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federal register

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3803 **National Salute to Hospitalized Veterans' Day** Presidential proclamation

4536 **Grant Programs** ED issues rules making available Federal grants to assist local educational agencies and State educational agencies in the identification of asbetos hazards in school buildings; effective 1–16–81 (Part XIV of this issue)

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3952 **Grant Programs** Commerce/MBDA solicits financial assistance applications to provide technical assistance to minority business persons to increase their management and marketing capabilities (2 documents)

4606 **Education** ED issues rules for the Arts in Education Program and solicits applications for grant awards to state educational agencies, local educational agencies and other public or private institutions in order to establish programs in which the arts are an integral part of elementary and secondary curricula (2 documents) (Part XVIII of this issue)

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Highlights

FEDERAL REGISTER Published daily, Monday through Friday, (not published on Saturdays, Sundays, or on official holidays), by the Office of the Federal Register, National Archives and Records Service, General Services Administration, Washington, D.C. 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

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Questions and requests for specific information may be directed to the telephone numbers listed under INFORMATION AND ASSISTANCE in the READER AIDS section of this issue.

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Presidential Documents

Title 3—

The President

Proclamation 4814 of January 14, 1981

National Inventors' Day, 1981

By the President of the United States of America

A Proclamation

As the progress of science and technology is fundamental to the economic and social welfare of our society, so is the patent system essential to the advance of science and technology. This relationship is recognized in the first Article of our Constitution, which empowers the Congress "to promote the progress of science and useful arts" by securing for limited times to inventors an exclusive right to their discoveries.

Established in accordance with this constitutional mandate, our patent system dates back to the very beginning of our Nation. Since George Washington signed the first patent act into law on April 10, 1790, the patent system has encouraged our dramatic progress from a small agrarian Nation to a great technological and industrial world leader. From the cotton gin, telephone, and electric lamp, through the transistor, modern medicines and space vehicles, the history of our creativity, ingenuity and determination is reflected in the records of our patent system.

The incentive offered by patent protection to invent and innovate has created new markets, new industries and more jobs. As a consequence, a strong and reliable patent system is a substantial element in our efforts to develop alternative energy sources, increase our productivity, improve our environment, and solve the technological challenges which will confront us in the future.

In honor of the important role played by inventors in promoting progress in the useful arts, and in recognition of the invaluable contribution of inventors to the welfare of our people, the 96th Congress, by House Joint Resolution 337, has designated February 11, 1981, as "National Inventors' Day." Because February 11 is the birthday of Thomas Alva Edison, this Nation's most prolific inventor, it is an especially appropriate day on which to honor one of our most valuable national resources, the inventive genius of our people.

NOW, THEREFORE, I, JIMMY CARTER, President of the United States of America, do hereby call upon the people of the United States to honor all inventors by observing February 11, 1981, as National Inventors' Day, with appropriate ceremonies and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this fourteenth day of January, in the year of our Lord nineteen hundred and eighty-one, and of the Independence of the United States of America the two hundred and fifth.

Jimmy Carter

[FR Doc. 81-1999
Filed 1-14-81; 4:01 pm]
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[FR Doc. 81-1887
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Presidential Documents

Proclamation 4815 of January 14, 1981

National Salute to Hospitalized Veterans' Day

By the President of the United States of America

A Proclamation

There are today more than 30 million living veterans of the United States Armed Forces whose military service to their Nation has significantly influenced the role of the United States in world affairs.

During Fiscal Year 1978, approximately 1.3 million of these men and women were hospitalized in the 172 Veterans Administration medical centers across the country. A similar number will be admitted for care and treatment this year and in the years to come.

In order to encourage a continuing awareness of the service and sacrifice of these Americans, I urge citizens of all ages to participate in their communities in honoring our sick and disabled hospitalized veterans. I believe it essential that we do as much as possible to express our collective appreciation to the many hospitalized men and women who have served this Nation faithfully.

NOW, THEREFORE, I, JIMMY CARTER, President of the United States of America, do hereby proclaim February 14, 1981, as "National Salute to Hospitalized Veterans' Day." I invite all of our citizens to join with me in observing this day with appropriate ceremonies and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this fourteenth day of January, in the year of our Lord nineteen hundred and eighty-one, and of the Independence of the United States of America the two hundred and fifth.

Jimmy Carter

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OFFICE OF PER MANAGEMENT

5 CFR Part 351

Reduction in Fo

AGENCY: Office o
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ACTION: Final Ru

SUMMARY: Since
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Rules and Regulations

Federal Register
Vol. 46, No. 11
Friday, January 16, 1981

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each month.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 351

Reduction in Force

AGENCY: Office of Personnel Management.

ACTION: Final Rule; Republication.

SUMMARY: Since November 1979 the Office of Personnel Management (OPM) has published eight final reduction in force regulations in the Federal Register. These changes were intended to clarify and simplify existing material, and to reflect changes in the Federal personnel system that resulted from the Civil Service Reform Act (CSRA). For reference, we are now republishing the revised reduction in force regulations. OPM will forward a copy of this document to individual agencies in a Federal Personnel Manual (FPM) posting bulletin.

FOR FURTHER INFORMATION CONTACT: Ted Dow or Tom Glennon, (202) 632–4422.

EFFECTIVE DATE: January 16, 1981.

SUPPLEMENTARY INFORMATION: OPM has published final reduction in force regulations covering eight specific subject areas:

(i) *Preference eligible employees with a compensable service-connected disability of 30 percent or more.* On January 30, 1979, OPM published interim regulations providing for new retention subgroup AD (44 FR 5964). Final regulations were published in the Federal Register on November 9, 1979 (44 FR 65047).

(ii) *How to establish reduction in force tenure groups for new supervisors and managers.* OPM published proposed regulations in the Federal Register on December 28, 1979 (44 FR 76799). Final regulations were published on April 29, 1980 (45 FR 28301).

(iii) *How to use new performance appraisal systems established by the CSRA in the determination of reduction in force retention standing.* OPM published proposed regulations in the Federal Register on February 5, 1980 (45 FR 7618). Final regulations were published on May 2, 1980 (45 FR 29294).

(iv) *Clarification of the reduction in force assignment rights of full-time employees to other-than-full-time positions.* OPM published proposed regulations in the Federal Register on February 8, 1980 (45 FR 31379). Final regulations were published on June 20, 1980 (45 FR 41628).

(v) *Clarification of the transfer of function provisions.* OPM published proposed regulations in the Federal Register on May 13, 1980 (45 FR 31379). Final regulations were published on September 12, 1980 (45 FR 60401).

(vi) *Clarification of how agencies determine the retention standing of employees receiving military retired pay.* OPM published proposed regulations in the Federal Register on May 20, 1980 (45 FR 33640). Final regulations were published on September 23, 1980 (45 FR 62971).

(vii) *How to establish reduction in force competitive levels for supervisors and managers covered by the Merit Pay System provisions, and/or new probationary period requirements, that were established by the CSRA.* OPM published proposed regulations in the Federal Register on July 1, 1980 (45 FR 44304). Final regulations were published on December 12, 1980 (45 FR 81725).

(viii) *Clarification of how reemployment priority lists are established and maintained.* OPM published proposed regulations in the Federal Register on July 22, 1980 (45 FR 48904). Final regulations were published on December 30, 1980 (45 FR 85651).

The revised Part 351 of this title (which this document republishes) includes these final provisions.

Before March 1, 1981, OPM plans to publish final reduction in force regulations covering two additional subject areas:

(ix) *Clarification of how agencies formally designate positions as trainee or developmental positions for reduction in force purposes.* OPM published popoosed regulations in the Federal Register on October 21, 1980 (45 FR 69466). Final regulations are expected to be published before March 1, 1981.

(x) *Clarification of how agencies identify employees with transferring positions under the transfer of function provisions of OPM's reduction in force regulations.* OPM published proposed regulations in the Federal Register on October 28, 1980. Final regulations are expected to be published before March 1, 1981.

Proposed regulations (ix) and (x) would properly incorporate in Part 351 of this title existing policy that is presently set forth in FPM Chapter 351.

OPM has determined that this is a significant regulation for the purposes of E.O. 12044.

Office of Personnel Management.
Beverly M. Jones,
Issuance System Manager.

Accordingly, Part 351 of Title 5, Code of Federal Regulations, is republished to read as follows:

PART 351—REDUCTION IN FORCE

Subpart A—[Reserved]

Subpart B—General Provisions

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351.201 Use of regulations.
351.202 Coverage.
351.203 Definitions.
351.204 Responsibility of agency.
351.205 Authority of OPM.

Subpart C—Transfer of Function

351.301 Applicability.
351.302 Transfer of employees.

Subpart D—Scope of Competition

351.401 Determining retention standing.
351.402 Competitive area.
351.403 Competitive level.
351.404 Retention register.
351.405 Employees demoted because of unacceptable performance.

Subpart E—Retention Standing

351.501 Tenure groups and subgroups—competitive service.
351.502 Tenure groups and subgroups—excepted service.
351.503 Length of service.
351.504 Performance rating.
351.505 Records.
351.506 Effective date of retention standing.

Subpart F—Release From Competitive Level

351.601 General.
351.602 Order of release from competitive level.
351.603 Actions.
351.604 Use of furlough.

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351.807 Permissive continuing exceptions.
351.808 Permissive temporary exceptions.

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351.702 Exception to qualifications.
351.703 Assignment involving displacement.
351.704 Rights and prohibitions.
351.705 Administrative assignment.

Subpart H—Notice to Employee

351.801 Notice period.
351.802 Content of notice.
351.803 General and specific notices.
351.804 Content of general notice.
351.805 Expiration of notice.
351.806 New notice required.
351.807 Status during notice period.
351.808 Notice concerning consideration for reemployment.

Subpart I—Appeals and Corrective Action

351.901 Appeal.
351.902 Correction by agency.

Subpart J—Reemployment Priority List

351.1001 Establishment and maintenance of the reemployment priority list.
351.1002 Persons covered.
351.1003 Employee eligibility.
351.1004 Duration of eligibility.
351.1005 Operation of the list in Alaska or overseas.

Authority: 5 U.S.C. 1302, 3502, unless otherwise noted.

Subpart A [Reserved]

Subpart B—General Provisions

§ 351.201 Use of regulations.

(a) Each agency shall follow this part when it releases a competing employee from his/her competitive level by separation demotion, furlough for more than 30 days, or reassignment requiring displacement, when the release is required because of lack of work, shortage of funds, reorganization, reclassification due to change in duties, or the exercise of reemployment rights or restoration rights.

(b) This part does not require an agency to fill a vacant position. However, when an agency, in its discretion, chooses to fill a vacancy by an employee who has been reached for release from his/her competitive level for one of the reasons named in paragraph (a) of this section, this part shall be followed.

(c) This part does not apply to the change of an employee from regular to substitute in the same pay level in the U.S. Postal Service field service.

(d) An agency authorized to administer alien employee programs under section 441 of the Foreign Service Act of 1946, as amended (22 U.S.C. 889), may include special plans for reduction in force in its alien employee programs. In these special plans an agency may give effect to the labor laws and practices of the locality of employment by supplementing the selection factors in Subparts D and E of this part to the extent consistent with the public interest. Subpart I of this part does not apply to actions taken under the special plans authorized by this paragraph.

(e) This part does not apply to the termination of a temporary promotion or to the return of an employee to the position from which he/she was temporarily promoted or his/her reassignment or demotion to a different position that is not at a lower grade or level than the position from which he/she was temporarily promoted.

(f) This part does not apply to the release from his/her competitive level of a National Guard technician under section 709 of title 32, United States Code.

(g) This part does not apply to an employee in the Senior Executive Service.

(h) This part does not apply to the return of an employee promoted under § 335.102(g) to the position from which promoted or to a position of equivalent grade and pay.

§ 351.202 Coverage.

(a) Except as provided in paragraph (b) of this section, this part applies to each civilian employee in:

(1) the executive branch of the Federal Government,

(2) Those parts of the Federal Government outside the executive branch which are subject by statute to the competitive service requirements,

(3) the civil service of the government of the District of Columbia.

(b) This part does not apply to an employee:

(1) In a position in or under the legislative or judicial branch of the Federal Government, except an employee in a position subject by statute to the competitive service requirements, or

(2) Whose appointment is required by Congress to be confirmed by, or made with, the advice and consent of the United States Senate, except a postmaster.

§ 351.203 Definitions.

In this part:

(a) "Competing employee" means an employee in tenure group I, II, or III.

(b) "Days" means calendar days.

(c) "Function" means all or a clearly identifiable segment of an agency's mission (including all integral parts of that mission), regardless of how it is performed.

(d) "Local commuting area" means the geographic area that usually constitutes one area for employment purposes. It includes any population center (or two or more neighboring ones) and the surrounding localities in which people live and reasonably can be expected to travel back and forth daily in their usual employment.

(e) "Performance rating" means the current official performance rating under a performance rating plan approved by OPM.

(f) "Reorganization" means the planned elimination, addition, or redistribution of functions or duties in an organization.

(g) "Representative rate" means the fourth step of the grade for a position subject to the General Schedule, the prevailing rate for a position under a wage-board or similar wage-determining procedure, and for other positions, the rate designated by the agency as representative of the position.

(h) "Transfer of function" means:

(1) The transfer of the performance of a continuing function from one competitive area and its addition to one or more other competitive areas; or

(2) The movement of the competitive area in which the function is performed to another commuting area.

§ 351.204 Responsibility of agency.

Each agency covered by this part is responsible for following and applying the regulations in this part when the agency determines that a reduction in force is necessary.

§ 351.205 Authority of OPM.

The Office of Personnel Management may examine an agency's preparations for reduction in force at any stage. When OPM finds that an agency's preparations are contrary to the spirit and intent of these regulations or that they would result in violation of employee rights or equities, OPM shall require appropriate corrective action.

Subpart C—Transfer of Function

§ 351.301 Applicability.

The transfer of function provisions set forth in § 351.203(i)(1) are applicable when the work of one or more employees is moved from one competitive area to another, regardless of whether or not the movement is made under authority of a statute, Executive Order, reorganization plan, or other authority.

§ 351.302 Transfer of employees.

(a) Before a reduction in force is made in connection with the transfer of any or all of the functions of a competitive area to another continuing competitive area,

each competing employee in a position identified with the transferring function or functions shall be transferred to the continuing competitive area without any change in the tenure of his or her employment.

(b) An employee whose position is transferred under this subpart solely for liquidation, and who is not identified with an operating function specifically authorized at the time of transfer to continue in operation more than 60 days, is not a competing employee for other positions in the competitive area gaining the function.

(c) Regardless of an employee's personal preference, an employee has no right to transfer with his or her function, unless the alternative in the competitive area losing the function is separation or demotion.

(5 U.S.C. 3503)

Subpart D—Scope of Competition

§ 351.401 Determining retention standing.

Each agency shall determine the retention standing of each competing employee on the basis of the selection factors in this subpart and in Subpart E of this part.

§ 351.402 Competitive area.

(a) Each agency shall establish competitive areas in which employees compete for retention under this part.

(b) The standard for a competitive area is that it include all or that part of an agency in which employees are assigned under a single administrative authority. A competitive area in the departmental service meets this standard when it covers a primary subdivision of an agency in the local commuting area. A competitive area in the field service meets this standard when it covers a field installation in the local commuting area.

(c) An agency may establish a competitive area larger than one that meets the standard named in paragraph (b) of this section. In exceptional circumstances, and with the prior approval of the Office, an agency may establish a competitive area smaller than one that meets the standard named in paragraph (b) of this section. Agencies which have been delegated individual authority to do so may establish competitive areas smaller than named in paragraph (b) of this section, without prior approval of the Office.

(d) An agency may combine two or more competitive areas for initial competition in an enlarged competitive level or levels without correspondingly combining the areas for assignments between competitive levels. When an agency combines areas for initial competition only, it may limit competition for assignments between competitive levels to (1) the enlarged area, (2) a single competitive area, or (3) an area larger than a single area but smaller than the enlarged area.

(5 U.S.C. 1104; Pub. L. 95-454, sec. 3(5))

§ 351.403 Competitive level.

(a) Each agency shall establish competitive levels consisting of all positions in a competitive area and in the same grade or occupational level which are sufficiently alike in qualification requirements, duties, responsibilities, pay schedules, and working conditions, so that an agency readily may assign the incumbent of any one position to any of the other positions without changing the terms of his appointment or unduly interrupting the work program. Sex may not be a basis for assigning a position to a competitive level, except for a position for which restriction of certification of eligibles by sex is found justified by OPM.

(b)(1) Each agency shall establish separate competitive levels for competitive positions, as distinguished from excepted positions. Among competitive positions and among excepted positions, each agency shall establish separate competitive levels for positions that are:

(i) Under different pay schedules;
(ii) Filled on a full-time basis;
(iii) Filled on a seasonal basis;
(iv) Filled on a part-time basis;
(v) Filled on an intermittent basis; or
(vi) Filled by a supervisor or management official, as defined in 5 U.S.C. 7103(a)(10) and (11).

(2) Among excepted positions, each agency shall establish separate competitive levels for positions filled under different appointment authorities.

(3) Employees covered by the Merit Pay System provisions are General Schedule employees for all reduction in force purposes.

(4) A probationary period required by Subpart I of Part 315 of this title upon initial appointment to a supervisory or managerial position does not constitute a basis for establishing a separate competitive level.

(5) Differences in work schedules among other-than-full-time employees who would otherwise be assigned to the same competitive level do not constitute a basis for establishing separate competitive levels.

§ 351.404 Retention register.

(a) When a competing employee is to be released from a competitive level under this part, the agency shall establish a separate retention register for that competitive level. The retention register is prepared from the current retention records of employees:

(1) In the competitive level;

(2) Temporarily promoted from the competitive level; or

(3) Detailed from the competitive level under 5 U.S.C. 3341 or other appropriate authority.

(b) Except for an employee on military duty with a restoration right, the agency shall enter on the retention register, in the order of his or her retention standing, the name of each competing employee who is:

(1) In the competitive level;

(2) Temporarily promoted from the competitive level; or

(3) Detailed from the competitive level under 5 U.S.C. 3341 or other appropriate authority.

(c) The agency shall enter on a list apart from the retention register the name and expiration date of the appointment or promotion of each employee serving in a position under specifically limited temporary appointment or temporary promotion, followed by the name of each employee serving in the competitive level with, as applicable:

(1) A performance rating of less than "Satisfactory" in an agency that has not implemented a performance appraisal system meeting all the requirements of 5 U.S.C. 4302 and Subpart 430-B of this title; or

(2) A written decision under § 432.204(a) of this title to remove him or her because of "Unacceptable Performance" as defined in § 432.202 of this title.

§ 351.405 Employees demoted because of unacceptable performance.

An employee who has received a written decision under § 432.204(a) of this title to demote him or her because of "Unacceptable Performance," as defined in § 432.202 of this title, competes under this part from the position to which he or she will be demoted.

Subpart E—Retention Standing

§ 351.501 Tenure groups and subgroups—competitive service.

(a) Each agency shall classify the competing employees on a retention register who occupy positions in the competitive service in the following groups and subgroups on the basis of tenure of employment and veteran preference. The descending order of retention standing:

(1) By groups is group I, group II, group III;

(2) Within each group is subgroup AD, subgroup A, subgroup B;

(3) Within each subgroup persons are ranked beginning with the earliest service date.

(b) Group I includes each career employee who is not serving a probationary period. (A supervisory or managerial employee serving a probationary period required by Subpart I of Part 315 of this title is in group I if the employee is otherwise eligible to be included in this group.)

(c) Group II includes:

(1) Each employee serving a probationary period under Subpart H of Part 315 of this title. (A supervisory or managerial employee serving a probationary period required by Subpart I of Part 315 of this title is in group II if that employee has not completed a probationary period under Subpart H of Part 315 of this title); and

(2) Each career-conditional employee.

(d) Group III includes:

(1) Each indefinite employee;

(2) Each employee serving under a temporary appointment pending establishment of register;

(3) Each employee in status quo; and

(4) Each employee serving under other nonstatus nontemporary appointment.

(e) Subgroup AD includes each preference eligible employee who has a compensable service-connected disability of 30 percent or more.

(f) Subgroup A includes each preference eligible employee not included in subgroup AD.

(g) Subgroup B includes each nonpreference eligible employee.

(h) A retired member of a uniformed service is considered a preference eligible under this part only if he or she meets at least one of the conditions in the following paragraphs (h) (1), (2), or (3):

(1) The employee's military retirement is based on disability that either:

(i) Resulted from injury or disease received in the line of duty as a direct result of armed conflict; or

(ii) Was caused by an instrumentality of war incurred in the line of duty during a period of war as defined by sections 101 and 301 of title 38, United States Code.

(2) The employee's military service does not include 20 or more years of full-time active service, regardless of when performed. However, this total does not include periods of active duty for training.

(3) The employee has been employed continuously since November 30, 1964, in a position covered by this Part without a break in service of more than 30 days.

(4) An employee who would otherwise be considered a preference eligible under conditions in § 351.501(h)(2) or (3) is not, effective October 1, 1980, considered a preference eligible for purposes of this part if the employee retired at or above the rank of major or its equivalent.

§ 351.502 Tenure groups and subgroups—excepted service.

Each agency shall classify the competing employees on a retention register who occupy positions in the excepted service by groups and subgroups that correspond to those for employees who occupy positions in the competitive service having similar tenure of employment and veteran preference, except that an employee who completes 1 year of current continuous service under a temporary appointment is in tenure group III.

§ 351.503 Length of service.

(a) Each agency shall establish a service date for each competing employee.

(b) An employee's service date is whichever of the following dates reflects his or her total creditable service, and the service credit rating provided under this part:

(1) The date the employee entered on duty, when he or she has no previous creditable service;

(2) The date obtained by subtracting the employee's total creditable previous service from the date he or she last entered on duty; or

(3) The date obtained by subtracting from the date in paragraph (b)(1) or (b)(2) of this section, the service equivalent allowed for a performance rating under § 351.504.

(c) An employee who is a retired member of a uniformed service is entitled to credit under this part for:

(1) The length of time in active service in the armed forces during a war, or in a campaign or expedition for which a campaign badge has been authorized; or

(2) The total length of time in active sevices in the armed forces if the employee meets one of the conditions included under § 351.501(h) of this title.

(d) Each agency shall adjust the service date for each employee to withhold credit for noncreditable time.

§ 351.504 Credit for performance.

(a) Each employee's performance rating of record on the date of issuance of specific reduction in force notices shall determine the employee's entitlement to additional service credit for performance under this section.

(b) An agency that has not implemented a performance appraisal system meeting all the requirements of 5 U.S.C. 4302 and Part 430 Subpart B of this title, and assigns summary objective performance ratings, shall credit the following employees with additional service, which is added to each employee's creditable service under this part:

(1) Each employee who has an "Outstanding" performance rating shall receive 4 years of additional service; and

(2) Each employee who has a performance rating between "Satisfactory" and "Outstanding" shall receive 2 additional years of service.

(c) An agency that has implemented a performance appraisal system meeting all the requirements of 5 U.S.C. 4302, and Part 430 Subpart P of this title, is responsible for using employee performance appraisals to credit employees with additional service toward retention standing. This additional service is added to each employee's creditable service under this part. Each employee who has an "Outstanding" or highest appraisal under the agency's system, shall receive 4 additional years of service. Each employee whose performance meets, but does not exceed the established minimum performance standards for the critical elements of his or her position shall be credited with no additional years of service. Agencies may use employee performance appraisals to assign other employees whose performance exceeds the established minimum performance standards for the critical elements of the position, but is less than "Outstanding" or the highest equivalent appraisal under the agency's system, an amount of service credit ranging from 0 to less than 4 years.

Each agency is responsible for ensuring that these provisions are:

(1) Consistent with Part 430 Subpart B of this title; and

(2) Uniformly and consistently applied in any one reduction in force.

§ 351.505 Records.

Each agency shall maintain the current, correct records needed to determine the retention standing of its competing employees. The agency shall allow the inspection of its retention registers and related records by:

(a) A representative of OPM; and

(b) An employee of the agency to the extent that the registers and records have a bearing on his case.

The agency shall preserve intact all registers and records relating to an employee for at least 1 year from the date the employee is issued a specific notice.

§ 351.606 Effective date of retention standing.

Except for determining additional service credit for performance ratings as provided in § 351.504:

(a) The retention standing of each employee released from his competitive level in the order prescribed in § 351.602 is determined as of the date he is so released.

(b) The retention standing of each employee temporarily retained in his competitive level under § 351.606 is determined as of the date he would have been released from his competitive level had temporary retention action under § 351.606 not been taken. The retention standing of each employee so retained remains fixed until the completion of the reduction in force action which resulted in the temporary retention.

(c) When an agency discovers an error in the determination of an employee's retention standing, it shall correct the error and adjust any erroneous reduction in force action to accord with the employee's true retention standing as of the effective date established by this section.

Subpart F—Release From Competitive Level

§ 351.601 General.

(a) An agency may not release a competing employee from a competitive level while retaining in that level an employee with:

(1) A specifically limited temporary appointment;

(2) A specifically limited temporary promotion;

(3) A performance rating of less than "Satisfactory" in an agency that has not implemented a performance appraisal system meeting all the requirements of 5 U.S.C. 4302 and Subpart B or Part 430 of this title; or

(4) A written decision under § 432.204(a) of removal or demotion from the competitive level because of "Unacceptable Performance," as defined in § 432.202 of this title.

(b) An agency may not release a competing employee from a competitive level while retaining in that level an employee with lower retention standing except:

(1) As required under § 351.606 when an employee is retained under a mandatory exception or under § 351.606 when an employee is entitled to a new written notice of reduction in force; or

(2) As permitted under § 351.607 when an employee is retained under a permissive continuing exception or under § 351.606 when an employee is retained under a permissive temporary exception.

§ 351.602 Order of release from competitive level.

Each agency shall select competing employees for release from a competitive level under this part in the inverse order of retention standing, beginning with the employee with the lowest retention standing on the retention register. When employees in the same retention subgroup have identical service dates and are tied for release from a competitive level, the agency may select any tied employee for release.

§ 351.603 Actions.

Subject to Subpart G of this part, when an agency selects an employee for release from his competitive level, it shall:

(a) Assign him with his consent to a position for which he is qualified which will last at least 3 months;

(b) Furlough him; or

(c) Separate him.

§ 351.604 Use of furlough.

(a) An agency may furlough a competing employee only when it intends to recall him within 1 year to duty in the position from which furloughed.

(b) An agency may not separate a competing employee under this part while an employee with lower retention standing in the same competitive level is on furlough.

(c) An agency may not furlough a competing employee for more than 1 year.

(d) When an agency recalls employees to duty in the competitive level from which furloughed, it shall recall them in the order of their retention standing, beginning with the highest standing employee.

§ 351.605 Liquidation provisions.

When an agency will abolish all positions in a competitive area within 3 months it shall release employees in subgroup order but may release them regardless of retention standing within a subgroup, except as provided in § 351.606. When an agency releases an employee under this section, the notice to the employee shall so state and also shall give the date the liquidation will be completed. An agency may apply §§ 351.607 and 351.608 in liquidation.

§ 351.606 Mandatory exceptions.

(a) When an agency applies § 351.602 or §351.605, it shall give the following special retention priorities:

(1) Each group I or II preference eligible employee entitled under section 9 of the Military Selective Service Act of 1967, as amended (50 U.S.C. App. 459), to retention for 1 year after restoration shall be retained over other employees in his subgroup for the retention period; and

(2) Each group I or II nonpreference eligible employee entitled under section 9 of the Military Selective Service Act of 1967, as amended (50 U.S.C. App. 459), to retention for either 6 months or 1 year after restoration shall be retained over other employees in his subgroup for the retention period.

(b) Each agency shall record on the retention register, for inspection by each employee, the reasons for any deviation from the regular order of selection required by paragraph (a) of this section.

§ 351.607 Permissive continuing exceptions.

An agency may make exception to the selection sequence in § 351.602 and to the action provisions of § 351.603 when needed to retain an employee on duties that cannot be taken over within 90 days and without undue interruption to the activity by an employee with higher retention standing. The agency shall notify in writing each higher-standing employee reached for release from the same competitive level of the reasons for the exception.

§ 351.608 Permissive temporary exceptions.

An agency may make exception for not more than 90 days to the selection sequence in § 351.602 and to the action provisions of § 351.603 when needed to retain an employee for 90 days or less after the effective date of release from the same competitive level of a higher-standing employee to continue an activity without undue interruption, or to satisfy a Government obligation to the retained employee, or when the temporary retention of the lower-standing employee does not adversely affect the rights of any higher-standing employee who is released ahead of him. The temporary retention of a lower-standing employee on sick leave as a permissive exception may exceed 90 days but may not exceed the date of exhaustion of his sick leave. When the agency retains an employee for more than 30 days after the effective date of release from the same competitive level of a higher-standing employee, it shall notify in writing each higher-standing employee of the reasons for the exception and the date the lower-standing employee's retention will end. When the agency retains a lower-standing employee for 30 days or less it shall list opposite his name on the retention register the reasons for the exception and the date his retention will end.

Subpart G—Assignment Rights

§ 351.701 Qualifications for assignment.

(a) Except as provided in § 351.702, an employee is qualified for assignment under § 351.603 if the employee:

(1) Meets the Office standards and requirements for the position, including any minimum educational requirement;

(2) Is physically qualified for the duties of the position;

(3) Meets any special qualifying condition which the Office has approved for the position; and

(4) Has the capacity adaptability, and any special skills needed to satisfactorily perform the duties and responsibilities of the position without undue interruption to the activity.

(b) An agency may not consider the sex of an employee as a factor in determining the employee's qualification for a position, except when the position is one for which restriction of certification of eligibles by sex is found justified by the Office.

(c) An employee who is carried on leave of absence because of a compensable injury and is released from his/her competitive level may not be denied an assignment right solely because the employee is not physically qualified for the duties of the position when the physical disqualification resulted from the compensable injury. Such an employee must be afforded appropriate assignment rights subject to his/her recovery as provided by 5 U.S.C. 8151 and Part 353 of this chapter.

(d) If an agency determines that, on the basis of evidence before it, a preference eligible employee who has a compensable service-connected disability of 30 percent or more is not able to fulfill the physical requirements of a position to which the employee would otherwise have been assigned under this part, the agency must notify the Office of this determination. At the same time, the agency must notify the employee of the reasons for the determination and of the right to respond, within fifteen days of the notification, to the Office, which will require the agency to demonstrate that the notification was timely sent to the employee's last known address. The Office shall make a final determination concerning the physical ability of the employee to perform the duties of the position. This determination must be made before the agency may select any other person for the position. When the Office has completed its review of the proposed disqualification on the basis of physical disability, it must send its finding to both the agency and the employee. The agency must comply with the findings of the Office. The functions of the Office under this paragraph may not be delegated to an agency.

§ 351.702 Exception to qualifications.

An agency may assign an employee under § 351.201(b) or § 351.603 without regard to OPM's standards and requirements for the position if:

(a) He meets any minimum education requirement for the position; and

(b) The agency determines that the employee has the capacity, adaptability, and special skills needed to satisfactorily perform the duties and responsibilities of the position.

§ 351.703 Assignment involving displacement.

(a) An agency shall assign under § 351.603 a group I or II employee in a position in the competitive service, rather than furlough or separate him, to a position in the competitive service in another competitive level in his competitive area which requires no reduction, or the least possible reduction, in representative rate when a position in the other competitive level is held by an employee:

(1) In a lower subgroup; or

(2) With lower retention standing in a position from which the group I or II employee was promoted or an essentially identical position.

(b) Each employee's assignment rights shall be determined on the basis of the pay rates in effect on the date of issuance of specific notices of reduction in force, except that when it is officially known on the date of issuance of notices that new pay rates have been approved and will become effective by the effective date of the reduction in force, assignment rights shall be determined on the basis of the new pay rates.

§ 351.704 Rights and prohibitions.

(a) An agency may satisfy an employee's right to assignment under § 351.703 by assignment under § 351.201(b) or § 351.705 to a position having a representative rate equal to that to which he or she would be entitled under § 351.703.

(b) Section 351.703 does not:

(1) Require an agency to assign an employee to a position having a higher representative rate;;

(2) Authorize or permit an agency to displace a full-time employee by other than a full-time employee;

(3) Authorize or permit an agency to displace an other-than-full-time employee by a full-time employee; or

(4) Authorize or permit an agency to satisfy a full-time employee's right to assignment under § 351.603 by assigning the employee to a vacant other-than-full-time position. However, an agency may, at its discretion, choose to offer a vacant other-than-full-time position to a full-time employee in lieu of separation by reduction in force.

§ 351.705 Administrative assignment.

(a) An agency may, in its discretion, adopt provisions which:

(1) Provide for assignments across competitive areas;

(2) Permit a competing employee to displace an employee with lower retention standing in the same subgroup when it cannot make an equally reasonable assignment by displacing an employee in a lower subgroup;

(3) Permit an employee in subgroup III–AD to displace an employee in subgroup III–A or III–B, or permit an employee in subgroup III–A to displace an employee in subgroup III–B; or

(4) Provide competing employees in the excepted service with assignment rights similar to those in § 351.703 and in paragraphs (a) (1), (2), and (3) of this section.

(b) Provisions adopted by an agency under paragraph (a) of this section:

(1) Shall be consistent with this part;

(2) Shall be uniformly and consistently applied in any one reduction in force;

(3) May not provide for the assignment of a less-than-full-time employee to a full-time position;

(4) May not provide for the assignment of an employee in a competitive position to a position in the excepted service; and

(5) May not provide for the assignment of an excepted employee to a position in the competitive service.

Subpart H—Notice to Employee

§ 351.801 Notice period.

(a) Each competing employee selected for release from his or her competitive level under this part is entitled to a written notice at least 30 full days before the effective date of his or her release.

(b) The notice shall not be issued more than 90-days before release except when the agency determines that additional time will protect employee rights or avoid administrative hardship.

(c) When an agency retains an employee under § 351.606 or § 351.608 the agency may not continue the notice period beyond the employee's retention period. The notice to the employee shall cite the date on which the retention period ends as the effective date of the employee's release from his or her competitive level.

(5 U.S.C. 1104; Pub. L. 95–454, sec. 3 (5))

§ 351.802 Content of notice.

Except as provided in § 351.803, the notice required by § 351.801 shall state specifically the action to be taken and its effective date; the employee's competitive area, competitive level, subgroup, and service date; the place where the employee may inspect the regulations and records pertinent to this case; the reasons for retaining a lower-standing employee in the same competitive level under § 351.607; the reasons for retaining a lower-standing employee in the same competitive level for more than 30 days under § 351.608; and the employee's right to appeal to the Merit Systems Protection Board under the provisions of the Board's regulations. The agency shall comply with the provisions of § 1201.21 of this title.

(5 U.S.C. 7701, et seq.)

§ 351.803 General and specific notices.

When an agency cannot determine specifically all individual actions at the start of the notice period, it may issue general notices which shall be supplemented by specific notices. The combined contents of the general and specific notices shall meet the requirements in § 351.802. When an agency issues a general notice, the notice period begins the day after the employee receives the general notice. An agency may cancel an unexpired general notice, or may renew it for additional periods within the maximum notice period referred to in § 351.801. A general notice expires as stated therein unless, on or before the expiration date, the employee receives a renewal of the general notice or a specific notice. A general notice expires no later than at a time that will allow 5 days before the end of the maximum notice period. When a general notice is supplemented by a specific notice, an agency may not release an employee from his competitive level until at least 5 days after the employee's receipt of the specific notice.

§ 351.804 Content of general notice.

A general notice shall inform the employee that action under this part may be necessary but that the agency has determined no specific action in his case. The notice shall state that as soon as the agency determines what action, if any, will be taken under this part the employee will receive specific notice of the action to be taken. The general notice shall state that it will expire as stated therein unless, on or before the expiration date, it is renewed or supplemented by a specific notice.

A general notice may also include any other information specified in § 351.802.

§ 351.805 Expiration of notice.

A general notice expires as provided in § 351.803. A specific notice expires except when followed by the action specified, or by action less severe than specified, in the notice or in an amendment made to the notice before the agency takes the action. The agency may not take the action before the effective date specified in the specific notice. An action taken after the specified date in the specific notice shall not be ruled invalid for that reason except when it is challenged by a higher-standing employee in the competitive level who is reached out of order for reduction in force as a result of the action or except when it results in a notice period longer than the maximum allowed.

§ 351.806 New notice required.

An employee is entitled to a new written notice of at least 30 full days if the agency decides to take an action more severe than first specified.

§ 351.807 Status during notice period.

When possible, the agency shall retain the employee on active duty during the notice period, but it may place him/her on annual leave with or without his/her consent, on leave without pay with his/her consent, or in a nonpay status without his/her consent when in an emergency the agency lacks work or funds for all or part of the notice period.

(5 U.S.C. 7701, et seq.)

§ 351.808 Notice concerning consideration for reemployment.

An employee who receives a specific notice of separation under this part must be given information concerning his or her right to consideration for reemployment under the provisions of Subparts B and C of Part 330 of this title. This information is in addition to that specified in § 351.802. The information concerning consideration for reemployment should be included in or with the specific reduction in force notice; otherwise, a separate supplemental notice covering this information must be given to the employee.

Subpart I—Appeals and Corrective Action

§ 351.901 Appeal.

An employee who has been affected by a reduction in force action and who believes this part has not been correctly applied may appeal to the Merit Systems Protection Board under the provisions of the Board's regulations.

(5 U.S.C. 7701, et seq.)

§ 351.902 Correction by agency.

When an agency decides that an action under this part was unjustified or unwarranted and restores an individual to his former grade or rate of pay or to an intermediate grade or rate of pay, it shall make the restoration retroactively effective to the date of the improper action.

(5 U.S.C. 7701, et seq.)

Subpart J—Reemployment Priority List

§ 351.1001 Establishment and maintenance of the reemployment priority list.

Each agency shall establish and maintain a reemployment priority list for each commuting area in which it separates group I or group II employees from competitive positions under this part.

§ 351.1002 Persons covered.

(a) The name of each group I or group II employee who receives a specific notice of separation from a competitive position (as distinguished from an excepted position) under this part is entered on the reemployment priority list.

(b) This priority extends to all competitive positions in the commuting area for which the employee is qualified and available, except as provided in § 351.1006.

(c) Subpart B of Part 330 of this title covers appointment from the reemployment priority list.

§ 351.1003 Employee eligibility.

(a) A full-time group I or group II employee is entered on the reemployment priority list unless he or she has declined assignment under Subpart G of this part to a position that:

(1) Is full-time;

(2) Is competitive;

(3) Is nontemporary; and

(4) Has a representative rate no lower than that of the position from which the employee was separated.

(b) An other-than-full-time group I or group II employee is entered on the reemployment priority list unless he or she has declined assignment under Subpart G of this part to an other-than-full-time position that:

(1) Is of the same type work schedule (i.e., part-time, intermittent, or seasonal) as the position from which the employee was separated;

(2) Is competitive;

(3) Is nontemporary;

(4) Has a representative rate no lower than that of the position from which the employee was separated; and

(5) Has a regularly scheduled administrative workweek no lower than that of the position from which the employee was separated.

§ 351.1004 Duration of eligibility.

(a) The name of a group I employee remains on the reemployment priority list for 2 years, and a group II employee's name for 1 year, from the date he or she was separated.

(b) An employee's name is deleted from the reemployment priority list when the employee submits a written request to the agency asking that his or her name be deleted.

(c) A full-time employee's name is also deleted from the reemployment priority list when the employee:

(1) Accepts a non-temporary, full-time, competitive position; or

(2) Declines under this subpart a full-time, nontemporary, competitive position with a representative rate the same as, or higher than, that of the position from which he or she was separated under this part.

(d) An other-than-full-time employee's name is also deleted from the reemployment priority list when the employee:

(1) Accepts a nontemporary competitive position; or

(2) Declines under this subpart a nontemporary, competitive position with a representative rate, and regularly scheduled administrative workweek, the same as or higher than that of the position from which the employee was separated under this part.

§ 351.1005 Operation of the list in Alaska and overseas.

(a) The name of each group I or group II employee who receives a notice of separation under this part from a competitive position in Alaska or overseas is entered on the reemployment priority list for the area in which the position from which separated is located, except when:

(1) The employee leaves that area; or

(2) The agency has a general program for rotating employees between overseas areas and the United States and the employee's immediately preceding overseas services or residence, combined with prospective overseas service under available appointments, exceeds the maximum duration of an overseas duty tour in the agency's rotation program.

(b) Upon his or her written request, the name of an employee who leaves the area is entered on the agency's reemployment priority list for:

(1) The commuting area from which he or she was employed for Alaskan or overseas service; or

(2) Another area, except in Alaska or overseas, that is mutually acceptable to the employee and the agency.

(c) In addition to any of the reasons, as appropriate, in § 351.1004 (b), (c), or (d), for deleting an employee's name from the reemployment priority list, the name of an employee is deleted from an Alaskan or overseas reemployment priority list when the employee:

(1) Leaves the area covered by that list; or

(2) Becomes disqualified for overseas appointment because of his or her previous service or residence.

(5 U.S.C. 3315)

[FR Doc. 81-1791 Filed 1-15-81; 8:45 am]

BILLING CODE 6325-01-M

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Parts 210, 220, and 225

[Amendments 47, 37, and 5, respectively]

National School Lunch Program, School Breakfast Program and State Administrative Expense Funds; Changes to National Average Payment Factors

AGENCY: Food and Nutrition Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule amends the National School Lunch Program, School Breakfast Program, and State Administrative Expense fund regulations for the period January 1, 1981 through September 30, 1981 in the following ways: (1) there will be no January 1, 1981 semiannual adjustment made in the Section 4 and Section 11 National Average Payment factors for lunches and breakfast served; (2) the Section 4 and Section 11 National Average Payment adjustment to be made in July 1981 shall be based on the Consumer Price Index for the previous 12 months, rather than for the previous six months; (3) Section 4 National Average Payment factors for school lunches will be reduced by two and one-half cents for all categories of lunches served by school food authorities in which less than 60 percent of the lunches served were served free or at a reduced price during school year 1978–79; (4) reductions in Section 4 National Average Payment factors must be reflected in reimbursement payments actually made to School Food Authorities in which less than 60 percent of the lunches served were served free or at a reduced price during school year 1978–79; (5) State revenue matching requirements under the National School Lunch Program for the school year beginning July 1, 1981 will not be reduced by the reduction in Section 4 National Average Payment factors; and (6) State Administrative Expense fund allocations for the fiscal year ending September 30, 1982 will not be reduced by the reduction in Section 4 National Average Payment Factors. These changes implement the mandates of P.L. 96–499, the Omnibus Reconciliation Act of 1980. These changes are anticipated to save $128.1 million for the National School Lunch Program and $8 million for School Breakfast Program.

EFFECTIVE DATE: January 1, 1981.

FOR FURTHER INFORMATION CONTACT: Stanley C. Garnett, Branch Chief, Policy and Program Development Branch, School Programs Division, Food and Nutrition Service, U.S. Department of Agriculture, Washington, D.C. 20250, (202) 447–8065. An Impact Analysis Statement is available on request from the above named individual.

SUPPLEMENTARY INFORMATION: This final action has been reviewed under USDA procedures established in the Secretary's Memorandum 1955 to implement Executive Order 12044 and has been classified "not significant." Robert Greenstein, Administrator, Food and Nutrition Service, has determined that this final rule is nondiscretionary and mandated by Public Law 96–499. Therefore, solicitation of public comments is unnecessary. Good cause exists both for the dispensing with the solicitation of public comments and for making this rule effective earlier than 30 days after publication.

Background

Public Law 96–499 authorized several legislative changes in all Child Nutrition Programs which will result in significant savings for fiscal year 1981. These changes are intended by Congress to achieve savings by amending Part 210 National School Lunch Program and Part 220 School Breakfast Program with the three provisions which are explained below.

Two and one-half cent Section 4 Reduction in Reimbursement Rates

Section 4 of the National School Lunch Act provides for general cash payment for all lunches served under the National School Lunch Act. Currently most States earn 18.5 cents under Section 4 for each lunch (free, reduced-price or paid) served under the National School Lunch Program. Section 201 of Public Law 96–499 provides for a two and one-half cent reduction in the

general cash payment factor under Section 4 of the National School Lunch Act for all categories of lunches served (free, reduced-price, paid) by school food authorities in which less than 60 percent of the lunches were served free or at a reduced-price during the second preceding school year (SY 1978–79).

The two and one-half cent reduction in the Section 4 general cash payment factor will not affect the amount of State administrative expense funds to be made available under Section 7 of the Child Nutrition Act of 1966 for the fiscal year ending September 30, 1983. In addition, the amount of State revenues appropriated or used for meeting the requirements under Section 7 of the National School Lunch Act for the school year ending June 30, 1982 will not be affected by a reduction in the amount of Federal funds expended as a result of the reduction in Section 4 earnings.

Annual Adjustments in National Average Payment (NAP) Rates

Section 204 of Public Law 96–499 eliminated the semiannual adjustment in the Section 4 and Section 11 National Average Payment factors for lunch and the National Average Payment factors for breakfast served under Section 4 of the Child Nutrition Act of 1966 for fiscal year 1981. This final rule eliminates the January 1, 1981 semiannual adjustment of National Average Payment factors for the National School Lunch Program and School Breakfast Program. The National Average Payment factors for these programs for the period January 1, 1981, through June 30, 1981, will be those factors prescribed for the period July 1 through December 31, 1980, (45 FR 48174), except for the changes noted below.

PART 210—NATIONAL SCHOOL LUNCH PROGRAM

Accordingly, Part 210 is amended as follows:

1. § 210.4 paragraph (a) is amended by adding a new sentence at the end of the paragraph to read as follows:

§ 210.4 Payment of Funds to States and FNSROs.

* * * * *

(a) * * * For the period from January 1, 1981 through September 30, 1981, the National Average Payment factor for lunches served under the National School Lunch Act, after being adjusted under Section 11(a) of the National School Lunch Act, shall be reduced by two and one-half cents for any school food authority in which less than 60 percent of lunches served in the National School Lunch Program were served free or at a reduced price during the second preceding school year (SY 1978–79).

§ 210.4 [Amended]

2. § 210.4 paragraph (c) is amended by adding a new sentence at the end of the paragraph to read as follows:

* * * * *

(c) * * * In the fiscal year ending September 30, 1981, however, the Secretary shall omit the January semiannual adjustments and shall make adjustments by July 1, which shall reflect changes in the cost of operating the program as indicated by the changes in the food away from home series of the Consumer Price Index for All Urban Consumers published by the Bureau of Labor Statistics of the Department of Labor for the 12 month period ending May 31, 1981.

* * * * *

3. § 210.6 paragraph (b) is amended by revising the last sentence of the paragraph to read as follows:

§ 210.6 Matching of funds.

* * * * *

(b) * * * For the school year beginning July 1, 1979, and for each school year thereafter, such State revenue shall constitute at least 10 percent of the matching requirements for the preceding school year based on the total general cash-for-food assistance funds expended for that period: *Except that,* for the school year beginning July 1, 1981, an additional amount shall also be subject to the State revenue matching requirement. Such amount for each State shall be determined by multiplying two and one-half cents by the number of lunches served during the period January 1, 1981 through June 30, 1981 in those School Food Authorities administered by the State agency in which less than 60 percent of the lunches served under the Program during the 1978–79 school year were served free or at a reduced price.

* * * * *

4. § 210.11 paragraph (c) is amended by revising the first sentence of the paragraph to read as follows:

§ 210.11 Reimbursement payments.

* * * * *

(c) Based on the principles set forth in this section, State agencies, and FNSROs where applicable, shall have maximum flexibility in assigning rates of reimbursement from general cash-for-food assistance funds among schools and School Food Authorities: *Except that,* for the period January 1, 1981 through September 30, 1981, the total amount of general cash-for-food assistance reimbursement actually paid to all School Food Authorities under the jurisdiction of a State agency in which less than 60 percent of the lunches served were served at a free or reduced price in school year 1978–79, shall not be greater than the amount of general cash-for-food assistance funds available for such School Food Authorities for this period under § 210.4(a) of this part. * * *

* * * * *

PART 220—SCHOOL BREAKFAST PROGRAM

§ 220.9 [Amended]

Section 220.9 paragraph (b) is amended by adding a new sentence at the end of the paragraph to read as follows:

(b) * * * In the fiscal year ending September 31, 1981, however, the Secretary shall omit the January 1 semiannual adjustments and shall make annual adjustments by July 1, which shall reflect changes in the cost of operating the program, as indicated by the changes in the food away from home series of the Consumer Price Index for All Urban Consumers published by the Bureau of Labor Statistics of the Department of Labor for the 12 month period ending May 31, 1981.

* * * * *

PART 235—STATE ADMINISTRATIVE EXPENSE FUNDS

Section 235.4 paragraph (a) is amended by adding the following sentence after the first sentence of the paragraph:

§ 235.4 Allocation of funds to States.

(a) * * * For the fiscal year ending September 30, 1981, the amount of funds expended under Section 4 of the National School Lunch Act in each State shall, for purposes of this paragraph, be the sum of: (1) the amount of such funds actually expended within the State during the fiscal year, and (2) the amount determined by multiplying two and a half cents times the number of lunches served during the period January 1, 1981 through September 30, 1981 in those School Food Authorities in which less than 60 percent of the lunches served under the National School Lunch Program during the 1978–79 school year were served free or at a reduced price. * * *

(Catalogue of Federal Domestic Assistance Nos. 10.555 and 10.559).

(Public Law 96–499. Sections 201 and 204, 94 Stat. 2599)

Dated: January 6, 1981.

Carol Tucker Foreman,

Assistant Secretary for Food and Consumer Services.

[FR Doc. 81-1206 Filed 1-15-81; 8:45 am]

BILLING CODE 3410-30-M

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7 CFR Part 226

Child Care Food Program; Matching of Federal Funds

AGENCY: Food and Nutrition Service, USDA.

ACTION: Final rule.

SUMMARY: This final regulation implements for the Child Care Food Program a provision of Title VI of Pub. L. 96–205. This provision (section 601) waives any requirements for local matching funds under $100,000 for American Samoa and the Northern Mariana Islands.

EFFECTIVE DATE: March 12, 1980.

FOR FURTHER INFORMATION CONTACT: Beverly Walstrom, Branch Chief, Policy and Program Development Branch, Child Care and Summer Programs Division, USDA, Food and Nutrition Service, Washington, D.C. 20250. Telephone (202) 447–8609. The final Impact Statement describing the options considered in developing this final rule and the impact of implementing each option is available on request from Beverly Walstrom at the above address.

SUPPLEMENTARY INFORMATION:

Administrative Procedures

This final action has been reviewed under USDA procedures established in the Secretary's Memorandum 1955 to implement Executive Order 12044 and has been classified as "not significant."

Robert Greenstein, Administrator, FNS, has determined that a situation exists which warrants publication without opportunity for a public comment period on this final action. Section 601 of Pub. L. 96–205 is mandatory; the Department is not at liberty to change the matching requirement should public comments indicate disapproval of the rule.

Solicitation of public comments is unnecessary. Good cause exists both for dispensing with the solicitation of public comments and for making this rule effective earlier than 30 days after publication.

Current Child Care Food Program Matching Requirements

Section 17(a) of the National School Lunch Act requires States to match the Federal funds received to assist institutions to acquire food service equipment under the Food Service Equipment Assistance (FSEA) Program (7 CFR 226.25). Section 226.25(d) requires States to provide at least one-fourth of the cost of equipment financed with FSEA funds from sources within the State, except that especially needy institutions are exempted from this matching requirement. The regulations also establish the matching requirement on a fiscal year basis.

Pub. L. 96–205

In section 601 of Pub. L. 96–205, enacted on March 12, 1980, Congress has required that "* * * in the case of American Samoa and the Northern Mariana Islands any department or agency shall waive any requirement for local matching funds under $100,000 (including in-kind contributions) required by law to be provided by American Samoa or the Northern Mariana Islands."

Effect of Law on Child Care Food Program

A review of FNS data indicates that for Fiscal Year 1980, the Northern Mariana Islands was not required to produce matching FSEA funds because all the child care institutions participating in the CCFP in this territory were classified as "especially needy." As of March 12, 1980, pursuant to the mandate of section 601 of Pub. L. 96–205, the Northern Mariana Islands was also exempt from producing local FSEA matching funds under $100,000. Furthermore, it is not anticipated that future funding will increase to a level that would require this jurisdiction to match Federal monies.

American Samoa was not participating in the Child Care Food Program in Fiscal year 1980 and therefore was not awarded any FSEA funds. Should American Samoa participate at some future time, it is not anticipated that any Food Service Equipment Assistance funds allocated to this territory would be at a high enough level to require this jurisdiction to match Federal monies. Therefore, these territories are expected to be exempt from the matching requirements of Part 226 in accordance with Pub. L. 96–205 and these regulations.

PART 226—CHILD CARE FOOD PROGRAM

Accordingly, Part 226, Child Care Food Program, is amended as follows:

Section 226.25 of the regulations is amended by revising paragraph (d) to read as follows:

§ 226.25 Food service equipment assistance.

* * * * *

(d) Matching of food service equipment assistance funds. Payment to any State of funds allocated under this paragraph for any fiscal year shall be made upon condition that at least one-fourth of the cost of equipment funded under this section shall be financed from sources within the State, except that this condition shall not apply to equipment obtained for institutions that are especially needy, as defined in the approved State Plan of Child Care Food Program Operations. Beginning March 12, 1980, however, American Samoa and the Northern Mariana Islands shall be exempt from the matching requirements under this section if their respective matching requirement is under $100,000. Payments made by FNS to State agencies and by State agencies to institutions may be matched by either the recipient institution or other State or local sources and payments. Funds from sources within the State may include any source of State or local funds.

* * * * *

(Sec. 601, Pub. L. 96–205, 94 Stat. 90 (42 U.S.C. 1466a))

Dated: January 8, 1981.

Carol Tucker Foreman,

Assistant Secretary for Food and Consumer Services.

[FR Doc. 81-1202 Filed 1-15-81; 8:45 am]

BILLING CODE 3410-30-M

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7 CFR Part 245

Determining Eligibility for Free and Reduced Price Meals and Free Milk in Schools; Implementation of Revised Income Poverty Guidelines

AGENCY: Food and Nutrition Service.

ACTION: Emergency final rule.

SUMMARY: The Department announces the temporary use of revised eligibility standards and procedures that schools participating in the National School Lunch and Breakfast Programs and Special Milk Program shall use to determine a child's eligibility for free and reduced price meals and free milk for the remainder of this fiscal year through September 30, 1981. The new income poverty guidelines that include a standard deduction are posted in the Notice of Income Poverty Guidelines that appears in the Notice Section of today's Federal Register. Public Law 96–499 requires this change in the income guidelines and the use of a standard deduction. This emergency ruling specifies the timetable and the steps to be taken to implement the changes.

These changes will affect the eligibility of some children for free and reduced price meals and free milk. This rule requires that those children be given advance notice of a reduction or termination of benefits.

EFFECTIVE DATE: January 1, 1981.

FOR FURTHER INFORMATION CONTACT: Stanley C. Garnett, Branch Chief, Policy and Program Development Branch, School Programs Division, USDA, FNS, Washington, D.C. 20250, (202) 447–9089. An Impact Analysis Statement is available on request from Mr. Garnett.

SUPPLEMENTARY INFORMATION:

Classification: This final rule has been reviewed under USDA procedures established in Secretary's Memorandum 1955 to implement Executive Order 12044, and has been classified as "not significant". Robert Greenstein, Administrator of the Food and Nutrition Service, has determined that an emergency situation exists which warrants making this rule effective on January 1, 1981. Because the provisions of this rule are mandated by Public Law 96–499 and are thus non-discretionary, solicitation of public comment is impractical and unnecessary. Further, the provisions of Public Law 96–499 implemented by this rule are effective January 1, 1981. Therefore, good cause exists both for making this rule effective earlier than 30 days after publication and for dispensing with the solicitation of comments.

Background

Public Law 96–499 which was enacted on December 5, 1980, requires the following provisions: (1) deletion of the Secretary's adjustment of the Office of Management and Budget's Income Poverty Guidelines; (2) replacement of the hardship deductions with a standard deduction; and (3) implementation options for School Food Authorities to use in determining eligibility under the new income poverty guidelines. These provisions are in effect through September 30, 1981. These provisions are fully explained in the Notice of Income Poverty Guidelines that appears in today's **Federal Register**.

Public Law 96–499 requires the Department to establish the standard deduction for each family size as follows:

(1) in States other than Alaska, Hawaii, and Guam, the Secretary shall allow a standard deduction of $80 each month for each household, which shall be adjusted to the nearest $5 on July 1, 1980, to reflect changes in the Consumer Price Index for All Urban Consumers, published by the Bureau of Labor Statistics, Department of Labor, for items other than food for the period beginning September 1977 and ending March 1980;

(2) the monthly standard deduction allowed in Alaska shall bear the same ratio to the standard deduction allowed in the contiguous States as the applicable income poverty guidelines for Alaska bear to the applicable income poverty guidelines for such States; and

(3) the monthly standard deduction allowed in Hawaii and Guam shall bear the same ratio to the standard deduction allowed in the contiguous States as the applicable income poverty guidelines for Hawaii bear to the applicable income poverty guidelines for such States.

The new Income Poverty Guidelines which are announced in the notice section of this Federal Register include the standard deduction allowed by law for each household.

Implementation

In determining a child's eligibility under the new income guidelines, a school shall compare the family's income to the guidelines without allowing any hardship deductions, because such deductions are not allowable through September 30, 1981. They have been replaced by the appropriate standard deductions which have been incorporated into the Income Poverty Guidelines.

Because the income guidelines change in the middle of the school year, Public Law 96–499 allows the Department to provide schools with some flexibility in implementing the new certification procedures.

A School Food Authority has two choices in implementing the new income guidelines. It may: 1) use the applications that it has on hand to make new eligibility determinations; or 2) it may distribute new applications with the new guidelines. In either case, the School Food Authority shall review all of its applications and make new eligibility determinations based on the new guidelines. School Food Authorities which distribute new applications are provided an additional 30 days to collect the income information. The family of each child whose eligibility for program benefits is reduced or terminated shall receive written notice of the reduction in benefits at least 10 days prior to the date the reduction or termination of benefits takes effect. This advance notice will enable children to arrive at school prepared to pay an additional amount if necessary.

Accordingly, a new paragraph is added to Part 245 as follows: § 245.2, a new paragraph (d) is added to the end of the section to read as follows:

§ 245.2 Eligibility standards and criteria.

* * * * *

(d) For the period of time between January 1 and September 30, 1981, notwithstanding any provision of this Part, all State agencies, School Food Authorities, and FNSROs where applicable, shall abide by the following provisions in implementing the revised Income Poverty Guidelines which are required by Public Law 96–499:

(1) Within 15 days after the Department publishes the revised Income Poverty Guidelines, the State agencies or FNSRO, where applicable, shall notify School Food Authorities of the new guidelines.

(2) Within 15 days of receipt of the revised guidelines the School Food Authority shall issue a public release to the informational media to publicly announce the revised family size income standards for determining eligibility for free and reduced price meals and free milk in the National School Lunch Program, School Breakfast Program and Special Milk Program. Applications containing the revised income guidelines may be distributed. A new application shall be issued to parents or guardians who express interest in submitting a new application as a result of the revised family size income standards.

(3) Each School Food Authority shall ensure that each child's eligibility for free or reduced price benefits is redetermined based on the revised Income Poverty Guidelines published in the notice section of the Federal Register dated January 16, 1981. Such redeterminations of eligibility may be based on applications already on file for school year 1980–81 or may be based on new applications distributed to comply with this rule. School Food Authorities shall ensure that: (i) schools which use applications on file redetermine each child's eligibility for benefits within 30 days and implement the new income guidelines within 45 days after the State agency or FNSRO, where applicable, issues the new income eligibility guidelines; and (ii) schools which distribute new applications redetermine each child's eligibility for benefits within 60 days and implement the new guidelines within 75 days after the State agency or FNSRO, where applicable, issues the new income eligibility guidelines.

(4) Each School Food Authority shall ensure that when these eligibility redeterminations are made, as specified in the preceding section, "special hardship deductions" are not subtracted from family income. The Income Poverty Guidelines for the remainder of this fiscal year include a standard deduction for each family size, which replaces the hardship deductions.

(5) Each School Food Authority shall ensure that the family of each child whose eligibility for program benefits is

reduced or terminated receives written notice of the reduction or termination of benefits at least 10 days prior to the effective date of the reduction or termination.

(8) No School Food Authority is required to amend its current free and reduced price policy statement as a result of this rule.

(42 U.S.C. 1760, 1758, 1772, 1773(e), sec. 203, Pub. L. 95-809; 94 Stat. 2599)

Dated: January 8, 1981.

Carol Tucker Foreman,

Assistant Secretary for Food and Consumer Services.

[FR Doc. 81-1289 Filed 1-15-81; 8:45 am]

BILLING CODE 3410-30-M

Animal and Plant Health Inspection Service

7 CFR Part 371

Organization, Functions and Delegations of Authority

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: This document revises the statement of functions of Animal and Plant Health Inspection Service as it relates to the Deputy Administrator, Veterinary Services, to specifically provide authority to purchase unlicensed veterinary biological products on the open market, test same, and disseminate the results of such tests as provided in section 101(d) of the Act of September 21, 1944 (7 U.S.C. 430). Also, for clarification purposes, the statement of functions and delegations of authority for both the Deputy Administrator, Veterinary Services, and the Deputy Administrator, Plant Protection and Quarantine, is begin revised to include U.S. Code citations for the various programs and activities assigned to each Deputy Administrator.

EFFECTIVE DATE: January 16, 1981.

FOR FURTHER INFORMATION CONTACT: John C. Prey, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Washington, DC 20250, (202-447-6335 or 301-436-8466).

SUPPLEMENTARY INFORMATION: The statement of organization, functions, and delegations of authority of the Animal and Plant Health Inspection Service, is being amended to delegate to the Deputy Administrator, Veterinary Services, the authority to purchase in the open market, from applicable appropriations, samples of all tuberculin, serums, antitoxins, or analogous products of foreign or domestic manufacture which are sold in the United States, for the detection, prevention, treatment, or cure of diseases of domestic animals, to test the same, and to disseminate the results of said tests in such manner deemed best. It is necessary to provide this delegation of authority to appropriate officers consistent with, and with due regard to, the continuing responsibility for the proper discharge of the functions assigned to APHIS. Delegation of this authority will provide for the acquisition and dissemination of information regarding the quality of veterinary biological products available in U.S. markets. It will serve to encourage those who produce and distribute veterinary biological products which are pure, safe, potent, and efficacious. The Secretary has delegated this authority to the Assistant Secretary for Marketing and Transportation Services who in turn has delegated such authority to the Administrator, Animal and Plant Health Inspection Service (45 FR 80477).

In addition, to more precisely delineate those functions heretofore delegated to the Deputy Administrators of APHIS, and to assure that future delegations are clear, the applicable U.S. Code citations are being inserted with each program and activity delegation.

This rule relates to internal agency management and, therefore, pursuant to 5 U.S.C. 553, it is found upon good cause that notice and other public procedures with respect thereto are impractical and contrary to the public interest, and good cause is found for making this rule effective less than 30 days after its publication in the Federal Register.

Further, since this rule relates to internal agency management, it is exempt from the provisions of Executive Order 12044, Improving Government Regulations, and, thus, does not require the preparation of a regulatory impact analysis.

Accordingly, 7 CFR Part 371 is amended as follows:

Section 371.2 is amended by revising paragraphs (c)(2) and (d)(2) to read as follows:

§ 371.2 The Office of the Administrator.

* * * * *

(c) * * *

(2) Planning, providing leadership, formulating and coordinating policies, developing and issuing regulations (including quarantines), and directing the administration of PPQ programs and activities. These programs and activities include:

(i) Sec. 102, Organic Act of September 21, 1944, as amended, and the Act of April 6, 1937, as amended (7 U.S.C. 147a, 148, 148a-148e), relating to control and eradication of plant pests and diseases;

(ii) the Mexican Border Act, as amended (7 U.S.C. 149);

(iii) the Golden Nematode Act (7 U.S.C. 150-150g);

(iv) the Federal Plant Pest Act (7 U.S.C 150aa-150jj);

(v) the Plant Quarantine Act, as amended (7 U.S.C. 151-164a, 167);

(vi) the Terminal Inspection Act, as amended (7 U.S.C. 166);

(vii) the Honeybee Act, as amended (7 U.S.C. 281-282);

(viii) the Federal Noxious Weed Act of 1974 (7 U.S.C. 2801-2813);

(ix) the Endangered Species Act of 1973 (87 Stat. 884);

(x) Executive Order 11987; and

(xi) the responsibilities of the United States under the International Plant Protection Convention.

* * * * *

(d) * * *

(2) Planning, providing leadership, formulating and coordinating policies, developing and issuing regulations (including quarantines) pursuant to law, and directing the administration of the VS programs and related activities involving:

(i) Sec. 306 of the Tariff Act of June 17, 1930, as amended (19 U.S.C. 1306);

(ii) Act of August 30, 1890, as amended (21 U.S.C. 102-105);

(iii) Act of May 29, 1884, as amended, Act of February 2, 1903, as amended, and Act of March 3, 1905, as amended, and supplemental legislation (21 U.S.C. 111-114a, 114a-1, 115-130);

(iv) Act of February 28, 1947, as amended (21 U.S.C. 114b-114c, 114d-1);

(v) Act of June 16, 1948 (21 U.S.C. 114e-114f);

(vi) Act of September 6, 1961 (21 U.S.C. 114g-114h);

(vii) Act of July 2, 1962 (21 U.S.C. 134-134h);

(viii) Act of May 6, 1970 (21 U.S.C. 135-135b);

(ix) Sections 12-14 of the Federal Meat Inspection Act, as amended, and so much of Section 18 of such Act as pertains to the issuance of certificates of condition of live animals intended and offered for export (21 U.S.C. 612-614, 618);

(x) Improvement of poultry, poultry products and hatcheries (7 U.S.C. 429);

(xi) (Laboratory) Animal Welfare Act, as amended (7 U.S.C. 2131-2147, 2149-2155);

(xii) Horse Protection Act (15 U.S.C. 1821-1831);

(xiii) 28 Hour Law, as amended (45 U.S.C. 71-74);

(xiv) Export Animal Accommodation Act, as amended (46 U.S.C. 466a-466b);

(xv) Purebred animal duty-free entry provision of Tariff Act of June 17, 1930, as amended (19 U.S.C. 1202, Part I, Item 100.01);

(xvi) Virus-Serum Toxin Act (21 U.S.C. 151–159);

(xvii) Sections 203 and 205 of the Agricultural Marketing Act of 1946, as amended with respect to voluntary inspection and certification of inedible animal byproducts and inspection, testing, treatment, and certification of animals and a program to investigate and develop solutions to the problems resulting from the use of sulfonamides in swine (7 U.S.C. 1622, 1624); and

(xviii) Section 101(d) of the Organic Act of September 21, 1944 (7 U.S.C. 430).

* * * * *

(7 U.S.C. 301)

Issued at Washington, D.C., this 31st day of December, 1980.

Harry C. Mussman,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 80-4280 Filed 1-15-81; 8:45 am]

BILLING CODE 3410-34-M

Farmers Home Administration

7 CFR Part 1900

Farmers Home Administration Appeal Procedure

AGENCY: Farmers Home Administration, USDA.

ACTION: Final rule.

SUMMARY: The Farmers Home Administration (FmHA) amends its appeal procedures to provide clarity, limit unnecessary hearings, and add a reporting function designed to ultimately provide FmHA and the public with information on appeal results. This action is the result of an administrative review.

EFFECTIVE DATE: January 16, 1981.

FOR FURTHER INFORMATION CONTACT: Arthur M. Collings, Jr., Special Assistant to the Administrator, USDA, FmHA, Washington, DC 20250, phone 202–447–8448.

The Final Impact Statement describing the options considered in developing this final rule and the impact of implementing each option is available on request from Joseph H. Linsley, Chief, Directives Management Branch, USDA, FmHA, Washington, DC 20250, telephone (202) 447–4057.

SUPPLEMENTARY INFORMATION: This final action has been reviewed under USDA procedure established in Secretary's Memorandum 1955 to implement Executive Order 12044, and has been classified "not significant."

C.F.D.A. No. 10.404—Emergency Loans
C.F.D.A. No. 10.405—Farm Labor Housing Loans and Grants
C.F.D.A. No. 10.406—Farm Operating Loans
C.F.D.A. No. 10.407—Farm Ownership Loans
C.F.D.A. No. 10.408—Grazing Association Loans
C.F.D.A. No. 10.409—Irrigation, Drainage, and Other Soil and Water Conservation Loans
C.F.D.A. No. 10.410—Low to Moderate Income Housing Loans (Rural Housing Loans—Section 502—Insured)
C.F.D.A. No. 10.411—Rural Housing Site Loans (Section 523 and 524 Site Loans)
C.F.D.A. No. 10.413—Recreation Facility Loans
C.F.D.A. No. 10.414—Resource Conservation and Development Loans
C.F.D.A. No. 10.415—Rural Rental Housing Loans
C.F.D.A. No. 10.416—Soil and Water Loans (SW Loans)
C.F.D.A. No. 10.417—Very Low-Income Housing Repair Loans and Grants
C.F.D.A. No. 10.418—Water and Waste Disposal Systems for Rural Communities
C.F.D.A. No. 10.419—Watershed Protection and Flood Prevention Loans
C.F.D.A. No. 10.420—Rural Self-Help Housing Technical Assistance (Section 523 Technical Assistance)
C.F.D.A. No. 10.421—Indian Tribes and Tribal Corporation Loans
C.F.D.A. No. 10.422—Community Facilities Loans
C.F.D.A. No. 10.424—Industrial Development Grants
C.F.D.A. No. 10.425—Emergency Livestock Loans
C.F.D.A. No. 10.426—Area Development Assistance Planning Grants (Section 111)
C.F.D.A. No. 10.427—Rural Rental Assistance Payments
C.F.D.A. No. 10.428—Economic Emergency Loans
C.F.D.A. No. 10.430—Energy Impacted Area Development Assistance Program
C.F.D.A. No. 10.431—Technical and Supervisory Assistance Grants
C.F.D.A. No. 10.432—Biomass Energy and Alcohol Fuels Loans and Loan Guarantees

The FmHA programs and projects which are affected by this instruction are subject to State and local clearinghouse review in the manner delineated in FmHA Instruction 1901–H.

On December 31, 1979, FmHA published in the Federal Register (44 FR 77183) a notice of proposed rulemaking involving the amending of Subpart B of Part 1900, Chapter XVIII, Title 7, Code of Federal Regulations.

Comments were received from 19 individuals and organizations. Followup correspondence and/or dialogue has occurred with some respondents and changes or revisions have been made as a result of a review of the comments. The overall appeal process has been broken down into 3 sections: 1900.56, 1900.57, and 1900.58 in an attempt to provide recognizable distinctions between the functions. The following sections were reconsidered and in most instances the December 31, 1979, proposed rules revised as a result of the comments received:

1900.51—Reference to administrative decisions made after November 13, 1978, has been deleted.

1900.52—One respondent asked that the term "applicant" be defined. FmHA determined this to be unnecessary.

1900.52(b)—A respondent asked that coercion of any kind in limiting appeals be forbidden. FmHA has acted to forbid any Agency officials from delaying approved assistance pending the outcome of appeal of a partial adverse action.

1900.52(c)—The proposed new 1900.58(c) as a definition of decisions not appealable has been deleted. The essence of this subsection has been transferred to a new § 1900.58. A number of suggested specific instances where a decision is not appealable were rejected in that they were subjective in nature.

1900.52(d)(5)—An objection was raised to District Directors handling foreclosure appeals. Section 510 of the Housing Act of 1949 was cited. The changed regulation provides that hearing officers for appeals of accounts serviced in County Offices will be a District Director from a nearby district. Appeals of such accounts that are serviced in District Offices will be heard by the appropriate Assistant Administrator or designee.

1900.52(d)—Hearing officer: Changed to provide that the appropriate Assistant Administrator or designee will be the hearing officer for decisions made by State Directors.

1900.52(f)—Review officer: Changed to provide that the appropriate Assistant Administrator or designee will be review officer for State Director decisions and in foreclosure cases. A request that there be only one National Office review, including that of the Administrator, was rejected.

1900.53—A new definition for stayed assistance was added to provide clarity. Also, a new definition for official positions is added to note that FmHA titles for similar level positions may vary in some areas.

1900.53—A new § 1900.53 is incorporated to list examples of decisions which are not appealable. Denial of section 502 refinancing because of the 5-year limitation was deleted due to passage of Pub. L. 96–153.

1900.53(a)(12)—Appraisals of property value are not appealable via a hearing. See § 1900.54. Two respondent groups objected to FmHA's omitting appraisals, but the decision was made since all appraisals are somewhat subjective and

therefore every decision on value could produce a hearing.

1900.53(a)(14)—Published interest rates may not be appealed.

1900.53(a)(15)—Rent increase rejections are not appealable when the borrower fails or refuses to apply for rental assistance and low-income tenants must pay more than 25 percent of the income for rent.

1900.53(b)—New § 1900.53(b) is added to prohibit appeals on new applications or requests when an adverse decision has been appealed and upheld, and there is no change in circumstances.

1900.54—A new § 1900.54 entitled "review of appraisals" provides for a review by the State Director, but without a hearing. FmHA rejected two suggestions that appraisals should be appealable, since they are a judgmental art, and almost every appraisal could be contested. State Directors will dispatch a representative to make an onsite review when the situation appears warranted.

1900.55—A new section designed to limit hearings guides FmHA actions leading to the reduction of hearings without interfering with an appellant's ultimate right to a hearing.

1900.56—Appeal from an FmHA Decision—Changed to include actions leading up to a hearing. Numerous suggestions and complaints were received related to the circumstances leading to a hearing. This section:

(1) Prescribes that the appellant must first have a meeting with the decisionmaker before requesting a hearing. They may bring a representative to the meeting as well as to the hearing.

(2) Provides that, when the individual or organization receives an adverse notice and invitation to meet with the decision maker, the name, title, address, and telephone number of the hearing officer will be included. FmHA received comments on all sides of this issue. Many respondents stated that notifying the borrower of the hearing officer in the initial letter would lead to direct access to that route without trying to resolve differences with the decision maker. They believed it would encourage unnecessary appeals. FmHA elected to identify the hearing officer in the letter but require the meeting before a hearing.

1900.56(a)(3)—FmHA will provide the name and address of legal services and legal referral services on request. At least one respondent asked that FmHA automatically supply the name of local legal services with the notice of adverse action. Another believed FmHA should never supply this service. The decision represents a middle ground. FmHA must provide copies of subsequent notices and correspondence to the appellant's representative.

1900.56(a)(4)—Provides that requests for a meeting with the decision maker must be made within 15 days of notification of the adverse action. Requests for a hearing must be made within 15 days of notification of results of the meeting with the decision maker.

1900.56(c)—Provides for exceptions to the hearing process in Samoa, Guam, and the Pacific Trust Territories. This area is serviced by Hawaii and time and travel budget restraints inhibit FmHA's ability to provide hearings.

1900.56(f)—Clarifies that appellants will be afforded favorable consideration when interest rates change during an appeal.

1900.57—A new section covering the hearing.

1900.57(a)—Refers to a new Exhibit A—"Guide for a Hearing."

1900.57(d)—Provides for copies of FmHA file information at no expense to the appellant, in accordance with Freedom of Information and Privacy Act Regulations.

1900.57(f)—Requires FmHA to tape record all hearings, but only as a back up to the hearing notes, which are the official record. FmHA received a number of suggestions on how best to develop a hearing record. Verbatim notes and transcripts were rejected as being too costly and time consuming.

1900.57(f)(2)—Changed to suggest that hearing officer take own notes.

1900.57(h)—Changed to eliminate the proposed prohibition on making hearing decisions in consultation with other FmHA employees. This approach is implied in Exhibit A—"Guide to Conducting a Hearing."

1900.58—Additional Appeals—This new section relates solely to appeal reviews. Few changes have been made to the review process other than to provide time deadlines and make the regulation easier to follow by utilizing the separate section.

1900.60—Reporting requirements. Has been changed to provide for a record which will follow an appeal through its course. Several respondents deplored the fact that FmHA has no record wherein appeal decisions can be used to change practical operating procedures and thus limit the need for appeals. FmHA is studying methods for instituting a computerized index system which would utilize information from the appeal record.

Exhibit A—"A Guide to Conducting a Hearing," developed to provide uniformity in holding hearings, and guidance for FmHA officials. the basic information contained in this Exhibit was used in Administrative Notice (A. N.) circulated to field staff on August 2, 1979.

Exhibit B—"Guide Letter for Notifying Applicants and Borrowers of Adverse Decisions where the Decision is Appealable," supplements the regulation to provide uniformity, guidance to FmHA officials, and assurance that there will be due process.

Exhibit C—"Guide Letter for Notifying Applicants and Borrowers of Adverse Decisions where the Decision is not Appealable." Provides for a invitation to meet with the decision maker when hearings will not be permitted.

Therefore, Subpart B of Part 1900 is revised to read as follows:

PART 1900—GENERAL

Subpart B—Farmers Home Administration Appeal Procedure

Sec.

1900.51 Purpose.
1900.52 Definitions.
1900.53 Decisions which are not appealable.
1900.54 Review of appraisals.
1900.55 FmHA actions to limit hearings.
1900.56 Appeal from an initial FmHA decision.
1900.57 Hearings.
1900.58 Additional appeals.
1900.59 Effect of appeal decision.
1900.60 Reporting requirements.
1900.61–1900.100 [Reserved]
Exhibit A—Guide to Conducting a Hearing.
Exhibit B—Guide Letter for Notifying Applicants and Borrowers of Adverse Decisions Where the Decision is Appealable.
Exhibit C—Guide Letter for Notifying Applicants and Borrowers of Adverse Decisions Where the Decision is not Appealable.

Authorities: 7 U.S.C. 1989; 42 U.S.C. 1480; delegation of authority by the Secretary of Agriculture, 7 CFR 2.23; delegation of authority by the Assistant Secretary for Rural Development, 7 CFR 2.70.

PART 1900—GENERAL

Subpart B—Farmers Home Administration Appeal Procedure

§ 1900.51 Purpose.

This Subpart provides a uniform procedure whereby a person or organization may appeal any Farmers Home Administration (FmHA) program administrative action directly affecting such person or organization. This procedure does not apply to Guaranteed loans, debt settlement actions as found in Part 1864 of this Chapter (FmHA Instruction 456.1), Freedom of Information Act or Privacy Act appeals, and is not intended to affect the Suspension and Debarment procedure found at Subpart E of Part 1924 of this chapter. This procedure takes precedence over all other FmHA

appeals procedures affecting applicants, borrowers, or grantees. Tenant appeals are covered in Subpart L of Part 1944 of this Chapter. This regulation does not replace any existing procedures for handling discrimination complaints.

§ 1900.52 Definitions.

(a) *Appellant.* An appellant is an applicant for FmHA assistance or an FmHA borrower or grantee, either individual or organization, that is directly and adversely affected by an administrative decision by FmHA.

(b) *Directly and adversely affected.* The term "directly and adversely affected" includes having a request for FmHA assistance denied in whole or in part or having FmHA assistance reduced, cancelled, or not renewed. The term "directly and adversely affected" does not include actions where persons or organizations are clearly not eligible such as in the examples cited in § 1900.53. FmHA officials may not deny or delay approved assistance pending the outcome of appeal of a partial adverse action.

(c) *Hearing.* A hearing, as used in this Subpart, is an informal proceeding at which an appeal from an adverse decision is heard.

(d) *Hearing officer.* The hearing officer has the authority to uphold or reverse decisions and will be:

(1) In the case of an appeal of an initial decision by a County Supervisor, the District Director having jurisdiction over that County Office. If that District Director has a significant role in the initial determination, the District Director from a nearby District Office will be designated by the State Director. The term "significant role" does not include routine supervision by the District Director.

(2) In the case of an appeal of an initial decision by the County Committee, the State Director or Acting State Director. The State Director may designate a State Office program chief, or other State Office official, including a District Director, to conduct the hearing, acting for the State Director, provided that the designee has had no significant role in the decision.

(3) In the case of an appeal of an initial decision by a District Director, the State Director, who may designate a program chief or other State Office official to be the hearing officer.

(4) In the case of an appeal of an initial decision by a State Director, the appropriate Program Assistant Administrator or designee.

(5) In the case of a decision to foreclose an account:

(i) For accounts serviced in County Offices, a District Director from a nearby district.

(ii) For accounts serviced in District Offices, the appropriate Program Assistant Administrator or designee.

(6) In the case of an appeal of an initial decision by a Division Director or an Assistant Administrator, the appropriate Deputy Administrator or designee.

(7) For any decision not directly covered in paragraphs (d) (1) through (6) of this section, the person in the next highest level of FmHA authority, or the designee of that person.

(e) *Record.* The term "record" means the FmHA file, papers filed by an appellant, notes, tapes, or transcript (if any) of a hearing, and decisions made by FmHA.

(f) *Review officer.* The review officer has the authority to uphold or reverse the decision of the hearing officer. Regardless of the level of the decision maker and hearing officer, there will only be one review made in the National Office. However, the review provided for in § 1900.58 (c)(6), and (e) will always be available except where the Administrator is the review officer. When the hearing officer is:

(1) The District Director, the review officer will be the State Director or designee, except that, when a decision to foreclose is appealed, the review officer will be the appropriate Assistant Administrator or designee;

(2) The State Director or designee, the review officer will be the appropriate Assistant Administrator or designee;

(3) The Program Assistant Administrator or designee, the review officer will be the Administrator, or designee.

(g) *District Director.* Wherever the term "District Director" is used, it will also include Assistant District Director.

(h) *Decision maker.* The FmHA official who actually makes the specific decision. For example, if a State Director reviews a preapplication from an organization and directs a District Director to include specific items in Form AD 622, "Notice of Preapplication Review Action," the State Director is the decision maker. However, when the State Director or designee serves only in an advisory capacity in interpreting instructions, policies, and technical items and is not significantly involved in the decision, the District Director will be considered the decision maker. Additionally, when State Directors refer questions of interpretation to the National Office, and National Office officials act only in an advisory capacity, the State Director will be considered the decision maker.

(i) *Stayed assistance.* The act by FmHA of maintaining assistance at a current or present level, instead of reducing or terminating it pending the outcome of an appeal.

(j) *Official positions.* The terms "County Supervisor" and "District Director" may vary in a few geographical areas. These terms will also mean Assistant Area Loan Specialist and Area Loan Specialist, respectively, in Alaska.

§ 1900.53 Decisions which are not appealable.

(a) FmHA decisions based solely on a limitation of law, or solely and directly on objective standards that are included in published regulations may not be appealed. Examples of these include:

(1) Denial of a Section 504 grant to an applicant less than 62 years of age.

(2) Denial of a loan and/or grant when a city or town to be served has a population in excess of published limits.

(3) Denial of a loan and/or grant to an organization not identified as an eligible applicant by the regulations.

(4) Applications for emergency loans not filed before a prescribed termination date.

(5) Decision not to release basic security for unauthorized purposes.

(6) Denial of a loan because of confirmed income that is above FmHA published limits.

(7) Interest credit reduction that is the result of a confirmed income increase.

(8) A determination of ineligibility for emergency loans based on confirmation or verification by the Agricultural Stabilization and Conservation Service (ASCS) or the Federal Crop Insurance Corporation (FCIC) that the applicant did not have the required production losses of 30 percent or more.

(9) A finding that a cooperative, corporation or partnership applying for an economic emergency loan is not eligible when it has been *confirmed* that less than 50 percent of such applicant's total income is from farming.

(10) Denial of compensation for construction defects when it has been determined that the contractor is willing and able to correct the deficiencies.

(11) Requirements and conditions designated by law to be developed by agencies other than FmHA. They include, but are not limited to: Davis-Bacon wage rates; flood plain determinations; and archaeological and historical areas preservation requirements.

(12) Property standards. An appeal may only be made when the appellant claims FmHA is misapplying the written standards.

(13) Appraisals of property value. (See § 1900.54)

(14) Interest rates as set forth in FmHA procedure.

(15) A rent increase rejection when the borrower fails or refuses to apply for rental assistance in accordance with Exhibit C of Subpart C of Part 1930 of this Chapter.

(b) A new application or request for FmHA assistance, when an adverse decision has been appealed and upheld, and when the applicant provides no new supportive information or substantative change, may not be appealed.

§ 1900.54 Review of appraisals.

Appraisals of property value are not appealable. When a loan is not made because the appraisal did not justify the amount requested, the applicant will be notified and advised that a request may be made for a review of the appraisal by the State Director. When a request is made the State Director will review the specific appraisal documents and, when warranted and deemed necessary, send a representative to make an on site review.

§ 1900.55 FmHA actions to limit hearings.

Formal appeals and hearings are time consuming and actions are to be taken to avoid them whenever possible, but without jeopardizing the rights of the appellant. The following procedure should be utilized to minimize the number of appeals.

(a) FmHA personnel should carefully check the accuracy of any adverse actions to be taken.

(b) The reasons for adverse actions should be clearly explained when the applicant or borrower is notified. Vague reasons such as "you lack repayment ability" should be avoided and the applicant or borrower specifically advised why they lack repayment ability.

(c) Affected parties will be required to meet with the decision maker before they request a hearing.

§ 1900.56 Appeal from an initial FmHA decision.

(a) If an applicant for FmHA assistance, an FmHA borrower, or an FmHA grantee is directly and adversely affected by an FmHA decision or action, the official taking such action or making the decision will inform that person or organization by letter of the action taken within 15 calendar days of such action. The letter will be similar in form and content to Exhibit B of this Subpart, or Exhibit C in the case of actions not appealable in accordance with § 1900.53 of this Subpart, and will include the following:

(1) A statement of the action taken or decision made and all of the specific reason(s) for so doing.

(2) An invitation to call at the decision-making official's office, which may include a meeting with the County Committee, to discuss the decision with that official and to obtain information on appeal rights. The person (or organization) may bring to the meeting any additional information or a representative, including an attorney. (Whenever an appellant utilizes the services of a representative FmHA will provide that representative with copies of all notices and correspondence directly related to the appeal.)

(3) A statement that if the appellant wishes the services of an attorney and does not have one, the name and address of the nearest legal services representative and any known legal referral assistance will be furnished upon request.

(4) When the FmHA actions are appealable, as statement that the person or organization is entitled to a hearing in the event the meeting with the decision maker does not satisfactorily resolve their differences. The letter will state that:

(i) Requests for a meeting with the decision maker must be made within 15 days of the notification.

(ii) When not satisfied with the results of the meeting, the person or organization may appeal directly to the hearing officer. The appeal must be made within 15 days of the notification of the results of the meeting. An additional 30 days may be granted when circumstances clearly warrant the extension.

(iii) The name, title, address, and telephone number of the hearing officer.

(iv) A statement that they should provide the hearing officer and/or bring to the hearing, any evidence supporting their claim.

(v) A statement that if the person (or organization) wants the terminated or reduced assistance maintained at the existing level, the decision to reduce or terminate may be stayed pending appeal if requested by the person (or organization). The appellant will agree to repay any assistance received during the stay for which the appellant is, upon completion of the appeal, determined to have been ineligible.

(vi) When an appeal from a foreclosure action is instituted and includes appeal of corollary matters such as denial of moratorium or interest credits, the letter will include a statement that all matters are merged into a single appeal.

(vii) In acceleration notices, the statement shall read substantially as found in the "Notice of Acceleration" Exhibit C to Subpart A of Part 1955 of this Chapter. The term "hearing" will be used in lieu of "meeting" in the "Notice of Acceleration."

(b) When the person or organization takes the opportunity for a meeting with the decision-making official and the meeting results in a resolution of the problem, the official will send the person or organization a letter within 7 days setting forth the resolution and all of the reasons for it. If the meeting does not result in granting the request or a part of the request the letter will restate the person or organization's right to a hearing, and provide the name, title, address, and telephone number of the hearing officer. The letter will require that such hearing requests be made within 15 days of notification.

(c) If a request is received to stay the decision, the hearing officer, based on the facts and circumstances, will stay the decision. An appropriate case for a stay would be if not to grant the stay would make an appeal useless.

(d) When an appellant appeals a decision and requests a hearing, the appeal will be handled as follows:

(1) Upon the receipt of the request for a hearing, the hearing officer will request the entire file from the decision-making official.

(2) The hearing officer will arrange for a hearing to be held as soon as possible but within 30 calendar days of the receipt of the request for a hearing. The hearing will be held at a location convenient to the appellant, decision-making official and hearing officer. If no such place can be agreed on, the hearing officer will select the location. The hearing officer, after reviewing the file, will return it to the office of the decision-maker so that it will be available to the appellant or representative. If the appellant or the decision-maker for good reason is unable to attend a hearing within the 30 calendar day period, the hearing officer, after considering the circumstances, will reschedule the hearing within 15 days of the original hearing date. The 15 day extension may only be exceeded for verified medical reasons, or other good cause as agreed to by FmHA.

(3) Failure to appear.

(i) If the appellant or appellant's representative, without reasonable cause, fails to appear at the hearing, the appellant's appeal will be deemed to have been concluded.

(ii) If the failure to appear is with reasonable cause and the appellant can demonstrate inability to notify FmHA, the hearing officer will reschedule the hearing at a time convenient to all interested parties, but usually not later

than 15 days after the initially scheduled date.

(e) Cases originating in Samoa, Guam and the Western Pacific Territories and submitted to the Hawaii State Office for a hearing, may be acted upon without a meeting between the appellant and the hearing officer when circumstances due to travel and time involved preclude having such a meeting. In such cases the decision-maker must obtain and mail to the hearing officer the complete FmHA file for the case together with any available documents from the appellant supporting their allegations, and statements from other witnesses who would have appeared at the hearing.

(f) When interest rates change during an appeal involving a loan application, and the decision is reversed or modified, the final rate shall be the one most favorable to the appellant if authorized by statute.

(g) Whenever a preliminary review of the file by the hearing officer clearly indicates that the decision will be reversed, the hearing officer will make that decision, notify all involved parties of the reasons, and cancel the hearing.

§ 1900.57 Hearings.

(a) The hearing will be an informal proceeding at which the appellant will bear the burden of proving the initial decision erroneous. To do so the appellant may provide any information or witnesses the appellant believes should be considered in reaching a proper decision. The appellant may present evidence, witnesses, and arguments in support of appellant's complaint, controvert evidence relied on by FmHA, and question all witnesses. Any evidence may be received by the hearing officer without regard to whether that evidence could be employed in judicial proceedings. A suggested guide for the order of presentation at a hearing is included in Exhibit A to this Subpart.

(b) The decision making official (or successor) or delegate will be at the hearing and will present evidence if necessary. Any other witnesses or FmHA personnel the decision making official thinks necessary to fully determine the matter will be at the hearing to present evidence.

(c) The hearing officer may request additional witnesses to appear or request further information if in the hearing officer's opinion such is necessary to reach a proper decision.

(d) Before the hearing, the appellant or appellant's representative, may examine, and copy at no cost to the appellant, all relevant documents, records, and regulations of FmHA normally releasable under the provisions of the Freedom of Information Act and the Privacy Act.

(e) If any new evidence or reasons for adverse action will be presented by FmHA, it should be provided to the appellant at least 3 working days before the hearing, or sooner when such information becomes known and available to FmHA.

(f) Hearing record:

(1) FmHA will tape record all hearings, but will use the tapes as a back up to support the outline notes as the official record.

(i) The appellant may tape record the proceedings at their own expense or may obtain a copy for the cost of reproduction. FmHA must notify the other party when the taping begins.

(ii) The taking of transcripts is neither required nor prohibited. Either party may arrange to have a transcript of the hearing made at their own expense. When one party has a transcript made the other will make their own arrangements to obtain a copy. Ordinarily FmHA will not have transcripts made. Prior approval of the Administrator is required when transcripts are made or copied for FmHA.

(2) An FmHA employee (not the decision maker) will take notes at the hearing. The hearing officer may take the notes or assign this responsibility to another FmHA employee. Hearing officers will, in the interest of efficient use of agency staff time, give first consideration to taking their own notes.

(3) The notes will *informally reflect* the essential positions, pertinent information presented, and comments made by both parties, *may be in outline form*, and *need not repeat proceedings* verbatim. They will indicate if the appellant arranged for a transcript.

(4) A typed copy of the notes will be provided to the appellant within 15 days of the hearing. The appellant will notify FmHA of any changes the appellant thinks should be made within 7 days of receipt of the copy. This period of time may be extended an additional 7 days by FmHA upon the request of the applicant. The suggested changes will be made part of the record even if not agreed to by FmHA.

(5) File documents and other written materials used in the hearing will be included as part of the FmHA record.

(g) For good cause, the hearing officer on the request of either the appellant or an FmHA official may, at the hearing officer's complete discretion, continue the hearing to a future time.

(h) *The decision of the hearing officer* shall be based on facts presented at the hearing, appropriate FmHA files, applicable statutes and regulations, and the hearing officer's general knowledge of FmHA program functions.

(i) Within 30 days of the hearing, the hearing officer will determine what action to take with regard to the appeal, unless FmHA has ordered a transcript in which case the decision will be made within 15 days of receipt of the transcript. Hearing officers will make their decision in less time when possible.

(j) If the initial decision is reversed, the hearing officer will inform the appellant and original decision making official by letter of the decision, the reason for it, and what action will be taken. The State Director or Acting State Director must sign the letter on County Committee decision reversals regardless of who conducts the hearing for the State Director.

§ 1900.58 Additional appeals.

(a) If the initial decision is upheld or modified but not reversed, the hearing officer will inform the appellant by letter of the decision giving specific reasons, with a copy to the decision making official. The letter must contain the following statement:

"If you wish to have the above decision further reviewed, you may appeal in writing to (*review officer/address*) within 20 calendar days of the date of this letter explaining why you believe the decision is incorrect. Since this review will be based on the record, including papers filed, FmHA files, notes, or transcripts of the appeal meeting, my decision, applicable statutes and regulations, and any *additional written* information you wish to submit, you should include any additional information you think is important and indicate whether you wish to present any information in person. The right to present information in person is limited to a meeting and is not to be construed as another hearing."

(b) If the appellant does not request in writing a review of the hearing officer's decision within the 20 calendar day period provided in the letter, the appeal will be considered concluded.

(c) If the appellant appeals to the review officer:

(1) Upon receipt of the appeal the review officer will request that the hearing officer forward the record to the review officer. The hearing officer will promptly do so.

(2) With prior approval of the Administrator the review officer may obtain a copy of the transcript of the hearing if one was arranged for by the appellant.

(3) If no personal meeting was requested by the appellant, the review officer will review the record on the case and applicable law and regulations, any additional information furnished by the appellant, and such

additional information as the review officer deems necessary and render a decision within 30 calendar days of receipt of the appeal.

(4) If the appellant indicates a desire to present information in person, the review officer will arrange a meeting for the sole purpose of receiving such additional information. The meeting will be held within 15 calendar days of receipt of the appeal and at the offices of the review official. A final decision will be rendered within 20 calendar days after the meeting.

(5) If the decision of the hearing officer is reversed, the appellant will be informed by letter of the decision and what action will be taken. The decision-making official and the hearing officer will also be notified, with the reasons for reversal provided.

(6) If the hearing officer's decision is upheld or modified but not completely reversed, the appellant will be informed of the decision by letter giving the specific reasons for the decision, with a copy each to the decision making official and hearing officer. The letter must contain the following statement:

If you believe the above decision is arbitrary and capricious, that it is lacking any rational, factual, or legal basis, or is contrary to FmHA regulations, you may write the Administrator, FmHA, 14th and Independence Avenue, SW., Washington, D.C. 20250, within 30 days, explaining why. The Administrator's review will be based only on the existing written record. A copy of your letter to the Administrator should be sent to me so that I can expeditiously forward the record to the Administrator.

(d) If a letter appealing the decision of the review officer is not received within 30 days, the appeal will be concluded.

(e) Upon receipt of an appeal from a review officer's decision, the Administrator or a delegate will review the record, which will have been forwarded by the review officer upon receipt of a copy of the letter, and determine whether the decision was arbitrary and capricious or contrary to FmHA regulations. If not, the decision will be upheld and the appellant so notified. If the Administrator or a delegate finds the decision to have been arbitrary and capricious, or contrary to FmHA regulations, the official will determine what action should be taken and notify all affected parties.

§ 1900.59 Effect of appeal decision.

(a) *Effective date.* When an appeal is concluded, the effective date of the action to be taken will be the date of the initial decision from which the appeal was taken. Regulations in effect on the effective date will govern the action unless those requirements would not be authorized under statutory or case law at the time the appeal is concluded. Effective interest rates are covered in § 1900.56(f).

(b) *Legal effect.* When an appeal is concluded the decision will be administratively conclusive. The decision will not, however, be determinative of the legality of the action to be taken.

§ 1900.60 Reporting requirements.

(a) A record will be maintained for all cases appealed. The record will consist of the following:

(1) Form FmHA 1900–2, "Appeal Record." This completed form will follow each appeal through final action.

(2) Copies of decision letters by the hearing officer and/or review officer will be attached to Form FmHA 1900–2.

(3) The hearing outline notes will also be attached to Form FmHA 1900–2.

(b) The original appeal record will be maintained in the applicable case folder.

(c) Copies of the appeal record for cases handled at the State Office level and below will be transmitted to and filed in the State Office where the appropriate information will be assembled for the computer entry. The Management Information Systems Division (MISD) will maintain files on appeals in the National Office and will assemble information for computer entry.

(d) Summary reports listing the number and type of appeals and disposition will be submitted semi-annually to the MISD in the National Office on Form FmHA 1900–1, "Semi-annual Report on Appeals." County and District Offices will submit their report to the State Office by the tenth of April and October. State Offices will prepare consolidated State reports which will be transmitted to the National Office by the twentieth of April and October.

§§ 1900.61–1900.100 [Reserved]

[FmHA Instruction 1900–B]

Exhibit A.—Guide to Conducting a Hearing

A. Obtain the FmHA file from the decision-maker and retain the file. After reviewing the file the hearing officer will return it to the decision maker so that it may be available to the appellant or representative.

B. Arrange a hearing within 30 calendar days of receipt of the notice of appeal at a place convenient to the appellant, decision-making official, and hearing officer.

C. Ensure that appellant sees and is able to photocopy the FmHA file if appellant so requests before the hearing.

1. Concern here should be that if the appellant requests an opportunity to see the file that every document (unless privileged) which may be used in making the decision will be made available to the appellant.

2. This is necessary to give the appellant an adequate opportunity to rebut the evidence that might be against the appellant.

D. Be an unbiased presiding officer.

1. The hearing officer is not representing FmHA or the decision-maker, nor is the hearing officer an advocate for the initial decision.

2. The hearing officer should have no preconceived opinions concerning the issues.

3. To preserve this unbiased atmosphere—

a. The hearing should be held someplace other than the hearing officer's office or office of any FmHA official. The latter may not be possible, but an attempt should be made to hold the hearing at a neutral place.

b. The hearing officer should not fraternize with the decision-maker or other FmHA personnel in the presence of the appellant before or after the hearing. This can be accomplished by having the hearing officer seated separate from the others at the hearing.

E. Conduct an informal proceeding.

1. At this informal proceeding the appellant will bear the burden of proving the initial decision erroneous.

2. The hearing officer may receive evidence without regard to whether that evidence could be employed in judicial proceedings.

3. However the hearing must be conducted in a manner to get facts on the record. Therefore, the hearing must deal in facts and not opinions.

4. The hearing officer should keep control over the hearing and not allow any of the participants, including counsel for the appellant or the decision-maker, to unduly attempt to set the tone of the hearing.

5. As a fact-finder, the hearing officer may question any witness, request additional witnesses to appear, and/or request further information if this information is necessary to reach a proper decision. If the hearing officer is going to request additional witnesses, these witnesses should be given adequate notice along with the time and place of the hearing.

F. Order of presentation. The order listed below should be followed:

1. Opening statement by appellant setting forth why original decisidu was erroneous. This is an outline of how appellant plans to proceed.

2. Opening statement by decision-maker to show why decision is correct.

3. Appellant presents evidence including documents, witnesses, and arguments supporting their position. The decision-maker can be questioned at this time by the appellant. Any witnesses presented by the appellant can be questioned by the decision-maker or other Government representative.

4. Decision-maker or other Government representative then has opportunity to rebut appellant's arguments and/or evidence by presenting evidence including witnesses. Any witnesses may be questioned by appellant.

5. The hearing should be concluded by a summary by both sides.

6. If the appellant has arranged to have a transcript of the hearing made at the appellant's expense, the hearing officer, with the prior approval of the Administrator, may purchase a copy of the transcript.

G. See to it that typed notes of the hearing are forwarded to the appellant for review

within 15 days of the hearing. These notes should be reviewed by the hearing officer before transmittal to the appellant. The appellant has an additional 7 days from receipt of the notes to return them with any suggested changes noted.

H. Make a decision based on the following:

1. Facts presented at the hearing.
2. Appropriate FmHA files.
3. Applicable statutes and regulations.
4. The hearing officer's general knowledge of FmHA program functions.
5. In short, the decision must be based on the record plus the general knowledge of the FmHA program functions.

I. After reaching a decision, the hearing officer must prepare the appropriate letter setting out the decision and forward it to the appellant.

1. This letter must set out *specific* reasons for the decision. The letter must contain more than conclusions. *It also must set forth the facts on which the decision is based.*

2. The decision will be communicated by letter to the appellant within 30 calendar days of the hearing.

a. If the initial decision is reversed, the letter will so inform the appellant and the decision-maker giving the reasons and action to be taken.

b. If the initial decision is upheld or modified, the letter will contain a statement set out in the regulations that the appellant may have the decision reviewed further if the appellant files an appeal within 20 calendar days of the date of the letter.

[FmHA Instruction 1900–B]

Exhibit B—Guide Letter for Notifying Applicants and Borrowers of Adverse Decisions Where the Decision is Appealable

UNITED STATES DEPARTMENT OF AGRICULTURE

Farmers Home Administration

(Washington, D.C. 20250)

(Date) ————

Dear ————:

After careful consideration we were unable to take favorable action on your application/request for Farmers Home Administration services.

(Insert here the adverse decision and all of the *specific* reasons for the adverse action. Non appealable reasons may be entered; however, if all reasons are non appealable, use Exhibit C)

You have a right to appeal this decision and are entitled to a hearing. However, FmHA regulations require that you first meet with (this Office/the County Committee) so that we may explain in greater detail why your request has not been approved. We may also review possible alternatives and any new information you may have. Any new information or evidence supporting your claim should be provided this office or brought with you to the meeting. You may bring a representative. If you wish the services of an attorney and do not have one, we will furnish you with the name and address of the nearest legal services representative and known legal referral assistance. Your request for a meeting must be made within 15 days of this notice.

The hearing officer is (insert name, title, address and telephone number). You must make a hearing request to the hearing officer within 15 days of notification of the results of the meeting with (this office/the County Committee). A 30 day extension of time may be granted, but only when you are unable to meet the 15 day deadline for warranted or unavoidable reasons. Additional evidence to support your claim can be sent to the hearing officer or taken to the hearing.

(When the action involves an applicant or borrower who will receive less assistance than requested or a termination of assistance add the following paragraph):

You may wish to have your present assistance maintained at the current level. At your request we will maintain this level of assistance pending the outcome of your appeal. However any such request carries with it an automatic agreement to repay any reduced or terminated assistance should the FmHA decision be upheld.

The Federal Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status, or age (provided that the applicant has the capacity to enter into a binding contract); because all or part of the applicant's income derives from any public assistance program, or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act. The Federal agency that administers compliance with the law concerning this creditor is the Federal Trade Commission, Equal Credit Opportunity, Washington, D.C. 20580.

Very truly yours,

(Decision-maker) ————

(Title) ————

[FmHA Instruction 1900–B]

Exhibit C—Guide Letter for Notifying Applicants and Borrowers of Adverse Decisions Where the Decision Is Not Appealable

United States Department of Agriculture

Farmers Home Administration

(Insert Address)

(Date) ————

Dear ————:

After careful consideration we were unable to take favorable action on your application/request for Farmers Home Administration services.

(Insert here all of the *specific* reasons for the adverse action. Examples of non appealable reasons are listed in § 1900.53(a))

If you have any questions about this action, we would like the opportunity to explain in detail why your request has not been approved, explain any possible alternative, or provide any other information you would like. You may bring any additional information you may have and you may bring a representative if you wish. Please call *(telephone number)* for an appointment.

Applicants and borrowers generally have a right to appeal adverse decisions, but certain FmHA decisions are not appealable. We have determined that the decisions(s) made in this case (is/are) not appealable under FmHA regulations. You may, however, write the State Director (insert name and address) for a review of the accuracy of our finding this decision not appealable. (Substitute the appropriate hearing officer's name and address in the event the decision was made by a State Director or National Office Official.)

The Federal Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status, or age (provided that the applicant has the capacity to enter into a binding contract), because all or part of the applicant's income derives from any public assistance program, or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act. The Federal agency that administers compliance with the law concerning this creditor is the Federal Trade Commission, Equal Credit Opportunity, Washington, D.C. 20580.

Very truly yours,

(Decision-maker) ————

(Title) ————

[Form FmHA 1900–1]

Check Appropriate Blank:

County Office ————

District Office ————

State Office ————

National Office ————

Semi-Annual Report on Appeals:

Location: (City and State) ————

I. Appeals to Decision Maker:
- A. Number of letters suggesting pre-appeal meetings ————
- B. Disposition:
  - 1. Differences settled ————
  - 2. Appeal letters mailed ————
  - 3. Disposition still pending ————

II. Hearings:
- A. Number held ————
- B. Disposition:
  - 1. Decision upheld ————
  - 2. Decision overruled ————
  - 3. Decision modified ————
- C. Pending Hearings ————

	State Director	Assistant Administrator	Administrator
III. Review of Appeals:			
A. Number appeal reviews			
B. Disposition:			
1. Decision upheld			
2. Decision overruled			
3. Decision modified			
C. Reviews pending			

[Form FmHA 1900–2]

Appeal Record

(FmHA Office Code)

1. Appellant's Name: ————
2. Appellant's Address: ————
3. Appellant's Social Security Number: ————
4. Applicant or Borrower: ————
5. Date Appeal Received by FmHA: ————
6. Type of loan or grant program: ————
7. Primary Reason For Appeal: ————

8. Secondary Reason for Appeal:
9. Appeal Level:
10. Appeal Decision for each item cited in item 7 above:
11. Date of Appeal Decision:

[Forms Manual Insert (Form FmHA 1980-2)]

Appeal Record

1. Enter Last name, First name, and then Middle Initial.
2. Enter street address or RFD number and Box Number.
3. Enter Appellant's Social Security Number.
4. Enter "A" for Applicant and "B" for Borrower.
5. Enter Month, Day and Year numerically.
6. Enter Type of Loan Program involved, such as: OL, FO, EM, EE, SW, 502, 504.
7. Enter the appropriate Reason or Reasons by code as shown below:
A. Lack of repayment ability.
B. Poor credit history.
C. Management capability.
D. Foreclosure action.
E. Excessive cost.
F. Credit elsewhere.
G. Not recognized as a farmer.
H. Size of farm operation.
I. Inadequate security.
J. (Reserved).
K. Third party eligibility or deficiencies.
L. Not in rural area.
M. Loan/grant ratio.
N. Other.
8. Enter the appropriate reason or reasons by code as shown below—match to the Primary code entered in item 5 by space entry.
1. Insufficient income to pay loan.
2. Excessive debt payments.
3. Credit history one of general slow payment.
4. Credit history one of default.
5. Judgements on record and reasons not excluded in FmHA Instruction 1910-A.
6. Significant legal action pending that would impair security and repayment.
7. Insufficient managerial experience.
8. Experience totally unrelated to loan purpose.
9. Delinquent more than 4 monthly payments.
10. Has been continually delinquent for more than 6 months.
11. FmHA paid real estate taxes.
12. Legal action by other creditors.
13. FmHA payment adjustment plans not carried out.
14. Not primarily serving rural residents.
9. Enter the appropriate codes.
1. District Director.
2. State Director.
3. Area Coordinator.
4. Assistant Administrator.
5. Administrator.
10. Enter the appropriate code: 1. Upheld; 2. Overruled; 3. Modified.
11. Enter the month, day and year numerically.

This document has been reviewed in accordance with FmHA Instruction 1901-G, "Environmental Impact Statements." It is the determination of FmHA that the proposed action does not constitute a major Federal action significantly affecting the quality of the human environment and, in accordance with the National Environmental Policy Act of 1969, Pub. L. 91-190 an Environmental Impact Statement is not required.

Dated: January 6, 1981.

Gordon Cavanaugh,
Administrator, Farmers Home Administration.

[FR Doc. 81-1290 Filed 1-15-81; 8:45 am]
BILLING CODE 3410-07-M

Food Safety and Quality Service

7 CFR Part 2852

United States Standards for Grades of Frozen Brussels Sprouts [1]

AGENCY: Food Safety and Quality Service, USDA.

ACTION: Final rule.

SUMMARY: The purpose of this rule is to revise the voluntary U.S. grade standards for frozen Brussels sprouts. The final rule was developed by the U.S. Department of Agriculture at the request of the frozen vegetable industry. This rule (1) revises the present grade standard to permit more variation in the trim of units, (2) converts the current variables (score points) standard to an attributes type standard, and (3) replaces dual grade nomenclature with single letter designations. Its effect will be to improve the standards, and promote orderly and efficient marketing.

EFFECTIVE DATE: February 17, 1981.

FOR FURTHER INFORMATION CONTACT:
Mr. Melvin J. Horst, Processed Products Branch, Fruit and Vegetable Quality Division, Food Safety and Quality Service, U.S. Department of Agriculture, Washington, D.C. 20250, (202) 447-6194. The Final Impact Statement describing the options considered in developing this final rule and the impact of implementing each option is available on request from the above named individual.

SUPPLEMENTARY INFORMATION:

Significance

This final rule has been reviewed under USDA procedures established in Secretary's Memorandum 1955 to implement Executive Order 12044, and has been classified "not significant".

[1] Compliance with the provisions of these standards shall not excuse failure to comply with the provisions of the Federal Food, Drug, and Cosmetic Act, or with applicable State laws and regulations.

Background

The current voluntary grading standards for frozen Brussels sprouts have been in effect since May 11, 1951. At the time these standards were developed, nearly all Brussels sprouts were harvested by hand and transported to the processing plant in burlap bags, baskets or wooden boxes. At the processing plant, the sprouts were hand sorted and trimmed. The sprouts were expected to be cut neatly at or near the point of attachment to the outer leaves. Therefore, reflecting marketing practices prevalent when they were developed, the current grade standards require that any unit (sprout) not smoothly trimmed at the point of attachment be scored as a "defect".

California is the source of nearly all of the commercial crop of Brussels sprouts produced for processing. In 1979, approximately 61,353,000 pounds of frozen Brussels sprouts were packed in the United States.

During the 1960's, machinery became available to harvest and trim Brussels sprouts. By 1966, according to unofficial estimates, approximately 30 percent of the California Brussels sprouts crop was harvested by machine. The use of machines, such as the mechanical trimmer, has become commonplace in the typical Brussels sprouts processing plant. Due to the effects of mechanical harvesting and processing, sprouts often vary in size and shap. Although product can be processed more efficiently using machinery than by hand, the sprouts will more often show the effects of machine trimming. For example, the butt end might have a more ragged or slanted cut and the head end might show a cut edge exposing the underlying head material. In addition more of the tender leaf material, cut from the outer portion of the sprout head, is now more likely to appear in the finished product. These trimming conditions are "cosmetic" and do not affect the eating quality or nutritional value of the finished food.

This revision of the voluntary grading standards for Brussels sprouts changes the quality requirement of the product with respect to appearance by permitting more variation in the trim of the units, allowing conformity to the present day industry practice of using mechanical trimmers.

The current grade standards for frozen Brussels sprouts specifies a numerical scoring system (0 to 100 points) for assigning a quality grade to the product. When the total score is not less than 90 points, a Grade "A" or "Fancy" quality grade is assigned. When the total score is 80 to 89 points, a Grade "B" or "Extra Standard" quality grade is

assigned. When the total score is 70 to 79 points, a Grade "C" or "Standard" quality grade is assigned. Frozen Brussels sprouts which have a total score of less than 70 points are given a "Substandard" quality rating.

This action also changes the procedure for assigning a quality grade and eliminates the numerical scoring system. The new system for determining whether the product quality meets or fails to meet a designated grade level is called "attributes sampling." Under this new system, the quality of the product would be compared with the minimum quality permitted in the intended or designated grade. If the quality is as good as, or better than, the minimum quality permitted, the product would be assigned that grade. If the quality of the product is not as good as the minimum quality permitted, the product could not be assigned that grade. However, it could be assigned a lower grade.

The existing grade standards for frozen brussels sprouts provide two names for each quality grade level. Currently, "Grade A" and "Fancy" are used to describe the highest quality grade level; "Grade B" and "Extra Standard" are the intermediate quality grade level; and "Grade C" and "Standard" are the lowest quality grade level acceptable in the marketplace. This action changes the grade names by deleting the terms "Fancy," "Extra Standard," and "Standard" and retains only the single letter grades of "Grade A," "Grade B," and "Grade C," preferred by consumers.

Comments

The proposed rule to revise the voluntary grading standards for frozen brussels sprouts was published in the Federal Register on January 4, 1980 (45 FR 1046–1049). One comment was received from the American Frozen Food Institute fully endorsing the proposed rule with suggestions for minor editorial changes for the purpose of clarity. Several editorial changes have been made in the final publication to enable better reader understanding.

Options Considered

The Department considered three options in preparing this final rule.

Option I—Revision of the U.S. Standards for Grades of Frozen Brussels Sprouts (Attributes type). The U.S. Standards would be revised to permit more variation in the trim of units; convert the current variables (score points) standard to an attributes type standard; and replace the dual grade nomenclature with single letter designations.

Option II—Revision of the U.S. Standards for Grades of Frozen Brussels Sprouts (Variables type). The U.S. Standards would be revised to permit more variation in the trim of units; and replace the dual grade nomenclature with single letter designations.

Option III—Continue the currently effective U.S. Standards for Grades of Frozen Brussels Sprouts. The frozen vegetable industry would be denied a change in the standards. No action would be taken to adjust the standards to comply with USDA policy or consumer preferences. Options II and III were rejected as they would not promote the orderly marketing of frozen Brussels sprouts and would fail to utilize the procedure which is currently available to improve the U.S. standards.

Thus, after review of the comments and in order to promote the orderly marketing of brussels sprouts, USDA hereby revises the U.S. grades for Brussels sprouts to (1) permit more variation in the trim of units allowing conformity with the present industry practice of using mechanical trimmers, (2) convert to attributes type standards; and (3) replace dual grade nomenclature with single letter designations.

In consideration of the foregoing, Subpart—United States Standards for brussels sprouts (7 CFR 2852.651 through 2852.659) are hereby revised to read as follows, and the Table of Contents is revised accordingly:

Subpart—United States Standards for Grades of Frozen Brussels Sprouts

Sec.

2852.651 Product description.
2852.652 Definitions of terms.
2852.653 Recommended sample unit size.
2852.654 Grades.
2852.655 Factors of quality.
2852.656 Classification of defects.
2852.657 Tolerances for defects.
2852.658 Sample size.
2852.659 Quality requirements.

Subpart—United States Standards for Grades of Frozen Brussels Sprouts

§ 2852.651 Product description.

Frozen Brussels sprouts means the frozen product prepared from the clean, sound succulent heads of the Brussels sprouts plant (*Brassica oleracea L. var. gemmifera*) by trimming, washing, blanching, and properly draining. The product is frozen in accordance with good commercial practice and maintained at temperatures necessary for its preservation.

§ 2852.652 Definitions of terms.

(a) *Acceptable Quality Level (AQL)* means the maximum percent of defective units or the maximum number of defects per hundred units of product that, for the purpose of acceptance sampling, can be considered satisfactory as a process average.

(b) *Blemished* means a unit affected by surface or internal discoloration, pathological injury, insect injury, or by other means to the extent that the appearance or eating quality is affected:

(1) Slightly;

(2) Materially; or

(3) Seriously.

(c) *Character.* (1) *Good character* means the individual heads are well formed, compact or very compact, and reasonably firm.

(2) *Reasonably good character* means the individual heads are reasonably well formed, reasonably compact, and fairly firm.

(3) *Fairly good character* means the individual heads are fairly well formed.

(4) *Poor character* means the individual heads fail the requirements for fairly good character.

(d) *Color (individual units).* (1) *Well colored* means the individual units have a color ranging from a distinct dark green to a lighter predominating characteristic green color with a definite yellow cast.

(2) *Fairly well colored* means the individual units have a predominating characteristic yellow color with or without slight tinges of green color.

(e) *Defect (or defective)* means any nonconformance of a unit(s) of product from a specified requirement of a single characteristic.

(f) *Extraneous vegetable material* means harmless vegetable substances other than from Brussels sprouts.

(g) *Flavor and odor. "Normal flavor and odor"* means that the product, after cooking, is free from objectionable flavors or odors of any kind.

(h) *Loose leaves and loose small pieces* means Brussels sprouts leaves, pieces of leaves or small pieces of edible stalk or stems not attached to a unit.

(i) *Sample unit* means the amount of product specified to be used for grading. It may be: (1) The entire contents of a container;

(2) A portion of the contents of a container;

(3) A combination of the contents of two or more containers; or

(4) A portion of unpacked product.

(j) *Trim.* (1) *Well trimmed* means the appearance of the unit is not materially affected by mechanical damage or by cutting into the head or by cutting of the stalk or stem.

(2) *Poorly trimmed* means the appearance of the unit is materially affected by mechanical damage or by excessive cutting into the head, or by insufficient cutting of the stalk or stem.

(k) *Unit* means a Brussels sprout or portion thereof other than loose leaves and loose small pieces.

§ 2852.653 Recommended sample unit size.

Meeting the requirements for factors of quality is based on a sample unit size of 50 units.

§ 2852.654 Grades.

(a) *U.S. Grade A* is the quality of frozen Brussels sprouts that: (1) Meets the following prerequisites in which the sprouts: (i) Have similar varietal characteristics;
(ii) Have a normal flavor and odor;
(iii) Have a good overall brightness;
(iv) Are free from grit or silt that affect the appearance or eating quality; and
(v) Have loose leaves and loose small pieces that may slightly affect the appearance or eating quality.
(2) Is within the limits for defects as classified in Tables I and II and specified in Tables III and IV, as applicable.

(b) *U.S. Grade B* is the quality of frozen Brussels sprouts that:
(1) Meets the following prerequisites in which the sprouts: (i) Have similar varietal characteristics;
(ii) Have a normal flavor and odor;
(iii) Have a reasonably good overall brightness;
(iv) Are free from grit or silt that affect the appearance or eating quality; and
(v) Have loose leaves and loose small pieces that may materially affect the appearance or eating quality.
(2) Is within the limits for defects as classified in Tables I and II and specified in Tables III and IV, as applicable.

(c) *U.S. Grade C* is the quality of frozen Brussels sprouts that: (1) Meets the following prerequisites in which the sprouts: (i) Have similar varietal characteristics;
(ii) Have a normal flavor and odor;
(iii) Have a fairly good overall brightness;
(iv) Have no more than a slight trace of grit or silt; and
(v) Have loose leaves and loose small pieces that may seriously affect the appearance or eating quality.
(2) Is within the limits for defects as classified in Tables I and II and specified in Tables III and IV, as applicable.

(d) *Substandard* is the quality of frozen Brussels sprouts that fails to meet the requirements of *U.S. Grade C.*

§ 2852.655 Factors of quality.

The grade of frozen Brussels sprouts is based on meeting the requirements for the following quality factors: (a) *Prerequisite quality factors:*
(1) Varietal characteristics;
(2) Flavor and odor;
(3) Brightness;
(4) Grit or silt; and
(5) Loose leaves and loose small pieces.
(b) *Classified quality factors:*
(1) Individual unit color (in U.S. Grades A and B only);
(2) Blemish;
(3) Trim;
(4) Extraneous vegetable material; and
(5) Character.

§ 2852.656 Classification of defects.

All defects, other than character defects, are classified as minor, major, severe, or critical. All character defects are classified as reasonably good, fairly good, or poor. Each "X" in Tables I and II represents "one (1) defect."

Table I.—*Classification of Defects (Other Than Character)*

Quality factor	Defects	Classification			
		Minor	Major	Severe	Critical
Individual unit color	Fairly well colored in U.S. Grades A and B only (each unit).		X		
Blemished	Slightly (each unit)	X			
	Materially (each unit)		X		
	Seriously (each unit)			X	
Trim	Poor (each unit)		X		
Extraneous vegetable material	Each piece				X

Table II.—*Classification of Character Defects*

Quality factor	Defects	Reasonably good	Fairly good	Poor
Character	"B" (each unit)	X		
	"C" (each unit)		X	
	"Substandard" (each unit)			X

§ 2852.657 Tolerances for defects.

Table III.—*All Classified Defects Except Character*

	Total[1]	Major	Severe	Critical
	Grade A			
AQL[2]	30.0	12.5	4.0	0.16
	Grade B			
AQL[2]	40.0	25.0	6.5	1.5
	Grade C			
AQL[2]	65.0	35.0	10.0	2.5

[1] AQL expressed as defects per hundred units.
[2] Total—Minor + Major + Severe + Critical.

Table IV.—*Classified Defects for Character Only*

	Grade					
	A			B		C
	Total[1]	Fairly good	Poor	Total[2]	Poor	Poor
AQL[3]	15.0	6.0	1.5	40.0	6.5	40.0

[1] AQL expressed as percent defective.
[2] Total—Reasonably Good + Fairly Good + Poor.
[3] Total—Fairly Good + Poor.

§ 2852.658 Sample size.

The sample size to determine meeting the requirements of these standards shall be as specified in the sampling plans and procedures in the "Regulations Governing Inspection and Certification of Processed Fruits and Vegetables, Processed Products Thereof, and Certain Other Processed Food Products" (7 CFR 2852.1–2852.83), for lot grading and on-line grading, as applicable.

§ 2852.659 Quality requirements.

(a) *Lot grading.* A lot of frozen Brussels sprouts is considered as meeting the requirements for quality if:
(1) The prerequisite requirements specified in § 2852.654 are met; and
(2) The Acceptable Quality Levels (AQL) in Tables III and IV, as applicable, are not exceeded.

(b) *On-line grading.* A portion of production is considered as meeting the requirements for quality if:
(1) The prerequisite requirements specified in § 2852.654 are met; and
(2) The Acceptable Quality Levels (AQL) in Tables III and IV, as applicable, are not exceeded.

(c) *Single sample unit.* Each single sample unit submitted for quality evaluation will be treated individually

and is considered as meeting the requirements for quality if:

(1) The prerequisite requirements specified in § 2852.654 are met; and

(2) The Acceptable Quality Levels (AQL) in Tables III and IV, as applicable, are not exceeded.

(Agricultural Marketing Act of 1946, Secs. 203, 205, 60 Stat. 1087, as amended, 1090, as amended (7 U.S.C. 1622, 1624))

Done at Washington, DC, on: January 12, 1981.

Donald L. Houston,

Administrator, Food Safety and Quality Service.

[FR Doc. 81-1348 Filed 1-15-81; 8:45 am]

BILLING CODE 3410-DM-M

DEPARTMENT OF ENERGY

Economic Regulatory Administration

10 CFR Part 212

[Docket No. ERA-R-80-26]

Maximum Lawful Selling Price for Unleaded Gasoline

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Final rule.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) hereby adopts two amendments to its gasoline price rules. The first amendment adopted includes the unleaded gasoline production incentive in the "B" factor rather than in the "H" factor to make clear that the increased cost passthrough computed under the incentive may be "banked" and to specify its sequence of recoupment. Second, DOE clarifies that new grades of unleaded gasoline may be treated as separate product categories.

EFFECTIVE DATE: January 9, 1981.

FOR FURTHER INFORMATION CONTACT:

William Webb (Office of Public Information), Economic Regulatory Administration, Room B-110, 2000 M Street, NW., Washington, D.C. 20461, (202) 653-4055.

Chuck Boehl (Office of Regulatory Policy), Economic Regulatory Administration, Room 7116, 2000 M Street, NW., Washington, D.C. 20461, (202) 653-4290.

William Mayo Lee or William Funk (Office of General Counsel), Department of Energy, Room 6A-127, 1000 Independence Avenue, SW., Washington, D.C. 20585, (202) 252-6754 or 252-6736.

SUPPLEMENTARY INFORMATION:

I. Background
II. Summary of Comments
III. Discussion
IV. Amendment
V. Procedural Requirements

I. Background

On August 15, 1980, DOE issued a notice of proposed rulemaking (45 FR 54694) proposing several changes to the price rules for unleaded gasoline. Specifically DOE proposed: (1) That all firms be permitted the option of imputing a May 15, 1973 selling price for unleaded gasoline; (2) several alternative methods of imputing the May 15, 1973 selling price for all grades of unleaded gasoline; (3) that all new grades of unleaded gasoline be considered separate product categories; and (4) that the unleaded gasoline production incentive be included in the "A" factor.

Generally, under the current price regulations the maximum lawful price refiners may charge for unleaded gasoline is the May 15, 1973 selling price of unleaded gasoline plus increased product and non-product costs. In addition, refiners are permitted to recoup additional increased costs on gasoline pursuant to the unleaded gasoline production incentive in § 212.83(j).

If a refiner did not sell unleaded gasoline on May 15, 1973, or 30 days prior thereto, the maximum lawful selling price for unleaded gasoline is calculated using an imputed May 15, 1973 selling price determined pursuant to § 212.112(b)(1). This imputed selling price is the weighted average selling price charged for leaded gasoline on May 15, 1973, of the same or nearest octane as the unleaded gasoline currently sold, plus one cent. The additional one cent is intended to reflect the additional cost associated with producing unleaded gasoline.

Pursuant to § 212.83(c)(1)(i)(B) refiners may designate different types and grades of gasoline as separate categories within the product category gasoline, provided such types and grades have consistently and historically been designated as such by the refiner and not disapproved by the DOE. In some instances, DOE has not disallowed refiners treating new grades of unleaded gasoline as separate product categories.

Finally, refiners are permitted to increase the amount of costs which may be passed through in gasoline price increases to reflect increased production of unleaded gasoline (44 FR 69694, December 3, 1979). The increased costs are permitted refiners which produce more unleaded gasoline than the national average or than they refined in the corresponding month in 1978.

II. Summary of Comments

Approximately 13 interested parties testified at a public hearing held in Washington, D.C. on September 24, 1980, and approximately 26 firms submitted written comments regarding the proposals.

The majority of the parties commenting were refiners. While they generally supported the thrust of DOE's proposals, there was considerable disagreement on the appropriate methods to impute a standard base price for both minimum octane and higher grades of unleaded gasoline. Also there were suggestions that no changes in the present system be made since decontrol will occur no later than September 30, 1981.

With respect to the various proposals for changing the method of imputing the May 15, 1973 selling prices, most refiners agreed that none of the proposals adequately reflected the increased costs associated with producing unleaded gasoline. Some refiners stated that it would be impossible to determine the per octane cost for producing higher grades of unleaded gasoline. Several commenters stated that in establishing prices often there is only an indirect relationship between the cost of producing a product and its selling price.

Most of the refiners that impute a May 15, 1973 unleaded gasoline selling price with reference to the May 15, 1973 selling price of a sub-regular grade of gasoline supported using an imputed selling price of regular leaded gasoline instead of the actual selling price of the sub-regular grade of leaded gasoline plus one cent to determine the May 15, 1973 unleaded selling price.

Commenters favored permitting refiners which sold unleaded on May 15, 1973, to have the option of imputing a May 15, 1973 selling price for unleaded gasoline. Most refiners opposed amending the rules to require all refiners which sold unleaded gasoline in May 1973 to impute unleaded base selling prices.

Commenters supported the proposal to eliminate the requirement that DOE approval be obtained before new grades of unleaded gasoline may be treated as separate product categories.

Many refiners supported removing the unleaded production incentive from the "H" factor. However, most commenters suggested it be included in the "B" factor to remove any confusion over the relationship between the production incentive and the gasoline "tilt" provision contained in the "A" factor.

III. Discussion

The amount of increased costs that refiners may assign to gasoline has increased because of the "tilt" and the unleaded gasoline production incentive rules. Moreover, during 1980, most refiners were unable to recover a significant amount of increased costs attributable to gasoline. It appears that cumulative gasoline banks are now approaching $30 billion.

The elimination of the equal application rule grants refiners greater pricing flexibility by permitting them to recoup increased costs allocated to gasoline as they deem appropriate. A refiner's aggregate price increases will be compared to total increased costs to determine compliance with the price rules. In other words, the primary limitation on a refiner's allowable gasoline price increases above the May 15, 1973, selling price is that the total increased costs allocated to gasoline for passthrough may not be exceeded.[1]

DOE believes that the current level of refiner "banks" and the pricing flexibility permitted refiners by elimination of the equal application rule will insure that refiners have an incentive to produce sufficient quantities of unleaded gasoline. Therefore, DOE does not believe that additional price relief is necessary at this time. Currently, refiners may allocate increased costs to meet competitive factors. Accordingly, DOE is terminating this rulemaking with respect to all the proposals concerning the provisions for imputing a May 15, 1973, selling price for unleaded gasoline.

IV. Amendments

The elimination of the equal application rule (45 FR 72620, November 3, 1980) permits refiners to allocate increased costs to determine maximum lawful selling prices of gasoline as refiners deem appropriate. Accordingly, refiners may allocate increased costs *within* their historical categories of gasoline at their discretion. Consequently, the limitations in the provision in § 212.83(c)(1)(i)(B) regarding separate categories of gasoline within the gasoline product categories are meaningless with respect to the allocation of increased costs to determine maximum lawful selling prices and, therefore, are being deleted. Refiners may allocate increased costs to all types and grades of gasoline, regardless of when they were first produced, as the refiner deems appropriate.

The other amendment DOE is adopting today is technical in nature. DOE is deleting the unleaded production incentive from the "H" factor and including it in the "B" factor.

The purpose of the amendment is to clarify that recouped costs derived from the incentive may be "banked" and to specify their exact order of recoupment. By removing the incentive from the "H" factor any ambiguities regarding "banks" and sequence of recoupment are eliminated. The production incentive is included in the "B" factor rather than the "A" factor to remove any confusion regarding the treatment of the production incentive and the "tilt" rule.

V. Procedural Requirements

A. FERC Review

Under Section 404(a) of the Department of Energy Organization Act, Pub. L. 95-91 (DOE Act), the proposed rule was referred to the Federal Energy Regulatory Commission (FERC) for a determination as to whether it may significantly affect any functions within the jurisdiction of the FERC under Section 402 (a)(1), (b), and (c)(1) of the DOE Act. The FERC has declined to make such a determination.

B. NEPA Review

Under DOE's Proposed Guidelines for Compliance with the National Environmental Policy Act (44 FR 42136, July 18, 1978) the DOE has determined that the adoption of this rule is not a major federal action significantly affecting the quality of the environment. Thus the preparation of an environmental impact statement is not required.

C. Effective Date

The provisions of 5 U.S.C. section 553(d) generally require that only substantive rules may not be made effective less than 30 days following publication of the rule. In this instance, the rule is not substantive in nature, so DOE is making the rule effective the day it is issued.

(Emergency Petroleum Allocation Act of 1973, 15 U.S.C. 751 *et seq.*, Pub. L. 93-159, as amended, Pub. L. 93-511, Pub. L. 94-99, Pub. L. 94-133, Pub. L. 94-163, and Pub. L. 94-385; Federal Energy Administration Act of 1974, 15 U.S.C. 787 *et seq.*, Pub. L. 93-275, as amended, Pub. L. 94-332, Pub. L. 94-385, Pub. L. 95-70, and Pub. L. 95-91; Energy Policy and Conservation Act, 42 U.S.C. § 6201 *et seq.*, Pub. L. 94-163, as amended, Pub. L. 94-385, Pub. L. 95-70, Pub. L. 95-619, and Pub. L. 96-30; Department of Energy Organization Act, 42 U.S.C. 7101 *et seq.*, Pub. L. 95-91, Pub. L. 95-509, Pub. L. 95-619, Pub. L. 95-620, and Pub. L. 95-621; E.O. 11790, 39 FR 23185; E.O. 12009, 42 FR 46267)

In consideration of the foregoing, Part 212, Chapter II of Title 10 of the Code of Federal Regulations is amended as set forth below effective the date this rule is issued.

Issued in Washington, D.C., January 9, 1981.

Hazel R. Rollins,

Administrator, Economic Regulatory Administration.

1. Section 212.83(c)(1)(i)(B) is revised to read as follows:

§ 212.83 Price rule.

* * * * *

(c) *Allocation of increased costs.*

* * *

(1) *Allocation of increased costs incurred in the period "t"—*

(i) * * *

* * * * *

(B) Notwithstanding any other provision of this subpart, for purposes of this section, a refiner may designate as categories within the product gasoline different types (unleaded gasoline as differentiated from leaded gasoline) and grades (differentiated by octane number), if the categories so designated by the refiner represent discrete gasoline types and grades. In apportioning the total amount of increased costs allocable to gasoline among categories of gasoline, a refiner may apportion amounts of increased costs to a particular category of gasoline in whatever amounts it deems appropriate.

* * * * *

2. Section 212.83(c)(2)(iii)(C) *The "B" factor* is revised in the definition of "B_t" to read as follows:

§ 212.83 Price rule.

* * * * *

(c) *Allocation of increased costs.* * * *
(2) *Formulae.* * * *
(iii) *Definitions.* * * *
(C) *The "B" factor.*

* * * * *

"B_t" is the total increased cost of the specific covered product or products of the type "i" purchased or landed in the period "t," provided such cost is not included in computing "A_t." The cost of a specific covered product or products of the type "i" shall include the cost of a product or products not of the type "i" which was a covered product as of May 31, 1976 and is purchased and defined or blended, that is attributable to the production of the covered product or products of the type "i." Beginning December 1, 1979, with respect to category "i" = 3, the cost of gasoline

[1] Section 212.83(c)(1)(C) prohibits refiners from charging in retail sales at a retail outlet more than 17.7 cents per gallon over the price charged by the refiner in its nearest DTW price to an independent retailer.

shall include materials and compounds, including catalyst, alcohol, and process chemicals, that are purchased and refined or blended and are attributable to the production of gasoline. The cost and quantity of covered products purchased or landed that are consumed as refinery fuel shall be excluded from this amount. Effective January 9, 1981, "B_iT" shall include the unleaded gasoline production incentive found in § 212.83(j).

Where: cl^o = The total cost of a covered product or products of the type "i" purchased or landed in the period "o".

cl^T = The total cost of a covered product or products of the type "i" purchased or landed in the period "t".

ql^o = The total quantity or volume of a covered product or products of the type "i" purchased or landed in the period "o".

ql^T = The total quantity or volume of a covered product of the type "i" purchased or landed in the period "t".

Y_i = The lowest price at or above [below] which at least 10 percent of the product or products of type "i" were priced in transactions during the month of May 1973, or, if no transactions occurred in that month, the month next preceding May 1973 in which such transactions occurred.

* * * * *

3. Section 212.83(c)(2)(iii)(G) The "H" factor is revised to read as follows:

§ 212.83 Price rule.

* * * * *

(c) *Allocation of increased costs.* * * *

(2) *Formulae.* * * *

(iii) *Definitions.* * * *

(G) *The "H" Factor.*

"H_iU" = For i=1, i=2, and i=4, the portion, if any, of the total dollar amount available in the period "u" for inclusion in price adjustments to the product of the type "i" that pursuant to paragraphs (d) or (e) of this section the refiner elects to include in prices of gasoline for the period "u" (in which case "H_i" shall be subtracted); for "i"=3, the portion, if any, of the total dollar amount available in the period "u" for inclusion in price adjustments to No. 2 oils, aviation jet fuel, or general refinery products that pursuant to paragraphs (d) or (e) of this section the refiner elects to include in the price of gasoline for the period "u" (in which case "H_i" shall be added).

* * * * *

[FR Doc. 81-1743 Filed 1-15-81; 8:45 am]

BILLING CODE 6450-01-M

FEDERAL TRADE COMMISSION

16 CFR Part 305

Rules for Using Energy Cost and Consumption Information Used in Labeling and Advertising for Consumer Appliances Under the Energy Policy and Conservation Act; Technical Correction to Ranges of Comparability

AGENCY: Federal Trade Commission.

ACTION: Technical corrections to final rule and comparability ranges.

SUMMARY: On November 19, 1979, the Federal Trade Commission issued a final rule that requires the disclosure of energy efficiency information for the following categories of appliances: refrigerators and refrigerator-freezers, freezers, dishwashers, clothes washers, water heaters, room air conditioners and furnaces. Section 305.8 of the rule requires affected members of the appliance industry to submit to the Commission information relating to the energy cost or energy efficiency rating of covered appliances. Using this information, the Commission published [1] the ranges of energy cost or energy efficiency ratings for the appliances covered by the rule. This information was to be used by the industry to prepare required labels and fact sheets.

After publication of the ranges, the Commission discovered certain technical errors, and published corrections on March 25, 1980. The Commission found that the information published on March 25 contained errors in the furnace ranges that were not ascertainable prior to publication, and published corrections on April 17, 1980.

The Commission has found that the refrigerator and refrigerator-freezer ranges published on April 17 also contain errors. This notice corrects those errors.

A provision in section 326(c) of the Energy Policy and Conservation Act prohibits the Commission from requiring that labels be changed to reflect revised tables of ranges more often than annually. Consequently, any changes made to required labels in response to this notice would be purely voluntary.

EFFECTIVE DATE: These corrections are effective on January 16, 1981.

FOR FURTHER INFORMATION CONTACT: James Mills, 202-724-1401 or Lucerne D. Winfrey, 202-724-1453, Attorneys, Federal Trade Commission, 414 11th Street NW., Washington, D.C. 20580.

[1] 45 FR 12998, March 3, 1980.

SUPPLEMENTARY INFORMATION: The Commission published the final rule on November 19, 1979 (44 FR 66466). Information respecting the annual ranges of comparability was published in the Federal Register on Monday, March 3, 1980 (45 FR 12998), Tuesday, March 25, 1980 (45 FR 19520) and on Thursday, April 17, 1980 (45 FR 26038). The published ranges are applicable to refrigerators and refrigerator-freezers, freezers, dishwashers, clothes washers, water heaters, room air conditioners and furnaces. Appendix A1- Refrigerators, and Appendix A2- Refrigerator-freezers have been corrected so that the ranges of comparability for these products now more accurately reflect all of the information submitted by industry members prior to the submission deadline of January 21, 1980.

A1.—Refrigerators

Manufacturer's rated total refrigerated volume in cubic feet	Ranges of estimated yearly energy costs, electricity	
	Low	High
Less than 2.5	$18	$25
2.5 to 4.4	20	31
4.5 to 6.4	22	31
6.5 to 8.4	22	33
8.5 to 10.4	22	35
10.5 to 12.4	24	37
12.5 to 14.4	28	41
14.5 to 16.4	(1)	(1)
16.5 and over	33	53

[1] No data submitted.

A2.—Refrigerators-Freezers

Manufacturer's rated total refrigerated volume in cubic feet	Ranges of estimated yearly energy costs, electricity	
	Low	High
Less than 16.5	$27	$39
16.5 to 12.4	31	50
12.5 to 14.4	31	59
14.5 to 16.4	33	62
16.5 to 18.4	45	68
18.5 to 20.4	56	91
20.5 to 22.4	64	89
22.5 to 24.4	68	94
24.5 to 26.4	79	109
26.5 to 28.4	94	94
28.5 and over	(1)	(1)

[1] No data submitted.

By direction of the Commission.

Carol M. Thomas,

Secretary.

[FR Doc. 81-1744 Filed 1-15-81; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 282

[Docket No. RM81-9]

Rule Adopting Revised Alternative Fuel Price Ceilings for the State of Kentucky; Public Hearing

Issued January 12, 1981.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of public hearing.

SUMMARY: On December 24, 1980, the Federal Energy Regulatory Commission (Commission) issued an Interim Rule (46 Fed. Reg. 2036) in Docket No. RM81-9 revising the alternative fuel price ceilings for the State of Kentucky under the Natural Gas Policy Act of 1978. The Commission has received a request for a public hearing in Docket No. SA81-9 wherein interested persons would have the opportunity to make oral presentations of their views on the interim rule. Pursuant to this request, the Commission has scheduled a public hearing to be held on January 19, 1981, at the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, Hearing Room A.

DATES: The public hearing will be held on January 19, 1981, 10:00 a.m.

ADDRESSES: The public hearing will be held at: Hearing Room A, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426.

FOR FURTHER INFORMATION CONTACT:

Sandra Delude, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, (202) 357-9095

Alice Fernandez, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, (202) 357-9095

Kenneth F. Plumb,

Secretary.

[FR Doc. 81-1722 Filed 1-15-81; 8:45 am]

BILLING CODE 6450-85-M

DEPARTMENT OF LABOR

Employment and Training Administration

20 CFR Part 656

Labor Certification Process for the Permanent Employment of Aliens in the United States; Correction

AGENCY: Employment and Training Administration, Labor.

ACTION: Final rule; correction.

SUMMARY: This document corrects an error in a final rule on the permanent alien labor certification process, published December 19, 1980 (45 FR 83926).

FOR FURTHER INFORMATION CONTACT:

Mr. Aaron Bodin, Division of Labor Certifications. Telephone: 202-376-6295.

SUPPLEMENTARY INFORMATION: This document corrects an error contained in the final rule on the permanent alien labor cretification process, published at 45 FR 83926 (December 19, 1980). In the final rule, the word "shall" in the introductory language to 20 CFR 656.21(b) was changed incorrectly to the word "may". See 45 FR 83939.

Accordingly, the Employment and Training Administration is correcting the introductory language to 20 CFR 656.21(b) to read as follows:

§ 656.21 Basic labor certification process.

* * * * *

(b) Except for labor certification applications involving occupations designated for special handling (see § 656.21a) and *Schedule A* occupations (see §§ 656.10 and 656.22), the employer shall submit as a part of every labor certification application, on the *Application for Alien Employment Certification* form or in attachments, as appropriate, the following clear documentation:

* * * * * *

Signed in Washington, D. C., this 9th day of January, 1981.

Ernest G. Green,

Assistant Secretary for Employment and Training.

[FR Doc. 81-1852 Filed 1-15-81; 8:45 am]

BILLING CODE 4510-30-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 178

[Docket No. 80F-0184]

Indirect Food Additives: Adjuvants, Production Aids, and Sanitizers; 4-[[4,6-Bis(Octylthio)-S-Triazin-2-yl]amino]-2,6-di-Tert-Butylphenol

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of 4-[[4,6-bis(Octylthio)-*s*-triazin-2-yl]amino]-2,6-di-*tert*-butylphenol as an antioxidant and thermal stabilizer for styrene block copolymers, polystyrene, and rubber-modified polystyrene polymers. Ciba-Geigy Corp. petitioned for this use.

DATES: Effective January 16, 1981; objections by February 17, 1981.

ADDRESS: Written objections to the Hearing Clerk (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT:

Mary W. Lipien, Bureau of Foods (HFF-334), Food and Drug Administration, 200 C St. SW., Washington, D.C. 20204, 202-472-5740.

SUPPLEMENTARY INFORMATION: FDA issued a notice in the **Federal Register** of June 10, 1980 (45 FR 39340) announcing that a food additive petition (FAP OB3509) had been filed by Ciba-Geigy Corp., Ardsley, NY 10502, proposing that § 178.2010 *Antioxidants and/or stabilizers for polymers* (21 CFR 178.2010) be amended to provide for the safe use of 4-[[4,6-bis(Octylthio)-*s*-triazin-2-yl]amino]-2,6-di-*tert*-butylphenol as an antioxidant and thermal stabilizer for styrene block copolymers complying with § 177.1810 (21 CFR 177.1810) and polystyrene and rubber-modified polystyrene polymers complying with § 177.1640 (21 CFR 177.1640).

FDA has evaluated data in the petition and other relevant material and concludes that § 178.2010 should be amended as set forth below to include the petitioned additive.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 201(s) and 409, 72 Stat. 1784–1788 as amended (21 U.S.C. 321(s) and 348)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.1), Part 178 is amended in § 178.2010(b) by inserting a new entry alphabetically in the table, to read as follows:

§ 178.2010 Antioxidants and/or stabilizers for polymers.

* * * * *

(b) * * *

Substances	Limitations
* * * * *	
4-[[4,6-Bis(octylthio)-*s*-triazin-2-yl]amino]-2, 6-di-*tert*-butylphenol (CAS Reg. No. 991-84-4).	For use only: 1. At levels not to exceed 0.5 percent by weight in styrene block copolymers complying with § 177.1810 of this chapter: *Provided*, That the finished styrene block copolymers contact food identified as types I, II, IV-S, VI, VII-S, and VIII in table 1 of § 178.170(c) of this chapter under conditions of use D, E, F, and G described in table 2 of § 178.170(c) of this chapter. 2. At levels not to exceed 0.1 percent by weight in polystyrene and rubber-modified polystyrene complying with § 177.1640 of this chapter: *Provided*, That the finished polystyrene and rubber-modified polystyrene polymer contact food only under conditions of use D, E, F, and G described in table 2 of § 178.170(c) of this chapter.
* * * * *	

Any person who will be adversely affected by the foregoing regulation may at any time on or before February 17, 1981 submit to the Hearing Clerk (HFA–306), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, written objections thereto and may make a written request for a public hearing on the stated objections. Each objection shall be separately numbered and each numbered objection shall specify with particularity the provision of the regulation to which objection is made. Each numbered objection on which a hearing is requested shall specifically so state; failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held; failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Four copies of all documents shall be submitted and shall be identified with the Hearing Clerk docket number found in brackets in the heading of this regulation. Received objections may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Effective date. This regulation becomes effective January 16, 1981.

(Secs. 201(s) and 409, 72 Stat. 1784–1788 as amended (21 U.S.C. 321(s) and 348))

Dated: January 12, 1981.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 81-1681 Filed 1-15-81; 8:45 am]

BILLING CODE 4110-03-M

21 CFR Parts 430, 436 and 442

[Docket No. 80N-0285]

Antibiotic Drugs; Cefaclor

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) amends the antibiotic drug regulations to provide for the certification of a new antibiotic drug, cefaclor. The manufacturer has supplied sufficient data and information to establish its safety and efficacy.

DATES: Effective January 16, 1981. Comments by February 17, 1981.

ADDRESS: Written comments to the Dockets Management Branch (formerly the Hearing Clerk's office) (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Joan Eckert, Bureau of Drugs (HFD–140), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4290.

SUPPLEMENTARY INFORMATION: FDA has evaluated data submitted in accordance with regulations promulgated under section 507 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 357), as amended, with respect to providing for the certification of a new antibiotic drug, cefaclor. The agency concludes that the data supplied by the manufacturer concerning this antibiotic drug are adequate to establish its safety and efficacy when used as directed in the labeling and that the regulations should be amended in Parts 430, 436, and 442 (21 CFR Parts 430, 436, and 442) to provide for its certification.

The agency has determined pursuant to 21 CFR 25.24(b)(22) (proposed December 11, 1979; 44 FR 71742) that this action is of a type that does not individually or cumulatively have a significant impact on the human environment. Thus, neither an environmental assessment nor an environmental impact statement is required.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 507, 59 Stat. 463 as amended (21 U.S.C. 357)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.1), Parts 430, 436, and 442 are amended as follows:

PART 430—ANTIBIOTIC DRUGS; GENERAL

1. Part 430 is amended in Subpart A as follows:

a. In § 430.5 by adding new paragraph (a)(66) and new paragraph (b)(66) to read as follows:

§ 430.5 Definitions of master and working standards.

(a) * * *

(66) *Cefaclor.* The term "cefaclor master standard" means a specific lot of cefaclor that is designated by the Commissioner as the standard of comparison in determining the potency of the cefaclor working standard.

(b) * * *

(66) *Cefaclor.* The term "cefaclor working standard" means a specific lot of a homogeneous preparation of cefaclor.

b. In § 430.6 by adding new paragraph (b)(66) to read as follows:

§ 430.6 Definitions of the terms "unit" and "microgram" as applied to antibiotic substances.

* * * * * *

(b) * * *

(66) *Cefaclor.* The term "microgram" applied to cefaclor means the cefaclor activity (potency) contained in 1.0493 micrograms of cefaclor master standard.

PART 436—TESTS AND METHODS OF ASSAY OF ANTIBIOTIC AND ANTIBIOTIC-CONTAINING DRUGS

2. Part 436 is amended in § 436.105 (a) and (b) by alphabetically inserting a new item into the respective tables, as follows:

§ 436.105 Microbiological agar diffusion assay.

* * * * *

(a) * * *

Antibiotic	Media to be used (as listed by medium number in § 436.102(b))		Milliliters of media to be used in the base and seed layers		Test organism	Suggested volume of standardized inoculum to be added to each 100 milliliters of seed agar	Incubation temperature for the plates
	Base layer	Seed layer	Base layer	Seed layer			
						Milliliters	*Degrees C.*
Cefaclor	2	1	21	5	A	0.05	36-37.5

(b) * * *

Antibiotic	Working standard stock solutions					Standard response line concentrations	
	Drying conditions (method number as listed in § 436.201)	Initial solvent	Diluent (solution number as listed in § 436.101(a))	Final concentration units or milligrams per milliliter	Storage time under refrigeration	Dilution	Final concentrations, units or micrograms of antibiotic activity per milliliter
Cefaclor	Not dried	1	1 mg	1 day		1	3.2, 4.0, 5.0, 6.25, 7.81 µg

PART 442—CEPHA ANTIBIOTIC DRUGS

3. Part 442 is amended:

a. In Subpart A by adding new § 442.4 to read as follows:

§ 442.4 Cefaclor monohydrate.

(a) *Requirements for certification*—(1) *Standards of identity, strength, quality, and purity.* Cefaclor monohydrate is the monohydrate form of (6*R*, 7*R*)-7-[(*R*)-2-amino-2-phenylacetamido]-3-chloro-8-oxo-5-thias-1-azabicyclo [4.2.0]oct-2-ene-2-carboxylic acid. It is so purified and dried that:

(i) Its potency is not less than 860 micrograms and not more than 1,050 micrograms of cefaclor per milligram on an "as is" basis.

(ii) Its moisture content is not less than 3.0 percent and not more than 8.0 percent.

(iii) Its pH in an aqueous suspension containing 25 milligrams per milliliter is not less than 3.0 and not more than 4.5.

(iv) It gives a positive identity test.

(v) It is crystalline.

(2) *Labeling.* It shall be labeled in accordance with the requirements of § 432.5 of this chapter.

(3) *Requests for certification; samples.* In addition to complying with the requirements of § 431.1 of this chapter, each such request shall contain:

(i) Results of tests and assays on the batch for potency, moisture, pH, identity, and crystallinity.

(ii) Samples required: 10 packages, each containing approximately 300 milligrams.

(b) *Tests and methods of assay*—(1) *Potency.* Use either of the following methods; however, the results obtained from the hydroxylamine colorimetric assay shall be conclusive.

(i) *Microbiological agar diffusion assay.* Proceed as directed in § 436.105 of this chapter, preparing the sample for assay as follows: Dissolve an accurately weighed sample in sufficient 1 percent potassium phosphate buffer, pH 6.0 (solution 1), to obtain a stock solution containing 1 milligram of cefaclor per milliliter (estimated). Further dilute an aliquot of the stock solution with solution 1 to the reference concentration of 5.0 micrograms of cefaclor per milliliter (estimated).

(ii) *Hydroxylamine colorimetric assay.* Proceed as directed in § 442.40(b)(1)(ii) of this chapter, except prepare the working standard and sample solutions and calculate the cefaclor content as follows:

(*a*) *Preparation of working standard solution.* Dissolve and dilute an accurately weighed portion of the cefaclor working standard in sufficient 0.1*M* potassium phosphate buffer, pH 4.5 (as described in § 436.101(a)(4) of this chapter) to obtain a concentration of 1 milligram of cefaclor per milliliter.

(*b*) *Preparation of sample solution.* Dissolve an accurately weighed portion of the sample in sufficient 0.1*M* potassium phosphate buffer, pH 4.5 (as described in § 436.101(a)(4) of this chapter) to obtain a concentration of 1 milligram of cefaclor per milliliter.

(*c*) *Calculations.* Calculate the cefaclor content in micrograms per milligram as follows:

$$\text{Micrograms of cefaclor per milligram of sample} = \frac{A_u \times P_s}{A_s \times W_u}$$

where:

A_u = Absorbance of sample solution;
P_s = Potency of working standard solution in micrograms per milliliter;
A_s = Absorbance of working standard solution;
W_u = Milligrams of sample per milliliter of sample solution.

(2) *Moisture.* Proceed as directed in § 436.201 of this chapter.

(3) *pH.* Proceed as directed in § 436.202 of this chapter, using an aqueous suspension containing 25 milligrams per milliliter.

(4) *Identity.* Proceed as directed in § 436.211 of this chapter, using the

sample preparation described in paragraph (b)(2) of that section.

(5) *Crystallinity.* Proceed as directed in § 436.203(a) of this chapter.

b. In Subpart B by adding new §§ 442.104, 442.104a, and 442.104b to read as follows:

§ 442.104 Cefaclor monohydrate oral dosage forms.

§ 442.104a Cefaclor monohydrate capsules.

(a) *Requirements for certification*—(1) *Standards of identity, strength, quality, and purity* Cefaclor monohydrate capsules are composed of cefaclor monohydrate and one or more suitable and harmless lubricants and diluents enclosed in a gelatin capsule. Each capsule contains cefaclor monohydrate equivalent to either 250 milligrams or 500 milligrams of cefaclor. Its potency is satisfactory if it is not less than 90 percent and not more than 120 percent of the number of milligrams of cefaclor that it is represented to contain. Its moisture content is not more than 8.0 percent. The cefaclor monohydrate used conforms to the standards prescribed by § 442.4(a)(1).

(2) *Labeling.* It shall be labeled in accordance with the requirements of § 432.5 of this chapter.

(3) *Requests for certification; samples.* In addition to complying with the requirements of § 431.1 of this chapter, each such request shall contain:

(i) Results of tests and assays on:

(*a*) The cefaclor monohydrate used in making the batch for potency, moisture, pH, identity, and crystallinity.

(*b*) The batch for potency and moisture.

(ii) Samples required:

(*a*) The cefaclor monohydrate used in making the batch: 10 packages, each containing approximately 300 milligrams.

(*b*) The batch: A minimum of 30 capsules.

(b) *Tests and methods of assay*—(1) *Potency.* Proceed as directed in § 442.40(b)(1)(ii) of this chapter, except prepare the working standard and sample solutions and calculate the potency of the sample as follows:

(i) *Preparation of working standard solution.* Dissolve and dilute an accurately weighed portion of the cefaclor working standard in sufficient 0.1*M* potassium phosphate buffer, pH 4.5 (as described in § 436.101(a)(4) of this chapter) to obtain a concentration of 1 milligram of cefaclor.

(ii) *Preparation of sample solution.* Place one capsule into a high-speed glass blender jar containing sufficient 0.1*M* potassium phosphate buffer, pH 4.5 (as described in § 436.101(a)(4) of this chapter) to obtain a concentration of 1 milligram per milliliter. Filter a portion to be used through a 10-micron filter.

(iii) *Calculations.* Calculate the cefaclor content in milligrams per capsule as follows:

$$\text{Milligrams of cefaclor per capsule} = \frac{A_u \times P_s \times d}{A_s \times 1{,}000}$$

where:

A_u = Absorbance of sample solution;
P_s = Potency of working standard in micrograms per milliliter;
A_s = Absorbance of working standard solution;
d = Dilution factor of the sample.

(2) *Moisture.* Proceed as directed in § 436.201 of this chapter.

§ 442.104b Cefaclor monohydrate for oral suspension.

(a) *Requirements for certification*—(1) *Standards of identity, strength, quality, and purity.* Cefaclor monohydrate for oral suspension is cefaclor monohydrate with one or more suitable and harmless diluents, buffer substances, colorings and flavorings. When reconstituted as directed in the labeling, each milliliter contains cefaclor monohydrate equivalent to 25 milligrams or 50 milligrams of cefaclor. Its potency is satisfactory if it is not less than 90 percent and not more than 120 percent of the number of milligrams of cefaclor that it is represented to contain. Its moisture content is not more than 2.0 percent. When reconstituted as directed in the labeling, its pH is not less than 2.5 and not more than 4.5. The cefaclor monohydrate used conforms to the standards prescribed by § 4442.4(a)(1).

(2) *Labeling.* It shall be labeled in accordance with the requirements of § 432.5 of this chapter.

(3) *Requests for certification; samples.* In addition to complying with the requirements of § 431.1 of this chapter, each such request shall contain:

(i) Results of tests and assays on:

(*a*) The cefaclor monohydrate used in making the batch for potency, moisture, pH, identity, and crystallinity.

(*b*) The batch for potency, moisture, and pH.

(ii) Samples required:

(*a*) The cefaclor monohydrate used in making the batch: 10 packages, each containing approximately 300 milligrams.

(*b*) The batch: A minimum of six immediate containers.

(b) *Tests and methods of assay*—(1) *Potency.* Proceed as directed in § 442.40(b)(1)(ii) of this chapter, except prepare the working standard and sample solutions and calculate the potency of the sample as follows:

(i) *Preparation of working standard solution.* Dissolve and dilute an accurately weighed portion of the cefaclor working standard in sufficient 0.1*M* potassium phosphate buffer, pH 4.5 (as described in § 436.101(a)(4) of this chapter) to obtain a concentration of 1 milligram of cefaclor.

(ii) *Preparation of sample solution.* Reconstitute the sample as directed in the labeling. Transfer a 5.0-milliliter portion into an appropriate-sized volumetric flask and dilute to volume with 0.1*M* potassium phosphate buffer, pH 4.5 (as described in § 436.101(a)(4) of this chapter) to obtain a concentration of 1 milligram per milliliter.

(iii) *Calculations.* Calculate the cefaclor content as follows:

$$\text{Milligrams of cefaclor for 5 milliliters of sample} = \frac{A_u \times P_s \times d}{A_s \times 1{,}000}$$

where:

A_u = Absorbance of sample solution;
P_s = Potency of working standard in micrograms per milliliter;
A_s = Absorbance of working standard solution;
d = Dilution factor of the sample.

(2) *Moisture.* Proceed as directed in § 436.201 of this chapter.

(3) *pH.* Proceed as directed in § 436.202 of this chapter, using the drug reconstituted as directed in the labeling.

This regulation announces standards that FDA has accepted in a request for approval of an antibiotic drug. In accordance with the conditions for certification in section 507 of the act, FDA permits the manufacturer to market this drug on a "release" status pending the regulation's becoming effective.

Because this regulation is not controversial and because when effective it provides notice of accepted standards and permits earlier certification of regulated products, notice and comment procedure and delayed effective date are found to be unnecessary and not in the public interest. The amendment, therefore, is effective upon the date of publication in the Federal Register. However, interested persons may, on or before February 17, 1981, submit to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, written comments on this rule. Four copies of any comments to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Dockets Management Branch office between 9 a.m. and 4 p.m., Monday through Friday.

Any person who will be adversely affected by this regulation may file objections to it, request a hearing, and show reasonable grounds for the hearing. Any person who decides to seek a hearing must file (1) on or before February 17, 1981, a written notice of participation and request for hearing, and (2) on or before March 17, 1981, the data, information, and analyses on which the person relies to justify a hearing, as specified in 21 CFR 430.20. A request for a hearing may not rest upon mere allegations or denials, but must set forth specific facts showing that there is a genuine and substantial issue of fact that requires a hearing. If it conclusively appears from the face of the data, information, and factual analyses in the request for hearing that no genuine and substantial issue of fact precludes the action taken by this order, or if a request for hearing is not made in the required format or with the required analyses, the Commissioner of Food and Drugs will enter summary judgment against the person(s) who request(s) the hearing, making findings and conclusions and denying a hearing.

The procedures and requirements governing this order, a notice of participation and request for hearing, a submission of data, information, and analyses to justify a hearing, other comments, and grant or denial of a hearing are contained in 21 CFR 430.20.

All submissions under this order must be filed in four copies, identified with the docket number appearing in the heading of this order and filed with the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

All submissions under this order, except for data and information prohibited from public disclosure under 21 U.S.C. 331(j) or 18 U.S.C. 1905, may be seen in the office of the Dockets Management Branch, between 9 a.m. and 4 p.m., Monday through Friday.

Effective date. This regulation shall be effective January 16, 1981.

(Sec. 507, 59 Stat. 463 as amended (21 U.S.C. 357))

Dated: January 6, 1981.

Mary A. McEniry,

Assistant Director for Regulatory Affairs, Bureau of Drugs.

[FR Doc. 81-1200 Filed 1-15-81; 8:45 am]

BILLING CODE 4110-03-M

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21 CFR Parts 510 and 558

Tylosin; New Animal Drugs for Use in Animal Feeds

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) amends the animal drug regulations to reflect approval of a new animal drug application (NADA) filed for Indiana Farm Bureau Cooperative Association, Inc., providing for safe and effective use of a 10-grams-per-pound tylosin premix for making complete swine feeds, and to add this firm to the list of approved NADA sponsors.

EFFECTIVE DATE: January 16, 1981.

FOR FURTHER INFORMATION CONTACT: Jack C. Taylor, Bureau of Veterinary Medicine (HFV-136), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-5247.

SUPPLEMENTARY INFORMATION: Indiana Farm Bureau Cooperative Association, Inc., 120 E. Market St., Indianapolis, IN 46204, is sponsor of NADA 125-226 submitted on its behalf by Elanco Products Co. The NADA provides for use of a premix containing 10 grams of tylosin (as tylosin phosphate) per pound for making complete swine feeds used to increase rate of weight gain and improve feed efficiency.

Approval of this NADA relies upon safety and effectiveness data contained in Elanco Products Co.'s approved NADA 12-491. Use of the data in NADA 12-491 to support this NADA has been authorized by Elanco. This approval does not change the approved use of the drug. Consequently, approval of this NADA poses no increased human risk from exposure to residues of the animal drug, nor does it change the conditions of the drug's safe use in the target animal species. Accordingly, under the Bureau of Veterinary Medicine's supplemental approval policy (42 FR 64367; December 23, 1977), approval of this NADA has been treated as would an approval of a Category II supplement and does not require reevaluation of the safety and effectiveness data in NADA 12-491.

Indiana Farm Bureau Cooperative Association, Inc., has not previously been included in the regulations under the list of approved sponsors. The regulations are amended to reflect this approval and to include this firm in the list of sponsors.

In accordance with the freedom of information provisions of Part 20 (21 CFR Part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (formerly the Hearing Clerk's office) (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, from 9 a.m. to 4 p.m., Monday through Friday.

The agency has determined pursuant to 21 CFR 25.24(d)(1) (proposed December 11, 1979; 44 FR 71742) that this action is of a type that does not individually or cumulatively have a significant impact on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i))), under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.1) and redelegated to the Bureau of Veterinary Medicine (21 CFR 5.83), Parts 510 and 558 are amended as follows:

PART 510—NEW ANIMAL DRUGS

1. In Part 510, § 510.600 is amended by adding a new sponsor alphabetically to paragraph (c)(1) and numerically to paragraph (c)(2), to read as follows:

§ 510.600 Names, addresses, and drug labeler codes of sponsors of approved applications.

* * * * *

(c) * * *

(1) * * *

Firm name and address	*Drug labeler code*
Indiana Farm Bureau Cooperative Association, Inc., 120 E. Market St., Indianapolis, IN 46204	021502

* * * * *

(2) * * *

Drug labeler code	Firm name and address
* * * * *	
021502	Indiana Farm Bureau Cooperative Association, Inc., 130 E. Market St., Indianapolis, IN 46204
* * * * *	

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

2. In Part 558, § 558.625 is amended by adding new paragraph (b)(76), to read as follows:

§ 558.625 Tylosin.

* * * * *

(b) * * *

(76) To 021502: 10 grams per pound; paragraph (f)(1)(vi)(*a*) of this section.

* * * * *

Effective date. This regulation is effective January 16, 1981.

(Sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i)))

Dated: January 7, 1981.

Gerald B. Guest,

Acting Director, Bureau of Veterinary Medicine.

[FR Doc. 80-1366 Filed 1-15-81; 8:45 am]

BILLING CODE 4110-03-M

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21 CFR Parts 430, 436, 446

[Docket No. 80N-0304]

Antibiotic Drugs; Meclocycline Sulfosalicylate

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) amends the antibiotic drug regulations to provide for the certification of a new antibiotic drug, meclocycline sulfosalicylate. The manufacturer has supplied sufficient data and information to establish its safety and efficacy.

DATES: Effective January 16, 1981. Comments by February 17, 1981.

ADDRESS: Written comments to the Dockets Management Branch (formerly the Hearing Clerk's office) (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Joan Eckert, Bureau of Drugs (HFD-140), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4290.

SUPPLEMENTARY INFORMATION: FDA has evaluated data submitted in accordance with regulations promulgated under section 507 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 357), as amended, with respect to providing for the certification of a new antibiotic drug, meclocycline sulfosalicylate. The agency concludes that the data supplied by the manufacturer on meclocycline sulfosalicylate are adequate to establish its safety and efficacy when used as directed in the labeling and that the regulations should be amended in Parts 430, 436, and 446 (21 CFR Parts 430, 436, and 446) to provide for its certification.

The agency has determined pursuant to 21 CFR 25.24(b)(22) (proposed December 11, 1979; 44 FR 71742), that this action is of a type that does not individually or cumulatively have a significant impact on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 507, 59 Stat. 463 as amended (21 U.S.C. 357)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.1), Parts 430, 436, and 446 are amended as follows:

PART 430—ANTIBIOTIC DRUGS; GENERAL

1. Part 430 is amended: a. In § 430.5 by adding paragraphs (a)(70) and (b)(70) to read as follows:

§ 430.5 Definitions of master and working standards.

(a) * * *

(70) *Meclocycline.* The term "meclocycline master standard" means a specific lot of meclocycline that is designated by the Commissioner as the standard of comparison in determining the potency of the meclocycline working standard.

(b) * * *

(70) *Meclocycline.* The term "meclocycline working standard" means a specific lot of a homogeneous preparation of meclocycline.

b. In § 430.6 by adding paragraph (b)(72) to read as follows:

§ 430.6 Definitions of the terms "unit" and "microgram" as applied to antibiotic substances.

* * * * *

(b) * * *

(72) *Meclocycline.* The term "microgram" applied to meclocycline means the meclocycline activity (potency) contained in 1.0493 micrograms of the meclocycline master standard.

PART 436—TESTS AND METHODS OF ASSAY OF ANTIBIOTIC AND ANTIBIOTIC-CONTAINING DRUGS

2. Part 436 is amended:

a. In § 436.106 (a) and (b) by alphabetically inserting a new item into the respective tables as follows:

§ 436.106 Microbiological turbidimetric assay.

(a) * * *

Antibiotic	Working standard stock solutions: Drying conditions (method number as listed in § 436.200)	Working standard stock solutions: Initial solvent	Working standard stock solutions: Diluent (solution number as listed in § 436.101(a))	Working standard stock solutions: Final concentration units or milligrams per milliliter	Working standard stock solutions: Storage time under refrigeration	Standard response line concentrations: Diluent (solution number as listed in § 436.101(a))	Standard response line concentrations: Final concentrations—units or micrograms of antibiotic activity per milliliter
Meclocycline	Not dried		13	1 mg	Use same day	Distilled water	0.048, 0.054, 0.06, 0.067, 0.075 µg

(b) * * *

Antibiotic	Test organism	Medium (nutrient broth)	Suggested volume of standardized inoculum to be added to each 100 milliliters of medium (nutrient broth)	Incubation temperature
			Milliliters	Degrees C
Meclocycline	A	3	0.2	28-37.5

b. By adding new § 436.329 to read as follows:

§ 436.329 High-pressure liquid chromatographic assay for meclocycline.

(a) *Equipment.* A suitable high-pressure liquid chromatograph, such as a Waters Associates Model 244 [1] or equivalent equipped with:

(1 A low dead volume cell 8 to 20 microliters;

(2) A light path of 1 centimeter;

(3) A suitable ultraviolet detection system operating at a wavelength of 340 nanometers;

(4) A suitable recorder of at least 25.4 centimeter deflection;

(5) A suitable integrator;

(6) A column approximately 25 centimeters in length having an inside diameter of approximately 4 millimeters and packed with a suitable reverse-phase packing such as: 10 micrometer silica gel particles bonded to octadecyl silane, Vydac 201 TP Reverse Phase [2] or equivalent.

(b) *Reagents*—(1) *0.001M Ammonium (ethylenedinitrilo) tetraacetate.* Moisten 293 milligrams of (ethylenedinitrilo) tetraacetic acid with 1 milliliter of methanol and dissolve in 7 milliliters of concentrated ammonium hydroxide. Dilute to 900 milliliters with distilled water, adjust the pH to 6.6 with glacial acetic acid, and dilute to 1,000 milliliters with distilled water.

[1] Available from: Water Associates, Inc., Maple St., Milford, MA 10757.

[2] Available from: The Separations Group, 18660 Spruce St., Hesperia, CA 92345.

(2) *Mobile phase.* Mix 150 milliliters of tetrahydrofuran (high-pressure liquid chromatography grade) with 850 milliliters of 0.001*M* ammonium (ethylenedinitrilo) tetraacetate. Filter the mobile phase through a suitable glass fiber filter or equivalent that is capable of removing particulate contamination to 1 micron in diameter. Degas the mobile phase just prior to its introduction into the chromatograph pumping system.

(c) *Operating conditions.* Perform the assay at ambient temperature with a typical flow rate of 0.8 milliliter per minute. Use a detector sensitivity setting that gives a peak height for the reference standard that is at least 50 percent of scale. The minimum between peaks must be no more than 2 millimeters above the initial baseline.

(d) *Preparation of sample and working standard solutions.* Accurately weigh an amount of sample or working standard equivalent to approximately 25 milligrams of meclocycline into a 50-milliliter volumetric flask. Dissolve and dilute to volume with methanol and mix. Transfer exactly 3.0 milliliters of this solution to a 25-milliliter volumetric flask, dilute to volume with mobile phase, and mix.

(e) *Procedure.* Using the equipment, reagents, and operating conditions listed in paragraphs (a), (b), and (c) of this section, inject 10 microliters of the sample or working standard solution prepared as described in paragraph (d) of this section into the chromatograph. Allow an elution time sufficient to obtain satisfactory separation of expected components. The elution order is void volume, oxytetracycline (if present), demeclocycline (if present), methacycline (if present), and meclocycline.

(f) *Calculations.* Calculate the meclocycline content as follows:

$$\frac{\text{Micrograms of meclocycline per milligram}}{\text{milligrams of working standard}} = \frac{A}{B} \times \frac{\text{potency of the working standard in micrograms per milligram}}{\text{milligrams of sample}}$$

where:

A = Area or peak height of the sample peak (at a retention time equal to that observed for the standard);

B = Area or peak height of the standard peak.

PART 446—TETRACYCLINE ANTIBIOTIC DRUGS

3. Part 446 is amended:

a. In Subpart A by adding new § 446.42 to read as follows:

§ 446.42 Meclocycline sulfosalicylate.

(a) *Requirements for certification*—(1) *Standards of identity, strength, quality, and purity.* Meclocycline sulfosalicylate is the sulfosalicylate salt of 7-chloro-4-(dimethylamino)-1,4,4a,5,5a,6,11,12a-octahydro-3,5,10,12,12a-pentahydroxy-6-methylene-1,11-dioxo-2-

naphthacenecarboxamide. It is so purified and dried that:

(i) Its potency is not less than 820 micrograms of meclocycline per milligram on an "as is" basis.

(ii) Its moisture content is not more than 4.0 percent.

(iii) Its pH is an aqueous suspension containing 10 milligrams per milliliter is not less than 2.5 and not more than 3.5.

(iv) It is crystalline.

(2) *Labeling.* It shall be labeled in accordance with the requirements of § 432.5 of this chapter.

(3) *Requests for certification; samples.* In addition to complying with the requirements of § 431.1 of this chapter, each such request shall contain:

(i) Results of tests and assays on potency, moisture, pH, and crystallinity.

(ii) Samples required: 10 packages, each containing approximately 300 milligrams.

(b) *Tests and methods of assay*—(1) *Potency.* Use either of the following methods; however, the results obtained from the high-pressure liquid chromatography method shall be conclusive.

(i) *High-pressure liquid chromatography.* Proceed as directed in § 436.329 of this chapter.

(ii) *Microbiological turbidimetric assay.* Proceed as directed in § 436.106 of this chapter, preparing the sample for assay as follows: Dissolve an accurately weighed portion of the sample in sufficient 0.01*N* methanolic hydrochloric acid (solution 13) to obtain a stock solution of convenient concentration. Further dilute an aliquot of the stock solution with distilled water to the reference concentration of 0.06 microgram of meclocycline per milliliter (estimated).

(2) *Moisture.* Proceed as directed in § 436.201 of this chapter.

(3) *pH.* Proceed as directed in § 436.202 of this chapter, using an aqueous suspension containing 10 milligrams of meclocycline per milliliter.

(4) *Crystallinity.* Proceed as directed in § 436.203(a) of this chapter.

b. In Subpart F by adding new § 446.542 to read as follows:

§ 446.542 Meclocycline sulfosalicylate cream.

(a) *Requirements for certification*—(1) *Standards of identity, strength, quality, and purity.* Meclocycline sulfosalicylate cream contains meclocycline sulfosalicylate in a suitable and harmless cream base. Each gram contains meclocycline sulfosalicylate equivalent to 10 milligrams of meclocycline. Its potency is satisfactory if it is not less than 90 percent and not more than 125 percent of the number of milligrams of meclocycline that it is represented to contain. the meclocycline sulfosalicylate used conforms to the standards prescribed by § 446.42(a)(1).

(2) *Labeling.* It shall be labeled in accordance with the requirements of § 432.5 of this chapter.

(3) *Requests for certification; samples.* In addition to complying with the requirements of § 431.1 of this chapter, each such request shall contain:

(i) Results of tests and assays on:

(*a*) The meclocycline sulfosalicylate used in making the batch for potency, moisture, pH, and crystallinity.

(*b*) The batch for potency.

(ii) Samples required:

(*a*) The meclocycline sulfosalicylate used in making the batch: 10 packages, each containing approximately 300 milligrams.

(*b*) The batch: A minimum of five immediate containers.

(b) *Tests and methods of assay; potency.* Use either of the following methods; however, the results obtained from the high-pressure liquid chromatography method shall be conclusive.

(1) *Microbiological turbidimetric assay.* Proceed as directed in § 436.106 of this chapter, preparing the sample for assay as follows: Place an accurately weighed representative portion of the sample into a high-speed glass blender jar containing sufficient 0.01*N* methanolic hydrochloric acid (solution 13) to obtain a stock solution of convenient concentration. Blend for 3 to 5 minutes. Further dilute an aliquot of the stock solution with distilled water to the reference concentration of 0.06 microgram of meclocycline per milliliter (estimated).

(2) *High-pressure liquid chromatography.* Proceed as directed in § 436.329 of this chapter, except, prepare the working standard and sample solution and calculate the meclocycline content as follows:

(i) *Preparation of standard solution.* Accurately weigh an amount of working standard equivalent to approximately 25 milligrams of meclocycline into a 50-milliliter volumetric flask and mix. Transfer exactly 2.0 milliliters of this solution to a 100-milliliter volumetric flask, dilute to volume with mobile phase, and mix.

(ii) *Preparation of sample solution.* Accurately weigh approximately 0.4 to 0.7 gram of sample into a 50-milliliter glass-stoppered centrifuge tube. Add 20 milliliters of methanol and 20 milliliters of 0.025*N* sulfuric acid. Disperse the sample thoroughly by a combination of ultrasonic/vortexing and shaking by hand. Shake for 15 minutes on a wrist action shaker. Quantitatively transfer the contents of the centrifuge tube into a 50-milliliter volumetric flask. Rinse the centrifuge tube with two 5-milliliter portions of methanol and add to the flask. Dilute to volume with methanol and mix. Transfer a portion of the content of the volumetric flask into an appropriate-sized centrifuge tube. Centrifuge for 5 minutes at 2,000 revolutions per minute. Transfer 5.0 milliliters of this solution into a 50-milliliter volumetric flask and dilute to volume with mobile phase and mix. Filter this solution through a 0.5 micrometer filter. Inject the filtrate onto the column.

(iii) *Calculations.* Calculate the meclocyline content as follows:

$$\text{Meclocycline content of cream in percent} = \frac{A \times 2 \times \text{milligrams of working standard} \times \text{Potency of working standard in micrograms per milligram}}{S \times 100 \times \text{milligrams of sample}}$$

This regulation announces standards that FDA has accepted in a request for approval of an antibiotic drug. In accordance with the conditions for certification in section 506 of the act, FDA permits the manufacturer to market this drug on a "release" status pending the regulation's becoming effective. Because this regulation is not controversial and because when effective it provides notice of accepted standards and permits earlier certification of regulated products, notice and comment procedure and delayed effective date are found to be unnecessary and not in the public interest. The amendment, therefore, is effective January 16, 1981. However, interested persons may, on or before February 17, 1981, submit to the Dockets

Management Branch (FDA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, written comments on this rule. Four copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Dockets Management Branch office between 9 a.m. and 4 p.m., Monday through Friday.

Any person who will be adversely affected by this regulation may file objections to it, request a hearing, and show reasonable grounds for the hearing. Any person who decides to seek a hearing must file (1) on or before February 17, 1981, a written notice of participation and request for hearing, and (2) on or before March 17, 1981, the data, information, and analyses on which the person relies to justify a hearing, as specified in 21 CFR 430.20. A request for a hearing may not rest upon mere allegations or denials, but must set forth specific facts showing that there is a genuine and substantial issue of fact that requires a hearing. If it conclusively appears from the face of the data, information, and factual analyses in the request for hearing that no genuine and substantial issue of fact precludes the action taken by this order, or if a request for hearing is not made in the required format or with the required analyses, the Commissioner of Food and Drugs will enter summary judgment against the person(s) who request(s) the hearing, making findings and conclusions and denying a hearing.

The procedures and requirements governing this order, a notice of participation and request for hearing, a submission of data, information, and analyses to justify a hearing, other comments, and grant or denial of a hearing are contained in 21 CFR 430.20.

All submissions under this order must be filed in four copies, identified with the docket number appearing in the heading of this order, with the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

All submissions under this order, except for data and information prohibited from public disclosure under 21 U.S.C. 331(j) or 18 U.S.C. 1905, may be seen in the office of the Dockets Management Branch, between 9 a.m. and 4 p.m., Monday through Friday.

Effective date. This regulation shall be effective January 16, 1981.

(Sec. 507, 59 Stat. 463 as amended (21 U.S.C. 357))

Dated: December 29, 1980.

Philip L. Pequin,

Acting Director, Bureau of Drugs.

[FR Doc. 81-1207 Filed 1-15-81; 8:45 am]

BILLING CODE 4110-03-M

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21 CFR Parts 436 and 453

[Docket No. 80N–0316]

Tests and Methods of Assay of Antibiotic-Containing Drugs and Lincomycin Antibiotic Drugs; Microbiological Turbidimetric Assay for Lincomycin Hydrochloride Monohydrate

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) amends the antibiotic drug regulations to provide for an improved method for determining the lincomycin potency of drugs containing lincomycin hydrochloride monohydrate. The new method, microbiological turbidimetric assay, replaces the microbiological agar diffusion assay for lincomycin potency. The regulation is intended to improve drug quality.

DATES: Effective January 16, 1981; comments by February 17, 1981.

ADDRESS: Written comments to the Dockets Management Branch (formerly the Hearing Clerk's office) (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Joan Eckert, Bureau of Drugs (HFD–140), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4290.

SUPPLEMENTARY INFORMATION: FDA is replacing the microbiological agar diffusion assay currently specified in the regulations for determining the potency of the antibiotic drug lincomycin hydrochloride monohydrate with a microbiological turbidimetric assay. The agency finds that the microbiological turbidimetric assay method is more accurate and reliable than the method being replaced in the regulations.

Three minor editorial changes are also included in this document. The word "monohydrate" is added to correct the section heading for sterile lincomycin hydrochloride; vapor phase chromatography is changed to gas liquid chromatography to reflect current nomenclature; and the work "sirup" is changed to read "syrup" in the section heading for lincomycin hydrochloride sirup and wherever it appears in the monograph to conform with U.S.P. nomenclature.

Also, the chemical method, gas liquid chromatography, is made the conclusive potency assay to reflect current certification practices.

The agency has determined pursuant to 21 CFR 25.24(b)(22) (proposed December 11, 1979, 44 FR 71742) that this action is of a type that does not individually or cumulatively have a significant impact on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 507, 59 Stat. 463 as amended (21 U.S.C. 357)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.1), Parts 436 and 453 are amended as follows:

1. Part 436 is amended as follows:

PART 436—TEST AND METHODS OF ASSAY OF ANTIBIOTIC AND ANTIBIOTIC-CONTAINING DRUGS

§ 436.105 [Amended]

a. In § 436.105 *Microbiological agar diffusion assay,* paragraphs (a) and (b) are amended by removing the item "Lincomycin" from the respective tables.

b. In § 436.106(a) and (b) by alphabetically inserting a new item in the respective tables to read as follows:

§ 436.106 Microbiological turbidimetric assay.

(a) * * *

Antibiotic	Working standard stock solutions: Drying conditions (method number as listed in § 436.200)	Initial solvent	Diluent (solution number as listed in § 436.101(a))	Final concentration units or milligrams per milliliter	Storage time under refrigeration	Standard response line concentrations: Diluent (solution number as listed in § 436.101 (a))	Final concentration—units or micrograms of antibiotic activity per milliliter
Lincomycin	Not dried		Distilled water	1 mg	1 month	Distilled water	0.400, 0.447, 0.500, 0.559, 0.625 µg

(b) * * *

Antibiotic	Test organism	Medium (nutrient broth)	Suggested volume of standardized inoculum to be added to each 100 milliliters of medium (nutrient broth)	Incubation temperature
			Milliliters	*Degrees C.*
Lincomycin	A	3	0.1	36-37.5

c. In § 436.306 by revising the section heading to read as follows:

§ 436.306 Lincomycin gas liquid chromatography.

* * * * *

2. Part 453, is amended as follows:

PART 453—LINCOMYCIN ANTIBIOTIC DRUGS

a. In § 453.30 by revising paragraph (a)(1)(viii), the introductory text of paragraph (b)(1), paragraph (b)(1)(i) and the heading of paragraph (b)(1)(ii) to read as follows:

§ 453.30 Lincomycin hydrochloride monohydrate.

(a) * * *

(1) * * *

(viii) It passes the identity test if the elution pattern of the lincomycin sample compares quantitatively to that of the lincomycin working standard under identical conditions of gas liquid chromatography.

* * * * *

(b) * * *

(1) *Potency.* Use either of the following methods; however, the results obtained from the gas liquid chromatography assay shall be conclusive.

(i) *Microbiological turbidimetric assay.* Proceed as directed in § 436.106 of this chapter, preparing the sample for assay as follows: Dissolve an accurately weighed sample in sufficient sterile distilled water to obtain a stock solution of convenient concentration. Further dilute an aliquot of the stock solution with sterile distilled water to the reference concentration of 0.5 microgram of lincomycin per milliliter (estimated).

(ii) *Gas liquid chromatography assay.* * * *

* * * * *

b. In § 453.30a by revising the section heading and paragraph (a)(1)(xi), the introductory text of paragraph (b)(1), paragraph (b)(1)(i), and the heading of paragraph (b)(1)(ii) to read as follows:

§ 453.30a Sterile lincomycin hydrochloride monohydrate.

(a) * * *

(1) * * *

(xi) It passes the identity test if the elution pattern of the lincomycin sample compares quantitatively to that of the lincomycin working standard under identical conditions of gas liquid chromatorgrphy.

* * * * *

(b) * * *

(1) *Potency.* Use either of the following methods; however, the results obtained from the gas liquid chromatography assay shall be conclusive.

(i) *Microbiological turbidimetric assay.* Proceed as directed in § 436.106 of this chapter, preparing the sample for assay as follows: Dissolve an accurately weighed sample in sufficient sterile distilled water to obtain a stock solution of convenient concentration. Further dilute an aliquot of the stock solution with sterile distilled water to the reference concentration of 0.5 microgram of lincomycin per milliliter (estimated).

(ii) *Gas liquid chromatography assay.* * * *

* * * * *

c. In § 453.130a by revising the introductory text of paragraph (b)(1), paragraph (b)(1)(i), and the heading of paragraph (b)(1)(ii) to read as follows:

§ 453.130a Lincomycin hydrochloride monohydrate capsules.

* * * * *

(b) * * *

(1) *Potency.* Use either of the following methods; however, the results obtained from the gas liquid chromatography assay shall be conclusive.

(i) *Microbiological turbidimetric assay.* Proceed as directed in § 436.106 of this chapter, preparing the sample for assay as follows: Place a representative number of capsules into a high-speed glass blender jar with sufficient sterile distilled water to obtain a stock solution of convenient concentration. Blend for 3 to 5 minutes. Remove an aliquot of the stock solution and further dilute with sterile distilled water to the reference concentration of 0.5 microgram of lincomycin per milliliter (estimated).

(ii) *Gas liquid chromatography assay.* * * *

* * * * *

d. In § 453.130b by revising the section heading, the first sentence in paragraph (a)(1), and paragraph (b)(1) to read as follows:

§ 453.130b Lincomycin hydrochloride syrup.

(a) * * *

(1) *Standards of identity, strength, quality, and purity.* Lincomycin hydrochloride syrup is a syrup containing lincomycin hydrochloride monohydrate, one or more suitable preservatives, flavorings, sweetening agents, colorings, and purified water.

* * *

* * * * *

(b) * * *

(1) *Potency.* Use either of the following methods; however, the results obtained from the gas liquid chromatography assay shall be conclusive.

(i) *Microbiological turbidimetric assay.* Proceed as directed in § 436.106 of this chapter, preparing the sample for assay as follows: Remove an accurately measured representative sample with a suitable hypodermic needle and syringe. Place into a high-speed glass blender jar with sufficient sterile distilled water to give a total volume of 500 milliliters. Blend for 3 to 5 minutes. Further dilute an aliquot with sterile distilled water to the reference concentration of 0.5 microgram of lincomycin per milliliter (estimated).

(ii) *Gas liquid chromatography assay.* Proceed as directed in § 436.300 of this chapter, except prepare the sample for assay by either of the following methods:

(*a*) Place an aliquot of syrup, containing the equivalent of 250 milligrams of lincomycin into a 50-milliliter volumetric flask and add 30 milliliters of absolute ethanol. Place on a steam bath and boil gently for 5 minutes. Remove from the steam bath and cool. Add ethanol to prior volume level and let stand overnight. Adjust to mark, shake well, and transfer a 5-milliliter aliquot into a 25-milliliter volumetric flask and make to mark with methanol. Place 4 milliliters of this solution in a 15-milliliter centrifuge tube and evaporate to dryness on a steam bath with a stream of dry air. Dissolve the residue in 1 milliliter of dry pyridine. Calculate the lincomycin content as follows:

$$\text{Lincomycin content in milligrams per milliliter} = \frac{(R_u)(W_s)(d)(f)}{(R_s)(M)}$$

where:

$R_u = \frac{\text{Area of lincomycin sample peak}}{\text{Area of internal standard}}$;

$R_s = \frac{\text{Area of lincomycin standard peak}}{\text{Area of internal standard}}$;

W_s = Weight of lincomycin working standard in milligrams;

d = Dilution factor;

f = Potency of lincomycin working standard in milligrams of lincomycin per milligram;

M = Milliliters of syrup used.

(*b*) Treat the lincomycin working standard and sample in a similar manner, except lyophilize an aliquot of the sample containing the equivalent of 50 milligrams of lincomycin. To approximately 50 milligrams of the standard, accurately weighed, and to the dried residue of the sample, add 5 milliliters of dry pyridine which contains 10 milligrams of tetraphenylcyclopentadienone per milliliter. Warm on a hot plate for 5 minutes to attain complete solution. Remove from the hot plate and add 5 milliliters of hexamethyldisilazane and 2 milliliters of trimethylchlorosilane. Shake mechanically for 60 minutes, then centrifuge for 15 minutes. Inject 2 microliters of the supernate into the chromatograph. Calculate the lincomycin content as follows:

$$\text{Lincomycin content in milligrams per milliliter of syrup} = \frac{(R_u)(W_s)(f)}{(R_s)(M)}$$

where:

$R_u = \frac{\text{Area of lincomycin sample peak}}{\text{Area of internal standard}}$;

$R_s = \frac{\text{Area of lincomycin standard peak}}{\text{Area of internal standard}}$;

W_s = Weight of lincomycin working standard in milligrams;

f = Potency of lincomycin working standard in milligrams of lincomycin per milligram;

M = Milliliters of syrup used.

* * * * *

e. In § 453.230 by revising the introductory text of paragraph (b)(1), paragraph (b)(1)(i), and the heading of paragraph (b)(1)(ii) to read as follows:

§ 453.230 Lincomycin hydrochloride injection.

* * * * *

(b) * * *

(1) *Potency.* Use either of the following methods; however, the results obtained from the gas liquid chromatography assay shall be conclusive.

(i) *Microbiological turbidimetric assay.* Proceed as directed in § 436.106 of this chapter, preparing the sample for assay as follows: Using a suitable hypodermic needle and syringe, remove all of the withdrawable contents if it is represented as a single-dose container; or, if the labeling specifies the amount of potency in a given volume of the resultant preparation, remove an accurately measured representative portion from each container. Place the portion, thus obtained, into a suitably-sized volumetric flask and dilute to volume with sterile distilled water. Remove an aliquot and further dilute with sterile distilled water to the reference concentration of 0.5 microgram of lincomycin per milliliter (estimated).

(ii) *Gas liquid chromatography assay.* * * *

* * * * *

This amendment institutes changes that are either corrective, editorial, or of a minor substantive nature. In addition, because this amendment is an improvement in testing procedures and the only manufacturer affected has agreed to the change, the Food and Drug Administration finds that prior notice, public procedure and delayed effective date are unnecessary and not in the public interest. The amendment may become effective January 16, 1981. However, an opportunity is provided for submission of comments to determine whether the regulation should subsequently be modified or revoked. Interested persons may, on or before Febraury 17, 1981, submit to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, written comments on this regulation. Four copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday. (A copy of the agreement with the manufacturer is on file with the Dockets Management Branch).

Any person who will be adversely affected by this regulation may file objections to it, request a hearing, and show reasonable grounds for the hearing. Any person who decides to seek a hearing must file (1) on or before February 17, 1981, a written notice of participation and request for hearing, and (2) on or before March 17, 1981, the data, information, and analyses on which the person relies to justify a hearing, as specified in 21 CFR 430.20. A request for a hearing may not rest upon mere allegations or denials, but must set forth specific facts showing that there is a genuine and substantial issue of fact that requires a hearing. If it conclusively appears from the face of the data, information, and factual analyses in the request for hearing that no genuine and substantial issue of fact precludes the action taken by this order, or if a request for hearing is not made in the required format or with the required analyses, the Commissioner of Food and Drugs will enter summary judgment against the person(s) who request(s) the hearing, making findings and conclusions and denying a hearing.

The procedures and requirements governing this order, a notice of participation and request for hearing, a submission of data, information, and analyses to justify a hearing, other comments, and grant or denial of a hearing are contained in 21 CFR 430.20.

All submissions under this order must be filed in four copies, identified with the docket number appearing in the heading of this order, with the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

All submissions under this order, except for data and information prohibited from public disclosure under 21 U.S.C. 331(j) or 18 U.S.C. 1905, may be seen in the office of the Dockets Management Branch, between 9 a.m. and 4 p.m., Monday through Friday.

Effective date. This regulation shall be effective January 16, 1981.

(Sec. 507, 59 Stat. 463 as amended (21 U.S.C. 357))

Dated: January 8, 1981

Mary A. McEniry,

Assistant Director for Regulatory Affairs, Bureau of Drugs.

[FR Doc. 81-908 Filed 1-15-81; 8:45 am]

BILLING CODE 4110-03-M

21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Antibiotic, Nitrofuran, and Sulfonamide Drugs

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect the change of sponsor from Thompson-Hayward Chemical Co. to A. L. Laboratories, Inc., the new name for International Minerals & Chemical Corp., and the new drug name for bactracin zinc. The Federal Register publications that established these revisions in other sections failed to amend § 558.15 accordingly. This document corrects that omission.

EFFECTIVE DATE: January 16, 1981.

FOR FURTHER INFORMATION CONTACT: Robert S. Brigham, Bureau of Veterinary Medicine (HFV-238), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-6243.

SUPPLEMENTARY INFORMATION: In the Federal Register of April 5, 1977 (42 FR 18060), FDA amended the animal drug regulations in 21 CFR 510.600 and 558.15 to reflect the change of sponsor of NADA 98-452 from Thompson-Hayward Chemical Co. to A.L. Laboratories, Inc. In the Federal Register of February 16, 1979 (44 FR 10058), FDA amended the regulations in 21 CFR 510.600(c) to reflect the change of sponsor name from IMC Chemical Group to International Minerals & Chemical Corp. In the Federal Register of June 13, 1978 (43 FR 25444), the agency proposed, and in the Federal Register of April 13, 1979 (44 FR 22053) published, a final rule for several amendments to the bacitracin regulations in 21 CFR Part 548, including the name change from zinc bacitracin to bacitracin zinc. The bacitracin name change conforms to a recent revision in the U.S. Pharmacopoeia (U.S.P. XX). The amendments failed to amend 21 CFR 558.15 to reflect the changes. This document amends 21 CFR 558.15 to provide for these changes.

§ 558.15 [Amended]

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i))), under the authority delegated to the Commissioner of Food and Drugs (21 CFR 5.1) and redelegated to the Bureau of Veterinary

Medicine (21 CFR 5.83), § 558.15 *Antibiotic, nitrofuran, and sulfonamide drugs in the feed of animals* is amended in paragraph (g) (1) and (2) in the column "Drug sponsor", by deleting the sponsor name "IMC Chemical Group, Inc.," and inserting in its place the name "International Minerals & Chemical Corp.," by deleting the sponsor name "Thompson-Hayward Chemical Co." and inserting in its place "A. L. Laboratories, Inc.," and in paragraph (g)(1) in the column "Drug premix" and in paragraph (g)(2) in the column "Drug ingredient" by deleting the drug name "Zinc bacitracin" and inserting in its place the name "Bacitracin zinc" wherever it appears.

Effective date. This regulation is effective January 16, 1981.

(Sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i)))

Dated: January 7, 1981.

Gerald B. Guest,

Acting Director, Bureau of Veterinary Medicine.

[FR Doc. 81-1310 Filed 1-15-81; 8:45 am]

BILLING CODE 4110-03-M

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21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Tylosin and Sulfamethazine

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration amends the animal drug regulations to reflect approval of a new animal drug application (NADA) filed by Custom Feed Blenders Corp., providing for safe and effective use of a premix containing 10 grams-per-pound each of tylosin and sulfamethazine for making complete swine feeds.

EFFECTIVE DATE: January 16, 1981.

FOR FURTHER INFORMATION CONTACT: Jack C. Taylor, Bureau of Veterinary Medicine (HFV-136), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-5247.

SUPPLEMENTARY INFORMATION: Custom Feed Blenders Corp., 540 Hawkeye Ave., Fort Dodge, IA 50501, is the sponsor of NADA 122-522 providing for use of premix containing 10 grams per pound each of tylosin (as tylosin phosphate) and sulfamethazine for making complete swine feeds used to increase rate of weight gain and to improve feed efficiency.

Approval of this application is based on safety and effectiveness data contained in Elanco Products Co.'s approved NADA 41-275. Use of the data in NADA 41-275 to support this application has been authorized by Elanco. This approval does not change the approved use of the drug. Consequently, approval of this NADA poses no increased human risk from exposure to residues of the animal drug, nor does it change the conditions of the drug's safe use in the target animal species. Accordingly, under the Bureau of Veterinary Medicine's supplemental approval policy (see the Federal Register of December 23, 1977 (42 FR 64367)), approval of this NADA has been treated as would approval of a Category II supplemental NADA and does not require reevaluation of the safety and effectiveness data in NADA 41-275.

In accordance with the freedom of information provisions of Part 20 (21 CFR Part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (formerly the Hearing Clerk's office) (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, from 9 a.m. to 4 p.m., Monday through Friday.

The agency has determined pursuant to 21 CFR 25.24(d)(1) (proposed December 11, 1979; 44 FR 71742) that this action is of a type that does not individually or cumulatively have a significant impact on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i))), under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.1) and redelegated to the Director of the Bureau of Veterinary Medicine (21 CFR 5.83), Part 558 is amended in § 558.630 by revising paragraph (b)(3) to read as follows:

§ 558.630 Tylosin and sulfamethazine.

* * * * *

(b) * * *

(3) To 011490, 016968, 017255, 017274, 026186, 034500, 035955, 043743, 046987; 10 grams per pound each, paragraph (f)(2)(ii) of this section.

* * * * *

Effective date. This regulation is effective January 16, 1981.

(Sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i)))

Dated: January 7, 1981.

Gerald B. Guest,

Acting Director, Bureau of Veterinary Medicine.

[FR Doc. 81-1309 Filed 1-15-81; 8:45 am]

BILLING CODE 4110-03-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Part 241

[Docket No. R-81-896]

Mortgage and Loan Insurance Programs Under the National Housing Act

AGENCY: Department of Housing and Urban Development.

ACTION: Final rule.

SUMMARY: This final rule amends 24 CFR 241.65 to delete the requirement that the term of a supplementary financing loan insured under Section 214 of the National Housing Act may not exceed the remaining term of the insured mortgage. Section 319 of the Housing and Community Development Amendments of 1979 eliminated the maturity requirement.

EFFECTIVE DATE: February 17, 1981.

FOR FURTHER INFORMATION CONTACT: Linda D. Cheatham, Office of Multifamily Housing Development, Development Division, Room 6116, 451 Seventh Street, SW., Washington, D.C. 20410. (202) 755-9280 (This is not a toll free number.)

SUPPLEMENTARY INFORMATION: Section 319 of the Housing and Community Development Amendments of 1979 amended Section 241(b)(2) of the National Housing Act to eliminate the requirement that the maximum term of a loan insured under Section 241 could not exceed the remaining term of the insured mortgage. Section 241.65 of 24 CFR is being amended to implement that statutory change.

The Secretary has determined that, in light of the current economic situation, the benefit afforded by this amendment should be made available as soon as possible. Publishing a notice of proposed rulemaking and giving the public an opportunity to comment on this amendment would cause a substantial delay in making the benefit available. Therefore, the Secretary finds that notice and public procedure on this amendment would be contrary to the public interest. Accordingly, this

amendment will become effective as soon as legally permissible following publication of this rule in the Federal Register.

A Finding of no significant Impact respecting the National Environmental Policy Act of 1969 has been made in accordance with HUD procedures. A copy of this Finding of Inapplicability will be available for public inspection during regular business hours in the Office of the Rules Docket Clerk, Office of the General Counsel, Room 5218, Department of Housing and Urban Development, 451 Seventh Street, S.W., Washington, D.C. 20410.

This rule is not listed in the Department's semiannual agenda of significant rules, published pursuant to Executive Order 12044 as extended by Executive Order 12221.

Accordingly, Title 24, Code of Federal Regulations, § 241.65 is revised as follows:

§ 241.65 Maturity.

The loan shall have a maturity satisfactory to the Commissioner.

(Section 319, Housing and Community Development Amendments of 1979)

Issued at Washington, D.C., on December 1, 1980.

Clyde McHenry,

Deputy Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 81-1720 Filed 1-15-81; 8:45 am]

BILLING CODE 4210-01-M

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24 CFR Part 885

[Docket No. R-81-867]

Loans for Housing for the Elderly or Handicapped (Interest Rate Determination)

AGENCY: Department of Housing and Urban Development (HUD).

ACTION: Final rule.

SUMMARY: This amendment implements the determination by the Secretary of HUD that the allowance for administrative costs and probable losses to be included in the Section 202 direct loan interest rate charged to Borrowers should be ¼ of 1 percent per annum for both the construction loan and the permanent loan. These loans are for housing for the elderly or handicapped.

EFFECTIVE DATE: February 23, 1981.

FOR FURTHER INFORMATION CONTACT: George O. Hippe, Jr., Director, Office of Multifamily Housing Development, 451 7th Street, S.W., Room 6128, Washington, D.C. 20410, Telephone (202) 755-5720. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: The present regulation provision (24 CFR 885.410(g)) incorporates a determination by the Secretary that the allowance for administrative costs and probable losses should be 1 percent per annum during the construction period and ½ of 1 percent per annum thereafter.

The Section 202 interest rate is based on a rate determined by the Secretary of the Treasury taking into account the average interest rate on all interest-bearing obligations of the United States forming a part of the public debt, computed as of the end of the preceding fiscal year plus the allowance determined by the HUD Secretary.

Because the average interest rate on Federal borrowing during the first half of Fiscal Year 1980 was extraordinarily high, many Section 202 sponsor organizations have sought administrative and statutory relief to obtain a rate not in excess of that charged HUD on loans made during Fiscal Year 1980.

HUD shares the program sponsors' concern over the possible detrimental effect of a higher interest rate on program viability. Therefore, based on consideration of the large portfolio of Section 202 loans now held by HUD, the relatively low number of defaults so far experienced and administrative costs for the program, the Secretary has determined that an allowance of ¼ of 1 percent per annum should be added to the rate determined by the Secretary of the Treasury, beginning with loans made in Fiscal Year 1981.

Because of the remedial nature of the Section 202 interest rate change and in order to avoid further delay in processing projects presently in development, the Department has determined that there is good cause for making this rule effective as soon as possible.

A determination has also been made that public comments need not be obtained because of the remedial nature of the change. Accordingly, this Final Rule becomes effective on the date set forth above.

The Catalog of Federal Domestic Assistance Program title and number is Housing for the Elderly or Handicapped, 14.157.

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR Part 50, which implement Section 102(2)(c) of the National Environmental Policy Act of 1969. The Finding of No Significant Impact is available for public inspection during regular business hours at the Office of the Rules Docket Clerk, Office of the General Counsel, Room 5218, Department of Housing and Urban Development, 451 Seventh Street, S.W., Washington, D.C. 20410.

This Rule is not listed in the Department's semiannual agenda of significant rules, published pursuant to Executive Order 12221.

Accordingly, 24 CFR Part 885, § 885.410(g) (1) and (2) is revised to read as follows:

§ 885.410 Amount and terms of financing.

* * * * *

(g) The loan shall bear interest at a rate established by the Secretary by adding:

(1) A rate determined by the Secretary of the Treasury to be the average interest rate on all interest-bearing obligations to the United States then forming a part of the public debt computed at the end of the fiscal year immediately prior to the date on which the loan is made; plus

(2) an allowance to cover administrative costs and probable losses under the program, which allowance has been determined by the Secretary of HUD to be one-fourth of one percent (.25%) per annum for both the construction and permanent loan periods.

* * * * *

(Sec. 202, Housing Act of 1959 (12 U.S.C. 1701q); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)))

Issued at Washington, D.C., December 2, 1980.

Lawrence B. Simons,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 81-1740 Filed 1-15-81; 8:45 am]

BILLING CODE 4210-01-M

DEPARTMENT OF JUSTICE

Office of the Attorney General

28 CFR Parts 0 and 40

[Order No. 824-81]

Office of Inmate Grievance Procedure Certification Standards for Inmate Grievance Procedures

AGENCY: Department of Justice.

ACTION: Final rule.

SUMMARY: The "Civil Rights of Institutionalized Persons Act," requires that the Attorney General of the United States promulgate minimum standards for inmate grievance procedures and establish a method of certifying such procedures. The following fulfills these requirements.

EFFECTIVE DATE: The "Civil Rights of Institutionalized Persons Act" states

that the standards for inmate grievance procedures shall become effective thirty legislative days after the date of publication.

FOR FURTHER INFORMATION CONTACT: William R. Yeomans, Attorney-Advisor, Office for Improvements in the Administration of Justice, Department of Justice, Room 4250, Main Justice Building, Washington, D.C. 20530 (202–633–4582).

SUPPLEMENTARY INFORMATION: "The Civil Rights of Institutionalized Persons Act" of 1980 grants the Attorney General authority to initiate and to intervene in civil actions against states and their political subdivisions to protect the federal rights of institutionalized persons. It also encourages the protection of constitutional rights of adults in correctional facilities by encouraging the development and implementation of administrative mechanisms for the resolution of prisoner grievances within institutions.

The Act requires that the Attorney General develop minimum standards for prisoner grievance mechanisms in adult correctional and detention facilities. States and their political subdivisions voluntarily may submit plans for grievance mechanisms to the Attorney General for certification that they comply with the standards. Courts may continue cases filed pursuant to 42 U.S.C. 1983 by adults confined in correctional or detention facilities for a period of up to 90 days in order to allow exhaustion of the grievance mechanism, if the Attorney General has certified a plan, or the court determines that the grievance mechanism is in substantial compliance with the minimum standards promulgated by the Attorney General. Such continuances should only occur if the issues raised in the action pursuant to 42 U.S.C. 1983 reasonably can be expected to be resolved by the grievance mechanism.

Section 7, Pub. L. 96–247, 94 Stat. 353 (42 U.S.C. 1997e) requires that the minimum standards for grievance mechanisms provide for an advisory role for employees and prisoners in the formulation, implementation, and operation of the mechanism; specific time limits for written replies to grievances including explanations of decisions; priority processing of emergency grievances; safeguards to prevent reprisals against grievants; and independent review of grievance decisions "by a person or other entity not under the direct supervision or direct control of the institution."

The Act also requires that the Attorney General develop a certification procedure to determine whether grievance procedures submitted to the Attorney General are in substantial compliance with the minimum standards. An Office of Inmate Grievance Procedure Certification is created to apply the standards.

A total of sixteen comments were received in response to the publication on November 28, 1980 (45 FR 79095) of the proposed rule. This section responds to the major comments. The following comments prompted changes in the final rule:

Comment One. It was suggested that the proposed definition of "grievance" was too restrictive. Therefore, the definition of a "grievance" was expanded to include "a written complaint by an inmate on the inmate's own behalf regarding * * * a condition in an institution * * *". (See § 40.1(d)). It was thought that this addition combined with the proposed language would allow an inmate to file a grievance regarding any aspect of confinement that might cause the inmate harm and that was not governed by some other procedure, such as a disciplinary or parole proceeding.

Comment Two. It was pointed out that grievance procedures are intended to be adopted by states or their political subdivisions and that the use of "institution" in § 40.2 was inappropriate. The word "institution" has been replaced by "applicant". (See § 40.2).

Comment Three. It was proposed that § 40.5 was unclear where it stated: "The grievance procedure shall not supplant disciplinary procedures." In order to clarify the meaning, the sentence has been changed to read: "The grievance procedure shall not be used as a disciplinary procedure." (See § 40.5).

Comment Four. It was suggested that inclusion of information reflecting trends over time in the use of a grievance procedure would contribute to the usefulness of the evaluation of the procedure. Consequently, the requirement was added to § 40.11 that the evaluation report on "year to year trends in inmate use of the grievance procedure". (See § 40.11).

The following significant comments are not reflected in the final rule for the reasons stated:

Comment One. It was suggested that the standards reflect the different natures of short and long-term holding facilities. It was determined that compliance with the proposed standards by facilities that house inmates for short periods would be difficult. While recognizing the difficulties that such facilities might experience, it was decided that such a distinction was neither practical nor desirable. As a practical matter, the difficulty of administering two sets of standards would introduce confusion and require a larger than desirable bureaucratic structure to apply the standards.

Nor was it thought that separate requirements for short- and long-term facilities were desirable. Under 42 U.S.C. 1997e, certification of a grievance procedure by the Attorney General provides justification for a court to stay consideration of an action by an inmate pursuant to 42 U.S.C. 1983 for 90 days to allow exhaustion of the certified grievance procedure. The possibility that an action by an inmate confined for a short period may be stayed, possibly preventing him from receiving court consideration of his action before his release, places special demands on the fairness of the grievance procedures in short-term holding facilities. Consequently, any dilution of the standards applicable to such facilities was rejected.

Comment Two. It was suggested that § 40.7(b) be changed to permit inmate participation in the disposition of all grievances, not just those "challenging general policy and practices." On the other hand, comments were received opposing inmate participation in the disposition of individual grievances. Both suggestions were rejected in favor of the present language which strikes a desirable balance between the competing concerns of preventing inmate exclusion from meaningful participation in the grievance procedure and affording inmates opportunity to abuse positions of influence.

Comment Three. A variety of comments were offered regarding the nature of the review to be afforded the disposition of inmate grievances under § 40.7(f). The suggestions ranged from elimination altogether of review by a person or entity not under the supervision or control of the corrections agency to providing such review for all grievances. Comments were also received supporting the language of § 40.7(f). It was determined that the proposed language of § 40.7(f) struck a proper balance assuring that the appropriateness of policies challenged through grievances would receive independent examination by individuals who were not responsible for promulgation of the policies, while reducing fears that every grievance would be reviewed outside the correctional agency, thereby creating a potentially costly extra step in the grievance procedure.

Comment Four. It was suggested that the standards require the availability of monetary relief through the grievance procedure. Proposed § 40.6 listed

monetary relief among the remedies that a grievance procedure "may include". The final § 40.6 retains the original language based on a determination that some systems may not be empowered to offer monetary relief through a grievance procedure without amendment of existing statutes. Further, it was determined that, although monetary relief is desirable, it is not an essential component of a fair and effective grievance procedure. Finally, it should be noted that under 42 U.S.C. 1997e a court may determine whether exhaustion of a grievance procedure should be required of an inmate before adjudication of his claim pursuant to 42 U.S.C. 1983. Presumably, where monetary relief was the sole adequate remedy and could not be obtained through a grievance procedure, exhaustion would not be appropriate.

Comment Five. It was suggested that states with the equivalent of an Administrative Procedure Act be required to adopt formally their grievance procedures. Although formal adoption may be desirable, it does not rise to the level of a requirement for minimum standards for grievance procedures, particularly in consideration of the standards' provisions for inmate and public contribution to the adoption of procedures.

Comment Six. It was suggested that it was not necessary to distribute the written grievance procedure to every inmate, as required by § 40.3. It was decided that this requirement should be retained as the only method of ensuring that all inmates were aware of the existence and workings of the grievance procedure. Such awareness is necessary if inmates are to use the grievance procedure and if they are to contribute meaningfully to its formulation, implementation and operation.

Comment Seven. A comment was received questioning the need for evaluations of grievance procedures, as required by § 40.11. It was determined that such evaluations were essential to inform both corrections administrators and the Attorney General of the effectiveness of grievance procedures. It is essential that grievance procedures, once certified, continue to operate effectively to avoid unfair and needless postponement of court consideration of inmate petitions.

Comment Eight. A comment was received suggesting that the standards address the effect of inmate transfers on pending grievances. It was concluded that the use of a transfer for the purpose of mooting a grievance was covered adequately by § 40.9, which forbids reprisals against inmates for using a grievance procedure. It was also determined that a general rule stating the effect of a transfer on a pending grievance was undesirable in consideration of the myriad matters that may form the subject matter of a grievance. Therefore, it has been left to applicants to treat such matters on a case by case basis. It is expected that the grievance procedure may be used to challenge the mooting of a grievance.

It is the position of the Attorney General that the provision in Section 7, Pub. L. 96-247, 94 Stat. 353 (42 U.S.C. 1997e) subjecting these model standards for inmate grievance procedures to a legislative veto is unconstitutional under Article I, § 7, of the United States Constitution insofar as it deprives the President of the opportunity to veto congressional action that has the effect of law. The standards will be transmitted to Congress as required by Section 7, Pub. L. 96-247, 94 Stat. 353 (42 U.S.C. 1997e) and will be implemented thirty legislative days thereafter. Although any congressional views that are expressed regarding the standards will be considered carefully, any resolution of "disapproval" will not be treated as binding.

For the reasons set forth in the preamble and under the authority of Pub. L. 96-247, 94 Stat. 349 (42 U.S.C. 1997) and 28 U.S.C. 509, 510 and 5 U.S.C. 301, it is hereby ordered as follows:

1. A new Part 40 is added to Title 28, Code of Federal Regulations to read as follows:

PART 40—STANDARDS FOR INMATE GRIEVANCE PROCEDURES

Subpart A—Minimum Standards for Inmate Grievance Procedures

Sec.

40.1 Definitions.
40.2 Adoption of procedures.
40.3 Communication of procedures.
40.4 Accessibility.
40.5 Applicability.
40.6 Remedies.
40.7 Operation and decision.
40.8 Emergency procedure.
40.9 Reprisals.
40.10 Records.
40.11 Evaluation.

Subpart B—Procedures for Obtaining Certification of a Grievance Procedure

40.12 Submissions by applicant.
40.13 Notice of intent to apply for certification.
40.14 Review by the Attorney General.
40.15 Conditional certification.
40.16 Full certification.
40.17 Denial of certification.
40.18 Reapplication after denial of certification.
40.19 Suspension of certification.
40.20 Withdrawal of certification.
40.21 Contemplated change in certified procedure.
40.22 Notification of court.
40.23 Significance of certification.
Appendix A—Commentary.

Authority: Pub. L. 96-247, 94 Stat. 349 (42 U.S.C. 1997).

Subpart A—Minimum Standards for Inmate Grievance Procedures

§ 40.1 Definitions.

For purposes of this part—

(a) "Act" means the Civil Rights of Institutionalized Persons Act of 1980, Pub. L. 96-247, 94 Stat. 349, (42 U.S.C. 1997).

(b) "Applicant" means a state or political subdivision of a state that submits to the Attorney General a request for certification of a grievance procedure.

(c) "Attorney General" means the Attorney General of the United States or the Attorney General's designees.

(d) "Grievance" means a written complaint by an inmate on the inmate's own behalf regarding a policy applicable within an institution, a condition in an institution, an action involving an inmate of an institution, or an incident occurring within an institution. The term "grievance" does not include a complaint relating to a parole decision.

(e) "Inmate" means an individual confined in an institution for adults who has been convicted of a crime.

(f) "Institution" means a jail, prison, or other correctional facility, or pretrial detention facility that houses adults and is owned, operated, or managed by or provides services on behalf of a state or political subdivision of a state.

(g) "State" means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any of the territories and possessions of the United States.

(h) "Substantial compliance" means that there is no omission of any essential part from compliance, that any omission consists only of an unimportant defect or omission, and that there has been a firm effort to comply fully with the standards.

§ 40.2 Adoption of procedures.

Each applicant seeking certification of its grievance procedure for purposes of the Act shall adopt a written grievance procedure. Inmates and employees shall be afforded an advisory role in the formulation and implementation of a grievance procedure adopted after the effective date of these regulations, and shall be afforded an advisory role in reviewing the compliance with the standards set forth herein of a grievance procedure adopted prior to the effective date of these regulations.

§ 40.3 Communication of procedures.

The written grievance procedure shall be distributed to all employees and inmates of the institution, together with explanatory materials reasonably necessary to ensure that potential participants understand how to use the procedure. Additionally, each inmate and employee shall, upon arrival at the institution and periodically thereafter, receive an oral explanation of the procedure including the opportunity to have questions regarding the procedure answered orally. Explanatory materials and oral presentations shall be available in any language spoken by a significant portion of the institution's population. An inmate who does not understand a language spoken by a significant portion of the institution's population shall receive an explanation of the grievance procedure in a language in which the inmate is fluent. Impaired and handicapped inmates shall receive explanations in a manner comprehensible to them. All employees of the institution who may reasonably be expected to operate or participate in the grievance procedure shall receive training in the skills necessary to operate or participate in the grievance procedure.

§ 40.4 Accessibility.

Each inmate shall be entitled to invoke the grievance procedure regardless of any disciplinary, classification, or other administrative or legislative decision to which the inmate may be subject. The institution shall ensure that the procedure is accessible to impaired and handicapped inmates.

§ 40.5 Applicability.

The grievance procedure shall be applicable to a broad range of complaints and shall state specifically the types of complaints covered and excluded. At a minimum, the grievance procedure shall permit complaints by inmates regarding policies and conditions within the jurisdiction of the institution or the correctional agency that affect them personally, as well as actions by employees and inmates, and incidents occurring within the institution that affect them personally. The grievance procedure shall not be used as a disciplinary procedure.

§ 40.6 Remedies.

The grievance procedure shall afford a successful grievant a meaningful remedy. Acceptable forms of relief may include, but are not limited to monetary remedies, restitution of property, reclassification, correction of records, personnal actions, agreement by institution officials to remedy an objectionable condition within a reasonable, specified time, and a change in an institution policy or practice. Although available remedies may vary among institutions, a reasonable range of meaningful remedies in each institution is necessary.

§ 40.7 Operation and decision.

Initiation. The procedure for initiating a grievance shall be simple and include the use of a standard form. Necessary materials shall be freely available to all inmates and assistance shall be readily available for inmates who cannot complete the forms themselves. Forms shall not demand unnecessary technical compliance with formal structure or detail, but shall encourage a simple and straightforward statement of the inmate's grievance.

(b) *Inmate and employee participation.* The institution shall provide a role for employees and inmates in the operation of the system in such a manner as to promote the credibility and use of the grievance procedure. At a minimum, some employees and inmates shall be permitted to participate directly in an advisory capacity in the disposition of grievances challenging general policy and practices and to review the effectiveness and credibility of the grievance procedure. To protect confidentiality, an inmate shall not participate in the resolution of another inmate's grievance over an objection by the grievant.

(c) *Investigation and consideration.* The institution shall establish a procedure for investigating the allegations and establishing the facts of each grievance. No inmate or employee who appears to be involved in the matter shall participate in any capacity in the resolution of the grievance.

(d) *Reasoned, written responses.* Each grievance shall be answered in writing at each level of decision and review. The response shall state the reasons for the decision reached and shall include a statement that the inmate is entitled to further review, if such is available, and shall contain simple directions for obtaining such review.

(e) *Fixed time limits.* Responses shall be made within fixed time limits at each level of decision. Time limits may vary between institutions, but expeditious processing of grievances at each level of decision is essential to prevent grievances from becoming moot. In all instances grievances must be processed from initiation to final disposition in less than 90 days, unless the grievant agrees in writing to an extension for a fixed period. Expiration of a time limit at any stage of the process shall entitle the grievant to move to the next stage of the process, unless the grievant has agreed in writing to an extension of the time for a response.

(f) *Review.* The grievant shall be entitled to review by a person or other entity, not under the institution's supervision or control, of the disposition of all grievances concerning alleged reprisals by an employee against an inmate and grievances concerning the substance or general application of policy. A grievance challenging a policy promulgated by the correctional agency that supervises the institution shall be reviewed by a person or other entity not under the supervision or control of the correctional agency. The correctional agency must give serious consideration to the results of such review, but need not agree to be bound by the results. A request for review shall be allowed automatically without interference by administrators or employees of the institution or correctional agency and such review shall be conducted without influence or interference by administrators or employees of the institution or correctional agency.

§ 40.8 Emergency procedure.

The grievance procedure shall contain special provision for responding to grievances of an emergency nature. Emergency grievances shall be defined, at a minimum, as matters regarding which disposition according to the regular time limits would subject the inmate to a substantial risk of personal injury, or cause other serious and irreparable harm to the inmate. The grievance procedure shall state specifically the matters that will be reviewed under the emergency procedure. Emergency grievances shall be forwarded immediately, without substantive review to the level at which corrective action can be taken. The procedure for resolving emergency grievances shall provide for expedited responses at every level of decision. The emergency procedure shall also include review by a person or entity not under the supervision or control of the institution.

§ 40.9 Reprisals.

The grievance procedure shall prohibit reprisals against inmates for their use of the procedure, and shall specify the steps that will be taken to prevent and redress reprisals, and the penalties for engaging in a reprisal. "Reprisal" means any action or threat of action against an inmate based on the inmate's use of or participation in the grievance procedure. Each inmate must be given written assurance that use of or participation in the grievance

mechanism will not result in formal or informal reprisals against the inmate. Employees of the institution shall also be given assurances that they will not be subject to reprisals resulting from their participation in the grievance procedure. An inmate shall be entitled to pursue through the grievance procedure a complaint that a reprisal occurred against the inmate.

§ 40.10 Records.

(a) *Nature.* Records regarding the filing and disposition of grievances shall be collected and maintained systematically by the institution. Such records shall be preserved for at least three years following final disposition of the grievance. At a minimum, such records shall include aggregate information regarding the numbers, types and dispositions of grievances, as well as individual records of the date of and the reasons for each disposition at each stage of the procedure.

(b) *Confidentiality.* Records regarding the participation of an individual in grievance proceedings shall not be available to staff or other inmates, except to the extent that access for clerical processing of the records is necessary. Such records shall not be available to individuals participating in parole decisions. Records of any testimony or evidence received in connection with a grievance proceeding shall not be made available to staff or other inmates, except to the extent that access for clerical processing is necessary or as hereafter provided. Such records shall not be available to individuals participating in parole decisions. Consistent with ensuring confidentiality, staff and inmates who are participating in the disposition of a grievance shall have access to records essential to the resolution of the grievance.

§ 40.11 Evaluation.

The grievance procedure shall contain a plan for periodic evaluation reports, at least annually, of the performance of the grievance procedure. At a minimum, such evaluation shall report on the inmates' use of the grievance procedure, including year to year trends in inmate use of the grievance procedure, information regarding types of grievances filed, types of remedies granted, implementation of remedies, numbers and types of emergency grievances, and the average time for disposition of standard and emergency grievances. The evaluation report shall include recommendations for improvements in the grievance procedure. The evaluation report shall also contain information regarding the costs generated or saved by compliance with 42 U.S.C. 1997e. Evaluation reports shall be reviewed by a person or entity not under the supervision or control of the institution with specific reference to compliance with the standards set forth in §§ 40.2 through 40.10. Such evaluation and review shall be submitted promptly after their completion to the Attorney General.

Subpart B—Procedures for Obtaining Certification of a Grievance Procedure

§ 40.12 Submissions by applicant.

An application for certification shall be submitted to the Office of Inmate Grievance Procedure Certification, Department of Justice, Main Justice Building, Washington, D.C. 20530, and shall contain the following:

(a) *Written statement.* A written statement describing the grievance procedure, including a brief description of the institution or institutions covered by the procedure, with accompanying plans for or evidence of implementation in each institution.

(b) *Instructional materials.* A copy of the instructional materials for inmates and employees regarding use of the grievance procedure together with a description of the manner in which such materials are distributed, a description of the oral explanation of the grievance procedure, including the circumstances under which it is delivered, and a description of the training provided to employees and inmates in the skills necessary to operate the grievance procedure.

(c) *Form.* A copy of the form used by inmates to initiate a grievance and to obtain review of the disposition of a grievance.

(d) *Information regarding past performance.* For a procedure that has operated for more than one year at the time of the application, the applicant shall submit information regarding the number and types of grievances filed over the preceding year, the disposition of the grievances with sample responses from each level of decision, the remedies granted, evidence of compliance with time limits at each level of decision, and a description of the role of inmates and employees in the formulation, implementation, and operation of the grievance procedure.

(e) *Plan for collecting information.* For a procedure that has operated for less than one year at the time of the application, the applicant shall submit a plan for collecting the information described in paragraph (d) of this section.

(f) *Assurance of confidentiality.* A description of the steps taken to ensure the confidentiality of records of individual use of or participation in the grievance procedure.

(g) *Evaluation.* A description of the plans for periodic evaluation of the grievance procedure, including identification of the group, individuals or individual who will conduct the evaluation and identification of the person or entity not under the control or supervision of the institution who will review the evaluation, together with two copies of the most recent evaluation, if one has been performed.

(h) *Public participation.* A list of all local agencies, interested persons and groups that have received a copy of the grievance procedure submitted to the Attorney General.

§ 40.13 Notice of intent to apply for certification.

The applicant shall publish notice of its intent to request certification in at least one newspaper that receives general circulation in the vicinity of each institution to be covered by the application. The notice shall invite comments regarding the grievance procedure and direct them to the Attorney General. A similar notice shall be posted within each institution to be covered by the application.

§ 40.14 Review by the Attorney General.

The Attorney General shall review and respond to each application as promptly as the circumstances, including the need for independent investigation and consideration of the comments of agencies, and interested groups and persons, permit.

§ 40.15 Conditional certification.

If, in the judgment of the Attorney General, a grievance procedure that has been in existence less than one year is at the time of application in substantial compliance with the standards promulgated herein, the Attorney General shall grant conditional certification for one year or until the applicant satisfies the requirements of § 40.10, whichever period is shorter.

§ 40.16 Full certification.

If, in the judgment of the Attorney General, a grievance procedure that has been in existence longer than one year at the time of application is in substantial compliance with the standards promulgated herein, full certification shall be granted. Such certification shall remain in effect unless and until the Attorney General finds reasonable cause to believe that the grievance procedure is no longer in substantial compliance with the

minimum standards and so notifies the applicant in writing.

§ 40.17 Denial of certification.

If the Attorney General finds that the grievance procedure is not in substantial compliance with the standards promulgated herein, the Attorney General shall deny certification and inform the applicant in writing of the area or areas in which the grievance procedure or the application is deemed inadequate.

§ 40.18 Reapplication after denial of certification.

An applicant denied certification may resubmit an application for certification at any time after the inadequacy in the application or the grievance procedure is corrected.

§ 40.19 Suspension of certification.

(a) *Reasonable belief of non-compliance.* If the Attorney General has reasonable grounds to believe that previously certified grievance procedure may no longer be in substantial compliance with the minimum standards, the Attorney General shall suspend certification. The suspension shall continue until such time as the deficiency is corrected, in which case certification shall be reinstated, or until the Attorney General determines that substantial compliance no longer exists, in which case, except as provided in paragraph (b) of this section, the Attorney General shall withdraw certification pursuant to § 40.20.

(b) *Defect may be readily remedied; good faith effort.* If the Attorney General determines that a grievance procedure is no longer in substantial compliance with the minimum standards, but has reason to believe that the defect may be readily corrected and that good faith efforts are underway to correct it, the Attorney General may suspend certification until the grievance procedure returns to compliance with the minimum standards.

(c) *Recertification after suspension pursuant to paragraph (a).* The Attorney General shall reinstate the certification of an applicant whose certification was suspended pursuant to paragraph (a) of this section upon a demonstration in writing by the applicant that the specific deficiency on which the suspension was based has been corrected or that the information that caused the Attorney General to suspend certification was erroneous.

(d) *Recertification after suspension pursuant to paragraph (b).* The Attorney General shall reinstate the certification of an applicant whose certification has been suspended pursuant to paragraph (b) upon a demonstration in writing that the deficiency on which the suspension was based has been corrected.

(e) *Notification in writing of suspension or reinstatement.* The Attorney General shall notify an applicant in writing that certification has been suspended or reinstated and state the reasons for the action.

§ 40.20 Withdrawal of certification.

(a) *Finding of non-compliance.* If the Attorney General finds that a grievance procedure is no longer in substantial compliance with the minimum standards, the Attorney General shall withdraw certification, unless the Attorney General concludes that suspension of certification under § 40.19(b) of this part is appropriate.

(b) *Notification in writing of withdrawal of certification.* The Attorney General shall notify an applicant in writing that certification has been withdrawn and state the reasons for the action.

(c) *Recertification after withdrawal.* An applicant whose certification has been withdrawn and who wishes to receive recertification shall submit a new application for certification.

§ 40.21 Contemplated change in certified procedure.

A proposed change in a certified procedure must be submitted to the Attorney General thirty days in advance of its proposed effective date. The Attorney General shall review such proposed change and notify the applicant in writing before the effective date of the proposed change whether such change will result in suspension or withdrawal of the certification of the grievance procedure.

§ 40.22 Notification of court.

The Attorney General shall notify in writing the Chief Judges of the United States Court of Appeals and of the United States District Court(s) within whose jurisdiction the applicant is located of the certification, suspension of certification, withdrawal of certification and recertification of the applicant's grievance procedure. The Attorney General shall also notify the court of the certification status of any grievance procedure the request of the court or any party in an action by an adult inmate pursuant to 42 U.S.C. 1983.

§ 40.23 Significance of certification.

Certification of a grievance procedure by the Attorney General shall signify only that on the basis of the information submitted, the Attorney General believes the grievance procedure is in substantial compliance with the minimum standards. Certification shall not indicate approval of the use or application of the grievance procedure in a particular case.

Appendix A—Commentary

Section 40.2 Adoption of Procedures

The essential feature of this standard is the requirement that the grievance procedure be adopted in writing. Written grievance procedures provide assurances to inmates that established procedures exist for processing, reviewing, and resolving their complaints. They also assist institutional administrators and staff by providing guidance regarding the proper handling of inmate complaints.

Section 40.3 Communication of Procedures—written and oral explanation

This standard is intended to ensure that the institution takes reasonable steps to communicate how and when to use the grievance procedure to the inmates. The standard incorporates the requirement of 42 U.S.C. 1997e that inmates and employees participate in the formulation and implementation of the grievance procedure. The type of participation is left to the correctional agency or institution to determine, but it should be of such a nature as to enhance the credibility of the grievance mechanism by fostering a sense of inmate and employee responsibility for the final design and operation of the procedure. For further comment on the need to foster inmate and employee responsibility see Commentary on § 40.7(b) below.

Research on existing grievance mechanisms sheds important light on the need for inmate familiarity with those mechanisms.[1] Many inmates may not develop extensive knowledge of

[1] The relevant research is limited to general surveys of grievance mechanisms presently in use and evaluations of their effects on such factors as inmate and staff attitudes concerning the resolution of complaints, patterns of use by inmates, and dispositions of grievances resolved. Very few of the studies gather extensive empirical data on the operation and effects of grievance mechanisms. Those that do are limited to individual correctional institutions or systems. Thus, extensive empirical comparisons between the effects of diferent types of grievance mechanisms on prisons and inmates are not available.

Most of the research simply describes the operation of grievance mechanisms, and inmate and staff perceptions of their fairness and efficiency. It is not possible to draw firm conclusions from this research about the effectiveness of grievance mechanisms in reducing levels of tension or violence in institutions, or even about whether there are significant systematic differences among grievance mechanisms in their effects on prisons. Accordingly, discussion of research in this commentary only summarizes the research findings that are related to the central points of discussion and that are strongly supported across the literature cited.

their rights under grievance mechanisms or of the specific procedures used in filing grievances or appealing grievance decisions.[2] Formal orientation involving inmates and staff may reduce apprehension when the grievance mechanisms are introduced, increase awareness of their existence, and stimulate their use in settling disputes.[3]

Thorough orientation and training about grievance mechanisms is necessary for both inmates and staff. Orientation for inmates might involve both inmate and staff participation, and should attempt to increase inmates' knowledge of rules and procedures in filing grievances and appealing grievance decisions. Training for employees and inmates should cover the skills necessary to participate in and, where appropriate, operate the grievance procedure. Active involvement and support by the institutional administration in training and orientation is important.[4]

Section 40.4 Accessibility

An inmate must have access to the grievance procedure, regardless of personal impairments or handicaps. The purposes of a grievance procedure cannot be fulfilled if certain classes of inmates are prevented from using it. The provisions of 42 U.S.C. 1997e apply to adult inmates convicted of crimes. Although juveniles and pretrial detainees are excluded, as a matter of sound policy and equal treatment, institutions containing mixed populations are encouraged to open the grievance procedure to all inmates, despite the ability of inmates not covered by the Act to proceed directly to court.

Section 40.5 Applicability

The range of complaints to which the grievance procedure applies and the types of remedies that the procedure affords are fundamental features of the design of a grievance mechanism. Pursuant to 42 U.S.C. 1997e, a court may stay any inmate action filed under 42 U.S.C. 1983 for 90 days to allow exhaustion of a grievance procedure. If exhaustion is to be a realistic alternative in such cases, the grievance procedure must be applicable to many complaints that could be raised in an action under section 1983 and the relief available under the procedures must approximate the remedies available under the statute. Otherwise, a major purpose of the "Civil Rights of Institutionalized Persons Act"—to permit non-judicial resolution of inmate grievances—may not be realized.

Grievance mechanisms should explicitly state what matters or categories of complaints are subject to review under the procedure in order to ensure proper and necessary use of the procedure. General examples of such matters include institutional policies, applications of the policies, actions by employees or other inmates, and living conditions within the institution. There also should be explicit statements of matters not subject to review. Applicants are encouraged to use the grievance procedure to determine whether a complaint is grievable. The grievance procedure shall not replace disciplinary procedures which are subject to certain constitutional safeguards.

Section 40.6 Remedies

The requirement that grievance procedures afford meaningful remedies is essential. The procedures should clearly specify the types of remedies that are within their scope and authority. Examples of such remedies include monetary relief, restitution of a grievant's property, correction of records, reclassification, and changes in institutional policies or practices that are the subject of grievances. As stated previously, if the purposes of the Civil Rights of Institutionalized Persons Act are to be fulfilled, grievance procedures must be empowered to award a broad range of remedies.

Section 40.7 Operation and Decision

a. *Initiation.* All inmates should be permitted to file grievances. The requisite materials should be readily accessible to every inmate in the institution, regardless of classification or disciplinary status. Since the effectiveness of a complaint may turn on the ability of the inmate to express the compliant in writing, inmates with handicaps or minimal or diminished capacity for written expression must be afforded assistance in presenting their grievances. However, this standard should not be read as requiring the provisions of legal representation for inmates.

In filing grievances, inmates should not be forced to comply with technicalities of form or detail, but should be required only to state their compliant in a simple, straightforward manner. The use of a standard form will assist the simplification of the filing process and assist decision-makers by structuring the presentation of the grievance.

b. *Inmate and Employee Participation.* Taken in conjunction with § 40.2 of this part, this standard requires inmate and employee participation in the formulation, implementation and operation of the grievance procedure. The exact nature of the participation is left to each applicant for certification with the caveat that the participation must be such as to promote the credibility and use of the grievance procedure.

Inmate participation in an advisory capacity is mandated at the most decentralized level reasonably possible. This requirement is intended to ensure that inmates play a role in the initial consideration of their grievances. Such participation will allow full airing of the dispute at the earliest possible time and promote prompt and efficient settlement of grievances.

Examples of inmate involvement include participation in designing grievance procedures, reviewing the overall operation of the grievance system and working with staff to assure the system is successful and credible. Staff and administration involvement may include participation in the design of grievance procedures, and in dispute resolution through the grievance mechanisms. Administrators may also serve in reviewing capacities.

As a reflection of the concern for confidentiality expressed in Standard IV(b), this Standard allows an inmate to request that other inmates not participate in the actual resolution of a grievance filed by the inmate. Barring such a request, inmates may have other inmates participate in an advisory capacity in the resolution of their disputes, although the standard does not require that any inmates have access to confidential records. A request that inmates not participate in the resolution of a dispute shall be made by the inmate who filed the grievance and may be withdrawn before the grievance procedure is completed.

Many existing grievance procedures are designed to include inmate participation. A recent survey indicates that under some programs inmates accept and screen incoming grievances and work together with staff in settling inmates' disputes.[5] The survey also showed that almost one-third of the

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[2] California Youth Authority, *Final Evaluation of Ward Grievance Procedure at Karl Holton School*, 25, (1974) (hereinafter cited as California Youth Authority Report).

[3] M. Keating, V. McArthur, M. Lewis, K. Sebelvis, and L. Singer, *Grievance Mechanisms in Correctional Institutions* (1975) (hereinafter cited Keating et al.); J. Hepburn, J. Lave, and M. Becker, *To Do Justice: An Analysis of the Development of Inmate Grievance Resolution Procedures and a Final Report for the Center for Community Justice* (1978) (hereinafter cited as Hepburn et al.).

[4] Keating et al., *supra* note 3, at 20.

[5] Dillingham and Singer, *Complaint Procedures in Prisons and Jails: An Examination of Recent Experience*, pp. 22–23 (1982).

programs that involve prisoner participation and hearings on grievances give prisoners "decision-making" roles.[6]

There is reason to believe that prisoners in programs with participatory grievance mechanisms may be more willing to use the grievance mechanism.[7] A study by Dillingham and Singer suggests that more prisoners feel that complaints are handled fairly and satisfactorily under participatory grievance procedures (those with inmate participation and external review) than do under nonparticipatory procedures.[8] This finding may be due in part to the higher rates of dispositions favoring inmates in correctional systems using participatory grievance procedures.[9]

Another study indicates that prisoners and correctional officers may often feel participatory grievance procedures achieve fair, useful and expeditious resolution of prisoners' complaints.[10] Correctional administrators also feel that, as a general matter, grievance mechanisms are effective in resolving prisoner complaints.[11] Some administrators indicate that prisoner participation in grievance mechanisms enables prisoners to question and challenge policies more easily, more expeditiously, and at lower levels of decision-making within the institution.[12] Hepburn et al. report that line-officers and staff involved in participatory grievance procedures, who may initially resist involvement due to concerns over weakening authority and reduced autonomy, may come to believe that the procedures improve working conditions by (1) reducing prisoner hostility toward staff, (2) clarifying ambiguous or contradictory policies, and (3) effecting change in unpopular or unenforceable institutional rules.[13] In brief, available evidence shows that grievance mechanisms that provide for inmate and staff involvement tend to be perceived as fair and effective, and thus achieve greater credibility.

c. *Investigation and consideration.* A grievance procedure must have a method for investigating the allegations contained in a grievance and establishing the facts necessary to be just resolution. The method need not be modeled on a strict adversarial approach to grievance resolution, but it may be necessary for inmates to be interviewed personally regarding their grievances.

To enhance the impartiality of grievance decisions, the Standard requires that employees and inmates who are the subject of grievances or were involved in the events that produced the grievance not participate in resolving the grievance.

d. *Reasoned, written responses.* The requirement that grievances receive reasoned, written responses may aid in ensuring that grievances are considered carefully by staff and administrators and may inform administrators whether institution policies and procedures are appropriate and are being implemented properly. Equally important is the possible effect upon an inmate of a reasoned, written response. It will give the inmate some assurance that the grievance has been reviewed and should serve to clarify the institutional policy or practice that was the subject of the grievance. Furthermore, the requirement of a written response provides administrators with a document that identifies the outcome of an inmate's grievance. Thus, reasoned, written responses may enhance inmates' perceptions that they have been treated fairly, and may assist administrators in operating the facility.

There is little research concerning responses to grievances. Dillingham and Singer note that summary replies to grievances such as "Request denied—contrary to policy" were often observed in their analysis of grievance records.[14] Dillingham's analysis of the California Youth Authority grievance procedure indicates that mandatory provision for explanations of grievance decisions has resulted in reasoned replies.[15]

e. *Fixed time limits.* The credibility and practical success of grievance procedures may be enhanced if the procedures result in prompt responses to inmates' complaints. Fixed time limits help to ensure inmates that complaints will not be put off by decision-makers. The standard provides that time limits may not be exceeded unless an inmate agrees in writing to an extension. If the inmate has not agreed to an extension and no response is forthcoming during the prescribed period, the inmate may move to the next stage of review. The standard would not affect the ability of correctional systems and institutions to impose stronger penalties for delay among decision-makers.

Surveys of grievance procedures indicate that a great majority impose time limits on replies to inmates' complaints.[16] Many apply these time limits to all levels of the grievance procedure.[17] There is limited information on the comparative efficiency of grievance procedures with fixed time limits and other grievance mechanisms. Dillingham and Singer indicate there may be more complaints filed per prisoner under grievance procedures allowing inmate participation and employing fixed time limits.[18] Hepburn et al. conclude that the grievance procedure with fixed time limits implemented in South Carolina is more efficient than the state ombudsman program handling similar types of complaints.[19]

In spite of fixed time limits, delays in processing grievances may occur in most grievance mechanisms. Failures to comply with time limits in California's Ward Grievance Procedure, for example, occur most frequently during appellate reviews of grievances.[20] Serious delays may also attend upon the introduction of grievance procedures, as was the case following the introduction of a grievance procedure in New York. There, the most frequent delays took place at the initial hearing stages, as a result of heavy filing of grievances and the difficulty of obtaining attendance at hearings of prisoners subject to special conditions of confinement.[21]

f. *Review.* Review of the disposition of inmate grievances may ensure that institutional policies are applied fairly and objectively and that the procedural guarantees of the grievance procedure itself are observed. The standard states two different minimum requirements for review. For grievances that are based on incidents occurring within the institution or that challenge practices, policies or conditions that only pertain in a specific institution, the standard mandates review by a person or entity not under the control or supervision of the institution. For grievances that challenge policies or practices that apply throughout the correctional system, the

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[6] *Id.*

[7] Keating et al., *supra* note 3, at 9.

[8] Dillingham and Singer, *supra* note 5, at 51, 56 Table XI, XIII.

[9] Id. at 54.

[10] Dillingham, *Right to Be Heard: An Evaluation of the Ward Grievance Procedure in the California Youth Authority*, at 61, 62 Tables 20–21 (1978); Dillingham and Singer, *supra* note 5, at 51, 52; Keating et al., *supra* note 3, at 49–60. Keating et al.'s analysis of 17 correctional systems indicates that more prisoners in programs with participatory grievance procedures feel that disputes are settled in a timely way than prisoners in programs with other grievance mechanisms.

[11] Dillingham and Singer, *supra* note 5, at 21, 29, 28, 32.

[12] Hepburn et al. *supra*, note 3, at 406–407.

[13] Id. at 406; J. Hepburn and J. Laue, "Prisoner Redress: An Analysis of an Inmate Grievance Procedure," 25 *Crime and Delinquency* 162. Hepburn and Laue suggest that prisoners and staff should have equal roles in resolving grievances.

[14] Dillingham and Singer, *supra* note 5, at 66.

[15] Dillingham, *supra* note 10, at 36–40.

[16] Dillingham and Singer, *supra* note 5, at 23.

[17] *Id.*, at Table V.

[18] *Id.*, at 48 Chart 1.

[19] Hepburn et al., *supra* note 3, at 288–289.

[20] Keating et al., *supra* note 3, at 49–60; Hepburn et al. at 284, 345.

[21] Dillingham, *supra* note 10, at 44 Table 15.

standard requires an independent review—that is, by a person or entity wholly outside the correctional system. The review should ordinarily be a step in the grievance procedure. Evidence from the states' experience shows that this step is rarely invoked. Accordingly, fears that heavy burdens may result from this process appear to be unsupported.

Although correctional administrators are expected to be capable of fair and detached consideration of grievances, a structure that ensures that administrators will not be the only individuals reviewing their own policies will enhance the credibility of the grievance procedure among inmates and will furnish administrators with impartial input into their dispositions of grievances. Although the standard directs correctional agencies to consider the views of the reviewing body or individual, it does not require that the views be binding. Review by a correctional agency of the disposition of a grievance by an institution official will be binding.

It is important to recognize that the standard dictates the minimum level of independence of review. Obviously, independence and its appearance increase as the reviewing authority gains distance from the institution and the correctional structure. For instance, greater independence would be achieved by giving reviewing authority to an individual or group which is separate from the executive branch of government. An example of this would be a legislatively appointed commission or ombudsman. Still greater independence could be achieved by giving the reviewing commission or official binding authority over grievance decisions and other matters pertaining to grievance decisions. While this type of review may be perceived as challenging the authority of correctional administrators, it might improve the credibility of grievance mechanisms among prisoners and result in increased use of the mechanism in settling disputes. No grievance mechanisms currently permit such a degree of independent review of grievance decisions.[22]

A variety of mechanisms exist, however, that employ impartial or "outside" review by individuals or groups not under the direct supervision of the institution or department of corrections. Prisoners may be more likely to use these grievance mechanisms with impartial review and more likely to perceive them as fair and responsive to their complaints than grievance mechanisms with other forms of review.[23] Mechanisms affording impartial review rely on several different types of reviewers: grievance commissions consisting of persons not affiliated with correctional agencies; ombudsmen acting in conjunction with administrative grievance procedures; arbitration panels; and professional arbitrators acting as mediators in the final stage of grievance appeals. Under all grievance mechanisms using outside review, the reviewing bodies make advisory recommendations to correctional administrators with respect to final settlement of grievances.

Section 40.8 Emergency Procedures

A special emergency grievance procedure is necessary to handle matters that will inevitably arise that would result in serious harm to an inmate or a threat to the safety or security of the institution if they were not treated on an expedited basis. It is important, however, that the procedure state explicitly what matters will be subject to emergency treatment so that inmates may avail themselves of the procedure and frivolous filings will be discouraged and screened out quickly when they occur. Emergency grievances must reach a decisionmaker with authority to take corrective action without passing through preliminary levels of substantive review.

Prisoners in systems with emergency provisions may file "emergency" grievances relatively frequently. For example, forty percent of all grievances filed in the California Youth Authority's system in 1977 were initially declared "emergencies."[24] Although the heavy filing of such grievances may be a burden on the operation of the overall grievance mechanism, the provision for handling grievances on an emergency basis may serve as a "safety valve" for prisoners' immediate reactions to institutional problems as well as a mechanism for settling problems which generally requires immediate relief.[25]

Section 40.9 Reprisals

Reprisals or fear of reprisals may discourage use of the grievance mechanism. No inmate should be subjected to adverse consequences or threats as a result of having invoked or participated in the grievance procedure. Inmates must, therefore, be given a remedy against possible reprisals, at least to the extent of being permitted to complain of reprisals through the grievance procedure. In addition, employees of the institution should be informed that reprisals against inmates will be viewed seriously by the administrators of the institution and correctional agency and met with specific penalties. And, since employees must also be encouraged to participate freely in the grievance procedure, they should receive assurances against reprisals by administrators.

Research on grievance procedures discloses no evidence of formal reprisals against grievants.[26] Evidence of fear of reprisal among prisoners, however, is clear. Approximately one-in-six prisoners in the California Youth Authority's initial experiment with grievance procedures reported reluctance to use the procedure due to fear of negative consequences.[27] Similar attitudes have been observed among prisoners in New York and South Carolina.[28] A reprisal feared by many is unfavorable intervention in parole decisions.[29] Such fear may harm the credibility of grievance procedures and limit their usefulness.

Standards for grievance mechanisms cannot be expected to prevent all informal reprisals against grievants, but formal reprisals by staff and administration may be deterred by the remedies discussed above in combination with the safeguards contained in other standards, such as those ensuring the confidentiality of grievance files. To minimize informal reprisals, grievance mechanisms might also provide for immediate independent review of allegations of reprisals.

Section 40.10 Records—Nature; Confidentiality

a. *Nature.* The systematic collection of information regarding the operation of the grievance mechanism is essential for administrators if they are to ensure that the procedure is operating fairly.

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[22] Dillingham and Singer, *supra* note 5, at 23, 27; Keating et al., *supra* note 3, at 35–47.

[23] Keating et al., *supra* note 3, at 14; Dillingham and Singer, *supra* note 5, at 43–57. Dillingham and Singer summarize their analysis of interviews with prisoners and staff and examination of records in ten prison systems using different types of grievance mechanisms: "Procedures have a greater chance of success if they include inmates and line staff in resolving complaints, permit appeal to outsiders seen as impartial and adhere to established time limits and other procedural requirements." (at 43) While Dillingham and Singer's findings do not indicate that appellate review by external authorities alone ensures effective dispute resolution, the findings suggest that external review may be necessary to ensure utilization of grievance mechanisms by prisoners and enhance their perception as fair and timely in resolving disputes.

[24] Hepburn et al., *supra* note 3, at 100–101.

[25] *Id.* at 113.

[26] Hepburn et al., *supra* note 3, at 425.

[27] California Youth Authority Report, *supra* note 2.

[28] Hepburn et al., *supra* note 3, at 102, 281.

[29] Keating et al. *supra* note 3, at 15.

effectively and according to its own internal requirements.

Examples of information which might be collected include types of grievances filed, nature of disputed issues, final dispositions of grievances, levels of review required, compliance with time limits, and reasons for dispositions of grievances.[30]

b. *Confidentiality.* To prevent reprisals, it is important to keep records of individual inmate use and participation in grievance mechanisms out of the reach of fellow inmates and staff. Similarly, to prevent individuals or bodies making parole decisions from considering inmate use or involvement in grievance procedures as a factor in their deliberations, strict precautions must be taken to ensure that such material is not available to them. Fear on the part of inmates that use of or participation in grievance procedures could affect release decisions negatively may restrict use of the grievance procedure. In addition, fear that testimony or evidence produced during grievance proceedings will become known to persons making release decisions may restrict inmate participation in the proceedings and impede efforts to develop fully and accurately the factual bases of grievances.

Although institutional records are exempted from the disclosure requirements of freedom of information acts in many states, it is not the intent of this standard to override such disclosure requirements where they exist under state law.

Section 40.11 Evaluation

Only through periodic evaluations can administrators and outside reviewers guarantee that grievance procedures serve the institutional purposes of administrators while also resolving inmates' grievances fairly. An important concern is the availability of information on grievance processing. Development and implementation of record-keeping as discussed in Standard IX will aid in conducting informed evaluations. The standard requires review of the evaluation by a person or group that is not associated with the institution to assist the administrators of the grievance procedure in maintaining compliance with the standards. The evaluation and the review are to be submitted to the Attorney General to assist him in acquitting his obligation to review certified procedures for continuing compliance with the standards.

An additional concern involves criteria used in evaluations to measure the effectiveness of grievance mechanisms. Criteria should be based upon the specific objectives of the grievance mechanism. Due to the inherent difficulties in determining whether grievance mechanisms meet the general objectives of reducing levels of frustration, tension, and violence among prisoners, Keating et al. recommend that criteria of effectiveness simply reflect prisoners' use of grievance mechanisms and whether such use results in clarification and changes in institutional policies.[31]

2. A new § 0.18 to read as follows, is added to Title 28, Code of Federal Regulations:

§ 0.18 Office of Inmate Grievance Procedure Certification.

The Office of Inmate Grievance Procedure Certification shall be under the direction of a Director. Under the supervision of the Deputy Attorney General, the Director shall review and certify, in accordance with Part 40 of this title, plans for inmate grievance procedures submitted by States or their political subdivisions.

Dated: January 12, 1981.

Benjamin R. Civiletti,

Attorney General.

[FR Doc. 81-1528 Filed 1-15-81; 8:45 am]

BILLING CODE 4410-01-M

[30] Hepburn et al. *supra* note 3, at 202-204. The standard allows inmates and staff to handle records where necessary for clerical purposes. The most effective method to implement this Standard may be to establish a separate record-keeping system for inmate grievance records. Whenever possible, such records should not be managed or handled by inmates.

[31] Keating et al., *supra* note 3, at 31.

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1903

Walkaround Compensation

AGENCY: Occupational Safety and Health Administration (OSHA); Labor.

ACTION: Final rule.

SUMMARY: This document amends 29 CFR 1903.8 to require employers to compensate employees who participate in walkaround inspections and related activities. The requirement will protect the statutory right of employees to participate in inspections of their working conditions with the OSHA inspector and will facilitate walkaround participation, thus increasing the effectiveness of inspections and thereby promoting occupational safety and health.

EFFECTIVE DATE: February 17, 1981.

FOR FURTHER INFORMATION CONTACT: Mr. James Foster, Office of Public Affairs, Occupational Safety and Health Administration, Third Street and Constitution Avenue, NW., Room N-3641, Washington, D.C. 20210 (Tel. 202-523-8151).

SUPPLEMENTARY INFORMATION:

I. Background

A. Introduction

On November 14, 1980, the Occupational Safety and Health Administration ("OSHA" and the "agency") published in the Federal Register proposed amendments to 29 CFR 1903.8 and 1977 requiring employers to compensate employees who participate in walkaround inspections and related activities, 45 FR 75232. The agency invited the public to submit written data, views and arguments with respect to the proposed amendments and all issues involved therein. Comments were to be postmarked on or before December 29, 1980.

The agency has received numerous comments from businesses, unions, trade associations, law firms and others. In addition, comments relating to the issues in this proceeding were received from OSHA field personnel. All submissions were made part of the record and were duly considered.

B. Statutory Framework

The Occupational Safety and Health Act of 1970, 29 U.S.C. 651 *et seq.* (the "Act" and the "OSH Act"), was enacted "to assure so far as possible every working man and woman in the Nation safe and healthful working conditions and to preserve our human resources." In order to carry out these purposes, section 8(a) of the Act authorizes the Secretary of Labor ("Secretary") to conduct inspections and investigations of workplaces in order to determine whether violations of the Act are present. An essential feature of such inspections is set forth in section 8(e) of the Act, which provides:

> Subject to regulations issued by the Secretary, a representative of the employer and a representative authorized by his employees shall be given an opportunity to accompany the Secretary or his authorized representative during the physical inspection of any workplace under subsection (a) for the purpose of aiding such inspection. Where there is no authorized employee representative, the Secretary or his authorized representative shall consult with a reasonable number of employees concerning matters of health and safety in the workplace.

Thus, the Act grants employer representatives and employee representatives an express right to accompany an OSHA inspector for the purpose of aiding the inspection and provides for consultation with employees by the inspector where there is no authorized employee representative. In addition, section 8(f)(2) of the Act grants employees the right to complain to OSHA compliance officers prior to or during an inspection about possible violations of the Act, and section 8(a)(2) provides that OSHA compliance officers may question employees about workplace conditions. The right to accompany an OSHA inspector may be implemented by the promulgation of regulations pursuant to section 8(e) of the Act. In addition, this provision, as well as other provisions such as sections 8(a)(2), 8(e) and 8(f)(2), may be implemented pursuant to section 8(g)(2) of the Act, which provides:

> The Secretary and the Secretary of Health, Education and Welfare shall each prescribe such rules and regulations as he may deem necessary to carry out their responsibilities under this Act, including rules and regulations dealing with the inspection of an employer's establishment.

C. History of Walkaround Compensation Regulation

In 1973, the Assistant Secretary of Labor for Occupational Safety and Health, relying in part upon the Solicitor of Labor's opinion that walkaround time was not "hours worked" under the Fair Labor Standards Act ("FLSA"), 29 U.S.C. 203(o) (1976), concluded that an employer's failure to pay employees for the time spent with the OSHA inspector was not a *per se* violation of section 11(c). (See 38 FR 2661, 2664 (January 29, 1973) (codified at 29 CFR 1977.21(a) (1975)).

In 1974, a federal district court upheld the Department of Labor's interpretation in a civil action brought by employees to recover wages lost because of participation in an OSHA inspection. *Leone* v. *Mobil Oil Corp.*, 377 F. Supp. 1302 (D.D.C. 1974).

In 1975, the U.S. Court of Appeals for the District of Columbia Circuit affirmed the district court's decision and held that because walkaround time primarily benefits employees and because the walkaround is conducted beyond the employer's control, walkaround time does not constitute "hours worked" under the FLSA. *Leone, supra,* 523 F.2d 1153, 1163–64. Furthermore, the court held that a walkaround payment requirement could not be inferred from the provisions of the Occupational Safety and Health Act. *Id.* at 1159–61.

In 1977, the Solicitor of Labor reevaluated the original legal position and, in September 1977, issued a new opinion, based on further study and the agency's experience, which stated that walkaround time was "hours worked" under the FLSA, that an employer's failure to pay employees for that time was inherently destructive of the walkaround right, and that therefore the failure to pay was discrimination prohibited by section 11(c)(1) of the Act. On September 20, 1977, the Assistant Secretary promulgated a rule declaring that "an employer's failure to pay employees for time during which they are engaged in walkaround inspections is discriminatory under section 11(c)." 42 FR 47344. Because the rule was considered "an interpretive rule and general statement of policy," 42 FR 47344, public participation was not provided in accordance with the provisions of the Administrative Procedure Act ("APA"). 5 U.S.C. 553.

In 1978, a federal district court, in an action challenging the validity of the new regulation, concluded that the regulation was interpretive and therefore exempt from the notice-and-comment procedures of the APA. *Chamber of Commerce of the United States of America* v. *OSHA*, 466 F. Supp. 10 (D.D.C. 1978), *rev'd* No. 78–2221, 8 BNA OSHC 1648 (D.C. Cir. 1980). The court held that OSHA did not exceed its statutory authority in issuing the new regulation. On appeal, the U.S. Court of Appeals for the District of Columbia Circuit reversed the judgment of the district court and remanded the case to that court with instructions to vacate the regulation. *Chamber of Commerce of the United States of America* v. *OSHA*, F. 2d , No. 78–2221, 8 BNA 1648 (D.C. Cir. 1980). The Court of Appeals held that walkaround time did not constitute "hours worked" within the meaning of the FLSA because the employer did not select or regulate the employee representative during the walkaround, nor was the employer the primary beneficiary of the walkaround. The court also held that the Act itself neither prohibited nor compelled pay for walkaround time. Therefore, according to the court, the regulation was not interpretive but legislative. Because OSHA did not comply with the notice-and-comment procedures of the APA for the promulgation of legislative rules, the court concluded that the walkaround pay regulation was invalid and should be vacated. The court expressed no view on whether the Assistant Secretary could reissue the same rule after complying with the notice-and-comment procedures of 5 U.S.C. 553.

On remand, the district court vacated the regulation. On October 31, 1980, the Assistant Secretary deleted the regulation (45 FR 72118) and instructed OSHA field staff to cease enforcing its provisions.

D. Summary of the Proposed Amendment

On November 14, 1980, OSHA proposed regulations requiring employers to compensate employees who participate in walkaround inspections and related activites. In the preamble to the proposal, the agency noted its disagreement with the *Chamber* decision that walkaround time is not "hours worked" under the FLSA but noted that the proposal was not based on any determination that walkaround time is "hours worked" under the FLSA.

Under paragraph (e)(1)(i) of the proposed additions to 29 CFR 1903.8, the employer would have been required to provide to an authorized representative of the employees walkaround benefits for time during which the representative participates in any OSHA inspection of the workplace, including attendance at the opening and closing conferences. Paragraph (e)(1)(ii) of the proposal stated that if a new employee representative replaces an employee representative then on the inspection team, the employer would be required to provide walkaround benefits to each representative for that portion of the walkaround in which each representative participated. Paragraph (e)(1)(iii) provided that if compliance officers inspect different parts of a workplace at the same time or at different times, one employee representative for each inspection team would be entitled to walkaround benefits. Paragraph (e)(1)(iv) would have required employers to provide to any employee walkaround benefits for time spent in other activities related to the inspection. Paragraph (e)(1)(v) defined walkaround benefits. Paragraph (e)(2) provided the method of enforcement of the regulation. Paragraph (e)(3) provided for an effective date of the regulation.

The proposal would have also added a new 29 CFR 1977.21 to Part 1977 which provided that an employer's failure to pay for walkaround time was *per se* discrimination against employees because of the exercise of employee rights and therefore violative of section 11(c)(1) of the Act. With respect to the proposed amendment to 29 CFR Part 1977, the agency has decided, for the reasons discussed below, not to promulgate the proposal at this time.

As noted earlier, the agency has received numerous comments in

response to the November 14, 1980 Federal Register notice. Several commentors requested public hearings on the proposed amendments. The agency reviewed these requests and determined that public hearings would not be held. Since the proposed regulations at 29 CFR 1903.8 and 1977 are not occupational safety and health standards as defined by section 3(8) of the Act, 29 U.S.C. 652(8), the provisions of section 6(b) of the Act, 29 U.S.C. 655(b), do not apply. Additionally, hearings are not required by the APA when, as here, an agency is engaged in informal rulemaking. 5 U.S.C. 553; *Vermont Yankee Nuclear Power* v. *National Resources Defense Council, Inc.*, 435 U.S. 519 (1978). Accordingly, the agency has determined not to conduct public hearings in this matter.

Many commentors requested that the comment period be extended beyond the December 29, 1980 deadline established in the November 14, 1980 Federal Register Notice of Proposed Rulemaking. Most of these commentors cited Executive Order 12044 (43 FR 12661 (March 24, 1978)) and Department of Labor guidelines (44 FR 5570 (January 26, 1979)) in support of their requests.

First, the instant rulemaking was conducted in conformance with the notice-and-comment requirements of the APA. Neither the Executive Order nor the Department of Labor guidelines require a 60-day comment period in every rulemaking proceeding. Both contemplate situations in which the 60-day period will not be provided and require that in such circumstances the regulation be accompanied by a statement of reasons for the shorter time period. The purpose of the provisions of the Executive Order and the Department guidelines is to assure that full public discussion of the issues in the rulemaking be afforded. Here, we believe that this purpose has been more than adequately achieved. As noted in the Notice of Proposed Rulemaking, 45 FR at 75237, the issues relating to pay for walkaround have already been subject to extensive public discussion since the agency's original interpretation was made several years ago. Moreover, since a notice was published by OSHA on October 31, 1980, (45 FR 72118) deleting the walkaround pay interpretive regulation and stating that OSHA was planning to propose a walkaround compensation regulation shortly, as a practical matter, the public had approximately 60 days to prepare and submit comments from the time OSHA first announced its intention to propose a new regulation. Accordingly, the agency determined that the full 60-day comment period was unnecessary and that the comment period should not be extended.

II. Basis and Purpose of the Regulation

A. Statutory Basis

As noted above, section 8(c) expressly authorizes the Secretary to issue regulations implementing the walkaround requirements of that section. In addition section 8(g)(2) empowers the Secretary to promulgate regulations as he may deem necessary to carry out his responsibilities under the Act, including regulations dealing with inspections. The regulation, an addition to 20 CFR 1903.8, which details procedures for selection of employer and employee walkaround representatives, is based on the Secretary's authority under sections 8(c) and 8(g)(2). As discussed more fully below, compensation for time spent in walkaround and related activities will facilitate employee participation in these activities and as a result will enhance the effectiveness of OSHA's inspections. Thus, the regulation being promulgated is necessary to implement the walkaround requirement of section 8(c) and is necessary to effectively carry out the Secretary's responsibilities to conduct occupational safety and health inspections, in accordance with section 8(g)(2).

B. Importance of Employee Walkaround Representative

In proposing the amendments to 29 CFR 1908.8, the agency noted the crucial importance of employee involvement to the successful enforcement of the Act. The Act itself underscores the importance of employee participation in the inspection process and grants employees an express right to accompany an OSHA inspector for the purpose of aiding the inspection. *See* section 8(c) of the Act, 29 U.S.C. 657(c). Other provisions of the Act also seek to facilitate employee participation by attempting to assure a free and open exchange of information between representatives of the Secretary and employees. Thus, the Act expressly provides in section 8(f)(2) that employees have the right to notify the OSHA inspector prior to or during the inspection itself of violations which they have reason to believe exist in the workplace. In addition, section 8(a)(2) of the Act provides that OSHA compliance officers may question employees about workplace conditions and section 8(c) provides that compliance officers may consult with a reasonable number of employees about occupational safety and health matters where there is no employee representative.

The remarks of Senator Williams, Chairman of the Senate Labor Committee and one of the main sponsors of the OSHA bill, reflect the crucial importance of employee participation in the walkaround process:

> During the field hearings held by the subcommittee on labor, the complaint was repeatedly voiced that under existing safety and health legislation, employees are generally not advised of the content and results of a Federal or State inspection. Indeed, they are often not even aware of the inspector's presence and are thereby deprived of an opportunity to inform him of alleged hazards. Much potential benefit of an inspection is therefore never realized, and workers tend to be cynical regarding the thoroughness and efficacy of such inspections. Consequently, in order to aid in the inspection and provide an appropriate degree of involvement of employees themselves in the physical inspections of their own places of employment, the committee has concluded that an authorized representative of employees should be given an opportunity to accompany the person who is making the physical inspection * * * [T]he inspector should have an opportunity to question employees in private so that they will not be hesitant to point out hazardous conditions which they might otherwise be reluctant to discuss.

Legislative History of the Occupational Safety and Health Act of 1970, 92d Cong. 1st Sess., p. 151 (Committee Print, 1971) (Hereinafter *"Leg. Hist."*).

> Certainly no one knows better than the working man what the conditions are, where the failures are, where the hazards are, and particularly where there are safety hazards. The opportunity to have the working man himself and a representative of other working men accompanying inspectors is manifestly wise and fair, and in arriving at the objectives of this legislation I think it is one of the key provisions of the bill * * *

Remarks of Senator Williams, *Leg. Hist.* p. 430; *see also Leg. Hist.*, pp. 852, 1216–17.

In addition to the above statements in the legislative history, it has been the agency's experience that employee participation and cooperation at the inspection stage have proved to be crucial to enforcement efforts under the Act. Throughout the agency's nine-year enforcement experience, employees have provided assistance and information essential to enable representatives of the Secretary to determine whether violations of the Act exist and what abatement action should be taken. Employee participation in the walkaround process and related activities has aided the Secretary in the performance of his duties and responsibilities under the Act to conduct

comprehensive and effective inspections.

The importance of employee involvement in the inspection process is substantiated beyond peradventure by the numerous comments addressing the issue. Numerous OSHA field personnel have documented for the record the many ways in which employee participation has aided the Secretary in the performance of his duties and responsibilities. For example, there have been many instances where employees have informed OSHA during the inspection of hazards which might otherwise not have been detected by the compliance officer. *See,* e.g., Exhibits 3–4 at p. 5; 3–6 at p. 6; 3–7 at pp. 4, 5; 3–8 at p. 5; 3–18 at p. 1; 3–19 at p. 9; 3–27 at p. 1. By virtue of their familiarity with the workplace and its operations, employee representatives have ensured that all locations and all phases of workplace activities are examined for possible hazards. *See,* e.g., Exhibits 3–5 at p. 7; 3–7 at p. 2; 3–8 at p. 2; 3–8 at p. 7; 309 at p. 7; 3–10 at p. 4; 3–35 at p. 1. Employees often explain to OSHA inspectors how machinery operates. *See,* e.g., Exhibits 3–4 at p. 4; 3–6 at p. 2; 3–9 at p. 12; 3–25 at p. 2; 3–33 at p. 2. The increasingly complex nature of workplace hazards, as in the health area, has imposed greater burdens on the Secretary in detecting these hazards and has correspondingly made the need for employee involvement at the inspection stage even more compelling. *See,* e.g., Exhibits 3–8 at p. 4; 3–33 at p. 15. In several instances, compliance officers have found that employee representatives clarify or correct representations made to the inspector by employer representatives. *See,* e.g., Exhibits 3–3 at p. 4; 3–4 at p. 2; 3–19 at p. 28; 3–38 at p. 2. Many OSHA personnel have expressed the view that the presence of the employee representative in the inspection team often serves to encourage other employees to discuss workplace conditions with the OSHA inspector. As a result, the statutorily preferred open channels of communication between the Secretary and employees are better facilitated. *See,* e.g., Exhibits 3–4 at pp. 3, 4; 3–6 at pp. 4, 6; 3–9 at pp. 7, 9; 3–11 at pp. 1, 6; 3–12 at pp. 1, 3; 3–19 at p. 9. One compliance officer indicated that the presence of an employee representative reduces tensions among all parties and results in greater cooperation between the inspector and the employer representative. *See* Exhibit 3–11 at p. 3. Moreover, some OSHA personnel believed that the absence of an employee representative makes the conduct of the inspection more difficult. *See,* e.g., Exhibits 3–6 at p. 3; 3–19 at p. 13; 3–25 at p. 3; 3–38 at p. 1. Other inspectors, on the basis of actual experience, have concluded that inspections without the benefit of employee representatives are more difficult to conduct and less efficient than those in which an employee representative participates. *See,* e.g., Exhibits 3–6 at p. 6; 3–8 at p. 8; 3–19 at pp. 11, 15, 16; 3–23 at p. 1.

The agency's experience that employee participation is an essential part of the inspection process is also supported by the comments submitted by the public. *See,* e.g., Exhibits 2–4; 2–58; 2–61; 2–116; 2–141; 2–146; 2–271. Many commentors expressed the view that the worker is in the best position to understand and identify workplace hazards and their location. *See,* e.g., Exhibits 2–68; 2–108; 2–111; 2–123; 2–146; 2–169; 2–215; 2–282, 2–289. Some commentors noted that hazards may go undetected by OSHA inspectors who do not have the benefit of an employee representative's knowledge and experience. *See,* e.g., Exhibits 2–34; 2–61. Other commentors expressed concern that, in the absence of an employee representative, some employers make incomplete or incorrect representations to the inspector regarding workplace practices or conditions. *See,* e.g., Exhibits 2–69, 2–155, 2–256, 2–287, 2–282, 2–307. Also noted were the views that the presence of an employee representative in the inspection team alerts other employees to the inspector's presence and encourages other workers to express their concerns regarding hazardous conditions to the inspectors. *See,* Exhibits 2–196, 2–217.

In view of the above, the agency concludes that the participation of employee representatives in walkaround and related activities is crucial to effective and efficient enforcement of the Act. In reaching this conclusion, the agency is not unmindful of some comments which question the usefulness of employee representatives. *See,* e.g., Exhibits 2–1; 2–44; 2–78; 2–151; 2–165; 2–186; 2–211; 2–214; 2–253; 2–257; 2–261; 2–265; 2–272; 3–9 at p. 15. However, the overwhelming evidence in the record confirms the value of employee participation in the inspection process substantiating the agency's experience and supporting the above finding.

The agency recognizes that a considerable number of walkaround inspections are conducted without the participation of employee walkaround representatives. However, this fact in no way detracts from the importance of employee involvement in the walkaround. Rather, it indicates that in some instances, particularly in non-union establishments, the selection of an employee walkaround representative would be impractical or would entail complex and time-consuming procedures that would seriously delay the conduct of inspections and effective and efficient enforcement of the Act. Section 8(e) of the Act recognizes that in some situations the participation of an employee representative would not be possible; in those cases, the Act requires that the OSHA inspector consult with a reasonable number of employees at the workplace during the course of the inspection. OSHA field instructions require compliance officers to make every effort to determine if an employee walkaround representative can be designated, and where the selection is "impractical" the inspector is directed to proceed to the inspection, interviewing employees as he or she makes the physical tour of the workplace. *See,* Field Operations Manual, V–2. However, the record overwhelmingly shows that where an employee representative has been selected his or her participation is crucial to effective inspection activity.

C. Pay for Employee Representatives

As noted in the November 14, 1980 proposal, the agency believes that forcing employees to suffer economic detriment through loss of pay or other benefits would constitute a serious disincentive to an employee from participating in a walkaround inspection. As a consequence, the failure to pay for walkaround would interfere with the statutory right of employees to accompany the OSHA inspector and to notify compliance officers of hazards prior to and during inspections, a right expressly granted to employees under section 8(f)(2) of the Act. When employees are discouraged from present and future participation in the walkaround and related activities, the open channels of communication between employees and the Secretary would be seriously impaired. OSHA compliance personnel would be substantially limited to reliance on information provided by employers—the subject of the inspection—thereby reducing the likelihood of obtaining complete, objective and useful information on workplace hazards, as discussed earlier. Thus, the failure to pay for walkaround would be harmful not only to the exercise of employees' protected rights but also to the entire enforcement scheme of the Act.

That an employee would be more reluctant to participate in a walkaround if he or she would lose pay for the time involved is, in the view of the agency, a

matter of common sense in light of experience. This view was corroborated by many comments in the record. Commentors stated that walkaround compensation is essential in order to ensure proper administration and enforcement of the Act. *See*, e.g., Exhibits 2–9, 2–271, 2–276, 2–307. Commentors expressed concern over the chilling and deterring effects that the failure to pay walkaround compensation has on employee participation in the inspection. *See*, e.g., Exhibits 2–9, 2–58, 2–116, 2–175, 2–203, 2–269, 2–283, 2–306. Other commentors have noted the inability of many employees to afford a loss of earnings caused by participation in a walkaround. *See*, e.g., Exhibits 2–34, 2–61, 2–94, 2–109, 2–160, 2–210, 2–290. According to several commentors, employees will choose to remain at their work station when presented a choice between receiving pay or accompanying the OSHA inspector without pay, thereby depriving other employees of representation and the inspector of their assistance. *See*, e.g., Exhibits 2–58, 2–133, 2–155, 2–290. This is especially true when lengthy inspections are conducted and significant amounts of compensation would be lost. *See*, e.g., Exhibit 2–276.

In addition to the above, specific instances noted in the record demonstrate that the failure to pay for time spent during the walkaround discourages employee participation in such activities. In one case, the treasurer of the company refused to pay the union representative for time spent on the walkaround and the representative then chose not to accompany the compliance officer. The inspector noted that not having an employee representative made it difficult to ascertain that all work areas and all operations were seen during the high hazard industry inspection of the large facility. *See* Exhibit 3–6, at p. 8.

In another case, the company refused walkaround pay to any person wishing to accompany OSHA personnel during the walkaround, and the union could not pay any of the plant personnel. The president of the union, not a plant employee, was invited to participate in the walkaround but he declined the offer. The inspector noted several ways in which the effectiveness of the inspection was seriously diminished, including a reluctance of employees to speak to the inspector and a very uncooperative attitude on the part of the employer's supervisory personnel. *See* Exhibit 3–19 at p. 11.

In another instance, a company denied walkaround pay to the representative of a local union. The representative spent a few days participating in the inspection conducted in response to a complaint of worker overexposure to carcinogenic and highly toxic chemicals, but after the third day of the inspection he could no longer afford financially to continue on the walkaround. Because of the size and complexity of the facility, as well as the seriousness of the alleged health hazards, the commentor was convinced that the effectiveness of the inspection was diminished by the lack of union representation on the walkaround. *See* Exhibit 2–276.

In another case, a complaint was filed by a union in response to an explosion that killed eight workers and another incident in which exposure to benzene was allegedly found. The complaint triggered a lengthy, complex inspection which at times consisted of up to five inspection teams in the facility at one time, with one union representative on each team. Two weeks into the inspection, the company announced that it would pay walkaround compensation for only one union representative. Thereafter, the union had to reduce the size of its walkaround representation. *See* Exhibit 2–276.

Another case in which lack of compensation served as a disincentive to employee participation in a walkaround occurred during a recent state inspection that lasted three days a week for seven to eight weeks. Because of a past practice of paying the union representative for internal safety inspections, the company agreed to pay one representative for the safety inspection but would not pay for the health inspection participation. Since the local union could not afford to cover that cost, no employee representative covered the inspections for such hazards as lead, arsenic, and sulfur dioxide. *See* Exhibit 2–310.

Several commentors expressed the view that the agency has not provided sufficient evidence to support its conclusion that lack of pay discourages employee participation in inspection process. *See*, e.g., Exhibits 2–83, 2–104, 2–113, 2–114, 2–119, 2–120, 2–128, 2–137, 2–150, 2–202, 2–216, 2–252, 2–253, 2–254, 2–270, 2–279. More specifically, a number of instances were adduced in the comments where employees participated in the walkaround despite the fact that they were not paid. *See*, e.g., exhibits 3–9 at p. 3; 3–19 at p. 7; 3–26. However, these comments in all cases do not make clear whether the employee was not paid at all for the walkaround, or was not paid by the employer but paid by the union. Indeed, a number of cases were mentioned in the record where employees were paid for the walkaround by the union. *See*, e.g., Exhibits 3–9 at pp. 5, 11, 12; 3–25. If, as may well be the case, the employee in these situations was paid by the union, the facts would *not* establish that failure to pay for walkaround is not a disincentive to participation. On the contrary, such union reimbursement in the face of the employer's refusal to pay indicates a recognition by the union that, without such reimbursement, the employees would be reluctant to act as walkaround representatives; accordingly, the unions voluntarily undertook this obligation in order to eliminate the economic suffering which would result from the employees not being paid, thereby enabling them to participate in the walkaround.

We recognize however that the record does not contain numerous specific instances of employee non-participation in walkaround because of non-payment. There therefore remains the question on this record whether the employer who is being inspected should be required to make this payment, or, as has sometimes been the case, the unions should assume this obligation, or employees should be relied on to participate in walkaround without being paid, presumably out of a sense of public responsibility. For the following reasons, the agency concludes that employers should be required to pay for walkaround pay, and that this critical element in the inspection process should not be left to the vagaries of union payment or employees agreeing to participate in walkaround even though it means a loss of pay. In the first place, there will undoubtedly be many cases where no union exists in the plant where the inspection is taking place. Even where there is a union there will be circumstances where the union is unable for financial reasons to undertake this obligation, particularly where the inspection is lengthy and more than one employee walkaround representative is involved. *See*, e.g., Exhibit 2–276. Also, since the union is supported by employee dues, payment by the union for walkaround time in the last analysis must be viewed as employees paying themselves for participation in the walkaround. Finally, it is uncertain to what extent employees are now willing, and would continue to be willing, to assume the walkaround obligation at the sacrifice of wages, particularly in the context of lengthy inspections.

Our conclusion that employers should be mandated to assume this burden is impelled by yet another critical consideration. We have already stated that the inspection process—and the

walkaround which is integral to effective inspection activity—are essential ingredients in the statutory scheme for abatement of workplace hazards and protection of workers. As has been recognized on numerous occasions, Congress has placed on employers the economic burden of taking the necessary actions to neutralize these dangerous conditions. The Senate Labor Committee in its report made it clear that, "Final responsibility for compliance with the requirements of this Act remains with the employer." *Leg. Hist. supra, 150–51; see Atlantic & Gulf Stevedores, Inc.* v. *OSHRC,* 534 F. 2d 541, 553 (3d Cir. 1976). And Senator Eagleton, a member of the subcommittee which considered the OSHA bill, stated that "[t]he costs that will be incurred by employers in meeting the standards of health and safety to be established under the bill are * * * reasonable and necessary costs of doing business." *Leg. Hist.* at 1150; *see also Leg. Hist.* at 444. We conclude that just as employers must under the statutory scheme assume the financial burdens of complying with the standards, so must they be obligated to make payments to employees for walkaround time to assure that this critical aspect of Congress' procedure for effective enforcement is fully carried out and not left to the uncertainties of union payment or voluntary action by unpaid employees.

In a strikingly similar situation, the Court of Appeals for the District of Columbia recently upheld a provision of the lead standard requiring employers who removed employees from areas of excessive lead exposure to maintain the earnings and benefits of the removed employees. *See United Steelworkers of America* v. *Marshall,* No. 79–1048, 8 BNA OSHC 1810, 1835–1842 (D.C. Cir., August 15, 1980). The Court relied on various statutory provisions and statements in the legislative history, in concluding that employers had "general financial responsibility" under the Act. *See also American Federation of Labor, etc.* v. *Marshall,* 617 F. 2d 636, 674–75 (D.C. Cir 1979).

In sum, the record evidence supports the self-evident, common-sense proposition that compensation is critical to the effectuation of employees' walkaround rights, which in turn is crucial to effective inspection activity. Clearly, if employees receive no reimbursement for their time spent in engaging in walkaround and related activities, they will be confronted with the Hobson's choice between promoting safety and health and receiving their regular remuneration. Such a choice is antithetical to the remedial purposes of the Act. And, in light of the record, the statutory scheme and the policy considerations discussed above, the agency further concludes that it is employers who should be required to assume the burden of payment for walkaround time.

It should be emphasized that OSHA's requiring walkaround compensation is not based on the "hours worked" provisions of the Fair Labor Standards Act, as the proposal stated. It is also not based on section 11(c) of the Act, which prohibits discrimination against employees for exercising rights under the Act. In the proposal, the agency concluded that failure to pay for walkaround benefits should be considered *per se* discrimination under section 11(c) because of its chilling effect on employee participation. While the agency continues to believe in the validity of the rationale, it has concluded based on the record that the more appropriate means for enforcement of the walkaround pay obligation is through the amendment of 29 CFR 1903.8 and the issuance of citations, and penalties which are adjudicated through the Review Commission. The provision of alternate routes of enforcement—as proposed—would lead to redundancy and confusion. (See, e.g., Exhibit 2–270)

D. Statutory Objections to Walkaround Compensation Requirement

Employers and industry groups commenting on the proposal argue that OSHA exceeded its authority in promulgating a walkaround compensation regulation (*See,* e.g., Exhibits 2–202, 2–253, 2–254, 2–259, 2–265, 2–270). They contend on the basis of *Leone* v. *Mobil Oil Corporation,* 523 F.2d 1153, 1160–61, (D.C. Cir. 1975) that Congress was silent on the issue of walkaround pay and that therefore OSHA is forbidden to promulgate a regulation dealing with the subject. However, Congressional silence on the issue does not lead to this conclusion. We have already discussed at length the legal and policy basis for this regulation. The Act is silent on most specific safety and health issues, but, as *United Steelworkers of America, supra,* notes, the Act gives OSHA broad remedial powers to effectuate Congressional purposes, including section 8(g)(2), with which *Leone, supra,* did not deal. In the later decision on the issue of walkaround pay, *Chamber of Commerce of the United States of America* v. *OSHA,* No. 78–2221, 8 BNA OSHC 1648, 1653 (D.C. Cir., July 10, 1980), the District of Columbia Circuit specifically left open the question of "* * * whether ordering pay for walkaround time is indeed a statutorily authorized, rational, nonarbitrary, and noncapricious method of supplementing the Act's provisions."

Employers and industry groups also contend that since the Act expressly includes certain employee rights, such as the right to file complaints with OSHA under section 8(f), the right to be parties in Occupational Safety and Health Review Commission proceedings, as well as the right of an authorized employee representative to accompany an OSHA compliance officer during a walkaround inspection, the Act excludes all other types of employee rights, such as walkaround benefits. Thus they rely on the canon of construction *expressio unius est exclusio alterius* ("the expression of one is the exclusion of another"). An argument against medical removal protection benefits based on this canon was rejected in *United Steelworkers of America, supra,* which relied on the following language in *Nat'l Petroleum Refiners Ass'n* v. *FTC,* 482 F.2d 672, 676 (D.C. Cir. 1973), *cert. denied,* 515 U.S. 951 (1975):

> This maxim (*expressio unius est exclusio alterius*) is increasingly considered unreliable * * * for it stands on the faulty premise that all possible alternative or supplemental provisions were necessarily considered and rejected by the legislative draftsmen.

Thus it is incorrect to say that because Congress expresely granted certain rights, such as the walkaround right, it prohibited OSHA from using its broad section 8 rulemaking authority to provide other employee rights, where it determines, after rulemaking, that such rights are necessary to enable the agency effectively to carry out its responsibilities.

Another argument based on the canon *expressio unius* was made by employers and their associations (*See,* e.g., Exhibits 2–202, 2–253). They contend that the express Congressional inclusion of walkaround pay in section 103(f) of the Federal Mine Safety and Health Act of 1977 indicates that in passing the OSH Act in 1970 the Congress intended to preclude OSHA from requiring walkaround pay. This contention is similar to an argument which was rejected in *United Steelworkers of America, supra,* at 1837. In that case an employer association argued that because Congress provided for earnings protection for miners suffering from pneumoconiosis in the Federal Coal Mine Health and Safety Act of 1969, it was aware of the concept of medical removal protection (MRP) in 1970 when it passed the OSH Act and so its failure to require MRP in the OSH Act or to

expressly delegate to OSHA the authority to require MRP proves that Congress intended that OSHA may not include MRP in any standards. After detailing the difficulties inherent in the *expressio unius* canon, as noted previously, the court noted that the maxim can only apply sensibly when very similar statutes are compared. However, as the court noted, there is a crucial difference between the two laws. In the OSH Act the Congress granted OSHA extremely broad authority to prevent all kinds of safety and health hazards throughout American industry. In the Coal Act the Congress created a sharply focused statute with many detailed standards. As the court stated at 1837:

> Congress may well have avoided all mention of medical removal protection in the OSH Act simply because it thought that mandating such a specific program was inappropriate in a statute so much broader and so much more dependent on agency implementation than the Coal Act.

Likewise, the Federal Mine Safety and Health Act of 1977 (to a certain extent the successor to the Coal Act), which is the basis of the employers' argument in this rulemaking proceeding, is a sharply focused statute with many detailed standards. Congress may well have avoided all mention of walkaround pay in the OSH Act because it thought that mandating such a specific program was inappropriate in a statute so much broader and so much more dependent on agency implementation than the Federal Mine Safety and Health Act of 1977. *See also Marshall* v. *Whirlpool Corp.*, 593 F. 2d 715, 723–28 (6th Cir. 1979), *aff'd* 445 U.S. 1 (1980).

Another contention made by employers and industry groups is that an OSHA requirement of walkaround pay would constitute an unwarranted interference with the collective bargaining process (*See* e.g. Exhibits 20103, 2–113, 2–253, 2–254). This type of argument was also rejected in *United Steelworkers of America, supra,* at 1840. Although MRP is a mandatory subject of collective bargaining under federal law, the court held that this fact does not mean that an OSHA requirement for walkaround pay is precluded. As noted by the court, any issue directly related to worker safety or health is a mandatory subject of collective bargaining; in passing the comprehensive OSH Act Congress knew it was laying a basis for OSHA regulations that would replace or obviate the occupational safety and health provisions of many collective bargaining agreements, the court stated. In the view of the court, there is nothing in the OSH Act or other labor legislation to suggest that Congress removed from OSHA the authority to promulgate a regulation necessary in achieving occupational safety and health simply because such a program could otherwise be established through collective bargaining. Such an inference would contradict the principle that remedial welfare and labor laws are to be liberally construed, the court held. This reasoning, which was applied to sustain a provision for medical removal protection benefits, is directly applicable to a provision for walkaround benefits.

Some commentors who oppose the regulation rely upon the current practice of many employers to pay walkaround compensation. Such industry comments argue that since many employers already provide walkaround compensation the regulation is unnecessary. (*See,* e.g., Exhibits 2–113, 2–254, 2–270). However, there is no guarantee that employers will continue this practice. Further, there still are a number of employers which do not provide walkaround compensation (*See,* e.g., Exhibits 2–202, 2–253D, p. 18).

In conclusion, the Act permits OSHA to require employers to provide walkaround benefits. This imposition of the financial burden on employers is justified as a practical matter by the unpredictability of union reimbursement and of a voluntary employer-paid walkaround compensation program.

III. Summary and Explanation of the Regulation and Particular Issues

The following part discusses individual provisions of the regulation, including analysis of the particular issues involving the individual requirements, the record evidence, and the policy considerations underlying the various provisions of the regulation. The language of the regulation closely follows that of the proposed amendment of 29 CFR 1903.8 except for revisions based on OSHA's review of the rulemaking record.

Section 1903.8(e)(1)(i). This provision sets forth the general requirement that employers provide walkaround benefits to authorized employee representatives who accompany compliance officers during inspections. The rationale for this basic requirement has been discussed previously.

One specific issue that has been raised with respect to this provision is the requirement that the employee representative be paid for attendance at opening and closing conferences. Employers commented that opening and closing conferences are not part of the "physical inspection" mentioned in section 8(e) on walkaround rights and that therefore employee representatives have no right to participate in these conferences. (*See,* e.g., Exhibits 2–104, 2–113, 2–202, 2–216, 2–254, 2–270). To the contrary, opening conferences and closing conferences are integral parts of the physical inspection. During the opening conference the purposes of the inspection and procedures for the rest of the inspection are explained. One comment noted that the effectiveness of employee participation in the rest of the inspection is diminished when employee representatives do not understand the broader context of the inspection and cannot assist in planning the inspection because of their non-attendance at the opening conference. (*See* Exhibit 2–252A). The closing conference is also an important part of the inspection because at that time possible violations and abatement periods are discussed. The OSHA Field Operations Manual notes these important functions of the opening and closing conferences. In particular, the Field Operations Manual states that the compliance officer should conduct joint opening and closing conferences with employer and employee representatives; if such joint conferences are not practical separate conferences with employer representatives and employee representatives are to be conducted. *See* Field Operations Manual V–6.2, V–14. Since the opening and closing conferences are integral parts of physical inspections and employee representatives have the right to attend them, the rationale for employer walkaround compensation for the observation portion of the inspection, discussed previously, applies to walkaround compensation for the opening and closing conferences.

Paragraph (e)(1)(ii). Under this requirement, if a new employee representative replaces an employee representative then on the inspection team, the employer would be required to provide walkaround benefits to each representative for that portion of the walkaround in which each representative participated.

Paragraph (e)(1)(iii). Under this provision, if compliance officers, either individually or in groups inspect different parts of a workplace at the same time or at different times—for example, in a large facility—one employee representative for each inspection team would be entitled to walkaround benefits.

In general the regulation specifies the number of employee representatives which must be compensated. Under the regulation one employee representative

accompanying the compliance officer(s) during a walkaround inspection would be entitled to walkaround benefits. In some situations a group of two or more compliance officers will conduct an inspection jointly. In such circumstances only one employee representative would be entitled to benefits. Many union comments stated that if the compliance officer requests additional employee representatives all should receive walkaround benefits. (*See*, e.g., Exhibits 2–107, 2–181, 2–184, 2–268, 2–271, 2–275). Some industry comments opposed this concept on the grounds that compensating more than one employee representative for a single inspection team would be burdensome and disruptive (*See*, Exhibits 2–216, 2–250, 2–270). OSHA rejects the idea that more than one employee representative per inspection team should be compensated because to do so would be burdensome for employers. A single employee representative at a time can usually provide sufficient information to the compliance officer and any lack of information on his part may be supplied by interviews with individual employees at their worksite. Furthermore, compensating only one employee representative for an inspection would be consistent with section 103(b) of the Federal Mine Safety and Health Act of 1977, 30 U.S. 813(b).

As paragraph (e)(1)(iii) states, if more than one inspection team inspects different parts of a workplace at the same time or at different times, there will be more than one employee representative, but, as stated previously, only one for each team. Concern has been expressed about the number of inspection teams on a worksite at the same time (e.g., Ex. 2–270). As a general rule, more than one team is utilized only in large worksites.

A related issue is the number of employee representatives to be compensated at multi-employer worksites, such as construction sites. Concern has been expressed that payment of one employee representative for each employer would be burdensome. (*See* Exhibit 2–270). On the other hand, some unions have urged that each trade on a building site should have a compensated employee representative. (*See*, Exhibit 2–212). Under section 8(e) of the Act, a representative of the employees of each employer is entitled to accompany the compliance officer. Therefore, the representative of the employees of each employer on a multi-employer worksite shall be compensated. As a practical matter, this solution is helpful to the inspection because in any cases each contractor on the site does a different type of work, e.g. carpentry and plumbing, and an employee representative for each employer could provide information on the employer's individual work processes and hazards. However, compensating an employee representative for each trade, when more than one trade works for a single employer, would be unduly burdensome, for the reasons stated previously with respect to the general question of the number of compensated employee representatives for an inspection team.

It should be stated that 29 CFR 1903.8(a) does make provision for more than one employee representative for an inspection team when the compliance officer deems this necessary. Nothing in this regulation should be construed to affect the operation of that provision. Only compensation is affected by this regulation.

Paragraph (e)(1)(iv). The employer would also be required to provide to any employee walkaround benefits for time spent by employees in other activities related to the inspection. The rationale for this provision has been discussed previously.

Paragraph (v). The requirement that the employer provide walkaround benefits is defined to include maintenance not only of the earnings which the employee would have received if he had performed his work duties, but also of all other benefits, such as seniority and insurance, to which an employee would otherwise be entitled for working. The purpose of this provision is to ensure that the employee suffers no economic loss of any kind because of his participation in the inspection. The final regulation, as compared to the proposal, specifies that an employee be paid at the same wage rate during his walkaround activities as he would have been paid for performing his work duties at that time. (For a discussion of overtime pay see paragraph (e)(1)(vi) below.)

Paragraph (e)(1)(vi). Under the regulation employee walkaround representatives and employees engaged in related activities will be entitled to receive walkaround benefits only for time spent in the walkaround inspection during their regular working hours, or overtime hours, which were assigned or would have normally been assigned for purposes other than the inspection. Thus, for example, an employer would not be required to provide walkaround benefits to a representative whose regular working day has ended and has remained in the workplace or who returns to the workplace solely for the purpose of participating in a walkaround inspection.

Comments were specifically invited on the issue whether walkaround benefits should apply to any time during which an employee representative participates in a walkaround inspection or an employee engages in inspection-related activities. A number of unions supported this concept, saying, for example, that the failure to pay for any time, including unplanned overtime, would constitute a disincentive to participation during unplanned overtime hours. (*See*, e.g., Exhibits 2–190, 2–195, 2–204, 2–213, 2–255, 2–256, 2–260, 2–266, 2–268, 2–269, 2–271). A number of employers and employer groups objected to this idea, saying, for example, that if walkaround compensation is to be paid at all, the only type of overtime which should be the subject of compensation is previously scheduled overtime, that to compensate for unplanned overtime would be unlawful; and that an employee representative leaving his shift may be replaced by another representative. (*See*, e.g., Exhibits 2–113, 2–253, 2–254, 2–270). OSHA has determined that it would be unreasonable to require employers to provide walkaround compensation benefits for unplanned overtime because the employee, if he were denied compensation for such time, would not be losing expected compensation. However when an employee is entitled to overtime pay under this regulation because such overtime has been previously planned, the employee will be paid at his normal overtime rate. Such a requirement is necessary to assure that the employee receives the pay that he normally would expect. Failure to receive such expected payment would act as a disincentive to walkaround participation.

Paragraph (e)(2)(i). This regulation would be enforced like other OSHA regulations, such as those in Part 1904 on recordkeeping and reporting. If violations of the regulation are found, citations would be issued under section 9(a) and civil penalties, if appropriate, would be proposed. The employer would have the right to contest these citations before the Occupational Safety and Health Review Commission (see section 10), whose decisions are subject to review in the courts of appeals (see section 11(a)). The Secretary also has the right to seek enforcement of final Review Commission orders in the courts of appeals (section 11(b)).

Paragraph (e)(2)(iii). Under this provision employers found in violation of the other provisions of this regulation would be required to post a notice setting forth the regulation and stating

that a citation became a final order on a certain date with respect to a denial of walkaround compensation for a named employee and that the employer has complied with and promises to comply with the walkaround compensation regulation.

IV. Regulatory Assessment

In accordance with Executive Order No. 12044 (43 FR 12661, March 24, 1978), OSHA has assessed the potential economic impact of this regulation. Based on the economic identification guidelines of the Department of Labor (44 FR 5570, January 26, 1979), OSHA has concluded that the subject matter of this regulation is not a "major" action which would necessitate further economic impact evaluation and the preparation of a regulatory analysis.

In general, the guidelines provide that a regulatory analysis should be performed, if the regulation is likely to cause or result in:

(1) An increased cost of $100 million or more in any one year for the national economy;

(2) A $50 million or larger increase in costs or total revenues in any one year for a specific segment of the economy such as a specific industry, geographic regions or state or local government;

(3) A direct dislocation of 10,000 jobs or more;

(4) A substantial limitation on competition, marketing, market information or an increase in concentration in a market doing $100 million of business a year or more. (44 FR 5576).

The third and fourth factors are not relevant to the regulation. With regard to the first two factors, OSHA estimates that walkaround benefits will amount to approximately $5.3 million a year. This estimate has been made on the basis of statistics which take into consideration average wage rates, the number of federal and state OSHA inspections a year, and the average length of a federal OSHA inspection. It also assumes that the only increased costs, as a general matter, will be compensation for the employee representative's walkaround time because, according to OSHA's experience, employers generally do not deduct from wages for time spent by employees (who are not walkaround representatives) in the discusson of occupational safety and health matters with compliance officers during inspections. The average hourly earnings of a production of nonsupervisory worker on a private nonagricultural payroll during June, 1980, was $6.81. Bureau of Labor Statistics, "Employment and Earnings, September, 1980," "Vol. 27 No. 9 (Exhibit 3-1).

According to OSHA statistics, there were 146,288 federal and state OSHA safety inspections during fiscal year 1979, the latest year for which figures are available; there were 19,272 federal and state health inspections during that time. (Exhibit 3-2). The average length of a federal safety inspection during that year was 4.4 hours; the average length of a federal health inspection was 8.3 hours (Exhibit 3-39). (For this preliminary analysis, the average length of state inspections is assumed to be the same.) On the basis of these figures, the maximum cost of the proposed regulations would be approximately $5.3 million per year, which is clearly below the threshold for classifying a regulation as a major regulation. Moreover, this is a worst-case estimate since many employers already provide walkaround benefits to employee representatives and since many workplaces do not have authorized employee representatives for walkaround and thus the increased cost to employers from these regulations should be much less than $5.3 million. Accordingly, having considered the comments on the cost of walkaround compensation (*See*, e.g. Exhibits, 2-254 and 2-257), it is determined that preparation of a regulatory analysis is not necessary. The benefits of the proposal are significant. As discussed previously, the proposal will encourage walkaround participation, thus increasing the effectiveness of inspections and thereby promoting occupational safety and health.

V. Effective Date

The regulation will be effective with respect to walkaround benefits for time spent in walkaround or related activities on or after the thirtieth day after the promulgation of this regulation. This provision should give employers sufficient time to prepare for compliance with the new regulation as well as satisfy the legitimate expectations for compensation of employees who participate in inspections.

VI. Authority

This document was prepared under the direction of Eula Bingham, Assistant Secretary of Labor for Occupational Safety and Health, 200 Constitution Ave., NW., Washington, D.C. 20210.

Accordingly, pursuant to sections 8(c) and 8(g)(2) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 657(c) and 657(g)(2)), 5 U.S.C. 553, and Secretary of Labor's Order 8-76 (41 FR 25059), OSHA amends Part 1903 of Title 29 of the Code of Federal Regulations by adding a new paragraph (e) to § 1903.8, as set forth below.

Signed at Washington, D.C. this 12th day of January 1980.

Eula Bingham,

Assistant Secretary, Occupational Safety and Health.

PART 1903—INSPECTIONS, CITATIONS AND PROPOSED PENALTIES

1. 29 CFR 1903.8 is amended by adding a new paragraph (e) to read as follows:

§ 1903.8 Representatives of employers and employees.

* * * * *

(e) *Walkaround compensation*—(1) *Requirements.* (i) The employer shall provide to the authorized representative of the employees walkaround benefits for the time during which the representative accompanies the Compliance Safety and Health Officer(s) in a walkaround inspection team during any physical inspection of a workplace, including attendance at the opening and closing conferences.

(ii) If a new employee representative replaces an employee representative during a walkaround inspection, each representative is entitled to walkaround benefits for the portion of the inspection in which each representative participated.

(iii) If more than one walkaround inspection team is utilized, the employee representative for each team is entitled to the walkaround benefits required by this section.

(iv) In addition, the employer shall provide walkaround benefits to any employee for the time during which (A) a Compliance Safety and Health Officer, in conducting the inspection consults with or questions the employee concerning matters of safety or health in the workplace; or (B) the employee notifies the Compliance Safety and Health Officer, while conducting the inspection, of an occupational safety or health hazard or violation of the Act which the employee has reason to believe exists in such workplace.

(v) For the purposes of this section, the requirement that an employer provide walkaround benefits means that the employer shall maintain the earnings, seniority, and other employment rights and benefits of an employee as though the employee had been performing work for the employer.

(iv) For the purposes of this section, the time spent by an employee for which the employer shall provide walkaround benefits includes only the regular working hours of the employee, or overtime hours which were assigned or

would otherwise normally have been assigned by the employer for purposes other than the walkaround inspection. The rate of pay will be the rate which normally would be applicable for the time if work duties had been performed.

[2] *Enforcement.* (i) Any employer who fails to comply with paragraph (e)(1) of this section shall be subject to citations, civil penalties, and enforcement of Occupational Safety and Health Review Commission orders in the courts of appeals, in accordance with sections 9, 10, 11 (a) and (b), and 17 of the Act.

(ii) Any citation issued against an employer because of his violation of this regulation shall include in the abatement requirements thereof a requirement that the employer shall post a notice within ten days of the date on which the citation or citation item becomes a final order, setting forth that the ordered walkaround compensation has been paid and the employer will comply with the requirement of the regulation in the future. The citation shall also require that the notice shall be posted in a conspicuous place and will remain in place for sixty days.

(3) Effective date. This regulation will be effective with respect to time spent in walkaround or related activities on or after [insert date 30 days after publication].

(Secs. 6(e) and (g)(2); 84 Stat. 1600, 1603 (29 U.S.C. 657(e) and (g)(2) (5 U.S.C. 553); Secretary of Labor's Order 8-76 (41 FR 25059))

[FR Doc. 81-1748 Filed 1-15-81; 8:45 am]

BILLING CODE 4510-26-M

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29 CFR Part 1952

Approval of Supplements to California State Plan

AGENCY: Occupational Safety and Health Administration, U.S. Department of Labor.

ACTION: Final rule.

SUMMARY: The State of California has submitted an Occupational Safety and Health Plan supplement containing the restructuring of Safety Engineer classification used in State service (Cal/OSHA). This document announces the approval of the supplement.

EFFECTIVE DATE: January 16, 1981.

FOR FURTHER INFORMATION CONTACT: Patricia O. Horn, Project Officer, Office of State Programs, Occupational Safety and Health Administration, 200 Constitution Avenue, N.W., Washington, D.C. 20210, (202) 523-8045.

SUPPLEMENTARY INFORMATION:

Background

Part 1953 of Title 29, Code of Federal Regulations, provides procedures under Section 18 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 667) (hereinafter referred to as the Act) for review of changes and progress in the development and implementation of State plans which have been approved in accordance with Section 18(c) of the Act and Part 1902 of this chapter. On August 19, 1977, a notice was published in the **Federal Register** (Vol. 42, No. 161) of a decision to approve the California Plan and the adoption of Subpart K to Part 1952 containing the decision.

The U.S. Civil Service Commission found in January 1976 that the California personnel operations were in conformance with the Standards for a Merit System of Personnel Administration. On July 1, 1979, the State adopted a revised stratification of the Safety Engineer series, including salaries and classification, in order to overcome the difficulty in recruiting a significant number of women and minority candidates in safety engineering jobs. The Division of Occupational Safety and Health has had to rely on recruitment efforts directed almost exclusively at the journey level of Safety Engineer, and these circumstances have hampered the Division in its efforts to develop effective affirmative action and upward mobility programs. In addition to these considerations, questions have arisen concerning the lack of salary parity between the safety engineering series and other engineering series in State service, and the supplement addresses these questions as well. Review of this plan supplement by OSHA indicates that the State regulation conforms to the merit system requirements in effect.

Description of Supplement

This supplement establishes a safety engineering technician series to provide an alternative entry into the professional technician series and an upward mobility opportunity for clerical support staff.

Establishing the safety technician series further delineates the levels of complexity of the safety engineering work.

The revised stratification of the Safety Engineer series relieves existing positions of less technical tasks currently assigned, and raises the level of responsibility at which they function.

Comparisons are also made between the supervisory structure of the Safety Engineering series and existing supervisory classes in various engineering disciplines in other State agencies. In addition, salary increases for supervisory personnel are listed along with their class description.

Location of the Plan and Supplement for Inspection and Copying

A copy of the plan and its supplements may be inspected and copied during normal business hours at the following locations:

Office of the Directorate of Federal Compliance and State Programs, 200 Constitution Avenue, N.W., Room N3619, Washington, D.C. 20210

Office of Regional Administrator, Occupational Health and Safety Administration, 450 Golden Gate Avenue, Room 11349, San Francisco, California 94102

California Occupational Safety and Health Administration, 455 Golden Gate Avenue, San Francisco, California 94102

Public Participation

Under § 1953.2 of this Chapter, the Assistant Secretary may prescribe alternative procedures to expedite the review process or for any other good cause which may be consistent with applicable law. The Assistant Secretary finds that this restructuring is consistent with the merit system (personnel administration) contained in the approved plan which was previously made available for public comments. Good cause is, therefore, found for approval of the supplement without public comment and notice.

Decision

After careful consideration, the California plan supplement described above is hereby approved under Part 1953 of this Chapter. This decision incorporates the requirements of the Act and implementing regulations applicable to State plans generally. Accordingly, Subpart K of 29 CFR Part 1952 is amended by adding a new paragraph (f) to § 1952.175 as follows:

§ 1952.175 Changes to approved plan.

* * * * *

(f) In accordance with Subpart E of 1953 of this Chapter, the revised stratification of the Safety Engineer Series, adopted by California on July 1, 1979, was approved by the Assistant Secretary on January 12, 1981.

(Sec. 18, Pub. L. 91-596, 84 Stat. 1608 (29 U.S.C. 667))

Signed at Washington, D.C. this 12th day of January 1981.

Eula Bingham,

Assistant Secretary of Labor.

[FR Doc. 81-1752 Filed 1-15-81; 8:45 am]

BILLING CODE 4510-26-M

29 CFR Part 1952

Approval of Supplements to the Michigan State Plan

AGENCY: Occupational Safety and Health Administration, Department of Labor.

ACTION: Final rule.

SUMMARY: This notice approves the administrative proceedings for granting variances; regulations for inspections and investigations, citations, and proposed penalties; the procedural rules for the State Board of Health and Safety Compliance and Appeals; procedures for notifying complainants of the disposition of complaints; and the 1979 amendments to the Michigan Occupational Safety and Health Act.

EFFECTIVE DATE: January 16, 1981.

FOR FURTHER INFORMATION CONTACT:
John M. Kelly, Project Officer, Office of State Programs, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210, (202) 523-8061.

SUPPLEMENTARY INFORMATION:

Background

Part 1953 of Title 29, Code of Federal Regulations, prescribes procedures under Section 18 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 667) (hereinafter referred to as the Act) for review of changes and progress in the development and implementation of State plans which have been approved under Section 18(c) of the Act and 29 CFR Part 1902. On October 3, 1973 notice was published in the Federal Register of the approval of the Michigan plan and of the adoption of Subpart T of Part 1952 containing the decision (38 FR 27391). On November 1, 1977, a notice was published in the Federal Register (42 FR 57140) acknowledging the receipt of the supplements containing the procedural rules for Variances; regulations for Inspections and Investigations, Citations, and Proposed Penalties; the procedural rules for the State Board of Health and Safety Compliance and Appeals; and copies of letters for notifying complainants of the disposition of complaints. In a letter dated March 17, 1980, to the Acting Regional Administrator, Region V, the State submitted the 1979 amendments to the Michigan State plan for Occupational Safety and Health. Except for the amendments to the Michigan Occupational Safety and Health Act, all the supplements were made available for public comment.

Description of Plan Supplements

1. *Procedural Rules for Granting Variances, Part 12.* The State submitted rules effective March 1, 1978 which provide for the granting of variances under the Michigan Occupational Safety and Health Act. After review by OSHA, the State amended the Rules in May of 1979 to provide that requests for variances and interim orders include a statement concerning the opportunity for public response and a hearing, as well as notice of intention to modify or revoke a variance, and be published in the LABORegister, a publication of the Michigan Department of Labor. The State also agreed not to consider a request for a temporary variance if the standard from which a variance is requested is in effect at the time of the request, and clarified the requirement that the proponent of a permanent variance demonstrate, by a preponderance of evidence, that the operations proposed to be used will provide protection equivalent to that under the standard.

2. *Regulations for Inspections and Investigations, Citations, and Proposed Penalties, Part 13.* The State submitted regulations, effective November 12, 1978, for the conduct of inspections and investigations, the issuance of citations, and the proposal of penalties. They include provisions for regulating exceptions to the prohibition on advance notice of inspections and investigations.

3. *Procedural Rules for the Board of Health and Safety Compliance and Appeals, Part 4.* The State submitted rules of procedures, effective November 23, 1978, governing contested cases before the Board or a hearing officer. After review by OSHA, the State amended the rules, effective May 7, 1979, to include an indication in the rules that certain additional rights are granted to parties under the Michigan Administrative Procedures Act, such as provisions relating to posting of notices of appeals, and provisions dealing with service and notice to employees and employee representatives.

4. *Notification of the Disposition of Complaints.* The State submitted copies of form letters used to notify complainants of the final disposition of their complaints including provision for requesting an informal review of the determination not to issue a citation based on the complaint.

5. *Amendments to the Michigan Occupational Safety and Health Act, Act 154 Public Acts of 1974 (MIOSHA).* MIOSHA was amended by Act 149 of the Public Acts of 1978, approved on November 17, 1979, and became effective March 27, 1980. The amendments include provisions relating to an employer's obligation to pay for personal protective equipment, employee access to health records, employee attendance at meetings, walkaround pay, red tag procedures, collection of civil penalties, employee attendance at first appeal meetings, trade secrets, and discrimination complaints.

Location of the Plan and Its Supplements for Inspection and Copying

A copy of the plan and the supplements may be inspected and copied during normal business hours at the following locations: the Office of the Regional Administrator, Occupational Safety and Health Administration, 230 South Dearborn Street, Chicago, Illinois 60604; Michigan Department of Labor, State Secondary Complex, 7150 Harris Drive, Lansing, Michigan 48926; Office of State Programs, Occupational Safety and Health Administration, Room N-3613, 3rd and Constitution Avenue N.W., Washington, D.C. 20210.

Public Participation

Interested persons were afforded thirty days to submit written comments or request a hearing concerning all the supplements except the amendments to the Michigan Occupational Safety and Health Act. No public comments or request for a hearing were received. The amendments to the Michigan Occupational Safety and Health Act were adopted in accordance with the procedural requirements of State law and further public participation is not necessary.

Decision

After careful consideration, the Michigan plan supplements described above are approved under Part 1953. This decision incorporates the requirements of the Act and implementing regulations applicable to State plans generally. Accordingly, Subpart T of 29 CFR Part 1952.204 is amended by adding new paragraphs (e) and (f) as follows:

§ 1952.264 Completed developmental steps.

* * * * *

(e) In accordance with § 1952.203(d), Procedural Rules for the granting of Variances, Regulations for Inspections and Investigations, Citations, and Proposed Penalties and Procedural Rules for the Board of Health and Safety Compliance and Appeals, were approved by the Assistant Secretary on January 12, 1981.

(f) In accordance with prior commitments, the Michigan Occupational Safety and Health Act as amended by Act 140 of the Public Acts of 1979, was approved by the Assistant Secretary on January 12, 1981.

(Sec. 18, Pub. L. 91-596, 84 Stat. 1608 (29 U.S.C. 667))

Signed at Washington, D.C. this 12th day of January 1981.

Eula Bingham,

Assistant Secretary of Labor.

[FR Doc. 81-1730 Filed 1-15-81; 8:45 am]

BILLING CODE 4510-26-M

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29 CFR Part 1952

Approval of Supplements to the Michigan State Plan

AGENCY: Occupational Safety and Health Administration, Department of Labor.

ACTION: Final rule.

SUMMARY: This notice approves the State's regulations for reporting of occupational injuries and illnesses; and the operations manuals for the occupational safety program and the occupational health program.

EFFECTIVE DATE: January 16, 1981.

FOR FURTHER INFORMATION CONTACT: John M. Kelly, Project Officer, Office of State Programs, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, D.C. 20210, (202) 523-8061.

SUPPLEMENTARY INFORMATION:

Background

Part 1953 of title 29, Code of Federal Regulations, prescribes procedures under Section 18 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 667) (hereinafter referred to as the Act) for review of changes and progress in the development and implementation of State plans which have been approved under Section 18(c) of the Act and 29 CFR Part 1902. On October 3, 1973, notice was published in the Federal Register of the approval of the Michigan plan and of the adoption of Subpart T of Part 1952 containing the decision (38 FR 27391). On February 25, 1977, a notice was published in the Federal Register (42 FR 11024) acknowledging receipt of a supplement concerning manuals for compliance operations of the Michigan Department of Labor and Public Health. On November 1, 1977, a notice was published in the Federal Register (42 FR 57140) acknowledging the receipt of the supplement containing the rules for recording and reporting occupational injuries and illnesses by employers covered under the Michigan Occupational Safety and Health Act. Both supplements were made available for public comment.

Description of Plan Supplements

1. *Manuals for Compliance Operations of the Michigan Department of Labor and Public Health.* On September 28, 1978, the State submitted compliance manuals for the occupational safety program and for the occupational health program. The manuals provide basic information and guidance for State personnel of the Department of Labor and the Department of Public Health in administering and enforcing the occupational safety and health program according to the provisions of the Michigan Occupational Safety and Health Act. The State has subsequently submitted amendments to the manuals to reflect changes in Federal procedures. This notice does not approve these subsequent amendments.

2. *Rules for Recording and Reporting of Occupational Injuries and Illnesses, Part 11.* The State submitted rules effective March 1, 1978 (amended May 7, 1979), which provide for recording and reporting of occupational injuries and illnesses by employers covered under the Michigan Occupational Safety and Health Act.

Location of the Plan and Its Supplements for Inspection and Copying

A copy of the plan and the supplements may be inspected and copied during normal business hours at the following locations: the Office of the Regional Administrator, Occupational Safety and Health Administration, 230 South Dearborn Street, Chicago, Illinois 60640; Michigan Department of Labor, State Secondary Complex, 7150 Harris Drive, Lansing, Michigan 48920; Office of State Programs, Occupational Safety and Health Administration, Room N-3613, 3rd and Constitution Avenue NW., Washington, D.C. 20210.

Public Participation

Interested persons were afforded thirty days to submit written comments or request a hearing concerning both supplements. No public comment or request for a hearing were received.

Decision

After careful consideration, the Michigan plan supplements described above are approved under Part 1953. This decision incorporates the requirements of the Act and implementing regulations applicable to State plans generally. Accordingly, 29 CFR 1952.264 is hereby amended by adding new paragraphs (g) and (h) as follows:

§ 1952.264 Completed developmental steps.

* * * * *

(g) In accordance with § 1952.263(c), Manuals for Compliance Operations of the Michigan Department of Labor and Public Health were approved by the Assistant Secretary on January 13, 1981.

(h) In accordance with § 1952.263(e), Rules for Recording and Reporting of Occupational Injuries and Illnesses, were approved by the Assistant Secretary on January 13, 1981.

(Sec. 18, Pub. L. 91-596, 84 Stat. 1608 (29 U.S.C. 667))

Signed at Washington, D.C. this 13th day of January 1981.

Eula Bingham,

Assistant Secretary of Labor.

[FR Doc. 81-1731 Filed 1-15-81; 8:45 am]

BILLING CODE 4510-26-M

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29 CFR Part 1952

Certification of Completion of Developmental Steps for Michigan State Plan

AGENCY: Occupational Safety and Health Administration, Department of Labor.

ACTION: Final rule.

SUMMARY: Michigan, on or before September 24, 1978, submitted documentation attesting to the completion of all structural, developmental aspects of its approved State plan. After extensive review and opportunity for State correction, all developmental plan supplements have now been approved. This notice certifies this completion and the beginning of the final evaluation phase of State plan development. This certification attests only to the fact that Michigan now has in place those structural components necessary for an effective program. It does not render judgment, either positively or negatively, on the adequacy of the State's actual performance. In addition, although original State plan commitments on staffing and resources have been met, these initial commitments may not be interpreted as meeting the ultimate requirements of the Occupational Safety and Health Act of 1970 for "sufficient staff" as redefined by the U.S. Court of Appeals decision in "AFL-CIO v. Marshall", 570 F. 2d 1030 (1978).

EFFECTIVE DATE: January 16, 1981.

FOR FURTHER INFORMATION CONTACT: John M. Kelly, Project Officer, Office of State Programs, Occupational Safety

and Health Administration, 200 Constitution Avenue, N.W., Rm. N3613, Washington, D.C. 20210—(202) 523-8081.

SUPPLEMENTARY INFORMATION:

Background

Section 18 of the Occupational Safety and Health Act of 1970 (the "Act," 29 U.S.C. 667) provides that States which desire to assume responsibility for the development and enforcement of occupational safety and health standards shall submit for Federal approval a State plan for such development and enforcement. Part 1902 of Title 29, Code of Federal Regulations, sets forth procedures under which the Assistant Secretary of Labor for Occupational Safety and Health ("Assistant Secretary") shall approve such plans. Under the Act and regulations, plan approval is essentially a two-step procedure. A State must first submit its plan for an initial determination under section 18(b) of the Act. If the Assistant Secretary, after reviewing the State's submission, determines that the plan satisfies or will satisfy the criteria set forth in section 18(c) of the Act, a decision of "initial approval" is issued and the State may begin enforcement of its safety and health standards in accordance with the plan and with concurrent enforcement by the Occupational Safety and Health Administration (OSHA).

A State plan may receive initial approval even though at the time of submission not all essential components of the plan are in place. As provided at 29 CFR 1902.2(b), the Assistant Secretary may initially approve the submission as a "developmental plan" and a schedule within which the State must complete specified "developmental steps" is issued as part of the initial approval decision.

When the Assistant Secretary finds that the State has completed all developmental steps specified in the initial approval decision, a notice of such completion is published in the Federal Register (see 29 CFR 1902.34 and 35). Certification of completion of developmental steps initiates a thorough evaluation of the State plan by the Assistant Secretary to determine, on the basis of actual operations, whether the plan adequately protects safety and health of the State's workers. Certification does not render judgment as to the adequacy of State performance.

Final approval of the plan under section 18(e) of the Act and 29 CFR Part 1902 may not be granted until at least three years after initial approval and until at least one year after completion of developmental steps. Thereafter, when the Assistant Secretary determines on the basis of actual performance under the plan that the Act's criteria are being applied, a decision of final approval may be granted.

On October 3, 1973, a notice was published in the Federal Register (38 FR 27391) of initial approval of the developmental Michigan plan and the adoption of Subpart T of Part 1952 containing the decision, a description of the plan and the developmental schedule. During the three year period ending September 24, 1976, following commencement of State operations, the Designees of the Michigan Department of Labor and the Department of Public Health, submitted documentation attesting to the completion of each State developmental commitment for review and approval as provided in 29 CFR Part 1953. Following Departmental review, opportunity for public comment and subsequent modification of the State's submissions, as deemed appropriate, the Assistant Secretary has approved the completion of all individual Michigan developmental steps.

Completion of Developmental Steps

All developmental steps specified in the October 3, 1973 notice of initial approval have been completed as follows:

a. In accordance with § 1952.263(a), the State on June 19, 1974, submitted a supplement containing its enabling legislation enacted on June 18, 1974. (40 FR 8555, February 28, 1975.) The 1979 amendments to the Michigan Occupational Safety and Health Act, submitted as a State-initiated change supplement to the Michigan State plan, were approved on January 12, 1981, and appear elsewhere in this issue.

b. In accordance with § 1952.263(b), the State has promulgated occupational safety and health standards covering all the issues contained in 29 CFR Part 1910, Subparts D through S, and Part 1926. (The State will not cover Parts 1915, 1916, 1917, and 1918). (40 FR 50583, October 30, 1975; 41 FR 18483, May 4, 1976; 41 FR 53078, December 3, 1976; 43 FR 31457, July 21, 1978).

c. In accordance with § 1952.263(c), the State, on September 28, 1976, submitted compliance manuals for the occupational safety program and for the occupational health program. The State has subsequently submitted amendments to these manuals to reflect changes in Federal procedures. The original submission was approved on January 13, 1981, and appears elsewhere in this issue.

d. In accordance with § 1952.263(d), regulations similar to Parts 1903, 1905, and 2200 became effective November 12, 1976, March 1, 1976, and November 23, 1976, respectively. After review by OSHA, they were approved on January 12, 1981, and appears elsewhere in this issue.

e. In accordance with § 1952.263(e), the State submitted rules effective March 1, 1976 (amended May 7, 1979), for recordkeeping and reporting of occupational injuries and illnesses which were approved on January 13, 1981, and appears elsewhere in this issue.

f. In accordance with § 1952.263(f), an interagency agreement between the Michigan Department of Labor and the Michigan Department of Public Health was signed on September 23, 1974, and approved on September 21, 1975. (41 FR 8555, February 28, 1975).

g. In accordance with § 1952.263(g), Michigan's public employee program was implemented with an effective date of July 1, 1975, and approved on October 17, 1977. (42 FR 57123, November 1, 1977).

h. In accordance with the requirements of § 1952.10, the Michigan State poster was approved by the Assistant Secretary on September 22, 1975. (40 FR 44131, September 25, 1975).

i. The Michigan Departments of Labor and Public Health have established a comprehensive management information system which was approved on October 17, 1977. (42 FR 57123 November 1, 1977).

j. The State submitted revisions to the staffing pattern contained in the State's plan and indicated that the Michigan Departments of Labor and Public Health were in substantial conformity with the revised staffing pattern. The supplement was approved by the Assistant Secretary on October 17, 1977. (42 FR 57123, November 1, 1977).

k. The system of personnel administration in the Michigan Departments of Labor and Public Health has been found to be in substantial conformity with the standards for a merit system in a letter dated August 25, 1980 from the United States Office of Personnel Management. Operation of the State merit system has been found acceptable by OSHA.

This certification covers all occupational safety and health issues covered under the Federal program except for longshoring and maritime standards found in 29 CFR Parts 1915, 1916, 1917 and 1918 (longshoring, ship repairing, ship building, and ship breaking), which are excluded from coverage under the plan. This certification also covers the State's

program covering State and local government employees.

Location of the Plan and Its Supplements for Inspection and Copying

Copies of the supplements, along with the approved plan, may be inspected and copied during normal business hours at the following locations:

Office of the Director of Federal Compliance and State Programs, Occupational Safety and Health Administration, Room N3613, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210

Office of the Regional Administrator, Occupational Safety and Health Administration, Region V, 230 South Dearborn Street, Chicago, Illinois 60604

Michigan Department of Labor, State Secondary Complex, 7150 Harris Drive, Lansing, Michigan 48926

Effect of Certification

The Michigan plan is certified effective January 16, 1981 as having completed all developmental steps on or before September 24, 1976. This certification attests to structural completion, but does not render judgment on adequacy of performance.

The Michigan occupational health and safety program will be monitored and evaluated for a period of not less than one year after publication of this certification to determine whether the State program in operation provides for an effective program of enforcement. The Assistant Secretary will then determine whether Federal authority should be withdrawn with respect to issues covered by the plan pursuant to Section 18(e) of the Act.

Level of Federal Enforcement

In accordance with 29 CFR 1902.35, Federal enforcement authority under sections 5(a)(2), 8, 9, 10, 13 and 17 of the Act (29 U.S.C. 654(a)(2), 657, 658, 659, 662, and 666) and Federal standards authority under section 6 of the Act (29 U.S.C. 655) will not be relinquished during the evaluation period. However, under the terms of an operational status agreement entered into between OSHA and the Michigan Departments of Labor and Public Health on January 6, 1977 (42 FR 15411) the exercise of this authority by the U.S. Department of Labor will continue to be limited to, among other things: complaints about employee discrimination, enforcement of new Federal standards such as temporary emergency standards until adopted by the State; enforcement of standards excluded from plan coverage, investigations for fulfillment of monitoring obligations under Sections 18 (e) and (f) of the Act; and abatement dates from OSHA-issued citations, which extend beyond the date of State assumption of inspection responsibility. Pursuant to 29 CFR § 1954.3(f)(1) the agreement provides for resumption of Federal enforcement activity for failure to substantially comply with the provisions of the agreement, or as a result of evaluation or other factors.

The continuation of this operational status agreement is not to be construed as a determination that the Michigan program has met the requirements of the Act and regulations for a "sufficient number of qualified personnel, as defined in "AFL-CIO v. Marshall," but rather that the State has reached a satisfactory, interim level of staffing. In accordance with this certification, 29 CFR 1952.263 is hereby amended to reflect successful completion of the developmental period by changing the title of the section and by adding paragraph (f) as follows:

§ 1952.263 Completion of developmental steps and certification.

* * * * *

(f) In accordance with § 1902.34 of this chapter, the Michigan occupational safety and health plan was certified effective January 13, 1981 as having completed all developmental steps specified in the plan as approved on September 24, 1973, on or before September 24, 1976.

This certification attests to structural completion, but does not render judgment on adequacy of performance.

(Sec. 18, Pub. L. 91-596, 84 Stat. 1608 (29 U.S.C. 667))

Signed at Washington, D.C., this 13th day of January, 1981.

Eula Bingham,

Assistant Secretary of Labor.

[FR Doc. 81-1729 Filed 1-15-81; 8:45 am]

BILLING CODE 4510-26-M

DEPARTMENT OF EDUCATION

34 CFR Part 300

Assistance to States for Education of Handicapped Children

AGENCY: Department of Education.

ACTION: Technical amendment: Final rule.

SUMMARY: The Secretary issues this regulation to make changes in the definition of "handicapped children" under Part B of the Education of the Handicapped Act, as amended.

(1) The reference to "autistic" children is deleted from the disability category "seriously emotionally disturbed" under the definition of "handicapped children"; and

(2) A reference to "autistic" children is added under the disability category "other health impaired" under the definition of "handicapped children".

EFFECTIVE DATE: These regulations are expected to take effect 45 days after they are transmitted to Congress. They are transmitted to Congress several days before they are published in the Federal Register. The effective date is changed by statute if Congress takes certain adjournments. If you want to know the effective date of these regulations, call or write the Department of Education contact person.

FOR FURTHER INFORMATION CONTACT: Mrs. Beverly E. Brightly, U.S. Department of Education, Office of Special Education and Rehabilitative Services, Division of Assistance to States, 400 Maryland Avenue, S.W. (Room 4032, Donohoe Building), Washington, D.C. 20202, Telephone: (202) 472-7921.

SUPPLEMENTARY INFORMATION: The proposed rules which included the definition of "handicapped children" for the purposes of Part B of the Education of the Handicapped Act, as amended by Pub. L. 94-142, were published December 30, 1976 (41 FR 56966). The final regulations were published August 23, 1977 (42 FR 42474).

Congress did not address autism in developing the statute. When the implementing regulations were published in 1977, autism was placed under the category of "seriously emotionally disturbed", based upon knowledge available to the agency at that time. We now conclude that this original classification of autistic children is inappropriate because not all autistic children are seriously emotionally disturbed. The technical amendment to the regulations reflects our expanded knowledge of autism gained through our contracts with and knowledge provided by the National Society for Autistic Children (NSAC), the National Institute for Neurological and Communicative Disorders and Stroke (NINCDS), and others who have sought to bring to our attention current thinking in the field of autism. The Secretary does not expect this change to affect the number of handicapped children identified as autistic, but only the manner or category in which autistic children will be reported.

Since this amendment does not represent a substantive change in the regulations, the Secretary has determined, in accordance with 5 U.S.C.

553, that public participation in the rulemaking process is unnecessary.

Dated: January 11, 1981.

Shirley M. Hufstedler,

Secretary of Education.

(Catalog of Federal Domestic Assistance Number 84.027; Education of Handicapped Children, Part B)

(The Education of the Handicapped Act, as amended (20 U.S.C. 1401 *et seq.*)).

The Secretary amends Part 300 of Title 34 of the Code of Federal Regulations by revising § 300.5(b)(7) and (b)(8)(ii) to read as follows:

§ 300.5 Handicapped children.

* * * * *

(b) * * *

(7) "Other health impaired" means (i) having an autistic condition which is manifested by severe communication and other developmental and educational problems; or (ii) having limited strength, vitality or alertness, due to chronic or acute health problems such as a heart condition, tuberculosis, rheumatic fever, nephritis, asthma, sickle cell anemia, hemophilia, epilepsy, lead poisoning, leukemia, or diabetes, which adversely affects a child's educational performance.

(8) "Seriously emotionally disturbed" is defined as follows:

* * * * *

(ii) The term includes children who are schizophrenic. The term does not include children who are socially maladjusted, unless it is determined that they are seriously emotionally disturbed.

[FR Doc. 81-1587 Filed 1-23-81; 8:45 am]

BILLING CODE 4000-01-M

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34 CFR Part 682

Guaranteed Student Loan Program

AGENCY: Department of Education.

ACTION: Final Regulations with Comments Invited.

SUMMARY: Recent laws have added five new provisions for deferment of repayment to the Guaranteed Student Loan Program (GSLP). The Secretary of Education is establishing criteria to implement these new deferments for a GSLP borrower who: (1) Is pursuing a course of study under a rehabilitation training program for disabled individuals; (2) Is serving as an officer in the Commissioned Corps of the United States Public Health Service; (3) Is serving as a full-time volunteer for a tax-exempt organization providing service that is comparable to service in the Peace Corps or full-time service in ACTION agency programs; (4) Is temporarily totally disabled or is unable to secure employment by reason of the care required by a spouse who is temporarily totally disabled; or (5) Is serving an internship required to gain professional recognition required to begin professional practice.

DATES: Comments must be received on or before March 17, 1981. These regulations are expected to take effect 45 days after they are transmitted to Congress. Regulations are usually transmitted to Congress several days before they are published in the Federal Register. The effective date is changed if the Congress takes certain adjournments. If you want to know the effective date of these regulations, call or write the Department of Education contact person.

When these regulations become effective they will apply to all outstanding loans, and borrowers will be entitled to obtain these new deferments for all periods during which they are eligible after the regulations become effective. In the case of the rehabilitation training deferement, coverage also will be retroactive to the date that provision was enacted into law. Therefore, any borrower who has been granted forbearance since November 1, 1978 because he or she was engaged in an approved rehabilitation training program will be able to receive this benefit if the program meets the criteria established by this regulation.

ADDRESS: Comments should be addressed to Jane A. Bryson, Chief, Guaranteed Student Loan Policy Section, Office of Student Financial Assistance, (Room 4310, ROB-3), 400 Maryland Avenue, SW., Washington, D.C. 20202.

FOR FURTHER INFORMATION CONTACT: Cheryl Leibovitz or Jane A. Bryson. Telephone (202) 245-2475.

SUPPLEMENTARY INFORMATION:

A. Background

During a deferment period, and until six months after the deferment period ends (post-deferment grace period), the borrower's obligation to repay the principal amount due on a GSLP loan is temporarily suspended. The interest on the principal amount owed continues to accrue during both the deferment and post-deferment grace periods. However, if the borrower was deemed eligible for Federal interest benefits at the time the loan was made, the Federal government pays the interest owed by the borrower during both the deferment and post-deferment grace periods.

The Education Amendments of 1980 (Pub. L. 96-374) added four new deferment provisions to the GSLP. The new deferment provisions permit a borrower to defer repayment during the following periods: (1) Up to 3 years of service as an officer in the Commissioned Corps of the United States Public Health Service; (2) Up to 3 years of full-time volunteer service for an organization which is exempt from taxation under Section 501(c)(3) of the Internal Revenue Code of 1954 if the service provided is comparable to service in the Peace Corps or full-time service in ACTION agency programs; (3) Up to 2 years of internship, the successful completion of which is necessary to receive recognition required to begin professional practice or service; (4) Up to 3 years during which the borrower is temporarily totally disabled, as established by the sworn affidavit of a qualified physician, or during which the borrower is unable to secure employment by reason of the care required by a spouse who is so disabled, as established by the affidavit of a qualified physician.

In addition, the Middle Income Student Assistance Act (Pub. L. 95-566), added a deferment to the GSLP, permitting a disabled borrower to defer repayment on his or her loan if he or she is pursuing a rehabilitation training program that is approved by the Secretary. Accordingly, § 682.506 of the GSLP regulations has been revised to accommodate these changes.

These amendments to § 682.506 provide criteria under which: (1) Service in a volunteer program for an organization which is exempt from taxation under section 501(c)(3) of the Internal Revenue Code of 1954 may be considered comparable to service in the Peace Corps or full-time service in other ACTION agency programs; (2) A borrower can qualify for an internship deferment; and (3) A rehabilitation program can receive the Secretary's approval. The deferments for service in the United States Public Health Service and for temporary total disability are self-implementing and do not require additional rules by the Secretary. In addition, certain changes have been made to the existing regulations governing the deferment for graduate fellowship programs in order to simplify their administration. The procedure by which a borrower may receive each deferment is also specified.

Section 682.506 is part of Subpart E, which sets forth the requirements for the Federal Insured Student Loan Program (FISLP). However, the deferment provisions contained in § 682.506 have been incorporated by reference into § 682.401(b)(10) of Subpart D, which governs guarantee agency programs.

Therefore, these deferment provisions apply equally to guarantee agency programs.

B. Criteria for Approving the Volunteer Service Deferment

Volunteer service for a tax-exempt organization is determined to be comparable to volunteer service in the Peace Corps or full-time service in other ACTION agency programs if: (1) The service is for an organization which is exempt from taxation under § 501(c)(3) of the Internal Revenue Code of 1954; (2) The borrower provides service to low-income persons and their communities to assist them in eliminating poverty and poverty-related human, social, and environmental conditions; (3) The borrower's compensation does not exceed the compensation received by a full-time volunteer in the Peace Corps or in a program administered by the ACTION agency; (4) The borrower, as part of his or her duties, does not give religious instruction, conduct worship services, engage in religious proselytizing or engage in fundraising to support religious activities; and (5) The volunteer has agreed to serve on a full-time basis for a term of at least one year. Service in MEDICO and the International Voluntary Service are examples of such service. To receive this deferment, the borrower obtains a certification of the program's eligibility from a program official and gives it to the lender, as described in the regulations.

These criteria are based on policies established by the Peace Corps and the ACTION agency for the organizations that sponsor their volunteers. The Secretary is seeking public comment on the adequacy of these criteria. In particular, the Secretary requests comments on whether the deferment should be limited to borrowers who serve only the type of populations that Peace Corps and ACTION agency volunteers serve; whether the deferment should be limited to borrowers who earn only as much as Peace Corps and ACTION agency volunteers earn; and whether the deferment should be limited to borrowers who provide direct services to the target populations or should include borrowers serving as support staff in the volunteer agency.

C. Internship Deferment

To qualify for an internship deferment a borrower must: (1) Hold at least a baccalaureate or professional degree; and (2) Be serving in an eligible internship program, the successful completion of which is required to receive recognition required to begin professional practice or service. A medical residency is an example of such an internship, since medical school graduates are required to complete a residency before they can be licensed to practice medicine in most States. The Secretary requests comments on this provision. The Secretary is particularly interested in receiving comments from the public concerning what other types of professions require an internship. To receive this deferment, the borrower gives the lender evidence that he or she is serving in a program which the Secretary has determined is an eligible internship. For programs other than medicine that have internships, program information may be submitted for the Secretary's approval.

D. Graduate Fellowship Deferment

Currently the GSLP regulations specify that, to qualify for a graduate fellowship deferment, a borrower must be enrolled in a program that is approved by the Secretary. To gain approval, the borrower or the graduate fellowship program submits a written request to the Education Department (ED), which reviews the request and provides the graduate fellowship program with a letter of approval. The graduate fellowship program then provides the borrower and/or lender with a copy of the letter of approval. In an effort to respond more quickly to the needs of both borrowers and lenders, the Secretary has simplified the process in these regulations. Under the new procedures, graduate fellows will be required to submit a certification by an official of the fellowship program that the program meets the six regulatory criteria for the Secretary's approval. Experience with the provision since September, 1979 has convinced the Secretary that an individual review of each program is not necessary to prevent abuse of the deferment.

E. Criteria for Approving a Rehabilitation Training Program

A rehabilitation training program is approved if: (1) The provider of the rehabilitation services is recognized by a government agency with specific responsibility for rehabilitation programs in a given area (e.g. a State vocational rehabilitation agency); (2) The provider agrees to develop an individual plan for the borrower's rehabilitation; and (3) The plan the provider has agreed to develop requires that the borrower make a substantial commitment of time or effort toward his or her rehabilitation.

Borrowers in a wide range of circumstances may qualify for the deferment. The regulations provide for approval of drug, alcohol, and mental health rehabilitation programs, as well as more traditional vocational rehabilitation programs. The regulations also have been written to permit deferment for up to three months for a borrower who is scheduled to receive rehabilitation services from a qualified program but who has not actually started his or her program. This provision prevents loan default in situations when the borrower may be required to wait either for his or her injuries to heal prior to starting rehabilitation or for the availability of an opening in a particular rehabilitation program.

The requirement that the program offer the borrower an individual rehabilitation plan is common to most public and private rehabilitation programs. The plan developed for the borrower may be designated as either an Individual Treatment Plan or an Individual Written Rehabilitation program. The latter term is most frequently used in vocational rehabilitation.

The Secretary has included the criterion requiring a substantial commitment of time or effort from the borrower in order to exclude from deferment eligibility a borrower who may be in a type of rehabilitation that occupies the borrower for a relatively short period of time each week and allows the borrower to be regularly employed on a full-time basis. For example, a borrower who visits his or her therapist for only an hour two evenings a week would be excluded. Similarly, a borrower in a drug treatment program whose sole rehabilitation is receiving methadone maintenance would not be eligible for the rehabilitation training program deferment.

The regulations establish a procedure for approval which relies on the expertise of the Veterans Administration and the State rehabilitation agencies designated in the criteria. Under these regulations, the Secretary would accept a certification by one of these agencies that the borrower's program meets the approved criteria. Since these agencies maintain close communication with the various rehabilitation programs in their respective jurisdictions, these agencies are better suited to make decisions concerning both a program's legitimacy and the borrower's situation.

The Secretary requests public comments on these criteria and particularly on whether there are types of programs, excluded under these regulations, which should be included.

Coverage for Borrowers Currently in Rehabilitation

The Secretary has asked, because of the delay in issuing regulations on criteria for approval, that lenders grant forbearance to any borrower seeking relief from payment under this deferment. This deferment coverage will be retroactive, thereby covering any disabled borrower who has been granted forbearance since November 1, 1978 because the borrower was engaged in rehabilitation training, provided that the borrower's program of rehabilitation otherwise qualifies for approval.

Waiver of Proposed Rulemaking Procedures

In accordance with Section 431(b)(2)(A) of the General Education Provisions Act (20 U.S.C. 1232(b)(2)(A)), it has been the practice of the Secretary to offer interested parties the opportunity to comment on proposed regulations. The Secretary then reviews these comments and makes appropriate changes before republishing the regulations in final form.

For the reasons described in the following paragraph, the use of that practice in connection with the provisions of these regulations is unnecessary and contrary to the public interest under 5 U.S.C. 553(b). However, the Secretary invites the public to comment on these regulations and will consider appropriate comments before publishing the regulations again.

The Secretary has waived proposed rulemaking procedures because the regulatory changes mainly reflect the statutory changes made by the Education Amendments of 1980 and the Middle Income Student Assistance Act of 1978; the other changes are of a minor or technical nature. The Secretary wishes to enable borrowers to obtain the new deferments that are being implemented by these regulations. In addition, the Secretary wishes to give the higher education and lending communities as much advance notice as possible of these changes. Accordingly, in this instance, the Secretary is publishing these rules as final regulations.

Comments requested: While the Secretary is publishing these rules as final regulations, the Secretary is requesting public comments on the provisions dealing with the new deferments. Issues on which the Secretary is particularly interested in receiving comments are specified in the descriptions of each new deferment in the "Supplementary Information" section of this preamble. The Secretary also is requesting comments regarding whether the definition of "estimated financial assistance" in § 682.200 of the GSLP regulations should be revised to include Veterans' benefits, students' benefits under Social Security, or other social service payments such as Aid to Families with Dependent Children. This revision would avoid duplication of GSLPs with other Federal assistance.

Written comments submitted in response to this notice will be available for public inspection, during and after the comment period, in Room 4310, ROB-3, 7th and D Streets, S.W., Washington, D.C. between the hours of 8:30 a.m. and 4:30 p.m., Monday through Friday of each week except on Federal holidays.

Regulatory Flexibility Act Analysis

The Regulatory Flexibility Act (Pub. L. 96-354, enacted Sept. 19, 1980) requires each Federal agency to prepare an initial regulatory flexibility analysis and a final regulatory flexibility analysis for each regulation that—

(1) Is published as a notice of proposed rulemaking after January 1, 1981, and

(2) Has a significant economic impact on a substantial number of small businesses, small organizations, or small governmental jurisdictions.

Because the Department has not yet established its own definitions of "small organization" and "small governmental jurisdiction", as contemplated by the Act, it is not possible to prepare a full initial regulatory flexibility analysis at this time. Further, since these regulations were required by statute to be published in final no later than May 31, 1981, it is impracticable to delay publication while the necessary definitions are being developed. In these circumstances, the Regulatory Flexibility Act permits a waiver or delay of the initial regulatory flexibility analysis. If it is later determined that these regulations are subject to that Act, the Secretary will prepare the necessary analysis in conjunction with the issuance of later regulations.

As an interim measure, this preamble, to the maximum extent possible, includes information of the kind contemplated by the Regulatory Flexibility Act, including the reasons for the regulations, the objectives and legal basis for the regulations, and any significant issues and alternatives for consideration by the public. To assist the Department in determining whether the Regulatory Flexibility Act applies to these regulations and in complying with the Act's requirements, public comment is especially invited on the following matters: (1) The number and kind of small businesses, small organizations, and small governmental jurisdications affected by the GSLP deferment provisions regulations;

(2) The reporting, recordkeeping, and compliance burdens imposed by these regulations;

(3) The type of professional skills necessary for preparation of any reports or records required by these regulations;

(4) Any Federal rules that may duplicate, overlap, or conflict with these regulations;

(5) Any significant alternatives that would accomplish the purposes of the applicable statute but would minimize any significant economic impact of these regulations on small entities (small business, small organizations, and small governmental jurisdictions). The Secretary is particularly interested in suggestions for alternatives such as the following:

- The establishment of differing reporting or compliance requirements or timetables that take into account the resources available to small entities.
- The clarification, consolidation, or simplification of compliance and reporting requirements for small entities.
- The use of performance rather than design standards.
- An exemption for small entities from coverage of part or all of the regulations.

Citation of Legal Authority

A citation of statutory authority for the regulations is placed in parentheses on the line following each substantive provision of these regulations.

Assessment of Educational Impact

The Department particularly requests comments on whether the regulations in this document would require transmission of information that is already being gathered by or is available from any other agency or authority of the United States.

(Catalog of Federal Domestic Assistance No. 84.032, Guaranteed Student Loan Program)

Dated: January 12, 1981.

Shirley M. Hufstedler,

Secretary of Education.

34 CFR Part 682 is amended as follows:

Section 682.506 is revised to read as follows:

§ 682.506 Deferment.

(a) *Borrower eligibility.* (1) Once the repayment period has commenced, a borrower is entitled to have periodic installment payments of principal deferred during authorized periods and during the six months (post-deferment grace period) after the completion of each such period or combination of

periods. Except as provided in paragraph (e)(4) of this section, a period of authorized deferment begins when the condition entitling a borrower to deferment first exists. Interest accrues and is payable by the borrower during the deferment and post-deferment grace periods unless the borrower was determined to be eligible for Federal interest benefits when the loan was made. The borrower shall provide to the lender all documentation required to establish eligibility for a specific type of deferment.

(2) A deferment cannot be denied by a lender when the borrower meets the eligibility criteria, even though the borrower may be delinquent, but not in default, in making required installment payments. The 120- or 180-day period required to establish a default does not run during the deferment and post-deferment grace periods. When the post-deferment grace period expires, a borrower resumes any delinquent status that existed when the deferment period began.

(3) A borrower whose loan is in default is not eligible for a deferment unless the borrower has made satisfactory arrangements with the lender to bring the account current.

(b) *Authorized deferments.* Deferment is authorized during periods when a borrower is engaged in at least one of the following activities:

(1)(i) Full-time study at a participating school, unless the borrower is not a national of the United States and is pursuing a course of study at a school not located in a State; or

(ii) Full-time study at a school which meets the definition of an institution of higher education or a vocational school and is operated by an agency of the Federal government (e.g., the service academies), unless the borrower is not a national of the United States and is pursuing a course of study at a school not located in a State.

(2) Study under an eligible graduate fellowship program, as described in paragraph (c) of this section.

(3) Up to 3 years of active duty service in the United States Armed Forces or of service as an officer in the Commissioned Corps of the United States Public Health Service.

(4) Up to 3 years of volunteer service under the Peace Corps Act.

(5) Up to 3 years of service as a full-time volunteer under Title I of the Domestic Volunteer Service Act of 1973 (ACTION programs).

(6) Up to 3 years of full-time volunteer service which the Secretary has determined is comparable to service referred to in paragraphs (b)(4) and (b)(5) of this section for a tax-exempt organization, as described in paragraph (d) of this section.

(7) Conscientiously seeking but unable to find full-time employment in the United States over a single period of up to twelve months, as described in paragraph (e) of this section.

(8) Pursuing a course of study under a rehabilitation training program for disabled individuals, as described in paragraph (f) of this section.

(9) Up to 2 years of service as an intern, as described in paragraph (g) of this section.

(10) Up to 3 years during which the borrower is temporarily totally disabled, as described in paragraph (h) of this section, or during which the borrower is unable to secure employment because he or she is caring for a spouse who is temporarily totally disabled, as described in paragraph (i) of this section.

(c) *Graduate fellowship deferment.* To qualify for a deferment for study under a graduate fellowship program, a borrower shall provide the lender with a statement from an official of the borrower's fellowship program certifying that—

(1) The fellowship program—

(i) Provides sufficient financial support to graduate fellows to allow for full-time study for at least six months;

(ii) Requires, prior to the award of that financial support, a written statement from each applicant which explains the applicant's objectives; and

(iii) Requires a graduate fellow to submit periodic reports, projects, or other evidence of the graduate fellow's progress; and

(2) The borrower—

(i) Holds at least a baccalaureate degree conferred by an institution of higher education;

(ii) Is engaged in full-time study, that may be independent of an educational or cultural institution, in an academic or professional subject area for which the borrower has shown an interest and ability; and

(iii) Has been recommended by an institution of higher education for acceptance into the graduate fellowship program.

(d) *Full-time volunteer service for a tax-exempt organization deferment.* To qualify for a deferment for full-time volunteer service for a tax-exempt organization comparable to volunteer service in the Peace Corps or full-time volunteer service in a program administered by the ACTION agency, a borrower shall provide the lender with a statement from an official of the borrower's volunteer program certifying that—

(1) The borrower serves in an organization which is exempt from taxation under Section 501(c)(3) of the Internal Revenue Code of 1954;

(2) The borrower provides service to low-income persons and their communities to assist them in eliminating poverty and poverty-related human, social, and environmental conditions;

(3) The borrower's compensation does not exceed the compensation received by a full-time volunteer in the Peace Corps or in a program administered by the ACTION agency. Compensation includes a subsistence allowance, necessary travel expenses and stipends;

(4) The borrower, as part of his or her duties, does not give religious instruction, conduct worship services, engage in religious proselytizing, or engage in fundraising to support religious activities; and

(5) The borrower has agreed to serve on a full-time basis for a term of at least one year.

(e)(1) *Basic eligibility for an unemployment deferment.* (i) For purposes of this section, full-time employment involves at least 30 hours of work per week and is expected to last at least 3 months.

(ii) A borrower is entitled to the deferment whether or not he or she has been previously employed. If previously employed, the borrower is entitled to a deferment regardless of the circumstances under which the employment ended.

(iii) An unemployment deferment is not justified if the borrower has sought employment only in kinds of positions or at salary and responsibility levels for which he or she feels qualified by virtue of education or previous experience.

(2) *Submission of request.* To receive an unemployment deferment, a borrower shall submit a request for the deferment in writing to the holder of the loan. To continue the deferment for more than 6 months, the borrower shall submit a second request by the end of that 6-month period. Each request must be signed and dated and contain the following:

(i) A statement from the borrower describing his or her conscientious search of full-time employment.

(ii) The borrower's latest permanent home address and, if applicable the borrower's latest temporary address.

(iii) Certification that the borrower has registered with a public or private employment agency, if one is accessible, specifying its name and address.

(iv) The borrower's agreement to notify the lender promptly when he or she becomes employed full-time.

(3) *Lender's approval or disapproval of request.* (i) The lender must review the borrower's request and notify the borrower of its decision within one month after receipt of the request.

(ii) The lender may rely upon the written statements provided by the borrower, unless the lender has information to the contrary.

(iii) If the lender is satisfied that the borrower has conscientiously searched for full-time employment and otherwise meets the requirements for an unemployment deferment, the lender shall approve the request.

(iv) If the borrower's request does not justify an unemployment deferment, the lender may grant the borrower forbearance if authorized under § 682.512.

(4) *When the unemployment deferment begins:* An unemployment deferment begins—

(i) On the date that the lender approves the request; or

(ii) On a date not in excess of 60 days prior to the lender's approval if the unemployment existed at the earlier date.

(5) *When the unemployment deferment ends:* An unemployment deferment ends on the earliest of—

(i) The date the lender learns that the borrower has become employed full-time;

(ii) One month after the date when a certification of unemployment deferment eligibility is due from the borrower but has not been received; or

(iii) 12 months after the commencement of the deferment period.

(f) *Rehabilitation training program deferment.* (1) To qualify for this deferment—

(i) The borrower must either be receiving or be scheduled to receive services under a program designed to rehabilitate disabled individuals; and

(ii) The borrower's rehabilitation program must meet the Secretary's criteria for approval.

(2) *Criteria for the Secretary's approval of rehabilitation training programs.* The Secretary approves a rehabilitation training program if the organization providing rehabilitation services to the borrower—

(i) Is licensed, approved, certified or otherwise recognized as providing rehabilitation training to disabled individuals by any of the following agencies—

(A) A State vocational rehabilitation agency;

(B) A State agency for drug abuse treatment;

(C) A State agency for mental health services;

(D) A State agency for alcohol abuse treatment; or

(E) The Veterans Administration; and

(ii) Provides or has agreed to provide that borrower with services for his or her rehabilitation under a rehabilitation plan that is—

(A) Written;

(B) Individualized to meet the borrower's needs;

(C) Specific as to the date on which the services to the borrower are expected to end; and

(D) Structured in a way that requires a substantial commitment by the borrower to his or her rehabilitation. The Secretary considers a substantial commitment by the borrower to be a commitment of time or effort that would normally prevent an individual from engaging in full-time employment either because of the number of hours that he or she must devote to rehabilitation or because of the nature of his or her rehabilitation. For the purpose of this paragraph, full-time employment involves at least 30 hours of work per week.

(3) *Qualification for a rehabilitation training program deferment.* (i) To obtain a rehabilitation training deferment, a borrower shall provide the lender with evidence that he or she qualifies for the defement, in a form approved by the Secretary. The evidence must include—

(A) The statement of the provider of the rehabilitation services certifying that the borrower either is receiving or is scheduled to receive rehabilitation training services from the provider; and

(B) A statement from an agency described in paragraph (e)(2)(i) of this section certifying that the provider from which the borrower is receiving services or is scheduled to receive services meets the requirements of paragraph (e)(2) of this section with respect to that borrower.

(ii) On receipt of the properly completed request, the lender shall grant the borrower a deferment.

(4) *When the rehabilitation training program deferment begins.* The rehabilitation training deferment begins—

(i) In the case of a borrower who is actually receiving rehabilitation services under an approved program on the date specified in the borrower's rehabilitation plan as the beginning date for his or her receipt of services through that program, but no earlier than November 1, 1978; or

(ii) In the case of a borrower who is requesting deferment based on being scheduled to receive rehabilitation services under an approved program, on the date that the borrower provides the lender with a properly completed request.

(5) *When the rehabilitation training program deferment ends.* Unless the borrower re-establishes his or her eligibility to continue a deferment by repeating the request procedure described in paragraph (3), the rehabilitation program deferment ends on the earliest of the following dates:

(i) In the case of a borrower who was granted deferment based on being scheduled to receive rehabilitation services under an approved program, the date the borrower informs the lender that he or she no longer plans to receive rehabilitation services; or

(ii) In the case of a borrower who was granted deferment based on being scheduled to receive rehabilitation services under an approved program, the date three months from the date the borrower submitted a request for a rehabilitation deferment; or

(iii) The date the borrower ceases rehabilitation training; or

(iv) The date specified in the borrower's rehabilitation plan as the date on which rehabilitation services to the borrower are anticipated to end; or

(v) The date twelve months from the date the borrower begins receiving services.

(g) *Internship deferment.* To qualify for an internship deferment, a borrower shall provide the lender with evidence that he or she is serving in an eligible internship, after obtaining a baccalaureate or professional degree, which the Secretary has determined is required to receive professional recognition required to begin professional practice or service. The Secretary has determined that medical residency is an example of such an internship.

(h) *Borrower's temporary total disability deferment.* (1) To qualify for this deferment the borrower shall give the lender an affidavit of a qualified physician stating that the borrower is temporarily totally disabled.

(2) For purposes of this section, a borrower who is "temporarily totally disabled" is one who, by reason of injury or illness, cannot be expected to be able to attend school or to be gainfully employed during an extended period of time needed to recover from such an injury or illness.

(i) *Deferment for a borrower whose spouse is temporarily totally disabled.* In order to qualify for this deferment the borrower shall give the lender—

(1) An affidavit of a qualified physician stating that the borrower's spouse is temporarily totally disabled. For purposes of this section a spouse who is "temporarily totally disabled" is

one who, by reason of injury or illness, cannot be expected to be gainfully employed during an extended period of time needed to recover from such injury or illness and who during that period requires continuous nursing or other similar services; and

(2) A statement from the borrower certifying that he or she is unable to secure employment because he or she is providing this care.

(20 U.S.C. 1077, 1078, 1078–2, 1082, 1085; 42 U.S.C. 5055(e))

[FR Doc. 81–1283 Filed 1–15–81; 8:45 am]
BILLING CODE 4000–01–M

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34 CFR Part 682

Guaranteed Student Loan Program; Refund of Tuition Charges and Other Fees

AGENCY: Department of Education.

ACTION: Final regulation.

SUMMARY: The Secretary of Education is revising the regulations governing the Guaranteed Student Loan Program (GSLP) which set criteria for determining the fairness and equity of a school's policy for refunding tuition charges and other fees. This rule relates to students who either never enroll or do not complete the academic period for which they borrowed under the GSLP. It amends § 682.606(b) of the GSLP regulations by replacing the Federal standards for equity in school refund policies with reliance on State law and the standards developed by the postsecondary education community.

EFFECTIVE DATE: These regulations are expected to take effect 45 days after they are transmitted to Congress. Regulations are usually transmitted to Congress several days before they are published in the Federal Register. The effective date is changed by statute if the Congress takes certain adjournments. If you want to know the effective date of these regulations, call or write the Department of Education contact person.

FOR FURTHER INFORMATION CONTACT: Ms. Cheryl Leibovitz, GSLP Specialist, or Ms. Jane A. Bryson, Chief, Guaranteed Student Loan Policy Section, Division of Policy and Program Development, Department of Education, 400 Maryland Avenue SW., Washington, D.C. 20202, (202) 245–2475.

SUPPLEMENTARY INFORMATION: The Secretary views the lack of equitable school refund policies and the failure of schools to administer properly their refund policies on a timely basis as one of the major causes of defaults on student loans.

For this reason, the Secretary considers it appropriate that schools participating in the GSLP establish and properly administer "fair and equitable" policies for refunding school charges and fees to students who have borrowed under the GSLP to meet their educational expenses. However, the Secretary is now placing greater reliance on the standards for equitable refund policies which have been developed by the postsecondary education community.

A. Background

A refund policy applicable to GSLP participating schools was first included in the GSLP regulations in 1975. The policy was based on 20 U.S.C. 1082 and 20 U.S.C. 1088f–1. The present amendments on "fair and equitable" refunds result from several actions taken by the Secretary of Education and, previously, the Commissioner of Education. On July 19, 1978, the Commissioner published proposed rules (43 FR 31104–05) inviting public comment on the GSLP requirements regarding school refunds. The language of the 1978 proposed refund rules mirrored the original 1975 language with minor technical changes. On September 17, 1979, the Commissioner published a comprehensive package of final GSLP rules which included the refund provisions of § 682.606 (44 FR 53897), the section now being amended.

The most controversial provision of the refund rules has been § 682.606(b) which sets forth the criteria for the Secretary's determination of whether a school's refund policy is fair and equitable. Many of the commenters on the 1978 proposed rules called this provision an enroachment into school prerogatives and challenged the Commissioner's authority to issue specific rules on school refunds. Still other commenters voiced their objections in terms of specific suggestions for improvement of the provision. However, the Commissioner received strong support for continued regulation on refund equity from student organizations and other concerned citizens.

The September 17, 1979, final regulations for the GSLP modified the proposed regulations as suggested by several commenters. However, the basic Federal criteria were retained. In response to the opposing comments, the Commissioner resolved, in the preamble to those regulations, that the issue of refund policy criteria would be reconsidered in view of the growing efforts of the higher education groups towards viable self-regulation. After further consideration, and in partial fulfillment of the Secretary of Education's commitment to both the public and the Congress to reconsider the refund issue, a proposed regulation was published on July 2, 1980. Comments were received in response to that NPRM from the higher education community, educational institutions, and guarantee agencies. The majority of comments supported the proposed revisions. Consequently, in publishing this final regulation the Secretary is adopting the revisions proposed in the NPRM.

The Senate Report accompanying S. 1839 addressed the issue of the Secretary's authority to establish criteria for determining whether a school's refund policy is "fair and equitable", and endorsed the self-regulation approach contained in these regulations. The Senate Report stated:

> New section 487, like section 497A of current law, authorizes the Secretary to prescribe such regulations as may be necessary to provide for the establishment of reasonable standards of financial responsibility and appropriate institutional capability on the part of an educational institution in its administration of student financial aid funds. The Department of Health, Education, and Welfare has relied on this provision as a basis for specifying factors to be considered in determining whether an institution's policy for refunding tuition, fees, and other charges to a student who terminates his enrollment during an academic term is "fair and equitable."

The Committee believes that the setting of the specific elements on an institutional refund policy is primarily the prerogative of the educational institution. Neither new section 487 nor any other provision of this bill or current law gives the Secretary the authority to prescribe a single national refund policy. At the same time, the Committee recognizes that the lack of a fair and equitable institutional refund policy can easily lead to defaults on student loans made under Title IV of the Higher Education Act. Students who leave school shortly after enrolling may not feel responsible for repaying loans intended to cover most or all of the academic term for which they enrolled. An institutional refund in a reasonable amount under such circumstances could reduce the loan balance and increase the likelihood that the student would repay the remainder of the loan.

Accordingly, the Committee encourages an approach under which the Secretary's review is limited to determining whether an institution's refund policy is in accord with requirements imposed by the State government and with a reasonable policy endorsed by self-regulatory

organizations such as the institution's accrediting agency. This approach, which is authorized by the new section 487, would preserve the principle of minimum Federal involvement in institutional refund policies without compromising the Government's interest in keeping defaults on student loans to an absolute minimum.

B. Community-Developed Standards.

These regulations revise the GSLP regulations by placing increased reliance on standards developed by the postsecondary education community in determining what is fair and equitable in regard to refunds. Where a State enacted laws affecting the school's refund policy, compliance with State law of course is necessary. In addition, the school must demonstrate fairness and equity in its refund policy by establishing a policy that is in accord with standards accepted by the postsecondary education community and the Secretary.

These regulations establish two avenues for compliance, each of which is based on community self-regulation. A school must adhere to criteria approved by the Secretary which are set by the school's nationally recognized accrediting agency. If no such standards exist, the school must adhere either to the standards for fair and equitable refunds set out in Appendix A or to standards that are established by the higher education community through its self-regulating guidelines and approved by the Secretary.

A school may not opt to comply with standards where no standards exist (e.g., by basing its refund policy on an accrediting agency policy that offer no guidance on refunds). These regulations do not require accrediting agencies or other postsecondary organizations to develop refund standards in order to retain eligibility in Federal programs. These regulations simply recognize that some accrediting agencies have already developed such standards and treat those standards as strong evidence of appropriate practice within the postsecondary education community.

The Secretary considers the guidelines on refund policies which were established by the National Association of College and University Business Officers (NACUBO), in conjunction with persons representing a wide range of schools and professional responsibilities, as the closest indication of the higher education community's consensus on fair and equitable refund policies. These guidelines were specifically developed to assist in achieving self-regulation and have received support from fifteen higher education associations. The guidelines have been incorporated in Appendix A to these regulations. A refund policy based on State law and these guidelines is, therefore, in compliance with § 682.608(b) requirements if the school's nationally recognized accrediting agency has not adopted standards approved by the Secretary.

For ease of reference, the entire document has been reproduced. However, the reader should direct his or her attention to guidelines VI, VII, and VIII of the appendix, which relate to fair and equitable refund policies. This document does not affect a school's obligation to comply with State law or with any Department of Education regulation other than § 682.608(b). Refund policies which are based on other guidelines will be accepted if those guidelines receive the Secretary's approval.

The Department of Education has discussed this regulatory approach with various constituent groups. It is the Secretary's belief that the shift toward the reliance on standards developed through initiatives like the one undertaken by NACUBO will not deprive student borrowers or the program in general of the necessary protection against unfair refund policies.

C. Summary of Comments and Responses

Comment. One commenter felt that guideline XII of Appendix A should not be considered as part of the GSLP refund policy because it is not fair and equitable to all students.

Response. Guideline XII is not a part of the GSLP refund policy. Appendix A—*Standards for Acceptable Refund Policies by Participating Schools* was developed and published by the National Association of College and University Business Officers (NACUBO). For purposes of the GSLP, the Secretary considers guidelines VI, VII, and VIII of that document to be acceptable elements of a fair and equitable school refund policy. The document was reproduced in its entirety merely for the convenience of the reader.

Comment. One school commenter said that two programs at his school were governed by a State Board that stipulates that additional students may not enroll in these programs once class has commenced. The commenter felt that since the school was not able to replace drop-outs the school should not be required to refund any money to students who left class after the program began.

Response. In developing its refund policy NACUBO, in conjunction with persons representing a wide range of schools and professional responsibilities, considered situations such as the one described by the commenter. The Secretary feels that it is necessary to require that GSLP-participating schools have a fair and equitable refund policy for the protection of student borrowers. Since NACUBO's refund policy is the closest indication of the higher education community's consensus on fair and equitable refund policies the Secretary has chosen to adopt it.

D. Citation of Legal Authority

A citation statutory or other legal authority for the regulations is placed in parentheses on the line following the text of the regulation.

Dated: January 12, 1981.

Shirley M. Hufstedler,

Secretary of Education.

(Catalogue of Federal Domestic Assistance No. 84.032, Guaranteed Student Loan Program)

34 CFR Part 682 is amended as follows:

* * * * *

1. Section 682.608(b) is revised to read as follows:

§ 682.608 Refund policy.

* * * * *

(b) *Fair and equitable refund policy.* A school's refund policy is fair and equitable if that policy conforms with—

(1) The requirements of applicable State law; and

(2)(i) Specific refund standards set by the school's nationally recognized accrediting agency and approved by the Secretary;

(ii) If no such standards exist, other specific refund policy standards, either contained in Appendix A to this Part or set by another association of institutions of postsecondary education and approved by the Secretary.

(20 U.S.C. 1082, 1088f-1(a)(2))

* * * * *

2. An Appendix A to 34 CFR Part 682 is added, to read as follows:

Appendix A—Standards for Acceptable Refund Policies by Participating Schools

For purposes of § 682.608(b), the Secretary considers guidelines VI, VII, and VIII of the following document to be acceptable elements of a fair and equitable school refund policy. The document, which is reproduced in its entirety for the convenience of the reader, was developed by the National Association of College and University Business Officers. The document does not affect a school's obligation to comply with other Department of Education regulations.

Policy Guidelines for Refund of Student Charges

(I) *The governing board of the institution should review and approve the schedule of all institutional charges and refund policies applicable to students.* The pricing of services and refund policies have important consequences to students, parents, the institution, and society; as such, pricing and refund policies should receive board attention and approval.

(II) *Institutions should seek consumer views in the process of establishing and amending charge and refund structures.* Decisions regarding institutional funds are ultimately the sole responsibility of the institution's legally designated fund custodians. However, consumer concerns do affect decision making, and involving consumers in decision making related to charges and refunds is a desirable approach for assessing student needs and creating public awareness of institutional requirements.

(III) *Institutions should publish a current schedule of all student charges, a statement of the purpose for such charges, and related refund policies, and have them readily available free of charge to current and prospective students.* Students and parents have a right to know what charges they will be expected to pay and what will or will not be refunded. They also have a right to know what services accompany payment of the charges. Informational materials published free for students and prospective students are ideal for this purpose.

(IV) *Institutions should clearly designate all optional charges as "optional" in all published schedules and related materials. Clearly, charges that are mandatory and charges that are optional must be plainly differentiated in all printed materials.* Also, the institution should state clearly in its schedule if a charge is optional for some students but required for others. Statements accompanying the schedule may include institutional endorsements of the optional program or service.

(V) *Institutions should clearly identify charges and deposits that are nonrefundable as "nonrefundable" on all published schedules.* Institutions determine on an individual basis which of their charges are refundable or non-refundable. In general, admission fees, application fees, laboratory fees, facility and student activity fees, and other similar charges are not refundable. These fees are generally charged to cover the cost of activities such as processing applications and other student information, reserving academic positions, and establishing the limits of institutional programs and services, reserving housing space, and otherwise setting the fixed costs of the institution for the coming academic periods.

Institutions determine on an individual basis which of their deposits are refundable or nonrefundable. Some deposits will be nonrefundable or will be credited to a student's account (e.g., tuition deposits). Others are refundable according to the terms of the deposit agreement (e.g., deposits for breakage).

(VI) *Institutions should refund housing rental charges, less a deposit, so long as written notification of cancellation is made prior to a well-publicized date that provides reasonable opportunity to make the space available to other students.* Written notification on or before the beginning of the term of the contract is necessary to ensure utilization of housing units. During the term of the contract, room charges are generally not refundable. However, based on the program offered, space availability, debt service requirements, State and local laws, and other individual circumstances, institutions may provide for some more flexible refund guideline for housing.

(VII) *Institutions should refund board charges in full, less a deposit, if written notification of cancellation is made prior to a well-publicized date that falls on or before the beginning of the term of the contract. Subsequent board charges should be refunded on a pro rata basis less a withdrawal fee.* It is reasonable to make a refund for those goods and services not consumed. The withdrawal charge should reflect that portion of an institution's costs that are fixed for the term of the contract.

(VIII) *The institutional tuition refund policy for an academic period should include the following minimum guidelines:*

A. *The institution should refund 100 percent of the tuition charges, less a deposit fee, if written notification of cancellation is made prior to a well-publicized date that falls on or before the first day of classes.*

B. *The institution should refund at least 25 percent of the tuition charge if written notification of withdrawal is made during the first 25 percent of the academic period.* It is reasonable to refund tuition charges on a sliding scale if a student withdraws from his or her program prior to the end of the first 25 percent of the academic period unless state law imposes a more restrictive refund policy.

(IX) *The institution should assess no penalty charges where the institution, as opposed to the student, is in error. The institution should make refunds in cases where the institution has assessed charges in error.* Penalty charges, such as those involving late registration fees, change of schedule fees, late payment fees, should not be assessed if it is determined that the student is not responsible for the action causing the charge to be levied.

(X) *Institutions should advise students that any notifications of withdrawal or cancellation and requests for refund must be in writing and addressed to the designated institutional officer.* A student's written notification of withdrawal or cancellation and request for a refund provides an accurate record of transactions and also ensures that such request will be processed on a timely basis. Acceptance of oral requests is an undesirable practice.

(XI) *Institutions should pay or credit refunds due on a timely basis.* The definition of "timely basis" should include the time required to process a formal student request for refund, to process a check if required, and to allow for mail delivery, when necessary. If an institution has a policy that a refund of an inconsequential amount will not be made, this policy should be published in part of all materials related to refund policies.

(XII) *Institutions should publicize, as a part of their dissemination of information on charges and refunds, that an appeals process exists for students or parents who feel that individual circumstances warrant exceptions from published policy. The informational materials should include the name, title, and address of the official responsible.* Although charges and refund policies should reflect extensive consideration of student and institutional needs, it will not be possible to encompass in these structures the variety of personal circumstances that may exist or develop. Institutions are required to provide a system of due process to their students, and charges and refund policies are legitimately a part of that process. Students and parents should be informed regularly of procedures for requesting information concerning exceptions to published policies.

[FR Doc. 81-1291 Filed 1-15-81; 8:45 am]
BILLING CODE 4000-01-M

Office of Educational Research and Improvement

34 CFR Part 735

Minority Institutions Science Improvement Program (MISIP)

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary issues regulations to implement the Minority Institutions Science Improvement Program.

These regulations will allow accredited two- and four-year institutions of higher education whose enrollments are predominantly (more than 50 percent) American Indian; Alaskan Native; Black, not of Hispanic Origin; Hispanic (including persons of Mexican, Puerto Rican, Cuban, and Central or South American origin); Pacific Islander or any combination of these or other disadvantaged ethnic minorities who are underrepresented in science to become eligible to participate in the program. The program provides support to these minority institutions and certain other nonprofit groups to effect long-range improvement in science education at predominantly minority institutions and to increase the flow of underrepresented ethnic minorities into scientific and engineering careers.

EFFECTIVE DATE: These final regulations are expected to take effect 45 days after they are transmitted to Congress. Regulations are usually transmitted to Congress several days before they are published in the Federal Register. The effective date is changed if Congress takes certain adjournments. If you want to know the effective date of these final regulations, call or write the Department of Education contact person.

FOR FURTHER INFORMATION CONTACT:
Dr. Argelia Velez-Rodriquez, Telephone: (202) 282-7760.

SUPPLEMENTARY INFORMATION: The authority to administer the Minority Institutions Science Improvement Program (MISIP) is firmly rooted in Congressional action. Prior to its transfer to the Department of Education, MISIP was administered by the National Science Foundation under the authority of section 3(a) of the National Science Foundation Act 42 U.S.C. 1862. When the Department of Education was established, MISIP was specifically transferred to it by Congress. (Section 304 of the Department of Education Organization Act and 20 U.S.C. 3444; S. Rep. No. 96-49, 96th Cong., 1st Sess. 50-51) (1979). S. Rep. No. 96-320, 96th Cong., 1st Sess. 50 (1979). These references indicate that Congress recognized the purpose of the program to assist institutions with predominantly minority enrollments and that Congress intended that the Department of Education administer the program in a manner consistent with this purpose.

Finally, section 1303 of the Education Amendments of 1980 specifically amends the General Education Provisions Act to authorize appropriations to carry out the MISIP program during fiscal year 1981. Pub. L. 96-374, § 1303 (1980).

The objectives of MISIP are two-fold: (1) to effect long-range improvement in science education at predominantly minority institutions, and (2) to increase the flow of underrepresented ethnic minorities into scientific careers. In general, predominantly minority institutions lack the extensive financial resources needed to plan for and implement improved programs of science instruction. The students at these institutions represent a large, relatively untapped, reservoir of scientific talent. In addition, many of these students have suffered the pervasive effects of years of discrimination, including economic disadvantage and inferior academic preparation, that have not yet been eradicated by the Civil Rights Act of 1964 and other remedial measures.

For these reasons, students are often poorly prepared for the rigors of science education opportunities at the postsecondary level. With improved science education opportunity these students will be able to redress the current underrepresentation of certain minorities within the scientific and engineering community and make a large contribution to the Nation's need for trained professionals in these fields.

It should also be emphasized that all students that attend predominantly minority institutions—whether or not they belong to a disadvantaged ethnic group currently underrepresented in science and engineering—are expected to benefit from the improved educational opportunities that result from this program. In addition, although the purpose of MISIP is to improve these opportunities at predominantly minority institutions, entities other than minority institutions are eligible to receive a grant and participate in certain types of projects conducted as part of MISIP.

The provisions of these final regulations are substantially the same as the provisions of the notice of proposed rulemaking (NPRM) published in the **Federal Register** on November 5, 1980, 45 FR 73514. Interested persons were given 30 days in which to comment on the NPRM. No comments were received during the comment period which ended December 5, 1980.

Assessment of Educational Impact

On November 14, 1980, the Secretary published a notice in the **Federal Register** of the Department's intent to publish regulations necessary to implement the Education Amendments of 1980. In that notice, the Department listed the existing regulations affected by the new law and requested comments whether those regulations required information that is already being gathered by or is available from any other agency or authority of the United States. The regulations in this document are based on regulations listed in the November 14 notice. Based on any comments received and the Department's own review, it has been determined that the regulations in this document do not require information that is already being gathered by or is available from any other agency or authority of the United States.

Citation of Legal Authority

The reader will find a citation of statutory or other legal authority in parentheses on the line following each substantive provision.

(Catalog of Federal Domestic Assistance No. 84.120, Minority Institutions Science Improvement Program. Part I of OMB Circular A-95 does not apply to this program)

Dated: January 12, 1981.

Shirley M. Hufstedler,

Secretary of Education.

The Secretary of Education amends Title 34 of the Code of Federal Regulations to add a new Part 755, reading as follows:

PART 735—THE MINORITY INSTITUTIONS SCIENCE IMPROVEMENT PROGRAM

Subpart A—General

Sec.

735.1 What is the Minority Institutions Science Improvement Program (MISIP)?
735.2 Who is eligible to receive a grant?
735.3 How does a minority institution establish eligibility?
735.4 What regulations apply to the Minority Institutions Science Improvement Program?
735.5 What definitions apply to the Minority Institutions Science Improvement Program?

Subpart B—What Kinds of Projects Does the Department of Education Assist Under This Program?

735.10 What kinds of projects are supported by this program?
735.11 What are institutional projects?
735.12 What are design projects?
735.13 What are special projects?
735.14 What are cooperative projects?

Subpart C—How Does One Apply for a Grant?

735.20 Application procedures.

Subpart D—How Does the Secretary Make a Grant?

735.30 How does the Secretary evaluate an application?
735.31 What selection criteria does the Secretary use?

Subpart E—What Conditions Must a Grantee Meet?

735.40 What are the restrictions on the types of costs a grant may support?

Authority: Sec. 3(a) of the National Science Foundation Act of 1950 as enacted by Pub. L. 81-507, 64 Stat. 149, as amended (42 U.S.C. 1862).

Subpart A—General

§ 735.1 What is the minority institutions science improvement program (MISIP)?

The Minority Institutions Science Improvement Program is designed to effect long-range improvement in science education at predominantly minority institutions and to increase the flow of underrepresented ethnic minorities into scientific careers.

(42 U.S.C 1862)

§ 735.2 Who is eligible to receive a grant?

The following parties are eligible to receive grants:

(a) Public and private, nonprofit minority institutions as defined in § 735.5(b).

(b) Nonprofit science-oriented organizations, professional scientific societies, and all nonprofit, accredited colleges and universities which render a needed service to a group of eligible minority institutions or which provide

in-service training for project directors, scientists, and engineers from eligible minority institutions.

(42 U.S.C. 1862)

§ 735.3 How does a minority institution establish eligibility?

The institution is required to provide the information necessary to establish eligibility to participate in the program, including the data on enrollment furnished by the institution to the Office for Civil Rights, Education Department, for the "Fall Enrollment and Compliance Report of Institutions of Higher Education, 1978" (Higher Education General Information Survey HEGIS XIII: OE Form 2300–2.3).

(42 U.S.C. 1862)

§ 735.4 What regulations apply to the minority institutions science improvement program?

The following regulations apply to the Minority Institutions Science Improvement Program:

(a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Part 75 (Direct Grant Programs) and 34 CFR Part 77 (General).

(b) The regulations in this Part 735.

(42 U.S.C. 1862, 20 U.S.C. 3444)

§ 735.5 What definitions apply to the minority institutions science improvement program?

(a) *Definitions in EDGAR.* The following terms used in this part are defined in 34 CFR Part 77.

Applicant
Application
Department
Grants
Grantee
Nonprofit
Private
Project
Project period
Resources
Secretary

(20 U.S.C. 1221e–3(a)(1))

(b) *Definitions that apply to this part:*

"Accredited" means currently certified by a nationally recognized accrediting agency or making satisfactory progress toward achieving accreditation.

"Minority" means American Indian, Alaskan Native, black (not of Hispanic origin), Hispanic (including persons of Mexican, Puerto Rican, and Central or South American origin), Pacific Islander or other ethnic group underrepresented in science and engineering.

"Minority institution" means an accredited college or university whose enrollment of a single minority group or a combination of minority groups as defined in § 735.5(b) exceeds fifty percent of the total enrollment.

"Pre-College level" means middle or secondary school.

"Science" means, for the purposes of this program, the biological, engineering, mathematical, physical and social sciences, and the history and philosophy of science; also included are interdisciplinary fields which are comprised of overlapping areas among two or more sciences.

"Underrepresented in science and engineering" means a minority group whose number of scientists and engineers per 10,000 population of that group is substantially below the comparable figure for scientists and engineers who are white and not of Hispanic origin.

(42 U.S.C. 1862)

Subpart B—What Kinds of Projects Does the Department of Education Assist Under This Program?

§ 735.10 What kinds of projects are supported by this program?

The Secretary awards grants under this program for all or some of the following categories of projects:

(a) Institutional projects for implementing a comprehensive science improvement plan as described in § 735.11.

(b) Design projects for developing a long-range science improvement plan as described in § 735.12.

(c) Special projects to support a single activity as described in § 735.13.

(d) Cooperative projects to share facilities and personnel and disseminate information as described in § 735.14.

(42 U.S.C. 1862)

§ 735.11 What are institutional projects?

(a) Institutional project grants support the implementation of a comprehensive science improvement plan, which may include any combination of activities for improving the preparation of minority students for careers in science.

(b) The length of the project period is a maximum of 36 months.

(c) Activities that the Secretary may assist under an institutional project include but are not limited to the following:

(1) Faculty development programs; or

(2) Development of curriculum materials.

(d) Eligible applicants for institutional projects are minority institutions.

(42 U.S.C. 1862)

§ 735.12 What are design projects?

(a) Design project grants assist minority institutions that do not have their own appropriate resources or personnel to plan and develop long-range science improvement programs.

(b) The length of the project period is a maximum of 12 months.

(c) Activities that the Secretary may assist under a design project include but are not limited to the following:

(1) Development of planning, management, and evaluation systems; and

(2) Improvement of institutional research or development offices.

(d) Eligible applicants for design projects are minority institutions that have not received support under this program in prior years.

(42 U.S.C. 1862)

§ 735.13 What are special projects?

(a) Special project grants support a single activity to—

(1) Improve quality training in science and engineering at minority institutions;

(2) Enhance the minority institutions' general scientific research capabilities;

(3) Provide a needed service to a group of eligible minority institutions; or

(4) Provide in-service training for project directors, scientists, and engineers from eligible minority institutions.

(b) The length of the project period is a maximum of 24 months.

(c) Activities that the Secretary may assist under a special project include, but are not limited to, the following:

(1) Advanced science seminars;

(2) Science faculty workshops;

(3) Faculty training to develop specific science research or education skills;

(4) Research in science education;

(5) Programs for visiting scientists;

(6) Preparation of films or audio-visual materials in science;

(7) Development of learning experiences in science beyond those normally available to minority undergraduate students;

(8) Development of pre-college enrichment activities in science; and

(9) Any other activities designed to address specific barriers to the entry of minorities into science.

(d) Eligible applicants for special projects of the type listed in paragraphs (a) (1) and (2) of this section are minority institutions. Eligible applicants for special projects of the type listed in paragraphs (a) (3) and (4) of this section are all applicants eligible for assistance under this program.

(42 U.S.C. 1862)

§ 735.14 What are cooperative projects?

(a) Cooperative project grants assist groups of nonprofit accredited colleges and universities with common problems to work together to conduct a science improvement project.

(b) The length of the project period is a maximum of 36 months.

(c) Activities that the Secretary may fund under cooperative projects include, but are not limited to, the following:

(1) Assisting institutions in sharing facilities and personnel;

(2) Disseminating information about established programs in science and engineering;

(3) Supporting cooperative efforts to strengthen the institutions' science and engineering programs; and

(4) Carrying out a combination of any of the activities in paragraphs (c)(1)–(3) of this section.

(d) Eligible applicants for cooperative projects are groups of nonprofit accredited colleges and universities whose primary fiscal agent is an eligible minority institution as defined in § 735.5(d).

(42 U.S.C. 1882)

Subpart C—How Does One Apply for a Grant?

One applies for a grant under the procedures of EDGAR §§ 75.100 through 75.129.

Subpart D—How Does the Secretary Make a Grant?

§ 735.30 How does the Secretary evaluate an application?

(a) The Secretary evaluates an application on the basis of the criteria in § 735.31.

(b) The Secretary awards up to 100 points for these criteria.

(c) The maximum possible score for each criterion is indicated in parentheses.

(d) For applications of substantially equal quality, the Secretary gives priority to projects that contribute to achieving balance among projects funded by this program within each of the following categories:

(1) Past history of participation in the program;

(2) Geographic location;

(3) Academic discipline; and

(4) Project type.

§ 735.31 What selection criteria does the Secretary use?

The Secretary evaluates applications using the following criteria:

(a) *Plan of operation.* (10 points)

(1) The Secretary reviews each application for information that shows the quality of the plan of operation for the project.

(2) The Secretary looks for information that shows—

(i) High quality in the design of the project;

(ii) An effective plan of management that insures proper and efficient administration of the project;

(iii) A clear description of how the objectives of the project relate to the purpose of the program;

(iv) The way the applicant plans to use its resources and personnel to achieve each objective; and

(v) Methods of coordination. (See EDGAR 34 CFR 75.581)

(b) *Quality of key personnel.* (10 points)

(1) The Secretary reviews each application for information that shows the quality of the key personnel the applicant plans to use on the project.

(2) The Secretary looks for information that shows—

(i) The qualifications of the project director (if one is to be used);

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (b)(2) (i) and (ii) of this section plans to commit to the project.

(iv) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as members of a racial or ethnic minority groups, women, handicapped persons, and the elderly.

(3) To determine the qualifications of a person, the Secretary considers evidence of past experience and training, in fields related to the objectives of the project, as well as other information that the applicant provides.

(c) *Budget and cost effectiveness.* (5 points)

(1) The Secretary reviews each application for information that shows that the project has an adequate budget and is cost effective.

(2) The Secretary looks for information that shows—

(i) The budget for the project is adequate to support the project activities; and

(ii) Costs are reasonable in relation to the objectives of the project.

(d) *Evaluation plan.* (10 points)

(1) The Secretary reviews each application for information that shows the quality of the evaluation plan for the project. (See EDGAR 34, CFR 75.590—Evaluation by the grantee; where applicable)

(2) The Secretary looks for information that shows methods of evaluation that are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable.

(e) *Adequacy of resources.* (5 points)

(1) The Secretary reviews each application for information that shows that the applicant plans to devote adequate resources to the project.

(2) The Secretary looks for information that shows—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies that the applicant plans to use are adequate.

(20 U.S.C. 1221(e)—3(a)(1))

(f) *Identification of need for the project.* (10 points)

(1) The Secretary reviews each application for information that shows the identification of need for the project.

(2) The Secretary looks for information that shows—

(i) An adequate needs assessment;

(ii) An identification of specific needs in science; and

(iii) An involvement of appropriate individuals, especially science faculty, in identifying the institutional needs.

(g) *Potential institutional impact of the project.* (15 points)

(1) The Secretary reviews each application to determine the extent to which the proposed project gives evidence of potential for enhancing the institution's capacity for improving and maintaining quality science education for its minority students.

(2) The Secretary looks for information that shows—

(i) For an institutional or cooperative project, the extent to which both the established science education program(s) and the proposed project will expand or strengthen the established program(s) in relation to the identified needs; or

(ii) For a design project, the extent to which realistic long-range science education improvement plans will be developed with the technical assistance provided under the project; or

(iii) For a special project, the extent to which it addresses needs that have not been adequately addressed by any existing institutional science program or takes a particularly new and exemplary approach that has not been taken by any existing institutional science program.

(h) *Institutional commitment to the project.* (15 points)

(1) The Secretary reviews each application for information that shows that the applicant plans to continue the project activities when funding ceases.

(2) The Secretary looks for information that shows—

(i) Adequate institutional commitment to absorb any after-the-grant burden initiated by the project;

(ii) Adequate plans for continuation of project activities when funding ceases;

(iii) Clear evidence of past institutional commitment to the provision of quality science programs for its minority students; and

(iv) A local review statement signed by the chief executive officer of the institution endorsing the project and indicating how the project will accelerate the attainment of the institutional goals in science.

(i) *Expected outcomes.* (10 points)

(1) The Secretary reviews each application to determine the extent to which minority students will benefit from the project.

(2) The Secretary looks for information that shows—

(i) Expected outcomes likely to result in the accomplishment of the program goals;

(ii) Educational value for science students; and

(iii) Possibility of long-term benefits to minority students, faculty, or the institution.

(j) *Scientific and educational value of the proposed project.* (10 points)

(1) The Secretary reviews each application for information that shows its potential for contributions to science education.

(2) The Secretary looks for information that shows—

(i) The relationship of the proposed project to the present state of science education;

(ii) The use or development of effective techniques and approaches in science education; and

(iii) Potential use of some aspects of the project at other institutions.

(42 U.S.C. 1862)

Subpart E—What Conditions Must a Grantee Meet?

§ 735.40 What are the restrictions on the types of costs a grant may support?

Funds may not be used for—

(a) Undergraduate scholarships;

(b) Augmenting the salary rate for faculty members pursuing regularly assigned duties;

(c) Full support of faculty members currently employed by the institutions;

(d) Support for a project director or for faculty members beyond the extent of their participation in project activities. For design grants no more than fifty percent of the academic year salaries may be paid;

(e) Support for faculty members engaged in project activities during summer in excess of two-months of a faculty member's current academic year salary for full-time involvement for an 8-week period;

(f) Fees and expenses for consultants in excess of the established applicant's rate;

(g) Support for student assistants not involved in project activities or in excess of the approved work-study rates in operation at the institution;

(h) Support of any other on-going, regular activity at the institution;

(i) Staff benefits, if they are treated as an item of indirect cost in the negotiation of the institution's indirect cost rate; and

(j) Major renovations of existing physical facilities.

(42 U.S.C. 1862)

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34 CFR Part 757

Law-Related Education Program [1]

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary of Education issues final regulations to implement the Law-Related Education Act of 1978. These regulations govern grant awards to encourage State educational agencies (SEA's), local educational agencies (LEA's), and other public and non-profit private agencies, organizations, and institutions to provide law-related education programs. These regulations replace the final regulations that were issued for the Act on April 24, 1980 (45 FR 27880).

EFFECTIVE DATE: These regulations are expected to take effect 45 days after they are transmitted to the Congress. Regulations are usually transmitted to the Congress several days before they are published in the Federal Register. The effective date is changed by statute if the Congress takes certain adjournments. If you want to know the effective date of these regulations, call or write to the Department of Education contact person.

FOR FURTHER INFORMATION CONTACT: Elizabeth Farquhar, Telephone (202)-472-4594.

SUPPLEMENTARY INFORMATION:

A. Background

The Law-Related Education Act of 1978 is enacted as Part G of Title III of the Elementary and Secondary Education Act.

The Act authorizes the Secretary to fund discretionary grants or contracts supporting law-related education activities. It defines "law-related education" to mean education to equip non-lawyers with knowledge and skills pertaining to the law, the legal process, and the legal system and the fundamental principles and values on which these are based. The purpose is to enable children, youth, and adults to be more informed and effective citizens.

The Act is premised on congressional findings that—

(1) There is a lack of understanding of how our system of law and legal institutions works;

(2) That understanding is essential in developing faith and appreciation in our democratic system of government and in preparing youth to be knowledgeable, responsible citizens; and

(3) There is an urgent need for Federal involvement to encourage and support the development of law-related education programs.

Under the Act, the Secretary is authorized to fund a variety of law-related education activities, including awareness activities, program support, materials and methods development, pilot and demonstration projects, dissemination, clearinghouse activities, technical assistance, training, research and evaluation, involvement of law-related organizations, and youth internships.

The regulations govern grant and contract awards beginning in Fiscal Year 1981. Regulations are needed—

(1) To clarify the scope of law-related education as defined in the statute;

(2) To establish the types of activities eligible for support;

(3) To authorize priorities for types of activities; and

(4) To indicate criteria governing the selection of grantees.

B. Public Comments on the Proposed Regulations

A notice of proposed rulemaking (NPRM) for the Law-Related Education Act was published in the Federal Register of September 22, 1980 (45 FR 62850). The NPRM proposed to replace final regulations issued for the Act on April 24, 1980 (45 FR 27880), and invited public comment. Seven people provided responses. In general, these comments supported the simplification of the regulations and the elimination of cost-sharing and other requirements. A number of specific questions were raised on provisions of the proposed regulations; in many instances, these comments have resulted in changes which are incorporated in the final regulations.

[1] Note: The closing date for applications for new projects under the Law-Related Education Program was published on January 15, 1981 at page 3588.

While the provisions of these final regulations are substantially the same as those of the NPRM, some notable modifications include: alterations in the list of subjects used to illustrate topics eligible for funding under the Act; elimination of the requirement that existing projects include technical assistance activities and consolidation of other sections referring to technical assistance; elimination of a five percent limit on equipment costs. Other changes serve to conform the regulations more closely to the language of the Act, to clarify provisions of the regulations, or to provide additional flexibility for applicant institutions. The paragraphs below summarize the comments and the Secretary's responses to them. They appear in the order of the sections to which they pertain. All references which in the NPRM appeared under the heading Part 161g have been redesignated to refer to the new Part 757; the section numbers, however, remain the same.

§ 757.1 Scope of law-related education

Comment. Two commenters raised questions regarding the list of illustrative activities pertinent to the Act. One commenter recommended that (c)(4) be expanded to include lawmaking processes at the local and State levels as well as the Federal level. Another stated that (c)(6) did not make clear what kinds of rules are covered. The commenter also questioned, in (c)(7), who would determine the "strengths and weaknesses" of our system. It was also suggested that the study of the juvenile justice system be added to that of the criminal and civil systems under that example. A commenter objected to the inclusion, in (c)(8), of "informal law" as a possible invitation for applicants to include the study of morals and ethics. One of the commenters suggested modifications in (c) (9), (11), and (13), adding "equality, rights, and responsibilities" and removing "punishment" ((c)(9)); substituting "housing" for "criminal" ((c)(11)); and substituting "American Indian legal traditions" for "Indian law" in (c)(13).

Response. Some changes have been made. Local, State and Federal lawmaking processes are now included under (c)(4). The reference to development and administration of rules has been made more specific; it includes rules formulated by government. Paragraph (c)(7) is amended to include the juvenile justice system while the phrase on strengths and weaknesses is deleted to avoid confusion. Paragraph (c)(8) is deleted. The recommended changes in (c) (9), (11), and (13) have not been made; the examples provided under the NPRM are illustrative only; the commenter's suggestions are all legitimate subjects of study under the Act.

§ 757.4 Definitions

Comment. One commenter asked why the definition of "interested groups and individuals" was broader than that mentioned in the Act.

Response. The definition has been eliminated.

§ 757.12 Elementary/Secondary School Project Activities

Comment. One commenter was concerned that by combining awareness and training activities in the same section, the regulations were deviating from the language of the law ((b)(1)). Clarification was sought concerning the phrase "to the extent that they are incidental to training activities" ((b)(2)) and the commenter asked if this qualification applied to all materials or lesson plans only. The commenter expressed a concern over the provisions for technical assistance in ((b) (3) and (5)). This concern included a question as to the recipients of technical assistance and the mandatory inclusion of technical assistance activities by applicants from established programs. The commenter felt that these provisions were unclear and inconsistent with the statute. The commenter asked why the regulations include grants involving activities to mobilize financial and programmatic support ((b)(4)), while a second commenter suggested a rewording of this section to place additional emphasis on community participation.

Response. Several changes have been made to conform the regulation more closely to the language of the Act. Awareness and training activities have been separated into two discrete provisions, with each identifying participants as stated in the Act. With respect to the comment requesting an explanation of (b)(2) on materials development, the section applies to all materials listed. It is included so that materials development does not become the major focus of elementary/secondary programs. There is evidence that a diversity of curriculum materials for elementary/secondary education already exists; there are far greater needs for program development and institutionalization within the schools. At the same time, we recognize that existing materials must be adapted to serve local needs. For this reason, curriculum development is permitted as an adjunct activity to training in this section, while § 757.13, exemplary projects, permits an exclusive focus on curriculum development for neglected areas within law-related education.

The two provisions on technical assistance have been combined into one so as to make it clear that the regulatory intent, like that of the Act, is for technical assistance to be extended to both individuals (such as teachers) and groups and organizations. In addition, the reference to technical assistance requirements of multiyear projects has been deleted. The Act is designed to encourage the development of law-related education programs throughout the Nation. Its authorized funding level cannot provide direct funding for more than a small number of programs. It must, therefore, encourage funded projects with developed expertise to offer assistance to other developing programs to achieve the statutory purposes. At the same time, the Secretary realizes that the law authorizes, but does not mandate, technical assistance activities and for that reason a change is made.

The provision for the mobilization of financial and programmatic support is retained with a minor change. Part of the overall strategy in this program is to fund seed or incentive grant projects that will eventually become self-sustaining programs. It is critical that projects seek other sources of funding for their long-term operation. Insufficient attention paid to future sources of support for federally funded programs will impede the process of program development authorized by the Act and may contribute to the problem of programs ending when Federal funds are exhausted. With respect to the comment suggesting a greater emphasis on community participation in this section, no change is deemed necessary; the Secretary hopes that community involvement will be a strong component of any such activities, but does not consider it appropriate to mandate that approach within the regulations.

§ 757.13 Exemplary Projects

Comment. One commenter suggested, under (a), removal of the requirement that exemplary projects propose approaches that have "not been taken by any law-related education program," stating that this was too prescriptive and not very realistic.

Response. A change has been made in accordance with the comment.

§ 757.20 Private School Participation.

Comment. A commenter requested that the regulations place additional emphasis on the need for LEAs and SEAs to involve private school officials in developing applications under the Act

so that children in these schools can be served by funded projects.

Response. A change has been made. This provision is uniformly maintained for all ED programs by §§ 75.650 and 76.650–652. The more complete section from Part 76 is now referenced in the regulation and will be part of the application package for the program. No special provisions, however, will be added for these regulations in order to retain a consistent policy throughout the Department.

§ 757.30 Award Decisions

Comment. One commenter asked why the Secretary might not fund a project if it comes within a priority of another Federal agency, and asked whether other existing Federal programs overlap with this one.

Response. No change has been made. The Secretary believes that the Department should be certain to use appropriated funds in a manner that does not duplicate activities of other Federal agencies. In general, law-related education has not been a major concern of any Federal agency. Two agencies—the National Endowment for the Humanities (NEH) and the Office of Juvenile Justice and Delinquency Prevention (OJJDP)—have funded a small number of projects in law-related education. NEH defines jurisprudence as a discipline of the humanities; OJJDP is concerned with law-related education's potential role in delinquency prevention. To insure wise expenditure of Federal funds, the ED program is closely coordinated with relevant programs in these other agencies. It is for this reason that the provision is maintained.

§ 757.31 Evaluation Criteria

Comment. One commenter asked why the regulations refer to gains in students' attitudes, when the law only refers to knowledge and skills.

Response. A change has been made to conform the criterion to the language of the Act.

Comment. The same commenter asked why, in (a)(4), "on-site" training was specified, and, in (a)(iii), why "on-site" technical assistance was required.

Response. Changes have been made: under training, the criterion has been made less prescriptive, but it retains the idea that training should be conducted in a manner and place accessible to trainees. No changes have been made in the reference to technical assistance. There is evidence that program quality will be enhanced when the project includes some provisions for attention to the specific, on-site needs of the recipients of technical assistance. Studies of educational innovations clearly demonstrate that the implementation of innovations takes place over time within the classroom and school building. Technical assistance away from the implementor's site is likely to be less effective than when it occurs at that site. It should be noted, however, that both these passages are not program requirements; but simply one means of evaluating the likely quality of a proposed project.

Comment. The commenter asked why, in (a)(5)(i) and (c)(2), the regulation appears to require commitment from organizations likely to participate in law-related education activities, when the law simply encourages their involvement.

Response. A change has been made. Involvement of repesentative organizations in law-related education is not a requirement of the regulation. It is simply one way of judging the likely quality of proposed activities. Just as the law encourages the involvement of organizations in law-related education programs, the selection criteria encourage applicants to make provisions for participation. The language of the criterion has been modified, however, to reflect more closely the language of the Act.

Comment. The commenter asked for clarification of provisions for technical assistance under (d)(1)(ii) and (d)(3).

Response. Changes have been made in order to clarify and consolidate these sections.

Comment. One commenter asked, in response to paragraph (b)(v)(D), how elementary and secondary school projects could include access for the elderly. Another commenter requested inclusion, under plan of operation, (b)(2)(v), of immigrant groups and those of limited English-speaking ability.

Response. No change has been made. This criterion applies to all ED programs and should be employed to the extent to which it is appropriate. Immigrant groups and others mentioned by the second commenter would be included as members of racial or ethnic minority groups. In the first year of the program, one of the grants went to an immigrant refugee group from Southeast Asia and several others involved American Indians and handicapped persons with limited English-speaking facility.

§ 757.32 Evaluation Criteria

Comment. A commenter suggested that, under (g), an organization with a potentially significant contribution to make but limited experience in law-related education would be at a competitive disadvantage.

Response. A change has been made. The applicant must have knowledge of law-related education, but if it lacks experience in the field it can make provision for obtaining assistance from those with appropriate background in law-related education.

§ 757.33 Duration of Support

Comment. A commenter asked for explanation of the rationale for the optional two-year project period and whether after completion of a two-year project, a grantee would be able to compete for another award.

Response. No change has been made. The recommended two-year project period is designed to provide programs with some stability over the short term and to reduce administrative burdens. The recipient of a two-year project would certainly be eligible to compete for another project upon expiration of the first one.

§ 757.40 Allowable Costs

Comment. A commenter asked why the regulation limits equipment costs to five percent of the grant amount.

Response. The section has been deleted.

Citation of Legal Authority

A citation of statutory or other legal authority has been placed in parentheses on the line following each provision.

(Catalog of Federal Domestic Assistance Number 84.123, Law-Related Education Program)

Dated: January 12, 1981.

Shirley M. Hufstedler,

Secretary of Education.

The Secretary of Education amends Title 34 of the Code of Federal Regulations by adding a new Part 757 reading as follows:

PART 757—LAW RELATED EDUCATION

Subpart A—General

Sec.
757.1 The Law-Related Education Program.
757.2 What regulations apply to the Law-Related Education Program?
757.3 Who is eligible to apply?
757.4 Definitions.

Subpart B—What Kinds of Activities Does the Secretary Support Under This Program?

757.10 What are the eligible projects; priorities?
757.11 Non-duplication of procurements.
757.12 Elementary and secondary school projects.
757.13 Exemplary projects.

Subpart C—How Does One Apply for a Grant?

757.20 What limitations apply to applications?

Subpart D—How Is a Grant Made?

757.30 How does the Secretary evaluate an application?
757.31 What criteria are used to evaluate applications for elementary and secondary school projects?
757.32 What criteria are used to evaluate applications for exemplary projects?
757.33 What is the duration of support?

Subpart E—What Conditions Must Be Met by a Grantee?

757.40 What are the limitations on allowable costs?

Authority: Part G of Title III of the Elementary and Secondary Education Act of 1965, as amended by Pub. L. 95–561, 92 Stat. 2216 (20 U.S.C. 3001–03).

Subpart A—General

§ 757.1 The Law-Related Education Program.

(a) The Law-Related Education Program is designed to give persons knowledge and skills pertaining to the law, the legal process, and the legal system, and the fundamental principles and values on which these are based.

(b) The purpose of law-related education is to enable non-lawyers, including children, youth, and adults, to be more informed and effective citizens.

(c) Law-related education may include a variety of learning approaches in such subject areas as—

(1) Fundamental legal principles and the values on which they are based;

(2) The Bill of Rights and other constitutional law;

(3) The role and limits of law in a democratic society both past and present;

(4) The Federal, State, and local lawmaking process;

(5) The role of law in avoiding and resolving conflicts;

(6) Development and administration of specific rules of law by Federal, State or local government and examination in a general or theoretical way of how rules of governance are developed and administered;

(7) The administration of the criminal, civil and juvenile justice systems;

(8) Issues of authority, freedom, enforcement, and punishment;

(9) Law as a vehicle to illuminate and resolve social and political issues;

(10) Areas of law that affect the daily lives of citizens (e.g., criminal, consumer, labor, education, administrative, environmental, and family law);

(11) Comparative law that examines law and its role in different societies and cultures;

(12) Indian law; and

(13) The application of the above and other law-related subject areas to school policies and practices.

(d) Law-related education does not include direct training for careers in law. It does not include programs designed exclusively or primarily to provide information to persons preparing for or working in a particular profession on a specific law or set of laws that affect that profession.

(20 U.S.C. 3001, 3002; S. Rep. No. 95–856, Pages 41–42)

§ 757.2 What regulations apply to the Law-Related Education Program?

The following regulations apply to grants under the Law-Related Education Act: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Part 75 (Direct Grant Programs) and 34 CFR Part 77 (General); and (b) The regulations in this part 757.

(20 U.S.C. 1221e–3, 3001, 3002)

§ 757.3 Who is eligible to apply?

A State educational agency (SEA), local educational agency (LEA), or other public or nonprofit private agency, organization, or institution may apply for a grant. An applicant may apply singly or jointly with another eligible applicant, as provided in §§ 75.127 through 75.129 of EDGAR.

(20 U.S.C. 3002(a))

§ 757.4 Definitions.

As used in these regulations—

"Act" means the Law-Related Education Act of 1978 that is enacted by Pub. L. 95–561 as Part G of Title III of the Elementary and Secondary Education Act of 1965.

(20 U.S.C. 1221e–3(a)(1), 3001)

Subpart B—What Kinds of Activities Does the Secretary Support Under this Program?

§ 757.10 What are the eligible projects; priorities?

(a) *Eligible projects.* The Secretary awards grants to support any law-related education activities authorized under the Act.

(b) *Annual priority areas.* The Secretary annually may reserve funds to support some, all, or a combination of the following types of projects: (1) Projects to support law-related education programs in elementary or secondary schools or both, as described in § 757.12. In this area, the Secretary may reserve funds for—

(i) Projects to plan and establish new law-related education programs;

(ii) Projects to strengthen or expand established law-related education programs;

(iii) Projects to provide technical assistance from established law-related education programs to other organizations in one or more States;

(2) Projects to carry out exemplary activities in any area authorized by the Act, as described in § 757.13.

(20 U.S.C. 3002)

§ 757.11 Non-duplication of procurements.

The Secretary does not fund a grant to support activities that duplicate any procurement activities under the Act.

(20 U.S.C. 3002)

§ 757.12 Elementary and secondary school projects.

(a) *Purposes.* The Secretary awards grants to support law-related education programs that serve elementary or secondary schools or both in a State, school district, or combination of school districts to—

(1) plan and establish a new program; or

(2) strengthen or expand an already established program—or provide technical assistance from the program to other organizations in one or more States—or both.

(b) *Activities.* To carry out these purposes the Secretary awards grants that support:

(1) The planning and implementation of awareness activities such as conferences or workshops for educators, law-related personnel, and the public;

(2) The planning and implementation of training activities—such as workshops, seminars, courses, or institutes—for educators and law-related personnel;

(3) The planning, development, and adaptation of curriculum and resource materials such as curriculum guides, resource publications, and lesson plans to the extent that they are incidental to training activities;

(4) Technical assistance to help individual participants (such as teachers) plan and implement the law-related education program in elementary or secondary schools and classrooms—or technical assistance to other agencies or organizations to help them identify and use available resources in initiating or conducting law-related education programs—or both; and

(5) Activities to mobilize and coordinate financial and programmatic support in the community for the grantee's program.

(20 U.S.C. 3002(d); S. Rep. No. 95–856, pages 41–42)

§ 757.13 Exemplary projects.

(a) *General.* The Secretary awards grants under this section to support innovative activities at any level of education and in any area of law-related education authorized under the Act. The

project shall address needs that have not been adequately addressed by any law-related education program or take a particularly new and exemplary approach to law-related education.

(b) *Significance of project.* The project must be of national or regional significance by—

(1) Carrying out activities that are national or regional in scope;

(2) Developing a model program or product that can be used, copied, or adapted by other agencies and institutions in other places; or

(3) Addressing a particularly critical need in law-related education.

(20 U.S.C. 3002(d); S. Rep. No. 96-856, pages 41-42)

Subpart C—How Does One Apply for a Grant?

§ 757.20 What limitations apply to applications?

(a) An application from an LEA must comply with the requirements in §§ 75.136 through 75.141 of EDGAR concerning an open meeting on the application.

(b) An application from an LEA or SEA must document compliance with Section 302(b) of the Elementary and Secondary Education Act, as implemented by §§ 75.650 and 76.650-662 of EDGAR, concerning the opportunity for participation by private school children.

(c) An application for the second year of an approved two-year project must comply with § 75.118 of EDGAR and—

(1) Provide a budget for the second year;

(2) Detail any proposed project changes, as described in § 75.110 of EDGAR; and

(3) Provide a detailed project description for the second year—as required in § 75.110 of EDGAR—if this description was not fully provided in the original project application.

(20 U.S.C. 3002(c))

Subpart D—How Is a Grant Made?

§ 757.30 How does the Secretary evaluate an application?

(a) Within any established funding reservations, the Secretary decides whether or not to fund an application based on the following factors: (1) The criteria for evaluating applications in § 757.31 (Elementary and secondary school projects) or § 757.32 (Exemplary projects), as applicable.

(b) The maximum possible score for an application is 100 points. The maximum possible score for each criterion reflects the degree of importance assigned to that criterion by the Secretary and is indicated in parentheses.

(ii) In evaluating an application under the appropriate criteria from an applicant that previously received a grant under the Act, the Secretary places great emphasis on the success of the previously funded project in reaching its objectives.

(2) Whether funding the proposed project will contribute to the widest possible distribution of law-related education programs throughout the United States.

(b) The Secretary may decline to fund a project if it comes within a priority of another Federal agency.

(20 U.S.C. 3001, 3002)

§ 757.31 What criteria are used to evaluate applications for elementary and secondary school projects?

In evaluating applications to plan and initiate, to strengthen or expand, or to provide technical assistance to law-related education programs under § 161g.12, the Secretary considers the following: (a) *Quality of the project.* (25 points) The quality of the applicant's law-related education project. In applying this criterion, the Secretary considers—

(1) Evidence of success of the applicant's materials, programs, or approaches in law-related education and in the types of activities proposed in the project;

(2) The applicant's and the staff's experience in and knowledge of law-related education, or provisions to obtain training and technical assistance from persons or groups experienced in law-related education;

(3) How the project addresses a diversity of learning approaches that are—

(i) Appropriate to the students to whom the project is directed;

(ii) Designed to address gains not only in students' knowledge, but also in their skills;

(iii) Balanced and based on sound scholarship and do not advocate particular legal or political viewpoints.

(4) The nature and scope of proposed training activities for participating individuals, including the extent of continuing training in a manner and place accessible to trainees.

(5) The likely quality of proposed technical assistance activities under § 757.12 (b)(4), including—

(i) In the case of technical assistance to other agencies and organizations, the applicant's plans for identifying the communities to receive technical assistance services and for involving representative educational, law-related, and other organizations in these communities as participants in the projects;

(ii) The applicant's capacity and plans to respond to the needs and interests of individuals and local communities to be assisted;

(iii) The nature and scope of the proposed technical assistance activities, including the extent of continuing, on-site technical assistance and the extent to which recipients of technical assistance will be exposed to a variety of law-related education models, materials, and approaches.

(b) *Plan of operation.* (12 points)

(1) The Secretary reviews each application for information that shows the quality of the plan of operation for the project.

(2) The Secretary looks for information that shows—

(i) High quality in the design of the project;

(ii) An effective plan of management that insures proper and efficient administration of the project;

(iii) A clear description of how the objectives of the project relate to the purpose of the program;

(iv) The way the applicant plans to use its resources and personnel to achieve each objective;

(v) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(vi) If the applicant is an SEA or LEA, how the applicant will provide an opportunity for the participation of children in private schools.

(c) *Likelihood of sustaining program.* (20 points) The likelihood that the project will help the applicant or organizations that receive technical assistance sustain a viable law-related education program. In applying this criterion, the Secretary considers the adequacy of the applicant's plan for institutionalizing law-related education or for assisting other organizations to institutionalize law-related education, including evidence of: (1) A plan for integrating law-related education as a regular part of the school curriculum;

(2) The participation of interested groups and individuals in planning and implementing the project;

(3) A realistic plan for developing financial support to continue the program after Federal funding expires, or, with respect to technical assistance to other agencies or organizations, for

helping recipients develop this support for their programs.

(d) *Need for support.* (13 points) (1) With respect to an application to initiate or strengthen a law-related education program—

(i) The need and rationale for the applicant's program at the site and grade levels at which it is directed; and

(ii) The financial need of the applicant's program and the extent to which the project is likely—both directly and indirectly—to strengthen the program's financial capacity to sustain law-related education activities.

(2) With respect to an application from an established program that requests funding only to provide technical assistance to other agencies or organizations, the need and interest of communities to receive technical assistance from the project, as documented in the application.

(3) Applications designed both to strengthen an existing program and also to provide technical assistance to other agencies or organizations are evaluated under (d)(1) and (2) of this section.

(e) *Breadth of the proposed programs.* (5 points) The breadth of the law-related education programs likely to be developed as a result of the project. In applying this criterion, the Secretary considers—

(1) The numbers of students, teachers, and schools proposed to be served by the applicant's program and by programs given technical assistance; and

(2) The extent to which the project will increase the capacity of State or local organizations to offer law-related education at a variety of grade levels and educational settings.

(20 U.S.C. 3001, 3002)

(f) *Quality of key personnel.* (12 points) (1) The Secretary reviews each application for information that shows the quality of key personnel the applicant plans to use on the project.

(2) The Secretary looks for information that shows—

(i) The qualifications of the project director (if one is to be used);

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (f)(2)(i) and (ii) of this section plans to commit to the project; and

(iv) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(3) To determine the qualifications of a person, the Secretary considers evidence of past experience and training in fields related to the objectives of the project, as well as other information that the applicant provides.

(g) *Budget and cost effectiveness.* (5 points) (1) The Secretary reviews each application for information that shows that the project has an adequate budget and is cost effective.

(2) The Secretary looks for information that shows—

(i) The budget for the project is adequate to support the project activities; and

(ii) Costs are reasonable in relation to the objectives of the project.

(h) *Evaluation plan.* (5 points) (1) The Secretary reviews each application for information that shows the quality of the evaluation plan for the project. (See 34 CFR § 75.590—Evaluation by the grantee.)

(2) The Secretary looks for information that shows methods of evaluation that are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable.

(i) *Adequacy of resources.* (3 points) (1) The Secretary reviews each application for information that shows that the applicant plans to devote adequate resources to the project.

(2) The Secretary looks for information that shows—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies that the applicant plans to use are adequate.

(20 U.S.C. 3001, 3002)

§ 757.32 What criteria are used to evaluate applications for exemplary projects?

In evaluating applications for exemplary grants, the Secretary considers—

(a) *Importance of need.* (18 points) The importance of the need addressed by the project, as documented by objective evidence in the application. In applying this criterion, the Secretary considers the extent to which the project—if successful—contributes to the Act's purposes to expand opportunities for law-related education throughout the United States and to improve the quality of law-related education programs.

(b) *Innovativeness.* (13 points) The extent to which the proposed project addresses needs that have not been adequately addressed by any law-related education program or the extent to which the proposed project uses a particularly new and exemplary approach to law-related education.

(c) *Quality of activities.* (18 points) The quality of the law-related education activities in the project. In applying this criterion, the Secretary considers how the project addresses the need for sound scholarship, quality control, and a balanced curriculum that does not advocate particular legal or political viewpoints.

(d) *Plan of operation.* (10 points) The Secretary evaluates an application on the basis of the criterion in § 757.31(b).

(e) *Evaluation plan.* (12 points) The Secretary evaluates an application on the basis of the criterion in § 757.31(h).

(f) *Quality of key personnel.* (13 points) The Secretary evaluates an application on the basis of the criterion in § 757.31(f).

(g) *Applicant's experience.* (10 points) The applicant's knowledge of and experience in law-related education, or specific provision for obtaining assistance from individuals or groups expert in the field.

(h) *Budget and cost effectiveness.* (5 points) The Secretary evaluates an application on the basis of the criterion in § 757.31(g).

(i) *Adequacy of resources.* (3 points) The Secretary evaluates an application on the basis of the criterion in § 757.31(i).

(20 U.S.C. 3001, 3002)

§ 757.33 What is the duration of support?

The Secretary approves a project for a period of up to two years. A multi-year application must comply with § 75.117 of EDGAR. Approval of a project for more than a year and the award of continuation grants within the project period are subject to the provisions in §§ 75.250 through 75.254 of EDGAR.

(20 U.S.C. 1221e-3)

Subpart E—What Conditions Must Be Met by a Grantee?

§ 757.40 What are the limitations on allowable costs?

Allowable costs under a grant are direct and indirect costs incurred by the grantee in carrying out the approved project, subject to the applicable cost principles provided or referenced in §§ 75.530 through 75.534 of EDGAR, except that construction and other capital costs are not allowable.

(20 U.S.C. 1221e-3)

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[A-9-FRL 1722-1]

California Plan Revision: Redesignation of Air Quality Control Regions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rulemaking.

SUMMARY: The EPA takes final action to approve the redesignation of seven Air Quality Control Regions (AQCR's) and the designation of two additional AQCR's in California, as requested by the California Air Resources Board (ARB). The intended effect of these designations and redesignations is to promote more efficient and effective air quality management.

EFFECTIVE DATE: February 17, 1981.

ADDRESS: A copy of the redesignation request is located at: The Office of the Federal Register, 1100 "L" Street NW., Room 8401, Washington, D.C. 20408.

FOR FURTHER INFORMATION CONTACT: Louise P. Giersch, Director, Air and Hazardous Materials Division, EPA Region IX, 215 Fremont Street, San Francisco, California 94105, Attn: Douglas Grano, (415) 556-2938.

SUPPLEMENTARY INFORMATION:

Background

Under Section 107 of the Clean Air Act, as amended, 11 AQCR's in California were designated by the Administrator. Boundaries of these AQCR's are described in the following sections of 40 CFR Part 81:

Sec.
81.17 Metropolitan los Angeles AQCR.
81.21 The San Francisco Bay Area Intrastate AQCR.
81.159 Great Basin Valley intrastate AQCR.
81.160 North Central Coast intrastate AQCR.
81.161 North Coast intrastate AQCR.
81.162 Northeast Plateau intrastate AQCR.
81.163 Sacramento Valley intrastate AQCR.
81.164 San Diego intrastate AQCR.
81.165 San Joaquin Valley intrastate AQCR;
81.166 South Central Coast intrastate AQCR.
81.167 Southeast Desert intrastate AQCR.

Altogether, the AQCR's listed above include the entire state. At the time they became effective their boundaries coincided with those of the California Air Basins as defined in the California Administrative Code. Since then the boundaries of several air basins have been changed, and additional air basins have been created.

Changes that have been made by the ARB to the original air basins are as follows:

1. On May 18, 1971, northeastern Solano County was transferred from the San Francisco Bay Area Air Basin to the Sacramento Valley Air Basin.
2. On May 18, 1971, northern Sonoma County was transferred from the San Francisco Bay Area Air Basin to the North Coast Air Basin.
3. On July 21, 1971, western Siskiyou County was transferred from the North Coast Air Basin to the Northeast Plateau Air Basin.
4. On September 15, 1971, a portion of Kern County in the vicinity of Tehachapi was transferred from the San Joaquin Valley Air Basin to the Southeast Desert Air Basin.
5. On June 21, 1974, the Mountain Counties Air Basin was created from five counties (Plumas, Sierra, Nevada, Placer, and El Dorado) of the Sacramento Valley Air Basin and four counties (Amador, Calaveras, Tuolumne, and Mariposa) of the San Joaquin Valley Air Basin.
6. On July 19, 1974, the Lake County Air Basin, consisting of all of Lake County (previously in the North Coast Air Basin), was created.
7. On December 30, 1975, the Lake Tahoe Air Basin, comprising the Lake Tahoe watershed in Placer and El Dorado Counties, was created from part of the Mountain Counties Air Basin.
8. On August 31, 1976, Ventura County and southern Santa Barbara County were transferred from the South Coast Air Basin (Metropolitan Los Angeles AQCR) to the South Central Coast Air Basin.
9. On July 1, 1977, eastern San Diego County was transferred from the Southeast Desert Air Basin to the San Diego Air Basin.

As a result of these changes, there are now 14 State-designated air basins in California, of which two (North Central Coast and Great Basin Valleys) remain as originally established. Of the remaining 12, three (Mountain Counties, Lake County, and Lake Tahoe) are new and nine have been changed since their original establishment.

The Redesignation

On September 11, 1978, the Executive Officer of the ARB requested the EPA's approval of seven redesignated and two additionally designated (new) AQCR's in California.

The seven redesignated AQCR's in the State's proposal are as follows:

1. Northeast Plateau
2. North Coast
3. Sacramento Valley
4. San Francisco Bay Area
5. San Joaquin Valley
6. Southeast Desert
7. San Diego

The two new AQCR's proposed by the State are as follows:

1. Lake County
2. Mountain Counties

Two AQCR's in the State's proposal are unchanged from their original designation and thus remain as now designated, as follows:

1. Great Basin Valley
2. North Central Coast

Two AQCR's continue to differ from the corresponding air basins. Although the boundary between the South Central Coast and the South Coast Air Basins was changed in 1976 (see change #8 under Background, above), redesignation of the South Central Coast and the Metropolitan Los Angeles (South Coast) AQCR's is not being proposed at this time.

Another discrepancy between the air basins designated by the ARB and their proposed redesignation of AQCR's is the exclusion of the Lake Tahoe basin from the proposed Mountain Counties AQCR without a separate proposal of Lake Tahoe as an AQCR, although the basin was designated as an air basin by the ARB in 1975 (see change #7 under Background, above).

As indicated in the ARB's Staff Report No. 78-14-3, the Lake Tahoe basin presents unique regulatory and administrative problems because the airshed is shared by California and Nevada. In view of the possibility of designation of the Lake Tahoe basin as an Interstate AQCR, intrastate designation was not proposed by the ARB.

Under section 107(b)(2) of the Clean Air Act, as amended, the Lake Tahoe situation is being remedied by the EPA's designation of the basin as an intrastate AQCR. This action, which the EPA now takes, does not preclude any future designation of the Lake Tahoe area by California or by California and Nevada.

Effects of Redesignation

The redesignation AQCR's in California should begin to eliminate much of the confusion and misunderstanding which have occurred because of the differences between the State air basins and the Federal AQCR's. With this approval by the EPA of the redesignation (including designation of the Lake Tahoe AQCR), the geographic applicability of local, State, and Federal regulations will be more uniform and thus more easily understood.

As a result of these designations and redesignations of AQCR's, many changes are being made to the *Code of Federal Regulations* (CFR). In Part 81, most of the California AQCR descriptions are being revised, and newly designated AQCR's are being added. As a consequence of those Part 81 changes, numerous revisions are being made in Part 52, Subpart F (§§ 52.220–52.280).

Many of the changes in Part 52 are of a classificatory nature, where either (1) certain APCD's are being reclassified as to the AQCR in which they are located, or (2) references to AQCR's are being removed from the CFR; §§ 52.231, 52.233, 52.234, 52.236, 52.240, 52.269, 52.271, 52.272, 52.273, 52.275, and 52.280 are so revised.

In other sections (§§ 52.246, 52.252, 52.253, 52.254, and 52.255), which contain Federal requirements, the AQCR's to which the regulations apply are being defined "as of July 1, 1979" ("old" AQCR's), so that the Federal requirements in affected areas are not changed.

On April 20, 1979 (44 FR 23544) the EPA published a Notice of Proposed Rulemaking, proposing to approve the redesignation and to designate on its own the Lake Tahoe AQCR, and inviting public comments.

One comment, a letter from the Nevada Department of Conservation and Nautral Resources, Division of Environmental Protection, was received. That letter objected to the EPA's proposed designation of the California portion of the Lake Tahoe Basin as an intrastate AQCR and advocated designation of an interstate AQCR to include the entire Basin, in California and Nevada.

As noted in the Notice of Proposed Rulemaking, the ARB excluded the Lake Tahoe Basin from the Mountain Counties AQCR but did not propose the designation of a Lake Tahoe Intrastate AQCR, nor have the two states proposed an interstate AQCR for Lake Tahoe. As provided in section 107(b)(2) of the Clean Air Act, as amended, "the portion of such State which is not part of any such designated region shall be an air quality control region . . ."

This action by the EPA does not preclude the future designation of the Lake Tahoe Basin as an interstate AQCR. The EPA would publish a proposal to that effect as soon as the States of California and Nevada jointly request such a redesignation.

The EPA is approving this redesignation because it meets the requirements of section 107(e) of the Clean Air Act, as amended, which requires that the redesignation be for purposes of improved air quality management.

The EPA has determined that this action is "specialized" and therefore not subject to the procedural requirements of Executive Order 12044.

(Secs. 107, 110, 310(a), Clean Air Act, as amended (42 U.S.C. 7407, 7410, and 7601(a))

Dated: January 12, 1981.

Douglas M. Costle,

Administrator.

Note.—Incorporation by reference of the State Implementation Plan for the State of California was approved by the Director of the Federal Register on July 1, 1980.

Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

Subpart F—California

1. Section 52.220, paragraph (c)(61) is added as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(61) Redesignation of AQCR's in California, submitted on September 11, 1978, by the Governor's designee.

* * * * *

2. In section 52.221, three new AQCR's are added to the classification table, as follows:

§ 52.221 Classification of regions.

The California plan is evaluated on the basis of the following classifications:

Air quality control region	Pollutant				
	P.M.	SO_x	NO_x	CO	O_x
. . .					
San Diego Intrastate	II	III	III	I	I
Lake County Intrastate	II	III	III	III	III
Lake Tahoe Intrastate	II	III	III	I	I
Mountain Counties Intrastate	II	III	III	I	I

* * * * *

3. To correct a misprint in 40 CFR Part 52 of July 1, 1979, section 52.224(a)(1) is amended by revising paragraphs (iv) through (viii) and removing paragraph (ix) as follows:

§ 52.224 General requirements.

(a) * * *
(1) * * *
(i) * * *
(ii) * * *
(iii) * * *
(iv) Del Norte County APCD.
(v) Humboldt County APCD.
(vi) Mendocino County APCD.
(vii) Northern Sonoma County APCD.
(viii) Trinity County APCD.
(2) * * *

* * * * * *

4. The title of section 52.228 is revised to read as follows:

§ 52.228 Control strategy and regulations: Particulate matter, San Joaquin Valley and Mountain Counties Intrastate Regions.

* * * * *

5. The title of section 52.230 is revised to read as follows:

§ 52.230 Control strategy and regulations: Nitrogen dioxide.

* * * * *

6. In section 52.231, paragraphs (a)(3) and (b)(1) are revised to read as follows:

§ 52.231 Regulations: Sulfur oxides.

(a) * * *
(3) Mountain Counties Intrastate Region.

* * * * *

(b) * * *
(1) Lake County Intrastate Region.

* * * * *

7. In section 52.233, paragraphs (c), (d), (f)(1)(i), and (g)(1) are revised as follows:

§ 52.233 Review of new sources and modifications.

* * * * *

(c) The requirements of § 51.18 (a) and (c) of this chapter are not met in the following Air Pollution Control Districts since the regulations of the APCD's do not provide the means to prevent construction of sources which would violate applicable portions of the control strategy or would interfere with the attainment or maintenance of a national standard.

(1) Mariposa County APCD.
(2) Santa Barbara County APCD.

(d) The requirements of § 51.18(c) of this chapter are not met in the following Air Pollution Control Districts since the regulations of the APCD's do not include a means to prevent construction or modification if such construction or modification would interfere with the attainment or maintenance of a national standard.

(1) Amador County APCD.
(2) Calaveras County APCD.
(3) El Dorado County APCD.
(4) Fresno County APCD.
(5) Glenn County APCD.
(6) Humboldt County APCD.
(7) Kern County APCD.
(8) Kings County APCD.
(9) Lake County APCD.
(10) Lassen County APCD.
(11) Madera County APCD.
(12) Mendocino County APCD.
(13) Merced County APCD.

(14) Modoc County APCD.
(15) Monterey Bay Unified APCD.
(16) Nevada County APCD.
(17) Northern Sonoma County APCD.
(18) Placer County APCD.
(19) Plumas County APCD.
(20) San Joaquin County APCD.
(21) Shasta County APCD.
(22) Sierra County APCD.
(23) Siskiyou County APCD.
(24) Stanislaus County APCD.
(25) Sutter County APCD.
(26) Tulare County APCD.
(27) Tuolumne County APCD.
(28) Yolo-Solano APCD.

* * * * *

(f) * * *
(1) * * *
(i) Any stationary source in the APCD's listed below, the construction or modification of which is commenced after the effective date of this regulation.
(*a*) Mariposa County APCD.
(*b*) Sacramento County APCD.
(*c*) Santa Barbara County APCD.
(*d*) Ventura County APCD.

* * * * *

(g) * * *
(1) The requirements of this paragraph are appliable to any stationary source in the APCD's listed below, the construction or modification of which is commenced after the effective date of this regulation.
(i) Amador County APCD.
(ii) Calaveras County APCD.
(iii) El Dorado County APCD.
(iv) Fresno County APCD.
(v) Glenn County APCD.
(vi) Humboldt County APCD.
(vii) Kern County APCD.
(viii) Kings County APCD.
(ix) Lassen County APCD.
(x) Madera County APCD.
(xi) Mendocino County APCD.
(xii) Merced County APCD.
(xiii) Modoc County APCD.
(xiv) Monterey Bay Unified APCD.
(xv) Nevada County APCD.
(xvi) Placer County APCD.
(xvii) Plumas County APCD.
(xviii) San Joaquin County APCD.
(xix) Shasta County APCD.
(xx) Sierra County APCD.
(xxi) Siskiyou County APCD.
(xxii) Stanislaus County APCD.
(xxiii) Sutter County APCD.
(xxiv) Tulare County APCD.
(xxv) Tuolumne County APCD.
(xxvi) Yolo-Solano APCD.

* * * * *

8. In section 52.234, paragraphs (a) and (e) are amended as follows:

§ 52.234 Source surveillance.

(a) * * *
(1) Amador County APCD.
(2) Bay Area AQMD.
(3) Calaveras County APCD.
(4) Del Norte County APCD.
(5) El Dorado County APCD.
(6) Humboldt County APCD.
(7) Imperial County APCD.
(8) Lake County APCD.
(9) Mariposa County APCD.
(10) Mendocino County APCD.
(11) Nevada County APCD.
(12) Northern Sonoma County APCD.
(13) Placer County APCD.
(14) Plumas County APCD.
(15) Sierra County APCD.
(16) Trinity County APCD.
(17) Ventura County APCD.

* * * * *

(e) * * *
(1) Amador County APCD.
(2) Bay Area AQMD
(3) Calaveras County APCD.
(4) El Dorado County APCD.
(5) Imperial County APCD.
(6) Kern County APCD.
(7) Kings County APCD.
(8) Los Angeles County APCD.
(9) Mariposa County APCD.
(10) Monterey Bay Unified APCD.
(11) Nevada County APCD.
(12) Placer County APCD.
(13) Plumas County APCD.
(14) San Bernardino County Desert APCD.
(15) San Diego County APCD.
(16) San Joaquin County APCD.
(17) San Luis Obispo County APCD.
(18) Santa Barbara County APCD.
(19) Sierra County APCD.
(20) South Coast AQMD.
(21) Stanislaus County APCD.
(22) Tulare County APCD.
(23) Ventura County APCD.

* * * * *

9. In § 52.236, paragraphs (a), (b), (c), (e), and (f) are amended as follows:

§ 52.236 Rules and regulations.

(a) * * *
(1) Imperial County APCD.
(i) Rule 114.5, submitted on November 10, 1976.
(ii) Rule 148.D(3), submitted on November 10, 1976.
(b) * * *
(1) San Luis Obispo County APCD.
(i) Rules 401(B)(4) and 401(B)(6), submitted on November 10, 1976.
(2) Sacramento County APCD.
(i) Rule 7(b)(5), submitted on November 4, 1977.
(3) Glenn County APCD.
(i) Section 77(e), submitted on June 30, 1972, and previously approved under 40 CFR 52.223 (37 FR 19812).
(4) Mariposa County APCD.
(i) Rule 203(G), submitted on June 6, 1977.
(5) Kern County APCD.
(i) Rules 402(c) and 402(e), submitted on: November 10, 1976.
(6) Fresno County APCD.
(i) Rules 402(c) and 402(e), submitted on October 23, 1974.
(ii) Rules 402(c) and 402(e), submitted on June 30, 1972, and previously approved under 40 CFR 52.223 (37 FR 19812).
(7) Tulare County APCD.
(i) Section 402(c), submitted on November 10, 1976, and previously approved under 40 CFR 52.223 (42 FR 47556).
(8) Madera County APCD.
(i) Rules 402(c) and 402(e), submitted on January 10, 1975, and previously approved under 40 CFR 52.223 (42 FR 42219).
(c) * * *
(1) Merced County APCD.
(i) Rule 102(hh), submitted on June 30, 1972, previously approved under 40 CFR 52.223, and deleted by the August 2, 1976 submittal, is retained.

* * * * *

(e) * * *
(1) Mendocino County APCD.
(i) Rule 130(p4), submitted on November 10, 1976. (Part III–49, previously submitted on February 21, 1972, and approved in 40 CFR 52.223, is retained).
(ii) Rule 130(s3), submitted on November 10, 1976. (Part III–55, previously submitted on February 21, 1972, and approved in 40 CFR 52.233, is retained).
(2) Shasta County APCD.
(i) The definition of "modification" in Rule 1:2, *Definitions*, submitted on October 13, 1977, is disapproved.
(3) San Bernardino County Desert APCD.
(i) Rule 103, *Definition of Terms*, submitted on November 4, 1977, is disapproved with respect to the deletion of the following terms: "Distilling type heater", "Noncomplying orchard heater", "Pipe line systems", and "Return stack heater". (Rule 2, *Definitions*, submitted on February 21, 1972 and approved in 40 CFR 52.223, is retained for the above terms.)
(f) * * *
(1) El Dorado County APCD.
(i) Rule 201, submitted on November 4, 1977, is disapproved. (The previously approved Rule 49, submitted on June 30, 1972, is retained for Federal enforcement purposes.)

* * * * *

10. In section 52.240, paragraphs (a) and (d)(1) are revised to read as follows:

§ 52.240 Compliance schedules.

(a) The requirements of § 51.15(c) of this chapter are not met in the following Air Pollution Control Districts since the regulations cited do not provide

increments to progress toward compliance.

(1) Rules 50–A, 52–A, 53–A(a), 53–A(b), 53–A(c), 53.2, 53.3, 54.A, 56.A, 62.1, 68, 69, 70, and 71 of the San Bernardino County APCD.

(2) Rules 53, 72.1, and 72.2 of the Riverside County APCD.

(3) Rules 53, 66.c, and 66.a of the Orange County APCD.

(4) Rule 39.1 of the Santa Barbara County APCD.

(5) Rule 59 of the Ventura County APCD.

(6) Rule 66(c) of the Los Angeles County APCD.

(7) Rule 4.5 of the Siskiyou County APCD.

(8) Rule 64(c) of the Northern Sonoma County APCD.

(9) Rule 409 of the Tulare County APCD.

* * * * *

(d) *Regulation for increments of progress.* (1) The requirements of this paragraph are applicable to any stationary source in the following Air Pollution Control Districts subject to the indicated regulations.

(i) Rules 50–A, 52–A, 53–A(a), 53–A(b), 53–A(c), 53.2, 53.3, 54.A, 56.A, 62.1, 68, 69, 70, and 71 of the San Bernardino County APCD.

(ii) Rules 53, 72.1, and 72.2 of the Riverside County APCD.

(iii) Rules 53 and 66.c of the Orange County APCD.

(iv) Rule 39.1 of the Santa Barbara County APCD.

(v) Rule 59 of the Ventura County APCD.

(vi) Rules 66(c) and 68 of the Los Angeles County APCD.

(vii) Rule 4.5 of the Siskiyou County APCD.

(viii) Rule 64(c) of the Northern Sonoma County APCD.

(ix) Rule 409 of the Tulare County APCD.

* * * * *

11. In section 52.246, paragraph (b) is revised to read as follows:

§ 52.246 Control of dry cleaning solvent vapor losses.

* * * * *

(b) This section is applicable in the Metropolitan Los Angeles, Sacramento Valley, San Joaquin Valley, and San Francisco Bay Area Intrastate Air Quality Control Regions (the "Regions"), as described in 40 CFR Part 81, dated July 1, 1979, except as follows:

* * * * *

12. In section 52.252, paragraph (b) is revised to read as follows:

§ 52.252 Control of degreasing operations.

* * * * *

(b) This section is applicable in the Metropolitan Los Angeles, Sacramento Valley, San Joaquin Valley, and San Francisco Bay Area Air Quality Control Regions (the "Regions"), as described in 40 CFR Part 81, dated July 1, 1979, except as follows:

* * * * *

13. In section 52.253, paragraph (b) is revised to read as follows:

§ 52.253 Metal surface coating thinner and reducer.

* * * * *

(b) This section is applicable in the Metropolitan Los Angeles, San Diego, Sacramento Valley, San Joaquin Valley, and San Francisco Bay Area Intrastate Air Quality Control Regions (the "Regions"), as described in 40 CFR Part 81, dated July 1, 1979, except as follows:

* * * * *

14. In section 52.254, paragraph (a) is revised to read as follow:

§ 52.254 Organic solvent usage.

(a) This section is applicable in the Sacramento Valley, San Francisco Bay Area, and San Joaquin Valley Intrastate Air Quality Control Regions (the "Regions"), as described in 40 CFR Part 81, dated July 1, 1979, except as follows:

* * * * *

15. In section 52.255, the introductory text of paragraph (b) is revised to read as follows:

§ 52.255 Gasoline transfer vapor control.

* * * * *

(b) This section is applicable in the Metropolitan Los Angeles, Sacramento Valley, and San Joaquin Valley Intrastate Air Quality Control Regions, as described in 40 CFR Part 81, dated July 1, 1979, with the following exceptions:

* * * * *

16. In section 52.267, an error in the description of the Sacramento Valley Air Quality Maintenance Area is corrected by revising subparagraph (a)(1) to read as follows:

§ 52.267 Maintenance of national standards.

(a) * * *

(1) Sacramento Valley Air Quality Maintenance Area.

(i) Pollutants for which the area is identified: Carbon monoxide and photochemical oxidants.

(ii) Geographical compostion of area:

Sacramento County
Yolo County
That portion of Solano County lying in the Sacramento Valley Air Basin, as defined in the plan.
That portion of Placer County lying west of the easterly line of Range 7 East, and that portion of Placer County lying south of the northerly line of Township 11 North, Mount Diablo Base and Meridian.

* * * * *

17. In Section 52.269, paragraph (b)(1) is revised to read "Mountain Counties Intrastate Region". Paragaraph (b)(1–1), "San Joaquin Valley Intrastate Region", is inserted following paragaraph (b)(1)(ii)(B). Paragraphs (b)(1)(iii) through (viii) are redesignated (b)(1–1)(i) through (vi), respectively.

18. In § 52.271(a), paragraphs (a)(1) through (8) are revised, and all paragraphs (a)(9) through (a)(35) are added to read as follows:

§ 52.271 Malfunction regulations.

(a) * * *

(1) Amador County APCD.

(i) Rule 404, submitted on April 21, 1976.

(ii) Rule 4f, submitted on June 30, 1972, and previously approved under 40 CFR 52.223 (37 FR 10812).

(2) Bay Area APCD.

(i) Regulation 2, Section 3212, and Regulation 3, Section 3203, submitted on April 21, 1976.

(ii) Regulation 2, Section 3212, submitted on February 21, 1972, and previously approved under 40 CFR 52.223 (37 FR 10842).

(3) Calaveras County APCD.

(i) Rules 110 and 402(f), submitted on July 25, 1973.

(ii) Rule 404, submitted on October 13, 1977.

(4) Colusa County APCD.

(i) Rule 4.4g, submitted on July 25, 1973, and Rule 4.4g, submitted on June 30, 1972, and previously appoved under 40 CFR 52.223 (37 FR 10812).

(5) Del Norte County APCD.

(i) Rule 540, submitted on November 10, 1976.

(ii) Rule 45, submitted on February 21, 1972, and previously approved under 40 CFR 52.223 (37 FR 10842).

(6) Fresno County APCD.

(i) Rule 110, submitted on June 30, 1972, and previously approved under 40 CFR 52.223.

(ii) Rules 110 and 402(f), submitted on October 23, 1974.

(7) Glenn County APCD.

(i) Rules 95.2 and 95.3, submitted on January 10, 1975.

(8) Great Basin Unified APCD.

(i) Rule 403, submitted on June 6, 1977.

(ii) Rule 617, submitted on November 4, 1977.

(9) Humboldt County APCD.

(i) Rule 540, Submitted on November, 10, 1976.

(ii) Rule 59, Submitted on February 21, 1972 and previously approved under 40 CFR 52.223 (37 FR 10842).

(10) Kern County APCD.

(i) Rule 111, submitted on July 19, 1974.

(11) Kings County APDC.

(i) Rule 111, submitted on July 25, 1973, and Rule 111, submitted on July 30, 1972, and previously approved under 40 CFR 52.223.

(ii) Rule 111, submitted on November 4, 1977.

(12) Lake County APCD.

(i) Chapter III, Article I, Section 500, and Article II, Sections 510 and 511, submitted on February 10, 1977.

(ii) Part VI, Sections 1 and 2, submitted on June 30, 1972, and previously approved under 40 CFR 52.223.

(13) Los Angeles County APCD.

(i) Rule 430, submitted on June 6, 1977.

(14) Madera County APCD.

(i) Rule 402(f), submitted on January 10, 1975, and Rule 110, submitted on June 30, 1972, and previously approved under 40 CFR 52.223.

(ii) Rule 110, submitted on January 10, 1975.

(15) Mariposa County APCD.

(i) Rule 203(j), submitted on January 10, 1975, and Rule 4.3(g), submitted on February 21, 1972, and previously approved under 40 CFR 52.223.

(ii) Rule 404, submitted on June 6, 1977.

(16) Mendocino County APCD.

(i) Rule 540, submitted on November 10, 1976.

(ii) Sections 1 and 2 of Part VI, submitted on February 21, 1972, and previously approved under 40 CFR 52.223 (37 FR 10842).

(17) Merced County APCD.

(i) Rule 109, submitted on August 2, 1976.

(ii) Rule 109, submitted on June 30, 1972, and previously approved under 40 CFR 52.223 (37 FR 19812).

(18) Nevada County APCD.

(i) Rule 55(f), submitted on February 21, 1972, and previously approved under 40 CFR 52.223 (37 FR 10842).

(19) Northern Sonoma County APCD.

(i) Rule 540, submitted on November 10, 1976.

(20) Placer County APCD.

(i) Rule 55(f), submitted on February 21, 1972, and previously approved under 40 CFR 52.223 (37 FR 10842).

(ii) Rule 404, submitted on October 13, 1977.

(21) Plumas County APCD.

(i) Rule 203(j), submitted on January 10, 1975.

(ii) Rule 404, submitted on June 6, 1977.

(22) Riverside County APCD.

(i) Rule 430, submitted on June 6, 1977.

(23) San Bernardino County APCD.

(i) Rule 430, submitted on June 6, 1977.

(ii) Rule 55, submitted on February 21, 1972, and previously approved under 40 CFR 52.223 (37 FR 10842).

(24) San Joaquin County APCD.

(i) Rule 110, submitted on October 23, 1974, and Rule 110, submitted on June 30, 1972, and previously approved under 40 CFR 52.223 (37 FR 19812).

(25) San Luis Obispo County APCD.

(i) Rule 107, submitted on November 10, 1976.

(ii) Rule 102, submitted on February 21, 1972, and previously approved under 40 CFR 52.223 (37 FR 10842).

(26) Shasta County APCD.

(i) Rule 3:10, submitted on July 19, 1974.

(ii) Rule 3:10, submitted on June 30, 1972, and previously approved under 40 CFR 52.223 (37 FR 19812).

(27) Sierra County APCD.

(i) Rule 51, submitted on June 30, 1972, and previously approved under 40 CFR 52.223 (37 FR 19812), and Rule 203(j), submitted on January 10, 1975, and previously approved under 40 CFR 52.223 (42 FR 23805).

(ii) Rule 404, submitted on June 6, 1977.

(28) Southern California APCD.

(i) Rule 430, submitted on February 10, 1977.

(29) Stanislaus County APCD.

(i) Rule 110, submitted on June 30, 1972, and previously approved under 40 CFR 52.223 (37 FR 19812), and Rule 110, submitted on July 19, 1974.

(30) Tehama County APCD.

(i) Rule 417, submitted on July 19, 1974.

(ii) Rule 4:1g, submitted on June 30, 1972, and previously approved under 40 CFR 52.223 (37 FR 19812).

(31) Trinity County APCD.

(i) Rule 540, submitted on November 10, 1976.

(ii) Rule 44, submitted on June 30, 1972, and previously approved under 40 CFR 52.223 (37 FR 19812).

(32) Tulare County APCD.

(i) Rules 111 and 402(f), submitted on November 10, 1976.

(33) Tuolumne County APCD.

(i) Rule 404, submitted on February 10, 1977, and Rule 402(f), submitted on June 30, 1972, and previously approved under 40 CFR 52.223.

(34) Ventura County APCD.

(i) Rule 32, submitted on July 19, 1974.

(ii) Rule 32, submitted on June 30, 1972, and previously approved under 40 CFR 52.223 (37 FR 19812).

(35) Yuba County APCD.

(i) Rule 4.5, submitted on July 25, 1973.

* * * * *

19. In section 52.272, a sentence is added to the introduction text of paragraph (a), paragraphs (a)(1) through (a)(5) are revised, and all other paragraphs (a)(6) through (a)(9) are added to read as follows:

§ 52.272 Research operations exemptions.

(a) * * * Therefore, the following regulations are disapproved:

(1) Bay Area APCD.

(i) Regulation 2, Division 1, sections 1214 to 1214.3, submitted on July 25, 1973.

(ii) Regulation 3, Division 1, sections 1205 to 1205.3, submitted on July 25, 1973.

(2) El Dorado County APCD.

(i) Rule 203(D), submitted on November 4, 1977.

(3) Great Basin Unified APCD.

(i) Rule 423, submitted on November 4, 1977.

(4) Los Angeles County APCD.

(i) Rule 441, submitted on June 6, 1977.

(5) Placer County APCD.

(i) Rule 203(D), submitted on October 13, 1977.

(6) Riverside County APCD.

(i) Rule 441, submitted on June 6, 1977.

(7) Sacramento County APCD.

(i) Rule 30, submitted on January 22, 1974.

(8) San Bernardino County APCD.

(i) Rule 441, submitted on June 6, 1977.

(9) Southern California APCD.

(i) Rule 441, submitted on August 2, 1976.

20. In section 52.273, paragraphs (a)(1) through (a)(9) and (b)(1) through (b)(9) are revised, and all other paragraphs (a)(10) through (a)(25) and (b)(10) through (b)(18) are renumbered and revised to read as follows:

§ 52.273 Open burning.

(a) * * *

(1) Amador County APCD.

(i) Rules 308 and 312, submitted on April 21, 1976.

(ii) Rule 304, submitted on October 13, 1977.

(2) Calaveras County APCD.

(i) Rules 304 and 322, submitted on October 13, 1977.

(3) Del Norte County APCD.

(i) Rule 410(c)(2) and the following portions of Regulation 2: General prohibitions (all of page 1), paragraph (f) of Article I, paragraphs (f) and (g) of Article V, and paragraph (f) of Article VI, submitted on November 10, 1976.

(4) El Dorado County APCD.

(i) Rules 302(C), 304, 307, 319, and 322, submitted on November 4, 1977.

(5) Fresno County APCD.

(i) Rules 416.1(e)(1), (e)(3), and (e)(4), submitted on October 23, 1974.

(ii) Rule 416.1(c)(1), submitted on June 30, 1972, and previously approved under 40 CFR 52.223 (37 FR 19812).

(6) Humboldt County APCD.

(i) Rule 410(c)(2) and the following portions of Regulation 2: General prohibitions (all of page 1), paragraph (f) of Article I, paragraphs (f) and (g) of Article V, and paragraph (f) of Article VI, submitted on November 10, 1976.

(7) Kern County APCD.

(i) Rule 417(I)(A), submitted on November 10, 1976.

(8) Madera County APCD.

(i) Rules 416.1(e)(1), (e)(3), and (e)(4), submitted on January 10, 1975.

(ii) Rule 416.1(c)(1), submitted on June 30, 1972, and previously approved under 40 CFR 52.223 (37 FR 19812).

(9) Mariposa County APCD.

(i) Rules 302(C), 304, 319, and 322, submitted on June 6, 1977.

(10) Mendocino County APCD.

(i) Rule 410(c)(2) and the following portions of Regulation 2: General prohibitions (all of page 1), paragraph (f) of Article I, paragraphs (f) and (g) of Article V, and paragraph (f) of Article VI, submitted on November 10, 1976.

(11) Merced County APCD.

(i) Rule 416(h), submitted on August 2, 1976.

(ii) Rules 416.1(III)(A), (V)(A), (V)(B), (V)(C), and (V)(D), submitted on August 2, 1976. (Rule 416.1(c)(2), submitted on June 30, 1972, and previously approved, is retained. Rule 416.1(a)(1), submitted on June 30, 1972, and previously approved, is retained for the purpose of enforcing Rule 416.1(c)(2).)

(12) Monterey Bay Unified APCD.

(i) Rules 409(a), 409(a)(5), and 410(b)(1), submitted on January 10, 1975.

(13) Nevada County APCD.

(i) Rules 302(C), 307, 314, and 322, submitted on April 10, 1975.

(ii) Rules 304 and 319, submitted on June 6, 1977.

(14) Northern Sonoma County APCD.

(i) Rule 410(c)(2) and the following portions of Regulation 2: General prohibitions (all of page 1), paragraph (f) of Article I, paragraphs (f) and (g) of Article V, and paragraph (f) of Article VI, submitted on November 10, 1976.

(15) Placer County APCD.

(i) Rules 302(C), 302(G), 304, 307, 314, 319, and 322, submitted on October 13, 1977.

(16) Plumas County APCD.

(i) Rule 314, submitted on January 10, 1975.

(ii) Rules 302(C), 304, 307, 319, and 322, submitted on June 6, 1977.

(17) Sacramento County APCD.

(i) Rule 96(a), submitted on November 10, 1976.

(ii) Rule 96(a), submitted on November 4, 1977.

(18) San Joaquin County APCD.

(i) Rule 402(e), submitted on November 10, 1976.

(ii) Rule 416.1(c)(1), submitted on June 30, 1972, and previously approved under 40 CFR 52.223 (37 FR 19812).

(iii) Rules 416.1(D)(1) and (D)(2), submitted on October 23, 1974.

(19) Santa Barbara County APCD.

(i) Rules 40(4)(a) and 40(4)(1), submitted on July 25, 1973. (The analogous Rules 40(4)(a) and 40(4)(g), previously approved in the February 21, 1972 submittal, are retained.) Rule 40(4)(c), submitted on July 25, 1973, is also disapproved.

(ii) Rule 22, submitted on January 22, 1974. (The analogous Rule 22, previously approved in the February 21, 1972 submittal, is retained.) Rules 24.1 and 24.2, submitted on January 22, 1974, are also disapproved.

(20) Shasta County APCD.

(i) Rule 2:6, sections (1)(b)(iii) (a ,b, and d), (1)(c)(viii), 2(c), 3(f), 4(e), 5(c), and 5(d). (Previously approved Rule 2:6, sections (2)(c), (3)(f), and (4)(e), submitted on July 19, 1974, are retained.)

(21) Sierra County APCD.

(i) Rules 302(C), 319, and 322, submitted on June 6, 1977.

(22) Trinity County APCD.

(i) Rule 410(c)(2) and the following portions of Regulation 2: General prohibitions (all of page 1), paragraph (f) of Article I, paragraphs (f) and (g) of Article V, and paragraph (f) of Article VI, submitted on November 10, 1976.

(23) Tulare County APCD.

(i) Rule 402(e), submitted on November 10, 1976.

(ii) Section 417(III)(A), submitted on June 30, 1972, and previously approved under 40 CFR 52.223 (37 FR 19812).

(iii) Section 417.1(e)(1), (e)(3), and (e)(4), submitted on January 10, 1975.

(24) Tuolumne County APCD.

(i) Rule 322, submitted on February 10, 1977.

(25) Yolo-Solano APCD.

(i) Rules 2.8(c) (4) and (5), 6.3, and 6.5(a), submitted on July 25, 1973.

(ii) Rules 6.1(a), (e)(6), and (g), submitted on January 10, 1975. (Rules 4.1 (a) and (g), submitted on February 21, 1972, and previously approved under 40 CFR 52.223, are retained.)

(b) * * *

(1) Del Norte County APCD.

(i) Regulation 2, Article I, paragraph (e), submitted on November 10, 1976.

(ii) Rule 410(c)(2), submitted on May 7, 1979.

(2) Fresno County APCD.

(i) Rule 416.1(c)(1), submitted on October 23, 1974.

(ii) Rule 416.1(g), submitted on November 4, 1977.

(3) Humboldt County APCD.

(i) Regulation 2, Article I, paragraph (e), submitted on November 10, 1976.

(ii) Rule 410(c)(2), submitted on May 7, 1979.

(4) Imperial County APCD.

(i) Rule 422, submitted on November 4, 1977. (The requirements of Rule 115, submitted on February 21, 1972, and previously approved under 40 CFR 52.223, are retained as applicable to the burning of wood waste.)

(ii) Regulation VII (Rules 701 to 706), submitted on November 4, 1977. (Regulation VII (Rules 200 to 206), submitted on July 25, 1973 and previously approved under 40 CFR 52.223, is retained.)

(5) Kings County APCD.

(i) Rules 416.1 and 417.1, submitted on November 4, 1977.

(6) Lake County APCD.

(i) Sections 435, 436, 1003, and 1200(A), submitted on February 10, 1977.

(ii) Section 435, submitted on January 2, 1979.

(7) Los Angeles County APCD.

(i) Rule 444, submitted on June 6, 1977. (Rules 57.1, 57.2, 57.3, and 57.4, submitted on June 30, 1972, and previously approved under 40 CFR 52.223, are retained.)

(8) Madera County APCD.

(i) Rule 416.1(c)(1), submitted on January 10, 1975.

(9) Mendocino County APCD.

(i) Regulation 2, Article I, paragraph (e), submitted on November 10, 1976.

(ii) Rule 410(c)(2), submitted on May 7, 1979.

(10) Merced County APCD.

(i) Rule 416.1(I)(A)(2), submitted on August 2, 1976.

(11) Northern Sonoma County APCD.

(i) Regulation 2, Article I, paragraph (e), submitted on November 10, 1976.

(ii) Rule 410(c)(2), submitted on may 7, 1979.

(12) San Bernardino County Desert APCD.

(i) Rule 444 and the definition of "Agricultural Burning" in Rule 102, submitted on November 4, 1977. (Rule 57, submitted on February 21, 1972, and previously approved under 40 CFR 52.223, is retained.)

(13) San Diego County APCD.

(i) Rules 102(e) and 103(g), submitted on October 13, 1977.

(14) San Luis Obispo County APCD.

(i) Rule 501(B), submitted on November 10, 1976, and Rule 501(A)(7), submitted on November 4, 1977. (Previously approved Rule 115(2), submitted on February 21, 1972, is retained.)

(15) Santa Barbara County APCD.

(i) Rules 2(b), 40(3), and 40(4)(e), submitted on July 25, 1973. (Analogous Rules 2(b), 40(3), and 40(4)(c), submitted

on February 21, 1972, and previously approved, are retained.)

(16) Shasta County APCD.

(i) Rule 2:6, submitted on October 13, 1977. (Rule 2:8, submitted on July 19, 1974, and July 22, 1975, and previously approved, is retained.)

(17) Siskiyou County APCD.

(i) Rule 4.3(2), submitted on January 2, 1979.

(18) Trinity County APCD.

(i) Regulation 2, Article I, paragraph (e), submitted on November 10, 1976.

(ii) Rule 410(c)(2), submitted on May 7, 1979.

21. In section 52.275, paragraphs (a)(1) and (2) and (b)(1) through (b)(5) are revised, and paragraphs (b)(6) through (b)(14) are added to read as follows:

§ 52.275 Particulate matter control.

(a) * * *

(1) Lake County APCD.

(i) Part III–60 and Part V–1B, submitted on October 23, 1974, and previously approved under 40 CFR 52.223.

(2) San Luis Obispo County APCD.

(i) Rule 113, submitted on February 21, 1972, and previously approved under 40 CFR 52.223.

(b) * * *

(1) Amador County APCD.

(i) Rules 211 and 212, submitted on April 21, 1976. (Regulation V, Rules 13 and 14, submitted on June 30, 1972, and previously approved, are retained.)

(ii) Rules 207 and 212, submitted on October 13, 1977. (The analogous Rules 10 and 14 of Regulation V, submitted on June 30, 1972, and previously approved, are retained and shall remain in effect for Federal enforcement purposes.)

(2) Calaveras County APCD.

(i) Rule 211, submitted on October 13, 1977. (Rule 211, submitted on july 22, 1975, and previously approved, is retained and shall remain in effect for Federal enforcement purposes.)

(3) Del Norte County APCD.

(i) Rules 410(c)(7) and 420(e), submitted on November 10, 1976.

(ii) Rules 420(e) and (f), submitted on November 4, 1977.

(4) El Dorado County APCD.

(i) Rule 212, submitted on April 10, 1975, and Rule 211, submitted on August 2, 1976. (The analogous Rule 55, submitted on February 21, 1972, and previously approved, is retained and shall remain in effect for Federal enforcement purposes.)

(5) Humbolt County APCD.

(i) Rules 410(c)(7) and 420(e), submitted on November 10, 1976.

(ii) Rules 420(e) and (f), submitted on November 4, 1977.

(6) Mariposa County APCD.

(i) Rule 211, submitted on June 6, 1977. (Rule 211, submitted on January 10, 1975, and previously approved, is retained and shall remain in effect for Federal enforcement purposes.)

(7) Mendocino County APCD.

(i) Rule 410(c)(7), submitted on November 10, 1976.

(ii) Rules 420(e) and (f), submitted on November 4, 1977.

(8) Nevada County APCD.

(i) Rule 212, submitted on April 10, 1975, and Rule 211, submitted on April 21, 1976. (Rule 52.1, submitted on June 30, 1972, and previously approved, is retained and shall remain in effect for Federal enforcement purposes.)

(9) Northern Sonoma County APCD.

(i) Rule 420(e), submitted on november 10, 1976.

(ii) Rules 420(e) and (f), submitted on October 13, 1977.

(10) Placer County APCD.

(i) Rule 211, submitted on October 13, 1977. (The analogous Rule 61, submitted on June 30, 1972, and previously approved, is retained and shall remain in effect for Federal enforcement purposes.)

(11) Plumas County APCD.

(i) Rule 211, submitted on June 6, 1977. (The analogous Rule 211, submitted on January 10, 1975, and previously approved, is retained and shall remain in effect for Federal enforcement purposes.)

(12) San Luis Obispo County APCD.

(i) Rule 403, submitted on November 10, 1976.

(13) Sierra County APCD.

(i) Rule 211, submitted on June 6, 1977. (The analogous Rule 211, submitted on January 10, 1975, and previously approved, is retained and shall remain in effect for Federal enforcement purposes.)

(14) Trinity County APCD.

(i) Rules 410(c)(7) and 420(e), submitted on November 10, 1976.

(ii) Rules 420(e) and (f), submitted on November 4, 1977.

22. In section 52.280, paragraph (a)(1) is revised to read as follows:

§ 52.280 Fuel burning equipment.

(a) * * *

(1) Mountain Counties Intrastate AQCR:

* * * * * *

PART 81—DESIGNATION OF AREAS FOR AIR QUALITY PLANNING PURPOSES

Subpart B—Designation of Air Quality Control Regions

23. In section 81.21, the title and description are revised to read as follows:

§ 81.21 San Francisco Bay area intrastate air quality control region.

* * * * * *

In the State of California: Alameda County, Contra Costa County, Marin County, Napa County, San Francisco County, San Mateo County, Santa Clara County.

Solano County—that portion of Solano County which lies south and west of a line described as follows:

Beginning at the intersection of the westerly boundary of Solano County and the ¼ section line running east and west through the center of Section 34, T. 6 N., R. 2 W., M.D.B.&M., thence east along said ¼ section line to the east boundary of Section 36, T. 6 N., R. 2 W., thence south ½ mile and east 2.0 miles, more or less, along the west and south boundary of Los Putos Rancho to the northwest corner of Section 4, T. 5 N., R. 1 W., thence east along a line common to T. 5 N. and T. 6 N. to the northeast corner of Section 3, T. 5 N., R. 1 E., thence south along section lines to the southeast corner of Section 10, T 3 N., R. 1 E., thence east along section lines to the south ¼ corner of Section 8, T. 3 N., R. 2 E., thence east to the boundary between Solano and Sacramento Counties.

Sonoma County—that portion of Sonoma County which lies south and east of a line described as follows:

Beginning at the southeasterly corner of the Rancho Estero Americano, being on the boundary line between Marin and Sonoma Counties, California; thence running northerly along the easterly boundary line of said Rancho Estero Americano to the northeasterly corner thereof, being an angle corner in the westerly boundary line of Rancho Canada de Jonive; thence running along said boundary of Rancho Canada de Jonive westerly, northerly and easterly to its intersection with the easterly line of Graton Road; thence running along the easterly and southerly line of Graton Road, northerly and easterly to its intersection with the easterly line of Sullivan Road; thence running northerly along said easterly line of Sullivan Road to the southerly line of Green Valley Road; thence running easterly along the said southerly line of Green Valley Road and easterly along the southerly line of State Highway 116, to the westerly line of Vine Hill Road; thence running along the westerly and northerly line of Vine Hill Road, northerly and easterly to its intersection with the westerly line of Laguna Road; thence running northerly along the westerly line of Laguna Road and the northerly projection thereof to the northerly line of Trenton Road; thence running westerly along the northerly line of said Trenton Road to the easterly line of Trenton-Healdsburg Road; thence running northerly along said easterly line of Trenton-Healdsburg Road to the easterly line of Eastside Road; thence running northerly along said easterly line of Eastside Road to its intersection with the southerly line of Rancho Sotoyome; thence running easterly along said southerly line of Rancho Sotoyome to its intersection with the township line common to Townships 8 and 9 North, Mt.

Diablo Base and Meridian; thence running easterly along said township line to its intersection with the boundary line between Sonoma and Napa Counties, State of California.

24. In section 81.161, the description is revised to read as follows:

§ 81.161 North coast intrastate air quality control region.

* * * * *

In the State of California: Del Norte County, Humboldt County, Mendocino County, Trinity County.

Sonoma County—that portion of Sonoma County which lies north and west of a line described as follows:

Beginning at the southeasterly corner of the Rancho Estero Americano, being on the boundary line between Marin and Sonoma counties, California; thence running northerly along the easterly boundary line of said Rancho Estero Americano to the northeasterly corner thereof, being an angle corner in the westerly boundary line of Rancho Canada de Jonive; thence running along said boundary of Rancho Canada de Jonive westerly, northerly and easterly to its intersection with the easterly line of Graton Road; thence running along the easterly and southerly line of Graton Road, northerly and easterly to its intersection with the easterly line of Sullivan Road; thence running northerly along said easterly line of Sullivan Road to the southerly line of Green Valley Road; thence running easterly along the said southerly line of Green Valley Road and easterly along the southerly line of State highway 116, to the westerly line of Vine Hill Road; thence running along the westerly and northerly line of Vine Hill Road, northerly and easterly to its intersection with the westerly line of Laguna Road; thence running northerly along the westerly line of Laguna Road and the northerly projection thereof to the northerly line of Trenton Road; thence running westerly along the northerly line of said Trenton Road to the easterly line of Trenton-Healdsburg Road; thence running northerly along said easterly line of Trenton-Healdsburg Road to the easterly line of Eastside Road; thence running northerly along said easterly line of Eastside Road to its intersection with the southerly line of Rancho Sotoyome; thence running easterly along said southerly line of Rancho Sotoyome to is intersection with the township line common to Townships 8 and 9 North, Mt. Diablo Base and Meridian; thence running easterly along said township line to its intersection with the boundary line between Sonoma and Napa Counties, State of California.

25. In section 81.162, the description is revised to read as follows:

§81.162 Northeast Plateau intrastate air quality control region.

* * * * *

In the State of California: Lassen County, Modoc County, Siskiyou County.

Shasta County—that portion of Shasta County which lies east and north of a line described as follows:

Beginning at the Shasta-Siskiyou County boundary and running south along the range line common to R. 2 E. and R. 1 E., Mt. Diablo Base and Meridian, to the southwest corner of T. 35 N., R. 2 E; then east along the township line common to T. 35 N. and T. 34 N. to the northwest corner of T. 34 N., R. 3 E.; then south along the range line common to R. 3 E. and R. 2 E. to the southwest corner of T. 33 N., R. 3 E.; then east along the township line common to T. 33 N. and T. 32 N. to the northwest corner of T. 32 N., R. 4 E.; then south along the range line common to R. 4 E. and R. 3 E. to the point of intersection with the northwest corner of the Lassen Volcanic National Park boundary; then east along the north boundary of Lassen Volcanic National Park to the point of intersection with the Lassen-Shasta County boundary.

26. In section 81.163, the description is revised to read as follows:

§ 81.163 Sacramento Valley intrastate air quality control region.

* * * * *

In the State of California: Butte County, Colusa County, Glenn County, Sacramento County, Sutter County, Tehama County, Yolo County, Yuba County.

Shasta County—that portion of Shasta County which lies west and south of a line described as follows:

Beginning at the Shasta-Siskiyou County boundary and running south along the range line common to R. 2 E. and R. 1 E., Mt. Diablo Base and Meridian, to the southwest corner of T. 35 N., R. 2 E.; then east along the township line common to T. 35 N. and T. 34 N. to the northwest corner of T. 34 N., R. 3 E.; then south along the range line common to R. 3 E. and R. 2 E. to the southwest corner of T. 33 N., R. 3 E.; then east along the township line common to T. 33 N. and T. 32 N. to the northwest corner of T. 32 N., R. 4 E.; then south along the range line common to R. 4 E. and R. 3 E. to the point of intersection with the northwest corner of the Lassen Volcanic National Park boundary; then east along the north boundary of Lassen Volcanic National Park to the Point of intersection with the Lassen-Shasta County boundary.

Solano County—that portion of Solano County which lies north and east of a line described as follows:

Beginning at the inersection of the westerly boundary of Solano County and the ¼ section line running east and west through the center of Section 34, T. 6 N., R. 2 W., M.D.B.&M., thence east along said ¼ section line to the east boundary of Section 36, T. 6 N., R. 2 W., thence south ½ mile and east 2.0 miles, more or less, along the west and south boundary of Los Putos Rancho to the northwest corner of Section 4, T. 5 N., R. 1 W., thence east along a line common to T. 5 N. and T. 6 N. to the northeast corner of Section 3, T. 5 N., R. 1 E., thence south along section lines to the southeast corner of Section 8, T. 3 N., R. 2 E., thence east to the boundary between Solano and Sacramento Counties.

27. In section 81.164, the description is revised to read as follows:

§ 81.164 San Diego intrastate air quality control region.

* * * * *

In the State of California: San Diego County.

28. In section 81.165, the description is revised to read as follows:

§ 81.165 San Joaquin Valley Intrastate Air Quality Control Region.

* * * * *

In the State of California: Fresno County, Kings County, Madera County, Merced County, San Joaquin County, Stanislaus County, Tulare County.

Kern County—that portion of Kern County which lies west and north of a line described as follows:

Beginning at the Kern-Los Angeles County boundary and running north and east along the northwest boundary of the Rancho La Liebre Land Grant to the point of intersection with the range line common to R. 15 W. and R. 16 W., San Bernardino Base and Meridian; then north along the range line to the northwest corner of Section 2, T. 32 S., R. 32 E., Mount Diablo Base and Meridian; then east along the township line common to T. 32 S. and T. 31 S.; then north along the range line common to R. 35 E. and R. 34 E.; then east along the township line common to T. 29 S. and T. 28 S.; then north along the range line common to R. 36 E. and R. 35 E.; then east along the township line common to T. 28 S. and T. 27 S.; then north along the range line common to R. 37 E. and R. 36 E. to the Kern-Tulare County boundary.

29. In section 81.167, the description is revised to read as follows:

§ 81.167 Southeast Desert Intrastate Air Quality Control Region.

* * * * *

In the State of California: Imperial County.

Kern County—that portion of Kern County which lies east and south of a line described as follows:

Beginning at the Kern-Los Angeles County boundary and running north and east along the northwest boundary of the Rancho La Liebre Land Grant to the point of intersection with the range line common to R. 15 W. and R. 16 W., San Bernardino Base and Meridian; then north along the range line to the northwest corner of Section 2, T. 32 S., R. 32 E., Mount Diablo Base and Meridian; then east along the township line common to T. 32 S. and T. 31 S.; then north along the range line common to R. 35 E. and R. 34 E.; then east along the township line common to T. 29 S. and T. 28 S.; then north along the range line common to R. 36 E. and R. 35 E.; then east along the township line common to T. 28 S. and T. 27 S.; then north along the range line common to R. 37 E. and R. 36 E. to the Kern-Tulare County boundary.

Los Angeles County—that portion of Los Angeles County which lies north and east of a line described as follows:

Beginning at the Los Angeles-San Bernardino County boundary and running west along the township line common to T. 3 N. and T. 2 N., San Bernardino Base and Meridian; then north along the range line common to R. 8 W. and R. 9 W.; then west along the township line common to T. 4 N. and T. 3 N.; then north along the range line common to R. 12 W. and R. 13 W. to the southeast corner of Section 12, T. 5 N.; R. 13 W.; then west along the south boundaries of Sections 12, 11, 10, 9, 8, and 7, T. 5 N., R. 13 W. to the boundary of the Angeles National Forest which is collinear with the range line common to R. 13 W. and R. 14 W.; then north and west along the Angeles National Forest boundary to the point of intersection with the township line common to T. 7 N. and T. 6 N. (point is at the northwest corner of Section 4 in T. 6 N., R. 14 W.); then west along the township line common to T. 7 N. and T. 6 N.; then north along the range line common to R. 15 W. and R. 16 W. to the southeast corner of Section 13, T. 7 N., R. 16 W.; then along the south boundaries of Sections 13, 14, 15, 16, 17, and 18, T. 7 N., R. 16 W.; then north along the range line common to R. 16 W. and R. 17 W. to the north boundary of the Angeles National Forest (collinear with the township line common to T. 8 N. and T. 7 N.); then west and north along the Angeles National Forest boundary to the point of intersection with the south boundary of the Rancho La Liebre Land Grant; then west and north along this land grant boundary to the Los Angeles-Kern County boundary.

Riverside County—that portion of Riverside County which lies east of a line described as follows:

Beginning at the Riverside-San Diego County boundary and running north along the range line common to R. 4 E. and R. 3 E., San Bernardino Base and Meridian; then east along the township line common to T. 8 S. and T. 7 S.; then north along the range line common to R. 5 E. and R. 4 E.; then west along the township line common to T. 6 S. and T. 7 S. to the southwest corner of Section 34, T. 6 S., R. 4 E.; then north along the west boundaries of Sections 34, 27, 22, 15, 10, and 3, T. 6 S., R. 4 E.; then west along the township line common to T. 5 S. and T. 6 S.; then north along the range line common to R. 4 E. and R. 3 E.; then west along the south boundaries of Sections 13, 14, 15, 16, 17, and 18, T. 5 S., R. 3 E.; then north along the range line common to R. 2 E. and R. 3 E.; then west along the township line common to T. 4 S. and T. 3 S. to the intersection with the southwest boundary of partial Section 31, T. 3 S., R. 1 W.; then northwest along that line to the intersection with the range line common to R. 2 W. and R. 1 W.; then north to the Riverside-San Bernardino County line.

San Bernardino County—that portion of San Bernardino County which lies east and north of a line described as follows:

Beginning at the San Bernardino-Riverside County boundary and running north along the range line common to R. 3 E. and R. 2 E., San Bernardino Base and Meridian; then west along the township line common to T. 3 N. and T. 2 N. to the San Bernardino-Los Angeles County boundary.

30. Section 81.273 is added as follows:

§ 81.273 Lake County Intrastate Air Quality Control Region.

The Lake County Intrastate Air Quality Control Region consists of the territorial area encompassed by the boundaries of the following jurisdictions or described area (including the territorial area of all municipalities (as defined in section 302(f) of the Clean Air Act, 42 U.S.C. 1857h(f)) geographically located within the outermost boundaries of the area so delimited):

In the State of California: Lake County.

31. Section 81.274 is added as follows:

§ 81.274 Mountain Counties Intrastate Air Quality Control Region.

The Mountain Counties Intrastate Air Quality Control Region consists of the territorial area encompassed by the boundaries of the following jurisdictions or described area (including the territorial area of all municipalities (as defined in section 302(f) of the Clean Air Act, 42 U.S.C. 1857h(f)) geographically located within the outermost boundaries of the area so delimited):

In the State of California: Amador County, Calaveras County, Mariposa County, Nevada Country, Plumas County, Sierra County, Tuolumne County.

El Dorado County—all of El Dorado County except that portion within the drainage area naturally tributary to Lake Tahoe including said Lake.

Placer County—all of Placer County except the following described area:

That portion of Placer County within the drainage area naturally tributary to Lake Tahoe including said Lake, plus that area in the vicinity of the head of the Truckee River described as follows: commencing at the point common to the aforementioned drainage area crestline and the line common to Townships 15 North and 16 North, Mount Diablo Base and meridian (M.D.B.&M.), and following that line in a westerly direction to the northwest corner of Section 3, Township 15 North, Range 16 East, M.D.B.&M., thence south along the west line of Sections 3 and 10, Township 15 North, Range 16 East, M.D.B.&M., to the intersection with the said drainage area crestline, thence following the said drainage area boundary in a southeasterly, then northeasterly direction to and along the Lake Tahoe Dam, thence following the said drainage area crestline in a northeasterly, then northwesterly direction to the point of beginning.

32. Section 81.275 is added as follows:

§ 81.275 Lake Tahoe Intrastate Air Quality Control Region.

The Lake Tahoe Intrastate Air Quality Control Region consists of the territorial area encompassed by the boundaries of the following jurisdictions or described area (including the territorial area of all municipalities (as defined in Section 302(f) of the Clean Air Act, 42 U.S.C. 1857h(f)) geographically located within the outermost boundaries of the area so delimited:

In the State of California:

El Dorado County—that portion of El Dorado County within the drainage area naturally tributary to Lake Tahoe including said Lake.

Placer County—that portion of Placer County within the drainage area naturally tributary to Lake Tahoe including said Lake, plus that area in the vicinity of the head of the Truckee River described as follows: commencing at the point common to the aforementioned drainage area crestline and the line common to Townships 15 North and 16 North, Mount Diablo Base and Meridian (M.D.B.&M.), and following that line in a westerly direction to the northwest corner of Section 3, Township 15 North, Range 16 East, M.D.B.&M., thence south along the west line of Sections 3 and 10, Township 15 North, Range 16 East, M.D.B.&M., to the intersection with the said drainage area crestline, thence following the said drainage area boundary in a southeasterly, then northeasterly direction to and along the Lake Tahoe Dam, thence following the said drainage area crestline in a northeasterly, then northwesterly direction to the point of beginning.

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DEPARTMENT OF LABOR

41 CFR Part 29-70

Public Contracts and Property Management; Federal Standards for Federally Funded Grants and Agreements

Correction

In FR Doc. 80-36059 appearing in the issue for Tuesday, December 16, 1980, make the following corrections:

(1) On page 82828, in the first column, in the "SUMMARY", 2nd paragraph, in the 17th line, "Circular A-122" should have read "OMB Circular A-122".

(2) On page 82828, in the third column, in the fourth line, "70.216-1(a)" should have read "70.216a-1(a)".

(3) On page 82828, in the third column, in paragraph i, in the first line, the word "required" should have been "requires".

(4) On page 82834 in the middle column, in paragraph (7), (contract clause contained in § 29-70.216-12(b)(6)), in the 18th line, the word "which" should have read "with".

(5) On page 82630, in the first column, in § 29–70.216b–1, paragraph (c)(2), in the last line "sec. 122(k)" should have read "sec. 121(k)".

BILLING CODE 1505-01-M

Office of Federal Contract Compliance Programs

41 CFR Part 60–1

Payment of Membership Fees and Other Expenses to Private Organizations

AGENCY: Office of Federal Contract Compliance Programs, Labor.

ACTION: Final rule.

SUMMARY: This rule amends 41 CFR Part 60–1 by adding a new § 60–1.11 to prohibit Federal contractors under Executive Order 11246, as amended, from paying membership fees and other expenses for employee participation in discriminatory private clubs or organizations except where the contractor can provide evidence that such restrictions or limitations do not abridge the promotional opportunities, status, compensation or other terms and conditions of employment of those of its employees barred from membership because of their race, color, religion, sex, or national origin. The rule requires OFCCP to provide contractors with the opportunity to present evidence in defense of their actions, and requires that contractors' fee payment policies be administered without regard to employees' race, color, religion, sex, or national origin. The rule is designed to address the problems facing employees excluded from contractor sponsored membership in discriminatory private clubs or organizations because of their race, color, religion, sex, or national origin, and to ensure that the contractor conducts business related activities and provides employee benefits in an environment free of discrimination.

EFFECTIVE DATE: February 17, 1981.

FOR FURTHER INFORMATION CONTACT: James W. Cisco, Acting Director, Division of Program Policy, Office of Federal Contract Compliance Programs, U.S. Department of Labor, Washington, D.C. 20210, telephone (202) 523–9426.

SUPPLEMENTARY INFORMATION: The Office of Federal Contract Compliance Programs (OFCCP) administers three programs which prohibit employment discrimination by Federal contractors and subcontractors. Executive Order 11246, as amended, prohibits employment discrimination based on race, color, religion, sex, and national origin; Section 503 of the Rehabilitation Act of 1973 prohibits handicap-based discrimination; and Section 402 of the Vietnam Era Veterans' Readjustment Assistance Act of 1974 prohibits discrimination based on veteran status.

The rule published today covers practices under Executive Order 11246, but not under either Sections 402 or 503. The matter of payment of membership fees first arose under the Executive Order, and most concerns have revolved around the employment impact of exclusion from discriminatory clubs upon minorities and women. Only one commentator expressed the opinion that coverage of the rule should be extended to qualified handicapped persons under Section 503. However, if OFCCP becomes aware of problems in this area, consideration will be given to further rulemaking.

OFCCP has no jurisdiction over the membership practices of private organizations, and does not seek any through this rule. The regulation does not prohibit contractors from making direct contributions unrelated to employment to charitable, service, or other private organizations. Neither does the regulation prohibit employees from maintaining membership in any organization for which they elect to pay membership or other fees not reimbursed by the contractor.

I. Background—Summary of the Proposed Rule.

The proposal published January 22, 1980 (45 FR 4953) would have made it a violation of Executive Order 11246 for contractors to pay membership fees or other expenses to organizations which bar, restrict, or limit membership on the basis of race, color, religion, sex, or national origin where such restrictions or limitations impacted upon employees' promotional opportunities, status, compensation, or other terms and conditions of employment. The proposal would have established a procedure through which the contractor would conduct an analysis of its membership fee payment policy to determine whether any employees were maintaining contractor sponsored membership in a discriminatory organization which conferred a business or professional advantage affecting excluded employees. Nothing in the proposal would have prohibited contractors from paying membership fees to organizations which confer no business or professional advantage.

The proposed regulation contained an analysis composed of five steps designed to enable the contractor to determine whether its fee payment policy was nondiscriminatory, which organizations to which it paid fees had discriminatory membership practices, which employees maintained employer paid memberships in such discriminatory organizations, whether these employees received any business or professional advantage by virtue of their membership in such discriminatory organizations, and whether such advantage impacted upon the employment opportunities or status of those similarly situated. The sixth step of the process would have required the cessation of payments to any discriminatory organization which the contractor's analysis determined to be conferring a business or professional advantage having an employment impact.

II. Analysis of Comments Received

During the comment period ending March 24, 1980, OFCCP received an unduplicated count of 203 comments broken down into the following categories of commentators: members of Congress or the Senate, 4; women's groups, 6; minority groups, 2; public interest groups, 4; religious groups, 3; service clubs, 21; other clubs, 31; club "industry" associations, 7; banks and savings and loan associations, 20; other contractors and companies, 15; contractor associations, 7; state agencies, 1; individuals, 82. Comments OFCCP considered as substantive numbered 35 of the unduplicated total. Of the 202 commentators expressing an opinion on the proposal, 41 supported the proposal, while 161 opposed it. OFCCP reviewed and considered comments received after the close of the comment period, but these are not reflected in the figures given above. The major concerns raised in the comments are considered below.

A. *Justification for the rule.* One of the most frequently expressed comments by opponents to the proposal was the belief that the proposal is unwarranted. While some of these commentators agreed that OFCCP had a role in prohibiting employment discrimination, they argued that the purpose of a contractor's payment of membership fees was not to discriminate in employment, but to further the contractor's business interests.

But membership fees are generally paid, to quote one corporate commentator, "as a perquisite and adjunct to the company's compensation program or for business purposes to contact officers [of other businesses] with the understanding that the membership will be used for business cultivation and direct business purposes." It is then reasonable to conclude that in furthering the business through membership, company

sponsored members further their own careers as well. It is also reasonable to conclude that those excluded from membership in clubs or organizations used to further the business are correspondingly impeded in advancing their careers in the same manner as their company sponsored member colleagues. Evidence gathered in various compliance reviews by the Department of the Treasury as a contract compliance agency, testimony provided before the Senate Committee on Banking, Housing and Urban Affairs, and information received by the Department of Labor both before and after the proposal's publication provide sufficient cause for OFCCP to conclude that exclusion from contractor sponsored membership in a discriminatory private organization may affect employment.

B. *Determining effects on employment.* The basis of the proposal was that employees provided with contractor sponsored membership in a discriminatory private organization receive an employment advantage not available to employees excluded from membership in the discriminatory organization. The analysis in proposed paragraph (b), through a progression of steps, was intended to identify those situations in which membership conferred an employment advantage leading to disparities in employment opportunities, status, compensation, or other terms and conditions of employment.

Paragraph (b)(4) would have required contractors to "determine any direct or indirect benefits received by employees from their membership in . . . exclusionary clubs or organizations which serve to enhance their employment opportunities or which give to them an employment or professional advantage over employees who are excluded from such membership."

To determine whether the employment advantage was accompanied by actual disparities in employment opportunities, the proposal contained a paragraph (b)(5), which required the contractor to "compare the promotion rate, compensation, and other job benefits of employees who maintain contractor sponsored membership in . . . exclusionary clubs or organizations with those of employees who are excluded from such clubs or organizations. . . ." In paragraph (b)(6) the contractor, "upon determining that there exists any employment or professional advantage," was to "immediately cease the reimbursement or payment of membership fees for participation in the exclusionary club or organization."

In speaking of proposed paragraph (b)(4), some commentators went to great lengths to produce hypothetical situations for which contractors would have difficulty determining whether the club conferred an employment advantage. Few other commentators on this paragraph spoke as much on the specifics of paragraph (b)(4) as on the reasons employers pay membership fees. Some opponents of the rule who answered questions relating to why contractors pay membership fees stated that they do not pay fees to confer any employment advantage or to discriminate, but instead to further business, make contacts, and establish relationships with potential customers—all activities which would be likely to have some effect upon the contractor sponsored employee's opportunities for career advancement.

Supporters of the rule found fault with proposed paragraph (b)(5). They believed that the comparison of promotion rates, compensation, etc. required by this paragraph would be meaningless because it could not consider the fact that two employees of unequal ability and perseverance could achieve the same level of success—one through contacts made at a discriminatory private club, the other through harder work and greater talent.

The fact that one employee would have had to work harder than the other to achieve the same level of success would indicate discrimination, but such discrimination would be hidden from the analysis in paragraph (b)(5). Other commentators simply believed that the procedure of (b)(5) was too complex to be feasible.

The analytical process of paragraph (b), particularly the payment cessation requirement of (b)(6), received criticism from many commentators because of their belief that it presumed the employer "guilty" of employment discrimination without any evidence of "guilt." Opponents believed that the existence of the opportunity to continue paying fees to discriminatory organizations upon establishing that no employment impact would result was insufficient assurance that the analysis raised no issue of "guilt" or "innocence."

As stated above, the purpose of the analysis was to provide a means of identifying those instances of fee payment which conferred a business or professional advantage having an effect on the employment opportunities or status of similarly situated employees. OFCCP, following the guidance provided by the Department of Justice, had concluded that such identification was necessary to restrict the impact of the regulation to those situations where employment was affected by the contractor's fee payment policy.

Partly because of the realization that it is the furtherance of business which is at the heart of fee payments, and partly because of the complexities associated with the analysis of the proposal, OFCCP has removed the analysis process of proposed paragraph (b), and has simply stated the conditions under which a violation of the Executive Order exists. The rule published today also ensures that "OFCCP shall provide the contractor with the opportunity to present evidence in defense of its actions" in implementing its membership fee policy.

C. *Determining discriminatory membership.* Paragraph (b) of the proposal contained a provision that required the contractor to determine which, if any, of the organizations to which payments are made maintain membership policies which bar, restrict, or limit membership on the basis of race, color, religion, sex, or national origin. Most of the 27 commentators expressing opinions on this portion of the proposed regulation were opposed to the requirement. They believed either that OFCCP intended contractors to "investigate" private organizations or that the provision provided insufficient guidance for contractors to know what was intended.

It was never the intention of OFCCP that either contractors or the Government would conduct "investigations" of private organizations. Although the determination procedure would have been left to contractors, OFCCP envisioned a simple process in which the contractor would generally determine an organization's membership practices by requesting a policy statement from an officer of the organization or by checking the organization's by-laws.

D. *Per se violation.* At the end of the preamble to the proposal appeared a note stipulating that EEOC disagreed with OFCCP's position regarding the regulation, and inviting "comment on the alternative position which, under § 703(a)(1) of Title VII of the Civil Rights Act of 1964, as amended, would absolutely prohibit payment by employers of fees to such discriminating clubs."

Seventeen commentators expressed opinions on the question EEOC raised. Although opposition to any rule in this area was generally widespread, 15 of the 17 commentators who specifically discussed the *per se* violation question

supported EEOC's position that contractors' payments of membership fees to a discriminatory organization should be prohibited absolutely. These commentators viewed any contractor payment to any discriminatory organization as abetting discrimination. They believed that any employee excluded from contractor sponsored membership in a discriminatory organization would suffer diminished employment opportunities and status.

In its two opinions, however, the Department of Justice advised the Department of Labor that employment discrimination under Executive Order 11246 does not exist simply because a contractor pays membership fees for employee participation in a discriminatory organization. The 1976 opinion stated that the Department of Labor could not assume that all membership fee payments were made to clubs to transact business and make business contacts, and that therefore Labor could also not assume that membership in all clubs automatically affects promotion and advancement potential of employees. The 1977 opinion clarified Justice's earlier position by stating that the Department of Labor could assert that a contractor's payment of dues to a discriminatory organization violates Executive Order 11246 so long as the contractor is provided the opportunity to show that its policy and the effects of its policy on employment are nondiscriminatory. In electing to follow the advice of the Department of Justice on this issue of authority under the Executive Order, OFCCP in no way asserts that EEOC is similarly limited in interpreting Title VII.

E. *Exemption of types or organizations.* The proposal provided for no exemptions from the rule for either specific organizations or organizations of particular "types." Among the questions OFCCP asked in the preamble was whether any "types" of organizations should be exempted and how one would characterize an organization as being of a particular "type" (for example, a religious society, service club or social club).

Most of the comments advocating exemptions came from organizations or their industry associations. Although most of these commentators opposed promulgation of any rule, they sometimes qualified their opposition by stating that should OFCCP finalize a rule on membership fees, their type of organization should be exempt from the rule. Service clubs and their members were generally of the opinion that no connection between employment opportunity and membership in a service club could be shown, and that the rule would discourage employers from sponsoring their employees for membership. They expressed the opinion that the effect of the rule would be to diminish their memberships substantially, with resulting reduction in the services the community would receive. None of the two minority groups and only one of the six women's groups filing comments advocated an exemption for organizations established to increase the employment opportunities of women or minorities.

Some determination as to "type" would be necessary to categorize what kinds of organization should be exempt from the rule. Few commentators provided any guidance on how one determines whether an organization is of a particular "type" other than to say that the "type" of organization is dependent upon its purpose. Considering organizations as being of a particular "type" according to their purpose rather than their function, however, leaves unanswered the question of what consideration should be given to the effect that contractor sponsored membership in that organization might have upon employment.

In adopting a rule without exemptions, OFCCP recognizes that participation in various organizations will have varying impacts upon employment. Some organizations are established primarily to provide an environment in which to further business, and function to do so. Others are established for nonbusiness purposes, but have memberships and activities which function to further the business interests of their members. Others have neither business purposes nor functions. Therefore, the rule adopted today will not affect payments made to organizations when the contractor can demonstrate that no effect upon employment results.

III. The Rule Explained.

The rule adopted today is divided into two paragraphs. Paragraph (a) requires that the contractor's fee payment policy be applied without discrimination, and establishes the general principle that payment of membership fees and other expenses for participation in a discriminatory private club or organization is a "a violation of Executive Order 11246 except where the contractor can provide evidence that such restrictions or limitations do not abridge the promotional opportunities, status, compensation or other terms and conditions of employment of those of its employees barred from membership because of their race, color, religion, sex, or national origin." The paragraph also ensures that "OFCCP shall provide the contractor with the opportunity to present evidence in defense of its actions." Paragraph (b) requires the contractor to determine whether an organization to which it pays fees maintains a discriminatory membership policy or practice.

A. *Principle of the Rule.* Paragraph (a)(1) requires that the contractor administer its policy or practice of paying membership fees or other expenses for employee participation in private clubs or organizations without regard to the race, color, religion, sex, or national origin of employees. This paragraph merely applies the existing nondiscrimination requirements of Section 202(1) of the Executive Order to the specific policy or practice of paying membership fees.

Paragraph (a)(2) establishes that "payment or reimbursement by contractors of membership fees and other expenses for participation by their employees in a private club or organization which bars, restricts or limits its membership on the basis of race, color, religion, sex, or national origin constitutes a violation of Executive Order 11246 except where the contractor can provide evidence that such restrictions or limitations do not abridge the promotional opportunities, status, compensation or other terms and conditions of employment of those of its employees barred from membership because of their race, color, religion, sex, or national origin." The paragraph also ensures that "OFCCP shall provide the contractor with the opportunity to present evidence in defense of its actions."

As has been discussed above, OFCCP's assertion of violation arises from the conclusion that contractors pay membership fees and other expenses either to further the interests of the business or to provide benefits to employees, and that both types of actions have employment effects. The interests of the business may be furthered by the use of a club or organization in activities such as the following: Use of a club to confer with, transact business with, or entertain clients; use of a club to hold business meetings and company functions; use of the social activities of an organization to establish and maintain contacts on behalf of the contractor; or participation in activities of the organization to enhance the goodwill of the employer within the community.

Although not all employment benefits automatically affect one's employment opportunities, compensation, status, or other terms and conditions of employment, some benefits are career

enhancing. A career enhancing benefit is one which may advance the career or business interests of the employee, including meeting with members of the employee's profession or business, participating in activities which provide information on business related or professional fields (such as lectures on the employee's profession or on local business or the economy), or participating in activities designed to improve the employment or career opportunities of the employee (such as use of job banks, directories, libraries, etc. and participation in job seminars).

OFCCP does not expect, however, that membership in every club or organization will automatically abridge the terms and conditions of employment of employees or applicants excluded from membership. Therefore, the contractor is afforded the opportunity to provide evidence that no effect has resulted. In determining the adequacy of the contractor's demonstration of no effect, OFCCP will review any evidence the contractor may present, and compare this evidence against its own analyses for adverse impact, disparate treatment, or other evidence of employment effect.

B. *Consideration of terms.* Much of the controversy arising over the proposed regulation surrounded the interpretation of terms, particularly those relating to membership and requirements placed upon contractors. Therefore, several of the key terms are described here to provide guidance.

1. *Membership fees and other expenses.* Although the rule is often discussed as affecting *membership fees*, expenses other than the fees themselves are covered. *Membership fees* are those expenses levied by a club or organization for the privilege of association through membership. *Other expenses* are expenses incurred incidental to membership and which are paid or reimbursed by the employer. Generally such expenses include entertainment expenses, facility usage fees, tuition for organization sponsored courses or training, admission and event participation fees, and convention registration and associated convention or meeting expenses. Expenses the employee pays on his or her own behalf are not *other expenses* covered by this regulation.

2. *Discriminatory private club or organization.* A discriminatory private club or organization is one which "bars, restricts or limits its membership on the basis of race, color, religion, sex, or national origin." Such restrictions may arise either from the organization's *policy* or *practice*.

Policy means a written statement (in the by-laws, for example) or verbal agreement among the membership by which members and officers of the organization determine who is eligible for membership. *Practice* means a method of operating the club, including verbal agreements among the members or tradition recognized by the members, which has the effect of determining who is eligible for membership.

Universal eligibility for membership is not a criterion for considering a club or organization as nondiscriminatory. Clubs or organizations which select members according to any criterion other than race, color, religion, sex, or national origin are not considered discriminatory for the purposes of this regulation. For example, an organization which requires candidates for membership to receive a certain minimum level of income or to have attained a certain standard of professional achievement is not considered discriminatory solely on the basis of these membership criteria.

A nondiscriminatory club or organization need not necessarily make all of its facilities available to all of its members. For example, athletic clubs would not be discriminatory if they maintained separate locker rooms, lodgings, and exercise facilities for men and women.

B. *Determining nondiscrimination of membership policies.* As paragraph (b) of the rule states, "the contractor has the responsibility of determining whether the club or organization restricts membership on the basis of race, color, religion, sex, or national origin. The contractor may make separate determinations for different chapters of an organization, and where it does so, may limit any necessary corrective action to the particular chapters which observe discriminatory membership policies and practices."

Although OFCCP prescribes no procedure for complying with the rule, the contractor may find it most efficient to place the responsibility for determining the membership policies of an organization to which the payment of fees and expenses is contemplated with the management official who authorizes the expenditure. The determination may be based upon certification from an officer of the club, from an examination of the organization's by-laws, or from any other evidence that enables the contractor to determine the organization's membership policies and practices in accordance with the rule.

Unless the contractor receives indications of a change in the membership policies or practices of a given club or organization, the determination of an organization's or club's membership policies need be made only once to cover payments of fees for all eligible employees to participate in that club or organization. (Of course, the contractor may elect to make determinations more than once, such as annually or in advance of paying each employee's fees for participation in that club or organization.) OFCCP may verify that the determination for each club or organization is both correct and current by contacting the club on its own.

IV. Expected Impact of the Rule

In the preamble to the proposed regulation, OFCCP asked several questions relating to how widespread the practice of paying membership fees is and what the likely impact of a rule on membership fees would be. No commentator answered these questions with sufficient useful information to allow OFCCP to make more than rough estimates of the extent of the practice of paying membership fees or the costs to contractors of complying with the rule. Only one commentator expressed an opinion which attempted to judge the actual costs of the rule as proposed. Some commentators argued that a regulatory analysis should be conducted.

With deletion of the analysis procedure contained in the proposal, the rule published today imposes only incidental new requirements upon contractors. The actions required to comply with the rule can be conducted coincidental to the contractor's established procedure for authorizing expenditures for membership fees and other expenses. The Department has therefore determined that no regulatory analysis is necessary.

This document was prepared by OFCCP's Division of Program Policy under the direction and control of Weldon J. Rougeau, Director, Office of

Federal Contract Compliance Programs. Staff from the Office of the Solicitor provided assistance.

Accordingly, a new § 60-1.11 is added to Part 60-1, Title 41, Code of Federal Regulations, as set forth below to take effect February 17, 1981.

Dated: January 13, 1981 at Washington, D.C.

Ray Marshall,
Secretary of Labor.

Donald Elisburg,
Assistant Secretary, Employment Standards Administration.

Weldon J. Rougeau,
Director, OFCCP.

§ 60-1.11 Payment or reimbursement of membership fees and other expenses to private clubs.

(a)(1) A contractor which maintains a policy or practice of paying membership fees or other expenses for employee participation in private clubs or organizations shall ensure that the policy or practice is administered without regard to the race, color, religion, sex, or national origin of employees.

(2) Payment or reimbursement by contractors of membership fees and other expenses for participation by their employees in a private club or organization which bars, restricts or limits its membership on the basis of race, color, sex, religion, or national origin constitutes a violation of Executive Order 11246 except where the contractor can provide evidence that such restrictions or limitations do not abridge the promotional opportunities, status, compensation or other terms and conditions of employment of those of its employees barred from membership because of their race, color, religion, sex, or national origin. OFCCP shall provide the contractor with the opportunity to present evidence in defense of its actions.

(b) The contractor has the responsibility of determining whether the club or organization restricts membership on the basis of race, color, religion, sex, or national origin. The contractor may make separate determinations for different chapters of an organization, and where it does so, may limit any necessary corrective action to the particular chapters which observe discriminatory membership policies and practices.

[FR Doc. 81-1587 Filed 1-15-81; 8:45 am]
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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1, 2, and 90

[PR Docket No. 79-338; RM-3470; FCC 80-753]

Temporary Licensing for Multiple Licensed Mobile Relay Systems Operating in the Business Radio Service in the 450-470 MHz Band

AGENCY: Federal Communications Commission.

ACTION: Final rule (order).

SUMMARY: The Commission adopts an order denying the Petition for limited reconsideration filed by the General Electric Company to delay the implementation date of a temporary licensing procedure available to some users in the Business Radio Service. The Commission further provides for an interim form to be used for this procedure due to the temporary unavailability of Form 572, the temporary licensing form.

EFFECTIVE DATE: December 29, 1980.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Gay Ludington, Private Radio Bureau, (202) 634-2443.

SUPPLEMENTARY INFORMATION:

In the matter of amendment of Parts 1, 2, and 90 of the Commission's rules and regulations to implement a system of temporary licensing for multiple licensed mobile relay systems operating in the Business Radio Service in the 450-470 MHz band, PR Docket No. 79-338, RM-3470.

Order

Adopted: December 18, 1980.
Released: December 29, 1980.

By the Commission: Commissioners Quello and Jones absent.

1. We have before us a petition filed by the General Electric Co. (GE) to reconsider the decision we took in our Report and Order in this proceeding to create a temporary licensing system for some users in the Business Radio Service.[1]

2. The gist of the GE petition is that the effective date of the rules adopted in the Report and Order should be delayed from January 1, 1981, to March 4, 1981.

3. In support GE has expressed concern that the proposed change will have adverse repercussions on the highly competitive equipment marketplace, because it will necessitate major changes in the way GE and some other radio equipment manufacturers market their products. GE contends that most dealers presently do not maintain an inventory to enable them to sell radio equipment off the shelf. Instead, the dealer orders the necessary radio equipment from the manufacturer who then assembles and delivers it to the dealer. The lag time has historically coincided with the time between application submission and license grant and arrangements have usually been made to have the equipment delivered to the dealer about the same time that a license is issued to the user. The new licensing procedure, however, will eliminate this delay. Dealers will be faced with a demand from customers to purchase and install equipment immediately. GE contends that such a change in customer demand characteristics will require dealers to stock inventory in order to remain competitive and thus may require local dealers to procure financing to purchase equipment, insurance, rent storage space, etc. GE therefore requests we delay implementation of our new rules to provide a longer period of time for manufacturers and dealers to alter or adjust their marketing procedures to assimilate this change.

4. We have considered GE's arguments. The issues it raises are merely reiterations of its earlier arguments in this proceeding and were considered and disposed of in our Report and Order.[2] GE has presented no new evidence or arguments in its Petition for Reconsideration to support its request, and has essentially restated the position it took in its comments in the earlier phase of this proceeding. GE does not contend there has been any change of conditions or circumstances which requires our reconsideration of these matters. Accordingly, there is no apparent basis for reconsideration action.[3]

5. In view of the foregoing, it is ordered that General Electric Co.'s petition for reconsideration is denied.

6. The form originally designated for use in this temporary licensing program will not be available on January 1, 1981, the effective date of the rules. We have, however, developed an interim procedure utilizing an existing form, a copy of the submitted FCC Form 400, that does not require the submission of any additional information. This interim procedure was described in a Public Notice issued on December 8, 1980, attached as an Appendix to this order.

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[1] *See Report and Order*, Docket No. 79-338, FCC 80-487, adopted August 1, 1980, released September 4, 1980.

[2] *Id.*, at paragraphs 12-13.

[3] *See* 47 CFR 1.429.

7. Therefore, it is further ordered, That until FCC Form 572 is available, eligible applicants may obtain temporary permits by following the interim procedure set out in the attached Appendix below. This interim procedure shall be effective January 1, 1981. It is determined that 30 days notice is not required for the adoption of this interim procedure because it is of a procedural nature; it conforms with existing policy; and expedited implementation is required in the public interest.

8. The Secretary shall cause this order to be published in the Federal Register.

Federal Communications Commission.

William J. Tricarico,

Secretary.

Appendix

FCC Form 572 Temporarily Unavailable; FCC Provides Interim Procedure To Allow Implementation of Temporary Licensing System in the Business Radio Service on January 1, 1981, as Scheduled.

December 8, 1980

On September 4, 1980, the FCC released a Report and Order in PR Docket 79-338 which created a system of temporary licensing for add-on users of existing multiple licensed shared stations in the Business Radio Service (for example, a community repeater, or a radio or wireline controlled shared base station facility) in the frequency bands 30-50 MHz, 150-170 MHz and 450-470 MHz. The program becomes effective January 1, 1981. However, due to processing delays, the temporary permit form itself will not be available on January 1, 1981. We are aware that manufacturers and equipment dealers alike have relied on the January 1 effective date in their planning and production schedules. The Commission has therefore provided for an interim "form" which will substitute for the temporary permit form (#572) until it becomes available.

Applicants in the Business Radio Service eligible to use the temporary licensing system when it begins on January 1, 1981, may use as a substitute for the temporary permit the Form 400 work sheet, or a photo copy or other duplicate of the completed FGC Form 400 being used to apply for Commission authorization. This copy should be signed, dated and posted at every control point or station covered by the application. Do not mail the copy to the FCC.

We caution applicants who use the temporary licensing system that eligibility provisions remain the same as outlined in the Report and Order.

(1) Applicants may use a copy of a completed Form 400 as an interim temporary permit only if he or she wants to operate on an existing licensed facility in the 30-50 MHz, 150-170 MHz, or 450-470 MHz band while the original Form 400 is being processed by the Federal Communications Commission.

(2) An applicant may not be temporarily licensed under this system if he or she operates an individual non-shared station.

(3) An applicant will not qualify for a temporary permit until he or she has complied with frequency coordination requirements under Section 90.175 of the FCC rules.

(4) The applicant must certify that he or she:

(a) is not a representative of a foreign government;

(b) is eligible in the Business Radio Service under Section 90.75 of the FCC Rules;

(c) has not had a license denied or revoked by the FCC;

(d) is not the subject of legal action concerning the operation of a radio station;

(e) has mailed a completed Form 400 to the FCC;

(f) has complied with the frequency coordination requirements under Section 90.175 of the FCC rules.

The applicant must clearly label the copied Form 400 as a "Temporary permit to operate a business radio station" in the space marked "Special Conditions." Also, the applicant will construct a temporary call sign consisting of the letters "WT" plus his or here local business telephone number, and will use that call sign until a permanent call sign is assigned by the FCC. The temporary call sign should be written in the space marked "call sign" on the copied Form 400.

This interim procedure will be valid only so long as the temporary permit Form 572 is unavailable. A Public Notice will be issued when the form is available.

[FR Doc. 80-1618 Filed 1-15-81; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[Docket No. 20642; FCC 80-725]

Radio Broadcast Services; Clear Channel Broadcasting in the Standard Broadcast Band

AGENCY: Federal Communications Commission.

ACTION: Final rule (Memorandum Opinion and Order.)

SUMMARY: This action addresses petitions for reconsideration of the *Report and Order* in Docket No. 20642, *Clear Channel Broadcasting in the AM Broadcast Band.* Petitions for reconsideration filed by Great Southern Broadcasting Company, Inc., KBMR Radio, Inc., Peidmont Broadcasting Company, Inc., Natibnal Black Media Coalition, American Broadcasting Companies, Inc., Midwest Television, Inc., and Midwest Radio-Television, Inc., are denied. Section 73.37(e)(2) of the Commission's rules is amended in response to the petition of Clear Channel Broadcasting Service, which petition is otherwise denied.

EFFECTIVE DATE: January 28, 1981.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Molly Pauker, Broadcast Bureau, (202) 632-6302; or Gary Stanford, Broadcast Bureau, (202) 632-9660.

SUPPLEMENTARY INFORMATION:

In the matter of Clear Channel Broadcasting in the Standard Broadcast Band, Docket No. 20642.

Memorandum Opinion and Order

Adopted: December 4, 1980.

Released: December 22, 1980.

By the Commission: Commissioner Quello concurring in the result.

1. Before the Commission are several petitions for reconsideration of the *Report and Order* in Docket No. 20642, Clear Channel Broadcasting in the AM Band, 45 FR 43172, published June 26, 1980. Petitioners are Great Southern Broadcasting Company, Inc., licensee of Station WAMB, Donalson, Tennessee ("WAMB"); KBMR Radio, Inc., licensee of Station KERR, Polson, Montana ("KERR"); Piedmont Broadcasting Company, Inc., licensee of Station WSPF, Hickory, North Carolina ("WSPF"); National Black Media Coalition ("NBMC"), American Broadcasting Companies, Inc. ("ABC"); Clear Channel Broadcasting Service ("CCBS"); Midwest Television, Inc., licensee of Station KFMB, San Diego, California ("KFMB"); and Midwest Radio-Television, Inc., licensee of Station WCCO, Minneapolis, Minnesota ("WCCO").[1]

2. The City of New York Municipal Broadcasting System, licensee of Station WNYC ("WNYC"), filed comments addressing issues raised in WCCO's Petition II. WCCO filed a reply to WNYC's comments. These are discussed

[1] WCCO filed a petition to stay acceptance of applications on 830 kHz, as well as three petitions for reconsideration. All are addressed *infra*, and are referred to as "WCCO Petition I, II or III."

in paragraphs 29 and 31, *infra*. Association for Broadcast Engineering Standards, Inc. ("ABES"), filed a statement in reponse to the petitions for reconsideration of WSPF, WAMB, KBMR, CCBS, ABC and NBMC. ABES' views are noted, *infra*, in connection with consideration of each of the subject petitions. Southern California Broadcasting Company, licensee of Station KIEV, Glendale, California ("KIEV"), filed a comment opposing CCBS's petition (see paragraphs 21 through 23, *infra*) and also urging denial of the other petitions for reconsideration.

I. Petitions of WAMB, KBMR, WSPF

3. Petitioners seek reconsideration of paragraphs 69 and 70 of the *Report and Order*, relating to the daytime (ground wave) interference protection required to be afforded to Class I–A stations. Petitioners note that at paragraph 32 of the *Further Notice of Proposed Rule Making* in this proceeding, 44 FR 4502, 70 F.C.C. 2d 1077 (1978), the Commission proposed to reduce the daytime interference protection afforded to Class I–A stations from the 0.1 mV/m contour to the 0.5 mV/m contour. In the *Report and Order*, however, the Commission chose not to do so, in reliance upon three assumptions: (1) Generally, the controlling factor in the placement of any new unlimited-time Class II stations on the Class I–A channels would be the need to protect the dominant station's 0.5 mV/m 50% skywave contour, rather than the Class I station's daytime contour; (2) the proposed reduction in daytime interference protection would affect the placement of daytime-only stations on Class I channels, but action on applications for those stations have been deferred for the present; and (3) the question of daytime-only stations concerns Class I–B stations as well as the Class I–A's, but limits on Class I–B service areas are beyond the scope of this proceeding, and the issue of reduction of daytime interference protection for Class I stations would be more appropriately addressed in a separate proceeding focused specifically on that question. See *Report and Order*, paragraphs 69 and 70, 45 FR at 43161.

4. Petitioners claim that the degree of daytime protection afforded the Class I station by unlimited time co-channel Class II stations has significant effects on the operation of the Class II station. Pursuant to § 73.187 of the Commission's rules, a Class II station has the obligation of protecting the co-channel Class I station's 0.1 mV/m ground wave contour during critical hours, that is, two hours after local sunrise or two hours before local sunset. Under these provisions, a Class II station can operate in three different modes during different times of the day: a high power (as much as 50 kW) during daytime hours; a low power operation to protect the requisite skywave contours at night; and an intermediate power to protect the dominant station's ground wave contour during critical hours. Petitioners argue that decreasing the ground wave protection afforded Class I stations would permit Class II stations to operate at a higher power during critical hours, perhaps in the same mode as its daytime operation. Thus, the operation of a Class II station would be simplified.

5. ABES supports the present 0.1 mV/m protection level, contending that maintenance of 0.1 mV/m groundwave protection will not inhibit additional unlimited-time Class II stations. In addition, ABES argues that the benefits from daytime Class I–A service between the 0.5 mV/m and 0.1 mV/m contours, to rural residents and highway travelers, in particular, outweigh whatever benefits woud be derived from reducing daytime protection of Class I stations to the 0.5 mV/m contour.

6. It appears that petitioners have raised adequate grounds for reconsideration of our determination not to reduce the level of ground wave protection afforded Class I stations. In fact, a reduction in the Class I daytime contour protection level would increase the primary service areas of some Class II stations during critical hours, but that increase in the Class II station's service area would come at the cost of a decrease in the Class I station's service area. However, upon reconsideration, we remain of the opinion that it would be inappropriate to resolve this conflict within the confines of this proceeding. As previously noted, this proceeding involves Class I–A stations only, but the daytime interference standards affect Class I–B stations as well. We could not summarily amend the rules with regard to Class I–B stations without benefit of notice and comment, and we do not believe that it would be appropriate to add to the already complicated AM protection rules with different daytime standards for Class I–A and Class I–B stations. Rather, the better course would be institution of a new rule making proceeding looking to the modification of those rules for all Class I stations.

7. Accordingly, upon reconsideration, the conclusions of our *Report and Order* in Docket No. 20642 regarding daytime interference protection afforded Class I–A stations are affirmed. However, the petitions for reconsideration filed by WAMB, KBMR and WSPF will be treated as petitions for rule making; and we shall proceed as expeditiously as possible to develop a Notice of Proposed Rule Making on the subject of daytime interference protection required to be afforded to all Class I stations.

II. Petition of NBMC

8. NBMC asks the Commission to reconsider its intent to consider well-founded requests for waivers of the requirements of § 73.37(e)(2) of the Rules. See *Report and Order*, paragraph 72, 45 FR, at 43161, published June 26, 1980. NBMC urges that the Commission not accept requests for waivers of this section, arguing that this would substantially dilute the effect of the preference afforded to minority-owned and noncommercial applicants by the *Report and Order*. Additionally, NBMC asks that the Commission grant a strong preference to minority applicants in comparative hearings against other applicants for the new Class II stations on Class I–A channels. In support, NBMC alleges that such a preference could enhance the availability of funds for minority applicants and might discourage non-minority applications, thus obviating the need for comparative hearings altogether, in some instances. NBMC cites the recent decision of the Supreme Court in *Fullilove* v. *Klutznick*, U.S. 78–1007, decided July 2, 1980 (48 U.S.L.W. 4979), as an intervening development which broadens the Commission's discretion in the area of minority ownership policies.

9. NBMC correctly states that the criteria in § 73.37(e)(2) were designed to facilitate our primary objectives in this proceeding: provision of additional AM spectrum for minority-owned and noncommercial applicants, as well as applicants who would provide first or second local primary nighttime service. However, NBMC is incorrect in its further assumption that because no other equally meritorious service objective has been suggested to date, no other will ever be. Purely as a matter of logic, it must be acknowledged that there could arise a desirable use of this additional spectrum space not heretofore considered. We are not prepared now to close the door to every other possible applicant, however worthy, by refusing even to consider applications for waiver of the § 73.37(e)(2) criteria.

10. Moreover, we would be legally constrained to consider the merits of waiver requests for other possible uses. *Storer* v. *United States*, 351 U.S. 192, 100 L. Ed. 1081, 76 S. Ct. 763 (1956), holds that the Communications Act requires the Commission to afford a hearing to an applicant with a well-founded request for a waiver of the rules. That principle, announced in the context of

the prohibition against multiple ownership, applies here, as well. The Court has told us that we must be willing to consider waiving our rules for nonconforming proposals which nevertheless may be found to serve the public interest. See *WAIT Radio* v. *F.C.C.*, 418 F. 2d 1153 (D.C. Cir. 1969).

11. NBMC next argues that the assignment of a strong preference to minority applications on the Class I–A channels would stimulate minority applications and funding therefor, as well as possible discourage nonminority applications and thereby reduce the necessity for comparative hearings in some instances. In opposition, ABES argues that NBMC's proposal goes beyond the scope of the instant proceeding, and raises constitutional issues which require most serious consideration.

12. We believe that it would not be appropriate for us to take up issues which relate to the conduct of comparative hearings in the instant proceeding. We have taken note of the *Fullilove* opinion, and, while we find its teachings valuable, we do not think it mandates any change in the approach taken here. It would appear to be more useful for NBMC's suggestion to be taken up in connection with a proceeding specifically designed to address our comparative criteria, in which the comments of all interested parties could be elicited and due note taken of the *Fullilove* case, as well as *TV–9 Inc.* v. *F.C.C.*, 495 F. 2d 929 (D.C. Cir. 1973) and *Garrett* v. *F.C.C.*, 513 F. 2d 1063 (D.C. Cir. 1975), in which the court has instructed the Commission regarding its minority ownership policies.

III. Petition of ABC

13. ABC urges the Commission to reconsider paragraph 84 of the *Report and Order* and decline to grant interim authorizations for limited-time stations to operate at night until such time as it has balanced the desirability of increased operations by limited-time stations against the possible reduction in new unlimited-time stations this could cause. Second, ABC suggests that the Commission limit the minority ownership criterion in § 73.37(e)(2)(iv) to minority-owned applicants explicitly seeking to operate in communities with high minority populations and to provide programming specifically to serve those populations. Articulation of the policy objectives underlying the minority ownership provision would, according to ABC, strengthen the rule against possible constitutional challenge. Finally, ABC advocates that the Commission adopt streamlined comparative hearing procedures, to reduce the administrative burden of competing applications for the newly-available frequencies.

14. We have considered ABC's first argument that since disruption to existing service is a strong factor militating against rescission of any temporary operating authority, we should not grant interim authorizations to limited-time stations. ABES' support of this position has also been noted. However, we believe that at an appropriate future time, the Commission will be able to adequately weigh the continued efficiency of the small number of interim authorizations which might be granted pursuant to paragraph 84 of the *Report and Order*, in connection with rule making undertaken pursuant to paragraph 85 of the *Report and Order*, or otherwise. In the interim, it appears that the public would benefit now from additional nighttime service on those limited-time stations which seek to provide it. Therefore, this portion of ABC's request for reconsideration will be denied, and we intend to accept requests for interim nighttime authorizations.[2]

15. We believe that ABC is quite correct in suggesting that the primary objective of our minority ownership policy is to foster diversity in the source and content of programming. The courts have approved the awarding of merit to minority applications in service to this end. See, *e.g.*, *TV–9, Inc.* v. *F.C.C.*, 495 F. 2d 929, 938 (D.C. Cir. 1973). However, we have been directed by the court that once minority ownership has been established, we may not ask for further evidence relating to program content, but must presume a relationship between ownership by minorities and programming for minorities. "The entire thrust of *TV–9* is that Black ownership and participation together are themselves likely to bring about programming that is responsive to the needs of the Black citizenry [footnote omitted], and that that 'reasonable expectation' without 'advance demonstration' gives them relevance." (footnote omitted) *Garrett* v. *F.C.C.*, 513 F. 2d 1063 (D.C. Cir. 1975). Furthermore, because we believe that minority-controlled stations can have the additional function of educating nonminorities about minority viewpoints, we would be hesitant to restrict the threshhold criterion of this rule on the basis of the racial composition of the community of application. See *Statement of Policy on Minority Ownership of Broadcast Facilities*, 68 F.C.C. 2d 979, 981 (1978).

16. Moreover, as ABES points out, 73.37(e)(2)(iv) merely sets out a threshhold standard which applications must meet in order to be acceptable for further processing. It would be neither feasible nor desirable to introduce program content criteria into the initial screening process.

17. We also note ABC's suggestions regarding the streamlining of comparative hearings for new stations on the Class I–A channels. Its suggestions may prove useful; however, as we have said, issues relating to the conduct of comparative hearings do not properly belong in this proceeding. See paragraph 12, *supra*.

IV. Petition of CCBS

18. CCBS asks that the Commission authorize a maximum daytime power of 100 kilowatts for Class I–A stations, to conform to the standards adopted in the Buenos Aires Region 2 Report, and adds that all but one of its members would apply to increase power of this level. Also, CCBS seeks deferment of authorization of new stations on Class I–A channels, until other proceedings which contemplate provision of spectrum space for additional radio stations have been completed. CCBS asserts that coordination of proceedings involving 9 kHz spacing, expansion of the AM band and expanded use of FM frequencies would facilitate more orderly provision of aditional aural services. CCBS' third request is for clarification of the *Report and Order*, specifically as to whether the amended § 73.37(e)(2) would apply to applications for modification of facilities by stations currently operating on or seeking to operate on Class I–A channels.

19. The Commission has considered a lengthy record of proposals for power above the present 50 kW maximum, and has concluded that a 50 kW day and nighttime power limit for Class I–A stations best serves the public interest. CCBS offers no additional evidence in its petition for reconsideration which persuades us to the contrary. We noted

[2] We note that on September 10, 1980, the Commission adopted an *Order* delegating to the Broadcast Bureau the authority to grant applications for interim authorizations. ABC opposed the issuance of interim grants pending reconsideration, via letters of September 8 and 15, 1980. We have considered ABC's position. However, since the provisional nature of the grants creates no equities on the part of the licensees thus treated, no further demand for new full-time stations on the Class I–A channels will be prejudiced thereby. In these circumstances, in conformance with the policy on interim grants set out in paragraphs 83 and 84 of the *Report and Order*, three grants of special temporary authority have been issued to limited-time stations, File Nos. BP–800804AQ, BP–800813AC and BP–800814AD. Should applications by these limited-time licensees for regular nighttime operation conflict with future applications for new stations on the Class I–A channels, we shall consider the relative merits of the service each could provide.

the Region 2 resolution providing for 100 kW daytime in the *Report and Order*. That this power level may, under some circumstances, be authorized internationally is not, however, sufficient reason for its domestic adoption, especially in light of countervailing factors. ABES concurs with this view, adding that it might be premature to evaluate maximum AM power limits, prior to the second session of the Region 2 Conference.

20. Preliminary analysis indicates that CCBS' proposed power increase would have a substantial preclusionary impact on the first adjacent channels to the Class I–A channels, particularly where these adjacencies are also Class I–A channels. This result would run directly counter to the Commission's objectives in the instant rule making. Mindful of the social value placed by all on a diversity of voices in the media, we reaffirm our conviction that the public will benefit more from the present scheme than from an increase in daytime power on Class I–A stations. Our reasons for rejecting power increases for Class I–A stations were stated at some length in the *Further Notice* and were reannounced in the *Report and Order*, which incorporated the supporting analyses and evaluations of the *Further Notice*. Accordingly, we are denying this part of CCBS' petition.

21. CCBS' request for deferment of the *Report and Order* until such time as the various proceedings looking toward provision of additional spectrum space may be resolved is opposed by ABES and KIEV, a daytime-only station which contends it is qualified to extend its hours of operation under § 73.37(e)(2)(ii). We also find CCBS' proposal impracticable. As we noted both in the *Further Notice* and the *Report and Order*, our action here takes advantage of the first possible opportunity to respond to a growing demand for additional spectrum space. In light of the immediacy of this demand, we believe it would disserve the public to postpone effectuation of the *Report and Order*.

22. The progressive diminution of need for nighttime exclusivity on the Class I–A channels has long been acknowledged. Indeed, the possibility of further duplication of these channels was foreseen in 1961, on the resolution of the predecessor proceeding to this one. See 31 F.C.C. 565 (1961). We have not acted in haste, but have based our decision on a lengthy and thorough evaluation of relevant factors. Furthermore, there is ample evidence that the approximately 125 stations which could be created as a result of this proceeding will not even approach fulfillment of the demand for more stations. Thus, the spectrum-related rule makings are not interdependent. That is, the facilitation of an increased number of stations accomplished in this proceeding will not obviate the need for additional rule making to the same end.

23. Moreover, the Region 2 MF Broadcasting Conference has called for prompt submission of data concerning proposed stations meeting the needs of each country in the Western Hemisphere. On the other hand, developments which could result in the expansion of the AM band at the upper end of the spectrum will likely not be implemented until the latter part of this decade. It would then be some time until most radio receivers are capable of receiving the additional channels. Resolution of both domestic and international matters relating to 9 kHz spacing between AM channels will require additional time, also. We do note, however, that these matters are being explored in the recently reorganized Advisory Committee on Radio Broadcasting (see *Requests for Formation of New Government-Industry Advisory Committee on AM and FM Radio Broadcasting, and for Institution of Consolidated Inquiry Proceeding on AM and FM Radio*, adopted September 10, 1980, released September 22, 1980, FCC No. 80–537, published ————). We, nevertheless, see no point in delaying for at least a decade utilization of the first additional spectrum space we have been able to make available, pending availability of the last. Whatever benefits might be gained from coordination of these rule makings would be far outweighted by the delay in getting additional stations on the air.

24. As the third part of its tripartite request, CCBS asks that we explain whether and how § 73.37(e)(2) would apply to an existing fulltime AM station seeking to change frequency to one of the 25 Class I channels, or to change facilities on a Class I channel on which it is currently operating. CCBS points out that the *Report and Order* in Docket No. 20285, 54 F.C.C. 2d 1 (1975), amended the rules so that existing AM stations applying to change frequency would not have to meet any of the (then) three alternative criteria set out in § 73.37(e)(2)(i)–(iii), but would merely be required to demonstrate compliance with the "go-no-go" rules and the interference prohibitions of § 73.182(o), the same standards applied to stations desiring to increase power. See 54 F.C.C. 2d, at 20. At that time, however, existing AM stations were precluded from applying to operate fulltime on the 25 Class I–A channels by §§ 73.22, 73.25(a) and 73.182(i).

25. The *Report and Order* in Docket No. 20642 amended §§ 73.21, 73.25(a) and 73.182, to make available the 25 Class I channels for applications for fulltime AM operation from qualified applicants. Under § 73.37(e)(2), applications for new unlimited time stations and nighttime operation by existing daytime stations must meet one of the (now) five criteria outlined therein. The *Report and Order* evinces, as CCBS acknowledges, the Commission's intent that, unless waived in individual cases, these five criteria apply to all applications regarding AM operation on the 25 Class I channels, including those for modification of facilities by existing AM stations, as well as new AM operations and daytime stations applying to operate at night. However, CCBS avers that the language of § 73.37(e)(2), as amended, does not encompass existing fulltime AM stations seeking modification to one of the 25 Class I frequencies, or stations already operating on a Class I channel which seek to increase power while remaining on the same channel. Thus, under the amended rules, as CCBS asserts they might be interpreted, such a station could apply to change to a Class I frequency, or to increase power on the frequency, without fulfilling any of the criteria of § 73.37(e)(2), only by meeting the interference protection requirements of § 73.182 and the "go-no-go" rules.

26. We recognize that there is so little opportunity for frequency changes in any given community that only in rare cases will the aural service maximums be exceeded by relaxing the frequency change requirements. Yet, the instant proceeding is intended to increase optimally the opportunity for additional stations on the Class I–A channels. It would be inconsistent not to require frequency change applications onto the Class I–A channels to serve those objectives, also. In order to eliminate the possibility of any party misconstruing the intent of the amended rules, to permit existing AM stations to apply to change frequency to one of the Class I–A channels, or to change facilities on one of the Class I–A channels, without first meeting one of the criteria of § 73.37(e)(2), we are acceding to the request for clarification in CCBS' petition and amending that rule to provide expressly that existing fulltime AM stations seeking to change frequency onto a Class I–A channel or to modify their facilities or mode of operation on a Class I–A channel must meet the requirements of § 73.37(e)(2).

V. Petition of KFMB

27. KFMB asks the Commission to amend the *Report and Order* to delete the footnote to § 73.21(a)(2)(ii), which restricts Station KFMB to 5 kW, arguing that a 50 kW power limit for KFMB would provide additional primary service in southern California and would not unduly interfere with the operation of any other station, in particular, the Class I–A station operating at 760 kHz, WJR, Detroit, Michigan. KFMB states that when it was required to change frequency from 540 to 760 kHz in 1961, as a result of U.S.-Mexican negotiations, this footnote was added to limit its power as described.

28. Initially, we note that the footnote in question has been deleted. See Attachment III to the *Report and Order*. KFMB's power level is now governed by § 73.21(a)(2)(ii)(B), which limits its power to that authorized as of June 1, 1980, or such other power level as the Commission may subsequently authorize. This technically disposes of KFMB's request. As we stated in the *Further Notice* and in the *Report and Order*, this proceeding is designed solely to revise the rules governing clear channel usage nationwide. KFMB must therefore seek any power increase by an application for a construction permit which will be governed by the provisions of §§ 73.21(a)(2)(ii)(B) and 73.37(e)(2) of the rules.

VI. Petition of WCCO

29. In Petition I WCCO asks that the *Report and Order* be amended to reflect the precise relationship between Stations WCCO and WNYC, both of which currently operate on 830 kHz. Petition II asks that the Commission issue a Show Cause Order requiring Station WNYC to modify its operation to 820 kHz, which could, WCCO asserts, resolve the lengthy dispute between it and WNYC over WNYC's nighttime operation. WNYC's comment, while not opposing a switch to 820 kHz, avers that additional data, particularly engineering analysis, is necessary to evaluate WCCO's proposal, and emphasizes its desire for prompt resolution of the controversy along the lines of the Supplemental Initial Decision (FCC 78–D–36), currently pending before the Commission on exceptions. WCCO's reply to WNYC's comment argues that the benefits to the public from switching WNYC to 820 kHz outweigh those which would derive from retention of WNYC on 830 kHz. WCCO has also petitioned the Commission to stay acceptance of applications on 820 kHz, pending resolution of its request that Station WNYC be shifted to that channel, in order that competing equities not be permitted to develop which could reduce the desirability of this solution. Finally, WCCO asks in Petition III that the Commission require directionalization of the limited-time stations, to prevent interference to the new unlimited-time Class II stations between local sunset at the limited-time stations and local sunset at the co-channel Class I–A station to the west.

30. The omission, in the general list in Attachment I to the *Report and Order*, of express reference to the explicit conditions under which WNYC currently operates on 830 kHz in no way alters the terms of the SSA which governs WNYC's nighttime operations. Nor does it in any way affect the resolution of the issues under the consolidated proceeding—Dockets No. 11227 and 17588—in which, as expressly observed in Note 1 to § 75.25(a)(2)(ii), questions relating to the future use of 830 kHz for a Class II station at New York City, will be decided. No amendment is needed in this respect.

31. We do not believe WCCO's Petition II warrants action in this proceeding. It was the Commission's intent, in the Clear Channel proceeding, to make 820 kHz, as well as the other 24 Class I–A channels, available for use by additional unlimited-time AM stations. The manner in which those frequencies are used is a matter which must be addressed in connection with application processing, not rule making. Indeed, the primary request of WCCO is the issuance of an Order to Show Cause why Station WNYC should not be required to modify its operation to 820 kHz.[3] The decision whether to issue such an order is properly made in the context of licensing, not rule making. In addition, as we stated in paragraph 75 of the *Report and Order* and paragraph 28, *supra*, we do not intend to consider individual cases in this docket. Although WCCO's proposal is put forward as a possible means of resolving a dispute which has been in hearing for many years, the proposal nevertheless does not call for resolution through action in a generalized rule making proceeding. Intimating no evaluation of the merits of WCCO's proposal, we refer petitioner to the license application process in which to seek the relief it desires. We likewise take no position herein on the issues raised in WNYC's comments and WCCO's reply to them.

32. WCCO's pleading styled "Petition for Stay" asks the Commission not to accept applications on 820 kHz, nor take any other action which would permit "equities" to develop which might later prejudice its case regarding the shift of Station WNYC to 820 kHz. Public Notice has been given of the pendency of WCCO's Petition II. Thus, to the extent that expenditure on preparation of an application itself can be claimed to give rise to "equities," this will not occur by virtue of the absence of such notice. It would be inappropriate for the Commission to take further action with respect to petitioner's request, in the context of the instant proceeding, however, especially in view of the absence of sufficient data on which to base an estimate of WCCO's prevailing on the merits. Whether a stay should be issued will be determined when petitioner has submitted information adequate to establish the desirability and feasibility, or lack thereof, of its proposal.[4] We decline to prejudge these issues at this preliminary stage.

33. Without evaluating the merits of WCCO's Petition III, we refer petitioner to paragraph 85 of the *Report and Order*, where we indicated that we have under consideration the possible inauguration of separate rule making to address the potential interference problems between the present limited-time and new unlimited-time stations. We continue to believe that these matters should be considered separately. Therefore, we are not evaluating petitioner's request on its merits herein, but will consider its views in connection with whatever separate proceeding may be initiated regarding the limited-time stations.

VII Conclusion

34. In conclusion, we have reviewed the several petitions for reconsideration in Docket No. 20642. As indicated above, we have not been persuaded that new evidence has been adduced which warrants modification of the conclusions in the *Report and Order*. We find merit, however, in the request for clarification contained in the third part of CCBS' petition, and, accordingly, amend § 73.37(e)(2) of the rules, as set out in Appendix I below. Where a proposal would be more suitably considered in another rule making proceeding or pursuant to a procedure other than rule making, we have so indicated in the discussion above.

35. Accordingly, pursuant to authority continued in Sections 1, 4(i), 303 (a) and (r), 307(b) and 403 of the Communications Act of 1934, as

[3] Midwest Radio's other request, that the Commission grant Station WNYC 820 kHz facilities in Docket No. 17588, likewise warrants no action in Docket No. 20642.

[4] It may well be determined that petitioner's proposal would be better judged against other proposed uses of 820 kHz which would be precluded thereby, and a stay might be denied on that basis alone.

amended, it is ordered, that the petition for reconsideration of Clear Channel Broadcasting Service is granted to the extent stated in paragraph 34, *supra;* and otherwise denied; and

36. It is further ordered, That the other subject petitions for reconsideration of the *Report and Order* in Docket No. 20642 are denied; and

37. It is further ordered, That effective January 26, 1981, the rule amendment set out in Appendix I attached below is adopted; and

38. It is further ordered, That this proceeding is terminated.

39. For further information concerning this proceeding contact Molly Pauker, Broadcast Bureau, (202) 632-6302, or Gary L. Stanford, Broadcast Bureau, (202) 632-9660.

(Secs. 4, 303, 307, 48 Stat., as amended, 1066, 1082, 1083; (47 U.S.C. 154, 303, 307))

Federal Communications Commission.

William J. Tricarico,

Secretary.

Appendix I

Section 73.37(e)(2) of the Commission's Rules is amended to read as follows:

§ 73.37 Applications for broadcast facilities, showings required.

* * * * *

(e) * * *

(1) * * *

(2) Application for a new unlimited-time station or for nighttime facilities by an authorized daytime station or for a major change in facilities resulting in operation on one of the 25 Class I channels listed in § 73.25(a) by any authorized station:

* * * * *

[FR Doc. 81-1617 Filed 1-15-81; 8:45 am]

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OFFICE OF PE
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5 CFR Part 359

Removal, Rein
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AGENCY: Office
Management.

ACTION: Status
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SUMMARY: On A
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DEPARTMENT O

Food and Nutriti

7 CFR Part 210

National School
Nutritional Requ

AGENCY: Food an
USDA.

ACTION: Proposed

Proposed Rules

Federal Register
Vol. 46, No. 11
Friday, January 16, 1981

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 359

Removal, Reinstatement, and Guaranteed Placement in the Senior Executive Service

AGENCY: Office of Personnel Management.

ACTION: Status Update on Proposed Regulations.

SUMMARY: On August 1, 1980, the Office of Personnel Management (OPM) published proposed regulations on reduction in force in the Senior Executive Service (45 FR 51214). Reaction to the proposal was sharply divided, and the formal comments were sufficiently diverse to cause OPM to decide not to publish final regulations at this time. Rather, OPM is proceeding to form an interagency task group to advise on what should be issued. In the absence of final regulations agencies have been told that they should consult with the Executive Personnel and Management Development Group in OPM if they are facing reduction-in-force situations prior to initiating any formal action.

FOR FURTHER INFORMATION CONTACT: Neal Harwood, (202) 632-7676.

Office of Personnel Management.

Beverly M. Jones,

Issuance System Manager.

[FR Doc. 81-1752 Filed 1-15-81; 8:45 am]
BILLING CODE 6325-01-M

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Part 210

National School Lunch Program; Nutritional Requirements

AGENCY: Food and Nutrition Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposal would amend 210, 10 of the National School Lunch Program regulations. The Department proposes to restrict the service of foods of minimal nutritional value during the lunch period in senior high, junior high and middle schools participating in the "offer versus serve" method of school lunch service. The reasons for the restrictions are (1) these foods have very little nutritional value, (2) the "offer versus serve" option is being used in a manner which encourages students to consume foods with little nutritional value and (3) because USDA reimburses the States for food service, it has in some cases paid for food lacking in nutritional value.

DATES: To be assured of consideration, comments must be received no later than March 17, 1981.

ADDRESS: Comments may be mailed to: Samuel P. Bauer, Director, School Programs Division, USDA, Food and Nutrition Service, 201 14th Street, S.W., Auditor's Building, Room 4122, Washington, D.C. 20250, or delivered to Room 4300B at the above address between 8:30 a.m. and 5:00 p.m., Monday through Friday. Comments received may be inspected at room 4300B Auditor's Building, Policy and Programs Development Branch, School Programs Division, 201 14th Street S.W., Washington, D.C. 20250, during regular business hours (8:30 a.m. to 5:00 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Stanley C. Garnett, Policy and Program Development Branch, School Programs Division, USDA, FNS, Washington, D.C. 20250, Telephone: (202) 447-9065.

SUPPLEMENTARY INFORMATION: This proposed action has been reviewed under USDA procedures established in Secretary's Memorandum 1955 to implement Executive Order 12044, and has been classified not significant.

This proposal has been reviewed with regard to the requirements of Public Law 96-354. Robert Greenstein, Administrator of the Food and Nutrition Service, has certified that this proposal does not have a significant economic impact on a substantial number of small entities. The Department is not aware of any small school districts that are not already in compliance with this, and therefore is unaware of any economic impact on any small school district. The Department is aware of only one large school district that would be affected, and the effect on that one school district would not impact on a substantial number of small businesses.

Background

Meal Pattern

Section 9 of the National School Lunch Act requires the Secretary to establish minimum nutritional standards for lunches reimbursed under the Act. Pursuant to that authority, the Department has developed a meal pattern for lunch. The components of the lunch pattern are milk, meat or meat alternate, fruits or vegetables or both, and bread or bread alternate. The required quantities of these food items are specified in the Program regulations at 7 CFR 210.10. Besides the food items making up the components of the meals, schools frequently serve other foods as condiments and seasonings, to round out the meal, to improve acceptability and to satisfy student appetites. The cost of other foods when served as part of the reimbursable meal is an allowable cost, but the presence or absence of these foods does not determine whether the meal is reimbursable.

The Department has always allowed schools to serve other foods and has not restricted the other foods that can be served. These foods supply calories which help to meet the energy needs of growing children. The Department recognizes that the required minimum amounts of foods in the lunch do not always meet the caloric needs of all children. In addition, other foods also contribute varying amounts of protein, vitamins, and minerals essential to good nutrition. However, some of these foods may be of minimal nutritional value. School food service personnel should carefully plan the kinds, amounts, and frequency of the other foods that they serve.

Offer versus Serve

Section 9(a) of the National School Lunch Act further provides the Secretary with authority to establish procedures which are designed to diminish waste of foods "without endangering the nutritional integrity of lunches . . ."

Until 1975, children were required to take all of the required food items prescribed by the Food and Nutrition Service (FNS). If a student did not receive all of the food items, the meal was not reimbursable by FNS.

To curtail plate waste in the National School Lunch Program and to comply with the Congressional mandate of Public Law 94–105, that students "shall not be required to accept offered foods which they do not intend to consume", the Department implemented the "offer versus serve" provision for high school students in 1976 (210.10(a)(5)). Under this provision, schools must offer students the five required items of the lunch, but students need only choose three items.

The "offer vs. serve" option was an attempt to insure that children choose only those foods they intend to eat. The amendments made by Pub. L. 94–105 limited this provision to high school students who might be expected to have more strongly formed food preferences. At the same time, the Department continued to encourage schools to offer choices and to encourage student involvement in the hope that more older students would take and consume all five food items. In 1978, Public Law 95–166, amended the National School Lunch Act to authorize extension of the "offer versus serve" option to junior high and middle schools. The "offer versus serve" option does not apply to the School Breakfast Program.

Competitive Foods Rule

On January 29, 1980 (45 FR 6758), the Department published the competitive foods regulations. These regulations implement Section 10 of the Child Nutrition Act of 1966 as amended by Section 17 of Public Law 95–166 concerning the sale of foods in competition with meals served under the National School Lunch and the School Breakfast Programs. The competitive foods regulations were finalized after a lengthy analysis period. During this analysis, numerous types of data were examined which concerned the nutritional status of the school age population in the United States, food consumption/health problem correlations and methods of comparing the nutritional quality of various foods. These data and the Department's decision making process are described in the preambles to the proposed and final rules (43 FR 17476 and 45 FR 6758, respectively) and the reader is referred to those documents, which are hereby incorporated by reference.

7 CFR § 210.2(h–1) defines foods of minimal nutritional value that may not be sold from the beginning of the school day to the end of the last lunch period. Categories of foods of minimal nutritional value are listed in Appendix B of Part 210. They are: soda water (carbonated beverages), water ices, chewing gum and certain candies (hard candies, jellies and gums, marshmallow candies, fondants, licorice, spun candy, and candy coated popcorn). These categories of foods provide less than five percent of the United States Recommended Dietary Allowance (USRDA) for each of eight specified nutrients per 100 calories and less than five percent of the USRDA for each of the eight specified nutrients per serving.

7 CFR 210.2(c–3) defines competitive foods and 7 CFR 210.15b prohibits the sale of foods of minimal nutritional value from the beginning of the school day until the end of the last lunch period.

It has come to the Department's attention that foods of minimal nutritional value are being offered to students in schools which utilize the "offer versus serve" method of lunch service. Thus, foods of minimal nutritional value are being offered in direct competition to the five required meal components. Because of a recent U.S. District Court decision in *Pulaski County School District vs. Bergland,* (C.A. No. 80–399) questions have arisen as to the applicability of the restriction on the sale of foods of minimal nutritional value when offered as a food alternate in the "offer versus serve" setting. In order to eliminate any ambiguity in the regulations on this part, it is proposed that the regulations governing the requirements for lunches described in 210.10 be amended to prohibit the inclusion of foods of minimal nutritional value as an additional food item in the "offer versus serve" lunch service.

The rationale for this action is threefold. Foods of minimal nutritional value as defined by 210.2(h–1) were found to contain fewer nutrients than other foods. This fact underpinned the decision to restrict the sale of these foods during the time the school meal programs were in effect. Providing foods of minimal nutritional value to students on an "offer versus serve" lunch line allows a student to choose a food of minimal nutritional value in lieu of one or more of the prescribed five meal components. The competition for the student's appetite is perhaps more apparent in this situation than when a student must purchase foods of minimal nutritional value separately from the school lunch. The accessibility of these foods endangers the nutritional integrity of the school lunch.

Second, the Department never intended the "offer versus serve" option to be used in a manner which encourages students to forego the five required meal components for comparatively less nutritious food items. The "offer versus serve" provision was developed to encourage student participation and reduce waste. Inclusion of foods of minimal nutritional value as an alternate to required lunch components, if it contributes to either of these goals, does so at the expense of allowing substitution of less nutritious foods for the required lunch components. The Department was sufficiently concerned about the availability of these foods to children to restrict the sale of foods of minimal nutritional value. Therefore, providing the foods as an alternate on the "offer versus serve" lunch line directly conflicts with the prohibition on the sale of competitive foods.

Third, because the Department reimburses States for meals on a cost basis, the Department is, in some cases, reimbursing schools for service of foods of minimal nutritional value. Such a result is totally inconsistent with the Department's action concerning competitive foods and places the Department in a contradictory position of restricting the sale of these foods on the one hand while financing their availability on the other.

For these reasons, the Department is proposing the following rule. This rule will restrict the service of foods of minimal nutritional value listed in Appendix B of Part 210 National School Lunch Program regulations during the lunch period(s) in schools which participate in the "offer versus serve" option.

In § 210.10 it is proposed that paragraph (a)(6) be redesignated as 210.10(a)(7) and a new paragraph (a)(6) be added to read as follows:

§210.10 Requirements for lunches.

(a)* * *

(6) Foods of minimal nutritional value as defined in Appendix B of this Part shall not be offered during the lunch period in schools which participate in the offer versus serve option described in paragraph (5) above.

* * * * * *

(Catalogue of Federal Domestic Assistance No. 10.555)

(Sec. 9, Pub. L. 79–396, 60 Stat. 233 (42 U.S.C. 1758(a); sec. 6, Pub. L. 94–105, 89 Stat. 512 (42 U.S.C. 1758); sec. 8, Pub. L. 95–166, 91 Stat. 1335 (42 U.S.C. 1758); sec. 17, Pub. L. 95–166, 91 Stat. 1345 (42 U.S.C. 1779))

Dated: January 8, 1981.

Carol Tucker Foreman,

Assistant Secretary for Food and Consumer Services.

[FR Doc. 81-1283 Filed 1-15-81; 8:45 a.m.]

BILLING CODE 3410-30-M

7 CFR Parts 210 and 220

National School Lunch Program and School Breakfast Program; Competitive Foods

AGENCY: Food and Nutrition Service, USDA.

ACTION: Proposed Rule.

SUMMARY: This proposed rule would amend the current National School Lunch and School Breakfast Program regulations to exempt the living quarters of residential educational units, which includes boarding schools, from the restrictions of the so-called competitive foods rule, (concerns the sale of food in competition with the meals served under the National School Lunch and the School Breakfast Programs). (45 FR 6758). This proposal would also reword the definition of "school" to clarify the distinction between residential and nonresidential schools.

DATE: Comments should be received on or before March 17, 1981.

ADDRESSES: Comment should be submitted to: Samuel P. Bauer, Director, School Program Division, FNS, USDA, Washington, D.C. 20250.

Comments will be available for review during regular business hours (8:30 a.m. to 5:00 p.m.), Monday through Friday in Room 4300B Auditors Building at the address listed above.

FOR FURTHER INFORMATION CONTACT: Stanley C. Garnett, Branch Chief, Policy and Program Development Branch, School Programs Division, FNS, USDA, Washington, D.C. 20250, (202) 447-9069.

SUPPLEMENTARY INFORMATION:

Administrative Procedures

This proposed rulemaking has been reviewed under USDA procedures established in the Secretary's Memorandum 1955 to implement Executive Order 12044, and has been classified as not significant.

This proposal has been reviewed with regard to the requirements of Public Law 96-354. Robert Greenstein, Administrator of the Food and Nutrition Service, has certified that the proposal does not have a significant economic impact on a substantial number of small entities. The proposal would have a limited impact on a number of boarding schools by removing any Federal restrictions on foods that can be made available to children through vending machines or other means in residential parts of boarding schools during school hours. A limited number of boarding schools will be affected, and in few, if any, cases would there be a significant economic impact. There may be a slight increase in the sale of certain products in those boarding schools, but it would not be enough to have a significant economic impact on any substantial number of small businesses.

Background

7 CFR 210.15b and 220.12 prohibit the sale of foods of minimal nutritional value on school premises from the beginning of the school day until after the last lunch period. These restrictions apply to all schools which participate in the National School Lunch and School Breakfast Programs. Foods of minimal nutritional value identified are soda water (carbonated beverages), frozen ices, chewing gum and certain candies.

Because boarding schools, residential child care institutions, and nonresidential schools also participate in the lunch and breakfast programs, the restrictions apply equally in those institutions.

The Department has received questions concerning the effect of the competitive foods regulations in residential schools. Because the restrictions on sale of certain foods extends throughout the school premises, both the living areas and educational areas of residential schools are affected. Such coverage may be overly broad. The living quarters of residential schools are, in effect, students' homes.

The competitive foods rule was promulgated at Congress' direction to regulate the sale of competitive foods in schools. By definition, "school" under most circumstances includes the entire school premises. However, we think it unlikely that Congress considered the situation of residential institutions or intended the Department to regulate the sale of foods in student living quarters. The Department is proposing to exempt from coverage only the living quarters of residential schools. Those areas of the schools which constitute the educational facilities, as well as the food service areas, will be covered by the competitive foods regulations. Thus, the intent of Congress that students have limited access to certain foods on school premises would be satisfied.

It is also proposed that the term "school" defined in 7 CFR 210.2(o) would be redefined to clarify the distinction between residential educational units and nonresidential educational units. This revision would be made in all existing school nutrition program regulations. The Department is seeking public comment on these proposed provisions as they relate to the School Breakfast Program as well.

1. Accordingly, Part 210, National School Lunch Program, is amended in § 210.2(o) by revising the definition of "school" as follows:

§ 210.2 Definitions.

* * * * *

(o) "School" means (1) a nonresidential educational unit of high school grade or under, operating under public or nonprofit private ownership in a single building or complex of buildings. The term "high school grade or under" includes classes of preprimary grade when they are conducted in a school having classes of primary or higher grade, or when they are recognized as a part of the educational system in the State, regardless of whether such preprimary grade classes are conducted in a school having classes of primary or higher grade. (2) A residential educational unit of high school grade or under, operating under public or nonprofit private ownership in a single building or complex of buildings. The term "high school grade or under" as defined in (o)(1) nonresidential educational unit, is applicable to (o) (2) residential educational units, (3) with the exception of residential summer camps which participate in the Summer Food Service Program for Children and private foster homes, any distinct part of public or nonprofit private institution or any public or nonprofit child care institution, which (i) maintains children in residence, (ii) operates principally for the care of children, and (iii) if private, is licensed to provide residential child care services under the appropriate licensing code by the State or a subordinate level of government. The term "child care institution" includes, but is not limited to: homes for the mentally retarded, the emotionally disturbed, the physically handicapped, and unmarried mothers and their infants; group homes; halfway houses; orphanages; temporary shelters for abused children and for runaway children; long-term care facilities for chronically ill children and juvenile detention centers. (4) With respect to the Commonwealth of Puerto Rico, nonprofit child care centers certified as such by the Governor of Puerto Rico.

* * * * *

2. Part 210.15b, paragraph (a) is amended by adding to the end of the first sentence of that paragraph the following sentence:

§ 210.15b Competitive Food Services.

(a) * * * Except that, such regulations need not apply to the service of competitive foods in the living quarters of a residential school as defined in Section 210.2(o) (2) and (3). * * *

* * * * *

Note.—The above definition of "school" would be used to amend all existing school nutrition program regulations.

(Section 17, Public Law 95-166, 91 Stat. 1345 (42 U.S.C. 1779))

Dated: January 8, 1981.

Carol Tucker Foreman,

Assistant Secretary for Food and Consumer Services.

[FR Doc. 81-1286 Filed 1-15-81; 8:45 am]

BILLING CODE 3410-30-M

Rural Electrification Administration

7 CFR Part 1701

Public Information; Appendix A—REA Bulletins—Bulletin 345-10, REA Standard PC-6, Acceptance Testing Procedures for Cable Television Systems

AGENCY: Rural Electrification Administration, USDA.

ACTION: Proposed Rule.

SUMMARY: REA proposes to amend Appendix A—REA Bulletins to issue a new Bulletin 345-10, REA Standard PC-6, Acceptance Testing Procedures for Cable Television Systems, to establish testing procedures and minimum acceptable performance criteria for REA financed CATV systems.

DATE: Public comments must be received by REA no later than March 17, 1981.

ADDRESS: Submit written comments to Joseph M. Flanigan, Director, Telecommunications Engineering and Standards Division, Rural Electrification Administration, Room 1355, South Building, U.S. Department of Agriculture, Washington, D.C. 20250.

FOR FURTHER INFORMATION CONTACT: Claude F. Buster, Jr., Chief, Transmission Branch, Telecommunications engineering and Standards Division, Rural Electrification Administration, Room 1367, south Building, U.S. Department of Agriculture, Washington, D.C. 20250, telephone (202) 447-3917. The Draft Impact Analysis Statement describing the options considered in developing this proposed rule and the impact of implementing each option is available on request from the above office.

SUPPLEMENTARY INFORMATION: Pursuant to the Rural Electrification Act, as amended (7 U.S.C. 901 et seq.), REA proposes to issue Bulletin 345-10, Acceptance Testing Procedures for Cable Television Systems. This action has been reviewed under USDA procedures established in Secretary's Memorandum No. 1955 to implement Executive Order No. 12044 and has been classified not significant.

This program is listed in the Catalog of Federal Domestic Assistance as 10.853, Community Antenna Television Loans and Loan Guarantees. REA, in its effort to assure the best, most cost-effective telecommunications for rural America, and to assure loan security, proposes to issue a new Bulletin 345-10. This action will provide REA borrowers, contractors, engineers, and other interested parties with information on acceptance test procedures and minimum acceptable performance criteria for REA-financed CATV systems. All written submissions made pursuant to this action will be made available for public inspection during regular business hours, above address.

Dated: January 8, 1981.

John H. Arnesen,

Assistant Administrator—Telephone.

[FR Doc. 81-1288 Filed 1-15-81; 8:45 am]

BILLING CODE 3410-15-M

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7 CFR Part 1701

REA Bulletin 20-2, "Electric Loan Policies and Application Procedures—Supplemental Resource Financing"; Supplement to Existing Bulletin

AGENCY: Rural Electrification Administration, USDA.

ACTION: Proposed rule.

SUMMARY: REA proposes to issue a supplement to Bulletin 20-2, "Electric Loan Policies and Application Procedures," concerning the making of front-end and construction financing loans and loan guarantees to borrowers for projects utilizing supplemental energy resources.

In accordance with national energy goals, REA encourages its borrowers to utilize supplemental energy resources to the greatest extent practicable to meet power and energy requirements of beneficiaries under the Rural Electrification Act of 1936, as amended. Such supplemental energy resources include, but are not limited to hydroelectric, geothermal, storage, solar, fuel cell, biomass, gas recovery from coal mines and landfills and co-generation.

Under REA's existing loan policies, borrowers interested in developing supplemental resources projects for electric generation have had insufficient incentive for doing so. Early costs involved in studying technical, economic and environmental aspects of such projects have had to be borne by the borrower from revenues, or borrowed at high interest rates as short- or intermediate-term loans from private sources. If a borrower had committed funds to feasibility studies or other early costs of a project later found infeasible, the cost would have to be absorbed by consumers over a short time period. If found feasible, the most likely source of construction funds would be from REA under a loan guarantee.

REA proposes to modify existing loan policies to:

1. Provide fast-track front-end financing at attractive interest rates for early costs of assessing and developing generating projects utilizing supplemental resources;

2. Provide construction financing for such projects with loan guarantees or, where deemed appropriate by the Administrator to provide additional incentive, with insured loan funds or a blend of insured loans and loan guarantees; and

3. Allow for other considerations (national energy goals) to take priority over REA's usual criteria where the project involves initial and supplemental generation utilizing supplemental energy resources.

DATE: Public comments must be received by REA no later than March 17, 1981.

ADDRESS: Submit written comments to the Director, Energy Management and Utilization Division, Rural Electrification Administration, Room 5906 South Building, U.S. Department of Agriculture, Washington, D.C. 20250.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas B. Heath, Director, Energy Management and Utilization Division, at the above address. Telephone number (202) 447-6065. The Draft Impact analysis describing the options considered in developing and implementing the proposal is available on request from the above office.

SUPPLEMENTARY INFORMATION: Pursuant to the Rural Electrification Act of 1936, as amended (7 U.S.C. 901 *et seq.*), REA proposes to issue a supplement to be applicable to REA Bulletin 20-2 as described above. The proposed action has been reviewed under USDA procedures established in Secretary's Memorandum 1955 to implement Executive Order 12044 and has been classified "not significant." the text of the proposed rule follows:

Subject: Supplement to REA Bulletin 20-2, "Policies and Applications Procedures for Financing Supplemental Energy Projects"

I. Purpose:

To set forth Rural Electrification Administration policies and requirements concerning financing of electric generating facilities utilizing supplemental energy resources.

II. Policy:

A. It is the policy of REA to encourage its borrowers to utilize supplemental energy resources for power and energy requirements.

B. REA will consider making insured loans and/or loan guarantees to finance the costs of developing and constructing new generating projects or modifications to existing facilities which will utilize supplemental energy resources. Such loans and guarantees will be made in conformity with the provisions of all applicable REA bulletins, except that Bulletin 20–6, "Guarantee of Loans for Bulk Power Supply Facilities," and Section VII.B of Bulletin 20–2, "Electric Loan Policy and Application Procedures," shall not be applicable to such financing.

III. Eligible Projects:

A. The following are among the supplemental energy resource technologies for which REA will consider providing financing, when utilized for electric generation:

Solar—Storage

Thermal, Mechanical (includes compressed gas); Wind, Electrochemical.

Hydro—Fuel Cells

Conventional and Pumped Storage—No Fuel Cells.

Geothermal; Direct Combustion or Co-Combustion of:

Peat, Biomass (includes wood), Refuse or Refuse Derived Fuel.

Production and Utilization of Fuels From:

Gasification or Liquefaction of Coal, Peat, Biomass, or Refuse by Thermal, Chemical, or Biological Processes.
Fuel Gas Recovered from Mines or Landfills.

B. REA will consider providing financing for co-generation facilities to the extent that such facilities are a necessary and integral part of a borrower's electric system. For the purposes of this section co-generation shall mean the combined generation by any facility of electrical energy and energy of any other form not used within the borrower's system.

IV. Front-End Financing:

A. REA financing for early costs associated with supplemental resource utilization projects will be available as follows:

1. *Insured loans* may be approved for the following items: pre-construction activities including resource investigations, plant site options or acquisition, technical feasibility studies, cost evaluations and comparison of alternatives, environmental analyses, and costs associated with pre-construction permits and licenses other than detailed design engineering costs. Insured loans will not be available for design engineering except when necessary to develop specifications and conduct permits and licenses which are vital to keeping the proposed project on a schedule necessary to meet power or energy supply needs.

The amount of insured funds made available for front-end financing of a particular project will be at the discretion of the Administrator.

2. *Loan guarantees* may be approved for the following items: the procurement of land for resources (such as peat lands, biomass production land or land for project storage capacity), transmission rights-of-way, design engineering other than that provided under IV.A.I, cancellation charges on contracts for long lead time equipment, and for all items specified in IV.A.I, should insured loan funds be limited or unavailable.

B. Front-end financing for a proposed supplemental resource project may be requested by submitting the following items to the Director, Energy Management and Utilization Division, Washington, D.C. 20250:

1. A brief discussion of the need for the project and how it will be utilized to meet members' power and energy needs, and the estimated amount and source (supplier) of any power and energy which might be displaced by the proposed project;

2. An estimated schedule of major project milestones, including financial obligations and cash flow requirements;

3. An estimate of the impact upon the retail consumer's cost of power in the event that all front-end financing is expended but the proposed project is never constructed;

4. Two certified copies of the board resolution authorizing the requested financing; and

5. Two signed copies of REA Form 740c, "Cost Estimates and Loan Budget for Electric Borrowers." An itemized attachment to REA Form 740c should be prepared, showing the amount and purpose for each item for which financing is requested.

V. Construction Financing:

A. Normally, loan guarantees will be available for financing the cost of construction of supplemental energy resource projects. However, the Administrator may approve a blend of guaranteed funds and insured funds to provide an interest rate conducive to development of a project.

B. Construction financing for a proposed supplemental energy resource project may be requested by submitting the following items to the Director, Energy Management and Utilization Division:

1. Two certified copies of the board's resolution to construct the project and request financing from REA, specifying the amount requested;

2. Two signed copies of REA Form 740c, "Cost Estimates and Loan Budget for Electric Borrowers," with an attachment showing the detailed total construction cost estimate, including interest during construction, and any transmission or distribution facilities required, and deductions for previously provided REA front-end financing;

3. Five copies of technical and feasibility analyses. Assumptions used in the analyses must be specified, and it is recommended that they be discussed with REA prior to performance of analyses;

4. A board approved financial forecast, prepared in accordance with REA Bulletin 105–5 (distribution borrowers) or Bulletin 105–7 (power supply borrowers), for a period extending at least 10 years beyond commercial operation of the proposed project. The forecast must include a forecast of annual accrual and cash costs of wholesale power under the plan of power supply utilizing the proposed project vs. the plan which would be pursued if the supplemental resource project were not available;

5. Most recent REA Form 7, "Financial and Statistical Report," and REA Form 740a, "Review of General Funds" for the same period as Form 7. These must not be older than 60 days;

6. A detailed project construction schedule;

7. A report on integration of the proposed project into the existing power supply plan including such items as arrangements, for project interconnection, sale of power from the project, back-up and reserve power for the project and transmission of project power; and

8. Environmental information in accordance with REA Bulletin 20–21. REA should be consulted well in advance of a financing request to determine the exact information required for a particular project.

Copies of the draft bulletin and the Draft Impact Analysis are available upon request from the address indicated above. All written submissions made pursuant to this action will be made available for public inspection during

regular business hours at the above address.

This program is listed in the Catalog of Federal Domestic Assistance as 10.850 Rural Electrification Loans and Loan Guarantees.

Dated: January 15, 1981.

Robert W. Feragen,

Administrator.

[FR Doc. 81-1701 Filed 1-15-81; 8:45 am]

BILLING CODE 3410-15-M

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7 CFR Part 1701

REA Bulletin 20-14 With Respect to Loan Terms and Conditions and Supplemental Financing Policies; Supplement to Existing Bulletin

AGENCY: Rural Electrification Administration, USDA.

ACTION: Proposed Rule.

SUMMARY: REA proposes to issue a supplement to Bulletin 20-14, Supplemental Financing for Loans Considered Under Section 4 of the Rural Electrification Act. Under the existing policy, in order to meet program needs more effectively and conserve available loan funds, REA requires qualified borrowers to obtain a portion of their long-term loan funds from a supplemental lender, on terms and conditions approved by REA, as a prerequisite for obtaining REA loan funds. Heretofore, REA has generally been making loans with terms of 35 years, which is the maximum permitted by the REA Act of 1936, as amended. No requirement as to the duration of a supplemental loan has been in effect. The intent of the proposed action is to require that supplemental lenders which make loans to borrowers concurrently with REA provide loans having a minimum term of 25 years.

DATE: Public comments must be received by REA no later than March 17, 1981.

ADDRESS: Submit written comments to the Director, Electric Loans and Management Division, Rural Electrification Administration, Room 3342, South Building, U.S. Department of Agriculture, Washington, D.C. 20250.

FOR FURTHER INFORMATION CONTACT: Mr. Charles R. Weaver, Director, Electric Loans and Management Division, at the above address, telephone number (202) 447-5900. The Draft Impact Analysis describing the options considered in developing and implementing the proposal is available on request from the above office.

SUPPLEMENTARY INFORMATION: Pursuant to the Rural Electrification Act, as amended (7 U.S.C. 901 *et seq.*), REA proposes to issue a supplement to be applicable to REA Bulletin 20-14 as described above. This proposed action has been reviewed under USDA procedures established in Secretary's Memorandum 1955 to implement Executive Order 12044 and has been classified "significant."

General Summary of Changes

As the spread between cost of supplemental loans and the REA standard interest rate has increased, some borrowers have indicated an interest in shortening the term of future supplemental loans as a means of reducing the overall cost of financing. In order to fairly allocate the limited availability of REA's Revolving Fund, REA will generally require that supplemental loans have a minimum term of 25 years. This will serve to reduce a potential added future requirement for REA insured loan funds while continuing to provide reasonable flexibility in the source, terms and conditions of the required concurrent supplemental financing. REA will continue to offer loans with a term of up to 35 years with principal deferments not to exceed three years.

This requirement of a minimum of a 25-year term for supplemental loans may be modified in special cases where statutory requirements, existing financial arrangements or other valid reasons could preclude certain borrowers from obtaining necessary capital with otherwise acceptable financing if the requirement were strictly applied. Each such situation will be considered on its individual merits.

Copies of the draft bulletin and the Draft Impact Analysis are available upon request from the address indicated above. All written submissions made pursuant to this action will be made available for public inspection during regular business hours at the above address.

(This program is listed in the Catalog of Federal Domestic Assistance as 10.850, Rural Electrification Loans and Loan Guarantees)

Dated: January 13, 1981.

Robert W. Feragen,

Administrator.

[FR Doc. 81-1700 Filed 1-15-81; 8:45 am]

BILLING CODE 3410-15-M

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 30, 31, and 32

Static Elimination Devices and Ion Generating Tubes

AGENCY: Nuclear Regulatory Commission.

ACTION: Withdrawal of proposed rule.

SUMMARY: The Nuclear Regulatory Commission is withdrawing a notice of proposed rulemaking published in the Federal Register on April 1, 1971, (sic) in which the Atomic Energy Commission (the predecessor of the NRC) solicited comments on proposed amendments of its regulations which would establish a class exemption from licensing requirements for the possession and use of tritium, krypton-85, or polonium-210 in static elimination devices and ion generating tubes. In consideration of the length of time since public comments were requested on the proposed rule and since it will be another year or more before a Commission value impact assessment will recommend the course of action that should be taken on static elimination devices and ion generating tubes, the Commission concludes that it should withdraw the proposed rule published April 1, 1971. The withdrawal of the proposed rule will not affect any person because it is not an action that adds, amends, or rescinds any NRC regulation.

EFFECTIVE DATE: January 16, 1981.

FOR FURTHER INFORMATION CONTACT: Mr. J. J. Henry, Office of Standards Development, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, (301) 443-5946.

SUPPLEMENTARY INFORMATION: On April 1, 1971, the Atomic Energy Commission (the predecessor of the Nuclear Regulatory Commission) published in the Federal Register (36 FR 6015) proposed amendments to 10 CFR Parts 30, 31, and 32 of its regulations which would (a) in proposed new § 30.21(a) establish a class exemption from licensing requirements for the possession and use of tritium, krypton-85, or polonium-210 in static elimination devices and ion generating tubes manufactured, processed, produced, imported, or transferred in accordance with a specific license issued by the AEC authorizing transfer for use under the exemption, (b) in proposed new §§ 32.30, 32.31, 32.32, and 32.33 establish requirements for the issuance of specific licenses authorizing the distribution of the static elimination devices and ion generating tubes to persons for use under the class exemption, (c) in proposed new §§ 30.21 (b) and (c) exempt those static elimination devices and ion generating tubes distributed for use under general license in § 31.3 prior to a specified date, and (d) revoke § 31.3 as of that same specified date.

A number of comments were received in response to the notice of proposed rulemaking, some of which suggested

that proposed new § 32.30 may have been too restrictive in requiring a specific license for the incorporation of static elimination devices or ion generating tubes into products for commercial distribution.

Neither the Atomic Energy Commission nor the Nuclear Regulatory Commission (established by the Energy Reorganization Act of 1974 on January 19, 1975) took any further action on this rulemaking proceeding. Over the intervening years, the staff began studies (including a generic environmental impact statement on consumer products) that eventually should result in Commission decisions on criteria for approval of consumer products and policy on the use of general licenses that might have a bearing on the regulatory control of static elimination devices and ion generating tubes containing byproduct materials.

The Commission believes that it would be premature to exempt at this time additional products containing radioactive material for consumer use in view of the above studies. In consideration of the length of time since public comments were requested on the proposed rule and since it will be another year or more before a Commission value impact assessment will recommend the course of action that should be taken on static elimination devices and ion generating tubes, the Commission concludes that it should withdraw the proposed rule published April 1, 1971.

In view of these considerations, the proposed rule is hereby withdrawn. The withdrawal of this proposed rule, however, does not preclude the Commission from issuing similar notices in the future or commit the Commission to any course of action with regard to static elimination and ion generating devices.

(5 U.S.C. 552(a))

Dated at Washington, D.C., this 12th day of January, 1981.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 81-1415 Filed 1-15-81; 8:45 am]

BILLING CODE 7590-01-M

FEDERAL HOME LOAN BANK BOARD

12 CFR Part 545

[No. 81-5]

Washington, D.C.-Maryland-Virginia SMSA Branching

Dated: January 8, 1981.

AGENCY: Federal Home Loan Bank Board.

ACTION: Establishing comment period on proposed regulation.

SUMMARY: The Federal Home Loan Bank Board will accept public comments until February 13, 1981, on its pending proposal to allow branching of Federal savings and loan associations throughout the Washington Standard Metropolitan Statistical Area.

DATE: Comments will be accepted until February 13, 1981.

ADDRESS: Comments should be addressed to Secretary, Federal Home Loan Bank Board, 1700 G Street NW., Washington, D.C. 20552

FOR FURTHER INFORMATION CONTACT: Nancy Feldman, Associate General Counsel, Federal Home Loan Bank Board, 1700 G Street NW., Washington, D.C. 20552; (202) 377-6440.

SUPPLEMENTARY INFORMATION: On June 14, 1979, the Federal Home Loan Bank Board, by Resolution No. 79-340 (44 FR 36057; published June 20, 1979), proposed to amend its regulations to permit Federal associations with offices within the Washington, D.C.-Md.-Va. Standard Metropolitan Statistical Area ("SMSA") to branch throughout the SMSA.

When the Board proposed this regulation, it was aware that Congress had requested the President of the United States to conduct a study of the McFadden Act, which imposes restrictions on the branching of banks. While the McFadden Act does not impose restrictions on the branching of savings and loan institutions, the McFadden Study addresses competitive issues that parallel savings and loan branching issues. To give the Board and the public an adequate opportunity to assess the application of material contained in the McFadden Study to the Washington SMSA branching proposal, the Board announced on October 4, 1979, by Resolution No. 79-498 (44 FR 58744; published October 11, 1979), that it was extending the October 15, 1979, comment period deadline until at least 30 days after release of the Study. Accordingly, the Study ("Geographic Restrictions on Commercial Banking in the United States") having been submitted to Congress on January 6, 1981, the Board will accept comments regarding its proposed Washington SMSA regulation until February 13, 1981.

(Sec. 17, 47 Stat. 736, as amended; 12 U.S.C. 1437, Reorg. Plan No. 3 of 1947, 3 CFR, 1943-48 Comp., p. 1071)

By the Federal Home Loan Bank Board.

Robert D. Linder,

Acting Secretary.

[FR Doc. 81-1733 Filed 1-15-81; 8:45 am]

BILLING CODE 6720-01-M

DEPARTMENT OF ENGERGY

Federal Energy Regulatory Commission

18 CFR Part 35

[Docket No. RM80-36]

Rate of Return on Equity for Electric Utilities; Informal Conference

Issued January 12, 1981.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of informal conference.

SUMMARY: The staff of the Federal Energy Regulatory Commission (Commission) will hold an informal public conference to hear and discuss views from interested persons on proposals made in a Study group discussion paper on rate of return for electric utilities. The discussion paper is entitled, "Establishing the Rate of Return on Equity for Wholesale Electric Sales: Potential Regulatory Reforms."

DATES: Requests to participate in the public conference due January 27, 1981; public conference will be held on Friday, January 30, 1981, at 9:00 a.m.

ADDRESSES: Request to participate to:

The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426 (202) 357-8400;

Public conference: Hearing Room A, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426;

Requests for copies of discussion paper: Office of Congressional and Public Affairs, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Room 1000, Washington, D.C. 20426 (202) 357-8055.

FOR FURTHER INFORMATION CONTACT: Ms. Angela Lancaster, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426 (202) 357-8377.

SUPPLEMENTARY INFORMATION: On December 15, 1980, the Commission directed its staff to make public a Study Group discussion paper on rate of return for electric utilities entitled, "Establishing the Rate of Return on Equity for Wholesale Electric Sales: Potential Regulatory Reforms." In addition, the Commission authorized the staff to hold informal public conferences

to solicit views from interested persons on the proposals made by the Study Group as described in the paper. The Study Group proposed that the Commission institute one of three alternative generic procedures for setting equity rates of return for jurisdictional electric utilities, rather than continue the current, case-by-case procedures for setting rates of return. The alternatives and the basis of the Study Group's recommendation are described in the Study Group's discussion paper.

The public conference will be held on Friday, January 30, 1981. The conference will be conducted as a roundtable discussion, with members of the staff Study Group participating along with other interested persons. Persons wishing to participate in the meeting should contact the Secretary by January 27, 1981, and should give some indication of the particular issues they would most like to discuss. A record will be kept of the discussion.

There are several specific questions on which views are solicited. First, has the Study Group adequately identified the problems and advantages of the Commission's current procedures for setting electric rate of return on equity? If not, what alternative considerations should be brought to the Commission's attention?

Second, has the Study Group correctly identified the options available to the Commission for improving the Commission's regulation of the rate of return on equity allowed jurisdictional electric utilities? If not, what other options should be considered by the Commission?

Finally, which option is preferred?

Kenneth F. Plumb,
Secretary.

[FR Doc. 81-1721 Filed 1-15-81; 8:45 am]
BILLING CODE 6450-85-M

DEPARTMENT OF LABOR

Employment and Training Administration

20 CFR Part 656

Labor Certification Process for the Permanent Employment of Aliens in the United States; Certification of Canadian Railway Workers

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Employment and Training Administration of the Department of Labor proposes to amend its regulations relating to certification of immigrant aliens for permanent employment in the United States. The amendment would add to the *Schedule A* precertification list certain Canadian railway workers who have qualified for employment through seniority rights under a collective bargaining agreement.

DATE: Interested persons are invited to submit written comments on this proposed rulemaking on or before March 17, 1981.

ADDRESS: Send written comments to: Mr. David O. Williams, Administrator, United States Employment Service, Employment and Training Administration, United States Department of Labor, Suite 8000—Patrick Henry Building, 601 "D" Street N.W., Washington, D.C. 20213.

FOR FURTHER INFORMATION CONTACT: Mr. Aaron Bodin, Chief, Division of Labor Certifications, Telephone: 202-376-6295.

SUPPLEMENTARY INFORMATION: The Employment and Training Administration (ETA) of the Department of Labor (DOL) is proposing to amend its regulations at 20 CFR Part 656, to add to the *Schedule A* precertification list certain Canadian railway workers who will be employed with the same international railway corporation or organization with which they were employed in the United States or Canada for one continuous year.

Permanent Alien Employment Certification Process

Pursuant to the Immigration and Nationality Act (Act), before the Department of State and the Immigration and Naturalization Service (INS) may issue visas and admit certain immigrant aliens to work permanently in the United States, the Secretary of Labor must first certify to the Secretary of State and to the Attorney General that:

(a) There are not sufficient United States workers, who are able, willing, qualified, and available at the time of the application for a visa and admission into the United States and at the place where the alien is to perform the work; and

(b) The employment of the alien will not adversely affect the wages and working conditions of similarly employed United States workers. 8 U.S.C. 1182(a)(14).

Department of Labor Regulations

DOL has promulgated regulations at 20 CFR Part 656 governing the labor certification process described above for the permanent employment of immigrant aliens in the United States. 45 FR 83926 (December 19, 1980). Part 656 was promulgated pursuant to and implements section 212(a)(14) of the Act (8 U.S.C. 1182(a)(14)).

The regulations at 20 CFR Part 656 set forth the factfinding process designed to develop information sufficient to support the granting or denial of a permanent labor certification. Part 656 also sets forth the responsibilities of employers who desire to permanently employ immigrant aliens in the United States, and the responsibilities of the alien beneficiaries of permanent alien labor certifications.

Schedule A Precertification List

ETA has published, at 2 CFR 656.10, a list of occupations *(Schedule A)* for which the Administrator, U.S. Employment Service, has determined that there are not sufficient United States workers who are able, willing, qualified, and available, and that the wages and working conditions of U.S. workers similarly employed will not be adversely affected by the employment of aliens. 45 FR 83934 (December 19, 1980). DOL has delegated to the Department of State and the INS the authority to determine if an alien falls within one of the occupational categories on *Schedule A*, and, if so, to issue a permanent alien labor certification for the alien. 20 CFR 656.22; 45 FR 83941 (December 19, 1980). The *Schedule A* determination of the INS or Deparment of State is conclusive and final, and is not appealable within DOL.

Canadian Railway Workers

Various international railway companies operate tracks which cross the United States-Canadian border, or facilities which are in both the United States and Canada. Pursuant to collective bargaining agreements between these railway employers and international railway unions, the employers' employees may exercise seniority rights and bid for jobs on both sides of the border. United States workers seek and obtain employment in Canada under such agreements, as do Canadian workers in the United States.

Canadian immigration authorities may issue an employment authorization (similar to a labor certification) to a non-Canadian if the employment of that person would result in reciprocal treatment of Canadian citizens in other countries. Thus, the issuance of *Schedule A* United States permanent alien labor certifications to Canadian workers in such an occupational category would result in reciprocal employment opportunities for similarly situated U.S. workers in Canada.

During the recent rulemaking process revising 20 CFR Part 656 (see 44 FR 83926 (December 19, 1980)), DOL

received a request from international railway unions that consideration be given to Canadian railway workers exercising their collective bargaining agreement seniority rights across the border, so that reciprocity might be extended to United States workers in Canada. These unions represent members on both sides of the border, under collective bargaining agreements with international railway employers. Although the unions' request was outside the scope of the rulemaking concluded on December 19, 1980, ETA has determined that the request has merit and is issuing this Notice of Proposed Rulemaking. Because of the unique nature of railway employment, with tracks crossing and facilities located on both sides of the border, and the unique nature of the employment, resulting in expanded job opportunities for U.S. workers in Canada, certain Canadian railway workers will be added to *Schedule A*.

The Canadians must qualify for such employment on the basis of seniority rights under a collective bargaining agreement between an international railway corporation or organization and an international labor union. Two groups of workers would be included:

(1) Canadian citizens who have been admitted to the United States in order to work in, and who are currently working in, railway employment with the same international railway corporations or organization with which they were continuously employed in railway employment in Canada for one year before they were admitted to the United States; and

(2) Canadian citizens in Canada who will be engaged in the United States in railway employment with the same international railway corporations or organizations with which they have been continuously employed in railway employment in Canada for the immediately prior year.

Precertification of the above two groups would be permitted only where the Canadian immigration authorities reciprocate in permitting similar employment of United States railway workers in Canada.

Development of Final Rule

The final rule was prepared under the direction and control of Mr. David O. Williams, Administrator, United States Employment Service, Employment and Training Administration, United States Department of Labor, Washington, D.C.

Regulatory Impact

The rule would have less impact than specified in DOL's criteria, so that the effect of the proposed regulation is not so major as to require the preparation of a regulatory analysis. See 44 FR 5576 (January 26, 1979). This shall also certify that the rule, if promulgated, will not have a significant economic impact on a substantial number of small business entities, since it applies only to large multinational employers. 5 U.S.C. 605(b).

Catalog of Federal Domestic Assistance Number

This program is listed in the *Catalog of Federal Domestic Assistance* at Number 17.203, "Certification for Immigrant Workers".

Proposed Rule

Accordingly, it is proposed to amend Part 656 of Chapter V of Title 20, Code of Federal Regulations, as follows:

1. Section 656.10 is amended by designating paragraph (d)(3) on *Schedule A* as paragraph (d)(4) and by adding a new paragraph (d)(3) to read as follows:

§ 656.10 Schedule A.

* * * * *

(d) Group IV: * * *

(3)(i)(A) Canadian citizens who have been admitted to the United States in order to work in, and who are currently working in, railway employment with the same international railway corporations or organization with which they were continuously employed in railway employment in Canada for one year before they were admitted to the United States, and who have qualified for such employment in the United States on the basis of seniority rights under a collective bargaining agreement between the employer and an international labor union.

(B) Canadian citizens in Canada who will be engaged in the United States in railway employment with the same international railway corporations or organizations with which they have been continuously employed in railway employment in Canada for the immediately prior year, and who have qualified for such employment in the United States on the basis of seniority rights under a collective bargaining agreement between the employer and an international labor union.

(ii) A Canadian citizen shall qualify under paragraph (d)(3)(i) of this section only if the employment of the alien would result in the reciprocal employment of United States railway workers in Canada.

* * * * *

2. Section 656.22 is amended as follows:

a. Paragraph (f)(2)(iii) is amended by deleting the word "and" at the end thereof;

b. Paragraphs (f)(1) and (f)(2)(iv) are revised, and a new paragraph (f)(2)(v) is added, to read as follows:

§ 656.22 Applications for labor certifications for Schedule A occupations.

* * * * *

(f)(1) Aliens seeking labor certifications under Group IV(1) or IV(2) of *Schedule A* shall meet, at the time of filing the application, the eligibility requirements of the Immigration and Nationality Act for an L-1 nonimmigrant visa classification as a manager or executive. See 8 U.S.C. 1101(a)(15)(L); and 8 CFR 214.2(1). However, persons who are eligible for an L-1 visa on the basis of specialized knowledge, but not managerial or executive experience, do not meet the requirements for Group IV(1) of IV(2) of *Schedule A*. The actual filing of an L-1 visa petition is not required.

* * * * *

(2) * * *

(iv) The dates the international corporation or organization was established and has been doing business in the United States prior to the submission of the application (The term "doing business" is defined in *Schedule A* at § 656.10(d)(4) of this Part); and

(v) If the alien is seeking certification of employment as a railway worker, as described in Group IV(3) of *Schedule A*, the alien shall attach:

(A) Proof of the alien's Canadian citizenship; and

(B) A document signed by an authorized officer of the international railway corporation or organization which will employ the alien in the United States and by an authorized officer of the international labor union under whose collective bargaining agreement the alien is seeking railway employment in the United States, stating that the alien has qualified for the employment on the basis of seniority rights under a collective bargaining agreement between the employer and the union. Notwithstanding such documentation, such aliens do not qualify for the purposes of *Schedule A*, Group IV(3) (see § 656.10(d)(3) of this Part), unless the alien's employment would result in the reciprocal employment of United States railway workers in Canada.

* * * * *

(Sec. 212(a)(14) of the Immigration and Nationality Act, 8 U.S.C. 1101 et seq.; Wagner-Peyser Act of 1933, as amended, 29 U.S.C. 49 et seq.; 5 U.S.C. 301)

Signed in Washington, D.C., this 12th day of January 1981.

Ray Marshall,

Secretary of Labor.

[FR Doc. 81-1634 Filed 1-15-81; 8:45 am]

BILLING CODE 4510-28-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

Income Tax; Dollar-Value LIFO Inventory

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed amendments to the regulations relating to the valuation of dollar-value last-in, first-out (LIFO) inventories. The proposed amendments would provide the public with guidance regarding a method of valuing dollar-value LIFO inventories and would affect taxpayers required to maintain inventories.

DATES: Written comments and requests for a public hearing must be mailed or delivered by April 16, 1981. The amendments are proposed to be effective for taxable years beginning after the proposed amendments are adopted by a Treasury decision.

ADDRESS: Send comments and requests for a public hearing to: Commissioner of Internal Revenue, Attention: CC:LR:T (LR-267-79), Washington, D.C. 20224.

CONTACT FOR FURTHER INFORMATION: Philip Bosco of the Legislation and Regulations Division, Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, D.C. 20224, Attention: CC:LR:T, 202-566-3238, not a toll-free call.

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed amendments to the Income Tax Regulations (26 CFR Part 1) under section 472 of the Internal Revenue Code of 1954. The proposed amendments are to be issued under the authority contained in sections 472 and 7805 of the Internal Revenue Code of 1954 (68A Stat. 159, 917; 26 U.S.C. 472, 7805).

Explanation of Proposed Amendments

Under regulations § 1.472-8, taxpayers are permitted to use the dollar-value LIFO method of accounting for inventories, which accounts for inventories in terms of dollars of cost rather than specific goods. In order to compare the costs in an inventory pool at the close of a year with the costs in an inventory pool at the beginning of the year, it is necessary to convert costs into dollars with a constant value, which are referred to as "base-year" dollars.

Current rules provide that taxpayers generally are not permitted to use an inventory price index to determine the base-year dollars in an inventory pool unless the index is based on the price change experience for the particular inventory pool. An exception to this rule is the *Department Store Inventory Price Indexes*, prepared by the United States Bureau of Labor Statistics for the purpose of valuing inventories found in the departments of department stores. Taxpayers generally cannot use price indexes such as the consumer and producer price indexes prepared by the Bureau of Labor Statistics because they cannot show that the use of such indexes is accurate, reliable, and suitable for their particular inventory pools.

Many taxpayers, especially small businesses, do not currently use the LIFO method because the use of the current dollar-value LIFO rules are perceived to be complex and burdensome. Amendments to the regulations are being proposed to simplify the use of the dollar-value LIFO method so that the LIFO method could be used by more taxpayers and would be easier to use by taxpayers currently using the method. However, before the proposed amendments can be adopted as final regulations, in addition to the issues addressed by the proposed amendments, several issues not addressed by the proposed amendments also must be resolved. A notice of proposed rulemaking might be published in the future addressing these issues, but written comments at this time would be helpful. The remainder of this preamble, which discusses the draft proposed amendments, also identifies some of the issues that remain to be resolved.

The proposed amendments to the regulations would simplify the use of the dollar-value LIFO method by providing that for taxable years beginning after the proposed amendments are adopted as final regulations, taxpayers may establish inventory pools under special rules and may compute an inventory price index for valuing a pool by referring to 80 percent of the percent change in selected consumer or producer price indexes prepared by the Bureau of Labor Statistics and published in the *CPI Detailed Report* or *Producer Prices and Price Indexes*, which are monthly reports on consumer price movements and producer price movements.

In developing the proposed amendments, it was determined that the consumer and producer price indexes prepared by the Bureau of Labor Statistics would overstate the movement of inventory prices experienced by some taxpayers and would understate the movement of inventory prices experienced by other taxpayers. Taxpayers experiencing a rate of inventory price inflation lower than the published rate would tend to choose the use of the published consumer and producer price indexes. Taxpayers experiencing a rate of inventory price inflation higher than the published rate would tend to choose to use a price index based on their own inventory price inflation experience. It was decided that the use of the consumer and producer price indexes prepared by the Bureau of Labor Statistics should not depend on whether a taxpayer's actual rate of inventory price inflation was relatively high or low. However, it was also decided that the use of overstated inflation rates to value LIFO inventory pools should be reduced to the extent possible consistent with the purposes of simplifying the use of the dollar-value LIFO method. The 80 percent limitation is intended to be an alternative to computing an inventory price index based on the taxpayer's own inflation rate and is intended to be an appropriately conservative estimate that the taxpayer can use without regard to the inflation rate actually experienced by the taxpayer.

An unresolved issue is how to apply the 80 percent limitation to the inflation rate for a period of more than one taxable year. For example, if a selected consumer or producer price index for a specific category of goods increased 10 percent per year for two years, the cumulative published inflation rate for the two-year period is 21 percent. If the 80 percent limitation were applied to the 21 percent cumulative published inflation rate, the inventory price index would reflect an increase of 16.8 percent (80 percent of 21 percent). However, if the 80 percent limitation were applied to the annual published inflation rate, the inventory price index would reflect an increase of 8 percent (80 percent of 10 percent) for each year and a cumulative increase of 16.64 percent.

The *CPI Detailed Report* and *Producer Prices and Price Indexes* can each be ordered from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402. The *CPI Detailed Report* has a single copy price

of $2.25 and a one-year subscription price of $15.00. The *Producer Prices and Price Indexes* has a single copy price of $2.75 and a one-year subscription price of $17.00.

An excerpt from the *CPI Detailed Report* for December 1979 is reproduced here.

Excerpt from Table 5.—*CPI for All Urban Consumers: Nonfood Expenditure Categories, U.S. City Average*

	Index base	Unadjusted index Dec. 1978	Unadjusted percent change to Dec. 1979 from Dec. 1978
Household furnishings and operation	1967	195.8	6.4
Housefurnishings:	1967	169.9	5.2
Textile household furnishings	1967	178.6	6.1
Household linens	1977	108.3	4.3
Curtains, drapes, slipcovers, and sewing materials	1977	114.8	7.8
Furniture and Bedding	1967	182.8	6.5
Bedroom furniture	1977	118.3	8.7
Sofas	1977	108.2	4.5
Livingroom chairs and tables	1977	106.1	4.5
Other furniture	1977	117.1	6.3
Appliances including TV and sound equipment	1977	137.6	3.3
Television and sound equipment	1977	106.3	2.0
Television	1967	103.8	.9
Sound equipment	1977	107.8	2.9
Household appliances	1967	157.9	4.5
Refrigerators and home freezers	1967	156.7	4.5
Laundry equipment	1977	115.8	6.9
Other household appliances	1977	109.9	3.4
Stoves, dishwashers, vacuums, and sewing machines	1977	108.6	.5
Office machines, small electric appliances and air conditioners	1977	111.4	7.0
Other household equipment	1977	113.0	6.5
Floor and window coverings, infants', laundry, cleaning, and outdoor equipment	1977	111.7	5.7
Clocks, lamps, and decor items	1977	110.1	6.9
Tableware, serving pieces, and nonelectric kitchenware	1977	117.2	8.0
Lawn equipment, power tools, and other hardware	1977	110.3	4.8

The proposed amendments would provide that the index or indexes selected for an inventory pool must be the most detailed index or indexes for the category or categories of goods that most closely resemble the type of goods in the inventory pool. Written comments are requested suggesting additional criteria to be used to determine the appropriate index or indexes for an inventory pool. Suggestions with respect to specific types of businesses would be helpful.

The proposed amendments would also provide that if it is necessary to select more than one consumer or producer price index for an inventory pool, the inventory price index used to determine the LIFO value of the pool is computed by referring to 80 percent of a weighted average of the percent changes in the selected consumer or producer price indexes for the pool. The weighted average is computed with reference to the relative amounts of costs of goods in each consumer or producer price index category of goods in the inventory pool. An issue not resolved is whether the weighting of the indexes should be based on the relative current-year costs in ending inventory, the relative base-year costs in ending inventory, or the relative costs in ending inventory of a representative year which would be revised at reasonable intervals such as every five years. Written comments addressing these issues or suggesting alternate ways of applying multiple indexes to a single pool are requested.

The proposed amendments would also provide special rules for establishing the inventory pools of retailers, wholesalers, jobbers and distributors to be valued with the inventory price indexes computed under the new rules. The proposed amendments would provide that retailers, wholesalers, jobbers, and distributors using the new rules to compute an inventory price index may establish inventory pools for any group of goods included within one of eleven general categories of consumer goods described in the *CPI Detailed Report*. These categories are food and beverages, housing maintenance and repair commodities, fuels (other than gasoline), house furnishings and housekeeping supplies, apparel commodities, private transportation (including gasoline), medical care commodities, entertainment commodities, tobacco products, toilet goods and personal care appliances, and school books and supplies. Written comments suggesting other pooling methods to be used with the new inventory price index rules are welcome.

The proposed amendments would provide that the use of an inventory price index based on selected consumer or producer price indexes is a method of accounting. The proposed amendments would provide that taxpayers must request the Commissioner's consent to a change to such method of accounting, but also would provide that for the first or second taxable year beginning after the proposed amendments are adopted as final regulations, taxpayers may change to this method of computing inventory price indexes without requesting the consent of the Commissioner. This change would be made by filing a Form 970 with the taxpayer's income tax return for the year of change.

Initial Regulatory Flexibility Analysis

Amendments to the regulations are being proposed because the existing rules relating to the computation of inventory price indexes used in connection with the dollar-value LIFO method of inventory valuation are perceived by many taxpayers, especially many small businesses, as being too complex and therefore the LIFO method is not used by such taxpayers.

The objective of these proposed amendments is to provide taxpayers with an alternate, simplified, method of computing an inventory price index that will make the use of the dollar-value LIFO method easier and therefore more accessible, especially to small businesses. The proposed amendments, if adopted, would therefore permit taxpayers to use price indexes prepared by the United States Bureau of Labor Statistics in lieu of computing an inventory price index based on their own inflation experience. A necessary part of the objective to simplify the use of the dollar-value LIFO method is to maintain the integrity of the method as a method that results in the clear reflection of income. Therefore, in order to mitigate any inaccuracy inherent in the use of averages and to reduce the possibility of adverse selection against the Government, the proposed amendments would permit taxpayers to use only 80 percent of the percent change in the selected consumer or producer price indexes. The amendments are proposed under the authority of sections 472 and 7805 of the Internal Revenue Code of 1954.

The proposed amendments, if adopted, will affect any small business that is required under section 471 of the Internal Revenue Code to maintain inventories, elects to use the LIFO method in valuing such inventories, and wishes to use the rules provided by the proposed amendments. No taxpayer will

be required to use the method provided by the proposed amendments.

If the proposed amendments are adopted, any small business wishing to use the rules provided by the proposed amendments will be required to report for the first year that the method is used the inventory pools used, the type of goods included in each pool, and the consumer or producer price index or indexes selected for each pool. In addition, for each year in which the inventory price index computation method is used, the taxpayer will be required to maintain adequate books and records showing how inventory pools were established, how the consumer and producer price indexes were selected, and how the inventory price indexes and the change in such indexes were computed. Professional accounting skills may be desirable in the initial year of using the method provided by the proposed rules, although information disseminated by various industry groups may provide small businesses with adequate assistance. Otherwise, the rules prescribed in the proposed amendments do not require any professional skills in addition to those already needed to keep inventory accounting records for a small business.

The proposed amendments do not overlap with, conflict with, or duplicate any existing federal regulation.

The amendments are being proposed to reduce the economic impact on small businesses of the rules relating to the use of the LIFO method by simplifying the computations required under such method, thereby enabling more small entities to avail themselves of the tax reduction benefits of the use of the LIFO method and reducing the computational and recordkeeping costs of taxpayers using the LIFO method. The only significant alternative that was considered, other than not proposing any amendments, was to limit the availability of the new method to small businesses and allow the use of 100 percent of the change in the selected consumer and producer price indexes. This alternative was rejected because there is no authority under sections 472 and 7805 of the Internal Revenue Code to differentiate between large and small businesses in providing rules that would affect tax liability. In addition, allowing the use of 100 percent of the change in the selected indexes would result in an increase in the number of taxpayers using an overstated inflation rate to value inventory pools and would increase the extent to which such rates are overstated. The 80 percent limitation provided in the proposed amendments is intended to be an alternative to computing an inventory price index based on the taxpayer's own inflation experience and therefore a conservative estimate that taxpayers can use without regard to the inflation rate actually experienced by the taxpayer.

Comments and Requests for a Public Hearing

Before adopting these proposed amendments, consideration will be given to any written comments (preferably six copies) that are submitted to the Commissioner of Internal Revenue. All comments will be available for public inspection and copying. A public hearing will be held upon written request to the Commissioner by any person who has submitted written comments. If a public hearing is to be held, notice of the time and place will be published in the Federal Register.

Drafting Information

The principal author of these proposed amendments is Geoffrey B. Lanning of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the proposed amendments, both on matters of substance and style.

Proposed Amendments to the Regulations

The proposed amendments to 26 CFR Part 1 are as follows:

Paragraph (e) of § 1.472–8 is amended by adding new paragraph (e)(3) to read as set forth below:

§ 1.472–8 Dollar-value method of pricing LIFO inventories.

* * * * *

(e) *Methods of computation of the LIFO value of a dollar-value pool.* * * *

(3) *Use of inventory price index computed with reference to consumer or producer price indexes*—(i) *In general.* For purposes of paragraph (e)(1) of this section, for taxable years beginning after [insert date these proposed amendments are adopted by a Treasury decision], an inventory price index computed in the manner provided by paragraph (e)(3) will be accepted by the Commissioner as an appropriate method of computing an index, and the use of such inventory price index to compute the LIFO value of a dollar-value inventory pool will be accepted as accurate, reliable, and suitable. A taxpayer using the inventory price index computation method provided by paragraph (e)(3) must use such method in determining the value of all goods for which the taxpayer has elected to use the LIFO method. However, the inventory price index computation method provided by paragraph (e)(3) may not be used by a taxpayer eligible to use inventory price indexes prepared by the United States Bureau of Labor Statistics for the purpose of valuing the LIFO inventories of a specific industry. Thus, a taxpayer eligible to use the retail price indexes prepared by the Bureau of Labor Statistics and published in *Department Store Inventory Price Indexes* may not use the inventory price index computation method provided by paragraph (e)(3). An inventory price index computed as provided by paragraph (e)(3) is computed in the manner provided by paragraph (e)(3)(ii) with reference to consumer or producer price indexes selected in the manner provided by paragraph (e)(3)(iii). Special rules forestablishing inventory pools to be valued by an inventory price index computed in the manner provided by paragraph (e)(3) are in paragraph (e)(3)(iv). Rules relating to the adoption of, or change to, the method of computing an inventory price index in the manner provided by paragraph (e)(3) are in paragraph (e)(3) (v) and (vi).

(ii) *Computation of index.* An inventory price index computed in the manner provided by this subdivision (ii) shall reflect 80 percent of the percent change in the selected consumer or producer price index or indexes for a specific category or categories of goods. See paragraph (e)(3)(iii) of this section for rules relating to the selection of appropriate consumer or produce price indexes. Thus, if the selected consumer or producer price index for a specific category of goods increased 10 percent for the period December 1981 to December 1982, an inventory price index computed in the manner provided by this subdivision (ii) with reference to such consumer or producer price index will reflect an increase of 8 percent (80 percent of 10 percent) for the period December 1981 to December 1982. If under paragraph (e)(3)(ii) it is necessary to select more than one consumer or producer price index for an inventory pool, 80 percent of the percent change in such indexes is 80 percent of the weighted average percent change for such indexes. Such weighted average is computed with reference to the relative amounts of costs in the inventory pool for each index category of goods.

(iii) *Selection of consumer or producer price indexes*—(A) *In general.* An inventory price index computed as provided by paragraph (e)(3) of this section is computed with reference to

the most detailed consumer or producer price indexes for specific categories of goods in the *CPI Detailed Report* or *Producer Prices and Price Indexes* published by the United States Bureau of Labor Statistics.

(B) *Selection of category of goods.* The index or indexes selected must be the most detailed index or indexes for the specific category or categories of goods that most closely resemble the type of goods in the inventory pool to be valued. Whether the selection of the consumer or producer price indexes to be used to compute an inventory price index is appopriate, and the propriety of all computations incidental to the use of such consumer or producer price indexes, will be determined in connection with the examination of the taxpayer's income tax return. The selection of a consumer or producer price index for a specific category of goods to compute an inventory price index under paragraph (e) (3) is a method of accounting. A taxpayer desiring to change the selection of the consumder or producer price indexes must secure the consent of the Commissioner as provided in § 1.446–1 (e). In the case of such a change, any layers of inventory increments previously determined and the LIFO value of such increments shall be retained. Instead of using the earliest taxable year for which the taxpayer adopted the LIFO method for any items in the inventory pool, the year of such change shall be used as the base year in determining the LIFO value of the inventory pool for the year of change and later taxable years. The base year costs of layers of increments in the pool at the beginning of the year of change shall be restated in terms of new base year costs using the year of change as the new base year.

(C) *Other selection requirements.* Manufactuers, processors, wholesalers, jobbers, and distributors may select indexes from only *Producer Prices and Price Indexes.* Retailers may select indexes from either the *CPI Detailed Report* or *Producer Prices and Price Indexes,* but if equally appropriate indexes could be selected from either publication, a retailer using the retail inventory method must select the index from the *CPI Detailed Report* and a retailer not using the retail inventory method must select the index from *Producer Prices and Price Indexes.* If a retailer using the retail inventory method selects a price index from *Producer Prices and Price Indexes,* the selected index must be converted into a retail price index. If a retailer not using the retail inventory method selects an index from the *CPI Detailed Report,* the selected index must be converted into a cost price index. Manufacturers, processors, wholesalers, jobbers, and distributors, must convert selected indexes into cost prices indexes. Seasonally adjusted indexes may not be selected. Indexes for specific cities, class of cities, or regions may not be selected. In the case of indexes published in the *CPI Detailed Report,* indexes may be selected only from indexes for all urban consumers. In the case of a taxpayer using the retail inventory method, the selected index must be the index as of the last month of the taxpayer's taxable year. Taxpayers that do not use the retail inventory method must select indexes as of the month or months most appropriate to the taxpayer's method of determining the current-year cost of the inventory pool under paragraph (e)(2)(ii) of this section. For example, assume that a calendar year taxpayer does not use the retail method and determines the current year cost of inventory pools underparagraph (e)(2)(ii)(*a*) by reference to the actual cost of the goods most recently purchased or produced. If all the goods most recently purchased or produced in 1982 were purchased or produced in November, the selected index or indexes must be indexes as of November 1982.

(iv) *Special rules for pools.* A retailer, wholesaler, jobber, or distributor computing an inventory price index in the manner provided by paragraph (e)(3) of this section may establish an inventory pool for any group of goods included within one of eleven general categories of consumer goods described in the *CPI Detailed Report.* The eleven categories are food and beverages, housing maintenance and repair commodities, fuels (other than gasoline), house furnishings and housekeeping supplies, apparel commodities, private transportation (including gasoline), medical care commodities, entertainment commodities, tobacco products, toilet goods and personal care appliances, and school books and supplies. See paragraphs (b), (c) and (d) of this section for additional rules relating to the establishment of pools. Except as provided in paragraph (e)(3)(v) of this section, relating to the adoption or change of method of computing an inventory price index, the rules of paragraph (g) (1) and (2) of this section apply to a change in method of pooling.

(v) *Adoption or change of method.* The use of an inventory price index computed in the manner provided by paragraph (e) (3) of this section is considered a method of accounting. A taxpayer permitted to adopt or change to the dollar-value LIFO inventory method without first securing the consent of the Commissioner may adopt the inventory price index computation method prescribed by paragraph (e) (3) incident to such adopotion or change without first securing the consent of the Commissioner. In all other cases, a taxpayer may adopt or change to the inventory price index computation method prescribed by paragraph (e) (3) only after first securing the consent of the Commissioner as provided in § 1.446–1 (e). However, in the case of a taxpayer not using the inventory price index computation method prescribed by paragraph (e) (3), the taxpayer may adopt or change to such method for the taxpayer's first or second taxable year beginning after [insert date Treasury decision adopting these amendments is published by the Federal Register] without requesting the Commissioner's consent to such adoption or change. In addition, in such a case the taxpayer is not required to request the Commissioner's consent to a change in method of pooling incident to such adoption or change if the taxpayer is changing to a method of pooling authorized by paragraph (e) (3) (iv). The inventory price index computation method provided by paragraph (e) (3) may be adopted and used only if the taxpayer indicates on a Form 970 a listing of each inventory pool, the type of goods included in each pool, and the consumer or producer price index or indexes selected for each inventory pool. In the case of a taxpayer permitted to adopt or change to the inventory price index computation method without requesting the Commissioner's consent, the Form 970 shall be attached to the taxpayer's income tax return for the taxable year of such adoption or change. In other cases, the Form 970 shall be attached to a Form 3115 filed in accordance with § 1.446–1 (e). Taxpayers must maintain adequate books and records of the use and computation of the inventory price index method in order to satisfy the requirements of § 1.472–2 (h). Notwithstanding the rules in paragraph (e) (1) of this section, a taxpayer adopting or changing to the use of an inventory price index computed in the manner provided by paragraph (e) (3) is not required to demonstrate that the use of the double-extension method is impractical.

(vi) *Requirement incident to change.* In the case of a taxpayer using a method other than an inventory price index computed as prescribed by paragraph

(e) (3) of this section to determine the LIFO value of a dollar-value inventory pool, any layers of inventory increments previously determined by such method and the LIFO value of such layers shall be retained if the taxpayer changes to the use of a price index computed as prescribed by paragraph (e) (3). Instead of using the earliest taxable year for which the taxpayer adopted the LIFO method for any items in the pool, the year of such change shall be used as the base year in determining the LIFO value of the inventory pool for the year of change and later taxable years. The base year costs of layers of increments in the pool at the beginning of the year of change shall be restated in terms of new base year costs, using the year of change as the new base year. See paragraph (f) (2) of this section for rules relating to a change to the dollar-value method from another method of pricing LIFO inventories.

* * * * *

William E. Williams,

Acting Commissioner of Internal Revenue.

[FR Doc. 81-1728 Filed 1-15-81; 4:40 p.m.]

BILLING CODE 4830-01-M

DEPARTMENT OF LABOR

Wage and Hour Division

29 CFR Part 530

Employment of Homeworkers in Certain Industries

AGENCY: Wage and Hour Division, Labor.

ACTION: Hearing for the purpose of obtaining information concerning employment of homeworkers: extension of period for submitting written comments.

SUMMARY: This document extends the period for filing written comments regarding Regulations 29 CFR Part 530. This action is taken to permit addtitional comment from interested persons.

DATE: Comments must be received on or before February 17, 1981.

ADDRESS: Comments should be sent to the Deputy Administrator, Wage and Hour Division, U.S. Department of Labor, 200 Constitution Avenue, N.W., Room S-3508, Washington, D.C. 20210, (202) 523-7043.

SUPPLEMENTARY INFORMATION: In the Federal Register of December 5, 1980 (45 FR 80555) the Wage and Hour Division published a notice of a hearing to obtain information concerning the employment of homeworkers. Interested parties desiring to comment in writing were to submit comments on or before January 13, 1981.

Because of the interest in this matter, the Wage and Hour Division believes that it is desirable to grant an extension of the comment period for interested parties. Therefore, the comment period for submitting information concerning the employment of homeworkers under the Fair Labor Standards Act is extended to February 17, 1981.

Signed at Washington, D.C., this 9th day of January 1981.

Henry T. White, Jr.,

Deputy Administrator, Wage and Hour Division.

[FR Doc. 81-1662 Filed 1-15-81; 8:45 am]

BILLING CODE 4510-27-M

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

DEPARTMENT OF LABOR

Office of Federal Contract Compliance Programs

29 CFR Part 1603

41 CFR Part 60-20

Interpretive Guidelines on Employment Discrimination and Reproductive Hazards; Withdrawal of Proposed Guidelines

AGENCY: Equal Employment Opportunity Commission and Department of Labor.

ACTION: Withdrawal of Proposed Interpretive Guidelines.

SUMMARY: On February 1, 1980, (45 FR 7514) the Equal Employment Opportunity Commission and the Department of Labor published proposed interpretive guidelines on employment discrimination and reproductive hazards for public comment. Extensive comments were received. Upon reviewing the comments, the agencies have concluded that the most appropriate method of eliminating employment discrimination in the work place where there is potential exposure to reproductive hazards is through investigation and enforcement of the law on a case by case basis, rather than by the issuance of interpretive guidelines. Therefore, the agencies hereby withdraw the proposed interpretive guidelines. The agencies, however, will apply general principles of Title VII of the Civil Rights Act of 1964, as amended, and Executive Order 11246, as amended, to their continued vigorous investigation and resolution of sex discrimination issues involving employer/contractor policies and practices based on occupational exposure to potential reproductive hazards.

FOR FURTHER INFORMATION CONTACT: Karen Danart, Acting Director, or Raj K. Gupta, Supervisory Attorney, Office of Policy Implementation, Equal Employment Opportunity Commission, Room 4002, 2401 E Street, NW, Washington, D.C. 20506, (202) 634-7060, or the Acting Director, Division of Program Policy, Office of Federal Contract Compliance Programs, U.S. Department of Labor, 200 Constitution Ave., NW, Washington, D.C. 20210, (202) 523-9426.

Authority: E. O. 11246, as amended, and Title VII of the Civil Rights Act of 1964, as amended.

Signed at Washington, D.C., this 13th day of January, 1981.

Eleanor Holmes Norton,

Chair, Equal Employment Opportunity Commission.

Ray Marshall,

Secretary of Labor.

Donald Elisburg,

Assistant Secretary, Employment Standards Administration, Department of Labor.

Weldon J. Rougeau

Director, Office of Federal Contract Compliance Programs, Department of Labor.

[FR Doc. 81-1647 Filed 1-15-81; 8:45 am]

BILLING CODE 4510-27-M

BILLING CODE 6570-06-M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1910

[Docket No. S-201]

Conveyor Standard; Extension of Written Comment Period; Notice of Informal Hearing

AGENCY: Occupational Safety and Health Administration (OSHA), Department of Labor.

ACTION: Extension of Time for Submission of Comments; Notice of Public Hearing.

SUMMARY: This notice extends the time for written comments concerning the rulemaking proceeding for conveyors (29 CFR 1910.186). A notice reopening the record and providing opportunity for submission of written comments was published on November 14, 1980, at 45 FR 75258. The notice requested submission of written comments by December 29, 1980. Many interested parties requested extensions of time to submit their comments. OSHA finds validity in these requests and has

decided to grant an extension of time, until March 17, 1981, to submit written comments.

This notice also schedules an informal public hearing concerning conveyors. The purpose of this hearing is to receive testimony on certain issues concerning economic feasibility and alternative provisions.

DATES: Written comments must be received by March 17, 1981. The informal public hearing will begin on May 5, 1981, at 9:30 a.m.

All notices of intention to appear at the public hearing must be submitted by April 7, 1981. All testimony and evidence which will be introduced into the hearing record must be received by April 21, 1981.

ADDRESSES: The informal hearing will begin at 9:30 a.m. on May 5, 6, and 7, 1981, in the Auditorium, Frances Perkins Department of Labor Building, 200 Constitution Avenue, N.W., Washington, D.C. 20210; at 9:00 a.m. on May 12, 13, and 14, 1981, in the Lakeside Room, Best Western/Lakeshore Hotel, 600 North Lakeshore Drive, Chicago, Illinois 60611; and at 9:00 a.m. on May 19, 20, and 21, 1981, in the Century Room, Quality Inn-Airport, 5249 West Century Blvd., Los Angeles, California 90071.

Comments should be sent to: Docket Officer, Docket No. S–201, Room S–6212, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210, Telephone: (202) 523–7894.

Notices of intention to appear and written testimony should be sent to: Tom Hall, Division of Consumer Affairs, Room N–3635, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210, Telephone: (202) 523–8024.

FOR FURTHER INFORMATION CONTACT: Carrol E. Burtner, Director, Office of Mechanical Engineering Safety Standards, Occupational Safety and Health Administration, U.S. Department of Labor, Room N–3506, 200 Constitution Avenue, N.W., Washington, D.C. 20210, Telephone: (202) 523–7202.

SUPPLEMENTARY INFORMATION: The Occupational Safety and Health Administration (OSHA) published a Notice of Proposed Rulemaking for a permanent occupational safety standard on conveyors used in general industry (29 CFR 1910.186) on June 3, 1974, in the **Federal Register** (39 FR 19507). Interested persons were given until August 2, 1974 to submit comments with respect to the proposal and to file objections and require a hearing thereon. The period for submission of written comments was extended until October 9, 1974, pursuant to a notice in the **Federal Register** on September 9, 1974 (39 CFR 32562), which also announced scheduling of an informal rulemaking hearing in Washington, D.C., on October 15, 1974. Approximately 130 comments were received in response to the proposal, and 14 parties testified at the public hearing. The record was kept open until November 15, 1974, for the submission of posthearing comments and documents. The record of the public hearing was closed on December 1, 1974, and was certified by the Administrative Law Judge to the Assistant Secretary for Occupational Safety and Health on December 2, 1974. All the documents relating to this hearing are available for inspection and copying at the OSHA Docket Office, Room S–6212, Frances Perkins Department of Labor Building, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

A notice to reopen the record was published on November 14, 1980, at 45 FR 75238 to permit additional accident and economic data and analyses to be entered into the record and to allow public comment thereon. The notice allowed interested persons until December 29, 1980, to submit written comments concerning the new information placed in the record. Many commenters requested additional time to review the record and submit written data, views and arguments and also requested an opportunity for a public hearing. OSHA has decided, based on these requests, to extend the comment period 60 days from the date of publication of this document, until March 17, 1981, and to schedule a public hearing.

Hearing Issues

In addition to the general extension of the written comment period on all the issues raised in the notice of November 14, 1980, OSHA invites hearing testimony on the following issues. Any other issues raised in the written comments that are determined to be appropriate for discussion at the hearing will be published in a supplementary hearing notice.

Issue 1

The purpose of the November 14 notice was to allow the public an opportunity to comment on the economic material and injury data entered into the record. Several commenters requested additional time to comment on this new information, and OSHA believes that this extension of time and informal public hearing will provide interested persons with such an opportunity. Therefore, the economic impact of a conveyor standard and the injury data will be a subject to be addressed at the hearing.

In addition, although this rulemaking predates the Regulatory Flexibility Act (Pub. L. 96–353, 94 Stat. 1164 (5 U.S.C. 601 *et seq.*)) OSHA is requesting information about the economic impact of the proposed conveyor standard on small business.

Issue 2

In response to requests from interested persons, OSHA is publishing the text of four alternative provisions that have been developed, based on evidence in the rulemaking record, from four provisions proposed in 1974. The four alternatives, and the proposed requirements on which they are based, are set forth below.

a. *Proposed provision (c)(2):* Before operating the conveyor each day, a visual inspection of the entire conveyor and immediate area shall be made by the operator of the conveyor to determine that actuation will cause no hazard to employees; the inspection shall include an examination of at least the following: (i) Feed points; (ii) Discharge points; (iii) Brakes; (iv) Cables and sheaves; (v) Tracks and rails, wheels, rollers; (vi) Limit switches and slack cable switches; (vii) The presence of all guards and switches; and (viii) Any parts of the conveyor exposed to employees.

Alternative to proposed provision (c)(2): The employer shall inspect the safety devices, guards, and danger zones on conveyors before each day's use.

b. *Proposed provision (c)(3):* If observation of the entire conveyor is not possible from the operator's station, audible or visual warning signals or both, detectable at all employee stations; shall be used to warn of the conveyor's actuation.

Proposed provision (c)(4): If a conveyor is not operated continuously, an audible or visual alarm shall be used to warn employees that the conveyor is being started.

Alternative to proposed provisions (c)(3) and (c)(4): Warning. Before a conveyor is started, except as specified below, the employer shall provide a visible or audible warning that is:

(i) Seen or heard by all employees at or adjacent to the conveyor;

(ii) Of sufficient duration to allow employees to get clear of the conveyor before it is started; and

(iii) Activated by the conveyor's mechanism if the conveyor is automatically or remotely controlled.

Exception. No warning is required before activation of an assembly conveyor when employees working at or

near the conveyor are familiar with the conveyor's indexing cycle, or a completely enclosed conveyor, or a conveyor at which no employees are working.

c. *Proposed provision (c)(14):* Only trained operators shall be permitted to operate conveyors. Training shall include instruction in operation under normal conditions and emergency action under unusual conditions.

Alternative to proposed provision (c)(14): Training. (1) The employer shall ensure that conveyors are only operated by designated employees trained in standard operating and emergency procedures.

(2) Employers shall instruct employees whose work stations are at or adjacent to conveyors in the operation of emergency stop devices and the locations and hazards of any danger zones in the vicinity of their work stations.

d. *Proposed provision (f)(2)(i):* Before repairs, tests or services are begun, the following precautions shall be taken: (i) The conveyor shall be placed in a location where it will cause the least possible interference with employees not involved in the conveyor operation. Where the regular work of employees requires them to frequently pass close to the conveyor, the area shall be roped off or barricaded and caution signs shall be posted in the area in accordance with the caution sign requirements of § 1910.145.

Alternative to proposed provision (f)(2)(i): During conveyor modification, repair, testing, or servicing, the employer shall rope off, barricade, or post any unguarded danger zones.

OSHA particularly welcomes testimony and data on the economic and technological feasibility of these alternative provisions. OSHA has estimated the costs of compliance for the four proposed provisions and the alternatives, and has included these estimates in a document, "Compliance Cost Estimation and Economic Impact Assessment for the Proposed Federal Standard Regulating Conveyors."

Issue 3

In the 1974 conveyor proposal, OSHA included one "lockout" requirement, (f)(2), which stated that:

(f)(2) Before repairs, tests or services are begun, the following precautions shall be taken: * * *

(ii) All power controls shall be locked out. When operation of the conveyor is necessary during repairs or testing, the power shall be left on only to perform those tests and repairs. Affected employees shall be warned that the power is on for this purpose;

Although OSHA intends to include a similar provision in any final standard for conveyors, an analysis of conveyor accident and injury data suggests that additional lockout emphasis is necessary to protect conveyor workers from the risk of serious injury. For example, employees who attempt to free a conveyor which has been stopped by a conveyor jam are exposed to several serious hazards. First, the sudden release of the energy stored up while the power remains on and the conveyor is jammed might cause an employee to fall and be pulled into the conveyor. Second, an employee continuing to hold a tool used to free a jam might be pulled into the reactivated conveyor. Finally, any tool, such as a probe, used to release a jammed and stopped conveyor might itself be turned into a lethal projectile.

An analysis of the data from a study by Coleman et al. (Exh. 24) shows that a lockout provision for jammed and stopped conveyors might have prevented between 11 and 16% of the conveyor-related accidents studied, although it is not possible to determine with certainty how many of the accidents studied were caused specifically by efforts to unjam, rather than maintain, the conveyor. Review of data from a Safety Sciences study (Exh. 22) suggests that approximately 6% of the accidents investigated might have been prevented by lockout of the power supply. In addition, analysis of a series of 39 conveyor fatality reports from several states (Exh. 89) reveals that several of these fatalities would probably have been prevented if the conveyor involved had been locked out while the employee attempted to unjam it, and a review of an OSHA report on fixed machine fatalities (Exh. 93) shows that two of the fatalities reported were caused by failure to observe the same precaution.

OSHA invites comment and testimony on the feasibility and appropriateness of providing conveyor workers with such additional lockout protection. In particular, OSHA welcomes any injury data related to the failure to lock out powered conveyors in these operation situations.

Public Participation in Hearing

Under section 6(b)(3) of the Act and 29 CFR Part 1911, an opportunity to submit oral testimony concerning the hearing issues will be provided at an informal public hearing scheduled to begin at 9:30 a.m. on May 5, 1981, in the Auditorium, Frances Perkins Department of Labor Building, 200 Constitution Avenue, NW., Washington, D.C. 20210. The hearing will continue at regional locations as follows: 9 a.m. on May 12, 1981, in the Best Western/Lakeshore Hotel, Chicago, Illinois 60611; and 9:00 a.m. on May 19, 1981, in the Quality Inn-Airport, Los Angeles, California 90045.

Notice of Intention to Appear

Persons desiring to participate at the hearing, including those who previously requested that a public hearing be held, must file a notice of intention to appear, which must be received by April 7, 1981, with Tom Hall, OSHA Division of Consumer Affairs, Room N3635, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210. Telephone: (202) 523–8024. Persons who do not intend to appear at the hearing may submit written comments on the hearing issues, by March 17, 1981, to the Docket Office, Docket S–201, U.S. Department of Labor, Washington, D.C. 20210. Telephone: (202) 523–7894.

The notices of intention to appear, which will be available for inspection and copying at the OSHA Division of Consumer Affairs, must contain the following information:

1. The name, address, and telephone number of each person to appear;
2. The capacity in which the person will appear;
3. The city where the person intends to appear;
4. The approximate amount of time required for the presentation;
5. The specific issues that will be addressed;
6. A detailed statement of the position that will be taken with respect to each issue addressed; and
7. Whether the party intends to submit documentary evidence, and if so, a detailed summary of the evidence.

Filing of Testimony and Evidence Before Hearing

Any party requesting more than 15 minutes for presentation at the hearing or who will submit documentary evidence, must provide in quadruplicate the complete text of its testimony, including all documentary evidence to be presented at the hearing, to the OSHA Division of Consumer Affairs, where they will be available for inspection and copying. This material must be received by April 21, 1981. Each submission will be reviewed in light of the amount of time requested in the notice of intention to appear. In instances where the information contained in the submission does not justify the amount of time requested, a more appropriate amount of time will be allocated and the participant will be notified of that fact.

Any party who has not substantially complied with the above requirement

may be limited to a 15 minute presentation, and may be requested to return for questioning at a later time. Any party who has not filed a notice of intention to appear may be allowed to testify, as time permits, at the discretion of the Administrative Law Judge.

Conduct of the Hearings

The hearing will commence at 9:30 a.m. on May 5, 1981, with the resolution of any procedural matters relating to the proceeding. The hearing will be presided over by an Administrative Law Judge who will have all the powers necessary or appropriate to conduct a full and fair informal hearing as provided in 29 CFR Part 1911, including the powers:

1. To regulate the course of the proceedings;
2. To dispose of procedural requests, objections, and comparable matters;
3. To confine the presentation to the matters pertinent to the issues raised;
4. To regulate the conduct of those present at the hearing by appropriate means;
5. In the Judge's discretion, to question and permit questioning of any witness; and
6. In the Judge's discretion, to keep the record open for a reasonable stated time to receive written information and additional data, views, and arguments from any person who has participated in oral proceeding.

Following the close of the hearing, the presiding Administrative Law Judge will certify the record of the hearing to the Assistant Secretary of Labor for Occupational Safety and Health. Proposed § 1910.186 of Part 1910 will be reviewed in light of all testimony and written submissions received as part of the record, and a standard will be issued or a determination will be made not to issue a rule, based on the entire record of this proceeding, as well as all previously submitted evidence from the earlier written comments and public hearing.

This hearing notice for proposed § 1910.186 was prepared under the diretion of Eula Bingham, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

(Sec. 6, Pub. L. 91–596, 84 Stat. 1593 (29 U.S.C. 655), 29 CFR Part 1911; Secretary of Labor's Order No. 8–76 (41 FR 25059))

Signed at Washington, D.C., this 9th day of January 1981.

Eula Bingham,

Assistant Secretary of Labor.

[FR Doc. 81–1243 Filed 1–15–81; 8:45 am]

BILLING CODE 4510–26–M

29 CFR Parts 1952 and 1955

Proposed Withdrawal of the Indiana State Plan

AGENCY: Occupational Safety and Health Administration, Department of Labor.

ACTION: Notice of Initiation of Withdrawal Action.

SUMMARY: This notice publishes the Assistant Secretary's decision to initiate a proceeding under Section 18(f) of the Occupational Safety and Health Act, 29 U.S.C. 667(f), and the regulations promulgated thereunder at Part 1955 of this chapter, to withdraw the approval of the Indiana State plan for Occupational Safety and Health. Indiana has 30 days in which to submit a response to the statement of issues in the notice. Interested persons have 30 days in which to submit a petition requesting party status. At any time during the proceeding, any person who is not a party may submit a written statement of position.

DATES: Requests for party status should be submitted by February 17, 1981. Comments may be submitted at any time during the proceeding.

ADDRESSES: Requests for party status should be submitted to: Chief Administrative Law Judge, U.S. Department of Labor, Room 700, Vanguard Building, 1111 20th Street, NW., Washington, D.C. 20036. Written comments to the State should be submitted to: Bill Ray, Acting Commissioner, Indiana Division of Labor, 1013 State Office Building, Indianapolis, Indiana 46204.

Written comments to the Department of Labor and Information requests should be submitted to: Barbara Bryant, Chief, Eastern Division, Office of State Programs, Occupational Safety and Health Administration, Room N–3613, 200 Constitution Ave., NW., Washington, D.C. 20210, (202) 523–8045.

SUPPLEMENTARY INFORMATION: Pursuant to Section 18(f) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 667(f)) and Part 1955 of this Chapter, notice is hereby given that the following complaint, having been served on the Commissioner of the Indiana Division of Labor, has been placed on public record. This complaint initiates an administrative action by the Assistant Secretary for withdrawal of the Indiana plan for occupational safety and health. Absent summary decision or settlement, this action will lead to a formal, fact-finding hearing before a departmental administrative law judge, during which the State will have an opportunity to present witnesses, obtain evidence through discovery, and fully brief and argue all issues of fact and law. The Department of Labor has the burden of proof in the proceeding. Any other interested persons wishing to participate in the proceeding as a party, should submit a petition to the administrative law judge within 30 days hereafter, in accordance with the requirements set out at 29 CFR 1955.17. Pursuant to the provisions set out at 29 CFR 1955.18, any person who is not a party may submit a written statement of position with 4 copies to either the Assistant Secretary or the State. Mere statements of approval or opposition to the plan without any documentary support shall not be considered as falling within this provision.

On the basis of the hearing record, the administrative law judge will decide whether approval of the Indiana plan should be withdrawn. The decision of the administrative law judge can be appealed by any party to the Secretary; if the Secretary upholds the decision, the State may obtain judicial review of the determination in the court of appeals for the circuit in which the State is located. Throughout the courts of the withdrawal proceedings, until a final decision by the Secretary the plan will continue to be in effect.

(Sec. 18, Pub. L. 91–596 84 Stat. 1608 (29 U.S.C. 667))

Signed at Washington, D.C. this 12th day of January 1981.

Eula Bingham,

Assistant Secretary of Labor.

Complaint

Complainant, Eula Bingham, Assistant Secretary of Labor for Occupational Safety and Health, brings this action to enforce the provisions of the Occupational Safety and Health Act of 1970, (hereinafter referred to as the "Act") 84 Stat. 1590, 29 U.S.C. 651 et seq., seeking to withdraw approval of the Indiana State plan.

I

This proceeding arises under Section 18(f) (29 U.S.C. 667(f)), of the Act and the regulations promulgated thereunder at 29 CFR Part 1955.

II

Jurisdiction of this action is conferred upon the Office of Administrative Law Judges, U.S. Department of Labor, pursuant to Section 18(f) of the Act and the regulations promulgated at 29 CFR 1955.11 and 1955.12.

III

Respondent, the State of Indiana, has been administering its own plan for occupational safety and health through the Indiana Occupational Safety and Health Administration (hereinafter referred to as IOSHA) since February 25, 1974, pursuant to Section 18(b) (29 U.S.C. 667(b)) of the Act.

IV

Respondent as a result of the aforesaid activities, is subject to the requirements of Section 18(c) (29 U.S.C. 667(c)) of the Act and the regulations at 29 CFR Part 1955 promulgated thereunder.

V

Complainant is bringing this action under a delegation of authority from the Secretary of Labor, who is mandated by law (29 U.S.C. 667(f)), to make a continuing evaluation of the manner in which each State having an approved plan is carrying out such plan.

VI

Comprehensive monitoring by complainant during the past six years of the Indiana State plan has revealed a consistent pattern of poor performance in critical program areas.

VII

In June, 1977, both the State and the National AFL–CIO submitted to the complainant a petition requesting the complainant to withdraw approval of the respondent's State plan. The United Steelworkers of American subsequently joined the AFL-CIO in its petition.

VIII

Based upon the evaluation of special studies undertaken in response to this petition, complainant preliminarily determined that the respondent's State plan failed to provide an effective program for the protection of the safety and health of employees in the State of Indiana and failed to comply with assurances contained in the State plan that IOSHA would provide enforcement of safety and health standards at least as effective as Federal enforcement of Federal standards, and failed to comply with assurances in the State plan that IOSHA would have qualified personnel necessary for the effective enforcement of its standards. Thereafter, in accordance with the requirements of Section 18(f) of the Act and 29 CFR 1955.10(a), the complainant notified the respondent on April 2, 1980, of its intent to institute a proceeding to withdraw the approval of the respondent's plan.

IX

On May 15, 1980, the respondent filed a response to the complainant's notice in which it denied the allegations in the notice and preserved its right to an administrative hearing on the issue of whether the State plan should be withdrawn.

X

First Ground for Withdrawal. Respondent has substantially failed to comply with the provisions of the State plan by not hiring and retaining a sufficient number of experienced, qualified industrial hygienists. As a result, the State has been unable to establish an adequate health enforcement program.

XI

Second Ground for Withdrawal. Respondent has substantially failed to comply with the provisions of the State plan by failing to provide effective enforcement of standards. Respondent's compliance officers have failed to recognize a substantial number of serious hazards present in inspected workplaces, and have failed to issue citations for such hazards. Therefore, employees in Indiana have been exposed to serious hazards which were not cited, and hence not abated.

XII

Third Ground for Withdrawal. Respondent has substantially failed to comply with the provisions of the State plan by improperly proposing penalties for violations of respondent's standards. Penalties proposed by IOSHA are substantially lower than those proposed by complainant OSHA for similar violations in similar workplaces. Enforcement of IOSHA standards therefore is less effective than federal enforcement of federal standards.

XIII

Fourth Ground for Withdrawal. Respondent has substantially failed to comply with the provisions of the State plan by circumscribing the rights of employees so as to diminish the effectiveness of the program, and by failing to maintain its program in accordance with the appropriate changes in the Federal program regarding employee rights.

Wherefore, complainant prays that the judge affirm complainant's decision to withdraw approval of the Indiana State Plan.

Respectfully submitted,
Carin Ann Clauss,
Solicitor of Labor.
Benjamin W. Mintz,
Associate Solicitor for Occupational Safety and Health.
Harold J. Engel,
Counsel for Regional Trial Litigation.
Patrick R. Tyson,
Assistant Counsel for State Plans.
Arthur J. Amchan,
Attorney.
Olympia Pachares,
Attorney.

[FR Doc. 81-1723 Filed 1-15-81; 8:45 am]
BILLING CODE 4510-26-M

Office of the Secretary

34 CFR Subtitle A

Definitions of Small Organization and Small Governmental Jurisdiction

AGENCY: Department of Education.

ACTION: Notice of Definitions under the Regulatory Flexibility Act.

SUMMARY: The Secretary proposes definitions of "small organization" and "small governmental jurisdiction" to be used to implement the Regulatory Flexibility Act.

This Act allows the Secretary to apply to these terms definitions that are appropriate to the Department's activities. The definitions will govern the procedures of the Department in proposing regulations that affect institutions of higher education and local educational agencies (LEAs) in carrying out Federally funded programs.

DATE: Comments must be received on or before February 17, 1981.

ADDRESS: Comments should be addressed to A. Neal Shedd, Director, Division of Regulations Management, Office of the General Counsel, U.S. Department of Education (Room 2129, FOB–6) 400 Maryland Avenue, S.W., Washington, D.C. 20202.

FOR FURTHER INFORMATION CONTACT: A. Neal Shedd. Telephone (202) 245–7091.

SUPPLEMENTARY INFORMATION:

Summary of the Regulatory Flexibility Act

The Regulatory Flexibility Act, (Pub. L. 96–354, enacted September 19, 1980), provides procedures that Federal agencies must follow in promulgating regulations that have a significant economic impact on a substantial number of small entities. "Small entities" are defined in the Act to mean small businesses, small organizations, and small governmental jurisdictions.

The Act seeks to alleviate the disparate burden that regulations may place on small entities but, at the same time, to ensure that statutory purposes are fulfilled. The Act requires Federal agencies to consider for their regulations alternative provisions that will minimize any significant economic impact on small entities.

Requirements of the Regulatory Flexibility Act

The Regulatory Flexibility Act applies to all regulations for which a notice of proposed rulemaking (NPRM) is issued on or after January 1, 1981 and which will have a significant economic impact on a substantial number of small entities. If regulations do have that impact, the agency promulgating the regulations must publish an initial regulatory flexibility analysis or a summary in the Federal Register with the proposed regulations. The agency must also prepare and make available to the public a final regulatory flexibility analysis.

The initial regulatory flexibility analysis must include the following:

(a) The reasons for and objectives of the regulations.

(b) The legal basis for the regulations.

(c) A description—and, if possible, an estimate of the number—of small entities to which the proposed regulations will apply.

(d) A description of the proposed paperwork associated with the regulations.

(e) An identification, if possible, of all relevant Federal regulations which may

duplicate, overlap or conflict with the proposed regulations.

(f) A discussion of alternatives that could minimize the significant economic impact of the regulations on small entities.

The final regulatory flexibility analysis must include the following:

(a) Reasons for and objectives of the regulations.

(b) A summary of the issues raised by the public comments in response to the initial regulatory flexibility analysis.

(c) A summary of the agency's assessment of these issues.

(d) A summary of any changes made in the proposed regulations as a result of the comments.

(e) A description of each significant alternative designed to minimize any significant economic impact of the regulations on small entities considered by the Department and the reasons why it was rejected.

The analyses are not required if the Secretary certifies that the regulations will not impose a significant economic impact on a substantial number of small entities.

The Act also requires an agency to—

(a) Take action so as to ensure that small entities are given an opportunity to participate in rulemaking for regulations that have significant economic impact on a substantial number of small entities;

(b) Publish a semi-annual agenda of planned or proposed regulations that will have a significant economic impact on a substantial number of small entities;

(c) Review and, if necessary, amend existing regulations that have a significant economic impact on a substantial number of small entities.

Definitions Under the Regulatory Flexibility Act

The Act allows each agency to define "small business", "small organization" and "small governmental jurisdiction" in terms appropriate to that agency's activities where the agency finds the definitions in the Act to be inappropriate. The Secretary has found that the Act's definitions of "small organization" and "small governmental jurisdiction" are unsuited to two kinds of organizations with which the Department is primarily concerned—local educational agencies (LEAs) and institutions of higher education. It is therefore proposed to define "small LEA" and "small institution of higher education" to better carry out the intent of the Act.

The definitions published in this notice will be the Department's working standards under the Act while public comments are being considered.

The definitions of "small LEA" and "small institution of higher education" that the Secretary is proposing for use under the Regulatory Flexibility Act are explained in the following sections of this document.

Small LEA

"Small governmental jurisdiction" is defined by the Act as "governments of cities, counties, towns, townships, villages, school districts or special districts with a population of less than 50,000."

Under most of the Department's programs, an LEA is defined by statute as—

(a) A public board of education or other public authority legally constituted within a State for either administrative control of or direction of, or to perform service functions for, public elementary or secondary schools in—

(1) A city, county, township, school district, or other political subdivision of a State; or

(2) Such combination of school districts or counties a State recognizes as an administrative agency for its public elementary or secondary schools; or

(b) Any other public institution or agency that has administrative control and direction of a public elementary or secondary school. (See 34 CFR 77.1 (c), formerly 45 CFR 100c.1(c)).

The definition of "small governmental jurisdiction" is not appropriate for LEAs, since LEAs frequently serve areas with smaller populations than areas served by other governmental bodies. Moreover, an LEA's size is measured more easily and more accurately by focusing on enrollment rather than population.

For these reasons, the Secretary proposes to define a small LEA as one with a student enrollment of fewer than 1500 students. Based on available data, this definition would include 65 percent of all LEAs in the United States and 11 percent of the total student population in the United States.

For the convenience of those who may wish to comment on this definition the following table shows the number of LEAs and the number of students that would be affected if the Secretary were to use different figures to define small LEA. The first column, "Size of Enrollments," shows LEAs by various total enrollments ranging from those with no students to those with more than 25,000 students. The second column, "Number of LEAs," shows the number of LEAs corresponding to each enrollment category in the first column. The third column, "Percent of Total LEAs" shows the percentage of LEAs corresponding to each enrollment category in the first column. The fourth column, "Enrollments," shows the number of students enrolled in LEAs corresponding to each enrollment category in the first column. The fifth column, "Percent of Total Enrollments," shows the percentage of students enrolled in LEAs corresponding to each category in the first column.

LEA's by Enrollment Size: 1979–80

Size of enrollments	Number of LEA's	Percent of total LEA's	Enrollments	Percent of total enrollments
No students	699	3.819	0	0.000
Under 300	4,384	26.239	525,685	1.199
300 to 499	1,705	10.199	671,159	1.599
500 to 999	2,576	15.396	1,882,395	4.349
1,000 to 1,499	1,518	9.093	1,872,049	4.399
1,500 to 1,999	1,203	7.199	2,093,089	4.749
2,000 to 2,499	812	4.893	1,817,169	4.149
2,500 to 2,999	662	3.999	1,817,623	4.144
3,000 to 3,499	466	2.994	1,559,691	3.647
3,500 to 3,999	399	2.395	1,449,483	3.399
4,000 to 4,999	532	3.179	2,305,216	5.359
5,000 to 9,999	1,112	6.646	7,749,133	17.899
10,000 to 24,999	512	3.069	7,449,691	16.999
25,000 and over	185	1.109	12,899,125	29.799
All LEA's	16,733	100.0	43,899,177	100.0

Source: Elementary and Secondary Education General Information Survey—Public School Districts 1979–80. National Center for Educational Statistics, U.S. Department of Education, (1991 Presidential Building), 400 Maryland Avenue, S.W., Washington, D.C. 20202.

Small Institution of Higher Education

"Small organization" is defined under the Act as "any not-for-profit enterprise which is independently owned and

operated and is not dominant in its field." The Secretary has decided to refine this definition as it applies to institutions of higher education.

For purposes of the Act the Secretary proposes to define a "small institution of higher education" as an institution of higher education (as that term is defined in the individual authorizing statute or implementing regulations for the program) that has a fulltime equivalent (FTE) student enrollment of fewer than 500 or—if the FTE figure is not readily available—a total student population of fewer than 550. Based on available data, for programs this definition would include 20–25 percent of all institutions of higher education and 1.5–2.4 percent of FTE students attending those institutions.

For the convenience of those who may wish to comment on the proposed definition, the following table shows the number of colleges and universities and the number of FTE students that would be affected if the Secretary were to use different figures to define "small institutions of higher education." The data on which the proposed definition is based in the best available data. It includes both non-profit and for-profit postsecondary institutions.

Colleges and universities have been included in the following table if:

(a) They are legally authorized to offer and are offering at least a one-year program of college-level studies leading toward a degree ("college-level" means a postsecondary associate, baccalaureate, post-baccalaureate, or rabbinical education program);

(b) They submitted the information requested by NCES; and

(c) They meet one of the following criteria:

(1) The institution is accredited at the college level by an agency that has been listed as nationally recognized by the Secretary of Education;

(2) The institution holds preaccredited status at the college level with a designated nationally recognized accrediting agency; or

(3) If the institution is public or nonprofit, it has qualified under the "three-institutional-certification method" established by Section 1201 (a)(5)(B) of the Higher Education Act of 1965. That is, the Secretary of Education verifies that not fewer than three accredited college level institutions have accepted and do accept an unaccredited institution's credits, on transfer, as though the credits came from an institution accredited by a nationally recognized accrediting agency.

The first column, "Size of FTE Student Enrollments," lists categories of FTE enrollments ranging from fewer than 114 to fewer than 628. The second column, "Number of Colleges and Universities Included," shows the number of these institutions corresponding to each FTE enrollment category in the first column. The third column, "Percent of Total Colleges and Universities," shows the percentage of these institutions corresponding to each FTE enrollment category in the first column. The fourth column, "FTE Student Enrollments," shows the total FTE student enrollment for colleges and universities corresponding to each FTE enrollment in the first column. The fifth column, "Percent of total FTE Student Enrollments," shows the percentage of total FTE Student enrollment for colleges and universities corresponding to each FTE enrollment category in the first column.

FTE [1] Student Enrollments for Colleges and Universities, Fall 1979

[All figures are cumulative]

Size of FTE student enrollments	Number of colleges and universities included	Percent of total colleges and universities	FTE student enrollments	Percent of total FTE student enrollments
Under 114	160	5	11,618	0.1
Under 196	319	10	36,255	0.4
Under 301	478	15	76,264	0.8
Under 429	638	20	134,073	1.5
Under 534	797	25	210,568	2.4
Under 628	958	30	304,715	3.5
Total number of colleges and universities			3,188	
Total FTE student enrollment			8,605,506	

[1] NCES generated full-time equivalent.

SOURCE: Higher Education General Information Survey (HEGIS), 1979. National Center for Educational Statistics, U.S. Department of Education, (1001 Presidential Building), 400 Maryland Avenue, S.W., Washington, D.C. 20202.

Invitation to comment: Interested persons are invited to submit comments and recommendations regarding the proposed definitions. The public is also invited to comment on—

(a) Whether the Department's activities require additional definitions under the Regulatory Flexibility Act (e.g., "small proprietary institutions") should be defined;

(b) What should constitute a "significant economic impact" and a "substantial number of small entities" under the Act; and

(c) Whether the Department should establish a definition for small private elementary and secondary schools and, if so, what that definition should be.

In addition, the Secretary is considering ways to reduce regulatory burdens on small entities by such methods as simplifying or consolidating requirements for small entities; applying less stringent requirements on small entities; or exempting small entities from the requirements. As another possible approach to reducing regulatory burden, it may be useful to apply the definitions of small LEA and small institution of higher education in current or future program regulations. The Secretary invites comments on this concept. Comments are also sought on what regulations should be changed and how they should be changed to minimize burdens on small institutions of higher education and small LEAs.

Written comments and recommendations may be sent to the address given at the beginning of this preamble. All comments received on or before February 17, 1981 will be considered in the development of the final definitions.

All comments submitted in response to these proposed definitions will be available for public inspection, during and after the comment period, in Room 2129, FOB–6, 400 Maryland Avenue, S.W., Washington, D.C. between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday of each week except Federal holidays.

Shirley M. Hufstedler,

Secretary of Education.

January 12, 1981.

[FR Doc. 81–1815 Filed 1–15–81; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF EDUCATION

34 CFR Part 682

Guaranteed Student Loan Program

AGENCY: Department of Education.

ACTION: Notice of proposed rulemaking; Cross-reference.

SUMMARY: In this issue of the Federal Register the Secretary of Education has promulgated final regulations for the Guaranteed Student Loan Program deferment provisions. The Secretary has, however, requested comments on all the new provisions of those regulations. In addition, the Secretary requests comments concerning whether the definition of "estimated financial assistance" in § 682.200 of the GSLP regulations should be revised to include Veterans benefits, student benefits under Social Security, and other social service payments such as aid to Families with Dependent Children. This revision would avoid duplication of GSLs with other Federal assistance.

The texts of the regulations on which the Secretary invites comments are published in the Rules and Regulations section of this issue of the Federal Register. They have been adopted as final regulations and will govern these

programs until the Secretary issues new regulations based on public comment.

DATES: All comments, suggestions, or objections must be reviewed on or before March 17, 1981.

ADDRESSES: Comment should be addressed to: Jane A. Bryson, Office of Student Financial Assistance, U.S. Department of Education, (Room 4310, ROB-3) 400 Maryland Avenue, S.W., Washington, D.C. 20202.

FOR FURTHER INFORMATION CONTACT: Jane A. Byrson or Cheryl Leibovitz, Telephone: (202)245-2475.

INVITATION TO COMMENT: For additional details on how to comment, see the Preamble of the final regulations for this program published in this issue of the **Federal Register.**

(Catalog of Federal Domestic Assistance Number 84.032, Guaranteed Student Loan Program)

Dated: January 12, 1981.

Shirley M. Hufstedler,

Secretary of Education.

[FR Doc. 81-1362 Filed 1-15-81; 8:45 am]

BILLING CODE 4000-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A-1-FRL 1628-5]

Approval and Promulgation of Implementation Plans—Connecticut; Notice of Proposed Rulemaking: State of Connecticut Ambient Monitoring Network

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Revisions to the State Implementation Plan (SIP) for the State of Connecticut were submitted to EPA on June 9, 1980 and November 17, 1980 by the Commissioner of the Department of Environmental Protection. On May 10, 1979, EPA promulgated Ambient Air Quality Monitoring, Data Reporting, and Surveillance Provisions. That action revoked the requirements for air quality monitoring in Part 51 of Title 40 of the Code of Federal Regulations and established a new Part 58 entitled Ambient Air Quality Surveillance. Those regulations satisfy the requirements of Section 110(a)(2)(C) of the Clean Air Act (the Act) by requiring ambient air quality monitoring and data reporting for purposes of SIPs. Additionally, requirements of Sections 319, 313, and 127 of the Act are statisfied.

The intended effect of Connecticut's SIP revision is to meet the requirements of this new Part 58.

This Notice discusses the Connecticut submittal and EPA's proposed action. EPA is proposing to approve the comprehensive air quality monitoring network.

DATES: Comments must be received on or before February 17, 1981.

ADDRESSES: Copies of the Connecticut submittal and EPA's evaluation are available for public inspection during normal business hours at the Environmental Protection Agency, Region I, Room 1903, JFK Federal Building, Boston, Massachusetts 02203; Public Information Reference Unit, Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460; the Department of Environmental Protection, Air Compliance Unit Library, Room 144, State Office Building, 165 Capitol Avenue, Hartford, Connecticut 06115

Copies of EPA guidance pertaining to the requirements of the SIP revision are available for inspection in Room 1903, JFK Federal Building, Boston, Massachusetts; the Public Information Reference Unit, Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460; and at the Department of Environmental Protection, State Office Building, Hartford, Connecticut 06115.

Comments should be submitted to the Regional Administrator, Region I, Environmental Protection Agency, Room 2203, JFK Federal Building, Boston, Massachusetts 02203.

FOR FURTHER INFORMATION CONTACT: Donald P. Porteous, Air Section, EPA Region I, 60 Westview Street, Lexington, Massachusetts 02173, (617) 861-6700.

SUPPLEMENTARY INFORMATION: On May 10, 1979 (44 FR 27558) pursuant to the requirements of Sections 110(a)(2)(C), 319, 313 and 127 of the Act, EPA promulgated Ambient Air Quality Monitoring, Data Reporting, and Surveillance Provisions, revoking Part 51 and establishing a new Part 58 entitled Ambient Air Quality Surveillance.

As required by Subpart C, 58-20, "the State shall adopt and submit to the Administrator a revision to the plan which will:

(a) Provide for the establishment of an air quality surveillance system that consists of a network of monitoring stations designated as State and Local Air Monitoring Stations (SLAMS) which measure ambient concentrations of those pollutants for which standards have been established in Part 50 of this chapter.

(b) Provide for meeting the requirements of Appendices A, C, D, and E to this part.

(c) Provide for the operation of at least one SLAMS per pollutant during any stage of an air pollution episode as defined in the contingency plan.

(d) Provide for the review of the air quality surveillance system on an annual basis to determine if the system meets the monitoring objectives defined in Appendix D to this part. Such review must identify needed modifications to the network such as termination or relocation of unnecessary stations or establishment of new stations which are necessary.

(e) Provide for having a SLAMS network description available for public inspection and submission to the Administrator upon request. The network description must be available at the time of plan revision submittal and must contain the following information for each SLAMS:

(1) The Storage and Retrieval of Aerometric Data (SAROAD), site identification form for existing stations.

(2) The proposed location for scheduled stations.

(3) The sampling and analysis method.

(4) The operating schedule.

(5) The monitoring objective and spatial scale of representativeness as defined in Appendix D to this part.

(6) A schedule for:

(i) locating, placing into operation, and making available the SAROAD site identification form for each SLAMS which is not located and operating at the time of plan revision submittal,

(ii) implementing quality assurance procedures of Appendix A to this part for each SLAMS for which such procedures are not implemented at the time of plan revision submittal, and

(iii) resiting each SLAMS which does not meet the requirements of Appendix E to this part at the time of plan revision submittal.

Connecticut's SIP submittal to EPA on November 17, 1980 included a comprehensive air quality monitoring plan designed to meet anticipated Federal regulations. Connecticut has worked closely with EPA, Region I to design a comprehensive monitoring system. The number and locations of SLAMS were jointly determined by Connecticut and the Regional Office. Stations are located in all areas where Connecticut and EPA decided they are necessary to determine: (1) highest concentrations expected to occur in the area covered by the network; (2) representative concentrations in areas of high population density; (3) the impact of significant sources or source categories on ambient pollution levels;

and (4) general background concentrations. Connecticut will operate the SLAMS network in accordance with the Quality Assurance Procedures described in Appendix A to 40 CFR Part 58 and will submit a written Quality Assurance Program to the Regional Office by December 31, 1980. Some SLAMS will be designated as episode monitoring sites for declaring and monitoring episodes for CO, SO_2, NO_2, O_3 and particulate matter.

Connecticut also provides for a special purpose monitoring system which is comprised of several studies designed to aid in determining air quality levels and the effects of air pollution sources on air quality in Connecticut, measure effects of control strategies on air quality, and provide a better understanding of air pollution in Connecticut and the effects of air pollution on the public's health.

The site-specific SLAMS monitoring network description is not included in the SIP revision to allow for annual review and revision of the network without repeating the full SIP revision procedure.

Connecticut's submittal establishes an ambient air monitoring network for "Criteria Pollutants" (SLAMS) meeting Appendices A, C, D, and E, establishes episode monitoring stations, and provides for a network description and an annual SLAMS review.

EPA finds the Connecticut submittal meets the applicable regulations and is proposing approval of the comprehensive air quality monitoring network.

The Administrator's decision to approve or disapprove the plan revision will be based on whether it meets the requirements of Section 110(a)(2)(C), 319, 313, and 127 of the Clean Air Act, as amended, and EPA regulations in 40 CFR Part 58. This revision is being proposed pursuant to Sections 110(a) and 301 of the Clean Air Act, as amended (42 U.S.C. 7401 et seq. and 7601).

Under Executive Order 12044, EPA is required to judge whether a regulation is "significant" and therefore subject to the procedural requirements of the Order or whether it may follow other specialized development procedures. EPA refers to these other regulations as "specialized". I have reviewed this regulation and determined that it is a specialized regulation not subject to the procedural requirements of Executive Order 12044.

Pursuant to the provisions of 5 U.S.C. 605(b) I hereby certify that this proposed rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. The reason for this finding is that the proposal relates only to air quality surveillance to be carried out by four states and will not cause any significant economic impacts.

Dated: December 31, 1980.

William R. Adams, Jr.,

Regional Administrator, Region I.

[FR Doc. 81-1736 Filed 1-15-81; 8:45 am]

BILLING CODE 6560-38-M

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40 CFR Part 52

[A-2-FRL 1626-7]

Interstate Air Pollution Abatement: Notice of Proceedings Under Section 126 of the Clean Air Act

AGENCY: Environmental Protection Agency.

ACTION: General notice to extend the date for closure of a public hearing record of proceedings under Section 126 of the Clean Air Act (Interstate Pollution Abatement).

SUMMARY: This notice extends the date for closure of the public hearing record concerning petitions filed pursuant to Section 126 of the Clean Air Act by Connecticut and New Jersey. These petitions, discussed in a November 3, 1980 **Federal Register** notice (45 FR 72702), concern interstate air pollution impacts of particulate matter and sulfur dioxide within the New Jersey-New York-Connecticut metropolitan area. A public hearing was held in response to these petitions on December 3 and 4, 1980. On December 24, 1980 EPA received a request from the New York State Department of Environmental Conservation to maintain the public hearing record for an additional 30 days, and is honoring that request through today's action.

DATE: The date for closure of the public hearing record is extended until February 5, 1981.

ADDRESS: Written material should be submitted to: Robert A. Predale, Environmental Protection Agency, Air Programs Branch, Room 1005, 26 Federal Plaza, New York, New York 10278, (212) 264-9600.

All material submitted should include a reference to "Docket No. 2A-80-1."

FOR FURTHER INFORMATION CONTACT: William S. Baker, Chief, Air Programs Branch, Environmental Protection Agency, Region II Office, 26 Federal Plaza, New York, New York 10278, (212) 264-2517.

Dated: January 9, 1981.

(Sections 110 and 301 of the Clean Air Act, amended (42 U.S.C. 7410 and 7601))

Charles S. Warren,

Regional Administrator, Environmental Protection Agency.

[FR Doc. 81-1735 Filed 1-15-81; 8:45 am]

BILLING CODE 6560-38-M

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40 CFR Part 123

[SW-4-FRL 1626-6]

Tennessee's Application for Interim Authorization, Phase I

AGENCY: EPA, Region IV.

ACTION: Reopening of comment period on Tennessee's Application for Interim Authorization

SUMMARY: By notice dated November 28, 1980 (45 FR 79118), EPA announced review of the Tennessee Application for Interim Authorization to administer a Hazardous Waste Management Program under the Resouce Conservation and Recovery Act (RCRA). On December 29, 1980, a public hearing was held concerning Tennessee's application. Since the public hearing, EPA has received several requests for an extension of time for submittal of comments on Tennessee's Application for Interim Authorization. Today EPA is announcing that the comment period on Tennessee's Application is being reopened and the final date for receipt of written comments is January 30, 1981. This comment period is being reopened as a result of the several requests from various organizations and individuals. The State submission has not been materially changed, which would require that the formal review process start over.

DATE: Comments on Tennessee's Application for Interim Authorization must be received by January 30, 1981.

ADDRESSES: Copies of Tennessee's Application for Interim Authorization and the transcript of the public hearing are available at the following addresses for inspection and copying by the public:

(1) Division of Solid Waste Management, Tennessee Department of Public Health, 320 Capitol Hill Building, Nashville, Tennessee 37219, Telephone: 615/741-3424.

(2) Environmental Protection Agency, Regional Office Library, Room 121, 345 Courtland Street, NE, Atlanta, Georgia 30365, Telephone: 404/881-4216.

(3) EPA Headquarters Library, Room 2404, 401 M Street, SW, Washington, D.C. 20460.

Written comments should be addressed to: Patricia S. Zweig, Environmental Protection Agency,

Residuals Management Branch, 345 Courtland Street, NE, Atlanta, Georgia 30365, Telephone: 404/881-3966.

Dated: January 9, 1981

John A. Little,

Acting Regional Administrator.

[FR Doc. 81-1734 Filed 1-15-81; 8:45 am]

BILLING CODE 6560-30-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Ch. I

Improving Government Regulations; Semiannual Agenda of Significant Proceedings

AGENCY: Federal Communications Commission.

ACTION: Publication of semiannual agenda of significant proceedings.

SUMMARY: On March 23, 1978, President Carter signed Executive Order 12044 directing Federal agencies to make improvements in the regulatory process. As part of these improvements, the Order stated that agencies shall publish at least semiannually an agenda of significant proceedings to provide the public with adequate notice of these matters. In compliance with the Order, the FCC has prepared an agenda of important proceedings under development or review.

EFFECTIVE DATE: November 24, 1980.

ADDRESS: Federal Communications Commission, 1919 M Street N.W., Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Anne Riffey, Office of the Executive Director, (202) 632-7513.

SUPPLEMENTARY INFORMATION:

Semiannual Agenda of Significant Proceedings

The Commission wants to encourage greater public participation in the FCC rule making process. To help keep the public informed of significant rule making proceedings, the Commission has prepared an agenda of important proceedings now in progress. The Commission expects to publish an agenda of significant proceedings in the Federal Register every six months.

The following terms may be helpful in understanding the status of the proceedings included in this report:

1. A Notice of Inquiry (NOI) is issued by the Commission when it is seeking information on a broad subject or trying to generate ideas on a given topic. A comment period is specified during which all interested parties may submit comments.

2. A Notice of Proposed Rule Making (NPRM) is issued by the Commission when it is proposing a specific change to the FCC Rules and Regulations. Before any changes are actually made, interested parties may submit written comments on the proposals.

3. A Memorandum Opinion and Order (MO&O) is issued by the Commission to deny a petition for rule making, conclude an inquiry, modify a decision, or deny a petition for reconsideration of a decision.

4. A Report and Order is issued by the Commission to state a new or amended rule or state that the FCC Rules will not be changed.

5. A Report Making (RM) Number is assigned to a proceeding after the appropriate Bureau/Office has reviewed a petition for rule making, but before the Commission has taken action on the petition.

6. A Docket Number is assigned to a proceeding if the Commission has issued either a Notice of Proposed Rule Making or a Notice of Inquiry in regard to the matter under consideration. Since January 1, 1978, the Commission has used docket numbers which consist of the last two digits of the calendar year in which the docket was established plus a sequential number which begins at 1 with the first docket initiated during a calendar year (e.g. Docket 78-1 or Docket 79-1). The abbreviation for the responsible Bureau usually precedes the docket number, as in "BC Docket 79-164." When a docket number consists of only five digits (e.g. Docket 19622), this indicates that the docket was established before January 1, 1978.

Semiannual Agenda of Significant Proceedings (as of Nov. 24, 1980)

Title of proceeding	Rulemaking or docket No.	Description	Stage of development	Projected date of upcoming action
A. Broadcast Matters				
A-1—Clear Channel Proceeding. Contact Person: Louis Stephens, 632-7792; Gary Stanford, 632-6660.	20642	Consideration of a proposal to permit additional AM stations to operate on the 25 Class I-A Clear Channels.	Report and Order Adopted in May 1980. Petitions for Reconsideration scheduled for presentation to Commission.	Dec. 4, 1980, agenda.
A-2—Reduction of AM Bandwidth to 9kHz. Contact Person: Gary Stanford, 632-6660.	BC Docket 79-164	Inquiry into reduction of spacing between AM channels from 10 kHz to 9kHz.	Final resolution is awaiting results of Region 2 Conference on AM Broadcasting, to be held in November 1981. In the interim, Commission will develop further reports.	Bureau will present Commission with full report of activities prior to Jan. 15, 1981.
A-3—Deregulation of Radio. Contact Person: Roger Holberg, 632-7792.	BC Docket 79-219	Study to determine if radio broadcasting should be partially or totally deregulated.	Combined Notice of Inquiry (NOI) and NPRM issued September 1979. Comments are being analyzed and R&O is planned.	R&O is expected to be ready for Commission agenda in January 1981.
A-4—FCC Renewal Forms. Contact Person: Israel Tollenbaum, 632-7792.	BC Docket 80-253	Study to revise FCC renewal forms for Commercial and non-commercial broadcast stations.	Commission issued NPRM June 4, 1980. Reply comments due Dec. 4, 1980; final item being drafted.	Final item Expected to go to Commission in February 1981.
A-5—Inquiry into the Proper Role of Television, Translators, and Low-Power TV Broadcasting. Contact Person: Michael Cosmos, 632-6302.	BC Docket 78-253	Inquiry into uses of television translators, especially in rural areas, to determine if rules concerning translators should be changed to permit their increased use.	Commission adopted a NPRM in September 1980. Further comments close on Mar. 1, 1981. Several Petitions for Reconsideration are pending which will be presented to Commission.	February 1981 for Petitions for Reconsideration.
A-6—Subscription (Pay) TV Operations. Contact Person: Freda Thyden, 632-7792.	21502	Inquiry to determine whether current rules governing pay TV operation are necessary or desirable and whether any new rules are needed to govern the service.	A Second Report and Order (R&O) is forthcoming, and a further NPRM which will include such issues as the "complement of four" requirement.	April 1981.
A-7—Equal Employment Opportunity in the Broadcast Industry. Contact Person: Steve Bookshester, 653-7366.	21474	Revision of FCC Form 395, the annual employment form filed by broadcasters, to make it more useful in monitoring the broadcaster's commitment to equal employment opportunity.	Further NPRM issued in 1980 seeking comments on a revised Model EEO program R&O is being drafted.	R&O expected to be ready for agenda in Second Quarter, 1981.

Title of proceeding	Rulemaking or docket No.	Description	Stage of development	Projected date of upcoming action
		A. Broadcast Matters—Continued		
A-8—Children's Television Programming and Advertising Practices. Contact Person: Steve Bookshester, 632-7568.	19142	Evaluation of television licensees' compliance with the Commission's 1974 policy guidelines on children's television programming and advertising practices.	NPRM adopted by Commission in December 1978. The comment stage extends from January to August 1980. R&O is being drafted.	R&O ready to be scheduled for agenda in Second Quarter, 1981.
A-9—New VHF Channel Assignment. Contact Person: Martin Blumenthal, 632-7792.	20418	Study of possibility of assigning new VHF channels in the Top-100 markets, specifically at this time in Charleston, West Virginia; Johnstown or Altoona, Pennsylvania; Knoxville, Tennessee; and Salt Lake City, Utah.	Report and Order adopted in September 1980. See entries for New Jersey VHF-TV, below.	
A-10—New Jersey UHF-TV Assignments. Contact Person: Gordon Godfrey, 632-6460.	BC Docket 79-269	Study to assign 6 UHF-TV frequencies to various New Jersey communities.	NPRM adopted Oct. 16, 1979. Record closed August 1980, R&O being developed.	R&O projected for consideration on agenda in first Quarter, 1981.
A-11—New Jersey UHF-TV Financial Viability. Contact Person: Martin Blumenthal, 632-7792.	BC Docket 79-270	Study of means by which the New Jersey UHF-TV stations created in BC Docket 79-269 (above) might best become financially viable.	NPRM adopted Oct. 16, 1979, in conjunction with BC Docket 79-269; record closed August 1980.	Final action projected for the same time as BC Docket 79-269, above.
A-12—Reassignment of Ch. 9 -TV. Frequency to New Jersey. Contact Person: Mark Lipp, 632-7792.	BC Docket 80-719	Study of possibility of reassigning the Channel 9 UHF-TV frequency from New York City to a New Jersey community.	NPRM adopted Nov. 6, 1980. Matter being held in abeyance pending resolution of R&O appeal by Federal court.	
A-13—Revision of Financial Qualifications Form. Contact Person: Alan Stillwell, 632-6302.	BC Docket 80-190	Study to revise form 324, Financial Qualifications form, which broadcasters are required to file with the Commission.	NPRM adopted Apr. 24, 1980; reply comments due December.	R&O is planned for scheduling on agenda in first Quarter, 1981.
A-14—Commercial Television Network Practices. Contact Person: Issiel Teitelbaum, 632-7792.	Docket 21049	Inquiry into practices and policies of the 3 major television networks regarding the acquisition and distribution of television programming.	Network Inquiry Special Staff has made final report to Commission. Report is now being analyzed by Broadcast Bureau staff. Recommendations to the Commission are being formulated.	May or June 1981.
A-15—Use of FM Frequencies. Contact Person: Kathryn Hosford, 632-6460.	BC Docket 80-90	Study of means for increasing the use of FM frequencies.	NPRM issued on Feb. 28, 1980. Reply comments due on Dec. 1, 1980.	Item to the Commission in June 1981.
A-16—Processing of FM Rulemaking Petitions. Contact Person: Jonathan David, 632-7792.	BC Docket 80-130	Study of possible modifications to the procedures for processing FM petitions.	NPRM issued Mar. 27, 1980. Reply comments due Dec. 1, 1980.	Item to the Commission in June 1981.
A-17—FM Quadraphonic Broadcasting. Contact Person: Al Jarrett, 632-7275.	Docket 21310	Inquiry into whether Commission should authorize a quadraphonic FM broadcasting system.	Notice of Proposed Rule Making (NPRM) adopted July 17, 1980. Reply comments due on Feb. 9, 1981.	
A-18—AM Stereo. Contact Person: James McNally, 632-6460.	Docket 21313	The Commission must decide if, and under what circumstances, standards for the transmission of stereophonic program material by AM broadcast stations should be established.	NPRM adopted September 1978; a Memorandum Rept. and Order and Further NPRM adopted July 30, 1980, and released Sept. 11, 1980. Comment period closes in February 1981, after which the staff will probably draft an R&O.	
A-19—Teletext Inquiry. Contact Person: Jim Green, 632-6302.	Rulemaking 3727	Petition by CBS, Inc., to authorize use of teletext by TV stations.	Period for comments on the petition has closed. Staff is evaluating several alternatives with a view to taking action in the next two or three months.	First Quarter, 1981.
		B. Cable Television Matters		
B-1—Cable TV Systems: Multiple Ownership and Cross-Ownership. Contact Person: William Johnson, 632-6460.	Dockets 18891 and 20423	Inquiry to determine if FCC should limit size of cable systems, multiple ownership and cross ownership.	Additional R&O's are forthcoming in these dockets. Office of Plans and Policy has a study of these issues in progress. Study includes telephone cross-ownership issues also.	
B-2—Cable TV Impact on Broadcast Service. Contact Person: William Johnson, 632-6460.	Dockets 21284 and 20988	Inquiry into the economic relationship between television broadcasting and cable television to provide the Commission with better methods of predicting changes in these industries and analyzing cases where questions of impact are raised.	R&O eliminating CATV rules has been adopted by Commission, but rule changes have been stayed in connection with an appeal of the Commission's decision. Court action is expected by the Spring of 1981.	
B-3—Cable TV Local Franchise Fees. Contact Person: Deborah Stuhlmann, 632-6460.	Docket 21002	Proposal to eliminate rule (§ 76.31) that limits the ability of local authorities to collect franchise fees in excess of 3% of a cable system's gross revenues.	Draft of final R&O is in progress. Additional analysis of economic study (NERA study) submitted in comments may be required.	
B-4—Cable TV Mandatory Local TV Signal Carriage Rules for "Saturated" Cable TV Systems. Contact Person: Stephen Bailey, 632-6460.	Docket 21472	Proposal to amend the cable TV mandatory signal carriage rules with respect to those situations where the availability of additional channels on local cable systems has been exhausted.	Draft of final R&O is in progress.	
		C. Common Carrier Matters		
C-1—Cost Allocation Manual—AT&T. Contact Person: Tim Stevens, 632-6942.	CC Docket 78-245	Proceeding to develop and prescribe specific procedures to be followed by AT&T in allocating costs among its various services.	Final Commission Order tentatively scheduled for vote in December 1980. Reconsideration should follow.	December 1980.

Title of proceeding	Rulemaking or docket No.	Description	Stage of development	Projected date of upcoming action
C. Common Carrier Matters—Continued				
C-8—Cellular Mobile Communications. Contact Person: Michael Sullivan, 632-6450.	CC Docket 79-318	Inquiry into implementation of cellular mobile communications systems.	Draft of Report and Order completed and expected to be before the Commission in First Quarter, 1981.	First Quarter, 1981.
C-9—Xerox XTEN Proposal. Contact Person: Beverly Baker, 632-6930.	Gen. Docket 79-166	Xerox Corporation has proposed the allocation of microwave frequencies in the 10.55–10.68 GHz band for use in providing a new common carrier electronic message service.	Draft item revised. Awaiting final comments from Common Carrier Bureau, Office of Science and Technology, Office of Plans and Policy and General Counsel's office.	First Quarter, 1981.
C-4—Resale and Shared Use of WATS. Contact Person: Brad Allenby, 632-6917.	CC Docket 80-64 (RM 3403)	Regulatory policies concerning resale and shared use of common carrier domestic public switched network services. (MCI petition for rule making #3403).	On Oct. 21, 1980, the Commission concluded that the tariff restrictions were unlawful. The Commission's final order prescribing unlimited resale and shared use of public switched network service is expected to be released in December. AT&T will have 60 days from the release date to file tariff revisions removing all resale and sharing restrictions.	
C-6—WATS Offering. Contact Person: Kent Nakamura, 632-6917.	Bureau Project #210 (TR-13566).	AT&T tariff revisions reflect significant and complex changes in a major basic service. The filing represents substantial structural change in the WATS offering.	Numerous petitions for rejection, or suspension of the proposed tariff revisions have been filed primarily by large volume WATS customers and companies that compete with AT&T. The Commission will act on the petitions before the effective date of the proposed tariff revisions.	December 1980.
C-6—Bell System Operating Companies Tariff, FCC No. 6. Contact Person: Kent Nakamura, 632-6917.	21409 Rate Case	Investigation into the lawfulness of facilities offerings by AT&T and its associated Bell companies to other common carriers; Bell System Operating Companies Tariff FCC No. 6.	The Commission is expected to adopt in December 1980 a Notice of Inquiry and Proposed Rulemaking.	December 1980.
C-7—Second Generation Satellite. Contact Person: Ron Lepkowski, 632-6930.	Bureau Project #130	The total number of applications for new domestic satellites may exceed the number that could be accommodated in the orbital arc useful for U.S. service. In order to avoid potential conflicts, a rulemaking approach is desired.	Action on applications to be completed in December 1980. Staff now working on the follow-on proceedings to develop and promulgate long term policy and procedures.	First Quarter, 1981.
C-8—AT&T Rate Structure Rulemaking. Contact Person: Pat Dempsey, 632-5560.	CC Docket 79-246	Inquiry into AT&T private line tariff and rate structures and volume discount policies.	Staff is preparing a commission Memorandum Opinion and Order and Second Notice of Inquiry. Item is scheduled to be presented to the Commission in February.	February 1981.
C-9—MTS-WATS Market Structure Inquiry. Contact Person: Carl Lawson, 632-6342.	CC Docket 78-72	Inquiry to determine whether public interest requires interstate Message Telecommunications Service (long distance telephone service) and/or Wide Area Telecommunications Service (bulk rate long distance service) or their functional equivalents, to be provided on a sole source basis.	Report and third supplemental notice, issued Aug. 19, 1980, resolved entry policy question and issued other than access charges and Alaska entry policy. Staff preparing further order on access charges. Awaiting supplemental comment regarding Alaska entry policy.	Planned for February 1981.
C-10—"Authorized User" Petitions. Contact Person: Gene Bullard, 632-7285.	CC Docket 80-170	Study of whether to authorize non-carrier entities to obtain service directly from Comsat for provision of international communications.	An NPRM was issued in May 1980. Comments and reply comments have been filed and reviewed. Staff research and economic studies completed. R&O is being drafted. See also CC Docket 80-634, below.	
C-11—International Resale and Shared Use. Contact Person: Helen Golding, 632-6917.	CC Docket 80-176	Study of the restrictions on resale and shared use of international services.	Comments were filed by twenty-three parties, seventeen of which filed reply comments in late September. The staff is in the process of drafting a recommended decision to be presented to the Commission in the Spring of 1981.	April 1981.
C-12—AT&T General Rate Increase. Contact Person: Brad Allenby, 632-6917.	Bureau Project #28	Tariff filing by AT&T that would increase its tariff charges, to become effective in part by June 1980.	Bureau's order was released on June 13, 1980, with Chief ordering an investigation of the across-the-board increases, but deferred that investigation until the hearing on AT&T's rate of return in Docket 79-63. MCI has challenged some procedural aspects of the decision and an application for review is pending.	No earlier than Second Quarter, 1981.
C-13—Uniform System of Accounts for Telephone Companies. Contact Person: David Chessler, 653-7413.	CC Docket 78-196	Study to develop a system of accounts which can readily provide cost information by both jurisdiction and individual service categories.	Review of comments received on First Supplemental NPRM is ongoing. Staff will devise specifications of the new proposed Uniform System of Accounts.	
C-14—Communications Satellite Corporation Structure. Contact Person: J. Ball, 632-7834.	CC Docket 80-634	An inquiry into changes in the corporate structure and operations of Communications Satellite Corporation.	NPRM adopted Oct. 9, 1980; released Oct. 29, 1980, to provide interested parties the opportunity to comment on the tentative proposals the Commission made in the Comsat study for changes in the Corporate structure and operations of Comsat. See also CC Docket 80-170 above.	Second Quarter, 1981.

Title of proceeding	Rulemaking or docket No.	Description	Stage of development	Projected date of upcoming action
C. Common Carrier Matters—Continued				
C-15—Overseas Communication Service. Contact Person: Stuart Chiron, 632-7285.	CC Docket 80-832	The Commission has tentatively concluded that voice/record dichotomy in international services no longer best serves the public interest. This NPRM proposes to permit the IRCs to provide international voice services and AT&T to provide international record services. NPRM revisits 1964 TAT-4 decision which helped establish voice/record dichotomy.	NPRM released Oct. 28, 1980. Comments due Dec. 12, 1980. Replies due Jan. 16, 1981.	Second Quarter, 1981.
C-16—AT&T Rate of Return. Contact Person: Kent Nilson, 632-6342.	CC Docket 79-187	Inquiry to determine if AT&T's rate of return during 1978 exceeded the limits specified by the Commission in Docket 20376.	Comments from NOI have been reviewed. Further action pending policy guidance from the Commission.	
C-17—INMARSAT Interconnection—Implementation of Sec. 503(G) of INMARSAT Act. Contact Person: J. Bell, 632-7834.	CC Docket 79-26	Rulemaking regarding operational arrangements for maritime satellite service; interconnection with earth stations; and regulating safeguards against cross-subsidization of costs.	Further Notice of Proposed Rule Making being prepared requesting public comment on whether Comsat should be permitted to combine the expenses and assets of its INMARSAT investment with its INTELSAT revenue requirement for rate setting purposes.	
C-18—MDS Licensing. Contact Person: Cecily Holiday, 632-6415.	CC Docket 80-116	Inquiry on alternatives to trial-type proceedings for awarding MDS licenses. Possible alternatives include paper hearings, lotteries, and auctions.	NPRM issued March 1980. Staff is evaluating comments to draft an R&O.	
C-19—MDS Frequency Reallocation. Contact Person: Kevin Kelley, 632-6430.	Gen. Docket 80-112	Inquiry and rulemaking to consider reallocation of frequencies; in the 2500-2690 MHz band.	NPRM issued March 1980. Comment period extended to Sept. 26 and Oct. 27, 1980. Staff anticipates issuance of an R&O.	
D. Field Operations Bureau Matters				
D-1—Radio Operator Licensing. Contact Person: Vernon Wilson, 632-7240.	Docket 20817	Inquiry to review radio operator rules and evaluate the current need for them.	Order issued extending time to file comments to Dec. 5, 1980, and reply comments until Jan. 5, 1981.	2d Quarter, 1981 or later.
E. Office of General Counsel				
E-1—Reimbursement for Participation in Commission Proceedings. Contact Person: Randy May, 632-7030.	Gen. Docket 78-205	Inquiry as to the rules under which FCC should reimburse expenses of public participants in its rulemaking proceedings.	Comments are being evaluated by staff.	3d Quarter, 1981 or later.
F. Office of Plans and Policy				
F-1—Improvements to UHF TV Reception. Contact Person: Phil Gaeier, 653-5940.	Gen. Docket 78-391	A five-person task force has been created to examine comparability for UHF and VHF television reception and to assist in determining what regulatory changes are needed to achieve comparability.	Last Report was issued November 1980. Contractor's reports pending.	
F-2—Direct Broadcast Satellite Inquiry. Contact Person: Florence Setzer, 653-5940.	Gen. Docket 80-603	Study of regulatory options concerning direct broadcast satellite (DBS).	NOI and R&O issued in October 1980. Comments due by Dec. 5, 1980, and reply comments by Dec. 22, 1980.	2d Quarter, 1981.
G. Office of Science and Technology				
G-1—Xerox XTEN Proposal. Contact Persons: Bert Withers, 653-8100; Beverly Baker, 632-6530.	Gen. Docket 79-188	Xerox Corporation has proposed the allocation of microwave frequencies in the 10.55-10.68 GHz band for use in providing a new common carrier electronic message service.	Comment dates on NPRM of August 1979, were extended to March 1980. An initial Commission decision is expected by the end of 1980.	1st Quarter, 1981.
G-2—Spread Spectrum Communications Technology. Contact Person: Michael Kennedy, 632-7073.	Not yet Assigned	Inquiry into possible civil application of spread spectrum communications technology and possible rulemakings needed to permit its use (it is implicitly forbidden under present rules).	NOI is being written to be presented to Commission.	February 1981.
G-3—Radio Frequency Interference to Electronic Equipment. Contact Person: Al Paul, 653-8126.	Gen. Docket 78-369	Inquiry to determine extent of radio frequency interference to electronic equipment and need for government regulation to lessen such interference.	Pursuant to NOI, review of the comments received and the record has been completed. Statistical summary of comments is currently being developed, to be followed by coordination with appropriate operating bureaus/offices. An options paper is to be issued early in 1981.	1st Quarter, 1981.

Title of proceeding	Rulemaking or docket No.	Description	Stage of development	Projected date of upcoming action
		G. Office of Science and Technology—Continued		
G-4—Broadcasting-Satellite Planning Conference. Contact Person: Michael Kennedy, 632-7072.	Gen. Docket 80-396	Preparation of U.S. Proposals to a 1983 ITU Region 2 Conference to plan the use fo 12 GHz broadcasting satellites in the Western Hemisphere.	An initial NOI has been released and comments are being reviewed. Release of another NOI is anticipated.	1st or 3d Quarter, 1981.
G-5—Mobile Services Conference. Contact Person: Lawrence Palmer, 653-8102.	Gen. Docket 80-184	Preparation of U.S. proposals to a 1982 World Conference on the Mobile Radio Services.	Two NOIs have been issued and comments are being reviewed. Expect another NOI in 1st Quarter 1981 and a R&O containing FCC recommended proposals in 3d Quarter 1981.	NOI—1st Quarter, 1981; R&O—3d Quarter, 1981.
G-6—Space Services Planning Conference Space WARC. Contact Person: Thomas S. Tycz, 653-8102.	Gen. Docket 80—	Preparation of U.S. proposals to a 1984/85 (2d session) ITU WARC on "Use of the Geostationary-Satellite Orbit and Planning of the Space Services Utilizing It".	Initial NOI on agenda. of Nov. 25, 1980. Expect another NOI to be released 2d Quarter.	Initial NOI—November 1980; 2d NOI—2d Quarter, 1981.
G-7—Air-to-Ground Telephone Service at 800 MH. Contact Person: Mal Murray, 653-8188.	RM. 3524	This proposed system is designed to serve passengers on commercially scheduled airlines in the contiguous United States. Airfone, the petitioner, plans to use single side band modulation, proposes the use of a total of 4 MH, of spectrum to provide 310 two-way voice channels which will be interconnected to the public telephone network.	Petition is being analyzed along with the experimental-developmental applications filed by petitioners.	3d Quarter, 1981.
		H. Private Radio Bureau Matters		
H-1—Telephone Interconnection in Land Mobile Radio Services. Contact Person: Lewis Goldman, 632-6402.	Docket 20846	Proceeding to develop and prescribe specific rules for interconnection of private land mobile radio systems with the public switched telephone network.	An R&O is being drafted by the staff...	April 1981.
H-2—Additional Personal Radio Service. Contact Person: John B. Johnston, 224-6994.	PR Docket 79-140	Inquiry into need for new Personal Radio Service at 900 MH, and technical and operational characteristics of such a possible service.	NOI issued previously and comment period ended in February 1980. Staff is drafting a NPRM in conjunction with the Office of Science and Technology.	April 1981.

Federal Communications Commission.
William J. Tricarico,
Secretary.

[FR Doc. 81-1180 Filed 1-15-81; 8:45 am]
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47 CFR CH. 1

[CC Docket No. 79-35; FCC 80-744]

Further Proposal Regarding Implementation of Requirements of the International Maritime Satellite Telecommunications Act

AGENCY: Federal Communications Commission.

ACTION: Further notice of proposed rulemaking (Docket No. 79-35).

SUMMARY: This Further Notice of Proposed Rulemaking provides and opportunity for interested parties to comment on whether the Communication Satellite Corporation (Comsat) should be permitted to include, for rate setting purposes, the net expenses and assets of its International Maritime Satellite System (INMARSAT) investment in the revenue requirements for its International Telecommunications Satellite (INTELSAT) operations.

This further notice is necessary because Comsat indicated in initial comments filed in this proceeding that no such cross-subsidization would be necessary, but has now changed its position in view of the significant start-up losses that it foresees as resulting from its participation in INMARSAT.

DATES: Interested parties may file comments on or before February 27, 1981 and reply comments on or before March 20, 1981.

ADDRESS: Comments and responses to this notice should be submitted to: The Secretary, Federal Communications Commission, 1919 M Street, NW., Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: James L. Ball/Glenn deChabert, International Facilities Planning Division, Common Carrier Bureau, Federal Communications Commission, Washington, D.C. 20554, (202) 632-3214.

In the matter of implementation of requirements of the International Maritime Satellite Telecommunications Act, CC Docket No. 79-35.

Adopted: December 16, 1980.
Released: December 29, 1980.

1. On February 28, 1979, we released a Notice of Proposed Rulemaking inviting comments on proposals to implement certain requirements imposed on the Commission by the International Maritime Satellite Telecommunications Act, 47 U.S.C. 751 (1979). *International Maritime Satellite System*, 70 F.C.C. 2d 1068 (1979). The International Maritime Satellite Telecommunications Act declares that it is the policy of the United States to provide for U.S. participation in the International Maritime Satellite Organization (INMARSAT) in order to develop a global maritime satellite system that will meet the maritime commercial and safety needs of the United States and foreign countries. INMARSAT is intended to be an independent international organization that will provide for ownership and operation of such a system. The Act amends the Communications Satellite Act of 1962, 47 U.S.C. 701 (1976), to designate the Communications Satellite Corporation (Comsat) as the U.S. operating entity in INMARSAT and place sole responsibility on Comsat for any financial obligations it incurs in that capacity.

2. Our Notice of Proposed Rulemaking inquired into (1) ownership of earth stations and operational arrangements by which Comsat and U.S. domestic or international carriers will interconnect their facilities for the purpose of extending maritime satellite services to users in the United States and beyond, and (2) operational arrangements by which Comsat will interconnect its facilities with private communications systems authorized by this Commission.[1] In addition, it sought comments from interested parties concerning regulatory safeguards to assure that Comsat's participation in INMARSAT will not adversely affect its participation in INTELSAT, and to prevent Comsat from cross-subsidizing its maritime satellite services with its other communication services. The purpose of this Further Notice of Proposed Rulemaking is to provide interested parties with an opportunity to comment on issues relating to this latter subject area that were raised by Comsat following the period for comments and replies allowed by our initial notice.

[1] We addressed issues concerning operational arrangements, interconnection between Comsat and U.S. domestic and international carriers and private communications systems on April 30, 1979. *International Maritime Satellite System*, 71 FCC 2d 1069 (1979). Issues concerning earth station ownership and operation are still outstanding.

A. Background

3. In our initial notice, we indicated that regulatory safeguards with respect to Comsat's investment in INMARSAT would be necessary for two reasons. First, we stated that Comsat's participation in INMARSAT should not be permitted to adversely affect its participation in INTELSAT or furtherance of the objectives set forth in the Communications Satellite Act. Second, we stated Comsat's provision of maritime satellite services should not be cross-subsidized with other communications services it provides. We noted that Comsat's participation in INMARSAT will necessarily involve substantial investment, and that the immediate prospects for an economically viable maritime satellite system appear uncertain.[2] In view of these factors, we indicated a concern that the costs of financial commitments undertaken by Comsat, as the U.S. operating entity in INMARSAT, not be passed on to users of communications services other than maritime satellite services.

4. We therefore posed several approaches to guard against potential cross-subsidization situations: (1) Requiring Comsat to establish a separate subsidiary for maritime satellite services; (2) changing elements of Comsat's basic structure without a separate subsidiary for maritime satellite services; (3) requiring Comsat to establish a separate system of accounts for maritime satellite services; and, (4) a combination approach. We invited comments from interested parties on these approaches and on any other regulatory measures which they believe should be taken to guard against cross-subsidization. However, we indicated that we would defer imposition of specific subsidiary arrangements, structural changes, or accounting rules until we examined Comsat's overall corporate structure and activities in the Comsat Study.[3]

[2] We noted that the Economic, Marketing and Financial Panel of the INMARSAT Preparatory Committee does not expect total cumulative INMARSAT revenues to equal total cumulative INMARSAT costs until the late 1980's at the earliest. However, we expressed concern that even this projection may be optimistic, and that initial losses may not be recouped until after that date.

[3] The Comsat Study was undertaken pursuant to Section 505 of the International Maritime Satellite Telecommunications Act which directed the Commission to determine whether any changes are required in Comsat's structure or operations to ensure that the corporation is able to fulfill effectively its obligations and carry out its functions under the Communications Satellite Act of 1962 and the Communications Act of 1934. A Final Report and Order in the Comsat Study was transmitted to Congress on May 1, 1980. *Communications Satellite Corporation*, 77 F.C.C. 2d 564 (1980).

5. In our final report in the Comsat Study, we reaffirmed the observation we made in our initial notice in this proceeding that INMARSAT will suffer losses. We observed that Comsat will be faced with a substantial negative cash flow in providing INMARSAT services, and concluded that a fundamental policy question exists with respect to how Comsat's expected INMARSAT losses should be absorbed. In so concluding, we recognized that Comsat will have the incentive and perhaps the ability to cover at least a part of its INMARSAT losses by shifting as many INMARSAT-related costs to its INTELSAT rate base, a process of cross-subsidization which would be difficult to detect as long as common facilities are involved. We further recognized that such cross-subsidization could impose excessive costs on INTELSAT ratepayers. However, we decided not to recommend at that time total separation between Comsat's INTELSAT and INMARSAT functions. Instead, we deferred imposition of any structural separation between Comsat's INTELSAT and INMARSAT roles to this proceeding, in which we would consider how Comsat may treat its INMARSAT losses from a regulatory standpoint. We also stated it would be useful for Congress to also consider this problem and provide the Commission with direction or guidance as to how it should be handled. In this respect we suggested that Congress may wish to reexamine U.S. national interest in light of expected INMARSAT losses and alternatives available to treat such losses.[4]

6. This further notice is necessitated by the fact that Comsat has recently proposed to treat its INMARSAT losses in a manner that is markedly different from the position that it took in the comments it filed in response to our initial notice in this proceeding.[5] In

[4] We noted that an alternative to permitting any form of cross-subsidization would be direct government subsidy of Comsat's INMARSAT operations. On the other hand, we indicated that a more extreme form of cross-subsidy than the cross-subsidy which may be available through common cost allocations would be to permit Comsat to add all of its INMARSAT investment and expenses to its INTELSAT revenue requirements.

[5] In our initial notice, we requested Comsat to indicate: (1) The means by which Comsat intended to fund its initial INMARSAT investment; (2) how Comsat intended to treat any losses it might sustain during initial maritime satellite operations; (3) the effect any such losses (or its initial INMARSAT investment) might have on its INTELSAT obligations and provision of INTELSAT services; (4) the level of all costs, including, but not limited to, operational, administrative, equipment and hardware costs, it expected to incur in providing maritime satellite service and in participating in INMARSAT; (5) all common, joint and overhead costs it expected to incur; and (6) how such costs

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response to our initial notice, Comsat gave the clear impression that its INMARSAT losses would have no adverse impact on its INTELSAT obligations, and that cross-subsidization of its INMARSAT services with its INTELSAT services neither would be necessary nor was contemplated. As for funding of its initial INMARSAT investment, Comsat asserted that it has the "financial capability to undertake the INMARSAT program without any adverse impact on its furnishing of INTELSAT services." Comments at 21. Comsat declared a consolidated cash position of approximately $66 million and a continuing ability to generate "substantial amounts of cash which will be adequate to finance both Comsat's INTELSAT and INMARSAT activities, as well as other activities." Comments at 21. Moreover, Comsat asserted that insofar as its capitalization consisted of $373 million of equity and $1.8 million of long term debt as of December 31, 1978, the corporation "is in an excellent position to acquire additional long-term debt, if necessary," and noted that the Commission, in fact, "explicitly acknowledged this capability when it imputed 45 percent debt to Comsat in determining an appropriate rate of return in the Comsat rate proceeding." Comments at 21.

7. As for treatment of INMARSAT losses, Comsat stated that it "fully intends to keep these two (INTELSAT and INMARSAT) activities separate from one another through appropriate organizational and accounting practices." Comments at 3–4. It indicated that to the extent it incurs losses from its INMARSAT services, it will be able to separately record and isolate such losses through a separate system of accounts for its INMARSAT activities. Comments at 24. Comsat further stated that the appropriate mechanism to record such losses would be instituted once Comsat could clearly determine the magnitude of projected losses. Comments at 24. Comsat concluded that whatever the ultimate disposition of the losses, "as long as they are segregated they can have no impact on Comsat's INTELSAT obligations or its provision of INTELSAT services." Comments at 24.[6] It assured the Commission that its planned internal corporate controls and separate accounting capability would prevent the costs of INMARSAT services from being borne by other communications services. Comments at 24.

8. On July 17, 1980, Comsat submitted a letter to the Commission in which it proposed a strikingly different approach to handling anticipated INMARSAT losses than the position it took in the comments it filed in this proceeding.[7] Essentially, Comsat proposed that it be allowed to combine for rate setting purposes, the net expenses and assets of its INMARSAT activities with its INTELSAT revenue requirements. It attached an internal memorandum to its letter which contains a hypothetical analysis concluding that such a remedy would have a minimal impact on its INTELSAT business.[8] The memorandum finds several options for absorbing initial INMARSAT losses to be either infeasible or undesirable. It maintains that existing maritime satellite rates cannot be increased because, based on the MARISAT experience, "* * * the demand characteristics in this market would cause much lower utilization of the service and would retard, if not prevent, its development." The memorandum observes that a reduction in Comsat's ownership in INMARSAT to reduce losses "* * * would produce the adverse result of U.S. and Comsat having an even lower voice in the business." And, it states that "asking for a government subsidy is possible, but our strong preference is that this business should be totally supported by the private sector. But still we cannot expect our shareholders to support this venture on a stand-alone basis."

9. The memorandum contains a worldwide maritime satellite traffic forecast based on Comsat's experience in providing maritime satellite services. According to the memorandum, the financial implications of the projections contained therein show Comsat's "* * * share of the after-tax losses accumulating to over $17 million in the period 1980–1988." The memorandum states that "* * * while the first year of profitability is estimated to be 1988, it is speculative to project when thereafter, even on a year-by-year basis, INMARSAT will provide an acceptable return." It further states that "these results will be in return a gross investment by Comsat of almost $100 million," and concludes that "clearly these are not the characteristics of a venture that prudent business people with a responsibility to shareholders can willingly pursue; further action is both required and appropriate."

10. The action recommended in the memorandum is to propose to the Commission that "* * * we be allowed to include, for rate setting purposes, the net expenses and assets of INMARSAT in the revenue requirements of our INTELSAT operations, at least during the several years of start up for the new service." The memorandum states that while Comsat would organizationally separate its INTELSAT and INMARSAT lines of business, its rate of return should reflect a single jurisdictional business and the reasonableness of Comsat's earnings from INTELSAT and INMARSAT services should be viewed on an overall basis. According to the memorandum, this approach would have a "very small impact" on Comsat's INTELSAT business. The memorandum further states:

> Our best forecasts for INTELSAT circuit costs show a steady decline averaging about 8.7% over the next ten years. The effect of combining the revenue requirements is a slight decrease of about one-half percentage point in that rate of decline. Viewed another way, INTELSAT rates would average 4–5% more over the period than they otherwise would have been. Naturally, the percentage impact on costs to the end user is an order of magnitude smaller, probably less than 1% if any at all, as our costs are a shrinking fraction of the total costs of international communications.

11. Three carriers submitted responses to the Commission concerning Comsat's July 17, 1980 letter. AT&T reiterated the comments that it made in the Comsat Study that Comsat's INMARSAT activities should not be subsidized by its INTELSAT activities, or vice versa, unless a conscious decision is made by the Commission that any subsidy is in the public interest.[9] AT&T stated that it would not, in principle oppose Comsat's proposal to combine its INMARSAT and INTELSAT expenses and assets for rate setting purposes during a transition period, so long as the Commission closely monitors such a combination

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would be allocated or accounted for between corporate organizational units and the service they provide.

[6] Comsat stated that it expects INMARSAT's capital requirements "to be relatively small in the early years, particularly in view of the expectation that the initial INMARSAT space segment will be leased from other entities and the capital investment in those facilities will be made by such other entities." Comments at 22. It also stated that it expects that all of the costs it would incur by operating earth stations and participating in INMARSAT "would be offset by revenues received for furnishing maritime services," and concluded that even if losses are experienced in the early years, "neither they nor the required capital investments are likely to be of such magnitude as to have any adverse effect on Comsat's ability to meet its INTELSAT obligations." Comments at 22.

[7] Letter to Chief, Common Carrier Bureau, from William H. Berman, Vice President and General Counsel, Communications Satellite Corporation, dated July 17, 1980. That letter has been made a part of the record in this proceeding.

[8] The internal memorandum was originally provided by Comsat to the Commission's Common Carrier Bureau in connection with the Comsat Study.

[9] Letter to Chief, Common Carrier Bureau from Robert E. Boone, Jr., General Attorney, dated August 11, 1980.

"* * * with an eye toward (a) the duration of the transition period, and (b) its effect on present and future rates charged by Comsat to service carriers for INTELSAT circuits." TRT Communications Corporation opposes any Commission grant of the relief sought by Comsat in its July 17 letter. TRT points out that if Comsat is permitted to combine its INMARSAT and INTELSAT expenses and assets, the international service carriers will subsidize Comsat's INMARSAT business.[10] TRT maintains that it in effect would be helping Comsat to compete against the public coast station services that it provides through Station WNU at Slidell, Louisiana. Western Union International opposes Comsat's proposal and requests an opportunity to more fully submit comments to the Commission.[11] WUI notes its efforts along with other carriers to become involved in INMARSAT. It emphasizes that "Comsat now seeks to burden WUI and others with the risks of the new venture by burdening its INTELSAT ratepayers with the INMARSAT start-up costs."

B. Discussion

(1) Overview

12. At the outset, we note that the concern we expressed in our initial notice in this proceeding—that the cost of INMARSAT financial commitments made by Comsat not be borne by users of its other communications services—reflects well established Commission policy declaring cross-subsidization between services as generally inimical to the pbulic interest.[12] In our initial notice, we emphasized that the cost of providing a service is at the heart of the statutory requirements of sections 201 through 205 of the Communications Act for just, reasonable and nondiscriminatory rates, and that such costs are to be directly controlling in rate setting or are to be considered as the reference or benchmark from which to measure departures from this basis.[13] In addition, we noted that these views were expressed during the early stages of INMARSAT's development. In a 1976 letter to the Secretary of State concerning the formation of an international organization to provide maritime satellite services, we recommended that the United States participate in a forthcoming confernece looking toward resolution of outstanding issues and formation of general principles upon which such an organization would be based.[14] We indicated that the Commission then had under consideration in a formal proceeding the issue regarding creation of a U.S. entity to be responsible for maritime satellite services.[15] In this respect, we stated:

It is not, however, the intention of the Commission to create a U.S. entity that would undertake a financial commitment in INMARSAT under any arrangements that would require the users of services other than maritime satellite service to bear the costs of such commitments. Any such course, we believe, would require Congressional action.

13. We recognize that our general policy against cross-subsidization cannot be applied in a vacuum without regard to other public interest considerations. It is clear that costs are not the only criterion for determining the lawfulness of rates and that other factors may be weighed.[16] However, it is unclear that the circumstances before us present other factors which outweigh our general policy. Comsat's main reason for requesting permission to cross-subsidize its INMARSAT and INTELSAT services appears to be a business judgment that INMARSAT is an even less attractive investment than Comsat originally anticipated, and that the Comsat shareholders should not be expected "to support this venture on a stand-alone basis." We do not regard the fact that losses will be sustained, in and of itself, to be sufficient justification for permitting the cross-subsidization that Comsat seeks. The drastic departure from traditional Commission policy sought by Comsat requires clear public interest justification. Comsat's July 17 letter to the Commission fails to provide such justification.

14. It appears that the only factors which may provide such justification involve the U.S. commitment to the commercial and operational success of INMARSAT and the national interest and foreign policy implications that flow from this commitment. However, as we will discuss, we question whether there is sufficient connection between Comsat's projects INMARSAT losses and U.S. foreign policy objectives to warrant cross-subsidization between Comsat's INMARSAT and INTELSAT services.

(2) The National Interest and Foreign Policy Basis for U.S. Participation in INMARSAT

15. In a joint letter to the Chief, Common Carrier Bureau, the

[10] Letter to Chief, Common Carrier Bureau, from Lloyd D. Young, Regulatory Counsel, dated July 30, 1980.

[11] Letter to Chief, Common Carrier Bureau from Robert E. Conn, Executive Vice President, Western Union International, dated July 21, 1980.

[12] AT&T Private Line Cases, 61 FCC 2d 587, 600 (1976).

[13] *See* Private Line Rate Cases, 34 F.C.C. 244 (1981); 34 F.C.C. 217, 231 (1982); In Re WATS, 35 V.C.C. 148, 153–56 (1963); In Re WATS, 37 F.C.C. 888 (1964); In Re Part 61 of the Rules, 25 F.C.C. 2d 957, 965 (1970), 40 F.C.C. 2d 148, 154 (1973); In Re 48 kHz, 29 F.C.C. 2d 493 (1971); Hi-Lo, 58 F.C.C. 2d 224, 241 (1975), 58 F.C.C. 2d 362, 368 (1976); In Re WATS, 59 F.C.C. 2d 671, 678 (1976); 64 F.C.C. 2d 538 (1977); AT&T Private Line Rate Cases, 61 F.C.C. 2d 587, 607 (1976); 64 F.C.C. 2d 971 (1977).

[14] The conference was the second among three intergovernmental conferences convened regarding international maritime satellite communications services. In 1972, the Intergovernmental Maritime Consultative Organization (IMCO) established a panel of representatives from over 20 countries, including the United States, to study the feasibility of creating an international maritime satellite system. The panel included U.S. Government, common carrier, and maritime industry representatives. It completed its study in 1974 and issued a report that (1) examined operational requirements and technical parameters for a maritime satellite system; (2) provided an economic assessment for such a system; and (3) included a draft agreement that would create an international organization to operate the system. IMCO thereafter convened in Intergovernmental Conference in 1975 to consider the establishment of an international maritime satellite organization. U.S. participation in the Conference again was through U.S. Government, common carrier, and maritime industry representatives. After three sessions, the Conference adopted and opened for signature in 1976 two separate agreements providing for the establishment of INMARSAT—a Convention to be signed by governments and an Operating Agreement to be signed by either the governments or their designated operating entities. These instruments set forth the legal and financial requirements for participation in INMARSAT and the institutional basis upon which the organization operates.

[15] We released a Notice of Inquiry on December 5, 1974, seeking comments from interested parties on a number of issues relating to the establishment of an international maritime satellite system. *International Maritime Satellite System*, 50 F.C.C. 2d 660 (1974). We considered the comments filed in adopting recommendations to the Department of State for the first session of the Intergovernmental Conference convened in 1975 to consider an international organization to establish a martime sattlite system. We invited further comments regarding the designation of a private communications entity to be the U.S. participant and investor in any such organization. *International Maritime Satellite System*, 55 F.C.C. 2d 67 (1975). Subsequently, however, we terminated this proceeding in view of enactment of the International Maritime Satellite Telecommunications Act designating Comsat as the U.S. representative in INMARSAT. *International Maritime Satellite System*, 70 F.C.C. 2d 1985 (1979).

[16] *See* Private Line Rate cases, 34 F.C.C. 2d at 217, 231 and 287; In Re WATS, 59 F.C.C. 2d at 671, 678. *See also*, AT&T Private Line Rate Cases, 61 FCC 2d 587, 589 (1976), in which we stated:

Our prior policy supports the position that actual costs of providing service underlie the statutory requirement that rates be just, reasonable, and nondiscriminatory, albeit this does not mean that costs are the *only* criterion useful in determining whether rates are lawful under the Act. Further, we conclude that the public interest is not generally served by interservice cross-subsidization, but recognize that statutory and social policies may lend sanction to some intraservice subsidies. Finally, we make findings regarding proper cost standards, measures of cross-subsidization, and acceptable departures from cost of service as a criterion of the justness and reasonableness of return levels and relationships (emphasis in original).

Department of State and the National Telecommunications and Information Administration (NTIA) emphasize the U.S. commitment to the commercial and operational success of INMARSAT, and call for expeditious Commission determination of proper treatment of Comsat's INMARSAT investment costs "* * * in view of foreign policy considerations * * *" [17] They state that:

> The United States was instrumental in bringing INMARSAT into being and is now, through COMSAT, the largest investor in the Organization. United States policy, as clearly stated in the International Maritime Satellite Telecommunications Act supports participation in INMARSAT in order to serve the maritime commercial and safety needs of the United States. Any international uncertainty about our commitment to the commercial and operational success of INMARSAT could have an unfortunate impact upon our influence in the Organization. An early Commission determination as to the appropriate treatment of COMSAT's start-up costs would be helpful in dispelling such uncertainty. Additionally, our record of leadership in INTELSAT prompts us to favor a climate within INMARSAT which enables U.S. spokesmen to play a similarly constructive role in the further development of a global maritime satellite capability generally, and on behalf of U.S. interests more particularly.

The two agencies take no position on what the appropriate regulatory treatment should be concerning Comsat's anticipated INMARSAT losses. However, they note that:

> * * * the Commission has several tools available which it can—and should—use to assure that the overall public interest is served. For example, if the Commission determines that COMSAT should be permitted to combine the expenses and assets of its INMARSAT revenue requirements with its INTELSAT revenue requirements, it should set firm limitations of duration, amount, etc. These limitations would not only have the effect of protecting the INTELSAT ratepayer, but would also act as an incentive for COMSAT to assure commercially sound and efficient INMARSAT operations. The Commission should also consider the extent to which such combination affects COMSAT's ability to pass on reductions in INTELSAT charges. It is particularly important that COMSTAT's charges not deter utilization of INTELSAT capacity or the introduction of new INTELSAT services.

16. We note that the views expressed above by NTIA and State are consistent with their position during Congressional hearings considering INMARSAT legislation. In those hearings the two agencies stressed the importance of national interest and foreign policy concerns in connection with U.S. participation in INMARSAT. [18] The Department of State maintained that U.S. participation in an international joint undertaking for the provision of maritime satellite communications service would be in the public interest. [19] The State Department indicated a concern that the failure of the U.S. to participate in INMARSAT could cause duplicative efforts by other countries in deploying maritme communications satellites which would result in a needlessly wasteful use of available radio spectrum and limited orbital locations. [20] It concluded that * * * a responsible approach dictates U.S. support for a joint and unified enterprise to avoid duplicative requirements and the squandering of scarce resources." [21] With respect to foreign policy concerns, the State Department concluded that:

> * * * a decision not to permit participation in INMARSAT, following our failure to implement after a lengthy period of negotiation and the signature of a memorandum of understanding, the joint program of experimentation and evaluation using an aeronautical satellite Capability with European and Canada, would lend credence to the argument that the U.S. is really not interested in cooperative international efforts to exploit space for peaceful purposes. [22]

17. In supporting legislation to provide for U.S. participation in INMARSAT, NTIA indicated that the executive branch "* * * strongly believes that the INMARSAT organization should come into existence." [23] It further stated that the failure of the U.S. to participate in INMARSAT

> * * * would not sit well with the international community, having urged so strongly INMARSAT on the conditions we set forth, and having gotten those conditions after a big fight, to turn around and not go forward. It would not put us in the best position in the international community.

18. National interest and foreign policy factors accordingly were considered in the U.S. decision to participate in INMARSAT. In enacting the International Maritime Satellite Telecommunications Act, Congress recognized the lengthy negotiations in which the U.S. actively participated looking toward the creation of INMARSAT. [24] The Senate Committee on Commerce, Science and Transportation stated:

> Although Congress did not decide prior to the negotiations that it is in the national interest to participate in INMARSAT, as it did with the establishment of INTELSAT, it is apparent to the committee that if the United States is to have any credibility in future international telecommunications negotiations, the Congress must authorize the U.S. participation in INMARSAT and designate a representative to sign the operating agreement. S. Rep. No. 95–1036, 95th Cong., 2d Sess. 5 (1978).

The Senate Committee further cited the statement of the Assistant Secretary of Commerce that the failure of the U.S. to participate in INMARSAT "would not sit well with the international community." S. Rep. No. 95–1036 at 5.

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[17] Letter to Chief, Common Carrier Bureau, from the Assistant Secretary of Commerce for Communications and Information, and the Assistant Secretary of State for Transportation and Telecommunications, dated October 16, 1980.

[18] Commission testimony did not address national interest of foreign policy considerations with respect to U.S. participation in INMARSAT. Commission testimony reviewed the involvement of Commission staff members, under the aegis of the Department of State, in international discussions and negotiations leading up to U.S. initialling of the INMARSAT Convention. In addition, it indicated that the Commission had further assisted the Department of State by outlining its views concerning institutional arrangements which might be adopted for INMARSAT. Commission testimony focused on institutional, operational and regulatory issues concerning the type of entity to be the U.S. representative should the U.S. participate in INMARSAT. In doing so, the testimony emphasized that the Commission had neither conducted a formal inquiry nor reached a formal conclusion as to whether the U.S. should participate in INMARSAT. *See* Statement of Charles D. Ferris, Chairman, Federal Communications Commission, before Subcommittee on Communications, Senate Committee on Commerce, Science and Transportation, May 8, 1978 (Serial No. 95–99), pp. 27–42; Statement of Walter R. Hinchman, Chief, Common Carrier Bureau, Federal Communications Commission, before the Subcommittee on Communications, House Interstate and Foreign Commerce Committee, April 4, 1978 (Serial No. 95–101), pp. 78–85

[19] *See* Statement of Joel W. Billar, Deputy Assistant Secretary of State for Commercial Telecommunications Affairs, before Subcommittee on Communications, House Interstate and Foreign Commerce Committee, April 4, 1978 (Serial No. 95–101), p. 19

[20] The State Department was concerned that the failure of the U.S. to participate in a joint international undertaking would pressure European interests to deploy European developed MAROTS satellites operationally. Such an effort would be duplicative of the existing U.S. MARISAT system and any follow-on MARISAT system that may be deployed by U.S. carriers.

[21] Statement of Joel W. Billar, p. 19.

[22] *Id.* p. 20. The State Department further concluded: In view of the fact that good communications are essential for the efficient operation of world shipping and for the safety and welfare of those at sea, and taking into account the difficulty in recent years of maintaining an adequate standard of ship-to-shore communications service using existing techniques, the State Department supports new legislation which would establish a legal basis for the U.S. Government to become a Party to the INMARSAT Convention, and designate, subject to appropriate Executive Branch oversight, an entity to be the United States Signatory to the INMARSAT Operating Agreement.

[23] *See* Statement of Henry Geller, Assistant Secretary-designate, Telecommunications and Information, Department of Commerce, before Subcommittee on Communications, Senate Committee on Commerce, Science and Transportation, May 8, 1978 (Serial No. 95–99) p. 67.

[24] See footnote 14, above.

The House Committee on Interstate and Foreign Commerce took a similar view:

> It is the view of this committee that a decision not to participate in INMARSAT, following the failure of the United States to arrive at a satisfactory plan with Europe and Canada for the growth of undersea cables and satellite facilities, would lend credence to the argument that the United States is not interested in cooperative international efforts to promote telecommunications technologies for peaceful purposes. H.R. Rep. No. 95–1134, Part 1, 95th Cong., 2d Sess. 9 (1978).

(3) General Considerations

19. In view of the national interest and foreign policy considerations underlying the declared policy objective of the International Maritime Satellite Telecommunications Act to provide for U.S. participation in INMARSAT, and the expressed concerns of the Department of State and NTIA that there be no international uncertainty regarding the U.S. commitment to the commercial and operational success of the organization, we will expeditiously consider Comsat's proposed treatment of its anticipated INMARSAT losses. However, at the outset, we question whether the form of cross-subsidization that Comsat seeks would be consistent with the spirit, if not the intent, of the International Maritime Satellite Telecommunications Act. The Act provides for U.S. participation in INMARSAT through a private entity that operates for profit and is not an agency of the Federal Government.[25] As the U.S. designated entity in INMARSAT, Comsat is solely responsible for meeting all financial obligations resulting from its participation in INMARSAT.[26] Section 503(d) of the Act states:

> The corporation shall be responsible for fulfilling any financial obligation placed upon the corporation as a signatory to the operating agreement or other pertinent instruments, and any other financial obligation which may be placed upon the corporation as the result of a convention or other instrument establishing INMARSAT. The corporation shall be the sole United States representative in the managing body of INMARSAT.

The legislative history of the Act clearly shows that "this section relieves the U.S. Government from any financial responsibility to Comsat for its participation in INMARSAT or in a similar system."[27] In addition, the legislative history indicates a Congressional intent that Comsat's INTELSAT obligations not be adversely affected by its participation in INMARSAT. In recommending enactment of the Act, Congressman Murphy of the House Committee on Merchant Marine and Fisheries stated:

> This bill does not require an authorization of appropriated funds. *Moreover, the policies in this bill do not impact INTELSAT or its relationship with U.S. carriers.* (emphasis added) Cong. Rec. H. 12731, October 12, 1978.

Finally, the Act's requirement that the Commission conduct the Comsat study, in part, was borne out of a general Congressional concern for Comsat's continued ability to fulfill effectively its obligations and carry out its functions under the 1962 Satellite Act and the 1934 Communications Act, in view of the additional responsibilities being placed on it as the designated U.S. operating entity in INMARSAT.[28]

20. In light of a legislative history which illustrates Congress' clear intent that Comsat be solely responsible for all financial obligations flowing from INMARSAT, we believe a serious question exists as to whether Comsat's proposal to cross-subsidize its INMARSAT services is consistent with the provisions of the International Maritime Satellite Telecommunications Act. Even assuming that Comsat's proposal is consistent with the Act, however, we believe that Comsat must clearly connect the fact that it will suffer initial start-up losses with overriding public interest factors that justify departure from our traditional policy disfavoring cross subsidies.

21. We recognize that high start-up cost and relatively low traffic volume will prohibit Comsat from initially setting INMARSAT rates based on cost. We further recognize that the U.S. policy commitment to INMARSAT's commercial and operational success as expressed in the International Maritime Satellite Telecommunications Act necessarily limits Comsat to providing maritime satellite services only through INMARSAT. Nevertheless, it is clear that Comsat accepted the risk of loss, along with the opportunity for profit when it voluntarily undertook the responsibilities and embraced the monopoly privileges associated with becoming the sole U.S. participant in INMARSAT. In this connection, Comsat actively sought to be the U.S. designated entity in INMARSAT to the exclusion of other U.S. carriers seeking the same status.[29] Comsat opposed an alternative in which it would be part of a consortium of U.S. carriers acting as the U.S. designated entity in INMARSAT, even though it recognized that initial losses would be incurred. Moreover, subsequent to being designated the U.S. operating entity in INMARSAT, Comsat attempted to increase its initial investment share in INMARSAT from the 17 percent originally provided for by the INMARSAT Operating Agreement to a 30 percent share. In seeking to increase its investment share, Comsat asserted that a 30 percent share would better approximate its initial projected use of the INMARSAT system. Comsat ultimately had to settle for a 23.5 percent share because of similar efforts by other INMARSAT Signatories.

22. Given the business decisions exercised by Comsat's management in seeking involvement in INMARSAT, we question whether we now should require Comsat's INTELSAT ratepayers to bear the initial losses associated with Comsat's INMARSAT activities. The crucial issue before us is not whether Comsat should be permitted to cross-subsidize its INMARSAT service out of its INTELSAT service revenues simply because of the start-up losses that it anticipates from participation in INMARSAT. The legislative history of the International Maritime Satellite Telecommunications Act demonstrates that the prospect of early losses was foreseen. Rather, the crucial issue is whether there are public interest factors relating to foreign policy concern which are sufficient to override this Commission's general policy that cross-subsidization between services is inimical to the public interest. In our view, resolution of that issue turns largely on whether Comsat's anticipated start-up losses will be so great as to

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[25] Section 502(b) of the Act states: It is the purpose of this title to provide that the participation of the United States in INMARSAT shall be through the Communications Satellite Corporation, which constitutes a private entity operating for profit, and which is not an agency or establishment of the Federal Government.

[26] *See* S. Rep. No. 95–1096, 95th Cong., 2d Sess. 20 (1978); H.R. Rep. No. 95–1134, Part I, 95th Cong., 2d Sess. 13 (1978); H.R. Rep. No. 95–1134, Part II, 95th Cong., 2d Sess. 12 (1978).

[27] *See* H.R. Rep. No. 95–1134, Part II, at 12. See also, the comments of Congressman Devine on H.R. 11209 which state in part:

> This legislation is necessary to enable the United States to participate in INMARSAT through the designation of Comsat as its operating entity. *While Comsat must contribute roughly $34 million, there will be no taxpayer dollars involved in the program.*

Comsat was chosen as the designated entity for many reasons, including its expertise in satellite endeavors, the necessity to have a designated entity in existence as soon as possible, and the lack of an economic justification for the creation of a new corporation for this limited purpose. (emphasis added) Cong. Rec. 3886, May 15, 1978.

[28] *See* S. Rep. No. 95–1096 at 15–16. *See also Communications Satellite Corporation*, 77 FCC 2d at 575.

[29] *See* Statement of Dr. Joseph V. Charyk, President, Communications Satellite Corporation, before the Subcommittee on Communications, House Interstate and Foreign Commerce Committee, April 4, 1978 (Serial No. 95–101), pp. 58–63; *See also* Statement of Dr. Charyk before the Subcommittee on Communications, Senate Committee on Commerce, Science, and Transportation, May 8, 1978 (Serial No. 95–99), pp. 109–127.

jeopardize its ability to participate in INMARSAT and, as a result, threaten the U.S. foreign policy commitment to INMARSAT's commercial and operational success. In this connection we do not have a clear statement from Comsat that it will seek to withdraw from INMARSAT if it is denied the remedy that it seeks. Nor do we have a clear statement from the State Department and NTIA of the national interest and foreign policy implications of a denial of Comsat's proposal. Such a statement from these agencies would be helpful in our consideration of the issues that Comsat's proposal raises.

23. If Comsat's start-up losses will be of such severity as to threaten U.S. national interests and foreign policy objectives, Congressional action addressing this problem could be an alternative to permitting Comsat to pass its INMARSAT investment losses on to its INTELSAT ratepayers. As we noted in the Comsat Study, one form of Congressional action could involve reconsideration of whether U.S. participation in INMARSAT should receive direct taxpayer subsidization. *Communications Satellite Corporation*, 77 FCC 2d at 668. From the perspective of economic efficiency and of the other values found in Section 1 of the Communications Act, direct payments from general tax revenues might be preferred to an internal subsidy arrangement of the sort proposed by Comsat. However, Congressional action may take other forms. For instance, Congress could amend the Act to designate a new U.S. Signatory to INMARSAT in the form of a consortium of carriers. This option would provide a risk-sharing solution to initial start-up losses. Also, Congress could revisit the Act and conduct a broad review of continued U.S. participation in INMARSAT as we suggested in the Comsat Study. 77 FCC 2d at 66. There, we indicated that such a review could consider the requirement for an independent maritime communications system, the identification of the most efficient means of providing maritime services and the determination of the most appropriate means for subsidizing this service. Finally, Congress might also reconsider whether a maritime satellite system, which will service a somewhat specialized consumer group, can best be provided through the private marketplace.

24. From a regulatory standpoint, Comsat's proposal to include its net INMARSAT assets and expenses with its INTELSAT operations for rate setting purposes also raises a number of other issues which we believe must be considered in the context of this proceeding. Moreover, in view of the opposition to the proposal already expressed by WUI and TRT, we believe that these carriers and other interested parties should have an opportunity to comment on it and to pose any alternative approaches that would assure U.S. commitment to INMARSAT's commercial and operational success. As we have noted, Comsat's proposal may affect U.S. international service carriers and their customers because it would essentially result in passing along INMARSAT investment costs to them. Since some of these carriers are the licensees of public coast radio stations that will compete with Comsat's INMARSAT services, we believe that they and other interested parties should be given an opportunity to comment on the effect the proposal will have on the overall competitive structure for maritime communications.

25. In addition, there may be regulatory approaches to dealing with Comsat's anticipated INMARSAT start-up losses other than Comsat's proposal. One approach could take the form of intertemporal subsidization. Under this approach, Comsat would be permitted to include within its INMARSAT rate base those expenses in excess of revenues occurring in the formative years of INMARSAT operations. Comsat's shareholders would continue to bear the risk of corporate participation in INMARSAT. However, Comsat could expand its INMARSAT rate base by the amount of its unrecovered expenses during the unprofitable INMARSAT start-up period. Thus, while Comsat's INMARSAT business would not have generated sufficient revenues to attain any net return on investment during the start-up period, the rate base would reflect in its return allowance the Corporation's risk-related expenses over that period. In this manner, Comsat ultimately could recover these expenses when and if it began to realize a net return on its INMARSAT investment.[30]

[30] We emphasize these unrecovered expenses would not include "revenue deficiencies"; *i.e.*, lost profits representing the amount by which total INMARSAT revenues may fall short of total INMARSAT revenue requirements for each year in which Comsat fails to earn its allowed return on its INMARSAT investment. We specifically denied Comsat's request to include alleged "revenue deficiencies" in its INTELSAT rate base in the Comsat Rate Case, *Communications Satellite Corporation*, 56 FCC 2d 1101, at 1129–1132 (1975), *aff'd. sub.nom. Communications Satellite Corporation* v. *FCC*, 611 F. 2d 883, 892–894 (1977). Moreover, the Supreme Court has consistently denied the requests of regulated companies to include "revenue deficiencies" in their rate bases on the principal ground that to do so would unfairly privilege ratepayers of previous years at the expense of ratepayers of future years. *See FPC* v. *Tennessee Gas Transmission Co.*, 371 U.S. 145, 152 83 S. Ct. 211, 9L.Ed. 2d 189 (1962); *FPC v. Natural Gas Pipeline Co.*, 315 U.S. 575, 590, 62 S. Ct. 736, 745, 86 L.Ed. 1037 (1942); *Galveston Electric Co.* v. *Galveston*, 258 U.S. 388, 395, 42 S. Ct. 351, 354, 66 L.Ed. 676 (1922).

26. Another approach would be to defer any action on the treatment of Comsat's anticipated start-up losses until some time after the INMARSAT system becomes operational. This approach would provide an incentive for Comsat, the sole U.S. representative and largest investor in INMARSAT, to exercise its influence within the organization in the pursuit of cost-effective options in the areas of INMARSAT operations, capital expenditures and the procurement of the second generation INMARSAT space segment. We note that Comsat has not indicated any change in the outlook for its consolidated cash position of approximately $66 million which is "projected to increase in the future", according to its initial comments to this proceeding. Comments at 21. Nor has Comsat indicated any change of position which would decrease its ability to acquire additional long-term debt to cover its INMARSAT start-up losses. On the basis of the information Comsat has provided to us, the adoption of this alternative for a period of limited duration would not appear to seriously undermine the financial position of the Corporation. *See* para. 6, above.

(4) Specific issues raised.

27. *Treatment of losses.* In commenting on Comsat's proposal, we urge interested parties to address four issues. The first issue involves the preferred means of handling the anticipated INMARSAT losses. This issue subsumes the basic question of who should bear the financial obligation for U.S. involvement in INMARSAT. In this connection, we must be cognizant of the fact that, in our free enterprise system, firms have the right to invest capital and to face the normal risks associated with their investment decisions. While this fact is tempered in regulated industries in which firms have common carrier obligations, such firms still assume responsibility for their investment decisions.

28. In Comsat's case, we face a potential conflict between theoretical and practical considerations. We have noted the legislative history which places responsibility on Comsat for any financial obligations that it incurs as the U.S. Signatory. We have also recounted Comsat's eagerness to be the sole U.S. participant in INMARSAT and its push to acquire a greater ownership share in this enterprise. Moreover, it is clear that

the common carrier obligations that Comsat has undertaken as the single U.S. representative in INTELSAT and INMARSAT are not without associated benefits and rewards. As the U.S. representative in INTELSAT, Comsat is sheltered from competition in the provision of INTELSAT services to and from the United States. As the U.S. representative in INMARSAT, Comsat will be similarly sheltered in the provision of INMARSAT services. It is also important to note that, like other common carriers under our jurisdiction, Comsat is allowed a rate of return which includes a risk factor. That is, Comsat's prescribed rate of return for INTELSAT services includes an explicit allowance to compensate for the risks it normally assumes in its business decisions.[31] Comsat similarly will be allowed a rate of return for its INMARSAT services that includes a risk factor. And, part of the risk that Comsat knowingly assumed in joining INMARSAT was the risk of incurring start-up losses, as projected by both its own forecasts and INMARSAT's forecasts. In view of these factors, we expect Comsat to fulfill the obligations it undertook in joining the INMARSAT system. However, we recognize that, if Comsat's current forecasts for INMARSAT losses are correct, it is likely to behave as we would expect any normal business to behave, and attempt to minimize its losses. Such behavior could take the form of unenthusiastic support for necessary capital expenditures by INMARSAT or the commitment of corporate resources to the development of the market for maritime satellite communications. We are concerned that the national interest and foreign policy considerations underlying the declared policy objective of the International Maritime Satellite Telecommunications Act may not be effectively fulfilled if Comsat behaves in this manner.

29. Therefore, we request public comment on whether action by the Commission is necessary to assure that the U.S. commitment to INMARSAT's operational and commercial success is fulfilled. We request those parties supporting some form of Commission action to comment on regulatory solutions such as those that we described in paragraphs 25 and 26 above, as well as the cross-subsidization scheme proposed by Comsat. We request all parties to comment on whether we should deny Comsat a regulatory remedy and direct it to seek Congressional relief.

30. *Effects on rates.* The second issue involves what effect combining INMARSAT expenses and assets with INTELSAT revenue requirements may have on the rates Comsat charges for its INTELSAT services. One of our major concerns in considering either Comsat's proposal or any other regulatory approach to treating anticipated INMARSAT losses will be its potential effect on users of INTELSAT services. We will carefully weigh any public interest benefits to be gained from a regulatory solution to INMARSAT losses against any adverse impact or disadvantage to consumers.

31. For purposes of our consideration of this issue, we urge interested parties to note the differences between Comsat's traffic and revenue projections and those of INMARSAT. The traffic and revenue projections made by Comsat in its July 17, 1980 letter to the Commission are based on its experience in providing four years of commercial maritime satellite services under the MARISAT developmental program.[32] The Comsat projections are significantly more conservative than the only other available comprehensive forecast of maritime satellite traffic and revenue—the July 1978 report of the INMARSAT Preparatory Committee's Economic, Financial and Marketing Panel.[33] The INMARSAT Prepcom Panel projected that cumulative INMARSAT revenues will equal total cumulative INMARSAT costs sometime in the late 1980's. As we concluded in our initial notice in this proceeding, however, INMARSAT's projection may be optimistic in view of certain assumptions made by the Panel in arriving at traffic and revenue forecasts. The revenue forecasts upon which the Panel's breakeven projection is predicated were developed from traffic forecasts based on a number of critical assumptions made because of (1) a lack of meaningful historical information on maritime satellite usage, and (2) the failure of countries representing an estimated fifty percent of the world's vessels to report any traffic estimates of future maritime satellite usage by their vessels. Although Comsat recently submitted its current traffic and revenue projections to INMARSAT and urged acceptance of these forecasts as the basis of operational and financial planning, INMARSAT apparently has decided to continue to rely on the 1978 report of the INMARSAT Prepcom Panel, with certain adjustments.[34] We note that these adjustments do not cure the basic problems that we have with the assumptions made by the Prepcom in arriving at its 1978 projections.[35]

32. In its July 17 letter to the Commission, Comsat projects higher initial market estimates than the INMARSAT Prepcom Panel due to an unexpected demand by unique customers (i.e., oil rigs and construction barges); however, it believes that the long term market for maritime satellite services is with "more traditional customers" (i.e., oil tankers, cargo ships).[36] Comsat forecasts a slower ship station terminal placement rate than the INMARSAT Prepcom Panel due to the "current and projected costs of terminals," although it envisions a higher utilization rate per ship or terminal. Comsat concludes that these factors combine to produce the summary difference between its projections and those of the INMARSAT Prepcom Panel—"a significantly slower, long term growth rate for the development of the maritime satellite communications market." We request Comsat to summarize in its comments the methodology it used to arrive at its projections. In particular, we request Comsat to identify and explain any judgments on the characteristics of the maritime satellite communications

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[31] In the 1978 Settlement Agreement in the Comsat Rate Case, Comsat's overall allowed rate of return was set at 12.48%. *See Communications Satellite Corporation*, 68 FCC 2d 941, 950 (1978). Of that 12.48%, 7.48% represents the yield on long-term U.S. government bonds conditioned upon imputation of dept equal to 45% of Comsat's INTELSAT rate base for the six year period which began on January 1, 1978; 4.0% represents a "risk premium", as derived from our assessment of the evidence on Comsat's corporate risk characteristics in the Comsat to Rate Case; and 1.0% represents an incentive to Comsat improve its overall earnings through operating and internal efficiencies. *See Communications Satellite Corporation*, 58 FCC 2d 1101, 1170–1174 (1975).

[32] *See* Attachment 1 of the inter-office memorandum enclosed with Comsat's July 17, 1980 letter.

[33] *See* Report of the Fourth Session of the Economic, Marketing and Financial Panel, Prepcom/Econ/Report 4, July 7, 1978, submitted to the INMARSAT Preparatory Committee, July 13, 1978.

[34] Comsat submitted its projections in April of this year to the INMARSAT Advisory Committee on Finance and Market Planning. *See* Report of the Second Session of the Advisory Committee on Finance and Market Planning Council/4/11, ACFMP/2, April 17, 1980.

[35] For instance, in its report to the INMARSAT Council, the Advisory Committee continued reliance on the Prepcom Panel's 1978 ship terminal forecast rather than Comsat's more recent projections. The Advisory Committee noted that Comsat's forecasts and those of the Prepcom Panel are consistent for the period 1979 to mid-1983, but significantly diverge beyond that period. The Advisory Committee decided that Comsat's forecasts "* * * might not be sufficiently comprehensive and that all Signatories might jointly be in a better position to estimate, at the appropriate time, ship terminal fitting rates." However, in stating this reason for continuing reliance on the Prepcom Panel's 1978 ship terminal forecast, the Advisory Committee ignored the fact that the Prepcom Panel's forecast was partly based on critical assumptions made because of the failure of countries representing fifty percent of the world's vessels to report ship terminal or traffic estimates.

[36] *See* Attachment 1 of the inter-office memorandum enclosed with Comsat's July 17, 1980 letter.

market which provide a basis for its projections. We invite interested parties to comment on the viability of Comsat's projections and to submit any different traffic and revenue forecasts which they believe will more accurately reflect the future of the market. Comsat's projections are contained in its application (CSS–81–001–P) for authority to participate in INMARSAT's first generation satellite system, filed on November 5, 1980.

33. As for the projections Comsat makes on the effects of combining INMARSAT expenses and revenues with its INTELSAT revenue requirements, we note at the outset that Comsat's July 17 letter does not contain sufficient information to evaluate these projections. More troublesome, however, is the fact that Comsat has provided at least three different projections of the initial losses that it anticipates as a result of its involvement in INMARSAT.[37] In addition to the INMARSAT expense and revenue projections Comsat submitted to us its July 17 letter, on September 12, 1980, Comsat provided the State Department with a written analysis of the cost implications of implementing the Baseline Operational Plan for INMARSAT's first space segment facilities.[38] This analysis contains somewhat different projections of initial INMARSAT losses than those submitted on July 17. Moreover, the revenue projections for the Baseline Operational Plan, recommended to the INMARSAT Council by the Director General and AGTOM, submitted by Comsat in its November 5 application, vary from those submitted both on July 17 and September 12.

34. Whereas Comsat stated in its July 17 letter that the first year of profitability ($1 million after taxes) for its INMARSAT line of business may be 1988, it indicates in its September 12 letter to the State Department that pre-tax profits of $1.7 million may be realized in 1987. By contrast, Comsat indicated 1987 pre-tax profits of $1.1 million in its application CSS–81–001–P. In addition, whereas Comsat stated in its July 17 letter that it would incur after tax losses of $17 for the 1980–1988 period, Comsat (1) states in the body of its letter to the State Department that it will incur pre-tax losses of $33.8 million "for the first seven years of INMARSAT operations (1980–1988)" [39] and (2) indicates in its application pre-tax losses of $42.6 for the 1979–1988 period.[40] We note that Comsat's Attachment III, Table III–2 of its September 12 letter indicates that Comsat's pre-tax loss projection is for the 1979–1988 period rather than the 1982–1988 period. Table III–2 projects Comsat's pre-tax loss during the first seven years of INMARSAT operations as $29.0 million. According to the table, this translates into an after-tax loss of $14.5 million for this seven year period, a $16.7 after-tax loss for the 1980–1988 period that Comsat used in its July 17 letter to the Commission, and a $16.9 after-tax loss for the 1979–1988 period that Comsat used in the application it ultimately filed with the Commission.

35. We recognize that these discrepancies may be inconsequential for purposes of analysis. However, we believe that Comsat should state with specificity what information was considered and what assumptions it made in preparing its analysis to the State Department and its formal application that were not considered in preparing the analysis contained in its July 17 letter to the Commission. In particular, we request Comsat to explain the nature of the $4.8 million in operations losses that it attributed to the 1979–1981 timeframe in its September 12 letter.[41] We also request Comsat to amend its July 17 forecast of the impact combined INTELSAT and INMARSAT rate bases will have on Comsat's rates for INTELSAT circuits in view of the profit/loss analyses Comsat provided to the State Department and in its application.[42] In submitting this amended forecast, we expect Comsat to explain its methodology and provide all necessary background information or identify references to such information which the Commission may already have in its possession. This information will permit both the Commission and interested parties to assess Comsat's forecast with respect to the effects of its proposal to combine INMARSAT expenses and assets with INTELSAT revenue requirements.

36. *Restrictions on cross-subsidizations.* The third issue concerns what restrictions, if any, should be placed on Comsat if it is to be permitted to combine its INMARSAT expenses and assets with its INTELSAT revenue requirement. We agree with NTIA and AT&T that Comsat's INMARSAT business should ultimately stand on its own. Comsat may not have the incentive to work toward this end if it is permitted to cross-subsidize for an unlimited period. We therefore believe that, should Comsat be permitted to cross-subsidize, it should only be allowed to do so for a pre-determined transition period. Our initial determination of the duration of that transition period could be reviewed as may be necessary to reflect changing conditions. This would provide us with the opportunity to compare changing INMARSAT traffic and revenue projections to capital outlays and expenses.

37. The transition period should be of sufficient duration to provide Comsat both the incentive and a reasonable opportunity to develop the maritime satellite communications market. As it draws to a close, we would review the results of Comsat's efforts in developing this market and determine whether continued combination of INMARSAT expenses and assets with the INTELSAT revenue requirement is necessary and in the public interest. In making this determination, we would consider the effect of continued cross-subsidization on Comsat's charges for INTELSAT circuits, as well as the prospects for Comsat's INMARSAT business to exist on a stand-alone basis.

38. Two factors must be considered in determining the initial transition period. First, the period should permit development of more complete historical information on maritime satellite traffic and revenue growth than now exists. We note that the current shipboard terminal projections of INMARSAT and Comsat generally conform through 1982, but begin to significantly diverge

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[37] In its application CSS–81–001–P, Comsat submits both an Income Statement for the INMARSAT "Baseline Operational Plan" and an Income Statement for a "Baseline Operational Plan with Options" (Attachment 9). The Baseline Operational Plan is that which was recommended to the INMARSAT Council by the Director General of INMARSAT and by the INMARSAT Advisory Committee on Technical and Operational Matters (ACTOM). In Comsat's view, this Plan represents "an operationally sound approach to the implementation of space segment by INMARSAT." *See* FCC File No. CSS–81–001–P at 24. The Baseline Operational Plan with Options represents Comsat's gross INMARSAT operating losses through 1988 should INMARSAT exercise options for (1) a fourth and fifth MCS, (2) a third MARISAT–A, (3) one year of MARISAT–B service, (4) extension of the basic MAREC'S service to seven years with a deferred payment option, and (5) retention of the MARECS–B (POR–IOR) flexibility option. *See* FCC File No. CSS–81–001–P at 23–24. However, for the purposes of this discussion, we shall compare only the recommended Baseline Operational Plan projections to those which Comsat submitted in its July 17 letter and its September 12, 1980 letter, *infra*, n. 40.

[38] Letter from John L. MuLucas, Executive Vice President International Communications and Technical Services, Communichtions Satellite Corporation, to Mr. B. Boyd Hight, Deputy Assistant Secretary for Transportation and Telecommunications, Department of State, September 12, 1981 [sic]. We will make this letter part of the record in this proceeding.

[39] *Id.*, p. 2.

[40] PCC File No. CSS–81–001–P, Attachment 8.

[41] In its application, Comsat's attributes $6.0 million in operations losses to the 1979–1981 timeframe.

[42] Neither Comsat's letter to the State Department nor its application contains such forecasts.

thereafter. Since shipboard terminal growth is a major factor in projecting maritime satellite traffic and revenue growth, the initial transition period should be of sufficient length to establish a more definitive growth trend for shipboard terminal installation and its resulting impact on traffic and revenue growth.

39. Second, the initial period should encompass INMARSAT planning for a second generation INMARSAT system and thus permit the Commission to consider the magnitude of future capital outlays and expenses that Comsat will make in connection with its INMARSAT obligations. In this respect, we note that the INMARSAT Council made an initial determination of the configuration of the first generation of INMARSAT space segment at its November 12–19 meeting in London. The Council awarded contacts to INTELSAT, the European Space Agency (ESA) and the MARISAT consortium under a combination arrangement for the procurement of the first generation INMARSAT space segment which we view as generally consistent with the Baseline Operational Plan reflected in the Comsat application now before the Commission.[43] Depending upon the service availability dates of the various proposals, the first generation INMARSAT system should provide services approximately through the 1988–1990 period. INMARSAT second generation planning will have to involve sufficient lead time to replenish first generation space segment. An important decision to be made will be whether to procure dedicated second generation space segment or whether to continue leasing space segment from INTELSAT and/or other entities. A decision to procure a dedicated system would involve contractual commitments and capital outlays approximately three to four years prior to need for replenishment. A decision to lease space segment would probably defer major second generation costs until the satellites are in orbit.[44]

40. In view of these factors, if we should adopt Comsat's proposal we believe that an initial transition period in which Comsat would be permitted to combine its net INMARSAT expenses and assets with its INTELSAT revenue requirements should end no later than 1988, if not sooner. This period would be of sufficient length to develop definitive trends in maritime satellite communications usage. Also, it would permit the Commission to consider future capital outlays and expenses for INMARSAT's second generation system in determining whether continued cross-subsidization is in the public interest. We invite comments on this approach and suggestions for any other limitations that interested parties believe may be necessary.

41. *Monitoring cross-subsidization.* The fourth issue is whether any measures should be taken to monitor the effects of any cross-subsidization in which Comsat is permitted to engage. We believe that the tentative proposals for changes in Comsat's accounting system that we made in the Comsat Study will provide a basis to develop such measures. In the Comsat Study, we proposed changes in Comsat's accounting system that would provide the Commission with information for measuring Comsat's operations (e.g., revenues, expenses, investment).[45] To supplement these changes, we believe that Comsat should be required to show sufficient detail in its accounting system to enable separate identification of expenses and investment attributable to its INTELSAT and INMARSAT lines of business. The purpose of this requirement would be to keep any cross-subsidization between Comsat's INTELSAT AND INMARSAT investments as visible as possible and permit the Commission to monitor the effects of such cross-subsidization on a continuing basis.

42. We request comments from interested parties on specific accounting requirements that should be imposed on Comsat. We will make any such comments part of the record in Docket No. 80-634 and consider them in formulating comprehensive proposals for changes in Comsat's accounting system.[46]

C. Procedural Schedule

43. As in our initial notice in this proceeding, we instruct the Chief, Common carrier Bureau, to supplement the record by obtaining any information necessary for the conduct of this proceeding and consideration of the issues posed in this further notice. In view of the national interest and foreign policy concerns necessitating expeditious consideration of these issues, we will strictly adhere to the procedural deadlines established in this further notice.

44. For purposes of this non-restricted informal rulemaking proceeding, members of the public are advised that *ex parte* contacts are permitted from the time of issuance of a notice of proposed rulemaking until the time a draft order proposing a substantive disposition of such proceeding is placed on the Commission's Sunshine Agenda. In general, an *ex parte* presentation is any written or oral communication (other than formal written comments/pleadings and oral arguments) between a person outside the Commission and a Commissioner or a member of the Commission's staff which addresses the merits of the proceedings. Any person who submits a written *ex parte* presentation must serve a copy of that presentation on the Commission's Secretary for inclusion in the public file. Any person who makes an oral *ex parte* presentation addressing matters not fully covered in any written comments previously filed in the proceeding must prepare a written summary of that presentation. On the day of oral presentation, that written summary must be served on the Commission's Secretary for inclusion in the public file, with a copy to the Commission official receiving the oral presentation. Each *ex parte* presentation discussed above must state on its face that the Secretary has been served, and must also state by docket number the proceeding to which it relates. See generally, Section 1.1231 of the Commission's rules, 47 CFR 1.1231.

45. Accordingly, it is ordered, that, pursuant to sections 4 (i) and 4 (j) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j) (1976) and section 553(b) of the Administrative Procedure Act, 5 U.S.C. 553 (b) (1970), a further notice of proposed rulemaking into the above-captioned matter is instituted.

46. It is further ordered, that interested parties may file comments on or before

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[43] The INMARSAT Council still has before it a number of open questions with respect to the first generation INMARSAT space segment; *e.g.*, the feasibility of deploying MAREC's in the IOR. We understand that such questions will be addressed at the INMARSAT Council meeting to be held in London in February 1981.

[44] A decision by INMARSAT in favor of a lease arrangement for a second generation system could reduce capital investment requirements and expenses associated with providing maritime satellite communications, and thereby reduce the amount of loss that Comsat would seek to subsidize. Continued lease of space segment from INTELSAT would be by means of maritime satellite packages added on to INTELSAT VI generation satellites. INTELSAT has already developed a decision schedule for INTELSAT VI planning (BC–13 10/9/80). The schedule calls for release of the RFP in March, 1981; receipt of proposals by July, 1981; contract award in March, 1982; and delivery of the first spacecraft by March, 1986.

[45] *See* Communications Satellite Corporation, 77 FCC 2d at 719–721.

[46] Docket No. 80–634 is a rulemaking proceeding recently instituted to consider the need for any changes in Comsat's corporate structure and operation in view of our tentative findings and conclusions in the Comsat Study. *See* FCC 80–566, October 29, 1980. In our initial notice in that proceeding, we stated that we will issue a Further Notice of Proposed Rulemaking regarding changes in Comsat's accounting system and in the reporting requirements imposed on Comsat by the Commission's rules.

February 27, 1981, and reply comments on or before March 20, 1981.

47. It is further ordered, that, in accordance with the provisions of § 1.419 of the Commission's rules and regulations, all participants in the proceeding ordered herein shall file with the Commission an original and five (5) copies of all comments and reply comments. In reaching this decision, the Commission may take into consideration information and ideas not contained in the comments, provided that such information or a writing indicating the nature and source of such information is placed in the public file, and provided that the fact of the Commission's reliance on such information is noted in the Report and Order. Copies of comments and reply comments filed in this proceeding shall be available for public inspection during regular business hours in the Commission's reference room at its headquarters at 1919 M street, NW., Washington, D.C.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 81-1020 Filed 1-15-81; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Ch. I

[CC Docket No. 79-245]

American Telephone and Telegraph Co., Manual and Procedures for the Allocation of Costs; Order Cancelling Comment and Reply Comment Dates

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; Cancellation of comment and reply comment dates.

SUMMARY: This Order cancels dates established in Notice of Proposed Rulemaking in CC Docket No. 79-245, Manual and Procedures for the Allocation of Costs, for filing comments on long-term cost allocation procedures. Those dates were January 11, 1981 for initial comments and March 7, 1981 for reply comments.

DATES: Supplemental Notice will be issued which will provide dates for submitting comments on long-term cost allocation procedures.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Albert Halprin, Policy and Program Planning Division, Common Carrier Bureau, Federal Communications Commission, Washington, D.C. 20554 (202-632-6942).

In the matter of American Telephone and Telegraph Co., manual and procedures for the allocation of costs, CC Docket 79-245.

Order (45 FR 46121)

Adopted: December 29, 1980.

Released: January 5, 1981.

1. This Order cancels dates established in Notice of Proposed Rulemaking in CC Docket No. 79-245 (78 FCC 2d 1296), released June 26, 1980, for filing comments on long-term cost allocation procedures. Those dates were January 11, 1981 for initial comments and March 7, 1981 for reply comments.

2. The Commission adopted a Report and Order in Docket 79-245 on December 18, 1980, in which it explained that consideration of long term approaches would occur through further proceedings in this docket. Filing dates for comments will be issued in a forthcoming Supplemental Notice.

3. Accordingly it is ordered, that filing dates established in Notice of Proposed Rulemaking in CC Docket No. 79-245 for comments on long term cost allocation procedures are hereby cancelled.

4. It is further ordered, That the Secretary shall cause this Order to be published in the Federal Register.

Federal Communications Commission.

Philip L. Verveer,

Chief, Common Carrier Bureau.

[FR Doc. 81-1020 Filed 1-15-81; 8:45 am]

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47 CFR Part 73

[BC Docket No. 79-253]

Inquiry Into Future Role of Low-Power Television Broadcasting and Television Translators in the National Telecommunications System; Order Extending Time for Filing Comments and Reply Comments

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; extension of comment and reply comment period.

SUMMARY: This action extends time for filing comments and reply comments on the *Notice of Proposed Rule Making* in BC Docket No. 79-253, *An Inquiry into the Future Role of Low-Power Television Broadcasting and Television Translators in the National Telecommunications System*, in response to motions filed by the National Association of Broadcasters and the Corporation for Public Broadcasting.

DATES: Comments must be filed on or before March 2, 1981, and reply comments must be filed on or before April 13, 1981.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Molly Pauker, Broadcast Bureau (202) 632-6302.

SUPPLEMENTARY INFORMATION:

Adopted: January 8, 1981.

Released: January 12, 1981.

By the Chief, Policy and Rules Division:

1. On September 9, 1980, the Commission adopted a Notice of Proposed Rule Making, 45 FR 60178, in BC Docket No. 79-253, An Inquiry into the Future Role of Low-Power Television Broadcasting and Television Translators in the National Telecommunications System. The deadlines for comments and reply comments were set for January 15, 1981, and March 1, 1981, respectively.

2. We have received two requests for extension of time for responsive filings. The Corporation for Public Broadcasting seeks a comment date of February 15, 1981, and the National Association of Broadcasters seeks a comment date of March 1, 1981.

3. We believe that, in view of the magnitude of the record to date and the complexity of the issues involved, that the public interest will be served by an extension of time in which all interested parties may file responsive pleadings.

4. Accordingly, it is ordered, That the date for filing comments is extended to and including March 2, 1981, and the deadline for filing reply comments is extended to and including April 13, 1981.

5. This action is taken pursuant to authority contained in Sections 4(i), 5(d)(1) and 303(r) of the Communications Act of 1934, as amended, and § 0.281 of the Commission's Rules.

Federal Communications Commission.

Henry L. Baumann,

Chief, Policy and Rules Division, Broadcast Bureau.

[FR Doc. 81-1020 Filed 1-15-81; 8:45 am]

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47 CFR Part 81

[PR Docket No. 80-711; FCC 80-835]

Regarding Public Coast Station Replies to General Calls on Channel 16

AGENCY: Federal Communications Commission.

ACTION: Proposed Rule Making.

SUMMARY: The FCC has adopted a Notice of Proposed Rule Making relative to public coast stations answering

general calls on Channel 16. This action was prompted by a petition for rule making. The intended effect of this action is to allow public coast stations to answer general calls not addressed to it by call sign.

DATES: Comments must be received on or before February 13, 1981, and reply comments must be received on or before February 27, 1981.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Roy Carleton Howell, Private Radio Bureau, (202) 632-7175.

SUPPLEMENTARY INFORMATION: .

Adopted: November 6, 1980.

Released: November 19, 1980.

By the Commission:

Background

1. On February 29, 1980, Gulf Coast Communications, Inc. (Gulf Coast) General Telephone and Electronics, and Tampa Marine Radio Service were all parties to an administrative law hearing, File Nos. 40-M-RL-28/179-M-ML-54/585-M-RL-11 /79-M-RL-116; Docket 78-259, *et seq.* An important issue in this hearing was whether § 81.312(a) (6) of the Commission's Rules and Regulations is violated when a Tampa Bay, Florida public coast station answers calls on Channel 16 not addressed to it by specific call sign.

2. The Private Radio Bureau (Bureau) filed its Proposed Findings of Fact in this hearing; and, in regard to this issue as to whether § 81.312 (a) (6) is violated when a Tampa Bay public coast station answers calls on Channel 16 not addressed to it by specific call sign, the Bureau took the following position:

> Section 81.312 (a) (6) prohibits a public coast station operating on a shared frequency with another public coast station from answering a ship station until the ship station has transmitted the call sign or name of the particular coast station with which it wants to communicate. Emergency calls are excepted.[1]

3. Even though there are three public coast stations in the Tampa Bay area which share the Channel 16 frequency, nevertheless the Bureau's position on § 81.312 (a) (6) is that calls not specifically addressed to the call signs of the three Tampa Bay public coast stations may not be answered. The Bureau's position in its Proposed Findings of Fact was correctly premised on the plain meaning of § 81.312 (a) (6), which provides:

> Except in the event of an emergency involving safety, a public coast station, with respect to operation on any frequency which is used also by other coast stations within the same communication area, shall not answer, or attempt to answer, a ship station until the latter has transmitted the call sign or name of the particular coast station with which it desires to communicate.

4. Subsequently on March 27, 1980, a Petition For Emergency Stay was filed by Gulf Coast. Gulf Coast was seeking urgent relief from the severe restrictions placed on it as a result of the Bureau's interpretation of § 81.312 (a) (6) of the Commission's Rules and Regulations. Essentially, Gulf Coast considered the Bureau's interpretation of § 81.312 (a) (6) to mean that unless a vessel specifically uses its station call sign KU 2383, the call may not be answered by Gulf Coast. Thus, when a vessel calls "Marine Operator" in the Tampa area neither Gulf Coast nor any of the other public coast stations answer the call for fear of violating the subject rule. This in turn was resulting in repeated unanswered calls and lack of service to the public.

5. In response to Coast's Petition For Emergency Stay, the Bureau granted waivers to § 81.312 (a) (6) to Gulf Coast and all other public coast stations in the Tampa Bay area. The effect of these waivers was to allow public coast stations in the Tampa Bay area to answer calls from vessels, which don't use the public coast station's specific call sign. Therefore, when a vessel calls the "Marine Operator" in the Tampa Bay area, in lieu of the particular station call sign, any public coast station may answer the call. The Bureau's rationale in granting these waivers was to insure that all vessel calls were answered by a public coast station.[2]

6. In addition to Gulf Coast's Petition For Emergency Stay, it simultaneously filed a Petition for Rulemaking to amend or delete § 81.312 (a) (6) of the commission's Rules and regulations; and, this Notice of Proposed Rulemaking is in response to Gulf Coast's Petition For Rulemaking.

Proposal

7. The issue in this Notice of Proposed Rulemaking is whether § 81.312 (a) (6) should be amended or deleted. Gulf Coat believes that if § 81.312 (a) (6) of the Commission's Rules and Regulations is amended, then the new version of the subject rule should provide the following:

> *Except in the event of an emergency involving safety, a public coast station, with respect to operation on any frequency which is used also by other coast stations within the same communication area, shall not answer, or attempt to answer, a ship station until the later has transmitted the call sign or name of the particular coast station with which it desires to communicate.* Provided, however, that this subparagraph does not apply to public coast stations providing service to Tampa Bay, Florida.[3]

The proposed amended version of § 81.312 (a) (6) by Gulf Coast would essentially exempt only public coast stations in the Tampa Bay, Florida area from the subject rule.

8. However, the crux of Gulf Coast's argument in regard to § 81.312 (a) (6) is that indeed the subject rule should be deleted. The Commission agrees with Gulf Coast's position that § 81.312 (a) (6) should be deleted.

Rationale for Deletion of § 1.312 (a) (6)

9. The Tampa Bay area is major international port. A significant proportion of imports and exports arrive in Tampa Bay and depart this area in foreign cargo vessels. A significant percentage of these foreign vessels are officered and crewed by non-English speaking crews.

The captain of a Greek ship, for example, may only speak enough English to phonetically identify his ship by call sign and to request "Marine Operator". There is no practical method of instructing foreign flag deepwater vessels to call KUZ383 instead of Marine Operator.[4]

Insofar as many foreign vessels do not adequately employ the use of the English language, therefore § 81.312 (a) (6) is unduly restrictive; and, in turn this results in many unanswered calls from foreign vessels.

10. Gulf Coast argues that its experience is that approximately eighty percent of its calls for public correspondence service on Channel 16 are addressed to "Marine Operator" or by other names and not by call sign. Gulf Coast further argued the following:

> These calls cannot be answered under the Bureau's reading of the terms of § 81.312 (a) (6). But when a vessel calls "Marine Operator" on Channel 16 and does not receive an answer, the call is repeated and repeated again. Channel 16 then is cluttered with unanswered, repeated calls for the "Marine Operator". Each repeated unanswered call on Channel 16, of course, carries with it a finite probability (however

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[1] The Private Radio Bureau filed its Proposed Findings of Fact in the hearing February 29, 1980. Paragraph 49, p. 6 of the Proposed Findings made the preceding statement with respect to Issue (B) (4).

[2] Gulf Coast's Petition for Emergency Stay was filed simultaneously with its Petition for Rulemaking to delete or amend § 81.312(a) (6), therefore the duration of these waivers to § 81.312 (a) (6) was contingent upon the outcome of this rulemaking.

[3] See, page 7 of Gulf Coast's Petition For Rulemaking (emphasis added).

[4] See, page 4 of Gulf Coast's Petition For Rulemaking for this Hypothetical argument for deletion of § 81.312 (a) (6).

small) that a distress message could unknowingly be covered up.[3]

11. On May 12, 1980, General Telephone and electronics (General) filed comments in support of Gulf Coast's Petition For Rulemaking. General agreed with the positions of Gulf Coast and the Commission's herein. General argued that § 81.312 (a) (6) of the Commission's Rules and Regulations should be deleted. Furthermore, General made the following argument in support of its position:

"General can see no benefit from continuing the restriction in § *81.312* Subsection (a) (6). It causes a disservice to the public by restricting service only to those who use the "magic words". It adds no further protection to public coast stations from another station "jumping in" on its calls. As stated above, § *81.312* Subsection (a) (7) already provides this protection. Furthermore, § *81.312* Subsection (A) (7) recognizes that there will be times when the specified station will not answer and permits another station to answer. The rules should similarly reflect that there are times when no operator is specified. When no station is specified, any station should be permitted to answer." [4]

Conclusion

12. In view of the foregoing reasons and analyses, the Commission proposes to delete § 81.312(a)(6) in its entirety. Section 81.312(a)(6) serves only to confuse marine users, particularly foreign vessels. Furthermore, because many ship operators don't know or remember particular call signs of all public coast stations (in the Tampa Bay area for example) it is not in the public's best interest to deny that ship licensee public coast service when said licensee makes a general call on Channel 16 for "Marine Operator".

13. Authority for issuance of this Notice is contained in Sections 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i) and 303(r). Pursuant to procedures set out in Section 1.419 of the Rules and Regulations, 47 CFR 1.419, interested persons may file comments on or before February 13, 1981, and reply comments on or before February 27, 1981. All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding. In reaching its decision, the Commission may take into consideration information and ideas not contained in the comments provided that such information or a writing indicating the nature and source of such information is placed in the public file, and provided that the fact of the Commission's reliance on such information is noted in the Report and Order.

14. In accordance with the provisions of Section 1.419 of the Rules and Regulations, 47 CFR 1.419, formal participants shall file an original and 5 copies of their comments and other materials. Participants wishing each Commissioner to have a personal copy of their comments should file an original and 11 copies. Members of the general public who wish to express their interest by participating informally may do so by submitting one copy. All comments are given the same consideration, regardless of the number of copies submitted. All documents will be available for public inspection during regular business hours in the Commission's Public Reference Room at its headquarters in Washington, D.C.

15. For further information concerning this rulemaking contact Roy C. Howell, Rules Division, Private Radio Bureau, Federal Communications Commission, Washington, D.C. 20554, (202) 632-7175.

Federal Communications Commission.

William J. Tricarico,

Secretary.

Appendix

Part 81 of Chapter I of Title 47 of the Code of Federal Regulations is amended as follows:

§ 81.312 [Amended]

In § 81.312 paragraph (a)(6) is removed, and reserved.

[FR Doc. 81-1662 Filed 1-15-81; 8:45 am]

BILLING CODE 6712-01-M

[3] See, page 3 of Gulf Coast's Petition For Rulemaking.

[4] See pages 3 and 4 of General Telephone's Comments in Support of (Gulf Coast's Petition) For Rulemaking (emphasis added).

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1056

[Ex Parte No. MC-19 (Sub-No. 36)]

Practices of Motor Common Carriers of Household Goods (Revision of Operations Regulations)

AGENCY: Interstate Commerce Commission.

ACTION: Denial of extension of time in notice of proposed rulemaking.

SUMMARY: The Commission intends to cancel the operational regulations now appearing in 49 CFR Part 1056 applicable to motor common carriers of household goods and to adopt new regulations in conformity with the Household Goods Transportation Act of 1980. It is intended to eliminate all regulation of household goods transportation cost estimating which pertains to the procedure or form of estimates or which require the final charges for the transportation of a shipment to be determined by an estimate. Further charges to the regulations are also intended.

Public notice of this proceeding was served October 16, 1980, and published at 45 FR 70823, October 27, 1980. In that notice, it was provided that comments by interested persons were scheduled as due 30 days from the date of publication in the Federal Register. That November 26, 1980, date was extended to December 11, 1980, at 45 FR 76718, November 20, 1980. A further extension of the time for filing comments in this proceeding was granted to December 31, 1980, at 45 FR 83642, December 19, 1980. A request for an additional extension of time for filing comments in this proceeding is denied by this decision.

DATES: Comments on this proceeding are due December 31, 1980. Comments received after December 31, 1980 will be given consideration if received within a reasonable time provided such consideration does not impede the decisionmaking process.

FOR FURTHER INFORMATION CONTACT:

W. F. Sibbald, Jr. (202) 275-7148.

SUPPLEMENTARY INFORMATION: By petition filed December 30, 1980, Western Union Telegraph Company has requested a 30-day extension of time for filing comments in this proceeding on the basis that it was unaware of the institution of the proceeding until recently.

The comment period was extended twice, and embraced a total of 65 days, which is sufficient opportunity for notice and comment. The request is denied, but the Commission may consider late filed comments received within a reasonable time after December 31, 1980, if consideration will not interfere with the Commission's internal schedule of deliberations or the time limit set forth in Section 6 of the Household Goods Transportation Act of 1980.

It is ordered: The request for a 30-day extension of time for the filing of comments is denied.

Decided: January 7, 1981.

By the Commission, Darius W. Gaskins, Jr. Chairman.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 81-1570 Filed 1-15-81; 8:45 am]

BILLING CODE 7035-01-M

49 CFR Part 1109

[Ex Parte No. 393]

Standards for Railroad Revenue Adequacy

AGENCY: Interstate Commerce Commission.

ACTION: Extension of Time to Proposed Repeal of Existing Rules and Notice of Proposed Standards.

SUMMARY: In this proceeding, published at 45 FR 80150, December 3, 1980, the Commission proposed new standards for determining the adequacy of the revenues of individual railroads. The proposed new standards are intended to reflect the increased importance of railroad revenue adequacy determinations have on our exercise of jurisdiction under the Staggers Rail Act of 1980.

Comments were due on January 19, 1981, but in response to a petition filed with the Commission, a 4-day extension is being granted.

DATE: Comments are now due January 23, 1981.

ADDRESS: An original and 15 copies should be sent to: Room 5356, Interstate Commerce Commission, Washington, D.C. 20423.

FOR FURTHER INFORMATION CONTACT: Richard B. Felder (202) 275-7693, or Bruce Stram (202) 275-7381.

SUPPLEMENTARY INFORMATION: The American Association of Railroads (AAR) have petitioned for a four day extension to January 23, 1981. In light of the briefness of the requested extension and the substantial difficulties the AAR has encountered in developing its comments, the petition shall be granted.

Decided: January 12, 1981.

By the Commission, Darius W. Gaskins, Jr., Chairman.

Agatha L. Mergenovich,
Secretary.

[FR Doc. 81-1671 Filed 1-13-81; 8:45 am]
BILLING CODE 7035-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 230

Taking of Bowhead Whales by Indians, Aleuts, or Eskimos for Subsistence Purposes

AGENCY: National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Commerce.

ACTION: Proposed rulemaking.

SUMMARY: At its 32nd Annual Meeting held in Brighton, England, in July 1980, the International Whaling Commission (IWC) adopted an amendment to the Schedule of the International Convention for the Regulation of Whaling, 1946 (Convention), which established a three-year quota for the taking of the Bering Sea stock of bowhead whales for calendar years 1981, 1982, and 1983 of 45 landed or 65 struck, whichever occurs first, with a maximum of 17 landed in any year. All amendments to the Schedule of the Convention adopted by the 32nd Annual Meeting, including the three-year quota, became effective on November 25, 1980. 45 FR 85031 (December 24, 1980).

On March 28, 1980, the National Oceanic and Atmospheric Administration (NOAA) promulgated regulations under the Whaling Convention Act of 1949, 16 U.S.C. 916 et seq. (Act), which allocated the then available 1980 quota among the nine Alaskan villages which engage in subsistence whaling (45 FR 20486). These proposed rules amend these regulations to implement the 1981, 1982, and 1983 management program.

DATE: Comments may be submitted on or before February 27, 1981.

ADDRESS: Assistant Administrator for Fisheries, National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Washington, D.C. 20235.

FOR FURTHER INFORMATION CONTACT: Mr. Richard B. Roe, Acting Director, Office of Marine Mammals and Endangered Species, National Marine Fisheries Service, Washington, D.C. 20235, Telephone: (202) 634-7461.

SUPPLEMENTARY INFORMATION: Prior to 1977, the IWC Schedule exempted the native subsistence harvest of bowhead whales from its otherwise total prohibition of the hunting of bowheads. In 1977, the IWC removed that exemption and has established annual quotas each year from 1977 through 1980. In 1980, the quota was 18 landed or 26 struck, whichever came first.

Recent scientific analyses have indicated that the bowhead whale population may decline even in the absence of any further hunting. Thus, a sustained harvest of bowhead whales at current levels over an extended period of time could endanger the herd and jeopardize the Eskimos' own interests.

At the 32nd Annual Meeting of the IWC, the United States proposed a transition period priorto lowering hunt levels during which NOAA and the Department of the Interior would cooperate with the Eskimos in developing and studying the implications of more biological evidence, exploring subsistence alternatives, and improving hunting practices and weapons to increase the efficiency of the hunt. The IWC responded by establishing a three-year block quota, beginning in 1981, of 45 whales landed or 65 struck, whichever occurs first, with the maximum landed in any one year of 17.

On October 22, 1980, NOAA published an advance notice of proposed rulemaking regarding implementing the three-year quota (45 FR 70032). With respect to the proposed rulemaking, NOAA invited comments on how the quota should be allocated over the three-year period, how the quota should be allocated among the villages, and how takings over or under annual allocations should affect the remaining quota.

Eight comments were received. They reflect a broad range of views on implementation on the quota, Eskimo cooperation, jurisdictional issues, changes in the quota, and efficiency of the harvest.

Three commenters urged that Eskimo cooperation in all aspects of the harvest be given primary concern. NOAA recognizes this as one of its highest priorities and will continue to work toward that end.

There was one comment that no regulation should be issued until the question of jurisdiction of the International Whaling Commission (IWC) over subsistence whaling has been judicially resolved. The government currently is involved in litigation of this question, *Adams* v. *Klutznick*, Civil No. A78-184 (D. Alaska). Its position is that the IWC has jurisdiction and it will continue to regulate whaling under the Act as it has in the past, unless there is a disposition of this case to the contrary. One commenter suggested that regulation should be proceeding simultaneously under the Marine Mammal Protection Act of 1972 (MMPA) to be available in the event the courts find that the IWC does not have jurisdiction. NOAA does not intend to institute MMPA hearings at this time. More expeditious regulatory approaches are likely to be available if necessary.

There were several comments regarding the IWC quota itself. One commenter wanted it raised. Another urged that single figure quotas be adopted, and a third wanted a zero quota. A fourth took the position that quotas should be determined under MMPA. After taking into account opposing views, the U.S. Government

has accepted the quota adopted by the IWC, and does not intend through this regulatory process to reopen debate on the quota itself.

The block quota is allocated among the three years to provide a realistic perspective on how the quota might be gradually reduced over a three year period and to provide for planning for ways to mitigate the adverse affects of reducing the quota. It is important to note, however, that flexibility is also provided for in the proposed regulations. The bowhead hunt is unpredictable, affected by widely varying climatic conditions. Inclement weather or adverse ice conditions may prevent some villages from taking any whales in one year or may preclude harvest by any village for one year. The regulatory system must have flexibility to be able to respond to the variable conditions in which the hunt is conducted. Therefore, unused quotas from one village may be reallocated to another village within annual quota limitations and unused quotas from one year may be allocated to subsequent years within the maximum of 27 whales in any one year. Therefore the quotas will be reviewed at the end of each spring and fall whaling season and amended if appropriate.

Comments reflected concern about enforcement of the quota. Two commenters suggested the 1981 quota be reduced by the number of whales struck in excess of the 1980 quota. Possible violations of the 1980 quotas are under investigation by the Department of Justice at this time. No other action which must be characterized as punitive will be taken during this investigation.

With regard to the 3-year quota two commenters suggested that whales taken in excess of village quotas in one year be subtracted from that village's quota in subsequent years. Violations of village quotas under the three year block quota will be taken into consideration in subsequent years to the extent that, when either 45 whales are landed or 65 are struck, further whaling will be prohibited. Two commenters who believe we should adopt quotas lower than the IWC quota urged we not reassign unused quotas as a means of reducing the quota. One commenter urged us to reassign quotas. Because we do not intend to reduce the quota below that adopted by the IWC we will consider reassigning unused portions until the IWC quota has been reached.

Another large group of comments concerned the efficiency of the hunt. The government, in cooperation with the Eskimos, is committed to employing all possible ways to achieving efficiency. Studies are planned for completion this year to improve hunting gear and methods, and we believe it is premature at this time to consider issuing regulations on this issue before we can review the results of our efforts.

The comments concerning the efficiency of the hunt which we will not adopt at this time include imposition of license fees, and numbering weapons. One commenter supported license fees because the Act does not limit the fees to commercial operations only, because the costs associated with monitoring the catch are as great with subsistence as with commercial catch, and because a license fee would reduce whaling effort. We maintain our previous position that these fees are not appropriate in the case of subsistence harvest. The fact that the Act does not address different kinds of whaling activities is not dispositive. We do not believe it appropriate to charge fees for taking animals where no profit is involved, when the whales taken constitute an important, historic element of the Eskimos diet, and where the hunt is of central importance to the cultural fabric of the community. There is a significant difference between this kind of harvest which involves subsistence and tradition, and one which is conducted for commercial profit or for sport. We disagree that the licensing fees would be an effective means of reducing effort. As noted above, the Eskimos and the government are committed to a cooperative effort to improve the efficiency of the hunt. We believe this cooperative effort is more effective than imposing a fee for cultural and subsistence uses.

Another suggestion is that each harpoon and darting gun dart be sequentially numbered before the spring hunt to obtain a rough index of the magnitude and efficiency of the hunt and to provide information regarding the number of harpoons needed to kill individual whales. the commenter believed this would be feasible because all weapons come from one source in Pennsylvania. We conjecture that this commenter envisions a system in which all weapons would be numbered prior to the hunt, and the difference between that total number and the number remaining at the end of the hunt would reflect and efficiency.

The value of numbering weapons has been extensively examined in the past and found to be too full of obstacles to be of merit. While it is true that the bombs are all manufactured in one location, there is no single inventory of bombs. There are existing supplies of bombs and gear which create the same problem as an open market. Harpoons are not manufactured in one place and there is no control over their source. Moreover, even if there were controlled conditions regarding weapons, we do not believe the procedure would result in usable data. Weapons are lost in ways other than insertion into a bowhead whale. Gear may be lost overboard or used for other hunting purposes. In summary, the difficulties involved in implementing a numbering system outweigh the value of the information collected.

Another commentor suggested harvest be limited to immature animals. By accepting IWC jurisdiction over bowhead whaling, we have deferred to its discretion in imposing limits. We see no reason to impose such a restriction that the IWC did not believe necessary to adopt. Furthermore, most animals taken are immature and there is little to be gained by adding such a regulation.

Another suggestion was that the regulations required by the Administrator to suspend licenses from whaling captains who intentionally or negligently fail to comply with the regulations. This comment was received last year and no new reasons were put forth for its adoption. We do not believe there is any reason to narrow the Administrator's prosecutorial discretion in this manner.

The comments have been taken into consideration in developing these proposed regulations.

Regulations in effect during 1978, 1979, and 1980 allocated the available quotas to nine whaling villages. There is no substantive difference between the regulations established for 1980 and those proposed for 1981 through 1983 other than total quotas.

Total proposed quotas are 17 landed or 25 struck, whichever occurs first, for calendar year 1981; 15 landed or 22 struck, whichever occurs first, for calendar year 1982; and 13 landed or 18 struck, whichever occurs first, for calendar year 1983.

Village allocations proposed herein reflect the preference of distribution originally suggested by the Alaska Eskimo Whaling Commission in 1978 with ratios being preserved as closely as possible.

In order to assure participation from those members of the public sector affected by the proposed regulation, NOAA will send copies of the proposed regulation directly to the Alaska Eskimo Whaling Commission, the village councils of Savoonga, Gambell, Wales, Kivalina, Point Hope, Wainwright, Barrow, Kaktovik, and Nuigsut, and U.S. conservation organizations.

Note.—The Department of Commerce has determined that no environmental impact

statement needs to be prepared in connection with these regulations. The National Marine Fisheries Service has determined that this document does not contain a major proposal requiring preparation of a regulatory analysis under Executive Order 12044.

A Final Environmental Impact Statement (FEIS), October 1977, a Final Supplement to the FEIS, March 1979, an Environmental Assessment of the 1980 regulations, and an Environmental Assessment of the 1981 through 1983 regulations are available upon request from the Information Contact previously indicated.

1. 50 CFR Part 230 is proposed to be amended by revising Section 230.10(b) to read as follows:

§ 230.10 Licenses required to engage in whaling.

* * * * *

(b) No permit or license shall be issued except as provided in § 230.13 and §§ 230.70 through 230.77. Licenses issued under § 230.73 shall be governed solely by the requirements of §§ 230.70 through 230.77.

2. 50 CFR Part 230 is proposed to be amended by revising §§ 230.70–230.77 and the undesignated center heading to read as follows:

Subsistence

Sec.
230.70 General.
230.71 Definitions.
230.72 Prohibited acts.
230.73 Licenses.
230.74 Quotas.
230.75 Salvage of stinkers.
230.76 Reporting by whaling captains.
230.77 Penalties.

Authority: Whaling Convention Act (WCA 16 U.S.C. 916a–1)

Subsistence

§ 230.70 General.

The provisions of §§ 230.70 through 230.77 govern subsistence whaling for bowhead whales.

§ 230.71 Definitions.

As used in §§ 230.70 through 230.77 of this Part 230:

(a) "Assistant Administrator" means the Assistant Administrator for Fisheries of the National Oceanic and Atmospheric Administration;

(b) "Bowhead" means a whale of the Bering Sea stock of bowhead whales; *Balaena mysticetus;*

(c) "Calf" means any bowhead which is less than 21 feet in length as measured from the point of the upper jaw to the notch between the tail flukes;

(d) "Landing" means bringing a bowhead or any parts thereof onto the ice or land in the course of whaling operations;

(e) "Whaling captain" or "captain" means any Indian, Aleut, or Eskimo domiciled in a whaling village who is in charge of a vessel and a whaling crew;

(f) "Stinker" means a dead unclaimed bowhead found upon a beach, stranded in shallow water, or floating at sea;

(g) "Strike" means hitting a bowhead with a harpoon, lance, or explosive dart;

(h) "Whaling" means the hunting, striking, harassing, killing, or landing of bowheads, but does not include the salvage or processing of any stinker;

(i) "Whaling crew" means those persons under the control of a captain, who collectively participate as a unit in whaling;

(j) "Whaling village" means any of the villages of Gambell, Savoonga, Wales, Kivalina, Point Hope, Wainwright, Barrow, Nuigsut, and Kaktovik in the State of Alaska; and

(k) "Wasteful manner" means a method of whaling which is not likely to result in the landing of a struck bowhead or which does not include all reasonable efforts to retrieve the bowhead.

§ 230.72 Prohibited acts.

(a) No person shall engage in whaling except a whaling captain licensed pursuant to § 230.73 or a member of a whaling crew under the control of a captain.

(b) No whaling captain shall engage in whaling for any calf or any bowhead whale accompanied by a calf.

(c) No whaling captain shall engage in whaling in a wasteful manner.

(d) No whaling captain shall engage in whaling without an adequate crew or without adequate supplies and equipment.

(e) No person may receive money for participation in native subsistence whaling.

(f) No whaling captain shall continue to whale after, (1) the quota set forth in § 230.74 for his village of domicile is reached, or (2) the license under which he is whaling is suspended as proved in § 230.73(b), or (3) the Assistant Administrator has declared that the whaling season is closed pursuant to § 230.74(c).

(g) No whaling captain shall claim domicile in more than one whaling village during any given calendar year.

(h) No person may salvage a stinker without complying with the provisions of § 230.75.

(i) No whaling captain shall engage in whaling with a harpoon, lance, or explosive dart which does not bear a permanent distinctive mark identifying the captain as the owner thereof.

§ 230.73 Licenses.

(a) A license is hereby issued to whaling captains.

(b) The Assistant Administrator may suspend the license of any whaling captain who fails to comply with these regulations.

§ 230.74 Quotas.

(a) During the calendar year 1981, the quota for bowheads is allocated among whaling villages as follows:

(1) Savoonga—2 whales landed or 3 struck, whichever occurs first;
(2) Gambell—2 whales landed or 3 struck, whichever occurs first;
(3) Wales—1 whale landed or 1 struck, whichever occurs first;
(4) Kivalina—1 whale landed or 1 struck, whichever occurs first;
(5) Pt. Hope—2 whales landed or 3 struck, whichever occurs first;
(6) Wainwright—2 whales landed or 3 struck, whichever occurs first;
(7) Barrow—4 whales landed or 7 struck, whichever occurs first;
(8) Kaktovik—2 whales landed or 3 struck, whichever occurs first;
(9) Nuigsut—1 whale landed or 1 struck, whichever occurs first;
(Totals)—(17) whales landed or (25) struck.

(b) During the calendar year 1982, the initial quota for bowheads is allocated as follows:

(1) Savoonga—2 whales landed or 3 struck, whichever occurs first;
(2) Gambell—2 whales landed or 3 struck, whichever occurs first;
(3) Wales—1 whale landed or 1 struck, whichever occurs first;
(4) Kivalina—1 whale landed or 1 struck, whichever occurs first;
(5) Pt. Hope—2 whales landed or 3 struck, whichever occurs first;
(6) Wainwright—2 whales landed or 3 struck, whichever occurs first;
(7) Barrow—4 whales landed or 6 struck, whichever occurs first;
(8) Kaktovik—1 whale landed or 2 struck, whichever occurs first;
(9) Nuigsut—0 whales landed or 0 struck;
(Totals)—(15) whales landed or (22) struck.

(c) During the calendar year 1983, the initial quota for bowheads is allocated as follows:

(1) Savoonga—2 whales landed or 3 struck, whichever occurs first;
(2) Gambell—2 whales landed or 3 struck, whichever occurs first;
(3) Wales—1 whale landed or 1 struck, whichever occurs first;
(4) Kivalina—0 whales landed or 0 struck;
(5) Pt. Hope—2 whales landed or 3 struck, whichever occurs first;
(6) Wainwright—1 whale landed or 1 struck, whichever occurs first;
(7) Barrow—4 whales landed or 6 struck, whichever occurs first;
(8) Kaktovik—1 whale landed or 1 struck, whichever occurs first;
(9) Nuiqsut—0 whales landed or 0 struck;
(Totals)—(13) Whales landed or (18) struck.

(d) If, for any reason, the landing or struck quota for whaling villages is not reached in any given year, the unused part of the quota may be reassigned to succeeding years to the extent that the total bowheads permitted to be landed or struck in 1982 or 1983 shall not exceed those prescribed for 1981 (17 landed or 25 struck, whichever occurs first) and that the 3-year total will not exceed 45 bowheads landed or 65 bowheads struck.

(e) When the number of bowheads struck or landed by whaling captains domiciled in a whaling village as set forth in paragraphs (a), (b), and (c) of this Section, whaling by all captains domiciled in that whaling village shall cease. All license holders shall be notified promptly by the Assistant Administrator for Fisheries using all reasonable means of communication. Licenses held by whaling captains domiciled in a whaling village which has reached its quota shall not be valid for the remainder of the calendar year after the quota for that whaling village has been reached.

(f) The Assistant Administrator for Fisheries shall monitor the bowhead whale hunt and keep tally of the number of bowheads landed and struck. When the number of bowhead whales landed or struck reaches the sum total of the village allocations set forth in § 230.74(a), (b), or (c) for the appropriate calendar year, the Assistant Administrator for Fisheries may declare that the whaling season is closed and there shall be no further whaling during that calendar year. Closure shall become effctive upon receipt by the Federal Register of notice by the Assistant Administrator for Fisheries that the season has been closed pursuant to this regulation.

(g) If for any reason the landing or struck quota for whaling villages is not reached, the part of the quota which remains may be reassinged by the Assistant Administrator to a second whaling village for the same calendar year: Provided, that if any other whaling village has exceeded its quota, the Assistant Administrator shall not reassign the quota if he determines that it is likely to result in the total number of whales landed or struck exceeding 17 landed or 25 struck, whichever occurs first and that the 3-year total will not exceed 45 landed or 65 struck. In making such reassignment, the Assistant Administrator shall consult with representatives of as many whaling villages as time reasonably permits.

§ 230.75 Salvage of stinkers.

(a) Any person salvaging a stinker shall submit to the Assistant Administrator or his representative an oral or written report describing the circumstances of the salvage within 12 hours of such salvage. He shall provide promptly to the Assistant Administrator or his representative each harpoon, lance, or explosive dart found in or attached to the stinker. The device shall be returned to the owner thereof promptly unless it is retained as evidence of a possible violation.

(b) There shall be a rebuttable presumption that a stinker has been struck by the captain whose mark appears on the harpoon, lance, or explosive dart found in or attached thereto, and, if no strike has been reported by such captain, such strike shall be deemed to have occurred at the time of recovery of the device.

§ 230.76 Reporting by whaling captains.

(a) A representative of the Assistant Administrator may request each whaling captain licensed pursuant to § 230.73 to provide written statement of his name and village of domicile and a description of the distinctive marking to be placed on each harpoon, lance, and explosive dart. Representatives of the Assistant Administrator may provide each captain with a form approved by the Assistant Administrator to facilitate reporting under this paragraph.

(b) Each whaling captin shall provide to appropriate representatives, on request, an oral or written report of whaling activities including but not limited to the striking, attempted striking, or landing of a bowhead whale and, where possible, specimens from landed whales. The Assistant Administrator is authorized to provide technoligical assistance to facilitate prompt reporting and collection of specimens from landed whales, including but not limited to ovaries, ear plugs, and baleen plates. The report shall include at least the following information:

(1) The number, dates, and locations of every strike, attempted strike, or landing;

(2) The length (as measured from the point of the upper jaw to the notch between the tail flukes), the extreme width of the flukes, and the sex of the bowhead(s) landed;

(3) The length and sex of a fetus, if present, in a landed bowhead whale;

(4) An explanation of circumstances associated with the striking or attempted striking of any bowhead whale not landed; and

(5) The number of bowhead whales sighted by the whaling captain or any member of the whaling crew.

§ 230.77 Penalties.

Any person who whales in contravention of these regulations, or violates any other provision of the Whaling Convention Act shall be subject to the penalties set forth in 16 U.S.C. 916e and 916f, and any other penalties provided by law.

Dated: December 29, 1980.

William Stevenson,

Deputy Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 81-1455 Filed 1-15-81; 8:45 am]
BILLING CODE 3510-22-M

Notices

Federal Register
Vol. 46, No. 11
Friday, January 16, 1981

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Determining Eligibility for Free and Reduced Price Meals and Free Milk in Schools; Income Poverty Guidelines

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice.

SUMMARY: The Department announces new guidelines to be used by schools participating in the National School Lunch, School Breakfast, and the Special Milk Programs, and commodity only schools in determining a child's eligibility for free and reduced price meals and free milk for the remainder of this fiscal year (through September 30, 1981). These new guidelines differ from previous guidelines in three ways: (1) they are based on Office of Management and Budget guidelines that are *not* adjusted by the Department; (2) they remove the hardship provisions; and (3) in place of the hardship provisions, they include a standard deduction. The Department is required by Public Law 96-499 to make these changes in the guidelines. These changes will affect the eligibility of some children for free and reduced price meals and free milk.

EFFECTIVE DATE: January 1, 1981.

IMPLEMENTATION DATE: See dates in Supplementary Information below and in Emergency Final Rules published in the Rules and Regulations Section of today's Federal Register.

FOR FURTHER INFORMATION CONTACT: Stanley C. Garnett, Branch Chief, Policy and Program Development Branch, School Programs Division, USDA, FNS, Washington, D.C. 20250, (202) 447-8069. The Impact Analysis Statement is available from Mr. Garnett.

SUPPLEMENTARY INFORMATION:

Classification

This notice has been reviewed under USDA procedures established in Secretary's Memorandum 1955 to implement Executive Order 12044 and has been classified as "not significant".

Background

The Department requires schools that charge for meals and milk separately from other fees to serve free meals and, at the option of the School Food Authority, free milk to all children from any family whose income is at or below 125 percent of the income level specified by the Department for that family's size. The Department also requires schools that charge for meals separately from other fees to serve reduced price meals to all children from any family whose income is more than 125 percent of the income level specified by the Department for that family's size but at or below 195 percent of that income level.

Definition of Income

There is no change in the definition of income. "Income", as the term is used in this notice, is similar to that defined in the Bureau of the Census report, "Characteristics of the Low-Income Population: 1971," Current Population Reports, series P-60, No. 86, December 1972. "Income" means income before deductions for income taxes, employees' socila security taxes, insurance premiums, bonds, etc. It includes the following: (1) Monetary compensation for services, including wages, salary, commissions, or fees; (2) net income from nonfarm self-employment; (3) net income from farm self-employment; (4) social security; (5) dividends or interest on savings or bonds, income from estates or trusts, or net rental income; (6) public assistance or welfare payments; (7) unemployment compensations; (8) Government civilian employee, or military retirement, or pensions or veterans' payments; (9) private pensions or annuities; (10) alimony or child support payments; (11) regular contributions from persons not living in the household; (12) net royalties; and (13) other cash income. Other cash income would include cash amounts received or withdrawn from any source including savings, investments, trust accounts, and other resources which would be available to pay the price of a child's meal.

"Income", as the term is used in this notice, does not include any income or benefits received under any Federal program which are excluded from consideration as income by any legislative prohibition, for example, income received by volunteers for services performed in the National Older Americans Volunteer Program as stipulated in the Domestic Volunteer Service Acts of 1973, Pub. L. 93-113, Title IV, c 418 (87 Stat. 413, 42 U.S.C. 5058). Furthermore, the value of assistance to children or their families shall not be considered as income if prohibited by the authorizing legislation, e.g., the National School Lunch Act, the Child Nutrition Act of 1966, and the Food Stamp Act of 1964.

In applying guidelines, a School Food Authority may consider both the income of the family during the past 12 months and the family's current rate of income to determine which is the better indicator of the need for free and reduced price meals and free milk. However, if one or more of a child's parents or guardians become unemployed and the family's income drops due to this unemployment so that the child should be eligible for free or reduced price meals and free milk, during the period of unemployment the School Food Authority shall provide that child with the type of meal for which the child is eligible.

Elimination of Secretary's Adjustment of Office of Management and Budget Guidelines

Section 11(b)(1) of the National School Lunch Act requires the Secretary to issue income poverty guidelines based on the nonfarm income poverty guidelines issued by the Office of Management and Budget (OMB) adjusted to reflect changes in the Consumer Price Index between the previous calendar year and March of the calendar in which the Secretary's guidelines would become effective. The Department generally issues the guidelines to be effective July 1. Thus the guidelines, when effective, are only three months behind changes in prices. Public Law 96-499, which became law on December 5, 1980, deletes this

adjustment for the remainder of fiscal year 1981. Therefore, the guidelines contained in the notice reflect the average of the Consumer Price Index for 1980 without the above described adjustment.

Replacement of Hardship Provisions with Standard Deduction

In the past, the Department allowed a family to deduct from its stated income the cost of certain "hardship" conditions that could not be reasonably anticipated or controlled by the household. The hardship conditions were: (1) unusually high medical expenses; (2) shelter costs in excess of 30 percent of income; (3) special education expenses due to the mental or physical condition of a child; and (4) disaster or casualty losses.

Pub. L. 96–499 deletes these hardship conditions for the remainder of fiscal year 1981. In their place, the law establishes a standard deduction for all families. The standard deduction is the same amount for all States except Hawaii, Alaska, and Guam. The standard deduction is adjusted to reflect the higher cost of living in those States and in Guam. The Department has included all appropriate standard deductions in the attached guidelines.

Implementation

Requirements for implementation of these new guidelines are set forth in the amendments made to 7 CFR 245.3 appearing in today's Rules and Regulations Section of the Federal Register. These changes in the income guidelines will expire on September 30, 1981.

No School Food Authority is required to amend its free and reduced price policy statement as a result of this notice.

The new guidelines are also intended to apply to independent centers and sponsoring organizations of centers which participate in the Child Care Food Program (7 CFR Part 226) or Special Milk Program (7 CFR Part 215). The Department will shortly issue a separate notice that will apply the new guidelines to these institutions.

New Guidelines

The following are the new income poverty guidelines to be effective until September 30, 1981. These guidelines include the standard deduction which replaces all hardship deductions.

Income Poverty Guidelines.—*Feb. 1, 1981—Sept. 30, 1981*

(48 States, District of Columbia, Territories Excluding Guam)

Family size	Poverty level			125 percent of poverty			185 percent of poverty		
	Year	Month	Week	Year	Month	Week	Year	Month	Week
1	$4,750	$396	$91	$5,700	$475	$110	$8,360	$696	$161
2	6,370	498	115	7,720	602	139	10,730	894	206
3	7,190	599	138	8,790	729	169	13,110	1,092	252
4	8,410	701	162	10,270	856	198	15,490	1,291	298
5	9,630	803	185	11,800	983	227	17,870	1,489	344
6	10,850	904	209	13,330	1,110	256	20,250	1,688	390
7	12,070	1,006	232	14,850	1,238	286	22,630	1,886	436
8	13,290	1,108	256	16,370	1,364	315	25,000	2,083	481
For each additional family member add	1,220	102	23	1,520	126	29	2,360	196	46
ALASKA									
1	5,930	497	115	7,180	599	138	10,490	873	202
2	7,960	663	144	9,950	764	176	13,490	1,121	259
3	9,000	750	173	10,950	913	211	16,410	1,366	316
4	10,520	877	202	12,900	1,071	247	19,370	1,614	373
5	12,040	1,003	232	14,750	1,229	284	22,340	1,862	430
6	13,560	1,130	261	16,600	1,388	320	25,300	2,108	487
7	15,080	1,257	290	18,500	1,546	357	28,270	2,356	544
8	16,600	1,383	319	20,400	1,704	393	31,230	2,602	601
For each additional family member add	1,520	127	29	1,900	158	37	2,960	247	57
HAWAII AND GUAM									
1	5,460	454	105	6,540	545	126	8,830	800	185
2	6,850	571	132	8,250	691	159	12,250	1,028	237
3	8,250	688	159	10,040	837	193	15,060	1,255	289
4	9,650	804	186	11,750	983	227	17,780	1,489	342
5	11,050	921	213	13,540	11,128	260	20,580	1,719	395
6	12,450	1,038	239	15,250	1,274	294	23,280	1,958	447
7	13,850	1,154	266	17,040	1,420	328	25,980	2,165	500
8	15,250	1,271	293	18,750	1,566	361	28,710	2,392	552
For each additional family member add	1,400	117	27	1,750	146	34	2,730	228	53

NOTE.—Do not allow hardship deductions from the above income poverty guidelines. The standard deduction has been included in all of the above income levels.

National Average Minimum Value of Donated Foods for the Period January 1, 1981, through June 30, 1981

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice of reduction in level of commodity assistance.

SUMMARY: This notice announces a reduction in the level of assistance per lunch under the National School Lunch Program, and per lunch and supper under the Child Care Food Program, for the period January 1, 1981 through June 30, 1981.

FOR FURTHER INFORMATION CONTACT: Gwena Kay Tibbits, Chief, Program Monitoring and Policy Development Branch, Food Distribution Division, Food and Nutrition Service, U.S. Department of Agriculture, Washington, DC 20250. (202) 447–8288.

SUPPLEMENTARY INFORMATION: Pursuant to sections 6(e) and 17(h) of the National School Lunch Act, as amended, and the regulations governing the Food Distribution Program (7 CFR Part 250) and Cash in Lieu of Commodities (7 CFR Part 240), notice was given in the Federal Register of Friday, August 15, 1980 (45 FR 54336) that the national average minimum value of donated foods, or cash in lieu thereof, per lunch under the National School Lunch Program (7 CFR Part 210) and per lunch and supper under the Child Care Food Program (7 CFR Part 226), was to be 15.50 cents for the period July 1, 1980 through June 30, 1981. This value was derived at by applying the annual percentage change in a three-month simple average value of the Price Index Used in Schools and Institutions for March, April and May of 1980 (from 230.9 in 1979 to 226.5 in 1980). The Index, prescribed in section 8(b) of Pub. L. 95–627, is computed using five major food components in the Bureau of Labor Statistics' Producer Price Index (cereal and bakery products, meats, poultry, and fish, dairy products, processed fruits and vegetables, and fats and oils). Each component is weighted using the same relative weight as determined by the Bureau of Labor Statistics.

Section 202(a) of Pub. L. 96–499, enacted December 5, 1980, provides that for the fiscal year ending September 30, 1981, the mandated level of commodity assistance under section 6(e) of the National School Lunch Act shall be

reduced by 2 cents after the required adjustment per Index changes has been made. This reduction shall become effective on January 1, 1981. Thus, the level of assistance for the period July 1, 1980, through December 31, 1980 remains at 15.50 cents per meal. For the period January 1, 1981 through June 30, 1981, the 2-cent reduction will be applied to the 15.50 cent rate of assistance, making the new level 13.50 cents per meal. Because the level of assistance required under section 6(e) is determined on a school-year basis, a new level of assistance will take effect on July 1, 1981 on the basis of 1980–1981 changes in the Price Index for Schools and Institutions, and the 2-cent reduction will be applied to that rate from July 1, 1981 through September 30, 1981.

(Sec. 202, Pub. L. 96-499, 95 Stat. 2599.)
(Catalog of Federal Domestic Assistance Nos. 10.555 and 10.556)

Effective Date: This notice is effective as of January 1, 1981.

Dated: January 8, 1981.

Carol Tucker Foreman,
Assistant Secretary for Food and Consumer Services.

[FR Doc. 81-1309 Filed 1-15-81; 8:45 am]
BILLING CODE 3410-30-M

Forest Service

Mill Creek Wilderness Study Area, Jefferson National Forest, Giles County, Va.; Intent To Prepare an Environmental Impact Statement

Pursuant to Section 102(2)(c) of the National Environmental Policy Act of 1969 (Pub. L. 91–190), the Forest Service, Department of Agriculture, will prepare an environmental impact statement for determining the suitability or nonsuitability of the Mill Creek Wilderness Study Area for preservation as wilderness.

Preparation of an environmental impact statement is a required part of the process in determining the suitability of Congressionally-designated Wilderness Study Areas. The Mill Creek Wilderness Study Area was so designated by Congress in the Eastern Wilderness Act of 1975 (Pub. L. 93–622). The Study Area encompasses approximately 4,000 acres on the Blacksburg Ranger District, Jefferson National Forest, Southern Region.

A range of alternatives for the area will be considered. One of them will be a no-action (no change) alternative which will be to continue present management of the area. Other alternatives will consider different management options for portions of the area—ranging from a non-wilderness to a wilderness classification.

The draft environmental impact statement will incorporate input from local, state and Federal agencies that have an interest in the area or specific knowledge that will be useful in the study process. University personnel with expertise in specific fields will be consulted.

Public input from citizen workshops and RARE II hearings that were held to discuss wilderness study areas will be included in the study, as will comments from interested individuals or organizations.

A public hearing on the draft environmental impact statement and the suitability of the Study Area for preservation as wilderness will be held in the Summer of 1981. Adequate notice of the hearing will be published in local newspapers prior to the hearing. At least 30 days before the date of the hearing, the Governor of Virginia, the governing board of Giles County, and Federal departments and agencies concerned with the area will be invited to submit their views on the proposed action at the hearing or by no later than 30 days following the date of the hearing. The draft environmental impact statement should be available for public review in the Summer of 1981, with a 3-month review period. The final environmental impact statement is scheduled for filing by December 1981.

R. Max Peterson, Chief of the Forest Service, is the official responsible for the environmental impact statement. The Secretary of Agriculture will make his recommendation based on this analysis. Written comments and suggestions concerning this notice of intent or the proposal should be sent to Forest Supervisor, Jefferson National Forest, 210 Franklin Road, Roanoke, Virginia 24001, by February 15, 1981.

For further information about the proposal or the environmental impact statement or other documents relevant to the proposal, contact: Charles Blankenship, Jefferson National Forest, 210 Franklin Road, Roanoke, Virginia 24001 (Phone 703–982–6270).

Dated: January 6, 1981.

J. Lamar Beasley,
Acting Chief, Forest Service.

[FR Doc. 81-1340 Filed 1-15-81; 8:45 am]
BILLING CODE 3410-11-M

Mountain Lake Wilderness Study Area, Jefferson National Forest, Craig and Giles Counties, Va., Monroe County, W. Va.; Intent To Prepare an Environmental Impact Statement

Pursuant to Section 102(2)(c) of the National Environmental Policy Act of 1969 (Pub. L. 91–190), the Forest Service, Department of Agriculture, will prepare an environmental impact statement for determining the suitability or nonsuitability of the Mountain Lake Wilderness Study Area for preservation as wilderness.

Preparation of an environmental impact statement is a required part of the process in determining the suitability of Congressionally-designated Wilderness Study Areas. The Mountain Lake Wilderness Study Area was so designated by Congress in the Eastern Wilderness Act of 1975 (Pub. L. 93–622). The Act identified the Study Area as encompassing 8,400 acres. Corrected acreage, according to resource data, is 11,827 acres. There are 1,543 acres in the Study Area classified as the Mountain Lake Scenic Area, which was established in 1960 by the Regional Forester, Southern Region under the authority of Regulation U–3 to protect and maintain the scenic resource. The Study Area is located on the Blacksburg Ranger District, Jefferson National Forest, Southern Region.

A range or alternatives for the area will be considered. One of them will be a non-action (no change) alternative which will be to continue present management of the area. Other alternatives will consider different management options for portions of the area—ranging from a non-wilderness to a wilderness classification.

The draft environmental impact statement will incorporate input from local, state and Federal agencies that have an interest in the area or specific knowledge that will be useful in the study process. University personnel with expertise in specific fields will be consulted. Public input from citizen workshops and RARE II hearings that were held to discuss wilderness study areas will be included in the study, as will comments from interested individuals or organizations.

A public hearing on the draft environmental impact statement and the suitability of the Study Area for preservation as wilderness will be held in the Summer of 1981. Adequate notice of the hearing will be published in local newspapers prior to the hearing. At least 30 days before the date of the hearing, the Governor of Virginia and West Virginia, the governing boards of Giles, Craig and Monroe Counties, and

Federal departments and agencies concerned with the areas will be invited to submit their reviews on the proposed action at the hearing or by not later than 30 days following the date of the hearing. The draft environmental impact statement should be available for public review by July 1981 with a 3-month review period. The final environmental impact statement is scheduled for filing by December 1981.

R. Max Peterson, Chief of the Forest Service, is the official responsible for the environmental impact statement. The Secretary of Agriculture will make his recommendation based on this analysis. Written comments and suggestions concerning this notice of intent or the proposal should be sent to Forest Supervisor, Jefferson National Forest, 210 Franklin Road, Roanoke, Virginia 24001, by February 15, 1981.

For further information about the proposal or the environmental impact statement, or other documents relevant to the proposal, contact: Charles Blankenship, Jefferson National Forest, 210 Franklin Road, Roanoke, Virginia 24001 (phone 703-982-6270).

Dated: January 6, 1981.

J. Lamar Beasley,

Acting Chief, Forest Service.

[FR Doc. 81-1207 Filed 1-15-81; 8:45 am]

BILLING CODE 3410-11-M

Rural Electrification Administration

Central Power Electric Cooperative; Finding of No Significant Impact

Notice is hereby given that the Rural Electrification Administration (REA) has made a Finding of No Significant Impact which concludes that there is no need for REA to prepare an environmental impact statement in connection with construction by Central Power Cooperative (Central), of Minot, North Dakota, of approximately 51.2 km (32 miles) of 115 kV transmission line and an associated 115/69 kV transmission substation to be financed with REA loan funds.

The planned 115 kV transmission line will be built between the Department of Energy's Leeds Substation located in Benson County, North Dakota, and the proposed Agate 115/69kV transmission substation to be located in Towner County, North Dakota. Central has prepared a Borrower's Environmental Report (BER) concerning the proposed project. REA has reviewed the BER and determined that it represents an accurate assessment of the environmental impact of the project. REA has prepared an Environmental Assessment concerning the proposed project and its impacts.

Threatened and endangered species, important farmland, archaeological and historic sites, wetlands, flood plains and potential impacts of the project are adequately considered in the BER. REA's independent evaluation of the proposed project leads it to conclude that its proposed financial assistance for this project does not represent a major Federal action that will significantly affect the quality of the human environment.

Based on this independent evaluation and a review of Central's BER, a Finding of No Significant Impact was reached in accordance with Section IV.B and IV.D.1 of REA Bulletin 20-21:320-21, Part I.

Various alternatives to the proposed transmission line and substation were reviewed by Central and REA. The alternatives included no action, energy conservation, alternative line routes and an alternative line. After reviewing these alternatives, REA determined that the proposed 115 kV transmission line and associated substation is the best alternative for providing power to existing and future Central loads within the area.

Copies of REA's Finding of No Significant Impact and Central's BER may be reviewed in the office of the Director, Power Supply Division, Room 5829, South Agriculture Building, Rural Electrification Administration, Washington, D.C. 20250 and at the office of the cooperative, Central Power Electric Cooperative, P.O. Box 1576, Minot, North Dakota 58701.

This program is listed in the Catalog of Federal Domestic Assistance as 10.850—Rural Electrification Loans and Loan Guarantees.

Dated at Washington, D.C., this 9th day of January 1981.

Robert W. Feragen,

Administrator.

[FR Doc. 81-1209 Filed 1-15-81; 8:45 am]

BILLING CODE 3410-15-M

Deseret Generation and Transmission Cooperative; Draft Environmental Impact Statement and Notice of Public Hearing

Notice is hereby given that the Bureau of Land Management (BLM) and the Rural Electrification Administration (REA) have jointly prepared a Draft Environmental Impact Statement (DEIS) in accordance with Section 102(2)(c) of the National Enviromental Policy Act of 1969. This action is in connection with an anticipated request for an REA loan guarantee commitment from Deseret Generation and Transmission Cooperative (Deseret), P.O. Box BB, Sandy, Utah 84070. The anticipated financial assistance would allow Deseret to secure funds for the contruction of the proposed two unit (800 MW) coal-fired steam electric Moon Lake Generating Station, Deserado Mine and associated transmission facilities. Deseret proposes to locate the generating station in Uintah County, Utah. The Deserado Mine will be located in Rio Blanco County, Colorado.

Additional information may be obtained from REA through requests submitted to Mr. Frank W. Bennett, Director, Power Supply Division, Rural Electrification Administration, U.S. Department of Agriculture, 12th and Independence Ave., S.W., Washington, D.C. 20250, (202) 447-3183. Comments are invited from the public and particularly from State and local agencies which are authorized to develop and enforce environmental standards, and from Federal agencies having jurisdiction by law or special expertise with respect to any environmental impact, from which comments have not been requested specifically.

Copies of the BLM-REA DEIS are being sent to various Federal, state and local agencies, as outlined in the Council on Environmental Quality Regulations. Copies are available upon request to the Utah State Office, Bureau of Land Management, 136 East South Temple, Salt Lake City, Utah 84111. The DEIS may be examined during regular business hours at the offices of REA in the South Agriculture Building, Room 5831, 12th And Independence Avenue, S.W., Washington, D.C. 20250, at the BLM Washington Office (WO-332), 18th and C Streets N.W., Washington, D.C. 20240, at BLM State and District Offices in Colorado and Utah, at Deseret's address, 6722 South 300 West, Sandy, Utah 84070 and at public libraries in appropriate towns in the affected counties.

All comments concerning the environmental impact of the proposed project should be addressed to: State Director (U910), Utah State Office, Bureau of Land Management, 136 East South Temple, Salt Lake City, Utah 84111. Comments must be received within forty-five (45) days from the date the Environmental Protection Agency (EPA) announces availability of the document in accordance with 40 CFR 1506.10, in order to be considered in connection with the proposed actions by BLM and REA.

Notice is also hereby given that oral and/or written comments regarding the adequacy of the DEIS can be presented

at public hearings scheduled on February 17 at the Salt Palace in Salt Lake City, Utah, on February 18, at the Unitah County Courthouse in Vernal, Utah, and on February 19 at the Rangely High School in Rangely, Colorado. The three public hearings will start at 7:00 p.m.

Any REA financing assistance which may be made pursuant to this proposal will be subject to, and the release of funds thereunder will be contingent upon REA's reaching satisfactory conclusions with respect to environmental effects. Final REA action will be taken only after compliance with the National Environmental Policy Act of 1969, and other environmentally related statutes, regulations, Executive Orders and Secretary's Memoranda normally considered by REA.

This Federal Assistance program is listed in the Catalog of Federal Domestic Assistance as 10.850—Rural Electrification Loans and Loan Guarantees.

Dated at Washington, D.C., this 13th day of January 1981.

Robert W. Feragen,

Administrator.

[FR Doc. 81-1604 Filed 1-15-81; 8:45 am]

BILLING CODE 3410-15-M

Sam Houston Electric Cooperative, Inc.; Finding of No Significant Impact

Notice is hereby given that the Rural Electrification Administration (REA) has made a Finding of No Significant Impact which concludes that there is no need for REA to prepare environmental impact statement in connection with a proposed insured loan by REA for Sam Houston Electric Cooperative, Inc., (Sam Houston), of Livingston, Texas. The proposed insured loan will assist Sam Houston in constructing approximately 49.6 km (31 miles) of 138 kV transmission line, two associated switching stations, and two associated substations.

The 138 kV transmission line will originate at the proposed New Waverly Switching Station in Walker County, extend to the proposed Evergreen and Oakhurst Substations, and terminate at the proposed Staley Switching Station in San Jacinto County. Sam Houston has prepared a Borrower's Environmental Report (BER) concerning the proposed project. REA has reviewed the BER and determined that it represents an accurate assessment of the environmental impact of the project. REA has prepared an Environmental Assessment concerning the proposed project and its impacts.

Threatened and endangered species, important farmland, archaeological and historic sites, wetlands, flood plains, and potential impacts of the project are adequately considered in the BER. REA's independent evaluation of the proposed project leads it to conclude that its proposed financing assistance for this project does not represent a major Federal action that will significantly affect the quality of the human environment.

Based on this independent evaluation and review of Sam Houston's BER, a Finding of No Significant Impact was reached in accordance with Section IV.B and IV.D.1 of REA Bulletin 20-21:320-21, Part I.

Various alternatives to the proposed transmission line and substation were reviewed by Sam Houston and REA. The alternatives included no action and construction and utilization of other facilities. After reviewing these alternatives, REA determined that the proposed 138 kV transmission line and associated facilities are the best alternative for providing power and system reliability to existing and future Sam Houston loads within the area.

Copies of REA's Finding of No Significant Impact and Sam Houston's BER may be reviewed in or requested from the office of the Director, Distribution Systems Division, Room 3304, South Agriculture Building, Rural Electrification Administration, Washington, D.C. 20250 and at the office of the cooperative, Sam Houston Electric Cooperative, Inc., P.O. Box 1121, Livingston, Texas 77351.

This program is listed in the Catalog of Federal Domestic Assistance as 10.850—Rural Electrification Loans and Loan Guarantees.

Dated at Washington, D.C., this 12th day of January 1981.

Robert W. Feragen,

Administrator.

[FR Doc. 81-1606 Filed 1-15-81; 8:45 am]

BILLING CODE 3410-15-M

CHRYSLER CORPORATED LOAN GUARANTEE BOARD

Closed Meeting

The Chrysler Corporation Loan Guarantee Board will hold a meeting closed to the public on January 14, 1981 at 4 p.m., in Room 4121, Main Treasury Building, 15th Street and Pennsylvania Avenue, N.W., Washington, D.C.

The Board will continue its discussion of Chrysler Corporation's new Operating and Financing Plans and related documents and its request for additional guarantees. The Board expects to begin considering whether to grant preliminary approval to Chrysler's application for an additional $400 million of guarantees.

Discussions of the above matters are closed to the public pursuant to applicable exemptions under the Government in the Sunshine Act. The discussions at the meeting will involve significant amounts of non-public financial and commerical information received from Chrysler Corporation, relating to anticipated profitability, market positions, capital expenditures and cost reduction actions.

An open meeting is likely to disclose (1) confidential commerical and financial information, which is exempt under 5 U.S.C. 552b(c)(4); and (2) information the premature disclosure of which would be likely to significantly frustrate implementation of Board action, which is exempt under 5 U.S.C 552b(c)(9)(B).

The meeting was closed pursuant to a unanimous vote of the Board taken on December 17, 1980 to close all Board meetings held during the thirty days after the Board's December 18, 1980 meeting, at which the same subject matters are discussed.

Those persons expected to attend the meeting, or portions thereof, include the Board members, the Executive Director, General Counsel, and Secretary of the Board, and members of the respective staffs of each Board member.

Those persons desiring further information should contact Bruce D. Bolander, Secretary of the Board, at (202) 566-2278.

This notice is given as a result of a court order. The position of the Board is that it is not subject to the Government in the Sunshine Act.

Dated: January 13, 1981.

Bruce D. Bolander,

Secretary of the Board.

[FR Doc. 81-1650 Filed 1-15-81; 8:45 am]

BILLING CODE 4810-27-M

CIVIL AERONAUTICS BOARD

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q of the Board's Procedural Regulations [1]

Week Ended January 9, 1981.

Subpart Q. Applications

The due date for answers, conforming applications, or motions to modify scope are set forth below for each application. Following the answer period the Board

[1] See 14 CFR 302.1701 *et seq.*

may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Date filed, Docket No., and Description

1-7-81—39135—Jet America, 10880 Wilshire Boulevard, Suite 911, Los Angeles, California 90024.

Application of Jet America, pursuant to Section 401 of the Act and Subpart Q of the Board's Procedural Regulations, requests a determination of its fitness, willingness and ability to operate as a federally certificated air carrier and for a certificate of public convenience and necessity, authorizing the scheduled transportation of persons, property and mail in a medium haul market, proposing nonstop service between the cities of Long Beach, California and Chicago, Illinois.

Conforming Applications, motions to modify scope, and Answers may be filed by February 4, 1981.

1-7-81—39140—New York Air, LaGuardia Airport Station, Hangar 5, Flushing, New York 11317.

Application of New York Air pursuant to Section 401 of the Act and Subpart Q of the Board's Procedural Regulations, requests that the Board amend its certificate of public convenience and necessity for Route 260 by the addition of new nonstop authority between and among the terminal points New York/Newark, Washington, Boston, Syracuse, Albany, Rochester, Buffalo, Cleveland, Columbus, Dayton, Cincinnati, Detroit, Indianapolis, and Pittsburgh and the alternate terminal points:

Atlanta, Georgia;
Atlantic City, New Jersey;
Baltimore, Maryland;
Charlotte, North Carolina;
Chicago, Illinois;
Columbia, South Carolina;
Greensboro/High Point/Winston-Salem, North Carolina;
Greenville/Spartanburg, South Carolina;
Hartford, Connecticut/Springfield, Massachusetts;
Islip, Long Island, New York;
Jacksonville, Florida;
Louisville, Kentucky;
Memphis, Tennessee;
Milwaukee, Wisconsin;
Nashville, Tennessee;
Norfolk/Virginia Beach, Virginia;
Philadelphia, Pennsylvania;
Providence, Rhode Island;
Raleigh/Durham, North Carolina;
Richmond, Virginia;
St. Louis, Missouri;
White Plains/Westchester County, New York.

Conforming Applications, motions to modify scope, and Answers may be filed by February 4, 1981.

1-8-81—39142—Trans World Airlines, Inc., 605 Third Avenue, New York, New York 10158.

Application of Trans World Airlines, Inc. pursuant to Section 401 of the Act and Subpart Q of the Board's Procedural Regulations requests authority to engage in foreign air transportation between the terminal point St. Louis, Missouri, and the terminal points Mexico City and Acapulco, Mexico.

Conforming Applications, motions to modify scope, and Answers may be filed by February 5, 1981.

Phyllis T. Kaylor,
Secretary.

[FR Doc. 81-1689 Filed 1-15-81; 8:45 am]
BILLING CODE 6320-01-M

[Docket No§. 33361 and 33412]

Former Large Irregular Air Service Investigation and Application of Eric C. Pearson d.b.a. Pearson Alaska Airlines; Hearing

Notice is hereby given, pursuant to the Federal Aviation Act of 1958, as amended, that a hearing in the above-entitled proceeding is assigned to be held on February 18, 1981, at 10:00 a.m. (local time), in Room 1003, Hearing Room B, Universal North Building, 1875 Connecticut Avenue, N.W., Washington, D.C., before the undersigned administrative law judge.

Dated at Washington, D.C., January 12, 1981.

Joseph J. Saunders,
Chief Administrative Law Judge.

[FR Doc. 81-1690 Filed 1-15-81; 8:45 am]
BILLING CODE 6320-01-M

[Docket No. 39049]

Transamerica Airlines, Inc.; Compliance with Part 252 Enforcement Proceeding; Assignment of Proceeding

This proceeding has been assigned to Administrative Law Judge William A. Pope, II. Future communications should be addressed to Judge Pope.

Dated at Washington, D.C., January 12, 1981.

Joseph J. Saunders,
Chief Administrative Law Judge.

[FR Doc. 81-1691 Filed 1-15-81; 8:45 am]
BILLING CODE 6320-01-M

DEPARTMENT OF COMMERCE

Minority Business Development Agency

General Business Services Program; Financial Assistance Application Announcement

January 3, 1981.

The Minority Business Development Agency announces that it is seeking applications under its program to operate a grant for management and technical performance project for 12 months beginning May 1, 1981.

Funding Instrument: It is anticipated that the funding instruments as defined by the Federal Grant and Cooperative Agreement Act of 1977 will be a grant.

Program Description: The General Business Services Program (GBS) of the Minority Business Development Agency (MBDA) provides technical assistance to minority business persons and firms for the purpose of improving their stability by increasing their management and marketing capabilities.

MBDA offers competitive grants to consulting firms either "not for profit" or commercial entities. These firms must be capable of providing such services as:

——Preparation of business plans;
——Financial Packaging;
——Industrial Management Services;
——Personnel Management Services;
——Marketing Planning.

Applications are invited for the following grant:

H—GBS Grant for a Management and Technical Performance Project to operate in Dallas, TX, SMSA county of Dallas. Project will operate at a cost not to exceed $278,000 and the Project I.D. Number is 06-60-80001-01 under Catalog of Federal Domestic Assistance, Minority Business Development 11.800.

Eligibility Requirements: Any for-profit or non-profit institution is eligible to submit an application. If an award is made, continuation awards of up to two additional years may be made to the successful recipient without competition, provided that: (1) Funds have been appropriated for a project of this kind, (2) MBDA has determined that such funds are available, (3) there is a continuing need for a project of this kind and (4) the recipient has performed satisfactorily.

Application Materials: An application kit for these projects may be requested by writing to the following address: U.S. Department of Commerce, Minority Business Development Agency, Grants Administration Unit, 1100 Commerce Street, Room 7B18, Dallas, TX 75242, Attn: Richard L. Greene, Grant/Cooperative Agreement Specialist.

The closing date for submitting an application is February 17, 1981. An appliation kit is available by written request to the above address, Attn: Richard L. Greene, Grant/Cooperative Agreement Specialist.

(11.800 Minority Business Development Catalog of Federal Domestic Assistance)

Richard H. Sewing,

Regional Director.

[FR Doc. 81-1804 Filed 1-15-81; 8:45 am]

BILLING CODE 3510-21-M

General Business Services Program; Financial Assistance Application Announcement

The Minority Business Development Agency announces that it is seeking applications under its program to operate one project for a twelve month period beginning May 1, 1981. The total cost of the project will not exceed $358,000.

Funding Instrument: It is anticipated that the funding instrument, as defined by the Federal Grant and Cooperative Agreement Act of 1977, will be a grant.

Program Description: The General Business Services Program (GBS) of the Minority Business Development Agency (MBDA) provides technical assistance to minority businesspersons and firms for the purpose of improving their stability by increasing their management and marketing capabilities. MBDA offers competitive grants to consulting firms (either non-profit or commercial entities). These firms must be capable of providing such services as:

——Preparation of business plans;
——Financial packaging;
——Industrial management assistance;
——Personnel management services;
——Marketing planning;

and a broad range of other business services excluding legal services.

Applications are invited for the following project:

One grant for a management and technical assistance project to operate in the Memphis, Nashville and Louisville SMSAs in Tennessee and Kentucky. The project will operate at a cost not to exceed $358,000, and will also include supplying specialized consulting services. The Project I. D. Number is 04-10-80003-01.

Eligibility Requirements: There are no restrictions. Any profit or non-profit institution is eligible to submit an application.

Pre-application Conference: A Pre-application Conference for this project will be held on January 30, 1981, at 1:30 p.m. at the following address: U.S. Department of Commerce, Minority Business Development Agency, 1365 Peachtree Street, NE, Room 225, Atlanta, Georgia 30309.

Application Materials: An application kit for this project may be requested by writing the following address: U.S. Department of Commerce, Minority Business Development Agency, 1371 Peachtree Street, NE, Suite 505, Atlanta, Georgia 30309.

In requesting an application kit, the applicant must specify its profit status; i.e., State or Local Government, federally recognized Indian tribal units, educational institutions, hospitals, or other type of profit or non-profit institution. This information is necessary to enable MBDA to include the appropriate cost principles in the application kit.

Award Process: All applications that are submitted in accordance with the instructions in the application kit will be submitted to a panel for review and ranking. Specific criteria by which applications will be evaluated is included in the application kit.

Closing Date: Applicants are encouraged to obtain an application kit as soon as possible in order to allow sufficient time to prepare and submit an application before the closing date of February 13, 1981. Applications received after this date will not be considered.

11.800 Minority Business Development (Catalog of Federal Domestic Assistance)

(This program is not subject to the requirements of OMB Circular A-95)

Dated: January 7, 1981.

Charles F. McMillan,

Regional Director.

[FR Doc. 81-1825 Filed 1-15-81; 8:45 am]

BILLING CODE 3510-21-M

General Business Services Program; Financial Assistance Application Announcement

The Minority Business Development Agency announces that it is seeking applications under its program to operate one project for a twelve month period beginning May 1, 1981. The total cost of the project will not exceed $436,000.

Funding Instrument: It is anticipated that the funding instrument, as defined by the Federal Grant and Cooperative Agreement Act of 1977, will be a grant.

Program Description: The General Business Services Program (GBS) of the Minority Business Development Agency (MBDA) provides technical assistance to minority businesspersons and firms for the purpose of improving their stability by increasing their management and marketing capabilities. MBDA offers competitive grants to consulting firms (either non-profit or commercial entities). These firms must be capable of providing such services as:

——preparation of business plans;
——financial packaging;
——industrial management assistance;
——personnel management services;
——marketing planning;

and a broad range of other business services excluding legal services.

Applications are invited for the following project:

One grant for a management and technical assistance project to operate in the Atlanta, Augusta and Savannah SMSAs in Georgia. The project will operate at a cost not to exceed $436,000, and will include supplying specializing consulting services. The Project I. D. Number is 04-10-80004-01.

Eligibility Requirements: There are no restrictions. Any profit or non-profit institution is eligible to submit an application.

Pre-application Conference: A Pre-application Conference for this project will be held on Janury 29, 1981 at 1:30 p.m. at the following address: U.S. Department of Commerce, Minority Business Development Agency, 1371 Peachtree Street, NE, Suite 505, Atlanta, Georgia 30309.

Application Materials: An application kit for this project may be requested by writing the following address: U.S. Department of Commerce, Minority Business Development Agency, 1365 Peachtree Street, NE, Room 225, Atlanta, Georgia 30309.

In requesting an application kit, the applicant must specify its profit status; i.e., State or Local Government, federally recognized Indian tribal units, educational institutions, hospitals, or other type of profit or non-profit institution. This information is necessary to enable MBDA to include the appropriate cost principles in the application kit.

Award Process: All applications that are submitted in accordance with the instructions in the application kit will be submitted to a panel for review and ranking. Specific criteria by which applications will be evaluated is included in the application kit.

Closing Date: Applicants are encouraged to obtain an application kit as soon as possible in order to allow sufficient time to prepare and submit an application before the closing date of February 13, 1981. Applications received after that date will not be considered.

11.800 Minority Business Development (Catalog of Federal Domestic Assistance)

(This program is not subject to the requirements of OMB Circular A-95)

Dated: January 7, 1981.

Charles F. McMillan,

Regional Director.

[FR Doc. 81-1826 Filed 1-15-81; 8:45 am]

BILLING CODE 3510-21-M

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Procedure List 1981; Additions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Additions to Procurement List.

SUMMARY: This action adds to Procurement List 1981 a commodity to be produced by and services to be provided by workshops for the blind and other severely handicapped.

EFFECTIVE DATE: January 16, 1981.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, 2009 14th Street North, Suite 610, Arlington, Virginia 22201.

FOR FURTHER INFORMATION CONTACT: C. W. Fletcher (703) 557–1145.

SUPPLEMENTARY INFORMATION: On October 31, 1980 and September 19, 1980, the Committee for Purchase from the Blind and Other Severely Handicapped published notices (45 FR 72248 and 45 FR 62520) of proposed additions to Procurement List 1981, November 12, 1980 (45 FR 74836).

After consideration of the relevant matter presented, the Committee has determined that the commodity and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c, 85 Stat. 77.

Accordingly, the following commodity and services are hereby added to Procurement List 1981:

Class 7530

Paper, Teletypewriter Roll
7530–00–142–9037

SIC 7349

Janitorial Service, Naval Air Station Miramar, San Diego, California

SIC 7699

Repair of Rubberized Items:
Mattress Pneumatic
(Noninsulated 8465–00–254–8887)
(Insulated 8465–00–518–2781)
Ponchos (8405–00–935–3257)
Bag Clothing, Waterproof (8465–00–261–6909) Fort Bliss, Texas

C. W. Fletcher,

Executive Director.

[FR Doc. 81–1899 Filed 1–15–81; 8:45 am]

BILLING CODE 6820–33–M

Procurement List 1981; Proposed Deletions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Proposed Deletions from Procurement List.

SUMMARY: The Committee has received proposals to delete from Procurement List 1981 services provided by workshops for the blind or other severely handicapped.

COMMENTS MUST BE RECEIVED ON OR BEFORE: February 18, 1981.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, 2009 14th Street North, Suite 610, Arlington, Virginia 22201.

FOR FURTHER INFORMATION CONTACT: C. W. Fletcher (703) 557–1145.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2), 85 Stat. 77. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed action.

It is proposed to delete the following services from Procurement List 1981, November 12, 1980 (45 FR 74836):

SIC 7384

Film Developing
Photographic Processing for the GSA Self-Service Store #80, Denver Federal Center, Denver, Colorado

SIC 7699

Repair of Field Jackets
Fort Riley, Kansas

C. W. Fletcher,

Executive Director.

[FR Doc. 81–1900 Filed 1–15–81; 8:45 am]

BILLING CODE 6820–33–M

COMMODITY FUTURES TRADING COMMISSION

Proposed Futures Contract; Proposed Rules of Major Economic Significance; Terms and Conditions of the Three-Month Domestic Certificates of Deposit Futures Contract of the Chicago Mercantile Exchange

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of proposed rules of contract markets.

SUMMARY: The Chicago Mercantile Exchange ("CME") has applied for designation as a contact market in $1,000,000 certificates of deposit with maturities of three months. The Commodity Futures Trading Commission ("Commission") has determined that the proposed terms and conditions of this proposed futures contract are of major economic significance and that, accordingly, publication of the proposed terms and conditions is in the public interest, will assist the Commission in considering the views of interested persons and is consistent with the purposes of the Commodity Exchange Act.

DATE: Comments must be received on or before March 17, 1981.

ADDRESS: Interested persons should submit their views and comments to Jane K. Stuckey, Secretary, Commodity Futures Trading Commission, 2033 K. Street, N.W., Washington, D.C. 20581. Reference should be made to CME Three-Month Domestic CD Futures Contract.

FOR FURTHER INFORMATION CONTACT: Christine A. Rock, Staff Attorney, Division of Trading and Markets, Commodity Futures Trading Commission, 2033 K Street, N.W., Washington, D.C. 20581; Telephone: (202) 254–8955.

SUPPLEMENTARY INFORMATION: The terms and conditions of CME's proposed three-month domestic CD futures contract are as follows:

Chapter —

Domestic Certificates of Deposit

00. Scope of Chapter.—This chapter is limited in application to futures trading in Domestic Certificates of Deposit. The procedures for trading, clearing, delivery and settlement, and any other matters not specifically covered herein shall be governed by the rules of the Exchange.

01. Commodity Specifications.—Each futures contract shall be for a $1,000,000 Domestic Certificate of Deposit with a three-month maturity.

02. Futures Call.—

A. Trading Months and Hours: Futures contracts shall be scheduled for trading during such hours and delivery in such months as may be determined by the Board of Governors.

B. Size of Trading Unit: The size of the unit of trading shall be a Domestic Certificate of Deposit in the amount of $1,000,000.

C. Minimum Increments: Bids and offers shall be quoted in terms of the IMM Index, 100.00 minus yield on an annual basis for a 360-day year. (A deposit rate of 7.20% shall be quoted as 92.80.) Minimum fluctuations of the IMM Index shall be in multiples of .01 ($25.00).

D. Daily Limits: There shall be no trading at a level more than 0.60 IMM Index points above or below the preceding day's settlement index except as provided by Rule 07 (Expanded Daily Limits) and on the last day of trading when there shall be no limit.

E. Discretionary Position Limits: The Board may in its sole and complete discretion impose limits upon an individual or upon related accounts.

F. Termination of Trading: Futures trading shall terminate on the business

day immediately preceding the last delivery day of the contract month.

G. Contract Modification: Specifications shall be fixed as of the first day of trading of a contract except that all deliveries must conform to government regulations in force at the time of delivery. If any U.S. governmental agency or body issues an order, ruling, directive or law pertaining to the trading or delivery of Domestic Certificates of Deposit, such order, ruling, directive or law shall be construed to take precedence and become part of these rules, and all open and new contracts shall be subject to such government orders.

03. Delivery.—The following shall specifically apply to the delivery of Domestic Certificates of Deposit.

A. Par Delivery Unit: A par delivery unit shall be a $1,000,000 three-month Domestic Certificate of Deposit.

B. Delivery Days: Delivery shall be made on any business day that is not a bank holiday in either New York or Chicago, and in the period beginning on the Monday following the 15th day of the contract month, and ending on the last business day of the contract month.

C. Approved Delivery Banks: The Board of Governors shall maintain a list of U.S. banks whose domestic certificates of deposit constitute approved delivery units on the Domestic Certificate of Deposit contract. Individual Banks may be deleted from this list by the Board of Governors without prior notice.

D. Deliverable Issues: Any domestic certificate of deposit meeting the following conditions shall constitute a deliverable CD.

1. Having a fixed maturity value (principal plus interest at maturity) not less than $1,000,000 and not greater than $1,200,000.

2. Having no interest payments between the delivery date and maturity date.

3. Maturing not before the 10th of the month three months after the spot month nor after the last day of the month three months after the spot month.

4. Maturing on a business day that is not a banking holiday in either New York or Chicago.

E. Seller's Duties: The clearing member representing a customer making delivery in liquidation of his position, shall present to the Clearing House by 2:00 p.m., one business day before delivery day, a Seller's Delivery Commitment completed in full. If such commitment is received later than 2:00 p.m. on the business day prior to the last delivery day but not later than 9:00 a.m. on the last delivery day, seller's clearing member shall be assessed a fine on a per contract basis, the amount to be determined by the Board. Any papers received subsequent to 9:00 a.m. on the last delivery day shall constitute the seller's failure to perform and be acted upon in accordance with Rule 06.

Before 12:00 noon (Chicago time) on the delivery date, Seller's Clearing Member shall deliver a Domestic Certificate of Deposit of an Approved Delivery Bank, satisfying the conditions of Rule 03.D, to a bank registered with the Exchange and a member of the Federal Reserve System selected by the buyer.

F. Buyer's Duties: Upon notification of delivery by the Clearing House, the clearing member representing the buyer shall deliver to the Clearing House by 5:00 p.m. (Chicago time) on the day before the delivery date, a buyer's delivery commitment that includes: the buyer's name and account number, and the name of a Chicago bank registered with the Exchange and a member of the Federal Reserve System to which the delivery unit should be transferred. The clearing member representing the buyer shall, by 12:45 noon (Chicago time) by payment against delivery on the day of delivery, present to the seller's clearing member's bank or its designated agent a wire transfer of Federal funds for the net invoicing price.

G. Matching Longs and Shorts: The Clearing House shall pair Seller's and Buyer's Delivery Commitments by matching the oldest long positions with the Seller's Delivery Commitments as received. The Clearing House shall, as soon as practicable thereafter, present or make known the Buyer's Delivery Commitment to the appropriate, paired clearing member.

04. Par Delivery.—

A. Par Delivery: A delivery unit shall be a Domestic Certificate of Deposit of an approved delivery bank satisfying the conditions of 03–D.

B. Payment: The following formula shall be used to calculate the net invoicing price:

(maturity value [1]) ÷ [1 + (F yield [2]) days to maturity]/360

C. Delivery Points: Delivery shall be made to a bank, registered with the Exchange and a member of the Federal Reserve System, specified by the Buyer's clearing member. All banks selected by the buyer and by the seller to effectuate delivery must be members of the Federal Reserve System.

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[1] Maturity value is the value of the delivery unit at maturity (principal + interest).

[2] The F yield is the difference between 100.00 and the IMM index at settlement on the day before delivery day, expressed in decimals.

F yield = (100.00 − F index) × 0.01

05. Emergencies, Acts of God, Acts of Government.—If delivery or acceptance or any precondition or requirement of either is prevented by strike, fire, accident, action of government or act of God, the seller or buyer shall immediately notify the Exchange President. If the President determines that emergency action may be necessary, he shall call a special meeting of the Board of Governors and arrange for the presentation of evidence respecting the emergency condition. If the Board determines that an emergency exists, it shall take such action as it deems necessary under the circumstances and its decision shall be binding upon all parties to the contract. For example, and without limiting the Board's power, it may: take action in accordance with Rule 06; extend delivery dates; and designate alternate approved banks in the event of conditions interfering with the normal operations of approved facilities.

In the event that the Board of Governors or Business Conduct Committee determines that there exists a shortage of deliverable domestic Certificates of Deposit, it may upon a two-thirds vote of the members present or upon a two-thirds vote of the members who respond to a poll take such action as may in the Board's or Committee's sole discretion appear necessary to prevent, correct, or alleviate the condition. Without limiting the foregoing, the Board or Committee may: (1) designate as deliverable Certificates of Deposit of banks not on the Approved Bank List and (2) determine a cash settlement based on the current cash value of a 3-month Certificate of Deposit as determined by using the current cash market yield curve on the last day of trading.

06. Failure To Perform.—If the clearing member with a delivery commitment fails to perform all acts required by this chapter, then that clearing member shall be deemed as failing to perform which may be punishable as a major violation. A clearing member failing to perform shall be liable to the clearing member to which it was matched on the failing transaction for any loss sustained. The Board shall determine and assess losses sustained, taking into account the settlement price, interest earnings foregone, and such other factors as it deems appropriate. The Board may also assess such penalties as it deems appropriate in addition to damages.

07. Expanded Daily Limits.—Whenever on two successive days any contract month closes at the normal daily limit in the same direction (not

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necessarily the same contract month on both days) an expanded daily limit schedule shall go into effect as follows:

1. The third day's daily limit in all contract months shall be 150% of the normal daily limit.

2. If any contract month closes at its expanded daily limit on the third day in the same direction, then the fourth day's expanded daily limit and each successive day thereafter, shall be 200% of the normal daily limit, so long as any contract month closes at its expanded daily limit.

3. Whenever the foregoing daily limit schedule is in effect and no contract month closes at the limit in the same direction which initiated or maintained the expanded schedule, then the normal daily limit shall be reinstated on the following day.

* * * * *

The Commission also will make available any other materials submitted by the CME in support of its application for contract market designation to the extent that such materials are not entitled to confidential treatment under Part 145 of the Commission's regulations (17 CFR Part 145). Copies of such materials submitted by the CME in support of its application for designation will be available through the Commission's Secretary or its offices in Washington, New York, Chicago Minneapolis, Kansas City and San Francisco.

Any person interested in submitting written data, views or arguments on the terms and conditions of the proposed futures contract, or with respect to other materials submitted by the CME in support of its application for contract market designation, should send such comments to Jane K. Stuckey, Secretary, Commodity Futures Trading Commission, 2033 K Street, N.W., Washington, D.C. 20581, by March 17, 1981.

Issued in Washington, D.C., on January 12, 1981.

Jane K. Stuckey,

Secretary of the Commission.

[FR Doc. 81-1088 Filed 1-15-81; 8:45 am]

BILLING CODE 6351-01-M

Proposed Futures Contracts; Proposed Rules of Major Economic Significance; Terms and Conditions of the Three-Month Eurodollar Futures Contract of the Chicago Mercantile Exchange

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of proposed rules of contract markets.

SUMMARY: The Chicago Mercantile Exchange ("CME") has applied for designation as a contract market in one million dollar par value Eurodollar certificates of deposit or time deposits with maturities of three months. The Commodity Futures Trading Commission ("Commission") has determined that the proposed terms and conditions of this proposed futures contract are of major economic significance and that, accordingly, publication of the proposed terms and conditions is in the public interest, will assist the Commission in determining whether the CME should be so designated, and is consistent with the purposes of the Commodity Exchange Act.

DATE: Comments must be received on or before March 17, 1981.

ADDRESS: Interested persons should submit their views and comments to Jane K. Stuckey, Secretary, Commodity Futures Trading Commission, 2033 K Street, N.W., Washington, D.C. 20581. Reference should be made to CME Three-Month Eurodollar Futures Contract.

FOR FURTHER INFORMATION CONTACT: Christine A. Rock, Attorney, Division of Trading and Markets, Commodity Futures Trading Commission, 2033 K Street, N.W., Washington, D.C. 20581; Telephone: (202) 254-8955.

SUPPLEMENTARY INFORMATION: The terms and conditions of CME's proposed three-month Eurodollar futures contract are as follows:

Chapter —Three-Month Eurodollars

00. Scope of Chapter.—This chapter is limited in application to futures trading in Eurodollars. The procedures for trading, clearing, delivery and settlement, and any other matters not specifically covered herein shall be governed by the rules of the Exchange.

01. Commodity Specifications.—Each futures contract shall be for a $1,000,000 Eurodollar Time Deposit or Eurodollar Certificate of Deposit with a three-month maturity.

02. Futures Call.—

A. Trading Months and Hours: Futures contracts shall be scheduled for trading during such hours and delivery in such months as may be determined by the Board of Governors.

B. Size of Trading Unit: The size of the unit of trading shall be Eurodollar Time Deposits or Eurodollar Certificates of Deposit in the amount of $1,000,000.

C. Minimum Increments: Bids and offers shall be quoted in terms of the IMM Index, 100.00 minus yield on an annual basis for a 360-day year. (A deposit rate of 7.20% shall be quoted as 92.80). Minimum fluctuations of the IMM Index shall be in multiples of .01 ($25.00).

D. Daily Limits: There shall be no trading at a level more than 0.60 IMM Index points above or below the preceding day's settlement index except as provided by Rule 07 (Expanded Daily Limits) and on the last day of trading when there shall be no limit.

E. Discretionary Position Limits: The Board may in its sole and complete discretion impose limits upon an individual or upon related accounts.

F. Termination of Trading: Futures trading shall terminate on the last business day immediately preceding the third Tuesday of the contract month.

G. Contract Modification: Specifications shall be fixed as of the first day of trading of a contract except that all deliveries must conform to government regulations in force at the time of delivery. If any U.S. governmental agency or body issues an order, ruling, directive or law pertaining to the trading or delivery of Eurodollars, such order, ruling, directive or law shall be construed to take precedence and become part of these rules, and all open and new contracts shall be subject to such government orders.

03. Delivery.—The following shall specifically apply to the delivery of Eurodollars:

A. Par Delivery Unit: A part delivery unit shall be a $1,000,000 three-month Eurodollar Certificate of Deposit or Time Deposit.

B. Delivery Day: Delivery shall be made on the third business day following the last day of trading if that day is followed by a banking business day in London, Chicago, and New York. If that day is the day before a bank holiday, delivery shall be made on the next business day that is not followed by a holiday or weekend in either New York, Chicago or London.

C. Approved Delivery Banks: The Board of Governors shall maintain a list of London branches of U.S. or European banks whose dollar-denominated liabilities constitute approved delivery units on the Eurodollar contract. The Board of Governors may, without prior notification, delete banks from the Approved Delivery Bank list.

D. Deliverable Issues: Any dollar-denominated time deposit or certificate of deposit of any Approved Delivery Bank meeting the following conditions shall constitute a deliverable deposit:

1. For time deposits: (a) value dated on delivery day in New York Clearing House funds; (b) the initial amount of the deposit will be $1,000,000.00.

2. For both time deposits and certificates of deposit: maturing at least

86 days and not more than 93 days after delivery date, and maturing on a business day, not a banking holiday, not the last banking day of the week or the last banking day before a holiday in either London, New York or Chicago.

3. For certificates of deposit: (a) having a fixed maturity value (principal+interest) not less than $1,000,000 nor greater than $1,200,000 and (b) having no interest payments between the delivery date and the maturity data.

E. Seller's Duties: The clearing member representing a customer making delivery in liquidation of his position, shall present to the Clearing House by 2:00 p.m. on the business day before the delivery day, a Seller's Delivery Commitment completed in full. If the delivery unit is a Eurodollar Certificate of Deposit, the Seller's Delivery Commitment shall indicate the maturity date and the maturity value of the delivery unit. If the delivery unit is a time deposit, the clearing member representing seller shall indicate the bank, yield and maturity date. If seller has failed to negotiate a deliverable time deposit or purchase a deliverable CD at time of submission of Seller's Delivery Commitment, seller's clearing member will notify the Clearing House by 2:00 p.m. Time deposits negotiated and CDs purchased by short following 2:00 p.m. on the business day preceding delivery day will not be deliverable. If such commitment is received later than 2:00 p.m. on the day before the delivery day, but not later than 9:00 a.m. on the delivery day, the short clearing member shall be assessed a fine on a per contract basis, the amount to be determined by the Board. Any papers received subsequent to 9:00 a.m. on the delivery day shall constitute the seller's failure to perform and be acted upon in accordance with Rule 06.

If the delivery unit is a Certificate of Deposit, before 11:00 a.m. on the delivery date the seller shall deliver a Certificate of Deposit of an Approved Delivery Bank, satisfying the conditions of Rule 03–D, to a bank designated by the Clearing House.

On the delivery date the clearing member representing the seller shall present to the buyer's clearing member a certified or cashier's check or a wire transfer of Fed funds in the amount of the seller's remaining obligation to the buyer.

F. Buyer's Duties: The clearing member with a long position at close of trading on the last day of trading shall present to the Clearing House by 2:00 p.m. on that day, a Buyer's Delivery Commitment completed in full and an IMM approved payment order from an approved delivery bank confirming delivery of New York Clearing House funds value dated on the delivery date to the IMM Eurodollar delivery account in a bank named by the Clearing House. If such commitment is received later than 2:00 p.m. on the last day of trading, but not later than 9:00 a.m. on the following business day, buyer's clearing member shall be assessed a fine on a per contract basis, the amount to be determined by the Board. If papers are not submitted by 9:00 a.m. on the business day following the last day of trading, the clearing member representing the buyer shall pay a penalty of no more than the interest yield on $1 million, at twice the average of the prime loan rates of the ten largest U.S. banks, ranked by deposit size, per contract.

Upon notification of a delivery of a Eurodollar time deposit in buyer's name or a certificate of deposit, buyer's clearing member shall present a certified or cashier's check or a wire transfer of Fed funds in the amount of buyer's remaining obligation to seller.

G. Matching Longs and Shorts: The Clearing House shall match the oldest short positions with the Buyer's Delivery commitments as received. In the event that the clearing member representing the buyer does not present the Buyer's Delivery Commitment to the Clearing House by the required time, the Clearing House will assign the open long position to the remaining open short position.

04. Par Delivery.—

A. Delivery Unit: A delivery unit shall be a $1,000,000 liability of a London branch of an approved delivery bank satisfying the conditions of 03.

B. Payment: If the unit of delivery is a Certificate of Deposit satisfying the conditions of 03–D, buyer's clearing member shall be invoiced according to the formula:

$$\text{maturity value}^{*} \div [1 + \frac{\text{days to maturity}}{360} (\text{7 yield}^{**})] = \text{invoice price}$$

*maturity value = value at maturity of the delivered CD.

**7 yield = (100–7 index) x 0.01 where (7 index) is the index level of the expiring Eurodollar contract at close of business on the last day of trading.

If the delivery unit is a time deposit, $1,000,000 in New York Clearing House funds will be transferred to the buyer's time deposit account at an Approved Delivery bank.

If the unit of delivery is a time deposit, the following formula shall be used to calculate the amount of any remaining obligations between buyer's clearing member and seller's clearing member.

$$\text{remaining obligation} = \frac{\text{days to maturity} \times (\text{CD yield}^{**} - \text{7 yield}^{**}) \times \$1{,}000{,}000}{360} \times [1 + (\text{days to maturity} \times (\text{7 yield}))]$$

If this amount is positive, Buyer's clearing member will make payment to Seller's clearing member. If this amount is negative, Seller's clearing member will make payment to Buyer's clearing member.

05. Emergencies, Acts of God, Acts of Government.—If delivery or acceptance of any precondition or requirement of either is prevented by strike, fire, accident, action of government or act of God, the seller or buyer shall immediately notify the Exchange President. If the President determines that emergency action may be necessary, he shall call a special meeting of the Board of Governors and arrange for the presentation of evidence respecting the emergency condition. If the Board determines that an emergency exists, it shall take such action as it deems necessary under the circumstances and its decision shall be binding upon all parties to the contract. For example, and without limiting the Board's power, it may: take action in accordance with Rule 06; extend delivery dates; and designate alternate dates; and designate alternate approved banks in the event of conditions interfering with the normal operations of approved facilities.

In the event that the Board of Governors or Business Conduct Committee determines that there exists a shortage of deliverable Eurodollar deposits, it may upon a two-thirds vote of the members who respond to a poll take such action as may in the Board's or Committee's sole discretion appear necessary to prevent, correct, or alleviate the condition. Without limiting the foregoing the Board or Commitee may: (1) designate as deliverable deposits of banks not on the Approved Bank List and (2) determine a cash settlement based on the current cash value of a 3-month Eurodollar deposit as determined by using the current cash market yield curve on the last day of trading.

08. Failure to Perform.—If the clearing member with a delivery commitment fails to perform all acts required by this chapter, then that clearing member shall be deemed as failing to perform which may be punishable as a major violation. A clearing member shall be liable to the clearing member to which it was matched on the failing transaction for any loss sustained. The Board shall determine and assess losses sustained, taking into account the settlement price, interest earnings foregone, and such other factors as it deems appropriate. The Board may also assess such penalties as it deems appropriate in addition to damages.

07. Expanded Daily Limits.—Whenever on two successive days any contract month closes at the normal daily limit in the same direction (not necessarily the same contract month on both days) an expanded daily limit schedule shall go into effect as follows:

1. The third day's daily limit in all contract months shall be 150% of the normal daily limit.

2. If any contract month closes at its expanded daily limit on the third day in the same direction, then the fourth day's expanded daily limit and each successive day thereafter, shall be 200% of the normal daily limit, so long as any contract month closes at its expanded daily limit.

3. Whenever the foregoing daily limit schedule is in effect and no contract month closes at the limit in the same direction which initiated or maintained the expanded schedule, then the normal daily limit shall be reinstated on the following day.

* * * * *

The Commission also will make available any other materials submitted by the CME in support of its application for contract market designation to the extent that such materials are not entitled to confidential treatment under Part 145 of the Commission's regulations (17 CFR Part 145). Copies of such materials submitted by the CME in support of its application for designation will be avialable through the Commission's Secretary or its offices in Washington, New York, Chicago, Minneapolis, Kansas City and San Francisco.

Any person interested in submitting written data, views or arguments on the terms and conditions of the proposed futures contract, or with respect to other materials submitted by the CME in support of its application for contract market designation, should send such comments to Jane K. Stuckey, Secretary, Commodity Futures Trading Commission, 2033 K Street, N.W., Washington, D.C. 20581, by March 17, 1981.

Issued in Washington, D.C., on January 12, 1981.

Jane K. Stuckey,

Secretary of the Commission.

[FR Doc. 81-1989 Filed 1-15-81; 8:45 am]

BILLING CODE 6351-01-M

Proposed Futures Contracts; Proposed Rules of Major Economic Significance; Terms and Conditions of the 90-Day Certificates of Deposit Futures Contract of the New York Futures Exchange, Inc.

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of proposed rules of contract markets.

SUMMARY: The New York Futures Exchange, Inc. ("NYFE") has applied for designation as a contract market in $1,000,000 par value certificates of deposit with maturities of 90 days that are issued by major United States banks. The Commodity Futures Trading Commission ("Commission") has determined that the proposed terms and conditions of this proposed futures contract are of major economic significance and that, accordingly, publication of the proposed terms and conditions is in the public interest, will assist the Commission in determining whether the NYFE should be so designated, and is consistent with the purposes of the Commodity Exchange Act.

DATE: Comments must be received on or before March 17, 1981.

ADDRESS: Interested persons should submit their views and comments to Jane K. Stuckey, Secretary, Commodity Futures Trading Commission, 2033 K Street NW., Washington, D.C. 20581. Reference should be made to NYFE 90-Day CD Futures Contract.

FOR FURTHER INFORMATION CONTACT: Christine A. Rock, Attorney, Division of Trading and Markets, Commodity Futures Trading Commission, 2033 K Street NW., Washington, D.C. 20581; Telephone: (202) 254-8955.

SUPPLEMENTARY INFORMATION: The terms and conditions of NYFE's proposed 90-day certificates of deposit ("CD") futures contract are as follows:

CD Futures Contract

1000 Scope of Chapter

This chapter governs transactions involving contracts for the future delivery of ninety day certificates of deposit ("CD's") issued by major United States banks ("CD Futures Contracts"). The CD Futures Contract and all trading therein shall be subject to the rules contained in this chapter, the Rules of the Exchange and the Rules of the Clearing Corporation.

1001 Obligation of Parties to Contract

The seller under any CD Futures Contract sells and agrees to delivery to the purchaser, and the purchaser buys and agrees to receive from the seller, the delivery unit specified in these Rules in the delivery month and for the price agreed upon at the time the contract is transacted, in accordance with the Rules of the Exchange and the Rules of the Clearing Corporation.

1002 Standards

The contract grade for delivery in satisfaction of CD Futures Contracts shall be CDs issued by those major U.S. banks whose CDs are approved by the Board as being deliverable in satisfaction of CD Futures Contracts and which have a maturity of "ninety (90) days" from the day of delivery specified in the contract. The term "ninety (90) days" or "90-days" as used in these rules shall refer to CDs maturing on any Exchange business day within the half-month maturity period which includes the 90th calendar day from the date of settlement of the contract.

(a) The Board shall approve for delivery without discount, only CDs of those major U.S. banks whose CDs trade at the highest prices (lowest interest rate) and at prices equivalent to each other's and which are accepted as good delivery without specific name in cash market transactions by the major New York dealers regularly trading in such certificates.

(b) In the event of an emergency situation affecting the adequacy of the supply of CDs outstanding deliverable under paragraph (a) of this rule, the Board shall have the authority to approve for delivery CDs of major U.S. banks which trade at prices closest to those CDs specified in paragraph (a) of this rule. Such CDs shall be deliverable at a discount approximately equivalent to the cash market discount.

The cash market discount for CDs of each bank approved under this paragraph shall be determined by averaging the quotations of major New York CD dealers during the five business days prior to the day of delivery, after removing the highest and lowest quotes, based on the mean between the dealers' representative bid and asked quotations. The dealers whose quotations shall be used for this purpose shall be those as approved by the Board.

(c) Once trading has been initiated in a contract month, no deletions of approved banks under paragraph (a) of this rule shall be made for that contract month except under extreme adverse conditions which may impair that bank's ability to issue new or redeem its outstanding CDs.

(d) The list of banks approved pursuant to paragraph (a) of this rule shall be posted on the Exchange bulletin board prior to the opening of trading in a delivery month. Additions to or deletions from the list of approved banks as specified in paragraph (a) of this rule shall be made only for new contract months prior to their introduction for trading and only after survey of the New York cash dealer market and determination by the Board that such additions or deletions of banks correspond with such current CD cash market practice.

(e) CDs delivered under these rules shall mature "ninety (90) days" after delivery in the half month period designated at the beginning of trading in that delivery month. The first half month period shall be that period which includes the first and fifteenth day of the delivery month. The second half month period shall be that period which includes the sixteenth and the last day of the delivery month. CDs which mature on a weekend or a New York State bank holiday shall not be deliverable.

(f) CDs delivered under these rules shall not have an issuance date which is earlier than the first business day of the sixth month prior to the CD's maturity date.

(g) Only standard bearer form CDs paying a fixed rate of interest payable at maturity shall be deliverable. No variable coupon rate, semi-annual payment with interest payment due prior to maturity or any other non-conventional type of CD shall be deliverable.

(h) The following formulae shall be used to calculate the settlement value, principal value and accrued interest of a delivery unit at the time of delivery:

$$S = P \left(\frac{360 + (L_1 R_1)}{360 + (L_2 R_2)} \right)$$

$$I = P \times R_1 \left(\frac{L_1 - L_2}{360} \right)$$

$$Q = S - I$$

Where—

S = Settlement value of a delivery unit.
L_1 = Original Life of CD.
L_2 = Remaining Life of CD.
R_1 = Coupon rate of CD.
R_2 = Yield to maturity (settlement price) of CD.
P = Par value.
I = Accrued interest.
Q = Principal value of a delivery unit.

1003 Unit of Trading

The unit of trading for CD Futures Contracts shall be CDs having a par value of $1,000,000.

1004 Months Traded

Trading in CD Futures Contracts may be conducted in the first and second half month periods during the six nearby calendar months and the first half month periods during March, June, September and June thereafter.

1005 Price Basis

Prices quoted shall be complements of 100% of the yield to maturity (100-yield to maturity) based on total dollars invested (e.g.: a CD future priced at 9.50% yield to maturity basis would be quoted on an Exchange Index at 90.50). Minimum price fluctuations shall be one basis point (.01%) per 100 points. For the purpose of calculating variation margin, the value of one basis point shall be set at $24.50 per contract.

1006 Limits on Daily Price Changes

(a) There shall be no trading at a price more than 1.00% (100 basis points) above or below the preceding day's settlement price for contracts in the same delivery month. Exceptions are provided for in paragraphs (b) and (c) below.

(b) Whenever on two successive days any contract month closes at the normal daily price limit in the same direction (not necessarily the same contract month on both days) an expanded daily price limit schedule shall go into effect as follows:

(1) The third day's daily price limit shall be 150% of the normal daily price limit.

(2) If any contract month closes at its expanded daily price limit on the third day in the same direction when the fourth day's expanded daily price limit shall be 200% of the normal daily price limit.

(3) If any contract month closes at its expanded daily price limit on the fourth day in the same direction, then there shall be no daily price limit on the fifth day. The normal daily price limit will be reinstated on the sixth day.

(4) Whenever the foregoing price limit schedule is in effect and no contract month closes by more than the expanded daily price limit in the same direction which initiated or maintained the expanded schedule, then the normal daily price limit shall be reinstated on the following day.

(c) There shall be no limit on daily contract price changes for the delivery month on and after the first exchange business day of the delivery month of the contract.

1007 Position Limits

The Board from time to time may set limits on the maximum net long or net short position in any one contract delivery month or in all months combined in the contract which any individual or organization acting alone or in concert with any other person may hold or control in CD Futures Contracts at the end of any business day.

1008 Reportable Positions

The Board from time to time may set the number of contracts, long or short, in any one contract delivery month or in all months combined in the contract whether owned or controlled or carried for any individual or organization, either alone or in conjunction with any other person, which shall be a reportable position. Every member and member organization shall report each and every reportable position to the Exchange at such times and in such form and manner as shall be prescribed by the Exchange.

1009 Hours of Trading

The hours of Futures trading in CD futures Contracts shall be from 9:00 a.m. to 3:00 p.m. Eastern time on all exchange business days except that on the last day of trading, trading shall be closed at 11:00 a.m. of that day.

1010 Last Day of Trading

(a) No trades in CD Futures Contracts deliverable in any first half month shall be made after the Tuesday closest to the seventh calendar day of that first half month period.

(b) No trades in CD Futures Contracts deliverable in any second half month period shall be made after the Tuesday closest to the twenty-first calendar day of the second half month period.

(c) Should such Tuesday be an Exchange holiday or precede an Exchange holiday, or the closest Tuesdays to the seventh and twenty-first calendar days not be determinable, the Board shall set the delivery day for that half month period.

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1011 Delivery of Futures Contracts

All deliveries must be made through the Clearing Corporation. No deliveries shall be made in a current half delivery month except on the day specified for such delivery in these rules. At the conclusion of trading in the current delivery half month, all open positions must be satisfied by actual delivery of CDs meeting the standards of Rule 1002 or otherwise as provided for in the Rules of the Exchange.

1012 Tender of Delivery Notices

(a) A clearing member holding open positions in the CD Futures Contract in the current delivery month at the time trading in that contract has ceased in accordance with Rule 1010 of these rules, shall furnish delivery notices to the Clearing Corporation on a form prescribed by the Clearing Corporation not later than 1:00 p.m. of the last day of trading in that contract.

(b) Delivery notices from clearing members representing sellers shall contain the following information:

1. Name of bank CD to be delivered.
2. Interest rate of CD.
3. Original date of issuance of CD.
4. Date of maturity of CD.
5. Such other information as the Clearing Corporation may require.

1013 Copy of Delivery Notice to Commission

Every clearing member shall furnish promptly to the Commission a copy of each delivery notice specified in Rule 1012 of these rules issued by such member in conjunction with the delivery of CDs.

1014 Delivery Through the Clearing Corporation

(a) Delivery of CDs as required by these rules shall be made not later than —— p.m., on the Exchange business day following the last day of trading. In the event that day is a bank holiday in New York State, delivery shall be made on the next business day common to the Exchange and banks in New York State.

(b) The Clearing Corporation will advise clearing members holding open long positions of the details and settlement amounts of each delivery assigned to them, based on the settlement price established on the last day of trading in the delivery half month and the information furnished to it in the delivery notices tendered to it in accordance with Rule 1012 of these rules, no later than 2:00 p.m. of the Exchange business day prior to the delivery date.

1015 Payment by Buyers

Payment by buyers shall be remitted in Federal funds to the Clearing Corporation designated delivery bank not later than —— p.m. on the day specified for delivery. Calculation of the value of the delivery unit shall be in accordance with the formulae in Rule 1002(h) of these rules.

1016 Delinquency in Performance

If a clearing member fails to perform any acts required by this chapter or fails to deliver or accept delivery as required under Clearing Corporation Rules 502 and 503, respectively, the clearing member will be subject to disciplinary action, and the Exchange may assess such clearing member for the expenses associated therewith.

* * * * *

The Commission also will make available any other materials submitted by the NYFE in support of its application for contract market designation to the extent that such materials are not entitled to confidential treatment under Part 145 of the Commission's regulations (17 CFR Part 145). Copies of such materials submitted by the NYFE in support of its application for designation will be available through the Commission's Secretary or its offices in Washington, New York, Chicago, Minneapolis, Kansas City and San Francisco.

Any person interested in submitting written data, views or arguments on the terms and conditions of the proposed futures contract, or with respect to other materials submitted by the NYFE in support of its application for contract market designation, should send such comments to Jane K. Stuckey, Secretary, Commodity Futures Trading Commission, 2033 K Street, N.W., Washington, D.C. 20581, by March 17, 1981.

Issued in Washington, D.C., on January 12, 1981.

Jane K. Stuckey,
Secretary of the Commission.

[FR Doc. 81-1870 Filed 1-15-81; 8:45 am]
BILLING CODE 6351-01-M

Quarterly Publication of Indexes; Order

The Commodity Futures Trading Commission hereby determines, pursuant to subparagraph (a)(2) of the Freedom of Information Act, 5 U.S.C. 552(a)(2), that quarterly publication of the indexes required to be kept thereunder of:

(A) final Commission opinions, including concurring and dissenting opinions, as well as orders, made in the adjudication of cases;

(B) statements of policy and interpretations which have been adopted by the Commission and are not published in the Federal Register; and

(C) Commission administrative staff manuals and instructions to staff that affect a member of the public; is unnecessary and impractical. One of the reasons for this determination is that the records referred to in paragraph A above are continually being generated, so that any publication of an index of them would be quite lengthy and might soon become out-of-date. With respect to the items referred to in paragraph B above, all currently-effective Commission statements of policy and interpretations, except for one, have been published in the Federal Register and the Commission now generally publishes such documents in the Federal Register so that there will be few, if any, which are unpublished in the future. The Commission has determined that it is unnecessary to publish an index of this one document. Furthermore, the records listed in paragraph C are gradually generated and no need is seen for quarterly publication of an index of them. Finally, publication of the indexes would require an additional expenditure of the Commission's limited resources.

Instead of publication, the Commission's Office of the Secretariat will provide copies of the indexes of these records upon request at the direct cost of duplication. A listing of Commission indexes currently available is Appedix A hereto.

Issued by the Commission in Washington, D.C. on January 9, 1981.

Jane K. Stuckey,
Secretary of the Commission.

Appendix A—Commodity Futures Trading Commission Indexes Available for Public Inspection and Copying

Agency	Index title: period covered, brief description of contents	Order from; price; make checks payable to Commodity Futures Trading Commission	For inspection, copying, or additional information contact
Commodity Futures Trading Commission.	Index of final Commission opinions, including concurring and dissenting opinions, and orders in the adjudication of cases. April 21, 1975 to date [1].	Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street, N.W., Washington, D.C. 20581. Price: 10 cents per page.	Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street, N.W., Washington, D.C. 20581, (202) 254-6314.

Appendix A—Commodity Futures Trading Commission Indexes Available for Public Inspection and Copying
—Continued

Agency	Index title; period covered, brief description of contents	Order from; price; make checks payable to Commodity Futures Trading Commission	For inspection, copying, or additional information contact
Commodity Futures Trading Commission.—Continued	Index of statements of policy and interpretations adopted by the Commission and not published in the Federal Register. April 21, 1975 to date.	Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street, N.W., Washington, D.C. 20581. Price: 10 cents per page.	Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street, N.W., Washington, D.C. 20581, (202) 254-6314.
Do	Index of Commission administrative manuals and instructions to staff that affect a member of the public. April 21, 1975 to date [2].	do	Do.

[1] This index consists of separate chronological listings of final Commission opinions and orders in enforcement cases and reparations proceedings before the Commission.
[2] Commission instructions no longer in use are not included in this index.

DEPARTMENT OF EDUCATION

Advisory Council on Developing Institutions; Meeting

AGENCY: Advisory Council on Developing Institutions.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the Advisory Council on Developing Institutions. This notice also describes the functions of the Council. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act.

DATE: January 29–30, 8 a.m. to 5 p.m.

ADDRESS: F.O.B. 6, Room 1130, 400 Maryland Avenue, SW., Washington, D.C. 20202.

FOR FURTHER INFORMATION CONTACT: Dr. Paul H. Carnell, Executive Director, Advisory Council on Developing Institutions, Regional Office Building 3, (202) 245–2455, 7th and D Streets, SW., Washington, D.C. 20202.

SUPPLEMENTARY INFORMATION: The Advisory Council on Developing Institutions is established under Section 303 of the Higher Education Act of 1965, as amended (20 U.S.C. 1051–1056), unless otherwise noted. The Council is established to identify developing institutions through which the purposes of this title may be achieved; and establish the priorities and criteria to be used in making grants under section 304(a).

The meeting of the Council shall be open to the public. The proposed agenda includes:

1. Swearing-in of new members.
2. An Analysis of the Application Review Award Process.
3. A Progress Report on the "Study of the Strengthening Developing Institutions Program."

Records are kept of all Council proceedings, and are available for public inspection at the Office of the Executive Director of the Advisory Council on Developing Institutions, Room 3068, Regional Office Building 3, 7th and D Streets, SW., Washington, D.C. 20202.

Signed at Washington, D.C., on January 13, 1981.

Paul H. Carnell,

Executive Director, Advisory Council on Developing Institutions.

[FR Doc. 81-1389 Filed 1-15-81; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP81-30-000]

Algonquin Gas Transmission Co.; Filing

January 13, 1981.

Take notice that on January 9, 1981, Algonquin Gas Transmission Company (Algonquin Gas) filed three tariff sheets relating to Rate Schedule SNG–1 to provide for extra-schedule deliveries of synthesized natural gas (SNG) pursuant to urgent customer requests. Algonquin Gas also requests such other authorization as may be necessary to effectuate such deliveries.

By its proposal, Algonquin Gas states that it will deliver to its regular SNG–1 customers such extra-schedule quantities of SNG as are available from the SNG plant at Freetown, Massachusetts which is owned and operated by Algonquin Gas' wholly-owned subsidiary, Algonquin SNG, Inc. Deliveries will be made during the remainder of the 1980–81 SNG delivery season. Algonquin Gas states that the price will be based on the incremental cost of feedstock plus the established rate for converting feedstock into SNG. It also states that its intent is neither to gain nor lose in net income as a result of making such proposed extra-schedule SNG deliveries. The full details of Algonquin Gas' filing are on file with the Commission and open for public inspection.

Algonquin further states that its proposal is designed to meet two *force majeure* situations, namely the inability of its distributor-customers to receive LNG supplies due to the interruption of shipping at Algeria, and the 20% colder-than-normal winter currently being experienced. Accordingly, Algonquin Gas requests Commission acceptance of its tariff filing and the issuance of any necessary authorization on an expedited basis.

Algonquin states that a copy of its letter and enclosure has been mailed to all affected customers and interested state commissions and is being posted as provided by our Regulations.

Take further notice that the above referenced tariff sheets were accepted for filing by letter order of the Director of the Office of Pipeline and Producer Regulation subject to noticing and review of any comments received. Said tariff sheets are to be effective for the period January 9, 1981 through March 31, 1981.

The January 9, 1981 order indicates that the proposed tariff sheets provide for an increase in the level of service without a change in rate, and that the revenues collected thereunder shall be subject to a revenue-cost comparison pursuant to the post audit procedures of § 10.6 of Rate Schedule SNG–1, which are intended to protect customers against overcollection of revenues.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before January 23, 1981. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 81-1390 Filed 1-15-81; 8:45 am]

BILLING CODE 6450-85-M

ENVIRONMENTAL PROTECTION AGENCY

[ER-FRL-1630-7]

Availability of Environmental Impact Statements

AGENCY: Office of Evironmental Review (A-104) U.S. Environmental Protection Agency.

PURPOSE: This notice lists the environmental impact statements (EIS's) which have been officially filed with the EPA and distributed to Federal agencies and interested groups, organizations and individuals for review pursuant to the Council on Environmental Quality's regulations (40 CFR Part 1506.9).

PERIOD COVERED: This notice includes EIS's filed during the week of January 5, 1981 to January 9, 1981.

REVIEW PERIODS: The 45-day review period for draft EIS's listed in this notice is calculated from January 16, 1981 and will end on March 2, 1981. The 30-day review period for final EIS's as calculated from January 16, 1981 will end on February 16, 1981.

EIS AVAILABILITY: To obtain a copy of an EIS listed in this notice you should contact the Federal agency which prepared the EIS. This notice will give a contact person for each Federal agency which has filed an EIS during the period covered by the notice. If a Federal agency does not have the EIS available upon request you may contact the Office of Environmental Review, EPA, for further information.

BACK COPIES OF EIS'S: Copies of EIS's previously filed with EPA or CEQ which are no longer available from the originating agency are available with charge from the following source: Information Resources Press, 1700 North Moore Street, Arlington, Virginia 22209 (703) 558-8270.

SUMMARY OF NOTICE: This notice sets forth a list of EIS's filed with EPA during the week of January 5, 1981 to January 9, 1981. The Federal agency filing the EIS, the name, address, and telephone number of the Federal agency contact for copies of the EIS, the filing status of the EIS, the actual date the EIS was filed with EPA, the title of the EIS, the State(s) and county(ies) of the proposed action and a brief summary of the proposed Federal action and the Federal agency EIS number, if available, is listed in this notice. Commenting entities on draft EIS's are listed for final EIS's. All additional information relating to EIS's such as time extensions or reductions of prescribed review periods, withdrawals, retractions, corrections or supplemental reports is also noticed under the appropriate agency.

FOR FURTHER INFORMATION CONTACT: Kathi L. Wilson, Office of Environmental Review, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460 (202) 245-3006.

Dated: January 13, 1981.

William N. Hedeman, Jr.,

Director, Office of Environmental Review (A-104).

U.S. ARMY CORPS OF ENGINEERS

Contact: Mr. Richard Makinen, Office of Environmental Policy, Attn: DAEN-CWR-P, Office of the Chief of Engineers, U.S. Army Corps of Engineers, 20 Massachusetts Avenue, Washington, D.C. 20314 (202) 272-0121.

Draft

UVAS CREEK FLOOD PROTECTION PLAN, GILROY: Santa Clara County, California, January 6: Proposed is a flood control plan for Uvas Creek located along the city of Gilroy, Santa Clara County, California. The preferred alternative consists of: (1) A new or reconstructed levee along the north side of the creek, setback wherever possible; (2) reconstruction of about 1,000 feet of existing levee downstream of Miller Avenue; (3) raising of up to 1,000 feet of levee upstream of Miller Avenue; (4) relocation of Thomas Road; and (5) construction of a new bridge upstream of the existing structure. (San Francisco District) (EIS order No. 810007).

EXTENSION: The review period for the above EIS has been extended until March 23, 1981. (No. 810007.)

Draft Supplement

MANKATO-N. MANKATO-LE HILLIER FLOOD CONTROL (DS-2): Blue Earth County, Minnesota, January 5: Proposed is the alternation or relocation of two MN-169/60 bridges over the Blue Earth River in Blue Earth County, Minnesota. The bridges must be raised or replaced to an elevation approximately 17 feet above the existing bridges. The alternatives differ only in location and would consist of a new bridge built immediately upstream of the existing bridges and new off and on ramps to replace an existing at-grade intersection. This statement supplements an amended final EIS filed in April 1972. (St. Paul District) (EIS order No. 810003).

Report

REPORT—MISSOURI RIVER MANAGEMENT PLAN: Several, January 9: This supplemental report provides information concerning a management plan for the Missouri River as related to final EIS, No. 790003, filed 1-2-79 on the Missouri River bank stabilization and navigation project, continuing construction and maintenance. (Missouri River division) (EIS order No. 810019).

REESTABLISHMENT OF EIS AVAILABILITY DATE: Based on the actual availability of the following EIS's EPA has reestablished the date of availability and subsequently the end of the review periods for the following EIS's:

Rouge River Basin, Elk Creek Lake, OR—Date of EIS availability is December 12, 1981—End of Review is January 22, 1981. (No. 803046FS.)

Manlaea Harbor for Light-Draft Vessels, HI—Date of EIS availability is December 29, 1981—End of Review is January 27, 1981. (No. 803057F.)

DEPARTMENT OF ENERGY

Contact: Dr. Robert Stern, Acting Director, NEPA Affairs Division, Department of Energy, Mail Station 4G-064, Forrestal Bldg., Washington, D.C. 20585.

Draft

SOLVENT REFINED COAL-1 DEMONSTRATION PROJECT: Daviess County, Kentucky, January 9: Proposed is a cost sharing agreement for the construction and operation of a 6,000 TPSD solvent refined coal demonstration project with the potential for ultimate development of a 30,000 TPSD commercial facility at Newman in Daviess County, Kentucky. The alternatives consider: (1) Site locations, (2) design options, (3) plant layout, and (4) termination of contract. (DOE/EIS-0073-D/VI) (EIS order No. 810017).

ENVIRONMENTAL PROTECTION AGENCY

Draft

Contact: RTP Library, Environmental Protection Agency, Research Triangle Park, North Carolina 27711. (919) 541-2777.

BENZENE STORAGE TANK EMISSIONS, STANDARDS: Regulatory, January 7: Proposed are benzene emissions standards which would limit emissions from existing and new storage tanks. Several control options are considered both for new and existing plants including no additional standard and the prohibition of benzene tanks. The other options address the possible use of: (1) Internal floating roofs (contact or noncontact), (2) secondary seals, (3) contact internal floating roofs with liquid-mounted primary seals and a continuous secondary seal, and (4) vapor control systems. (EPA-450/3-80-034A.)

EXTENSION: The review period for the above EIS has been extended until March 10, 1981. (No. 810011.)

Final

Contact: Mr. Edward Vest, Region VII, Environmental Protection Agency, 324 East 11th Street, Kansas City, Missouri 64108, (816) 374-2821.

MARION COUNTY SEWERAGE FACILITIES, GRANT: Marion County, Kansas, January 7: Proposed is the awarding or non-approval of funding for the constructing of a conventional sewerage collection and treatment system to serve the Marion County Lake Improvement District, Kansas. The project includes: (1) A conventional gravity collection system, and (2) a force main to the city of Marion's proposed treatment plant. Alternatives include: (1) A total retention lagoon, (2) new on-site systems, (3) pressure sewer and vacuum sewer collection systems, and (4) community leach fields. (EPA-907/9-80-004.) Comments made by: COE, USDA, HHS, HUD, DOI, State agencies, individuals and businesses. (EIS order No. 810013.)

Draft

Contact: Ms. Lisa Corbin, Region X, Environmental Protection Agency, 1200 6th Avenue, Seattle, Washington 98101, (206) 442-1295.

CITY OF COEUR D'ALENE WWT FACILITY, GRANT: Kootenai County, Idaho, January 7: Proposed is the awarding of a grant for the upgrading of sewage treatment facilities in the city of Coeur D'Alene, Kootenai County, Idaho. The alternatives consider: (1) no action, (2) upgrading of existing facilities and construction of additional facilities, (3) closure of existing plant and construction of a new trickling filter/activated sludge plant, and (3) upgrading the existing plant and construction of an additional plant. All of the alternatives would include sewer interceptor extensions. (EPA-910/9-80-076) (EIS order No. 810012).

GENERAL SERVICES ADMINISTRATION

Contact: Mr. Carl W. Penland, Acting Director, Environmental Affairs Division, General Services Administration, 18th and F Streets, NW., Washington, D.C. 20405, (202) 566-1416.

Draft

POST OFFICE AND COURTHOUSE RENOVATION, CHARLESTON: Charleston County, January 8: Proposed is the renovation of and annex construction to the US post office and courthouse in the city and county of Charleston, South Carolina. The annex will contain 25,270 sq. ft. of occupiable space. The alternatives consider: (1) No action, (2) construction of annex, (3) relocation of post office, (4) relocation of courthouse, (5) leasing of existing space, (6) acquisition of adjacent building, and (7) use of existing Government-owned buildings. (RSC-81001) (EIS order No. 810020).

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

SECTION 104(H)

The following are community development block grant statements prepared and circulated directly by applicants pursuant to section 104 (H) of the 1974 Housing and Community Development Act. Copies may be obtained from the office of the appropriate local executive. Copies are not available from HUD.

Final

PUEBLO DOWNTOWN HOTEL/CONVENTION CENTER, UDAG: Pueblo County, Colorado, January 1: Proposed is the awarding of a UDAG for the Pueblo Downtown Hotel/Convention Center project in the city and county of Pueblo, Colorado. The complex will be composed of separate but integrated facilities including: (1) A conference center, (2) a hotel, (3) a retail complex, (4) a parking facility, and (5) associated on-site improvements. Comments made by: AHP, EPA, FEMA, State, and local agencies. (EIS order No. 810010).

DEPARTMENT OF INTERIOR

Contact: Mr. Bruce Blanchard, Director, Environmental Project Review, Room 4256 Interior Bldg., Department of the Interior, Washington, D.C. 20240 (202) 343-3891.

Bureau of Land Management

Draft

MOON LAKE POWER PLANT UNITS 1 AND 2, RIGHT-OF-WAY: Uintah County, Utah, January 8: Proposed is the awarding of right-of-way for the Moon Lake Power Plant units 1 and 2 in Uintah County, Utah. The electricity generated would be distributed by one 345 kV transmission line and four 138 kV lines. The alternatives consider various options for plant sites, coal supply, coal transport, water source, and power transmission systems. The USDA/REA is a joint lead agency and proposes to issue loan guarantees. The FS is a cooperating agency. (FES-81-2). (USDA-REA-(ADM)-81-1-D). (EIS order No. 810016).

Final

EASTERN SAN DIEGO COUNTY PLANNING AREA MANAGEMENT: San Diego County, California, January 8: Proposed is a grazing and wilderness management plan for the eastern San Diego County planning unit (McCain Valley) in the El Cento resource area of the Riverside district, California. The planning area encompasses 98,902 acres of public land. Grazing management would be implemented on 57,903 acres, and wilderness designation recommended for 41,776 acres. The grazing alternatives include: (1) No grazing, (2) intensive use, (3) limited use, and (4) no action. The wilderness alternatives are: (1) Maximize wilderness, (2) no wilderness, and (3) limited wilderness. Comments made by: DOI, EPA, USDA, State and local agencies, groups, individuals, and business. (EIS order No. 810006).

Final

MOUNT DOME PLANNING UNIT LIVESTOCK GRAZING MGMT.: Siskiyou and Modoc Counties, California, January 6: Proposed is the implementation of a livestock grazing management plan for the Mount Dome area in Siskiyou and Modoc Counties, California. Components include: (1) Adjustments of authorized livestock use; (2) introduction of grazing treatments; and (3) range projects and facilities including vegetation manipulation and construction of reservoirs, fencing, pipeline, water tank and troughs. The alternatives include moderate, primitive, limited or exclusive uses and no action. (FES-81-2). Comments made by: FERC, DOI, EPA, USDA, HHS, AHP, State agencies, groups, and individuals. (EIS order No. 810005).

Bureau of Indian Affairs

Final

WILDHORSE RESERVOIR AND LANDS, RECREATIONAL LEASE: Elko County, Nevada, January 6: Proposed is the leasing of 150 acres of Federal lands, known as the Wildhorse Marina, within the Wildhorse Reservoir, Elko County, Nevada. The alternatives consider: (1) No action, (2) retain present administration in addition to further recreational development, (3) lease or convey all or portions of the reservoir area to nontribal entities, and (4) seek DOI sponsorship of legislation for the conveyance in trust of the BIA-administered areas of Wildhorse Reservoir to the tribes (Proposed Action of draft EIS). (FES-80-55). Comments made by: DOI, DOC, USDA, EPA, COE, AHP, State and Local Agencies, Groups, Individuals, and Businesses. (EIS order No. 810009).

Water and Power Resources Service

Draft

ACREAGE LIMITATION, RECLAMATION ACT OF 1902: Programmatic, January 8: Proposed are three alternatives for regulatory procedures under the Reclamation Act of 1902, specifically regarding acreage limitation provisions. The act allows Federal assistance through irrigation development so that opportunities can be provided in arid parts of the Western U.S. Acreage limitations provide that federally developed water could not be sold for use on more than 160 acres in individual ownership and that the user had to live on or near the benefited land. (DES-81-1). (EIS order No. 810015).

EXTENSION: The review period for the above EIS has been extended until March 16, 1981. (No. 810015).

O'NEILL UNIT, PICK-SLOAN BASIN PROGRAM, NE, published FR December 17, 1980—review extended from February 10, 1981 (prior extension) to March 2, 1981. (No. 800068).

DEPARTMENT OF LABOR

Contact: Ms. Joanne Lindhart, Chief, Office of Environmental Impact Assessment, Department of Labor, Room N-3673, Washington, D.C. 20210 (202) 523-7111.

Final

OCCUPATIONAL NOISE EXPOSURE STANDARDS, AMENDMENT: Regulatory, January 6: Proposed is the amendment of the standard for occupational exposure to noise. The amendment imposes requirements for hearing conservation programs. The alternatives consider: (1) Revision of the permissible exposure limits for noise, (2) initiation of hearing conservation programs at higher or lower levels, (3) revision of the monitoring, testing, and training provisions, and (4) no regulatory action. Comments made by: USDA, HEW, DOT, DOI, STAT, DOD, HUD, EPA, CEQ, ERDA, groups, and individuals. (EIS ORDER No. 810008).

DEPARTMENT OF TRANSPORTATION

Contact: Mr. Martin Convisser, Director, Office of Environment and Safety, U.S. Department of Transportation, 400 7th Street, SW., Washington, D.C. 20590, (202) 426-4357.

Federal Highway Administration

Draft

US 27 BYPASS OF DECATUR: Adams County, Indiana, January 8: Proposed is the relocation of US 27 to create a bypass of the city of Decatur in Adams County, Indiana. The bypass would extend from 0.5 mile south of the intersection of US 27 and In-124 to US 27/US 33, and vary from 9.4 to 12.7 miles depending on the alternative chosen. The alternatives considered are: (1) Construction on a new alignment west of Decatur, (2) Construction on a new alignment east of Decatur, and (3) widening and upgrading of the existing alignment. (FHWA-IND-EIS-79-05-D). (EIS order No. 810014).

EXTENSION: The review period for the above EIS has been extended until March 9, 1981. (No. 810004).

Final

I-78 COMPLETION, BERKELEY HEIGHTS TO SPRINGFIELD: Somerset and Union Counties, New Jersey, January 9: Proposed is the completion of I-78 from the present termini of I-78 in the vicinity of Plainfield Avenue in Berkeley Heights to the vicinity of Baltusrol Road in Springfield and within the counties of Somerset and Union, New Jersey. The facility would be a six lane, controlled access freeway extending for 5.5 miles. In addition to no build eight alternatives are considered. (FHWA–NJ–EIS–78–02–F). Comments made by: USDA, DOC, DOI, HUD, DOT, EPA, COE, and State and local agencies. (EIS order No. 810018).

Report

REPORT—NB-31 IMPROVEMENT, I-80 TO NB-31/92: Sarpy County, Nebraska, January 9: This supplemental report is an addendum to the final EIS, No. 800039, filed 8-28-80 concerning the improvement of NB-31 from I-80 to the junction of NB-31/50 in Sarpy County, Nebraska. (EIS order No. 810004).

EXTENSION: US 70 Improvement, Portales-Clovis Section, NM, published FR January 9, 1981—review extended from February 23, 1981 to February 26, 1981. (No. 810001).

[FR Doc. 81-1029 Filed 1-15-81; 8:45 am]

BILLING CODE 6560-01-M

[OPP–180542; PH–FRL 1628–2]

California; Issuance of Specific Exemption for Carbofuran on Artichokes

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has granted a specific exemption to the California Department of Food and Agriculture (hereafter referred to as the "Applicant") for the use of carbofuran to control the cribrate weevil on 625 acres of globe artichokes in Monterey County, California. The specific exemption is issued under the Federal Insecticide, Fungicide, and Rodenticide Act.

DATE: The specific exemption expires on August 25, 1981.

FOR FURTHER INFORMATION CONTACT: Jack E. Housenger, Registration Division (TS–767), Office of Pesticide Programs, Environmental Protection Agency, Rm. E–107, 401 M St. SW., Washington, D.C. 20460, (202–426–0223).

SUPPLEMENTARY INFORMATION: The cribrate weevil, *Otiorhynchus cribricollis*, has caused repeated and increasing damage to artichokes since it was found in artichoke fields in 1956. The spread of this pest has been slow but steady since adults do not fly. They spread by moving from plant to plant or by being carried with propagating stock to new fields. Damage occurs both to the roots by the larvae and to the foliage and buds by the adults. Control is achieved by killing the adults.

The Applicant claims that there are no registered alternatives for the control of cribrate weevils on artichokes. Aldrin and endrin had been successfully used until these uses were cancelled. No cultural or biological control methods are known. The Applicant reported that losses for the 1979 growing season exceeded $194,000. A negligible crop loss is anticipated with the use of carbofuran treatments.

The Applicant proposed to treat 625 acres of artichokes with a maximum of two applications at a rate of 0.5 to 1.0 pound active ingredient (a.i.) carbofuran per acre. All applications are to be made by ground equipment with a 30-day preharvest interval and a 24-hour field reentry interval to be observed. The second half of the 1980 growing season and the first half of the 1981 growing season will be covered by this exemption.

EPA has determined that residues of carbofuran and its metabolites from the proposed use should not exceed 1.0 part per million (ppm), of which no more than 0.2 ppm is carbamate. EPA also notes that control of the cribrate weevil now on this limited acreage could retard the spread of this pest to new acreage in the future. No undue adverse effects on the environment are anticipated from this use of carbofuran.

After reviewing the application and other available information, EPA has determined that the criteria for an exemption have been met. Accordingly, the Applicant has been granted permission to use the pesticide noted above until August 25, 1981, to the extent and in the manner set forth in the application. The specific exemption is also subject to the following conditions:

1. The product Furadan 4 Flowable, EPA Reg. No. 279–2876, may be used. If an unregistered label is used in connection with this product, it must contain the identical applicable precautions and restrictions which appear on the registered label.

2. A maximum of two applications per season may be made.

3. Furadan may be applied at a rate of 1 to 2 pints of formulation (0.5 to 1.0 pound a.i.) per acre.

4. Applications may be made using ground equipment. A minimum of 50 gallons of water per acre will be used.

5. All applications will be made by or under the direct supervision of State-certified applicators.

6. A maximum of 625 acres of globe artichokes in the county named above may be treated.

7. A total of 2,500 pounds of carbofuran is authorized.

8. No applications may be made within 30 days of harvest.

9. A field reentry interval of at least 24 hours shall be observed.

10. Carbofuran may not be applied directly to any body of water, and drift reduction precautions must be observed. Carbofuran may not be applied where excessive runoff is likely to occur. Care must be taken to prevent contamination of water by the cleaning of equipment or disposal of wastes or excess pesticides.

11. Residue levels of carbofuran in or on artichokes resulting from this use are not expected to exceed 1.0 ppm, of which no more than 0.2 ppm is carbamate. Artichokes with residue levels not exceeding this level may enter interstate commerce. The Food and Drug Administration, U.S. Department of Health and Human Services, has been advised of this action.

12. The EPA shall be immediately informed of any adverse effects resulting from the use of carbofuran in connection with this exemption.

13. The Applicant is responsible for ensuring that all of the provisions of this specific exemption are met and must submit an interim report by March 31, 1981, on the 1980 treatments and by February 28, 1982, on the 1981 treatments.

(Sec. 18 as amended 92 Stat. 819; (7 U.S.C. 136)).

Dated: January 9, 1981.

Edwin L. Johnson,

Deputy Assistant Administrator for Pesticide Programs.

[FR Doc. 81-1032 Filed 1-15-81; 8:45 am]

BILLING CODE 6560-32-M

[OPTS–51193, TSH–FRL 1628–3]

Certain Chemicals; Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Section 5(d)(2) requires EPA to publish in the Federal Register certain information about each PMN within 5

working days after receipt. This Notice announces receipt of two PMN's and provides a summary of each.

DATES: Written comments by:

PMN 80-330 February 2, 1980
PMN 80-340 February 9, 1981

ADDRESS: Written comments to: Document Control Officer (TS-793), Management Support Division, Office of Pesticides and Toxic Substances, Environmental Protection Agency, Rm. E-447, 401 M St., SW., Washington, D.C. 20460, (202-755-8050).

FOR FURTHER INFORMATION CONTACT: Carolyn Brown, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Rm. E-221, 401 M St., SW., Washington, D.C. 20460, (202-426-3980).

SUPPLEMENTARY INFORMATION: Section 5(a)(1) of TSCA (90 Stat. 2012 (15 U.S.C. 2604)), requires any person who intends to manufacture or import a new chemical substance to submit a PMN to EPA at least 90 days before manufacture or import commences. A "new" chemical substance is any substance that is not on the Inventory of existing substances compiled by EPA under section 8(b) of TSCA. EPA first published the Initial Inventory on June 1, 1979. Notices of availability of the Inventory were published in the Federal Register of May 15, 1979 (44 FR 28558-Initial) and July 29, 1980 (45 FR 50544-Revised). The requirement to submit a PMN for new chemical substances manfactured or imported for commercial purposes became effective on July 1, 1979.

EPA has proposed premanufacture notification rules and forms in the Federal Register issues of January 10, 1979 (44 FR 2242) and October 16, 1979 (44 FR 59764). These regulations, however, are not yet in effect. Interested persons should consult the Agency's Interim Policy published in the Federal Register of May 15, 1979 (44 FR 28564) for guidence concerning premanufacture notification requirements prior to the effective date of these rules and forms. In particular, see page 28567 of the Interim Policy.

A PMN must include the information listed in section 5(d)(1) of TSCA. Under section 5(d)(2) EPA must publish in the Federal Register nonconfidential information on the identity and use(s) of the substance, as well as a description of any test data submitted under section 5(b). In addition, EPA has decided to publish a description of any test data submitted with the PMN and EPA will publish the identity of the submitter unless this information is claimed confidential.

Publication of the section 5(d)(2) notice is subject to section 14 concerning disclosure of confidential information. A company can claim confidentiality for any information submitted as part of a PMN. If the company claims confidentially for the specific chemical identity or use(s) of the chemical, EPA encourages the submitter to provide a generic use description, a nonconfidential description of the potential exposures from use, and a generic name for the chemical. EPA will publish the generic name, the generic use(s), and the potential exposure descriptions in the Federal Register.

If no generic use description or generic name is provided, EPA will develop one and after providing due notice to the submitter, will publish an amended Federal Register notice. EPA immediately will review confidentiality claims for chemical identity, chemical use, the identity of the submitter, and for health and safety studies. If EPA determines that portions of this information are not entitled to confidental treatment, the Agency will publish an amended notice and will place the information in the public file, after notifying the submitter and complying with other applicable procedures.

After receipt, EPA has 90 days to review a PMN under section 5(a)(1). The section 5(d)(2) Federal Register notice indicates the date when the review period ends for each PMN. Under section 5(c), EPA may, for good cause, extend the review period for up to an additional 90 days. If EPA determines that an extension is necessary, it will pubish a notice in the Federal Register.

Once the review period ends, the submitter may manufacture the substance unless EPA has imposed restrictions. When the submitter begins to manufacture the substance, he must report to EPA, and the Agency will add the substance to the Inventory. After the substance is added to the Inventory, and company may manufacture it without providing EPA notice under section 5(a)(1)(A).

Therefore, under the Toxic Substances Control Act, summaries of the data taken from the PMN's are published herein.

Interested persons may, on or before the dates shown under "Dates," submit to the Document Control Officer (TS-793), Management Support Division, Office of Pesticides and Toxic Substances, Environmental Protection Agency, Rm. E-447, 401 M St., SW, Washington, DC 20460, written comments regading these notices. Three copies of all comments shall be submitted, except that individuals may submit single copies of comments. The comments are to be identified with the document control number "[OPTS-51193]" and the specific PMN number. Comments received may be seen in the above office between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays.

(Sec. 5, 90 Stat. 2012 (15 U.S.C. 2604))

Dated: January 8, 1981.

Edward A. Klein,

Director, Chemical Control Division.

PMN 80-330

The following information is taken from data submitted by the manufacturer in the PMN.

Close of Review Period. February 17, 1981.

Manufacturer's Identity. Claimed confidential business information. Organizational description provided:

Annual sales—In excess of $500 million.

Manufacturing site—West-north central U.S.

Standard Industrial Classification Code—286 "Industrial Organic Chemicals."

Specific Chemical Identity. Claimed confidential business information. Generic name provided: Amino alcohol.

Use. Claimed confidential business information. Generic use information provided: PMN substance will be used in an open use that will release less than 5,000 kilograms (kg) to the environment per year with potential exposure to both chemical and non-chemical industrial employees.

Production Estimates

First year—50,000 kg.
Second year—60,000 kg.
Third year—70,000 kg.

Physical/Chemical Properties

Viscosity (23°C, 73°F)—12.5 cps.
Density (23°C, 73°F)—0.9019 g/ml.
Flashpoint (Closed cup)—203°F (95°C).
Coefficient of expansion (23-63°C, 73-145°F)—7.35 x 10^{-4}/°C, (4.09 x 10^{-4}/°F).
Freezing point—< −78°C, (< −108°F).
Vapor pressure (100°F, 38°C)—6.00 Torr.
Boiling range—238-240°C, (460-464°F).
pH of 10% aqueous solution—11.4.
Solubility in water (23°C, 73°F)—>10%.

Toxicity Data

Ames test—Nonmutagenic.
Acute oral LD_{50} (male, female rats)—1.72 ml/kg.

Primary ocular irritation—Severely irritating. All adverse effects were reversible in 30 days.

Primary dermal irritation—Severely irritating, corrosive. All adverse effects were reversible in 30 days.

Activity	Exposure route(s)	Maximum number exposed	Maximum duration		Concentration (ppm)	
			Hours/day	Day/year	Average	Peak
Manufacture	Dermal	10	8	21	0-1	
Do	Ocular					
Do	Inhalation					
The manufacturer states that workers will be potentially exposed to the new chemical substance during sampling, drum filling, and cleanup operations.						
Use	Dermal	10	24	30	0-1	
Do	Ocular				40	
Do	Inhalation				40	
Disposal	Dermal	10	5	30	0-1	
Do	Ocular				4-0	
Do	Inhalation					

Environmental Release/Disposal. The manufacturer states that less than 10 kg/yr of the chemical will be released into the air, with the duration of release reported as 24 hr/da, 21 da/yr; and that all air emissions will be incinerated. The manufacturer also states that less than 100 lb/yr of this chemical will be sewered to an onsite evaporative lagoon designed for long-term chemical storage.

PMN 80-340.

The following information is taken from data submitted by the manufacturer in the PMN.

Close of Review Period. February 24, 1981.

Manufacturer's Identity. Claimed confidential business information.

Specific Chemical Identity. Polymer of: Polymer diol, monocarboxylic acid diol, diamine, and a diisocyanate.

Use. No data were submitted.

Production Estimates

	Kilograms per year	
	Minimum	Maximum
First year	30,000	100,000
Second year	100,000	300,000
Third year	300,000	500,000

Physical/Chemical Properties. No data were submitted.

Toxicity Data. The manufacturer states that an Ames test has been conducted on the substance. It was found to be nonmutagenic when tested using the microbial plate assay for mutagenic potential both with and without S-9 enzymatic activation. The result indicated that neither the substance nor its metabolites are mutagenic.

Exposure. The manufacturer states that: The substance will be produced at one plant controlled by the submitter; five 8-hour shifts using four employees per week will be required to produce the maximum quantities indicated for 1983; and that direct exposure occurs only during accidental situations such as spills or leaks during loading or transferring of the product both at the manufacturing location and at the customer's site.

Environmental Release/Disposal. The manufacturer states that because the product is manufactured in closed kettles, environmental release at the manufacturing location or at the customer's site under normal operating conditions is nil.

[FR Doc. 81-1661 Filed 1-15-81; 8:45 am]

BILLING CODE 6560-01-M

[OPP-180528; PH-FRL 1627-6]

New Mexico; Crisis Exemption for Fenvalerate on Lettuce

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA gives notice that the New Mexico Department of Agriculture (hereafter referred to as "New Mexico") has availed itself of a crisis exemption for the use of fenvalerate to control *Heliothis* species on 3,300 acres of lettuce in the Mesilla Valley, New Mexico. New Mexico had submitted a request for a specific exemption for this use on August 25, 1980.

FOR FURTHER INFORMATION CONTACT: Jack E. Housenger, Registration Division (TS-767), Office of Pesticide Programs, Environmental Protection Agency, Rm. E-107, 401 M St., SW., Washington, D.C. 20460, (202-426-0223).

SUPPLEMENTARY INFORMATION: New Mexico reported that the State has experienced infestations of *Heliothis* species in lettuce for the past three years. The pest destroys the head and makes the lettuce unmarketable. This year New Mexico anticipated a severe infestation of this pest in lettuce because there was an outbreak of *Heliothis* spp. in cotton which is intermingled with lettuce fields. New Mexico stated that the time element became to critical to wait for a specific exemption so it initiated a crisis exemption on September 8, 1980. A total loss of the lettuce crop could mean a monetary loss of up to $28.7 million for growers in the State, New Mexico claimed.

According to New Mexico, methomyl, Orthene, Dipel, Phosdrin, Nudrin, Thiodan, and Thuricide are registered for use against *Heliothis* spp., but they have given erratic results.

New Mexico used Pydrin (fenvalerate), EPA Reg. No. 201-401, manufactured by Shell Chemical Co. A maximum of 3,300 pounds active ingredient (a.i.) was used at a rate of 0.1 to 0.2 pound a.i. per acre. A minimum of 3 gallons per acre with the specified dosage was applied by air; a minimum of 10 gallons per acre with the specified dosage was applied by ground. A maximum of 5 applications were to be made at 5-7 day intervals and a 7-day pre-harvest interval was to be observed. State-certified applicators or personnel under their direct supervision made the applications. Pydrin residue levels in lettuce were set at 1 part per million. On December 19, the agency raised the residue levels to 2 parts per million.

In order to reduce possible adverse effects on man and the environment, buffer zones were established according to the specific exemption issued last year for Pydrin; New Mexico Department of Agriculture personnel monitored the applications; wrapper leaves were to be trimmed on the lettuce where Pydrin applications were made; and all applicable directions, restrictions, and precautions on the product label were to be made available to the personnel involved. Since the program was expected to be needed for more than 15 days, New Mexico requested a specific exemption for its continuation.

(Sec. 18 as amended 92 Stat. 691; (7 U.S.C. 136))

Dated: January 9, 1981.

Edwin L. Johnson,

Deputy Assistant Administrator for Pesticide Programs.

[FR Doc. 81-2044 Filed 1-15-81; 8:45 am]

BILLING CODE 6560-32-M

[OPP-180531A; PH-FRL 1628-4]

Oklahoma; Issuance of Specific Exemption for Diazinon in Wheat Fields

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA granted a specific exemption to the Oklahoma Department of Agriculture (hereafter referred to as the "Applicant") for the use of Diazinon to control white grubs on a maximum of 10,000 acres of winter wheat in 10 counties in Oklahoma. The specific exemption was issued under the Federal Insecticide, Fungicide, and Rodenticide Act.

DATE: The specific exemption expired on November 30, 1980.

FOR FURTHER INFORMATION CONTACT: Edward Gross, Registration Division (TS-767), Office of Pesticide Programs, Environmental Protection Agency, Rm. E-124, 401 M St. SW., Washington, D.C. 20460, (202-426-0223).

SUPPLEMENTARY INFORMATION: On September 18, 1980, the Applicant initiated a crisis exemption for the use of Diazinon 14G and Diazinon AG500 in Blaine, Canadian, Garfield, Grant, Kingfisher, and Major Counties, Oklahoma, for the control of white grubs in winter wheat. Notice of this crisis exemption appeared in the Federal Register of December 12, 1980.

According to the Applicant, white grubs infested land to be planted to winter wheat in Blaine, Canadian, Cotton, Garfield, Grant, Kay, Jackson, Kingfisher, Major, and Tillman Counties. The Applicant stated that white grubs exceeded economic threshold levels of 3 per square foot. There are no pesticides registered for use on white grubs in winter wheat. Data indicate that Diazinon, which contains the active ingredient O, O-diethyl O-(2-isopropyl-6-Methl-4-pyrimidinyl) phosphorothioate, is effective. The Applicant estimated that without the use of Diazinon, losses will range from $400,000 to $600,000 this year.

The Applicant proposed to use a maximum of 20,000 pounds of the active ingredient (a.i.) in a single pre-plant application. Diazinon is manufactured by Ciba-Geigy Corp. as Diazinon 14G, EPA Reg. No. 100-469 and Diazinon AG500, EPA Reg. No. 100-461.

EPA determined that residues of the a.i. in or on winter wheat grain should not exceed 0.03 part per million (ppm) from this use. This level has been judged adequate to protect the public health. It was expected that the proposed use would not present an undue hazard to the environment.

After reviewing the application and other available information, EPA determined that the criteria for a specific exemption had been met. Accordingly, the Applicant was granted permission to use the pesticide noted above until November 30, 1980, to the extent and in the manner set forth in the application. The specific exemption was also subject to the following conditions:

1. The products Diazinon 14G and Diazinon AG500 might be used.

2. Diazinon might be applied in the ten counties named above.

3. The dosage rate was not to exceed 7-14 pounds per acre of Diazinon 14G or 1½ quarts per acre of Diazinon AG500.

4. A single application was authorized.

5. Application was restricted to ground equipment only.6. The product was to be soil incorporated immediately after application.

7. Turn areas or row ends were to be soil incorporated.

8. Areas recently treated with Diazinon were not to be retreated. Infested areas were to be treated only once.

9. Granules which were spilled during loading or application were to be either covered or soil incorporated.

10. All applicable restrictions and precautions addressed on the label were to be adhered to.

11. The EPA was to be immediately informed of any adverse effects resulting from the use of Diazinon.

12. The Applicant was responsible for assuring that all of the provisions of this specific exemption were met and must submit a report summarizing the results of this program by May 1, 1981.

13. Residues of the a.i. in wheat grain or forage were not expected to exceed 0.03 ppm from this use. Wheat grain with residues not in excess of this level may be offered in interstate commerce. The Food and Drug Administration, U.S. Department of Health and Human Services, has been advised of this action.

(Sec. 18 as amended, 92 Stat. 819, (7 U.S.C. 136))

Dated: January 9, 1981.

Edwin L. Johnson,

Deputy Assistant Administrator for Pesticide Programs.

[FR Doc. 81-1060 Filed 1-15-81; 8:45 am]

BILLING CODE 6560-32-M

[OPP-180548; PH-FRL 1622-1]

Pennsylvania; Issuance of Specific Exemption for Permethrin in Mushroom Houses

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has granted a specific exemption to the Pennsylvania Department of Agriculture (hereafter referred to as the "Applicant") for the use of permethrin to control adult sciarid flies in the mushroom houses in Pennsylvania. The specific exemption is issued under the Federal Insecticide, Fungicide, and Rodenticide Act.

DATE: The specific exemption expires on August 22, 1981.

FOR FURTHER INFORMATION CONTACT: Jack E. Housenger, Registration Division (TS-767), Office of Pesticide Programs, Environmental Protection Agency, Rm. E-107, 401 M St. SW., Washington, D.C. 20460 (202-426-0223).

SUPPLEMENTARY INFORMATION: The sciarid fly is a serious pest of mushrooms in Pennsylvania. The sciarid flies transmit mushroom diseases in addition to causing damage from larval feeding. The Applicant reports that the shift in marketing from processing to fresh by the Pennsylvania mushroom industry makes the requirement for higher mushroom quality more vital.

According to the Applicant, pesticides registered for use on mushrooms are not providing effective control of the adult sciarid flies. Resistance is developing to some of the pesticides, phytotoxicity is a problem in some, and pyrethrins are generally not available and are expensive, the Applicant reports. Data indicate that permethrin is effective in controlling sciarid fly populations. The Applicant estimates that without the use of permethrin, a 15-to-17 percent yield loss will occur, amounting to a 4,800 pound loss per double house per crop.

The Applicant proposed to treat a maximum of 38.8 million square feet of mushroom houses with Pounce Mushroom Spraymist, an unregistered product. The product is to be applied as an aerosol with a mechanical fog applicator.

EPA has determined that residues of permethrin, per se, should not exceed 0.05 part per million (ppm) in or on mushrooms from the proposed use. This level has been judged adequate to protect the public health. The risk from applicator exposure is expected to be significantly reduced by the protective clothing and respirator requirements EPA has imposed.

After reviewing the application and other available information, EPA has determined that the criteria for an exemption have been met. Accordingly, the Applicant has been granted a specific exemption to use the pesticide noted above until August 22, 1981, to the extent and in the manner set forth in the application. The specific exemption is also subject to the following conditions:

1. The product Pounce Mushroom Spraymist, manufactured by the FMC Corp., may be used.

2. Pounce is to be applied with a mechanical fog applicator at a rate of 2 to 2.5 ounces of formulation in 30 ounces of water per double house (35,000 cubic feet).

3. A maximum of 20 applications may be made prior to pinning of first break.

4. Pounce may not be applied once pins begin to form.

5. Pounce may not be used when mushrooms are present.

6. Prior to application, all doors, windows, and ventilators should be closed. All entrances should be locked or barricaded, pilot lights turned off, warning signs posted, and precautions taken to prevent persons and animals from entering the area.

7. During treatment, a pesticide respirator, which has been jointly approved by the Mining Enforcement and Safety Administration (formerly the U.S. Bureau of Mines) and the National Institute of Occupational Safety and Health, must be worn.

8. Applicators must wear protective clothing and rubber gloves. They must wash thoroughly with soap and water after handling permethrin and before eating or smoking. They must remove contaminated clothing and wash it before reuse.

9. It is recommended that a closed system be used for mixing/loading operations of Pounce Mushroom Spraymist.

10. No applications may be made within 6 days before harvest.

11. Mushroom houses should be ventilated to remove fog after the treatment time has elapsed. Fans should be used in houses that do not have forced air circulation.

12. Permethrin is extremely toxic to fish and aquatic invertebrates. Care must be taken not to contaminate water by the cleaning of equipment or disposal of wastes or excess pesticides.

13. Applications will be made by or under the direct supervision of applicators State-certified for this category of pest control.

14. A maximum of 10,000 gallons of Pounce Mushroom Spraymist may be used.

15. Residues of permethrin, per se, are not expected to exceed 0.5 ppm in or on mushrooms. Mushrooms with residues that do not exceed this level may enter interstate commerce. The Food and Drug Administration, U.S. Department of Health and Human Services, has been advised of this action.

16. Participants are to be notified of their obligation to report any adverse effects arising from the use of Pounce Mushroom Spraymist. The EPA must be immediately informed of any adverse effects resulting from this use.

17. The Applicant is responsible for ensuring that all of the provisions of this specific exemption are met and must submit a final report summarizing the results of this program by January 31, 1982.

(Sec. 18 as amended 92 Stat. 819, (7 U.S.C. 136))

Dated: January 9, 1981.

Edwin L. Johnson,

Deputy Assistant Administrator for Pesticide Programs.

[FR Doc. 81-1643 Filed 1-15-81; 8:45 am]

BILLING CODE 6560-32-M

[OPP-30000/25C; PH-FRL 1627-6]

Preliminary Notice of Determination Concluding the Rebuttable Presumption Against Registration of Pesticides Containing Ethylene Dibromide; Extension of Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has extended the period for submission of comments in regard to the preliminary determination concluding the rebuttable presumption against the registration and reregistration (RPAR) of pesticide products containing ethylene dibromide (EDB).

DATE: The comment period now closes on March 10, 1981.

ADDRESS COMMENTS TO: Document Control Officer (TS-793), Office of Pesticides and Toxic Substances, Environmental Protection Agency, Rm. E-447, 401 M St., SW., Washington, D.C. 20460.

Three copies of the comments should be submitted bearing the identifying notation [OPP 30000/25B].

FOR FURTHER INFORMATION CONTACT: Richard Johnson, Special Pesticide Review Division (TS-791), Office of Pesticide Programs, Environmental Protection Agency, Rm. 709, Crystal Mall No. 2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703-557-7451).

SUPPLEMENTARY INFORMATION: On December 2, 1980, EPA issued a preliminary determination concluding the RPAR on EDB. Notice of this action was published in the Federal Register of December 10, 1980 (45 FR 81516). The determination was not final, pending external review by the U.S. Department of Agriculture and the Scientific Advisory Panel. Registrants and other interested persons were given the same 30-day period in which to submit comments that the Federal Insecticide, Fungicide, and Rodenticide Act provides for comments from the Secretary of Agriculture and the Scientific Advisory Panel. That comment period ends on January 9, 1981.

EPA has received requests for an additional 60 days in which to submit comments on the preliminary determination. The agency has determined that additional time would be beneficial to ensure the submission of complete and accurate responses to this preliminary notice of determination. Therefore, all registrants, applicants for registration, and other interested persons shall have until March 10, 1981, to submit rebuttal evidence and other comments or information. These submissions should be sent to the Document Control Officer at the address given above. All comments should bear the identifying notation 30000/25B. All written comments filed will be available for public inspection in the office of the Document Control Officer at the above address from 8:00 a.m. to 4:00 p.m. daily except legal holidays.

(Sec. (3) as amended (Pub. L. 92-516, 86 Stat. 973; Pub. L. 94-140, 89 Stat. 755; 7 U.S.C. 136 et seq.))

Dated: January 9, 1981.

Edwin L. Johnson,

Deputy Assistant Administrator for Pesticide Programs.

[FR Doc. 81-1645 Filed 1-15-81; 8:45 am]

BILLING CODE 6560-32-M

[OPP-180517A; PH-FRL 1627-7]

Wyoming; Amendment to Specific Exemption for Strychnine To Control Rabid Skunks

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has issued an amendment to a specific exemption granted to the Wyoming Department of Agriculture (hereafter referred to as the "Applicant") to use strychnine baits to control rabid skunks in Wyoming.

DATE: The amendment extends the expiration date to December 31, 1980.

FOR FURTHER INFORMATION CONTACT: Libby Welch, Registration Division (TS-767), Office of Pesticide Programs, Environmental Protection Agency, Rm. E-124, 401 M St. SW., Washington, D.C. 20460, (303-426-0223).

SUPPLEMENTARY INFORMATION: In the Federal Register of November 13, 1980 (45 FR 74980), EPA announced that EPA had granted a specific exemption to the Applicant to use strychnine baits to control rabid skunks in Campbell and Crook Counties, Wyoming. The specific exemption expired on October 31, 1980. Since then, the Applicant has requested that the specific exemption be extended. No additional material will be required.

After reviewing the application and other available information, EPA has determined that the requested revision should not result in any additional environmental problems. Accordingly, EPA has granted the amendment so that applications of strychnine baits may be made until December 31, 1980, if necessary. All other provisions and restrictions of the specific exemption granted on May 23, 1980, still apply.

(Sec. 18 as amended 92 Stat. 819; (7 U.S.C. 136))

Dated: January 9, 1981.

Edwin L. Johnson,

Deputy Assistant Administrator for Pesticide Programs.

[FR Doc. 81-1645 Filed 1-15-81; 8:45 am]

BILLING CODE 6560-32-M

FEDERAL COMMUNICATIONS COMMISSION

[Report No. A-22]

FM Broadcast Applications Accepted for Filing and Notification of Cut-Off Date

Released: December 22, 1980.

Cut-Off Date: February 4, 1981.

Notice is hereby given that the applications listed in the attached appendix are hereby accepted for filing. They will be considered to be ready and available for processing after February 4, 1981. An application, in order to be considered with any application appearing on the attached list or with any application on file by the close of business on February 4, 1981, which involves a conflict necessitating a hearing with any application on this list, must be substantially complete and tendered for filing at the offices of the Commission in Washington, D.C., not later than the close of business on February 4, 1981.

Petitions to deny any application on this list must be on file with the Commission no later than the close of business on February 4, 1981.

Federal Communications Commission.

William J. Tricarico,

Secretary.

Appendix

BPH-800716AD, WOWW, Pensacola, Florida, Colonial Broadcasting Company, Inc.; HAS: 107.3 MHz; Channel No. 297C; ERP: 100 kW; HAAT: 360 ft. (Lic); REQ: 107.3 MHz; Channel No. 297C; ERP: 100 kW; HAAT: 460 ft.

BPH-800725AD (new), Buffalo, Wyoming, Buffalo Communication Corporation; REQ: 92.7 MHz; Channel No. 224A; ERP: 3 kW; HAAT: 25 ft.

BPH-800903AD, WPMF, Baton Rouge, Louisiana, Baton Rouge Broadcasting Co., Inc.; HAS: 102.5 MHz; Channel No. 273C; ERP: 100 kW; HAAT: 560 ft. (Lic); REQ: 102.5 MHz; Channel No. 273C; ERP: 84.6 kW; HAAT: 1556 ft.

BPH-800904AD (new), Hampton, Iowa, Wayne E. Grant; REQ: 104.9 MHz; Channel No. 285A; ERP: 3 kW; HAAT: 300 ft.

BPH-800910AD, WNSL, Laurel, Mississippi, Voice of the New South, Inc.; HAS: 100.3 MHz; Channel No. 262C; ERP: 25 kW; HAAT: 165 ft. (Lic); REQ: 100.3 MHz; Channel No. 262C; ERP: 90 kW; HAAT: 400 ft.

BPH-800911AC, KNEY, Pierre, South Dakota, Sorenson Broadcasting Corporation; REQ: 95.3 MHz; Channel No. 237A; ERP: 3 kW; HAAT: 300 ft.

BPH-800915AE (new), Booneville, Arkansas, Booneville Broadcasting Company; REQ: 92.1 MHz; Channel No. 221A; ERP: 3 kW; HAAT: 300 ft.

BPH-800918AC (new), Mountain Home, Arkansas, B & M Communications, Inc.; REQ: 105.5 MHz; Channel No. 288A; ERP: 1.13 kW; HAAT: 457 ft.

BPH-800923AB (new), Columbus, Kansas, Columbus FM 98, Inc.; REQ: 98.3 MHz; Channel No. 252A; ERP: 3 kW; HAAT: 300 ft.

BPH-800923AC, KNEV, Reno, Nevada; McClatchy Newspapers; HAS: 95.5 MHz; Channel No. 238C; ERP: 50 kW; HAAT: 530 ft. (Lic); REQ: 95.5 MHz; Channel No. 238C; ERP: 60 kW; HAAT: 2269 ft.

BPH-800923AD (new), Mexia, Texas, Limestone Broadcasting, Inc.; REQ: 104.9 MHz; Channel No. 285A; ERP: 3 kW; HAAT: 292 ft.

BPH-800923AD, KYND, Pasadena, Texas, Southern Broadcasting Company; HAS: 92.5 MHz; Channel No. 223C; ERP: 97 kW; HAAT: 800 ft. (Lic); REQ: 92.5; MHz; Channel No. 223C; ERP: 100 kW; HAAT: 1425 ft.

BPH-800923AF (new), North Platte, Nebraska, Tri-State B/Ctng Association, Inc.; REQ: 103.5 MHz; Channel No. 278C; ERP: 100 kW; HAAT: 366 ft.

BPH-800925AB (new), West Plains, Missouri, C M Broadcasting Company; REQ: 102.3 MHz; Channel No. 272A; ERP: 3 kW; HAAT: 300 ft.

BPH-800926AA, KORT-FM, Grangeville, Idaho, 4-K Radio, Inc.; HAS: 92.7 MHz; Channel No. 224A; ERP: .70 kW; HAAT: 67 ft. (Lic); REQ: 92.7 MHz; Channel No. 224A; ERP: .610 kW; HAAT: 710 ft.

BPH-800929AB (new), Boyce, Louisiana, KGIM Broadcasting Corporation; REQ: 98.3 MHz; Channel No. 252A; ERP: 3 kW; HAAT: 300 ft.

BPH-800929AE, KSRR, Houston, Texas, KAUM, Inc.; HAS: 98.5 MHz; Channel No. 243C; ERP: 100 kW; HAAT: 580 ft. (Lic); REQ: 98.5 MHz; Channel No. 243C; ERP: 100 kW; HAAT: 1425 ft.

BPH-800929AF, KFMK, Houston, Texas, First Media Corporation; HAS: 97.9 MHz; Channel No. 250C; ERP: 100 kW; HAAT: 440 ft. (Lic); REQ: 97.9 MHz; Channel No. 250C; ERP: 100 kW; HAAT: 1425 ft.

BPH-800929AG, KILT-FM, Houston, Texas, Lin-Texas Broadcasting Corporation; HAS: 100.3 MHz; Channel No. 262C; ERP: 97 kW; HAAT: 790 ft. (Lic); REQ: 100.3 MHz; Channel No. 262C; ERP: 100 kW; HAAT: 1425 ft.

BPH-800929AH, KBXK-FM, Houston, Texas, Viacom Broadcasting, Inc.; HAS: 95.7 MHz; Channel No. 239C; ERP: 96 kW; HAAT: 790 ft. (Lic); REQ: 95.7 MHz; Channel No. 239C; ERP: 100 kW; HAAT: 1425 ft.

BPH-800929AI, KLOL, Houston, Texas, Rusk Corporation; HAS: 101.1 MHz; Channel No. 266C; ERP: 97 kW; HAAT: 790 ft. (Lic); REQ: 101.1 MHz; Channel No. 266C; ERP: 100 kW; HAAT: 1425 ft.

BPH-800929AJ, KLEF, Houston, Texas, Entertainment Communications, Inc.; HAS: 94.5 MHz; Channel No. 233C; ERP: 100 kW; HAAT: 590 ft. (Lic); REQ: 94.5 MHz; Channel No. 233C; ERP: 100 kW; HAAT: 1425 ft.

BPH-800929AK, KRBE, Houston, Texas, GCC Communications of Houston, Inc.; HAS: 104.1 MHz; Channel No. 281C; ERP: 96 kW; HAAT: 790 ft. (Lic); REQ: 104.1 MHz; Channel No. 281C; ERP: 100 kW; HAAT: 1425 ft.

BPH-800929AL, KODA, Houston, Texas, Westinghouse Broadcasting Co., Inc.; HAS: 99.1 MHz; Channel No. 256C; ERP: 97 kW; HAAT: 790 ft. (Lic); REQ: 99.1 MHz; Channel No. 256C; ERP: 100 kW; HAAT: 1425 ft.

BPH-800930AC, KUPO, Odessa, Texas; Stream Broadcasting of Texas, Inc.; HAS: 97.9 MHz; Channel No. 250C; ERP: 34 kW; HAAT: 100 ft. (Lic); REQ: 97.9 MHz; Channel No. 250C; ERP: 100 kW; HAAT: 359 ft.

BPH-801002AC (new), Auburn, Nebraska; Midway Broadcasters; REQ: 105.5 MHz; Channel No. 288A; ERP: 3 kW; HAAT: 100 ft.

BPED-780802AK (new), Norwich, Connecticut, Ct. Educ. Telecommunications Corp.; REQ: 89.1 MHz; Channel No. 206B; ERP: 5.05 kW; HAAT: 589 ft.

BPED-790928AC, KSMC, Moraga, California, Students of St Marys College of Ca; HAS: 89.5 MHz; Channel No. 208D; ERP: .055 kW; HAAT: 95 ft. (Lic); REQ: 89.5 MHz; Channel No. 208A; ERP: .800 kW; HAAT: 80 ft.

BPED-791015AD, WLKL, Mattoon, Illinois, Community Dist. #817 Lake Land College; HAS: 90.3 MHz; Channel No. 212D8; ERP: .01 kW; HAAT: —— ft. (Lic); REQ: 90.9 MHz; Channel No. 210A; ERP: 1.3 kW; HAAT: 308 ft.

BPED–791220AI, KTAI, Kingsville, Texas, Texas A & I University; HAS: 91.1 MHz; Channel No. 216DS; ERP: .01 kW; HAAT: —— ft. (Lic); REQ: 91.1 MHz; Channel No. 216A; ERP: .1 kW; HAAT: 100 ft.

BPED–791221AO, WXBA, Brentwood, New York, Brentwood Union Free School District; HAS: 88.5 MHz; Channel No. 203DS; ERP: .01 kW; HAAT: —— ft. (Lic); REQ: 88.1 MHz; Channel No. 201A; ERP: .16 kW; HAAT: 83 ft.

BPED–791226AW, KVIK, Travis AFB, California, Vanden High School; HAS: 91.5 MHz; Channel No. 216D; TPO: .01 kW. (Lic); REQ: 91.5 MHz; Channel No. 218A; ERP: .360 kW; HAAT: —41.7 ft.

BPED–791226BF, WVHP–FM, Highland Park, New Jersey, Highland Park High School; HAS: 90.3 MHz; Channel No. 212DS; ERP: .01 kW; HAAT: —— ft. (Lic); REQ: 90.3 MHz; Channel No. 212A; ERP: .15 kW; HAAT: 67.6 ft.

BPED–791226BO, KTCC, Colby, Kansas, Colby Community Junior College; HAS: 91.9 MHz; Channel No. 220D; TPO: .01 kW; (Lic); REQ: 91.9 MHz; Channel No. 220A; ERP: .100 kW; HAAT: 73 ft.

BPED–791226BR, (New), Becker, Minnesota, Becker Public School District #726; REQ: 88.9 MHz; Channel No. 205A; ERP: .10 kW; HAAT: 70 ft.

BPED–791226BY, WWLR, Lyndon, Vermont, Lyndon State College; HAS: 91.7 MHz; Channel No. 219D; TPO: .01 kW. (Lic); (Lyndonville, Vermont); REQ: 91.5 MHz; Channel No. 218A; ERP: 2.73 kW; HAAT: —182 ft. (Lyndon, Vermont).

BPED–791226CG, WQFS, Greensboro, North Carolina, Trustees of Guilford College; HAS: 90.7 MHz; Channel No. 214DS; ERP: .01 kW; HAAT: —— ft. (Lic); REQ: 90.9 MHz; Channel No. 215A; ERP: 1.01 kW; HAAT: 198 ft.

BPED–791226DB, KQAL, Winona, Minnesota, Winona State University; HAS: 89.5 MHz; Channel No. 208DS; ERP: .01 kW; HAAT: —— ft. (Lic); REQ: 89.5 MHz; Channel No. 208A; ERP: 1.32 kW; HAAT: —148 ft.

BPED–791227AZ, WCBN–FM, Ann Arbor, Michigan, The Regents of the University of Michigan; HAS: 88.3 MHz; Channel No. 202D; TPO: .01 kW. (Lic); REQ: 88.3 MHz; Channel No. 202A; ERP: .200 kW; HAAT: 178 ft.

BPED–791227DI, WNTE, Mansfield, Pennsylvania, Mansfield State College; HAS: 89.5 MHz; Channel No. 208D; TPO: .01 kW; HAAT: 320 ft. (Lic); REQ: 89.5 MHz; Channel No. 208A; ERP: .113 kW; HAAT: —344 ft.

BPED–791228AP, WHFR, Dearborn, Michigan, Henry Ford Community College; REQ: 89.3 MHz; Channel No. 207A; ERP: .200 kW; HAAT: 60 ft.

BPED–791228AH, WDCV–FM, Carlisle, Pennsylvania, trustees of Dickinson College; REQ: 88.3 MHz; Channel No. 202A; ERP: .454 kW; HAAT: —50 ft.

BPED–791228AL, WGRN, Greenville, Illinois, Greenville College Ed. B/C Fndatn., Inc.; HAS: 89.3 MHz; Channel No. 207DS; ERP: .01 kW; HAAT: —— ft. (Lic); REQ: 89.5 MHz; Channel No. 208A; ERP: .225 kW; HAAT: 169 ft.

BPED–791228AO, WERD, Berlin, Connecticut, Berlin Board of Education; HAS: 89.9 MHz; Channel No. 210DS; ERP: .01 kW; HAAT: —— ft. (Lic); REQ: 97.3 MHz; Channel No. 247D; ERP: .024 kW; HAAT: —69 ft.

BPED–791228AX, WBCX, Gainesville, Georgia, Brenau College; HAS: 89.1 MHz; Channel No. 206D; TPO: .01 kW; (Lic); REQ: 89.1 MHz; Channel No. 206A; ERP: .1 kW; HAAT: 482 ft.

BPED–791228BA, WDBK, Blackwood, New Jersey, Camden County College; HAS: 91.5 MHz; Channel No. 218DS; ERP: .01 kW; HAAT: —— ft. (Lic); REQ: 91.5 MHz; Channel No. 218A; ERP: .100 kW; HAAT: 81 ft.

BPED–791228BC, KPGR, Pleasant Grove, Utah, Alpine School District; HAS: 88.1 MHz; Channel No. 201D ERP: .001 kW; HAAT: —1180 ft. (Lic); REQ: 88.1 MHz; Channel No. 201A; ERP: .115 kW; HAAT: —1126 ft.

BPED–791228BD, WMTB–FM, Emmitsburg, Maryland, Mount Saint Marys College; HAS: 89.9 MHz; Channel No. 210DS; ERP: .01 kW; HAAT: ft. (Lic); REQ: 89.9 MHz; Channel No. 210A; ERP: .118 kW; HAAT: 740 ft.

BPED–791228BF, KCEP, Las Vegas, Nevada, Economic Opportunity Board; HAS: 88.1 MHz; Channel No. 201DS; ERP: .01 kW; HAAT: ft. (Lic); REQ: 88.1 MHz; Channel No. 201B; ERP: 4.7 kW; HAAT: 118 ft.

BPED–791228BH, WRDL, Ashland Ohio, Ashland College; HAS: 89.5 MHz; Channel No. 201DS; ERP: .01 kW; HAAT: ft. (Lic); REQ: 89.9 MHz; Channel No. 206A; ERP: 3 kW; HAAT: 172 ft.

BPED–791228BM, KCNT, Hastings, Nebraska, Central Technical Community College area; HAS: 88.1 MHz; Channel No. 201DS; ERP: .01 kW; HAAT: ft.(Lic); REQ: 88.1 MHz; Channel No. 201A; ERP: 2.32 kW; HAAT: 162 ft.

BPED–791231AR, KAYE–FM, Tonkawa, Oklahoma, Northern Oklahoma College; HAS: 90.5 MHz; Channel No. 213DS; ERP: .01 kW; HAAT: ft. (Lic); REQ: 90.7 MHz; Channel No. 214A; ERP: 1.21 kW; HAAT: 66 ft.

BPED–791231BV, KWTS, Canyon, Texas, West Texas State University; HAS: 91.1 MHz; Channel No. 216DS; ERP: .012 kW; HAAT: —9 ft. (Lic); REQ: 91.1 MHz; Channel No. 216A; ERP: .125 kW; HAAT: —9 ft.

BPED–791231BY, KEOL, La Grande, Oregon, State Bd. of Higher Education; HAS: 91.1MHz; Channel No. 216D; TPO: .01 kW; ft. (Lic); REQ: 91.7 MHz; Channel No. 219A; ERP: .307 kW; HAAT: —749 ft.

BPED–791231CA, KLCD, Decorah, Iowa, Minnesota Public Radio, Inc.; HAS: 89.5 MHz; Channel No. 206DS; ERP: .01 kW; HAAT: ft. (Lic); REQ: 89.5 MHz; Channel No. 208A; ERP: .10 kW; HAAT: 182 ft.

BPED–791231CR, WJSC–FM, Johnson, Vermont, VSC board of trustees; HAS: 90.1 MHz; Channel No. 211D; TPO: .01 kW; (Lic); REQ: 90.7 MHz; Channel No. 214A; ERP: .155 kW; HAAT: —486 ft.

BPED–800306AD, KWAX, Eugene, Oregon, Oregon State Board of Higher Education; HAS: 91.1 MHz; Channel No. 216C; ERP: 20 kW; HAAT: —46 ft. (Lic); REQ: 91.1 MHz; Channel No. 216C; ERP: 20 kW; HAAT: 1,015 ft.

BPED–800502AD, WWSU, Fairborn, Ohio, Wright State University; HAS: 88.5 MHz; Channel No. 203DS; ERP: .01 kW; HAAT: ft. (Lic); (Dayton, Ohio); REQ: 108.9 MHz; Channel No. 298D; ERP: .007 kW; HAAT: 211 ft. (Fairborn, Ohio).

BPED–800706AJ, (new), Woodlake, California, Farmworkers Communications, Inc.; REQ: 90.5 MHz; Channel No. 213B; ERP: .870 kW; HAAT: 2,911 ft.

[FR Doc. 81-1621 Filed 1-15-81; 8:45 am]

BILLING CODE 6712-01-M

[Report No. B–10]

FM Broadcast Applications Accepted for Filing and Notification of Cut-Off Date

Released: December 22, 1980.

Cut-Off Date: February 19, 1981.

Notice is hereby given that the applications listed in the attached appendix are accepted for filing. Because the applications listed in the attached appendix are in conflict with applications which were accepted for filing and listed previously as subject to a cut-off date for conflicting applications, no application which would be in conflict with the applications listed in the attached appendix will be accepted for filing.

Petitions to deny the applications listed in the attached appendix and minor amendments thereto must be on file with the Commission not later than the close of business on February 19, 1981. Any application previously accepted for filing and in conflict with the applications listed in the attached appendix may also be amended as a matter of right not later than the close of business on February 19, 1981. Amendments filed pursuant to this notice are subject to the provisions of § 73.3572(b) of the Commission's Rules.

Federal Communications Commission.

William J. Tricarico,

Secretary.

BPH–800731AE (new), Elk City, Oklahoma, RONCA Broadcasting Company, Inc.; REQ: 98.5 MHz; Channel No. 249C; ERP: 100 kW; HAAT: 300 ft.

BPH–800818AA (new), Whitehouse, Texas, Smith County Broadcasters; REQ: 88.3 MHz; Channel No. 257A; ERP: 3 kW; HAAT: 300 ft.

BPH–800827AI (new), Cape Charles, Virginia, Ronald Smith; REQ: 98.1 MHz; Channel No. 241B; ERP: 50 kW; HAAT: 490 ft.

BPH–800925AA (new), Ponce, Puerto Rico, Family Broadcasting Group; REQ: 101.1 MHz; Channel No. 266B; ERP: 50 kW; HAAT: -46 ft.

BPH–800930AD (new), Ponce, Puerto Rico, Zeba Radio Corporation; REQ: 101.1 MHz; Channel No. 266B; ERP: 50 kW; HAAT: 262 ft.

BPH–800930AE (new), St Simons Island, Georgia, James U. Steele; REQ: 92.7 MHz; Channel No. 224A; ERP: 3 kW; HAAT: 300 ft.

BPH-801001AA (new), St Simons Island, Georgia, Burrows Broadcasting Company; REQ: 92.7 MHz; Channel No. 224A; ERP: 3 kW; HAAT: 300 ft.
BPH-801003AA (new), Malakoff, Texas, Henderson County Radio; REQ: 95.9 MHz; Channel No. 240A; ERP: 3 kW; HAAT: 300 ft.
BPH-801003AC (new), Carthage, Texas, East Delta Communications, Inc.; REQ: 98.9 MHz; Channel No. 255C; ERP: 100 kW; HAAT: 549.3 ft.
BPH-801003AD (new), Athens, Texas, Seven Seals Broadcasting Co., Inc.; REQ: 95.9 MHz; Channel No. 240A; ERP: 1.6 kW; HAAT: 400 ft. (Allocated to Malakoff, Tx.)
BPH-801003AE (new), Whitehouse, Texas, North American Broadcasting Co., Inc.; REQ: 99.3 MHz; Channel No. 257A; ERP: 3 kW; HAAT: 300 ft.
BPH-801003AF (new), St Simons Island, Georgia, Dale Bell; REQ: 92.7 MHz; Channel No. 224A; ERP: 3 kW; HAAT: 147 ft.
BPH-801003AI (new), Ephrata, Washington, Robert L. & Lougena J. Wikstrom; REQ: 95.9 MHz; Channel No. 240A; ERP: 3 kW; HAAT: 300 ft.
BPH-801003AJ (new), Ponce, Puerto Rico, Marsona Broadcasting Corporation; REQ: 101.1 MHz; Channel No. 266B; ERP: 50 kW; HAAT: 90 ft.
BPH-801027AI (new), San Mateo, California, San Mateo Broadcasting Co., Inc.; REQ: 107.7 MHz; Channel No. 299B; ERP: 6.2 kW; HAAT: 1160 ft. (Mutually Exclusive with renewal of KSOL.)
BPH-801103AL (new), San Mateo, California, Afro-American Comm., a Calif Corp.; REQ: 107.7 MHz; Channel No. 299B; ERP: 6.17 kW; HAAT: 1162 ft. (Mutually exclusive with renewal of KSOL.)

[FR Doc. 81-1622 Filed 1-15-81; 8:45 am]
BILLING CODE 6712-01-M

FEDERAL RESERVE SYSTEM

American Holding Co.; Formation of Bank Holding Company

American Holding Co., Glencoe, Illinois, has applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company by acquiring 80 percent of the voting shares of Bank of Highland Park, Highland Park, Illinois. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Chicago. Any person wishing to comment on the application should submit views in writing to the Reserve Bank, to be received not later than February 9, 1981. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, January 9, 1981.

Jefferson A. Walker,
Assistant Secretary of the Board.

[FR Doc. 81-1601 Filed 1-15-81; 8:45 am]
BILLING CODE 6210-01-M

Arapahoe Financial Corp., Formation of Bank Holding Company

Arapahoe Financial Corp., Arapahoe, Nebraska, has applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company by acquiring 100 percent of the voting shares of Citizens State Bank, Arapahoe, Nebraska. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Kansas City. Any person wishing to comment on the application should submit views in writing to the Reserve Bank, to be received not later than February 11, 1981. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presetned at a hearing.

Board of Governors of the Federal Reserve System, January 12, 1981.

Jefferson A. Walker,
Assistant Secretary of the Board.

[FR Doc. 81-1602 Filed 1-15-81; 8:45 am]
BILLING CODE 6210-01-M

BancMidwest Corporation; Formation of Bank Holding Company

BancMidwest Corporation, St. Paul, Minnesota, has applied for the Board's approval under 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company by acquiring 82.7 percent of the voting shares of Goodhue State Bank, Goodhue, Minnesota, 64.4 percent of the voting shares of Chisago County State Bank, Center City, Minnesota, and 72.3 percent of the voting shares of White Rock State Bank, White Rock, Minnesota. The factors that are considered in acting on the application are set forth in 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Minneapolis. Any person wishing to comment on the application should submit views in writing to the Reserve Bank, to be received not later than February 11, 1981. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, January 12, 1981.

Jefferson A. Walker,
Assistant Secretary of the Board.

[FR Doc. 81-1603 Filed 1-15-81; 8:45 am]
BILLING CODE 6210-01-M

Bank Holding Companies; Porposed de Novo Nonbank Activities

The bank holding companies listed in this notice have applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and section 225.4(b)(1) of the Board's Regulation Y (12 CFR 225.4(b)(1)), for permission to engage *de novo* (or continue to engage in an activity earlier commenced *do novo*), directly or indirectly, solely in the activities indicated, which have been determined by the Board of Governors to be closely related to banking.

With respect to each application, interested persons may express their views on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreasd or unfair competition, conflicts of interest, or unsound banking practices." Any comment on an application that requests a hearing must include a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of that proposal.

Each application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank indicated for that application. Comments and requests for hearings should identify clearly the specific application to which they relate, and should be submitted in writing and, except as noted, received by the appropriate Federal Reserve Bank not later than February 11, 1981.

A. *Federal Reserve Bank of New York* (A. Marshall Puckett, Vice President) 33 Liberty Street, New York, New York 10045:

CITICORP, New York, New York (finance company activities; Georgia, Virginia, North Carolina, South Carolina, Tennessee, Alabama, Mississippi, and Florida): to engage through a *de novo* office of its subsidiary Citicorp Private Capital, Inc., in finance company activities, including the making or acquiring of loans and other extensions of credit (including loans secured by real or personal property) with primary emphasis on loans to business enterprises and large loans to individuals. These activities will be conducted from an office in Atlanta, Georgia, serving the eight states listed above. Comments on this application must be received by February 4, 1981.

B. *Federal Reserve Bank of San Francisco* (Harry W. Green, Vice President) 400 Sansome Street, San Francisco, California 94120:

SECURITY PACIFIC CORPORATION, Los Angeles, California (Mortgage banking activities; Texas): to engage through its subsidiary, Security Pacific Mortgage Corporation, in the origination and acquisition of mortgage loans, including development and construction loans on multi-family and commercial properties for Security Pacific Mortgage Corporation's own account or for sale to others, and the servicing of such loans for others. These activities would be conducted from an office in Dallas, Texas, serving the State of Texas.

C. *Other Federal Reserve Banks:* None.

Board of Governors of the Federal Reserve System, January 12, 1981

Jefferson A. Walker,

Assistant Secretary of the Board.

[FR Doc. 81-1608 Filed 1-15-81; 8:45 am]

BILLING CODE 6210-01-M

Bank Holding Companies; Proposed de Novo Nonbank Activities

The bank holding company listed in this notice has applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843 (c)(8)) and section 225.4(b)(1)) of the Board's Regulation Y (12 CFR § 225.4(b)(1), for permission to engage *de novo* (or continue to engage in an activity earlier commenced *de novo*), directly or indirectly, soley in the activities indicated, which have been determined by the Board of Governors to be closely related to banking.

With respect to this application, interested persons may express their views on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interest, or unsound banking practices." Any comment on the application that requests a hearing must include a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of that proposal.

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank indicated for the application. Comments and requests for hearings should identify clearly the specific application to which they relate, and should be submitted in writting and received by the appropriate Federal Reserve Bank not later than February 8, 1981.

A. *Federal Reserve Bank of San Francisco* (Harry W. Green, Vice President), 400 Sansome Street, San Francisco, California 94120:

Security Pacific Corporation, Los Angeles, California; (financing, servicing, industrial loan, and credit-related insurance activities; California): to engage, through its subsidiary, Security Pacific Finance Money Center Inc., in financing and industrial loan corporation activities, including making, acquiring and servicing loans and other extensions of credit; in selling and issuing investment certificates; and in acting as agent for the sale of credit-related life, credit-related accident and health, and credit-related property insurance, all as authorized by California law. These activities would be conducted from an office in the city of Escondido, California, serving the state of California.

B. *Other Federal Reserve Banks:* None.

Board of Governors of the Federal Reserve System, January 9, 1981.

Jefferson A. Walker,

Assistant Secretary of the Board.

[FR Doc. 81-1607 Filed 1-15-81; 8:45 am]

BILLING CODE 6210-01-M

Callaway Security Banks, Inc.; Formation of Bank Holding Company

Callaway Security Banks, Inc., Fulton, Missouri, has applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company by acquiring 80 percent or more of the voting shares of The Callaway Bank, Fulton, Missouri; and 80 percent or more of the voting shares of The Security Bank of Auxvasse, Auxvasse, Missouri. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of St. Louis. Any person wishing to comment on the application should submit views in writing to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551 to be received no later than February 9, 1981. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, January 9, 1981.

Jefferson A. Walker,

Assistant Secretary of the Board.

[FR Doc. 81-1606 Filed 1-15-81; 8:45 am]

BILLING CODE 6210-01-M

Central and Southern Holding Co; Formation of Bank Holding Company

Central and Southern Holding Company, Milledgeville, Georgia, has applied for the Board's approval under Section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company by acquiring 100 percent of the voting shares of Citizens and Southern Bank of Milledgeville, Milledgeville, Georgia. The factors that are considered in acting on the application are set forth in Section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Atlanta. Any person wishing to comment on the application should submit views in writing to the Reserve Bank, to be received not later than February 11, 1981. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, January 12, 1981.
Jefferson A. Walker,
Assistant Secretary of the Board.
[FR Doc. 81-1625 Filed 1-15-81; 8:45 am]
BILLING CODE 6210-01-M

First Arkansas Bancshares, Inc., Formation of Bank Holding Company

First Arkansas Bancshares, Inc., Jacksonville, Arkansas, has applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company by acquiring 100 percent of the voting shares (less directors' qualifying shares) of First Jacksonville Bank, Jacksonville, Arkansas. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. section 1842(c)).

The application may be inspected at the office of the Board of Governors or at the Federal Reserve Bank of St. Louis. Any person wishing to comment on the application should submit views in writing to the Reserve Bank, to be received not later than February 1, 1981. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, January 12, 1981.
Jefferson A. Walker,
Assistant Secretary of the Board.
[FR Doc. 81-1626 Filed 1-15-81; 8:45 a.m.]
BILLING CODE 6210-01-M

First State Bancorporation; Formation of Bank Holding Company

First State Bancorporation, Tiptonville, Tennessee, has applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company by acquiring 80 percent or more of the voting shares of First State Bank and Trust Company, Tiptonville, Tennessee. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of St. Louis. Any person wishing to comment on the application should submit views in writing to the Reserve Bank, to be received not later than February 9, 1981. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, January 12, 1981.
Jefferson A. Walker,
Assistant Secretary of the Board.
[FR Doc. 81-1609 Filed 1-15-81; 8:45 am]
BILLING CODE 6210-01-M

Geneseo Bancshares, Inc.; Formation of Bank Holding Company

Geneseo Bancshares, Inc., Geneseo, Kansas, has applied for the Board's approval under § 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company by acquiring 80 percent or more of the voting shares of The Citizens State Bank, Geneseo, Kansas. The factors that are considered in acting on the application are set forth in § 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Kansas City. Any person wishing to comment on the application should sumit views in writing to the Reserve Bank, to be received not later than February 11, 1981. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, January 12, 1981.
Jefferson A. Walker,
Assistant Secretary of the Board.
[FR Doc. 81-1610 Filed 1-15-81; 8:45 am]
BILLING CODE 6210-01-M

Lakin Bancshares, Inc.; Formation of Bank Holding Company

January 12, 1981.

Lakin Bancshares, Inc., Lakin, Kansas, has applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company by acquiring 80 percent or more of the voting shares of The Kearney County Bank, Lakin, Kansas. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Kansas City. Any person wishing to comment on the application should submit views in writing to the Reserve Bank, to be received not later than February 9, 1981. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, January 9, 1981.
Jefferson A. Walker,
Assistant Secretary of the Board.
[FR Doc. 81-1611 Filed 1-15-81; 8:45 am]
BILLING CODE 6210-01-M

Northwest Pennsylvania Corp.; Formation of Bank Holding Company

Northwest Pennsylvania Corp., Oil City, Pennsylvania, has applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company by acquiring 100 percent of the voting shares of Northwest Pennsylvania Bank & Trust Company, Oil City, Pennsylvania. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Cleveland. Any person wishing to comment on the application should submit views in writing to the Reserve Bank, to be received not later than February 11, 1981. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, January 12, 1981.
Jefferson A. Walker,
Assistant Secretary of the Board.
[FR Doc. 81-1612 Filed 1-15-81; 8:45 am]
BILLING CODE 6210-01-M

Peoples Bancshares, Inc.; Formation of Bank Holding Company

Peoples Bancshares, Inc., Colorado Springs, Colorado, has applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank

holding company by acquiring 87.94 percent of the voting shares of Peoples Bank of Westville, Westville, Oklahoma. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Kansas City. Any person wishing to comment on the application should submit views in writing to the Reserve Bank, to be received not later than February 11, 1981. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, January 12, 1981.

Jefferson A. Walker,

Assistant Secretary of the Board.

[FR Doc. 81-1013 Filed 1-15-81; 8:45 am]

BILLING CODE 6210-01-M

First Bank Holding Company of Batesville; Formation of Bank Holding Company

First Bank Holding Company of Batesville, Batesville, Arkansas, has applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company by acquiring 82.9 percent or more of the voting shares of First National Bank, Batesville, Arkansas. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of St. Louis. Any person wishing to comment on the application should submit views in writing to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551 to be received no later than February 11, 1981. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, January 12, 1981.

Jefferson A. Walker,

Assistant Secretary of the Board.

[FR Doc. 81-1007 Filed 1-15-81; 8:45 am]

BILLING CODE 6210-01-M

United Texas Financial Corp.; Acquisition of Bank

United Texas Financial Corporation, Wichita Falls, Texas, has applied for the Board's approval under section 3(a)(3) of the Bank Holding company Act (12 U.S.C. 1842(a)(3)) to acquire 78.9 percent or more of the voting shares of First State Bank in Archer City, Archer City, Texas. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Dallas. Any person wishing to comment on the application should submit views in writing to the Reserve Bank to be received not later than February 11, 1981. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, January 12, 1981.

Jefferson A. Walker,

Assistant Secretary of the Board.

[FR Doc. 81-1007 Filed 1-15-81; 8:45 am]

BILLING CODE 6210-01-M

FEDERAL TRADE COMMISSION

Commercial Practices; Early Termination of the Waiting Period of the Premerger Notification Rules

AGENCY: Federal Trade Commission.

ACTION: Granting of request for early termination of the waiting period of the premerger notification rules.

SUMMARY: Baldwin-United Corporation is granted early termination of the waiting period provided by law and the premerger notification rules with respect to the proposed acquisition of all voting securities of Mt. Hood Stages, Inc. The grant was made by the Federal Trade Commission and the Assistant Attorney General in charge of the Antitrust Division of the Department of Justice in response to a request for early termination submitted by both parties. Neither agency intends to take any action with respect to this acquisition during the waiting period.

EFFECTIVE DATE: December 30, 1980.

FOR FURTHER INFORMATION CONTACT: Roberta Baruch, Senior Attorney, Premerger Notification Office, Bureau of Competition, Room 303, Federal Trade Commission, Washington, D.C. 20580 (202) 523-3894.

SUPPLEMENTARY INFORMATION: Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Commission and Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the Federal Register.

By direction of the Commission.

Carol M. Thomas,

Secretary.

[FR Doc. 81-1002 Filed 1-15-81; 8:45 am]

BILLING CODE 6750-01-M

Commercial Practices; Early Termination of the Waiting Period of the Premerger Notification Rules

AGENCY: Federal Trade Commission.

ACTION: Granting of request for early termination of the waiting period of the premerger notification rules.

SUMMARY: Midland Investment Company is granted early termination of the waiting period provided by law and the premerger notification rules with respect to the proposed acquisition of certain voting securities of AMP Inc. The grant was made by the Federal Trade Commission and the Assistant Attorney General in charge of the Antitrust Division of the Department of Justice in response to a request for early termination submitted by both parties. Neither agency intends to take any action with respect to this acquisition during the waiting period.

EFFECTIVE DATE: December 31, 1980.

FOR FURTHER INFORMATION CONTACT: Roberta Baruch, Senior Attorney, Premerger Notification Office, Bureau of Competition, Room 303, Federal Trade Commission, Washington, D.C. 20580 (202) 523-3894.

SUPPLEMENTARY INFORMATION: Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give

the Commission and Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A (b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the Federal Register.

By direction of the Commission.

Carol M. Thomas,

Secretary.

[FR Doc. 81-1653 Filed 1-13-81; 8:45 am]

BILLING CODE 6750-01-M

Commercial Practices; Early Termination of the Waiting Period of the Premerger Notification Rules

AGENCY: Federal Trade Commission.

ACTION: Granting of request for early termination of the waiting period of the premerger notification rules.

SUMMARY: Tamco Enterprises, Inc. is granted early termination of the waiting period provided by law and the premerger notification rules with respect to the proposed acquisition of certain voting securities of Kennecott Corp. The grant was made by the Federal Trade Commission and the Assistant Attorney General in Charge of the Antitrust Division of the Department of Justice in response to a request for early termination submitted by Tamco. Neither agency intends to take any action with respect to this acquisition during the waiting period.

EFFECTIVE DATE: December 31, 1980.

FOR FURTHER INFORMATION CONTACT: Roberta Baruch, Senior Attorney, Premerger Notification Office, Bureau of Competition, Room 303, Federal Trade Commission, Washington, D.C. 20580 (202) 523-3894.

SUPPLEMENTARY INFORMATION: Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Commission and Assistant Attorney General Advance notice and to wait designated periods before consummation of such plans. Section 7A (b) (2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the Federal Register.

By direction of the Commission.

Carol M. Thomas,

Secretary.

[FR Doc. 81-1654 Filed 1-13-81; 8:45 am]

BILLING CODE 6750-01-M

GENERAL SERVICES ADMINISTRATION

[GSA Bulletin FPR 37]

Federal Procurement; Supplement 10

December 29, 1980.

TO: Heads of Federal agencies.

SUBJECT: Companies not in compliance with the Voluntary Wage and Price Standards.

1. *Purpose.* This supplement provides a complete relisting of all companies that have been determined to be, and are now, in noncompliance with the Voluntary Wage and Price Standards formulated under Executive Order 12092.

2. *Expiration date.* This bulletin contains information of a continuing nature and will remain in effect until canceled.

3. *Substance.* Attachment A is the November 21, 1980, letter from the Administrator, Office of Federal Procurement Policy, to GSA and DOD. The letter includes the list of companies that are in noncompliance with the Voluntary Wage and Price Standards. The list supersedes the list previously published in GSA Bulletin FPR 37, Supplement 9.

4. *Cancellation.* This bulletin cancels GSA Bulletin FPR 37, Supplement 9, dated November 20, 1980.

Gerald McBride,

Assistant Administrator for Acquisition Policy.

GSA Bulletin FPR 37—Supplement 10—Attachment A

EXECUTIVE OFFICE OF THE PRESIDENT

Office of Management and Budget

Washington, D.C. 20503

November 21, 1980.

Memorandum to: The Secretary of Defense, The Administrator of General Services.

From: Karen Hastie Williams, Administrator, Office of Federal Procurement Policy.

Subject: Companies not in compliance with the Voluntay Wage and Price Standards.

The Council on Wage and Price Stability has determined that the following companies are not in compliance with the Voluntary Wage and Price Standards formulated pursuant to Executive Order 12092 (43 FR 51375). The list is current as of November 12, 1980.

Company and Original Date Listed

Cement Division compliance unit of Ideal, Basic Industries, Inc., P.O. Box 8789, Denver, Colorado 80201, DUNS Number 00-708-1385—June 15, 1979.

Northwestern Steel and Wire Co., 121 Wallace Street, Sterling, Illinois 61061, DUNS Number 00-526-3157—July 24, 1979.

Mason Contractors of DuPage County, P.O. Box 129, Mount Prospect, Illinois 60056, DUNS Number 99-106-2472—July 24, 1979.

American Hoechst Corporation, Route 202-206 North, Somerville, New Jersey 08876, DUNS Number 04-578-7991—October 23, 1979.

SCOA Industries, Inc. (excluding foreign subsidiaries), 155 East Broad Street, Columbus, Ohio 43215, DUNS Number 00-790-2206—October 23, 1979.

National Electrical Contractors Association (Oregon-Columbia Chapter), 201 S.W. Arthur Street, Portland, Oregon 97201, DUNS Number 99-106-2480—October 23, 1979.

The Eureka Company, 1201 East Bell Street, Bloomington, Illinois 61701, DUNS Number 00-116-3823—November 27, 1979.

Portland Association of Plumbing Heating and Cooling Contractors (two noncomplying agreements), 612 S.W. Idaho, Portland, Oregon 97201, DUNS Number 06-509-2300—November 27, 1979.

Sheetmetal Association, Inc., c/o 3434 S.W. Water Avenue, Portland, Oregon 97201, DUNS Number 99-105-2496—November 27, 1979.

San Diego Contracting Lathers Association, 7855 Ostrow Street, San Diego, California 92111, DUNS Number 99-106-2506—November 27, 1979.

"All other" compliance unit of Gifford-Hill & Company, Inc. (which includes all products exclusive of transportation, irrigation and metal building products), 8435 Stimmons Freeway, P.O. Box 47127, Dallas, Texas 75247, DUNS Number 00-792-6496—December 27, 1979.

Boston Distributors, a compliance unit of Cook United, Inc., 16501 Rockside Road, Cleveland, Ohio 44137, DUNS Number 09-449-7245—January 21, 1980.

National Gypsum Company, 4100 First International Building, Dallas, Texas 75270, DUNS Number 00-138-2431—January 21, 1980.

Crown Central Petroleum Corp., One North Charles, P.O. Box 1168, Baltimore, Maryland 21203, DUNS Number 00-306-2401—March 25, 1980.

Gust K. Newberg Company & Assoc. (out of compliance only in Will County and vicinity, Illinois), 2040 North Ashland Avenue, Chicago, Illinois 60614, DUNS Number 00-893-1869—March 25, 1980.

Mid-America Regional Bargaining Association, 228 North LaSalle Street, Chicago, Illinois 60601, DUNS Number 99-106-2514—March 25, 1980.

Contractors Association of Will and Grundy Counties, 254½ Rusy Street, Joliet, Illinois 60435, DUNS Number 99-106-2522—March 25, 1980.

Residential Construction Employers Council, 1010 Jorie Boulevard, Suite 112, Oak Brook, Illinois 60521, DUNS Number 99-106-2530—March 25, 1980.

Koch Fuels, Inc., a compliance unit of Koch Refining Company, P.O. Box 31, Gloucester City, N.J. 08030, DUNS Number 07-067-9404—April 2, 1980.

Church's Fried Chicken, Inc., P.O. Box BH001, San Antonio, Texas 78284, DUNS Number 02-701-7417—April 2, 1980.

Monolith Portland Cement Co., P.O. Box 3303 Terminal Annex, Suite 201, Glendale, California 91202, DUNS Number 00-825-5580—April 18, 1980.

Dundee Cement Company, P.O. Box 122, Dundee, Michigan 48131, DUNS Number 00-803-8000—May 2, 1980.
Santee Portland Cement Co., S.C. Highway No. 53, Holly Hill, South Carolina, DUNS Number 00-336-8901—May 2, 1980.
Hyatt Hotels compliance unit of Hyatt Corporation (which includes all hotels owned or managed by the Hyatt Corporation), 9701 W. Higgins Road, Rosemont, Illinois 60018, DUNS Number 04-738-6877—May 20, 1980.
Air Conditioning and Refrigeration Contractors Association, 870 Market Street, San Francisco, California 94102, DUNS Number 09-108-2548—May 30, 1980.
Industrial Contractors (UMIC. Inc.), P.O. Box 1005, Tiburon, California 94920, DUNS Number 09-108-2565—May 30, 1980.
Plumbing Heating Piping Employers Council, 36 Tiburon Blvd., Mill Valley, California 94941, DUNS Number 09-108-2562—May 30, 1980.
Residential Plumbing and Mechanical Contractors of North California, 1545 B Palos Verdes Mall, Walnut Creek, California 94596, DUNS Number 09-108-2571—May 30, 1980.
Santa Clara Valley Contractors Association, 400 Reed Street, Santa Clara, California 95050, DUNS Number 09-108-2589—May 30, 1980.
Burlington Northern Air Freight, Inc., a compliance unit of Burlington Northern, Inc., 4950 Von Karman Avenue, New Port Beach, California 92660, DUNS Number 05-802-0496—July 2, 1980.
Hotels Division and Hotel-Casinos Division, compliance units of Hilton Hotels Corporation, 9880 Wilshire Blvd., Beverly Hills, California 90210, DUNS Number 00-693-0531 (limited to Hotels Division and Hotel-Casinos Division)—July 10, 1980.
Murphy Oil, Domestic Marketing and Refining Division, a compliance unit of Murphy Oil Corporation (excluding foreign subsidiaries), 200 Jefferson Avenue, El Dorado, Arkansas 71730, DUNS Number 00-805-3712—July 15, 1980.
Harris-Teeter Supermarkets, Inc., a compliance unit of Ruddick Corporation, 4017 Chesapeake Drive, P.O. Box 33129, Charlotte, N.C. 28233, DUNS Number 09-108-9287—August 13, 1980.
Circle K Corporation, 4500 South 40th Street, Phoenix, Arizona, DUNS Number 00-694-8143—August 13, 1980.
Louisville Cement Company, 501 South Second Street, Louisville, Kentucky 40201, DUNS Number 00-606-6670—September 17, 1980.
Brown-Forman Distillers Corporation, 850 Dixie Highway, Louisville, Kentucky 40201, DUNS Number 00-627-6812—September 17, 1980.
Dairymen's Creamery Association, Inc., 520 Albany, Caldwell, Idaho 83605, DUNS Number 04-529-5865—October 15, 1980.
Agricultural Chemicals Group, compliance unit of W. R. Grace and Company, 100 North Main Street, Memphis, Tennessee 38103, DUNS Number 04-457-7918—October 15, 1980.
American Petrofina, Inc., 8350 North Central Expressway, Dallas, Texas 75221, DUNS Number 00-122-6077 (excluding crude oil exploration and development)—October 15, 1980.
Glen-Gery Corporation, 227 North 5th Street, Reading, Pa. 19603, DUNS Number 0-235-5857—November 12, 1980.
Supermarkets General Corporation, 301 Blair Road, Woodbridge, N.J. 07095, DUNS Number 00-697-6960—November 12, 1980.
Hollingsworth & Vose Company, 112 Washington Street, East Walpole, Massachusetts, DUNS Number 00-100-6378—November 12, 1980.
Deltic Farm & Timber Company Inc., a compliance unit of Murphy Oil Corporation, 200 Jefferson Avenue, El Dorado, Arkansas 71730, DUNS Number 00-690-2878—November 12, 1980.
Eastern Coal & Coke Company, a compliance unit of Westmoreland Coal Company, P.O. Box 63, Banner, Kentucky 41603, DUNS Number 00-123-8734—November 12, 1980.
Howell Corporation, 800 Houston Natural Gas Bldg., Houston, Texas 77002, DUNS Number 00-611-8671—November 12, 1980.

This supersedes the previous list promulgated by OFPP memorandum of October 29, 1980. Changes to that list include the addition of six companies. There are no deletions.

Pursuant to the terms of Office of Federal Procurement Policy Letter 78-6 dated December 27, 1978, I request that you publish this information in a Defense Acquisition Circular and Federal Procurement Regulations Bulletin.

[FR Doc. 81-1627 Filed 1-15-81; 8:45 am]
BILLING CODE 6820-61-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Alcohol, Drug Abuse, and Mental Health Administration

National Advisory Council on Alcohol Abuse and Alcoholism; Meeting

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. Appendix I), announcement is made of the following national advisory body scheduled to assemble during the month of February 1981.

National Advisory Council on Alcohol Abuse and Alcoholism, February 2-3, 9:30 a.m., Conference Room 10, Building 31C, National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20205. Open—February 2. Closed February 3. Contact: Mr. James Vaughan, Room 16C-06, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443-3667.

Purpose: The Council advises the Secretary of Health and Human Services regarding policy direction and program issues of national significance in the area of alcohol abuse and alcoholism. The Council reviews all grant applications submitted, evaluates these applications in terms of scientific merit and coherence with Department policies, and makes recommendations to the Secretary with respect to approval and amount of award.

Agenda: February 2 will be devoted to general business of the Council and a discussion of legislation, budget, current program issues and other subjects related to Institute programs.

February 3, the Council will conduct a final review of grant applications for Federal assistance and this session will not be open to the public in accordance with the determination by the Acting Administrator, Alcohol, Drug Abuse, and Mental Health Administration pursuant to the provisions set forth in Section 552b(c)(6), Title 5 U.S. Code and Section 10(d) of Public Law 92-463 (5 U.S.C. Appendix I).

Substantive program information may be obtained from the contact person listed above. The NIAAA Committee Management Office will furnish upon request summaries of the meeting and a roster of Committee members. Contact Ms. Helen Garrett, Room 16C-21, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443-2860.

Dated: January 12, 1981.

Elizabeth A. Connolly,
Committee Management Officer, Alcohol, Drug Abuse, and Mental Health Administration.

[FR Doc. 81-1682 Filed 1-15-81; 8:45 am]
BILLING CODE 4110-88-M

Rape Prevention and Control Advisory Committee; Meeting

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. Appendix I), announcement is made of the following National advisory body scheduled to assemble during the month of February 1981.

Rape Prevention and Control Advisory Committee, February 5-6, 1981; 9:30 a.m.—open meeting, Conference Room K, Parklawn Building, Rockville, Maryland 20857. Contact: Mary Lystad, Ph.D., Executive Secretary, Room 15-99, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443-1910.

Purpose: The Rape Prevention and Control Advisory Committee advises the Secretary, Department of Health and Human Services, the Administrator, Alcohol, Drug Abuse, and Mental Health Administration, and the Director, National Institute of Mental Health, through the National Center for the Prevention and Control of Rape, on matters regarding the needs and concerns associated with rape in the United States and makes

recommendations pertaining to activities to be undertaken by the Department to address the problems of rape.

Agenda: The entire meeting will be open to the public. The Advisory Committee will provide input to Title VI, Rape Prevention and Control, of the Mental Health Systems Act.

Substantive information may be obtained from the contact person listed above. Ms. Debbie Clawson, Assistant to the Executive Secretary, Rape Prevention and Control Advisory Committee, Room 15-99, 5600 Fishers Lane, Rockville, Maryland 20857, telephone number (301) 443-1910, will furnish upon request summaries of the meeting and rosters of the committee members.

Dated: January 12, 1981.

Elizabeth A. Connolly,

Committee Management Officer, Alcohol, Drug Abuse, and Mental Health Administration.

[FR Doc. 81-1503 Filed 1-15-81; 8:45 am]

BILLING CODE 4110-88-M

Treatment and Rehabilitation Work Group; Meeting

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. Appendix I), announcement is made of the following national advisory body scheduled to assemble during the month of February 1981.

The Treatment and Rehabilitation Work Group of the Interagency Committee on Federal Activities for Alcohol Abuse and Alcoholism, February 3; 2:00 p.m.—open, Conference Room A, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857. Contact: Mr. David Clough, Room 11-19, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443-2070.

Purpose: The Treatment and Rehabilitation Work Group evaluates all Federal efforts in the areas of alcohol abuse and alcoholism treatment and rehabilitation; provides for the communication and exchange of information necessary; and seeks to coordinate and enhance these programs and activities. Any reports or recommendations are submitted to the Interagency Committee on Federal Activities for Alcohol Abuse and Alcoholism.

Agenda: Tentative agenda items include updated reports from work group members, a followup report on the Treatment Alternatives to Street Crime (TASC) program, and a report on criminal justice/alcoholism treatment issues.

Substantive program information may be obtained form the contact person listed above. The NIAAA Committee Management Office will furnish summaries of the meeting and a roster of Committee members upon request. Contact Ms. Helen Garrett, Room 16C-21, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443-2860.

Dated: January 12, 1981.

Elizabeth A. Connolly,

Committee Management Officer, Alcohol, Drug Abuse, and Mental Health Administration.

[FR Doc. 81-1504 Filed 1-15-81; 8:45 am]

BILLING CODE 4110-88-M

Centers for Disease Control

Control Technology Assessment of Chemical Process Batch Unit Operations; Open Meeting; Cancellation

The notice of a meeting on the Control Technology Assessment of Chemical Process Batch Unit Operations, to be held January 22, 1981, was published in the **Federal Register** (46 FR 1030) on Monday, January 5, 1981. This open meeting is cancelled until further notice.

Dated: January 12, 1981.

William H. Foege,

Director, Centers for Disease Control.

[FR Doc. 81-1658 Filed 1-15-81; 8:45 am]

BILLING CODE 4110-87-M

Food and Drug Administration

Consumer Participation; Open Meeting

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) announces a forthcoming consumer exchange meeting to be chaired by Federick R. Carlson, District Director, Boston District Office, Boston, MA.

DATE: The meeting will be held at 10 a.m., Thursday, January 29, 1981.

ADDRESS: The meeting will be held at the Food and Drug Administration Bldg., 2d Floor Conference Room, 585 Commercial St., Boston, MA 02109.

FOR FURTHER INFORMATION CONTACT: Yolan L. Harsanyi, Consumer Affairs Officer, Food and Drug Administration, 585 Commercial St., Boston, MA 02109, 617-223-5857.

SUPPLEMENTARY INFORMATION: The purpose of this meeting is to encourage dialogue between consumers and FDA officials, to identify and set priorities for current and future health concerns, to enhance relationships between local consumers and FDA's Boston District Office, and to contribute to the agency's policymaking decisions on vital issues.

Dated: January 12, 1981.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 81-1505 Filed 1-15-81; 8:45 am]

BILLING CODE 4110-88-M

Consumer Participation; Open Meeting

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) announces a forthcoming consumer exchange meeting to be chaired by Loren Y. Johnson, District Director, Philadelphia District Office, Philadelphia, PA.

DATE: The meeting will be held at 9:30 a.m., Wednesday, February 25, 1981.

ADDRESS: The meeting will be held at the Federal Bldg., Rm. 3306 (3d Floor), 600 Arch St., Philadelphia, PA 19106.

FOR FURTHER INFORMATION CONTACT: Bob Lockett, Consumer Affairs Officer, Food and Drug Administration, U.S. Customhouse, Rm. 900, 2d and Chestnut Sts., Philadelphia, PA 19106, 215-597-0837.

SUPPLEMENTARY INFORMATION: The purpose of this meeting is to encourage dialogue between consumers and FDA officials, to identify and set priorities for current and future health concerns, to enhance relationships between local consumers and FDA's Philadelphia District Office, and to contribute to the agency's policymaking decisions on vital issues.

Dated: January 12, 1981.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 81-1507 Filed 1-15-81; 8:45 am]

BILLING CODE 4110-88-M

Ophthalmic Device Section of the Ophthalmic; Ear, Nose, and Throat; and Dental Devices Panel; Meeting

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). This notice also sets forth a summary of the procedures governing committee meetings and methods by which interested persons may participate in open public hearings conducted by the committees and is issued under section 10(a) (1) and (2) of the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat.

770–776 (5 U.S.C. App. I)), and FDA regulations (21 CFR Part 14) relating to advisory committees. The following advisory committee meeting is announced:

Ophthalmic Device Section of the Ophthalmic; Ear, Nose, and Throat; and Dental Devices Panel

Date, time, and place: February 5 and 6, 9 a.m., Holiday Inn, 8777 Georgia Ave., Silver Spring, MD.

Type of meeting and contact person: Open public hearing, February 5, 9 a.m. to 10 a.m., open committee discussion, February 5, 10 a.m. to 5 p.m.; open public hearing, February 6, 9 a.m. to 10 a.m., open committee discussion, February 6, 10 a.m. to 5 p.m.; Max W. Talbott, Bureau of Medical Devices (HFK–460), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7538.

General function of the Committee: The Committee reviews and evaluates available data on the safety and effectiveness of devices currently in use and makes recommendations for their regulation.

Agenda—Open public hearing: Interested persons are encouraged to present information pertinent to intraocular lenses and the intraocular lens clinical investigation (February 5) and on contact lenses and contact lens products (February 6). Those desiring to make formal presentations should notify the contact person by January 22, 1981, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, references to any data to be relied on, and an indication of the approximate time required to make their comments.

Open committee discussion. The Section will conduct reviews of premarket approval applications of intraocular lenses and will discuss other statistical/epidemiological questions pertaining to intraocular lenses (February 5) and will conduct reviews of premarket approval applications for contact lens products (February 6).

Applications for reimbursement. Must be received by January 26, 1981.

Board of Tea Experts

Date, time, and place: February 9, 10 a.m., Rm. 700, 850 Third Ave., Brooklyn, NY.

Type of meeting and contact person: Open public hearing, 10 a.m. to 11 a.m., open committee discussion, 11 a.m. to 4:30 p.m.; Robert H. Dick, Food and Drug Administration, 850 Third Ave., Brooklyn, NY, 11232, 212–965–5730.

General function of the Committee: The Board advises on establishment of uniform standards of purity, quality, and fitness for consumption of all teas imported into the United States pursuant to 21 U.S.C. 42.

Agenda—Open public hearing: Any interested persons may present data, information, or views, orally or in writing, on issues pending before the Board.

Open committee discussion: Discussion and selection of tea standards.

Applications for reimbursement: Must be received by January 26, 1981.

FDA public advisory committee meetings may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. There are no closed portions for the meetings announced in this notice. The dates and times reserved for the open portions of each committee meeting are listed above.

The open public hearing portion or each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairman determines will facilitate the committee's work.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this Federal Register notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairman's discretion.

Persons interested in specific agenda items to be discussed in open session may ascertain from the contact person the approximate time of discussion.

A list of committee members and summary minutes of meetings may be requested from the Dockets Management Branch (formerly the Hearing Clerk's office) (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday. The FDA regulations relating to public advisory committees may be found in 21 CFR Part 14.

Applications for reimbursement for participation in the meeting listed above should be sent to the Office of Consumer Affairs (HFE–88), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, rather than to the Dockets Management Branch as prescribed in § 10.210 of the regulations (21 CFR 10.210). If you wish to submit an application or wish more information regarding the reimbursement program, please call 301–443–3170.

FDA has established expedited procedures for review of any application for reimbursement for participation in the meetings announded in this notice. The Office of Consumer Affairs, FDA, will file any application for reimbursement for participation in the meetings announced in this notice in the docket for this notice.

Dated: January 9, 1981.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 81–1550 Filed 1–15–81; 8:45 am]

BILLING CODE 4110–03–M

[Docket No. 75N–0184; DESI 597, 3285, 10637, and 9489]

Certain Anticholinergics/Antispasmodics in Combination With a Sedative, and Single-Entity Antispasmodics, in Conventional Dosage Form; Drug Efficacy Study Implementation; Notice of Opportunity for Hearing

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: This notice reclassifies certain anticholinergics or antispasmodics in combination with a sedative, and single-entity antispasmodics in conventional dosage form to lacking substantial evidence of effectiveness, proposes to withdraw approval of the new drug applications, and offers an opportunity for a hearing on the proposal.

DATES: Any request for hearing must be submitted on or before February 17, 1981. All data and information relied upon in support of any such request and any other comments must be submitted on or before March 17, 1981.

ADDRESSES: Communications in response to this notice should be identified with the Docket No. 75N–0184 and the reference number DESI 597, 3285, 10637, or 9489, as appropriate, and directed to the attention of the appropriate office named below.

Requests for hearing, supporting data, and other comments: Dockets Management Branch (HFA–305), Rm. 4–62, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857.

Requests for opinion of the applicability of this notice to a specific product: Division of Drug Labeling Compliance (HFD–310), Bureau of Drugs,

Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Suzanne O'Shea, Bureau of Drugs (HFD–32), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–3650.

SUPPLEMENTARY INFORMATION: In notices published in the Federal Register of June 22, 1971 (36 FR 11875) (DESI 10837), July 27, 1972 (37 FR 15026) (DESI 597), September 18, 1973 (38 FR 26138) (DESI 9489), and November 11, 1975 (40 FR 52849) (DESI 3265), the Food and Drug Administration (FDA) classified anticholinergic or antispasmodic drugs in combination with a sedative, and antispasmodic drugs alone, as possibly effective for various gastrointestinal diseases. The indications lacking substantial evidence of effectiveness were specifically named in the notices. All other indications were classified as possibly effective. The possibly effective indications are set forth below:

DESI 10837

1. Tridihexethyl chloride and meprobamate (NDA 11–043 Milpath-200, Milpath-400, and NDA 10–837 Pathibamate-200 and Pathibamate-400): As adjunctive therapy in peptic ulcer and in the irratable bowel syndrome; functional diarrhea; drug induced diarrhea; ulcerative colitis; urinary bladder spasm; and urethral spasm.

DESI 597

1. Mepenzolate bromide and phenobarbital (NDA 10–679 Cantil with Phenobarbital Tablets): Motility disorders of the lower GI tract; acute enterocolitis; mild chronic ulcerative colitis; rectospasm; diverticulitis; post-gastrectomy diarrhea; diarrhea associated with diverticulitis.

2. Oxyphencyclimine hydrochloride and phenobarbital (NDA 13–515 Daricon PB): Peptic ulcers; hiatal hernia; functional bowel syndrome; chronic ulcerative colitis; bladder spasm with or without infection; urethral spasm.

3. Propantheline bromide and phenobarbital (NDA 9–014 Pro-Banthine with Phenobarbital Tablets): peptic ulcer; urinary bladder spasm; functional gastrointestinal disturbances; acute and chronic pancreatitis; ileoanal anastomosis; hyperhidrosis; ureteral spasm; infantile colic; useful ileostomies.

4. Glycopyrrolate and phenobarbital (NDA 12–050 Robinul PH Tablets and Robinul PH Forte): As adjunctive therapy for gastric and duodenal ulcer; esophagitis; hiatal hernia; spastic and irritable colon; functional bowel distress; splenic flexure syndrome; ileocolitis; diverticulitis; some neurogenic disturbances; acute enteritis; diarrhea; and intestinal viral infections.

5. Piperidolate hydrochloride and phenobarbital (NDA 8–907 Dactil with Phenobarbital): functional gastric disorders; post-gastrectomy syndrome.

6. Dicyclomine hydrochloride and phenobarbital (NDA 7–409 Bentyl with Phenobarbital): symptomatic control of functional gastrointestinal disorders; chronic irritable bowel; spastic constipation; mucous colitis; spastic colitis; biliary dyskenesia; gastrointestinal spasm secondary to organic disease.

DESI 9489

1. Tridihexethyl choiride and phenobarbital (NDA 9–489 Pathilon with Phenobarbital): peptic ulcer; gastric hyperacidity; gastric hypermotility; spastic and irritable colon; functional diarrhea; pylorospasm; gastritis where symptoms are due to hyperacidity.

DESI 3265

1. Piperidolate hydrochloride (NDA 8–907 Dactil Tablets); Irritable bowel syndrome and acute enterocolitis.

In a notice published in the Federal Register of November 11, 1975 (40 FR 52844) anticholinergic/sedative or antispasmodic/sedative combinations and antispasmodics alone were temporarily exempted from the time limits established for implementing certain phases of the Drug Efficacy Study. In order to qualify for the exemption manufacturers of anticholinergic/sedative combinations were required to undertake studies of the products as adjunctive therapy in the treatment of peptic ulcer, or in the treatment of the irritable bowel syndrome or acute enterocolitis. Manufacturers of antispasmodic/sedative combinations or antispasmodics alone were required to perform studies of their products in treating the irritable bowel syndrome or acute enterocolitis. The notice set forth a timetable for submitting protocols and for starting, reporting on, and completing the studies.

In a notice published in the Federal Register of June 20, 1978 (43 FR 26490), FDA extended the deadline for completion of the studies for 1 year. The notice also stated that abbreviated new drug applications for identical products would be conditionally approved if certain conditions were met. Among other things, it was required that the manufacturers of conditionally approved products conduct clinical studies. However, no study would be necessary if another manufacturer was conducting a study of a drug product containing the same ingredients to which the same efficacy conclusions would apply. The conditionally approved products have the same legal status as products initially covered by the exemption. The notices setting forth the exemption also apply to certain related drugs that are not the subject of an approved new drug application or a conditionally approved abbreviated new drug application.

No data were submitted to support the indications found by FDA to lack substantial evidence of effectiveness. The data submitted to comply with the exemption have been reviewed. Several studies require detailed analysis and will be the subject of a future Federal Register notice. The drug products affected by those studies are not listed above. However, many of the studies were seriously incomplete, and did not show that each component of the combination products makes a significant contribution to the effectiveness of the product. Analyses of these studies follow.

1. Studies were completed which investigated the effectiveness of Bentyl with Phenobarbital Tablets (Merrell-National Laboratories), Dactil with Phenobarbital Tablets (Merrell-National Laboratories), and Pro-Banthine with Phenobarbital Tablets (G. D. Searle & Co.) in treating the irritable bowel syndrome. However, none of the studies showed that each of the components makes a significant contribution to the effectiveness of the product. 21 CFR 300.50(a). In most cases, there was a trend toward improvement of the conditions regardless of the treatment. The sponsors acknowledge the lack of a showing of the effectiveness of their products.

2. Pfizer submitted the results of a completed double-blind, placebo controlled study on the effectiveness of Daricon PB Tablets as adjunctive therapy in duodenal ulcer. The patients took antacids concomitantly, after meals and before bed as needed.

The study does not show that each component makes a significant contribution to the effectiveness of Daricon PB. 21 CFR 300.50(a). The patients were evaluated at the final global rating as worse or unchanged, improved, or symptom free. In the patient and investigator rating there is very little difference in the proportions of "improved" and "symptom free" patients. In addition, when the "improved" and "symptom free" groups are combined, there is little difference between any of the treatment groups.

The sponsor claims that patients receiving Daricon PB consumed the least amount of antacids during the study except during the fourth week when

placebo patients consumed the least antacids. Placebo patients consumed less antacids than phenobarbital and plain Daricon patients, except for the fourth week when the placebo patients consumed more than phenobarbital patients. Throughout the study Daricon patients consumed the most antacids.

Pfizer claims that the Daricon PB group had the lowest number of symptoms per patient per week for four of seven symptoms. However, the sponsor also stated that "* * * the small patient population large within-group variation prevented statistical significance."

3. Robins submitted a status report on a double-blind, parallel investigation of Robinul PH in treating functional upper and lower gastrointestinal disorders. Robins claims that the data suggest that Robinul PH is helpful in alleviating symptoms and that the contribution of each component is evident.

The study is not adequate and well-controlled. 21 CFR 314.111(a)(5). The patients receiving Robinul PH had the greatest proportion of liquid or soft stools, and placebo patients had the most variable stools. Thus, it is not clear that the subjects were assigned to test groups in a way that minimizes bias. 21 CFR 314.111(a)(5)(*a*)(*2*)(*ii*). The test and control groups are not comparable because the Robinul PH used in the study contains 1.10 milligrams of glycopyrrolate per tablet, but the control group was given only 1.0 milligram of glycopyrrolate per tablet. In addition, the sponsor does not specify the patients who took concomitant drugs or those who had concomitant diseases, nor is there any explanation of the difference between "evaluable patients" and "patients completing the study." 21 CFR 314.111(a)(5)(ii)(*a*)(*2*)(*iii*).

Robins claims that Robinul PH is superior in normalizing stools after the first week. However, the patient diaries do not evaluate bowel habits. It is not clear, therefore, that adequate steps were taken to minimize bias in measuring responses. 21 CFR 314.111(a)(5)(ii)(*a*)(*3*).

In addition, the contribution of each component to the combination has not been demonstrated. 21 CFR 300.50(a). Although Robins claims that Robinul PH is superior in stool normalization, the physicians rating charts indicate that all drugs were equally effective. Robins claims that Robinul PH is effective treatment for night pain. However, Robinul (glycopyrrolate) alone and phenobarbital alone are as effective as Robinul PH in the treatment of night pain after the second week. For day pain, Robinul is as effective as Robinul PH. For duration of pain, there is little difference Robinul and Robinul PH. All treatments were shown to be equally effective in the global evaluation. The sponsor claims that the study demonstrates the clinical superiority of Robinul PH, but acknowledges that no statistical superiority has been shown.

No study was submitted for Robinul PH Forte.

4. Reed and Carnrick submitted data from a partially completed study of the effectiveness of Sidonna Tablets in treating the irritable bowel syndrome. The sponsor was able to study less than half the intended number of cases, but the specific number is not defined. The study is not adequate and well-controlled, nor do the results of the study demonstrate that each component makes a significant contribution to the combination product. 21 CFR 314.111(a)(5); 300.50(a).

The study's protocol was not submitted for review as required by the November 11, 1975 notice. The dose is not given for any of the test drugs used. Thus, it is not clear that the test drugs were standardized as required by 21 CFR 314.111(a)(5)(ii)(*b*). Several patients should not have been admitted to the study: those with depression, character disorders, migraines, diverticulosis, and those receiving antidiarrheal drugs, ampicillin, and Bentyl. 21 CFR 314.111(a)(5)(ii)(*a*)(*2*)(*iii*). The sponsor analyzed only the physicians' ratings because this rating was based in part on the patients' daily logs. The patients' daily logs should have been analyzed separately from the physicians' rating in order to minimize bias. 21 CFR 314.111(a)(5)(ii)(*a*)(*3*).

The sponsor found no statistical evidence of the superiority of Sidonna. The sponsor found no significant difference among treatment groups in abdominal pain, abdominal distention, and borborygmi. Sidonna and placebo were equally effective in treating mucus in stool. Significant differences exist at 2 weeks, but not at 4 weeks, in alleviation of diarrhea. However, the greatest improvement was in the simethicone and placebo groups and poorest in the Sidonna group. In the global assessment, there were no significant differences among the treatment groups at 2 weeks or 4 weeks. The highest percentage of improved patients occurred in the placebo group. Thus it has not been shown that each component makes a significant contribution to the combination product. 21 CFR 300.50(a).

5. Data submitted for six irritable bowel syndrome studies are seriously incomplete. The data obtained from these studies are inadequate to draw any conclusions on the effectiveness of the product. Merrell-National terminated a study of Dactil Tablets because only one patient entered the study. Only 19 patients completed the study of Endo Laboratories' Valpin 50 PB tablets. Lederle Laboratories studied only 22 patients in investigating Pathilon with Phenobarbital Tablets. Twenty-three patients completed Merrell-National's study of Cantil with Phenobarbital Tablets. In a joint study of Lederle's Pathibamate 200 and Wallace's Milpath 200, approximately 60 patients were analyzable. In a joint study of Lederle's Pathibamate-400 and Wallace's Milpath-400, 129 patients met protocol requirements and completed the study. The sponsors had planned on studying 500 patients. All sponsors acknowledge that the data submitted are insufficient to draw any conclusions on the effectiveness of their products.

Most of the above sponsors have requested additional time to study additional patients, as did Beecham Laboratories for Daricon PB Tablets, Robins for Robinul PH Tablets, Merrell-National for Bentyl with Phenobarbital, and Reed and Carnrick for Sidonna Tablets. The deadline for completion of studies has already been extended for 1 year. The Director of the Bureau of Drugs believes that adequate time has been allowed to investigate the effectiveness of these products. Therefore, requests for additional time in which to submit data are denied.

6. In addition to the incomplete study on irritable bowel syndrome (above), Merrell-National submitted a statement, "The Rationale for Cantil with PB in Peptic Ulcer." It claims that Cantil is currently effective for peptic ulcer, that the management of peptic ulcer is often complicated by anxiety, and that phenobarbital is an effective anti-anxiety, sedative agent. Therefore, Merrell-National asserts that Cantil with PB should be allowed to remain on the market for the treatment of peptic ulcer. No data were submitted on any studies for the use of Cantil with PB Tablets in peptic ulcer. Substantial evidence of effectiveness must be demonstrated by adequate and well-controlled clinical investigations. 21 U.S.C. 355; 21 CFR 314.111(a)(5). Clearly, this submission does not meet the statutory standard.

7. Roche Laboratories did not submit data from a clinical study in support of Librax. Instead, it submitted data from an ongoing study of the prevalence of emotional factors in association with certain gastrointestinal disorders. To date, 312 patients have been studied. Roche claims that patients with gastrointestinal disorders show higher emotional stress than other types of

patients, or persons with no medical disorders.

Roche also submitted the results of a medical marketing summary undertaken in August and September 1974 in which physicians were asked to indicate their preference concerning the use of anticholinergic/sedative drugs in various diseases. It also submitted the results of pharmacology studies in mice, from which it claims that both the tranquilizer and anticholinergic components are effective in protecting against stress-induced gastric mucosal erosion.

Clearly, none of these submissions fulfill the requirement that substantial evidence of effectiveness be shown by adequate and well-controlled studies. 21 U.S.C. 355; 21 CFR 314.111(a)(5). Moreover, because the study of emotional factors in gastrointestinal disorders is incomplete, the amount of reliance appropriately placed on that study is in question. The Director has already granted one time extension for the study of these drugs. Because adequate time has already been provided, no further extension is warranted.

No person has yet provided data that would support upgrading any of these products to effective. In addition, the Director believes that the time allowed for investigating the effectiveness of these products has been adequate for the design and conduct of acceptable studies. Accordingly, the temporary exemption granted by the November 11, 1975 and June 20, 1978 notices, as they pertain to these drugs, is revoked in a notice appearing elsewhere in this issue of the Federal Register.

Notice of Opportunity for Hearing

On the basis of all of the data and information available to him, the Director of the Bureau of Drugs is unaware of any adequate and well-controlled clinical investigation, conducted by experts qualified by scientific training and experience, meeting the requirements of section 505 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355) and 21 CFR 314.111(a)(5) and, for combination products, 21 CFR 300.50, demonstrating the effectiveness of the drugs.

Therefore, notice is given to the holders of the following new drug applications and conditionally approved abbreviated new drug applications, to manufacturers of the following related products, and to all other interested persons that the Director of the Bureau of Drugs proposes to issue an order under section 505(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(e)), withdrawing approval of the new drug applications and all amendments and supplements thereto on the ground that new information before him with respect to the drug products, evaluated together with the evidence available to him when the applications were approved, shows there is a lack of substantial evidence that the drug products will have the effect they purport or are represented to have under the conditions of use prescribed, recommended, or suggested in the labeling.

DESI 597

1. NDA 7-409; Bentyl with Phenobarbital Capsules containing dicyclomine hydrochloride 10 milligrams and phenobarbital 15 milligrams, Merrell-National Laboratories, Division of Richardson-Merrel, Inc., 110 E. Amity Rd., Cincinnati, OH 45215.

2. NDA 8-907; Dactil with Phenobarbital tablets containing piperidolate hydrochloride 50 milligrams and phenobarbital 16 milligrams; Merrell-National Laboratories.

3. NDA 12-950; Robinul PH Tablets and Robinul PH Forte containing glycopyrrolate 1 milligram and phenobarbital 16 milligrams, and glycopyrrolate 2 milligrams and phenobarbital 16 milligrams; A. H. Robins Co., 1407 Cummings Dr., Richmond, VA 23220.

4. NDA 10-679; Cantil with Phenobarbital Tablets containing mepenzolate bromide 25 milligrams and phenobarbital 16 milligrams; Merrell-National Laboratories.

5. NDA 13-515; Daricon PB Tablets containing oxyphencyclimine hydrochloride 5 milligrams and phenobarbital 15 milligrams; Pfizer Laboratories, Division of Pfizer, Inc., 235 E. 42d St., New York, NY 10017.

6. NDA 9-014; Pro-Banthine with Phenobarbital Tablets containing propantheline bromide 15 milligrams and phenobarbital 15 milligrams; G. D. Searle & Co., P.O. Box 5110, Chicago, IL 60680.

DESI 3265

1. NDA 8-907; Dactil Tablets containing piperidolate hydrochloride 50 milligrams; Merrell-National Laboratories.

DESI 9489

1. NDA 9-489; Pathilon with Phenobarbital Tablets containing tridihexethyl chloride 25 milligrams and phenobarbital 15 milligrams; Lederle Laboratories Division, American Cyanimid Co., Pearl River, NY 10965.

DESI 10637

1. NDA 10-[illegible] Pathibamate-200 Tablets and Pathibamate-400 Tablets containing tridihexethyl chloride 25 milligrams and meprobamate 200, and tridihexethyl chloride 25 milligrams and meprobamate 400 milligrams; Lederle Laboratories.

2. NDA 11-043; Milpath-200 Tablets and Milpath-400 Tablets containing tridihexethyl chloride 25 milligrams and meprobamate 200, and tridihexethyl chloride 25 milligrams and meprobamate 400 milligrams; Wallace Laboratories, Division of Carter-Wallace, Inc., Half-Acre Rd., Cranberry, NJ 08512.

The following products, not reviewed by NAS/NRC, were subject to the exemption notices of November 11, 1975, and June 20, 1978: 1. NDA 12-750; Librax Capsules containing clidinium bromide 2.5 milligrams and chlordiazepoxide 5 milligrams; Roche Laboratories, Division of Hoffman-LaRoche, Inc., Nutley, NJ 07110.

2. NDA 13-430; Valpin 50 PB Tablets and Valpin PB Tablets containing anisotropine methylbromide 50 milligrams and phenobarbital 15 milligrams, and anisotropine methylbromide 15 milligrams and phenobarbital 15 milligrams; Endo Laboratories, 1000 Stewart Ave., Garden City, NY 11530.

3. ANDA 86-281; Meprobamate with Tridihexethyl Chloride Tablets containing 200 milligrams meprobamate and 25 milligrams tridihexethyl chloride; Chelsea Laboratories, Inc., 428 Doughty Blvd., Inwood, NY 11696.

4. ANDA 86-526; Meprobamate with Tridihexethyl Chloride Tablets containing 400 milligrams meprobamate and 25 milligrams tridihexethyl chloride; Chelsea Laboratories, Inc.

5. ANDA 86-791; T.C.M. 200 Tablets containing 200 milligrams meprobamate and 25 milligrams tridihexethyl chloride; Zenith Laboratories, Inc., 140 Legrand Ave., Northvale, NJ 07647.

6. ANDA 86-792; T.C.M. 400 Tablets containing 400 milligrams meprobamate and 25 milligrams tridihexethyl chloride; Zenith Laboratories, Inc.

The following products are not the subject of an approved new drug application. The NDA number listed is for identification purposes and is the NDA number of the manufacturer's original product to which the product listed below is related.

1. NDA 9-014; Probital Tablets containing propantheline bromide 7.5 milligrams, and phenobarbital 15 milligrams; G. D. Searle & Co.

2. Ref. No. 90-006 (No NDA); Sidonna Tablets containing simethicone 25 milligrams, butabarbital sodium 16

milligrams, hyoscyamine sulfate 0.1037 milligram, scopolamine hydrobromide 0.0065 milligram and atropine sulfate 0.0194 milligram; Reed and Carnrick, 30 Boright Ave., Kenilworth, NJ 07033.

In addition to the holders of the new drug applications specifically named above, this notice of opportunity for hearing applies to all persons who manufacture or distribute a drug product not the subject of an approved new drug application, that is listed above or that is identical, related, or similar to a drug product named above, as defined in 21 CFR 310.6 It is the responsibility of every drug manufacturer or distributor to review this notice of opportunity for hearing to determine whether it covers any drug products that the person manufactures or distributes. An opinion of the applicability of this notice to a specific drug product may be obtained by writing to the Division of Drug Labeling Compliance (address given above).

In addition to the grounds for the proposed withdrawal of approval stated above, this notice of opportunity for hearing encompasses all issues relating to the legal status of the drug products subject to it (including identical, related, or similar drug products as defined in 21 CFR 310.6) e.g., any contention that a product is not a new drug because it is generally recognized as safe and effective within the meaning of section 201(p) of the act or because it is exempt from part or all of the new drug provisions of the act under the exemption for products marketed before June 25, 1938, contained in section 201(p) of the act, or under section 107(c) of the Drug Amendments of 1962 or for any other reason.

In accordance with section 505 of the act (21 U.S.C. 355) and the regulations promulgated thereunder (21 CFR Parts 310, 314), the applicants and all other persons subject to this notice under 21 CFR 310.6 are hereby given an opportunity for a hearing to show why approval of the new drug application(s) should not be withdrawn and an opportunity to raise, for administrative determination, all issues relating to the legal status of a drug product named above and of all identical, related or similar drug products.

An applicant or any other person subject to this notice under 21 CFR 310.6 who decides to seek a hearing, shall file (1) on or before February 17, 1981, a written notice of appearance and request for hearing, and (2) on or before March 17, 1981, the data, information, and analyses relied on to justify a hearing, as specified in 21 CFR 314.200. Any other interested person may also submit comments on this notice. The procedures and requirments governing this notice of opportunity for hearing, a notice of appearance and request for hearing, a submission of data, information, and analyses to justify a hearing, other comments, and a grant or denial of hearing, are contained in 21 CFR 314.200.

The failure of an applicant or any other persons subject to this notice under 21 CFR 310.6 to file time written appearance and request for hearing as required by 21 CFR 314.200 constitutes an election by the person not to make use of the opportunity for a hearing concerning the action proposed with respect to the product and consititues a waiver of any contentions concerning the legal status of any such drug product. Any such drug product may not thereafter lawfully be marketed, and the Food and Drug Administration will initiate appropriate regulatory action to remove such drug products from the market. Any new drug product marketed without an approved NDA is subject to regulatory action at any time.

A request for a hearing may not rest upon mere allegations or denials, but must set forth specific facts showing that there is a genuine and substantial issue of fact that requires a hearing. If it conclusively appears from the face of data, information, and factual analyses in the request for the hearing that there is no genuine and substantial issue of fact which precludes the withdrawal of approval of the application, or when a request for hearing is not made in the required format or with the required analyses, the Commissioner of Food and Drugs will enter summary judgment against the person(s) who requests the hearing, making findings and conclusions, denying a hearing.

All submissions under this notice must be filed in quintuplicate. Such submissions except for data and information prohibited from public disclosure under 21 U.S.C. 331(j) or 18 U.S.C. 1905, may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

(Sec. 505, 52 Stat. 1052–1053, as amended (21 U.S.C. 355)), and under the authority delegated to the Director of the Bureau of Drugs (21 CFR 5.82)

Dated: December 24, 1980.

J. Richard Crout,

Director, Bureau of Drugs.

[FR Doc. 81-1204 Filed 1-15-81; 8:45 am]

BILLING CODE 4110-03-M

[Docket No. 78N-0184; DESI Nos. 557, 2305, 9489 and 10837]

Certain Anticholinergics or Antispasmodics in Combination With a Sedative, and Single-Entity Antispasmodics, in Conventional Dosage Form; Drug Efficacy Study Implementation; Revocation of Exemption

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: This notice revokes the temporary exemption for continued marketing of certain anticholinergics or antispasmodics in combination with a sedative, or single-entity antispasmodics. Under the exemption, the drugs have been allowed to remain on the market for continued study beyond the time limit scheduled for implementation of the Drug Efficacy Study.

EFFECTIVE DATE: January 16, 1981.

FOR FURTHER INFORMATION CONTACT: Suzanne O'Shea, Bureau of Drugs (HFD–32), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–3650.

SUPPLEMENTARY INFORMATION: In notices published in the Federal Register of June 22, 1971 (36 FR 11875) (DESI 10837), July 27, 1972 (37 FR 15030) (DESI 557), September 18, 1973 (38 FR 26138) (DESI 9489), and November 11, 1975 (40 FR 52949) (DESI 3385), the Food and Drug Administration (FDA) classified anticholinergic or antispasmodic drugs in combination with a sedative, and antispasmodic drugs alone, as possibly effective for various gastrointestinal diseases. In a notice published in the Federal Register of November 11, 1975 (40 FR 52344), conventional dosage forms of these products were permitted to remain in the market pending completion of clinical studies testing their effectiveness in treating gastrointestinal disease. That notice established a timetable for submission of protocols, for beginning studies, and for completion of the studies. In a notice published in the Federal Register of June 20, 1978 (43 FR 26490), the deadline for completion of the studies was extended for 1 year. The June 20, 1978 notice required abbreviated new drug applications for duplicative products covered by the exemption and stated that conditionally approved abbreviated new drug applications have the same legal status as "deemed approved" applications reviewed in the Drug Efficacy Study.

The data received for several completed studies are undergoing detailed FDA analysis. The drugs used

in these studies will be the subject of a future Federal Register notice. However, data submitted in support of the drug products listed below are seriously incomplete and, for the combination products, do not show that each component of the combination product makes a significant contribution to its effectiveness. Many sponsors have requested time extensions beyond the final submission deadlines. FDA believes that adequate time has been allowed to investigate the effectiveness of these products, and that no further time extension is warranted.

In a notice published elsewhere in this issue of the Federal Register, the Director of the Bureau of Drugs reclassifies the possibly effective indications to lacking substantial evidence of effectiveness and offers an opportunity for a hearing. Because the time period for final reports has elapsed, these drug products are no longer in compliance with the requirements of the temporary exemption. Therefore, the temporary exemption granted in the November 11, 1975 and June 20, 1978 notices is hereby revoked for the following products in the Drug Efficacy Study or otherwise covered by the exemption, and all identical, similar, and related products not the subject of an approved or conditionally approved new drug application.

DESI 597

1. NDA 7-406; Bentyl with Phenobarbital Capsules containing dicyclamine hydrochloride 10 milligrams and phenobarbital 16 milligrams, Merrell-National Laboratories, Division of Richardson-Merrell, Inc., 110 E. Amity Rd., Cincinnati, OH 45215.

2. NDA 8-907; Dactil with Phenobarbital Tablets containing piperidolate hydrochloride 50 milligrams and phenobarbital 16 milligrams; Merrell-National Laboratories.

3. NDA 12-950; Robinul PH Tablets and Robinul PH Forte containing glycopyrrolate 1 milligram and phenobarbital 16 milligrams, and glycopyrrolate 2 milligrams and phenobarbital 16 milligrams; A. H. Robins Co., 1407 Cummings Dr., Richmond, VA 23220.

4. NDA 10-679; Cantil with Phenobarbital Tablets containing mepenzolate bromide 25 milligrams and phenobarbital 16 milligrams; Merrell-National Laboratories.

5. NDA 13-515; Daricon PB Tablets containing oxyphencyclimine hydrochloride 5 milligrams and phenobarbital 15 milligrams; Pfizer Laboratories, Division of Pfizer, Inc., 235 E. 42d St., New York, NY 10017.

6. NDA 9-014; Pro-Banthine with Phenobarbital Tablets containing propantheline bromide 15 milligrams and phenobarbital 15 milligrams; G. D. Searle & Co., P.O. Box 5110, Chicago, IL 60680.

DESI 3265

1. NDA 8-907; Dactil Tablets containing piperidolate hydrochloride 50 milligrams; Lakeside Laboratories.

DESI 9480

1. NDA 9-402; Pathilon with Phenobarbital Tablets containing tridihexethyl chloride 25 milligrams and phenobarbital 15 milligrams; Lederle Laboratories, Division American Cyanimid Co., Pearl River, NY 10965.

DESI 10637

1. NDA 10-837; Pathibamate—200 Tablets and Pathibamate—400 Tablets containing tridihexethyl chloride 25 milligrams and meprobamate 200 and 400 milligrams; Lederle Laboratories.

2. NDA 11-043; Milpath—200 Tablets and Milpath—400 Tablets containing tridihexethyl chloride 25 milligrams and meprobamate 200 and 400 milligrams; Wallace Laboratories, Division of Carter-Wallace, Inc., Half-Acre Rd., Cranberry, NJ 08512.

The following products were not reviewed by NAS/NRC: 1. NDA 12-750; Librax Capsules containing clidinium bromide 2.5 milligrams and chlordiazepoxide 5 milligrams; Roche Laboratories, Division of Hoffman-LaRoche, Inc., Nutley, NJ 07110.

2. NDA 13-430; Valpin 50 PB Tablets and Valpin PB Tablets containing anisotropine methylbromide 50 milligrams and phenobarbital 15 milligrams, and anisotropine methylbromide 15 milligrams and phenobarbital 15 milligrams; Endo Laboratories, 1000 Stewart Ave., Garden City, NY 11530.

3. ANDA 86-261; Meprobamate with Tridihexethyl Chloride Tablets containing 200 milligrams meprobamate and 25 milligrams tridihexethyl chloride; Chelsea Laboratories, Inc., 428 Doughty Blvd., Inwood, NY 11696.

4. ANDA 86-526; Meprobamate with Tridihexethyl Chloride Tablets containing 400 milligrams meprobamate and 25 milligrams tridihexethyl chloride; Chelsea Laboratories, Inc.

5. ANDA 86-791; T.C.M. 200 Tablets containing 200 milligrams meprobamate and 25 milligrams tridihexethyl chloride; Zenith Laboratories, Inc., 140 Legrand Ave., Northvale, NJ 07647.

6. ANDA 86-792; T.C.M. 400 Tablets containing 400 milligrams meprobamate and 25 milligrams tridihexethyl chloride; Zenith Laboratories, Inc.

The following products are not the subject of an approved new drug application. The NDA number listed is for identification purposes and is the NDA number of the manufacturer's original product to which the product listed below is related.

1. NDA 9-014; Probital Tablets containing propantheline bromide 7.5 milligrams and phenobarbital 15 milligrams; G. D. Searle & Co.

2. Ref. No. 90-006 (No NDA); Sidonna Tablets containing simethicone 25 milligrams, butabarbital sodium 16 milligrams, hyoscyamine sulfate 0.1037 milligram, scopolamine hydrobromide 0.0065 milligram, and atropine sulfate 0.0194 milligram; Reed and Carnrick, 30 Boright Ave., Kenilworth, NJ 07033.

[(Secs. 502, 505, 52 Stat. 1050-1053 as amended (21 U.S.C. 352, 355)) and under authority delegated to the Director of the Bureau of Drugs (21 CFR 5.70)).

Dated: December 24, 1980.

J. Richard Crout,

Director, Bureau of Drugs.

[FR Doc. 81-1287 Filed 1-13-81; 8:45 am]

BILLING CODE 4110-03-M

[Docket No. 80F-0499]

Ciba-Geigy Corp.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Ciba-Geigy Corp. has filed a petition proposing that the food additive regulations be amended to provide for the use of 1,2-bis(3,5,di-*tert*-butyl-4-hydroxyhydrocinnamoyl) hydrazine as a component of adhesives in articles intended for food-contact use.

FOR FURTHER INFORMATION CONTACT: Julius Smith, Bureau of Foods (HFF-334), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (secs. 201(s), 409, 72 Stat. 1784-1788 as amended (21 U.S.C. 321(s), 348)), notice is given that a petition (FAP 0B3487) has been filed by Ciba-Geigy Corp., Ardsley, NY 10502, proposing that § 175.105 *Adhesives* (21 CFR 175.105) be amended to provide for the safe use of 1,2-bis(3,5-di-*tert*-butyl-4-hydroxyhydrocinnamoyl)hydrazine as a component of adhesives in articles intended for food-contact use.

The agency has carefully considered the potential environmental effects of this action and has concluded that the action will not have a significant impact on the human environment and that an environmental impact statement is not

required. The agency's finding of no significant impact and its environmental assessment may be seen in the Dockets Management Branch (formerly the Hearing Clerk's office) (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

Dated: December 24, 1980.

Sanford A. Miller,

Director, Bureau of Foods.

[FR Doc. 81-1289 Filed 1-15-81; 8:45 am]

BILLING CODE 4110-03-M

[Docket No. 80F–0462]

General Foods Corp.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration announces that the General Foods Corp. has filed a petition proposing that the food additive regulations be amended to provide for the safe use of ethyl acetate as a solvent for the decaffeination of coffee.

FOR FURTHER INFORMATION CONTACT: Richard C. Kraska, Bureau of Foods (HFF–334), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–472–5690.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786 (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 8A3353) has been filed by the General Foods Corp., White Plains, NY 10625, proposing that Part 173—Secondary Direct Food Additives Permitted in Food for Human Consumption (21 CFR Part 173) be amended to provide for the safe use of ethyl acetate as a solvent for the decaffeination of coffee.

The environmental impact analysis report and other relevant material have been reviewed, and it has been determined that the proposed use of the additive will not have a significant environemental impact. Copies of the environmental analysis report and the environmental assessment report may be seen in the Dockets Management Branch (formerly the Hearing Clerk's office) (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

Dated: December 29, 1980.

Sanford A. Miller,

Director, Bureau of Foods.

[FR Doc. 81-1290 Filed 1-15-81; 8:45 am]

BILLING CODE 4110-03-M

[Docket No. 80N–0453; DESI 6550]

Methoxyphenamine Hydrochloride; Withdrawal of Approval of New Drug Application

AGENCY: Food and Drug Administration (FDA).

ACTION: Notice.

SUMMARY: This notice withdraws approval of those parts of a new drug application (NDA 6–550) pertaining to Orthoxine Hydrochloride Tablets and Syrup, each containing methoxyphenamine hydrochloride. The basis of the withdrawal is the lack of substantial evidence that the drug products are effective. The drug products have been used in treating bronchial asthma and certain allegic conditions.

EFFECTIVE DATE: January 28, 1981.

ADDRESS: Requests for an opinion of the applicability of this notice to a specific product should be identified with the reference number DESI 6550 and directed to the Division of Drug Labeling Compliance (HFD–310), Bureau of Drugs, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Herbert Gerstenzang, Bureau of Drugs (HFD–32), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–3650.

SUPPLEMENTARY INFORMATION: In notice of opportunity for hearing published in the Federal Register of August 21, 1973 (38 FR 22501), (Docket No. FDC–D–650 (now Docket No. 80N–0453)), the Food and Drug Administration proposed to issue an order withdrawing approval of pertinent parts of the following new drug application on the ground that there is a lack of substantial evidence that the drug products are effective for their labeled indications.

NDA 6–550; those parts of the NDA pertaining to Orthoxine Hydrochloride Tablets and Syrup, containing methoxyphenamine hydrochloride; The Upjohn Co., 7171 Portage Rd., Kalamazoo, MI 49002.

Neither the holder of the application nor any other person filed a written appearance of election as provided by the notice. The failure to file such an appearance constitutes election by such persons not to avail themselves of the opportunity for a hearing.

Any drug product that is identical, related, or similar to a drug product named above and is not the subject of an approved new drug application is covered by the new drug application reviewed and is subject to this notice (21 CFR 310.6). Any person who wishes to determine whether a specific product is covered by this notice should write to the Division of Drug Labeling Compliance (address given above).

The Director of the Bureau of Drugs, under the Federal Food, Drug, and Cosmetic Act (sec. 505, 52 Stat. 1052–1053, as amended (21 U.S.C. 355)), and under authority delegated to him (21 CFR 5.82), finds that, on the basis of new information before him with respect to the drug products, evaluated together with the evidence available to him when the application was approved, there is a lack of substantial evidence that the drug products will have the effect they purport or are represented to have under the conditions of use prescribed, recommended, or suggested in the labeling.

Therefore, pursuant to the foregoing finding, approval of those parts of NDA 6–550 providing for the drug products named above and all amendments and supplements thereto is withdrawn effective January 28, 1981.

Shipment in interstate commerce of the above products or of any identical, related, or similar product that is not the subject of an approved new drug application will then be unlawful.

Dated: December 24, 1980.

J. Richard Crout,

Director, Bureau of Drugs.

[FR Doc. 81-1291 Filed 1-15-81; 8:45 am]

BILLING CODE 4110-03-M

Health Care Financing Administration

Medicare Program; Reimbursement for Costs Incurred in Relation to Union Activities

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Final Notice.

SUMMARY: This notice sets forth HCFA's response to its previous notice published in the Federal Register on October 21, 1980. That notice restated HCFA's policy with respect to the allowability of provider costs incurred in certain union activities and requested public comment on our policy.

As a result of our reexamination of this policy, following that publication, we have decided to retain the policy but to provide further clarification and examples in the *Provider Reimbursement Manual.*

EFFECTIVE DATE: January 16, 1981.

FOR FURTHER INFORMATION CONTACT: William Goeller, 301-597-1803.

SUPPLEMENTARY INFORMATION:

Background

The Medicare provisions of the Social Security Act specify that health care providers participating in the Medicare program will be reimbursed for the reasonable cost of furnishing covered services to Medicare beneficiaries. The statute further provides that determinations of "reasonable cost" will be made in accordance with Medicare regulations, which establish the methods of calculating costs and the items to be included in the calculations (42 U.S.C. 1395x(v)(1)(A)).

One of the provisions of these regulations is the general requirement that the determination of reasonable cost must be based on costs related to the delivery of health care to Medicare beneficiaries (42 CFR 405.451). HCFA has interpreted this provision to preclude reimbursement for costs incurred by providers for the purpose of persuading their employees not to form a collective bargaining unit or not to join a trade union. HCFA believes that such costs are clearly unrelated to patient care, and therefore, are not allowable under the statute and regulations. However, HCFA also believes that the costs incured to carry out the providers' obligation under a collective bargaining agreement are directly related to its delivery of appropriate health care and therefore are reimbursable under Medicare. This policy statement is currently contained in the *Provider Reimbursement Manual*, section 2180, and represents HCFA's longstanding interpretation of the requirements contained in the statute and regulations.

We believe that situations above represent two widely separate points of a spectrum of activities related to union activities and personnel management. In recent months, a number of questions arose on the application of our general policy to factual situations on the spectrum between these two points. As a result, we decided to seek the viewpoints and suggestions of interested members of the public regarding these and other situations. Moreover, we have been requested by providers and hospital associations to review our policy statement further. Accordingly, we published a Notice of Policy Interpretation in the **Federal Register** (45 FR 69561) on October 21, 1980, setting forth our interpretation and requesting comments to see whether changes or further development of existing policies are appropriate.

Summary of Comments

The following are the major comments received from numerous hospitals and health facilities, as well as related provider and trade associations, in response to this notice.

1. Several commentors indicated that this policy precludes management's right and responsibility to communicate pertinent facts to employees so that informed choices can be made regarding unionization and cited that the present interpretation constitutes unreasonable interference with a provider's right to conduct business in accordance with its best business judgment. Many providers further stated that since they are not familiar with the details of labor law they often have to obtain advice and assistance from attorneys and consultants.

It was never the intent of this policy to interfere with a provider's prerogative to keep employees informed of issues and to keep the lines of communication open between an employer and the employees. A legitimate expression of facts and opinions involving both sides of an issue is not precluded by this policy. We recognize that consultants and/or attorneys retained by a provider may be needed at times to familiarize supervisors and employees with labor law. Costs incurred for such activities are usually considered allowable costs. On the other hand, activities by a consultant that are designed to persuade or influence employees not to join a union are not related to patient care and are, therefore, not included in the determination of allowable cost.

2. A number of providers argued that, in order to fully inform employees and maintain a smooth functioning environment, the costs of persuading employees not to join a union are related to patient care. These providers indicated that such activity eliminates potential discord between the employer and employees which may have an adverse effect on the facility environment and its ability to insure quality care to patients. Many providers stated that the similarities between collective bargaining and activities to persuade employees not to unionize are such that both situations are parallel in nature and are logically related to patient care.

Although arguments could be made on both sides of this question as to whether such provider costs do or do not contribute to a more effective working environment, the allowability under Medicare of costs incurred to persuade or influence employees on unionization hinges on whether such expenses are related to the health care of patients. We believe a clear distinction can be drawn between the costs incurred to persuade employees not to unionize and the collective bargaining process. Provider negotiations with provider employees with respect to wages, benefits and conditions of employment are clearly necessary to delivery of patient care whether conducted through individual or collective bargaining. The same is not true for activities designed to influence employees with respect to whether or not to conduct their negotiations with the provider on an individual or a collective basis, since either basis can be and is used in the provision of patient care.

3. Several comments indicated that our policy with regard to costs related to union activities is contrary to cost containment efforts since it precludes providers from obtaining services and supplies as cheaply as can be prudently purchased and, therefore, may result in an increase in expenses for operating a facility. They indicated that costs incurred in persuading employees not to form collective bargaining units will save patients and third party payers much more than what is spent to avoid unionization. Providers stated the Medicare's unwillingness to recognize these items as allowable expenses will result in shifting the costs of informing their employees entirely to the private sector and result in raising overall health care costs.

The argument that persuading employees not to join unions would be cost effective seems to rest on a belief that employees are less effective in bargaining for wages, benefits and conditions when they bargain individually than they are when they bargain collectively. While providers are expected to bargain effectively so that they pay no more than the going rate for any goods or services they purchase, we do not believe that this obligation would convert costs incurred to influence suppliers of goods and services on their method of organizing to costs related to patient care.

The fact that providers may impose costs unrelated to patient care on other payers is not relevant to the allowability of such costs under the Medicare law.

4. Several commenters suggested that our present policy violates neutrality and unfairly discriminates against providers who want to remain nonunionized.

It is not our intent, nor do we have the authority, to interfere with a provider's operating and management decisions. In promulgating this policy, we do not intend to deny or diminish the rights of provider management to foster employer-employee relationships that

may or may not be pro-union. Our policy is intended to insure that only costs related to patient care are reimbursed under the Medicare program.

5. A number of commenters state that, since the IRS specifically recognizes the cost of persuasion of employees as a legitimate business expense, only those costs which are in direct violation of the NLRA should be denied for reimbursement.

The Internal Revenue code differs in nature and purpose from the Medicare law. Treatment of costs unrelated to patient care under the Code is irrelevant to the allowability of such costs under the Medicare law.

6. Several commenters indicated that the inclusion of section 2180 of the Medicare *Provider Reimbursement Manual* constituted a major change in reimbursement policy and that it was not promulgated in accordance with the Administrative Procedure Act (APA).

We believe the manual revision to be an interpretation and clarification of Medicare policy already stipulated in 42 CFR 405.451. That section indicates that only reasonable and necessary costs related to patient care activities are reimbursable. Therefore, we do not agree that the revision has been inappropriately implemented or that it represents a new policy being retroactively applied.

7. While in agreement with the present policy, various commenters suggested that it be expanded to include reasonable limits on costs related to collective bargaining activities. These commenters believed that the present policy may have the effect of encouraging employers to prolong union negotiations which, in turn, may force employees and their trade associations into arbitration which can be costly and time-consuming.

As with all allowable costs, costs incurred by a provider for collective bargaining and related activities are recognizable and allowable for the purpose of Medicare reimbursement only to the extent that they are reasonable and necessary. We believe that providers in the health care industry are concerned with providing quality care and would not jeopardize patient care by unnecessarily prolonging labor disputes with employees. Accordingly we do not plan to set specific limitations on those costs incurred by providers as a result of the collective bargaining process.

In addition to these comments, a number of responses indicated agreement with the policy contained in the notice published on October 21.

Clarification of Present Policy

The thrust of this policy has not been to preclude providers from seeking legal advice and consultation on union activity matters. Rather, our intent has been to preclude from reimbursement only the costs of activities (such as persuading employees not to form a union) which are not necessary to the provision of patient care.

Based on our analysis and review of the comments received, we believe there is a need to further clarify this policy in the *Provider Reimbursement Manual.* As a result we are planning to clarify and list those consultant activities and general expenses which are related to patient care but not specifically noted as allowable or unallowable in the Manual. The Manual issuance will be communicated through regular channels to Medicare contractors, providers and other interested parties.

(Sec. 1102, 1861(v)(1), 1866(a), and 1871 of the Social Security Act; 42 U.S.C. 1302, 1395f(b), 1395x(v)(1), 1395cc(a), and 1395hh)

(Catalog of Federal Domestic Assistance Program No. 13,773, Medicare—Hospital Insurance)

Dated: January 9, 1981.

Howard Newman,

Administrator, Health Care Financing Administration.

Approved: January 12, 1981.

Patricia Roberts Harris,

Secretary.

[FR Doc. 81-1586 Filed 1-15-81; 8:45 am]
BILLING CODE 4110-35-M

National Professional Standards Review Council; Request for Nomination of Members

The terms of four members of the National Professional Standards Review Council will expire as of June 30, 1981. Additionally legislative amendments signed into law on December 5, 1980 (Pub. L. 96-499) expand Council membership. The purpose of this notice is to solicit suggestions for qualified individuals to fill the impending vacancies and new positions.

The National Professional Standards Review Council was established under Section 1163 of the Social Security Act (42 U.S.C. 1320c-12). The recent amendments now require that the Council be composed of eleven physicians, one doctor of dental surgery or of dental medicine, one registered professional nurse, and one other nonphysician health professional.

The physicians must be of recognized standing and distinction in the appraisal of medical practice. The dentist, nurse and one other nonphysician health practitioner should also be of recognized standing and distinction in their respective disciplines. A majority of the Council's physician members must be recommended by national organizations recognized by the Secretary as representing practicing physicians. The membership of the Council must include physicians recommended by consumer groups and other health care interests. Members are appointed for 3 years and are eligible for reappointment. All members of the Council may not otherwise be in the employ of the United States.

In order to achieve a balance of expertise on the Council, we are particularly interested in nominees experienced in the areas of health care financing, specialized medical review methodologies such as ancillary services review, preventive health and data analysis.

Send nominations and curriculum vitae by February 17, 1981, to: Cleo E. Hancock, Jr., Staff Director, National Professional Standards Review Council, Room 4520, North Building, 330 Independence Avenue, S.W., Washington, D.C. 20201, Telephone: (202) 245-6087.

Nominations must state that the nominee is aware of the nomination and is willing to serve as a member of the Council.

Thank you for your assistance and prompt attention.

Dated: January 12, 1981.

Howard N. Newman,

Administrator.

[FR Doc. 81-1589 Filed 1-15-81; 8:45 am]
BILLING CODE 4110-35-M

Medicare Program; Schedule of Target Reimbursement Rates for Institutions Furnishing Home Dialysis Supplies, Equipment, and Support Services

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Final Notice.

SUMMARY: This notice sets forth a schedule of rates for End-Stage Renal Disease (ESRD) program reimbursement for supplies, equipment, and support services furnished to patients who dialyze themselves at home. The schedule establishes the calendar year 1981 regionally adjusted rates per treatment for home hemodialysis and home peritoneal dialysis. These rates are the amounts to be paid to approved hospital-based and independent dialysis facilities that enter into an optional agreement with HCFA to accept target rate reimbursement for all home dialysis patients under their direct supervision.

EFFECTIVE DATES: The rates are applicable to home dialysis services furnished on or after January 1, 1981, through December 31, 1981.

FOR FURTHER INFORMATION CONTACT:
Bernadette Schumaker (301) 597-1046.

SUPPLEMENTARY INFORMATION:

Background

The End-Stage Renal disease (ESRD) Program Amendments of 1978 (Pub. L. 95-292) added section 1881(b)(6) to the Social Security Act. This section requires HCFA to establish target reimbursement rates for home dialysis for patients under the direct supervision of hospital-based or independent renal dialysis facility. The rates must be established for each calendar year, and must be adjusted for regional variations. This is an optional reimbursement method only for facilities that make an agreement with HCFA to furnish all home dialysis supplies, equipment, and support services (including the services of qualified home dialysis aides) that are medically necessary for patients to dialyze at home. If facilities do not choose this option, they are paid according to the usual Medicare reimbursement principles. That is, hospital-based facilities are paid on a reasonable cost basis, using the lower of cost or charges, and independent facilities are paid reasonable charges on a fee for service basis.

Regulations governing these optional agreements between HCFA and facilities are found at 42 CFR 405.691. Regulations governing the target rate reimbursement method and applications are at 42 CFR 405.440. These regulations were published together as a final rule with comment period on October 19, 1979 (44 FR 60287). A notice setting forth schedules for target rates covering April through December, 1979 (44 FR 60412) and a notice covering calendar year 1980 was published March 5, 1980 (45 FR 14249).

Section 1881(b)(6) limits the maximum target rate to no more than 70 percent of the national average payment for in-facility maintenance dialysis services furnished by approved hospital-based and independent facilities during the preceding fiscal year, as adjusted for regional variations and before application of the deductible and coinsurance requirements. The rates must be used without recomputation throughout the calendar year for which they are established. Accordingly, there can be no administrative appeal if actual costs for covered services exceed the target reimbursement rate payments (see regulations at 42 CFR 405.440).

We do not have sufficient cost information on the new services required under this optional reimbursement method (e.g., providing home dialysis aides) to evaluate the impact of alternate target rates. Therefore, in order not to discourage the use of home dialysis, we have kept the 1981 target reimbursement rate per treatment at the maximum rate permitted under the statute, as we did in 1979 and 1980.

Comments and Response

As a result of the publication of the regulations and notices mentioned above, we have received a number of comments. We plan to make minor clarifying changes in the rules during fiscal year 1981, such as clarifying the retroactive period for the target rate reimbursement method and deleting erroneous references, to 42 CFR 405.438, in 42 CFR 405.691. When those changes are published we will summarize and respond to all the comments received on the rule. However, since some comments referred directly to the rates, we thought it appropriate to respond to them at this time. We believe this will improve understanding of the rates published in this schedule.

1. *Rates too low.* Three comments indicated that the rate was too low and would discourage facilities from furnishing anything other than what was absolutely required under the regulation. Some commenters felt that the rate was adequate this year, but did not contain any guarantees that it would keep pace with inflation in the future. One commenter suggested that the rate be set three years in advance so that facilities could better judge the long term financial implications.

The law establishing the target rate clearly states that the maximum rate payable is 70 percent of the national average payment for in-facility maintenance dialysis services furnished during the previous fiscal year, adjusted for regional variations. We have set the rate at this maximum and cannot increase it. Because the law requires us to set the target rate annually based on the most recent data available at that time, we cannot set the rate more than one year in advance.

2. *"Without equipment" rate inadequately explained.* In responding to the notice on October 19, 1979 (44 FR 60412), some commenters indicated a misunderstanding of when the "without equipment" rate applies, apparently believing that a facility under the target rate has an option of not furnishing home dialysis equipment to its home patients. The notice has been revised to clearly state that all facilities that have elected target rate reimbursement must furnish all necessary home dialysis equipment, either directly or under arrangements, to all of their home patients. The lower "without equipment" rate applies where the facility elects to furnish the home dialysis equipment under a separate 100 percent equipment cost reimbursement agreement, as provided in 42 CFR 405.438 and 405.690. In all other cases, the higher rate applies.

3. *Inadequate differential between "with equipment" rate and "without equipment" rate.* Some comments indicated that the differential between the higher "with equipment" rate, and the lower "without equipment" rate did not accurately reflect the true costs of furnishing home dialysis equipment. HCFA does not have substantial, highly reliable data on the costs of home dialysis generally, or the cost per treatment of home dialysis equipment specifically. Consequently, these rates could not be computed by analyzing and comparing component costs. Instead, they were calculated from the cost data for in-facility dialysis services, adjusted by 70 percent according to the requirements in the law for the maximum payable rate. Furthermore, because the "with equipment" rate is set at the maximum, a larger differential between the two rates would require the "without equipment" rate to be set lower than it is. We do not believe that the best interest of the ESRD program and its beneficiaries would be served by lowering the "without equipment" rate at this time.

4. *Alternate method of rate calculation suggested.* One commenter challenged the validity of using a prior year's cost data to establish a future rate. The law requires that the target rate be no more than 70 percent of the national average payment, adjusted for regional variations, for in-facility maintenance dialysis services furnished during the preceding fiscal year. Because facilities cannot report this data timely enough to be used to calculate the target rate by December of the same year, data from the year before must be used and updated.

Although the commenter suggested another method to be used in calculating the target rate limits, it, too, was based upon the same prior year's data. The commenter suggested that another inflation index be used in place of the one we used, and that the adjustment factor of the annualized inflation rate raised to the three-fourths power not be used. Apparently it was unclear that the adjustment factor was to convert the inflation rate to a rate that we could use

with our historical data. The historical data we have is based on a calendar year, whereas the law prescribes that the target rate limit must be based on the previous fiscal year's data. (See *Development of average maintenance dialysis payment data,* below, for further explanation.

Because of lack of historical data, it is impossible to demonstrate that the commenter's suggested method is more valid than the present method for calculating the maximum limits. The commenter's method would result in a greater expense to the program. As the intent of the law is to create more economical methods of reimbursement, we have decided to calculate the target rates in the same way as in the past two years. However, we intend to evaluate our experience in future years, and we will publish any resulting changes in the methodology for public comment.

5. *Alternate method of determining boundaries for regional adjustment suggested.* One commenter suggested that a facility's target rate should follow its ESRD network boundary rather than its HHS regional boundary. (ESRD "networks" are groups of ESRD facilities within a specified geographic area.) The target rate was not adjusted according to ESRD network boundaries because many networks do not have enough dialysis treatments to provide a statistically valid method of weighting them against the treatments furnished in the rest of the country. Therefore, we decided to use HHS regional boundaries, as we do have adequate data for these geographic divisions.

Calculation of Target Rates—Calendar Year 1981

1. *Development of average maintenance dialysis payment data.* As indicated above, the 1981 target rates equal 70 percent of the national average payment, before application of the coinsurance and deductible requirements and adjusted for regional variations, for in-facility maintenance dialysis services furnished by hospital-based and independent renal dialysis facilities during the preceding fiscal year.

The basis for determining the national average payment is the Renal Disease Program Cost Analysis System maintained by the Office of End-Stage Renal Disease (OESRD), Office of Special Programs, HCFA. We developed average maintenance dialysis payments for in-facility hemodialysis from Facility Cost Questionnaire Profiles, maintained by OESRD for each HHS regional area, for the accounting periods ending in the calendar year 1979.

The Facility Cost Questionnaire Profile is a computerized summary of the average maintenance dialysis cost per treatment, broken down into the various components of cost per treatment (e.g., supplies, salaries) for facilities on a regional and national basis. The costs and other statistical information (e.g., number of treatments) are derived from the Renal Dialysis Facility Cost and Statistical Questionnaire (form HCFA-0734) which is submitted annually based on cost data from a facility's most recently completed fiscal year.

While reported costs are the basis for the program payments made to hospital-based facilities, payments to independent facilities are made on a reasonable charge basis. (See 42 CFR 405.541) Information developed by OESRD established that the average reasonable charge payment per dialysis equalled the screen amount. Therefore, in developing the average payments for independent facilities, the Medicare payment screen of $138 was used as the average maintenance dialysis payment for independent facilities in all regions ($150 per treatment, including routine laboratory services, less $12 for the physician's direct patient care services during dialysis).

In developing the average payments, we excluded the portion of the payment applicable to physicians' direct patient care services, because reimbursement for these services is not included in the target rates. Under this reimbursement method, we pay for these physicians' services separately.

Facilities electing target rate reimbursement are required to provide medically necessary dialysis equipment, including installation, maintenance, and repair. A facility may fulfill this requirement by arranging for equipment for its home dialysis patients under the provision for 100 percent reimbursement for home dialysis equipment established by section 1881(e) of the Social Security Act and implemented by 42 CFR 405.438. In this case the lower target rate (excluding equipment costs) applies. Alternatively, a facility may own, lease, or otherwise arrange for equipment to be provided to patients whose self-care home dialysis it is furnishing. Under these circumstances, the higher target rate (including equipment costs) applies.

Accordingly, we computed two sets of payment rates for home hemodialysis. The higher target rate, entitled "Including Equipment Costs," includes an amount for the costs of equipment installation, depreciation or rental, maintenance and repair. This rate applies to services to patients using dialysis equipment that is furnished by the facility, but not under the provisions for 100 percent reimbursement of equipment costs. The lower target rate, entitled "Excluding Equipment Costs," does not include payment for any of these equipment costs. It applies when the facility provides dialysis equipment under the 100 percent equipment cost reimbursement provision.

The Office of Financial and Actuarial Analysis, HCFA, used payment data developed by OESRD to calculate the projected fiscal year 1980 average maintenance dialysis payments for hospital-based and independent facilities.

The law requires that the maximum target rate be based on the adjusted national average payment for dialysis services in the previous *fiscal* year. In other words, this requires us to base the calendar year 1981 target rate maximum on payments made for the October 1, 1979 to September 30, 1980 fiscal year. Section 1881(b)(6) of the statute requires the Secretary to base the determination of the level of payment on "the most recent data available to the Secretary at the time". Dialysis facilities are not able to report FY 1980 data timely enough for us to use in determining this rate. Therefore, we have used data from calendar year 1979—the most recent available data—and have indexed it to a 1980 fiscal year by using an inflation factor.

In order to apply such a factor, we needed to determine the base period (or time period) that the available data represented. The ESRD reporting system could be used only to develop data for facility accounting periods *ending* in calendar year 1979. As these accounting periods had varied date spans, there was no obvious well-defined base period. In the absence of evidence to the contrary, for purposes of adjustment for inflation, we assumed that the data represented costs that were evenly distributed throughout a calendar year 1979 base period.

A. *Hospital-based facilities.* We derived the fiscal year 1980 average in-facility maintenance dialysis payments for hospital-based facilities by increasing the average dialysis payments for the 1979 base period data by a weighted increase factor adjusted for regional variations. These factors were derived as follows:

i. We calculated the full year national increase for each of the three major components of the average payment (i.e., salaries (excluding payment for physicians' direct patient care services), supplies, and overhead), using appropriate data from the "Employment and Earnings Series" and "Consumer Price Index—Urban Wage Earners and

Clerical Workers—Revised," both from the Bureau of Labor Statistics. We derived salary increases from the data on hourly earnings in finance, insurance, and real estate because they represent workers in physicians' offices in the economic index computations. We derived supply cost increases from the consumer price index (CPI) for medical commodities, and used the CPI for all items to represent increases in overhead.

ii. We multiplied the component increase factors by the corresponding national weights to produce a weighted full year national increase (1980 over 1979).

iii. We had to adjust annual inflation factors applicable to calendar year data in order to make them applicable to fiscal year data. We used a compounding formula reflecting three-fourths of the calendar year increase (raising the calendar year factor to the three-fourths power) to obtain the final adjusted weighted national increase factor.

iv. We multiplied this final national factor by regional adjustment factors to obtain the regional increase factors. The regional adjustment factors were derived from the ratios of regional "per capita" ESRD reimbursement to the national "per capita" ESRD reimbursement for all reported fiscal years ending in calendar year 1979 (the most recent year for which data were available).

v. These regional increase factors were then multiplied by the appropriate 1979 base period values for hospital-based facilities to obtain the projected fiscal year 1980 average in-facility maintenance dialysis payment to hospital-based facilities by region.

B. *Independent facilities.* Independent facilities are not reimbursed on a cost basis. They are paid reasonable charges on a fee for service basis, subject to a screen limit of $138 per treatment. The per treatment reimbursement for dialysis in independent facilities has remained constant over the period in question. Therefore, it was not necessary to apply regional increase factors to payment data for independent facilities.

2. *Establishing target reimbursement rates for home hemodialysis.* The following procedure was used to establish the 1981 home hemodialysis target reimbursement rates per treatment for each region:

A. We multiplied each regional fiscal year 1980 average in-facility dialysis payment to hospital-based facilities, calculated in 1A above, by the corresponding number of treatments provided in the 1979 base period by hospital-based facilities for each region.

B. We added to each value calculated in 2A above the appropriate fiscal year 1980 average in-facility dialysis payment to independent facilities times the number of in-facility treatments provided in the 1979 base period by independent facilities for each region.

C. We divided each resulting value from 2B above by the total number of in-facility treatments provided in the 1979 base period by both hospital-based and independent facilities. The resulting values are the projected fiscal year 1980 average in-facility maintenance dialysis payments weighted between hospital-based and independent facilities by region.

D. We multiplied the regional average payments calculated in 2C above by 70 percent to derive the target reimbursement rates per treatment for 1981, which equal the maximum rates permitted under the statute.

3. *Example: Hypothetical Calculation of the "With Equipment" Rate for Region "A".* (The following numbers are for illustrative purposes only.)

A. We derive a total national increase factor from appropriate data from the Bureau of Labor Statistics (BLS), weighted by the portion of the total national average payment that is assigned to each of three cost component categories. In this example we use representative percentages of 35 percent, 35 percent, and 30 percent for, respectively, supplies, overhead, and salaries (excluding payment for physicians' direct patient care services).

Cost component	BLS increase factors	Weighting	Result
Supplies	8.04	35	2.8
Overhead	13.40	35	4.7
Salaries	8.46	30	2.5
Total national increase factor = 10			.10

B. To index base period data from calendar year 1979 to fiscal year 1980, we apply a compounding formula to the national increase factor (raising it to the three-fourths power).

1.00+0.10=1.10

$(1.10)^{\frac{3}{4}}$ = 1.0741 or, 7.41 percent

(final adjusted weighted national increase factor)

C. We calculate regional variation from the ratio:

Region "A" per capita ESRD reimbursement/National per capita ESRD reimbursement

If the regional per capita equals $141.75, and the national per capita equals $150, then:

$141.75÷150=0.945 (regional adjustment factor)

D. We calculate the increase factor for Region "A" by multiplying the adjusted weighted national increase factor by the regional adjustment factor.

7.41 percent × 0.945=7.0 percent.

E. "Program data" show that in Region "A"; Total Hospital-based Facility Costs (less physician fees)=$20,000,000

Total Independent Facility Costs=$17,000,000

Total Number of Outpatient Maintenance Dialysis Treatments=268,794

F. We use the increase factor (7 percent) from item D. to adjust the hospital-based costs, and then add the independent costs.

$20,000,000×1.07=$21,400,000

$21,400,000+$17,000,000=$38,400,000

G. We divide this by the total number of outpatient maintenance dialysis treatments.

$38,400,000 divided by 268,794=$142.86

This is the adjusted regional average payment per in-facility treatment.

H. Finally, we derive the maximum rate allowed by law by multiplying the adjusted regional average in-facility payment by 70 percent.

$142.86×0.70=$100

This would be the maximum "with equipment" target rate per treatment for home dialysis in Region "A".

4. *Schedule of target reimbursement rates for home hemodialysis.* Shown below is the schedule of regionally adjusted 1981 target reimbursement rates per treatment for home hemodialysis. Two sets of rates are shown. The higher set, entitled "Including Equipment Costs," applies where the facility is furnishing hemodialysis equipment, but not under the provision for 100 percent reimbursement of home dialysis equipment costs described in 42 CFR 405.438. The lower set, entitled "Excluding Equipment Costs," applies where the facility is furnishing the home dialysis equipment under the 100 percent reimbursement provisions of 42 CFR 405.438 (see discussion under section 1 above). In either case, if the facility chooses the target rate reimbursement option, it must furnish home dialysis equipment, including installation, maintenance, and repair, either directly or under arrangements.

Schedule of Target Reimbursement Rates Per Treatment for Home Hemodialysis—Calendar Year 1981

[Effective for Services Furnished on or after Jan. 1, 1981 through Dec. 31, 1981]

1978 region	Including equipment costs[1]	Excluding equipment costs[1]
Boston—Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont	$108	$106
New York—New Jersey, New York, Puerto Rico, Virgin Island	111	109
Philadelphia—Delaware, District of Columbia, Maryland, Pennsylvania, Virginia, West Virginia	99	97
Atlanta—Alabama, North Carolina, South Carolina, Florida, Georgia, Kentucky, Mississippi, Tennessee	97	95
Chicago—Illinois, Indiana, Michigan, Minnesota, Ohio, Wisconsin	111	109
Dallas—Arkansas, Louisiana, New Mexico, Oklahoma, Texas	104	102
Kansas City—Iowa, Kansas, Missouri, Nebraska	109	109
Denver—Colorado, Montana, North Dakota, South Dakota, Utah, Wyoming	99	97
San Francisco—American Samoa, Arizona, California, Guam, Hawaii, Nevada	120	117
Seattle—Alaska, Idaho, Oregon, Washington	116	114

[1] Depreciation or rental, installation, maintenance and repair.

5. *Establishing target reimbursement rates for home peritoneal dialysis.* Under Medicare, peritoneal dialysis has always been subject to the same reimbursement rules as hemodialysis. As a result of medical consultations, we established an equivalence between peritoneal dialysis and hemodialysis furnished in the facility. Peritoneal dialysis is usually done in sessions of 10–12 hours duration, three times per week. The dialysate, tubing, machines and level of skilled labor required for hemodialysis and peritoneal dialysis are similar, and in the absence of cost data to the contrary, we set the reimbursement for normal peritoneal dialysis sessions at the same level as for hemodialysis.

Later case experience showed that sometimes peritoneal dialysis was furnished in a single extended session of 30 hours or more in a week, in place of three separate sessions. Because the labor, overhead and supplies were more related to the total time in dialysis than the number of separate sessions, we reimbursed the extended session the same as three normal dialysis sessions in a week. Further case experience indicated the need for another intermediate reimbursement level to correspond to changing medical patterns. As a result, we provided that peritoneal dialysis sessions of 20 hours duration furnished twice per week be reimbursed at a rate equivalent to one and one-half times the payment for a normal hemodialysis session.

In view of the limited data available on the cost of home peritoneal dialysis, a separate target rate has not been computed for that mode of dialysis. Because the target rate is related to the in-facility payment, we have set the following equivalencies between home peritoneal dialysis and home hemodialysis target rates to parallel the reimbursement for these respective modes of treatment furnished in the facility. We invite comments on the use of these equivalencies, and suggestions on other means of determining reimbursement for home peritoneal dialysis that would more accurately reflect the costs of services.

A. *Peritoneal dialysis sessions of less than 20 hours duration.* If a home peritoneal patient dialyzes for under 20 hours a session, the facility will be reimbursed routinely an amount per session equal to the reimbursement for one home hemodialysis treatment.

B. *Peritoneal dialysis sessions of less than 30 hours, but 20 hours or more duration.* If a home peritoneal dialysis patient dialyzes for 20–29 hours a session, the facility will be reimbursed routinely an amount per session equal to one and a half times the rate for one home hemodialysis treatment.

C. *Peritoneal dialysis sessions of 30 hours or more duration.* If a home peritoneal dialysis patient dialyzes for 30 hours or more per session, the facility will be reimbursed routinely an amount per session equal to three times the rate for one home hemodialysis treatment.

(Sec. 1102, 1814, 1833, 1861(v)(1), 1871, and 1881 of the Social Security Act (42 U.S.C. 1302, 1395f(b), 1395l, 1395(v)(1), 1395hh and 1395rr))

(Catalog of Federal Domestic Assistance Program No. 13,773 Medicare—Hospital Insurance and No. 13,774, Medicare—Supplementary Medical Insurance)

Dated: January 13, 1981.

Howard Newman,

Administrator, Health Care Financing Administration.

[FR Doc. 81-1741 Filed 1-15-81; 8:45 am]

BILLING CODE 4110-86-M

Privacy Act of 1974; Report of Altered System

AGENCY: Health Care Financing Administration, HHS.

ACTION: Notification of altered system.

SUMMARY: In accordance with 5 U.S.C. 552a(e)(4) and 5 U.S.C. 552a(o), we are proposing to amend the following notice of systems of records: 09–70–0001, Medicare Second Surgical Opinion Experiments.

We have provided background information about the amendments in the "Supplementary Information" section below.

DATES: HCFA has sent a Report of Altered System to the Congress and to the Office of Management and Budget on December 29, 1980. HCFA has requested that OMB grant a waiver of the usual requirement that a revision to a system of records not be put into effect until 60 days after the report is sent to OMB and Congress. If this waiver is granted, the alteration to the system will be effective on the date of the waiver.

ADDRESS: The public should address comments to the Privacy Officer, Office of Management and Budget, Health Care Financing Administration, Bay A–3, 1710 Gwynn Oak Avenue, Baltimore, Maryland 21207. Comments received will be available for inspection at this location.

FOR FURTHER INFORMATION CONTACT: Mr. Alan S. Friedlob, Office of Research, Demonstrations and Statistics, Room 1–E–6, Oak Meadows Building, 6340 Security Boulevard, Baltimore, Maryland 21207, Telephone (301) 597–2364.

SUPPLEMENTARY INFORMATION: System Notice 09–70–0001, Medicare Second Surgical Opinion Experiments, contains data on Medicare beneficiaries and physicians who have participated in the second opinion demonstration programs being conducted by Blue Cross and Blue Shield of Greater New York and Blue Cross and Blue Shield of Michigan. The purposes of collecting this data are to: (1) Operate referral centers to help eligible Medicare beneficiaries locate consultants and obtain second/third opinions; (2) collect information necessary to conduct referral operations and evaluate the impact of the program, and (3) modify claims processing systems to permit waiver of co-payment and deductible requirements under Part B of Medicare on all second/third surgical opinion claims.

The routine uses of System Notice 09–70–0001 are not being changed. Routine use 1(b), "collect information necessary to conduct referral operations and evaluate the impact of the program" is being further specified by extending systems notice 09–70–0001 to include records created by sample surveys associated with evaluation of the Medicare Second Surgical Opinion Experiments, the Consultation Program for Elective Surgery for Massachusetts Medicaid recipients, and the National Second Surgical Opinion Program (NSSOP. This information will be

collected by Abt Associates, Inc., Cambridge, Massachusetts under HCFA Contract No. 500-78-0047, "Evaluation of the Impact of Second Surgical Opinions for Elective Surgery."

Specifically, the amendments to systems notice 09-70-0001 are associated with the following survey activities:

Patient Telephone Survey: A large random sample of Medicare beneficiaries residing in New York and Medicaid recipients in Vermont or Connecticut (the control group for Massachusetts Medicaid recipients) will be surveyed by telephone to identify beneficiaries and recipients who have undergone or who are actively considering undergoing elective surgery. Data will be gathered on surgical recommendations or discussion of surgery, second opinions obtained, and surgery actually undergone.

Personal Interview with Patients: An in-depth interview survey of a sample of Medicare beneficiaries and recipients who participated in the New York second opinion demonstration and Massachusetts second opinion program, as well as a sample of telephone survey respondents who reside in New York and Vermont/Connecticut will be conducted. This survey will gather extensive data on patient characteristics, surgical recommendations/discussions, consultations, patient health attitudes, treatment received and health care costs.

Physician Mail Survey: The physician(s) of consenting respondents to the Personal Interview Survey will be surveyed. Data collected will include physician characteristics and attitudes as well as clinical details and prognosis of the specific case.

Physician Mail Survey—Special Case Study in Detroit SMSA: A random sample of 100 surgeons in the Detroit, Michigan SMSA will be surveyed to ascertain their awareness of the Michigan second opinion demonstration program, their attitude toward the program and towards second opinions in general, and estimates of the utilization of second opinions by their patients.

Patient Telephone Survey—Special Case Study in Detroit SMSA: A telephone survey of 200 patients in the Detroit, Michigan SMSA who have undergone elective surgery will be conducted. The data gathered will include their level of awareness of the Michigan second opinion demonstration program, how they learned of it, whether they used it, and whether they obtained a second opinion elsewhere.

NSSOP Patient Intake Log: This form is used to collect basic data on callers to 15 listholders participating in the NSSOP. This form also records caller consent to be contacted for a follow-up survey. This form has already received OMB clearance. These 15 listholders have been using this form (i.e., collecting data) since January 1980.

NSSOP Intake Log Patient Follow-up Questionnaire: A telephone survey of consenting callers to 15 listholders participating in the NSSOP will be conducted. Data will be obtained on the patient's experience with the NSSOP, their subsequent second surgical opinion experience (if any), and any treatment received subsequent to their call to the NSSOP. A version of this questionnaire has already received OMB clearance.

The notices below contain the amended uses as indicated above.

Dated: December 29, 1980.

Howard Newman,

Administrator, Health Care Financing Administration.

09-70-0001

SYSTEM NAME:

Medicare Second Surgical Opinion Experiments, HHS/HCFA/ORDS.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Blue Cross and Blue Shield of Greater Nw York, 622 Third Avenue, New York, N.Y. 10017, and 3 Park Avenue, New York, N.Y. 10016, and Blue Cross and Blue Shield of Michigan, 600 Lafayette East, Detroit, Mich. 48226; and Abt Associates, Inc., 55 Wheeler Street, Cambridge, Mass. 02138.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Physicians who practice, and Medicare beneficiaries who reside in the carrier area of Blue Cross and Blue Shield of greater New York (plus Queens) or in Macomb, Oakland, or Wayne Counties for which the Medicare carrier is Blue Cross and Blue Shield of Michigan.

Physicians who practice, and Medicaid recipients who reside in the States of Massachusetts and Connecticut or Vermont. Persons contacting National Second Surgical Opinion Program (NSSOP) listholders.

CATEGORIES OF RECORDS IN THE SYSTEM:

Physicians: personal identification and demographic data attitudes toward second opinion programs, clinical details and prognosis of patients who have sought second opinions, estimates of the use of second opinions by their patients.

Beneficiaries: personal identification, demographic data, and health status information pertinent to advisability of patient undergoing elective surgery, surgical recommendations/discussions, treatment received, patient health attitudes, awareness of second opinion programs, satisfaction with second opinion programs.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 402 of the Social Security Amendments of 1967, P.L. 90-248, as amended by Section 222(b) of the Social Security Amendments of 1972, P.L. 92-603, 42 U.S.C. 1395b-1.

PURPOSE(S):

To provide data necessary to operate second opinion referral centers and to determine the impact of second opinion programs on Medicare costs, surgery rates, consumer and provider decision-making regarding surgery, and quality of care.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. Blue Cross and Blue Shield of greater New York and Blue Cross and Blue Shield of Michigan will use the data to: (a) operate referral centers to help eligible Medicare beneficiaries locate consultants and obtains second/third opinions, (b) collect information necessary to conduct referral operations and evaluate the impact of the program, and (c) modify claims processing systems to permit waiver of co-payment and deductible requirements under part B of Medicare on all second/third surgical opinion claims (i.e., physician and ancillary service costs). The Office of Research, Demonstrations and Statistics (ORDS), HCFA, will use the information to coordinate all data collection, reimbursement, and evaluation activities. HCFA will contract via request for proposals with an independent third party which will use data in the system to evaluate the impact of the second surgical opinion programs.

2. Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

3. In event of litigation where the defendant is: (a) the Department, any component of the Department, or any employee of the Department in his or her official capacity; (b) the United States where the Department determines that the claim, if successful, is likely to directly affect the operations of the

Department or any
(c) any Departmen
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POLICIES AND PRACT
RETRIEVING, ACCESS
DISPOSING OF RECO

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and subject to the
precautions.

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and health insuran
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be retrievable by p
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SAFEGUARDS:

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Department or any of its components; or (c) any Department employee in his or her individual capacity where the Justice Department has agreed to represent such employee, the Department may disclose such records as it deems desirable or necessary to the Department of Justice to enable that Department to present an effective defense, provided such disclosure is compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Hardcopy intake forms, first opinion physician/surgeon reports and consultants' reports will be stored in locked metal file cabinets in the referral centers established within the contractors' carrier offices. Completed data tapes created from hardcopy forms will be stored in the tape libraries maintained by the contractors for storage of routine Medicare claims tapes and subject to the same security precautions.

RETRIEVABILITY:

Hardcopy stored in referral centers will be retrievable by beneficiary name. Beneficiary information stored on tape will be retrievable by beneficiary name and health insurance claim number; provider information stored on tape will be retrievable by physician name and provider number.

Where applicable, the evaluation contractor will merge the systems records created by survey sampling activities with systems records already covered by this systems notice. The systems records created by survey activity are temporary in nature, and patient and physician identifiers will not be retained.

SAFEGUARDS:

All records will be retained in secure storage areas accessible only to authorized employees of Blue Cross and Blue Shield of Greater New York, Blue Cross and Blue Shield of Michigan, and the evaluation contractor staff. All employees having access to records have been notified of criminal sanctions for unauthorized disclosure of information on individuals. After the hardcopy and tapes are validated and analyzed by the evaluation contractor, they will be returned to HCFA.

For computerized records, where appropriate, ADP systems security procedures will be instituted with reference to guidelines contained in the Department ADP Systems Manual, Part 6, "ADP Systems Security," and the National Bureau of Standards Federal Information Processing Standards Publications (FIPS PUB 41 and FIPS PUB 31) (e.g., use of password access). By taking all the aforementioned precautions, HCFA has reduced the risk of unauthorized access to a minimum.

RETENTION AND DISPOSAL:

Hardcopy data collection forms and magnetic data tapes with identifiers will be retained in secure storage areas. The disposal technique of degaussing will be used to strip magnetic tape of all identifying names and numbers in December 1987. Hardcopy will be destroyed at this time.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Office of Research, Demonstrations and Statistics, Health Care Financing Administration Room 4228, HHS Building, 330 Independence Avenue, S.W., Washington, D.C. 20201.

NOTIFICATION PROCEDURE:

Any physician or Medicare beneficiary who participates in this demonstration as a provider or recipient of service may request his or her data record in writing. This request should be addressed to the system manager. To obtain data on physicians, the requestor should provide the name and business address of the physician; to obtain data on a Medicare beneficiary, the requestor should provide the beneficiary's name and home address.

RECORD ACCESS PROCEDURES:

Same as notification procedure. Requesters should also reasonably specify the record contents being sought. These access procedures are in accordance with Department regulations (45 CFR, section 5b.5(a)(2)).

CONTESTING RECORD PROCEDURES:

Contact the system manager at the address specified under notification procedure above, and reasonably identify the record and specify the information to be contested. These procedures are in accordance with Department Regulations (45 CFR, section 5b.7).

RECORD SOURCE CATEGORIES:

Referral Center Intake Forms are completed by a referral center analyst upon receiving a call from a Medicare beneficiary requesting a second opinion under the demonstrations. First Opinion Physician/Surgeon Report Forms are completed by the first opinion physician in the Blue Cross and Blue Shield of Michigan demonstration and by the first surgeon in the Blue Cross and Blue Shield of Greater New York demonstration. The consultant's report is completed by second/third opinion consultants who are participating in the demonstrations.

NSSOP Patient Intake Log to be completed by NSSOP listholders. NSSOP Intake Log Patient Followup Questionnaire to be completed by the evaluation contractor through telephone survey. Telephone Questionnaire of Medicare recipients in Connecticut or Vermont to be completed by the evaluation contractor. Patient Interview of Medicare beneficiaries in New York and Medicaid recipients in Massachusetts and Connecticut or Vermont to be completed by the evaluation contractor. Physician Mail Questionnaire to be completed by first opinion and second opinion physicians of patients who participate in the Patient Interviews. Physician Mail Questionnaire to be completed by surgeons who practice in Macomb, Oakland, and Wayne Counties, Michigan. Patient telephone survey of Medicare beneficiaries who reside in Macomb, Oakland, and Wayne Counties, Michigan to be completed by the evaluation contractor.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 81-1795 Filed 1-15-81; 8:45 am]
BILLING CODE 4110-85-M

Office of Human Development Services

White House Conference on Aging; Technical Committee, Meeting

The White House Conference on Aging Technical Committee was established to provide scientific and technical advice and recommendations to the National Advisory Committee of the 1981 White House Conference on Aging and to the Executive Director of the 1981 White House Conference on Aging in developing issues to be considered and to produce technical documents to be used by the Conference.

Notice is hereby given pursuant to the Federal Advisory Committee Act, (Pub. L. 92-463, 5 U.S.C. App. 1, sec. 10, 1976) that the Technical Committee on Physical and Social Environment and Quality of Life will hold their next meeting on Tuesday, January 27, 1981 from 9:00 am until 5:00 pm. The meeting will be held in Room 5051 of HHS-North Building, 330 Independence Avenue, S.W., Washington, D.C. 20201.

The purpose of the meeting will be to review and revise the draft final report.

Further information on the Technical Committee meeting may be obtained

from Mr. Jerome R. Waldie, Executive Director, White House Conference on Aging, Room 4059, 330 Independence Avenue, S.W., Washington, D.C. 20201, telephone (202) 245-1974. Technical Committee meetings are open for public observation.

Dated: January 12, 1981.

Mamie Welborne,

HDS Committee Management Officer.

[FR Doc. 81-1762 Filed 1-15-81; 8:45 am]

BILLING CODE 4110-92-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Intent To Prepare an Environmental Impact Statement on the Proposed Preservation of Wildlife Habitat in an Area of Cape May County, New Jersey, Known as South Cape May Meadows; Correction

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice: Correction.

SUMMARY: This notice advises the public of a correction to the above document published in 46 FR 1040, January 5, 1981. The last sentence in the Supplemental Information Section should read, "The estimated completion date for the Draft EIS is April 1981."

Howard N. Larsen,

Regional Director.

January 7, 1981.

[FR Doc. 81-1281 Filed 1-15-81; 8:45 am]

BILLING CODE 4310-55-M

Bureau of Land Management

Alabama; Meeting of Southern Appalachian Regional Coal Team

AGENCY: Bureau of Land Management, Department of the Interior.

ACTION: Meeting notice.

SUMMARY: Pursuant to the responsibilities set forth in 43 CFR Part 3400, the regional coal team for the Southern Appalachian Federal Coal Production Region, Alabama Subregion, will meet on February 17, 1981 to discuss the ranking, selection and scheduling process for proposed coal lease sales; alternative coal lease sale schedules; and potential impacts, including proposed mitigation measures on tracts proposed for Federal leasing in the Southern Appalachian Federal Coal Production Region, Alabama Subregion. Consultations with State Governor(s) will also be discussed, along with a draft Secretarial Issue Document containing recommendations for coal leasing in the subregion. These recommendations will be forwarded from the regional coal team chairman, through the Director, Bureau of Land Management, to the Secretary of Interior for his consideration in making a final decision on coal leasing in the Southern Appalachian Federal Coal Production Region, Alabama Subregion. Public attendance at the meeting is welcome. Additional time will be provided at the meeting for public comment prior to finalization of regional coal team recommendations.

DATE: The regional coal team will meet from 1:00 p.m. to 3:00 p.m. on Tuesday, February 17, 1981.

ADDRESS: The meeting will be held at the Sheraton University Inn, 4810 Skyland Boulevard East, Tuscaloosa, Alabama.

FOR FURTHER INFORMATION CONTACT: Bob Moore, Regional Coal Team Chairman, Bureau of Land Management (160), 18th and C Streets, N.W., Washington, D.C. 20240, (202) 343-4636.

Dated: January 12, 1981.

Pieter J. VanZanden,

Acting Eastern States Director, Bureau of Land Management.

[FR Doc. 81-1640 Filed 1-15-81; 8:45 a.m.]

BILLING CODE 4310-84-M

Adoption of Planning Criteria, Jordan, North Rosebud and New Prairie Management Plans

AGENCY: Bureau of Land Management, Interior.

ACTION: Adoption of planning criteria, Jordan, North Rosebud and New Prairie management plans.

SUMMARY: Planning criteria to prepare public land use decisions covering Baker, Prairie, Kinsey, Jordan and North Rosebud planning units in the Miles City District, Bureau of Land Management have been adopted by the District and approved by the Montana State Director. The criteria will be used to prepare the new Prairie and Jordan-North Rosebud Management Framework Plans. Both plans are Transition Period Category C Management Framework Plans. The criteria as well as issues to be addressed in the plan are available for public inspection at the Miles City District offices during normal business hours.

EFFECTIVE DATE: December 12, 1980.

FOR FURTHER INFORMATION CONTACT: Ray Brubaker, District Manager, Miles City District, BLM, P.O. Box 940, Miles City, Montana 59301.

SUPPLEMENTARY INFORMATION: In late August, 1980, a mailer for each of the planning areas explaining significant issues and concerns identified during personal interviews, public meetings, etc., were mailed to individuals and agency and governmental representatives. Of the approximately 3350 copies mailed (2500 Prairie and 850 Jordan-North Rosebud), 71 responses have been received (2%). The majority of responses concern wilderness, coal development and the value of public land administration. No new issues were identified but the candid responses have assisted in criteria revision and will be considered in the district's development of alternatives and in management decisions. A summary of the comments received relating to mailing of planning issues and criteria for Jordan-North Rosebud and New Prairie Planning Areas follows.

The District received 71 responses including 10 from state, federal or local governmental agencies which included comments applicable to two criteria maps. six were requests for further information with special interest expressed in: (a) public land, (b) how the planning area boundaries were formed, (c) cultural resource inventories, (d) air and water quality, loss of wildlife, environment and population impact, (e) forestry, and (f) social and economic impacts of mineral development. Fifteen responses concerned wilderness designation with four favorable to wilderness area designation, eight opposed to wilderness designation and two noncommittal. Two proposed establishmnent of a national monument rather than a wilderness for the Terry Badlands. Five comments related to areas of potential coal or other fuel energy development, including KRCRA boundary redefinition. Two comments concerned access to public land and favored the use of maps, markers, signs, and development of roads to facilitate general access to public land. Five comments expressed concern for ranching and farming and preservation of resources for food production. Four comments expressed opposition to federal ownership or control of land. Two comments favored disposing or trading parcels of scattered or isolated land to consolidate blocks of public land. Three comments expressed opposition to any federal land or resource planning. One comment favored development of corridors for highways, railroads, power lines, and pipelines to serve growth in civil industry and possible military defense. One comment expressed opposition to construction of a dam in northern Prairie County and in favor of road improvements. One comment

emphasized the need for interagency coordination of comprehensive planning.

These comments resulted from mailing approximately 2,500 copies of the New Prairie Planning Area maps and approximately 850 copies of the Jordan-North Rosebud Planning Area maps with return response cards for each. The mailings were distributed to all box holders within the planning areas and to all interagency addresses and energy companies who have expressed interest in information on these areas. A news release explaining the public response and BLM's application of the comments will be published in newspapers in circulation in the planning area. The major issues, problems and criteria for the planning areas are discussed below.

Vegetation Allocation

Draft decisions for vegetation allocation in the New Prairie and Jordan-North Rosebud MFP's and vegetation allocation decisions from the 1979 Redwater MFP will be analyzed in the Big Dry EIS. This EIS is scheduled for completion by 9–30–82.

Where negative surface owner views (by location, acreage and/or number of surface owners) precludes development of a logical mining unit, that area will be considered for deletion from further consideration for coal leasing.

Multiple use constraints, unsuitability criteria and surface owner consultation processes (except on PRLA's) will be applied to coal within the following areas: KRCRA's—Custer Creek and Knowlton; preliminary KRCRA's—Ismay and Carlyle; and revised KRCRA's—Lame Jones and Circle (where boundary revisions are made by USGS prior to 11–30–80).

In mid-November of 1980, the USGS identified high and moderate coal development potential for the Circle KRCRA. This KRCRA boundary revision necessitates updating the surface owner identification, completed in October 1980, to include the revised area. The preliminary KRCRA's for Ismay and Carlyle and a much expanded Lame Jones preliminary KRCRA were received from USGS on 10–6–80. Surface owners over Federal coal for the KRCRA's and preliminary KRCRA's have been identified. Resource data for the recently identified areas is comprised of photo interpretation data except for Federal surface where SVIM data is available.

In the forthcoming planning effort, the Bureau can: (1) include all identified high/moderate coal areas in the planning area and (after applying the data which is available), bring areas through the MFP as acceptable for further consideration for leasing pending further study; or (2) concentrate on smaller areas where resource data is available or can possibly be acquired in time to be available for application. At present, we expect to have the information necessary for at least the Meadowlark PRLA's by February, 1981 (see next paragraph). It is questionable if CRO–CDP maps, specific agricultural data, four seasons worth of wildlife data or cultural resources data could be acquired in FY 1981 for the other coal areas.

Analysis of the Meadowlark Farms PRLA's (M–2732, M–2733, M–2734) will be included in the New Prairie MFP. A *management decision* of whether to include the Meadowlark Farms PRLA coal in the Ft. Union (Coal) EIS for analysis along with the Redwater MFP coal must be made immediately as it affects the EIS time frame and the wilderness designation schedule (there is a direct conflict with WSA 004 on the Meadowlark Farms PRLA's).

It should be noted that coal decisions in the 1979 Redwater MFP are *final decisions* and will not be addressed in the current land use plan or the Big Dry EIS. The Redwater Coal including the Fred Woodson PRLA (M10195) will be addressed in the Fort Union EIS, however.

Wilderness

In accordance with W.O. Instruction Memo 80–352 Change 1, Category C Transition MFP's will identify and analyze conflicts between wilderness use and other resource values and uses, and will be used to recommend area(s) to Congress as suitable or unsuitable for wilderness designation. That memo states that the Wilderness EIS shall not be combined with the Grazing EIS.

Draft MFP Range Management decisions will focus on identification of problem areas, using SVIM range condition as the key indicator, and will propose adjustments/management/treatment/rehabilitation practices for problem areas. For those areas where adequate reservation for wildlife and/or watershed needs were not made in previous vegetation allocations, the current needs will be identified. Site productivity potential versus present livestock allocation will serve as guidance for management decisions. Present vegetation information will continue to guide grazing management in the remaining allotments until additional vegetation studies can be completed for those areas. The MFP decisions will document existing allocations and any needed changes. Actual on-the-ground changes in the allocation of livestock forage will be developed and implemented during activity planning after allotment specific studies are completed.

Draft vegetation allocation decisions for wildlife will identify geographic areas of significant competition for forage or cover between wildlife (primarily big game) and other vegetation users (as identified by Montana FG & F).

Draft vegetation allocation decisions for watershed will specify target cover values and management for all soils series areas using SVIM data and soils surveys. Where watershed condition is critically unstable and/or changes in management are needed or treatment is required to facilitate the desired watershed condition, these needs will be further identified.

Alternatives for allocation of the vegetation resource will be developed in the MFP and further analyzed in the Big Dry EIS. Major alternatives will include: (1) continuation of present grazing management levels, (2) alternative levels of management, (3) reduced levels or adjusted livestock use, (4) livestock forage maximization, (5) elimination of livestock use on public grazing lands.

Final decisions (on-going MFP's) and possible modified final decisions (Redwater MFP) for vegetation allocation will be developed as a result of the EIS. The wildlife and watershed management decisions reached in the MFP's will be used as background for development of alternatives in the EIS.

Since approximately 91% of the public surface in the New Prairie and Jordan-North Rosebud planning areas is in good or excellent range condition and no critical big game-livestock competition areas have been identified, extensive adjustments in vegetation allocation on public surface lands in these planning areas is not anticipated.

Coal

In order to analyze the public coal resource concurrently with other public resources, the Miles City District will proceed with the land use planning, unsuitability, and surface owner consultation processes, applying all the resource data available to the identified coal areas, preliminary and final. The draft coal decisions will identify the coal in the planning areas that is acceptable for further consideration for leasing, acceptable for further consideration for leasing pending further study, and that which is unsuitable.

FY 1981 AWP advises direct the Miles City District to process PRLA's M–2732, M–2733, M–2734, and M–10195. W.O. advises, via MSO (October, 1980) that any portion of the Meadowlark PRLA's (the first three above numbers) within the Terry Badlands WSA cannot be

offered for coal lease until Congress determines whether the area will be wilderness or not. This direction therefore becomes one of our Planning Criteria.

If it is desirable to lease coal in the PRLA's in 1983, wilderness consideration and environmental assessment of the PRLA coal (possibly in the Fort Union EIS) will have to be closely coordinated.

ACEC's

Areas that qualify for ACEC status will be considered for ACEC management as an MFP alternative.

Withdrawal Review

In order to coordinate the land use plans and withdrawal review process within the allowable time frame, the MFP draft decisions will prioritize the identified withdrawals (sequentially) for subsequent review. (This prioritization will be coordinated with the tentative review dates stated in the District Manager's memo of 9-10-80 to the State Director.) This schedule should allow systematic review and multiple use analysis of withdrawals within the 1991 completion date. However, pertinent BLM withdrawals will be fully addressed in the forthcoming planning effort.

Planning Criteria

Land use planning in the New Prairie planning area is both first and second generation. The Jordan-North Rosebud planning effort is all first generation. The Jordan-North Rosebud Planning effort is all in 1977 (the initial pre-planning analysis) and continuing to date. Numerous public meetings have been held and comments received. Revision of the RPA was completed in December, 1979. During FY 1980 the pre-planning analysis data was re-organized to the new format, i.e., Project Situation Analysis, and Project Situation Analysis Summary. Issues Criteria-Planning Criteria were developed and 3350 copies were mailed to boxholders in the planning areas and to governmental agencies of all levels for public comment and inter-agency coordination. The responses received will continue to be used in guiding development of the planning documents.

Quality Control

Pre-planning and planning documents are developed by a multidisciplinary team of resource specialists under the direction of a planning coordinator and in consultation with resource specialists in the resource area and with District and State Office specialists and with their counterparts in other agencies. Technical review is accomplished by the Division of Resources. Management review is completed by the Area Manager and District Manager.

The criteria for the New Prairie and Jordan-North Rosebud planning areas were prepared by an interdisciplinary team and were reveiwed by resource specialists in the District Division of Resources and in the Big Dry Resource Area, as well as by specialists in the State Office Division of Resources and Division of Planning and Environment. Public comments have been reviewed and analyzed and the issues and criteria revised accordingly.

Ray Brubaker,

District Manager.

[FR Doc. 81-1737 Filed 1-15-81; 8:45 am]

BILLING CODE 4310-84-M

Designation of East Mojave National Scenic Area

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of designation of East Mojave National Scenic Area.

SUMMARY: The rich diversity of outstanding natural, scenic and cultural resources of this area of the East Mojave Region of the California Desert Conservation Area warrants it special recognition. The area will be managed in accordance with the California Desert Conservation Area Plan approved December 18, 1980. This designation as the East Mojave National Scenic Area will provide added emphasis to the Bureau of Land Management's plan to protect the area's outstanding natural, scenic and cultural resources.

Pursuant to the authority in section 601 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1781), and 43 CFR Subpart 2070, those public lands administered by the Bureau of Land Management and described in the California Desert Conservation Area Plan as the East Mojave National Scenic Area are hereby designated the East Mojave National Scenic Area.

EFFECTIVE DATE: January 13, 1981.

ADDRESS: Any inquiries or suggestions should be sent to: District Manager, California Desert District, 1695 Spruce Street, Riverside, California 92507.

FOR FURTHER INFORMATION CONTACT: Gerald C. Hillier at the above address or 714 787-1462.

Cecil D. Andrus,

Secretary of the Interior.

January 13, 1981.

[FR Doc. 81-1827 Filed 1-15-81; 8:45 am]

BILLING CODE 4310-84-M

Idaho Falls District Grazing Advisory Board, Meeting

Notice is hereby given in accordance with Pub. L. 92-463 that the Idaho Falls District Grazing Advisory Board will meet February 21, 1981.

The meeting will begin at 9:00 a.m. in the conference room of the Bureau of Land Management Office, 940 Lincoln Road, Idaho Falls, Idaho, 83401. The meeting is open to the public. Interested persons may make oral statements to the Board between 9:00 and 9:30 a.m. or file written statements for the Board's consideration. Anyone wishing to make an oral statement must notify the Idaho Falls BLM District Manager at the above address by February 6, 1981. Depending on the number of persons wishing to make oral statements, a per person time limit may be established.

The agenda for the meeting will include:

1. Update on status of projects discussed at the last meeting.
2. Discussion on Advisory Board projects and expenditure of Advisory Board funds.
3. Use of Range Betterment funds.
4. Election of officers.
5. Allotment Management Plans in the Little Lost River and Birch Creek Valley's.
6. Arrangements for the next meeting.

Summary minutes of the Board meeting will be kept in the District Office and be available for public inspection and reproduction, (during regular business hours) within 30 days following the meeting.

Dated: January 9, 1981.

O'dell A. Freudsen,

District Manager.

[FR Doc. 81-1829 Filed 1-15-81; 8:45 am]

BILLING CODE 4310-84-M

[W-70796 and W-70865]

Trailblazer Pipeline Project, Wyoming; Applications

Notice is hereby given that pursuant to Sec. 28 of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 185) the Overthrust Pipeline Company and Colorado Interstate Gas Company have filed right-of-way applications (W-70796 and W-70865, respectively) to construct, operate, maintain, repair, replace and remove two segments of a 36" O.D. buried pipeline for the purpose of transporting natural gas from the overthrust belt in southwestern Wyoming to facilities located in Beatrice, Nebraska. The proposed pipeline will affect the following described public lands:

W-70796 Overthrust Pipeline Company (Segment I)

Sixth Principal Meridian, Wyoming

Sweetwater County

T. 18 N., R. 108 W.,
Secs. 8, 16, 22 and 24.
T. 18 N., R. 107 W.,
Sec. 4.
T. 19 N., R. 107 W.,
Sec. 32.
T. 18 N., R. 108 W.,
Secs. 2, 10, 16 and 18.
T. 18 N., R. 109 W.,
Secs. 14 and 18.
T. 18 N., R. 110 W.,
Secs. 14, 20 and 22.
T. 18 N., R. 111 W.,
Secs. 18, 20, 22 and 24.

Sweetwater and Uinta Counties

T. 18 N., R. 112 W.,
Secs. 14, 20, 22 and 30.

Uinta County

T. 17 N., R. 113 W.,
Sec. 4.
T. 18 N., R. 113 W.,
Secs. 32 and 34.
T. 18 N., R. 114 W.,
Secs. 22, 34 and 36.
T. 17 N., R. 115 W.,
Secs. 2, 4 and 6.
T. 18 N., R. 115 W.,
Sec. 36.
T. 17 N., R. 116 W.,
Secs. 2, 4 and 6.
T. 17 N., R. 117 W.,
Secs. 2, 8, 10 and 18.
T. 17 N., R. 118 W.,
Secs. 12 and 14.
T. 17 N., R. 119 W.,
Secs. 22 and 24.

W-76986 Colorado Interstate Gas Company (Segment II)

Sixth Principal Meridian, Wyoming

Albany County

T. 13 N., R. 71 W.,
Sec. 2.
T. 14 N., R. 71 W.,
Sec. 32.
T. 14 N., R. 72 W.,
Sec. 30.
T. 17 N., R. 77 W.,
Sec. 12.
T. 18 N., R. 77 W.,
Sec. 34.

Carbon County

T. 21 N., R. 81 W.,
Secs. 18, 20, 22 and 28.
T. 21 N., R. 82 W.,
Secs. 14, 16 and 18.
T. 21 N., R. 83 W.,
Secs. 14 and 30.
T. 21 N., R. 84 W.,
Secs. 25, 26, 32 and 34.
T. 21 N., R. 85 W.,
Secs. 32, 34 and 36.
T. 21 N., R. 86 W.,
Secs. 32 and 34.
T. 21 N., R. 87 W.,
Secs. 26 and 30.
T. 21 N., R. 88 W.,
Secs. 20, 28 and 28.
T. 21 N., R. 89 W.,
Secs. 24, 26, 32 and 34.

Sweetwater County

T. 21 N., R. 90 W.,
Secs. 32, 34 and 36.
T. 20 N., R. 91 W.,
Secs. 4 and 6.
T. 20 N., R. 92 W.,
Secs. 2, 8, 10, 12 and 18.
T. 20 N., R. 93 W.,
Secs. 14 and 18.
T. 20 N., R. 94 W.,
Secs. 24, 26, 28 and 32.
T. 19 N., R. 95 W.,
Sec. 4.
T. 20 N., R. 95 W.,
Secs. 34 and 36.
T. 19 N., R. 96 W.,
Secs. 8 and 10.
T. 19 N., R. 97 W.,
Secs. 8, 10 and 12.
T. 19 N., R. 98 W.,
Secs. 8, 10 and 12.
T. 19 N., R. 99 W.,
Secs. 2, 4 and 12.
T. 20 N., R. 99 W.,
Sec. 32.
T. 19 N., R. 100 W.,
Sec. 2.
T. 20 N., R. 100 W.,
Secs. 30, 32, 34 and 36.
T. 20 N., R. 101 W.,
Secs. 14, 18 and 24.
T. 20 N., R. 102 W.,
Secs. 14, 20 and 30.
T. 19 N., R. 103 W.,
Secs. 4 and 6.
T. 20 N., R. 103 W.,
Secs. 28 and 34.
T. 18 N., R. 104 W.,
Secs. 4 and 6.
T. 19 N., R. 104 W.,
Secs. 2, 10, 22 and 28.
T. 18 N., R. 105 W.,
Secs. 12 and 18.
T. 18 N., R. 106 W.,
Sec. 24.

The purpose of this notice is to inform the public that the Bureau will be proceeding with consideration of whether the applications, affecting approximately 106 miles of public lands within the State of Wyoming, should be approved; and, if so, under what terms and conditions.

Interested persons desiring to express their views concerning these applications should do so promptly. Comments submitted should include your name and address, as well as a reference to the serial numbers assigned the applications; and should be sent to the Wyoming State Office, Bureau of Land Management, P.O. Box 1828, 2515 Warren Avenue, Cheyenne, Wyoming 82001.

Harold G. Stinchcomb,
Chief, Branch of Lands and Minerals Operations.

[FR Doc. 81-1981 Filed 1-15-81; 8:45 am]
BILLING CODE 4310-84-M

INTERSTATE COMMERCE COMMISSION

Agricultural Cooperative: The Commission of Intent to Perform Interstate Transportation for Certain Nonmembers

Date: January 12, 1981.

The following Notices were filed in accordance with section 10526 (a)(5) of the Interstate Commerce Act. These rules provide that agricultural cooperatives intending to perform nonmember, nonexempt, interstate transportation must file the Notice, Form BOP 102, with the Commission within 30 days of its annual meetings each year. Any subsequent change concerning officers, directors, and location of transportation records shall require the filing of a supplemental Notice within 30 days of such change. The name and address of the agricultural cooperative, the location of the records, and the name and address of the person to whom inquiries and correspondence should be addressed, are published here for interested persons. Submission of information that could have bearing upon the propriety of a filing should be directed to the Commission's Office of Consumer Protection, Washington, D.C. 20423. The Notices are in a central file, and can be examined at the Office of the Secretary, Interstate Commerce Commission, Washington, D.C.

Complete Legal Name of Cooperative Association Or Federation Of Cooperative Associations: (1) Agriland Trucking Cooperative Association, Inc.,
Principal Mailing Address (Street No., City, State, and Zip Code): 2700 Esquire Drive, Boise, Idaho 83704
Where are the Records Of Your Motor Transportation Maintained (Street No., City, State and Zip Code): 2700 Esquire Drive, Boise, ID 83704
Person To Whom Inquiries And Correspondence Should Be Addressed (Name and Mailing Address): R. H. Redmond, 2700 Esquire Drive, Boise, ID 83704
Complete Legal Name of Cooperative Association Or Federation Of Cooperative Associations: (2) Dairymen, Inc.
Principal Mailing Address (Street No., City, State, and Zip Code): 10140 Linn Station Road, Louisville, KY 40223
Where Are Records Of Your Motor Transportation Maintained (Street No., City, State and Zip Code): P.O. Box 18118, Louisville, KY 40218
Person To Whom Inquiries And Correspondence Should Be Addressed (Name and Mailing Address): Mr. Beverly Williams, 10140 Linn Station Road, Louisville, KY 40223
Complete Legal Name Of Cooperative Association Or Federation Of Cooperative Associations: (3) Mid-Western Farm Lines, Inc.

Principal Mailing Address (Street No., City, State, and Zip Code): 2169 E. Blaine, Springfield, MO 65803
Where Are Records Of Your Motor Transportation Maintained (Street No., City, State and Zip Code): 2169 E. Blaine, Springfield, MO 65803
Person To Whom Inquiries And Correspondence Should Be Addressed (Name and Mailing Address): Bruce McCurry—910 Plaza Towers, Springfield, MO 65804
Complete Legal Name Of Cooperative Association Or Federation Of Cooperative Associations: (4) Tennessee Farmers Cooperative
Principal Mailing Address (Steet No., City, State, and Zip Code): P.O. Box 157, LaVergne, Tennessee 37086
Where Are Records Of Your Motor Transportation Maintained (Street No., City, State and Zip Code): P.O. Box 157, LaVergne, Tennessee 37086
Person To Whom Inquiries And Correspondence Should Be Addressed (Name and Mailing Address): Joe L. Wright, P.O. Box 157, LaVergne, Tennessee 37086
Complete Legal Name Of Cooperative Association Or Federation Of Cooperative Associations: (5) Wilcox Marketing, Inc.
Principal Mailing Address (Street No., City, State, and Zip Code): 12551 E. Telegraph Road, Santa Fe Springs, CA 90670
Where Are Records Of Your Motor Transportation Maintained (Steet No., City, State and Zip Code): 12551 E. Telegraph Road, Santa Fe Springs, CA 90670
Person To Whom Inquiries And Correspondence Should Be Adressed (Name and Mailing Address): Lindsey C. Dutton, Route 1 Box 280 A, Springfield, Tennessee

Agatha L. Mergenovich,
Secretary.

[FR Doc. 81-1570 Filed 1-15-81; 8:45 am]
BILLING CODE 7035-01-M

Intent To Engage in Compensated Intercorporate Hauling Operations

This is to provide notice as required by 49 U.S.C. 10524(b)(1) that the named corporations intend to provide or to use compensated intercorporate hauling operations as authorized in 49 U.S.C. 10524(b).

1. Parent corporation and address of principal office: Atlantic Richfield Company, 515 South Flower Street, Los Angeles, California 90071.

2. Wholly owned subsidiaries of Atlantic Richfield Company, the principal offices of all of which are located at 515 So. Flower Street, Los Angeles, California 90071:

ABE Beverage, Inc.
(100% by Prestige Stations, Inc.)
ADPI Enterprises, Inc.
(100% by Arco Durethene Plastic, Inc.)
Airtron, Inc.
(100% by ARCO Energy Conservation Inc.)
Allweather, Inc.
(100% by Airtron, Inc.)
AMCOR-Chem, Inc.
Anaconda Overseas Services Inc.
The Anaconda Company (a)
Anaconda Valve Company
Archem Company
Arco Argentina Inc.
(100% by Sinclair International Oil Company)
Arco Asia Inc.
Arco Australia Coal Pty. Ltd.
Arco Australia Limited
Arco Bangladesh Inc.
Arco Brazil Inc.
Arco British Limited
(100% by Sinclair International Oil Company)
Arco Caribbean Inc.
Arco Centennial Corp.
Arco Channelview, Inc.
Arco Chemical Corporation
Arco Chemical Enterprises, Inc.
Arco Chemical (Europe) Inc.
Arco Chemical International Company
Arco Trading, Inc.
Arco Chile LNG Inc.
Arco Coal Corporation
Arco Colombia Oil Corporation
(100% by Sinclair International Oil Company)
Arco Communications Inc.
Arco Credit Corporation
Arco Crude Trading Inc.
Arco Dubai Inc.
Arco Durethene Plastics Inc.
(100% by ARCO Polymers, Inc.)
Arco East Africa Inc.
Arco Ecuador Corporation
Arco Egypt Inc.
Arco El Salvador Inc.
Arco Energy Conservation, Inc.
Arco Energy Transportation, Inc.
Arco Environmental, Inc.
Arco Exploration, Inc.
Arco Far East Exploration Inc.
Arco Far East Ltd.
Arco Greenland Inc.
Arco Gustemala Inc.
Arco Ilocos Inc.
Arco Inc.
Arco Independence, Inc.
Arco International Oil and Gas Corporation
Arco International Petroleum, Inc.
Arco International Services Inc.
Arco Iran, Inc.
Arco Italy Inc.
Arco Latin America Inc.
Arco Liberia Inc.
Arco Lyondell, Inc.
Arco Malaysia Inc.
Arco Marine, Inc.
Arco Medical International Ltd.
(100% by Arco Medical Products Company)
Arco Medical Products Company
Arco Medical Products (Japan) Ltd.
(100% by Arco Medical Products Company)
Arco Mindoro Inc.
Arco Montana, Inc.
Arco Morocco Inc.
Arco Netherlands, Inc.
Arco New Mexico, Inc.
Arco Nicaragua Corporation
Arco Norge A/S
Arco Norway Inc.
Arco Norway Systems Inc.
Arco Nuclear Company
Arco Offshore Inc.
Arco Oil and Gas Corporation
Arco Oil Limited
Arco Oil Producing, Inc.
Arco Oil Refining Company
Arco Pakistan, Inc.
Arco Performance Chemicals Company, Inc.
Arco Performance Chemicals (PTE) Ltd.
(100% by Arco Performance Chemicals Company, Inc.)
Arco Peru Corporation
Arco Petroleum Company
Arco Philippines Inc.
Arco Pipe Line Company
Arco Polymers (Canada) Limited
(100% by ARCO Polymers, Inc.)
Arco Polymers Chemical Corporation
(100% by ARCO Polymers, Inc.)
Arco Polymers, Inc.
Arco Polymers International, Inc.
(100% by ARCO Polymers, Inc.)
Arco Princeton Corp.
Arco Publications Inc.
Arco (QLD) Coal Pty. Limited
Arco Queensland Mining Limited
Arco Raffinerie GmbH
Arco Sebree, Inc.
Arco Seed Co., Inc.
Arco Solar, Inc.
Arco Solar International, Inc.
Arco Solar Saudi Arabia, Inc.
Arco Somalia Incorporated
Arco South Africa Corporation
Arco Spain Inc.
Arco Tankers, Inc.
Arco Technology, Inc.
Arco Thailand Inc.
Arco Transportation Corporation
Arco Turkey Inc.
Arco Venezuela Inc.
Arco Ventures Group, Inc.
Arco West Africa Inc.
Arcoal, Inc.
Arcobrasil Florestal Ltda.
(100% by Companhia Atlantic de Petroleo)
Arcobrasil Participacoes e Investimentos Ltda.
ARCOtravel Club, Inc.
ARDEV Company, Inc.
Arlan Corporation
Arpet Petroleum Limited
Arphos, Inc.
Arprox Corporation
The Atlantic Refining Company
Atlantic Refining Company of Cuba
Atlantic Richfield Argentina Inc.
Atlantic Richfield Bali North Inc.
Atlantic Richfield Foundation of California
Atlantic Richfield France, Inc.
Atlantic Richfield Hanford Company
Atlantic Richfield Indiana, Inc.
Atlantic Richfield Indonesia Coal Inc.
Atlantic Richfield Indonesia Inc.
(100% by Sinclair International Oil Company)
Atlantic Richfield International Finance Corporation
Atlantic Richfield Investment Company
Atlantic Richfield Kentucky Corporation
Atlantic Richfield Medical Products (Ireland) Limited
Atlantic Richfield Oil Limited
Atreco, Inc.
Atreco Investment Company
Beaver Creek Coal Company
Benson-Goss Fuels, Inc.
(100% by Buckley & Scott Co.)

Bercon Packaging, Inc.
Bogen, Inc.
(100% by Airtron, Inc.)
Bohn Lake Inc.
Bolivian Atlantic Corporation
Bolivian Petroleum Corporation
(100% by Sinclair International Oil Company)
Border Pipe Line Company
Brandywine Oil Company
(100% by Major Petroleum Company)
George Y. Brubaker, Inc.
(100% by Major Petroleum Company)
Buckley & Scott Co.
Buckley & Scott, Whetton, Inc.
(100% by Buckley & Scott Co.)
Candel International Limited
Candelaria Exploration Corporation
Casitas Pipeline Company
CASOLIN, S.A.
(100% by Anaconda Valve Company)
Cello Bag Co., Inc.
(100% by ARCO Durethene Plastics, Inc.)
Chapin, Kisley & Howe, Inc.
(100% by Buckley & Scott Co.)
Cheviot Hills Pipeline Company
Cimerron Properties, Inc.
Columbia Shale Oil, Inc.
Compashia Atlantic de Petroleo
(100% by Arcobrasil Participacoes e Investimentos Ltda.)
Compania Petrolera Carco
Cayama Pipeline Company
Delta Housing Inc.
Eastern-Narragansett Oil Company
(100% by Buckley & Scott Co.)
Empresa Carioca de Produtos Quimicos S.A.
(100% by Arcobrasil Participacoes e Investimentos Ltda.)
Energy Utilization Systems Inc.
(100% by Northrup Incorporated)
Fahnestock, Inc.
(100% by Airtron, Inc.)
Fip, S.A. de C. V.
(100% by Arilan, S.A. de C. V.)
Four Corners Pipe Line Company
Gardner Oil Company, Inc.
(100% by Buckley & Scott Co.)
Gieske Sheet Metal Co. Missouri
(100% by Airtron)
Greater Pacific Limited
Griffith-Consumers Company
Hondo Coal Company
Hondo Oil & Gas Company
Hope Land Corporation
Housing Services, Inc.
Industrial de Valvulas, S.A. de C. V.)
(100% by Arilan, S.A. de C. V.)
Inmobiliaria Inval, S.A. de C. V.)
(100% by Industrial de Valvulas, S.A. de C. V.)
Integrated Solar International
Sales, Inc.
Joaquin Ranch Company
Junction Projects Inc.
Kershen Triticale Company Delaware
Kryoflo, Inc.
(100% by The Walworth Company)
Kuparuk Pipeline Company
Lamborn Land Company
Libyan American Oil Company
Libyan Atlantic Company
Los Palacios Exploration Corporation
Major Petroleum Company
Marlin Delaware Corporation
Megol Corporation
Mesa Pipeline Company
Dick Mills Air Conditioning, Inc.
Wm. Mills Fuel Co., Inc.
(100% by Major Petroleum Company)
Minute Man Oil Sales, Inc.
(100% by Buckley & Scott Co.)
N. T. Development, Inc.
Newtown Square Properties Inc.
Nickel Airtron, Inc.
(100% by Airtron)
Northrup Energy Corporation
(100% by Northrup, Incorporated)
Northrup Incorporated
(100% by Arco Energy Conservation, Inc.)
NUMEC Instruments & Controls Corporation
(100% by ARCO Medical Products Company)
Observer International Inc.
Observer Offers Limited
(100% by The Observer, Limited)
The Observer, Limited
(100% by Observer International Inc.)
Oxirane Chemical Company (a partnership)
(50% by Arprox Corporation & 50% Megol Corporation)
Oxirane Chemical Company (Channelview) (a partnership)
(50% by Megol Corporation & 50% by Arco Princeton)
Oxirance Chemie (Nederland) (a partnership)
(99% by Willet Limited & 1% by ACC)
Oxirane Corporation
Oxirane Europe Inc.
(100% by Oxirance International)
Oxirane Europe Incorporated
(100% by Oxirane International)
Oxirane Export Sales Company
(100% by Oxirane Chemical Company)
Oxirane Funding Company (a partnership)
(50% by ARCO & 50% by Megol Princeton Corp.)
Oxirane Industries (a partnership)
(65% by Oxirane Chemical Company (Channelview) and 35% by Arco Polymers Chemical Corporation)
Oxirane International (a partnership)
(50% by Arco Princeton Corporation & 50% by Megol Corporation)
Oxirane Overseas Corporation
(100% by Oxirane Chemical Company (Channelview))
Oxirane Technology (Japan) Company (a partnership)
(50% by ARCO & 50% by Arco Princeton Corp.)
Pacific Marine Oil Company
Palomar Land Company
Panamericana de Valvulas, S.A. de C. V.
(100% by Arilan, S.A. de C. V.)
Pan American Petroleum Company of California
R. N. Parsons & Son, Inc.
Patroon Fuels, Inc.
Philadelphia Tankers, Inc.
Prestige Stations, Inc.
William C. Pullen, Inc.
(100% by Major Petroleum Company)
Quality Energy Systems, Inc.
(100% by Northrup Incorporated)
Quiggin & Son, Inc.
(100% by by Airtron)
E. J. Read & Sons, Inc.
(100% by Griffith-Consumers Company)
Reno Junction Development, Inc.
Richfield Athabasca Petroleum Company
Richfield Iranian Offshore Petroleum Company
Richfield Oil Corporation
Richfield U. K. Petroleum, Limited
Rio Grande Gasoline Company
Rocket Oil Company
Rodas Exploration Corporation
Rosco, Inc.
Russell Coal & Oil Company, Inc.
(100% by Buckley & Scott Co.)
S. R. Participacoes Ltda.
Santa Cruz Exploration Corporation
Schultz, Doyle & Stoddard, Inc.
(100% by Buckley & Scott Co.)
Sherman Equipment Corporation
Silva Exploration Corporation
Sinclair Deutschland Erdol Gesellschaft
(100% by Sinclair International Oil Company)
Sinclair International Oil Company
Sinclair Netherlands Oil Company
(100% by Sinclair International Oil Company)
Sinclair Transportation Company Limited
Sinclair (U.K.) Oil Company Limited
(100% by SIOC)
Staples-Savard, Inc.
(100% by Buckley & Scott Co.)
Stingray Tanker Corporation
Tanker Transport, Inc.
Tankers Leasing Corporation
Thunder Basin Coal Company
Tooele Valley Railway Company
Truflame of Carrollton, Inc.
The Wat Tyler Co., Inc.
(100% by Buckley & Scott Co.)
Venezuelan Atlantic Refining Company
H. K. Wallace, Inc.
(100% by Airtron, Inc.)
Walworth Company
(100% by Arilan, S.A. de C. V.)
West Elk coal Company, Inc.
Willet Limited
Wisconsin Centrifugal, Incorporated
Wright Oil Co., Inc.
(100% by Buckley & Scott Co.)

3. Wholly owned subsidiaries of the Anaconda Company. The address of the Anaconda Company principal office is 555 17th Street, Denver, Colorado 80202:

Almag Extrusion Company
Anacobre Inc.
(100% by Industrias Nacobre, S.A. de C. V.)
Anacom Co.
Anaconda Aluminum Company
Anaconda Arizona, Inc.
Anaconda Australia Inc.
Anaconda Bauxite, S.A.
(100% by Anaconda Shannon Company)
Anaconda B.V.
Anaconda Canada Exploration Ltd.
Anaconda Chile, Inc.
The Anaconda Company
Anaconda Holland B.V.
Anaconda International Corporation
Anaconda-Iran, Inc.
(100% by Anaconda International Corporation)
Anaconda Ireland Company
(100% by Anaconda Aluminum Company)
Anaconda Jamaica Inc.
(100% by Anaconda International Corporation)
Anaconda Properties Company
Anaconda Shannon Company
Andes del Peru
Arcomex, S.A. de C. V.

(100% by Grupo Condumex, S.A.)
Arelex, S.A. de C. V.
(100% by Grupo Condumex, S.A.)
The British American Metals Company, Limited
Butte, Anaconda & Pacific Railway Company
Centroamericana de Cobre, S.A.
(100% by Industrias Nacobre, S.A. de C.V.)
Cobre de Hercules, S.A.
Communication Specialties, Inc.
Compania Minera Don Ricardo S.A. de C. V.
(100% by Compania Minera de Cananea, S.A.)
Compania Minera Tenacobre, S.A.
(100% by Compania Minera de Cananea, S.A.)
Conductores Guadalajara, S.A.)
(100% by Grupo Condumex, S.A.)
Condumex, S.A.
(100% by Grupo Condumex, S.A.)
Condutel, S.A. de C. V.
(100% by Grupo Condumex, S.A.)
Cranston Properties, Inc.
Dexter de Mexico, S.A.
(100% by Industrias Nacobre, S.A. de C. V.)
Empaquetadora de Desperdicios, S.A.
(100% by Industrias Nacobre, S.A. de C.V.)
Estrategia en Mercadotecnia, S.A.
(100% by Industrias Nacobre, S.A. de C.V.)
Face, S.A. de C.V.
(100% by Grupo Condumex, S.A.)
Indael, S.A. de C.V.
(100% by Grupo Condumex, S.A.)
Intalmex, S.A.
(100% by Grupo Condumex, S.A.)
Lingobronce, S.A.
(100% by Industrias Nacobre, S.A. de C.V.)
Lugatom, S.A.
(100% by Promociones Industriales Mexicanas, S.A.)
Macopel, S.A. de C.V.
(100% by Grupo Condumex, S.A.)
Manguera Flex, S.A. de C.V.
(100% by Industrias Nacobre, S.A. de C.V.)
Nacional de Cobre, S.A.
(100% by Industrias Nacobre, S.A. de C.V.)
Raritan Terminal and Transportation Company
Salmat, S.A. de C.V.
(100% by Grupo Condumex, S.A.)
Santa Maria Development Company, S.A.
Servicios Condumex, S.A. de C.V.
(100% by Grupo Condumex, S.A.)
Servicios Industriales Nacobre, S.A.
(100% by Industrias Nacobre, S.A. de C.V.)
Teosmex, S.A.
(100% by Grupo Condumex, S.A.)
Topaz Beryllium Company

1. Parent corporation: Baskin-Robbins Ice Cream Company, 31 Baskin-Robbins Place, P.O. Box 1200, Glendale, California 91209.

2. Subsidiaries: Baskin-Robbins, Inc., 31 Baskin-Robbins Place, P.O. Box 1200, Glendale, California 91209, with manufacturing facilities at:

Baskin-Robbins, Inc., 1119 S. Victory Blvd., Burbank, CA 91502
Baskin-Robbins, Inc., 425 Main Street North, Southbury, CT 06488
Baskin-Robbins, Inc., 1918 Texas Avenue, Bryan, TX 77801
Baskin-Robbins, Inc., 1017 Locust Street, Owensboro, KY 42301
Flavor Forces, Inc., 1001 S. Victory Blvd., Burbank, CA 91502

1. Parent corporation and address of principal office: Carolina Enterprises, Inc., Tarboro, NC.

2. Wholly-owned subsidiaries which will participate in the operations and State(s) of incorporation:

Empire of Carolina, Inc., 41 Madison Ave., New York, NY 10010
Marx Toys Ltd., P.O. Box 2121, Rocky Mount, NC 27801

1. Parent corporation: CMC, Inc., 501 25th Avenue North, Nashville, Tennessee 37202.

2. Wholly-owned subsidiaries: (a) Cumberland Freight Line, Inc., 501 25th Avenue North, Nashville, Tennessee 37202.

1. Parent corporation and address of principal office: General Mills, Inc., P.O. Box 1113, Minneapolis, MN 55440.

2. Wholly-owned subsidiaries and addresses of their respective principal offices:

a. Casa Gallardo, Inc., 11715 Administrative Drive, St. Louis, MO 63141
b. CPG Products Corp., P.O. Box 1113, Minneapolis, MN 55440.
c. Eddie Bauer, Inc., 15010 Northeast 36th Street, Redmond, WA 98052
d. Fashion Flair, Inc., 498 Seventh Avenue, New York, NY 10018
e. Foot-Joy, 144 Field Street, Brockton, MA 02403
f. General Mills Apparel Corporation, 34th Floor, Rockefeller Center, 630 5th Avenue, New York, NY
g. General Mills Products Corp., P.O. Box 1113, Minneapolis, MN 55440.
h. General Mills Restaurant Group, Inc., P.O. Box 1431, Orlando, FL 32802
i. Good Mark Foods, Inc., P.O. Box 18300, Raleigh, NC 27619
j. H. E. Harris & Company, Inc., 645 Summer Street, Boston, MA 02210
k. LeeWards Creative Crafts, Inc., 1200 St. Charles Road, Elgin, IL 60120
l. Lord Jeff Knitting Co., Inc., 10 Maple Street, Norwood, NJ 07648
m. Louise's Home Style Ravioli Company, 370 Commercial Street, Malden, MA 02148
n. Pioneer Products, Inc., 808 Southwest 12th Street, P.O. Box 279, Ocala, FL 32670
o. Saluto Foods Product Corp., P.O. Box 967, Benton Harbor, MI 49022
p. Ship'n Shore Products Corp., Bridgewater-at-Aston, Aston, PA 19014
q. The Talbots, Inc., 175 Beal Street, Hingham, MA 02043
r. E. H. Thompson Company, P.O. Box 1005, Jackson, FL 32201
s. Trans World Seafood, Inc., 800 Third Avenue, 14th Floor, New York NY 10016
t. Wallpapers Inc., P.O. Box 5016, Hayward, CA 94540
u. Wallpapers To Go, Inc., P.O. Box 5016, Hayward, CA 94540
v. York Steak House Systems, Inc., P.O. Box 27975, Columbus, OH 43227
w. General Mills Canada, Ltd., 1330 Martin Grove Road, Rexdale, Ontario, Canada M9W 4X4

3. Divisions of parent corporation and addresses of their principal offices:

a. David Crystal Division, 498 Seventh Avenue, New York, NY 10018
b. Dunbar, 601 Fulton Street, Berne, IN 46711
c. The Donruss Division, 975 Kansas Street, P.O. Box 2038, Memphis, TN 38106
d. The Gorton Division, 327 Main Street, P.O. Box 361, Gloucester, MA 01930
e. Kittinger, 1893 Elmwood Avenue, Buffalo, NY 14207
f. O-Cel-O, 305 Sawyer Avenue, Tonawanda, NY 14150
g. Pennsylvania House, 137 North Tenth Street, Lewisburg, PA 17837
h. Ship'n Shore Products Corp., Bridgewater-at-Aston, Aston, PA 19014

4. Divisions of wholly-owned subsidiaries and addresses of their principal offices:

a. Fundimensions Division of CPG Products Corp., 2650—23 Mile Road, Mt. Clemens, MI 48043
b. Jessie Jones Division of GoodMark Foods, Inc., P.O. Box 18300, Raleigh, NC 27619
c. Kenner Products Division of CPG Products Corp., 1014 Vine Street, Cincinnati, OH 45202
d. Lark Luggage Division of CPG Products Corp., 350 Fifth Avenue, New York, NY 10001
e. Monet Division of General Mills Products Corp., P.O. Box 378, Murray Hill Station, New York, NY 10016
f. Parker Brothers Division of CPG Products Corp., P.O. Box 1000, Beverly, MA 01915
g. Red Lobster Inns of America, a Division of General Mills Restaurant Group, Inc., P.O. Box 13330, Orlando, FL 32809
h. R & R Stamp Division of H. E. Harris & Co., Inc., 645 Summer Street, Boston, MA 02210
i. Slim Jim Division of GoodMark Foods, Inc., P.O. Box 18300, Raleigh, NC 27619
j. Tom's Distribution, Inc., CPG Products Corp., P.O. Box 60, Columbus, GA 31902
k. Tom's Foods Division of CPG Products Corp., P.O. Box 60, Columbus, GA 31902
l. Yoplait, USA of General Mills Products Corp, P.O. Box 9329, Minneapolis, MN 55440
m. Yoplait USA Division of General Mills Products Corp., P.O. Box 9329, Minneapolis, MN 55440
o. Blue Water Seafoods Division of General Mills, Canada, Ltd., 1640 Crescent, Lachine, Montreal, Quebec, Canada H8T 2N1
p. Eddie Bauer Division of General Mills Canada, Ltd., 1020 Lawrence Avenue West, Toronto, Ontario, Canada MCA 1C3
q. Impressions Division of General Mills Canada, Ltd., 7883 Keele Street, Concord, Ontario, L4K 1B7 Canada
r. Lancia-Bravo Foods Division of General Mills Canada, Ltd., 58A Hook Avenue, Toronto, Ontario M6P 1T5 Canada
s. Parker Brothers Division of General Mills Canada, Ltd., P.O. Box 600, 7883 Keele Street, Concord, Ontario L4K 1B7 Canada.

1. Parent Corporation: Mattel Incorporated, 5150 Rosecrans Ave., Hawthorne, California 90250.

2. Subsidiary(s) to participate in the operation:

(A) Standard Plastic Products, Inc., 450 Oak Tree Avenue, South Plainfield, New Jersey 07080
(B) Ringling Bros.—Barnum & Bailey, Circus World Inc., Orlando, Florida 32801
(C) Ringling Bros.—Barnum & Bailey, Combined Shows, Inc., 3201 New Mexico Ave., N.W., Washington, D.C. 20016
(D) H & H Plastics Company Inc., 7701 E. Compton Blvd., Paramount, California 90723
(E) A & A Die Casting Co., 12901 South Western, Gardena, California 90249
(F) Mattel Plastics Purchasing, 7617 E. Compton Blvd., Paramount, California 90723
(G) Monogram Models, Inc., 8601 Waukegan Road, Morton Grove, Illinois 60053

1. Parent corporation and address of principal office: Memphis Compress & Storage Co., Inc., 2350 Florida Street, Memphis, TN 38109.

2. Wholly-owned subsidiaries which all participate in the operations, and the address of their respective principal office:

a. Wilson Compress & Storage Co., Inc., 2350 Florida Street, Memphis, TN 38109
b. Shelby Delivery Service, Inc., 2350 Florida Street, Memphis, TN 38109
c. Chickasaw Warehouse Company, Inc., 2350 Florida Street, Memphis, TN 38109
d. Alexander International, Inc., 2350 Florida Street, Memphis, TN 38109

1. Parent Corporation: Morton Shoe Companies, Inc.

2. Wholly-Owned subsidiaries:

Morton's Shoe Stores, Inc.
Laconia Shoe Company, Inc.
Hampshire Manufacturing Corporation
Paris Shoe Company, Inc.

1. Parent Corporation and address: Southern Railway Company, 920 15th Street, N.W., Washington, D.C. 20005

2. Wholly-owned subsidiaries which will participate in intercorporate hauling operations are:

The Alabama Great Southern Railroad Company
Central Of Georgia Railroad Company
The Cincinnati, New Orleans and Texas Pacific Railway Company
Georgia Southern and Florida Railway Company
Norfolk Southern Railroad Company
Atlantic and East Carolina Railway Company
Birmingham Terminal Company
Camp Lejeune Railroad Company
Chattanooga Station Company
The Georgia Northern Railway Company
Interstate Railroad Company
Live Oak, Perry and South Georgia Railroad Company
Louisiana Southern Railway Company
New Orleans Terminal Company
St. Johns River Terminal Company
Tennessee, Alabama & Georgia Railroad Company
Tennessee Railway Company
Airforce Pipeline, Inc.
Arrowood-Southern Company
Arrowood-Southern Executive Park, Inc.
The Atlanta and Charlotte Air Line Railway Company
Atlanta Terminal Company
Blue Ridge Railway Company
Charlotte-Southern Corporation
Chattanooga Terminal Railroad Company
Citico Realty Company
Danville and Western Railroad Company
Durham and South Carolina Railroad Company
Elberton Southern Railroad Company
The Georgia Midland Railroad Company
Lenoir Car Works
Macon Terminal Company
Memphis and Charleston Railway Company
The National Investment Company
Norfolk Southern Industrial Development Corp.
Ocean Steamship Company of Savannah
Southern Rail Terminals, Inc.
Southern Rail Terminals of Alabama, Inc.
Southern Rail Terminals Of North Carolina, Inc.
Southern Railway-Carolina Division
Southern Region Coal Transport, Inc.
Southern Region Distribution Services, Inc.
Southern Region Industrial Realty, Inc.
Southern Region Investment Company
Southern Region Materials Supply, Inc.
Southern Region Motor Transport, Inc.
Terminal Properties, Inc.
Virginia and Southwestern Railway Company

1. Parent corporation and address of principal office: Trinity Bag & Paper Co., Inc., 529 5th Avenue, New York, NY 10017.

2. Wholly-owned subsidiaries which will participate in the operations, and address of their respective principal offices:

Terminal Paper Bag Co., Inc., P.O. Box 47, Yulee, FL 32097
Trinity Midwest Corporation, P.O. Box 301, Plainfield, IL 60544

Agatha L. Mergenovich,
Secretary.

[FR Doc. 81-1874 Filed 1-15-81; 8:45 am]
BILLING CODE 7035-01-M

Motor Carriers; Permanent Authority Decisions; Decision-Notice

The following applications, filed on or after July 3, 1980, are governed by Special Rule 247 of the Commission's Rules of Practice, see 49 CFR 1100.247. Special rule 247 was published in the Federal Register on July 3, 1980, at 45 FR 45539. For compliance procedures, refer to the Federal Register issue of December 3, 1980, at 45 FR 80109.

Persons wishing to oppose an application must follow the rules under 49 CFR 1100.247(B). Applications may be protested *only* on the grounds that applicant is not fit, willing, and able to provide the transportation service and to comply with the appropriate statutes and Commission regulations. A copy of any application, together with applicant's supporting evidence, can be obtained from any applicant upon request and payment to applicant of $10.00.

Amendments to the request for authority are not allowed. Some of the applications may have been modified prior to publication to conform to the Commission's policy of simplifying grants of operating authority.

Findings

With the exception of those applications involving duly noted problems (e.g.s., unresolved common control, fitness, water carrier dual operations, or jurisdictional questions) we find, preliminarily, that each applicant has demonstrated its proposed service warrants a grant of the application under the governing section of the Interstate Commerce Act. Each applicant is fit, willing, and able to perform the service proposed, and to conform to the requirements of Title 49, Subtitle IV, United States Code, and the Commission's regulations. Except where noted, this decision is neither a major Federal action significantly affecting the quality of the human environment nor a major regulatory action under the Energy Policy and Conservation Act of 1975.

In the absence of legally sufficient interest in the form of verified statements filed on or before March 2, 1981 (or, if the application later becomes unopposed) appropriate authorizing documents will be issued to applicants with regulated operations (except those with duly noted problems) and will remain in full effect only as long as the applicant maintains appropriate compliance. The unopposed applications involving new entrants will be subject to the issuance of an effective notice setting forth the compliance requirements which must be satisfied before the authority will be issued. Once this compliance is met, the authority will be issued.

Within 60 days after publication an applicant may file a verified statement in rebuttal to any statement in opposition.

To the extent that any of the authority granted may duplicate an applicant's other authority, the duplication shall be construed as conferring only a single operating right.

Note.—All applications are for authority to operate as a motor common carrier in interstate or foreign commerce over irregular routes, unless noted otherwise. Applications for motor contract carrier authority are those where service is for a named shipper "under contract".

Volume No. OP1-662

Decided: January 6, 1981.

By the Commission, Review Board No. 2, Members Chandler, Eaton, and Liberman.

MC 153330F, filed December 29, 1980. Applicant: JERRY E. BIRELEY d.b.a. J.E.B. DRAYAGE, 2715 Palm Ave., Livermore, CA 94550. Representative: Arden Riese, P.O. Box 6087, 319 E. Charter Way, Stockton, CA 95206. Transporting for or on behalf of the United States Government, *general commodities* (except used household goods, hazardous or secret materials, and sensitive weapons and munitions), between points in the U.S.

MC 153331F, filed December 29, 1980. Applicant: SURFACE FREIGHT CORPORATION, 151 Harvard Ave., Stamford, CT 06902. Representative: Leonard A. Jaskiewicz, 1730 M St., N.W., Suite 501, Washington, DC 20036. Transporting *shipments weighing 100 pounds or less* if transported in a motor vehicle in which no one package exceeds 100 pounds, between points in the U.S.

MC 153361F, filed December 17, 1980. Applicant: ACORN TRAFFIC CONSULTANTS, INC., P.O. Box 161, Brentwood, TN 37027. Representative: Henry E. Seaton, 929 Pennsylvania Bldg., 425 13th St., N.W., Washington, DC 20004. As a *broker of general commodities* (except household goods), between points in the U.S.

Volume No. OP1-663

Decided: January 8, 1981.

By the Commission, Review Board No. 2, Members Chandler, Eaton, and Liberman.

MC 147311 (Sub-4F), filed December 18, 1980. Applicant: T & S TRANSPORTATION, INC., 7420 Ranco Rd., P.O. Box 9729, Richmond, VA 23228. Representative: William P. Jackson, Jr., 3426 N. Washington Blvd., P.O. Box 1240, Arlington, VA 22210. Transporting *general commodities*, between Cheviot, Bridgetown, and Miamitown, OH, on the one hand, and, on the other, points in the U.S.

Note.—The purpose of this application is to substitute motor carrier for abandoned rail carrier service.

MC 147660 (Sub-1F), filed December 22, 1980. Applicant: AQUA-TERRA ORGANIC FARMS, INC., 257 Oak St., San Francisco, CA 94102. Representative: Ronald C. Chauvel, 100 Pine St., Suite 2550, San Francisco, CA 94111. Transporting, for or on behalf of the United States Government, *general commodities* (except used household goods, hazardous or secret materials, and sensitive weapons and munitions), between points in the U.S.

Volume No. OP4-194

Decided: January 12, 1981.

By the Commission, Review Board No. 2, Members Chandler, Eaton, and Liberman. (Member Liberman not participating.)

MC 60069 (Sub-24F), filed December 24, 1980. Applicant: BEE LINE MOTOR FREIGHT, INC., 1804 Paul St., Omaha, NE 68102. Representative: Donald L. Stern, Suite 610, 7171 Mercy Rd., Omaha, NE 68106. Transporting *shipments weighing 100 pounds or less* if transported in a motor vehicle in which no one package exceeds 100 pounds, between points in the U.S.

Agatha L. Mergenovich,
Secretary.

[FR Doc. 81-1679 Filed 1-15-81; 8:45 am]
BILLING CODE 7035-01-M

Motor Carrier Permanent Authority Decisions; Decision-Notice

The following applications, filed on or after July 3, 1980, are governed by Special Rule 247 of the Commission's Rules of Practice, see 49 CFR 1100.247. Special Rule 247 was published in the Federal Register of July 3, 1980, at 45 FR 45539. For compliance procedures, refer to the Federal Register issue of December 3, 1980, at 45 FR 80109.

Persons wishing to oppose an application must follow the rules under 49 CFR 1100.247(B). A copy of any application, together with applicant's supporting evidence, can be obtained from any applicant upon request and payment to applicant of $10.00.

Amendments to the request for authority are not allowed. Some of the applications may have been modified prior to publication to conform to the Commission's policy of simplifying grants of operating authority.

Findings

With the exception of those applications involving duly noted problems (e.g., unresolved common control, fitness, water carrier dual operations, or jurisdictional questions) we find, preliminarily, that each applicant has demonstrated its proposed service warrants a grant of the application under the governing section of the Interstate Commerce Act. Each applicant is fit, willing, and able to perform the service proposed, and to conform to the requirements of Title 49, Subtitle IV, United States Code, and the Commission's regulations. Except where noted, this decision is neither a major Federal action significantly affecting the quality of the human environment nor a major regulatory action under the Energy Policy and Conservation Act of 1975.

In the absence of legally sufficient interest in the form of verified statements filed on or before March 2, 1981 (or, if the application later becomes unopposed) appropriate authorizing documents will be issued to applicants with regulated operations (except those with duly noted problems) and will remain in full effect only as long as the applicant maintains appropriate compliance. The unopposed applications involving new entrants will be subject to the issuance of an effective notice setting forth the compliance requirements which must be satisfied before the authority will be issued. Once this compliance is met, the authority will be issued.

On or before March 17, 1981, an applicant may file a verified statement in rebuttal to any statement in opposition.

To the extent that any of the authority granted may duplicate an applicant's other authority, the duplication shall be construed as conferring only a single operating right.

Note.—All applications are for authority to operate as a motor common carrier in interstate or foreign commerce over irregular routes, unless noted otherwise. Applications for motor contract carrier authority are those where service is for a named shipper "under contract".

Volume No. OP1-663

Decided: January 6, 1981.

By the Commission, Review Board No. 1, Members Carleton, Joyce and Jones.

MC 117730 (Sub-63F), filed December 11, 1980. Applicant: KOUBENEC MOTOR SERVICE, INC., Route No. 7, Huntley, IL 60142. Representative: Stephen H. Loeb, Suite 2027, 33 North LaSalle St., Chicago, IL 60602. Transporting *general commodities* (except classes A and B explosives and household goods as defined by the Commission), between points in the U.S., under continuing contract(s) with American Cyanamid Company of Wayne, NJ.

MC 140231 (Sub-11F), filed October 16, 1980. Applicant: LUMBER DISTRIBUTORS, INC., Building 149 Marsh Street, Southside, Port Newark, NJ 07114. Representative: Morton E. Kiel, Suite 1632, 2 World Trade Center, New York, NY 10048. Transporting (1) *construction materials, equipment and supplies*, (2) *materials, equipment and supplies* used in the manufacture and distribution of commodities in (1) above, (3) *lumber and wood products* as described in Item 24 of the Standard Transportation Tariff Code, (4) *metals*, (5) *minerals*, and (6) *commodities which because of size or weight*, require the

use of special equipment, between points in ME, VT, NH, MA, RI, CT, NY, NJ, PA, DE, MD, DC, VA, NC, WV and OH.

MC 148751 (Sub-6F) (Republication), filed November 6, 1980, previously noticed in the Federal Register issue of December 2, 1980. Applicant: LINCOLN FREIGHT LINES, INC., P.O. Box 427, Lapel, IN 46051. Representative: Norman R. Garvin, 1301 Merchants Plaza, East Tower, Indianapolis, IN 46204. Transporting (1) *paper and paper articles*, and (2) *materials, equipment and supplies* used in the manufacture and distribution of the commodities in (1) above (except commodities in bulk), between points in IL and MO, on the one hand, and, on the other, points in IN, KY, MI, MO, and OH.

Note.—The purpose of this republication is to add points in IL as a portion of the base territorial description.

MC 152171 (Sub-2F), filed December 22, 1980. Applicant: C & L TRUCKING, INC., P.O. Box 409, Judsonia, AR 72081. Representative: Timothy C. Miller, Suite 301, 1307 Dolley Madison Blvd., McLean, VA 22101. Transporting *general commodities* (except classes A and B explosives, and household goods as defined by the Commission), between points in the U.S., under continuing contract(s) with American Cyanamid Company of Wayne, NJ.

Volume No. OP1-001

Decided: January 7, 1981.

By the Commission, Review Board No. 2, Members Chandler, Eaton, and Liberman.

MC 200 (Sub-517F), filed December 16, 1980. Applicant: RISS INTERNATIONAL CORPORATION, P.O. Box 100, 215 W. Pershing Rd., Kansas City, MO 64141. Representative: H. Lynn Davis (same address as applicant). Transporting *lumber and lumber products*, between St. Joseph, MO, and Ilion, NY.

MC 200 (Sub-520F), filed December 22, 1980. Applicant: RISS INTERNATIONAL CORPORATION, P.O. Box 100, 215 W. Pershing Rd., Kansas City, MO 64141. Representative: H. Lynn Davis (same address as applicant). Transporting *general commodities* (except classes A and B explosives and household goods as defined by the Commission), between points in Hudson County, NJ, on the one hand, and, on the other, points in Milwaukee County, WI.

MC 7840 (Sub-37F), filed December 16, 1980. Applicant: ST. LAWRENCE FREIGHTWAYS, INC., 650 Cooper St., Watertown, NY 13601. Representative: E. Stephen Heisley, 805 McLachen Bank Bldg., 666 Eleventh St., NW, Washington, DC 20001. Transporting (1) *paper, paper products, plastics, plastic articles, soap, and soap dispensers*, and (2) *materials, equipment, and supplies* used in the manufacture and distribution of the commodities in (1) above, between points in the U.S., restricted to traffic originating at or destined to the facilities of Crown Zellerbach Corporation.

MC 9291 (Sub-18F), filed December 15, 1980. Applicant: CARROL BALL TRANSPORT, INC., P.O. Box 53, Centerville, KS 66014. Representative: Clyde N. Christey, Kansas Credit Union Bldg., 1010 Tyler, Suite 110L, Topeka, KS 66612. Transporting *general commodities* (except classes A and B explosives and household goods as defined by the Commission), between points in the U.S., under continuing contract(s) with Hoover Universal, Incorporated, of Georgetown, KY.

MC 19201 (Sub-141F), filed December 18, 1980. Applicant: PENNSYLVANIA TRUCK LINE, INC., 49th and Parkside Ave., Philadelphia, PA 19131. Representative: James V. Fleming III (same address as applicant). Transporting *general commodities* (except classes A and B explosives and household goods as defined by the Commission), between points in CT, DE, IL, IN, KY, MD, MA, MI, MO, NJ, NY, OH, PA, RI, VA, WV, and DC, restricted to traffic having a prior or subsequent movement by rail or water.

MC 22301 (Sub-30F), filed December 16, 1980. Applicant: SIOUX TRANSPORTATION CO., INC., 1230 Steuben St., P.O. Box 3068, Sioux City, IA 51102. Representative: Michael J. Ogborn, P.O. Box 82028, Lincoln, NE 68501. Transporting *rubber and rubber products*, between Lincoln, NE, and Sun Prairie, WI.

MC 29910 (Sub-314F), filed December 22, 1980. Applicant: ABF FREIGHT SYSTEM, INC., 301 South Eleventh St., Fort Smith, AR 72901. Representative: Joseph K. Rever (same address as applicant). Transporting *chemicals and related products*, between Houston, TX, on the one hand, and, on the other, points in CT, IL, IN, IA, KY, MA, MI, MO, NJ, NY, OH, PA, RI, and WI.

MC 44801 (Sub-19F), filed December 11, 1980. Applicant: DICK HARRIS & SON TRUCKING CO., INC., P.O. Box 10277, Lynchburg, VA 24506. Representative: Eugene M. Malkin, Suite 1832, 2 World Trade Center, New York, NY 10048. Transporting (1) *malt beverages and wine* (except in bulk), and (2) *materials and supplies* used in the distribution of the commodities in (1) above between points in VA, on the one hand, and, on the other, those points in the U.S. in and east of WI, IL, KY, TN, and MS.

MC 60430 (Sub-31F), filed December 9, 1980. Applicant: FRIEDMAN'S EXPRESS, INC., P.O. Box 480, Wilkes-Barre, PA 18703. Representative: Maxwell A. Howell, 1100 Investment Bldg., 1511 K St., N.W., Washington, DC 20005. Over regular routes, transporting *general commodities* (except classes A and B explosives, household goods as defined by the Commission, and commodities in bulk), (1) between Newark, NJ, and Stroudsburg, PA, from Newark over US Hwy 22 to junction NJ Hwy 31, then over NJ Hwy 31 to junction US Hwy 202, then over US Hwy 202 to junction PA Hwy 611, then over PA Hwy 611 to Stroudsburg, PA, and return over the same route, (2) between New Hope, PA, and Riegelsville, NJ, from New Hope over PA Hwy 32 to Riegelsville, PA then across the Delaware River to Riegelsville, NJ, and return over the same route, serving the off-route points on Stockton and Milford, NJ, and points in Bucks County, PA, and (3) between Philadelphia and Doylestown, PA, over US Hwy 611, serving all intermediate points in (1)–(3) above.

Note.—Applicant intends to tack the above requested authority with its existing regular-route operations.

MC 78400 (Sub-99F), filed December 19, 1980. Applicant: BEAUFORT TRANSFER CO. a corporation, P.O. Box 151, Gerald, MO 63037. Representative: Ernest A. Brooks II, 1301 Ambassador Bldg., St. Louis, MO 63101. Transporting (1) *vinyl*, and (2) *materials, equipment and supplies* used in the manufacture and distribution of printed vinyl, between Union, MO, on the one hand, and, on the other, points in PA, NM, LA, FL, VA, and CA.

MC 114211 (Sub-466F), filed December 16, 1980. Applicant: WARREN TRANSPORT, INC., P.O. Box 420, Waterloo, IA 50704. Representative: Adelor J. Warren (same address as applicant). Transporting *general commodities* (except classes A and B explosives), between points in Polk County, IA, on the one hand, and, on the other, points in the U.S.

MC 114211 (Sub-491F), filed December 16, 1980. Applicant: WARREN TRANSPORT, INC., P.O. Box 420, Waterloo, IA 50704. Representative: Adelor J. Warren (same address as applicant). Transporting *such commodities* as are dealt in or used by agricultural equipment and industrial equipment dealers and manufacturers (except commodities in bulk), between Armstrong, IA, on the one hand, and on the other, points in the U.S.

MC 119741 (Sub-288F), filed December 15, 1980. Applicant: GREEN FIELD TRANSPORT CO., INC., 1515 Third

Ave., NW., P.O. Box 1235, Fort Dodge, IA 50501. Representative: D. L. Robson (same address as applicant). Transporting *mobile home interior furnishings*, from Grand Prairie, TX, Pine Bluff, AR, and Memphis, TN, to Newton, KS.

MC 129600 (Sub-37F), filed December 15, 1980. Applicant: POLAR TRANSPORT, INC., 176 King St., Hanover, MA 02339. Representative: Alton C. Gardner (same address as applicant). Transporting (1) *foodstuffs*, (2) *meats, meat products, and meat byproducts, and articles distributed by meat-packing houses* (except foodstuffs), and (3) *materials, equipment and supplies* used in the manufacture and distribution of the commodities in (1) and (2) above, between points in the U.S., under continuing contract(s) with Swift Independent Packing Company, of Chicago, IL.

MC 129600 (Sub-38F), filed December 23, 1980. Applicant: POLAR TRANSPORT, INC., 176 King Street, Hanover, MA 02339. Representative: Alton C. Gardner, 176 King Street, Hanover, MA 02339. Transporting *general commodities* (except household goods as defined by the Commission and classes A and B explosives), between points in the U.S., under continuing contract(s) with Ascott Associates Co., of Malden, MA.

MC 134551 (Sub-22F), filed December 30, 1980. Applicant: LANTER REFRIGERATED DISTRIBUTING CO., No. 3 Caine Dr., Madison, IL 62060. Representative: Ernest A. Brooks II, 1301 Ambassador Bldg., St. Louis, MO 63101. Transporting *pharmaceuticals, and such commodities* as are dealt in chain food, grocery, and discount stores, between points in AR, IA, IL, IN, KS, KY, LA, MI, MO, MS, NE, OH, OK, TN, TX, and WI.

MC 135410 (Sub-116F), filed December 15, 1980. Applicant: COURTNEY J. MUNSON, d.b.a. MUNSON TRUCKING, North 6th Street Road, Monmouth, IL 61462. Representative: Daniel O. Hands, Suite 200, 205 W. Touhy Ave., Park Ridge, IL 60068. Transporting (1) *meat and packing-house products*, and (2) *materials, equipment and supplies* used in the manufacture and distribution of meat (except commodities in bulk), between points in Des Moines and Lee Counties, IA, on the one hand, and, on the other, points in IL, IN, MN, MO, NE, and WI.

MC 135861 (Sub-91F), filed December 29, 1980. Applicant: LISA MOTOR LINES, INC., P.O. Box 4550, Fort Worth, TX 76106. Representative: Billy R. Reid, 1721 Carl St., Fort Worth, TX 76103. Transporting *sugar*, between points in the U.S., under continuing contract(s) with Godchaux-Henderson Sugar Co., Inc., of Reserve, LA.

MC 142900 (Sub-3F), filed December 24, 1980. Applicant: ED MARKS TRUCKING, INC., 1305 West Idaho St., Kalispell, MT 59901. Representative: Edward L. Marks (same address as applicant). Transporting *lumber, lumber products, and wood products*, from points in MT to points in UT.

MC 146560 (Sub-5F), filed December 22, 1980. Applicant: FREIGHT SYSTEMS, INC., 2300 James Street, Suite 1E, Bellingham, WA 98225. Representative: Alan P. Sherbrooke, 30th Floor, The Bank of California Center, Seattle, WA 98164. Transporting *health and personal care products*, between points in the U.S., under continuing contract(s) with Northwestern Drug Co., of Auburn, WA.

MC 147770 (Sub-3F), filed December 16, 1980. Applicant: WEST AMERICAN TRANSPORT, INC., 1260 West North Temple, Salt Lake City, UT 84116. Representative: Mark K. Boyle, 10 Broadway Bldg., Suite 400, Salt Lake City, UT 84101. Transporting (1) *farm products, metal products, and machinery*, and (2) *parts and supplies*, for the commodities in (1) above, between points in the U.S.

MC 149500 (Sub-1F), filed December 15, 1980. Applicant: INTERMODAL SERVICES, INC., 11650 Courthouse Blvd., Inver Grove Heights, MN 55075. Representative: Samule Rubenstein, P.O. Box 5, Minneapolis, MN 55440. Transporting *agricultural baler twine*, from Albert Lea, MN, to points in the U.S.

MC 150211 (Sub-10F), filed December 22, 1980. Applicant: ASAP EXPRESS, INC., P.O. Box 3250, Jackson, TN 38301. Representative: Jerry Ross (same address as applicant). Transporting *General commodities* (except classes A and B explosives, household goods as defined by the Commission, Commodities in bulk, and those requiring special equipment), between points in Chester County, TN, on the one hand, and, on the other, points in IN.

MC 150231 (Sub-6F), filed December 29, 1980. Applicant: MAVERICK TRANSPORTATION, INC., 1803 East Broad St., Texarkana, AR 75502. Representative: Steve Williams (same address as applicant). Transporting *iron and steel articles*, between points in AR, on the one hand, and, on the other, points in AL, IL, IN, IA, KY, LA, MI, MN, MS, MO, NE, OH, OK, PA, TN, TX, and WI.

MC 151471 (Sub-1F), filed December 12, 1980. Applicant: STEINBECKER BROS., INC., P.O. Box 852, Greeley, CO 80632. Representative: Charles J. Kimball, 350 Capitol Life Center, 1600 Sherman St., Denver, CO 80203. Transporting *meats, meat products, and meat byproducts, and articles distributed by meat-packing houses* as described in Sections A and C of Appendix I to the report in *Descriptions in Motor Carrier Certificates*, 61 M.C.C. 209 and 766 (except hides and commodities in bulk), between points in the U.S., under continuing contract(s) with Denver Meat Company, Inc., of San Jose, CA.

MC 151930 (Sub-1F), filed December 16, 1980. Applicant: SAMUEL BRUSCEMI, d.b.a., NEWCOMER TRUCKING CO., 1200 Island Ave., McKees Rocks, PA 15136. Representative: John A. Pillar, 1500 Bank Tower, 307 Fourth Ave., Pittsburgh, PA 15222. Transporting *general commodities*, (except classes A and B explosives, and household goods as defined by the Commission), between Pittsburgh, PA, on the one hand, and, on the other, points in Greene, Fayette, and Washington Counties, PA.

MC 152210 (Sub-1F), filed December 11, 1980. Applicant: WESTERN TANK SERVICE, d.b.a., NORTHWEST TANK SERVICE, P.O. Box. 84282, Seattle, WA 98124. Representative: Boyd Hartman, P.O. Box 3041, Bellevue, WA 98009. Transporting *industrial waste*, between points in ID, OR, WA, and UT.

MC 152621 (Sub-1F), filed December 24, 1980. Applicant: RUSH TRANSPORT, INC., Mapletree Industrial Park, P.O. Box 272, Palmer, MA 01069. Representative: James M. Burns, 1383 Main St.—Suite 413, Springfield, MA 01103. Transporting (1) *plastic articles* and (2) *materials, equipment and supplies* used in the manufacture and distribution of plastic articles, between Stratford, CT, Covington, GA, Bakersfield and Woodland, CA, Frankfort and Jacksonville, IL, Lowell, MA, Washington, NJ, Shawnee, OK, Canandaigua, and Macedon, NY, and Temple, TX, on the other hand, and, on the other, points in the U.S.

MC 153100F, filed December 9, 1980. Applicant: MT. STATE BIT SERVICE, INC., P.O. Box 4295, Morgantown, WV 26505. Representative: Brooks E. Smith, P.O. Box 660, Morgantown, WV 26505. Transporting *ammonium nitrate fertilizer and oxidizer*, between points in the U.S., under continuing contract(s) with Hercules Incorporated, of Wilmington, DE.

MC 153161 (Sub-1F), filed December 19, 1980. Applicant: WAYNE SOLVENTS, INC., 120 Grace Avenue, Newark, NY 14513. Representative:

Raymond A. Richards, 35 Curtice Pk., Webster, NY 14580. Transporting (1) *chemicals, chemical products, petroleum products, solvents, mineral spirits, and metals,* and (2) *materials, equipment and supplies* used in the manufacture and distribution of the commodities in (1) above, between points in the U.S., under continuing contract(s) with Chemical & Metallurgical Enterprises, Inc., Wayne Solvents, Inc., and Arcade Chemical Industries, Inc., of Newark, NY.

MC 153360, filed December 19, 1980. Applicant: JAY R. RUHL, 525 B. West 29th Div. Hwy., Lititz, PA 17543. Representative: John W. Metzger, 49 North Duke Street, Lancaster, PA 17602. Transporting *agricultural limestone,* (1) from points in Lancaster County, PA, to points in DE, MD, and NJ, and (2) from Viola and laurel, DE, to points in MD and VA.

Volume No. OP1-004

Decided: January 7, 1981

By the Commission, Review Board No. 3, Members Parker, Fortier and Hill.

MC 135410 (Sub-110F), filed November 19, 1980, and previously noticed in FR issue of December 10, 1980. Applicant: COURTNEY J. MUNSON, d.b.a. MUNSON TRUCKING, North 6th St., Road, P.O. Box 266, Monmouth, IL 61462. Representative: Daniel O. Hands, Suite 200, 205 W. Touhy Ave., Park Ridge, IL 60068. Transporting *such commodities* as are dealt in or used by bakeries (except commodities in bulk), between Wheeling, IL, on the one hand, and, on the other, points in FL, IA, IN, MI, MN, NE, and WI.

Note.—This republication shows Wheeling, IL as the origin or destination point.

MC 145441 (Sub-125F), filed November 28, 1980, and previously noticed in FR issue of December 11, 1980. Applicant: A.C.B. TRUCKING, INC., P.O. Box 5130, North Little Rock, AR 72119. Representative: Ralph E. Bradbury (same address as applicant). Transporting *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), between the facilities of Foremost McKesson, Inc. at points in the U.S., on the one hand, and, on the other, points in the U.S.

Note.—This republication clarifies the territorial description.

Volume OP1-005

Decided: January 8, 1981.

By the Commission, Review Board, No. 2, Members Chandler, Eaton, and Liberman.

MC 200 (Sub-524F), filed December 18, 1980. Applicant: RISS INTERNATIONAL CORP., P.O. Box 100, 215 W. Pershing Road, Kansas City, MO 64141. Representative: H. Lynn Davis (same address as applicant). Transporting (1) *food and related products,* and (2) *materials, equipment, and supplies* used in the manufacture and distribution of the commodities in (1) above, between points in Grand and Hall Counties, NE, on the one hand, and, on the other, points in the U.S.

MC 200 (Sub-525F), filed December 18, 1980. Applicant: RISS INTERNATIONAL CORP., P.O. Box 100, 215 W. Pershing Road, Kansas City, MO 64141. Representative: H. Lynn Davis (same address as applicant). Transporting *metal products,* and *materials, equipment, and supplies* used in the manufacture and distribution of metal products, between points in Marion County, WV, on the one hand, and, on the other, points in AR, OK, and TX.

MC 200 (Sub-526F), filed December 18, 1980. Applicant: RISS INTERNATIONAL CORP., P.O. Box 100, 215 W. Pershing Road, Kansas City, MO 64141. Representative: H. Lynn Davis (same address as applicant). Transporting *general commodities* (except household goods as defined by the Commission and classes A and B explosives), between points in Sangamon County, IL, on the one hand, and, on the other, points in the U.S.

MC 29910 (Sub-317F), filed December 22, 1980. Applicant: ABF FREIGHT SYSTEM, INC, 301 South Eleventh St., Fort Smith, AR 72901. Representative: Joseph K. Reber (same address as applicant). Transporting (1) *paper and paper products,* and (2) *materials and supplies* used in the manufacture and distribution of the commodities in (1) above, between points in Berk County, PA, and Baltimore and Anne Arundel Counties, MD, on the one hand, and, on the other, points in the U.S.

MC 60430 (Sub-32F), filed December 16, 1980. Applicant: FRIEDMAN'S EXPRESS, INC., P.O. Box 460, Wilkes-Barre, PA 18703. Representative: Maxwell A. Howell, 1100 Investment Bldg., 1511 K St., N.W., Washington, DC 20005. Transporting *general commodities* (except classes A and B explosives, household goods as defined by the Commission, and commodities in bulk), between Philadelphia, PA, on the one hand, and, on the other, Allentown, Bloomsburg, Easton, Reading and Scranton, PA.

Note.—Applicant intends to tack the above requested authority with its existing regular-route authority.

MC 82841 (Sub-297F), filed December 18, 1980. Applicant: HUNT TRANSPORTATION, INC., 10770 "I" St., Omaha, NE 68127. Representative: Donald L. Stern, Suite 610, 7171 Mercy Rd., Omaha, NE 68106. Transporting (1) *iron and steel articles,* and (2) *materials and equipment* used in the manufacture and distribution of the commodities in (1) above, between points in Middlesex County, NJ, on the one hand, and, on the other, those points in the U.S. in and east of TX, OK, KS, NE, IA, and MN.

MC 82841 (Sub-298F), filed December 18, 1980. Applicant: HUNT TRANSPORTATION, INC., 10770 "I" St., Omaha, NE 68127. Representative: Donald L. Stern, 7171 Mercy Rd., Suite 610, Omaha, NE 68106. Transporting (1) *glass and glass products,* and (2) *materials, equipment, and supplies* used in the manufacture and distribution of the commodities in (1) above, between points in the U.S., restricted to traffic originating at or destined to the facilities of Libby-Owens-Ford Company.

MC 109631 (Sub-19F), filed December 31, 1980. Applicant: BOB YOUNG TRUCKING, INC., Schoenersville Road at Industrial Drive, Bethlehem, PA, 18017. Representative: Alan Kahn, 1430 Land Title Bldg., Philadelphia, PA 19110. Transporting *malt beverages and malt beverage containers,* between the facilities of Schaefer Brewing Company at Fogelsville, PA, on the one hand, and, on the other, points in CT, DE, FL, ME, MD, MA, NH, NJ, NY, RI, VT, VA, and DC.

MC 111231 (Sub-330F), filed December 17, 1980. Applicant: JONES TRUCK LINES, INC., 610 East Emma Ave., Springdale, AR 72764. Representative: Don A. Smith, P.O. Box 43, 510 North Greenwood Ave., Fort Smith, AR 72902. Transporting (1) *alcoholic liquors,* and (2) *materials, equipment, and supplies* used in the manufacture and distribution of alcoholic liquors, between points in IL, on the one hand, and, on the other, points in the U.S.

MC 115841 (Sub-779F), filed December 2, 1980. Applicant: COLONIAL REFRIGERATED TRANSPORTATION, INC., McBride Lane, P.O. Box 22188, Knoxville, TN 37922. Representative: Richard L. Hollow (same address as applicant). Transporting (1) *adhesives and sealant compounds,* and (2) *materials and supplies* used in the manufacture and distribution of the commodities in (1) above (except commodities in bulk), from Conyers, GA, Chicago and Kankakee, IL, Mishawaka, IN, Muscatine, IA, Kansas City and St. Louis, MO, Ashland, Columbus and Piqua, OH, and Huntington, WV, to Hutchinson, KS.

MC 119990 (Sub-12F), filed December 22, 1980. Applicant: MERCHANTS DELIVERY CO., a Corporation, 1212 East 19th Street, Kansas City, MO 64108. Representative: David W. Howard, 601 West 47th Street, Kansas City, MO 64112. Transporting *general commodities* (except classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), from Kansas City, MO, to those points in KS bounded by a line beginning at the junction of U.S. Hwy 81 and the KS–NE State line and extending along U.S. Hwy 81 to junction KS Hwy 61, then along KS Hwy 61 to junction KS Hwy 96, then along KS Hwy 96 to junction Interstate Hwy 235, then along Interstate Hwy 235 to junction Interstate Hwy 35, then along Interstate Hwy 35 to the KS–OK State line, then along the KS–OK State line to junction U.S. Hwy 77, then along U.S. Hwy 77 to the KS–NE State line, then along the KS–NE State line to the point of beginning, including points on the described boundary lines, and the commercial zones of any points in the described area, restricted against the transportation of packages or articles weighing individually more than 100 pounds or in the aggregate more than 750 pounds from one consignor at one location to one location on any one day.

Note.—The person or persons who appear to be engaged in common control must either file an application under 49 U.S.C. §§ 11343–11344 or submit an affidavit indicating why such approval is unnecessary.

MC 14170 (Sub-1F), filed December 23, 1980. Applicant: NATIONWIDE TRUCK LINES, INC., P.O. Box 609, Ennis, TX 75119. Representative: William J. Lippman, Steele Park, Suite 330, 50 South Steele Street, Denver, CO 80209. Transporting *bakery products* (except frozen), from Marietta, OK and Louisville, KY, to points in AL, AR, AZ, CA, CT, DE, GA, ID, IL, IN, KS, KY, LA, MA, MD, ME, MI, MN, MO, MS, MT, NC, NE, NH, NJ, NM, NV, NY, OH, OK, OR, PA, RI, SC, TN, TX, UT, VA, VT, WA, WI, WV, and WY.

MC 146660 (Sub-6F), filed December 22, 1980. Applicant: FREIGHT SYSTEMS, INC., 2300 James Street, Suite 1E, Bellingham, WA 98225. Representative: Alan P. Sherbrooke, 30th Floor, The Bank of California Center, Seattle, WA 98164. Transporting *general commodities* (except classes A and B explosives and household goods as defined by the Commission), between points in the U.S., under continuing contract(s) with Amway Corporation, of Ada, MI.

Condition: Issuance of a permit in this proceeding is subject to the coincidental cancellation, at applicant's written request, of Permit No. MC 146500 (Sub-4).

MC 146510 (Sub-3F), filed December 19, 1980. Applicant: THOMPSON TRUCK SERVICE, INC., 4714 Primm Street, St. Louis, MO 63116. Representative: B. W. LaTourette, Jr., 11 S. Meramec, Suite 1400, St. Louis, MO 63105. Transporting *such commodities* as are dealt in by retail department stores, between points in the U.S., under continuing contract(s) with P. N. Hirsch & Co. Stores, Inc., or St. Louis, MO.

MC 150080 (Sub-2F), filed December 22, 1980. Applicant: CONTROLLED CARRIERS, INC., P.O. Box 367, Exton, PA 19341. Representative: Edward N. Button, 580 Northern Ave., Hagerstown, MD 21740. Transporting *paper products*, and *materials and supplies* used in the manufacture and distribution of paper products, between points in Chester County, PA, on the one hand, and, on the other, points in the U.S.

MC 151471 (Sub-2F), filed December 22, 1980. Applicant: STEINBECKER BROS., INC., P.O. Box 852, Greeley, CO 80632. Representative: Steven K. Kuhlmann, 2000 Energy Center, 717 17th St., Denver, CO 80202. Transporting *such commodities* as are dealt in by restaurant suppliers, between points in CO and NM, on the one hand, and, on the other, points in the U.S.

MC 152020 (Sub-2F), filed December 11, 1980. Applicant: ALBERT G. DRIEBE, R.D. No. 1, Box 1229, Stroudsburg, PA 18360. Representative: Joseph A. Keating, Jr., 121 S. Main St., Taylor, PA 18517. Transporting (1) *masonry cement*, from points in Stroud Township, PA, to points in the U.S., (2) *plastic displays*, between East Stroudsburg, PA, on the one hand, and, on the other, points in the U.S., and (3) *such commodities* as are dealt in by retail and wholesale grocery stores, and hotel and restaurant establishments, between points in Monroe County, PA, on the one hand, and, on the other, points in the U.S.

MC 152100 (Sub-1F), filed December 23, 1980. Applicant W & H TRUCK SYSTEMS, INC., 7601 West 59th St., Summit, IL 60501. Representative: Abraham A. Diamond, 29 South LaSalle St., Chicago, IL 60603. Transporting *foodstuffs* (except in bulk), and *materials, equipment, and supplies* used in the manufacture and distribution of foodstuffs, between points in Cook, DuPage, and Will Counties, IL, on the one hand, and, on the other, those points in the U.S. in and east of MT, WY, CO, and NM.

MC 153411F, filed December 30, 1980. Applicant: ALLRED TRUCKING CO., INC., 995 Marion Road, Columbus, OH 43207. Representative: A. Charles Tell, 100 East Broad St., Columbus, OH 43215. Transporting *general commodities* (except classes A and B explosives, household goods as defined by the Commission, and commodities in bulk), between points in Franklin County, OH, on the one hand, and, on the other, points in the U.S.

MC 153440F, filed December 31, 1980. Applicant: CLEAR-VIEW ENTERPRISES, INC., d.b.a. CVE TRUCKING, 1801 South Lumber St., Chicago, IL 60616. Representative: Patrick H. Smyth, 19 South LaSalle St., Suite 401, Chicago, IL 60603. Transporting *salt and salt products*, between points in the U.S., under continuing contract(s) with International Salt Company, of Clarks Summit, PA.

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Decided: January 12, 1981.

By the Commission, Review Board No. 2, Members Chandler, Eaton, and Liberman. (Member Liberman not participating.)

MC 117786 (Sub-283F), filed December 24, 1980. Applicant: RILEY WHITTLE, INC., P.O. Box 19038, Phoenix, AZ 85005. Representative: A. Michael Bernstein, 1441 E. Thomas Rd., Phoenix, AZ 85014. Transporting *general commodities* (except household goods as defined by the Commission, classes A and B explosives, and commodities in bulk), between points in the U.S., restricted to traffic originating at or destined to the facilities used by Hammermill Paper Company.

MC 141216 (Sub-6F), filed December 22, 1980. Applicant: DARREL K. OAKLEY, d.b.a. OAKLEY ENTERPRISES, P.O. Box 387, Rapid City, SD 57709. Representative: J. Maurice Andren, 1734 Sheridan Lake Rd., Rapid City, SD 57701. Transporting (1) *contractors materials and supplies*, from points in IL, IN, IA, MO, and NE, to points in MT, ND, SD, and WY, and (2) *lumber*, between points in IL, IN, IA, MO, and NE, on the one hand, and, on the other, points in SD.

MC 141398 (Sub-10F), filed December 30, 1980. Applicant: DELP, INC., Hwy. 71 So., P.O. Box 369, Springdale, AR 72764. Representative: Stanley W. Ludwig, P.O. Box 265, 529 S. Holcomb St., Springdale, AR 72764. Transporting (1) *frozen foodstuffs*, in containers, and (2) *materials, equipment, and supplies* used in the manufacture of the commodities named in (1) above, between the facilities of Mexican Original Products, Inc., at or near Fayetteville, AR, on the

one hand, and, on the other, points in the U.S. (except AK and HI).

MC 147606 (Sub-2F), filed December 22, 1980. Applicant: SOUTHERN HEAVY HAUL, INC., 5202 Industry Ave., Pico Rivera, CA 90660. Representative: Milton W. Flack, 6363 Wilshire Blvd., Suite 900, Beverly Hills, CA 90211. Transporting (1) *metal products*, and (2) *materials, equipment, and supplies* used in the manufacture, installation, and distribution of metal products, between points in IL, IN, MI, MO, OH, OK, PA, and TX, on the one hand, and, on the other, points in AZ, CA, CO, OR, TX, UT, and WA. Condition: Issuance of a certificate in this proceeding is subject to prior or coincidental cancellation at applicant's written request, of Permit No. MC 147606 (Sub. No. 2).

MC 148649 (Sub-129F), filed December 23, 1980. Applicant: BRISTOW TRUCKING CO., INC., P.O. Box 6355 A, Birmingham, AL 35217. Representative: James W. Segrest (same address as applicant). Transporting (1) *such commodities* as are dealt in by a manufacturer or distributors of paper products, and (2) *materials, equipment and supplies* used in the manufacture and distribution of the commodities named in (1) above, between points in CA, NM, AZ, UT, WA, OR, OK, ID, and TX.

MC 151586 (Sub-1F), filed December 23, 1980. Applicant: TRANSPORTATION UNLIMITED OF CALIFORNIA, INC., 2839 So. Soto St., Vernon, CA 90023. Representative: Scott T. Robertson, P.O. box 94748, Lincoln, NE 68509. Transporting (1) *meats, meat products, meat byproducts, and articles distributed by meat packing-houses* as described in Sections A and C of Appendix I to the report in *Descriptions in Motor Carrier Certificates*, 61 M.C.C. 209 and 766 (a) between points in Shelby County, IA, on the one hand, and, on the other, Cincinnati, OH, Philadelphia, PA, New York, NY, and points in Douglas and Sarpy Counties, NE, (b) between points in Douglas and Sarpy Counties, NE, on the one hand, and, on the other, Jacksonville, FL, New York, NY, Chicago, IL, points in Sedgwick County, KS and Dallas County, TX, and DC, (c) between points in Multnomah, Washington, and Clackamas Counties, OR, Kitsap and King Counties, WA, and CA, on the one hand, and on the other, Oklahoma City, OK, and points in MN, KS, IA, NE, TX, and CO, (d) between points in Hale County, TX, on the one hand, and, on the other, points in WA, OR, AZ, UT, GA, FL, AL, SC, NC, TN, WI, MN, NV, and IL, (e) between points in Sioux County, IA, on the one hand, and, on the other, points in AZ, CA, ID, MT, NV, NM, OR, UT, WA, and WY, and (f) between Los Angeles, CA, on the one hand, and, on the other, Kansas City, MO, and points in NC, SC, VA, and WA, and (2)(a) *such commodities* as are dealt in by grocery and food business houses, and *alcoholic beverages*, and (b) *materials, equipment, and supplies* used in the manufacture and distribution of the commodities named in (2)(a) above, between points in Ward and Cass Counties, ND, Minnehaha, Borwn, and Pennington Counties, SD, Hall and Lancaster Counties, NE, Linn County, IA, Benton, Sherburne, and Stearns Counties, MN, on the one hand, and, on the other, points in Santa Clara, and San Joaquin Counties, CA.

Volume No. OP4-155

Decided: January 12, 1981.

By the Commission, Review Board No. 2, Members Chandler, Eaton, and Liberman.

MC 5227 (Sub-78F), filed December 17, 1980. Applicant: ECKLEY TRUCKING, INC., P.O. Box 201, Mead, NE 68041. Representative: A. J. Swanson, P.O. Box 1103, 226 N. Phillips Ave., Sioux Falls, SD 57101. Transporting *general commodities* (except household goods as defined by the Commission, classes A and B explosives, and commodities in bulk), between points in NE, on the one hand, and, on the other, points in the U.S.

MC 50307 (Sub-103F), filed December 30, 1980. Applicant: INTERSTATE DRESS CARRIERS, INC., 215 County Ave., Secaucus, NJ 07094. Representative: Arthur Liberstein, 888 Seventh Ave., New York, NY 10106. Transporting *wearing apparel and materials, supplies and equipment* used in the manufacture of wearing apparel (except commodites in bulk) between New York, NY, Perkasie, PA and Youngstown, OH.

MC 113267 (Sub-372F), filed December 24, 1980. Applicant: CENTRAL & SOUTHERN TRUCK LINES, INC., 3215 Tulane Rd., P.O. Box 30130 AMF, Memphis, TN 38130. Representative: Lawrence A. Fischer (same address as applicant). Transporting *meats, meat products, meat by products, and articles distributed by meat packing-houses*, as described in Sections A and C of Appendix I to the report in *Descriptions in Motor Carrier Certificates*, 61 M.C.C. 209 and 766 (except hides and commodities in bulk), (1) from the facilities of Wilson Foods Corporation, at Oklahoma City, OK, to points in AL, AR, FL, GA, KY, LA, MS, NC, SC, and TN, and (2) from the facilities of Fischer Packing Company, at Louisville, KY, to points in AL, AR, FL, GA, LA, MS, NC, SC, and TN.

MC 114457 (Sub-331F), filed December 30, 1980. Applicant: DART TRANSIT COMPANY, a Corporation, 2102 University Ave., St. Paul, MN 55114. Representative: James H. Wills (same address as applicant). Transporting *general commodities* (except those of unusual value, Classes A and B explosives, commodities in bulk, and those requiring special equipment), between the facilities of Target Stores, Division of Dayton-Hudson Corporation, on the one hand, and, on the other, points in the U.S.

MC 114457 (Sub-332F), filed December 30, 1980. Applicant: DART TRANSIT COMPANY, a Corporation, 2102 University Ave., St. Paul, MN 55114. Representative: James H. Wills (same address as applicant). Transporting *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), between the facilities of The Pillsbury Company, on the one hand, and, on the other, points in the U.S.

MC 120257 (Sub-83F), filed December 24, 1980. Applicant: K. L. BREEDEN & SONS, INC., P.O. Box 4267, Lone Star, TX 75668. Representative: Bernard H. English, 6270 Firth Rd., Ft. Worth, TX 76116. Transporting (1) *valves and hydrants*, and (2) *materials, equipment, and supplies* (except in bulk), used in ther manufacture and distribution of the commodities named in (1) above, between the facilities of American Valve & Hydrant Manufacturing Company, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 126087 (Sub-12F), filed December 24, 1980. Applicant: JOHN N. JOHN III, INC., 1000 West Second St., P.O. Box 921, Crowley, LA 70526. Representative: John N. John, III (same address as applicant). Transporting *liquid amorphous polypropylene*, (1) for La Porte, TX to Crowley, LA, and (2) from Baytown, TX to points in the U.S. (except AK and HI).

MC 134687 (Sub-123F), filed December 30, 1980. Applicant: SHELTON TRUCKING SERVICE, INC., Route 1, Box 230, Altha, FL 32421. Representative: Sol H. Proctor, 1101 Blackstone Bldg., Jacksonville, FL 32202. Transporting (1) *ores and minerals*, (2) *chemicals and related products*, and (3) *materials, equipment, and supplies* used in the manufacture and distribution of the commodities in (1) and (2) above, between points in Caldwell County, KY,

Mineral and Nye Counties, NV, Quitman County, MS, and Seneca County, OH, on the one hand, and, on the other, points in the U.S.

MC 135007 (Sub-66F), filed December 22, 1980. Applicant: AMERICAN TRANSPORT, INC., 7850 "F" St., Omaha, NE 68127. Representative: Arthur J. Cerra, 2100 Ten Main Center, P.O. Box 19251, Kansas City, MO 64141. Transporting *meat, meat products, meat byproducts, and articles distributed by meat-packing houses*, as described in Sections A and C of Appendix I to the report in *Descriptions in Motor Carrier Certificates*, 61 M.C.C. 209 and 766 (except hides and commodities in Bulk), and *foodstuffs*, and (2) *materials, equipment and supplies* used in the manufacture and distribution of the commodities in (1) above, between points in the U.S., under continuing contract(s) with Swift Independent Packing Company, a Division of Swift & Company, of Chicago, IL.

MC 139457 (Sub-29F), filed December 30, 1980. Applicant: G. L. SKIDMORE d.b.a. JELLY SKIDMORE TRUCKING COMPANY, P.O. Box 38, Paris, TX 75460. Representative: Paul D. Angenend, P.O. Box 2207, Austin, TX 78768. Transporting (1) *foodstuffs and animal food*, and, (2) *materials, equipment and supplies* used in the manufacture of the commodities named in (1) above, between points in the U.S., under continuing contract(s) with Campbell Soup (Texas) Inc., of Paris, TX.

MC 139897 (Sub-7F), filed December 30, 1980. Applicant: ORRAN HOFSTETTER, INC., P.O. Box 237, Route 2, Orrville, OH 44667. Representative: James Duvall, P.O. Box 97, 220 W. Bridge St., Dublin, OH 43017. Transporting *commodities* in bulk, in dump vehicles, between points in OH, on the one hand, and, on the other, points in the U.S.

MC 152337 (Sub-4F), filed December 30, 1980. Applicant: CENTRAL STATES TRUCKING CO., 1311 S. First Ave., Maywood, IL 60153. Representative: Edward G. Bazelon, 39 S. La Salle St., Chicago, IL 60603. Transporting *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), between St., Louis, MO and points in IL, IN, IA, KY, MI, OH, and WI, on the one hand, and, on the other, Chicago, IL, restricted to traffic having a prior or subsequent movement by rail.

MC 153367F, filed December 17, 1980. Applicant: TRANSX, LTD., 2595 Inkster Blvd., Box 36, Group 200, R.R. 2, Winnipeg, Manitoba, Canada R3C2E8. Representative: Robert L. Cope, Suite 501, 1730 M St., N.W., Washington, DC 20036. In foreign commerce only, transporting *general commodities* (except household goods as defined by the Commission and classes A and B explosives), between ports of entry on the international boundary line between the U.S. and Canada, in MI, MN, and ND, on the one hand, and, on the other, points in IA, IL, KS, MO, NE, SD, and WI.

Agatha L. Mergenovich,
Secretary.

[FR Doc. 81-1675 Filed 1-15-81; 8:45 am]
BILLING CODE 7035-01-M

Motor Carrier Permanent Authority Decisions; Decision-Notice

The following applications, filed on or after March 1, 1979, are governed by Special Rule 247 of the Commission's *Rules of Practice* (49 CFR 1100.247). These rules provide, among other things, that a petition for intervention, either in support of or in opposition to the granting of an application, must be filed with the Commission within 30 days after the date notice of the application is published in the **Federal Register**. Protests (such as were allowed to filings prior to March 1, 1979) *will be rejected.* A petition for intervention without leave must comply with Rule 247(k) which requires petitioner to demonstrate that it (1) holds operating authority permitting performance of any of the service which the applicant seeks authority to perform, (2) has the necessary equipment and facilities for performing that service, and (3) has performed service within the scope of the application either (a) for those supporting the application, or, (b) where the service is not limited to the facilities of particular shippers, from and to, or between, any of the involved points.

Persons unable to intervene under rule 247(k) may file a petition for leave to intervene under Rule 247(l) setting forth the specific grounds upon which it is made, including a detailed statement of petitioner's interest, the particular facts, matters, and things relied upon, including the extent, if any, to which petitioner (a) has solicited the traffic or business of those supporting the application, or, (b) where the identity of those supporting the application is not included in the published application notice, has solicited traffic or business identical to any part of that sought by application within the affected marketplace. The Commission will also consider (a) the nature and extent of the property, financial, or other interest of the petitioner, (b) the effect of the decision which may be rendered upon petitioner's interest, (c) the availability of other means by which the petitioner's interest might be protected, (d) the extent to which petitioner's interest will be represented by other parties, (e) the extent to which petitioner's participation may reasonably be expected to assist in the development of a sound record, and (f) the extent to which participation by the petitioner would broaden the issues or delay the proceeding.

Petitions not in reasonable compliance with the requirements of the rule may be rejected. An original and one copy of the petition to intervene shall be filed with the Commission indicating the specific rule under which the petition to intervene is being filed, and a copy shall be served concurrently upon applicant's representative, or upon applicant if no representative is named.

Section 247(f) provides, in part, that an applicant which does not intend to timely prosecute its application shall promptly request that it be dismissed, and that failure to prosecute an application under the procedures of the Commission will result in its dismissal.

If an applicant has introduced rates as an issue it is noted. Upon request, and applicant must provide a copy of the tentative rate schedule to any protestant.

Further processing steps will be by Commission notice, decision, or letter which will be served on each party of record. *Broadening amendments will not be accepted after the date of this publication.*

Any authority granted may reflect administrative acceptable restrictive amendments to the service proposed below. Some of the applications may have been modified to conform to the Commission's policy of simplifying grants of operating authority.

Findings

With the exception of those applications involving duly noted problems (e.g., unresolved common control, unresolved fitness questions, and jurisdictional problems) we find, preliminarily, that each common carrier applicant has demonstrated that its proposed service is required by the present and future public convenience and necessity, and that each contract carrier applicant qualifies as a contract carrier and its proposed contract carrier service will be consistent with the public interest and the transportation policy of 49 U.S.C. 10101. Each application is fit, willing, and able properly to perform the service proposed and to conform to the requirements of Title 49, Subtitle IV, United States Code,

and the Commission's regulation. Except where specifically noted, this decision is neither a major Federal Action significantly affecting the quality of the human environment nor a major regulatory action under the Energy Policy and Conservation Act of 1975.

In those proceedings containing a statement or note that dual operations are or may be involved we find, preliminarily and in the absence of the issue being raised by a petitioner, that the proposed dual operations are consistent with the public interest and the transportation policy of 49 U.S.C. 10101 subject to the right of the Commission, which is expressly reserved, to impose such terms, conditions or limitations as it finds necessary to insure that applicant's operations shall conform to the provisions of 49 U.S.C. 10930(a) (formerly section 210 of the Interstate Commerce Act.)

In the absence of legally sufficient petitions for intervention, filed on or before February 17, 1981 (or, if the application later becomes unopposed), appropriate authority will be issued to each applicant (except those with duly noted problems) upon compliance with certain requirements which will be set forth in a notification of effectiveness of the decision-notice. To the extent that the authority sought below may duplicate an applicant's other authority, such duplication shall be construed as conferring only a single operating right.

Applicants must comply with all specific conditions set forth in the following decision-notices within 30 days after publication, or the application shall stand denied.

Note.—All applications are for authority to operate as a common carrier, by motor vehicle, in interstate or foreign commerce, over irregular routes, except as otherwise noted.

Volume No. 304

Decided: December 11, 1980.

By the Commission, Review Board No. 3, Members Parker, Fortier, and Hill.

MC 35320 (Sub-805F), filed June 13, 1980, and previously noticed in Federal Register issue of July 31, 1980. Applicant: T.I.M.E.-DC, INC., 2808 74th St., P.O. Box 2550, Lubbock, TX 79408. Representative: Kenneth G. Thomas (same address as applicant). *Over regular routes*, transporting *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), (1) between Minneapolis, MN, and Seattle, WA, from Minneapolis, MN, over Interstate Hwy 94 to junction Interstate Hwy 90, then over Interstate Hwy 90 to Seattle, and return over the same route, serving no intermediate points, and (2) between junction Interstate Hwy 90 and U.S. Hwy 395, at or near Ritzville, WA, and Portland, OR, from junction Interstate Hwy 90 and U.S. Hwy 395 over U.S. Hwy 395 to junction WA Hwy 14, then over WA Hwy 14 to junction U.S. Hwy 730, at or near the WA-OR State line, then over U.S. Hwy 730 to junction Interstate Hwy 80N, at or near Boardman, OR, then over Interstate Hwy 80N to Portland, OR, and return over the same route, serving no intermediate points, as alternate routes for operating convience only.

Note.—Applicant intends to tack this authority with its existing regular-route authority. This republication clarifies the territorial description.

MC 52460 (Sub-279F), filed May 5, 1980, previously noticed in Federal Register issue of August 13, 1980, and corrected as published this issue. Applicant: ELLEX TRANSPORTATION, INC., P.O. Box 9637, 1420 West 35th St., Tulsa, OK 74107. Representative: Michael A. Calvert (same address as applicant). Transporting *foodstuffs*, (except in bulk), from the facilities of McIlhenny Company, at or near Avery Island, LA, and Collinsville, IL, to points in AL, AK, CO, FL, GA, IL, IA, KS, LA, MS, MO, NM, NC, OK, SC, TN, and TX.

Note.—The purpose of this republication is to correct the spelling of the company and clarify the origin.

MC 142980 (Sub-3F (Republication)), filed January 29, 1980, previously noticed in the FR issues of April 3, 1980 and October 15, 1980. Applicant: HUGH AND LAILA PIXLEY d.b.a. PIXLEY TRANSPORTATION, 1410 Oak, P.O. Box 927, Forsyth, MT 59327. Representative: Hugh Pixley (same address as applicant). *Contract carrier*, transporting *passengers and their baggage* in the same vehicle with passengers, between points in Boundary, Bonner, Kootenai, and Shoshone Counties, ID, Divide, Williams, McKenzie, Burke, Mountrail, Renville, and Ward Counties, ND, Spokane County, WA, Lincoln, Sanders, Mineral, Glacier, Flathead, Lake, Missoula, Granite, Powell, Lewis and Clark, Teton Pondera, Liberty, Cascade, Jefferson, Broadwater, Gallatin, Meagher, Chouteau, Hill, Blaine, Fergus, Judith Basin, Wheatland, Sweet Grass, Park, Phillips, Petroleum, Musselshell, Golden Valley, McCone, Roosevelt, Daniels, Sheridan, and Richland Counties, MT, under continuing contract(s) with Burlington Northern, Inc., of Missoula, MT.

Note.—The purpose of this republication is to indicate the points in ID and ND as county-wide points.

Volume No. 305

Decided: January 6, 1981.

By the Commission, Review Board No. 2, Members Chandler, Eaton, and Liberman.

MC 143140 (Sub-4F), filed April 30, 1980. Applicant: SEYMOUR BUS LINES, INC., Route 3, Maynardville, TN 37807. Representative: Lewis S. Witherspoon, 88 E. Broad St., Columbus, OH 43215. Transporting *passengers and their baggage*, in the same vehicle with passengers, in special and charter operations, in round-trip tours, beginning and ending at points in Davidson and Hamilton Counties, TN, Bell, Clay, Harlan, Knox, Laurel, Leslie, Letcher, and Whitley Counties, KY, and Lee, Wise and Scott Counties, VA, and extending to points in the U.S. (including AK but excluding HI).

Volume No. 306

Decided: January 6, 1981.

By the Commission, Review Board No. 1, Members Carleton, Joyce, and Jones.

MC 150640 (Sub-4F (Republication)), filed April 23, 1980, previously noticed in the Federal Register issues of July 15, 1980, August 26, 1980, and November 26, 1980. Applicant: EMERSON EXPRESS CO., INC., 545 Lyell Ave., Rochester, NY 14606. Representative: Raymond A. Richards, 35 Curtice Park, Webster, NY 14580. *Contract carrier*, transporting *scrap materials, metals, stainless steel, batteries*, and *reconditioned steel containers*, including *tubs*, between points in Monroe County, NY, on the one hand, and, on the other, New York, NY, points in Nassau and Suffolk Counties, NY, and points in AL, CT, IL, IN, KY, MA, MI, MO, NJ, OH, PA, and TN, under continuing contract(s) with (1) Krieger Waste Paper Co., (2) Genesee Scrap & Tin Baling Corp. (3) Atkin's Waste Materials, Inc., (4) L. Atkin's Sons, and (5) Lyell Metal Co., Inc., all of Rochester, NY.

Note.—The purpose of this republication is to add the contracting shipper of Lyell Metal Co., Inc., named in (5) above.

Agatha L. Mergenovich,
Secretary.

[FR Doc. 81-1276 Filed 1-15-81; 8:45 am]
BILLING CODE 7035-01-M

[Volume No. 1]

Motor Carrier Permanent Authority Decisions; Decision-Notice

Decided: January 12, 1981.

The following restriction removal applications, filed after December 28,

1980, are governed by 49 CFR 1127. Part 1127 was published in the Federal Register of December 31, 1980, at 45 FR 86747.

Persons wishing to file a comment to an application must follow the rules under 49 CFR 1117.12. A copy of any application can be obtained from any applicant upon request and payment to applicant of $10.00.

Amendments to the restriction removal applications are not allowed.

Some of the applications may have been modified prior to publication to conform to the special provisions applicable to restriction removal.

Findings

We find, preliminarily, that each applicant has demonstrated that its requested removal of restrictions or broadening of unduly narrow authority is consistent with 49 U.S.C. 10922(h).

In the absence of comments filed on or before February 10, 1981, appropriate reformed authority will be issued to each applicant. Prior to beginning operations under the newly issued authority, compliance must be made with the normal statutory and regulatory requirements for common and contract carriers.

By the Commission, Restriction Removal Board, Members Sporn, Alspaugh, and Shaffer.

Agatha L. Mergenovich,
Secretary.

MC 60014 (Sub-306X), filed January 5, 1981. Applicant: AERO TRUCKING CO., Box 308, Monroeville, PA 15146. Representative: A. Charles Tell, Baker & Hostetler, Suite 1600, 100 East Broad St., Columbus, OH 43215. Applicant seeks to remove restrictions in Sub Nos. 9 and 38 which authorize transportation of iron and steel articles from named points in PA, WV, and OH to points in KY, TN, AL, and MS, and the transportation of "size and weight" commodities from points in 19 named states to points in the United States (with exceptions) in order to authorize roundtrip operations.

MC 115093 (Sub-26X), filed January 6, 1981. Applicant: MERCURY MOTOR EXPRESS, INC., 2211 North Grady Ave. (P.O. Box 23406), Tampa, FL 33607 (33623). Representative: Joseph W. Watson (same address as above). Applicant seeks to remove restrictions from the irregular-route portion of its lead Certificate No. MC-115093 which authorizes the transportation of general commodities between points in NC, TN, VA, WV, PA, MD, DE, NJ, RI, CN, MA, DC, and those in NY, on and south of NY Hwy 7, on the one hand, and, on the other, points in FL, GA, and SC, by (1) removing restrictions against handling articles of unusual value, household goods, commodities in bulk, commodities requiring special equipment, and those injurious or contaminating to other lading, and (2) removing restrictions on service (a) between points in FL, GA and SC, on the one hand, and, on the other, points in TN and (b) between points in SC, on the one hand, and, on the other, points in NC which require that the traffic move from, to or through points in a specified part of NC and SC.

MC 115331 (Sub-198X), filed January 5, 1981. Applicant: CENTRAL TRANSPORT, INC., P.O. Box 7007, High Point, NC 27264. Representative: Ben H. Keller, III, (same adress as applicant). Applicant seeks to remove restrictions in its Sub-No. 148 in order to (1) broaden the commodity description from dry chemicals, in bulk, to commodities, in bulk, (2) remove the territorial restrictions against transportation to AK and HI (3) remove restrictions against the transportation of fly ash to points in NC, SC, GA, and FL, and carbon to Covington, VA, and (4) authorize service between Richland County, SC, and points in the United States in place of its limited authority from a named facility near Eastman, SC, to points in the United States.

MC 126123 (Sub-62X), filed January 8, 1981. Applicant: MEAT DISPATCH, INC., P.O. Box 1056, Palmetto, FL 33561. Representative: William L. Beasley (same as above). Applicant seeks to remove restrictions in its Sub-No. 17 permit which authorizes it to serve Arcata Graphics Division of Depew, NY, under contract(s), in order to (1) broaden its commodity authority to transport such commodities as are manufactured in the printing industry, and (2) broaden its territorial authority to between points in the United States.

MC 136535 (Sub-125X), filed January 2, 1981. Applicant: CAROLINA WESTERN EXPRESS, INC. Box 3695, Gastonia, NC 28052. Representative: Eric Meierhoefer, Suite 423, 1511 K Street, N.W., Washington, DC 20005. The application seeks to remove restrictions in Sub-Nos. 46 and 66F to (1) broaden the commodity descriptions from general commodities (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk and those requiring special equipment) to general commodities (except classes A and B explosives) and (2) remove the restrictions limiting transportation to traffic moving on bills of lading of freight forwarders.

MC 144678 (Sub-3X), filed January 6, 1981. Applicant: AMERICAN FREIGHT SYSTEM, INC., 9393 West 110th Street, Overland Park, Kansas 66210. Representative: Harold H. Clokey, Vice President and General Counsel, American Freight System, Inc., 9393 West 110th Street, Overland Park, KS 66210. Applicant seeks removal of restrictions in Sub-Nos. 2F, 4F, and 6F in order to (1) broaden the commodity descriptions from general commodities (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk and those requiring special equipment) to general commodities (except classes A and B explosives and household goods as defined by the Commission); (2) authorize service at all intermediate points, and (3) in Sub No. 6 remove a restriction that authorizes service at the junction of Interstate Hwy. 35 and U.S. Hwy. 50 for purposes of joinder only, and a restriction that limits the regular route operations against the transportation of traffic moving between the Kansas City, MO-KS, Commercial Zone and Wichita, KS.

MC 145477 (Sub-1X), filed January 7, 1981. Applicant: MID-CITIES MOTOR FREIGHT, INC., 324 Michigan, St. Joseph, MO 64504. Representative: Tom B. Kretsinger, Kretsinger & Kretsinger, 20 East Franklin, Liberty, MO 64068. Applicant seeks to remove restrictions in its lead certificate in order to (1) broaden the commodity description from general commodities (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment) to general commodities (except classes A and B explosives, and household goods as defined by the Commission), and (2) remove the restriction limiting the authority to the transportation of traffic originating at and destined to Kansas City, Faucett, and St. Joseph, MO.

[FR Doc. 81-1971 Filed 1-15-81; 8:45 am]
BILLING CODE 7035-01-M

Motor Carrier Transfer; Decision Notice

As indicated by the findings below, the Commission has approved the following applications filed under 49 U.S.C. 10924, 10926, 10931 and 10932.

We find:

Each transaction is exempt from section 11343 (formerly section 5) of the Interstate Commerce Act, and complies with the appropriate transfer rules.

This decision is neither a major Federal action significantly affecting the quality of the human environment nor a major regulatory action under the Energy Policy and Conservation Act of 1975.

Petitions seeking reconsideration must be filed on or before February 5, 1981. Replies must be filed within 20 days after the final date for filing petitions for reconsiderations; any interested person may file and serve a reply upon the parties to the proceeding. Petitions which do not comply with the relevant transfer rules at 49 CFR 1132.4 may be rejected.

If petitions for reconsideration are not timely filed, and applicants satisfy the conditions, if any, which have been imposed, the application is granted and they will receive an effective notice. The notice will indicate that consummation of the transfer will be presumed to occur on the 20th day following service of the notice, unless either applicant has advised the Commission that the transfer will not be consummated or that an extension of time for consummation is needed. The notice will also recite the compliance requirements which must be met before the transferee may commence operations.

Applicants must comply with any conditions set forth in the following decision-notices on or before February 17, 1981, or within any approved extension period. Otherwise, the decision-notice shall have no further effect.

By the Commission, Review Board Number 5, Members Krock, Taylor, and Williams.

MC–FC–78801. By decision of December 1, 1980 issued under 49 U.S.C. 10928 and the transfer rules at 49 C.F.R. 1132 Review Board Number 5 approved the transfer to S&P Trucking, Inc., of Kennett, MO of Certificate No. MC 140475 (Sub-Nos. 2, 4, and 6) issued to Holcomb Trucking Company, Inc. of Holcomb, MO. The authority in Sub-Nos. 2, 4 and 6 was issued May 19, 1976, January 22, 1979, and November 6, 1980, respectively. This authority authorizes the transportation, over irregular routes, in interstate or foreign commerce, of (1) dry fertilizer and dry fertilizer materials, in bulk, from the facilities of Cargill Incorporated, at or near New Madrid, MO, to points in Arkansas, Illinois (except East St. Louis and those points in Illinois located within the St. Louis, MO-East St. Louis, IL commercial zone). Iowa, Kentucky, and Tennessee, 92) fertilizer and fertilizer ingredients (except petroleum and petroleum products), from points in Dunklin County, MO (except Malden), and points in Pemiscott County, MO to points in Alabama, Arkansas, Illinois (except East St. Louis and its commercial zone), Kentucky, Louisiana, Mississippi, and Tennessee, (3) dry fertilizer and dry fertilizer ingredients, from Memphis and Nashville, TN to points in Missouri, (4) dry fertilizer and fertilizer ingredients (a) from Nashville, TN to points in Missouri and (b) from the facilities utilized by United States Steel Corporation in Memphis, TN to points in Missouri, and (5) dry fertilizer and fertilizer ingredients, in bulk, in dump vehicles, from Memphis, TN (except the facilities utilized by United States Steel Corporation) to points in Missouri. Applicant's representative is: Thomas P. Rose, P.O. Box 205, Jefferson City, MO 65102.

MC 78854. By decision of November 19, 1980 issued under 49 U.S.C. 10928 and the transfer rules at 49 CFR Review Board Number 5 approved the transfer to Lane's Transport (Toronto) Limited of Certificate No. MC 120861 (Sub-No. 2) issued March 27, 1979 to Duggan's Trucking, Inc. authorizing the transportation in interstate or foreign commerce, over irregular routes, of general commodities (except those of unusual value, classes A and B explosives, household goods, as defined by the Commission, commodities in bulk, and those requiring special equipment), (1) between points in Erie County, NY, and (2) between points in Erie County, NY, on the one hand, and, on the other, points in Niagara County, NY. Applicant's representative is: Robert D. Gunderman, Suite 710, Statler Building, Buffalo, NY 14202.

Note.—Common control is involved.

MC–FC–78883. By decision of December 12, 1980, issued under 49 U.S.C. 10931 or 10932 and the transfer rules at 49 CFR 1132, Review Board Number 5 approved the transfer to D.C. Transport, Inc. d.b.a. Roughneck Trucking, Inc., of 2811 Albany, Houston, TX 77006 of Certificate of Registration No. MC 120750 (Sub-No. 1) issued 2/12/76, to D.C. Transport, Inc., of 10707 Goodnight, Dallas, TX 75220, evidencing a right to engage in transportation in interstate commerce corresponding in scope to No. 5091, dated 9/2/80 issued by the Railroad Commission of Texas, authorizing oilfield equipment and pipe, machinery, and various other named commodities, with certain restrictions, between points in Texas. TA lease is not sought. Transferee holds no authority.

MC–FC–78888. By decision of December 12, 1980 issued under 49 U.S.C. 10928 and the transfer rules at 49 CFR 1132, Review Board Number 5 approved the transfer to H & P Trucking, Inc., of Mt. Vernon, MO of Certificate MC 117883 (Sub-No. 21F) issued July 25, 1980 to Wade Truck Lines, Inc., of Verona, MO, authorizing the transportation of sand, gravel, rock, and asphalt, in bulk, in dump truck vehicles, over irregular routes, between points in McDonald, Barry, Stone, and Taney Counties, MO, and points in Benton, Washington, Madison, Marion, Baxter, Carroll, and Boone Counties, AR. Applicant's representative: Charles J. Fain, 233 Madison St., Jefferson City, MO 65101.

MC–FC–78827. By decision of November 5, 1980, issued under 49 U.S.C. 10928 and the transfer rules at 49 CFR 1132, Review Board Number 5 approved the transfer to FRANK'S TRUCKING CORP., of La Grange, IL, of Certificate MC 120949 issued September 2, 1976 to ATLANTIC COAST IMPORT CARRIERS, INC., of La Grange, IL authorizing the transportation by irregular routes of *cream and condensed milk*, in containers, *and butter*, from Columbus and Toledo, OH, Fort Wayne and Bluffton, IN, and points in that part of Michigan on and south of Michigan Highway 21 between Grand Rapids and Port Huron, and on and east of U.S. Highway 131 between Grand Rapids and the Michigan-Indiana State line; to Springfield, Worcester and Boston, MA, and points in Massachusetts within 30 miles of Boston and Providence, RI, New York, NY, Paterson, Newark, Hillside, Belleville, Woodbridge, and Perth Amboy, NJ, Wilmington, DE, Philadelphia, Hershey and Harrisburg, PA, and Baltimore, MD; and *empty containers* used in the transportation of the commodities described above, from the above-specified destination points to the above-specified origin points. Applicant's representative is: Joan Devitt, President, 316 S. 6th Avenue, La Grange, IL 60525.

MC–FC–78905. By decision of December 30, 1980, issued under 49 U.S.C. 10928 and the transfer rules at 49 CFR 1132, Review Board Number 5 approved the transfer to DAVID S. WRIGHT, d.b.a. WRIGHT'S TRANSFER & STORAGE, a portion of Certificate No. MC–20084 issued July 2, 1951, to LEO BERTRAND CRITES, d.b.a. CRITES TRANSFER, authorizing the transportation of *household goods* as defined by the Commission, (a) between points in Pendleton County, WV, on the one hand, and, on the other, points in VA, WV, KY, OH, PA, MD, and DC, (b) between Cumberland, MD, and points within 10 miles of Cumberland, on the one hand, and, on the other, points in NY on and south of US Hwy 6, and those in MD, NJ, PA, VA, WV, and DC.

and (c) between Mountain Lake Park, MD, and points within 20 miles of Mountain Lake Park, on the one hand, and, on the other, points in MD, PA, OH, VA, WV, and DC. Applicants' Representative is Edward N. Button, 590 Northern Avenue, Hagerstown, MD 21740.

Note.—Application for TA has not been filed. Transferee holds no authority from this Commission.

MC-FC-78803. By decision of December 30, 1980, issued under 49 U.S.C. 10926 and the transfer rules at 49 CFR 1132, Review Board Number 5 approved the transfer to BOUTWELL ENTERPRISES, INC., of Jay, FL, of Certificate MC-136102 (Sub-No. 2), issued November 26, 1973 and Certificate No. MC-136102 (Sub-No. 3), issued September 9, 1980, to CARSON D. BOUTWELL, d.b.a. BOUTWELL TRUCK LINES, of Jay, FL, authorizing the transportation of (1) *dry bulk fertilizer*, from Cottondale & Pensacola, FL, to points in AL and MS; and (2) *dry fertilizer*, from points in Escambia and Santa Rosa Counties, FL, to points in AL, GA, MS, and LA. Applicant's representative: Bobby A. Boutwell, P.O. Box 338, Jay, FL 32565.

Note.—Transferee does not hold any ICC authority. Application for TA has not been filed. This application was previously assigned docket MC-F-14520F.

MC-FC-78893. By decision of December 19, 1980, issued under 49 U.S.C. 10926 and the transfer rules at 49 CFR 1132, Review Board Number 5 approved the transfer to CAROLINA AGRICULTURAL DISTRIBUTORS, INC., a corporation of Plymouth, NC, of Certificate No. MC-145928 (Sub Nos. 2, 4 and 5) issued July 12, 1979, and April 30, July 7, and July 11, 1980, respectively, to PANTEGO DISTRIBUTING CO., INC. of Pantego, NC, authorizing the transportation of (1) *paper, paper products and wood pulp* from the facilities of Weyerhaeuser Co., Inc., in NC, to points in CT, FL, ME, MA, NH, NJ, NY, RI, VT, and the facilities of Weyerhaeuser Co., Inc. at Seymour, IN. (2) *Manufactured forest products*, from points in NC to points in CT, FL, ME, MA, NH, NJ, RI, VT, SC, GA, AL, MS, KY TN, WV, OH, MI, IL, IN, and WI, restricted to the transportation of traffic originating at the facilities of Weyerhaeuser Co., Inc. (3) *Forest products* from the facilities of Weyerhaeuser, Inc., in NC to points in Ny, NJ, DE, MD, PA, and VA. (4) *Lumber and lumber products, and iron, steel and aluminum articles* between Philadelphia, PA, on the one hand, and, on the other, Newport News, VA. Applicant's representative is: Peter A. Greene, 1920 N St., N.W., Washington, D.C. 20036. Application for temporary authority has been filed.

MC-FC-78860. By decision of December 11, 1980, issued under 49 U.S.C. § 10926 and the transfer rules at 49 CFR 1132, Review Board Number 5 approved the transfer to T. DEL FARNO TRUCKING CO., of Pawtucket, RI, of Certificate MC-144899 (Sub-No. 1F), issued June 25, 1980, to B.T. OILFIELD TRANSPORT, INC., of North Kingstown, RI, authorizing the transportation of (1) *machinery, equipment, materials, and supplies* used in, or in connection with, the discovery, development, production, refining, manufacture, processing, storage, transmission, and distribution, of natural gas and petroleum and their products and by-products, and (2) *machinery, materials, equipment, and supplies* used in, or in connection with, the construction, operation, repair, servicing, maintenance and dismantling of pipe lines, including the stringing and picking up thereof, between North Kingstown, RI, on the one hand, and, on the other, points in AR, CT, DE, GA, IL, IN, LA, MD, MA, MI, MS, NC, NJ, NY, OH, OK, PA, RI, SC, TX, VA, and WV. Applicant's representative: Frank J. Weiner, 15 Court Square, Boston, MA 02108.

Note.—Transferee holds Certificate MC 96165 and sub-numbers thereunder. Application has been filed for TA under 49 U.S.C. 11349.

MC-FC-78865. By decision of December 11, 1980 issued under 49 U.S.C. 10926 and the transfer rules at 49 CFR 1132, Review Board Number 5 approved the transfer to WACHUSETT TRANSPORATION CO., INC., of Clinton, MA, of Certificate MC 146219F, issued February 28, 1980, to FROZEN FOOD DELIVERY SERVICE, INC. (Shawmut Community Bank and T.H.E. Appraisal Corporation, Successors in Interest), of Berlin, MA, authorizing the transportation of *cereal, plastic articles, lunch and picnic kits, napkins, sugar, condiments, and straws* (except commodities in bulk), from the facilities of Van Brode Milling Co. Inc., at Clinton, MA, to points in AL, CA, FL, GA, IL, IN, IA, KS, MD, MI, MN, MS, MO, NE, NJ, NY, NC, ND, OH, OK, PA, SC, SD, TN, VA, WV, WI, and DC. Applicants' representative: James M. Burns, 1383 Main Street, Suite 413, Springfield, MA 01103.

Note.—Application for TA has been filed. Transferee holds no permanent authority from this Commission.

Agatha L. Mergenovich,
Secretary.

[FR Doc. 81-1271 Filed 1-15-81; 8:45 am]
BILLING CODE 7035-01-M

DEPARTMENT OF LABOR
Occupational Safety and Health Administration
Federal Advisory Council on Occupational Safety and Health; Meeting

Notice is hereby given that the Federal Advisory Council on Occupational Safety and Health, established under Section 1.5 of Executive Order 12196 of February 26, 1980 (Vol. 45, No. 40), will meet on February 3, 1981 starting at 10:00 a.m. in Room N5437 A, B, C, and D, of the Frances Perkins Department of Labor Building, 200 Constitution Avenue, N.W., Washington, D.C. The meeting will be open to the public.

The agenda provides for:

I. Call to Order
II. Approval of Minutes of Meeting October 28, 1980
III. Announcements
IV. Update of Training Requirements in 29 CFR 1960
V. Report on Labor-Management Safety and Health Committees
VI. Committee Reports and Recommendations
A. Conference Committee
B. Special OPM-Standards
C. Interagency Task Group on Federal Employee Medical Records
VII. New Business

The Council welcomes written data, views or comments concerning safety and health programs for Federal employees, including comments on the agenda items. All such submissions received by close of business January 30, 1981, will be provided to the members of the Council and included in the record of the meeting.

The Council will consider oral presentations relating to agenda items. Persons wishing to orally address the Council at the meeting should submit a written request to be heard by close of business January 30, 1981. The request must include the name and address of the person wishing to appear, the capacity in which appearance will be made, a short summary of the intended presentation and an estimate of the amount of time needed.

All communications regarding this Advisory Council should be addressed

to Robert J. Broderick, Acting Director, Office of Federal Agency Safety and Health Programs, Department of Labor, OSHA, Bicentennial Building, 600 E Street, Suite 500, N.W., Washington, D.C. 20210, telephone (202) 376–3005.

Signed at Washington, D.C. this 12th day of January, 1981.

Eula Bingham,

Assistant Secretary.

[FR Doc. 81–2091 Filed 1–15–81; 8:45 am]

BILLING CODE 4510–26–M

Office of the Secretary

Senior Executive Service; Reappointment of Members to the Performance Review Board

This notice amends Department of Labor notice published in 44 FR 55240, dated September 25, 1979, listing Department of Labor members of the Performance Review Board of the Senior Executive Service.

Alfred M. Zuck has been reappointed as Chairperson for a three-month period, January 1, 1981, through March 31, 1981. Charles E. Pugh has also been reappointed for a three-month period, January 1, 1981, through March 31, 1981.

FOR FURTHER INFORMATION CONTACT: Mr. Frank A. Yeager, Director of Personnel Management, Room C5526, Frances Perkins Building, 200 Constitution Avenue, NW., Washington, D.C. 20210, telephone 202–523–9191.

Signed at Washington, D.C., this 13th day of January, 1981.

Ray Marshall,

Secretary of Labor.

[FR Doc. 81–2092 Filed 1–15–81; 8:45 am]

BILLING CODE 4510–23–M

MERIT SYSTEMS PROTECTION BOARD

Regulation Review

AGENCY: Merit Systems Protection Board.

ACTION: Notice of Orders and opportunity to file comments in Board proceedings.

SUMMARY: 5 U.S.C. sec. 1205(e) authorizes the Board to review rules and regulations issued by the Office of Personnel Management and their implementation by other Federal agencies in order to determine if they have required or would require any federal employee to commit a prohibited personnel practice in violation of 5 U.S.C. sec. 2302(b). The Board has issued orders, described below, under section 1205(e). Those orders schedule five matters for review and deny review of some rules and regulations raised in petitions filed pursuant to section 1205(e)(1)(B).

DATES: In all of the matters scheduled for review, the respondents' briefs are to be filed by March 12, 1981. Interested persons are invited to file comments. These comments may be filed at any time prior to Board's determination but the Board cannot guarantee that it will be able to consider filed comments unless they are received by April 1, 1981. All filings are to be made in accordance with 5 CFR Part 1203, the Board's interim regulations governing review of OPM regulations. 46 FR 2328 (Jan. 9, 1981). All pleadings, briefs and comments received in these matters will be publicly available for inspection in the Office of the Secretary of the Merit Systems Protection Board.

ADDRESS: Office of the Secretary, Merit Systems Protection Board, Room 350, 1717 H Street, NW, Washington, D.C. 20419 (202) 632–4525.

FOR FURTHER INFORMATION CONTACT: Bruce Mayor, Office of the General Counsel, Merit Systems Protection Board (202) 653–8388.

SUPPLEMENTARY INFORMATION: The Board will review the following rules and regulations on its own motion:

a. Volume 5 CFR 432.201(a) which limits the coverage of 5 U.S.C. sec. 4303, *Actions based on unacceptable performance*, to actions based solely on unacceptable performance and 5 CFR 752.401(a)(2) which extends the coverage of adverse actions under 5 U.S.C. sec. 7512 to actions taken for both performance and conduct cases. (*In Re reduction-in-grade or removals for performance and non-performance related reasons*, Docket No. HQ1205S110011). The issues to be addressed in this review are, whether these regulations: (1) deny federal employees substantial rights provided by Chapter 43 of the Civil Service Reform Act; (2) require the commission of prohibited personnel practices with respect to employees against whom a reduction-in-grade or a removal is proposed for performance and non-performance related reasons in violation of 5 U.S.C. sec. 2302(b)(11); and/or (3) deny federal employees an opportunity to demonstrate improved performance before they can be reduced-in-grade or removed.

b. Volume 5 CFR 735.206, which restricts federal employees from using official information in furtherance of a private interest and 5 CFR 1001.735–206 which restricts OPM employees from making public disagreements with or criticisms of officials, policies or practices of OPM or other Federal agencies in areas relating to OPM's functions. (*In Re disclosure of information*, Docket No. HQ1205S110010). The issues to be addressed in this review are whether these regulations: (1) prohibit disclosure of information in areas which are protected under 5 U.S.C. sec. 2302(b)(8); (2) violate the "whistleblower" protections of the Civil Service Reform Act which restrict disclosure of information only where it is specifically prohibited by law or required by Executive order in the interest of national defense or the conduct of foreign affairs; and/or (3) require the commission of a prohibited personnel practice with respect to employees who disclose information which they reasonably believe evidences a violation of law, mismanagement, waste of funds, abuse of authority or a danger to public health or safety.

c. 335 Federal Personnel Manual, Chapter S1–5(c)(1)(b) (1979), which permits agencies to except from their competitive merit plans promotions which result from an employee's position being reclassified at a higher grade because of an accretion of duties. (*In Re exceptions from competitive plans*, Docket No. HQ1205S11012). The issues to be addressed in this review are whether this rule: (1) permits the non-competitive promotion of an employee whose position is upgraded as a result of the addition of duties by planned management action;
(2) permits the granting of special preferences or advantages in violation of 5 U.S.C. 2302(b)(6); and/or discrimination in violation of 5 U.S.C. 2302(b)(1), and/or (3) permits the evasion of the Chapter 43 requirement that promotion determinations be based, in part, upon performance appraisals in violation of 5 U.S.C. 2302(b)(1).

The Board will also review the following rules and regulations raised in petitions filed with it pursuant to 5 U.S.C. 1205(e)(1)(B):

a. Volume 5 CFR 752.401(c)(9) which excludes from adverse action procedural requirements the furlough of seasonal, part-time and intermittent employees. (*National Treasury Employees Union* v. *Jule M. Sugarman, Acting Director, Office of Personnel Management*, Docket No. HQ1205S00006). The issues to be addressed in this review are whether: (1) the regulation impermissibly restricts, on its face or as implemented, the statutory procedures found at 5 U.S.C. 7511–7514 (Subchapter II) with regard to the specific personnel actions at issue or with regard to the class of employees involved and (2) Subchapter II implements or directly concerns the merit principles contained in 5 U.S.C.

2301(b)(2), (6) and (8)(A) so that their violation constitutes a prohibited personnel practice under 5 U.S.C. 2302(b)(11).

b. Federal Personnel Manual Supplement 335–1, Subchapter S6 which, as implemented by the Customs Service, has restricted the availability to employees and others of crediting plans used by promotion and selection panels to rate and rank candidates for employment and promotion. (*National Treasury Employees Union v. Jule M. Sugarman, Acting Director, Office of Personnel Management, et al.*, Docket No. HQ120500003). The issues to be addressed in this review are whether: (1) has the Customs Service arbitrarily refused access to such plans; and (2), in the event that it has, does the arbitrary refusal of access to crediting plans constitute a violation of sec. 2302(b).

The Board will not review the following rules and regulations raised in petitions filed with it pursuant to 5 U.S.C. 1205(e)(1)(B):

a. Volume 5 CFR 771.204, which permits agencies to exclude bargaining unit employees for the coverage of agency grievance systems. (Petition of Robert M. Tobias, et al., dated Feb. 7, 1980).

b. Volume 5 CFR 752.401(c)(2) which excludes actions which entitle employees to grade retention under Part 536 from adverse action procedural requirements. (Petition of Robert M. Tobias, et al., dated Feb. 7, 1980); and

c. Federal Personnel Manual Supplement 335–1 Subchapter S6 which instructs agency personnel to maintain proper security and control over examination materials used to evaluate employees for promotion and internal placement (Petition of Vincent L. Connery, dated Feb. 7, 1980). The Board will, as noted above, review the implementation of this rule by the Customs Service.

For the Board.

Ruth T. Prokop,

Chairwoman.

January 13, 1981.

[FR Doc. 81-1703 Filed 1-15-81; 8:45 am]

BILLING CODE 6325-01-M

OFFICE OF PERSONNEL MANAGEMENT

Performance Review Board Members

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: This is notice of Performance Review Board Membership to review the performance appraisal of a Presidential appointee, The Federal Inspector, Alaska Natural Gas Transportation System, who was formerly a SES career member and elected to retain SES benefits, except pay, under 5 U.S.C. 3392(c).

EFFECTIVE DATE: January 16, 1981.

FOR FURTHER INFORMATION CONTACT: Jule Sugarman, Deputy Director, Office of Personnel Management, 1900 E St., N.W., Washington, D.C. 20415 (202–632–6106).

SUPPLEMENTARY INFORMATION: The following is a listing of Performance Review Board members proposed by the U.S. Office of Personnel Management:

Mr. Lloyd Miller, Deputy Managing Director, National Transportation Safety Board

Dr. Robert Fairman, Acting Assistant Secretary for Administration, Department of Transportation

Ms. June G. Brown, Inspector General, Department of Interior.

Office of Personnel Management.

Beverly M. Jones,

Issuance System Manager.

[FR Doc. 81-1702 Filed 1-15-81; 8:45 am]

BILLING CODE 6325-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-17434; File No. SR-Amex-80-33]

American Stock Exchange, Inc.; Proposed Rule Change

Pursuant to Section 19(b)(1) of the Securities Act of 1934 (the "Act"), 15 U.S.C. 78s(b)(1), as amended by Pub. L. No. 94–29, 16 (June 4, 1975), notice is hereby given that on December 31, 1980 the above-mentioned self-regulatory organization filed with the Securities and Exchange Commission a proposed rule change as follows:

The Exchange's Statement of Terms of Substance of the Proposed Rule Change

([Brackets] indicate material to be deleted and italics indicate material to be added.)

Article IV, Section 2(m)

Registered Address

(m) Every member [, member firm and member corporation] *and member organization* shall register with the Exchange an address and subsequent changes thereof where notices may be served. [The registered address of every member who personally transacts business upon the Exchange must be in its vicinity.[1]] Any notice mailed to a member or member organization at the last address registered at the Exchange shall be presumed to have been received by such member or member organization.

The Exchange's Statement of Purpose and Basis

The purpose and basis of the foregoing rule change is as follows: Article IV, Section 2(m) of the Exchange Constitution requires that every member and member organization register an address with the Exchange where notices may be served. The registered address of every member who personally transacts business on the Floor must be in the "vicinity of the Exchange". Notices mailed by the Exchange to a member's registered address are presumed to have been received by the member.

The local address requirement was originally intended to facilitate the expeditious clearance and settlement of transactions on the floor of the Exchange. However, the creation of modern clearance and settlement facilities such as the National Securities Clearing Corporation and the Depository Trust Company has eliminated the need for this requirement.

The proposed amendment is consistent with Section 6(b) of the Act in general and furthers the objectives of Section 6(b)(2) and 6(b)(5) of the Act in particular in that it would enhance the ability of qualified persons to become members of the Exchange and remove an impediment to and enhance the perfection of the mechanism of a free and open market and a national market system, by removing a geographical location requirement for members who wish to personally transact business on the floor of the Exchange. The proposed amendment is also consistent with Section 6(b)(5) in that it would foster cooperation and coordination with persons engaged in regulating, clearing, settling, and processing information with respect to, and facilitating transactions in securities, by making Exchange requirements consistent with the geographical location requirements for members of the National Securities Clearing Corporation.

Comments Received From Members, Participants or Others on Proposed Rule Change

No comments were solicited or received with respect to the proposed rule change.

Burden on Competition

The Amex has determined that no burden on competition will be imposed by the proposed amendment. On the

[1] This has been interpreted to encompass the New York metropolitan area.

contrary, elimination of the local registered address requirement for Floor members will enhance competition.

Within 35 days of the date of publication of this notice in the Federal Register, or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the above-mentioned self-regulatory organization consents, the Commission will:

(a) By order approve such proposed rule change, or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons desiring to make written submission should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, Washington, D.C. 20549. Copies of the filing with respect to the foregoing and all written submissions will be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number references in the caption above and should be submitted within 21 days of the date of this publication.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 81-1291 Filed 1-15-81; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-17440; File No. SR-NASD-80-27]

Self-Regulatory Organizations; Proposed Rule Change by National Association of Securities Dealers, Inc.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), as amended by Pub. L. 94-29, 16 (June 4, 1975), notice is hereby given that on December 31, 1980, the above-mentioned self-regulatory organization filed with the Securities and Exchange Commission a proposed rule change as follows:

The NASD's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change amends the numerical designation of one of the Rules of Fair Practice of the National Association of Securities Dealers, Inc., changing Article III, Section 35 to Article III, Section 34.

The NASD's Stated Purpose of the Proposed Rule Change

The purpose of the proposed rule change is to change the numerical designation of Section 35 to Section 34 thereby maintaining the consecutive numbering system employed in the Rules of Fair Practice of the Association. The proposed rule change makes no other changes to the affected rule or any other Rules of Fair Practice of the Association. In connection with this filing, the Commission's attention is directed to File No. SR-NASD-77-8 containing all documentation relating to the filing of Article III, Section 35 as approved by the Commission in Securities Exchange Act Release No. 16937 (July 8, 1980).

The NASD's Statement of Basis Under the Act for Proposed Rule Change

Section 15A(b)(2) of the 1934 Act requires that the Association possess the capacity to carry out the purposes of that Act. Implicit in that requirement is authority for the Association to administer rules adopted by the Association and approved by the Commission. The proposed rule change is being made pursuant to that authority.

Comments Received From Members, Participants or Others on Proposed Rule Change

No comments were solicited or received regarding the proposed rule change.

The NASD's Statement on Burden on Competition

The Association believes that, because of the technical nature of the proposed rule change, no burden will be imposed on competition.

The foregoing rule change has become effective, pursuant to Section 19(b)(3) of the Securities Exchange Act of 1934. At any time within sixty days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Securities Exchange Act of 1934.

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons desiring to make written submissions should file 6 copies thereof with the Secretary of the Commission, Securities and Exchange Commission, Washington, D.C. 20549. Copies of the filing with respect to the foregoing and of all written submissions will be available for inspection and copying in the Public Reference Room, 1100 L Street NW., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number referenced in the caption above and should be submitted within 21 days of the date of this publication.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

January 12, 1981.

[FR Doc. 81-1292 Filed 1-15-81; 8:45 am]

BILLING CODE 8010-01-M

[Release 34-17441; File No. SR-NASD-80-28]

Self-Regulatory Organizations; Proposed Rule Change by National Association of Securities Dealers, Inc.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), as amended by Pub. L. No. 94-29, 16 (June 4, 1975), notice is hereby given that on January 5, 1981, the above-mentioned self-regulatory organization filed with the Securities and Exchange Commission a proposed rule change as follows:

Statement of the Terms of Substance of the Proposed Rule Change

Text of Proposed Rule Change

The following is the full text of a proposed amendment to Schedule D under Article XVI of the Association's By-Laws. (New language is italicized.)

Part XI of Schedule D of the Association's By-Laws is deleted in its entirety and replaced with the following:

XI—Publication and Dissemination of Quotations to the News Media

The NASDAQ Committee shall recommend lists of quotations of NASDAQ securities for dissemination by the news media. The criteria for such lists shall be determined by the NASDAQ Committee in light of the space available for publication and the information desired by the news media and the investing public. The criteria shall be based on the dollar value of securities traded except in the case of:

A. Convertible debt securities, which shall be based on the principal amount outstanding, and

B. Securities subject to a distribution, which shall be initially based on the size of the distribution.

The NASDAQ Committee may, under appropriate circumstances, grant exceptions to its established criteria if it determines that it is in the public interest to do so.

Purpose of Proposed Rule Change

The proposed rule change revises Part XI of Schedule D of the Association's By-Laws. The revision clearly states that the criteria for inclusion in the quotation lists constitute only recommendations to the media. The amendment also will permit revisions of the size or number of lists, as well as the precise criteria for determining eligibility for inclusion in any recommended list, which will become immediately effective under the provisions of Section 19(b)(3) of the Act.* At the same time, the proposed rule does clearly state the basis upon which these criteria will be applied. It distinguishes between equity and debt issues, and new and established issues. This will permit the Association to respond quickly to changing market conditions, media requirements or requests from issuers, the investing public, or the securities industry. Therefore, the Association believes the proposed rule change will permit it to administer its quotations list program in a more efficient and responsive fashion.

Basis Under the Act for the Proposed Rule Change

Section 15A(b)(11) provides that an association of brokers and dealers shall not be registered as a national securities association unless the Commission determines that the rules of the association contain provisions governing the form and content of quotations relating to securities sold otherwise than on a national securities exchange, which may be distributed or published by any member or other persons associated with a member, and the persons to whom such quotations may be supplied. Such rules relating to quotations shall be designed to produce fair and informative quotations to prevent fictitious or misleading quotations and to promote orderly procedures for collecting, distributing and publishing quotations.

Comments Received From Members, Participants or Others on the Proposed Rule Change

Comments regarding this proposed rule change were neither solicited nor received.

*The criteria will be submitted to the Commission in a separate filing.

Burden on Competition

Since this rule change only deals with recommendations of the content of the lists for dissemination by the news media, the Association does not anticipate any burden on competition.

Within 35 days of the date of publication of this notice in the Federal Register, or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the above-mentioned self-regulatory organization consents, the Commission will:

(a) By order approve such proposed rule change, or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons desiring to make written submission should file six (6) copies thereof with the Secretary of the Commission, Securities and Exchange Commission, Washington, D.C. 20549. Copies of the filing with respect to the foregoing and of all written submissions will be available for inspection and copying in the Public Reference Room, 1100 L Street, N.W., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number referenced in the caption above and should be submitted on or before February 9, 1981.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

January 12, 1981.

[FR Doc. 81-1393 Filed 1-15-81; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-17431; File No. SR-NYSE-80-42]

Self-Regulatory Organization; Proposed Rule Change by New York Stock Exchange, Inc.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), as amended by Pub. L. No. 94-29, 16 (June 4, 1975), notice is hereby given that on December 15, 1980 the above mentioned self-regulatory organization filed with the Securities and Exchange Commission a proposed rule change as follows:

The Exchange's Statement of the Terms of Substance of the Proposed Rule Change

The proposed amendments to Rule 460, if adopted, would formally adopt a provision of Rule 460 which the Securities and Exchange Commission (SEC or Commission) contends was never validly adopted by the Exchange's Board of Directors and (ii) to add to Rule 460 a provision that specialists and persons affiliated with specialists should avoid acquiring or owning more than 5 percent of a stock in which they or one of their affiliates is registered as specialists.

The Exchange's Statement of Basis and Purpose

The basis and purpose of the proposed amendment to Rule 460 are as follows:

The Supplementary material to Rule 460—i.e., .10 thereunder—provides that a specialist should not be in a control relationship with any specialty stock company and states that this applies to ownership of 10 percent or more of the stock of the company and entering into business transactions involving, for example, loans or the acceptance of finder's fees.

The purpose of the restriction is to prevent a potential conflict between the specialist's obligation to maintain a fair and orderly market and his acquisition of "insider" status. Such a conflict might make it difficult for the specialist to act solely in the interest of a fair and orderly market.

In a recent review of an Exchange disciplinary proceeding against a member for violations of various rules (including Rule 460.10) the SEC—while upholding the sanction imposed by the Exchange—set aside one of the Exchange's findings of a violation of Rule 460.10 on the grounds that "the record indicates that Subsection .10 was never validly adopted as a rule by the Exchange's Board of Directors".

While the Exchange disagrees with the SEC's contention that Rule 460.10 "was never validly adopted," in order to avoid future enforcement problems, the Exchange's Board has formally approved the provision and the Exchange is now asking the Commission to approve it pursuant to Rule 19b-4.

* * * * *

Also, in September 1978, the Board approved a rule change (Proposed Rule 98(b)), as included in File No. SR-NYSE-78-59 which was designed to codify and Exchange policy that a specialist and persons affiliated with a specialist should avoid acquiring or owning, either individually or as a group, more than 5

percent of the stock of a specialty company. In any case where 5 percent is exceeded, the Exchange could require that stock be liquidated.

The 5% policy is designed to supplement, and provide a buffer, to the absolute prohibition against owning more than 10% of the stock. It seems appropriate therefore that the 5% policy should be included in Rule 460.10.

At the same time, the Exchange is proposing a minor change to the language originally proposed in SR-NYSE-78-59 to make clear that the rule contains latitude to enable the 5% limit to be exceeded where circumstances warrant. And, the Exchange is also adding a reporting requirement in connection with the 5% policy.

* * * * *

With the proposed amendment to the supplementary material of Rule 460, as contained in Exhibit I, the Exchange also proposes to repeal subparagraph (c) of present Rule 98.10, which would be superseded by Rule 460.10, as proposed.

The Exchange's Basis Under the Act for Proposed Rule Change

The proposed rule changes are consistent with Section 6(b)(1) in that they would better enable the Exchange to enforce compliance by its members and persons associated with members with rules of the Exchange; specifically, Rule 460.10 and present Exchange policy which would be codified by the proposed amendment to this Rule.

Comments Received From Members, Paticipants or Others on Proposed Rule Changes

The Exchange has not solicited nor has it received any comments regarding the proposed rule changes.

Burden On Competition

The proposed rule changes will not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

Within 35 days of the date of publication of this notice in the Federal Register, or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the above mentioned self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule changes, or

(B) Institute proceedings to determine whether the proposed rule changes should be disapproved.

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons desiring to make written submissions should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, Washington, D.C. 20549. Copies of the filing with respect to the foregoing and of all written submissions will be available for inspection and copying in the Public Reference Room, 1100 L Street, N.W., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above mentioned self-regulatory organization. All submissions should refer to the file number referenced in the caption above and should be submitted on or before February 9, 1981.

For the Commission by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

January 9, 1981.

[FR Doc. 81-1584 Filed 1-15-81; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-17439; File No. SR-PSE-80-26]

Self-Regulatory Organization; Proposed Rule Change by the Pacific Stock Exchange, Inc.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), as amended by Pub. L. No. 94-29, 16 (June 4, 1975), on December 9, 1980, the above-mentioned self-regulatory organization filed with the Securities and Exchange Commission a proposed rule change as follows:

The Exchange's Statement of the Terms of Substance of the Proposed Rule Change

The Pacific Stock Exchange Incorporated ("PSE") proposes to amend Article XI and XIV of its Constitution to prohibit violations of Board policies, required to be filed with the Securities and Exchange Commission, and to assure due notice before summary suspension or expulsion of members or member organizations.

The Exchange's Statement of Basis and Purpose of the Proposed Rule Change

The purpose of the proposed change is to provide procedural due process in the summary suspension or expulsion of members or member organizations and to prohibit violations of Board policies required to be filed with the Securities and Exchange Commission.

The proposed changes to the PSE Constitution are consistent with Section 6(b) of the Act in general and further the objectives of Sections 6(b)(5), 6(b)(6) and 6(b)(7) of the Act, in particular, in that they are designed to promote just and equitable principles of trade to protect investors and the public interest and to provide for members and member organizations to be appropriately disciplined for violations of the Securities Exchange Act of 1934 and the rules, policies and procedures of the PSE.

Comments Received From Members, Participants, or Others on Proposed Rule Change

Comments have neither been solicited nor received from members on the proposed rule change.

The Exchange's Statement on Burden on Competition

The exchange believes the proposed rule change will impose no burden on competition.

Within 35 days of the date of publication of this notice in the Federal Register, or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the above-mentioned self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons desiring to make written submissions should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, Washington, D.C. 20549. Copies of the filing with respect to the foregoing and of all written submissions will be available for inspection and copying in the Public Reference Room, 1100 L Street N.W., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number referenced in the caption above and should be submitted on or before February 9, 1981.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

January 12, 1981.

George A. Fitzsimmons,
Secretary.

[FR Doc. 81-1565 Filed 1-15-81; 8:45 am]
BILLING CODE 8010-01-M

[Release No. 34-17442; File No. SR-PHLX 80-29]

Self-Regulatory Organizations; Proposed Rule Change by Philadelphia Stock Exchange, Inc.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), as amended by Pub. L. No. 94-34, 16 (June 4, 1975), notice is hereby given that on January 2, 1981, the above-mentioned self-regulatory organization filed with the Securities and Exchange Commission a proposed rule change as follows:

The Exchange's Statement of the Terms of Substance of the Proposed Rule Change

The Philadelphia Stock Exchange ("PHLX"), pursuant to Rule 19b-4 of the Securities Exchange Act of 1934 ("Act") proposes to amend Rule 631 ("Connection with Non-Members"), as follows: (brackets indicate words to be deleted; italics indicate words to be added).

Rule 631. No member or member organization shall establish or maintain any private wire connection, private radio, television or wireless system, between his or its offices and the office of any non-member without (notification) *application to and approval by* the Committee.

Every such means of communication shall be registered with the Committee. Notice of the discontinuance of any such means of communication shall be promptly given to the Committee.

The Exchange's Basis and Purpose of Proposed Rule Change

The purpose of the proposed rule change is to clarify the intent of the Rule 631 by providing that formal application to and approval by the Committee is a prerequisite to the installation of any type of communication line between the offices of a member or member organization and that of a non-member. Approval of such installation is based on compliance with the rules and policies of the Exchange and the Act and the rules and regulations thereunder.

The proposed rule change would enhance the PHLX's capacity to comply and enforce compliance by its members and persons associated with its members with the Act, the rules and regulations thereunder and its own rules.

Comments were not solicited or received.

The PHLX has determined that the proposed amendment will not impose any burden on competition.

Within 35 days of the date of publication of this notice in the Federal Register, or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the above-mentioned self-regulatory organization consents, the Commission will:

(a) By order approve such proposed rule change, or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons desiring to make written submissions should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, Washington, D.C. 20549. Copies of the filing with respect to the foregoing and of all written submissions will be available for inspection and copying in the Public Reference Room, 1100 "L" Street, N.W., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number referenced in the caption above and should be submitted on or before February 9, 1981.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons,
Secretary.

January 12, 1981.

[FR Doc. 81-1566 Filed 1-15-81; 8:45 am]
BILLING CODE 8010-01-M

VETERANS ADMINISTRATION

Station Committee on Educational Allowances; Meeting

Notice is hereby given pursuant to Section V, Review Procedure and Hearing Rules, Station Committee on Educational Allowances that on February 10, 1981, at 9:00 a.m., the Veterans Administration Regional Office, St. Petersburg, Florida, Station Committee on Educational Allowances shall, at the Federal Building, Room 621, 144 1st Avenue South, St. Petersburg, Florida, conduct a hearing to determine whether Veterans Administration benefits to all eligible persons enrolled in Lakeland college of Business and Fashion, Lakeland, Florida, should be discontinued, as provided in 38 CFR 21.4143, because a requirement of law is not being met or a provision of the law has been violated. All interested persons shall be permitted to attend, appear before, or file statements with the committee at that time and place.

Dated: January 9, 1981.

Carlos L. Rainwater,
Director.

[FR Doc. 81-1565 Filed 1-15-81; 8:45 am]
BILLING CODE 8320-01-M

Vocational Rehabilitation and Counseling; Policies and Procedures

AGENCY: Veterans Administration.

ACTION: Public notice and request for comment.

SUMMARY: The Veterans Administration is publishing for public notice and comment a summary of new provisions to be administered in the vocational rehabilitation and counseling program. This summary of the Veterans' Rehabilitation and Education Amendments of 1980 will acquaint veterans, educational institutions and the public at large with the anticipated changes in the vocational rehabilitation and counseling program.

DATE: Comments must be received on or before February 17, 1981.

ADDRESS: Send written comments to: Administrator of Veterans Affairs (271A), Veterans Administration, 810 Vermont Avenue, N.W., Washington, D.C. 20420.

Comments will be available for inspection at the address shown above during normal business hours until February 27, 1981.

FOR FURTHER INFORMATION CONTACT: Dr. Stephen L. Lemons, Assistant Director for Policy and Program Development, Vocational Rehabilitation and Counseling Service (282), Veterans Administration, 810 Vermont Avenue, NW., Washington, D.C. 20420 (202-389-2020).

SUPPLEMENTARY INFORMATION: This publication contains DVB Circular 28-80-3, Vocational Rehabilitation and Counseling Provisions of the Veterans' Rehabilitation and Education Amendments of 1980 (Pub. L. 96-466). This circular contains a summary of the Veterans Administration vocational rehabilitation program. This circular has been implemented and has been

distributed through normal channels to interested persons. Comments received will be used in developing VA Regulations and policies to implement Pub. L. 96-466.

ADDITIONAL COMMENT INFORMATION

Interested persons are invited to submit written comments, suggestions, or objections regarding this document to the Administrator of Veterans Affairs (271A), Veterans Administration, 810 Vermont Avenue, NW., Washington, D.C. 20420. All written comments received will be available for public inspection at the above address only between the hours of 8 am and 4:30 pm, Monday through Friday (except holidays) until February 27, 1981. Any person visiting Veterans Administration Central Office in Washington, D.C. for the purpose of inspecting any such comments will be received by the Central Office Veterans Services Unit in room 132. Such visitors to a VA field station will be informed that the records are available for inspection only in Central Office and furnished the above address and room number.

Approved: January 7, 1981.
Max Cleland,
Administrator.

Vocational Rehabilitation and Counseling Provisions of the Veterans' Rehabilitation and Education Amendments of 1980 (Pub. L. 96-466); DVB Circular 28-80-3

November 7, 1980.

1. *Purpose.* This issue is to inform DVB field staff about changes to Chapter 31, title 38 U.S.C., resulting from the enactment of Pub. L. 96-466. While the focus is on the vocational rehabilitation provisions of the law, other aspects relevant to VR&C (Vocational Rehabilitation and Counseling) operations are also discussed.

2. *Background.* During FY 1978 the VA completed and submitted to the Congress a study of the VA vocational rehabilitation program as mandated by Pub. L. 95-202. The study included an analysis of the VA vocational rehabilitation program, a comparison of Chapter 31 provisions with the State/Federal program provisions, and recommendations for administrative and legislative changes needed to up-date and modernize the program. Subsequently, proposed legislation was introduced in both houses of Congress by request of the VA. After consideration of these and other proposals, Congress enacted Pub. L. 96-466, "Veterans' Rehabilitation and Education Amendments of 1980," which was signed into law on October 17, 1980. Title I of Pub. L. 96-466 updates and expands the VA vocational rehabilitation program. This complete revision of Chapter 31, the first since its inception in 1943, improves the vocational rehabilitation program and assures that service-connected disabled veterans will benefit from the latest concepts and methods developed in the field of rehabilitation. The VA has the authority to make the Chapter 31 program more responsive to the needs of service-disabled veterans, especially the more seriously disabled.

3. *Overview.* a. *Title I—Rehabilitation Amendments.* (1) *Purposes.* The purpose of the rehabilitation program is expanded to provide for all services and assistance necessary to enable service-disabled veterans to achieve maximum independence in daily living, and to the maximum extent feasible, to become employable and to obtain and maintain suitable employment. This statement of purpose significantly differs from the traditional view which limited vocational rehabilitation to restoration of employability through training, and the provisions of the new law clearly reflect this fundamental change in philosophy.

(2) *Eligibility and Entitlement.* Eligibility for and entitlement to services are organized around two basic concepts—employment handicap and serious employment handicap. Employment handicap must be shown in each case as part of the determination of basic entitlement. The basic period of eligibility has been extended from 9 to 12 years. Rehabilitation programs will not exceed 48 months, unless a longer period is warranted in the individual case. A finding of a serious employment handicap is a key factor in most provisions for extension of the period of eligibility beyond the basic 12-year period and for extension of the duration of a rehabilitation program beyond 48 months.

(3) *Extended Evaluation and Independent Living Services.* Those veterans for whom feasibility of vocational rehabilitation cannot be immediately determined will now enter extended evaluation programs and receive pretraining services. Such evaluation and services will be provided to determine if the veteran may attain a level necessary to either enter vocational rehabilitation training or a rehabilitation program having the objective of achieving maximum independence in daily living. For this last purpose, a special pilot program of limited scope and duration has been authorized to enable some of the most severely disabled veterans to undergo an intensive and innovative program of independent living services.

(4) *Individualized Planning.* Rehabilitation planning will now include not only those services needed to improve the veteran's ability to function in employment, but also in his or her family and community. An individual written rehabilitation plan, to be jointly developed by VA staff and the veteran, will be the means through which the goals of most rehabilitation programs are developed, and will delineate the means and time by which these goals will be achieved.

(5) *Allowances.* Enhanced financial provisions include an overall 17 percent increase in subsistence allowance, an increase in the revolving fund loan maximum, increased subsistence allowance for nominal pay or nonpay training, subsistence allowance during periods of extended evaluation, liberalization of post-rehabilitation payment and other considerations. Under a new option, Chapter 31 participants with remaining Chapter 34 entitlement may elect to receive the higher Chapter 34 educational allowance, in lieu of subsistence allowance and other training costs, while still being able to receive almost the full range of Chapter 31 services.

(6) *Employment Assistance.* To carry out the full purposes of the program, the scope of services and assistance has been broadened to include employment assistance as an integral part of the program for service-connected veterans who are or have been in vocational rehabilitation programs. In this way, veterans will be assisted to obtain and retain employment.

b. *Title III—Educational Assistance Program Adjustments.* While the basic provisions of this title are addressed in DVB Circular 22-80-39, VR&C staff should make note that effective October 1, 1980, mandatory counseling under Chapter 35 is repealed. Provisions for special restorative training, specialized vocational training and requested counseling are retained.

c. *Title IV—Post-Vietnam Era Veterans' Educational Assistance Program Adjustments.* Clarification of Chapter 32 is provided to indicate that effective October 1, 1980, individuals under this contributory program are eligible for counseling on request.

d. *Title V—Veterans' Employment Assistance Amendments.* This title addresses a variety of employment-related issues in title 38, U.S.C., Chapters 41, 42, and other chapters. The DVOP (Disabled Veterans Outreach Program) is continued and strengthened.

Specific priority groups of veterans are established; appointments of DVOP personnel are tied to State veteran population; and assignments of personnel are apportioned between local State employment offices and VA locations. These provisions, effective October 1, 1980, will assist the VR&C effort in fulfilling Chapter 31 training and employment initiatives. They will be discussed more fully in separate issues.

4. *Implementation.* Provisions effective October 1, 1980, or upon enactment are discussed in paragraph 5. These are for immediate implementation. During the period from enactment to March 31, 1981, all other provisions of Chapter 31, Title 38, U.S.C., will remain in effect. Provisions effective April 1, 1981, are discussed briefly in paragraph 6 and will be more fully developed in subsequent issues prior to the effective date.

5. *Provisions Effective October 1, 1980.* a. *Section 1508—Allowances.* This section deals with a variety of issues involving payment of subsistence allowance, including rate increases. The following provisions are for immediate implementation.

(1) *Subsistence Allowance.* Rates are increased 17 percent (see exhibit A). Hines DPC will adjust running IHL and NCD awards to show the new rates and will notify RO's (regional offices) of those cases in which RO input will be necessary. All new awards should use the new rates for periods of payment extending beyond October 1, 1980.

(2) *Nonpay Training.* On-job or work experience trainees in a Federal agency at nominal or no pay are eligible for subsistence allowance at the institutional rate, rather than OJT rate.

(a) All new entrance or reentrance awards for nonpay OJT trainees will be at institutional rates of subsistence allowance effective October 1, 1980. Both the authorization document (VA Form 22–1905, Authorization and Certification of Entrance or Reentrance Into Training and Certification of Trainee Status) and the award document (VA Form 22–1907a, Authorization of Subsistence Allowance) will be annotated in the "Remarks" section as follows: "Unpaid Federal work experience: in the receipt of institutional rates effective October 1, 1980."

(b) VR&C staff in each RO will immediately undertake a search to identify all Federal OJT or work experience cases with running awards paying the old OJT rate. VA Form 22–1905 will be prepared with the annotation in the "Remarks" section: "Adjust award for unpaid Federal work experience to pay institutional rates effective October 1, 1980." Upon receipt of VA Form 22–1905, the adjudicator will prepare VA Form 22–1907a and annotate the "Remarks" section of the award form, "Unpaid Federal work experience: in receipt of institutional rates effective October 1, 1980." This project, including award preparation, should be completed no later than December 15, 1980.

(3) *Post-Rehabilitation Pay.* Post-rehabilitation pay will now extend for a 2-month period following the training program and will no longer be paid as a lump sum. Payment will be at the full-time rate for the type of training pursued, regardless of the rate of pursuit during the final enrollment period. When preparing VA Form 22–1905 for a post-rehabilitation payment, the VR&C staff member must clearly specify in the "Remarks" section that a 2-month post-rehabilitation payment should be made. Upon receipt of VA Form 22–1905, the adjudicator will prepare a reentrance award on VA Form 22–1907a to extend the veteran's last award period for exactly 2 months. In the "Remarks" section, the adjudicator will annotate: "Award represents 2-month post-rehabilitation payment." The lump-sum payment indicator in item 4 of the VA Form 22–1907a will no longer be used.

(4) *Incarcerated Chapter 31 Trainees.* Specific provisions of the law now restrict and, in some instances, prohibit payment of chapter 31 subsistence allowance to veterans incarcerated in a Federal, State or local penal institution, halfway house, or participating in a work release program. Immediately, VR&C staff will identify such trainees and suspend all running awards. Detailed instructions for processing these cases will be forthcoming in an appendix to this circular.

b. *Section 1512—Revolving Fund Loans.* The existing RFL (Revolving Fund Loan) benefit is modified to increase the maximum loan which may be authorized from $200 to an amount twice the monthly subsistence rate for a single veteran in institutional training (currently $564).

(1) *Loan Approval and Documentation.* Prudent management is a critical aspect of administering this substantially increased benefit. Strict assurance must be given that loans in any amount are authorized only for meritorious reasons. The VRS must make careful evaluation of the need for the loan and the amount of the loan. The VRS will document findings of the evaluation on VA Form 22–1905d, Special Report of Training.

(2) *Loan Amount and Repayment.* The loan amount shall not exceed that needed to assure the veteran's continuation in the program. Repayment should be made as quickly as possible, taking into account the effect of such terms upon the veteran's ability to continue in his or her rehabilitation program. The VRS must review with the veteran whether there is a need for other kinds of assistance, for example, assistance in budgeting.

(3) *Special Considerations.*

(a) New loan requests will not be approved until any outstanding RFL has been fully recouped.

(b) Any loan in excess of $200 will require Central Office approval. Such requests accompanied by complete documentation justifying the request will be forwarded to the Field Director (28).

(4) *Other Provisions.* Chapter 34 educational assistance allowance has been added to sources for RFL repayment. Also, note that chapter 31 trainees who elect to receive a chapter 34 educational assistance allowance are not eligible for the RFL benefit.

c. *Section 1516—Promotion of Employment and Training.* Employment as the goal of rehabilitation is emphasized by targeting veterans who are or have been participating under the chapter 31 program, any veterans with service-connected disabilities and Vietnam era veterans targeted under Title 38, U.S.C., Chapter 42, "Employment and Training of Disabled and Vietnam Era Veterans." Both direct outreach efforts to employers by VA staff and coordination with other Agencies are mandated in order to develop and establish employment and on-the-job training opportunities. Stations should include this in all VA/DOL (Department of Labor) local agreements. This section also authorizes payment to an employer/trainer which does not exceed the direct expenses incurred in providing on-job training or employment. Regulations to implement the provisions for payment to an employer/trainer will be developed in consultation with the DOL and distributed. No local action on payment to an employer/trainer will be taken until these regulations are received.

d. *Section 1518—Personnel Training, Development and Qualifications.* Ongoing professional training for VR&C personnel is authorized to enable them to provide such services under Chapter 31 in accordance with the most advanced knowledge, methods, and techniques available. VA may contract with consultants and/or agencies to provide training and staff development. Training in areas of mutual concern will be coordinated by the VA with DOL and RSA (Rehabilitation Services Administration). The Administrator will

establish qualifications for professional staff providing evaluation and rehabilitation services under Chapter 31.

e. *Section 1519—Rehabilitation Research and Special Projects.* Research and special projects are authorized to advance psychological, educational, employment social, vocational, industrial and economic aspects of rehabilitation of veterans. Authorization is given to actively engage in and/or support studies, projects and research and to make grants and enter into contracts with educational institutions and other agencies. Cooperation with RSA, DOL, and NIHR (National Institute for Handicapped Research) in areas of mutual concern is also mandated. All such efforts will be undertaken only with prior Central Office approval.

f. *Section 1520—Pilot Program of Independent Living Services and Assistance.* Beginning in FY 1982 and continuing through FY 1985, a pilot program of independent living services will be provided for severely handicapped service-connected veterans for whom a vocational goal is not reasonably feasible, including veterans in long-term care facilities of the VA. Each year up to 500 veterans may enter this program, which will be implemented in the various geographic regions of the United States. An individualized written plan will be prepared in the same manner as for a veteran in a vocational rehabilitation program. Services necessary to carry out the rehabilitation plan will be provided through contractual arrangements made with outside agencies and organizations or through DM&S (Department of Medicine and Surgery). A report on these programs including accomplishments, cost effectiveness and legislative recommendations must be submitted to the Congress by September 30, 1984. Although the effective date for funding the pilot program is October 1, 1981, planning for program establishment will begin on October 1, 1980, the effective date of the program.

g. *Section 1521—Veterans' Advisory Committee on Rehabilitation.* This section requires the Administrator to appoint an advisory committee with whom to consult on a regular basis concerning the chapter 31 program. The members will include veterans with service-connected disabilities and persons distinguished in the general and special fields of rehabilitation. Ex officio members will represent DVB, DM&S, RSA, NIHR, and DOL. An annual report will be submitted to the Administrator and forwarded to Congress along with other relevant reports and recommendations.

h. *Other Provisions.* (1) *Section 1780—Payment of Educational Allowance or Subsistence Allowance.* Chapter 36, Title 38, U.S.C., is amended to provide that, in addition to weekends and legal holidays, up to 5 days in a 12-month period will not be counted as absences if the institution is not in session on those days due to teacher conferences or teacher training sessions, and regularly scheduled classes would otherwise have been held.

(2) *Section 1781—Limitations on Educational Assistance.* Chapter 36, Title 38, U.S.C., is amended to include subsistence allowance granted under chapter 31 as an additional category of prohibited payments to certain servicepersons and Government employees receiving training. This codifies existing VA Regulation 10022.

(3) *Section 1795—Limitation on Period of Assistance Under Two or More Programs.* Chapter 36, Title 38, U.S.C., is amended to include Chapter 32 entitlement used in consideration of the 48-month limitation under two or more programs. Although assistance received under Chapter 31 must be included with assistance under other chapters in considering the aggregate 48-month limitation on total training, additional months of benefits may be allowed under Chapter 31 when determined necessary to accomplish rehabilitation in the individual case.

i. *Title V—Disabled Veterans Outreach Program.* (1) *Scope and Eligibility.* The DVOP is placed on a continuing basis at a level of approximately 2,000 specialists nationwide. DVOP personnel are assigned only those duties directly related to meeting the employment needs of eligible veterans. Priority is as follows: Disabled Vietnam veterans who are participating in or have completed a program of vocational rehabilitation under Chapter 31, other disabled veterans, and eligible veterans included under employment emphasis under Chapter 42.

(2) *Location of DVOP Personnel.* No more than three-fourths of DVOP staff stationed in each State will be stationed at local State employment offices. DVOP staff not stationed at local employment offices shall be stationed at VA centers providing a program of readjustment counseling, veterans assistance offices, or other sites as may be determined appropriate for coordinated development of job training and employment opportunities.

6. *Provisions Effective April 1, 1981.* The majority of the provisions which complete the updating and expansion of the vocational rehabilitation program are effective April 1, 1981. Instructions governing the implementation of these provisions will be issued prior to that effective date.

a. *Section 1500—Purpose.* The purposes of chapter 31 are modified to include all services and assistance needed to "enable veterans with service-connected disabilities to achieve maximum independence in daily living and, to the maximum extent feasible, to become employable and to obtain and maintain suitable employment."

b. *Section 1501—Definitions.* Terms defined include employment handicap, serious employment handicap, rehabilitation program, vocational goal, vocational rehabilitation program, independence in daily living, program of independent living services and assistance, and rehabilitated to the point of employability.

c. *Section 1502—Basic Entitlement.* The conditions of basic entitlement for rehabilitation include the existence of a service-connected compensable disability incurred or aggravated during or after World War II. In addition, a serviceperson with a service-connected disability which will probably be classified as compensable who is hospitalized pending discharge is eligible. Need for rehabilitation because of an "employment handicap" must be established in all cases.

d. *Section 1503—Periods of Eligibility.* The basic 9-year period currently in effect is extended to 12 years. Conditions for extension beyond the basic period of eligibility have been liberalized for veterans with "serious employment handicaps," for veterans prevented from participating in a vocational rehabilitation program due to medical factors or due to eligibility not being established, and for severely disabled veterans participating in the pilot program of independent living services and assistance.

e. *Section 1504—Scope of Services and Assistance.* The statutory range of services and assistance available is expanded while retaining all services and assistance furnished under current law and regulations. New provisions include authorization for extended evaluation and reevaluations to determine potential for rehabilitation, to determine whether a serious employment handicap exists, to provide a basis for planning a rehabilitation program, and/or to improve the rehabilitation potential of a veteran. Placement and followup services and assistance necessary to establish severely disabled veterans in self-employment are also added. Many services and types of assistance

currently available through VA regulations are now included specifically in the law.

f. *Section 1505—Duration of Rehabilitation Programs.* The current basic 48-month period for rehabilitation services is continued, and conditions for an extension beyond 48 months have been liberalized to accomplish the purposes of vocational rehabilitation for a veteran with a serious employment handicap. A period for extended evaluation of up to 12 months is authorized if the VA is unable to determine whether the veteran can achieve a vocational goal, with additional 6-month extensions of that period possible for an individual veteran. A severely disabled veteran found to be in need of a program of independent living services and assistance may be authorized a rehabilitation program for a basic period of 24 months, but the period may be extended if it is determined that a longer period is necessary and likely to result in a substantial increase in the level of independent living.

g. *Section 1506—Initial and Extended Evaluations.* An initial evaluation will be made in all cases to establish eligibility for the Chapter 31 program, to determine whether a serious employment handicap exists, and to determine whether the achievement of a vocational goal is feasible. That initial evaluation shall consist of counseling and diagnostic or other services. In addition, an extended evaluation will be authorized when it cannot be determined whether the achievement of a vocational goal is reasonably feasible. Each veteran with a serious employment handicap will be provided counseling and an individually written vocational rehabilitation plan, whether pursuing a vocational goal or an independent living goal.

h. *Section 1507—Individualized Vocational Rehabilitation Plan.* The minimum essential elements of an individualized written plan of vocational rehabilitation are prescribed in the law for the veteran with a serious employment handicap. The plan developed jointly with the veteran will be reviewed annually and redeveloped if appropriate. A veteran not in agreement with an original or redeveloped plan may submit his or her objections and request a VA review of the plan. Time limits are established for the review process.

i. *Section 1508—Allowances.* (1) *Election of Chapter 34 Allowance.* A Chapter 31 eligible veteran may elect to use remaining Chapter 34 entitlement and receive educational assistance in lieu of subsistence allowance, but remain eligible for certain other Chapter 31 services. Despite election of Chapter 34 allowance, the veteran is a vocational rehabilitation trainee. The St. Paul DPC statistical system will be updated to reflect Chapter 34 award periods which form part of a program of vocational rehabilitation. System modifications to simultaneously reduce remaining Chapters 31 and 34 entitlement for such veterans will be developed.

(2) *Extended Evaluation.* Subsistence allowance is now authorized for veterans participating in extended evaluation.

(3) *Specialized Rehabilitation Facility.* For a veteran pursuing a rehabilitation program in residence at a special rehabilitation facility, authority has been granted to make payment to the facility for room and board in lieu of subsistence allowance. If such a payment to the facility is made, however, the veteran will receive the portion of the subsistence allowance for dependents for a full-time institutional program.

(4) *Temporary Hospitalization Rating.* If a hospitalized trainee is temporarily receiving compensation at the 100 percent level as a result of hospitalization in excess of 21 days, the sum of the combined Chapter 31 subsistence allowance and compensation benefits is limited either to the sum of the subsistence allowance due and the pre-hospitalization compensation rate received, or the 100 percent disability compensation rate, whichever is the greater.

j. *Section 1509—Entitlement to Independent Living Services and Assistance.* If it is determined that the achievement of a vocational goal is not reasonably feasible, a veteran is entitled to be considered as one of those selected to be in the pilot program of independent living services and assistance to achieve maximum independence in daily living.

k. *Section 1510—Leaves of Absence.* The authority to grant leaves of absence to veterans pursuing vocational rehabilitation training is continued. The current 30-day limit during a 12-month period is eliminated.

l. *Section 1511—Regulations to Promote Satisfactory Conduct and Cooperation.* Authority to establish regulations to promote satisfactory conduct and cooperation is continued. In addition, the VA must determine that all reasonable counseling efforts have been made prior to discontinuing services and assistance for failure to maintain satisfactory conduct and cooperation. The specific penalties formerly stated in the law are removed.

m. *Section 1513—Vocational Rehabilitation for Hospitalized Members of the Armed Forces and Veterans.* The VA will continue to afford vocational rehabilitation services and assistance to persons hospitalized pending discharge from military service. However, payment of subsistence allowance is prohibited. In addition, Chapter 31 services, including subsistence, subject to limitations in subparagraph 1(4) above, may be provided to a veteran receiving care in a VA facility or other medical or hospital facility.

n. *Section 1514—Vocational Rehabilitation Outside the United States.* Regulations will be prescribed to allow provision of a vocational rehabilitation program outside the United States, if it is determined to be necessary for purposes of rehabilitation, and if it is in the best interests of the veteran and the Government. Some provisions of the previous law are eliminated and more flexibility is delegated to the VA than was formerly permitted.

o. *Section 1515—Rehabilitation Resources.* The VA will utilize facilities, staff and resources of the VA and those of other Agencies or public and private facilities or individuals for purposes of providing training, work experience, or other rehabilitation services, through contract agreement or other arrangements. A veteran pursuing on-job training or work experience in a Federal agency continues to be considered an employee of the United States under Chapter 81, title 5, U.S.C., but not for purposes of laws administered by the OPM (Office of Personnel Management). Medical care is to be provided in VA facilities or as otherwise set forth under Chapter 17, title 38, U.S.C.

p. *Section 1517—Employment Assistance.* The VA is now required to provide employment assistance to veterans with a service-connected disability who have participated under Chapter 31 or in a similar program under the Rehabilitation Act of 1973. The services to veterans include direct placement, assistance of DVOP staff, use of DOL's employment services, the services of OPM, placement facilities provided under the Rehabilitation Act of 1973 or other public or nonprofit organizations. The VA must assure that the veteran rehabilitated for self-employment in a small business is provided the full benefit of the resources of the SBA (Small Business Administration), including veterans preference. If a veteran trained under a State program is unable to obtain

necessary equipment, initial stocks and supplies through that program or from other sources, the VA may provide them.

7. Inservice Training. This legislation represents the most important change in the program since it was established in 1943, and it is essential that provisions are communicated to the regional office Director and to VR&C and other staffs who will be carrying out the program. Each person in the VR&C Division will be furnished a copy of this issue. A staff meeting will be scheduled and the circular's provisions will be reviewed in-depth. Staffs in other Divisions, including Adjudication and Veterans Services, will be invited to participate in these meetings or, if desired, the VR&C Officer will brief staffs of those Divisions as part of their own inservice training programs.

Dorothy L. Starbuck,

Chief Benefits Director.

RATES FOR SUBSISTENCE ALLOWANCE UNDER CHAPTER 31 OF TITLE 38, U.S.C.

Type of program	No dep.	One dep.	Two dep.	Add'l amt. for each dep. over two
Institutional training:[1]				
Full time	$292	$349	$411	$30
Three-quarter time	212	262	308	23
Half time	141	175	206	15
Farm-cooperative, apprenticeship or other on-job training:				
Full time	246	297	343	22
Extended evaluation:				
Full time	282	349	411	30
Independent living training:				
Full time	282	349	411	30
Three-quarter time	212	262	308	23
Half time	141	175	206	15

[1] Institutional training includes IHL, NCD, and nonpay or minimal pay OJT or work experience in a Federal agency.

[FR Doc. 81-1080 Filed 1-15-81; 8:45 am]
BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register
Vol. 46, No. 11
Friday, January 16, 1981

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

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1

FEDERAL COMMUNICATIONS COMMISSION.

The Federal Communications Commission voted to hold a Closed Meeting on Thursday, January 22, 1981, following the Regular Open Meeting, at 1919 M Street, N. W., Washington, D.C. on the following subject:

Internal Personnel Matters

Additional information concerning this meeting may be obtained from Edward Dooley, FCC Public Affairs Office, telephone number (202) 254-7674.

The Public Notices for the Regular Open and Closed Meeting, for the above dates will be issued at a later date.

Issued: January 13, 1981.

Federal Communication Commission.

William J. Tricarico,

Secretary.

[S-0370-81 Filed 1-14-81; 10:00 am]

BILLING CODE 6712-01-M

2

FEDERAL COMMUNICATIONS COMMISSION.

During the Open Meeting scheduled for January 8, 1981, the Commission discussed the consideration of *FOIA Request for Employee Disqualification Statements filed pursuant to Section 19.735-204(e)(3) of the Rules.*

The prompt and orderly conduct of Commission business did not permit prior notice of this additional item.

Additional information concerning this matter may be obtained from Edward Dooley, FCC Public Affairs Office, telephone number (202) 254-7674.

Issued: January 13, 1981.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[S-0369-81 Filed 1-14-81; 10:07 am]

BILLING CODE 6712-01-M

3

FEDERAL COMMUNICATIONS COMMISSION.

The Federal Communications Commission held an Emergency Closed Meeting on Thursday, January 8, 1981 following the Regular Open Meeting, at 1919 M Street, N.W., Washington, D.C. on the following subject:

Internal Personnel Matters

The prompt and orderly conduct of Commission business did not permit announcement of this matter prior to the meeting.

Additional information concerning this meeting may be obtained from Edward Dooley, FCC Public Affairs Office, telephone number (202) 254-7674.

Issued: January 13, 1981.

Federal Communications Commission

William J. Tricarico,

Secretary.

[S-0368-81 Filed 1-14-81; 10:03 am]

BILLING CODE 6712-01-M

4

FEDERAL RESERVE SYSTEM.

BOARD OF GOVERNORS

TIME AND DATE: 10 A.M., WEDNESDAY, JANUARY 21, 1981.

PLACE: Board Building, C Street entrance between 20th and 21st Streets NW., Washington, D.C. 20551.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Proposal to revise Regulation C (Home Mortgage Disclosure) to implement amendments to the Home Mortgage Disclosure Act.

2. Request for an interpretation of Regulation Y (Bank Holding Companies and Change in Bank Control) that placement of equity interests in real estate projects is within the regulation's permissible lending activities.

3. Any items carried forward from a previously announced meeting.

Note.—This meeting will be recorded for the benefit of those unable to attend. Cassettes will be available for listening in the Board's Freedom of Information Office, and copies may be ordered for $5 per cassette by calling (202) 452-3684 or by writing to: Freedom of Information Office, Board of Governors of the Federal Reserve System, Washington, D.C. 20551.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board (202) 452-3204.

Dated: January 13, 1981.

James McAfee,

Assistant Secretary of the Board.

[S-0366-81 Filed 1-13-81; 4:00 pm]

BILLING CODE 6210-01-M

5

FEDERAL RESERVE SYSTEM.

Board of Governors

TIME AND DATE: Approximately 11:00 a.m., Wednesday, January 21, 1981, following a recess at the conclusion of the open meeting.

PLACE: 20th Street and Constitution Avenue, NW., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board.

Dated: January 13, 1981.

James McAfee,

Assistant Secretary of the Board.

[S-0367-81 Filed 1-14-81; 8:45 am]

BILLING CODE 6210-01-M

6

MERIT SYSTEMS PROTECTION BOARD.

AGENCY HOLDING THE MEETING: Merit Systems Protection Board.

TIME AND DATE: 11 a.m., Monday, January 19, 1981.

PLACE: Hearing Room, Merit Systems Protection Board, 1717 H Street NW., Washington, D.C. 20419.

STATUS: Open.

MATTERS TO BE CONSIDERED: Oral Arguments on Motion for Subpoena in *Acting Special Counsel v. Paul D. Sullivan*, Docket No. HQ12000018.

CONTACT PERSON FOR MORE INFORMATION: Kathy W. Semone, Director, Division of Records and Inquiries, Office of the Secretary, 202-632-4525.

January 14, 1981.

Merit Systems Protection Board.

Ruth T. Prokop,

Chairwoman.

[S-0371-81 Filed 1-14-81; 2:02 pm]

BILLING CODE 7400-01-M

7

NUCLEAR REGUL...

DATE: Monday, ... Wednesday, Ja...

PLACE: Commis... Room, 1717 H S... D.C.

STATUS: Open/...

MATTERS TO BE ...

January 19:

2:30 p.m.

1. Briefing on Sp... (approximatel...

2. Briefing on a ... Action (appro...

Wednesday, J...

10:00 a.m.

1. Meeting with ... Power Regulation ... public meeting)

2:00 p.m.

1. Briefing on Ad... Ignition Systems (... public meeting)

AUTOMATIC TELE... SERVICE FOR SCH... 634-1498. Those ... meeting should r... day of the meeti...

CONTACT PERSON ... INFORMATION: W... 1410.

Walter Magee,

Office of the Secret...

[S-0373-81 Filed 1-14-81; ...

BILLING CODE 7590-01-...

7

NUCLEAR REGULATORY COMMISSION,

DATE: Monday, January 19 and Wednesday, January 21, 1981.

PLACE: Commissioners' Conference Room, 1717 H Street NW., Washington, D.C.

STATUS: Open/closed.

MATTERS TO BE CONSIDERED: *Monday, January 19:*

2:30 p.m.
1. Briefing on Spent Fuel Storage (approximately 1 hour, public meeting)
2. Briefing on a Significant Enforcement Action (approximately 1 hour, closed)

Wednesday, January 21:

10:00 a.m.
1. Meeting with AIF on Future of Nuclear Power Regulation (approximately 1½ hours, public meeting)

2:00 p.m.
1. Briefing on Adequacy of Sequoyah Ignition Systems (approximately 1½ hours, public meeting)

AUTOMATIC TELEPHONE ANSWERING SERVICE FOR SCHEDULE UPDATE: (202) 634-1498. Those planning to attend a meeting should reverify the status on the day of the meeting.

CONTACT PERSON FOR MORE INFORMATION: Walter Magee (202) 634-1410.

Walter Magee,
Office of the Secretary.

[S-0073-81 Filed 1-14-81; 3:55 pm]
BILLING CODE 7590-01-M

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Friday, January 16, 1981

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AGENCY PUBLICATION ON ASSIGNED DAYS OF THE WEEK

The following agencies have agreed to publish all documents on two assigned days of the week (Monday/Thursday or Tuesday/Friday).

This is a voluntary program. (See OFR NOTICE 41 FR 32914, August 6, 1976.)

Monday	Tuesday	Wednesday	Thursday	Friday
DOT/SECRETARY	USDA/ASCS		DOT/SECRETARY	USDA/ASCS
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Documents normally scheduled for publication on a day that will be a Federal holiday will be published the next work day following the holiday.
Comments on this program are still invited.
Comments should be submitted to the Day-of-the-Week Program Coordinator, Office of the Federal Register, National Archives and Records Service, General Services Administration, Washington, D.C. 20408

NOTE: As of September 2, 1980, documents from the Animal and Plant Health Inspection Service, Department of Agriculture, will no longer be assigned to the Tuesday/Friday publication schedule.

REMINDERS

The "reminders" below identify documents that appeared in issues of the Federal Register 15 days or more ago. Inclusion or exclusion from this list has no legal significance.

Rules Going Into Effect Today

AGRICULTURE DEPARTMENT

Agricultural Marketing Service—

82939 12-17-80 / Tomatoes grown in South Texas; production research and marketing promotion, committee membership, penalties for late assessment payments, etc.

ENVIRONMENTAL PROTECTION AGENCY

47832 7-16-80 / Identification and listing of hazardous waste; additions

INTERIOR DEPARTMENT

Indian Affairs Bureau—

82921 12-17-80 / Descendancy rolls of certain Delaware Indians; preparation, certification, and approval

82918 12-17-80 / Membership roll of Delaware Indians of Western Oklahoma; preparation, certification, and approval

Surface Mining Reclamation and Enforcement Office—

83166 12-17-80 / Steep-slope mining; interim variances from requirement to return mined land to original contour

JUSTICE DEPARTMENT

Immigration and Naturalization Service—

83196 12-18-80 / Preliminary examination on petitions for naturalization; designation of examiners

List of Public Laws

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's List of Public Laws.

A complete listing for the second session of the 96th Congress is published in the Reader Aid section of the issue of January 7, 1981

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Book 2 of 3 Books
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4034 Part II—Labor/OSHA:
Electrical Standards

4078 Part III—Labor/OSHA:
Occupational Noise Exposure; Hearing Conse. Amendment

4182 Part IV—Labor/OSHA:
Marine Terminals

4254 Part V—Labor/ESA/W&H:
Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

4270 Part VI—Architectural and Transportation Barriers Compliance Board:
Minimum Guidelines and Requirements for Accessible Design

4306 Part VII—Labor/ESA/W&H:
Procedures for Predetermination of Wage Rates

4320 Part VIII—Labor/ESA/W&H:
Service Contract Act; Labor Standards for Federal Service Contracts

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Friday
January 16, 1981

Part II

Department of Labor

Occupational Safety and Health Administration

Electrical Standards

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1910

Electrical Standards

AGENCY: Occupational Safety and Health Administration, U.S. Department of Labor.

ACTION: Final standard

SUMMARY: In this final standard, the Occupational Safety and Health Administration (OSHA) establishes "Design Safety Standards for Electrical Systems." This standard revises Subpart S of 29 CFR Part 1910 and is intended to simplify and update the former standard. OSHA has determined that electrical hazards in the workplace pose a significant risk of injury or death to employees, and that these regulations which draw heavily on the experience of the National Electrical Code are reasonably necessary to provide protection from these hazards. The final rule places relevant requirements of the National Electrical Code (NEC) into the text of the regulations, making it unnecessary for employers to refer to the NEC to determine their obligations and unnecessary for OSHA to continue to incorporate the NEC by reference. Additionally, the final rule clarifies certain provisions which were misunderstood by certain interested parties.

EFFECTIVE DATE: This revision of 29 CFR Part 1910, Subpart S becomes effective on April 16, 1981.

FOR FURTHER INFORMATION CONTACT: For information on the standard contact: Mr. Jerry Leonard or Mr. David Wallis; Office of Electrical and Electronic Engineering Safety Standards; OSHA; Rm. N3510; 200 Constitution Avenue, NW., Washington, D.C. 20210. (202–523–7207).

For information on compliance contact: Mr. Peter Wasko; Federal Compliance and State Programs; Division of Safety Programming; OSHA; Rm. N3106; 200 Constitution Avenue, NW, Washington, D.C. 20210. (202–523–8124).

For additional copies of this regulation contact: OSHA Office of Publications; U.S. Department of Labor; Room S–1212; Washington, D.C. 20210. (202–523–8677).

SUPPLEMENTARY INFORMATION:

I. Background

(1) Safety Problems of Electric Shock

It is well known that the human body will conduct electricity, and that if direct body contact is made with an electrically energized part while a similar contact is made simultaneously with another conductive surface which is maintained at a different electrical potential, a current will flow, entering the body at one contact point, traversing the body and then exiting at the other contact point, usually the ground. Each year many workers suffer pain, injuries and death from such electric shocks and throughout the past decade the National Center for Health Statistics has reported approximately 1000 accidental electrocutions annually in the United States with about a fourth being industry and farm related.

The effects that electric shock will have on an individual will depend upon the type of circuit, its voltage, resistance, amperage, pathway through the body and the duration of the contact. For example, electric shocks produced by alternating currents of powerline frequency (normally 60 Hertz) passing through the body from hand to foot for an average adult worker for one second can cause various effects on the body. Such effects range from a condition of being barely perceptible at 1 milliampere to involuntary muscular control from 9 to 25 milliamperes. The passage of still higher currents can produce ventricular fibrillation of the heart (cessation of rhythmic pumping action) from 75 milliamperes to 4 amperes and finally immediate cardiac arrest at over 4 amperes. Nearly instantaneous fatalities from electric shock can result from either direct paralysis of the respiratory system (at 20 milliamperes or more), failure of the heart to pump due to ventricular fibrillation (at 75 milliamperes or more), or immediate and complete heart stoppage (at 4 amperes or more). Even if the shocking current does not pass through vital organs or nerve centers, severe injuries such as deep internal burns can still occur. In some cases, injuries caused by electric shock can be a contributory cause of delayed fatalities.

Burns suffered in electrical accidents are of great concern. These burns may be of three basic types: electrical burns, arc burns and thermal contact burns. Electrical burns are the result of the electric current flowing in the tissues and may be either skin deep or may affect deeper layers (muscles, bones, etc.) or both. Tissue damage is caused by the heat generated from the current flow; if the energy delivered by the electrical shock is high, the body cannot dissipate the heat and the tissue is burned. Typically, such electrical burns are slow to heal. Arc burns, on the other hand are the result of high temperatures in close proximity to the body produced by electric arcs or by explosions. These burns are similar to burns and blisters produced by any high temperature source. Finally, thermal contact burns are those normally experienced from the skin contacting hot surfaces of overheated electrical conductors, conduits, or other energized equipment. All types of burns may be produced simultaneously.

Electrical shock currents, even at levels as low as 3 milliamperes, can also cause injuries of an indirect or secondary nature in which involuntary muscular reaction from the electrical shock can cause bruises, bone fractures and even death resulting from collisions or falls.

(2) Hazards Associated With Electricity

Most electrical systems use the earth to establish an electrical voltage reference system with respect to ground. This is done by connecting a portion of the circuit to ground. Since these systems use conductors which have voltages to ground, a shock hazard exists for persons who are in electrical contact with the earth and are exposed to the conductors. If a person comes in contact with an ungrounded conductor while he is in contact with the ground, he becomes part of the circuit and current passes through his body.

In addition to the shock hazard, electricity poses other hazards to employees. For example, when a short circuit occurs or current flow is interrupted, hazards are created from the resultant arcs. If high current is involved, these arcs can cause injury or can start a fire. Fires can also be created by overheating equipment or by conductors carrying too much current. Extremely high-energy arcs can damage equipment causing fragmented metal to fly in all directions. In atmospheres which contain explosive gases or vapors or combustible dusts, even low-energy arcs can cause violent explosions.

(3) Nature of Electrical Accidents

Electrical accidents, when initially studied, often appear to be caused by circumstances which are varied and peculiar to the particular incidents involved. However, further consideration usually reveals the underlying cause to be a combination of three possible factors. These consist of work involving unsafe equipment and installations, workplaces made unsafe

by the environment, and unsafe work performance.

(a) *Basic Contributory Factors.* Some unsafe electrical equipment and installations can be identified, for example, by the presence of faulty insulation, improper grounding, loose connections, defective parts, ground faults in equipment or unguarded live parts. The environment can also be a contributory factor to electrical accidents in a number of ways. Some unsafe environments affecting electrical safety would be, for example, atmospheres containing flammable vapors, liquids or gases, areas containing corrosive atmospheres, and wet and damp locations. Finally, some typical unsafe acts can be recognized as, for example, the failure to deenergize electrical equipment when it is being repaired or inspected, the intentional use of obviously defective and unsafe tools, or the use of tools or equipment too close to energized parts. For purposes of convenience, the first and second accident causing situations are sometimes combined and simply referred to as unsafe conditions. Thus, electrical accidents can be generally considered as being caused by unsafe conditions, unsafe acts, or, what is usually the case, combinations of the two. It should also be noted that inadequate maintenance can cause equipment or installations, which were originally considered safe, to deteriorate, resulting in an unsafe condition.

(b) *Typical Accidents from Unsafe Conditions.* Of the two primary causative factors influencing electrical accidents (i.e., unsafe conditions and unsafe acts) the ones involving unsafe conditions are more directly addressed by the provisions of the National Electrical Code. Since OSHA's revised electrical safety standards are initially directed towards minimizing unsafe conditions, a few typical examples of related accidents are given to illustrate these situations.

(i) California—1972. A nurseryman was electrocuted when he touched a conduit riser in a greenhouse. The greenhouse was wired with overhead open wiring on insulators. A short section of conduit was installed to enclose conductors feeding down to a time clock. A fulty splice in the clock energized the clock frame and conduit.

(ii) Florida—1973. A lead foreman and set-up man for a plastics corporation was installing a new injection molding machine. The employee was electrocuted when he touched a temperature control unit used in conjunction with the molding machine. The temperature control unit had been improperly wired.

(iii) Hawaii—1971. An installer of refrigerators for the retail-wholesale trade was electrocuted using an electric drill. While working on top of a prefabricated walk-in unit, the worker was in continuous ground contact when an electrical fault developed in the drill plug and the accident occurred.

(iv) California—1971. A worker engaged in electroplating was electrocuted when he touched an ungrounded 9 volt D.C. bus on an electroplating tank while in contact with the grounded tank. It was found that a 120-volt terminal on an A.C. timer coil was installed within ⅛ inch of the D.C. bus. A fault path had developed and a leakage current of 70 milliamperes at 120 volts was measured between the electroplating bus and the grounded tank.

(v) Florida—1974. A slag house operator for a slag plant was on a catwalk repairing and replacing guards on belt drives and pulleys. He had gained access to the catwalk by using a wooden ladder, but he descended from the catwalk by means of a power pole erected at the end of the platform. A 440-volt line with deteriorated insulation was anchored to the pole, and metal spikes for climbing and descending had been driven into the pole. As the victim stepped on the first cleat, he grabbed his chest, lost his grip and fell ten feet to the concrete floor. Electric shock was found to be the cause of death.

(vi) Idaho—1974. A lubricator working in the molding department of a plastics manufacturing plant was electrocuted. The accident resulted when the worker contacted a nozzle adaptor which was energized on the molding machine.

(vii) California—1966. An electrician received flash burns on his face when he closed a large 480-volt switch after replacing a blown fuse. The ceramic insulating block holding one end of the fuse was defective and apparently had originally caused the fuse to blow.

(viii) California—1972. A worker was electrocuted when he grasped the metal nozzle of a steam cleaning hose which was metal reinforced. The 120-volt switch in the motor terminal enclosure of the steam cleaning unit had vibrated loose and a terminal was contacting the metal enclosure. The unit was supplied by a three conductor cord; however, the ground prong on the attachment plug had been broken off. Another worker received a severe shock when he attempted to help the first worker.

(ix) Massachusetts—1970. A repairman working in an automobile body shop was electrocuted when the portable grinder which he was using developed a short circuit.

(x) Florida—1973. A carpenter's helper for a boat manufacturing firm was electrocuted when he plugged the router cord into an extension cord outlet box. Examination of the extension cord outlet box showed the ungrounded conductor had separated from its terminal and was touching the metal box.

While these electrical accident descriptions are typical, it must be emphasized that they only represent accidents within the category of unsafe conditions.

(c) Accident References. Although descriptive accident data was reviewed from a variety of sources, the typical representative data presented herein was taken from the following:

(i) Electrical Work Injuries in California, Department of Industrial Relations, Division of Industrial Safety State of California, 455 Golden Gate Avenue, San Francisco, CA 94101.

(ii) "Live and Learn" Publication, Department of Labor and Employment Security, Industrial Safety, State of Florida 1321 Executive Center Drive, East Tallahassee, Florida 32301.

(iii) Publication of Occupational-Related Electrocutions, Department of Labor and Industrial Relations, State of Hawaii, 825 Mililani Street, Honolulu, Hawaii 96813.

(iv) Industrial Accidents, Industrial Commission, State of Idaho, 317 Main Street, Boise, Idaho 83707.

(v) Department of Labor and Industries, Division of Industrial Safety, Commonwealth of Massachusetts, Leverett Saltonstall Bldg., Government Center, 100 Cambridge Street, Boston, MA 02202.

(4) Protective Measures and Present Regulations

There are various general ways of protecting employees from the hazards of electric shock, including insulation and guarding of live parts. Insulation provides an electrical barrier to the flow of current. To be effective, the insulation must be appropriate for the voltage, and the insulating material should be clean and dry. Guarding prevents the employee from coming too close to energized parts. It can be in the form of a physical barricade, or it can be provided by installing the live parts out of reach from the working surface. (This technique is known as "guarding by location.")

Grounding is another method of protecting employees from electric shock; however, it is normally a secondary protective measure. To keep guards or enclosures at a common

potential with earth, they are connected, by means of a grounding conductor, to ground. If a live part accidentally comes in contact with a grounded enclosure, any current flow is directed back to earth and the circuit protective devices (e.g., fuses and circuit breakers) can interrupt the circuit.

When employees are working with electrical equipment, they must use safe work practices. Such safety-related employee work practices include keeping a prescribed distance from exposed energized lines, avoiding the use of electrical equipment while wet, and locking-out and tagging equipment which is deenergized for maintenance.

Another important safety practice involves the use of electrical protective devices, such as rubber gloves and rubber mats for purposes of insulation against live parts, or hot sticks for purposes of both insulation and actuation of energized parts from a distance. However, to assure the protection of the employee, this equipment must be properly manufactured and maintained. With this equipment, regular maintenance becomes an important consideration in order to keep the equipment from deteriorating into an unsafe condition.

The regulations formerly contained in Subpart S of Part 1910 adopted the 1971 National Electrical Code by reference and set forth definitions with respect to some of the terms used by the NEC. The National Electrical Code is the most widely used code to safeguard people and property from the potential hazards associated with electricity. This code had its beginning prior to the turn of the century when the use of electricity was just starting. At this time, the code serves as the cornerstone of electrical safety in the United States. As such, it provides the basis for electrical safety regulations in over 2000 municipalities throughout all 50 States. Thirty-seven States and the District of Columbia have adopted it as their electrical safety law, and it is enforced by over 12,000 governmental electrical inspectors. This national system provides important assistance to OSHA in its mission to afford electrical safety in the workplace.

(5) Reasons for Proposed Revision

As noted earlier, electricity has long been recognized as a serious workplace hazard, exposing employees to such dangers as electric shock, electrocution, fires, and explosions. Indeed, the long history of the National Electrical Code attests to this fact. Since 1896, the NEC has represented the continuing efforts of experts in electrical safety to deal with these recognized hazards and to provide for safety in all electrical installations, including workplaces. OSHA has determined that electrical hazards in the workplace pose a significant risk of injury or death to employees, and that these regulations which draw heavily on the experience of the NEC, are reasonably necessary to provide protection from these hazards.

OSHA recognizes the important role that the NEC has played over the years in defining basic requirements for safety in electrical installations. The revision of Subpart S being promulgated by this document will maintain the protection presently afforded to employees by the 1971 NEC, as incorporated by reference in the present standards. While carrying forward those provisions which are considered necessary for employee safety, OSHA is providing greater flexibility for compliance with these provisions to the extent that employee safety warrants. OSHA has determined, therefore, that this revision of Subpart S contains requirements derived from the NEC which are reasonably necessary to protect employees from electrical hazards in the workplace.

Since the National Electrical Code (NEC) NFPA 70-1971 was adopted as a national consensus standard under Section 6(a) of the Act, three revisions of the NEC have been issued, the most recent being the 1981 edition. Because of the continual process by the National Fire Protection Association (NFPA) of updating the Code every three years, any specific edition which OSHA might adopt would likely be outdated within a few years. In addition, since the rulemaking process can become somewhat lengthy, a complete revision of the OSHA electrical safety standards every three years to keep pace with the NEC changes is not practical. To remedy this problem, OSHA's electrical safety standards should accommodate changes in technology without the need for constant revision and, where possible, be written in performance terms in order to allow alternative installation methods if they provide comparable safety to the employee.

Another difficulty with the current incorporation of the entire NEC by reference is that the NEC contains many details which are not directly related to employee safety. In addition, a further objective of OSHA in revising the standard is to obtain an improved standard which will provide employee safety and will be easier to use and understand, but will still be comprehensive enough to cover all significant electrical hazards.

Finally, since the NEC is an electrical installation design document, it does not generally contain explicit requirements for electricial safety-related work practices, electrical equipment maintenance or safety requirements for special equipment. OSHA, therefore, will also consider the development of regulations in these areas in subsequent rulemaking proceedings.

(6) General Approach

In view of the existing constraints and limitations imposed by the continued use of the 1971 version of the NEC, discussed previously, OSHA concluded that a revised standard tailored to fulfill OSHA's responsibilities and which would extract suitable portions from the NEC and other safety standards applicable to electrical safety was needed.

At the same time, and after discussions with OSHA staff, the NFPA decided that the NEC Correlating Committee, which periodically evaluates the NEC, should examine the feasibility of developing a document to be used as a basis for providing electrical safety in the workplace. In 1976, NFPA established the "70E Committee" to prepare a consensus standard for possible use by OSHA in developing a proposal for subsequent rulemaking. The 70E Committee visualized a standard consisting of four major parts:

Part I—Installation Safety Requirements,

Part II— Safety Related Work Practices,

Part III—Safety-Related Maintenance Requirements,

Part IV—Safety Requirements for Special Equipment.

The name given to this new document became NFPA 70E, "Electrical Safety Requirements for Employee Workplaces."

(7) Criteria for Part I of NFPA 70E

The NFPA 70E Committee derived Part I from the 1978 NEC; however, unlike the NEC, this Part was not intended to be applied as a design, installation, modification, or construction standard for an electrical installation or system. Rather, its content was excerpted from the NEC in order to apply only to electrical utilization systems which were part of the workplace. Although Part I of NFPA 70E is compatible with corresponding provisions of the NEC, it is not intended to be used, nor can it be used, in lieu of the NEC for the design and initial installation of utilization systems and equipment.

Although all of the requirements of the NEC may be related to electrical hazards, for practical purposes the Committee included in Part I of NFPA 70E provisions which are most directly associated with employee safety. In

determining which provisions should be included in Part I, the following guidelines were used by the 70E Committee.

(a) The provisions should give protection to the employees from electrical hazards.

(b) The provisions should be excerpted from the NEC in a manner that will maintain their intent as they apply to employee safety.

(c) The provisions should be selected and written in a manner that will reduce the need for frequent revision and avoid technological obsolescence.

(d) Compliance with the provisions should be determinable by means of an inspection during the normal state of employee occupancy without requiring shutdown of the electrical installation or damage to the building or finish.

(e) The provisions should not be encumbered with unnecessary details.

(f) The provisions should be written so as to enhance their understanding by the employer and employee.

(g) The provisions must not add any requirements not found in the NEC, nor may the intent of the NEC be changed even if the wording is changed.

(6) Source of 70E

The 1978 edition of the NEC was used as a source document for NFPA 70E, instead of the 1971 edition. Part I of 70E reflects a considerable improvement over the present OSHA standards incorporated in Subpart S. Generally, this improvement may be considered as being one achieved more from the elimination of requirements inappropriate to OSHA's needs rather than from the addition of new requirements. Typical examples of this method of simplification in the preparation of Part I of 70E relate to NEC chapters 3, 4, 6, 7, and 9, as discussed below. Although 70E does contain some additional requirements not contained in the 1971 NEC (as in chapters 6 and 7 of the 1978 NEC), such new provisions are relatively few in number.

Major deletions and additions, typical of those made in the preparation of 70E, are given in the following paragraphs:

(a) *Principal Deletions.* Chapters 3 and 4 of the 1971 and 1978 NEC deal with wiring methods and materials (Chapter 3) and equipment for general use (Chapter 4). Tables containing various specialized technical information have been deleted in 70E.

Typical topics of these chapters included insulation characteristics, allowable ampacities, electrical box sizes, flexible cord and motor full load currents. This type of information was deleted because it deals with items not directly related to the electrical hazard. For example, the composition of insulation on a conductor was deleted; however, the actual requirement that the conductor be insulated and that the insulation be approved for its intended purpose was retained. These changes result in a standard which is more performance oriented.

Chapter 6 of the 1971 and 1978 NEC describes special equipment requirements. Requirements from this chapter dealing with electrically operated organs and the installation of equipment and wiring used for sound-recording and reproduction have been deleted in 70E because electrical safety for employees is not directly affected by these items. Any hazard to the employee related to this type of equipment would most likely arise in the supply system which will still be covered.

Chapter 7 of the 1971 and 1978 NEC deals with special conditions. All requirements from this chapter involving stand-by power generation systems permanently installed, other than emergency systems, have been deleted. In these situations, primary electrical hazards to the worker are minimal since the effects of power outage are generally limited to product or process damage.

Chapter 9 of the 1971 and 1978 NEC provides a collection of tables containing technical data, together with a number of sample computations. This entire chapter is not included in 70E because it is solely and instructive guide for the design of certain electrical syatems.

(b) *Principal Additions.* Chapter 6 of the 1971 NEC which deals with special equipment, has been supplemented by additional requirements found in the 1978 edition of the NEC. These additions are included in 70E. Specifically, new provisions for workplaces containing electrically driven or controlled irrigation machines and workplaces using electrolytic cells have been added. In the first type of workplace, the related electrical hazard is associated with the presence of an electrically driven or controlled machine, with one or more motors, used primarily to transport and distribute water for agricultural purposes. In the second type of workplace, equipment is installed consisting of electrolytic cells used for the purpose of refining or producing various materials. Such an installation contains electrical hazards because the employee's work is normally performed on or in the vicinity of exposed energized surfaces of the electrolytic cell lines and their attachments. As a consequence, special electrical safety requirements are needed and hence such provisions are included in 70E.

Chapter 7 of the 1971 NEC covers special conditions. An addition contained in the 1978 NEC involves fire protective signaling systems. Inasmuch as the installation of wiring and equipment of fire protective signaling systems, operating at 600 volts or less, has a definite effect on workplace safety, the new provisions have been included in 70E.

II. History of Regulation

The need for an uncomplicated and readily understandable standard, sufficiently general to minimize the need for changes, appeared to be satisfied by Part I of the NFPA 70E recommendations. OSHA carefully reviewed the work product of the 70E Committee and determined that its use as a source document for OSHA's design safety standard for electical utilization systems and equipment was appropriate and offered certain advantages in achieving a more simplified standard. OSHA prepared a notice of proposed rulemaking which contained proposed amendments of the electrical safety standards in Subpart S of 29 CFR Part 1910. The proposal was published in the Federal Register (44 FR 55274) on September 25, 1979. On November 20, 1979, OSHA published a notice correcting the proposal and extending the comment period (44 FR 66821).

The proposal represented an attempt to develop a comprehensive standard which would protect employees from recognized electrical hazards in the workplace. This was accomplished by examining the existing standards, the 1975 and 1978 edition of the NEC. The proposal streamlined the existing standard, which incorporated by reference the whole 1971 NEC, by deleting portions of the NEC which were not directly related to employee safety. OSHA's proposed revisions provided more flexibility, allowing employers alternative methods of compliance by phrasing the standard in terms of performance instead of specification.

The notice of proposed rulemaking invited interested persons to submit written comments on the proposed standard, to participate in a public meeting (which was held on November 8, 1979), and to file objections and requests for a public hearing. The original date for the close of the comment period was set for November 30, 1979, but was subsequently extended, at the request of commenters, to December 31, 1979 (44 FR 66821). Over 190 written comments were received, including several requests for a hearing which identified eight major issues:

1. Whether the proposal should be more performance oriented or, on the other hand, should provide greater specification.

2. Whether the scope of the standard is clear with respect to its coverage of public utilities.

3. Whether the proposal would change the existing "grandfathering" and "retroactive" provisions.

4. Whether the marking and approval requirements in proposed §§ 1910.303(a), 1910.303(e), and 1910.307(b)(4) deviate from the existing regulations and whether they relate to employee safety.

5. Whether the impedance and ampacity requirements of National Electrical Code (NEC) Section 250–51 should be included in the standard.

6. Whether the prohibition of the use of structural metal frames of buildings as the equipment grounding conductor (1978 NEC 250–53(a)) should be included in the standard.

7. Whether the definitions for Class II locations and their associated explanatory notes should be changed.

8. Whether installations of electrolytic cells should be covered by the guarding provisons of proposed § 1910.303.

In response to these hearing requests, OSHA published a notice of public hearing, listing these issues (45 FR 10375). The informal rulemaking hearing was convened by Judge Harmon Maxson on May 6, 1980, pursuant to section 6(b)(3) of the Act (29 U.S.C. 655(b)(3)) and 29 CFR Part 1911. The hearing lasted through May 8, 1980, and included testimony from over 50 witnesses. Judge Maxson established a post-hearing period for the submission of additional comments and briefs extending through July 8, 1980.

The entire record, including 73 exhibits, 5 addenda, and 490 transcript pages, was certified by Judge Maxson on August 27, 1980, in accordance with 29 CFR 1911.17. Copies of materials in the record, as well as an index of the record, may be obtained from the OSHA Docket Office, Room S6212, Frances Perkins Building, 200 Constitution Avenue, NW, Washington, D.C. 20210

This final standard is based on a full consideration of the entire record of this proceeding including materials discussed or relied on in the proposal, the record of the informal hearing, and all written comments and exhibits received.

III. Issues

The evidence submitted into the record is summarized and evaluated in the following discussions of each issue. The numbers in brackets refer to specific references in the May 6, 7, and 8, 1980, hearing exhibits (Ex.) and hearing transcript page numbers (Tr.).

1. *Whether the proposal should be more performance oriented or, on the other hand, should provide greater specification.*

Most of the language of the proposed standards was taken directly from the National Electrical Code. This was done to maintain continuity with the existing regulations, which incorporated the entire 1971 NEC by reference. Where the NEC language was rewritten emphasis was given to performance oriented terms. As stated by one witness, the criteria used by the NFPA 70E Committee in developing the base document was: "Whenever practicable, the standard promulgated shall be expressed in terms of objective criteria and of the performace desired" (Tr. 394). However, some commenters felt that the proposal was still too specific and suggested that the entire standard be more general. One commenter stated:

> Most accidents do not result from lack of or conformance to specification, but are performance failures, such as human and/or environmental failures. Another deficiency of specification standards is that the inflexibility of specification standards leads to specification-type citations which frequently fail to correct accident causes. * * * So long as a standard is specification oriented, it is sterile and freezes in place the state of technology and scientific applications to the industry (Ex. 44).

In a later submission, the same commenter stated, "The standards should allow the employer the use of reasoned judgment in the application of innovative methods, new technology and cost-saving practices so long as worker safety is not jeopardized" (Ex. 61). This commenter had earlier submitted an annotated copy of the proposal with suggested changes for all paragraphs which they felt were too specific (Ex. 2). Another comment contained a suggested revision of the entire standard which would reduce it to two pages of very general terms and stated, "Performance orientation allows for rapid technological improvements, alternative methods of accomplishing employee safety and a reduction of nuisance citations" (Ex. 12). In addition, a witness stated, "When specifications are detailed to this degree, they place a burden on OHSA compliance officers to become unnecessarily proficient in the technical language and application of the National Electrical Code and the proposed regulations" (Tr. 417–418).

In contrast to testimony supporting more general standards, one witness stated, "The most obvious and serious defect is the emphasis on writing the standard in general terms * * * The [Review] Commission and the circuit courts have ruled, in some instances, that standards written in general terms are vague and unenforceable" (Tr. 227).

A certain balance is required in order to make the standard both flexible and at the same time enforceable. OSHA has tried to make the standard as performance oriented as possible. However, it is impossible to express the standard in only performance terms without providing some specifications for employers and compliance officers. The final rule as adopted, therefore, is essentially a performance standard, with specifications included where necessary.

2. *Whether the scope of the standard is clear with respect to its coverage of public utilities.*

The scope of OHSA's former standard was stated in § 1910.308(c). The so-called "utility exemption" was contained in paragraph (c)(2)(v) and was identical to 1971 NEC Section 90–2(b)(5). In the proposal, OHSA continued the "exemption" in § 1910.302(e)(2)(v), which read the same as the earlier version:

> (2) *Not covered.* * * *
> (v) Installations under the exclusive control of electric utilities for the purpose of communication or metering; or for the generation, control, transformation, transmission, and distribution of electric energy, located in buildings used exclusively by the utilities for such purposes or located outdoors on property owned or leased by the utility, or on public highways, streets, roads, etc., or outdoors by established rights on private property.

OHSA's interpretation of this regulation, as stated at the public hearing, has been that "this provision excludes the *installations* of electric utilities used for such purposes as the generation, control, transformation, transmission and distribution of electric energy. Other codes and standards such as ANSI C–2, National Electrical Safety Code, address the installation design requirements for these facilities. Therefore, the NEC does not address these areas of electric design" (Tr. 25, emphasis added).

As stated by witnesses at the hearing, the scope provision of the standard does not grant exemptions (Tr. 68, 259, 426). Instead, the "utility exemption", as it is referred to, is simply a statement of installations which were never intended to be within the scope of the NEC, or of this standard. In other words the standard, like the NEC, does not contain provisions which are appropriate for dealing with utility installations either for the generation, control, transformation, transmission, and

distribution of electric energy, or for the purpose of communication or metering.

However, other utility installations not of the type noted above are covered. A proposal was submitted to the 1981 code writing panels to clarify the intent of the scope paragraphs. As noted by some witnesses (Tr. 261, 427), this proposal was accepted and a revised fine print note was added to the proposed 1981 NEC, reading as follows:

> It is the intent of this section that this Code covers all premises' wiring or wiring other than utility owned metering equipment, on the load side of the service point of buildings, structures, or any other premises not owned or leased by the utility. Also, it is the intent that this Code cover installations in buildings used by the utility for purposes other than listed in (b–5) above, such as office buildings, warehouses, garages, machine shops, recreational buildings which are not an integral part of a generating plant, substation, or control center.

The language of § 1910.302(a)(2)(v) provides that portions of a utility installation which are not integral parts of a generating plant, substation, or control center are covered by the standard.

The position that all aspects of public utilities operation should be covered by the proposed regulations was raised by two commenters. The first commenter expressed the concern that a large number of workers would not be protected by an electrical standard if the public utility industry were exempted from this standard. He cited a Bureau of Labor Statistics News Release which stated that six of every 10 fatalities from contact with electric current occurred to workers in the construction, transportation and public utilites industries (Ex. 25). However, most of those fatalities were in the construction industry; and, since the causes of those fatalities occurring in the transportation and public utilities industries were not broken down, it is not clear how many may have been caused by conditions covered in the regulations of this Subpart. Expressing the same concern, the other commenter stated, "To exclude the utility industry from Subpart S (electrical) of the Occupational Safety and Health Act is to deny fair and equal safety coverage to the largest number of workers exposed to these hazards on a daily basis." In support of his objection, this witness described several electrical accidents of which he had personal knowledge (Ex. 26). However, it must be noted that the causes of these accidents were related to construction and maintenance of power transmission and distribution lines and equipment; the electrical standards of Part 1910 do not apply to construction activities. (Regulations for the construction of power transmission and distribution lines are contained in OHSA's construction standards (29 CFR Part 1926). Regulations on the maintenance and design of these lines and equipment will be considered in future rulemakings.)

The question of whether other industries should have the same exemption as public utilities in areas where they are performing the same operations was raised by steel industry representatives (Ex. 61). As they noted, the National Electrical Safety Code (ANSI C-2) contains regulations covering the generation, control, transformation, transmission and distribution of electric energy. ANSI C-2 does specifically say in its scope that it is applicable to the systems and equipment operated by utilities, or similar systems and equipment of an industrial establishment or complex under the control of qualified persons. While questioning a witness representing the Edison Electric Institute, a steel industry representative noted that while the NEC and OSHA's Subpart S cover industrial substations, the ANSI C-2 Code says that it, too, covers industrial equipment, thus producing a conflict or overlap (Tr. 350).

The NEC and OSHA's Subpart S do contain provisions which are appropriate for most industrial substations. Such facilities are included in the scope of this standard, because they vary widely in the power and voltage involved and in the type of equipment that is used. While some industrial facilities may only include utility type equipment and operate similarly to a utility, this is not the general case. As a rule utilities operate at much higher voltages and with specially trained employees. In the situations where the industrial operation may be the same as that of an electric utility, there would not be an overlap since ANSI C-2 contains the provisions which would apply and neither the NEC nor OSHA's Subpart S contain provisions which would be applicable. However, since provisions are included in these standards which are appropriate for most industrial substations, these installations have been included in the scope of the final rule.

3. *Whether the proposal would change the existing "grandfathering" and "retroactive" provisions.*

a. *Terminology.*

The term "retroactive" has been used during this rulemaking to refer to provisions which were required by former § 1910.309(a) (and by proposed § 1910.302(b)(1)) to be implemented without regard to when the electrical installation was made. OSHA recognizes that this is an unorthodox use of the term "retroactive," since these provisions do not involve retroactivity in the true sense of the word. The so-called "retroactive" provisions of § 1910.309(a) required certain previously installed equipment to be updated as of the standard's effective date to meet a list of requirements from the 1971 NEC. In that sense, its application to existing installations was no different than that of the other national consensus standards which OSHA adopted under section 6(a) of the Act. In other words, employers who had not voluntarily met these standards before OSHA adopted them were now required to bring their facilities into compliance.

In this preamble, OSHA will refer to the requirements of § 1910.309(a) and proposed § 1910.302(b) as the "retroactive" provisions of Subpart S, in order to avoid further confusion, even though the term is not accurate.

Similarly, § 1910.309(b) (and proposed § 1910.302(b)(2)) which apply the entire electrical standard to installations made after March 15, 1972, are referred to as the "grandfathering" provisions, because they did not require that installations made before March 15, 1972, comply with the entire 1971 NEC (or as stated in § 1910.302(b)(2), comply with all of Subpart S).

b. *Background of the former § 1910.309*

OSHA's former General Industry Electrical Safety Standard included §§ 1910.309 (a) and (b), which read as follows:

> (a) The requirements contained in the following articles and sections of the National Electrical Code, NFPA 70–1971; ANSI C1–1971 (Rev. of C1–1968) shall apply to all electrical installations and utilization equipment: [4 articles and 74 provisions of the 1971 NEC were listed].
>
> (b) Every new electrical installations and all new utilization equipment installed after March 15, 1972, and every replacement, modification, or repair or rehabilitation, after March 15, 1972, of any part of any electrical installation or utilization equipment installed before March 15, 1972, shall be installed or made, and maintained, in accordance with the provisions of the 1971 National Electrical Code, NFPA 70–1971; ANSI C1–1971 (Rev. of C1–1968).

Under these provisions, the 4 articles and 74 provisions of the 1971 NEC, as listed in § 1910.309(a), applied to all electrical installations and utilization equipment, including those installed before the rule was published. If these installations and equipment did not comply with the listed provisions, they were required to be brought into compliance. Paragraph 1910.309(b), then, provided that equipment and

installations made after March 15, 1972, were subject to the entire 1971 NEC.

To the extent that § 1910.302(b) of the proposal was developed directly from these provisions, OSHA believed that it was clear that no new requirements were proposed for installations and equipment installed prior to March 15, 1972. In fact, the list of provisions in proposed § 1910.302(b)(1) was shortened, and the listed provisions were simplified significantly from those in § 1910.309(a).

However, as the rulemaking on Subpart S progressed, it became evident that there was considerable confusion over proposed § 1910.302(b)(1) and its antecedent, § 1910.309(a). Some parties contended that proposed § 1910.302(b)(1) actually added new "retroactive" requirements not found in § 1910.309(a). Others indicated that they did not understand either the proposed or the existing "retroactive" provisions. In this regard, OSHA believes that it will be helpful at this point to discuss the development of § 1910.309 as it has appeared in Subpart S since 1972.

On May 29, 1971, OSHA published, under Section 6(a) of the Act, its first package of national consensus and established Federal standards in 29 CFR Part 1910 (36 FR 10466). Various amendments were made less than three months later, on August 13–14, 1971, (36 FR 15101, 15438). Included in the initial package of standards was Subpart S of Part 1910, entitled "Electrical." Certain substantive provisions from the 1968 NEC were published nearly verbatim in Subpart S as § 1910.308 and §§ 1910.310–1910.328. The August 13, 1971 amendments provided that these sections became effective on August 27, 1971 (36 FR 15101). The remaining provisions of the 1968 NEC were incorporated by reference in § 1910.309, and employers were given an additional 5½ months, until February 15, 1972, to adjust to and come into compliance with these requirements.

However, before the expiration of the two year period established by section 6(a) of the Act for the adoption of national consensus standards as OSHA standards, the NFPA issued its 1971 edition of the NEC. The 1971 NEC thus became the latest edition of the national consensus standards for electrical safety. OSHA reviewed its existing standards and determined that there were potential conflicts between the two consensus standards, namely, the 1968 NEC and 1971 NEC. Under section 6(a) of the Act, the Assistant Secretary eliminated such conflicts by promulgating the standard which assured the greatest protection for employees.

OSHA determined that original §§ 1910.310–1910.328, as originally promulgated, were necessary elements of employee safety in existing installations, and that their coverage should be continued for all electrical installations, regardless of when made. It was also determined that for future installations and modifications of existing installations, the entire 1971 NEC should be applicable.

For existing installations, then, OSHA adopted only the Articles and Sections of the 1971 NEC which, in their 1968 versions, had been the sources for original §§ 1910.310–1910.328 (37 FR 3431, February 16, 1972). Where there was conflict between the 1968 provisions and the 1971 provisions, section 6(a) of the Act required the adoption of the version which "assures the greatest protection of the safety or health of the affected employees." (29 USC 655(a).) The Assistant Secretary selected the 1971 versions as being more protective than those of 1968. (This determination was also congruent with the NFPA's own determination, as stated in a new provision of the 1971 NEC, Section 90–1, that the 1971 Code contained "requirements considered necessary for safety.")

OSHA did not then publish sections 1910.308 and 1910.310–1910.328, taken from the 1971 Code, to replace those sections originally taken from the 1968 Code. Instead of publishing the text of these NEC articles and sections verbatim within Subpart S, OSHA chose to list them and incorporate them by reference in paragraph (a) of § 1910.309 and apply them to all electrical installations. Paragraph (b), on the other hand, incorporated the entire 1971 NEC by reference for application only to installations, modifications, repairs, and renovations made after March 15, 1972 (37 FR 3431, Feb. 16, 1972).

The format and content of § 1910.309, as promulgated in February 1972 has remained unchanged since then, except for the revision of a requirement from the 1971 NEC relating to ground-fault protection on construction sites.

It is clear from this discussion that OSHA's actions in applying only certain provisions of the 1971 NEC to existing installations were well within the authority of the Assistant Secretary under section 6(a) of the Act. Indeed, the promulgation of former § 1910.309 did not constitute the fullest possible exercise of section 6(a) authority, which could have resulted in the entire 1971 NEC being applied to all electrical installations. The Assistant Secretary acted to resolve the conflict between consensus standards in a manner which did not compromise the good faith efforts of employers to comply with the electrical standards as originally promulgated.

c. Background of proposed § 1910.302(b)

OSHA proposed to retain most of the requirements of former § 1910.309 in proposed § 1910.302(b). The proposed provision retained the dichotomy between old and new installations as contained in § 1910.309, as follows:

> (b) *Extent of application.* (1) The requirements contained in the sections listed below shall apply to all electrical installations and utilization equipment regardless of when they were designed or installed: [28 sections of proposed Subpart S were listed, containing 48 provisions].
>
> (2) Every new electric utilization system and all new utilization equipment installed after March 15, 1972, and every replacement, modification, repair, or rehabilitation, after March 15, 1972, of any part of any electric utilization system or utilization equipment installed before March 15, 1972, shall be installed or made, and maintained, in accordance with the provisions of §§ 1910.302 through 1910.308 of this subpart.

The requirements listed in proposed § 1910.302(b)(1) were all based on the 1971 NEC Articles and Sections contained in the former § 1910.309(a) list. Some of the requirements in the old list were proposed to be deleted (e.g., NEC Section 422–17). Others were written in more performance-oriented terms (e.g., NEC Articles 500, 501, 502, and 503), allowing alternative methods of compliance to those specified in the 1971 NEC. (These changes are noted in detail in section IV of this preamble.) Thus, the proposal provided much greater flexibility for the employer than did the former regulation.

The "retroactive" provisions in proposed § 1910.302(b)(1) related to such critical areas as grounding, guarding live parts, use of flexible cords, overcurrent protection, hazardous locations, identification of equipment and disconnecting means, and inspection of equipment. In evaluating the need for these requirements, OSHA reviewed 1971 and 1972 electrical accident data from the State of California. From this data, OSHA concluded that 70 percent of the electrical accidents which were attributable to unsafe conditions involved hazards addressed by the "retroactive" requirements.

Most of the comments and testimony introduced on the issue of the "retroactive" provisions were submitted by representatives of a single industry, involving feed and grain production (Tr. 160–169, 250–251, 264–269, 420; Ex. 19, 21, 28, 31, 32, 39, 54). Some argued that OSHA's former regulation was not recognized by industry as applying "retroactively" and that OSHA

compliance officers were interpreting it inconsistently (Ex. 31, 44).

However, the record clearly indicates that the "retroactive" provisions of § 1910.309(a) have been uniformly applied by OSHA to installations made prior to March 15, 1972. This fact is indicated by the evidence of citations submitted into the record (Ex. 55G). In addition, testimony of representatives from organizations such as the American Petroleum Institute, Underwriters Laboratories, Inc., and the National Fire Protection Association shows that industry in general has been well aware of the "retroactive" provisions of § 1910.309(a) during the nearly nine years since their original promulgation (Tr. 307, 324, 406–409).

Furthermore, the Occupational Safety and Health Review Commission, in *Delaware and Hudson Railway* (1980 OSHD ¶ 24,422), has ruled definitively that the "retroactive" provisions of § 1910.309(a) do apply to equipment installed before March 15, 1972. As the Commission noted:

> Respondent submits that section 1910.309(b) limits the application of section 1910.309(a) to equipment installed after March 15, 1972.
>
> Sections 1910.309 (a) and (b) must be read together. Section 1910.309(a) incorporates by reference certain specified sections of the NEC as occupational safety and health standards and provides that they "shall apply to *all* electrical installations. . . ." (emphasis added). Section 1910.309(a) contains no clause excluding previously installed equipment from its coverage. Section 1910.309(b), on the other hand, goes further than section 1910.309(a)'s incorporation of only specific sections of the NEC, and requires compliance with the entire electrical code. The terms of section 1910.309(b), however, limit its application to equipment installed, replaced, repaired, or rehabilitated after March 15, 1972. Because Respondent was cited for a failure to comply with an NEC provision specifically incorporated in section 1910.309(a), the date of installation of Respondent's equipment is irrelevant. (1980 OSHD ¶ 24,422, at p. 29767).

Several commenters argued that even if § 1910.309(a) by its terms applies to installations made prior to March 15, 1972, the NEC was not intended by its drafters to be applied "retroactively" in this way, but was only intended to be used prospectively, as an installation standard (Ex. 31, 32, 54, 69). These commenters argued that there was no evidence in the record that any other State or governmental agency had adopted the NEC "retroactively."

The 1971 NEC was totally silent on the question of its application to existing facilities. Had the drafters intended to limit its application to new installations, they could easily have included a statement to that effect in the scope provisions (Section 90–2) of the Code. (In fact, the NEC Code Making Panel which is responsible for the scope and introduction to the NEC rejected a proposal for the 1975 NEC which would have provided an exemption for existing installations. See pp. 1–3, *Preprint of the Proposed Amendments for the 1974 National Electrical Code*, Part II (NFPA, 1973).) Moreover, the 1971 NEC clearly indicated an intention to leave all such questions of application and enforcement to the enforcing authority. For example, section 90–7 provided:

> This Code is intended to be suitable for mandatory application by governmental bodies exercising legal jurisdiction over electrical installations. . . . The administrative authority supervising such enforcement of the Code will have the responsibility for making interpretations of the rules, for deciding upon the approval of equipment and materials, and for granting the special permission contemplated in a number of the rules.

In addition, section 90–1(b) of the 1971 NEC did not distinguish between safety in existing installations and safety in new installations:

> This code contains provisions considered necessary for safety. Compliance therewith and proper maintenance will result in an installation essentially free from hazard. . . .

Thus, the 1971 NEC contained no provisions which indicated an intent for that Code to apply only to new electrical installations. The question of how the Code would be applied was left to the authorities enforcing it, including OSHA.

Section 6(a) of the Act was enacted to provide protection to employees from workplace hazards as soon as possible. The urgency of this action was underscored by Congress' authorization to OSHA to proceed without regard to the rulemaking procedures of the Administrative Procedure Act (5 U.S.C. 553). Had OSHA chosen to apply the 1971 NEC only to new installations, such action would not have resulted in any improvement in employee safety under existing conditions. Furthermore, there would have been no coverage at all for these conditions.

OSHA's selection of provisions from the 1971 NEC to apply to all installations represented a means of complying with the letter and the spirit of section 6(a) of the Act. Virtually all of the "retroactive" provisions in former § 1910.309(a) (and, necessarily, in proposed § 1910.302(b)(1)) had been in the NEC in one form or another for many years prior to the 1971 edition. Hence, although they were now mandatory on a National scale for the first time, these provisions were already well known to employers across the country.

It is important to note that former § 1910.309(a) listed only a small portion of the 1971 NEC for application to installations made before March 15, 1972. Additionally, the overwhelming majority of these provisions originated in editions of the NEC dated 1937 or earlier (see Table following).

Table of "Retroactive" Provisions

"Retroactive" provisions in OSHA's former standards (§ 1910.309(a))		NEC edition and page numbers in which provisions first appeared	Provisions not "retroactive" in OSHA's proposal (§ 1910.302 (b)(1))
Sections:			
250-56 (a) and (b)	Equipment on Structural Metal	1930, p. 125	X
250-59 (a), (b), and (c)	Portable and/or Cord Connected and Plug Connected Equipment, Grounding Method.	1930, p. 132; 1935, p. 138; 1937, p. 65.	X
400-3 (a) and (b)	Flexible Cords and Cable, Uses	1930, p. 132; 1937, p. 127	
400-4	Flexible Cords and Cable Prohibited	1959, p. 206	
400-5	Flexible Cords and Cables, Splices	1947, p. 131	
400-9	Overcurrent Protection and Ampacities of Flexible Cords.	1930, p. 83; 1937, p. 127	
400-10	Pull at Joints and Terminals of Flexible Cords and Cables.	1930, p.82	
422-8	Installation of Appliances with Flexible Cords	1930, p. 70	X
422-9	Installation of Portable Immersion Heaters	1935, p. 182	X
422-10	Installation Appliances Adjacent to Combustible Material.	1935, p. 182	X
422-11	Stands for Portable Appliances	1935, p. 182	X
422-12	Signals for Heated Appliances	1935, p. 182	X
422-14	Water Heaters	1956, pp. 70-181	X
422-15 (a), (b), and (c)	Installation of Infrared Lamp and Industrial Heating Appliances.	1947, p. 144	X
110-14 (a) and (b)	Electric Connection	1930, p. 14; 1935, p. 16	
110-17 (a), (b), and (c)	Guarding of Live Parts	1936, p. 19	
110-18	Arcing Parts	1937, p. 20	
110-21	Marking	1937, p. 20; 1899, pp. 10, 22, 33, 43.	
110-22	Identification	1965, p. 16	
240-16 (a), (b), (c), and (d)	Location in Premises (for Overcurrent Protection Devices).	1930, p. 100	
240-19 (a) and (b)	Guarding of Arcing or Suddenly Moving Parts of Overcurrent Protection Devices.	1930, p. 98	
250-3 (a) and (b)	D.C. System Grounding	1930, p. 137; 1925, p. 85	
250-5 (a), (b), and (c)	A.C. Circuits and Systems. To be Grounded	1930, pp. 127-128; 1925, p. 85	
250-7	Circuits not to be Grounded	1936, p. 57	X
250-42 (a), (b), (c), and (d)	Fixed Equipment Grounding, General	1930, p 130; 1937, p. 58	
250-43 (a), (b), (c), (d), (e), (f), (g), (h), and (i).	Fixed Equipment, Grounding, Specific	1930, p. 130; 1937, pp. 58-59.	X
250-44 (a), (b), (c), (d), and (e).	Nonelectrical Equipment, Grounding	1930, p. 131; 1937, p. 60	
250-45 (a), (b), (c), and (d)	Equipment Connected by Cord and Plug, Grounding.	1930, p. 132	
430-142 (a), (b), (c), and (d)	Stationary Motor, Grounding	1937, p. 158	X
430-143	Portable Motors, Grounding	1937, p, 159	X
250-50 (a) and (b)	Equipment Grounding Connections	1947, p. 85	
250-51	Effective Grounding	1937, p. 63	
250-57 (a) and (b)	Fixed Equipment, Method of Grounding	1937, p. 65	
422-16	Appliance Grounding	1937, p. 138	X
422-17	Installation of Wall-mounted Ovens and Counter-mounted Cooking Units.	1937, p. 137, 139	X
Articles:			
500	Hazardous Locations		
501	Class I Installations (Hazardous Locations)	1925; 1926; 1930, p. 185	
502	Class II Installations (Hazardous Locations)		
503	Class III Installations (Hazardous Locations)		
"Approval Requirements" [1]		1899, pp. 6, 20, 26, 27, and 29 supplement.	

[1] The general approval requirement is not "retroactive" either in OSHA's present or proposed regulations. It is shown here to indicate its genesis.

Lastly, several commenters claimed that "retroactive" application of OSHA's electrical standards would result in a vast economic burden on employers without being necessary for employee safety (Tr. 169-171; Ex. 31, 56, 61, 62). To support their claim, two organizations submitted economic impact studies on their respective industries (Ex. 55], 58).

As discussed more fully in the section on regulatory assessment (Section V), the exaggerated cost estimates in these industry studies can be attributed to a lack of clarity and proper organization in § 1910.307 as proposed. During the rulemaking, as is later noted, proposed § 1910.307 was viewed by various parties as imposing an "approval" requirement for electrical equipment in hazardous locations. This section applied to all such equipment, regardless of when installed, by virtue of its inclusion in the "retroactive" list in § 1910.302(b)(1). Thus, based upon this interpretation, the cost estimates in the industry studies included the unnecessary and enormous expense of removing acceptable equipment which was not "approved."

OSHA recognizes that proposed § 1910.307, as drafted, may have been susceptible to such reading. However, as

issue 4 in this section of the preamble makes clear, it was never OSHA's intention to require "approval" or "listing" or "labeling" of equipment in hazardous locations installed before March 15, 1972. Approval of this sort was only one of three alternatives which OSHA intended to allow for these locations. Although approval of equipment is certainly an acceptable means of compliance, § 1910.307 provides that other equipment will also be acceptable if it is intrinsically safe or if the employer can demonstrate that the equipment is of a type and design which provides protection from the hazards of the hazardous location. This performance requirement is, if anything, a less burdensome provision than the requirements from the 1971 NEC which have been enforced under § 1910.309(a).

Thus, many of the costs submitted in the industry studies are not imposed by the revision of Subpart S. The reorganization of § 1910.307 in the final standards will help to clarify the situation and remove the cause of the controversy surrounding both this section and the other "retroactive" provisions of § 1910.302(b)(1).

OSHA has considered the recommendations for eliminating "retroactive" provisions for older electrical installations and has concluded that a total exemption of all existing facilities is unwarranted. "Retroactive" application of the requirements listed in § 1910.302(b)(1) has been shown to be reasonably necessary for employee safety and has not been shown to be an unwarranted or extremely costly burden on employers. Therefore, § 1910.302(b)(1) has been adopted with no change from the proposal.

4. *Whether the marking and approval requirements in proposed §§ 1910.303(a), 1910.303(e), and 1910.307(b)(4) deviate from the existing regulations and whether they relate to employee safety.*

a. *Marking*

OSHA's previous standards on the general marking of electrical equipment were contained in 1971 NEC Sections 110–21 and 500–2(b). In the former standards, both requirements were "retroactive," and they read as follows:

> 110–21. *Marking.* The manufacturer's name, trademark, or other descriptive marking by which the organization responsible for the product may be identified, shall be placed on all electrical equipment. Other markings shall be provided giving voltage, current, wattage, or other ratings as are prescribed elsewhere in this Code. The marking shall be of sufficient durability to withstand the environment involved.
>
> 500–2. *Special Precaution.* * * *
>
> (b) *Marking.* Approved equipment shall be marked to show the Class, Group and operating temperature, or temperature range, based on operation in a 40° C ambient for which it is approved.
>
> The temperature range, if provided, shall be indicated in identification numbers, as shown in Table 500–2(b).
>
> Identification numbers marked on equipment nameplates shall be in accordance with Table 500–2(b).
>
> *Exception: Equipment of the nonheat-producing type, such as junction boxes, conduit and fittings, are not required to have a marked operating temperature.*

OSHA proposed to retain both provisions, with some minor modifications. Paragraph 1910.303(e) proposed requirements equivalent to NEC Section 110–21, except with the words "as are prescribed elsewhere in this Code" changed to the more performance-oriented "as may be required." In proposed § 1910.307(b)(4), the second and third sentences of NEC Section 500–2(b) were deleted, a related sentence from 1971 NEC Section 500–2(c) was added, and two new exceptions were also added. These changes resulted in no new obligations for employers.

Some commenters were concerned with the "retroactive" application of the general marking requirements, § 1910.303(e) (Tr. 309, 396–397; Ex. 19, 31). However, it must be noted that this requirement was not new to the NEC when the first OSHA electrical standards were promulgated. Indeed, this requirement can be found as far back as the 1918 National Electrical Code,[1] and it has been carried forward in all subsequent editions. More than half a century later, it was reasonable for OSHA to expect that most, if not all workplaces were in compliance with this provision when Subpart S was first promulgated.

The commenters also suggested that marking was not related to employee safety. However, since the required markings provide for proper identification and utilization of equipment, the requirement clearly provides protection for operating and maintenance personnel (Tr. 64, 73–74).

One commenter (Ex. 56) was concerned that otherwise safe equipment would have to be replaced for lack of the required markings and suggested that OSHA allow the employer to mark the equipment. In this regard, the standard does not specify that markings are only acceptable if they are part of the manufacturers' nameplates (though a nameplate would be acceptable). The standard allows the employer to place the required marking on equipment provided that it is done in a manner which ensures sufficient durability.

Many of the comments on OSHA's proposal, as well as some of the hearing exhibits, reflected misinterpretations of OSHA's marking requirements (Exs. 2, 19, 21, 31). The terms "marking", "labeling", and "approval", each of which has its own distinctive meaning within the context of Subpart S, were nonetheless used interchangeably by the commenters and witnesses. In this regard, it may be helpful to discuss the meanings of and relationships between these terms in the context of the standards.

"Marking" means no more than the identification of the key electrical parameters of a piece of electrical equipment. As noted above, § 1910.303(e) does not require that this "marking" take the form of a manufacturer's nameplate. Marking may be accomplished by any means which will provide the necessary information and will be capable of withstanding the operating environment of the equipment.

"Marking" does not mean the same thing as "labeling", as used in both the NEC and Subpart S. "Labeling" refers to the label of a nationally recognized testing laboratory, such as Underwriters Laboratories, Inc. (UL), or Factory Mutual Engineering Corporation, which indicates that the equipment in question has met criteria set by that laboratory for electrical safety. "Labeling," unlike "marking," is not required by Subpart S; however, if equipment is required by the Subpart to be "approved," equipment which is "labeled" is acceptable to OSHA.

The general requirement that all equipment be "approved", which was carried forward in proposed § 1910.303(a), only applies to installations made after March 15, 1972. This requirement was not contained in the list of "retroactive" provisions in former § 1910.309(a) and was also not contained in the list of proposed § 1910.302(b)(1). (See discussion of *Approval* in Section III, Issue 4b of this preamble.)

In brief, the general requirements for marking in § 1910.303(e) apply to all electric equipment; the general approval requirement in § 1910.303(a) applies to equipment installed after March 15, 1972; and there is no labeling requirement. If equipment is required to be "approved", unapproved equipment generally has to be replaced with "approved" equipment. On the other hand, equipment which is not properly marked need not be replaced but need

[1] P. 128 (Class D, Markings) 1918 "National Electrical Code", *Regulations of the National Board of Fire Underwriters for Electric Wiring and Apparatus, as Recommended by the National Fire Protection Association.*

only be marked with the necessary information.

Other commenters addressed § 1910.307(b)(4). They claimed that this paragraph required unnecessary marking of dust-tight equipment, which did not need to be marked for use in Class II, Division 2 locations (Tr. 274–275; Ex. 19, 34, 56). To support their views, they cited the 1981 NEC which has clarified the marking requirement by including an exception to Section 500–2(b) for dust-tight equipment in Class II, Division 2 and Class III locations. So that OSHA's standard would not conflict with the NEC, they suggested that § 1910.307(b)(4) be changed to read as follows:

(4) *Marking.* Approved equipment not covered in paragraphs (b)(4)(i) through (b)(4)(iv) of this section shall be marked to show the class, group, and operating temperature, or temperature range, based on operation in a 40° C ambient, for which it is approved. The temperature marking shall not exceed the ignition temperature of the specific gas or vapor to be encountered.

(i) Equipment of the nonheat-producing type, such as junction boxes, conduit, and fittings and equipment of the heat producing type having a maximum temperature not more than 100°C [212°F], shall not be required to have a marked operating temperature or temperature range.

(ii) Fixed lighting fixtures marked for use in Class I, Division 2 locations only, need not be marked to indicate the Group.

(iii) Fixed general purpose equipment in Class I locations other than fixed lighting fixtures which is acceptable for use in Class I Division 2 locations shall not be required to be marked with the Class, Group, Division or operating temperature.

(iv) Fixed dust tight equipment other than fixed lighting fixtures which are acceptable for use in Class II Division 2 and Class III locations shall not be required to be marked with the Class, Group, Division or operating temperature.

The proposed version allowed general-purpose equipment suitable for any Division 2 location to be unmarked. Since dust-tight equipment was acceptable for installation in Class II, Division 2 locations, proposed § 1910.307(b)(4)(iii) already accepted the use of unmarked, dust-tight equipment in Class II, Division 2 locations. However, in an effort to clarify this point and in agreement with the comments received, the suggested change has been included in the final rule.

b. *Approval*

OSHA's former regulation requiring all equipment to be approved was contained in 1971 NEC Section 110–2, which was not made applicable to equipment installed before March 15, 1972. Definitions and clarifications relating to approval were contained in former § 1910.399(d), and paragraph (d)(1) stated that approved meant "acceptable to the Assistant Secretary of Labor for Occupational Safety and Health." For the purpose of the former regulations, § 1910.399(d)(2) listed the types of installations or equipment which would be acceptable (and therefore "approved"). The definitions applied both to the general approval requirement and to provisions of the 1971 NEC which contained their own specific approval requirements.

In proposed § 1910.303(a), OSHA retained the same approval requirement as that contained in 1971 NEC Section 110–2. The definitions relating to approval were also retained. In keeping with the former standards, § 1910.303(a) was not proposed to be made applicable to equipment installed before March 15, 1972. However, § 1910.307 (dealing with equipment installed in hazardous locations) was proposed to be made applicable to all electric equipment. This proposed section corresponded to Articles 500–503 of the 1971 NEC, which were listed in § 1910.399(a) of the former standards as being "retroactive." Proposed § 1910.307 did contain some requirements relating to approval of equipment. In paragraph (c), this section required equipment to be one or more of the following: (1) intrinsically safe, (2) approved for the hazardous location, or (3) of a type and design which provides protection from the hazards arising from the combustibility and flammability of vapors, liquids, gases, dusts or fibers.

Equipment "approval" was intended to be only one means of compliance. Paragraphs (b)(1) and (b)(2) were not intended to establish substantive requirements unless the employer selected the means of compliance in § 1910.307(c)(2). Since they related only to approval, these paragraphs were not applicable if one of the other two methods of compliance were chosen.

There seemed to be confusion among the commenters about these approval requirements (Tr. 294; Ex. 31, 49). One assumed that the proposal required all equipment in hazardous locations to be approved regardless of when it had been installed and claimed that retrofitting of existing equipment would be required solely because such equipment was not approved (Ex. 56). The extent of the confusion is indicated by the testimony of one witness who believed that U.L. listed motors built between 1973 and 1975 would have to be replaced, because Underwriters Laboratories subsequently changed their standards (Tr. 275–276).

However, OSHA does not intend to require all equipment in hazardous locations to be "approved." Although hazardous locations are required to comply with § 1910.307, the approval requirement contained therein is only one of the three alternate methods by which employers can comply. The standard does not require existing equipment to be "approved," as long as the employer can demonstrate that it is safe for the hazardous location.

OSHA intended the requirements for approved and intrinsically safe equipment, as set forth in proposed paragraph (b) of § 1910.307 to be read totally in the context of the alternatives for compliance under paragraph (c) of that section. Thus, if an employer chose to comply with § 1910.307 by using approved or intrinsically safe equipment in hazardous locations, the requirements applicable to such equipment in paragraph (b) would specify what each compliance option entailed.

The general approval requirements in § 1910.303(a), then, do not apply to installations made before March 15, 1972. Therefore, that section does not require any changes to an employer's equipment if that equipment was installed before March 15, 1972. Additionally, with respect to the approval-related options contained in § 1910.307, OSHA has reorganized the final rule to state the agency's intent more clearly. Section 1910.307 requires that equipment in hazardous locations be one or more of the following: (1) intrinsically safe (§ 1910.307(b)(1)); (2) approved for the hazardous location (§ 1910.307(b)(2)); or (3) of a type and design which provides protection from the hazards arising from the combustibility and flammability of vapors, liquids, gases, dusts, or fibers (§ 1910.307(b)(3)). Requirements addressing each alternative set forth in § 1910.307 have been relocated to show that they apply only to that alternative. For example, if the employer selects to use approved equipment as a means of complying with § 1910.307(b), then new § 1910.307(b)(2)(i) indicates that such equipment must be approved not only for the Class and Division but also for the group of atmosphere involved.

5. *Whether the impedance and ampacity requirements of National Electrical Code (NEC) Section 250–51 should be included in the standard.*

Section 1910.304(f)(4) of the proposed electrical standards, which requires that the path to ground from circuits, equipment, and enclosures be permanent and continuous, was derived from Section 250–51 of the 1978 NEC. However, it does not contain the ampacity and impedance requirements of the grounding path which are in both the 1978 NEC (Section 250–51) and the former OSHA standards.

The proposed requirements of § 1910.304 specify that conductors and equipment be protected in accordance with their ability to safely conduct current, and § 1910.305 requires that wiring methods, components, and equipment for general use be approved for the purpose. It follows that if these two performance requirements are met, then all basic requirements applicable to ampacity and impedance will likewise be satisfied. For this reason, the ampacity and impedance requirements are omitted here without affecting employee safety. These changes reflect the general approach to simplify and clarify the proposed standard.

The record reflects general agreement that deletion of the ampacity requirement was justified (Ex. 22; Tr. 94, 398). The ampacity requirement of NEC Section 250-51 should be satisfied at the time of initial installation of the electrical utilization equipment or systems in which the equipment grounding conductors are a part.

There was considerable testimony plus comment in the record, however, on the proposed deletion of the impedance requirement. It was contended that the omission of this requirement would reduce the protection of employees against shock and electrocution. To achieve employee protection against shock and electrocution, it was argued the equipment grounding conductor must not only have continuity, it must also present a low impedance path which will permit sufficient fault current to flow thus assuring the rapid operation of the overcurrent device protecting the circuit (Ex. 22).

The same commenter, however, further indicated that a return to the impedance requirements of NEC 250-51 would still be inadequate because the quality of the equipment ground is generally an unknown value and requires verification. For example, NEC 250-51 paragraph (c) specifies no quantitative values but requires only that the grounding path have "sufficiently low impedance" to limit the voltage to ground and to facilitate the operation of the circuit protective devices in the circuit. Thus, the NEC specifies the ground path requirements in terms of performance and does not specify values of impedance. The commenter recommended (Ex. 22) that OSHA change the proposed § 1910.304(f)(4) to read as follows: "The path to ground from circuits, equipment and enclosures shall be permanent, continuous and have sufficiently low impedance to limit the voltage to ground and to facilitate the operation of the circuit protective devices in the circuit. The impedance of this path shall not exceed the levels given in Table S-4." (Table S-4 is contained in Exhibit 22 and specifies a maximum equipment ground impedance for different overcurrent device ratings at various circuit voltages.)

Mr. Robert West, an expert in the area of electrical grounding and its relationship to occupational safety standards, stated at the hearing (Tr. 113) that the impedance of equipment grounding conductors for most of the circuits in many operational workplaces cannot be accurately verified by testing. The reason for this is that the test current will flow in unknown conducting paths that are in parallel with the equipment grounding conductors. The witness cited (Tr. 110) examples of test situations which could occur with commercial testers showing the presence of a low impedance equipment grounding conductor when, in fact, the equipment grounding conductor is disconnected. Because of these problems, it was Mr. West's view that the standard should not require impedance testing. Mr. West indicated (Tr. 113) that the requirement for the path to ground from circuits, equipment, and enclosures to be permanent and continuous can be verified in most operational workplaces by visually inspecting grounding conductors and by checking the grounding conductor connections for tightness.

A representative of Monsanto Company (Tr. 337) also agreed with OSHA's deletion of the impedance requirement and submitted the results of a series of field tests performed to evaluate a particular equipment grounding conductor impedance measuring technique (Ex. 36). According to this witness, the tests were conducted to determine whether or not meaningful values of equipment grounding conductor impedance could be obtained through measurements using a commercially available tester designed for this purpose. The test results showed generally how the existence of parallel paths affect the measurement of equipment grounding conductor impedances. One significant test result was that impedance measurements will not always reveal a break (open conductor) in, or the absence of, the equipment grounding conductor.

In one instance, one commenter submitted what appeared to be inconsistent testimony concerning impedance testing. The initial submittal (Ex. 22) stated: "Instrumentation is commercially available that will quickly, easily and accurately measure the impedance of *only the equipment grounding conductor* under live circuit conditions" (emphasis added). However, in his post-hearing comment, the same commenter concluded that the impedance tester would not be able to measure the impedance of the conductor alone, but would only be able to measure the impedance of the total fault path: "The purpose of the impedance tester is to accurately determine the amount of impedance *in the anticipated fault path whether it is called an equipment grounding conductor or anything else*" (Ex. 68A) (emphasis added).

Where non-current-carrying metal parts of electrical equipment are required to be grounded, § 1910.304(f) specifies that only equipment grounding conductors be used and that the equipment grounding conductor must be installed either along with the circuit conductors or enclose the circuit conductors. The reason for keeping the ground return path and the phase legs in close proximity is to minimize the impedance of the fault circuit by placing conductors so their magnetic fields cancel each other and mutual inductance is minimized. This reduces the inductive reactance and allows sufficient current to flow, thus facilitating operation of the circuit protective devices.

Where conduit is used as an equipment grounding conductor, the ground-fault current flows through a conductor inside the conduit and returns through the conduit. When this occurs, practically all of the magnetic field is inside the conduit. This results in practically all of the inductive reactance of the circuit appearing on the inside conductor while the impedance of the conduit becomes approximately equal to its DC resistance.

Low resistance paths in parallel with the equipment grounding conductor will carry some portion of the total ground-fault current. These unknown and undefined parallel paths make it impossible to separate and measure the impedance of only the equipment grounding conductor alone.

Tests have shown that ground path impedance measurements involving extraneous parallel paths can give incorrect indications regarding disconnected or open grounding conductors (Ex. 17, 36). Under these conditions, as noted above, impedance measurements may not detect the presence of serious electrical hazards. They may well give the employee a false sense of security as to the safety of an installation. With limitations of this type, it appears that visual inspection and periodic maintenance are the only practical approach to assure a safe

condition of the equipment grounding conductor.

Additionally, one commenter (Ex. 22) referenced accident data involving electrical work injuries in California (1972) and claimed that a major factor contributing to the injuries was equipment not being grounded or having poor or inadequate grounding connections. A review of the actual accident descriptions, however, indicated the presence of such other causal factors as the total absence of proper equipment grounding means, interruption in the continuity of the equipment grounding conductor, or improper connection of grounding conductors. The data did not, therefore, indicate that the ohmic value of the equipment grounding conductor impedance was a significant factor in the accidents.

Grounding path resistances are usually determined in the design stage of equipment and electrical installations and are not intended to be measured in the field on a routine basis. OSHA's recognition of this fact has previously been incorporated into the OSHA standard on ground-fault protection (§ 1926.400(h) is the cognizant standard), where only a continuity test of the equipment grounding conductor is required. A quantitative test including an ohmic value is not considered necessary or appropriate for determining the presence of the equipment grounding conductor.

It is OSHA's belief that equipment grounding systems, installed in accordance with the requirements of this Subpart, will significantly reduce the chances for personnel injuries provided the continuity and permanence of the equipment grounding conductors and connections are maintained after the systems are placed in operation.

The path to ground from circuits, equipment and enclosures can usually be verified as being permanent and continuous by an inspection of equipment grounding conductors and the grounding conductor connections. In certain special cases, where extraneous parallel paths are not a problem, continuity tests can also be made to verify the presence and integrity of equipment grounding conductors. OSHA recognizes that impedance testing may lead to false assurances of the impedance, or even the very presence of the grounding conductor. Therefore, for this reason and since maintenance requirements are not the subject of this rulemaking, OSHA is not requiring such testing in these standards.

6. *Whether the prohibition of the use of structural metal frames of buildings as the equipment grounding conductor (1978 NEC 250–58(a)) should be included in the standard.*

The comments addressing this issue refer to proposed § 1910.304(f)(6), dealing with methods of grounding fixed equipment. Specifically, the comments concern the use of structural metal frames of buildings as equipment grounding conductors for AC equipment. Such use is permitted in the 1971 NEC and was carried forward in the proposed standard.

One commenter (Ex. 22) cited the 1978 NEC (Section 250–58) which explicitly states that this use is not acceptable, and argued that a similarly explicit statement should be included in the proposed OSHA standard.

It is noted that although the building of structural metal will, in many installations, possess sufficient ampacity to safely conduct ground-fault currents, the NEC no longer considers such a grounding path to be a valid substitute for the required equipment grounding conductor. The code's current position is that there is always the possibility that any path to ground other than the equipment grounding conductor may have insufficient capacity. This can result in a serious hazard in those installations where the presence of large-capacity circuits have the capability of producing thousands of amperes of fault-current. Also, where high-magnitude ground-fault currents are forced to flow in paths that are remote from the circuit conductors, magnetic fields are generated which can induce voltages in adjacent conductors. Such induced voltages may cause failure of components in low energy electric systems. Stray ground currents have also been known to cause arcing in piping systems.

On the other hand, from the standpoint of employee safety, installations where electric equipment is secured to, and in metallic contact with, the grounded structural metal frame of a building are essentially free of electrical shock hazards. This condition occurs because the electric equipment enclosures and the metal building frame will be approximately at the same potential if a ground fault occurs and will provide a measure of employee safety.

Mr. Robert West suggested that the proposed standard be changed to prevent the structural metal frame of a building from being used as an acceptable equipment grounding conductor for installations made after the date of the final rule (Tr. 115–116). However, he contended that the change should be applicable only to new installations. He noted that prior to the 1978 NEC, Section 250–58 of previous editions, including the 1971 NEC incorporated by OSHA, specifically stated that electrical equipment secured to and in electrical contact with the structural frame of a building was acceptably grounded. Therefore, he argued that it would be impractical to require changes to existing installations.

As a result of the testimony, OSHA has concluded that § 1910.304(f)(6)(ii) should be changed to reflect the latest NEC requirements. This change is accomplished by deleting the first sentence of proposed § 1910.304(f)(6)(ii) and adding two sentences as follows: "Electric equipment is considered to be effectively grounded if it is secured to, and in electrical contact with, a metal rack or structure that is provided for its support and the metal rack or structure is grounded by the method specified for the noncurrent-carrying metal parts of fixed equipment in paragraph (f)(6)(i) of this section. For installations made before April 16, 1981 only, electric equipment is considered to be effectively grounded if it is secured to, and in metallic contact with, the grounded structural metal frame of a building."

7. *Whether the definitions for Class II locations and their associated explanatory notes should be changed.*

The proposed definition of a Class II, Division 1 location (§ 1910.399(a)(25)(i)) was identical to the definition in OSHA's previous regulations and read as follows:

> A Class II, Division 1 location is a location: (1) in which combustible dust is *or may be in suspension* in the air *continuously, intermittently, or periodically* under normal operating conditions, in quantities sufficient to produce explosive or ignitible mixtures; or (2) where mechanical failure or abnormal operation of machinery or equipment might cause such explosive or ignitible mixtures to be produced, and might also provide a source of ignition through simultaneous failure of electric equipment, operation of protection devices, or from other causes; or (3) in which combustible dusts of an electrically conductive nature may be present. (Emphasis added.)

In other words, a location in which a hazardous concentration of combustible dust could be suspended in the air under normal operations was classified as Class II, Division 1.

Contending that the proposed definitions were confusing and would conflict with the 1981 NEC, several grain- and feed-affiliated organizations objected to the proposal (Exs. 18, 19, 21, 31, 32, 39, 49 & 54). Their objections included the following:

(1) The definitions contain vague and improper terminology which requires subjective judgments to be made (Ex. 19).

(2) Code Making Panel 14 of the NEC which is responsible for the content of these definitions in the NEC has changed the definition of Class II hazardous locations in the 1981 National Electrical Code (Ex. 31). Thus, OSHA's proposed definition is inconsistent with the latest NEC.

(3) Hazardous location definitions contained in the proposed 1981 NEC would better identify types of potential hazards through the establishment of performance standards (Ex. 18).

The revised definition as submitted by Panel 14 and accepted for the 1981 NEC reads as follows:

A Class II, Division 1 location is a location: (1) in which combustible dust is *in the air under normal operating conditions, in quantities sufficient* to produce explosive or ignitible mixtures; or (2) where mechanical failure or abnormal operation of machinery or equipment might cause such explosive or ignitible mixtures to be produced, and might also provide a source of ignition through simultaneous failure of electric equipment, operation of protection devices, or from other causes; or (3) in which combustible dusts of an electrically conductive nature may be present. (Emphasis added).

This change would remove the words "or may be in suspension" and "continuously, intermittently, or periodically" from OSHA's former and proposed definitions. However, as stated by an OSHA witness, Dr. Jerry Purswell, Director of Safety Standards, this change "removes the clarification which is needed to realistically describe conditions which are encountered in these locations. Utilizing the proposed 1981 NEC change would permit one to classify a location as a Class II, Division 1 only when dust is actually witnessed, and to disregard the real and frequently existing situations which are presently described in the existing rules" (Tr. 32).

After hearing testimony relative to possible interpretations of the suggested definitions, two members of Code Making Panel 14 who were at the hearing, made the following statements: Mr. Leonard Corey—"After hearing the comments that have been made during this hearing, it would be my recommendation that the panel review this material one more time so that everyone gets a fair hearing on it" (Tr. 410); Mr. Peter J. Schram—"I submit that if the proposed revision of the code is interpreted in this manner [as stated before by Dr. Purswell] the area is not being classified as I intended as a member of Code Panel 14. Had this type of an interpretation been brought up at the meeting or during the voting, I do not believe I would have voted for all of the deletions in Section 500–5(a) of the code for the 1981 edition" (Tr. 464). Since the deadline for commenting on the proposed 1981 NEC had expired, these concerns could not be considered by the NEC Panel before the adoption of the 1981 NEC.

OSHA believes that the deletion of the words "or may be in suspension" would seriously compromise employee safety. It is necessary for the definition to cover not only situations in which explosive or ignitible concentrations of dusts are actually present, but also situations in which such concentrations may arise under normal operating conditions. In this respect, the definition of Class II, Division 1 locations contained in the 1981 NEC represents a potential decrease in employee safety compared to OSHA's former standard, and OSHA has decided not to delete the words "or may be in suspension" from the definitions.

However, based on the comments in the record, the words "continuously, intermittently, or periodically" have been deleted from the definition of Class II, Division 1 locations. For consistency, the language has also been deleted from the definition of Class I, Division 1 locations although most of the comments dealt only with Class II locations. OSHA agrees that these words are possibly confusing and do not enhance the definition.

Therefore, under § 6(b)(8) of the Act, the Assistant Secretary has determined that the 1971 NEC definition of Class II, Division 1 locations, except as noted above, better effectuates the purpose of the Act to provide a safe place of employment than the definition in the 1981 NEC.

The proposed definition of a Class II, Division 2 location (§ 1910.399(a)(25)(ii)) was also identical to the definition in OSHA's previous standards and read as follows:

A Class II, Division 2 location is a location in which combustible dust will not normally be in suspension in the air or will not be likely to be thrown into suspension by the normal operation of equipment or apparatus in quantities sufficient to produce explosive or ignitible mixtures, but: (*a*) Where deposits or accumulations of such combustible dust may be sufficient to interfere with the safe dissipation of heat from electric equipment or apparatus; or (*b*) where such deposits or accumulations of combustible dust on, in, or in the vicinity of electric equipment might be ignited by arcs, sparks, or burning material from such equipment.

Several commenters suggested that OSHA adopt the changes made in the definition of a Class II, Division 2 location in the 1981 NEC (Ex. 19, 32, 55L). They stated that OSHA's adoption of the suggested wording would clarify the difference between Division 1 and Division 2 in Class II locations. The suggested change was as follows:

Class II, Division 2. A Class II, Division 2 location is a location in which (a) combustible dust will not normally be in suspension in the air in quantities sufficient to produce explosive or ignitible mixtures, and dust accumulations are normally insufficient to interfere with the normal operation of electrical equipment or other apparatus; or (b) dust may be in suspension in the air as a result of infrequent malfunctioning of handling or processing equipment, and dust accumulations resulting therefrom may be ignitible by abnormal operation or failure of electrical equipment or other apparatus.

OSHA agrees with these comments and, in view of the absence of any opposition to this change, adopts it in the final standard. Although the wording has been revised, the intent of the definition remains the same and is clearer than that of the proposal, by giving specific examples and by better organization.

The proposed "fine print" notes to the definitions of Class II locations were basically the same as those in OSHA's former regulations (Article 500–5(a) and (b) of the 1971 NEC), and the proposal read as follows:

Class II, Division 1

Note.—This classification usually includes the working areas of grain handling and storage plants; rooms containing grinders or pulverizers, cleaners, graders, scalpers, open conveyors or spouts, open bins or hoppers, mixers or blenders, automatic or hopper scales, packing machinery, elevator heads and boots, stock distributors, dust and stock collectors (except all-metal collectors vented to the outside), and all similar dust-producing machinery and equipment in grain-processing plants, starch plants, sugar-pulverizing plants, malting plants, hay-grinding plants, and other occupancies of similar nature; coal-pulverizing plants (except where the pulverizing equipment is essentially dust-tight); all working areas where metal dusts and powders are produced, processed, handled, packed, or stored (except in tight containers); and all other similar locations where combustible dust may, under normal operating conditions, be present in the air in quantities sufficient to produce explosive or ignitible mixtures.

Combustible dusts which are electrically nonconductive include dusts produced in the handling and processing of grain and grain products, pulverized sugar and cocoa, dried egg and milk powders, pulverized spices, starch and pastes, potato and woodflour, oil meal from beans and seed, dried hay, and other organic materials which may produce combustible dust when processed or handled. Electrically conductive nonmetallic dusts include dusts from pulverized coal, coke, carbon black, and charcoal. Dusts containing magnesium or aluminum are particularly hazardous and the use of extreme precaution will be necessary to avoid ignition and explosion.

Several commenters claimed that the proposed fine print note is 25 years old and outmoded and that its emphasis is on types of machinery rather than on types of operation being performed. (Ex. 2, 19, 49, 56). One commenter stated that in many instances, with modern methods of dust control or complete rehandling of the grain or grain product, it is possible that many of the locations noted in the fine print notes would no longer be classified as either Class II, Division 1 or a Class II, Division 2 area (Ex. 49). It was further argued that these notes have been consistently misinterpreted by OSHA compliance officers as firm requirements for classification of locations instead of as guidelines (Ex. 56).

Regarding the explanatory fine print note, OSHA agrees with the comments of the grain and feed industry that the note should reflect the operation being done in the area rather than what equipment is located there. Commenters submitted to the record revised explanatory notes for both Class II, Division 1 and Class II, Division 2 locations (addendum #3). Since these suggested notes more accurately reflect the intent of the definition and describe operations rather than equipment, they have been included, with minor editorial changes, in the final rule. The new notes read as follows:

Class II, Division 1

Note.—This classification may include areas of grain handling and processing plants, starch plants, sugar-pulverizing plants, malting plants, hay-grinding plants, coal-pulverizing plants, areas where metal dusts and powders are produced or processed, and other similar locations which contain dust producing machinery and equipment (except where the equipment is dust-tight or vented to the outside). These areas would have combustible dust in the air, under normal operating conditions, in quantities sufficient to produce explosive or ignitible mixtures.

Combustible dusts which are electrically nonconductive include dusts produced in the handling and processing of grain and grain products, pulverized sugar and cocoa, dried egg and milk powders, pulverized spices, starch and pastes, potato and woodflour, oil meal from beans and seed, dried hay, and other organic materials which may produce combustible dust when processed or handled. Dust containing magnesium or aluminum are particularly hazardous and the use of extreme precaution will be necessary to avoid ignition and explosion.

Class II, Division 2

This classification includes locations where dangerous concentrations of suspended dust would not be likely but where accumulations might form on or in the vicinity of electric equipment. These areas may contain equipment from which appreciable quantities of dust would escape under abnormal operation conditions or be adjacent to a Class II, Division 1 location, as described above, into which an explosive or ignitible concentration of dust may be put into suspension under abnormal operating conditions.

8. Whether installations of electrolytic cells should be covered by the guarding provisions of proposed § 1910.303.

Section 110-17 of the 1971 NEC, which is referenced in the former regulations, requires live parts of equipment operating at 50 volts or more to be guarded. The 1978 NEC included a new Article 668 which permits electrolytic cells to operate with live parts exposed, provided that specific alternate safety measures are employed.

Electrolytic cells differ in certain respects from standard electrical installations. In a standard electrical circuit, all live parts are required to be insulated or guarded. One side of the circuit is connected to ground to provide a common reference and to stabilize voltages, and thus a potential exists between any live conductor and any grounded surface. A person coming in contact with both a live conductor and a grounded surface will provide a path for electric current to flow and will receive a shock varying in severity with the amount of current that flows through the body. The purpose of the guarding provisions of the NEC is to prevent contact with live parts since contact with grounded surfaces is very common.

In an electrolytic cell line, however, the actual working parts and some working surfaces are, by necessity, the bare live parts of an electric circuit. Employee contact with these live parts is necessary in normal electrolytic cell working procedures. Therefore, whereas a standard circuit necessitates guarding of live parts, employees working on electrolytic cells must be protected against contact with ground. The provisions of Article 668 of the 1978 NEC recognize the different working conditions of electrolytic cell lines and outline the procedures to be used as an alternative to guarding of live parts. The proposed regulations incorporated these electrolytic cell provisions in § 1910.306(h)(3).

Only one commenter (Ex. 20) objected to the provisions proposed in § 1910.306(h)(3). His position was that leaving the energized portions of the cell line unguarded would result in decreased safety protection for workers. To support his position, he cited an electrocution of a worker who died when he stepped into a floor hold and fell against the energized portion of an electrolytic cell. The commenter also state, "The workers typically wear rubber gloves and rubber boots. But if any other portion of the worker's body touches the cell, the worker is electrocuted" (Ex. 20).

As previously discussed, a worker would have to come in contact with both the energized portion of a cell and a grounded surface in order to be electrocuted. The accident referred to resulted when a floor hole was not covered and an otherwise guarded grounded surface was exposed to contact. However, this accident could have happened with a standard electrical circuit if a guard was left off of an energized portion of a conductor, and a worker came in contact with this conductor and a gounded surface.

Ten witnesses (Ex. 23, 24, 29, 38, 40, 41, 46, 51, 52 and 53) appeared in support of the provisions contained in § 1910.306(h)(3). The witnesses included representatives from the aluminum, chlorine, and copper industries. The operations of these industries differ but each requires the actual physical contact with the energized portion of the cell line for proper operation. Various methods of isolating the cell lines from ground were presented, including the insulation of any structural member with wood or fiberglass, and the guarding of grounding parts by distance. The witnesses contended that the addition of guards for the live parts would not enhance employee safety but would actually hinder cell operation and would create a safety hazard by blocking access and egress in emergency siutations. As pointed out at the hearing, if access to the cell is impeded by guards in an emergency situation such as a dry cell, a shorted cell, or an overflow, employees in the area would be subjected to acid burns, electrical flash burns, or injury from flying molten metal (Ex. 40).

The evidence submitted to the record reflects that the alternative procedures being used in cell line operation will provide a safer workplace for electrolytic cell employees than would guarding line parts of cells. In fact, the evidence in the record indicates that guarding live parts of cells may actually reduce employee safety. Therefore, the final rule incorporates the electrolytic cell provisions of § 1910.306(h)(3) as proposed.

IV. Summary and Explanation of the Final Standard

The final standard revising 29 CFR Part 1910, Subpart S, follows the language and format of the proposal with some changes. Most of the changes are editorial in nature. However, those that are substantive are discussed in

detail below. Where changes have been made concerning areas of the proposal which were major issues at the hearing, reference is made to the discussion of such issues in Section III of this preamble. The resulting final standard, which is based on the record considered as a whole, simplifies and clarifies the former Subpart S. The significance of this simplification is indicated by the reduction from the approximately 250,000 words in the National Electrical Code to the approximately 15,000 words in this final standard. As a consequence, the 1971 NEC (NFPA–70) will no longer be incorporated by reference in the OSHA standards.

Subpart S of Part 1910 as revised provides a systematic format both to satisfy present requirements and to accommodate future growth. Subpart S will eventually contain four major parts covering not only the design safety standards for electrical systems contained in this rulemaking (Part I), but also safety-related work practices (Part II), safety-related maintenance requirements (Part III), and safety requirements for special equipment (Part IV).

Some parts of the former §§ 1910.308 and 1910.309 have been deleted. Other parts of these sections have been incorporated into new sections without substantive change. (Any changes made were only editorial to reflect the change in format of the Subpart.) The following table summarizes the numbering changes from the former Subpart S to the final standard:

Redesignation Table

Former paragraph	New paragraph
§ 1910.308(a)	Deleted—unnecessary.
§ 1910.308(b)	Deleted—unnecessary.
§ 1910.308(c)	§ 1910.302(a).
§ 1910.308(a)(1)	§ 1910.399(a)(7).
§ 1910.308(a)(2)	§ 1910.399(a)(9).
§ 1910.308(a)(3)(i)	§ 1910.399(a)(77).
§ 1910.308(a)(3)(ii)	§ 1910.399(a)(79).
§ 1910.308(a)(3)(iii)	§ 1910.399(a)(2).
§ 1910.308(a)(3)(iv)	§ 1910.399(a)(22).
§ 1910.308(a)(3)(v)	§ 1910.399(a)(127).
§ 1910.309(a)	§ 1910.302(b)(1).
§ 1910.309(b)	§ 1910.302(b)(2).
§ 1910.309(c)	§ 1910.304(a)(3).

The following discussion summarizes the final standard and the effects this rulemaking has on the former provisions of §§ 1910.308 and 1910.309. Any changes made from the proposal are noted; otherwise, the requirements in the proposal have been adopted with no substantive change.

§ 1910.301 Introduction. The former introductory paragraphs, § 1910.308 (a) and (b), which incorporated the 1971 NEC into Subpart S by reference, have been deleted. A new introductory § 1910.301 addresses the new format followed in this Subpart. The basic areas which are or will be included in Subpart S of Part 1910 are set forth as follows:

(a) Design Safety Standards for Electrical Systems. The standards which are the subject to this rulemaking are contained in §§ 1910.302 through 1910.330. (At this time, however, only §§ 1910.302 through 1910.308 are being promulgated; §§ 1910.309 through 1910.330 have been reserved for possible future design safety standards for other electrical systems, such as power generating systems.)

(b) Safety-Related Work Practices. These regulations will be contained in §§ 1910.331 through 1910.360.

(c) Safety-Related Maintenance Requirements. These requirements will be contained in §§ 1910.361 through 1910.380.

(d) Safety Requirements for Special Equipment. These requirements will be contained in §§ 1910.381 through 1910.398.

(e) Definitions applicable to each of these four major divisions are contained in a common § 1910.399.

Since the areas covered by each of these four major divisions represent broadly diverse equipment, installations and practices, it is intended that each division will be further subdivided where appropriate. For example, within the category involving design safety standards for electrical systems, separate subgroupings could include electrical utilization systems, electrical power generation and transformation systems, electrical power transmission and distribution systems, and others, in the future.

The changes to Subpart S contained in the present document are limited to electrical utilization systems, as covered by the former OSHA electrical standards.

This standard places the relevant requirements of the National Electrical Code into the text of the regulations making it unnecessary to incorporate the National Electrical Code by reference. The former incorporation of the entire NEC is therefore being deleted.

§ 1910.302 Electric Utilization Systems (Scope and Extent of Application).

§ 1910.302(a). The provisions formerly in the scope paragraph, § 1910.308(c), have been carried forward in new scope paragraph § 1910.302(a). Additionally, as proposed, § 1910.302(a)(vi) in the final rule includes "industrial substations", which was inadvertently omitted in the adoption of the former OSHA standard.

§ 1910.302(b)(1). The National Electrical Code requirements formerly listed in paragraph § 1910.309(a), which were applicable to all electrical installations and utilization equipment, have been retained in part and deleted in part. The retained part no longer references sections of the NEC, but instead references the corresponding provisions of Subpart S. These requirements are carried forward as § 1910.302(b)(1). The deleted portion consists of the sections of the 1971 NEC which are inappropriate for OSHA's use or otherwise covered in this subpart. The specific sections deleted, along with the reasons for the deletions, and the new paragraph numbers of the retained NEC sections are given in the following distribution table:

Distribution Table

1971 NEC provision referenced in former § 1910.309(a)	New section of subpart S
Articles:	
500	These Articles were rewritten in performance terms and combined into § 1910.307.
501	
502	
503	
Sections:	
110-14(a)	Deleted—Covered by § 1910.303(g).
110-14(b)	§ 1910.303(c).
110-17(a), (b), and (c).	§ 1910.303(g)(2).
110-18	§ 1910.309(d).
110-21	§ 1910.303(e).
110-22	§ 1910.303(f).
240-16	§ 1910.304(d)(1)(iv).
240-19(a) and (b).	§ 1910.304(d)(1)(v).
250-3(a)	§ 1910.304(f)(1)(i)
250-3(b)	Deleted—Inappropriate; this section is not a requirement but only states that certain systems over 300 volts may be grounded.
250-5 (a), (b), and (c).	§ 1910.304(f)(1) (iii), (iv), and (v).
250-7	Deleted—covered in § 1910.307.
250-42 (a), (b), (c), and (d).	§ 1910.304(f)(1)(iv) (a), (b), (c), and (d).
250-43 (a), (b), (c), (e), (e), (f), (g), (h) and (i).	Deleted—covered in § 1910.304(f)(1)(v).
250-44 (a), (b), (c), and (d).	§ 1910.304(f)(1)(vi).
250-44(e)	Deleted—covered by § 1910.304(f)(1)(vi).
250-45 (a), (b), and (c).	§ 1910.304(f)(1)(v).
250-45(c)	Deleted—Inappropriate; applies only to residence.
250-50 (a) and (b).	§ 1910.304(g)(2).
250-51	§ 1910.304(f)(4).
250-57(a) and (b).	§ 1910.304(f)(5)(i).
250-59 (a) and (b).	Deleted—Inappropriate; These are not requirements but optional methods of meeting the grounding requirement.
250-59 (a), (b) and (c).	Deleted—Inappropriate; These sections are not requirements but only suggest methods of grounding.
400-3 (a) and (b).	§ 1910.309(a)(1) (i) and (ii).
400-4	§ 1910.309(a)(1)(iii).
400-5	§ 1910.309(a)(2)(i).
400-6	§ 1910.304(a)(1)(i).
400-10	§ 1910.309(a)(2)(ii).
422-8	Deleted—covered by § 1910.309(a)(1)(i).
422-9	Deleted—covered by § 1910.309(a)(2).
422-10	Deleted—covered by § 1910.309(b).

Distribution Table—Continued

1971 NEC provision referenced in former § 1910.308(a)	New section of subpart S
422-11	Deleted—Inappropriate; this section addresses appliance construction detail requirements.
422-12	Deleted—Inappropriate; this section addresses appliance construction detail requirements.
422-14	Deleted—Inappropriate; this section addresses appliance construction detail requirements.
422-15 (a), (b) and (c).	Deleted—Covered by § 1910.303(a).
422-16	Deleted—Covered by § 1910.304(f) and the standard procedure for a variance request.
422-17(a)	Deleted—Inappropriate; this is not a requirement, but a definition of a term no longer used in the standard.
422-17(b)	Deleted—Covered by § 1910.303(a).
430-142	Deleted—Covered by § 1910.304(f)(5)(iv).
430-143	Deleted—Covered by § 1910.304(f)(5)(iv).

The provisions which are listed in § 1910.302(b)(1) apply to all electrical installations and utilization equipment regardless of when they were designed or installed. For discussion of comments on and objections to the application of these provisions, see Issue 3 in Section III of this preamble.

§ 1910.302(b)(2). Proposed § 1910.302(b)(2), as well as former § 1910.309(b), applied the full coverage of Subpart S to "every replacement, modification, repair, or rehabilitation made to an existing installation after March 15, 1972." At the November 8, 1979, public meeting (Meeting Tr. 9–10) and at the public hearing (Tr. 28), OSHA officials interpreted this provision as being limited to "major" replacements, modifications, repairs, or rehabilitations. Other witnesses supported this interpretation but requested that the word "major" be added to § 1910.302(b)(2), to ensure consistent application by compliance personnel (Tr. 170, 269–270, 284).

Concerned that such wording could be ambiguous, OSHA requested the hearing witnesses to supply definitions or clarifications of what would be "major replacement, modifications, repairs, or rehabiliations." The respondents contended that "major" should refer to work which is similar to that involved when a new building or facility is built, a new wing is added, or an entire floor is renovated (Ex. 19, 55K, 62).

There is no objection to the addition of the word "major" to § 1910.302(b)(2) and OSHA agrees that it more accurately reflects the intent of this paragraph. Therefore, § 1910.302(b)(2) has been modified to indicate that "every major replacement, modification, repair, or rehabilitation, after March 15, 1972," must comply with all the requirements of § 1910.302 through 1910.308. Also, a note has been added to indicate that such "major" work includes work of a magnitude similar to that involved when a new building is built, a new wing is added to an existing facility, or an entire floor is renovated.

§ 1910.302(b)(3). A new § 1910.302(b)(3) has been added which contains a list of paragraphs that impose new requirements which were not in the 1971 NEC. Since the requirements in these paragraphs were not in the former standards, they will only apply to installations made after the effective date of these standards. The paragraphs involved are the following:

§§ 1910.303(h)(4)(i) and (ii)—Entrance and access to workspace (over 600 volts).
§ 1910.304(e)(1)(vi)(*b*)—Circuit breakers operated vertically.
§ 1910.304(e)(1)(vi)(*c*)—Circuit breakers used as switches.
§ 1910.304(f)(7)(ii)—Grounding of systems of 1000 volts or more supplying portable or mobile equipment.
§ 1910.305(j)(6)(ii)(*b*)—Switching series capacitors over 600 volts.
§ 1910.306(c)(2)—Warning signs for elevators and escalators.
§ 1910.306(i)—Electrically controlled irrigation machines.
§ 1910.306(j)(5)—Ground-fault circuit interrupters for fountains.
§ 1910.308(a)(1)(ii)—Physical protection of conductors over 600 volts.
§ 1910.308(c)(2)—Marking of Class 2 and Class 3 power supplies.
§ 1910.308(d)—Fire protective signaling circuits.

The effective date for these provisions is discussed and explained in Section VI of this preamble.

General

As was the case with the former provisions of Subpart S, the revised Subpart does not apply to construction and agriculture. It does apply to all other workplaces covered by OSHA, except that for maritime, § 1910.302(a)(2)(i) provides that ships and other watercraft are not covered. Some commenters pointed out that the proposed standard inadvertently contained requirements pertaining to construction, even though (as noted in the preamble to the proposal) 29 CFR Part 1910, Subpart S does not apply to this industry (Ex. 30). Therefore, the final standard reflects the deletion of the following proposed provisions or references which deal exclusively with construction.

§ 1910.305(a)(2)(i)(*a*)—Use of temporary wiring for construction.
§ 1910.305(a)(2)(iii)(*g*)—Splices on construction sites.

§ 1910.303 General Requirements. This section contains general requirements for electrical installations. These requirements address approval and use of equipment, splices, marking and identification, working clearances, and guarding of live parts. Approval and marking requirements were the only regulations in this section which were major issues. For detailed discussion on these topics, see Issue 4 in Section III of this preamble. Specific paragraphs and substantive changes from the proposal are discussed as follows:

Paragraph (a) requires approval of electrical equipment, while paragraph (b) gives provisions for the equipment's inspection and use. These two paragraphs basically require employers to provide equipment which is in safe condition and to ensure that it is used safely.

Paragraph (c) requires splices to be suitably made and insulated. Parts of electric equipment that produce arcs, sparks, or molten metal are required to be appropriately guarded by § 1910.303(d).

Marking and identification are covered in § 1910.303(e) and (f). In paragraph (e), electric equipment is required to be marked to identify who made the equipment and what the necessary electrical ratings are. Paragraph (f) requires branch circuits, feeders, services, and disconnecting means for equipment to be identified. In the proposal, this requirement read as follows:

(f) *Identification of disconnecting means.* Each disconnecting means required by this subpart for motors and appliances shall be legibly marked unless located and arranged so that its purpose is evident; and each disconnecting means required by this subpart for each service, feeder, or branch circuit shall be legibly marked to indicate its purpose at the point where the service, feeder or branch circuit originates. The marking shall be of sufficient durability to withstand the environment involved.

This wording is slightly different from the NEC and NFPA 70E. It was changed in an attempt to clarify the requirement without changing the intent. However, as evidenced by some of the comments received (Ex. 2), the modification created additional confusion regarding marking of service, feeder, and branch circuit disconnects. For example, the proposed subpart contained no requirements for these circuits to have disconnecting means, seemingly making the identification requirement for such disconnecting means superfluous. Therefore, OSHA is again revising the language to clarify the intent of the rule. This paragraph now clearly requires each service, feeder, or branch circuit to be identified, at its disconnecting means or overcurrent device, to indicate the circuit's purpose. However, no marking

is necessary if the purpose of the circuit is evident. This clarification, which is consistent with OSHA's former regulation, the NEC, and NFPA 70E, should clear up any misunderstanding created by the proposed requirement.

Paragraphs (g) and (h) set forth requirements pertaining to guarding of and working clearances around live parts of electric equipment. Regulations applying to equipment 600 volts or less can be found in § 1910.303(g), while paragraph (h) applies over 600 volts. One commenter (Ex. 12) pointed out that OSHA's proposal and NFPA 70–E contained an error in the exception to § 1910.303(h)(3)(i). In the second sentence, it was noted that "energized" should be "de-energized", as it is in 1978 NEC Section 110–34(a) from which the OSHA requirement was derived. The final rule contains this correction.

4. § *1910.304 Wiring Design and Protection.* This section covers the design requirements for wiring systems from the service conductors to the branch circuit conductors. It also covers requirements for the protection of electric conductors from both overcurrent and physical hazards.

Paragraph (a) requires that both the grounded circuit conductor and the equipment grounding conductor be identifiable and distinguishable from other conductors. These regulations have been written in more performance oriented terms than the former requirements which required that those conductors be identified in a specific manner.

A comment was received suggesting the inclusion of a provision which was contained in Section 410–55(c) of the 1971 NEC, but was not carried forward in the proposal on the presumption that it was covered by other proposed provisions. This provision prohibited the use of grounding terminals or grounding-type devices for purposes other than grounding. It was claimed that several fatalities in South Carolina were attributable to the placing of an ungrounded conductor on the grounding terminal of a receptacle, plug, or connector (Ex. 2). Similar accidents have been found in OSHA's records (Ex. 4).

Upon examining proposed provisions relating to grounding, OSHA has determined that the requirement of 1971 NEC Section 410–55(c) was not adequately covered elsewhere in the proposal. Therefore, since this provision is contained in OSHA's former regulations and since fatalities have occurred which are directly attributable to violations of this requirement, the following paragraph has been added to the final standard as new § 1910.304(a)(3):

(3) *Grounding Terminal.* A grounding terminal or grounding-type device on a receptacle, cord connector, or attachment plug may not be used for purposes other than grounding.

Paragraph (b) includes the requirements for sizing of outlet devices and for ground-fault protection for personnel on construction sites.

Paragraph (c) contains location and clearance requirements for low voltage (600 volts or less) conductors and lamps that are located outside. Paragraph (d) of this section requires that a disconnecting means be provided for the service entrance conductors. It also contains the location, marking and operational requirements for that disconnect.

Paragraph (e) contains overcurrent protection requirements for both low voltage and high voltage conductors.

Paragraph (e)(1)(vi) has been broken down into three separate paragraphs. The two provisions dealing with mounting and marking of circuit breakers have been renumbered as (e)(1)(vi)(*b*) and (*c*), and are effective only to equipment installed after the effective date of this standard, as noted in § 1910.303(b)(3).

The grounding requirements for electric systems are contained in paragraph (f) of this section. This paragraph is subdivided into seven categories as follows:

(1) Systems to be grounded.
(2) Conductors to be grounded.
(3) Grounding connections.
(4) Grounding path.
(5) Supports, enclosures, and equipment to be grounded.
(6) Methods of grounding fixed equipment.
(7) Grounding of systems and circuits of 1,000 volts and over (high voltage).

There were two major issues raised on the regulations contained in paragraph (f). One involved new § 1910.304(f)(4) *Grounding path.* This requirement, which is unchanged from the proposal, is discussed in issue number 5 of Section III of this preamble. The other major issue concerned new § 1910.304(f)(6) *Methods of grounding fixed equipment.* Paragraph (f)(6)(i) has been modified to prohibit the use of building steel as the equipment grounding conductor for installations made after the effective date of these standards. This subject is discussed in Issue 6 of Section III of this preamble.

All of the remaining requirements contained in paragraph (f) were contained in the former regulation, and any changes to those requirements are strictly editorial. For example, the word "devices" has been changed to "appliances" in § 1910.304(f)(5)(iv)(*f*)(*2*) because the equipment does not meet the definition of a "device", as set forth in § 1910.399(a)(38), meaning "a unit of an electrical system which is intended to carry but not utilize electric energy." Similarly, the word "portable" as used in § 1910.304(f)(7)(ii) has been changed to "portable or mobile", the equipment referred to in the applicable paragraphs is mobile but not necessarily easily carried. A similar change has also been made in the 1981 NEC.

§ *1910.305 Wiring Methods, Components, and Equipment for General Use.* This section contains installation requirements for equipment (in general), wiring components, and wiring methods. None of the requirements of this section were major issues during the rulemaking proceeding, except as to whether they should be more or less performance-oriented. (The performance vs. specification question is discussed in Issue 1 of Section III of this preamble.)

In response to comments received, OSHA has revised some provisions, and these revisions are discussed along with the requirements of this section:

Paragraph (a) deals with wiring methods. General wiring requirements (electrical continuity and wiring in ducts) are the subject of § 1910.305(a)(1). In this paragraph, continuity of metal raceways and enclosures is required and wiring in certain ducts is prohibited.

Paragraph (a)(2) gives requirements on temporary wiring, including its permitted uses. In general, temporary wiring is permitted to be of a class less than permanent wiring, but must follow most of the rules of permanent installations, except as noted in that paragraph. For the reasons discussed earlier under § 1910.302, the references to construction in §§ 1910.305 (a)(2)(i)(*a*) and (a)(2)(ii) have been deleted. Similarly, the first sentence of proposed § 1910.305(a)(2)(iii)(*g*), which related solely to construction, has been deleted.

Paragraphs (a)(3) and (a)(4) address two wiring methods, namely, cable trays and open wiring. These provisions give general installation and use requirements. In the final rule, proposed § 1910.305(a)(3)(i)(*b*)(*3*) has been renumbered § 1910.305(a)(3)(i)(*c*).

Paragraph (b) requires cabinets, boxes, and fittings to provide a complete enclosure for conductors and to have only smooth surfaces in contact with conductors.

Paragraphs (c) and (d) relate to switches, switchboards, and panelboards, and require protection from live parts.

Weatherproof enclosures are required for wet locations in paragraph (e).

Paragraph (f) requires conductors to have suitable insulation.

Paragraphs (g) and (h) cover the use of flexible cords and portable cables. Uses which are permitted and not permitted are listed in paragraph (g)(1), while paragraph (g)(2) details requirements for identification, splices, and termination of flexible cords. Requirements applicable to portable cables for use over 600 volts are contained in paragraph (h).

Fixture wires are addressed in § 1910.305(i). This paragraph gives permitted uses for fixture wires and does not allow their use for general branch circuit wiring.

Paragraph (j) contains requirements for wiring of equipment for general use. Paragraphs (j)(1) and (2) cover lighting equipment, plugs, and receptacles. Marking, guarding, and disconnection requirements for appliances are given in § 1910.305(j)(3).

Requirements for motors are contained in paragraph (j)(4). Motors are required to have suitable cover current protection and disconnection means. Guarding requirements are also provided in that paragraph.

Paragraph (j)(5) gives safeguarding requirements for transformer installations. Depending on their rating, some transformers must be in a vault. Stated in performance language, § 1910.305(j)(5)(vi) requires such vaults to be able to contain fires and combustible liquids. Although no specific fire rating is given, any vault constructed in accordance with NEC specifications in Article 450 would be acceptable.

Capacitor switching and charge drainage are addressed in § 1910.305(j)(6). Paragraph 1910.305(j)(6)(ii)(*b*), which gives switching specifications for series capacitors over 600 volts, was proposed as a new requirement and will apply only to installations made after the effective date of these standards.

Paragraph (j)(7) requires storage battery installations to have adequate ventilation.

6. § *1910.306 Specific Purpose Equipment and Installations.* This section contains regulations for equipment which is not adequately covered by the general requirement elsewhere in Subpart S.

Paragraph (a) covers electric signs and outline lighting. It includes specific requirements for disconnecting means and a requirement that access doors be interlocked to deenergize any live parts operating at over 600 volts when the sign or outline lighting is accessible to other than qualified persons. Paragraph (b) covers cranes and hoists and includes specific requirements for disconnects, control switches, and required working clearance.

Paragraph (c) includes specific requirements for disconnects and location of control panels associated with elevators, dumbwaiters, escalators, and moving walks.

A new provision requiring that a warning sign be mounted on or adjacent to the disconnecting means under certain conditions was included in § 1910.306(c)(1) of the proposal. This requirement has been renumbered in the final standard as § 1910.306(c)(2) and applies only to installations made after the effective date of these standards.

Specific requirements relating to disconnecting means, controls, guarding, grounding and labeling for electric welders, X-ray equipment for nonmedical and nondental use, and induction and dielectric heating equipment are included in paragraphs (d), (f), and (g).

Paragraph (e) contains disconnect requirements for data processing systems and was divided in the proposal into requirements for data processing rooms and requirements for general building areas. OHSA received comments (Ex. 2) stating that clarification should be made to indicate that disconnection of all equipment, such as typewriters and lights is not addressed by this paragraph. In addition, these same commenters questioned the extent of application to general building areas and requested clarification regarding when additional disconnects were required in those areas. The comments in the record are further supported by the decision of the NFPA 1981 NEC Code Committee to limit this requirement to electronic equipment, and only when installed in a computer room or data processing room. The change was made to avoid requiring associated equipment such as typewriters and even fire warning and fire supression systems to be disconnected with the data processing systems. These machines have nothing to do with protecting employees from hazards associated with data processing systems. Paragraph (e) in the final standard has therefore been modified to reflect these changes.

Paragraph (h) includes specific regulations on electrolytic cells. These requirements were not contained in the former standard but were proposed because of the unique operational requirements of these cells. These provisions, which are discussed in issue number 8 of Section III, have been adopted in the final rule as proposed.

Paragraph (i) contains specific requirements, which were not in the former standard, relating to electrically driven or controlled irrigation machines. This paragraph is applicable only to installations made after the effective date of these standards.

Paragraph (j) contains regulations for swimming pools, fountains, and similar installations other than therapeutic pools in health care facilities. Specific provisions include location requirements for lighting and receptacles and methods for determining which circuits require ground-fault circuit interrupters. Paragraph (j)(2)(c) in the proposal has been renumbered (j)(3) to make it clear that this requirement applies to all cord- and plug-connected equipment and not just to lighting fixtures and lighting outlets. Proposed paragraphs (j)(3) and (j)(4) have also been renumbered as (j)(4) and (j)(5) respectively and a note has been added to new § 1910.306(j)(5) indicating that it is applicable only to installations made after the effective date of these standards.

7. § *1910.307 Hazardous Locations.* Paragraph (a) gives the scope of this section and lists typical hazardous locations.

The remainder of this section was completely rearranged from the proposal to indicate its intent more clearly. The basic requirements for hazardous locations were contained in proposed § 1910.307(c), which read as follows:

(c) *Electrical installations.* Equipment wiring methods, and installations of equipment in classified locations shall be one or more of the following:

(1) Intrinsically safe.

(2) Approved for the classified location.

(3) Of a type and design which provides protection from the hazards arising from the combustibility and flammability of vapors, liquids, gases, dusts, or fibers.

The proposal was confusing to many interested persons in that other requirements or guidelines, which explained the three alternatives of § 1910.307(c), were scattered throughout § 1910.307. Confusion about these provisions appears to have been the cause of many of the misunderstandings discussed in relation to Issues 3 and 4 of Section III of this preamble.

In order to avoid the confusion and clarify the wording, OHSA has reorganized the final standard to combine the basic requirements with their respective related provisions. For example, provisions related to "approved" equipment have been combined under the option which allows the use of equipment which is "approved for the classified location." OHSA believes that this reorganization of § 1910.307 will make the section easier to understand.

Guidelines for determining what equipment and installations are "safe for the hazardous location" and thus meet § 1910.307(b)(3)) of the final standard (proposed § 1910.307(c)(3)) are contained in Chapter 5 of the current National Electrical Code (NFPA 70). However, these guidelines are not the only means of complying with the standard. Any equipment or installation which is shown by the employer to provide protection from the hazards involved will be acceptable. This performance-oriented approach will allow the employer maximum flexibility in providing safety for his employees.

8. § *1910.308 Special Systems.* Paragraph (a) of this section addresses electrical systems over 600 volts, nominal. Requirements are given for wiring methods, interrupting and isolating means, mobile and portable equipment, and tunnel installations. The provision in proposed paragraph (a)(1) requiring conductors emerging from the ground to be enclosed is a new requirement not in OHSA's previous standards. Therefore, in the final standard, this provision has been renumbered as paragraph (a)(1)(ii) and applies only to installations made after the effective date of these standards.

Paragraph (b) covers emergency power systems. Wiring for these systems is required to be separate from the normal supply wiring. Additionally, where emergency lighting is required, no space may be left in total darkness as a result of the failure of a single emergency lighting element.

Requirements for remote control, signaling, and power-limited circuits are contained in paragraph (c). Depending on the voltage, current, and power limitation, these circuits have been designated as Class 1, Class 2, or Class 3. Paragraph (c)(2) requires Class 2 and Class 3 systems to be marked; however, this requirement applies only to systems installed after the effective date of these standards, since this is a new requirement.

Fire protective signaling systems are covered in paragraph (d), which addresses classification, separation, and identification of these systems. Since this entire paragraph was not contained in OSHA's former standards, it applies only to installations made after the effective date of these standards.

Paragraph (e) applies to communications systems and contains provisions on protective devices, conductor and equipment locations, and grounding. Some commenters indicated that the proposal conflicted with both the 1971 and 1978 NEC by not making § 1910.308(e) the only provision in Subpart S covering communications systems (Ex. 45, 48). They suggested that OSHA include a statement in the regulation stating that communications systems were covered only in § 1910.308(e).

The omission of such a statement from the proposal was an oversight on OSHA's part. To correct this, OSHA has added the following sentence in § 1910.308(e):

> These installations need not comply with the provisions of §§ 1910.303 through 1910.308(d).

9. § *1910.399 Definitions.* This section provides definitions for Subpart S. The definitions in the final rule remain as proposed, except as follows:

(a)(24) "Class I locations": The definition of a Class I, Division 1 location has been changed by deleting the words "continuously, intermittently, or periodically." The rationale for this change is discussed in Issue 7 of Section III of this preamble. The note following this section has also been changed to more clearly describe this type of location.

(a)(25) "Class II locations": The definition of a Class II, Division 1 location has been changed by deleting the words "continuously, intermittently, or periodically." The definition of a Class II, Division 2 location (§ 1910.399(a)(25)(ii)) has also been changed to clarify the difference between Division 1 and Division 2 locations. Additionally, the fine print notes following these definitions have been modified to more accurately reflect examples of *locations* which could be classified as Class II locations considering advances in grain handling technology. The rationale for these changes is discussed in Issue 7 of Section III of this preamble.

(a)(128) "Utilization system": One commenter (Ex. 30) questioned this definition, stating that it was redundant with the definition of "premises wiring." However, the terms are not synonymous, and the final rule has been modified to clearly state that the utilization system includes not only the premises wiring system, but its associated utilization equipment as well.

V. Regulatory Assessment

In accordance with Executive Order No. 12044 (43 FR 12661, March 24, 1978), OSHA assessed the potential economic impact of the proposal. Based on the economic identification criteria developed by the Department of Labor (44 FR 5570, January 26, 1979), OSHA concluded that the subject matter of the proposal was not a "major" action which would necessitate further economic impact evaluation and the preparation of a Regulatory Analysis.

The proposal dealt with electrical installation safety requirements and was derived from the National Electrical Code, which was used as OSHA's previous standard. Since the proposal resulted in an overall simplification of OSHA's standards, the estimated cost of compliance was concluded not to be higher than the cost of compliance with the current OSHA standards.

This determination was based on a May 11, 1979, report by JRB Associates, Inc. The major finding of the economic impact assessment was that there would be no significant economic effect resulting from the promulgation of the proposed revisions to 29 CFR Part 1910, Subpart S, Electrical. The rationale for this conclusion was as follows:

—The proposed regulation contained no requirements other than those found in either 29 CFR Part 1910, Subpart S, or the 1978 National Electrical Code.

—Current industry practice for new installation is to conform to the 1978 National Electrical Code.

—Provisions in the proposed Subpart S had an antecedent in the 1978 National Electrical Code.

Several commenters took issue with OSHA's determination that the proposed revisions to Subpart S would not have a major economic impact on the affected industries. Detailed studies were submitted to the record by certain industry groups, notably the grain elevator industry and the feed manufacturing industry, which indicated that the costs of compliance with Subpart S as revised would be far greater than those associated with compliance with the current provisions. (Ex. 55j, 58). However, a review of these studies reveals that their findings are based on certain misunderstandings of the scope and application of the former standards and OSHA's proposed revisions. These areas of concern are also discussed in detail in section III of this preamble, which deal with the "retroactive" and hazardous locations provisions of the standard. Nonetheless, OSHA believes that it may also be helpful to discuss these major areas of misunderstanding in the context of the regulatory assessment of the proposed standards.

OSHA's intent in proposing changes to Subpart S was to simplify compliance with the electrical standards, without reducing any of the employee protection currently provided. To that end, the proposed revisions to Subpart S approached the problem in three ways: first, performance language was substituted for the detailed requirements of the 1971 NEC, to provide flexibility for the employer; second, provisions of the 1971 NEC which were directed

primarily at property protection and not at employee protection were deleted; and third, all relevant provisions from the NEC were placed within Subpart S in place of the incorporation by reference of the NEC itself. The net result of the proposed revisions, therefore, was a significant decrease in the regulatory burden imposed by the electrical standards. In the limited circumstances in which the proposed standards imposed obligations not contained in the 1971 NEC as applied in the present standards, OSHA intended that these new obligations only apply to installations made after the effective date of the revised standards. (As noted in section VI of this preamble, OSHA acknowledged that this intention was not implemented totally in the proposal; such new provisions are more carefully and completely distinguished in the final standards.)

Concerning the question of the listed "retroactive" provisions in proposed § 1910.302(b)(1), it should be noted that the proposed revisions did no more than carry forward the provisions of current § 1910.309(a), which presently apply to all electrical installations, regardless of when they were made. Indeed, where the list has been modified, the changes simplify and reduce the compliance burden by eliminating requirements and allowing alternative compliance methods. There is no requirement imposed by the new § 1910.302(b)(1) that is not currently imposed on employers by virtue of § 1910.309(a) of the former standards. Thus, the costs of complying with these requirements cannot be attributed to the proposal.

OSHA based its economic impact analysis on the requirements of Executive Order No. 12044 (43 FR 12661, March 24, 1978), as supplemented by Department of Labor regulations (44 FR 5570, January 26, 1979). The regulatory assessment of the proposed regulations was intended to evaluate the incremental cost impact of the proposal over that of the existing regulations.

Since OSHA's proposal did not increase existing compliance requirements or establish new compliance requirements, it was found not to result in a major impact.

To support their view that OSHA's assessment was inadequate, two trade assocations submitted studies of the economic impact on their respective industries, based upon their interpretations of the proposal. One study claimed that it would cost the feed manufacturing industry about $785,000,000 to comply with OSHA's proposal, the other estimated costs of $825,000,000 for the grain elevator industry [Ex. 55], 58].

It is difficult to evaluate the industry studies in depth: although specific compliance elements are mentioned in each study, the actual cost data are not adequately broken down to correspond to those elements. Therefore, there is no way to determine how much of their total cost estimates are attributable to which compliance activity. This is particularly troublesome for two reasons: first, when the costs are calculated based on an inaccurate reading of the standards, the magnitude of these unnecessary costs cannot be determined. It is noted, however, that in their other comments and testimony submitted to the record, these parties' primary concerns with the proposal centered on the costs of removal and replacement of unmarked, unlabeled and unapproved equipment in hazardous (classified) locations. As noted earlier, such requirements, and, therefore, their costs, are illusory. Clearly, then, if these costs constitute the greatest share of the total estimated compliance costs in these studies, the studies greatly overestimate the resources necessary for compliance with the standards.

Second, where repair costs are included as costs of compliance, such costs are also not properly attributable to the proposal. The proposal did not add any new requirements for existing installations; thus, where repairs are required for compliance with the proposal, they would also be necessary for compliance with the current standards. In addition, some repair costs may well be directed more towards routine operating repairs for continuing or resuming production in currently idle facilities than they are towards compliance with OSHA standards.

The inaccurate assumptions which appear to be the basis of much of the cost data in the industry studies have been discussed in depth in earlier sections of this preamble. The following discussion, therefore, represents a summation of the relevant issues as they pertain to the regulatory assessment.

Both industry studies assumed that all installations in hazardous locations were required to have "approved" equipment. (See issue 4(b) in section III of this preamble).

The studies also confused the terms "marking", "labeling", and "approval" and assumed that OSHA's standard differed from the NEC as to those terms (See Issue 4(a) in section III of this preamble). Contrary to the implications in the studies, the marking provisions in the standard do not require labeling or approval; they simply require identification of the various parameters of the equipment. This identification may be placed on the equipment using any means that is legible and durable enough to withstand the operating environment. As such, many of the costs indicated by the studies would not be incurred as employers would not be required to affix official manufacturers' labels or replace equipment which does not have such labels. Furthermore, the studies included in their estimates the cost of replacing otherwise acceptable equipment which is not listed or labeled, and hence not "approved." Such replacement of unapproved but otherwise acceptable equipment is not required by the standard if the equipment can be shown to meet one of the other compliance alternatives in § 1910.307.

Should some items of equipment not meet any of the compliance alternatives in § 1910.307, replacement of that equipment would be necessary. Assuming that an item of equipment would need to be replaced, the study did not take into account any possible salvage value of the used equipment. In addition, the studies did not consider the savings that might result from reduction in insurance premiums, property losses, and liability costs as a result of replacing unsafe equipment with safe equipment.

Where costs are imposed by the existing standards, the proposal does not increase these costs; to the contrary, as the assessment points out, the net impact of the proposal is expected to be an overall reduction in compliance costs due to the use of performance language and other reductions in the regulatory burdens imposed by the former standard.

One commenter contended that OSHA should have conducted a field survey to ascertain the present level of compliance with the current "retroactive" provisions in § 1910.309(a). Based on that survey, it was argued, OSHA should then have assessed not only the costs of compliance with new requirements imposed by the proposal, but the added costs of coming into compliance with the existing standards. [Ex. 69].

Because the proposed "retroactive" provision of § 1910.302(b)(1) did not increase compliance requirements over those of § 1910.309(a) (see Issue 3 in section III of this preamble), OSHA determined that the impact of the proposal in this regard was not major. Where industry is not currently in compliance with the existing standards, these costs cannot be attributed to the proposal. The regulatory assessment therefore, properly evaluated the incremental costs to be imposed by the proposed standard.

The regulatory assessment concluded that the only area in which increased costs might be expected is that of new provisions which were taken from the 1978 NEC and which were not in the 1971 NEC. Such costs were determined to be insignificant, particularly if the new provisions were to be applied only to installations made after the effective date of the final standards. This condition has been met by OSHA in the final revisions of Subpart S.

Therefore, after a careful review of the rulemaking record, OSHA has determined that this final standard is not a major action as defined in Executive Order 12044 and the Department economic criteria.

VI. Effective Date and Dates of Application

The scope and application of Subpart S, as set forth in paragraphs (b)(1) and (b)(2) of § 1910.302, essentially carry forward the provisions of § 1910.309 of the former standards. (The background and issues surrounding this section have been discussed at length in both Section III and Section IV of this preamble.) As in the case of previous § 1910.309(a), the provisions of Subpart S which are listed in new § 1910.302(b)(1) apply to all electrical installations, regardless of when they were made. Former § 1910.309(b) provided that the entire 1971 NEC applied to installations and modifications made after March 15, 1972. To be consistent with the former standard, the revision, in § 1910.302(b)(2), provides that the entire Subpart S applies to the same installations and modifications.

However, some of the provisions contained in the proposed regulations differed from or were not found in the previous regulations. These differences resulted from the use of the 1978 National Electrical Code as a base document. Since the previous regulations referenced the 1971 NEC, changes which were made in the subsequent editions of the NEC and which were included in the proposal appeared to impose new requirements.

OSHA had intended that all provisions in the proposal which were more stringent than the OSHA electrical standards in effect at the time would not apply to existing installations. Existing installations would not have to be retrofitted to meet these new requirements.

OSHA has added a new § 1910.302(b)(3) to indicate that the following new provisions apply only to installations made after April 16, 1981, the effective date of these standards.

(1) §§ 1910.303(h)(4)(i) and (ii). These requirements relate to access and entrance to workspace about equipment rated over 600 volts.

(2) § 1910.304(e)(1)(vi)(*b*). This requires the handle of vertically mounted circuit breakers to be in the up position when the breaker is on.

(3) § 1910.304(e)(1)(vi)(*c*). This provision would require circuit breakers used as switches in fluorescent lighting circuits to be marked "SWD."

(4) § 1910.305(j)(6)(ii)(*b*). This regulation addresses proper switching of series capacitors over 600 volts.

(5) § 1910.306(c)(2). This provision requires a warning sign for multicar elevator or escalator installations, under certain conditions.

(6) § 1910.306(i). This paragraph contains requirements for lighting protection and disconnection of electrically controlled or driven irrigation machines.

(7) § 1910.306(j)(4). This provision requires ground-fault circuit interrupters for fountain installations.

(8) § 1910.306(a)(1)(ii). This provision requires conductors over 600 volts emerging from the ground to be enclosed in a raceway.

(9) § 1910.306(c)(2) requires marking on Class 2 and Class 3 power supply units.

(10) § 1910.306(d). This paragraph contains requirements for fire protective signaling circuits.

In summary, § 1910.302(b) provides for three sets of provisions within Subpart S: paragraph (b)(1) contains the list of provisions applicable to all electrical installations; paragraph (b)(3) provides that the new requirements listed in that paragraph are only applicable to installations made after the effective date of these standards; and paragraph (b)(2) provides for the remainder of Subpart S to apply to new installations and major modifications made after March 15, 1972.

The effective date of these standards is (90 days after publication). The 90-day period between the issuance of the standards and their effective date is intended to provide sufficient time for employers and employees to become informed of the existence of the standards and their requirements.

The standards currently found in the existing Subpart S [§§ 1910.306–1910.309] will remain in effect until the standards contained in this document actually go into effect. Should the new standards be stayed, judicially or administratively, or should the standards not sustain legal challenge under section 6(f) of the Act, the current standards in Subpart S will remain in effect.

Any petitions for administrative reconsiderations of these standards or for an administrative stay pending judicial review must be filed with the Assistant Secretary of Labor for Occupational Safety and Health on or before March 2, 1981. Any petitions filed after this date will be considered to be filed untimely. This requirement is considered essential to permit the Agency to give full consideration to each petition and respond in advance of the effective date of the standards.

VII. Appendices

For informational purposes, one Appendix has been provided and two others reserved in this final standard. At this time only Appendix A is being promulgated. It contains a list of references which can provide guidance for employers who wish to know specifically what constitutes compliance with the performance standards. If an employer complies with the specific guidelines (the National Electrical Code, NFPA 70, in particular), that employer will be considered to be in compliance with the performance requirements given in OSHA's standard. At the same time, an employer may be in compliance with the standard although not complying with the specific requirements of the guidelines. In construing the meaning of the performance language in the standards in circumstances where the employer chooses not to comply with the specific provisions of the guidelines, OSHA will look at the specific guidelines among other things to determine whether the employer has complied with the standards' performance requirements. However, nothing contained in the appendices should be construed as establishing a mandatory requirement not otherwise imposed by the standard, or as detracting from an obligation which the standard does impose. In view of the nature of the appendices, changes in their contents may subsequently be made without rulemaking.

Three documents have been added to the list contained in the proposal. They are:

NMAB 353–1–79 Matrix of Combustion—Relevant Properties and Classifications of Gases, Vapors, and Selected Solids

NMAB 353–2–79 Test Equipment For Use in Determining Classifications of Combustible Dusts

NMAB–353–80 Classification of Combustible Dusts in Accordance with the National Electrical Code

VIII. Authority

This document was prepared under the direction of Eula Bingham, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of

Labor, Third Street and Constitution Avenue, NW., Washington, D.C. 20210.

Accordingly, pursuant to sections 4(b)(2) and 6(b) of the Occupational Safety and Health Act of 1970 [84 Stat. 1592, 1593, 29 U.S.C. 653, 655], Secretary of Labor's Order No. 8-76 (41 FR 25059), and 29 CFR Part 1911, Subpart S of 29 CFR Part 1910 is revised as set forth below.

Signed at Washington, D.C. this 8th day of January, 1981.

Eula Bingham,

Assistant Secretary of Labor.

Part 1910 of Title 29 of the Code of Federal Regulations is hereby amended by revising Subpart S, Electrical, to read as follows:

* * * * *

Subpart S—Electrical

General

Sec.

1910.301 Introduction.

Design Safety Standards for Electrical Systems

1910.302 Electric utilization systems.
1910.303 General requirements.
1910.304 Wiring design and protection.
1910.305 Wiring methods, components, and equipment for general use.
1910.306 Specific purpose equipment and installations.
1910.307 Hazardous (classified) locations.
1910.308 Special systems.
1910.309—1910.330 [Reserved]

Safety-Related Work Practices

1910.331—1910.360 [Reserved]

Safety-Related Maintenance Requirements

1910.361—1910.380 [Reserved]

Safety Requirements for Special Equipment

1910.381—1910.398 [Reserved]

Definitions

1910.399 Definitions applicable to this subpart.
Appendix A—Reference Documents.
Appendix B—Explanatory Data [Reserved]
Appendix C—Tables, Notes, and Charts [Reserved]

Authority: Secs. 4(b)(2) and 6(b), 84 Stat. 1592, 1593 (29 U.S.C. 653, 655), Secretary of Labor's Order No. 8-76 (41 FR 25059), 29 CFR Part 1911.

Subpart S—Electrical

General

§ 1910.301 Introduction.

This subpart addresses electrical safety requirements that are necessary for the practical safeguarding of employees in their workplaces and is divided into four major divisions as follows:

(a) *Design safety standards for electrical systems.* These regulations are contained in §§ 1910.302 through 1910.330. Sections 1910.302 through 1910.308 contain design safety standards for electric utilization systems. Included in this category are all electric equipment and installations used to provide electric power and light for employee workplaces. Sections 1910.309 through 1910.330 are reserved for possible future design safety standards for other electrical systems.

(b) *Safety-related work practices.* These regulations will be contained in §§ 1910.331 through 1910.360.

(c) *Safety-related maintenance requirements.* These regulations will be contained in §§ 1910.361 through 1910.380.

(d) *Safety requirements for special equipment.* These regulations will be contained in §§ 1910.381 through 1910.398.

(e) *Definitions* applicable to each division are contained in § 1910.399.

Design Safety Standards for Electrical Systems

§ 1910.302 Electric utilization systems.

Sections 1910.302 through 1910.308 contain design safety standards for electric utilization systems.

(a) *Scope.* (1) *Covered.* The provisions of §§ 1910.302 through 1910.308 of this subpart cover electrical installations and utilization equipment installed or used within or on buildings, structures, and other premises including:

(i) Yards,

(ii) Carnivals,

(iii) Parking and other lots,

(iv) Mobile homes,

(v) Recreational vehicles,

(vi) Industrial substations,

(vii) Conductors that connect the installations to a supply of electricity, and

(viii) Other outside conductors on the premises.

(2) *Not covered.* The provisions of §§ 1910.302 through 1910.308 of this subpart do not cover:

(i) Installations in ships, watercraft, railway rolling stock, aircraft, or automotive vehicles other than mobile homes and recreational vehicles.

(ii) Installations underground in mines.

(iii) Installations of railways for generation, transformation, transmission, or distribution of power used exclusively for operation of rolling stock or installations used exclusively for signaling and communcation purposes.

(iv) Installations of communcation equipment under the exclusive control of communication utilities, located outdoors or in building spaces used exclusively for such installations.

(v) Installations under the exclusive control of electric utilities for the purpose of communication or metering; or for the generation, control, transformation, transmission, and distribution of electric energy located in buildings used exclusively by utilities for such purposes or located outdoors on property owned or leased by the utility or on public highways, streets, roads, etc., or outdoors by established rights on private property.

(b) *Extent of application.* (1) The requirements contained in the sections listed below shall apply to all electrical installations and utilization equipment, regardless of when they were designed or installed:

Sections:

1910.303(b)	Examination, installation, and use of equipment.
1910.303(c)	Splices.
1910.303(d)	Arcing parts.
1910.303(e)	Marking.
1910.303(f)	Identification of disconnecting means.
1910.303(g)(2)	Guarding of live parts.
1910.304(e)(2)(i)	Protection of conductors and equipment.
1910.304(e)(2)(ii)	Location in or on premises.
1910.304(e)(2)(iv)	Arcing or suddenly moving parts.
1910.304(f)(2)(i)	2-Wire DC systems to be grounded.
1910.304(f)(2)(ii) and 1910.304(f)(2)(iv).	AC Systems to be grounded.
1910.304(f)(2)(v)	AC Systems 50 to 1000 volts not required to be grounded.
1910.304(f)(3)	Grounding connections.
1910.304(f)(4)	Grounding path.
1910.304(f)(5)(v)(a) through 1910.304(f)(5)(v)(c)	Fixed equipment required to be grounded.
1910.304(f)(5)(v)	Grounding of equipment connected by cord and plug.
1910.304(f)(5)(vi)	Grounding of nonelectrical equipment.
1910.304(f)(6)(i)	Methods of grounding fixed equipment.
1910.305(g)(1)(i) and 1910.305(g)(1)(ii).	Flexible cords and cables, uses.
1910.305(g)(1)(iii)	Flexible cords and cables prohibited.
1910.305(g)(2)(i)	Flexible cords and cables, splices.
1910.305(g)(2)(ii)	Pull at joints and terminals of flexible cords and cables.
1910.307	Hazardous (classified) location.

(2) Every electric utilization system and all utilization equipment installed after March 15, 1972, and every major replacement, modification, repair, or rehabilitation, after March 15, 1972, of any part of any electric utilization system or utilization equipment installed before March 15, 1972, shall comply with the provisions of §§ 1910.302 through 1910.308.

Note.—"Major replacements, modifications, repairs, or rehabilitations" include work similar to that involved when a new building or facility is built, a new wing is added, or an entire floor is renovated.

(3) The following provisions apply to electric utilization systems and utilization equipment installed after April 16, 1981:

§ 1910.309(b)(4) (f)	Entrance and access to workspace (over 600 volts).
§ 1910.304(e)(1)(i)-(ii)(d)	Circuit breakers operated vertically.
§ 1910.304(e)(1)(iii)(d)	Circuit breakers used as switches.
§ 1910.304(f)(7)(ii)	Grounding of systems of 1000 volts or more supplying portable or mobile equipment.
§ 1910.305(g)(2)(iii)(a)	Switching series capacitors over 600 volts.
§ 1910.309(c)(2)	Warning signs for elevators and escalators.
§ 1910.309(i)	Electrically controlled irrigation machines.
§ 1910.309(j)(5)	Ground-fault circuit interrupters for fountains.
§ 1910.309(a)(1)(ii)	Physical protection of conductors over 600 volts.
§ 1910.309(c)(2)	Marking of Class 2 and Class 3 power supplies.
§ 1910.309(l)	Fire protective signaling circuits.

§ 1910.303 General requirements.

(a) *Approval.* The conductors and equipment required or permitted by this subpart shall be acceptable only if approved.

(b) *Examination, installation, and use of equipment.* (1) *Examination.* Electrical equipment shall be free from recognized hazards that are likely to cause death or serious physical harm to employees. Safety of equipment shall be determined using the following considerations:

(i) Suitability for installation and use in conformity with the provisions of this subpart. Suitability of equipment for an identified purpose may be evidenced by listing or labeling for that identified purpose.

(ii) Mechanical strength and durability, including, for parts designed to enclose and protect other equipment, the adequacy of the protection thus provided.

(iii) Electrical insulation.

(iv) Heating effects under conditions of use.

(v) Arcing effects.

(vi) Classification by type, size, voltage, current capacity, specific use.

(vii) Other factors which contribute to the practical safeguarding of employees using or likely to come in contact with the equipment.

(2) *Installation and use.* Listed or labeled equipment shall be used or installed in accordance with any instructions included in the listing or labeling.

(c) *Splices.* Conductors shall be spliced or joined with splicing devices suitable for the use or by brazing, welding, or soldering with a fusible metal or alloy. Soldered splices shall first be so spliced or joined as to be mechanically and electrically secure without solder and then soldered. All splices and joints and the free ends of conductors shall be covered with an insulation equivalent to that of the conductors or with an insulating device suitable for the purpose.

(d) *Arcing parts.* Parts of electric equipment which in ordinary operation produce arcs, sparks, flames, or molten metal shall be enclosed or separated and isolated from all combustible material.

(e) *Marking.* Electrical equipment may not be used unless the manufacturer's name, trademark, or other descriptive marking by which the organization responsible for the product may be identified is placed on the equipment. Other markings shall be provided giving voltage, current, wattage, and other ratings as necessary. The marking shall be of sufficient durability to withstand the environment involved.

(f) *Identification of disconnecting means and circuits.* Each disconnecting means required by this subpart for motors and appliances shall be legibly marked to indicate its purpose, unless located and arranged so the purpose is evident. Each service, feeder, and branch circuit, at its disconnecting means or overcurrent device, shall be legibly marked to indicate its purpose, unless located and arranged so the purpose is evident. These markings shall be of sufficient durability to withstand the environment involvement involved.

(g) *600 Volts, nominal, or less.* (1) *Working space about electric equipment.* Sufficient access and working space shall be provided and maintained about all electric equipment to permit ready and safe operation and maintenance of such equipment.

(i) *Working clearances.* Except as required or permitted elsewhere in this subpart, the dimension of the working space in the direction of access to live parts operating at 600 volts or less and likely to require examination, adjustment, servicing, or maintenance while alive may not be less than indicated in Table S–1. In addition to the dimensions shown in Table S–1, workspace may not be less than 30 inches wide in front of the electric equipment. Distances shall be measured from the live parts if they are exposed, or from the enclosure front or opening if the live parts are enclosed. Concrete, brick, or tile walls are considered to be grounded. Working space is not required in back of assemblies such as dead-front switchboards or motor control centers where there are no renewable or adjustable parts such as fuses or switches on the back and where all connections are accessible from locations other than the back.

**Table S–1.—*Working clearances*

Nominal voltage to ground	Minimum clear distance for condition[2] (ft)		
	(a)	(b)	(c)
0–150	[1]3	[1]3	3
151–600	[1]3	3½	4

[1] Minimum clear distances may be 2 feet 6 inches for installations built prior to April 16, 1981.

[2] Conditions (a), (b), and (c), are as follows: (a) Exposed live parts on one side and no live or grounded parts on the other side of the working space, or exposed live parts on both sides effectively guarded by suitable wood or other insulating material. Insulated wire or insulated busbars operating at not over 300 volts are not considered live parts. (b) Exposed live parts on one side and grounded parts on the other side. (c) Exposed live parts on both sides of the workspace (not guarded as provided in Condition (a)) with the operator between.

(ii) *Clear spaces.* Working space required by this subpart may not be used for storage. When normally enclosed live parts are exposed for inspection or servicing, the working space, if in a passageway or general open space, shall be suitably guarded.

(iii) *Access and entrance to working space.* At least one entrance of sufficient area shall be provided to give access to the working space about electric equipment.

(iv) *Front working space.* Where there are live parts normally exposed on the front of switchboards or motor control centers, the working space in front of such equipment may not be less than 3 feet.

(v) *Illumination.* Illumination shall be provided for all working spaces about service equipment, switchboards, panelboards, and motor control centers installed indoors.

(vi) *Headroom.* The minimum headroom of working spaces about service equipment, switchboards, panelboards, or motor control centers shall be 6 feet 3 inches.

Note.—As used in this section a motor control center is an assembly of one or more enclosed sections having a common power bus and principally containing motor control units.

(2) *Guarding of live parts.* (i) Except as required or permitted elsewhere in this subpart, live parts of electric equipment operating at 50 volts or more shall be guarded against accidental contact by approved cabinets or other forms of approved enclosures, or by any of the following means:

(*a*) By location in a room, vault, or similar enclosure that is accessible only to qualified persons.

(*b*) By suitable permanent, substantial partitions or screens so arranged that only qualified persons will have access to the space within reach of the live parts. Any openings in such partitions or screens shall be so sized and located that persons are not likely to come into accidental contact with the live parts or

to bring conducting objects into contact with them.

(c) By location on a suitable balcony, gallery, or platform so elevated and arranged as to exclude unqualified persons.

(d) By elevation of 8 feet or more above the floor or other working surface.

(ii) In locations where electric equipment would be exposed to physical damage, enclosures or guards shall be so arranged and of such strength as to prevent such damage.

(iii) Entrances to rooms and other guarded locations containing exposed live parts shall be marked with conspicuous warning signs forbidding unqualified persons to enter.

(h) *Over 600 volts, nominal.* (1) *General.* Conductors and equipment used on circuits exceeding 600 volts, nominal, shall comply with all applicable provisions of paragraphs (a) through (g) of this section and with the following provisions which supplement or modify those requirements. The provisions of paragraphs (h)(2), (h)(3), and (h)(4) of this section do not apply to equipment on the supply side of the service conductors.

(2) *Enclosure for electrical installations.* Electrical installations in a vault, room, closet or in an area surrounded by a wall, screen, or fence, access to which is controlled by lock and key or other approved means, are considered to be accessible to qualified persons only. A wall, screen, or fence less than 8 feet in height is not considered to prevent access unless it has other features that provide a degree of isolation equivalent to an 8 foot fence. The entrances to all buildings, rooms, or enclosures containing exposed live parts or exposed conductors operating at over 600 volts, nominal, shall be kept locked or shall be under the observation of a qualified person at all times.

(i) *Installations accessible to qualified persons only.* Electrical installations having exposed live parts shall be accessible to qualified persons only and shall comply with the applicable provisions of paragraph (h)(3) of this section.

(ii) *Installations accessible to unqualified persons.* Electrical installations that are open to unqualified persons shall be made with metal-enclosed equipment or shall be enclosed in a vault or in an area, access to which is controlled by a lock. If metal-enclosed equipment is installed so that the bottom of the enclosure is less than 8 feet above the floor, the door or cover shall be kept locked. Metal-enclosed switchgear, unit substations, transformers, pull boxes, connection boxes, and other similar associated equipment shall be marked with appropriate caution signs. If equipment is exposed to physical damage from vehicular traffic, suitable guards shall be provided to prevent such damage. Ventilating or similar openings in metal-enclosed equipment shall be designed so that foreign objects inserted through these openings will be deflected from energized parts.

(3) *Workspace about equipment.* Sufficient space shall be provided and maintained about electric equipment to permit ready and safe operation and maintenance of such equipment. Where energized parts are exposed, the minimum clear workspace may not be less than 6 feet 6 inches high (measured vertically from the floor or platform), or less than 3 feet wide (measured parallel to the equipment). The depth shall be as required in Table S–2. The workspace shall be adequate to permit at least a 90-degree opening of doors or hinged panels.

(i) *Working space.* The minimum clear working space in front of electric equipment such as switchboards, control panels, switches, circuit breakers, motor controllers, relays, and similar equipment may not be less than specified in Table S–2 unless otherwise specified in this subpart. Distances shall be measured from the live parts if they are exposed, or from the enclosure front or opening if the live parts are enclosed. However, working space is not required in back of equipment such as deadfront switchboards or control assemblies where there are no renewable or adjustable parts (such as fuses or switches) on the back and where all connections are accessible from locations other than the back. Where rear access is required to work on de-energized parts on the back of enclosed equipment, a minimum working space of 30 inches horizontally shall be provided.

Table S–2.—*Minimum Depth of Clear working Space in Front of Electric Equipment*

Nominal voltage to ground	Conditions[2] (ft)		
	(a)	(b)	(c)
601 to 2,500	3	4	5
2,501 to 9,000	4	5	6
9,001 to 25,000	5	6	9
25,001 to 75kV[1]	6	8	10
Above 75kV[1]	8	10	12

[1] Minimum depth of clear working space in front of electric equipment with a nominal voltage to ground above 25,000 volts may be the same as for 25,000 volts under Conditions (a), (b), and (c) for installations built prior to April 16, 1981.

[2] Conditions (a), (b), and (c) are as follows: (a) Exposed live parts on one side and no live or grounded parts on the other side of the working space, or exposed live parts on both sides effectively guarded by suitable wood or other insulating materials. Insulated wire or insulated busbars operating at not over 300 volts are not considered live parts. (b) Exposed live parts on one side and grounded parts on the other side. Concrete, brick, or tile walls will be considered as grounded surfaces. (c) Exposed live parts on both sides of the workspace not guarded as provided in Condition (a) with the operator between.

(ii) *Illumination.* Adequate illumination shall be provided for all working spaces about electric equipment. The lighting outlets shall be so arranged that persons changing lamps or making repairs on the lighting system will not be endangered by live parts or other equipment. The points of control shall be so located that persons are not likely to come in contact with any live part or moving part of the equipment while turning on the lights.

(iii) *Elevation of unguarded live parts.* Unguarded live parts above working space shall be maintained at elevations not less than specified in Table S–3.

Table S–3.—*Elevation of Unguarded Energized Parts Above Working Space*

Nominal voltage between phases	Minimum elevation
601 to 7,500	*8 feet 6 inches.
7,501 to 35,000	9 feet.
Over 35kV	9 feet + 0.37 inches per kV above 35kV.

*Note.—Minimum elevation may be 8 feet 6 inches for installations built prior to April 16, 1981 if the nominal voltage between phases is in the range of 601–8000 volts.

(4) *Entrance and access to workspace.* (See § 1910.302(b)(3).)

(i) At least one entrance not less than 24 inches wide and 6 feet 6 inches high shall be provided to give access to the working space about electric equipment. On switchboard and control panels exceeding 48 inches in width, there shall be one entrance at each end of such board where practicable. Where bare energized parts at any voltage or insulated energized parts above 600 volts are located adjacent to such entrance, they shall be suitably guarded.

(ii) Permanent ladders or stairways shall be provided to give safe access to the working space around electric equipment installed on platforms, balconies, mezzanine floors, or in attic or roof rooms or spaces.

§ 1910.304 Wiring design and protection.

(a) *Use and identification of grounded and grounding conductors.* (1) *Identification of conductors.* A conductor used as a grounded conductor shall be identifiable and distinguishable from all other conductors. A conductor used as an equipment grounding conductor shall be identifiable and distinguishable from all other conductors.

(2) *Polarity of connections.* No grounded conductor may be attached to any terminal or lead so as to reverse designated polarity.

(3) *Use of grounding terminals and devices.* A grounding terminal or grounding-type device on a receptacle, cord connector, or attachment plug may

not be used for purposes other than grounding.

(b) *Branch circuits.* (1) *Ground-fault protection for personnel on construction sites.* The employer shall use either ground-fault circuit interrupters as specified in paragraph (b)(1)(i) of this section or an assured equipment grounding conductor program as specified in paragraph (b)(1)(ii) of this section, to protect employees on construction sites. These requirements are in addition to any other requirements for equipment grounding conductors.

(i) *Ground-fault circuit interrupters.* All 120-volt, single-phase, 15- and 20-ampere receptacle outlets on construction sites, which are not a part of the permanent wiring of the building or structure and which are in use by employees, shall have approved ground-fault circuit interrupters for personnel protection. Receptacles on a two-wire, single-phase portable or vehicle-mounted generator rated not more than 5 kW, where the circuit conductors of the generator are insulated from the generator frame and all other grounded surfaces, need not be protected with ground-fault circuit interrupters.

(ii) *Assured equipment grounding conductor program.* The employer shall establish and implement an assured equipment grounding conductor program on construction sites covering all cord sets, receptacles which are not a part of the permanent wiring of the building or structure, and equipment connected by cord and plug, which are available for use or used by employees. This program shall comply with the following minimum requirements:

(*a*) A written description of the program, including the specific procedures adopted by the employer, shall be available at the jobsite for inspection and copying by the Assistant Secretary and any affected employee.

(*b*) The employer shall designate one or more competent persons (as defined in 29 CFR 1926.32(f)) to implement the program.

(*c*) Each cord set, attachment cap, plug and receptacle of cord sets, and any equipment connected by cord and plug, except cord sets and receptacles which are fixed and not exposed to damage, shall be visually inspected before each day's use for external defects, such as deformed or missing pins or insulation damage, and for indication of possible internal damage. Equipment found damaged or defective may not be used until repaired.

(*d*) The following tests shall be performed on all cord sets, receptacles which are not a part of the permanent wiring of the building or structure, and cord- and plug-connected equipment required to be grounded:

(*1*) All equipment grounding conductors shall be tested for continuity and shall be electrically continuous.

(*2*) Each receptacle and attachment cap or plug shall be tested for correct attachment of the equipment grounding conductor. The equipment grounding conductor shall be connected to its proper terminal.

(*e*) All required tests shall be performed:

(*1*) Before first use;

(*2*) Before equipment is returned to service following any repairs;

(*3*) Before equipment is used after any incident which can be reasonably suspected to have caused damage (for example, when a cord set is run over); and

(*4*) At intervals not to exceed 3 months, except that cord sets and receptacles which are fixed and not exposed to damage shall be tested at intervals not exceeding 6 months.

(f) The employer may not make available or permit the use by employees of any equipment which has not met the requirements of this paragraph (b)(1)(ii) of this section.

(g) Tests performed as required in this paragraph shall be recorded. This test record shall identify each receptacle, cord set, and cord- and plug-connected equipment that passed the test, and shall indicate the last date it was tested or the interval for which it was tested. This record shall be kept by means of logs, color coding, or other effective means, and shall be maintained until replaced by a more current record. The record shall be made available on the jobsite for inspection by the Assistant Secretary and any affected employee.

(2) *Outlet devices.* Outlet devices shall have an ampere rating not less than the load to be served.

(c) *Outside conductors, 600 volts, nominal, or less.* Paragraphs (c)(1), (c)(2), (c)(3), and (c)(4) of this section apply to branch circuit, feeder, and service conductors rated 600 volts, nominal, or less and run outdoors as open conductors. Paragraph (c)(5) applies to lamps installed under such conductors.

(1) *Conductors on poles.* Conductors supported on poles shall provide a horizontal climbing space not less than the following:

(i) Power conductors below communication conductors—30 inches.

(ii) Power conductors alone or above communication conductors: 300 volts or less—24 inches; more than 300 volts—30 inches.

(iii) Communication conductors below power conductors with power conductors 300 volts or less—24 inches; more than 300 volts—30 inches.

(2) *Clearance from ground.* Open conductors shall conform to the following minimum clearances:

(i) 10 feet—above finished grade, sidewalks, or from any platform or projection from which they might be reached.

(ii) 12 feet—over areas subject to vehicular traffic other than truck traffic.

(iii) 15 feet—over areas other than those specified in paragraph (c)(2)(iv) of this section that are subject to truck traffic.

(iv) 18 feet—over public streets, alleys, roads, and driveways.

(3) *Clearance from building openings.* Conductors shall have a clearance of at least 3 feet from windows, doors, porches, fire escapes, or similar locations. Conductors run above the top level of a window are considered to be out of reach from that window and, therefore, do not have to be 3 feet away.

(4) *Clearance over roofs.* Conductors shall have a clearance of not less than 8 feet from the highest point of roofs over which they pass, except that

(i) Where the voltage between conductors is 300 volts or less and the roof has a slope of not less than 4 inches in 12, the clearance from roofs shall be at least 3 feet, or

(ii) Where the voltage between conductors is 300 volts or less and the conductors do not pass over more than 4 feet of the overhang portion of the roof and they are terminated at a through-the-roof raceway or approved support, the clearance from roofs shall be at least 18 inches.

(5) *Location of outdoor lamps.* Lamps for outdoor lighting shall be located below all live conductors, transformers, or other electric equipment, unless such equipment is controlled by a disconnecting means that can be locked in the open position or unless adequate clearances or other safeguards are provided for relamping operations.

(d) *Services. (1) Disconnecting means. (i) General.* Means shall be provided to disconnect all conductors in a building or other structure from the service-entrance conductors. The disconnecting means shall plainly indicate whether it is in the open or closed position and shall be installed at a readily accessible location nearest the point of entrance of the service-entrance conductors.

(ii) *Simultaneous opening of poles.* Each service disconnecting means shall simultaneously disconnect all ungrounded conductors.

(2) *Services over 600 volts, nominal.* The following additional requirements apply to services over 600 volts, nominal.

(i) *Guarding.* Service-entrance conductors installed as open wires shall be guarded to make them accessible only to qualified persons.

(ii) *Warning signs.* Signs warning of high voltage shall be posted where other than qualified employees might come in contact with live parts.

(e) *Overcurrent protection. (1) 600 volts, nominal, or less.* The following requirements apply to overcurrent protection of circuits rated 600 volts, nominal, or less.

(i) *Protection of conductors and equipment.* Conductors and equipment shall be protected from overcurrent in accordance with their ability to safely conduct current.

(ii) *Grounded conductors.* Except for motor running overload protection, overcurrent devices may not interrupt the continuity of the grounded conductor unless all conductors of the circuit are opened simultaneously.

(iii) *Disconnection of fuses and thermal cutouts.* Except for service fuses, all cartridge fuses which are accessible to other than qualified persons and all fuses and thermal cutouts on circuits over 150 volts to ground shall be provided with disconnecting means. This disconnecting means shall be installed so that the fuse or thermal cutout can be disconnected from its supply without disrupting service to equipment and circuits unrelated to those protected by the overcurrent device.

(iv) *Location in or on premises.* Overcurrent devices shall be readily accessible to each employee or authorized building management personnel. These overcurrent devices may not be located where they will be exposed to physical damage nor in the vicinity of easily ignitible material.

(v) *Arcing or suddenly moving parts.* Fuses and circuit breakers shall be so located or shielded that employees will not be burned or otherwise injured by their operation.

(vi) *Circuit breakers.* (*a*) Circuit breakers shall clearly indicate whether they are in the open (off) or closed (on) position.

(*b*)Where circuit breaker handles on switchboards are operated vertically rather than horizontally or rotationally, the up position of the handle shall be the closed (on) position. (See § 1910.302(b)(3).)

(*c*) If used as switches in 120-volt, fluorescent lighting circuits, circuit breakers shall be approved for the purpose and marked "SWD." (See § 1910.302(b)(3).)

(2) *Over 600 volts, nominal.* Feeders and branch circuits over 600 volts, nominal, shall have short-circuit protection.

(f) *Grounding.* Paragraphs (f)(1) through (f)(7) of this section contain grounding requirements for systems, circuits, and equipment.

(1) *Systems to be grounded.* The following systems which supply premises wiring shall be grounded:

(i) All 3-wire DC systems shall have their neutral conductor grounded.

(ii) Two-wire DC systems operating at over 50 volts through 300 volts between conductors shall be grounded unless:

(*a*) They supply only industrial equipment in limited areas and are equipped with a ground detector; or

(*b*) They are rectifier-derived from an AC system complying with paragraphs (f)(1)(iii), (f)(1)(v), and (f)(1)(v) of this section; or

(*c*) They are fire-protective signaling circuits having a maximum current of 0.030 amperes.

(iii) AC circuits of less than 50 volts shall be grounded if they are installed as overhead conductors outside of buildings or if they are supplied by transformers and the transformer primary supply system is ungrounded or exceeds 150 volts to ground.

(iv) AC systems of 50 volts to 1000 volts shall be grounded under any of the following conditions, unless exempted by paragraph (f)(1)(v) of this section:

(*a*) If the system can be so grounded that the maximum voltage to ground on the ungrounded conductors does not exceed 150 volts;

(*b*) If the system is nominally rated 480Y/277 volt, 3-phase, 4-wire in which the neutral is used as a circuit conductor;

(*c*) If the system is nominally rated 240/120 volt, 3-phase, 4-wire in which the midpoint of one phase is used as a circuit conductor; or

(*d*) If a service conductor is uninsulated.

(v) AC systems of 50 volts to 1000 volts are not required to be grounded under any of the following conditions:

(*a*) If the system is used exclusively to supply industrial electric furnaces for melting, refining, tempering, and the like.

(*b*) If the system is separately derived and is used exclusively for rectifiers supplying only adjustable speed industrial drives.

(*c*) If the system is separately derived and is supplied by a transformer that has a primary voltage rating less than 1000 volts, provided all of the following conditions are met:

(*1*) The system is used exclusively for control circuits,

(*2*) The conditions of maintenance and supervision assure that only qualified persons will service the installation,

(*3*) Continuity of control power is required, and

(*4*) Ground detectors are installed on the control system.

(*d*) If the system is an isolated power system that supplies circuits in health care facilities.

(2) *Conductors to be grounded.* For AC premises wiring systems the identified conductor shall be grounded.

(3) *Grounding connections.* (i) For a grounded system, a grounding electrode conductor shall be used to connect both the equipment grounding conductor and the grounded circuit conductor to the grounding electrode. Both the equipment grounding conductor and the grounding electrode conductor shall be connected to the grounded circuit conductor on the supply side of the service disconnecting means, or on the supply side of the system disconnecting means or overcurrent devices if the system is separately derived.

(ii) For an ungrounded service-supplied system, the equipment grounding conductor shall be connected to the grounding electrode conductor at the service equipment. For an ungrounded separately derived system, the equipment grounding conductor shall be connected to the grounding electrode conductor at, or ahead of, the system disconnecting means or overcurrent devices.

(iii) On extensions of existing branch circuits which do not have an equipment grounding conductor, grounding-type receptacles may be grounded to a grounded cold water pipe near the equipment.

(4) *Grounding path.* The path to ground from circuits, equipment, and enclosures shall be permanent and continuous.

(5) *Supports, enclosures, and equipment to be grounded.*—(i) *Supports and enclosures for conductors.* Metal cable trays, metal raceways, and metal enclosures for conductors shall be grounded, except that:

(*a*) Metal enclosures such as sleeves that are used to protect cable assemblies from physical damage need not be grounded; or

(*b*) Metal enclosures for conductors added to existing installations of open wire, knob-and-tube wiring, and nonmetallic-sheathed cable need not be grounded if all of the following conditions are met: (1) runs are less than 25 feet; (2) enclosures are free from probable contact with ground, grounded metal, metal laths, or other conductive materials; and (3) enclosures are guarded against employee contact.

(ii) *Service equipment enclosures.* Metal enclosures for service equipment shall be grounded.

(iii) *Frames of ranges and clothes dryers.* Frames of electric ranges, wall-mounted ovens, counter-mounted cooking units, clothes dryers, and metal outlet or junction boxes which are part of the circuit for these appliances shall be grounded.

(iv) *Fixed equipment.* Exposed non-current-carrying metal parts of fixed equipment which may become energized shall be grounded under any of the following conditions:

(*a*) If within 8 feet vertically or 5 feet horizontally of ground or grounded metal objects and subject to employee contact.

(*b*) If located in a wet or damp location and not isolated.

(*c*) If in electrical contact with metal.

(*d*) If in a hazardous (classified) location.

(*e*) If supplied by a metal-clad, metal-sheathed, or grounded metal raceway wiring method.

(*f*) If equipment operates with any terminal at over 150 volts to ground; however, the following need not be grounded:

(*1*) Enclosures for switches or circuit breakers used for other than service equipment and accessible to qualified persons only;

(*2*) Metal frames of electrically heated appliances which are permanently and effectively insulated from ground; and

(*3*) The cases of distribution apparatus such as transformers and capacitors mounted on wooden poles at a height exceeding 8 feet above ground or grade level.

(v) *Equipment connected by cord and plug.* Under any of the conditions described in paragraphs (f)(5)(v)(*a*) through (f)(5)(v)(*c*) of this section, exposed non-current-carrying metal parts of cord- and plug-connected equipment which may become energized shall be grounded.

(*a*) If in hazardous (classified) locations (see § 1910.306).

(*b*) If operated at over 150 volts to ground, except for guarded motors and metal frames of electrically heated appliances if the appliance frames are permanently and effectively insulated from ground.

(*c*) If the equipment is of the following types:

(*1*) Refrigerators, freezers, and air conditioners;

(*2*) Clothes-washing, clothes-drying and dishwashing machines, sump pumps, and electrical aquarium equipment;

(*3*) Hand-held motoroperated tools;

(*4*) Motoroperated appliances of the following types: hedge clippers, lawn mowers, snow blowers, and wet scrubbers;

(*5*) Cord- and plug-connected appliances used in damp or wet locations or by employees standing on the ground or on metal floors or working inside of metal tanks or boilers;

(*6*) Portable and mobile X-ray and associated equipment;

(*7*) Tools likely to be used in wet and conductive locations; and

(*8*) Portable hand lamps.

Tools likely to be used in wet and conductive locations need not be grounded if supplied through an isolating transformer with an ungrounded secondary of not over 50 volts. Listed or labeled portable tools and appliances protected by an approved system of double insulation, or its equivalent, need not be grounded. If such a system is employed, the equipment shall be distinctively marked to indicate that the tool or appliance utilizes an approved system of double insulation.

(vi) *Nonelectrical equipment.* The metal parts of the following nonelectrical equipment shall be grounded: frames and tracks of electrically operated cranes; frames of nonelectrically driven elevator cars to which electric conductors are attached; hand operated metal shifting ropes or cables of electric elevators, and metal partitions, grill work, and similar metal enclosures around equipment of over 750 volts between conductors.

(6) *Methods of grounding fixed equipment.* (i) Non-current-carrying metal parts of fixed equipment, if required to be grounded by this subpart, shall be grounded by an equipment grounding conductor which is contained within the same raceway, cable, or cord, or runs with or encloses the circuit conductors. For DC circuits only, the equipment grounding conductor may be run separately from the circuit conductors.

(ii) Electric equipment shall be considered to be effectively grounded if it is secured to, and in electrical contact with, a metal rack or structure that is provided for its support and the metal rack or structure is grounded by the method specified for the non-current-carrying metal parts of fixed equipment in paragraph (f)(6)(i) of this section. For installations made before April 16, 1981, only, electric equipment shall be also considered to be effectively grounded if it is secured to, and in metallic contact with, the grounded structural metal frame of a building. Metal car frames supported by metal hoisting cables attached to or running over metal sheaves or drums of grounded elevator machines are also considered to be effectively grounded.

(7) *Grounding of systems and circuits of 1000 volts and over (high voltage).*—(i) *General.* If high voltage systems are grounded, they shall comply with all applicable provisions of paragraphs (f)(1) through (f)(6) of this section as supplemented and modified by this paragraph (f)(7).

(ii) *Grounding of systems supplying portable or mobile equipment.* (See § 1910.302(b)(3).) Systems supplying portable or mobile high voltage equipment, other than substations installed on a temporary basis, shall comply with the following:

(*a*) Portable and mobile high voltage equipment shall be supplied from a system having its neutral grounded through an impedance. If a delta-connected high voltage system is used to supply the equipment, a system neutral shall be derived.

(*b*) Exposed non-current-carrying metal parts of portable and mobile equipment shall be connected by an equipment grounding conductor to the point at which the system neutral impedance is grounded.

(*c*) Ground-fault detection and relaying shall be provided to automatically de-energize any high voltage system component which has developed a ground fault. The continuity of the equipment grounding conductor shall be continuously monitored so as to de-energize automatically the high voltage feeder to the portable equipment upon loss of continuity of the equipment grounding conductor.

(*d*) The grounding electrode to which the portable or mobile equipment system neutral impedance is connected shall be isolated from and separated in the ground by at least 20 feet from any other system or equipment grounding electrode, and there shall be no direct connection between the grounding electrodes, such as buried pipe, fence, etc.

(iii) *Grounding of equipment.* All non-current-carrying metal parts of portable equipment and fixed equipment including their associated fences, housings, enclosures, and supporting structures shall be grounded. However, equipment which is guarded by location and isolated from ground need not be grounded. Additionally, pole-mounted distribution apparatus at a height exceeding 8 feet above ground or grade level need not be grounded.

§ 1910.305 Wiring methods, components, and equipment for general use.

(a) *Wiring methods.* The provisions of this section do not apply to the conductors that are an integral part of factory-assembled equipment.

(1) *General requirements.*—(i) *Electrical continuity of metal raceways and enclosures.* Metal raceways, cable armor, and other metal enclosures for conductors shall be metallically joined together into a continuous electric conductor and shall be so connected to all boxes, fittings, and cabinets as to provide effective electrical continuity.

(ii) *Wiring in ducts.* No wiring systems of any type shall be installed in ducts used to transport dust, loose stock or flammable vapors. No wiring system of any type may be installed in any duct used for vapor removal or for ventilation of commercial-type cooking equipment, or in any shaft containing only such ducts.

(2) *Temporary wiring.* Temporary electrical power and lighting wiring methods may be of a class less than would be required for a permanent installation. Except as specifically modified in this paragraph, all other requirements of this subpart for permanent wiring shall apply to temporary wiring installations.

(i) *Uses permitted, 600 volts, nominal, or less.* Temporary electrical power and lighting installations 600 volts, nominal, or less may be used only:

(*a*) During and for remodeling, maintenance, repair, or demolition of buildings, structures, or equipment, and similar activities;

(*b*) For experimental or development work, and

(*c*) For a period not to exceed 90 days for Christmas decorative lighting, carnivals, and similar purposes.

(ii) *Uses permitted, over 600 volts, nominal.* Temporary wiring over 600 volts, nominal, may be used only during periods of tests, experiments, or emergencies.

(iii) *General requirements for temporary wiring.*—*(a)* Feeders shall originate in an approval distribution center. The conductors shall be run as multiconductor cord or cable assemblies, or, where not subject to physical damage, they may be run as open conductors on insulators not more than 10 feet apart.

(*b*) Branch circuits shall originate in an approved power outlet or panelboard. Conductors shall be multiconductor cord or cable assemblies or open conductors. If run as open conductors they shall be fastened at ceiling height every 10 feet. No branch-circuit conductor may be laid on the floor. Each branch circuit that supplies receptacles or fixed equipment shall contain a separate equipment grounding conductor if run as open conductors.

(*c*) Receptacles shall be of the grounding type. Unless installed in a complete metallic raceway, each branch circuit shall contain a separate equipment grounding conductor and all receptacles shall be electrically connected to the grounding conductor.

(*d*) No bare conductors nor earth returns may be used for the wiring of any temporary circuit.

(*e*) Suitable disconnecting switches or plug connectors shall be installed to permit the disconnection of all ungrounded conductors of each temporary circuit.

(*f*) Lamps for general illumination shall be protected from accidential contact or breakage. Protection shall be provided by elevation of at least 7 feet from normal working surface or by a suitable fixture of lampholder with a guard.

(*g*) Flexible cords and cables shall be protected from accidental damage. Sharp corners and projections shall be avoided. Where passing through doorways or other pinch points, flexible cords and cables shall be provided with protection to avoid damage.

(3) *Cable trays.* (i) *Uses permitted. (a)* Only the following may be installed in cable tray systems:

(*1*) Mineral-insulated metal-sheathed cable (Type MI);

(*2*) Armored cable (Type AC);

(*3*) Metal-clad cable (Type MC);

(*4*) Power-limited tray cable (Type PLTC);

(*5*) Nonmetallic-sheathed cable (Type NM or NMC);

(*6*) Shielded Nonmetallic-sheathed cable (Type SNM);

(*7*) Multiconductor service-entrance cable (Type SE or USE);

(*8*) Multiconductor underground feeder and branch-circuit cable (Type UF);

(*9*) Power and control tray cable (Type TC);

(*10*) Other factory-assembled, multiconductor control, signal, or power cables which are specifically approved for installation in cable trays; or

(*11*) Any approved conduit or raceway with its contained conductors.

(*b*) In industrial establishments only, where conditions of maintenance and supervision assure that only qualified persons will service the installed cable tray system, the following cables may also be installed in ladder, ventilated trough, or 4 inch ventilated channel-type cable trays:

(*1*) Single conductor cables which are 250 MCM or larger and are Types RHH, RHW, MV, USE, or THW, and 250 MCM or larger single conductor cables if specifically approved for installation in cable trays. Where exposed to direct rays of the sun, cables shall be sunlight-resistant.

(*2*) Type MV cables, where exposed to direct rays of the sun, shall be sunlight-resistant.

(*c*) Cable trays in hazardous (classified) locations shall contain only the cable types permitted in such locations.

(ii) *Uses not permitted.* Cable tray systems may not be used in hoistways or where subjected to severe physical damage.

(4) *Open wiring on insulators.*—(i) *Uses permitted.* Open wiring on insulators is only permitted on systems of 600 volts, nominal, or less for industrial or agricultural establishments and for services.

(ii) *Conductor supports.* Conductors shall be rigidly supported on noncombustible, nonabsorbent insulating materials and may not contact any other objects.

(iii) *Flexible nonmetallic tubing.* In dry locations where not exposed to severe physical damage, conductors may be separately enclosed in flexible nonmetallic tubing. The tubing shall be in continuous lengths not exceeding 15 feet and secured to the surface by straps at intervals not exceeding 4 feet 6 inches.

(iv) *Through walls, floors, wood cross members, etc.* Open conductors shall be separated from contact with walls, floors, wood cross members, or partitions through which they pass by tubes or bushings of noncombustible, nonabsorbent insulating material. If the bushing is shorter than the hole, a waterproof sleeve of nonconductive material shall be inserted in the hole and an insulating bushing slipped into the sleeve at each end in such a manner as to keep the conductors absolutely out of contact with the sleeve. Each conductor shall be carried through a separate tube or sleeve.

(v) *Protection from physical damage.* Conductors within 7 feet from the floor are considered exposed to physical damage. Where open conductors cross ceiling joints and wall studs and are exposed to physical damage, they shall be protected.

(b) *Cabinets, boxes, and fittings.*—(1) *Conductors entering boxes, cabinets, or fittings.* Conductors entering boxes, cabinets, or fittings shall be protected from abrasion, and openings through which conductors enter shall be effectively closed. Unused openings in cabinets, boxes, and fittings shall be also effectively closed.

(2) *Covers and canopies.* All pull boxes, junction boxes, and fittings shall be provided with covers approved for the purpose. If metal covers are used they shall be grounded. In completed installations each outlet box shall have

a cover, faceplate, or fixture canopy. Covers of outlet boxes having holes through which flexible cord pendants pass shall be provided with bushings designed for the purpose or shall have smooth, well-rounded surfaces on which the cords may bear.

(3) *Pull and junction boxes for systems over 600 volts, nominal.* In addition to other requirements in this section for pull and junction boxes, the following shall apply to these boxes for systems over 600 volts, nominal:

(i) Boxes shall provide a complete enclosure for the contained conductors or cables.

(ii) Boxes shall be closed by suitable covers securely fastened in place. Underground box covers that weigh over 100 pounds meet this requirement. Covers for boxes shall be permanently marked "HIGH VOLTAGE." The marking shall be on the outside of the box cover and shall be readily visible and legible.

(c) *Switches.*—(1) *Knife switches.* Single-throw knife switches shall be so connected that the blades are dead when the switch is in the open position. Single-throw knife switches shall be so placed that gravity will not tend to close them. Single-throw knife switches approved for use in the inverted position shall be provided with a locking device that will ensure that the blades remain in the open position when so set. Double-throw knife switches may be mounted so that the throw will be either vertical or horizontal. However, if the throw is vertical a locking device shall be provided to ensure that the blades remain in the open position when so set.

(2) *Faceplates for flush-mounted snap switches.* Flush snap switches that are mounted in ungrounded metal boxes and located within reach of conducting floors or other conducting surfaces shall be provided with faceplates of nonconducting, noncombustible material.

(d) *Switchboards and panelboards.* Switchboards that have any exposed live parts shall be located in permanently dry locations and accessible only to qualified persons. Panelboards shall be mounted in cabinets, cutout boxes, or enclosures approved for the purpose and shall be dead front. However, panelboards other than the dead front externally-operable type are permitted where accessible only to qualified persons. Exposed blades of knife switches shall be dead when open.

(e) *Enclosures for damp or wet locations.* (1) Cabinets, cutout boxes, fittings, boxes, and panelboard enclosures in damp or wet locations shall be installed so as to prevent moisture or water from entering and accumulating within the enclosures. In wet locations the enclosures shall be weatherproof.

(2) Switches, circuit breakers, and switchboards installed in wet locations shall be enclosed in weatherproof enclosures.

(f) *Conductors for general wiring.* All conductors used for general wiring shall be insulated unless otherwise permitted in this Subpart. The conductor insulation shall be of a type that is approved for the voltage, operating temperature, and location of use. Insulated conductors shall be distinguishable by appropriate color or other suitable means as being grounded conductors, ungrounded conductors, or equipment grounding conductors.

(g) *Flexible cords and cables.*—(1) *Use of flexible cords and cables.* (i) Flexible cords and cables shall be approved and suitable for conditions of use and location. Flexible cords and cables shall be used only for:

(*a*) Pendants;

(*b*) Wiring of fixtures;

(*c*) Connection of portable lamps or appliances;

(*d*) Elevator cables;

(*e*) Wiring of cranes and hoists;

(*f*) Connection of stationary equipment to facilitate their frequent interchange;

(*g*) Prevention of the transmission of noise or vibration;

(*h*) Appliances where the fastening means and mechanical connections are designed to permit removal for maintenance and repair; or

(*i*) Data processing cables approved as a part of the data processing system.

(ii) If used as permitted in paragraphs (g)(1)(i)(*c*), (g)(1)(i)(*f*), or (g)(1)(i)(*h*) of this section, the flexible cord shall be equipped with an attachment plug and shall be energized from an approved receptacle outlet.

(iii) Unless specifically permitted in paragraph (g)(1)(i) of this section, flexible cords and cables may not be used:

(*a*) As a substitute for the fixed wiring of a structure;

(*b*) Where run through holes in walls, ceilings, or floors;

(*c*) Where run through doorways, windows, or similar openings;

(*d*) Where attached to building surfaces; or

(*e*) Where concealed behind building walls, ceilings, or floors.

(iv) Flexible cords used to show windows and showcases shall be Type S, SO, SJ, SJO, ST, STO, SJT, SJTO, or AFS except for the wiring of chain-supported lighting fixtures and supply cords for portable lamps and other merchandise being displayed or exhibited.

(2) *Identification, splices, and terminations.*

(i) A conductor of a flexible cord or cable that is used as a grounded conductor or an equipment grounding conductor shall be distinguishable from other conductors. Types SJ, SJO, SJT, SJTO, S, SO, ST, and STO shall be durably marked on the surface with the type designation, size, and number of conductors.

(ii) Flexible cords shall be used only in continuous lengths without splice or tap. Hard service flexible cords No. 12 or larger may be repaired if spliced so that the splice retains the insulation, outer sheath properties, and usage characteristics of the cord being spliced.

(iii) Flexible cords shall be connected to devices and fittings so that strain relief is provided which will prevent pull from being directly transmitted to joints or terminal screws.

(h) *Portable cables over 600 volts, nominal.* Multiconductor portable cable for use in supplying power to portable or mobile equipment at over 600 volts, nominal, shall consist of No. 8 or larger conductors employing flexible stranding. Cables operated at over 2,000 volts shall be shielded for the purpose of confining the voltage stresses to the insulation. Grounding conductors shall be provided. Connectors for these cables shall be of a locking type with provisions to prevent their opening or closing while energized. Strain relief shall be provided at connections and terminations. Portable cables may not be operated with splices unless the splices are of the permanent molded, vulcanized, or other approved type. Termination enclosures shall be suitably marked with a high voltage hazard warning, and terminations shall be accessible only to authorized and qualified personnel.

(i) *Fixture wires.*—(1) *General.* Fixture wires shall be approved for the voltage, temperature, and location of use. A fixture wire which is used as a grounded conductor shall be identified.

(2) *Uses permitted.* Fixture wires may be used:

(i) For installation in lighting fixtures and in similar equipment where enclosed or protected and not subject to bending or twisting in use; or

(ii) For connecting lighting fixtures to the branch-circuit conductors supplying the fixtures.

(3) *Uses not permitted.* Fixture wires may not be used as branch-circuit conductors except as permitted for Class 1 power limited circuits.

(j) *Equipment for general use.*—(1) *Lighting fixtures, lampholders, lamps, and receptacles.* (i) Fixtures,

lampholders, lamps, rosettes, and receptacles may have no live parts normally exposed to employee contact. However, rosettes and cleat-type lampholders and receptacles located at least 8 feet above the floor may have exposed parts.

(ii) Handlamps of the portable type supplied through flexible cords shall be equipped with a handle of molded composition or other material approved for the purpose, and a substantial guard shall be attached to the lampholder or the handle.

(iii) Lampholders of the screw-shell type shall be installed for use as lampholders only. Lampholders installed in wet or damp locations shall be of the weatherproof type.

(iv) Fixtures installed in wet or damp locations shall be approved for the purpose and shall be so constructed or installed that water cannot enter or accumulate in wireways, lampholders, or other electrical parts.

(2) *Receptacles, cord connectors, and attachment plugs (caps).* (i) Receptacles, cord connectors, and attachment plugs shall be constructed so that no receptacle or cord connector will accept an attachment plug with a different voltage or current rating than that for which the device is intended. However, a 20-ampere T-slot receptacle or cord connector may accept a 15-ampere attachment plug of the same voltage rating.

(ii) A receptacle installed in a wet or damp location shall be suitable for the location.

(3) *Appliances.*—(i) Appliances, other than those in which the current-carrying parts at high temperatures are necessarily exposed, may have no live parts normally exposed to employee contact.

(ii) A means shall be provided to disconnect each appliance.

(iii) Each appliance shall be marked with its rating in volts and amperes or volts and watts.

(4) *Motors.* This paragraph applies to motors, motor circuits, and controllers.

(i) *In sight from.* If specified that one piece of equipment shall be "in sight from" another piece of equipment, one shall be visible and not more than 50 feet from the other.

(ii) *Disconnecting means.* (*a*) A disconnecting means shall be located in sight from the controller location. However, a single disconnecting means may be located adjacent to a group of coordinated controllers mounted adjacent to each other on a multi-motor continuous process machine. The controller disconnecting means for motor branch circuits over 600 volts, nominal, may be out of sight of the controller, if the controller is marked with a warning label giving the location and identification of the disconnecting means which is to be locked in the open position.

(*b*) The disconnecting means shall disconnect the motor and the controller from all ungrounded supply conductors and shall be so designed that no pole can be operated independently.

(*c*) If a motor and the driven machinery are not in sight from the controller location, the installation shall comply with one of the following conditions:

(*1*) The controller disconnecting means shall be capable of being locked in the open position.

(*2*) A manually operable switch that will disconnect the motor from its source of supply shall be placed in sight from the motor location.

(*d*) The disconnecting means shall plainly indicate whether it is in the open (off) or closed (on) position.

(*e*) The disconnecting means shall be readily accessible. If more than one disconnect is provided for the same equipment, only one need be readily accessible.

(*f*) An individual disconnecting means shall be provided for each motor, but a single disconnecting means may be used for a group of motors under any one of the following conditions:

(*1*) If a number of motors drive special parts of a single machine or piece of apparatus, such as metal and woodworking machines, cranes, and hoists;

(*2*) If a group of motors is under the protection of one set of branch-circuit protective devices; or

(*3*) If a group of motors is in a single room in sight from the location of the disconnecting means.

(iii) *Motor overload, short-circuit, and ground-fault protection.* Motors, motor-control apparatus, and motor branch-circuit conductors shall be protected against overheating due to motor overloads or failure to start, and against short-circuits or ground faults. These provisions shall not require overload protection that will stop a motor where a shutdown is likely to introduce additional or increased hazards, as in the case of fire pumps, or where continued operation of a motor is necessary for a safe shutdown of equipment or process and motor overload sensing devices are connected to a supervised alarm.

(iv) *Protection of live parts—all voltages.*—(*a*) Stationary motors having commutators, collectors, and brush rigging located inside of motor end brackets and not conductively connected to supply circuits operating at more than 150 volts to ground need not have such parts guarded. Exposed live parts of motors and controllers operating at 50 volts or more between terminals shall be guarded against accidental contact by any of the following:

(*1*) By installation in a room or enclosure that is accessible only to qualified persons;

(*2*) By installation on a suitable balcony, gallery, or platform, so elevated and arranged as to exclude unqualified persons; or

(*3*) By elevation 8 feet or more above the floor.

(*b*) Where live parts of motors or controllers operating at over 150 volts to ground are guarded against accidental contact only by location, and where adjustment or other attendance may be necessary during the operation of the apparatus, suitable insulating mats or platforms shall be provided so that the attendant cannot readily touch live parts unless standing on the mats or platforms.

(5) *Transformers.*—(i) The following paragraphs cover the installation of all transformers except the following:

(*a*) Current transformers;

(*b*) Dry-type transformers installed as a component part of other apparatus;

(*c*) Transformers which are an integral part of an X-ray, high frequency, or electrostatic-coating apparatus;

(*d*) Transformers used with Class 2 and Class 3 circuits, sign and outline lighting, electric discharge lighting, and power-limited fire-protective signalling circuits; and

(*e*) Liquid-filled or dry-type transformers used for research, development, or testing, where effective safeguard arrangements are provided.

(ii) The operating voltage of exposed live parts of transformer installations shall be indicated by warning signs or visible markings on the equipment or structure.

(iii) Dry-type, high fire point liquid-insulated, and askarel-insulated transformers installed indoors and rated over 35kV shall be in a vault.

(iv) If they present a fire hazard to employees, oil-insulated transformers installed indoors shall be in a vault.

(v) Combustible material, combustible buildings and parts of buildings, fire escapes, and door and window openings shall be safeguarded from fires which may originate in oil-insulated transformers attached to or adjacent to a building or combustible material.

(vi) Transformer vaults shall be constructed so as to contain fire and combustible liquids within the vault and to prevent unauthorized access. Locks and latches shall be so arranged that a

vault door can be readily opened from the inside.

(vii) Any pipe or duct system foreign to the vault installation may not enter or pass through a transformer vault.

(viii) Materials may not be stored in transformer vaults.

(6) *Capacitors.* (i) All capacitors, except surge capacitors or capacitors included as a component part of other apparatus, shall be provided with an automatic means of draining the stored charge after the capacitor is disconnected from its source of supply.

(ii) Capacitors rated over 600 volts, nominal, shall comply with the following additional requirements:

(a) Isolating or disconnecting switches (with no interrupting rating) shall be interlocked with the load interrupting device or shall be provided with prominently displayed caution signs to prevent switching load current.

(b) For series capacitors (see § 1910.302(b)(3)), the proper switching shall be assured by use of at least one of the following:

(1) Mechanically sequenced isolating and bypass switches,

(2) Interlocks, or

(3) Switching procedure prominently displayed at the switching location.

(7) Storage batteries. Provisions shall be made for sufficient diffusion and ventilation of gases from storage batteries to prevent the accumulation of explosive mixtures.

§ 1910.306 Specific purpose equipment and installations.

(a) *Electric signs and outline lighting.* (1) *Disconnecting means.* Signs operated by electronic or electromechanical controllers located outside the sign shall have a disconnecting means located inside the controller enclosure or within sight of the controller location, and it shall be capable of being locked in the open position. Such disconnecting means shall have no pole that can be operated independently, and it shall open all ungrounded conductors that supply the controller and sign. All other signs, except the portable type, and all outline lighting installations shall have an externally operable disconnecting means which can open all underground conductors and is within the sight of the sign or outline lighting it controls.

(2) Doors or covers giving access to uninsulated parts of indoor signs or outline lighting exceeding 600 volts and accessible to other than qualified persons shall either be provided with interlock switches to disconnect the primary circuit or shall be so fastened that the use of other than ordinary tools will be necessary to open them.

(b) *Cranes and hoists.* This paragraph applies to the installation of electric equipment and wiring used in connection with cranes, monorail hoists, hoists, and all runways.

(1) *Disconnecting means.* A readily accessible disconnecting means shall be provided between the runway contact conductors and the power supply.

(ii) Another disconnecting means, capable of being locked in the open position, shall be provided in the leads from the runway contact conductors or other power supply on any crane or monorail hoist.

(a) If this additional disconnecting means is not readily accessible from the crane or monorail hoist operating station, means shall be provided at the operating station to open the power circuit to all motors of the crane or monorail hoist.

(b) The additional disconnect may be omitted if a monorail hoist or hand-propelled crane bridge installation meets all of the following:

(1) The unit is floor controlled;

(2) The unit is within view of the power supply disconnecting means; and

(3) No fixed work platform has been provided for servicing the unit.

(2) *Control.* A limit switch or other device shall be provided to prevent the load block from passing the safe upper limit of travel of any hoisting mechanism.

(3) *Clearance.* The dimension of the working space in the direction of access to live parts which may require examination, adjustment, servicing, or maintenance while alive shall be a minimum of 2 feet 6 inches. Where controls are enclosed in cabinets, the door(s) shall either open at least 90 degrees or be removable.

(c) *Elevators, dumbwaiters, escalators, and moving walks.* (1) *Disconnecting means.* Elevators, dumbwaiters, escalators, and moving walks shall have a single means for disconnecting all underground main power supply conductors for each unit.

(2) *Warning signs.* If interconnections between control panels are necessary for operation of the system on a multicar installation that remains energized from a source other than the disconnecting means, a warning sign shall be mounted on or adjacent to the disconnecting means. The sign shall be clearly legible and shall read "Warning—Parts of the control panel are not de-energized by this switch." (See § 1910.302(b)(3).)

(3) *Control panels.* If control panels are not located in the same space as the drive machine, they shall be located in cabinets with doors or panels capable of being locked closed.

(d) *Electric welders—disconnecting means.* (1) A disconnecting means shall be provided in the supply circuit for each motor-generator arc welder, and for each AC transformer and DC rectifier arc welder which is not equipped with a disconnect mounted as an integral part of the welder.

(2) A switch or circuit breaker shall be provided by which each resistance welder and its control equipment can be isolated from the supply circuit. The ampere rating of this disconnecting means may not be less than the supply conductor ampacity.

(e) *Data processing systems—disconnecting means.* A disconnecting means shall be provided to disconnect the power to all electronic equipment in data processing or computer rooms. This disconnecting means shall be controlled from locations readily accessible to the operator at the principal exit doors. There shall also be a similar disconnecting means to disconnect the air conditioning system serving this area.

(f) *X-Ray equipment.* This paragraph applies to X-ray equipment for other than medical or dental use.

(1) *Disconnecting means.* (i) A disconnecting means shall be provided in the supply circuit. The disconnecting means shall be operable from a location readily accessible from the X-ray control. For equipment connected to a 120-volt branch circuit of 30 amperes or less, a grounding-type attachment plug cap and receptacle of proper rating may serve as a disconnecting means.

(ii) If more than one piece of equipment is operated from the same high-voltage circuit, each piece or each group of equipment as a unit shall be provided with a high-voltage switch or equivalent disconnecting means. This disconnecting means shall be constructed, enclosed, or located so as to avoid contact by employees with its live parts.

(2) *Control.* (i) *Radiographic and fluoroscopic types.* Radiographic and fluoroscopic-type equipment shall be effectively enclosed or shall have interlocks that de-energize the equipment automatically to prevent ready access to live current-carrying parts.

(ii) *Diffraction and irradiation types.* Diffraction- and irradiation-type equipment shall be provided with a means to indicate when it is energized unless the equipment or installation is effectively enclosed or is provided with interlocks to prevent access to live current-carrying parts during operation.

(g) *Induction and dielectric heating equipment.* (1) *Scope.* Paragraphs (g)(2) and (g)(3) of this section cover induction

and dielectric heating equipment and accessories for industrial and scientific applications, but not for medical or dental applications or for appliances.

(2) *Guarding and grounding.* (i) *Enclosures.* The converting apparatus (including the DC line) and high-frequency electric circuits (excluding the output circuits and remote-control circuits) shall be completely contained within enclosures or noncombustible material.

(ii) *Panel controls.* All panel controls shall be of dead-front construction.

(iii) *Access to internal equipment.* Where doors are used for access to voltages from 500 to 1000 volts AC or DC, either door locks or interlocks shall be provided. Where doors are used for access to voltages of over 1000 volts AC or DC, either mechanical lockouts with a disconnecting means to prevent access until voltage is removed from the cubicle, or both door interlocking and mechanical door locks, shall be provided.

(iv) *Warning labels.* "Danger" labels shall be attached on the equipment and shall be plainly visible even when doors are open or panels are removed from compartments containing voltages of over 250 volts AC or DC.

(v) *Work applicator shielding.* Protective cages or adequate shielding shall be used to guard work applicators other than induction heating coils. Induction heating coils shall be protected by insulation and/or refractory materials. Interlock switches shall be used on all hinged access doors, sliding panels, or other such means of access to the applicator. Interlock switches shall be connected in such a manner as to remove all power from the applicator when any one of the access doors or panels is open. Interlocks on access doors or panels are not required if the applicator is an induction heating coil at DC ground potential or operating at less than 150 volts AC.

(vi) *Disconnecting means.* A readily accessible disconnecting means shall be provided by which each unit of heating equipment can be isolated from its supply circuit.

(3) *Remote control.* If remote controls are used for applying power, a selector switch shall be provided and interlocked to provide power from only one control point at a time. Switches operated by foot pressure shall be provided with a shield over the contact button to avoid accidental closing of the switch.

(h) *Electrolytic cells.* (1) *Scope.* These provisions for electrolytic cells apply to the installation of the electrical components and accessory equipment of electrolytic cells, electrolytic cell lines, and process power supply for the production of aluminum, cadmium, chlorine, copper, fluorine, hydrogen peroxide, magnesium, sodium, sodium chlorate, and zinc. Cells used as a source of electric energy and for electroplating processes and cells used for production of hydrogen are not covered by these provisions.

(2) *Definitions applicable to this paragraph.*

Cell line: An assembly of electrically interconnected electrolytic cells supplied by a source of direct-current power.

Cell line attachments and auxiliary equipment: Cell line attachments and auxiliary equipment include, but are not limited to: auxiliary tanks; process piping; duct work; structural supports; exposed cell line conductors; conduits and other raceways; pumps; positioning equipment and cell cutout or by-pass electrical devices. Auxiliary equipment also includes tools, welding machines, crucibles, and other portable equipment used for operation and maintenance within the electrolytic cell line working zone. In the cell line working zone, auxiliary equipment includes the exposed conductive surfaces of ungrounded cranes and crane-mounted cell-servicing equipment.

Cell line working zone: The cell line working zone is the space envelope wherein operation or maintenance is normally performed on or in the vicinity of exposed energized surfaces of cell lines or their attachments.

Electrolytic Cells: A receptacle or vessel in which electrochemical reactions are caused by applying energy for the purpose of refining or producing usable materials.

(3) *Application.* Installations covered by paragraph (h) of this section shall comply with all applicable provisions of this subpart, except as follows:

(i) Overcurrent protection of electrolytic cell DC process power circuits need not comply with the requirements of § 1910.304(e).

(ii) Equipment located or used within the cell line working associated with the cell line DC power circuits need not comply with the provisions of § 1910.304(f).

(iii) Electrolytic cells, cell line conductors, cell line attachments, and the wiring of auxiliary equipment and devices within the cell line working zone need not comply with the provisions of §§ 1910.303, and 1910.304 (b) and (c).

(4) *Disconnecting means.* (i) If more than one DC cell line process power supply serves the same cell line, a disconnecting means shall be provided on the cell line circuit side of each power supply to disconnect it from the cell line circuit.

(ii) Removable links or removable conductors may be used as the disconnecting means.

(5) *Portable electric equipment.* (i) The frames and enclosures of portable electric equipment used within the cell line working zone may not be grounded. However, these frames and enclosures may be grounded if the cell line circuit voltage does not exceed 200 volts DC or if the frames are guarded.

(ii) Ungrounded portable electric equipment shall be distinctively marked and may not be interchangeable with grounded portable electric equipment.

(6) *Power supply circuits and receptacles for portable electric equipment.* (i) Circuits supplying power to ungrounded receptacles for hand-held, cord- and plug-connected equipment shall be electrically isolated from any distribution system supplying areas other than the cell line working zone and shall be ungrounded. Power for these circuits shall be supplied through isolating transformers.

(ii) Receptacles and their mating plugs for ungrounded equipment may not have provision for a grounding conductor and shall be of a configuration which prevents their use for equipment required to be grounded.

(iii) Receptacles on circuits supplied by an isolating transformer with an ungrounded secondary shall have a distinctive configuration, shall be distinctively marked, and may not be used in any other location in the plant.

(7) *Fixed and portable electric equipment.* (i) AC systems supplying fixed and portable electric equipment within the cell line working zone need not be grounded.

(ii) Exposed conductive surfaces, such as electric equipment housing, cabinets, boxes, motors, raceways and the like that are within the cell line working zone need not be grounded.

(iii) Auxiliary electrical devices, such as motors, transducers, sensors, control devices, and alarms, mounted on an electrolytic cell or other energized surface, shall be connected by any of the following means:

(*a*) Multiconductor hard usage or extra hard usage flexible cord;

(*b*) Wire or cable in suitable raceways; or

(*c*) Exposed metal conduit, cable tray, armored cable, or similar metallic systems installed with insulating breaks such that they will not cause a potentially hazardous electrical condition.

(iv) Fixed electric equipment may be bonded to the energized conductive surfaces of the cell line, its attachments, or auxiliaries. If fixed electric equipment is mounted on an energized conductive

surface, it shall be bonded to that surface.

(8) *Auxiliary nonelectric connections.* Auxiliary nonelectric connections, such as air hoses, water hoses, and the like, to an electrolytic cell, its attachments, or auxiliary equipment may not have continuous conductive reinforcing wire, armor, braids, and the like. Hoses shall be of a nonconductive material.

(9) *Cranes and hoists.* (i) The conductive surfaces of cranes and hoists that enter the cell line working zone need not be grounded. The portion of an overhead crane or hoist which contacts an energized electrolytic cell or energized attachments shall be insulated from ground.

(ii) Remote crane or hoist controls which may introduce hazardous electrical conditions into the cell line working zone shall employ one or more of the following systems:

(*a*) Insulated and ungrounded control circuit;

(*b*) Nonconductive rope operator;

(*c*) Pendant pushbutton with nonconductive supporting means and having nonconductive surfaces or ungrounded exposed conductive surfaces; or

(*d*) Radio.

(i) *Electrically driven or controlled irrigation machines.* (See § 1910.302(b)(3).)

(1) *Lightning protection.* If an electrically driven or controlled irrigation machine has a stationary point, a driven ground rod shall be connected to the machine at the stationary point for lightning protection.

(2) *Disconnecting means.* The main disconnecting means for a center pivot irrigation machine shall be located at the point of connection of electrical power to the machine and shall be readily accessible and capable of being locked in the open position. A disconnecting means shall be provided for each motor and controller.

(j) *Swimming pools, fountains, and similar installations.* (1) *Scope.* Paragraphs (j)(2) through (j)(5) of this section apply to electric wiring for and equipment in or adjacent to all swimming, wading, therapeutic, and decorative pools and fountains, whether permanently installed or storable, and to metallic auxiliary equipment, such as pumps, filters, and similar equipment. Therapeutic pools in health care facilities are exempt from these provisions.

(2) *Lighting and receptacles.* (i) *Receptacles.* A single receptacle of the locking and grounding type that provides power for a permanently installed swimming pool recirculating pump motor may be located not less than 5 feet from the inside walls of a pool. All other receptacles on the property shall be located at least 10 feet from the inside walls of a pool. Receptacles which are located within 15 feet of the inside walls of the pool shall be protected by ground-fault circuit interrupters.

Note.—In determining these dimensions, the distance to be measured is the shortest path the supply cord of an appliance connected to the receptacle would follow without piercing a floor, wall, or ceiling of a building or other effective permanent barrier.

(ii) *Lighting fixtures and lighting outlets.* (*a*) Unless they are 12 feet above the maximum water level, lighting fixtures and lighting outlets may not be installed over a pool or over the area extending 5 feet horizontally from the inside walls of a pool. However, a lighting fixture or lighting outlet which has been installed before April 16, 1981 may be located less than 5 feet measured horizontally from the inside walls of a pool if it is at least 5 feet above the surface of the maximum water level and shall be rigidly attached to the existing structure. It shall also be protected by a ground-fault circuit interrupter installed in the branch circuit supplying the fixture.

(*b*) Unless installed 5 feet above the maximum water level and rigidly attached to the structure adjacent to or enclosing the pool, lighting fixtures and lighting outlets installed in the area extending between 5 feet and 10 feet horizontally from the inside walls of a pool shall be protected by a ground-fault circuit interrupter.

(3) *Cord- and plug-connected equipment.* Flexible cords used with the following equipment may not exceed 3 feet in length and shall have a copper equipment grounding conductor with a grounding-type attachment plug.

(i) Cord- and plug-connected lighting fixtures installed within 15 feet of the water surface of permanently installed pools.

(ii) Other cord- and plug-connected, fixed or stationary equipment used with permanently installed pools.

(4) *Underwater equipment.* (i) A ground-fault circuit interrupter shall be installed in the branch circuit supplying underwater fixtures operating at more than 15 volts. Equipment installed underwater shall be approved for the purpose.

(ii) No underwater lighting fixtures may be installed for operation at over 150 volts between conductors.

(5) *Fountains.* All electric equipment operating at more than 15 volts, including power supply cords, used with fountains shall be protected by ground-fault circuit interrupters. (See § 1910.302(b)(3).)

§ 1910.307 Hazardous (classified) locations.

(a) *Scope.* This section covers the requirements for electric equipment and wiring in locations which are classified depending on the properties of the flammable vapors, liquids or gases, or combustible dusts or fibers which may be present therein and the likelihood that a flammable or combustible concentration or quantity is present. Hazardous (classified) locations may be found in occupancies such as, but not limited to, the following: aircraft hangars, gasoline dispensing and service stations, bulk storage plants for gasoline or other volatile flammable liquids, paint-finishing process plants, health care facilities, agricultural or other facilities where excessive combustible dusts may be present, marinas, boat yards, and petroleum and chemical processing plants. Each room, section or area shall be considered individually in determining its classification. These hazardous (classified) locations are assigned six designations as follows:

Class I, Division 1
Class I, Division 2
Class II, Division 1
Class II, Division 2
Class III, Division 1
Class III, Division 2

For definitions of these locations see § 1910.399(a). All applicable requirements in this subpart shall apply to hazardous (classified) locations, unless modified by provisions of this section.

(b) *Electrical installations.* Equipment, wiring methods, and installations of equipment in classified locations shall be intrinsically safe, approved for the hazardous (classified) location, or safe for the hazardous (classified) location. Requirements for each of these options are as follows:

(1) *Intrinsically safe.* Equipment and associated wiring approved as intrinsically safe shall be permitted in any hazardous (classified) location for which it is approved.

(2) *Approved for the hazardous (classified) location.* (i) Equipment shall be approved not only for the class of location but also for the ignitible or combustible properties of the specific gas, vapor, dust, or fiber that will be present.

Note.—NFPA 70, the National Electrical Code, lists or defines hazardous gases, vapors, and dusts by "Groups" characterized by their ignitible or combustible properties.

(ii) Equipment shall be marked to show the class, group, and operating

temperature or temperature range, based on operation in a 40 degrees C ambient, for which it is approved. The temperature marking shall not exceed the ignition temperature of the specific gas or vapor to be encountered. However, the following provisions modify this marking requirement for specific equipment:

(*a*) Equipment of the non-heat-producing type, such as junction boxes, conduit, and fittings, and equipment of the heat-producing type having a maximum temperature not more than 100 degrees C (212 degrees F), need not have a marked operating temperature or temperature range.

(*b*) Fixed lighting fixtures marked for use in Class I, Division 2 locations only, need not be marked to indicate the group.

(*c*) Fixed general-purpose equipment in Class I locations, other than lighting fixtures, which is acceptable for use in Class I, Division 2 locations need not be marked with the class, group, division, or operating temperature.

(*d*) Fixed dust-tight equipment, other than lighting fixtures, which is acceptable for use in Class II, Division 2 and Class III locations need not be marked with the class, group, division, or operating temperature.

(3) *Safe for the hazardous (classified) location.* Equipment which is safe for the location shall be of a type and design which the employer demonstrates will provide protection from the hazards arising from the combustibility and flammability of vapors, liquids, gases, dusts, or fibers.

Note.—The National Electrical Code, NFPA 70, contains guidelines for determining the type and design of equipment and installations which will meet this requirement. The guidelines of this document address electric wiring, equipment, and systems installed in hazardous (classified) locations and contain specific provisions for the following: wiring methods, wiring connections; conductor insulation, flexible cords, sealing and drainage, transformers, capacitors, switches, circuit breakers, fuses, motor controllers, receptacles, attachment plugs, meters, relays, instruments, resistors, generators, motors, lighting fixtures, storage battery charging equipment, electric cranes, electric hoists and similar equipment, utilization equipment, signaling systems, alarm systems, remote control systems, local loud speaker and communication systems, ventilation piping, live parts, lightning surge protection, and grounding. Compliance with these guidelines will constitute one means, but not the only means, of compliance with this paragraph.

(c) *Conduits.* All conduits shall be threaded and shall be made wrench-tight. Where it is impractical to make a threaded joint tight, a bonding jumper shall be utilized.

(d) *Equipment in Division 2 locations.* Equipment that has been approved for a Division 1 location may be installed in a Division 2 location of the same class and group. General-purpose equipment or equipment in general-purpose enclosures may be installed in Division 2 locations if the equipment does not constitute a source of ignition under normal operating conditions.

§ 1910.308 Special systems.

(a) *Systems over 600 volts, nominal.* Paragraphs (a)(1) through (a)(4) of this section cover the general requirements for all circuits and equipment operated at over 600 volts.

(1) *Wiring methods for fixed installations.* (i) Above-ground conductors shall be installed in rigid metal conduit, in intermediate metal conduit, in cable trays, in cablebus, in other suitable raceways, or as open runs of metal-clad cable suitable for the use and purpose. However, open runs of non-metallic-sheathed cable or of bare conductors or busbars may be installed in locations accessible only to qualified persons. Metallic shielding components, such as tapes, wires, or braids for conductors, shall be grounded. Open runs of insulated wires and cables having a bare lead sheath or a braided outer covering shall be supported in a manner designed to prevent physical damage to the braid or sheath.

(ii) Conductors emerging from the ground shall be enclosed in approved raceways. (See § 1910.302(b)(3).)

(2) *Interrupting and isolating devices.* (i) Circuit breakers located indoors shall consist of metal-enclosed or fire-resistant, cell-mounted units. In locations accessible only to qualified personnel, open mounting of circuit breakers is permitted. A means of indicating the open and closed position of circuit breakers shall be provided.

(ii) Fused cutouts installed in buildings or tranformer vaults shall be of a type approved for the purpose. They shall be readily accessible for fuse replacement.

(iii) A means shall be provided to completely isolate equipment for inspection and repairs. Isolating means which are not designed to interrupt the load curent of the circuit shall be either interlocked with an approved circuit interrupter or provided with a sign warning against opening them under load.

(3) *Mobile and portable equipment.* (i) *Power cable connections to mobile machines.* A metallic enclosure shall be provided on the mobile machine for enclosing the terminals of the power cable. The enclosure shall include provisions for a solid connection for the ground wire(s) terminal to effectively ground the machine frame. The method of cable termination used shall prevent any strain or pull on the cable from stressing the electrical connections. The enclosure shall have provision for locking so only authorized qualified persons may open it and shall be marked with a sign warning of the presence of energized parts.

(ii) *Guarding live parts.* All energized switching and control parts shall be enclosed in effectively grounded metal cabinets or enclosures. Circuit breakers and protective equipment shall have the operating means projecting through the metal cabinet or enclosure so these units can be reset without locked doors being opened. Enclosures and metal cabinets shall be locked so that only authorized qualified persons have access and shall be marked with a sign warning of the presence of energized parts. Collector ring assemblies on revolving-type machines (shovels, draglines, etc.) shall be guarded.

(4) *Tunnel installations.* (i) *Application.* The provisions of this paragraph apply to installation and use of high-voltage power distribution and utilization equipment which is portable and/or mobile, such as substations, trailers, cars, mobile shovels, draglines, hoists, drills, dredges, compressors, pumps, conveyors, and underground excavators.

(ii) *Conductors.* Conductors in tunnels shall be installed in one or more of the following:

(a) Metal conduit or other metal raceway,

(b) Type MC cable, or

(c) Other approved multiconductor cable.

Conductors shall also be so located or guarded as to protect them from physical damage. Multiconductor portable cable may supply mobile equipment. An equipment grounding conductor shall be run with circuit conductors inside the metal raceway or inside the multiconductor cable jacket. The equipment grounding conductor may be insulated or bare.

(iii) *Guarding live parts.* Bare terminals of transformers, switches, motor controllers, and other equipment shall be enclosed to prevent accidental contact with energized parts. Enclosures for use in tunnels shall be drip-proof, weatherproof, or submersible as required by the environmental conditions.

(iv) *Disconnecting means.* A disconnecting means that simultaneously opens all ungrounded conductors shall be installed at each transformer or motor location.

(v) *Grounding and bonding.* All nonenergized metal parts of electric equipment and metal raceways and cable sheaths shall be effectively grounded and bonded to all metal pipes and rails at the portal and at intervals not exceeding 1000 feet throughout the tunnel.

(b) *Emergency power systems.* (1) *Scope.* The provisions for emergency systems apply to circuits, systems, and equipment intended to supply power for illumination and special loads, in the event of failure of the normal supply.

(2) *Wiring methods.* Emergency circuit wiring shall be kept entirely independent of all other wiring and equipment and may not enter the same raceway, cable, box, or cabinet with other wiring except either where common circuit elements suitable for the purpose are required, or for transferring power from the normal to the emergency source.

(3) *Emergency illumination.* Where emergency lighting is necessary, the system shall be so arranged that the failure of any individual lighting element, such as the burning out of a light bulb, cannot leave any space in total darkness.

(c) *Class 1, Class 2, and Class 3 remote control, signaling, and power-limited circuits.* (1) *Classification.* Class 1, Class 2, or Class 3 remote control, signaling, or power-limited circuits are characterized by their usage and electrical power limitation which differentiates them from light and power circuits. These circuits are classified in accordance with their respective voltage and power limitations as summarized in paragraphs (c)(1)(i) through (c)(1)(iii) of this section.

(i) *Class 1 circuits. (a)* A Class 1 power-limited circuit is supplied from a source having a rated output of not more than 30 volts and 1000 volt-amperes.

(b) A Class 1 remote control circuit or a Class 1 signaling circuit has a voltage which does not exceed 600 volts; however, the power output of the source need not be limited.

(ii) *Class 2 and Class 3 circuits. (a)* Power for Class 2 and Class 3 circuits is limited either inherently (in which no overcurrent protection is required) or by a combination of a power source and overcurrent protection.

(b) The maximum circuit voltage is 150 volts AC or DC for a Class 2 inherently limited power source, and 100 volts AC or DC for a Class 3 inherently limited power source.

(c) The maximum circuit voltage is 30 volts AC and 60 volts DC for a Class 2 power source limited by overcurrent protection, and 150 volts AC or DC for a Class 3 power source limited by overcurrent protection.

(iii) The maximum circuit voltages in paragraphs (c)(1)(i) and (c)(1)(ii) of this section apply to sinusoidal AC or continuous DC power sources, and where wet contact occurence is not likely.

(2) *Marking.* A Class 2 or Class 3 power supply unit shall be durably marked where plainly visible to indicate the class of supply and its electrical rating. (See § 1910.302(b)(3).)

(d) *Fire protective signaling systems.* (See § 1910.302(b)(3).)

(1) *Classifications.* Fire protective signaling circuits shall be classified either as non-power limited or power limited.

(2) *Power sources.* The power sources for use with fire protective signaling circuits shall be either power limited or nonlimited as follows:

(i) The power supply of non-power-limited fire protective signaling circuits shall have an output voltage not in excess of 600 volts.

(ii) The power for power-limited fire protective signaling circuits shall be either inherently limited, in which no overcurrent protection is required, or limited by a combination of a power source and overcurrent protection.

(3) *Non-power-limited conductor location.* Non-power-limited fire protective signaling circuits and Class 1 circuits may occupy the same enclosure, cable, or raceway provided all conductors are insulated for maximum voltage of any conductor within the enclosure, cable, or raceway. Power supply and fire protective signaling circuit conductors are permitted in the same enclosure, cable, or raceway only if connected to the same equipment.

(4) *Power-limited conductor location.* Where open conductors are installed, power-limited fire protective signaling circuits shall be separated at least 2 inches from conductors of any light, power, Class 1, and non-power-limited fire protective signaling circuits unless a special and equally protective method of conductor separation is employed. Cables and conductors of two or more power-limited fire protective signaling circuits or Class 3 circuits are permitted in the same cable, enclosure, or raceway. Conductors of one or more Class 2 circuits are permitted within the same cable, enclosure, or raceway with conductors of power-limited fire protective signaling circuits provided that the insulation of Class 2 circuit conductors in the cable, enclosure, or raceway is at least that needed for the power-limited fire protective signaling circuits.

(5) *Identification.* Fire protective signaling circuits shall be identified at terminal and junction locations in a manner which will prevent unintentional interference with the signaling circuit during testing and servicing. Power-limited fire protective signaling circuits shall be durably marked as such where plainly visible at terminations.

(e) *Communications systems.* (1) *Scope.* These provisions for communication systems apply to such systems as central-station-connected and non-central-station-connected telephone circuits, radio and television receiving and transmitting equipment, including community antenna television and radio distribution systems, telegraph, district messenger, and outside wiring for fire and burglar alarm, and similar central station systems. These installations need not comply with the provisions of §§ 1910.303 through 1910.308(d).

(2) *Protective devices.* (i) Communication circuits so located as to be exposed to accidental contact with light or power conductors operating at over 300 volts shall have each circuit so exposed provided with a protector approved for the purpose.

(ii) Each conductor of a lead-in from an outdoor antenna shall be provided with an antenna discharge unit or other suitable means that will drain static charges from the antenna system.

(3) *Conductor location.* (i) *Outside of buildings. (a)* Receiving distribution lead-in or aerial-drop cables attached to buildings and lead-in conductors to radio transmitters shall be so installed as to avoid the possibility of accidental contact with electric light or power conductors.

(b) The clearance between lead-in conductors and any lightning protection conductors may not be less than 6 feet.

(ii) *On poles.* Where practicable, communication conductors on poles shall be located below the light or power conductors. Communications conductors may not be attached to a crossarm that carries light or power conductors.

(iii) *Inside of buildings.* Indoor antennas, lead-ins, and other communication conductors attached as open conductors to the inside of buildings shall be located at least 2 inches from conductors of any light or power or Class 1 circuits unless a special and equally protective method of conductor separation, approved for the purpose, is employed.

(4) *Equipment location.* Outdoor metal structures supporting antennas, as well as self-supporting antennas such as vertical rods or dipole structures, shall be located as far away from overhead

conductors of electric light and power circuits of over 150 volts to ground as necessary to avoid the possibility of the antenna or structure falling into or making accidental contact with such circuits.

(5) *Grounding.* (i) *Lead-in conductors.* If exposed to contact with electric light and power conductors, the metal sheath of aerial cables entering buildings shall be grounded or shall be interrupted close to the entrance to the building by an insulating joint or equivalent device. Where protective devices are used, they shall be grounded in an approved manner.

(ii) *Antenna structures.* Masts and metal structures supporting antennas shall be permanently and effectively grounded without splice or connection in the grounding conductor.

(iii) *Equipment enclosures.* Transmitters shall be enclosed in a metal frame or grill or separated from the operating space by a barrier, all metallic parts of which are effectively connected to ground. All external metal handles and controls accessible to the operating personnel shall be effectively grounded. Unpowered equipment and enclosures shall be considered grounded where connected to an attached coaxial cable with an effectively grounded metallic shield.

§ 1910.308–§ 1910.330 [Reserved]

Safety-Related Work Practices

§ 1910.331–§ 1910.360 [Reserved]

Safety-Related Maintenance Requirements

§ 1910.361–§ 1910.380 [Reserved]

Safety Requirements for Special Equipment

§ 1910.381–§ 1910.398 [Reserved]

Definitions

§ 1910.399 Definitions applicable to this subpart.

(a) *Definitions applicable to §§ 1910.302 through 1910.330.*

(1) *Acceptable.* An installation or equipment is acceptable to the Assistant Secretary of Labor, and approved within the meaning of this Subpart S: (i) If it is accepted, or certified, or listed, or labeled, or otherwise determined to be safe by a nationally recognized testing laboratory, such as, but not limited to, Underwriters' Laboratories, Inc. and Factory Mutual Engineering Corp.; or (ii) with respect to an installation or equipment of a kind which no nationally recognized testing laboratory accepts, certifies, lists, labels, or determines to be safe, if it is inspected or tested by another Federal agency, or by a State, municipal, or other local authority responsible for enforcing occupational safety provisions of the National Electrical Code, and found in compliance with the provisions of the National Electrical Code as applied in this Subpart; or (iii) with respect to custom-made equipment or related installations which are designed, fabricated for, and intended for use by a particular customer, if it is determined to be safe for its intended use by its manufacturer on the basis of test data which the employer keeps and makes available for inspection to the Assistant Secretary and his authorized representatives.

(2) *Accepted.* An installation is "accepted" if it has been inspected and found by a nationally recognized testing laboratory to conform to specified plans or to procedures of applicable codes.

(3) *Accessible.* (As applied to wiring methods.) Capable of being removed or exposed without damaging the building structure or finish, or not permanently closed in by the structure or finish of the building. (See *"concealed"* and *"exposed."*)

(4) *Accessible.* (As applied to equipment.) Admitting close approach; not guarded by locked doors, elevation, or other effective means. (See *"Readily accessible."*)

(5) *Ampacity.* Current-carrying capacity of electric conductors expressed in amperes.

(6) *Appliances.* Utilization equipment, generally other than industrial, normally built in standardized sizes or types, which is installed or connected as a unit to perform one or more functions such as clothes washing, air conditioning, food mixing, deep frying, etc.

(7) *Approved.* Acceptable to the authority enforcing this Subpart. The authority enforcing this Subpart is the Assistant Secretary of Labor for Occupational Safety and Health. The definition of "acceptable" indicates what is acceptable to the Assistant Secretary of Labor, and therefore approved within the meaning of this Subpart.

(8) *Approved for the purpose.* Approved for a specific purpose, environment, or application described in a particular standard requirement.

Suitability of equipment or materials for a specific purpose, environment or application may be determined by a nationally recognized testing laboratory, inspection agency or other organization concerned with product evaluation as part of its listing and labeling program. (See *"Labeled"* or *"Listed."*)

(9) *Armored cable.* Type AC armored cable is a fabricated assembly of insulated conductors in a flexible metallic enclosure.

(10) *Askarel.* A generic term for a group of nonflammable synthetic chlorinated hydrocarbons used as electrical insulating media. Askarels of various compositional types are used. Under arcing conditions the gases produced, while consisting predominantly of noncombustible hydrogen chloride, can include varying amounts of combustible gases depending upon the askarel type.

(11) *Attachment plug (Plug cap) (Cap).* A device which, by insertion in a receptacle, establishes connection between the conductors of the attached flexible cord and the conductors connected permanently to the receptacle.

(12) *Automatic.* Self-acting, operating by its own mechanism when actuated by some impersonal influence, as, for example, a change in current strength, pressure, temperature, or mechanical configuration.

(13) *Bare conductor.* See *"Conductor."*

(14) *Bonding.* The permanent joining of metallic parts to form an electrically conductive path which will assure electrical continuity and the capacity to conduct safely any current likely to be imposed.

(15) *Bonding jumper.* A reliable conductor to assure the required electrical conductivity between metal parts required to be electrically connected.

(16) *Branch circuit.* The circuit conductors between the final overcurrent device protecting the circuit and the outlet(s).

(17) *Building.* A structure which stands alone or which is cut off from adjoining structures by fire walls with all openings therein protected by approved fire doors.

(18) *Cabinet.* An enclosure designed either for surface or flush mounting, and provided with a frame, mat, or trim in which a swinging door or doors are or may be hung.

(19) *Cable tray system.* A cable tray system is a unit or assembly of units or sections, and associated fittings, made of metal or other noncombustible materials forming a rigid structural system used to support cables. Cable tray systems include ladders, troughs, channels, solid bottom trays, and other similar structures.

(20) *Cablebus.* Cablebus is an approved assembly of insulated conductors with fittings and conductor terminations in a completely enclosed, ventilated, protective metal housing.

(21) *Center pivot irrigation machine.* A center pivot irrigation machine is a multi-motored irrigation machine which

revolves around a central pivot and employs alignment switches or similar devices to control individual motors.

(22) *Certified.* Equipment is "certified" if it (a) has been tested and found by a nationally recognized testing laboratory to meet nationally recognized standards or to be safe for use in a specified manner, or (b) is of a kind whose production is periodically inspected by a nationally recognized testing laboratory, and (c) it bears a label, tag, or other record of certification.

(23) *Circuit breaker.* (i) (600 volts nominal, or less). A device designed to open and close a circuit by nonautomatic means and to open the circuit automatically on a predetermined overcurrent without injury to itself when properly applied within its rating.

(ii) (Over 600 volts, nominal). A switching device capable of making, carrying, and breaking currents under normal circuit conditions, and also making, carrying for a specified time, and breaking currents under specified abnormal circuit conditions, such as those of short circuit.

(24) *Class I locations.* Class I locations are those in which flammable gases or vapors are or may be present in the air in quantities sufficient to produce explosive or ignitible mixtures. Class I locations include the following:

(i) *Class I, Division 1.* A Class I, Division 1 location is a location: (*a*) in which hazardous concentrations of flammable gases or vapors may exist under normal operating conditions; or (*b*) in which hazardous concentrations of such gases or vapors may exist frequently because of repair or maintenance operations or because of leakage; or (*c*) in which breakdown or faulty operation of equipment or processes might release hazardous concentrations of flammable gases or vapors, and might also cause simultaneous failure of electric equipment.

Note.—This classification usually includes locations where volatile flammable liquids or liquefied flammable gases are transferred from one container to another; interiors of spray booths and areas in the vicinity of spraying and painting operations where volatile flammable solvents are used; locations containing open tanks or vats of volatile flammable liquids; drying rooms or compartments for the evaporation of flammable solvents; locations containing fat and oil extraction equipment using volatile flammable solvents; portions of cleaning and dyeing plants where flammable liquids are used; gas generator rooms and other portions of gas manufacturing plants where flammable gas may escape; inadequately ventilated pump rooms for flammable gas or for volatile flammable liquids; the interiors of refrigerators and freezers in which volatile flammable materials are stored in open, lightly stoppered, or easily ruptured containers; and all other locations where ignitible concentrations of flammable vapors or gases are likely to occur in the course of normal operations.

(ii) Class I, Division 2. A Class I, Division 2 location is a location: (*a*) in which volatile flammable liquids or flammable gases are handled, processed, or used, but in which the hazardous liquids, vapors, or gases will normally be confined within closed containers or closed systems from which they can escape only in case of accidental rupture or breakdown of such containers or systems, or in case of abnormal operation of equipment; or (*b*) in which hazardous concentrations of gases or vapors are normally prevented by positive mechanical ventilation, and which might become hazardous through failure or abnormal operations of the ventilating equipment; or (*c*) that is adjacent to a Class I, Division 1 location, and to which hazardous concentrations of gases or vapors might occasionally be communicated unless such communication is prevented by adequate positive-pressure ventilation from a source of clean air, and effective safeguards against ventilation failure are provided.

Note.—This classification usually includes locations where volatile flammable liquids or flammable gases or vapors are used, but which would become hazardous only in case of an accident or of some unusual operating condition. The quantity of flammable material that might escape in case of accident, the adequacy of ventilating equipment, the total area involved, and the record of the industry or business with respect to explosions or fires are all factors to be merit considered in determining the classification and extent of each location.

Piping without valves, checks, meters, and similar devices would not ordinarily introduce a hazardous condition even though used for flammable liquids or gases. Locations used for the storage of flammable liquids or a liquefied or compressed gases in sealed containers would not normally be considered hazardous unless also subject to other hazardous conditions.

Electrical conduits and their associated enclosures separated from process fluids by a single seal or barrier are classed as a Division 2 location if the outside of the conduit and enclosures is a nonhazardous location.

(25) *Class II locations.* Class II locations are those that are hazardous because of the presence of combustible dust. Class II locations include the following:

(i) *Class II, Division 1.* A Class II, Division 1 location is a location: (*a*) in which combustible dust is or may be in suspension in the air under normal operating conditions, in quantities sufficient to produce explosive or ignitible mixtures; or (*b*) where mechanical failure or abnormal operation of machinery or equipment might cause such explosive or ignitible mixtures to be produced, and might also provide a source of ignition through simultaneous failure of electric equipment, operation of protection devices, or from other causes, or (*c*) in which combustible dusts of an electrically conductive nature may be present.

Note.—This classification may include areas of grain handling and processing plants, starch plants, sugar-pulverizing plants, malting plants, hay-grinding plants, coal pulverizing plants, areas where metal dusts and powders are produced or processed, and other similar locations which contain dust producing machinery and equipment (except where the equipment is dust-tight or vented to the outside). These areas would have combustible dust in the air, under normal operating conditions, in quantities sufficient to produce explosive or ignitible mixtures. Combustible dusts which are electrically nonconductive include dusts produced in the handling and processing of grain and grain products, pulverized sugar and cocoa, dried egg and milk powders, pulverized spices, starch and pastes, potato and woodflour, oil meal from beans and seed, dried hay, and other organic materials which may produce combustible dusts when processed or handled. Dusts containing magnesium or aluminum are particularly hazardous and the use of extreme caution is necessary to avoid ignition and explosion.

(ii) *Class II, Division 2.* A Class II, Division 2 location is a location in which, (*a*) combustible dust will not normally be in suspension in the air in quantities sufficient to produce explosive or ignitible mixtures; and dust accumulations are normally insufficient to interfere with the normal operation of electrical equipment or other apparatus; or (*b*) Dust may be in suspension in the air as a result of infrequent malfunctioning of handling or processing equipment, and dust accumulations resulting therefrom may be ignitible by abnormal operation or failure of electrical equipment or other apparatus.

Note.—This classification includes locations where dangerous concentrations of suspended dust would not be likely but where dust accumulations might form on or in the vicinity of electric equipment. These areas may contain equipment from which appreciable quantities of dust would escape under abnormal operation conditions or be adjacent to a Class II Division 1 location, as described above, into which an explosive or ignitible concentration of dust may be put into suspension under abnormal operating conditions.

(26) *Class III locations.* Class III locations are those that are hazardous because of the presence of easily

ignitible fibers or flyings but in which such fibers or flyings are not likely to be in suspension in the air in quantities sufficient to produce ignitible mixtures. Class III locations include the following:

(i) *Class III, Division 1.* A Class III, Division 1 location is a location in which easily ignitible fibers or materials producing combustible flyings are handled, manufactured, or used.

Note.—Such locations usually include some parts of rayon, cotton, and other textile mills; combustible fiber manufacturing and processing plants; cotton gins and cotton-seed mills; flax-processing plants; clothing manufacturing plants; woodworking plants, and establishments; and industries involving similar hazardous processes or conditions.

Easily ignitible fibers and flyings include rayon, cotton (including cotton linters and cotton waste), sisal or henequen, istle, jute, hemp, tow, cocoa fiber, oakum, baled waste kapok, Spanish moss, excelsior, and other materials of similar nature.

(ii) *Class III, Division 2.* A Class III, Division 2 location is a location in which easily ignitible fibers are stored or handled, except in process of manufacture.

(27) *Collector ring.* A collector ring is an assembly of slip rings for transferring electrical energy from a stationary to a rotating member.

(28) *Concealed.* Rendered inaccessible by the structure or finish of the building. Wires in concealed raceways are considered concealed, even though they may become accessible by withdrawing them. *[See "Accessible. (As applied to wiring methods.)"]*

(29) *Conductor.* (i) *Bare.* A conductor having no covering or electrical insulation whatsoever.

(ii) *Covered.* A conductor encased within material of composition or thickness that is not recognized as electrical insulation.

(iii) *Insulated.* A conductor encased within material of composition and thickness that is recognized as electrical insulation.

(30) *Conduit body.* A separate portion of a conduit or tubing system that provides access through a removable cover(s) to the interior of the system at a junction of two or more sections of the system or at a terminal point of the system. Boxes such as FS and FD or larger cast or sheet metal boxes are not classified as conduit bodies.

(31) *Controller.* A device or group of devices that serves to govern, in some predetermined manner, the electric power delivered to the apparatus to which it is connected.

(32) *Cooking unit, counter-mounted.* A cooking appliance designed for mounting in or on a counter and consisting of one or more heating elements, internal wiring, and built-in or separately mountable controls. *(See "Oven, wall-mounted.")*

(33) *Covered conductor.* See "Conductor."

(34) *Cutout.* (Over 600 volts, nominal.) An assembly of a fuse support with either a fuseholder, fuse carrier, or disconnecting blade. The fuseholder or fuse carrier may include a conducting element (fuse link), or may act as the disconnecting blade by the inclusion of a nonfusible member.

(35) *Cutout box.* An enclosure designed for surface mounting and having swinging doors or covers secured directly to and telescoping with the walls of the box proper. *(See "Cabinet.")*

(36) *Damp location.* See *"Location."*

(37) *Dead front.* Without live parts exposed to a person on the operating side of the equipment.

(38) *Device.* A unit of an electrical system which is intended to carry but not utilize electric energy.

(39) *Dielectric heating.* Dielectric heating is the heating of a nominally insulating material due to its own dielectric losses when the material is placed in a varying electric field.

(40) *Disconnecting means.* A device, or group of devices, or other means by which the conductors of a circuit can be disconnected from their source of supply.

(41) *Disconnecting (or Isolating) switch.* (Over 600 volts, nominal.) A mechanical switching device used for isolating a circuit or equipment from a source of power.

(42) *Dry location.* See *"Location."*

(43) *Electric sign.* A fixed, stationary, or portable self-contained, electrically illuminated utilization equipment with words or symbols designed to convey information or attract attention.

(44) *Enclosed.* Surrounded by a case, housing, fence or walls which will prevent persons from accidentally contacting energized parts.

(45) *Enclosure.* The case or housing of apparatus, or the fence or walls surrounding an installation to prevent personnel from accidentally contacting energized parts, or to protect the equipment from physical damage.

(46) *Equipment.* A general term including material, fittings, devices, appliances, fixtures, apparatus, and the like, used as a part of, or in connection with, an electrical installation.

(47) *Equipment grounding conductor.* See *"Grounding conductor, equipment."*

(48) *Explosion-proof apparatus.* Apparatus enclosed in a case that is capable of withstanding an explosion of a specified gas or vapor which may occur within it and of preventing the ignition of a specified gas or vapor surrounding the enclosure by sparks, flashes, or explosion of the gas or vapor within, and which operates at such an external temperature that it will not ignite a surrounding flammable atmosphere.

(49) *Exposed.* (As applied to live parts.) Capable of being inadvertently touched or approached nearer than a safe distance by a person. It is applied to parts not suitably guarded, isolated, or insulated. (See *"Accessible."* and *"Concealed."*)

(50) *Exposed.* (As applied to wiring methods.) On or attached to the surface or behind panels designed to allow access. [See *"Accessible.* (As applied to wiring methods.)"]

(51) *Exposed.* (For the purposes of § 1910.308(e), *Communications systems.*) Where the circuit is in such a position that in case of failure of supports or insulation, contact with another circuit may result.

(52) *Externally operable.* Capable of being operated without exposing the operator to contact with live parts.

(53) *Feeder.* All circuit conductors between the service equipment, or the generator switchboard of an isolated plant, and the final branch-circuit overcurrent device.

(54) *Fitting.* An accessory such as a locknut, bushing, or other part of a wiring system that is intended primarily to perform a mechanical rather than an electrical function.

(55) *Fuse.* (Over 600 volts, nominal.) An overcurrent protective device with a circuit opening fusible part that is heated and severed by the passage of overcurrent through it. A fuse comprises all the parts that form a unit capable of performing the prescribed functions. It may or may not be the complete device necessary to connect it into an electrical circuit.

(56) *Ground.* A conducting connection, whether intentional or accidental, between an electrical circuit or equipment and the earth, or to some conducting body that serves in place of the earth.

(57) *Grounded.* Connected to earth or to some conducting body that serves in place of the earth.

(58) *Grounded, effectively.* (Over 600 volts, nominal.) Permanently connected to earth through a ground connection of sufficiently low impedance and having sufficient ampacity that ground fault current which may occur cannot build up to voltages dangerous to personnel.

(59) *Grounded conductor.* A system or circuit conductor that is intentionally grounded.

(60) *Grounding conductor.* A conductor used to connect equipment or

the grounded circuit of a wiring system to a grounding electrode or electrodes.

(61) *Grounding conductor, equipment.* The conductor used to connect the non-current-carrying metal parts of equipment, raceways, and other enclosures to the system grounded conductor and/or the grounding electrode conductor at the service equipment or at the source of a separately derived system.

(62) *Grounding electrode conductor.* The conductor used to connect the grounding electrode to the equipment grounding conductor and/or to the grounded conductor of the circuit at the service equipment or at the source of a separately derived system.

(63) *Ground-fault circuit-interrupter.* A device whose function is to interrupt the electric circuit to the load when a fault current to ground exceeds some predetermined value that is less than that required to operate the overcurrent protective device of the supply circuit.

(64) *Guarded.* Covered, shielded, fenced, enclosed, or otherwise protected by means of suitable covers, casings, barriers, rails, screens, mats, or platforms to remove the likelihood of approach to a point of danger or contact by persons or objects.

(65) *Health care facilities.* Buildings or portions of buildings and mobile homes that contain, but are not limited to, hospitals, nursing homes, extended care facilities, clinics, and medical and dental offices, whether fixed or mobile.

(66) *Heating equipment.* For the purposes of § 1910.309(g), the term "heating equipment" includes any equipment used for heating purposes if heat is generated by induction or dielectric methods.

(67) *Hoistway.* Any shaftway, hatchway, well hole, or other vertical opening or space in which an elevator or dumbwaiter is designed to operate.

(68) *Identified.* Identified, as used in reference to a conductor or its terminal, means that such conductor or terminal can be readily recognized as grounded.

(69) *Induction heating.* Induction heating is the heating of a nominally conductive material due to its own I^2R losses when the material is placed in a varying electromagnetic field.

(70) *Insulated conductor.* See under "Conductor."

(71) *Interrupter switch.* (Over 600 volts, nominal.) A switch capable of making, carrying, and interrupting specified currents.

(72) *Irrigation machine.* An irrigation machine is an electrically driven or controlled machine, with one or more motors, not hand portable, and used primarily to transport and distribute water for agricultural purposes.

(73) *Isolated.* Not readily accessible to persons unless special means for access are used.

(74) *Isolated power system.* A system comprising an isolating transformer or its equivalent, a line isolation monitor, and its ungrounded circuit conductors.

(75) *Labeled.* Equipment is "labeled" if there is attached to it a label, symbol, or other identifying mark of a nationally recognized testing laboratory which, (a) makes periodic inspections of the production of such equipment, and (b) whose labeling indicates compliance with nationally recognized standards or tests to determine safe use in a specified manner.

(76) *Lighting outlet.* An outlet intended for the direct connection of a lampholder, a lighting fixture, or a pendant cord terminating in a lampholder.

(77) *Listed.* Equipment is "listed" if it is of a kind mentioned in a list which, (a) is published by a nationally recognized laboratory which makes periodic inspection of the production of such equipment, and (b) states such equipment meets nationally recognized standards or has been tested and found safe for use in a specified manner.

(78) *Location.* (i) *Damp location.* Partially protected locations under canopies, marquees, roofed open porches, and like locations, and interior locations subject to moderate degrees of moisture, such as some basements, some barns, and some cold-storage warehouses.

(ii) *Dry location.* A location not normally subject to dampness or wetness. A location classified as dry may be temporarily subject to dampness or wetness, as in the case of a building under construction.

(iii) *Wet location.* Installations underground or in concrete slabs or masonry in direct contact with the earth, and locations subject to saturation with water or other liquids, such as vehicle-washing areas, and locations exposed to weather and unprotected.

(79) *Medium voltage cable.* Type MV medium voltage cable is a single or multiconductor solid dielectric insulated cable rated 2000 volts or higher.

(80) *Metal-clad cable.* Type MC cable is a factory assembly of one or more conductors, each individually insulated and enclosed in a metallic sheath of interlocking tape, or a smooth or corrugated tube.

(81) *Mineral-insulated metal-sheathed cable.* Type MI mineral-insulated metal-sheathed cable is a factory assembly of one or more conductors insulated with a highly compressed refractory mineral insulation and enclosed in a liquidtight and gastight continuous copper sheath.

(82) *Mobile X-ray.* X-ray equipment mounted on a permanent base with wheels and/or casters for moving while completely assembled.

(83) *Nonmetallic-sheathed cable.* Nonmetallic-sheathed cable is a factory assembly of two or more insulated conductors having an outer sheath of moisture resistant, flame-retardant, nonmetallic material. Nonmetallic sheathed cable is manufactured in the following types:

(i) *Type NM.* The overall covering has a flame-retardant and moisture-resistant finish.

(ii) *Type NMC.* The overall covering is flame-retardant, moisture-resistant, fungus-resistant, and corrosion-resistant.

(84) *Oil (filled) cutout.* (Over 600 volts, nominal.) A cutout in which all or part of the fuse support and its fuse link or disconnecting blade are mounted in oil with complete immersion of the contacts and the fusible portion of the conducting element (fuse link), so that arc interruption by severing of the fuse link or by opening of the contacts will occur under oil.

(85) *Open wiring on insulators.* Open wiring on insulators is an exposed wiring method using cleats, knobs, tubes, and flexible tubing for the protection and support of single insulated conductors run in or on buildings, and not concealed by the building structure.

(86) *Outlet.* A point on the wiring system at which current is taken to supply utilization equipment.

(87) *Outline lighting.* An arrangement of incandescent lamps or electric discharge tubing to outline or call attention to certain features such as the shape of a building or the decoration of a window.

(88) *Oven, wall-mounted.* An oven for cooking purposes designed for mounting in or on a wall or other surface and consisting of one of more heating elements, internal wiring, and built-in or separately mountable controls. (See *"Cooking unit, counter-mounted."*)

(89) *Overcurrent.* Any current in excess of the rated current of equipment or the ampacity of a conductor. It may result from overload (see definition), short circuit, or ground fault. A current in excess of rating may be accommodated by certain equipment and conductors for a given set of conditions. Hence the rules for overcurrent protection are specific for particular situations.

(90) *Overload.* Operation of equipment in excess of normal, full load rating, or of a conductor in excess of rated ampacity which, when it persists for a sufficient length of time, would

cause damage or dangerous overheating. A fault, such as a short circuit or ground fault, is not an overload. (See *"Overcurrent."*)

(91) *Panelboard.* A single panel or group of panel units designed for assembly in the form of a single panel; including buses, automatic overcurrent devices, and with or without switches for the control of light, heat, or power circuits; designed to be placed in a cabinet or cutout box placed in or against a wall or partition and accessible only from the front. (See *"Switchboard."*)

(92) *Permanently installed decorative fountains and reflection pools.* Those that are constructed in the ground, on the ground, or in a building in such a manner that the pool cannot be readily disassembled for storage and are served by electrical circuits of any nature. These units are primarily constructed for their aesthetic value and not intended for swimming or wading.

(93) *Permanently installed swimming pools, wading and therapeutic pools.* Those that are constructed in the ground, on the ground, or in a building in such a manner that the pool cannot be readily disassembled for storage whether or not served by electrical circuits of any nature.

(94) *Portable X-ray.* X-ray equipment designed to be hand-carried.

(95) *Power and control tray cable.* Type TC power and control tray cable is a factory assembly of two or more insulated conductors, with or without associated bare or covered grounding conductors under a nonmetallic sheath, approved for installation in cable trays, in raceways, or where supported by a messenger wire.

(96) *Power fuse.* (Over 600 volts, nominal.) See *"Fuse."*

(97) *Power-limited tray cable.* Type PLTC nonmetallic-sheathed power limited tray cable is a factory assembly of two or more insulated conductors under a nonmetallic jacket.

(98) *Power outlet.* An enclosed assembly which may include receptacles, circuit breakers, fuseholders, fused switches, buses and watt-hour meter mounting means; intended to supply and control power to mobile homes, recreational vehicles or boats, or to serve as a means for distributing power required to operate mobile or temporarily installed equipment.

(99) *Premises wiring system.* That interior and exterior wiring, including power, lighting, control, and signal circuit wiring together with all of its associated hardware, fittings, and wiring devices, both permanently and temporarily installed, which extends from the load end of the service drop, or load end of the service lateral conductors to the outlet(s). Such wiring does not include wiring internal to appliances, fixtures, motors, controllers, motor control centers, and similar equipment.

(100) *Qualified person.* One familiar with the construction and operation of the equipment and the hazards involved.

(101) *Raceway.* A channel designed expressly for holding wires, cables, or busbars, with additional functions as permitted in this subpart. Raceways may be of metal or insulating material, and the term includes rigid metal conduit, rigid nonmetallic conduit, intermediate metal conduit, liquidtight flexible metal conduit, flexible metallic tubing, flexible metal conduit, electrical metallic tubing, underfloor raceways, cellular concrete floor raceways, cellular metal floor raceways, surface raceways, wireways, and busways.

(102) *Readily accessible.* Capable of being reached quickly for operation, renewal, or inspections, without requiring those to whom ready access is requisite to climb over or remove obstacles or to resort to portable ladders, chairs, etc. (*See "Accessible."*)

(103) *Receptacle.* A receptacle is a contact device installed at the outlet for the connection of a single attachment plug. A single receptacle is a single contact device with no other contact device on the same yoke. A multiple receptacle is a single device containing two or more receptacles.

(104) *Receptacle outlet.* An outlet where one or more receptacles are installed.

(105) *Remote-control circuit.* Any electric circuit that controls any other circuit through a relay or an equivalent device.

(106) *Sealable equipment.* Equipment enclosed in a case or cabinet that is provided with a means of sealing or locking so that live parts cannot be made accessible without opening the enclosure. The equipment may or may not be operable without opening the enclosure.

(107) *Separately derived system.* A premises wiring system whose power is derived from generator, transformer, or converter winding and has no direct electrical connection, including a solidly connected grounded circuit conductor, to supply conductors originating in another system.

(108) *Service.* The conductors and equipment for delivering energy from the electricity supply system to the wiring system of the premises served.

(109) *Service cable.* Service conductors made up in the form of a cable.

(110) *Service conductors.* The supply conductors that extend from the street main or from transformers to the service equipment of the premises supplied.

(111) *Service drop.* The overhead service conductors from the last pole or other aerial support to and including the splices, if any, connecting to the service-entrance conductors at the building or other structure.

(112) *Service-entrance cable.* Service-entrance cable is a single conductor or multiconductor assembly provided with or without an overall covering, primarily used for services and of the following types:

(i) *Type SE,* having a flame-retardent, moisture-resistant covering, but not required to have inherent protection against mechanical abuse.

(ii) *Type USE,* recognized for underground use, having a moisture-resistant covering, but not required to have a flame-retardant covering or inherent protection against mechanical abuse. Single-conductor cables having an insulation specifically approved for the purpose do not require an outer covering.

(113) *Service-entrance conductors, overhead system.* The service conductors between the terminals of the service equipment and a point usually outside the building, clear of building walls, where joined by tap or splice to the service drop.

(114) *Service entrance conductors, underground system.* The service conductors between the terminals of the service equipment and the point of connection to the service lateral. Where service equipment is located outside the building walls, there may be no service-entrance conductors, or they may be entirely outside the building.

(115) *Service equipment.* The necessary equipment, usually consisting of a circuit breaker or switch and fuses, and their accessories, located near the point of entrance of supply conductors to a building or other structure, or an otherwise defined area, and intended to consititute the main control and means of cutoff of the supply.

(116) *Service raceway.* The raceway that encloses the service-entrance conductors.

(117) *Shielded nonmetallic-sheathed cable.* Type SNM, shielded nonmetallic-sheathed cable is a factory assembly of two or more insulated conductors in an extruded core of moisture-resistant, flame-resistant nonmetallic material, covered with an overlapping spiral metal tape and wire shield and jacketed with an extruded moisture-, flame-, oil-, corrosion-, fungus-, and sunlight-resistant nonmetallic material.

(118) *Show window.* Any window used or designed to be used for the display of goods or advertising material, whether it is fully or partly enclosed or entirely open at the rear and whether or not it has a platform raised higher than the street floor level.

(119) *Sign.* See *"Electric Sign."*

(120) *Signaling circuit.* Any electric circuit that energizes signaling equipment.

(121) *Special permission.* The written consent of the authority having jurisdiction.

(122) *Storable swimming or wading pool.* A pool with a maximum dimension of 15 feet and a maximum wall height of 3 feet and is so constructed that it may be readily disassembled for storage and reassembled to its original integrity.

(123) *Switchboard.* A large single panel, frame, or assembly of panels which have switches, buses, instruments, overcurrent and other protective devices mounted on the face or back or both. Switchboards are generally accessible from the rear as well as from the front and are not intended to be installed in cabinets. (See *"Panelboard."*)

(124) *Switches.*

(i) *General-use switch.* A Switch intended for use in general distribution and branch circuits. It is rated in amperes, and it is capable of interrupting its rated current at its rated voltage.

(ii) *General-use snap switch.* A form of general-use switch so constructed that it can be installed in flush device boxes or on outlet box covers, or otherwise used in conjunction with wiring systems recognized by this subpart.

(iii) *Isolating switch.* A switch intended for isolating an electric circuit from the source of power. It has no interrupting rating, and it is intended to be operated only after the circuit has been opened by some other means.

(iv) *Motor-circuit switch.* A switch, rated in horsepower, capable of interrupting the maximum operating overload current of a motor of the same horsepower rating as the switch at the rated voltage.

(125) *Switching devices.* (Over 600 volts, nominal.) Devices designed to close and/or open one or more electric circuits. Included in this category are circuit breakers, cutouts, disconnecting (or isolating) switches, disconnecting means, interrupter switches, and oil (filled) cutouts.

(126) *Transportable X-ray.* X-ray equipment installed in a vehicle or that may readily be disassembled for transport in a vehicle.

(127) *Utilization equipment.* Utilization equipment means equipment which utilizes electric energy for mechanical, chemical, heating, lighting, or similar useful purpose.

(128) *Utilization system.* A utilization system is a system which provides electric power and light for employee workplaces, and includes the premises wiring system and utilization equipment.

(129) *Ventilated.* Provided with a means to permit circulation of air sufficient to remove an excess of heat, fumes, or vapors.

(130) *Volatile flammable liquid.* A flammable liquid having a flash point below 38 degrees C (100 degrees F) or whose temperature is above its flash point.

(131) *Voltage (of a circuit).* The greatest root-mean-square (effective) difference of potential between any two conductors of the circuit concerned.

(132) *Voltage, nominal.* A nominal value assigned to a circuit or system for the purpose of conveniently designating its voltage class (as 120/240, 480Y/277, 600, etc.). The actual voltage at which a circuit operates can vary from the nominal within a range that permits satisfactory operation of equipment.

(133) *Voltage to ground.* For grounded circuits, the voltage between the given conductor and that point or conductor of the circuit that is grounded; for ungrounded circuits, the greatest voltage between the given conductor and any other conductor of the circuit.

(134) *Watertight.* So constructed that moisture will not enter the enclosure.

(135) *Weatherproof.* So constructed or protected that exposure to the weather will not interfere with successful operation. Rainproof, raintight, or watertight equipment can fulfill the requirements for weatherproof where varying weather conditions other than wetness, such as snow, ice, dust, or temperature extremes, are not a factor.

(136) *Wet location.* See "Location."

(137) *Wireways.* Wireways are sheet-metal troughs with hinged or removable covers for housing and protecting electric wires and cable and in which conductors are laid in place after the wireway has been installed as a complete system.

(b) *Definitions applicable to §§ 1910.331 through 1910.360 [Reserved].*

(c) *Definitions applicable to §§ 1910.361 through 1910.380 [Reserved].*

(d) *Definitions applicable to §§ 1910.381 through 1910.398 [Reserved].*

Appendix A—Reference Documents

The following references provide information which can be helpful in understanding and complying with the requirements contained in Subpart S:

ANSI A17.1–71 Safety Code for Elevators, Dumbwaiters, Escalators and Moving Walks.
ANSI B9.1–71 Safety Code for Mechanical Refrigeration.
ANSI B30.2–76 Safety Code for Overhead and Gantry Cranes.
ANSI B30.3–75 Hammerhead Tower Cranes.
ANSI B30.4–73 Safety Code for Portal, Tower, and Pillar Cranes.
ANSI B30.5–68 Safety Code for Crawler, Locomotive, and Truck Cranes.
ANSI B30.6–77 Derricks.
ANSI B30.7–77 Base Mounted Drum Hoists.
ANSI B30.8–71 Safety Code for Floating Cranes and Floating Derricks.
ANSI B30.11–73 Monorail Systems and Underhung Cranes.
ANSI B30.12–75 Handling Loads Suspended from Rotocraft.
ANSI B30.13–77 Controlled Mechanical Storage Cranes.
ANSI B30.15–73 Safety Code for Mobile Hydraulic Cranes.
ANSI B30.16–73 Overhead Hoists.
ANSI C2–77 National Electrical Safety Code.
ANSI C33.27–74 Safety Standard for Outlet Boxes and Fittings for Use in Hazardous Locations, Class I, Groups A, B, C, and D, and Class II, Groups E, F, and G.
ANSI K61.1–72 Safety Requirements for the Storage and Handling of Anhydrous Ammonia.
ASTM D2155–66 Test Method for Autoignition Temperature of Liquid Petroleum Products.
ASTM D3176–74 Method for Ultimate Analysis of Coal and Coke.
ASTM D3180–74 Method for Calculating Coal and Coke Analyses from As Determined to Different Bases.
IEEE 463–77 Standard for Electrical Safety Practices in Electrolytic Cell Line Working Zones.
NFPA 20–76 Standard for the Installation of Centrifugal Fire Pumps.
NFPA 30–76 Flammable and Combustible Liquids Code.
NFPA 32–74 Standard for Drycleaning Plants.
NFPA 33–73 Standard for Spray Application Using Flammable and Combustible Materials.
NFPA 34–74 Standard for Dip Tanks Containing Flammable or Combustible Liquids.
NFPA 35–76 Standard for the Manufacture of Organic Coatings.
NFPA 36–74 Standard for Solvent Extraction Plants.
NFPA 40–74 Standard for the Storage and Handling of Cellulose Nitrate Motion Picture Film.
NFPA 56A–73 Standard for the Use of Inhalation Anesthetics (Flammable and Nonflammable).
NFPA 56F–74 Standard for Nonflammable Medical Gas Systems.
NFPA 58–76 Standard for the Storage and Handling of Liquefied Petroleum Gases.
NFPA 59–76 Standard for the Storage and Handling of Liquefied Petroleum Gases at Utility Gas Plants.
NFPA 70–76 National Electrical Code.
NFPA 70C–74 Hazardous Locations Classification.

NFPA 70E Standard for the Electrical Safety Requirements for Employee Workplaces.
NFPA 71–77 Standard for the Installation, Maintenance, and Use of Central Station Signaling Systems.
NFPA 72A–75 Standard for the Installation, Maintenance, and Use of Local Protective Signaling Systems for Watchman, Fire Alarm, and Supervisory Service.
NFPA 72B–75 Standard for the Installation, Maintenance, and Use of Auxiliary Protective Signaling Systems for Fire Alarm Service.
NFPA 72C–75 Standard for the Installation, Maintenance, and Use of Remote Station Protective Signaling Systems.
NFPA 72D–75 Standard for the Installation, Maintenance, and Use of Proprietary Protective Signaling Systems for Watchman, Fire Alarm, and Supervisory Service.
NFPA 72E–74 Standard for Automatic Fire Detectors.
NFPA 74–75 Standard for Installation, Maintenance, and Use of Household Fire Warning Equipment.
NFPA 76A–73 Standard for Essential Electrical Systems for Health Care Facilities.
NFPA 77–72 Recommended Practice on Static Electricity.
NFPA 80–77 Standard for Fire Doors and Windows.
NFPA 86A–73 Standard for Ovens and Furnaces; Design, Location and Equipment.
NFPA 88A–73 Standard for Parking Structures.
NFPA 88B–73 Standard for Repair Garages.
NFPA 91–73 Standard for the Installation of Blower and Exhaust Systems for Dust, Stock, and Vapor Removal, or Conveying.
NFPA 101–76 Code for Safety to Life from Fire in Buildings and Structures. (Life Safety Code.)
NFPA 325M–80 Fire Hazard Properties of Flammable Liquids, Gases, and Volatile Solids.
NFPA 493–75 Standard for Intrinsically Safe Apparatus for Use in Class I Hazardous Locations and Its Associated Apparatus.
NFPA 496–74 Standard for Purged and Pressurized Enclosures for Electrical Equipment in Hazardous Locations.
NFPA 497–75 Recommended Practice for Classification of Class I Hazardous Locations for Electrical Installations in Chemical Plants.
NFPA 505–75 Fire Safety Standard for Powered Industrial Trucks Including Type Designations and Areas of Use.
NMAB 353–1–79 Matrix of Combustion-Relevant Properties and Classification of Gases, Vapors, and Selected Solids.
NMAB 353–2–79 Test Equipment for Use in Determining Classifications of Combustible Dusts.
NMAB 353–3–80 Classification of Combustible Dusts in Accordance with the National Electrical Code.

Appendix B—Explanatory Data [Reserved]

Appendix C—Tables, Notes, and Charts [Reserved]

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January 16, 1981

Part III

Department of Labor

Occupational Safety and Health Administration

Occupational Noise Exposure; Hearing Conservation Amendment

DEPARTMENT OF LABOR

29 CFR Part 1910

Occupational Noise Exposure; Hearing Conservation Amendment

AGENCY: The Occupational Safety and Health Administration (OSHA) of the United States Department of Labor.

ACTION: Final rule.

SUMMARY: This final rule establishes a hearing conservation program, including exposure monitoring, audiometric testing, and training, for all employees who have occupational noise exposures equal to or exceeding an 8-hour time-weighted average of 85 dBA. This amendment covers all employees except those engaged in construction or agriculture. This rule is the outgrowth of the proposed revision of the occupational noise exposure standard which was proposed in 1974. By its action today, OSHA is deferring final action on two issues raised in the 1974 proposal: the permissible exposure level for occupational noise and the appropriate method of compliance with the permissible exposure level. These two issues will continue to be governed by the existing standard.

OSHA plans to study these two issues further and will in the near future reopen the record for the submission of new evidence on these issues.

EFFECTIVE DATE: This standard will become effective April 15, 1981. Start-up dates: Employee exposure monitoring shall be completed by October 15, 1981. Dosimeters used to measure employee exposures must meet the specifications in the standard by April 15, 1983. Baseline audiograms shall be completed by April 15, 1982.

FOR FURTHER INFORMATION CONTACT: Dr. Alice Suter, Office of Physical Agents Standards, Occupational Safety and Health Administration, Room N-3718, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, D.C. 20210, Telephone (202) 523-7151.

Copies of any portion of the record including the Final Environmental Impact Statement and Regulatory Analysis may be obtained by contacting: Docket Officer, Docket No. OSH-11, Room S-6212, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210, Telephone (202) 523-7894.

I. Introduction

Rationale for Amendment

Noise is one of the most pervasive occupational health problems. It is a by-product of many industrial processes. Exposure to high levels of noise causes temporary or permanent hearing loss and may cause other harmful health effects as well. The extent of damage depends primarily on the intensity of the noise and the duration of the exposure.

There is an abundance of epidemiological and laboratory evidence that protracted noise exposure above 90 decibels (dB) causes hearing loss in a substantial portion of the exposed population, and that more susceptible individuals will incur hearing loss at levels below 90 dB (Ex. 11; Ex. 12; Ex. 17; Ex. 28-2). This is discussed more fully in the Health Effects section below. Noise-induced hearing loss is an irreversible condition that progresses with increased exposure, and is exacerbated by the normal aging process. Although such a loss may be slight at first, continued exposure may result in a loss that is severe enough to affect seriously an individual's ability to understand speech. In some cases, even slight losses in the audiometric frequencies that are critical for the understanding of speech can adversely affect an individual's ability to earn a living and to function in society in general. It constitutes a serious physical, psychological, and social handicap. Such impairment of a critical functional capacity clearly is the type of material impairment of health, which Congress, in Section 6(b)(5) of the Act, directed the Secretary to prevent.

Noise can also cause other adverse effects, such as degraded job performance, increases in accidents and absenteeism, job dissatisfaction, headaches, fatigue, sleeplessness, stress-related illnesses, and other effects that are more difficult to quantify and identify as noise-related than is hearing loss (Ex. 2C-106, p. 2; Ex. 2C-111, p. 1; Ex. 90, pp. 277-281; Ex. 189-8, p. 2; Ex. 28A, pp. 18-24, 27-28, 41-44, 48-49; Ex. 32, App. B, Gulian, pp. 6-11; Ex. 79, p. 2; Ex. 173, pp. 1-2, 7-8; Ex. 84, attach. 2, pp. 1-2).

OSHA's existing standard for occupational exposure to noise (29 CFR 1910.95) specifies a maximum permissible noise exposure level of 90 dB for a duration of 8 hours, with higher levels allowed for shorter durations. (This level is called a time-weighted average sound level, abbreviated TWA.) Employers must use feasible engineering or administrative controls, or combinations of both, whenever employee exposure to noise in the workplace exceeds the permissible exposure level. Personal protective equipment may be used to supplement the engineering and administrative controls where such controls are not able to reduce the employee exposures to within permissible limits. The standard also requires employers to administer a "continuing, effective hearing conservation program" for overexposed employees, but the standard does not define such a program.

OSHA proposed a revised noise standard in 1974, which maintained the current standard's 90 dB time-weighted average exposure limit, but required exposure monitoring, and articulated the requirements for hearing conservation programs. There was a great deal of controversy in the rulemaking proceedings about alternative permissible exposure limits and their technical and economic feasibility, but few challenged the concept or the appropriateness of a hearing conservation program. (Tr. 551-553; Tr. 210; Ex. 306, Secs. J2C, J1C, J4C; Ex. 305; Ex. 2C-16A; Ex. 2C-16B)

Analysis of the hearing record reveals information gaps in the area of extra-auditory physiological effects of noise (adverse health effects other than loss of hearing, such as high blood pressure), and also in the areas of economic and technological feasibility of noise control. The Agency needs to obtain additional material and to perform additional impact analyses before issuing a comprehensive new regulation. Therefore, for the present, OSHA will leave the permissible exposure level and compliance mechanisms of the current noise standard unchanged and continue its enforcement. The Agency will defer the final decision on methods of compliance and the permissible exposure level until it has obtained and evaluated the necessary information. The decision to implement a hearing conservation program is separate and severable from the remaining issues.

While such information is being obtained, employees must be afforded additional protection against the effects of noise. Information in the record indicates that many employees are not receiving the benefits of engineering controls to reduce their exposures to within the permissible exposure limits. In fact, there are some 2.9 million workers in American production industries with TWAs in excess of 90 dB, and an additional 2.3 million whose exposure levels exceed 85 dB. These workers, who face a significant risk or material impairment of health or functional capacity, will receive greatly increased protection from the promulgation and enforcement of these hearing conservation requirements, which amend certain provisions of the present noise standard. The provision of

this protection in the form of a well-defined hearing conservation program does not depend upon a determination of an appropriate exposure level or compliance strategy. These issues were treated separately in the proposal and the decision to implement a hearing conservation program first is consistent with the mandate of the Act that, insofar as possible, workers be protected from any material impairment of health or functional capacity.

Hearing conservation programs constitute commonly accepted industrial hygiene practice. Many companies already have instituted programs for their noise-exposed workforce (Ex. 308; Ex. 147A; Ex. 147C). This amendment clarifies what a hearing conservation program must be, and gives direction to the implementation of such a program.

Hearing conservation includes noise exposure monitoring, audiometric testing, the use of hearing protective devices where necessary, and employee education. All of these elements are reasonably necessary and appropriate for a continuing effective hearing conservation program. These procedures will result in considerable benefits for more than 5.2 million employees. Hearing protective devices will reduce the incidence of noise-induced hearing loss and also the various extra-auditory effects described below. Audiometric tests will enable employers and employees to take proper precautions to prevent further deterioration of hearing. Monitoring and educational programs will increase general awareness of noise problems, and promote the effective use of ear protectors. Another benefit, which was suggested by a National Institute for Occupational Safety and Health study, is a reduction in workplace accidents and absenteeism (Ex. 26–11, pp. ii, 5–2).

At this time the Agency does not believe that a hearing conservation program alone is the solution to the problem of workplace noise. The Agency continues to support the policy, reflected in the existing standard and not affected by this amendment, that engineering control of noise is preferable to the use of personal protective devices. The record contains considerable evidence that hearing protectors do not always provide as much attenuation in practice as the manufacturer indicates (Ex. 319, B–12, p. 4; Ex. 300A, p. 91; Ex. 301, p. 33), that many workers dislike using hearing protectors (Ex. 79, pp. 7–8; Ex. 94, pp. 9–10; Ex. 78, p. 14), and that protectors can be very uncomfortable (Ex. 73, Attach. 4, p. 1; Ex. 79, p. 7; Ex. 321–45A, pp. 1–11; Ex. 94, p. 10; Ex. 78, p. 14). In fact the degree of protection provided by such devices is questionable since they may become unseated through talking or chewing during the course of the workday.

When hearing protectors are relied upon, the adequacy of protection will depend upon the quality of the hearing protector, the tightness of the fit, and its use by employees. Permanent hearing loss can occur before it is identified by audiometric testing and, of course, extra-auditory effects cannot be detected by audiometry. Thus, none of these measures are as effective as controlling the hazard at the source.

Physical Properties of Sound

Sound consists of pressure changes in a medium (usually air), caused by vibration or turbulence. These pressure changes take the form of alternating compression and rarefaction of molecules, producing waves that propagate away from a vibrating or turbulent source. The magnitude and the type of effect on humans depend on three physical parameters of sound: level, frequency, and duration. Sound pressure level is a logarithmic measure of the magnitude of the pressure change, which is perceived as loudness. Sound pressure level is expressed in decibels, abbreviated dB. The magnitude, or intensity, of sound is perceived as loudness. The entire range of audible sound pressure (for individuals with normal hearing a range of more than ten million to one), can be compressed into a practical scale of 0 to 140 dB. Because of the logarithmic scale, a small increase in decibels represents a large increase in sound energy. Technically, each increase of 3 dB represents a doubling of sound energy, an increase of 10 dB represents a tenfold increase, and a 20-dB increase represents a 100-fold increase in sound energy.

The frequency of a sound is the number of times that a complete cycle of compressions and rarefactions occurs in a second. The descriptor, which used to be "cycles per second," is now hertz, abbreviated Hz. Frequency is perceived as pitch. The audible range of frequencies for humans with good hearing is 20 Hz to 20,000 Hz. Most everyday sounds contain a mixture of frequencies generated by a variety of sources. A sound's frequency composition is referred to as the spectrum. Frequency spectrum can be a determinant of the annoyance caused by noise, with high frequency noise being generally more annoying than low frequency noise. Also, narrow frequency bands or pure tones (single frequencies) can be somewhat more harmful to hearing than is broad band noise.

The third important parameter is the way a sound level varies over time. The duration of a sound can be measured in microseconds (the duration of a gunshot) to indefinitely long periods (typical of the hum of an electrical transformer). Industrial noise is usually described as continuous, fluctuating, intermittent, or impulsive. Continuous noise, like the sound of a fan or a motor, remains relatively constant for a long period of time. Fluctuating noise, such as the sound of a vehicle in different gears, rises and falls in intensity over a period of time. Intermittent noise ceases or falls to low levels between "on-times," or periods of much higher levels. Drilling or sawing operations are examples of intermittent noise. Impulse noise is characterized by a sharp rise in sound pressure level to a high peak, followed by a rapid decay. Impulses can occur in quiet conditions, or they can be superimposed on a background of continuous or fluctuating noise, which is typical of the production industries. Sometimes a distinction is made between impulse noise, which is non-reverberant, and impact noise, which is reverberant. Since impulsive noise in industry can be either reverberant or non-reverberant, and since the relevant parameter is pulse duration, only one term, "impulse noise," will be used.

Sound levels are relevant under this standard only as they affect employees. If the employee is not present while high sound levels are being generated, OSHA is not concerned. The Agency is concerned with employee *exposure*, which is the accumulation of noise levels experienced by employees, as these levels are distributed over the workshift. This distinction is important because some comments in the record reflected a misunderstanding of the difference between workplace sound levels and employee levels (Ex. 14–66, p. 1; Ex. 14–79, p. 1). Although the frequency spectrum of a sound may have some effect on hearing loss, it is primarily the combination of level and duration that determines the degree to which noise will cause hearing loss and extra-auditory health effects. The manner in which level and duration are combined, for purposes of predicting adverse effects or calculating noise "dose" or 8-hour time-weighted average sound level, depends upon the "exchange rate." This combination is sometimes referred to as the "doubling rate," or the "time-intensity" tradeoff. A 5-dB exchange rate is used in 29 CFR 1910.95 and in this amendment. Specifically, a 5-dB increase in level is permitted for each halving of duration,

or conversely, a doubling of duration necessitates a 5-dB decrease in level.

Noise exposure can be described either in terms of an 8-hour time-weighted average sound level or a noise dose. For purposes of Section 20 CFR 1910.95 and this amendment the integration is performed according to a 5-dB exchange rate, referenced to a "criterion" level of 90 dB and a criterion duration of 8 hours. A worker's 8-hour time-weighted average sound level (TWA) is obtained from the time integral of the various noise levels experienced over the entire workshift. For example, for purposes of the hearing conservation amendment, the exposure of an individual who works 12 hours in continuous noise of 90 dB would correspond to a TWA of 93 dB.

Noise dose is the same concept expressed in percent. A dose of 50 percent means that one-half of the permitted TWA has been experienced. It could represent 8 hours at 85 dB, 4 hours at 90 dB, 16 hours at 80 dB, or other such combinations.

Hearing and Hearing Loss

The auditory system has three primary components: the outer ear serves to direct sound into the ear, the middle ear mechanically transmits the sound waves from the air to the fluid-filled inner ear, and the inner ear changes the sound waves from mechanical to neural energy. This last process is done in a small organ known as the cochlea, where sensory cells respond to the mechanical vibrations, change them into electrical energy, and transmit the message to the brain via the auditory nerve.

Noise-induced hearing loss can be temporary or permanent. Temporary hearing loss results from short-term exposures to noise, with normal hearing returning after a period of rest. This temporary decrease in hearing ability is called temporary threshold shift (TTS), a person's hearing threshold being the level of sound that he or she can just barely hear. For example, if a person with normal hearing works all day in a noisy environment, measurements at the end of the day would show that he or she could not hear as well as at the beginning of the day. But by the next morning, after a period of quiet, this person's hearing would have returned to normal. Generally, prolonged exposure to noise over a period of several years causes permanent damage to the sensory cells of the cochlea. A person who regularly sustains TTS will eventually suffer permanent hearing loss, which will occur gradually over time. The occurrence of TTS shows that a worker has been affected by noise, and if that individual continues to be exposed to the same levels of noise, it will result in a noise-induced permanent threshold shift (NIPTS).

The ability to hear sounds with clarity is a distinct attribute of normal hearing. Damage to the outer or middle ear can produce a problem with the perception of sound intensity. Damage to the cochlea or the auditory nerve is termed "sensori-neural," and causes impaired perception of intelligibility as well as intensity. Even if sounds are amplified, they still seem indistinct. Sensori-neural hearing loss is irreversible. People with noise-induced hearing loss sometimes can benefit from the use of a hearing aid, but the aid can never "correct" a hearing loss the way eyeglasses usually can correct for impaired vision (Ex. 231, written testimony, p. 5). Hearing aids merely amplify sound, but they do not make it clearer, or less distorted. Also, they amplify the unwanted noise as well as the wanted speech signals.

Noise-induced hearing loss is sensori-neural. It is a permanent condition, and cannot be treated medically. It is characterized by a declining sensitivity to high frequency sounds, usually to frequencies above 2000 Hz. The loss usually appears first and is most severe for the 4000-Hz frequency; the "4000-Hz notch" in the audiogram is typical of noise-induced hearing loss. With continued exposure, the loss spreads to the other audiometric frequencies, 500 through 6000 Hz. This phenomenon results in difficulties in the perception of speech. Most of the sound energy of speech is in the vowel sounds, and yet most of the intelligibility lies in the consonants. People with noise-induced, high-frequency hearing loss typically have difficulty hearing consonant sounds, and therefore have difficulty understanding speech (Ex. 9, p. 18). These problems will be discussed more fully in the Health Effects section below.

The hearing-impaired person is often frustrated by missing information that is vital for social or vocational functioning. Not only will people have to speak louder, but they must speak more clearly in order to be understood. In addition, background noise, such as radio, TV, or other people talking, has a much more disruptive effect on hearing-impaired individuals than on the normal listener because these individuals are less able to differentiate between the wanted signal and the unwanted background noise (Ex. 50, p. 6; Ex. 321–16 B, pp. 9, 10, 14, 49–50). People with noise-induced hearing impairments may be lost when trying to communicate in a group or on a noisy street.

Studies in the record show that some individuals suffer severe hearing losses as a result of noise exposure (Ex. 12, p. 138; Ex. 210, p. 22; Ex. 278, 11–13, p. 443; Ex. 28–2, p. 31). These individuals would rate themselves as hearing very poorly, or even as deaf (Ex. 28, p. 35).

Social relationships become increasingly difficult as the hearing impairment becomes more severe. Audiologist Dr. W. Grady Thomas of the University of North Carolina explains some of the difficulties experienced by the hearing impaired as follows:

> depression, isolation, suspicion and withdrawal from social contacts . . . can be expected in some individuals with moderate hearing loss. . . . Adjustment problems in adults who lose hearing are difficult because habit patterns are firmly established. . . . Also, the evaluation of self, to a great extent is affected by the individual's perceptions of the evaluation of himself by others. Having to continually ask people to repeat misunderstood speech messages can contribute to feelings of inadequacy and insecurity. (Tr. 315–316)

Other Adverse Effects

In addition to hearing loss, noise can cause other harmful effects. Noise can interfere with conversation to the extent that communication is virtually impossible, causing a feeling of isolation among workers. High levels of noise, even though they may be of relatively short duration, can mask warning shouts or signals. Injuries and even fatalities have been reported in conditions where the noise masked danger signals or cries for help (Ex. 20–1, p. 7; Ex. 78, p. 20).

There is increasing evidence that noise can cause adverse effects on general health. Laboratory and field studies implicate noise as a causative factor in stress-related illnesses, such as hypertension, ulcers, and neurological disorders. These effects, as well as more details on noise-induced hearing loss, will be discussed in subsequent sections of this preamble.

Measurement of Noise and Hearing Loss

There are two major types of instruments that are used to measure occupational noise. These are the noise dosimeter and the sound level meter. Noise dosimeters measure noise dose by directly integrating a function of the various sound levels over the entire workshift. For this reason they are quite useful in workplaces where noise levels vary throughout the workshift. The dosimeter gives a reading in terms of percentage of allowable exposure. The person being monitored wears the dosimeter throughout the workshift. Results of the monitoring are obtained after the dosimeter is taken off, either by pressing a button on the dosimeter or by plugging it into a master unit which then

gives a "readout." Since employee noise exposure is expressed either as percentage of allowable dose, or as a TWA, OSHA has included a chart in Appendix A, which presents the relationship between these forms of measurement.

A sound level meter registers the level of sound that occurs at a particular time. It is useful for measuring the noise level due to a given process, or for measuring a worker's exposure to sound that fluctuates relatively little. Sound level meters contain a microphone, an amplifier with a calibrated attenuator, a set of frequency response networks, and an indicator meter.

Most sound level meters and dosimeters are small, "general purpose" (Type 2) instruments, equipped with "weighting networks," which adjust the meter response to predetermined frequency portions of the measured sounds. The A-weighting network is most commonly used in the measurement of industrial and environmental noise. The A-weighting network discriminates against low-frequency sound and, to a lesser extent, against high-frequency sound. The rationale behind A-weighting is that low frequency sound, and some fairly high-frequency sound, is not as damaging or as irritating as sound in the mid-frequency range. Thus, A-weighted sound level appears to be a good predictor of human response to noise. A-weighted sound levels will be assumed throughout the amendment and preamble unless otherwise specified. Most general purpose sound level meters also have a C-weighting network, which basically reflects sound as it occurs in the environment, without any adjustment for human response. The C-weighting network is useful in determining the effectiveness of hearing protectors for particular noise conditions, since it does not discount the presence of low-frequency sound.

The frequency range is sometimes divided into octave bands. By measuring the sound level in each octave-band one can determine the spectrum of the noise. Each band is identified by its center frequency, such as 125, 250, 500, 1000, 2000, 4000 and 8000 Hz. Octave band measurements are necessary when selecting a room in which to perform audiometric testing, and in certain audiometer calibrations. They can also be helpful for assessing engineering control strategies. To determine the level of noise in different frequency bands, a sound level meter with an octave-band filter set is needed. This instrument is somewhat larger and more complex than the general purpose sound level meter that is used for measuring A-weighted and C-weighted sound levels.

The instrument that is used to test hearing is the audiometer. Audiometers produce pure tones at specific frequencies (e.g., 250, 500, 1000, 2000, 3000, 4000, 6000, and 8000 Hz) and at specific sound levels. OSHA has required that employee hearing be tested at the frequencies 500 through 6000 Hz, since these are the most important frequencies for understanding speech, and since they are useful for determining the cause of the hearing loss.

The record of a given individual's hearing sensitivity is an audiogram. An audiogram shows hearing threshold level measured in decibels as a function of frequency in hertz. It indicates how intense or loud a sound at a given frequency must be before it can be perceived, thereby providing a graphic representation of the status of the individual's hearing. With periodic audiometric testing it is possible to trace and document hearing loss, and by doing so, to prevent further loss from occurring. The audiogram is an important indicator of early hearing loss, since losses can occur so gradually that a person may not realize that he or she is becoming impaired until a substantial amount of hearing is lost.

There are two principal types of audiometers, manual and self-recording. When a manual audiometer is used the technician adjusts the level of the tone to the point where the individual being tested can just hear it, and the technician records the level as hearing threshold. A self-recording audiometer allows the test subject to adjust the level of the tone, and the intensity of the tone is constantly recorded by a stylus, which records the results on a moving card.

Hearing threshold levels, as they are recorded from the audiometer, are given in decibels above audiometric zero. Audiometric zero is not the same as 0 dB sound pressure level, the zero reference level to which sound level meters are set. Audiometric zero deviates somewhat from 0 dB sound pressure level at each test frequency. (For example, the deviation is 10 dB at 1000 Hz, and 8.5 dB at 2000 Hz.) Audiometric zero represents the median hearing threshold level of young people with normal hearing. While some individuals may have unusually good hearing sensitivity (as good as −10 dB), others may have hearing thresholds of 10 or 15 dB and still be considered within the range of normal. Therefore, audiometric zero (as opposed to 0 dB sound pressure level) reflects an adjustment to represent normal baseline hearing. Audiometric zero has been standardized for the U.S. population in American National Standard Specification for Audiometers S3.6—1969. This zero reference level is assumed throughout the amendment and preamble unless otherwise specified.

II. Health Effects

The effects of occupational noise can be divided into two principal categories: auditory effects and extra-auditory effects. There is a wealth of information on the relationship between noise exposure and hearing loss. Dose-response relationships have been well established. Numerous studies are available which describe the effects of noise on hearing as a function of level and duration. The effects are stated in terms of the audiometric frequencies at which the loss occurs, degree of hearing loss, anatomical changes (in animal experiments), and differential changes in hearing as variables such as age and sex interact with noise exposure.

The extra-auditory effects of noise involve complex physiological and psychosocial reactions, which are much more difficult to document. Although stress-related illnesses have been associated with noise exposure, isolating all of the factors which contribute to stress confounds efforts to provide a direct "cause and effect" relationship between noise and such stress-related conditions as hypertension or ulcers. Although precise dose-response relationships are lacking at this time, information on the extra-auditory effects is included in this discussion because the data are highly suggestive of adverse effects, and therefore provide added incentive for protecting noise exposed workers.

A. *Hearing Loss.*

There is no doubt that noise exposure causes hearing loss, which grows more severe as exposure continues over the years. Many witnesses spoke with first-hand knowledge of the effect of noise exposure on their hearing, and consequently, on their lives. Ruth Knowles, President of Local 1716 of the Textile Workers Union, testified as follows about her noise-induced hearing loss:

> It has been a gradual loss of hearing for me, so gradual that I never really realized it until a few years ago, when a relative asked me if I did not hear well. After then I started noticing that it was getting worse and that I was having to strain more to hear clearly. I became alarmed and consulted a specialist, only to be told that nothing could be done and that the hearing loss had been caused by high noise exposure.
>
> It is truly a sad, helpless feeling that you have been told that you have lost a significant part of your second most

important sensor. As time has passed, I have been embarassed because I was not able to hear well enough to know what was going on. I have even given an affirmative nod only to find out later that it should have been a negative answer. Socially speaking, there have been many, many instances that because of my hearing impairment, I would rather have stayed at home. It is difficult for me to hear and understand most waitresses in restaurants and a few times I have even had to tell them that I did not hear well, after which they speak so loudly that everyone around turns to look. My family has come to realize this problem and usually volunteers their help.

Also, I am never able to hear sales persons in grocery stores or bank tellers. At times it has become so disturbing that I have actually sat down and cried when I would get home. Persons who do not suffer any loss of hearing can't possibly realize the humiliation those of us who have impaired hearing go through. (Tr. 2021–2022).

Material Impairment

Section 6(b)(5) of the Occupational Safety and Health Act indicates that when dealing with a harmful physical agent the Secretary should set a standard which guards against material impairment of health or functional capacity, even if the worker is exposed for a working lifetime. As discussed below, noise is a harmful physical agent. The hearing conservation amendment is reasonably necessary to mitigate the significant risk of noise, which is present in most workplaces. This amendment is necessary to prevent large numbers of workers from suffering material impairment of health and functional capacity resulting from exposure to noise. As shown below, even assuming compliance with the current occupational noise exposure standard, many workers will still be at increased risk of suffering material impairment of functional capacity from noise in the workplace. The hearing conservation program prescribed in this amendment will save at least 189,000 workers from suffering material impairment after the program is fully effective. Accordingly OSHA finds that this amendment is reasonably necessary and appropriate, not only to provide healthful, but to provide safe places of employment.

OSHA defines material impairment of hearing as an average hearing level, with respect to audiometric zero, that exceeds 25 dB for the frequencies 1000, 2000, and 3000 Hz. This hearing level is sometimes called a "fence" in that it provides a demarcation point along the continuum of hearing levels, above which a hearing loss is considered, in the language of the Occupational Safety and Health Act, a "material impairment of health or functional capacity." Most audiologists and acousticians will agree that small amounts of hearing loss can be tolerated. If more than a small amount of loss is suffered, a person cannot function as well as a normally hearing individual. The selection of the point or "fence" beyond which an individual person cannot function as well becomes the definition of material impairment of hearing.

OSHA believes that the capacity to hear and understand speech is the most critical function of human hearing. Therefore the definition of material impairment of hearing is directly related to people's ability to understand speech as it is spoken in everyday social conditions. Assessing this ability can be done by a variety of speech audiometric tests. Since speech audiometry is not well standardized, researchers and administrators have used pure-tone thresholds to estimate hearing for speech. As explained in the introductory section, these thresholds are the lowest levels at which a listener can just barely hear discrete frequency tones.

There is very little debate about the usefulness of pure tones to assess hearing impairment, but there is some disagreement about the hearing level, or fence, at which material impairment begins, and about which audiometric frequencies to use in the assessment. Setting the fence at a high hearing level means that workers are allowed to lose quite a lot of hearing before the loss is considered to be a material impairment to be prevented. Setting the fence at a low hearing level means that relatively little hearing is lost before the loss or impairment is considered material. The lower the fence, the larger will be the number of workers identified as materially impaired. The selection of audiometric frequencies also has an effect on the number of workers that will be identified. Since noise-induced hearing loss affects the high frequencies earlier and more severely than the low frequencies, more workers will be identified as crossing the fence or suffering material impairment when high frequencies are used in the definition. It should be noted that the use of high frequencies in the definition of material impairment more accurately portrays a worker's actual hearing loss, since those frequencies are more severely affected by noise.

The hearing levels and audiometric frequencies that constitute the definition of material impairment of hearing have been identified through studies of the ability to communicate in everyday listening conditions. Some of these studies were submitted to the record, and the issue of material impairment received considerable attention.

Until now, the Agency had not conclusively defined material impairment of hearing. For purposes of the proposal, OSHA had used the definition of hearing handicap developed in 1959 by the American Academy of Ophthalmology and Otolaryngology (AAOO), a subgroup of the American Medical Association (Ex. 3, p. 44; Ex. 6, p. 12337). The AAOO definition, which has been used primarily for workers' compensation purposes, uses a 25-dB fence for average hearing levels at the frequencies 500, 1000, and 2000 Hz. Some comments to the record (Ex. 35, p. 1; Ex. 26–3, p. 5–24; Ex. 26–4, p. 1) favored this definition, because it was thought to describe an individual's ability to communicate under everyday conditions. However, several commenters pointed out that it would not be appropriate to use the same formula for prevention and compensation (Ex. 47, p. 5; Ex. 46, pp. 364–365; Ex. 51, p. 4; Ex. 57, pp. 9–10). Dr. H. E. von Gierke of the U.S. Air Force commented on this subject on behalf of the EPA. He states that: "Formulas developed for assessing hearing handicap for compensation purposes were never intended to be used for purposes of preventive criteria." (Ex. 47, p. 5).

In its criteria document NIOSH recommended that the defintion of material impairment be expanded to include the ability to hear and to understand speech in noisy or difficult listening conditions. NIOSH used an average loss of 1000,4000, and 3000 Hz in the frequency averaging, still using a 25-dB fence (Ex. 1, pp. VI–11 through VI–14). Various studies and comments supported the 1000, 2000, and 3000 Hz definition as being more realistic than the 500, 1000, and 2000 Hz AAOO defintion, because good hearing in the higher frequencies (2000 and 3000 Hz) is very important for understanding speech especially when there is noise in the background, or when speech is not clear. It was also noted that everyday listening conditions are noisy at least part of the time rather than being completely quiet (Ex. 1, p. VI–13; Ex. 50, p. 16; Ex. 321–16B, pp. 9–10, 61; Ex. 5, p. 43803), which is the assumption in the AAOO formula.

Dr. Aage Moller, Professor of Physiological Acoustics at the Karolinska Institute in Stockholm, commented on the severity of the AAOO definition in his testimony for the AFL–CIO:

> The 25 dB hearing loss average value for frequencies 500, 1000 and 2000 Hz is (by AAOO) assumed to correspond to a beginning loss of ability to understand speech in the quiet. Historically this definition originates from the limit where workmen's

compensation was to be paid for loss of earning power. Such a hearing loss will no doubt by most people be regarded as a rather severe handicap in normal social life. It will with most people make it impossible or at least very difficult to participate in parties where more than one person speaks at a time. People with that degree of hearing loss will also have difficulties to understand novel words and numbers. It is thus somewhat surprising that this *"limit of a handicap"* at present has been accepted as *"the limit of a tolerable"* impairment of the hearing. It has been suggested to exchange 500 Hz with 3000 Hz to give more realistic estimates of beginning loss of intelligibility of speech. (Ex. 88, pp. 3–4).

William C. Sperry, a private individual whose hearing impairment was very close to the AAOO-identified point of beginning handicap, filed a comment (Ex. 184). He believed that his hearing loss was sufficient to warrant buying a hearing aid. Although the hearing aid sometimes helped, there were other times when hearing was extremely difficult. He stated:

> In a situation where there is a high ambient noise level, such as parties, I might as well leave my hearing aid at home, and very often, I go home after a short while since the multitude of speakers and all of the noise frequently makes it impossible to follow conversations. In any situation, where there is background noise, such as an air-conditioner, I find that communication is difficult, with or without the hearing aid. . . . I submit to you that people with my hearing loss are considerably more than just barely impaired. A standard that allows an average of 25 dB hearing loss at 500, 1000 and 2000 Hz very definitely allows material impairment to occur, and does not prevent people from losing one of their most valuable abilities, namely the ability to communicate effectively with each other. (Ex. 184, pp. 4–5).

Finally it was pointed out that the AAOO formula does not distinguish between a person who has a noise-induced hearing loss and a person who has a conductive hearing loss since it includes 500 Hz and excludes the frequencies above 2000 Hz (Ex. 1, pp. VI–12 and VI–13). Conductive hearing loss (which can be the result of many nonoccupational factors such as ear infections) tends to be of the same magnitude across all frequencies so that the loss has a flat appearance on the audiogram. Noise-induced hearing loss produces a sloping configuration, the loss being much more severe in the high frequencies than in the low frequencies, especially in the early stages. Since 500 Hz is the last and least severely affected of the test frequencies, it is not nearly so important as 3000 Hz in characterizing the audiogram of the individual with noise-induced hearing loss.

In 1979 the American Medical Association (AMA) (Ex. 321–10, p. 2056) changed its formula for hearing handicap, and now advocates a low fence of 25 dB for hearing levels averaged at the frequencies 500, 1000, 2000, and 3000 Hz. The AMA has chosen to include 3000 Hz because it now recognizes the value of high-frequency hearing in more realistic listening situations (Ex. 321–10, p. 2056). However, the primary use of the AMA formula for "medico-legal" (compensation) purposes remains unchanged.

Another method for describing material impairment, developed by the Committee on Hearing, Bioacoustics and Biomechanics of the National Academy of Sciences (CHABA), was discussed by Dr. W. Dixon Ward (Ex. 222C, pp. 12–13) and Dr. Thomas (Ex. 51, pp. 7, 8). The CHABA report specified that a fence of 35 dB should be used if hearing levels at 1000, 2000, and 3000 Hz were averaged (Ex. 222C, pp. 12–13). CHABA's charge was to find a low fence for the frequencies 1000, 2000, and 3000 Hz that would yield the same compensation as a 25-dB fence at 500, 1000, and 2000 Hz (Ex. 51, pp. 7–8). Since this formula was specifically concerned with compensation, rather than with prevention, OSHA does not consider it appropriate for use in a standard to prevent material impairment of hearing. The CHABA committee made no attempt to define material impairment of hearing by examining research results on the ability to understand speech and to function in everyday life.

EPA (Ex. 189–5, p. 11) recommended a 25-dB fence for hearing levels averaged at the frequencies 1000, 2000, and 4000 Hz, and later submitted a study (Ex. 321–16B, pp. 60, 61) to support the same frequencies but using an even lower fence.

Other witnesses also recommended lower fences or higher frequencies than those employed by the AAOO. Dr. Karl Kryter of the Stanford Research Institute, testifying on behalf of EPA (Ex. 50, p. 6; Tr. 776–778) criticized the AAOO formula, and suggested a fence at least as low as 15 dB if the frequencies 500, 1000, and 2000 Hz were used. Joseph Hafkenschiel of the Communications Workers of America, recommended a 15-dB fence for the frequencies 500, 1000, and 2000 Hz (Ex. 82, p. 4), and others also argued that a 25-dB fence allows too much hearing loss (Ex. 189–5, p. 7; Ex. 184, p. 5; Ex. 50, p. 4). A fence of 15 dB at 500, 1000, and 2000 Hz would be equivalent to a hearing level of 25 dB if the frequencies 1000, 2000, and 3000 Hz were used (Ex. 50, p. 19).

A report submitted by the Center for Policy Alternatives at the Massachusetts Institute of Technology (Ex. 136A, pp. 3–2 to 3–3) recommended using a variety of fences to describe different degrees of hearing loss experienced by a noise exposed population.

Dr. William Burns, professor of physiology at the University of London, pointed out (Tr. 881) that the British Standard, Method of Test for Estimating the Risk of Hearing Handicap due to Noise Exposure (in draft form at the time of his testimony), estimated risk data for the frequencies 1000, 2000, and 3000 Hz, although the standard used a fence of 30 dB. This fence and frequency combination were also recommended by the British to the International Organization for Standardization (Proposal from the UK-Member Body of ISO/TC 43/SC 1 for a revision of ISO 1999—Acoustics—Assessment of Occupational Noise Exposure for Hearing Conservation Purposes). These two documents later were submitted to the record by EPA as Exhibits 226E (p. 15) and 278, 11–10 (p. 1).

Following the original recommendation of NIOSH, OSHA will consider as material impairment a 25-dB fence for the frequencies 1000, 2000, and 3000 Hz. The agency agrees with the many comments and studies cited to show that high-frequency hearing is critically important for the understanding of speech (Ex. 40, p. 393; Ex. 26–1, p. 8; Ex. 26–6, p. 630; Ex. 226, p. 6; Ex. 5, p. 43803; Ex. 51, pp. 6–7), and that everyday speech is sometimes distorted and often takes place in noisy conditions. Therefore, the Agency believes that 3000 Hz should be included in the definition of material impairment, and 500 Hz, since it is not so important for understanding speech (Ex. 1, p. VI–10; Ex. 26–6, p. 630; Ex. 26–7, p. 1217; Ex. 321–16B, pp. 42–44) and since it is last and least affected by noise, should be excluded from the definition.

OSHA has considered including the 4000-Hz frequency in the definition of material impairment as recommended by EPA, since hearing at this frequency appears to be particularly valuable at times when listening conditions are noisy and distorted (Ex. 26–6, p. 630; Ex. 26–7, p. 1217; Ex. 321–16B, pp. 34–45). However, OSHA recognizes that listening conditions are favorable at least part of the time, and until data become available to show the typical proportion of favorable to unfavorable listening conditions, or the average amount of distortion that occurs in everyday speech, OSHA will continue to use the 25-dB fence at 1000, 2000, and 3000 Hz as recommended by NIOSH (Ex. 1, p. VI–11) and others (Ex. 88, pp. 3–4, Ex. 26–7, pp. 1217, 1223; Ex. 50, pp. 6,

19). This is not to say that the 4000-Hz frequency has no importance for the understanding of speech and that unlimited loss should be allowed in that frequency, but only that it is not included in the definition of material impairment at this time. In the typical noise-induced hearing loss pattern, severe losses at 4000 Hz are almost always accompanied by losses at 3000 Hz which are nearly as severe (Ex. 12, p. 136, fig. 10.19; Ex. 28–2, pp. 36–47; Ex. 1, fig. 7). Therefore, losses at 4000 Hz would not be unaccounted for.

The Agency has accepted the recommendation of the Center for Policy Alternatives to examine the effects of noise on hearing by means of a variety of fences. In the discussion of the anticipated benefits of hearing conservation programs, the Agency uses fences at 15 dB, 25 dB, and 40 dB for the frequencies 1000, 2000, and 3000 Hz. The 25-dB fence, however, is considered the point at which impairment may be considered material.

Quantifying the Effects of Noise

The two most useful concepts for describing dose-response relationships for noise-induced hearing loss are the "percentage risk" and the "noise-induced permanent threshold shift" (NIPTS) concepts. The first concept involves predicting the percentage of a population that will develop material impairment of hearing as a result of given levels and durations of noise. The second concept is used to predict the amount of hearing loss in decibels that will occur as a result of given levels and durations of noise after subtracting for presbycusis (hearing loss from aging).

In order to better understand the methods of describing the effects of noise, the concept of presbycusis should first be discussed. Presbycusis is a natural phenomenon that affects most individuals if they live to be old enough. Some people will lose some hearing by the age of 40 or 50, while others will have normal hearing well into their 70s. Mature adults will seldom have hearing levels as low as 0 dB for all audiometric frequencies. As people age, their hearing levels become higher, and most individuals accept some hearing loss as a natural occurrence (Ex. 29, p. 84). However, when even a minor noise-induced hearing loss is added to presbycusis, the resulting loss can be sufficient to cross the fence into material impairment. Whether a hearing loss is one-third presbycusis and two-thirds noise-induced, or the other way around, the loss of functional capacity is the same. In most cases, people will not be materially impaired by presbycusis alone unless they live to be very old. When noise exposure is added, usually from an occupational source, many will become materially impaired when they are young or middle-aged, and the impairments will grow more severe as age increases. In addition, occupational noise exposures have the effect of making some people suffer more hearing loss at a younger age than they would if not exposed to occupational noise.

Since presbycusis, when it occurs, is a natural and inevitable condition, it is only reasonable to examine the impact of noise exposure on a population that includes some amount of presbycusis. After a working lifetime most individuals will be at least 60 years old, and will have experienced some amount of presbycusis. It is also useful to know the extent of damage produced by noise alone, so as to judge the magnitude of the effect at each audiometric frequency as a function of exposure level and duration. Therefore the Agency has quantified the effects of noise on hearing using both the percentage risk and the NIPTS methods.

The percentage risk method allows the inclusion of presbycusis in that the procedure estimates numbers of people whose hearing levels (including presbycusis or any other impairment) will exceed a certain fence due to noise exposure. It does not include people who will exceed a certain fence because of a hearing loss *only* from aging, since the calculation subtracts the percentage of a non-noise-exposed population who would cross the fence anyway from "natural" causes. The remainder is the population at risk of developing material impairment of hearing due to noise exposure.

OSHA believes that the data in Table 1 provide reliable and consistent estimates of the percentages of the population at risk of developing material impairment due to exposure to daily average noise levels of 80, 85 and 90 dB for a working lifetime.

Table 1

[Estimated percentages of the population at risk of exceeding a 25-dB fence at 500, 1000, and 2000 Hz as a function of average noise exposure level for 40 years. (EPA, Ex. 5, p. 43806)]

Organization	Noise exposure in dB	Risk (percent)
ISO	90	21
	85	10
	80	0
EPA	90	22
	85	12
	80	5
NIOSH	90	29
	85	15
	80	3

This table, which was submitted by EPA (Ex. 5, p. 43805), shows the percentage of the exposed population expected to exceed a 25-dB fence at the frequencies 500, 1000, and 2000 Hz. The risk figures were developed by the International Organization for Standardization (ISO) (based on the data for Baughn), EPA, and NIOSH. These organizations estimated percentage risk for the 500, 1000, and 2000 Hz combination since the AAOO definition of hearing handicap still was used widely at the time these percentage risk estimates were developed (ISO in 1975, Ex. 28–4; EPA in 1973, Ex. 31; and NIOSH in 1972, Ex. 1). Two of the three organizations have now advocated the inclusion of frequencies above 2000 Hz in the definition of material impairment (Ex. 5, pp. 43803, 43805; Ex. 1, pp. VI–11, VI–14). The ISO–1990 proposal, which still is in draft form at this time, does not prescribe a specific formula for risk assessment but provides an array of formulas that can be used for predictive purposes (Ex. 321–43A, p. 3).

It can be seen that the risk of material impairment at an average exposure level of 90 dB is a substantial 21 to 29 percent. The risk of incurring material impairment after a working lifetime of 85 dB is 10 to 15 percent, and at 80 dB is 0 to 5 percent. The inclusion of 3000 or 4000 Hz in the definition of material impairment would tend to make the percentages at risk somewhat higher, since hearing loss at these frequencies from noise exposure is almost always greater than it is at 500 and 1000 Hz.

Because these risk figures were developed virtually independently [1] by the three organizations, the percentages for each exposure level are slightly different. These differences are to be expected when using the percentage risk concept because the estimates can be influenced by the extent to which a noise-exposed population is screened to exclude people with nonoccupational hearing loss, and also by the extent to which the population includes hearing loss from aging (Ex. 5, p. 43806). For example, NIOSH suggested that its percentage risk estimates might be slightly higher than those derived from the "severely" screened population (Ex. 1, p. VI–31). (An exposed population that includes some amount of nonoccupational hearing loss and some presbycusis would be representative of the U.S. population, and thus the risk figures should not be unrealistic.)

[1] As mentioned above, the ISO risk estimates were derived from data collected by Dr. W. L. Baughn. The EPA also used Baughn's data, and averaged them with data collected by Drs. Burns and Robinson, and Dr. Passchier-Vermeer. All of these studies will be discussed in further detail below. Since EPA's estimates are based in part on the same data that were used by ISO, the relationship between the EPA and ISO risk estimates is not entirely independent.

Although Table 1 shows small differences, the risk estimates for the same exposure level are very similar.

The percentage risk concept, while easy to understand, is in some ways a limited descriptor of noise-induced hearing loss (Ex. 5, p. 43806; Ex. 47, pp. 9–10; Ex. 231, written testimony, p. 1). First, the use of a single fence such as 25 dB does not adequately describe the effects of noise on all of the impaired workers in that it does not quantify the amount of loss (Ex. 5, p. 43805; Ex. 231, p. 7). Everyone whose hearing threshold has exceeded the 25-dB fence is considered to have the same amount of hearing loss. The single fence conveys nothing about the people who start with excellent hearing and lose up to 25 dB from noise exposure, nor does it indicate how many people suffer severe losses, greater than 40 or 50 dB, for example (Ex. 5, p. 43806; Ex. 231, p. 7; Ex. 47, pp. 9–10). In an attempt to overcome these limitations, OSHA uses three fences to discuss the benefits anticipated from hearing conservation programs.

Noise-induced permanent threshold shift (NIPTS) is the actual shift in hearing level due to noise exposure, after corrections have been made for aging. NIPTS values may be designated for combinations of frequencies, but they are usually given for each audiometric frequency separately, and it can be helpful to examine hearing loss at individual frequencies. (The percentage risk method nearly always averages hearing levels at three or more frequencies.) The NIPTS method allows examination of the effects of noise on hearing level at 4000 and 6000 Hz, which, although they are not usually included in the definition of material impairment, are the frequencies where hearing is earliest and most severely affected by noise. NIPTS usually is presented for certain percentages of the exposed population, such as the median, the 90th and the 10th percentiles, the lower percentiles representing the more severely affected members.

The disadvantage in presenting the data only as NIPTS is that the full impact of noise exposure is not as easily comprehended as it is with percentage risk. Since NIPTS values do not include any hearing loss from nonoccupational causes, they do not reflect actual hearing levels. However, for comparing the effects of one exposure level against another they are very useful.

Table 2 shows NIPTS as a function of exposure level and exposure duration in years (see Johnson's Table 3, Ex. 310, pp. 27–28). NIPTS values are given for each audiometric frequency from 500 Hz to 6000 Hz, and are shown for the less sensitive 90th percentile, the median, and the more sensitive 10th percentile. When added to presbycusis values from a "normal" non-noise exposed population, these resulting hearing levels would reflect realistic hearing levels to be expected in noise exposed populations.

Table 2 is taken from a report by Col. Daniel Johnson of the U.S. Air Force, entitled "Derivation of Presbycusis and Noise Induced Permanent Threshold Shift (NIPTS) to be used for the Basis of a Standard on the Effects of Noise on Hearing" (Ex. 310, pp. 27–28). As in a previous report, which Col. Johnson had prepared for the EPA (Ex. 17), he averaged the hearing loss data from some well-known studies. While in the earlier report Col. Johnson used the data of Baughn, Burns and Robinson, and Passchier-Vermeer, in the more recent report he combined only the data of Burns and Robinson with those of Passchier-Vermeer. Details of these studies will be discussed further below.

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TABLE 2

Noise-induced permanent threshold shift in decibels as a function of audiometric frequency, resulting from 8-hour daily average sound levels of 75 dB to 100 dB, for durations of 10 to 40 years. Data are presented for the 90th, 50th and 10th population centiles. From Johnson, Ex. 310, pp. 27-28, using the combined data of Burns/Robinson and Passchier-Vermeer.

Sound Level [dB]	Freq. [Hz]	10 yrs. .9	10 yrs. .5	10 yrs. .1	20 yrs. .9	20 yrs. .5	20 yrs. .1	30 yrs. .9	30 yrs. .5	30 yrs. .1	40 yrs. .9	40 yrs. .5	40 yrs. .1
75	500	0	0	0	0	0	0	0	0	0	0	0	0
80	500	0	.1	.6	.1	.1	.3	.4	.1	.4	.6	.2	.4
85	500	.1	.2	1.4	.1	.3	1.2	.5	.7	1.5	.9	.4	1.1
90	500	.2	.5	2.3	.2	.7	2.4	.6	.8	2.5	1.1	1.0	2.4
95	500	.3	.9	3.5	.5	1.3	4.0	.6	1.7	4.5	1.0	1.9	4.6
100	500	1.7	3.9	7.6	2.8	5.1	9.2	3.9	6.2	10.6	4.9	7.2	11.4
75	1000	0	0	0	0	0	0	0	0	0	0	0	0
80	1000	.1	.1	.7	.1	.2	.4	.4	.2	.6	.8	.2	.6
85	1000	.1	.3	2.0	.2	.5	1.9	.5	.6	1.9	.9	.7	1.7
90	1000	.3	.7	2.9	.4	1.0	3.3	.8	1.3	3.6	1.3	1.5	3.6
95	1000	.5	2.7	5.9	.8	3.7	7.2	3.3	4.6	8.4	4.3	5.3	8.9
100	1000	3.1	6.1	11.0	4.8	8.1	13.5	6.4	9.9	15.6	8.3	11.3	16.9
75	2000	0	0	0	0	0	0	0	0	0	0	0	0
80	2000	.1	.3	1.6	.1	.4	.9	1.1	.5	1.2	1.8	.6	1.3
85	2000	.3	.9	4.9	.7	1.3	4.8	1.8	1.8	4.6	2.8	2.1	3.9
90	2000	.6	2.4	8.0	1.6	3.9	9.3	3.6	5.4	11.8	5.3	6.6	10.6
95	2000	1.2	5.5	14.2	3.7	8.7	17.4	7.4	12.0	20.1	10.6	14.8	21.9
100	2000	2.3	9.2	21.5	6.5	14.6	26.6	12.0	19.9	35.9	16.7	24.1	33.9
75	3000	0	0	0	0	0	0	0	0	0	0	0	0
80	3000	.2	2.0	4.1	1.9	2.4	3.4	3.5	2.7	2.7	5.1	3.0	2.3
85	3000	1.6	4.4	7.7	3.6	5.3	7.8	5.5	6.2	7.6	7.4	6.7	7.2
90	3000	3.9	9.2	16.9	6.6	11.0	17.9	8.5	12.6	18.4	11.3	13.7	18.4
95	3000	8.1	16.0	26.8	11.6	18.9	29.1	14.9	21.4	30.1	17.8	23.1	30.5
100	3000	15.8	25.4	37.5	20.6	29.5	39.7	24.8	32.7	41.0	28.6	35.0	41.6
75	4000	0	0	0	0	0	0	0	0	0	0	0	0
80	4000	.3	3.1	1.9	.3	3.4	2.1	1.8	3.7	6.3	3.3	3.8	5.3
85	4000	1.6	6.7	12.3	3.4	7.4	12.2	5.0	8.0	11.9	6.7	8.3	11.0
90	4000	6.3	11.9	19.1	8.4	13.3	19.5	10.3	14.4	19.4	12.1	14.9	18.6
95	4000	13.7	20.4	28.2	16.4	22.5	28.7	18.7	23.9	28.5	20.7	24.6	27.6
100	4000	22.3	30.2	37.8	25.6	32.6	37.8	28.4	34.1	37.2	30.6	34.8	36.1
75	6000	0	0	0	0	0	0	0	0	0	0	0	0
80	6000	.3	2.0	4.0	1.8	2.2	3.1	3.2	2.4	2.2	4.6	2.5	2.1
85	6000	1.1	4.8	8.9	2.8	5.3	8.6	4.3	5.8	8.2	5.8	6.1	7.3
90	6000	1.9	8.5	15.6	3.8	9.5	16.0	5.6	10.4	16.0	7.3	10.9	15.3
95	6000	4.3	13.7	23.5	6.7	15.5	24.4	8.9	16.8	24.5	10.8	17.6	23.8
100	6000	9.2	20.3	32.2	13.3	23.7	33.9	17.0	26.5	34.9	20.2	28.4	35.1

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Studies of Noise and Hearing Loss

Numerous studies of the effects of noise on hearing were submitted to the record. For purposes of this discussion, the studies have been divided into the categories of continuous and impulsive noise. The word "continuous" refers here to time-varying exposures as well, since in most of the studies noise levels varied somewhat throughout the day (Ex. 11, p. 2–3; Ex. 12, pp. 93–99; Ex. 26–2, p. 10).

Exposure to intermittent (on and off) noise will not be treated separately since the same methods for predicting hearing loss from continuous noise apply to losses resulting from intermittent noise (Ex. 279, 11–3, p. 447; Ex. 54, pp. 16–17; Ex. 29, p. 217). There was some disagreement as to whether the 5-dB or the 3-dB exchange rate should be used in calculating the time-weighted average exposure level from noncontinuous noise. But since the current noise standard (29 CFR 1910.95) uses the 5-dB exchange rate, and since the permissible exposure level remains unchanged at this time, the debate over the exchange rate will not be treated extensively at this time.

OSHA has examined the many studies and reports in the record that describe the effects of continuous noise on hearing (Ex. 11; Ex. 17; Ex. 310; Ex. 12; Ex. 26–2; Ex. 36; Ex. 286 A; Ex. 304), and the Agency believes that they comprise the best available data on the subject. The results of the various studies are relatively consistent, both in terms of the population at risk, and the extent of NIPTS as a function of noise exposure. The various studies, if considered together, contain data on more than 10,000 subjects.

As stated above, Col. Johnson averaged the data of different researchers in the preparation of a report for EPA. Later, the EPA used Col. Johnson's analysis of those data in the development of criteria for the effects of noise (Ex. 31, p. 5–17) and for the identification of safe levels of noise (Ex. 30, p. C–5). The three studies that were used in the EPA reports were the subject of much discussion during the hearings. Although some criticisms were raised, they were also widely supported (Tr. 734, 738, 779, 785, 834). The three studies were the following:

"Relationship between Daily Noise Exposure and hearing loss based on the evaluation of 6,835 industrial noise exposure cases" by W. L. Baughn (Ex. 11).

"Hearing and Noise in Industry" by W. Burns and D. W. Robinson (Ex. 12).

"Hearing Loss Due to Exposure to Steady-state Broadband Noise" by W. Passchier-Vermeer (as displayed and used in "Prediction of NIPTS due to continuous noise exposure" by D. L. Johnson (Ex. 17).

The study by Dr. William L. Baughn of the General Motors Corporation was performed between 1960 and 1965 (Ex. 11). These data have been used in the development of the Air Force report "Hazardous Noise Exposure" (Ex. 48) and for the current ISO standard 1999, "Assessment of Occupational Noise Exposure for Hearing Conservation Purposes" (Ex. 11, p. iii). The data were published in 1973 as an Air Force technical report (Ex. 11). Dr. Baughn studied the effects of average noise exposures of 78 dB, 86 dB, and 92dB on 6,835 industrial workers employed in midwestern plants producing automobile parts. Approximately 20,000 subjects had been excluded from the study because there was insufficient information about their exposure histories, or because they had "mixed" exposures (including nonoccupational sources). Subjects with anatomical abnormalities (such as ear infections) were not screened from the noise-exposed or control groups. Noise measurements had been taken over a period of 14 years, and through interviews, exposure histories were estimated as far back as 40 years (Ex. 11, p. 2. Dr. Baughn "smoothed" the data and presented families of curves showing the numbers of people exceeding a 15-dB fence at 500, 1000, and 2000 Hz referenced to the ASA 1951 audiometric zero, which is the equivalent of a 25-dB fence referenced to the ANSI 1969 zero level. He also provided data for fences of 5 dB to 40 dB (ASA), which would translate to 15 dB to 50 dB (ANSI). Since the exposure categories were for 78 dB, 86 dB and 92 dB, Dr. Baughn interpolated so as to provide estimates for exposures to 80 dB, 85 dB and 92 dB. He also extrapolated to exposure levels up to 115 dB, but the data above 95 dB were not used in Col. Johnson's report or the comparisons shown earlier.

Figure 1 shows Baughn's estimates of the percentages of the exposed population that will cross a 25-dB fence as a result of exposure to daily average noise levels of 80 dB to 115 dB. Since these estimates use the frequencies 500, 1000, and 2000 Hz, the numbers of people crossing a 25-dB fence at 1000, 2000, and 3000 Hz would be expected to be greater.

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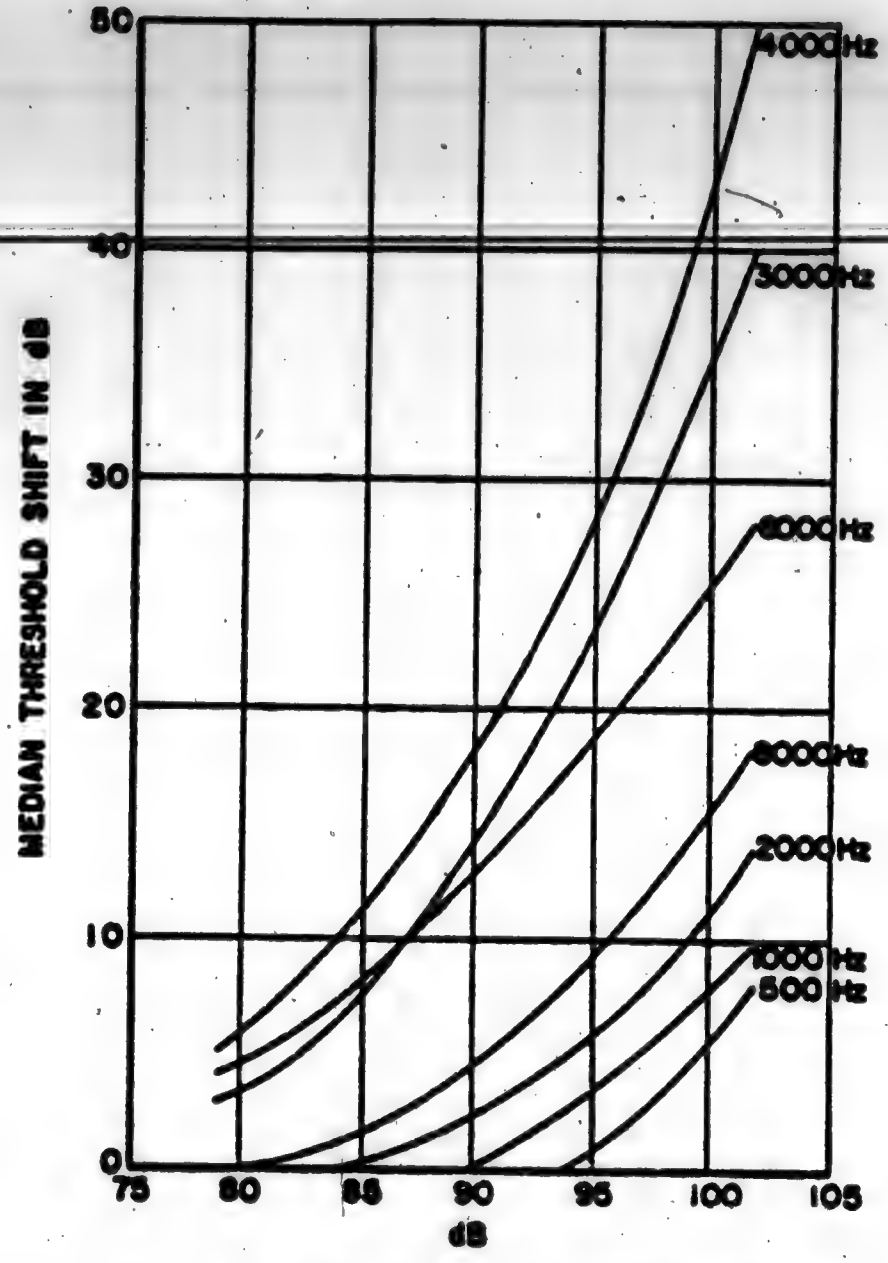

Figure 2. Median noise-induced threshold shift for various audiometric frequencies as a function of average daily noise exposure level for 10 years. Data are from Passchier-Vermeer (in Ex. 5, p. 43803).

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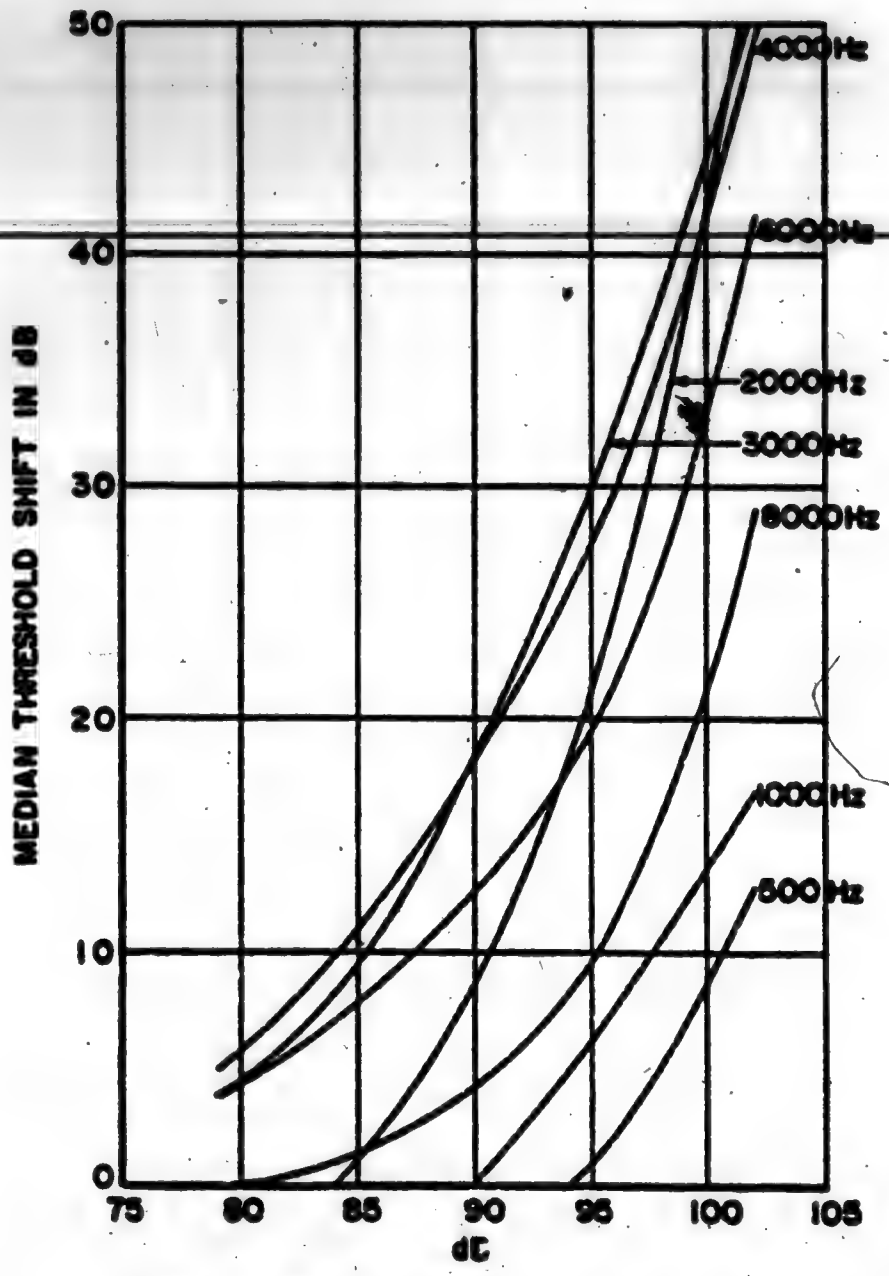

Figure 3. Median noise-induced threshold shift for various audiometric frequencies as a function of average daily noise exposure level for 40 years. Data are from Passchier-Vermeer (in Ex. 5, p. 43803).

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Baughn's study was criticized because in some cases as little as 20 minutes of recovery time was allowed prior to audiometric testing (Ex. 17, p. 2; Ex. 3, p. 39; Ex. 28–3, p. 5–15; Ex. 138A, p. 2–17). As a result the data may have been influenced to some extent by temporary threshold shift, which would have the effect of making the noise-exposed group's hearing threshold levels appear worse than they should. The study was also criticized because the control group may have had average exposures as high as 78 dB so that they may also have had a small amount of occupational hearing loss (Ex. 17, p. 2; Ex. 138A, p. 2–17). If the control group's hearing levels were slightly inflated, this would tend to reduce the difference between the hearing levels of the exposed and control groups. These potential flaws would have the tendency to offset each other when NIPTS is calculated. In addition, Dr. Kryter (Ex. 50, pp. 9–12) pointed out that any residual TTS after 20 minutes would be quite small (only 1 to 2 dB) for those subjects who had already incurred a noise-induced hearing loss. (TTS tends to become smaller after significant permanent loss is incurred.)

One practical limitation of the Baughn study is that the author did not provide hearing loss data at separate frequencies, but only at the combined frequencies of 50, 1000, and 2000 Hz, and then separately for 4000 Hz (Ex. 11, pp. 4, 30; Ex. 5, p. 43804). Thus, it is not possible to estimate hearing loss, for example, at only 2000 Hz, or for the combined frequencies 1000, 2000, and 3000 Hz. While this may result in some procedural problems for researchers and administrators, it does not detract from the validity of the study. The sample size appears to be the largest in any single hearing loss study, and the study has received support from other scientists and organizations. The results are not incompatible with other data in the record. Therefore, OSHA believes that the Baughn study represents a valuable contribution to the public record.

Dr. W. Passchier-Vermeer's data on steady-state noise exposure do not appear in the hearing record except as they are presented by Col. Johnson (Ex. 17 and Ex. 310). Dr. Passchier-Vermeer presented in 1966 an exhaustive review of hearing loss as a function of exposure to average noise levels of about 80 dB to 102 dB, having summed, analyzed, and correlated data from any sources (Ex. 17, pp. 2, 3, 12–14). The data consisted of laboratory and field studies conducted by British, Dutch, Swedish, and U.S. investigators.

Figure 2 shows median NIPTS at various frequencies as a function of noise exposure for a period of 10 years. Figure 3 shows median NIPTS after 40 years of noise exposure. These figures, which were submitted by EPA (Ex. 5, p. 43803), are taken from Dr. Passchier-Vermeer's reports. Of course the noise-induced permanent threshold shift would be expected to be more severe for the more susceptible individuals in the higher centiles of the population, such as the 10th or the 95th centiles.

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audiometric frequencies as a function of average daily noise exposure level for 40 years. Data are from Passchier-Vermeer (in Ex. 5, p. 43803).

various audiometric frequencies as a function of average daily noise exposure level for 10 years. Data are from Passchier-Vermeer (in Ex. 5, p. 43803).

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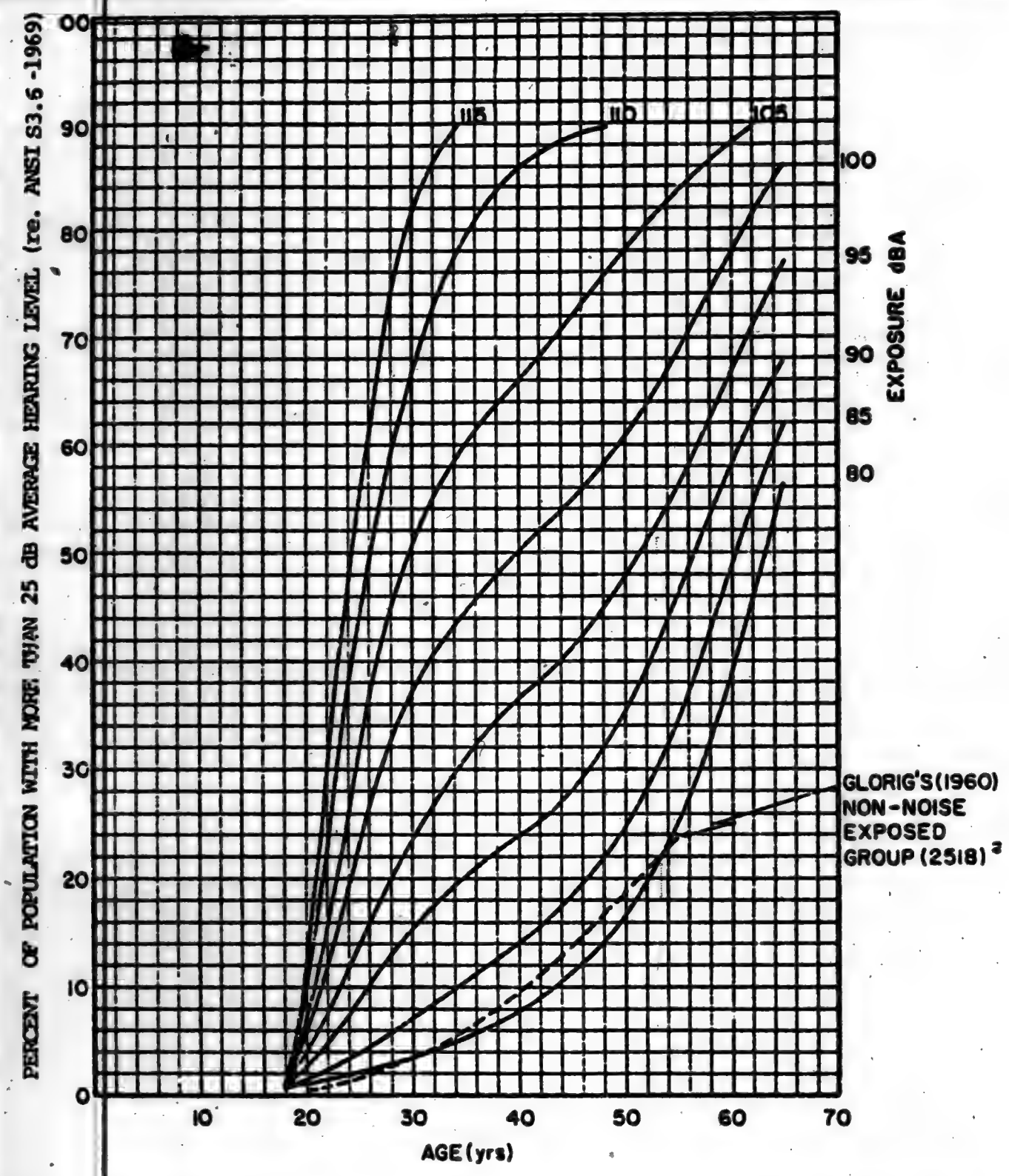

Figure 1. Percent of the population with more than 25 dB average hearing level for the frequencies 500, 1000, and 2000 Hz as a function of noise exposure level. From Baughn (Ex. 11, p. 41).

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Four of the 10 studies analyzed by Dr. Passchier-Vermeer were discussed briefly in documents prepared by NIOSH (Ex. 1), EPA (Ex. 31), and Drs. Burns and Robinson (Ex. 12). The NIOSH criteria document reported that Drs. Taylor, Pearson, Mair, and Burns studied 251 working and retired jute weavers who were exposed to average overall sound pressure levels of 99 to 102 dB. The investigators found the greatest deterioration of hearing occurred in the first 10 to 15 years of exposure (Ex. 1, p. 5 Table IV). NIOSH also reported on a study by Drs. Burns, Hinchcliffe, and Littler of 174 textile spinners and weavers exposed to average overall (unweighted) sound pressure levels of 100 to 101 dB. Hearing losses were found to be greater for the weavers than the spinners (Ex. 1, p. 6 of Table IV).

EPA's document entitled Public Health and Welfare Criteria for Noise described a study by Gallo and Glorig, which also was used by Dr. Passchier-Vermeer, as well as the study by Taylor et al., mentioned above. According to EPA (Ex. 31, p. 5–5), Drs. Gallo and Glorig measured the hearing levels of 400 men aged 18–65, and 90 women, aged 18–35, exposed to an average overall sound pressure level of 102 dB. The population had been screened to exclude nonoccupational noise exposure and otological abnormalities. The results showed that high-frequency hearing loss rose rapidly during the first 15 years of exposure, but that hearing loss in the mid-frequencies continued to rise in a linear manner up to 40 years of exposure.

Drs. Burns and Robinson (Ex. 12, pp. 220–228) also discussed the studies of Gallo and Glorig, and Taylor et al. In addition, they described a study by Dr. B. Kylin, which also was used by Dr. Passchier-Vermeer, of 89 men exposed for durations of 10 to 15 years, and 29 male controls. Neither population was screened for military noise exposure or for ear disease. (These factors should not have influenced the actual NIPTS since they were distributed evenly among the noise exposed and control populations (Ex. 12, p. 226).) Drs. Burns and Robinson compared the results of their study with those of the three selected studies (Gallo and Glorig, Taylor et al., and Kylin), and with the results predicted by Dr. Passchier-Vermeer on the basis of all of the studies she analyzed. They found, using median hearing loss values, that agreement among all of the results was good for the mid-frequencies (500, 1000, and 2000 Hz), but that their own data and method of prediction showed somewhat lower values (less hearing loss) for the higher frequencies (3000, 4000, and 6000 Hz) (Ex. 12, p. 227). The authors suggested that this finding might be due to differences in noise monitoring and subject selection techniques used by the various investigators (Ex. 12, p. 228).

Because the Passchier-Vermeer data resulted from a synthesis of many studies, some people argued that their quality was difficult to judge (Ex. 50, p. 8). Others noted that the original report only presented data for quartile groups (25th, 50th and 75th centiles) and neglected to address the more variant hearing levels found in the extremes of the population (Ex. 3, p. 39; Ex. 17, p. 2; Ex. 26–3, p. 5–14). Col. Johnson has extrapolated the data to the 10th and 90th centiles so that it would be averaged with those of the other studies (Ex. 17, p. 14 and Ex. 310, p. 7). Col. Johnson reported (Ex. 17, p. 14) that in a paper published in 1971, Dr. Passchier-Vermeer did publish the data for the 10th and 90th centiles, and these data were in agreement with Johnson's extrapolations.

The Passchier-Vermeer data are useful in that hearing levels are given for the discrete audiometric frequencies 500, 1000, 2000, 3000, 4000, 6000, and 8000 Hz, resulting from exposure levels of 80 dB, 85 dB, and 90 dB. Also, the Agency believes that averaging the results from a number of studies may be considered an advantage in that it ought to minimize any anomalies that might occur as a result of any one study. The Passchier-Vermeer data also were supported by various witnesses and comments to the record, (Ex. 47, p. 8; Ex. 216 A, p. 5).

Dr. W. Burns (Ex. 54) reported on a study of British factory workers that he and Dr. D. W. Robinson conducted between 1963 and 1968. The complete study was submitted to the record by OSHA as Exhibit 12. The study's population consisted of 759 subjects exposed to average noise levels between 75 dB and 120 dB and 97 non-noise exposed control subjects. The range of exposure durations was one month to 50 years. Exposure levels were taken in octave bands from 63 to 8000 Hz, and A-weighted measurements also were taken. Approximately 4000 audiograms were performed. Subjects were screened thoroughly to exclude exposure histories that were not readily quantifiable (to some extent unknown), exposure to gunfire, ear disease or abnormality, and language difficulties (Ex. 12, p. 12). The investigators found that hearing levels of people exposed to certain noise levels for certain durations were much the same as those of others exposed to higher levels for shorter times (Ex. 12, p. 17). They found that this relationship held for relatively short durations as well as for many years of exposure (Ex. 12, pp. 17–18). Consequently, they developed a mathematical formula to predict hearing levels in the frequencies 500 through 6000 Hz in various percentages of the exposed population due to specific levels and durations of noise (Ex. 12, pp. 100–151). Data from the Burns and Robinson study are shown combined with those of Dr. Passchier-Vermeer in Table 2 above.

The Burns and Robinson study has been criticized on the grounds that eliminating all workers with any form of nonoccupational hearing loss by extensive screening (which appeared to be more rigorous than in the other studies) would cause the resulting hearing levels to be an underestimate of the total "real-life" hearing loss picture (Ex. 40, p. 7; Ex. 50, p. 17). This problem has been eliminated in the analyses performed by Col. Johnson (Ex. 17 and 310) and by OSHA in the Benefits section, by using only the NIPTS data from Burns and Robinson and adding values for presbycusis from a normal, unscreened population (such as the U.S. Public Health Survey data).

The Burns and Robinson study was also criticized by Terrence Dear of the DuPont Company for including subjects exposed to impulse noise (Tr. 864–866), although the authors maintained that they tried to minimize such exposures, and that impulse noise exposures only would have occurred in a relatively small number of cases where subjects were exposed to high levels of continuous noise (Tr. 894–896; Ex. 12, p. 97).

On the whole, OSHA believes that the study by Burns and Robinson represents a very thorough, well-controlled study, with results that are extremely useful in predicting the effect of noise exposure on hearing.

NIOSH submitted to the record a report entitled "Occupational Noise and Hearing", 1968–1972 (Ex. 26–2). The dose-response relationships described in this report had been used by NIOSH in making the recommendations in its criteria document (Ex. 1). The report (Ex. 26–2, p. vi) presented background information about the study, and statistical analyses that were meant to complement the analyses that had already been published in the criteria document. NIOSH studied a population of 792 industrial workers exposed to average noise levels of 85 dB, 90 dB, and 95 dB, and a control population of 380 subjects who were exposed to average

levels below 80 dB. (Since the control population was exposed to levels as high as 80 dB, a few members of the group may have incurred some amount of occupational hearing loss, and therefore the study would be subject to the same criticism as the study of Dr. Baughn.) Although the exposures were primarily to steady-state noise, exposure levels fluctuated slightly within each category. The total population was screened to exclude subjects who had been exposed to noise from gunfire, and who showed some sign of ear disease or audiometric irregularity (Ex. 20–2, pp. 6–7). Subjects ranged in age from 17 to 65 years. Data were presented for hearing levels of the 10th, 25th, 50th, 75th, and 90th centiles for various age groups and exposure durations, resulting from average exposures to 85 dB, 90 dB, and 95 dB. The authors concluded that the data substantiated the results of other similar investigations, but that they pertained only to simple or "ordinary" noise environments, as opposed to complex environments such as lengthened exposures, seasonal exposures, impact or impulsive noise, and high frequency noise (Ex. 20–2, p. 15).

Data from the NIOSH study have not been used in the prediction of benefits from the hearing conservation amendment. Col. Johnson stated in his report (Ex. 17, p. 10) that he did not use the NIOSH data in the analysis performed for EPA because the data had not yet been "smoothed," which would make it difficult to make predictions. Also, the NIOSH data were limited to exposures of 85, 90 and 95 dB, thus preventing hearing loss estimates for exposures to 80 dB and 100 dB. Nevertheless, the data are generally consistent with the results of the other studies discussed above.

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85dB

90dB

95dB

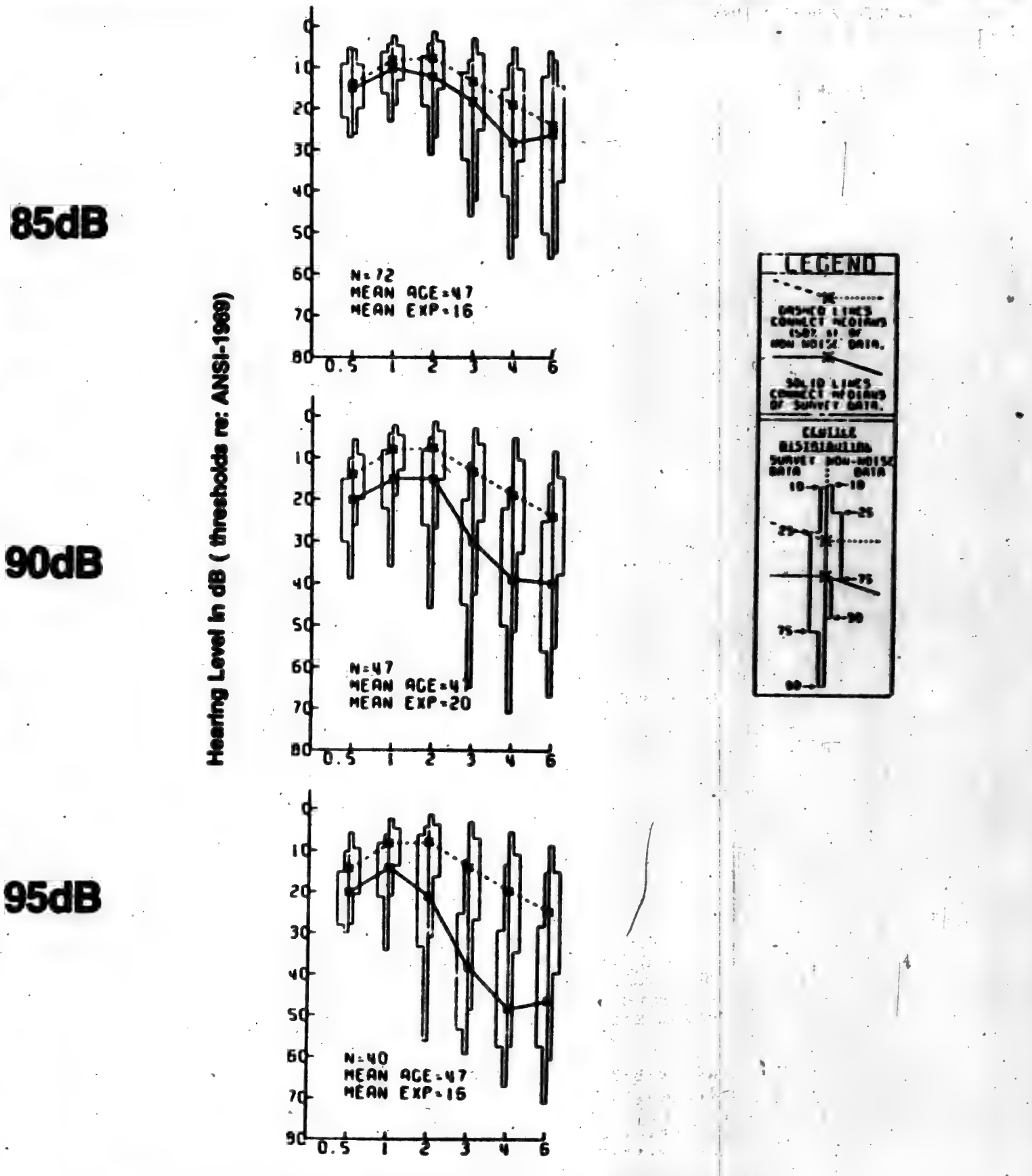

Figure 4. Hearing level distribution for workers aged 43 to 51 years exposed to daily average noise levels of 85dB, 90dB, and 95dB, and for non-noise-exposed workers.

Results of the NIOSH study are shown in Figure 4 (Ex. 28–2, p. 41). This figure shows hearing level by audiometric frequency as a function of noise exposure to levels of 85, 90, and 95 dB. Population distributions are shown for the least sensitive (labeled in this case the 10th centile) to the most sensitive (the 90th centile) groups, and are compared to the non-noise-exposed control group. This study shows that differences between median hearing levels increase with exposure level, duration, and age. Also, more importantly, the distribution of hearing levels becomes considerably greater as exposure level, duration, and age increase.

In another study, Dr. R. H. Martin, Dr. E. S. Gibson, and J. N. Lockington (Ex. 36) related the degree of employee hearing loss to average noise levels of 85 and 90 dB in industrial plants. The population consisted of 228 Canadian industrial workers ranging from 18 to 65 years of age who were screened to exclude non-occupational hearing loss. The control group consisted of 148 subjects with minimal occupational noise exposure. The study concluded that the risk of hearing loss at 500, 1000, and 2000 Hz increases significantly between 85 and 90 dB, leaving a portion of the population at risk (up to 22 percent) by a noise exposure standard of 90 dB.

Elliott Berger, with Drs. Royster and Thomas (Ex. 266A) examined a North Carolina industrial population that had been exposed for 10 to 12 years to daily average noise levels of 88 to 89 dB. The population consisted of 42 men working in one location of the plant and 58 women working in another location. Control subjects were drawn from the same geographical area, and were screened to exclude any occupational noise exposure. Because of the relatively short exposure duration and the moderate exposure levels, the investigators analyzed only the losses at 4000 Hz, where they found hearing levels somewhat worse for men than for women (Ex. 266A, pp. 82–83). They concluded that the observed hearing losses were compatible with the data of Baughn, Passchier-Vermeer, Burns and Robinson, and NIOSH, with compatibility being greater for the male than for the female subjects (Ex. 266A, pp. 81–85).

In the Inter-Industry Noise Study (IINS) (Ex. 304) the authors measured noise exposure and hearing levels of 348 industrial subjects. Daily average noise exposure levels were between 82 and 92 dB for durations ranging from 3 years to greater than 30 years. There were 228 matched control subjects whose noise exposures were less than 75 dB. After analyzing the data the authors concluded that differences in hearing levels between the control and experimental populations were not statistically significant at the frequencies 500, 1000, and 2000 Hz. Differences at 3000, 4000, and 6000 Hz were statistically significant for male subjects, but not for females (Ex. 304, p. 8). In an editorial immediately following the IINS Research Report in the Journal of Occupational Medicine (JOM), Dr. Robert O'Connor stated:

> From this study it appears that 90 dB is as protective as 85, as far as women's hearing is concerned. In the case of men, if a small amount of hearing loss in frequencies that are well beyond the speech range is considered unacceptable, then this study supports a standard of 85. (Ex. 304, p. 8) (in JOM, 17: 760–770, 1975, p. 770).

The Environmental Protection Agency (Ex. 321–16A, p. 2) stated that there were major technical problems in the design, administration, and analysis of the Inter-Industry Noise Study which "raise serious questions concerning the technical appropriateness and usefulness of a number of the conclusions which were presented in the 1978 JOM publication."

A NIOSH report prepared by Barry Lempert also criticized the study by stating that the results included only mean or average hearing level comparisons while much more highly significant effects are found when the full distribution of hearing levels is presented (Ex. 321–38A, p. 1). After reviewing and reanalyzing the IINS raw data, and using evaluation techniques developed for the 1972 criteria document, NIOSH reaffirmed that "exposure to 85 dBA should allow no more than an increase of 10 to 15 percentage points in the incidence of hearing impairment" relative to a non-noise exposed population (Ex. 321–38A, p. 4).

Col. Johnson and Dr. Thomas Schori also analyzed the raw data from the IINS, and submitted a review of the data (Ex. 321–21A). The authors concluded that the hearing levels found in the IINS were essentially the same as those found in other noise and hearing loss studies (Ex. 321–22A, p. 16).

Having reviewed the study, the critiques (Ex. 321–16A; Ex. 321–36A; Ex. 321–21A), and a critique of a critique (Motor Vehicle Manufacturers Assoc., Ex. 321–8A), OSHA has determined that the findings of the IINS do not contradict those of the studies described earlier. The Agency disagrees with the conclusions of Dr. O'Connor that 90 dB is as protective as 85 dB. Although the IINS did not find the differences between mean hearing levels of the female experimental and control groups statistically significant, there *were* differences at every frequency, showing greater hearing loss for noise-exposed than for control subjects (Ex. 304, p. 4). As Lempert pointed out, these differences would have been much larger if the full distribution of hearing levels had been presented, showing the more susceptible elements of the population. The same argument would apply to the differences between mean hearing levels of the male experimental and control groups, where systematic differences are shown. The fact that the standard deviations were greater for noise-exposed than for non-noise-exposed groups at nearly every frequency (Ex. 304, p. 4) supports this argument. In addition, OSHA disagrees with Dr. O'Connor that the frequencies above 2000 Hz "are well beyond the speech range," on the basis of the many studies and comments cited earlier, showing the importance of high-frequency hearing for understanding speech in everyday conditions (Ex. 46, p. 363; Ex. 26–1; p. 3; Ex. 26–6, p. 830; Ex. 228, p. 8; Ex. 5, p. 43803; Ex. 51, pp. 6–7).

Dr. Royster submitted a series of reports to the record (Ex. 321–22 A through H). Some of these reports discussed recent findings by Dr. Royster and his colleagues that differences in sex and race are evident in the growth of NIPTS (Ex. 321–22A, pp. 18–19), as well as in the growth of presbycusis (Ex. 321–22B, p. 516; Ex. 321–22C, pp. 116–118; Ex. 321–22D, pp. 1–2). After examining the audiograms of a large North Carolina industrial population (Ex. 321–22A), Drs. Royster and Thomas concluded that hearing threshold levels differ significantly according to race and sex and that these differences are greater for the higher audiometric frequencies and increase with age. In their subject population, black women had the best hearing, followed by white women, black men, and finally, white men after noise exposure (Ex. 321–22A, pp. 15, 18–19).

Sex differences in hearing levels have been noted in numerous studies of non-noise-exposed populations (Ex. 31, p. 4–4, Ex. 321–22, p. 7, Ex. 279, pp. 11–6; pp. 41–44). OSHA has incorporated the NIOSH presbycusis data (Ex. 1, pp. I–16 to I–17) for men and women separately in Appendix F of the amendment. Also, the Agency has calculated the benefits anticipated from hearing conservation programs using separate presbycusis data for men and for women. Actual NIPTS values have not been differentiated according to sex because

data for men and women shown separately were not available for the major studies mentioned above (Burns and Robinson, Passchier-Vermeer, Baughn, and NIOSH).

Drs. Burns and Robinson (Ex. 12, pp. 145–147) found small but persistent sex differences in noise-induced hearing loss, suggesting that NIPTS developed slightly more rapidly in men than in women. However, they did not present separate data for men and women. The IINS also showed slightly larger NIPTS values for men than for women both in the control and in the experimental populations (Ex. 304, pp. 4–8). Col. Johnson (Ex. 17 and Ex. 310) did not display NIPTS values separately for men and women, but he did show different data for certain non-noise-exposed populations, and therefore for certain estimates of the percentage at risk (Ex. 310). The studies by Baughn (Ex. 11), NIOSH (Ex. 28–2), Passchier-Vermeer (as reported by Johnson in Ex. 17), and Martin et al. (Ex. 36) did not present different NIPTS data for male and female subjects. OSHA believes that there is relatively little evidence available at this time to show that the hearing of men and women is differently affected by noise exposure, but that there is considerable evidence that differences exist in non-noise-exposed populations. Therefore, for estimating the benefits of hearing conservation programs, the Agency has used Col. Johnson's analysis of the Burns and Robinson and Passchier-Vermeer data, which shows sex differences for presbycusis but not for NIPTS. For any additional breakdown by sex or race the Agency will await further experimental evidence.

OSHA believes that the above studies are meritorious and are sufficient to make good estimates of the benefits to be derived from hearing conservation programs, despite any criticisms raised. Dr. von Gierke stated that "in spite of some uncertainties and everybody's desire for the 'perfect' study, there is adequate information available to predict with reasonable confidence the hearing impairment produced in the general population by a lifetime's exposure to continuous noise" (Tr. 705–706).

Discussion

Having established a definition of material impairment of hearing and discussed the various studies, some attention must be given to the various interpretations of the noise exposure and hearing loss data. Not all of the commenters interpreted the data in a similar manner.

Generally the argument for protecting workers above 85 dB is made on two grounds: analysis of NIPTS and of the percentage at risk showed that not only is the amount of hearing loss significantly greater at an average daily exposure level of 90 dB than at 85 dB, but also considerably more people are at risk of incurring material impairment (Ex. 40, p. 3; Ex. 47, p. 19; Ex. 57, p. 8; Ex. 82, pp. 1–4; Ex. 6, p. 12337; Ex. 26–1, p. 2).

Using the data of Baughn, Passchier-Vermeer, and Burns and Robinson, the Environmental Protection Agency found that half as many people are at risk of impairment at a daily average noise level of 85 dB as at 90 dB (Ex. 138A, pp. 1–4; Ex. 5, p. 43805; Ex. 189–5, p. 6). In addition, the amount of NIPTS doubles between 85 dB and 90 dB, especially for the frequencies 1000, 2000, and 3000 Hz (Ex. 5, p. 43804). In order to prevent *any* measurable hearing loss over a 40-year period the EPA identified a maximum 8-hour average daily noise exposure level of 75 dB (Ex. 5, p. 43803; Ex. 30, p. 4).

NIOSH also found that the population at risk due to lifetime exposures to average daily levels of 90 dB would be twice the size of the population at risk from 85 dB. The estimates were 29 percent and 15 percent, respectively (Ex. 1, Tables XV and XVII). Dr. Moller also noted that the number of impaired people doubles when average levels are increased from 85 to 90 dB (Ex. 86, p. 33).

There were numerous comments in the record concerning the amount of protection afforded by an average daily exposure level of 90 dB. Estimates of the percentage of unprotected workers ranged from 1 percent to 30 percent. Many commenters supported the 90-dB level based on OSHA's estimate that 96 percent of the population would be protected (Ex. 14–11, p. 1; Ex. 14–45, p. 1; Ex. 14–81, p. 1; Ex. 14–157, p. 2; Ex. 14–189, p. 1).

In OSHA's draft Environmental Impact Statement (Ex. 3, App. D, p. 12337) the Agency incorrectly stated that an exposure level of 90 dB would protect 96 percent of the exposed population. This estimate was based on the data and method of Burns and Robinson, using a 25-dB fence for the frequencies 500, 1000, and 2000 Hz, and a 30-year exposure duration. Later, an EPA representative (Ex. 40) pointed out that OSHA had neglected to perform one of the steps in the Burns and Robinson method, (step 7 on p. 132 of Ex. 12). Using the same data and method, the risk would actually be much greater than 2 percent (Ex. 40, pp. 5–6). Dr. Burns clarified the matter by explaining the distinction between hearing *level*, which includes presbycusis, and hearing *loss*, which does not (Ex. 54–2, pp. 1, 2).

Dr. Ward (Ex. 222C, p. 7) based his recommendation exclusively on Passchier-Vermeer's data, which, he claimed, showed that no workers would exceed a 25-dB hearing loss at the frequencies 500, 1000, or 2000 Hz due to exposure between 85 and 90 dB. For this reason Dr. Ward concluded that 90 dB protects workers from a "noticeable" hearing loss (Ex. 64, p. 3). This interpretation of Passchier-Vermeer's data is at variance with the interpretation of EPA and Col. Johnson. EPA submitted a graph of Passchier-Vermeer's data showing hearing loss as a function of noise exposure (Ex. 5, p. 43803). Although the median NIPTS from a 40-year exposure to 90 dB is essentially zero at 500 and 1000 Hz, it is nearly 10 dB at 2000 Hz. While the resulting average hearing levels would be quite small when added to the hearing loss from aging, they would be sufficient to ensure that some members of the exposed population would cross a 25-dB fence. Considering that nearly 3 million workers are exposed to daily averge noise levels of 90 dB and above, 50 percent of the population, or 1.5 million workers, would be expected to have at least this much NIPTS. Also, the NIPTS values would be expected to be larger for more sensitive individuals. Median NIPTS data say very little about actual hearing levels in the more susceptible members of the exposed population. As described above, when Johnson and EPA combined the data of Passchier-Vermeer with those of Baughn, and Burns and Robinson, the risk of crossing a 25-dB fence at 500, 1000, and 2000 Hz was 12 percent from exposure to 85 dB, and 22 percent from exposure to 90 dB (Ex. 5, p. 43805). Finally, as mentioned earlier, both the NIPTS and the risk are greater when 3000 Hz is included in the averaging and 500 Hz is eliminated.

OSHA has considered the definition of material impairment as it relates to hearing loss in light of a large body of data on the effects of noise on hearing. The Agency has determined that many workers will be at risk of material impairment of hearing, and possibly incur other kinds of physiological damage, when they are exposed to daily average sound levels above 90 dB over a working lifetime. Some workers will be expected to develop a material impairment of hearing if they are exposed to daily average sound levels between 85 and 90 dB, and a few will even develop a material impairment from average levels between 80 and 85 dB. Since it is possible to incur noise-induced hearing loss as a result of exposure to daily average levels less

than 90 dB, OSHA has determined that it is necessary to initiate audiometric testing and other aspects of the hearing conservation program at a time-weighted average sound level of 85 dB. The practice of requiring an "action level," a point well below the permissible exposure level at which protective action is taken, is consistent with OSHA's policy of protecting workers before they are overexposed. Moreover, the final standard will identify those in the exposed population that might be more sensitive to noise, and protect them before they suffer further adverse effects. In keeping with this policy, employers may wish to provide audiometric testing for employees whose TWAs are between 80 and 85 dB, so that the few most susceptible workers might be identified and protected.

B. *Effects of Impulse Noise on Hearing*

The fact that impulse noise can be extremely damaging to hearing is widely supported in studies submitted to the record (Ex. 29, pp. 211–216, pp. 219–220, pp. 229–234; Ex. 30, App. G; Ex. 37 or Ex. 26–12(B); Ex. 279, 11–3 and 11–6). Although these studies suggest that there is no uniformly accepted definition of impulse noise, everyone agrees on certain of its characteristics. Impulse noise is characterized by a rapid rise time, high peak value of short duration, and a rapid decay. These sounds may be divided into two general categories: "A-duration" impulses are of very short duration (usually measured in microseconds) and are non-reverberant, in that they usually occur outside or in a sound-deadening environment. An example would be gunfire outdoors or in a sound-treated firing range. "B-duration" impulses are of longer duration (usually measured in milliseconds), and are reverberant mainly because they occur inside where the sound is augmented by reflective surfaces. B-duration impulses are more typical of industrial conditions where the sounds of metal impacting on metal, or short, high-level bursts of compressed air, are quite common. B-duration impulses are considerably more damaging to hearing than A-duration impulses of the same level because of the increased duration (Ex. 30, App. G, p. G–4).

There were a number of comments and exhibits in the record concerning impulse noise. Some were reports of studies, others were reviews of research on impulse noise, and others were discussions and recommendations for the standard.

In contrast to the studies of continuous noise mentioned above, dose-response relationships for impulse noise are not so easily defined. This may be due in part to the fact that the different studies of impulse noise varied considerably in such parameters as the subject (human or animal), the effect (TTS or NIPTS) and the stimulus (level, rise time, A-duration, B-duration, etc.). Also, there appears to be more individual variability associated with response to impulse noise than there is with response to continuous noise (Ex. 29, p. 227).

Many of the investigators and witnesses concluded that the best way to describe the effects of impulse noise was an approach called the "equal energy" method or rule (Ex. 54, pp. 16, 17; Ex. 279, 11–3, pp. 444, 449; Ex. 29, pp. 213–214; Ex. 321–21E, pp. 1–9; Ex. 80, App. B, p. 3, Ex. 61A, p. 3). According to this approach, equal amounts of sound energy produce equal effects on hearing, even though they are distributed differently in time. As explained in the introduction, sound energy is represented logarithmically by the decibel scale, an increase or decrease of 3 dB representing a doubling or halving of sound energy, and an increase or decrease of 10 dB representing a tenfold change in sound energy. Therefore, this approach is also called the 3-dB rule or the 3-dB exchange rate. It is somewhat more conservative than the 5-dB exchange rate presently used in OSHA's noise standard, 29 CFR 1910.95, and in this amendment.

Studies

In an article that OSHA had used to support the impulse requirements in the proposal, Dr. D. H. McRobert and Dr. Ward (Ex. 13) discussed their laboratory study of TTS due to short-duration impulses. The purpose of the study was to determine the appropriate trading relationship between sound level and number of impulses. Drs. McRobert and Ward used impulses with peak sound pressure levels of about 148 to 155 dB and about 2 milliseconds in duration. After establishing an individual's "critical level" (the level that produced a 20-dB TTS), the investigators lowered the level and increased the numbers of impulses. They found that subjects could tolerate greater numbers of lower-level impulses than would have been predicted by the equal energy rule (Ex. 13, p. 1299). On the basis of their experiment, Drs. McRobert and Ward recommended a 5-dB decrease in peak level for every tenfold increase permitted in number of impulses. However, they cautioned that this relationship would only be correct for non-reverberant impulses, not for reverberant impulses. In fact, they stated that it is probably erroneous to have a single dose-response curve for both reverberant and non-reverberant impulses (Ex. 13, p. 1300).

In a document submitted by EPA (Ex. 29, pp. 219–226), Drs. T. Czypek, J. Kumiarz, and A. Lipowczan reported on their field study of 213 drop-forge workers. The noise environment consisted of impulses with peak sound pressure levels of 127 to 134 dB and durations of 100 to 200 milliseconds repeated 3,000 to 10,000 times per day, superimposed on a background noise of about 110 dB. Subjects had been exposed to these conditions for one to 30 years. The results showed large hearing losses even after fairly short durations, such as two years (Ex. 29, pp. 221, 227). The authors concluded that impulses combined with continuous noise produced a more rapid development of permanent hearing loss than would continuous noise alone and that the loss observed after five years was the same as that which would be expected after 10 years of exposure to continuous noise (Ex. 29, pp. 221, 227). They also concluded that the criteria developed for gunfire (non-reverberant impulses) were inappropriate for such industrial conditions as drop-forging (Ex. 29, pp. 221, 227).

In another chapter of the document submitted by EPA (Ex. 29, pp. 229–234), Dr. H. G. Dieroff described a laboratory study that he had conducted of the effects of impulse noise on guinea pigs. In an attempt to discover a mechanism causing the hearing loss that is different from the one involved in continuous noise-induced hearing loss, he studied the effects of impulse noise on the cochlear microphonic potential (MP), and on the secretion of succinodehydrogenase (SDH) activity in the cochlear. In so doing he compared a mechanical and a histochemical response to sound stimuli. He found that when guinea pigs were exposed to peak sound pressure levels of 162 dB for durations of 200 to 400 milliseconds the MP was very rapidly adversely affected, whereas any adverse SDH changes were not detected until much longer after they would have been predicted to appear with exposure to equivalent levels of continuous noise (Ex. 29, pp. 232–233). These seemingly conflicting results were not easily explained.

NIOSH submitted to the hearing record three studies on the effects of impulse noise (Ex. 26–12 (A) (B) and (C)), which had been performed at the Upstate Medical Center of the State University of New York by Drs. Roger Hamernik and Donald Henderson and their colleagues. In the experiments

chinchillas were used, a practice that is not unusual for laboratory studies of permanent hearing loss. In the first of these studies (Ex. 26–12(A), pp. 1–20), Dr. C. R. Perkins, with Drs. Hamernik and Henderson, explored the effects of the time interval between impulses on the magnitude of hearing loss. They exposed five chinchillas to 50 A-duration impulses with a peak sound pressure level of 155 dB and an interval between sound stimuli of one minute. Five more chinchillas were exposed to impulses of the same number and level, but with an interval between stimuli of only 10 seconds. The results showed that the group with the shorter interval between stimuli (and hence less recovery time) had much more temporary and permanent hearing loss than the group with the longer recovery interval (Ex. 26–12(A), pp. 6–7).

In the second study, Drs. Hamernik, Henderson, J. Crossley, and R. Salvi (Ex. 26–12(B), and Ex. 37) reported on a laboratory experiment on the interaction of continuous and impulsive noise. As justification for the experiment, the authors cited the high incidence of serious hearing losses among army personnel in the armored branch, where exposure to a combination of continuous and impulsive noise is common (Ex. 26–12(B), p. 117). Groups of chinchillas were exposed to 50 impulses having a 40-millisecond A-duration with peak sound pressure levels of 158 dB and 175 dB, a 2000 to 4000 Hz band of continuous noise of 95 dB, and two combination exposures of impulsive noise at 158 dB with continuous noise at 95 dB. Results showed that the combination of impulsive and continuous noise produced sizeable permanent hearing losses, whereas the TTS from the exposures to continuous noise alone and impulsive noise alone recovered fully with time (Ex. 26–12(B), pp. 118–119). The exposure to impulsive noise of 175 dB proved to be less damaging than the combined exposure (of 90 dB plus 175 dB), even though the impulse was 17 dB higher in level (Ex. 26–12(B), p. 119). When the combined exposure was interrupted with quiet periods of approximately 2 seconds, the damage was less severe even though the total sound energy was the same (Ex. 26–12(B), p. 120). Dr. Hamernik and his co-workers concluded that since the addition of the background noise to the impulses added very little to the total sound energy, the large increase in damage must be due to something else, such as "metabolic insufficiency" in the cochlea (Ex. 26–12(B), p. 120). The authors suggested that the interactive effect of impulsive and continuous noise might be similar to the drug-noise interaction, where damage due to the interaction can be two to four times greater than the damage expected from each stimulus alone (Ex. 26–12(B), p. 120).

In the third study (Ex. 26–12(C)) Drs. Hamernik and Henderson and Charles M. Woodford attempted to determine a safe level of B-duration impulses and to explore the trading relation between impulse intensity and duration. They exposed a total of 23 chinchillas to 50 impulses with the same duration (200 milliseconds) and interval between stimuli (one per minute), but with differing peak sound pressure levels. The investigators found that 50 impulses at the 140-dB level produced no permanent hearing loss or cochlear destruction, and was presumed safe for chinchillas, whereas the 155-dB level produced profound changes in hearing and cochlear structure, and was presumed hazardous (Ex. 26–12(C), pp. 2–3). In the group exposed to 150 dB some animals were severely affected, and others appeared to be nearly normal. The authors concluded that 150 dB may be close to a critical level at least for the number and temporal pattern of impulses that were used in the experiment (Ex. 26–12(C), p. 4).

Reviews

In a publication submitted by the Environmental Protection Agency, Drs. R. Coles, C. Rice, and A. Martin reviewed research on the effects of impulse noise performed before 1973 (Ex. 29, pp. 211–217). According to the authors (Ex. 29, p. 212), the first comprehensive set of recommendations for impulse noise was published in 1968 by Coles, Garinther, Hodge, and Rice. These recommendations were based on gunfire-induced TTS (Ex. 29, p. 212), and assumed that a similar amount of permanent hearing loss would occur after years of habitual exposure (Ex. 29, p. 214). They were applicable to military situations where about 10 to 20 exposures per year would occur (Ex. 29, p. 214). These criteria allowed A-duration impulses with peak levels up to about 175 dB, so long as the duration was extremely short (only a few microseconds). Peak levels must be reduced as duration increases. The authors also described (Ex. 29, p. 213) the attempt in 1970 of Coles and Rice to extend the criteria (previously based on gunfire-type impulses) to longer duration impulses, which would be typical of industrial conditions. Coles and Rice added data points to the criteria, indicating that the peak level should be considerably lower for B-duration than for A-duration impulses in order to produce the same amount of hearing loss. According to Coles et al. (Ex. 29, p. 213), this extension was based on TTS studies by Cohen, Kylin, and LaBenz in 1966, and Walker in 1969.

Another document (Ex. 279, 11–3), a report by Dr. Alan Martin entitled "The Equal Energy Concept Applied to Impulse Noise," presented an extensive review of research conducted before 1976 on the effects of impulse noise. In addition to some of the studies mentioned above, he discussed his own field study (Ex. 279, 11–3, p. 432) of 77 dropforge workers exposed to peak sound pressure levels of 65 to 446 Pascals (130 to 147 dB) with a repetition rate of 0.2 to 0.7 per second. Dr. Martin combined noise levels and duration according to the method advocated by Robinson (Ex. 12, App. 10, and Ex. 17, p. 14). His experiment supported the use of the equal energy (or 3 dB) rule for predicting the amount of permanent hearing loss resulting from all kinds and combinations of noise (Ex. 279, 11–3, pp. 437, 449). Instead of starting with critical peak levels and progressing to lower levels with increases of duration (like Coles et al. in Ex. 29, p. 212), Dr. Martin advocated building on the existing criteria for continuous noise, decreasing the duration as the level became higher (Ex. 279, 11–3, pp. 444–449).

Using the data from other impulse noise investigations, Dr. Martin combined level and duration of exposure according to the equal energy rule, and compared the results to studies of continuous noise. A study of 70 dropforgers by Guberan, Fernandez, Cardinet, and Terrier was supported by Dr. Burns (Ex. 54, pp. 9,11) as well as by Dr. Martin (Ex. 279, 11–3, p. 430) as supporting the equal energy rule for predicting hearing levels resulting from impulse noise. Dr. Martin also used Ceypek's data (Ex. 279, 11–3, p. 440) on dropforgers and achieved the same results. In addition he cited a study by Atherly (Ex. 279, 11–3, p. 443) of 50 trimmers who used pneumatic chisels on manganese bronze castings. Once again the observed hearing levels agreed very closely with predicted levels according to the equal energy rule, even in the extremes of the population distribution (at the first and 99th percentiles) (Ex. 279, 11–3, pp. 443–444). Dr. Martin concluded that these studies provided ample proof that the equal energy concept may be extended to include exposures to industrial impulse noises (Ex. 279, 11–3, p. 444).

Dr. Martin believed that the preponderance of the evidence indicated that the equal energy concept should be extended from steady-state noise

exposure to include industrial impulse noise. He concluded by stating:

It is somewhat surprising that, in the past and in the context of injury to hearing, impulse noise has been treated as a special type of noise having different properties than steady-state noise. It is now apparent from research, as perhaps has been from a logical viewpoint for some time, that it merely forms part of a "temporal" continuum of noise, and therefore should be treated in a similar manner to the rest of that continuum. (Ex. 279, 11–3, p. 449).

Criteria and Standards

The current noise standard, 29 CFR 1910.95, limits impulse noise to a peak sound pressure level of 140 dB.

OSHA's proposal maintained the maximum allowable level for impulses at a peak sound pressure level of 140 dB but specified a maximum of 100 impulses at that level with a 10-dB decrease in level for each tenfold increase in number (39 FR 37775, October 24, 1974), (an equal energy approach). According to the proposal's preamble, this requirement was based on the study by Drs. McRobert and Ward (Ex. 13), discussed above. In addition the proposal defined "impulse or impact noise" as "a sound with a rise time of not more than 35 milliseconds to peak intensity and a duration of not more than 500 milliseconds to the time when the level is 20 dB below the peak." If impulses occurred more often than once every half second they were to be considered as continuous noise.

Certain other standards and criteria for impulse noise were submitted to the record. In a report entitled "Proposed Damage-Risk Criterion for Impulse Noise (Gunfire)" (Ex. 16), the Committee on Hearing, Bioacoustics, and Biomechanics (CHABA) modified the criteria of Coles et al. (Ex. 29, pp. 212–214; Ex. 279, 11–3, p. 421), making it about 10 dB more stringent (Ex. 16, p. 5) in order to protect a higher percentage (95 percent) of the exposed population (Ex. 16, p. 2). Even so, the criteria were designed to permit NIPTS of 10 dB at 1000 Hz, 15 dB at 2000 Hz, and 20 dB at 3000 Hz and above in a small percentage of the population (Ex. 16, p. 1). The criteria specified a maximum peak sound pressure level of 164 dB for the short pulses (25 microsecond or less), with a 2-dB decrease for each doubling of duration, dropping to a plateau of 152 dB for A-duration impulses or 138 dB for B-duration impulses (200 to 1000 milliseconds) (Ex. 16, pp. 2, 4–5).

The authors of the CHABA report cautioned that it was only a first attempt at reasonable damage risk criteria for impulses, and it rested heavily on the assumption of a constant relation between TTS and NIPTS, and that this assumption might be incorrect (Ex. 16, p. 6). However, they believed that the report designated "reasonable limits for the type of impulse noise to which most service personnel will be exposed: rifle and pistol reports from his own and his fellows' weapons, and single rounds fired by higher caliber armament in both reverberant and non-reverberant conditions." (Ex. 16, p. 6).

The NIOSH criteria document (Ex. 1) made very little mention of impulse noise, except to say that the provisions in the recommended standard were "intended to apply for all noise even though additional controls may be necessary for certain specific types of noise, such as some impact and impulsive noise." (Ex. 1, p. I–1). However, no specific recommendations were given for the measurement of impulse noise, or for calculating its contribution to the daily dose. In the supporting text NIOSH stated that industrial noise and hearing surveys dealing with this kind of exposure were just beginning at that time (1972) (Ex. 1, p. IV–9).

EPA submitted to the record a document entitled "Information on Levels of Environmental Noise Requisite To Protect the Public Health and Welfare With an Adequate Margin of Safety" (Ex. 30). This document contained a section on impulse noise (Appendix G), which modified the CHABA criteria so that the allowable levels would prevent 90 percent of the exposed population from incurring more than a 5-dB hearing loss at 4000 Hz (Ex. 30, App. G, pp. G–4, p. G–10). The allowable levels became accordingly more stringent. A peak sound pressure level of 152 dB was the maximum allowable level for impulses of 25 microseconds or less, with plateaus of 140 dB for A-duration impulses and 128 dB for B-duration impulses (Ex. 30, Appendix G, p. G–6). Unlike the CHABA criteria EPA recommended changes in peak level of 10 dB for every tenfold change in number of impulses based on a limit of 100 impulses (Ex. 30, App. G, p. G–4). The EPA "Levels" document indicated growing support for the extension of the equal energy rule to include impulsive as well as continuous noise exposure (Ex. 30, App. G, p. G–9). However, the authors recommended evaluating impulsive and continuous noise separately, "each according to its own criterion," until combining them according to the equal energy rule had been further justified by more research (Ex. 30, Appendix G, pp. G–8, G–9).

Recently Col. Johnson submitted to the hearing record a preliminary draft ANSI standard entitled "The Evaluation of the Effect on Human Hearing of Sounds with a Peak A-Weighted Sound Pressure Level Above 120 Decibels and a Peak C-Weighted Sound Pressure Level Below 140 Decibels" (Ex. 321–21E). Although the draft ANSI standard is intended to cover impulse noise, the committee decided against unequivocally defining impulse noise, impact noise, or types of non-impulsive noise (Ex. 321–21E, p. 1), and instead refers to "intense" sound (Ex. 321–21E, p. 3). The basic measurement used to assess the effect of intense sound on hearing is the A-weighted equivalent continuous level (calculated by the equal energy rule), and all sound between the levels specified in the title is to be included in the assessment (Ex. 321–21E, p. 1). The measuring system must be able to integrate properly the energy of very short impulses, and the sound environment must be sampled at least every 25 microseconds (Ex. 321–21E, p. 6).

Although the ANSI standard still is in the preliminary draft stages, the intent of integrating impulsive with continuous noise according to the equal energy rule appears to be quite clear.

Discussion

The topic of the maximum permissible peak sound pressure level of 140 dB will not be addressed in this discussion since the requirement is present in the existing standard, 29 CFR 1910.95, and remains unchanged at this time. However, the method with which impulses are to be included in employee dose is germane to the calculation of dose or TWA for purposes of the hearing conservation amendment.

Walter Nowikas, late president of Donley, Miller and Nowikas, Inc. (Ex. 161, 9 B; Tr. 3222), pointed out that OSHA's criteria were derived from studies of short duration impulses, and therefore were not appropriate for longer duration industrial impulses. He believed that the proposed limit of 100 impulses at 140 dB was excessive since it could exceed the allowable exposure for continuous noise when the sound energy was summed. To prevent this discrepancy, he suggested reducing the number of impulses by a factor of 10 (Ex. 14–42, p. 6). Mr. Nowikas recommended changing the criteria "to conform at least with the RMS equivalent" (the equivalent for continuous noise) (Ex. 161, p. 31).

Some comments favored integrating impulses in the manner suggested above by Dr. Martin (Ex. 279, 11–3) and later by Col. Johnson (Ex. 321–21E). Dr. Loren Kerr, Medical Director of the United Mine Workers (Ex. 60, App. B, p. 3),

suggested that the standard should read, "Impulse noise, when integrated by the equal energy rule, shall not produce equivalent levels in excess of Table G—16(a)." Dr. Burns (Ex. 54, p. 16) testified that he was "satisfied that impulse noise, suitably handled, is also amenable to a simple energy method of exposure."

In order to be sufficiently protective, Drs. Richard Bolt and Edgar Shaw, speaking for the Acoustical Society of America, recommended the equal energy rule until such time as more definitive criteria could be developed. They stated:

> It is regrettable that no simple but valid damage risk criterion covering all kinds of impulse and impact noise exposure has yet been found or appears within sight. In these circumstances, it may be wise to consider limits based strictly on the A-weighted daily total acoustic energy, i.e. the eight hour energy equivalent level Leq. Such a measure might prove overprotective by as much as 10 decibels in some circumstances, but would have the merit of simplicity with respect to interpretation and instrumentation. (Ex. 14–303, p. 2).

Other commenters pointed out that OSHA had proposed a standard that seemed to allow two separate doses—one for continuous noise, and one for impulse noise (Ex. 79, p. 7; Ex. 80, App. B, p. 3). On this subject Wookcock stated (Ex. 79, p. 7):

> * * * I would like to point out that OSHA has proposed a noise standard which, in effect, sets two separate levels—one for continuous noise and one for impulse and impact noise. Conceivably, the standard allows for a double exposure. This should be corrected so that both hazards are not permitted to exist at the same time.

Dr. Ward must have recognized this problem when he recommended using a combination of the 5-dB and 3-dB trading relations. He suggested using the 5-dB trading relation when calculating noise dose for exposures from 85 dB to 105 dB and the 3-dB trading relation for high level exposures above 105 dB (Tr. 1042–1043). He felt that this combination would bridge the gap between steady and impulsive noise (Ex. 64, Statement by W. Dixon Ward on behalf of AISI—July 1, 1975, pp. 10–11).

Conclusions

It is clear from examining the studies, reviews, standards and comments discussed above that the early criteria for impulse noise were developed using assumptions that are not generally applicable to industrial conditions. The studies on which they were based used A-duration (gunfire) impulses, even though they have been extrapolated to cover B-duration impulses (Ex. 29, pp. 212–213; Ex. 16, p. 6; Ex. 30, App. G, p. G–6). In addition, the early studies of gunfire noise did not include moderate or high levels of continuous noise in the background, which is typical of the industrial situation (Ex. 294, p. 1; Ex. 26–12(B), p. 117). Since the early criteria were meant to apply to the military situation they assumed only 10 to 20 exposures per year (Ex. 29, p. 214), whereas workers in industry often are exposed to impulsive noise on a daily basis.

When impulsive noise was combined with continuous noise, the studies and reports submitted to the hearing record showed fairly clearly that the hazard increased (Ex. 26–12 (B), p. 119; Ex. 29, pp. 221, 227). The study by Hamernik et al. (Ex. 26–12(B), p. 119) showed an effect that was not just additive but synergistic. Field studies where impulses were superimposed on background noise indicated that hearing loss was exacerbated. Ceypek et al. (Ex. 29, p. 221) found considerably more damage than would be expected from continuous noise. Dr. Martin (Ex. 279, pp. 449, 432–444), through the results of his own investigation and by evaluating the data from studies by Guberan et al., Ceypek et al., and Atherly, found that the best way to predict hearing loss was to extend the equal energy rule from continuous through impulsive noise. The draft ANSI standard submitted by Col. Johnson (Ex. 321–21 E, p. 1) supports this method for use in the U.S.

Therefore, OSHA has determined that, for purposes of the hearing conservation program, impulse noise should be combined with continuous noise for purposes of calculating employee noise exposure. Since industrial impulses are almost always superimposed on a background of moderate-to-high levels of continuous noise (Ex. 6, p. 12338; Ex. 26–12(B), p. 117; Ex. 29, p. 229; Ex. 29, p. 227; Ex. 30, p. G–8), and since both may be harmful, it is only reasonable to consider their effect together, rather than to treat each separately. There is ample justification for this approach in the studies and comments submitted to the hearing record (Ex. 26–12(B), pp. 117, 121; Ex. 279, 11–3, p. 449; Ex. 29, p. 213; Ex. 80, App. B, p. 3; Ex. 61A, p. 3; Ex. 54, p. 16). However, since there are still some uncertainties as to the ameliorative effects of certain temporal patterns (Ex. 26–12(A), pp. 6–7, 10; Tr. 1051; Ex. 26–12(B), p. 120), and since there usually are some quiet periods (or less noisy periods) during the work day (Ex. 64–5, p. 2; Ex. 64–6, p. 6; Ex. 6, p. 12338, Ex. 114, p. 7), the Agency cannot determine the precise effects of industrial impulses at this time, and therefore OSHA has chosen to retain the 5-dB exchange rate for purposes of the hearing conservation amendment. Until such time as another method, such as the equal energy rule (the 3-dB exchange rate), or a combination of the 3-dB and 5-dB exchange rate (as suggested by Dr. Ward, Tr. 1042–1043), is borne out by laboratory and field research, OSHA will continue to require the integration of all sound, including impulse noise, according to the 5-dB exchange rate in the computation of dose or TWA.

While the hearing conservation amendment does nothing to change the PEL or methods of compliance required by 29 CFR 1910.95(a) and (b)(1), it does require that all noise exposures above 80 dB, whether impulsive or steady state, be considered in determining whether an employee is included in the hearing conservation program. The decision to measure all noise exposures for purposes of the hearing conservation program is a pragmatic approach to the whole problem of impulse noise. For, while there is some dispute as to the precise definition and effect of impulse noise, there is general agreement that impulse noise is damaging. The hearing conservation program is designed to identify and protect those who show an increased susceptibility to the effects of noise. Accordingly, in computing an employee's noise dose or TWA for purposes of inclusion in the hearing conservation program, the impulsive component of the noise exposure is included. Moreover, there have been many technological advances in the capabilities of measuring instruments, and equipment now exists that can integrate impulse noise into the dose. Therefore, OSHA has determined that it is appropriate to include impulse noise in the dose computation for hearing conservation in order to provide employees exposed to significant amounts of this type of noise the protection of the amendment.

C. *Extra-Auditory Effects of Noise*

The most obvious physiological effect of noise is damage to the auditory system. However, depending upon the level, type, and duration of the noise, a variety of extra-auditory effects have been observed, which will be discussed in the following paragraphs. In addition, it should be noted that people who are exposed to noise at work may also be exposed to noise during their non-working hours. For example, many workers live in areas where there is highway and aircraft noise as well as noise from industrial plants. Industrial workers who live in the urban settings are sometimes stressed by noise 24

hours a day without respite, and without adequate opportunity to recover, either physiologically or psychologically. Thus, effects that might otherwise have been temporary would tend to become chronic.

Although there is a substantial body of data suggesting a wide variety of noise-induced physiological responses, specific responses to specific noise doses have not yet been identified. The evidence of noise-induced health effects is not conclusive for 8-hour exposures of 85 dB, or 90 dB, or even higher levels experienced over a working lifetime. However, to ignore this large body of data is to undervalue the significance of the adverse effects (Ex. 5, p. 43606; Ex. 138A, p. 2–31). Both testimony and written exhibits, including subjective and experimental evidence, indicate that noise can be harmful to human health (Ex. 2C–106, p. 2; Ex. 2C–111, p. 1; Ex. 2C–4, p. 1; Ex. 96, pp. 277–281; Ex. 189–8, p. 2; Ex. 28A, pp. 18–24, 27–28, 41–44, 46–49; Ex. 32, App. B, pp. 6–11; Ex. 79, p. 2; Ex. 173, pp. 1–2, 7–8; Ex. 84, Attach. 2, pp. 1–2).

During the 1975 and 1976 public hearings most of the evidence that was submitted was anecdotal, although some studies were submitted by individuals (Ex. 28A), unions (Ex. 88, Ex. 95, Ex. 96, Ex. 97, Ex. 98), and government agencies (Ex. 26–9; Ex. 26–10; Ex. 26–3; Ex. 26–11; Ex. 32; Ex. 40). Leonard Woodcock, then president of the United Auto Workers, stated:

> I am sure that there are many limitations to these studies, as there always seems to be in this sort of work. But we think there is truth to these studies since it matches our subjective experience. We expect that future research into this important area will offer more definitive data. (Ex. 79, p. 5)

According to Ruth Knowles, then president of Local 1716 of the Textile Workers Union (Tr. 2024), "Some workers have been forced to retire long before retirement age because of hypertension." She goes on to state that in her opinion the high noise exposure in the weave department could have been a factor in those instances.

The major concern over extra-auditory health effects from noise arises from the fact that noise has the ability to act as a general, non-specific, biological stressor (Ex. 138A, p. 2–31). Evidence suggests that the stress reaction produced by noise is not unlike that produced by other stressors; that is, a generalized reaction governed by sympathetic activation of the autonomic nervous system.

The concept of biological stress, first introduced by Dr. Hans Selye, has been described as "the nonspecific response of the body to any demand made upon it; a stereotyped, phylogenetically old adaptation pattern primarily preparing the organism for physical activity, e.g., fight or flight." (Ex. 138A, p. 2–32).

This stress reaction produces a widespread change in bodily activity. There is a rise in blood pressure, a rise in pressure inside the head and an increase in sweating. The heart rate increases, there are changes in breathing and there may be a sharp constriction of the muscles over the whole body (Ex. 26–9, p. 10–8). These change are likely to be mediated by increased adrenal secretion of the catecholamine hormones, epinephrine and norepinephrine (Ex. 138A, p. 2–32).

In the hearing record two theories were proposed to explain mechanisms by which these stress-related physiological changes can have an impact on human health. Two conceivable damage pathways were developed:

1. Abnormalities in blood pressure regulation that lead to hypertension.
2. Increased blood platelet adhesiveness that accelerates the development of atherosclerotic plaques in the walls of the arteries.

Each of these stress-related damage pathways is discussed in turn.

1. The theory that noise stress can result in hypertension is supported by Dr. Bruce Welch (Ex. 321–16E, pp. 1–11) and Dr. Ernest Peterson (Ex. 321–16D, pp. 1, 4, 10) as well as by numerous other researchers, referred to in these and other exhibits (Ex. 88, p. 6; Ex. 96, p. 279). Intense industrial sound impairs the regulation of blood pressure, the most distinct manifestation of which is an increased prevalence of hypertension (Ex. 321–16E, p. 2).

According to Dr. Welch, hypotension, or reduced blood pressure levels, also can result from noise stress (Ex. 321–16E, pp. 3–4). Both hyper- and Hypo-tension fundamentally are disorders of circulatory regulation. They are characterized by exaggerated and inappropriate cardiac and vasomotor response to changes in body position or physical and psychological stimuli (Ex. 321–16E, p. 8). This increase in vascular lability (or changeability) under noise stress affects the circulatory adjustments that must normally be made during the course of a working day (Ex. 321–16E, p. 9). For those who already have impaired circulation, excessive vascular lability can lead to congestive heart failure, cardiac ischemia, or cardiovascular stroke. In fact it has been established that hypertension, even at moderate elevations, is associated with increased risk of coronary and *cerebrovascular* disease (Ex. 321–16E, p. 3).

2. In a report submitted by EPA (Ex. 138A, p. 2–40) Hattis et al. proposed another pathway theory, which involves an increase in the adhesiveness of blood platelets. Increased platelet adhesiveness has clear potential for negative side effects, due to an increased tendency for the formation of thrombi, small aggregates of platelets and other blood components involved in the clotting process. These thrombi contribute to the buildup of atherosclerotic plaques, which gradually narrow the arteries and reduce the oxygen supply to vital tissues. A heart attack can occur when there is complete blockage of an artery to the heart muscle, or when the demand for blood oxygen is greater than that which can be supplied through a narrowed coronary artery. These effects can be cumulative, for the same thrombi that contributed to a gradual narrowing of the arteries can complete the sequence by forming the final occlusion leading to tissue death in the heart.

Two epidemiological studies that were submitted to the record are of particular importance. In a classic study of German iron and steel workers (Ex. 98, p. 219), Dr. Gerd Jansen found that 62 percent of the workers chronically exposed to noise levels above 90 dB had "peripheral circulatory symptoms", compared to 48 percent of those exposed to lower levels. Physiological and psychological examinations were performed to determine the extent to which the difference could be caused by non-occupational factors. Dr. Jansen concluded that noise interferes with involuntary bodily functions, and as such could be a serious health risk.

A NIOSH-sponsored study (Ex. 29, pp. 441–452) performed by the Raytheon Service Company lends further support to these findings. The medical records of factory workers routinely exposed to high noise levels (at or above 95 dB) were compared to those of a population exposed to lower noise levels (at or below 80 dB). Statistically significant differences in the number of cardiovascular and circulatory disorders as well as other health problems and complaints were found between the two groups. In a follow-up study the Raytheon Service Company compared medical records of workers exposed to high noise levels (prior to the implementation of a hearing conservation program) with records of the same workers after a hearing conservation program has been put into effect. The overall results indicated fewer accidents, diagnosed medical disorders, and absences during the period when workers were involved in a

hearing protection program. The Raytheon report summarizes: "In general, the results were interpreted as adding strong support to the hypothesis that prolonged exposure to high intensity noise increases the incidence of various medical, accident and attendance problems." (Ex. 26–11, pp. 5–1 and 5–2).

In an experimental study (Ex. 28A, pp. 42, 46–50) on the effects of prolonged exposure to tonal pulses, Dr. Robert Cantrell found statistically significant increases in plasma cortisal and blood cholesterol levels when compared with the pre-exposure levels of his experimental subjects. Significant increases were noted at noise levels of 80 and 85 dB, and were pronounced at 90 dB.

However, there was skepticism during the hearings about the importance of extra-auditory effects. The Edison Electric Institute maintained that:

> since there is no clear evidence on non-auditory noise impact, an occupational noise standard should not consider this area. We recommend that the federal government undertake additional long-term research as provided for in the OSH Act before promulgating standards for non-auditory noise effects (Ex. 73, p. 2).

According to Dr. Bruce Karrh of DuPont:

> I know of no significant report of extra-auditory physiological effects for persons with noise exposure levels below 115 dBA. We have not conducted a controlled scientific study on non-auditory effects of noise at our plants because of our experience with our hearing conservation program has not indicated a need for such a study (Ex. 114, p. 14).

In May of 1973 three Swedish researchers (Carlestam, Karlsson, and Levi in Ex. 29, p. 485) pointed out that "the evidence in favor of noise as a major pathogenetic environmental agent is rather shaky."

Between the 1975 hearings and the recent reopening of the record (April 1980), considerable research activity has occurred, and new and more persuasive evidence has been submitted to the record.

The EPA submitted an analysis by Dr. Welch (Ex. 321–16E) of over forty studies from European and Soviet bloc nations of the effects of noise exposure on the cardiovascular system. Dr. Welch found evidence of noise-induced structural changes in the heart, increased cardiac morbidity, cerebrovascular and peripheral vascular disorders, and hypertension (Ex. 321–16E, pp. 2–21). Dr. Welch admits that many of these studies suffered from methodological problems, although approximately half of them presented data in a statistically verifiable manner. Viewed as a whole, these studies represent a consistent body of data containing significant evidence that noise levels greater than 90 to 95 dB may increase the risk of cardiovascular disease in exposed workers. He concludes:

> In a practical sense, the available evidence now demands that prolonged exposure to high intensity sound be viewed in a much broader sense than heretofore as a serious threat to general human health. The evidence for associating long-term sound exposure with cardiovascular disease, in particular, is comparable to that for associating it with loss of hearing (Ex. 321–16E, p. 37).

In another report submitted by EPA (Ex. 321–16D, pp. 1–2), Dr. Peterson also discusses recent developments in research on the extra-auditory effects of noise. He finds that by far the largest body of evidence centers about the relationship between prolonged exposure to intense noise and cardiovascular performance. The most common occurrence is one of impaired regulation of blood pressure, which may be manifested either as hypotension or hypertension. Other signs and symptoms that occur more frequently in noise-exposed workers are abnormalities in cardiac pacing, reducing stroke volume, various ECG abnormalities, and narrowing of retinal arteries. Dr. Peterson also reported on his own work (Ex. 321–16D, pp. 6–10), a laboratory study of the effects of protracted noise exposure on rhesus monkeys. Monkeys were chosen as an animal model so as to closely approximate human response. As a result of life-like exposure scenarios (averaging 85 dB) for 9 months, the monkeys showed significant alterations in blood pressure that were sustained even after cessation of the stimulus.

A third submission by EPA (Ex. 321–16F) is a study of German brewery workers by Dr. H. Ising et al., who attempted to quantify the risk to the cardiovascular system associated with exposure to noise levels averaging 95 dB. Dr. Ising used each individual as his own control by comparing various cardiovascular indicators with and without the use of hearing protectors. In so doing he overcame some of the methodological problems discussed by Dr. Peterson (Ex. 321–16D, pp. 2–4) and Dr. Welch (Ex. 321–16E, pp. 35–37). Dr. Ising found that on days when people worked without hearing protection, there was a significant elevation in systolic blood pressure, changes in arterial wall elasticity, and increased levels of catecholamine hormones excreted in the urine. (The catecholamines are characteristically secreted in response to stress, and have been associated with increased blood platelet adhesiveness and with increases in blood pressure (Ex. 138A, pp. 2–32 and 2–33)).

Despite the quantity of evidence in the studies discussed above, clear dose-response relationships do not yet exist for the cardiovascular effects of noise. However, if, as the evidence suggests, there is a cause-effect relationship between noise and hypertension, the health implications would be widespread and serious (Ex. 79, p. 5; Ex. 266B, pp. 2, 13, 14–15; Ex. 138A, p. 2–31; Ex. 321–16E, p. 37; Ex. 29, p. 485). Therefore the Agency urges caution on the part of employers. OSHA has included the above evidence as a qualitative, if not a quantitative, argument for requiring hearing conservation programs.

Other extra-auditory effects are also discussed in the record. The report of the initial Raytheon study, mentioned above, described other possible effects of noise (Ex. 29, pp. 449, 451). In addition to cardiovascular effects, the investigators found evidence of digestive, respiratory, allergenic, and musculo-skeletal disorders. Over a period of 5 years the number of diagnosed disorders in every category was significantly higher for workers exposed to high noise levels that it was for those exposed to lower noise levels.

In his report (Ex. 321–16E, p. 31), Dr. Welch discusses neurological changes associated with long-term exposure to occupational noise. After reviewing the scientific literature, he finds that the sense of balance can be altered, that reaction time is impaired, and that there is decreased tactile sensitivity in the hands and feet. Dr. Cohen and Dr. Joseph Anticaglia (Ex. 96, pp. 277) suggest that noise-induced neurological changes may occur as a result of overstimulation of the brain's reticular formation, leading to a state of reflex hyperactivity and abnormal EEG response. The authors noticed that laboratory subjects complained about feelings of disorientation after exposure to high levels of noise (Ex. 96, p. 278). Studies cited by Dr. Edith Gulian (Ex. 97, pp. 38–39) support this observation with factory workers as well. It has also been suggested that high levels of noise reduce the eye's ability to focus clearly, and narrow the visual field (Ex. 97, p. 35; Ex. 96, p. 278). These effects can be significant from the standpoint of potential accidents and injuries (Ex. 96, p. 279).

There was information on the effects of noise on worker performance submitted to the hearing record. According to EPA's Public Health and

Welfare Criteria for Noise (Ex. 31, p. 8–2), a variety of effects have been observed in the literature. EPA cites research by Dr. D. O. Hebb to explain these effects. To paraphrase: Changes in stimulation (such as intense noise) produce arousal activity which originates in the reticular formation. An individual's level of arousal affects the performance of a task. Too little arousal produces inadequate performance whereas too much arousal interferes with performance. The optimum is somewhere at the top of an inverted U-shaped curve. Thus, noise can enhance, interfere with, or fail to affect the performance of certain tasks. The EPA concludes that:

> Continuous noise levels above 90 dBA appear to have potentially detrimental effects on human performance, especially on what have been described as noise-sensitive tasks such as vigilance tasks, information gathering and analytical processes. Effects of noise on more routine tasks appear to be much less important, although cumulative degrading effects have been demonstrated by researchers. Noise levels of less than 90 dBA can be disruptive, especially if they have predominantly high frequency components, are intermittent, unexpected, or uncontrollable. The amount of disruption is highly dependent on the type of task, the state of the human organism, and the state of morale and motivation (Ex. 31, pp. 8–6 and 8–7).

Noise can degrade job safety in some of the same ways that it degrades performance. It is logical to conclude that the same parameters that disrupt job performance (high noise levels, or noise that is high in frequency, intermittent, unexpected, or uncontrollable) can jeopardize job safety. In addition, there are other reasons why noise can be a safety hazard. Noise can effectively mask alarm signals and warning shouts. This includes signals from malfunctioning machines and the sound of approaching vehicles.

I.W. Abel, former president of the Steelworkers Union, reported the following:

> A recent study of the causes of 25 fatalities in railroad accidents by the Federal Railroad Administration showed the common factor was the workers' unawareness of the approach of the railroad cars or equipment that struck them. Many of these workers, the study pointed out, were working under exposure to a high level of noise (Ex. 78, p. 20).

Howard Pemberton, safety committeeman from Local 589 of the UAW, describes the workers' condition:

> "They cannot escape the noise. They also tell us—and we know from our own experience—that they cannot hear instructions from the foremen, and that they must scream to carry on necessary communication" (Ex. 2C–74, p. 2).

Another way in which noise can lead to accidents (although the cause and effect relationship is less direct), is through workers' aversion to the noise. Dr. John Finklea, then Director of NIOSH, related the following incident:

> Several weeks ago, a worker fatality was reported in a power plant in the Cincinnati area. An investigation revealed that the accident victim and his fellow workers, irritated by the screeching sounds from a pulley drive in a conveyor system, had resorted to repeated "soaping" of the pulley unit to quiet the sound. Gaining access to the pulley for this purpose involved certain risks that were contrary to company work policy. Despite this, a worker in the course of soaping the pulley evidently became caught, was pulled into the moving conveyor and was killed. It is doubtful that even an 85 dBA noise limit would have prevented this accidental death. Yet the case deserves mention if only to show that non-auditory problems of noise cannot be ignored. Indeed, it should motivate more conservative approaches in specifying noise limits meeting both health *and* safety needs (Ex. 20–1, p. 7).

Finally, the general effect of worker absenteeism should be mentioned. Whether from psychological aversion to noise or the physiological consequences of noise stress, absenteeism appears to be higher among workers in noisy industries. According to anecdotal evidence from union witnesses, both fatigue and absenteeism are higher (Ex. 2C–74, p. 2; Ex. 79, p. 2). Studies in the record supported this contention. The Raytheon study mentioned earlier (Ex. 28–11, p. 3–172), found significant differences in absenteeism between groups of workers exposed to average noise levels above 95 dB and below 80 dB. Absenteeism in the high noise group was significantly decreased after the institution of a hearing conservation program.

A study by Schmidt, Royster, and Pearson (Ex. 321–22F, p. 28) found significant differences in absenteeism as well in accident records. The report by Dr. Gulian cites a study by Odescalchi of 50 noisy Italian companies (such as textile, steel and metal fabrication), where the annual number of absences is about 15 percent higher than in quieter ones (Ex. 97, p. 60). Other studies cited by Dr. Gulian are inconclusive on this issue, but enough data exist to be strongly indicative of increased absenteeism, which can be very costly to industry.

III. History of the Regulation

The occupational noise exposure standard, which is found at 29 CFR 1910.95, was originally promulgated as a standard under the Walsh-Healey Public Contracts Act, 41 U.S.C. 35 *et seq.* (See 34 FR 7946, May 20, 1965; 35 FR 1015, January 24, 1970). The Walsh-Healey occupational noise standard (41 CFR 50–204.10) was adopted under § 6(a) of the Occupational Safety and Health Act, 84 Stat. 1590, 29 U.S.C. 651 *et seq.* which, within two years of the effective date of the Act, allowed the Secretary to promulgate without regard to rulemaking any established Federal standard. (See also § 4(b)(2) of the Act).

The present noise standard limits an employee's noise exposure to 90 dB as an 8-hour time-weighted average (TWA). Employee exposure to noise above the permissible exposure level (PEL) must be reduced to within permissible limits by feasible engineering controls or administrative controls. Where such controls cannot reduce employee exposure to within permissible limits, they are to be supplemented with personal protective equipment. The OSHA noise standard also requires that the employer must administer a continuing effective hearing conservation program if exposures exceed the PEL. OSHA has interpreted this to require employers to provide audiometric testing for those employees exposed above the PEL without regard to the use of personal protective equipment. (See Industrial Hygiene Field Operations Manual, Chapter IV, pp. 9–16, OSHA Instruction CPL 2–2.20, April 2, 1979).

On August 14, 1972, the National Institute for Occupational Safety and Health (NIOSH) transmitted to the Department of Labor a criteria document, "Occupational Exposure to Noise" (HSM 73–11001) (Ex. 1), in accordance with section 20(a) and 22(d) of the Occupational Safety and Health Act, (29 U.S.C. 669(a), 671(d)), which authorizes the Secretary of Health, Education and Welfare to conduct research to develop criteria for dealing with harmful physical agents and to make recommendations to the Secretary of Labor concerning new or improved occupational safety and health standards. The criteria document recommended that employee noise exposures be limited to an 8-hour TWA of 85 dB in new installations and that the Secretary should study the feasibility of reducing the PEL in all facilities to an 8-hour TWA of 85 dB. In addition, the criteria document recommended audiometric testing not only for employees whose exposures exceeded the PEL but also for those employees whose exposures were reduced to within the PEL by the use of personal protective equipment.

On January 26, 1973 the Assistant Secretary of Labor for Occupational Safety and Health appointed an Advisory Committee on Noise pursuant to section 7(b) of the Act (29 U.S.C. 656). The Committee consisted of 15 members, representing a broad cross-section of individuals knowledgeable about noise hazards in the industrial environment. The Committee included representatives of employers and employees, as well as representatives of the public and the occupational safety and health professions. The purpose of this committee was to obtain and evaluate additional recommendations from labor, management, government, and independent experts. In its deliberations the Committee considered approximately 135 comments submitted to it by various interested parties (see Ex. 2(c)), as well as numerous oral presentations (see Ex. 2(a)). The Committee held meetings periodically during an eight-month period and on December 20, 1973 it transmitted its recommendations for a revised occupational noise exposure standard (see Ex. 2(b)) to the Occupational Safety and Health Administration (39 FR 6647, February 21, 1974).

Briefly, the Advisory Committee recommended that the permissible exposure level for occupational noise be an 8-hour time-weighted average of 90 dB, with exposures down to 85 dB integrated into the computation. Exposures to steady-state noise were not to exceed 115 dB at any time. In addition, the Advisory Committee recommended audiometric testing be done annually for all employees whose exposures equalled or exceeded 85 dB or would equal or exceed 85 dB but for the use of personal protective equipment.

OSHA considered the information and recommendations contained in the NIOSH Criteria document (Ex. 1), the Advisory Committee's recommendations (Ex. 2(b)), and other available information. On October 24, 1974, OSHA proposed a revision to its occupational noise exposure standard and solicited comments and objections to it from interested persons (39 FR 37773–37778). OSHA proposed to retain an 8-hour TWA of 90 dB as the PEL, with exposures down to 85 integrated into the time-weighted average. In addition, the suggested ceiling of 140 dB for impact noise exposure contained in the old standard (see 29 CFR 1910.95, Table G–16, note) was proposed to be modified to a mandatory ceiling of no more than 100 impulses of 140 dB per day, with a tenfold increase in the permissible number of impulses to which employees could be exposed for each 10 dB decrease in the peak pressure of the impulse. The proposal also required the employer to determine if any employees were exposed to an 8-hour time-weighted average of 85 dB or above and to measure the exposure of any employees so identified. Additional exposure monitoring was required within 30 days of any change of equipment or process which would affect the noise level. Employee exposures to impact or impulse noise were also required to be monitored.

Under the proposal, audiometric testing was to be required for all employees who had noise exposures equal to or exceeding 85 dB as an 8-hour TWA and for all employees who were using personal protective equipment to reduce their exposures to an 8-hour TWA of 90 dB. If the employee's audiogram showed a significant threshold shift (STS) when compared to the employee's first or baseline audiogram, the employee had to be retested within one month. If the diminution of hearing was confirmed on retest, then the employee had to be informed of the change in the hearing level, and had to be provided and fitted with, and instructed in, the use of hearing protectors. Employees whose audiograms showed that they had a significant threshold shift were required to wear hearing protectors under the proposal even if they were not exposed over the PEL.

The preference for engineering controls over personal protective equipment as a method of compliance was retained and clarified and a limited exception was proposed that would have allowed personal protective equipment to be used even where engineering or administrative controls were feasible if the employee overexposure occurred on no more than one day a week. Various other provisions in the proposal required the employer to keep records of employee exposure monitoring, audiometric tests, calibration of audiometers, and notifications of employee overexposures.

On December 18, 1974, the Administrator of the U.S. Environmental Protection Agency (EPA), acting under the authority of section 4(c)(2) of the Noise Control Act of 1972 (86 Stat. 1236, 42 U.S.C. 4903), published a notice in the Federal Register requesting that the Secretary of Labor review the proposed occupational noise exposure regulation and report to the Administrator within 90 days on the advisability of revising the proposed regulation (39 FR 43802). Briefly, EPA contended that the proposal "does not protect the public health and welfare to the extent required and feasible." EPA objected to the proposal's permissible exposure limit, including the use of a 5 dB time-intensity trade-off (doubling rate) in computing the PEL, and to the definition of significant threshold shift which was used in the proposal. On March 18, 1975, OSHA published in the Federal Register the Review and Report Requested by EPA (40 FR 12336). In its response, OSHA reviewed and explained the reasoning underlying its proposed regulation. OSHA noted that the document to which EPA objected was merely a proposal upon which the public had been invited to comment. The Assistant Secretary concluded that "no changes should be made in the proposal at this stage," since the proposal by its very nature did not represent a final agency position and EPA's objections would be aired along with objections raised by concerned persons at an informal public hearing. In addition, OSHA promised to consider EPA's request and the evidence contained therein along with the rest of the evidence in developing its final standard. To the extent that the final hearing conservation rule promulgated today deals with issues raised in the Request for Review and Report, they are discussed below under the appropriate topic headings.

In the notice of proposed rulemaking, interested persons were given approximately 45 days to submit written data, views and arguments on the proposal and to file objections and request a hearing thereon. The comment period was subsequently extended two more times (until March 21, 1975) because of the complexity of the issues raised in the proposal and in response to a number of requests for additional time in which to prepare responses. (See 39 FR 42929, 12/9/74; 40 FR 2822, 1/16/75). Thus, the public was given almost five months in which to file comments and objections on the proposal. OSHA received approximately 1000 written comments on the proposal (Ex. 14).

Section 6(b)(3) of the Act provides for informal public hearings on objections to a proposal. Many persons requested that hearings be held on the proposed occupational noise exposure standard and an informal public hearing was scheduled (40 FR 16338, 4/11/75). The rulemaking hearing was convened by Administrative Law Judge Milton Kramer on June 23, 1975. The hearing lasted through July 30, 1975. Over 90 parties, many of them represented by multi-witness panels, participated in the hearing. In addition, during the course of the hearing approximately 188 exhibits, many containing numerous documents,

were submitted to the record. Testimony at the hearing addressed every issue raised by the proposal, as well as environmental issues and economic issues. At the close of the hearing, a 45-day period for the receipt of post-hearing comments was authorized by Judge Kramer. The hearing record also remained open for receipt of an economic impact analysis.

On June 18, 1976, OSHA published a notice of availability of an economic impact analysis which had been prepared for the agency by Bolt, Beranek and Newman, Inc. (BBN) of Cambridge, Massachusetts (41 FR 24718). The economic impact analysis considered the possible inflationary impact and economic feasibility not only of the proposed noise exposure regulation, but of several alternatives such as a standard with a PEL of 85, and various compliance periods. Benefits to be derived from the alternatives were also considered. Basically the economic impact analysis was modeled after the guidelines for implementing Executive Order 11821 (see 39 FR 41501) although the proposal predated the Executive Order (see Ex. 192, p. iii). According to the BBN study noise exposure monitoring was estimated to cost approximately $12 per production worker, while audiometric testing for all workers exposed to an 8-hour TWA of 85 dB or above was estimated to cost about $20 per worker (Ex. 192, p. iv). The cost of keeping the PEL at 90 dB and instituting a hearing conservation program including audiometric testing was estimated to be approximately $241 million per year (Ex. 192, p. iv). BBN also estimated the relative probability of workers experiencing material impairment after 20 and 40 years of exposure at 85 dB as opposed to 90 dB (Ex. 192, pp. 2–28—2–36) and estimated the benefits of including hearing conservation requirements at or below the PEL (Ex. 192, pp. 2–34—2–36).

Interested persons were given an opportunity to comment on the BBN study and a second informal public hearing was scheduled to begin on August 24, 1976 (41 FR 24718). The notice also invited the submission of any new information that might be available on the issue of economic feasibility of the proposed standard and on any of the other issues discussed in the economic impact analysis itself. OSHA subsequently extended the period in which to file comments and rescheduled the public hearing in response to a number of requests for extensions of time (41 FR 32912, 8/6/76). OSHA received approximately 106 comments on the economic impact analysis (Ex. 193).

The economic impact hearing was convened on September 21, 1976 with Administrative Law Judge Jean F. Greene presiding. Approximately 70 parties were scheduled to appear at the hearing (Ex. 196), and approximately 69 exhibits were submitted to the record during the hearing. The hearing lasted through October 8, 1976. Those participating at the hearing were given 60 days from the close of the hearing in which to submit post-hearing comments.

During the hearing OSHA received many requests for information that was not contained in the economic impact analysis itself, but which was related to its preparation. OSHA, through arrangements with BBN, made available that portion of the requested information which had not been obtained under a pledge of confidentiality. BBN prepared a document (Ex. 278) which included some of the data requested at the hearing. In addition, BBN discussed and clarified many of the issues raised at the hearing. On January 26, 1977, OSHA published in the Federal Register a notice of the availability of the BBN post-hearing comment and additional information on the economic impact analysis (42 FR 5374). Those who participated at the hearing were given additional time in which to comment on the BBN submission. OSHA received approximately 18 comments on the BBN submission (Ex. 279).

Although the proposal was published before any of the Executive Orders requiring the preparation of Inflationary or Economic Impact Statements or Regulatory Analyses (Executive Orders 11821, 11949 and 12044), OSHA has prepared a Final Regulatory Analysis for this hearing conservation amendment which is generally consistent with the requirements of the most recent Executive Order on the subject. This analysis was based on information and methodologies contained in the noise record and uses standard techniques of economic and scientific analysis. In addition publicly available population and employment data, such as that published by the Bureau of Labor Statistics *(Employment and Earnings)* was used. Similarly, the estimates of the costs of compliance as well as benefits of the amendment were made using information from the record and publicly available data. The expected economic impact was developed using costs estimated by OSHA, on the basis of record information, publicly available data and standard techniques of economic analysis. OSHA has used the latest available data. Interested persons may request copies of the Final Regulatory Analysis through the Docket Office.

On April 18, 1980, OSHA again opened the record to introduce additional comments, letters and reports that had been sent to the agency since the last time the record had been open (45 FR 26306). Some corrected transcripts from the second hearing were submitted to the record as an exhibit and some updated cost data on hearing conservation programs were also submitted. Interested persons were given over 45 days in which to submit comments. The Agency subsequently extended the comment period until July 3, 1980 in response to requests for additional time (45 FR 40166, 6/13/80). Thus the public was given 11 weeks in which to submit comments on this information.

OSHA received a number of objections to its April 18, 1980, Federal Register notice. Some of these objections, as noted, requested additional time in which to comment, and some raised certain procedural objections (see Ex. 321–15A, 321–11, 321–14). Several comments expressed the belief that OSHA had selectively introduced exhibits into the record (Ex. 321–15A, p. 2, 321–11, p. 2). However, OSHA made no attempt to "select" correspondence to be submitted to the record or correspondence to be withheld. Rather, all the substantive comments on noise which the Agency had on file were submitted to the record. Any comments which may have been inadvertently omitted could have been resubmitted in response to the Federal Register notice.

The Federal Register notice invited comments "on the above materials only," and went on to explain that because of the length and repetition of the existing record the public was asked to refrain from resubmitting material already submitted. The record in this proceeding could be characterized as voluminous, verbose, redundant, and since it contains approximately 38,000 pages, unwieldy. The Agency has tried in every manner consistent with the statutory mandate to accommodate the reasonable demands and concerns of interested persons. However, some few persons apparently interpreted the Federal Register notice to mean that relevant new data would not be allowed into the record. (See Ex. 321–15A, 321–11, p. 2). The vast majority of commenters, however, construed the sentence correctly and did not resubmit evidence but instead confined their comments to the general subject matter of the additional submissions. A number

of the comments received in response to the Federal Register notice (see, for example, Ex. 323) did in fact constitute new evidence or studies on the subject matter of the new submissions. (See, for example, Ex. 321–44, 321–53D, 321–17, 321–19, 321–20A, 321–21, 321–22, 321–14D, 321–35, 321–13, 321–16).

In misconstruing the notice, several persons mentioned that they should be given a change to submit new evidence showing the effectiveness of hearing conservation programs and new updated cost estimates on engineering controls (Ex. 321–15A, 321–12A, p. 4; 321–11, p. 2–4; 321–53A, p. 2). As discussed above, the final rule here merely articulates hearing conservation requirements. Several issues; including the appropriate permissible exposure level and priorities among compliance strategies, have not been decided at this time. Both issues have been deferred for further study.

The Agency contemplates further economic studies and another hearing on these and other remaining issues. The record will be reopened to receive any new evidence on the relevant issues, including overall effectiveness of personal protective equipment as opposed to engineering controls in preventing material impairment, the permissible exposure level and the correct doubling rate, economic costs and consequences of various alternative strategies, benefits of the various strategies, and technological advances in engineering controls. Anyone wishing to do so may submit new evidence when the record is reopened.

Certain other participants requested that OSHA repropose the standard in view of advances in technology (Ex. 321–12A, p. 2: 321–11, p. 2). At the present time it is not contemplated that re-proposal will be necessary. The original proposal as well as the EPA Request for Review and Report and the OSHA response, all of which were printed in the Federal Register and actively debated at the hearing, gives the public ample notice of the wide range of regulatory alternatives that are being considered within the general parameters of the permissible exposure level and the method-of-compliance issues. Such alternatives include industry-by-industry standards, different compliance schedules, and a performance standard allowing the employer to choose the best method of compliance.

Another commenter (see Ex. 321–12A, p. 3) objected to a meeting with several audiologists which was held in August 1979. The meeting which was the subject of this objection had been held primarily to discuss various problems with the instructions contained in the Industrial Hygiene Field Operations Manual on audiometric testing as part of an effective hearing conservation program. Since some of the issues discussed at the meeting could have possible relevance to the hearing conservation amendment, OSHA included a detailed summary of the meeting in a group of noise-related materials submitted to the record of April 18, 1980 (see Ex. 317). Interested persons were given an ample amount of time in which to comment upon this material. Clearly, then, the business community as well as other interested persons were permitted "a further opportunity for input" (see Ex. 321–12A, p. 4) on the subject of the meeting.

A few other commenters objected that a new hearing was not being scheduled to discuss the new record submissions. (See Ex. 321–15, 321–15A, p. 2). Section 6(b)(3) of the Act does not indicate a "right" to a hearing every time something new is submitted to the record. Such an interpretation of section 6(b)(3) might even, for example, require a hearing in response to post-hearing comments, a procedure which could easily result in needlessly drawnout rulemakings.

As stated above, the Agency has tried at every point in the proceeding to accommodate all reasonable demands and concerns of the public. This has been done by according more time to respond at numerous junctures in the proceeding, clarifying ambiguities and considering numerous alternative approaches suggested by the public as well as by other government agencies. The public dialogue on the various issues raised during the course of this proceeding has been extensive and helpful. The record has been carefully reviewed and all opinions, comments and evidence therein have been considered in reaching the final decisions reflected in the hearing conservation amendment. The Agency believes this provides workers with adequate protection without undue burden on employers.

IV. Benefits

Summary and Conclusions

The primary purpose of this hearing conservation amendment is to prevent occupationally related cases of hearing impairment. Hearing impairment is a serious obstacle to a person's effectiveness as an employee and in the other aspects of life as discussed elsewhere in this preamble. Occupationally related hearing loss cannot be cured by hearing aids.

The noise record includes extensive evidence indicating that hearing conservation programs can reduce the number of cases of hearing impairment. Based on that record OSHA has made estimates of the number of hearing impairments prevented by the hearing conservation program prescribed herein. Evidence in the record amply demonstrates that many workplaces are not safe from hazards posed by noise. Present noise exposures pose a significant risk of harm to workers and can be lessened or reduced by instituting hearing conservation programs for workers exposed at or above a TWA of 85 dB.

OSHA estimates that hearing conservation programs for all employees exposed above 85 dB will eliminate 212,000 cases of material impairment of hearing after 10 years, 696,000 after 30 years and 896,000 cases at equilibrium. Even assuming full compliance with the present standard which requires hearing conservation programs for all employees exposed over 90 dB, this amendment would prevent 38,000 additional impairments within 10 years, 143,000 within 30 years, and 189,000 at equilibrium. Therefore the standard will significantly reduce the risk of hearing impairment present in many workplaces. Unfortunately this standard will not completely succeed in eliminating occupationally related hearing impairment. Approximately 162,000 cases of impairment will remain at equilibrium after the implementation of this standard.

OSHA anticipates that employers and employees will carefully and conscientiously carry out the provisions of this standard. However, even if only 50% of employees receive protection, there will be a reduction of 381,000 cases of impairment at equilibrium. This is still a very substantial benefit.

The OSHA estimates are based on the methodology of CPA, the exposure estimates of BBN and the scientific data contained in the record. OSHA has utilized its judgment based on the record to choose what it believes are the better methodologies, assumptions and data and has updated the estimates to take into account more recent, publicly available population data. Therefore, as discussed below, OSHA believes that its estimates improve upon the earlier estimates.

The Supreme Court in *Industrial Union Department, AFL–CIO* v. *American Petroleum Institute*, 65 L. Ed. 2d 1010, 100 S. Ct. 2844 (July 2, 1980) indicated that in promulgating a standard dealing with toxic materials or harmful physical agents, the Act "requires the Secretary to find, as a

threshold matter, that the toxic substance or harmful physical agent in question poses a significant health risk in the workplace and that a new lower standard is therefore reasonably necessary or appropriate to provide safe or healthful employment." (slip op., p. 5.).

The record in this proceeding clearly demonstrates and OSHA therefore concludes that all these tests have been met. OSHA finds that employee exposure to noise at existing workplace levels poses a significant health risk in the workplace. Even assuming full compliance with the current occupational noise exposure standard, some employees face a significant risk of material impairment of hearing. Accordingly a new and more protective standard is reasonably necessary and appropriate to provide healthful employment. Indeed OSHA would reach this same conclusion even if the risk of hearing impairment had been substantially less than is the case.

These conclusions have been reached without reliance on the further benefits of reduced absenteeism, improved workplace safety, and reduced extra-auditory health effects also resulting from the standard. But, of course, those benefits provide additional justification for the standard.

Finally, workplace noise, and the resulting occupationally related hearing loss, is perhaps the most widespread hazard faced by workers. As Leonard Woodcock, then President of the United Auto Workers stated, "noise is probably the most pervasive of the many job hazards which our members face today. We have had no health and safety problem about which our members complain more" (Tr. p. 1388).

The hearing conservation standard will go a substantial way towards alleviating the worst aspect of the hazard, hearing loss, though it will not achieve the ideal solution, eliminating the hazard at its source. The Agency finds that eliminating noise exposure utilizing engineering controls would create substantial additional benefits of reduced discomfort and more effective hearing conservation.

The existing level of risk in absolute numbers and the amount of risk reduced by this standard is great. Clearly, even if the level of risk were lower and the reduction of risk were not as great, OSHA would still be able to make a valid threshold finding of significant risk. While in this instance detailed data were available to estimate the hearing impairment benefits of this noise regulation, it should be recognized that in many circumstances much less evidence will be available, especially for relatively new substances which may create life threatening risks. As the Supreme Court noted, OSHA may make a finding of significant risk even when much less evidence is available upon which to base such judgments. "OSHA is not required to support its findings that significant risk exists with anything approaching scientific certainty . . . this provision requires a reviewing court to give OSHA some leeway where its findings must be made on the frontiers of scientific knowledge . . ." (slip op., p. 45).

The rest of this section sets forth, in depth, the basis for OSHA's estimates of hearing impairment and analyzes the relevant portions of the record. To make its estimates as current and exact as possible, OSHA made use of some publicly available census and labor statistics data, such as employment by SIC code, which is not physically in the noise record. The limited amount of data in this category that has been utilized is not controversial and is publicly available.

It is relatively complicated to present data on the number of noise-related cases of hearing impairment because it occurs at varying ages and lasts a varying number of years before death. The approach selected here is the "snapshot" approach. This estimates in a given year, the absolute number of cases of impairments existing if there were no regulation, the number eliminated by the standard or an alternative, and the number of impairments remaining. It is not appropriate to add the number of impairments in the 10th year to those in the 20th year, for example, since that would double-count the persons who were impaired in both years. On the other hand, the actual number of impaired individuals over periods of time greater than a year are greater than the number present in a given year. Over time persons die and then are subtracted from the totals while others enter into the totals for the first time.

For example, OSHA estimated that hearing conservation programs for all employees exposed above 85 dB would prevent 696,000 material hearing impairments in the 30th year and 799,000 in the 40th year. The total number of individuals saved from impairment by these programs during the decade is less than the sum of 696,000 + 799,000, because some individuals lived through that period and would have been counted as saved from impairment at each of those timepoints. On the other hand, the number of individuals saved from impairment prior to the 40th year is much greater than 799,000 since many who will be saved from impairment by these programs will die before the 40th year and were therefore not counted in the 40th year totals. OSHA has also presented data on the number of person-years of hearing impairment prevented. This data does not present the same problems, but does not indicate how many individuals will suffer impairment.

Much of the data presented is for the equilibrium year. Hearing impairment develops gradually over time from the accumulation of noise the employee is subject to in each year of employment. In addition, hearing impairment once developed lasts beyond age 65 and through the entire time of retirement until death. Clearly hearing impairment is a substantial loss to retired persons as well. Many people live well into their 80's. (For example, the average life expectancy of males at age 65 is 14 years and females 19 years. Of course a substantial portion of the population lives longer than these averages.) Therefore, the full effects of hearing conservation programs will not be achieved until the entire population has been replaced by a population who have spent their entire working lives covered by these programs. This does not occur for at least 70 years, the time from age 18 until when most retirees have died by age 88. However, benefits are also presented at the 10th, 20th, 30th and 40th years after the implementation of hearing conservation programs. It can be seen that by the 30th year, about ¾ of the number of employees who will ultimately be protected will receive the full benefits of hearing conservation programs.

Introduction

Workers will derive substantial benefits from the hearing conservation amendment. The primary benefit of the amendment will be a sizable reduction in the incidence of occupational hearing impairment for U.S. workers. This reduction will substantially improve the health and quality of life of these workers. In addition, there will be possible declines in the number of workplace accidents and in the incidence of cardiovascular disease following the implementation of the amendment. The hearing conservation amendment will also create financial benefits stemming from reductions in worker absenteeism and medical costs, which will partially offset the costs of the amendment. Employers will profit by the decline in workers' absences, while workers will benefit from the reduction in medical costs. Consumers and taxpayers as a whole will gain from a reduction in the societal subsidy to medical costs. These financial benefits

furnish additional support for the amendment.

Occupational hearing loss damages the social relationships of impaired workers by hindering their ability to communicate with other workers, their families, and their friends. OSHA's hearing conservation amendment, by substantially reducing the incidence of occupational hearing loss, will improve the quality of life for these individuals since they will no longer need to endure the difficulties and hardships experienced by those who associate with impaired workers. These improvements are also benefits of this amendment.

In addition, other indirect benefits will occur. For example, audiometric testing will indicate that there are workers with non-occupationally caused hearing difficulties, thereby enabling their referral to otologists for treatment. (For an example, see Ex. 321–1, p. 2.) Monitoring will provide information on workplace noise levels that may be used by workers and their union representatives in collective bargaining negotiations concerning work conditions. However, these informational benefits are not easily quantified, and the following discussion will focus on the benefits resulting from the increased use of personal hearing protectors as required by the amendment.

The hearing conservation amendment will also lead to a more equitable distribution of the costs and benefits of industrial production. Currently, one undesirable side effect of industrial production is the loss of hearing ability among a substantial number of workers. Although workers bear this cost of industrial production, the benefits of this production are shared by firms, stockholders, and consumers, as well as by workers. One traditional principle of distributional equity is that those who benefit from an activity should share in its costs. In order to prevent occupational hearing loss, implementation of the hearing conservation amendment will impose compliance costs on firms. Depending on the particular economic circumstances of these firms, these costs may be passed on to consumers or borne by stockholders. In both cases, most workers will no longer bear the cost of occupational hearing loss, while those who share the benefits of industrial production will share the costs of preventing that loss.

Moreover, the benefits of the reduced incidence of occupational hearing loss will be experienced to a greater extent by poorer and lesser educated workers who often have little choice except to work in the noisiest and least healthful jobs. Evidence derived from a U.S. Public Health Service Survey shows that for every age group, those of lower educational attainment have a higher risk of hearing impairment than those with higher levels of education (Center for Policy Alternatives, "Some Considerations," Ex. 138A, 3–2 to 3–3). Thus, the reduced incidence of occupational hearing impairment will more than proportionately benefit those with fewer material resources.

In this section, the various benefits of the hearing conservation amendment are discussed. The primary benefit of the amendment—the prevention of occupational hearing impairment—is treated extensively by including first, an examination of the major studies in the record, second, a description of OSHA's methodology for updating the estimates of the benefits and third, a presentation of the results of OSHA's calculations. Several other effects of the amendment, including improved workplace safety, and possible reductions in cardiovascular illness, absenteeism, medical costs, and workers' compensation payments, are also discussed. Finally, although the current record lacks the information needed for a final evaluation, two possible benefits are analyzed: reduced annoyance and improved productivity.

Material Impairment of Hearing Prevented

Previous Estimates

Four major studies present in the record estimate the number of hearing impairments that would be prevented by an OSHA standard regulating occupational noise exposure. Although each has certain inadequacies, taken together they reveal that occupational noise >85 dB impairs a substantial number of workers. Based on these studies and OSHA's own calculations and analysis, presented below, the Agency has concluded that regulatory action is necessary.

Bolt, Beranek, and Newman, Inc. (BBN), a consulting firm under contract to OSHA, prepared a report entitled "Impact of Noise Control at the Workplace" (Ex. 7), which was dated January 1, 1974. They estimated, based on "informal discussions with industry spokesmen", their extensive experience conducting noise surveys, and 1973 employment data, that 8,524,000 workers (59.3 percent of the 14,382,000 production workers in 19 two-digit industries) were exposed to noise levels > 85 dB, while 3,755,000 workers (26.1 percent) were exposed to levels > 90 dB (BBN, Ex. 7, p. C–2). For demonstration purposes they assumed that 30 percent of production workers were exposed to levels > 90 dB and an additional 40 percent were exposed between 85 and 90 dB. (Ex. 7, p. D–3). Then using the risk data of Baughn, they calculated that maximum compliance with a 90 dB Permissible Exposure Limit (PEL), which they referred to as "the present standard," would reduce the number handicapped at retirement by 700,000 (25 dB fence at 500, 1000, and 2000 Hz); and that compliance with an 85 dB PEL would reduce this number by an additional 770,000.

This study formed the basis for BBN's testimony at the 1975 hearings. After those hearings, OSHA contracted with BBN for a more extensive study of workplace noise and the impact of 85 and 90 dB PEL's. The resulting study, entitled "Economic Impact Analysis of Proposed Noise Control Regulation" (Ex. 192), was released by OSHA in 1976. In it, BBN estimated that 4,468,400 workers (34.5 percent of the 12,939,300 production workers in the 19 industries studied) were exposed to noise levels > 85 dB, while 2,393,200 workers (18.3 percent) were exposed to levels > 90 dB (BBN, Ex. 192, p. 2–7).

Using dose-response relationships for noise exposure and hearing impairment developed by Baughn and the team of Burns and Robinson, BBN estimated the number of hearing impairments that would occur under a number of alternative regulations, definitions of material impairment, and assumptions concerning job mobility. They estimated that after implementation of a 90 dB PEL, between 86,400 and 675,100 workers would still be impaired (25 dB fence at 500, 1000, and 2000 Hz) while an 85 dB PEL would reduce this to between 44,400 and 631,200. Therefore, the additional impairments prevented by an 85 dB PEL would be between 42,000 and 243,900 (BBN, Ex. 192, p. 2–35). (The range of estimates was due to the use of two measures of the risk of impairment: the Burns and Robinson data for the lower bound and the Baughn data for the upper bound.)

In addition, BBN made estimates of the benefits of requiring hearing protector use in combination with the 90 and 85 dB PEL's. They did this using three different assumptions concerning hearing protector use. First, that all workers required would wear hearing protectors and three-fourths of them would wear them correctly. Second, that three-fourths of the workers required to do so would wear hearing protectors and three-fourths of them would wear their hearing protectors correctly. Third, that one-half of the workers required to

do so would wear hearing protectors and one-half of them would wear them correctly. In all cases, correct use of hearing protectors was assumed to yield a 30 dB attenuation.

Using these assumptions, BBN calculated that a 90 dB PEL for engineering controls, with hearing protector use for those exposed above 85 dB, would leave between 10,800 and 324,200 impairments after 20 years of exposure if everyone who required hearing protectors wore them. The number of impairments remaining in the workforce was larger under the second and third assumptions. For these two assumptions, the estimates of impairments remaining in the population were between 30,000 and 458,400 impairments (second assumption), and 32,900 and 834,900 impairments (third assumption) (BBN, Ex. 192, p. 2-35). Compared to the effects of a 90 dB PEL, the use of hearing protectors by those exposed above 85 dB was therefore estimated to prevent at least an additional 53,500 to 75,600 impairments (lower bound estimate based on the Burns and Robinson data) or an additional 240,200 to 550,900 impairments (upper bound estimate based on the Baughn data).

The estimates provided by BBN require updating for several reasons. First, the production work force of 12,939,300 for the 19 industries studied by BBN was based on employment data for 1975. Second, BBN calculated the benefits of noise control assuming a workforce composed entirely of 20-year-olds who would be exposed to noise for 20 years. This inaccurately depicts the effects of noise on a real work force that also contains older workers and retirees who have been exposed for more than 20 years. Third, in most cases, the number of hearing impairments was calculated for hearing thresholds greater than or equal to a 25 dB average of 500, 1000, and 2000 Hz. For reasons discussed in the Health Effects section, OSHA believes that this combination of frequencies is not the most appropriate measure of material hearing impairment and that a 25 dB average of hearing threshold levels at the frequencies of 1000, 2000, and 3000 Hz is preferable.

A third benefits estimate was performed by the Center for Policy Alternatives (CPA) under contract to the Environmental Protection Agency (EPA). Entitled "Some Considerations in Choosing an Occupational Noise Exposure Regulation," it was presented at the first hearings. Using the risk data of Baughn throughout their report, CPA estimated that present noise exposures (based on the estimates in BBN's first report and assuming no job mobility) would lead to 1,649,000 impairments (25 dB at 500, 1000, and 2000 Hz) after 40 years of exposure. They calculated that if noise exposures for all workers above 90 dB were brought down to 90 dB, the number of impairments could be reduced to 1,106,000, while if all exposures above 85 dB were brought down to 85 dB, the number of impairments could be reduced to 710,000 (CPA, Ex. 138A, p. 2-26). Thus a 90 dB PEL could prevent 543,000 hearing impairments while an 85 dB PEL could prevent an additional 396,000 impairments.

A fourth estimate of the impairments prevented by the proposed noise regulation that was submitted to the record and subjected to examination at the 1978 hearings was also performed by CPA under contract to EPA. ("Economic/Social Impact of Occupational Noise Exposure Regulations," Ex. 232). This report continued the earlier research CPA had performed for EPA (Ex. 138A). The noise exposure profile used in the second CPA report was based on the same raw exposure data that BBN had collected for their second report (Ex. 192), although the data were modified by CPA. CPA estimated that after the establishment of equilibrium, compliance with a 90 dB PEL would prevent 770,000 workers from impairment (25 dB fence at 500, 1000, and 2000 Hz) while an 85 dB PEL would prevent 1,350,000 impairments (CPA, Ex. 232, p. 5p7). Thus the additional impairments prevented by the 85 dB PEL would total 580,000.

For various reasons the CPA estimates also require updating. First, the estimates were based on 1974 employment levels rather than on the latest available data. Second, although CPA used an age distribution of the exposed population, they excluded retirees and did not distinguish between men and women. OSHA has determined that these calculations should include future retirees because they will also benefit from hearing conservation programs. In addition the calculations must distinguish between men and women because of the presbycusis differences between the sexes. Third, CPA used the frequencies 500, 1000, and 2000 Hz instead of the more appropriate 1000, 2000, and 3000 Hz. Fourth, the CPA study discussed the benefits of engineering control strategies to reduce noise levels to 90 and 85 dB, but not the benefits of hearing conservation programs that require the issuance and use of hearing protectors.

OSHA's Methodology

In order to improve upon the estimates of BBN and CPA, OSHA has decided to revise and update the calculation of the benefits of the hearing conservation amendment. The principal benefit of the hearing conservation amendment will be to prevent occupational hearing impairments through the inter-related aspects of effective hearing conservation programs. For example, monitoring provides information on the need for hearing protection and the type of protectors required. The use of these hearing protectors will reduce worker exposures. Training sessions will instruct workers in properly fitting, maintaining, and using hearing protectors. Audiometric testing detects temporary and permanent shifts in hearing ability, thereby detecting workers who are susceptible to hearing loss, identifying workers who may be wearing their hearing protectors improperly, and motivating those who would not otherwise wear them.

OSHA's estimates of the benefits of hearing conservation programs were calculated by comparing the number of hearing impairments that would occur if no hearing conservation programs exist with the number that will occur after they are established. The methodology used to estimate the benefits is derived from the studies summarized above as well as from other evidence contained in the record. Specifically, OSHA has determined that the methodology of the CPA report is more appropriate than the simpler methodology followed by BBN. BBN's methodology was based on a hypothetical work force composed of 20-year-olds, while CPA's methodology used the actual age distribution of the noise-exposed population. OSHA's calculations do, however, use the noise exposure distribution developed by BBN since it is the best available evidence on occupational noise exposures.

The benefits of preventing hearing impairment are described here by presenting (1) the number of persons prevented by hearing conservation programs from incurring material impairment of hearing after the full effects of these programs are realized, (2) the number of persons prevented from incurring material impairment of hearing at years selected from the interim time period before the full effects are realized, and (3) the accumulated person-years of impairment prevented over that time period.

People in the *current* workforce will only gain a limited benefit from the hearing conservation programs

established by this hearing conservation amendment since many of these workers have already suffered noise-induced hearing loss. The full benefits of the amendment will be realized only by workers who spend their entire working lives covered by its provisions. It will take a number of years for the current worker population to be completely replaced by people who have been covered by hearing conservation programs for all of their working lives. Over time, the number of people prevented from incurring a material impairment will rise until an equilibrium is reached after the entire pre-hearing conservation work force has been replaced. With the continued provision of hearing protectors and hearing conservation programs, this equilibrium level of impairments prevented should continue for the years following the establishment of equilibrium.

Although the benefits of preventing occupational hearing impairment are not fully realized until equilibrium is reached, benefits will accrue during the period prior to equilibrium. As the years advance, the number of workers prevented, at any one time, from having a material impairment of hearing will increase. In order to describe this progression, the number of material impairments prevented during the 10th, 20th, 30th, and 40th years following implementation were calculated and are referred to as the interim benefits of the hearing conservation programs.

These first two descriptions, the number of impairments prevented at equilibrium and the number prevented at 4 interim years, provide only views of the benefits at particular time points. These "snapshot" views fail to capture the differences in the number of impairment-free years each person has enjoyed. For example, the number of impairments prevented at the 40th interim year will include some people who have been free from impairment for 40 years, as well as some people free from impairment for as short as 1 year. In fact, as time passes after implementation, the average number of impairment-free years per impairment prevented increases.

In order to describe this pattern, OSHA has calculated the accumulated number of person-years of impairment prevented over the interim time period. The number of person-years of impairment prevented is derived by multiplying the number of impairments prevented by the number of years each individual was kept free from impairment. For example, 2 people prevented from incurring a material impairment of hearing for 10 years apiece equals 20 person-years of impairment prevented. This would also be equal to 1 person for 20 years or 4 people for 5 years.

The accumulated person-years of impairment prevented were estimated from the interim benefits using the procedures suggested and used by CPA (Ex. 232, p. B–21), and described in Appendix A of OSHA's Final Regulatory Analysis. Estimates of the accumulated number of person-years of impairment prevented were calculated for 10, 20, 30, 40, and 70 years after the implementation of hearing conservation programs. Seventy years was chosen to approximate the length of time required for equilibrium to be reached. Since these calculations were based on a population that included retirees, and since many retirees live well into their 80's, it will take at least 70 years for people in the existing workforce, who have spent some of their working lives without the benefits of hearing conservation programs, to be replaced by people who have had those benefits.

Noise Exposure Distribution. These updated hearing impairment calculations are based on the same set of 19 industries and the same noise exposure data used by BBN for their second study of the proposed regulation. (CPA used the same set of industries, but modified the exposure data.) BBN, in their economic impact analysis, presented a noise exposure distribution based on surveys of 68 different establishments in 19 two-digit standard industrial classification (SIC) industries. The industries selected by BBN were the ones believed to contain most of the noisy workplaces in the U.S. (BBN, Ex. 192, p. 2–1). These industries and the number of production workers in them during 1979 are listed in Table 3.

Note.—That the total number of workers in these industries today is about 2 million greater than BBN's 1976 estimate.

The selection of industries and establishments was based on BBN's extensive experience with industrial noise and its control. During the survey, BBN estimated the number of workers exposed to various noise levels within 5 dB ranges. Because of uncertainty in the classification of workers by exposure level, BBN adjusted the raw data by distributing one-fourth of the workers in each 5 dB range to the next highest 5 dB range and one-fourth to the next lowest 5 dB range. Although CPA judged this adjustment to be inappropriate (See Ex. 232, p. B–4), OSHA has retained it because BBN was more familiar with the raw data and its peculiarities.

Table 3.—*Industries Studied*

SIC code[1]	Industry title[1]	Production workers[2] (thousands)
20	Food	1,178.2
21	Tobacco	62.5
22	Textiles	777.0
23	Apparel	1,182.2
24	Lumber and wood	648.3
25	Furniture and fixtures	390.0
26	Paper	641.6
27	Printing and publishing	702.2
28	Chemicals	636.9
29	Petroleum and coal	136.7
30	Rubber and plastics	601.1
31	Leather	267.4
32	Stone, clay, and glass	560.5
33	Primary metals	978.3
34	Fabricated metals	1,366.9
35	Machinery, except electrical	1,816.2
36	Electrical machinery	1,378.6
37	Transportation equipment	1,404.2
49	Utilities	668.3
Total		14,994.0

[1] Executive Office of the President, Office of Management and Budget, *Standard Industrial Classification Manual*, 1972.
[2] Average number of production workers in 1979.
Source: U.S. Department of Labor, Bureau of Labor Statistics, *Employment and Earnings*, 27, (March 1980): 89–98, Table B-2.

These exposure estimates, which were published in the 1976 BBN report (BBN, Ex. 192, pp. 2–4 and 2–7) and discussed at the hearings, have been recalculated to correct minor errors in the original profile. Thus, the noise exposure profile used here differs slightly from the profile published by BBN as Table 2.1 of their report. These differences are small—no more than one-half of one percentage point for any 5 dB exposure range. This recalculation has also corrected the inconsistency of Tables 2.1 and 2.2 of the 1976 BBN report (BBN, Ex. 192, pp. 2–4 and 2–7). Except for the total percentage exposed above 85 dB, the exposure profile used here is consistent with BBN's Table 2.2. The total percentage above 85 dB differs by only one-tenth of one percentage point. (See also Table 11 in the Cost of Compliance section below.) Table 4 presents the corrected noise exposure distribution for the 19 industries.

Table 4.—*Noise Exposure Distribution*

Exposure Level (dB)	Percent
Less than 80	48.69
80–85	16.74
85–90	14.06
90–95	10.08
95–100	5.47
100+	2.97
Total	100.00

Source: Bolt, Beranek, and Newman. This is a corrected version of Table 2.1 from "Economic Impact of Proposed Noise Control Regulation," Ex. 192, p. 2–4.

OSHA has chosen to use the BBN exposure estimates because they remain the most comprehensive and detailed estimates of occupational noise exposures in U.S. industry. Although these estimates were briefly criticized at the hearings (see Hearing Transcript,

Sept. 21, 1976, pp. 139–43; Sept. 22, 1976, pp. 237–42, 360–1) as well as in the post-hearing comments (Ex. 279–8, pp. 37–8, 69–72), no one came forward with another set of exposure estimates that includes both the full range of industries and the detailed exposure levels of the BBN estimates. The American Road Builders Association (Ex. 186B) and the Motor Vehicle Manufacturing Association (Ex. 242D) presented estimates limited to the specific industries in which their member companies operate. Evidence, based on samples drawn from a wider range of industries, is included in surveys by Hearing Conservation Noise Control (Ex. 240B) and NIOSH (Ex. 321–14B and Ex. 321–14D). These surveys present the number of workers exposed above either 90 or 85 dB but do not provide a detailed classification of employees by 5 dB exposure level ranges as do the BBN estimates. This classification is necessary for the matching of the exposure distribution with the risk matrices to estimate the number of hearing impairments prevented by hearing conservation programs.

OSHA has concluded that three simplifying assumptions were necessary in order to use the BBN noise exposure distribution to estimate the number of hearing impairments prevented. First, that BBN's noise exposure distribution adequately describes the occupational noise environment in the 19 industries studied, and that the 19 industries encompass all substantial occupational noise exposure. Second, that the noise exposure distribution and the size of the work force in the 19 industries will remain unchanged for the 70-year period used to calculate benefits. If there are changes in the noise distribution and the size of the work force which increase the number of persons exposed to harmful noise levels, this assumption will lead to an understatement of the number of hearing impairments prevented. On the other hand, if these changes decrease the number of persons exposed, then there will be an overstatement of the number of impairments prevented. Third, in industries with fluctuating noise levels, it was assumed that a 5 dB exchange rate adequately represents time-weighted exposure levels. The BBN data are based on a 5 dB exchange rate. The CPA report argued that these data should be adjusted to take into account a 3 dB exchange rate (CPA, Ex. 232, p. B–5).

The exchange rate or the "doubling rate" is a way of either averaging or comparing exposure levels and durations. Under a 5 dB exchange rate, for a 5 dB increase in the exposure level the exposure duration must be halved to obtain an equivalent time-weighted exposure. Thus, 8 hours of exposure to a level of 90 dB is equal to 4 hours at 95 dB. Similarly, under a 3 dB rate, an increase of 3 dB necessitates halving the duration—e.g., 8 hours at 90 dB equals 4 hours at 93 dB. Since OSHA is currently retaining the 5dB exchange rate used in 29 CFR 1910.95, and since the procedure used by CPA to adjust the BBN data does not appear to be based on actual exposure data, the Agency did not adjust the noise exposure distribution to account for a 3 dB exchange rate. This adjustment would have increased the effective exposure level of the work force and would have increased the estimated number of hearing impairments. By not performing this adjustment, OSHA may be understating the number of hearing impairments prevented by the final amendment.

Fences. The methodology used to estimate the number of people suffering impairments of hearing continues the standard practice of drawing fences to demarcate "normal" from "materially impaired" and then calculating the number of persons with hearing abilities worse than the level of that fence. An important issue is the choice of appropriate fences, both in terms of the levels used as well as the frequencies to be examined or averaged. BBN did most of their calculations using a 25 dB average of hearing threshold levels at the frequencies of 500, 1000, and 2000 Hz. However, BBN also examined the effects of choosing other levels, 15 and 35 dB, as well as an average of the frequencies of 1000, 2000, and 3000 Hz (BBN, Ex. 192, pp. 2–27, 2–28). CPA correctly pointed out that the effect of noise on a population of workers is to cause a change from one population distribution to another. They state:

> Essentially the entire population of workers has worse hearing because of the influence of noise. Those which, without noise, might have had excellent hearing are shifted so that they have less than excellent hearing. Those which without noise, would have had only fair or poor hearing have their hearing handicaps increased. (CPA, Ex. 232, p. 5–2)

Thus, the usual practice of drawing a single fence does not adequately describe the shift of the entire distribution of workers. Therefore, CPA suggested that a series of fences be employed (CPA, Ex. 232, p. 5–3). There were many other comments submitted to the record concerning the choice of appropriate fences, both for the determination of the number of workers suffering material impairment as well as for workers' compensation purposes. (For a discussion of these comments, see the Health Effects Section.) After a thorough review of these comments, OSHA has concluded that the number of hearing impairments prevented by the final amendment should be measured using the fences of 15, 25, and 40 dB. These fences are defined as the average of a person's hearing threshold levels for the frequencies 1000, 2000, and 3000 Hz. As described in the discussion on health effects, these frequencies were chosen as those most appropriate to describe the ability of persons to understand human speech under everyday conditions. The levels were chosen to describe the number of persons with various degrees of hearing loss: mild hearing loss, material impairment, and moderate to severe impairment.

Dose-Response Relationship. A person's hearing ability can be estimated by analyzing two components: the loss in hearing ability due to noise and the loss in hearing ability due to the effects of aging (presbycusis). The following discussion will focus on these two components, presenting OSHA's arguments concerning the best available and most appropriate evidence for each.

The change in hearing ability due to noise exposure is measured in terms of the permanent decibel shift in hearing thresholds caused by noise. This change, the amount of lost hearing ability, is more commonly called the Noise-Induced Permanent Threshold Shift or NIPTS. An examination of the hearing loss studies cited in the Health Effects section reveals a fair degree of consistency in their basic findings concerning the amount of NIPTS caused by various combinations of exposure levels and durations. One way to incorporate all of the information in these studies is to average the results. Col. Daniel Johnson has recommended such an approach (Ex. 17, p. 2) and EPA has applied it to the data of Baughn, Burns and Robinson, and Passchier-Vermeer both for establishing criteria for noise regulation (Ex. 26–3) and for identifying safe levels of noise exposure (Ex. 30, p. C–5). Recently Col. Johnson published a variety of calculations based on averaging the data of Burns and Robinson (referred to only as "Robinson" by Johnson) and Passchier-Vermeer (Ex. 310).

OSHA has chosen to use the studies of Burns and Robinson and Passchier-Vermeer because of the completeness of their data for describing the NIPTS at frequencies from 500 to 6000 Hz for various population percentiles, noise levels, and exposure durations. Baughn's data (Ex. 11) were not available for individual frequencies, thus preventing

the averaging of hearing threshold levels at 1000, 2000, and 3000 Hz. The NIOSH data (Ex. 26–2) were limited to exposures of 85, 90, and 95 dB, thus preventing the estimation of hearing loss for exposures to 80 and 100 dB.

OSHA has determined that the results of the Burns and Robinson and Passchier-Vermeer studies can be strengthened by averaging the NIPTS values from each. Because Johnson's recent publication, *Derivation of Presbycusis and Noise Induced Permanent Threshold Shift* (Ex. 310), provides a convenient presentation of this data, OSHA has used it as the basis for the calculation of the number of occupational hearing impairments. Table A.7 in Appendix A of OSHA's Final Regulatory Analysis presents the NIPTS values, derived from the Johnson publication, which were used by OSHA.

The second component that determines a person's hearing ability is calculated by observing the hearing ability of a "normal" population, and making adjustments to account for the effects of aging (presbycusis) on hearing ability. For this study, OSHA has used a presbycusis base developed by Johnson from the data of the U.S. Public Health Survey conducted in 1960–62. In this survey, 6,672 persons aged 18–79, drawn from the civilian, non-institutional population of the U.S., were given audiometric examinations. Thus, the survey gives a detailed picture of the actual hearing ability of the U.S. population. Other researchers, most notably Burns and Robinson, have screened their populations quite severely in order to eliminate all individuals who have been exposed to gunfire, or had ear disease, or other ear abnormalities. These screening techniques were designed to create a population that is otologically "normal."

But the actual work force is not otologically "normal." Some workers have been exposed to gunfire, both from sport shooting and from service in the armed forces. Other workers have or have had ear disease or other ear abnormalities. OSHA has therefore decided that the presbycusis base to use in calculating the number of hearing impairments in the work force should reflect, as closely as possible, the real world hearing ability of the U.S. population. The Public Health Survey represents the best available description of this hearing ability. An examination of the aging curves in Baughn (Ex. 12, p. 26) and Berger, Royster, and Thomas (Ex. 286A, pp. 42, 43, and 57) reveals that the data of the Public Health Survey are consistent with other major presbycusis bases.

The two components, the NIPTS and the presbycusis, may then be added together to find the total hearing loss for populations of given ages and sexes exposed to specified levels and durations (See Johnson's discussion, Ex. 310, p. 16). Johnson has provided a convenient computer program (Ex. 310, pp. 43–47) which was used to generate dose-response relationships. A simple linear interpolation was used to match the exposure distribution with these dose-response relationships to create the risk matrices (Tables A.9, A.10, A.11 in Appendix A of OSHA's Final Regulatory Analysis) used in the calculation of the number of hearing impairments.

Hearing Protector Use and Attenuation. Under the current noise standard, hearing protector use is mandatory for workers exposed above the PEL (90 dB TWA) where there are no feasible engineering or administrative controls. Under the amendment hearing protectors must also be provided to all workers exposed to noise levels between 85 and 90 dB, but of these workers only those who have experienced a significant threshold shift are required to wear hearing protectors. It is impossible to project accurately the number of workers exposed to noise between 85 and 90 dB who would voluntarily choose or be required to wear hearing protectors, but it is probable that the annual audiometric test will identify, by showing significant threshold shifts, the employees most vulnerable to occupational hearing loss. These employees will then be required to use hearing protectors, which should prevent most of them from incurring a material impairment of hearing. Thus, the following calculations are based on the assumption that following the implementation of this amendment, all workers who are vulnerable to occupational hearing loss will wear hearing protectors when exposed to noise >85 dB.

The CPA report did not present any assumptions concerning hearing protector use or attenuation. BBN assumed for correct usage, an attenuation value of 30 dB (BBN, Ex. 192, p. 2–34). As the following studies indicate, this is an attenuation that is generally achieved only in laboratory settings.

In a NIOSH-sponsored study (*A Field Investigation of Noise Reduction Afforded by Insert-Type Hearing Protectors*, Ex. 306), a team of researchers investigated the attenuation received by workers using various types of hearing protectors in actual industrial settings. The three earplugs tested had median attenuation values of 7.5, 10.0, and 12.8 dB (Ex. 306, p. 28). Padilla's study revealed an overall mean attenuation of 12 dB at 500 Hz for the earplugs he tested. He estimated that this was equal to approximately 7 dB over the frequencies 125–6000 Hz. ("Ear Plug Performance in Industrial Field Conditions," Ex. 301, p. 34). Regan found mean attenuation values of 25.11 and 19.74 dB for two types of earplugs and 33.04 dB for one type of earmuff (*Real Ear Attenuation of Ear Protective Devices Worn in Industry*, Ex. 300A, pp. 67–71). In addition, Berger presents information from the National Acoustic Laboratories (Australia) for four different earplugs. For these earplugs, the Noise Reduction Rating with a correction of two standard deviations ranged from 0–14 dB, while with a correction of one standard deviation the range was 9–19 dB ("Laboratory Estimates of the Real World Performance of Hearing Protectors," Ex. 321–35E).

The results of these studies reveal, for the earplugs tested, a mean attenuation of approximately 10–15 dB in industrial settings. It is reasonable to assume that the training and audiometric testing provisions of the hearing conservation amendment will improve industrial hearing conservation programs to at least maintain the upper bound of this average attenuation range. Moreover, those exposed to very loud workplace noise can use earmuffs or a combination of earmuffs and earplugs. These two options appear to have a higher attenuation rating than the earplugs tested in the studies mentioned. Accordingly, for the purposes of these calculations, OSHA has concluded that a reasonable assumption is that workers using personal hearing protection will receive an attenuation of 15 dB.

Mobility. The OSHA calculations were based on the assumption that workers do not move between jobs with harmful noise exposures and jobs without such exposures. Both BBN and CPA generally assumed such mobility to calculate the number of material hearing impairments. However, they used different procedures and assumptions concerning the effect of mobility on the number of material impairments in the population and the number that would benefit from reduced occupational noise exposure. BBN's calculations suggest that assuming mobility reduces the number of additional workers protected by controlling noise levels to 85 dB. (BBN, Ex. 192, Table 2.11, p. 2–30). CPA, on the other hand, argued that an assumption of mobility dramatically increases both the estimated number of

material impairments in the pre-regulation population and the number of impairments that would be prevented by regulatory action (Ex. 232, p. 5–8. See also discussion at the hearings by CPA: Hearing Transcript, Oct. 8, 1976, pp. 2286–92, 2343–9, 2354–8 and BBN's reply in their Post-Hearing Comments, Ex. 278, pp. 60–65).

Occupational mobility has two separate, contradictory effects. First, mobility from jobs with harmful noise exposures to jobs without such exposures means that each individual worker will be exposed to harmful levels of noise for a shorter length of time because he or she will not have spent an entire lifetime exposed to harmful levels of occupational noise. This shortened duration of exposure lowers a worker's chance of suffering an occupational hearing impairment as well as the amount of lost hearing ability, and thus would tend to reduce the number of impairments in the entire population. The second effect of mobility, however, is to increase the population exposed to harmful noise levels, even though for shorter periods of time. This increase in the population at risk will tend to increase the number of occupational hearing impairments.

CPA has calculated that, on the average, workers hold three different jobs during their lifetimes. If one assumes that during one of these jobs they will be exposed to harmful occupational noise levels and that the other two jobs have no such noise exposure, then the total population at risk will be increased threefold. (The noise exposure distribution indicates that approximately one-third of the jobs in the 19 industries have noise exposures >85 dB while two-thirds have exposures less than this. See Table 4.) In order for there to be no difference in the estimated number of hearing impairments when comparing the assumptions of mobility and no mobility, this threefold increase in the number of workers must be matched by a two-thirds decrease for each worker in the percentage risk of crossing a fence. If the decrease is less than two-thirds, then mobility will increase the number of impairments. If it is more than two-thirds, then mobility will decrease the number of impairments.

CPA calculated, using the equal energy rule (the 3 dB exchange rate), equivalent lifetime exposure levels for workers holding one job with harmful noise exposures and two jobs without such exposures during a working lifetime. This calculation reveals that the maximum reduction in a worker's lifetime exposure level with an assumption of three jobs per worker is about 5 dB for exposures >90 dB, 4 dB for exposures of 85–90 dB, and 3 dB for exposures of 80–85 dB (CPA, Ex. 232, Table B–6, p. B–14). An examination of the risk matrices (Tables A.9, A.10, A.11 in Appendix A of OSHA's Final Regulatory Analysis) shows that these reductions in lifetime exposure levels lead to a decrease of less than two-thirds in the percentage risk. Therefore, the decrease in the percentage risk is more than matched by the increase in the population at risk due to mobility. Thus, even though an individual's risk of impairment declines from the shortened exposure duration, the increase in the number of persons at risk leads to an increase in the total number of impairments in the population.

Accordingly, the Agency concurs with the judgment of CPA that an assumption of mobility will increase the estimated number of material impairments in the noise-exposed population and therefore will increase the estimated number of impairments prevented by the regulation. As CPA also argued, this effect occurs whenever workers move between jobs with and jobs without harmful noise levels and is intensified by increasing the assumed number of jobs per worker (CPA, Ex. 232, p. 5–8). This effect follows from the shape of the dose-response curve for noise, which is such that the first exposure to noise is more damaging than successive increments of exposure (Hearing Transcript, Oct. 8, 1976, p. 2357).

However, the current record does not contain sufficient information on the current pattern of occupational mobility for the industries under study to enable OSHA to update the hearing impairment calculations using a specific mobility rate. Therefore, OSHA has assumed that no mobility occurs. Since such mobility does take place, this assumption will lead to an understatement of the estimated number of material impairments in the population as well as to an understatement of the number of hearing impairments prevented by the final hearing conservation amendment.

Results of OSHA's Calculations

Occupational hearing impairment is a function of age, sex, exposure level, and exposure duration. OSHA's methodology for calculating the number of material impairments incorporates these functional relationships.

The six basic steps used to calculate the number of material impairments prevented by the hearing conservation amendment were:

1. Develop an age distribution,
2. Develop an age by exposure level distribution,
3. Adjust exposure levels for the use of hearing protectors,
4. Develop a sex distribution and combine with the age by exposure level distribution,
5. Calculate the number of hearing impairments from all causes,
6. Determine the number of occupational hearing impairments.

These six steps, as well as the procedure used to estimate the interim benefits of the regulation, are described in detail in Appendix A of OSHA's Final Regulatory Analysis. It should be noted that OSHA's procedure uses an age distribution that includes retired workers, as well as incorporating a distribution of the work force by sex, thus improving upon two deficiencies of previous studies.

The benefits of the hearing conservation amendment will accrue primarily to future populations of workers, slowly reducing the number of material impairments in these populations until an equilibrium is reached. The results of these calculations show that 1,000,000 individuals currently have crossed a 25 dB fence (1000, 2000, and 3000 Hz) due to occupational noise. Hearing conservation programs are expected to reduce this number to 848,000 persons 10 years after implementation; 583,000 in 20 years; 364,000 in 30 years; 201,000 in 40 years; and 162,000 at equilibrium (See Appendix A of OSHA's Final Regulatory Analysis, Table A.15). In each of these years, the number of hearing impairments which would have existed in the absence of hearing conservation programs remains constant at 1,060,000.[2] Consequently, the number of hearing impairments prevented by hearing conservation programs can be calculated by subtracting the number that will exist in any of the years from the 1,060,000 impairments that would have existed. Hearing conservation programs, therefore, are expected to reduce the number of hearing impairments (25 dB fence) by at least 212,000 in the 10th year after implementation; 477,000 in the 20th year; 696,000 in the 30th year; 799,000 for the 40th year; and 898,000 at equilibrium (See Table 5). The reduction of 898,000 impairments at any one time after the establishment of equilibrium represents 84.7 percent of the occupational impairments that would have occurred without hearing conservation programs.

In addition, OSHA has calculated the number of individuals with hearing impairments at any one time after the

[2] This is based on the assumption of a constant size for the work force exposed to noise, as discussed above.

establishment of equilibrium for two other fences—15 dB and 40 dB at 1000, 2000, and 3000 Hz. These calculations reveal that without hearing conservation programs, 1,624,000 people will be across a 15 dB fence, and 473,000 will be across the 40 dB fence due to occupational noise exposure. Hearing conservation programs for those exposed to levels >85 dB are expected to reduce this to 321,000 across the 15 dB fence, and 59,000 across the 40 dB fence (Table A.13 of OSHA's Final Regulatory Analysis). Thus after the establishment of equilibrium, these programs can be expected to reduce the number of persons across the fences by 1,303,000 for the 15 dB fence, and 412,000 for the 40 dB fence (See Table 5), reductions of 80.2 percent, and 87.1 percent, respectively.

Table 5.—Hearing Impairments Prevented by the Hearing Conservation Amendment

	Years after implementation				Equilibrium
	10	20	30	40	
Number of impairments prevented:					
15 dB Fence					1,303,000
25 dB Fence	212,000	477,000	686,000	799,000	898,000
40 dB Fence					412,000
Accumulated person-years of impairment prevented:					
25 dB Fence	1,060,000	4,505,000	10,370,000	17,948,000	43,300,000

Source: OSHA, Office of Regulatory Analysis.

Finally, the number of person-years of impairment prevented can be calculated. (The procedure used follows that of CPA, Ex. 232, and is described in Appendix A of OSHA's Final Regulatory Analysis.) In the 70 years following implementation of the amendment, the total accumulated person-years of prevented impairment is 43.3 million. The pattern of this accumulation is presented in Table 5.

Two conclusions follow from these data: First, without hearing conservation programs, a large number of workers will suffer hearing impairment and reduced hearing ability. Therefore, OSHA has determined that workers who are exposed to occupational noise >85 dB (TWA) face a significant risk of material impairment. Second, hearing conservation programs for all workers exposed to >85 dB (TWA) will substantially reduce that risk.

Full Compliance Assumptions

In keeping with past practice concerning the preparation of economic analyses of OSHA regulations, full compliance with the hearing conservation amendment, including 100 percent usage of hearing protectors, has been assumed. For a variety of reasons, this may not occur. Many workers cannot or will not wear hearing protectors. Workers with irregularly shaped or infected ear canals cannot wear ear inserts. Similarly, persons needing to wear either prescription or safety glasses often cannot wear ear muffs because the frames of the glasses will break the seal the muff makes around the ear. More often, hearing protectors will not be worn because they are uncomfortable. Workers have complained about headaches, claustrophobia, and general discomfort from the use of ear protectors. In addition, the use of earplugs may lead to ear infections, especially in dirty workplaces.

Full compliance with this amendment will have substantial benefits. Partial compliance will also provide benefits, although not to the same extent. Moreover, the estimated attenuation of 15 dB after regulation may also be an overestimate of the benefit achieved from the use of hearing protectors. In order to provide this attenuation, hearing protectors must be fitted carefully, worn properly, maintained conscientiously, and replaced in a timely fashion. As illustrated in Table 6, if all workers who are required to do so wear hearing protectors, if they receive a 15 dB attenuation, and if they wear their hearing protection every day that they are exposed to noise, then the total pool of material hearing impairment from occupational causes (at equilibrium) will be reduced by 898,000 persons. If only 10 dB of attenuation is achieved, the number of material impairments prevented falls to 750,000. However, if only 50 percent of workers exposed above 85 dB receive 10 dB attenuation and the remaining 50 percent do not wear ear protection, then the reduction in the number of impairments declines to 381,000. The effectiveness of hearing conservation programs is therefore very dependent on the attenuation that hearing protectors provide and their daily use by all workers.

Table 6.—Sensitivity Analysis for Assumptions on Hearing Protector Use and Attenuation

Assumption	Number of occupational impairments prevented[1]
100% of workers required[2] wear hearing protectors and receive 15 dB attenuation	898,000
100% of workers required[2] wear hearing protectors and receive 10 dB attenuation	750,000
50% of workers required[2] wear hearing protectors and receive 10 dB attenuation	381,000
No hearing protector use	0

[1] Hearing threshold levels >25 dB average of 1000, 2000, and 3000 Hz. Data are for equilibrium.
[2] All workers exposed to levels >90 dB after feasible engineering and administrative controls have been implemented and all workers exposed >85 dB who have shown a permanent significant threshold shift.
Source: OSHA, Office of Regulatory Analysis.

These calculations of the number of impairments prevented are also based on the assumption that workers exposed above 85 dB do not currently use hearing protectors. However, the current OSHA standard for noise does require the use of hearing protectors by workers exposed to levels above the PEL of 90 dB (TWA) and the establishment by each employer of a "continuing, effective hearing conservation program" for these employees (29 CFR 1910.95(b)(3)). Moreover, there is evidence in the record to suggest that some employees currently do wear hearing protection and that some companies have established hearing conservation programs. (The BBN exposure estimates were based solely on the use of non-use of engineering controls. The use or personal hearing protectors was not factored into their estimates.)

But the effectiveness of these programs and the length of time they have been in operation is less clear. Submissions by Newport News Shipbuilding (Ex. 131), Dupont (Ex. 273A), and Burlington Industries (Ex. 175) describe hearing conservation programs for three large companies that appear to be effective. But one cannot reasonably conclude that all companies with workers exposed to levels greater than 90 dB are maintaining such programs. A NIOSH study revealed that only 29 percent of the manufacturing respondents had such programs, while another 20.1 percent were planning such programs. Most of those without

programs or plans claimed no noise problems (Ex. 321–14B, p. B–3). This study also included the testing of equipment used by 65 companies with hearing conservation programs. These tests revealed that 80 percent of these companies were not in compliance with at least one of the then existing ANSI specifications for audiometers and audiometric test booths (Ex. 321–14B, p. 55).

Based on data from NIOSH's National Occupational Hazard Survey (Ex. 321–14D), it is reasonable to conclude that up to 20 percent of those exposed to greater than 90 dB currently wear hearing protectors. The lack of adequate audiometric testing, monitoring, and training activities, however, make it less likely that a 15 dB attenuation would be achieved. A more reasonable estimate of the current attenuation would be 10 dB, which is the lower bound of the average attenuation range revealed in several studies on the real world attenuation of hearing protectors. (See discussion above.) OSHA has calculated, using the procedures and assumptions detailed in this section and in Appendix A of OSHA's Final Regulatory Analysis, that the effect of this current hearing protector use would ultimately be a reduction of 120,000 material impairments (25 dB fence) from the 1,080,000 that would continue to exist at any one time in the absence of hearing protector use.

OSHA anticipates that fully effective hearing conservation programs for all workers exposed to levels greater than 85 dB would prevent 898,000 impairments after the entire population has worked with hearing conservation programs in effect. Thus, the incremental or additional benefits due to the hearing conservation amendment will be the difference between these benefits and the 120,000 impairments expected to be prevented by existing programs. The final hearing conservation amendment, therefore, is estimated to prevent 778,000 material impairments over and above the number expected to be prevented by current hearing conservation programs. (These 778,000 impairments prevented consist both of workers exposed to levels >90 dB who are not currently receiving hearing protection as well as those exposed between 85 and 90 dB who will benefit from hearing conservation programs for the first time.)

This discussion on the benefits of preventing hearing impairment has shown that there are substantial benefits to be gained from reducing workplace noise exposure by 15 dB for those exposed above 85 dB. It was assumed in this discussion that the reduction of noise exposures would be achieved through the use of personal hearing protectors. However, that reduction could also be achieved by engineering controls, including the redesign of machinery and the construction of baffles to impede the transmission of sound energy. Engineering controls provide more consistent and dependable protection to worker hearing than personal hearing protectors and are still preferred by OSHA.

Improved Workplace Safety

A second benefit of the hearing conservation amendment is improved workplace safety. The presence of untreated workplace noise can increase the number of accidents because (1) noise can mask warning signals or shouts, and (2) noise exposure might lead to inattentiveness and fatigue, both of which may precipitate accidents. Edith Gulian's summary of studies in the European literature revealed no clear consensus on the relationship between noise and accidents. One study found no relationship, while two others concluded that noise may have contributed to accidents (Gulian, Ex. 97, p. 60). Two other studies in the record, by examining the job safety records of workers before and after the institution of hearing conservation programs, showed a statistically significant reduction in the number of accidents and injuries occurring after the initiation of hearing conservation programs.

Schmidt, Royster, and Pearson (Ex. 321–22F) studied a cotton yarn plant where a hearing conservation program requiring the use of hearing protectors was instituted in 1972. Using a statistical technique by which each worker serves as his or her own control, the researchers compared the mean number of injuries in the 4-year period prior to the hearing conservation program to the 4-year period following institution of the hearing conservation program for two groups of employees exposed to noise levels of 92–96 dB. The results showed a statistically significant reduction in reported injuries.[3] For one group, the reduction in the mean injury rate was from 0.4 to 0.2 injuries per year, or by about 50 percent; for the other group, the reduction was from 0.5 to 0.3 injuries per year, or by about 40 percent (Schmidt, et al., Ex. 321–22F, p. 22).

A second study was performed by the Raytheon Service Company under contract to NIOSH (Ex. 26–11). The researchers studied the records of a boiler fabrication plant for the 2-year period before the initiation of a hearing conservation program and the 2-year period after program initiation. The results of this study showed a statistically significant [4] reduction in the number of accidents among workers exposed to noise levels >95 dB after the initiation of the hearing conservation program. The median frequency of accidents was reduced from 3.8 to 2.3 accidents per worker per year, or by 39.5 percent (Raytheon, Ex. 26–11, pp. 3–5 to 3–6).

Information from the Bureau of Labor Statistics shows that annually there are about 2,474,000 reported occupational injuries in the 19 industries in this noise study, of which about 1,052,900 are lost workday cases (Bureau of Labor Statistics, *Occupational Injuries and Illnesses in 1978: Summary,* March 1980, Report 586, Table 3, pp. 12–13). If these accidents are distributed evenly among all workers in these industries without regard to noise exposure, then approximately 851,000 total cases and 362,000 lost workday cases could occur each year for those exposed above 85 dB (TWA) [2,474,000 injuries × 34.4 percent (workers exposed>85 dB)=851,056; 1,052,900 lost workday cases × 34.4 percent=362,198]. Similarly, there are 477,000 total cases and 203,000 lost workday cases among those exposed above 90 dB (TWA) [2,474,000 injuries × 19.3 percent=477,482; 1,052,900 lost workday cases x 19.3 percent=203,210]. The Schmidt, Royster, and Pearson study, and the Raytheon study together reveal that the initiation of hearing conservation programs may reduce this yearly toll of accidents.

The reduction in the number of accidents, beside improving the quality of worker lives, may also provide financial benefits to employers by reducing the costs of accidents. These costs include administrative and legal fees, safety administration, damage to equipment, loss of productivity, supplements to workers' compensation payments, and lost income due to inefficiency of replacement personnel. Robert Sharkey, Safety Administrator for Alcoa, estimates that these costs total $14,000 per lost-workday case. (See Peter J. Sheridan, "What Are Accidents Really Costing You?" *Occupational Hazards,* March 1979, pp. 41–43.)

Extra-Auditory Health Benefits

As described in the Health Effects section, there is a wealth of evidence suggesting a link between noise

[3] Statistical significance refers to the probability or confidence, based on laws of probability and statistics, that the decline in the number of accidents was not due solely to chance. In this case, the confidence level was 99.9 percent.

[4] 90 percent confidence level.

exposure and ill effects, including cardiovascular, respiratory, allergenic, musculo-skeletal, and glandular disorders. However, because precise dose-response relationships have not yet been developed OSHA has not attempted to quantify these benefits. One example does reveal the magnitude of the occurrence of cardiac disease in the U.S. today. The current rate for deaths due to heart disease for those between 45 and 64 years old is 536.7 per 100,000 (Bureau of the Census, *Statistical Abstract of the United States*, 1979, p. 77, Table 111). If this rate applies to the 4,984,000 workers aged 45–64 in the 19 industries, then approximately 27,000 will die of heart disease annually. By reducing noise exposure, the hearing conservation amendment may help to prevent some of these premature deaths.

Reduced Absenteeism

The reduction in noise exposures due to hearing protector use should reduce the number of noise-induced illnesses and could also lead to better worker attitudes towards their jobs, thus improving both attendance records and job performance. In both cases, employers, firms, and consumers would benefit from increased output and reduced costs. The Raytheon study (Raytheon, Ex. 26–11) found that the median number of absences for the group exposed to >95 dB fell by 12.4 days per year after initiation of a hearing conservation program. This was a reduction of about 63 percent from the preconservation program level of absences (Raytheon, Ex. 26–11, p. 3–177).

Several studies of the economic impact of the proposed regulation placed a monetary value on the expected reduction in absenteeism. CPA, in their first study, assumed a reduction in absenteeism of 1 day per year per worker exposed over 85 dB. This was calculated to provide an estimated benefit of $2 billion per year (CPA, "Some Considerations," Ex. 138A, p. 2–55). In their second study, CPA used a more complex methodology based on information from the Raytheon report concerning the reduction in the average number of days absent. CPA calculated the value of lost production based on lower and upper bounds—i.e., average production worker wages and value added per production worker. Based on 1975 dollars, CPA estimated that the value of improved worker attendance for an 85 dB PEL would be between $341.04 million and $1.2484 billion per year (CPA, "Economic/Social Impact," Ex. 232, p. 5–28). A third estimate of the value of absenteeism savings was performed by the Council on Wage and Price Stability (COWPS). Although not based on any empirical studies, COWPS assumed that an 85 dB PEL would reduce absenteeism by 1 day for those previously exposed to 85–90 dB and by 2 days for those exposed above 90 dB. COWPS calculated the savings by multiplying the number of person-days saved by the average daily wages of manufacturing workers, including an estimate of the costs for turnover and new worker training. Finally, COWPS concluded that controlling noise exposures to 85 dB would produce a benefit of $271.7 million per year (COWPS, Ex. 208, p. 19).

After a review of these estimates, OSHA has concluded that the best estimates are provided by the methodology used by CPA in their September 1976 report, which was based on information from the Raytheon study. OSHA has chosen to reestimate the absenteeism benefits by updating the CPA calculations for the increase in the size in the labor force and changes in wage rates since 1976. For this update, OSHA has used only the wage rate to estimate the value of production lost from absenteeism. These calculations, which assume that hearing conservation programs will reduce exposures to below 85 dB for those exposed at 90 dB and above, follow the CPA methodology. First the total number of worker-days of absenteeism prevented were calculated by using the number of workers exposed to noise >90 dB and the number of days of absenteeism saved according to the CPA presentation of the Raytheon data (See CPA, Ex. 232, p. 5–25). The equation used was: 1.243 million workers exposed >95 dB × 3.9 days saved per worker + 1.636 million workers exposed to 90–95 dB × 1.55 days saved per worker = 7.384 million worker-days saved. The value of the production gain from reduced absenteeism was then estimated using the 1979 average wage rate in the 19 industries (See *Employment and Earnings*, 27, 3, March 1980, Table C–2.). Thus, 7.384 million worker-days saved × 8 hours per day × $6.76 per hour = $399.3 million. This gain of about $400 million per year from reduced absenteeism will benefit employers by partially offsetting the costs of hearing conservation programs and feasible engineering and administrative controls.

Reduced Medical Costs

Workers, and also society, indirectly through third party medical payments, will benefit financially through reduced medical costs. Although in most cases noise-induced hearing loss is untreatable and irreversible, there still is a drain on medical resources—principally professional time—used to reach those diagnoses. In addition, there is the purchase of prescribed hearing aids in the minority of cases for which hearing aids can help, as well as the hearing aids purchased by workers vainly hoping for a cure. In all three cases, social resources are consumed. The prevention of occupational hearing impairments will free those resources for other uses.

Ideally, the magnitude of this loss could be quantified. However, the current noise record does not include either estimates of this loss or information from which estimates could be calculated. Because of this lack of information, OSHA has not attempted to quantify these savings, although preventing 896,000 hearing impairments should lead to a substantial reduction in medical costs.

Reduced Workers' Compensation Payments

Two estimates of the anticipated reduction in workers' compensation payments for occupational hearing loss are contained in the record. BBN estimated that the *additional* workers' compensation liability saved by reducing noise exposures to 85 dB would be $16.097 million (BBN, Ex. 192, p. 2–38). This is the additional savings, comparing a 90 dB with an 85 dB PEL, not the total reduction expected from the implementation of hearing conservation programs. CPA made an estimate of the *total* potential workers' compensation payments that a noise regulation might save. They calculated that the present value of the stream of potential savings for an 85 dB PEL over the next 40 years would be $530 million (CPA, Ex. 232, p. 5–34).

But any of these estimates is speculative since hearing impairment is often not compensated. Over 70 percent of manufacturing workers in the U.S. live in states that pay few or no hearing impairment claims (EPA, *Occupational Hearing Loss: Workers' Compensation under State and Federal Programs*, Ex. 321–16C, p. viii). EPA estimates that in 1977, 6,095 claims totalling approximately $13 million were paid for occupational hearing loss. This figure could change considerably in the future because the number of claims filed has been increasing dramatically (EPA, Ex. 321–16C, pp. 14–15).

It has been pointed out that an estimate of reduced workers' compensation payments cannot be directly added to the other benefits described in this section. As COWPS testified:

Although a reduction in workmen's compensation payments is a benefit to employers who no longer have to pay workmen's compensation premiums, it represents an almost equal and offsetting cost to workers who no longer receive such payments. (COWPS, Ex. 208, pp. 7–6)

In other words, workers' compensation payments are transfer payments from employers to impaired workers. The true social cost is the incidence of occupational hearing impairment and the various other ill effects of noise; the true social benefit is the reduction in the number of hearing impairments and ill effects.

Annoyance

Several of the studies in the record quantified the benefit of reduced annoyance from noise exposures. (See CPA, "Some Considerations," Ex. 138A, pp. 2–55 to 2–59; Smith *The Occupational Safety and Health Act*, Ex. 261A, pp. 46–52; COWPS, Ex. 208, pp. 17–18.) Although these calculations provide interesting information, they primarily apply to the benefits of using engineering controls to reduce noise exposures. The use of hearing protectors to achieve noise reductions will not create the full value of these benefits, because hearing protectors also create disutilities, especially worker discomfort, for those who must wear them. Thus, the benefits of less annoyance due to lowered noise levels are likely to be considerably reduced by this disutility although there are no data in the record enabling OSHA to make a more precise determination.

Worker Productivity

The hearing conservation amendment may also improve the productivity of workers exposed to high levels of noise. There are two possible mechanisms for this: (1) through improvements in conscious worker attitudes towards their jobs, and (2) through subconscious reductions in psychological and physiological stress. The hearing conservation amendment will improve the quality of worker lives by preventing occupational hearing loss and by reducing the incidence of other noise-induced illnesses. These improvements in the quality of life may improve worker attitudes towards their jobs, thus leading to increases in the quantity and the quality of goods and services they produce. The reduction of noise exposures through the issuance and use of hearing protectors may also improve worker performance even if it does not improve conscious worker morale. In particular, workers may still hold the same attitudes towards their jobs, but may be more productive because of a reduction in the subconscious psychological and physiological stress experienced by workers exposed to workplace noise.

In both cases, employers, workers, and consumers would benefit financially. The increased production and improved product quality would benefit employers by offsetting, at least partially, the cost of the amendment. To the extent that the increases in output and improvements in quality increase the productivity of labor inputs, workers could be able to gain improvements in wages and fringe benefits. Finally, consumers would benefit from the increase in the quantity and quality of output. This increase would enable them to purchase an increased quantity at existing prices or continue to purchase the existing quantity but at reduced prices.

Thus, one can reasonably believe that reductions in noise exposure with the use of hearing protectors could, through improved worker morale and reduced subconscious stress, improve worker productivity and lead to financial benefits for employers, workers, and consumers. However, the empirical literature summarized in submissions to the noise record does not provide enough data to confirm or reject this.

In their criteria document on occupational exposure to noise, NIOSH reviewed some of the literature on the effect of noise on job performance (NIOSH, *Criteria for a Recommended Standard*, Ex. 1). NIOSH discovered that the effect of noise appears to be quite variable depending on the type of noise, the nature of the job, and the attitudes of the person affected. It also appeared that impulsive noise (recurring bursts of noise of high intensity) and intermittent noise (on and off exposures) create greater performance losses than continuous noise. The nature of the job is also important—jobs which require "unremitting attention" or "which place extreme mental demands on the employee" appear to be the most vulnerable to decrements in employee performance under noise exposures. For simple, repetitive tasks, performance may be enhanced by the presence of low to moderate levels of noise. Finally, it appears that certain attitudes and personality factors influence the effect noise has on task performance. Tense, anxious individuals, as well as those already dissatisfied with their jobs may be less able to perform productively under noisy conditions than other persons (NIOSH, *Criteria for a Recommended Standard*, Ex. 1, pp. IV–13 to IV–16).

EPA and Edith Gulian drew similar conclusions from their reviews of the literature. EPA concluded that continuous noise levels above 90 dB can impair job performance for "noise sensitive tasks," such as vigilance, information gathering, and analytical tasks. Noise levels of less than 90 dB can be disruptive, especially if the noise is composed of high frequencies, or if it is "intermittent, unexpected, or uncontrollable." The amount of this disruption is a function of the nature of the task, and the psychological and physiological state of the individual. The studies surveyed showed that noise does not usually affect the total quantity which a person produces, but may increase the variability of the work rate and reduce the accuracy of the work (EPA, *Public Health and Welfare Criteria for Noise*, Ex. 31, pp. 8–1 to 8–7). Gulian's survey of the European literature found several studies which indicated increased production with reduced noise exposures, but concluded that the literature was inconclusive on the effects when noise levels were lower than 100 dB, although under certain conditions lower levels have shown adverse effects on productivity (Gulian, Ex. 97, pp. 18–20).

Many of these studies involved testing the ability of persons to perform certain experimental tasks under laboratory conditions and not actual jobs under industrial working conditions. Moreover, the studies mentioned above investigated primarily the effects of noise on performance. They did not examine what effect the issuance and use of hearing protectors might have on job performance.

One study that did examine the effect of hearing protectors indicates that the issuance and use of hearing protectors may have an adverse effect on productivity. This study, by L. R. Hartley (cited by CPA, "Some Considerations," Ex. 138A, pp. 2–45 to 2–46), examined the ability of test subjects to perform a laboratory task under four conditions: quiet, quiet while wearing hearing protectors, noisy, and noisy while wearing hearing protectors. Under quiet conditions, subjects were exposed to broad-band noise at a C-weighted sound level of 70 dB; for noisy conditions exposures were at a C-weighted sound level of 95 dB. The researcher used two measures of subject performance—the number of gaps (pauses of 1½ seconds) and errors. The results revealed that without hearing protectors, exposure to noisy conditions increased both the number of gaps and the number of errors compared to the quiet conditions. When the subjects were exposed to conditions of quiet, the use of hearing protectors increased the number of gaps and

errors. Finally, under noise conditions, the use of hearing protectors decreased the number of gaps, but increased the number of errors. CPA concluded their discussion of this study by suggesting that these results:

> . . . tend to give added support to the preference of OSHA, NIOSH, and EPA for engineering solutions to noise, rather than personal ear protection. The widely-observed resistance of workers to the discomfort and annoyance of at least some ear protectors increases the probability that their imposition may sometimes have negative effects on the quality, if not the quantity of industrially-produced goods (CPA, "Some Considerations," p. 2–46).

A final determination of the effect of noise and hearing protector use on productivity awaits the completion of further research. Therefore, OSHA has not based its justification of the hearing conservation amendment on possible gains in worker productivity.

Conclusion

In this section, the benefits of the hearing conservation amendment were delineated and discussed. The primary benefit will, of course, be a substantial reduction in the incidence of occupational hearing impairment in the population exposed to workplace noise. The additional benefits to be gained include improved workplace safety, reduced absenteeism, reduced medical costs, and a possible reduction in cardiovascular and certain other illness. The range of health, safety, and financial benefits, and the magnitude of their favorable impact on the quality of life for U.S. workers serve to justify this amendment.

V. Cost and Feasibility Considerations

Summary and Conclusions

The following three sections analyze in depth the costs of the final standard, its economic feasibility and its technical feasibility. This subsection briefly summarizes that analysis.

The cost of the hearing conservation amendment will average $53 per year for each of the 5.1 million employees estimated to be covered by the amendment. This comes to $270 million in total annual costs for the 19 sectors of the economy (2-digit SIC codes) which have significant noise exposures. Approximately $15.7 million is already being spent on hearing conservation programs, so the additional costs generated by the standard are $254.3 million. As explained in the cost section, OSHA believes these costs are somewhat overestimated because of the methodology used.

The industry with the largest compliance costs is lumber and wood with annual costs of $30.9 million. Other industries with annual costs between $20 and $25 million are printing and publishing, primary metals, fabricated metals, machinery except electric, and utilities. The food and textile industries have costs of $17 million. No other industry has costs over $13 million per year.

The only other comprehensive cost estimates were submitted by BBN. They estimated a cost of $65 per employee included in hearing conservation programs. Certain changes in the standard, as well as the use of more timely cost data, account for the differences between the BBN and OSHA estimates.

The section on economic impact discusses in detail the impacts of the costs of the standard. These impacts are small. If the total costs of the regulation are passed on to consumers, prices would increase 0.0148%. Even in the segment most impacted, lumber and wood, prices would increase only 0.0776%.

Even in the unlikely event that firms would be forced to absorb the costs of the amendment, these costs represent only 0.1932% of the profits of the 19 industries. It should be noted that even in the industry most affected, lumber and wood, costs represent slightly under 1% of profits. It is inappropriate to present the increased price and decreased profit data as cumulative when analyzing impacts. The two maximum effects will not occur simultaneously. The greater the increase in prices, the smaller the reduction in profits. Similarly, the greater the reduction in profits, the smaller the increase in prices. The price and profit impacts are both likely to be less than the maximums presented here.

Section 6(b)(5) of the Occupational Safety and Health Act requires standards to be feasible and this includes economic as well as technical considerations. The D.C. Circuit explored this requirement in *Industrial Union Dept., AFL–CIO v. Hodgson*, 499 F.2d 467 (1975). It states,

> There can be no question that OSHA represents a decision to require safeguards for the health of employees even if such measures substantially increase production costs. This is not, however, the same thing as saying that Congress intended to require immediate implementation of all protective measures technologically achievable without regard for their economic impact. To the contrary, it would comport with common usage to say that a standard that is prohibitively expensive is not "feasible." . . . practical considerations can temper protective requirements. Congress does not appear to have intended to protect employees by putting their employers out of business—either by requiring protective devices unavailable under existing technology or by making financial viability generally impossible.
>
> This qualification is not intended to provide a route by which recalcitrant employers or industries may avoid the reforms contemplated by the Act. Standards may be economically feasible even though, from the standpoint of employers, they are financially burdensome and affect profit margins adversely. Nor does the concept of economic feasibility necessarily guarantee the continued existence of individual employers. It would appear to be consistent with the purposes of the Act to envisage the economic demise of an employer who has lagged behind the rest of the industry in protecting the health and safety of employees and is consequently financially unable to comply with new standards as quickly as other employers. As the effect becomes more widespread within an industry, the problem of economic feasibility becomes more pressing. (pp. 447–8).

As shown in the economic impact section, the cost impacts of the final hearing conservation amendment will not lead to economic dislocation. The costs are tiny relative to sales (averaging 0.0148%) and small relative to profits.

The worst case is 1% of profits while the average is 0.2%. In reality the costs as a percentage of profits will be less because some costs will be passed forward to consumers. These costs are easily affordable and no economic disruption or anything approaching it will be caused in any industry. Even employers who have a high percentage of employees affected by the amendment should be able to afford the $53 per employee cost. Therefore OSHA finds that the standard is without doubt economically feasible.

Technological feasibility is analyzed in the resource availability section. No difficult engineering problems, or indeed any engineering problems, are created by the standard. The hearing protection devices are already available on the market. The measuring and testing equipment needed (dosimeters, audiometers, etc.) is also available for purchase. In those areas where short-term production may not be adequate to meet immediate demand, a 2-year delayed starting date is provided by the standard. There also are adequate numbers of trained personnel, audiologists, physicians, etc., to meet the needs of employers resulting from the standard.

OSHA therefore finds the hearing conservation amendment is clearly technologically feasible.

VI. Costs of Compliance

Introduction

Many industry groups strongly recommended to OSHA that hearing conservation programs are a cost-effective and affordable means of reducing noise induced hearing impairment among workers. Bolt Beranek and Newman, (BBN), in their 1976 report for OSHA, ("Economic Impact Analysis of Proposed Noise Control Regulation," Ex. 192) estimated that the hearing conservation provisions of the proposed standard would cost the manufacturing and utilities sectors of the U.S. economy a total of $289.3 million per year in 1975 prices. This amounted to an annual cost of $65 per worker included in the program. The monitoring, recordkeeping, and associated tasks were estimated at $155.2 million annually, (p. 3–9) and were based on the assumption that a typical plant had 50 production workers and could be surveyed by a noise engineer for $800. The annual cost for audiometric testing was calculated at $20 per production worker for $89.1 million, and hearing protectors were estimated at $10 per worker for a total of $45 million per year (Ex. 192, p. 3–33). None of these cost estimates were adjusted to reflect the existence of hearing conservation programs already established by industry.

The BBN estimates of these provisions were not widely criticized. However, certain differences between the proposed standard and the final rule, as well as the availability of more timely cost data, have convinced OSHA to update these estimates of the expected compliance costs. The current estimation procedures, which are based on a thorough review and analysis of the entire record, are presented below for each major provision of the final regulation (Appendix B of OSHA's Final Regulatory Analysis provides the detailed caculations for a sample SIC industry). Overall these new calculations show that the total annual cost of the regulation will average about $53 for each of the 5.1 million workers estimated to be covered by the hearing conservation amendment. Thus, the total cost of complying with all of the provisions of the amendment are estimated at about $270 million a year. After accounting for some of the compliance activities already taking place, OSHA estimates that the new compliance costs will not exceed about $254.3 million a year and most likely will fall well below this amount (see Table 7).

Table 7.—*Estimated New Annual Compliance Costs of the Hearing Conservation Amendment*

Monitoring	$73,731,000
Audiometric Testing	87,199,000
Hearing Protectors	45,534,000
Training	40,029,000
Warning Signs	1,795,000
Recordkeeping	6,033,000
Total	254,321,000

Source: OSHA, Office of Regulatory Analysis.

Monitoring

The proposed standard directed employers to monitor worker exposure to noise on an annual basis. The final amendment will be less costly because in most cases, it requires monitoring to be performed only every other year. Although the final hearing conservation amendment requires that a new representative exposure be obtained whenever there is a change in noise levels that would render the employee's hearing protection inadequate, in practice, the general availability of hearing protectors rated to reduce high noise levels should make these occurrences infrequent.

A number of consultants have submitted documents to the record listing their fees for noise measurement services. For example, Exhibit 319 B–8 lists $440 plus expenses as the daily change for a noise engineer and $360 plus expenses as the daily fee for a technician. Exhibit 319 B–11 indicates fees from $250 to $350 for an engineer and from $180 to $240 for a technician, while Exhibit 319 B–16 reported between $229 and $465 plus expenses for an engineer and between $175 and $255 plus expenses for a noise technician. The average of these daily fees is about $382 for an engineer and $262 for a technician. Travel expenses will vary according to each firm's location relative to the consultant. However, as the demand for these services grows, economies of scale will operate to reduce costs below current market charges. For example, the expanded market for consultant services within a region will stimulate the supply of monitoring consultants in the area, thereby minimizing travel expenses. Also, noise engineers should find it increasingly profitable to combine resources with audiometric testing firms to provide industrial clients with a complete range of hearing conservation services. A growing number of firms already market these comprehensive consulting programs (Ex. 305; 319 B–12), and this one-stop approach to satisfying monitoring, testing and training requirements should substantially reduce the costs of these services over time.

Based on its survey experience, OSHA has estimated the average time it would take noise experts to take measurements in plants of varying sizes. Table 8 shows OSHA's estimate of the cost of hiring a noise consultant, based on the daily fee of $382 for an engineer, $262 for a technician, and a $50 average travel expense.

Table 8.—*Cost of Monitoring by Consultant*

Number of employees measured	Days in the field		Days in office		Cost
	Engineer	Technician	Engineer		
1 to 10	1				$412
11 to 20	1		.5		562
21 to 40	1	1	.5		855
41 to 60	1.5	2	.5		1,290
61 to 80	2	2	1		1,660
81 to 100	2.5	3	1.5		2,284
101 to 120	2	4	2		2,548
121 to 140	2	5	2		2,908

Source: OSHA, Office of Regulatory Analysis.

The monitoring provision of the amendment requires the reporting of representative exposures of all workers exposed to a time weighted average (TWA) of noise above 85 dB, rather than an actual measurement of each such employee. Thus, a measure of the exposure of one employee may be used to represent similarly exposed employees. Since the data shown in Table 8 correspond to measured workers (as opposed to others who are represented by the measured workers), an estimate of the number of employees who would be individually measured is necessary to assess the total monitoring cost. However, there is no data base available to identify statistically the determinants of the number of employees who would actually have to be measured according to the final rule. This number will vary due to the nature of the industrial process and the diversity of the work areas and tasks. For instance, in workplaces where noise levels are fairly uniform throughout the shop, fewer employees will need to be monitored than in workplaces where the noise exposure vary extensively among workers. Nevertheless, it can be assumed that, in general, the percent of the work force to be measured would vary inversely with the size of the plant. (See Ex. 309, p. 35, Table 3.1 for an example of how the percentage of workers to be sampled within a group of similarly exposed workers might decline as the group grows larger.) Table 9 gives estimates of the percentage of employees who would have to be measured individually to provide representative exposures of workplace noise for all exposed workers. These estimates were developed by OSHA,

based on its broad experience with noise surveys for numerous industrial establishments, and are consistent with the final monitoring requirement as they are predicted on a sampling strategy designed to place employees within 5 dB ranges.

Table 9.—*Percent of Employees Measured To Provide Representative Exposures*

Number of employees	Employees measured (percent)
1 to 19	100
20 to 49	80
50 to 99	50
100 to 249	40
250 and over	30

Source: OSHA, Office of Regulatory Analysis.

To refine the estimate of the cost of using consulting services to conduct industrial noise measurements, it was necessary to construct a statistical distribution of the number of production workers in manufacturing establishments of different sizes. The U.S. Bureau of the Census provides 1977 data on the total number of employees in five establishment size categories (*County Business Patterns*, CBP–77–1). The conversion of this size distribution from total employees to one limited to production workers was accomplished by combining these data with information from the U.S. Bureau of Labor Statistics (BLS) (*Employment and Earnings*, 1909–1978) to obtain a 15-year average ratio of the number of production workers to the total number of employees. When multiplied by the 1977 Census estimates of total employment by industry and establishment size, this procedure yields estimates of 1977 production worker employment by industry and establishment size. These data are shown in Table 10.

OSHA believes that the best estimates of the total number of workers affected by this hearing conservation program are obtained from the BBN data on the percentage of workers exposed to various levels of noise in those industrial sectors which include most manufacturing and public utility firms (Ex. 192, p. 2–7). BBN's industry-wide estimates, as presented in Table 11, were developed from surveys of 68 firms representing 19 two-digit SIC categories, were based on years of extensive experience and expertise in noise control surveys, and were the most comprehensive and detailed noise exposure estimates submitted to the record. Thus, they remain the best source of data on TWA exposures in typical noisy industrial surroundings.

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Table 10

Number of Production Workers and Establishments by Industry and Establishment Size

SIC	1–19 Employees		20–49 Employees		50–99 Employees		100–249 Employees		Over 250 Employees	
	Production Workers	Establishments	Production Workers	Establishments	Production Workers	Establishments	Production Workers	Establishments	Production Workers	Establishments
20	73,583	13,118	122,613	4,783	150,034	2,013	292,110	2,332	527,839	1,248
21	431	102	817	30	1,402	22	5,487	37	44,363	42
22	17,182	2,647	36,791	1,238	33,829	825	143,386	1,607	525,811	965
23	73,714	12,301	150,593	4,490	180,224	2,810	314,631	2,257	403,037	2,020
24	131,794	23,577	108,400	3,550	117,628	1,697	159,985	1,103	128,894	519
25	33,884	5,762	45,134	1,527	32,706	819	81,521	647	174,743	573
26	15,173	2,204	38,254	1,360	61,079	983	149,706	1,146	277,289	538
27	126,470	35,518	101,748	5,199	89,263	2,042	117,751	1,251	266,969	661
28	33,186	6,812	48,072	2,021	54,695	1,082	94,994	841	405,253	687
29	8,360	1,379	9,271	286	9,988	137	23,797	142	80,284	123
30	33,391	5,590	62,459	2,230	82,901	1,353	134,120	999	288,258	498
31	8,275	1,410	13,415	467	20,528	332	48,213	341	116,948	325
32	74,668	11,639	80,305	2,810	65,780	998	107,929	750	231,819	422
33	20,304	3,003	41,980	1,475	34,945	893	130,046	945	231,698	795
34	117,675	19,020	101,809	6,154	170,975	2,815	274,821	2,041	572,619	1,688
35	163,075	32,304	133,393	6,406	135,719	2,502	219,351	1,783	842,683	1,448
36	38,208	7,192	59,450	2,212	80,189	1,382	179,638	1,383	1,021,145	1,306
37	27,347	5,379	34,035	1,318	44,954	801	93,414	731	1,304,490	868
49	67,188	10,993	66,942	2,179	79,232	1,156	110,509	744	333,430	421
Total	1,065,937	201,550	1,349,388	50,310	1,514,071	25,450	2,690,979	20,498	8,887,626	13,285

Source: Estimated as described in text from the U.S. Bureau of the Census, County Business Patterns, CBP-77-1; and the U.S. Bureau of Labor Statistics, Employment and Earnings, 1909–1978.

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Table 11.—Percentage of Production Workers Exposed to Noise

SIC	90 dB	85 dB	80 dB	75 dB
20	16	28	47	
21	6.6	6.7	26	
22	62	75	87	
23	0	1	20	
24	72	84	97	
25	12	30	53	
26	21	40	60	
27	19	45	66	
28	20	37	55	
29	52	76	82	
30	8.8	20	40	
31	0	1	20	
32	4.8	16	42	
33	38	63	81	
34	18	34	56	
35	13	28	48	
36	2.5	7	27	
37	13	23	42	
49	30	74	89	
Total	18.2	34.4	53.1	71.5

Source: Bolt, Beranek, and Newman. "Economic Impact Analysis of Proposed Noise Control Regulation," (Ex. 192, p. 2-7; and BBN worksheets).

Technically, representative exposures are only required for workers with a TWA exposure to noise of 85 dB or above. However, it seems probable that many employees exposed to noise below a TWA of 85 dB would be surveyed also. This is because, at least initially, employers would not know which workers were exposed to 85 dB without monitoring representatives of most of the workers stationed in fairly noisy work areas. Consequently, all workers exposed above a TWA of 80 dB were assumed to be surveyed for cost estimation purposes despite the fact that, as employers become more knowledgeable about the exposures, this adjustment will overestimate monitoring costs.

Therefore, the number of measurements for each establishment size category in each SIC industry studied can be estimated by the following equation:

(1) $M=(PM/100)(PW/E)(N)$

where:

M = the number of measurements
PM = the percent of workers actually measured (Table 9)
PW = the number of production workers (Table 10)
E = the number of establishments (Table 10)
N = the percentage of workers exposed to >80 dB (Table 11)

This formula simply multiplies: (the percent of workers that the sampling strategy would require to be actually measured) × (the average number of production workers per establishment) × (the percentage of workers exposed to >80 dB). When the number of measurements for each establishment size are matched to estimates of the corresponding consultant charge (Table 8) this provides estimates of the average cost for a firm using a noise consultant. Since monitoring will usually be required biennially, the annual consultant cost is one-half of the values listed in Table 8.

However, employers may elect to monitor with in-house personnel. An acceptable dosimeter, readout and calibrator, such as described in Exhibit 319 A-7, costs $1,230. The standard capital recovery formula with a 10 percent interest rate and a 10-year equipment lifetime gives an annualized capital cost of about $200. Periodic calibration costs could add another $30 a year. In addition, it might take an employer about an hour per measured employee to select representative workers, make daily calibrations of the dosimeter, and place and remove the dosimeters from the individual workers. Since this task may be performed by the employer or by supervisory employees earning more than the average industry production worker wage, an average cost of $10 per hour was used to account for the time required to complete this task. Thus, the average annual cost for each establishment can be calculated as $260 + ($10 × the number of measured workers/2 years). The resulting values imply that monitoring would usually be done by in-house staff only in the largest plants where the average cost of $755 [a] is substantially below the $1,142 [b] average consultant cost. However, for the smallest establishments, the annual consultant fee of $206 is significantly less than the cost of developing an in-house program by purchasing the required equipment.

Alternatively, sound level meters and calibrators may be purchased for $610 (Ex. 319 A-7). Since these meters are expected to last at least 10 years (Ex. 319 A-7; Ex. 319 A-72), a 10 percent interest rate yields an annualized equipment cost of $99.27. Biennial calibration would add an additional $30 per year (Ex. 319 A-7). However, the time employers would need to make TWA exposure measurements with a sound level meter would often exceed the time required using a dosimeter because sound level meter measurements often require following employees through various phases of the work process. For this reason, the following calculations assume the use of dosimeters for in-house monitoring.

It was assumed that employers would select the least expensive mode of complying with the provision. Therefore, for each SIC sector, multiplying the number of establishments in each size class by the average consultant cost where consultant services would be more efficient (generally the first three or four establishment size categories), and the average in-house cost using dosimeters for the larger size categories where in-house programs are more efficient, provides an estimate of the industry's monitoring cost. Summing these costs over all the SIC's gives total costs of $78,427,000 to initiate monitoring programs in all establishments in the studied industries.

However, many firms already have extensive monitoring programs. Although precise estimates are not available, a survey of hearing conservation programs conducted by The National Institute for Occupational Safety and Health (NIOSH) (Ex. 321-14B) evaluated responses from 1,410 manufacturing firms (p. 7). Twenty-nine percent stated that their firm had a program concerned with hearing conservation (p. B-3), and 90 percent of those firms, or 26 percent of the respondents, reported that they currently monitor workplace noise (p. B-7). Since the survey sample was heavily weighted with firms of over 100 employees, the results may apply primarily to these larger firms. Table 10 indicates that there are about 33,775 establishments with more than 100 employees in the industries studied. Based on the NIOSH study, it is reasonable to conclude that 26 percent of the firms with more than 100 employees already have monitoring programs. Thus, the new annual cost of this monitoring provision falls to about $73,731,000 for the 19 SIC sectors (See Appendix B in OSHA's Final Regulatory Analysis for a detailed example of the computational procedure).

Even more important, however, is the implausibility of the assumption that every single establishment in the industries studied would have workers exposed to a TWA of 85 dB or greater. The only large-scale survey that presents estimates of the number of plants with noise levels above 85 dB is the National Occupational Hazard Survey (NOHS) prepared by the NIOSH (Ex. 321-14D). The Center of Policy Alternatives (CPA), Massachusetts Institute of Technology, presented a preliminary summary of these data, stating that "NIOSH has collected extensive data on noise exposures in workplaces representative of American industry . . ." (Ex. 136A, p. 2-6). Since NIOSH directed its staff to note "Any continuous *noise* in worker's normal environment equal to or exceeding 85 dBA . . ., regardless of exposure

[a] $260 + (10 × M/2) = $755, where M is defined as in equation (1) and equals, on average, (.30 × 8,287,626/13,285 × .531) which is 90.

[b] Table 8 indicates that the consultants fee for measuring 99 workers was estimated at $2,284. If performed biennually, the annual cost is $1,142.

Source: Estimated as described in text from the U.S. Bureau of the Census, County Business Patterns, CBP-77-[1] and the U.S. Bureau of Labor Statistics, Employment and Earnings, 1909-1978.

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duration. . . ." (NOHS, vol. 1, p. 15), it is clear that these estimates of the number of noisy firms would exceed projections made on a TWA basis. Table 12 displays the results of this survey, which indicate that only about 49 percent of the plants in the studied industries have workers exposed to noise levels of 85 dB or greater as measured by NOHS. If this survey is accurate, the monitoring costs estimated above are substantially overstated.

Table 12.—*Number of Plants With Continuous Noise Above 85dB in the National Occupational Hazard Survey*

Industry sector	Total plants[1]	Number of plants with workers exposed to continuous noise[2]	Percent of plants with continuous noise
Manufacturing	14,207	6,949	48.8
19	113	72	63.7
20	16,173	7,711	47.7
21	196	48	24.5
22	3,225	1,560	48.4
23	15,566	4,115	26.4
24	3,091	2,214	71.6
25	4,818	3,132	67.8
26	4,859	3,673	75.6
27	13,809	5,248	38.6
28	8,743	2,423	36.9
29	993	599	60.3
30	5,640	2,967	52.6
31	1,653	786	48.3
32	7,956	4,420	55.6
33	5,040	3,716	73.7
34	19,615	12,653	64.5
35	18,190	8,949	49.0
36	5,073	1,937	38.2
37	8,457	1,849	53.6
49			[3]45.8

[1] NIOSH, Table, pp. 42–23.
[2] NIOSH, Table 48, p. 250.
[3] Preliminary NOHS estimate reported in Exhibit 138A, p. 5–8

Source: National Institute of Occupational Safety and Health, *National Occupational Hazard Survey*, Vol. III (Ex. 321–14D).

Moreover, the current record does not adequately indicate the widespread current or future availability of rental markets for dosimeters or sound level meters. An informal telephone survey reveals that even the relatively more expensive dosimeters can generally be leased for under $100 per month. On a biennial basis this is less than $50 per year for most of the 311,094 establishments in the industries studied, for a total yearly equipment charge of only $15.6 million. Alternatively, some firms will share noise monitoring meters rather than purchase them. Thus, the true new monitoring costs attributable to this hearing conservation amendment may be substantially below OSHA's $73.7 million estimate which was based solely on data in the noise record.

BBN's economic impact analysis (Ex. 192, p. 3–9) projected annual costs of $155.2 million for the proposed monitoring provision. This estimate overstates the cost of the final provision for several reasons. First, the BBN analysis was based on the proposed requirement for annual monitoring, whereas the final rule will generally require only biennial monitoring. Second, BBN's methodology assumed that all industrial firms employed 50 production workers and would hire noise consultants to conduct the monitoring requirements. OSHA has determined that larger firms will find it substantially more economical to obtain noise measuring instruments and to perform the monitoring themselves. Third, BBN's estimate includes the cost of recordkeeping which OSHA treats as a separate cost category. Fourth, the BBN estimates do not reflect the current monitoring activities which are already taking place. OSHA believes that these factors taken together more than offset the price increases which may have occurred since BBN's 1976 report and consequently account for the divergent estimates.

Audiometric Testing

An analysis of the record indicates that the cost of audiometric testing will vary with the size of the establishment. Very small plants are likely to send production workers who require testing to a clinic or doctor. Somewhat larger plants will contract with audiometric testing firms for the actual exam and review. Still larger plants will find it cost effective to purchase the equipment for audiometric testing, to train the industrial nurse or safety director to give the test, and to use an outside firm of doctor to review the audiograms. The largest firms will perform the entire service in-house.

Commercial specialists who evaluate worker's hearing have submitted the following per employee costs for audiometric testing, review and reporting: $7.50 to $10.65 (Ex. 317); $10.00 (Ex. 319 B–6); $3.00 or less for more than 100 (Ex. 319 B–12); $7.00 to $20.00 (Ex. 319 B–5); and $12.00 (Ex. 293). These firms generally provide this service by transporting an audiometric test booth in a mobile van directly to the commercial establishment that has contracted for the testing. Employees of the smallest firms, however, will often be sent to a clinic or doctor's office to be tested. These fees will vary greatly and some are rather high (Ex. 2C–71–3, p. 50 reported $20). However, many clinic or physician fees should ultimately be comparable to those charged by mobile units because (1) negotiated fees are a traditional practice in industrial medicine, (2) employers of small firms may group together to gain scale economies, and (3) stationary medical facilities do not bear the substantial transportation costs borne by the operators of mobile vans. (For example, the Washington Speech and Hearing Society currently charges $120 plus $10 per exam for their central mobile unit but only $7.50 per test at their facility.)

Because the current market for audiometric services is small relative to the demand that would follow the promulgation of this regulation, it is not possible to make precise estimates of the cost to all firms that would purchase these services. However, in order to estimate the regulatory cost, it is reasonable to assume that the average firm sending workers to a clinic would lose about 2 hours in lost production time plus about $15 per worker for test fees and travel expenses. For firms large enough to take advantage of mobile units, the estimated lost production time per worker would be about one-half hour, and the submissions cited above imply an average test fee of about $12.00.

For large firms, in-house programs will be substantially less expensive. A comment to the Advisory Committee (Ex. 102, Sec. 9, p. 15) estimated the cost of providing audiometric testing programs for firms with 200, 300, and 500 employees at about $6.00, $5.00, and $4.00 per audiogram, respectively. Numerous submissions in the record itemize the specific components of these costs. For example, audiometric test booths sell for about $1,700 (Ex. 319 A–44; Ex. 319 A–51; Ex. 2C–71–3, p. 47), and installation could add about $300. Audiometer price quotes average about $500 (Ex. 319 A–51; Ex. 319 A–53; Ex. 319 A–60; Ex. 319 A–62; Ex. 319 A–66; Ex. 319 A–67) and are expected to operate for 10 years (Ex. 319 A–90; Ex. 319 A–60). The calibration procedures require a coupler which costs about $130 (Ex. 319 A–16; Ex. 319 A–11) and a sound level meter with an octave filter set which costs about $1,000. The operator's certification course is good for 5 years and costs $250 plus 3 days of an employee's time (Ex. 319 B–4) which amounts to $240 at $10 per hour. The cost of calibrating the audiometer could be another $100 every other year (Ex. 102, Sec. 9, p. 16). Thus, the total capital outlay is about $4,200. Assuming that the test booths last for 20 years, the other equipment lasts for 10 years, the certification course is given every 5 years, and the interest charge is 10 percent, the total annualized cost amounts to about $650.

Since one exam takes about 10 minutes of time (Ex. 306–J5C, p. 9; Ex. 319 B–6), approximately 48 workers can be tested by a technician earning a daily rate of about $80. Thus, the cost to the firm of the technician's time amounts to $1.67 per worker tested. The cost of

reviewing audiograms and reporting the findings is also dependent upon whether this service is contracted out or done in-house. Contractor fees for reviewing audiograms are reported at $2.25, $2.50, $3.00, and $4.00 per audiogram (Ex. 317; Ex. 319 B–12), whereas the in-house review by a physician or audiologist was estimated to cost only $0.25 each (Ex. 102, sec. 9, Audiometric Testing, p. 16). Thus, using $2.50 as a reasonable average cost to review the audigram, a typical cost for administering the tests as well as reviewing the audiograms would amount to $4.17 per unit ($1.67 + $2.50). Finally, a cost for one-half hour of lost production for each worker during the test procedure adds an additional one-half of the hourly wage per worker tested. In summary, the annual cost of the in-house audiometric program is estimated at about $650 per establishment for equipment and certification-related charges, and about $4.17 plus one-half of the industry hourly wage for each employee tested.

The Can Manufacturers Institute, Inc., (Ex. 2C–71–3, p. 50) stated that it would become cost-effective for a firm to develop its own audiometric testing capability when the number of audiograms it required reached about 100 per year. Dr. W. G. Thomas, (Ex. 102, sec. 9) put the break-even point between in-house and contracted audiometric testing at about 300 employees. To estimate the number of firms that would develop their own testing facilities, it is appropriate to use the Table 10 estimates of the number of production workers in the five establishment size categories for the 19 industries studied. The data in Table 10 imply that if the BBN estimate of 34.4 percent of production workers exposed to a TWA >85 dB remains constant across establishment sizes, the average number of workers per establishment in the hearing conservation program will be less than 2 employees for the smallest size category and 9, 21, 46, and 213 employees, respectively, in the larger establishment size categories.

It is likely that workers in the two smallest establishment size classes (1–19, and 20–49 employees) would travel to facilities outside the firm to take the audiometric exam. As explained above, the estimated annual cost for these establishments in each SIC sector would be the number of workers exposed to noise at or above a TWA of 85 dB × (2 hours at the industry hourly wage + $15 per test). For workers in the third and fourth largest size categories (50–99, 100–249 employees), the best assumption is that hearing conservation firms with mobile vans will service the employees. Since each employee would miss only about a half-hour or work time, the annual cost per industry for these intermediate-sized firms is the number of workers exposed to noise at or above a TWA of 85 dB × (.5 hours at the industry hourly wage + $12 per test).

Most firms in the over 250 employee size group would choose in-house audiometric programs. The annual cost for these firms, as detailed above, is estimated at ($650 × the number of establishments) + [the number of workers exposed to a TWA of 85 dB or greater in these establishments × ($4.17 + .5 hours at the industry hourly wage)].

The data needed to complete the above calculations include the percent of workers exposed to a TWA of >85 dB as shown in Table 11, the number of production workers and plants by establishment size in each industry as presented in Table 10, and the 1979 industry average hourly wage as reported by BLS (*Employment and Earnings*, March 1980). However, workers employed for less than 120 days with one firm are exempt from this provision. Employment data from the BLS as well as submissions to the record (Ex. 14–279; Ex. 14–512) indicate that SIC's 20 and 21 hire a substantial number of seasonal employees. In fact, the 1979 BLS average monthly employment estimate would fall by 17,100 and 1,400 in SIC's 20 and 21, respectively, if employment in each industry's 120-day peak employment period were adjusted downward to the level of the following month. The data from Table 10 were revised to reflect this exemption in order to estimate the cost of audiometric testing. Temporary workers in other industries will also take advantage of the exclusion, but the lack of appropriate data have prevented further adjustments to these calculations.

In addition to the annual audiogram, some workers will need to be retested during the year owing to threshold shifts, operator errors, or inconsistent test results. A number of workers will exhibit temporary threshold shifts if they are tested toward the end of the workday after being exposed to excessive noise. Wearing effective and properly inserted hearing protectors prior to the test would lower the incidence of temporary threshold shifts, whereas testing at the start of the day would substantially eliminate their detection. The number of permanent threshold shifts recorded will depend upon the intensity of the noise exposures, the worker turnover rates, and the effectiveness of the hearing protectors. In addition, the requirement for a recheck is waived if the annual test is conducted after 14 hours free from workplace noise. If as many as 20 percent of the workers require rechecks, the overall cost of audiometric testing would total $62,352,000 or about $18 per worker tested.

This discussion has assumed that no audiometric testing is currently provided. The noise record, however, indicates that many industrial establishments already offer audiometric testing to their employees. For example, a survey by the Forging Industry Association revealed that 82 percent of the 151 member firms responding do periodic testing, (Ex. 321–25), while Table 90 of the NOHS (Ex. 321–14D) shows that in their sample, 40 percent of the manufacturing workers exposed to continuous noise above 85 dB received audiometric exams. Table 13 of this same exhibit indicates that primarily the largest-sized establishments provide this service for their workers. Still another NIOSH hearing conservation survey shows that annual and biennial audiometric tests account for about 23 percent and 13 percent, respectivey, of current industry testing programs, with retesting periods in other programs ranging from 6 months to every 5 years (Ex. 321–14B, p. 30). For cost estimating purposes, it seems reasonable to assume that on average, these tests are already provided on a biennial basis to 40 percent, or on an annual basis to 20 percent of the workers in plants with more than 250 employees. Since the number of establishments providing these services is unknown, an accurate accounting of the costs already accepted by industry is not possible. Reducing only the labor-related cost of the largest firms by 20 percent to reflect current practice brings the total cost of this provision to $37,199,000 a year (See Appendix B in OSHA's Final Regualtory Analysis for an example of the calculations). This estimate is not significantly different from BBN's 1976 estimate of 89.1 million even though BBN did not adjust their data to acknowledge current programs and simply used a $20 per worker cost (Ex. 192, p. 3–33).

Hearing Protectors

Hearing protectors used in industry include ear muffs, disposable ear plugs, molded plugs, and custom-molded plugs. Unfortunately, there is no survey information on the percentage of workers who wear each type of protector. In hot, humid environments, workers are likely to choose plugs. It is probable that plugs will be chosen in more than a majority of instances as

they are often associated with a lesser degree of discomfort.

Substantial data on the price of ear protectors have been collected for the record. For example, disposable foam ear plugs can be purchased for $0.15 a pair (Ex. 319 A–31) and are reusable. If employees use two pair a week, the yearly cost is $15.00. Disposable non-foam ear plugs cost only from $0.06 to $0.07 a pair (Ex. 319 A–30; Ex. 319 A–37). For a new set of plugs each day, these costs would average about $16.50 a year per employee. Molded ear plug prices are quoted at about $1.50 (Ex. 319 A–30; Ex. 319 A–37), and would cost $6.00 a year if workers used 4 pair per year. Custom molded plugs can be purchased in a kit that makes up to 50 pair of ear plugs at $3.10 a pair (Ex. 319 A–35). These plugs, with minimum care, will last 2 or 3 years (Ex. 319 A–36). Ear muff prices are listed at $9.50 (Ex. 319 A–30), $7.60 (Ex. 319 A–31), and $8.40 (Ex. 319 A–37). The estimated cost of about $10 per year per employee reported by the Industrial Fasteners Institute (Tr. 1611), Bethlehem Steel Corporation (Ex. 145), and BBN (Ex. 191, p. 3–33) appear consistent with these rates. Based on a cost of $10 per year per employee, if hearing protectors were provided to all employees exposed to noise at or above a TWA of 85 dB, the cost of this provision would be $51,296,000.

The NIOSH NOHS survey also indicates that about 20 percent of the workers exposed to continuous noise at or above 85 dB are subject to attempts to reduce exposures (See Vol. III, Table 51). Moreover, the data in Table 90 of the NOHS study show that hearing protectors are almost always the method selected to accomplish this reduction. Since the data show that 20 percent of the workers exposed above 85 dB are provided hearing protectors, this implies that more than 20 percent of those exposed above 90 dB have them. This is because it is probable that most of the current worker use of hearing protectors takes place among workers whose exposures exceed 90 dB. However, if we assume that just 20 percent of the workers exposed to noise above a TWA of 90 dB are already supplied with hearing protectors, the total cost of this provision is $45,534,000. This may be an overestimate of the cost to the extent that not all workers exposed between 85 and 90 dB are required to use the hearing protectors.

Training Program

The major cost elements for the training program will be the cost of the production lost while the workers are being trained, and the cost for the individuals providing the training. Because the training session may last about an hour, the cost for production time lost while training takes place can be estimated by multiplying the industry average hourly wage times the number of workers trained. The cost for the people conducting the training will vary with the size of the establishment. The data from Tables 10 and 11 imply that establishments with under 100 employees average less than 21 workers exposed to noise at or above a TWA of 85 dB. A training program consisting of one hour per year per establishment seems appropriate for these size classes. For establishments with more than 100 employees, it is reasonable to assume that one individual could train 30 people in one session.

Consequently, the cost of training can be estimated at (the average production worker hourly wage × the number of workers exposed to noise > a TWA of 85 dB) + (the number of establishements with less than 100 employees × the cost of providing one hour of training) + (the number of exployees exposed at >85 dB in establishments larger than 100 employees divided by 30 workers per session × the cost of providing one hour of training). If we assume that the cost for the person providing the training is $10 an hour, the cost estimating equation for each SIC is:

$$\$\,Tr = (W)(PW)(P) + \$10\,e + \$10/30\,(PWE)(P)$$

were:

$ Tr = the cost of training
W = the hourly production worker wage
PW = the number of production workers (Table 10)
P = the fraction of workers exposed to >85 dB (Table 11)
e = the number of establishments with less than 100 employees (Table 10)
PWE = the number of production workers in establishments with over 100 employees (Table 10)

Summing over all SIC's, the total cost of training for the 19 industry sectors is estimated at $40,029,000. Although a number of comments described well organized training programs already in operation (Ex. 307, J2C, p. 11; Ex. 147C, p. 335; Ex. 147A, p. 6), and it is likely that many firms do some training, no estimates were available of the total number of such programs currently in existence. Therefore, the above estimate for the cost of this regulatory provision is overstated by the extent that industry already provides this instruction.

Warning Signs

The cost for noise warning signs will vary with the plant layout and the number of entrances into the noisy area. Signs are available for slightly over a dollar (Bilsom International, Inc., Product Order Form, etc.). If, on the average, one sign accommodates ten workers and takes 15 minutes to install, the cost to a firm for placing one sign would be about $3.50 at a $10 hourly wage, and the total cost of the provision would be $1,795,000. Although OSHA's calculations treat this estimate as an annual cost, it is probable that most signs will last for considerably longer than one year.

Recordkeeping

Updating records of noise exposure should take no longer than 10 minutes per worker measured. This amounts to 5 minutes per worker per year. Recordkeeping of audiograms, could also take about 5 minutes per employee per year. The cost of this lost work time would equal 1/6 of an hour × the industry hourly wage × the number of workers exposed to noise at a TWA of >85 dB.

In addition, recordkeeping of periodic calibration of audiometers could take 20 minutes per year. If every establishment with over 250 employees in the SIC's studied maintained an audiometer, the total cost for the activity would be 2/6 of an hour × the industry hourly wage × the number of establishments. It can reasonably be assumed that most firms that market hearing conservation services already keep these records so that their additional costs would be negligible. Thus, the total recordkeeping costs are estimated to amount to $6,033,000.

Conclusion

Overall, the above calculations show that the annual cost of compliance with all of the provisions of this regulation would amount to about $53 for each of the more than five million workers protected by the program. The total cost of hearing conservation programs, as measured in current dollars, is about $270 million a year. After adjustment for some of the compliance activities already taking place, the total new costs fall to $254 million per year.

OSHA's estimates do not appear inconsistent with industry statements. For example, testimony from the Industrial Fasteners Institute implies an annual cost of $50 per employee (Tr. 1611, 1612), and the American Boiler Manufacturers Association commented that $35 per production worker is a conservative estimate (Tr. 1573). Dupont stated that its comprehensive program cost the firm between $10 and $20 per worker per year (Ex. 306–J5c). Moreover, a study submitted by the American Textile Manufacturers Institute estimated an annual cost of $14.16 per

employee (Ex. 275 B, Attachment I). BBN offered the only industry-wide calculation. However, as described above, their cost estimate of $65 per worker does not reflect significant changes from the proposal to the final rule.

Table 13 displays the new compliance costs attributable to this amendment as estimated by OSHA for each industry sector. To the extent that many establishments in the industries studied are not affected by noise, or already comply with most of the requirements, or that rental equipment is easily available for monitoring purposes, actual costs would be substantially below the estimates provided.

Table 13.—*Estimated New Annual Compliance Cost of Hearing Conservation Amendment*

SIC	Industry	Estimated cost
20	Food	$17,319,440
21	Tobacco	224,058
22	Textiles	17,756,670
23	Apparel	6,134,562
24	Lumber & Wood	30,864,350
25	Furniture & Fixtures	6,117,161
26	Paper	9,076,951
27	Printing & Publishing	22,264,030
28	Chemicals	10,944,270
29	Petroleum & Coal	4,454,069
30	Rubber & Plastics	6,721,314
31	Leather	909,841
32	Stone, Clay & Glass	7,348,522
33	Primary Metals	23,072,240
34	Fabricated Metals	23,505,250
35	Machinery, Except Electrical	25,519,890
36	Electrical Machinery	6,843,938
37	Transportation Equipment	12,914,530
49	Utilities	22,310,000
	Total	254,321,000

Source: OSHA, Office of Regulatory Analysis.

VII. Economic Impact

Introduction

The cost of the hearing conservation amendment will generate a series of economic effects on those industries that expose their employees to significant amounts of noise. It is difficult to forecast precisely the magnitude of the specific impacts that will occur because they depend in part upon decisions by individual employers on how best to respond to the costs of the amendment. However, the economic framework within which the decisions will be made can be described, and the potential range of subsequent impacts can be identified. For example, compliance costs will exert upward pressure on the prices of the products produced in those industries. Conversely, profits and employment may decline if sales cannot be maintained at the higher price levels. However, the analysis presented below indicates that the economically adverse effects of the program will be exceedingly small compared to each industry's ability to finance them. Moreover, it is shown that the most severe of these impacts will hardly influence the various financial indexes used to assess each industry's economic well-being.

The anaylsis that follows is based upon the assumption that the cost of production in each affected industry will rise by the full extent of the compliance costs as estimated in the previous section. However, even if these compliance cost estimates are approximately correct, it is probable that the accounting ledgers of the impacted industries will not reflect the full burden of these costs. In fact, studies cited in the Benefits section above support the view that the amendment may cause significant cost savings due to decreased rates of industrial accidents, absenteeism, and worker's compensation premiums. To the extent that dollar outlays for these business expenses are reduced following the implementation of the amendment, the net regulatory cost to industry will diminish. However, to demonstrate conclusively the economic feasibility of the amendment, this section does not adjust the above compliance cost estimates for these potentially important cost reductions.

Price Impact

Economic reasoning indicates that firms will attempt to pass on higher production costs by increasing the selling price of their products. If an industry faces a perfectly inelastic demand for its output, the manufacturers would shift the entire cost of complying with the amendment to their customers through a price increase without a contraction of industry sales. This market condition, however, is seldom the case. On the other hand, if the industry supply curve is perfectly elastic, product prices will rise by the full amount of the cost increase, but industry output will fall to the extent that sales are inversely related to price. Except for over very long time periods, this industry response would also be considered unusual.

In general, firms will try to pass on cost increases by raising product prices, and consumers will respond by reducing their purchases of the industry's products. Most firms, therefore, will find that they cannot quickly recoup all of their profits through price hikes, but must settle for price increases allowing less than a full cost passthrough. If firms could pass on their entire cost increase, however, the maximum expected price rise can be calculated by dividing the estimated compliance cost for each industry by the sales of that industry, and expressing the result as a percentage. Table 14 presents the percentage price increase that would be attributable to the amendment if the entire cost is passed on solely and exclusively in the form of price increases.

Table 14.—*Maximum Price Increase*

(In millions of dollars)

SIC	Industry	Estimated cost of amendment	1979 total shipments	Maximum price increase (percent)
20	Food	$17.32	$234,829	0.0074
21	Tobacco	0.22	12,173	.0018
22	Textiles	17.76	46,992	.0378
23	Apparel	6.13	[1] 40,060	.0153
24	Lumber and wood	30.86	[1] 39,781	.0776
25	Furniture and fixtures	6.12	[1] 16,859	.0363
26	Paper	9.08	66,089	.0136
27	Printing and publishing	22.26	[1] 49,527	.0450
28	Chemicals	10.94	149,181	.0073
29	Petroleum and coal	4.45	134,841	.0033
30	Rubber and plastics	6.72	44,742	.0150
31	Leather	0.91	[1] 7,508	.0121
32	Stone, clay, glass	7.35	46,185	.0153
33	Primary metals	23.07	140,122	0.164
34	Fabricated metals	23.51	109,488	.0215
35	Machinery, except electrical	25.52	157,896	.0162
36	Electrical machinery	6.84	110,713	.0062
37	Transportation equipment	12.91	194,461	.0066
49	Utilities	22.31	[2] 117,024	.0191
	Total	254.32	1,718,402	.0148

[1] Data for 1977. See U.S. Department of Commerce, Bureau of the Census, *Preliminary Report, 1977 Census of Manufactures*, Table 2, p. 4-23.

[2] Revenues from sales to customers for electric power and gas utilities. See U.S. Department of Commerce, *Survey of Current Business* (July 1980): S-23. This figure slightly understates total revenues for the entire SIC 49 because it does not include revenues from sanitary services.

Source: OSHA, Office of Regulatory Analysis. U.S. Department of Commerce, *Survey of Current Business* (July 1980): S-4.

The table shows that the overall impact of the proposed amendment, if all of the costs were passed on, would be to increase prices by 0.01 percent, i.e. one hundredth of a percent in the 19 industrial sectors studied. This clearly implies a negligible change to any of the nation's more aggregated price index series. While there is variation among industries, in only a few cases are the estimated price increases greater than a few hundredths of a percent. The largest increase in price, 0.078 percent, is recorded for the lumber and wood sector, an industry estimated to have over 94 percent of its production workers exposed to noise levels above 85 dB. However, even this price increase is of such a small magnitude that its effect would be hardly noticeable among all of the other cyclical factors affecting the industry product prices.

Financial Impact

The discussion above illustrates the impact on prices if the costs of the amendment were shifted entirely to industry customers through higher prices. Alternatively, the entries in Table 15 show the impact upon profits if the costs were solely and exclusively absorbed from profits. The percentage decrease in profits was calculated by dividing the cost of the amendment for each industry by its estimated 1979 profit level. Table 15 indicates that even in the highly unlikely event of no price change, overall profits would decrease by only 0.19 percent. Profits would fall by under 1 percent in all industry sectors, and in the great majority of cases, the anticipated decline is less than one-half of one percent. Moreover, to the extent that output prices rise at all, profits will fall by a smaller amount than listed. Thus, even these fractional values must be considered estimates of the maximum reduction in industry profits.

Table 15.—*Maximum Profit Reduction*

[In millions of dollars]

SIC	Industry	Estimated cost of amendment	1979 pre-tax profits	Profit reduction (percent)
20	Food	$17.32	$10,081	0.1718
21	Tobacco	0.22	2,237	.0098
22	Textiles	17.76	2,291	.7752
23	Apparel	6.13	[1]2,033	.3015
24	Lumber and wood	30.66	[2]3,140	.9828
25	Furniture and fixtures	6.12	[2]663	.9891
26	Paper	9.09	4,814	.1888
27	Printing and publishing	22.26	6,077	.3966
28	Chemicals	10.84	13,372	.0818
29	Petroleum and coal	4.45	25,239	.0176
30	Rubber and plastics	6.72	1,929	.3484
31	Leather	0.91	647	.1406
32	Stone, clay, glass	7.26	3,609	.2014
33	Primary metals	23.07	6,215	.3712
34	Fabricated metals	23.51	6,830	.3442
35	Machinery, except electrical	25.52	15,484	.1648
36	Electrical machinery	6.84	10,894	.0628
37	Transportation equipment	12.91	[3]6,695	.1495
49	Utilities	22.31	[4]7,139	.3125
	Total	254.32	131,609	.1932

[1] The *Quarterly Financial Report* aggregates income for "Other Nondurables" (SIC's 23 and 31). The pre-tax income of $2,680 million was allocated to the respective SIC's on the basis of the 1976 Internal Revenue Service (IRS) data. The IRS survey gives 75.84 percent, of "Net income (less deficit)" to SIC 23 and 24.16 percent to SIC 31. See Internal Revenue Service, *Preliminary Report, Statistics of Income—1976, Corporation Income Tax Returns*, (Washington, D.C., 1979), p. 6.

[2] The *Quarterly Financial Report* lists income for "Other Durable Manufacturing Products" which is composed of SIC's 24, 25, and 39. The pre-tax income of $3,834 million was also allocated on the basis of the 1976 IRS data (see [1] above). The distribution was 52.91 percent for SIC 24, 14.68 percent for SIC 25, and 32.21 percent for SIC 39. Since 39 was not included in this study, the profits from that industry are excluded from this table.

[3] This amount is also based upon the 1976 IRS data (see [1] above). The 1976 profit rate was calculated by dividing (Net income (less deficit) by total receipts. This profit rate, 6.1 percent, was then multiplied by the total 1979 revenues presented in Table 14.

Source: OSHA, Office of Regulatory Analysis. U.S. Federal Trade Commission, *Quarterly Financial Report*, First Quarter 1980, pp. 18–53.

The ability of the affected industries to raise sufficient compliance funds through normal commercial channels is another relevant consideration. Table 16 presents several financial indicators for U.S. manufacturing industries as presented in the *Quarterly Financial Reports* published by the U.S. Federal Trade Commission. The three indicators—cash on hand, outstanding short term loans, and net working capital—have been chosen because each helps to establish the ability of an industry to finance the costs of the amendment. Comparing the magnitude of these variables to the volume of required funds indicates whether the dollar outlays would be disruptive to the traditional financial operations of the affected industries.

Table 16 shows that for the 19 industries studied, the cost of the amendment is only about 0.6 percent of current cash on hand. The table also indicates that for those industries where data are available, compliance costs average only about 0.7 percent of the short-term debt, and 0.1 percent of the net working capital. Although some industry-to-industry variation exists, none of these ratios is above 2.66 percent. This clearly demonstrates that the cost of compliance will be small relative to each industry's ability to comply with the regulation. On this basis, the record indicates that the regulatory burden would not be an undue financial hardship for each of these sectors.

Table 16.—Compliance Cost as a Percent of Selected Financial Indicators (1979)

SIC	Industry	Cost as a percent of cash on hand	Cost as a percent of short-term loans	Cost as a percent of net working capital
20	Food	0.57	0.37	0.09
21	Tobacco	.12	.10	.01
22	Textiles	2.40	2.32	.23
31	Leather	.58[1]	.34[1]	.08[1]
23	Apparel	.58[1]	.34[1]	.08[1]
24	Lumber and wood	2.66[2]	NA	NA
25	Furniture and fixtures	2.66[2]	NA	NA
26	Paper	.60	1.92	.12
27	Printing and publishing	1.04	2.61	.28
28	Chemicals	.33	.08	.04
29	Petroleum and coal	.08	.16	.03
30	Rubber and plastics	.99	.85	.11
32	Stone, clay, glass	.56	1.59	.11
33	Primary metals	1.04	1.13	.14
34	Fabricated metals	.99	1.04	.16
35	Machinery, except electrical	.62	.57	.09
36	Electrical machinery	.16	.98	.03
37	Transportation equipment	.21	.84	.08
49	Utilities	[3].06	NA	NA
	Total	.60	[4].70	[4].10

[1] FTC reports only aggregated data for the non-durables group which consists of SIC's 23 and 31.

[2] FTC reports aggregated data of $2,105 million for the Durables group consisting of SIC's 24, 25, and 26. This value was allocated according to IRS data indicating that SIC 24 had 50 percent and SIC 25 about 19 percent of the "Cash" balances reported by firms in these industries in 1975. See U.S. Department of the Treasury, Internal Revenue Service, *Source Book, Statistics of Income—1975, Corporation Income Tax Returns* (Washington, D.C., 1979), p. 52.

[3] "Cash" as defined by the IRS for tax purposes, and thus not strictly comparable to the FTC definition. See IRS, *ibid.*, p. 52.

[4] Excludes SIC's 24, 25, and 49.

Source: OSHA, Office of Regulatory Analysis. U.S. Federal Trade Commission, *Quarterly Financial Report*, First Quarter 1980, pp. 18–53.

Other Sectors

The 19 industrial sectors for which detailed feasibility data were presented above include almost all manufacturing and utility industries. These sectors were initially selected by BBN (see their "Economic Impact Analysis of Proposed Noise Control Regulation," Ex. 182 p. 2–1) because they were believed to be the areas under OSHA's jurisdiction which were most likely to have occupational noise problems. However, industrial noise may also be found in some service-oriented industries. Nevertheless, there is no reason to believe that firms in other industries could not also provide adequate hearing conservation programs for the estimated average cost of $53 per exposed worker. Therefore, there is no reason to expect other major adverse economic impacts.

In addition, the industries covered by OSHA's vertical standards for the maritime industries may also be affected by this hearing conservation amendment. These industries include shipbuilding, ship repair, shipbreaking, and longshoring. Shipbuilding and ship repair are included in SIC 37 (Transportation Equipment) for which cost estimates were presented above. Shipbreaking (or the disassembly of ships) and longshoring are included in SIC 44 (Water Transportation) which was not among the 19 two-digit SIC's studied by OSHA. According to the Bureau of Labor Statistics, in 1979, there were 225,300 total employees in SIC 44.[7] Using the $53 per worker cost, even if all of these employees are exposed to noise

[7] U.S. Department of Labor, Bureau of Labor Statistics, *Employment and Earnings*, 27 (March 1980): 83.

levels >85 dB (TWA), the total cost of the hearing conservation amendment for this industry would be $11.9 million. Since this amounts to less than 0.2 percent of total business receipts and only 2.1 percent of net income,[8] it is clear that the hearing conservation amendment would have a minor economic impact on this industry. Moreover, this estimated cost and economic impact are substantially overstated because the total employment figure used includes white collar workers as well as those production workers who are exposed to noise levels below 85 dB (TWA). Since, for the most part, the number of workers exposed to severe noise in the nonmanufacturing sectors is small compared to the number in heavy manufacturing, it is even less probable that compliance costs in these industries would be the cause of major economic disruption.

Small business

OSHA has always attempted to minimize the regulatory burden on small business as long as it would not jeopardize worker safety and health. To conform with this practice, as well as to comply with the spirit of the Regulatory Flexibility Act, the Agency has made a concerted effort to analyze the special problems that small business might face in complying with this amendment. (The requirement for a Regulatory Flexibility Analysis applies only to proposed regulations issued after January 1, 1981, not to final regulations issued after that date.) Where possible, the proposed regulation was modified to ameliorate potential hardships. For example, the requirement for monitoring may affect smaller businesses disproportionately because they will often rely on consultants, whereas it is easier for larger firms to develop an in-house monitoring capability. After analyzing the record, OSHA drafted the present provision to allow the obligation to recur every other year in most situations, rather than at least annually as was originally proposed. Also, the proposal required that a worker repeat the audiometric exam if a significant threshold shift was detected. The final amendment deletes this requirement for workers who were tested after 14 hours away from workplace noise. Although it may not be practicable for large firms to schedule morning tests for all of their exposed workers, small businesses should be able to take full advantage of this exemption.

Despite these efforts, small business firms may find compliance more of a burden than large firms. Table 10 in the Cost of Compliance section shows that there are only 1–19 employees in almost two-thirds of the 311,094 establishments in those industries primarily affected by noise. The table implies that a firm classified in this size group hires an average of five production workers. Based on the BBN exposure data (see Table 11) an average of 34.4 percent, or only about 2 workers, would be exposed to noise at or above 85 dB in these small establishments.

Small firms will often find ways to reduce monitoring costs by working together to share equipment or by renting monitoring equipment to measure noise exposures. However, following the cost estimation procedures developed above, if these firms do hire consultants to satisfy their monitoring requirements, the annual monitoring cost would average $200 per firm. Using BLS data to calculate a weighted average hourly earnings of $6.76 for production workers in these industries, the estimated cost of sending two workers for audiometric testing is $68 per year. Annual costs for these small firms to provide training and hearing protectors come to about $24 and $20 respectively, while costs for recordkeeping and the posting of signs add $6.00 per firm. Thus, compliance costs for establishments in the smallest size category may average about $324 per year.

Costs of this magnitude are obviously significant to the smallest firms. However, except for the most marginal of these establishments, they are not likely to affect the economic viability of an otherwise profitable operation. Moreover, these costs may be substantially offset by the potential financial benefits of reduced worker absenteeism and workplace accidents. In addition, OSHA offers free onsite consultation in every state, funded under Section 7(c)(1) of the OSHA Act. This service is delivered by State governments or private sector contractors using trained and qualified professional staff. To the extent that these resources allow, OSHA will make a special effort to respond to requests from employers for professional advice and assistance. Also, OSHA is in the process of developing printed pamphlets that will assist employers in providing appropriate training to their workers. The availability of these additional resources should significantly enhance the ability of small business to comply with the provisions of the hearing conservation amendment.

VIII. Resource Availability

For the compliance activities of the hearing conservation amendment to be feasible, industry must have the specialized equipment and personnel essential to an acceptable program. As documented in the following paragraphs, the noise record indicates that industry need not develop new technologies to implement hearing conservation programs since the equipment required by the new rule is already being manufactured and sold to industrial purchasers.

A substantive issue that remains to be addressed, however, is the general accessibility of the necessary human and material resources. An assessment of the present availability of equipment and personnel would be useful but it would not provide a realistic indication of the future availability of these resources following the promulgation of the amendment. In the absence of a detailed requirement for hearing conservation programs, many employers have not felt obligated to protect workers from hearing loss. As a result, there has been little incentive for manufacturers to step up the production of appropriate equipment. Similarly, the number of properly trained hearing professionals has been limited by the demand for their services. As industry begins to implement the hearing conservation activities mandated under this rule, it is anticipated that the supply of these resources would rapidly expand to satisfy the new requirements.

Monitoring

The feasibility of the monitoring provision, which requires the determination of a representative noise exposure for each worker exposed to an 8 hour TWA of 85 dB or more, depends on the availability of appropriate instrumentation for firms performing in-house monitoring or of qualified monitoring consultants for firms that choose not to obtain the necessary noise measuring equipment. Comments to the noise record indicate that currently at least 6,000 dosimeters are manufactured each year (Ex. 319 A–1; Ex. 319 A–7; Ex. 319 A–12; Ex. 319 A–20; Ex. 319 A–60; Ex. 319 A–72). Although not all of these dosimeters meet the specifications of the final rule, some appear to comply with the amendment by meeting the range and lower threshold requirements as well as the specifications of ANSI § 1.25–1978 (Ex. 319 A–8; and OSHA telephone survey to dosimeter manufacturers). Kamperman (Ex. 321–32) has tested one of these instruments

[8] In 1974, receipts for SIC 44 totalled $6,058,209,000 while net income was $570,257,000. See U.S. Department of the Treasury, Internal Revenue Service, *Statistics of Income—1974, Corporation Income Tax Returns*, (Washington, D.C., 1978), p. 12.

and found that it meets a test OSHA believes to be more rigorous than the one this amendment requires. Other manufacturers should also have little difficulty building units that comply with the amendment as the technology is available to both domestic and foreign firms. In addition, there are at least 5,300 sound level meters manufactured each year that can be used to measure worker exposures (Ex. 319 A–1; Ex. 319 A–7; Ex. 319 A–12; Ex. 319 A–72).

The analysis described in the Cost of Compliance section concludes that only the larger industrial establishments are likely to purchase monitoring equipment. In the 19 industrial sectors studied, there are less than 34,000 establishments with over 100 employees (see table 10). It is not known how many of these firms already possess acceptable monitoring instruments. However, the rates of production listed above for units that will last a number of years imply that a substantial amount of equipment is already available. Further, because many of the smaller establishments will opt to rent or share equipment, each instrument will frequently be used by numerous employers.

The significant increase in the demand for monitoring instruments which will follow the implementation of the hearing conservation programs will provide a sharp stimulus to their production. Of the 12 companies currently manufacturing dosimeters, only 2 manufactured acoustical measurement equipment prior to the passage of the 1969 noise standard. Since that time, the remaining companies either expanded their product lines to include sound level meters and dosimeters or were established in response to the anticipated demand for noise measurement equipment. In similar fashion, existing manufacturers and new firms will be able to supply dosimeters and sound level meters to meet the new demand. To provide adequate time for this increased scale of production, OSHA is allowing a 2-year period before the more stringent specification requirements for dosimeters become effective.

In addition, the widespread occurrence of industrial noise has fostered the establishment of numerous acoustical consulting firms that will be available to accommodate those employers who choose to rely on specialized acoustical technicians to measure worker exposures (Ex. 319 B–6; Ex. 319 B–9; Ex. 319 B–11; Ex. 319 B–15). Audiometric testing firms also frequently offer monitoring services (Ex. 319 B–9; Ex. 319 B–12; Ex. 305; Ex. 321–7). This approach is acceptable as long as employers ensure that the consultants use qualified personnel and appropriate equipment and that they follow the requirements of the amendment. Each consulting firm can provide monitoring services to numerous industrial clients as the surveys do not always require a substantial degree of technical expertise (especially where dosimeters are used), and the smaller establishments can be surveyed in no more than one day (see Table 8). Although the record does not indicate the number of consulting firms that currently have the capability to conduct noise measurement surveys, the capacity of such firms would be expected to expand accordingly if the current supply of these services proves to be insufficient.

Audiometric Testing

The data developed in the cost of compliance section indicate that there will be about 5,126,000 workers in audiometric testing programs. The amendment requires that an otolaryngologist, an audiologist, or in their absence, a qualified physician oversee each program. In addition, the audiometric examination must be administered by one of these professionals or a certified technician trained in a course that contains material equivalent to that approved by the Council for Accreditation in Occupational Hearing Conservation, or The Guidelines of the Inter-Society Committee on Audiometric Technician Training.

In 1975, the American Speech and Hearing Association (ASHA) reported that course work in industrial hearing conservation was offered by 100 university and college programs. The ASHA estimated that there were 3,500 audiologists at that time and that this number would probably double in the next five years. (Ex. 15–30, p. 4). Indeed, by 1980, the American Speech-Language-Hearing Association (ASLHA) reported that there were currently 6,052 audiologists who are members of ASLHA, another 2,000 who are licensed, and an additional 1,600 students who were about to receive masters' or doctoral degrees (Ex. 319 B-7). Thus, within the near future, there will be about 9,652 audiologists who can supervise audiometric programs. Although it is unlikely since many firms will have a medical doctor to oversee the program, if only these audiologists supervised audiometric testing for all 5,126,000 workers, they would see an average of 531 workers each. The number of workers tested per audiologist, therefore, is about 2 per day, which is clearly a manageable task.

In addition to audiologists, otolaryngologists and other qualified physicians can oversee audiometric testing programs. The American Council of Otolaryngology (ACO) estimated that there were almost 5,000 practicing otolaryngologists in 1973 (Ex. 321–5, p. 17). According to the ACO, by 1985 there will be a surplus of 253 otolarynogologists (Ex. 321–5, p. 94). Moreover, in 1977 there were 382,000 professionally active M.D.'s in the U.S. (Statistical Abstract of the U.S., 1979, p. 106), and a major study recently submitted to the U.S. Department of Health and Human Services concludes that the U.S. will have an oversupply of 70,000 physicians by 1990 (Report of the Graduate Medical Education National Advisory Committee, Vol. I, GMENAC Summary Report, Sept. 1980, p. 3).

Currently, the Council for Accreditation in Occupational Hearing Conservation (CAOHC) indicates that they have certified about 6,700 audiometric technicians (Ex. 319 B–4), and there are about 700 course directors approved by the CAOHC to provide training for 20–30 technicians per course. If each course director teaches only one course per year to 20 people, this represents an additional 14,000 technicians. Thus, within a year, about 21,000 technicians could be available to perform audiometric tests, which averages to about one technician per 244 workers. However, many technicians have received training and certification by institutions and professionals other than the CAOHC, and audiologists and physicians other than those certified as instructors by the CAOHC will be able to train additional technicians. Thus, the supply of technicians is likely to be even larger than the 21,000 estimated here.

As explained in the previous section on the cost of compliance, about 829,000 workers will receive audiometric tests supervised by physicians or audiologists at clinics and in private practices. The 253 excess otolaryngologists that the ACO predicted to be available in 1985, alone, could provide 1,170,000 office visits (Ex. 321–5, p. 94). Thus, there is no indication that the total supply of otolaryngologists, audiologists, and physicians could not meet this demand.

About 1,447,000 workers were estimated to receive audiometric tests from mobile vans which can travel to virtually any plant facility. At a testing rate of 46 persons per day (Ex. 319 B–6 suggests 56 per 8-hour day), the workers could be tested in 180 days by 167 mobile vans. The use of these vans is already a common practice for many hearing conservation firms. Although the

number of vans presently equipped to provide audiometric services was not submitted to the record, it is reasonable to expect that the existing audiometric firms, along with new firms entering the market will be able to supply these mobile services.

Approximately 2,850,000 workers were estimated to have their hearing tested at in-house programs in 13,285 of the largest industrial establishments. Many of these firms already offer audiometric tests to their employees. Moreover, additional audiometric technicians can be readily trained by sending employees at each facility to an appropriate institution for training. Thus, it is unlikely that these large firms will have difficulty finding appropriately qualified personnel.

In general, the trained personnel are widely disseminated throughout the nation. For example, there are about 2.1 otolaryngologists per 100,000 people in the U.S., with a range from 1.7 in the east south central region to 2.5 in the pacific region (Ex. 321–5, p. 21). By federal geographical region, the distribution of audiologists listed on the ASLHA mailing list ranges from 285 ASLHA audiologists in Region 8 to 1,168 ASLHA audiologists in Region 5. Nevertheless, one objection raised against audiometric testing was that some commercial activities, such as logging operations, would not be accessible to qualified personnel (Ex. 14–264; Ex. 14–280). However, OSHA believes the record shows that in almost all cases, the widespread availability of professional and technical personnel supplying mobile audiometric services should be adequate for even outlying industrial sites.

The major equipment required to perform audiometric examinations are audiometers and audiometric test booths. Based on 2,000 hours of use per year and a 10-minute examination period, each audiometer can potentially be used to provide 12,000 tests. If the audiometers are operated at only half this rate, it would take about 1,000 audiometers to test 5,126,000 workers. The current production of this equipment, each unit of which is expected to operate for about 10 years, is at least 5000 per year. (Ex. 319 A–51; Ex. 319 A–60; Ex. 319 A–64; Ex. 319 A–67). Moreover, all of the manufacturers who commented indicated that they could meet an increased demand, and it is likely that most of the existing audiometers currently used by industry are acceptable under the amendment.

There are three major manufacturers of audiometric test booths in the U.S. Although there is no information in the record about the number of units produced each year, manufacturers could increase their production fairly rapidly by adding second and third shifts if the current supply proves to be inadequate to meet an increased demand. In addition, other firms could expand into this area. However, some users of audiometric test booths may have difficulty complying with the maximum octave band sound pressure levels allowed in the booth during audiometric testing. This may be particularly difficult in the 500 Hz octave band. In an effort to alleviate this difficulty, OSHA has chosen to use 27 dB as the maximum sound pressure level in the 500 Hz octave band rather than the more stringent level of 21.5 dB specified in the ANSI S3.1–1977 standard. Although there is evidence on the record that the levels specified by ANSI S3.1–1977, with the adjustment at 500 Hz, can be met during industrial audiometry (Ex. 266A, p. 73; Ex. 295), some users may have to relocate their booths to a quieter location in order to comply with this provision. Since only the largest industrial establishments will develop in-house audiometric facilities, quieter enclosed areas should be generally available. Nevertheless, barrier walls could be constructed or double-walled booths purchased where a problem persists. Since this part of the requirement does not become effective until 2 years after the effective date of the amendment, most users should have sufficient time to make the necessary adjustments.

Other Provisions

The resources required to comply with the use of hearing protectors, training, the posting of warning signs, and the keeping of records will not be difficult for companies to find. The general availability of hearing protectors is amply demonstrated by the list of 175 models of hearing protectors from 46 different manufacturers or suppliers published by NIOSH in 1975 (Ex. 321–14A). Training materials, warning signs, and record forms also can be readily purchased from many safety supply houses.

IX. Additional Matters

It has been shown that this standard will result in a significant reduction of a significant risk of hearing impairment. Indeed, even assuming full compliance with the present hearing conservation requirements set forth in § 1910.95(b)(3), the new standard is reasonably necessary and appropriate to reduce a significant risk, in that it will result in 38,000 fewer cases after 10 years, 143,000 after 30 years, and 169,000 at equilibrium. It has also been shown that the costs of the standard, $53 per employee covered, and the total new costs, averaging 0.0145% of sales and less than .2% of profits, are economically feasible and that the amendment is technologically feasible. Hearing impairment reduces a worker's effectiveness on the job, makes life much more difficult and when noise-induced, is essentially nonreversible and cannot be cured through use of hearing aids. OSHA has issued this standard because of these reasons and findings. Thus, in accordance with the Agency's traditional interpretation of Sections 3(8) and 6(b)(5) of the Act, and its legislative history, the Secretary is issuing this standard to reduce a significant risk of material impairment.

OSHA rejects the view that the Agency should weigh costs and benefits in issuing this standard. OSHA believes such a course would contravene its statutory mandate. We note, however, that the question of whether OSHA must balance costs and benefits is presently pending before the Supreme Court in *American Textile Mfgs. Institute, Inc.* v. *Marshall*, U.S. Nos 79–1429, 79–1563. If required to do so as a formal finding, OSHA would find that the prevention of a year of hearing impairment is worth many times more than the cost of this standard in preventing that impairment. Losses of workplace effectiveness, inability to hear safety warnings on the job, inability to communicate with family and friends, and inability to enjoy many of the benefits of a media oriented society are very real and very substantial losses, even if exceedingly difficult to quantify in dollars. The basis for this alternative cost-benefit finding are contained in the Final Regulatory Analysis (Section VII) which contains several evaluations of the comparison between costs and benefits. That discussion is incorporated here by reference. However, we briefly summarize it below.

Some of the financial savings created by this amendment, such as reductions in absenteeism and worker's compensation payments have been estimated above. However, the value of preventing the serious hardship of hearing impairment, though large, cannot be quantified in dollars.

The data available in the noise record are much more extensive than can normally be expected to be available in the health area. It is possible to make a reasonable estimate that hearing conservation programs over the next 70 years will prevent 43.3 million person-years of hearing impairment at a cost of $430 per year of hearing impairment

prevented (discounting neither costs nor benefits).

OSHA has placed a detailed numerical analysis of the benefits of the standard in the preamble because the data available permits it. But in most cases of health regulation, such detailed analysis cannot be done because data are not available. As the Supreme Court pointed out, the inability to do such detailed analysis does not inhibit the agency from issuing appropriate regulations (*I.U.D v. API, supra*, slip. op. p. 45).

As discussed above, this standard creates massive benefits, has a low cost per employee covered and creates no feasibility problems. In fact, it would even be appropriate for health and safety regulations to be issued and fully justified by the OSH Act though the reduction in risk were much less and the economic impact greater.

X. Environmental Impact

On February 19, 1974 OSHA announced in the **Federal Register** its intention to prepare an Environmental Impact Statement assessing the impact of a standard that would be proposed for occupational noise exposure (See 39 FR 6119). Information was solicited from the public on a variety of environmentally related issues including possible environmental impacts of the recommended standard and any irreversible commitments of resources which would be involved if the standard should be implemented.

A draft Environmental Impact Statement was made available to the public on June 18, 1975 (40 FR 25525) and environmental impact was specifically an issue at the first hearing held in 1975. Approximately 20 comments were received on the environmental impact of the proposal.

A Final Environmental Impact Statement has been prepared in accordance with the Council on Environmental Quality (CEQ) Guidelines (40 CFR § 1500 et seq.) and the Department of Labor's regulations setting out procedures to be used by Department of Labor agencies to insure compliance with the National Environmental Policy Act (29 CFR Part 11). The Final Environmental Impact Statement concluded that the hearing conservation amendment will beneficially impact the workplace environment by reducing both the incidence and the degree of hearing loss among workers. The incidence of other adverse health effects associated with noise exposure may also be reduced. In addition, the environment outside the workplace should not be significantly affected.

The Final Environmental Impact Statement discussed a number of alternatives including:

(1) Revision of the permissible exposure level for noise.

(2) Initiation of a hearing conservation program at 85 dB.

(3) Initiation of a hearing conservation program at 80 dB, and 90 dB.

(4) Revision of the monitoring, testing, and training provisions in the proposal.

(5) No regulatory action.

The alternative which would be the most preferable environmentally is the one which would result in the greatest reduction in hearing loss and other adverse non-auditory health effects associated with noise exposure in the workplace without resulting in any significant adverse environmental impact. Theoretically at least the most preferable alternative would have been to revise the permissible exposure level downward; this would have the effect of protecting more employees from suffering material impairments of hearing and of lessening the severity of the impairments that might be suffered anyway. At the other end of the continuum was the alternative of no regulatory action. This would result in approximately 5.4% of employees and retirees (940,000) suffering material impairments of hearing due to occupational noise exposure. The Agency felt that more information was needed before it could make a decision to reduce the permissible exposure level. The decision as to the appropriate permissible exposure level was deferred pending the acquisition and evaluation of the necessary data.

Various alternative monitoring, testing and training provisions were generally considered. Many of these were suggested by interested persons in comments and were discussed at the rulemaking hearing. For example, the appropriate frequency of monitoring and audiometric testing was the subject of somewhat varying opinions. While it is not possible to isolate the contribution of any particular element to the overall efficacy of an employee hearing conservation program, OSHA has endeavored to select a combination of provisions which together will provide adequate protection to employees while minimizing the burden on employers. The hearing conservation program prescribed in the final standard is consistent with the advice and recommendations of numerous experts in the field of hearing conservation.

Initiation of hearing conservation programs at employee exposure levels of both 90 dB and 80 dB was also considered. Initiation of a hearing conservation program at 90 dB was rejected because it was not considered adequate to reduce the significant risk of material impairment faced by many employees at this level. Implementation of this alternative, even assuming perfect compliance, would still result in approximately 351,00 occupationally-exposed persons suffering material impairment of hearing. Initiation of a hearing conservation program for all employees exposed to 80 dB, although it would have provided a substantial reduction in the number of hearing impairments resulting from noise exposure, was deferred. Lowering the initiation level for hearing conservation programs to 80 dB would greatly increase the number of workers and establishments included in these programs. This would increase the demand for the various resources needed to implement effective hearing conservation programs including individuals trained in the evaluation of hearing and persons trained in conducting audiometric examinations, as well as increase the demand for the equipment and supplies used in such programs. The current record does not contain enough information to enable OSHA to determine if the resources available are adequate to meet this increased demand.

After considering the various alternatives the Agency decided to mandate hearing conservation programs when workers are exposed to TWAs of 85 dB. This is an environmentally pragmatic decision and should result in preventing 896,000 persons from suffering a material impairment of hearing as a result of occupational noise exposure. This represents an additional 778,000 material impairments over the estimated number of material impairments that are being prevented by hearing conservation programs currently in effect.

The alternative selected by the Agency will not eliminate all environmental harm due to occupational noise exposure since some persons will continue to suffer material impairment of hearing even after implementation of the hearing conservation program required by the amendment. However it was chosen by the Agency because it will extend the benefits of hearing conservation programs to approximately 5.1 million U.S. workers while the Agency resolves various feasibility issues surrounding the permissible exposure level and priority of various methods of compliance. By its action in promulgating the hearing conservation amendment, the Agency has taken all practicable means to minimize

environmental harm within these feasibility constraints.

This action will help to preserve the nation's human resources by protecting workers from occupational noise exposure. It has been designed to minimize the irretrievable commitments of human and physical resources needed in order to implement hearing conservation programs.

Summary and Explanation of the Standard

Exposure Monitoring

Noise monitoring is necessary for the following reasons:

(1) to identify employees who should be given audiometric tests and the other benefits of the hearing conservation program;

(2) to identify those employees for whom hearing protection is mandatory under the provisions of this amendment;

(3) to determine the amount of attenuation that hearing protectors need to provide; and

(4) to instruct both employers and employees in the degree of the noise hazard.

The monitoring requirements of this amendment are imposed pursuant to section 6(b)(7) of the Act, which mandates that standards promulgated under section 6(b) shall, where appropriate, "provide for monitoring or measuring of employee explosure at such locations and intervals, and in such a manner as may be necessary for the protection of employees." In this amendment the word "measurement" is used to mean the quantification of an employee's noise exposure. Monitoring refers to a program that includes calibration, measurement, and calculation of dose or noise exposure. Although the current standard requires noise exposures to be controlled to within specific limits, it does not explicitly require the collection of personal noise exposure data. This amendment makes monitoring requirements explicit for purposes of the hearing conservation program.

Briefly, the amendment requires employers initially to determine if any employee's exposure equals or exceeds a TWA of 85 dB. This determination must be based on the employer's good faith inquiry into any factors which would tend to indicate that noise exposures in the workplace are in the vicinity of an 8 hour TWA of 85 dB. Factors meriting a positive determination include any employee complaints about noise, any difficulties in communication at a distance of about 2 feet, or any measurements made with a sound level meter or dosimeter. If the employer's determination indicates any employees are or may be exposed to a TWA at or above 85 dB, then employers must obtain noise exposure measurements which are representative of all such employees.

This initial determination/monitoring cycle must be repeated every 2 years. Of course, the employer may, at his own option, skip the initial determination procedure entirely, and simply measure employee exposures.

Where employees have a TWA of 85 dB or more, measurements must be made at least every 2 years. Measurements must also be taken within 60 days of any change in process, equipment, or personnel assignment which increases employee exposure to the extent that some employees may be newly exposed to a TWA of 85 dB or above, or increases exposure to the extent that any personal protective equipment being used no longer provides enough attenuation. Rather than measure every worker, in such cases, employers have the option of measuring the exposure of only one member of an employee group so long as the other members are engaged in a similar kind of work and are reasonably expected to have approximately the same noise exposure. In this case the employer must select for measurement the employee in the group whom he reasonably believes has the highest exposure. The exposure of the measured employee is then attributed to the other members of the group. Measurements of new employees must be taken (or exposures must be attributed to them) within 60 days of their exposures to a TWA of 85 dB or above. Workers must be notified of their exposures in writing within 21 days of the measurement.

Expression of Noise Exposure

In the proposal, an employee's noise exposure was expressed in terms of a fraction of allowable exposure or dose, often expressed as a percentage. Noise dose is a measure of the total noise to which an employee is exposed during a workshift. It is measured directly by a noise dosimeter or it can be computed from sound levels and the amount of time of exposure to each level. In this amendment, the concept of an "8-hour time-weighted average sound level," abbreviated TWA, is used as an alternative descriptor of noise exposure. The TWA as a single numerical value is the sound level which, if experienced continuously for an 8-hour workshift, would lead to the same noise dose as was measured or calculated, even if the duration was shorter or longer than 8-hours. Since noise exposure levels vary throughout the day in most industrial establishments, the TWA represents the integration of these levels (according to the 5-dB exchange rate), referenced to a duration of 8 hours and an exposure level of 90 dB. OSHA believes that since TWA is an exposure level expressed in decibels, it may be more easily understood by workers, management, the public, and others who are not familiar with the field of acoustics. To summarize, for purposes of the hearing conservation amendment, a dose of 0.5, or 50 percent, is equal to a TWA of 85 dB, computed in accordance with Appendix A of the amended noise standard.[9]

Since noise dose and TWA are equivalent in that one can be calculated from the other, since there does not appear to be much possibility of confusion between the two terms, and since one or the other may be preferred under different circumstances, both terms are defined in this amendment and either may be used by employers. Table A–1 in Appendix A has been added as a convenience so that where the value of one descriptor is known, the value of the other may easily be found.

There were relatively few comments in the record that addressed the issue of whether to describe noise exposure in terms of dose to TWA. There were, however, some instances where witnesses and commenters seemed to confuse noise *levels* with noise *exposures* (for example Ex. 14–96, p. 1; Ex. 14–79 p.

(1) OSHA wishes to clarify the fact that both "dose" and "8-hour, time-weighted, average sound level" are descriptors of employee noise *exposure*. Noise levels are addressed by this amendment only to the extent that they are experienced by employees. Even then, it is the time integration of noise levels that is of importance.

When To Implement the Program

The hearing conservation program must be implemented when any employee's noise exposure equals or exceeds an 8-hour TWA of 85 dB,[10] or when the dose equals or exceeds 50 percent (0.5). The final standard requires the initiation of a hearing conservation program at this point because as explained earlier, a substantial

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[9] Technically TWA is not a true average, either arithmetic or exponential, since it represents a theoretical value derived from an accumulated dose. To be more precise, TWA should stand for "time-weighted accumulation." However, the Agency has chosen to use the word "average" so as to be consistent with other OSHA standards, such as the asbestos standard (29 CFR 1910.1001) and the acrylonitrile standard (29 CFR 1910.1045), as well as to be more easily understood.

[10] Unless otherwise noted, where the term TWA is used in the preamble an 8-hour duration is assumed.

percentage of the population whose exposures exceed this level over a working lifetime will incur noise-induced hearing loss constituting material impairment unless preventive measures are applied. This is similar to setting an "action level" of 85 dB. Setting an action level for noise monitoring at approximately one-half the permissible exposure level (PEL) is consistent with other OSHA health standards (for example the standards on Arsenic (29 CFR 1910.1018) and Acrylonitrile (29 CFR 1910.1045)). This is done primarily because of uncertainties that can affect the employer's measuring program. The employer may not be absolutely certain that the day on which he or she measures is representative of the employee's actual exposure throughout the year. Therefore, requiring noise exposure measurements and other elements of the hearing conservation program at an action level the PEL safeguards employers against exceeding the permissible level, as well as identifies the more susceptible workers so that steps may be taken to protect their hearing. Many comments in the record supported initiating noise monitoring at a TWA of 85 dB (Ex. 162, p. 48; Ex. 169–6, p. 25; Ex. 114, p. 5; Ex. 23, p. 4; Ex. 2B, p. 6; Ex. 2C–126, p. 1). In fact, many people who opposed a PEL of 85 dB supported the idea of initiating monitoring and audiometric testing at 85 dB (Ex. 114, pp. 4–5; Ex. 175, pp. 10–11).

Dose Computation

The amendment requires noise dose to be computed in accordance with Table G–16a and the formula $D=100\ C/T$. In cases where the measured levels are not specified in the table, noise dose may be computed using the equation given in the footnote to Table G–16a.

The sound levels to be included in the calculation of the noise dose, whether one uses a sound level meter or a dosimeter, extend from 80 to 130 dB. A-weighted sound levels are assumed throughout the standard and preamble unless otherwise specified. The term "dBA" is not used because it is technically incorrect to do so. (It is the sound level that is weighted, not the decibel). According to acoustician Dr. Robert W. Young (Ex. 2C–121, p. 1) "The decibel is not A-weighted. The quantity . . . is A-weighted sound level (dB)."

Noise dose is relatively simple to compute when the sound level is constant throughout the workshift. The dose in percent, D, is given by $D=100\ C/T$, where C is the total length of the workshift in hours and T is the reference duration corresponding to the measured sound level L, as given in Table G–16a of the amendment.

For example, consider a worker who is exposed to a continuous sound level of 96 dB for a 7-hour workshift. As specified in Table G–16a, the reference duration for 96 dB is 3.5 hours. Entering this reference duration into the previous formula: $D=100(7/3.5)=100(2)=200\%$. Two hundred percent is the dose for a 7-hour day's exposure to 96 dB.

When the employee's noise exposure level fluctuates, or consists of two or more levels, the total noise dose is computed as follows: $D=100(C_1/T_1+C_2/T_2+\ldots+C_n/T_n)$, where C_n represents the total time of exposure at a specific level, and T_n represents the reference duration for that level given in Table G–16a or by the equation in the footnote to that table.

For example, if a worker is exposed for 5 hours to 85 dB, 2 hours to 87 dB, 15 minutes (0.25 hour) at 95 dB, and 45 minutes (0.75 hour) at 97 dB, the total noise dose would be:

$D=100\ (5/16+2/12.1+.25/4+.75/3)$
$D=100\ (0.31+0.17+0.06+0.25)$
$D=100\ (0.79)=79\%$.

The 8-hour time-weighted average sound level (TWA) can be computed from the employee's dose by use of the formula: $TWA=16.61\ \log_{10}\ (D/100)+90$ where the dose, D, is given in percent. Conversely, the dose may be computed from TWA using: $D=100\times 10^{(TWA-90)/16.61}$.

Values of TWA corresponding to various doses are tabulated in Appendix A, II. For the two examples given above, the TWA for a dose of 200 percent is approximately 95 dB, and that for a dose of 79 percent is approximately 88 dB. Since Table A–2 in Appendix A does not provide values above a dose of 999 percent or above a TWA of 106.6 dB, the formula must be used to convert from dose to TWA, or from TWA to dose in cases where exposures exceed these values.

Note that TWA is the sound level that would produce a given noise dose if an employee were exposed to that sound level continuously *over an 8-hour workday. This is true regardless of the length of the actual workshift.* OSHA requires the initiation of monitoring at a noise dose of 0.5, or 50 percent. This corresponds to a TWA of 85 dB. It is important to understand that the exposure is to be averaged over 8 hours. Thus, if an employee only works for 5 or 6 hours, the exposure can be higher during those hours than if the employee works for 8 hours. For example, for purposes of the hearing conservation amendment a 4-hour workday at a steady sound level of 90 dB, an 8-hour workday at 85 dB, and a 12-hour workday at 82 dB all correspond to a noise dose of 50 percent and to a TWA of 85 dB.

Table G–16a is essentially the same as the table presented in the proposal except that levels above 115 dB and below 85 dB are included so as to help clarify the fact that they are to be included in the determination of noise dose.

There are several reasons for the extension of Table G–16a. The current standard does not permit exposures above 115 dB, regardless of duration. This provision was not intended to preclude such levels, where they actually exist, from being included in the computation of an employee's actual total exposure. Indeed, it would be patently unreasonable to exclude the highest levels which are the most damaging (Kamperman, Ex. 321–32, p. 1; Ex. 321–21E, p. 5). The extension of the table above that level has been done to make explicit the requirement that, for purposes of the hearing conservation program, exposures above 115 are to be included in the dose. This is important so that where noise exposure levels exceed 115 dB, the actual exposures above that level are assessed accurately, so that employees will know that they need to select hearing protection with maximum attenuation capabilities, and to take steps to ensure that protectors are effectively fitted and worn. To avoid giving the impression that levels above 115 dB are permitted, values above that level in Table 16a have been added in italics.

Similarly, Table G–16a gives values below 85 dB so that such levels also can be included in the dose for purposes of the hearing conservation program. These values are primarily relevant for those employees with workshifts longer than 8 hours. To ensure that exposure measurements taken with a dosimeter are equivalent to those obtained using a standard sound level meter, and to those in Table G–16a, an operating range of 80 to 120 dB is required for dosimeters. The upper limit of 120 dB ensures that levels above 115 are included in the dose. The lower limit of 80 dB is consistent with accepted measuring techniques for dosimeters. It is generally accepted that the lower threshold of a dosimeter should be 5 dB below the level for which measurements are being taken. Evidence in the record supports this requirement.

Dr. George C. Maling, Jr., representing the Institute of Noise Control Engineering, commented that selection of the same level as the point at which integration (or accumulation of noise dose) begins may lead to serious measurement errors. He recommended setting the threshold 3 to 5 dB below the lowest "action point" (Ex. 14–334, p. 2).

Kenneth Eldred, as Chairman of the ANSI Sound Level Meter Standards Working Group, also supported this concept. He stated that should a sound level of 85 dB for 8 hours trigger the hearing conservation program, there might be considerable measurement error unless the threshold level of the dosimeter is required to be at a lower level, such as 80 dB (Ex. 321–19, p. 2). For example, with continuous noise levels that fluctuate between 84 dB and 86 dB, instruments with lower thresholds of 84.5 dB, 84.8 dB, or 85 dB could read anything from zero percent to more than 100 percent dose in exactly the same noise conditions. Setting the threshold well below 85 dB would prevent this confusing situation, and would ensure that the appropriate employees receive the benefits of the hearing conservation program.

There were some comments during the hearings that by initiating the hearing conservation program at a TWA of 85 dB, OSHA was, in effect, lowering the permissible exposure limit, thereby making new requirements for engineering controls (Ex. 14–341, p. 1; Ex. 14–288, p. 2). However, the Agency has made it clear throughout this preamble that the PEL remains unchanged at this time, and that an action level of 85 dB, calculated as set forth in the amendment, is an appropriate action level to trigger monitoring and other hearing conservation measures. The lower threshold of 80 dB for measurements merely facilitates the proper identification of employees to be included in the hearing conservation program, and does not change the requirements for engineering controls.

Monitoring Requirements

The proposal stated that employers have an obligation to determine if any employee is exposed to a daily noise dose of 0.5 or above (50 percent or above). The American Trucking Association (Ex. 14–878, p. 3) suggested that the proposal gave insufficient guidance on when monitoring is required. In order to ensure that monitoring will be conducted when necessary, OSHA has stated conditions upon which employers must base their determinations.

In order to comply with this amendment employers must determine whether or not they need to monitor workers' noise exposures. The initial determination is based on any information, observation, calculations, or exposure measurements that indicate exposures are or may be at or above 85 dB. This includes personal noise exposure surveys, area noise surveys, and other information such as manufacturer's information about noise emitted from specific machines. The employer must also consider other factors which may tend to suggest noise exposures at or above a TWA of 85 dB. Such factors include employee complaints about noise, indications that employees are losing their hearing, or are finding that normal conversation between two people is very difficult when those attempting to communicate are facing each other in the work area at a distance of 2 feet (Ex. 1, Table 5; Ex. 31, Fig. 6–1). Employers shall make this determination at least every two years so as to identify any new employees in need of periodic noise monitoring.

The Agency received a number of comments favoring an initial determination as a practical approach to monitoring. Dr. Robert Benson, representing the American Iron and Steel Institute (Ex. 64–10, p. 11), stated that a preliminary screening method should be used to determine whether or not extensive measurements must be applied. S.E. Cyc for the Timken Co. (Ex. 14–978, p. 3) suggested that employers establish "noise centers" where noise samples could be made on a regular basis to see if certain areas need further investigation. The Evaporated Milk Association (Ex. 14–295, p. 2) suggested that Type III sound level meters could be used to make cursory measurements for such determinations. OSHA agrees that all of these methods could be appropriate.

John J. Ahern of General Motors Corp. (Ex. 14–883, pp. 8–9), as well as H. Grady Gatlin of the Air Transport Association (Ex. 14–860, p. 3), recommended area monitoring as a way to estimate employee exposure. Area monitoring is a good way to determine the need for further monitoring, and it is useful for planning engineering control strategies. However, since employees move around within the workplace, and since area measurements are not made at the worker's ear, area monitoring is not sufficient to describe actual worker exposures. Area monitoring would constitute compliance with the requirement for an initial determination, but not with the actual monitoring requirement.

It is intended that the initial determination direct the employer's attention to the workplace noise exposures. Because of the ubiquity of noise, it is contemplated that all employers covered by the standard will have to make initial determinations, yet only a small fraction of them will actually have to monitor their employees' noise exposures. The initial determination is essentially a screening device which balances the need to protect employees by measuring their exposures against the undue burden on employers if the standard were to require measurement of every employee's exposure. Such a requirement would result in the monitoring of many employees who do not have significant noise exposures. The final standard does not require the initial determination to be written. While it is thought that a written initial determination might force the employer to focus more on the rationale for deciding not to monitor, it was felt that in this case imposing such a requirement would result in an extremely large amount of paperwork due to the ubiquity of noise. It should be noted, however, that initial determinations which are incorrect do not protect an employer from a citation for failure to monitor employee exposures. There is little to gain from incorrect initial determinations and it is expected that initial determinations will be carefully done.

The proposed standard required annual monitoring. However, some commenters suggested less frequent monitoring. The J.I. Case Company (Ex. 189–1, p. 3) suggested every 2 years, and John Stenmark of the American Iron and Steel Institute recommended every 3 years (Ex. 2C–126, p. 4). In the final amendment the proposed annual monitoring requirement has been relaxed to every 2 years. The Agency believes that monitoring every 2 years is sufficient, as long as additional monitoring is conducted whenever the employer has reason to believe that employees' exposures may have increased so that those not in the hearing conservation program would need to be included or that the attenuation provided by hearing protectors already in use is insufficient. Therefore the amendment requires employers to remonitor whenever there is an increase in the level or time of exposure sufficient to render an employee's hearing protectors inadequate. Monitoring more often than every 2 years will probably be unnecessary in industries where production processes change relatively little.

Some commenters opposed a requirement for periodic monitoring at all, especially in conditions where noise levels tend to be uniform over long periods of time. Groups such as the Air Transport Association (Ex. 142, p. 4–5), the American Iron and Steel Institute (Ex. 64–4, p. 3–4), and the Can Manufacturers Institute (Ex. 14–882, p.

12) believed that periodic monitoring was unnecessary unless there was a significant change in production process.

After considering these arguments OSHA has, in this amendment, required periodic monitoring for all industries, where initial determinations indicate exposures may equal or exceed a TWA of 85 dB, but has substantially reduced the frequency of the required monitoring. Periodic monitoring is necessary because noise levels tend to increase as equipment ages and wears, and in the absence of actual measurement employers are often unaware of these changes. Changes in noise level may cause workers whose exposures have been below a TWA of 85 dB to exceed that level, and therefore these workers would need the benefits of the hearing conservation program. Workers who have been exposed to a TWA between 85 and 90 dB may exceed the permissible exposure limit (PEL) and at this point the employer has an obligation to implement feasible engineering controls (or hearing protection whenever engineering controls are infeasible). Workers exposed above the PEL and whose exposures have increased may need additional hearing protection, such as an earplug with greater attenuation, or a change in type of protector. In addition, periodic monitoring is expected to serve an informational purpose since the amendment requires employers to inform employees of their exposures. Therefore workers will be reminded of the nature and extent of their exposures and will be better motivated to participate cooperatively in the hearing conservation program, and to wear properly fitted hearing protectors. (Ex. 147C, p. 335).

The monitoring procedure outlined in the final standard requires that once every 2 years the employer make an initial determination as to whether any of the employees may be exposed to a TWA of 85 dB. Even in the case of a negative initial determination, a new initial determination must be conducted every 2 years. If the initial determination is positive, then the employer must determine actual exposure through measurement.

In order to minimize the employer's burden while affording adequate protection to employees, the final amendment allows employers to measure fewer than all noise-exposed employees. The employer must select a group of employees who are engaged in a similar kind of work, and whose noise exposures are expected to be similar. The employer must then select for monitoring the worker within this group whom he or she reasonably believes has the highest noise exposure. When this employee has been monitored, his or her noise exposure is attributed to and written on the record of each member of the group. If the employer finds that the monitored employee's noise exposure is so high that it does not accurately reflect the exposure of other members of the group the employer may, of course, divide the group into smaller subgroups and pick an employee within that subgroup to monitor. This employee's exposure may be attributed to the rest of the employees in the subgroup. Of course nothing in the amendment prevents the employer from monitoring the exposures of all employees.

The proposal required additional monitoring with 30 days of any change or modification of equipment or process, or other workplace or work practice modifications affecting the noise level. There was considerable debate about this requirement. Some companies, such as the Outboard Marine Corporation. (Ex. 14–242, p. 4), pointed out that noise levels in their facilities were constantly changing from day to day. Others agreed (Air Transport Association, Ex. 14–860, Attach 2, p. 3; National Concrete Masonry Association, Ex. 14–247, p. 4; Oklahoma General Contractors, Ex. 14–306, p. 1) and stated that remonitoring should not have to occur unless there was a "significant" or "substantial" change in exposure levels. The Can Manufacturers Institute (Ex. 14–862, p. 12) equated a "significant increase" with an increase in level of 5 dB or greater. Many witnesses supported the 30–day "grace period" in which to remonitor when a significant change had occurred (Ex. 14–287, p. 2; Ex. 14–306, p. 1), but some recommended longer periods. Bill Johnson, representing Keystone Steel and Wire (Ex. 14–232, p. 1), suggested that 30 days was insufficent due to limited personnel and time constraints. William Hughes, representing the Composite Can and Tube Institute (Ex. 14–864, p. 4), supported monitoring within 90 days of a change in process so that employers could be sure that new conditions were not temporary, and that they had stabilized.

In response to these arguments the Agency has relaxed the proposed requirements for additional measurements. OSHA agrees that it is unreasonable and unnecessary for purposes of deciding who should be included in the hearing conservation program to require employers to remonitor with *any* change in exposure level since work environments will often change from day to day. The Agency does not intend employers to have to monitor workers' exposures continuously, but to monitor whenever changes in exposures are sufficiently great to require new hearing protectors or, for those employees who are not already in the hearing conservation program, to require training, audiometric testing, and the availability of hearing protectors. To minimize the need for interim monitoring, employers should take the periodic noise measurements on days when workplace conditions are noisiest, and plan the hearing conservation program accordingly. Due to potential feasibility problems, the time period for interim monitoring has been lengthened to 60 days. The Agency recognizes that employers who use consultants may have a scheduling problem and thus has provided this longer period. However, employers are urged to remonitor sooner than 60 days whenever possible, in order to minimize the time during which employees might be subjected to higher noise exposures without adequate protection.

This option of representative sampling is consistent with many comments in the record, and was generally supported by General Motors and Alcoa. Mr. Ahern of General Motors Corporation (Ex. 14–883, pp. 8–9) said that monitoring every employee was costly and unnecessary. Mr. Cyc. (Ex. 14–878, p. 3) suggested that employers could sample the noise exposures of certain groups of employees in an area and use the average of those samples. Thomas Bonney of Alcoa Corporation (Ex. 14–969, p. 2) suggested that monitoring a representative sample of employees be allowed when noise dosimeters are used. The draft California Noise Standard (Ex. 321–50A, pp. 5–6) recommended the following: "Where several employees work at the same job, the daily noise dose may be measured for a representative sample of employees and the highest noise dose thus determined shall be considered representative of all such employees in the group." OSHA believes that the provisions of the final standard are responsive to these suggestions and that a method such as this effectively reduces the monitoring burden but still provides adequate protection for employees.

The proposal did not explicitly provide how soon a new employee should be monitored. The Agency recognizes a need for such an explicit requirement so as to identify employees who need audiometric testing and ear protection. If employers wait until the regular biannual monitoring employees might not be identified for up to two years. Therefore the amendment

requires new employees to be monitored within 60 days of their first exposure to noise at or above a TWA of 85 dB.

The need for actually monitoring new employee exposures would depend upon the circumstances. If the new employee replaces an employee who did the same job, the old employee's noise exposure measurement may represent the new employee's measurement until the next biannual monitoring. If the new employee is assigned to a work activity for which employee exposure measurements have been made, that exposure would then be attributed to the new employee. If the new employee does not replace anyone, and does not become part of a group with a measured representative, the employer must do an initial determination and, where the determination is positive, must measure the exposure of the new employee. In either case the new employee must be apprised of his or her noise exposure, (which is actually the representative noise exposure) within 21 days of the determination.

Initial monitoring of all employees exposed to a TWA above 85 dB shall be completed within 180 days after the effective date of the amendment. This extra time has been provided because the Agency recognizes that a great many employees will need to be monitored. Although many employers already possess noise measuring equipment, and have an ongoing monitoring program, most of the 2 million employees exposed to TWAs between 85 and 90 dB (Ex. 192, pp. 2–7) will not have been monitored previously. Those employers who have not monitored before will need to purchase or rent equipment, or engage consultants to perform the monitoring. It is felt that this extra time, when added to the delayed effective date of the standard, will not result in an undue burden on employers or tax available equipment and services. Initially OSHA will accept previous monitoring results done within the past two years if they are done in accordance with this amendment.

Employee Notification

The hearing conservation amendment requires employers to notify workers of their noise exposure individually and in writing within 21 days of the monitoring. Each worker shall be notified of his or her own exposure, or of the exposure of the measured employee who represents the group.

The proposal required the employer to notify employees within 5 days of the time the employer discovers overexposure. Comments to the hearing record generally favored longer time periods because of administrative difficulties (Ex. 105, p. 8; Ex. 145, Comments p. 5; Ex. 14–215, p. 3; Ex. 14–223, p. 8; Ex. 14–306, p. 4). Therefore the Agency has relaxed the requirement to 21 days from the time of monitoring. It is the Agency's belief that the additional time will minimize administrative difficulties without significantly lessening employee protection. For example, in the event that a consultant takes the measurements the longer period will allow for communications between the consultant and the employer. Also, this period should allow the employer sufficient time to include the written notice in the employee's pay envelope. Periods longer than 21 days are not satisfactory since employees need to know the nature and extent of the hazard as quickly as possible in order to carry out their responsibilities in the prevention of adverse effects. The grace period now extends from the time of the monitoring rather than the time the employer discovers "overexposure" so as to discourage long delays or lapses of communication between employers and their technical staffs or consultants.

The proposal required employees whose exposures exceeded the prescribed noise levels to be notified "of such excessive exposure." Employers were required to keep a record of each employee's noise dose, which would be accessible to the employee. The proposal did not specifically require that employers notify employees of their actual exposures, but the accessibility of the record partly fulfilled that function. The final amendment modifies this requirement in that the employer must notify each employee of his or her actual exposure, or of the exposure of the employee who is representative of his or her exposure.

The amendment clarifies the proposal's requirement for employee notification since it is important for workers to know more than merely whether or not they are overexposed. This is especially true for purposes of a hearing conservation program where much of the burden of protection falls on the employee. By informing workers of their actual exposures, employees will have a better understanding of the extent of the hazard, and in many cases will be better motivated to wear their hearing protectors effectively. A worker who is told that his or her TWA is 103 dB will have a better sense of the need for protection than will a worker who is only told that he or she is exposed above the permissible level (90 dB) or the action level (85 dB). Since the field use of hearing protectors shows significantly lower average attenuation values than laboratory tests would indicate (Ex. 308, p. 27; Ex. 301, p. 35; Ex. 300A, p. 91), and since the worker is the only one who can know on a continuous basis whether the protector fits snugly, it is very important that the worker be properly apprised of the hazard.

Method and Accuracy of Measurement

In order to evaluate employee noise exposure accurately, OSHA has established specific requirements for instruments and techniques to be employed in measuring noise. In some instances the amendment requires that measuring instruments adhere to, and calibrations be performed according to, consensus standards developed by the American National Standards Institute (ANSI). In other instances the amendment specifies exactly the steps that employers must follow in order to meet a certain requirement. These specifications are considered necessary in order to standardize and evaluate the measurement results.

By specifying minimum requirements for noise measuring instruments the Agency believes that it will better identify those workers needing audiometric testing and will help ensure that those workers requiring hearing protectors because of a significant threshold shift will be given protectors with proper attenuation to afford them adequate protection. Other elements of the program are also dependent upon accurate noise measuring instruments, namely measurements of sound levels inside audiometric test rooms, audiometer calibration, and the calculation of hearing protector attenuation. Moreover, it should be noted that these specifications merely provide a floor, or a minimum level of compliance. Employers are always free to use instruments that are more precise or more sophisticated than the ones specified in the amendment.

The use of consensus standards, such as those of ANSI, is supported by section 6(b)(8) of the Occupational Safety and Health Act, which calls for the Secretary of Labor to explain the reasons why any rule adopted by OSHA differs from any existing national consensus standard. Although the Agency recognizes that ANSI standards are revised periodically, the amendment refers to specific standards by number and year. In the event that a referenced ANSI standard is revised, the Agency will consider proposing a revision to the noise standard whenever the Agency believe that the revision is necessary and feasible for industry.

The hearing conservation amendment permits noise exposure measurements to be made either with a noise dosimeter or a sound level meter. Sound level

meters must meet the Type 2 requirements of the American National Standard Specification for Sound Level Meters (ANSI S1.4–1971) (R1976)), and they must be set to the A-weighting network and the "slow" meter response. An appropriate sampling strategy must be used in order to measure accurately the employee noise exposure. Appendix B has been provided to advise employers of an acceptable strategy. Appendix B is intended as a guideline; reasonable alternatives that will ensure sufficient numbers of measurements for the range of sound levels encountered may also be used. All sound levels between 80 dB and 130 dB must be included, as specified in Table G–16a, in computing noise dose or TWA from measured sound levels.

The amendment also permits the use of dosimeters to measure the noise exposure of employees. The use of dosimeters is preferred in situations where there is a significant component of impulse noise, because the dosimeter can integrate all noise levels automatically, whereas individuals who use a sound level meter and a stopwatch are likely to miss certain transient sounds. Therefore, in situations where there is a significant impulse noise component, a dosimeter can be expected to result in more accurate exposure data than can be obtained using a sound level meter. It is also important to note that, in most industrial settings where the noise levels are not constant, the use of a dosimeter will be less burdensome than the use of a sound level meter. Nevertheless, employers have the option of using a sound level meter providing it is used in a manner which, like the procedures suggested in Appendix B, ensures the maximum accuracy.

Two years after the effective date of this amendment dosimeters must meet the requirements for Class 2A–90/80–5 according to the American National Standard Specifications for Personal Noise Dosimeters (ANSI S1.25–1978) (Ex. 313). "Class 2" corresponds to Type 2 tolerances of ANSI S1.4–1971 for sound level meters; "A" refers to the A-weighting network; "90" refers to the 90 dB level at which an 8-hour exposure yields 100 percent of the allowable dose; 80 refers to the lower cutoff or threshold below which the dosimeter does not respond, and "5" refers to the exchange rate between noise level and duration. Dosimeters must have an "operating range," as defined in ANSI S1.25–1978, from 80 to at least 120 dB, and in addition they must meet the requirements of section 7.5 of ANSI S1.25–1978 for a test signal at an average sound level of 90 dB, when the signal has a "crest factor," also as defined in ANSI S1.25–1978, of 30 dB.

Crest factor is the ratio of the peak sound pressure to the average sound over a specific time period. The "crest factor capability" of an instrument indicates the maximum crest factor for which the instrument meets specified tolerances. Since section 7.5 of the ANSI standard requires a crest factor of approximately 10 dB above the upper limit of the operating range (which must be at least 120 dB), such instruments will be capable of including short-duration sounds up to 130 dB in the integration. The final standard requires that dosimeters meet an additional test beyond that required by section 7.5 of the ANSI dosimeter standard. The additional test using a signal with a 90-dB average sound level and a 30-dB crest factor has been included to ensure the proper integration of short duration sounds having peak levels that are considerably higher than the average sound level. Because not all existing dosimeters can be adjusted to meet these specifications, the requirement for a lower threshold of 80 dB and a crest factor capability of 30 dB are not mandatory for 2 years. Until that time, employers may conduct monitoring with existing dosimeters using a lower threshold setting as low as the instrument permits. In addition, during this interim period dosimeters without a crest factor capability of 30 dB may be used.

The proposal permitted the use of dosimeters with accuracy and precision equivalent to that of a sound level meter, but specific performance requirements were not given, chiefly because no performance standard existed at that time. This led the Can Manufacturers Institute to point out (Ex. 14–962, p. 13) that dosimeter performance was suspect in the absence of a performance standard.

In 1978 the Acoustical Society of America completed and published an American National Standard Specification for Personal Noise Dosimeters, ANSI S1.25–1978 (Ex. 313). The standard was submitted to the public record, and the public was invited to comment on it. There were no adverse comments on the document. The existence of this concensus standard greatly facilitates the specification of noise dosimeter performance for use in conjunction with this amendment.

Considerable general support for the use of dosimeters is found in the record (Ex. 2A, p. 252, 9–25–73; Ex. 14–969, p. 2; Ex. 14–952, p. 2; Ex. 2C–117–1, p. 4; Ex. 14–247, p. 4; Ex. 315, p. 3730; Ex. 316, 40760). Dr. Floyd Van Atta (Ex. 2A, p. 2,5–9–73) pointed out the advantages of dosimeters when sound levels vary throughout the workshift. There is also specific support in the record for incorporation of the performance requirements of ANSI S1.25–1978 (Ex. 321–15, p. 3; Ex. 321–17, pp. 1, 2; Ex. 321–19, p. 1).

The American National Standard Specification for Personal Noise Dosimeters, S1.25–1978 (Ex. 313, p. 4) in itself, does not sufficiently define dosimeter performance since several operational parameters are left for the user to define. For example, the operating range can be quite different for purposes of community noise as opposed to industrial noise measurement, (such as 40–90 dB or 80–130 dB respectively). For measurements to be made in conjunction with this amendment, a Class 2A–90/80–5 dosimeter is required; this corresponds to the accuracy requirements of a Type 2 sound level meter, and to A-weighted response, and thus is consistent with the performance requirements for a sound level meter in the proposal. Similarly, the 90–dB level for 100 percent dose and the 5–dB exchange rate are consistent with the proposal. The class designation defines tolerances, frequency weighting, criterion sound level (meaning the 100 percent dose level), threshold level, and exchange rate. It is also necessary to designate the operating range—the range between the threshold level and an upper sound level within which the dosimeter operates within stated tolerances.

Noise dosimeters designed in the past few years, and particularly those designed since S1.25–1978 became available, have an operating range that extends, at least, from 90 to 115 dB if those dosimeters were intended for monitoring compliance with 29 CFR 1910.95 (a) (Ex. 319A–8, p. 22; Ex. 319A–2, p. 2).

The proposed standard did not specify a lower threshold. However, the 80–dB requirement is included in the amendment to permit reliable measurement of noise doses down to 50 percent (a TWA of 85 dB).

There are several suggestions in the record that support upper limits for dosimeters that are well in excess of 115 dB. The draft California noise standard (Ex. 321–50A, p. 6) recommends an upper limit of at least 130 dB. Mr. Eldred, as chairman of the working group that is responsible for the ANSI standards for both sound level meters and dosimeters, suggests (Ex. 321–19, p. 3) an upper limit "in the region of 115 to 140 dB." Col. Johnson introduced (Ex. 321–21E, p. 1) a draft ANSI standard on the effect on human hearing of intense (impulse or

impact) noise, that considers average A-weighted sound levels of up to 142 dB. Kamperman (Ex. 321–32, p. 1) advocated a dynamic response from 80 dB to "greater than 140 dB and preferably greater than 150 dB."

OSHA has considered all of the factors and recommendations cited above. Because of the known adverse effects of high-level noise on human hearing, it would be very desirable to require dosimeters to integrate sound levels accurately up to 140 dB or higher. However, an informal survey of dosimeter manufacturers indicated that many of the instruments currently on the market could not easily be modified to operate accurately over a dynamic range from 80 to 140 dB. In order not to rule out the use of existing dosimeter designs, OSHA has decided to require dosimeters that meet the performance requirements of ANSI S1.25–1978 only over an operating range from 80 to 120 dB. (As discussed above, a dosimeter that accurately integrates average sound levels up to 120 dB should be able to handle peak instantaneous sound levels up to approximately 130 dB.) In the purchase of new dosimeters, employers are encouraged to consider instruments that have a larger operating range than that which is required by this amendment. OSHA intends to follow closely the availability of instruments having a larger operating range (e.g., 80 to 140 or 150 dB) and will consider amending the standard to require a larger operating range when such instruments become more readily available.

T. A. Rockwell (Ex. 321–47, p. 1) correctly pointed out that noise dose will, in some cases, be significantly higher when impulses are included in the calculation. He contrasts sound level meter measurements using the "fast" response mode with those using the "slow" response mode. By using the "fast" mode one is able to ignore the contribution of impulses and report only the level of the background noise.[11] The hearing conservation amendment requires that noise exposures be measured with a standard sound level meter set to the slow response or a dosimeter with a crest factor capability of at least 30 dB.

[11] The current standard indicates that employee exposure should be measured with a standard sound level meter "at slow response." Thus the PEL under 29 CFR 1910.95(a) is, by definition, that total amount of noise that is reflected by measurement with a standard sound level meter set to the slow response. A recent revision of the Industrial Hygiene Field Operations Manual directing compliance officers to use the "fast" mode to measure noise where there is both continuous and impulse noise present is clearly at variance with the present standard and is being deleted.

Use of this instrumentation will, as Mr. Rockwell asserts, include the impulsive component of the total noise exposure in the calculation of the dose. This result is intended. As stated above (see discussion of impulse noise), for purposes of determining which employees should be included in the hearing conservation program it is important to consider the employees' total noise exposure: continuous, intermittent, and impulsive. The dosimeter specified in the final standard is capable of integrating impulse noise accurately into the total dose. Appendix B provides guidance to employers on an appropriate sampling strategy when using a sound level meter to measure exposure even where impulse noise is present.

John Stenmark, for the American Iron and Steel Institute (Ex. 321–15, p. 2) and Mr. Kamperman (Ex. 296, p. 1) suggested that public hearings be held to permit consideration of the exposure requirements for impulse noise. As discussed above, the final decision has not been made on the PEL, which includes the exchange rate and any specific requirements for impulse noise. Until that time, the Agency does see the necessity of including impulses in the computation of dose for purposes of the hearing conservation program.

The evidence submitted to the record supports OSHA's conviction that implusive noise must not be ignored—that it is as harmful to hearing as continuous noise of equivalent sound energy, and that it is especially harmful when it is combined with high levels of continuous noise. Dr. Van Lee (Ex. 294, p. 1) points out that the superposition of impulsive or impact noise is very common in industrial noise environments. Dr. Lee recommends extending Table G–16 to include the computation of impulsive noise. The evidence also supports the conclusion that instrumentation that will include impulses in the noise dose is currently available. Kamperman (Ex. 321–32, p. 2) found that several units of one dosimeter model could meet a fairly rigorous test to incorporate the energy from impulses. Although he conducted the test on one model only, he stated that engineers employed by other manufacturers believed that his "dynamic response test requirement was reasonable and meaningful although they had not actually performed the test on (their) dosimeters."

In the present amendment, the total noise dose must include intermittent and impulsive contributions, as well as continuous sound levels. Instrumentation requirements must be consistent with this intent and therefore noise dosimeters and sound level meters must be capable of handling intermittent and impulsive signals with proper accuracy. Although the scope of the American National Standard Specification for Personal Noise Dosimeters, S1.25–1978, states that this standard is not intended for use with noises that are "predominantly" impulsive, the Agency recognizes, based on its experience, that most industrial impulses are superimposed on a background of continuous noise, and therefore, would not be considered *predominantly* impulsive. However, there are many industrial situations where impulses exceed the continuous background noise by more than a few decibels. Therefore, there is a need for instrumentation with crest factor capability sufficient to measure these impulses. Since such a test is not available in ANSI S1.25–1978, this amendment includes a crest factor test that is conducted according to the method described in section 7.5 of the ANSI standard. This test is necessary to ensure that dosimeters used to measure employee exposure meet the needs of the standard.

Section 7.5 of ANSI S1.25 requires that the dosimeter respond with an accuracy of ±1.5 dB to a tone burst having a crest factor of approximately 3 (which, being a ratio, translates to approximately 10 dB). For a dosimeter with an operating range of 80 to 120 dB, this test signal would be applied at an average level corresponding to 85 dB and also at 119 dB. Such a test should assure that the instrument functions properly for an average sound level of 85 dB with instantaneous peak levels up to 95 dB and for an average level of 119 dB with peaks up to 129 dB. For many instrument designs, these tests would assure proper operation for an average level of 85 dB with peak levels up to 129 dB, thus yielding reliable readings for continuous sound levels with high crest factors due to impulsive content. However, some dosimeter designs could result in an instrument that could not record a rapidly increasing sound level (such as that commonly associated with impulse noise), thus resulting in erroneously low dose readings, or an instrument that could not record the rapid decrease in sound level after an impulsive event and therefore would yield erroneously high doses. To preclude such possibilities, OSHA has added an additional test using a test method from the ANSI standard. The Agency is requiring a dosimeter that is capable of performing the function required by the standard:

namely, the integration of sound levels from 80 to 130 dB. Thus, the amendment requires that the test included in Section 7.5 of S1.25–1978 also be carried out with a signal corresponding to an average sound level of 90 dB but having a crest factor of 30 (approximately 30 dB). The instrument reading must be correct to within ±1.5 dB, which is the tolerance stated by the ANSI standard. OSHA anticipates that most instrument manufacturers will conduct the test and specify in their brochures whether the instrument meets it. According to Kamperman (Ex. 321–32, p. 2) there is currently available at least one dosimeter that meets a similar test which OSHA believes is more stringent than the test which is being required herein.

Although there are some instruments currently available that meet the new provisions, (e.g. Ex. 319A–8, p. 22), there are others where adjustments would have to be made, and still others that would not be usable for compliance with this amendment after the end of the 2-year period. OSHA advises employers who already own noise dosimeters to consult the specifications and, if necessary, the distributor or manufacturer, to learn the extent to which their dosimeter complies with the new regulations. The amendment allows employers up to 2 years in which to check their existing instruments, have them adjusted if appropriate, or obtain new ones. The Agency has provided this 2-year grace period also for the sake of manufacturers, who may need to alter the design of their instrument and manufacture new models.

There were some comments in the record that questioned the accuracy and reliability of noise dosimeter measurements (Ex. 14–46, pp. 1–3; Ex. 14–161, p. 3; Ex. 14–178, p. 3; Ex. 321–15, pp. 3, 4; Ex. 321–28A, section 18, pp. 1, 2). Stenmark cited a number of articles that describe in detail the problems of erroneous results from noise exposure evaluations using personal dosimeters (Ex. 321–15, pp. 3, 4). However, all but one of these articles were published before 1978, the date of the ANSI dosimeter standard. In fact, two of the authors cited were members of the ANSI workgroup that drafted the dosimeter standard. The introduction to ANSI S1.25 states that the standard should "help minimize variations between results obtained with various makes and models . . . (of dosimeters)" (Ex. 313, p. 1). Moreover, the employer has the option of using sound level meters to measure employee noise exposure, although, where noise levels fluctuate, they are admittedly more difficult to use. In addition, NIOSH made a strong case for the use of dosimeters, which will be discussed below.

OSHA believes that some of the problems experienced in the past may have been due to the fact that different models of dosimeters had slightly different lower thresholds, crest factors, and ranges. The Agency has determined that OSHA's new requirements for the 80-dB lower threshold and the 30-dB crest factor capability should minimize discrepancies among these instruments.

The DuPont Company expressed a number of concerns about the use of dosimeters (Ex. 321–28A, Section 18, pp. 1, 2). Among their concerns was the fact that dosimeters are not identical to sound level meters in such respects as meter ballistics, microphonics, and system diffraction characteristics. Naturally the two instruments are different in some ways because the dosimeter carries out a function automatically that must be done by the measurer when a sound level meter is used. Also the dosimeter is worn on the body of the individual whose exposure is to be measured, whereas the sound level meter is carried by the measurer. Therefore, the measurement locations would be slightly different with respect to the sound source. OSHA does not believe that these kinds of differences should cause significant differences in measurement results, so long as measurements with each instrument are taken properly.

DuPont was also concerned (Ex. 321–28A, Section 18, p. 1) that none of the existing hearing loss criteria are based on studies correlating dosimeter measurements with audiometric test results. Only sound level meters were used. OSHA believes that this fact should not detract from the use of dosimeters for compliance purposes since dosimeters and sound level meters are expected to produce the same results when properly used. Moreover, record evidence indicates that the company already uses dosimeters as part of their hearing conservation program (Ex. 306, Section J2B, p. 4). The company manufactures and sells dosimeters as well, claiming that their product "is designed to accurately measure and record personal noise exposure . . ." (Ex. 319, A–21, cover).

Many of the concerns about the use of dosimeters have been addressed by NIOSH in its "Findings of Fact on Use of Noise Dosimeters" (43 FR 3729 (1978)) (Ex. 315). NIOSH supported the use of dosimeters for making noise exposure measurements in coal mines. On the basis of evidence presented at its hearing, and on other available information, NIOSH made certain significant findings, which are summarized below:

1. Field and laboratory comparisons of personal noise dosimeters with other noise survey instruments or systems meeting ANSI S1.4–1971 tolerances for Type I or Type II instruments, indicate that noise dosimeters will yield comparable results to these other noise measurement instruments.

2. Inadvertent and extraneous noise may be integrated by personal noise dosimeters, thus, affecting dosimeter readings; however, this problem can be minimized by spot checking of noise levels with sound level meters, or by full-shift observation of the measurement by a "qualified" person.

3. Instrument errors (including calibrator error) are less than 1 dB, and these errors combined with other possible errors associated with microphone placement and calibration drift will be within the ±2 dBA tolerance permitted by the Mining Enforcement and Safety Administration for purposes of citing noise violations (Ex. 315, pp. 3730, 3731).

OSHA recognizes that some people will prefer to use a sound level meter and a timing device, rather than a noise dosimeter, to determine employee noise dose. For continuous sound levels and relatively immobile workers, this is an acceptable procedure. Hess, Reed, Jensen, and Jokel (Ex. 303, p. 717) report that careful sampling techniques used in conjunction with a sound level meter can yield noise exposure data with an accuracy that approaches that of a dosimeter. However, such techniques, which involve following a worker around with a sound level meter held near his ear, taking many measurements, and making involved calculations, may necessitate expertise and time that many employers will not want to provide.

If a sound level meter is used, an appropriate sampling strategy must be used in order to determine the noise dose with adequate accuracy (Ex. 303, pp. 718–719). Appendix B has been provided to advise employers of an acceptable strategy. Since Appendix B is intended as a guideline, reasonable alternatives may be used. The number of necessary measurements will depend primarily upon the range of sound levels. In most circumstances, the greater the range, the more measurements will be needed. It is the employer's obligation to assure that the sampling procedure is adequate. The sampling procedure detailed in Appendix B is a simplification of a procedure developed by Hess, Reed, Jensen, and Jokel (Ex. 303). Except for the inclusion of impulsive sounds, Appendix B is similar to the sound level meter measurement method found in the proposed revision to the ISO standard 1999 (Ex. 321–43, pp. 11–20).

It has been stated (Ex. 321–47, pp. 1–2) that in certain conditions a noise dosimeter overestimates the noise dose relative to that which would be obtained using a sound level meter and timing device. OSHA believes that this situation should not occur for the following reasons: A dosimeter essentially consists of a sound level meter followed by a circuit that integrates the proper function of the A-weighted sound level. When only a sound level meter is used, sufficient data as to the temporal distribution of sound levels must be taken so as to enable the integration to be done numerically. Assuming that each instrument performs accurately and that the microphone positions are the same, the noise dose obtained with a dosimeter and that obtained using a sound level meter and a timing device should agree when the daily noise exposure is the result of several essentially constant sound levels, each experienced for an easily determined duration. OSHA has observed this kind of agreement in its compliance experience. In such cases, the noise dose can easily be obtained with a sound level meter using Table G–16a and the procedures given in Appendix A, I. However, if the sound level varies over a range of more than a few decibels and, particularly, if the sound level undergoes rather rapid excursions due to intermittent or impulse noises, it can be very difficult to obtain accurate noise doses using a sound level meter and a timing device. If the sound level is fluctuating more or less randomly, without sudden rapid excursions, a sampling strategy and calculation procedure such as that described in Appendix B can result in reliable determinations of noise dose.

OSHA therefore concludes that a properly calibrated dosimeter reads the correct dose but that the use of a sound level meter, for intermittent noise or noise with significant impluse content, may lead to an *underestimate* of the correct dose.

Microphone Placement

There are three popular methods for positioning a microphone to monitor noise:

(1) The microphone (typically on a dosimeter) is located near one of the employee's ears (on the shoulder), usually occupying that position for the entire workday.

(2) The microphone is maintained near the employee's head, with the measuring instrument (typically a sound level meter) usually held by an individual who follows the employee during a portion of the workshift.

(3) The microphone is placed at a fixed location in the workplace.

OSHA requires that the microphone be placed according to either Method 1 or Method 2. As mentioned earlier in this preamble, Method 3, area monitoring, cannot be used to determine personal exposure. While Method 3 may be useful for planning engineering control strategies, area monitoring alone is not sufficient to assess employees' personal exposure. Workers move around too much for this method to be accurate.

The use of either Method 1 or Method 2 requires consideration as to whether or not it is necessary to specify more precisely the actual microphone location and orientation. The NIOSH criteria document (Ex. 1, pp. 1–5) required measurement at the "appropriate head position," and the Advisory Committee (Ex. 2B, p. 1) required the microphone to be located at the point that most closely approximates the noise levels at the employee's head. The proposal required the noise to be measured at the employee's point of exposure. Comments in the record suggested a more specific location and microphone orientation than was stated in the proposal. One, for example (Ex. 2C–72, p. 1), wanted the microphone placed on the head using a free-field microphone and a random incidence corrector with the axis of the microphone perpendicular to the floor. Another (Ex. 14–231, p. 2) stated that the microphone should be positioned 12–16 inches from the head. The American Speech and Hearing Association (Ex. 2C–14, p. 3) recommended that a free-field microphone and random incidence corrector be used, and that the microphone be held at various angles of incidence and an average taken. Other comments called for OSHA to specify a standardized microphone position (for example, Ex. 186, p. 5).

In the noise exposure standard for surface and underground coal mines, (30 CFR Part 70 and Part 71; 43 FR 40760–40762 (1978)) (Ex. 316, p. 40761), the Department of Labor's Mine Safety and Health Administration (MSHA) requires dosimeter microphones to be positioned as follows:

> For the miner whose noise exposure is under consideration, noise exposure measurements shall be made with the personal noise dosimeter microphone located at the top of the shoulder, midway between the neck and the end of the shoulder with the microphone pointing in a vertical upward direction. . . .

MSHA's standard shows a diagram to facilitate compliance with the requirement. The standard's preamble justifies the requirement by citing studies that show the importance of exact and standardized microphone positioning for "limiting measurement errors associated with body baffle and absorption effects."

OSHA agrees that uniform placement of the dosimeter microphone is good measurement practice in order to minimize error. However, the Agency is aware that different kinds of microphones need to be placed at different angles of incidence with respect to the sound source. Also, the advent of newer, smaller microphones (½ inch and ¼ inch in diameter) may tend to reduce errors caused by microphone directionality, and positioning may become less critical. Miniaturization of dosimeters in the future may lead to their placement on the ear or on the top of the head (positioned on a helmet or a headband). OSHA does not want to preclude the development of more advantageous positioning techniques by requiring microphone placement only on the shoulder. However, the Agency does recognize the need for uniformity of placement of most 1-inch microphones. Therefore, unless the dosimeter manufacturer specifies otherwise, the Agency strongly recommends positioning the 1-inch microphone midway between the neck and the end of the shoulder with the microphone pointing vertically upward, as required by MSHA. In order to retain some flexibility to respond to technological advances, the amendment only requires the dosimeter microphone to be placed somewhere on the employee's shoulder or head.

In addition, because of the diversity of working situations, OSHA has decided not to specify an exact location for the microphone of the sound level meter. Instead the amendment only requires employers to position the sound level meter microphone not less than 2 inches nor more than 2 feet from the worker's ear. Care must be taken to be close enough so that the measurements are representative of what the worker actually hears, but not so close that the body acts as a baffle or a reflector. Again, OSHA advises the employer to follow the manufacturer's instructions concerning the microphone's angle of incidence with respect to the sound source.

There was some discussion in the record as to whether measurements should be made with or without the worker present. The Institute of Noise Control Engineering (Ex. 14–334, p. 2) stated that the measurements should be made without the worker. The proposal was unclear on this point but could be

interpreted to mean either with or without the worker present.

Whenever an object (a worker) is placed in a sound field, it distorts the field to some extent and the measured sound level will be different from that which would be measured if the object were not there. Measuring the noise in the worker's absence may be preferred for the development of engineering solutions to the noise problem of a particular machine. However, since actual exposure takes place in the worker's presence, OSHA requires measuring the noise in the presence of the worker for purposes of the hearing conservation amendment.

Calibration

To check the calibration of a sound level meter or noise dosimeter an acoustical calibrator, of known frequency and sound pressure level output, is connected to the sound measuring instrument, and a test is made at least at a single frequency and sound level. The appropriate controls, such as amplifier gain, on the instrument are then adjusted, if necessary, so that the instrument reads correctly, within certain tolerances, for that test signal. This procedure is often called "field calibration."

The proposal required such calibration before and after each day's use. Also, the MSHA amendments to 30 CFR Part 70 state that dosimeters "shall be acoustically calibrated in accordance with the manufacturer's instructions before and after each shift on which the meter is used" (Ex. 316, p. 40761). There was some discussion in the record of the proposal's requirement for daily field calibration.

Some commentors, such as the International Paper Company (Ex. 14–345, p. 2) and the California Manufacturer's Association (Ex. 14–169, p. 2) believed that daily field calibration would take too long. Others such as Clayton Ruyle of Aerospace Industries Association of America, (Ex. 105A, p. 7) said that it was impractical to calibrate a dosimeter before and after daily use. However, OSHA's requirement was supported in comments by Dr. Bruce Karrh on behalf of the American Occupational Medicine Association (Ex. 321–34A, p. 1), and the Motor Vehicle Manufacturers Association (Ex. 2C–1, p. 6). Washington Occupational Health Associates, Inc. (Ex. 321–49, p. 1) stated: "We encourage the application of uniform calibration procedures which will work to the advantage of all parties involved." It has been the experience of OSHA personnel that field calibration of a sound level meter can be done in a matter of seconds, and that a dosimeter can be calibrated in a few minutes.

The Agency has determined that the advantages of daily field calibration warrant any inconvenience that might be experienced. Such calibrations are necessary to assure any degree of accuracy or uniformity in employee noise exposure measurements, which are a crucial and integral part of the entire hearing conservation program. Therefore, the amendment requires that an acoustical calibrator shall be used to verify the calibration of all equipment used to measure employee noise exposure prior to and after each day's measurements. In establishing this requirement OSHA believes that:

1. the accuracy of the instrument will be less subject to question when it is field calibrated at least before and after each day's measurement;

2. if meter/dosimeter performance does drift over the time between field calibrations, only one day's data will be lost;

3. it is good acoustical practice to check instrument performance as often as practical.

Although the amendment does not require calibration *immediately* prior to and following each day's use, it is good measurement practice to calibrate as close as possible to the time of instrument use.

In the broadest technical sense, the "calibration" of noise-measuring equipment involves precise evaluation of instrument performance relative to the specified ideal performance. Such calibration is a complex procedure that should be carried out in a sophisticated laboratory with specialized facilities by skilled people knowledgeable in acoustics and electronics. The amendment requires that instruments used to measure employee noise exposure—the noise dosimeter and the sound level meter—conform to ANSI S1.25–1978 for noise dosimeters, or ANSI S1.4–1971 for sound level meters. In order to ensure that instruments continue to meet the ANSI standard, it may be necessary for them to be calibrated in a laboratory.

The amendment does not specify how often the laboratory calibration should take place. Prudent practice requires that instruments, should be kept well maintained, that the manufacturer's instructions concerning maintenance and upkeep should be carefully followed, and that instruments should be carefully tested at appropriate intervals by the manufacturer or by a qualified laboratory to ascertain that their performance meets specifications. The intervals between laboratory calibration would depend upon the amount of usage. Based on the Agency's estimates of the frequency of monitoring according to the size and type of the company, OSHA estimates that employers will send noise measuring equipment for laboratory calibration approximately every 2 years. Instruments that are used often, or are inadvertently bumped or dropped, should be calibrated more frequently, as should instruments that require frequent and extensive adjustment as a result of the field calibration.

NIOSH presents support for this type of requirement in its "Findings of Fact on Use of Noise Dosimeters" (43 FR 3729 (1978)) (Ex. 315, p. 3730).

> Most failures are attributable to microphone interferences resulting in an inability of the instrument to achieve calibration tolerances. Thus, there is a need for annual recalibration of personal noise dosimeters including as a minimum frequency response testing and visual inspection of the microphone for any foreign matter or defects.

Another Federal agency, the U.S. Department of Transportation, Federal Highway Administration, recommends that "The Equipment should be checked annually by its manufacturers or other certified laboratory to verify its accuracy." (Ex. 321–42A), p. 7).

Although the proposed standard was silent on the subject, OSHA agrees with MSHA, NIOSH, and the Department of Transportation, on the merits of periodic recalibration of noise-measuring instruments. However, the Agency does not require that these tests be conducted at any particular time interval because the appropriate intervals between calibrations are highly dependent upon instrument usage. Some businesses will use the instruments only occasionally, and store them in between uses. These instruments may maintain their calibration for longer periods of time if they are cared for according to the manufacturer's instruction.

Although the proposal required acoustical calibrations to be accurate to within plus or minus 1 dB, the amendment has not made this 1–dB precision and accuracy mandatory. However, a draft American National Standard Specification for the Performance and Use of Acoustical Calibrations has been prepared (Ex. 321–17B), and when this standard is issued, employers are encouraged to use acoustical calibrators that conform to it.

Audiometric Testing Program

Audiometric testing is an integral part of hearing conservation. Since the hearing loss process tends to occur gradually, a worker often does not realize that he or she is developing a hearing loss until quite a bit of damage

has occurred. Because noise-induced permanent threshold shift is not reversible, it is very important to identify it as early as possible in order to prevent further deterioration. If if is not identified, the hearing loss will continue and the resulting impairment will be even more debilitating. Audiometric testing, to identify employees who are losing their hearing and to try to prevent further hearing loss, is therefore necessary to reduce the risk of material impairment.

Not only does audiometric testing establish a baseline and a continuing record of hearing acuity, but it provides the employer a tool with which to educate employees about the importance of hearing conservation (Ex. 2A, p. 1–101 8–9–73). It also provides workers with information about their hearing acuity and the need for protection. A well run audiometric testing program will document the extent to which the entire hearing conservation program is effective.

In the words of Dr. John Fletcher, professor at the University of Tennessee Medical School:

> Another essential in hearing conservation programs is monitoring audiograms. To restate the obvious, these are periodic hearing tests after the worker has begun work or after he has started this program. These are important because they give us some feedback about the effectiveness of the program. They are necessary, we need that effectiveness. (Tr. 210).

Dr. Norman Righthand went on to say:

> The effectiveness of an industrial hearing conservation program is dependent upon proper assessment by audiometric testing. The accuracy of such testing is a function of many factors, including the training and experience of the audiometric technician, background noise levels, and the cooperation and attention of the persons being tested. Of equal importance is the state of calibration of the audiometer. (Ex. 261, attach 1, p. 1).

This amendment requires testing of employees who are exposed to an 8-hour time-weighted average sound level of 85 dB (or equivalently a dose of 50 percent) or more. Baseline audiometric tests must be administered, then retests must be performed annually. Employees who experience significant shifts of hearing thresholds with respect to the baseline test must be retested within 60 days. Baseline and retest audiograms must be preceded by at least 14 hours free from workplace noise. Follow-up procedures are required in cases where a significant threshold shift is permanent. Medical or audiological referral is required in caes where the test results are ambiguous, or where medical problems are suspected. Requirements for personnel, audiometric testing, follow-up procedures, audiometric test rooms, test frequencies, instrument specifications and calibration are specified. These requirements are addressed in the following paragraphs.

Personnel

The hearing conervation amendment requires that certain functions be performed by a licensed or certified audiologist or otolaryngologist, or in the absence of one of these specialists, a qualified physician. This professional is responsible for administering the audiometric tests or supervising the conduct of the tests by technicians, for ensuring that the audiometer is properly calibrated and that the tests are conducted in a room that is sufficiently quiet, and for reviewing audiograms, making a determination as to whether a hearing loss is work related, and determining the need to refer employees for further evaluation. Under certain circumstances employees will need to be evaluated more thoroughly than can be done on-site. Sometimes resources may not be available through the industrial audiometric program, and employees must be sent to a physician or an audiology clinic in the community. For example, although the supervising professional may be an audiologist, he or she may determine that the employee needs an otological evaluation by a physician. On the other hand, the professional supervisor may be an otolaryngologist, who may determine that the employee needs further audiological evaluation in a facility where more sophisticated audiological equipment is available.

The proposed standard did not require that an audiologist or otolaryngologist supervise the program. A wide range of opinion about this issue was expressed. Some recommended that licensed or certified otologists or audiologists supervise audiometric testing as opposed to technicians (Ex. 14-172, p. 2; Ex. 14–68, p. 4; Ex. 14–243, p. 4; Ex. 129, p. 4; Ex. 147, p. 7; Ex. 81A, p. 9). Others who regarded audiometric testing as a medical program said that only a physician should supervise (Ex. 14–156, p. 1; Ex. 2C–113, p. 1; Ex. 2A, p. 154, 5–30–73). Dr. Robert McLauchlin, of the American Speech and Hearing Association (ASHA) recommended that only audiologists supervise audiometric testing because of their extensive knowledge of audiometric testing (Ex. 2C–83, p. 3).

Either licensed or certified audiologists or otolaryngologists should supervise the audiometric testing program since these professionals are highly trained in hearing loss and are familiar with audiometric protocol. Individuals who are knowledgeable of audiometric configurations and the associated causes, are in the best position to assess the validity of audiograms and the need for medical referral, and to assess work relatedness by interpreting the results of the audiometric test. Although other physicians also may supervise the audiometric testing, it is recommended that audiologists and otolaryngologists be used because they are likely to be more knowledgeable of audiometric procedures and the patterns of hearing loss.

The amendment requires that these individuals review the audiograms to determine the existence of threshold shifts and to determine whether the shifts are due to occupational noise exposure. Since many large companies and consulting firms may wish to computerize the audiometric test results, the supervising professional does not need to review actual audiograms, so long as a professional is involved in preparing the computer program. In this way the professional will be able to determine what kinds of audiograms need to be identified for review, and review the results on a selective basis. For example, audiograms that show large losses at 500 Hz, or audiograms where there is a substantial difference in hearing thresholds between ears may need to be reviewed, as well as audiograms that show significant threshold shift, as defined below.

OSHA advises employers to see that the audiometric testing program is well supervised by either an audiologist or otolaryngologist, although the professional does not need to be present at the time of testing. Although technicians may actually conduct the audiometric tests, they must be under the direction of the professional who is responsible for the proper conduct of the tests, and the calibration of equipment. In cases where the validity of the audiogram is in question, or when problems of a medical nature are suspected, the professional must decide whether another test, or referral is necessary. Examples of cases where medical referral would be appropriate are audiograms that show large differences in hearing thresholds between the two ears, or predominantly low-frequency hearing losses. Examples of cases where retesting would be indicated would be unusual hearing loss configurations, thresholds that are not repeatable, and invalid results on self-recording audiometers. Another good use of the audiologist, otolaryngologist, or other qualified physician supervising

the testing would be in the training and counseling of employees with significant hearing threshold shifts, because they will be able to answer employee questions.

The hearing conservation amendment requires that appropriate professionals or trained audiometric technicians administer the audiometric tests. This is similar to the proposal's requirement for certified audiometric technicians or individuals with at least equivalent training and experience. There was some discussion in the record concerning the qualifications of the person actually administering the test. Most commenters, such as Dr. McLauchlin (Ex. 129, p. 4) and others (Ex. 2C–22, p. 1 and attach., p. 2; Ex. 2C–31–1, p. 2; Ex. 2A, 157, 5–30–73, Ex. 2B, p. 6) stated that the tests should be conducted by physicians, audiologists, or trained audiometric technicians. OSHA's decision to require appropriate professionals or trained audiometric technicians to administer the tests is consistent with the proposal and the above comments. While OSHA believes that the quality of testing should be as professional as possible, the Agency recognizes that a well-trained technician can do a satisfactory job. Aside from the actual test procedures, the tester must recognize when the audiometer is not working properly and know what to do about it, and should be familiar with the proper testing conditions. The tester must be able to check the functional operation of the audiometer, although he or she is not necessarily required to perform an acoustical calibration.

Employers must be able to show that technicians are competent in the administration of hearing tests and in the care and use of audiometers. One of the best ways for technicians to achieve this competence is to successfully complete a course that is especially designed for the training and certification of audiometric technicians. Such courses usually will include sessions in the anatomy and physiology of the ear, the hearing mechanism, causes of hearing problems, different types of audiometric configurations, care and use of the audiometer, daily checking of the audiometer's functioning, administration of valid audiometric tests, selection and fitting of ear protection, and recordkeeping. These topics are covered by courses that are specified by the Council of Accreditation of Occupational Hearing Conservation (CAOHC) (1619 Chestnut Ave., Haddon Heights, N.J. 08035) (Ex. 319–B4) or the Guidelines of the Inter-Society Committee on Audiometric Technician Training, (see American Industrial Hygiene Association Journal, Vol. 27: 303, May–June 1966) (Ex. 4, p. 37775). The Agency recognizes that more extensive training courses are available, and therefore, that the CAOHC and Inter-Society courses should be considered minimum curricula. The Agency strongly advises that technicians be given a refresher course at least every 5 years. The frequency of retraining necessary would be dependent upon the degree of supervision provided by audiologists or otolaryngologists, with technicians who are more closely supervised needing less retraining. Professionals with advanced degrees, such as audiologists and physicians, need not be certified as technicians.

The Agency advises (but does not require) that an otoscopic examination be conducted before audiometry as well as before the fitting of hearing protectors. This examination can be conducted by a professional supervisor or a trained technician. This practice, suggested by Dr. Thomas (Ex. 102 sec. 9 pp. 28–29), is helpful to ensure that the ear canal is not blocked with excessive wax which would preclude accurate results on the hearing test and accurate fitting of hearing protectors.

Employees To Be Included in the Program

All employees who are exposed to an 8-hour time-weighted average sound level of 85 dB or greater must be included in the audiometric test program, except for those who work less than 4 months (120 days) for one employer. This 120-day delay means the length of time from the start to the termination of employment; it is not variable or dependent upon duration of exposure, that is, the number of days or hours within the 4-month period actually worked. All employees who are subject to the noise standard, including those engaged in part-time work for less than 35 hours a week, as well as temporary workers who work for a given employer for more than 4 months are required to be tested if their TWAs exceed 85 dB.

There was considerable concern over the proposal's requirement to test within 90 days, which would have required the audiometric testing of all seasonal employees (the Larsen Company, Ex. 2C–8, p. 1; the Michigan Canners and Freezers Association, Ex. 14–279, p. 1; the American Frozen Food Institute, Ex. 14–512, p. 2; and other organizations (Ex. 2C–11–1, pp. 2–4; Ex. 2C–15, p. 3; Ex. 14–867, p. 2; Ex. 15–36, p. 2; Ex. 164, p. 3; Ex. 188–4, pp. 1–2)). Commenters stated that audiometric testing for seasonal employees would not be useful or protective, because these workers are located at several job sites in a season or over the year which makes monitoring their hearing very difficult. The decision in the final amendment to allow 120 days for the baseline audiogram is in response, at least in part, to the comments and objections raised by the above groups.

The Agency believes that allowing employers 4 months in which to perform the baseline audiogram, will have the effect of excluding most temporary and seasonal employees. OSHA has allowed the 4-month period, at least in part, as an administrative convenience so that employers who use distant consulting services for audiometric testing need only schedule the mobile van three times a year or less. Also, the Agency believes that it would be fruitless to require a testing program for workers who move from job to job because follow-up testing would be difficult or impossible.

However, OSHA does not believe these workers should be unprotected merely by virtue of the relatively short tenure of their employment. Therefore, all workers exposed to a TWA of 85 dB or above must be offered a variety of personal protective equipment and encouraged to use it, and must be educated in the hazards of noise.

Audiometric Testing

Audiometric testing consists of measuring an individual's hearing level at various frequencies in both ears. An audiogram, which is a graph showing hearing sensitivity at each frequency, provides a record of the status of that individual's hearing. When new audiograms are compared to previous audiograms, a picture of an individual's hearing sensitivity over the course of years emerges. It is important that employers observe all of the standard's requirements concerning the various components of the testing program to ensure that the test results are valid and can be compared in a meaningful manner.

There are three types of audiograms. The first is the baseline against which all other audiograms will be compared. The second is the annual audiogram, which serves to identify individuals who are developing hearing loss, and to track the effectiveness of hearing protectors and other hearing conservation measures. The third is the retest audiogram, which is required when there appears to be a significant threshold shift, or if there is any doubt about the accuracy of an audiogram.

Baseline Audiograms

The baseline audiogram is extremely important since it is the reference

against which future audiograms are compared in order to determine the extent to which an employee's hearing is deteriorating. If the baseline audiometric test is not conducted properly, it will not reflect the employee's true thresholds, and any real changes between baseline and future tests may be masked. For example, if the baseline audiogram is not taken after at least 14 hours of relative quiet, it may include some temporary threshold shift (Ex. 102, sec. 9, p. 5; Tr. 2340–2341), and hearing thresholds would be somewhat inflated. Consequently, differences between the baseline and subsequent annual audiograms would appear to be less than if the baseline had been accurate. This process would mask the true amount of hearing loss. Therefore, employers must follow the requirements of the amendment to ensure the accuracy of the baseline audiogram. OSHA requires that workers must have been away from workplace noise for at least 14 hours before the baseline audiometric test is conducted so that the baseline will accurately reflect the employee's hearing thresholds.

The hearing conservation amendment requires baseline audiograms to be established for new employees within 4 months of an employee's first exposure to noise at or above a TWA of 85 dB. The proposal required baseline audiograms to be established within 90 days for all employees. NIOSH (Ex. 1, p. I–5) and Dr. Larry Royster (Ex. 102, sec. 4, p. 12) suggested that less time be allowed before the baseline. As explained above, OSHA has chosen the 4-month grace period, which gives employers an opportunity to exclude seasonal employees. OSHA has determined that to delay audiometric testing of employees longer than 4 months, as suggested by the American Frozen Food Institute (Ex. 164, pp. 3–4) and General Foods Corporation (Ex. 2C–105, p. 2) would not be appropriate since employees might begin to incur hearing loss. To safeguard the purity of the baseline audiogram as much as possible, employers are advised to encourage all employees exposed to a TWA at or of 85 dB to wear hearing protectors until the baseline test has been performed. (All employees exposed over the PEL must already be wearing ear protectors, if engineering and administrative controls are not sufficient to reduce their exposure). Employers are encouraged to conduct pre-employment baseline audiogram where possible. Both employers as well as employees may benefit in the long run from this practice. Early testing would probably provide the employer with a more accurate indication of the effectiveness of the hearing conservation program. Early testing also will identify, at a stage where there can be no question, individuals whose hearing losses are not attributable to noise exposures within that particular workplace.

For employees presently exposed to a TWA of 85 dB or above a baseline audiogram must be obtained within 1 year of the effective date of this amendment. The Agency has allowed this amount of time because many employers will be initiating hearing conservation programs for the first time, and will need additional time to make preparations. Employers whose audiometric testing programs already meet the requirements of this standard may use audiograms taken before the effective date of the amendment to fulfill this requirement.

There are two circumstances recognized in the amendment in which the baseline audiogram must be revised. This is a change from the proposal, which had no provision for revising the baseline. Comments submitted by Dr. Royster (Ex. 321–22D, pp. 5, 47; Ex. 321–22E, p. 40), and by R. V. Durham, director of Health and Safety for the International Brotherhood of Teamsters (Ex. 61A, p. 1), discussed cases where subsequent audiograms reveal better thresholds than the original baseline. It was suggested that this might be due to a "learning effect" where an individual becomes slightly more skillful at taking the test. Or it can be caused by a reduction in temporary threshold shift due to the beneficial effects of hearing protection. The amendment requires that when a subsequent audiogram shows improved thresholds in at least two test frequencies with respect to the baseline, this later audiogram becomes the new baseline audiogram, and subsequent audiograms must be compared to it. The Agency believes that the audiogram with improved thresholds must more closely resemble an employee's true, non-noise-exposed baseline, and that significant threshold shifts would be detected that might otherwise have been overlooked by using this audiogram from as the revised baseline. Of course the old baseline audiogram must be retained, according to the recordkeeping requirements to be discussed later in the preamble.

Where the retest or annual audiogram is considered to be free of TTS, e.g., when it is conducted after 14 hours free from noise, the audiogram may show a deterioration in thresholds with respect to the baseline due to the harmful effects of noise exposure. If the change in threshold is "significant" (as defined in the amendment and discussed later in this section) the audiogram with the reduced thresholds shall become the baseline audiogram and subsequent audiograms will be compared to it. This provision is in response to a number of comments, which pointed out the futility of identifying the same significant threshold shift year after year, even though the hearing loss may have stabilized, an unintended result of the way the proposal was worded (Ex. 317, p. 3; Ex. 321–1, p. 2; Ex. 321–24A, p. 9; Ex. 321–38, p. 3). Revising the baseline each time a new significant threshold shift occurs should prevent this problem.

Annual Audiograms

The annual audiometric test has a number of purposes. It detects shifts in hearing level, indicates the need for followup procedures identifies employees who are particularly susceptible to noise-induced hearing loss, monitors the effectiveness of hearing protectors, and detects medical problems.

OSHA proposed that employers test their employees' hearing annually. Dr. McLauchlin (Ex. 2A, p. 1–101, 8–9–73), the Architectural Woodwork Institute (Ex. 127, p. 2), and many other organizations and witnesses supported annual testing (Ex. 2C–2, p. 2; Ex. 2C–31–1, p. 2; Ex. 61, p. 9; Ex. 14–166, p. 1; Ex. 102, sec. 4, p. 12; Ex. 29–2, p. 3; Ex. 110, p. 3; Ex. 321–50, p. 9). NIOSH (Ex. 1, p. I–6) and some others (Ex. 130, p. 5; Tr. 2136) favored testing every 2 years since it was postulated that a period of this length is needed to identify shifts that are truly significant.

OSHA has chosen to retain the annual audiometric test requirement because of the potential seriousness of the hearing damage that can occur within a 2-year period. For employees exposed to high levels of noise, a 2-year period between audiograms might allow too much hearing loss to occur before identifying the loss and taking remedial steps. Annual audiometric tests can aid employers and workers in detecting temporary threshold shifts before they become permanent, and they can also detect minor threshold shifts before they become significant. In both cases increased awareness of the hazard reflected by the audiometric test results will lead to more prompt protective action, and as a result more hearing will be saved.

The proposal required that all audiograms be conducted after 14 hours of quiet. This provision has been modified in the final rule to allow annual audiograms to be taken anytime during the workshift. This is consistent with the recommendation of Jeffrey

Morrill, President of Impact Hearing Conservation, Inc. (Ex. 293, p. 1), and may result in increased employee protection in that audiograms taken during the workshift are likely to show TTS. Since TTS is a harbinger of permanent threshold shift (Ex. 188–27, sec. 11, attach., p. 790), it is an important symptom or warning sign, and protective measures can then be taken before the change in threshold becomes permanent. Some employers may find this procedure more convenient than testing before the beginning of the workshift. Employers are encouraged to conduct annual audiometric tests during the workshift since the early identification of TTS can result in the prevention of permanent hearing loss.

Retest Audiograms

In cases where the annual audiogram reveals a significant threshold shift, the employee must be retested within 60 days. The retest must be performed after at least 14 hours free from workplace noise. The purpose of the retest after 14 hours of relative quiet is to determine the extent to which the significant threshold shift is permanent. Hearing protection and educational steps may be taken to prevent a temporary loss from becoming permanent, and to prevent a permanent loss from progressing. Also, the Agency recommends that a medical history be taken at the time of the retest. This may be in the form of a simple questionnaire that should contain questions relevant to the employee's work and auditory history. The purpose of the history is to aid the professional reviewer in making determinations of work relatedness, and the need for medical or audiological referral.

Although NIOSH (Ex. 1, p. I–6) had recommended a retest within 60 days, the Advisory Committee (Ex. 2B, p. 8) and the proposal required the retest within 30 days. However, OSHA received some negative comments on the 30-day retest provision. Individuals such as Dr. J. Ronald Bailey of North Carolina State University (Ex. 2C–33, p. 6) recommended a period of 60 days within which to retest employees. Companies such as the International Paper Co. (Ex. 14–344, p. 3) maintained that a 30-day retest period is impractical, since it creates a hardship for employers who must rely on mobile audiometric test vans, which may not always be available. OSHA had decided that 60 days is an appropriate period within which to require retests. Professionals who must review the audiograms, might not be available within a shorter time frame; time would therefore be needed to send the audiograms to the professional, have them reviewed, and then reschedule the mobile van for any necessary retests. While some employers may choose to send employees to a local hospital or audiology clinic instead of rescheduling a mobile van, this may not always be possible in small towns or rural locations. In any event, to provide the employer maximum flexibility, 60 days are allowed for the retest audiogram.

A retest audiogram is not required if the annual audiogram is conducted after 14 hours free from workplace noise, because recovery from TTS would have occurred and the threshold shift can be presumed to be permanent under these circumstances. Although the Agency recommends the two-stage procedure, OSHA does not require annual testing during the workshift and retest in the event of significant threshold shift in order to distinguish temporary shifts from permanent shifts, since scheduling large numbers of retests may pose a feasibility problem in some cases, and employers may choose to perform all audiometric tests before the workshift. Employers may be able to use this two stage approach by scheduling the retest for the next morning before workers are exposed to noise.

Significant Threshold Shift

A definition and an understanding of what OSHA considers to be a significant shift of hearing threshold is very important in the proper implementation of the amendment's requirements. Without such a definition workers and employers are unable to know the seriousness of the noise-induced hearing loss.

Identifying a threshold shift as significant means that it is outside the range of audiometric error (±5dB), and it is serious enough to warrant prompt attention because it is a precursor to material impairment of hearing. When threshold shifts are significant, employers must provide and fit hearing protection, and take other remedial actions depending upon whether or not the shift is permanent.

The definition of the term "significant" is critical to the effective operation of the hearing conservation program. If the definition is too stringent, spurious threshold shifts may occur and workers will be identified because of audiometer or technician error. If the definition is not stringent enough, workers will be allowed to lose too much hearing before protective actions are taken. Correctly identifying significant threshold shifts of hearing is particularly important for workers who have already begun to lose their hearing, so that the progression may be stopped before the hearing loss becomes handicapping.

OSHA's proposed standard defined significant threshold shift as an average shift of more than 10 dB at the frequencies 2000, 3000, and 4000 Hz in either ear, relative to the baseline audiogram. These frequencies were selected with the understanding that hearing loss occurs earliest and most severly in the higher audiometric frequencies.

However, a number of witnesses criticized the leniency of the proposal's definition of significant threshold shift. The Environmental Protection Agency (Ex. 9, pp. 37, 41, 51; Ex. 5, p. 43802) and others (Ex. 51, pp. 10–11; Ex. 60, p. 2; Ex. 82, attach 1, p. 2) pointed out that under certain circumstances the proposal's definition would allow shifts of up to 30 dB at single frequencies.

According to Dr. McLauchlin:

> Workers should be identified when the first signs of noise induced threshold shift occur. With a more rigid criteria the risk of allowing workers to develop compensable hearing impairments is lessened. Further, a more stringent interpretation of "significant threshold shift" provides more adequate means for evaluating the performance of ear protective devices. (Ex. 129, p. 3).

Support for a more stringent definition of significant threshold shift is provided in the NIOSH Criteria Document (Ex. 1, p. I–6), which defined it as a shift that equals or exceeds 10 dB at 500, 1000, 2000, or 3000 Hz, or 15 dB at 4000 or 6000 Hz when that audiogram is compared to the most recent age-corrected audiogram. Some commentors such as John R. Franks of the Department of Audiology and Speech Services, Purdue University (Ex. 14–68, p. 3), and Donna Dickman, director of the Industrial Hearing Conservation Program at the Washington Hearing and Speech Society (Ex. 14–320, p. 2), suggested a very stringent definition, which was a 10–dB shift at any frequency from 500 to 4000 Hz. The Armstrong Rubber Company (Ex. 14–50, p. 1), Dupont Company (Ex. 306, sec. J2C, p. 8), and others (Ex. 2B, pp. 7–8; Ex. 14–289, p. 4), suggested more stringent threshold shift criteria (10 dB) at the lower frequencies of 500, 1000 and 2000 Hz, and larger values (up to 25 dB) at the higher frequencies of 3000, 4000 and 6000 Hz.

The Agency has chosen to use the more protective approach suggested by McLauchlin, Dickman, and Franks for workers who already have a hearing loss, while allowing a less stringent criterion for those with normal hearing. Thus, the amendment's definition of significant threshold shift reflects a "sliding scale" approach, with the amount of hearing loss constituting a

significant threshold shift becoming smaller as the worker's hearing loss becomes greater. The use of a "sliding scale" for determining hearing loss was the result of suggestions to OSHA (Ex. 2B, pp. 7–8; Ex. 14–289, p. 4; Ex. 48, p. 16; Ex. 321–38, p. 2; Ex. 317, pp. 3–4) from various audiologists and others who were concerned about workers who have a pre-existing hearing loss or workers who have already demonstrated threshold shifts. Also, the Advisory Committee recognized the need for such an approach (Ex. 2B, pp. 7–8), by recommending a more stringent definition of significant threshold shift for employees whose hearing levels at any test frequency were worse than 25 dB.

Thus, the amendment requires that for employees whose hearing is within 25 dB of audiometric zero and who have not previously suffered a significant threshold shift, the significant threshold shift criterion is a fairly lenient one—a 20–dB shift at any frequency. For employees who have lost some hearing (more than 25 dB at any test frequency), the criterion is more strict—10 dB or greater at 1000 and 2000 Hz, 15 dB at 3000 and 4000 Hz, and 20 dB at 6000 Hz. For employees who already have a mild to moderate hearing loss (worse than 25 dB *average* at 1000, 2000, and 3000 Hz) or who have previously incurred a significant threshold shift, the criterion is a more stringent 10 dB at any test frequency.

OSHA believes that this more complex definition of significant threshold shift will be more efficient, and more protective. Identification of spurious threshold shifts would be minimized by a fairly lenient (20–dB) criterion for workers whose hearing was within normal limits. Yet workers whose hearing had begun to deteriorate, in other words, those with less hearing left to lose, would be watched more closely as a result of the stricter criteria. In these cases employers would need to take protective measures. Making the criteria more stringent for workers who have lost some hearing would minimize the possibility of allowing progressive deterioration to go unnoticed in workers who change jobs frequently and may have constantly worsening baseline audiograms against which annual audiograms are compared.

Unlike the proposal, the amendment includes 1000 Hz in the definition of significant threshold shift because of its importance in the understanding of speech, and the amendment also includes 6000 Hz in the definition because of its importance as an early indicator of noise-induced hearing loss. The amendment addresses each frequency separately instead of averaging them so as to avoid the situation where a worker might lose up to 30 dB at one frequency before the shift is considered "significant".

Like the proposal, the final hearing conservation amendment excludes the 500 Hz frequency form the definition of significant threshold shift. OSHA agrees with certain industrial audiologists (Ex. 317, p. 4), that the 500 Hz frequency does not need to be included in the criteria for significant threshold shift because hearing at 500 Hz is the last and least affected of any of the test frequencies (500 through 6000 Hz) as a result of noise exposure. By the time the hearing level at 500 Hz has shifted, all of the higher frequencies will have been affected more severely, and the worker would have suffered considerable hearing loss. Noise-induced hearing loss at 500 Hz alone is very unlikely to occur, even in workers who are exposed to predominantly low-frequency noise.

Aging

The hearing conservation amendment permits the application of an age (presbycusis) correction to the audiometric test results in order to discount the results of aging in determining whether a significant threshold shift has occurred. When applying an age correction, the most recent audiogram is corrected according to the procedures outlined in Appendix F. In this appendix, OSHA has adopted the procedures and the age correction tables used by NIOSH in the criteria document (Ex. 1, pp. I–14 to I–17).

Although the proposal does not address the issue, the record contains a substantial number of comments recommending the use of an age correction, many of which stated that hearing loss can occur from aging, nonoccupational noise, and other factors, and such hearing loss should not be considered part of a significant threshold shift within the context of the OSHA standard (Ex. 14–110, p. 2; Ex. 14–150, p. 2; Ex. 14–160, p. 2; Ex. 14–168, p. 1; Ex. 14–200, p. 1; Ex. 14–215, p. 2; Ex. 14–248, p. 3). Lawrence Hodge of the J. I. Case Company told OSHA that an analysis of approximately 40,000 audiograms from over 10,000 employees revealed that the proposed criterion for significant threshold shift was not appropriate without addressing presbycusis. He urged OSHA to adjust audiograms accordingly (Ex. 321–24A, p. 1).

The NIOSH criteria document (Ex. 1, pp. I–14 to I–17, III–6) recommended adjusting the baseline audiogram for hearing loss that occurs naturally due to the aging process. The adjusted baseline could then be subtracted from the most recent annual audiogram in order to determine whether or not a significant threshold shift had occurred. If employers wish to correct for aging, the amendment directs them to make the adjustment to the annual audiogram rather than to the baseline, so that the baseline will not be changed (and remain changed) by mistake. The NIOSH presbycusis values are similar to those of other well known presbycusis data bases. Although there may be slight variations at individual frequencies, the NIOSH values are generally consistent with other presbycusis data such as the U.S. Public Health Service data, and those used by Robinson and Burns, and by Passchier-Vermeer (found in "Derivation of Presbycusis and Noise Induced Permanent Threshold Shift (NIPTS) To Be Used for the Basis of a Standard on the Effects of Noise on Hearing". (Ex. 310, p. 31)). It is the differences in hearing level between age groups that actually form the age corrections.

OSHA is responding to employer's concerns that if a stringent significant threshold shift criterion is not coupled with an age correction, many people would be referred unnecessarily for follow-up. Employers need not use these corrections if they choose not to.

The Agency recognizes that many workers will be exposed to nonoccupational noise that could result in some amount of hearing loss. Most presbycusis data bases include some amount of nonoccupational hearing loss, although these populations usually are screened to avoid such cases to the extent possible. It would not be appropriate to include more than a small value for nonoccupational hearing loss in the age correction since these noise exposures vary greatly among individuals.

Follow-Up Procedures

When a significant threshold shift has been identified, the employee must be provided with and required to wear adequate hearing protection and be trained in how to use and care for this protection. If the threshold shift is shown to be temporary as a result of a retest audiogram, employees exposed to TWAs between 85 and 90 dB may discontinue the use of the hearing protection. However, OSHA advises such employees to continue to wear protectors as the fact that they have suffered TTS may indicate an increased susceptibility to noise. If the threshold shift is found to be permanent, employers must require workers to wear hearing protection. Workers exhibiting

significant threshold shift have shown an increased susceptibility to noise; the permissible exposure limit is not sufficiently protective for them, and additional measures, such as ear protectors are needed to protect these individuals. In addition, the worker must be informed in writing of a permanent, significant threshold shift within 21 calendar days of the determination. Although the proposal did not require that notification be made in writing, Durham (Ex. 321–18, pp. 2–3), and those who prepared the draft California noise standard (Ex. 321–50, p. 9) recommended it. Durham stated that workers should be notified in writing "to prevent any misunderstandings or ambiguities . . ." (Ex. 321–18, pp. 2–3). A period of 21 days was chosen in order to give the professional reviewer time to interpret the test results and review previous audiograms. A period of 21 days should allow the employer the convenience of enclosing the notice with the employee's paycheck.

So as to make the notification more meaningful to employees Dr. McLaughlin (Ex. 2A, p. 103, 8–9–73) and others (Ex. 2C–63, p. 4; Ex. 61A, p. 8) urged that OSHA require employees to be informed of their hearing levels at the time of audiometric testing. Dr. Thomas (Ex. 102, sec. 9, p. 31) asserted that "this is the best time for a good individualized education program on a one-to-one basis and companies which fail to take advantage of this time are missing an excellent opportunity." At this time the employees are interested in their test results and can be shown a graphic display of their hearing sensitivity. Workers should be informed at the time of testing of *any* change in hearing level that is discovered, even if the threshold shift is not yet "significant." However, the Agency does not require this procedure in the final amendment because the individual giving the test may not have the employee's previous records available at the time.

The company must refer the employee for an audiological or otological examination under certain circumstances. The determination for this referral will usually be made on the advice of the professional reviewer. Follow-up examinations were not required by the proposal. However, the Agency agrees with suggestions from interested persons that such examinations are necessary under certain limited conditions. Employees must be referred under the following circumstances:

a. Sometimes an employee is unable to take a hearing test on a self-recording audiometer. He or she may not understand the directions, or may not be able to produce an audiogram that meets the requirement in section (ii)(E) of Appendix C, that at least six tracings or excursions must be made at each frequency for the audiogram to be considered valid. Fewer tracings would be indicative of very slow or uncertain responses, and the determination of hearing threshold would be questionable. Since the standard requires a valid audiogram, the test would have to be administered on a manual audiometer in order to obtain a valid audiogram for such an employee (Ex. 102, sec. 9; Ex. 321–1, pp. 2–3). If a manual audiometer is not available to the employer, the employee must be sent to a clinical audiologist or otolaryngologist for further testing.

b. In other cases the employee may not respond reliably to a test given on a manual audiometer (Ex. 321, p. 3). In such cases the employee must be retested. This may happen in situations where the employee has a language problem and has not understood the directions, or where an employee may have tinnitus (ringing sounds in the ears) that can interfere with taking the test, or occasionally where an employee may exaggerate the hearing loss. If upon retesting satisfactory results are not obtained, the employee must be referred to a clinical audiologist or an otolaryngologist for a diagnostic evaluation.

c. The supervising professional may feel that the audiogram is valid, but may suspect that the loss is due to a nonoccupational cause (such as ear infection or illness) (Ex. 321–1, p. 2); these suspicions may be based on an audiogram that reveals large amounts of low frequency hearing loss, large hearing threshold differences between ears, or some other audiometric configuration that is not typical of noise-induced hearing loss. Unless the employer is willing to enter the hearing loss as work related on the OSHA Form 200, the employee must be sent to an otolaryngologist or audiologist for further evaluation to attempt to ascertain whether the hearing loss is occupationally related.

OSHA recognizes that noise-induced hearing loss may not always be due to occupational exposure. Many people raised this point at the hearing (E. 14–160, p. 2; Ex. 14–188, p. 1; Ex. 14–248, p. 3; Ex. 144, pp. 2–3). However, since this amendment covers workers who are occupationally exposed to significant amounts of noise, the occupational loss can be expected to be the dominating component in most cases. Even though people may hunt or engage in noisy hobbies, most workers' NIPTS will be work related because the average person spends infinitely more time on a routine basis at work than in recreational activities.

d. A problem may arise where the employer or the supervising professional suspects that hearing protectors are either causing or aggravating an irritation or infection of the ear canal. The symptoms may include pain upon insertion of the ear plug, visible irritation of the ear canal, or draining ear, etc. The possibility of such conditions was reported by labor union witnesses (Tr. 2026–2027; Ex. 79, p. 7; Ex. 88, p. 7; Ex. 73, attach 4, p. 1). In this case the employer must refer the worker for an otological examination so that medical treatment will enable the worker to wear ear protectors comfortably and without any adverse medical consequences.

In some circumstances a medical pathology of the ear may be suspected that is clearly unrelated to the wearing of ear protectors. Examples could be infection or irritation prior to the fitting and wearing of protectors, or an otoscopically abnormal ear drum related to a cold or allergy. Regardless of the amount or kind of hearing loss, if the employer feels that an employee needs medical treatment, the employee should be informed of the need. In these cases the amendment does not require medical or audiological referral, but employers are advised to inform workers of the need for examination or treatment. (Ex. 321–1, p. 1).

Quiet periods

The amendment requires 14 hours free from workplace noise prior to conducting baseline and retest audiograms. Ear protection is not permitted as a substitute for this quiet period.

The proposed standard specified that audiometric tests (of any kind) must be preceded by at least 14 hours during which there was no exposure to workplace sound levels in excess of 80 dB. The requirement could be met by wearing hearing protectors.

OSHA received many comments favorable to requiring a quiet period prior to taking audiograms (Ex. 2A, pp. 51–54, 5–31–73; Tr. 2340–2341; Ex. 321–34, p. 2; Ex. 321–51, p. 10). Since the baseline and retest audiograms must not be influenced by temporary threshold shift, some time away from noise is necessary in order to allow the ear to recover. Therefore, baseline and retest audiograms will have to be conducted before the workshift. Morrill (Ex. 293, p. 1) supported the option of the using hearing protectors under controlled

conditions to achieve the necessary quiet period. The draft California noise standard (Ex. 312–60, p. 10) also included this option. However, this amendment does not permit the use of hearing protections to fulfill the 14-hour quiet requirement since studies have shown (Ex. 300, p. 2; Ex. 300A, p. 91; Ex. 308, p. 27) that common fitting and wearing practices can greatly reduce hearing protector effectiveness. This reduction in effectiveness would contribute to the risk of contaminating the baseline and retest audiograms by temporary threshold shift, so that neither would reflect the employee's true hearing threshold levels.

The proposal specified a maximum workplace noise exposure level of 80 dB immediately preceding the baseline audiogram. The amendment does not specify any maximum noise exposure level for the 14-hour quiet period, since employers cannot be responsible for their employees' noise exposures away from work, if employees are in the hearing conservation program to begin with, their workplace noise levels would not meet an 80–dB exposure level without the use of hearing protectors, and therefore the testing would have to be performed before work. Employers should explain to workers why the audiometric tests must be performed after 14 hours of quiet and counsel them that it is in their best interest to avoid recreational noise exposures before baseline or retest audiometric tests.

There was some dispute about the appropriate length of quiet time necessary before the baseline and retest audiograms. The New York State Department of Labor (Ex. 2C–118, p. 2) recommended 48 hours, while most others stated that 14 hours was sufficient (Ex. 2B, p. 6; Ex. 321–34, p. 2; Tr. 2340; Ex. 2A, p. 51, 5–31–73,). While OSHA recognizes that workers with greater exposures will need longer periods of time to recover from TTS than will those who are exposed to more moderate levels, it has also been shown that the major portion of TTS disappears in the first few hours after cessation of exposure (Ex. 278, 11–6, pp. 987–990; Ex. 29, pp. 288–290; Ex. 189–27, sec. 11, p. 735). However, since it is not possible to specify an appropriate recovery time for each individual, OSHA has selected 14 hours as the most appropriate and protective period that is practical. The Agency recognized that some employees exposed to high levels of noise currently are wearing hearing protectors, and therefore they should have minimal TTS if the protectors are being worn properly. Since it is very difficult for employers to know if the ear protectors are being worn properly, and since it is very important for the baseline audiogram to be free of TTS, the amendment requires all employees to be away from workplace noise for at least 14 hours before the baseline and retest audiograms are taken.

The Agency has chosen the 14-hour period as an administrative convenience, since there are usually at least that many hours between the end of an employee's workshift and the beginning of the next shift. Employers who are unable to meet the 14-hour minimum quiet period between shifts (due to overtime or irregular schedules) may prefer to schedule the baseline or retest audiogram before work on the first day of the work week.

Audiometric Test Frequencies

This amendment requires that pure tone air conduction audiometric tests be performed for each ear at the frequencies 500, 1000, 2000, 3000, 4000, and 6000 Hz. This is consistent with the proposal, the NIOSH criteria document (Ex. 1, p. I–6) and the Advisory Committee (Ex. 2B, p. 6) recommendations.

While 500 Hz is not included in the definition of significant threshold shift, this frequency still is included among the required test frequencies in order to provide a more complete audiometric profile. The hearing threshold level at 500 Hz can be very helpful in assessing the validity of the audiogram as a whole since an unusual loss at this frequency can signal the need for a retest. Also, OSHA believes that the hearing threshold level at this frequency can provide important information about the health of employees, even though it is usually the last of the test frequencies to be affected by noise. Hearing loss at 500 Hz may be indicative of job related conductive hearing loss, which could possibly result from an adverse reaction to hearing protection, or from upper respiratory infections due to inhalation of irritating dust. Dr. Gene Del Polito of the American Speech-Language-Hearing Association explained why testing should include 500 Hz:

> 500 Hertz can add information that is useful in detecting most medical problems affecting the function of the outer and middle ears. Detecting these problems by way of hearing measurement could provide an additional measure for assuring the safety and health of the worker. Also, industrial accidents resulting in trauma to the auditory mechanism, such as punctured eardrums or disarticulated ossicles, may affect hearing more in the low frequency range than in the higher frequencies. (Ex. 291, pp. 1–2).

Dr. Joseph Sataloff (Ex. 2A, pp. 35–36, 5–10–73)) recommended the inclusion of 6000 Hz in the required audiometric test frequencies in order to more clearly delineate the characteristic noise-induced "notch." (where hearing levels at 6000 Hz are sometimes less severe than at 4000 or 8000 Hz). A number of comments to the Advisory Committee recommended against any requirement to test at 6000 Hz (Ex. 2C–41, p. 1; Ex. 2C–42, p. 1; Ex. 2C–48, p. 1; Ex. 2C–51, p. 1; Ex. 2C–52, p. 1). OSHA did not accept Dr. Sataloff's recommendation for two reasons. First, the calibration of 6000 Hz is often less stable than it is for other frequencies, and spurious results are likely to occur. Also, there are some audiometers that are incapable of testing at 6000 Hz, and the inclusion of this frequency would preclude their use under this amendment.

Audiometer Specifications

The amendment calls for equipment that meets the specifications of, and is maintained and used in accordance with the American National Standard Specification for Audiometers (ANSI S3.6—1969). Since the ANSI standard does not contain requirements for pulsed-tone and self-recording audiometers these requirements are found in Appendix C of the amendment. (Pulsed-tone and self-recording audiometers interrupt the tone signal automatically, whereas with other audiometers the interruption is performed manually). The requirements in Appendix C are essentially unchanged from those of the proposal.

The ANSI standard contains performance specifications for audiometers. It also contains calibration requirements, and specifications for audiometric zero with respect to sound pressure level at the different test frequencies. OSHA understands that microprocessor audiometers, which computerize the audiometric test are increasingly used by consultants and large companies. They are allowed by this amendment so long as they meet the performance specifications of ANSI S3.6–1969.

The proposal required that audiometers meet the specifications of ANSI S3.6–1969. There was some discussion in the record about the use of older audiometers that fail to meet the 1969 standard, but instead were calibrated to an earlier zero reference level established by the American Standard Association in 1951. Comments by Stenmark (Ex. 2C–134, p. 1) and Edwin Toothman (Ex. 145, attach 1, p. 8) expressed the opinion that industry should be allowed to continue to use existing audiometers conforming to the 1951 standard. Others, such as the American Speech and Hearing

Association (Ex. 129, attach 1, p. 2), the Environmental Defense Fund (Ex. 2C–125–1, p. 7), the Motor Vehicle Manufacturers Association (Ex. 2C–1, p. 9) and the Advisory Committee (Ex. 2B, pp. 8–9) supported adherence to the 1969 standard.

There is an average difference of 10 dB between the 1951 and the 1969 audiometric zero reference levels, the 1969 levels being lower (closer to 0 dB sound pressure level). Because the differences between the older and newer standards vary according to frequency (for example 9.5 dB at 1000 Hz and 5.5 dB at 4000 Hz), allowing both zero reference levels to be used would make it very difficult to compare an individual's audiograms that had been performed on different audiometers. It would also be very confusing for anyone wishing to assess the effectiveness of a hearing conservation program, especially since the criteria for significant threshold shift would have to be adjusted for each frequency. Since the 1969 ANSI standard has been in effect for 11 years, and since OSHA has estimated the average life of an audiometer to be about 10 years (Ex. 319A–60, p. 1; Ex. 319A–60, p. 1), the Agency assumes that there are very few audiometers in existence that are calibrated to the 1951 zero reference level. To the extent that audiometers calibrated to the 1951 zero reference level are still in use, some probably can be recalibrated to the 1969 zero reference level (Ex. 306, p. J5C–3). Therefore, the amendment requires that audiometers be calibrated to the zero reference level specified in ANSI S3.6–1969.

There was some discussion about the use of less common audiometric features, such as sweep-frequency and pulsed-tone types. Comments favored the proposal's requirements for discrete-frequency (as opposed to sweep-frequency) audiometers where the tone is presented in octave or half-octave intervals (Ex. 1, p. I–7; Ex. 2C–1, p. 9). Comments also supported the proposals's requirement that with pulsed-tone audiometers, the on-time of the test tone is at least 200 milliseconds (Ex. 1, p. I–7; Ex. 2C–1, p. 9). There was consensus that self-recording audiometers should be allowed in addition to the manual type, (Ex. 1, p. I–7; Ex. 2B, p. 9; Ex. 46, p. 12; Ex. 102, sec. 9, pp. 25–28, 31; Ex. 306, p. J1C–11; Ex. 2C–28, p. 2; Ex. 2C–90, p. 1; Ex. 2C–125–1, pp. 7–8).

NIOSH (Ex. 1, p. I–7) and the Advisory Committee (Ex. 2B, p. 9) recommended and the proposal required that self-recording audiometers should be subject to the requirements found in Appendix C. These requirements are necessary to ensure the validity of audiograms taken with self-recording audiometers.

Audiometer Rooms

Background sound levels in audiometer rooms must be quiet enough to permit valid measurements of audiometric thresholds. Too much noise can "mask" or artificially shift a subject's hearing threshold level. In other words, the tone would have to be significantly louder before the person could distinguish it from the background noise, making it seem as though the individual hears less well than he or she actually does. While this is not a good practice for any type of hearing test, it is especially serious with respect to the baseline audiogram. For example, a worker might enter a company with hearing as good as 0 dB at 1000 Hz. But background noise could mask this worker's hearing level at 1000 Hz by 15 dB, and cause the baseline to read 15 dB rather than 0 dB hearing level. In subsequent years the worker might actually lose some ability to hear at various frequencies, including 1000 Hz. Not until the worker had already lost more than 15 dB of hearing would any changes begin to show up on the audiogram. Then, the worker would have to have a hearing level of 35 dB (signifying a loss of 20 dB more), before the shift would be considered significant, under the amendment, and protective actions would be taken.

The Agency has determined that background levels in audiometer test rooms should be quiet enough to allow threshold testing to 0 dB hearing level. This is especially important in order to describe accurately the hearing levels of individuals who enter the workforce with hearing as good as 0 dB. According to the DuPont Company (Ex. 306, sect. J1C, pp. 8–9) "most young subjects will have extremely good hearing and will respond to the tone while the hearing dial is still at 0 dB threshold. In these cases it is good practice to obtain . . . responses . . . at these low levels." "Screening" audiometry, (merely registering positive responses at a specific level across frequencies) does not satisfy the requirements of this regulation because actual thresholds, and therefore valid threshold shifts, cannot be identified by this process. Baseline and periodic audiograms should reflect testing to the lowest audible level. These views have also been supported by industrial audiologists (Ex. 317, p. 2; Ex. 319B–2, p. 1; Ex. 319B—3, p. 3), and constitute good industrial audiometric practice, necessary to preserve workers' hearing.

In the proposed standard OSHA required that background levels in audiometric test rooms levels not exceed the following:

40 dB at 500 Hz
40 dB at 1000 Hz
47 dB at 2000 Hz
57 dB at 4000 Hz
62 dB at 8000 Hz

These levels, referenced to 0 dB sound pressure level, were taken from the American National Standard, Criteria for Background Noise in Audiometer Rooms, S3.1–1960.

The amendment retains the background levels specified in the proposal (as Table D–2 of Appendix D) for 2 years, and then imposes a more stringent background noise requirement for audiometric test rooms. After 2 years, background levels shall not exceed the following.

27 dB at 500 Hz
30 dB at 1000 Hz
35 dB at 2000 Hz
42 dB at 4000 Hz
41 dB at 8000 Hz

So that the professional reviewer will know that testing has been conducted in sufficiently quiet conditions, employers must record on employees' audiograms whether the test room meets the requirements of Table D–1 or Table D–2.

These background levels (with the exception of the 27-dB level at 500 Hz) are specified in the American National Standard for Permissible Ambient Noise During Audiometric Testing, S3.1–1977. This standard was submitted to the record as Exhibit 312 and public comment was invited on it (see 45 FR 26366, 4/18/80).

OSHA has required the more stringent background levels in audiometric test rooms which are outlined above to be as consistent as possible with the newer ANSI standard. In previous years, the older (1960) ANSI standard for background levels was presumed to be sufficient for allowing threshold testing to audiometric zero, based on the 1951 audiometric zero (ANSI S3.1–1960, p. 7). However, as mentioned above, audiometric zero was changed (made more stringent) in 1969, and therefore the old ANSI standard for background levels was no longer stringent enough to allow threshold testing to 0 dB. ANSI began revising the standard for background levels, but the new standard was not published until 1977. It is logical for this amendment to require the more stringent background levels so that workers may be tested to the 1969 0-dB hearing threshold level, which is now the nationally accepted norm for

audiometric zero. (In fact, the proposal required the use of audiometers meeting the ANSI S3.6–1969 standard, which includes the 1969 zero reference level).

Although the 1977 ANSI standard for background levels specifies a maximum level of 21.5 dB at the 500-Hz frequency, OSHA has modified this requirement to 27 dB. This change was based in part on a number of recent submissions to the record by audiometric booth manufacturers, employers, and industrial audiologists, who maintained that they were unable to meet the new ANSI requirement of 21.5 dB at 500 Hz with existing equipment (Ex. 287, p. 2, Attach. 1, p. 1, Attach. 3, p. 1; Ex. 291, p. 2; Ex. 295, p. 1, Ex. 319–B1; Ex. 319–B2, pp. 1, 2; Ex. 321–15, pp. 1, 2). Alan Eckel, president of Noise Control Products and Materials Association (Ex. 287, p. 2) stated that ANSI S3.1–1977 was "a clinical research standard and . . . not intended for industrial hearing conservation purposes." However, there is no such distinction made by the ANSI standard (Ex. 312). While the ANSI standard maintains that the exclusion of all ambient noise is not necessary, the levels in the standard will permit measurement of hearing threshold levels as low as those specified in ANSI S3.6–1969, (as explained above) (Ex. 312, p. 1).

Also, the Agency realizes that since 500 Hz is not included in the definition of significant threshold shift, audiometric precision at this frequency is not as important as it is at the other test frequencies. However, is not appropriate to allow background noise up to 40 dB at 500 Hz, (as allowed by the older ANSI standard) since this amount of noise would be capable of masking thresholds at 1000 Hz. The decision to allow a sound pressure level of 27 dB is based on a study by Dr. James Jerger (Ex. 321–20, p. 387), which shows that background levels at 500 Hz may be raised approximately 5 dB without interfering with threshold testing at 1000 Hz.

William Vanko (Ex. 285, p. 2) referred to the statement in ANSI S3.1–1977 (Ex. 312, p. 1) to the effect that some testing programs may be met by measurements at test signal sound pressure levels higher than 0 dB referenced to ANSI S3.6–1969. The objectives of the audiometric testing program required by OSHA can be met by slightly higher levels at 500 Hz, but they cannot be met at higher levels for the test frequencies 1000 through 6000 Hz because these frequencies are used in the definition of significant threshold shift. Testing to 0 dB hearing threshold level is critical to the proper characterization of hearing level for persons with acute hearing, so as to correctly identify significant threshold shift, with the goal of preventing material impairment of hearing.

The amendment does not incorporate the entirety of ANSI S3.1–1977 by reference since the octave band levels at 500 through 6000 Hz stated above are the only ones necessary for the amendment's audiometric testing requirements (frequencies such as 125, 250, and 750 Hz are not included since testing is not required at these frequencies). Also, the amendment has rounded the levels stated in the ANSI standard to the next highest whole number, (e.g., at 1000 Hz the amendment requires 30 dB instead of 29.5 dB). Since the remainder of the ANSI standard consists mainly of appendices, which are not actually part of the standard, only the pertinent allowable levels as modified are included in the final standard.

Although the amendment does not require testing at 8000 Hz, (nor did the proposal), this frequency is included instead of 6000 Hz in the requirements for background sound levels. This is because ordinary sound level meters are not capable of measuring sound pressure levels for the octave band surrounding 6000 Hz. Therefore OSHA has listed the levels to permit testing at the 6000-Hz frequency even though they must be measured with the octave band filter set for 8000 Hz. This procedure was assumed in the proposal, since a 62-dB maximum level was required for audiometric testing at 6000 Hz, although the 8000 Hz frequency was specified for measurement with the sound level meter. The same rationale applies to the 41-dB maximum level to be measured at 8000 Hz setting after the initial 2-year period. Since most background noise tends to be predominantly low frequency, and also since high frequency sound is more efficiently attenuated by typical audiometric test booths (Ex. 312, p. 7), the amendment's requirement for maximum levels of high frequency noise are not expected to pose a feasibilty problem.

Since some employers or consultants may need to retrofit their present audiometer rooms, (Ex. 319B–2, p. 2) or move them to a quieter location, the Agency has allowed them 2 years in which to make these changes. There may be cases where employers need to purchase new test booths, but OSHA believes that these cases will be rare because of the modification of allowable background noise made at 500 Hz.

Quieter booths of the double-walled variety are available but they should not usually be necessary since most factories have some kind of office space, where background noise levels are relatively low. Because none of the comments in the record mentioned difficulties at frequencies above 500 Hz, OSHA concludes that the 1977 ANSI requirements at these frequencies do not present significant problems. Measurements of background levels submitted by audiologist Sue Riggs (Ex. 295, p. 1 and Attachment) indicated some difficulties at 500 Hz, but the 1977 ANSI levels were met at other frequencies. Alan Eckel of Eckel Industries stated that "almost all audiometric booths currently used in industrial hearing conservation programs meet the requirements of the new ANSI standard at 1000 Hz and above. The lower frequencies are difficult to achieve". (Ex. 319 B–1, p. 1).

Measurements by Riggs (Ex. 295, Attachment) indicated that the 27-dB levels at 500 Hz could be met in many of the cases she cited, although the 21.5-dB level specified in ANSI S1.3–1977 could not. Reports by Berger et al. (Ex. 286A, p. 36) and NIOSH (Ex. 28–2, p. 23), showed that the 27-dB level usually was met in the conditions in which these investigators tested. The mobile audiometric van used by Burns and Robinson had a mean attenuation of 79 dB at 500 Hz from outside the vehicle to inside the booth (Ex. 12, p. 71), which when added to the 27-dB allowable level at 500 Hz, must have provided ample attenuation for any ordinary circumstances.

Audiometer Calibration

This amendment requires three types of audiometer calibration. First, the functional calibration of the audiometer must be checked before each day's use. Second, the audiometer's calibration must be checked acoustically with a sound level meter and earphone coupler at least every year. Finally, the audiometer must receive an exhaustive calibration at least every 2 years. In the first two instances the word "calibration" refers to a procedure by which the audiometer is checked to make sure that it is producing the correct level of pure tones at specific frequencies, and that the signals are free from distortion or unwanted sounds, which might lead to invalid audiograms. In the third type of calibration the instrument is thoroughly checked, and adjusted if necessary, so that it meets the ANSI specifications described below. In most cases this type of calibration must be performed in a laboratory or at the manufacturer's factory.

So as to ensure accurate audiograms, OSHA advises employers to measure the background sound pressure levels in

audiometric test rooms periodically. Since the sound levels inside the room are greatly dependent upon the sound levels outside, employers should measure the room levels whenever there is an increase in outside sound levels that might adversely affect compliance with Appendix D. For example, Dr. Thomas (Ex. 102, Sect. 9, pp. 53–56) recommends making these measurements whenever a test room is relocated, or when noisy equipment is moved into the area of the test room.

Audiometer calibration is necessary in order to obtain valid audiograms, which in turn are critical since changes in hearing level initiate a number of different actions. There were many comments in the record supporting required audiometer calibrations. According to William Reich of Gen Rad Corporation, "An accurate and reliable audiometric testing program involves more than the simple purchase of a good audiometer. Periodic calibrations are an essential part of the audiometer program . . ." (Ex. 281, attach. 2, p. 86, Electro-Acoustic Audiometer Calibration). There are several studies that show that audiometers can often malfunction, and this malfunctioning can be undetected by the individual who is using the instrument (Ex. 321-51A, Ex. 281, attach. 2, p. 86). As a consequence, the audiograms that have been produced are of questionable accuracy and value. According to a study by Thomas, Preslar, Summers, and Stewart (Ex. 321–51A, p. 326), of 98 audiometers checked, none was "in condition to do satisfactorily the testing for which it was manufactured. The most frequent defect was incorrect sound level output." This study and also a study performed by the U.S. Air Force School of Aerospace Medicine (Ex. 281, attach., p. 86) indicate that a high percentage (50 percent to 100 percent) of audiometers failed to perform according to ANSI requirements when these instruments were left uncalibrated. It is for these reasons that calibration is mandatory.

The hearing conservation amendment requires that the functional operation of the audiometer be checked before each day's use. The process involves testing a person whose hearing levels are stable and do not exceed 25 dB at any test frequency. This person may be the tester himself or herself, or any other person with normal hearing. The process also includes checking the general function of the audiometer for unwanted sounds, such as clicks, static, and distortion. This functional check is quite simple, and can be done in a few minutes. If the test reveals significant deviations (greater than 5 dB), in hearing level from the subject's known audiogram or unwanted or distorted sounds, a more thorough calibration is warranted. In this case OSHA requires an acoustic calibration. In order to be sure that the audiometer's output is deviating rather than the subject's hearing level (the subject may have a headcold), the tester is advised to test additional subjects (with known stable hearing levels that do not exceed 25 dB). If these subjects confirm the deviation, use of this audiometer for testing must be discontinued until a periodic or exhaustive calibration can be performed since all of the audiograms taken that day would be suspect.

The proposal also required that the functional operation of the audiometer be checked prior to each period of use to ensure that it was in proper operating order. In addition, the proposal required a "biological" calibration at least once a month, which consisted of testing a person having known, stable audiometric thresholds. If the results of the biological calibration indicated hearing level differences greater than 5 dB, the audiometer was to be subjected to a "periodic" calibration. In the final amendment the Agency has combined the functional check and the biological calibration into the same requirement, to be performed before each day's use of the audiometer. This approach has been taken because it is extremely important to ensure that the audiometer produces correct sound pressure levels each time it is used. The process of testing one person's hearing can be done quickly, especially if the individual performing the test tests himself or herself.

This type of calibration check was supported by comments and articles submitted to the record. Even a new audiometer from the factory can lose its calibration especially if it was bumped in transit, and a functional check before each day's use would alert the operator to any malfunctions that might invalidate the test results (Ex. 102, sec. 9, p. 55–56; Ex. 306, p. J5C–8). This type of calibration appears to be accepted audiological practice, and was recommended in many comments to the record (Ex. 2C–14, p. 4; Ex. 2C–31–1, p. 2; Ex. 48, p. 14; Ex. 58, p. 2; Ex. 159, p. 6; Ex. 281, attach p. 2, p. 86; Ex. 306, pp. J5C–6, J1C–4, J1C–12).

Like the proposal, the amendment requires an acoustic calibration at least once a year, in order to check the audiometer's output with calibrated measuring equipment. This calibration is specified in Appendix E, and must be performed with a sound level meter and octave-band filter set, and a National Bureau of Standards 9–A coupler. The amendment's requirements are the same as those of the proposal, except that the listening test and the functional check are not included since they must now be performed before each day's use. The name has been changed from "periodic" to "acoustic" to more accurately characterize this particular calibration.

The amendment's requirements for acoustic calibration are given in Section 4.1.4.3 of ANSI § 3.6–1969, but the actual calibration procedures are given more explicitly in Appendix E, as they were in the proposal. Also, Appendix E gives reference sound pressure levels for both the Telephonics TDH–39 and TDH–49 earphones, which are in popular use today. (Reference levels for the TDH–49 earphone were not included in ANSI § 3.6–1969).

For the acoustic calibration, measurements must be taken acoustically at a reading of 70 dB on the audiometer's hearing threshold dial at all test frequencies (500, 1000, 2000, 3000, 4000, and 6000 Hz). Measurements must then be taken at the 1000-Hz frequency in decreasing steps of 10 dB from 70 dB to 10 dB hearing level. These latter measurements may be taken acoustically with the sound level meter or electrically with a voltmeter. The purpose of these measurements is to check the sound pressure level output at all frequencies, and to check the linearity of the attenuator, to make sure that the audiometer is producing the correct sound pressure level output at all hearing levels. Appendix E gives the following tolerances, which also are stayed in Section 4.1.4.3 of ANSI § 3.6–1969:

3 dB at 500 through 3000 Hz
4 dB at 4000 Hz
5 dB at 6000 Hz

Whenever the audiometric output deviates by more than the above levels, OSHA advises an exhaustive calibration. Until such time as the exhaustive calibration is performed, deviations that exceed these tolerances should be posted on the audiometer, so that the operator can correct the audiograms accordingly. When manual audiometers are used, deviations of 3 or 4 dB should be rounded to 5 dB when adjusting the audiogram. The amendment advises, but does not require an exhaustive calibration when small tolerances are exceeded, because posting deviations and correcting audiograms should serve as a satisfactory interim measure. However, when the deviations exceed 10 dB, an exhaustive calibration is mandatory.

This portion of the amendment reflects a slight departure from the proposal, which specified additional

listening checks. The amendment limits the requirement to an assessment of sound pressure level output, since sound pressure level output is the audiometric function most frequently found to be incorrect (Ex. 321–51A, p. 328).

Comments in the hearing record supported a periodic calibration and some even specified its performance quarterly (Ex. 2C–14, p. 4; Ex. 2C–31–1, p. 2; Ex. 48, p. 14). Since not all audiometers will be in constant service and since an acoustic calibration will be triggered by a functional check that shows the necessity of further calibration, the Agency believes that a regular acoustic calibration once a year should be sufficiently frequent to assure accuracy.

The hearing conservation amendment requires an exhaustive calibration every 2 years. The content of the requirement is essentially the same as that which appeared in the proposal, although the interval between calibrations has been shortened from 5 to 2 years. This calibration will usually be performed in a laboratory or by the audiometer manufacturer because of the need for specialized equipment. (Calibration of frequencies below 500 Hz and above 6000 Hz may be omitted since they are not required test frequencies). During this calibration the audiometer is actually adjusted so that it conforms to the following sections of ANSI § 3.6–1969:

Section 4.1.2 Accuracy of Tone Frequencies. The purpose of the test is to make sure that the audiometer will actually produce tones at the frequency stated on the audiometer dial. For example, the tone should be 2000 Hz, not 2100 Hz or 1900Hz.

Section 4.1.3 Purity of Tones. In this test the audiometer is checked to make sure that harmonics of the test frequencies are not present to the extent that a test subject might respond to the harmonic rather than to the test tone.

Section 4.1.4.3 Accuracy of Sound Pressure Level. In this test the audiometer's sound pressure level output is checked in a similar manner as it is on the acoustic calibration. Reference threshold levels should be appropriate to the type of earphone, as mentioned above.

Section 4.4.1 Sound from Test Earphone. The purpose of this test is to ensure that the earphone will not emit any sound other than the test tone, which might affect the subject's threshold.

Section 4.4.2 Sound from Second Earphone. This test guards against any sound from the nontest earphone, which might affect the subject's threshold.

Section 4.4.3 Other Unwanted Sound. This test guards against any sound from the audiometer itself, which might furnish a clue to the subject being tested, thereby affecting the subject's threshold.

Section 4.5 Tone Switch. The purpose of this test is to ensure that the tone has an adequate rise and decay time, and that operation of the switch does not produce audible transient sounds or extraneous frequencies, which could influence the subject's threshold determination.

The proposal required an exhaustive calibration every 5 years. The amendment requires that the exhaustive calibration be performed every 2 years. Many comments in the hearing record supported an exhaustive (or factory) calibration every year (Dr. Righthand, Ex. 281, Attach. p. 91; Air Force Regulation Ex. 48, p. 13; Dr. Thomas, Ex. 102, Sec. 9, p. 56). Although the DuPont Company calls its yearly calibration an "acoustic" calibration, their requirements are similar to the exhaustive calibration specified in the amendment. The Company states: "This calibration shall check both frequency and intensity at each setting, rise time and overshoot and electrical and mechanical integrity." (Ex. 306, p. J5C–5). A Draft International Standard (Ex. 321–39, p. 3) suggests an exhaustive calibration every 2 years. The NIOSH criteria document (Ex. 1, p. I–19), the Advisory Committee (Ex. 2B, p. 12), and the draft California noise standard (Ex. 321–50, p. 15) supported the 5-year period between exhaustive calibrations.

Since the validity of the audiogram is highly dependent upon the calibration of the audiometer, OSHA believes that 5 years is too long an interval between exhaustive calibrations. Even though employers may find in the acoustic calibration that the sound pressure level output is correct, other malfunctions may occur, such as inaccurate tone frequencies or harmonic distortion. These malfunctions could occur without the knowledge of the operator because they can be too difficult to detect. A shorter interval is all the more important because the exhaustive calibration is advised but not required when an acoustic calibration indicates that the audiometer is up to 10 dB out of calibration. Audiometers that are not used very often (such as only a few days a year) should not need to be thoroughly calibrated more often than every 2 years. However, employers are urged to send their audiometers for exhaustive calibration more frequently when they are heavily used, or when, as a result of periodic calibration, it becomes apparent that they slip out of calibration fairly easily.

The amendment requires employers to record the date of the most recent acoustic or exhaustive calibration on employees' audiograms. This requirement will aid professional reviewers in making the determination that the tests have been conducted with properly calibrated equipment. In addition, employers must make complete calibration records available to professional reviewers, so that the reviewers will have better knowledge of actual function of the audiometer.

Hearing Protectors

The hearing conservation amendment requires employers to make hearing protectors available to all workers whose exposures equal or exceed an 8-hour time-weighted average sound level of 85 dB. When the PEL is exceeded, and employers are unable to reduce exposures through the use of engineering or administrative controls, hearing protectors must be provided and worn, as required by the current noise standard, 29 CFR 1910.95(b)(1). In addition, employers must assure that hearing protectors are provided to and worn by employees exposed to a TWA of 85 dB or greater if their audiograms have indicated a permanent significant threshold shift. Although workers who have not yet received a baseline audiogram are not required to wear protectors if their TWAs are between 85 and 90 dB employers are advised to encourage them to do so.

Employers must provide workers with a choice of hearing protectors. Employers are advised to give workers a choice between at least one type of ear plug and one type of ear muff (preferably more) since individuals may be much more comfortable in one type of protection than in the other. Ear protectors shall be supplied at the employer's expense. The employer is responsible for the proper initial fitting of hearing protection, and for regularly supervising its use to make sure that employees are wearing the protectors, and that they are worn correctly.

Employers must select hearing protectors that attenuate or reduce employee noise exposure at least to the PEL, and for employees who have suffered a significant threshold shift, to a TWA of 85 dB or below. Under the present standard, 29 CFR 1910.95(b)(1), an employee must wear hearing protection whenever his or her exposure exceeds the PEL and engineering controls are infeasible, in the process of being installed, or will not reduce the employee's exposure to within the PEL. The final hearing conservation

amendment requires an additional group of employees to wear hearing protection: those exposed to TWAs of 85 dB or above if they suffer a significant threshold shift of hearing level.

The results of four recent studies indicate that the way hearing protectors are worn in real life conditions significantly reduces the manufacturer's stated estimates of attenuation (Ex. 301, p. 35; Ex. 308, pp. 1, 2; Ex. 321–14C, p. 5; Ex. 321–35E, abstract). NIOSH found that the attenuation achieved in the field was only about one-third of the attenuation achieved in the laboratory (Ex. 308, p. iii). Therefore, employers are advised to underestimate hearing protector attenuation by a few decibels when selecting protectors for employers. (This underestimate may have the effect of slightly overprotecting the employee.)

A given hearing protector must always be suitable for the frequency distribution of the noise environment in which it is to be worn. Therefore employers must estimate hearing protector attenuation for each employee's noise exposure conditions in order to be sure that the attenuation provided will be adequate. Methods for estimating hearing protector attenuation are described, and instructions for their use are given in Appendix G: *Methods for Estimating the Adequacy of Hearing Protector Attenuation.* This appendix is mandatory.

As discussed above in the section on exposure monitoring, the employer must remonitor whenever there is a change in working conditions that may cause an employee's hearing protector attenuation to be insufficient. After monitoring, the employer must re-evaluate the attenuation of the hearing protector being used and provide new protectors as necessary. These measurements could be taken as a result of either a bi-annual monitoring or monitoring due to a change in noise conditions.

The proposal required hearing protectors to be provided to and used by employees exposed to a TWA between 85 and 90 dB if their audiograms showed a significant threshold shift. OSHA has retained this very important requirement since these workers have demonstrated susceptibility to noise exposure (Ex. 310, p. 25; Ex. 5, pp. 43804, 43805; Ex. 138A, p. 1–4) and wearing hearing protectors may help prevent further hearing loss (Ex. 231, p. 11; Ex. 321–33D, p. 3; Tr. 2246; Tr. 755).

Unlike the proposed standard, the amendment also requires employers to make protectors *available* to all employees exposed to a TWA above 85 dB on a voluntary basis. The fundamental reason for this requirement is the fact that hearing loss can occur above 85 dB, as was explained earlier. A significant percentage of workers exposed to 85 dB over a working lifetime will suffer material impairment of hearing (Ex. 138A, p. I–4; Ex. 5, p. 43805; Ex. 189–5, p. 6; Ex. 58, p. 39). These workers should not have to incur significant threshold shifts or any work related diminution of hearing, for that matter, before they have access to hearing protection. Workers should be able to wear protection voluntarily, even where the use of hearing protection is not mandatory. This is fully consistent with the purposes of the Occupational Safety and Health Act (see section 2(b)(1) and 2(b)(4) of the Act).

Generally the amendment does not make the wearing of hearing protectors mandatory until exposure levels exceed the PEL since the permissible exposure level listed in 29 CFR 1910.95(a), Table G–16 has not been changed. This requirement is contained in the present noise standard and the amendment does nothing to change it. Moreover, workers sometimes find hearing protectors particularly oppressive at the more moderate exposure levels where they can cause interference with speech communication to be more noticeable. (More speech communication is likely to occur in moderate levels, especially if the noise is intermittent, allowing speech to take place in the quiet intervals (Ex. 321–35G, p. 3; Ex. 231, p. 12).) Therefore the Agency has decided to require employers to provide ear protectors to employees exposed between 85 and 90 dB, but not to make the use of these devices mandatory for those employees without significant threshold shift until the PEL is exceeded. Since the Agency recognizes that many employees dislike hearing protectors, mandatory use of protectors has been limited to those cases where they are absolutely necessary.

Acceptability of Hearing Protectors

A major issue that was addressed in the record is worker refusal to wear ear plugs because they cause discomfort (Ex. 75–5, p. 22; Ex. 321–45A, pp. 1, 11; Ex. 94, p. 9). Complaints about ear muffs included headaches, claustrophobia, excessive warmth, perspiration, interference with safety glasses and hardhats, and bulk in and around the ear (Tr. 576, 603, Tr. 1371; Ex. 94, p. 9; Ex. 2C–16B, p. 25). Hearing protectors also have been criticized because their effectiveness is so heavily dependent upon individual worker's compliance, rather than on the more consistent protection afforded by engineering controls (Tr. 794). The use of hearing protectors can be more difficult to supervise because their effectiveness depends upon many people (all employees who wear them) rather than on one or two machines (Tr. 1465). Also, supervision is difficult because it is impossible to know whether a hearing protector is being effectively worn just by looking at each employee. Finally, some stated that hearing protectors can be unacceptable for hygienic reasons (i.e., they lead to ear infections) (Ex. 79, p. 7; Ex. 94, p. 9; Ex. 58, p. 7; Tr. 2020–2027).

Leonard Woodcock, former president of the United Auto Workers Union, revealed many potential problems with ear protection:

> The effect of using ear protection shifts the burden and responsibility for compliance from the employer to employee. Ear protection is uncomfortable and irritating. Some workers easily get ear infections or drainage problems from wearing them.
>
> Moreover, experience teaches us that management often selectively enforces the wearing of ear protection. (Ex. 79, p. 7).

Joseph Hafkenschiel of the Communication Workers of America went on to say that:

> Personal protective equipment, cannot be regarded . . . as anything more than an interim control measure. Even in these temporary situations, many people cannot wear this type of protection because of medical problems of the ear. Other individuals find the effective deafness enforced by ear protectors psychologically distrubing. Finally, ear protection may mask shouts or signals and, thus, contribute to industrial accidents. (Ex. 82, p. 6).

In response to these problems many commentors pointed out the necessity to fit hearing protectors correctly and to allow for personal preference in order to assure comfort and acceptance (Tr. 3463–3464; Ex. 14–245, p. 2; Ex. 308, p. 1; Ex. 321–14A, p. 2; Ex. 321–14B, p. 2; Ex. 14–604, sec. 3, p. 6; Ex. 75–2, p. 123; Ex. 321–34A, p. 2; Ex. 321–53D, p. 3). Workers who develop ear infections or have significant amounts of wax in the ears should use muffs, if possible, instead of insert type hearing protectors (Ex. 102, sec. 8, p. 15; Tr. 1803, 1805).

In a program developed for the North Carolina Department of Labor (Ex. 2C–16B, pp. IV–6, 7), Dr. Royster provided an example of a program which emphasized that workers should be able to receive help when protectors are not satisfactory. A supervisor, a nurse, or even a health and safety committee can provide guidance "on the job." OSHA believes that if, after a trial period, (Ex. 75–2, p. 122) the discomfort associated with the use of a particular hearing protector is so great that it cannot be worn successfully, then an alternative protector should be used. The company

must make a concerted effort to find the right protector for each worker—one that offers the appropriate amount of attenuation, is accepted in terms of comfort, and is *used* by the employee. The Agency requires workers to wear hearing protectors as part of the total hearing conservation program. If the protectors do not fit properly will not provide the estimated amount of protection.

There are several reasons why OSHA mandates that employers provide a variety of protectors (Ex. 147C, pp. 336–337). Plant conditions such as dust, temperature, and humidity can cause one type of protector to be more suitable than another (Ex. 102, sec. 5, p. 18). For example, ear plugs can be more comfortable in a hot, humid environment, than ear muffs. Also, individual ear canals come in all shapes and sizes. For people with unusually shaped ear canals, fitting may be difficult, and commonly-used insert protectors may be very uncomfortable (Ex. 2C–16B, p. V–3).

In a survey of industrial hearing conservation programs NIOSH found that:

> Another factor which seemed to affect the willingness of the employee to wear ear protectors was the variety of items offered to him. Many companies supplied a wide range of personal ear protector devices and permitted the employee a trial period to select the one he liked. (Ex. 321–14B, p. 2).

This finding was also supported by Dr. M. Thomas Summar (Ex. 147C, p. 335) and others (Ex. 321–14A, p. 2; Ex. 321–14B, p. 2; Tr. 3464; Ex. 321–34A, p. 2).

Another aspect of worker rejection of ear protectors is safety. The United Auto Workers, for example (Ex. 79, p. 8; Ex. 94, p. 10; Ex. 91C, p. 3), stated that hearing protectors create unsafe conditions in the workplace by reducing the audibility of shouts and warning signals. It is possible that a worker might not hear noises that indicate that machinery is malfunctioning. The Environmental Protection Agency (Ex. 231, p. 12) pointed out that hearing protectors can impede speech communication, especially in situations where the noise is highly intermittent, or in cases where the wearer has a high-frequency hearing loss. Interference with speech communication can cause a safety hazard. This issue is complex, since, in some situations protectors can actually improve hearing of speech in noisy backgrounds (Ex. 14–295, p. 1; Ex. 14–886, p. 1; Ex. 14–907, p. 21). On the basis of this evidence, OSHA concludes that although hearing protectors may in some circumstances pose a safety hazard, this is insufficient reason to abandon their use when workers are exposed to potentially damaging levels of noise and there are no other feasible means of reducing the noise exposure.

There is also some evidence that protectors provide other advantages beyond protection against NIPTS. Studies by the Raytheon Company (Ex. 26–11, p. 5–2) and another by Schmidt, Royster, and Pearson (Ex. 321–22, p. 27) showed that after the institution of a hearing protector program not only was hearing loss reduced, but lower injury rates and higher attendance rates were observed.

Administrative and Financial Responsibility

Another important issue that was raised at the hearings was the placement of administrative responsibility for this part of the program. The American Newspaper Publishers Association (Ex. 14–266, p. 2) and others (Ex. 14–173, p. 2; Ex. 14–290, p. 2; Ex. 14–276, p. 2) stated that it should be the worker's responsibility to use ear protectors. Going one step further, the Air Transport Association of America (Ex. 144, p. 10), and Dr. Raymond J. LeZak (Ex. 14–276, p. 2) felt that each worker should decide whether or not to use protection. Based on this reasoning, if the employee is not diligent in the use of protection, then any hearing loss that is incurred cannot be blamed on the company.

The Occupational Safety and Health Act does not include the concept of "assumption of risk" which would permit workers to decide which rules merit compliance. On the contrary, the Act requires employees to comply with all rules and employers have the responsibility of enforcing all of OSHA's requirements.

The proposal did not specify who should bear the expense of hearing protectors. Some comments in the record, such as those submitted by the Environmental Protection Agency (Ex. 9, p. 5) and others (Ex. 321–18, p. 2; Ex. 321–50A, p. 8; Ex. 103A, p. 4), recommended that ear protectors be provided at the employer's expense. For example, R. V. Durham, director of the Safety and Health Department of the International Brotherhood of Teamsters stated:

> A point we must raise, the burden of cost for personal ear protective devices, is one that is vital although often overlooked. Labor and most employers recognize the reponsibility of the employer to provide a safe and healthful working environment for its employees. Where, in certain circumstances, personal protective equipment is necessary to afford such an environment, it is again almost universally accepted that its purchase is the responsibility of the employer. If personal ear protective devices are necessary to the success of a hearing conservation program, it is vital that the employer provide appropriate ear protectors and maintain control over the proper issuance, maintenance, and use.
>
> An employer's attempt to require its employees to purchase their own personal ear protective devices would cause resentment among the workers and clearly demonstrate to them the lack of commitment on the part of their employer in preventing hearing loss. Such a requirement would discourage the use of ear protective devices and would create an adversarial atmosphere in regard to the hearing conservation program. Finally, requiring workers to buy their own hearing protective devices risks losing the necessary control over the organized and consistent selection, issuance, maintenance, and use of such equipment (Ex. 321–18, pp. 1–2).

On the basis of arguments such as the above, and because ear protectors are vital to the prevention of noise-induced hearing loss, the Agency has determined that employers must bear the expense of providing employees with hearing protectors, incuding the cost of replacing protectors that wear out.

Hearing protectors do wear out, and lose some of their ability to attenuate noise. Malleable inserts eventually become inflexible and unable to attenuate properly. Premolded plugs also can lose their elasticity, and custom molded plugs may shrink. Ear muffs also wear out eventually—the soft seals surrounding the ear cup can become inflexible; and the headband can lose its tension. Employers must replace all types of protectors as often as necessary so as to ensure the necessary amount of attenuation. Certain types of protectors, such as disposable plugs, may need to be replaced daily.

Dr. Royster mentioned that workers might damage or lose their protectors or just want an extra set, presumably to take home (Ex. 2C–16B, pp. IV–3, IV–6). The final standard's requirement that the employer pay for hearing protectors does not go this far. The Agency believes that employers should not have to pay for an unlimited supply of protectors or replace protectors lost due to employee negligence. The issue of how many replacement protectors to supply is up to the individual company as it is with other necessary work items, such as tools. However, if the employer refuses to replace worn out ear protectors, the employer may be subject to citation. On the other hand, the employer should not have to bear the expense if an employee has been irresponsible.

The Agency is aware that many industrialists are concerned about being held responsible for nonoccupationally-

induced hearing loss (Ex. 14–8, p. 2; Ex. 14–66, p. 1 and Ex. 14–283, pp. 3–4). To the extent that an employee's noisy hobby can contribute to noise-induced hearing loss, wearing protectors at home should diminish the loss. Therefore, OSHA suggests that employers urge workers to use protectors at home during noisy activities.

Attenuation

The value of hearing protectors lies in their ability to attenuate or reduce the noise that reaches the ear. Although the proposed standard did not specify requirements for estimating hearing protector attenuation, adequate attenuation is fundamental to worker protection, and for this reason it was suggested that OSHA make its requirements explicit (Ex. 1, pp I–11 through I–13, III–7, III–8; Ex. 2B, pp. 13–15).

The amendment requires employers to evaluate the effectiveness of particular ear protectors in specific noise environments, since the capabilities of the protectors need to be matched to the characteristics of the noise. For example, workers who are exposed to predominantly low-frequency noise levels of approximately 100 dB may need protectors that provide more attenuation in the low frequencies than those needed by workers who are exposed to predominantly high-frequency noise of the same A-weighted level.

Since hearing protectors generally provide greater attenuation in the high frequencies than in the low frequencies, (see Ex. 321–14A, pp. 4–16) and since industrial noise tends to be predominantly low-frequency, (Ex. 26–2, pp. 34–35; Ex. 266A, pp. 77–78) it is important to assess the relative contribution of low-frequency noise in order to select an appropriate hearing protector. As explained in the Introduction, the sound level meter's C-weighting network does not discriminate against (filter out) low-frequency noise, whereas the A-weighting network discriminates strongly against low-frequency noise. Thus, taking the difference between C-weighted and A-weighted sound levels is a simple method of assessing the relative contribution of low frequencies in a given noise spectrum. This method was advocated in a study submitted by DuPont Company (Ex. 188–27, part 4, p. 447) in which Dr. R. Waugh pointed out that the same ear protector could provide 20 dB more attenuation of noise with one frequency spectrum than with another. Dr. Waugh recommended selecting ear protectors according to the difference obtained by subtracting the A-weighted noise level from the C-weighted level.

NIOSH and EPA also found the difference between C-weighted and A-weighted noise levels to be useful for purposes of hearing protector selection (Ex. 321–14A, p. 28; Ex. 314, p. 561B). OSHA also recognizes the value of this approach, and recommends a method that incorporates it, which is EPA's Noise Reduction Rating (NRR) (Ex. 314). EPA requires all manufacturers of hearing protectors to label the package with the appropriate NRR for that protector. The regulation, 40 CFR Part 211, became effective Sept. 27, 1980 (44 FR 56130, 1979).

Appendix G requires the use of the NRR or one of three NIOSH methods. OSHA recommends the NRR since it is simple to use, and it appears to have been reasonably and thoughtfully developed (see NIOSH Ex. 321–14A, and EPA Ex. 314). The NRR concept has been adopted by another Federal agency (the EPA), and the NRR will appear on the label of all hearing protectors manufactured in the United States. Once the NRR of a protector is known, the employer needs to relate the NRR (or a reduction factor determined by one of the NIOSH methods), to an individual worker's exposure to assess the adequacy of the hearing protector for that individual.

Use of the NRR to predict the sound level at the ear drum is dependent upon knowledge of the C-weighted sound level to which the worker is exposed. The NRR is to be subtracted from the C-weighted sound level in the employee's environment. Since sound levels usually fluctuate throughout the day, it is necessary to obtain a C-weighted TWA so that employers can estimate the A-weighted sound level under the protector. The simplest and most efficient way to accomplish this would be to obtain a C-weighted noise dose with a dosimeter. Since contemporary dosimeters do not have C-weighting networks, this method will not be possible unless or until such dosimeters are manufactured and marketed. However, such a method has been included in Appendix G in the event that dosimeters with C-weighting networks become available. In the meantime employers may use the guidelines in Appendix B to calculate C-weighted noise dose, or they may make a correction to the A-weighted dose or TWA to allow for the uncertainty of not knowing the C-weighted exposure level.

OSHA has selected a 7 dB correction factor for cases where the difference between the C-weighted and A-weighted TWA is not known. This correction factor was suggested by NIOSH for use when information about the spectral distribution of a worker's noise environment was not available. However, the NIOSH report stated that a certain amount of caution should be exercised in using this method in workplaces where the difference between C-weighted and A-weighted sound levels might be greater than 7-dB (Ex. 321–14A, p. 31). Thus, when employers are aware of significant amounts of low-frequency noise, they are advised to take C-weighted measurements to make sure that the 7 dB correction factor is sufficient. To make the correction, 7 dB is subtracted from the NRR, and the remaining NRR value is subtracted from the A-weighted TWA in order to estimate the A-weighted sound level under the ear protector. When dosimeters are used, dose must be converted to TWA before the subtraction can be made. Appendix A, II. provides tables with which this conversion can easily be made.

As an alternative, employers may actually measure the employee's C-weighted exposure levels. They are advised to take these measurements whenever the noise is predominantly low-frequency, or whenever exposure levels are fairly high (i.e., above 95 dB). Employers should use temporal sampling procedures such as those described in Appendix B, but they may not need to take as many samples. If employers already have taken the required number of A-weighted measurements with a sound level meter, it is usually necessary only to take a few C-weighted measurements in order to obtain a good estimate of the average C-weighted sound level in each time segment. If employers have not already taken A-weighted measurements with a sound level meter, (in other words if they have used an A-weighted dosimeter), more measurements may be necessary in order to obtain a good estimate of the C-weighted TWA. Then the 8-hour time-weighted average of each segment's C-weighted sound levels must be computed using Figure B–5 in Appendix B and Table G–16a, or an equivalent method. Finally, the NRR is subtracted from the C-weighted TWA to obtain the estimated A-weighted TWA under the employee's ear protector. OSHA has not specified the exact number of measurements needed in order to estimate the level under the ear protector. However, the Agency believes that employers should attempt to assess the C-weighted exposure levels as accurately as possible.

In some instances employers may choose to use a method other than the NRR. For example, an employer may

want to use a protector that is not manufactured in the United States, or a protector that for some reason does not bear the NRR label on the package. Or the noise may have an unusual spectrum, which the employer wants to evaluate by octave-band analysis. In these cases employers may use any of the three methods developed by NIOSH described in the "List of Personal Hearing Protectors and Attenuation Data," by Kroes, Fleming and Lempert, HEW Publication No. 76-120, 1975 (Ex. 321-14A). The NIOSH method #1 is the most complex, but is likely to be the most accurate method since it uses the largest amount of information from the frequency spectrum of the worker's environment.[1] It requires data for each octave band. As with the use of the NRR, employers should be careful to take enough measurements so that a representative sample is obtained for each identified time segment. When using the NIOSH methods the reduction factor, or "R" factor needs to be calculated. Since this "R" factor is already included in the NRR, use of the NRR should be more convenient. Also, OSHA recommends the NRR for the sake of uniformity as well as for simplicity.

Elliot Berger, manager of Acoustical Engineering at the E-A-R Corporation, noted that the real world performance of hearing protectors is significantly overrated by the manufacturer's laboratory data, reflected by the NRR (Ex. 321-35, p. 1). Mr. Berger noted that the NRR incorporates certain corrections that are intended to ensure that 98 percent of the population who "correctly" wear the device in 98 percent of the industrial noise environments will achieve the protection indicated by the NRR (Ex. 321-35D, p. 3). However, Berger cited studies by NIOSH (Ex. 308), Padilla (Ex. 301), Regan (Ex. 300A), and the National Acoustic Laboratory of Australia (Ex. 321-35F), which show that the NRR value is not usually realized in actual use. This occurs because the NRR does not make allowances for improper fitting, for unusually shaped ear canals, or for highly unusual noise spectra.

OSHA recognizes that the NRR is based on laboratory data taken according to standardized procedures in standardized conditions (Ex. 311). At the time of testing the plugs and muffs are new, and they are fitted carefully. Unfortunately, hearing protectors are used in conditions that are less favorable than laboratories. Field tests have revealed that workers receive far less attenuation from several types of earplugs than is predicted by the laboratory test methods. A NIOSH report, for example, found that "half of the workers tested were receiving less than one-third of the potential attenuation of the hearing protectors in terms of noise reduction in dBA" (Ex. 308, p. iii). The report attributed the reduced protection to workers wearing the wrong size plugs and inserting their plugs improperly. In a similar study, Padilla (Ex. 301, p. 35) also concluded that the average earplug was worn incorrectly and suggested a test by which employers could monitor the attenuation of plugs in field use.

A study submitted by Dr. Donald Regan also found that devices worn in the occupational setting showed significantly less attenuation than the manufacturers estimated. Dr. Regan concludes: "The results of this investigation emphasize the 'false sense of safety' that management, industrial consultants, and particularly the individual who is wearing the device is assuming, if they conclude they are being adequately protected from the possibility of hearing loss." (Ex. 300A, p. 91).

As a result of this information OSHA urges employers to use extra caution in the initial selection and fitting of ear protectors so that protectors will fit comfortably, yet snugly, and so that workers will be skilled in refitting and caring for them.

Fitting

The fitting of hearing protectors must be done very carefully. Workers shall be trained in the care and fitting of the protectors, and employers must supervise their use.

Suggestions for proper fitting procedures were offered to the hearing record. Dr. Harold R. Imbus, medical director of Burlington Industries stated:

> It is often little understood that ear canal size can vary on the same individual. We have often found it necessary to use two different sizes of plugs in order to get the proper fit in each ear. We instruct the employee to return to the nurse's office immediately should any unusual soreness develop, because a refitting with a different type of plug may be necessary. (Tr. 3463-3464).

According to Dr. Royster:

> It is not sufficient to simply make available ear protection; the company must make sure that the fitting is done by someone trained in the issuing of ear protectors. This individual, nurse, technician, etc., should be under the supervision of the company doctor, local doctor, (or) audiologist. (Ex. 2C-16B, p. 27).

There was a great deal of comment recommending that trained persons fit hearing protective devices, especially if the protector is custom molded (Ex. 2C-16B, p. 27; Ex. 38, p. 2; Ex. 321-28A-2, p. 12; Ex. 75-5, p. 24). The Agency believes that any trained person, such as most nurses and technicians, will be able to fit ear protection adequately, so long as training on the subject has been included in their short courses, and they are well acquainted with the relevant audiological and/or industrial hygiene literature.

If proper precautions are taken, and if workers and management approach the problem in a spirit of cooperation, noise induced hearing loss should be greatly reduced. Comment and testimony by Dr. Karrh of DuPont Corp. (Tr. 2237; Ex. 208, p. 1), Dr. Sataloff (Ex. 321-33, pp. 5-6), Dr. von Gierke (Tr. 755), and Dr. Kryter (Tr. 704), indicated that well managed hearing protector programs can be extremely effective in conserving workers' hearing. However, employers should not lose sight of the fact that the current standard, 29 CFR 1910.95 (a), requires them to control noise by engineering or administrative means whenever feasible. True cooperation between labor and management is most likely to occur when workers know that management is making every attempt to eliminate the hazard, and that personal protective equipment is a temporary rather than a long term solution.

Observation of Monitoring

Section 8(c)(3) of the Occupational Safety and Health Act requires OSHA to issue regulations for keeping records on employee exposures to toxic materials or harmful physical agents, "which are required to be monitored or measured under section 6." The Act goes on to say, "Such regulations shall provide employees or their representatives with an opportunity to observe such monitoring and measuring, and to have access to the records thereof." Since the hearing conservation amendment requires some monitoring of employee noise exposure, the amendment requires employers to provide workers with an opportunity to observe the process of noise exposure monitoring. The Agency believes that workers who observe the monitoring of their exposures will gain insight into the nature and extent of the noise hazard, and will become more involved in the hearing conservation program. This involvement should increase the motivation for the proper use of ear protection, and thereby increase the effectiveness of the program.

The hearing conservation amendment requires employers to provide monitored

[1] NIOSH developed two additional methods. NIOSH method #2 is very similar to the NRR and method #3 is similar to the NRR plus correction factor, which is described above.

employees or their representatives an opportunity to observe any noise exposure measurements that are conducted for compliance with the amendment. Employees may desire to have someone else observe the monitoring, such as a union health and safety representative. Under certain circumstances, an outside professional may be allowed to observe. Although employers are not obligated to notify workers of the intention to monitor in advance, the Agency recommends that they do so whenever possible.

Without interfering with the monitoring, observers are entitled to receive an explanation of the procedures, observe all the steps related to the noise measurements (with the exception of any calculations made away from the workplace), and record the results.

OSHA received some coments objecting to the observation of monitoring provisions in the proposal. For example, John Harris of the J. I. Case Company (Tr. 2611), stated that observation of monitoring would not prevent occupational hearing loss, but on the contrary would take time, manpower, and money away from the hearing conservation efforts. However, many commenters favored the concept of employee observation. Mr. Ahern of General Motors Corp. (Ex. 14–663, p. 10) said, "We recognize of course, that under 8(c)(3) of the Occupational Safety and Health Act an employee or his duly authorized representative has the right to observe monitoring under certain circumstances." Mr. Bonney of Alcoa (Ex. 14–669, p. 2) stated that "under the OSH Act employees were given the right to observe measuring or monitoring. We certainly cannot take exception to this."

Most of the objections implied that the requirements would be burdensome or disruptive. In response to these comments OSHA has made certain changes to the proposed standard that should make the requirements somewhat easier for employers to implement.

The proposal required employers to give written notice of scheduled monitoring at least 3 days before the event was to occur by posting a notice to this effect in a place regularly visited by employees. One reason why the Agency had proposed this requirement was that in certain circumstances the employees might have a desire to have someone with knowledge of noise measurement present to observe the monitoring. However, such a person might not be on the premises and it might take some time to get there. The proposal also allowed employers to require employees to give written notification of their intent to observe the monitoring. This was an attempt to eliminate any disruption that might ensue in the event that a number of employees decided spontaneously to exercise their right to observe the monitoring.

Many commenters objected to the requirement for advance notification. Seymour Epstein of the Aluminum Association stated:

> We cannot take exception to the employees' right to observe monitoring. However, we strongly object to the requirement for posting notice of opportunity to observe the monitoring at least three working days before this is scheduled to occur and listing the time and place where the monitoring will occur. We feel this is unrealistic, will unnecessarily restrict the activities of industrial hygienists in the plant and will place an undue burden on their efforts. (Ex. 14–652, p. 2)

Mr. Harris (Tr. 2613) agreed, and described the conditions that might make advance notification impractical or even impossible: changes in production, breakdowns, shutdowns, failures of measurement equipment, or other such factors might suddenly alter the monitoring schedule. Other commenters suggested that only one day's advance notification should suffice (Ex. 14–169, p. 2; Ex. 59, p. 5; Ex. 14–290, p. 5).

On the basis of the argument presented by Mr. Harris and others, OSHA has decided that advance notification might be difficult for some employers. Therefore the Agency recommends rather than requires advance notice. In addition, the Agency recognizes that such requirements as posting advance notice and allowing the employer to require a response in writing from employees may constitute unnecessary paperwork, and employers may need to retain some flexibility in how best to inform employees of monitoring plans. OSHA does believe that it is helpful for workers or their representatives to know about the monitoring in advance so that they may plan their schedules accordingly.

A number of comments suggested that the observation provisions would be disruptive to the production process and to the monitoring itself.

Mr. Cornell of the Gypsum Association (Tr. 2664) suggested that all workers might exercise their rights to observe, and in that case no one would be available to operate the machinery in question. David Anderson of the Bethlehem Steel Corp. (Ex. 14–347, p. 3) suggested that employees might actually interfere with the monitoring process by stopping work. M. V. Truss of the Vulcan Materials Co. (Ex. 14–56, p. 3) believed that if employees stopped work and watched the monitoring it would be too expensive for the company. For these reasons some industry spokesman suggested that only employee representatives (and not employees) be allowed to observe the monitoring process (Ex. 14–58, p. 2; Ex. 14–290, p. 4).

The Agency understands that in some circumstances a cessation of work might cause the noise levels to change, and it would not be in the interest of either the worker or the employer to take measurements under conditions that did not reflect the employee's true exposure. For reasons such as these, the amendment (as did the proposal) specifies that observation shall be permitted so long as it does not interfere with the monitoring process.

OSHA does not expect that employee observation of monitoring will be disruptive of the production process or the monitoring itself. While the precise method in which this employee right is exercised will vary from workplace to workplace, it is expected that, in most cases, employees will select a single representative to act as an observer. This observer will receive the explanation of the process, observe the calibration of equipment, its placement, and the actual sampling, and report to other employees. The observer may also record the results of the monitoring. It has been OSHA's experience in the context of other health standards that the observation of monitoring by a representative employee successfully implements this provision without undue disruption. In any event, the employee right to observe monitoring must be tempered with "standard of reasonableness," and observation which seriously disrupts production or the sampling itself is not permitted.

Training Program

Section 6(b)(7) of the Occupational Safety and Health Act indicates that standards shall prescribe appropriate forms of warning to insure that employees are apprised of all hazards to which they are exposed. The final standard requires that employers provide workers whose exposures equal or exceed a TWA of 85 dB with a training program that explains the purposes and major components of the hearing conservation program. As part of employee training, the employer also has the responsibility of making certain materials and information, such as the hearing conservation amendment, available to employees.

The proposal required employers to train workers initially in the use of hearing protectors, and to reinstruct employees in the use of hearing

protectors whenever employees incurred a significant threshold shift in hearing. Also the requirement for warning signs and for notification of exposure, which were included in the proposal, are considered elements of worker training. The amendment retains and clarifies these provisions (see discussion under specific subject headings). In addition, the final rule includes a separate training section with more detailed guidance than was found in the proposal. Employees must be trained according to these new requirements at least once a year, so that they will be reminded on a regular basis of the hazardous effects of noise, and the respective roles of management and workers in preventing these effects. Annual audiometric tests should be an opportune time to conduct such training programs.

It should be noted that the entire training program does not have to be accomplished at one session. For example, employers who have safety meetings biweekly may wish to work some elements of the training requirements into general safety meetings. Workers may have been given a brief overview before starting a job, with supplementary information provided later. It is not the intention of this amendment to impose a rigid and formal training program on employers. Rather, the amendment gathers in one place all of the elements deemed necessary for a good training program and allows the employer maximum flexibility in deciding how best to impart the information to the noise-exposed workers.

The new training requirements are in direct response to the many comments in the record emphasizing the importance of training and education to the success of the hearing conservation program (Ex. 75–10, p. 3, Ex. 102, Attach. 4, pp. 4–6, and Attach. 5, p. 3; Ex. 321–1, Attach. 1, p. 3; Ex. 75, p. 11; Ex. 75–2, p. 125; Ex. 308, pp. 2–3 and p. J 2 C; Ex. 307, p. 1; Ex. 2C–16A, p. 6; Ex. 305, p. 7; Ex. 147C, p. 335; Ex. 147A, p. 6; Tr. 3269, 3140; Tr. 3504–3505; Tr. 2528–2529). For example, an article submitted by Dr. M. Thomas Summar (Ex. 147A, p. 4) states that, "Personal counseling with employees and visits to work areas are necessary and important parts of the program. Some of these visits coincide with the yearly monitoring hearing tests . . . ." C. Edward Scott and Dr. Royster (Ex. 102, p. 12) maintain that "continuing education should be used as a means for improving the quality of the program whenever it is found necessary."

Although the amendment does not dictate the content of employers' training programs, certain subject areas must be included. First, workers must be informed of the requirements of the noise standard and the hearing conservation amendment. So that they are aware of the extent of the hazard, workers must be told about the effects of noise on hearing. Workers must be told to report any symptoms of TTS, such as not being able to hear very well after the end of the workshift. This is so that employers can identify TTS and implement prompt protective measures. Workers must also be told about other effects, such as speech and signal masking, which may cause a safety hazard.

So that employees can better understand the nature of their own particular noise exposures, the training program must include a discussion of specific machinery at the job site that causes hazardous exposures, including information on any noise control compliance plan in effect. An integral part of the training program is a complete discussion of hearing protectors, the advantages and disadvantages of various types, and clear instructions on the selection, fitting, use, and care of the protectors. Finally, so that employees are motivated to take the hearing test and to refrain from non-occupational noise exposure before baseline and recheck audiograms, the program must include an explanation of the purpose of audiometric testing, and of the test procedure.

Employers must post a copy of the standard and amendment in a location where employee notices are customarily posted, and they must make a copy of the standard and amendment available to employees exposed to a TWA of 85 dB or above, if they should ask for it. This requirement gives workers an opportunity to be fully informed of specific aspects of the amendment, and should provide workers with access to this information in cases where they might be afraid or reluctant to ask management for a copy. Employers must also provide these employees with any informational materials supplied by OSHA, which are meant to be distributed to affected employees. Lastly, employers must provide copies of their training materials to OSHA if they are requested to do so. This is intended to provide an objective check of compliance with the requirements of this section of the amendment.

Many comments to the record supported the concept of training programs, and emphasized the importance of motivating employees to play an active role in the hearing conservation program. As Dr. Karrh of DuPont pointed out:

> Our experience has shown that maximum effectiveness of hearing conservation results when employees understand the reasons for the program and cooperate and take initiative in its implementation and conduct on a daily basis. This cooperation is accomplished by educating them regarding the potential effects of exposure to high noise levels whether encountered at work or during leisure hours. (Ex. 308, p. 3).

Training programs are also important at the supervisory level. Personnel who conduct the training program must be well versed in all aspects of the company's hearing conservation program, so that they are prepared to answer employees' questions (Ex. 102, Sec. 5, pp. 9, 27–29). Involvement of first-line supervisors would be particularly effective. As stated by Scott and Royster, "the success of the hearing conservation program in each working area will in the end depend upon the willingness of the local supervisor to support the program and enforce its requirements." (Ex. 102, Sec. 5, p. 9). DuPont and several other companies have demonstrated that imagination, discipline, and commitment from the highest levels of management are qualities that will promote successful programs (Ex. 75–5, p. 21; Ex. 75, p. 122; Ex. 307, p. 1; Ex. 102, Sec. 5, pp. 10, 15). Simply informing workers to use hearing protectors so they "won't go deaf" is not enough.

Morrill (Ex. 305, p. 7) stressed the importance of worker education in overcoming workers' objections to wearing hearing protectors. A number of comments indicated that workers are reluctant to appear weak or ridiculous as a result of wearing personal protection (Ex. 321–13C, p. 738; Ex. 75–7, p. 20; Ex. 75–5, p. 22; Ex. 75–12, p. 24). According to Dr. Roger Maas (Ex. 75–2, p. 2) "Supervisors must sell employees on the need and value of hearing protection devices. When employees understand what the protective measure if for, it will be accepted because the employee realizes it is for his own good." Labor leadership, such as union health and safety committees, can also play an active, supportive role in answering on-the-job questions, seeing that their members are fitted satisfactorily, and encouraging workers to wear protectors.

Employers are advised to use audiologists, otolaryngologists, or industrial hygienists to aid in the training of employees. They are not required to do so because these personnel may not always be available. However, the instructor should be capable of addressing any questions on

the technical, procedural, or health aspects of hearing conservation. Also, the instructor should be well versed in all aspects of hearing protectors since employees are likely to have many questions on the subject. One person does not have to perform all of the training. Different aspects of the training may be done by a variety of people with knowledge of various aspects of the hearing conservation program.

The employer is free to structure the training program any way he or she pleases as long as it contains the specific topics discussed above. Several commenters (Ex. 102, Attach. 3, p. 5, and Attach. 4, pp. 6, 12; Ex. 2C–16B, p. 17; Ex. 75–2, p. 122; Ex. 75–3, p. 6; Ex. 75–10, p. 3) offered suggestions. They recommended that companies (and also unions) regularly distribute informative literature to employees, provide periodic audiovisual presentations, hang posters and use bulletin board displays, and put articles on noise hazards and hearing protection in the company or union magazine. Audiovisual materials can often be obtained from Federal and State health agencies, insurance companies, trade union and professional associations, hearing protector and audiometric equipment suppliers, educational institutions, individual medical practioners, and audiological consulting firms.

To summarize, good training means clear content, well presented by an informed and sympathetic person, who is willing to spend the time and effort to motivate employees to participate actively in the hearing conservation program. The final element is the behavior, and implicitly the attitude, of management. According to Dr. Thomas, who submitted extensive materials to the record:

> Several companies have gone to considerable expense in developing and implementing a hearing conservation program only to end up with what can properly be called a second rate program. Why? . . . Lack of support by top management . . . Why spend several thousand dollars implementing the program if MR. BIG is going to walk through the plant without wearing his protective equipment. Even if the amount of exposure expected is insignificant the attitude given is what counts. MR. BIG, regardless of his position in the company, must also abide by the rules and by example educate the employees. (Ex. 2C–16, pp. IV–5).

Warning Signs

The proposal required that clearly worded warning signs be posted at the entrances to or on the periphery of areas where employees' exposures exceed the prescribed limits. These signs were to be large enough so as to be easily read by employees working in this area. The warning sign was to indicate that the area is a high noise area, and it was to specify the protective actions (usually ear protectors) that are necessary.

The final standard requires warning signs in those areas where exposures equal or exceed a TWA of 85 dB. This represents the action level for the initiation of the hearing conservation programs, and it is consistent with the concept to have warning signs in such environments.

Most entries to the hearing record favored the use of warning signs (Ex. 105, p. 8; Ex. 132, p. 6; Ex. 58, p. 2; Ex. 2C–1, p. 11 and 12; Ex. 2C–125–1, p. 9; Ex. 14–864, p. 6). Some commenters believed that the requirements for notification of exposure and posting of warning signs were redundant (Ex. 14–348, p. 4; Ex. 14–333, p. 5). The Agency believes that the requirement is not redundant with the notification of employee exposure because exposure notification occurs approximately every two years, while the warning sign presents a constant reminder that a hazard exists, and that protective action may be needed.

Certain witnesses, such as Dr. Ward (Ex. 64–6, pp. 1–2), brought up the fact that warning signs are necessarily stationary and describe noise *levels*, whereas OSHA regulates noise *exposures* for workers who move around. OSHA recognizes this problem. For this reason OSHA advises employers to post signs in areas where employees' noise exposures regularly rather than occasionally meet or exceed 85 dB. Also, the Agency is aware that not all workers who are exposed to a TWA above 85 dB are required to wear hearing protectors. Therefore the Agency advises employers to specify mandatory ear protectors on the sign in locations where employees' noise exposures are routinely above 90 dB, and in areas where employee's exposures are between 85 and 90 dB employers may specify that hearing protectors are advised, or may be needed.

Some comments recommended that OSHA put specific wording for signs into the regulation (Ex. 1, p. 1–9; Ex. 48, p. 9; Ex. 110, p. 4), or provide examples of clearly worded signs (Ex. 14–152, p. 4). Although the Agency believes that employers should be free to devise their own wording, the following examples are suggested:

In work areas where employee exposure routinely exceed a TWA of 90 dB:

> WARNING
>
> HAZARDOUS NOISE AREA
>
> Hearing Protection
>
> Required

In work areas where employee exposures routinely exceed a TWA between 85 and 90 dB:

> WARNING
>
> HAZARDOUS NOISE AREA
>
> Hearing Protection
>
> May be Necessary

OSHA has not prescribed the specific wording for the warning signs. It is desirable to retain as much flexibility as possible so that employers may devise signs that are appropriate to the specific workplace environment.

Recordkeeping

Section 8(c)(1) of the Occupational Safety and Health Act gives OSHA the authority to require employers to maintain records that are: "Necessary or appropriate for the enforcement of this Act, or for developing information regarding the cause and prevention of occupational accidents and illnesses." Section 8(c)(3) requires OSHA to "issue regulations requiring employers to maintain accurate records of employee exposures to potentially toxic materials or harmful physical agents which are required to be monitored or measured under section 6."

The hearing conservation amendment requires that records of noise exposure measurements, audiometric testing and audiometer calibration be maintained. These recordkeeping requirements have been approved by the Office of Management and Budget (Approval No. 44–R 1622).

Noise exposure records require the date, location, and results of the measurements, including the number of measurements made when sound level meters are used. Although the latter requirement did not appear in the proposal, this provision provides further clarification of the proposal's requirement that the employer keep an accurate record of all noise exposure measurements. The number of sound level meter measurements is required to be recorded in order to show that the sampling procedures have been sufficient to give a reasonable estimate of the TWA for the range of noise levels encountered. The final rule also requires a description of the equipment used and the date of the most recent laboratory-type calibration. The name and job classification must be recorded for each employee measured, and for any other employees represented by the measured employee. Although not specified in the proposal, an entry for job classification (or job title) has been added so that employers and employees may see the important connection between job location and magnitude of exposure. The requirement to record the social security number has been eliminated as unnecessary paperwork unless the employer desires to keep it. Records of noise exposure monitoring must be kept for at least 2 years. This represents a relaxation of the proposal's requirement, which was to keep noise exposure records for at least 5 years. Since the employee's most recent noise exposure must be recorded on the audiometric test record, OSHA feels that it is unnecessary to keep records of noise exposure monitoring for longer than 2 years, after which they may be replaced by new monitoring records.

Records of audiometric tests must include the employee's name and job classification. They must also include the date of the audiometric test, the examiner's name and qualifications, the make and model of the audiometer, and the date of the last acoustic or exhaustive audiometer calibration. These requirements are essentially the same as those of the proposal, except for the inclusion of job classification and the deletion of social security number for the reasons stated above. The Agency has added a requirement to record the employee's most recent noise exposure (or that of the employee's representative) on the audiogram record. This will aid employers and professional reviewers in making important associations between noise exposure and hearing loss, and will permit monitoring records to be disposed of at an earlier date. Also, the amendment requires that employers indicate on the audiometric test record whether the background noise levels in the audiometer room met the levels specified on Table D–1 or Table D–2 in Appendix D. This information will be very useful to the professional reviewer, who needs to know that the audiometric test was carried out in sufficiently quiet conditions. As required in the proposal, audiometric test records must be retained for the duration of employment plus 5 years.

OSHA recommends that employers record the type of hearing protector selected, its attenuation (usually the NRR), and the procedure used to determine its attenuation, which involves identifying the method selected from Appendix G. This entry, coupled with the exposure measurement, would be useful to employers and professional reviewers in assessing the adequacy of hearing protection. However, OSHA has not made this provision a requirement because employers must provide workers with a variety of ear protectors, and workers may want to use certain protectors on a trail basis. The Agency does not want to restrict the flexibility with which employers offer and employees choose their hearing protection by requiring employers to record the make of protector before the final choice is made.

The requirements for keeping records of audiometer calibration are the same as those specified by the proposal. The record must include information on the type of calibration, whether an acoustic or exhaustive calibration, and the date the calibration was performed. The record must also include the numerical results of the acoustical calibration, which are the results of the measurements taken. These records will provide employers and professional reviewers with evidence of the proper functioning of the audiometer, and any steps that were taken to correct improper functioning. As required in the proposal, they must be kept for a minimum of 5 years.

Although the proposal did not contain this requirement, employees must record measurements of the background sound pressure levels in the audiometric test room and the date of these measurements. The Agency believes that this information must be recorded because it is critical to the requirement that valid audiograms be made. Sound pressure level measurements of audiometric test rooms must be kept at least 5 years.

OSHA has included a new requirement for the transfer of records in case an employer should cease to do business. If a new employer takes over the business the old employer must transfer the records to the new employer. This provision, which is added to safeguard the records, also is found in other OSHA standards.

Discussion in the hearing record centered on the usefulness of keeping records, the impact of recordkeeping on the affected businesses, the retention period, access to records, and recordkeeping procedures.

Some commenters questioned the usefulness of keeping records. M. V. Truss, Director of Engineering at the Vulcan Material Company (Ex. 14–58, p. 2) was joined by others (Ex. 14–66, p. 2; Ex. 14–35, p. 1) in saying that disruptive paper work would seem to outweigh any theoretical benefits. Others maintained that recordkeeping requirements have no bearing on the reduction of noise levels or on hearing loss (Ex. 14–120, p. 3; Ex. 14–190, p. 1; Ex. 14–246, p. 5; Ex. 14–791, pp. 1–2). Carroll Rogers Jr., President of the Feldspar Corporation (Ex. 14–23, p. 1), was among those who believed that the provisions would be too burdensome, especially for small business (Ex. 14–72, p. 1; Ex. 14–117, p. 1; Ex. 14–201, p. 1; Ex. 14–215, p. 4; Ex. 14–266, p. 2; Ex. 14–292, pp. 2–3).

OSHA understands that recordkeeping can be problematic; however, without this requirement the effectiveness of the amendment would be impaired. Professional reviewers need to make sure that the audiometric tests were carried out under proper conditions and that audiograms reflect employees' true hearing levels. Records are educational for employees because they enable employees to assess the continuing status of their hearing. In addition, they provide employers with a way of assessing the success or failure of the hearing conservation program.

Some industry spokesmen suggested that records should not have to be kept for short-term employees. The National Association of Manufacturers (Ex. 14–664, p. 20), and the Beet Sugar Development Foundation and the United States Beet Sugar Association (Ex. 14–657, p. 3, p. 34) suggested that records should only be kept for employees who have worked continuously for more than 180 days, whereas the National Canners Association (Ex. 138–4, p. 6) suggested 120 days. The Can Manufacturers Institute (Ex. 14–662, p. 23) thought that employees should have worked at least 1 year before records should be kept. Although no recordkeeping exemptions have been specified, OSHA believes that short-term employees should not present a significant recordkeeping problem. Audiometric testing of short-term workers is not required unless they remain at work longer than 4 months.

Since employers must monitor new employees within 60 days of exposure to a TWA of 85 dB or greater, they may have to keep noise exposure records of short-term employees. In most cases, as explained earlier, a new employee will assume a position occupied by a former employee, and therefore the former employee's noise exposure will be attributed to the new employee. Making and retaining the same information for the new employee should not be a difficult matter. Also, since the amendment permits employers to monitor representative employees rather than all employees, this procedure should reduce the recordkeeping burden in many cases. Employers may choose to write the exposure level, names, and jobs of the represented employees all on one record. Employers must, however, record the most recent exposure measurement on each individual's audiometric test record.

Following the recommendation of the Advisory Committee (Ex. 2 B, p. 17) the proposal required noise exposure measurements to be maintained for 5 years, audiometric records to be maintained for 5 years. Many comments to the record discussed this issue. Some, such as those of Dr. Ward (Ex. 64–9, p. 5), Robert Richards of the Consumers Power Company (Ex. 14–332, p. 5), and others (Ex. 14–348, p. 3, Ex. 14–329, p. 3), indicated that the proposed record retention periods were too long and too costly. Edwin Hood of the Shipbuilders Council of America (AC 53–1, p. 3) suggested that the employer determine the length of the retention period but that all records be kept for at least 5 years. On the other hand, Frank Fitzsimmons of the International Brotherhood of Teamsters (Ex. 81A, p. 9) advocated a longer retention period for exposure records, stating that exposure records should be kept for the same amount of time as audiometric records so that the relationship between noise exposure and hearing loss can be reviewed. NIOSH recommended a 10-year retention period for records of exposure monitoring, 20 years for audiometric records, and 20 years for audiometric calibration records. NIOSH's recommendations were supported by Raelyn Janssen of the Environmental Defense Fund (AC 125–1, p. 11) and by Dr. J. Ronald Bailey, Assistant Professor of Mechanical Engineering at the North Carolina State University (AC 33, p. 10). Dr. Victor Gladstone, Assistant Professor of Audiology at Towson State College (AC 31, p. 3) concurred with NIOSH, but recommended that if an employee remained in the same employment for a period longer than 20 years, audiometric records should be kept for the duration of employment.

OSHA has considered these recommendations and agrees with Mr. Fitzsimmons that both noise exposure measurements and audiometric test records should be retained at least for the duration of employment to enable employers and professional reviewers to follow the employee's audiometric thresholds in relation to the employee's noise exposure levels. This procedure has been accomplished (and simplified) by the requirement to record the employee's latest noise exposure level on the audiometric test record. OSHA believes that it is not necessary to keep the details of the noise measurements, such as a description of the equipment and the date of calibration, longer than 2 years, at which time they may be replaced by new measurements. However, the Agency does see the value in keeping audiometric test records *and* the employee's exposure levels for the duration of employment plus 5 years in order to ascertain the employee's sensitivity to noise exposure, and to judge the effectiveness of the hearing conservation program.

A minimum of 5 years was selected for the retention of audiometric calibration records and records of the sound pressure levels in audiometric test rooms. These durations are necessary so that employers and professional reviewers may be assured that a series of audiograms was carried out under proper test conditions.

Requirements for access to records are essentially the same as those of the proposal, with the exception that the proposal required employers to furnish copies of audiometric data upon *written* request by employees. The amendment specifies written requests only when employees designate another person to receive the records. The Agency does not believe that written requests are necessary for direct employee access to either noise monitoring or audiometric test records. The amendment requires employers to make records available, upon request, to the Assistant Secretary of Labor and his or her respective authorized representatives, including compliance officers. Copies of records must be made available to affected (noise-exposed) employees and former employees. If an employee or former employee should present a written request, employers must also furnish the records to any person designated by the employee, such as a physician, lawyer, or union representative. Since employees are granted access to their records, OSHA advises them to take copies with them when they leave their jobs.

OSHA's standard entitled "Access to Employee Exposure and Medical Records" (29 CFR 1910.20 (d)(i) and (ii)) requires that employee medical records be preserved and maintained for at least the duration of employment plus 30 years, that exposure records be preserved and maintained for at least 30 years, and that calibration records (which would be covered by section (d)(ii)(A), "background data") be retained for 1 year. However, the standard provides that it may be superseded by other health standards that require longer or shorter retention periods. According to the standard's preamble, the reason for the 30-year or longer retention period was the long latency periods associated with certain occupational diseases. The Agency recognizes, however, that specific substances or agents may merit longer or shorter record retention periods, in which case an individual standard's recordkeeping requirements would supersede those of 29 CFR 1910.20. This provision in the access standard is appropriate since each health standard is based on rulemaking evidence specific to the substance or agent being regulated (45 FR 35270). Since the hearing conservation amendment has undergone the rulemaking procedure on issues that are specific to noise, some provisions in the amendment are different from those in the access standard.

OSHA believes that it is unnecessary to require retention of noise exposure and audiometric test records for periods as long as 30 years. In the event that some companies and consulting firms wish to computerize these records and retain them indefinitely, the Agency would encourage this practice. However, the latency for noise-induced hearing loss is not nearly as long as it is for certain other occupational diseases, such as cancer. Although the onset of noise-induced hearing loss is gradual, its progress is not expected to continue after cessation of exposure. Therefore a long record-retention period would not aid in the diagnosis of a condition, or in the identification of a hazard that is not already recognized.

The standard also requires that employees, their designated representatives, the Assistant Secretary for Occupational Safety and Health shall have access to all records required to be maintained. In general, the employer is obliged to provide access to such records at a reasonable time, place and manner. Specifics regarding the

provision of such access are found at 29 CFR 1910.20 and 29 CFR 1913.10.

It is the Agency's belief that providing employees with access to the records is a necessary component of the hearing conservation program. Such access will serve to educate employees as to the state of their hearing and the effectiveness of the program, and will encourage their conscientious participation in it. The information in the records will be invaluable to the Assistant Secretary in the enforcement of the amendment and will be useful in research into the effects of occupational noise exposure. The Director of NIOSH will also be primarily interested in the records for research purposes.

A number of commenters, such as Moyer B. Edwards of the Alabama By-Products Corporation (Ex. 14–972, p. 6), recommended restricting access to records to the employee's physician or other medical representative (Ex. 145, p. 5). Others (Ex. 233, p. 1; Ex. 14–900, p. 9; Ex. 14–965, p. 6; Ex. 14–890, p. 5) believed that because of the technical nature of the data, lay readers might misinterpret their files. Douglass Bracket of the Southern Furniture Manufacturers Association (Ex. 14–918, p. 17) and others (Ex. 14–345, p. 4) contended that records only should be made available for some justifiable reason. Lockheed-California Company (Ex. 14–312, p. 2) suggested that records should be available for exposure studies only. Some were concerned that employee access to records might result in "misuse of records" in worker compensation cases (Ex. 14–86, p. 2; Ex. 14–107, p. 1; Ex. 14–233, p. 1; Ex. 14–262, p. 3; Ex. 14–333, p. 6), and some suggested that workers might "harass" employers after they see their records (Ex. 14–107, p. 1; Ex. 14–233, p. 1; Ex. 14–262, p. 3; Ex. 14–332, p. 5). OSHA believes that proper training and education of employees should prevent misinterpretations or "misuse" of noise exposure or audiometric data. The Agency agrees with the many witnesses who stated that informed workers are better motivated and able to protect themselves, and to effectively participate in the total hearing conservation program (Ex. 305, p. 7; Ex. 306, p. J2c–11; Ex. 321–1, Section 2, p. 3; Ex. 307, p. 1; Tr. 2907). Access to their own noise exposure and audiometric test results is a necessary step in the development of informed workers.

XII. Authority

This document was prepared under the direction of Eula Bingham, Assistant Secretary for Occupational Safety and Health, 200 Constitution Avenue, N.W., Washington D.C. 20210.

Pursuant to sections 6(b) and 8(c) of the Occupational Safety and Health Act of 1970 (84 Stat. 1593, 1599, 29 U.S.C. 655, 657), Secretary of Labor's Order No. 8–76 (41 FR 25059), and 29 CFR Part 1911, Part 1910 of Title 29, Code of Federal Regulations is hereby amended by deleting paragraph (b)(3) of § 1910.95 and adding to § 1910.95 requirements for a hearing conservation program in new paragraphs (c) through (s) plus Appendices A through I.

The provision of the current occupational noise standard requiring employers who have employees exposed over the permissible exposure level to implement a continuing, effective hearing conservation program (§ 1910.95(b)(3)) will remain in effect until the new paragraphs contained in this document actually go into effect. Should the new paragraphs be stayed, judicially or administratively, or should the new paragraphs not sustain legal challenge under section 6(f) of the Act, paragraph (b)(3) of § 1910.95 will remain in effect.

Any petitions for administrative reconsideration of this amendment or for an administrative stay pending judicial review must be filed with the Assistant Secretary of Labor for Occupational Safety and Health within 45 days of the publication of this amendment in the Federal Register. Any petitions filed after this date will be considered to be untimely filed. This requirement is considered essential to permit the Agency to give full consideration to any petition filed and respond in advance of the effective date of the amendment.

Signed at Washington, D.C. this 8th day of January, 1981.

Eula Bingham,

Assistant Secretary of Labor.

1. Paragraph (b)(3) of § 1910.95 is removed.

2. Section 1910.95 is amended by adding new paragraphs (c) through (s) and Appendix A through I to read as follows:

§ 1910.95 Occupational noise exposure.

* * * * *

(c) *Hearing conservation program.* The employer shall administer a continuing, effective hearing conservation program, as described in paragraphs (c) through (s) of this section whenever employee noise exposures equal or exceed an 8-hour time-weighted average sound level (TWA) of 85 decibels measured on the A scale or, equivalently, a dose of fifty percent. For purposes of the hearing conservation program, employee noise exposures shall be computed in accordance with Appendix A and Table G–16a, and without regard to any attenuation provided by the use of personal protective equipment.

(d) *Initial determination.* (1) Each employer shall determine if any employee's exposure may equal or exceed an 8-hour time-weighted average of 85 decibels (dB) measured on the A scale. This determination shall be based on all information, observations, or calculations which indicate that employee noise exposures may be at or above that level, including the following:

(i) Any employee exposure measurements which have been taken;

(ii) Any employee complaints which may be attributable to noise exposure;

(iii) Any difficulties in understanding normal conversation in the workplace when the speaker and the listener face each other at a distance of two feet.

(2) This initial determination shall be repeated at least every two years and within sixty days of a change in production, processes, equipment, controls, or personnel which may result in new noise exposures at or above a time-weighted average of 85 decibels.

(e) *Monitoring.* (1) When any information in the initial determination conducted pursuant to paragraph (d) of this section indicates that any employee's exposure may equal or exceed an 8-hour time-weighted average of 85 decibels, the employer shall within 60 days obtain individual or representative exposure measurements for all employees who may be exposed at or above that level.

(2) In cases where a group of employees is engaged in a similar kind of work and has approximately the same noise exposure, the employer may, in lieu of measuring the exposure of each employee, measure only one member of the group. In these cases, the employer shall select for monitoring the employee who is reasonably believed to have the greatest exposure and shall attribute the selected employee's exposure measurement to all employees in the group.

(3) Monitoring of employee noise exposures shall be repeated:

(i) Every two years unless an initial determination conducted pursuant to paragraph (d)(2) of this section or actual exposure measurements indicate that employees are not exposed to a time-weighted average of 85 decibels or greater; and

(ii) Within sixty days of a change in production, processes, equipment, controls, or personnel which may render the attenuation provided by hearing protectors in use inadequate to meet the requirements of paragraph (m) of this section.

(f) *Employee notification.* (1) Within 21 days of monitoring, the employer shall notify, in writing, each employee exposed at or above a time-weighted average of 85 decibels of the results of the monitoring.

(2) Each employee shall be notified of that employee's measured exposure or the representative exposure that is attributed to that employee.

(3) New employees shall be notified of their measured exposure or the exposure attributed to them within sixty days of their first exposure at or above a time-weighted average of 85 decibels.

(g) *Method of measurement.* (1) All employee exposure measurements required by paragraph (e) of this section shall be obtained by the use of noise dosimeters which comply with the provisions of paragraph (g)(1)(i) of this section or sound level meters which comply with the provisions of paragraph (g)(1)(ii) of this section.

(i) *Dosimeters.* Dosimeters shall meet the Class 2A–90/40–5 requirements of the American National Standard Specification for Personal Noise Dosimeters, S1.25–1978, with an operating range of at least 80 dB to 120 dB. Dosimeters shall also meet the performance requirements of Section 7.5 of ANSI S1.25–1978 for a test signal at an average A-weighted sound level of 90 dB having a crest factor of 30 dB.

(ii) *Sound level meters.* Sound level meters shall meet the Type II requirements of the American National Standard Specification for Sound Level Meters, S1.4–1971 (R1976).

(2) Exposure measurements shall accurately reflect employee exposures and shall be conducted in the following manner:

(i) *Dosimeters.* The microphone of the dosimeter shall be placed on the employee's shoulder or head.

(ii) *Sound level meters.* (*a*) Sound level meters shall be set to the A scale, slow response.

(*b*) All continuous, intermittent and impulsive sound levels from 80 dB to 130 dB shall be integrated into the computation of time-weighted average.

(*c*) The employer shall use an appropriate sampling strategy to ensure that accurate results are obtained. The employer may use the sampling procedures given in Appendix B: *Temporal Sampling Procedures for Use with a Sound Level Meter,* which are provided as guidelines for compliance with this provision.

(*d*) The microphone of a sound level meter shall be positioned not less that two inches nor more than two feet from the worker's ear.

(h) *Calibration of monitoring equipment.* Dosimeters and sound level meters used to monitor employee noise exposure shall be calibrated as follows:

(1) Before and after each day's measurements, an acoustical calibrator shall be used to verify the accuracy of the measuring equipment.

(2) Whenever acoustical calibration and manual adjustments of the measuring equipment cannot verify the accuracy of the measuring instrument, laboratory calibration shall be performed to ensure conformance with the requirements of ANSI S1.25–1978 or S1.4–1971, as appropriate.

(i) *Observation of monitoring.* (1) The employer shall provide affected employees or their representatives with an opportunity to observe any measurements of employee noise exposure which are conducted pursuant to paragraph (e) of this section.

(2) Without interfering with the monitoring procedures, the observer shall be entitled to:

(i) Receive an explanation of the measurement procedures;

(ii) Observe all steps related to the noise exposure measurements performed at the place of exposure; and

(iii) Record the results obtained.

(j) *Audiometric testing program.* (1) The employer shall establish and maintain an audiometric testing program as provided in this paragraph by making audiometric testing available to all employees whose exposures equal or exceed an 8-hour time-weighted average of 85 decibels.

(2) The program shall be provided at no cost to employees.

(3) Audiometric tests shall be performed by a licensed or certified audiologist, otolaryngologist, or other qualified physician, or by a person who is certified by the Council of Accreditation in Occupational Hearing Conservation, or by an audiometric technician who has satisfactorily demonstrated competence in administering audiometric examinations, obtaining valid audiograms, and properly using, maintaining and calibrating audiometers. A technician who performs audiometric tests must be responsible to an audiologist, otolaryngologist or qualified physician.

(4) All audiograms obtained pursuant to this section shall meet the requirements of Appendix C: *Audiometric Measuring Instruments.*

(5) *Baseline audiogram.* (i) Within 4 months of an employee's first exposure to noise at or above a time-weighted average of 85 decibels, the employer shall establish for each employee so exposed a valid baseline audiogram against which subsequent audiograms can be compared.

(ii) Testing to establish a baseline audiogram shall be preceded by at least 14 hours without exposure to workplace noise.

(*a*) Hearing protectors shall not be used as a substitute for the requirement that baseline audiograms be preceded by 14 hours without exposure to workplace noise.

(*b*) The employer shall notify employees of the need to avoid high levels of non-occupational noise exposure during this 14-hour period.

(6) *Annual audiogram.* (i) At least annually after obtaining the baseline audiogram, the employer shall obtain a new audiogram for each employee exposed at or above a time-weighted average of 85 decibels.

(ii) Annual audiometric testing may be conducted at any time during the workshift.

(7) *Evaluation of audiogram.* (i) Each employee's annual audiogram shall be compared to that employee's baseline audiogram to determine if the audiogram is valid and if a significant threshold shift, as defined in paragraph (j)(10) of this section, has occurred.

(ii) Such evaluation shall be performed by an audiologist, otolaryngologist, or qualified physician. The employer shall provide to the person performing this evaluation the following information:

(*a*) A copy of the requirements for hearing conservation as set forth in paragraphs (c) through (r) of this section;

(*b*) The baseline audiogram and most recent audiogram of the employee to be evaluated;

(*c*) Measurements of background sound pressure levels in the audiometric test room as required in Appendix D: *Audiometric Test Rooms.*

(*d*) Records of audiometer calibrations required by paragraph (k)(5) of this section.

(iii) The audiologist, otolaryngologist, or qualified physician shall also review the audiograms to determine whether any significant threshold shift is work related or whether there is need for further evaluation.

(iv) If the comparison of the audiograms reveals a significant threshold shift as defined in paragraph (j)(10) of this section, a retest to obtain a new audiogram shall be performed within 60 days to determine if the shift is permanent.

(*a*) Retesting shall be preceded by at least 14 hours without exposure to workplace noise.

(*b*) Hearing protectors shall not be used as a substitute for the requirement that retesting be preceded by at least 14 hours without exposure to workplace noise.

(c) Retesting is not required if the annual audiogram was obtained after 14 hours without exposure to workplace noise. In this case the significant threshold shift revealed by the annual audiogram shall be considered permanent.

(d) If retesting also reveals a significant threshold shift as defined in paragraph (j)(10) of this section, the significant threshold shift shall be considered permanent.

(8) *Follow-up procedures.* If a comparison of the annual audiogram to the baseline audiogram indicates a significant threshold shift as defined in paragraph (j)(10) of this section, the employer shall ensure that the following steps are taken:

(i) Employees not using hearing protectors shall be fitted with hearing protectors, trained in their use and care, and required to use them.

(ii) Employees already using hearing protectors shall be refitted and retrained in the use of hearing protectors and provided with hearing protectors offering greater attenuation if necessary.

(iii) If retesting of an employee reveals that the significant threshold shift is not permanent, the use of hearing protectors by that employee may be discontinued, unless the employee is required to wear hearing protectors pursuant to paragraph (b)(1) of this section.

(iv) If a significant threshold shift has been determined to be permanent on the basis of a retest audiogram or an annual audiogram conducted after 14 hours without exposure to workplace noise, the employer shall:

(a) Inform the employee in writing, within 21 days of the determination, of the existence of a permanent significant threshold shift;

(b) Refer the employee for a clinical audiological evaluation or an otological examination, as appropriate, if additional testing is necessary to determine the cause of the permanent significant threshold shift, or if the employer suspects that a medical pathology of the ear (as defined in Appendix I) is caused or aggravated by the wearing of hearing protectors;

(c) Inform the employee of the need for an otological examination if a medical pathology of the ear which is unrelated to the use of hearing protectors is suspected; and

(d) Record the existence of the permanent significant threshold shift on the OSHA Form 200 when the audiologist, otolaryngologist or qualified physician who reviews the audiogram determines that the shift is work related.

(9) *Revised baseline.* An annual or retest audiogram shall be substituted for the baseline audiogram under the following circumstances:

(i) Where the annual or retest audiogram reveals a permanent significant threshold shift as defined in paragraph (j)(10) of this section; or

(ii) Where the annual or retest audiogram reveals improved hearing thresholds with respect to the baseline at two or more test frequencies.

(10) *Significant threshold shift.* As used in this section, a significant threshold shift is:

(i) A change in hearing threshold relative to the baseline audiogram of 20 dB or greater at any test frequency other than 500 Hz in either ear, if no previous audiograms have thresholds that exceed 25 dB with reference to audiometric zero as specified by American National Standard S3.6–1969; or

(ii) A change in hearing threshold relative to the baseline audiogram of 10 dB or greater at 1000 or 2000 Hz, 15 dB at 3000 or 4000 Hz, or 20 dB at 6000 Hz, in either ear, if any previous audiogram has one or more thresholds that exceed 25 dB with reference to audiometric zero; or

(iii) A change in hearing threshold relative to the baseline audiogram of 10 dB or greater at any test frequency other than 500 Hz in either ear, if any previous audiogram has thresholds exceeding an average of 25 dB with reference to audiometric zero at the frequencies 1000, 2000, and 3000 Hz; or

(iv) A change in hearing threshold relative to the baseline audiogram of 10 dB or greater at any test frequency other than 500 Hz in either ear, if the employee has previously suffered one or more permanent significant threshold shifts.

(v) In determining whether a significant threshold shift has occurred, allowance may be made for the contribution of aging (presbycusis) to the change in hearing level by correcting the annual or retest audiogram according to the procedure described in Appendix F: *Calculation and Application of Age Correction to Audiograms.*

(k) *Audiometric test requirements.* (1) Audiometric tests shall be pure tone, air conduction, hearing threshold examinations, with test frequencies including as a minimum 500, 1000, 2000, 3000, 4000, and 6000 Hz. Tests at each frequency shall be taken separately for each ear.

(2) Audiometric tests shall be conducted with equipment that meets the specifications of, and is maintained and used in accordance with, American National Standard Specification for Audiometers, S3.6–1969.

(3) Pulsed-tone and self-recording audiometers, if used, shall meet the requirements specified in Appendix C: *Audiometric Measuring Instruments.*

(4) Audiometric examinations shall be administered in a room meeting the requirements listed in Appendix D: *Audiometric Test Rooms.*

(5) *Audiometer calibration.* (i) The functional operation of the audiometer shall be checked before each day's use by testing a person with known, stable hearing thresholds, and by listening to the audiometer's output to make sure that the output is free from distorted or unwanted sounds. Deviations of more than 5 dB shall require an acoustic calibration.

(ii) Audiometer calibration shall be checked acoustically at least annually in accordance with Appendix E: *Acoustic Calibration of Audiometers.* Test frequencies below 500 Hz and above 6000 Hz may be omitted from this check. Deviations of more than 10 dB necessitate an exhaustive calibration.

(iii) An exhaustive calibration shall be performed at least every two years in accordance with sections 4.1.2; 4.1.3; 4.1.4.3; 4.4.1; 4.4.2; 4.4.3; and 4.5 of the American National Standard Specification for Audiometers, S3.6–1969. Test frequencies below 500 Hz may be omitted from this calibration.

(l) *Hearing protectors.* (1) Employers shall make hearing protectors available to all employees exposed to a time-weighted average of 85 decibels or greater at no cost to the employees. Hearing protectors shall be replaced as necessary.

(2) Employers shall ensure that hearing protectors are worn by all employees:

(i) Who are exposed to a time-weighted average of 85 decibels or greater and who have experienced a permanent significant threshold shift; or

(ii) Who are required by paragraph (b)(1) of this section to wear personal protective equipment.

(3) Employees shall be given the opportunity to select their hearing protectors from a variety of suitable hearing protectors provided by the employer.

(4) The employer shall provide training in the use and care of all hearing protectors provided to employees.

(5) The employer shall ensure proper initial fitting and supervise the correct use of all hearing protectors.

(m) *Hearing protector attenuation.* (1) The employer shall evaluate hearing protector attenuation for the specific noise environments in which the protector will be used by one of the methods described in Appendix G:

Methods for Estimating the Adequacy of Hearing Protector Attenuation.

(2) Hearing protectors must attenuate employee exposure at least to a time-weighted average of 90 decibels as required by paragraph (b) of this section.

(3) For employees who have experienced a significant threshold shift, hearing protectors must attenuate employee exposures to a time-weighted average of 85 decibels or below.

(4) The adequacy of hearing protector attenuation shall be re-evaluated whenever employee noise exposures increase to the extent that the hearing protectors provided may no longer provide adequate attenuation. The employer shall provide more effective hearing protectors where necessary.

(n) *Training program.* (1) The employer shall institute a training program for all employees who are exposed to noise at or above a TWA of 85 dB, and shall ensure employee participation in such program.

(2) The training program shall be repeated annually for each employee included in the hearing conservation program. Information provided in the training program shall be updated to be consistent with changes in protective equipment and work processes.

(3) The employer shall ensure that each employee is informed of the following:

(i) The contents of the noise standard including the hearing conservation program;

(ii) The effects of noise on hearing;

(iii) Specific machinery at the jobsite that could produce hazardous noise exposures;

(iv) The role of engineering and administrative controls in the reduction of noise exposure;

(v) The contents of any noise control compliance plan in effect;

(vi) The purpose of hearing protectors, the advantages, disadvantages, and attenuation of various types, and instructions on selection, fitting, use, and care; and

(vii) The purpose of audiometric testing, and an explanation of the test procedures.

(o) *Access to information and training materials.* (1) The employer shall make available to affected employees or their representatives copies of this standard and shall also post a copy in the workplace.

(2) The employer shall provide to affected employees any informational materials pertaining to this standard that are supplied to the employer by the Assistant Secretary.

(3) The employer shall provide, upon request, all materials related to the employer's training and education program pertaining to this standard to the Assistant Secretary and the Director.

(p) *Warning signs.* (1) Signs shall be posted at entrances to or on the periphery of all well-defined work areas in which employees may be exposed at or above a TWA of 85 dB.

(2) Warning signs shall clearly indicate that the area is a high noise area and shall indicate that hearing protectors may be required.

(q) *Recordkeeping.* (1) *Exposure measurements.* (i) The employer shall maintain an accurate record of all employee exposure measurements required by paragraph (e) of this section.

(ii) This exposure record shall include:

(*a*) Name and job classification of the employee measured and of all other employees whose exposure the measurement represents;

(*b*) The date, location and result of each measurement taken, and the number of measurements where sound level meters are used;

(*c*) A descripton of the noise measurement equipment used and the date of it last laboratory calibration.

(2) *Audiometric tests.* (i) The employer shall retain all employee audiograms obtained pursuant to paragraph (j) of this section;

(ii) This record shall include:

(*a*) Name and job classification of the employee;

(*b*) Date of the audiogram;

(*c*) The examiner's name and qualifications;

(*d*) Manufacturer and model of the audiometer;

(*e*) Date of the last acoustic or exhaustive calibration of the audiometer;

(*f*) Employee's most recent noise exposure assessment;

(*g*) Statement of whether the sound pressure levels in the test room in which the audiogram was taken meet the levels specified in Table D–1 or Table D–2 of Appendix D: *Audiometric Test Rooms.*

(3) *Audiometric test rooms.* (i) The employer shall maintain accurate records of the measurements of the background sound pressure levels in audiometric test rooms.

(ii) This record shall include:

(*a*) Background sound pressure level measurements at each of the following octave bands: 500, 1000, 2000, 4000, and 8000 Hz; and

(*b*) Date of measurement.

(4) *Calibration of audiometers.* (i) The employer shall maintain accurate records of all acoustical and exhaustive calibrations of audiometers required to be made pursuant to paragraph (k) of this section;

(ii) This record shall include;

(*a*) Type of calibration:

(*b*) Date performed; and

(*c*) Numerical results of the acoustical calibration.

(5) *Record retention.* The employer shall retain records required in this paragraph (q) for at least the following periods:

(i) Noise exposure measurement records shall be retained for 2 years.

(ii) Audiometric test records shall be retained for the duration of the affected employee's employment plus 5 years.

(iii) Records of background sound pressure levels in audiometric test rooms shall be retained for a period of 5 years.

(iv) Records of audiometer calibrations shall be retained for a period of 5 years.

(6) *Access to records.* All records required by this section shall be provided upon request to employees, former employees, representatives designated by the individual employee and the Assistant Secretary. The provisions of 29 CFR 1910.20(a)–(e) and (g)–(i) apply to access to records under this section.

(7) *Transfer of records.* If the employer ceases to do business, the employer shall transfer to the successor employer all records required to be maintained by this section, and the successor employer shall retain them for the remainder of the period prescribed in paragraph (q)(5) of this section.

(r) *Appendices.* (1) Appendices A, C, D, E, G, and I to this section are incorporated as part of this section and the contents of these Appendices are mandatory.

(2) Appendices B, F and H to this section are informational and are not intended to create any additional obligations not otherwise imposed or to detract from any existing obligations.

(s) *Effective dates.* (1) Paragraphs (c)–(r) of this section shall become effective April 15, 1981 unless otherwise noted below.

(2) Initial determinations and subsequent monitoring conducted pursuant to paragraphs (d) and (e) of this section shall be completed by October 15, 1981.

(3) Baseline audiograms required by paragraph (j) of this section shall be completed by April 15, 1982.

(4) In lieu of Table D–1 of Appendix D, background sound pressure levels in audiometric test rooms may conform to Table D–2 of Appendix D until April 15, 1983. After April 15, 1983, background sound pressure levels in audiometric test rooms shall comply with Table D–1 of Appendix D.

(5) Dosimeters used for employee exposure monitoring conducted pursuant to paragraph (e) of this section shall meet the requirements of paragraph (g)(1)(i) of this section by April 15, 1983.

Appendix A: Noise Exposure Computation

This Appendix is Mandatory

I. Computation of Employee Noise Exposure

(1) Noise dose is computed using Table G–16a as follows:

(i) When the sound level, L, is constant over the entire work shift, the noise dose, D, in percent, is given by: $D = 100\ C/T$ where C is the total length of the work day, in hours, and T is the reference duration corresponding to the measured sound level, L, as given in Table G–16a or by the formula shown as a footnote to that table.

(ii) When the workshift noise exposure is composed of two or more periods of noise at different levels, the total noise dose over the work day is given by: $D = 100\ (C_1/T_1 + C_2/T_2 + \ldots + C_n/T_n)$, where C_n indicates the total time of exposure at a specific noise level, and T_n indicates the reference duration for that level as given by Table G–16a.

(2) The eight-hour time-weighted average sound level (TWA), in decibels, may be computed from the dose, in percent, by means of the formula: $TWA = 16.61 \log_{10} (D/100) + 90$. For an eight-hour workshift with the noise level constant over the entire shift, the TWA is equal to the measured sound level.

(3) A table relating dose and TWA is given in Section II.

Table G–16a

A-weighted sound level, L (decibel)	Reference duration, T (hour)
80	32
81	27.9
82	24.3
83	21.1
84	18.4
85	16
86	13.9
87	12.1
88	10.6
89	9.2
90	8
91	7.0
92	6.2
93	5.3
94	4.6
95	4
96	3.5
97	3.0
98	2.6
99	2.3
100	2
101	1.7
102	1.5
103	1.4
104	1.3
105	1
106	0.87

Table G–16a—Continued

A-weighted sound level, L (decibel)	Reference duration, T (hour)
107	0.76
108	0.66
109	0.57
110	0.5
111	0.44
112	0.38
113	0.33
114	0.29
115	0.25
116	0.22
117	0.19
118	0.16
119	0.14
120	0.125
121	0.11
122	0.095
123	0.082
124	0.072
125	0.063
126	0.054
127	0.047
128	0.041
129	0.036
130	0.031

In the above table the reference duration, T, is computed by

$$T = \frac{8}{2^{(L-90)/5}}$$

where L is the measured A-weighted sound level.

II. Conversion Between "Dose" and "8-Hour Time-Weighted Average" Sound Level

Compliance with paragraphs (c)–(r) of this regulation is determined by the amount of exposure to noise in the workplace. The amount of such exposure is usually measured with an audiodosimeter which gives a readout in terms of "dose." In order to better understand the requirements of the amendment, dosimeter readings can be converted to an "8-hour time-weighted average (TWA) sound level".

In order to convert the reading of a dosimeter into TWA, see Table A–1, below. This table applies to dosimeters that are set by the manufacturer to calculate dose or percent exposure according to the relationships in Table G–16a. So, for example, a dose of 91 percent over an eight hour day results in a TWA of 89.3 dB, and, a dose of 50 percent corresponds to a TWA of 85 dB.

If the dose as read on the dosimeter is less than or greater than the values found in Table A–1, the TWA may be calculated by using the formula: $TWA = 16.61 \log_{10} (D/100) + 90$ where TWA = 8-hour time-weighted average sound level and D = accumulated dose in percent exposure.

Table A–1.—Conversion From "Percent Noise Exposure" or "Dose" to "8-Hour Time-Weighted Average Sound Level" (TWA)

Dose or percent noise exposure	TWA
10	73.4
15	76.5
20	78.4
25	80.0
30	81.3
35	82.4
40	83.4
45	84.2
50	85.0
55	85.7
60	86.3
65	86.9
70	87.4
75	87.9
80	88.4
81	88.5
82	88.6
83	88.7
84	88.7
85	88.8
86	88.9
87	89.0
88	89.1
89	89.2
90	89.2
91	89.3
92	89.4
93	89.5
94	89.6
95	89.6
96	89.7
97	89.8
98	89.8
99	89.9
100	90.0
101	90.1
102	90.1
103	90.2
104	90.3
105	90.4
106	90.4
107	90.5
108	90.6
109	90.6
110	90.7
111	90.8
112	90.8
113	90.9
114	90.9
115	91.1
116	91.1
117	91.1
118	91.2
119	91.3
120	91.3
125	91.6
130	91.9
135	92.2
140	92.4
145	92.7
150	92.9
155	93.2
160	93.4
165	93.6
170	93.8
175	94.0
180	94.2
185	94.4
190	94.6
195	94.8
200	95.0
210	95.4
220	95.7
230	96.0
240	96.3
250	96.6
260	96.9
270	97.2
280	97.4
290	97.7
300	97.9
310	98.2
320	98.4
330	98.6
340	98.8
350	99.0

Table A-1.—*Conversion From "Percent Noise Exposure" or "Dose" to "8-Hour Time-Weighted Average Sound Level" (TWA)*—Continued

Dose or percent noise exposure	TWA
360	99.2
370	99.4
380	99.6
390	99.8
400	100.0
410	100.2
420	100.4
430	100.6
440	100.7
450	100.9
460	101.0
470	101.2
480	101.3
490	101.5
500	101.6
510	101.8
520	101.9
530	102.0
540	102.2
550	102.3
560	102.4
570	102.6
580	102.7
590	102.8
600	102.9
610	103.0
620	103.2
630	103.3
640	103.4
650	103.5
660	103.6
670	103.7
680	103.8
690	103.9
700	104.0
710	104.1
720	104.2
730	104.3
740	104.4
750	104.5
760	104.6
770	104.7
780	104.8
790	104.8
800	105.0
810	105.1
820	105.2
830	105.3
840	105.4
850	105.4
860	105.5
870	105.6
880	105.7
890	105.8
900	105.8
910	105.9
920	106.0
930	106.1
940	106.2
950	106.2
960	106.3
970	106.4
980	106.5
990	106.5
999	106.6

Appendix B: Temporal Sampling Procedures for Use With a Sound Level Meter

This Appendix Is Non-Mandatory

Two basic types of equipment permitted are to measure noise exposure for the purposes of paragraphs (c) through (r) of 29 CFR 1910.95: the noise dosimeter and the sound level meter. The sampling procedure for using a sound level meter described below is intended to yield accuracy comparable to that obtained by using a dosimeter meeting the requirements of paragraph (g)(1)(i) of 29 CFR 1910.95. This accuracy will only be possible when the sampled sound levels are truly representative of the total exposure. 1. Based on the nature of the workplace operations to which the employee is exposed, identify each time period for which the noise exposure is to be determined.

This identification is done by dividing the entire workday into a number of time segments, each having workplace operations where the noise environment is relatively uniform. The noise may vary with time in each time segment but except for periodic variations in sound level associated with the cyclic nature of specific machinery, there is no reason to expect consistently different sound levels in one part of this time segment as opposed to another part.

For example, in a machine shop a worker may spend the early part of the day preparing his particular machine for production and the remainder of the day actually running it. The sound level at the worker's location might exceed 80 dB during the setting up process because of nearby machines already in operation. When his own machine is running, the sound level to which he is exposed could be much greater. During each period the sound levels vary in a characteristic manner. Each of these two time periods (see Figure B–1) would be an identified time segment during which measurements should be made.

As another example, consider a factory where intermittent noise due to operation of a particular machine is superimposed on a fairly steady background noise, so that the sound level varies with time as shown in Figure B–2. The total time that the machine is on can be considered to be one time segment and the total time that the machine is off would be another time segment. The procedure described in Section 2, below, can be used in conjunction with such intermittent noise provided that the times spent in each operating cycle are sufficiently long that the duration of each on-cycle or off-cycle can be easily measured.

As a third example, consider a situation where impulsive sounds due, for example, to mechanical impacts are superimposed on continuous noise as indicated in Figure B–3. The total time that the impulses are well in excess of the general ambient noise can be considered as one time segment and the remainder of the time as another time segment. The procedure described in Section 3, below, can be used in conjunction with impulsive noises or very short bursts of noise.

2. For each time segment for which the noise is essentially continuous, determine the average sound level in the following manner:

(a) Carry out any necessary calibration to ensure proper and accurate operation of the sound level meter.

(b) Set the controls of the sound level meter for A-weighted SLOW response.

(c) Adjust the controls of the sound level meter so that the highest sound level readings that occur during the time segment will be readable on the meter scale.

(d) With the microphone located in the desired position, read the sound level at intervals and place a checkmark in the appropriate box on the data sheet (Figure B–4). The sound levels should be read to the nearest decibel. The readings may be made at any time interval of 5 seconds or longer. The readings should be instantaneous, i.e., the person taking the data should glance at the indicator of the sound level meter and read it "on the fly" rather than look for maximum or minimum levels or wait for fairly steady levels. If the noise-producing operation is cyclic, care should be taken to avoid reading sound levels at consistent times relative to the cycles in sound level; this may require taking observations at random, rather than at regular time intervals.

(e) If the time interval is not sufficiently long to take 25 readings at intervals of 5 seconds or longer, readings should be taken at 5-second intervals throughout the entire time period and steps (f), (g), and (h) may be omitted.

(f) If, after 25 sound level readings have been taken, the total range of sound levels does not exceed 5 dB, the highest reading obtained may be taken as the effective sound level, and steps (g), (h), and (i) may be omitted.

(g) If, after 25 readings have been taken, the total range of sound levels exceeds 5 dB, the total number of readings that are required is estimated as follows:

(1) On the data sheet (Figure B–4), count down four checkmarks from the top. Draw a horizontal arrow (as shown in the example on Figure B–6) from the ordinate scale marked "A-weighted sound level" to the center of the row in which the fourth checkmark appears.

(2) Count up four checkmarks from the bottom and draw an arrow in line with the center of the row in which the fourth checkmark appears.

(3) Take the difference, in decibels, between the two sound levels (rows) so identified. This is the "spread of levels" to be used below. If the spread of levels from the fourth lowest to the fourth highest exceeds 12 decibels, the identified time segment should be

divided into two or more smaller time segments such that the spread of levels in *each* time segment will not exceed 12 decibels. If this is not possible, the use of a sound level meter to determine the noise exposure is probably not advisable and a noise dosimeter should be used. (However, see Section 3, below, for circumstances under which transient or impulsive noises may be ignored).

(4) Locate the estimated duration of the time segment on the ordinate scale to the far left on the data sheet. Draw a straight line from this point to the point where the upper arrow (step (1) above) intersects the scale labeled "A-weighted sound level." Draw a second straight line from the point labeled 8 hr on the time segment scale through the intersection of the first line with the "pivot line" located midway between the two scales, extend it to the sound level scale and then draw a horizontal arrow to the right to find the "adjusted upper level."

(5) The total number of sound level readings required is given by the table at the bottom of the worksheet. The columns in this table correspond to different values of the spread of levels (from the fourth lowest to the fourth highest). The three rows correspond, respectively, to the adjusted upper level being less than 85 decibels, between 85 and 90 decibels, and greater than 90 decibels.

(h) If the "adjusted upper level" is less than 80 decibels, the contribution due to the particular time segment may be ignored and no further measurements or calculations for that time segment are required.

(i) If the required number of sound level meter readings is equal to 25, no further sound levels need be read. If the required number is greater than 25, take additional measurements, in accordance with (d), above, until the total number of readings, including the 25 original readings, exceeds the required number. (The checkmarks can be added onto the original data sheet).

(j) Compute the effective sound level using the worksheet (Figure B–5) as follows:

(1) Enter the number of counts per sound level (frequency of occurrence) in Column B. Add them to get Sum B.

(2) Multiply the counts in Column B by the number in Column C and enter the results in Column D.

(3) Add all values in Column D to determine Sum D.

(4) Divide Sum D by Sum B.

(5) Locate the value in Column C that is approximately equal to Sum D/Sum B. The corresponding value in Column A is equal to the effective sound level.

Note.—It may be desirable to use a (pre-programmed) calculator to carry out these steps rather than to use the worksheet. This is quite acceptable so long as the calculation procedure is checked to ensure correctness.

(k) Proceed to carry out steps (a) through (g) as necessary for any other identified time segments.

3. When impulsive noise or short bursts of continuous noise result in large (e.g., 10 decibels or more) increases of short duration in the sound level, care must be taken to determine properly the effective duration of the higher noise level. When such discrete events occur, with a resultant time variation of sound levels such as that shown in Figure B–3, the following procedure may be followed:

(a) Carry out steps (a), (b), and (c) of Section 2, above.

(b) With the microphone located in the desired position, read the *maximum* sound level indicated on the sound level meter during occurrence of one of the discrete events of interest and place a checkmark in the appropriate box on a data sheet (Figure B–4). The maximum sound levels should be read to the nearest decibel.

(c) Repeat step 3(b) for 25 readings of the maximum sound level.

(d) Compute the maximum effective sound level for these 25 readings using the worksheet (Figure B–5) and the procedures described in Section 2(j), above.

(e) Calculate the sound level that is 6 decibels less than the maximum effective sound level determined in step 3(d); this is designated as the "6-decibel down level."

(f) Determine the effective duration of a transient event as follows: For a minimum of 10 events, use a stop watch or other timing device to measure the time that the sound level is greater than the "6-decibel down level" that was determined in step 3(e). This can be done by noting the 6-decibel down level on the sound level meter and then, for at least 10 events, starting the stop watch when the sound level increases to the 6-decibel down level, allowing the stop watch to run while the sound level is above the 6-decibel down level, and stopping the watch when the sound level falls below the 6-decibel down level. The effective duration of a single event is the arithmetic average of at least 10 durations thereby obtained, rounded up to the next larger integer second.

(g) The duration of the time segment for all similar single events is simply the number of such events multiplied by the effective duration of a single event.

(h) Follow the procedures described in Section 2(g) to determine the total required number of sound level meter readings, using the duration of the time segment as determined in step 3(g) to enter the left-hand scale of the data sheet (Figure B–4).

(i) If the "adjusted upper level" is less than 80 decibels, the contribution due to the particular time segment may be ignored and no further measurements or calculations for that time segment are required.

(j) If the required number of sound level meter readings is equal to 25, no further readings of the maximum sound level need be taken. If the required number of readings is greater than 25, take additional measurements, in accordance with 3(b), above, until the total number of readings, including the 25 original readings, exceeds the required number.

(k) Compute the effective sound level, using the worksheet (Figure B–5) and the procedure described in Section 2(j), above.

4. The average sound levels thus determined, and the durations for each time segment, should be entered into Table G–16a to compute the total noise dose, and subsequently the 8-hour time-weighted average sound level according to the procedures required by 29 CFR 1910.95(c).

Example for Continuous Noise

(a) Twenty-five sound levels are measured and entered on a data sheet with the results shown in Figure B–6.

(b) Counting down four checkmarks from the top, the number corresponding to the row in which the fourth checkmark appears is 97 decibels. An arrow is placed in line with that row and a dot is drawn where the tail of the arrow intersects the scale labeled "A-weighted sound level."

(c) The duration of the time segment is estimated as 5 hours; a corresponding dot is placed on the (left-hand) time scale on the data sheet.

(d) A straight line is drawn connecting the dot at 5 hours on the time scale and the dot at 97 dB on the sound level scale. A dot is placed where this line intersects the "pivot line" that is parallel to and midway between the two scales.

(e) A straight line (shown dashed in Figure B–6) is drawn from the mark at 8 hours on the time scale through the dot on the pivot line and extended to intersect the sound level meter scale. An arrow (also shown dashed) is drawn from this intersection point to the right—the "adjusted upper level" is found to lie between 93 and 94 decibels.

(f) Counting up four checkmarks from the botton of the worksheet, the number corresponding to the row in which the fourth checkmark appears is 92 dB.

(g) The difference between this lower level and the (unadjusted) upper level is 5 decibels; from the table at the bottom of the worksheet, it is found that at least 75 sound level readings are required.

(h) Fifty additional sound levels are read and entered onto the data sheet with the results show in Figure B–7; the number of checkmarks in each row is summed and entered in the right hand column.

(i) The sums from the data sheet are transferred to a worksheet and the required calculations are carried out as shown in Figure B–8; the resultant average sound level for the selected time period is found to be 95 dB.

Example for Impulsive Noise

(a) Twenty-five maximum sound levels are measured and entered on a data sheet with the results shown in Figure B–9.

(b) The sums from this data sheet are transferred to a worksheet as shown in Figure B–10 and the required calculations are carried out. The resultant maximum effective sound level for these impulsive events is found to be 103 dB.

(c) The "5-decibel down level" is thus 97 decibels. Using a stop watch, the time that the sound level exceeds 97 decibels is measured for 10 events; the average effective duration is found to be 3.4 seconds, which is rounded up to 4 seconds.

(d) It is estimated that there are approximately 50 such events during a typical workshift. Thus the duration of the time segment is estimated to be 200 seconds (or 3.3 minutes).

(e) A dot is placed on the time axis on the worksheet at 3.3 minutes and a dot is placed on the sound level axis at 103 decibels. A straight line is drawn between these two dots and a dot is placed where that line intersects the pivot line. A second line (shown dashed in Figure B–9) is drawn from the mark at 8 hours on the time axis through the mark on the pivot line. It is seen that this line would intersect the sound level scale at a location well below 80 decibels. Thus the noise exposure due to the 50 impulse sounds can be ignored and no further measurements or calculations are required. (Note: If the adjusted level had exceeded 80 decibels, the remaining procedure for the impulsive noises would have been the same as for the continuous noise example given above.)

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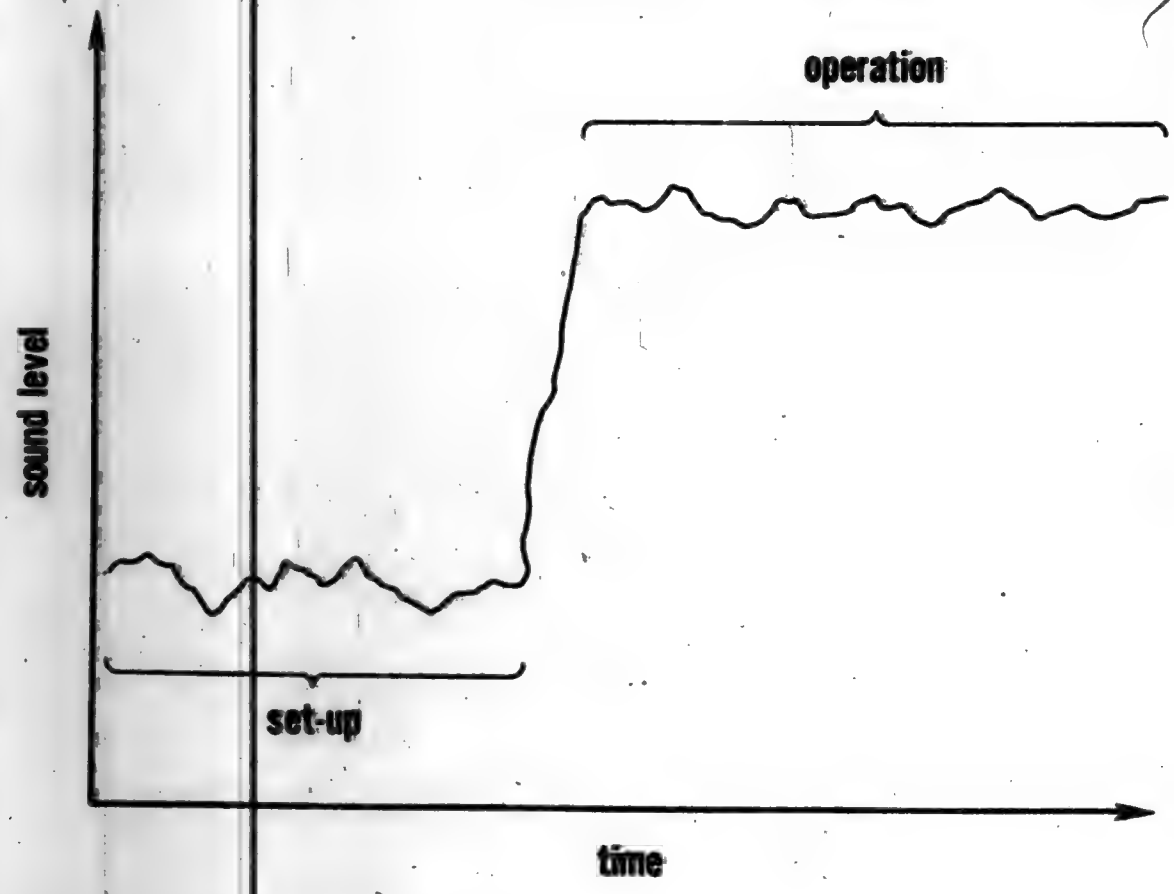

Figure B–1. Example of two discrete time segments.

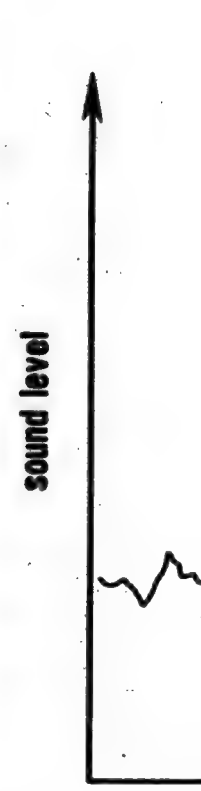

Figure

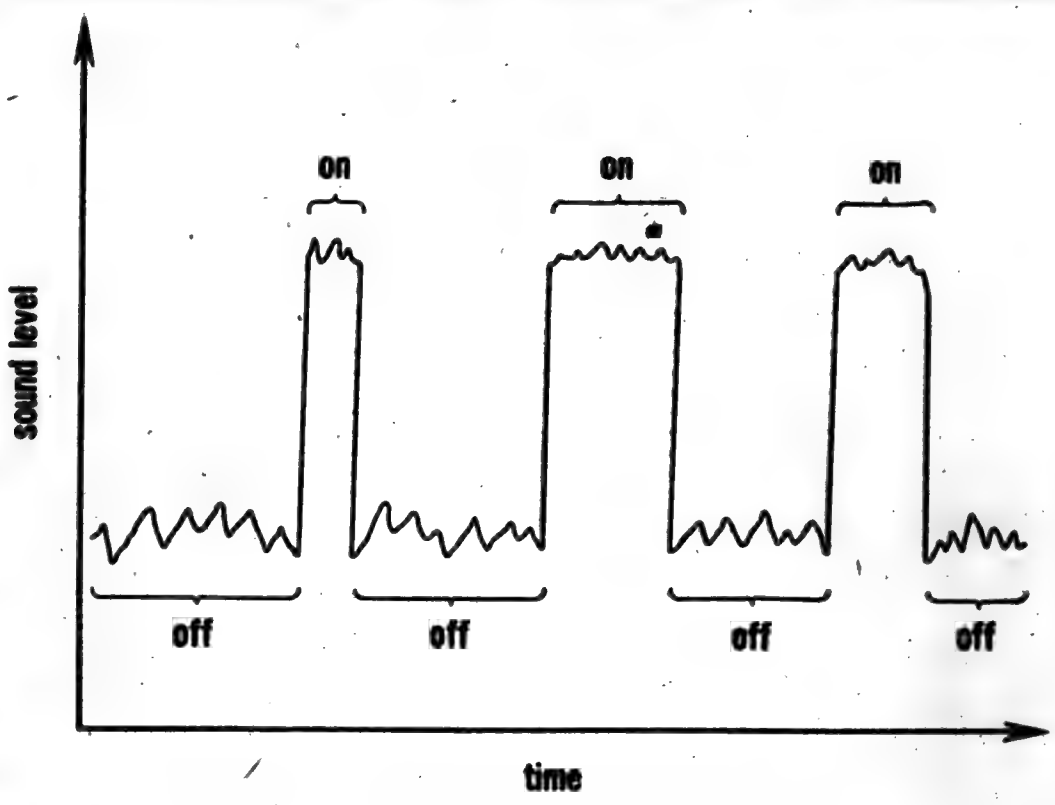

Figure B-2. Example of intermittent noise time segments.

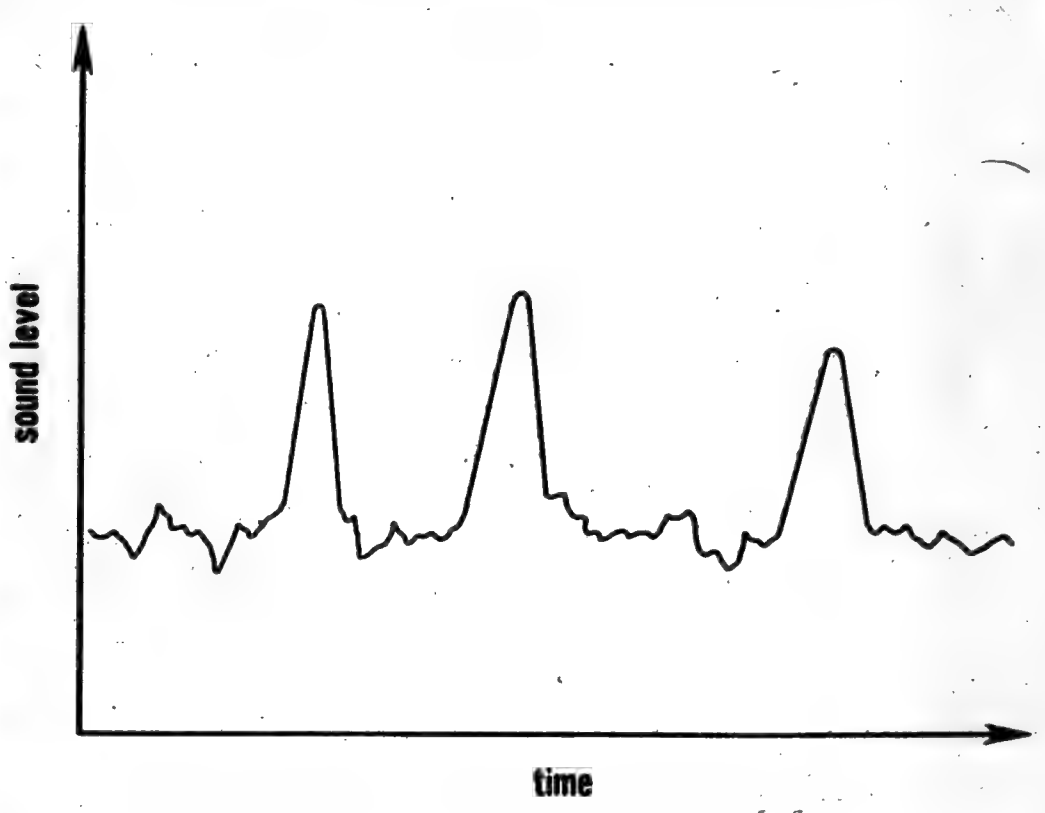

Figure B-3. Example of impulses superimposed on continuous noise.

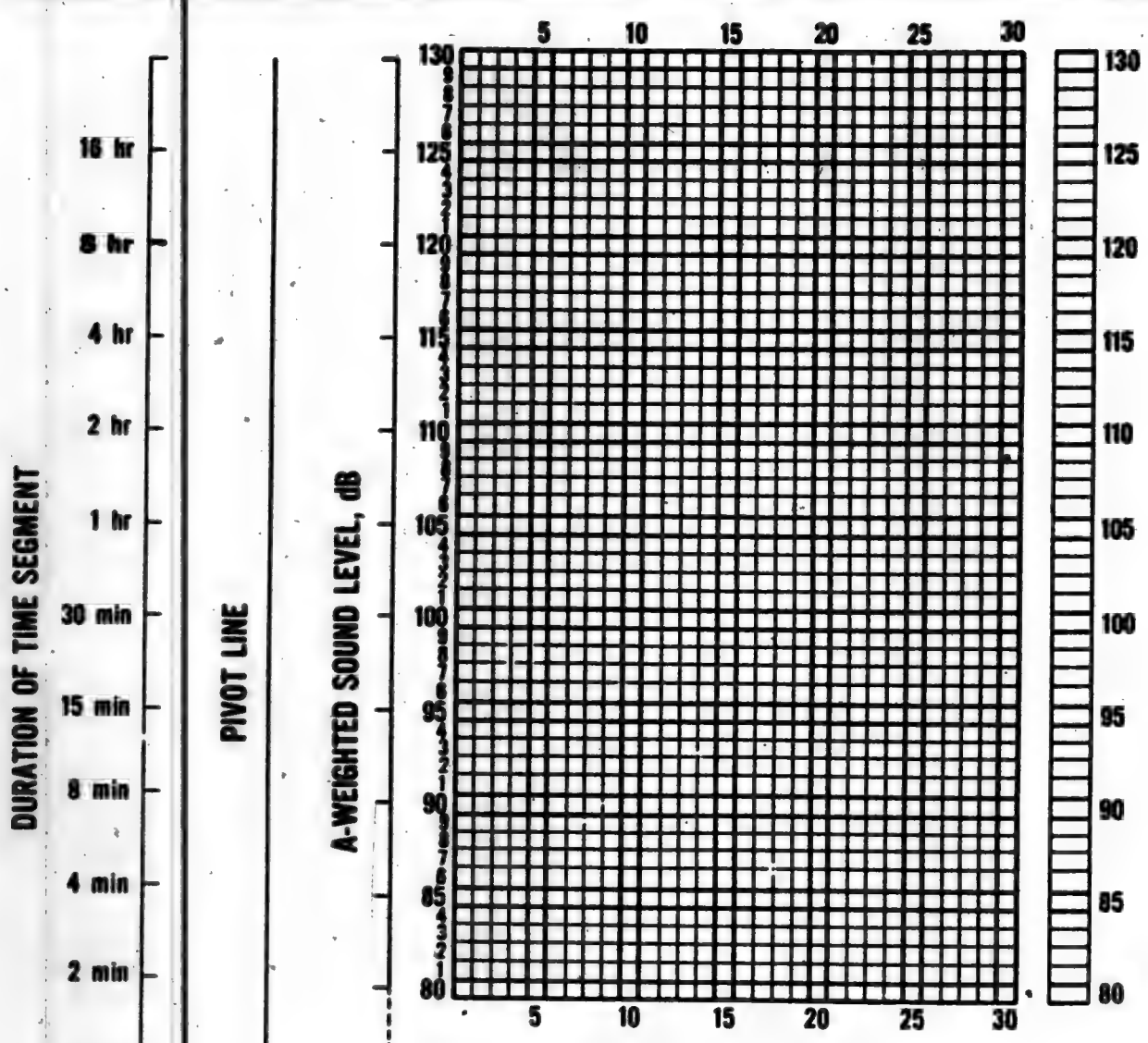

ADJUSTED UPPER LEVEL	SPREAD OF LEVELS									
	≤3	4	5	6	7	8	9	10	11	12
L ≤ 85	25	25	25	25	25	25	25	25	25	25
85 < L ≤ 90	25	25	25	25	50	50	75	75	100	100
L > 90	25	50	75	100	150	200	250	300	350	400

Figure B-4. Data Sheet.

A SOUND LEVEL dB	
130 or above	
129	
128	
127	
126	
125	
124	
123	
122	
121	
120	
119	
118	
117	
116	
115	
114	
113	
112	
111	
110	
109	
108	
107	
106	
105	
104	
103	
102	
101	
100	
99	
98	
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96	
95	
94	
93	
92	
91	
90	
89	
88	
87	
86	
85	
84	
83	
82	
81	
80	
below 80	

Sum B = _____

$\frac{\text{Sum D}}{\text{Sum B}}$ = _____

Figure B-

A SOUND LEVEL dB	B COUNT		C RELATIVE WEIGHTING		D RELATIVE TOTAL WEIGHTING
130 or above		×	256.00	=	
129		×	222.86	=	
128		×	194.01	=	
127		×	168.91	=	
126		×	147.03	=	
125		×	128.00	=	
124		×	111.43	=	
123		×	97.01	=	
122		×	84.45	=	
121		×	73.52	=	
120		×	64.00	=	
119		×	55.72	=	
118		×	48.50	=	
117		×	42.22	=	
116		×	36.76	=	
115		×	32.00	=	
114		×	27.86	=	
113		×	24.25	=	
112		×	21.11	=	
111		×	18.38	=	
110		×	16.00	=	
109		×	13.93	=	
108		×	12.13	=	
107		×	10.56	=	
106		×	9.19	=	
105		×	8.00	=	
104		×	6.96	=	
103		×	6.06	=	
102		×	5.28	=	
101		×	4.59	=	
100		×	4.00	=	
99		×	3.48	=	
98		×	3.03	=	
97		×	2.64	=	
96		×	2.30	=	
95		×	2.00	=	
94		×	1.74	=	
93		×	1.52	=	
92		×	1.32	=	
91		×	1.15	=	
90		×	1.00	=	
89		×	0.87	=	
88		×	0.76	=	
87		×	0.66	=	
86		×	0.57	=	
85		×	0.50	=	
84		×	0.44	=	
83		×	0.38	=	
82		×	0.33	=	
81		×	0.29	=	
80		×	0.25	=	
below 80		×	0.00	=	0.00

Sum B = _____ Sum D = _____

$\frac{\text{Sum D}}{\text{Sum B}}$ = _____ Average Sound Level = _____

Figure B-5. Worksheet for computing average sound level.

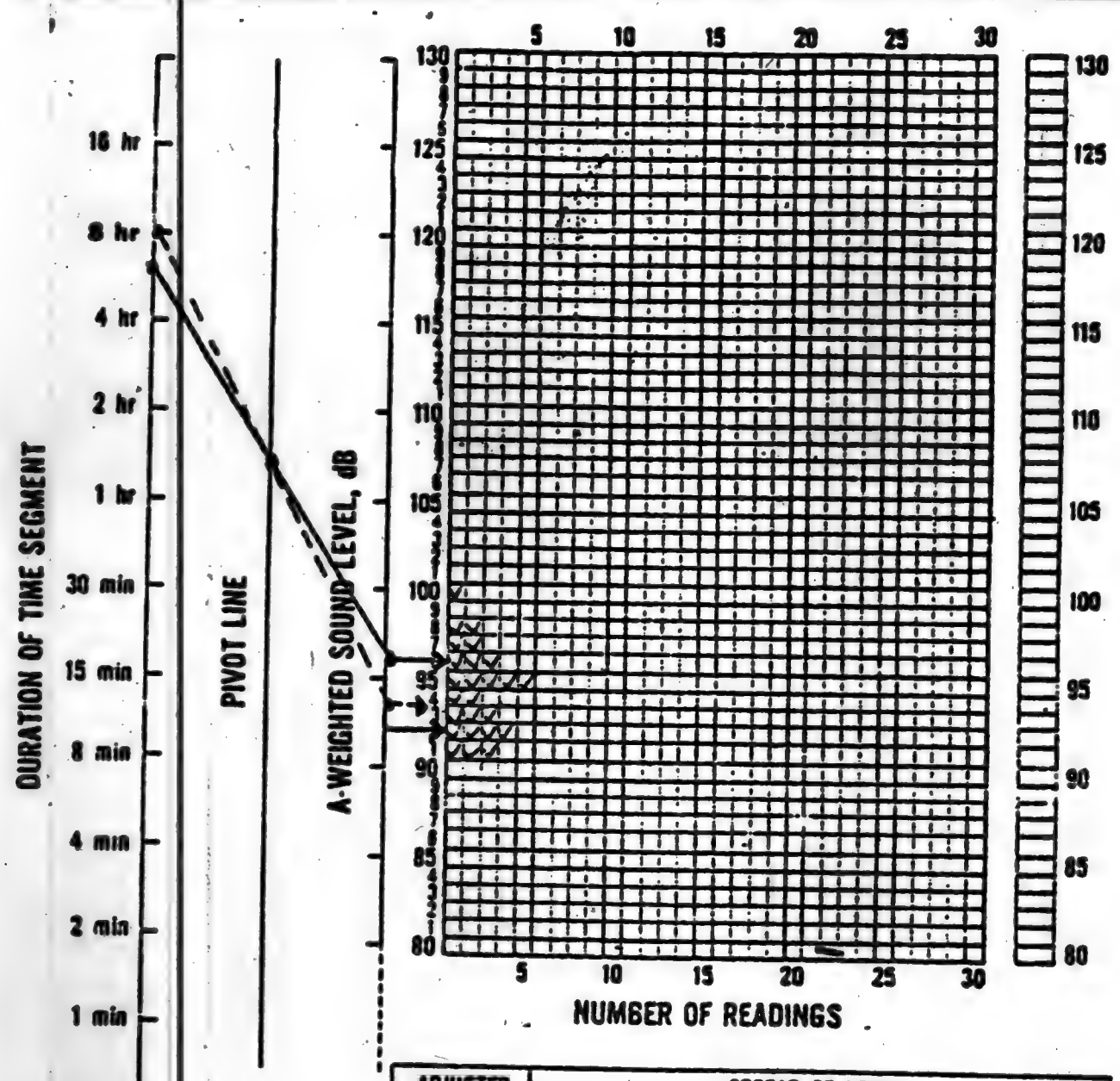

ADJUSTED UPPER LEVEL	SPREAD OF LEVELS									
	≤3	4	5	6	7	8	9	10	11	12
L ≤ 85	25	25	25	25	25	25	25	25	25	25
85 < L ≤ 90	25	25	25	25	50	50	75	75	100	100
L > 90	25	50	75	100	150	200	250	300	350	400

Figure B-6. Sample data sheet.

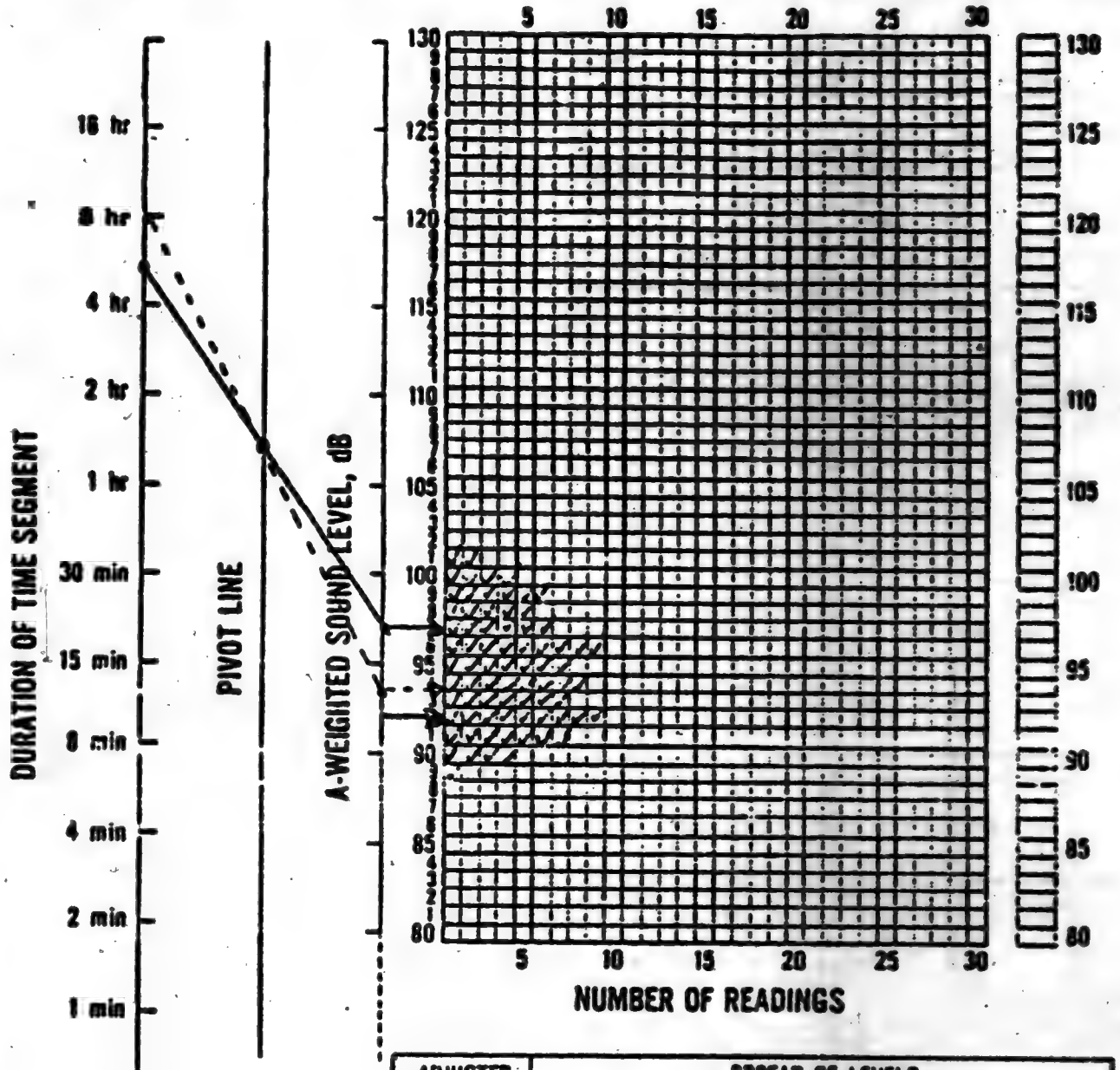

ADJUSTED UPPER LEVEL	SPREAD OF LEVELS									
	≤3	4	5	6	7	8	9	10	11	12
L ≤ 85	25	25	25	25	25	25	25	25	25	25
85 < L ≤ 90	25	25	25	25	50	50	75	75	100	100
L > 90	25	50	75	100	150	200	250	300	350	400

Figure B-7. Sample data sheet.

SOUND LEVEL dB	COUNT		RELATIVE WEIGHTING		RELATIVE TOTAL WEIGHTING
130 or above		x	256.00	=	
129		x	222.86	=	
128		x	194.01	=	
127		x	168.91	=	
126		x	147.03	=	
125		x	128.00	=	
124		x	111.43	=	
123		x	97.02	=	
122		x	84.48	=	
121		x	73.52	=	
120		x	64.00	=	
119		x	55.72	=	
118		x	48.50	=	
117		x	42.22	=	
116		x	36.75	=	
115		x	32.00	=	
114		x	27.86	=	
113		x	24.25	=	
112		x	21.11	=	
111		x	18.38	=	
110		x	16.00	=	
109		x	13.93	=	
108		x	12.13	=	
107		x	10.56	=	
106		x	9.19	=	
105		x	8.00	=	
104		x	6.96	=	
103		x	6.06	=	
102		x	5.28	=	
101	1	x	4.59	=	4.59
100	2	x	4.00	=	8.00
99	4	x	3.48	=	13.92
98	5	x	3.03	=	15.15
97	7	x	2.64	=	18.48
96	11	x	2.30	=	25.30
95	9	x	2.00	=	18.00
94	12	x	1.74	=	20.89
93	7	x	1.52	=	10.64
92	7	x	1.32	=	9.24
91	6	x	1.15	=	6.90
90	4	x	1.00	=	4.00
89		x	0.87	=	
88		x	0.76	=	
87		x	0.66	=	
86		x	0.57	=	
85		x	0.50	=	
84		x	0.44	=	
83		x	0.38	=	
82		x	0.33	=	
81		x	0.29	=	
80		x	0.25	=	
below 80		x	0.00	=	0.00

Sum S = 75

Sum D = 155.00

$\frac{\text{Sum D}}{\text{Sum S}}$ = 2.07

Average Sound Level = 95^{+} dB

Figure 8-8. Sample worksheet for computing average sound level.

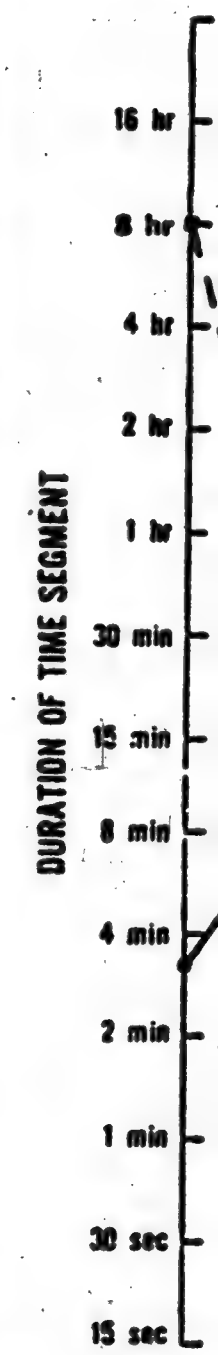

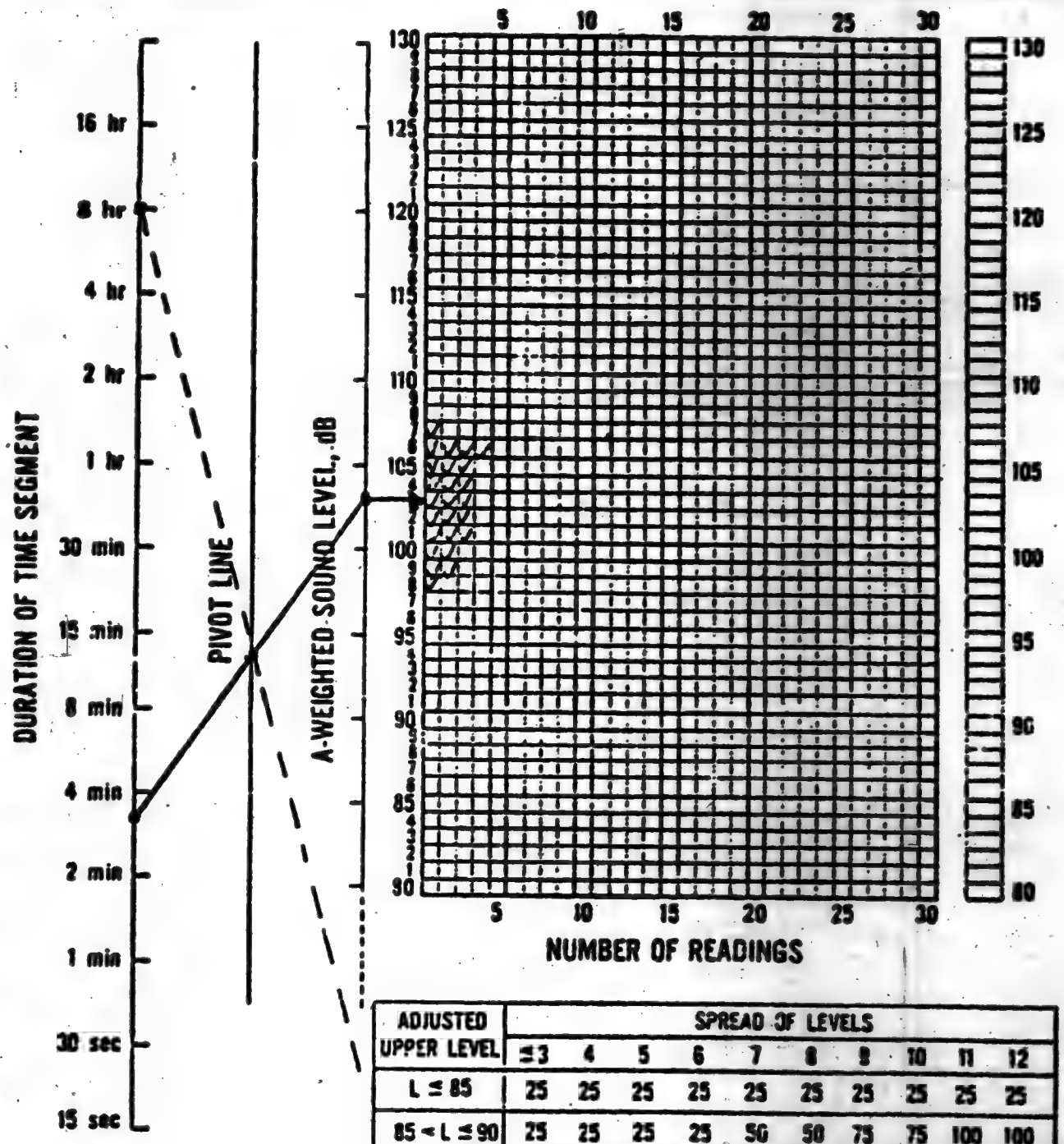

ADJUSTED UPPER LEVEL	SPREAD OF LEVELS									
	≤3	4	5	6	7	8	9	10	11	12
L ≤ 85	25	25	25	25	25	25	25	25	25	25
85 < L ≤ 90	25	25	25	25	50	50	75	75	100	100
L > 90	25	50	75	100	150	200	250	300	350	400

Figure B-9. Sample data sheet.

A SOUND LEVEL dB	B COUNT		C RELATIVE WEIGHTING		D RELATIVE TOTAL WEIGHTING
130 or above		x	256.00	=	
129		x	222.66	=	
128		x	194.01	=	
127		x	168.91	=	
126		x	147.03	=	
125		x	128.00	=	
124		x	111.43	=	
123		x	97.01	=	
122		x	84.45	=	
121		x	73.52	=	
120		x	64.00	=	
119		x	55.72	=	
118		x	48.50	=	
117		x	42.22	=	
116		x	36.76	=	
115		x	32.00	=	
114		x	27.86	=	
113		x	24.25	=	
112		x	21.11	=	
111		x	18.38	=	
110		x	16.00	=	
109		x	13.93	=	
108		x	12.13	=	
107	1	x	10.56	=	10.56
106	4	x	9.19	=	36.76
105	3	x	8.00	=	24.00
104	3	x	6.96	=	20.88
103	3	x	6.06	=	18.18
102	3	x	5.28	=	15.84
101	3	x	4.59	=	13.77
100	2	x	4.00	=	8.00
99	2	x	3.48	=	6.96
98	1	x	3.03	=	3.03
97		x	2.64	=	
96		x	2.30	=	
95		x	2.00	=	
94		x	1.74	=	
93		x	1.52	=	
92		x	1.32	=	
91		x	1.15	=	
90		x	1.00	=	
89		x	0.87	=	
88		x	0.76	=	
87		x	0.66	=	
86		x	0.57	=	
85		x	0.50	=	
84		x	0.44	=	
83		x	0.38	=	
82		x	0.33	=	
81		x	0.29	=	
80		x	0.25	=	
Below 80		x	0.00	=	0.00

Sum B = 25

Sum D = 157.98

Sum D / Sum B = 6.32

Average Sound Level = 103+ dB

Figure B-10. Sample worksheet for computing average sound level.

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Appendix C: A
Instruments

This Appendix

1. In the eve
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2. Self-recor
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(A) The cha
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tracings shall

(B) It shall b
manually at th
for calibration

(C) The slew
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than 6 dB/sec
slewing rate gr
permitted at th
test frequency,
subject respon

(D) The audi
each required
seconds (±3 s
shall be clearly
of frequency a
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marked on the
±3 seconds.

(E) It must be
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Appendix D: A

This Appendix

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Appendix C: Audiometric Measuring Instruments

This Appendix is Mandatory

1. In the event that pulsed-tone audiometers are used, they shall have a tone on-time of at least 200 milliseconds.

2. Self-recording audiometers shall comply with the following requirements:

(A) The chart upon which the audiogram is traced shall have lines at positions corresponding to all multiples of 10 dB hearing level within the intensity range spanned by the audiometer. The lines shall be equally spaced and shall be separated by at least 1/4 inch. Additional increments are optional. The audiogram pen tracings shall not exceed 2 dB in width.

(B) It shall be possible to set the stylus manually at the 10-dB increment lines for calibration purposes.

(C) The slewing rate for the audiometer attenuator shall not be more than 6 dB/sec except that an initial slewing rate greater than 6 dB/sec is permitted at the beginning of each new test frequency, but only until the second subject response.

(D) The audiometer shall remain at each required test frequency for 30 seconds (±3 seconds). The audiogram shall be clearly marked at each change of frequency and the actual frequency change of the audiometer shall not deviate from the frequency boundaries marked on the audiogram by more than ±3 seconds.

(E) It must be possible at each test frequency to place a horizontal line segment parallel to the time axis on the audiogram, such that the audiometric tracing crosses the line segment at least six times at that test frequency. At each test frequency the threshold shall be the average of the midpoints of the tracing excursions.

Appendix D: Audiometric Test Rooms

This Appendix is Mandatory

After April 15, 1983, rooms used for audiometric testing shall not have background sound pressure levels exceeding those in Table D–1 when measured by equipment conforming at least to the Type 2 requirements of American National Standard Specification for Sound Level Meters, S1.4–1971 (R1976), and to the Class II requirements of American National Standard Specification for Octave, Half-Octave, and Third-Octave Band Filter Sets, S1.11–1971 (R1976). Table D–2 may be used until April 15, 1983.

Table D–1.—*Maximum Allowable Octave-Band Sound Pressure Levels for Audiometric Test Rooms*

Octave-band center frequency (Hz)	500	1000	2000	4000	8000
Sound pressure level (dB)	27	30	35	42	41

Table D–2.—*Maximum Allowable Octave-Band Sound Pressure Levels for Audiometric Test Rooms (May be used in lieu of Table D–1 until Apr. 15, 1983)*

Octave-band center frequency (Hz)	500	1000	2000	4000	8000
Sound pressure level (dB)	40	40	47	57	62

Appendix E: Acoustic Calibration of Audiometers

This Appendix is Mandatory

Audiometer calibration shall be checked acoustically, at least annually, according to the procedures described in this Appendix. The equipment necessary to perform these measurements is a sound level meter, octave-band filter set, and a National Bureau of Standards 9A coupler. In making these measurements, the accuracy of the calibrating equipment shall be sufficient to determine that the audiometer is within the tolerances permitted by American National Standard Specification for Audiometers, S3.6–1969.

(1) *Sound Pressure Output Check*

A. Place the earphone coupler over the microphone of the sound level meter and place the earphone on the coupler.

B. Set the audiometer's hearing threshold level (HTL) dial to 70 dB.

C. Measure the sound pressure level of the tones at each test frequency from 500 Hz through 6000 Hz for each earphone.

D. At each frequency the readout on the sound level meter should correspond to the levels in Table E–1 or Table E–2, as appropriate, for the type of earphone, in the column entitled "sound level meter reading."

(2) *Linearity Check*

A. With the earphone in place, set the frequency to 1000 Hz and the HTL dial on the audiometer to 70 dB.

B. Measure the sound levels in the coupler at each 10-dB decrement from 70 dB to 10 dB, noting the sound level meter reading at each setting.

C. For each 10-dB decrement on the audiometer the sound level meter should indicate a corresponding 10 dB decrease.

D. This measurement may be made electrically with a voltmeter connected to the earphone terminals.

(3) *Tolerances*

When any of the measured sound levels deviate from the levels in Table E–1 or Table E–2 by ± 3 dB at any test frequency between 500 and 3000 Hz, 4 dB at 4000 Hz, or 5 dB at 6000 Hz, an exhaustive calibration is advised. An exhaustive calibration is required if the deviations are greater than 10 dB at any test frequency.

Table E–1.—*Reference Threshold Levels for Telephonics—TDH–39 Earphones*

Frequency, Hz	Reference threshold level for TDH–39 earphones, dB	Sound level meter reading, dB
500	11.5	81.5
1000	7	77
2000	9	79
3000	10	80
4000	9.5	79.5
6000	15.5	85.5

Table E–2.—*Reference Threshold Levels for Telephonics—TDH–49 Earphones*

Frequency, Hz	Reference threshold level for TDH–39 earphones, dB	Sound level meter reading, dB
500	13.5	83.5
1000	7.5	77.5
2000	11	81.0
3000	8.5	78.5
4000	10.5	80.5
6000	13.5	83.5

Appendix F: Calculations and Application of Age Corrections to Audiograms

This Appendix is Non-Mandatory

In determining whether a significant threshold shift has occurred, allowance may be made for the contribution of aging to the change in hearing level by adjusting the most recent audiogram. If the employer chooses to adjust the audiogram, the employer shall follow the procedure described below. This procedure and the age correction tables were developed by the National Institute for Occupational Safety and Health in the criteria document entitled "Criteria for a Recommended Standard . . . Occupational Exposure to Noise," (HSM)–11001).

For each audiometric test frequency:

(1) Determine from Table F–1 or F–2 the age correction values for the employee by:

(A) finding the age at which the most recent audiogram was taken and recording the corresponding values of age corrections at 1000 Hz through 6000 Hz;

(B) finding the age at which the baseline audiogram was taken and recording the corresponding values of

age corrections at 1000 Hz through 6000 Hz.

(ii) Subtract the values found in step (i)(A) from the value found in step (i)(B).

(iii) The differences calculated in step (ii) represented that portion of the change in hearing that may be due to aging.

Example: Employee is a 32-year-old male. The audiometric history for his right ear is shown in decibels below.

Employee's age	Audiometric test frequency (Hz)				
	1000	2000	3000	4000	6000
26	10	5	5	10	5
*27	0	0	0	5	5
28	0	0	0	10	5
29	5	0	5	15	5
30	0	5	10	20	10
31	5	10	20	15	15
*32	5	10	10	25	20

The audiogram at age 27 is considered the baseline since it shows the best hearing threshold levels. Asterisks have been used to identify the baseline and most recent audiogram. A threshold shift of 20 dB exists at 4000 Hz between the audiograms taken at ages 27 and 32. (The threshold shift is computed by subtracting the hearing threshold at age 27, which was 5, from the hearing threshold at age 32, which is 25). A retest audiogram has confirmed this shift. The contribution of aging to this change in hearing may be estimated in the following manner:

Go to Table F–1 and find the age correction values (in dB) for 4000 Hz at age 27 and age 32.

	Frequency (Hz)				
	1000	2000	3000	4000	6000
Age 32	6	5	7	10	14
Age 27	5	4	6	7	11
Difference	1	1	1	3	3

The difference represents the amount of hearing loss that may be attributed to aging in the time period between the baseline audiogram and the most recent audiogram. In this example, the difference at 4000 Hz is 3 dB. This value is subtracted from the hearing level at 4000 Hz, which in the most recent audiogram is 25, yielding 22 after adjustment. Then the hearing threshold in the baseline audiogram at 4000 Hz (5) is subtracted from the adjusted annual audiogram hearing threshold at 4000 Hz (22). Thus the age-corrected threshold shift would be 17 dB (as opposed to a threshold shift of 20 dB without age correction).

Table F–1.—*Age Correction Values in Decibels for Males*

Years	Audiometric Test Frequencies (Hz)				
	1000	2000	3000	4000	6000
20 or younger	5	3	4	5	8
21	5	3	4	5	8
22	5	3	4	5	8
23	5	3	4	6	9
24	5	3	5	6	9
25	5	3	5	7	10
26	5	4	5	7	10
27	5	4	6	7	11
28	6	4	6	8	11
29	6	4	6	8	12
30	6	4	6	9	12
31	6	4	7	9	13
32	6	5	7	10	14
33	6	5	7	10	14
34	6	5	8	11	15
35	7	5	8	11	15
36	7	5	9	12	16
37	7	6	9	12	17
38	7	6	9	13	17
39	7	6	10	14	18
40	7	6	10	14	19
41	7	6	10	14	20
42	8	7	11	16	20
43	8	7	12	16	21
44	8	7	12	17	22
45	8	7	13	18	23
46	8	8	13	19	24
47	8	8	14	19	24
48	9	8	14	20	25
49	9	9	15	21	26
50	9	9	16	22	27
51	9	9	16	23	28
52	9	10	17	24	29
53	9	10	18	25	30
54	10	10	18	26	31
55	10	11	19	27	32
56	10	11	20	28	34
57	10	11	21	29	35
58	10	12	22	31	36
59	11	12	22	32	37
60 or older	11	13	23	33	38

Table F–2.—*Age Correction Values in Decibels for Females*

Years	Audiometric test frequencies (Hz)				
	1000	2000	3000	4000	6000
20 or younger	7	4	3	3	6
21	7	4	4	3	6
22	7	4	4	4	6
23	7	5	4	4	7
24	7	5	4	4	7
25	8	5	4	4	7
26	8	5	5	4	8
27	8	5	5	5	8
28	8	5	5	5	8
29	8	5	5	5	9
30	8	6	5	5	9
31	8	6	6	5	9
32	9	6	6	6	10
33	9	6	6	6	10
34	9	6	6	6	10
35	9	6	7	7	11
36	9	7	7	7	11
37	9	7	7	7	12
38	10	7	7	7	12
39	10	7	8	8	12
40	10	7	8	8	13
41	10	8	8	8	13
42	10	8	9	9	13
43	11	8	9	9	14
44	11	8	9	9	14
45	11	8	10	10	15
46	11	9	10	10	15
47	11	9	10	11	16
48	12	9	11	11	16
49	12	9	11	11	16
50	12	10	11	12	17
51	12	10	12	12	17
52	12	10	12	13	18
53	13	10	13	13	18
54	13	11	13	14	19
55	13	11	14	14	19
56	13	11	14	15	20
57	13	11	15	15	20
58	14	12	15	16	21

Table F–2.—*Age Correction Values in Decibels for Females—Continued*

Years	Audiometric test frequencies (Hz)				
	1000	2000	3000	4000	6000
59	14	12	16	16	21
60 or older	14	12	16	17	22

Appendix G: Methods for Estimating the Adequacy of Hearing Protector Attenuation

This Appendix is Mandatory

For employees who have experienced a significant threshold shift, hearing protector attenuation must be sufficient to reduce employee exposure to a TWA of 85 dB. Employers must select one of the following methods by which to estimate the adequacy of hearing protector attenuation.

The most convenient method is the Noise Reduction Rating (NRR) developed by the Environmental Protection Agency (EPA). According to EPA regulation, the NRR must be shown on the hearing protector package. The NRR is then related to an individual worker's noise environment in order to assess the adequacy of the attenuation of a given hearing protector. This Appendix describes four methods of using the NRR to determine whether a particular hearing protector provides adequate protection within a given exposure environment. Selection among the four procedures is dependent upon the employer's noise measuring instruments.

Instead of using the NRR, employers may evaluate the adequacy of hearing protector attenuation by using one of the three methods developed by the National Institute for Occupational Safety and Health (NIOSH), which are described in the "List of Personal Hearing Protectors and Attenuation Data," HEW Publication No. 76–120, 1975, pages 21–37. These methods are known as NIOSH methods #1, #2 and #3. The NRR described below is a simplification of NIOSH method #2. The most complex method is NIOSH method #1, which is probably the most accurate method since it uses the largest amount of spectral information from the individual employee's noise environment. As in the case of the NRR method described below, if one of the NIOSH methods is used, the selected method must be applied to an individual's noise environment to assess the adequacy of the attenuation. Employers should be careful to take a sufficient number of measurements in order to achieve a representative sample for each time segment.

Note.—The employer must remember that calculated attenuation values reflect realistic values only to the extent that the protectors are properly fitted and worn.

When using the NRR to assess hearing protector adequacy, one of the following methods must be used:

(i) When using a dosimeter that is capable of C-weighted measurements:

(A) Obtain the employee's C-weighted dose for the entire workshift, and convert to TWA (see Appendix A, II).

(B) Subtract the NRR from the C-weighted TWA to obtain the estimated A-weighted TWA under the ear protector.

(ii) When using a dosimeter that is not capable of C-weighted measurements, the following method may be used:

(A) Convert the A-weighted dose to TWA (see Appendix A).

(B) Subtract 7 dB from the NRR.

(C) Subtract the remainder from the A-weighted TWA to obtain the estimated A-weighted TWA under the ear protector.

(iii) When using a sound level meter set to the A-weighting network:

(A) Obtain the employee's A-weighted TWA in accordance with a procedure such as the one recommended in Appendix B.

(B) Subtract 7 dB from the NRR, and subtract the remainder from the A-weighted TWA to obtain the estimated A-weighted TWA under the ear protector.

(iv) When using a sound level meter set on the C-weighting network:

(A) Obtain a representative sample of the C-weighted sound levels in the employee's environment for each identified time segment.[1]

(B) If there is more than one identified time segment, compute the 8-hour time-weighted average of the C-weighted sound levels using Figure B–5 and Table G–16a or an equivalent method.

(C) Subtract the NRR from the C-weighted average sound level to obtain the estimated A-weighted TWA under the ear protector.

Appendix H: Availability of Referenced Documents

Paragraphs (c) through (s) of 29 CFR 1910.95 and the accompanying appendices contain provisions which incorporate publications by reference. Generally, the publications provide criteria for instruments to be used in monitoring and audiometric testing. These criteria are intended to be mandatory when so indicated in the applicable paragraphs of Section 1910.95 and appendices.

It should be noted that OSHA does not require that employers purchase a copy of the referenced publications. Employers, however, may desire to obtain a copy of the referenced publications for their own information.

The designation of the paragraph of the standard in which the referenced publications appear, the titles of the publications, and the availability of the publications are as follows:

Paragraph designation	Referenced publication	Available from—
§ 1910.95(g)(1)(i)	"Specification for Personal Noise Dosimeters," ANSI S1.25–1978, (ASA 25–1978).	Back Numbers Department, Dept. STD, American Institute of Physics 333 E. 45th St., New York, NY 10017; American National Standards Institute, Inc., 1430 Broadway, New York, N.Y. 10018.
§ 1910.95(g)(1)(ii)	"Specification for Sound Level Meters," S1.4–1971 (R 1976).	American National Standards Institute, Inc., 1430 Broadway, New York, NY 10018.
§ 1910.95(k)(2), appendix E	"Specifications for Audiometers," S3.6–1969.	American National Standards Institute, Inc., 1430 Broadway, New York, NY 10018.
Appendix D	"Specification for Octave, Half-Octave and Third-Octave Band Filter Sets," S1.11–1971 (R1976).	Back Numbers Department, Dept. STD, American Institute of Physics 333 E. 45th St., New York, NY 10017; American National Standards Institute, Inc., 1430 Broadway, New York, N.Y. 10018.
Appendix G	"List of Personal Hearing Protectors and Attenuation Data," HEW Pub. No. 76–120, 1975.	Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20404.

The referenced publications (or a microfiche of the publications) are available for review at many universities and public libraries throughout the country. These publications may also be examined at the OSHA Technical Data Center, Room N2439, United States Department of Labor, 200 Constitution Avenue N.W., Washington, D.C. 20210, (202) 523–9700 or at any OSHA Regional Office (see telephone directories under United States Government—Labor Department).

Appendix I: Definitions

These definitions apply to the following terms as used in paragraphs (c) through (r) of 29 CFR 1910.95.

Audiogram—A chart, graph, or table resulting from an audiometric test showing an individual's hearing threshold levels as a function of frequency.

Audiologist—A professional, specializing in the study and habilitation of hearing, who is certified by the American Speech, Hearing, and Language Association or licensed by a state board of examiners.

Baseline audiogram—The audiogram against which future audiograms are compared.

Crest factor—Absolute value of the ratio of the peak value and the root-mean-square value measured over a specified time interval where both values are measured in reference to the arithmetic mean value of the wave.

Criterion sound level—A sound level of 90 decibels.

Decibel (dB)—Unit of measurement of sound level.

Hertz (Hz)—Unit of measurement of frequency, numerically equal to cycles per second.

Medical pathology—A disorder or disease. For purposes of this regulation, a condition or disease affecting the ear, which should be treated by a physician specialist.

Noise dose—The ratio, expressed as a percentage, of (1) the time integral, over a stated time or event, of the 0.6 power of the measured SLOW exponential time-averaged, squared A-weighted sound pressure and (2) the product of the criterion duration (8 hours) and the 0.6 power of the squared sound pressure corresponding to the criterion sound level (90 dB).

Noise dosimeter—An instrument that integrates a function of sound pressure over a period of time in such a manner that it directly indicates a noise dose.

Otolaryngologist—A physician specializing in diagnosis and treatment of disorders of the ear, nose and throat.

Representative exposure—Measurements of an employee's noise dose or 8-hour time-weighted average sound level that the employers deems to be representative of the exposures of other employees in the workplace.

Sound level—Ten times the common logarithm of the ratio of the square of the measured A-weighted sound pressure to the square of the standard reference pressure of 20 micropascals. Unit: decibels (dB). For use with this regulation, SLOW time response, in accordance with ANSI S1.4–1971 (R1976), is required.

Sound level meter—An instrument for the measurement of sound level.

Time-weighted average sound level—That sound level, which if constant over an 8-hour exposure, would result in the same noise dose as is measured.

(Sec. 4, 6, 8, 84 Stat. 1592, 1593, 1599, (29 U.S.C. 653, 655, 657); Secretary of Labor's Order No. 8–76 (41 FR 25059); 29 CFR Part 1911)

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[1] Time segments should be identified according to a procedure such as the one recommended in Appendix B, but the same number of measurements may not be necessary to achieve a representative sample.

federal register

Friday
January 16, 1981

Part IV

Department of Labor

Occupational Safety and Health Administration

Marine Terminals; Notice of Proposed Rulemaking

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Parts 1910 and 1918a

[Docket No. S-606]

Marine Terminals; Proposed Rulemaking

AGENCY: Occupational Safety and Health Administration Department of Labor.

ACTION: Proposed standard.

SUMMARY: The Occupational Safety and Health Administration (OSHA) is proposing to add a new part, 29 CFR Part 1918a, safety and health regulations for marine terminals.

The proposed standards covers cargo handling and related activites at marine terminals and addresses the safety and health hazards associated with the shoreside portion of the marine cargo-handling industry. Marine cargo-handling operations that take place aboard vessels will continue to be regulated under 29 CFR Part 1918, the safety and health regulations for longshoring.

This proposed rule is a vertical standard, i.e., one which applies to this industry exclusively and is designed specifically to address the hazards associated with marine cargo-handling ashore. However, certain sections and subparts of Part 1910, the general industry standards, would continue to apply to marine terminals and have been incorporated by reference in the vertical standard. The new Part 1918a would apply exclusively to marine terminals, except for those provisions of Part 1910 referenced in the new Part.

This proposal contains requirements for marine terminal operations, cargo handling gear and equipment, personal protective equipment, operations such as welding and spray painting, and specialized terminals such as container terminals and menhaden facilities. The water transportation services industry, which is largely comprised of the marine cargo-handling industry, has an occupational injury incidence more than twice the average rate of industries in the private sector, and a severity rate seven times as great. The principal hazards addressed by this proposal are injuries and accidents associated with hoisting gear, hazardous atmospheres, materials handling, powered industrial vehicles, ship's gear, vehicle and pedestrian traffic, and other marine cargo-handling operations.

DATES: Written comments and any requests for a hearing must be postmarked on or before May 15, 1981.

ADDRESS: Written comments and requests for a hearing should be submitted to the Docket Officer, Docket No. S-606, Occupational Safety and Health Administration, Room S 6212, U.S. Department of Labor, Washington, D.C. 20210, (202) 523-7894.

FOR FURTHER INFORMATION CONTACT: Mr. Basil Needham, acting director, Office of Maritime Safety Standards, Occupational safety and Health administration, U.S. Department of Labor, 200 Constitution Avenue, NW., room N3471, Washington. D.C. 20210, Telephone: (202) 523-7234.

SUPPLEMENTARY INFORMATION:

I. History.

Due to the alarming number and serious nature of the accidents and injuries in the marine cargo-handling industry, Congress amended the Longshoremen's and Harbor Workers' Compensation Act (LHWCA) (44 Stat. 1424; 33 U.S.C. 901 et seq.) in 1956 to provide maritime employees with a safe work environment. The amendments (P.L. 85-742, 72 Stat. 835) significantly strengthened Section 41 of the LHWCA (44 Stat. 1444; 33 U.S.C. 941) by requiring employers covered by the Act to "furnish, maintain and use" equipment and to establish safe working conditions in accordance with regulations promulgated by the secretary of Labor. Two years later, the Labor Standards Bureau (LSB) of the Department of Labor (DOL) issued the first set of safety and health regulations for longshoring activites as 29 CFR Part 9 (25 FR 1505). These standards were amended on several occasions between 1960 and 1971. Since 1971, there have been no substantive changes in these provisions. However, these regulations only covered longshorign activities taking place aboard vessels.

Passage of the Occupational Safety and Health Act (the Act) (84 Stat. 1590; 29 U.S.C. 650 et seq.) by Congress in 1970 enabled the Federal government to become directly involved with commercial shoreside cargo-handling operations in marine terminals. Section 6(a) of the act (84 Stat. 1593; 29 U.S.C. 655) authorized the Secretary of Labor to adopt established Federal standards issued under other statutes, including LHWCA, as occupational safety and health standards under the Act. Accordingly, the Secretary adopted the existing longshoring regulations as OSHA regulations and recodified these rules as 29 CFR Part 1918 (39 FR 22074, June 19, 1974). Since the Act comprehensively covered all private employments, the longshoring standards also applied to shoreside cargo handling operations. (See 29 CFR 1910.16.)

In addition, in accordance with established policy codified at 29 CFR 1910.5(c)(2), OSHA has applied its general industry regulations to shoreside activities not covered by its older longshoring rules. Citations have also been frequently issued under Section 5(a)(1) (the General Duty Clause) of the Act (84 Stat. 1593, 29 U.S.C. 654) (Ex. 22), since some serious hazards are not addressed either by requirements in Part 1910 or Part 1918.

The attempt to apply and to enforce provisions from different standards to shoreside activities has encouraged a fragmentary approach to compliance activity, has produced much misunderstanding and dissension, and has not provided adequate employee protection. As a result, several groups have requested that OSHA "make the industry whole" by consolidating all the regulations applicable to the marine terminal portion of the cargo-handling industry into a comprehensive set of regulations parallel to those for the shipboard portion of the operation. OSHA believes that a marine terminal standard tailored specifically to the hazards and circumstances of this industry, written in simplified and more understandable language, is clearly needed.

II. Background of the Proposal.

In the early 1960's, OSHA's predecessor agency, the Bureau of Labor Standards, played an important role in developing an American National Standards Institute (ANSI) marine terminal standard (ANSI MH9) to assist the industry in its voluntary efforts at accident prevention. When completed, however, this consensus standard left many gaps in safety coverage, and it was somewhat out of date by 1971. A new ANSI MH9 committee was established after the advent of OSHA, and in 1972 this group developed a revised ANSI marine terminal standard, Safety Requirements for Marine Terminal Operations, ANSI MH9.1. OSHA had intended to adopt this new ANSI revision under Section 6(a) of the Act; however, the Agency did not do so because the standard was considered incomplete and because the legal authority to adopt such national consensus standards expired in April 1973. OSHA then began to develop its own marine terminal standard, using ANSI MH9.1, State standards, other available data, and staff experience and research as starting points.

Subsequently, the Assistant Secretary of Labor for OSHA appointed an ad hoc Standards Advisory Committee (SAC) to review the Agency's draft marine terminal document and to make appropriate recommendations. (A list of committee members and their affiliations appears in the front of the volume of committee recommendations, which has been entered in the record (Ex. 2)). The first meetings of the SAC took place in June 1974, and its period of service terminated in March 1975. Staff work then resumed, with review and consideration of the transcripts of committee meetings and recommendations, and further revision in response to the committee's comments.

All available material and data have since been given careful review, in particular the issues raised by the SAC and accident and injury data related to marine terminal operations. OSHA has also continued to monitor industry trends, such as the increasing use of intermodal containers, and coverage for hazards associated with these relatively recent industry developments has been incorporated into the proposal.

Any specific final recommendations made by the SAC on provisions of the draft marine terminal proposal are discussed in the Summary and Explanation section of this preamble, in connection with the relevant provisions of the proposal; references to Advisory Committee discussions that were inconclusive and did not result in a specific recommendation have not been included in this preamble. However, transcripts of the Committee's deliberations and a copy of their recommendations are in the rulemaking record (Ex. 2–12).

This proposed standard was written to enhance the safety of dock workers, to address the specific hazards associated with the marine terminal industry, and to encourage voluntary compliance by employers and employees. To achieve these goals, the proposal has been written in straightforward, performance-based language, which has allowed OSHA to reduce the volume of these proposed regulations to ⅓ that of the existing rules that currently apply to marine terminals. In addition, in an effort to keep the employer's compliance costs to the lowest level consonant with employee safety, the proposed standard makes extensive use of the "grandfather clause" or phase-in concept. This practice will reduce to a minimum the amount of equipment that must either be replaced or retrofitted to comply with the standard's provisions. Another method of reducing costs and avoiding regulatory rigidity is the proposal's use of a range rather than a specific figure, for design or construction specifications. For example, rather than specifying that guardrails must be 36 inches high, the proposal permits railing height to fall within a range which experience and ergonomic research have determined to be appropriate and safe. Finally, OSHA has worked closely with the U.S. Coast Guard throughout the development of this proposal, to ensure that the proposed requirements complement and do not conflict with that agency's regulatory efforts in the marine terminal environment. Section 4(b)(1) of the Act (84 Stat. 1592, 29 U.S.C. 653) preempts OSHA jurisdiction in areas in "which other Federal agencies . . . exercise statutory authority to prescribe or enforce standards or regulations affecting occupational safety or health." Thus, in marine terminals, OSHA's jurisdiction does not apply to those working conditions as to which the Coast Guard has exercised its statutory authority to promulgate standards affecting occupational safety and health.

The shortened forms listed below are used throughout this preamble to refer to the following sources: Standards Advisory Committee—SAC; American National Standards Institute, Safety Requirements for Marine Terminals—ANSI MH9.1; OSHA's safety and health regulations for longshoring—Part 1918; OSHA's general industry standards—Part 1910; and exhibits in the rulemaking record—Ex.

III. Marine Terminal Hazards

The work environment at a marine terminal exposes maritime employees to a greater risk of injury than is true for workers in most other industries. In terms of number of injuries per worker and of lost workdays per worker, cargo-handling operations in American ports represent some of the most dangerous activities in American industry. A simple comparison of injury incidence and accident severity rate between the marine terminal industry and the industrial average for the private sector will illustrate the hazardous nature of the work performed along the waterways of this country.

Examination of accident data compiled by the U.S. Bureau of Labor Statistics (BLS) up to 1978 reveals that the injury incidence for marine cargo-handling operations is more than twice that of the national average. More specifically, BLS found an average injury incidence for the private industrial sector of 9.2 injuries per 100 full-time workers, while the rate for water transportation services (SIC 446, made up in large part by the marine cargo-handling industry) was 21.5 per 100 employees (Ex. 18).

Even more disturbing are the comparative BLS figures on accident severity. The severity rate, computed on the basis of lost workdays per worker, was seven times greater for maritime employees than the national average. Though only 62.1 workdays were lost on the average to occupational injury (per 100 full-time workers), those industries supplying water transportation services suffered losses of 454 lost workdays per 100 workers (Ex. 18). Even when compared to the accident severity rate of a high hazard industry such as construction, the accident figures for cargo handling operations are still significant and unsettling. The lost workday incidence rate for construction was only 108.1 days per 100 workers, leaving the maritime industry with an accident severity rate four times greater than that of construction (Ex. 18).

The particular hazards encountered at marine terminals are as varied as the cargoes that move through terminal gates. Technological advances in waterborne trade such as the development of container ships, roll on-roll off (Ro-Ro) vessels and "lighter aboard ship" (LASH) barges have eliminated many hazards, but created new ones. In an effort to pinpoint the major types of maritime accidents, OSHA contacted Cooper and Company of Stanford, Connecticut to study this problem. The company surveyed approximately 7,000 injury reports (Employer's First Notice of Injury or Illness) for 1974, and issued a report in 1975 which listed, by percentage, the 20 leading types of accidents associated with longshoring activities (Ex. 52):

	Percentage
Slip/Trip on Dock Deck	15.7
Stress/Strain, Lifting/Carrying	8.4
Caught Between Load/Object	8.1
Hit by Lashing Gear	5.8
Hit by Load/Draft	5.4
Foreign Body in Eye	4.7
Hit by Falling Cargo	4.6
Hurt Handling Drums	4.4
Cut on Cargo	4.1
Hit by Dunnage	4.1
Foot Through Dunnage/Cargo	3.9
Hit by Industrial Truck	3.9
Sensitivity to Cargo/Fumes	3.1
Slipped on Ladder	2.9
Step on Nails	2.6
Cut on Hook	2.5
Hit by Falling Object	2.5
Hit by Sling/Bridle	2.2
Hit by Rolling Pipe/Steel	2.2
Hurt Avoiding Accident	1.7

Additionally, the Agency sought to determine the types of accidents that generated the greatest cost, in terms of dollars expended for medical and

compensation purposes. To make this determination, OSHA relied on a study performed by the Liberty Mutual Insurance Company. This study, published in the February 1978 edition of American Seaport Magazine, reported that Liberty Mutual reviewed 297 "high cost" accidents occurring in the marine cargo-handling industry. The insurance company found that more than 69 percent of the total costs and 66 percent of the total number of cases surveyed fell within two broad classes of accidents, "falls" and "struck by falling objects." To more firmly underline this point, Liberty Mutual (Ex. 80) reproduced this accident data in the following tabular form:

Stevedoring Operations—A Review of 297 High Cost Accidents

[Figures in parentheses equal percentage]

	Number of accidents	Cost of accidents
Falls	115 (39)	$1,995,800 (37.6)
Struck by falling objects	80 (27)	1,665,200 (31.6)
All others	102 (34)	1,629,400 (30.8)
Total number	297	
Total cost		5,258,400

From the above: 66 percent of the total number and 69.2 percent of the total cost were from "Falls" and "Struck by falling objects."

Falls

Types of falls	No. of cases	Total cost[1]	Average cost[1]
Fall to working surface	40	$405,000	$10,800
Fell between cargo	22	438,500	19,900
Fell from ship's ladders/portable ladders	16	439,400	27,400
Fell to lower level	16	241,900	14,700
Fell from piled cargo, piled dunnage, piled hatch boards, etc.	14	342,000	24,400
Fell from forklift trucks and other similar equipment	7	121,800	17,300

[1]Medical and compensation costs.

Struck by Falling Objects

Type of object	No. of cases	Total cost[1]	Average cost[1]
Cargo (from stacks, stacked cargo, or while manually handling)	55	$1,282,302	$23,314
Hatch gear	10		
Empty pallets	4		
Parts from gear failure	3	382,896	15,316
Dunnage	3		
Other	5		

[1]Medical and compensation costs.

Agency review of some of its recent accident data confirmed Liberty Mutual's finding regarding the existence of "falls" and "struck by objects" as major accident categories in the maritime environment. Accident figures for longshoring activities in the Port of New York (Ex. 29) during the first six months of 1980 revealed that out of a total of 1,256 reported accidents, 289 were attributed to "slips, trips and falls," and 119 consisted of instances where employees were struck by falling cargo. Moreover, another 247 accidents occurred as a result of employees being struck by or against drafts, or by other objects being handled. Another major source of injury was operation of mobile equipment (188 accidents). Additionally foot injuries (122) represented almost 10 percent of the total number of injuries for this six-month period (Ex. 29). An OSHA survey of the West Coast accident experience for marine cargo handling operations during this same period found that out of a total of 2,643 reported accidents, falls accounted for 684 injuries and "struck by or against" accidents numbered 711. Injuries associated with the operation of mobile equipment totaled 204, while foot injuries (348) formed 13.2 percent of the total West Coast accident figure (Ex. 30).

Another way the Agency chose to focus on the major sources of maritime accidents for rulemaking purposes was to examine the fatal maritime accidents reported to OSHA during the period July 1972–April 1980. A brief summary of ten of the more than 180 fatal accidents reviewed is provided below, along with a reference to the relevant provision in the proposal (Ex. 80–90).

New York, New York—December 1973

An employee inspecting a container gantry crane was thrown from his position atop a trolleying drum house, when the entire trolley apparatus traveled past the out reach stops of the crane. The employee struck the container spreader in his fall, and though quickly pulled from the water, never regained consciousness (See § 1918a.45(g)(6)).

Everett, Massachusetts—August 1974

A worker engaged in a welding operation adjacent to a set of large rollers was drawn into an eight inch space between the rollers and was crushed. No provision had been made to lock out the electric power that activiated this equipment. The power was accidentally turned on, resulting in this employee's death (See § 1918a.151(b)(7)).

Tampa, Florida—May 1975

An employee suffocated in tons of citrus pellets, when he attempted to clear the flow of a jam within a silo without benefit of a safety harness and lifeline. The jam suddenly cleared and the worker was swept under twenty feet of the bulk cargo. On the spot rescuers were helpless and watched him disappear under the cargo (See § 1918a.49(l)(3)).

Miami, Florida—September, 1975

A terminal worker accidentally fell into an opening atop a hopper car filled with corn grain. the opening was unguarded, facilitating easy entry, and the employee died, asphyxiated by the cargo (See § 1918a.49(c)).

Port Newark, New Jersey—March, 1976

The driver of a large fork lift (stacker) struck a yard tractor at a cross aisle where visibility was obstructed by container stows. The driver of the yard tractor was operating on the wrong side of a two-lane thoroughfare (See § 1918a.44(d)) and neither driver was required to sound a warning or stop at the cross aisle, despite poor visibility (See § 1918a.43(b)(8) and § 1918a.44(e)). The driver of the yard tractor was thrown from his vehicle and killed.

Baltimore, Maryland—March, 1976

Two employees were killed and another seriously injured when two large rail mounted container gantry cranes were pushed down their tracks by strong winds. Wind warnings were issued prior to the accident. There were intermittent gusts of 40 and 50 mph throughout the four hour period prior to the accident. Audible wind warning alarms had been made inoperable. No policy existed at the port for discontinuing operations at a specific wind velocity. The cranes were swept off the end of the apron and into the adjacent waters (See § 1918a.45(g)).

San Juan, Puerto Rico—October, 1976

A checker was crushed to death when a yard tractor driver accidentally hit the tractor's accelerator pedal. The checker was noting marks at the rear of a mounted container that was in a truck line. The yard tractor that struck him was waiting immediately behind the container (See § 1918a.71(i)).

San Juan, Puerto Rico—March, 1977

While containers were being unloaded from a vessel by a crane the crane's cargo fall broke and a loaded container fell striking three longshoremen below. The crane had exceeded its operable rating and the container was overloaded (See § 1918a.45(b)(2) and § 1918a.71(f)).

St. Louis, Missouri—February, 1980

A terminal worker was killed when he fell 6 feet from an unguarded platform above a hopper. The employee was controlling the flow of fertilizer through

the hopper when he lost his balance and fell over the open edge (See § 1918a.49(b)).

Port Elizabeth, New Jersey—June, 1980

Three rail mounted container gantry cranes were swept down their tracks by high winds. weather alerts and high wind warnings were issued as early as four hours before the incident. Upon investigation, the Agency learned that much of the equipment needed to secure the cranes had fallen into disrepair and was not serviceable (See § 1918a.45(g)).

As noted above, these accidents form only a fraction of the accident data surveyed and represent only a small protion of the hazards that this proposal addresses. However, it is possible that OSHA may not have surveyed all the relevent classes of accidents that occur at marine terminals, and therefore may not have provided protection in the proposal from all major hazards present at a terminal. OSHA is therefore solicitous of any accident information relevant to the hazards found at a terminal especially if it relates to one of the provisions in the proposed standard.

The available data on accidents and injuries in marine terminals indicate that terminal employees are exposed to a significant risk of injury in the workplace. OSHA therefore believes that a marine terminal standard is reasonably necessary for the protection of these employees from a wide range of workplace hazards.

(A) Vertical vs. Horizontal Standards

This proposed marine terminal standard is drafted in a format that will allow it to stand by itself, i.e., to be a "vertical" standard (one that applies to this industry exclusively and in lieu of any other OSHA standard); in a few areas of coverage specified in the proposal's scope section, OSHA's general industry standards are incorporated by reference. In general, vertical standards encourage voluntary compliance because they are directed to the particular problems of the industry, and because they only contain provisions that are appropriate to the industry in question. On the other hand, since many industries covered by OSHA do in fact use the same or similar equipment and processes, and therefore have employees who are exposed to the same hazards, it is usually a more efficient use of the Agency's resources to develop "horizontal" standards (those applying to more than one industry). It is also more efficient to train field personnel in general safety programs tailored to the horizontal general industry standards than to train field staff in individual programs designed for specific industries.

The Standards Advisory Committee discussed the merits of vertical versus horizontal standards at some length. The committee recommended that some provisions of OSHA's general industry standards continue to apply in marine terminals, but the group also recommended that a vertical standard be written to apply to those aspects "that are unique to Marine Terminal Facilities" (Ex. 2:a). However, OSHA has subsequently received several letters (Ex. 58), many from former members of the SAC, urging the Agency to adopt a predominantly vertical marine terminal standard and testifying to the difficulty and confusion associated with trying to comply with two sets of standards (Parts 1910 and 1918).

In many respects, marine cargo handling is a single operation, despite the fact that it has both ashore and afloat segments. Both segments of the marine cargo-handling industry employ longshoremen, both use many of the same types of equipment, and both require many of the same operational procedures. The line between cargo handling aboard a vessel and such work ashore has traditionally and for regulatory purposes been drawn "at the foot of the gangway." In practice, however, loading or discharging cargo from a vessel is one continuous operation which cannot logically be divided into two distinct functions. For example, regardless of whether fork lifts are used in the hold of a ship or inside a terminal, whether ship's gear or house fall gear is used to hoist cargo, or whether vessel cranes or shore cranes perform the lift, the tasks to be done, the hazards to be addressed, the workers involved, and the type of equipment to be used are essentially the same. The fact that cargo handlers involved in both shipside and shoreside aspects of the operation use the same distinctive terms, such as dunnage, burtoning gear, recoopering, stowage, and apron, attests to the common tradition and the unitary nature of the marine cargo-handling industry.

Despite this commonality, however, there are substantial differences between the work environments of longshoremen on board ship and those working ashore. For example, shipboard conditions vary greatly among particular ships, and the restricted spaces and close clearances typical of work aboard ship exacerbate many of the hazards commonly associated with cargo-handling. The equipment and machinery used to handle cargo aboard ship also differ somewhat from those used ashore. For example, vessel cranes and hoisting gear usually have lower rated capacities than their shore-based counterparts. In addition, there are significantly fewer powered industrial trucks aboard ships than in terminals. Further, certain equipment frequently used in cargo-handling at marine terminals, such as railcars, conveyors, chutes, and hoppers, is not found aboard vessels. These differences in shipboard and shoreside work environments are substantial enough to warrant careful consideration of the hazards unique to each aspect of the industry and have led OSHA to propose this marine terminal standard as a document distinct from, but complementary to, the Agency's longshoring standard. Ultimately, appropriate changes in part 1918 will be proposed to make it consistent with the marine terminal standard.

The entire marine cargo-handling environment, both shipside and shoreside, is also unique in several respects, especially in comparison to other industries. For example, longshoremen must continually work in the harsh environment of the waterfront, which requires exposure both to work-related hazards, such as falling cargo, and to environmental hazards, such as drowning and working around machinery in high winds. Additionally, dock workers perform some of the same high-hazard tasks, and confront many of the same heavy-industry hazards, as those typically associated with the construction industry. Examples of such hazards include falls, crushing and caught-in injuries, and traffic accidents, which are common in container terminals. Cargo handling and construction work are also both seasonal and weather-dependent, and both industries have a high proportion of part-time and transient employees. Longshoremen are also likely to be exposed more frequently and often for longer periods to certain hazardous work situations, such as work in restricted spaces and hazardous atmospheres, than would be the case for many workers in general industry. The excessive occupational injury and illness incidence for the marine cargo-handling industry, more than twice the national private sector average, testifies to the hazardous nature of longshoring (Ex.18: 62, 69). The Hazard section of the preamble above, describes in greater detail the accidents and injuries to which longshoremen are subject.

After careful consideration of the advantages and disadvantages of vertical and horizontal standards,

OSHA had decided to propose a vertical standard for this high-hazard and large-workforce industry. The Agency believes that only this type of regulation will eliminate redundant and conflicting coverage, reduce the confusion caused by the existing dual coverage, be tailored specifically to the unique problems of marine terminals, and address adequately the hazards peculiar to this industry. OSHA also has a vertical standard for the construction industry (29 CFR part 1926), another particularly hazardous industry with a large workforce (the average occupational injury and illness incidence per 100 full-time construction workers is nearly twice the average for workers in the private sector as a whole).

Proposed Part 1918a references those provisions of Part 1910 that would continue to apply to shoreside cargo handling, but is otherwise self-contained in its coverage of marine terminals.

OSHA particularly welcomes comments both as to the merits and the limitations of a vertical standard for marine terminals. In addition, OSHA would appreciate information about the appropriateness of developing detailed coverage under the vertical marine terminal standard for certain operations and types of equipment, such as abrasive blasting and scaffolds, which under this proposal would continue to be covered under the general industry standards.

(B) Performance vs. Specification Standards

Another issue raised during the development of this proposal concerned performances versus specification standards. A performance-based standard identifies a hazard and the level of control required to protect against the hazard, without specifying the precise means of achieving such control, while a specification standard stipulates design and construction crietria to be met to achieve a particular safety objective. For example, a specification standard often requires specific sizes, materials, or types of equipment, and thus allows little or no variation or innovation. OSHA has received many comments in the past about standards that have forced employers to move, retrofit, or replace existing equipment in order to comply with an inflexible specification requirement. This lack of flexibility fails to take the adequacy of many existing facilities into account and discourages design and use innovations. Although enforceability is enhanced by specification standards, they may be unduly restrictive; on the other hand, a performance standard may be too broad to be meaningful. The present general industry standards (29 CFR Part 1910) are primarily specification standards, while the longshoring standards (29 CFR Part 1918) take a predominantly performance approach.

In keeping with OSHA's commitment to clarity, brevity, flexibility, and practicality, and to encourage employers to comply voluntarily, this marine terminal proposal has adopted the performance approach except in those cases in which employee safety would be enhanced by more specific requirements. OSHA has followed this approach in other recent standards (see Fire Protection final rule, 45 FR 60656, September 12, 1980). The Agency is interested in receiving substantive comments from persons who feel that certain of the proposed provisions would benefit either from a greater degree of specification or from a more goal-oriented approach.

(1) *Review of general industry standards for marine terminal applicability.*

The shift in emphasis from specification to performance-based standards, coupled with the Agency's earlier decision to establish a vertical standard for this industry, made it necessary to review the requirements of Part 1910 for applicability to marine terminals. After an extensive examination of the pertinent provisions of Part 1910, OSHA decided that it would not be appropriate to include a large number of these provisions in the marine terminal proposal. The guidelines used to determine which general industry rules to exclude are explained below.

Among the types of provisions in Part 1910 that OSHA chose not to propose for marine terminal application where those directed primarily at the manufacturer (design or construction specifications), and other rules of Part 1910 addressed to industrial or environmental conditions not present at marine terminals. Also, regulatory actions taken in the past by the United States Coast Guard as to certain working conditions in the area of waterfront safety preempt the Agency from exercising its authority as to these working conditions under § 4(b)(1) of the Act.

Pursuant to its statutory mandate under the Port and Waterways Safety Act (33 U.S.C. § 1221 et seq.) to provide rules for the promotion of waterfront safety, the Coast Guard promulgated a series of regulations that set out in detail the practices to be observed by employers to protect against the hazards of fire (see 33 CFR Part 126). Since the Coast Guard has already taken regulatory action as to these working conditions affecting safety and health in which it possesses primary statutory authority, OSHA cannot also regulate in the area. Section 4(b)(1) of the Occupational Safety and Health Act (29 U.S.C. 653(b)(1)) provides that nothing in the Act "shall apply to working conditions of employees with respect to which other Federal agencies . . . exercise statutory authority to prescribe or enforce standards or regulations affecting occupational safety or health." Accordingly, OSHA's general industry fire protection regulations at Subpart L of Part 1910 could not be incorporated into this proposal.

It should be noted that the Coast Guard issued an advance notice of proposed rulemaking (43 FR 15106) on April 10, 1978, which outlined plans to significantly expand and update the Coast Guard's coverage of fire protection on the waterfront. When the Coast Guard has proposed and then promulgated these fire protection rules, they will apply in marine terminals and will further enhance employee safety.

Many provisions of Part 1910 could not be adopted in this proposal, for practical reasons. Provisions from the general industry standards that deal with equipment or processes not used at marine terminals are not included. For example, § 1910.213 requires that employers provide guarding on a large variety of woodworking machinery. However, many of the machines covered by this section, such as jointers, tenoning machines and veneer cutters, are not found at marine terminals, and therefore do not need to be addressed by this proposal. Consequently, OSHA saw no need to include paragraphs (j) through (q) of § 1910.213 in the proposed standard. In addition, certain provisions on spray painting in the general industry standard, such as the rules covering use of electrostatic hand spraying equipment (§ 1910.107(i)) and the use of drying, curing or fusion units (§ 1910.107(j)), were not made part of this proposal because these types of spray painting equipment are not found at marine terminals. Further, three parts of paragraph (f)(2) of § 1910.184 were left out of the proposal, since the slings and grommets covered are to small to be used in cargo handling operations at marine terminals.

Certain other specification provisions of the general industry standards were not adopted in the peoposal because technological innovation has made them obsolete. For example, § 1910.184(h)(3)(ii), which sets the

requisite number of tucks for eye splices made in synthetic rope, has not been adopted because the production of new types of synthetic rope has made these requirements outdated. The provisions of this general industry rule can only be applied safely to those few types of synthetic rope specifically addressed by this rule, because the properties of the new varieties of synthetic rope on the market differ from those of the types of rope covered in § 1910.184(h)(3)(ii). Due to such technological advances in the manufacture of synthetic rope, OSHA believes that the rope manufacturer's recommendations provide a greater measure of safety than the general industry requirement, and the marine terminal proposal therefore mandates the use of these recommendations. Additionally, the Agency has decided not to include the tables from § 1910.184 listing the rated lifting capacities of wire and fiber rope (see Tables N–184–3, to N–184–10; N–184–16 to N–184–19). Again, these tables only contain ratings for certain types of wire and fiber rope. They do not cover new types of wire and fiber rope developed since the standard was promulgated.

The number of outdated provisions of Part 1910 that are not being proposed for marine terminals is small in comparison to the number of provisions not included in the proposal because they are design or contruction specifications. In their place, OSHA has proposed performance standards aimed at providing equivalent safety but simultaneously providing the employer with greater flexibility in choosing means of compliance. Several examples of the use of performance standards in place of design or specification requirements are included in the proposal's section on machine guarding, § 1918a.151. For instance, the proposal does not include the general industry design description of hoods and spreaders for hand-fed ripsaws (§ 1910.213(c)(1) and (2)). Instead, though the proposal specifically requires hoods and spreaders, it also contains a general performance rule requiring the employer to ensure that these saws are guarded to keep employees clear of any danger zone (§ 1918a.151(b)(1); (c)(1) and (2)).

Similarly, the marine terminal proposal does not incorporate the lengthy general industry requirements governing the use of certain types of powered industrial trucks in hazardous atmospheres. Instead the proposed standard provides that work in a hazardous atmosphere be performed only by powered industrial trucks approved by a nationally recognized testing laboratory for use in that atmosphere (compare § 1910.178(b) with § 1918a.43(d)). The rigid general industry specification covering construction of ladder cages has been replaced by a proposed provision that simply states that cages be of rigid construction to prevent an employee from falling through or dislodging the cage (compare § 1910.27(d)(1)(i) with § 1918a.119(e)(5)(i). Another example of substituting performance rules for specification standards concerns strength requirements for guardrails. Section 1910.23 contains specific measurements that wood, pipe and structural steel stair railings must meet to comply with the standard, while the proposal simply states that a stair railing must be capable of withstanding a force of at least 200 pounds applied in any direction (compare § 1910.23(e)(3)(i) through (iii) with § 1918a.112(e)(1)).

The preceding examples of general industry provisions that are not included in this proposed standard do not comprise an exhaustive list of the provisions that have not been incorporated in this proposal for marine terminals. However, OSHA believes this discussion and these examples will illustrate the principles which were followed in reviewing Part 1910 provisions for applicability in the marine terminal environment.

In general, the format and substance of this proposal reflect OSHA's efforts to eliminate needless regulations and to simplify and update others. To achieve these goals with regard to this proposed standard, OSHA has adopted a performance approach to drafting new rules and to revising existing ones. Staff review of Part 1910 convinced the Agency that many general industry provisions could be left out of the marine terminal proposal without reducing the level of protection now provided to longshoremen by these rules. Furthermore, OSHA believes that some of the lengthy, detailed and complex specification-based general industry regulations can be greatly simplified by substituting performance language for existing provisions. By not including some Part 1910 provisions and by modifying others, the Agency has sought both to streamline and to strengthen the safety requirements proposed for marine terminals. Where provisions from the general industry standards have been judged appropriate and applicable to the marine terminal environment they have been adapted to meet the marine terminal industry's specific safety and health requirements.

Certain sections of this proposed standard, such as those pertaining to cranes, have also been based principally on provisions in 29 CFR Part 1918 (longshoring), while other requirements, such as those for welding, have been based primarily on related provisions of 29 CFR Part 1915 (Ship Repairing), Part 1916 (Shipbuilding), and Part 1917 (Shipbreaking); these standards, and certain provisions of the ANSI MH9.1 consensus standard, were used as the basis for certain provisions of the proposal because they were more specifically directed at the hazards of this industry than were the relevant requirements of the general industry standards.

Interested parties are requested to submit any information related to the coverage of this proposed marine terminal standard. For example, are specific hazards adequately addressed in the proposal? Are dock workers exposed to safety and health hazards which this proposal does not cover? Have extraneous provisions been included in the proposal? Are there any areas of general industry coverage that have not been included in the proposal that should be? OSHA would particularly appreciate information on these issues.

Although many proposed requirements are based on provisions of the longshoring standard (Part 1918), they may vary somewhat in content or language from the parallel longshoring requirements because the longshoring rules have not been updated or substantively revised since 1971. However, OSHA intends to revise these rules in the near future. After the marine terminal standard (Part 1918a) is promulgated as a final rule and revisions to the longshoring standard (Part 1918) have been proposed and promulgated, employers and employees will be able to turn to these parallel standards to find compatible provisions applicable to the ashore and afloat segments of the marine cargo-handling industry.

V. Summary and Explanation of the Proposal

Section 1918a.1 Scope and applicability. Proposed § 1918a.1 outlines the scope and applicability of the marine terminal proposal, Part 1918a. The proposed standard would apply to container, menhaden, roll-on—roll-off, LPG, LNG, general cargo, and liquid and dry bulk terminals, including those at ocean ports and facilities located on the inland waterways. It would also apply to areas devoted entirely to the storage and handling of bulk liquids, such as petroleum, wine, coconut oil, castor oil, or paraffin, or associated packaged liquid products or gases such as drums of lubricating oil or compressed gas cylinders. The proposal

contains no additional provisions directed solely at operations in grain elevator terminals, although such terminals would be covered by an applicable provisions, such as those for electrical equipment and power trucks, of this marine terminal standard after it has been proposed and promulgated. OSHA is currently developing a proposed general industry safety and health regulation for grain-handling facilities. Applicable provisions of the general industry grain-handling standard are expected to be proposed for inclusion in these marine terminal regulations in the future.

The proposed standard would not apply to construction activities at marine terminals, which are regulated under the Agency's construction safety and health regulations (29 CFR Part 1926).

In addition, pursuant to § 4(b)(1) of the Act (84 Stat. 1952, 29 U.S.C. 653), the proposed standard would not apply to working conditions of employees in marine terminals with respect to which the United States Coast Guard or the Office of Pipeline Safety Regulation of the Materials Transportation Bureau, Department of Transportation exercises statutory authority to prescribe or enforce standards or regulations affecting occupational safety and health. The Office of Pipeline Safety has responsibility for regulating safety and health matters relating to interstate pipelines, while the Coast Guard has traditionally had the responsibility in marine terminals for maintaining port security (including fire protection and such operations as welding and hot work) under 33 CFR Part 126; for the handling and storage of hazardous materials as defined in 49 CFR Part 172; and the handling of explosives and dangerous commodities, under 46 CFR Part 146. Among facilities designated in the Coast Guard regulations (33 CFR Part 126) are the 16 liquid petroleum gas (LPG) and liquid natural gas (LNG) terminals presently in operation in the United States.

Certain subparts and provisions of OSHA's general industry standards (29 CFR Part 1910) would remain in effect in a marine terminal facility after the final marine terminal standard is published as a vertical standard. OSHA's electrical safety and health regulations for general industry (Subpart S) would continue in effect in marine terminals after promulgation of a final marine terminal standard, as would the Agency's noise standard (§ 1910.95). Where referenced in the marine terminal code, the toxic and hazardous substances rules for general industry, Subpart Z, also would apply. Similarly, any commercial divers performing minor inspection, salvage, or repair tasks at marine terminals, such as voyage repairs or piling inspections, would continue to be covered under OSHA's safety and health regulations for commercial diving operations (Subpart T).

In addition, as proposed paragraph (a)(2)(v) states, the scaffold section of the general industry standards (§ 1910.28) would continue to apply in marine terminals. A recent statistical estimate suggests that as many as 32,000 work-related falls from scaffolds occur each year in the United States (Ex. 58: Table 1). Although it is not possible to separate these data into marine terminal as opposed to general industry and construction cases, some of these injuries undoubtedly occurred in marine terminals. Although scaffolds are not used frequently in terminals, they are occasionally needed to perform minor repair tasks or chores such as window washing. At present, OSHA is developing construction and general industry rules for scaffolds, in connection with the Agency's planned overall revision of the walking and working surface standards in Subpart D of Part 1910 and Subparts L and M of Part 1926. The Agency intends to evaluate data and comments on scaffolds received in the course of that rulemaking, and information obtained in response to this marine terminal proposal, to determine appropriate requirements for scaffolds used in marine terminals. Provisions determined to be suitable to protect employees working on scaffolds in marine terminals would then be proposed for inclusion in the marine terminal standard.

OSHA particularly welcomes comment on the suitability of the current general industry scaffold standards (§ 1910.28), which are presently being applied, for the marine terminal environment. For example, are all of the types of scaffolds covered in Part 1910 used in terminals? What tasks are commonly performed on a scaffold in a terminal? Do terminal employees perform these jobs, or does the terminal owner usually contract such work out? What are the heights at which scaffolds are positioned? What types of fall protection do workers in a terminal use when on a scaffold? In addition, OSHA is interested in receiving any case reports or injury statistics related to marine terminal accidents involving the use of scaffolds.

Proposed paragraph (a)(2)(vi) proposes that abrasive blasting operations conducted in marine terminals also continue to be covered by the relevant requirements of the general industry standards (§ 1910.94(a)). As with scaffolds, OSHA is interested in receiving comment on the appropriateness of this coverage to the marine terminal situation. The Agency is aware that most terminals do not perform abrasive blasting; however, this process is performed in some terminals to prepare surfaces for spray painting or other treatment. Employees exposed to abrasive blasting inhale respirable particles of the sand or material used as the abrasive and the material being blasted, and are at risk of developing silicosis or other pneumoconiotic diseases as a result of this exposure. For example, if a mineral grit, such as "Black Beauty," a by-product of copper smelting, is used as the abrasive agent, chromium and beryllium dust and fumes are released, exposing workers in the vicinity to the toxic fumes of these metals. OSHA has issued a field directive requiring atmospheric monitoring when Black Beauty is used as the abrasive agent (Ex. 62).

OSHA is presently revising the general industry abrasive blasting standards, and comment received in the course of that rulemaking, in addition to information obtained in response to this marine terminal proposal, will be evaluated for suitability of application to marine terminals. Provisions determined to be appropriate to abrasive blasting operations in this environment would then be proposed for inclusion in the final marine terminal standard. OSHA invites comment on the adequacy and appropriateness of the current general industry abrasive blasting rules (§ 1910.94(a)) for marine terminals. The Agency would also welcome data on the number of marine terminal abrasive blasting operations, the size of the affected workforce, the abrasives used, and the composition of the materials most commonly blasted. In addition, any information on abrasive blasting-related occupational illness and disease among marine terminal wokers would help OSHA to develop this section of the final rule.

Section 1918a.2 Definitions. Section 1918a.2 includes definitions of terms used in more than one section of the standard; terms used only once are defined where they appear in the text. As defined, the term marine terminals would not include manufacturing and production operations which have their own docking facilities and are located within the marine terminal area. Examples of such operations are sugar refining plants, cement plants and

smelters. These facilities are principally concerned with manufacturing rather than cargo handling, and would therefore continue to be regulated under the general industry rather than the marine terminal standards.

In keeping with OSHA's shift to performance language to encourage voluntary compliance and to permit greater flexibility, the proposal applies the "danger zone" concept to the guarding of conveyors (see § 1918a.48) and machines (see § 1918a.151). As defined in the proposal, a danger zone is any place in or about a machine or piece of equipment where an employee may be struck by or caught between moving parts, caught between moving and stationary objects or parts of the machine, caught between the material and a moving part of the machine, burned by hot surfaces or exposed to electric shock.

OSHA has adopted the danger zone approach in preference to including individual provisions requiring guarding for each type of hazard, e.g., nip points, shear lines, gears, sprockets, and transfer mechanisms. The difficulty with attempting to specify every hazardous part or area is that some hazards may be overlooked in the standard, leaving a gap in employee protection. An advantage of using the danger zone concept is that it permits employers to use their judgment about which machine parts or areas at or near a machine do in fact expose employees to workplace hazards. For example, although an unguarded nip point near an employee's work station presents a significant caught-in hazard, a nip point located 10 feet above the working surface presents no such hazard. Similarly, the unguarded edge of a belt conveyor at which, for example, assembly workers are stationed would constitute a danger zone, while an edge on an unattended overland conveyor would not present a hazard to employees.

OSHA welcomes comments on this proposed danger zone concept. For example, does it cover all the hazards associated with moving machine parts and conveyors? Are there individual hazards that should be addressed separately in the proposal?

Subpart B—Marine Terminal Operations

Section 1918a.11 Housekeeping. Subpart B deals with characteristic operations associated with marine terminals, such as cargo handling, line handling, and work in hazardous atmospheres.

Section 1918a.11(a) contains general housekeeping provisions that are based essentially on requirements in § 1918.91 and on sections 3.1.12 and 3.1.13 of ANSI MH9.1 and which accord with SAC recommendations (Ex. 2: 131) on this topic. The provisions in this section are designed to prevent tripping and falling accidents, injuries caused by sharp objects such as nails, and struck-by accidents caused by falling objects. Paragraph (b) is similar to § 1918.43(a)(1) and is included because some vessels still use hatch beams and covers, and this equipment is occasionally placed ashore in the terminal. Proposed paragraph (c) is a housekeeping precaution that is designed to ensure that employees have unobstructed access to vehicles, buildings, and vessels at all times.

Section 1918a.12 Slippery conditions. Section 1918a.12 contains a performance requirement stipulating that employers eliminate walking-and-working surface hazards at work stations and walkways, both inside and outside the terminal's structures. Examples of these hazards are slippery floors caused by spilled liquids or by oil leaking from equipment, and icy surfaces on piers or aprons. Means of eliminating these hazards might include applying sawdust or other absorbent material to the slippery area, cleaning up spills entirely, or applying sand or salt. ANSI MH9.1 (section 3.1.16) is more detailed in its coverage of this topic than the proposed requirement, which uses a more performance-based approach. The proposed provision's language reflects the fact that weather conditions, for example, may make it impossible for an employer to keep all terminal walking and working surfaces completely slip-free at all times. This would be particularly difficult to accomplish in outdoor areas exposed to the marine environment. However, since recent estimates (Ex. 50: Table 1) indicate that falls on the same level account for approximately 9% of all occupational injuries, the importance of efforts to eliminate slip and fall hazards cannot be overemphasized.

Section 1918a.13 Slinging. Slinging cargo is addressed in proposed § 1918a.13, and the provisions are based essentially on equivalent regulations in Part 1918 and section 8.3.1 of the MH9.1. Paragraph (a) is based on §§ 1918.82(a) and 1918.81(a), and requires that drafts (loads of cargo) be built or hoisted in a way that will prevent the cargo from falling during hoisting; particular ways of achieving this goal are not specified. The proposed provision also stipulates that drafts be safely slung before hoisting, and that any loose protruding pieces be removed to prevent employee injury. Examples of means that might be used to comply are restraining logs in bunks and banding or tying the topmost tier of the draft. Methods of hoisting that reduce the risk of the draft slipping during the lift are, for example, lifting the draft squarely in the middle of the draft, and taking care not to "jerk" the winch mechanism. This provision is not intended to apply to the preliminary hoisting of cargo, such as the small amount of lifting involved in "breaking out" (hoisting cargo a few inches to allow slings or other gear to be passed under the load).

Proposed paragraph (b), based on § 1918.81(e), allows baled cargo to be lifted by straps only if the straps are strong enough to support the weight of the bale and only if a minimum of two hooks, each placed in a separate strap, is used to provide an additional safety factor should a band or strap break or a hook disengage during hoisting.

In paragraph (c), OSHA is proposing a newly developed provision restricting the means of hoisting bundles of certain types of cargo. For example, some types of cargo, such as pig iron, dunnage, or copper ingots, should not be hoisted by straps that are not intended for hoisting use; unless the bands, straps, or ties are designed for hoisting and are strong enough to support the load, a means such as slings must be used to contain these loads during hoisting.

Proposed paragraph (d) is also a newly developed provision, and it deals with the hazards associated with hoisting unitized loads, which have come into widespread use in the last decade. Finished lumber, bales of wood pulp, and paper products bound together are among the drafts most commonly unitized. The handling gear for hoisting these often bulky and heavy loads is usually specifically designed for the load in question. However, in the absence of any regulatory requirement, OSHA and its predecessor agency (and several agencies of foreign governments) have occasionally determined that the particular means of unitization and handling are safe by witnessing an on-site trial deliberately conducted under adverse working conditions. In such cases, approval has been granted on an individual basis. The provisions proposed in paragraph (e) simply place these procedures on a firmer regulatory basis. The testing process must be certified by an agency accredited under Part 1918, to ensure impartiality. The provisions in paragraph (e) do not require that each load or unit from a shipment be tested, but they are intended to apply to particular types of unitized loads and to a particular means of handling them. The suitability and

safety of each type of load and each means of hoisting would only need to be established and documented once.

Proposed paragraph (f) stipulates that unitized loads with seriously damaged banding or strapping be handled by whatever special and additional means, such as slings, may be necessary to ensure the safety of employees below.

Paragraph (g) proposes that case hooks only be used to hoist cases specifically intended to be used with these hooks. This rule is not intended to prohibit "breaking out" of cargo, i.e., lifting it a few inches to pass slings or other gear beneath the load, but is intended to guard against accidents that may occur if types of packaging unsuited to handling with case hooks are hoisted by this means. Cases intended for handling with hooks have stencilled marks indicating where the hooks are to go, and these cases are intended to be used for one lift only. A similar provision is found in § 1918.81(d).

Proposed paragraph (h) is based on § 1918.81(f) and requires that ropes (tag lines) be used to guide loads requiring manual guidance, to prevent the load from injuring employees. This provision would only apply to special types of lifts, for example hoisting a 30-foot-long crate that must be maneuvered with ropes to keep it from striking against a structure and breaking. The provision also stipulates that any guide ropes used be long enough to aid in directing the load.

Paragraph (i) is a cross-reference to a proposed provision covering the handling of intermodal containers.

Section 1918a.14 Stacking of cargo and pallets. Proposed § 1918a.14 stipulates that cargo and pallets stacked in tiers be placed so they will not slide or collapse; MH9.1 contains a similar requirement (section 4.2.9.5); the equivalent provision for shipboard application appears at § 1918.83(a) but is restricted to cargo because pallets stacked high enough to be a hazard are rarely found on board ship. The proposed provision essentially agrees with the recommendation of the SAC (Ex. 2: 53i); it is not intended to imply that cargo or pallets need to be stacked so securely that they will be able to withstand a major impact, such as being hit by a vehicle.

Section 1918a.15 Coopering. The proposed section on repair of damaged or leaking cargo packaging (coopering) (§ 1918a.15) provides that packaging repair activities be performed in a manner that is not hazardous to coopering employees, but it does not restrict this work to particular locations because it is not always possible to move damaged cargo to a special repair site. Examples of cargo and cargo packaging which would be difficult or impossible to move to a special repair area are sacks of coffee beans and barrels of nails. The proposed requirement does not prohibit coopering in place as long as the employees doing the repair work are not exposed to vehicle traffic, overhead loads, or other hazards.

Section 1918a.16 Line handling. Section 1918a.16 covers line handling, a topic also addressed by ANSI MH9.1 (section 3.14). The proposed provisions ensure a safe walkway for linemen required to handle heavy mooring lines along the water edge of the terminal area, and in cases where the walkway between the vessel's berth and a terminal structure (stringpiece or apron) is too narrow, the proposal requires a grab rail or grab line for linemen to grasp. Another provision directed at the same hazard, falling into the water and drowning, appears at proposed § 1918a.95(c).

Section 1918a.17 Railroad facilities. Railroad facilities and operations at marine terminals are addressed in § 1918a.17; no other OSHA standard specifically covers these facilities, although section 3.12.3 of MH9.1 does. Proposed paragraph (a) prohibits employees working in a railcar that has a defective and unsafe floor; if the floor is rusted out or otherwise unsafe, a steel plate or other means of supplemental flooring would have to be supplied before work continues.

Proposed paragraph (b) is intended to avoid the injuries that might occur if employees walk between or climb through railcars on the way to or from their work stations; section 3.12.4 of ANSI MH9.1 addresses the same hazard. This provision does not apply to walking between standing railcars that are more than 10 feet apart on the same track, because OSHA believes this distance is sufficient to ensure that no employee will be caught between two cars if one of the cars moves. OSHA would welcome accident data or other information concerning the adequacy of this distance for employee protection.

Paragraph (c) ensures that no employees are accidentally left in a railcar at the close of works; a similar provision appears at section 3.12.5 of ANSI MH9.1. For example, an employee cleaning a tank car may accidentally be locked up in the car overnight, with the tank secured, and be killed by toxic fumes or lack of oxygen.

Accidental railcar movement is addressed in proposed paragraph (d), and the provision agrees essentially with section 3.12.6 of ANSI MH9.1. Inadvertent movement of a car could injure employees working in or around the car; an example of means of preventing railcar movement is chocks.

The Advisory Committee recommended (Ex. 2: 51i) a "blue flag" requirement (a warning flag placed to notify railcar operators that men are working between two cars). OSHA has adopted this recommendation, although the color of the warning flag is not specified, in proposed paragraph (e) because workers in, on, or under a railcar are exposed to serious injury if an engine or car hits the car in which they are working. OSHA welcomes data about the hazards of working in this situation and information about other alternate means, such as derails, which might be used to provide equivalent protection against this hazard.

The next proposed provision, paragraph (f), requires material protruding from railcars to be removed or repositioned before cars are moved, to prevent projections from hitting employees walking or working near the cars.

In paragraph (g), OSHA addresses the potential for injury associated with the uncontrolled and unanticipated movement of unpowered railcars (a practice colloquially known as "humping" railcars) in areas where employees are walking, driving, or working. The proposed provision is not intended to apply to railcars being moved by locomotives, car pullers, winches or by other controlled and suitable means or to prohibit car-dumping operations in a bulk terminal. The requirement would apply, however, when a shift engine is used to push a railcar and then stops, sending the car rolling down the track. The SAC committee made two recommendations on this matter (Ex. 2: 52i): That only "positive means" be used to move unpowered cars, and that railcars without engines not be moved unless "provisions are made to safely control the movement. . . ." The proposed requirement incorporates these suggestions and would provide the employee protection envisaged by these recommendations.

Freight car doors, addressed by proposed paragraphs (h), (i) and (j), may cause accidents. For example, damaged car doors may fall on workers trying to open them or a worker opening a car door may be crushed by a stream of cargo that has shifted against the door during transit. In addition, if the forks of a fork lift truck are used to pry open a car door, the wheels of the truck may become wedged between the railcar and the platform, or the door of the car may fall on the truck driver. Section 3.13 of ANSI MH9.1 prohibits using power

trucks to open or close jammed railcar doors, but OSHA believes that industrial trucks fitted with specially designed door-opening attachments can perform this operation safely. The proposal does stipulate, however, that power trucks that do not have such attachments may not be used to open jammed doors; in such cases, car door openers are required to be fitted to the doors of the car. Proposed paragraph (i) also requires drivers to stand clear while freight car doors are being opened, to avoid being hit by falling cargo. OSHA has issued an interpretation for general industry on the use of acceptable attachments for opening freight car doors (Ex. 25).

Proposed paragraph (k) requires that employees leave flat cars and gondolas when loads are being moved overhead; employees are needed in the railcars to do such things as hook up drafts and land and stow cargo, but having them leave the cars during actual overhead hoisting should prevent many serious crushing and falling injuries. Another provision of the proposal (§ 1918a.71(g)(2)) also prohibits standing or walking under suspended containers. Proposed paragraph (k) also requires the end gates on the railcar to be secured so that an employee leaning against a gate will not fall off the railcar.

In paragraph (l), OSHA is proposing a new provision that requires the operator of the railcar dump mechanism used in handling high-volume bulk cargo (such as coal) to have an unobstructed view of the cars being dumped, to avoid dumping cars that have employees in them or dumping material on employees working near the cars.

Proposed paragraph (m) requires hand switches that are recessed to be enclosed with a cover or other device to provide a level working surface for vehicles and employees engaged in cargo handling on the apron. Section 3.12 of MH9.1 recommends identical coverage.

Warning signs to protect employees from being hit by a railcar are addressed in proposed paragraphs (n) and (o). The first provision requires signs to give employes warning of potential railcar movement at such places as blind corners, doorways opening directly onto the tracks, or at any other place where an employee might accidentally step in front of a moving railcar because it is not possible to see the tracks adequately. ANSI MH9.1 addresses this potential hazard in a similar way in section 3.12.1.

Proposed paragraph (o) requires warning signs to alert employees of insufficient clearance (less than 2 feet) between a railcar and another object, structure or the water; this requirement would prevent an employee from being crushed or from falling into the water.

Section 1918a.18 Log handling. Section 1918a.18 covers log handling cargo operations; it is based on the Washington state standard (WAC 296-56-520, (Ex. 3:45)) and was developed with the assistance of the staff of the Washington Division of Safety, Department of Labor and Industries. Much of the cargo handled in Pacific Northwest ports consists of outbound logs, although other ports also handle cargo of this type. The SAC recommended adoption of the provisions in this section (Ex. 2:143i, 144i).

Paragraph (a) proposes that log containers (bunks) have rounded corners and parts to prevent damage to slings, which could, in turn, cause a load to fall. Proposed paragraph (b) requires that logs be prevented from rolling off the sides of vehicles and striking nearby employees; binders or lashings might be used for this purpose.

The next proposed provision, (c), stipulates that at least two slings (or other gear intended for the purpose) be used to handle logs to prevent them from sliding or slipping from the sling during hoisting. Proposed paragraph (d) prohibits stacking of more than one tier of logs, to prevent the hazard caused by spreading and rolling logs that have been improperly stacked. The same hazard is addressed by proposed paragraph (e), which requires that logs be adequately supported to prevent spreading during hoisting.

Section 1918a.19 Movement of barges and railcars. Section 1918a.19, which covers the movement of barges and railcars in marine terminal areas, is similar in intent to the requirements appearing at § 1918.84(c) and at section 3.12.8 of ANSI MH9.1. The proposed provision prohibits using runners and rigging from vessel cargo booms, cranes, derricks, or other unsuitable equipment to move barges or railcars, and parallels the protection against this hazard provided in the longshoring standard. The proposal, however, extends the prohibition to shore cranes and other shore-based equipment. The proposed requirement is intended to prevent the widespread practice of moving barges and cars by hooking them to the ship's cargo gear or to vessel or shore-based cranes, a practice which can lead to the crane capsizing because large and improper stresses are imposed on the boom at angles for which the equipment was not designed, or which may structurally damage the crane or derrick, causing subsequent failure.

Section 1918a.20 Interference with communications. Cargo handling is a complex operation requiring close cooperation and effective communication among supervisory personnel, operators, and other workers. Section 1918a.20 requires that high noise levels, such as those that might be caused by scaling the sides of vessels, not be permitted to interfere with the communication essential to safe cargo handling; this paragraph is based on a similar provision from § 1918.95(a).

Section 1918a.21 Open fires. A prohibition against any open fire in a marine terminal (§ 1918a.21) has been incorporated into the proposal on the recommendation of the SAC (Ex. 2:15i); some committee members felt that any open fire, including a fire in a drum and used to warm employees' hands, represented a significant safety hazard in the marine terminal environment. OSHA invites specific comment on fire hazards in terminals, to aid the Agency in preparing the final rule on this topic. For example, would restricting open fires to designated areas provide adequate employee protection against unwanted fires?

Section 1918a.22 Hazardous cargo. Section 1918a.22 deals with the subject of hazardous cargo, and is based on OSHA's general industry coverage of atmospheric contaminants, and the Coast Guard (Department of Transportation) Hazardous Materials Tables. As defined in proposed § 1918a.2(p), any substance covered in Subpart Z of OSHA's general industry rules or included in the Hazardous Materials Table or Hazardous Materials Regulations of the Coast Guard, Department of Transportation (49 CFR Part 172) would be considered hazardous cargo. In addition, any substance not specifically described by name in the table or regulations of 49 CFR Part 172 noted above, but which would be categorized as hazardous in 49 CFR Part 172, e.g., a combustible liquid or an explosive material, would also be considered hazardous cargo. This category of hazardous materials has been included in the proposal to ensure that hazardous chemicals and substances that were developed or determined to be hazardous after publication of the lists in Subpart Z and 49 CFR Part 172 will be handled in a manner that will protect employees from harmful exposure. The proliferation of new chemicals and combinations makes the inclusion of this additional safeguard essential.

It is important to note, however, that although any substance included in the proposed definition of "hazardous" has

the potential to cause harm, specific circumstances vary, depending on the toxicity of the substance involved, the duration of the exposure, and the susceptibility of the individual exposed. In the case of hazardous cargo moving in trade, these circumstances occur rarely and only by accident, because cargo of this type is contained in sealed and intact packaging, which prevents employee exposure entirely. It is only when such packaging leaks or breaks that hazardous exposures can occur. The precautions for handling hazardous cargo included in the proposal are intended to prevent such occurrences if at all possible and to protect employees from harmful effects when they do occasionally occur. Examples of such potentially hazardous cargo are chlorine, hydrochloric acid, asbestos and many other chemicals.

Proposed paragraph (a) requires the employer to determine the nature of the hazardous cargo to be handled and then to inform employees both of any potential hazards and special precautions required to handle the cargo and the proper methods for cleaning up any leaks or spills.

Proposed paragraph (b) requires that hazardous cargo be handled by methods that will prevent damage to the container, to minimize the risk of employee exposure. Examples of appropriate precautions might be nets or lashings.

Paragraph (c) proposes precautions to be taken to reduce exposure to hazardous substances that have leaked or spilled from containers. For example, if leaks or spills occur, employers are required to clear the danger area of personnel other than those engaged in the cleanup operations, to provide appropriate protective and cleanup equipment, and to instruct employees in the proper method of cleaning and disposing of the hazardous substance. The provisions in proposed § 1918a.22 are similar to provisions 8.2.1, 8.2.2., and 8.2.3 of ANSI MH9.1, and to material recommended by the SAC (Ex. 2:140i–141i).

Section 1918a.23 Hazardous atmospheres and substances. Proposed § 1918a.23, Hazardous atmospheres and substances, is designed to provide protection from atmospheric hazards which are not specifically addressed in other proposed sections. The Advisory Committee recommended (Ex. 2: 56i) that this section of the draft standard not be included in the proposal. Instead, the SAC recommended including a single section covering all hazardous atmospheres in confined spaces. This recommendation was not adopted because OSHA believes that atmospheric hazards should be addressed wherever they occur in the terminal environment, regardless of the type of space in which they occur. Accordingly, this proposed section is intended to apply to vehicles, tanks, rooms and other spaces, to contaminants such as the vast array of hazardous chemicals carried as marine cargo, and to oxygen-deficient atmospheres occurring in any marine terminal situation. The substances, types of terminals, and operations specifically excluded in paragraph (a) are addressed individually in other sections of the proposal.

In the final standard, OSHA is considering incorporating the requirements from proposed §§ 1918a.23, 1918a.24, and 1918a.25 into a single section covering all types of hazardous atmospheres found in marine terminals. This consolidation would eliminate many redundant provisions, and would appear to offer equivalent employee protection. OSHA welcomes comments on the advantages and disadvantages of covering hazardous atmospheres in a single, rather than in separate, sections.

Paragraph (b) is generally based on § 1918.86 of the maritime regulations, although it has been adapted to apply to shoreside conditions. It requires that any necessary testing to determine whether a hazardous atmosphere exists be conducted by a properly equipped person designated by the employer, and that records of test results be kept for a minimum of 30 days, in accordance with a SAC recommendation (Ex. 2: 56ii).

The proposed provision appearing at (c) stipulates that in situations where mechanical ventilation is required to maintain an adequate and safe atmosphere, atmospheric tests be conducted as often necessary to ensure that the atmosphere is below permissible levels for the chemical involved.

Paragraph (d) addresses entry into hazardous atmospheres. The proposed requirements specify that only a designated and properly equipped and instructed person be allowed to enter a hazardous atmosphere, which might be necessary in a rescue attempt or to clean up after a spill. This section of the proposal also requires that prepared and equipped standby observers monitor the activity of any employees in spaces containing hazardous atmospheres, and that no ignition sources be permitted in such spaces. The importanct of training both workers and standbys involved in entry and work in hazardous atmospheres cannot be overstated. Accidents in these situations are often fatal and multiple, involving both workers and rescuers (Ex. 24).

The requirements in proposed paragraph (d)(4) recognize that atmospheres containing oxygen levels of less than 19.5% are inadequater for performing hard work; humans breathing oxygen-deficient atmospheres are unable to perform strenuous exercise or even to sustain a moderate level of exertion. Cleaning a tank car in a terminal is an example of work in an atmosphere that might be oxygen-deficient. The proposed 19.5% level is consistent with Coast Guard requirements (Ex. 65). OSHA's existing maritime regulations (29 CFR Parts 1915, 1916, 1917, and 1918) allow a minimum of 16.5% oxygen, but these provisions are presently under review and will be changed in the near future.

Although proposed paragraph (e) addresses a subject, asbestos, already covered by Subpart Z of the general industry regulations (29 CFR Part 1910), the Advisory Committee recommended (Ex. 2: 132i) inclusion of a provision dealing with the proper method of cleaning asbestos spills, a suggestion with which OSHA concurs. In practice, asbestos-containing cargo is almost never moved in trade in anything but heavily protected, sealed and intact packaging. However, the proposed requirements would provide employee protection in the event of asbestos spills.

Section 1918a.24 Carbon monoxide. Section 1918a.24 addresses carbon monoxide, a common hazard which is also dealt with in § 1918.93(a) of the longshoring regulations and in ANSI MH9.1 (section 3.18). Proposed paragraph (a) specifieds maximum carbon monoxide levels of 50 ppm as a time-weighted average, with a 75 ppm ceiling level. These levels agree with those of the Coast Guard (46 CFR Section 35.70–20(d)), and OSHA general industry standards (Supart Z of Part 1910), but OSHA's existing longshoring regulations (§ 1918.93(a)) allow a 100 ppm ceiling; the Agency plans to propose reduction of this figure to 75 ppm when Part 1918 is revised in the near future.

Proposed paragraph (b) contains a performance requirement and is intended to provide worker protection while allowing employers to test at intervals determined by the particular situation. For example, most transit sheds and other similar structures in marine terminals have high ceilings and numerous openings, so that maintaining a safe atmosphere generally poses no difficulty. However, since many vehicles may operate in these spaces simultaneously and not all spaces have

good ventilation, the employer should be prepared to monitor such work areas. Refrigerated and similar confined spaces that have very limited natural ventilation would require almost constant testing and additional ventilation to protect employees adequately. Enclosed highway vehicles or railcars in which an operating internal combustion engine is working might also develop a sufficient carbon monoxide level to be hazardous to an employee working in the car. OSHA is particularly interested in receiving comments giving other examples of marine terminal work situations in which hazardous carbon monoxide levels occur.

Proposed paragraph (c) requires that only designated persons using NIOSH-certified carbon monoxide measuring instruments make these tests, to ensure accurate testing and interpretation of the results. The tests required in this section should be made in the specific area where employees are working, to avoid misleading results such as may occur when samples are drawn from sources distant from the employee exposure area. The last paragraph in this section specifies that records of all tests required in this section be maintained for 30 days.

Section 1918a.25 Fumigants, pesticides, insecticides, and hazardous preservatives. Section 1918a.25, Fumigants, pesticides, insecticides, and hazardous preservatives, is directed to the atmospheric contamination associated with the use of these substances. Cargo that is frequently fumigated includes grain, tobacco, cotton, and other agricultural products; exposure to fumigating agents may cause severe illness or even death, depending on the toxicity of the agent, the level of exposure, and the susceptibility of the individual exposed.

Proposed paragraph (a) states that employers must ensure that only equipped and designated employees enter a space if cargo has been stored, handled, or treated in the space with one of these substances.

Proposed paragraph (b) specifies that tests to determine concentrations of chemicals be appropriate for the specific hazard or hazards involved, be conducted by persons designated by the employer, and be performed as often as necessary to protect employees. The recordkeeping provision that applies to this section appears at proposed paragraph (c) and requires that records of tests be kept for a minimum of 30 days. Provision (d) stipulates that only designated persons be permitted to apply chemicals to cargo; the Environmental Protection Agency (EPA) and several state agencies presently require that persons applying fumigants have EPA or state approval, which would be deemed to meet this requirement.

Paragraph (e) makes clear that only designated persons who have been instructed about the hazard and the applicable precautions and who know how to use the appropriate protective and emergency equipment are permitted to enter a space containing a hazardous atmosphere; further, persons entering must be protected both by respiratory and emergency equipment meeting the requirements of Subpart E of this part, and equipped and prepared standby observers must monitor employee activity within the space.

In paragraph (f), OSHA proposes that danger signs identifying hazards and precautions and providing emergency treatment instructions be posted in any area in which a pesticide, fumigant or hazardous preservative has created a hazardous atmosphere. This proposed provision is in keeping with modern safety and health practices and OSHA's efforts to increase the level of employee awareness of specific workplace hazards.

Section 1918a.26 First aid and lifesaving facilities. Proposed § 1918a.26 treats the subject of first aid and lifesaving facilities and is based primarily on § 1918.96 of the longshoring regulations and section 8.10 of ANSI MH9.1. The SAC recommended that employers be required to "keep related records of occupational diseases" (Ex.2:156ai), a recommendation not adopted because OSHA's existing medical recordkeeping requirements (29 CFR Part 1904) are more specific and more comprehensive than those recommended by the Committee.

Paragraph (a) stipulates that employees be instructed to report all work-related injuries to their employers; this proposed provision is designed to improve on-site treatment of occupational injuries and accidents, and simultaneously to reduce worker morbidity and lost workdays in this high-hazard work environment. Accurate employee reporting also aids in increasing the responsiveness of accident prevention programs to particular workplace hazards.

In proposed paragraph (b), OSHA defines the employer's responsibilities to provide first aid; the requirement is based on § 1918.96(a) of the longshoring regulations and is more extensive than the parallel general industry provisions (§ 1910.151). The proposal states that the employer must keep a first aid kit at the site where work is being performed, and must additionally ensure that a person holding a current first aid certificate is at the terminal. No particular first aid course or approving agency is designated, so long as the certificate is issued by a responsible organization which requires successful completion of a course as evidence of qualification. An example of an acceptable organization is the American Red Cross. Employees qualified at levels above that of first aid, for example as paramedics, would be deemed to satisfy this requirement without a first aid certificate.

First aid kits must be weatherproof if they will be exposed to the weather, and each sterile item must be sealed individually. Individual items and, in some cases, sizes are specified; burn dressing is not required, as it is in the longshoring standard, because medical opinion now advises against its use. This proposed list of items, intended as a minimal requirement, would in many cases be augmented by items appropriate to the particular environment or type of work involved. Except for the deletion from the list of burn dressing and the addition of first aid dressing, the proposed list is identical to the one in § 1918.96(b) and section 8.10.2 of ANSI MH9.1.

Paragraph (d), which covers stretchers, parallels a similar requirement for shipboard use (§ 1918.96(d)), but does not specify the number or type of stretchers required, as section 8.10.3 of ANSI MH9.1 does. OSHA believes that a "readily accessible" stretcher (available within five minutes) and blanket will provide adequate employee protection. The requirement that the stretcher be permanently equipped with bridles for hoisting, which are essential when hoisting employees from a vessel, has been retained for the marine terminal environment because employees may occasionally have to be hoisted, for example over the side of a gondola car or from a crane.

The next paragraph, (e), proposes that a phone or equivalent means, i.e., radio, be available for emergency use; adoption of this language was recommended by the SAC (Ex.2:157i), and is intended to allow greater flexibility, without compromising safety, than is provided by a similar rule appearing at section 8.10.4 of the ANSI MH9.1 standard, which allows only a telephone. The expression "readily available" means within a three-to-five minute period.

Liferings and ladders to prevent employees from drowning are addressed in paragraph (f), which requires that both items of safety equipment be available within 200 feet of each waterside work area. A ladder is

necessary to allow an employee who has fallen into the water to climb back up to the dock or to be rescued. The proposed requirement recognizes that cargo is not worked along many sections of frontage and there is no threat to worker safety in these areas. All active frontage work areas would be equipped, under the proposed provision, with ladders and rings within 200 feet of any such area. Section 1918.96(e) of the longshoring regulations contains similar coverage. Ninety feet of lifeline must be attached to each U.S. Coast Guard approved lifering, a requirement based on an equivalent provision in § 1918.96(e) and on the Coast Guard rules. In addition, any employee working on a bridge or structure leading from the terminal to a distant vessel berthing installation is required to wear a work vest to prevent drowning in case he falls into the water. These berthing installations are isolated from the main terminal area, sometimes by as much as one mile, and immediate rescue might therefore not be possible.

Section 1918a.27 Personnel. Section 1918a. 27 addresses personnel qualifications. Proposed paragraph (a) is directed to the hazards associated with power-operated hoisting equipment, conveyors, or vehicles, including industrial trucks, and requires that all employees, except supervised trainees, be familiar with signs, signals, and operating instructions before operating such equipment or giving signals to the operators of hoisting machinery. This rule is based on § 1918.97(a) and is similar to paragraph 8.9 of ANSI MH9.1. The SAC recommended (Ex. 2:155i) adding "and recognized as competent by the employer" after "trained and experienced employees," a recommendation which OSHA has not adopted because it is the training and experience which are essential to safe operation; any training recognized by a responsible group or organization would therefore be deemed to meet this requirement.

In paragraph (a)(2), OSHA proposes requiring all machinery operators assigned after the final standard's effective date to pass a practical on-the-job operating examination and to be instructed by the employer in standard operating procedures. This provision is designed to upgrade the training and experience levels of equipment operators without requiring licensing or formal training. OSHA supports and encourages joint labor-management training efforts, which have often sponsored such courses in the past. The specific content of the practical examination and the topics of the training course are left to the employer's discretion.

Proposed paragraph (a)(3) is very similar to § 1918.97(b), and provides that employees with medical conditions that could be incapacitating not operate powered machinery. It is intended to protect both the employee with the medical disability and other employees working with that employee. The draft version of this requirement reviewed by the SAC allowed employees with disabilities to operate power-operated equipment, provided they were annually certified by a physician as fit for such employment; the Advisory Committee recommended deletion of this waiver requirement (Ex.2:156i), a recommendation that has subsequently been adopted in the proposal. The type of medical condition addressed by this proposed provision is one which could be suddenly incapacitating, such as serious heart disease, seizure disorder, or insulin-dependent diabetes. OSHA believes that employees with a history of such a serious medical condition should not operate powered equipment.

Paragraph (b) is a newly developed provision similar in intent to a requirement that has appeared in a labor-management contract for this industry (Ex. 27: 4). The proposed rule, which requires that supervisors be trained in accident prevention, would only apply to supervisors of more than five employees. It is designed to increase awareness of hazards and methods of accident prevention at the supervisory level, and thus indirectly at all levels of the work force. The requirement allows a phase-in period, to permit supervisors time to acquire such training. However, after the delayed effective date specified in this paragraph (two years from the final standard's effective date), newly assigned supervisors would be required to take such a course within three months of assignment. The training required would include, in addition to instructions in matters specifically pertaining to the operation to be supervised, instruction in those topics specified in proposed paragraph (b)(2). An earlier SAC version of this requirement stipulated that supervisors have "documentary evidence of satisfactory completion of a 30-hour training course in accident prevention"; the majority recommendation of the committee (Ex. 2: 156i) was that the 30-hour specification be deleted. OSHA believes that accident prevention training is the key to reducing workplace accidents, but agrees with the Committee's judgment that the precise length of the training course does not need to be specified. Since this provision is not based on a similar requirement in any existing maritime regulation, OSHA particularly seeks comments and any relevant information on this matter. The Agency would also welcome suggestions for topics that should be included in the training course.

Subpart C—Cargo Handling Gear and Equipment

Section 1918a.41 House falls. This subpart of the standard is devoted to the gear, machinery, and equipment used to handle cargo. The first proposed section, § 1918a.41, concerns house falls used with ship's gear in union purchase cargo-handling (using cargo runners from the ship and the terminal's hoisting equipment together), a subject not addressed in the present longshoring regulations (although section 4.1 of the ANSI MH9.1 does cover house falls). House fall gear includes spans and supporting members, winches, blocks, and standing and running rigging attached to a terminal facility and used in conjunction with the vessel's gear to load or unload cargo. This provision has been included because, although the use of conventional ship's gear and house falls has declined drastically in recent years, these rigging arrangements are still used at some locations (especially at inland terminals) and are often poorly maintained. Proposed paragraph (a) requires that span beams be secured to prevent them from falling. The next provision, (b), states that safe means of access to the house fall block must be provided for employees working with such rigging arrangements. The specific means is not specified, but fixed ladder and personnel guarding provisions specified in other sections of this document (§§ 1918a.112 and 1918a.120) would also apply here, if these means of providing access are chosen.

In paragraph (c), OSHA requires a visual inspection of loose gear used in house falls before each day's use. House fall gear is often located in difficult to reach places, and maintenance is therefore easy to overlook. The provision also prohibits the use of defective loose gear.

Section 1918a.42 Miscellaneous auxiliary gear. Section 1918a.42, Miscellaneous auxiliary gear, deals with several types of cargo-handling equipment, such as ropes, shackles, slings, and pallets. Each type of equipment is addressed separately. Proposed paragraph (a) covers loose gear, such as slings, chains, bridles, blocks, and hooks; provision (a)(1) requires that loose gear be inspected before use, not be used if defective, and be stored or placed to avoid being

damaged. Paragraph (a)(2) requires that loose gear be inspected visually during use to detect defects in the gear. Defective gear may not be used, and hooks, shackles, and similar gear must be discarded if distorted, because it is not possible to repair damage of this type without permanently damaging the gear itself. The proposed provisions in paragraph (a) derive from § 1918.61(a) and § 1918.66(c), but have been modified for shoreside application; they are also consistent with industry practice and with rules 302 and 331 of the 1979 revision of the Pacific Coast Marine Safety Code (Ex. 20: 13, 17). They are designed to ensure that defects in the gear, which could, for example, cause the load to be dropped, are detected and appropriately dealt with.

Paragraph (b) proposes the adoption of a new approach to the rating of wire rope and wire rope slings; the existing longshoring regulations (§ 1918.63) and other OSHA regulations (for example, § 1910.184(f)(1), Slings) provide tables listing wire rope ratings, which are to be used in preference to the manufacturer's rating for the rope in question. The present proposal does not include these rating tables, because rope manufacturers provide ratings for their products; ropes of the same size, material and construction but made by different manufacturers or in different countries may have different ratings, and the tables in the existing regulations do not cover many of the ropes presently in use in marine terminals. The proposal requires that the employer ascertain and have available the manufacturer's ratings for all wire rope and wire rope slings obtained after the date noted in the proposed standard. This provision also requires that manufacturer's ratings not be exceeded and that a safety factor of at least five be maintained for the common sizes of running wire used in falls, purchases, or light load slings; this is in accordance with a similar provision in § 1918.63(a).

Proposed paragraph (b) goes on to specify situations in which wire rope safety factors of five do not have to be maintained: in specialized equipment such as cranes that are designed to be used with lesser safety factors; in standing rigging applications such as guys on a house fall mast; and in heavy lifts and other purposes where rope with a safety factor of five would be impractical but for which the employer can demonstrate equivalent safety. These exceptions are necessary in these applications, for example in mobile cranes, where the Society of Automotive Engineers Standard SAE J959 has established a safety factor of three for standing wire and three and one-half for running wire, or in heavy lift applications where a safety factor of five cannot be achieved and the method of handling (slowly and without shock loads) ensures safety. Large-capacity cranes are not designed to carry wire rope with a safety factor of five, because the rope would be too large and too heavy for the crane to lift. In standing wire uses, such as guys, a lesser safety factor is also adequate.

Proposed provision (b)(2) prohibits any wire rope or sling from being used with any of the defects listed, and is a revision of § 1918.63(e)(4) of the longshoring regulations. The proposed requirements are essentially consistent with similar provisions of § 1910.184(f)(5), and some, ((b)(2)(i), (ii), and (iii)), are identical to those of the general industry standards. Proposed items (b)(2) (v) and (vi) are new provisions necessary to ensure safe use of wire rope; any strand or wire slippage in end attachments is a clear indication of rope wear, and more than one broken wire within an inch or so of an end attachment indicates impending fatigue failure.

Proposed paragraph (b)(3) is modified somewhat from a similar provision in § 1918.63(b). It stipulates that ends of splices, if covered, be covered so that the covering can be removed to determine the condition of the splices, and that methods used to blunt ends not damage the wire itself.

The proposed paragraph dealing with wire rope clips, (b)(4), is based on a provision in the longshoring regulations, § 1918.63(c), except that the proposal requires that the manufacturer's use recommendations be followed, and that Table C–1 be used for "U" bolt clips only in the absence of the manufacturer's recommendations. As noted above, this method is preferable to relying on manufacturers' ratings and recommendations in this instance because a single table cannot address all the types of clips now available for use in marine terminals, and because manufacturers provide use recommendations with their products. However, Table C–1 has been brought up to date and expanded to include clip requirements for ropes of one-half inch (or less) in diameter, which are now in common use. Requirements for spacing of clips for ropes smaller than one-half inch have not been included since those for one-half inch rope are suitable for lesser sizes as well.

Proposed provision (b)(5) prohibits securing wire rope by means of knots, and has been adapted from a similar requirement in the longshoring regulations, § 1918.63(d). Knots cannot be used to secure wire rope because this means of securing may reduce the rope's strength capability by as much as 50%. The proper working of a wire rope "machine" depends on the inner core and the outer laye working in unison, which cannot occur when the rope is bent.

Proposed paragraphs (b)(6), (7), and (8) apply to wire rope eyes and eye splices, and are essentially based on provisions 1918.63(e)(3), 1918.63(e)(1), and 1918.63(e)(2) of the longshoring regulations, respectively. Proposed paragraph (b)(6) prohibits the use of wire rope clips or knots to form eyes in bridles, slings, bull wires, or single parts used for hoisting, but is not meant to apply to standing rigging applications, such as guys, or to eyes used with lashings for cargo or dead ends of multipart purchases, where clips may be used. The proposed requirements for tucks in eye splices in paragraph (b)(7) are traditional, and similar rules appear in seamanship texts and other standard sources (Ex. 66: 570). Proposed paragraph (b)(8) also reflects standard industry practice, and is identical to the section on the same topic in the existing longshoring regulations.

Proposed paragraph (c) covers natural fiber rope, and follows the proposal's approach of relying on manufacturers' ratings, rather than tables, for rated capacities of rope. Though no requirement on splices similar to proposed provision (c)(2) is included in the existing longshoring regulations, the proposal reflects current industry practice and is identical to the requirement in § 1910.184(h)(3)(i).

Synthetic rope is addressed in proposed paragraph (d); reliance on manufacturers' ratings is particularly important with this type of rope because it is made of a variety of combinations of synthetic materials, each with different capabilities, ratings, and use recommendations. There are several publications dealing with synthetic ropes (Ex. 37, 38) and the various characteristics of each type. For example, nylon has the largest amount of stretch and is therefore inappropriate for hoisting, and some materials cannot be used around a drum because they will melt when stressed in this manner. No specific requirements are given for splices because such matters are covered by the manufacturer's recommendations. The general industry standard does not cover synthetic rope except that used in slings (§ 1910.184(h)).

Proposed paragraph (d)(2) is similar to § 1918.62(b). The formula and directions for substituting synthetic rope for manila rope less than three inches in circumference were devised by the rope

industry for the Bureau of Labor Standards, the American Bureau of Shipping, and the U.S. Coast Guard (Ex. 23: 5; Ex. 5: 18; Ex. 30: 5–9). This provision also appears in section 4.2.5 of ANSI MH9.1, and is the standard for the American Bureau of Shipping and the U.S. Coast Guard.

Proposed paragraph (e) defines the conditions requiring synthetic and natural fiber rope to be removed from service because continued use would be hazardous; this provision derives from and is compatible with § 1910.184(h)95), and also reflects current industry practice.

The proposed requirement for thimbles (paragraph (f)), which protect rope from excessive wear when it is attached to a ring or similar device, is newly developed and does not appear in Parts 1910 or 1918. It stipulates that properly fitting thimbles must be used when a rope is permanently secured to an attachment. Rope used in a temporary configuration, for example in a pendant, would not be required to be protected by a thimble.

The proposed provision addressed to synthetic web slings (paragraph (g)) was drafted after consideration of the applicability of § 1910.184(i) to the marine terminal setting; the increasing use of synthetic web slings makes requirements such as these necessary for safety. Paragraph (g)(1) is broader than the equivalent provision in the general industry standards (§ 1910.184(i)) because preslung cargo arriving in U.S. ports in international trade is occasionally bound by synthetic web slings which, though adequate, are not always marked with the manufacturer's rated capacities. Allowing sling ratings to be ascertained from the manufacturer would permit shippers or carriers to obtain ratings and thus to continue to use unmarked slings. Provision (g)(2) lists conditions under which synthetic web slings must be retired from service, and is identical to § 1910.184(i)(9), except for the additional disqualifying defect, "damage to fitting," that has been included in the proposed list. A damaged fitting may damage the sling to which it is attached or it may itself fail.

Proposed paragraph (g)(3) prohibits repair and reuse of synthetic web slings, because there is no method of repairing these devices without damaging them structurally.

In paragraph (g)(4), OSHA proposes that these slings only be used in accordance with manufacturer's use recommendations, which specify under which conditions slings of this type may be used. For example, nylon slings may not be used around acids, phenolics, or fumes, and web slings with aluminum fittings may not be used near caustic liquids.

Fittings are required by proposed paragraph (g)(5) to be smooth to prevent tearing of the sling, and they must also have rated capacities equal to that of the sling so the fittings will not fail under load.

Chains and chain slings used in hoisting applications are addressed in proposed paragraph (h), and the requirements essentially parallel those of the existing longshoring regulations (§ 1918.64). These provisions also require employers to depend on manufacturer's ratings rather than complex tables for rated capacities and use recommendations, and further state that these ratings must be available at the terminal.

Proposed paragraph (h)(2) prohibits using proof coil steel chain (common or hardware chain), or other chain not intended for hoisting, for slinging or hoisting purposes. Chain of this type is not strong enough for this use and would fail under load.

Paragraph (h)(3) states the inspection requirements for chains used in hoisting, and is based on similar provisions in the existing longshoring regulations (§ 1918.64 (b), (c), and (d)), which will be made identical to the proposed provisions when the longshoring rules are revised. Proposed paragraphs (i) and (ii) require visual inspection, by designated employees, of sling chains and their end fastenings before each day's use, and during use as necessary, to ensure that they have no operational defects.

A more thorough quarterly inspection of chains is required in proposed paragraph (h)(3)(iii). The month of the thorough inspection must be indicated by appropriate means, such as painting a link; using a tag to indicate that the chain has been inspected is usually unsatisfactory, because the tag often tears off during a lift. Proposed paragraph (h)(3)(iv) requires that any chain showing the maximum allowable wear at any point of the link, as specified in Table C–2, be withdrawn from service. In addition, paragraph (v) states that any sling showing an increase of more than five percent in a measured section or having a bent, twisted or damaged link or a raised scarf or defective weld must be removed from service. Damage of these types significantly reduces the strength of the chain.

Proposed paragraph (h)(4) concerns repairing chains and returning them to service, and is similar to the coverage of the same topic in the longshoring regulations (§ 1918.64(e)), except for the addition of requirements that proof tests not conducted by the manufacturer be certified by an agency accredited under Part 1919 of this chapter, and that test results be available at the terminal. Requiring certification will ensure that chains are inspected and tested at regular intervals.

Proposed provision (h)(5) goes beyond the equivalent provision of the longshoring regulations (§ 1918.64(f)) because it requires wrought iron chains in constand use to be annealed or normalized at least every six months, whether or not the manufacturer so recommends; the present rules only require annealing if the manufacturer has recommended it. Both normalizing and annealing involve heating, which restores the metal to its original strength. The proposed rule also requires that certificates attesting to this treatment be available at the terminal. Wrought iron chains for hoisting have not been manufactured for many years, but some chains made of this material are still in use, particularly on the inland waterways. The final proposed requirement of this paragraph prohibits annealing of alloy chains, which do not require such treatment and might be seriously damaged by the process.

The first two proposed provisions of paragraph (h)(6) are identical in effect to those of § 1918.64(g); they prohibit hoisting with chains that are kinked, knotted, bolted, or wired, because these actions stress the chain excessively and may thus damage it. The final proposed requirement in paragraph (h)(6) is intended to prevent the use of makeshift links or fasteners in cargo hoisting; this topic is not currently addressed in the longshoring regulations, but will be covered when Part 1918 is revised in the future. Makeshift gear arrangements may not withstand the weight of the loads hoisted in cargo handling operations.

Proposed paragraph (h)(7) requires hooks, rings, links, and attachments on sling chains to have rated capacities at least equal to those of the chains to which they are attached; this provision would prevent loading a sling with a heavier load than the sling attachments could bear. This requirement is very similar to a provision appearing at § 1910.184(e)(2).

Proposed paragraph (h)(8) stipulates that it must be possible to identify the size, grade, and rated capacity of chain slings from marks or other identification on the sling; this information needs to be readily available to ensure that slings are only used as the manufacturer intended. The provision is similar to that in § 1910.184(e)(1), but this topic is not

presently addressed in the longshoring regulations.

Shackles are dealt with in paragraph (i), and the first proposed provision adopts the approach favored in the proposal for other hoisting gear, that of relying on the manufacturer's ratings in preference to using a table (in this case, Table C–3) to determine the safe working loads for shackles of various sizes. This table should only be used in situations in which it is not possible to determine the manufacturer's ratings for the shackles in use. The table is intended for mild steel shackles. Most shackles in use today are made of steel alloy that are of higher quality than mild steel, and steel alloy shackles should be used with the appropriate ratings for such alloys. The equivalent longshoring regulation (§ 1918.65) relies primarily on a table to determine minimum safe working loads. Proposed paragraph (i)(2) stipulates that screw pin shackles used aloft (except in cargo hook assemblies) have moused or otherwise secured pins so that the pin cannot come loose. Shackles used in cargo hook assemblies that are not used aloft are accessible during handling, so their pins can be tightened easily and do not have to be additionally secured.

The next proposed paragraph, (j)(1), applies to hooks (excluding hand hooks), and again requires conformance with the manufacturer's rated capacities. In addition, hooks obtained after the date specified in this proposal would have to be tested as part of the certification process outlined in § 1918a.51(c)(6). Proposed paragraph (j)(2) requires hooks that are bent or sprung to be discarded; these deformations are evidence of permanent damage that cannot be repaired. The next two proposed provisions, (j)(3) and (j)(4), require case hook teeth to be in good condition to facilitate grasping and clamp-type plate hook jaws to be sound (for the same reason). Paragraphs (j)(2) through (j)(4) are based on the longshoring regulations (see § 1918.66(b), (c), (d), (e)). A proposed provision requiring loads to be applied to the throat of the hook has also been included in the proposal because loading the point overstresses and bends the hook.

Some provisions of paragraph (k), which addresses pallets, are similar to provisions in ANSI MH3.1 (section 4.2.9) and the longshoring regulations (§ 1918.67). The principle hazard of hoisting a load on a damaged pallet is that the pallet may give way while the load is suspended, causing cargo to fall on employees below. The first proposed provision, (k)(1), requires that pallets be made and maintained to carry loads safely; all fastenings on reusable pallets must therefore be of a type, such as bolts and nuts, drive screws, or helically threaded nails, that will hold securely. Proposed paragraph (k)(2) is a newly developed requirement stipulating that damaged pallets be removed from active work areas, marked as damaged, and stored away from the work site; this rule is intended to ensure that damaged pallets are not accidentally used to hoist cargo.

Proposed paragraph (k)(3) is based on § 1918.67(b), but has been expanded in recognition of the fact that wing-type pallets may occasionally have to be hoisted by means other than bar bridles; so long as these means are suitable for the load, pallet, and other pertinent conditions and provide equivalent safety, they may be used. The prohibition against hoisting lip or wing-type pallets by wire slings alone is included because this practice places employees working beneath the load at great risk, since these slings may cause the pallet to buckle and drop the load.

Loaded pallets that are visibly defective may not be hoisted, according to the proposed rule in paragraph (k)(4), until they have been placed on a second pallet that is acceptable, or are handled by other means, such as a sling, providing equivalent safety. This provision is similar to a requirement at § 1918.67(c).

Proposed paragraph (k)(5) has been shortened but is substantively identical to § 1918.67(d) of the longshoring regulations; the bridles for handling pallets of the types specified must be designed specifically for this use, in order to fit and lift these pallets securely.

The next provision, (k)(6), requires pallets not in use to be stacked or positioned in a manner that will prevent them from falling on employees or otherwise creating a hazard; the SAC recommended the proposed wording (Ex. 2:83i). The final provision proposed in this paragraph, (k)(7), prohibits the reuse of disposable pallets intended to be used for one-way transit only; these pallets are not sturdy enough to withstand repeated use.

Section 1918a.43 Powered Industrial Trucks. Section 1918a.43 contains the proposed requirements for powered industrial trucks used in marine terminals. This section was drafted after consideration of the general industry standards (Part 1910), the longshoring standards (Part 1918), the relevant ANSI standard (Ex. 67), the recommendations of the Advisory Committee, and the results of other staff research. The provisions in this section are intended to address employee hazards associated with the use of powered industrial trucks in a marine terminal; however, many of the provisions dealing with powered industrial trucks that appear in the various source documents are not directly related to employee safety and health, are unnecessarily detailed, or are design or construction specifications addressed to the manufacture, and these have therefore not been adopted for this proposal. OSHA invites comment on the adequacy of the coverage of the proposed provisions for hazards related to powered industrial trucks in the terminal environment.

Paragraph (a) delineates the scope and application of the section; the proposed provisions apply to every type of material-handling vehicle, except over-the-road vehicles, used in a marine terminal. Over-the-road vehicles are not included because these vehicles are covered by Department of Transportation regulations.

Proposed paragraph (b) prohibits an employer from modifying or adding parts to powered industrial trucks if the alteration would affect the vehicle's capacity or safe operation, unless the employer has obtained written approval either from the manufacturer or from a professional engineer before the alteration is made. The engineer must additionally have had experience with the equipment to be altered and must have consulted the manufacturer of the equipment. The instruction plates, tags, or decals on the altered equipment must be changed to reflect the new rated capacity and any changes in operating and maintenance procedures. This proposed requirement allows greater flexibility than the equivalent provision of the general industry standards (§ 1910.178(a)(4)), which only permits modifications approved by the equipment manufacturer. The types of modification to which this provision is addressed include the addition of counterweights or specialized devices, such as attachments for handling rolls of paper.

Proposed paragraph (b)(2) prohibits unauthorized riding on powered industrial trucks; however, when the employer authorizes riding, a safe arrangement, such as a seat or platform, must be provided. Section 5.1.8 of ANSI MH 9.1 also prohibits unauthorized riding; § 1910.178(m)(3) of the general industry standards is identical in intent to the proposed provision. Employees riding on industrial trucks are in danger of falling from the vehicle unless stable and secure seating is provided.

The proposed requirements for unattended industrial trucks are based on provisions in the general industry standards, § 1910.178(m)(5), and the

longshoring regulations, § 1918.73(j). They require that unattended vehicles be left with the load-engaging means, such as the fork or scoop, in the lowered position, the controls in neutral, and the brakes set. The final proposed requirement in this paragraph mandates blocking or curbing of wheels if a truck is left on an incline, as does § 1910.178(m)(7); this precaution is the usual practice throughout industry, and is intended to prevent the uncontrolled rolling of trucks.

Proposed provision (b)(4) prohibits the operation of powered industrial trucks inside a highway vehicle or railcar that has any visible structural damage, such as a floor that has rusted through, which might adversely affect employee safety. Railcars and other vehicles very often have unsafe floors. The usual temporary method of making these floors usable is to install a metal plate, a practice specifically required by Rule 1218 of the Pacific Coast Marine Safety Code (Ex. 20), by paragraph 3, Part V of the New York Shipping Association—International Longshoremen's Association's Joint Maritime Safety Code (Ex. 19) by paragraph 1910.184(m)(7) of the general industry standards and by section 5.2.10 of MH9.1.

The requirement proposed in paragraph (b)(5) requires that rated capacities be visible to the truck's operator so that overloads can be avoided.

As stipulated in proposed paragraph (b)(6), only stable and safely arranged loads weighing no more than the amount specified by the vehicle's rated capacity may be carried. This rule is based essentially on § 1918.73(f)(3) of the longshoring regulations and is similar to section 5.1.6.1 of ANSI MH9.1, but it goes beyond these provisions to address the stability and arrangement of the load; §§ 1910.178(o)(1) and 1910.178(o)(2) of the general industry standards deal with this topic in the same manner. An industrial truck may tip over, drop the load, or go out of control if it is either overloaded or if the load is not securely arranged and positioned so that the weight is properly distributed.

Three work practices that are important to industrial truck safety are proposed in paragraphs (b)(7), (b)(8), and (b)(9); these derive from equivalent requirements in the general industry rules (§ 1910.178). The first provision states that drivers must ascend and descend inclines slowly, to prevent the loaded truck from careening out of control or tipping over. A significant source of vehicle-pedestrian and vehicle-vehicle accidents is addressed in the second provision, which requires drivers to slow down and give warning of their approach at blind intersections and other places where visibility is limited.

The third work practice provision proposes that loads which would interfere significantly with the driver's view if carried in front of the driver, e.g., on the forks, be carried with the load trailing, i.e., with the truck moving in reverse.

Steering knobs, which were common before the advent of power steering, are prohibited by proposed requirement (b)(10) because they do not provide effective steering control and can themselves cause injury to the driver if the wheel spins. They are also prohibited for seated drivers in § 1918.73(i)(2), and ANSI MH9.1 (section 5.1.5) recommends against their use entirely.

Paragraph (b)(11) requires industrial trucks with cargo-lifting devices that reach across the load to lift from the far side (beyond the operator's view) to be fitted with mirrors or devices that will permit the operator to see the loading process clearly. The SAC recommended a similar requirement (Ex.2: 87ai), and MH9.1 contains a similar requirement (section 5.1.10.3). No similar rule appears in other OSHA regulations. The proposed rule would apply principally to large, specialized handling vehicles such as piggy packers that hoist containers or trailers by reaching across them and grasping them on the far side; most such vehicles are located in intermodal container-handling yards. OSHA would appreciate the views of interested parties on this proposed provision. For example, should OSHA also require that an employee on the ground supervise these lifting operations unless the operator has an unobstructed view at all times?

Paragraph (c) concerns the maintenance and repair of powered industrial trucks, which are essential to safe vehicle operation. The first proposed provision, (c)(1), states that only designated persons may perform repairs on these vehicles; it is similar to the general industry rule at § 1910.178(q)(1). The provision is intended to prevent unqualified or unauthorized persons from performing maintenance work on powered industrial trucks, a practice that may cause accidents.

The proposed requirement ((c)(2)) dealing with disconnecting the battery during electrical system repair (except when the power must be on to test or repair the system) is almost identical to the requirement at § 1910.178(q)(4), but would allow systems that must be energized during "troubleshooting" or servicing to have batteries connected only during these operations. The proposed procedure would protect employees from electric shock during repair work.

The next provision, (c)(3), proposes that replacement parts whose function might affect operational safety be equivalent in strength or performance capability to the original parts which they replace; this rule derives from a provision at § 1910.178(q)(5) and is designed to ensure that vehicles and components of their lifting apparatus are maintained and repaired in a manner that will preserve their original strength capabilities.

The proposed requirement in paragraphs (c)(4) governing brake systems on powered industrial trucks used in marine terminals has been developed specifically for this industry because failures of these systems may cause accidents. There is no equivalent provison in the general industry or MH9.1 standards, although both of these standards contain general repair and safety device provisions.

The proposed provisions in paragraph (c)(5) require that vehicles be maintained in proper working order and be checked by an authorized person each day of use, and that any safety device, such as a horn or sprocket or overhead guard, be in place and operable during use, unless specifically exempted (see paragraph (e)(iv) of this section). The last requirement in this paragraph stipulates that no truck having a fuel system leak or any other defect affecting safety, such as failing brakes, may be operated. Requirements in this paragraph are based essentially on similar provisions in the longshoring regulations (§ 1918.73(a)), ANSI MH9.1 (section 5.1), and in Part 1910 (§ 1910.178(p) (1) and (4)), and are intended to preserve the operational safety of industrial vehicles and to protect their drivers and other employees from injuries.

Paragraph (c)(6) would require that records of the daily truck inspection be kept at the terminal for at least thirty days, so that the equipment's maintenance and repair history is available at the terminal.

Truck repairs involving the fuel or ignition systems are required by proposed paragraph (c)(7) to be performed away from active work areas and in locations equipped with fire extinguishers or other protection against unwanted workplace fires. The general industry standards have a similar rule (§ 1910.178(q)(3)).

Paragraph (d) concerns power-operated industrial trucks approved for use in hazardous atmospheres. The first

proposed requirement defines "approved" as it is used in this section, i.e., approved by a nationally recognized testing laboratory for use in a particular hazardous atmosphere. According to the proposal, trucks used in such atmospheres are required to be approved except where U.S. Coast Guard regulations (33 CFR 126.15) apply; any approved vehicle must bear a label or identifying mark indicating testing laboratory approval. This topic is covered in great detail in § 1910.178 of the general industry standards; however, OSHA has concluded that in the marine terminal context, it is sufficient to state that power-operated industrial trucks used in hazardous atmospheres be approved for use in the particular hazardous atmosphere. (Classifications of hazardous locations are set forth in Subpart S of Part 1910.)

Fork lift trucks, a particularly hazardous class of powered industrial trucks, are addressed in paragraph (e). The proposed requirements appearing at (e)(1) are essentially similar to those in § 1918.73(b) and deal with overhead guards on fork lifts. The first proposed provision, (e)(1)(i), differs from the existing longshoring requirement in that overhead guards would only be required in situations in which falling loads present a hazard to the truck operator, since many tasks in a terminal are performed in open areas free of overhead hazards, such as suspended loads. The proposal also mandates that the guard be strong enough to protect against the sort of objects likely to fall against it; a guard strong enough to withstand the full impact of a capacity load would be so heavy that it would interfere with the vehicle's stability. This provision is almost identical to one appearing in the general industry standards at §>1910.178(m)(9). The proposed provisions at (e)(1)(iii) prohibit guards from obstructing the operator's view and require any openings in the guard to be smaller than any unit of cargo being handled.

Proposed paragraph (e)(1)(ii) requires guards to be built so that failure of the truck's mast tilting mechanism will not dislodge the guard; this requirement is similar in intent to paragraph (b)(4) of § 1918.73 of the longshoring regulations and section 5.1.1.4 of ANSI MH9.1. The overhead guard provision at (e)(1)(iv) states that any guard required by this paragraph may only be removed when work cannot be conducted with the guard in place, such as in areas of low clearance where the truck's operator is in no danger of hitting overhead obstructions or of being hit by falling objects; this proposed requirement parallels the rule at § 1918.73(b)(5). Paragraph (e)(1)(v) would require overhead guards to be large enough to extend over the operator during all truck operations, including forward tilt.

Paragraph (e)(2) addresses load backrest extensions, and is based on § 1910.178(e)(2) of the general industry standards. The proposal requires a load backrest extension if the fork lift operator might be exposed to a backward-falling load. This equipment would only be necessary for high lifts, in which the load is higher than the truck's mast. This subject is also covered in section 5.1.2 of MH9.1, although none of the detailed ANSI design requirements for extensions have been included in the proposal because these extensions are stock items.

Forks and their attachments and extensions are covered in paragraph (e)(3)(i), which is a similar but stronger version of a longshoring provision (§ 1918.73(e)). The proposed requirement adds that this equipment may only be used to perform the tasks for which it was intended by the manufacture; improper use of the forks (for example, to pry open a railcar or cargo door) may result in overturning the vehicle, dropping the load, or in causing other hazards. Proposed paragraph (e)(3)(ii) prohibits transporting employees on the forks of these vehicles, an extremely hazardous practice that has caused serious falls and other injuries (Ex. 49).

The proposed requirement concerning counterweights, (e)(4), states that these weights must be secured so that they will not fall. It does not require that they be permanently attached to the vehicle as long as they are secured sufficiently to prevent them from falling during vehicle movement. This provision has been drafted for this proposal and no similar requirement appears in the longshoring regulations.

The capacities and weights of fork lift trucks addressed in paragraph (e)(5). The first proposed provision, (e)(5)(i), requires employers to observe the rated capacities, with and without counterweights, of these vehicles. Rated capacities and vehicle weights (with and without counterweight) must be marked on the vehicle and be visible to the operator. Vehicle weights must be marked because cranes and ship's gear are often used to hoist these trucks, and if the capacity of the hoisting equipment is exceeded it may fail. This provision combines several requirements from § 1918.73(f) of the longshoring regulations, and the subject is also addressed in paragraph 5.1.6 of ANSI MH9.1.

The second provision of this paragraph, (e)(5)(ii), re-states the proposed requirement in (e)(5)(i) for the situation in which more than one fork lift is used to lift a load. (Two or more fork lifts are sometimes required to work together to lift a particularly bulky piece of cargo.) The proposed requires trucks working in unison not to lift a load exceeding the total combined lifting capacity of all the trucks lifting the load; exceeding this capacity could cause the vehicle or vehicles to tip over. The longshoring regulations contain the same provision (§ 1918.73(f)(4)), as does ANSI MH9.1 (section 5.1.6.2).

The practice of lifting employees on the forks of fork lift trucks is covered in proposed paragraph (e)(6). Provision (i) prohibits employees being lifted on the forks of the vehicle or on a pallet or load being hoisted on the forks. However, proposed paragraph (e)(6)(ii) would permit employees to be lifted on the forks only if a suitable platform is secured to the forks or lifting carriage. The platform would be required to have a railing meeting the requirements of § 1918a.112(c) and to be fitted with a toeboard if tools beng carried by employees might fall on employees below. The platform floor must also be skid resistant. Additionally, employees on the platform must have an emergency shut-off switch or other means of shutting off the power to the truck if they control elevation of the lifting carriage, and they must also be protected from moving truck parts and from overhead falling hazards. Unless the employees on the platform control the lift, the fork lift operator must remain at the controls at all times, and a final proposed provision allows only minor adjustment in truck position while employees are elevated on a platform. The proposed precautions for lifting employees on a platform attached to the forks or lifting carriage are compatible with requirements on the the same subject in § 1910.178(m)(12) of the general industry standards and in section 5.1.9 of ANSI MH9.1. However, the proposed provisions go considerably beyond the requirements of the OSHA general industry standards because the misuse if fork lifts to hoist personnel is reported to have caused accidents since these regulations were first developed (Ex. 49).

Paragraph (f) of proposed § 1918a.43 deals with bulk-cargo-moving industrial trucks such as front end loaders and is based on § 1918.73(c) of the longshoring regulations. Provisions of this paragraph require an operator's guard on crawler-type cargo-moving vehicles used in situations where the operator may be struck by an overhead projection or be hit by falling objects. Any guard

required, and its attachments, must be strong enough to withstand a load equal the pull necessary to deform the machine's draw bar.

Straddle trucks, not at present specifically addressed by any OSHA regulation, are covered in proposed paragraph (g). Operators mounting or dismounting from these trucks are sometimes exposed to contact with moving drive chains or other nip points. Provision (g)(1) proposes that straddle trucks have a permanent means of access, such as a ladder, equipped with any handholds necessary to ensure operator safety, and the proposed requirements of paragraph (g)(2) specify guarding of moving parts. Another source of straddle-truck accidents is addressed in proposed paragraph (g)(2)(ii), which requires personnel-deflecting guards around the leading edges of front and rear wheels when the truck is near employees, unless the truck has such protection built in. The final provision in this paragraph proposes that straddle truck operators have devices to ensure the greatest visibility possible in all directions, to avoid vehicle collision and pedestrian accidents. ANSI MH9.1 addresses these straddle truck hazards in a similar way (section 5.1.10).

Trailer-spotting tractors, also known as fifth wheels, hostlers, and by other names, are addressed in proposed paragraph (h); this topic is not presently covered by any specific OSHA regulation or by ANSI MH9.1. Trailor-spotting tractors are vehicles used exclusively and extensively within terminals to haul intermodal containers mounted on chassis; these vehicles are not covered by highway regulations. They are often not equipped with adequate handholds or adequate means of access to the fifth wheel, both of which are necessary to protect employees engaging and disengaging chassis. Secure access is addressed in paragraph (h)(1). The next proposed provision, (h)(2), stipulates that the rear windows of trailer-spotting tractor cabs be safety glass or regular glass protected by means such as screen, to avoid having the glass shattered and the driver injured by a flying brake hose.

Section 1918a.44 General rules applicable to vehicles. Section 1918a.44, covers general rules applicable to vehicles. It applies to material handing vehicles used in marine terminals, except for those matters, addressed in paragraphs (c) and (m), falling under ther jurisdiction of the Department of Transportation; examples of vehicles not covered by the proposed requirements are highway vehicles, intermodal containers on chassis, buses, and automobiles.

Paragraph (b) proposes that all private vehicles (except those carrying cargo) must park in designated areas that are not simultaneously being used for storage and parking. This proposed provision is similar to a requirement in section 5.2 of ANSI MH9.1. It is directed at accidents involving private vehicles and cargo-handling vehicles, such as the fatal accident in Houston caused by a private car colliding at night with a container chassis that had been parked in the terminal parking lot (Ex. 68). The SAC recommended that the provision prohibit using any terminal parking area for cargo storage (Ex.2: 96l), but OSHA believes that the language of the proposal allows more flexibility and achieves equivalent safety by limiting the prohibition to concurrent parking and storage use.

Proposed paragraph (c) addresses the hazard of uncontrolled trailer movement that would result from disconnecting a tractor from its trailer before the trailer's road wheels have been completely immobilized, for example by chocks. Front end support (such as that supplied by landing gear or a jack) mut also be supplied for the trailer, if support is necessary to prevent the trailer from tipping when a vehicle enters it to load or unload. The rear end of the trailer must also be supported (for example by a dock lock-on mechanism or a jack) if the trailer is of the less common type that could tip when a vehicle enters it from the rear. Both ANSI MH9.1 (section 5.2.3.) and the general industry standards (§ 1910.178(m)(7)) have similar provisions for front end support. However, the proposed requirement for rear end support is newly developed. One of the most common loading dock accidents occurs when a lift truck entering a trailer falls into the space between the trailer and the dock because the trailer has "crept" forward or tipped on end. The proposed requirements should prevent these and many other loading dock accidents.

Proposed paragraph (d) requires employers to ensure that operators of motor vehicles in a terminal observe the posted speed limits and any other traffic signs; the intent of this proposed requirement is identical to that of section 5.2.6 of ANSI MH9.1 and § 1910.178(n)(l) of the general industry standards.

Paragraph (e) proposes the posting of stop signs at blind intersections and at exits and entrances where visibility is limited, unless traffic signals, mirrors, or other means of eliminating the collision hazard are provided. Section 1910.178(n)(4) partially addresses the same hazard, as does section 5.2.7 of ANSI MH9.1. As noted above, vehicle accidents have become the most common type of accident in marine terminals.

The proposed rules in paragraph (f) mandating the establishment of vehicle routes, traffic rules, and parking areas within a terminal have been stated in performance language to be adaptable to the variety of conditions existing at container terminals. The specific means of achieving this level of traffic control is left to the employer's discretion, but the importance of these practices to employee safety cannot be overestimated.

Drivers of vehicles are required by proposed paragraph (g) to honk their horns to warn pedestrians of the approach of the vehicle, and vehicular traffic lanes crossed by employees or used for pedestrian passage must be equipped with signs or other means of warning drivers that pedestrians may be in the lane, according to proposed paragraph (h). The ANSI provision (section 3.22.8) on the same topic is almost identical to these provisions.

The hazards of areas such as check-in/check-out lines, which require both emplyees and vehicles to be present in the same area during the course of routine work assignments, are addressed in paragraphs (i) and (j). For example, employees checking the load on one vehicle might be hit by another container-carrying tractor moving into place in the check-out line. The first provision requires signs to be posted to warn drivers, while the next rule mandates a distance of at least 20 feet between the first two vehicles in a check-in or check-out line. The SAC recommendation (Ex.2: 63i) could be interpreted as requiring 15 feet between any two trucks, but it is only necessary to maintain this clearance between the first two vehicles because employees only work at the rear of the first vehicle, which then moves out of the terminal while the next vehicle moves up to be checked. Proposed paragraph (k) would prevent injuries caused by free-rolling vehicles left with their motors running.

Proposed paragraph (l)(1) states that a secure ramp must be provided for employees and vehicles to use to load or unload a vehicle whose end is elevated, and also requires the vehicle's wheels to be chocked or a dock lock-on device to be used to prevent accidents caused by inadvertent movement of the vehicle during loading or unloading; ANSI MH9.1 has a similar requirement (section 5.2.9).

Any ramp used is required by paragraph (l)(2) to have a safety factor

of four for any load being carried across the ramp.

The floors of highway vehicles, addressed in proposed paragraph (m), are required to be safe for employees and vehicles working in them, a requirement similar to an earlier proposed provision applying to railcar floors. Trailer and over-the-road vehicle floors are often rusted through or are uneven; metal plates can be used as supplemental flooring in many of these instances. Provisions in both the general industry standards (§ 1910.178(m)(7)) and ANSI MH9.1 (section 5.2.10) are directed to the same hazard.

Paragraph (N) proposes that cargo such as pipes, logs, or other products that could spread and roll, thus endangering employees working nearby, be secured against movement. Means of complying with this requirement might be lashing the cargo as a unit or placing it in a restraining device. The proposed provision would apply to flatbed trucks, platform containers and other conveyances without sides, and is included in accordance with a suggestion of the SAC (Ex.2: 99i). The ANSI MH9.1 (section 5.2.11) contains a similar requirement, although it applies to flatbed trucks only.

The proposed requirement that vehicles used to transport personnel in marine terminals be kept in good working order, with functional safety devices (paragraph (o)), has significant accident prevention value. Failure of the brake system, for example, could be caused by faulty maintenance procedures. The proposed provision derives from a requirement in the longshoring regulations (§ 1918.73(a)), but has been broadened beyond automobiles to include any vehicle used to transport personnel.

The final paragraph in § 1918a.44 proposes precautions to be taken during servicing of multi-piece rim wheels in the marine terminal environment. The proposed requirements in this section conform to those of the general industry standard for multi-piece rim wheels (§ 1910.177) recently published by OSHA (45 FR 6700, January 29, 1980). The principal hazard associated with the servicing of wheels of this type is the possibility of an employee being struck by a wheel component thrown from an inflated wheel during an explosive separation. These provisions apply only to servicing of tube-type vehicle tires that are mounted on multi-piece rims; paragraph (p)(2) defines a multi-piece rim. The hazards associated with servicing these rims are well documented and are discussed in the preamble to the general industry rule.

Proposed paragraph (p)(3) addresses employee training and competence in multi-piece rim servicing procedures, the mot important element in any safety program designed to reduce the hazards associated with these wheel rims. Proposed requirements (p)(3)(ii)(A) through (G) detail the skills an employee must demonstrate to satisfy the competence qualification. Compliance with these requirements should greatly reduce or eliminate multi-piece rim accidents in terminals, because the greatest number of injuries have been shown to be caused by improper mounting procedures, use of damaged parts, and tire overinflation (45 FR 6707, January 29, 1980).

Employers are required by proposed paragraph (p)(4) to ensure that the servicing procedures included in provisions (p)(4)(i) through (p)(4)(ix) are observed when multi-piece rims are being serviced. These procedures are substantively identical to those in the general industry rule.

Paragraph (p)(5) requires that a chart containing the Department of Transportation, National Highway Traffic Safety Administration's instruction on the topic and appropriate for the types of wheels being serviced in the terminal be available, at the terminal, in addition to a current rim manual with the manufacturer's instructions for the wheels being serviced.

Restraining devices to be used when multi-piece rims are being inflated are dealt with in proposed paragraph (p)(6). These devices are essential to employee safety if the rim separates explosively from the wheel. The type of restraining device is not specified in the proposed provision, and a device would meet the requirement as long as it constrains rim components effectively. The proposed requirement at (p)(6)(ii) states that these devices must be kept in proper working order so that they remain capable of performing their function. The final proposed provisions in this paragraph, (p)(7) and (p)(8), require inflation hoses to have a clip-on chucks and be sufficiently long so employees can stay clear of the danger area during inflation, and also prohibit the use of any servicing tools not specifically recommended in the rim manual required in (p)(5). Finally, only those wheel components that are interchangeable accordingly to the chart or manual specified in proposed paragraph (p)(8)(ii) may be used interchangeably.

Section 1918a.45 Cranes and derricks. Proposed § 1918a.45 deals with cranes and derricks which are in use in the marine terminal environment.

The use of cranes and derricks is increasing on the waterfronts of the United States, and crane accidents are frequent (Ex. 43). A study of mobile crane accidents in construction, conducted by the Construction Safety Association of Ontario, showed that one-fifth of all fatal construction accidents involve cranes (Ex. 28: 2, 3). Of these accidents 28% involved rigging failure, 53% resulted from inadequate or improper securing or handling of loads, 12% were caused by overloading of the crane, boom collapse or crane overturning, and 6% involved operator error. OSHA statistics do not identify crane accidents that have occurred in marine terminals, but the Bureau of Labor Standards, OSHA's predecessor, did analyze and tabulate crane accidents on the waterfront (Ex. 43). This analysis showed that crane accidents were increasing with the increase in the use of this type of equipment in cargo-handling operations. OSHA welcomes any additional data on crane injuries and accidents associated with the use of cranes in marine terminals.

Many of the provisions in this section of the proposal are based on similar requirements in the longshoring regulations and many have been developed on the basis of staff research and after consideration of the Advisory Committee's coments on this subject. The final SAC recommendation (Ex. 2: 100i) urged OSHA to evaluate coverage of cranes and derricks in the general industry standards [(§§ 1910.179, 1910.180, and 1910.181), and to consider applicable provisions from the longshoring standards as well. The crane and derrick regulations in the proposal are the result of any analysis of these standards of applicability, appropriateness, and adequacy in the marine terminal environment. As a consequence, the proposal addresses every type of crane currently used in a terminal facility; the coverage of this topic in the general industry standards only applies to a few of the types of cranes used in a marine terminal. Further, many of the extensive and stringent cerfication requirements for cranes used in the maritime industries (see 29 CFR Part 1919) have been incorporated into this proposal; many of these provisions, for example those for inspections, are more rigorous than similar provisions in the general industry standards.

Proposed paragraph (a)(1) specifically lists types of cranes covered by this section. The type of crane specified in (a)(1)(vi) has been defined to distinguish it from an ordinary straddle truck; for

the purposes of this proposal any straddle-type unit capable of straddling two or more intermodal containers is sufficiently large to be classified as a crane. Straddle trucks that only have the capability of lifting one container are not classified as cranes because they cannot lift the container high enough to endanger employees below.

Overhead bridge cranes are also addressed in this proposed section, although they are not covered in the existing longshoring regulations because there were few cranes of this type being used in maritime applications at the time these rules were promulgated. Since then, however, the use of this type of crane has increased, and there have been several serious accidents involving runaway bridge cranes in marine terminals (Ex. 34).

Paragraph (a)(2) proposes to exclude equipment adapted from industrial trucks; this type of modified equipment is also not classified as a crane in section 1918.3(r)(2)(i) of the longshoring regulations. A further example of equipment not classified as a crane or derrick is a chain hoist, which would therefore also not be included in the scope of this section.

Proposed paragraph (b)(1) addresses ratings for cranes and derricks other than bridge cranes, and is based essentially on § 1918a.74(a)(2) of Part 1918. It requires that cranes be equipped with a rating chart visible to the operator and containing all the manufacturer's capacity ratings, such as operating radii for all permissible boom lengths and jib lengths. This information is needed by the operator to ensure that lifts are within the crane's capacity. ANSI MH9.1 (section 5.3.1.) contains a similar requirement.

Proposed paragraph (b)(2) is similar to the provision at § 1918.74(a)(5) of the longshoring regulations, and requires employers to observe the appropriate rated working load limits. The next proposed provision, (b)(3), prohibits employers from increasing load ratings unless the manufacturer of the crane has approved the increase. Since a crane's rated capacity determines the weight of the load that can be hoisted, the rating can only be increased after careful analysis of the crane's design characteristics and subsequent structural alteration of the crane. If the manufacturer's services are not available, the proposal requires the employer to obtain an engineering design analysis, performed or approved by the agency certificating the equipment under Part 1918, to ensure that increasing the designated working loads will not capsize the crane or be otherwise hazardous. The paragraph's final proposed provision requires that any structural changes to equipment necessitated by increasing the ratings be performed before the equipment is returned to service. Examples of changes that would affect a crane's rating are using a different boom or wire of a different size. The requirements are similar to but more extensive than those in the certification standard (29 CFR 1919.77).

Radius indicators or boom angle indicators visible from the operator's station are required on certain cranes by the proposed rule that appears in paragraph (c); the longshoring regulations contain a similar provision, (§ 1918.74(a)(3)), as does ANSI MH9.1 (section 5.3.21). Indicating devices of this type are essential in cases where the weight of the load that can be hoisted safely varies with the radius or angle of the boom.

Proposed paragraph (d) prohibits placing sideloading stresses upon the boom, for example by using a crane to pull railcars or drag (bull) cargo. This provision recognizes that it is not always possible to avoid a small amount of sideloading but that to exert a significant degree of sideloading is to invite boom failure or other disaster. Both the longshoring regulations and ANSI MH9.1 contain similar prohibitions (§ 1918.74(a)(7) and section 5.3.20, respectively). OSHA would appreciate comments defining or specifying the amount of sideloading that presents a hazard to employees working on or near the crane under various working conditions, and information about the kinds of operations in which sideloading is likely to be a problem. Suggestions for work practices that would prevent sideloading, such as positioning the load directly beneath the hoisting mechanism, would also be appreciated.

The next proposed provision, (d)(2), forbids operation of a crane or derrick that has a functional defect that might affect the safety of the operation adversely. Examples of such defects are damage to the boom, boom cord, or lacing or to the wire rope. Rules directed at the same hazard appear at § 1918.74(a)(8) of the longshoring regulations, section 5.3 20 of ANSI MH9.1, Rule 1428 of the 1979 Pacific Coast Marine Safety Code, and the 1970 Joint New York Maritime Safety Code (paragraph 12, Part 1) (Ex. 20; 19).

The guards addressed in proposed paragraph (e)(1) would protect employees from contact with moving machine parts such as gears and chain or belt drives; equivalent requirements appear in ANSI MH9.1 (section 5.3 17.6), § 1910.181(j)(1)(i) of the general industry standards, and in a more general manner for shipboard use in § 1918.53(a)(1) of the longshoring rules. Caught-in-and-between accidents involving nip and shear points are common around any unguarded moving machine parts, and the proposed requirement is designed to prevent these injuries. The general industry requirements stipulate that the guards used must be strong enough to withstand the weight of a 200-pound load; the proposal states this requirement in more performance-oriented language.

Proposed provision (e)(2) requires crane hoisting hooks to be latched or otherwise secured so that the load cannot accidentally disengage. This requirement has evolved from a precaution originally directed at ship's burtoning gear (two fixed booms, each with a fall, attached to a common hook) and was meant to apply in situations when, for example, auxiliary gear such as an empty bridle was used with a rapidly moving ship's hook. Cranes designed for use ashore, such as mobile cranes, which have devices such as latches on their hooks, are becoming increasingly common in the marine terminal setting.

The next proposed provision, (f)(1), directs either that operating controls be marked or that a diagram indicating control functions be posted at the operator's station; this rule is designed to reduce the hazards caused by lack of familiarity with equipment. It is not uncommon in this industry for operators to be assigned to particular cranes or types of cranes with which they are not familiar, a practice that may contribute to operator error, especially in an emergency. The language of this requirement is based on that of § 1918.74(a)(2) of the longshoring rules and section 5.3.1 of ANSI MH9.1.

The controls on derrick and cranes are required by proposed paragraph (f)(1)(ii) to be self-centering so that they will return to the "off" position if the operator accidentally releases the control. This provision would become effective one year after Part 1918a becomes effective, to allow employers sufficient lead time to modify the controls or other equipment.

Crane boom stops are addressed in proposed paragraph (f)(2); no similar requirement appears in the existing longshoring regulations, because at the time these rules were promulgated there were relatively few cranes on the waterfront that needed boom stops. Since that time, however, the increased use of cranes of the types that should have these stops has led OSHA to propose this requirement; ANSI MH9.1

contains a similar provision (section 5.3.5). It would also eliminate the possibility of the crane operating at angles too great for safe lifting. The proposed requirement excludes cranes already "fitted with operable automatic limiting devices," such as some types of portal cranes. There is some debate about the effectiveness and practicality of certain types of boom stops, and OSHA welcomes any pertinent information on this topic that will aid in drafting the final rule.

Proposed paragraph (f)(2)(ii) requires the crane's purchase block to be secured so that it will not interfere with the whip line, which is used in hauling operations.

Foot pedal controls on cranes and derricks are required by proposed paragraph (f)(3) to have non-skid surfaces to prevent the operator's foot from slipping off the pedal during operation; section 5.3.7 of ANSI MH9.1 contains a similar requirement.

Means of access to cranes and derricks are addressed in paragraph (f)(4); this proposed requirement is similar to coverage of the same topic in ANSI MH9.1 (section 5.3.12). The first provision, (f)(4), requires that ladders, stairways, or other suitable and safe means of access be provided so that employees working on or operating the crane can reach their work stations safely. Footwalks are required by proposed paragraph (f)(4)(i) to be rigid and capable of supporting a load of 100 pound per square foot.

Requirements for vertical ladders more than 20 feet high are proposed in the next paragraph, ((f)(4)(ii)); these devices are required to comply with any applicable strength, safety device, or landing platform specifications for fixed ladders proposed in §1918a.119 of this document.

Proposed paragraph (f)(4)(iii) stipulates that stairways on cranes have rigid handrails meeting the requirements of proposed §1918a.112(c)(1). The next provision, (f)(4)(iv), is designed to warn employees emerging from ladders or stairways at a level immediately below the crane's rotating house from being hit by the house. This proposed requirement has been newly developed for this marine terminal proposal. It is not intended to apply to moving machine parts such as gears and chains, already addressed by paragraph (e)(1) of this section.

The requirements proposed in paragraph (f)(5) concern the crane operator's station. The first requirement is similar to a provision in ANSI MH9.1 (section 5.3.13). It requires that the operator have a clear view of the load (or signalman, if one is involved in the operation), so that the coordination and control required to conduct crane operations safely can be maintained. The ANSI requirement specifies that the operator also be able to see the boom, but this requirement has not been proposed because the operator cannot see the boom with some types of cranes, for example with some level-luffing cranes. Any glass used in the cab of a crane or derrick is required to be safety plate glass, a precaution necessary to prevent employee injury if the cab window is broken. Plate glass is specified because laminated glass may distort the viewing image. The SAC recommended a prohibition against storing objects in the cab in a manner that would interfere with the operator's view or safe operation of the equipment (EX. 2: 103i); this recommendation is embodied in the final requirement proposed in paragraph (f)(5), and is similar to the provisions at §1910.180(i)(3)(i) and §1910.181(j)(6)(i).

Counterweights or ballast are addressed in paragraph (f)(6) of the proposal, and which is based on similar provisions of section 5.3.14 of ANSI MH9.1 and §1918.74(a)(6) of the longshoring regulations. The proposed requirement states that the manufacturer's or the design specifications pertaining to type, amount, location, and securing of ballast or counterweights must be observed, to ensure safe hoisting of loads. Accidents may be caused by the use of substitute, unsecured, additional, or improperly located ballast.

Outriggers, which increase equipment stability, are required by proposed paragraph (f)(7) to be used in accordance with design or manufacturer's specifications. The requirements proposed for floats and outrigger supports are similar to provisions in the general industry standards (§1910.180(h)(3)(ix)) and the ANSI MH9.1 (section 5.3.15); these proposed provisions, which also reflect current industry practice, are designed to ensure that outriggers are on a firm foundation while loads are being hoisted.

Proposed paragraph (f)(8) stipulates that exhaust gases from cranes discharge away from employee work stations, to avoid exposing workers to carbon monoxide and other noxious fumes. A requirement directed at the same hazard appears in ANSI MH9.1 (section 5.3.9) and in the 1979 Pacific Coast Marine Safety Code (Rule 1432) (Ex. 20).

The proposed provision addressing electrical hazards associated with cranes, (f)(9), requires guarding or an equally effective method of protecting workers exposed to energized electrical parts in the course of their work; this precaution would not apply to electrical equipment that must be energized to perform inspection, "troubleshooting," or maintenance operations. No similar provision appears in the longshoring rules or in ANSI MH9.1, but a somewhat similar requirement does appear in §1910.179(g)(2)(i).

Requiring a portable fire extinguisher on or near the cab of each crane or derrick is proposed by paragraph (f)(10); this precaution would allow the crane operator, for example, to put out an electrical fire in the cab. This provision reflects routine practice, and similar rules appear in ANSI MH9.1 (section 5.3.4), the general industry standards (§ 1910.160(i)(5)), and the International Longshoremen's Association-New York Shipping Association Joint Maritime Safety Code (1870)(Ex. 19: 52). U.S. Coast Guard regulations do not mandate fire extinguishers on all cranes in marine terminals. Extinguishers using carbon tetrachloride or chlorobromomethane, which produce toxic fumes, are prohibited.

The proposed wire-rope-on-drum provision ((f)(11)) is similar to a rule in the longshoring standard (§ 1918.52(c)(2)), but has been adapted to equipment used in marine terminals; several rules in § 1910.179(h)(2) are also similar in intent to the proposed provision, as is section 4.7.5 of the International Labour Organization Code of Practice, Safety and Health in Dock Work (Ex. 33). The precautions stipulated are designed to guarantee that sufficient and properly fastened rope remains on the drum to ensure that the rope does not slip off the drum.

Proposed paragraph (f)(12) relates to boom section assembly and disassembly, and has been newly developed because mobile crane accidents caused by failure to block the boom are very common throughout industry. In the past 22 years, for example, 30 workers in Florida alone have been killed by falling boom sections that were not blocked during assembly or disassembly (Ex. 41).

Crane and derrick brakes are covered in proposed paragraph (f)(13). Each hoisting unit is required to have at least two means of braking, one of which must directly effect the drive shaft (or other reducing gear component), which controls the hoist mechanism. Each of the brakes required must be capable of holding 1½ times the crane's rated load. ANSI MH9.1 (section 5.3.6) contains similar requirements.

The proposed requirements that appear in paragraph (g) apply to rail-mounted cranes other than those of the locomotive type. Paragraph (g)(1)

identifies specific types of cranes falling within the scope of this paragraph; overhead and gantry cranes, both of which are types of bridge cranes, are covered, as are portal cranes, which are revolving cranes with elevatable booms.

Paragraph (g)(2) requires the rated load to be marked clearly in the cab and on each side of any bridge crane; ratings must be legible from ground or floor level to be visible to all employees involved in the hoisting operation.

Wind-indicating devices, which are the subject of some controversy in the industry, are addressed in proposed paragraph (g)(3). The first provision, (g)(3)(i), requires all rail-mounted cranes (except locomotive cranes) to be individually fitted with an operable wind-indicating device. The anemometer or similar device must be set to give warning and shutdown indications appropriate to the particular crane to which it is attached. There have been many serious accidents involving cranes running away in high winds, including two fatalities (Ex. 34).

Although there is some difference of opinion in the industry over the proper location of these devices, there is no argument about the necessity for wind indicators on rail-mounted cranes. There have been many wind-related accidents involving cranes of these types, particularly the large, specialized container-handling cranes, which have more sail area than other cranes. Portal cranes have been blown the length of their tracks and fallen into the water, causing catastrophic losses. OSHA has decided, on the basis of staff research, accident records, and other evidence, that all rail-mounted cranes should be individually fitted with anemometers. A wind-indicating device mounted on a building at the work site would not be an acceptable alternative, because a device so located might not accurately reflect wind conditions prevailing at the crane's location. Wind conditions may vary widely from one site to another and be affected by altitude, buildings and other factors. The ANSI MH9.1 provision (5.3.17) directed at the same hazard simply states "Rail-mounted, portal, gantry, semi-gantry, and all other bridge-type cranes located outside of structures shall be equipped with anemometers or wind indicators in good working condition." A requirement for a wind-indicating device also appears at § 1910.179(b)(4) of the general industry standards, but its application is restricted to "outdoor storage bridges" only, and would not cover container cranes and other types of cranes found in marine terminals.

Proposed paragraph (g)(3)(ii) sets performance requirements for wind-indicating devices. These devices are required to provide both a continuous readout of wind speed and a visible or audible alert when wind speed reaches a predetermined warning or partial shutdown velocity (the warning speed), which may not exceed the crane manufacturer's recommendations for warning or partial shutdown. Another warning is required when the wind velocity reaches that speed established by the manufacturer as requiring crane shutdown and securing (the shutdown speed). Again, this speed may not exceed the manufacturer's recommended wind-velocity limit for operation of the particular crane. Both warning and shutdown wind velocities vary, depending on the crane in question. For example, some cranes must shut down when the wind reaches 35 mph, while others can operate safely at 50 mph. The proposed requirements are essential if cranes are to be adequately controlled in working conditions involving high winds.

The readout and alarm required by paragraph (g)(3)(iii) must be located in the cab to be seen and heard by the crane operator.

Proposed paragraph (g)(3)(iv) concerns posting of instructions to be followed when wind indicators show warning or shutdown velocities. Instructions must be posted in the cabs of rail-mounted cranes, and employees must comply with these instructions. Any necessary directions for coordinating the activity of more than one crane in high-wind situations must be included in the posted instructions; an example of such a situation would be two cranes working on the same track.

Means of preventing rail-mounted crane movement must be used when the wind has reached the warning velocity, according to the proposed requirement in paragraph (g)(4)(i). The preliminary steps to be taken include stopping the crane from gantrying, removing any parts of the crane that are overhanging the vessel being worked and stationing the crane so that it can be secured quickly if the wind speed continues to increase. Are there situations (for example, when the wind prevents hoisting of the boom or when the crane's boom is not articulated) when the crane cannot be moved clear of the vessel? What additional precautions should be taken in such situations?

The proposed requirement in paragraph (g)(4)(ii) specifies that each crane be secured; using all available means, when the wind reaches the predetermined shutdown speed for the particular crane in question. The most common method of securing a rail-mounted crane is the use of uniformly spaced securing points positioned alongside the crane's tracks, but rail clamps, typhoon chains, and wires and cables are also sometimes used. All available means should be used to secure a crane, because even when all means are used, it is still sometimes impossible to hold a crane in high winds. The ANSI MH9.1 standard also contains provisions directed at runaway cranes (section 5.3.17).

In paragraph (g)(5), OSHA proposes that employers monitor local weather conditions so that they will have advance warning of high wind conditions. Subscribing to local weather reporting services or listening to NOAA weather broadcasts should greatly increase storm warning times and thus reduce the number of wind-related marine terminal injuries and fatalities.

Stops and bumpers are addressed in proposed paragraph (g)(6); the provisions proposed in the paragraph are similar to but less detailed than those in sections 5.3.17.1 and 5.3.17.2 of ANSI MH9.1 or in §§ 1910.179(e)(2) and (e)(3) of the general industry standards. As proposed, either stops or bumpers are required ((g)(6)(i)) on all rail-mounted cranes; stops are used on the truck's tracks and are designed to limit the movement of the bridge or trolley, and bumpers are used on the trolley's tracks to reduce the force of impact, thus decreasing the likelihood of employee injury and equipment damage. As proposed, any stop designed to operate by engaging the tread of a wheel must be at least equal in height to the radius of the wheel engaged, to ensure effectiveness of the device.

Proposed paragraph (g)(6)(ii) requires bumpers or other devices on the adjacent ends of all cranes or trolleys used on the same runway or bridge with other cranes or trolleys. Examples of means other than bumpers that would prevent crane collision are automatic electronic controls or sensing devices. OSHA's general industry crane standard (§ 1910.179(e)(2)(i)) has a similar requirement (Ex. 42).

Although crane and trolley stops and bumpers are effective in reducing the hazards associate with runaway cranes or with two cranes colliding, no stop or bumper can eliminate these hazards entirely. For example, the most effective bumper available is designed to eliminate impact damage only for a crane traveling without load at 20% of rated load speed (Ex. 35: 26), conditions which would clearly be exceeded in many emergency situations. Similarly, no stop device or system of stops will hold a rail-mounted crane that is already in motion or has not been secured before high winds occur. The

limitations of stops and bumpers underscore the importance of the crane wind-indicating devices required in this section of the proposal.

Paragraph (g)(7) proposes that when employees may be in the vicinity of the tracks, crane trucks must be equipped with means, such as sweeps, to deflect employees from the track when the crane approaches. A similar requirement appears in the general industry regulations, § 1910.179(e)(4), and in ANSI MH9.1 (section 5.3.17.3). This provision, in conjunction with the proposed requirement at (g)(9) should ensure that employees on the track will have adequate warning of and protection from the movement of a traveling crane.

To ensure safe employee passage between a crane and another structure, proposed paragraph (g)(8) requires a minimum clearance of 3 feet for the area to be used by employees for passage. No similar requirement appears in the general industry standards or the ANSI MH9.1 standards, but the often limited working spaces typical of marine terminals warrant is inclusion in this proposal

Each rail-mounted crane is required by proposed paragraph (g)(9) to have a warning device to alert employees in the crane's path that the crane is traveling toward them. This proposed requirement may be met by using either an audible or a visible warning device, such as a gong or light. The provision should not be interpreted to mean that a warning should be sounded continuously when a crane is traveling, because such a warning would soon cease to be effective. For maximum effect, the warning device is to be used only when employees are in danger of being hit by the crane. The equivalent general industry requirement, § 1910.179(i), applies only to overhead and gantry cranes and does not cover portal cranes, which are very common on the waterfront.

The proposed rule in paragraph (g)(10) deals with communication between the cab and the base of rail-mounted cranes, and is intended to ensure that effective communication is available between the operator, who is often far away from the ground, and employees at the base of the crane. Any effective means of achieving this communication, other than hand signals, may be used. Neither the general industry standards nor ANSI MH9.1 has a similar requirement.

The proposed requirement in paragraph (h) is directed to the stability of locomotive cranes; it stipulates that outriggers be used during hoisting operations unless the force of the load being hoisted is distributed so that it is not carried by the crane truck's springs, which might cause the crane to collapse. An equivalent provision appears at § 1910.180(h)(3)(xi) of the general industry standards.

The requirements proposed in paragraph (i) relate to general crane operations; most of these provisions are similar to coverage of the same topics in the longshoring regulations, the ANSI MH9.1, and the general industry standards.

The first proposed provision, (i)(1), is directed to the hazardous but sometimes necessary practice of using two cranes working in unison to hoist a large and heavy load. To be preformed safely, this type of operation requires close coordination and supervision, and the requirement that one person be designated to direct the operation and instruct all involved personnel is designed to ensure the necessary level of supervisory control and skill. This proposed requirement parallels the rule in § 1910.180(h)(3)(xii) of the general industry standards.

The proposed rule ((i)(2)) requiring guarding of areas accessible to employees within the swing radius of the body of a revolving crane is based on provisions in the longshoring regulations (§§ 1918.55 and 1918.74(c)). These provisions were originally promulgated in response to fatal accidents in which employees were caught between a part of the crane and another structure or between parts of the crane itself (Ex. 43). A SAC recommendation (Rec Vol 103i) supported inclusion of this provision; the OSHA proposed rule has gone beyond the committee's recommendation to include the language "or between parts of the crane" and to specify that the means of guarding be physical, which would prohibit the use of signs only. Examples of means of guarding that might be used are sawhorses and boards, roping off, or extending wires from the crane chassis. A similar provision appears in section 5.3.16 of ANSI MH9.1.

The hazards addressed in proposed paragraph (i)(3) are also covered by provisions in ANSI MH9.1 (section 5.3.11) and the general industry standards (§ 1910.180(h)(3)(xiii)). Since both the boom and the hook of a crane may swing during travel from one job site to another, the proposal requires that they be properly secured during transit, except in those situations specifically noted in the proposed requirement. When the boom is secured to a dolly, it cannot slew, and when the operator is turning the house, he has control of the crane's movement.

The appropriate precautions to be taken when a crane is left unattended between shifts are specified in proposed paragraph (i)(4). No similar requirements appear in the general industry standards (except for a requirement that operators remain at the controls while loads are suspended (§ 1910.180(h)(4)(i)) ANSI MH9.1 or the existing longshoring rules. However, the hazards of unattended cranes, such as crane runaway in high winds or falling of a load left suspended, are addressed at least minimally in the following industry developed and consensus standards: Mobile Hydraulic Crane Standards, Standard No. 2, Power Crane and Shovel Association (paragraph 8.3.3.8); Mobile Power Crane and Excavator standards, Standard No.1, Power Crane and Shovel Association (Paragraph 8.3.8.8); and the ANSI B30.5–1968, Crawler, Locomotive and Truck Cranes (section 5.3.1.3 f) (Ex. 91). As proposed, the standard provides that unattended cranes may not be left with suspended loads (except as noted) and must have clutches disengaged, power sources turned off, wheels blocked or otherwise secured against travel, and boom lowered and secured. These precautions are designed to designed employee injuries caused by uncontrolled crane travel, falling loads, and swinging booms. OSHA particularly welcomes comments on appropriate precautions to be taken when a crane is left unattended; for example, are there situations in which it is not feasible to take the proposed precautions? If these precautions are not taken, what alternative measures would be appropriate?

Although the next paragraph, (i)(5), addresses a hazard, crane operation near power lines, that is rarely encountered in the marine terminal setting, the seriousness of the hazard requires the proposed regulatory coverage. The general industry and construction standards contain nearly identical provisions (§ 1910.180(j)(1) and § 1926.550(a)(15)). The proposed requirements specify that, unless electric power lines are deenergized and grounded or an insulating barrier independent of the crane or derrick has been erected to prevent contact, cranes may only be operated near electric lines if they maintain the clearances specified in provisions (i)(5)(i) (A), (B), and (C). These minimum overhead clearances are essential if electrocutions caused by parts of the crane hitting power lines, which have been common throughout construction and general industry (Ex. 28:2), are to be prevented. The proposed clearances are identical to those in the general industry standard.

Proposed paragraphs (i)(5) (ii) and (iii) address boom guards and energized lines, respectively, and both provisions are nearly identical to rules in the general industry standards (§ 1910.181(j)(5) (ii) and (iv)). Although proposed paragraph (i)(5)(ii) permits the use of boom guards or proximity warning devices, these devices do not offer adequate employee protection against electric shock and may therefore not be used in lieu of maintaining the overhead clearances specified above. Proposed paragraph (i)(5)(iii), which also reflects industry practice, requires the employer to assume that electric lines are energized until he has contacted the agency responsible for the line (which is usually a utility company) and until that agency has indicated that the line has been deenergized, as required by proposed paragraph (i)(5)(iii). A similar requirement appears in the general industry regulations (§ 1910.180(j)(2)).

The requirements grouped under proposed paragraph (j) concern precautions to protect employees being hoisted by a crane, for example when employees are being placed on the top of intermodal containers. The same topic is covered in OSHA's ship repairing and shipbuilding regulations (§ 1915.41(a)(9) and § 1916.41(a)(9)).

The first two proposed provisions, (j)(1) (i) and (ii), stipulate that employees may only be hoisted by a crane or derrick load hoisting apparatus if a protected platform or boatswain's chair is used. Proposed paragraphs (j)(1)(ii) (A)–(F) list the requirements any platform used to hoist employees must meet; these include proposed specifications for platform and load weights, safety factors, anchoring, access doors, and overhead protection.

The proposed provision dealing with wedge and socket attachments, (j)(1)(ii)(F), prohibits the use of these attachments to hoist employees unless the line is doubled back and secured by a clamp, which will prevent slippage. The proposed requirements at (j) (2) and (3) are concerned with hoist mechanism control and immobilization of variable-radius booms during hoisting of personnel; these precautions ensure that the operator has positive control and that the boom does not rotate or extend accidentally. Without power-down capability, the action of the brake would be the only protection against the load slipping on the way down.

Proposed paragraphs (j) (4) and (5) both deal with devices used to hoist employees by crane or derrick. The first proposed requirement stipulates that unless a net approximately 5 feet in height surrounds the sides of the lifting platform, all employees being hoisted must be protected against falling by a safety belt or by a harness and lifeline, attached either to the hoist mechanism of the crane or to the lifting device itself. In addition, it is proposed that platforms or other employee hoisting devices be inspected before each day's use and be removed from service if defective.

The provisions proposed in (j) (6), (7), and (8), which also reflect current industry practice, are designed to ensure employee safety during personnel hoisting operations. The first of these proposed requirements would ensure effective communication, by means such as visual or voice contact or by means of hand signals, between the employees being hoisted and the crane operator (or signalman, if one is involved in the operation). The next provision requires crane operators to remain at the controls continuously during employee hoisting operations (a similar requirement applicable to any load being hoisted appears at § 1910.180(h)(4)(i) of the general industry standards).

The proposed rule at paragraph (j)(8) prohibits crane travel during the interval when employees are being hoisted, to reduce the amount of crane motion during this operation to a minimum; in situations in which crane travel is unavoidable, for example, when transferring employees into position, the crane may make minor movements while employees are elevated if all other proposed personnel hoisting requirements have been met.

The final proposed provision in paragraph (j) is addressed to the use of intermodal container spreaders to lift employees on and off containers. A personnel platform that could be used for this purpose was first devised by a U.S. steamship operator and stevedoring firm in the 1960's, and since then the use of this device has spread widely. The requirements proposed in (j)(9) offer protection against falls while personnel are being hoisted in this manner, and the final statement in this paragraph proposes that the provisions of paragraphs (j)(1)(i), (j)(1)(ii)(A), (j)(1)(ii)(B), (j)(1)(ii)(E), (j)(4) and (j)(8) not apply when intermodal container spreaders, rather than hoisting platforms, are used to hoist employees. These four proposed requirements are unnecessary when spreaders are used, because spreaders are stable, strong and secure, and are only used in situations where there are no overhead hazards; i.e., no suspended drafts.

Routine crane and derrick inspections are covered in proposed paragraphs (k)(1) through (k)(4); provisions that are similar in intent to proposed paragraphs (k)(3) and (k)(1) appear in the existing longshoring regulations (§§ 1918.74(a)(8) and 1918.61(a), respectively), and extensive crane and derrick inspection requirements are found in the general industry standards (§ 1910.179(j); § 1910.180(d); § 1910.181(d)). The proposal would allow only designated persons to perform inspections or repairs on cranes or derricks, and any defects in functional operating components found during inspection would be required to be reported to the employer. In turn, the employer must inform the operator of any defects, which would then have to be repaired before further use of the equipment.

The final provision in this paragraph, (k)(4), proposes that a record of required monthly inspections be maintained for at least six months, so that maintenance personnel will have access to the equipment's service and repair history. OSHA would appreciate receiving comments and information about the need for the monthly inspections called for in proposed paragraph (k)(2), particularly in view of the stringent existing crane certification requirements for annual and daily inspections (§ 1919.15(c)).

Section 1918a.46 Crane load devices. Proposed § 1918a.46 covers crane load devices and is an updating of § 1918.74(a)(9) of the existing longshoring rules. Regulations governing load-indicating devices were first incorporated in the maritime rules in 1971, because cranes used in the marine environment must often operate in more critical situations and under harsher conditions than generally prevail elsewhere. For example, in stevedoring, cargo is being hoisted into and out of vessel holds and the hoisting equipment is therefore subject to more shock loading, impact damage, and sideloading stress than equipment used in open spaces.

Since promulagation of the maritime rules in 1960, however, some load devices have been reported to be less sturdy and less reliable than originally thought; in addition, the serviceability and accuracy of these devices have been shown to be highly dependent on the quality of the maintenance performed on the device itself and on the crane to which it is attached. For example, a load-indicating device that relies on factors affected by sheave friction (such as tension on the wire) will not operate properly if the sheaves present more than the proper amount of friction. Lack of success in using these devices has led many people in the marine industry to recommend that load-indicating devices not be required in the proposal or in any future marine

terminal rule. However, OSHA believes that, given proper maintenance procedures, these devices provide significant protection for employees working with cranes. There are no available statistics attesting directly to the effectiveness of load-indicating devices, but other countries, such as Great Britain and Germany, and organizations such as the International Labour Organization (Code of Practice, Safety and Health in Dock Work, 1977) (Ex. 32: 63, 64) have required or recommended these devices for several years. It has been suggested (Ex. 28: 4, 5) that the required use of such devices is responsible for the smaller percentage of crane capsizing accidents in Great Britain (25% of all crane accidents) compared to the United States and Canada (35%). Neither the OSHA construction standards nor the general industry standards require these devices. OSHA would appreciate any information or statistics, including accident reports, that would be helpful in addressing this topic in the final standard for marine terminals.

The first proposed rule ((a)) of the crane load device section requires each crane to have means of determining or limiting the loads hoisted; the exceptioms to this proposed requirement are stated in paragraphs (a)(1) through (a)(4). Cranes using a clamshell or bucket to handle bulk cargo or those using a magnet or similar hoisting device (other than a hook, spreader or sling) are exempted from the load device requirement because the dimensions or physical characteristics of a bucket or magnet limit the size of the load so drastically that it is impossible to overload the crane. The proposed provision goes beyond the exemption in § 1918.74(a)(9)(viii)(*b*), which is allowed only "while handling bulk commodities or cargoes by means of clamshell bucket or magnet," because there are other commodities and other hoisting configurations which similiarly pose no threat of overload. Similarly, cranes used exclusively to handle hose-handled products, such as bulk liquids, are excluded because no loaded hose weighs enough to present on overload hazard. Determining accurately, the weight of a load to be hoisted is often essential if overloading accidents are to be prevented. An example of a load whose weight is otherwise impossible to determine is a lift consisting of water-soaked logs, a common type of cargo in West Coast ports. In addition, the weights painted on steel ingots and loaded intermodal containers are often incorrect.

Proposed paragraph (a)(3) would permit employers to dispense with a load device if they can demonstrate that a crane will not be used to handle loads beyond the crane's load ratings at any working radius; this provision represents a rewording of the requirement in § 1918.74(a)(9)(viii)(*d*) of the maritime regulations. As proposed, an employer could demonstrate that a particular crane never exceeds its rated loads by making the pertinent cargo manifest, stow plan, or bill of lading available. This proposed requirement would ensure that the crane's load rating is not exceeded.

The final exemption, stated at paragraph (a)(4), is substantively identical to the provision appearing at § 1918.74(a)(9)(viiii)(*a*) of the longshoring regulations, and proposes that trolley-equipped container-handling cranes need not have had load devices, if they are in compliance with the rules proposed in § 1918a.71(b), (c), (d), and (e) of this Part for determining container and load weight, or if lifts are made with a lifting beam supplied by the manufacturer. Proposed paragraph (a)(4) should not be interpreted as permitting a crane fitted with a weighing device to be used to weigh a load, a hazardous practice which may involve lifting loads of unknown and perhaps excessive weight. Some employers have installed weighing devices that provide an actual readout in the cab of the weight of every load, but OSHA does not propose that such a readout be required because the load should be weighed before it is hoisted. Compliance with this proposed provision is required in addition to the requirements proposed in § 1918a.71(a) through (e), which require a weighing scale to be used.

Proposed paragraph (b) specifies the requirements to be met by whatever load-indicating or load-limiting device is chosen by the employer to comply with proposed paragraph (a); the criteria are essentially the same as those in the maritime regulations (§ 1918.74(a)(9)(ii)). Proposed paragraph (b)(1) is appropriate in the case of cranes with elevatable variable radius booms, and permits employers to use any means of indicating load weight directly, except a hook scale or a dynamometer, which are not sufficiently accurate for this use; this option would require operators to use weight indications together with crane ratings, where this is appropriate, to ensure that the hoisting operation is within a safe range. The proposed alternative outlined in paragraph (b)(2) would permit the use of a load-moment device, computer, or other equipment or system that automatically indicates that the rated load is being approached or has been reached or exceeded, and the last proposed provision, (b)(3), would allow employers to equip their cranes with a limit switch or other device that shuts off power to prevent overloading.

Performance requirements for crane overload or load-indicating devices are addressed in proposed paragraph (c); these provisions loosely parallel those in § 1918.74(a)(9). The first proposed provision requires any device used to have a range compatible with the range of the crane. The accuracy ranges required for load-indicating devices are specified in proposed paragraph (c)(2), and are based on the standards used by manufacturers of these devices and set forth in Society of Automotive Engineers standard J376 (Ex. 39: 1, 2). Since the state of the art for these devices is such that the specified accuracy cannot be attained at the extremes of the crane's ratings, the proposal requires a means of warning the crane operator when the load falls within these extreme and inaccurate ranges.

Limit switches or equivalent devices must meet the accuracy requirements proposed in paragraph (c)(3), and the rule in proposed paragraph (c)(4) requires any load-indicating load-limiting device to meet the performance requirements at temperatures ranging from −22° F to +122° F, which would include those commonly encountered in the marine terminal environment.

Proposed paragraph (d) requires load-indicating devices to be checked before each day's use unless the device manufacturer has certified that the device will meet the performance requirements of paragraph (c) for a specified and unexpired period of time, and there is a record of this certification at the terminal.

In cases where the load-indicating device itself forms part of the weight-bearing structure, as is the case when a load cell is used, proposed paragraph (e) states that the device's strength factor may not be the limiting strength factor of the crane to which the device is fitted. A similar requirement appears at § 1918.74(a)(9)(iv) of the longshoring standards. Any load-indicating readout or device labeling is required by proposed paragraph (f) to be compatible with or convertible to the measures used on the crane rating chart, which is essential if indications and chart are to be used together safely and effectively. The provisions in this paragraph are similar in intent to those in § 1918.74(a)(9)(v) of the longshoring regulations.

In paragraph (g), OSHA proposes that manufacturer's installation, maintenance, and use instructions be

followed for cranes and load-indicating devices; the effectiveness of these devices is heavily dependent on proper maintenance of both crane and device.

Proposed paragraph (h) is directed to devices that use radius or boom angle as a factor in determining load capacity; the provisions specify the accuracy ranges required for these devices. As proposed, a chart would be required if conversion from angular to linear measure (or vice versa) is necessary. Similar requirements may be found in the maritime rules (§ 1918.74(a)(9)(vii)).

In paragraph (i), OSHA proposes performance tests for load devices and requires installations to be tested when initially fitted, at intervals recommended by the manufacturer, when an inaccuracy is noticed, and when surveys are required by certification procedures. The performance test must be in accordance with manufacturer's instructions (if these are available), and must include testing of all functions. Performance test for load-indicating devices are not addressed in the longshoring rules or in the general industry standards, but they are recommended in SAE J376 standard (Ex. 39: 3, 4).

Test records are covered in paragraph (j), which proposes that records of the most recently conducted performance test be maintained for each load device. Such a record would be required to note the accuracy of the device and any recalibration that was required to restore accuracy.

Section 1918a.47 Winches. Both fixed and portable winches are covered in proposed § 1918.47; the provisions in this section closely parallel the recommendations of the ad hoc Advisory Committee (Rec Vol 117i). The first proposed provision requires moving winch parts to be guarded to protect employees from being drawn into the winch; bars or another type of guard over the drum would meet this requirement. A similar provision appears at § 1918.53(a)(1) of the longshoring industry standards. All winches are required by proposed paragraph (b) to have stop controls that can be easily identified and reached by the operator in an emergency. Both the ANSI marine terminal standard (section 5.4) and the longshoring rules (§ 1918.70(b)) address the proper securing of portable winches to prevent shifting during use. However, proposed paragraph (c) permits greater flexibility than these rules by allowing a winch to be moved during use if necessary and by recognizing that it may not be possible to immobilize a portable winch entirely. For example, some portable winches, such as specialized winches on tracks, are designed to move within prescribed limits during use. Proposed provision (d) requires limit stop switches on portable winches, a safety feature that might have prevented a serious winch accident that occurred in a bulk-handling terminal (Ex. 21). The final provision, (e) proposes that the wire-rope-on-drum requirements from the crane and derrick section of the proposal (§ 1918a.45(f)(11)) also apply to winches, to ensure that a safe length of rope remains on the drum.

Section 1918a.48 Conveyors. The proposed requirements in § 1918a.48 cover conveyors used in marine terminals. Although OSHA has no conveyor accident data specifically related to marine terminal conveyor injuries and fatalities, conveyors are known to account for nearly 1% of all lost-workday injuries, on a national basis (Ex. 74: 1-3). The great majority of these injuries are caught-in-and-between injuries, a large number of which result in amputations (Ex. 46: 47). This degree of risk requires that every effort be made to provide protection to employees who work with and around conveyors; OSHA would be grateful for information related to the kinds of conveyors found in marine terminals, the types of material conveyed, the number of employees exposed, and any relevant accident and injury data.

The provisions in paragraph (a) propose that all danger zones associated with conveyors be guarded to ensure employee protection; there is at present no general coverage of conveyors in OSHA's general industry standards. Moving parts, such as nip and shear points and transfer mechanisms, would be required to be guarded, as would screw conveyors, areas beneath counterweights, walkways beneath overhead conveyors, and any other danger zone. The second provision, (a)(2), proposes that employers provide an elevated walkway with a guardrail for the use of employees who must cross over a moving conveyor. It also stipulates that spill guards, casings or other methods be used when necessary to protect employees walking under operating overhead conveyors.

Rollers or wheels on gravity conveyors are required by proposed paragraph (b) to be secured in position to keep them from jumping or falling out of the frame; this requirement is similar to a provision in the ANSI MH9.1 standard (section 5.5.2) and the longshoring rules (§ 1918.66(d)), and uses language recommended by the SAC (Rec Vol 117i).

Gravity roller conveyor sections are required by proposed paragraph (c) to be firmly placed and secured, to prevent material on the conveying medium itself from falling off and injuring employees. Both the ANSI MH9.1 standard (section 5.5.2) and the maritime regulations (§ 1918.66(c)) address the same hazard.

A means of braking or slowing objects arriving at the delivery end of a conveyor must be provided, according to proposed paragraph (d)(1), if employees at the transfer points might be injured by material piling up and spilling off the conveyor. An example of a method that might be used is applying an abrasive surface at the end of the conveyor. Section 1918.66(f) of the longshoring regulations and section 5.5.3 of the ANSI marine terminal document contain similar provisions. A further proposed requirement addressing conveyor brakes stipulates that electrically released brakes must engage automatically if the power supply to the conveyor fails or if the control returns to the stop position, to prevent the load from rolling or falling backward on the conveying medium; the parallel ANSI provision appears at section 5.5.3 of the marine terminal standard.

Portable conveyor stability is addressed in paragraph (e) and in the ANSI MH9.1 standard (section 5.5.3); portable conveyors that can be positioned and used at different elevations must also be held at the operating level by a locking device or other means such as wedging a block in the positioning mechanism. Portable conveyors that have toppled over have caused several accidents and injuries (Ex. 73: 3-49, 3-50, 3-51).

Proposed paragraph (f) deals with emergency stop devices at work stations of employees working along a conveyor or at fixed loading or discharge points; the equivalent ANSI MH9.1 provision (section 5.5.4) prohibits operators from leaving the conveyor's controls while the conveyor is in motion. OSHA has not included this latter requirement because the Agency believes that the remotely controlled and extensive conveyors for which such a rule would be appropriate are not generally found in marine terminals. OSHA invites comments on the use of these conveyors in marine terminals.

A requirement mandating a warning (which may be either visible or audible) unless employees are clear of the conveyor before start-up is proposed in paragraph (g), and reflects a recommendation of the Advisory Committee (Ex. 2:116i). A similar provision was included in the ANSI conveyor standard (B20.1–1978). This provision is intended to prevent accidents caused by the unexpected activation of the conveyor; for example, employees standing next to a vertical

conveyor might be struck by a bucket if the conveyor started without warning.

A general housekeeping requirement is proposed in paragraph (h), which states that areas around conveyor loading and discharge points must be kept free of obstructions while employees are working. Section 5.5.7 of ANSI MH9.1 deals with the same hazards, which include falling over boxes, overexertion caused by lifting objects improperly in a cramped space, and being struck by falling objects.

Conveyor maintenance, sevicing and repair are covered by the requirements in paragraph (i), which are essentially the same as those at section 5.5.8 of ANSI MH9.1. OSHA has recently studied reports of several conveyor accidents in general industry in great detail, and has determined that injuries and fatalities related to the failure to deactivate and lock out the power supply to the conveyor while repairs or maintenance is being performed or while employees are attempting to unjam a stopped conveyor may account for as many as 25% of all conveyor-related injuries (Ex. 75: 216). Although the data on which this estimate is based cannot be separated into marine terminal vs. general industry cases, OSHA believes that they are valid for conveyors used in terminals as well.

The first provision requires deactivation, followed by locking out, of the power source to any conveyor being repaired or serviced except that such a conveyor may be operated briefly for testing or "troubleshooting" purposes, for example to jog the belt. The second proposed rule in this paragraph, (i)(2), stipulates that the conveyor's starting device be locked before any employee attempts to remove any object overloading or jamming the conveyor. This provision would prevent employees attempting to unblock the conveyor from being injured by the accidental reactivation of the conveying medium. Unjamming injuries may occur in several ways: the probe used to unjam the conveyor may itself become a lethal projectile when the conveyor suddenly starts up, or the unexpected reactivation may catch the employee off guard, causing him to be pulled into the conveyor.

The miscellaneous conveyor safety practices proposed in paragraph (j) carry forward requirements found in ANSI MH9.1 (section 5.5.9) and in the ANSI conveyor standard (B20.1–1976). These provisions state that only persons designated by the employer may operate, repair, or maintain conveyors. They also prohibit riding, walking, or climbing on conveyors or their components, and require safety devices and overload switches to be in place and functional when the conveyor is used. The prohibition against employees riding the conveying medium has been included on the recommendation of the SAC (Ex. 2:120 l), and would deal with a source of conveyor accidents (Ex. 73: 250).

Section 1918a.49 Spouts, chutes, hoppers, bins, and associated equipment. Proposed § 1918a.49 deals with bulk-loading spouts, chutes, hoppers, bins and associated gear and equipment. Chutes and spouts are used to carry such material as grain, coal, scrap steel, and sugar; there have been several reported fatalities (Ex. 48) caused by the failure of chutes and spout rigging, which is often located so high above the ground that close inspection is difficult. OSHA proposes to require certification of this gear for marine terminals under Part 1919 because of the number of accidents and injuries associated with it. The inspection requirement in proposed paragraph (a) is essential because the equipment used to handle bulk commodities frequently escapes the kind of scrutiny directed to other cargo-handling gear, with disastrous results if the rigging or gear fails. The cross-reference calls attention to the certification requirement for this type of equipment.

The next proposed requirement, paragraph (b), states that instantaneous and direct communication must be available between the shipboard work station at the discharge end of a loading spout or chute and the position in the terminal from which the flow of cargo is controlled. The Advisory Committee recommended inclusion of this provision (Ex. 2:120 i) because of the many instances when it has been necessary to stop the flow immediately to prevent employees from being hit by the conveyed material, for example when the flow has been obstructed temporarily, causing cargo to overflow the chute. The Agency intends to propose a similar requirement in the longshoring regulations in the future.

Means of preventing employees from falling into chutes and hoppers are addressed in proposed paragraph (c). Openings to chutes and hoppers are required to be guarded, for example by hinged covers or other devices, such as a railing, to prevent fall injuries. Paragraph (d) requires employers to provide a safe walkway and means of reaching the hopper for employees working on a hopper. Guardrails are required if the conditions stipulated in § 1918a.112, the proposed section on guarding of edges, are present. The ANSI MH9.1 standard protects against the same hazard (section 5.7).

Chutes used to carry materials that could fall on employees are required by proposed paragraph (e) to have sideboards to contain the material carried, a provision based on § 1918.68(b) of the longshoring regulations and similar to a requirement in section 5.5.1 of ANSI MH9.1. The proposed provisions in paragraphs (f) and (g) are intended to prevent fast-moving bulk cargo from overflowing the chute and injuring employees, and to ensure that chutes are adequately anchored so that they will not themselves be a hazard to employees working near them. Similar coverage is provided in the longshoring rules (§ 1918.68) and in ANSI MH9.1 (sections 5.5.1, 5.5.2, and 5.5.3).

In paragraphs (h), (i), and (j), OSHA proposes requirements to protect employees working around bulk commodities, such as sugar, sand, cement, grain, and coal, that are stored in bins. The principal hazards of working around bulk cargo in bins are asphyxiation and exposure to hazardous atmospheres, which occur, for example, when an employee is buried in moving grain or is overcome by pesticide fumes while performing such tasks as reinstating the flow of the cargo or cleaning the bin.

Proposed paragraph (h)(1) requires the person controlling cargo flow into the bin to be made aware that another employee is entering an empty bin. Paragraph (h)(2) states that the power supply to the conveyor or spout carrying the cargo must be locked out after the power has been shut off. The provisions in proposed paragraphs (i) provide coverage for the hazards of working in a bin filled with a bulk commodity. In addition to requirements similar to those in paragraphs (h)(1) and (h)(2), employees entering a bin containing a commodity must be additionally protected both by a lifeline and harness and by an appropriately equipped standby stationed outside the bin. The severity of the hazards associated with fumigants, pesticides, and shifting bulk material makes these precautions essential to employee safety.

Guarding of bin top openings is required by the proposed provision in paragraph (j); railings, hinged covers, and gratings are examples of means of complying with this provision.

Paragraph (k) provides that chutes and hoppers be repaired only by designated persons.

The requirements proposed in paragraph (l) cover power shovels, which are often used with hoppers to discharge or distribute commodities

such as grain, coal, or sugar. The inspection called for in the first provision is designed to reduce the number of injuries caused by defective rigging and shovel components. Operational defects that might interfere with safe operation of the shovel or associated gear are reasons for withdrawing the equipment from service according to proposed paragraph (1)(2). The final provision pertaining to power shovels requires the power to be shut off and locked out, the belt to be stopped and the hopper to be closed before employees attempt to adjust the position or parts of the shovel or rigging.

Section 1918a.50 Certification of marine terminal material handling devices. Certification of material handling devices used in marine terminals is covered in § 1918a.50; this topic is presently regulated in §§ 1918.13 and 1918.14 of the longshoring standards. Certification of material handling equipment is based on the International Labour Organization (ILO) Convention no. 32 and the ILO's Associated Code of Practice, Safety and Health in Dock Work (1977), which requires signatory nations to have minimum certification requirements for cranes, ship's gear, loose gear and other equipment. Certification requirements call for inspection and testing of cranes and ship's gear used ashore as well as aboard, and one-time testing of wire rope (by sample lot) and loose gear such as shackles, swivels, and hooks. Although the U.S. is not a signatory nation, it adheres to the convention's certification provisions. Certificating agencies accredited or approved by OSHA perform the certification in the U.S. for equipment used ashore. OSHA also recognizes the certification authority of two states, California and Washington.

Certification is intended to ensure that material handling equipment is maintained properly so that it will be capable of handling loads safely. Since 1960, the Department of Labor has required certification of ship's gear for foreign and U.S. vessels not inspected by the Coast Guard, and the Coast Guard has required certification of Coast Guard inspected vessels since 1963. Certification requirements were extended to shoreside material handling equipment in 1970. The certification requirements in this section of the proposal are not expected to affect much marine terminal equipment because most cranes and other similar assembled units will already have been certificated under the existing certification regulations.

Proposed paragraph (a) sets forth the scope and conditions under which this section applies; as noted in paragraphs (c)(1) through (c)(6), certification requirements apply to cranes and derricks, bulk cargo spouts and suckers, vertical pocket and bucket conveyors, house fall cargo-handling gear, certain types of special gear, and wire rope and loose gear.

Certification must be performed in accordance with the standards of Part 1919 of 29 CFR or by a duly authorized state agency, as described in proposed paragraph (b).

Details of the tests and documentation required are provided in proposed paragraphs (c)(1) through (c)(6); many of these provisions parallel requirements in the longshoring regulations. The proposed rule for cranes and derricks is based on material in §§ 1918.13 and 1918.14. The proposed provision in § 1918a.51(c)(2) applies certification procedures to bulk cargo spouts and suckers; the collapse of these devices has caused several reported fatal accidents in the past (Ex. 48). A similar requirement appears in the longshoring rules (§ 1918.13(d)).

Vertical and bucket conveyors, other than those in grain elevator structures, must be inspected annually, according to proposed paragraph (c)(3). This is a newly developed provision recommended by the SAC (Ex. 2: 121 ia). Examples of terminal conveyors that would fall under the scope of this proposed rule are banana and sugar conveyors used to load and unload vessels. There may be other permanently installed vertical conveyors, such as bulk cement handling equipment, which should be exempted from coverage by the standard because their operation does not require the presence of employees. OSHA would particularly welcome information on the numbers and types of conveyors meeting this condition, and the Agency is also interested in comments relating to the scope of this provision.

House fall cargo-handling gear must be tested as a unit, as specified in paragraph (c)(4); there is no similar Part 1918 coverage, although both the ANSI MH9.1 and the longshoring rules require inspection and keeping of inspection records for this gear. Because this type of gear is falling into disuse, inspection and maintenance procedures have often been overlooked. The proposed rule would ensure that this equipment and its supporting structures meet certification requirements. The Advisory Committee recommended inclusion of this provision (Ex. 2: 121 ia).

Special stevedoring gear used ashore must be certificated in accordance with the proposed provisions in paragraphs (c)(5)(i) through (c)(5)(iii). Similar requirements for gear used aboard vessels are found in the longshoring rules (§1918.61(b)); however, extending this coverage to the shore side of the operation should reduce the number of accidents caused by improperly maintained specially rigged gear. Proposed paragraph (c)(5)(ii) requires spreaders that are not part of ship's gear to be certificated. In the past, spreaders consistently used with a particular crane have been certificated in connection with the crane's unit proof test, while spreaders not so used have been considered special stevedoring gear and have therefore been tested only in accordance with the pertinent longshoring requirement (§1918.61(b)). Spreaders are often exchanged among different cranes, and in the past only those used with container cranes have been tested. This proposed provision will not affect much equipment because many employers have had these spreaders certificated, although they were not required by law to do so.

Loose gear and wire rope purchased or obtained after the date specified in proposed paragraph (c)(6) and used in material handling must also be tested and certificated. A certificate obtained at purchase stating that the rope has been tested by sample lot would meet this requirement. The provision is intended to apply only to wire rope and loose gear used in material handling applications, where failure of the rope could be disastrous, and would not apply to rope used in less critical situations, such as for lashings or railings.

The proposed provision in paragraph (d), which is similar to rules in the longshoring regulations (§1918.13(e) and (f)), has been included to ensure that equipment that is partially disassembled and then reassembled in a new configuration, such as a mobile crane, is not considered a new piece of equipment requiring new certification procedures. Examples of equipment routinely used in difference configurations are cranes used alternately with a long and a short boom, or those used with various hoisting mechanisms, such as magnets, clam shells, and hooks. The requirement proposed at paragraph (e) seeks to avoid duplication of certification surveys by not requiring re-certification when certificated equipment is moved to another jurisdiction, for example, when a crane certificated in Washington moves to Oregon. A nearly identical

requirement is included in the longshoring rules (§1918.13(f)).

Proposed paragraph (e) draws attention to the fact that certification procedures are no substitute for routine maintenance and inspection; the language is identical to that of §1918.13(h) of the existing longshoring regulations.

The proposed provisions in paragraph (g)(1) and (2) state clearly the intervals allowed between required certification surveys; these requirements have been included because there has been some confusion in the past about these dates. For example, some employers have had equipment inspected twice in one year: once for the annual survey and once for the quadrennial survey. However, no annual survey is required in the year in which a quadrennial survey is performed. The requirement in proposed paragraph (g)(2) states that equipment which has not been in use for 6 months or more (and has therefore probably not been properly maintained) must have the more thorough certification survey required of equipment entering service.

Loose gear such as shackles and swivels is required by the rule in proposed paragraph (h) to be marked after it has been tested if it is to be used in a hoisting application. OHSA intends to add an equivalent provision to the shipboard (longshoring) regulations in the future, as has been done in the maritime regulations of other nations; a similar provision appears in section 6.7 of the ANSI MH9.1 standard.

Single sheave blocks used in hoisting are presently covered by the certification requirements of §1919.21(b); the proposal (paragraph (h)) would simpy extend these and other certification requirements to equipment used ashore. Unlike multiple sheave blocks, single sheave blocks have two safe working loads, depending on the method of use, and marking could therefore be critical to safety. The requirements proposed in this paragraph have been limited to newly obtained equipment because of the difficulties involved in marking and certificating all existing units of loose gear. These proposed provisions will ensure the use of tested equipment in cargo handling by requiring that identifying marks of the testing be traceable to related certification documents, which must be available at the terminal.

Cargo-handling equipment exempted from the certification requirements is listed in proposed paragraphs (i)(1) and (i)(2); the list of equipment exempted in the proposal includes equipment excluded from certification coverage in ANSI MH 9.1 (section 6.8). However, the ANSI standard also excludes vertical pocket conveyors, such as banana legs, which are used in terminals. Cranes used exclusively to hoist personnel, such as cherry pickers, are also excluded in MH9.1. The proposal requires certification of straddle trucks which are large enough to be considered cranes rather than industrial trucks. OSHA believes that any industrial truck sufficiently large to hoist two intermodal containers should be treated for regulatory purposes as a crane. The list of equipment excluded from Part 1918 certification requirements (§ 1918.3(r)) is almost identical to the ANSI MH9.1 list, except that the longshoring regulations do not mention bridge cranes, which are not used aboard ship. These cranes ar included in the proposal. Most cargo-handling equipment in marine terminals that is not required by the proposal to be certificated is used in activities that do not expose employees to hazardous situations, such as ore loading at facilities that are largely unattended, or in operations involving modified industrial trucks that cannot lift a large load to a height that would endanger employees below. Restricting the exemption of bulk coal-loading facilities to equipment not of the types illustrated in Figures II–I through II–22 of proposed Appendix II and to equipment that does not use the types of booms or spans shown in these illustrations makes the proposal's certification requirement more stringent than the parallel provision in the longshoring rules. Although specialized car dumpers and equipment used only at high-volume coal-loading facilities would not have to be certificated, other more versatile and less specialized equipment which is not used primarily in coal-loading operations would have to be certificated.

Section 1918a.51 Hand tools. Hand tools used in marine terminal operations are covered in proposed § 1918a.51, which is based on similar provisions in the longshoring regulations (§ 1918.72 (a) and (b)). Employers are required by the proposed rule in paragraphs (a) to provide employees with hand tools that are properly maintained and in safe condition. Examples of defects that would affect a tool's safety are loose handles and mushroomed heads.

Portable electric hand tools are addressed in proposed paragraph (b)(1), which is essentially identical to coverage of the same hazards in the longshoring regulations (§ 1918a.72(b), but is more stringent than that in the general industry standards (§ 1910.243(a)(2)(ii)). OSHA has received petitions (Ex. 92) from power tool manufacturers requesting that a requirement similar to the one in paragraph (b)(1) be deleted from the shipyard regulations. However, the Agency believes that an off switch and operates independent of hand pressure offers substantilly less protection to employees because the tool can continue to operate even after it has fallen or been dropped, and it can also easily be turned on accidentally.

The requirement proposed at paragraph (b)(2) is intended to protect employees from being cut while using a portable powered circular saw. It requires adequate guarding of the blade, and is similar to coverage in § 1910.243(a)(1).

The proposed rule in paragraph (c) applies to tools used to cut metal banding or strapping around cargo and requires that cutting tools be used for this purpose. Performing this operation with improper tools, such as a claw hammer, may cause accidents if employees performing the cutting or standing nearby are struck by a flying metal strap. No similar rule appears in the OSHA general industry or longshoring standards, nor is the topic addressed in ANSI MH9.1

Subpart D—Specialized Terminals

Subpart D of the proposal covers specialized marine terminals, such as those devoted to intermodal containers and roll-on roll-off operations, and terminals handling menhaden fishing vessels. The provisions in each section would apply, in addition to any other appropriate provisions in Part 1918a, to operations and equipment in the particular terminals addressed in each of those sections.

Section 1918a.71 Terminals handling intermodal containers or roll-on roll-off vehicles. Proposed 1918a.71 covers marine terminals handling intermodal containers or devoted to roll-on roll-off operations. A roll-on and roll-off operation is one in which a wheeled vehicle (such as a truck or container on chassis) is pushed, towed, or driven aboard a vessel, which then carries these vehicles in ocean trade. These terminals are addressed separately in the proposal because the proliferation of container-handling facilities and the rapid development of containerized cargo-handling techniques, which eliminate much of the manual and mechanical handling of cargo, have been reflected in a change in the types of accidents occurring at these terminals. Traffic accidents are now the most frequent kind of accident in specialized facilities of this type, in contrast to accidents such as struck-by and caught-in injuries that are associated with traditional break-bulk cargo handling.

This section is therefore addressed principally to traffic hazards and accidents specifically associated with container handling. The section of ANSI MH9.1. (section 3.22) dealing with container terminals is more extensive and more detailed in regard to traffic control provisions, but is not as comprehensive as the proposal's coverage of container handling.

The provisions proposed in paragraphs (a) through (f) have been written in simplified and performance-based language, but are based substantively on paragraphs (a) through (b)(6) of § 1918a.45 of the longshoring regulations. These requirements are directed at one of the principal operational difficulties and safety hazards associated with containerized cargo, that of accurately determining the weight of a container and its contents. Misjudging this weight can lead to cranes capsizing and dropping loads, and other types of accidents.

Container and load weights must be marked in pounds, to prevent mishandling in U.S. ports, but they may also bear metric equivalents. These proposed requirements specify a means that may be used to calculate the container's gross weight in cases where the terminal has no weighing scale.

Proposed paragraph (d) exempts open-top containers carrying only vehicles or gas cylinders from the gross weight requirement, because no container of this type can be loaded with enough cylinders or vehicles to present an overload hazard.

Weights of inbound containers from foreign ports may be established either by calculation, weighing, or using the bill of lading, cargo stow plan, or ship's manifest (proposed paragraph (e)).

The final container-weight provision, paragraph (f), prohibits lifting any container that weighs more than the hoisting equipment's rating will permit.

The proposed requirements in paragraphs (g) and (h) are directed at pedestrian hazards that occur in busy terminals, at which employees are engaged in many different tasks involving many types of powered equipment. Many terminals already have designated pedestrian areas, as required in proposed paragraph (g), but the number of traffic accidents in terminals of this type (Ex. 45) makes the establishment of pedestrian and vehicle routes essential in all such facilities.

A member of the Advisory Committee recommended (Rec. Vol 62i) that employees be prohibited from walking beneath suspended containers, a requirement similar to provisions in the general industry standards (§§ 1910.179(h)(3)(vi) and 1910.180(h)(3)(b)(vi)), and in ANSI MH9.1 (section 3.22.2). The ANSI provision prohibits hoisting containers over pedestrian aisles "unless suitable precautionary measures are taken." Containers are occasionally dropped accidentally, for example when the locking mechanism releases in mid-air. Proposed paragraph (g)(2) requires employees to stand clear while containers are suspended or being hoisted overhead. OSHA would appreciate information about the operational difficulties, costs, and benefits that can be anticipated as a result of compliance with this requirement. For example, does this provision reflect current practice in intermodal container terminals? What kinds of warnings, if any, should be required?

Employees required to work around container-handling equipment or near a traffic lane must have high-visibility vests or other clothing offering equivalent protection, so that vehicle operators can see them easily (paragraph (h)). There is no similar ANSI or Part 1918 coverage.

Proposed requirements governing the handling of intermodal containers are included in paragraphs (i)(1) through (i)(3); these precautions are necessary because improper handling of containers may cause structural damage to the containers, leading to serious accidents. There are almost three million intermodal containers, which are owned by companies from different countries, moving in world trade; these units are of many types but are built to the requirements of ANSI NH5.4–1972/ISO TC–104 document (Ex. 64), which also establishes the means by which containers of particular designs are to be hoisted.

The proposed provisions at paragraph (i) outline the methods to be used to hoist containers in specific situations (except when the container has been damaged so that special means, such as appropriately used slings, are necessary). The instructions specified in detail in paragraphs (i)(1) conform to those in the ANSI/ISO standard (Ex. 64), and are included because, when used with properly loaded and undamaged containers, these techniques reduce the hazards associated with container handling. Neither the longshoring regulations, which were published before the ISO standard, nor the ANSI marine terminal standard deals with container hoisting in detail. Procedures for hoisting containers from top and bottom fittings appear at proposed paragraphs (i)(1) (i) and (ii), respectively.

The provision proposed at paragraph (i)(1)(iii) prohibits hoisting containers from above or from one side only, unless either the container is designed to be handled in this manner. This proposed requirement would allow hoisting of 20-foot-long containers by fork lift trucks if the containers are fitted with suitably maintained fork lift pockets. The final requirement proposed in this paragraph, (i)(1)(iv), is intended to cover specialized containers and to allow flexibility for technological advances in container design, a rapidly developing field.

Container spreaders that have lanyards to activate the releasing device are covered in paragraph (i)(2)(i); this equipment is used principally in break-bulk terminals. The proposed provision prohibits the use of lanyard-triggered releasing devices unless the employer can ensure that the lanyard will not snag on an object, accidentally triggering release of a container; such an accident occurred in a marine terminal in Seattle (Ex. 69).

A similar hazard is addressed in proposed paragraph (i)(2)(ii), which deals with twistlock securing systems on container spreaders. If these systems are not properly maintained, they may release a suspended container in mid-air.

Proposed paragraph (i)(3) requires that containers be secured while they are being transported in the terminal. Failure to secure containers adequately has caused several accidents in the past. For example, unsecured containers have fallen from chassis when the vehicle turned the corner too sharply (Ex. 70).

The proposed requirements in paragraphs (j)(1) and (j)(2) are intended to avoid accidents that occur when employees handle seriously damaged intermodal containers. The first provision proposes that containers received in the terminal be inspected before they are handled further, to determine whether they have sustained damage during transit that would make them hazardous for employees to handle. A similar requirement, limited to outbound containers, appears in section 8.1.2.2 of ANSI MH9.1, and the same hazard is addressed by § 1918.85(d) of the longshoring rules. Any container found to have a defect, such as a damaged fitting, that might affect safe use is required by proposed paragraph (j)(2) to be removed from service, identified as unsafe, and kept from use until the defects have been repaired. The Part 1918 requirement (§ 1918.85(d)) is directed to the same hazard, and ANSI MH9.1 also contains a similar provision (section 3.22.9).

Section 1918a.72 Grain elevator terminals [Reserved]. Section 1918a.72

of the proposal has been reserved at this stage of the rulemaking because OSHA is currently developing a standard applying to both safety and health hazards associated with grain-handling facilities. Provisions developed for OSHA's general industry grain-handling facilities proposal that are also applicable to grain elevators at marine terminals will be proposed as additions to the marine terminal standard in the future. After public comment and evaluation of the evidence received in connection with the general industry rulemaking, OSHA intends to propose the incorporation of safety and health coverage specifically tailored to marine terminal grain elevators into this section. Until then, grain elevators at marine terminals would be covered by the applicable requirements in the other subparts of Part 1918a, and would not have additional requirements prescribed for them as "Specialized Terminals" (§ 1918a.71).

Section 1918a.73 Terminal facilities handling menhaden and similar species of fish. Proposed § 1918.73 contains rules applicable to terminal facilities that handle menhaden and similar fish. Menhaden is a term applied to several species of trash fish. The menhaden fishing industry operates on the Atlantic and Gulf coasts, and there is a smaller and similar operation on the West coast. In volume of catch, the menhaden industry forms the largest part of the U.S. fishing industry. Products made from menhaden and similar species of fish include fertilizer, pet food, and fish oil. The material in this section of the proposal was developed in conjunction with the National Fish Meal and Oil Association and in response to reports of several fatalities at menhaden facilities that were caused by exposure to hydrogen sulfide, which is produced by rotting fish (Ex. 44). Parallel coverage for shipboard application will be added to the existing Part 1918 regulations when these are revised in the future. There are approximately 25 facilities devoted exclusively to menhaden handling in this country; most of these already comply with the safety practices outlined in this section. The MH9.1 standard contains detailed coverage of menhaden-related hazards.

To protect employees from exposure to hazardous levels of hydrogen sulfide, the provisions proposed in paragraph (b)(1) require adequate ventilation of brailwater storage tanks. Brailwater is recirculated into the boat's hold to wash out the menhaden. Unless other effective methods of removing hazardous levels of hydrogen sulfide are used, storage tanks must be drained completely after daily use. The proposed requirements in paragraph (b)(2), which require draining, rinsing, and atmospheric testing of tanks, are designed to protect employees from hazardous exposure to hydrogen sulfide or to an oxygen-deficient atmosphere, hazards commonly associated with a confined space such as a closed brailwater tank, in which hydrogen sulfide or other noxious atmosphere has displaced the available oxygen.

Tests to establish that atmospheric levels are safe may only be conducted by designated persons using equipment appropriate for testing in these situations, according to proposed paragraph (b)(3). Hoses and pipelines conveying used brailwater must be drained and left open to the air at the end of each day's use (paragraph (c)), to allow any hydrogen sulfide fumes to dissipate.

Respiratory protective equipment must be appropriate for protection against hydrogen sulfide and oxygen deficiency, and must be immediately available at the terminal, according to the provisions proposed in paragraph (d). Provisions addressed to rescue attempts in dock tanks are also proposed in this paragraph. Employees entering a tank must wear lifelines and harnesses and be equipped with the appropriate respiratory protective equipment. Two similarly equipped standbys must also be stationed outside the tank. Confined space accidents often cause the death of the employee working in the tank and other employees trying to effect rescue (Ex. 24). The rescuers are usually overcome because they fail to don the proper respiratory equipment and instead spontaneously rush into the space to help, and are then themselves overcome.

The provisions in proposed paragraphs (e) and (f) require informed supervisory personnel, familiar with the dangers of hydrogen sulfide and oxygen-deficient atmospheres and the precautions and equipment for reducing or eliminating these hazards, to be present whenever brailwater is being discharged from a vessel. This provision is intended to provide the necessary level of supervisory control to deal effectively with this hazard. These personnel will perform any procedures, such as testing to make sure that used brailwater is safe to be recirculated into the hold (where employees will be working), that are necessary to protect employees from hazardous exposures. Brailwater can be treated to remove contaminants and then re-used. The ANSI marine terminal consensus standard (section 3.23) contains similar coverage but also includes provisions pertaining to conditions aboard vessels, coverage more appropriately located in the longshoring regulations.

Subpart E—Personal Protection

Subpart E of the proposal is concerned with personal protective equipment designed for eye, respiratory, head, and foot protection. In keeping with recent OSHA Policy (see the standard for occupational exposure to acrylonitrile, 43 FR 45762, October 3, 1978), the proposal requires any protective equipment mandated by the standard to be provided to employees without charge.

Section 1918a.91 Eye protection. The proposed provisions relating to eye protection are nearly identical to those of ANSI MH9.1 (section 7.1) and the existing longshoring rules (§ 1918.101), except that the proposal adds a cross-reference to the more extensive eye protection required against radiant energy by proposed § 1918a.152(b).

Section 1918a.92 Respiratory protection. The SAC recommended (Ex. 2:124all) that respiratory protective equipment be used in accordance with the requirements set forth in 30 CFR Part 11, a suggestion with which OSHA concurs; the present longshoring regulations require respiratory equipment to be approved by the U.S. Bureau of Mines, but this function is now exercised by the Mine Safety and Health Administration and the National Institute for Occupational Safety and Health.

Many of the provisions in the proposed respiratory protection section are almost identical to coverage directed to the same hazards in the longshoring regulations (§ 1918.102); proposed paragraphs (a) through (j) derive from these rules, which are also compatible with similar requirements in § 1910.134 of the general industry standards. The proposed provisions in paragraph (j), are designed to ensure that proper aid is available whenever an employee is exposed to a hazardous atmosphere, whether or not the atmosphere is immediately hazardous to life and regardless of the type of respirator worn. The capability of the respirator and the degree of standby protection required vary with the level of hazard involved. For example, a canister-type gas mask might be used in an atmosphere containing a low concentration of ammonia, but self-contained breathing apparatus might be required for an oxygen-deficient atmosphere.

Section 1918a.93 Head protection. The head protection provisions proposed in § 1918a.93 differ somewhat

from present Part 1918 coverage (§ 1918.106) of this topic and from similar rules in the general industry standards (§ 1910.135). The present longshoring provision requires all employees on board vessels to be protected by hard hats. OSHA recognizes that some work situations in marine terminals do not expose employees to potential head injury; the proposal therefore only requires hard hats to be worn by employees exposed to potential head injury. This proposed provision follows the recommendation of the SAC (Ex. 2:127i).

Section 1918a.94 Foot protection. The foot protection section of the proposal (§ 1918a.94) differs from similar coverage in the existing maritime rules by requiring employers to ensure that their employees wear safety shoes in situations where they might be needed; the longshoring standard (§ 1918.104) only requires that employers make foot protection available to employees. The equivalent provision of the ANSI marine terminal standard (section 7.4) prohibits employees who are not wearing adequate footwear from working, but is otherwise similar to the proposal's treatment of the topic. The SAC also recommended (Ex. 2:128i) protection against foot injuries, which are common in cargo handling. At present, some ports, such as Philadelphia, provide employees with safety shoes but do not attempt to ensure that they are worn. OSHA would appreciate receiving information on current practice, foot injury incidence, and any related cost information.

Section 1918a.95 Other protective measures. Section 1918a.95 deals with other protective measures required in certain work situations. The proposed protective clothing provisions (paragraphs (a)(1) and (2)) are similar to rules in the maritime regulations (§ 1918.103) and the ANSI MH9.1 (section 7.6); these practices are already widely used throughout the industry. The proposed requirement that employers provide special protective clothing is not intended to apply to such standard items of clothing as work gloves; an example of a task requiring special protective clothing such as hoods or aprons would be handling leaking cargo packaging or cleaning a caustic tank.

Protective creams or ointments appropriate as barriers against the substance being handled are required whenever the substance involved demands this form of protection. The ANSI marine terminal standard contains a similar provision (section 7.5), but the existing longshoring regulations do not address this hazard. Examples of the types of exposure that might require protective ointment or cream are leaking containers of mildly corrosive or irritating substances. In general, however, barrier creams provide only minimal protection against cutaneous hazards, and gloves or indirect handling methods are more effective and are usually used in these situations.

Proposed paragraph (c)(1) requires employees such as line handlers, who may be pulled into the water in the course of their work, to be provided with personal flotation devices; no similar provision appears in the ANSI standard. The weight, pull, and cumbersome nature of the lines being handled all combine to make protection against drowning necessary; it is not unusual for a mooring line to pull an employee into the water. The remainder of the requirements in proposed paragraph (c) are standard practice in the industry; similar provisions appear in the longshoring rules (§ 1918.106).

Proper eye washing and any other appropriate emergency washing facilities are required by proposed paragraph (d) if employees are exposed to hazardous substances, such as any liquid acid that requires flushing if it contacts the eye. Parallel provisions appear in the general industry rules (§ 1910.151(c)) and in ANSI MH9.1 (section 7.7).

Subpart F—Terminal Facilities

Section 1918a.111 Maintenance and load limits. Hazards associated primarily with the structural features of marine terminals are addressed by the provisions of proposed Subpart F. Section 1918a.111 deals with maintenance of walking and working surfaces and their structural integrity, requiring load limits to be posted and observed to prevent excessive loads from damaging floor surfaces in cargo areas. This requirement is not meant to apply to areas in a terminal such as offices or storage lockers, which are not used for cargo-handling and would therefore not be subject to overloading. Both the general industry standards (§ 1910.22(d)) and the ANSI standard (section 3.1.1) contain provisions designed to protect employees and machinery from the hazards of unsafe floors; however, the proposal differs from the general industry standard in that it limits these requirements to active cargo areas.

Section 1918a.112 Guarding of edges. The various types of protection for employee hazards associated with open sides and edges covered in proposed § 1918a.112 include curbs, railings and toeboards. This section of the proposal is written primarily in performance language.

To protect vehicles and their operators from falling off an apron or bulkhead edge, curbs (bull rails) 10 inches in height must be provided ((a)(1)). Paragraph (a)(2) indicates that this protection is not required at loading docks, platforms and skids where cargo is moved by vehicles. The ANSI standard contains provisions directed at the same hazards (sections 3.1.4, 3.1.5, 3.1.6, and 3.1.7).

Protection against falls in situations where employees might fall more than 4 feet or into the water is addressed in proposed paragraph (b), which requires guardrails except in those circumstances specified in (b)(2)(i)–(iv). The SAC recommended guardrails at edges in cases where the fall distance was 4 feet or more (Ex. 2: 111). The exceptions listed in paragraph (b) apply to work places, such as loading docks; to equipment, such as railroad rolling stock (covered by other Federal agencies); and to waterside edges used for cargo handling. Since falls from elevations account for as many as 340,000 work-related injuries annually (Ex. 50: 5), the importance of fall protection for employees cannot be overemphasized.

Guardrails used to protect marine terminal employees must meet the strength requirements and be positioned as specified in proposed paragraph (c), but the material used in guardrail construction is left to the employer's discretion. Flexible railings, a common feature in the marine industry, may be used if they are sturdy enough to offer adequate protection. The proposed provision also allows existing guardrails, which are often between 36 and 42 inches high, to continue to be used because they offer adequate employee protection, and replacing all such guardrails would be prohibitively costly. New guardrails are required to be between 40 and 44 inches high, a range permitting the use of guardrails in a variety of building situations. A recent ergonomic research report provides evidence for this range in guardrail height (Ex. 13: 49); this range provides the optimal protection for the greatest number of employees. ANSI coverage of the same topic (MH9.1, section 3.1.9) differs from that of the proposal because it does not take the height of existing guardrails into consideration, does not deal with flexible railings, and is restrictive in terms of construction materials.

Toeboards to protect employees from objects falling from overhead are covered in proposed paragraph (d); this provision also allows flexibility in design, material, and application by

requiring protection only in situations where objects such as tools might fall on employees below and by leaving the material and construction requirements of the toeboard unspecified. The ANSI marine terminal requirement stipulates a height of 4 inches for toeboards (section 3.1.9), but the proposal recognizes that the finished size of 4-inch lumber is closer to 3½ inches than to 4, and additionally that a drainage space may contribute to overall toeboard height.

Stairway railings and handrails are addressed in proposed paragraph (e); the provision in paragrpah (e)(1) allows a greater range in acceptable railing height (from 32 to 36 inches) than similar coverage in the general industry standards (§ 1910.23(e)(2)), to permit most existing railings to remain in place. Any railing used must be in good repair and free of splinters and sharp edges (paragraph (f)). The ANSI MH9.1 does not cover railings in terminals.

Section 1918a.113 Clearance heights. The clearance height provision in § 1918a.113 addresses an obvious hazard, that of employees hiting their heads or being injured when a vehicle hits an overhead obstruction, and uses language almost identical to that found in ANSI MH9.1 (section 3.4).

Section 1918a.114 Cargo doors. Cargo doors have been a source of accidents in marine terminals in the past. The requirements in proposed § 1918a.114 cover the three general types of cargo doors found in terminal facilities: those that are mechanically operated, sliding horizontal doors, and tackle-operated doors. The ANSI MH9.1 standard provides nearly identical coverage of these hazards (section 3.3).

Mechanically operated cargo doors operate by means of counterweights, which can themselves be hazards unless they are enclosed or otherwise guarded (paragraph (a)(1)). Proposed paragraph (a)(2) prohibits using cranes or lift trucks to open doors of this type. Using a lift truck to pry open a cargo door could easily cause the truck to topple, and using a crane for this purpose would impose an excessive sideloading stress. During cargo door repair, however, cranes and lift trucks may be used if precautions such as roping off or barricading the repair area are taken to protect employees. Doors opened only partially, for example for ventilation purposes, must be blocked or otherwise secured in this position so that they do not fall on employees working beneath or near them.

Lifting tackle used to move tackle-operated cargo doors must have shackles or other equally secure connections, such as a moused hook, to ensure that the door does not fall on employees. The lifting gear must have a safety factor of five, as recommended by the SAC (Ex. 2: 15i), to ensure that it is of adequate size and strength to hold the door. Means of holding these doors securely in both the open and closed positions are also required ((b)(3)). The ANSI standard contains two provisions (sections 3.3.2.3 and 3.3.2.4) dealing with inspection and maintenance that have been simplified and stated in performance terms in the proposal (paragraphs (b)(4)) and (b)(5)).

Horizontal sliding doors are hazardous if their rollers come out of their overhead tracks, or if they swing, as might happen in a strong wind. These dangers are addressed in proposed paragraph (c) of this section.

Section 1918a.115 Cargo-landing surfaces. Aprons (the open portions of a terminal facility immediately adjacent to a vessel berth and used to transfer cargo directly between the terminal and a vessel) must provide adequate space to allow necessary work to be performed without undue restriction of movement (proposed § 1918a.115). The hazards of working in too narrow or too restricted a space include falling into the water, overexertion, and being hit by cargo. In addition, cramped working conditions force cargo handlers to work beneath suspended loads, an extremely hazardous practice. No similar requirement appears in the ANSI consensus standard.

Section 1918a.116 Platforms and skids. The platform and skid secton of the proposal (§ 1918a.116) is intended to provide protection against falling both for employees working cargo from the platform or skid and for those working below. The provisions proposed in paragraphs (a) and (b) call for guardrails or other means of protection (such as nets) on the side edges of platforms, and require nets between second story platforms and the vessel being worked.

The requirements proposed in paragraph (c) stipulate that platforms and skids be properly maintained, have their working loads marked on or near them, and have a minimum safety factor of five. Coverage of this topic in the ANSI marine terminal standard (section 3.5) is essentially the same as the proposal. The SAC recommended (Ex. 2: 16i) adoption of similar language covering platform attachments. However, the proposal's performance requirement stipulating that platforms and skids be maintained properly and be capable of handling loads would require that platform attachments be adequate to support the loads being handled.

Section 1918a.117 Elevators and escalators. Elevators and escalators are addressed in proposed § 1918a.117; definitions of these terms appear in paragraphs (a) and (b). The general industry standards do not cover elevators or escalators, and there are elevators in use which are not covered by state or local inspection requirements, including some at waterfront facilities. The General Duty Clause (§ 5(a)(1)) of the OSH Act has often been used to cite employers for hazardous conditions associated with elevators (Ex. 7i), although it is not possible to separate these citations into marine terminal, as opposed to general industry, categories. Escalators have been included in the proposal's coverage because there are some escalators in terminals that are used to move cargo, such as ship's stores, in addition to people, and these escalators may not be inspected as frequently as necessary to ensure employee safety.

The SAC recommended (Ex. 2: 17i) that escalators had elevators in marine terminals be certificated as an alternative to the thorough inspections required in proposed paragraph (e), but OSHA has not adopted this approach because most elevators are adequately inspected, and certification would require a new specially trained group of inspectors within the certificating agency. The language in proposed paragraph (e) recognizes that the designated person performing the annual inspection (and perhaps also the monthly inspection) may not be a marine terminal employee but a local government employee, insurance inspector, or employee of a service firm that provides inspection services. Evidence of the latest inspections must be posted, although earlier inspection records are not required to be retained; this provision is intended to reduce recordkeeping to the minimum level consonant with safety.

The requirements proposed in paragraphs (c), (f), and (g) cover load limits and other factors that might affect safe operation of manually operated elevators and those that do not have interlocking doors. The ANSI MH9.1 standard's coverage of elevators is similar in intent but uses language, such as "inspections shall be carried out by persons expert in the field," that OSHA has not proposed.

The proposed provision in paragraph (h) required adequate protection, such as doors, gates, or other barricades, to ensure that employees do not fall down the shaft of elevators that do not have full shaft door closings. The barrier must be in place at every landing except the one at which the elevator is positioned.

No similar provision appears in ANSI MH9.1.

Section 1918a.118 Manlifts. The section of the proposal devoted to manlifts, § 1918a.118, has been developed to apply specifically to manlifts used in marine terminals. The proposed provisions are compatible with but not identical to those on the same subject appearing in the ANSI marine terminal document (MH9.1) or the general industry standards (§ 1910.68). Several examples of manlift fatality case reports, received by OSHA in connection with another rulemaking but typical of manlift accidents anywhere, have been included in the marine terminal rulemaking record (Ex. 74); falls and crushing injuries are common in manlift accidents. The proposed section has been written to allow, to the extent possible, the continued use of existing installations, and to give the employer the widest possible latitude, consistent with employee safety, in implementing the various requirements.

Proposed paragraph (a) outlines a detailed inspection procedure for all manlift parts and related features essential to the safe operation of these devices. Inspection records, monthly and annual, must be kept for one year and be available in the terminal if they are not posted near the manlift (paragraph (b)). This provision is in keeping with the Agency's efforts to reduce recordkeeping requirements to the lowest level consistent with safe practice.

The emergency stop device proposed in paragraph (c), which would be accessible from any position on the lift, would permit an employee to stop the manlift at any point. Manlift instructions (proposed paragraph (d)) would acquaint employees with safe manlift procedures.

The proposed provisions in paragraphs (e), (f), and (g) deal with means of preventing employees on manlifts from being injured in the space above and below the manlift and the top and bottom floors of the facility housing the manlift; signs and lights are examples of such means. Accident reports of cases of employees being pinned either by a step off the manlift or between the lift and the ceiling are included in the record (Ex. 47). The automatic stop device proposed in paragraph (g) would prevent the same type of injury by stopping the manlift automatically any time an employee passed the top landing without getting off. Manlifts installed after the effective date of this standard would be required to have additional stop devices as backup.

Each step on a manlift is required (proposed paragraph (h)) to have a corresponding handhold, to provide the necessary security for employees mounting or riding the lift.

Accessible and secured emergency ladders running the entire length of the manlift must be positioned so that any employee riding the lift can leave it in an emergency (proposed paragraph (i)). This precaution, which is standard industry practice, is essential because a breakdown of the lift might, for example, leave an employee stranded 50 feet off the floor.

Landings, including emergency landings, are addressed in proposed paragraph (j), which requires that they be maintained free of obstructions and specifies that new manlifts (those built after the effective date of the standard) which have landings at intervals of 50 feet or more must have emergency landings every 25 feet or less. Landings must be guarded by an effective means of fall protection; the particular form of protection, which might be gates, railings, or mazes, is left to the employer's discretion. The final paragraph in the manlift section, proposed paragraph (k), stipulates that guards to guide (such as cone guides) and protect employees ascending on the lift be installed at each floor opening to prevent employees from hitting their heads or being knocked off the lift.

Manlifts are required by proposed provision (l) to be equipped, maintained, and used in accordance with the manufacturer's instructions. This requirement would, for example, require belts to be properly sized for the manlift configuration, handholds and steps to be uniformly spaced, and manlift components to have strength characteristics adequate for the application in which they are used.

The provisions proposed in paragraphs (m) and (n) are intended to ensure that no employee riding a manlift will be pulled into the bottom pulley or crushed between the top landing and the ceiling of the building containing the manlift. Brakes to hold the manlift when it is stopped are addressed in the final provision, paragraph (o), in this proposed section.

The proposal's coverage of manlifts is compatible with that of ANSI MH9.1 (section 3.7) but goes beyond it by requiring certain safety features such as warning signs and lights, emergency stop devices, and emergency ladders, and by enumerating safety features to be inspected. Section 1910.68 of the general industry standards contains an extensive series of detailed provisions relating to manlifts; those pertinent to employee safety in the marine terminal setting have been included, in performance language, in the proposed requirements.

Section 1918a.119 Fixed ladders. Proposed § 1918a.119 covers fixed ladders, a subject presently covered by §1910.27 of the general industry standards (Subpart D, Walking and Working Surfaces) but not addressed in ANSI MH9.1. In 1976, OSHA published a Request for Information asking for comments on the material in Subpart D of 1910 (41 FR 17102, April 23, 1976), which included questions about the requirements for fixed ladders, stairways, platforms, and other work surfaces. Many commenters responding to the notice recommended that OSHA adopt a performance-oriented approach to this subject matter whenever possible (Ex. 77). The proposed fixed ladder section uses the performance approach in many cases.

In addition, the proposal strives to make those specifications that are necessary for compliance as flexible and practical as is consistent with employee safety. For example, the proposal specifies an acceptable range, rather than a single size, for some ladder requirements (such as rung spacing), and in other cases (such as rail width or distance between ladder and structure), the proposal only stipulates the minimum dimension for particular ladder features. These minimum measurements offer adequate employee protection, even though they may not provide the extra degree of employee comfort and convenience offered by equipment built to more ample specifications. OSHA believes that requiring the minimum safe size, strength factor, or distance rather than the corresponding ideal measurements for these features will permit employers considerably more flexibility in compliance and will also allow sound and adequate equipment to continue to be used without the expense of replacement or retrofitting.

This proposed section does not apply to portable ladders, which are covered in another section of the proposal (§ 1918a.120); to ladders permanently affixed to vehicles of the types specified in (a)(1), which are covered by other Federal agencies; to climbing devices associated with tanks and towers, such as step bolts, which are not considered ladders; to ladders built into or attached to scaffold framing; or to certain special-purpose ladders.

Ladder defects are covered in proposed paragraph (c), which prohibits the use of ladders with defects affecting safe use, such as broken rungs or loose side rails. The second provision in this paragraph mandates that a ladder

repair, for example a rung replacement, provide a strength factor equivalent to that of the original ladder part.

The requirements in proposed paragraph (d) specify various ladder dimensions that are essential to the safety of employees using these devices. Paragraphs (d)(1)(i) and (d)(1)(ii) state the strength requirements for existing ladders (200 pounds applied over a 3½ inch width at the rung's center) and for newly built ladders (250 pounds similarly applied).

Rung spacing, from the center of one rung to the center of the next rung, is required by proposed paragraph (d)(2)(i) to fall within the 9 to 16½ inch range; however, after the effective date, newly installed ladders would be required to have spacing within the 10 to 14 inch range, which has been determined (Ex. 16) to provide maximum climbing ease and safety.

The proposal contains two requirements directed at the width of fixed ladder rungs: one for existing ladders, and one applicable to ladders installed after the effective date of the final standard. The first proposed provision, (d)(3)(i), permits ladders already installed to have a width of 10 inches between stiles (side rails), although newly installed ladders would be required by proposed paragraph (d)(3)(ii) to have a minimum rung width of 12 inches, in keeping with new research data on climbing safety (Ex. 17).

The distance between the center of the rung and the nearest physical object behind the ladder, such as a wall or building, is proposed in paragraph (d)(4) to be a minimum of 7 inches for all fixed ladders installed after the standard's effective date, but previously implaced ladders may continue to be used if this clearance is at least 4 inches. In future installations where physical limitations restrict the space available so drastically that a 7-inch clearance between the structure to which the ladder is attached and the rung cannot be achieved, the distance may be no less than 4 inches.

The proposed 7-inch clearance will allow enough distance so that the arch, rather than the ball, of the climber's foot will contact the rung, which reduces the amount of torque, and therefore effort, that must be exerted by the lower leg muscles (Ex. 17: 21). In addition, this clearance permits the climber's weight to be more evenly distributed over the arch of the climber's foot, further reducing strain and fatigue (Ex. 17: 21).

As proposed in provision (d)(5), the minimum clearance between an ascending ladder climber and any obstruction, such as a ceiling, light fixture, or wall is 24 inches, to permit passage of the climber. However, although a space of 24 inches allows enough room for the ladder user to avoid hitting hanging obstructions, the proposal requires a deflection device, such as a cone or bevel guard, to ensure that the climber is guided safely through a floor or landing opening without hitting the head.

To facilitate the climber's access to the surface above the top of the ladder, paragraph (d)(6) proposes that the ladder's stiles extend at least 3 feet above the landing surface, except where grab rails or bars provide a secure grip to aid in climbing off the ladder.

The proposed requirement addressed to ladder pitch ((d)(7)) prohibits the use of ladders positioned at a greater-than-90-degree backward slant to the horizontal, which would require a climber to climb with the back of his body, rather than the front, closer to the ground. This posture would require the climber to hang from the rungs of the ladder instead of being supported by the rungs.

Fall protection for climbers of fixed ladders is addressed in proposed paragraph (e). Although there are few ladders of great height in marine terminals, some do exist. Ladder fall protection devices may be grouped into three categories: cages, wells, and safety devices. Cages and wells provdie protection by enclosing the climber and limiting the distance of the potential fall by means of platforms. Safety devices generally involve the use of a pole and auxiliary equipment, such as a friction or hydraulic brake device and lifebelts and lanyards. The proposal considers each of these types of fall devices effective means of fall protection, although there is some evidence that fall arrest mechaniams, such as the safety devices mentioned above, may be more effective in an emergency than cage-type restraining devices, because the action of the safety devices is entirely independent of the climber's performance under stress (Ex. 72). OSHA would appreciate receiving any information about the relative merits of these respective protective devices, to aid the Agency in developing the final rule.

In paragraph (e)(1), OSHA proposes that all fixed ladders greater than 20 feet in height be provide with fall protection devices. This height agrees with the fall protection height requirement in the general industry standards (§1910.27(d)(1)(ii)).

Proposed paragraph (e)(2) states that when a fixed ladder more than 30 feet in height is equipped with a cage or well, unless the climber is additionally protected by a ladder safety device such as a lifebelt and lanyard, the ladder must be built of sections no more than 30 feet in height. Each ladder section must be offset horizontally from the section above and below it, and must also contain at least one landing platform fitted with guardrails. These features are designed to limit the distance a climber may fall, and the platform could also be used as a rest platform, if necessary.

The proposed requirement in paragraph (e)(2)(iv) is a grandfather provision which permits existing hinged platforms to be used in lieu of offset sections and landing platforms on ladders installed before the standard's effective date. Hinged platforms are not permitted in newly installed ladder cages or wells because they require the climber to bend down both to lift them from above during descent and to replace them after use during ascent. This bending maneuver is both "awkward and hazardous," according to a recent study of ladder safety factors (Ex. 17: 112). OSHA seeks information on the hazards of hinged platforms, and the extent of their use in marine terminals.

As proposed in paragraph (e)(3), rest platforms equipped with guardrails on all open sides must be supplied at intervals of 150 feet or less on all fixed ladders which use the safety device method of fall protection. The platform as proposed would provide sufficient room for a climber to stand. However, OSHA is aware that a platform with enough room for emergency sitting (minimum platform dimensions 16 inches in depth; by 28 inches in width) would offer even greater employee protection, by permitting an exhausted climber to rest his legs and feet more effectively (Ex 17: 52). OHSA is considering increasing the minimum platform dimensions to allow for emergency sitting, and would appreciate comments and suggestions pertaining to the effectiveness and feasibility of such rest platforms.

In paragraph (e)(4), OSHA proposes requirements designed to ensure that ladder safety devices are designed, installed, and maintained to ensure their effectiveness. Installation, maintenance, and repair should be performed in accordance with the recommendations of the manufacturer of the device; the distance between the point of attachment of the climber's safety belt and the carrier must fall in the range between 6 and 12 inches, a distance recommended in a recent research report on this topic (Ex. 18).

Ladder cages or wells installed after the standard's effective date are

required by proposed paragraph (e)(5) to be made of sufficiently rigid material to prevent a falling climber from either dislodging or breaking through the enclosure. In addition, cages and wells must have inner surfaces that are free of snags or other protrusions that might injure the ladder user, and both cages and wells are required to extend high enough above landings and close enough to the ground to protect employees during any portion of the ascent and descent that might be hazardous.

In paragraph (e)(6), OHSA proposes that all ladders on radio towers, other communication and utitlity towers, and on poles and other high structures such as stacks and chimneys meet the requirements of paragraph (e) after the effective date of the final standard. At present, many of these structures are not equipped with either ladders or step bolts, and employees are often required to use the tower's structural members as climbing devices. The proposal would offer employees climbing these high structures the same degree of fall protection afforded to climbers of fixed ladders, by mandating that employers provide safety devices, cages, or wells when the height of the structure exceeds 20 feet. Many of these facilities do not have fixed ladders, although some are equipped with step bolts or individual rung ladders, in which case safety devices would have to be used instead of cages or wells.

In proposed paragraph (f), OSHA addresses individual rung ladders, which are cast mortared, or otherwise secured directly to walls or other vertical or inclined surfaces, and which have no side rails. The load rating and rung spacing and width requirements parallel or exceed those proposed for existing fixed ladders. For example, proposed provision (f)(3) stipulates that the ends of the rungs of these ladders be offset, enclosed, or equipped with stops, to prevent the climber's foot from slipping from the rung. Since individual rung ladders have no stiles (side rails), these additional precautions against slipping are essential for safe ascent and descent. The final proposed requirement in this paragraph states that the rungs of ladders of this type must be free of sharp edges, which might injure or perhaps even trip a climber.

Section 1918a.120 Portable ladders. In § 1918a.120, OHSA proposes requirements for portable ladders, whether of wood, metal, or reinforced plastic construction, and including job-made ladders (ladders made on the site to the specific requirements of a job and not intended for use elsewhere). This section of the proposal also makes use of the phase-in concept, by specifying more stringent criteria for ladders obtained or built after the standard's effective date.

The load rating and rung spacing provisions are identical to those for existing fixed ladders, except that proprosed paragraph (b)(4) requires that rung width increase in proportion to the ladder's length of climb, a construction feature designed to impart greater strength and stability to long portable ladders.

Proposed paragraph (c) requires all manufactured portable ladders to bear lables indicating that they meet the construction requirements of the appropriate ANSI portable ladder consensus standard, which specifies load ratings, strength factors, spacing, and other requirements.

Job-made portable ladders used after the effective date of the final standard are required by proposed paragraph (d) to meet the ANSI A14.1–1975 spacing and loading specifications for manufactured portable ladders.

In paragraph (e), OSHA proposes maintenance and inspection requirements for all portable ladders, whether manufactured or job made. The defects outlined in paragraph(e)(1) are all sufficiently damaging to interfere with the structural integrity of the ladder, and the presence of any such defect would be cause to remove the ladder from the worksite or to lable is as unusable by tagging if stored on the premises. The inspection required by proposed paragraph (e)(2) would consist of a brief visual inspection to ensure that the ladder has no significant defect. The proposed provision would also require such an inspection after a ladder had been subjected to impact or other unusual stress.

Procedures for safe use of ladders are covered in proposed paragraph (f). The proposed requirements appearing at paragraphs (f)(1) through (f)(6) prohibit using ladders in unsafe ways; they may not be formed by securing a rung (cleat) across a single rail, which cannot provide adequate strength or support, nor may ladders be used in a horizontal position as a walking or working surface. Proposed paragraph (f)(3) is designed to protect climbers on ladders that are made of materials that would conduct electricity from being injured by electric shock, and proposed requirement (f)(4) prohibits tying, bolting, or otherwise securing separate sections from different multi-sectional ladders together or attaching single ladders to each other to achieve greater height. No temporary or improvised method of securing such separate climbing devices together can be guaranteed to provide adequate employee protection.

Proposed paragraph (f)(5) prohibits using self-supporting (free standing) portable ladders as straight ladders. Self-supporting ladders are not designed to be used at the pitch that would be necessary if they were leaned against a building.

The provision proposed in paragraph (f)(6) prohibits portable ladders that are not self supporting, i.e., those that depend on a structure for support, from being used as climbing devices at heights beyond the highest support point, even though the ladder may extend beyond that point. Climbing on and upsupported section of such a ladder could cause the ladder to slip or tip.

The requirement that ladders extend at least 3 feet above the upper level supporting the ladder (proposed paragraph (f)(7)) will ensure that employees climbing on or off the ladder have a secure rail to grasp, unless other handholds are available to offer equivalent gripping surfaces.

In paragraphs (f)(8) and (f)(9), OSHA is proposing that all ladders used be positioned on a level and secure surface and be equipped with slip-resistant bases, e.g., safety "shoes" or spikes. Further, ladders must be secured at top and bottom to prevent slipping. In addition, proposed paragraph (f)(10) requires ladders to be positioned out of the way of doors opening out toward the ladder, which could cause the ladder to slip and fall; in addition, ladders would have to be placed clear of projecting objects, such as window sills and protruding nails, which could injure an employee on the ladder.

Section 1918a.121 Fixed stairways. In proposed § 1918a.121, OSHA specifies requirements for fixed stairways. The term fixed stairway includes all stairs, indoors and out, except fire escape stairways, articulated stairways, or stairs built into a piece of machinery, such as a crane.

The dimensional characteristics specified in proposed paragraph (b) confrom to dimensions for stairways recommended in recent research on this topic (Ex. 17:150–176; Ex. 16). There is evidence that irregular spacing of stairway treads, risers and nosings "correlated highly with accident incidence" (Ex. 17:150). For this reason, the proposal requires uniform spacing of these features for fixed stairs installed after the standard's effective date.

Hand railings are required by proposed paragraph (b)(3) for all fixed stairs with length of climb greater that four steps. The absence of railings on

stairways also correlates highly with accident incidence, according to recent research (Ex. 17:150). Railings are required to have the strength characteristics and design features of permanently installed guardrails, since both types of railings perform essentially the same protective function.

Proposed paragraph (c) addresses stairways built in restricted spaces; these are required to have performance capabilities that will ensure adequate employee protection, but are permitted greater flexibility than that for fixed stairways in less restricted spaces. For example, tread depth may be as narrow as 4 inches because the stairs are without risers and therefore permit the climber's foot to extend into the open space behind the back of the tread. The final proposed requirement in the fixed stairway section states that employers must maintain such stairways in safe condition. For example, stairs must be kept free of tripping and slipping hazards, and railings must be kept free of sharp edges and be properly secured.

Section 1918a.122 Spiral stairways Spiral stairways, found frequently aboard ship and occasionally in marine terminals, are covered in proposed § 1918a.122. There is no coverage of this topic in either the general industry standards or the ANSI marine terminal consensus standard. The minimum requirements for spiral stairways are shown in Figure F–1; they conform to those for existing or restricted fixed stairways in proposed § 1918a.121(c), except for allowances made for the triangular form of spiral staircase treads. Since these stairways are open on at least one side, proposed paragraph (b)(4) stipulates that at least one baluster be provided for each step (if balusters are used), to protect against a user slipping through between the railing and the step.

Clearance above the uppermost step must be a minimum of 6 feet 6 inches, to allow a person to stand after ascending, according to proposed paragraph (b)(5); the requirement proposed in paragraph (c) requires employers to keep stairways of this type in sound condition and free of all hazards.

Section 1918a.123 Employee exits. In general, marine terminals are liberally equipped with exits, such as cargo doors, because they are used for vehicle and cargo traffic. However, to ensure that adequate and well-marked employee exits are available, particularly for emergency use, OSHA proposes the requirements in § 1918a.123. The proposed individual provisions address such matters as exit signs, market exit paths, and good housekeeping, all essential to protect employees in emergencies requiring escape. The minimum width specified in proposed paragraph (d) is sufficient to use of the exit by one person at a time. OSHA believes this minimum exit width is adequate because terminals have so many doors and windows that could be used for emergency egress; information demonstrating support or lack of support for this proposed requirement would be appreciated.

Section 1918a.124 Illumination. In § 1918a.124, OSHA proposes a minimum average light level of 10 foot-candles for active work areas in marine terminals. Although most terminals have light levels at or above this value, at least in cargo-handling areas, some do not. OSHA is considering increasing the required light level in the final rule to 20 foot-candles for active work areas, to conform to the level recommended both for active storage yards and for freight piers in the ANSI standard for illumination, ANSI A11.1–1973, Practice for Industrial Lighting.

OSHA believes this illumination level may be necessary to permit employees in cargo handling and other particularly hazardous work operations to see, and thus avoid, serious hazards. These hazards include tripping and falling over obstructions and being struck by falling objects. Since OSHA believes that areas where the work being performed is less hazardous, such as storage areas and transit sheds, require a lesser illumination level to protect employees, these areas are required in the proposal to have a minimum average light intensity of 5 foot-candles. This latter figure also accords with ANSIs recommendation for active shipping area surrounds (Ex. 61).

The proposed requirement states that illumination levels must be measured at the working or walking surface; as in other measurements of occupational exposure, for example, air samples, the place at which the measurement is taken is of the utmost importance to its validity. Since it is crucial to safety that employees be able to see the walking and working surface in use, the proposal requires that the assessment of light intensity be made at that level.The ANSI MH9.1 (section 3.15) also links amount of light required to degree of hazard involved. Its illumination requirement states:

> . . . all places where persons are employed, including regular passageways to or through a wharf, pier, or any other part of a marine terminal facility, or to and from a vessel, shall be lighted with such adequacy that employees are able to perform assigned duties safely; the amount of light being dependent on and suitable for the type and degree of activity in the specific area.

OSHA is interested in receiving comments about safe illumination levels in various terminal areas and operations. For example, are there work situations other than cargo-handling that require an average light intensity of 10 foot-candles to be performed safely? Do all walking areas, including parking lots, require an illumination level of 5 foot-candles? Are there specific jobs that require a lighting level greater than the proposed requirement for active work areas?

Section 1918a.125 Passage between levels and across openings. In § 1918a.125, OSHA proposes coverage for devices such as ramps, dockboards (car or bridge plates), or other temporary forms of surfacing, such as steel plates. These work surfaces are particularly hazardous because they are not a permanent part of any structure, and because they are subjected to heavy loads and rough use.

Proposed paragraph (a) provides that employees whose work requires them to drive or carry material across an opening or to move from one level to another have a safe means of crossing from one level or surface to another. Dockboards, also known as car or bridge plates, are used primarily to load or discharge cargo from the terminal's loading dock to a trailer or other vehicle by means of fork lift trucks, which go back and forth across the dockboard from the loading dock into the trailer. Ramps are used principally to provide vehicle access to vessels.

The provisions proposed in paragraph (b) address significant hazards associated with these temporary work surfaces. As with other equipment designed for material handling, these devices must be plainly marked with their rated capacities, to prevent collapse caused by overloading. If the rating is not marked directly on the device, which is sometimes the case with dockboards, the rating must be available at the terminal. The adequacy of the means by which these devices are secured to the loading dock, vessel, or other surface is critical to the safe transit of vehicles across them. Accidents involving slipping dockboards are common; a frequent accident sequence involves a fork lift being thrown into the open space between platform and trailer because the dockboard has slipped and fallen into the void. There are several kinds of anchoring and anti-slip devices for securing dockboards in place. In addition, sufficient overlap must be provided to ensure proper contact between the two edges; if the platform or loading surface slopes or is not level,

the edges cannot be lined up and the dockboard cannot be adequately secured.

The means of safe handling addressed in proposed paragraph (b)(5) would vary according to the surface in question and the equipment available. For example, ramps can be safely handled by fork lifts if the ramps are equipped with fork loops or lugs, and dockboards are often equipped with handles or handholds for carrying. The proposed requirements for ramps and dockboards are compatible with those in the general industry standards (§ 1910.30) and the longshoring regulations (§§ 1918.23 and 1918.24).

Guardrails to protect employees from falling are proposed in the requirement at (b)(7) for situations where the dockboard or ramp slopes or where employees might fall more than 4 feet. Fall protection for vehicles using these temporary surfaces is addressed in proposed paragraph (b)(8), which states that dockboards and ramps must have sideboards or, for example, be turned up at right angles on their open sides so that trucks cannot fall over the edge.

In proposed paragraph (c), steel plates or other temporary surfaces used to facilitate vehicle movement are required to be secured so that vehicles or other objects cannot dislodge the plate, which could cause the truck to overturn or the load to topple.

Section 1918a.126 Guarding temporary hazards. Areas in the terminal that may present tripping and falling hazards are addressed in proposed § 1918a.126. Examples of such areas are broken pavement, ditches, holes in the surface of the pier, and chuck holes in traffic areas. Employers may use any effective means of protecting employees from being injured by tripping or falling over or into these hazardous areas; ropes, barricades and temporary railings are examples of appropriate protection. In addition to providing a physical barrier, employers must ensure that such areas are adequately lighted so that employees can avoid the hazard. The ANSI MH9.1 (section 3.1.7) also addresses temporary surface conditions that may be hazardous to employees.

Section 1918a.127 River banks. The proposed provision in § 1918a.127 is intended to apply to conditions on the inland waterways rather than at ocean ports. Along rivers where the water level changes drastically, such as along the Ohio and Mississippi rivers, it is not uncommon for cargo-handling operations to be conducted directly from the bank of the river, without a pier or apron to use as a working surface. Employees working at such sites need to be protected from falling or being pulled into the water, particularly since these rivers flow very swiftly. There have been several incidents of cargo handlers drowning in these circumstances (Ex. 76). The proposed requirement calls for two types of protection: personal flotation devices for each employee, and guarding of the perimeter of the working area, between the land and the water. Employers might use temporary railings, roping off, or other physical barricades to accomplish the goal of employee protection. The related ANSI provision (section 3.1.6) only requires temporary guarding of the work area perimeter. OSHA believes that requiring flotation devices in these situations is justified by the number of drownings that have occurred.

Section 1918a.128 Sanitation. The requirements proposed in § 1918a.128 address washing and toilet facilities, drinking water, safe eating areas, and garbage disposal, all matters which affect employee health and comfort. The proposal provides coverage for temporary sanitary facilities as well as permanent installations, because cargo is occasionally handled directly from a river bank, and temporary facilities would be used in such a situation.

The requirement proposed at paragraph (c) prohibits employees from eating or drinking in storage or handling areas used for hazardous materials. It is not uncommon for employees, for example, to sit on a pile of hazardous cargo while eating lunch, a practice that might lead to ingestion of some of the hazardous material. The general industry standard contains similar coverage to protect employees against ingestion of toxic materials (§ 1910.141(g)(4)).

The longshoring regulations have rules similar to those in this section (§ 1918.94(a) and (b)) covering drinking water and garbage disposal, and ANSI MH9.1 (section 8.11.2) also addresses requirements for drinking water.

Section 1918a.129 Signs and marking. Signs to alert employees of hazards and to provide essential information are addressed in § 1918a.129. To achieve their purpose, signs are required to be legible and easy to understand, containing either a key word or a more detailed description of the hazard, such as "Railroad Crossing" or "High Voltage."

All marine terminals would be required to have, as a minimum, signs identifying the location of first aid facilities, telephones, fire exits, firefighting and emergency equipment (such as respiratory protective equipment), and a sign listing telephone numbers of the nearest hospital and other sources of emergency aid.

In addition, employers would be required to post danger signs to warn employees of imminent danger, such as electric shock, and to provide caution signs to warn employees of the presence of a potentially hazardous situation. Other sections of the proposal also require employers to post safety instruction signs, such as those designating smoking areas, and traffic signs. The ANSI standard also contains provisions concerning signs (section 8.12).

Subpart G—Related Terminal Operations and Equipment

The material in this proposed subpart addresses certain equipment, such as saws, abrasive wheels, and other fixed machinery, and specialized operations, such as welding and spray painting, that are used or performed in marine terminals. The equipment and operations involve support functions conducted principally to maintain or repair equipment used in connection with the terminal's primary purpose, cargo handling. Many types of machines found in general industry are not used in terminals, and the proposal's guarding and protection requirements are therefore much less extensive than those of OSHA's general industry standards.

Section 1918a.151 Machine guarding. Guarding of fixed machinery is addressed in § 1918a.151. Guarding may involve physical barriers used at the point of operation, or guarding by location, which means positioning the hazardous area, for example a nip point, beyond the reach of employees. The could be done either by using equipment designed so that the nip point is completely enclosed, for example by casting, or located beyond the reach of any employee's work station.

Proposed requirements for all fixed machines are covered in paragraph (b). The first provision proposes that all danger zones (§ 1918a.2(g)) be guarded; this requirement is stated in performance terms, to allow employers flexibility in choosing a method of guarding that is appropriate for the machine in question and the conditions of use.

Proposed paragraph (b)(2) requires a local exhaust system to protect employees performing tasks that produce dangerous quantities of dust or flying chips, as would occur, for example, in fixed saw operations.

The requirement proposed at paragraph (b)(3) to secure fixed machinery is designed to protect employees both from being hurt by a blade or other part of the machine when

the machine shifts, and from being hit by the machine itself as it falls.

The power cut-off device required by proposed paragraph (b)(4) would permit the operator to turn off the machine in a potentially hazardous or emergency situation.

Machines designed to operate at different speeds could seriously injure the operator if they shift speeds without warning during machine operation; the belt-locking device required by proposed paragraph (b)(5) would prevent any unintentional change in speed.

In proposed paragraph (b)(6), motors are required to be constructed so that any loss of power will automatically turn the machine off, to prevent operator injury caused by unexpected restart when the power supply comes back on.

The lockout requirement in proposed paragraph (b)(7) is designed to prevent the severe and frequent injuries caused by the accidental reactivation of machines that have not been properly turned off and locked out before employees work on them. OSHA is presently developing a general lockout standard for machines and equipment used in general industry, and preliminary data indicate that injuries related to the failure to lock out machines may account for as many as one percent of all occupational injuries. Although these statistics pertain to general industry cases, there is no reasonable basis to conclude that marine terminal experience with the same types of machines would be significantly different.

The provisions proposed at paragraphs (b)(8) and (b)(9) would ensure that machines and equipment used in the terminal are maintained in accordance with the manufacturer's instructions, and that maintenance and repair are performed only by designated employees. Maintenance is perhaps even more important in the harsh weather conditions of the terminal environment than in less severe conditions, although it is essential to the safe operation of all industrial machinery.

The final requirement proposed in paragraph (b) prohibits use of any equipment with a defect that would interfere with safe operation; the intent of this provision is to protect operators of machinery and employees working near equipment from being injured by machine malfunction or failure.

In paragraphs (c), (d), (e), and (f), OSHA proposes coverage for the hazards associated with the operation of industrial saws. These hazards include being cut by the saw's blade, and being hit by flying pieces of the material being cut. Accordingly, most of the requirements in these paragraphs relate to machine guarding. For example, proposed requirements (c)(1), (d)(1), (d)(4), (e)(1), and (f)(1) all pertain to guarding of the blades of the type of saw involved.

The provision proposed in paragraph (c)(2) requires spreaders on handfed ripsaws and table saws; these devices hold the cut in the material open, and thus prevent the feedstock from squeezing and jamming the blade.

Non-kickback fingers or dogs are required by proposed paragraphs (c)(3) and (e)(2); these devices hold the material being cut so that it will not be picked up by the saw's action and thrown at the operator. The work practice proposed in paragraph (e)(5) is also intended to ensure that the saw is used in a manner that will offer resistance to the saw's action, to prevent the operator's hands from being caught in the blade.

The devices required in proposed paragraphs (d)(2) and (e)(4) would prevent the saw from rebounding abruptly after use, which might break the blade, and would also ensure that the blade returns to the rest position, away from the operator's hands. Steps to prevent the saw from swinging into the operator's range are proposed in paragraphs (d)(3) and (e)(3), and brakes which would stop the saw are covered in proposed requirement (f)(2). The final proposed provision for saws requires band saws to have a tension control device to maintain the proper tension on the blade, so that material will not catch and be thrown at the operator.

In paragraph (g), OSHA proposes requirements for abrasive wheels and equipment used to grind and sharpen tools and other objects.

The most common accident associated with abrasive wheels is one in which the operator is struck by a piece of the wheel when the wheel breaks. For this reason, most of the requirements proposed in this paragraph deal with guarding or are related to guarding. For example, proposed provision (g)(4) requires that work rests be used; these devices are designed to hold the tool being ground so that the operator's hand will not contact the wheel. Similarly, the requirements proposed in paragraphs (g)(5), (g)(6), and (g)(7) are intended to prevent conditions that might cause the wheel to shatter, thus injuring the operator or others in the vicinity.

Proposed paragraph (h) contains guarding provisions for moving machine parts, such as gears, sprockets, and belt chains; whether the guarding is point of operation guarding or guarding by location is left to the employer's discretion.

Section 1918a.152 Welding, cutting, and heating (hot work). The provisions in this section of the proposal are compatible both with the hot work requirements in OSHA's shipyard regulations (29 CFR Part 1915) and with the Agency's general industry hot work requirements (§ 1910.252). Fire and electric shock are the principal hazards associated with any type of hot work. Hot work is used in the marine terminal principally to perform routine maintenance and repair tasks, such as rebuilding a damaged intermodal container or repairing a chassis that is no longer properly aligned.

In paragraph (c), OSHA proposes requirements to protect employees from the hazards associated with unwanted fires in the workplace. Unless hot work is performed in designated areas without fire hazards, proposed requirement (c)(2) would require that additional precautions, such as using a fire-proof slag curtain, be taken.

Proposed paragraph (c)(3) ensures that fire extinguishing equipment is at hand wherever hot work is being performed. This equipment must be fully charged and ready for use at all times.

The fire watch proposed in paragraph (c)(4), which is standard industry practice, and is necessary to ensure that no sparks or other fire hazards are left unattended.

Drums and other containers presenting a fire or explosion hazard are required in proposed paragraph (c)(5) to be closed to prevent the escape of dangerous fumes, and empty containers must be removed from the hot work area. The proposed requirements in paragraph (c)(6) are intended to prevent flying slag from starting a fire on the floor below the hot work area or outside the structure in which hot work is being carried on.

Hot work is prohibited in the areas specified in proposed paragraph (c)(7); these areas present extreme fire hazards. For example, bulk sulphur may ignite spontaneously during handling. OSHA also has received many reports of fatal accidents caused by employers welding on tanks containing combustible liquids (ref).

Before heating, proposed paragraph (c)(8)(i) requires inerting or cleaning of tanks or drums that have contained a flammable or combustible substance. These structures must then be tested by the employer to ensure that the atmosphere is free of fire hazards. A relief valve to release the gas built up by heating the drum or tank is required in proposed paragraph (c)(8)(ii), to prevent explosion.

In paragraph (d), OSHA proposes requirements for gas welding and cutting operations, such as hell-arc or oxy-arc welding. The proposed requirements of paragraph (d)(1) specify work practices to be followed to prevent damage to the compressed gas cylinders used to supply the welder's torch. Compressed gas cylinders must be protected from impact, which may cause the pressurized cylinder to explode or to become a lethal projectile.

The requirements in paragraph (d)(2) are addressed to hazards associated with fuel gas use. For example, proposed paragraph (d)(2)(i) is intended to prohibit blocking of cylinder valves, which would interfere with the proper flow of gas.

Cylinder valve regulators, which are spring-loaded and therefore delicate, are addressed by the provisions proposed in paragraphs (d)(2)(ii) through (d)(2)(iv); these work practices are essential to maintaining regulators, which control the pressure level, in safe condition.

The proposed requirements in paragraphs (d)(2) (v) and (vi) are intended to prevent leaking cylinders from presenting a fire hazard to employees near the cylinder.

Hazards associated with fuel gas and oxygen are addressed in proposed paragraph (d)(3). Hoses used to convey these substances must be maintained in optimum condition to ensure that they do not leak, which would present a fire and explosion hazard. It is essential that hoses supplying oxygen and those supplying fuel gas not be taped together more than is necessary for ease of handling, to reduce the likelihood of fire; however, as proposed provision (d)(3)(ii) notes, they may be taped together for a distance of no more than 4 inches for handling purposes.

Welding torches are addressed in proposed paragraph (d)(4); torches must be carefully maintained to ensure proper flow control. Proposed paragraphs (d)(5) and (d)(6) stipulate additional work practices to be followed to prevent explosions and fires.

Proposed paragraph (e) contains requirements for arc welding and cutting. As with other forms of welding, the primary hazards of arc welding and cutting are fire and explosion. However, arc welders and cutters are also subject to electric shock and to vision impairment caused by exposure to the blinding rays of the arc. The requirements in this paragraph are therefore directed at protecting workers from these dangers. For example, the proposed provisions appearing at paragraphs (e)(1)(ii), (e)(2)(i), and (e)(2)(iv) are designed to ensure that electrode holders, welding cables and connectors, and metal parts are properly insulated to protect against fire and electric shock.

The requirements proposed in paragraphs (e)(1)(i), (e)(2)(i), and (e)(3)(vi) are primarily concerned with the current-carrying capacity of electrode holders, welding cables, and ground connections. If such equipment is not electrically adequate to carry the current required in the welding or cutting operation, employees could be exposed to fire and electric shock.

In paragraphs (e)(2)(ii), (e)(2)(iii), (e)(9), and (e)(10), OSHA is proposing coverage directed largely to the hazard of electric shock. Proposed provision (e)(3)(ii) is intended to prevent explosions, which might occur if, for example, a pipeline carrying fuel gas was used as a ground return circuit. Grounding, which must be adequate to protect employees using electrical tools from being shocked or electrocuted, is addressed in the requirements proposed in paragraphs (e)(3)(iii), (e)(3)(iv), and (e)(3)(v).

The work practices and requirements in proposed provisions (e)(4), (e)(5), (e)(6), (e)(7), (e)(9), and (e)(11) are also directed at protecting the welder or cutter from electric shock and burns. The proposed requirements in paragraphs (e)(8)(i) and (ii) will provide employee protection against blinding by the arc and being burned by the sparks of the arc.

The final provision proposed in this paragraph, (e)(11), requires employers to provide additional protection against the increased risk of electric shock when arc welders and cutters must work in wet or humid conditions. This additional protection could take the form of rubber boots, rubber pads for employees to stand on, or rubber gloves.

The proposed requirements in paragraph (f) are directed to the atmospheric hazards associated with welding, cutting, and heating, processes which liberate fumes that may be harmful to the welder or cutter or to other employees in the vicinity of the hot work. The composition of the fumes liberated depends on the types of fluxes, filler materials, base materials and coatings involved in the process.

Proposed paragraph (f)(1) specifies the types of ventilation required to maintain breathing zone concentrations of atmospheric contaminants below hazardous levels. Either local exhaust ventilation, in the form of hoods that can be positioned near the point of operation, or general ventilation may be used to maintain non-hazardous levels of fumes, vapors, or smoke. The proposed requirement in paragraph (f)(1)(v) prohibits using pure oxygen to cool or ventilate the atmosphere, or to clean clothing to the work area. The provision is directed at the hazard of fire associated with oxygen levels above 23% of the atmosphere; since the oxygen used for welding is pure oxygen, it may cause a serious fire hazard. If it were used to clean a welder's clothing, for example, some of it might collect in the seams, where it could cause the clothing to catch on fire when the welding torch was lit.

In paragraph (f)(2), OSHA proposes requirements for performing hot work in a confined space, such as a tank or boiler. The severely limited natural ventilation, small size, and restricted access typical of confined spaces all contribute to the exacerbation of the respiratory hazards associated with hot work in general. The proposed requirements therefore mandate either mechanical ventilation or the use of appropriate respiratory protective equipment, in which case a standby prepared to perform a rescue must be stationed outside the confined space.

Proposed paragraph (f)(3) addresses the hazards of exposure to the fumes liberated when toxic metals are welded, cut, or heated, or used in the flux or filler. Examples of toxic mentals are lead, cadmium, chromium, zinc, and mercury. The level of employee protection required by the proposal varies with the toxicity of the metal being heated and the ventilation characteristics of the space in which the work is being performed. For example, proposed requirement (f)(3)(iii) requires that both local point-of-operation ventilation and supplied air or self-contained breathing apparatus be used when hot work is performed indoors with a beryllium base or filler metal. Workers exposed to beryllium fumes are subjected to the risk of developing either acute or chronic respiratory beryllium disease.

The provision proposed in paragraph (f)(3)(v) will ensure that employees working in the vicinity of the hot work are also adequately protected from hazardous exposures, by requiring them to wear the same type of personal protective equipment as is worn by the welder or burner.

In paragraph (f)(4), OSHA is proposing coverage for employees exposed to the fumes liberated during inert-gas metal-arc welding. An example of this type of hot work is the use of argon to weld aluminum. The proscription directed to the use of chlorinated solvents within 200 feet of the welder's arc is necessary to protect employees from chlorine gas, which would be liberated if the solvent contacted the sparks of the arc.

The rays produced by this type of hot work are particularly intense and therefore present the risk of impairing the vision of the exposed workers. Filter lenses and filter lens goggles are required by proposed paragraph (f)(4)(ii), to protect against this hazard.

Since inert-gas metal-arc welding produces 5 to 30 times the level of ultraviolet radiation produced in shielded metal-arc welding, proposed paragraph (f)(4)(iii) requires employees to wear protective clothing and equipment to protect them from ultraviolet burns and cutaneous or visual damage.

The final proposed requirement in the inert-gas welding section mandates that employees performing inert-gas metal-arc welding on stainless steel be protected by local ventilation or by supplied air respirators, to prevent exposure to hazardous levels of nitrogen dioxide.

Performing hot work on structures coated with preservatives requires that precautions against both fire and inhalation of toxic fumes be taken. For example, the requirements proposed in paragraph (g) would protect welders required to weld a chassis or container that had been painted with a preservative such as red lead paint or a chromate-containing coating.

Tests to establish the degree of flammability of the preservative coating are required by proposed paragraph (g)(1), and precautions against fire are required by the next provision. Examples of an appropriate precaution would be stripping the coating away from the area to be heated, or applying artificial cooling to the area to reduce the temperature of the surface. Since these perservatives produce toxic fumes when heated, the final proposed provision mandates that exposed employees wear appropriate respiratory protective equipment.

The final paragraph in the proposed hot work section addresses employee protection from the radiant energy produced by any type of welding or cutting. Visual impairments caused by the blinding flashes produced by the welder's torch and the metal being welded are common occurrences among welders. The proposed requirements in paragraphs (h)(1), (2), and (3) will ensure that eye protection, with the filter lenses appropriate to the task, is worn by affected employees.

Section 1918a.153 Spray painting. Spray painting is performed at many marine terminals, although such operations are usually conducted on an infrequent and small-scale basis. Spray painting is done to protect surfaces exposed to the environment from rusting or corroding. For example, chassis and fifth wheels might be spray painted after removal of rust spots or other damage. The principal hazards of spray painting are fire and inhalation of atmospheric contaminants.

The scope of this proposed section is specified in paragraph (a), which states that major spray painting jobs, such as painting the terminal building, and portable spray painting equipment, such as the hand-held equipment used for minor "touch-ups," are not included in the proposal's coverage of spray painting. Major painting jobs are considered construction operations, and would be covered by OSHA's construction regulations (29 CFR Part 1928).

The requirements proposed in this section are grouped according to the location in which the spray painting operation occurs. The requirements appearing in proposed paragraph (c) apply to any painting area, including spray booths, spraying areas, and outdoor spraying operations, while those in proposed paragraph (d) apply only to spraying booths and spraying areas. The provisions in proposed paragraph (e) apply to spray booths exclusively. This "tiering" of requirements corresponds to the degree of hazard associated with spray painting in the various locations. For example, electrical equipment used in an outdoor area would not have to be approved for use in a hazardous location because the natural ventilation outdoors is adequate to keep the atmosphere below flammable or explosive levels. However, electrical equipment in an indoor spraying area would be required by the proposal to be approved for use in a Class I, Division 2 hazardous location, while that used in the enclosed space of a spray booth would have to be approved for a Class I, Division 1 (explosive) atmosphere.

The proposed requirements in paragraph (c) are primarily directed to fire and explosion hazards in all spraying areas, whether indoor or out. For example, paragraph (c)(1) requires that the shut-off valves on spray painting containers or piping be closed when the equipment is not in use, to relieve the pressure on the hoses. Since equipment under pressure may burst, releasing flammable materials into the atmosphere, several proposed provisions are aimed at preventing this hazard (c)(1), (c)(2), and (c)(3). These preventive measures are necessary to ensure that materials used in spray painting operations which have low flash points, such as paints and thinners, do not create fire hazards.

Several paragraphs proposed in paragraph (c) are designed to prevent sparks or static electricity from igniting fumes from the operation; paragraphs (c)(4) and (c)(5) are examples of such provisions. Special precautions for the use of organic peroxides and other dual-component coatings, which are subject to spontaneous combustion, are addressed in proposed paragraph (c)(7).

The requirements in paragraph (d) would apply to indoor spraying areas and spray booths, but do not apply to outdoor spray areas because such areas do not have the equipment covered in this paragraph. For example, outdoor spray areas do not have exhaust ducts and ventilation fans.

Proposed paragraph (d)(1) requires distribution or baffle plates, which are used to ensure an even flow of air and to catch overspray, to be of non-combustible material and to be so located and designed that accumulations of paint that might be hazardous can be removed frequently and easily.

Filters, used to filter out paint mist to keep atmospheric paint concentration below a hazardous level, are addressed by proposed paragraphs (d)(2), (d)(3), and (d)(4). These requirements are all directed at prevention of fire. Mechanical ventilation of spraying areas is covered in several proposed requirements (d)(5), (d)(6), (d)(7), and (d)(9)). Ventilation is used to maintain the concentration of flammable and combustible vapors and mist from spray painting below flammable levels.

The risk of an electrical spark igniting the atmosphere in a spraying area is substantial unless safeguards are used against sparking. In paragraphs (d)(8), (d)(10) and (d)(12), OSHA proposes requirements to prevent this hazard.

The final paragraph in the spray painting section contains provisions that apply to spray booths, enclosed spaces in which the concentration of fumes and therefore the danger of fire is greater than in a spraying area. Although spray booths are not common in marine terminals, several terminals do have them, and the requirements proposed in paragraph (e) are directed to employee protection in these situations. The proposed requirements mandate that the booths themselves be constructed largely of noncombustible material (e)(1), be separated from other marine terminal operations either by a partition or by a clearance space (e)(2) and (e)(3), and have conductive objects, such as ducts or piping, grounded, to prevent sparking or fire (e)(4)). Spontaneous ignition caused by successively applying materials that are flammable when combined would be prevented by

compliance with proposed paragraph (e)(8).

Section 1918a.154 Compressed air. Many industrial processes use compressed air to clean the work area of debris, dust, and chips after work has been completed. Unless employees in the vicinity are properly protected, however, they may be hit by flying chips or debris that is thrown up by the cleaning process. In § 1918a.154, OSHA proposes that exposed employees be protected by chip guarding and by the appropriate personal protective equipment, such as goggles or face shields. This section also prohibits the use of compressed air to clean employees, a practice that can cause an air embolism if air under pressure is forced into the bloodstream through the skin.

Section 1918a.155 Air receivers. Air receivers, tanks used to store compressed air from a compressor, are addressed in proposed § 1918a.155. The hazard associated with this equipment is explosion caused by the excessive buildup of pressure in the receiver. The proposed provisions would guard against this hazard by requiring pressure guages and pressure-relief valves. The proposal would also prohibit the placement of any valves other than relief valves between the receiver and its safety valves, which would prevent the relief device from functioning properly.

Section 1918a.156 Fuel handling and storage. Although the Coast Guard exercises general statutory authority in matters related to fuel handling and storage in marine terminals, the working conditions covered by the provisions proposed in this section are not addressed in the Coast Guard regulations (33 CFR Part 126, 46 CFR Part 146).

The requirements in proposed paragraph (b) concern diesel and gasoline fuel handled at terminals which have their own dispensing pumps to supply industrial tructs and other vehicles used at the terminal. All of the proposed provisions are directed at preventing fires and explosions, the principal hazards associated with liquid fuel handling and storage.

In paragraph (c), OSHA proposes coverage for the safe handling and use of liquefied gas fuels, such as liquefied petroleum gases (LPG) (propane, butane, propylene, and butylene). These gases liquefy under moderate pressure, but convert to the gaseous state when the pressure is relieved. Adequate ventilation is an even greater problem with these fuels than with flammable natural gases, because LP-gas vapors are heavier than air and are therefore more difficult to disperse. Accordingly, two of the proposed provisions are directed at preventing these vapors from accumulating in low-lying areas such as tunnels and pits ((c)(1)(iii), (c)(5)(iii)).

The requirements proposed in paragraph (c)(2) are intended to ensure that LP cylinders and their valves are handled in a manner that will avoid damage to the containers and their fittings. The final provisions in this paragraph, (c)(3), (c)(4), and (c)(5), cover fueling operations, fuel storage, and storage and servicing of LP-powered vehicles, respectively.

Section 1918a.157 Battery charging and changing. The hazards associated with charging and changing electric storage batteries are dealt with in proposed § 1918a.157. Employees performing these tasks are exposed to acid burns from spilled electrolyte, slips and falls caused by spilled battery fluids, electric shock from the charging equipment, and fire and explosion caused by ignition of hydrogen released during the charging process. In addition, employees may overexert themselves if they attempt to lift the batteries or large quantities of electrolyte.

The proposed requirements are directed at the prevention of fire and explosion ((a), (b), (c), (f), (g), (h), (m), (n)); protecting employees from acid burns ((d), (e), (i), and (j)); avoiding electric shock ((k), (l), (n), and (o)); and preventing strains and overexertion injuries ((j)).

Section 1918a.158 Prohibited operations. The proposed standard's final section prohibits certain operations from being conducted during, or in the vicinity of, cargo-handling operations. Spray painting and abrasive blasting both produce exessive levels of noise, which would interfere with the communication of signals necessary to ensure close cooperation during the loading or discharging of cargo. Further, if a draft or part of a draft were to fall and hit the spray painting equipment, hazardous fumes might be released.

Proposed paragraph (b) is intended to protect cargo handlers from the fire hazards associated with welding and burning operations. Unless hot work is necessary to repair equipment being used in the hoisting operation, it should be performed in an area designated for that purpose and distant from the hoisting area, which would provide the requisite level of employee protection.

VI. Regulatory Assessment

The proposed standard covering the operation of marine terminals is not a "major" action as defined by Executive Order No. 12044 (43 FR 12661, March 24, 1978) and by the economic identification criteria contained in Department of Labor Guidelines for Improving Government regulations (44 FR 5575, January 26, 1979).

The marine terminal facilities covered by the proposed standard include other industries in addition to those in Standard Industrial Classification (SIC) 4463, Marine Cargo Handling. For example, firms in such industries as petroleum refining, steel production, iron ore and coal mining, cement manufacturing, and others frequently have their own port facilities to serve their shipping needs; these firms would be classified under other SIC's. The economic analysis of the proposed standard therefore includes estimates of compliance costs that are not entirely attributable to SIC 4463.

Centaur Associates, Inc., has prepared an economic assessment for OSHA entitled "Economic Impact Statement/Assessment for the Proposed Marine Terminals Standard" (Ex. 78). This study includes assessments of the technological feasibility of compliance, of the estimated costs of compliance, of the estimated effects upon the prices of goods shipped through marine terminals, of the estimated effects upon labor productivity and employment, and of the expected changes in market structure that can be anticipated upon implementation of the proposed standard.

According to the study, the costs of compliance for the marine cargo handling industry—based upon a "worst case" criterion—is estimated to be no greater than $40.3 million during the first year of compliance and no more than $16.5 million during any succeeding year. This falls well short of the Department of Labor's Guidelines establishing criteria for major actions of $50 million in one year in any one industry and $80 million in any two years. With respect to the economy-wide costs of compliance, the total is estimated to be less than $63.6 million during the first year and no greater than $28 million during any succeeding year. These values also clearly fall short of the E.O. guidelines setting a "major" action level of $100 million in one year for the economy as a whole, and $180 million for any two years. The Centaur study concludes that compliance with the proposed standard is both technologically and economically feasible.

With respect to the other general economic assessments of the proposed standard, the study concludes that the effects on prices and the quantity of goods shipped through marine terminals is, in the worst case, only about $0.05 a ton—a negligible charge equal to approximately 0.06 percent of the

average water transportation shipping charges. It also concludes that there would be some minor negative effects upon labor productivity due to the required safety training and the probable changes in certain work practices. However, this productivity loss may be more than offset by the decline in lost work days attributable to the reduction of occupational injuries in marine terminals. The study also concludes that the proposed standard would not have any effect upon employment because of its limited impact on costs, prices, quantities shipped, and labor productivity.

In addition, pursuant to the Regulatory Flexibility Act of 1980 (Pub. L. 96-353, 94 Stat. 1164 (5 U.S.C. 601 et seq.)) the study assessed the impact of the proposed standard upon small businesses. The Centaur study concluded that this proposed standard would not create any new competitive disadvantages in small firms relative to larger firms because the bulk of the costs are directly dependent upon the firm's size and upon the number of its employees. For example, the amount and costs of new lighting required by the proposal would be determined by the size of the marine terminal. The cost of providing safety shoes, the cost of providing supervisory safety instruction, and the cost of per-worker productivity reductions are all determined by the number of employees. Since these items account for the major cost (accounting for about 75% of the total estimated cost of the proposal), the per-ton costs of the proposed standard are expected to be the same for both smaller and larger firms. Thus, the basic market structures of the marine cargo handling and other affected industries would not be changed, and smaller firms would not lose business as a result of promulgation of the standard.

Further, the proposed safety standard is not expected to have environmental effects because the standard is concerned only with working conditions at marine terminals. The proposed standard provides coverage only for matters such as the types of slings to be used, the positioning of safety ladders, and the type of headgear and protective shoes to be worn. These provisions would not have an impact on the quality of the environment, and consequently, there is no need to perform an environmental impact statement for this proposed safety standard.

The economic impact assessment has identified several benefits which will be realized as a result of promulgation of a proposed safety standard for marine terminals. As the Hazard section of the preamble points out, workers at marine terminals are exposed to serious risk of injury. The Bureau of Labor Statistics has found that the Water Transportation Services industry (SIC 446) has the highest hazard index rating of any 3-digit SIC industry. Further it reports the greatest number of workdays lost per 100 workers for any 3-digit SIC industry. The extent and severity of the injury problem in marine terminals are reflected in compensation and medical payments made under the Longshoremen's and Harbor Worker's Compensation Act, which totaled about $200 million in fiscal year 1980. This figure does not include workmen's compensation paid to workers injured at marine terminals owned, for example, by a steel company, an oil refinery firm, or other facility not principally devoted to cargo handling.

Clearly, there is a pervasive injury problem in the shoreside marine cargo handling industry, which the provisions of this standard are designed to ameliorate. The proposed illumination requirement should limit the number of injuries caused by lack of light. The requirement that workers wear safety shoes which meet the ANSI 41.1-1967 specification for a class 75 safety shoe which, according to a Canadian study on the effectiveness of safety shoes (Ex. 79) will prevent 55% of all toe injuries and also substantially lessen the severity of many other toe injuries. Another proposed provision requiring safety training of supervisors should also reduce the level and severity of injuries caused by careless work practices.

Based upon a review of the Centaur study and the proposed standard as a whole, OSHA has determined that this proposed standard is not a "major" action under E.O. 12044 and the Secretary's Guidelines (44 FR 5575, January 26, 1979), and it is not expected to have any adverse effects upon small businesses as set forth in the Regulatory Flexibility Act of 1980.

VII. Public Participation

Interested persons are invited to submit written data, views and arguments with respect to this proposal. These comments must be postmarked on or before May 15, 1981, and submitted in quadruplicate to the Docket Officer, Docket S-506, Room S-6212, Frances Perkins Building, 200 Constitution Avenue, N.W., U.S. Department of Labor, Washington, D.C. 20210 (202) 523-7894. Written submissions must clearly identify the specific provisions of the proposal which are addressed and the position taken with respect to each issue.

The regulatory assessment and the exhibits cited in this document will be available for public inspection and copying at the above address. OSHA invites comment concerning the conclusions reached in the economic impact assessment.

The data, views and arguments that are submitted will be available for public inspection and copying at the above address. All timely submissions received will be made a part of the record of this proceeding.

To assist interested persons in submitting their written comments and data OSHA is scheduling a public meeting during the comment period. The meeting will be held on April 28, 29, and 30, 1981, in the Auditorium, Frances Perkins Building, 200 Constitution Avenue, N.W., U.S. Department of Labor, Washington, D.C. 20210. It will begin at 9:00 A.M. will recess from 12 Noon to 1:00 P.M., and will continue until 5:00 P.M.

The public meeting is intended as an informal forum for interested persons to present their concern orally and to seek clarification of the proposal from representatives of OSHA who will conduct the public meeting.

OSHA requests that any person wishing to make an oral presentation at the meeting notify OSHA in advance. Please identify the person and/or organization intending to make a presentation, telephone number, the amount of time requested for that presentation, and the subject matter and a brief summary of the intended presentation, if possible. This written notice should be sent to Thomas Hall, Room N-3635, OSHA Division of Consumer Affairs, Frances Perkins Building, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210 postmarked no later than April 15, 1981. For further information concerning participation at the meeting, please contact Thomas Hall or Richard Terry at (202) 523-8024. All persons giving advance notice will have time reserved for their oral presentations. Persons wishing to speak who have not filed advance notices are requested to register from 8:30 A.M. to 9:00 A.M. on the morning of the public meeting.

As long as time permits, all persons who wish to be heard will be allowed to speak. However, in the interest of time, persons who have provided advance notice will be given priority.

Detailed minutes of the meeting will be prepared and will be made a part of the record of this rulemaking. Copies of the minutes will be available for inspection at the OSHA Docket Office, Room S-6212, U.S. Department of Labor,

200 Constitution Avenue, N.W., Washington, D.C. 20210.

Pursuant to 29 CFR 1911.11(b) and (c), interested persons may, in addition to filing written submissions and attending the public meeting as provided above, file objections to the proposal and request an informal public hearing with respect thereto in accordance with the following conditions:

(1) The objections must include the name and address of the objector;

(2) The objections must be postmarked on or before May 15, 1981 and submitted to the Docket Office at the above address;

(3) The objections must specify with particularity the provisions of the proposed rule to which objection is taken, and must state the ground therefor;

(4) Each objection must be separatelystated and numbered; and

(5) The objections must be accompanied by a detailed summary of the evidence proposed to be adduced at the requested hearing.

VIII. Authority

This document was prepared under the direction of Eula Bingham, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, Third Street and Constitution Avenue, N.W., Washington, D.C. 20210.

Accordingly, under sections 4(b)(2), 6(b) and 8(c) of the Occupational Safety and Health Act of 1970 (84 Stat. 1592, 1593, 1599, 29 U.S.C. 653, 655, 657, and Section 41 of the Longshoremen's and Harbor Workers' Compensation Act (44 Stat. 1444 as amended; 33 U.S.C. 941), Secretary of Labor's Order No. 8–76 (41 FR 25059), and 29 CFR Part 1911, it is proposed to add Part 1918a to Title 29, Code of Federal Regulations, 29 CFR, and to amend 29 CFR Part 1910.16(a) and (b).

Signed at Washington, D.C. this 9th day of January 1981.

Eula Bingham,

Assistant Secretary of Labor.

1. By amending the title of § 1910.16 to read "Longshoring and Marine Terminals," and by revising paragraph (a) of § 1910.16 and by adding a new paragraph (b)(4) to § 1910.16 as follows:

§ 1910.16 Longshoring and marine terminals

(a) *Adoption and extension of safety and health standards for longshoring* (1) The standards prescribed by Part 1918, Subparts A through J of this title and in effect on April 28, 1971 are adopted as occupational safety and health standards under Section 6(a) of the Act and shall apply, according to the provisions thereof, to any employment and place of employment of every employee engaged in longshoring operations or a related employment aboard a vessel on the navigable waters of the United States.

(2) Part 1918a of this title shall apply exclusively according to the provisions thereof, to employment within a marine terminal, except as provided in paragraph (a)(4) of this section.

(3) The provisions of Part 1918a do not apply to the following:

(i) Facilities used for bulk storage, handling and transfer of flammable and combustible liquids, gases and hazardous cargo to the extent that specific working conditions are regulated by the United States Coast Guard; and

(ii) Facilities subject to the regulations of the Office of Pipeline Safety Regulation of the Materials Transportation Bureau, Department of Transportation, to the extent such regulations apply to specific working conditions.

(4) Part 1910 does not apply to marine terminals except for the following:

(i) Electrical. Subpart S;

(ii) Toxic and hazardous substances. Subpart Z applies where specifically referenced in Part 1918a, except that the requirements of Subpart Z do not apply when a substance or cargo is contained within a sealed, intact means of packaging or containment complying with Department of Transportation or Intergovernmental Maritime Consultative Organization requirements;

(iii) Noise. Subpart G, § 1910.95;

(iv) Commercial diving operations. Subpart T;

(v) Safety requirements for scaffolding. Subpart D, § 1910.28;

(vi) Abrasive blasting. Subpart G, § 1910.94(a); and

(vii) Access to employee exposure and medical records. Subpart C, § 1910.20.

(b) *Definition.* . . .

(4) "Marine terminal" means wharves, bulkheads, quays, piers, docks or other berthing locations and adjacent storage or contiguous areas and structures devoted to receiving, handling, holding, consolidating and loading or delivery of waterborne shipments. The term does not include production or manufacturing areas having their own docking facilities and located at a marine terminal.

2. By adding a new Part 1918a, Marine Terminal Code to 29 CFR as follows:

PART 1918a—MARINE TERMINALS

Subpart A—Scope and Definitions

Sec.

1918a.1 Scope and applicability.
1918a.2 Definitions.

Subpart B—Marine Terminal Operations

1918a.11 Housekeeping.
1918a.12 Slippery conditions.
1918a.13 Slinging.
1918a.14 Stacking of cargo and pallets.
1918a.15 Coopering.
1918a.16 Line handling.
1918a.17 Railroad facilities.
1918a.18 Log handling.
1918a.19 Movement of barges and rail cars.
1918a.20 Interference with communications.
1918a.21 Open fires.
1918a.22 Hazardous cargo.
1918a.23 Hazardous atmospheres, substances.
1918a.24 Carbon monoxide.
1918a.25 Fumigants, pesticides, insecticides and hazardous preservatives.
1918a.26 First aid and lifesaving facilities.
1918a.27 Personnel.

Subpart C—Cargo Handling Gear and Equipment

1918a.41 House falls.
1918a.42 Miscellaneous auxiliary gear.
1918a.43 Powered industrial trucks.
1918a.44 General rules applicable to vehicles.
1918a.45 Cranes and derricks.
1918a.46 Crane load and limit devices.
1918a.47 Winches.
1918a.48 Conveyors.
1918a.49 Spouts, chutes, hoppers, bins, and associated equipment.
1918a.50 Certification of marine terminal material handling devices.
1918a.51 Hand tools.

Subpart D—Specialized Terminals

1918a.71 Terminals handling intermodal container or roll on roll off operations.
1918a.72 Grain elevator terminals.
1918a.73 Terminal facilities handling menhaden and similar species of fish.

Subpart E—Personal Protection

1918a.91 Eye protection.
1918a.92 Respiratory protection.
1918a.93 Head protection.
1918a.94 Foot protection.
1918a.95 Other protective measures.

Subpart F—Terminal Facilities

1918a.111 Maintenance and load limits.
1918a.112 Guarding of edges.
1918a.113 Clearance heights.
1918a.114 Cargo doors.
1918a.115 Cargo landing surfaces.
1918a.116 Platforms and skids.
1918a.117 Elevators and escalators.
1918a.118 Manlifts.
1918a.119 Fixed ladders.
1918a.120 Portable ladders.
1918a.121 Fixed stairways.
1918a.122 Spiral stairways.
1918a.123 Employee exits.
1918a.124 Illumination.
1918a.125 Passage between levels and across openings.
1918a.126 Guarding temporary hazards.
1918a.127 River banks.
1918a.128 Sanitation.
1918a.129 Signs and marking.

Subpart G—Related Terminal Operations and Equipment

1918a.151 Machine guarding.

1918a.152 Welding, cutting and heating (hot work).
1918a.153 Spray painting.
1918a.154 Compressed air.
1918a.155 Air receivers.
1918a.156 Fuel handling and storage.
1918a.157 Battery charging and changing.
1918a.158 Prohibited operations.

Authority: Sec. 6(b), 8(c), 84 Stat. 1593, 1594 (29 U.S.C. 655, 657), Sec. 41, 44 Stat. 1444 (33 U.S.C. 941), Secretary of Labor's Order No. 8, 76 (41 FR 25059), 29 CFR Part 1911.

Subpart A—Scope and Definitions

§ 1918a.1 Scope and applicability.

(a) The regulations of this part apply to employment within a marine terminal as defined in § 1918a.2(u), including the loading, unloading movement or other handling of cargo, ship's stores or gear within the terminal or into or out of any land carrier, holding or consolidation area, or any other activity within and associated with the overall operation and functions of the terminal, such as the use and routine maintenance of facilities and equipment.

(1) The provisions of Part 1918a do not apply to the following:

(i) Facilities used for bulk storage, handling and transfer of flammable and combustible liquids, gases and hazardous cargo to the extent that specific working conditions are regulated by the United States Coast Guard; and

(ii) Facilities subject to the regulations of the Office of Pipeline Safety Regulation of the Materials Transportation Bureau, Department of Transportation, to the extent such regulations apply.

(2) Part 1910 of this Chapter does not apply to marine terminals except for the following provisions:

(i) Electrical. Subpart S;

(ii) Toxic and hazardous substances. Subpart Z applies where specifically referenced in Part 1918a, except that the requirements of Subpart Z do not apply when a substance or cargo is contained within a sealed, intact means of packaging or containment complying with Department of Transportation or Intergovernmental Maritime Consultative Organization requirements;[A-1]

(iii) Noise. Subpart G, § 1910.95;

(iv) Commercial diving operations. Subpart T;

(v) Safety requirements for scaffolding. Subpart D, § 1910.28; and

(vi) Abrasive blasting. Subpart G, § 1910.94(a).

[A-1] The Intergovernmental Martime Consultative Organization publishes the International Maritime Dangerous Goods Code to aid compliance with the international legal requirements of the International Convention for the Safety of Life at Sea, 1960.

§ 1918a.2 Definitions.

(a) "Apron" means that open portion of a marine terminal immediately adjacent to a vessel berth and used in the direct transfer of cargo between the terminal and a vessel.

(b) "Authorized," in reference to an employee's assignment, means authorized by the employer for that purpose.

(c) "Cargo door" (transit shed door) means a door designed to permit transfer of cargo to and from a marine terminal structure.

(d) "Cargo packaging" means any method of containment for shipment, including cases, cartons, crates and sacks, but excluding large units such as intermodal containers, vans or similar devices.

(e) "Confined space" means a space having all of the following characteristics:

(1) Small size;

(2) Severely limited natural ventilation;

(3) Capability to accumulate or contain a hazardous atmosphere;

(4) Exits that are not readily accessible; and

(5) Not designed for continuous human occupancy.

Examples of confined spaces are intermodal tank containers, bailwater tanks and portable tanks.

(f) "Conveyor" means a device designed exclusively for transporting bulk materials, packages or objects in a predetermined path and having fixed or selective points of loading or discharge. The term does not include such devices as industrial trucks, tractors, trailers, tiering machines, cranes, hoists, monorails, power and hand shovels, power scoops, bucket drag lines, platform elevators, moving stairways (escalators) and highway or rail vehicles.

(g) "Danger zone" means any place in or about a machine or piece of equipment where an employee may be struck by or caught between moving parts, caught between moving and stationary objects or parts of the machine, caught between the material and a moving part of the machine, burned by hot surfaces or exposed to electric shock. Examples of danger zones are nip and shear points, shear lines, drive mechanisms, and areas beneath counterweights.

(h) "Designated person" means a person who is recognized by the employer to possess specialized abilities in a specific area and is assigned by the employer to perform a specific task in that area.

(i) "Dock" means a wharf or pier forming all or part of a waterfront facility, including marginal or quayside berthing facilities; not to be confused with "loading dock" as at a transit shed or container freight station, or with the body of water between piers or wharves.

(j) "Dockboard" (bridge plate or car plate) means a device utilized to span the gap between railroad cars, or between railroad cars or highway vehicles and the loading dock or platform. A car plate may be fixed, adjustable, portable, powered or unpowered.

(k) "Enclosed space" means an indoor space, other than a confined space, that may contain or accumulate a hazardous atmosphere due to inadequate natural ventilation. Examples of enclosed spaces are trailers, railcars, and storage rooms.

(l) "Examination," as applied to material handling devices required by this Part to be certificated, means a thorough visual inspection, supplemented by other tests and procedures appropriate to the type of gear or device. For example, crane examinations include testing of all normal operations, such as slewing, topping, and hoisting, followed by inspection of accessory gear such as sheaves and blocks, which are disassembled to ensure that they are in good operating condition.

(m) "Flammable atmosphere" means an atmosphere containing more than 10 percent of the lower flammable limit of a flammable or combustible vapor or dust mixed with air.

(n) "Front-end attachments." (1) As applied to power-operated industrial trucks, means the various devices, such as roll clamps, rotating and sideshifting carriages, magnets, rams, crane arms or booms, load stabilizers, scoops, buckets and dumping bins, attached to the load end for handling lifts as single or multiple units.

(2) As applied to cranes, means various attachments applied to the basic machine for the performance of functions such as lifting, clamshell or magnet services.

(o) "Fumigant" is a substance or mixture of substances which is a gas or is rapidly or progressively transformed to the gaseous state, even though some nogaseous or particulate matter may remain and be dispersed in the treatment space.

(p) "Hazardous cargo, material, substance or atmosphere" means:

(1) Any substance listed in 29 CFR Part 1910, Subpart Z;

(2) Any material in the Hazardous Materials Table and Hazardous Materials Communications Regulations

of the Department of Transportation, 49 CFR Part 172;

(3) Any article not properly described by a name in the Hazardous Materials Table and Hazardous Materials Communications Regulations of the Department of Transportation, 49 CFR Part 172 but which is properly classified under the definition of those categories of dangerous articles given in 49 CFR Part 173; or

(4) Any atmosphere with an oxygen content of less than 19.5%.

(q) "House falls" means spans and supporting members, winches, blocks, and standing and running rigging forming part of a marine terminal and used with a vessel's cargo gear to load or unload by means of married falls.

(r) "Inspection," as applied to material handling devices required by this Part to be certificated, means a complete visual examination of all visible parts of the device.

(s) "Intermodal container" means a reusable cargo container of rigid construction and rectangular configuration, intended to contain one or more articles of cargo or bulk commodities for transportation by water and one or more other transport modes without intermediate cargo handling. The term includes completely enclosed units, open top units, fractional height units, units incorporating liquid or gas tanks and other variations fitting into the container system, remountable or with attached wheels. It does not include cylinders, drums, crates, cases, cartons, packages, sacks, unitized loads or any other form of packaging.

(t) "Loose gear" means removable and replaceable components of equipment or devices which may be used with or as a part of assembled material handling units for purposes such as making connections, changing line direction and multiplying mechanical advantage. Examples are shackles and snatch blocks.

(u) "Marine terminal" means wharves, bulkheads, quays, piers, docks, and other berthing locations and adjacent storage or contiguous areas and structures which are devoted to receiving, handling, holding, consolidation, and loading or delivery of waterborne shipments, including areas devoted to the maintenance of the terminal or equipment. The term does not include production or manufacturing areas having their own docking facilities and located at a marine terminal.

Subpart B—Marine Terminal Operations

§ 1918a.11 Housekeeping.

(a) The employer shall ensure that work areas are kept free of equipment and materials not in use, and clear of debris, projecting nails, strapping and other sharp objects not directly associated with the work in progress.

(b) Hatch beams and covers placed in terminal working areas shall either be stowed in stable piles with beams secured against tipping or falling, or be laid on their sides.

(c) Cargo and material shall not obstruct access to vessels, cranes, vehicles, or buildings.

§ 1918a.12 Slippery conditions.

The employer shall eliminate, to the extent possible, slippery working and walking surfaces in areas used by employees.

§ 1918a.13 Slinging.

(a) The employer shall ensure that drafts are safely slung before hoisting to prevent cargo from falling from the draft. Loose dunnage and debris hanging or protruding from drafts shall be removed.

(b) Bales of cotton, wool, cork, wood pulp, gunny bags or similar articles shall be hoisted only by straps strong enough to support the weight of the bale. At least two hooks, each in a separate strap, shall be used.

(c) When bundles of cargo such as ingots, steel and dunnage are hoisted by bands, strapping or ties, the bands, strapping, or ties shall be strong enough to support the load.

(d) Unitized loads bound by bands or straps may be hoisted by the banding or strapping only if the banding or strapping is designed for hoisting and is strong enough to support the weight of the load. The menans of handling shall not damage the bands or straps.

(e) The employer shall establish by testing in accordance with Part 1919 of this Chapter that the method of handling unitized loads by banding or strapping is suitable for hoisting.

(f) Unitized loads having damaged banding or strapping shall be handled by additional means that will ensure safe handling of the draft.

(g) Case hooks shall be used only with cases designed to be hoisted by these hooks.

(h) Loads requiring continuous manual guidance during handling shall be guided by guide ropes (tag lines) that are long enough to control the load.

(i) Intermodal containers shall be handled in accordance with § 1918a71(g).

§ 1918a.14 Stacking of cargo and pallets.

The employer shall ensure that cargo and pallets stored intiers are stacked to provide stability against sliding and collapse.

§ 1918a.15 Coopering.

The employer shall ensure that the repair or reconditioning of damaged or leaking cargo packaging (coopering) is so located and performed as not to endanger employees.

§ 1918a.16 Line handling. (See also § 1918a.96(c)).

(a) The employer shall ensure that areas used to handle mooring lines are kept free of obstructions.

(b) When stringpiece or apron width is insufficient for safe footing, grab lines or rails shall be installed on the sides of permanent structures. ("Stringpiece" means a narrow walkway between the water edge of a berth and a shed or other structure.)

§ 1918a.17 Railroad facilities.

(a) The employer shall ensure that work is performed in railcars only if floors of the railcars are in safe condition.

(b) A route shall be established to allow employees to pass to and from places of employment without passing under, over or through railcars, or between cars less than 10 feet (3 m) apart on the same track.

(c) The employer shall ensure that no employees remain in railcars after work.

(d) Railcars shall be chocked or otherwise prevented from moving:

(1) While dockboards or carplates are in position; or

(2) While employees are working within railcars or near the tracks at the ends of the cars.

(e) When employees are working in, on, or under a railcar, the employer shall ensure that flags or signs warning that work is in progress are placed no less than 50 feet from any end of the railcar exposed to impact from moving railcars.

(f) Before cars are moved, unsecured and overhanging stakes, wire straps, banding and similar objects shall be removed or placed so as not to create hazards.

(g) Railcars shall be moved only when attached to an engine or other powered vehicle. Free rolling movement of railcars is prohibited.

(h) Only freight car doors in safe condition shall be opened. Before being opened fully, doors shall be opened slightly to ensure that the load has not shifted during transit.

(i) If power trucks are used to open freight car doors, the trucks shall be equipped with door opening

attachments. The employer shall ensure that truck drivers stand clear of the railcar door while it is being opened or closed.

(j) Only railcar door openers or power trucks equipped with door opening attachments shall be used to open jammed doors.

(k) The employer shall ensure that employees do not remain in or on gondolas or flat cars when drafts are being hoisted over the car or landed in the car. End gates, if raised, shall be secured.

(l) Operators of railcar dumps shall have an unrestricted view of dumping operations and shall have emergency means of stopping dump movement.

(m) Recessed railroad switches shall be enclosed to provide a level surface.

(n) Warning signs shall be posted where doorways open onto tracks, at blind corners and at similar places where vision may be restricted.

(o) Warning signs shall be posted if a clearance of less than 24 inches (.61 m) exists between railcars and structures, cargo or waterside edges.

§ 1918a.18 Log handling.

(a) The employer shall ensure that structures (bunks) used to contain logs have rounded corners and structural parts to avoid sling damage.

(b) Two or more binders or equivalently safe means of containment shall remain on logging trucks and railcars to secure logs during movement of the truck or car within the terminal. During unloading, logs shall be prevented from moving while binders are being removed.

(c) Logs shall be hoisted by two slings or by other gear designed for safe hoisting.

(d) Logs placed adjacent to vehicle curbs on the dock shall not be over one tier high unless they are contained in bunks or are stacked or unitized to prevent spreading.

(e) Before logs are slung up from the dock, they shall be stably supported to prevent spreading and to allow passage of slings beneath the load. When bunks or similar retaining devices are used, no log shall be higher than the stanchions or retaining members of the device.

§ 1918a.19 Movement of barges and railcars.

The employer shall ensure that barges and railcars are not moved by cargo runners (running rigging) from vessel cargo booms, cranes or other equipment not suitable for the purpose.

§ 1918a.20 Interference with communications.

The employer shall ensure that noise does not inferfere with the communication of warnings or instructions during cargo-handling operations.

§ 1918a.21 Open fires.

The employer shall ensure that open fires and fires in drums or similar containers are prohibited.

§ 1918a.22 Hazardous cargo.[a-1]

(a) Before cargo handling operations begin, the employer shall ascertain whether any hazardous cargo is to be handled and shall determine the nature of the hazard. The employer shall inform employees of the nature of any hazard and any special precautions to be taken to prevent employee exposure, and shall instruct employees to notify him of any leaks or spills.

(b) Hazardous cargo shall be handled by means such as netting or restraining ropes to prevent damage to the cargo packaging during handling.

(c) If hazardous cargo is spilled or if its packaging leaks, employees shall be removed from the affected area until the employer has ascertained the specific hazards, provided any equipment, clothing and ventilation and fire protection equipment necessary to eliminate or protect against the hazard, and has instructed cleanup employees in a safe method of cleaning up and disposing of a spill and handling and disposing of leaking containers. Actual cleanup or disposal work shall be conducted under the supervision of a designated person.

§ 1918a.23 Hazardous atmospheres and substances.

(a) *Purpose and scope.* This section covers areas in which a hazardous atmosphere or substance may exist, except where one or more of the following sections apply: § 1918a.22 *Hazardous cargo;* § 1918a.24 *Carbon monoxide;* § 1918a.25 *Fumigants, pesticides, insecticides, and hazardous preservatives;* § 1918a.73 *Menhaden terminals;* § 1918a.152 *Welding, cutting, and heating (hot work);* and § 1918a.153 *Spray painting..*

(b) *Determination of hazard.* (1) When a room, building, vehicle, railcar, or other space contains or has contained a hazardous atmosphere, the employer shall ensure that a designated and appropriately equipped person tests the atmosphere before employee entry to determine whether a hazardous atmosphere exists.

(2) Records of results of any tests required by this section shall be maintained at the terminal for at least thirty (30) days.

(c) *Testing during ventilation.* When mechanical ventilation is used to maintain a safe atmosphere, tests shall be made to ensure that the atmosphere is not hazardous.

(d) *Entry into hazardous atmospheres.* The employer shall ensure that only designated persons enter hazardous atmospheres, in which case the following provisions shall apply:

(1) Persons entering a space containing a hazardous atmosphere shall be protected by respiratory and emergency protective equipment meeting the requirements of Subpart E of this Part;

(2) Persons entering a space containing a hazardous atmosphere shall be instructed in the nature of the hazard, precautions to be taken, and the use of protective and emergency equipment. Standby observers shall be similarly equipped and instructed and shall continuously monitor the activity of employees within such space;

(3) No ignition source shall be permitted in spaces containing flammable atmospheres; and

(4) Persons required to enter flammable atmospheres or those containing less than 19.5% oxygen shall use self-contained breathing apparatus or supplied air respirators drawing air from an uncontaminated source.

(e) *Cleaning of asbestos spills.* When the packaging of asbestos cargo leaks, the employer shall ensure that the spillage is cleaned up by designated employees protected from the harmful effects of asbestos as required by § 1910.1001 of this Chapter.

§ 1918a.24 Carbon monoxide.

(a) *Exposure limits.* The employer shall ensure that the carbon monoxide content of the atmosphere in a room, building, vehicle, railcar, or other enclosed space does not exceed 50 parts per million (0.005%) as an 8-hour time-weighted average (TWA) or 75 parts per million (0.0075%) at any time. Areas with concentrations above these levels shall be considered hazardous and employees entering these areas shall be protected as provided in § 1918a.23(d).

(b) *Testing.* Tests to determine carbon monoxide concentration shall be made when necessary to ensure that employee exposure does not exceed the limits specified in paragraph (a) of this section.

(c) *Instrumentation.* Tests for carbon monoxide concentration shall be made by designated persons using gas detector tube units or other measuring instruments certified by the National

[a-1] The Department of Transportation and the United States Coast Guard apply requirements related to handling, storing and transportation of hazardous cargo (see 33 CFR Part 126, 46 CFR, 49 CFR).

Institute for Occupational Safety and Health under 30 CFR Part 11.

(d) *Records.* A record of the date, time, location and results of carbon monoxide tests shall be available at the terminal for at least thirty (30) days.

§ 1918a.25 Fumigants, pesticides, insecticides and hazardous preservatives.

(a) When cargo in a space is or has been stowed, handled, or treated with a fumigant, pesticide, insecticide, or hazardous preservative, the employer shall determine whether a hazardous atmosphere is present in the space, and shall ensure that only designated employees protected as required in paragraph (e) of this section enter the space if it is hazardous.

(b) Tests to determine the atmospheric concentration of chemicals used to treat cargo shall be:

(1) Appropriate for the hazard involved;

(2) Conducted by designated persons; and

(3) Performed at the intervals necessary to ensure that employee exposure does not exceed the permissible exposure limit for the chemical involved.

(c) Results of any tests shall be available at the terminal for at least thirty (30) days.

(d) Chemicals shall be applied to cargoes only by designated persons.

(e) The employer shall ensure that only designated persons enter hazardous atmospheres, in which case the following provisions apply:

(1) Persons entering a space containing a hazardous atmosphere shall be protected by respiratory and emergency protective equipment meeting the requirements of Subpart E of this part; and

(2) Persons entering a space containing a hazardous atmosphere shall be instructed in the nature of the hazard, precautions to be taken, and the use of protective and emergency equipment. Standby observers shall be similarly equipped and instructed and shall continuously monitor the activity of employees within such a space.

(f) Signs shall be clearly posted where fumigants, pesticides or hazardous preservatives have created a hazardous atmosphere. These signs shall note the danger, identify specific chemical hazards, and give appropriate information and precautions, including instructions for the emergency treatment of employees affected by any chemical in use.

§ 1918a.26 First aid and lifesaving facilities.

(a) Employers shall instruct employees to report every injury, regardless of severity, to the employer.

(b) A first aid kit shall be available at the terminal, and at least one person holding a valid first aid certificate shall be at the terminal when work is in progress.

(c) First aid kits shall be weatherproof and contain individual sealed packages for each item that must be kept sterile. Each kit shall include at least the following items:

Gauze roller bandages, 1 inch and 2 inch (25.4 mm and 50.8 mm);
Gauze compress bandages, 4 inch (101.6 mm);
Adhesive bandage, 1 inch (25.4 mm);
Triangular bandage, 40 inch (101.6 cm);
Ammonia inhalants and ampules;
Antiseptic applicators or swabs;
Eye dressing;
Wire or thin board splints;
Forceps and tourniquet; and
First aid dressing.

(d) Stretchers permanently equipped with bridles for hoisting shall be readily accessible. A blanket shall be available.

(e) Telephone or equivalent means of communication shall be readily available.

(f) A U.S. Coast Guard approved 30-inch (76.2 cm) life ring, with at least 90 feet (27.42 m) of line attached, shall be available at readily accessible points within 200 feet (61 m) of each waterside work area. Employees working on any bridge or structure leading to a detached vessel berthing installation shall wear work vests provided by the employer at no cost to the employee. A readily available portable or permanent ladder giving access to the water shall also be provided within 200 feet (61 m) of such work areas.

§ 1918a.27 Personnel.

(a) *Qualifications of machinery operators.* (1) The employer shall ensure that only trained and experienced employees who understand the signs, notices, operating instructions and signal codes in use operate crains, winches, other power-operated hoisting apparatus, power conveyors or similar devices, or any other power-operated vehicle, or give signals to operators of any hoisting apparatus. Exception: Employees being trained and supervised by a designated person may operate such machinery and give signals to operators during training.

(2) Operators assigned after (*effective date of final standard*) shall pass a practical operating examination and be instructed in established operating practices.

(3) Employees with medical conditions that may impair their ability to operate powered machinery shall not operate a crane, winch, or other power-operated hoisting apparatus or a power-operated vehicle.

(b) *Supervisory accident prevention proficiency.* (1) After (two years after promulgation), supervisors of more than five persons shall possess documentary evidence of satisfactory completion of a course in accident prevention. Employees newly assigned to supervisory duties after that date shall be required to meet the provisions of this paragraph within ninety (90) days of such assignment.

(2) The course shall consist of classroom instruction suited to the particular operations involved and shall include at least the following:

(i) Safety responsibility and authority;

(ii) Elements of accident prevention;

(iii) Attitudes, leadership and motivation;

(iv) Hazards of longshoring, including peculiar local circumstances;

(v) Hazard identification and elimination;

(vi) Applicable regulations; and

(vii) Accident investigation.

Subpart C—Cargo Handling Gear and Equipment

§ 1918a.41 House falls.

(a) The employer shall ensure that span beams are secured to prevent accidental dislodgement.

(b) A safe means of access shall be provided for employees working with house fall blocks.

(c) The employer shall ensure that designated employees inspect chains, links, shackles, swivels, blocks and other loose gear used in house fall operations before each day's use. Defective gear shall not be used.

§ 1918a.42 Miscellaneous auxiliary gear.

(a) *Routine inspection.* (1) At the completion of each use, the employer shall ensure that loose gear such as slings, chains, bridles, blocks and hooks is placed to avoid damage to the gear. Loose gear shall be inspected and any defects corrected before reuse.

(2) Loose stevedoring gear shall be inspected for defects during use.

(3) Defective gear shall not be used. Distorted hooks, shackles or similar gear shall be discarded.

(b) *Wire rope and wire rope slings.* (1) The employer shall ascertain and adhere to the manufacturer's recommended ratings for wire rope and wire rope slings used for hoisting and shall have such ratings available at the terminal. A design safety factor of at least five shall be maintained for the

common sizes of running wire used as falls, in purchases or in such uses as light load slings. Wire rope with a safety factor of less than five may be used only:

(i) In specialized equipment, such as but not limited to cranes, designed to be used with lesser wire rope safety factors;

(ii) In accordance with design factors in standing rigging applications; or

(iii) For heavy lifts or other purposes for which a safety factor of five is impracticable and for which the employer can demonstrate that equivalent safety is ensured.

(2) Wire rope or wire rope slings having any of the following conditions shall not be used:

(i) Ten randomly distributed broken wires in one rope lay or three or more broken wires in one strand in one rope lay;

(ii) Kinking, crushing, bird caging or other damage resulting in distortion of the wire rope structure;

(iii) Evidence of heat damage;

(iv) Excessive wear or corrosion, deformation or other defect in the wire or attachments, including cracks in attachments;

(v) Any indication of strand or wire slippage in end attachments; or

(vi) More than one broken wire in the close vicinity of a socket or swaged fitting.

(3) Protruding ends of strands in splices on slings and bridles shall be covered or blunted. Coverings shall be removable so that splices can be examined. Means used to cover or blunt ends shall not damage the wire.

(4) Where wire rope clips (other than U-bolt clips) are used to form eyes, the employer shall adhere to the manufacturer's recommendations, which shall be available at the terminal. If "U" bolt clips are used and the manufacturer's recommendations are not available, Table C–1 shall be used to determine the number and spacing of clips. "U" bolts shall be applied with the "U" section in contact with the dead end of the rope.

Table C–1

[Number and spacing of u-bolt wire rope clips]

Improved plow steel, rope diameter		Minimum number of clips		Minimum spacing	
Inches	Centimeters	Drop forged	Other material	Inches	Centimeters
½ or less	(1.3)	3	4	3	(7.6)
⅝	(1.6)	3	4	3½	(9.5)
¾	(1.9)	4	5	4½	(11.4)
⅞	(2.2)	4	5	5¼	(13.3)
1	(2.5)	5	7	6	(15.2)
1⅛	(2.7)	6	7	6¾	(17.1)
1¼	(3.2)	6	8	7½	(19.1)
1⅜	(3.5)	7	8	8¼	(21.0)
1½	(3.8)	7	9	9	(22.9)

(5) Wire rope shall not be secured by knots.

(6) Eyes in wire rope bridles, slings, bull wires, or in single parts used for hoisting shall not be formed by wire rope clips or knots.

(7) Eye splices in wire ropes shall have at least three tucks with a whole strand of the rope and two tucks with one-half of the wire cut from each strand. Other forms of splices or connections which can be shown to be equivalently safe may be used.

(8) Except for eye splices in the ends of wires and for endless rope slings, each wire rope used in hoisting or lowering, or in bulling cargo, shall consist of one continuous piece without knot or splice.

(c) *Natural fiber rope.* (1) The employer shall ascertain the manufacturer's ratings for the specific natural fiber rope used and have such ratings available at the terminal. The manufacturer's ratings shall be adhered to and a minimum design safety factor of five maintained.

(2) Eye splices shall consist of at least three full tucks. Short splices shall consist of at least six full tucks, three on each side of the center line.

(d) *Synthetic rope.* (1) The employer shall adhere to the manufacturer's ratings and use recommendations for the specific synthetic fiber rope use and shall have such ratings available at the terminal.

(2) Unless otherwise recommended by the manufacturer, when synthetic fiber ropes are substituted for manila ropes of less than three inches (7.62 cm) in circumference, the substitute shall be of equal size. Where substituted for manila rope of three inches or more in circumference, the size of the synthetic rope shall be determined from the formula:

$$C = \sqrt{0.6C_s^2 + 0.4C_m^2}$$

where C=the required circumference of the synthetic rope in inches, C_s=the circumference to the nearest one-quarter inch of a synthetic rope having a breaking strength not less than that of the size manila rope that would be required by paragraph (c) of this section, and C_m=the circumference of manila rope in inches which would be required by paragraph (c) of this section. In making such substitution, it shall be ascertained that the inherent characteristics of the synthetic fiber are suitable for hoisting.

(e) *Removal of natural and synthetic rope from service.* Natural and synthetic rope having any of the following defects shall be removed from service:

(1) Abnormal wear;

(2) Powdered fiber between strands;

(3) Sufficient cut or broken fibers to affect the capability of the rope;

(4) Variations in the size or roundness of strands;

(5) Discolorations other than stains not associated with rope damage;

(6) Rotting; or

(7) Distortion or other damage to attached hardware.

(f) *Thimbles.* Properly fitting thimbles shall be used where any rope is secured permanently to a ring, shackle or attachment.

(g) *Synthetic web slings.* (1) Slings and nets or other combinations of more than one piece of synthetic webbing assembled and used as a single unit (synthetic web slings) shall not be used to hoist loads in excess of the sling's rated capacity.

(2) Synthetic web slings shall be removed from service if they exhibit any of the following defects:

(i) Acid or caustic burns;

(ii) Melting or charring of any part of the sling surface;

(iii) Snags, punctures, tears or cuts;

(iv) Broken or worn stitches; or

(v) Distortion or damage to fittings.

(3) Defective synthetic web slings removed from service shall not be repaired and returned to service.

(4) Synthetic web slings shall be used in accordance with the manufacturer's use recommendations, which shall be available at the terminal.

(5) Fittings shall have a breaking strength at least equal to that of the sling to which they are attached and shall be free of sharp edges.

(h) *Chains and chain slings used for hoisting.* (1) The employer shall adhere to the manufacturer's recommended ratings for safe working loads for the sizes of wrought iron and alloy steel chains and chain slings used and shall have such ratings available at the terminal.

(2) Proof coil steel chain, also known as common or hardware chain, and other chain not recommended by the

manufacturer for slinging or hoisting shall not be used for slinging or hoisting.

(3)(i) The employer shall ensure that only designated persons inspect chains used for slinging or hoisting.

(ii) Sling chains, including end fastenings, shall be inspected for visible defects before each day's use and as often as necessary during use to ensure integrity of the sling.

(iii) Thorough inspections of chains in use shall be made quarterly to detect wear, defective welds, deformation or increase in length or stretch. The month of inspection shall be indicated on each chain by color of paint on a link or by other equally effective means.

(iv) Chains shall be removed from service when maximum allowable wear, as indicated in Table C-2, is reached at any point of link.

Table C-2.—*Maximum Allowable Wear at any Point of Link*

Chain size		Maximum allowable wear	
Inches	(cm)	Inches	(cm)
¼ (5/16)	(0.6)	5/64	(0.1)
⅜	(1.0)	1/16	(0.2)
½	(1.3)	1/16	(0.3)
⅝	(1.6)	5/64	(0.4)
¾	(1.9)	5/64	(0.4)
⅞	(2.2)	3/32	(0.4)
1	(2.5)	3/32	(0.5)
1⅛	(2.9)	1/32	(0.6)
1¼	(3.2)	1/8	(0.6)
1⅜	(3.5)	9/64	(0.7)
1½	(3.8)	5/32	(0.8)
1⅝	(4.4)	11/64	(0.9)

(v) Chain slings shall be removed from service when stretch has increased the length of a measured section by more than five percent; when a link is bent, twisted or otherwise damaged; or when a link has a raised scarf or defective weld.

(4) Chains shall only be repaired under qualified supervision. Links or portions of chain defective under any of the criteria of paragraph (h)(3)(v) of this section shall be replaced with properly dimensioned links or connections of material similar to that of the original chain. Before repaired chains are returned to service, they shall be tested to the proof test load recommended by the manufacturer for the original chain. Tests shall be performed by the manufacturer or shall be certified by an agency accredited for the purpose under Part 1919 of this Chapter. Test certificates shall be available at the terminal.

(5) Wrought iron chains in constant use shall be annealed or normalized at intervals not exceeding six months. Heat treatment certificates shall be available at the terminal. Alloy chains shall not be annealed.

(6) Kinked or knotted chains shall not be used for lifting. Chains shall not be shortened by bolting, wiring or knotting. Makeshift links or fasteners such as wire, bolts or rods shall not be used.

(7) Hooks, rings, links and attachments affixed to sling chains shall have rated capacities at least equal to that of the chains to which they are attached.

(8) Chain slings shall bear identification of size, grade and rated capacity.

(i) *Shackles.* (1) If available, the manufacturer's recommended safe working loads for shackles shall not be exceeded. In the absence of manufacturer's recommendations, Table C-3 shall apply.

Table C-3.—*Safe Working Loads for Shackles*

Material size		Pin diameter		Safe working load in 2,000 lb. tons
Inches	(cm)	Inches	(cm)	
½	(1.3)	⅝	(1.6)	1.4
⅝	(1.6)	¾	(1.9)	2.2
¾	(1.9)	⅞	(2.2)	3.2
⅞	(2.2)	1	(2.5)	4.3
1	(2.5)	1⅛	(2.9)	5.6
1⅛	(2.9)	1¼	(3.2)	8.7
1¼	(3.2)	1⅜	(3.5)	8.2
1⅜	(3.5)	1½	(3.8)	10.0
1½	(3.8)	1⅝	(4.1)	11.9
1¾	(4.4)	2	(5.0)	16.2
2	(5.0)	2¼	(5.7)	21.2

(2) Screw pin shackles used aloft in house fall or other gear, except in cargo hook assemblies, shall have their pins moused or be otherwise effectively secured.

(j) *Hooks other than hand hooks.* (1) The manufacturer's recommended safe working loads for hooks shall not be exceeded. After (*effective date of final standard*) hooks other than hand hooks shall be tested in accordance with § 1918a.51(c)(6).

(2) Bent or sprung hooks shall be discarded.

(3) Teeth of case hooks shall be maintained in safe condition.

(4) Jaws of patent clamp-type plate hooks shall be maintained in condition to grip plates securely.

(5) Loads shall be applied to the throat of the hook only.

(k) *Pallets.* (1) Pallets shall be made and maintained to safely support and carry loads being handled. Fastenings of reusable pallets shall be bolts and nuts, drive screws (helically threaded nails), annular threaded nails or fastenings of equivalent holding strength.

(2) Damaged pallets shall be removed from active work areas, identified as damaged and stored away from the work area.

(3) Reusable wing or lip-type pallets shall be hoisted by bar bridles or other suitable gear and shall have an overhanging wing or lip of at least three inches (76.2 mm). They shall not be hoisted by wire slings alone.

(4) Loaded pallets that on visual examination do not meet the requirements of this section shall be hoisted only after being placed on pallets meeting such requirements or shall be handled by other means providing equivalent safety.

(5) Bridles for handling flush end or box-type pallets shall be designed to prevent disengagement from the pallet under load.

(6) Pallets shall be stacked or placed to prevent falling, collapsing or otherwise causing a hazard under standard operating conditions.

(7) Disposable pallets intended only for one use shall not be reused for hoisting.

§ 1918a.43 Powered industrial trucks.

(a) *Applicability.* This section applies to every type of powered industrial truck used for material or equipment handling within a marine terminal. It does not apply to over-the-road vehicles.

(b) *General.* (1) The employer shall ensure that modifications, such as adding counterweights, that might affect the vehicle's capacity or safety are not performed without either the manufacturer's prior written approval or the written approval of a professional engineer experienced with the equipment and who has consulted the manufacturer. Capacity, operation and maintenance instruction plates, tags or decals shall be changed to conform to the equipment as modified.

(2) Unauthorized personnel shall not ride on powered industrial trucks. A safe place to ride shall be provided when riding is authorized.

(3) When a powered industrial truck is left unattended, load-engaging means shall be fully lowered, controls neutralized and brakes set. Unless the truck is in view and within 25 feet (7.6 m) of the operator, power shall be shut off. Wheels shall be blocked or curbed if the truck is on an incline.

(4) Powered industrial trucks shall not be operated inside highway vehicles or

railcars having damage which could affect operational safety.

(5) Powered industrial trucks shall be marked with their rated capacities, which shall be visible to the operator.

(6) Only stable and safely arranged loads within the rated capacity of the truck shall be handled.

(7) The employer shall ensure that drivers ascend and descend grades slowly.

(8) The employer shall ensure that drivers slow down and sound the horn at cross aisles and other locations where visibility is obstructed.

(9) If the load obstructs the forward view, the employer shall ensure that the driver travels with the load trailing.

(10) Steering knobs shall not be used.

(11) When powered industrial trucks use cargo lifting devices that have a means of engagement hidden from the operator, mirrors or other means shall be provided to enable the driver to see that the cargo has been engaged.

(c) *Maintenance.* (1) The employer shall ensure that only designated persons perform maintenance and repair.

(2) Batteries shall be disconnected during repairs to the primary electrical system unless power is necessary for testing or repair.

(3) Replacement parts whose performance may affect the vehicle's safety shall be at least equivalent in performance capability to the original parts.

(4) Braking systems or other mechanisms used for braking shall be operable and in safe condition.

(5) Powered industrial trucks shall be maintained in safe working order and shall be inspected by an authorized person on each day of use. Safety devices shall not be removed or made inoperative except as otherwise provided in this section. Trucks with a fuel system leak or any other operational defect shall not be operated.

(6) Records of the daily inspections required in (c)(5) shall be maintained at the terminal for at least thirty (30) days.

(7) Repairs to the fuel or ignition systems of powered industrial trucks shall only be conducted in designated areas equipped to protect employees from fire hazards.

(d) *Approved trucks.* (1) "Approved power-operated industrial truck" means one listed or approved for the intended use by a nationally recognized testing laboratory, e.g., Underwriters Laboratories, Inc.; Factory Mutual Engineering Corporation.

(2) Approved trucks shall bear a label or other identification indicating testing laboratory approval.

(3) When the atmosphere in an area is hazardous and the provisions of United States Coast Guard regulations at 33 CFR 126.15(e) do not apply, only power-operated industrial trucks approved for such locations shall be used.

(e) *Fork lift trucks.* (1) Overhead guards. (i) When operators are exposed to overhead falling hazards, the employer shall ensure that fork lift trucks are equipped with securely attached overhead guards. Guards shall be constructed to protect the operator from being injured by falling boxes, cartons, packages, or similar objects.

(ii) Overhead guards shall not obstruct the operator's view, and openings in the top of the guard shall not exceed six inches (15.2 cm) in one of the two directions, width or length. Larger openings are permitted if no opening allows the smallest unit of cargo being handled to fall through the guard.

(iii) Overhead guards shall be built so that failure of the vehicle's mast tilting mechanism will not displace the guard.

(iv) An overhead guard, otherwise required by this paragraph, may be removed only when it would prevent a truck from entering a work space and if the operator is not exposed to low overhead obstructions in the work space.

(v) Overhead guards shall be large enough to extend over the operator during all truck operations, including forward tilt.

(2) Load backrest extensions. Where necessary to protect the operator, fork lift trucks shall be fitted with a vertical load backrest extension to prevent the load from hitting the mast when the mast is positioned at maximum backward tilt. For this purpose, a "load backrest extension" means a device extending vertically from the fork carriage frame to prevent raised loads from falling backward.

(3) Forks. (i) Forks, fork extensions and other attachments shall be secured so that they cannot be accidentally dislodged, and they shall be used only in accordance with the manufacturer's recommendations.

(ii) The employer shall ensure that employees do not ride on lift truck forks.

(4) Counterweights. Counterweights shall be affixed so that they cannot be dislodged.

(5) Capacities and weights. (i) Fork lift truck rated capacities, with and without removable counterweights, shall not be exceeded. Rated capacities shall be marked on the vehicle and shall be visible to the operator. The vehicle weight, with and without counterweight, shall be similarly marked.

(ii) If loads are lifted by two or more trucks working in unison, the total weight of the load shall not exceed the combined rated lifting capacity of all trucks involved.

(6) Lifting of employees. (i) The employer shall ensure that employees do not stand on the forks of a lift truck or on a pallet or load being lifted on the forks.

(ii) Employees may only be elevated by fork lift trucks when a platform is secured to the lifting carriage or forks. The platform shall meet the following requirements:

(A) The platform shall have a railing complying with § 1918a.112(c).

(B) The platform shall have toeboards complying with § 1918a.112(d) if tools or other objects could fall on employees below.

(C) When the truck has controls which are elevated with the lifting carriage, means shall be provided for employees on the platform to shut off power.

(D) The employer shall ensure that employees on the platform are protected from exposure to moving truck parts.

(E) The employer shall provide overhead protection for employees on the platform when there is danger of falling objects.

(F) The platform floor shall be skid resistant.

(G) The employer shall ensure that the truck operator is at the truck's controls when employees are elevated unless the truck's controls are elevated with the lifting carriage.

(H) While employees are elevated, the truck may be moved only to make minor placement adjustments.

(f) *Bulk cargo-moving vehicles.* (1) Where a seated operator may come into contact with projecting overheads, crawler-type bulk-cargo-moving vehicles that are rider operated shall be equipped with operator's guards.

(2) Guards and their attachment points shall be designed to withstand a load equal to the load that will bend the machine's draw bar.

(g) *Straddle trucks.* (1) Accessibility. Straddle trucks shall have a permanent means of access, including any handholds necessary to ensure safe access to the operator's platform.

(2) *Guarding.* (i) Main sprockets and chains to the wheels shall be guarded as follows:

(A) The upper sprocket shall be enclosed;

(B) The upper half of the lower sprocket shall be enclosed; and

(C) The drive chain shall be enclosed to a height of eight feet (2.6 m) except for that portion at the lower half of the lower sprocket.

(ii) Gears shall be enclosed and revolving parts which may be contacted by the operator shall be guarded.

(iii) When straddle trucks are used in the vicinity of employees, personnel-deflecting guards shall be provided around leading edges of front and rear wheels.

(3) Visibility. Operator visibility shall be provided in all directions by mirrors or equivalent means.

(h) *Trailer-spotting tractors.* (1) Trailer-spotting tractors (fifth wheels) shall be fitted with any hand grabs and footing necessary for safe access to the fifth wheel.

(2) Rear cab windows shall be protected by safety glass or by equivalent means.

§ 1918a.44 General rules applicable to vehicles.[C-1]

(a) The requirements of this section apply to general vehicle use within marine terminals except in cases where the provisions of paragraphs (c) and (m) of this section are preempted by applicable regulations of the Department of Transportation.[C-2]

(b) The employer shall ensure that private vehicle parking in marine terminals is allowed only in designated areas, which shall not be used concurrently for storage.

(c) Trailers shall not be disconnected from tractors at loading docks until the road wheels have been immobilized. The road wheels shall be immobilized from the time the brake system is disconnected until braking is again provided. Supplementary front end support shall be employed as necessary to prevent tipping when a trailer is entered by a material handling vehicle. Rear end support shall be employed if rear wheels are so far forward as to allow tipping when the trailer is entered.

(d) The employer shall ensure that motor vehicle operators comply with any posted speed limits and other traffic control signs or signals, and written traffic instructions.

(e) Stop signs shall be posted at main entrances and exits of structures where visibility is impaired, and at blind intersections, unless direct traffic control or warning mirror systems or equivalent are provided.

(f) Vehicular routes, traffic rules, and parking areas shall be established, identified, and used.

(g) The employer shall ensure that vehicle drivers warn employees in traffic lanes of the vehicle's approach.

(h) Where pedestrians use or cross traffic lanes, pedestrian crossing signs shall be posted to warn vehicle drivers.

(i) Signs indicating pedestrian traffic shall be clearly posted at vehicular check-in and check-out lines and similar locations where employees may be working.

(j) The employer shall ensure that a distance of at least 20 feet (4.6 m) is maintained between any two vehicles in a check-in, check-out, roadability, or vessel loading/discharging line.

(k) The employer shall ensure that no unattended vehicle is left with its engine running.

(l)(1) When the rear of a vehicle is elevated to facilitate loading or discharging, a ramp shall be provided and secured. The employer shall ensure that the vehicle is secured against accidental movement during loading or discharging.

(2) The ramp shall have a safety factor of four for the load being carried.

(m) Only highway vehicle floors in safe condition shall be use.

(n) When flatbed trucks, platform containers or similar conveyances are loaded or discharged and the cargo consists of pipe or other products which could spread or roll to endanger employees, the cargo shall be contained to prevent movement.

(o) Vehicles used to transport employees within a terminal shall be maintained in safe working order and safety devices shall not be removed or made inoperative.

(p) Multi-piece rim wheels. (1) *Scope.* This paragraph applies to the servicing of vehicle wheels containing tube-type tires mounted on multi-piece rims.

(2) *Definition.* "Multi-piece rim" means a vehicle wheel rim consisting of two or more parts, one of which is a (side) locking ring designed to hold the tire on the rim by tension on interlocking components when the tire is inflated, regardless of the relative sizes of the component parts.

(3) *Employee training.* (i) The employer shall ensure that only employees trained in the procedures required in paragraph (p)(4) and who have demonstrated their ability to service multi-piece rim wheels shall be assigned such duties.

(ii) The employer shall ensure that each employee demonstrates his ability to service multi-piece rim wheels, including performance of the following tasks:

(A) Tire demounting (including deflation);

(B) Inspection of wheel components;

(C) Mounting of tires;

(D) Inflation of tires, including use of a restraining device;

(E) Handling of wheels;

(F) Inflation of tires when a wheel is mounted on the vehicle; and

(G) Installation and removal of wheels.

(4) *Servicing procedures.* The employer shall ensure that the following procedures are followed:

(i) Tires shall be completely deflated before demounting by removal of the valve core;

(ii) The valve core shall be removed before the wheel is removed from the axle when:

(A) The tire has been operated underinflated at 80% or less of its recommended pressure; or

(B) There is discernible or suspected damage to the tire or wheel components;

(iii) Mating surfaces shall be free of dirt, surface rust, scale and rubber buildup before mounting;

(iv) Rubber lubricant shall be applied to bead and rim mating surfaces upon wheel assembly and inflation of the tire;

(v) Air pressure shall not exceed 3 psig (0.21 kg/cm²)when seating the locking ring or rounding out the tube when a tire is being partially inflated without a restraining device;

(vi) While the tire is pressurized, components shall not be struck or forced to correct the seating of side or lock rings;

(vii) There shall not be any contact between an employee or unit of equipment and a restraining device during tire inflation;

(viii) After inflation, tires, rims and rings shall be inspected while within the restraining device to ensure proper seating and locking. If adjustment is necessary the tire shall first be deflated by valve core removal; and

(ix) Before assembly, wheel components shall be inspected, and damaged rim components shall not be reused.

(5) *Charts and manuals.* (i) The employer shall provide a chart containing as a minimum the instructions provided in the United States Department of Transportation, National Highway Traffic Safety Administration (NHTSA) publication "Safety Precautions for Mounting and Demounting Tube-Type Truck/Bus Tires" and "Multi-Piece Rim Wheel Matching Chart," and pertinent to the type(s) of multi-piece rim wheels being serviced. The chart shall be available in the terminal's service area.[C-3]

(ii) A current rim manual containing the manufacturer's instructions for mounting, demounting, maintenance and safety precautions relating to the multi-piece rim wheels being serviced shall be available in the terminal's service area.

(6) *Restraining devices.* (i) Except as otherwise noted, inflation shall be done within a restraining device such as a

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[C-1] The United States Coast Guard at 33 CFR 128.15(d) and (e) has additional regulations applicable to vehicles in terminals.

[C-2] Department of Transportation regulations in 49 CFR Part 393, Subpart C-Brakes, address the immobilization of trailer road wheels prior to disconnection of the trailer and until braking is again provided. 49 CFR 393.94 addresses the condition of flooring. These rules apply when the motor carrier is engaged in interstate commerce or in the transport of certain hazardous items wholly within a municipality or the commercial zone thereof....

[C-3] NHTSA charts are available free from General Services Division, National Highway Traffic Safety Administration, Attention: NAD-51, 400 Seventh Street, S.W., Washington, D.C. 20590. Industry charts are available upon request from the manufacturer.

cage, rack or other device capable of withstanding the maximum force that would be transferred to it during an explosive wheel separation occurring at 150% of maximum tire specification pressure for the wheels being serviced. The restraining device shall be capable of preventing rim components from being thrown outside the frame of the device for any wheel position within the device. When the wheel assembly is mounted on a vehicle, tires may be inflated without a restraining device only if they have more than 50% of the recommended pressure and if remote control inflation equipment is used and employees are clear of the danger area.

(ii) Restraining devices shall be kept in good repair and be capable of preventing rim components from being thrown outside the device.

(7) *Inflation hoses.* Inflation hoses shall have a manual clip-on chuck with sufficient hose to permit an employee to be clear of the danger area. An in-line, manually operated valve with gauge or a preset pressure regulator shall be used to inflate tires.

(8) *Other equipment.* (i) Only tools recommended in the rim manual for the type of wheel being serviced shall be used to service multi-piece rim wheels.

(ii) Wheel components shall not be interchanged except as provided in the applicable chart or manual.

§ 1918a.45 Cranes and derricks (See also § 1918a.51).

(a) *Coverage.* (1) This section applies to every kind of crane and derrick such as but not limited to:

(i) Crawler, locomotive and truck cranes;

(ii) Overhead and bridge cranes of all types, including steeple-towers, container bridge cranes, ore and coal bridges and other specialized versions;

(iv) Hammerhead tower cranes;

(v) Any crane or derrick used to handle intermodal containers in containerized operations;

(vi) Any mobile straddle-type crane capable of straddling two or more intermodal containers (sixteen feet (4.88 m) in width);

(vii) Any other type of equipment not listed here but performing the functions of a crane or derrick, except as noted in paragraph (a)(2) of this section.

(2) This section does not apply to small industrial truck-type cranes and chain hoists.

(b) *Ratings.* (1) Except for bridge cranes covered by paragraph (g) of this section, the employer shall ensure that cranes and derricks having ratings that vary with boom length, radius (outreach) or other variables are equipped with a durable rating chart visible to the operator, covering the complete range of the manufacturer's (or design) capacity ratings. The rating chart shall include all operating radii (outreach) for all permissible boom lengths and jib lengths as applicable, with and without outriggers, and alternate ratings for optional equipment affecting such ratings. Precautions or warnings specified by the owner or manufacturer shall be included along with the chart.

(2) The manufacturer's (or design) rated loads for the conditions of use shall not be exceeded.

(3) Designated working loads shall not be increased beyond the manufacturer's ratings or original design limitations unless such increase meets with the manufacture's approval. When the manufacturer's services are not available or where the equipment is of foreign manufacture, engineering design analysis performed or approved by the agency certificating the equipment under Part 1919 of this Chapter is required. Any structural changes necessitated by the change in rating shall be carried out.

(c) *Radius indicator.* When the rated load varies with the boom radius, the crane or derrick shall be fitted with a boom angle or radius indicator visible to the operator.

(d) *Prohibited usage.* (1) The employer shall ensure that equipment is not used in a manner that exerts sideloading stresses upon the crane or derrick boom.

(2) No crane or derrick having an operational defect shall be used.

(e) *Protective devices.* (1) The employer shall ensure that guards protect employees from exposed moving parts such as gears, chains and chain sprockets during crane and derrick operations. These guards shall be securely fastened.

(2) Crane hooks shall be latched or otherwise secured to prevent accidental load disengagement.

(f) *General.* (1) Operating controls. (i) Crane and derrick operating controls shall be clearly marked or a chart indicating their function shall be posted at the operator's position.

(ii) After *(one year after effective date),* crane and derrick controls shall be self-centering so that they will automatically move to the "off" position when the operator releases the control.

(2) Booms. (i) Cranes with elevatable booms and without operable automatic limiting devices shall be provided with boom stops if boom elevation can exceed maximum design angles from the horizontal.

(ii) The main purchase block of cranes with extendable booms shall be secured when a whip line is in use.

(3) Foot pedals. Foot pedals shall have a non-skid surface.

(4) Access. Ladders, stairways, stanchions, grab irons, foot steps or equivalent means shall be provided as necessary to ensure safe access to footwalks, cab platforms, the cab and any portion of the superstructure which employees must reach.

(i) Footwalks shall be of rigid construction, and shall be capable of supporting a load of 100 pounds (4.79 kPa) per square foot.

(ii) If more than 20 feet (6.1 m) in height, vertical ladders shall comply with § 1918a.119 (d), (e)(1), (e)(2)(iii), and (e)(2)(iv).

(iii) Stairways on cranes shall be equipped with rigid handrails meeting the requirements of § 1918a.112(c)(1).

(iv) If the top of a ladder or stairway or any portion thereof is located where a moving part of a crane, such as a revolving house, could strike an employee ascending or descending the ladder or stairway, a prominent warning sign shall be posted at the hazardous location on the ladder or stairway.

(5) Operator's station. The cab, controls and mechanisms of the equipment shall be so arranged that the operator has a clear view of the load or signal man, when one is used. Cab glass, when used, shall be safety plate glass or equivalent and good visibility shall be maintained through the glass. Clothing, tools and equipment shall be stored so as not to interfere with access, operation, and the operator's view.

(6) Counterweights or ballast. Cranes shall be operated only with the specified type and amount of ballast or counterweight. Ballast or counterweight shall be located and secured only as provided in the manufacturer's or design specifications, which shall be available at the terminal.

(7) Outriggers. Outriggers shall be used according to the manufacturer's specifications or design data, which shall be available at the terminal. Floats, when used, shall be securely attached to the outriggers. Wood blocks or other support shall be of sufficient size to support the outrigger, free of defects that may affect safety and of sufficient width and length to prevent the crane from shifting or toppling under load.

(8) Exhaust gases. Engine exhaust gases shall be discharged away from areas in which employees are working.

(9) The employer shall ensure that electrical equipment is guarded or maintained to prevent employees from contacting live parts. Designated persons may work on energized equipment if necessary during inspection, maintenance, or repair.

(10) Fire extinguisher. (i) At least one portable fire extinguisher of at least

5-BC rating or equivalent shall be accessible in the cab of the crane or derrick.

(ii) No portable fire extinguisher using carbon tetrachloride or chlorobromomethane extinguishing agents shall be used.

(11) Rope on drums. At least three full turns of rope shall remain on ungrooved drums, and two turns on grooved drums, under all operating conditions. Wire rope shall be secured to drums by clamps, U-bolts, shackles or equivalent means. Fiber rope fastenings are prohibited.

(12) Assembly or disassembly of boom sections. Mobile crane booms being assembled or disassembled on the ground with or without the support of the boom hoisting shall be blocked to prevent dropping of the boom or boom sections.

(13) Brakes. (i) Each independent hoisting unit of a crane or derrick shall be equipped with two means of braking, one of which shall work directly on the drive shaft or other part of the reducing gear.

(ii) Each brake shall be capable of sustaining 1⅛ times the crane's rated load.

(g) *Rail-mounted cranes (excluding locomotive types).* (1) For the purposes of this section, rail-mounted cranes include bridge cranes and portal cranes.

(2) Rated load marking. The employer shall ensure that the rated loads of bridge cranes are plainly marked on each side of the crane and in the cab. If there is more than one hoisting unit, each hoist shall have its rated load marked on it or on its load block. Marking shall be legible from the ground level.

(3) Wind-indicating devices. (i) After *(effective date of final standard)* each rail-mounted crane shall be fitted with an operable wind-indicating device.

(ii) Indications. Wind-indicating devices shall provide a visible indication of wind velocity at all time. They shall also provide distinctive visible and audible alerts:

(A) When wind velocity reaches that speed (the warning speed), not exceeding the crane manufacturer's recommendations, at which a warning is to be provided or partial shutdown (such as stopping of crane movement on the rails) is to be accomplished; and

(B) When wind velocity reaches that speed (the shutdown speed), not exceeding the crane manufacturer's recommendations, at which work is to be stopped and the crane secured.

(iii) Location of indications. The indications required by paragraph (g)(3)(ii) of this section shall read out directly in the operator's cab.

(iv) Instructions. The employer shall post operating instructions for wind-indicating devices, including warning and shutdown velocities and the actions to be taken on their indications, in the operator's cab of each crane. The employer shall ensure that operators comply with these instructions. The instructions shall include directions for any coordination necessary when two or more affected cranes are located at the same terminal.

(4) Securing of cranes in high winds. (i) When the wind reaches the crane's warning speed, the employer shall ensure that:

(A) Gantry travel is stopped;

(B) Any portion of the crane spanning or partially spanning a vessel is moved clear of the vessel; and

(C) The crane is positioned for shutdown.

(ii) When the wind reaches the crane's shutdown speed, the employer shall ensure that the crane is secured against travel, using all available means of securing.

(5) The employer shall monitor local weather conditions by subscribing to a weather service or using equally effective means.

(6) Stops and bumpers. (i) The ends of all tracks shall be equipped with stops or bumpers. If a stop engages the tread of the wheel, it shall be of a height not less than the radius of the wheel.

(ii) When more than one crane operates on the same runway or more than one trolley on the same bridge, each crane or trolley shall be equipped with bumpers or equivalent devices at adjacent ends.

(7) Employee exposure to crane movement. When employees may be in the vicinity of the tracks, crane trucks shall be equipped with personnel-deflecting guards.

(8) Pedestrian clearance. If the area is used for employee passage or for work, a minimum clearance of three feet (0.9 m) shall be provided between trucks or the structures of rail-mounted cranes and any other structure or obstruction. When the required clearance is not available on at least one side of the crane's trucks, the area shall not be used and shall be marked and identified.

(9) Warning devices. Rail-mounted cranes shall be equipped with an effective travel warning device which shall be used when employees are in the way of the moving crane.

(10) Communications. Means of communication shall be provided between the operator's cab and the base of the gantry of all rail-mounted cranes. This requirement may be met by telephone, radio, sound-signalling system or other effective method, but not by a hand-signalling system.

(h) *Stabilizing of locomotive cranes.* Loads shall be hoisted by locomotive cranes only if outriggers are in place, unless means are taken to prevent the load being carried by the truck springs of the crane.

(i) *Operations.* (1) Use of cranes together. When two or more cranes hoist a load in unison, the employer shall designate a person to direct the operation and instruct personnel in positioning, rigging of the load and movements to be made.

(2) Guarding of swing radius. Accessible areas within the swing radius of the body of a revolving crane shall be physically guarded during operations to prevent an employee from being caught between the body of the crane and any fixed structure or between parts of the crane.

(3) Securing mobile crane components in transit. The crane's superstructure and boom shall be secured against rotation and carried in line with the direction of travel except when negotiating turns with an operator in the cab or when the boom is supported on a dolly. The empty hook or other attachment shall be secured.

(4) Unattended cranes. The following steps shall be taken before leaving a crane unattended between work periods:

(i) Suspended loads, such as those hoisted by lifting magnets or clamshell buckets, shall be landed unless the storage position or maximum hoisting of the suspended device will provide equivalent safety;

(ii) Clutches shall be disengaged;

(iii) The power supply shall be shut off;

(iv) The crane shall be secured against accidental travel; and

(v) The boom shall be lowered or secured against movement.

(5) Operating near electric power lines. (i) Clearance. Unless electrical distribution and transmitting lines are deenergized and visibly grounded at point of work, or unless insulating barriers not a part of or attachment to the crane have been erected to prevent physical contact with lines, cranes shall be operated near power lines only in accordance with the following:

(A) For lines rated 50 kV or below, minimum clearance between the lines and any part of the crane or load shall be 10 feet (3 m);

(B) For lines rated over 50 kV, minimum clearance between the lines and any part of the crane or load shall be either 10 feet (3 m) plus 0.4 inch (10 mm) for each 1 kV over 50 kV, or twice

the length of the line insulator, but never less than 10 feet; and

(C) In transit with no load and boom lowered, the clearance shall be a minimum of 4 feet (1.2 m).

(ii) Boom guards. Cage-type boom guards, insulating links or proximity warning devices may be used on cranes, but they shall not be used in place of the clearances required by paragraph (i)(5)(i) of this section.

(iii) Determination of energized lines. Any overhead line shall be presumed to be energized until the owner of the line indicates that it is not energized.

(j) *Protection for employees being hoisted.* (1) Except as provided in paragraph (j)(9) of this section, the employer shall ensure that no employee is hoisted by the load hoisting apparatus of a crane or derrick except:

(i) In a boatswain's chair rigged to prevent it from accidental disengagement from the hook or supporting member; or

(ii) On a platform meeting the following requirements:

(A) Enclosed by a railing or other means providing protection equivalent to that described in § 1918a.112(c). If equipped with open railings, the platform shall be fitted with toe boards;

(B) Having a safety factor of four based on ultimate strength;

(C) Bearing a plate or permanent marking indicating maximum load rating, which shall not be exceeded, and the weight of the platform itself;

(D) Equipped with a device to prevent access doors, when used, from opening accidentally;

(E) Equipped with an overhead guard to protect employees from falling objects or other overhead hazards; and

(F) Secured to the load line by means other than wedge and socket attachments, unless the free (bitter) end of the line is secured back to itself by a clamp placed as close above the wedge as possible.

(2) Except in an emergency, the hoisting mechanism of a crane or derrick used to hoist personnel shall operate in power up and power down, with automatic brake application when not hoisting or lowering.

(3) Variable radius booms of a crane or derrick used to hoist personnel shall be so constructed or secured as to prevent accidental boom movement.

(4) Unless the platform used to hoist employees is completely surrounded by a net approximately five feet (1.52 m) in height, each employee hoisted shall be secured by safety belt or harness and lifeline or equivalent device attached to the source of suspension or to the platform used.

(5) Platforms or devices used to hoist employees shall be inspected for defects before each day's use and shall be removed from service if defective.

(6) The employer shall ensure that employees being hoisted remain in continuous sight of and communication with the operator or signalman, if a signalman is used.

(7) The employer shall ensure that the operator remains at the controls when employees are hoisted.

(8) Cranes shall not travel while employees are hoisted, except in an emergency.

(9) When intermodal container spreaders are used to transfer employees to or from the tops of containers, the spreaders shall be equipped with a personnel platform equipped with fixed railings, provided that the railings have one or more openings for access. The openings shall be fitted with a means of closure, such as chains with hooks. Existing railings shall be at least 36 inches (0.91 m) in height. New railings installed after (*effective date of final standard*) shall be 42 inches (1.07 m), plus or minus 3 inches (7.6 cm), in height. The provisions of paragraphs (j)(1)(i), (j)(1)(ii)(A), (j)(1)(ii)(B), (j)(1)(ii)(E), (j)(4), and (j)(8) of this section do not apply when such container spreaders are used.

(k) *Routine inspection.* (1) The employer shall ensure that only designated persons inspect each crane and derrick on each day of use for defects in functional operating components and that any defect found is reported to the employer. The employer shall inform the operator of these findings.

(2) A designated person shall thoroughly inspect all functional components and accessible structural features of each crane or device at monthly intervals.

(3) Any defects found during such inspections shall be corrected before further equipment use. Repairs shall be done only by designated persons.

(4) A record of monthly inspections shall be maintained for six months in or on the crane or derrick or at the terminal.

§ 1910a.66 Crane load and limit devices.

(a) After (*one year after effective date*), the employer shall ensure that every crane has a load-indicating device or a limiting device, except in the following situations:

(1) When handling bulk commodities by means of clamshell or bucket, or in other service not using a hook, spreader or sling to engage the load to be hoisted;

(2) When handling or holding hoses for hose-handled products;

(3) When it can be documented that the crane never handles loads which exceed the crane's load ratings at all actual working radii; or

(4) When trolley-equipped bridge cranes handle:

(i) Containers identified on the manifest as empty or loaded and the lift is in compliance with the provisions of § 1918a.71 (b), (c), (d), and (e); or

(ii) Other lifts by means of a lifting beam supplied by the crane manufacturer.

(b) Crane load or limiting devices shall:

(1) Provide direct indications, by means other than a hook scale or dynamometer, of actual loads hoisted, to be used in conjunction with posted crane ratings;

(2) Automatically indicate in the cab the approach to, reaching, and exceeding or rated loads; or

(3) Prevent an overload by means of a device such as a limit switch or equivalent installation.

(c) *Performance requirements.* (1) Crane load or limiting devices shall have a range compatible with the range of the crane to which they are attached.

(2) For devices other than limit switches or equivalent devices, load indications shall fall in the range between 97% and 110% of actual loads, the 97% value establishing a 3% limit over rated loads. If accuracy requirements cannot be met over a narrow range at the extremes of the rating of the crane, labeling or other visible or audible means shall indicate to the operator the ranges in which accuracy requirements cannot be met.

(3) Accuracy of limit switches or equivalent devices shall be within plus or minus 10% of activating loads.

(4) Load-indicating or limiting devices shall meet required accuracies over ambient temperatures from −22° to +122°F (−30° to +50°C) without external adjustment.

(d) For devices other than limit switches or equivalent devices, it shall be determined before each day's use that the device is operable, unless the device has been certified by the manufacturer to remain operable within the limits specified in paragraph (c) of this section for a specified time, which has not expired.

(e) When elements of the load-indicating or limiting device are located so that their failure could cause a load to be dropped, the strength of the elements shall not be the limiting strength factor of the crane.

(f)(1) Readout and labeling shall be provided, and shall be compatible or convertible for use with the crane rating

chart. Readout and labeling shall provide:

(i) Units and form of measure;

(ii) Indicating device capacity;

(iii) Operating range within which accuracy requirements are met; and

(iv) Basic operating instructions and precautions.

(2) If the load or limiting device does not measure the load hoisted but affords warning when the load rating is approached or reached, or if it automatically stops the crane when the limit is reached, the crane shall be clearly marked with an identification and description of the device, its operating instructions, and any necessary precautions.

(g) For cranes with load indicating or limiting devices, maintenance, use and installation of the device and maintenance of the crane shall be performed in accordance with manufacturers' recommendations, which shall be available at the terminal.

(h) In installations using radius (in feet or meters) as a factor in operation, the indicated radius or boom angle (in degrees) shall satisfy the following:

(1) If displaying radius, the indications shall be in the range from 97% to 110% of actual radius, establishing allowable "under" indications of 3% of actual radius (overload condition) and allowable "over" indications of 10% of actual radius (underload condition).

(2) If displaying or using boom angle, indications shall be as follows:

(i) For boom angles, measured as the angle between the boom base section's longitudinal axis and the horizontal plane, of 65° or more, indicated angles shall be between ½° more and 1½° less than actual angles.

(ii) For boom angles under 65°, indicated angles shall be from 1° more to 2° less than actual angles.

(iii) When radius is presented in degrees, and feet or meters are required, conversion charts shall be provided.

(i) *Performance tests.* (1) The employer shall ensure that load-indicating devices and limit switches are performance tested, using known weight or fixed anchor procedures, at installation, at manufacturer's recommended intervals, when there are indications of inaccuracy, and at certification surveys.

(2) Tests shall be in accordance with manufacturer's instructions, which shall be available at the terminal, and shall include all functions.

(3) Tests shall use an appropriately configured crane and load rating chart. Tests of limit switches or equivalent devices shall include activation of the limit switch or device.

(j) *Test records.* Signed and dated records of the most recently conducted performance tests shall be available at the terminal and shall include the following:

(1) Crane owner;

(2) Crane manufacturer, model, serial number;

(3) Device manufacturer, model, serial number;

(4) Crane configuration, method of test and test load data; and

(5) Accuracy calculations and whether recalibration was necessary to achieve accuracy.

§ 1918a.47 Winches.

(a) The employer shall ensure that moving winch parts which present caught-in hazardous to employees are guarded.

(b) Winches shall have clearly identifiable and readily accessible stop controls.

(c) Portable winches shall be secured against accidental shifting while in use.

(d) Portable winches shall be fitted with limit switches if employees have access to areas from which it is possible to be drawn into the winch.

(e) The provisions of § 1918a.45(f)(11) shall apply to winches.

§ 1918a.48 Conveyors.

(a) *Guards.* (1) The employer shall ensure that danger zones at or adjacent to conveyors are guarded to protect employees.

(2) An elevated walkway with guardrail or equivalent means of protection shall be provided where employees cross over moving conveyors, and suitable guarding shall be provided when employees pass under moving conveyors.

(b) *Moving parts.* Conveyor rollers and wheels shall be secured in position.

(c) *Positioning.* Gravity conveyor sections shall be firmly placed and secured to prevent them from falling.

(d) *Braking.* (1) Brakes or equivalent means of stopping objects at the delivery end of the conveyor shall be provided.

(2) Conveyors using electrically released brakes shall be constructed so that the brakes cannot be released until power is applied and the brakes are automatically engaged if the power fails or the operating control is returned to the "stop" position.

(e) *Stability.* Portable conveyors shall be stable within their operating ranges. When used at variable fixed levels, the unit shall be secured at the operating level.

(f) *Emergency stop devices.* Emergency stop devices shall be readily accessible to employees at fixed loading, unloading and other conveyor work stations.

(g) *Starting powered conveyors.* The employer shall ensure that powered conveyors are not started until all employees are clear of the conveyor or have been warned that the conveyor is about to start.

(h) *Loading and unloading.* The area around conveyor loading and unloading points shall be kept clear of obstructions during conveyor operations.

(i) *Lockout.* (1) The employer shall ensure that conveyors are stopped and their power sources locked out during maintenance, repair, and servicing, unless power is necessary for testing.

(2) The starting device shall be locked in the stop position before an attempt is made to remove the cause of a jam or overload that has stopped the conveying medium.

(j) *Safe practices.* (1) Only designated persons shall operate, repair or service powered conveyors.

(2) Employers shall ensure that employees stay off operating conveyors.

(3) Conveyors shall be operated only with all overload devices, guards and safety devices in place and operable.

§ 1918a.49 Spouts, chutes, hoppers, bins, and associated equipment.

(a) The employer shall ensure that standing and running rigging and associated gear used as a permanent part of spouts, chutes or similar devices is inspected before each use and is not used if it has any functional defects. (See also § 1918a.51(c)(2) for certification requirements.)

(b) Instantaneous and direct communication shall be provided between the discharge or shipboard control end of loading spouts and chutes and the point in the terminal from which the flow of cargo is controlled.

(c) Chute and hopper openings shall be guarded to prevent employees from falling through them.

(d) When employees are working on hoppers, the hopper shall be equipped with a safe walkway and means of access, and guardrails if required by § 1918a.112.

(e) Chutes shall be equipped with sideboards to protect employees from falling objects.

(f) Chutes shall be firmly placed and secured to prevent them from falling.

(g) Brakes or equivalent means of stopping objects at the delivery end of chutes shall be provided.

(h) Before an employee enters an empty bin, the employer shall ensure that:

(1) Personnel controlling the flow of cargo into the bin have been notified of the entry; and

(2) The power supply to the equipment carrying the cargo to the bin has been turned off and locked out.

(i) Before an employee enters a bin containing a bulk commodity such as coal or sugar, the employer shall ensure that:

(1) Personnel controlling the flow of cargo into the bin have been notified of the entry;

(2) The power supply to the equipment carrying the cargo to the bin has been turned off and locked out;

(3) The employee entering the bin is wearing a lifeline and safety harness; and

(4) A standby attendant equipped to perform a rescue is continuously stationed outside the bin until the employee has left the bin.

(j) Bin top openings shall be covered with gratings or other means of preventing employees from falling into the bin when the cover is removed.

(k) Chutes and hoppers shall be repaired only by designated persons.

(l)(1) Before power shoveling operations begin, the employer shall ensure that a designated person inspects the equipment to be used. The inspection shall include at least the eye bolts, wires, and sheaves.

(2) Power shovels and associated equipment with operational defects shall not be used.

(3) Before adjustments are made to a power shovel, wire, or associated equipment, the power supply to the shovel shall be turned off and locked out, the belt stopped, and the hopper closed.

§ 1918a.90 Certification of marine terminal material handling devices.

(a) Employers shall not use any material handling device listed in paragraph (c) of this section until they have ascertained that the device has been certificated, as evidenced by current and valid documents attesting to compliance with the requirements of paragraph (b) of this section.

(b) The certifications required by paragraph (a) of this section, and further described in paragraph (c) of this section, shall be performed:

(1) In accordance with the standards of Part 1919 of this Chapter, by persons then currently accredited by the Occupational Safety and Health Administration as provided in that Part; or

(2) In accordance with standards established and enforced by the state in which the device is located or by a political subdivision thereof, which have been found by the Secretary to be compatible with the standards of Part 1919 of this Chapter, by persons designated as competent to perform such certification by competent state authority and recognized as such by the Secretary.

(c) The marine terminal material handling devices listed below shall be certificated in the following manner:

(1) Each crane and derrick shall be tested as a unit annually and quadrennially, and shall be inspected annually and examined quadrennially. Certificates of tests, inspections, and examinations shall be available for inspection on the equipment or at the terminal.

(2) Bulk cargo spouts and suckers, together with any portable extensions and rigging or outriggers supporting them vertically, shall be inspected annually. Certificates attesting to the required examination shall be available at the terminal.

(3) Vertical pocket or bucket conveyors such as banana, sugar and grain marine legs (other than those within a grain elevator structure) used within a marine terminal facility shall be inspected annually and examined quadrennially. The quadrennial examination shall include all supporting structures, rigging and mechanical components and observation of all steps of operation. Certificates attesting to the required inspections and examinations shall be available at the terminal.

(4) (i) House fall cargo-handling gear in use shall be tested as a unit and subjected to an examination upon initial certification and every fourth year, and shall be subjected to annual inspections in other years. The unit test shall consist of a proof load to 25% in excess of the rated safe working load. Inspections and examinations shall include all supporting structures and components. Certificates attesting to the required tests, inspections and examinations shall be available at the terminal.

(ii) House fall span beams or other house fall block supports shall be marked with the safe working load, which shall not be exceeded.

(5) Special gear. (i) Special stevedoring gear provided by the employer, the strength of which depends upon components other than commonly used stock items such as shackles, ropes or chains, shall be tested as a unit in accordance with the following table before initially being put into use.

Safe working load	Proof load
Up to 20 short tons	25 percent in excess.
Over 20 to 50 short tons	5 short tons in excess.
Over 50 short tons	10 percent in excess.

(ii) Every spreader not a part of ship's gear and used for hoisting intermodal containers shall be tested to a proof load equal to 25% in excess of its rated capacity. Additionally, any spreader which suffers damage necessitating structural repair shall be retested after repair and before being returned to service.

(iii) Certificates attesting to the required tests shall be available at the terminal.

(6) Wire rope and loose gear obtained after *(effective date of final standard)* and used for material handling shall have been tested and certificated before being placed into use in accordance with the provisions of paragraphs (a), (c) and (d) of § 1919.31 and §§1919.32 through 1919.34 of this Chapter as applicable. Certificates attesting to the required tests, inspections and examinations shall be available at the terminal.

(d) Disassembly and reassembly of equipment necessary for movement from job to job or which does not affect the equipment's ratings will not nullify the validity of the equipment's existing certification.

(e) For equipment certificated in accordance with paragraph (b)(2) of this section and transferred to a job site in another state, the current certification shall remain valid until the next inspection or examination becomes due.

(f) In addition to certification procedures, all certified equipment shall be maintained in accordance with the manufacturer's maintenance procedures.

(g) (1) Every unit of equipment requiring quadrennial certification shall have had such quadrennial certification within the previous 48 months. Equipment requiring annual certification shall have had such annual certification within the previous 12 months, except that no annual certification is required within 12 months after any required quadrennial certification. Annual surveys, inspections or examinations for certification may be accomplished up to one month early without effect on subsequent due dates.

(2) When certificated equipment is out of service for 6 months or more beyond the due date of a certification inspection, an examination equivalent to an initial certification, including unit proof load test, shall be performed before the equipment re-enters service.

(h) The employer shall ensure that loose gear obtained after *(effective date of final standard)* bears a legible mark indicating that it has been tested (see paragraph (c)(6) of this section). Signal sheave blocks shall be marked with safe working loads and proof test loads. Marks relating to testing shall be

identifiable on the related certificates, which shall be available at the terminal.

(i) The certification requirements of this section do not apply to the following equipment:

(1) Industrial trucks and small industrial crane trucks; and

(2) Any straddle truck not capable of straddling two or more intermodal containers (16 feet (4.88m)) in width.

§ 1918a.51 Hand tools.

(a) The employer shall ensure that hand tools used by employees are maintained in safe operating condition.

(b) (1) Hand-held portable electric tools shall be equipped with switches that must be manually held in a closed position to operate the tool.

(2) Portable power-driven circular saws shall be equipped with guards above and below the base plate or shoe. The upper guard shall cover the saw to the depth of the teeth, except for the minimum arc required to permit the base to be tilted for bevel cuts. The lower guard shall cover the saw to the depth of the teeth, except for the minimum arc required to allow proper retraction and contact with the work. When the tool is withdrawn from the work, the lower guard shall automatically and instantly return to the covering position.

(c) Only cutting tools shall be used to cut metal strapping or banding used to secure cargo.

Subpart D—Specialized Terminals

§ 1918a.71 Terminals handling intermodal containers or roll-on roll-off vehicles.

(a) This section shall apply in addition to any applicable requirements of this Part.

(b) The employer shall ensure that every intermodal container is legibly and permanently marked with:

(1) The weight of the container when empty, in pounds;

(2) The maximum cargo weight the container is designed to carry, in pounds; and

(3) The sum of the weight of the container and the cargo, in pounds.

(c) Containers loaded aboard or discharged from any vessel by a shore crane or derrick shall:

(1) If empty, be identified by shipping documents as empty and be so marked; and

(2) If loaded, be marked with their actual gross weight to be legible to the crane or other hoist operator.

(d) Each outbound loaded container, except open vehicle-carrying containers and those designed and used exclusively to carry compressed gases, shall be weighed to determine its actual gross weight. If the terminal has no scales, the actual gross weight may be calculated on the basis of the container's contents and the container's empty weight. The weights used in the calculation shall be posted conspicuously on the container, with the name of the person making the calculation and the date.

(e) The weight of loaded inbound containers from foreign ports shall be determined by weighing, by the method of calculation described in paragraph (d), or by shipping documents.

(f) No container shall be hoisted whose actual gross weight exceeds either the sum of the container's empty weight and the maximum cargo weight the container is designed to carry or the capacity of the crane or device used for hoisting.

(g) (1) Marked and designated areas shall be set aside within a container or roll-on roll-off terminal for passage of employees to and from work areas.

(2) The employer shall ensure that employees stay clear of the area beneath a suspended container.

(h) The employer shall ensure that employees working with container-handling equipment or in the terminal's traffic lanes wear high-visibility vests or equivalent protection.

(i) Except when damage to an intermodal container makes special means of handling necessary, containers shall be handled using lifting fittings or other arrangements suitable and intended for the purpose as set forth in paragraphs (i)(1) through (i)(3):

(1) Intermodal containers of 20 feet (6.1 m) or more in length shall be hoisted as follows:

(i) If hoisted by the top lifting fittings, the lifting forces shall be applied vertically from at least four such fittings.

(ii) If hoisted from bottom fittings, the hoisting connections shall bear on the fittings only, making no other contact with the container. The angles of the four bridle legs shall not be less than 30° to the horizontal in the case of 40 foot (12.2 m) containers, 37° in the case of 30 foot (9.1 m) containers, and 45° in the case of 20 foot (6.1 m) containers.

(iii) Lifting containers by fork lift trucks or by grappling arms from above or from one side shall be done only if the container is designed for this type of handling.

(iv) Other means of hoisting may be used only if the containers and hoisting means are designed for such use.

(2) (i) Intermodal container spreaders using lanyards for activation of releasing devices shall not be used except when there is no possibility of the lanyards accidentally releasing a suspended intermodal container.

(ii) Intermodal container spreader twistlock systems shall be designed and used so that a suspended load cannot accidentally be released.

(3) Intermodal containers moved by flat bed trucks or container chassis shall be secured to prevent dislodgement in transit.

(j) (1) Intermodal containers received shall be inspected for defects in structural members or fittings before further handling.

(2) Any intermodal container found to be unsafe shall be identified as such, promptly removed from service and repaired before being returned to service.

§ 1918a.72 Grain elevator terminals. [Reserved]

§ 1918a.73 Terminal facilities handling menhaden and similar species of fish.

(a) This section shall apply in addition to any applicable requirements of this Part.

(b) (1) The employer shall ensure that tanks in terminal areas used for receiving or storing brailwater for recirculating into vessel holds in discharging operations are open or ventilated to minimize contamination of water circulated to the vessel. Brailwater tanks shall be thoroughly drained upon completion of each day's operations and shall be left open to the air. Drainage is unnecessary when brailwater has been treated to remove hydrogen sulfide-producing contaminants and the efficiency of such treatment has been established.

(2) Before employees enter a dock tank, it shall first be drained, rinsed and tested for hydrogen sulfide and oxygen deficiency. Employees shall not enter the tank when the hydrogen sulfide level exceeds 20 ppm or oxygen content is less that 19.5%.

(3) Tests shall be conducted by designated personnel with suitable test equipment and respiratory protective equipment complying with the provisions of § 1918a.92 of this Part.

(c) Pipelines and hoses on the dock or terminal used for receiving and circulating used brailwater shall be completely drained upon completion of each day's operation and left open to the air.

(d) At least four units of respiratory protective equipment consisting of supplied-air respirators or self-contained breathing apparatus complying with the requirements of § 1918a.92 of this Part shall be available in a suitably labeled cabinet for immediate use in case of emergency caused by oxygen deficiency or hydrogen sulfide. Any employee entering a tank in an emergency shall, in addition to repiratory protective

equipment, wear a lifeline and safety harness to facilitate rescue. At least two other employees, similarly equipped, shall be continuously stationed outside the tank to observe and to provide rescue services.

(e) The plant superintendent and foremen shall be trained and knowledgeable about the hazards of hydrogen sulfide and oxygen deficiency. They shall be trained in the use of appropriate respiratory and other protective equipment, and in rescue procedures. Other supervisory plant personnel shall be informed of these hazards and instructed in the necessary safety measures, including use of respiratory and rescue equipment.

(f) Supervisory personnel shall be on hand at dockside to supervise discharging of brailwater from vessels.

Subpart E—Personal Protection

§ 1918a.91 Eye protection.

(a) (1) When employees perform work hazardous to the eyes, the employer shall provide, at no cost to the employee, eye protection equipment marked or labeled as meeting the manufacturing specifications of American National Standards Practice for Occupational and Educational Eye and Face Protection, ANSI Z87.1–1968, and shall ensure its use.

(2) For employees wearing corrective spectacles, eye protection equipment required by paragraph (a)(1) of this section must be of a type which can be worn over spectacles. Prescription ground safety lenses may be substituted if they provide equivalent protection.

(3) For additional requirements covering eye protection against radiant energy, see § 1918a.152(h).

(b) Eye protection equipment shall be maintained in good condition.

(c) Used eye protection equipment shall be cleaned and disinfected before reissuance to another employee.

§ 1918a.92 Respiratory protection.

(a) The employer shall provide, at no cost to the employee, approved respiratory protective equipment meeting the requirements of 30 CFR Part 11 and shall ensure its use in hazardous atmospheres as defined in § 1918a.2(p).

(b) Respirators are approved for use in hazardous atmospheres only when they are maintained and used in accordance with the requirements for performance and respiratory protection set forth in 30 CFR Part 11.

(c) For protection against nuisance dusts, the employer shall provide, at no cost to the employee, respirators with particulate filters or dust masks meeting the requirements of 30 CFR Part 11, and shall ensure their use.

(d) For protection against pneumoconiosis-producing or toxic dusts, the employer shall provide, at no cost to the employee, respirators meeting the requirements of 30 CFR Part 11, and shall ensure their use.

(e) Respiratory protective equipment shall not be modified.

(f) Respiratory protective equipment shall be inspected before each use. Gas mask canisters and chemical cartridges shall be replaced before the end of their service life. Mechanical filters shall be cleaned and replaced as often as necessary to prevent excessive breathing resistance.

(g) Previously used respiratory protective equipment shall be cleaned and disinfected before reissuance.

(h) Respiratory protective equipment shall be stored in a convenient and clean location.

(i) Employers shall instruct employees using respiratory protective equipment in its uses and limitations.

(j) When an employee enters a hazardous atmosphere, at least one attendant shall stand by with rescue equipment and with respiratory protection approved for the hazard involved.

§ 1918a.93 Head protection.

(a) The employer shall ensure that employees exposed to impact, falling or flying objects, or electric shocks or burns shall wear protective hats, which shall be provided at no cost to the employee.

(b) Protective hats shall bear identifying marks or labels indicating compliance with the manufacturing provisions of American National Standard Safety Requirements for Industrial Head Protection, ANSI Z89.1–1969.

(c) Protective hats previously worn shall be cleaned and disinfected before issuance by the employer to another employee.

§ 1918a.94 Foot protection.

(a) The employer shall ensure that employees exposed to impact, falling objects, or puncture hazards wear safety shoes, which shall be provided by the employer at no cost to the employee.

(b) Protective shoes shall bear identifying marks or labels indicating compliance with the manufacturing provisions of American National Standard for Men's Safety Toe Footwear, ANSI Z41.1–1967.

§ 1918a.95 Other protective measures.

(a) *Protective clothing.* (1) The employer shall provide, at no cost to the employee, protective clothing when ordinary clothing is unsuitable and circumstances necessitate special protective clothing, and shall ensure its use.

(2) Protective clothing previously worn shall be cleaned and disinfected before issuance by the employer to another employee.

(b) *Protective creams or ointments.* The employer shall ensure that employees use protective creams or ointments when skin exposure to a particular substance requires their use.

(c) *Protection against drowning.* (1) The employer shall provide, at no cost to the employee, and shall ensure that employees wear, personal flotation devices for those employees, such as line handlers, who are engaged in work in which they may be pulled into the water.

(2) Personal flotation devices shall be United States Coast Guard approved Type I PFD, Type II PFD, Type III PFD, or Type V PFD, or equivalent, in accordance with 46 CFR 160 (Coast Guard Lifesaving Equipment Specifications) and 33 CFR 175.23 (Coast Guard table of devices equivalent to personal flotation devices).

(3) Personal flotation devices shall be maintained in safe condition and shall be considered unserviceable when damaged so as to affect buoyancy or fastening capability.

(d) *Emergency facilties.* When employees are exposed to hazardous substances which may require emergency bathing, eye washing or other facilities, the employer shall provide such facilities and maintain them in good working order.

Subpart F—Terminal Facilities

§ 1918a.111 Maintenance and load limits.

(a) The employer shall ensure that the structural integrity of docks, piers, wharves, terminals and working surfaces is maintained.

(b) Maximum safe load limits, in pounds per square foot (kilograms per square meter), of floors within buildings and structures shall be conspicuously posted in all cargo areas.

(c) Maximum safe load limits shall not be exceeded.

(d) All walking and working surfaces in the terminal area shall be maintained in good repair.

§ 1918a.112 Guarding of edges.

(a) *Vehicle protection.* (1) The employer shall ensure that vehicle curbs and bull rails at least 10 inches (22.9 cm) in height are provided at the water side of aprons and bulkheads, except where vehicles are prohibited.

(2) The provisions of paragraph (a)(1) of this section also apply at the edge of any fixed level above the common floor area from which vehicles may fall, except at loading docks, platforms and skids where cargo is moved by vehicles.

(b) *Employee protection.* (1) Except as specified in paragraph (b)(2) of this section, guardrails shall be provided at locations where employees are exposed to floor or wall openings or waterside edges, including bridges or gangway-like structures leading to pilings or vessel mooring or berthing installations, which present a hazard of falling more than 4 feet (1.22 m) or into the water.

(2) Guardrails are not required:

(i) At loading platforms and docks;

(ii) At waterside edges used for cargo handling;

(iii) On the working sides of work platforms, skids or similar workplaces; or

(iv) On railroad rolling stock, highway vehicles, intermodal containers or similar equipment.

(3) Where guardrails are impracticable due to machinery requirements or work processes, other equivalently safe means of protecting employees from falling, such as nets, shall be used.

(c) *Criteria for guardrails.* Guardrails shall meet the following criteria:

(1) They shall be capable of withstanding a force of at least 200 pounds (890 N) applied in any direction at mid-span of the top rail (when used), or at the uppermost point if there is no top rail.

(2) If not of solid, baluster, grillwork, slattered or similar construction, guardrails shall consist of top rails and midrails. When used, midrails shall be positioned at approximately half the height of the top rail.

(3) The top surface of guardrails installed before *(effective date of final standard)* shall be at least 36 inches (0.91 m) high. Those installed after *(effective date of final standard)* shall be 42 inches (1.07 m), plus or minus 2 inches (5.1 cm), high.

(4) Any non-rigid railing such as chain or wire rope shall have a maximum sag limit at the mid-point between posts of not more than 6 inches (15.2 cm).

(5) Top rails shall be free of puncture and laceration hazards.

(6) Rail ends shall not overhang to constitute a hazard, but this does not prohibit scrollwork, boxed ends or similar non-hazardous projections.

(d) *Toeboards.* Toeboards shall be provided when employees below could be exposed to falling objects such as tools. Toeboards shall be at least 3½ inches (8.9 cm) in height from top edge to floor level, and be capable of withstanding a force of 50 pounds (220 N) applied in any direction. Drainage clearance under toeboards is permitted.

(e) *Stair railings.* (1) Stair railings shall be capable of withstanding a force of at least 200 pounds (890 N) applied in any direction, and shall be not more than 36 inches (0.9 m) nor less than 32 inches (0.8 m) in height from the upper top rail surface to the tread surface in line with the leading edge of the tread. Railings shall be provided at any stairway having four or more risers, as follows:

(i) For stairways less thanb 44 inches (1.12 m) wide at least one railing; and

(ii) For stairways more than 44 inches (1.12 m) but less than 88 inches (2.24 m) wide, a stair rail or handrail on each side, and if 88 or more inches wide, an additional intermediate handrail.

(f) *Condition.* Railings shall be maintained free of sharp edges and in good repair.

§ 1918a.113 Clearance heights.

The employer shall ensure that the clearance height is prominently posted where the height is insufficient for vehicles and equipment.

§ 1918a.114 Cargo doors.

(a) *Mechanically operated.* (1) The employer shall ensure that cargo door counterweights are guarded.

(2) Lift trucks and cranes shall not be used to move mechanically operated doors except during repair on the doors, in which case ropes or other guarding shall be provided to prevent entry into the area where the door may fall or slide.

(3) Vertically operated doors partially opened for work or ventilation shall be secured to prevent accidental closing.

(b) *Tackle operated.* (1) The door shall be connected to its lifting tackle with shackles or equally secure means.

(2) Lifting bridles and tackles shall have a safety factor of five, based upon maximum anticipated static loading conditions.

(3) Devices shall be provided to hold overhead doors in the open position and to secure them when closed.

(4) Lifting gear and hardware shall be maintained in safe condition.

(5) Lifting ropes, when used, shall be placed out of the work area and off the floor.

(c) *Horizontal sliding.* (1) Horizontal sliding door rollers shall be constructed to prevent the door from jumping from overhead tracks.

(2) The employer shall ensure that sliding doors are secured to prevent them from swinging.

§ 1918a.115 Cargo-landing surfaces.

The employer shall ensure that the working area of an apron used to load or discharge vessels is large enough to permit unobstructed cargo handling.

§ 1918a.116 Platforms and skids.

(a) The employer shall ensure that platforms and skids extending from piers, transit sheds or lofts and used for landing or hooking on drafts shall be provided at the side edges with guardrails meeting the requirements of § 1918a.112(c) or equivalent means, such as nets, to protect employees against falls.

(b) The employer shall ensure that any employee working below a second story platform or skid is protected from falling objects by a net stretched from the platform or skid to the vessel.

(c) The employer shall ensure that platforms and skids are strong enough to bear the loads handled and are maintained in safe condition. Safe working loads, which shall be posted or marked on or adjacent to platforms and skids, shall have a minimum safety factor of five for any part, based upon maximum anticipated static loading conditions and the ultimate strength of the construction material.

(d) The employer shall provide and maintain platform and skid attachments that will prevent accidental movement of the skid or platform.

§ 1918a.117 Elevators and escalators.

(a) "Elevator" means a permanent hoisting and lowering mechanism with a car or platform moving vertically in guides and serving two or more floors of a structure. The term excludes such devices as conveyors, tiering or piling machines, material hoists, skip or furnace hoists, wharf ramps, lift bridges, car lifts and dumpers.

(b) "Escalator" means a power-driven continuous moving stairway principally intended for the use of persons.

(c) The employer shall ensure that no elevator or escalator with any operational defect is used.

(d) Elevator safey devices shall not be overridden or made inoperable.

(e) The employer shall ensure that elavators and escalators are thoroughly inspected at intervals not exceeding one year, and that additional monthly inspections for satisfactory operation are carried out by designated persons. Records of the results of the latest annual and monthly elevator inspections shall be posted in elevators. Records of escalator inspections shall be posted in the vicinity of the escalator or be available at the terminal.

(f) Elevator landing openings shall be provided with doors, gates or equivalent

protection which shall be in place when the elevator is not at that landing. The door, gate, or equivalent device shall prevent employees from falling into the shaft.

(g) The elevator's or escalator's maximum load limits shall be posted and not exceeded. Elevator load limits shall be posted conspicuously both inside and outside of the car.

(h) Elevators shall be operated only by designated persons except for automatic or door interlocking elevators which provide full shaft door closing and automatic car leveling.

§ 1918a.118 Manlifts.

(a) *Inspection.* The employer shall ensure that manlifts are inspected monthly by a designated person. Safety switches shall be checked weekly. Manlifts found to be unsafe shall not be operated until repaired. Inspections shall include at least the following:

Step fastenings;
Rails;
Rail supports and fastenings;
Roller and slides;
Belt and belt tension;
Handholds and fastenings;
Floor landings;
Guardrails;
Lubrication;
Safety switches;
Warning signs and lights;
Illumination;
Drive pulley;
Bottom (boot) pulley and clearance;
Pulley supports;
Motor;
Drive mechanism;
Brake;
Electrical switches;
Vibration and misalignment;
"Skip" on up or down run when mounting the step (indicating worn gears); and
Emergency exit ladders.

(b) *Inspection records.* Inspection records shall be kept for at least one year. The record of the most recent inspection shall be posted in the vicinity of the manlift or in the terminal.

(c) *Emergency stop.* An emergency stop device shall be available within easy reach from any position on the belt.

(d) *Instructions.* Manlift use instructions shall be conspicuously posted.

(e) *Top floor warning sign and light.* An illuminated sign and red light that are visible to the user shall be provided under the top floor opening of the manlift to warn the user to get off at that floor.

(f) *Bottom floor warning sign.* A sign visible to descending passengers shall be provided to warn them to get off at the bottom floor.

(g) *Upper limit stop.* An automatic stop device shall be provided to stop the manlift when a loaded step passes the top landing, except that manlifts installed after *(Effective date of the final standard)* shall have two such devices.

(h) *Handholds and steps.* Each step shall be provided with a corresponding handhold.

(i) *Emergency ladder.* A fixed emergency ladder accessible from any position on the lift and in accordance with the requirements of § 1918a.119(d) shall be provided for the entire run of the manlift.

(j) *Landings.* (1) Clear and unobstructed landing spaces shall be provided at each level. Manlifts constructed after *(effective date of the standard)* and that have a distance of 50 feet (15.24 m) or more between floor landings shall have an emergency landing every 25 feet (7.62 m) or less of manlift travel.

(2) Open sides of emergency landings shall be protected by guardrails.

(3) Floor landing entrances and exits shall be guarded by mazes, self-closing gates, or equivalent devices.

(4) Landings shall be of sufficient size and strength to support 250 pounds (1120 N).

(k) *Floor opening guards.* The ascending sides of manlift floor openings shall be provided with cones or bevel guards to direct the user through the openings.

(l) *Maintenance.* Manlifts shall be equipped, maintained, and used in accordance with the manufacturer's specifications, which shall be available at the terminal.

(m) *Bottom pulley.* (1) The lower pulley shall be supported by the lowest landing.

(2) Sides of the bottom pulley support shall be guarded to prevent contact with the pulley or the steps.

(n) *Top clearance.* A clearance of at least 11 feet (3.3 m) shall be provided between the top landing and the ceiling.

(o) *Brakes.* Manlifts shall be equipped with brakes that are:.

(1) Self-engaging;

(2) Electrically released; and

(3) Capable of stopping and holding the manlift when the descending side is loaded with the maximum rated load.

§ 1918a.119 Fixed ladders.

(a) *Scope and applicability.* This section applies to all fixed ladders except:

(1) Ladders forming an integral part of railway cars, highway carriers, cargo containers or other transportation carrier equipment;

(2) Climbing devices such as step bolts or structural members of tanks and towers;

(3) Ladders built into or vertically attached to tubular scaffold framing; and

(4) Special-purpose ladders, such as fruit-pickers' ladders, shelf ladders, combination step and extension ladders, and library ladders.

(b) *Definitions.* (1) "Cage" (basket guard) means a barrier enclosing or nearly enclosing a ladder's climbing space and fastened to one or both of the ladder's side rails or to another structure.

(2) "Fixed ladder" means a ladder, including individual rung ladders, permanently attached to a structure, building or piece of equipment.

(3) "Ladder safety device" means a support system limiting an employee's drop or fall from the ladder, and which may incorporate friction brakes, lifelines and lanyards, or sliding attachments.

(4) "Well" means a permanent complete enclosure around a fixed ladder, which is attached to the walls of the well.

(c) *Defects.* (1) The employer shall ensure that ladders with broken, split or missing rungs, steps or rails, broken welds or connections, corrosion or wastage or other defect which may affect safe use are removed from service.

(2) Ladder repairs shall provide strength at least equivalent to that of the original ladder.

(d) *Ladder specifications.* (1) Strength and spacing requirements. (i) Existing ladders shall be capable of withstanding without damage a minimum concentrated load, applied uniformly over a 3-½ inch (8.8 cm) width at the rung center, of 200 pounds (890 N).

(ii) Ladders installed after *(effective date of final standard)* shall be capable of withstanding 250 pounds (1120 N) applied as described in paragraph (d)(1)(i) of this section. If used by more than one employee simultaneously, the ladder is a unit shall be capable of simultaneous additional loading in 250 pounds (1120 N) increments for each additional employee, applied to a corresponding number of rungs. The unit shall have a safety factor of four, based on ultimate strength, in the designed service.

(2) (i) Existing ladders shall have rungs evenly spaced from 9 to 16-½ inches (22.9 to 41.9 cm) apart, center to center.

(ii) Ladders installed after *(effective date of final standard)* shall have rungs evenly spaced from 12±2 inches (30±5 cm) apart, center to center.

(3) (i) Existing ladders shall have a width between side rails of at least 10 inches (25.4 cm).

(ii) Ladders installed after *(effective date of final standard)* shall have a width between side rails of at least 12 inches (30.48 cm).

(4) The minimum distance between the rung center line and the nearest permanent object behind the rung shall be 4 inches (10.2 cm), except that in ladders installed after *(effective date of final standard)*, the minimum distance shall be 7 inches (17.8 cm) unless physical limitations make a lesser distance, not less than 4-½ inches (11.5 cm), necessary.

(5) When a ladder passes through an opening or past overhead obstructions, a minimum 24 inch (.61 cm) clearance shall exist between the climbing side and any obstruction. Where this distance is less than 30 inches (0.76 m), a deflection device shall be installed for guidance through the opening.

(6) The side rails of ladders shall extend at least 36 inches (0.91 m) above the top landing surface, unless grab bars or equivalent holds are provided.

(7) The employer shall ensure that ladders whose pitch exceeds 90° to the horizontal (slanting backward on the climbing side) are not used.

(e) *Protection against falls.* (1) Fixed ladders more than 20 feet (6.1 m) in height shall be provided with a cage, well, or ladder safety device.

(2) When a well or cage is used, ladders with length of climb exceeding 30 feet (9.14 cm) shall comply with the following provisions:

(i) The ladder shall consist of multiple sections not exceeding 30 feet (9.14 m) each;

(ii) Except as specified in paragraph (e)(2)(iv) of this section, each section shall be horizontally offset from adjacent sections;

(iii) Except as specified in paragraph (e)(2)(iv) of this section, a landing platform capable of supporting a load of 100 pounds per square foot (4.79 kPa) and fitted with guardrails complying with § 1918a.112(c) shall be provided at least every 30 feet; and

(iv) For ladders installed before *(effective date of standard)*, offset sections and landing platforms are not required if hinged platforms capable of supporting 100 pounds per square foot (4.79 kPa), and which are kept closed except when opened for passage, are within the cage or well at intervals not exceeding 30 feet (9.14 m).

(3) Ladders equipped with ladder safety devices shall have rest platforms:

(i) Capable of supporting a load of 100 pounds per square foot (4.79 kPa);

(ii) Located at intervals of 150 feet (46 m) or less; and

(iii) Protected by guardrails complying with § 1918a.112(c) on three sides.

(4) Where used, ladder safety devices shall:

(i) Be installed and maintained in accordance with the manufacturer's instructions, which shall be available at the terminal;

(ii) Be repaired with replacement parts having performance capability at least equal to that of the original parts;

(iii) Have a connection length between carrier centerlines and safety belts of 10±2 inches (25.4±5.08 cm); and

(iv) Be installed in a manner that does not reduce the ladder's structural capability.

(5) Ladder cages or wells installed after *(effective date of final standard)* shall:

(i) Be of rigid construction that allows unobstructed ladder use but prevents an employee from falling through or dislodging the cage or well by falling against it;

(ii) Have smooth inner surfaces;

(iii) Extend at least 36 inches (0.9 m) above landings; and

(iv) Extend to within 8 feet (2.4 m) above the ground or base.

(6) After *(effective date of final standard)*, ladders on radio, microwave communication, electrical power and similar towers, poles and structures, including stacks and chimneys, shall meet the requirements of this paragraph (e). Ladders used only for firefighting or emergency purposes are exempted from the requirements of this paragraph.

(f) *Individual rung ladders.* Ladders consisting of individual rungs that are attached to walls or conical manhole sections shall:

(1) Be capable of supporting a load of 350 pounds (1557 N) without deformation;

(2) Form a continuous ladder, uniformly spaced vertically from 12 inches to 16 inches (30.5 to 41 cm) apart, with a minimum width of 10 inches (25.4 cm), and projecting at least 4½ inches (1 cm) from the wall;

(3) Be so constructed that an employee's foot cannot slide off the ends; and

(4) Be firmly attached and without sharp edges.

§ 1918a.120 Portable ladders.

(a) *Scope and applicability.* This section applies to all portable ladders including job-made ladders for temporary use, unless otherwise specified.

(b) *Standards for existing manufactured portable ladders.* (1) The employer shall ensure that rungs of manufactured portable ladders obtained before *(effective date of final standard)* are capable of supporting a 200 pound (890 N) load without deformation.

(2) Rungs shall be evenly spaced from 9 to 16½ inches (22.9 to 41.9 cm), center to center.

(3) Rungs shall be continuous members between rails. Each rung of a double-rung ladder (two side rails and a center rail) shall extend the full width of the ladder.

(4) Width between side rails at the base of the ladder shall be at least 15 inches (38 cm) for ladders 10 feet (3.05 m) or less in overall length, and shall increase at least ¼ inch (0.6 cm) for each additional 2 feet (0.61 m) of ladder length.

(c) *Standards for manufactured portable ladders.* The employer shall ensure that portable manufactured ladders obtained after *(effective date of final standard)* bear identifying labels indicating that they meet the appropriate ladder construction requirements of the following standards.

ANSI A14.1–1975 Safety Requirements for Portable Wood Ladders
ANSI A14.2–1972 Safety Requirements for Portable Metal Ladders
ANSI A14.5–1974 Safety Requirements for Portable Reinforced Plastic Ladders

(d) *Standards for job-made portable ladders.* The employer shall ensure that job-made ladders used after *(effective date of final standard)*:

(1) Have a minimum and uniform distance between rungs of 12 inches (30 cm), center to center;

(2) Are capable of supporting a 250 pound (1100 N) load without deformation; and

(3) Have a minimum width between side rails of 15 inches (38 cm) for ladders 10 feet (3.05 m) in height. Width between rails shall increase at least ¼ inch (0.6 cm) for each additional 2 feet (0.61 m) of ladder length.

(e) *Maintenance and inspection.* (1) The employer shall maintain portable ladders in safe condition. Ladders with the following defects shall not be used and either shall be tagged as unusable if kept on the premises or shall be removed from the worksite:

(i) Broken, split or missing rungs, cleats or steps;

(ii) Broken or split side rails;

(iii) Missing or loose bolts, rivets or fastenings;

(iv) Defective ropes; or

(v) Any other structural defect.

(2) Ladders shall be inspected for defects prior to each day's use, and after any occurance, such as a fall, which could damage the ladder.

(f) *Ladder usage.* (1) Ladders made by fastening rungs or devices across a single rail are prohibited.

(2) Ladders shall not be used:
(i) As guys, braces or skids; or
(ii) As platforms, runways or scaffolds.

(3) Metal and wire-reinforced ladders with wooden side rails shall not be used when employees on the ladder might come into contact with electrical conductors.

(4) Individual sections from different multi-sectional ladders or two or more single straight ladders shall not be tied or fastened together to achieve additional length.

(5) Except for combination ladders, self-supporting ladders shall not be used as single straight ladders.

(6) Unless intended for cantilever operation, non-self-supporting ladders shall not be used to climb above the top support point.

(7) Ladders shall extend at least 36 inches (0.91 m) above the upper support level if employees are to leave or mount the ladder at that level, except that where such extension is impractical other equivalent means such as grab bars may be used to provided a hand grip.

(8) The employer shall ensure that ladders are securely positioned on a level and firm base.

(9) Ladders shall be fitted with slip-resistant bases and lashed, blocked or otherwise secured at top or bottom to prevent the ladder from slipping.

(10) Ladders shall be placed so that employees climbing are not exposed to injury from projecting objects or doors that open toward the ladder.

§ 1918a.121. Fixed stairways.

(a) *Definition.* "Fixed stairway" means interior and exterior stairs serving machinery, tanks and equipment, and stairs to or from floors, platforms or pits. The term does not apply to stairs intended for fire exit purposes, to articulated stairs (the angle of which changes with the rise and fall of the base support) or to stairs forming an integral part of machinery.

(b) *New installations.* (1) The employer shall ensure that fixed stairs installed after *(effective date of final standard)* are positioned within the range of 30° to 50° to the horizontal with uniform riser height and tread width throughout each run and be capable of a minimum loading of 100 pounds per square foot (448 N) and a minimum concentrated load of 300 pounds (1344 N) at the center of any treadspan. Riser height shall be from 6 to 7.5 inches (15.2 to 19.0 cm), stair width a minimum of 22 inches (56 cm) between vertical barriers, tread depth a minimum of 12 ±2 inches (30.48 ±5.08 cm), and tread nosing shall be straight leading edges.

(2) Stair landings shall be at least 20 inches (51 cm) in depth. Where doors or gates open on a stairway, a landing platform shall be provided. Door swing shall not reduce effective standing area on the landing to less than 18 inches (45.7 cm) in depth.

(3) Fixed stairs having four or more risers shall have stair railings or handrails complying with § 1918a.112(c)(1).

(4) Railing height from tread surface at the riser face shall be 33 ±3 inches (83.8 ±7.6 cm).

(c) *Restricted areas.* When physical features require stairs steeper than those provided for by paragraph (b)(1) of this section, stairs at angles of 50° to 75° from the horizontal may be used if they:

(1) Are capable of a single concentrated load of 200 pounds (890 N) at the tread center;

(2) Have open treads at least 4 inches (10.2 cm) in depth and 18 inches (45.7 cm) in width with a uniformly spaced vertical rise between treads of 6 to 9.5 inches (15.2 to 24.1 cm); and

(3) Have handrails that meet the requirements of § 1918a.112(c)(1) on both sides and that are not less than 30 inches (76.2 cm) in height from the tread surface at the riser face.

(d) *Maintenance.* The employer shall ensure that fixed stairways are maintained in safe condition and are not obstructed.

§ 1918a.122 Spiral stairways.

(a) *Definition.* "Spiral stairway" means one with closed circular form, uniform sector-shaped treads and a supporting column.

(b) *Requirements.* The employer shall ensure that spiral stairways meet the following requirements:

(1) Stairways shall conform to the minimum dimensions of Figure F–1;

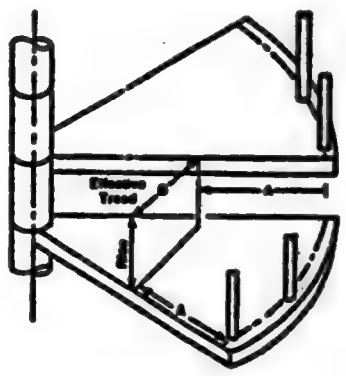

Figure F-1

Spiral Stairway—Minimum Dimensions

	A (Tread width)	B
Normal use by employees.	11 inches (27.9 cm).	6 inches (15.2 cm).
Limited access	9 inches (22.9 cm).	5 inches (12.7 cm).

(2) Stairway risers shall be uniform and shall range from 6-½ to 10-½ inches (16.5 to 26.7 cm) in height;

(3) Minimum loading capability shall be 100 pounds per square foot (448 N), and minimum tread center concentrated loading shall be 300 pounds (1344 N);

(4) Railings shall conform to the requirements of § 1918a.112(c)(1). A minimum of one baluster, if used, shall be provided per tread. Handrails shall be a minimum of 1¼ inches (3.3 cm) in outside diameter; and

(5) Vertical clearance shall be at least 6 feet, 6 inches (1.98 m) above the top stem.

(c) *Maintenance.* Spiral stairways shall be maintained in safe condition.

§ 1918a.123 Employee exits.

(a) The employer shall ensure that employee exits are marked. Marking consisting of the word "Exit" or other appropriate description shall be clear and easily distinguishable.

(b) If an employee exit is not visible from employees' work stations, directional signs indicating routes to the exit shall be posted.

(c) Exits shall be readily accessible and sufficient in number to provide employees with a convenient means of escape in emergencies. A clear passage to the exit shall be maintained.

(d) The minimum width of any employee exit shall be 28 inches (71.1 cm).

§ 1918a.124 Illumination

Except where the regulations of the United States Coast Guard (33 CFR 126.15(l) and (n), and 33 CFR 154.570) apply, the employer shall ensure that active work areas (for example cargo transfer points) are illuminated at an average minimum light intensity of 10 foot-candles. Other work areas (for example open storage areas) shall be illuminated at an average minimum light intensity of 5 foot-candles. Light intensity shall be measured on a horizontal plane at the work or walking surface.

§ 1918a.126 Passage between levels and across openings.

(a) *Differences in levels.* The employer shall provide safe means of passage between different surface levels and across openings.

(b) *Dockboards (cax and bridge plates) and ramps.* Dockboards and ramps shall:

(1) Not be subjected to loads exceeding the manufacture's recommended load rating, which shall be marked on the dockboard or ramp or available at the terminal;

(2) have sufficient edge contact with pier, dock and loading platforms and carriers or vessels to prevent rocking or sliding;

(3) Not be used when loading dock or platform surfaces slope so that substantial contact cannot be maintained;

(4) Be so secured, constructed and used as to prevent the dockboard or ramp from slipping;

(5) Have effective means for safe handling;

(6) Have a safety factor of at least four;

(7) Be equipped with a guardrail meeting the requirements of § 1918a.112(c)(1) if the slope is more than 20 degrees to the horizontal or if employees could fall more than 4 feet (1.2 m);

(8) Be equipped with sideboards or be designed so that trucks are prevented from running over the edge; and

(9) Have slip-resistant surfaces.

(c) *Other temporary surfacing.* When steel plates or similar means are used temporarily to bridge or cover uneven surfaces or tracks, such temporary surfacing shall be secured or built to prevent displacement by vehicle wheels.

§ 1918a.126 Guarding temporary hazards.

The employer shall ensure that ditches, pits, excavations, other subsidence areas, and surface areas in poor repair are guarded by barricades, railings, roping off or by other equally effective means. The employer shall provide sufficient illumination so that employees can see and avoid the hazardous area.

§ 1918a.127 River banks.

(a) This section applies to temporary installations or temporary operations near a river bank.

(b) Where working surfaces at river banks slope so steeply that an employee could slip or fall into the water, the employer shall ensure that the outer perimeter of the working surface is protected by posting or other portable protection such as roping off, and that employees wear a personal flotation device meeting the requirements of § 1918a.95(c).

§ 1918a.128 Sanitation.

(a) *Washing and toilet facilities.* (1) The employer shall provide accessible washing and toilet facilities sufficient for the sanitary requirements of employees. The facilities shall have:

(i) Running water, including hot and cold or tepid water at a minimum of one accessible location (when cargo handling is conducted at locations without permanent facilities, potable water may be provided in lieu of running water);

(ii) Soap;

(iii) Individual hand towels, clean individual sections of continuous toweling or warm air blowers; and

(iv) Fixed or portable toilets in separate compartments with latch-equipped doors. Separate toilet facilities shall be provided for male and female employees except when toilet rooms will be occupied by only one person at a time.

(2) Washing and toilet facilities shall be regularly cleaned and maintained in good order.

(b) *Drinking water.* (1) Potable drinking water shall be accessible to employees at all times.

(2) Portable drinking water containers shall be clean, containing only water and ice, and shall be fitted with covers.

(3) Common drinking cups are prohibited.

(c) *Prohibited eating areas.* The employer shall ensure that employees do not consume food or beverages in areas where hazardous materials are or have been stored or handled.

(d) *Garbage and overboard discharges.* Work shall not be conducted in the immediate vicinity of uncovered garbage or in the way of overboard discharges from the vessel's sanitary lines unless employees are protected from the garbage or discharge by a baffle or splash boards.

§ 1918a.129 Signs and marking.

(a) *General.* (1) The employer shall provide signs that are clearly worded and legible.

(2) Signs shall contain a key word or legend indicating the reason for the sign.

(i) Key words are such words as Danger, Warning, Caution.

(ii) Legends are more specific explanations such as High Voltage, Close Clearance, Pedestrian Crossing.

(b) *Specific.* (1) Every marine terminal shall have conspicuously posted signs as follows:

(i) Locations of first aid facilities;

(ii) Locations of telephones;

(iii) Telephone numbers of the closest ambulance service, hospital or other source of medical attention, police, fire department, and emergency squad (if any); and

(iv) Locations of firefighting and emergency equipment and fire exits.

(2) The employer shall ensure that any imminent danger is designated by a danger sign to warn employees of the immediate hazard.

(3) The employer shall ensure that any area in which any potential hazard is present is designated by a caution sign to warn employees of the hazard.

Subpart G—Related Terminal Operations and Equipment

§ 1918a.151 Machine guarding.

(a) *Definition.* "Guarded" means shielded, fenced, or enclosed by covers, casings, shields, troughs, spillways or railings, or guarded by position or location. Examples of guarding methods are guarding by location (positioning hazards so they are inaccessible to employees) and point of operation guarding (using barrier guards, two-hand tripping devices, electronic safety devices, or other such devices).

(b) *General.* (1) The employer shall ensure that danger zones on machines and equipment used by employees are guarded.

(2) During operations that produce chips or dust, the employer shall provide an effective exhaust system at the point of origin of chips and dust.

(3) Fixed machinery shall be secured to prevent shifting.

(4) A power cut-off device for machinery and equipment shall be provided at the operator's working position.

(5) Machines driven by belts and shafting shall be fitted with a belt-locking or equivalent device if the belt can be shifted.

(6) Motors shall be wired to prevent automatic restart after loss of power.

(7) The employer shall ensure that the power supply to machines and equipment is turned off and locked out during repair, adjustment, or servicing.

(8) The employer shall maintain machines and equipment in accordance with the manufacturer's instructions, which shall be available at the terminal.

(9) The employer shall ensure that only designated employees maintain or repair machinery and equipment.

(10) Machines and equipment with operational defects shall not be used.

(c) *Hand-fed circular ripsaws and hand-fed circular crosscut table saws.* Unless fixed or manually adjustable enclosures or guarding provides equivalent protection, the employer

shall ensure that hand-fed circular ripsaws and hand-fed circular crosscut table saws are guarded as follows to keep employees clear of any danger zones:

(1) They shall be equipped with hoods completely enclosing those portions of the saw above the table and the material being cut;

(2) They shall have spreaders to prevent material from squeezing the saw. Spreaders shall be in true alignment with the saw. Spreaders may be removed only during grooving, dadoing, or rabbeting operations, but shall be replaced at the completion of such operations; and

(3) They shall have non-kickback fingers or dogs to oppose the tendency of the saw to pick up material or throw material toward the operator.

(d) *Swing cutoff saws.* (1) The employer shall ensure that swing cutoff saws have hoods completely enclosing the upper half of the saw, the arbor end and the point of operation at all saw positions to protect the operator from material thrown up by the saw. The hood shall automatically cover the lower portion of the blade, so that when the saw returns to the back of the table the hood rises on top of the fence, and when the saw is moved forward the hood drops on top, remaining in contact with the table or the material.

(2) Swing cutoff saws shall have a device to return the saw automatically to the back of the table without rebound. The device shall not be dependent upon rope, cord or springs.

(3) Devices shall be provided to prevent saws from swinging beyond the front or back edges of the table.

(4) Inverted swing cutoff saws shall have hoods covering the part of the saw protruding above the table top or the material being cut. Hoods shall automatically adjust to the thickness of, and remain in contact with, material being cut.

(e) *Radial saws.* Unless fixed or manually adjustable enclosures or guards provide equivalent protection, radial saws shall be guarded as follows:

(1) The upper hood of radial saws shall enclose the upper portion of the blade up to and including the end of the saw arbor and shall protect the operator from being struck by debris. The sides of the lower exposed portion of the blade shall be guarded to the blade diameter by a device automatically adjusting to the thickness of the stock and remaining in contact with the stock. The lower guard may be removed only when the saw is used for bevel cuts;

(2) Radial saws used for ripping shall have non-kickback fingers or dogs on both sides to oppose the thrust or tendency of the saw to pick up materials or throw material toward the operator;

(3) Adjustable stops shall be provided to prevent travel of radial saw blades beyond the table's edge;

(4) Radial saws shall be installed so that the cutting head returns to the starting position without rebound when released; and

(5) The employer shall ensure that employees perform ripping and ploughing against the saw turning direction. Rotation direction and an indication of the end of the saw to be used shall be conspicuously marked on the hood.

(f) *Band saws and band resaws.* (1) Saw blades and band saw wheels shall be enclosed or guarded, except for the working portion of the blade between the bottom of the guide rolls and the table, to protect employees from point-of-operation hazards and flying debris.

(2) The employer shall provide brakes to stop the band saw wheel if the blade breaks.

(3) Band saws shall be equipped with a tension control device to keep the blade taut.

(g) *Abrasive wheels and machinery.* (1) Except as provided in paragraphs (g)(2) and (g)(3) of this section, the employer shall ensure that abrasive wheels are used only on machines having enclosure guards to restrain pieces of grinding wheels and to protect employees if the wheels break. Guards shall be aligned with the wheel, and the strength of fastenings shall be greater than the strength of the guard.

(2) When the work provides equivalent protection, or when the machine is designed as a portable saw, guards may be constructed with the spindle end, nut and outer flange exposed. When the work entirely covers the side of the wheel, the side covers of the guard may be removed.

(3) Guarding is not required:

(i) For wheels used for internal work while the wheel is contained within the work being ground; or

(ii) For mounted wheels 2 inches (5 cm) and smaller in diameter used in portable operations.

(4) Work rests shall be used on fixed grinding machines. Work rests shall be rigidly constructed and adjustable for wheel wear. They shall be adjusted closely to the wheel with a maximum opening of ⅛-inch (3.2 mm) and shall be securely clamped. Adjustment shall not be made while the wheel is in motion.

(5) Grinding wheels shall fit freely on the spindle. The spindle nut shall be tightened only enough to hold the wheel in place.

(6) The employer shall ensure that the grinding machine turns the wheel at a speed that is compatible with the rated speed of the wheel.

(7) Flanges and blotters shall be used only with wheels designed for their use. Flanges shall be of a type ensuring retention of pieces of the wheel in case of breakage.

(8) Abrasive wheels with operational defects shall not be used.

(h) *Rotating parts, drives and connections.* (1) The employer shall ensure that rotating parts, such as gears and pulleys, that are located 8 feet (2.4 m) or less above working surfaces are guarded to prevent employee contact with moving parts.

(2) Belt, rope and chain drives shall be guarded to prevent employees from coming into contact with moving parts.

(3) Gears, sprockets and chains shall be guarded to prevent employees coming into contact with moving parts. This requirement does not apply to manually operated sprockets.

§ 1918a.152 Welding, cutting and heating (hot work).

(a) *Definition.* "Hot work" means riveting, welding, burning or other fire or spark-producing operation.

(b) *General.* (1) The employer shall ensure that welding, cutting and heating are performed only as permitted by this section and by other applicable regulations.

(2) Hot work shall not be performed in a confined space until a designated person has tested the atmosphere and determined that it is not hazardous.

(c) *Fire protection.* (1) To the extent possible, the employer shall ensure that hot work is performed only in designated locations that are free of fire hazards.

Footnote G–1: The United States Coast Guard, at 33 CFR 126.15(c), requires prior permission of the Captain of the Port if welding or other hot work is to be carried out at a facility where dangerous cargoes as defined by 33 CFR 126.07 are located or being handled.

(2) When hot work must be performed in a location that is not free of fire hazards, the employer shall ensure that all necessary precautions are taken to confine heat, sparks and slag so that they cannot contact flammable or combustible material.

(3) Fire extinguishing equipment suitable for the location shall be immediately available and shall be maintained in readiness for use at all times.

(4) Additional employees shall be assigned to guard against fire during hot work and for a sufficient time after completion of work to ensure that no fire hazard remains. The employer shall instruct all employees involved in hot

work operations as to potential fire hazards and the use of firefighting equipment.

(5) Drums and containers which contain or have contained flammable or combustible liquids shall be kept closed. Empty containers shall be removed from the hot work area.

(6) When openings or cracks in flooring cannot be closed, precautions shall be taken so that no employees or flammable or combustible materials on the floor below are exposed to sparks dropping through the floor. Similar precautions shall be taken regarding cracks or holes in walls, open doorways and open or broken windows.

(7) Hot work shall not be performed:

(i) In flammable or potentially flammable atmospheres;

(ii) On or in equipment or tanks that have contained flammable gas or liquid or combustible liquid or dust-producing material, until a designated person has tested the atmosphere and determined that it is not hazardous; or

(iii) Near any area in which exposed readily ignitable materials such as bulk sulphur, baled paper or cotton are stored.

(8)(i) Drums, containers or hollow structures that have contained flammable or combustible substances shall either be filled with water or cleaned, and shall then be ventilated. A designated person shall test the atmosphere and determine that it is not hazardous before hot work is performed on or in such structures.

(ii) Before heat is applied to a drum, container or hollow structure, an opening to release built-up pressure during heat application shall be provided.

(d) *Gas welding and cutting.* (1) Compressed gas cylinders. The employer shall ensure that compressed gas cylinders:

(i) Have valve protection caps in place except when in use, hooked up or secured for movement. Oil shall not be used to lubricate caps;

(ii) Are hoisted only while secured, as on a cradle or pallet, and shall not be hoisted by magnet, choker sling or cylinder caps;

(iii) Are moved only by tilting or rolling on their bottom edges;

(iv) Are secured when moved by vehicle;

(v) Are secured while in use;

(vi) Have valves closed when cylinders are empty, being moved or stored;

(vii) Are secured upright except when hoisted or carried;

(viii) Are not freed when frozen by prying the valves or caps with bars or by hitting the valve with a tool;

(ix) Are not thawed by boiling water;

(x) Are not exposed to sparks, hot slag or flame;

(xi) Are not permitted to become part of electrical circuits or have electrodes struck against them to strike arcs;

(xii) Are not used as rollers or supports;

(xiii) Do not have contents used for purposes not authorized by the supplier;

(xiv) Are not used if damaged or defective;

(xv) Do not have gases mixed within, except by gas suppliers;

(xvi) Are stored so that oxygen cylinders are separated from fuel gas cylinders and combustible materials by a minimum distance of 20 feet (6 m) or a barrier having a fire-resistance rating of 30 minutes; and

(xvii) Do not have objects that might either damage the safety device or obstruct the valve placed on top of the cylinder when in use.

(2) Use of fuel gas. Fuel gas shall be used only as follows:

(i) Before regulators are connected to cylinder valves, the valves shall be opened slightly and closed immediately to clear away dust or dirt. Valves shall not be cracked if gas could reach possible sources of ignition;

(ii) Cylinder valves shall be opened slowly to prevent regulator damage and shall not be opened more than 1½ turns. Any special wrench required for emergency closing shall be positioned on the valve stem during cylinder use. For manifolded or coupled cylinders, at least one wrench shall be immediately available. Nothing shall be placed on top of a cylinder or associated parts when the cylinder is in use;

(iii) Pressure-reducing regulators shall be attached to cylinder valves when cylinders are supplying torches or devices equipped with shut-off valves;

(iv) Cylinder valves shall be closed and gas released from the regulator or manifold before regulators are removed;

(v) Leaking fuel gas cylinder valves shall be closed and the gland nut tightened. If the leak continues, the cylinder shall be tagged, removed from service, and moved to a location where the leak will not be hazardous. If a regulator attached to a valve stops a leak, the cylinder need not be removed from the workplace but may not be used again before it is repaired; and

(vi) If a plug or safety device leaks, the cylinder shall be tagged, removed from service, and moved to a location where the leak will not be hazardous.

(3) Hose. (i) Fuel gas and oxygen hoses shall be easily distinguishable from each other by color or sense of touch. Oxygen and fuel hoses shall not be interchangeable. Hoses having more than one gas passage shall not be used.

(ii) When oxygen and fuel gas hoses are taped together, not more than 4 of each 12 inches (10.2 cm of each 30.5 cm) shall be taped.

(iii) Hose shall be inspected before use. Hose subjected to flashback or showing evidence of severe wear or damage shall be tested to twice the normal working pressure but not less than 200 p.s.i. (1378.96 kPa) before reuse. Defective hose shall not be used.

(iv) Hose couplings shall not unlock or disconnect without rotary motion.

(v) Hose connections shall be clamped or securely fastened to withstand twice the normal working pressure but not less than 300 p.s.i. (3068.44 kPa) without leaking.

(vi) Gas hose storage boxes shall be ventilated.

(4) Torches. (i) Torch tip openings shall only be cleaned with devices designed for that purpose.

(ii) Torches shall be inspected before each use for leaking shut-off valves, hose couplings and tip connections. Torches with such defects shall not be used.

(iii) Torches shall not be lighted from matches, cigarette lighters, other flames or hot work.

(5) Pressure regulators. Pressure regulators, including associated gauges, shall be maintained in safe working order.

(6) Operational precaution. Gas welding equipment shall be maintained free of oil and grease.

(e) *Arc welding and cutting.* (1) Manual electrode holders. (i) The employer shall ensure that only manual electrode holders intended for arc welding and cutting and capable of handling the maximum current required for such welding or cutting are used.

(ii) Current-carrying parts passing through those portions of the holder gripped by the user and through the outer surfaces of the jaws of the holder shall be insulated against the maximum voltage to ground.

(2) Welding cables and connectors. (i) Arc welding and cutting cables shall be insulated, flexible and capable of handling the maximum current required by the operation, taking into account the duty cycles.

(ii) Only cable free from repair or splice for 10 feet (3 m) from the electrode holder shall be used unless insulated connectors or splices with insulating quality equal to that of the cable are provided.

(iii) When a cable other than the lead mentioned in paragraph (e)(2)(ii) of this section wears and exposes bare conductors, the portion exposed may not

be used until it is protected by insulation equivalent in performance capability to the original.

(iv) Insulated connectors of equivalent capacity shall be used for connecting or splicing cable. Cable lugs, where used as connectors, shall provide electical contact. Exposed metal parts shall be insulated.

(3) Ground returns and machine grounding. (i) Ground return cables shall have current-carrying capacity equal to or exceeding the total maximum output capacities of the welding or cutting units served.

(ii) Structures or pipe lines, other than those containing gases or flammable liquids or conduits containing electrical circuits, may be used in the ground return circuit if their current-carrying capacity equals that required by paragraph (e)(3)(i) of this section.

(iii) Structures or pipelines forming a temporary ground return circuit shall have electrical contact at all joints. Arcs, sparks or heat at any point in the circuit shall cause rejection as a ground circuit.

(iv) Structures or pipelines acting continuously as ground return circuits shall have joints bonded and maintained to ensure that no electrolysis or fire hazards exists.

(v) Arc welding and cutting machine frames shall be grounded, either through a third wire in the cable containing the circuit coductor or through a separate wire at the source of the current. Ground circuits shall have resistance low enough to permit sufficient current to flow to cause the fuse or circuit breaker to interrupt the current.

(vi) Ground connections shall be mechanically and electrically adequate to carry the current.

(4) When electrode holders are left unattended, electrodes shall be removed and holders placed to prevent employee injury.

(5) Hot electrode holders shall not be dipped in water.

(6) The employer shall ensure that when arc welders or cutters leave or stop work or when machines are moved, the power supply switch is kept in the open position.

(7) Arc welding or cutting equipment having a functional defect shall not be used.

(8)(i) Arc welding and cutting operations shall be separated from other operations by shields, screens, or curtains to protect employees in the vicinity from the direct rays and sparks of the arc.

(ii) Employees in areas not protected from the arc by screening shall be protected by appropriate filter lenses in accordance with § 1918a.91. When welders are exposed to their own arc or to each other's arc, they shall wear filter lenses complying with the requirements of § 1918a.91.

(9) The control apparatus of arc welding machines shall be enclosed, except for operating wheels, levers, and handles.

(10) Input power terminals, top change devices and live metal parts connected to input circuits shall be enclosed and accessible only by means of insulated tools.

(11) When arc welding is performed in wet or high-humidity conditions, employees shall use additional protection, such as rubber pads or boots, against electric shock.

(f) *Ventilation and employee protection in welding, cutting and heating.* (1) Mechanical ventilation requirements. The employer shall ensure that general mechanical ventilation or local exhaust systems meet the following requirements:

(i) General mechanical ventilation shall maintain vapors, fumes and smoke below a hazardous level.

(ii) Local exhaust ventilation shall consist of movable hoods positioned close to the work and shall be of such capacity and arrangement as to keep breathing zone concentrations below hazardous levels.

(iii) Exhausts from working spaces shall be discharged into the open air, clear of intake air sources;

(iv) Replacement air shall be clean and respirable; and

(v) Oxygen shall not be used for ventilation, cooling or cleaning clothing or work areas.

(2) Hot work in confined spaces. Except as specified in paragraphs (f)(3)(ii) and (f)(3)(iii) of this section, when hot work is performed in a cofined space the employer shall ensure that:

(i) General mechanical or local exhaust ventilation meeting the requirements of paragraph (f)(1) of this section is provided; or

(ii) Employees in the space wear supplied air respirators in accordance with § 1918a.92 and a standby on the outside maintains communication with employees inside the space and is equipped and prepared to provide emergency aid.

(3) Welding, cutting or heating of toxic metals. (i) In confined or enclosed spaces, hot work involving the following metals shall only be performed with general mechanical or local exhaust ventilation that ensures that employees are not exposed to hazardous levels of fumes:

(A) Lead base metals;

(B) Cadmium-bearing filler materials; and

(C) Chromium-bearing metals or metals coated with chromium-bearing materials.

(ii) In confined or enclosed spaces, hot work involving the following metals shall only be performed with local exhaust ventilation meeting the requirements of paragraph (f)(1) of this section or by employees wearing supplied air respirators in accordance with § 1918a.92:

(A) Zinc-bearing base or filler metals or metals coated with zinc-bearing materials;

(B) Metals cotaining lead other than as an impurity, or coated with lead-bearing materials;

(C) Cadmium-bearing or cadmium-coated base metals; and

(D) Metals coated with mercury-bearing materials.

(iii) The employer shall ensure that employees performing hot work in confined or enclosed spaces involving beryllium-containing base or filler metals are protected by local exhaust ventilation and wear supplied air respirators or self-contained breathing apparatus, in accordance with the requirements of § 1918a.92.

(iv) The employer shall ensure that employees performing hot work in the open air that involves any of the metals listed in paragraphs (f)(3)(i) and (f)(3)(ii) of this section are protected by respirators in accordance with the requirements of § 1918a.92, and those working on beryllium-containing base or filler metals are protected by supplied air respirators, in accordance with the requirements of § 1918a.92.

(v) The employer shall ensure that any employee exposed to the same atmosphere as the welder or burner is protected by the same type of respiratory and other protective equipment as that worn by the welder or burner.

(4) Insert-gas metal-arc welding. The employer shall ensure that employees do not engage in and are not exposed to the inert-gas metal-arc welding process unless the following precautions are taken:

(i) Chlorinated solvents shall not be used within 200 feet (61 m) of the exposed arc. Surfaces prepared with chlorinated solvents shall be thoroughly dry before welding is performed on them.

(ii) Employees in areas not protected from the arc by screening shall be protected by appropriate filter lenses in accordance with the requirements of § 1918a.91. When welders are exposed to their own arc or to each other's arc, filter lenses complying with the requirements of § 1918a.91 shall be worn

to protect against flashes and radiant energy.

(iii) Employees exposed to radiation shall have their skin covered completely to prevent ultraviolet burns and damage. Helmets and hand shields shall not have leaks, openings or highly reflective surfaces.

(iv) Inert-gas metal-arc welding on stainless steel shall not be performed unless exposed employees are protected either by local exhaust ventilation or by wearing supplied air respirators.

(g) *Welding, cutting and heating on preservative coatings.* (1) Before hot work is commenced on surfaces covered by a preservative coating of unknown flammability, the employer shall ensure that a test is made by a designated person to determine the coating's flammability. Preservative coatings shall be considered highly flammable when scrapings burn with extreme rapidity.

(2) Appropriate precautions shall be taken to prevent ignition of highly flammable hardened preservative coatings. Highly flammable coatings shall be stripped from the area to be heated. An uncoiled fire hose with fog nozzle, under pressure, shall be immediately available in the hot work area.

(3) Surfaces covered with preservative coatings shall be stripped for at least 4 inches (10.2 cm) from the area of heat application or employees shall be protected by supplied air respirators in accordance with the requirements of § 1918a.92.

(h) *Protection against radiant energy.* (1) The employer shall ensure that employees are protected from radiant energy eye hazards by spectacles, cup goggles, helmets, hand shields or face shields with filter lenses complying with the requirements of § 1918a.91 and this paragraph.

(2) Filter lenses shall have an appropriate shade number, as indicated in Table G–1, for the work performed. Variations of one or two shade numbers are permissible to suit individual preferences.

(3) If filter lenses are used in goggles worn under the helmet, the shade number of the lens in the helmet may be reduced if the sum of the shade numbers of both lenses equals the value shown in Table G–1 for the operation.

Table G–1.—*Filter Lenses for Protection Against Radiant Energy*

Operation	Shade No.
Soldering	2.
Torch Brazing	3 or 4.
Light cutting, up to 1 inch	3 or 4.
Medium cutting, 1–6 inches	4 or 5.
Heavy cutting, over 6 inches	5 or 6.
Light gas welding, up to ½ inch	4 or 5.
Medium gas welding ½–½ inch	5 or 6.
Heavy gas welding, over ½ inch	6 or 8.
Shielded Metal-Arc Welding ⅛-in- to ⅝-in- inch electrodes	10.
Inert-gas Metal-Arc Welding (Nonferrous) ⅛-in- to ⅝-in- inch electrodes	11.
Inert-gas Metal Arc Welding (Ferrous) ⅛-in- to ⅝-in- inch electrodes	12.
Shielded Metal-Arc Welding:	
⅝-in- to ¼- inch electrodes	12.
⅝-in- and ¼- inch electrodes	14.
Atomic Hydrogen Welding	10 to 14.
Carbon Arc Welding	14.

Table G–1.—*Filter Lenses for Protection Against Radiant Energy—Continued*

Operation	Shade No.
Medium gas welding ⅛–½ inch	5 or 6.
Heavy gas welding, over ½ inch	6 or 8.
Shielded Metal-Arc Welding ⅛-in- to ⅝-in- inch electrodes	10.
Inert-gas Metal-Arc Welding (Nonferrous) ⅛-in- to ⅝-in- inch electrodes	11.
Inert-gas Metal Arc Welding (Ferrous) ⅛-in- to ⅝-in- inch electrodes	12.
Shielded Metal-Arc Welding:	
⅝-in- to ¼- inch electrodes	12.
⅝-in- and ¼- inch electrodes	14.
Atomic Hydrogen Welding	10 to 14.
Carbon Arc Welding	14.

§ 1918a.153 Spray painting

(a) *Scope.* This section covers painting operations connected with maintenance of structures, equipment and gear at the marine terminal and of transient equipment serviced at the terminal. It does not apply to overall painting of the terminal structures under construction, major repair or rebuilding of terminal structures,or portable spraying appartus not used regularly in the same location.

(b) *Definition.* "Spraying area" means any area where flammable vapors, mists or combustible residues, dusts or deposits may be present due to paint spraying operations.

"Spray booth" means a power-ventilated enclosure containing a flammable or combustible paint spraying operation and confining and limiting the escape of paint, vapor and residue by means of an exhaust system.

"Approved" means, for the purpose of this section, that the equipment has been approved for the specified use by an organization such as Factory Mutual Research Corporation or Underwriters Laboratories, Inc.

(c) *Spray painting requirements for indoor and outdoor spraying areas and booths.* (1) Shut-off valves. The employer shall ensure that containers or piping with attached hoses or flexible connections have shut-off valves closed at the connection when not in use.

(2) Pressure-relieving devices. Pumps used to transfer paint supplies shall have automatic pressure-relieving devices.

(3) Inspection before use. Hoses and couplings shall be inspected before use. Hoses showing deterioration, leakage or weakness in the carcass or at the couplings shall be removed from service.

(4) Electrical and other sources of ignition. (i) No open flame or spark producing equipment shall be within 20 feet (6 m) of a spraying area unless it is separated from the spraying area by a fire-retardant partition.

(ii) Hot surfaces shall not be located in spraying areas.

(iii) When combustible residues may accumulate on electrical installations, wiring shall be in rigid conduit or in boxes containing no taps, splices or connections.

(iv) Portable electric lights shall not be used during spraying operations. Lights used during cleaning or repairing operations shall be approved for the location in which they are used.

(5) Containers and piping systems. When transferring flammable or combustible liquids between containers, both containers shall be bonded and grounded.

(6) Operations and maintenance. (i) Spraying shall be performed only in designated spray booths or spraying areas.

(ii) Spraying areas shall be kept as free from combustible residue accumulations as practicable.

(iii) Residue scrapings, debris, rags, and waste shall be removed from the spraying area as they accumulate.

(7) Organic peroxides and other dual-component coatings. Spraying with organic peroxides and other dual-component coatings shall only be conducted in sprinkler-equipped spray booths.

(8) Storage of flammable and combustible liquids. The employer shall ensure that only the quantity of flammable or combustible liquids required for the operation shall be allowed in the spraying area, and in no case shall the amount exceed a one-day supply.

(9) Smoking precautions. Smoking shall be prohibited and "No Smoking" signs shall be posted in spraying and paint storage areas.

(d) *Additional requirements for spraying areas and spray booths.* (1) The employer shall ensure that distribution or baffle plates are of noncombustible material and are removable or accessible for cleaning. They shall not be located in exhaust ducts.

(2) Any discarded filter shall be removed from the work area or placed in water.

(3) Filters shall not be used when the material being sprayed is highly susceptible to spontaneous heating and ignition.

(4) Filters shall be noncombustible or of an approved type. The same filter shall not be used when spraying with different coating materials if the combination of materials may spontaneously ignite.

(5) Spraying areas shall be mechanically ventilated for removal of flammable and combustible vapor and mist.

(6) Mechanical ventilation shall be in operation during spraying operations and long enough thereafter to exhaust hazardous vapor concentrations.

(7) Rotating fan elements shall be nonsparking or the casing shall consist of or be lined with nonsparking material.

(8) Piping systems conveying flammable or combustible liquids to the spraying booth or area shall be made of metal or bonded and grounded.

(9) Air exhausted from spray operations shall not contaminate makeup air or other ventilation intakes. Exhausted air shall not be recirculated unless it is first cleaned of any hazardous contaminants.

(10) Original closed containers, approved portable tanks, approved safety cans or a piping system shall be used to bring flammable or combustible liquids into spraying areas.

(11) If flammable or combustible liquids are supplied to spray nozzles by positive displacement pumps, the pump discharge line shall have a relief valve discharging either to a pump suction or detached location, or the line shall be equipped with a device to stop the prime mover when discharge pressure exceeds the system's safe operating pressure.

(12) Wiring, motors and equipment in a spray booth shall be of approved explosion-proof type for Class I, group D locations and conform to Subpart S of Part 1910 of this Chapter for Class I, Division I, Hazardous Locations. Wiring, motors and equipment within 20 feet (6 m) of any interior spraying area and not separated by vapor-tight partitions shall not produce sparks during operation and shall otherwise conform to the requirements of Subpart S of Part 1910 of this Chapter for Class I, Division 2, Hazardous Locations.

(13) Outside electrical lights within 10 feet (3 m) of spraying areas and not separated from the areas by partitions shall be enclosed and protected from damage.

(e) *Additional requirements for spray booths.* (1) The employer shall ensure that spray booths are substantially constructed of noncombustible material and have smooth interior surfaces. Spray booth floors shall be covered with noncombustible material. As an aid to cleaning, paper may be used to cover the floor during painting operations if it is removed after the painting is completed.

(2) Spray booths shall be separated from other operations by at least 3 feet (0.91 m) or by fire-retardant partitions or walls.

(3) A space of at least 3 feet (0.91 m) on all sides of the spray booth shall be maintained free of storage or combustible materials.

(4) Metal parts of spray booths, exhaust ducts, piping and airless high-pressure spray guns and conductive objects being sprayed shall be grounded.

(5) Electric motors driving exhaust fans shall not be located inside booths or ducts.

(6) Belts shall not enter ducts or booths unless the belts are completely enclosed.

(7) Exhaust ducts shall be made of steel, shall have sufficient access doors to permit cleaning, and shall have a minimum clearance of 18 inches (0.46 m) from combustible materials. Any installed dampers shall be fully opened when the ventilating system is operating.

(8) Spray booths shall not be alternately used to spray different types of coating materials if the combination of the materials may spontaneously ignite unless deposits of the first material are removed from the booth and from exhaust ducts before spraying of the second material begins.

§ 1918a.154 Compressed air.

The employer shall ensure that employees are protected by chip guarding and personal protective equipment complying with the provisions of Subpart E of this Part during cleaning with compressed air. Compressed air used for cleaning shall not exceed a pressure of 30 psi. Compressed air shall not be used to clean employees.

§ 1918a.155 Air receivers.

(a) *Application.* This section applies to compressed air receivers and equipment used for operations such as cleaning, drilling, hoisting and chipping. It does not apply to equipment used to convey materials or in such transportation applications as railways, vehicles or cranes.

(b) *Gauges and valves.* (1) The employer shall ensure that air receivers are equipped with indicating pressure gauges and spring-loaded safety valves. Safety valves shall prevent receiver pressure from exceeding 110 percent of the maximum allowable working pressure.

(2) No other valves shall be placed between air receivers and their safety valves.

§ 1918a.156 Fuel handling and storage.

(a) *Applicability.* This section applies to those matters not covered by the Coast Guard requirements in 33 CFR Part 126 and 46 CFR Part 146.

(b) *Liquid fuel.* (1) The employer shall ensure that only designated persons conduct fueling operations. In case of spillage, filler caps shall be replaced and spillage disposed of before engines are started.

(2) Engines shall be stopped and operators shall not be on the equipment during refueling operations.

(3) Smoking and open flames are prohibited in areas used for fueling, fuel storage or enclosed storage of equipment containing fuel.

(4) Equipment shall be refueled only at designated locations.

(5) Liquid fuels not handled by pump shall be handled and transported only in portable containers or equivalent means designed for that purpose. Portable containers shall be metal, have tight closures with screw or spring covers and shall be equipped with spouts or other means to allow pouring without spilling. Leaking containers shall not be used.

(6) Flammable liquids may be dispensed in the open from a tank or from other vehicles equipped for delivering fuel to another vehicle if:

(i) Dispensing hoses do not exceed 50 feet (15.2 m) in length; and

(ii) Any powered dispensing nozzles used are of the automatic-closing type without latch-open devices.

(7) Liquid fuel dispensing devices shall be provided with an easily accessible and clearly identified shut-off device, such as a switch or circuit breaker, to shut off the power in an emergency.

(8) Liquid fuel dispensing devices, such as pumps, shall be mounted either on a concrete island or be otherwise protected against collision damage.

(c) *Liquefied gas fuels.* (1) Fueling locations. (i) The employer shall ensure that liquefied gas powered equipment is fueled only at designated locations.

(ii) Equipment with permanently mounted fuel containers shall be charged outdoors.

(iii) Equipment shall not be fueled or stored near underground entrances, elevator shafts or other places where gas or fumes might accumulate.

(2) Fuel containers. (i) When removable fuel containers are used, the escape of fuel when containers are exchanged shall be minimized by:

(A) Automatic quick-closing (closing in both directions when uncoupled) in fuel lines; or

(B) Closing fuel container valves and allowing engines to run until residual fuel is exhausted.

(ii) Pressure-relief valve openings shall be in continuous contact with the vapor space (top) of the cylinder.

(iii) Fuel containers shall be secured to prevent their being jarred loose, slipping or rotating.

(iv) Containers shall be located to prevent damage to the container. If

located within a compartment, that compartment shall be vented. Containers near the engine or exhaust system shall be shielded against direct heat radiation.

(v) Container installation shall provide the container with at least the vehicle's road clearance under maximum spring deflection, which shall be to the bottom of the container or to the lowest fitting on the container or housing, whichever is lower.

(vi) Valves and connections shall be protected from contact damage. Permanent protection shall be provided for fittings on removable containers.

(vii) Defective containers shall be removed from service.

(3) Fueling operations. (i) To the extent applicable, fueling operations for liquefied gas fuels shall comply with paragraph (b) of this section.

(ii) Using matches or flames to check for leaks is prohibited.

(iii) Containers shall be examined before recharging and again before reuse for the following:

(A) Dents, scrapes and gouges of pressure vessels;

(B) Damage to valves and liquid level gauges;

(C) Debris in relief valves;

(D) Leakage at valves or connections; and

(E) Deterioration or loss of flexible seals in filling or servicing connections.

(4) Fuel storage. (i) Stored fuel containers shall be located to minimize exposure to excessive temperatures and physical damage.

(ii) Containers shall not be stored near inside exits, stairways or areas normally used or intended for egress.

(iii) Outlet valves of containers in storage or transport shall be closed. Relief valves shall connect with vapor spaces.

(5) Vehicle storage and servicing. (i) Liquefied gas fueled vehicles may be stored or serviced inside garages or shops only if there are no fuel system leaks.

(ii) Liquefied gas fueled vehicles under repair shall have container shutoff valves closed unless engine operation is necessary for repairs.

(iii) Liquefied gas fueled vehicles shall not be parked near open flames, sources of ignition or unventilated open pits.

§ 1918a.157 Battery charging and changing.

(a) The employer shall ensure that only designated persons change or charge batteries.

(b) Battery charging and changing shall be performed only in areas designated by the employer.

(c) Smoking and other ignition sources are prohibited in charging areas.

(d) Filler caps shall be in place when batteries are being moved.

(e) Parking brakes shall be applied before batteries are charged or changed.

(f) When a jumper battery is connected to a battery in a vehicle, the ground lead shall connect to ground away from the vehicle's battery. Ignition, lights and accessories on the vehicle shall be turned off before connections are made.

(g) Batteries shall be free of corrosion buildup and cap vent holes shall be open.

(h) Ventilation shall be provided during charging.

(i) Facilites for flushing the eyes, body and work area with water shall be provided where electrolyte is handled except that this requirement does not apply when employees are only checking battery electrolyte levels or adding water.

(j) Carboy tilters or siphons shall be used to handle electrolyte in large containers.

(k) Battery handling equipment which could contact battery terminals or cell connectors shall be insulated or otherwise protected.

(l) Metallic objects shall not be placed on uncovered batteries.

(m) When charging batteries, the vent caps shall be in place.

(n) Chargers shall be turned off when leads are being connected or disconnected.

(o) Installed batteries shall be secured to avoid physical or electrical contact with compartment walls or components.

§ 1918a.158 Prohibited operations.

(a) The employer shall ensure that spray painting and abrasive blasting operations are not conducted in the vicinity of cargo handling operations.

(b) Welding and burning operations shall not be conducted in the vicinity of cargo handling operations unless such hot work is part of the cargo operation.

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federal register

Friday
January 16, 1981

Part V

Department of Labor

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

DEPARTMENT OF LABOR

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor specify, in accordance with applicable law and on the basis of information available to the Department of Labor from its study of local wage conditions and from other sources, the basic hourly wage rates and fringe benefit payments which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of the character and in the localities specified therein.

The determinations in these decisions of such prevailing rates and fringe benefits have been made by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR 1.1 (including the statutes listed at 36 FR 306 following Secretary of Labor's order No. 24–70) containing provisions for the payment of wages which are dependent upon determination by the Secretary of Labor under the Davis-Bacon Act; and pursuant to the provisions of part 1 of subtitle A of title 29 of Code of Federal Regulations, Procedure for Predetermination of Wage Rates (37 FR 21138) and of Secretary of Labor's Orders 12–71 and 15–71 (36 FR 8755, 8756). The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in effective date as prescribed in that section, because the necessity to issue construction industry wage determination frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions are effective from their date of publication in the Federal Register without limitation as to time and are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision together with any modifications issued subsequent to its publication date shall be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR, Part 5. The wage rates contained therein shall be the minimum paid under such contract by contractors and subcontractors on the work.

Modifications and Supersedeas Decisions to General Wage Determination Decisions

Modifications and supersedeas decisions to general wage determination decisions are based upon information obtained concerning changes in prevailing hourly wage rates and fringe benefit payments since the decisions were issued.

The determinations of prevailing rates and fringe benefits made in the modifications and supersedeas decisions have been made by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR 1.1 (including the statutes listed at 36 FR 306 following Secretary of Labor's Order No. 24–70) containing provisions for the payment of wages which are dependent upon determination by the Secretary of Labor under the Davis-Bacon Act; and pursuant to the provisions of part 1 of subtitle A of title 29 of Code of Federal Regulations, Procedure for Predetermination of Wage Rates (37 FR 21138) and of Secretary of Labor's orders 13–71 and 15–71 (36 FR 8755, 8756). The prevailing rates and fringe benefits determined in foregoing general wage determination decisions, as hereby modified, and/or superseded shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged in contract work of the character and in the localities described therein.

Modifications and supersedeas decisions are effective from their date of publication in the Federal Register without limitation as to time and are to be used in accordance with the provisions of 29 CFR Parts 1 and 5.

Any person, organization, or governmental agency having an interest in the wages determined as prevailing is encouraged to submit wage rate information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Office of Government Contract Wage Standards, Division of Government Contract Wage Determinations, Washington, D.C. 20210. The cause for not utilizing the rulemaking procedures prescribed in 5 U.S.C. 553 has been set forth in the original General Determination Decision.

New General Wage Determination Decisions

Maryland: MD81–3002

Modifications to General Wage Determination Decisions

The numbers of the decisions being modified and their dates of publication in the Federal Register are listed with each State.

Arkansas:	
AR80–4078	Nov. 7, 1980.
AR80–4080	Oct. 31, 1980.
AR80–4081	Nov. 7, 1980.
AR80–4082	Nov. 7, 1980.
AR80–4083	Oct. 31, 1980.
Massachusetts: MA80–3064	Oct. 31, 1980.
Minnesota: MN80–2089	Dec. 19, 1980.
New York: NY80–3064	Apr. 25, 1980.

Supersedeas Decisions to General Wage Determination Decisions

The numbers of the decisions being superseded and their dates of publication in the Federal Register are listed with each State. Supersedeas decision numbers are in parentheses following the numbers of the decisions being superseded.

Maine: ME80–3005 (ME81–3008)	Feb. 22, 1980.
Vermont:	
VT79–3091 (VT81–3007)	Dec. 10, 1979.
VT79–3070 (VT81–3007)	Aug. 11, 1978.

Cancellation of General Wage Determination Decisions

None.

Signed at Washington, D.C. This 9th day of January 1981.

Dorothy P. Come,

Assistant Administrator, Wage and Hour Division.

BILLING CODE 4510-27-M

MODIFICATIONS P. 1

DECISION #ARBO-4079-Mod. #3
45FR74344-November 7, 1980

NEW DECISION

STATE: Maryland

COUNTIES: Baltimore, Baltimore City

DECISION NO.: MD81-3002
DESCRIPTION OF WORK: Residential Construction consisting of single family houses and garden type apartments up to and including 4 stories

DATE: Date of Publication

NEW DECISION

STATE: Maryland COUNTIES: Baltimore, Baltimore City

DECISION NO.: MD81-3002 DATE: Date of Publication

DESCRIPTION OF WORK: Residential Construction consisting of single family houses and garden type apartments up to and including 4 stories

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
AIR CONDITIONING MECHANIC	6.00				
BRICKLAYERS	9.27				
CARPENTERS	6.78				
CARPET MECHANIC	6.00				
CEMENT MASONS	6.82				
DRY WALL FINISHERS	5.76				
DRY WALL HANGERS	6.50				
ELECTRICIANS	6.23				
INSULATION MECHANICS	7.16				
LABORERS:					
Unskilled	4.71				
Mason Tenders	5.00				
Pipelayers	4.75				
PAINTERS, BRUSH	5.77				
PLUMBERS	7.00				
ROOFERS	6.28				
SHEET METAL WORKERS	5.61				
SOFT FLOOR LAYERS	7.00				
TILE SETTERS	6.79				
TRUCK DRIVERS	5.25				
POWER EQUIPMENT OPERATORS:					
Backhoe	6.03				
Bulldozer	7.50				
Grader	5.93				
Loader	6.11				
Scraper	7.00				

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5 (a)(1)(ii)).

MODIFICATIONS P. 1

DECISION #AR80-4079-Mod. #3
45FR74344-November 7, 1980
Garland, Hot Springs and Clark Counties, Arkansas

CHANGE:	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
BRICKLAYERS-STONEMASONS:					
Garland & Clark Counties	$11.50		.50		
Hot Springs	11.25		.55		.04
IRONWORKERS	11.55	.60	1.05		.06
PAINTERS:					
Brush & roller	8.00				
Paperhanging	8.50				
Sheetrock (tape and float only)	8.50				
Stage and steel	10.00				
Spray & sandblasting	11.25				
Painters operating any kind of taping or floating machine	11.75				
PLUMBERS-PIPEFITTERS:					
ZONE-A	12.20	.90	.60		.10
ZONE-B	13.25	.90	.60		.10
TILE LAYERS:					
Garland & Clark Counties	11.50		.50		

DECISION #AR80-4080-Mod. #4
45FR72439-October 31, 1980
Jefferson County, Arkansas

CHANGE:					
PAINTERS:					
Painters, paperhangers & steam cleaners, sheet rock finishers & wall cover hangers	9.55		.50		.03
Spray gun operators and sand blasterers	10.15		.50		.03
All skelton steel and all work on stages, structural steel over 30 feet high	9.80		.50		.03
PLASTERERS	11.50		.35		.04
MARBLE, TILE & TERRAZZO WORKERS	10.00				

DECISION #AR80-4081-Mod. #2 45FR74342-November 7, 1980 Sebastian, Crawford and Washington Counties, Arkansas	Basic Hourly Rates	Fringe Benefits Payments H & W	Pensions	Vacation	Education and/or Appr. Tr.
CHANGE: SEBASTIAN & CRAWFORD COS.					
Bricklayers-Stonemasons	$11.05	.85	.35		.14
Plasterers	11.50		.35		.04
Plumbers-Steamfitters	12.56	.55	.55		.04
Sprinkler fitters	12.53	.85	1.20		.08
DECISION #AR80-4082-Mod. #3 45FR74345-November 7, 1980 Union & Ouachita Counties, Arkansas					
CHANGE: ELECTRICAL CONTRACTS $20,000.00 or less:					
Electricians - Linemen	13.04		3%		1/4%
Cable splicers	13.34		3%		1/4%
ELECTRICAL CONTRACTS OVER $20,000.00:					
Electricians - Linemen	13.83		3%		1/4%
Cable splicers	14.13		3%		1/4%
PLASTERERS	11.50		.35		.04
DECISION #AR80-4083-Mod. #3 45FR72438-October 31, 1980 Pulaski County, Arkansas					
CHANGE: PAINTERS:					
Painters, paperhangers and steam cleaners, sheetrock finishers and wall cover hangers	9.55		.50		.03
Spray gun operator & sand blasterers	10.15		.50		.03
All skeleton steel and all work on stages, structural steel over 30 feet high	9.80		.50		.03
PLASTERERS	11.50		.35		.04
MARBLE, TILE & TERRAZZO WORKERS	10.00				

DECISION NO. MA80-3064 MOD. #1 (45 FR 72442 - October 31, 1980) Barnstable, Bristol, Dukes, Essex, Middlesex, Norfolk, Plymouth, Suffolk and Nantucket Counties, Massachusetts	Basic Hourly Rates	Fringe Benefits Payments H & W	Pensions	Vacation	Education and/or Appr. Tr.
Change: CARPENTERS: Soft Floor Layers					
MIDDLESEX (Ashby, Ayer, Lunenburg, Shirley, Lancaster, Harvard, Groton, Pepperell, Townsend, W. Groton, and W. Townsend	12.50	.75	1.00		.07
ESSEX (Methuen, Lawrence, Andover, N. Andover)	12.10	1.00	1.00		.05
ESSEX (Ipswich, Essex, Gloucester, Rockport, Topsfield, Hamilton, Wenham, Middleton, Danvers, Beverly, Manchester, Peabody, Salem, Marblehead)	11.50	1.00	1.00		.03
SUFFOLK, MIDDLESEX (Remainder of County); Norfolk (all except Avon, Holbrook, Randolph and Stoughton); ESSEX (Remainder of County); PLYMOUTH (Duxbury, Hanover, Hingham, Hull, Marshfield, Norwell, Pembroke, Rockland and Scituate); Bristol (Attleboro, N. Attleboro, & Seekonk)	12.25	1.00	1.00		.07

MODIFICATIONS P. 4

DECISION NO. MA80-3064 - CONT'D	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ELECTRICIANS:					
MIDDLESEX (Bedford, Billerica, Boxboro, Burlington, Carlisle, Chelmsford, Dracut, Dunstable, Littleton, Lowell, Tewksbury, Tyngsboro, Westford, Wilmington)	12.35	1.15	1.10+3%		.02
MIDDLESEX (Ashby, Ayer, Ft. Devens, Groton, Pepperell, Shirley, Townsend)	13.20	.75	.70+3%		.02
SUFFOLK CO.; MIDDLESEX (Remainder of County); NORFOLK (all except Avon, Holbrook, Randolph, Stoughton and Plainville); ESSEX (Lynn, Lynnfield, Nahant, Saugus, Swampscott)	14.68	1.05	1.80+3%		.10
PLYMOUTH (Hingham, Hull)					
ESSEX (Remainder of County)					
Contracts over $30,000	12.65	.92	.31+3%		.02
Contracts $30,000 or less	11.75	.92	.31+3%		.02
IRONWORKERS:					
MIDDLESEX (Sherborn, Natick, Framingham, Weston, Newton, Arlington, Belmont, Cambridge, Somerville, Waltham, Medford, Malden, Stoneham, Woburn, Winchester, Burlington, Bedford, Lincoln, Lexington, Sudburg, Maynard, Concord, Everett	13.25	1.15	2.05		.10
MILLWRIGHTS	13.65	1.00	1.00		.10

MODIFICATIONS P. 5

DECISION NO. MA80-3064 - CONT'D	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
PAINTERS:					
MIDDLESEX (Ashby, Townsend, Pepperell, Groton, Shirley, and Ayer)					
Brush	12.73	.90	1.65		.04
Spray/Sandblast	13.73	.90	1.65		.04
Steel	14.85	.90	1.65		.04
Repaint	10.82	.90	1.65		.04
Residential	9.55	.90	1.65		.04
MIDDLESEX (Boxboro, Action, Concord, Stow, Maynard, Lincoln, Lexington, Hudson, Sudbury, Wayland, Weston, Waltham, Watertown, Newton, Marlboro, Framingham, Natick, Ashland, Sherborn, Hopkinton, Holliston); NORFOLK (Dover, Medfield, Medway, Millis, Needham, Wellesley)					
New Construction:					
Brush	11.40	.85	.80		.03
Steel	12.65	.85	.80		.03
Spray and Sand Blast	12.40	.85	.80		.03
Repaint and Residential:					
Brush	10.85	.85	.80		.03
Steel	12.10	.85	.80		.03
Spray and Sand Blast	13.40	.85	.80		.03
SUFFOLK, ESSEX, PLYMOUTH (Remainder of County); BRISTOL (Remainder of Co.); MIDDLESEX (Remainder of County); NORFOLK (Remainder of County)					
New Construction:					
Brush/Taper	13.41	.82	1.40		.04
Spray/Sandblast	14.41	.82	1.40		.04
Steel	15.82	.82	1.40		.04

MODIFICATIONS P. 6

DECISION NO. MA80-3064 - CONT'D	Basic Hourly Rates	Fringe Benefits Payments H & W	Pensions	Vacation	Education and/or Appr. Tr.
PAINTERS: CONT'D					
Repaint:					
Brush/Taper	12.07	.82	1.40		.04
Spray/Sandblast	13.07	.82	1.40		.04
Steel	15.82	.82	1.40		.04
PILEDRIVERMEN	13.15	1.00	1.00		
PLASTERERS:					
SUFFOLK, MIDDLESEX (Arlington, Cambridge, Everett, Malden, Melford Melrose, Somerville); NORFOLK (Brookline, Milton); PLYMOUTH (Norwell only)	12.55	.85	1.68		.02
PLUMBERS AND STEAMFITTERS:					
BARNSTABLE; BRISTOL (Acushnet, Dartmouth, Fairhaven, Fall River, Freetown, New Bedford, N. & S. Dartmouth, Somerset, Swandea, Westport, and Seeknonk) PLYMOUTH (Marion, Mattapoisett, Rochester, and Wareham); DUKES, NANTUCKET	12.54	1.05	1.73		.20
Residential	11.29	1.05	1.73		.20
PLUMBERS AND PIPEFITTERS:					
MIDDLESEX (Ashland, Belmont, Concord, Framington, Holliston, Hopkington, Lexington, Lincoln, Marlboro, Maynard, Natick, Sherborn, Sudbury, Stow, Waltham, Wayland, Weston, Hudson); NORFOLK (Medway, Medfield, Dover Wellesley)	15.07	1.30	1.08		.05

MODIFICATIONS P. 7

DECISION NO. MA80-3064 - CONCLUDED	Basic Hourly Rates	Fringe Benefits Payments H & W	Pensions	Vacation	Education and/or Appr. Tr.
PLUMBERS AND PIPEFITTERS: CONT'D					
SUFFOLK, MIDDLESEX (Remainder of County); NORFOLK (except Avon, Holbrook, Randolph, Stoughton, Dover, Medfield, Medway, Wellesley); ESSEX (Lynn, Lynnfield, Nahant, Saugus, Swampscott); PLYMOUTH (Hingham, Hull, Scituate)					
PLUMBERS	15.75	1.02	1.48		.08
PIPEFITTERS	15.61	.94	1.45		.07
PLYMOUTH (Remainder of Co.); BRISTOL (Remainder of County); NORFOLK (Avon, Holbrook, Randolph, Stoughton)	13.60	.95	.80		.05
ROOFERS:					
BARNSTABLE CO., PLYMOUTH (Carver, Lakeville, Marion, Mattapoisett, Middleboro, Rochester, Wareham and Hingham); BRISTOL (Seekonk, Rehoboth, Dighton, Berkley, Swansea, Somerset, Fall River, Freetown, Westport, Dartmouth, New Bedford, Achushnet, Fairham); DUKES; NANTUCKET	10.20	1.00	.55		
SUFFOLK, NIDDLESEX, NORFOLK, ESSEX (Remainder of Co.); BRISTOL (Remainder of Co.)					
Journeyman	12.45	.90	1.85		.17
Pitch Work	13.45	.90	1.85		.17

MODIFICATIONS P. 8

MODIFICATIONS P. 9

DECISION NO. WY80-3036 - Mod. #3
(45 FR 28064 - April 25, 1980)
Onondaga County, New York

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
DECISION # MN80-2088 Mod # 1 (45 FR 83810 December 19,1980)					
COUNTIES: Becker, Clay, Cass, Hubbard, Ottertail, Todd, Wadena and Wilkin Cos. Minnesota					
OMIT:					
Clay County - Heavy Construction only					

DECISION NO. NY80-3036 - Mod. #3
(45 FR 28064 - April 25, 1980)
Onondaga County, New York

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Change:					
Boilermakers	14.63	1.275	10%		.03
Electricians					
Remainder of County					
Electricians	14.30	.87	3%+1.10		.07
Cable Splicer	15.30	.87	3%+1.10		.07
Painters					
Boatswain Chair	12.12	.80	.88		.05
Bridge	12.57	.80	.88		.05
Swing	12.02	.80	.88		.05
Brush, Roller, & Wallcovering	11.37	.80	.88		.05
Structural Steel	11.97	.80	.88		.05
Sandblasting	12.22	.80	.88		.05
Spray, Epoxy	11.87	.80	.88		.05
Taping	11.62	.80	.88		.05
Steamfitters	13.145	1.00	1.55		.025

DECISION NO. NY80-3036 - Mod. #3 Cont'd

LINE CONSTRUCTION	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Electrical Overhead & Underground Distrubution Work					
Journeyman Lineman & Technician	11.60	1.40	3%+1.00	a	
Cable Splicer	13.32	1.40	3%+1.00	a	
Groundman Digging Machine Operator, Groundman Dynamite Man	10.465	1.40	3%+1.00	a	
Groundman Mobile Equipment Operator, Mechanic First Class, Ground Truck Driver	9.33	1.40	3%+1.00	a	
Groundman Truck Driver (Tractor Trailer)	9.8975	1.40	3%+1.00	a	
Driver Mechanic, Groundman-Experienced	8.2621	1.40	3%+1.00	a	
All Overhead Transmission Line Work and Lighting for Athletic Fields					
Journeyman Lineman & Technician	13.25	1.40	3%+1.00	a	
Groundman Digging Machine Operator, Groundman Dynamite Man	11.95	1.40	3%+1.00	a	
Groundman Mobile Equipment Operator, Mechanic First Class, Groundman Truck Driver	10.65	1.40	3%+1.00	a	
Groundman Truck Driver (Tractor Trailer Unit)	11.30	1.40	3%+1.00	a	
Driver Mechanic, Groundman-Experienced	10.00	1.40	3%+1.00	a	
Sub-Station, Switching Structures (when not part of the line), Electrical, Telephone or CATV Commercial Work, Street Lighting & Signal Systems					
Journeyman Lineman & Technician	13.95	1.40	3%+1.00	a	
Cable Splicer	15.32	1.40	3%+1.00	a	
Groundman Digging Machine Operator, Groundman Dynamite Man	12.58	1.40	3%+1.00	a	
Groundman Mobile Equipment Operator, Mechanic First Class, Groundman Truck Driver	11.21	1.40	3%+1.00	a	
Groundman Truck Driver (Tractor Trailer Unit)	11.895	1.40	3%+1.00	a	
Driver Mechanic, Groundman-Experienced	10.525	1.40	3%+1.00	a	

DECISION NO. NY80-3036 - Mod. #3 Cont'd

LINE CONSTRUCTION CONT'D	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
All Pipe type Cable Installations, Maintenance jobs or Projects					
Journeyman Lineman	13.95	1.40	3%+1.00	a	
Certified Lineman Welder	14.635	1.40	3%+1.00	a	
Cable Splicer	15.32	1.40	3%+1.00	a	
Groundman Equipment Operator	13.95	1.40	3%+1.00	a	
Groundman Truck Driver (Tractor Trailer Unit)	11.895	1.40	3%+1.00	a	
Groundmen Truck Drivers	11.21	1.40	3%+1.00	a	
Groundman	10.525	1.40	3%+1.00	a	

FOOTNOTE:

a. Paid Holidays: New Year's Day, Washington's Birthday, Good Friday, Decoration Day, Independence Day, Labor Day, Thanksgiving Day, Christmas Day, and Election Day for the President of the United States and Election Day for the Governor of New York State, provided the employee works the day before or the day after a holiday

SUPERSEDEAS DECISION

STATE: MAINE STATEWIDE
DECISION NO.: ME81-3008 DATE: DATE OF PUBLICATION
Supersedeas Decision No. ME80-2005, dated February 22, 1980, in 44 FR 12085
DESCRIPTION OF WORK: Highway Construction Projects excluding major bridges (for example, bascule, suspension and spandrel arch

SUPERSEDEAS DECISION

STATE: MAINE STATEWIDE
DECISION NO.: MES1-3008 DATE: DATE OF PUBLICATION
Supersedeas Decision No. MES0-2005, dated February 22, 1980, in 44 FR 12085
DESCRIPTION OF WORK: Highway Construction Projects excluding major bridges (for example, bascule, suspension and spandrel arch bridges; those bridging waters presently navigable or to be made navigable; and those involving marine construction in any degree); tunnels, building structures in rest area projects and railroad construction.

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CARPENTERS:					
Androscoggin County	4.75				
Aroostook County	5.51				
Cumberland County	5.26				
Kennebec County	5.48				
Knox County	5.31				
Lincoln County	5.42				
Oxford County	5.06				
Penobscot County	5.50				
Piscataquis County	5.55				
Sagadahoc County	5.38				
Somerset County	5.43				
Waldo County	5.39				
Washington County	5.43				
CEMENT MASONS/CEMENT FINISHER:					
Androscoggin, Aroostook, Cumberland, Kennebec, Oxford, Penobscot, Piscataquis, Sagadahoc, Somerset, Waldo, Washington and York Counties	5.53				
ELECTRICIANS:					
Aroostook County	5.25				
Cumberland, Kennebec, Lincoln, Sagadahoc and Waldo Counties	7.58				
Penobscot County	7.52				
Piscataquis and Washington Cos.	7.06				
York County	7.65				
IRONWORKERS:					
Cumberland County	5.89				
Kennebec County	6.25				
IRONWORKERS: REINFORCING:					
Aroostook County	5.00				
Knox, Penobscot, Oxford, Waldo & York Cos.	4.18				
Piscataquis & Washington Cos.	5.00				
Sagadahoc County	5.46				
STRUCTURAL:					
Lincoln, Sagadahoc and Waldo Cos.	6.25				
Penobscot County	4.65				
Piscataquis County	5.59				
Washington County	5.53				
LABORERS:					
ASPHALT RAKERS/WHEELMAN:					
Androscoggin, Knox, Penobscot, Piscataquis & Washington Cos.	5.50				
Aroostook County	5.39				
Cumberland County	6.05				
Franklin County	5.38				
Hancock County	3.75				
Kennebec County	4.90				
Lincoln County	5.39				
Oxford County	5.10				
Sagadahoc County	5.51				
Somerset County	5.19				
Waldo County	5.24				
POWER TOOL OPERATOR:					
Aroostook, Piscataquis & Washington Cos.	4.50				
Kennebec County	4.00				
Lincoln County	4.75				
Sagadahoc County	4.67				
Waldo County	5.03				

DECISION NO. ME81-3008

	Basic Hourly Rates	Fringe Benefits Payments: H & W	Pensions	Vacation	Education and/or Appr. Tr.
LABORERS (Cont'd):					
BLASTER, POWDERMEN:					
Aroostook, Piscataquis & Washington Cos.	4.50				
CHAIN SAW OPERATORS:					
Aroostook, Kennebec, Hancock, Knox, Penobscot, Piscataquis, Waldo, Washington & York Cos.	4.00				
DRILLERS, WAGON DRILL:					
Piscataquis County	5.39				
Waldo County	5.36				
Washington County	5.00				
LABORERS:					
Androscoggin County	3.79				
Aroostook County	4.00				
Cumberland County	3.93				
Franklin County	4.04				
Hancock County	3.25				
Kennebec County	3.50				
Knox County	3.74				
Lincoln County	4.03				
Oxford County	4.17				
Penobscot County	3.25				
Piscataquis County	3.95				
Sagadahoc County	3.98				
Somerset County	4.34				
Waldo County	3.92				
Washington County	3.89				
York County	4.39				
TRUCK DRIVERS:					
2 AXLE:					
Cumberland County	4.17				
Franklin County	4.10				
Penobscot County	3.60				
Knox County	3.50				
Lincoln County	4.06				
Oxford County	4.14				
Piscataquis County	4.45				
Sagadahoc County	4.15				
Somerset County	3.92				

DECISION NO. ME81-3008

	Basic Hourly Rates	Fringe Benefits Payments: H & W	Pensions	Vacation	Education and/or Appr. Tr.
TRUCK DRIVERS (Cont'd):					
3 AXLE:					
Cumberland County	4.75				
Knox, Penobscot & Somerset Cos.	4.10				
Lincoln County	4.18				
Oxford County	4.44				
Piscataquis County	4.48				
Sagadahoc County	4.39				
2 & 3 AXLE:					
Androscoggin & York Cos.	4.35				
Aroostook County	3.90				
Hancock & Waldo Cos.	4.10				
Kennebec County	4.03				
Washington County	4.47				
TRAILER DRIVER:					
Knox County	4.38				
Penobscot, Waldo & Washington Cos.	4.35				
SPECIAL EARTH MOVING EQUIPMENT:					
Androscoggin & Sagadahoc Cos.	4.75				
Aroostook, Hancock, Piscataquis & Washington Cos.	6.00				
Waldo County	5.83				
York County	7.00				
POWER EQUIPMENT OPERATORS:					
ASPHALT PAVERS:					
Androscoggin County	5.23				
Aroostook County	6.62				
Cumberland County	6.05				
Franklin County	6.65				
Hancock, Knox, Penobscot, Piscataquis, Waldo, Washington & York Cos.	6.62				
Kennebec County	5.60				
Lincoln County	5.72				
Oxford County	5.30				
Sagadahoc County	5.49				
Somerset County	5.69				

DECISION NO. ME81-3008

	Basic Hourly Rates	Fringe Benefits Payments: H & W	Pensions	Vacation	Education and/or Appr. Tr.
POWER EQUIPMENT OPERATORS (Cont'd):					
BACKHOE:					
Androscoggin, Cumberland, Kennebec, Knox, Lincoln, Oxford, Sagadahoc, Somerset, Waldo & York Cos.	5.50				
Aroostook, Franklin, Hancock, Penobscot, Piscataquis & Washington Cos.	6.00				
BULLDOZER:					
Androscoggin, Cumberland, Kennebec, Knox, Lincoln, Oxford, Sagadahoc, Somerset, Waldo & York Cos.	5.50				
Aroostook, Franklin, Hancock, Penobscot, Piscataquis & Washington Cos.	6.00				
CRANE:					
Androscoggin, Cumberland, Kennebec, Knox, Lincoln, Oxford, Sagadahoc, Somerset, Waldo & York Cos.	5.50				
Aroostook, Franklin, Hancock, Penobscot, Piscataquis & Washington Cos.	6.00				
GRADER:					
Androscoggin, Cumberland, Kennebec, Knox, Lincoln, Oxford, Sagadahoc, Somerset, Waldo & York Cos.	5.50				
Aroostook, Franklin, Hancock, Penobscot, Piscataquis & Washington Cos.	6.00				
LOADER:					
Androscoggin, Cumberland, Kennebec, Knox, Lincoln, Oxford, Sagadahoc, Somerset, Waldo & York Cos.	5.50				
Aroostook, Franklin, Hancock, Penobscot, Piscataquis & Washington Cos.	6.00				
MECHANIC:					
Androscoggin, Cumberland, Kennebec, Knox, Lincoln, Oxford, Sagadahoc, Somerset, Waldo & York Cos.	5.50				
Aroostook, Franklin, Hancock, Penobscot, Piscataquis & Washington Cos.	6.00				
PAINTERS:					
Androscoggin, Cumberland, Kennebec, Knox, Lincoln, Oxford, Sagadahoc, Somerset, Waldo & York Cos.	4.50				
Aroostook, Franklin, Hancock, Penobscot, Piscataquis & Washington Cos.	5.00				

DECISION NO. ME81-3008

	Basic Hourly Rates	Fringe Benefits Payments: H & W	Pensions	Vacation	Education and/or Appr. Tr.
POWER EQUIPMENT OPERATORS (Cont'd):					
PILE DRIVER:					
Androscoggin, Cumberland, Kennebec, Knox, Lincoln, Oxford, Sagadahoc, Somerset, Waldo & York Cos.	5.50				
Aroostook, Franklin, Hancock, Penobscot, Piscataquis & Washington Cos.	6.00				
ROLLER:					
Androscoggin, Cumberland, Kennebec, Knox, Lincoln, Oxford, Sagadahoc, Somerset, Waldo & York Cos.	5.50				
Aroostook, Franklin, Hancock, Penobscot, Piscataquis & Washington Cos.	6.00				
SCRAPER:					
Androscoggin, Cumberland, Kennebec, Knox, Lincoln, Oxford, Sagadahoc, Somerset, Waldo & York Cos.	5.50				
Aroostook, Franklin, Hancock, Penobscot, Piscataquis & Washington Cos.	6.00				
SHOVEL:					
Androscoggin, Cumberland, Kennebec, Knox, Lincoln, Oxford, Sagadahoc, Somerset, Waldo & York Cos.	5.50				
Aroostook, Franklin, Hancock, Penobscot, Piscataquis & Washington Cos.	6.00				
TRACTOR:					
Androscoggin, Cumberland, Kennebec, Knox, Lincoln, Oxford, Sagadahoc, Somerset, Waldo & York Cos.	5.50				
Aroostook, Franklin, Hancock, Penobscot, Piscataquis & Washington Cos.	6.00				
TRUCK DRIVERS:					
2 AXLE:					
Androscoggin, Cumberland, Kennebec, Knox, Lincoln, Oxford, Sagadahoc, Somerset, Waldo & York Cos.	5.50				
Aroostook, Franklin, Hancock, Penobscot, Piscataquis & Washington Cos.	6.00				
3 AXLE:					
Androscoggin, Cumberland, Kennebec, Knox, Lincoln, Oxford, Sagadahoc, Somerset, Waldo & York Cos.	5.50				
Aroostook, Franklin, Hancock, Penobscot, Piscataquis & Washington Cos.	6.00				

DECISION NO. ME81-3008

POWER EQUIPMENT OPERATORS (Cont'd):	Basic Hourly Rates	Fringe Benefits Payments: H & W	Pensions	Vacation	Education and/or Appr. Tr.
BACKHOE:					
Androscoggin County	6.23				
Aroostook County	6.52				
Cumberland County	5.90				
Franklin County	6.43				
Hancock County	6.31				
Kennebec County	5.58				
Knox & Lincoln Cos.	5.50				
Oxford County	6.00				
Penobscot County	6.66				
Piscataquis County	6.55				
Sagadahoc County	6.07				
Somerset County	6.32				
Waldo County	6.10				
Washington County	6.42				
York County	6.35				
BULLDOZER:					
Androscoggin County	6.30				
Aroostook County	6.95				
Cumberland County	6.75				
Franklin County	5.57				
Hancock County	5.00				
Kennebec & Lincoln Cos.	5.50				
Knox County	6.09				
Oxford & Somerset Cos.	6.00				
Penobscot & Piscataquis Cos.	6.40				
Sagadahoc County	6.39				
Waldo County	6.08				
Washington County	6.72				
York County	5.97				
CRANE/DRAGLINE:					
Androscoggin County	5.75				
Aroostook County	6.83				
Cumberland County	6.25				
Kennebec County	8.06				
Knox County	6.13				

DECISION NO. ME81-3008

POWER EQUIPMENT OPERATORS (Cont'd):	Basic Hourly Rates	Fringe Benefits Payments: H & W	Pensions	Vacation	Education and/or Appr. Tr.
CRANE/DRAGLINE (Cont'd):					
Lincoln County	7.40				
Oxford County	6.75				
Penobscot County	6.43				
Piscataquis County	6.80				
Sagadahoc County	6.94				
Waldo County	7.23				
Washington County	6.76				
CRUSHER SCREENING PLANT OPERATOR:					
Androscoggin County	5.35				
Aroostook & Piscataquis Cos.	5.33				
Hancock County	5.21				
Penobscot & Washington Cos.	5.36				
Sagadahoc County	5.23				
Waldo County	5.21				
York County	5.00				
FRONT END LOADERS:					
Androscoggin County	6.30				
Aroostook County	6.00				
Cumberland County	6.20				
Franklin County	5.83				
Hancock County	6.40				
Kennebec County	4.87				
Knox County	6.17				
Lincoln County	5.69				
Oxford County	6.00				
Penobscot County	6.40				
Piscataquis County	6.17				
Sagadahoc County	5.91				
Somerset County	5.50				
Waldo County	6.40				
Washington County	6.19				
York County	5.50				

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DECISION NO. ME81-3008

POWER EQUIPMENT OPERATORS (Cont'd):	Basic Hourly Rates	Fringe Benefits Payments: H & W	Pensions	Vacation	Education and/or Appr. Tr.
GRADALL:					
Androscoggin County	6.30				
Aroostook County	7.00				
Cumberland County	7.75				
Hancock County	5.81				
Lincoln & Knox Cos.	7.35				
Penobscot County	8.35				
Piscataquis County	7.12				
Sagadahoc County	6.81				
Waldo County	6.82				
Washington County	6.92				
York County	6.30				
GRADER:					
Androscoggin & Cumberland Cos.	6.75				
Aroostook County	6.67				
Franklin County	7.34				
Hancock County	6.00				
Kennebec County	5.85				
Knox County	6.62				
Lincoln County	6.62				
Oxford County	6.00				
Penobscot County	6.40				
Piscataquis County	6.71				
Sagadahoc County	6.67				
Somerset & York Cos.	6.00				
Waldo & Washington Cos.	6.66				
HYDROSEEDER:					
Androscoggin County	4.25				
Aroostook & Piscataquis Washington Cos.	5.00				
Cumberland County	4.25				
Franklin County	4.25				
Kennebec County	4.75				
Knox & Lincoln Cos.	4.25				
Penobscot County	5.60				
Sagadahoc County	4.25				
Waldo County	4.70				
York County	4.00				

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DECISION NO. ME81-3008

POWER EQUIPMENT OPERATORS (Cont'd):	Basic Hourly Rates	Fringe Benefits Payments: H & W	Pensions	Vacation	Education and/or Appr. Tr.
MECHANIC:					
Androscoggin County	5.63				
Aroostook County	5.50				
Kennebec County	5.25				
Knox County	5.95				
Lincoln County	5.77				
Oxford County	4.75				
Penobscot County	6.88				
Piscataquis County	6.04				
Sagadahoc County	5.43				
Somerset County	5.90				
Waldo County	6.26				
Washington County	6.08				
York County	5.12				
MULCHER:					
Androscoggin County	4.50				
Aroostook County	4.63				
Franklin County	4.00				
Hancock County	4.58				
Kennebec County	5.25				
Knox and Lincoln Cos.	4.50				
Penobscot and Piscataquis Cos.	4.75				
Sagadahoc & Waldo Cos.	4.50				
Washington County	4.69				
OILER GREASER:					
Androscoggin & Sagadahoc Cos.	4.45				
ROLLER, EMBANKMENT:					
Aroostook County	5.82				
Cumberland County	5.02				
Hancock County	5.00				
Knox, Lincoln & Piscataquis Cos.	5.82				
Oxford County	4.45				
Washington County	6.62				
York County	5.68				
ROLLER, PAVEMENT:					
Androscoggin, Cumberland & Kennebec Cos.	5.19				
Aroostook County	6.62				
Franklin County	5.05				
Hancock County	6.62				

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POWER EQUIPMENT OPERATORS (Cont'd):	Basic Hourly Rates	Fringe Benefits Payments: H & W	Pensions	Vacation	Education and/or Appr. Tr.
ROLLER, PNEUMATIC:					
Androscoggin & Cumberland Cos.	5.19				
Aroostook County	6.62				
Franklin County	5.05				
Hancock County	6.62				
Kennebec County	5.25				
Knox County	5.95				
Lincoln County	5.77				
Oxford County	4.75				
Penobscot County	6.88				
Piscataquis County	6.04				
Sagadahoc County	5.43				
Somerset County	5.90				
Waldo County	6.26				
Washington County	6.08				
York County	5.12				
SCRAPER:					
Androscoggin & Cumberland Cos.	6.75				
Aroostook County	6.67				
Franklin County	7.34				
Hancock County	6.00				
Kennebec County	5.85				
Knox County	6.62				
Lincoln County	6.62				
Oxford County	6.00				
Penobscot County	6.40				
Piscataquis County	6.71				
Sagadahoc County	6.67				
Somerset & York Cos.	6.00				
Waldo & Washington Cos.	6.66				
SCREED:					
Androscoggin & Cumberland Cos.	6.75				
Aroostook County	6.67				
Franklin County	7.34				
Hancock County	6.00				
Kennebec County	5.85				
Knox County	6.62				
Lincoln County	6.62				
Oxford County	6.00				
Penobscot County	6.40				
Piscataquis County	6.71				
Sagadahoc County	6.67				
Somerset & York Cos.	6.00				
Waldo & Washington Cos.	6.66				

SUPERSEDEAS DECISION

STATE: VERMONT — COUNTIES: STATEWIDE
DECISION NO.: VT81-3007 — DATE: DATE OF PUBLICATION
Supersedes Decision No.: VT78-2091, dated December 10, 1976 in 41 FR 54146 and VT78-2070, dated August 11, 1978 in 43 FR 35887
DESCRIPTION OF WORK: Highway Construction Projects (excluding tunnels, building structures in rest area projects and rail-

DECISION NO. ME81-3008

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
POWER EQUIPMENT OPERATORS (Cont'd):					
ROLLER, PAVEMENT Cont'd):					
Knox County	6.62				
Lincoln County	5.64				
Oxford County	5.18				
Penobscot & Piscataquis Cos.	6.62				
Sagadahoc County	5.18				
Somerset County	5.34				
Washington County	5.50				
York County	5.40				
SCRAPERS:					
Aroostook, Knox, Lincoln, Piscataquis & Washington Cos.	5.50				
Hancock County	4.92				
SKIDDER:					
Piscataquis & Washington Cos.	4.00				
SHOVEL:					
Hancock, Waldo and Washington Cos.	6.00				

"Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5 (a)(1)(ii))."

SUPERSEDEAS DECISION

STATE: VERMONT COUNTIES: STATEWIDE
DECISION NO.: VT81-3007 DATE: DATE OF PUBLICATION
Supersedes Decision No.: VT78-2091, dated December 10, 1976 in 41 FR 54146 and VT78-2070, dated August 11, 1978 in 43 FR 35887
DESCRIPTION OF WORK: Highway Construction Projects (excluding tunnels, building structures in rest area projects and railroad construction; bascule, suspension and spandrel arch bridges designed for commercial navigation; bridges involving marine construction; and other major bridges)

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CARPENTERS:					
Bennington County	6.36	.40	.50		.04
Rutland County	6.55				
Windham County	6.58				
Windsor County	6.17				
Remainder of Counties	6.65	.35	.30		
CEMENT MASONS:					
Addison County	6.65	.35	.30		
Caledonia County, Chittenden, Essex, Franklin, Grand Isle, Lamoille, Orange, Orleans and Washington Counties	7.20				
Rutland County	7.30				
Windham County	5.85				
Windsor County	6.58				
ELECTRICIANS:	6.17				
Chittenden County	8.80				
Rutland County	5.50				
Windham and Windsor Counties	7.16				
Remainder of Counties	7.58				
IRONWORKERS:					
STRUCTURAL:					
Addison, Bennington, Lamoile, Orange, and Orleans Counties	8.45				
Remainder of Counties	7.40	.45	.60		
REINFORCING:					
Addison, Lamoille and Orleans Counties	6.75				
Remainder of Counties	6.46	.24			.05
LABORERS:					
Addison and Lamoille Counties	3.85	.15		*	
Bennington County	4.65			*	
Essex County	4.65			*	
Caledonia County	4.62			*	
Chittenden County	4.41			*	

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	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
LABORERS (Cont'd):					
Franklin County	4.46			a	
Grand Isle County	4.65			a	
Orange County	4.75			a	
Orleans County	4.66			a	
Rutland County	4.55				
Washington County	4.50			a	
Windham County	4.87				
Windsor County	4.56			a	
DRILLER:					
Orange And Rutland Counties	5.00				
Remainder of Counties	5.70			a	
PIPELAYER:					
Addison and Lamoille Counties	4.25			a	
Bennington County	4.90				
Caledonia County	4.87			a	
Chittenden County	4.66			a	
Essex County	4.90			a	
Franklin County	4.71			a	
Grand Isle County	4.68			a	
Orange County	5.00			a	
Orleans County	4.91				
Rutland County	4.80				
Washington County	4.75			a	
Windham County	5.12				
Windsor County	4.81			a	
TRUCK DRIVERS:					
Truck Drivers, 2 Axle:					
Rutland County	5.27				
Remainder of Counties	5.35				
Truck Drivers, 3 Axle:					
All Counties	5.50				
EARTH AUGER/POST DRIVER:					
Caledonia County	5.63				
Windsor County	6.16				
Remainder of Counties	5.50				

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	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
POWER EQUIPMENT OPERATORS:					
Backhoe:					
Caledonia County	8.00	.35	.50	b	.05
Grand Isle County	8.20			b	
Orange County	7.75	.35	.50	b	.05
Orleans County	9.05			b	.05
Rutland County	8.30				
Windsor County	8.09				
Remainder of County	8.20	.35	.50	b	.05
Backend/Screedman:					
Bennington County	7.93				
Chittenden, Essex, Franklin and Grand Isle Counties	7.75	.35	.50	b	.05
Broom:					
Addison and Caledonia Counties	7.20	.35	.50	b	.05
Bennington County	6.80				
Essex, Franklin, Lamoille, Rutland and Windham Counties	5.50			b	
Orange County	6.35	.35	.50	b b	.05
Orleans County	5.50	.35	.50	b b	.05
Washington County	6.75			b	
Windsor County	6.19				
Bulldozer:					
Addison, Essex, Franklin, Grand Isle, Orange and Orleans Counties	7.75	.35	.50	b	.05
Bennington County	8.30	.85	1.00	b b	.05
Caledonia County	8.05			b b	
Chittenden County	8.70	.35	.50	b b	.05
Lamoille County	8.23			b b	
Rutland County	8.70	.95	1.00	b b	.05
Washington County	8.20	.35	.50	b b	.05
Windham County	8.60			b	.05
Windsor County	8.37				

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	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
POWER EQUIPMENT OPERATORS: (Cont'd):					
Crane:					
Addison, Essex, Franklin, Grand Isle, Orange and Orleans Counties	8.20	.35	.50	b	.05
Bennington County	8.30	.85	1.00	b b	.05
Caledonia County	8.05			b b	
Chittenden County	8.70	.35	.50	b b	.05
Lamoille County	8.23			b b	
Rutland County	8.70	.95	1.00	b b	.05
Washington County	8.20	.35	.50	b b	.05
Windham County	8.60			b	.05
Windsor County	8.37				
Fireman:					
Addison, Essex, Franklin, Grand Isle, Orange and Orleans Counties	7.75	.35	.50	b	.05
Bennington County	8.30	.85	1.00	b b	.05
Caledonia County	8.05			b b	
Chittenden County	8.70	.35	.50	b b	.05
Lamoille County	8.23			b b	
Rutland County	8.70	.95	1.00	b b	.05
Washington County	8.20	.35	.50	b b	.05
Windham County	8.60			b	.05
Windsor County	8.37				

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	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
POWER EQUIPMENT OPERATORS: (Cont'd):					
Grader:					
Addison, Essex, Franklin, Grand Isle, Orange and Orleans Counties	7.75	.35	.50	b	.05
Bennington County	8.30	.85	1.00	b b	.05
Caledonia County	8.05			b b	
Chittenden County	8.70	.35	.50	b b	.05
Lamoille County	8.23			b b	
Rutland County	8.70	.95	1.00	b b	.05
Washington County	8.20	.35	.50	b b	.05
Windham County	8.60			b	.05
Windsor County	8.37				
Loader:					
Addison, Essex, Franklin, Grand Isle, Orange and Orleans Counties	7.75	.35	.50	b	.05
Bennington County	8.30	.85	1.00	b b	.05
Caledonia County	8.05			b b	
Chittenden County	8.70	.35	.50	b b	.05
Lamoille County	8.23			b b	
Rutland County	8.70	.95	1.00	b b	.05
Washington County	8.20	.35	.50	b b	.05
Windham County	8.60			b	.05
Windsor County	8.37				

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	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
POWER EQUIPMENT OPERATORS: (Cont'd):					
Compactor:					
Addison and Windsor Counties	7.59			b	
Bennington County	8.70				
Caledonia, Chittenden, Grand Isle, Lamoille and Washington Counties	8.65			b	
Essex, Franklin and Orleans Counties	7.75	.35	.50	b	.05
Orange County	7.20	.35	.50	b	.05
Rutland County	5.25				
Windham County	8.65	.55	.70	b	.05
Compressor:					
Bennington County	8.57				
Orange County	7.17	.35	.50	b	.05
Windsor County	7.20				
Remainder of Counties	7.95			b	.05
Crane:					
Addison, Caledonia, Lamoille and Washington Counties	9.05			b	.05
Orleans County	8.20	.35	.55	b	.05
Rutland County	6.50				
Windsor County	8.27				
Remainder of Counties	8.20	.35	.50	b	.05
Gradall:					
Caledonia, Lamoille and Orleans Counties	9.05			b	.05
Orange County	7.75	.35	.50	b	.05
Rutland County	7.00				
Washington County	8.57			b	
Windsor County	7.98				
Remainder of Counties	8.20	.35	.50	b	.05

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	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
POWER EQUIPMENT OPERATORS: (Cont'd):					
Grader:					
Bennington County	8.90	.35	1.00	b	.05
Caledonia County	8.18			b	
Rutland County	7.44				
Washington County	8.44			b	
Windham County	8.20	.35	.50	b	.05
Windsor County	8.27				
Remainder of Counties	7.95	.35	.50	b	.05
Loader:					
Bennington County	8.75	.80	.75	b	.05
Caledonia County	7.90	.45	.60	b	.05
Rutland County	6.94				
Windsor County	7.76				
Remainder of Counties	7.75	.35	.50	b	.05
Mechanic:					
Addison County	8.00			b	
Bennington County	8.79			b	
Caledonia County	8.20	.55	.70	b	.05
Lamoille County	8.70	.85	1.00	b	.05
Rutland County	7.53				
Windsor County	7.76				
Remainder of Counties	7.75	.35	.50	b	.05
Oilers:					
Bennington County	7.10				
Paver:					
Bennington County	8.70				
Caledonia County	8.20	.55	.70	b	.05
Rutland County	5.25				
Windham County	8.55			b	.05
Windsor County	7.76				
Remainder of Counties	7.75	.35	.50	b	.05

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	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
POWER EQUIPMENT OPERATORS: (Cont'd):					
Rollers:					
Bennington County	9.82				
Caledonia County	8.20	.55	.70	b	.05
Rutland County	5.78				
Washington County	7.80			b	
Windham County	8.00				
Windsor County	7.76				
Remainder of County	7.75	.35	.50	b	.05
Shovel:					
Bennington County	8.73				
Chittenden, Essex, Franklin, Grand Isle and Washington Counties	9.15	.85	1.00	b	.05
Lamoille County	9.15			b	
Line Stripper:					
Bennington County	7.50				
Backhoe/Loader Combination (Farm Type):					
Rutland and Windsor Counties	7.00				
Remainder of Counties	6.95			b	.05
Specialized Earth/Rock Haulers:					
All Counties	6.50				

FOOTNOTE:

a. Two (2) paid holidays: Memorial Day & Independence Day, providing the employee has been employed the schedule workday prior to the holiday and the schedule workday after the holiday.

b. Nine (9) paid holidays: New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, Christmas Day, Washington's Birthday, Columbus Day and Veteran's Day, provided the employee has been employed at least 7 days or more prior to the holiday and has worked the day before and the day after the holiday.

"Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5 (a)(1)(ii))."

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federal register

Friday
January 16, 1981

Part VI

Architectural and Transportation Barriers Compliance Board

Minimum Guidelines and Requirements for Accessible Design; Final Rule

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

36 CFR Part 1190

Minimum Guidelines and Requirements for Accessible Design

AGENCY: Architectural and Transportation Barriers Compliance Board.

ACTION: Final rule.

SUMMARY: The Architectural and Transportation Barriers Compliance Board hereby issues its minimum guidelines and requirements (guidelines and requirements) for standards for accessibility and usability of Federal and federally funded buildings and facilities by physically handicapped persons. These guidelines and requirements are issued pursuant to the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978 (the 1978 Act), amending the Rehabilitation Act of 1973, Pub. L. 93–112. The guidelines and requirements provide a basis for the issuance of consistent and improved accessibility and usability standards issued by the four Federal standard setting agencies, the General Services Administration, Department of Housing and Urban Development, Department of Defense and United States Postal Service, under the Architectural Barriers Act of 1968, as amended.

EFFECTIVE DATE: January 6, 1981.

FOR FURTHER INFORMATION CONTACT: Larry Allison, Director of Public Information, (202) 245–1591 (voice or TDD); Charles Goldman, General Counsel, (202) 245–1801 (voice or TDD); Karen Smith, Director, Technical Services (202) 472–3237 (voice), (202) 245–1801 (TDD).

SUPPLEMENTARY INFORMATION:

A. Background

Section 502 of the Rehabilitation Act of 1973, Pub. L. 93–112, 29 U.S.C. 792, established the Architectural and Transportation Barriers Compliance Board (ATBCB or Board) as an independent Federal agency to insure compliance with standards issued under the Architectural Barriers Act of 1968 (Pub. L. 90–480) (42 U.S.C. 4151 *et seq.*), as amended. The Board consists of eleven Federal agency members plus eleven members appointed by the President from the general public.[1]

[1] The agency members are the heads or their designees (Executive Level IV or above) of the Departments of Education; Transportation; Health and Human Services; Housing and Urban Development; Labor; Interior; Justice; Defense; General Services Administration; Veterans Administration; United States Postal Service. The Act requires at least five of the members from the general public to be physically handicapped.

Congress found that compliance with the Architectural Barriers Act had been spotty and that enforcement of accessibility standards[2] was necessary to fulfill the Congressional commitment to afford handicapped individuals the opportunity to move freely and integrate themselves in society. See H.R. Rep. No. 244, 93d Cong., 1st Sess. 23 (1973); S. Rep. No. 318, 93d Cong. 1st Sess. 49 (1973).

Congress expanded the responsibilities of the ATBCB in the 1978 Act. Section 118 of the 1978 Act, amending the Rehabilitation Act of 1973 ((29 U.S.C. 792), sec. 502(b)(7)), requires the Architectural and Transportation Barriers Compliance Board (ATBCB) "to establish minimum guidelines and requirements for standards issued pursuant to the * * * Architectural Barriers Act of 1968." Pub. L. 90–480 as amended (42 U.S.C. 4151 *et seq.*). Based on the minimum guidelines and requirements issued by the ATBCB, four Federal agencies—Department of Defense, General Services Administration, Department of Housing and Urban Development, and the United States Postal Service—are to prescribe standards for the design, construction, and alteration of certain Federal and federally-assisted buildings "to insure, whenever possible, that physically handicapped persons will have ready access to, and use of, such buildings." 42 U.S.C. 4152–4154a. Existing access standards[3] issued by those agencies will be revised to conform to the guidelines and requirements.

Congress recognized the need for consistent application of the Architectural Barriers Act throughout the nation. The Board will exercise strong leadership, provide technical assistance, and work with the agencies setting standards to insure they follow the minimum guidelines and requirements in revising their standards. See S. Rep. No. 890, 95th Cong., 2d Sess. 19 (1978); H.R. Rep. No. 1149, 95th Cong., 2d Sess. (1978); Report by the Comptroller General, *Making Public Buildings Accessible to the Handicapped: More Can Be Done*, B–182030 (1980).

[2] To implement the Board's enforcement mission as set forth in 29 U.S.C. 792(b)(1), through administrative procedures set forth in 36 CFR Part 1150, the ATBCB recently revised its original enforcement rules, 41 FR 55441 (1976) to enhance their readability, reflect the experiences of several years practice and to reflect the amendments in the Rehabilitation Act made by the 1978 Act. 45 FR 78472 (1980).

[3] GSA: 41 CFR 101–19.6, effective September 2, 1980, revised October 14, 1980 (45 FR 67804); HUD: 24 CFR Part 40, effective September 2, 1980; DOD: DOD 4270.1–M "Construction Criteria," June 1, 1978, paragraph 5–6; USPS: Postal Service Contracting Manual, Publication 41, § 18–518.4, 39 CFR 601.109, as amended by handbook RE–4, November 1979.

B. Problem of Inaccessibility

> The physically handicapped are citizens of this country—just as others of us are; they pay taxes and contribute to the economy of the country—just as others of us do; they deserve access to their public buildings on an equal basis with the rest of us.

These were the words Senator Edward Bartlett, the Senate sponsor of the bill which became the Architectural Barriers Act, spoke immediately before the passage of the Act. 113 Cong. Rec. 24133 (1968). The Act demonstrates a unanimous Congressional purpose to insure that "certain buildings financed with Federal funds are so designed and constructed as to be accessible to the physically handicapped." Title of Pub. L. 90–480.

In enacting this legislation, Congress intended to afford physically handicapped persons "every opportunity to obtain gainful employment and otherwise enter into the mainstream of American life." Congress found that the Federal government had "literally locked out millions of its citizens from the public buildings which it has * * * financed by not requiring that these buildings be designed and constructed so that people with physical impairments could readily enter and use the facilities of such buildings." S. Rep. No. 538, 90th Cong., 1st Sess. 3 (1967); see also H.R. Rep. No. 1532, 90th Cong., 2d Sess. 2, 3, and 4 (1968).

In a 1975 report examining the implementation of the Architectural Barriers Act the Comptroller General observed:

> Accessibility of public buildings is essential if the handicapped are to have the same rights and opportunities as the able-bodied in obtaining government services and employment outside their homes.

Report by the Comptroller General, *Further Action Needed to Make All Public Buildings Accessible to the Physically Handicapped*, B–182030 (1975).

The history of the Rehabilitation, Comprehensive Services and Developmental Disabilities Amendments of 1978 reflects a continuing congressional awareness of the problems of architectural barriers.

While a 3- to 6-inch step is no barrier to the vast majority of the population of the United States, it is an insurmountable barrier to someone in a wheelchair. The reality of barriers may only be a passing thing to the able-bodied individual, but it a constant

concern and frustration to the handicapped individual.

S. Rep. No. 890, 95th Cong., 2d Sess. 16 (1978).

The ATBCB views handicapped persons as first class citizens. Disabled persons should not be treated, as one witness testified when the Architectural Barriers Act was pending, as "back door citizens, persons dependent on others to do every day simple things." Hearings on S. 222 Before the Subcomm. on Public Buildings and Grounds of the Senate Committee on Public Works, 90th Cong., 1st Sess. 71 (1967). See also Goffman, *Stigma: Notes on the Management of Spoiled Identity* (1963).

The ATBCB itself is also quite knowledgeable in the problems of inaccessibility. Since the Board's formalized complaint system began in fiscal year 1977, the ATBCB has received hundreds of complaints of inaccessible sites. In 1978–1979, the Board conducted 1000 field reviews, surveying approximately 100 buildings in each of ten cities across the country. In its field reviews and complaint processing, the ATBCB has seen the spectrum of access problems identified in Federal and federally-funded projects. This includes a lack of parking for handicapped persons, inaccessible bathrooms, inaccessible entrances, elevator and other controls that were too high, a lack of tactile identification for blind and visually-impaired persons and a lack of warning systems for deaf and hearing-impaired persons. The ATBCB is aware that the problem of inaccessible buildings and facilities is national in scope.

C. Rulemaking History

On February 22, 1980, the Board published in the **Federal Register** at 45 FR 12167, a Notice of Intent to Issue Proposed Rules. The Notice of Intent to Issue Proposed Rules recited the Board's intent to compile information regarding design specifications and scoping requirements for the proposed minimum guidelines and requirements on accessibility. Comments were solicited for 45 days on the key issues anticipated to be addressed in the Notice of Proposed Rulemaking. One hundred seventeen comments from a cross-section of the public were received. Disabled persons and their advocacy organizations, universities, building industry organizations, and Federal and State agencies submitted comments.

Based on the comments received, Board discussions, and other information available, the Board published on August 18, 1980, in the **Federal Register**, 45 FR 55010, a Notice of Proposed Rulemaking (NPRM). The NPRM contained the proposed rule, a preamble, and draft regulatory analysis. Public comment on the proposed rule was invited for sixty days. Several issues, relating both to scope and technical matters, were highlighted for public comment.

The ATBCB forwarded nearly 10,000 copies of the NPRM to persons who requested copies or were on the ATBCB mailing list. The ATBCB received a total of 281 comments prior to the closure of the docket on October 17, 1980. All comments postmarked on or before that date were considered. No time extensions were granted. Comments received are available for inspection at 330 C Street, S.W., Room 1014, Washington, D.C. 20202, from 9:00 a.m. to 5:30 p.m., Monday through Friday.

D. Review by Office of Legal Counsel

At its December 12, 1980, meeting the ATBCB decided to take the extraordinary action of submitting its draft final rule to the Office of Legal Counsel (OLC), U.S. Department of Justice, for review prior to final consideration by the Board. The Office of Legal Counsel, in an opinion of December 30, 1980, which is included in the rulemaking docket, advised the Board that the draft final rule, with its detailed provisions, constituted "minimum guidelines and requirements" within the meaning of 29 U.S.C. 792(b)(7).

The ATBCB is within its discretion in establishing specific requirements, including each of certain items, for standards to achieve ready access and use. The Board's authority relating to minimum guidelines and requirements does not extend to regulations governing waivers and modifications as previously proposed in Subpart B. The ATBCB's authority over waivers and modifications is in the enforcement area. 29 U.S.C. 792(b)(1), 36 CFR Part 1150.

OLC considered whether the provisions relating to additions and alterations exceeded the applicable requirements of 42 U.S.C. 4155. OLC concluded that it was lawful to provide that a space be made accessible when alterations of elements within a space together constitute an alteration of the space itself. OLC also recognized the validity of the Board's provisions in the NPRM regarding vertical access. Under the NPRM an alteration of stairs and escalators was treated as an alteration of the building's system for providing vertical access. Nonetheless, as a matter of policy, the Board modified this provision to require accessible vertical access only in more limited circumstances. See discussion below in F. Section-by-Section Analysis. The provisions with respect to additions, 36 CFR 1190.32, were viewed as reasonably treated as new construction, and also found to be legally sufficient.

The Office of Legal Counsel reviewed carefully the provisions relating to alterations, 36 CFR 1190.33(b), which contain the "50% rule" requiring additional work where alterations within a 12 month period exceed 50% of the full and fair cash value. The Office of Legal Counsel felt it was within the ATBCB's mandate under the remedial statute it was implementing to require an accessible route and entrance when a building is being substantially altered. The Office of Legal Counsel did feel the Board proposal to require accessible toilet rooms on each floor in every case in which the alterations cost 50% of the facility's full and fair cash value was overly broad. The rule has been revised.

The Office of Legal Counsel sustained the ATBCB views on the scope of applicability of the Architectural Barriers Act with respect to leased buildings. The statute must be read to include leased buildings within the accessibility requirements of the Act. 42 U.S.C. 4155. This extends to extensions as well as renewals of leases. Buildings under Federal lease, including renewals and extensions, must be accessible.

E. Overview of the Regulation

These minimum guidelines and requirements, the first to be issued by the ATBCB, contain both technical and scoping provisons for the generic (common) elements and features of buildings and facilities. These are the basis for the accessibility and usability standards enforced under Section 502 of the Rehabilitation Act. This will provide a Government-wide basis for a common understanding of accessibility.

The ATBCB guidelines and requirements consist of five major components. Subpart A, General, sets out the purpose, applicability, definitions, relationship of the guidelines and requirements to the Architectural Barriers Act standards, other uses, and effect of State or local law on the guidelines and requirements. Subpart B has been reserved for reasons elaborated below. Other departures from the guidelines and requirements are permitted under specific design exceptions. Subpart C enumerates the scoping and technical provisions applicable to new construction, additions, alterations, and leased buildings. Subpart D contains the technical provisions. Subpart E is reserved for special use provisions applicable to elements or types of buildings, *e.g.*, library stacks, hospitals,

penal institutions, and residential structures.

Throughout the rulemaking process, the ATBCB considered the technical specifications in the proposed and final 1980 revision to the American National Standard Institute (ANSI) standard. ANSI is a private institute in New York City, not connected with the Federal government, that provides a mechanism for creating voluntary consensus standards. In May 1980, subsequent to the issuance of the ATBCB Notice of Intent, the American National Standard Institute published its technical accessibility standard. The 1980 ANSI standard states that scoping provisions are to be developed by administering agencies. ANSI A 117.1 (1980) §§ 2.1, 2.2. The ATBCB believes that a single document including both technical and scoping provisions is most usable in achieving accessibility.

At the beginning of the rulemaking process, the Board was presented with the issue of determining how to utilize the expertise of ANSI while protecting the public interest and ensuring adequate administration and enforcement of the Architectural Barriers Act.

In general, the system of voluntary standards tends to the development of commercially acceptable standards. However, that process is less than ideal from a regulatory perspective. Hamilton, *The role of Nongovernmental Standards in the Development of Mandatory Federal Standards Affecting Safety or Health* ("Hamilton"), 56 Tex. L. Rev. 1446–1447 (1978). The ANSI voluntary standard concensus process is not an open public dialogue process as required by the Administrative Procedure Act, 5 U.S.C. 553. The views of the general public are not solicited and thus not considered. The ATBCB process for developing guidelines and requirements for standards applicable to Federal procurement and grants is consistent with OMB Circular A–119 on the use of voluntary standards. The ATBCB is voluntarily taking cognizance of that circular. However, the voluntary standards technique has come under Congressional criticism. *Voluntary Industrial Standards in the United States: Report to the Subcommittee on Science, Research and Development of the House Committee on Science and Technology*, 93d Cong., 2d Sess. 88–89 (1974). See also S.Rep. No. 91–1282, 91st Cong., 2d Sess. 6 (1970); H.R. No. 1291, 91st Cong., 2d Sess. 181 (1970).

The ATBCB, while wary of the pitfalls of voluntary consensus standards, is mindful of the significant achievements with respect to ANSI A117.1 (1980). For that reason, the ATBCB, quite properly, considered that work as most significant in shaping the particular provisions and weighed it carefully. See Hamilton, 56 Tex. L. Rev. at 1448. The ATBCB, consistent with its recognition of the practical need for a single document containing both scoping and technical provisions, also developed scoping sections as ANSI suggested. The ATBCB also recognized the significant technical contribution made by the ANSI Standard and has adopted many of its provisions.

F. Section-by-Section Analysis/Major Comments

This section provides a brief review of the comments and changes from the NPRM to the final rule. A final Regulatory Analysis has been prepared which contains an in-depth discussion of the alternatives and issues considered by the ATBCB.

Subpart A contains the General Provisions. The ATBCB has determined that its authority from the 1978 Act is to issue a binding, legislative rule which insures *ready* access and use. See *Batterton v. Frances*, 432 U.S. 416 (1977), *American Telephone and Telegraph Co. v. United States*, 299 U.S. 232 (1936); *National Nutritional Foods Association v. Weinberger*, 512 F.2d 688 (2d Cir. 1975). Also see the Regulatory Analysis containing Issue Papers of December 2, 1980, and April 4, 1980.

In this context 36 CFR 1190.1, Purpose, has remained unchanged.

The dates previously mentioned in proposed 36 CFR 1190.2(b)(2)(ii) (A) and (B) have been deleted to avoid any confusion over the applicability of the guidelines and requirements. The application of the minimum guidelines and requirements is prospective not retroactive in nature. A building designed, constructed, altered or leased after the effective date of an accessibility standard issued under the Architectural Barriers Act must comply with that standard. Utilizing the process set forth in proposed 36 CFR Part 1150, the ATBCB enforces those standards in the buildings and facilities required to comply with the Architectural Barriers Act. See 36 CFR 1150.2(c).

A few of the federal members wanted the ATBCB to clarify that certain categories of acquired buildings were not covered by the Architectural Barriers Act. While the ATBCB has not reviewed in detail the particular program statutes, it recognizes that, as a general rule, buildings purchased or acquired directly by the Government without construction or alteration are not subject to the Architectural Barriers Act. See Regulatory Analysis containing Issue Paper No. 1, April 4, 1980.

The definition section, proposed 36 CFR 1190.3, was the focus of several comments. The definition of entrance has been added. The new definition clarifies that the entrance includes the approach walk, the vertical access leading to the entrance platform, the entrance platform itself, vestibules if provided, the entry door(s) or gate(s), and the hardware on the entry door(s) or gate(s). In some facilities the spaces that house the major activities for which the building or facility is intended, such as office space or transit loading areas, are located above or below ground, with access from the street level to an underground or raised level or levels via escalators or stairs. In those instances, the vertical access is considered an integral part of the entrance, and an elevator, ramp, or lift must be provided to the first of those levels in order for the entrance to comply with this section. With respect to an underground shopping/office area, the entrance platform is the interior platform from which doors lead to offices, stores, or other facilities. For purposes of these guidelines and requirements, the entrance to an underground transit facility includes the approach walk, the vertical access leading from the exterior to the interior platform or platforms, the fare gate or other point of controlled access, and all intervening spaces. The term "platform" is used here in the generic sense of a flat area or landing; it is not limited to the area between or alongside the tracks of a transit station from which transit cars are entered.

The definitions of "modification" and "waiver" have been removed as a result of the Office of Legal Counsel's opinion on Subpart B. Commenters thought the terms "normal maintenance" and "extraordinary repair" should be defined. The ATBCB looks to the standard-setting agencies to more precisely define these terms in the standards to be issued by the agencies under the Architectural Barriers Act, Pub. L. 90–480, as amended. The definition of "Disability" as contained in § 1190.3 is consistent with that utilized under Section 504 of the Rehabilitation Act. The definition of "full and fair cash value" has been changed to include three methods to determine the value of a building: the assessed value as equalized at one hundred percent (100%) valuation; the replacement cost; or the fair market value. The value of a building will be calculated for the estimated date that the work will begin.

Section 1190.4, Issuance of Architectural Barriers Act standards by standard-setting agencies, has been revised slightly from the provisions in

the NPRM. Comments were raised regarding the authority of the Board to enforce its own guidelines and requirements in the event the agencies setting standards under the Architectural Barriers Act fail to issue conforming standards. Proposed 36 CFR 1190.4(d). The Board is hopeful that each agency will issue conforming standards. 36 CFR 1190.4(d). The ATBCB expects that the agencies will act expeditiously, and anticipates that the standards will be published within one year of the effective date of the ATBCB minimum guidelines and requirements.

Section 1190.5, Guidelines: Other uses, is unchanged from the original proposal. The ATBCB provision allowing use of the minimum guidelines and requirements by other governmental and nongovernmental entities does not contradict the mandate of the Architectural Barriers Act standards.

Section 1190.6, Interpretation of guidelines, attracted only minor comment. It is unchanged and contains standard rules of interpretation.

Section 1190.7, Effect of State or local law, notes that the obligation to comply with this part is not affected by any State or local law. The question of the interrelationship of the Federal and State/local standards is one resolved on the basis of principles of preemption.

Section 1190.8, Site conditions, providing that site conditions were not to be used as a justification for noncompliance, was of concern to some commenters. Due to the difficult nature of this subject, it has been reserved for future use. The ATBCB recognizes that certain extreme site and/or climatic conditions, such as permafrost, would justify a waiver or modification by the appropriate head of the agency setting the standard.

Section 1190.9, Severability, is retained unchanged. No comments were received.

Subpart B—Waivers and Modifications: Processed departures, attracted considerable and divergent comments. In view of the nature of the comments on proposed 36 CFR 1190.21, 1190.22, and 1190.23, these sections are grouped together. Several commenters thought the provisions were far too liberal and would lead to excessive relaxation of the standards; others, however, thought the provisions were too restrictive of the rights of agencies setting standards under the Architectural Barriers Act. Some of the Federal agencies also thought those provisions were beyond the scope of the ATBCB's authority in these guidelines and requirements. To resolve the controversy, the Department of Justice, Office of Legal Counsel (OLC), was requested by the Board to review Subpart B. The OLC believes that the Board is not authorized to promulgate regulations in this rule governing waivers and modifications. The ATBCB, as a result, has removed all reference to the Subpart B guidelines and requirements on waivers and modifications and has reserved "Subpart B" for future use. To ensure that all waivers and modifications are based upon findings of fact and are not inconsistent with the provisions of the Architectural Barriers Act and Section 502 of the Rehabilitation Act, the ATBCB will supervise the agencies' determinations of waivers and modifications on a case by case basis through the use of the Board's recently revised enforcement procedures in 36 CFR Part 1150, 45 FR 78472. See Section 502 of the Rehabilitation Act, 29 U.S.C. 792(b)(1). Under these provisions, the Executive Director is free to institute compliance proceedings against any facility where the Executive Director claims that a waiver or modification was granted improperly.

Subpart C—Scope, attracted considerable comment concerning the nature of the guidelines and requirements. Some agencies expressed the view that the guidelines and requirements were all-inclusive in both their technical and scoping provisions. However, it is well established that guidelines may be extremely detailed. See *FMC Corp. v. Train*, 539 F.2d 973 (4th Cir. 1976). Moreover, the scoping provisions should be viewed as minimum guidelines and requirements. Certain minimum items must be provided for a building to be accessible. The quantification of these items is thus appropriate. See *FMC Corp. v. Train*. This approach was found by OLC to be within the Board's statutory authority.

In response to the public comment, however, the ATBCB did reconsider its policy on particular items affecting the extent to which a new building or a facility may be required to be accessible. Several changes were incorporated into 36 CFR 1190.31, Accessible buildings and facilities: New Construction.

In 36 CFR 1190.31(b), Parking and passenger loading zones, the questions considered by the Board included whether parking for disabled persons should be required and what number of parking spaces should be specified by the guidelines and requirements. The ATBCB decided to retain the proposed language requiring that if any parking is provided, parking must be provided for disabled persons. However, compliance with this section is not required if the only parking provided is for official vehicles owned or leased by the government.

The ATBCB also considered carefully the provisions in 36 CFR 1190.31(f), Elevators, especially in terms of its cost implications. The ATBCB has determined that few buildings will be constructed by or on behalf of the United States which will not contain an elevator. The agencies setting standards under the Architectural Barriers Act do not anticipate that this will be a problem. The provisions in the NPRM have been retained.

The provisions relating to the number of entrances, 36 CFR 1190.31(h), attracted considerable comment. The ATBCB considered such factors as the location, number, and costs of entrances. The ATBCB decided that, "At least one entrance to a building or facility shall comply with § 1190.120, *Entrances*. When a building or facility has entrances which normally serve any of the following functions: transportation facilities, passenger loading zones, parking facilities, taxi stands, pubic streets and sidewalks, accessible interior vertical access, then at least one of the entrances serving each such function shall comply with § 1190.120, *Entrances*. When a building or facility has entrances on more than one side then at least one entrance on each side shall comply with § 1190.120, *Entrances*." The ATBCB recognizes that certain extreme topographical conditions may preclude accessibility of a particular entrance.

The ATBCB also weighed carefully the highlighted questions relating to doors. The ATBCB decided that the scoping provisions relating to doors, proposed 36 CFR 1190.31(i), should be revised to provide, in effect, that at each accessible entrance to a building or facility there must be at least one accessible door. Similarly, there must be at least one accessible door to each accessible space within a building or facility. However, each door that is required by § 1190.50(h), Egress, and each door that is an element of an accessible route shall comply with § 1190.130, Doors. The NPRM had required all doors to be accessible.

The ATBCB considered the question of whether the Board had sufficient research on accessible windows to justify the scoping provisions of § 1190.31(j) in the NPRM. The Board concluded it did not; accordingly the provision has been reserved.

The NPRM highlighted questions concerning the requirements on the location and number of accessible toilet and bathing fixtures. The ATBCB decided to revise proposed 36 CFR

1190.31(k) to provide that each toilet and bathing facility must provide at least one accessible fixture and accessory of each type provided. The Board deleted the provision which required 2% of all fixtures and accessories to be acessible in multiple fixture facilities.

The ATBCB has decided to revise proposed 36 CFR 1190.31(l), Drinking Fountains and Water Coolers, to provide that if only one drinking fountain or water cooler is provided per floor it shall be a two-level fountain or cooler and the lower level must comply with 36 CFR 1190.160. If more than one is provided per floor then approximately 50% (fifty percent) of the drinking fountains and water coolers provided shall comply with 36 CFR 1190.160; the others shall be of the standard height. Commenters pointed out that some people with orthopedic problems cannot bend to use low fountains and suggested that there was a need to require fountains and coolers at two different heights.

Public comments on the proposal relating to the provisions in proposed 36 CFR 1190.31(n), Alarms, were mixed. Certain groups thought the flashing exit signs were acceptable while others did not. The ATBCB has decided to retain the proposed language as it benefits the largest cross-section of the population, including handicapped and able-bodied persons, while not increasing the cost of an alarm system significantly. The term "alarm systems" has been inserted to make this paragraph consistent with § 1190.180, Alarms. The ATBCB also recognizes the need for additional research in this area.

Tactile warnings, 36 CFR 1190.31(o), were carefully considered. Comments received on the NPRM indicated that there continues to be confusion in the use of tactile warnings and informational cues. Until the Board obtains additional research and information on tactile warnings, the Board decided to require tactile warnings only on the hardware of all doors that lead to hazardous areas. Tactile warnings are prohibited on emergency exit doors. The Board decided to reserve the technical section, tactile warnings, 36 CFR 1190.190, until additional research is obtained and therefore has eliminated reference to these provisions in paragraph 1190.31(o).

The ATBCB also considered the highlighted issue of volume controls for telephones in proposed 36 CFR 1190.31(q). However, the Board strongly encourages installation of TDDs, especially in buildings visited by large numbers of people. Several issues relating to telecommunication devices for the deaf (TDD) were also highlighted in the NPRM. A telecommunications device for deaf persons (TDD) is a teletypewriter, or similar keyboard device, attached to a standard telephone by means of an acoustical coupler, and by which two persons can communicate over regular telephone lines by typing their conversation. Although TDDs received strong support from deaf persons and their advocacy organizations, the ATBCB has decided to defer including a requirement for TDDs in Federal and federally-funded buildings until additional information is obtained. The ATBCB has also decided to adopt scoping requirements similar to those in the ANSI standard for volume controls; that is, at least one telephone shall be equipped with a volume control if banks of telephones are provided.

NPRM 36 CFR 1190.31(r), Seating, tables and work surfaces, requested comment on the adequacy of the requirement that 5% of the total fixed or built-in seating tables and work surfaces be required to be accessible. From the limited responses provided on this issue, the ATBCB concluded that its proposal was reasonable.

The question of numbers was also raised in connection with 36 CFR 1190.31(s), Assembly areas. The number of viewing areas in the proposed rule has been retained in the final.

In 36 CFR 1190.31(t), Storage, the Board questioned whether all storage areas should be required to be accessible. The ATBCB concluded that if storage facilities are intended to be provided in accessible space for occupant use, only one storage facility of each type provided must be accessible. Additional storage space which is not accessible is, of course, permissible.

Under 36 CFR 1190.32, Additions, additions are generally to be treated as new construction. This approach was supported by the OLC opinion. The ATBCB had retained the proposed language in 36 CFR 1190.32 (a) and (b) but revised proposed 36 CFR 1190.32 (c) and (d). This change requires that at least one accessible entrance, one accessible route, and one accessible toilet and bathing facility be provided in the existing building if these elements are not provided in the addition. This section, for example, allows a designer the choice of providing an accessible entrance in the new addition or utilizing an existing accessible entrance in the existing building. The designer may also find it practical to create an accessible route and an accessible entrance in the existing building as a more economical solution to the usability and accessibility issue if no entrances are planned in the new addition. If elements, spaces, or common areas are located in the existing building and they are not provided in the addition, consideration should be given to making those elements, spaces, and common areas accessible in the existing building. If the elements in 36 CFR 1190.32(a)(b)(c) were not provided, the addition would be extremely difficult or impossible for a disabled person to use. The revision provides for less access than in the NPRM. However, it effects a balancing of interests, as the comments warranted, to achieve access and use at a reasonable cost.

Proposed 36 CFR 1190.33, Accessible buildings and facilities: Alterations, attracted wide comment. A number of Federal agencies strongly opposed, under any circumstances, the requirement to make more than the altered area accessible.

The NPRM highlighted the issue of where a means of vertical access must be provided. Proposed 36 CFR 1190.33(a)(2). Some comments questioned the ATBCB's authority and policy on this matter. The ATBCB's review of the history of the Architectural Barriers Act demonstrated that it is within the Board's discretion to require that vertical access be provided in the circumstances specified. See Regulatory Analysis containing Issue Paper of December 8, 1980. The language in the NPRM was modified to require the following: "If power-driven vertical access equipment (e.g., escalators) is planned or installed where none existed previously, or if new stairs (other than stairs installed to meet emergency exit requirements) requiring major structural changes are planned or installed where none existed previously, then a means of vertical access shall be provided that complies with § 1190.70 Ramps and curb ramps, § 1190.100, Elevators, or § 1190.110, Platform lifts. It is consistent with the letter and spirit of the Architectural Barriers Act that accessibility shall be incorporated as each part of the facility is altered so that eventually the entire facility will be accessible. The OLC opinion supported this approach.

Under 36 CFR 1190.33(a)(3), formerly (a)(4), the words "portion of" when referring to "space" have been deleted. Commenters noted the difficulty in defining what "portion of" meant.

The NPRM 36 CFR 1190.33 (b) and (c) would have required basic accessibility throughout the building if the alteration involved more than 50% of the value and floor space. After considering the public comment, the Board has revised its rule to eliminate the phasing requirement proposed in 36 CFR 1190.33(a)(3) and to substitute a twelve (12) month time limit

for invocation of the 50% criteria, 36 CFR 1190.33(b). The phasing requirement, commenters noted, would be extremely difficult to monitor. The gross square footage criteria was eliminated because it appears to be misleading. 36 CFR 1190.33(b) requires that certain elements and spaces must be accessible in order to provide the most basic access to and use of a building and that these elements and spaces must be designed and altered to comply with the guidelines and requirements. Without the elements and spaces required by 36 CFR 1190.33(b) (1) (2) and (3)—that is, at least one accessible route, at least one accessible entrance, and at least one accessible toilet facility on each substantially altered floor with a minimum of one accessible toilet facility in each altered building—it would be extremely difficult or impossible for a handicapped person to use a facility even if the facility were otherwise accessible. The number of toilet rooms required to be accessible if no alterations were planned on existing toilet rooms has been decreased from one per floor, altered or not, consistent with the OLC opinion. Moreover, consistent with commenters' suggestion to ease the financial burden of doing the work required by 36 CFR 1190.33(b), exceptions have been added. If the cost of the elements and spaces required by 36 CFR 1190.33(b) exceeds 15% of the total cost of all other alterations, then the agency may elect to implement the required improvements within a five year period and thus reduce the financial impact of a previously unscheduled alteration. Consideration should also be given to providing the accessible elements or spaces enumerated in § 1190.33(b)(6). The ATBCB has excepted from the 50% rule alterations which are limited solely to the electrical, mechanical, or plumbing system and which do not involve the alteration of elements of spaces required to be accessible under Part 1190. This change is consistent with the OLC opinion.

The subject of the applicability of the Architectural Barriers Act to leased buildings, 36 CFR 1190.34, was considered fully. The ATBCB recognizes that Congress amended the Architectural Barriers Act in 1976, Pub. L. 94–541, to cover all buildings leased by the Federal government. Leased buildings are required to be accessible *at the time* the lease is entered into, rather than at a later time when such structures may be altered. The 1976 amendments also extended coverage of the Architectural Barriers Act to unilateral "extensions" of leases as well as bilateral "renewals" of leases. See ATBCB Minutes of Meeting October 31, 1980. The provisions concerning leases were found by OLC to be within the Board's statutory authority.

The ATBCB notes that the language "whenever possible" in the Architectural Barriers Act is a recognition that it may not, under necessarily limited circumstances, be possible to lease accessible space. This may also be true with respect to leases in the more remote areas where accessible space may not be available, or where space is leased for officials servicing natural or human made disasters, e.g., Three Mile Island. The Board, for this reason, has added the following exception to the full accessibility requirements for leased space: "If no space complying with (a) or (b) is available, space as available may be leased provided: (1) The leasing authority certifies that space is unavailable due to the remoteness of the area or that the lease is necessary for officials servicing natural or human-made disasters; and (2) the ATBCB is provided a listing of instances in which this exception is applied, as part of the semi-annual report to Congress." If other deviations from the requirements of § 1190.34 are necessary, these will be made through the waiver or modification process.

Subpart D attracted generally favorable comments.

36 CFR 1190.40, Human data, sets forth basic requirements, *e.g.*, moving wheelchair clearances and reach limitations. Generally the comments were favorable. The section remains as proposed in the NPRM. However, the language for minimum clear width for a single wheelchair has been clarified to provide for a 3'–0" (915mm) except that the clear width may be reduced to 2'–5" (815mm) for a distance not to exceed 2'–0" (610mm) in length at points such as doorways. Other paragraphs have been renumbered.

The provisions in 36 CFR 1190.50, Walks, floors, and accessible routes, are the same as in the NPRM. In general, comments received were favorable to this section. The word "nominal" has been inserted in proposed 36 CFR 1190. 1150(c)(1) and (e)(1) to accommodate the dimensions needed for door stops. No substantive change in the requirement has been made.

The technical provisions relating to parking, proposed 36 CFR 1190.60, Parking and passenger loading zones, remain unchanged except that the section has been revised to include specifications for accessible spaces for side lift vans. Accessible spaces for side lift vans may be used to meet the requirements of 36 CFR 1190.31(b).

The NPRM provisions relating to ramps and curb ramps, proposed 36 CFR 1190.70, were the focus of two decisions. It was decided to retain the language in the NPRM which does not require a standard or uniform location of curb ramps. The ATBCB will seek to work with the Federal Highway Administration to develop uniform requirements for the location of curb ramps which intersect vehicular ways. It was also decided to revise proposed 36 CFR 1190.70(c) to require curb ramps of a width of 3'–0" instead of 4'–0". This was based on the public comment to support 3'–0" and lack of any research data to support a width beyond 3'–0". For clarification, the chart on ramp slope has been revised to make it consistent with the text.

36 CFR 1190.80, Stairs, has been retained as proposed. Some questions were received on the use of open risers and the dimensions of stair treads, but no authority or research was cited by commenters. The ATBCB rule is similar to the ANSI A117.1 (1980) provision except that ANSI allows open risers.

The provisions relating to handrails, proposed 36 CFR 1190.90, have been revised based on the work of the American Society for Testing and Materials. A width measurement instead of a perimeter formula is now provided. An additional paragraph, which commenters noted was in ANSI A117.1 (1980) but not in the NPRM, has been added. A handrail or any wall rail or other surface adjacent to it shall be free of any sharp or abrasive elements.

The provisions applicable to elevators, proposed 36 CFR 1190.100, were the subject of considerable comment, particularly the technical and cost implications of the 4'–0" control panel mounting height. The ATBCB retained the NPRM language to retain 4'–0" for the maximum height and 2'–11" minimum. This is consistent with the Human Data, 36 CFR 1190.40. However, the ATBCB will allow floor buttons to be mounted up to 4'–6" if the 4'–0" height imposes a substantial increase in the cost of the elevator.

A typographical error appearing in the NPRM Figure 10.1 was corrected from four seconds to five seconds. The door widths of elevator cars has been revised from 2'6" to 3'0". The ATBCB recognizes that this may be inconsistent with 36 CFR 1190.40 Human data; however, the wider width is necessary because these are moving doors. A provision, which commenters suggested and is based upon ANSI A117.1 (1980), has been added to allow a maximum clearance of

1¼ inches between the elevator car and floor.

Platform lifts, proposed 36 CFR 1190.110, remains as proposed in the NPRM. Comments were relatively few and noncritical.

The comments concerning entrances were directed at the scoping requirements of 36 CFR 1190.31(h) rather than the technical requirements of proposed 36 CFR 1190.120. This section remains essentially unchanged; however, the definition of "entrance" has been added to § 1190.3, Definitions.

The provisions concerning doors were also the subject of several decisions. Under revised 36 CFR 1190.130(a)(3), if accessible doors are near revolving doors or turnstiles, the accessible doors shall be subject to the same use patterns as the revolving door or turnstile.

In revised 36 CFR 1190.130(c)(i), the ATBCB decided the latch side clearance requirement should be 1'6", through 2'0" is recommended. In proposed 36 CFR 1190.130(c)(2) Figure 2 was selected, consistent with the Human data. The NPRM had proposed alternative figures.

The ATBCB decided to retain the provision in proposed 36 CFR 1190.130(c)(4) relating to doors to acute care patient rooms.

In response to public comment, the ATBCB decided to make an exception to 36 CFR 1190.130(f) to allow hardware used to secure the inactive leaf of a double leaf door without a center mullion to be mounted at any height (as opposed to the 4'0" (1,220 mm) general rule).

The ATBCB, on an issue highlighted in the NPRM, decided to retain the proposed language of 36 CFR 1190.130(g) relating to doors to hazardous areas. The subject of door pressures and door closers was carefully examined. The ATBCB decided to revise 36 CFR 1190.130(h)(2) to delete the force requirements for exterior doors. Comments questioned the state-of-the-art technology and research in this matter. The ATBCB, through the National Bureau of Standards, is actively researching this matter.

The proposed 36 CFR 1190.140, Windows, has been reserved until the Board receives additional research and information on this subject.

The subject of toilets, also addressed in the scoping provisions of Subpart C, also entailed considerations of unisex toilets, 36 CFR 1190.150. The ATBCB has decided, on this highlighted issue, to retain the provision on unisex toilets. Commenters generally favored this requirement but requested that it be clarified that only one water closet and one lavatory be provided in each facility. The unisex facility is especially desirable for severely disabled persons who have attendants of the opposite sex.

The text of proposed 36 CFR 1190.160, drinking fountains and water coolers, was corrected to reflect the dimensions in the figures for clarification of descriptive language.

The question raised by commenters on proposed 36 CFR 1190.170, Controls and operating mechanisms, was whether controls should be required to be operable by one hand, similar to ANSI A117.1 (1980). It was agreed that the guidelines and requirements should reflect the ANSI language and this subsection has been changed accordingly.

The provision in proposed 36 CFR 1190.180, Alarms attracted considerable comment to the effect that devices and procedures need to be developed to provide earlier protection warning for deaf/hearing impaired and blind/visually impaired people. The ATBCB decided to require that visual and auditory alarms operate off the same power source. In proposed 36 CFR 1190.180(c)(3) the frequency requirement has been revised to "*less than* 5 Hz," in response to commenters' suggestions to make this provision similar to ANSI A117.1 (1980). Also, this will lessen the likelihood of epileptic seizures.

The Board has decided to reserve 36 CFR 1190.190, Tactile warnings, until additional research is obtained. The Board determined that there does not appear to be any immediate and critical need for tactile warnings, although tactile warnings might provide some assistance and convenience to those who are not skilled in proper cane techniques. For information concerning the technical specifications for tactile warnings, see ANSI A117.1–1980, Section 4.29.

The ATBCB highlighted for public comment the question of contrasting colors and specific shapes to be used as part of the signage to identify particular elements and spaces in proposed 36 CFR 1190.200. The comments support the ATBCB decision to retain the language of the NPRM and also indicated the utility of further research on these matters.

Another highlighted issue, in proposed 36 CFR 1190.210, was whether the maximum height for an operable part of a public telephone shoud be 4'-0" (1220mm) or 4'-6" (1372mm) high. The matter attracted considerable comment. The ATBCB decided that the human data research supported both 4'-0" maximum height for frontal and diagonal reach approaches and 4'-6" maximum height for side reach. Comments received supported both heights for all telephones. The guidelines and requirements have been modified to provide for both heights. This is consistent with proposed 36 CFR 1190.40, Human data. At least one telephone per bank shall be installed at 4'-0". Reference to TDDs has been deleted from this section.

36 CFR 1190.220, Seating, tables, and work surfaces, has been retained as in the NPRM. The section did not generate adverse comments. The ATBCB provision is similar to that in ANSI A117.1 (1980).

36 CFR 1190.230, Assembly areas, is different from the NPRM. The ATBCB rule will facilitate disabled persons' access by providing seating throughout the entire seating plan. The space for two persons has been expanded to 5'-6" to reflect ANSI requirements and to provide space between the wheelchairs.

Comments on § 1190.240, Storage, were limited and basically supportive. The language of the NPRM has been retained and a drawing added.

Subpart E—Special Building or Facility Types and Elements, continues to be reserved in the final rule, as in the NPRM. This subpart will be developed in future rulemaking. The guidelines and requirements as issued now will form the basis for special use guidelines and requirements which will then be applicable to the development of standards under the Architectural Barriers Act for special building types or special use facilities to the extent that these requirements enumerate elements or spaces that would be required by the Architectural Barriers Act to be accessible to handicapped persons. ATBCB expects to interact with the Federal agencies having expertise in specific areas to develop guidelines for the unique aspects of special use facilities. For example, the Department of Interior will be involved in the development of recommendations for historical buildings and recreational facilities, the Department of Health and Human Services, Department of Defense and Veterans Administration will be consulted on recommendations for hospitals.

The Department of Housing and Urban Development is also cooperating in the development of minimum guidelines and requirements for residential structures to be published later at Subpart E. This section of Subpart E will include specific scoping and technical provisions establishing guidelines and requirements for agencies' standards to be issued under the Architectural Barriers Act for accessibility in residential structures and accessible dwelling units. The guidelines and requirements issued now

are applicable to the development of standards under the Architectural Barriers Act to the extent that these requirements enumerate features, other than when affixed to or within an interior dwelling unit, required by the Architectural Barriers Act to be accessible to handicapped persons. See 24 CFR Part 40. These issues may be reexamined by HUD and the ATBCB as part of the rulemaking relating to the details of accessible residential structures. Such reexamination may result in making specific exceptions for residential structures to the general ATBCB requirements.

G. Future Activities

The ATBCB recognizes that technology and accessibility needs are changing. It intends to regularly review these guidelines and requirements to ensure they incorporate state-of-the-art technology as well as respond to the needs of disabled persons.

The ATBCB, as noted throughout this preamble, will be undertaking research to define and expand the guidelines and requirements. In addition, the ATBCB may undertake research concerning the accessibility needs of handicapped persons. The ATBCB encourages the public to provide the Board with information on new and innovative methods to eliminate barriers.

H. Regulatory Analysis

As an independent Federal agency, the ATBCB is not required to comply with Executive Order 12044; however, a draft regulatory analysis was prepared voluntarily and was published in the Federal Register for comment along with the NPRM. The ATBCB has solicited and received the views of the Council on Wage and Price Stability on its final rule and on the materials in the regulatory analysis. Those views are included in the rulemaking docket and are available for inspection at the ATBCB offices. The final regulatory analysis is also available for inspection at the ATBCB offices, 330 "C" Street, SW., Room 1014, Washington, D.C. 20202, from 9:00 a.m. to 5:30 p.m., Monday through Friday. For information on the final regulatory analysis, contact Sally Free, 202/245–1801.

I. National Environmental Policy

A negative environmental declaration prepared pursuant to the National Environmental Policy Act of 1969, as amended, 42 U.S.C. 4232, indicates that the issuance of the minimum guidelines will not have any significant impact on the environment. This document was prepared before the NPRM and remains in the public docket. The ATBCB received no comments indicating any environmental impact of the guidelines and requirements.

J. Effective Date

Pursuant to 5 U.S.C. 553(d), the ATBCB has determined that it is necessary to make these guidelines and requirements effective on the date issued in order to expedite the development and issuance of consistent Federal standards in accordance with the Architectural Barriers Act of 1968.

The Act, at noted above, directs four Federal agencies to "prescribe standards for the design, construction, and alteration of (certain Federal and federally-assisted) buildings" and "to insure whenever possible that physically handicapped persons will have ready access to, and use of, such buildings."

These four Federal agencies, as members of the ATBCB, have been actively involved in the development of these guidelines and requirements. The ATBCB expects the agencies to act expeditiously to issue final revised standards within a reasonable time, which should not exceed one year after the effective date of the minimum guidelines and requirements. There is no reason, therefore, to delay the effective date of this rule. Because these ATBCB minimum guidelines and requirements serve as a basis for the standards set by the four standard setting agencies, the general public is not adversely affected by the effective date being the date of issuance.

However, if the guidelines and requirements effective date is delayed 30 days, the public could be adversely affected because it would, in effect, further delay the issuance of consistent accessibility standards by the four Federal agencies.

K. Conclusion

In consideration of the foregoing, Part 1190 is added to Title 36 of the Code of Federal Regulations as set forth below. The preamble to Part 1190 will be published in the Code of Federal Regulations as Preamble A.

The guidelines and requirements are issued under 29 U.S.C. 792, section 502 of the Rehabilitation Act of 1973, as amended.

Dated: January 6, 1981.

By vote of the Board.

Mason H. Rose V,

Chairperson, Architectural and Transportation Barriers Compliance Board.

Donald Elisburg,

Vice Chairperson, Architectural and Transportation Barriers Compliance Board, Assistant Secretary for Employment Standards, Department of Labor.

PART 1190—MINIMUM GUIDELINES AND REQUIREMENTS FOR ACCESSIBLE DESIGN

Subpart A—General

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Subpart E—Special Building or Facility Types or Elements. [Reserved]—Preamble A.

Authority: Sec. 502(b)(7) of the Rehabilitation Act of 1973 (29 U.S.C. 792(b)(7), as amended by the Rehabilitation, Comprehensive Services, and Developmental

Disabilities Amendments of 1978 (Pub. L. 95-602).

Subpart A—General

§ 1190.1 Purpose.

The purpose of this part is to implement Section 502(b)(7) of the Rehabilitation Act of 1973 (29 U.S.C. 792(b)(7)), as amended, which requires the Architectural and Transportation Barriers Compliance Board to establish minimum guidelines and requirements for standards issued under the Architectural Barriers Act of 1968 (42 U.S.C. 4151 *et seq.*), as amended. This part and the standards to be based on it are intended to ensure that certain buildings and facilities financed with Federal funds are so designed, constructed, or altered as to be readily accessible to, and usable by, physically handicapped persons.

§ 1190.2 Applicability: Buildings and facilities subject to guidelines and standards.

(a) *Definitions.* As used in this section, the term:

(1) "Constructed or altered on behalf of the United States" means acquired by the United States through lease-purchase arrangement, constructed or altered for purchase by the United States, or constucted or altered for the use of the United States.

(2) "Primarily for use by able-bodied military personnel" means expected to be occupied, used, or visited principally by military service personnel. Examples of buildings so intended are barracks, officers' quarters, and closed messes.

(3) "Privately owned residential structure" means a single or multi-family dwelling not owned by a unit or subunit of Federal, state, or local government.

(b) *Buildings and facilities covered.* Except as provided in paragraph (c) of this section, the guidelines and requirements, and the standards to be issued by the standard-setting agencies to conform to it, apply to any building or facility—

(1) The intended use for which either—

(i) Will require that such building or facility be accessible to the public, or

(ii) May result in employment or residence therein of physically handicapped persons; and

(2) Which is—

(i) To be constructed or altered by or on behalf of the United States;

(ii) To be leased in whole or in part by the United States;

(iii) To be financed in whole or in part by a grant or loan made by the United States after August 12, 1968, if the building or facility may be subject to standards for design, construction, or alteration issued under the law authorizing the grant or loan; or

(iv) To be constructed under the authority of the National Capital Transportation Act of 1960, the National Capital Transportation Act of 1965, or Title III of the Washington Metropolitan Area Transit Regulation Compact.

(c) *Buildings and facilities not covered.* The guidelines and requirements, and the standards do not apply to—

(1) Any privately owned residential structure, unless it is leased by the Federal government on or after January 1, 1977, for subsidized housing programs; or

(2) Any building or facility on a military installation designed and constructed primarily for use by military personnel.

(3) Although the ATBCB has not reviewed in detail the particular program statutes, it recognizes that, as a general rule, buildings purchased or acquired directly by the Government without construction or alteration are not covered by the Architectural Barriers Act.

(d) *Effective date of standards.* Any covered building or facility, as provided in this section, which is designed, constructed, altered, or leased after the effective date of a standard issued under this guideline which is applicable to the building or facility, shall be designed, constructed, altered, or leased in accordance with the standard. For purposes of this section, any design, construction, alteration or lease for which bids or offers are received before the effective date of the applicable standards, in response to an invitation for bids or requests for proposals, is not subject to the standard.

§ 1190.3 Definitions.

As used in this part, the term:

"ATBCB" means the Architectural and Transportation Barriers Compliance Board.

"Access aisle" means a pedestrian space between elements such as parking spaces, seating, and desks.

"Accessible" means complying with the specifications and requirements of this part and with any applicable standard issued by a standard-setting agency.

"Accessible route" means a continuous unobstructed path connecting accessible elements and spaces in a building or facility and complying with the space and reach requirements of this part. (Interior accessible routes may include but are not limited to corridors, floors, ramps, elevators, lifts, and clear floor space at fixtures. Exterior accessible routes may include but are not limited to parking access aisles, curb ramps, walks, ramps, and lifts.)

"Accessible space" means a space that complies with this part.

"Addition" means an expansion, extension, or increase in the gross floor area of a building or facility.

"Agency" means a Federal department, agency or instrumentality, as defined in sections 551(1) and 701(b)(1) of Title 5, United States Code, or an official authorized to represent an agency.

"Alteration" means any change in a building or facility or its permanent fixtures or equipment. It includes, but is not limited to, remodeling, renovation, rehabilitation, reconstruction, changes or rearrangement in structural parts, and extraordinary repairs. It does not include normal maintenance, reroofing, interior decoration, or changes to mechanical systems.

"Architectural Barriers Act" means the Architectural Barriers Act of 1968, Pub. L. 90-480, as amended, 42 U.S.C. 4151 *et seq.*

"Automatic door" means a door—

(1) Used for human passage and

(2) Equipped with a power-operated mechanism and controls that open and close the door upon receipt of a momentary actuating signal.

"Building or facility" means all or any portion of buildings, structures, equipment, roads, walks, parking lots, parks, sites, or other real property or interest in such property.

"Common areas" means those interior and exterior spaces available for use by all occupants and users of a building or facility, exclusive of any spaces that are made available for the use of a restricted group of people or the use of which is restricted to particular functions.

"Construction" means any erection of a new building or of an addition to an existing building.

"Cross slope" means the slope that is perpendicular to the direction of travel (see "running slope").

"Curb ramp" means a short ramp cutting through a curb or built up to it.

"Disability" means any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following bodily systems: Neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genito-urinary; hemic and lymphatic; skin; and endocrine.

"Egress" or "means of egress" means a continuous and unobstructed way of exit travel from any point in a building or facility to an exterior walk or out of a

fire zone. It includes all intervening rooms, spaces, or elements.

"Element" means an architectural or mechanical component of a building, facility, space, or site, *e.g.*, telephone, curb ramp, door, drinking fountain, seating, water closet.

"Entrance" means any access point to a building or portion of a building or facility used for the purpose of entering. An entrance includes the approach walk, the vertical access leading to the entrance platform, the entrance platform itself, vestibules, if provided, the entry door(s) or gate(s), and the hardware of the entry door(s) or gate(s).

"Essential features" means those elements and spaces that make a building or facility usable by, or serve the needs of, its occupants or users. Essential features include but are not limited to entrances, toilet rooms, and accessible routes. Essential features do not include those spaces that house the major activities for which the building or facility is intended, such as classrooms and offices.

"Exception" means a special provision in this part or in a standard which indicates an acceptable alternative, under specified circumstances, to a requirement stated directly above the exception.

"Executive Director" means the Executive Director of the ATBCB.

"Extraordinary repair" means the replacement or renewal of any element of an existing building or facility for purposes other than normal maintenance.

"Full and fair cash value" is calculated for the estimated date on which work will commence on a project and means—

(1) The assessed valuation of a building or facility as recorded in the assessor's office of the municipality and as equalized at one hundred percent (100%) valuation; or

Note.—The one hundred percent (100%) equalized assessed value shall be based upon the state's most recent determination of the particular city's or town's assessment ratio. Example: Town X has an assessment ratio of forty percent (40%), and the particular building in question is assessed at $200,000.00. To determine the equalized assessed value of this building, divide $200,000.00 by .40, and the equalized assessed value equals $500,000.00.

(2) The replacement cost; or

(3) The fair market value.

"Guidelines, and requirements" means this part.

"Operable part" means a part of equipment or an appliance used to insert or withdraw objects, to activate or deactivate equipment, or to adjust the equipment (*e.g.*, coin slot, push button, handle).

"Physically handicapped person" means any person who has a disability which substantially limits one or more major life activity, including but not limited to such functions as performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

"Power-assisted door" means a door—

(1) Used for human passage; and

(2) With a mechanism that helps to open the door, or relieve the opening resistance of a door, upon the activation of a switch or a continued force applied to the door itself.

"Ramp" means a walking surface that has a running slope greater than 1:20.

"Running slope" means the slope that is parallel to the direction of travel (see "cross slope").

"Section 502 of the Rehabilitation Act" or "Section 502" means Section 502 of the Rehabilitation Act of 1973, Pub. L. 93–112, 29 U.S.C. 792, as amended.

"Shall" denotes a mandatory requirement.

"Signage" means the display of written, symbolic, tactile, or pictorial information.

"Site" means a parcel of land bounded by a property line or a designated portion of a public right-of-way.

"Site improvements" means landscaping, paving for pedestrian and vehicular ways, outdoor lighting, recreational facilities, and similar site additions.

"Space" means a definable area, *e.g.*, toilet room, hall, assembly area, parking area, entrance, storage room, alcove, courtyard, or lobby.

"Standard" means any standard for accessibility issued under the Architectural Barriers Act.

"Standard-setting agency" means one of the four agencies required to issue standards under the Architectural Barriers Act, *i.e.*, the General Services Administration, the Department of Housing and Urban Development, the Department of Defense, and the United States Postal Service.

"Structural impracticability" means having little likelihood of being accomplished without removing or altering a load-bearing structural member at an increased cost of 50 percent or more of the value of the element of the building or facility involved.

"Tactile" means perceptible through the sense of touch.

"Tactile warning" means a surface texture applied to or built into walking surfaces or other elements to warn visually impaired persons of hazards in the path of travel.

"Walk" means an exterior pathway or space with a prepared surface intended for pedestrian use and having a slope of 1:20 or less. It includes general pedestrian areas such as plazas and courts.

§ 1190.4 Issuance of Architectural Barriers Act standards by standard-setting agencies.

(a) These guidelines and requirements are the minimum requirements for standards issued under the Architectural Barriers Act by the Administrator of General Services, Secretary of Housing and Urban Development, Secretary of Defense, and Postmaster General.

(b) Standards which conform to or exceed the provisions of the guidelines shall be deemed in compliance with the guidelines and requirements.

(c) Each standard-setting agency is encouraged to issue standards which follow the format of these guidelines and requirements. However, standards which differ in format from these guidelines and requirements but are otherwise consistent with the guidelines and requirements shall be deemed in compliance with these guidelines and requirements.

§ 1190.5 Guidelines: Other uses.

The guidelines and requirements may be used by other governmental and nongovernmental entities to make buildings and facilities accessible to, and usable by, physically handicapped persons.

§ 1190.6 Interpretation of guidelines.

(a) These guidelines and requirements shall be liberally construed to carry out the purposes and provisions of the Architectural Barriers Act and Section 502 of the Rehabilitation Act.

(b) Words importing the singular number may extend and be applied to the plural and vice versa. However, unless otherwise specified in the guidelines and requirements, each element or space of a particular building or facility shall comply with the guidelines and requirements.

(c) Use of the imperative mood, *e.g.*, "provide," means the provision is mandatory. This form is being used to avoid wordiness and monotony but means the same as if the word "shall" had been included.

(d) The provisions in the minimum guidelines and requirements are based upon adult dimensions and anthropometrics.

(e) Dimensions that are not marked "minimum" or "maximum" are absolute.

unless otherwise indicated in the text or captions. All dimensions are subject to conventional building tolerances for field conditions.

§ 1190.7 Effect of State or local law.

The obligation to comply with this part is not affected by any State or local law.

§ 1190.8 Site conditions. [Reserved]

§ 1190.9 Severability.

If any section, subsection, paragraph, sentence, clause, or phrase of these guidelines and requirements is declared invalid for any reason, the remaining portions of these guidelines and requirements that are severable from the invalid part shall remain in full force and effect. If a part of these guidelines and requirements is invalid in one or more of its applications, the part shall remain in effect in all valid applications that are severable from the invalid applications.

Subpart B [Reserved]

Subpart C—Scope

§ 1190.20 Scope. [Reserved]

§ 1190.21 Accessible buildings and facilities: New construction.

Except as otherwise provided in Subpart E, all new construction of buildings and facilities shall comply with the following minimum requirements:

(a) *Accessible route.* At least one accessible route shall comply with § 1190.50, Walks, floors, and accessible routes, and shall connect an accessible building entrance with:

(1) Transportation facilities located within the property line of a given site, including passenger loading zones, public transportation facilities, taxi stands, and parking;

(2) Public streets and sidewalks;

(3) Other accessible buildings, facilities, elements, and spaces that are on the same site; and

(4) All accessible spaces, rooms, and elements within the building or facility.

(b) *Parking and passenger loading zones.* If any parking is provided, for employees or visitors, or both, each such parking area shall comply with § 1190.60, Parking and passenger loading zones, and the following table:

Total parking in lot	Required minimum number of accessible spaces
1 to 25	1
26 to 50	2
51 to 75	3
76 to 100	4
101 to 150	5
151 to 200	6
201 to 300	7
301 to 400	8
401 to 500	9
501 to 1000	(1)
Over 1000	(2)

[1] 2 percent of total.
[2] 20 plus 1 for each 100 over 1000.

(1) EXCEPTION: The total number of accessible parking spaces may be distributed among parking lots, if greater accessibility is achieved.

(2) EXCEPTION: This paragraph does not apply to parking provided for official government vehicles owned or leased by the government and used exclusively for government purposes.

If passenger loading zones are provided, at least one passenger loading zone shall comply with § 1190.60, Parking and passenger loading zones. Parking spaces for side lift vans, § 1190.60(c)(2)(a), are accessible parking spaces and may be used to meet the requirements of this paragraph.

(c) *Ramps and curb ramps.* If there is an abrupt level or grade change, if the slope is greater than 1:20, and if no other means of accessible vertical access is provided, a ramp or curb ramp shall be provided. If a ramp or curb ramp is provided, it shall comply with § 1190.70, Ramps and curb ramps.

(d) *Stairs.* Except as provided in paragraph 1190.31(f)(1), stairs connecting levels that are not connected by an elevator shall comply with § 1190.80, Stairs.

(e) *Handrails.* Handrails shall be provided at each ramp and staircase as required in § 1190.70, Ramps and curb ramps, and § 1190.80, Stairs, respectively, and shall comply with § 1190.90, Handrails.

(f) *Elevators.* One passenger elevator complying with § 1190.100, Elevators shall serve each level in all multi-story buildings and facilities. If more than one elevator is provided, each elevator shall comply with § 1190.100, Elevators.

(1) *Exception.* Elevator pits, elevator penthouses, mechanical rooms, piping, or equipment catwalks are excepted from this requirement.

(2) *Exception.* Ramps or platform lifts complying with § 1190.70, Ramps and curb ramps, and § 1190.110, Platform lifts, respectively, may be used in lieu of an elevator.

(g) *Platform lifts.* If the slope is greater than 1:20, and if no other means of accessible vertical access is provided, a platform lift may be provided if there is an abrupt level or grade change. If a platform lift is provided, it shall comply with § 1190.110, Platform lifts.

(h) *Entrances.* At least one entrance to a building or facility shall comply with § 1190.120 Entrances. When a building or facility has entrances which normally serve any of the following functions: transportation facilities; passenger loading zones; parking facilities; taxi stands; public streets and sidewalks; accessible interior vertical access, then at least one of the entrances serving each such functions shall comply with § 1190.120, Entrances. When a building or facility has entrances on more than one exposure, then at least one entrance for each exposure shall comply with § 1190.120, Entrances, unless site conditions preclude accessibility.

(i) *Doors.* (1) At each accessible entrance to a building or facility, at least one door shall comply with § 1190.130, Doors.

(2) For each space within a building or facility, at least one door at each accessible entrance to the accessible space shall comply with § 1190.130, Doors.

(3) Each door required by § 1190.50(h), Egress, shall comply with § 1190.130, Doors.

(4) Each door that is an element of an accessible route shall comply with § 1190.130, Doors.

(j) *Windows.* [Reserved]

(k) *Toilet and bathing facilities.* Each toilet and bathing facility provided shall comply with § 1190.150, Toilet and bathing facilities, and in each such facility where any of the fixtures and accessories specified in § 1190.150 (b) and (c) are provided, at least one accessible fixture and accessory of each type provided shall comply with § 1190.150 (b) and (c). For special use situations, refer to Subpart E, Special Building or Facility Types or Elements.

(l) *Drinking fountains and water coolers.* If drinking fountains or water coolers are provided, approximately 50% of those provided on each floor shall comply with § 1190.160, Drinking fountains and water coolers, and shall be dispersed throughout the floor. If only one drinking fountain or water cooler is provided on any floor, it shall have two levels and the lower level shall comply with § 1190.160.

(m) *Controls and operating mechanisms.* If controls and operating mechanisms are provided, each shall comply with § 1190.170, Controls and operating mechanisms.

(n) *Alarms.* If alarm systems are provided, each shall comply with § 1190.180, Alarms.

(o) *Tactile warnings.* Tactile warnings complying with § 1190.130(g), Doors to hazardous areas, shall be provided on the hardware of all doors that lead to hazardous areas. Tactile warnings shall not be used at emergency exist doors.

(p) *Signage.* (1) The international symbol of accessibility shall comply with paragraph 1190.200(e), Symbol of accessibility, and shall be used at the following locations:

(i) Parking spaces designated as reserved for the physically handicapped;

(ii) Passenger loading zones;

(iii) Accessible entrances;

(iv) Accessible toilet and bathing facilities.

(2) Informational signing, if provided, shall comply with § 1190.200.

(q) *Telephones.* At each location where public telephones are provided, each telephone shall comply with § 1190.210, Telephones. If public telephones are provided in a building or facility, then a reasonable number but always at least one shall be equipped with a volume control.

(r) *Seating, tables, and work surfaces.* If fixed seating, tables, and work surfaces are provided, at least 5 percent of each element shall comply with § 1190.220, Seating, tables, and work surfaces.

(s) *Assembly areas.* If assembly areas are provided, accessible viewing positions shall comply with § 1190.230, Assembly areas, and the following table:

Capacity of assembly	Number of viewing positions
1 to 25	1
26 to 50	2
51 to 75	3
76 to 100	4
101 to 150	5
151 to 200	6
201 to 300	7
301 to 400	8
401 to 500	9
501 to 1000	(1)
Over 1000	(2)

[1] 2 percent of total.
[2] 20 plus 1 for each 100 over 1000.

(t) *Storage.* If storage facilities such as cabinets, shelves, closets and drawers are provided in accessible spaces for occupant use, at least one storage facility of each type provided shall comply with § 1190.240, Storage.

§ 1190.32 Accessible buildings and facilities: Additions.

Each addition to an existing building or facility shall comply with § 1190.31, New construction, except as follows:

(a) *Entrances.* If a new addition to a building or facility does not have an entrance, then at least one entrance in the existing building or facility shall comply with § 1190.120, Entrances.

(b) *Accessible route.* If the only accessible entrance to the addition is located in the existing building or facility, then at least one accessible route shall comply with § 1190.50, Walks, floors, and accessible routes, and shall provide access through the existing building or facility to all rooms, elements, and spaces in the new addition.

(c) *Toilet and bathing facilities.* If there are no toilet rooms and bathing facilities in the addition and these facilities are provided in the existing building, then at least one toilet and bathing facility in the existing building shall comply with § 1190.150, Toilet and bathing facilities.

(d) *Elements, spaces, and common areas.* If elements, spaces, or common areas are located in the existing building and they are not provided in the addition, consideration should be given to making those elements, spaces, and common areas accessible in the existing building.

§ 1190.33 Accessible buildings and facilities: Alterations.

(a) *General.* Alterations to existing buildings or facilities shall comply with the following:

(1) If existing elements, spaces, essential features, or common areas are altered, then each such altered element, space, feature, or area shall comply with the applicable provisions of § 1190.31, Accessible buildings and facilities: New construction.

(2) If power-driven vertical access equipment (*e.g.*, escalator) is planned or installed where none existed previously, or if new stairs (other than stairs installed to meet emergency exit requirements) requiring major structural changes are planned or installed where none existed previously, then a means of accessible vertical access shall be provided that complies with § 1190.70, Ramps and curb ramps; § 1190.100, Elevators; or § 1190.110, Platform lifts.

(3) If alterations of single elements, when considered together, amount to an alteration of a space of a building or facility, the entire space shall be made accessible.

(4) Signage. If an existing building contains some but not all accessible elements and spaces, informational signage complying with § 1190.200, Signage, directing the user to accessible facilities shall be placed at each accessible entrance. Each inaccessible entrance and each inaccessible toilet room shall have signage directing the user to the accessible entrance(s) or toilet room(s).

(b) *Alterations involving more than 50% of the full and fair cash value.* If the total cost of all alterations (including but not limited to electrical, mechanical, plumbing and structural changes) for a building or facility within any twelve (12) month period is 50% or more of the building's full and fair cash value (as defined by § 1190.3), then each element or space that is altered or added shall comply with the applicable provisions of § 1190.31, Accessible buildings and facilities: New construction; and the altered building shall contain:

(1) At least one accessible route complying with § 1190.50, Walks, floors, and accessible routes, and § 1190.33(a);

(2) At least one accessible entrance complying with § 1190.120, Entrances. If additional accessible entrances are altered, then they shall comply with § 1190.33(a)(1); and

(3) The following toilet facilities, whichever number is greater:

(i) At least one toilet facility for each sex in the altered building complying with § 1190.150, Toilet and bathing facilities;

(ii) At least one toilet facility for each sex on each substantially altered floor, where such facilities are provided, complying with § 1190.150, Toilet and bathing facilities.

(4) *Exception.* If the cost of the elements and spaces required by § 1190.33(b)(1), (2), and (3) exceeds 15% of the total cost of all other alterations, then a schedule may be established by the standard-setting and/or funding agency to provide the required improvement within a 5 year period.

(5) *Exception.* If the alteration is limited solely to the electrical, mechanical, or plumbing system and does not involve the alteration of any elements and spaces required to be accessible under this Part 1190 the § 1190.33(b) does not apply.

(6) *Exception.* Consideration shall be given to providing accessible elements and spaces in each altered building or facility complying with:

(i) Section 1190.60, Parking and Passenger Loading Zones;

(ii) Section 1190.160, Drinking fountains and Water Coolers;

(iii) Section 1190.160, Alarms;

(iv) Section 1190.210, Telephones;

(v) Section 1190.220, Seating Tables and Work Surfaces;

(vi) Section 1190.230, Assembly Areas;

(vii) Section 1190.240, Storage.

§ 1190.34 Accessible buildings and facilities: Leased.

(a) Buildings or facilities or portions thereof leased by the Federal government shall comply with the requirements of § 1190.31, New

construction, § 1190.32, Additions, and § 1190.33, Alterations.

(b) If no fully accessible space is available, space may be leased only if the following conditions are met:

(1) At least one accessible route is provided from an accessible entrance complying with § 1190.120, Entrances, to all leased portions of the building or facility and to each essential feature which serves that portion of the building or facility. The accessible route shall comply with the requirements of § 1190.50 Walks, floors, and accessible routes.

(2) Each essential feature of the portion of the building or facility to be leased is accessible and complies with the applicable sections.

(3) Common areas that are approved space needs of the occupant agency serving the portions of the building or facility to be leased are accessible and comply with the applicable section.

(c) *Exception.* If no space complying with paragraph (a) or (b) of this section is available, space as available may be leased, provided—

(1) The leasing authority certifies that space is unavailable due to remoteness of the area or that the lease is necessary for officials servicing natural or human-made disasters; and

(2) The ATBCB is provided a listing of instances in which this exception is applied as part of the semi-annual report to Congress.

(d) Any other deviation from the requirements of § 1190.34 shall be made only through the waiver or modification process.

Subpart D—Technical Provisions

§ 1190.40 Human data.

(a) *General.* This section is the basis for clearances and equipment location required by other sections.

(b) *Moving wheelchair clearances.* Provide the clearances for moving wheelchairs as follows:

(1) Minimum clear width for passage of a single wheelchair is 3'0" (915 mm) (fig. 4.1).

(i) *Exception.* The clear width may be reduced to 2'8" (815 mm) for a distance not to exceed 2'0" (610 mm) in length at points such as doorways (fig. 4.1).

(ii) [Reserved].

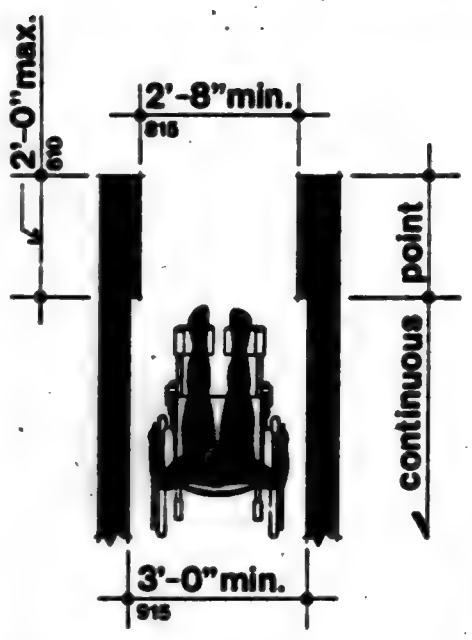

passage 4.1

(2) Minimum clear width for two wheelchairs to pass is 5'0" (1,525 mm) (fig. 4.2).

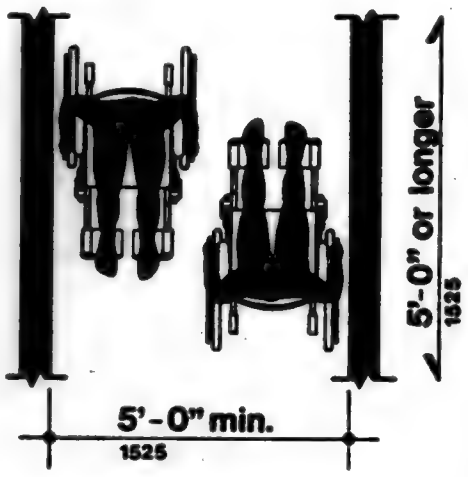

two-way 4.2

(3) Minimum clear space to make a 180 degree turn is 5'0" (1,525 mm) diameter (fig. 4.3) or a T-shaped space that complies with Figure 4.4.

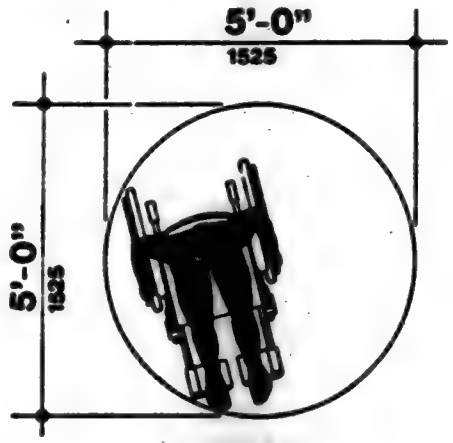

180°/360° 4.3

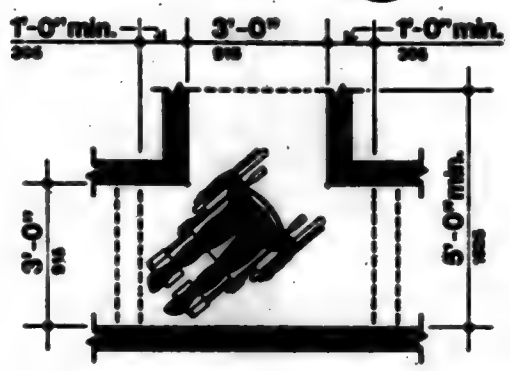

t-turn 4.4

(c) *Clear floor or ground space.* Provide the following clear floor or ground space to accommodate a single, stationary occupied wheelchair:

(1) Clear floor or ground space shall be a minimum of 2'6" by 4'0" (760 mm by 1,220 mm) (fig. 4.5).

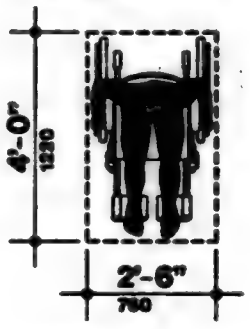

clear floor or ground space 4.5

(2) Position clear floor or ground space for either forward or parallel approach to an object or element as required (figs. 4.6 and 4.7).

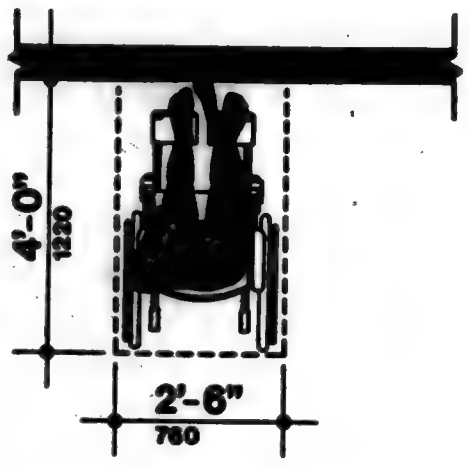

forward approach 4.6

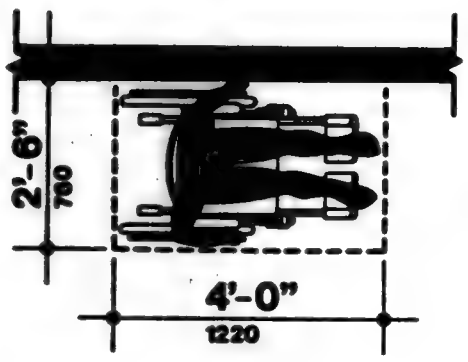

parallel approach 4.7

(3) Clear floor or ground space may overlap the clear space required under some objects.

(4) Clear floor or ground space shall adjoin or overlap an accessible route or another clear floor or ground space for at least one full, unobstructed side.

(5) If clear floor or ground space is confined or restricted on all or part of three sides, provide additional maneuvering space adjoining clear floor or ground space as shown in figures 4.8, 4.9, 4.10 and 4.11.

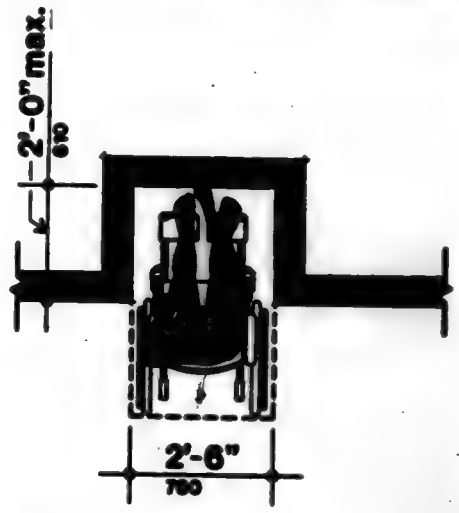

alcove 4.8

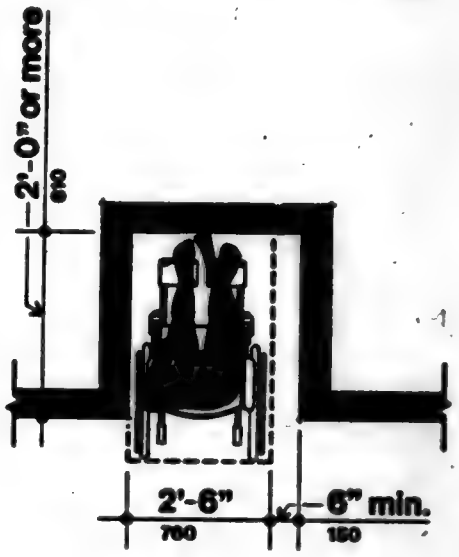

alcove 4.9

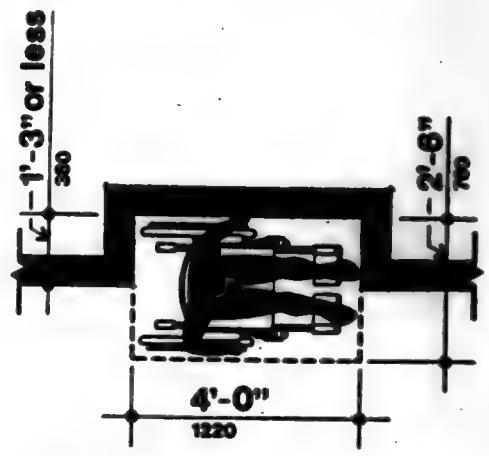

alcove 4.10

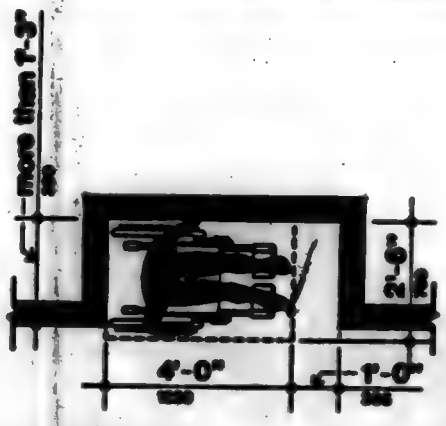

alcove 4.11

(6) Surfaces of clear floor or ground spaces shall comply with § 1190.50(i), walks, floors, and accessible routes.

(d) *Reach limitations.* Reach limitations are a function of approach in the clear floor or ground space:

[1] Forward reach:

(i) Maximum height of reach for a forward approach shall be 4'0" (1,220 mm) (fig. 4.12).

(ii) Minimum height of reach for a forward approach shall be 1'3" (380 mm) (fig. 4.12).

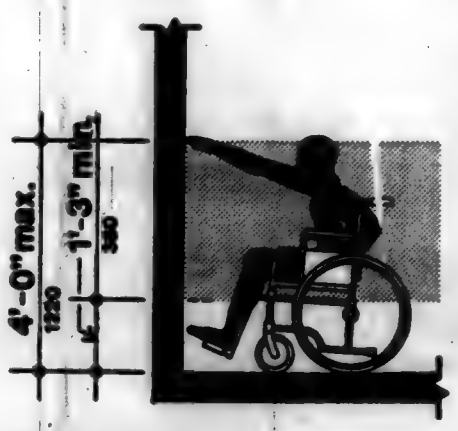

forward reach 4.12

(iii) Maximum height of reach for a forward approach over an obstruction shall comply with figures 4.13 and 4.14.

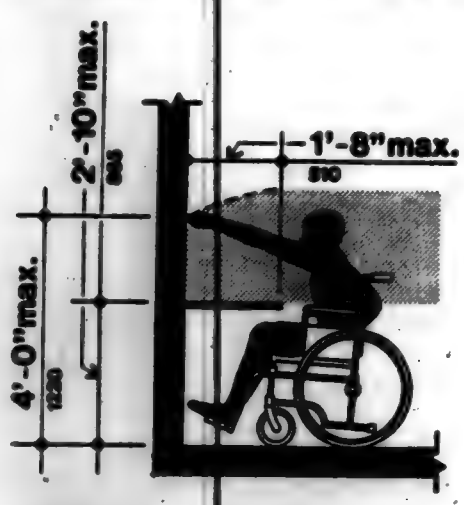

reach over obstacle
forward approach
4.13

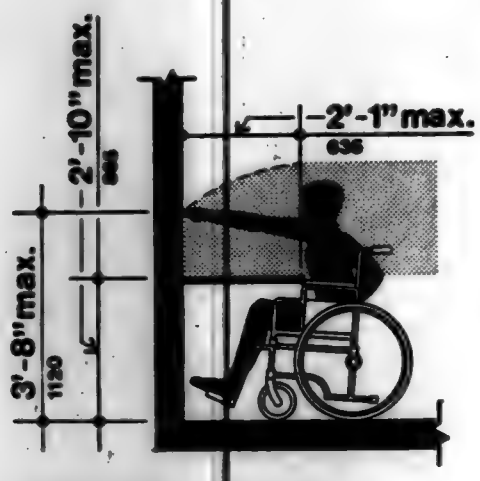

reach over obstacle
forward approach
4.14

(2) Side reach (parallel approach):

(i) Maximum height of reach for a side approach shall be 4'6" (1,370 mm) (fig. 4.15).

(ii) Minimum height of reach for a side approach shall be 9 inches (230 mm) (fig. 4.15).

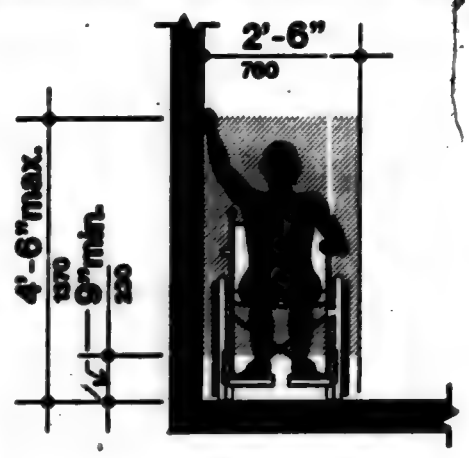

side reach
4.15

(iii) Maximum height of reach for a side approach over an obstruction shall comply with figure 4.16.

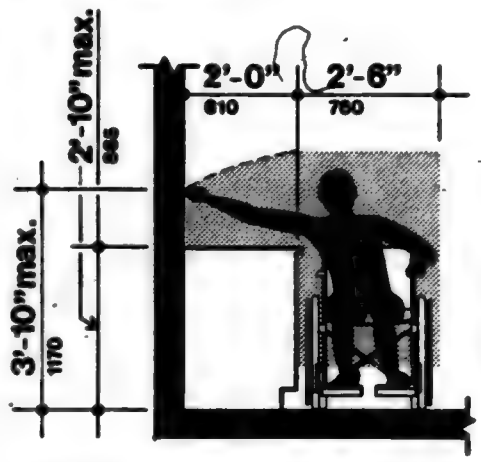

reach over obstruction
parallel approach
4.16

(3) To be accessible, special equipment may require measurements different from those provided above and these measurements should be dictated by equipment design.

§ 1190.50 Walks, floors, and accessible routes.

(a) *General.* Accessible routes required by Subpart C—Scope shall comply with this section.

(b) *Width.* Provide the minimum clear width for continuous passage and for point passage required by § 1190.40(b)(1) (fig. 4.1). Provide maneuvering clearances as shown in figures 5.1 and 5.2 if the accessible route requires a turn around an obstruction.

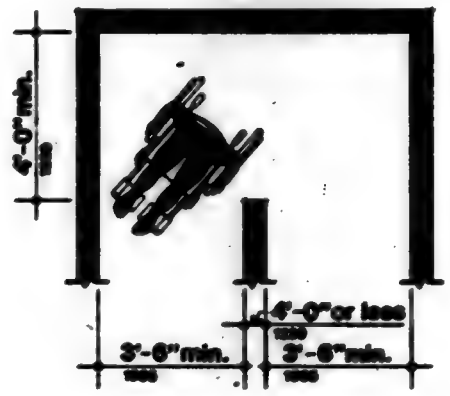

turn
maneuvering clearances
5.1

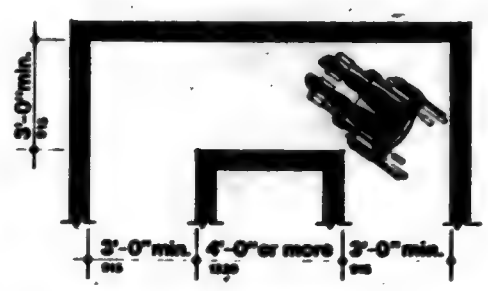

turn
maneuvering clearances
5.2

(c) *Protruding objects.* No protruding object shall reduce the clear width of an accessible route or maneuvering space below the minimum required by § 1190.40(b)(1) (fig. 5.3).

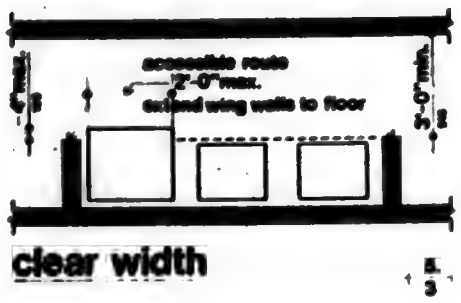

(1) Objects less than 2'0" (610 mm) long that are fixed to wall surfaces shall not project into accessible routes more than 4 inches (100 mm) if mounted with their leading edges between 2'3" and 6'8" (685 mm and 2030 mm) (nominal dimension) above finish floor (fig. 5.4).

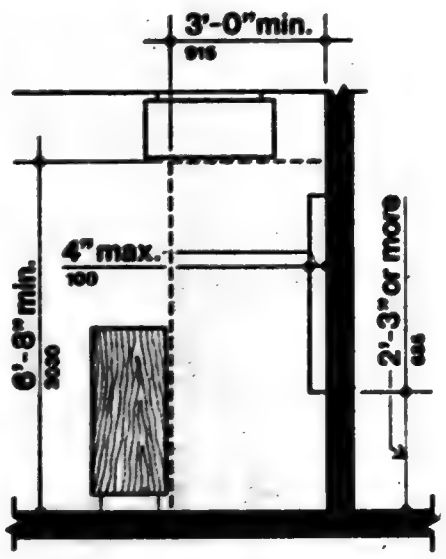

clear width
around object 24" long max.
5.
4

(2) Objects fixed to wall surfaces may project more than 4 inches (100 mm) if mounted with the lower extreme of their leading edge less than 2'3" (685 mm) above the finish floor. These objects shall not project into the required minimum clear width (fig. 5.5).

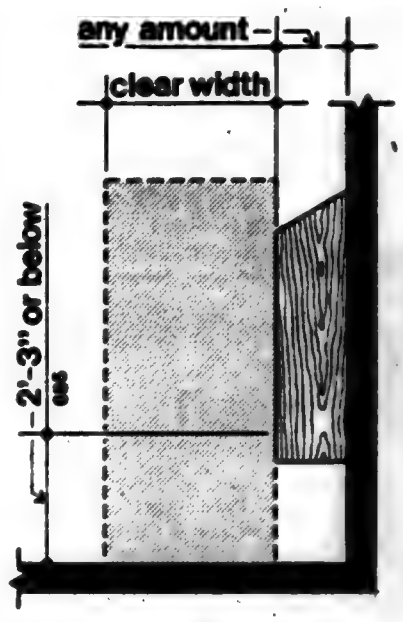

clear width
5.
5

(3) Free standing objects mounted on posts or pylons may overhang 1'0" (305 mm) maximum from 2'3" to 6'8" (685 mm to 2030 mm) above ground or finished floor surface (figs. 5.6 and 5.7).

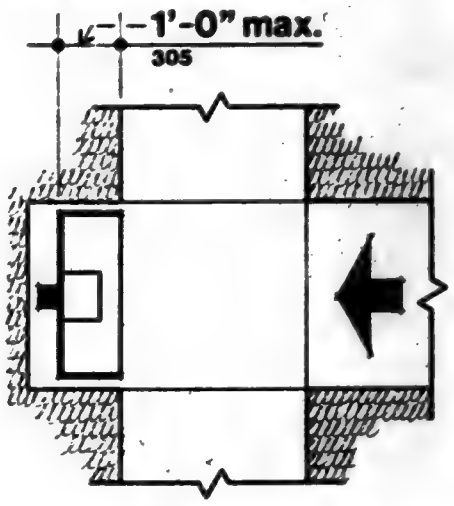

projecting object
plan view
5.
6

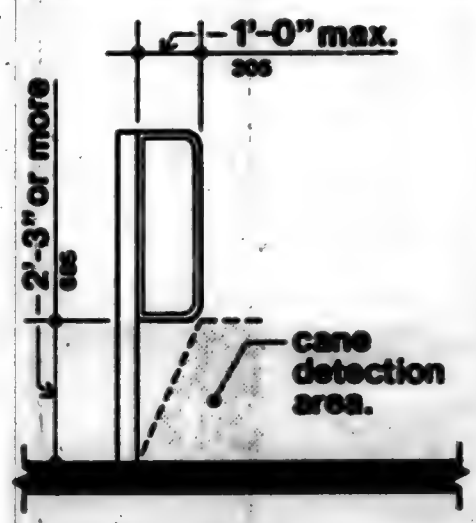

projecting object
elevation
5.
7

(4) Objects greater than 1'0" (305 mm) wide mounted with their leading edge less than 2'3" (685 mm) may protrude any distance (figs. 5.8 and 5.9).

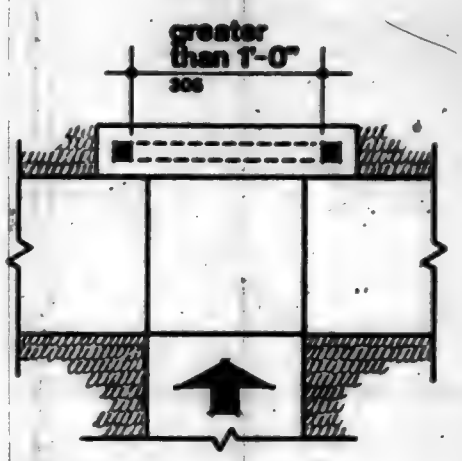

fixed obstruction
plan view
5.
8

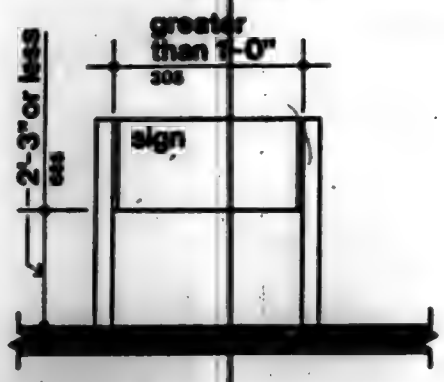

fixed obstruction 5./9
elevation

(d) *Passing space.* If an accessible route has less than a 5'0" (1,525 mm) clear width, provide accessible passing spaces at intervals not exceeding 200 ft. (61 mm) unobstructed view. See figures 4.2 and 4.4 for examples of acceptable passing spaces.

(e) *Vertical clearance.* Provide a minimum vertical clearance (headroom) of 6'8" (2,030 mm) throughout accessible routes. If vertical clearance of area adjoining accessible route is reduced to less than 6'8", (nominal dimension) provide a barrier to warn blind or visually-impaired persons (figs. 5.4 and 5.9 and 5.10).

overhead hazard 5./10

(f) *Slope.* Accessible routes with running slopes of 1:20 or greater shall be considered ramps and shall comply with § 1190.70, Ramps and curb ramps. Cross-slopes on accessible routes shall not exceed 1:48 (¼ inch per foot).

(g) *Changes in level.* All changes in level or grade in accessible routes shall comply with the following:

(1) Up to ¼ inch (6 mm): vertical without edge treatment (fig. 5.11).

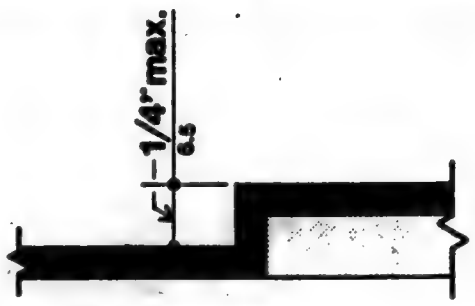

edge treatment 5./11

(2) ¼ inch to ½ inch (6 mm to 13 mm): beveled with slope not exceeding 1:2 (fig. 5.12).

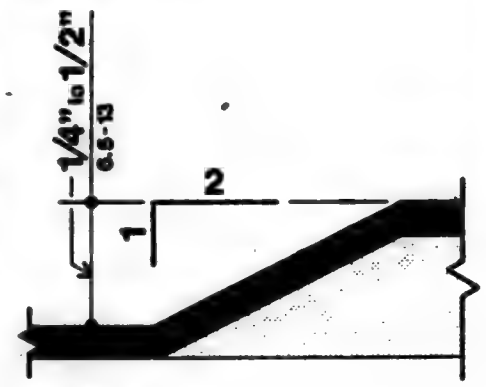

edge treatment 5./12

(3) Greater than ½ inch (13 mm): comply with § 1190.70, Ramps and curb ramps; § 1190.100, Elevators; or § 1190.110, Platform Lifts.

(i) *Exception.* Exterior sliding door thresholds may be ¾" (19 mm) maximum if beveled with slope not exceeding 1:2.

(ii) [Reserved]

(4) Stairs shall not be the sole means of vertical access along an accessible route.

(h) *Egress.* Arrange egress so as to be readily accessible from all accessible rooms and spaces. Where fire code provisions require more than one means of egress from any space or room, such means of accessible egress shall also be provided to handicapped persons.

(1) *Exception.* In multiple story buildings and facilities where at-grade egress from each floor is impossible, either of the following is permitted:

(i) The provision of approved fire and smoke partitions within each story creating horizontal exits; *or*

(ii) The provision of areas of refuge within each floor approved by agencies having authority for safety.

(2) [Reserved]

(i) *Ground and floor surfaces*—(1) *Surface Condition.* Surfaces of paving and floors shall be stable, firm, and slip-resistant. Irregular paving and flooring materials that may cause tripping or difficult wheelchair passage because of height differentials are not permitted on accessible routes.

(2) *Drainage.* Design accessible routes so that their surfaces will not collect water. Gratings located in accessible routes shall have openings no greater than ½ inch (13 mm) when measured in the dominant direction of travel (fig. 5.13).

Gratings with elongated openings shall be so placed that the long dimension is perpendicular to the predominant route of travel (fig. 5.14).

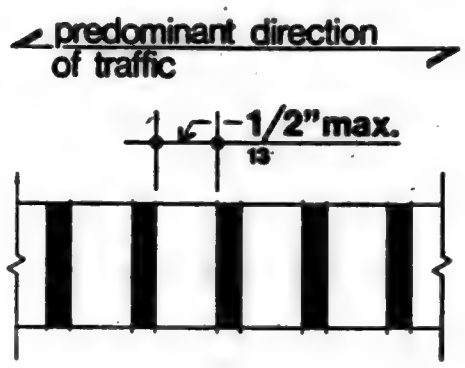

section: grating 5./13
detail of fig. 5.14

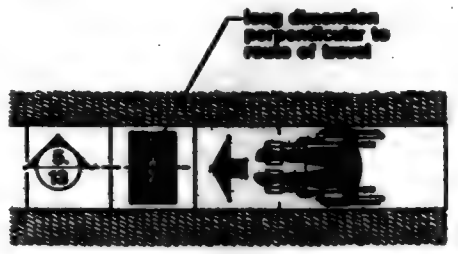

grating orientation 5./14

(3) Carpeting. If carpet or carpet tile is used on an accessible ground or floor surface, it shall:

(i) Be securely attached;

(ii) Have a firm cushion or pad or no cushion or pad;

(iii) Have a construction of level loop, textured loop, level cut pile, or level cut/uncut pile;

(iv) Have a maximum combined thickness of pile, cushion, and backing height of ½ inch (13 mm) (Fig. 5.15); and

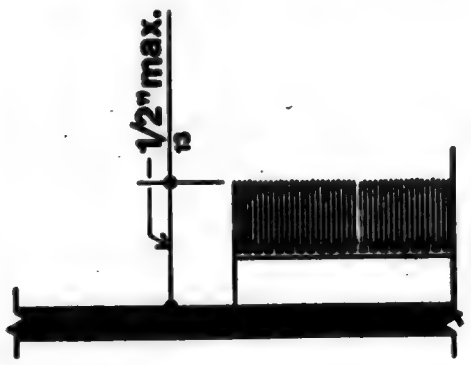

carpet height 5./15

(v) Exposed edge(s) and trim shall be securely fastened in place and shall comply with paragraph 1190.50(g), Changes in level.

§ 1190.60 Parking and passenger loading zones.

(a) *General.* Parking and passenger loading zones required to be accessible by Subpart C—Scope shall comply with this section.

(b) *Location.* Accessible parking spaces and accessible passenger loading zones shall:

(1) Be the spaces or zones located closest to the nearest accessible entrance on an accessible route; and

(2) If located in a separate building or facility, be on the shortest accessible route to an accessible entrance of the parking facility.

(c) *Accessible parking spaces.* Provide accessible parking spaces (fig. 6.1) that:

(1) Are at least 8'0" (2,440 mm) wide,

(2) Have an adjacent access aisle at least 5'0" (1,525 mm) wide and shall comply with § 1190.50, Walks, floors, and accessible routes;

(i) *Exception.* If accessible parking spaces for side lift vans are provided, each shall have an adjacent access aisle at least 8'0" (2,440 mm) wide and shall comply with § 1190.50, Walks, Floors, and Accessible Routes.

(ii) [Reserved].

(3) May share a common access aisle between two parking spaces;

(4) Do not permit parked vehicle overhangs to reduce the clear width of accessible routes; and

(5) Have parking spaces and access aisles with surface slopes not exceeding 1:48 (¼ inch per foot) in all directions.

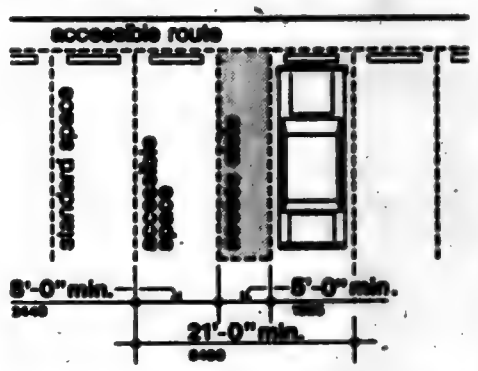

accessible parking 6./1

(d) *Passenger loading zones.* Provide accessible passenger loading zones that:

(1) Have an access aisle at least 4'0" (1,220 mm) wide by 20'0" (6 m) long adjacent, parallel, and level with the vehicle standing space,

(2) Have curb ramps conforming to § 1190.70, Ramps and curb ramps, if there are curbs between the access aisle and other portions of the accessible route; and

(3) Have vehicle standing spaces and access aisles with surface slopes not exceeding 1:48 (¼ inch per foot) in all directions (figure 6.2).

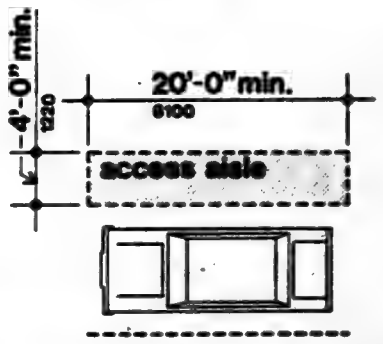

unloading zone 6./2

(e) *Vertical clearance.* Provide minimum vertical clearances of 9'6" (3.45 m) at accessible parking spaces, at accessible passenger loading zones, and along vehicle access routes to such areas from site entrances. (f) *Signage.* Signage reserving accessible parking spaces and identifying passenger loading zones and vehicle access routes shall comply with § 1190.200, Signage. Signage shall incorporate the International Symbol of Accessibility and shall not be obscured by a vehicle parked in the space (figures 20.1 and 20.2).

§ 1190.70 Ramps and curb ramps.

(a) *General.* Ramps and curb ramps required by Subpart C—Scope shall comply with this section.

(b) *Slopes and rise.* Provide the least practical slope for any ramp or curb ramp subject to the following maximums:

(1) New Construction requirements:

(i) Maximum running slope shall not exceed 1:12 (8.3%) (fig. 7.1).

(ii) Maximum rise for any run shall not exceed 2'6" (760 mm) (fig. 7.2).

(iii) Maximum slopes of adjoining gutters, road surface, or accessible routes shall not exceed 1:20 and shall comply with § 1190.70(e)(8) (fig. 7.12).

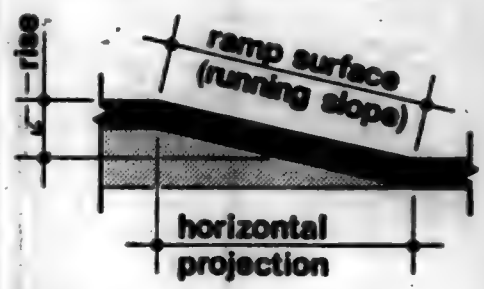

ramp slope 7./1

slope	maximum rise		maximum projection	
	in	mm	ft	m
1:12 to < 1:16	30	760	30	9
1:16 to < 1:20	30	760	40	12
1:20	30	760	60	18

maximum rise & projection
new construction 7./2

(2) Existing construction requirements:

(i) If space limitations prevent compliance with paragraph 1190.70(b)(1), slopes and rises listed in figure 7.3 may be used.

(ii) [Reserved].

slope	maximum rise in	maximum rise mm	maximum projection ft	maximum projection m
1:10 to 1:8	3	75	2	0.6
1:12 to 1:10	6	150	5	1.5

maximum rise & projection

7/3

existing construction

(c) *Width.* Ramps and curb ramps shall have a minimum clear width of 3'0" (915 mm) exclusive of edge protection or flared sides.

(d) *Cross-slope and surface.* Cross-slope of ramp surfaces shall not exceed 1:48 (¼ inch per foot). Ramp surfaces shall comply with § 1190.80, walks, floors, and accessible routes.

(e) *Curb ramps.* In addition to the requirements of paragraphs 1190.70(a), (b), and (c), curb ramps shall comply with the following requirements:

(1) Provide flared sides if ramps are located where pedestrians may walk across the ramp; flared slope shall not exceed 1:10 (fig. 7.4) where a 4'0" (1,220 mm) landing is provided at the top of the curb ramp. If less than 4'0" (1,220 mm) is provided, the flared slope shall not exceed 1:12 (fig. 7.5). Where pedestrians will not normally walk across a ramp, returned curbs may be used (fig. 7.6).

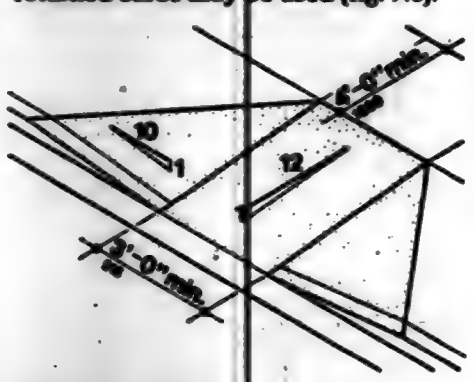

curb ramp 7/4

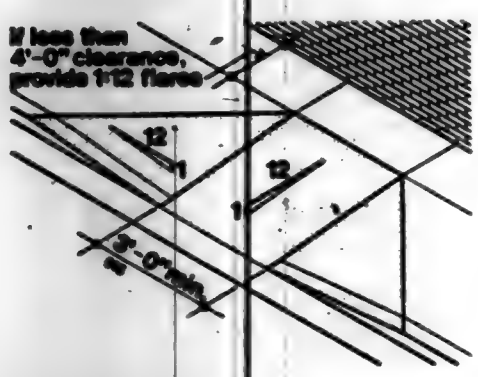

curb ramp 7/5

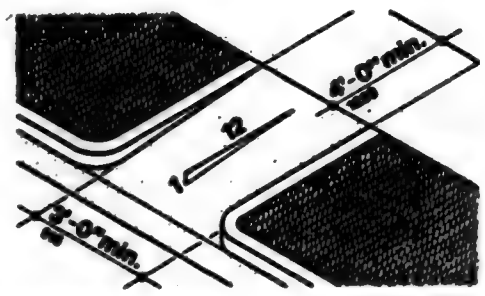

curb ramp 7/6

(2) Locate built-up curb ramps so that they do not project into vehicular traffic lanes (fig. 7.7).

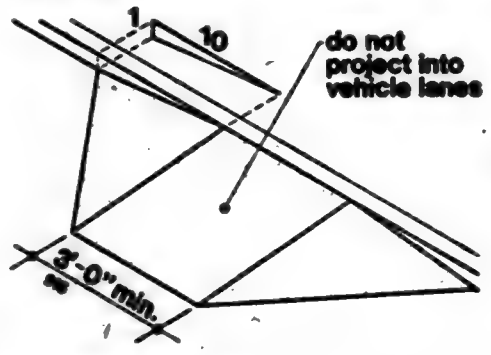

curb ramp 7/7

(3) Diagonal or corner type curb ramps having returned curbs or well defined edges, shall have such edges parallel to the direction of pedestrian flow (fig. 7.8). Diagonal or corner type curb ramps having flared sides shall have at least a 2'0" (610 mm) long segment of straight curb located on each side of the curb ramp and within marked crossings (fig. 7.9).

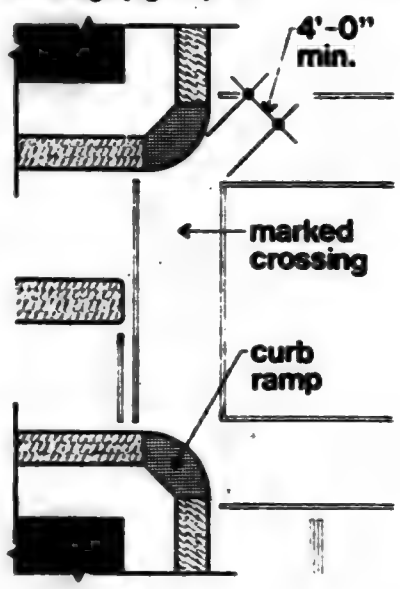

crossing 7/8

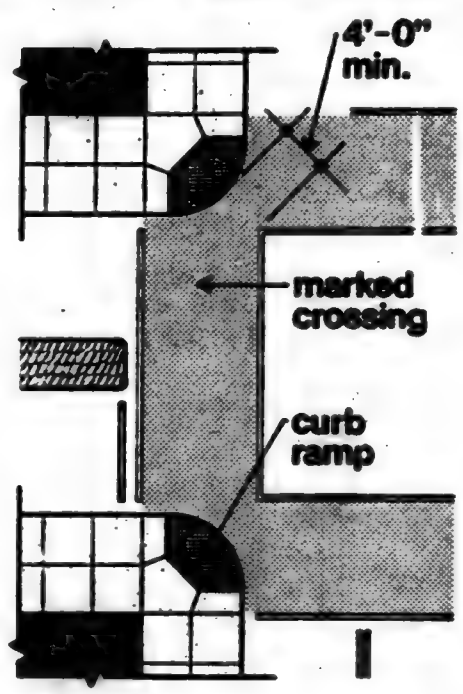

crossing 7/9

(4) Curb ramp discharge (top and bottom) shall be to a 4'0" (1,220 mm) minimum deep clear space (figs. 7.4 and 7.5). If the marked crossings are provided, locate bottom discharge entirely within marked crossings (figs. 7.8 and 7.9).

(5) Locate curb ramps to prevent blockage of discharge areas by parked vehicles.

(6) Cut any islands through flush with street surfaces or ramp each side to permit crossing. Provide 4'0" (1,220 mm) long rest area (see figs. 7.10 and 7.11).

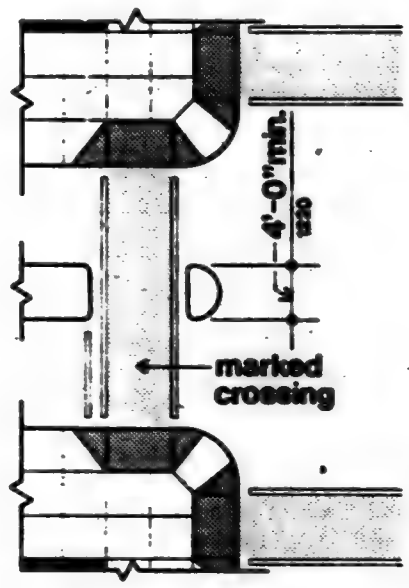

crossing 7/10

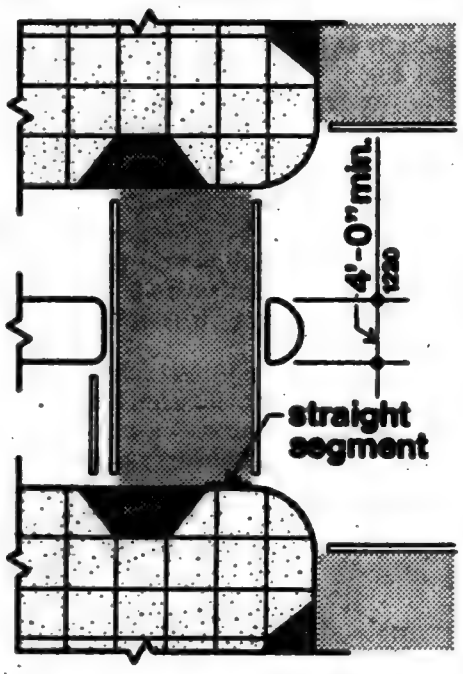

crossing 7.11

(7) Curb ramps having less than a 6-inch (150 mm) rise do not require handrails.

(8) Transitions from ramps to walks, gutters, or streets shall be flush and free of abrupt changes (fig. 7.12).

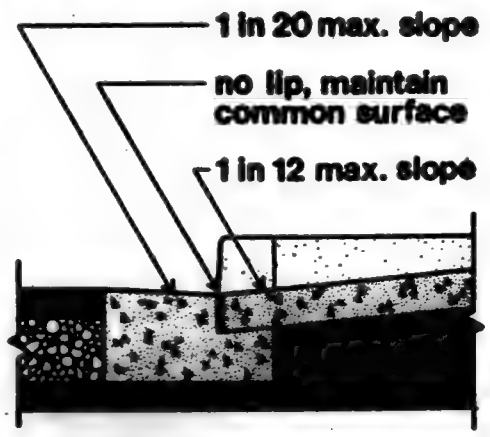

section 7.12

(f) *Ramps.* In addition to the requirements of § 1190.70(a), (b), (c) and (d) provide the following at all ramps:

(1) Provide landings at the top, bottom, and at changes of direction. If ramp runs exceed maximum projection given in figures 7.2 and 7.3, provide intermediate landings. Landings shall:

(i) Have a width which shall be at least as wide as the widest ramp run approaching it.

(ii) Have a minimum length of 5'0" (1,525 mm).

(iii) Have a minimum size at direction changes that is 5'0" by 5'0" (1,525 mm by 1,525 mm).

(iv) Shall comply with § 1190.130.

(2) Provide handrails that comply with § 1190.90, handrails, on both sides of any ramp run exceeding a 6-inch (150 mm) rise or a 6'0" (1,830 mm) horizontal projection (figs. 7.13, 7.14, 7.15, and 7.16).

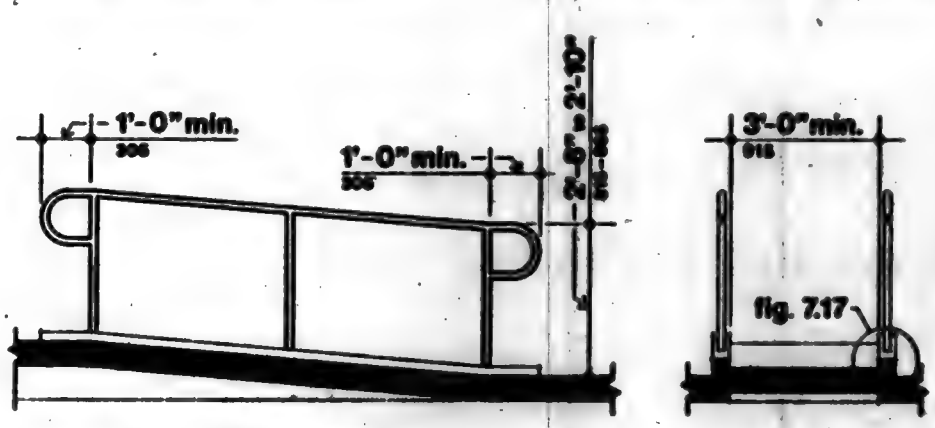

ramp with curb 7.13

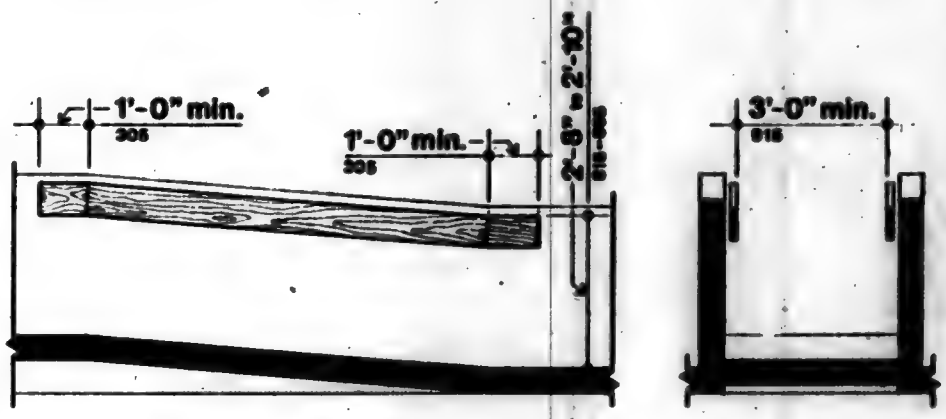

ramp with wall 7.14

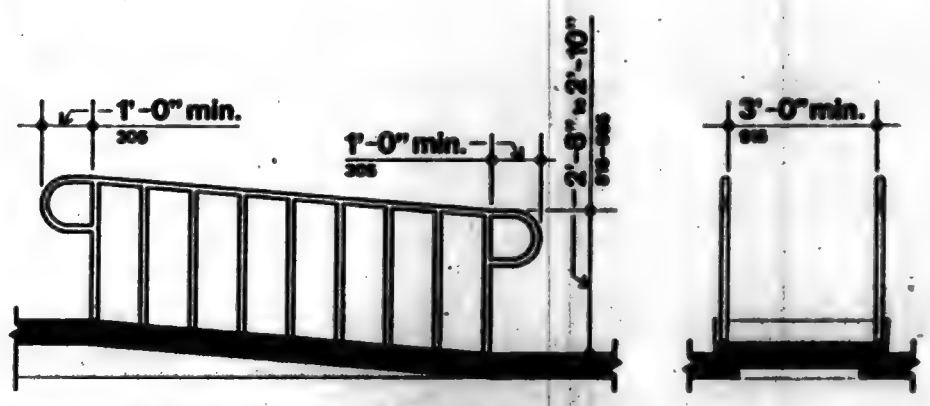

ramp with vertical guard 7.15

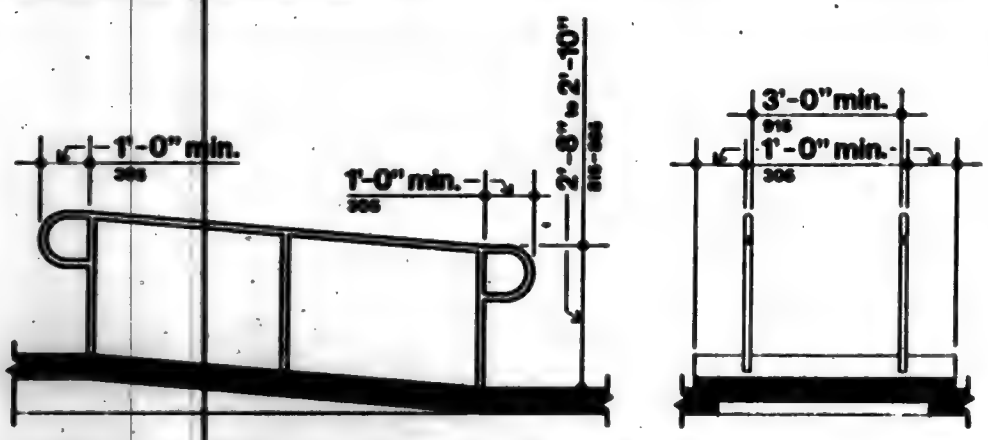

ramp with extended edge 7/16

(3) Provide curbs, walls, vertical guards or projected edges at ramps and landings with drop-offs. Minimum curb height shall be 2 inches (50 mm) (fig. 7.17).

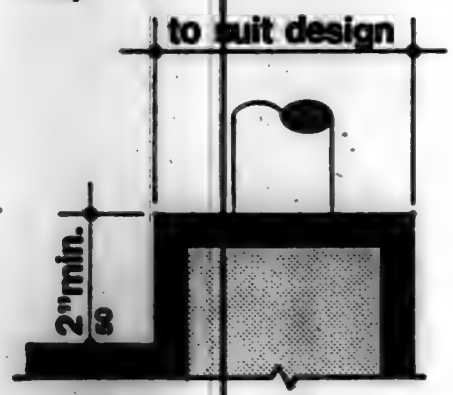

ramp curb 7/17

(g) *Exterior conditon.* Curb ramps, ramp, and landing surfaces shall comply with paragraph 1190.50(i)(2), drainage.

§ 1190.60 Stairs.

(a) *General.* Stairs required by Subpart C—Scope shall comply with this section.

(b) *Risers.* Provide risers that do not exceed 7 inches (180 mm) in height. Open risers are not permitted (fig. 8.1).

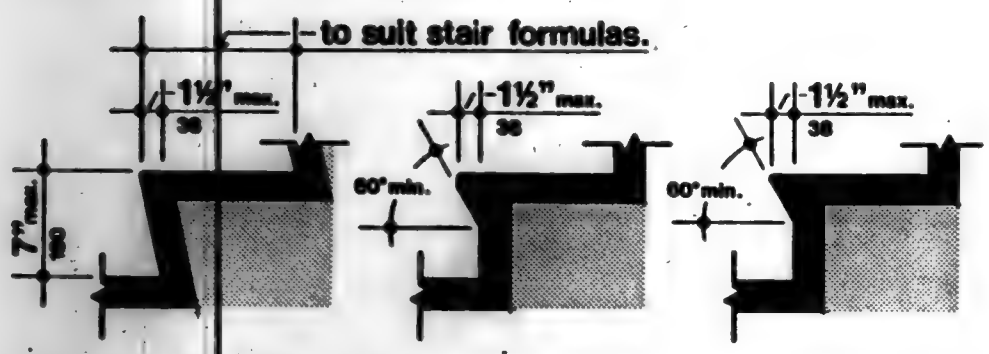

stair risers & nosings 8/1

(c) *Nosings.* Nosings shall:

(1) Project a maximum of 1½ inches (38 mm);

(2) Have a leading edge with a maximum radius of curvature of ½ inches (13 mm); and

(3) Be formed by risers that are sloped, or shall have undersides of the nosings which form an angle not less than 60 degrees from the horizontal (fig. 8.1).

(d) *Handrails.* Provide continuous handrails at both sides of stairways. Handrails shall comply with § 1190.60, Handrails.

(e) *Exterior conditions.* Stair treads and landing surfaces shall comply with § 1190.50(i)(2), Drainage.

§ 1190.60 Handrails.

(a) *General.* Handrails for ramps or stairs required by Subpart C—Scope shall comply with this section.

(b) *Size and spacing.* Size and spacing of handrails shall:

(1) The handgrip portion of the handrail, if round, shall be not less than 1¼ inches (32 mm) nor more than 2 inches (50 mm) in diameter (fig. 9.1). If the shape of the handrail is not round, then the larger dimension shall be not more than 2 inches (50 mm) (fig. 9.2).

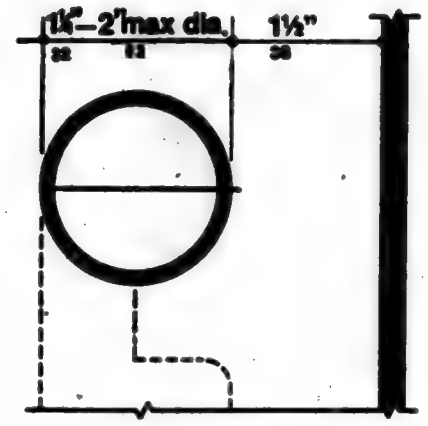

handrail 9/1

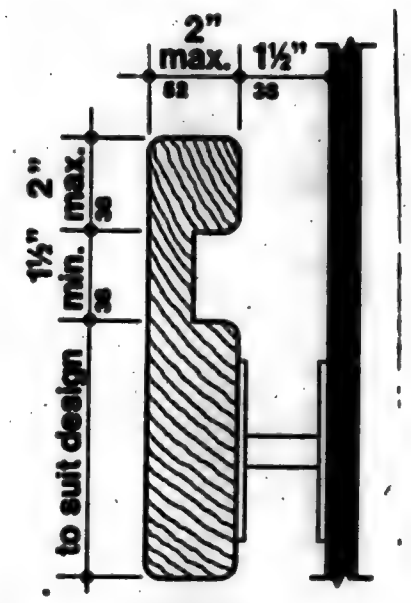

handrail 9/2

(2) If handrails are mounted adjacent to walls or other surfaces, provide a 1½ inch (38 mm) (minimum/maximum) clear space between the surface and the handrail (figs. 9.1, 9.2, 9.3, and 9.4). The handrail and the surfaces adjacent to the handrail shall be free of any sharp or abrasive elements. Edges shall have minimum radius of ⅛ inch (3 mm). Freestanding rails located farther than 6 inches (150 mm) from wall or other vertical surfaces are not subject to this provision.

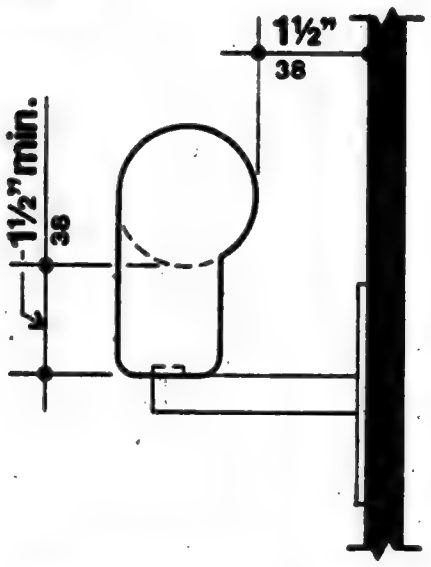

handrail 9.3

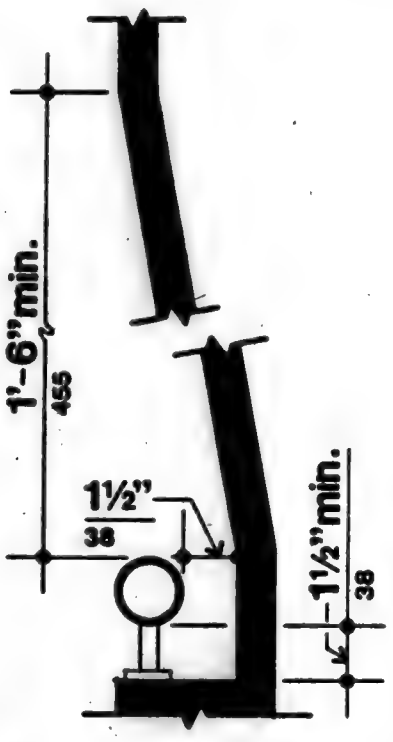

handrail 9.4

(3) Handrails may be mounted in recesses if the recesses comply with figure 9.4.

(4) On switchbacks or dogleg ramps or stairs, inside handrails shall be continuous.

(c) *Handrail projections.* (1) If outside handrails are not continuous, then:

(i) At a ramp landing, handrails shall project parallel with ramp or landing surface for a length of 1'0" (305 mm) beyond the top and bottom of ramp surfaces (figs. 7.13, 7.14, 7.15, and 7.16).

(ii) At a stair landing, handrails shall project at least 1'0" (305 mm) beyond the top riser and at least 1'0" (305 mm) plus the depth of one tread beyond the bottom riser. The 1'0" (305 mm) projection shall in each instance be parallel with the floor (figs. 9.5 and 9.6).

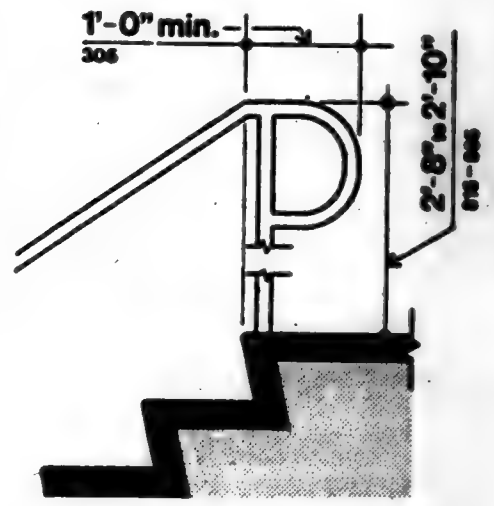

extension handrails 9.5

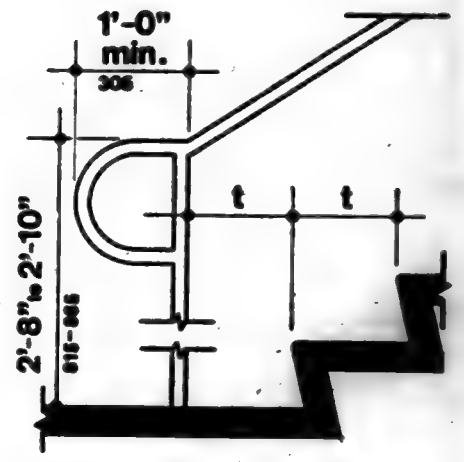

extension handrails 9.6

(iii) *Exception.* Full extension of handrails shall not be required in alterations where such extensions would be hazardous or impossible due to plan configurations.

(2) Gripping surfaces shall not be interrupted with newel posts, balusters, or other obstructions.

(d) *Mounting height.* Mount handrails for accessible stairs and ramps at a height of 2'8" to 2'10" (815 mm to 865 mm) above stair nosing(s) or ramp surface as applicable (see figs. 7.13, 7.14, 7.15, 7.16, 9.6, and 9.7).

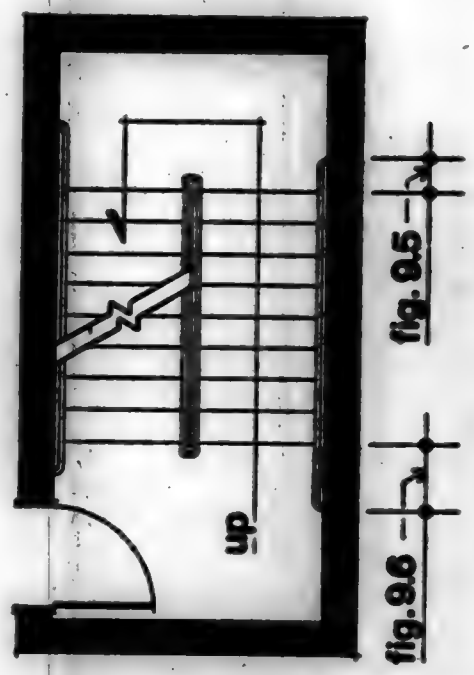

stairway 9.7

(e) *Structural strengths.* Handrails, as installed, shall support a minimum momentary concentrated load applied at the top edge of 200 lbs. (91 kg) horizontally and 30 percent of that load vertically downward. Where the railing system is installed in public assembly occupancies, the loading shall be increased 50 percent.

Handrails shall not rotate within their fittings. Handrails of material other than metal shall meet the same structural requirements.

(f) *Hazards.* Ends of freestanding handrails shall be either rounded or returned smoothly to floor or post (see § 1190.50(c), Protruding objects.)

§ 1190.100 Elevators.

(a) *General.* (1) Elevators required by Subpart C—Scope shall comply with this section. For additional information see the *American National Standard Safety Code for Elevators,*

Dumbwaiters, Escalators and Moving Walks, A17.1, and see also National Elevator Industry, Inc. (NEII) *Suggested Minimum Elevator Requirements for the Handicapped.*

(2) Freight elevators shall not be considered as meeting the requirements of this section.

(b) *Operation and leveling.* Elevators shall be automatic and shall be provided with a self-leveling feature that will automatically bring the car to the floor landing within a tolerance of ½ inch (13 mm) under normal loading and unloading conditions. The self-leveling feature shall, within its zone, be entirely automatic and independent of the operating device and shall correct for overtravel or under-travel and shall maintain the car approximately level irrespective of loading conditions.

(c) *Elevator door operation.* Elevator doors shall be a minimum of 3'0" (915 mm) wide and automatic door controls shall comply with the following requirements:

(1) The minimum acceptable time from notification that a car is answering a hall call until the doors of that car start to close shall be as indicated in fig. 10.1. The travel distance shall be established from a point in the center of the corridor or lobby (maximum of 5'0" (1,525 mm)) directly opposite the farthest hall button to the centerline of the farthest hoistway entrance (fig. 10.2).

distance		time
ft	m	sec
0 to 5	1.5	5
10	3	7
15	4.5	10
20	6	13

door timing 10.1

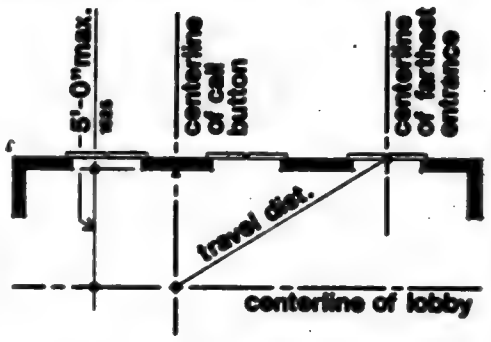

travel distance 10.2

(2) Doors shall remain fully open for a minimum of 5 seconds.

(3) Provide doors with a reopening device which will function to stop and reopen the car door and adjacent hoistway door in case the car door is obstructed while the door is closing. This reopening device shall also be capable of sensing an object or person in the path of a closing door without requiring contact for activation at a nominal height 5 inches and 2'5" (125 mm and 735 mm) above finish floor. Such devices shall remain effective for a period of not less than 20 seconds. For additional information, see ANSI A17.1.

(d) *Elevator cars.* (1) The minimum floor areas of elevator cars shall comply with figures 10.3 and 10.4.

(i) *Exception.* Where existing shaft or structural elements prohibit strict compliance in alteration work, these dimensions may be reduced by the minimum amount necessary, but in no case shall they be less than 4'0" by 4'0" (1,220 mm by 1,220 mm) clear minimum car size.

(ii) [Reserved].

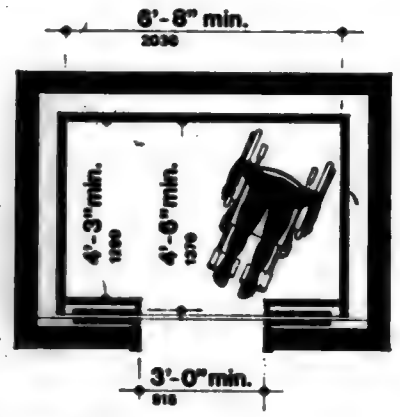

elevator car center opening 10.3

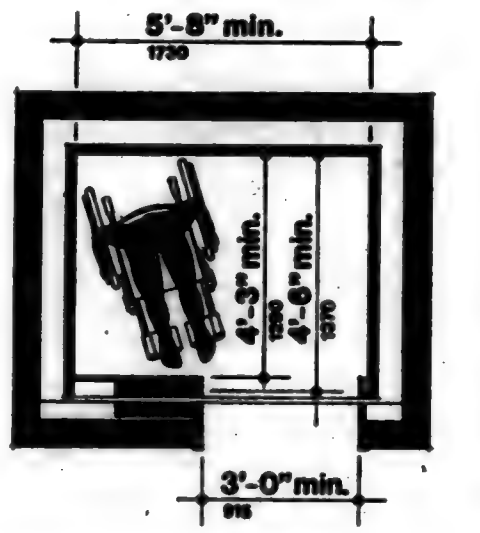

elevator car side opening 10.4

(2) Car floors shall comply with § 1190.50, Walks, floors and accessible routes. The clearance between the car platform sill and the edge of any hoistway landing shall be no greater than 1¼ inches (32 mm).

(3) Car controls shall be readily accessible from a wheelchair.

(i) Buttons, exclusive of border, shall have a minimum dimension of ¾ inch (19 mm) and shall be raised or flush with the operating panel.

(ii) Provide a visual signal indicating when each call is registered and answered.

(iii) Mount the highest floor buttons at a maximum of 4'0" (1,220 mm) above the floor and the lowest buttons at a minimum of 2'11" (880 mm) above the floor (fig. 10.5).

(A) *Exception.* If there is a substantial increase in cost as a result of the 4'0" (1,220 mm) requirement, the highest floor buttons may be mounted at a maximum of 4'6" (1,370 mm).

(B) [Reserved.]

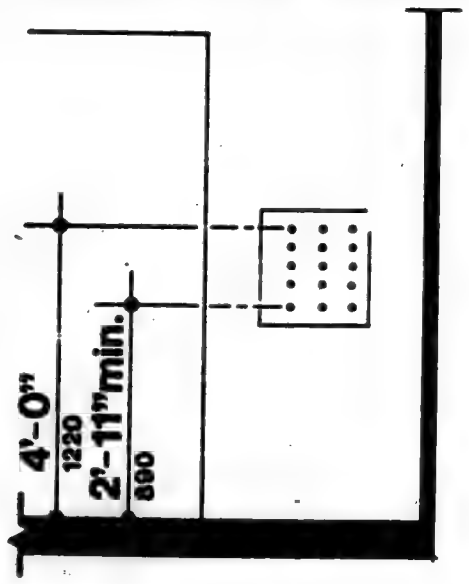

control panel 10.5

(iv) Group emergency buttons at the bottom of the panel with their centerlines no lower than 2'11" (890 mm).

(v) Designate all control buttons by raised standard alphabet characters for letters, arabic characters for numerals, or standard symbols as shown in figure 10.6. For additional information see ANSI A17.1 and see also NEII *Suggested Minimum Elevator Requirements for the Handicapped.* Place raised designations to the immediate left of the button to which they apply. Permanently attached, applied plates are acceptable. Locate the call button for the main entry floor in the left-most column and designate it with a raised star as shown in figure 10.6.

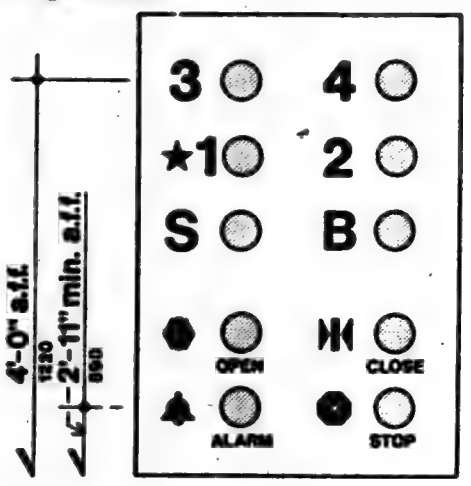

elevator control panel 10.6

(vi) Locate control panels as shown in figures 10.7 and 10.8.

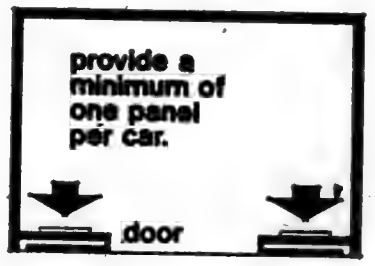

control locations
center opening 10.7

control locations
side opening 10.8

(e) *Door jamb markings.* Provide floor designation markings at each hoistway entrance on both jambs and that comply with the following:

(1) The centerlines of characters shall be located 5'0" (1,525 mm) above finish floor; and

(2) Characters shall be a minimum of 2 inches (50 mm) high and shall comply with § 1190.200, Signage.

(3) Permanently applied plates are acceptable (fig. 10.9).

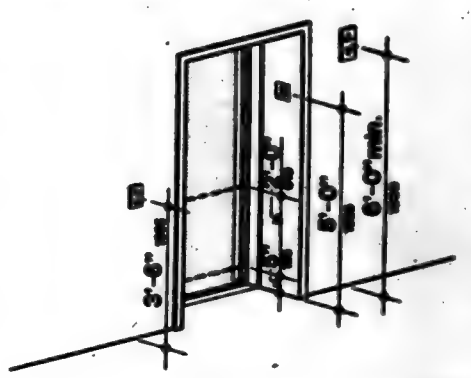

elevator entrance 10.9

(f) *Lobby call buttons.* (1) Call buttons shall:

(i) Be mounted with centerlines at 3'6" (1,065 mm) above finish floor (fig. 10.9);

(ii) Be a minimum of ¾ inch (19 mm) in diameter;

(iii) Have visual signals indicating when a call is registered and answered;

(iv) Be raised or flush; and

(v) Have the button designating "up" mounted on top.

(2) Objects mounted beneath lobby call buttons shall not project into the elevator lobby more than 4 inches (100 mm).

(g) *Hall lanterns.* Provide an audible and visual signal at each hoistway entrance to indicate car arrival and its travel direction.

(1) Audible signals shall sound once for the up direction and twice for the down direction or shall annunciate the words "up" or "down."

(2) Visual signals shall:

(i) Be mounted with their centerlines a minimum of 6'0" (1,830 mm) above finish floor (fig. 10.9);

(ii) Have a minimum dimension of 2½" (64 mm);

(iii) Distinguish between up and down travel directions; and

(iv) Be visible from the vicinity of call buttons.

(3) In-car lanterns mounted on car door jambs and that comply with § 1190.100(e)(2) are acceptable.

(h) Car position indicator and signal. Provide audible and visual car position indicators within each elevator car as follows:

(1) Audible indicators shall:

(i) Signal as the car passes or stops at each landing. Signal shall exceed the ambient noise level by at least 20 decibels with a frequency below 1,500 Hz; or

(ii) Provide an automatic verbal announcement.

(2) Visual indicators shall:

(i) Be located above the car operating panel or over the car door;

(ii) Visually display the floor number as the car passes or stops at a landing;

(iii) Have characters that are a minimum of ½ inches (13 mm) high and that comply with § 1190.200, Signage, except for § 1190.100(c)(2).

(i) *Illumination levels.* Illuminate car controls, platform, car threshold, and landing sill to a minimum of 5 footcandles.

(j) *Intercommunication systems.* If provided, emergency intercommunication systems shall comply with the following:

(1) Locate the highest operable part of the system no higher than 4'0" (1,220 mm) above car floor;

(2) Identify the system with raised lettering or symbols complying with § 1190.200, Signage.

(3) If system employs a handset, provide a 2'5" (735 mm) cord length;

(4) If system is located in a closed compartment, compartment door hardware shall conform to § 1190.170, Controls, and operating mechanisms;

(5) Provide a momentary contact button to allow hearing-impaired individuals to summon assistance.

§ 1190.110 Platform lifts.

(a) *General.* Platform lifts required by Subpart C—Scope, shall comply with this section.

(b) *Requirements.* Platform lifts shall:

(1) Accommodate an occupied wheelchair within the space provisions of § 1190.40, Human data;

(2) Facilitate unassisted entry and exit from the lift in accordance with the provisions of § 1190.50, Walks, floors, and accessible routes;

(3) Have accessible controls complying with § 1190.170, Controls and operating mechanisms; and

(4) Satisfy safety requirements of the agency having responsibility for safety of the facility.

§ 1190.120 Entrances.

(a) *General.* Entrances required to be accessible by Subpart C—Scope shall comply with § 1190.50, Walks, Floors and Accessible Routes; § 1190.120, Entrances; and § 1190.130, Doors.

(b) *Service entrances.* A service entrance is not to be used as the only accessible entrance unless it is the only entrance to the building or facility.

(c) *Access to elevators.* If elevators are provided, an accessible route shall be provided from an accessible entrance to the elevators.

§ 1190.130 Doors.

(a) *General.* Doors required to be accessible by Subpart C—Scope shall comply with this section.

(1) Gates, including ticket gates, shall comply with this section.

(2) In double-leaf doorways, at least one leaf shall comply with this Section and it shall be the active leaf. Double-leaf automatic doors are excepted from the one leaf provision if both leaves are automatic.

(3) Revolving doors or turnstiles are not accessible doors and shall not be the sole means of access at any accessible entrance or on any accessible route. An accessible door shall be provided immediately adjacent to the turnstile or revolving door and shall be subject to the same use pattern as the turnstile or revolving door.

(b) *Clear width.* Provide doorways with clear openings of 2'8" (815 mm) as measured with the door open 90 degrees between the face of the door and the latch side stop (figs. 13.1, 13.2, and 13.3). Openings deeper than 2'0" (610 mm) shall be a minimum of 3'0" (915 mm) wide (fig. 4.1).

(1) *Exception.* If a space and the elements within that space comply with the requirements of § 1190.40, Human Data, and the user does not require full passage into that space, then the opening to that space may be a minimum of 1'8" (510 mm) wide.

(2) [Reserved]

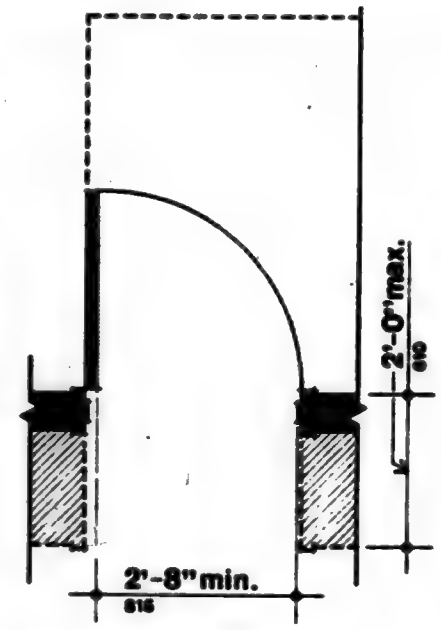

hinged 13. 1

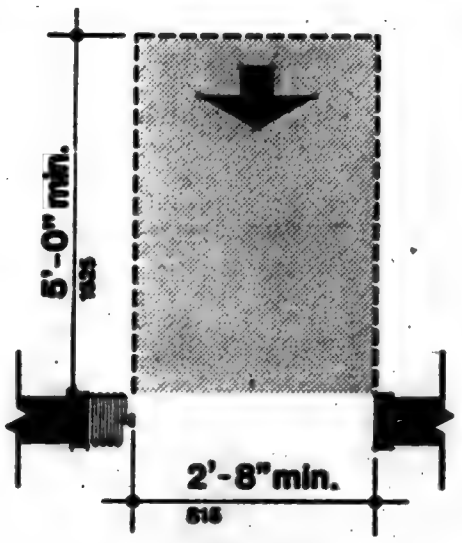

folding 13. 3

(c) *Maneuvering space.* Provide the following space at all non-automatic and non-power-assisted doors:

(1) At doors allowing front approach only, maneuvering space shall be as shown in figures 13.2, 13.3, and 13.4. The minimum maneuvering space (*i.e.*, latch side clearance) required for a hinged opening is 1'6" (455 mm), but 2'0" (600 mm) is recommended where space is available.

(i) *Exception.* Front approach entry doors to acute care hospital patient bedrooms shall be exempt from the 1'6" (455 mm) requirement of § 1190.130(c)(1) latch side clearance shown in figure 13.4 if the door is at least 3'8" (1,120 mm) wide.

(ii) [Reserved]

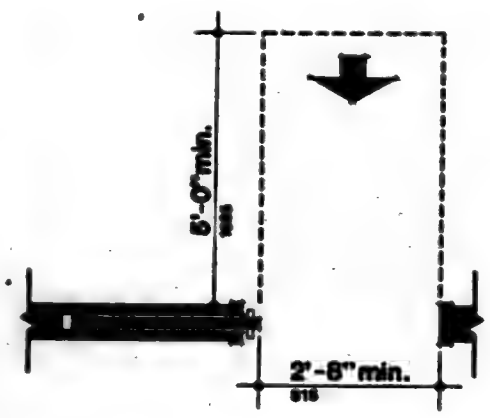

sliding 13. 2

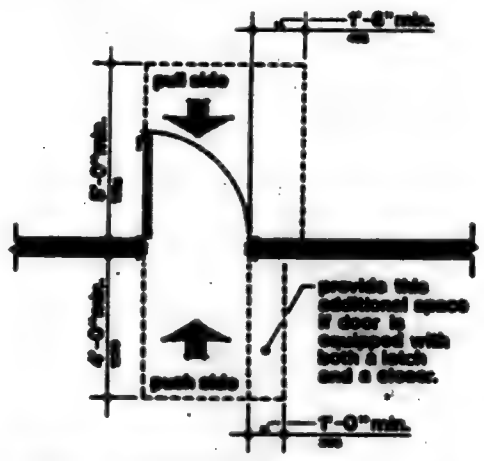

front approach 13. 4

(2) At doors allowing hinge side approach only, maneuvering space shall be as shown in figure 13.5.

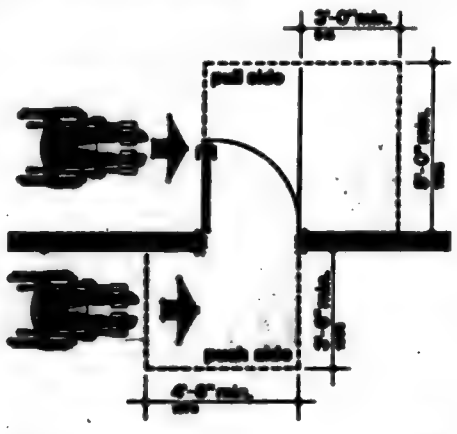

hinge approach 13.5

(3) At doors allowing latch side approach only, maneuvering space shall be as shown in figure 13.6.

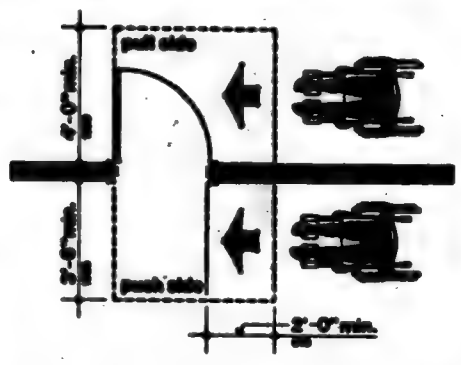

latch approach 13.6

(4) The floor or surface area within the required maneuvering space shall be clear and shall comply with § 1190.50(i), Ground and floor surfaces. It shall have a slope in any direction no greater than 1:48 (¼ inch per foot).

(d) *Doors in series.* Between any two hinged or pivoted doors in series, provide a minimum of 4'0" (1,220 mm) plus the width of any door swinging into the space. Opposing doors shall not swing towards each other, into the intervening space (see figs. 13.7 and 13.8).

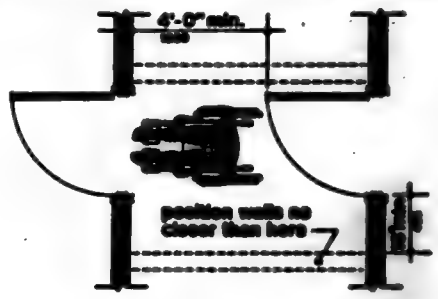

doors in series 13.7

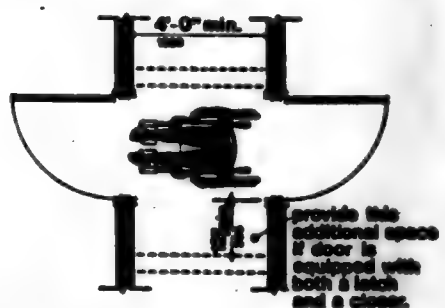

doors in series 13.8

(e) *Thresholds.* Raised thresholds, if provided, shall be beveled with a slope not to exceed 1:2 and with heights not exceeding the following:

(1) Exterior sliding doors: ¾ inch (19 mm) maximum.

(2) Other doors: ½ inch (13 mm) maximum. Bevel not required if less than ¼ inch (6 mm).

(f) *Hardware.* Provide handles, pulls, latches, locks and other operating hardware that are easy to grasp with one hand and that do not require twisting of the wrist, tight grasping, or tight pinching to operate. Acceptable designs include, but are not limited to, lever-operated hardware, push-type hardware, and U-shaped handles. Operating hardware shall be exposed and usable from both sides when sliding doors are fully open. Mount no operating hardware higher than 4'0" (1,220 mm) above finish floor.

(1) *Exception.* Mortise and surface mounted bolts used to secure the inactive leaf of a double leaf door without center mullion may be mounted at any height.

(2) [Reserved]

(g) *Doors to hazardous areas.* Provide a textured surface on any door handle, knob, pull, or other piece of operating hardware on doors that lead to areas that may prove hazardous to blind people. Such areas may include, but are not limited to, loading platforms, mechanical equipment rooms, stages, and similar spaces. Textured surfaces may be achieved by knurling, roughening, or applying materials on the hand contact surface. Do not provide textured surfaces on hardware leading to emergency egress or on any doors other than those leading to hazardous areas.

(h) *Closers and opening forces.* (1) Door closers, if provided, shall have a sweep period adjusted so that from a position of 70 degrees open it will take the door a minimum of 5 seconds to reach a point 3 inches (75 mm) from the door jamb, measured from the leading edge of the door.

(2) Maximum pushing or pulling opening forces for doors shall be as follows:

(i) Exterior hinged doors: [Reserved]

(ii) Interior hinged doors: 5 lbs (2.3 Kg)

(iii) Sliding or folding doors: 5 lbs (2.3 Kg)

(iv) Adjust fire doors for the minimum opening and closing forces required by the agency having responsibility for the safety of the facility.

(v) Power-assisted doors: Comply with paragraph 1190.130(g)(2) for closing force. These forces do not apply to forces required to retract or disengage latch bolts or other latching devices.

(i) *Automatic doors.* If automatic pedestrian doors are provided:

(1) They shall not open to back check in less than 5 seconds; and

(2) They shall not require more than 15 lbs (6.8 Kg) to stop door movement;

(3) See the *American National Standard for Power-Operated Pedestrian Doors,* ANSI A156.10 (latest edition) for additional information on the requirements for both standard and custom designed installations. Paragraph 1.1.1 of the ANSI publication contains information on slow opening, low powered automatic pedestrian doors.

§ 1190.140 Windows [Reserved]

§ 1190.150 Toilet and bathing facilities.

(a) *General.* Toilet rooms and bathing facilities required to be accessible by Subpart C—Scope shall comply with this section.

(1) *Exception.* Where alterations to existing facilities make strict compliance with § 1190.150 structurally impracticable, the addition of one

"unisex" toilet per floor containing one water closet and one lavatory that complies with § 1190.150(b) located adjacent to existing facilities will be acceptable in lieu of making existing toilet facilities for each sex accessible.

(2) [Reserved]

(b) *Doors.* Doors to toilet rooms and bathing facilities shall:

(1) Comply with § 1190.130, Doors; and

(2) Not swing into clear floor spaces required at fixtures.

(c) *Clear turning space.* Each accessible toilet room and bathing facility shall have an unobstructed turning space that:

(1) Complies with § 1190.40(b)(3);

(2) Adjoins an accessible route complying with § 1190.50, Walks, floors, and accessible routes; and

(3) May overlap the accessible route and clear floor space at fixture(s).

(i) *Exception.* In toilet rooms with one water closet, doors in a clear floor area that is 2'6" by 5'0" (815 mm by 1525 mm) may be provided in lieu of a clear turning space.

(ii) [Reserved]

(d) *Signage.* Signage required by Subpart C—Scope that identifies accessible toilet rooms and bathing facilities shall comply with § 1190.200, Signage.

(e) *Toilet fixtures and accessories*—(1) *Water closets.* Accessible water closets shall:

(i) Be provided with clear floor access spaces complying with figures 15.1, 15.2, 15.3 and 15.4 for fixtures not mounted in stalls. Clear floor space may be provided to allow either left-handed or right-handed approach.

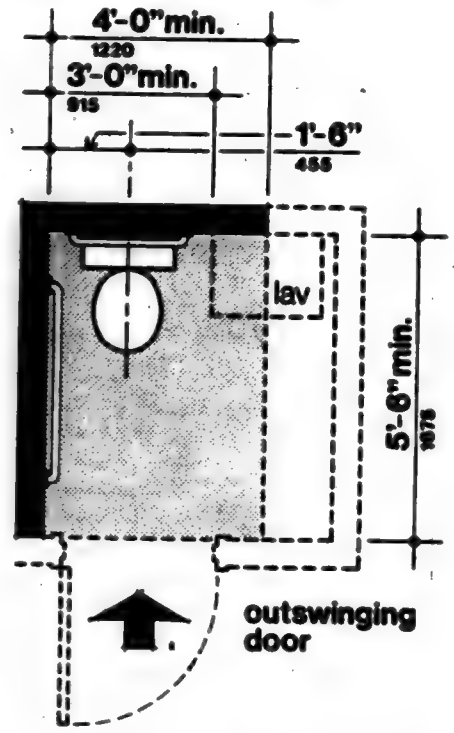

clear floor space (right-hand approach) 15.1

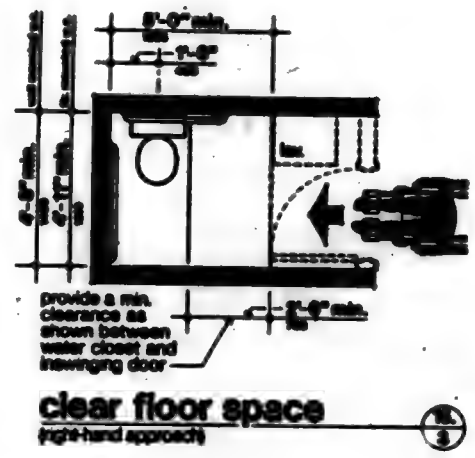

clear floor space (right-hand approach) 15.3

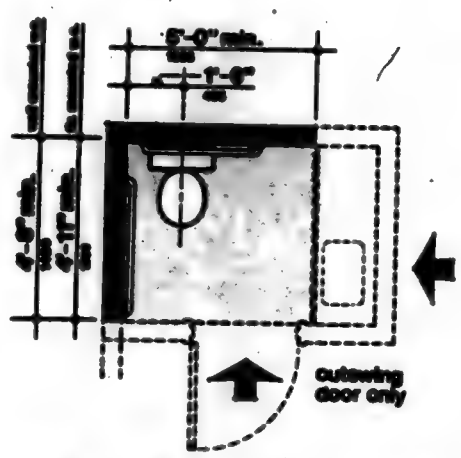

clear floor space (right-hand approach) 15.4

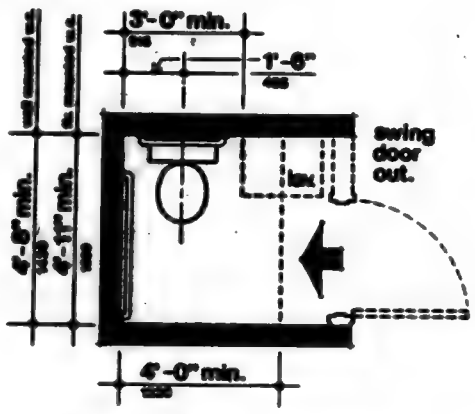

clear floor space (right-hand approach) 15.2

(ii) Have top of seats mounted 1'5" to 1'7" (430 mm to 485 mm) above finish floor (see figs. 15.5 and 15.6). Seats shall not be sprung to return to a lifted position when not in use.

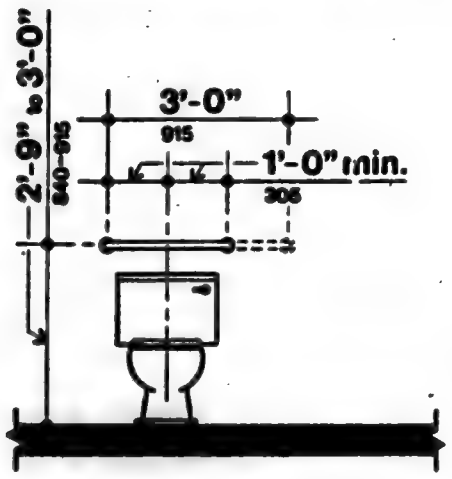

rear wall elevation
without stall
15. 5

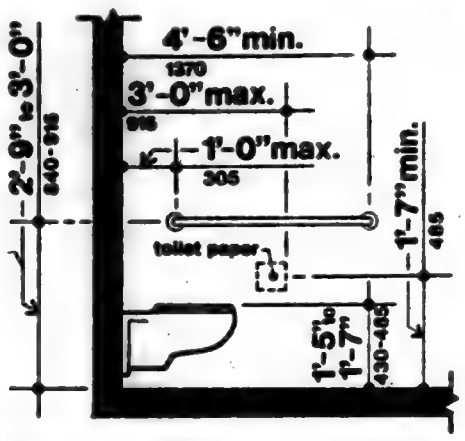

side wall
without stall or alternate stall
15. 6

(iii) Have automatic or hand-operated flush controls complying with § 1190.170, Controls and operating mechanisms. Mount controls for use from the wide side of access area and no higher than 3'6" (1,120 mm) above finish floor.

(iv) Have toilet paper dispensers mounted as shown in figure 15.6. Do not use dispensers that control delivery or that do not permit continuous paper flow.

(v) Have grab bars mounted of the length and positioning as shown in figures 15.1, 15.2, 15.3, 15.4, 15.5, and 15.6.

(2) *Toilet stalls.* Accessible toilet stalls shall:

(i) Have a water closet complying with § 1190.150(b)(1); and

(ii) Be of the size and arrangement as shown in figure 15.7. Stall configuration may be reversed for left or right-handed approach.

(A) *Exception.* In instances of alteration work where provision of a standard stall (fig. 15.7) is structurally impractical or plumbing fixture code requirements prevent combining existing stalls to provide space, an alternate stall (fig. 15.8) may be provided in lieu of the standard stall.

(B) [Reserved]

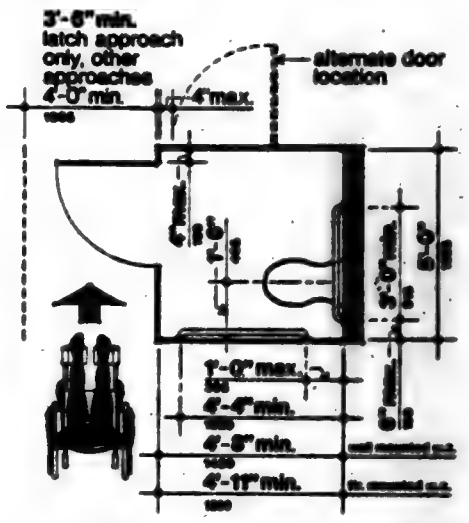

standard stall
(left-hand approach)
15. 7

(iii) Have toe clearances at the front partition and at least one side partition of 9 inches (230 mm) above finish floor. If stall depth is greater than 5'0" (1,525 mm), then toe clearance is optional.

(iv) Have doors that comply with § 1190.130, Doors, and that are outswinging; and have the symbol of access affixed to the outside of door.

(A) *Exception.* If toilet stall approach is from the latch side of the stall door, clearance between the door side of the stall and any obstruction may be reduced to a minimum of 3'6" (1,065 mm).

(b) [Reserved]

(v) Have grab bars mounted of the length and positioning shown in figures 15.7, 15.8, 15.9, and 15.10

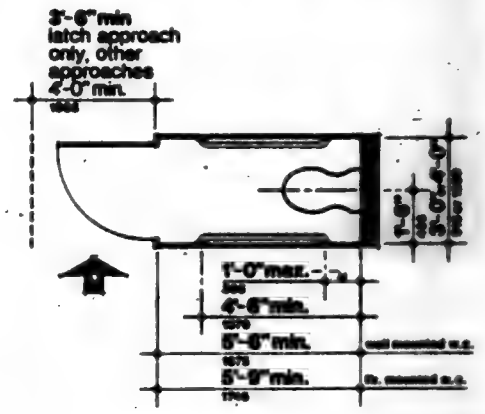

alternate stall
15. 8

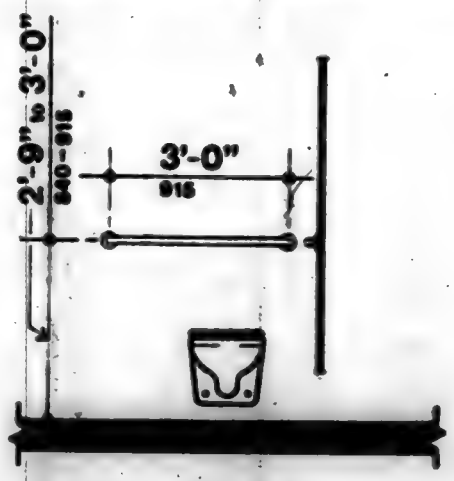

rear wall elevation
standard stall
15. 9

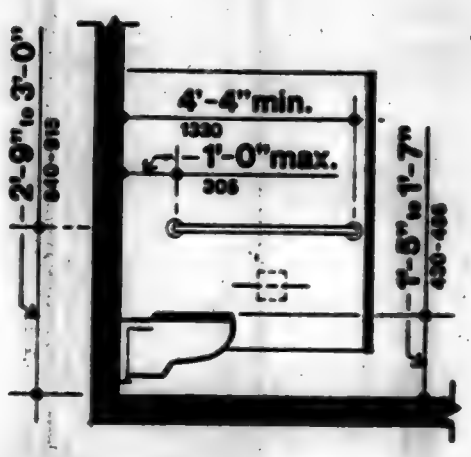

side wall
standard stall
15. 10

(3) *Urinals.* Accessible urinals shall:

(i) Have a clear floor space that complies with § 1190.40, Human data.

(A) *Exception.* Urinal shields that do not extend beyond the front edge of the urinal rim may be provided with 2'5" (735 mm) clearance between them (fig. 15.11).

(B) [Reserved]

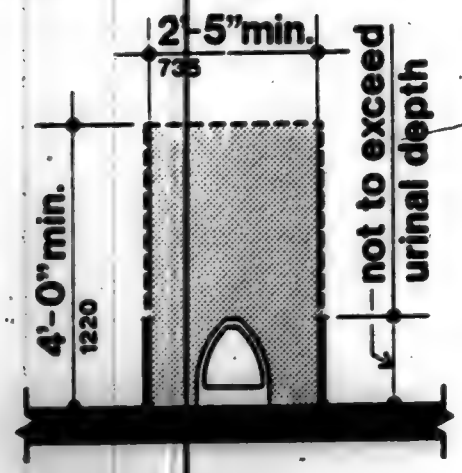

urinal shields 15.11

(ii) Be floor mounted stall type or wall-hung with an elongated rim mounted at 1'5" (430 mm) maximum above finish floor (fig. 15.12).

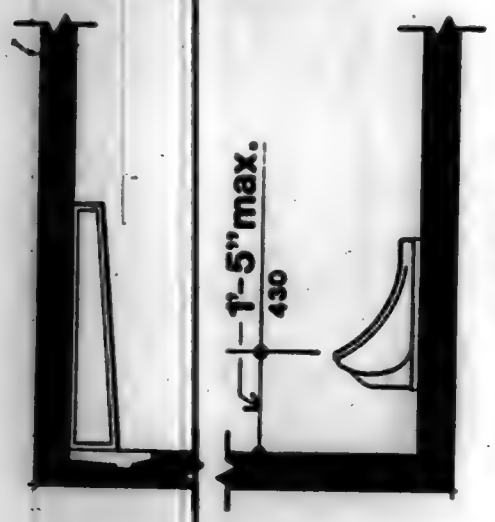

urinals 15.12

(iii) Have automatic or hand-operated controls complying with § 1190.170, Controls and operating mechanisms, and mounted no higher than 3'8" (1,120 mm) above finish floor.

(4) Lavatories and sinks. Lavatories and sinks shall meet the following requirements:

(i) Mount lavatories with the rim or counter surface no higher than 2'10" (865 mm) above finish floor. Provide knee space between bottom of apron and finish floor of at least 2'5" (735 mm) high, 2'6" (760 mm) wide and 1'7" (485 mm) deep (fig. 15.13).

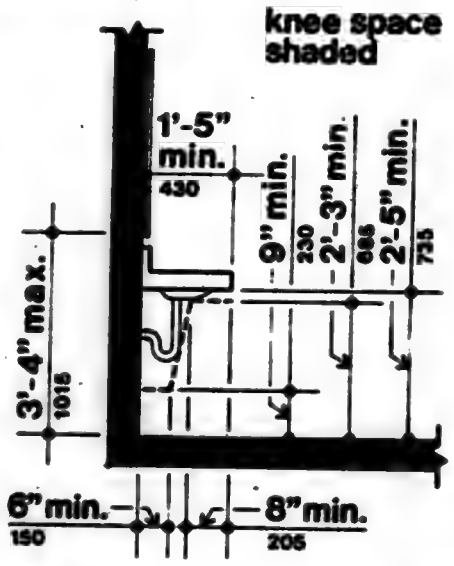

lavatory 15.13

(ii) Mount sinks with the rim or counter surface no higher than 2'10" (865 mm) above finish floor. Provide knee space under the sink of at least 2'3" (685 mm) high, 2'6" (760 mm) wide and 1'7" (485 mm) deep. Sink bowls shall be a maximum of 6½ inches (165 mm) deep (fig. 15.14).

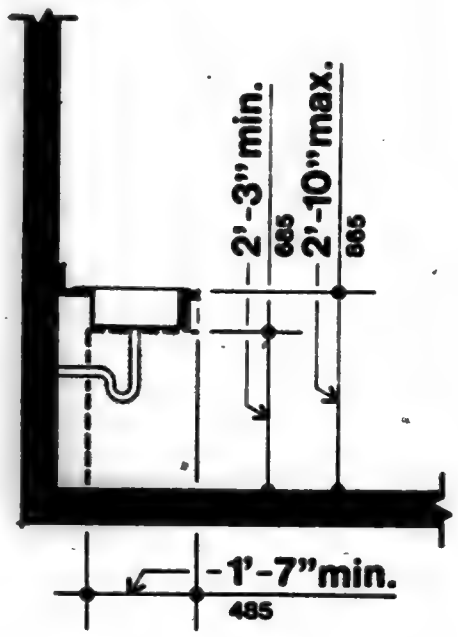

sink 15.14

(iii) Clear floor space permitting front approach shall comply with § 1190.40, Human Data. Clear floor space and knee space shall overlap 1'7" (485 mm) maximum (fig. 15.15).

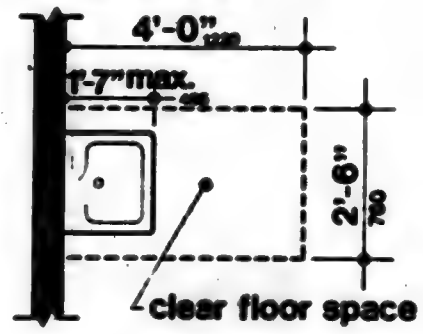

lavatory 15.15

(iv) Insulate or cover hot water and drain lines. Allow no sharp or abrasive surfaces to remain exposed under accessible lavatories or sinks.

(v) Acceptable faucet control designs include lever-operated, push type, touch-type, and electronically controlled mechanisms that comply with § 1190.170, Controls and operating mechanisms.

(A) *Exception.* Self-closing valves are permitted at lavatories if the faucet remains open for at least 10 seconds.

(B) [Reserved]

(5) Mirrors. Mount mirrors with the bottom edge of reflecting surface no higher than 3'4" (1,015 mm) above finish floor (fig. 15.13).

(6) Controls, dispensers, receptacles, or other equipment. Accessible equipment shall comply with § 1190.70, Controls and operating mechanisms.

(f) *Bathing facilities.* Bathtubs or showers shall:

(1) Have clear access space as shown in figures 15.16 to 15.20.

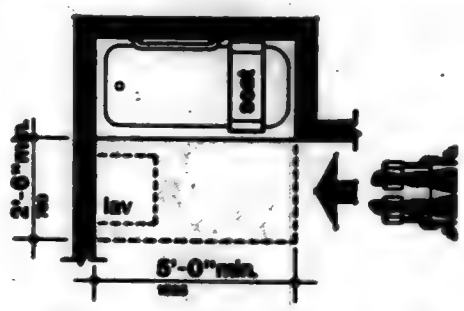

clear floor space with in-tub seat 15.16

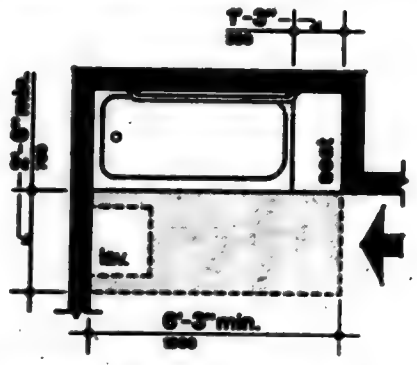

clear floor space
with ledge seat
15.17

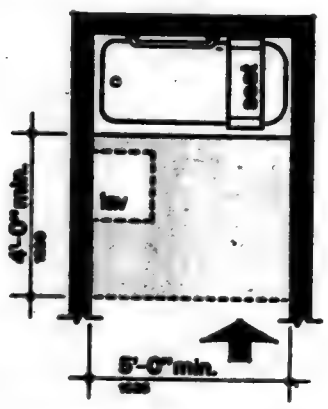

clear floor space
with in-tub seat
15.18

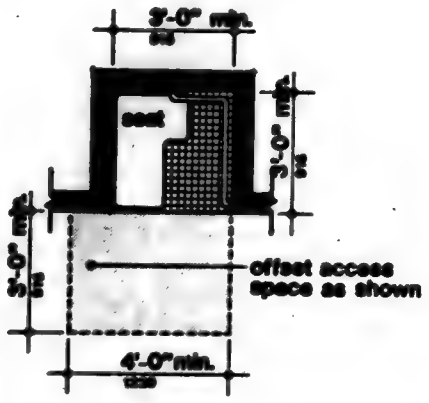

transfer stall
15.19

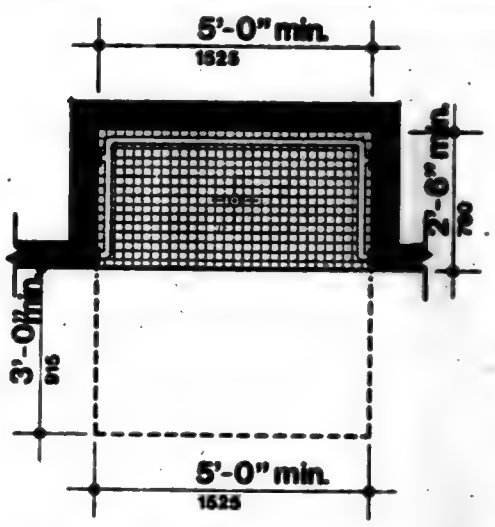

roll-in stall
15.20

(2) Have seats provided as shown in figures 15.16 to 15.19, 15.24 and 15.26 to 15.28. Seats and their attachments shall safely support a 250 lbs (114 Kg) continuous live load without sustaining permanent deflection. Seats shall not move when mounted during use. In-tub sets shall be portable.

(3) Have grab bars mounted of the length and positioning shown in figures 15.16 to 15.32.

(4) Have faucets and controls complying with § 1190.170, Controls and Operating Mechanisms, located as shown in figures 15.21, 15.29, and 15.31.

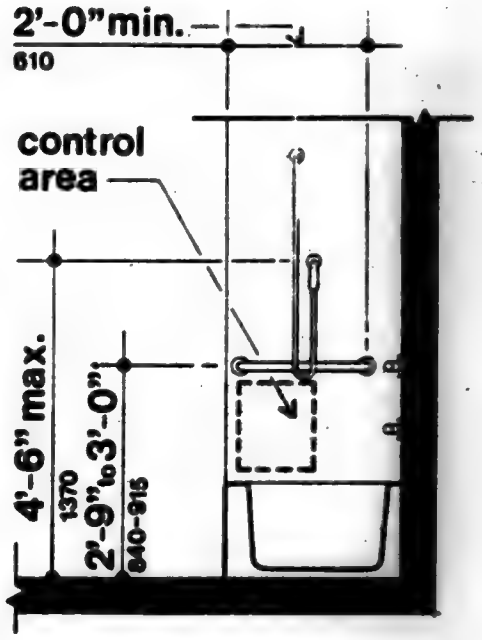

foot
15.21

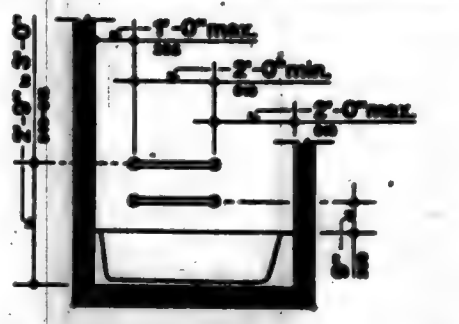

bathtub back
with in-tub seat
15.22

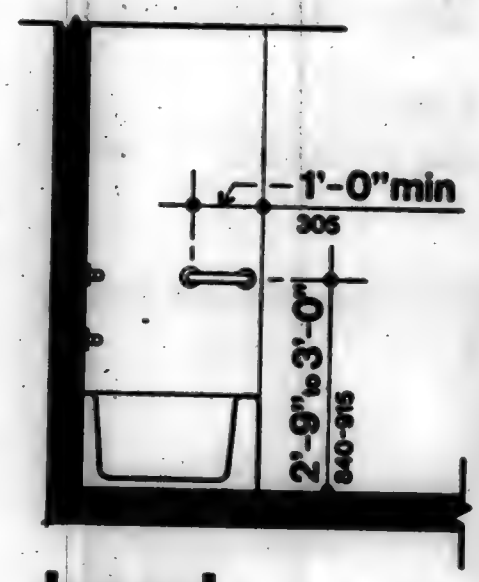

head
with in-tub seat
15.23

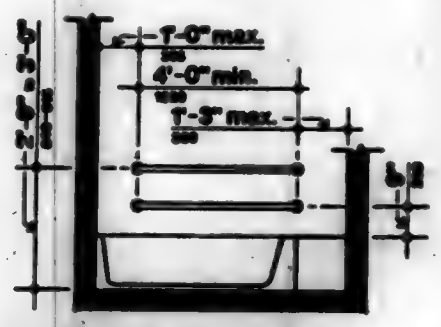

bathtub back
with ledge seat
15.24

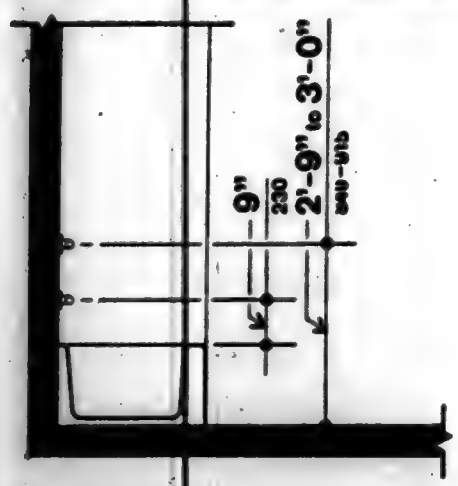

head
with ledge seat — 15.25

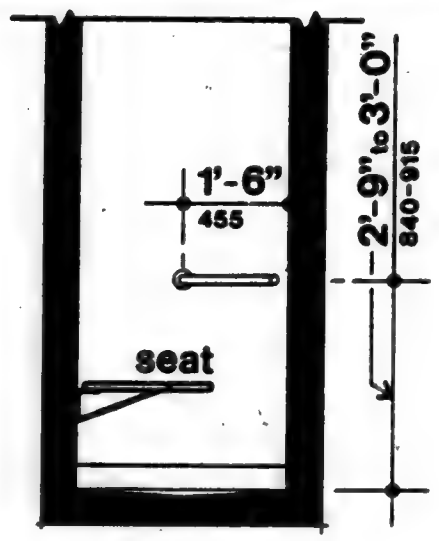

back
transfer shower — 15.27

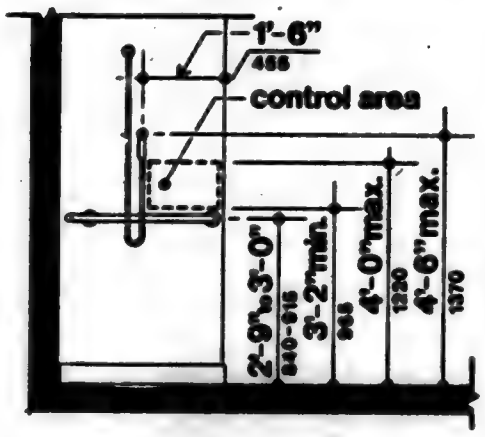

control wall
transfer shower — 15.29

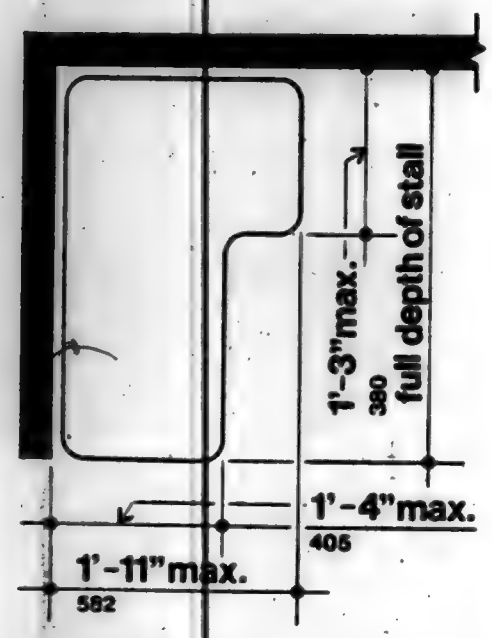

seat
transfer shower — 15.26

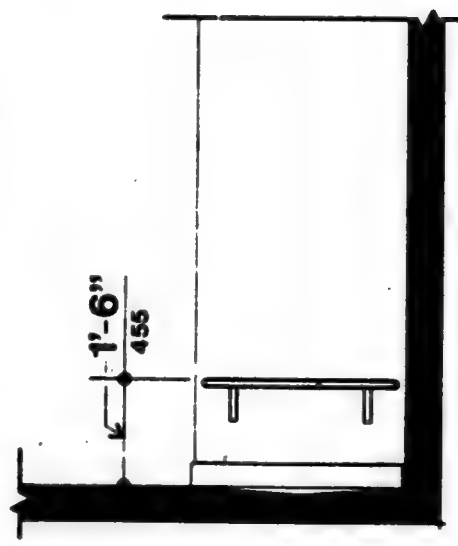

seat wall
transfer shower — 15.28

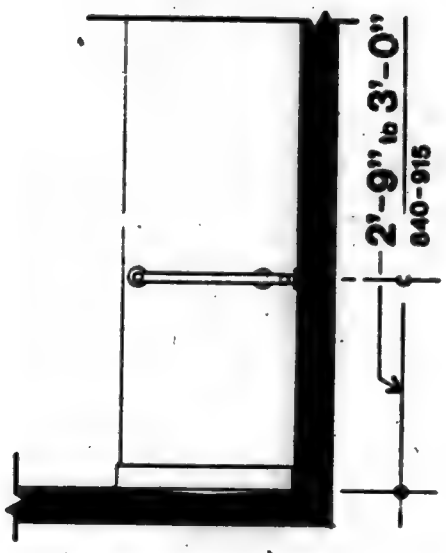

side
roll-in shower — 15.30

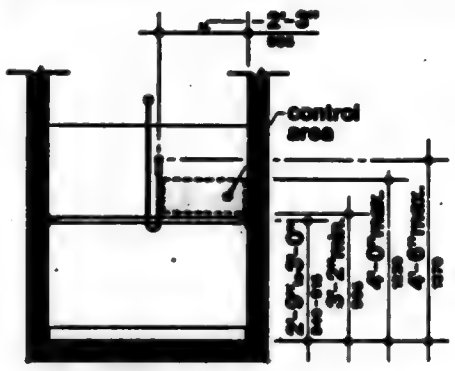

control wall
roll-in shower
15.31

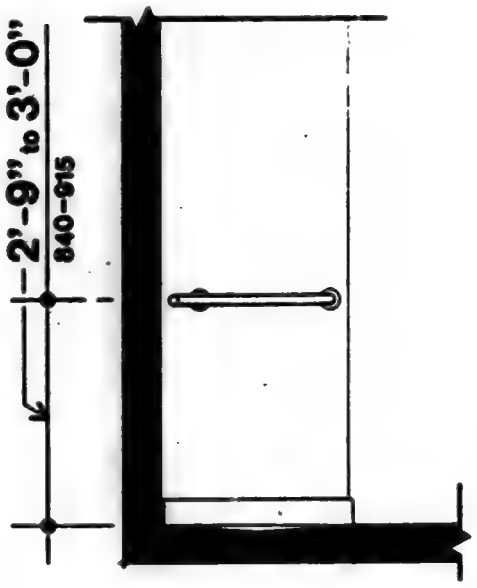

side
roll-in shower
15.32

(5) Have a shower spray unit with a flexible hose a minimum of 5'0" (1,525 mm) long that is usable as a fixed shower head and as a hand-held shower.

(i) *Exception.* In unmonitored facilities where vandalism is a concern, a fixed shower head mounted at 4'0" (1,220 mm) above the tub bottom may be used in lieu of the hand-held unit.

(ii) [Reserved]

(6) Have enclosures, if provided, that do not obstruct transfer from wheelchairs onto seats or into tubs or access to controls from clear floor spaces. Bathtub enclosures shall not have tracks mounted on the bathtub rims.

(7) Have shower curbs or thresholds no higher than ½ inch (13 mm) beveled.

(g) *Grab bars.* Grab bars for accessible toilet and bathing fixtures shall:

(1) Have a diameter or width of the gripping surfaces that is 1¼ inches to 1½ inches (32 mm to 38 mm).

(2) Have a 1½ inch (38 mm) (maximum/minimum) clear space between the bar and the mounting surface (fig. 15.33).

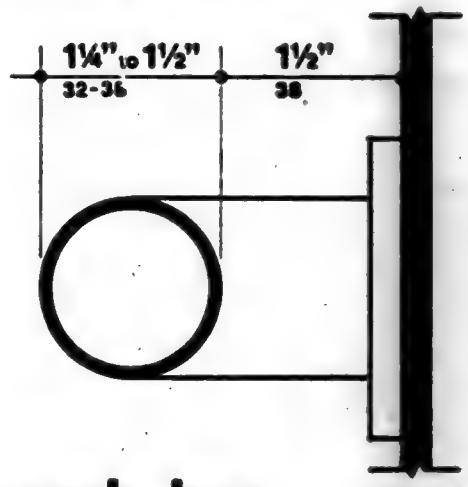

grab bar
15.33

(3) As installed, support a minimum concentrated load of 250 lb. (114 Kg).

(4) Not rotate in their fittings.

§ 1190.160 Drinking fountains and water coolers.

(a) *General.* Drinking fountains and coolers required by Supbart C—Scope shall comply with this section.

(b) *Clearances.* Drinking fountains and water coolers shall have clear floor or ground spaces that comply with § 1190.40, Human data, and shall be:

(1) Cantilevered units with a clear space allowing a forward approach and having a knee space under the unit that is at least 2'3" (685 mm) high, 2'6" (760 mm) wide, and 1'5" (202 mm) deep (figs. 16.1 and 16.2); or

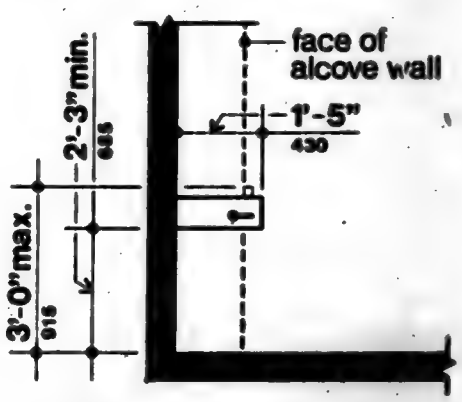

cantilevered
drinking fountain
16.1

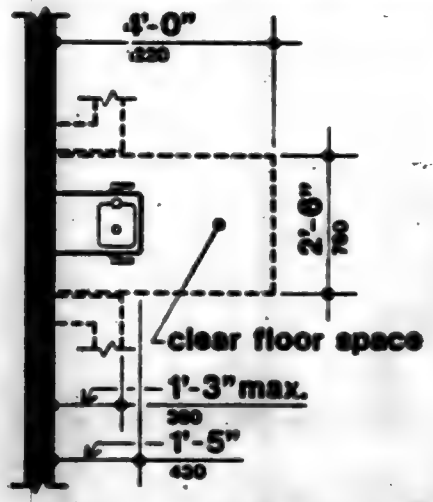

cantilevered
drinking fountain
16.2

(2) Free-standing or built-in units with a clear space allowing a parrallel approach and not having knee-space (figs. 16.3 and 16.4 and 16.5).

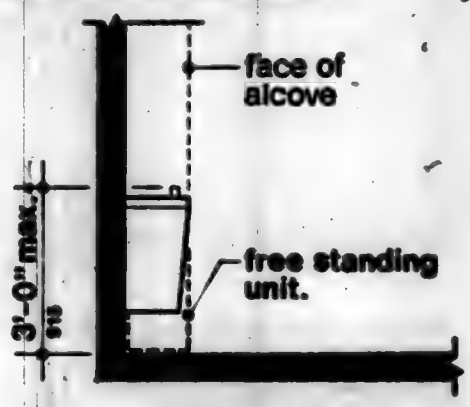

free standing or wall hung
drinking fountain
16.3

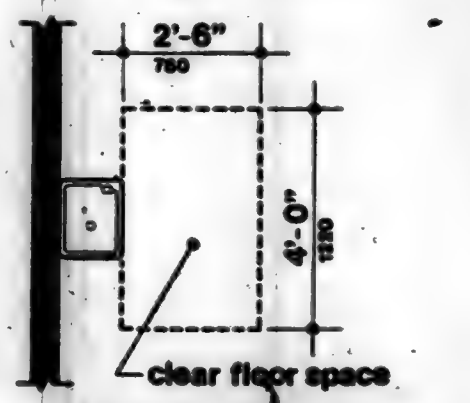

free standing or wall hung
drinking fountain
16.4

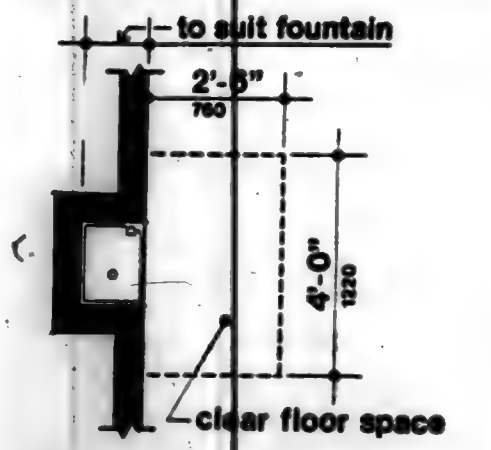

built in drinking fountain 16. 5

(c) *Spouts of drinking fountains and water-coolers.* Spouts shall:

(1) Be mounted no higher than 3'0" (915 mm) above the finish floor, measured to the spout outlet.

(2) Be at the front of the unit and shall direct water flow trajectory parallel or nearly parallel the front of the unit.

(3) Direct water flow at least 4 inches (100 mm) above the unit basin to facilitate cup or glass insertion.

(d) *Controls.* Unit control shall be front mounted or side mounted near the front edge and shall comply with § 1190.170, Controls and operating mechanisms.

§ 1190.170 Controls and operating mechanisms.

(a) *General.* Controls and operating mechanisms required to be accessible by Subpart C—Scope shall comply with this section.

(b) *Location requirements.* Controls and operating mechanisms shall adjoin clear floor or ground space complying with § 1190.40, Human data. Mount controls and operating mechanisms in compliance with approach direction and reach limitations specified in paragraphs 1190.40(c), Clear floor or ground space, and § 1190.40(d), Reach limitations (figs. 17.1 and 17.2).

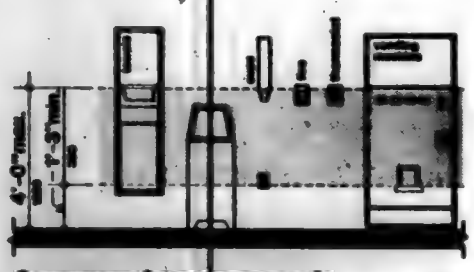

forward approach 17. 1

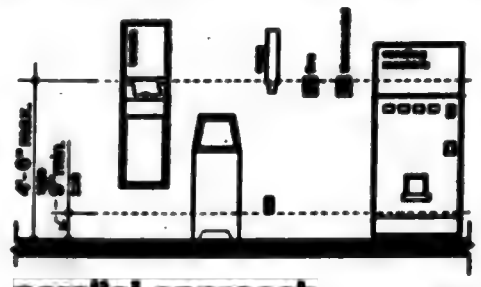

parallel approach 17. 2

(c) *Operation.* Controls and operating mechanisms shall be operable with one hand and shall not require tight grasping, pinching, or twisting of the wrist. The force required to activate controls shall be no greater than 5 lbs. of force (2.2 Kg).

(d) *Specialized equipment.* If specialized mechanical, electrical, or process equipment has inherent functional requirements which dictate location or force requirements other than those specified in this section, locate the equipment as dictated by its functional requirements.

§ 1190.180 Alarms.

(a) *General.* Alarm systems required to be accessible by Subpart C—Scope shall comply with this section.

(b) *Audible alarms.* Audible alarms shall produce a sound pressure level that exceeds ambient room or space noise by 15 decibels or any maximum noise level of 30 seconds duration by 5 decibels, whichever is greater.

(c) *Visual and other sensory alarms.* If audible alarms are provided, then in addition, provide a visual alarm device adjacent to or within each exit sign which flashes in conjunction with audible alarms and operates from the same power source. Flash frequency of visual alarms shall be less than 5 Hz.

(1) *Exception.* Specialized systems utilizing advanced technology will be considered on a case-by-case basis.

(2) [Reserved]

(d) *Pull Stations.* Alarm pull stations shall comply with § 1190.170, Controls and operating mechanisms.

§ 1190.190 Tactile Warnings. [Reserved]

Note.—For information on tactile warnings, see ANSI A117-1 (1980), Section 4.29.

§ 1190.200 Signage.

(a) *General.* Information and identification of elements and spaces as required by Subpart C—Scope shall comply with this section.

(1) *Exception.* The provisions of § 1190.200(c) are not mandatory for temporary information on room and space signage.

(2) [Reserved]

(b) *Character proportion and contrast.* Letters and numbers on sign systems shall:

(1) Have a width-to-height ratio of between 3:5 and 1:1.

(2) have a stroke width-to-height ratio of between 1:5 and 1:10.

(3) Contrast in value with their backgrounds, preferably light letters on a dark background.

(4) Have a matte finish on a matte finish background.

(c) *Raised or incised characters.* Provide numbers and letters that are:

(1) Raised or incised from the background surface ⅛s inch (0.8 mm). Also incise or raise symbols and pictographs in this manner.

(2) Between ⅝ inch (16 mm) and 2 inches (50 mm) high.

(3) Sans serif with sharply defined edges.

(4) If incised, provided with at least a ¼ inch (6 mm) stroke width.

(d) *Mounting location and height.* Signage shall be placed in a standardized location throughout a building or facility as follows:

(1) Interior signage shall be located alongside of the door on the latch side and shall be mounted at between 4'6" and 5'6" (1,370 mm and 1,675 mm) above finish floor (fig. 20.1).

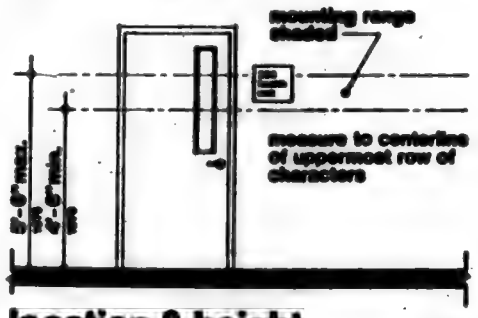

location & height 20. 1

(2) Exterior signage shall be installed at entrances and walks to direct individuals to accessible routes and entrances as required.

(e) *Symbol of accessibility.* Identification of accessible facilities as required by Subpart C—Scope shall be by means of the International Symbol of Accessibility. Display as shown in figures 20.2 and 20.3. Provide symbols of the following minimum dimensions:

Size	Location	Viewing distance
2½ in. (65 mm)	Interior	Up to 30 ft. (9 m).
4 in. (100 mm)	Interior	Greater than 30 ft. (9 m).
4 in. (100 mm)	Exterior	Up to 60 ft. (18 m).
8 in. (200 mm)	Exterior	Greater than 60 ft. (18 m).

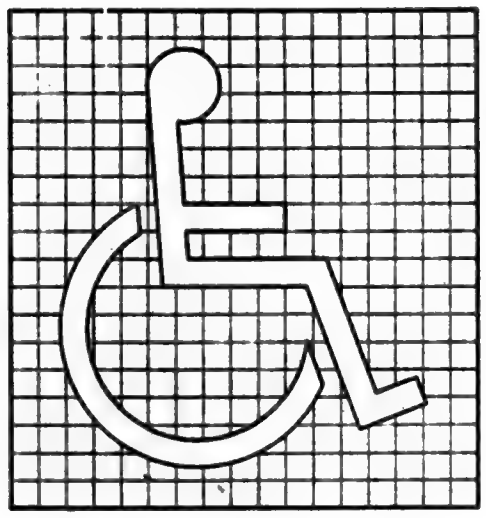

international symbol 20.2

display conditions 20.3

§ 1190.210 Telephones.

(a) *General.* Public telephones and related equipment required to be accessible by Subpart C—Scope shall comply with this section.

(b) *Clear floor or ground space.* Clear floor or ground spaces that comply with § 1190.40, Human data, shall be provided at each telephone (figs. 21.1, 21.2, and 21.3). These clear spaces shall not be restricted by installation of bases, fixed seats, or enclosures.

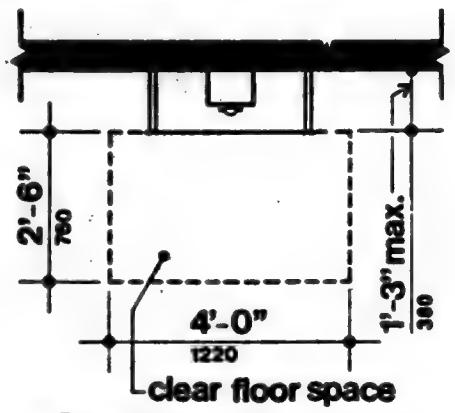

plan telephone 21.1

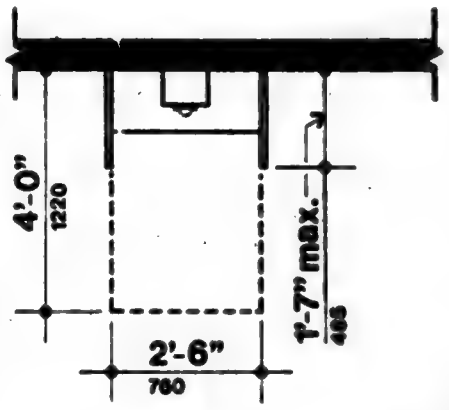

plan telephone 21.2

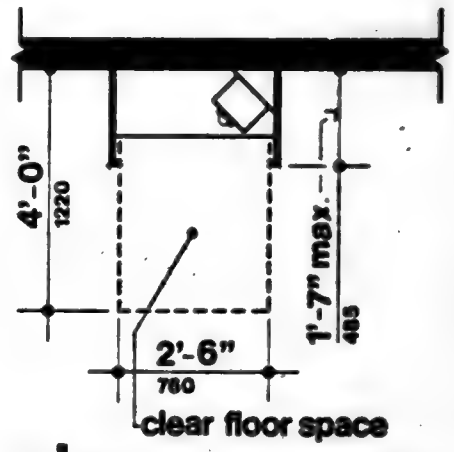

plan telephone 21.3

(c) *Equipment characteristics.* Telephone equipment shall:

(1) Have the highest operable control, including but not limited to dial and coin slot, located at a maximum of 4'6" (1,370 mm) above finish floor for side reach (fig. 21.4); and 4'0" (1220 mm) for forward and diagonal reach (figs. 21.5 and 21.6).

(i) *Exception.* If banks of telephones are provided, a minimum of one telephone per bank shall have the highest operable control at 4'0" (1220 mm).

(ii) [Reserved]

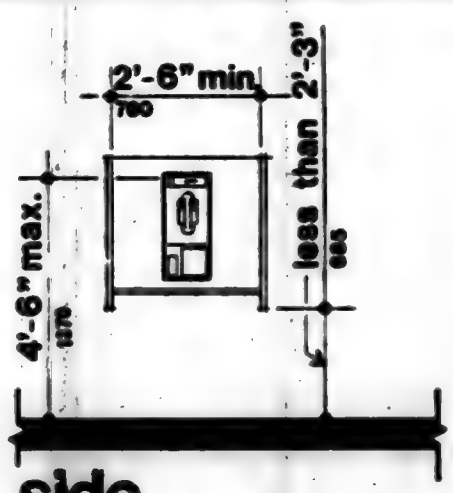

side reach telephone 21.4

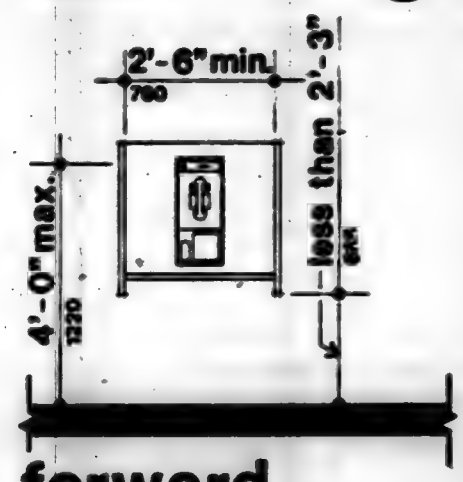

forward reach telephone 21.5

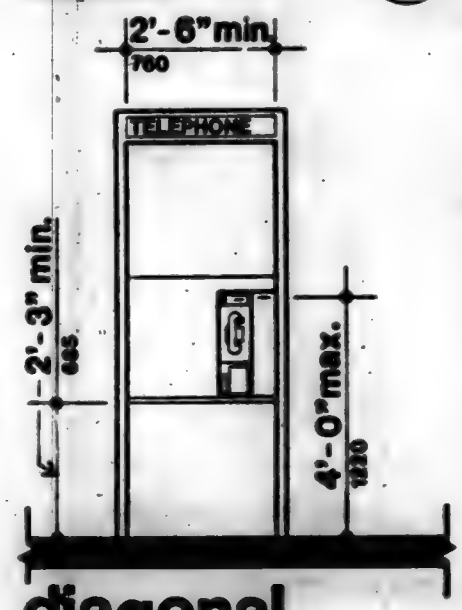

diagonal reach telephone 21.6

(2) Have push button controls where service by such equipment is available.

(3) Have a minimum handset cord length of 2'5" (735 mm).

(4) Have telephone books, if provided, located in a position that complies with § 1190.40, Human data.

(d) *Equipment for hearing impaired people.* Telephone receivers shall generate a magnetic field in the area of the receiver cap. Volume controls shall be provided in accordance with Subpart C—Scope.

§ 1190.220 Seating, tables, and work surfaces.

(a) *General.* Fixed seating spaces, tables, or work surfaces required to be accessible by Subpart C—Scope shall comply with this section.

(b) *Clearances.* Seating spaces for people in wheelchairs at tables, counters, or work surfaces shall:

(1) Have a clear floor or ground spaces that comply with § 1190.40, Human data.

(2) Have knee spaces that are least 2'3" (685 mm) high, 2'6" (760 mm) wide, and 1'7" (485 mm) deep. Clear access space and knee space may overlap 1'7" (fig. 15.15).

(3) Have table tops or work surfaces mounted between 2'4" to 2'10" (710 mm to 865 mm) above finish floor.

§ 1190.230 Assembly areas.

(a) *General.* Assembly areas required to be accessible by Subpart C—Scope shall comply with this section.

(b) *Size and location of viewing positions.* Accessible viewing positions shall:

(1) Provide minimum, level clear floor or ground areas as shown in figures 23.1 and 23.2.

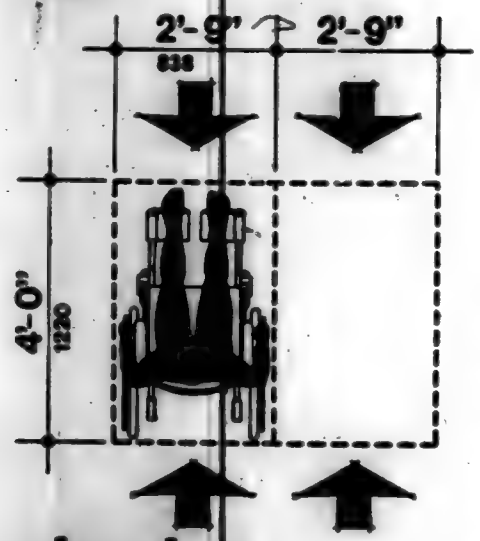

viewing positions 23.1

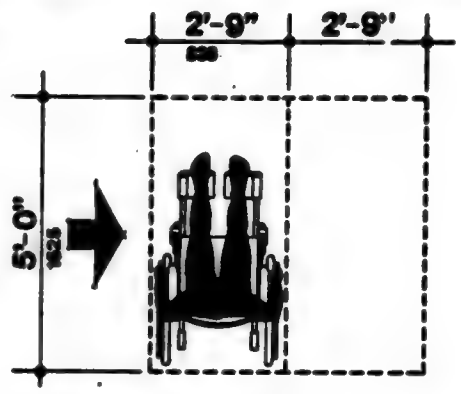

viewing positions 23.2

(2) Accommodate one occupied wheelchair or one portable seat to accommodate persons with crutches or leg braces.

(3) Be in an adjoining configuration if only two positions are provided. Additional positions may be in single position configurations.

(4) Be an integral part of the seating plan and shall be dispersed throughout the assembly area providing sight lines comparable to those for all seating.

(i) *Exception.* In alteration work where it is structurally impossible to alter seating locations to disperse seating throughout, seating may be located in collected areas as structurally feasible. Seating must adjoin an accessible route that also serves as a means of emergency egress.

(ii) [Reserved]

(5) Adjoin an accessible route of emergency egress as required by paragraph 1190.50(h), Egress.

(6) Have surfaces that comply with § 1190.50(i), Ground and floor surfaces.

(c) *Performing areas.* Provide accessible routes that comply with § 1190.50, Walks, floors, and accessible routes, to performing areas, including but not limited to stages, arena floors, dressing rooms, locker rooms, and other rooms and spaces required for use of the assembly area.

(1) *Exception.* In alteration work where it is structurally impracticable to alter all performing areas to be on an accessible route, at least one of each type shall be made accessible.

(2) [Reserved]

(d) *Listening systems.* Provide assembly areas with a listening system to assist no fewer than two persons with severe hearing loss.

(1) If the listening system serves individual seats, locate such seats within 50 feet (15 m) of the stage or arena. Such locations shall provide a complete view of the stage or arena.

(2) Acceptable types of listening systems include, but are not limited to, audio loops and radio frequency systems.

§ 1190.240 Storage.

(a) *General.* Storage facilities required to be accessible by Subpart C—Scope shall comply with this section.

(1) Provide clear floor or ground spaces that comply with § 1190.40, Human data.

(2) Provide storage spaces and clothes rods that comply with paragraph 1190.40(d), Reach limitations (fig. 24.1).

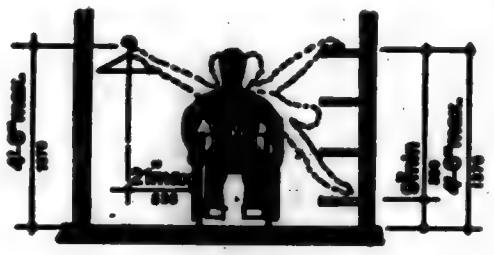

storage 24.1

(3) Provide accessible hardware that complies with § 1190.170, Controls and operating mechanisms.

(b) [Reserved]

Subpart E—Special Building or Facility Types or Elements. [Reserved]

[FR Doc. 81-1342 Filed 1-15-81; 8:45 am]
BILLING CODE 4110-02-M

federal register

Friday
January 16, 1981

Part VII

Department of Labor

Employment Standards Administration
Wage and Hour Division

Procedures for Predetermination of Wage Rates

DEPARTMENT OF LABOR

Wage and Hour Division

29 CFR Part 1

Procedures for Predetermination of Wage Rates

AGENCY: Wage and Hour Division, Employment Standards Administration, Labor.

ACTION: Final rule.

SUMMARY: The purpose of this document is to provide the final text of Regulations, 29 CFR Part 1, for predetermination of prevailing wage rates under the Davis-Bacon and Related Acts (minimum wages for Federal and federally assisted construction). Under the statute, the definition of wages includes the basic hourly rate of pay plus the rate for contributions or payments for bona fide fringe benefits. The definition of wages in the regulations has been revised to reflect the statutory definition. A new provision has also been added to the regulations to explain the method used to determine prevailing fringe benefits. In addition, there are clarifications regarding the application of wage determinations, modifications, and supersedeas wage determinations, and the necessary corrective action to be taken by contracting agencies when a wage determination which is either inapplicable or contains substantial errors is included in bidding documents and contracts or when a wage determination is omitted from a covered contract.

EFFECTIVE DATE: February 17, 1981.

FOR FURTHER INFORMATION CONTACT: Dorothy P. Come, Assistant Administrator, Wage and Hour Division, Department of Labor, Room S3502, 200 Constitution Ave. NW., Washington, D.C. 20210, Phone: (202) 523-8333.

SUPPLEMENTARY INFORMATION: On December 28, 1979, a proposal was published in the Federal Register (44 FR 77026) to make certain revisions to 29 CFR Part 1, Procedures for Predetermination of Wage Rates under the Davis-Bacon and Related Acts. As stated in the proposal, its purpose was to reexamine and revise the procedures in Part 1 for predetermination of wage rates under the Davis-Bacon and Related Acts.

Interested persons were afforded the opportunity to submit comments to the Wage and Hour Division on or before March 17, 1981. Subsequently, on February 15 and April 1, 1980, notice was given in the Federal Register extending the dates for submission of comments to March 27 and May 27, 1980, respectively. The extensions were granted to afford interested parties additional time to prepare their comments. Comments were received from approximately 126 interested parties, including contracting agencies, contractor associations, contractors, labor unions and organizations, State and local governmental bodies, business organizations, and others. Among those Federal agencies submitting comments were the Department of Defense, the General Services Administration, the Department of Energy, the National Aeronautics and Space Administration, the Logistics Service and the Office of Airport Planning and Programming of the Federal Aviation Administration, and the Department of Housing and Urban Development. Contractor associations and business organizations submitting comments included the Associated General Contractors of America, the Associated Builders and Contractors, Inc., the National Association of Home Builders, the Chamber of Commerce, the National Association of Manufacturers, and the Business Roundtable. Labor unions and organizations commenting on the proposal included the Building and Construction Trades Department of the American Federation of Labor-Congress of Industrial Organizations, whose submission was concurred in full by the center to Protect Workers' Rights and the Laborers International of North America, the International Brotherhood of Electrical Workers, Spokane District Council of Carpenters and the Northeastern Washington-Northern Idaho Building and Construction Trades Council.

While some requests for public hearings were made, it was decided, after careful consideration that, in view of the broad range of responses and issues addressed, such hearings would be redundant.

It has been determined that the amendments to these Regulations do not meet the criteria of Executive Order 12044 and the Department of Labor guidelines (44 FR 5570) for a regulatory analysis.

The following is an analysis of all the principal comments received and the concomitant changes made to the proposed rule. Each submission has been thoroughly reviewed, and each criticism and suggestion has been given careful consideration. For each section and, where appropriate, subsection of the final rule, the analysis contains a description of the major comments and recommendations, the Department's findings as to whether or not suggested changes to the proposed rule would be in accordance with the statutory language and intent of the Davis-Bacon Act, and, the substantive changes herein adopted.

§ 1.2 Definitions.

Subsection 1.2(a)(1) generated a substantial number of comments concerning the Department's current practice of determining the prevailing wage rate on the basis of the wage that is found paid most frequently, provided that the wage must be paid to at least 30 percent of the workers in the classification. This principle has been applied to the determination of prevailing wages since 1935, when the Act was amended to require incorporation into contracts of wage determinations issued by the Secretary of Labor. Several commentators argued that the prevailing wage should be determined from the mathematical average only, while others expressed support for the existing procedure reflected in the proposal. It is our belief that the concept of a "prevailing wage" under the Davis-Bacon Act contemplates a rate actually being paid rather than a mathematically contrived figure that may not be paid to any one individual. Under this concept we believe that a rate of central tendency can be acceptably measured by the arithmetic mode or the value in the data set that occurs most frequently, with a proviso to preclude adoption of a wage rate paid to relatively few people.

Some commentators objected to incorporating fringe benefits in the prevailing wage rate on the basis that "open-shop" or "merit pay" contractors in a given area provide disparate fringe benefit packages while contractors signatory to negotiated agreements provide the same fringe package. Thus, they contend that under the proposed regulations, the fringe benefit packages of organized contractors are more likely to be recognized as prevailing. More frequent comments were directed at the procedure to be adopted for computing fringe benefits rather than with the concept that fringe benefits should be recognized as part of the prevailing wage. These commentators expressed concern primarily with 1) whether the prevailing basic hourly wage rate and prevailing fringe benefits should be separately determined or determined as a package, and 2) the manner of treatment of individuals receiving no fringe benefits.

We believe that the method proposed, in which a prevailing package is determined in the first instance, is in accordance with the terms of the Davis-Bacon Act, which defines "prevailing

wages" as including the basic hourly rate of pay *and* the rate of contributions or costs of fringe benefits. A separate determination is required as a practical matter if the averaging method is used, because of the necessity of separating the fringe benefits from the basic hourly rate in paying overtime premiums; where the plurality package rate is utilized, separation into the wage rate and fringe benefits should be easily accomplished.

Treatment of laborers and mechanics receiving no fringe benefits is implicitly set forth in the proposed regulation. If any single package of wages and fringe benefits is paid with respect to a plurality of the workers constituting at least 30 percent of the classification, that package prevails; thus a prevailing package would include the situation where a plurality of the workers receive the same rate and no fringe benefits. Similarly, if there is no plurality wage and fringe benefit package paid with respect to at least 30 percent of the workers, the fringe benefit rate is the average fringe benefit rate weighted by all laborers and mechanics in the classification—including those receiving no fringe benefits; thus the "zeros" are averaged together with the workers who receive fringe benefits. It should be noted that is our experience that fringe benefits of some kind are currently provided by most contractors. We will be meeting with industry groups and conducting pilot studies, as appropriate, to ensure that full, accurate fringe benefit data are collected.

No changes are made in § 1.2(a)(1).

Numerous adverse comments were received on the second sentence of proposed § 1.2(a)(2) concerning differences in wage rates due solely to the point in time at which the wages are paid. These commentators principally contended that the language was unclear, it incorporated a statistically invalid concept, and it unfairly discriminated in favor of collectively bargained wage rates. A few commentators supported the subsection as proposed. On final consideration, we believe that the update of data may more acceptably be accomplished by means such as expedited surveys, truncating the data submission period, modifying the use of peak week data and other methods. We agree that, as proposed, the second sentence of this subsection does not yield totally dependable statistical data. Therefore, the second sentence of this proposed section is deleted and the first sentence, standing alone, is adopted.

Since no comments were received on § 1.2(c), this subsection is adopted as proposed.

One commentator suggested that § 1.2(d) be changed to reflect that the various Federal-Aid Highway Acts have been revised, codified, and re-enacted as Title 23, United States Code. We agree that it is appropriate to adopt the uniform citation suggested by this commentator. The appropriate deletion and substitution has been made in the final text. This commentator also suggested substituting "state highway agency" for "state highway department" in the text. While this has merit, the language of 23 U.S.C. 113 refers to "highway department of the State"; therefore we do not believe that it is appropriate to adopt the suggested change. Another commentator recommended a greatly expanded definition of "agency". We find no basis in existing law to support such a wide-ranging definition of "agency" and have retained the text with the exception of the changes made in reference to 23 U.S.C. 113.

§ 1.3 Obtaining and compiling wage information.

Several commentators objected to the use of wage rate data obtained from Federally financed or locally financed projects subject to coverage by the Davis-Bacon and Related Acts or State prevailing wage laws. The Act contains no such distinction. Federally and locally financed construction must be included to provide realistic data upon which to base determinations for such construction as highways, sewers, bridges, dams and other public works structures that are rarely, if ever, constructed with private funds.

It was suggested that the Department accept data only from contractors so as to eliminate the possibility of duplication. The evidence collection forms used require the listing of sufficient pertinent project information to enable quick and adequate identification of duplicate data. In keeping with the principles of open government, it is the Department's long standing policy, as codified by the current regulations, to encourage and to offer the opportunity to all interested parties to voluntarily submit wage data, thereby expanding the survey's universe and increasing the validity of the survey.

The concern expressed by some public agencies relating to their expanded role in the collection of data is unfounded. The changes in this section are merely editorial and do not mandate an expansion of their role.

By virtue of Pub. L. 90-495 (1968), Davis-Bacon prevailing wage requirements extend to all Federal-Aid highway systems pursuant to 23 U.S.C. 113. Proposed § 1.3(b)(4), which erred in limiting consultation with State Highway departments to Interstate System projects, has been corrected accordingly.

§ 1.4 Outline of agency construction programs.

Several commentators questioned whether the information required by this section would be actually used by the Department, suggesting the requirement was burdensome.

As is implied by the phrase "to the extent practicable", at the beginning of this section, it is recognized that some agencies by virtue of their contracting practices may not be able to submit a complete listing of proposed construction programs. Thus, the section contemplates the submission only of information already in hand or readily obtainable. Accordingly, the reporting requirement, which is also codified in the current regulations, is not considered to be excessively burdensome to Federal contracting agencies and State highway departments. The data submitted is of considerable value to the Department in scheduling wage surveys and to the various contracting agencies in helping to insure a planned approach to wage surveys which will provide wage determinations on an as-needed basis by the procurement community.

§ 1.5 Procedure for requesting wage determinations.

One commentator suggested that this Department should include 18 basic classifications in all wage determinations due to unfamiliarity with proper classifications by the contracting agencies.

This recommendation cannot be feasibly adopted. Wage data for every classification is not always readily available; thus the proposed change would place an excessive administrative burden on the Department. In addition, this recommendation fails to consider variations in the classifications needed, arising from differences in area practices. Experience has shown that while agency officials requesting rates do not always request the proper classifications, follow-up actions by this Department's personnel and the routine issuance of wage determinations containing classifications not specifically requested have in the vast majority of cases essentially obviated the problem suggested by this commentator.

§ 1.6 Application of wage determinations.

§ 1.6(a)(1). Several commentators have suggested the extension of project

wage determinations from the current 120 days to 180 days. This would allow the routine use of wage determinations that are already almost 6 months old when incorporated in the contract. It is believed that this policy would be contrary to Congressional intent that the wage determination reflect the current prevailing wage in the area, to the extent practicable.

Conversely, we cannot adopt the suggestion of another commentator to summarily reject any request for an extension to an expiring project wage determination where an applicable modification has already been made. The criteria for granting extensions which are set forth in both the current and proposed Regulations (i.e., that the extension is necessary and proper in the public interest to prevent injustice or undue hardship or to avoid serious impairment in the conduct of government business) are deemed to be reasonable and should be maintained. The commentator's suggestions for clarifying language of the criteria for requesting extensions and/or new wage determinations have been carefully reviewed and appropriate changes in this paragraph have been made.

§ *1.6(b) and Appendix C.* Several commentators objected to the codification of All Agency Memorandum Nos. 130 and 131 concerning classification of projects. The principal objections concerned the apparent establishment of nationwide standards without regard to local area practices. The memoranda were intended to be guidelines which would not be applicable where the category of a project in a construction sense is not clear and where a different category is established by area practice. Appendix C has therefore been revised to emphasize the significance of area practice where a legitimate dispute exists concerning the character of a project, and to make it clear that such questions are to be referred to the Wage and Hour Division for a ruling.

One commentator suggested that questions should not be referred to the Wage and Hour Division except at the contracting agency's discretion. Because of the Department's statutory responsibilities regarding wage determinations, and because of our experience with misapplication of wage determinations by agencies as a result of their lack of expertise or otherwise, referral of all disputes to the Department has been found to be necessary. The validity of the Department's current regulation (29 CFR 5.12) requiring such referral has been upheld by the Court of Appeals for the Fifth Circuit in *North Georgia Building and Construction Trades Council* v. *Goldschmidt*, 621 F. 2d 697 (1980).

Several specific comments were received concerning the circumstances in which more than one wage determination is issued for a project. In this connection, these comments requested clarification of the terms "project" and "substantial". These sections of the memoranda have been modified as a result of these comments in an attempt to make clear standards for application of multiple schedules—where the work constitutes 20 percent or more of the total project cost, or where the work at issue is estimated to cost at least $250,000. The dual test of amount of construction and functional relationship between the parts of the project in determining what is "incidental", is apparently confusing and unnecessary, and therefore has been eliminated. Additional illustrative examples have been added to clarify the term "project".

A few commentators were of the incorrect view that by publishing the memoranda as an appendix, they were not open to comment. To the contrary, this was not the Department's intention, as indicated by the fact that they were published as a part of the document on which comments were invited. They were published as an appendix only because they were not in traditional regulation form. Similarly, one commentator suggested that the agreement of unions and contractors should be obtained. However, the views of these groups were obtained in the rulemaking process.

Appendix C has been amended in accordance with the discussion above. In addition, changes were made to clarify the memoranda, and to combine them into one coherent inclusive document.

§ 1.6(c). Numerous commentators objected to the proposed revision of the "10 day" rule which would require contracting agencies to accept modifications to wage determinations received less than 10 days before the opening of bids unless the agency finds there is not sufficient time to notify bidders of the modification and to send a report of its findings to the Administrator.

It has been the consistent policy of the Department of Labor that bid solicitations should contain the most recently issued determination of current prevailing wages which can be included, without causing undue disruption of the procurement process. However, experience has shown that in many cases contracting agencies have declined to use wage modifications received less than 10 days before bid opening, even though it may have been possible to notify bidders of the modification prior to bid opening.

In this regard, the courts have held that the current 10-day rule imposes an affirmative obligation on the contracting agencies to make a substantive determination as to whether there is sufficient time to notify bidders of modifications received less than 10 days before bid opening. *(Operating Engineers, Local 627 v. Arthurs*, 355 Supp. 7 (W.D. Okla.), *aff'd*, 480 F. 2d 603 (10th Cir. 1973).) In view of the agencies' present obligation to make a determination as to sufficient time and the Department's considered opinion that the agencies frequently fail to do so, it was decided that the Act could be better implemented by adopting the proposed revision to place greater emphasis on the agencies' obligation in this area. Accordingly, the proposed revision of the 10 day rule is not considered a significant change in these obligations. We are also of the opinion that the notification process can be completed in accordance with the 10-day rule in most cases without undue disruption of the procurement process or inflation of bid prices. Of course, it is recognized that there may be cases where an agency will find that it is not feasible to adopt modifications less than 10 days before bid opening. In such cases, the agency would, prior to bid opening, document its finding of insufficient time and incorporate this finding in the contract file or docket.

Accordingly, while we have considered the objections of some commentators to this reporting requirement, we find that written documentation of the agency's finding of insufficient time is in keepng with sound administrative practices and does not impose an undue paperwork burden upon the agency. The Department has determined that it is appropriate to eliminate the requirement that the report be submitted to the Department, and to adopt one commentators recommendation that the report be in the form of a memo to the contract file and made available to the Administrator upon request. With respect to one commentator's view that the reporting requirement will encourage agencies to adopt modifications rather than make a documented finding of insufficient time, we note that the primary purpose of the reporting requirement is to ensure the utilization of modifications where feasible.

Numerous commentators also opposed the proposed "60 day rule". Under this proposed rule, if a contract

(to which a general wage determination has been applied) has not been awarded within 60 days after bid opening, any modification published prior to bid opening would be effective unless the agency has obtained an extension of the 60 day period from the Administrator.

The Department's obligation to insure that the most current determination of prevailing wages is included in contracts subject to the Davis-Bacon Act is also frustrated by delays which occur in awarding a contract after bid opening. However, it was deemed necessary to adopt a 90 day rather than the proposed 60 day rule to be consonant with the expiration date currently placed on project determinations.

In view of the objections to oral notification of a modification to a wage determination, we have studied the issue further and in consideration of the problems which may arise as a result of misinterpretation of an oral modification notice, we deem it appropriate to provide that written notification of a modification constitutes receipt.

It appears from apparent misinterpretations expressed by several commentators that clarification of § 1.6 with respect to projects financed under the National Housing Act and section 8 of the U.S. Housing Act of 1937 would be appropriate. (The somewhat different application of the rules to such projects is mandated by the statutory schemes of those two acts.) However we believe that the present format of the proposed regulations makes it clear that the 10 day rule applies to competitive procurements under these two acts, and therefore we have made no change in that provision.

With respect to the recommendation of one commentator that the proposed regulations be amended to specify that project and general wage determinations should be modified not less often than every 6 months, it is the Department's considered opinion that due to resource limitations and the lack of sufficient wage data in all cases, this recommendation would not be administratively feasible.

Accordingly, § 1.6(b) as amended is adopted.

§ 1.6(e). Several commenttators objected to § 1.6(e), stating that it improperly gives the Administrator discretionary authority to determine what is a wrong or erronerous wage determination. They argued that this is an impractical, destablizing concept, disruptive to the procurement process. They expressed concern that contractors would be penalized for errors which are not their fault. Three of these commentators also stated that the difference between wrong and erroneous wage determinations needed to be clarified. One commentator stated this subsection would allow this Department unlimited flexibility to circumvent other sections of these regulations. One commentator opposed oral notification, recommending adoption of only written notification.

It is not the Department's intention that a contractor would be penalized by the correction of a wage determination prior to contract award. Rather, it is envisioned that in a competitive procurement, the agency would resolicit the contract with the correct wage determination or permit the contractor to withdraw his bid. In other procurements, the contract price (or amount of Federal assistance) presumably would be adjusted accordingly.

It is clear that the word "wrong" as used in this subsection is used in the sense that the wage determination in the contract is not the wage determination applicable to the contract, such as a highway wage determination being used on a residential project. In contrast, an erroneous wage determination contains errors within the wage determination, such as incorrect wage rates. However, in view of obvious confusion expressed over the distinction between "wrong" and "erroneous", the word "erroneous" has been replaced by "contains substantial errors", thereby also limiting the Department's discretion to withdraw a wage determination. Further, we agree that it is appropriate to withdraw the oral notification provision of this section and to only retain the provision for written notification.

§ 1.6(f). Numerous commentators objected to this subsection, which mandates insertion of a wage determination after contract award where no wage determination has been put in the contract or where the Department of Labor issued an inapplicable wage determination because it was misadvised as to the nature of the project or its location. They argue that the contract awarded would not be the same as the contract for which bids were solicited and it would increase costs and contractor risks. They also stated it places an undue hardship on contractors and contracting agencies by requiring them to correct errors which may have been caused by the Department of Labor. Several commentators stated that it gives the Department of Labor powers beyond those expressed in Reorganization Plan 14 of 1950. Several commentators also noted the inherent difficulties in amending or terminating and resoliciting a contract. Three commentators suggested that, if adopted, this section should clearly provide for the right to appeal any decision by the Administrator ordering the incorporation of a wage decision after contract award to the Comptroller General or the Wage Appeals Board.

Subsection 1.6(f) is necessary to make clear the contracting agency's obligation to correct those situations where it has failed to include any wage determination in a covered contract, or has included an inapplicable wage determination. It is incumbent on this Department to insure that the statutory requirement of the Davis-Bacon Act to include proper wage determination in all covered contracts is met. Contrary to the views of some commentators, the authority for this subsection is derived directly from the statutory language as well as Reorganization Plan 14 of 1950.

We are cognizant of the stated additional cost and risk factors and do not intend that this subsection be a disruptive influence. We have provided that appropriate changes can be accomplished by the contracting agency by whatever means it deems appropriate, which should minimize any disruption to the procurement process, or inequitable cost increases or other problems faced by bidders and contractors. Therefore, subsection 1.6(f) has been adopted with minor word change.

No further amendment of this subsection is warranted with respect to the issue of the right to appeal to the Wage Appeals Board, since such a right already exists.

§ 1.6(g). Some commentators objected to proposed § 1.6(g), because its application may result in increased costs to contractors without providing for reimbursement for these extra costs. We recognize back wage payments may be necessary and we contemplate that contractors would take these into account in requesting funding from the contracting agency.

One commentator suggested that it be mandatory that the wage determination current at the time funding is approved by the agency be applied to the contract as of the funding approval date. This commentator also questioned the legality of the Department's authority to require any retroactive payment of Davis-Bacon wage rates. However, retroactive payment is implicit in the various statutory provisions. The Department's position in this regard is consistent with the recent decision in *North Georgia Building and Construction Trades Council* v. *Goldschmidt*, 621 F 2d 667 (5th Cir. 1980). Assuming this subsection would be finalized, this commentator requested

clarification of what wage determination would be applicable—the one current at the time of contract award or start of construction, at the time of funding approval, or at some point in between. It has been determined that the wage determination in effect at the time of contract award (or at the start of construction where applicable) is appropriate. Thus, when a wage determination is made effective retroactively to the contract award date or start of construction, the rates contained therein will be those prevailing at that earlier time.

§ 1.7 Scope of consideration.

Several commentators stated that the definition of area in § 1.2(b) of this part includes political subdivisions smaller than the county, and our reliance in § 1.7(a) on the county as the normal survey area is not consistent with the intent of the Davis-Bacon Act. They suggest we consider smaller local civil subdivisions within the county as the only basis for making wage determinations. Other commentators suggested we expand the area of consideration to the Standard Metropolitan Statistical Area. Subsection 1.7(a) expresses the actual practice that has been used by this Department in making wage determinations. Experience has demonstrated that the standard, but not inflexible, practice of using the county as the area of consideration is the administratively feasible approach in order to collect meaningful data. In our view, this practice is in accord with the Act. However, smaller civil subdivisions are occasionally used where it is warranted under special circumstances. Similarly, when there is not sufficient data available in individual counties to make an accurate wage determination, we have no choice but to survey surrounding counties.

One commentator requested that the distinction between a "metropolitan county" and a "rural county" be clarified in § 1.7(b). The terms "metropolitan county" and "rural county", as used in subsection 1.7(b), generally coincide with the inclusion or exclusion of a county from a Standard Metropolitan Statistical Area, although other criteria may be considered in a particular case if warranted under the circumstances. We believe that this subsection clearly restricts the conditions under which the Department can use data from such dissimilar counties to make a wage determination. However, we believe that it is also necessary to recognize that in extraordinary circumstances, such as when a specialized project is proposed in a rural county where there has been no similar type construction in the county or in surrounding counties, it may be necessary to obtain wage rate data from metropolitan counties where there have been such projects.

A few commentators objected to the term "in the State" as used in §1.7(c) on the basis that the Davis-Bacon Act speaks of civil subdivisions of the states as being the appropriate area of consideration in making wage determinations. One other commentator suggested that this same term was too restrictive and we should be able to consider wage rate data from adjoining states. It has been our policy that in the unusual case where there is not sufficient current wage rate data available in a county or surrounding counties, we expand the area of consideration. We believe that the use of "in the State" is consistent with our policy, but we do not envision except in the most extraordinary circumstances that data from an entire State would be needed to make a wage determination. In view of the comments, we have added "in surrounding counties" immediately before "in the State" in the text to clarify that when such circumstances arise, the first consideration outside the county will be the surrounding counties.

While some commentators objected to work performed as the criterion for making distinctions between classifications of laborers and mechanics, we regard the statute as requiring that distinctions be based on the classification of work performed rather than on the level of skill. In any given classification individual skill levels will vary from employee to employee and any attempt to measure and issue rates on that basis is administratively impossible and could throw the procurement into complete confusion. Subsection 1.7(d) is adopted with a minor language insert clarifying that the classifications will be issued on wage determinations only where the classification prevails in the area.

§ 1.8 Reconsideration by the Administrator.

All comments received were directed at the amount of time and expense in the form of delays to the start of construction involved in seeking reconsideration of wage determinations.

After due consideration the proposed regulation has been changed to reflect the concerns of the commentators and we have made the Administrator responsible for responding substantatively to the reconsideration request within a 30 day period or to notify the requestor that additional time is necessary.

Appropriate changes to reflect this policy have been made in the regulations.

§ 1.9 Review by the Wage Appeals Board.

Two commentators objected to the elimination of administrative hearings, citing the loss of due process and accountability on the part of Wage and Hour officials. This provision was eliminated because of the lengthy delays incurred by formal administrative hearings, the infrequency of their occurrence, the lack of expertise of administrative law judges, and in the interest of minimizing disruptions to the procurement process.

It is the opinion of the Department that in view of the expertise developed by the Wage Appeals Board through its existing responsibilities under section 1.16 of the current regulations, it is appropriate to eliminate the provision for formal administrative hearings. Because of the provision for appeal to the Board, this can be done without depriving interested parties of their right to due process.

One commentator was of the incorrect view that the proposed regulations limit the authority of the Board to hear an appeal on a portion of a wage determination. The Board has this authority. Additionally, pursuant to 29 CFR Part 7, the Board has the discretion to hear an appeal on all or part of any determination.

One commentator also misinterpreted the proposed regulations to indicate that field surveys would no longer be conducted. However, § 1.3(c) of the proposed regulations states that field surveys may be conducted as necessary to obtain sufficient data upon which to base wage determinations.

Accordingly, the proposed regulation will be adopted.

In addition to the above, there were other comments recommending minor editorial and language changes which we deemed valid, and we have amended the affected sections.

This rule was drafted under the supervision and direction of Donald Elisburg, Assistant Secretary of Labor, Employment Standards Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, D.C. 20210 (202–523–6191).

Accordingly, 29 CFR Part 1 is revised as set forth below.

Signed at Washington, D.C. this 12th day of January, 1981.

Donald Elisburg,

Assistant Secretary of Labor, Employment Standards Administration.

PART 1—PROCEDURES FOR PREDETERMINATION OF WAGE RATES

Sec.

1.1 Purpose and scope.
1.2 Definitions.
1.3 Obtaining and compiling wage rate information.
1.4 Outline of agency construction programs.
1.5 Procedure for requesting wage determinations.
1.6 Use and effectiveness of wage determinations.
1.7 Scope of consideration.
1.8 Reconsideration by the Administrator.
1.9 Review by Wage Appeals Board.
Appendix A.
Appendix B.
Appendix C.

Authority: 5 U.S.C. 301; R.S. 161, 64 Stat. 1267; Reorganization Plan No. 14 of 1950, 5 U.S.C. Appendix; 29 U.S.C. 259; 40 U.S.C. 276a—276a–7; 40 U.S.C. 276c; and the laws listed in Appendix A of this Part.

§ 1.1 Purpose and scope.

(a) The procedural rules in this part apply under the Davis-Bacon Act (46 Stat. 1494, as amended; 40 U.S.C. 276a—276a–7) and other statutes listed in Appendix A to this part which provide for the payment of minimum wages, including fringe benefits to laborers and mechanics engaged in construction activity under contracts entered into or financed by or with the assistance of agencies of the United States or the District of Columbia, based on determinations by the Secretary of Labor of the wage rates and fringe benefits prevailing for the corresponding classes of laborers and mechanics employed on projects similar to the contract work in the local areas where such work is to be performed. Functions of the Secretary of Labor under these statutes and under Reorganization Plan No. 14 of 1950 (64 Stat. 1267, 5 U.S.C. Appendix), except those assigned to the Wage Appeals Board (see 29 CFR Part 7), have been delegated to the Assistant Secretary of Labor for Employment Standards who in turn has delegated the functions to the Administrator of the Wage and Hour Division, and authorized representatives.

(b) The regulations in this part set forth the procedures for making and applying such determinations of prevailing wage rates and fringe benefits pursuant to the Davis-Bacon Act, each of the other statutes listed in Appendix A, any other Federal statute providing for determinations of such wages by the Secretary of Labor in accordance with the provisions of the Davis-Bacon Act.

(c) Procedures set forth in this part are applicable, unless otherwise indicated, both to general wage determinations published in the Federal Register for contracts in specified localities, and to project wage determinations for use on contract work to be performed on a specific project.

§ 1.2 Definitions.[1]

(a) The term "wages" (and its singular form) has the meaning prescribed in section 1(b) of the Davis-Bacon Act (40 U.S.C. 276a(b)). It includes the basic hourly rate of pay and the rate of contributions or payments made on behalf of the laborers and mechanics for bona fide fringe benefits.

(1) A "wage" shall be deemed to be the "prevailing wage" if it is the wage (hourly rate of pay and fringe benefits) paid to the greatest number of laborers or mechanics in the classification on similar projects in the area during the period in question, *provided* that the wage is paid to at least 30% of those employed in the classification. If the same wage (hourly rate of pay and fringe benefits) is not paid to at least 30% of those employed in the classification during the period in question, the "prevailing wage" shall be deemed to be the average of the basic hourly rates of pay plus the average of the rates of contributions or payments for bona fide fringe benefits, weighted by the total employed in the classification.

(2) In determining the "prevailing wages" at the time of issuance of a wage determination, the Administrator will be guided by paragraph (a)(1) of this section and will consider the types of information listed in § 1.3(b) of this part.

(b) The term "area" in determining wage rates under the Davis-Bacon Act and the prevailing wage provisions of the other statutes listed in Appendix A shall mean the city, town, village, county or other civil subdivision of the State in which the work is to be performed.

(c) The term "Administrator" shall mean the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, or authorized representative. In the absence of the Wage-Hour Administrator, the Deputy Administrator of the Wage and Hour Division is designated to act for the Administrator under this part. Except as otherwise provided in this part, the Assistant Administrator for Government Contract Wage Standards is the authorized representative of the Administrator for the performance of functions relating to the making of wage determinations.

(d) The term "agency" shall mean the Federal agency, State highway department under 23 U.S.C. 113, or recipient State or local government under Title 1 of the State and Local Fiscal Assistance Act of 1972.

§ 1.3 Obtaining and compiling wage rate information.

For the purpose of making wage rate determinations, the Administrator will conduct a continuing program for the obtaining and compiling of wage rate information.

(a) The Administrator will encourage the voluntary submission of wage rate data by contractors, contractors' associations, labor organizations, public officials and other interested parties, reflecting wage rates paid to laborers and mechanics on various types of construction in the area. The Administrator will also obtain data from agencies on wage rates paid on construction projects under their jurisdiction. The information submitted should reflect not only the wage rates paid a particular classification in an area, but also the type or types of construction on which such rate or rates are paid.

(b) The following types of information will be considered in making wage rate determinations:

(1) Statements showing wage rates paid on projects. Such statements should indicate the names and addresses of contractors, including subcontractors, the locations, approximate costs, dates of construction and types of projects, the number of workers employed in each classification on each project, and the respective wage rates paid such workers.

(2) Signed collective bargaining agreements. The Administrator may request the parties to an agreement to submit statements certifying to its scope and application.

(3) Wage rates determined for public construction by State and local officials pursuant to prevailing wage legislation.

(4) Information furnished by Federal and State agencies. See § 1.5. In making wage rate determinations pursuant to 23 U.S.C. 113, the highway department of the State in which a project in the Federal-Aid highway system is to be performed shall be consulted. Before making a determination of wage rates for such a project the Administrator

[1] These definitions are not intended to restrict the meaning of the terms as used in the applicable statutes.

shall give due regard to the information thus obtained.

(5) Wage rate data submitted to the Department of Labor by contracting agencies pursuant to 29 CFR 5.5(a)(1)(ii).

(6) Any other information pertinent to the determination of prevailing wage rates.

(c) The Administrator may initially obtain or supplement such information obtained on a voluntary basis by such means, including the holding of hearings, and from any sources determined to be necessary. All information of the types described in § 1.2(b) of this Part, pertinent to the determination of the wages prevailing at the time of issuance of the wage determination, will be evaluated in the light of § 1.2(a) of this Part.

§ 1.4 Outline of agency construction programs.

To the extent practicable, at the beginning of each fiscal year each agency using wage determinations under any of the various statutes listed in Appendix A will furnish the Administrator with a general outline of its proposed construction programs for the coming year indicating the estimated number of projects for which wage determinations will be required, the anticipated types of construction, and the locations of construction. During the fiscal year, each agency will notify the Administrator of any significant changes in its proposed construction programs, as outlined at the beginning of the fiscal year.

§ 1.5 Procedure for requesting wage determinations.

(a)(1) Except as provided in paragraph (b) of this section, the Federal agency shall initially request a wage determination under the Davis-Bacon Act or any of its related prevailing wage statutes by submitting Standard Form 308 to the Department of Labor at this address:

U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Branch of Construction Wage Determinations, Washington, D.C. 20210.

The agency shall check only those classifications on the applicable form which will be needed in the performance of the work. Inserting a note such as "entire schedule" or "all applicable classifications" is not sufficient. Additional classifications needed which are not on the form may be typed in the blank spaces or on a separate list and attached to the form. The agency shall not list classifications which can be fitted into classifications on the form, or classifications which are not generally recognized in the area or in the construction industry.

(2) In completing SF–308, the agency shall furnish:

(i) A sufficiently detailed description of the work to indicate the type of construction involved. Additional description or separate attachment, if necessary for identification of type of project, shall be furnished.

(ii) The county (or other civil subdivision) and State in which the proposed project is located.

(3) Such request for a wage determination shall be accompanied by any pertinent wage payment information which may be available. When the requesting agency is a State highway department under the Federal-Aid Highway Acts as codified in 23 U.S.C. 113, such agency shall also include its recommendations as to the wages which are prevailing for each classification of laborers and mechanics on similar construction in the area.

(b) Whenever the wage patterns in a particular area for a particular type of construction are well settled and whenever it may be reasonably anticipated that there will be a large volume of procurement in that area for such a type of construction, the Administrator, upon the request of a Federal agency or in his discretion, may publish a general wage determination in the Federal Register when, after consideration of the facts and circumstances involved, the Administrator finds that the applicable statutory standards and those of this part will be met. If there is a general wage determination applicable to the project, the agency may use it without notifying the Department of Labor, provided, that questions concerning its use are referred to the Department of Labor in accordance with § 1.6(b).

(c) The time required for processing requests for wage determinations varies according to the facts and circumstances in each case. An agency should anticipate that such processing in the Department of Labor will take at least 30 days.

§ 1.6 Use and effectiveness of wage determinations.

(a)(1) Project wage determinations initially issued shall be effective for 120 calendar days from the date of such determinations. If such a wage determination is not used in the period of its effectiveness it is void. Accordingly, if it appears that a wage determination may expire between bid opening and contract award (or between initial endorsement under the National Housing Act or the execution of an agreement to enter into a housing assistance payments contract under section 8 of the U.S. Housing Act of 1937, and the start of construction) the agency shall request a new wage determination sufficiently in advance of the bid opening to assure receipt prior thereto. However, when due to unavoidable circumstances a determination expires before award but after bid opening (or before the start of construction, but after initial endorsement under the National Housing Act, or before the start of construction but after the execution of an agreement to enter into a housing assistance payments contract under Section 8 of the U.S. Housing Act of 1937), the head of the agency or his or her designee may request the Administrator to extend the expiration date of the wage determination in the bid specifications instead of issuing a new wage determination. Such request shall be supported by a written finding which shall include a brief statement of the factual support, that the extension of the expiration date of the determination is necessary and proper in the public interest to prevent injustice or undue hardship or to avoid serious impairment in the conduct of Government business. The Administrator will either grant or deny the request for an extension after consideration of all of the circumstances, including an examination to determine if the previously issued rates remain prevailing. If the request for extension is denied, the Administrator will proceed to issue a new wage determination for the project.

(2) General wage determinations issued pursuant to § 1.5(b) and which are published in the Federal Register, shall contain no expiration date.

(b) Application of general wage determinations to projects and application of project wage determinations with more than one wage rate schedule shall be in accordance with Appendix C of this part. Any question regarding application of wage rate schedules or the guidelines contained in Appendix C shall be referred to the Administrator for resolution.

(c)(1) Project and general wage determinations may be modified from time to time to keep them current. A modification may specify only the items being changed, or may be in the form of a supersedeas wage determination, which replaces the entire wage determination. Such actions are distinguished from a determination by the Administrator under paragraphs (d), (e) and (f) of this section that an erroneous wage determination has been

issued or that the wrong wage determination or wage rate schedule has been utilized by the agency.

(2)(i) All actions modifying a project wage determination received by the agency before contract award (or the start of construction where there is no contract award) shall be effective except as follows:

(A) In the case of contracts entered into pursuant to competitive bidding procedures, modifications received by the agency less than 10 days before the opening of bids shall be effective unless the agency finds that there is not a reasonable time still available before bid opening, to notify bidders of the modification and a report of the finding is inserted in the contract file. A copy of such report shall be made available to the Administrator upon request. No such report shall be required if the modification is received after bid opening.

(B) In the case of those contracts entered into under the National Housing Act which are not awarded pursuant to competitive bidding procedures, modifications shall be effective if received prior to the beginning of construction or the date the mortgage is initially endorsed, whichever occurs first.

(C) In the case of projects to receive housing assistance payments under section 8 of the U.S. Housing Act of 1937, if there is no contract for the project awarded pursuant to competitive bidding procedures, modifications shall be effective if received prior to the beginning of construction or the date the agreement to enter into a housing assistance payments contract is executed, whichever occurs first.

(ii) Modifications to project wage determinations and supersedeas wage determinations shall not be effective after contract award, or after the beginning of construction, as appropriate.

(iii) Actual written notice of a modification shall constitute receipt.

(3) All actions modifying a general wage determination shall be effective with respect to any project to which the determination applies, if published before contract award (or the start of construction where there is no contract award), except as follows:

(i) In the case of contracts entered into pursuant to competitive bidding procedures, modifications published less than 10 days before the opening of bids shall be effective unless the agency finds that there is not a reasonable time still available before bid opening to notify bidders of the modification and a report of the finding is inserted in the contract file. A copy of such report shall be made available to the Administrator upon request. No such report shall be required if the modification is published after bid opening.

(ii) In the case of those contracts entered into under the National Housing Act which are not awarded pursuant to competitive bidding procedures, modifications shall be effective if published prior to the beginning of construction or the date the mortgage is initially endorsed, whichever occurs first.

(iii) In the case of projects to receive housing assistance payments under section 8 of the U.S. Housing Act of 1937, if there is no contract for the project awarded pursuant to competitive bidding procedures, modifications shall be effective if published prior to the beginning of construction or the date the agreement to enter into a housing assistance payments contract is signed, whichever occurs first.

(iv) If under paragraph (c)(3)(i) of this section the contract has not been awarded within 90 days after bid opening, or if under paragraph (c)(3)(ii) or (iii) of this section construction has not begun within 90 days after initial endorsement or the signing of the agreement to enter into a housing assistance payments contract, any modifications published in the Federal Register prior to award of the contract or the beginning of construction, as appropriate, shall be effective with respect to that contract unless the head of the agency or his or her designee requests and obtains an extension of the 90-day period from the Administrator. Such request shall be supported by a written finding, which shall include a brief statement of the factual support, that the extension is necessary and proper in the public interest to prevent injustice or undue hardship or to avoid serious impairment in the conduct of Government business. The Administrator will either grant or deny the request for an extension after consideration of all the circumstances.

(v) A modification to a general wage determination is "published" within the meaning of this section on the date of publication in the Federal Register, or on the date the agency receives actual written notice of the modification from the Department of Labor, whichever occurs first.

(vi) Modifications or supersedeas wage determinations to an applicable general wage determination published after contract award or after the beginning of construction, as appropriate, shall not be effective.

(d) Upon his/her own initiative or at the request of an agency, the Administrator may correct any wage determination, without regard to paragraph (c) of this section, whenever the Administrator finds such a wage determination contains clerical errors. Such corrections shall be included in any bid specifications containing the wage determination, or in any on-going contract containing the wage determination in question, retroactively to the start of construction.

(e) Written notification by the Department of Labor prior to the award of a contract (or the start of construction under the National Housing Act, under Section 8 of the U.S. Housing Act of 1937, or where there is no contract award) that (1) there is included in the bidding documents or solicitation the wrong wage determination or the wrong schedule or that (2) a wage determination is withdrawn because the Department of Labor has determined that it contains substantial errors (as distinguished from rates which are no longer current), shall be effective immediately without regard to paragraph (c) of this section.

(f) The Administrator may issue a wage determination after contract award or after the beginning of construction if the agency has failed to incorporate a wage determination in a contract required to contain prevailing wage rates determined in accordance with the Davis-Bacon Act, or has used a wage determination which by its terms or the provisions of this part does not apply to the contract. Further, the Administrator may issue a wage determination which shall be applicable to a contract after contract award or after the beginning of construction when it is found that the wrong wage determination has been incorporated in the contract because of an inaccurate description of the project or its location in the agency's request for the wage determination. Under any of the above circumstances, the agency shall incorporate the valid wage determination in the contract specifications retroactively to the date of award, or the beginning of construction, as appropriate. This should be done by whatever means the agency deems appropriate, including, for example, terminating and resoliciting the contract, or amending the contract through supplemental agreement or through change order. Such an amendment or change order may include price adjustments where the agency finds it to be appropriate under its regulations.

(g) If Federal funding or assistance under a statute requiring payment of wages determined in accordance with the Davis-Bacon Act is not approved

prior to contract award or the beginning of construction, as appropriate, the agency shall request a wage determination prior to approval of such funds. Such a wage determination shall be issued based upon the wages and fringe benefits found to be prevailing on the date of award or the beginning of construction (under the National Housing Act, under Section 8 of the U.S. Housing Act of 1937 or where there is no contract award), as appropriate, and shall be incorporated in the contract specifications retroactively to that date, *provided*, that upon the request of the head of the agency in individual cases the Administrator may issue such a wage determination to be effective on the date of approval of Federal funds or assistance whenever the Administrator finds that it is necessary and proper in the public interest to prevent injustice or undue hardship, *provided further* that the Administrator finds no evidence of intent to apply for Federal funding or assistance prior to contract award or the start of construction, as appropriate.

§ 1.7 Scope of consideration.

(a) In making a wage determination, the "area" will normally be the county unless sufficient current wage data (data on wages paid no more than one year prior to the beginning of the survey or the request for a wage determination, as appropriate) is unavailable to make a wage determination.

(b) If there has not been sufficient similar construction within the area in the past year to make a wage determination wages paid on similar construction in surrounding counties may be considered, *provided* that projects in metropolitan counties may not be used as a source of data for a wage determination in a rural county, and projects in rural counties may not be used as a source of data for a wage determination for a metropolitan county, except under extraordinary circumstances where there is not sufficient data available on projects in other rural or metropolitan counties.

(c) If there has not been sufficient similar construction in surrounding counties or in the State in the past year, wages paid on projects completed more than one year prior to the beginning of the survey or the request for a wage determination, as appropriate, may be considered.

(d) Classifications and wage and fringe benefit rates will be issued only for identifiable "classes of laborers and mechanics." Distinctions between classifications are based upon differences in the work performed, not upon skill and supervisory functions. A semi-skilled classification of laborers or helpers, for example, is issued when the classification prevails in the area, provided that the classification as utilized in the area performs a scope of duties which distinguishes it from other classifications in the area. Prevailing wages for apprentices and trainees are not issued on wage determinations, but their use is permitted in accordance with § 5.5(a)(4) of part 5.

§ 1.8 Reconsideration by the Administrator.

Any interested person may seek reconsideration of a wage determination issued under this part or of a decision of the Administrator regarding application of a wage determination. Such a request for reconsideration shall be in writing accompanied by a full statement of the interested person's views and any supporting wage data or other pertinent information. The Administrator will respond within 30 days of receipt thereof, or will notify the requestor within the 30 day period that additional time is necessary.

§ 1.9 Review by Wage Appeals Board.

Any interested person may appeal to the Wage Appeals Board for a review of a wage determination or its application made under this part, after reconsideration by the Administrator has been sought pursuant to § 1.8 and denied. Any such appeal may, in the discretion of the Wage Appeals Board, be received, accepted, and decided in accordance with the provisions of 29 CFR Part 7 and such other procedures as the Board may establish.

Appendix A

Statutes Related to the Davis-Bacon Act Requiring Payment of Wages at Rates Predetermined by the Secretary of Labor

1. The Davis-Bacon Act (secs. 1–7, 46 Stat. 1494, as amended; Pub. L. 74–403, 40 U.S.C. 276a–276a–7).
2. National Housing Act (sec. 212 added to c. 847, 48 Stat. 1246, by sec. 14, 53 Stat. 807; 12 U.S.C. 1715c and repeatedly amended).
3. Housing Act of 1950 (college housing) (amended by Housing Act of 1959 to add labor provisions, 73 Stat. 661; 12 U.S.C. 1749a(f)).
4. Housing Act of 1959 (sec. 401(f) of the Housing Act of 1950 as amended by Pub. L. 86–372, 73 Stat. 661; 12 U.S.C. 1701q(c)(3)).
5. Commercial Fisheries Research and Development Act of 1964 (sec. 7, 78 Stat. 199; 16 U.S.C. 779e(b)).
6. Library Services and Construction Act (sec. 7(a), 78 Stat. 13; 20 U.S.C. 355c(a)(4), as amended).
7. National Technical Institute for the Deaf Act (sec. 5(b)(5), 79 Stat. 128; 20 U.S.C. 684(b)(5)).
8. National Foundation on the Arts and Humanities Act of 1965 (sec. 5(k), 79 Stat. 846 as amended; 20 U.S.C. 954(j)).
9. Elementary and Secondary Education Act of 1965 as amended by Elementary and Secondary and other Education Amendments of 1969 (sec. 423 as added by Pub. L. 91–230, title IV, sec. 401(a)(10), 84 Stat. 169, and renumbered sec. 433, by Pub. L. 92–318; title III, sec. 301(a)(1), 86 Stat. 326; 20 U.S.C. 1232(b)). Under the amendment coverage is extended to all programs administered by the Commissioner of Education.
10. The Federal-Aid Highway Act of 1956 (sec. 108(b), 70 Stat. 378, recodified at 72 Stat. 895; 23 U.S.C. 113 as amended), see particularly the amendments in the Federal-Aid Highway Act of 1963 (Pub. L. 90–495, 82 Stat. 815).
11. Indian Self-Determination and Education Assistance Act (sec. 7, 88 Stat. 2205; 25 U.S.C. 450e).
12. Indian Health Care Improvement Act (sec. 303(b), 90 Stat. 1407; 25 U.S.C. 1633(b)).
13. Rehabilitation Act of 1973 (sec. 306(b)(5), 87 Stat. 364, 29 U.S.C. 776(b)(5)).
14. Comprehensive Employment and Training Act of 1973 (sec. 606, 87 Stat. 880, renumbered sec. 706 by 88 Stat. 1845; 29 U.S.C. 986; also sec. 604, 88 Stat. 1846; 29 U.S.C. 964(b)(3)).
15. State and Local Fiscal Assistance Act of 1972 (sec. 123(a)(6), 86 Stat. 933; 31 U.S.C. 1246(a)(6)).
16. Federal Water Pollution Control Act (sec. 513 of sec. 2, 86 Stat. 894; 33 U.S.C. 1372).
17. Veterans Nursing Home Care Act of 1964 (78 Stat. 502, as amended; 38 U.S.C. 5035(a)(6)).
18. Postal Reorganization Act (sec. 410(b)(4)(C); 84 Stat. 726 as amended; 39 U.S.C. 410(b)(4)(C)).
19. National Visitors Center Facilities Act of 1968 (sec. 110, 32 Stat. 45; 40 U.S.C. 808).
20. Appalachian Regional Development Act of 1965 (sec. 402, 79 Stat. 21; 40 U.S.C. App. 402).
21. Health Services Research, Health Statistics, and Medical Libraries Act of 1974 (sec. 107, see sec. 308(h)(2) thereof, 83 Stat. 370, as amended by 90 Stat. 378; 42 U.S.C. 242m(h)(2)).
22. Hospital Survey and Construction Act, as amended by the Hospital and Medical Facilities Amendments of 1964 (sec. 605(a)(5), 78 Stat. 453; 42 U.S.C. 291e(a)(5)).
23. Health Professions Education Assistance Act (sec. 303(b), 90 Stat. 2254; 42 U.S.C. 293a(g)(1)(C); also sec. 308a, 90 Stat. 2258, 42 U.S.C. 293a(c)(7)).
24. Nurse Training Act of 1964 (sec. 941(a)(1)(C), 89 Stat. 364; 42 U.S.C. 296a(b)(5)).
25. Heart Disease, Cancer, and Stroke Amendments of 1965 (sec. 904, as added by sec. 2, 79 Stat. 928; 42 U.S.C. 299d(b)(4)).
26. Safe Drinking Water Act (sec. 2(a), see sec. 1450e thereof, 88 Stat. 1691; 42 U.S.C. 300j–9(e)).
27. National Health Planning and Resources Act (sec. 4, see sec. 1604(b)(1)(H), 88 Stat. 2261, 42 U.S.C. 300o–3(b)(1)(H)).
28. U.S. Housing Act of 1937, as amended and recodified (88 Stat. 667; 42 U.S.C. 1437j).
29. Demonstration Cities and Metropolitan Development Act of 1966 (secs. 110, 311, 503, 1003, 80 Stat. 1259, 1270, 1277, 1284; 42 U.S.C. 3310; 12 U.S.C. 1715c; 42 U.S.C. 1437j).
30. Slum clearance program: Housing Act of 1949 (sec. 109, 63 Stat. 419, as amended; 42 U.S.C. 1459).

31. Farm housing: Housing Act of 1964 (adds sec. 516(f) to Housing Act of 1949 by sec. 803, 78 Stat. 797; 42 U.S.C. 1486(f)).
32. Housing Act of 1961 (sec. 707, added by sec. 907, 79 Stat. 496, as amended; 42 U.S.C. 1500c-3).
33. Defense Housing and Community Facilities and Services Act of 1951 (sec. 310, 65 Stat. 307; 42 U.S.C. 1592i).
34. Special Health Revenue Sharing Act of 1975 (sec. 303, see sec. 222(a)(5) thereof, 89 Stat. 324; 42 U.S.C. 2689j(a)(5)).
35. Economic Opportunity Act of 1964 (sec. 607, 78 Stat. 532; 42 U.S.C. 2947).
36. Headstart, Economic Opportunity, and Community Partnership Act of 1974 (sec. 11, see sec. 811 thereof, 88 Stat. 2327; 42 U.S.C. 2992a).
37. Housing and Urban Development Act of 1965 (sec. 707, 79 Stat. 492 as amended; 42 U.S.C. 3107).
38. Older Americans Act of 1965 (sec. 502, Pub. L. 89-73, as amended by sec. 501, Pub. L. 93-29; 87 Stat. 50; 42 U.S.C. 3041a(a)(4)).
39. Public Works and Economic Development Act of 1965 (sec. 712, 79 Stat. 575 as amended; 42 U.S.C. 3222).
40. Juvenile Delinquency Prevention Act (sec. 1, 88 Stat. 536; 42 U.S.C. 3884).
41. New Communities Act of 1968 (sec. 410.82 Stat. 516; 42 U.S.C. 3909).
42. Urban Growth and New Community Development Act of 1970. (sec. 727(f), 84 Stat. 1808; 42 U.S.C. 4529).
43. Domestic Volunteer Service Act of 1973 (sec. 406, 87 Stat. 410; 42 U.S.C. 5046).
44. Housing and Community Development Act of 1974 (secs. 110, 802(g), 83 Stat. 649, 724; 42 U.S.C. 5310, 1440(g)).
45. Developmentally Disabled Assistance and Bill of Rights Act (sec. 126(4), 89 Stat. 488; 42 U.S.C. 6042(4); title I, sec. 111, 89 Stat. 491; 42 U.S.C. 6063(b)(19)).
46. National Energy Conservation Policy Act (sec. 312, 92 Stat. 3254; 42 U.S.C. 6371j).
47. Public Works Employment Act of 1976 (sec. 109, 90 Stat. 1001; 42 U.S.C. 6708; also sec. 208, 90 Stat. 1008; 42 U.S.C. 6728).
48. Energy Conservation and Production Act (sec. 45(h), 90 Stat. 1168; 42 U.S.C. 6881(h)).
49. Solid Waste Disposal Act (sec. 2, 90 Stat. 2828; 42 U.S.C. 6979).
50. Rail Passenger Service Act of 1970 (sec. 405d, 84 Stat. 1337; 45 U.S.C. 565(d)).
51. Urban Mass Transportation Act of 1964 (sec. 10, 78 Stat. 307; renumbered sec. 13 by 80 Stat. 715; 49 U.S.C. 1609).
52. Highway speed ground transportation study (sec. 6(b), 79 Stat. 893; 49 U.S.C. 1636(b)).
53. Airport and Airway Development Act of 1970 (sec. 22(b), 84 Stat. 231; 49 U.S.C. 1722(b)).
54. Federal Civil Defense Act of 1950 (50 U.S.C. App. 2281(i).
55. National Capital Transportation Act of 1965 (sec. 3(b)(4), 79 Stat; 40 U.S.C. 682(b)(4).

Note.—Repealed Dec. 9, 1969 and labor standards incorporated in sec. 1-1431 of the District of Columbia Code).

56. Model Secondary School for the Deaf Act (sec. 4, 80 Stat. 1027, Pub. L. 89-694, but not in the United States Code).
57. Delaware River Basin Compact (sec. 15.1, 75 Stat. 714, Pub. L. 87-328) (considered a statute for purposes of this part but not in the United States Code).
58. Energy Security Act (Sec. 175(c), Pub. L. 96-294, 94 Stat. 611; 42 U.S.C. 8701 note).

Appendix B

Boston Region

For the States of Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont:

Assistant Regional Administrator for Wage-Hour, Employment Standards Administration, U.S. Department of Labor, JFK Federal Building, Government Center, Room 1612C, Boston, Massachusetts 02203 (telephone: 617-223-5565).

New York Region

For the States of New Jersey and New York and for the Canal Zone, Puerto Rico, and the Virgin Islands:

Assistant Regional Administrator for Wage-Hour, Employment Standards Administration, U.S. Department of Labor, 1515 Broadway, Room 3300, New York, New York 10036 (telephone: 212-399-5443).

Philadelphia Region

For the States of Delaware, Maryland, Pennsylvania, Virginia, and West Virginia, and the District of Columbia:

Assistant Regional Administrator for Wage-Hour, Employment Standards Administration, U.S. Department of Labor, Gateway Building, Room 15220, 3535 Market Street, Philadelphia, Pennsylvania 19104 (telephone 215-596-1183).

Atlanta Region

For the States of Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, and Tennessee:

Assistant Regional Administrator for Wage-Hour, Employment Standards Administration, U.S. Department of Labor, 1371 Peachtree Street, N.E., Room 305, Atlanta, Georgia 30309 (telephone: 404-881-4801).

Chicago Region

For the States of Illinois, Indiana, Michigan, Minnesota, Ohio, and Wisconsin:

Assistant Regional Administrator for Wage-Hour, Employment Standards Administration, U.S. Department of Labor, 230 South Dearborn Street, 8th Floor, Chicago, Illinois 60604 (telephone: 312-353-7249).

Dallas Region

For the States of Arkansas, Louisiana, New Mexico, Oklahoma, and Texas:

Assistant Regional Administrator for Wage-Hour, Employment Standards Administration, U.S. Department of Labor, 555 Griffin Square Building, Young and Griffin Streets, Dallas, Texas 75202 (telephone: 214-767-6891).

Kansas City Region

For the States of Iowa, Kansas, Missouri, and Nebraska:

Assistant Regional Administrator for Wage-Hour, Employment Standards Administration, U.S. Department of Labor, Federal Office Building, Room 2000, 911 Walnut Street, Kansas City, Missouri 64106 (telephone: 816-374-5886).

Denver Region

For the States of Colorado, Montana, North Dakota, South Dakota, Utah, and Wyoming:

Assistant Regional Administrator for Wage-Hour, Employment Standards Administration, U.S. Department of Labor, Federal Office Building, Room 1440, 1961 Stout Street, Denver, Colorado 80294 (telephone: 303-837-4813).

San Francisco Region

For the States of Arizona, California, Hawaii, and Nevada:

Assistant Regional Administrator for Wage-Hour, Employment Standards Administration, U.S. Department of Labor, 450 Golden Gate Avenue, Room 10353, San Francisco, California 94102 (telephone: 415-556-3592).

Seattle Region

For the States of Alaska, Idaho, Oregon, and Washington:

Assistant Regional Administrator for Wage-Hour, Employment Standards Administration, U.S. Department of Labor, Federal Office Building, Room 4141, 909 First Avenue, Seattle, Washington 98174 (telephone: 206-442-1016).

Appendix C

Subject: Application Of The Standard Of Comparison "Projects Of A Character Similar" Under The Davis-Bacon And Related Acts

The purpose of this memorandum is to set forth policies of the Wage and Hour Division with regard to the determination of "projects of a character similar to the contract work" for wage determination purposes. The guidelines contained in the memorandum are to be used by the contracting agencies in selecting the proper schedule(s) of wage rates from the Federal Register and in instructing contractors regarding the application of multiple schedules. This memorandum supersedes All Agency Memorandum No. 65 (July 19, 1966), No. 130 (March 17, 1978), and No. 131 (July 14, 1978).

The Davis-Bacon and related Acts require the Secretary of Labor to determine the prevailing wage rates for corresponding classes of laborers and mechanics on projects in the area which are of a "character similar" to the proposed contract work to which the determination will be applied. The Department's Wage Appeals Board in a decision specifically relating to high-rise apartment buildings (WAB Case No. 76-11, dated January 27, 1977) stated:

"The test of whether a project is of a character similar to another project refers to the nature of the project itself in a construction sense, not to whether union or nonunion wages are paid or whether union or nonunion workers are employed. Since the 1935 amendments to the Davis-Bacon Act, the statutory focus has always been on the character of the project itself rather than on who was employed on the project or how much he or she was being paid."

Again, in a decision relating to a water treatment plant project (WAB Case No. 77-

20, dated September 30, 1977), the Board stated: "When it is clear from the nature of the project itself in a construction sense that it is to be categorized as either building, heavy, or highway construction it is not necessary to resort to an area practice survey to determine the appropriate categorization of the project."

Where the proper category of construction is not clear, however, the Board has advised that the wages being paid may be considered to determine the appropriate category of construction, together with other characteristics, such as construction techniques, material and equipment used, and skills called for. WAB Case No. 77–23, dated December 30, 1977.

Generally, construction projects are classified as either Building, Heavy, Highway or Residential.[1] However, separate wage rate schedules are applied where a project includes structures in more than one category and the amount of construction in each category is substantial, either in relation to the overall project (approximately 20 percent or more of total project cost) or in dollar amount (approximately $250,000 or more). Separate schedules are common, for example, for water and sewage treatment plants, which generally include both buildings and non-building structures. On the other hand, water and sewer lines and paving on building projects are generally only incidental to a project, and therefore separate schedules are not ordinarily issued.[2]

Below are descriptions of the four major categories of construction, together with an illustrative list of the kinds of projects which are generally included within each category:

Building Construction

Building construction generally is the construction of sheltered enclosures with walk-in access for the purpose of housing persons, machinery, equipment, or supplies. It includes all construction of such structures, the installation of utilities and the installation of equipment, both above and below grade level, as well as incidental grading, utilities and paving. Additionally, such structures need not be "habitable" to be building construction. The installation of heavy machinery and/or equipment does not generally change the project's character as a building.

Examples

Alterations and additions to buildings
Apartment buildings (5 stories and above)
Arenas (enclosed)
Auditoriums
Automobile parking garages
Banks and financial buildings
Barracks
Churches
City halls
Civic centers
Commercial buildings
Court houses
Detention facilities
Dormitories
Farm buildings
Fire stations
Hospitals
Hotels
Industrial buildings
Institutional buildings
Libraries
Mausoleums
Motels
Museums
Nursing and convalescent facilities
Office buildings
Out-patient clinics
Passenger and freight terminal buildings
Police stations
Post offices
Power plants
Prefabricated buildings
Remodeling buildings
Renovating buildings
Repairing buildings
Restaurants
Schools
Service stations
Shopping centers
Stores
Subway stations
Theaters
Warehouses
Water and sewage treatment plants (buildings only)

Residential Construction

Residential projects for Davis-Bacon purposes are those involving the construction, alteration, or repair of single family houses or apartment buildings of no more than four (4) stories in height. This includes all incidental items such as site work, parking areas, utilities, streets and sidewalks.

Examples

Town or row houses
Apartment buildings (4 stories or less)
Single family houses
Mobile home developments
Multi-family houses
Married student housing

Heavy Construction

Heavy projects are those projects that are not properly classified as either "building", "highway", or "residential". Unlike these classifications, heavy construction is not a homogeneous classification. Because of this catch-all nature, projects within the heavy classification may sometimes be distinguished on the basis of their particular project characteristics, and separate schedules issued. For example, separate schedules may be issued for dredging projects, water and sewer line projects, dams, major bridges, and flood control projects.

Examples

Antenna towers
Bridges (bascule, suspension and spandrel arch bridges; bridges designed for commercial navigation; bridges involving marine construction; and other major bridges)
Breakwaters
Caissons (other than building or highway)
Canals
Channels
Channel cut-offs
Chemical complexes or facilities (other than buildings)
Cofferdams
Coke ovens
Dams
Dikes
Docks
Drainage projects
Dredging projects
Electrification projects (outdoor)
Flood control projects
Industrial incinerators (other than building)
Irrigation projects
Jetties
Kilns
Land drainage (not incidental to other construction)
Land leveling (not incidental to other construction)
Land reclamation
Levees
Locks, waterways
Oil refineries (other than buildings)
Pipe lines
Ponds
Pumping stations (prefabricated drop-in units)
Railroad construction
Reservoirs
Revetments
Sewage collection and disposal lines
Sewers (sanitary, storm, etc.)
Shoreline maintenance
Ski tows
Storage tanks
Swimming pools (outdoor)
Subways (other than stations and buildings)
Tipples
Tunnels
Unsheltered piers and wharves
Viaducts (other than highway)
Water mains
Waterway construction
Water supply lines (not incidental to building)
Water and sewage treatment plants (other than buildings)
Wells

Highway Construction

Highway projects include the construction, alteration or repair of roads, streets,

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[1] For wage determination purposes, a project generally consists of all construction necessary to complete a facility regardless of the number of contracts involved, so long as all contracts awarded are closely related in purpose, time and place. For example, demolition or site work preparatory to building construction is considered a part of the building project for wage determination purposes. In contrast, because of the extensive size of a rapid rail system or a highway, which is built over a period of years, each segment is considered a separate project. See *MARTA*, WAB Case No. 75–5, dated October 16, 1975. Similarly, a rest area on a highway is considered a separate project.

[2] In certain areas of the country different wage rates are paid for incidental paving and utilities than for the remainder of a building project. Accordingly, in such areas the Wage and Hour Division issues the rates which are paid on such work on building projects. See WAB Case No. 77–19, dated December 30, 1977.

highways, runways, taxiways, alleys, trails, paths, parking areas, and other similar projects not incidental to building or heavy construction.

Examples

Alleys
Base courses
Bituminous treatments
Bridle paths
Concrete pavement
Curbs
Excavation and embankment (for road construction)
Fencing (highway)
Grade crossing elimination (overpasses or underpasses)
Guard rails on highway
Highway signs
Highway bridges (overpasses; underpasses; grade separation)
Medians
Parking lots
Parkways
Resurfacing streets and highways
Roadbeds
Roadways
Runways
Shoulders
Stabilizing courses
Storm sewers incidental to road construction
Street Paving
Surface courses
Taxiways
Trails

Unless the Wage and Hour Division advises otherwise, as set forth below, the descriptions and classifications above are to be utilized by contracting agencies in selecting the appropriate wage schedule from the **Federal Register** and in determining the application of multiple schedules issued by the Wage and Hour Division. The advertised and contract specifications should identify as specifically as possible the structures to which the schedule applies and only the appropriate schedule(s) from the **Federal Register** should be incorporated into the specifications. Where multiple schedules are issued for a project by the Wage and Hour Division, they are to be utilized in the specifications and any applicable instructions regarding their use are to be observed.

To ensure that appropriate schedules are issued by the Wage and Hour Division, contracting agencies are reminded of their responsibility to provide a sufficiently detailed description of the project to enable the Wage and Hour Division to determine the character of the project. If structures in more than one category of construction are involved, such structures should be identified, together with an estimate of the cost of those structures in dollar amounts and in relation to total project cost.

Furthermore, contracting agencies have the authority only in the first instance to designate the appropriate wage schedule(s) from the **Federal Register** and, in the absence of instructions from the Wage and Hour Division, to determine the application of multiple schedules issued by the Wage and Hour Division in project wage determinations. It is recognized that in individual caes or with respect to specific areas of the country, application of these guidelines may not be appropriate, such as where the category of construction is not clear and a definitive area practice has developed. For example, major bridges are ordinarily heavy construction, but have attributes of both heavy and highway construction; accordingly, area practice may be of great significance. Similarly, pumping stations vary greatly in sophistication and construction techniques, requiring close examination.

In any instance where a contracting agency has a question regarding application of the guidelines to a specific case, or where a question is raised by interested parties concerning the appropriate schedule(s) to be applied to a contract, the question is to be referred to the Wage and Hour Division. This referral should include a complete description of the project, any evidence available regarding area practice of wages paid on similar projects, comments by interested parties which may have been submitted to the agency, and the agency's own view.

Agencies are advised that the U.S. Court of Appeals for the Fifth Circuit has ruled that where a party has objected to a Federal agency's application of a general wage determination to a project, the question must be submitted to the Department of Labor pursuant to the regulations, 29 CFR 5.13, and bid opening cannot proceed until the dispute is resolved by the Secretary. *North Georgia Building and Construction Trades, supra.* The Wage and Hour Division will endeavor to cooprate with the contracting agencies in acting expeditiously with a view towards procurement deadlines.

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Friday
January 16, 1981

Part VIII

Department of Labor

Employment Standards Administration
Wage and Hour Division

Service Contract Act; Labor Standards for Federal Service Contracts; Final Rule

DEPARTMENT OF LABOR

Wage and Hour Division, Employment Standards Administration

29 CFR Part 4

Service Contract Act; Labor Standards for Federal Service Contracts

AGENCY: Wage and Hour Division, Employment Standards Administration, Labor.

ACTION: Final rule.

SUMMARY: This rule revises Regulations, Part 4, Labor Standards for Federal Service Contracts, issued under the Service Contract Act. These regulations represent the first thorough substantive updating and clarification of these regulations since 1968. Most changes are made to reflect longstanding policies, rulings, and interpretations developed in the course of our experience in administering and enforcing the Act over the years. Essentially, this revision codifies these policies, rulings, and interpretations for the information and guidance of various interested parties, including employees and their representatives, contractors or potential contractors and their associations and Federal procurement agencies.

EFFECTIVE DATE: February 17, 1981.

FOR FURTHER INFORMATION CONTACT: Dorothy P. Come, Assistant Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Room S-3502, 200 Constitution Avenue, N.W., Washington, D.C. 20210, Telephone: 202-523-8333.

SUPPLEMENTARY INFORMATION: On December 28, 1979, a document was published in the Federal Register (44 FR 77036) proposing to revise, update, and clarify Regulations, 29 CFR Part 4, so that contracting agencies, contractors or potential contractors, and employees could be more fully apprised of their responsibilities and rights under the Service Contract Act and be provided with a current statement of the policies and interpretations followed by the Department of Labor in administering and enforcing the Act.

Numerous changes, clarifications, and revisions have been made to dispel misunderstandings and confusion that have arisen with respect to some of these policies.

In addition, several changes have been made which address certain concerns expressed by contracting agencies relative to the efficient administration of the Act as it relates to the procurement process. Many editorial and clarifying changes have also been made.

Persons interested in the proposed rulemaking were afforded the opportunity to submit comments to the Wage and Hour Division within 60 days after publication of the proposal in the Federal Register. On February 15, April 1, May 23, June 24, July 25, September 26, and October 24, 1980, notice was given in the Federal Register extending the time for public comment. The period for comments was terminated on November 24, 1980.

The April 1, 1980 extension was granted in order to allow the comment period for this Part to run concurrently with that for the related procedural rules in Parts 6 and 8 of this Title, published in proposed form on April 22, 1980. The other extensions were granted at the request of various interested parties who needed additional time to prepare their comments.

Overall, comments were received from approximately 450 interested parties, including Members of Congress, contracting agencies, labor unions and organizations, contractor associations, contractors, business organizations, and others.

Among those Federal agencies submitting comments were the Executive Office of the President—Office of Science and Technology Policy, the Department of Defense, the General Services Administration, the Department of Energy, the National Aeronautics and Space Administration, the Department of Agriculture, the Federal Aviation Administration and the Small Business Administration.

Contractor associations and business organizations submitting comments included the Council of Defense and Space Industry Associations, the Computer and Business Equipment Manufacturers Association, the National Council of Technical Service Industries, the National Star Route Mail Carriers' Association, the Scientific Apparatus Makers Association, and the Chamber of Commerce of the United States.

Among the individual firms who commented were Pan American World Airways, Inc., Datapoint Corporation, Northrop Corporation, Xerox Corporation, Trinidad Corporation, McDonald Douglas Corporation, Rockwell International, the Boeing Company, and attorneys representing the Bell and Howell Company, Southern Packaging and Storage Company, Inc., and Chromalloy Metals Tectonics Company.

Labor unions and organizations commenting on the proposal included the American Federation of Labor—Congress of Industrial Organizations (AFL-CIO) and its Department of Economic Research and Department of Professional Employees; and affiliated councils and unions of the AFL-CIO, including the International Brotherhood of Electrical Workers, the International Association of Machinists and Aerospace Workers, the American Federation of Government Employees, the Service Employees International Union, the International Union of Operating Engineers Local No. 3, and the United Brotherhood of Carpenters and Joiners of America, the Washington State Labor Council, the International Woodworkers of America, Seafarers International Union of North America, Laborers' International Union of North America, and the International Alliance of Theatrical Stage Employees and Moving Picture Machine Operators of the United States and Canada—Motion Picture Laboratory Technicians Local 780. Comments were also received from the Center to Protect Workers' Rights and the Contract Loggers Employee Association.

Several general comments were received, usually either in support or opposition to the proposal, while several others requested that public hearings regarding the proposed changes to the Regulations be held and/or requested the preparation of a regulatory analysis.

Since the long extended public comment period has given all interested parties ample opportunity to submit their views, it was decided that public hearings were not necessary.

It has been determined that the amendments to these Regulations do not meet the criteria of Executive Order 12044 and the Department of Labor Guidelines (44 FR 5570) for a regulatory analysis. The revised portions of the regulations essentially clarify interpretations, policies, and procedures, and do not, in any event, cause major cost/price increases.

The following is an analysis of all the principal comments received and a description of the changes made to the proposed rule because of these comments. Each submission has been thoroughly reviewed, and each criticism and suggestion has been given careful consideration. For each section and, where appropriate, subsection of the final rule, the analysis contains a description of the major substantive comments and recommendations, the Department's findings as to whether or not suggested changes to the proposed rule would be in accord with the language and intent of the SCA, and a discussion of the substantive changes adopted, if any. Many minor editorial changes, spelling, and other necessary

typographical corrections have been made.

* * * * *

Section 4.1b(a)—Effective Date of Variance Decisions

The AFL-CIO supported making decisions of substantial variance hearings effective on the date of issuance of an Administrative Law Judge's (ALJ) decision except where the decision results in the restoration of lost wages or fringe benefits, in which case the decision should be retroactive to the beginning of the contract, whereas DOD felt that a contractor should not be required to pay higher rates when a request for a variance hearing under section 4(c) of the Act has been made until the matter is resolved by an Administrative Law Judge. DOD also stated that a decision on substantial variance should not become effective until 10 days or more after the issuance of any new wage determination rather than the date of the ALJ's decision.

As set forth in § 4.163(c), the legislative history makes it clear that collectively bargained wages and fringe benefits must be honored "unless and until" they are found, after a hearing, to be at variance. Thus, the above suggestions cannot be adopted.

DOD also objected to the phrase "for the same location" as requiring successor contractors, regardless of where the service work will be performed, to pay wages and fringe benefits contained in a predecessor's collective bargaining agreement, and recommended using "at" or "in" the same location.

There is nothing in the Act indicating Congressional intent for such a strict limitation on section 4(c) of the Act. This point will be discussed in more detail under § 4.163.

Section 4.1b(b)—Limitations to the Applicability of Section 4(c) of the Act

The AFL-CIO, the Center to Protect Workers' Rights, and a number of other union organizations opposed what they perceived as additional limitations on the application of section 4(c) of the Act in the proposed adoption of different "cut off dates" for receipt of new or changed collective bargaining agreements in the case of negotiated procurements or contract extensions. The unions asserted that these proposed changes deprive workers of benefits which were insured by the 1972 Amendments to the Act.

The National Aeronautics and Space Administration, the Department of Energy, and several contractors argued that the rule for the application of new collective bargaining agreement rates in subparagraph (b)(2) should be tied to receipt of proposals (or best and final proposals), and not to contract award or commencement.

The General Services Administration (GSA) and NASA argued that the "30 day rule" in subparagraph (b)(2) would disrupt the procurement process because there would be legitimate reasons for delaying contract commencement for more than 30 days beyond the award date.

The Army and Air Force Exchange Service (AAFES) recommended a 90 day rule instead of the 30 day rule proposed in (b)(2), in order to allow phase-in procedures, since 60-90 days typically elapse between their contract awards and the contract commencement dates.

The time frame change in § 4.1b(b)(2) essentially moves back the date for recognition of new collective bargaining agreements from the current 10 days prior to the contract commencement, in the case of negotiated procurements, options or extensions, to the date of award—provided that the contract commences within 30 days after the award and that the predecessor contractor and collective bargaining representatives of the predecessor's employees are notified of all applicable procurement action dates, including, for example, commencement of negotiations, date of award and commencement of the contract. Otherwise, the "10 day prior to the commencement" rule becomes operative. While it is recognized that this change may take away 20 days from potential collective bargaining, it is deemed fair and equitable for all concerned, given the possible disruptions to the procurement process by the current 10-day rule. Conversely, tying the effectiveness of new bargaining agreements to the date on which contract proposals are received or the date of contract option, or extending the 30-day period to 90 days as suggested by some agencies, would provide too serve a limitation on the time available for meaningful collective bargaining with an incumbent contractor. For example, receipt of proposals often occurs many months before contract award or commencement.

The Computer and Business Equipment Manufacturers Association (CBEMA) objected to the provision in subparagraph (b)(3) that the limitations on the application of section 4(c) of the Act contained in subparagraphs (b) (1) and (2), concerning new collective bargaining agreement rates, are dependent upon the contracting officer notifying the predecessor contractor and the union of the applicable procurement dates.

This requirement, which has been in the Regulations since 1976, is necessary to give the affected parties fair and adequate notice, so that orderly bargaining may take place.

The Department of Defense recommended language changes in § 4.1b (b)(2) to refer to "contract start of performance" to prevent contractor evasion of the 30 day rule therein. This suggestion will be adopted.

Various commentators pointed out that in order to be effective, subparagraph (b)(3) must be clarified to specify that the incumbent contractor and the collective bargaining representative must be notified 30 days in advance of *all* applicable procurement dates. This subparagraph will be so clarified.

Section 4.4(a)—Notice of Intention To Make a Service Contract (SF-98)

The AFL-CIO; the Center to Protect Workers' Rights; the International Alliance of Theatrical Stage Employees, Local 780; the American Federation of Government Employees; and the International Brotherhood of Electrical Workers commented that the requirement for submitting SF-98s to the Department no less than 90 days prior to solicitation was necessary if DOL is to carry out its wage determination responsibilities more effectively, but suggested that the representatives of employees affected by the issuance of a wage determination (including Federal employees) also be notified.

The Department does not believe that the notification of employees' representatives that an SF-98 has been filed is a necessary or appropriate requirement. Employees are notified of their rights under the contract pursuant to § 4.6(e) in the contract clauses and union representatives are notified of agency procurement actions under § 4.1b (b)(3).

DOD and GSA objected to requiring earlier submissions of SF-98s for procurements which are not recurring and are not known of in advance. GSA noted that the reason for the longer advance time period was to accommodate appeals of wage determinations to the Board of Service Contract Appeals, and stated that it opposes, in spirit, the establishment of a Board because of the ensuing delays and complications which will accrue to the procurement process.

The National Aeronautics and Space Administration; the Department of Energy; the Department of Agriculture (Office of the Secretary, the Office of Operation and Finance, and the Forest

Service); the Naval Surface Weapons Center and the Chamber of Commerce also objected to the 90 day advance notice requirement as impairing the procurement process by increasing lead times for new requirements, thereby necessitating revisions of submitted data and an increase in costs. They argued that earlier submissions would also increase the incidence of changed collective bargaining agreements and would result in corresponding changes in wage determinations required by section 4(c) of the Act. NASA recommends retaining the current 30 day requirement and handling appeals which delay the issuance of a wage determination on a case by case basis.

As indicated above, the purpose of proposing an increase in the lead time for submission of SF–98s from 30 to 90 days was to provide adequate time for the review of wage determinations, if requested. (For the reasons stated in the preamble relating to 29 CFR Part 6, the Board of Service Contract Appeals is not being established, as proposed. Rather, a formal appeals procedure to the Secretary is being substituted.)

However, because of the degree of concern expressed by affected agencies, it has been decided to strike a balance by shortening this lead time to 60 days for submissions in the case of recurring, known procurements but retaining a 30 day submission period for unplanned and/or emergency actions. Appropriate changes will also be made in § 4.4(f).

GSA also took issue with the requirement in § 4.4(a) that agencies submit specific questions concerning the SCA's applicability to individual contracts to DOL, asserting that contracting officers, on advice of agency legal counsel, should retain authority to decide the applicability of the Service Contract Act in individual cases.

Since DOL has the responsibility for resolving questions of labor standards applicability (see the Opinion of the Attorney General, 43 Atty. Gen. Ops. (March 9, 1979)), it is proper to require the agencies to refer such matters for resolution.

Section 4.4(b)(1)

Two industry associations and one firm argued that the "5 employees" provision contained in this subsection should be interpreted as meaning 5 work years.

Because of the fluctuation in, and variety of staffing patterns on service contracts (e.g. a large number of employees used for a short time, a few used over the course of a year, etc.), it is not appropriate to establish any hard and fast rule on how to count the number of service employees, which is used by DOL to determine whether a wage determination is mandatory pursuant to section 10 of the Act. In any event, as required by section 10 and as set forth in § 4.3, DOL intends to issue wage determinations wherever possible, irrespective of whether more or less than 5 service employees will be utilized on a contract.

Section 4.4(f)

The Department of Defense objected to the 90 day rule for submission of SF–98s, and recommended a 30 day submission requirement for nonroutine procurements because of the need to meet emergency situations on a timely basis.

Such accommodation will be made in this subsection, as discussed above under § 4.4(a).

DOD also objected to the requirement that the contracting agency not award a contract with more than 5 service employees without an appropriate wage determination on the grounds that the agency should not have to hold up the award if the Department had not issued a wage determination within a reasonable time.

As noted in this subsection, the requirement that all contracts which involve the use of more than 5 service employees contain a wage determination carries out the mandate in section 10 of the Act and thus cannot be varied. The Department will do its utmost to issue timely wage determinations in response to the timely submissions of SF–98s.

Section 4.4(g)

DOD suggested that the requirement to contact DOL if a solicitation is delayed more than 30 days beyond the date indicated on the SF–98 to determine whether a wage determination is still current be changed to 60 days, in an effort to lessen the potential for unnecessary delays and disruption of the contracting process.

This is a reasonable suggestion, and will be adopted.

The National Aeronautics and Space Administration suggested that an expiration date be set forth in the wage determination in lieu of requiring the contracting agency to contact DOL if the procurement date exceeds the 30 day limitation, which they state is a common occurrence.

Given the large volume of wage determinations issued and revisions made, this is not a viable alternative.

Section 4.5(a)(2)—Inclusion of Revised Wage Determinations

The AFL–CIO; the Center to Protect Workers' Rights; the International Alliance of Theatrical Stage Employees, Local 780; the International Brotherhood of Electrical Workers; and the International Association of Machinists and Aerospace Workers objected to this provision as giving the contracting agencies too much discretion to use or reject revised wage determinations received less than 10 days prior to the date of bid opening in the case of competitive procurements, thereby inviting abuse. In addition, all of these parties recommend requiring the inclusion of an updated wage determination which is received by a contracting agency up to the date of contract commencement in the case of noncompetitive procurements.

NASA, the Army and Air Force Exchange Service (AAFES), the General Services Administration, the Department of Energy, the Computer and Business Equipment Manufacturers Association, and one contractor said the proposal would cause procurement problems by allowing insertion of wage determinations which were not contemplated in the original bidding competition. AAFES stated that a "90 day rule" for negotiated contracts would be preferable to the "30 day rule" proposed in this provision because of the nature of its contracts.

The Department of Defense suggested revising this subsection to substitute the term "contract start of performance" for "contract commencement." This change was adopted for the reasons set forth in § 4.1b(b).

The time frames for insertion of revised wage determinations provided in this section establish a fair and reasonable balance between the competitive aspects of the procurement process and providing for current prevailing wages and fringe benefits which will apply over the ensuing contract term (in most cases, a whole year). The "10 day rule" in the case of competitive procurements has been in the Regulations since 1968. The "30 day rule" in this proposed section replaces the current policy of requiring the inclusion of revised wage determinations up to the date of contract commencement with respect to negotiated (or option) procurement actions. This prior policy led to some serious difficulties. In addition, the new proposal dovetails with § 4.1b(b)(2) as it relates to revised collective bargaining agreements. No change will be made in this section other than the language changes proposed by DOD which are helpful.

Section 4.5(c)—Failure To File SF–98 on a Timely Basis; Erroneous Contracting Agency Determinations of Noncoverage

The Department of Defense (DOD) objected to the requirement that a contract agency either include the Service Contract Act provisions in a contract or cancel or terminate a contract, when DOL finds that the agency erroneously did not apply the Act to that contract. DOD believes that DOL should make allowances for good faith disagreements; it also contends that the court cases cited in this subsection do not indicate that DOL has the authority to require cancellation or termination of the contract.

The General Services Administration (GSA) opposed § 4.5(c)(2) on the ground that the potential for disruption of a contract far outweighs the "benefits" derived from the retroactive inclusion of the Service Contract Act in some situations. GSA argues that if the contract has been substantially performed, the decision whether to amend the contract should be left up to the contracting officer based upon the particular facts in the case, or at least, DOL should take this into consideration.

The Council of Defense and Space Industry Associations and the National Council of Technical Service Industries stated that the procedures in this section do not adequately protect the contractor by failing to require the contracting agency to reimburse the contractor for unanticipated costs.

The AFL–CIO, IATSE, the Center to Protect Workers' Rights, and the International Brotherhood of Electrical Workers all commented in favor of this section, stating that it would help insure the retroactive application of wage determinations to contracts where the agency has omitted the SCA requirements and would prevent employees from losing the protections of the Act.

In the case of a substantially completed contract, the Department of Labor has and will consider whether a contracting agency made a good faith decision not to include the required provisions of the Act in a particular contract and the possible disruptions to a procurement in deciding on remedies in each individual case. Accordingly, we do not believe that any changes in the regulation are justified.

The listed court cases are generally cases in which the courts have required incorporation of contract provisions required by law or considered such provisions to be incorporated as a matter of law. The Department of Labor does not have the authority to require an agency to reimburse a contractor for additional costs resulting from the inclusion of a wage determination or for other related procurement costs. These are matters for resolution within the context of the applicable procurement statutes and regulations and GAO directives. This section of the regulations sets out various possible alternative avenues of relief for the contracting agencies to consider and/or adopt so as to provide for equity to contractors while at the same time properly effectuating the remedial purposes of the SCA.

Section 4.5(d)

NASA and GSA objected to the requirement that agencies call the Department for guidance when an SF–98 has been timely filed but no wage determination has been issued, stating that this imposes delays on the contracting agencies but does not impose similar time limits on the Department. Both parties suggested that when a wage determination is not issued the wage determination applicable to the previous contract should be used or, if there was not a previous determination, the minimum wage standards contained in section 6(a)(1) of the Fair Labor Standards Act should apply.

This subsection is intended to provide an efficient and simplified procedure for the agencies and DOL to use in order to implement the mandatory requirement in section 10 of the Act for the issuance and, obviously, the inclusion of current, prevailing wage determinations in contracts. The failure to include a wage determination or the use of outdated wage determinations would be improper. Finally, this provision conforms to the instructions currently set forth on the reverse side of the SF–98.

Section 4.6(b)(1)—Contract Clauses

The Department of Energy (DOE) noted that the last sentence in this subparagraph does not specify that the length of service of a service employee with a predecessor contractor (which is used in determining wage and fringe benefits entitlements) must also have been performed on a predecessor contract. This section will be so amended.

Pan American World Airways agreed that length of service should be considered for fringe benefit entitlement but not for wage entitlements. However, length of service must be considered where required, as discussed in Subpart D of this title.

Section 4.6(b)(2)—Conforming Procedures

The AFL-CIO, the Center to Protect Workers' Rights, IATSE, and the International Brotherhood of Electrical Workers fully supported the proposed detailed changes in the conforming procedures. They believe that requiring the participation of the affected workers and involving the Department will prevent abuses such as redesigning jobs to evade the established wage determination classes and rates.

The Department of Energy (DOE) objected to the conforming procedures as potentially causing continuous disputes given the multitude of possible job function and responsibility combinations, and objected to the requirement that the contractor explain the conformance to the affected employees.

The Department of Defense objected to the requirement for review of all conformance actions by the Department on the grounds that it places additional burdens on the contracting agency, adds delays and paperwork requirements, and encroaches on the contracting officer's authority.

NASA proposed that new and different conformances procedures be established for contract modifications, options or extensions, new contract awards where there is no predecessor, and awards through recompetition, based upon maintaining a constant arithmetic relationship between the rates for conformed classes and those listed on a wage determination. In all cases, however, it was proposed that only the contracting agency and the Department be involved in the conformance.

The Council of Defense and Space Industry Associations (CODSIA) objected to the requirement for Departmental approval of conformances as interference in the collective bargaining process and as increasing the administrative burden on the Department. CODSIA and NCTSI also objected to the proposed time limits for conformance, and to the placing of the burden for conformance on the contractor. If the contractor "guesses wrong", CODSIA contended, he is subsequently held liable for violations based on the failure to conform rates properly. The Scientific Apparatus Makers Association and a number of contractors made similar observations.

The Computer and Business Equipment Manufacturers Association (CBEMA) and some other commentors asserted that the conforming procedures require either individual bargaining with each employee, which was termed

impractical, or forced collective bargaining contrary to the National Labor Relations Act.

NCTSI also stated that conformance actions should be appealable to the Board of Service Contract Appeals, and that subsequent to the completion of final action, the Department should issue a revised wage determination containing the additional rates in order to reduce subsequent conformance burdens.

The Department has wrestled for many years with this complex problem of conforming wage rates and classifications for contract work for which no wage data is available or about which the Department has not been informed by the agency on the SF-98. The proposed revisions to this procedure are intended to spell out and clarify existing methods. While we believe that the procedure for agreement the interested parties should continue to include the affected employees or their representatives, we intend to study, for possible future use, other alternatives, like the one proposed by NASA. In the meantime, this proposed subsection will be adopted. Moreover, we intend to take administrative steps to issue, to the extent possible, wage rates for all of the occupational classifications requested by the agencies, utilizing statistically valid benchmarks, slotting of jobs, etc. It is also noted that conformance actions will be appealable.

With respect to the proposed DOL review of all conforming actions, this requirement is deemed necessary because of significant past abuses and/or failure to observe the contract conforming requirements, which led to serious, protracted compliance problems when discovered during the course of investigations. However, it will be our policy not to modify agreements reached by the interested parties unless they are determined to be clearly erroneous.

Section 4.6(g)—Recordkeeping

NASA recommended review of the proposed requirement that the contractor's records include the employee's social security number because of the possible impact of the Privacy Act of 1974.

Since this agency computes and disburses wages to employees and taxes to the IRS from withheld funds, this provision is in accord with the Privacy Act.

National Star Route Mail Carrier's Association argued that the suspension of contract payments to a contractor for failing to provide payroll records might be appropriate in cases involving willful withholding of records, but not in situations where records were lost or simply not maintained.

This provision will be applied judiciously, with due regard for the facts in each case.

Section 4.6(i)—Withholding

NCTSI argued that contract fund withholding should be at the discretion of the contracting agency and should not take place in advance of due process hearings.

This policy on withholding is in accord with section 3(a) of the Act. See § 4.187(a) of this Part for an explanation of this matter.

Section 4.6(j)—Inclusion of Contract Clauses in Subcontracts

Several commentors suggested that the Department clarify the requirement that SCA clauses are only required to be inserted in subcontracts which are subject to the Service Contract Act.

Such amendatory language will be added.

Section 4.6(l)(2)—Seniority List

Several firms stated that the requirement to submit an employee seniority list to be used by successor contractors to determine vacation eligibility in certain cases was burdensome. The Computer and Business Equipment Manufacturers Association questioned whether this provision violated the Privacy Act and whether it was proper to require a firm to turn over business information to a competitor.

The National Council of Technical Service Industries (NCTSI) argued that the requirement to submit a list of employees during the last month of contract performance prior to the end of that month is impossible, since such a list could only be estimated at that time and requested this section be revised to require that the list be furnished within 30 days after completion of contract performance.

This proposal basically was made at the suggestion of a number of service contractors who had experienced difficulty in obtaining employee length of service data which is necessary in order for them to determine vacation entitlement amounts based on service with "predecessor" contractors where there is a succeeding contract (§ 4.173). This subsection will greatly assist successor contractors in obtaining this information and thus help insure greater voluntary compliance with the vacation fringe benefit provisions of the Act and wage determinations, as well as eliminating many serious and protracted enforcement problems in this area. NCTSI's suggestion would be unenforceable on a predecessor contractor, since the contract would have been completed, and thus no further contractual remedy would be available. The subsection only requires turning over the seniority list as it exists at the time stated. No valid reason for not adopting this proposal has been advanced.

Section 4.6(m)—Contract Clause: Incorporation of SCA Rulings and Interpretations by Reference

NASA and the Xerox Corporation objected to inclusion by reference of all rulings and interpretations of Part. 4. Xerox thought the contract clauses should stand alone.

Since all bidders and contractors must be governed by the same rules of compliance, it is appropriate that those rules be set forth as a contractual requirement. However, it is obviously not feasible or appropriate to include the entire regulation verbatim in the contract clauses. This provision, in substance, has been in the Regulations since 1968.

Section 4.6(n)—Certification of Eligibility

The AFL-CIO, the Center to Protect Workers' Rights, the Service Employees International Union, the International Association of Machinists and Aerospace Workers, and the International Brotherhood of Electrical Workers supported this provision as preventing fly-by-night contractors from obtaining further contracts after being debarred by merely changing their name or the name of their firm.

Several contractor associations (National Star Route Mail Carriers, CBEMA and NCTSI) objected to contractors being required to certify that each "official" is not debarred on the grounds that it is impossible to know whether each stockholder of a firm, including those with only minor investment, is on the debarred list.

This subsection does not require certification of eligibility with respect to every stockholder, but only those parties or officials with a "substantial interest" as set forth in Section 5 of the Act and as discussed in § 4.188(c).

Section 4.6(o)

The Department of Energy commented that the concept of formalized, approved programs for apprentices and trainees is almost foreign to the service industry and will force higher bids or no bids on Federal service contracts.

This section providing for enrollment in approved training programs in order to pay apprentices, student learners and handicapped workers less than the

applicable prevailing or minimum wage insures that bona fide training opportunities are present. It is our experience that there are many apprenticeship programs for workers in service occupations. This provision has been in the Regulations since 1968 and, to our knowledge, has caused no difficulties.

Section 4.6(p)—Apprenticeship and Training

The AFL–CIO, the Center to Protect Workers' Rights and the International Brotherhood of Electrical Workers generally supported the proposal as contributing to the upgrading and training of service workers but objected to the last sentence allowing "trainee" classifications to be included in wage determinations regardless of whether such "trainees" are enrolled in an approved program, claiming this would encourage contractors to underclassify service workers in order to justify the payment of lower wages. They suggested adding a requirement that trainee rates only be permitted when provided for in a *bona fide* apprenticeship program.

In response to these comments, we have deleted the last sentence of this section.

On the other hand, DOD, NASA, and the Northrop Corporation objected to trainee classifications being allowed only if included in the applicable wage determination on the grounds that many contractors use trainees and proposal's restrictive language would impair affirmative action and equal employment opportunity programs. DOD recommended that the same rules apply to both bona fide apprenticeship and training programs.

We have carefully considered the objections to this subsection. The Bureau of Apprenticeship and Training (and equivalent State agencies) approves apprenticeship programs for a wide variety of those service occupations which lend themselves to indentured skill progressions, and are open to any firm which desires a bona fide program and accommodates equal opportunity considerations. We therefore believe that this section as proposed (which retains the principles embodied in the regulations since 1968—see § 4.6(o)), does not restrict job opportunities in the service contract area, but through the registration/approval process for apprenticeship programs insures bona fide, meaningful training and provides protections necessary to prevent abuses of workers and unfair competitive bidding advantages.

Section 4.10—Substantial Variance Proceedings Under Section 4(c) of the Act

Several commentors, including the AFL–CIO, the Center to Protect Workers' Rights and the IBEW stated that the Act did not intend to require substantial variance proceedings based only on unsubstantiated claims, which cause unnecessary delay and expense. They recommended that this section be amended to require the charging party to present a *prima facie* case before a hearing is convened.

The provision in § 4.10(b)(2) requiring that a showing must be made that "there may be a substantial variance" is sufficient for the Department to eliminate frivolous complaints.

The IBEW and the Center to Protect Workers' Rights asserted that "interested parties" should include only the successor contractor, the contracting agency, and the affected employees or their collective bargaining representatives.

It is our view, however, that other prospective contractors and their representatives are clearly interested parties, and that they should be given the opportunity to participate in the process.

The Department of Defense objected to allowing the parties who are signatories to a bona fide collective bargaining agreement to challenge the agreement as being at variance.

As provided in § 4.10(b)(1), the signatories to a collective bargaining agreement are clearly interested parties under these proceedings, and there is nothing in the Act that indicates it would be inappropriate for them to request a hearing pursuant to this section.

Section 4.11—Arm's Length Proceedings

The AFL–CIO, the Center to Protect Workers' Rights, IATSE, and the IBEW all opposed the establishment of separate proceedings for substantial variance challenges and arm's length challenges. They commented that two separate procedures would result in repetitive litigation and unnecessary delay.

This section recognizes that these issues may, in fact, arise separately. However, where they are both present, §§ 4.10(c), 4.11(d) and Subpart E of 29 CFR Part 6 (§ 6.50) now provide for the consolidation of both issues in one proceeding. In addition, the time limits on requests for both types of hearings will preclude repetitious proceedings.

NASA recommended that other arrangements which would not meet the "arm's length negotiation" test be listed in proposed § 4.11(a), and stated that the test should be the National Labor Relations Board's "good faith bargaining" standard based upon an analysis of all facts in a particular case.

This is an appropriate suggestion and will be adopted in principle. However, since the NLRB and not DOL is the controlling agency on this issue, the changes will reflect this fact.

Section 4.51(b)—Prevailing in the Locality Determinations—Determination of Prevailing Rates

Several commentors, including CBEMA, NCTSI, SAMA, NASA and several individual firms, suggested that wage determinations should contain entry level wage rates and provide for the payment of a range of rates to the various employees within a given classification. These commentors argued that the issuance of a single prevailing wage rate for each classification would disrupt "merit pay" practices within "high technology" industries.

On several prior occasions, the Department by itself and in conjunction with an inter-agency task force has considered the possibility of issuing a rate range type of wage determination. On each occasion the Department concluded that the rate range and similar proposals would be clearly contrary to the statutory scheme and, therefore, would require legislation before such action could be implemented. Although the Department may use various different methods to collect and analyze data for the issuance of wage determinations under the SCA, a basic principle of this Act, as well as the Davis-Bacon Act, is that the prevailing wage rate established for each particular classification is the minimum floor permitted to be paid to *all* employees working in that classification on the Government contract. Nothing in the legislative history of the Act nor in any of the numerous hearings conducted subsequent to the passage of the SCA suggests any Congressional intent to depart from the traditional interpretation that a single prevailing rate must be determined for each classification of workers. In fact, establishment of a wage determination with a rate range would have the practical result of issuing a minimum wage, and not a prevailing wage. This is clearly contrary to the law.

For a further discussion of the circumstances under which the Department issues wage determinations for different levels in an occupational classification, see § 4.152.

Section 4.51(c)—Prevailing in the Locality Determinations—"Due consideration"

The AFL–CIO, the Center to Protect Worker's Rights, and the American Federation of Government Employees objected to the discretion which this section affords the Secretary in giving "due consideration" in the issuance of SCA wage determinations and they suggest that there should be mandatory criteria for applying due consideration. The AFGE recommends that, at a minimum, the Department should give proportional weight to the compensation received by Federal employees when issuing prevailing wage determinations. NASA and the Scientific Apparatus Makers Association on the other hand do not agree that the legislative history indicates that Congress intended to narrow the gap between wages paid to Federal employees and to service employees under SCA.

Although the legislative history of the 1972 Amendments to the Service Contract Act does not specifically define the purpose of the "due consideration" requirements of section 2(a)(5) of the Act, the report of the House Representatives, which accompanied the bill to amend the act did cite a number of serious problems including "a substantial disparity in wages and benefits which has developed between Federal wage board employees and their counterparts employed by service contractors". The purpose of the "due consideration" requirement is more clearly stated in an April 1975 report of the Subcommittee on Labor-Management Relations of the House Committee on Education and Labor entitled "Congressional Oversight Hearings: The Plight of the Service Worker Revisited".

In addition, the Department has previously considered implementation of a structured scheme for giving "due consideration". In many cases the Department gives due consideration in the manner suggested by APGE; however, strict adherence to mandatory "due consideration" standards would serve to inhibit the exercise of even limited discretion, which is necessary to avoid anomalies in the wage determinations.

Therefore, no change in this section of the Regulation is warranted.

Section 4.53 Locality Basis of Wage and Fringe Benefit Determinations Where Place of Performance Is Unknown

Numerous commentors objected to the provision in proposed § 4.53(b) allowing the use of a large composite geographic area as the locality basis for devising wage determinations when the place of performance is not known at the time of bid advertising or requests for proposals. Those objecting included the AFL–CIO, the Center to Protect Workers' Rights, IBEW, CODSIA, NCTSI, DOD, NASA, DOE, GSA and several corporations. Many of these commentors cited the decision of the U.S. Court of Appeals in *Southern Packaging and Storage Co., Inc.* v. *United States*, 618 F. 2d 1068 (4th Cir., 1980). Some agency and industry commentors suggested a "two-step" procurement process (i.e., step one would identify the localities of all potential bidders and step two would be the issuance of wage determinations for all potential places of performance for inclusion in the solicitation). Other suggestions included variations of the "two-step" process, using the locality of the incombent contractor as the locality for all successors, and using the locality of the procuring agency or installation as the locality for the purpose of applying wage determinations. Some of the parties also objected to application of section 4(c) of the Act in situations where the location of the successor contractor is unknown at the time of bid solicitation.

While all of the comments on this section have been given careful review and consideration, none of the various suggestions has been sufficiently developed to allow immediate approval. For example, a formal "two-step" procurement process presents some practical administrative problems and would require concomitant changes in the procurement regulations. Accordingly, while the Department is continuing to give serious consideration to some variation of the "two-step" propopsal, it would be premature to reach any final conclusion without further review and opportunity for public and agency comment. This proposed subsection is therefore, being deleted.

In the meantime, the Department is applying the principles set forth in *Southern Packaging* and is examining each procurement on an individual basis when the place of performance is unknown at the time of bid advertising to determine the appropriate locality or localities. This practice is reflected in the final regulation.

With respect to the application of section 4(c) to situations where the place of performance is unknown at the time of bid advertising, the clear language of the Act requires that the provisions of Section 4(c) apply to *all* successor contracts, regardless of place of performance. This issue has been considered on numerous previous occasions including in Congressional oversight hearings in 1974 and 1975 and rulemaking hearings in 1975 and the proposal has been rejected as being contrary to the statute. This is further discussed in the analysis of comments regarding proposed § 4.163(i).

Section 4.55(a) Review and Reconsideration of Wage Determinations—Review by the Administrator

Comments were received from the AFL–CIO, AFGE, and others as to who should be considered "interested parties" with standing to request review of a wage determination by the Administrator. In essence, the commentors were seeking to avoid frivolous requests for review while at the same time being sure that all parties with a bona fide interest had the right to seek review by the Administrator. The Scientific Apparatus Makers Association (SAMA) suggested placing a burden on the petitioner to present a "prima facie" case before the Administrator would accept a request for review. In addition, some industry and agency commentors were concerned about the time frames applicable to requests for review and reconsideration. Some considered the time requirements too restrictive while others felt that additional time limits should be established to insure prompt, timely reviews by the Administrator.

Because a formal wage determination review procedure is being newly established under these Regulations, the Department has made every effort to insure that no interested party is excluded from the process. In the fifteen years since the statute was enacted, the Department has entertained numerous informal requests for reconsideration, but we have never attempted to preclude reconsideration based on the petitioning parties standing or interest in the matter. The Department's objective is the issuance of the most accurate wage determinations possible, and, in order to achieve that goal, we consider all pertinent evidence, regardless of its source. Accordingly, the Department does not support restricting the standing of any possible interested party. With respect to time frames, the Department endeavors to conduct a prompt and expeditious review process; however, since any review is dependent on other aspects of the wage determination process, the establishment of more specific time constraints in this section is not possible.

Section 4.55(b) Review by the Board of Service Contract Appeals

A number of labor organizations opposed the review of wage determinations by an appellate board. These comments will be discussed in conjunction with proposed Part 6 of this title.

Section 4.110 What Contracts Are Covered

The General Services Administration, the Council of Defense and Space Industry Associations, the Computer and Business Equipment Manufacturers Association, the Scientific Apparatus Makers Association, the National Council of Technical Service Industries, the McDonnell Douglas Corporation, the Bell and Howell Company, Xerox Corporation, and Datapoint Corporation objected to SCA coverage of separate bid specifications which are principally for the furnishing of services through the use of service employees, asserting that the "principal purpose" test for coverage under the Act can only be applied to contracts in their entirety. Several of these commentors noted similar objections to other sections of the proposed Regulations delineating SCA coverage of separate bid specifications, such as § 4.132. GSA contended that the term "(and any bid specification therefor)" in section 2(a) of the SCA merely refers to the documents in a solicitation for bids, rather than a separate line item or work requirement within a bid solicitation or a contract as interpreted in the proposed Regulations. Essentially following GSA's line of reasoning, Bell and Howell argued that the SCA should not be applied to GSA Federal Supply Service "schedule" contracts for the furnishing of equipment and what it termed "incidental" services to maintain and repair that equipment.

NCTSI commented that SCA coverage of separate specifications within a contract would create significant administrative problems because of the application of different labor standards obligations.

The legislative history of the SCA contains no definition nor discussion of the term "bid specification" in section 2(a) of the Act. In the absence of such guidance, the Department of Labor has had to interpret this term in the fashion determined to be most consistent with the statutory language and the remedial purposes of the Act. Following these precepts, the Department has held since 1966 that a contract containing a separate bid specification which is principally for the furnishing of services through the use of service employees is subject to the Act regardless of the principal purpose of the other specifications of the contract as a whole. The Department's position that the SCA applies to a separate bid specification within a procurement which also calls for the furnishing of supplies is set forth in § 4.132 of the current Regulations. The position on SCA coverage of separate specifications is also explicity stated in § 4.116(c) of the current Regulations, which codifies SCA coverage of service specifications in contracts which also contain separate specifications for construction work.

Sections 4.116(c) and 4.132 of the current Regulations were formally adopted in 1968 after being published as part of the proposed 29 CFR Part 4 with opportunity for comment. At that time, no procurement agency and only one association expressed objections to the application of the "principal purpose" test to separate service specifications. It should also be pointed out that the Department's position on specifications subject to differing labor standards is clearly reflected in section 12-1002.1 of the Defense Acquisition Regulation which controls Department of Defense procurement. DAR 12-106 and FPR 1-18.701-2 contain a discussion of similar principles.

SCA coverage of separate bid specifications does not extend to incidental services performed under contracts also calling for the furnishing of nonlabor items, but only to requirements calling for substantial and segregable amounts of services, thus avoiding any overlapping of labor standards protections. With respect to the comment by Bell and Howell, it should be pointed out that, according to figures supplied by GSA, the cost, for example, of services performed under maintenance specifications in combined lease/purchase and maintenance contracts for automatic data processing and related equipment alone amounts to several hundred million dollars per year. This volume of work can hardly be characterized as "incidental". To view contracts only in their entirety for the purpose of determining SCA coverage would remove much of the protections intended by the Act.

Accordingly, since no new arguments have been presented as to why this longstanding position should be reversed at this time, we do not believe it appropriate to change any of the provisions in this or other sections of the proposed Regulations delineating SCA coverage of separate bid specifications for services.

Section 4.111 Contracts "To Furnish Services"

The Council of Defense and Space Industry Associations, the Computer and Business Equipment Manufacturers Association, the National Council of Technical Service Industries, the Department of Defense, the Department of Energy, the National Aeronautics and Space Administration, the Rockwell International Corporation, the McDonnell Douglas Corporation, and the Trinidad Corporation all objected to the provision in proposed § 4.111(a) stating that the "principal purpose" test for coverage under the Act applies only in determining whether a contract (or bid specification) is principally for services. These commentors essentially asserted that the proper application of "principal purpose" is threefold: whether a contract is principally for services, is principally performed in the United States, and is principally performed through the use of service employees.

Under section 2(a) of the SCA, the Act applies to (e)very contract (and any bid specification therefor) * * * the principal purpose of which is to furnish services in the United States through the use of service employees." Since the legislative history does not specifically state how the principal purpose language of the Act should be applied, the Department had to decide what construction of the term was intended by the statutory scheme.

In enacting the SCA, Congress evidenced a clear intent to "close the gap" between labor standards protections already in place for workers on construction contracts and supply contracts under the Davis-Bacon Act and the Walsh-Healey Public Contracts Act. See § 4.111(b). The Department, starting in 1966, has adhered to the position that the "principal purpose" test is used only to determine whether a contract is principally for services as opposed to one for supplies or construction activity. Thus, if a contract in the United States is determined to be principally for the purpose of furnishing services, it is subject to the SCA if it is performed "through the use of service employees" as discussed in § 4.113.

No new reasons have been advanced to support a change in this longstanding position which has been set forth in the Regulations since 1966. Such a change would amount to a significant "roll back" in labor standards protections.

Section 4.112 Contracts To Furnish Services "In the United States"

The AFL-CIO and the Seafarers International Union, addressing the

issue of SCA coverage of contracts for services performed on marine vessels, stated that all United States flag vessels are considered United States territory wherever such vessels travel, and recommended that the Regulations be changed to provide coverage even when such vessels enter non-American waters. The AFL-CIO also recommended that the reference to the Outer Continental Shelf Lands Act be replaced with the tests of the Fishery Conservation and Management Act of 1976, which provides for a 200 mile limit.

The definition in section 8(d) of the statute regarding the geographic scope of the Act is explicit, expressly excluding any territory other than those specifically set forth therein. Also, the use of the Outer Continental Shelf Lands Act standard is specifically provided for in the statute. Accordingly, these suggestions cannot be adopted by regulation.

The Computer and Business Equipment Manufacturers Association, DOD, and one firm argued that services performed on a vessel must be principally performed in the United States to be covered by the Service Contract Act.

As discussed in the analysis of 4.110, we do not consider this objection to comport with the Act's principal purpose test.

Section 4.113(a)(2) Contracts To Furnish Services "Through the Use of Service Employees"

The AFL-CIO and the Center to Protect Workers' Rights noted their agreement with the language of § 4.113(a)(2) specifying that the SCA applies to contracts principally for the furnishing of services and under which service employees are used to a significant or substantial extent, terming this provision necessary to protect the rights of service employees and in keeping with the remedial purposes of the Act.

The Computer and Business Equipment Manufacturers Association, the Council of Defense and Space Industry Associations, the Chamber of Commerce, the Scientific Apparatus Makers Association, the General Services Administration, the Department of Defense, the National Aeronautics and Space Administration, and several companies objected to our application of the "principal purpose" test.

All contended that the Congressional intent was that services must be furnished principally by service employees, in order for the Act to apply.

The Department's position on the "principal purpose" test is fully discussed in the analysis of comments under § 4.111. The language of this section has been revised, however, to make it clear that while the Act applies to any service contract in which there are any service employees performing contract work, the Department, under its authority to issue tolerances, does not require application of the Act to situations where the use of service employees is only a minor factor in the performance of the contract. Moreover, in response to comments by NASA and the Chamber of Commerce, we have added a new subparagraph (3)(ii) which sets forth the factors which the Department considers in determining whether the use of service employees is only a minor factor or is significant or substantial.

Numerous Federal agencies, business firms and associations, universities, and law firms objected to the statement in the second paragraph of § 4.113(a)(2) of the Regulations that under the principles discussed in this subsection many contracts for research and development (R & D) are subject to the Act. Those objecting included the Office of Science and Technology Policy of the Executive Office of the President; the Department of Agriculture; the Department of Housing and Urban Development; the Under Secretary of Defense for Research and Engineering; the National Science Foundation; NASA; CODSIA; NCTSI; the Chamber of Commerce; Booz-Allen and Hamilton; ITT Research Institute; the Rand Corporation; Digital Equipment Corporation; Planning Research Corporation; the National Association of College and University Business Officers; Harvard University; Yale University; John Hopkins University; Duke University; the University of Michigan; and the University of California.

Many of these commentors argued that the Department's assertion of SCA coverage of R & D contracts represents a new and unwarranted expansion of the Act's coverage.

In fact, as is clear from a comparison of the present and proposed Regulations, the principle of SCA coverage of R & D contracts has been stated in §§ 4.110–4.113, and in particular, § 4.113(a)(2), since 1968. With the exception of a few minor editorial changes, the current text of that subsection was carried over in total to the proposed § 4.113(a)(2). While a new subparagraph was added, it simply amplifies the principles already contained in the Regulations, and cites R&D as an example of a type of contract which has in the past been subject to the SCA where the usual tests of coverage have been met. Because it has been clear to contracting agencies as well as to the Department of Labor that a large number of R & D contracts fall within any reasonable criteria for coverage by the SCA, many contracting agencies have requested wage determinations for them.

Indeed, R & D contracts are categorized under the DOD procurement regulations as service contracts (DAR 22-101(b)(xcdi)). Even statistics compiled by the Office of Management and Budget (Federal Procurement Data System), which our evidence indicates are understated, indicate that 16.39 percent of contracts which have an "R & D" label contain these SCA provisions.

Several commentors also objected to SCA coverage of R & D contracts on the grounds that their principal purpose is the furnishing of research, not services, while others objected because R & D contracts often involve the furnishing of tangible end items such as a prototype, a set of specifications for a product, or a feasibility study in the form of a written report.

As discussed in § 4.111 of the proposed Regulations and the analysis of comments regarding that section, under the statutory scheme, virtually all types of Government contracts not specifically exempted may be subject to the labor standards provisions of the Davis-Bacon Act, and/or the Walsh-Healey Act and/or the Service Contract Act. It must be emphasized that coverage is independent of the designation, nomenclature or characterization of any particular contract under the procurement system of a contracting agency. Thus, while "R & D" is often only a budgetary designation which encompasses a very broad spectrum of contracts, the applicability of the SCA to R & D contracts—as well as to all other types of contracts—depends on whether or not the statutory tests for coverage have been met in each particular case. While numerous R & D contracts have been subject to the SCA because they meet the usual coverage tests for service contracts, SCA is not required to be applied to many other contracts categorized as "R & D" by the procurement agencies, either because service employees are a minor factor in their performance or because the contracts really involve the furnishing of goods or construction to the Government. Thus, for example, a contract to furnish prototypes of a new weapons system would not be covered under the SCA, but rather under the Walsh-Healey Act. Likewise, a contract to build a pilot coal gasification plant would be subject to the Davis-Bacon Act

rather than the SCA. However, as discussed in § 4.131 (a) and (e), the furnishing of such tangible items as written reports does not remove a contract for R & D or other services from the coverage of the SCA, as such items are considered to be of secondary importance to the services which it is the principal purpose of the contract to procure.

Several commentors, notably universities, objected to SCA coverage of R & D contracts for a variety of reasons relating to the belief that SCA wage determinations would cause severe disruptions in the pay systems of universities, some of which are established and controlled by State laws mandating pay levels for all university employees whether employed on Government contracts or not.

The Department recognizes that special problems of compliance with the terms of SCA wage determinations may arise when colleges and universities compete for Government contracts, and every effort will be made to develop wage determinations reflecting the pay practices of such institutions where appropriate.

Some firms commented that many R & D contracts are of the "cost-reimbursement" variety, under which contractors are compensated for all reasonable costs. Thus, it was argued, the SCA should not apply since R & D contractors have no incentive to engage in "wage busting" against service employees, and such employees do not need the protections of the Act.

The Department's position on this matter is that the presence or absence of "wage busting" is not an appropriate basis for determining coverage under the SCA. Adopting this criterion would cause severe administrative problems and require the Department to make arbitrary judgments concerning contractors' pay practices, which the statute does not authorize DOL to do, and the end result would be a patchwork of coverage.

Section 4.114 Subcontractors

The Council of Defense and Space Industry Associations, the Computer and Business Equipment Manufacturers Association, the Scientific Apparatus Makers Association, the National Council of Technical Service Industries, the Department of Energy, the National Aeronautics and Space Administration, and several firms objected to the provision in § 4.114(b) holding prime contractors jointly liable for SCA violations committed by their subcontractors. Some commentors argued that there was no statutory or judicial basis for such a liability to be placed on the prime contractor.

The provision that the prime contractor is liable in the event its subcontractors fail to comply with the Act by breaching the contract clauses, has been in the regulations since their inception, and follows precedent under the Davis-Bacon and Walsh-Healey Acts. (See, for example, Decision of the Armed Services Board of Contract Appeals, A. Jeris, Inc., 67–1 BCA par. 6241, March 22, 1967; Decision of the Comptroller General, B–162034, October 4, 1967; JBL Construction Co. Inc. Decision of the Administrator, CCH Lab. L. Rep., Wages Hours parr. 31,239 September 22, 1978; Ernest Simpson d.b.a. Ernest Simpson Construction Co., Decision of the Administrative Law Judge, 23 WH cases 1064 (1978).)

The Act and the contract clauses require the prime contractor to agree that the prescribed labor standards will be observed with respect to all employees on the contract. Therefore, this is primarily a matter of contract law (privity of contract). Specifically, the principal enforcement remedy in section 3 of the law is the withholding of contract funds in the case of violation. The Government can only withhold funds from the prime contractor, not from a subcontractor. To change this essential policy could invite prime contractors to broker subcontracts to fly-by-night firms, thereby nullifying labor standards protections enforcement of the Act.

Section 4.115 Exemptions and Exceptions

Paragraph (b) of the proposed regulation has been deleted since this section only concerns statutory exemptions, and the Secretary's authority to issue exemptions and variances is discussed elsewhere in § 4.123; therefore this paragraph was deemed unnecessary.

Section 4.116 Contracts for Construction Activity

Local No. 3 of the International Union of Operating Engineers objected to the proposed removal from coverage of construction projects on Guam which are not subject to the Davis-Bacon Act because the geographic scope of the Act does not extend beyond the 50 states and the District of Columbia, asserting that the Department should continue to protect the rights of construction workers in Guam.

We carefully reviewed this matter as a result of questions previously raised, and concluded that it would not be in accord with the law to continue the regulatory policy of asserting that construction contracts become subject to the Service Contract Act solely because such contracts are performed outside the geographic scope of the Davis-Bacon Act.

NASA and GSA objected to the discussion in proposed § 4.116(b) of contracts involving the demolition, removal, and sale of salvage materials as an example of a type of covered service contract not subject to the exemption in section 7(1) of the Act.

This position has been in the Regulations since 1966 and no convincing reasons have been advanced challenging its validity or propriety.

The Council of Defense and Space Industry Associations, the Computer and Business Equipment Manufacturers Association, and the McDonnell Douglas Corporation objected to § 4.116(c) which, in the case of a contract containing requirements for construction and nonconstruction work, limits the application of the exemption in section 7(1) of the Act to those separate specifications or segregable portions of the contract which call for the construction work, and thereby provides for SCA coverage of other contract requirements which are principally for services.

This position has been contained in these Regulations since 1966, as well as in both the Federal Procurement Regulations and the Defense Acquisition Regulations for many years. It also is in accord with the principles contained in §§ 4.110 and 4.132.

Section 4.123 Administrative Limitations, Variances, Tolerances, and Exemptions

The Computer and Business Equipment Manufacturers Association, the Scientific Apparatus Makers Association, and several individual firms recommended the adoption of an exemption for contracts for "commercial product support services". This request had already been submitted to the Department and is not being dealt with in the revision of this Regulation. Our position regarding coverage by the Act of such contracts is discussed under § 4.130.

Section 4.130 Types of Covered Service Contracts Illustrated

GSA objected to the listing of "computer services", as it may be construed to cover some activities arguably not subject to the Act. A large variety of "computer services" are covered by the Act where they are principally for services and involve the use of service employees, as discussed in sections 4.111 and 4.113. Furthermore, such contracts were specifically

mentioned as being covered in the President's statement upon signing the 1972 SCA amendments.

The Computer and Business Equipment Manufacturers Association, SAMA, and a firm contended that the Act should not apply to employees of firms which furnish "commercial product support services," both Government and private sector customers, either because the procurement is not principally for services or because the wage protections provided by the Act are not necessary since marketplace pressures maintain a relatively high level of wages.

The concepts of whether maintenance/repair services are performed on "commercially available" products or by firms which service both the Federal and private sectors are immaterial and irrelevant to SCA coverage.

There is no indication in the statute or the legislative history that contracts for "commercial product support services" are not covered. On the contrary, except for the specific exemptions in section 7, the Act by its express terms applies to "(e)very contract (and any bid specification therefor) * * * the principal purpose of which is to furnish services * * *". Further, the legislative history as discussed in § 4.111(b) also clearly indicates this all encompassing purpose and intent.

The law was enacted "to provide labor standards for the protection of employees of contractors and subcontractors furnishing services to or performing maintenance service for Federal agencies". Congress explained that service contracts were "the only remaining category of Federal contracts to which no labor standards protections apply." See S. Rep. 798, 89th Cong., 1st Sess. 1 (1965); H.R. Rep. No. 948, 89th Cong., 1st Sess. 1 (1965).

Following these guidelines, the Department has, since 1966, consistently held that the maintenance and repair of *all* types of equipment, including ADP equipment, scientific and medical apparatus, office and business machines, and "other high technology" equipment, are covered under the SCA, regardless of whether the equipment is commercially available.

Since almost all services are commercially offered or are in support of commercial products or equipment, from linen supply to automobile and vending machine servicing, any such exemption would, in effect, administratively nullify a significant portion of the Service Contract Act.

NCTSI and Northrop Corporation asserted that the addition of a number of examples to the list represents a significant expansion of the Act's coverage, and includes contracts that are professionally oriented, especially subsection (a)(16), citing electronic equipment maintenance and operation (which is listed in the § 4.130(h) of the current Regulations) and engineering support services.

Such contracts, like other service contracts, are clearly subject to the Act if the criteria in §§ 4.111–4.113 are met, and many "professional" contracts listed are of the type contemplated by the 1972 and 1976 amendments to the Act. For example, during the House debate preceding passage of the 1976 amendments, the Chairman of the Subcommittee on Labor-Management Relations of the Committee on Education and Labor explained that the purpose of those amendments was to clarify Congressional intent that the SCA applies to white collar employees, and specifically mentioned "clerical personnel, office machine operators, and persons engaged in data processing" as employees intended to be covered by the Act. See 122 Cong. Rec. 31575 (1976).

Section 4.131(f) Contracts Under Which the Contractor Receives Tangible Items from the Government in Return for Services—Timber Sales

A significant number of the comments received related to the application of the SCA to so-called "timber sales" contracts as discussed in this proposed subsection. Commentors included Members of Congress, forest industry associations, logging contractor associations, numerous lumber companies, labor organizations, the U.S. Departments of Agriculture and Interior, the Small Business Administration, the U.S. Navy, State and local government bodies, law firms, and individuals. The arguments regarding coverage of timber sales/removal contracts fell into several main categories, as follows:

It is argued that services provided under timber sales contracts are only incidental to the principal purpose of the contract which is the sale of timber by the Government. Some commentors cited the Organic Act of 1897 (16 U.S.C. section 475), which provided that "No national forest shall be established except to improve and protect the forest * * * and to furnish a continuous supply of timber for the use and necessities of citizens of the United States * * *" to support their argument.

The National Forest Management Act of 1976, 16 U.S.C. 1600 *et seq.*, was also cited by the commentors, who asserted that this legislation (which details how national forests are to be managed) has as its main purpose the providing of timber. Further, they stated that nowhere in this legislation was there a suggestion that timber sales contracts were predominantly service oriented or that Congress desired such sales to be included under the Service Contract Act.

The United Brotherhood of Carpenters and Joiners of America, arguing in support of coverage, stated that the National Forest Management Act of 1976 requires that the national forests be maintained by the Forest Service for multiple uses, i.e., "coordination of outdoor recreation, range, timber, watershed, wildlife and wilderness." (Section 6(e)1 of the National Forest Management Act of 1976, 16 U.S.C. 1604). They concluded that the sale of timber by the Forest Service is not undertaken primarily to dispose of Government property, but as part of an overall forest management program.

The Chairman of the Subcommittee on Labor-Management Relations, House Committee on Education and Labor, the Washington State Labor Council (AFL–CIO), the International Woodworkers of America, and the Contract Loggers Association commented in favor of the application of the Act to timber sales. These commentors argued that coverage was necessary to protect the wages and fringe benefits of the forest products industry employees.

It appears that the difficulty is with the terminology "timber sales." Although § 4.116(b) of the existing regulations, promulgated in 1966, sets forth the Department's position that contracts for timber clearing are subject to SCA, proposed §§ 4.130 and 4.131(f) stated for the first time the Department's longstanding interpretation that timber sales contracts *per se* are covered.

In determining the application of the SCA, it is necessary to examine the substance of a contract and its underlying purpose. Thus, as provided in the existing regulations as well as the regulations herein at §§ 4.131 and 4.141, the form of the contract and the fact that a contractor pays the Government under the terms of the contract do not control SCA coverage.

The Department has thoroughly reviewed the various statutes relating to the National Forests, the legislative histories, the regulations and handbooks issued thereunder, sample, timber sales contracts, and related material, in conjunction with the comments.

After this analysis, it is the Department's conclusion that certain contracts for timber sales (as distinguished from service specifications thereunder, discussed below) would not be principally for services and therefore would not be subject to the Act. On the other hand, under contracts styled as

"timber sales" contracts, trees are frequently removed for the purpose of opening up the forest for public use, such as camping; for construction projects, such as roads or reservoirs (covered by the Davis-Bacon Act); because the trees suffer from insect infestations or have been damaged by disasters such as forest fires or volcanic eruptions; or for other forest management purposes. The Department has determined that under such contracts (when not subject to the Davis-Bacon Act), the principal purpose is the furnishing of services, and the contracts are subject to SCA.

It is also apparent from our review of the contracts, that those timber sales contracts which are not principally for services, generally do contain a number of specifications principally for services. These specifications include, for example, the building of temporary roads, firefighting and control, erosion control, slash removal and trimming, and the removal of diseased or injured trees. Pursuant to § 4.132, such specifications are subject to SCA.

In addition to the comments concerning coverage of timber sales contracts, many commentators, including the forest products associations, objected to the recordkeeping requirements which they contend the application of the Act would impose upon the timber products industry, especially with respect to small companies. However, the SCA does not require maintenance of records beyond those already required under the Fair Labor Standards Act (which is applicable to most firms), except that if an employee receives less than the rate on the applicable wage determination for hours spent on commerical work not subject to the Service Contract Act, the employer's records must be segregated to show separately the time spent on contract work. Thus, in the Department's view, no excessive recordkeeping burden exists because of SCA coverage.

Most industry commentors also alleged that the application of SCA to timber sales would be highly inflationary. Wage determinations issued pursuant to the Act only reflect the wages and fringe benefits found to be prevailing in the locality, i.e., those wages and fringe benefits found to be most predominant in the area where the contract work is performed. The Department of Labor knows of no unique features of the timber products industry which would cause the Service Contract Act to have any significant impact upon it.

The National Forest Products Association and several logging companies commented that bonding requirements would be increased by application of the Act, thereby having a harmful effect, especially upon small contractors. However, neither the Service Contract Act nor these regulations require bonding.

Accordingly, § 4.131(f) has been revised to clarify the circumstances in which SCA applies to timber sales contracts.

Section 4.133 Beneficiary of Contract Services

As a result of comments regarding the scope of the contracts which are not subject to the SCA under this provision, the Department issued a new proposal on this section for comment. A final regulation is anticipated in the near future.

Section 4.134 Contracts Outside the Act's Coverage

The General Services Administration (GSA) objected to the provision in § 4.134(b) of the proposed Regulations denoting SCA coverage of service requirements contained in contracts for the lease of building space under certain circumstances. GSA contended that this provision would be contrary to the position expressed in an exchange between Solicitor of Labor Donahue and Senator Prouty during the 1965 Congressional hearings which led to enactment of the SCA, and would have a significant impact on the ability of GSA's Public Building Services to continue leasing building space in its present manner.

We do not agree with GSA's objections. Nothing in the exchange between the then Solicitor and Senator Prouty dealt with specifications in a contract which specifically require certain levels and frequencies of janitorial or other services. Moreover, janitorial workers are among the types of workers to whom Congress specifically intended the Act would apply.

Section 4.152 Employees Subject to Prevailing Compensation Provisions

The National Council or Technical Service Industries, NASA, and the Northrop Corporation commented that position descriptions are seldom attached to wage determinations, and recommended that DOL actually do so in all cases.

The Department will endeavor to supply position descriptions where necessary to inform users of the scope of duties included in a classification. However, as noted in the proposed § 4.152(b), this is not needed for some classifications where the title and duties have commonly understood meanings.

With respect to proposed § 4.152(c), NCTSI, the Scientific Apparatus Makers Association, the Council of Defense and Space Industry Associations, NASA, McDonnell Douglas Corporation, and Northrop asserted that contractors should be allowed to establish lower level classifications, variously described as entry level, trainee, or intermediate level, if no such classifications are listed on an applicable wage determination. Several of these commentors claimed that the prohibition against the use of such lower classifications hampers equal employment opportunity and affirmative action efforts, and is contrary to industry practice.

It would not be appropriate nor in accord with the law to change our longstanding position and adopt any of the recommendations regarding the establishment of lower level subclassifications. Basic to prevailing wage statutes is the principle that the prevailing wage rate be the *minimum* permitted to be paid to *all* covered employees in the classification on the Government contract. There is no indication of any intent by Congress to apply any other principle in the SCA. If Congress had intended anything different, it would have so provided, as it did in the Walsh-Healey Act, which requires that the Secretary determine "the prevailing minimum wages for persons employed on similar work." Thus, House Report No. 948, 89th Cong., 1st Sess. (1965), accompanying the bill as enacted in 1965, states at page 3: "Service employees must be paid no less than *the rate* determined by the Secretary of Labor to be *prevailing* in the locality" (emphasis added). See also S. Rep. No. 798, 89th Cong., 1st Sess. 2 (1965).

Congress was certainly aware that in the thirty years in which the Department of Labor had been issuing wage determinations under the Davis-Bacon Act, the Department had been interpreting that Act as requiring that a single prevailing rate be determined for each classification of workers. The legislative hearings prior to enactment of the SCA in 1965 clearly indicate that the Department would follow Davis-Bacon principles in administering the SCA wage determination functions. In addition, during the numerous oversight hearings conducted subsequent to passage of the Act, Congress has never suggested that the Department of Labor's procedures for determining prevailing rates are contrary to its intent.

Obviously, all contractors have their own individual and differing pay

structures, no one of which would usually be prevailing in a locality. However, the language of section 2(a) of the Act makes it absolutely clear that all service employees performing the duties of a given classification must be paid at least the prevailing wages and fringe benefits listed for that class on the wage determination. Further, a lower rate of pay for such employees cannot be established through the conforming procedures in § 4.5(b)(2) of the Regulations, as these procedures can only be used where the duties of an unlisted class constitute a separate and distinct job category. Appropriate variations have been provided in § 4.6(o) for apprentices, student learners and handicapped workers. Moreover, as discussed in § 4.152(c), a wage determination will list a series of classes within a job classification family (e.g., Technician Classes A, B, and C) where the practice prevails in the industry and where bona fide differences in the work performed exist. In such situations, the lowest level listed is considered to be the entry level and the establishment of a lower level (or intermediate levels) through conformance or otherwise is not permissible. To allow individual contractors to arbitrarily "carve out" any number of subclassifications without restriction in these situations would subvert the statutory intent of the Act to provide *prevailing* labor standards protections for all service employees (nonminority and minority) and to remove wages as a factor in the competitive procurement process. Indeed, to adopt these suggestions would make any wage determination meaningless and in effect nullify the prevailing wage provisions of the Act. The prohibition against "carving out" subclassifications under the SCA has been upheld in numerous administrative proceedings. See *Triple B Builders, Inc.*, Case No. SCA–974, Decision of the Assistant Secretary, March 26, 1970; *Fischer and Associates Technical Consultants, Inc.*, Case No. SCA–662, Decision of the Administrator, August 16, 1978; *Collins Radio Company, et al.*, Case No. SCA–430, May 27, 1976.

Section 4.163(a) Section 4(c) of the Act

The Service Employees International Union, IATSE, the AFL–CIO, the Center to Protect Workers Rights, and the IBEW objected to limiting the obligation of a successor contractor to the wage and fringe benefit provisions of the predecessor contractor's collective bargaining agreement because items excluded under this proposed subsection, such as work rules, and overtime premiums and other economic benefits, are negotiable under collective bargaining pursuant to the National Labor Relations Act. These commentors argued that Congress did not intend to narrowly limit the meaning of wages and fringe benefits under section 4(c) of the SCA so as to exclude these negotiable items, and that successor contractors should be required to observe such provisions called for under the predecessor's collective bargaining agreement.

As set forth in section 2(a)(2) of the Act, only the types of benefits enumerated therein and benefits of a similar nature are considered bona fide fringe benefits for purposes of meeting the compensation requirements of that section as well as the successorship provisions of section 4(c) of the Act. (A discussion of the criteria which must be met in order for any fringe benefit to be considered "bona fide" is contained in § 4.171.) While it is recognized that there are other bona fide fringe benefits, it is clear from section 2(a)(2) that items such as seniority, work rules, guaranteed workweek, overtime premiums, and other collectively bargained provisions of an economic or noneconomic nature which are not of the type enumerated in section 2(a)(2) are not wages or fringe benefits for purposes of the Act. See *Trinity Services, Inc.* v. *Marshall*, 593 F.2d 1250 (1978). The fact that such items may be negotiated pursuant to the National Labor Relations Act is not material in determining the obligations of successor contractors under section 4(c) of the SCA. Daily or weekly premium overtime compensation benefits are provided by other statutes. (See §§ 4.180 and 4.181.) Accordingly, no change will be made in this section.

Section 4.163(b)

The Department of Energy (DOE), GSA, and NASA commented that this subsection should delineate who is a successor contractor under section 4(c) of the Act and recommended that the traditional National Labor Relations Board tests for determining who is a successor contractor be adopted.

In the 1972 amendments to the Act, Congress carved out a special definition for "successorship" in SCA contracts as a result of the decision in *N.L.R.B.* v. *Burns International Security Services, Inc.*, 406 U.S. 272 (1972), which makes the NLRB definition irrelevant here.

The Computer and Business Equipment Manufacturers Association (CBEMA), the Scientific Apparatus Makers Association (SAMA), and Technicolor Graphic Services, Inc., all objected to section 4(c) obligations being deemed self-executing. SAMA and Technicolor commented that it is the Department of Labor's responsibility to issue determinations specifying the wage and fringe benefit obligations of successor contractors pursuant to section 4(c), and that unless the wages and fringe benefits contained in the predecessor contractor's collective bargaining agreement are reflected in a wage determination issued for the new contract, the successor contractor should not be obligated to pay them.

The statutory language of section 4(c) makes it clear that its provisions are self-executing whether or not all of the wage and fringe benefit requirements of a contractor's collective bargaining agreement are reflected in the wage determination issued for the successor contract. While the Department issues wage determinations for successor contracts accurately reflecting, to the extent possible, all of the wage and fringe benefit requirements, an occasional failure to do so (generally because the necessary data has not been furnished to the Department) cannot eliminate the successor contractor's statutory obligations under section 4(c) of the Act. A footnote notifying all bidders of their obligations in this regard is contained in all wage determinations issued pursuant to section 4(c). Accordingly, no change in this subsection would be appropriate.

Section 4.163(c)

The American Bar Association (ABA) and Rockwell International Corporation objected to the principle that decisions that collectively bargained wage rates and/or fringe benefits are substantially at variance with those prevailing in the locality are not made effective retroactively to the beginning of a contract.

The National Council of Technical Service Industries contended that if a variance proceeding is held, the difference in wages at issue should be held in escrow pending a decision on the matter.

The discussion of the legislative history of the 1972 amendments to the Act in this subsection makes it clear that collectively bargained wages and fringe benefits payable under section 4(c) of the Act must be honored "unless and until" a finding of substantial variance is made. Thus, variance hearing decisions cannot be applied retroactively, nor can an amount of wages or fringe benefits in dispute be held in escrow pending such a decision. However, every effort will be made to insure that variance decisions are rendered on a timely basis, in accordance with the time frames set forth in Regulations, Part 6.

Section 4.163(d)

The Department of Defense took issue with the requirement that sections 2(a) and 4(c) of the SCA must be read in conjunction, contending that the language of section 2(a) of the SCA provides that where a successor contractor has a bona fide collective bargaining agreement at his or her own plant, the contractor can pay employees in accordance with that agreement and be in compliance with the Act without having to observe the terms of a predecessor contractor's collective bargaining agreement pursuant to section 4(c) of the Act.

The legislative history of the 1972 amendments to the SCA, which added both section 2(a) and section 4(c) to the Act, makes it absolutely clear that sections 2(a) and 4(c) must be read in conjunction with each other, and the DOD interpretation on this point is in error.

Section 4.163(e)

The Department of Defense disagreed with the provision in this subsection that a contractor may succeed itself for purposes of the application of section 4(c) of the Act in noncompetitive situations (i.e., contract options or extensions), as well as in cases involving the recompetition of a contract. DOD claimed that, in noncompetitive situations, a contractor will have an incentive to increase collectively bargained wages and fringe benefits when it knows the agency will reimburse the costs of such an increase.

The legislative history of the 1972 amendments and the Act itself contemplate that collectively bargained wages and fringe benefits may increase over time, and such increases should be honored. To adopt DOD's restrictive suggestion would freeze wages for a number of years in the case of multi-year contracts. Section 4(d) of the Act precludes such a result. The "substantial variance" provisions of section 4(c) serve to preclude any abuses of the type foreseen by DOD.

Section 4.163(g)

The General Services Administration, the Department of Energy, and the National Aeronautics and Space Administration objected to the breadth of the provision requiring the payment of wages and fringe benefits provided for in a predecessor contractor's collective bargaining agreement pursuant to section 4(c) of the Act in the case of contract reconfigurations, claiming that in some situations the follow-on-contract may not be subject to the Act, e.g., in the case of a minor use of service employees in a contract for professional services. In effect, it was claimed, the term "identifiable contract work" as used in this subsection narrows the scope of the concept of a successor contract under 4(c) of the Act from one in which substantially the same services are furnished to one in which any single class of service work previously furnished is rendered under the reconfigured contract.

The Department of Defense recommended that a variance or exemption be provided for reconfiguration situations where two contracts are combined and, as a result, two employees working side by side may perform identical work but receive two different rates of pay.

A successor contract must meet the general tests of SCA coverage set forth in section 2(a) of the Act before the provisions of section 4(c) can be applied. Thus, section 4(c) only applies to identifiable portions of a successor contract which is otherwise subject to the Act. The contracting agency must, in the first instance, make a good faith determination as to what constitutes "identifiable contract work", which, it is assumed, would involve more than one class of service employees in the usual case. Furthermore, our experience has shown that "substantially the same services" are furnished in a continuing, reconfigured succeeding contract. The interpretation in question is necessary to prevent contractural reconfigurations from being used to evade or defeat the remedial purposes of section 4(c). It thus would not be appropriate to grant a variation as recommended by DOD.

The National Council of Technical Service Industries argued that the provisions of this subsection create administrative difficulties as the successor contractor would not, it was claimed, receive notification of its wage obligations.

In actual practice, where contract reconfigurations are involved, successor contractors receive notification of their obligations under section 4(c) of the Act through the issuance of appropriate wage determinations by the Department. It should also be noted that the provisions of this subsection have been implemented for several years as a matter of policy, and we are not aware of its having resulted in any administrative difficulties such as those foreseen by NCTSI. Accordingly, no substantive changes will be made in this subsection.

Section 4.163(i)

The American Bar Association, the Council of Defense and Space Industry Associations, the Computer and Business Equipment Manufacturer's Association, the National Council of Technical Service Industries, the Department of Defense, the Department of Energy, the National Aeronautics and Space Administration and Southern Packaging and Storage Co., Inc. objected to the application of section 4(c) of the SCA to successor contractors irrespective of the place of performance by the successor contractor.

Most of these commentors stated that Congress did not intend section 4(c) to apply where there was a change in the place of contract performance between the predecessor and successor contracts, while DOD asserted that section 4(c) should not apply to any contract performed at the contractor's plant (as opposed to a Government facility). Several of these commentors also claimed that this provision would necessitate numerous variance hearings caused by the conflict between "imported" collectively bargained wage rates and wage rates prevailing at the location of the successor contractor, and noted that variance hearings were not intended to correct problems caused by substantial differences between wage rates in different geographic locations.

The attorney for Southern Packaging and Storage Co., Inc. stated that this provision will prevent contractors in low wage areas from bidding on contracts currently performed in high wage areas pursuant to a collective bargaining agreement.

The language of section 4(c) of the SCA contains no provisions restricting its applicability to contracts performed at a Government facility generally or only to those procurements where the location of the successor contractor's place of performance is the same as the predecessor's. No such restriction is contained in the current Regulations, the relevant portions of which were promulgated in 1972.

Proposed revisions to 29 CFR Part 4 published for comment in April 1975, if adopted, would have limited the application of section 4(c) to those successor contracts performed at the same location as the predecessor contract. Subsequent to this proposal, oversight hearings were held by the House Subcommittee on Labor-Management Relations and public hearings were held by the Department of Labor. Congress specifically repudiated such a limitation, noting that:

> The GAO has advanced an interpretation of section 4(c) that it is to be applied only where the same employees and same locality continue under a succeeding contract. * * * The subcommitte rejects this interpretation of section 4(c). No such qualification exists on the face of the statute and nothing in the

legislative history would support the restrictive GAO reading of the successor obligations of section 4(c). (House Subcommittee on Labor-Management Relations, Committee on Education and Labor, *Congressional Oversight Hearings: The Plight of the Service Worker Revisited*, 94th Cong., 1st Sess. 7 (Comm. Print, 1975)).

In those hearings, Congressional intent as to the proper issuance of wage determinations pursuant to section 4(c) of the Act was stated as follows:

> * * * Section 4(c) requires that the wages and fringe benefits, including prospective increases contained in a predecessor's collective bargaining contract, form the basis for the Secretary's determination for successor contracts whether performed at the same site or at a different site. (*Oversight Hearings*, p. 10).

On the basis of those hearings, during which the statute and its legislative history were carefully reviewed, it was decided to withdraw this proposed limitation.

Section 4.163(j)

The DOE objected to the requirement that a successor contractor is obligated to observe the wage rates and fringe benefit provisions of the predecessor contractor's collective bargaining agreement which the Department of Labor failed to include in an applicable wage determination.

As discussed in § 4.163(b), the provisions of section 4(c) of the SCA are self-executing, and thus, the occasional omission of a wage or fringe benefit provision contained in the predecessor contractor's collective bargaining agreement from the wage determination issued for a successor contract cannot relieve the successor contractor of the direct statutory obligation under section 4(c) to observe such provisions.

The National Council of Technical Service Industries and DOE asserted that to follow the requirement that any interpretation of the wage and fringe benefit provisions of the predecessor contractor's collective bargaining agreement must be based on the intent of the parties to that agreement would be difficult. They remarked that intent may not be expressed in the agreement and the parties to the agreement may not be available to provide explanation.

In the majority of cases, the intent of the parties to a predecessor contractor's collective bargaining agreement is clear from the language of the agreement, the wage and fringe benefit provisions thereof are accurately reflected in the wage determination attached to the successor contract, and the successor contractor can rely upon the body of interpretations contained in this subpart. However, in those rare instances where the intent or meaning of a wage or fringe benefit provision in a predecessor contractor's collective bargaining agreement cannot be determined by a successor contractor, the Department of Labor will assist in obtaining interpretative guidance from the parties to that agreement.

Section 4.165 Wage Payments and Fringe Benefits—in General

The National Council of Technical Service Industries, the Computer and Business Equipment Manufacturers Association (CBEMA), and the Scientific Apparatus Makers Association (SAMA) objected to the provision in § 4.165(b) setting a semi-monthly pay period as the longest allowable under the SCA. SAMA stated that this provision may cause problems because many firms calculate fringe benefits on a monthly basis. CBEMA asserted that a requirement to obtain employee approval of a bi-weekly or semi-monthly pay period would contravene section 7 of the National Labor Relations Act by mandating collective bargaining.

The proposal in this subsection to reduce the longest permissible pay period under the Act from monthly to semi-monthly is deemed necessary to insure timely payment of wages to service employees, who are often low paid and do not have the financial resources to cover expenses incurred over an entire month in which they receive no wage payments without suffering undue hardships. This change is also necessary for effective enforcement of the Act to protect against those situations where contractors receive their final payment from the contracting agency before the last payroll comes due and fail to meet that payroll. However, as there may be individual cases where a showing can be made that a monthly payroll period is necessary and can be implemented without adversely affecting the employees, the Administrator will give consideration to specific requests for a waiver from this provision in order to allow a monthly pay period.

This proposed requirement will not restrict a contractor's ability to make fringe benefit contributions to bona fide plans on a monthly basis, as believed by SAMA. As set forth in § 4.175(d)(1), such contributions may be made on any periodic basis which is not less often than quarterly. While we do not believe that employee approval of a bi-weekly or semi-monthly pay period would contravene the National Labor Relations Act we have determined upon further study that it would be appropriate to withdraw the employee approval provision from the final rule and replace it with a provision requiring contractors only to advise employees when such pay periods are used.

The Department of Defense and NCTSI opposed the requirement in § 4.165(c) to pay wage rates contained in an applicable wage determination which are higher than the rates contained in the contractor's collective bargaining agreement.

As discussed in § 4.163(d), an incumbent (successor) contractor may not adhere to the terms of its own collective bargaining agreement where they conflict with the terms of an otherwise applicable prevailing wage determination.

Section 4.169 Wage Payments—Work Subject to Different Rates

The Northrop Corporation argued that lower skilled employees should be allowed to be assigned to work in more highly skilled and highly paid job classifications for training purposes. Northrop recommended that recognition of what was termed a "long established practice" be made by establishing a tolerance allowing a service employee to work in a more highly skilled job classification up to 25 percent of the time without having to be paid the higher wage determination rate for such time.

Section 2(a) of the Act makes it clear that the various classes of service employees must be paid *at least* the established corresponding wage determination rates while performing on a covered contract. It follows from this statutory language and the general principle under the Act that the duties which an employee actually performs govern the rate(s) of pay to which he or she is entitled, and that where a single employee performs work in more than one classification, he or she must be paid at least the corresponding wage determination rate for the time spent performing in each classification. To grant the tolerance suggested by Northrop would be clearly contrary to the statutory intent to protect prevailing wages by allowing contractors to pay less than the applicable wage determination rate for substantial periods of time. Accordingly, no change will be made in this section, which has been in the Regulations since 1968.

Section 4.170 Furnishing fringe benefits or equivalents

The Bell & Howell Company and Editorial Experts, Inc. commented that the Department should not prohibit the cross-crediting of wages and fringe benefits in proposed § 4.170(a).

The statutory language of section 2(a) of the Service Contract Act

differentiates between payments for wages and payments for fringe benefits and does not provide for the cross-crediting of one against another. Consequently, since 1968, the Regulations have prohibited such cross-crediting. However, section 2(a)(2) of the Act and § 4.170(a) of both the current and proposed Regulations provide that contractors may discharge their obligation to furnish specified fringe benefits by making equivalent or differential payments in cash to employees.

Section 4.171 "Bona Fide" Fringe Benefits

The AFL–CIO commented that the definition of a bona fide fringe benefit as provided in this section is too restrictive, asserting that it should not exclude such benefits as supplemental unemployment plans and prepaid legal plans.

While not specifically enumerated in this section, supplemental unemployment plans and prepaid legal plans are considered "bona fide" fringe benefits for purposes of the Act.

The Computer and Business Equipment Manufacturers Association and Pan American World Airways, Inc. commented in opposition to § 4.171(a)(5), which requires that bona fide fringe benefit plans comply with section 401(a) of the Internal Revenue Code. CBEMA stated that section 401(a) of the tax code only relates to stock bonus, pension, and profit sharing plans, and addresses only the tax consequences of employer contributions to such plans, and not whether they provide benefits of value to employees.

Since section 401(a) of the Internal Revenue Code only covers certain types of fringe benefit plans, only plans of the types listed in section 401(a) must meet the requirements of that section. The final rule has been amended accordingly.

CODSIA, CBEMA, and NASA objected to the exclusion in § 4.171(b) of self-insured benefit plans from the definition of bona fide fringe benefits. They commented that many self-insured plans satisfy the requirements of the Employment Retirement Income Security Act of 1974. Rockwell International Corporation, Xerox Corporation, Pan American World Airways, Inc., and Frank B. Hall Consulting Company made similar comments.

The purpose of § 4.171(b) is to preclude those situations (e.g., as in unfunded plans) where monies allegedly allocated by a contractor to provide fringe benefits may be used for other purposes or may be recouped without actually furnishing any benefits. The Department does not intend to prohibit self-insured plans where irrevocable payments are made pursuant to a trust or other funded arrangement and the other conditions of § 4.171 are met. The final Regulations have been amended to clarify this point.

Section 4.173 Meeting Requirements for Vacation Fringe Benefits

The Computer and Business Equipment Manufacturers Association (CBEMA) and Datapoint Corporation took issue with the requirement in § 4.173(a)(1) to consider prior service with a predecessor contractor(s) in computing vacation benefits on the grounds that prior service is often difficult to determine.

Vacation eligibility is often accrued on the basis of length of service with an employer. However, service employees on many Government contracts, who typically perform work at a single Federal facility for several years, in many cases could not gain vacation eligibility with any single employer since employing contractors frequently change, often on an annual basis. In recognition of this characteristic, the Regulations have since 1968 required that service employees receive credit for prior service with a predecessor contractor(s) at the same facility in order to insure that the employees actually receive the prevailing vacation benefits. In addition, as discussed in § 4.173(a), it is necessary to credit employees for prior contract service in order to avoid placing the incumbent contractor at a competitive disadvantage by making it, but not other bidders, liable for vacation benefits based upon length of prior service in performing the contract work.

Subsection 4.6(l)(2) of the Regulations requires that the incumbent contractor provide the contracting officer with a list of all the contractor's employees on the payroll during the last month of contract performance and their anniversary dates. This should eliminate problems in gathering length of service data.

CBEMA asserted that this requirement should not apply in the case of "commercial product support services" on the grounds that such services are generally not performed by "successor" contractors as that term is used under the Act and the Regulations.

The requirement to consider prior service with a predecessor contractor(s) in determining vacation eligibility does not generally apply to contractors furnishing so-called "commercial product support services" under General Services Administration-Federal Supply Service "schedule" contracts because it is almost impossible to trace or identify any specific contract work requirements from a "predecessor" to a "successor" contractor.

The AFL–CIO, the American Federation of Government Employees, and NASA opposed the provision in § 4.173(a)(3) excluding prior service as a Federal employee from being counted toward an employee's eligibility for vacation benefits under the SCA. They argued that this policy discriminates against Federal employees whose jobs are contracted out and is contrary to Federal policy and intent as outlined in OMB Circular A–76.

Employees' prior service on a predecessor service *contract* must be considered by a successor contractor in determining vacation eligibility under this subsection. Since Federal employees have not worked on prior service *contracts*, prior service as a Federal employee need not be considered for this purpose. We do not believe that this provision discourages contractors from hiring former Federal employees whose jobs are contracted out.

NASA, commenting on § 4.173(b)(1), stated that DOL should establish criteria for determining what constitutes a break in service for purposes of eligibility for vacation benefits. Northrop Corporation and NASA requested clarification of the term "temporary layoff" in § 4.173(b)(2). Northrop also sought clarification as to whether a firm's administrative policy or collective bargaining agreement in this area is controlling.

As discussed in § 4.173(b), whether or not there is a break in service is dependent upon all the facts in a particular case, the primary factor being the reason(s) for an employee's absence from work rather than the length of that absence. It would not be practicable to establish more detailed criteria as to what constitutes a break in service or list every possible factual circumstance under which a break would or would not have occurred. Accordingly, the general guidelines and specific examples contained in § 4.173(b)(1) are considered to be sufficient guidance and no amendment is made to the regulation. Questions regarding continuous service for vacation eligibility should be referred to the Department for a determination. In all such cases, the rulings and interpretations of the Department contained in this subpart or issued in accordance with § 4.101(g) of the Regulations will take precedence over a contractor's own administrative policy or collective bargaining agreement. However, where a successor contractor is subject to the wage and

fringe benefit provisions of the predecessor contractor's collective bargaining agreement pursuant to section 4(c) of the Act, the terms of that agreement pertaining to fringe benefit entitlement, including those relating to continuous service for vacation eligibility, are binding upon the successor contractor as provided in § 4.163(j) of the Regulations.

The AFL–CIO and NCTSI commented that the vesting of vacation benefits and the liability therefor should be prorated for portions of years worked, in accordance with what they termed the prevailing practice in private industry and the Federal Government, rather than being based solely on an employee's anniversary date of employment as required under §§ 4.173(c) and (d)(1).

Most SCA wage determinations have provided for employee vesting of vacation fringe benefits and contractor liability therefor on the basis of employee anniversary dates since the Act's inception and have not provided for prorating either vesting or liability. This policy was adopted by the Department after careful consideration of the alternatives and in view of the characteristics of Government service procurement relating to employee length of service and contractor turnover, as discussed above. Under this scheme, employees who continue to provide the same contract services are assured of receiving their full vacation benefits annually without regard to any change in contractors. This longstanding policy does not porvide a windfall or burden for either predecessor or successor contractors, since in most cases the vacation liabilities of both predecessors and contractors even out over time by the random distribution of employee anniversary dates. Although the preamble to the proposed Regulations invited comments on the possible adoption of an accrual (or pro rata) method for providing vacation benefits, no viable plan for doing so has been presented. Accordingly, the current policy will be maintained.

Section 4.174 Meeting Requirements for Holiday Fringe Benefits

The Department of Defense objected to the provision in § 4.174(a)(1) that an employee is entitled to holiday pay if the employee performs any work during the workweek in which a named holiday occurs. DOD recommended that the section be revised to provide for payment of holiday pay only if the employee works the day before and the day after the holiday.

NASA, DOE, CBEMA, and Datapoint Corporation objected to the requirement in § 4.174(b) which provides for the payment of holiday pay to an employee who is hired during the first week of a contract but does not begin work until after the named holiday. This requirement is a limited exception to the general rule that the contractor is not required to compensate a newly hired employee for a holiday occurring prior to hiring of the employee.

CBEMA, DOD and Datapoint objected to the requirement in § 4.174(c)(4) for payment of holiday pay to an employee who works during the holiday workweek but terminates prior to the named holiday.

Because a contractor has the right to assign work in any way it deems appropriate to meet the requirements of the contract, there is the potential for a contractor to avoid the requirements of paying benefits for holidays listed in a wage determination by manipulating work schedules. Thus, the Department has for many years followed the policy which is now codified. An employee is entitled to holiday pay if the employee performs any work during the workweek in which a named holiday occurs, in order to prevent the contractor from gerrymandering work days in order to avoid the payment of holiday fringe benefits to employees. This rule avoids the problems of having to determine whether an employee voluntarily quit or was fired, voluntarily took off the day before or the day after the holiday or was directed to take off by the contractor, etc. The experience of the Department in administering the law has been that the longstanding policies set forth in § 4.174 are equitable and fair to contractors and to the rights of employees.

The requirement in § 4.174(b) to provide benefits for a holiday occurring during the first week of a contract to employees hired during that week but not until after the named holiday is necessary to insure that employees receive their full entitlement to holiday benefits. This specific requirement is also necessary to prevent incumbent contractors who retain their current workforce from being placed at a competitive disadvantage with respect to other prospective contractors who would be newly hiring employees during the first week of a contract. No substantive changes will be made in this section.

Section 4.175 Meeting Requirements for Health, Welfare, and/or Pension Benefits

The Council of Defense and Space Industry Associations, Northrop Corporation, McDonnel Douglas Corporation, and the Seafarers International Union commented that the requirement in § 4.175(a)(2) to make differential payments where a contractor is able to obtain a specified fringe benefit for less than the amount stated on an applicable wage determination eliminates any incentive to obtain the benefit at a lower cost by, for example, negotiating lower premiums with an insurance carrier. Essentially, these commentors recommended that the standard by which compliance with fringe benefit obligations should be measured should be the level of benefits provided, rather than the monetary costs incurred.

As set forth in §§ 4.170 and 4.171 of the current Regulations, the Department has consistently required that fringe benefit compliance be measured by the monetary cost incurred by the contractor in furnishing such benefits. Compliance with fringe benefit requirements on the basis of the level of benefits provided is not practical because of the impossibility of measuring the relative merits and value to individual employees of the multitude of fringe benefit plans, which typically contain substantial variations in the types and amounts of benefits provided. The statutory provision in section 2(a)(2) allowing contractors to substitute *equivalent* fringe benefits and cash payments in lieu of the benefits specified in an applicable wage determination would preclude adoption of a level of benefits standard. No one has developed a feasible method for determining what fringes are prevailing in terms of the level of benefits provided. Thus, there is no means of informing contractors as to how they would comply with a requirement to furnish such benefits. Even if contractors could be so advised, if a given contractor desired a pension plan rather than a health insurance plan, it would be impossible to determine if the level of benefits were equivalent, and thus there would be no way to determine compliance with the Act.

CBEMA expressed concern over the requirement in § 4.175(c) that employees who are excluded from a plan must receive equivalent fringe benefits. In the view of the Department this provision is required by the statutory scheme under which each worker must be paid the prescribed minimum wage and furnished the prescribed fringe benefit or its equivalent. The fringe benefits are stated on the wage determinations as either a specified amount of payments or, in appropriate circumstances, in terms of average cost (see subsection 4.175(b)).

Section 4.187 Recovery of Underpayments

The Datapoint Corporation and the National Star Route Mail Carriers' Association asserted that the definition of "party responsible" in § 4.187(e) could result in imposing personal liability on most management and administrative officials of contractors.

The criteria for determining who is a "party responsible" as set forth in this section are based upon the authoritative administrative and judicial precedents cited therein. These criteria do not necessarily include most officials of a firm found to be in violation, but rather are limited to those who are responsible for controlling the firm, administering the contract or the firm's employment policies or are otherwise responsible for the violations by causing or permitting them to occur.

The Department of Defense (DOD) and the National Council of Technical Service Industries questioned whether the Department's procedures pertaining to disputes regarding violations of the Act in § 4.187(f) may be in conflict with the requirements of the Contract Disputes Act of 1978.

Section 14 of the Contract Disputes Act of 1978 sets forth the specific amendments made by the Congress to existing statutes. Significantly, no change, repeal or amendment, or reference was made to the SCA. Furthermore, Section 6(a) of the Contract Disputes Act states in part that "the authority of this subsection shall not extend to a claim or dispute for penalties or forfeitures *prescribed by statute or regulation which another Federal agency is specifically authorized to administer, settle, or determine"* (emphasis supplied). Therefore, DOL's explicit and exclusive statutory authority to resolve disputes set forth in section 4 of the SCA is unchanged.

In addition, logic dictates that the authority to resolve labor disputes should more properly reside in the agency which has, in addition to the statutory enforcement authority, the prerequisite expertise in administering the law and the regulations necessary to insure the effective and consistent implementation of such labor standards provisions.

This rule was drafted under the supervision and direction of Donald Elisburg, Assistant Secretary of Labor, Employment Standards Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, D.C. 20210. (202–523–6191).

Accordingly, 29 CFR Part 4 is revised as set forth below.

Signed at Washington, D.C., this 12th day of January 1981.

Donald Elisburg,

Assistant Secretary of Labor, Employment Standards Administration.

PART 4—LABOR STANDARDS FOR FEDERAL SERVICE CONTRACTS

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Authority: 41 U.S.C. 351, et seq., 79 Stat. 1034, as amended in 86 Stat. 789, 90 Stat. 2358; 41 U.S.C. 38 and 39; and 5 U.S.C. 301.

Subpart A—Service Contract Labor Standards Provisions and Procedures

§ 4.1 Purpose and scope.

This part contains the Department of Labor's rules relating to the administration of the McNamara-O'Hara Service Contract Act of 1965, as amended, referred to hereinafter as the Act. Rules of practice for administrative proceedings under the Act and for the review of wage determinations are contained in Part 8 of this chapter. See Part 1925 of this title for the safety and health standards applicable under the Service Contract Act.

§ 4.1a Definitions and use of terms.

As used in this part, unless otherwise indicated by the context—

(a) "Act," "Service Contract Act," McNamara-O'Hara Act, or "Service Contract Act of 1965" shall mean the Service Contract Act of 1965 as amended by Public Law 92–473, 86 Stat. 789, effective October 9, 1972, Pub. L. 93–57, 87 Stat. 140, effective July 6, 1973, and Pub. L. 94–489, 90 Stat. 2358, effective October 13, 1976 and any subsequent amendments thereto.

(b) "Secretary" includes the Secretary of Labor, the Assistant Secretary of Labor for Employment Standards, and their authorized representatives.

(c) "Administrator" means the Administrator of the Wage and Hour Division, or the authorized representative as set forth in this part. In the absence of the Wage-Hour Administrator, the Deputy Administrator of the Wage and Hour Division is designated to act for the Administrator under this part. Except as otherwise provided in this part, the Assistant Administrator for Government Contract Wage Standards is the authorized representative of the Administrator for the performance of functions relating to the making of wage determinations and the enforcement of the Service Contract Act of 1965, as amended, and this part.

(d) "Office of Government Contract Wage Standards" or "OGCWS" means the organizational unit in the Wage and Hour Division, Employment Standards Administration, to which is assigned the performance of functions of the Secretary under the Service Contract Act of 1965 as amended.

(e) "Contract" includes any contract subject wholly or in part to provisions of the Service Contract Act of 1965 as amended, and any bid specification or subcontract of any tier thereunder. (See §§ 4.107–4.134.)

(f) "Contractor" includes a subcontractor whose subcontract is subject to provisions of the Act. Also, the term "employer" means, and is used interchangeably with, the terms "contractor" and "subcontractor" in various sections in this part. The U.S. Government, its agencies, and instrumentalities are not contractors, subcontractors, employers or joint employers for purposes of compliance with the provisions of the Act.

(g) "Affiliate" or "affiliated person" includes a spouse, child, parent, or other close relative of the contractor or subcontractor; a partner or officer of the contractor or subcontractor; a corporation closely connected with a contractor or subcontractor as a parent, subsidiary, or otherwise; and an officer or agent of such corporation. An affiliation is also deemed to exist where, directly or indirectly, one business concern or individual controls or has the power to control the other or where a third party controls or has the power to control both.

(h) "Wage determination" includes any determination of minimum wage rates or fringe benefits made pursuant to the provisions of sections 2(a) and 4(c) of the Act for application to the employment in a locality of any class or classes of service employees in the performance of any contract in excess of $2,500 which is subject to the provisions of the Service Contract Act of 1965.

§ 4.1b Payment of minimum compensation based on collectively bargained wage rates and fringe benefits applicable to employment under predecessor contract.

(a) Section 4(c) of the Service Contract Act of 1965 as amended provides special minimum wage and fringe benefit requirements applicable to every contractor and subcontractor under a contract which succeeds a contract subject to the Act and under which substantially the same services as under the predecessor contract are furnished for the same location. Section 4(c) provides that no such contractor or subcontractor shall pay any service employee employed on the contract work less than the wages and fringe benefits provided for in a collective bargaining agreement as a result of arms-length negotiations, to which such service employees would have been entitled if they were employed under the predecessor contract, including accrued wages and fringe benefits and any prospective increases in wages and fringe benefits provided for in such collective bargaining agreement. If, however, the Secretary finds after a hearing in accordance with the regulations set forth in § 4.10 of this subpart and Part 6 of this title that in any of the foregoing circumstances such wages and fringe benefits are substantially at variance with those which prevail for service of a character similar in the locality, those wages and/or fringe benefits in such collective bargaining agreement which are found to be substantially at variance shall not apply, and a new wage determination shall be issued.

If the contract has been awarded and work begun prior to a finding that the wages and/or fringe benefits in a collective bargaining agreement are substantially at variance with those prevailing in the locality, the payment obligation of such contractor or subcontractor with respect to the wages and fringe benefits contained in the new

wage determination shall be applicable as of the date of the Administrative Law Judges' decision. (See also § 4.163(c).)

(b) Pursuant to section 4(b) of the Act, the application of section 4(c) is made subject to the following variation in the circumstances and under the conditions described: The wage rates and fringe benefits provided for in any collective bargaining agreement applicable to the performance of work under the predecessor contract which is consummated during the period of performance of such contract shall not be effective for purposes of the successor contract under the provisions of section 4(c) of the Act or under any wage determination implementing such section issued pursuant to section 2(a) of the Act, if—

(1) In the case of a successor contract for which bids have been invited by formal advertising, notice of the terms of such new or changed collective bargaining agreement is received by the contracting agency less than 10 days before the date set for opening of bids, provided that the contracting agency finds that there is not reasonable time still available to notify bidders; or

(2) Notice of the terms of a new or changed collective bargaining agreement is received by the agency after award of a successor contract to be entered into pursuant to negotiations or as a result of the execution of a renewal option or an extension of the initial contract term, provided that the contract start of performance is within 30 days of such award or renewal option or extension. If the contract does not specify a start of performance date which is within 30 days from the award, and/or performance of such procurement does not commence within this 30-day period, any notice of the terms of a new or changed collective bargaining agreement received by the agency not less than 10 days before commencement of the contract will be effective for purposes of the successor contract under section 4(c); and

(3) The limitations in paragraph (b) (1) or (2) of this section shall apply only if the contracting officer has given both the incumbent (predecessor) contractor and his employees' collective bargaining representative written notification at least 30 days in advance of all applicable estimated procurement dates, including issue of bid solicitation, bid opening, date of award, commencement of negotiations, receipt of proposals, or the commencement date of a contract resulting from a negotiation, option, or extension, as the case may be.

§ 4.2 Payment of minimum wage specified in section 6(a)(1) of the Fair Labor Standards Act of 1938 under all service contracts.

Section 2(b)(1) of the Service Contract Act of 1965 provides in effect that, regardless of contract amount, no contractor or subcontractor performing work under any Federal contract the principal purpose of which is to furnish services through the use of service employees shall pay any of his employees engaged in such work less than the minimum wage specified in section 6(a)(1) of the Fair Labor Standards Act of 1938, as amended ($2.65 per hour beginning January 1, 1978, $2.90 per hour beginning January 1, 1979, $3.10 per hour beginning January 1, 1980, and $3.35 per hour after December 31, 1980).

§ 4.3 Wage determinations.

(a) The minimum monetary wages and fringe benefits for service employees which the Act requires to be specified in contracts and bid specifications subject to section 2(a) thereof will be set forth in wage determinations issued by the Administrator. Wage determinations shall be issued as soon as administratively feasible for all contracts subject to section 2(a) of the Act, and will be issued for all contracts entered into under which more than 5 service employees are to be employed.

(b) Such wage determinations will set forth for the various classes of service employees to be employed in furnishing services under such contracts in the appropriate localities, minimum monetary wage rates to be paid and minimum fringe benefits to be furnished them during the periods when they are engaged in the performance of such contracts, including, where appropriate under the Act, provisons for adjustments in such minimum rates and benefits to be placed in effect under such contracts at specified future times. The wage rates and fringe benefits set forth in such wage determinations shall be determined in accordance with the provisions of sections 2(a)(1), (2), and (5), 4(c) and 4(d) of the Act from those prevailing in the locality for such employees, with due consideration of the rates that would be paid for direct Federal employment of any classes of such employees whose wages, if federally employed, would be determined as provided in 5 U.S.C. 5341 or 5 U.S.C. 5332, or from pertinent collective bargaining agreements with respect to the implementation of section 4(c). The wage rates and fringe benefits so determined for any class of service employees to be engaged in furnishing covered contract services in a locality shall be made applicable by contract to all service employees of such class employed to perform such services in the locality under any contract subject to section 2(a) of the Act which is entered into thereafter and before such determination has been rendered obsolete by a withdrawal, modification, or supersedure.

(c) Wage determinations will be available for public inspection during business hours at the Office of Government Contract Wage Standards, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, and copies will be made available on request at Regional Offices of the Wage and Hour Division.

§ 4.4 Notice of intention to make a service contract.

(a) For any contract exceeding $2,500 which may be subject to the Act, the contracting agency shall file with the Office of Government Contract Wage Standards, Wage and Hour Division, Employment Standards Administration, Department of Labor, its notice of intention to make a service contract. With respect to recurring or known requirements, such notices shall be filed not less than 60 days (nor more than 120 days, except with the approval of the Wage and Hour Division) prior to (1) any invitation for bids, (2) request for proposals, (3) commencement of negotiations, (4) exercise of option or contract extension, (5) annual anniversary date of a multi-year contract subject to annual fiscal appropriations of the Congress, or (6) each bi-annual anniversary date of a multi-year contract not subject to such annual appropriations, if so authorized by the Wage and Hour Division. (See § 4.4(d).) Notices with regard to solicitations where such planning is not feasible shall be submitted as soon as possible, but not later than 30 days prior to the above contracting actions. Such notice shall be submitted on Standard Form 98, Notice of Intention to Make a Service Contract, and Standard Form 98–A or a statement containing the information in paragraph (b) of this section and shall be completed in accordance with the instruction provided and shall be supplemented by the information required under paragraphs (c) and (d) of this section. Supplies of Standard Forms 98 and 98–A are available in all GSA supply depots under stock numbers 7540–828–8972 and 7540–118–1006, respectively. If there exists any question or doubt as to the possible application of the Act to a particular procurement, the contracting agency shall submit such question in a

timely manner to the Administrator for determination.

(b) The contracting agency shall file with its Notice of Intention to Make a Service Contract (SF–98) either a Standard Form 98–A or a statement in writing, containing the following information concerning the service employees expected by the agency to be employed by the contractor and any subcontractors in performing the contract:

(1) The number of such employees of all classes, or a statement indicating whether such number will or will not exceed 5, the number for which the inclusion of a wage determination in the contract is mandatory under the provisions of section 10 of the Act as set forth in § 4.3(a); and

(2) A listing of those classes of service employees expected to be employed under the contract which, if employed by the agency, would be subject to the wage provisions of 5 U.S.C. 5341 or 5 U.S.C. 5332, together with a specification of the rates of wages and fringe benefits that would be paid by the Government to employees of each such class if such statute were applicable to them. (Under section 2(a)(5) of the Act and § 4.6 the inclusion of such a statement in the service contract is also required.)

(c) If the services to be furnished under the proposed contract will be substantially the same as services being furnished for the same location by an incumbent contractor whose contract the proposed contract will succeed, and if such incumbent contractor is furnishing such services through the use of service employees whose wage rates and fringe benefits are the subject of one or more collective bargaining agreements, the contracting agency shall file with its Notice of Intention to Make a Service Contract (SF–98) a copy of each such collective bargaining agreement together with any related documents specifying the wage rates and fringe benefits currently or prospectively payable under such agreement. If such services are being furnished for more than one location and the collectively bargained wage rates and fringe benefits are different for different locations or do not apply for one or more locations, the agency shall identify the locations to which such agreements have application. If the collective bargaining agreement does not apply to all service employees under the contract, the agency shall identify the employees and/or work subject to the collective bargaining agreement. In the event that the agency has reason to believe that any such collective bargaining agreement was not entered into as a result of arm's-length negotiations, a full statement of the facts so indicating shall be transmitted with the copy of such agreement. See § 4.11. If the agency has information indicating that any such collectively bargained wage rates and fringe benefits are substantially at variance with those prevailing for services of a similar character in the locality, the agency shall so advise the Office of Government Contract Wage Standards and, if it believes a hearing thereon pursuant to section 4(c) of the Act is warranted, shall file its request for such hearing pursuant to § 4.10 at the time of filing the Notice of Intention to Make a Service Contract (Form SF–98).

(d) If the proposed contract is for a multi-year period subject to other than annual appropriations, the contracting agency shall file with its Standard Form 98 a statement in writing concerning the type of funding and the contemplated term of the proposed contract. Unless otherwise advised by the Wage and Hour Division that a Standard Form 98 must be filed on the annual anniversary date, a new Standard Form 98 shall be submitted on each bi-annual and anniversary date of the proposed multi-year contract in the event its term is for a period in excess of two years.

(e) Any Standard Form 98 submitted by a contracting agency without the information required under paragraphs (b), (c), or (d) of this section will be returned to the agency for further action.

(f) If exceptional circumstances prevent the filing of the notice of intention and supplemental information required by this section on a date at least 60 days (or 30 days in the case of unplanned procurements) prior to any invitation for bids, request for proposals, or commencement of negotiations, the notice shall be submitted to the Office of Government Contract Wage Standards as soon as practicable with a detailed explanation of the special circumstances which prevented timely submission. In the event the proposed contract involves performance by more than 5 service employees and an emergency situation requires an immediate award, the contracting agency shall contact the Office of Government Contract Wage Standards, Wage and Hour Division, by telephone for guidance prior to any such award. In no event may a contract subject to the act on which more than 5 service employees are contemplated to be employed be awarded without an appropriate wage determination. (Section 10 of the Act.)

(g) If any invitation for bids, request for proposals, bid opening, or commencement of negotiations for a proposed contract for which a wage determination was provided in response to a Standard Form 98 has been delayed, for whatever reason, more than 60 days from the date of such procurement action as on the submitted Standard Form 98, the contracting agency shall contact the Office of Government Contract Wage Standards, Wage and Hour Division, for the purpose of determining whether the wage determination issued pursuant to the initial submission is still current. Any revision of a wage determination received by the contracting agency as a result of such communication or upon discovery by the Department of Labor of a delay, shall supersede and replace the earlier response as the wage determination applicable to such procurement, subject to the time frames set forth in § 4.5(a)(2).

§ 4.5 Contract specification of determined minimum wages and fringe benefits.

(a) Any contract in excess of $2,500 shall contain an attachment specifying the minimum wages and fringe benefits for service employees to be employed thereunder, as determined in the applicable currently effective wage determination, including the applicable wage determination contained in any document referred to in paragraphs (a)(1) or (2) of this section;

(1) Any communication from the Office of Government Contract Wage Standards, Wage and Hour Division, Employment Standards Administration, Department of Labor, responsive to the notice required by § 4.4; or

(2) Any revision of a wage determination issued prior to the award of the contract or contracts which specifies minimum wage rates or fringe benefits for classes of service employees whose wages or fringe benefits were not previously covered by wage determinations, or which changes previously determined minimum wage rates and fringe benefits for service employees employed on covered contracts in the locality. However, revisions received by the Federal agency later than 10 days before the opening of bids, in the case of contracts entered into pursuant to competitive bidding procedures, shall not be effective if the Federal agency finds that there is not a reasonable time still available to notify bidders of the revision. In the case of procurements entered into pursuant to negotiations (or in the case of the execution of an option or an extension of the initial contract term), revisions received by the agency after award (or execution of an option or extension of term, as the case may be) of the contract shall not be effective *provided* that the contract start of performance is within 30 days of such

award (or execution of an option or extension of term). If the contract does not specify a start of performance date which is within 30 days from the award, and/or if performance of such procurement does not commence within this 30-day period, the Department of Labor shall be notified and any notice of a revision received by the agency not less than 10 days before commencement of the contract shall be effective. In situations arising under section 4(c) of the Act, the provisions in § 4.1b(b) apply.

(b)(1) The following exemption from the compensation requirements of section 2(a) of the Act applies, subject to the limitations set forth in paragraphs (b) (2), (3), and (4) of this section: To avoid serious impairment of the conduct of Government business it has been found necessary and proper to provide exemption from the determined wage and fringe benefits section of the Act (section 2(a) (1), (2)) but not the minimum wage specified under section 6(a)(1) of the Fair Labor Standards Act of 1938, as amended (section 2(b) of this Act), of contracts under which five or less service employees are to be employed, and for which no such wage or fringe benefit determination has been issued;

(2) The exemption provided in paragraph (b)(1) of this section, which was adopted pursuant to section 4(b) of the Act prior to its amendment by Public Law 92–473, does not extend to undetermined wages or fringe benefits in contracts for which one or more, but not all, classes of service employees are the subject of an applicable wage determination. The procedure for determination of wage rates and fringe benefits for any classes of service employees engaged in performing such contracts whose wages and fringe benefits are not specified in the applicable wage determination is set forth in § 4.6(b).

(3) The exemption provided in paragraph (b)(1) of this section does not exempt any contract from the application of the provisions of section 4(c) of the Act as amended, concerning successor contracts.

(c)(1) If the notice of intention required by § 4.4 is not filed with the required supporting documents within the time provided in such section, the contracting agency shall, through the exercise of any and all of its power and authority that may be needed (including, where necessary, its authority to negotiate, its authority to pay any necessary additional costs, and its authority under any provision of the contract authorizing changes), include in the contract any wage determinations communicated to it by the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, within 30 days of the receipt of such wage determination(s).

(2) Where the Department of Labor discovers and determines, whether before or subsequent to a contract award, that a contracting agency made an erroneous determination that the Service Contract Act did not apply to a particular procurement and/or failed to include an appropriate wage determination in a covered contract, the contracting agency, within 30 days of notification by the Department of Labor, shall include in the contract the stipulations contained in § 4.6 and any applicable wage determination issued by the Administrator or his authorized representative through the exercise of any and all authority that may be needed (including, where necessary, its authority to negotiate or amend, its authority to pay any necessary additional costs, and its authority under any contract provision authorizing changes, cancellation, and termination). *(G. L. Christian & Associates* v. *U.S.*, 312 F. 2d 418 (Ct. Cl. 1963), rearg. denied 320 F. 2d 345, cert. denied 375 U.S. 954; (53 Comp. Gen. 412, (1973); *Curtiss-Wright Corp.* v. *McLucas*, 361 F. Supp. 657 (D N] 1974); *Marine Engineers Beneficial Assn., District 2* v. *Military Sealift Command*, 86 CCH Labor Cases ¶33,782 (D DC 1979); *Brinks, Inc.* v. *Board of Governors of the Federal Reserve System*, 466 F. Supp. 112 (D DC 1979), 466 F. Supp. 116 (D DC 1979). (See also 32 CFR 1–403.)

(d) In cases where the contracting agency has filed its SF–98 within the time limits discussed in § 4.4(a) and has not received a response from the Department of Labor, the contracting agency shall, with respect to any contract for which section 10 of the Act and § 4.3 of this Part mandate the inclusion of an applicable wage determination, contact the Office of Government Contract Wage Standards, Wage and Hour Division by telephone for guidance.

§ 4.6 Labor standards clauses for Federal service contracts exceeding $2,500.

The clauses set forth in the following paragraphs shall be included in full by the contracting agency in every contract (and any bid specification therefor) entered into by the United States or the District of Columbia, in excess of $2,500, or in an indefinite amount, the principal purpose of which is to furnish services through the use of service employees:

(a) Service Contract Act of 1965, as amended: This contract, is subject to the Service Contract Act of 1965, as amended (41 U.S.C. 351) and is subject to the following provisions and to all other applicable provisions of the Act and regulations of the Secretary of Labor issued thereunder (29 CFR Part 4).

(b)(1) Each service employee employed in the performance of this contract by the contractor or any subcontractor shall be paid not less than the minimum monetary wages and shall be furnished fringe benefits in accordance with the wages and fringe benefits determined by the Secretary of Labor or authorized representative, as specified in any wage determination attached to this contract. Unless specified otherwise in the wage determination, the contractor, where relevant, must consider an employee's length of service with the contractor or with the predecessor contractor(s) on the predecessor contract, if any, in determining the employee's wage and fringe benefit entitlements.

(2)(i) If there is such a wage determination attached to this contract, the contracting officer shall require that any class of service employee which is not listed therein and which is to be employed under the contract, be classified by the contractor so as to provide a reasonable relationship (i.e., appropriate level of skill comparison) between such unlisted classifications and the classifications listed in the wage determination. Such conformed class of employees shall be paid the monetary wages and furnished the fringe benefits as are determined by bona fide agreement of the interested parties, who shall be deemed to be the contracting officer, the contractor, and any authorized representative of the unlisted class of employees or, where there is no authorized representative, the employees in the unlisted class who will perform on the contract.

(ii) Such conforming procedure shall be initiated by the contractor at the time of the contract commencement date, or prior to the performance of contract work by such unlisted class of employee if a need for an additional class(es) arises, and shall be concluded no later than 30 days after such unlisted class of employees performs any contract work. A written report of the proposed conforming action, including evidence in writing of the agreement of the authorized representative of the employees involved or, where there is no authorized representative, the employees themselves, shall be promptly submitted by the contractor to the contracting officer who shall review this action, and if he or she agrees, shall promptly submit a report of the action to the Office of Government Contract

Wage Standards, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, for review. The Office of Government Contract Wage Standards will approve or disapprove the action within 30 days of receipt or will notify the contracting officer within 30 days of receipt that additional time is necessary. If the conforming procedure cannot be concluded within the 30-day time period, the contracting officer shall submit an explanation of the special circumstances which prevent a timely agreement to the Office of Government Contract Wage Standards together with a request for additional time for resolution of the matter.

(iii) If the parties do not reach an agreement or acknowledge disagreement within this 30-day period on a proper classification which is, in fact, conformable, the contracting officer shall promptly submit the question, together with his or her recommendations and all pertinent information, including the positions of employees if in disagreement, to the Office of Government Contract Wage Standards, Wage and Hour Division, Employment Standards Administration, of the Department of Labor for final determination. The Office of Government Contract Wage Standards will render a determination within 30 days of receipt or will notify the contracting officer within 30 days of receipt that additional time is necessary.

(iv) The process of establishing wage rates that bear a reasonable relationship to those listed in a wage determination cannot be reduced to any single formula. The approach used may vary from wage determination to wage determination depending on the circumstances. Standard wage and salary administration practices which rank various job classifications by pay grade pursuant to point schemes or other job factors may, for example, be relied upon. Guidance may also be obtained from the way different jobs are rated under Federal pay systems (Federal Wage Board Pay System and the General Schedule) or from other wage determinations issued in the same locality. Basic to the establishment of any conformable wage rate(s) is the concept that a pay relationship should be maintained between job classifications based on the skill required and the duties performed.

(v) Failure to pay such unlisted employees the compensation agreed upon by the interested parties and/or finally determined by the Office of Government Contract Wage Standards retroactive to the date such class of employees commenced contract work shall be a violation of the Act and this contract.

(vi) No employee engaged in performing work on this contract shall in any event be paid less than the currently applicable minimum wage specified under section 6(a)(1) of the Fair Labor Standards Act of 1938, as amended.

(vii) Failure by the contractor to comply with its responsibilities in sections (b)(2) (i) through (vi) of this section shall also be a violation of the Act and this contract. Upon discovery of such violation, the Office of Government Contract Wage Standards shall then make a final determination of conformed classification, wage rate, and/or fringe benefits which shall be retroactive to the date such class of employees commenced contract work.

(viii) Any agreement reached by the interested parties will not be considered a bona fide agreement unless the affected employees in the unlisted classification(s) have been provided with a full explanation of the conformance procedures and the basis for arriving at the proposed conformed classification (and wage rate and/or fringe benefits). The affected employees shall be afforded an opportunity to agree or disagree without threat of job reprisal. Upon final determination of this action by the Office of Government Contract Wage Standards, each affected employee shall be furnished by the contractor with a written copy of such determination or it shall be posted as a part of the wage determination.

(3) If, as authorized pursuant to section 4(d) of the Service Contract Act of 1965 as amended, the term of this contract is more than 1 year, the minimum monetary wages and fringe benefits required to be paid or furnished thereunder to service employees shall be subject to adjustment after 1 year and not less often than once every 2 years, pursuant to wage determinations to be issued by the Wage and Hour Division, Employment Standards Administration of the Department of Labor as provided in such Act.

(c) The contractor or subcontractor may discharge the obligation to furnish fringe benefits specified in the attachment or determined conformably thereto by furnishing any equivalent combinations of bona fide fringe benefits, or by making equivalent or differential payments in cash in accordance with the applicable rules set forth in Subpart D of 29 CFR Part 4, and not otherwise.

(d)(1) In the absence of a minimum wage attachment for this contract, neither the contractor nor any subcontractor under this contract shall pay any person performing work under the contract (regardless of whether they are service employees) less than the minimum wage specified by section 6(a)(1) of the Fair Labor Standards Act of 1938. Nothing in this provision shall relieve the contractor or any subcontractor of any other obligation under law or contract for the payment of a higher wage to any employee.

(2) If this contract succeeds a contract, subject to the Service Contract Act of 1965 as amended under which substantially the same services were furnished and service employees were paid wages and fringe benefits provided for in a collective bargaining agreement, in the absence of the minimum wage attachment for this contract setting forth such collectively bargained wage rates and fringe benefits, neither the contractor nor any subcontractor under this contract shall pay any service employee performing any of the contract work (regardless of whether or not such employee was employed under the predecessor contract), less than the wages and fringe benefits provided for in such collective bargaining agreements, to which such employee would have been entitled if employed under the predecessor contract, including accrued wages and fringe benefits and any prospective increases in wages and fringe benefits provided for under such agreement. No contractor or subcontractor under this contract may be relieved of the foregoing obligation unless the limitations of § 4.16(b) of 29 CFR Part 4 apply or unless the Secretary of Labor or his authorized representative determines, after a hearing as provided in § 4.11 of 29 CFR Part 4, that the collective bargaining agreement applicable to service employees employed under the predecessor contract was not entered into as a result of arm's-length negotiations, or finds, after a hearing as provided in § 4.10 of 29 CFR Part 4 that the wages and/or fringe benefits provided for in such agreement are substantially at variance with those which prevail for services of a character similar in the locality. Where the Secretary finds after a hearing in accordance with the review procedures provided in 29 CFR 4.10 and Part 6 that some or all of the wages and/or fringe benefits contained in a predecessor contractor's collective bargaining agreement are substantially at variance with those which prevail for services of a character similar in the locality, the Department will issue a new or revised wage determination setting forth the applicable wage rates and fringe benefits. Such determination shall be

made part of the contract or subcontract, in accordance with the decision of the Administrative Law Judge, or the Secretary, as the case may be irrespective of whether such issuance occurs prior to or after the award of a contract or subcontract. 53 Comp. Gen. 401 (1973).

(e) The contractor and any subcontractor under this contract shall notify each service employee commencing work on this contract of the minimum monetary wage and any fringe benefits required to be paid pursuant to this contract, or shall post the wage determination attached to this contract. The poster provided by the Department of Labor (Publication WH 1313) shall be posted in a prominent and accessible place at the worksite. Failure to comply with this requirement is a violation of section 2(a)(4) of the Act and of this contract.

(f) The contractor or subcontractor shall not permit any part of the services called for by this contract to be performed in buildings or surroundings or under working conditions provided by or under the control or supervision of the contractor or subcontractor which are unsanitary or hazardous or dangerous to the health or safety of service employees engaged to furnish these services, and the contractor or subcontractor shall comply with the safety and health standards applied under 29 CFR Part 1925.

(g) The contractor and each subcontractor performing work subject to the Act shall make and maintain for 3 years from the completion of the work records containing the information specified in paragraphs (g)(1) through (5) of this section for each employee subject to the Act and shall make them available for inspection and transcription by authorized representatives of the Wage and Hour Division, Employment Standards Administration of the U.S. Department of Labor:

(1) Name and address and social security number of each employee.

(2) The correct work classification or classifications, rate or rates of monetary wages paid and fringe benefits provided, rate or rates of fringe benefit payments in lieu thereof, and total daily and weekly compensation of each employee.

(3) The number of daily and weekly hours so worked by each employee.

(4) Any deductions, rebates, or refunds from the total daily or weekly compensation of each employee.

(5) A list of monetary wages and fringe benefits for those classes of service employees not included in the wage determination attached to this contract but for which such wage rates or fringe benefits have been determined by the interested parties or by the Administrator or authorized representative pursuant to the labor standards clause in paragraph (b) of this section. A copy of the report required by the clause in paragraph (b)(2)(ii) of this section shall be deemed to be such a list.

(6) Any list of the predecessor contractor's employees which had been furnished to the contractor pursuant to § 4.6(l)(2).

(7) The contractor shall also make available a copy of this contract for inspection or transcription by authorized representatives of the Wage and Hour Division.

(8) The contractor shall permit authorized representatives of the Wage and Hour Division to conduct interviews with employees at the worksite during normal working hours.

Failure to make and maintain or to make available such records for inspection and transcription shall be a violation of the regulations and this contract, and in the case of failure to produce such records, the contracting officer, upon direction of the Department of Labor and notification of the contractor, shall take action to cause suspension of any further payment or advance of funds until such violation ceases.

(h) The contractor shall unconditionally pay to each employee subject to the Act all wages due free and clear and without subsequent deduction (except as otherwise provided by law or Regulations, 29 CFR Part 4), rebate, or kickback on any account. Such payments shall be made no later than one pay period following the end of the regular pay period in which such wages were earned or accrued. A pay period under this Act may not be of any duration longer than semi-monthly.

(i) The contracting officer shall withhold or cause to be withheld from the Government prime contractor under this or any other Government contract with the prime contractor such sums as an appropriate official of the Department of Labor requests or such sums as the contracting officer decides may be necessary to pay underpaid employees employed by the contractor or subcontractor. In the event of failure to pay any employees subject to the Act all or part of the wages or fringe benefits due under the Act, the agency may, after authorization or by direction of the Department of Labor and written notification to the contractor, take action to cause suspension of any further payment or advance of funds until such violations have ceased. Additionally, any failure to comply with the requirements of these clauses relating to the Service Contract Act of 1965, may be grounds for termination of the right to proceed with the contract work. In such event, the Government may enter into other contracts or arrangements for completion of the work, charging the contractor in default with any additional cost.

(j) The contractor agrees to insert these clauses in this section relating to the Service Contract Act of 1965 in all subcontracts subject to the Act. The term "contractor" as used in these clauses in any subcontract, shall be deemed to refer to the subcontractor, except in the term "Government Prime Contractor."

(k)(1) As used in these clauses, the term "service employee" means any person engaged in the performance of this contract other than any person employed in a bona fide executive, administrative, or professional capacity, as those terms are defined in Part 541 of Title 29, Code of Federal Regulations, as of July 30, 1976, and any subsequent revision of those regulations. The term "service employee" includes all such persons regardless of any contractual relationship that may be alleged to exist between a contractor or subcontractor and such persons.

(2) The following statement is included in contracts pursuant to section 2(a)(5) of the Act and is for *informational purposes only:*

The following classes of service employees expected to be employed under the contract with the Government would be subject, if employed by the contracting agency, to the provisions of 5 U.S.C. 5341 or 5 U.S.C. 5332 and would, if so employed, be paid not less than the following rates, of wages and fringe benefits:

Employee class	Monetary wage-fringe benefits

(l)(1) If wages to be paid or fringe benefits to be furnished any service employees employed by the Government prime contractor or any subcontractor under the contract are provided for in a collective bargaining agreement which is or will be effective during any period in which the contract is being performed, the Government prime contractor shall report such fact to the contracting officer, together with full information as to the application and accrual of such wages and fringe

benefits, including any prospective increases, to service employees engaged in work on the contract, and a copy of the collective bargaining agreement. Such report shall be made upon commencing performance of the contract, in the case of collective bargaining agreements effective at such time, and in the case of such agreements or provisions or amendments thereof effective at a later time during the period of contract performance, such agreements shall be reported promptly after negotiation thereof.

(2) Not less than 10 days prior to completion of any contract being performed at a Federal facility where service employees may be retained in the performance of the succeeding contract and subject to a wage determination which contains vacation or other benefit provisions based upon length of service with a contractor (predecessor) or successor (§ 4.173 of Regulations, 29 CFR Part 4), the incumbent prime contractor shall furnish to the contracting officer a certified list of the names of all service employees on the contractor's or subcontractor's payroll during the last month of contract performance. Such list shall also contain anniversary dates of employment on the contract either with the current or predecessor contractors of each such service employee. The contracting officer shall turn over such list to the successor contractor at the commencement of the succeeding contract.

(m) All rulings and interpretations of the Service Contract Act of 1965, as amended, expressed in Regulations, 29 CFR Part 4 are hereby incorporated by reference in this contract.

(n)(1) By entering into this contract, the contractor (and officials thereof) certifies that neither it (nor he or she) nor any person or firm who has a substantial interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of the sanctions imposed pursuant to section 5 of the Act.

(2) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract pursuant to section 5 of the Act.

(3) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

(o) Notwithstanding any of the clauses in paragraphs (b) through (m) of this section relating to the Service Contract Act of 1965, the following employees may be employed in accordance with the following variations, tolerances, and exemptions, which the Secretary of Labor, pursuant to section 4(b) of the Act prior to its amendment by Public Law 92-473, found to be necessary and proper in the public interest or to avoid serious impairment of the conduct of Government business:

(i) Apprentices, student-learners, and workers whose earning capacity is impaired by age, physical, or mental deficiency or injury may be employed at wages lower than the minimum wages otherwise required by section 2(a)(1) or 2(b)(1) of the Service Contract Act without diminishing any fringe benefits or cash payments in lieu thereof required under section 2(a)(2) of that Act, in accordance with the conditions and procedures prescribed for the employment of apprentices, student-learners, handicapped persons, and handicapped clients of sheltered workshops under section 14 of the Fair Labor Standards Act of 1938, in the regulations issued by the Administrator (29 CFR Parts 520, 521, 524, and 525).

(ii) The Administrator will issue certificates under the Service Contract Act for the employment of apprentices, student-learners, handicapped persons, or handicapped clients of sheltered workshops not subject to the Fair Labor Standards Act of 1938, or subject to different minimum rates of pay under the two acts, authorizing appropriate rates of minimum wages (but without changing requirements concerning fringe benefits or supplementary cash payments in lieu thereof), applying procedures prescribed by the applicable regulations issued under the Fair Labor Standards Act of 1938 (29 CFR Parts 520, 521, 524, and 525).

(iii) The Administrator will also withdraw, annul, or cancel such certificates in accordance with the regulations in Parts 525 and 528 of Title 29 of the Code of Federal Regulations.

(p) Apprentices will be permitted to work at less than the predetermined rate for the work they perform when they are employed and individually registered in a bona fide apprenticeship program registered with a State Apprenticeship Agency which is recognized by the U.S. Department of Labor, or if no such recognized agency exists in a State, under a program registered with the Bureau of Apprenticeship and Training, Employment and Training Administration, U.S. Department of Labor. Any employee who is not registered as an apprentice in an approved program shall be paid the wage rate and fringe benefits contained in the applicable wage determination for the journeyman classification of work actually performed. The wage rates paid apprentices shall not be less than the wage rate for their level of progress set forth in the registered program, expressed as the appropriate percentage of the journeyman's rate contained in the applicable wage determination. The allowable ratio of apprentices to journeymen employed on the contract work in any craft classification shall not be greater than the ratio permitted to the contractor as to his entire work force under the registered program.

(q) An employee engaged in an occupation in which he or she customarily and regularly receives more than $30 a month in tips may have the amount of tips credited by the employer against the minimum wage required by section 2(a)(1) or section 2(b)(1) of the Act in accordance with section 3 (m) of the Fair Labor Standards Act and Regulations, 29 CFR Part 531: Provided, however, That the amount of such credit may not exceed $1.24 per hour beginning January 1, 1980, and $1.34 per hour after December 31, 1980. To utilize this proviso:

(1) the employer must inform tipped employees about this tip credit allowance before the credit is utilized;

(2) the employees must be allowed to retain all tips (individually or through a pooling arrangement and regardless of whether the employer elects to take a credit for tips received);

(3) the employer must be able to show by records that the employee receives at least the applicable Service Contract Act minimum wage through the combination of direct wages and tip credit;

(4) the use of such tip credit must have been permitted under any predecessor collective bargaining agreement applicable by virtue of section 4(c) of the Act.

§ 4.7 Labor standards clauses for Federal service contracts not exceeding $2,500.

Every contract with the Federal Government which is not in excess of $2,500 but has as its principal purpose the furnishing of services through the use of service employees shall contain the following clause:

Service Contract Act. Except to the extent that an exemption, variation or tolerance would apply if this were a contract in excess of $2,500, the contractor and any subcontractor hereunder shall pay all of his employees engaged in performing work on the contract not less than the minimum wage specified under section 6(a)(1) of the Fair Labor Standards Act of 1938, as amended. All regulations and interpretations of the Service Contract Act of 1965 expressed in 29 CFR Part 4 are hereby incorporated by reference in this contract.

§ 4.8 Notice of awards.

Whenever an agency of the United States or the District of Columbia awards a contract subject to the Act which may be in excess of $2,500, it shall furnish the Office of Government Contract Wage Standards, Wage and Hour Division, ESA, an original and one copy of Standard Form 99, Notice of Award of Contract. The form shall be completed as follows:

(a) Items 1 through 7 and 12 and 13: Self-explanatory;

(b) Item 8: Enter the notation "Service Contract Act;"

(c) Item 9: Leave blank;

(d) Item 10: (1) Enter the notation "Major Category," and indicate beside this entry the general service area into which the contract falls (e.g., food services, grounds maintenance, computer services, installation or facility support services, custodial-janitorial service, garbage collection, insect and rodent control, laundry and drycleaning services, etc.);

(e) Item 11: Enter the dollar amount of the contract, or the estimated dollar value with the notation "estimated" (if the exact amount is not known). If neither the exact nor the estimated dollar value is known, enter "indefinite," or "not to exceed $——." Supplies of Standard Form 99 are available in all GSA supply depots under stock number 7540-634-4049.

§ 4.9 [Reserved]

§ 4.10 Substantial variance proceedings under section 4(c) of the Act.

(a) *Statutory provision.* Under section 4(c) of the Act, and under corresponding wage determinations made as provided in section 2(a)(1) and (2) of the Act, contractors and subcontractors performing contracts subject to the Act generally are obliged to pay to service employees employed on the contract work wages and fringe benefits not less than those to which they would have been entitled under a collective bargaining agreement if they were employed on like work under a predecessor contract. (See §§ 4.1b, 4.3, 4.6(d)(2).) Section 4(c) of the Act provides, however, that "such obligations shall not apply if the Secretary finds after a hearing in accordance with regulations adopted by the Secretary that such wages and fringe benefits are substantially at variance with those which prevail for services of a character similar in the locality".

(b) *Prerequisites for hearing.* (1)(i) A request for a hearing under this section may be made by the contracting agency or other person affected or interested, including contractors or prospective contractors and associations of contractors, representatives of employees, and other interested Governmental agencies. Such a request shall be submitted in writing to the Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, D.C. 20210, to the attention of the Office of Government Contract Wage Standards, and shall include the following:

(A) The number of any wage determination at issue, the name of the contracting agency whose contract is involved, and a brief description of the services to be performed under the contract;

(B) A statement regarding the status of the procurement and any estimated procurement dates, such as bid opening, contact award, commencement date of the contract or its follow-up option period;

(C) A statement of the applicant's case, setting forth in detail the reasons why the applicant believes that a substantial variance exists with respect to some or all of the wages and/or fringe benefits, attaching available data concerning wages and/or fringe benefits prevailing in the locality;

(D) Names and addresses (to the extent known) of interested parties.

(ii) If the information in paragraph (b)(1)(i) of this section is not submitted with the request, the Administrator may deny the request or request supplementary information, at his/her discretion. No particular form is prescribed for submission of a request under this section.

(2) No hearing will be provided pursuant to this section and section 4(c) of the Act unless the Administrator determines from information available or submitted with a request for such a hearing that there may be a substantial variance between some or all of the wage rates and/or fringe benefits provided for in a collective bargaining agreement to which the service employees would otherwise be entitled by virtue of the provisions of section 4(c) of the Act, and those which prevail for services of a character similar in the locality.

(3) Pursuant to section 4(b) of the Act, requests for a hearing shall not be considered unless received as specified below, except in those situations where the Administrator determines that extraordinary circumstances exist:

(i) For advertised contracts, prior to ten days before the award of the contract;

(ii) For negotiated contracts and for contracts with provisions extending the initial term by option, prior to the commencement date of the contract or the follow-up option period, as the case may be.

(c) *Referral to the Chief Administrative Law Judge.* When the Administrator determines from the information available or submitted with a request for a hearing that there may be a substantial variance, the Administrator on his own motion or on application of any interested person may by order refer the issue to the Chief Administrative Law Judge, for designation of an Administrative Law Judge who shall conduct such a fact finding hearing as may be necessary to render a decision solely on the issue of whether the wages and/or fringe benefits contained in the collective bargaining agreement which was the basis for the wage determination at issue are substantially at variance with those which prevail for services of a character similar in the locality. However, in situations where there is also a question as to whether the collective bargaining agreement was reached as a result of "arm's-length negotiations" (see § 4.11), the referral shall include both issues for resolution in one proceeding. No authority is delegated under this section to hear and/or decide any other issues pertaining to the Service Contract Act. As provided in section 4(a) of the Act, the provisions of §§ 4 and 5 of the Walsh-Healey Public Contracts Act (41 U.S.C. 38, 39) shall be applicable to such proceeding, which shall be conducted in accordance with the procedures set forth at 29 CFR Part 6, Subpart B.

(d) The Administrator shall be an interested party and shall have the opportunity to participate in the proceeding to the degree he/she considers appropriate.

§ 4.11 Arm's length proceedings.

(a) *Statutory provision.* Under Section 4(c) of the Act, the wages and fringe benefits provided in the predecessor contractor's collective bargaining agreement must be reached "as a result of arm's-length negotiations." This provision precludes arrangements by parties to a collective bargaining agreement who, either separately or together, acted with an intent to manipulate, exploit or otherwise take advantage of the wage determination scheme provided for in Sections 2(a) and 4(c) of the Act, or situations where it has been determined by the National Labor Relations Board that "good faith" bargaining did not occur. If the National Labor Relations Board makes such a finding, the Administrator shall issue a decision based on that finding and that decision shall be final and not subject to

appeal. A finding as to whether a collective bargaining agreement or particular wages and fringe benefits therein are reached as a result of arm's-length negotiations may be made through investigation, hearing or otherwise pursuant to the Secretary's authority under Section 4(a) of the Act.

(b)(1) A request for a determination under this section may be made by a contracting agency or other person affected or interested, including contractors or prospective contractors and associations of contractors, representatives of employees, and interested Governmental agencies. Such a request shall be submitted in writing to the Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, D.C. 20210, to the attention of the Office of Government Contract Wage Standards. Although no particular form is prescribed for submission of a request under this section, such request shall include the following information:

(i) A statement of the applicant's case setting forth in detail the reasons why the applicant believes that the wages and fringe benefits contained in the collective bargaining agreement were not reached as a result of arm's-length negotiations;

(ii) A statement regarding the status of the procurement and any estimated procurement dates, such as bid opening, contract award, commencement date of the contract or its follow-up option period;

(iii) Names and addresses (to the extent known) of interested parties.

(2) Pursuant to Section 4(b) of the Act, requests for a hearing shall not be considered unless received as specified below except in those situations where the Administrator determines that extraordinary circumstances exist:

(i) For advertised contracts, prior to ten days before the award of the contract;

(ii) For negotiated contracts and for contracts with provisions extending the term by option, prior to the commencement date of the contract or the follow-up option period, as the case may be.

(c)(1) The Administrator, on his/her own motion or after receipt of a request for a determination, may make a finding on the issue of arm's-length negotiations.

(2) If the Administrator determines that there may not have been arm's-length negotiations, but finds that there is insufficient evidence to render a final decision thereon, the Administrator may refer the issue to the Chief Administrative Law Judge in accordance with subsection (d).

(3)(i) If the Administrator finds that the collective bargaining agreement or wages and fringe benefits at issue were reached as a result of arm's-length negotiations or that arm's-length negotiations did not take place, the interested parties, including the parties to the collective bargaining agreement, will be notified of the Administrator's findings, which shall include the reasons therefor, and such parties shall be afforded an opportunity to request that a hearing be held to render a decision on the issue of arm's-length negotiations.

(ii) Such parties shall have 20 days from the date of the Administrator's ruling to request a hearing. A detailed statement of the reasons why the Administrator's ruling is in error, including facts alleged to be in dispute, if any, shall be submitted with the request for a hearing.

(iii) If no hearing is requested within the time mentioned in paragraph (c)(3)(ii) of this section above, the Administrator's ruling shall be final, and, in the case of a finding that arm's-length negotiations did not take place, a new wage determination will be issued for the contract. If a hearing is requested, the decision of the Administrator shall be inoperative.

(d) Referral to the Chief Administrative Law Judge. The Administrator on his/her own motion, under paragraph (c)(2) or upon a request for a hearing under paragraph (c)(3)(ii) where the Administrator determines that material facts are in dispute, shall by order refer the issue to the Chief Administrative Law Judge for designation of an Administrative Law Judge, who shall conduct such hearings as may be necessary to render a decision solely on the issue of arm's-length negotiations. However, in situations where there is also a question as to whether some or all of the collectively bargained wage rates and/or fringe benefits are substantially at variance (see § 4.10), the referral shall include both issues for resolution in one proceeding. As provided in Section 4(a) of the Act, the provisions of Sections 4 and 5 of the Walsh-Healey Public Contracts Act (41 U.S.C. 38, 39) shall be applicable to such proceeding, which shall be conducted in accordance with the procedures set forth at 29 CFR Part 6.

(e) Referral to the Secretary. When a party requests a hearing under paragraph (c)(3)(ii) and the Administrator determines that no material facts are in dispute, the Administrator shall refer the issue and the record compiled thereon to the Secretary to render a decision solely on the issue of arm's-length negotiations. Such proceeding shall be conducted in accordance with the procedures set forth at 29 CFR Part 6.

§ 4.12 Substantial interest proceedings

(a) *Statutory provision.* Under Section 5(a) of the Act, no contract of the United States (or the District of Columbia) shall be awarded to the persons or firms appearing on the list distributed by the Comptroller General giving the names of persons or firms who have been found to have violated the Act until 3 years have elapsed from the date of publication of the list. Section 5(a) further states that "no contract of the United States shall be awarded * * * to any firm, corporation, partnership, or association in which such persons or firms have a substantial interest * * *." A finding as to whether persons or firms whose names appear on the debarred bidders list have a substantial interest in any other firm, corporation, partnership, or association may be made through investigation, hearing, or otherwise pursuant to the Secretary's authority under Section 4 (a) of the Act.

(b) *Ineligibility.* See § 4.188 of this part for the Secretary's rulings and interpretations with respect to substantial interest.

(c)(1) A request for a determination under this section may be made by any interested party, including contractors or prospective contractors, and associations of contractors, representatives of employees, and interested Government agencies. Such a request shall be submitted in writing to the Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, D.C. 20210, to the attention of the Office of Government Contract Wage Standards.

(2) The request shall include a statement setting forth in detail why the petitioner believes that a person or firm whose name appears on the debarred bidders list has a substantial interest in any firm, corporation, partnership, or association which is seeking or has been awarded a contract of the United States or the District of Columbia. No particular form is prescribed for the submission of a request under this section.

(d)(1) The Administrator, on his/her own motion or after receipt of a request for a determination, may make a finding on the issue of substantial interest.

(2) If the Administrator determines that there may be a substantial interest, but finds that there is insufficient evidence to render a final ruling thereon, the Administrator may refer the issue to the Chief Administrative Law Judge in accordance with subsection (e).

(3) If the Administrator finds that no substantial interest exists, or that there is not sufficient information to warrant the initiation of an investigation, the requesting party, if any, will be so notified and no further action taken.

(4)(i) If the Administrator finds that a substantial interest exists, the person or firm affected will be notified of the Administrator's finding, which shall include the reasons therefor, and such person or firm shall be afforded an opportunity to request that a hearing be held to render a decision on the issue of substantial interest.

(ii) Such person or firm shall have 20 days from the date of the Administrator's ruling to request a hearing. A detailed statement of the reasons why the Administrator's ruling is in error, including facts alleged to be in dispute, if any, shall be submitted with the request for a hearing.

(iii) If no hearing is requested within the time mentioned in subparagraph (ii) above, the Administrator's finding shall be final and the Administrator shall so notify the Comptroller General. If a hearing is requested, the decision of the Administrator shall be inoperative unless and until the Administrative Law Judge or the Secretary issues an order that there is a substantial interest.

(e) *Referral to the Chief Administrative Law Judge.* The Administrator on his/her own motion, or upon a request for a hearing where the Administrator determines that relevant facts are in dispute, shall by order refer the issue to the Chief Administrative Law Judge, for designation of an Administrative Law Judge who shall conduct such hearings as may be necessary to render a decision solely on the issue of substantial interest. As provided in Section 4(a) of the Act, the provisions of Sections 4 and 5 of the Walsh-Healey Public Contracts Act (41 U.S.C. 38, 39) shall be applicable to such proceedings, which shall be conducted in accordance with the procedures set forth at 29 CFR Part 6.

(f) Referral to the *Secretary.* When the person or firm requests a hearing and the Administrator determines that relevant facts are not in dispute, the Administrator will refer the issue and the record compiled thereon to the Secretary to render a decision solely on the issue of substantial interest. Such proceeding shall be conducted in accordance with the procedures set forth at 29 CFR Part 6.

Subpart B—Wage Determination Procedures

§ 4.50 Types of wage and fringe benefit determinations.

The Administrator specifies the minimum monetary wages and fringe benefits to be paid as required under the Act in two types of determinations:

(a) *Prevailing in the Locality.* Determinations that set forth minimum monetary wages and fringe benefits determined to be prevailing for various classes of service employees in the locality (sections 2(a)(1) and 2(a)(2) of the Act) after giving "due consideration" to the rates applicable to such service employees if directly hired by the Federal Government (section 2(a)(5) of the Act); and

(b) *Collective Bargaining Agreement—(Successorship).* Determinations that set forth the wage rates and fringe benefits, including accrued and prospective increases, contained in a collective bargaining agreement applicable to the service employees under the predecessor contract.

§ 4.51 Prevailing in the locality determinations.

(a) *Information considered.* The minimum monetary wages and fringe benefits set forth in determinations of the Secretary are based on all available pertinent information as to wage rates and fringe benefits being paid at the time the determination is made. Such information is most frequently derived from area surveys made by the Bureau of Labor Statistics, U.S. Department of Labor, or other Labor Department personnel. Information may also be obtained from Government contracting officers and from other available sources, including employees and their representatives and employers and their associations. The determinations may be based on the wage rates and fringe benefits contained in collective bargaining agreements where they have been determined to prevail in a locality for specified occupational class(es) of employees.

(b) *Determination of Prevailing Rates.* Where a single rate is paid to a majority (50 percent or more) of the workers in a class of service employees engaged in similar work in a particular locality, that rate is determined to prevail. The wage rates and fringe benefits in a collective bargaining agreement covering 2,001 janitors in a locality, for example, prevail if it is determined that no more than 4,000 workers are engaged in such janitorial work in that locality. In the case of information developed from surveys, statistical measurements of central tendency such as a median (a point in a distribution of wage rates where 50 percent of the surveyed workers receive that or a higher rate and an equal number receive a lesser rate) or the mean (average) are considered reliable indicators of the prevailing rate. Which of these statistical measurements will be applied in a given case will be determined after a careful analysis of the overall survey, separate classification data, patterns existing between survey periods, and the way the separate classification data interrelate. Use of the median is the general rule. However, the mean (average) rate may be used in situations where, after analysis, it is determined that the median is not a reliable indicator. Examples where the mean may be used include situations where:

(1) The number of workers studied for the job classification constitutes a relatively small sample and the computed median results in an actual rate that is paid to few of the studied workers in the class;

(2) Statistical deviation such as a skewed (bimodal or multimodal) frequency distribution biases the median rate due to large concentrations of workers toward either end of the distribution curve and the computed median results in an actual rate that is paid to few of the studied workers in the class; or

(3) The computed median rate distorts historic wage relationships between job levels within a classification family, (i.e., Electronic Technician Classes A, B, and C levels within the Electronic technician classification family), between classifications of different skill levels (i.e., a maintenance electrician as compared with a maintenance carpenter), or, for example, yields a wage movement inconsistent with the pattern shown by the survey overall or with related and/or similarly skilled job classifications.

(c) *Due consideration.* In making wage and fringe benefit determinations, section 2(a)(5) of the Act requires that due consideration be given to the rates that would be paid by the Federal agency to the various classes of service employees if § 5341 or § 5332 of Title 5, United States Code, were applicable to them. Section 5341 refers to the Wage Board or Coordinated Federal Wage System for "blue collar" workers and § 5332 refers to the General Schedule pay system for "white collar" workers. The term "due consideration" implies the exercise of discretion on the basis of the facts and circumstances surrounding each determination, recognizing the legislative objective of narrowing the gap between the wage rates and fringe

benefits prevailing for service employees and those established for Federal employees. Each wage determination is based on a survey or other information on the wage rates and fringe benefits being paid in a particular locality and also takes into account those wage rates and fringe benefits which would be paid under Federal pay systems.

§ 4.52 Collective bargaining agreement (successorship) determinations.

Determinations based on the collective bargaining agreement of a predecessor contractor set forth by job classification each provision relating to wages (such as the established straight time hourly or salary rate, cost-of-living allowance, and any shift, hazardous, and other similar pay differentials) and to fringe benefits (such as holiday pay, vacation pay, sick leave pay, life, accidental death, disability, medical, and dental insurance plans, retirement or pension plans, severance pay, supplemental unemployment benefits, saving and thrift plans, stock-option plans, funeral leave, jury/witness leave, or military leave) contained in the predecessor's collective bargaining agreement, as well as conditions governing the payment of such wages and fringe benefits. Accrued wages and fringe benefits and prospective increases therein are also included. Each wage determination is limited in application to a specific contract succeeding a contract which had been performed by a contractor with a collective bargaining agreement, and contains a notice to prospective bidders regarding their obligations under section 4(c) of the Act.

§ 4.53 Locality basis of wage and fringe benefit determinations.

(a) Under section 2(a) of the Act, the Secretary or his authorized representative is given the authority to determine the minimum monetary wages and fringe benefits prevailing for various classes of service employees "in the locality". Although the term "locality" has reference to a geographic area, it has an elastic and variable meaning and contemplates consideration of the existing wage structures which are pertinent to the employment of particular classes of service employees on the varied kinds of service contracts. Because wage structures are extremely varied, there can be no precise single formula which would define the geographic limits of a "locality" that would be relevant or appropriate for the determination of prevailing wage rates and prevailing fringe benefits in all situations under the Act. The locality within which a wage or fringe benefit determination is applicable is, therefore, defined in each such determination upon the basis of all the facts and circumstances pertaining to that determination. Locality is ordinarily limited geographically to a particular county or cluster of counties comprising a metropolitan area. For example, a survey by the Bureau of Labor Statistics of the Baltimore, Maryland Standard Metropolitan Statistical Area includes the counties of Baltimore, Harford, Howard, Anne Arundel, and the City of Baltimore. A wage determination based on such information would define locality as the same geographic area included within the scope of the survey. Locality may also be defined as, for example, a city, a State, or, under rare circumstances, a region, depending on the actual place or places of contract performance, the geographical scope of the data on which the determination was based, the nature of the services being contracted for, and the procurement method used. In addition, in *Southern Packaging & Storage Co.* v. *United States*, 618 F.2d 1069 (4th Cir. 1980), the court held that a nationwide wage determination normally is not permissible under the Act, but postulated that "there may be the rare and unforeseen service contract which might be performed at locations throughout the country and which would generate truly nationwide competition.

(b) Where the wage rates and fringe benefits contained in a collective bargaining agreement applicable to the predecessor contract are set forth in a determination, locality in such a determination is typically described as the geographic area in which the Federal facility is situated. The determination applies to any sucessor contractor, regardless of place of performance and whether the place of performance is known at the time of bid advertising.

§ 4.54 Issuance and revision of wage determinations.

(a) Section 4.4 of Subpart A requires that the awarding agency file a notice of intention to make a service contract which is subject to the Act with the Office of Government Contract Wage Standards, Wage and Hour Division, Employment Standards Administration, prior to any invitation for bids or the commencement of negotiations for any contract exceeding $2,500. Upon receipt of the notice, the Office of Government Contract Wage Standards may issue a new determination of minimum monetary wages and fringe benefits for the classes of service employees who will perform work on the contract or may revise a determination which is currently in effect.

(b) Determinations will be reviewed periodically and where prevailing wage rates or fringe benefits have changed, such changes will be reflected in revised determinations. For example, in a locality where it is determined that the wage rate which prevails for a particular class of service employees is the rate specified in a collective bargaining agreement(s) applicable in that locality, and such agreement(s) specifies increases in such rates to be effective on specific dates, the determinations would be revised to reflect such changes as they become effective. Revised determinations shall be applicable to contracts in accordance with the provisions of § 4.5(a)(2) of Subpart A.

(c) Determinations issued by the Office of Government Contract Wage Standards with respect to particular contracts are required to be incorporated in the invitations for bids or requests for proposals or quotations issued by the contracting agencies, and are to be incorporated in the contract specifications in accordance with § 4.5 of Subpart A. In this manner, prospective contractors and subcontractors are advised of the minimum monetary wages and fringe benefits required under the most recently applicable determination to be paid the service employees who perform the contract work. These requirements are, of course, the same for all bidders so none will be placed at a competitive disadvantage.

§ 4.55 Review and reconsideration of wage determinations.

(a) *Review by the Administrator.* (1) Any interested party affected by a wage determination issued under section 2(a) of the Act may request review and reconsideration by the Administrator. A request for review and reconsideration may be made by the contracting agency or other interested party, including contractors or prospective contractors and associations of contractors, representatives of employees, and other interested Governmental agencies. Any such request must be accompanied by supporting evidence. In no event shall a request for review of any aspect of a wage determination, including its accuracy or its applicability, be considered after the opening of bids in the case of a competitively advertised procurement, or after the commencement of a contract in the case of a negotiated procurement. This limitation is necessary in order to ensure competitive equality and an orderly procurement process.

(2) The Administrator shall, upon receipt of a request for reconsideration, review the data sources relied upon as a basis for the wage determination, the evidence furnished by the party requesting review or reconsideration, and, if necessary to resolve the matter, any additional information found to be relevant to determining prevailing wage rates and fringe benefits in a particular locality. The Administrator, pursuant to a review of available information, may issue a new wage determination, may cause the wage determination to be revised, or may affirm the wage determination issued, and will notify the requesting party in writing of the action taken. The Administrator will render a decision within 30 days of receipt of the request or will notify the requesting party in writing within 30 days of receipt that additional time is necessary.

(b) *Review by the Secretary.* Any decision of the Administrator under paragraph (a) of this section may be appealed to the Secretary within 20 days of issuance of the Administrator's decision. Any such appeal shall be in accordance with the provisions of Part 6 of this title.

Subpart C—Application of the McNamara-O'Hara Service Contract Act

Introductory

§ 4.101 Official rulings and interpretations in this subpart.

(a) The purpose of this subpart is to provide, pursuant to the authority cited in § 4.102, official rulings and interpretations with respect to the application of the McNamara-O'Hara Service Contract Act for the guidance of the agencies of the United States and the District of Columbia which may enter into and administer contracts subject to its provisions, the persons desiring to enter into such contracts with these agencies, and the contractors, subcontractors, and employees who perform work under such contracts.

(b) These rulings and interpretations are intended to indicate the construction of the law and regulations which the Department of Labor believes to be correct and which will be followed in the administration of the Act unless and until directed otherwise by Act of Congress or by authoritative ruling of the courts, or if it is concluded upon reexamination of an interpretation that it is incorrect. See for example, *Skidmore* v. *Swift & Co.*, 323 U.S. 134 (1944); *Roland Co.* v. *Walling*, 326 U.S. 657 (1946); *Endicott Johnson Corp.* v. *Perkins*, 317 U.S. 501, 507–509 (1943); *Perkins* v. *Lukens Steel Co.*, 310 U.S. 113, 128 (1940); *United States* v. *Western Pacific Railroad Co.*, 352 U.S. 59 (1956). The Department of Labor (and not the contracting agencies) has the primary and final authority and responsibility for administering and interpreting the Act, including making determinations of coverage. See *Woodside Village* v. *Secretary of Labor*, 611 F. 2d 312 (9th Cir. 1980); *Nello L. Teer Co.* v. *United States*, 348 F.2d 533, 539–540 (Ct. Cl. 1965), cert. denied, 383 U.S. 934 (Davis-Bacon Act); *North Georgia Building & Construction Trades Council* v. *U.S. Department of Transportation*, 399 F. Supp. 58, 63 (N.D. Ga. 19075) (Davis-Bacon Act); *Zachry Co.* v. *United States*, 344 F.2d 352 (Ct. Cl. 1965) (Davis-Bacon Act); *Curtiss-Wright Corp.* v. *McLucas*, 364 F. Supp. 750, 769–72 (D.N.J. 1973); and 43 Atty. Gen. Ops. —— (March 9, 1979); 53 Comp. Gen. 647, 649–51 (1974); 57 Comp. Gen. 501, 506 (1978).

(c) Court decisions arising under the Act (as well as under related remedial labor standards laws such as the Walsh-Healey Public Contracts Act, the Davis-Bacon Act, the Contract Work Hours and Safety Standards Act, and the Fair Labor Standards Act) which support policies and interpretations contained in this part are cited where it is believed that they may be helpful. On matters which have not been authoritatively determined by the courts, it is necessary for the Secretary of Labor and the Administrator to reach conclusions as to the meaning and the application of provisions of the law in order to carry out their responsibilities of administration and enforcement (*Skidmore* v. *Swift & Co.*, 323 U.S. 134 (1944)). In order that these positions may be made known to persons who may be affected by them, official interpretations and rulings are issued by the Administrator with the advice of the Solicitor of Labor, as authorized by the Secretary (Secretary's Order No. 16–75, Nov. 21, 1975, 40 FR 55913; Employment Standards Order No. 2–76, Feb. 23, 1976, 41 FR 9016). These interpretations are a proper exercise of the Secretary's authority. *Idaho Sheet Metal Works* v. *Wirtz*, 383 U.S. 190, 206 (1966), reh. den. 383 U.S. 963 (1966). References to pertinent legislative history, decisions of the Comptroller General and of the Attorney General, and Administrative Law Judges' decisions are also made in this part where it appears they will contribute to a better understanding of the stated interpretations and policies.

(d) The interpretations of the law contained in this part are official interpretations which may be relied upon. The Supreme Court has recognized that such interpretations of the Act "provide a practical guide to employers and employees as to how the office representing the public interest in its enforcement will seek to apply it" and "constitute a body of experience and informed judgment to which courts and litigants may properly resort for guidance" (*Skidmore* v. *Swift & Co.*, 323 U.S. 134 (1944)). Interpretations of the agency charged with administering an Act are generally afforded deference by the courts. (*Griggs* v. *Duke Power Co.*, 401 U.S. 424, 433–34 (1971); *Udall* v. *Tallman*, 380 U.S. 1 (1965).) Some of the interpretations in this part relating to the application of the Act are interpretations of provisions which appeared in the original Act before its amendments in 1972 and 1976. Accordingly, the Department of Labor considers these interpretations to be correct, since there were no amendments of the statutory provisions which they interpret. (*United States* v. *Davison Fuel & Dock Co.*, 371 F.2d 705, 711–12 (C.A. 4, 1967).)

(e) On and after final publication of this part in the Federal Register, the interpretations contained herein shall be in effect and shall remain in effect until they are modified, rescinded, or withdrawn. This part supersedes and replaces certain interpretations previously published in the Federal Register and Code of Federal Regulations as Part 4 of this chapter. Prior opinions, rulings, and interpretations and prior enforcement policies which are not inconsistent with the interpretations in this part or with the Act as amended are continued in effect; all other opinions, rulings, interpretations, and enforcement policies on the subjects discussed in the interpretations in this part, to the extent they are inconsistent with the rules herein stated, are superseded, rescinded, and withdrawn.

(f) Principles governing the application of the Act as set forth in this subpart are clarified or amplified in particular instances by illustrations and examples based on specific fact situations. Since such illustrations and examples cannot and are not intended to be exhaustive, or to provide guidance on every problem which may arise under the Act, no inference should be drawn from the fact that a subject or illustration is omitted.

(g) It should not be assumed that the lack of discussion of a particular subject in this subpart indicates the adoption of any particular position by the Department of Labor with respect to such matter or to constitute an interpretation, practice, or enforcement policy. If doubt arises or a question

exists, inquiries with respect to matters other than safety and health standards should be directed to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, D.C. 20210, or to any regional office of the Wage and Hour Division. Safety and health inquiries should be addressed to the Assistant Secretary for Occupational Safety and Health, U.S. Department of Labor, Washington, D.C. 20210, or to any OSHA regional office. A full description of the facts and any relevant documents should be submitted if an official ruling is desired.

§ 4.102 Administration of the Act.

As provided by section 4 of the Act and under provisions of sections 4 and 5 of the Walsh-Healey Public Contracts Act (49 Stat. 2036; 41 U.S.C. 38, 39) which are made expressly applicable for the purpose, the Secretary of Labor is authorized and directed to administer and enforce the provisions of the McNamara-O'Hara Service Contract Act, to make rules and regulations, issue orders, make decisions, and take other appropriate action under the Act. The Secretary is also authorized to make reasonable limitations and to make rules and regulations allowing reasonable variations, tolerances, and exemptions to and from provisions of the Act (except section 10), but only in special circumstances where it is determined that such action is necessary and proper in the public interest or to avoid serious impairment of the conduct of Government business and is in accord with the remedial purposes of the Act to protect prevailing labor standards. The authority and enforcement powers of the Secretary under the Act are coextensive with the authority and powers under the Walsh-Healey Act. *Curtiss Wright Corp.* v. *McLucas* 364 F. Supp. 750, 769 (D N] 1973).

§ 4.103 The Act.

The McNamara-O'Hara Service Contract Act of 1965 (Pub. L. 89–286, 79 Stat. 1034, 41 U.S.C. 351 et seq.), hereinafter referred to as the Act, was approved by the President on October 22, 1965 (1 Weekly Compilation of Presidential Documents 428). It establishes standards for minimum compensation and safety and health protection of employees performing work for contractors and subcontractors on service contracts entered into with the Federal Government and the District of Columbia. It applies to contracts entered into pursuant to negotiations concluded or invitations for bids issued on or after January 20, 1966. It has been amended by Pub. L. 92–473, 86 Stat. 796; by Pub. L. 93–57, 87 Stat. 140; and by Pub. L. 94–489, 90 Stat. 2358.

§ 4.104 What the Act provides, generally.

(a) The provisions of the Act apply to contracts, whether negotiated or advertised, the principal purpose of which is to furnish services in the United States through the use of service employees. Under its provisions, every contract subject to the Act (and any bid specification therefor) entered into by the United States or the District of Columbia in excess of $2,500 must contain stipulations as set forth in § 4.6 of this Part requiring (a) that specified minimum monetary wages and fringe benefits determined by the Secretary of Labor (based on wage rates and fringe benefits prevailing in the locality or, in specified circumstances, the wage rates and fringe benefits contained in a collective bargaining agreement applicable to employees who performed on a predecessor contract) be paid to service employees employed by the contractor or any subcontractor in performing the services contracted for; (b) that working conditions of such employees which are under the control of the contractor or subcontractor meet safety and health standards; and (c) that notice be given to such employees of the compensation due them under the minimum wage and fringe benefits provisions of the contract. Contractors performing work subject to the Act thus enter into competition to obtain Government business on terms of which they are fairly forewarned by inclusion in the contract. (*Endicott Johnson Corp.* v. *Perkins*, 317 U.S. 501, 507 (1943).) The Act's purpose is to impose obligations upon those favored with Government business by precluding the use of the purchasing power of the Federal Government in the unfair depression of wages and standards of employment. (See H.R. Rep. No. 948, 89th Cong., 1st Sess. 2–3 (1965); S. Rep. No. 798, 89th Cong., 1st Sess. 3–4 (1965).) The Act does not permit the monetary wage rates specified in such a contract to be less than the minimum wage specified under section 6(a)(1) of the Fair Labor Standards Act, as amended (29 U.S.C. 206(a)(1)). In addition, it is a violation of the Act for any contractor or subcontractor under a Federal contract subject to the Act, regardless of the amount of the contract, to pay any of his employees engaged in performing work on the contract less than such Fair Labor Standards Act minimum wage. Contracts of $2,500 or less are not, however, required to contain the stipulations described above. These provisions of the Service Contract Act are implemented by the regulations contained in this Part 4 and are discussed in more detail in subsequent sections of Subparts C, D, and E.

§ 4.105 The Act as amended.

(a) The provisions of the Act (see §§ 4.102–4.103) were amended, effective October 9, 1972, by Public Law 92–473, signed into law by the President on that date. By virtue of amendments made to paragraphs (1) and (2) of section 2(a) and the addition to section 4 of a new subsection (c), the compensation standards of the Act (see §§ 4.159–4.179) were revised to impose on successor contractors certain requirements (see § 4.1b) with respect to payment of wage rates and fringe benefits based on those agreed upon for substantially the same services for the same location in collective bargaining agreements entered into by their predecessor contractors (unless such agreed compensation is substantially at variance with that locally prevailing or the agreement was not negotiated at arm's length). The Secretary of Labor is to give effect to the provisions of such collective bargaining agreements in his wage determinations under section 2 of the Act. A new paragraph (5) added to section 2(a) of the Act requires a statement in the government service contract of the rates that would be paid by the contracting agency in the event of its direct employment of those classes of service employees to be employed on the contract work who, if directly employed by the agency, would receive wages determined as provided in 5 U.S.C. 5341. The Secretary of Labor is directed to give due consideration to such rates in determining prevailing monetary wages and fringe benefits under the Act's provisions. Other provisions of the 1972 amendments include the addition of a new section 10 to the Act to insure that wage determinations are issued by the Secretary for substantially all service contracts subject to section 2(a) of the Act at the earliest administratively feasible time; an amendment to section 4(b) of the Act to provide, in addition to the conditions previously specified for issuance of administrative limitations, variations, tolerances, and exemptions (see § 4.123), that administrative action in this regard shall be taken only in special circumstances where the Secretary determines that it is in accord with the remedial purpose of the Act to protect prevailing labor standards; and a new subsection (d) added to section 4 of the Act providing for the award of service contracts for terms not more than 5 years with provision for periodic adjustment of minimum wage rates and fringe benefits payable thereunder by

the issuance of wage determinations by the Secretary of Labor during the term of the contract. A further amendment to section 5(a) of the Act requires the names of contractors found to have violated the Act to be submitted for the debarment list (see (§ 4.188) not later than 90 days after the hearing examiner's finding of violation unless the Secretary recommends relief, and provides that such recommendations shall be made only because of unusual circumstances.

(b) The provisions of the Act were amended by Pub. L. 93–57, 87 Stat. 140, effective July 6, 1973, to extend the Act's coverage to Canton Island.

(c) The provisions of the Act were amended by Pub. L. 94–489, 90 Stat. 2358, approved October 13, 1976, to extend the Act's coverage to white collar workers. Accordingly, the minimum wage protection of the Act now extends to all workers, both blue collar and white collar, other than persons employed in a bona fide executive, administrative, or professional capacity as those terms are used in the Fair Labor Standards Act and in Part 541 of Title 29. Pub. L. 94–489 accomplished this change by adding to Section 2(a)(5) of the Act a reference to 5 U.S.C. 5332, which deals with white collar workers, and by amending the definition of service contract employee in Section 8(b) of the Act.

(d) Included in this Part 4 and in Part 6 of this subtitle are provisions to give effect to the amendments mentioned in this section.

§ 4.106 [Reserved]

Agencies Whose Contracts May Be Covered

§ 4.107 Federal contracts.

(a) Section 2(a) of the Act covers contracts (and any bid specification therefor) "entered into by the United States" and section 2(b) applies to contracts entered into "with the Federal Government." Within the meaning of these provisions, contracts entered into by the United States and contracts with the Federal Government include generally all contracts to which any agency or instrumentality of the U.S. Government becomes a party pursuant to authority derived from the Constitution and laws of the United States. The Act does not authorize any distinction in this respect between such agencies and instrumentalities on the basis of their inclusion in or independence from the executive, legislative, or judicial branches of the Government, the fact that they may be corporate in form, or the fact that payment for the contract services is not made from appropriated funds. Thus, contracts of wholly owned Government corporations, such as the Postal Service, and those of nonappropriated fund instrumentalities under the jurisdiction of the Armed Forces, or of other Federal agencies, such as Federal Reserve Banks, are included among those subject to the general coverage of the Act. (*Brinks, Inc.* v. *Board of Governors of the Federal Reserve System*, 466 F. Supp. 116 (D DC 1979); 43 Atty. Gen. Ops. ——— (September 26, 1978).) Contracts with the Federal Government and contracts entered into "by the United States" within the meaning of the Act do not, however, include contracts for services entered into on their own behalf by agencies or instrumentalities of other Governments within the United States, such as those of the several States and their political subdivisions, or of Puerto Rico, the Virgin Islands, Guam, or American Samoa.

(b) Where a Federal agency exercises its contracting authority to procure services desired by the Government, the method of procurement utilized by the contracting agency is not controlling in determining coverage of the contract as one entered into by the United States. Such contracts may be entered into by the United States either through a direct award by a Federal agency or through the exercise by another agency (whether governmental or private) of authority granted to it to procure services for or on behalf of a Federal agency. Thus, sometimes authority to enter into service contracts of the character, described in the Act for and on behalf of the Government and on a cost-reimbursable basis may be delegated, for the convenience of the contracting agency, to a prime contractor which has the responsibility for all work to be done in connection with the operation and management of a Federal plant, installation, facility, or program, together with the legal authority to act as agency for and on behalf of the Government and to obligate Government funds in the procurement of all services and supplies necessary to carry out the entire program of operation. The contracts entered into by such a prime contractor with secondary contractors for and on behalf of the Federal agency pursuant to such delegated authority, which have such services as their principal purpose, are deemed to be contracts entered into by the United States and contracts with the Federal Government within the meaning of the Act. However, service contracts entered into by State or local public bodies with purveyors of services are not deemed to be entered into by the United States merely because such services are paid for with funds of the public body which have been received from the Federal Government as a grant under a Federal program. For example, a contract entered into by a municipal housing authority for tree trimming, tree removal, and landscaping for an urban renewal project financed by Federal funds is not a contract entered into by the United States and is not covered by the Service Contract Act. Similarly, contracts let under the Medicaid program which are financed by Federally-assisted grants to the States, and contracts which provide for insurance benefits to a third party, under the Medicare program are not subject to the Act.

§ 4.108 District of Columbia contracts.

Section 2(a) of the Act covers contracts (and any bid specification therefor) in excess of $2,500 which are "entered into by the * * * District of Columbia." The contracts of all agencies and instrumentalities which procure contract services for or on behalf of the District or under the authority of the District Government are contracts entered into by the District of Columbia within the meaning of this provision. Such contracts are also considered contracts entered into with the Federal Government or the United States within the meaning of section 2(b), section 5, and the other provisions of the Act. The legislative history indicates no intent to distinguish District of Columbia contracts from the other contracts made subject to the Act, and traditionally, under other statutes. District Government contracts have been made subject to the same labor standards provisions as contracts of other agencies and instrumentalities of the United States.

§ 4.109 [Reserved]

Covered Contracts Generally

§ 4.110 What contracts are covered.

(a) The Act covers service contracts of the Federal agencies described in §§ 4.107–4.108. Except as otherwise specifically provided (see §§ 4.115 et seq.), all such contracts, the principal purpose of which is to furnish services in the United States through the use of service employees, are subject to its terms. This is true of contracts entered into by such agencies with States or their political subdivisions, as well as such contracts entered into with private employers. Contracts between a Federal or District of Columbia agency and another such agency are not within the purview of the Act; however, "subcontracts" awarded under "prime contracts" between the Small Business

Administration and another Federal agency pursuant to various preferential set-aside programs, such as the 8(a) program, are covered by the Act. It makes no difference in the coverage of a contract whether the contract services are procured through negotiation or through advertising for bids. Also, the mere fact that an agreement is not reduced to writing does not mean that the contract is not within the coverage of the Act. The amount of the contract is not determinative of the Act's coverage, although the requirements are different for contracts in excess of $2,500 and for contracts of a lesser amount. The Act is applicable to the contract if the principal purpose of the contract is to furnish services, if such services are to be furnished in the United States, and if service employees will be used in providing such services. These elements of coverage will be discussed separately in the following sections.

(b) *"Contract" as including "any bid specification".* The Act, by its express terms, applies to "every contract (and any bid specification therefor) * * * the principal purpose of which is to furnish services in the United States through the use of service employees". Thus, as noted in subsequent sections discussing the application of the Act to particular contracts, the Act's provisions may be applicable to separate specifications for services in a contract but not to other contract specifications such as construction or supply specifications. Accordingly, except where otherwise noted, the term "contract" as used in this part shall be deemed to include any contract subject wholly or in part to the provisions of the Act. (See § 4.1a(e).)

§ 4.111 Contracts "to furnish services."

(a) *"Principal purpose" as criterion.* Under its terms, the Act applies to a "contract (and any bid specification therefor) * * * the principal purpose of which is to furnish services * * *." The principal purpose criterion applies only in determining whether a contract or bid specification is for services. Covered contracts need not be performed "principally in the United States" or "principally through the use of service employees." (See §§ 4.112 and 4.113.) If the principal purpose is to provide something other than services of the character contemplated by the Act and any such services which may be performed are only incidental to the performance of a contract or bid specification for another purpose, the Act does not apply. However, as will be seen by examining the illustrative examples of covered contracts in §§ 4.130 et seq., no hard and fast rule can be laid down as to the precise meaning of the term "principal purpose". This remedial Act is intended to be applied to a wide variety of contracts, and the Act does not define or limit the types of services which may be contracted for under a contract the principal purpose of which is to furnish services. Further, the nomenclature, type, or particular form of contract used by procurement agencies is not determinative of coverage. Whether the principal purpose of a particular contract is the furnishing of services through the use of service employees is largely a question to be determined on the basis of all the facts in each particular case. Even where tangible items of substantial value are important elements of the subject matter of the contract, the facts may show that they are of secondary import to the furnishing of services in the particular case. This principle is illustrated by the examples set forth in § 4.131.

(b) *Determining whether a contract is for "services", generally.* Except indirectly through the definition of "service employee" the Act does not define, or limit, the types of "services" which may be contracted for under a contract "the principal purpose of which is to furnish services". As stated in the congressional committee reports on the legislation, the types of service contracts covered by its provisions are varied. Among the examples cited are contracts for laundry and dry cleaning, for transportation of the mail, for custodial, janitorial, or guard service, for packing and crating, for food service, and for miscellaneous housekeeping services. Covered contracts for services would also include those for other types of services which may be performed through the use of the various classes of service employees included in the definition in section 8(b) of the Act (see § 4.113). Examples of some such contracts are set forth in §§ 4.130 et seq. In determining questions of contract coverage, due regard must be given to the apparent legislative intent to include generally as contracts for "services" those contracts which have as their principal purpose the procurement of something other than the construction activity described in the Davis-Bacon Act or the materials, supplies, articles, and equipment described in the Walsh-Healey Act. The Committee reports in both the House and Senate, and statements made on the floor of the House, took note of the labor standards protections afforded by these two Acts to employees engaged in the performance of construction and supply contracts and observed: "The service contract is now the only remaining category of Federal contracts to which no labor standards protections apply" (H. Rept. 948, 89th Cong., 1st Sess., p. 1; see also S. Rept. 798, 89th Cong., 1st Sess., p. 1; daily Congressional Record Sept. 20, 1965, p. 23497). A similar understanding of contracts principally for "services" as embracing contracts other than those for construction or supplies is reflected in the statement of President Johnson upon signing the Act (1 Weekly Compilation of Presidential Documents, p. 428).

§ 4.112 Contracts to furnish services "in the United States."

(a) The Act covers contract services furnished "in the United States, including" any State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, Outer Continental Shelf lands as defined in the Outer Continental Shelf Lands Act, American Samoa, Guam, Wake Islands, Eniwetok Atoll, Kwajalein Atoll and Johnston Island. The definition expressly excludes any other territory under the jurisdiction of the United States and any United States base or possession within a foreign country. Services to be performed on a vessel operating exclusively in international or foreign waters outside the geographic areas named in section 8(d) would not be services furnished "in the United States" within the meaning of the Act.

(b) A service contract to be performed in its entirety outside the geographic limits of the United States as thus defined is not covered and is not subject to the labor standards of the Act. However, if a service contract is to be performed in part within and in part without these geographic limits, the stipulations required by § 4.6 or § 4.7, as appropriate, must be included in the invitation for bids or negotiation documents and in the contract, and the labor standards must be observed with respect to that part of the contract services that is performed within these geographic limits. In such a case, the requirements of the Act and of the contract clauses will not be applicable to the services furnished outside the United States.

§ 4.113 Contracts to furnish services "through the use of service employees".

(a) *Use of "service employees" in a contract performance.* (1) As indicated in § 4.110, the Act covers service contracts only where "service employees" will be used in performing the services which it is the purpose of the contract to procure. A service contract otherwise subject to the Act ordinarily will meet this condition if any of the services which it is the principal

purpose of the contract to obtain will be furnished through the use of any service employee or employees. Even where it is contemplated that the services (of the kind performed by service employees) will be performed individually by the contractor, the contract cannot be considered outside the reach of the Act unless it is known in advance that the contractor or any subcontractor will in no event use any service employee during the term of the contract in furnishing the services called for. If the contracting officer knows when advertising for bids or concluding negotiations that no such employee will be used by the contractor in any event in providing the contract services, the Act will not be deemed applicable to the contract and the contract clauses required by § 4.6 or § 4.7 may be omitted. The fact that the required services will be performed by municipal employees or employees of a State would not remove the contract from the purview of the Act, as this Act does not contain any exemption for contracts performed by such employees. Also as discussed in subparagraph (2) of this paragraph where the services the Government wants under the contract are of a type that will require the use of service employees as defined in section 8(b) of the Act, the contract is not taken out of the purview of the Act by the fact that the manner in which the services of such employees are performed will be subject to the continuing overall supervision of professional personnel to whom the Act does not apply.

(2) The coverage of the Act does not extend, however, to contracts which have as their principal purpose the procurement of a type of service in the furnishing of which no service employees will be used. A contract for medical services by professional medical personnel is an example of such a contract. So are other contracts under which the desired services called for by the Government are to be performed exclusively by bona fide executive, administrative, or professional personnel as defined in Part 541 of this title (see paragraph (b) of this section).

(3)(i) In addition to the types of contracts discussed in subparagraph (2) of this part, the Department does not require application of the Act to any contract for professional services which is performed essentially by professional employees, with the use of service employees being only a minor factor in the performance of the contract. This tolerance does not extend to a contract for professional services which may involve the use of service employees to a significant or substantial extent even though there is some use of professional employees in the performance of the contract. This tolerance is issued pursuant to section 4(b) of the Act. It has been found to be necessary and proper in the public interest and to be in accord with the remedial purpose of the Act.

(ii) In applying this tolerance, if service employees constitute less than 10 percent of the total projected employment or staff years under a contract, the Act will not be applied to such contract. If service employees constitute 20 percent or more of the total projected employment or staff years under the contract, the Act will be required to be applied, since this would clearly be a significant use of service employees. Where the projected use of service employees is between 10 and 20 percent, the Department of Labor should be consulted, since such situations require consideration of other factors such as the nature of the contract work, the type of work performed by service employees, how necessary the work is to contract performance, the amount of contract work performed by service employees vis-a-vis professional employees, and the total number of service employees employed on the contract.

(4) Under these principles, the Act applies to many contracts for research and development, statistical surveys, engineering research and designing, computer services, etc., because the contracts may involve the use of a significant number of service employees. Laboratory technicians, interviewers, draftsmen, computer operators, and data entry personnel are a few examples of the classes of service employees that may be employed on such contracts. While the work of such service employees may be performed under the supervision and direction of professional personnel and the final analysis and reporting may be performed by professionals, nevertheless, the work performed by the service employees is a significant and important part of the overall contract requirements.

(b) *"Service employees" defined.* In determining whether or not any of the contract services will be performed by service employees, the definition of "service employee" in section 8(b) of the Act is controlling. It provides:

> The term "service employee" means any person engaged in the performance of a contract entered into by the United States and not exempted under section 7, whether negotiated or advertised, the principal purpose of which is to furnish services in the United States (other than any person employed in a bona fide executive, administrative, or professional capacity, as those terms are defined in part 541 of title 29, Code of Federal Regulations, as of July 30, 1976, and any subsequent revision of those regulations); and shall include all such persons regardless of any contractual relationship that may be alleged to exist between a contractor or subcontractor and such persons.

It will be noted that the definition expressly excludes those employees who are employed in a bona fide executive, administrative, or professional capacity as defined in Part 541 of this title and as discussed further in § 4.156. Some of the specific types of service employees who may be employed on service contracts are noted in other sections which discuss the application of the Act to employees.

§ 4.114 Subcontracts.

(a) *"Contractor" as including "subcontractor."* Except where otherwise noted or where the term "Government prime contractor" is used, the term "contractor" as used in this Part 4 shall be deemed to include a subcontractor. The term "contractor" as used in the contract clauses required by Subpart A in any subcontract under a covered contract shall be deemed to refer to the subcontractor, or, if in a subcontract entered into by such a subcontractor, shall be deemed to refer to the lower level subcontractor. (See § 4.1a(f).)

(b) *Liability of Prime Contractor.* When a contractor undertakes a contract subject to the Act, the contractor agrees to assume the obligation that the Act's labor standards will be observed in furnishing the required services. This obligation may not be relieved by shifting all or part of the work to another, and the prime contractor is jointly and severally liable with any subcontractor for any acts, omissions, or underpayments on the part of a subcontractor which would constitute a violation of the prime contract. The prime contractor is required to include the prescribed contract clauses (§§ 4.6–4.7) and applicable wage determination in all subcontracts and the appropriate enforcement sanctions provided under the Act may be invoked against both the prime contractor and the subcontractor in the event of failure to comply with any of the Act's requirements.

Specific Exclusions

§ 4.115 Exemptions and exceptions generally.

(a) The Act, in section 7, specifically excludes from its coverage certain contracts and work which might otherwise come within its terms as procurements the principal purpose of

which is to furnish services through the use of service employees.

(b) The statutory exemptions in section 7 of the Act are as follows:

(1) Any contract of the United States or District of Columbia for construction, alteration, and/or repair, including painting and decorating of public buildings or public works;

(2) Any work required to be done in accordance with the provisions of the Walsh-Healy Public Contracts Act (49 Stat. 2036);

(3) Any contract for the carriage of freight or personnel by vessel, airplane, bus, truck, express, railway line, or oil or gas pipeline where published tariff rates are in effect;

(4) Any contract for the furnishing of services by radio, telephone, telegraph, or cable companies, subject to the Communications Act of 1934;

(5) Any contract for public utility services, including electric light and power, water, steam, and gas;

(6) Any employment contract providing for direct services to a Federal agency by an individual or individuals;

(7) Any contract with the Post Office Department, (now the U.S. Postal Service) the principal purpose of which is the operation of postal contract stations.

§ 4.116 Contracts for construction activity.

(a) *General scope of exemption.* The Act, in paragraph (1) of section 7, exempts from its provisions "any contract of the United States or District of Columbia for construction, alteration and/or repair, including painting and decorating of public buildings or public works." This language corresponds to the language used in the Davis-Bacon Act to describe its coverage (40 U.S.C. 276a). The legislative history of the McNamara-O'Hara Service Contract Act indicates that the purpose of the provision is to avoid overlapping coverage of the two acts by excluding from the application of the McNamara-O'Hara Act those contracts (and any bid specification therefor) to which the Davis-Bacon Act is applicable and in the performance of which the labor standards of that Act are intended to govern the compensation payable to the employees of contractors and subcontractors on the work. (See H. Rept. 798, pp. 2, 5, and H. Rept. 948, pp. 1, 5, also Hearing, Special Subcommittee on Labor, House Committee on Education and Labor, p. 9 (89th Cong., 1st sess.).) The intent of section 7(1) is simply to exclude from the provisions of the Act those construction contracts which involve the employment of persons whose wage rates and fringe benefits are determinable under the Davis-Bacon Act.

(b) *Contracts not within exemption.* Section 7(1) does not exempt contracts which, for purposes of the Davis-Bacon Act, are not considered to be of the character described by the corresponding language in that Act, and to which the provisions of the Davis-Bacon Act are therefore not applied. Such contracts are accordingly subject to the McNamara-O'Hara Act where their principal purpose is to furnish services in the United States through the use of service employees. For example, a contract for clearing timber or brush from land or for the demolition or dismantling of buildings or other structures located thereon may be a contract for construction activity subject to the Davis-Bacon Act where it appears that the clearing of the site is to be followed by the construction of a public building or public work at the same location. If, however, no further construction activity at the site is contemplated the Davis-Bacon Act is considered inapplicable to such clearing, demolition, or dismantling work. In such event, the exemption in section 7(1) of the McNamara-O'Hara Act has no application and the contract will be subject to the Act in accordance with its general coverage provisions. It should be noted that the fact that a contract may be labeled as one for the sale and removal of property, such as salvage material, does not negate coverage under the Act even though title to the removable property passes to the contractor. While the value of the property being sold in relation to the services performed under the contract is a factor to be considered in determining coverage, the principal purpose of removal, dismantling, and demolition contracts is to furnish services through the use of service employees and thus these contracts are subject to the Act. (See also § 4.131.)

(c) *Partially exempt contracts.* (1) Instances may arise in which, for the convenience of the Government, instead of awarding separate contracts for construction work subject to the Davis-Bacon Act and for services of a different type to be performed by service employees, the contracting officer may include separate specifications for each type of work in a single contract calling for the performance of both types of work. For example, a contracting agency may invite bids for the installation of a plumbing system or for the installation of a security alarm system in a public building and for the maintenance of the system for one year, under separate bid specifications. In such a case, the exemption provided by section 7(1) will be deemed applicable only to that portion of the contract which calls for construction activity subject to the Davis-Bacon Act. The contract documents are required to contain the clauses prescribed by § 4.6 for application to the contract obligation to furnish services through the use of service employees, and the provisions of the McNamara-O'Hara Act will apply to that portion of the contract.

(2) *Supply, services, or maintenance contracts involving construction work.* The provisions of both the Davis-Bacon Act and the Service Contract Act would generally apply to contracts involving construction and service work. The exemption provided by section 7(1) of the Act would be applicable to construction contract work in such hybrid contracts where

(i) The contract contains specific requirements for substantial amounts of construction, reconstruction, alteration, or repair work (hereinafter referred to as construction) or it is ascertainable that a substantial amount of construction work will be necessary for the performance of the contract (the word "substantial" relates to the type and quantity of construction work to be performed and not merely to the total value of construction work (whether in absolute dollars or cost percentages) as compared to the total value of the contract); and

(ii) The construction work is physically or functionally separate from, and as a practical matter is capable of being performed on a segregated basis from, the other work called for by the contract.

§ 4.117 Work subject to requirements of Walsh-Healey Act [Reserved]

§ 4.118 Contracts for carriage subject to published tariff rates.

The Act, in paragraph (3) of section 7, exempts from its provisions "any contract for the carriage of freight or personnel by vessel, airplane, bus, truck, express, railway line or oil or gas pipeline where published tariff rates are in effect". In order for this exemption to be applicable, the contract must be for such carriage by a common carrier described by the terms used. It does not, for example, apply to contracts for taxicab or ambulance service, because taxicab and ambulance companies are not among the common carriers specified by the statute. Also, a contract for transportation service does not come within this exemption unless the service contracted for is actually governed by published tariff rates in effect pursuant to State or Federal law for such carriage.

The contracts excluded from the reach of the Act by this exemption are typically those where there is on file with the Interstate Commerce Commission or an appropriate State or local regulatory body a tariff rate applicable to the transportation involved, and the transportation contract between the Government and the carrier is evidenced by a bill of lading citing the published tariff rate. An administrative exemption has been provided for certain contracts where such carriage is subject to rates covered by section 10721 of the Interstate Commerce Act. See § 4.123(d). It should be noted further that only such contracts for the carriage of "freight or personnel" are exempt. Further, the exemption cannot apply where the contracts are principally for packing, crating, handling, loading, and/or storage of goods, with local drayage constituting an incidental part of the contract work. Also this exemption thus does not exclude any contracts for the transportation of mail from the application of the Act, because the term "freight" does not include the mail. (For an administrative exemption of certain contracts with common carriers for carriage of mail, see § 4.123(d)).

§ 4.119 Contracts for services of communications companies.

The Act, in paragraph (4) of section 7, exempts from its provisions "any contract for the furnishing of services by radio, telephone, telegraph, or cable companies, subject to the Communications Act of 1934." This exemption is applicable to contracts with such companies for communication services regulated under the Communications Act. It does not exempt from the Act any contracts with such companies to furnish any other kinds of services through the use of service employees.

§ 4.120 Contracts for public utility services.

The Act, in paragraph (5) of section 7, exempts from its provisions "any contract for public utility services, including electric light and power, water, steam, and gas." This exemption is applicable to contracts for such services with companies whose rates therefor are regulated under State, local, or Federal law governing operations of public utility enterprises. Contracts entered into with public utility companies to furnish services through the use of service employees, other than those subject to such rate regulation, are not exempt from the Act. Among the contracts included in the exemption would be those between Federal electric power marketing agencies and investor-owned electric utilities, Rural Electrification Administration cooperatives, municipalities and State agencies engaged in the transmission and sale of electric power and energy.

(See H. Rept. No. 948, 89th Cong., 1st sess., p. 4)

§ 4.121 Contracts for individual services.

The Act, in paragraph (6) of section 7, exempts from its provisions "any employment contract providing for direct services to a Federal agency by an individual or individuals." This exemption, which applies only to an "employment contract" for "direct services," makes it clear that the Act's application to Federal contracts for services is intended to be limited to service contracts entered into with independent contractors. If a contract to furnish services (to be performed by a service employee as defined in the Act) provides that they will be furnished directly to the Federal agency by the individual under conditions or circumstances which will make him an employee of the agency in providing the contract service, the exemption applies and the contract will not be subject to the Act's provisions. The exemption does not exclude from the Act any contract for services of the kind performed by service employees which is entered into with an independent contractor whose individual services will be used in performing the contract, but as noted earlier in § 4.113, such a contract would be outside the general coverage of the Act if only the contractor's individual services would be furnished and no service employee would in any event be used in its performance.

§ 4.122 Contracts for operation of postal contract stations.

The Act, in paragraph (7) of section 7, exempts from its provisions "any contract with the Post Office Department, [now the U.S. Postal Service], the principal purpose of which is the operation of postal contract stations." The exemption is limited to postal service contracts having the operation of such stations as their principal purpose. A provision of the legislation which would also have exempted contracts with the U.S. Postal Service having as their principal purpose the transportation, handling, or delivery of the mails was eliminated from the bill during its consideration by the House Committee on Education and Labor (H. Rept. 948, p. 1, 89th Cong., 1st sess.).

§ 4.123 Administrative limitations, variances, tolerances, and exemptions.

(a) *Authority of the Secretary.* Section 4(b) of the Act as amended in 1972 authorizes the Secretary to "provide such reasonable limitations" and to "make such rules and regulations allowing reasonable variations, tolerances, and exemptions to and from any or all provisions of this Act (other than § 10), but only in special circumstances where he determines that such limitation, variation, tolerances, or exemption is necessary and proper in the public interest or to avoid the serious impairment of Government business, and is in accord with the remedial purpose of this Act to protect prevailing labor standards." This authority is similar to that vested in the Secretary under section 6 of the Walsh-Healey Public Contracts Act (41 U.S.C. 40) and under section 105 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 331).

(b) *Administrative action under section 4(b) of the Act.* The authority conferred on the Secretary by section 4(b) of the Act will be exercised with due regard to the remedial purpose of the statute to protect prevailing labor standards and to avoid the undercutting of such standards which could result from the award of Government work to contractors who will not observe such standards, and whose saving in labor cost therefrom enables them to offer a lower price to the Government than can be offered by the fair employers who maintain the prevailing standards. Administrative action consistent with this statutory purpose may be taken under section 4(b) with or without a request therefor, when found necessary and proper in accordance with the statutory standards. No formal procedures have been prescribed for requesting such action. However, a request for exemption from the Act's provisions will be granted only upon a strong and affirmative showing that it is necessary and proper in the public interest or to avoid serious impairment of Government business, and is in accord with the remedial purpose of the Act to protect prevailing labor standards. If the request for administrative action under section 4(b) is not made by the headquarters office of the contracting agency to which the contract services are to be provided, the views of such office on the matter should be obtained and submitted with the request or the contracting officer may forward such a request through channels to the agency headquarters for submission with the latter's views to the Administrator of the Wage and Hour

Division, Department of Labor, whenever any wage payment issues are involved. Any request relating to an occupational safety or health issue shall be submitted to the Assistant Secretary for Occupational Safety and Health, Department of Labor.

(c) *Documentation of official action under section 4(b).* All papers and documents made a part of the official record of administrative action pursuant to section 4(b) of the Act are available for public inspection in accordance with the regulations in 29 CFR Part 70. Limitations, variations, tolerances and exemptions of general applicability and legal effect promulgated pursuant to such authority are published in the Federal Register and made a part of the rules incorporated in this Part 4. For convenience in use of the rules, they are generally set forth in the sections of this part covering the subject matter to which they relate. (See, for example, the exemption provided in §§ 4.5(b), 4.6(o), and the limitations set forth in §§ 4.115 et seq.) Any rules that are promulgated under section 4(b) of the Act relating to subject matter not dealt with elsewhere in this Part 4 will be set forth immediately following this paragraph.

(d) In addition to the statutory exemptions in § 7 of the Act (see § 4.115(c)), the following types of contracts have been exempted from all the provisions of the Service Contract Act of 1965, pursuant to section 4(b) of the Act, which exemptions the Secretary of Labor found to be necessary and proper in the public interest or to avoid serious impairment of the conduct of Government business.

(1) Contracts entered into by the United States with common carriers for the carriage of mail by rail, air (except air star routes), bus, and ocean vessel, where such carriage is performed on regularly scheduled runs of the trains, airplanes, buses, and vessels over regularly established routes and accounts for an insubstantial portion of the revenue therefrom.

(2) Any contract entered into by the U.S. Postal Service with an individual owner-operator for mail service where it is not contemplated at the time the contract is made that such owner-operator will hire any service employee to perform the services under the contract except for short periods of vacation time or for unexpected contingencies or emergency situations such as illness, or accident.

(3) Contracts for the carriage of freight or personnel where such carriage is subject to rates covered by section 10721 of the Interstate Commerce Act.

§§ 4.124—4.129 [Reserved]

Particular Application of Contract Coverage Principles

§ 4.130 Types of covered service contracts illustrated.

(a) The types of contracts, the principal purpose of which is to furnish services through the use of service employees, are too numerous and varied to permit an exhaustive listing. The following list is illustrative, however, of the types of services called for by such contracts that have been found to come within the coverage of the Act. Other examples of covered contracts are discussed in other sections of this subpart.

(1) Aerial spraying
(2) Aerial reconnaissance for fire detection
(3) Ambulance service
(4) Barber and beauty shop services
(5) Cafeteria and food service
(6) Carpet laying (other than part of construction) and cleaning
(7) Cataloging services
(8) Chemical testing and analysis
(9) Clothing alteration and repair
(10) Computer services
(11) Concessionaire services
(12) Custodial, janitorial, and housekeeping services
(13) Data collection, processing, and/or analysis services
(14) Demolition, dismantling and/or removal of buildings and other real property (other than part of construction)
(15) Drafting and illustrating
(16) Electronic equipment maintenance and operation and engineering support services
(17) Exploratory drilling (other than part of construction)
(18) Film processing
(19) Fire fighting and protection
(20) Fueling services
(21) Furniture repair and rehabilitation
(22) Geological field surveys and testing
(23) Grounds maintenance
(24) Guard and watchman security service
(25) Inventory services
(26) Keypunching and keyverifying contracts
(27) Laboratory analysis services
(28) Landscaping (other than part of construction)
(29) Laundry and dry cleaning
(30) Linen supply services
(31) Lodging and/or meals
(32) Mail hauling
(33) Mailing and addressing services
(34) Maintenance and repair of all types of equipment, e.g., aircraft, engines, electrical motors, vehicles, and automated data processing, electronic, telecommunications, office and related business, and construction equipment
(35) Mess attendant services
(36) Mortuary services
(37) Motor pool operation
(38) Nursing home services
(39) Operation, maintenance, or logistic support of a Federal facility
(40) Packing and crating
(41) Parking services
(42) Pest control
(43) Property management
(44) Snow removal
(45) Stenographic reporting
(46) Support services at military installations
(47) Surveying and mapping services (preliminary but not directly related to construction)
(48) Taxicab services
(49) Telephone and field interview services
(50) Timber removal/sale contracts
(51) Tire and tube repairs
(52) Transporting property or personnel (except as explained in § 4.118)
(53) Trash and garbage removal
(54) Vending machine services
(55) Visual and graphic arts
(56) Warehousing or storage

§ 4.131 Furnishing services involving more than use of labor.

(a) If the principal purpose of a contract is to furnish services in the performance of which service employees will be used, the Act will apply to the contract, in the absence of an exemption, even though the use or furnishing of nonlabor items may be an important element in the furnishing of the services called for by its terms. The Act is concerned with protecting the labor standards of workers engaged in performing such contracts, and is applicable if the statutory coverage test is met, regardless of the form in which the contract is drafted. The proportion of the labor cost to the total cost of the contract and the necessity of furnishing or receiving tangible nonlabor items in performing the contract obligations will be considered but are not necessarily determinative. A procurement that requires tangible items to be supplied to the Government or the contractor as a part of the service furnished is covered by the Act so long as the facts show that the contract is chiefly for services, and that the furnishing of tangible items is of secondary importance.

(b) Some examples of covered contracts illustrating these principles may be helpful. One such example is a contract for the maintenance and repair of typewriters. Such a contract may require the contractor to furnish typewriter parts, as the need arises, in

performing the contract services. Since this does not change the principal purpose of the contract, which is to furnish the maintenance and repair services through the use of service employees, the contract remains subject to the Act.

(c) Another example of the application of the above principle is a contract for the recurrent supply to a Government agency of freshly laundered items on a rental basis. It is plain from the legislative history that such a contract is typical of those intended to be covered by the Act. S. Rept. 798, 89th Cong., 1st Sess., p. 2; H. Rept. 948, 89th Cong., 1st Sess., p. 2. Although tangible items owned by the contractor are provided on a rental basis for the use of the Government, the service furnished by the contractor in making them available for such use when and where they are needed, through the use of service employees who launder and deliver them, is the principal purpose of the contract.

(d) Similarly, a contract in the form of rental of equipment with operators for the plowing and reseeding of a park area is a service contract. The Act applies to it because its principal purpose is the service of plowing and reseeding, which will be performed by service employees, although as a necessary incident the contractor is required to furnish equipment. For like reasons the contracts for aerial spraying and aerial reconnaissance listed in § 4.130 are covered, even though the use of airplanes, an expensive item of equipment, is essential in performing such services. In general, contracts under which the contractor agrees to provide the Government with vehicles or equipment on a rental basis with drivers or operators for the purpose of furnishing services are covered by the Act. Such contracts are not considered contracts for furnishing equipment within the meaning of the Walsh-Healey Public Contracts Act. On the other hand, contracts under which the contractor provides equipment with operators for the purpose of construction of a public building or public work, such as road resurfacing or dike repair, even where the work is performed under the supervision of Government employees, would be within the exemption in section 7(1) of the Act as contracts for construction subject to the Davis-Bacon Act. (See § 4.116.)

(e) Contracts for data collection, statistical surveys, computer services, and the like are within the general coverage of the Act even though the contractor may be required to furnish such tangible items as written reports or computer printouts, since items of this nature are considered to be of secondary importance to the services which it is the principal purpose of the contract to procure.

(f) Contracts under which the contractor receives tangible items from the Government in return for furnishing services (which items are in lieu of or in addition to monetary consideration granted by either party) are covered by the Act where the facts show that the furnishing of such services is the principal purpose of the contracts. For example, so-called "timber sales" contracts are subject to the Act where removal of trees is accomplished for the purpose of forest management, such as removal of diseased or damaged trees; to open up the forest for public use, such as camping; or for similar services. Similarly, even where the removal of trees is not accomplished for the purpose of forest management or some other service, such contracts generally contain service specifications which are subject to the act, such as building of temporary roads, firefighting and control, erosion control, slash removal and trimming, and removal of diseased or injured trees. Under these contracts, the fact that a contractor will receive a substantial amount of timber is of secondary importance to the services which it is the principal purpose of the Government contract (or specification) to procure. The same principle applies with respect to so-called property removal or disposal contracts which involve demolition of buildings or other structures.

§ 4.132 Services and other items to be furnished under a single contract.

If the principal purpose of a contract or bid specification (i.e., a line item in a bid or contract) is to furnish services through the use of service employees within the meaning of the Act, the contract to furnish such services is not removed from the Act's coverage merely because, as a matter of convenience in procurement, it is combined in a single contract document with specifications for the procurement of different or unrelated items. For example, a contracting agency may invite bids for supplying a quantity of new typewriters and for the maintenance and repair of the typewriters under separate bid specifications. The principal purpose of the latter, but not the former, would be the furnishing of services through the use of service employees; however, the specifications for each might be included in a single contract with a typewriter company for the convenience of the parties. In such a case, the contract obligation to furnish the maintenance and repair services would be subject to the provisions of the Act. The "principal purpose" test would be applicable to the specification for such services rather than to the combined contract. The Act would not apply in such case to the contract obligation to furnish new typewriters, although its performance would be subject to the provisions of the Walsh-Healey Public Contracts Act if the amount was in excess of $10,000. With respect to contracts which contain separate specifications for the furnishing of services and construction activity, see § 4.116(c).

§ 4.133 [Reserved]

§ 4.134 Contracts outside the Act's coverage.

(a) Contracts entered into by agencies other than those of the Federal Government or the District of Columbia as described in §§ 4.107–4.108 are not within the purview of the Act. Thus, the Act does not cover service contracts entered into with any agencies of Puerto Rico, the Virgin Islands, American Samoa, or Guam acting in behalf of their respective local governments. Similarly, it does not cover service contracts entered into by agencies of States or local public bodies, not acting as agents for or on behalf of the United States or the District of Columbia, even though Federal financial assistance may be provided for such contracts under Federal law or the terms and conditions specified in Federal law may govern the award and operation of the contract.

(b) Further, as already noted in §§ 4.111–4.113, the Act does not apply to Government contracts or bid specifications which do not have as their principal purpose the furnishing of services, or which call for no services to be furnished within the United States or through the use of service employees as those terms are defined in the Act. Clearly outside the Act's coverage for these reasons are such contracts as those for the purchase of tangible products which the Government needs (e.g. vehicles, office equipment, and supplies), for the logistic support of an air base in a foreign country, or for the services of a lawyer to examine the title to land. Similarly, where the Government contracts for a lease of building space for Government occupancy and the building owner furnishes general janitorial and other building services on an incidental basis through the use of service employees, the leasing of the space rather than the furnishing of the building services is the principal purpose of the contract, and the Act does not apply. However, if the

contract contains a separate line item or items which requires the contractor to furnish specified levels and frequencies of janitorial, security, or other maintenance services, the requirement for such services is considered to be a separate specification the principal purpose of which is the furnishing of services, and as set forth in § 4.132, the Act would apply to such specification. Another type of contract which is outside the coverage of the Act because it is not for the principal purpose of furnishing services may be illustrated by a contract for the rental of parking space under which the Government agency is simply given a lease or license to use the contractor's real property. Such a contract is to be distinguished from contracts for the storage of vehicles which are delivered into the possession or custody of the contractor, who will provide the required services including the parking or retrieval of the vehicles.

(c) There are a number of types of contracts which, while outside the Act's coverage in the usual case, may be subject to its provisions under the conditions and circumstances of a particular procurement, because these may be such as to require a different view of the principal purpose of the contract. Thus, the ordinary contract for the recapping of tires would have as its principal purpose the manufacture and furnishing of rebuilt tires for the Government rather than the furnishing of services through the use of service employees, and thus would be outside the Act's coverage. Similarly, contracts calling for printing, reproduction, and duplicating ordinarily would appear to have as their principal purpose the furnishing in quantity of printed, reproduced or duplicated written materials rather than the furnishing of reproduction services through the use of service employees. However, in a particular case, the terms, conditions, and circumstances of the procurement may be such that the facts would show its purpose to be chiefly the furnishing of services (e.g. repair services, typesetting, photocopying, editing, etc.), and where such services require the use of service employees the contract would be subject to the Act unless excluded therefrom for some other reason.

§§ 4.135–4.139 [Reserved]

Determining Amount of Contract

§ 4.140 Significance of contract amount.

As set forth in § 4.104 and in the requirements of §§ 4.6–4.7, the obligations of a contractor with respect to labor standards differ in the case of a covered and nonexempt contract, depending on whether the contract is or is not in excess of $2,500. Rules for resolving questions that may arise as to whether a contract is or is not in excess of this figure are set forth in the following sections.

§ 4.141 General criteria for measuring amount.

(a) In general, the contract amount is measured by the consideration agreed to be paid, whether in money or other valuable consideration, in return for the obligations assumed under the contract. Thus, even though a contractor, such as a wrecker entering into a contract with the Government to raze a building on a site which will remain vacant, may not be entitled to receive any money from the Government for such work under his contract or may even agree to pay the Government in return for the right to dispose of the salvaged materials, the contract will be deemed one in excess of $2,500 if the value of the property obtained by the contractor, less anything he might pay the Government, is in excess of such amount. In addition, concession contracts are considered to be contracts in excess of $2,500 if the contractor's gross receipts under the contract may exceed $2,500.

(b) All bids from the same person on the same invitation for bids will constitute a single offer, and the total award to such person will determine the amount involved for purposes of the Act. Where the procurement is made without formal advertising, in arriving at the aggregate amount involved, there must be included all property and services which would properly be grouped together in a single transaction and which would be included in a single advertisement for bids if the procurement were being effected by formal advertising. Therefore, if an agency procures continuing services through the issuance of monthly purchase orders, the amount of the contract for purposes of application of the Act is not measured by the amount of an individual purchase order. In such cases, if the continuing services were procured through formal advertising, the contract term would typically be for one year, and the monthly purchase orders must be grouped together to determine whether the yearly amount may exceed $2,500. However, a purchase order for services which are not continuing but are performed on a one-time or sporadic basis and which are not performed under a requirements contract, need not be equated to a yearly amount. (See § 4.142(b)). In addition, where an invitation is for services in an amount in excess of $2,500 and bidders are permitted to bid on a portion of the services not amounting to more than $2,500, the amounts of the contracts awarded separately to individual and unrelated bidders will be measured by the portions of the services covered by their respective contracts.

(c) Where a contract is issued in an amount in excess of $2,500 this amount will govern for purposes of application of the Act even though penalty deductions, deductions for prompt payment, and similar deductions may reduce the amount actually expended by the Government to $2,500 or less.

§ 4.142 Contracts in an indefinite amount.

(a) Every contract subject to this Act, (and any bid specification therefor) which is indefinite in amount is required to contain the clauses prescribed in § 4.6 for contracts in excess of $2,500, unless the contracting officer has definite knowledge in advance that the contract will not exceed $2,500 in any event.

(b) Where contracts or agreements between a Government agency and prospective purveyors of services are negotiated which provide terms and conditions under which services will be furnished through the use of service employees in response to individual purchase orders or calls, if any, which may be issued by the agency during the life of the agreement, these agreements would ordinarily constitute contracts within the intendment of the Act under principles judicially established in United Biscuit Co. v. Wirtz, 17 WH Cases 146 (C.A.D.C.), a case arising under the Walsh-Healey Public Contracts Act. Such a contract, which may be in the nature of a bilateral option contract and not obligate the Government to order any services or the contractor to furnish any, nevertheless governs any procurement of services that may be made through purchase orders or calls issued under its terms. Since the amount of the contract is indefinite, it is subject to the rule stated in paragraph (a) of this section. The amount of the contract is not determined by the amount of any individual call or purchase order.

Changes in Contract Coverage

§ 4.143 Effects of changes or extensions of contracts, generally.

(a) Sometimes an existing service contract is modified, amended, or extended in such a manner that the changed contract is considered to be a new contract for purposes of the application of the Act's provisions. The general rule with respect to such contracts is that, whenever changes affecting the labor requirements are made in the terms of the contract, the provisions of the Act and the regulations thereunder will apply to the changed

contract in the same manner and to the same extent as they would to a wholly new contract. However, contract modifications or amendments (other than contract extensions) that are unrelated to the labor requirements of a contract will not be deemed to create a new contract for purposes of the Act. In addition, only significant changes related to labor requirements will be considered as creating new contracts. This limitation on the application of the Act has been found to be in accordance with the provisions of section 4(b) of the Act.

(b) Also, whenever the term of an existing contract is extended, pursuant to an option clause or otherwise, so that the contractor furnishes services over an extended period of time, rather than being granted extra time to fulfill his original commitment, the contract extension is considered to be a new contract for purposes of the application of the Act's provisions. All such "new" contracts as discussed above require the insertion of a new or revised wage determination in the contract as provided in § 4.5.

§ 4.144 Contract modifications affecting amount.

Where a contract which was originally issued in an amount not in excess of $2,500 is later modified so that its amount may exceed that figure, all the provisions of section 2(a) of the Act, and the regulations thereunder are applicable from the date of modification to the date of contract completion. In the event of such modification, the contracting officer will immediately request a wage determination from the Department of Labor and insert the required contract clauses and any wage determination issued into the contract. In the event that a contract for services subject to the Act in excess of $2,500 is modified so that it cannot exceed $2,500, compliance with the provisions of section 2(a) of the Act and the contract clauses required thereunder ceases to be an obligation of the contractor when such modification becomes effective.

§ 4.145 Extended term contracts.

(a) Sometimes service contracts are entered into for a term of years; however, their continuation in effect is subject to the appropriation by Congress of funds for each new fiscal year. In such event, for purposes of this Act, a contract shall be deemed entered into at the beginning of each new fiscal year during which the terms of the original contract are made effective by an appropriation for the purpose. In other cases a service contract, entered into for a specified term by a Government agency, may contain a provision such as an option clause under which the agency may unilaterally extend the contract for a period of the same length or other stipulated period. Since the exercise of the option results in the rendition of services for a new or different period not included in the term for which the contractor is obligated to furnish services or for which the Government is obligated to pay under the original contract in the absence of such action to extend it, the contract for the additional period is a wholly new contract with respect to application of the Act's provisions and the regulations thereunder.

(b) With respect to multi-year service contracts which are not subject to annual appropriations (for example, concession contracts which are funded through the concessionaire's sales, certain research and development contracts which are funded with so-called "no year money" or contracts awarded by instrumentalities of the United States, such as the Federal Reserve Banks, which do not receive appropriated funds), section 4(d) of the Act allows such contracts to be awarded for a period of up to five years on the condition that the multi-year contracts will be amended no less often than once every two years to incorporate any new Service Contract Act wage determination which may be applicable. Accordingly, unless the contracting agency is notified to the contrary (see § 4.4(d)), at the end of the second year and again at the end of the fourth year, etc. such contracts are treated as wholly new contracts for purposes of the application of the Act's provisions and regulations thereunder. The two-year period is considered to begin on the date that the contractor commences performance on the contract (i.e., anniversary date) rather than on the date of contract award.

Period of Coverage

§ 4.146 Contract obligations after award, generally.

A contractor's obligation to observe the provisions of the Act arises on the date the contractor is informed that award of the contract has been made, and not necessarily on the date of formal execution. However, the contractor is required to comply with the provisions of the Act and regulations thereunder only while the employees are performing on the contract, provided the contractor's records make clear the period of such performance. (See also § 4.179.) If employees of the contractor are required by the contract to complete certain preliminary training or testing prior to the commencement of the contract services, or if there is a phase-in period which allows the new contractor's employees to familiarize themselves with the contract work so as to provide a smooth transition between contractors, the time spent by employees undertaking such training or phase-in work is considered to be hours worked on the contract and must be compensated for even though the principal contract services may not commence until a later date.

§§ 4.147–4.149 [Reserved]

Employees Covered by the Act

§ 4.150 Employee coverage generally.

The Act, in section 2(b), makes it clear that its provisions apply generally to all employees engaged in performing work on a covered contract entered into by the contractor with the Federal Government, regardless of whether they are the contractor's employees or those of any subcontractor under such contract. All service employees who, on or after the date of award, are engaged in working on or in connection with the contract, either in performing the specific services called for by its terms or in performing other duties necessary to the performance of the contract, are thus subject to the Act unless a specific exemption (see §§ 4.115 et seq.) is applicable. All such employees must be paid wages at a rate not less than the minimum wage specified under section 6(a)(1) of the Fair Labor Standards Act [29 U.S.C. 206(a)(1)], as amended. Payment of a higher minimum monetary wage and the furnishing of fringe benefits may be required under the contract, pursuant to the provisions of sections 2 (a)(1), (2), and 4(c) of the Act.

§ 4.151 Employees covered by provision of section 2(a).

The provisions of sections 2(a) and 4(c) of the Act prescribe labor standards requirements applicable, except as otherwise specifically provided, to every contract in excess of $2,500 which is entered into by the United States or the District of Columbia for the principal purpose of furnishing services in the United States through the use of service employees. These provisions apply to all service employees engaged in the performance of such a contract or any subcontract thereunder. The Act, in section 8(b) defines the term "service employee". The general scope of the definition is considered in § 4.113(b) of this subpart.

§ 4.152 Employees subject to prevailing compensation provisions of sections 2(a) (1) and (2) and 4(c).

(a) Under section 2(a) (1) and (2) of the Act, minimum monetary wages and fringe benefits to be paid or furnished the various classes of service employees performing such contract work are determined by the Secretary of Labor or his authorized representative in accordance with prevailing rates and fringe benefits for such employees in the locality or in accordance with the rates contained in a predecessor contractor's collective bargaining agreement, as appropriate, and are required to be specified in such contracts and subcontracts thereunder. All service employees of the classes who actually perform the specific services called for by the contract (e.g., janitors performing on a contract for office cleaning; stenographers performing on a contract for stenographic reporting) are covered by the provisions specifying such minimum monetary wages and fringe benefits for such classes of service employees and must be paid not less than the applicable rate established for the classification(s) of work performed.

(b) The duties which an employee actually performs govern the classification and the rate of pay to which the employee is entitled under the applicable wage determination. Some job classifications listed in an applicable wage determination are descriptive by title and have commonly understood meanings, (e.g., janitors, security guards, pilots, etc.). In such situations, detailed position descriptions may not be included in the wage determination. However, in cases where additional descriptive information is needed to inform users of the scope of duties included in the classification, the wage determination will generally contain detailed position descriptions based on the data source relied upon for the issuance of the wage determination.

(c) Some wage determinations will list a series of classes within a job classification family, e.g., Computer Operators, Class A, B, and C, or Electronic Technicians, Class A, B, and C, or Clerk Typist, Class A and B. Generally, the lowest level listed for a job classification family is considered to be the entry level and establishment of a lower level through conformance (§ 4.6(b)(2)) is not permissible. Likewise, so-called trainee classifications are not permissible and cannot be conformed under § 4.6(b)(2). Helpers in skilled maintenance trades (e.g., electricians, machinists, automobile mechanics, etc.) whose duties constitute, in fact, separate and distinct jobs, may be conformed. However, conformance may not be used to artificially split or subdivide classifications listed in the wage determination. In other words, conforming procedures may not be used if the work which an employee performs under the contract is within the scope of any classification listed on the wage determination, regardless of job title. Subminimum rates for apprentices, student learners, and handicapped workers are permissible under the conditions discussed in § 4.6(o).

§ 4.153 Inapplicability of prevailing compensation provisions to some employees.

There may be employees used by a contractor or subcontractor in performing a service contract in excess of $2,500 which is subject to the Act, whose services, although necessary to the performance of the contract, are not subject to minimum monetary wage or fringe benefit provisions contained in the contract pursuant to section 2(a) because such employees are not directly engaged in performing the specified contract services. An example might be a laundry contractor's billing clerk performing billing work with respect to the items laundered. In all such situations, the employees who are necessary to the performance of the contract but not directly engaged in the performance of the specified contract services, are nevertheless subject to the minimum wage provision of section 2(b) (see § 4.150) requiring payment of not less than the minimum wage specified under section 6(a)(1) of the Fair Labor Standards Act to all employees working on a covered contract, unless specifically exempt. However, in situations where minimum monetary wages and fringe benefits for a particular class or classes of service employees actually performing the services called for by the contract have not been specified in the contract because the wage and fringe benefit determination applicable to the contract has been made only for other classes of service employees who will perform the contract work, the employer will be required to pay the monetary wages and fringe benefits which may be specified for such classes of employees pursuant to the conformance procedures provided in § 4.6(b).

§ 4.154 Employees covered by sections 2(a) (3) and (4).

The safety and health standards of section 2(a)(3) and the notice requirements of section 2(a)(4) of the Act (see § 4.183) are applicable, in the absence of a specific exemption, to every service employee engaged by a contractor or subcontractor to furnish services under a contract subject to section 2(a) of the Act.

§ 4.155 Employee coverage does not depend on form of employment contract.

The Act, in section 8(b), makes it plain that the coverage of service employees depends on whether their work for the contractor or subcontractor on a covered contract is that of a service employee as defined in section 8(b) and not on any contractual relationship that may be alleged to exist between the contractor or subcontractor and such persons. In other words, any person, except those discussed in § 4.156 below, who performs work called for by a contract or that portion of a contract subject to the Act is, per se, a service employee. Thus, for example, a person's alleged status as an "owner-operator" or an "independent contractor" is immaterial in determining coverage under the Act and all such persons performing the work of service employees must be compensated in accordance with the Act's requirements.

§ 4.156 Employees in bona fide executive, administrative, or professional capacity.

The term "service employee" as defined in Section 8(b) of the Act does not include persons employed in a bona fide executive, administrative, or professional capacity as those terms are defined in 29 CFR Part 541. Employees within the definition of service employee who are employed in an executive, administrative, or professional capacity are not excluded from coverage, however, even though they are highly paid, if they fail to meet the tests set forth in 29 CFR Part 541. Thus, such employees as laboratory technicians, draftsmen, and air ambulance pilots, though they require a high level of skill to perform their duties and may meet the salary requirements of the regulations in Part 541 of this title, are ordinarily covered by the Act's provisions because they do not typically meet the other requirements of those regulations.

Subpart D—Compensation Standards

§ 4.159 General minimum wage.

The Act, in section 2(b)(1), provides generally that no contractor or subcontractor under any Federal contract subject to the Act shall pay any employee engaged in performing work on such a contract less than the minimum wage specified under section 6(a)(1) of the Fair Labor Standards Act. Section 2(a)(1) provides that the minimum monetary wage specified in any such contract exceeding $2,500 shall in no case be lower than this Fair Labor

Standards Act minimum wage. Section 2(b)(1) is a statutory provision which applies to the contractor or subcontractor without regard to whether it is incorporated in the contract; however, §§ 4.8–4.7 provide for inclusion of its requirements in covered contracts and subcontracts. Because this statutory requirement specifies no fixed monetary wage rate and refers only to the minimum wage specified under section 6(a)(1) of the Fair Labor Standards Act, and because its application does not depend on provisions of the contract, any increase in such Fair Labor Standards Act minimum wage during the life of the contract is, on its effective date, also effective to increase the minimum wage payable under section 2(b)(1) to employees engaged in performing work on the contract. The minimum wage rate under section 6(a)(1) of the Fair Labor Standards Act is $3.10 per hour beginning January 1, 1980, and $3.35 per hour after December 31, 1980.

§ 4.160 Effect of section 6(c) of the Fair Labor Standards Act.

Contractors and subcontractors performing work on contracts subject to the Service Contract Act are required to pay all employees, including those employees who are not performing work on or in connection with such contracts, not less than the general minimum wage standard provided in section 6(a)(1) of the Fair Labor Standards Act, as amended (Pub. L. 95–151).

§ 4.161 Minimum monetary wages under contracts exceeding $2,500.

The standards established pursuant to the Act for minimum monetary wages to be paid by contractors and subcontractors under service contracts in excess of $2,500 to service employees engaged in performance of the contract or subcontract are required to be specified in the contract and in all subcontracts (see § 4.6). Pursuant to the statutory scheme provided by sections 2(a)(1) and 4(c) of the Act, every covered contract (and any bid specification therefor) which is in excess of $2,500 shall contain a provision specifying the minimum monetary wages to be paid the various classes of service employees engaged in the performance of the contract or any subcontract thereunder, as determined by the Secretary or his authorized representative in accordance with prevailing rates for such employees in the locality, or, where a collective bargaining agreement applied to the employees of a predecessor contractor, in accordance with the rates for such employees provided for in such agreement; including prospective wage increases as provided in such agreement as a result of arm's-length negotiations. In no case may such wages be lower than the minimum wage specified under section 6(a)(1) of the Fair Labor Standards Act of 1938, as amended. (For a detailed discussion of the application of section 4(c) of the Act, see § 4.163.) If some or all of the determined wages in a contract fall below the level of the Fair Labor Standards Act minimum by reason of a change in that rate by amendment of the law, these rates become obsolete and the employer is obligated under section 2(b)(1) of the Service Contract Act, to pay the minimum wage rate established by the amendment as of the date it becomes effective. A change in the Fair Labor Standards Act minimum by operation of law would also have the same effect on advertised specifications or negotiations for covered service contracts, i.e., it would make ineffective and would supplant any lower rate or rates included in such specifications or negotiations whether or not determined. However, unless affected by such a change in the Fair Labor Standards Act minimum wage, by contract changes necessitating the insertion of new wage provisions (see §§ 4.143–4.145 or by the requirements of section 4(c) of the Act (see § 4.163), the minimum monetary wage rate specified in the contract for each of the classes of service employees for which wage determinations have been made under section 2(a)(1) will continue to apply throughout the period of contract performance. No change in the obligation of the contractor or subcontractor with respect to minimum monetary wages will result from the mere fact that higher or lower wage rates may be determined to be prevailing for such employees in the locality after the award and before completion of the contract. Such wage determinations are effective for contracts not yet awarded, as provided in § 4.5(a).

§ 4.162 Fringe benefits under contracts exceeding $2,500.

(a) Pursuant to the statutory scheme provided by sections 2(a)(2) and 4(c) of the Act, every covered contract in excess of $2,500 shall contain a provision specifying the fringe benefits to be furnished the various classes of service employees, engaged in the performance of the contract or any subcontract thereunder, as determined by the Secretary or his authorized representative to be prevailing for such employees in the locality or, where a collective bargaining agreement applied to the employees of a predecessor contractor, the various classes of service employees engaged in the performance of the contract or any subcontract must be provided the fringe benefits, including prospective or accrued fringe benefit increases, provided for in such agreement as a result of arm's-length negotiations. (For a detailed discussion of section 4(c) of the Act, see § 4.163.) As provided by section 2(a)(2) of the Act, fringe benefits include medical or hospital care, pensions on retirement or death, compensation for injuries or illness resulting from occupational activity, or insurance to provide any of the foregoing, unemployment benefits, life insurance, disability and sickness insurance, accident insurance, vacation and holiday pay, costs of apprenticeship or other similar programs and other bona fide fringe benefits not otherwise required by Federal, State, or local law to be provided by the contractor or subcontractor.

(b) Under this provision, the fringe benefits, if any, which the contractor or subcontractor is required to furnish the service employees engaged in the performance of the contract are specified in the contract documents (see § 4.6). How the contractor may satisfy this obligation is dealt with in §§ 4.170–4.177 of this part. A change in the fringe benefits required by the contract provision will not result from the mere fact that other or additional fringe benefits are determined to be prevailing for such employees in the locality at a time subsequent to the award but before completion of the contract. Such fringe benefit determinations are effective for contracts not yet awarded (see § 4.5(a)), or in the event that changes in an existing contract requiring their insertion for prospective application have occurred (see §§ 4.143–4.145). However, none of the provisions of this subsection may be construed as altering a successor contractor's obligations under section 4(c) of the Act. (See § 4.163.)

§ 4.163 Section 4(c) of the Act.

(a) Section 4(c) of the Act provides that no "contractor or subcontractor under a contract, which succeeds a contract subject to this Act and under which substantially the same services are furnished, shall pay any service employee under such contract less than the wages and fringe benefits, including accrued wages and fringe benefits, and any prospective increases in wages and fringe benefits provided for in a collective-bargaining agreement as a result of arm's-length negotiations, to which such service employees would have been entitled if they were employed under the predecessor contract: Provided, That in any of the

foregoing circumstances such obligations shall not apply if the Secretary finds after a hearing in accordance with regulations adopted by the Secretary that such wages and fringe benefits are substantially at variance with those which prevail for services of a character similar in the locality." Under this provision, the successor contractor's sole obligation is to insure that all service employees are paid no less than the wages and fringe benefits to which such employees would have been entitled if employed under the predecessor's collective bargaining agreement (i.e., irrespective of whether the successor's employees were or were not employed by the predecessor contractor). The obligation of the successor contractor is limited to the wage and fringe benefit requirements of the predecessor's collective bargaining agreement and does not extend to other items such as seniority, grievance procedures, work rules, overtime, etc.

(b) Section 4(c) is self-executing. Under section 4(c), a successor contractor is statutorily obligated to pay no less than the wage rates and fringe benefits which the predecessor contractor paid pursuant to a collective bargaining agreement. This is a direct statutory obligation and requirement placed on the successor contractor by section 4(c) and is not contingent or dependent upon the issuance or incorporation in the contract of a wage determination based on the predecessor contractor's collective bargaining agreement. Pursuant to section 4(b) of the Act, a variation has been granted which limits the self-executing application of section 4(c) in the circumstances and under the conditions described in § 4.1b(b) of this part. It must be emphasized, however, that the variation in § 4.1b(b) is applicable only if the contracting officer has given both the incumbent (predecessor) contractor and the employees' collective bargaining representative notification at least 30 days in advance of any estimated procurement date.

(c) *Variance hearings.* The regulations and procedures for hearings pursuant to section 4(c) of the Act are contained in § 4.10 of Subpart A and Part 6 of this title. If, as the result of such hearing, some or all of the wage rate and/or fringe benefit provisions of a predecessor contractor's collective bargaining agreement are found to be substantially at variance with the wage rates and/or fringe benefits prevailing in the locality, the Administrator will cause a new wage determination to be issued in accordance with the decision of the Administrative Law Judge or the Secretary. Since "it was the clear intent of Congress that any revised wage determinations resulting from a section 4(c) proceeding were to have validity with respect to the procurement involved" (53 Comp. Gen. 401, 402, 1973), the solicitation, or the contract if already awarded, must be amended to incorporate the newly issued wage determination. Such new wage determination shall be made applicable to the contract as of the date of the Administrative Law Judge's decision or as of the date of the decision of the Secretary. The legislative history of the 1972 Amendments makes clear that the collectively bargained "wages and fringe benefits shall continue to be honored * * * unless and until the Secretary finds, after a hearing, that such wages and fringe benefits are substantially at variance with those prevailing in the locality for like services" (S. Rept. 92–1131, 92nd Cong., 2d Sess. 5). Thus, variance decisions do not have application retroactive to the commencement of the contract.

(d) *Sections 2(a) and 4(c) must be read in conjunction.* The Senate report accompanying the bill which amended the Act in 1972 states that "Sections 2(a)(1), 2(a)(2), and 4(c) must be read in harmony to reflect the statutory scheme." (S. Rept. 92–1131, 92nd Cong., 2nd Sess. 4.) Therefore, since section 4(c) refers only to the predecessor contractor's collective bargaining agreement, the reference to collective bargaining agreements in sections 2(a)(1) and 2(a)(2) can only be read to mean a predecessor contractor's collective bargaining agreement. The fact that a successor contractor may have its own collective bargaining agreement does not negate the clear mandate of the statute that the wages and fringe benefits called for by the predecessor contractor's collective bargaining agreement shall be the minimum payable under a new (successor) contract. 48 Comp. Gen. 22, 23–24 (1968). In addition, because section 2(a) only applies to covered contracts in excess of $2,500, the requirements of section 4(c) likewise apply only to successor contracts which may be in excess of $2,500. However, if the successor contract is in excess of $2,500, section 4(c) applies regardless of the amount of the predecessor contract. (See §§ 4.141–4.142 for determining contract amount.)

(e) *The operative words of section 4(c) refer to "contract" not "contractor".* Section 4(c) begins with the language, "[n]o contractor or subcontractor under a *contract, which succeeds a contract* subject to this Act" (emphasis supplied). Thus, the statute is applicable by its terms to a successor contract without regard to whether the successor contractor was also the predecessor contractor. A contractor may become its own successor because it was the successful bidder on a recompetition of an existing contract, or because the contracting agency exercises an option or otherwise extends the term of the existing contract, etc. (See §§ 4.143–4.145). Further, since sections 2(a) and 4(c) must be read in harmony to reflect the statutory scheme, it is clear that the provisions of section 4(c) apply whenever the Act or the regulations require that a new wage determination be incorporated into the contract (53 Comp. Gen. 401, 404–6 (1973)).

(f) *Collective bargaining agreement must be applicable to work performed on the predecessor contract.* Section 4(c) will be operative only if the employees who worked on the predecessor contract were actually paid in accordance with the wage and fringe benefit provisions of a predecessor contractor's collective bargaining agreement. Thus, for example, section 4(c) would not apply if the predecessor contractor entered into a collective bargaining agreement for the first time, which did not become effective until after the expiration of the predecessor contract. Likewise, the requirements of section 4(c) would not apply if the predecessor contractor's collective bargaining agreement applied only to other employees of the firm and not to the employees working on the contract.

(g) *Contract reconfigurations.* As a result of changing priorities, mission requirements, or other considerations, contracting agencies may decide to restructure their support contracts. Thus, specific contract requirements from one contract may be broken out and placed in a new contract or combined with requirements from other contracts into a consolidated contract. However, the protections afforded service employees under section 4(c) are not lost or negated because of such contract reconfigurations, and the predecessor contractor's collectively bargained rates follow identifiable contract work requirements into new or consolidated contracts.

(h) *Interruption of contract services.* Other than the requirement that substantially the same services be furnished, the requirement for arm's-length negotiations and the provision for variance hearings, the Act does not impose any other restrictions on the application of section 4(c). Thus, the application of section 4(c) is not negated because the contracting authority may

change and the successor contract is awarded by a different contracting agency. Also, there is no requirement that the successor contract commence immediately after the completion or termination of the predecessor contract, and an interruption of contract services does not negate the application of section 4(c). Contract services may be interrupted because the Government facility is temporarily closed for renovation, or because a predecessor defaulted on the contract or because a bid protest has halted a contract award requiring the Government to perform the services with its own employees. In all such cases, the requirements of section 4(c) would apply to any successor contract which may be awarded after the temporary interruption or hiatus. The basic principle in all of the preceding examples is that successorship provisions of section 4(c) apply to the full term successor contract. Therefore, temporary interim contracts, which allow a contracting agency sufficient time to solicit bids for a full term contract, also do not negate the application of section 4(c) to a full term successor contract.

(i) *Place of performance.* The successorship requirements of section 4(c) apply to all contracts for substantially the same services as were furnished under the predecessor contract. The Act does not distinguish between successor contracts performed at the same Government installation and successor contracts performed at the location of a successful bidder, and the requirements of section 4(c) apply equally to both types of contracts.

(j) *Interpretation of wage and fringe benefit provisions of wage determinations issued pursuant to sections 2(a) and 4(c).* Wage determinations which are issued for successor contracts subject to section 4(c) are intended to accurately reflect the rates and fringe benefits set forth in the predecessor's collective bargaining agreement. However, failure to include in the wage determination any job classification, wage rate, or fringe benefit encompassed in the collective bargaining agreement does not relieve the successor contractor of the statutory requirement to comply at a minimum with the terms of the collective bargaining agreement insofar as wages and fringe benefits are concerned. Since the successor's obligations are governed by the terms of the collective bargaining agreement, any interpretation of the wage and fringe benefit provisions of the wage determination must be based on the intent of the parties to the collective bargaining agreement to the extent that such interpretation is not violative of law. Therefore, some of the principles discussed in §§ 4.170–4.177 regarding specific interpretations of the fringe benefit provisions of prevailing wage determinations may not be applicable to wage determinations issued pursuant to section 4(c). As provided in section 2(a)(2), a contractor may satisfy its fringe benefit obligations under any wage determination "by furnishing any equivalent combinations of fringe benefits or by making equivalent or differential payments in cash" in accordance with the rules and regulations set forth in § 4.177 of this Subpart.

(k) No provision of this section shall be construed as permitting a successor contractor to pay its employees less than the wages and fringe benefits to which such employees would have been entitled under the predecessor contractor's collective bargaining agreement. Thus, some of the principles discussed in § 4.167 may not be applicable in section 4(c) successorship situations. For example, if the predecessor contractor's collective bargaining agreement did not provide for the deduction from employees' wages of the reasonable cost or fair value for providing board, lodging, or other facilities, then the successor also may not include such costs as part of the applicable minimum wage specified in the wage determination. Likewise, unless the predecessor contractor's agreement allowed a tip credit (§ 4.6(q)), the successor contractor may not take a tip credit toward satisfying the minimum wage requirements under sections 2(a)(1) and 4(c).

Compliance with Compensation Standards

§ 4.164 [Reserved]

§ 4.165 Wage payments and fringe benefits—in general.

(a)(1) Monetary wages specified under the Act shall be paid to the employees to whom they are due promptly and in no event later than one pay period following the end of the pay period in which they are earned. No deduction, rebate, or refund is permitted, except as hereinafter stated. The same rules apply to cash payments authorized to be paid with the statutory monetary wages as equivalents of determined fringe benefits (see § 4.177).

(2) The Act makes no distinction, with respect to its compensation provisions, between temporary, part-time, and full-time employees, and the wage and fringe benefit determinations apply, in the absence of an express limitation, equally to all such service employees engaged in work subject to the Act's provisions. (See § 4.178 regarding fringe benefit payments to temporary and part-time employees.)

(b) The Act does not prescribe the length of the pay period. However, for purposes of administration of the Act, and to conform with practices required under other statutes that may be applicable to the employment, wages and hours worked must be calculated on the basis of a fixed and regularly recurring workweek of seven consecutive 24-hour workday periods, and the records must be kept on this basis. It is appropriate to use this workweek for the pay period. A bi-weekly or semimonthly, pay period may, however, be used if advance notification is given to the affected employees. A pay period longer than semi-monthly is not recognized as appropriate for service employees and wage payments at greater intervals will not be considered as constituting proper payments in compliance with the Act.

(c) The prevailing rate established by a wage determination under the Act is a minimum rate. A contractor is not precluded from paying wage rates in excess of those determined to be prevailing in the particular locality. Nor does the Act affect or require the changing of any provisions of union contracts specifying higher monetary wages or fringe benefits than those contained in an applicable determination. However, if an applicable wage determination contains a wage or fringe benefit provision for a class of service employees which is higher than that specified in an existing union agreement, the determination's provision must be observed for any work performed on a contract subject to that determination.

§ 4.166 Wage payments—unit of payment.

The standard by which monetary wage payments are measured under the Act is the wage rate per hour. An hourly wage rate is not, however, the only unit for payment of wages that may be used for employees subject to the Act. Employees may be paid on a daily, weekly, or other time basis, or by piece or task rates, so long as the measure of work and compensation used, when translated or reduced by computation to an hourly basis each workweek, will provide a rate per hour that will fulfill the statutory requirement. Whatever system of payment is used, however, must ensure that each hour of work in performance of the contract is compensated at not less than the required minimum rate. Failure to pay for certain hours at the required rate cannot be transformed into compliance

with the Act by reallocating portions of payments made for other hours which are in excess of the specified minimum.

§ 4.167 Wage payments—Medium of payment.

The wage payment requirements under the Act for monetary wages specified under its provisions will be satisfied by the timely payment of such wages to the employee either in cash or negotiable instrument payable at par. Such payment must be made finally and unconditionally and "free and clear." Scrip, tokens, credit cards, "dope checks", coupons, salvage material, and similar devices which permit the employer to retain and prevent the employee from acquiring control of money due for the work until some time after the pay day for the period in which it was earned, are not proper mediums of payment under the Act. If, as is permissible, they are used as a convenient device for measuring earnings or allowable deductions during a single pay period, the employee cannot be charged with the loss or destruction of any of them and the employer may not, because the employee has not actually redeemed them, credit itself with any which remain outstanding on the pay day in determining whether it has met the requirements of the Act. The employer may not include the cost of fringe benefits or equivalents furnished as required under section 2(a)(2) of the Act, as a credit toward the monetary wages it is required to pay under section 2(a)(1) or 2(b) of the Act (see § 4.170). However, the employer may generally include, as a part of the applicable minimum wage which it is required to pay under the Act, the reasonable cost or fair value, as determined by the Administrator, of furnishing an employee with "board, lodging, or other facilities," as defined in Part 531 of this title, in situations where such facilities are customarily furnished to employees, for the convenience of the employees, not primarily for the benefit of the employer, and the employees' acceptance of them is voluntary and uncoerced. The determination of reasonable cost or fair value will be in accordance with the Administrator's regulations under the Fair Labor Standards Act, contained in such Part 531 of this title. While employment on contracts subject to the Act would not ordinarily involve situations in which service employees would receive tips from third persons, the treatment of tips for wage purposes in the situations where this may occur should be understood. For purposes of this Act, tips may generally be included in wages in accordance with the regulations under the Fair Labor Standards Act, contained in Part 531 (See also § 4.6(q).) The general rule under that Act is that the amount paid a tipped employee by his employer is deemed to be increased on account of tips by an amount determined by the employer, not in excess of 40 percent of the minimum wage applicable under section 6 of that Act, effective January 1, 1980. Thus, the tip credit taken by an employer subject to the Service Contract Act may not exceed $1.34 per hour after December 31, 1980. (See § 4.163(k) for exceptions in section 4(c) situations.) In no event shall the sum credited be in excess of the value of tips actually received by the employee.

§ 4.168 Wage payments—deductions from wages paid.

(a) The wage requirements of the Act will not be met where unauthorized deductions, rebates, or refunds reduce the wage payment made to the employee below the minimum amounts required under the provisions of the Act and the regulations thereunder, or where the employee fails to receive such amounts free and clear because he "kicks back" directly or indirectly to the employer or to another person for the employer's benefit the whole or part of the wage delivered to him. Authorized deductions are limited to those required by law, such as taxes payable by employees required to be withheld by the employer and amounts due employees which the employer is required by court order to pay to another; deductions allowable for the reasonable cost or fair value of board, lodging, and facilities furnished as set forth in § 4.167; and deductions of amounts which are authorized to be paid to third persons for the employee's account and benefit pursuant to his voluntary assignment or order or a collective bargaining agreement with bona fide representatives of employees which is applicable to the employer. Deductions for amounts paid to third persons on the employee's account which are not so authorized or are contrary to law or from which the contractor, subcontractor or any affiliated person derives any payment, rebate, commission, profit, or benefit directly or indirectly, may not be made if they cut into the wage required to be paid under the Act. The principles applied in determining the permissibility of deductions for payments made to third persons are explained in more detail in §§ 531.38 - 531.40 of this title.

(b) *Cost of maintaining and furnishing uniforms.* If the employees are required to wear uniforms either by the employer, the nature of the job, or the Government contract, then the cost of furnishing and maintaining the uniforms is deemed to be a business expense of the employer and such cost may not be borne by the employees to the extent that to do so would reduce the employee's compensation below that required by the Act. Since it may be administratively difficult and burdensome for employers to determine the actual cost incurred by all employees for maintaining their own uniforms, payment in accordance with the following standards is considered sufficient for the contractor to satisfy its wage obligations under the Act:

(1) The contractor furnishes all employees with an adequate number of uniforms without cost to the employees or reimburses employees for the actual cost of the uniforms. (2) Where uniform cleaning and maintenance is made the responsibility of the employee, the contractor reimburses all employees for such cleaning and maintenance at the rate of $3.10 a week (or 62 cents a day) as of January 1, 1980 and of $3.35 a week (or 67 cents a day) as of January 1, 1981. Since employees are generally required to wear a clean uniform each day regardless of the number of hours the employee may work that day, the preceding weekly amounts generally may be reduced to the stated daily equivalent but not to an hourly equivalent. A contractor may reimburse employees at a different rate if the contractor furnishes affirmative proof as to the actual cost to the employees of maintaining their uniforms or if a different rate is provided for in a bona fide collective bargaining agreement covering the employees working on the contract.

(c) Stipends, allowances or other payments made directly to an employee by a party other than the employer (such as a stipend for training paid by the Veterans Administration) are not part of "wages" and the employer may not claim credit for such payments toward its monetary obligations under the Act.

§ 4.169 Wage payments—work subject to different rates.

If an employee during a workweek works in different capacities in the performance of the contract and two or more rates of compensation under section 2 of the Act are applicable to the classes of work which he or she performs, the employee must be paid the highest of such rates for all hours worked in the workweek unless it appears from the employer's records or other affirmative proof which of such hours were included in the periods spent in each class of work. The rule is the same where such an employee is

employed for a portion of the workweek in work not subject to the Act, for which compensation at a lower rate would be proper if the employer by his records or other affirmative proof, segregated the worktime thus spent.

§ 4.170 Furnishing fringe benefits or equivalents.

(a) *General.* Fringe benefits required under the Act shall be furnished, separate from and in addition to the specified monetary wages, by the contractor or subcontractor to the employees engaged in performance of the contract, as specified in the determination of the Secretary or his authorized representative and prescribed in the contract documents. Section 2(a)(2) of the Act provides that the obligation to furnish the specified benefits "may be discharged by furnishing any equivalent combinations of fringe benefits or by making equivalent or differential payments in cash under rules and regulations established by the Secretary." The governing rules and regulations for furnishing such equivalents are set forth in § 4.177 of this Subpart. An employer cannot offset an amount of monetary wages paid in excess of the wages required under the determination in order to satisfy his fringe benefit obligations under the Act, and must keep appropriate records separately showing amounts paid for wages and amounts paid for fringe benefits.

(b) *Meeting the requirement, in general.* The various fringe benefits listed in the Act and in § 4.162(a) are illustrative of those which may be found to be prevailing for service employees in a particular locality. The benefits which an employer will be required to furnish employees performing on a particular contract will be specified in the contract documents. A contractor may dispose of certain of the fringe benefit obligations which may be required by an applicable fringe benefit determination, such as pension, retirement, or health insurance, by irrevocably paying the specified contributions for fringe benefits to an independent trustee or other third person pursuant to an existing "bona fide" fund, plan, or program on behalf of employees engaged in work subject to the Act's provisions. Where such a plan or fund does not exist, a contractor must discharge his obligation relating to fringe benefits by furnishing either an equivalent combination of "bona fide" fringe benefits or by making equivalent payments in cash to the employee, in accordance with the regulations in § 4.177.

§ 4.171 "Bona fide" fringe benefits.

(a) To be considered a "bona fide" fringe benefit for purposes of the Act, a fringe benefit plan, fund, or program must constitute a legally enforceable obligation which meets the following criteria:

(1) The provisions of a plan, fund, or program adopted by the contractor, or by contract as a result of collective bargaining, must be specified in writing, and must be communicated in writing to the affected employees. Contributions must be made pursuant to the terms of such plan, fund, or program. The plan may be either contractor-financed or a joint contractor-employee contributory plan. However, any contributions made by employees must be voluntary, and if such contributions are made through payroll deductions, such deductions must be made in accordance with § 4.166. No contribution toward fringe benefits made by the employees themselves, or fringe benefits provided from monies deducted from the employee's wages may be included or used by an employer in satisfying any part of any fringe benefit obligation under the Act.

(2) The primary purpose of the plan must be to provide systematically for the payment of benefits to employees on account of death, disability, advanced age, retirement, illness, medical expenses, hospitalization, supplemental unemployment benefits, and the like.

(3) The plan must contain a definite formula for determining the amount to be contributed by the contractor and a definite formula for determining the benefits for each of the employees participating in the plan or the benefits provided under the plan must be specified or definitely determinable on an actuarial basis.

(4) Except as provided in paragraph (b), the contractor's contributions must be paid irrevocably to a trustee or other third person pursuant to an insurance agreement, trust or other funded arrangement. The trustee must assume the usual fiduciary responsibilities imposed upon trustees by applicable law. The trust or fund must be set up in such a way that in no event will the contractor be able to recapture any of the contributions paid in nor in any way divert the funds to its own use or benefit.

(5) Benefit plans or trusts of the types listed in 26 U.S.C. 401(a) must be approved by the Internal Revenue Service as satisfying the requirements of section 401(a) of the Internal Revenue Code and meet the requirements of the Employee Retirement Income Security Act of 1974, 29 U.S.C. 1001, et seq. and regulations thereunder.

(6) It should also be noted that such plans must meet certain other criteria as set forth in § 778.215 of 29 CFR 778 in order for any contributions to be excluded from computation of the regular rate of pay for overtime purposes under the Fair Labor Standards Act (§§ 4.180–4.182).

(b)(1) Unfunded self-insured fringe benefit plans (other than fringe benefits such as vacations and holidays which by their nature are normally unfunded) under which contractors allegedly make "out of pocket" payments to provide benefits as expenses may arise, rather than making irrevocable contributions to a trust or other funded arrangement as required under § 4.171(a)(4), are not considered "bona fide" plans or equivalent benefits for purposes of the Act.

(2) A contractor may request approval by the Administrator of an unfunded self-insured plan in order to allow credit for payments under the plan to meet the fringe benefit requirements of the Act. In considering whether such a plan is bona fide, the Administrator will consider such factors as whether it could be reasonably anticipated to provide the prescribed benefits, whether it represents a legally enforceable commitment to provide such benefits, whether it is carried out under a financially responsible program, and whether the plan has been communicated to the employees in writing. The Administrator in his/her discretion may direct that assets be set aside and preserved in an escrow account or that other protections be afforded to meet the plan's future obligation.

(c) No benefit required by any other Federal law or by any State or local law, such as unemployment compensation, workers' compensation, or social security, is a "bona fide" fringe benefit for purposes of the Act.

(d) The furnishing to an employee of board, lodging, or other facilities under the circumstances described in § 4.167, the cost or value of which is creditable toward the monetary wages specified under the Act, may not be used to offset any fringe benefit obligations, as such items and facilities are not fringe benefits or equivalent benefits for purposes of the Act.

(e) The furnishing of facilities which are primarily for the benefit or convenience of the contractor or the cost of which is properly a business expense of the contractor is not the furnishing of a "bona fide" fringe benefit or equivalent benefit or the payment of wages. This would be true of such items,

for example, as relocation expenses, travel and transportation expenses incident to employment, incentive or suggestion awards, and recruitment bonuses, as well as tools and other materials and services incidental to the employer's performance of the contract and the carrying on of his business, and the cost of furnishing, laundering, and maintaining uniforms and/or related apparel or equipment where employees are required by the contractor, by the contractor's Government contract, by law, or by the nature of the work to wear such items. See also § 4.166.

(f) Contributions by contractors for such items as social functions or parties for employees, flowers, cards, or gifts on employee birthdays, anniversaries, etc. (sunshine funds), employee rest or recreation rooms, paid coffee breaks, magazine subscriptions, and professional association or club dues, may not be used to offset any wages or fringe benefits specified in the contract, as such items are not "bona fide" wages or fringe benefits or equivalent benefits for purposes of the Act.

§ 4.172 Meeting requirements for particular fringe benefits—in general.

Where a fringe benefit determination specifies the amount of the employer's contribution to provide the benefit, the amount specified is the actual minimum cash amount that must be provided by the employer for the employee. No deduction from the specified amount may be made to cover any administrative costs which may be incurred by the contractor in providing the benefits, as such costs are properly a business expense of the employer. If prevailing fringe benefits for insurance or retirement are determined in a stated amount, and the employer provides such benefits through contribution in a lesser amount, he will be required to furnish the employee with the difference between the amount stated in the determination and the actual cost of the benefits which he provides. Unless otherwise specified in the particular wage determination, such as one reflecting collectively bargained fringe benefit requirements, issued pursuant to Section 4(c) of the Act, every employee performing on a covered contract must be furnished the fringe benefits required by that determination for all hours spent working on that contract up to a maximum of 40 hours per week and 2,080 (i.e., 52 weeks of 40 hours each) per year, as these are the typical number of nonovertime hours of work in a week, and in a year, respectively. Since the Act's fringe benefit requirements are applicable on a contract-by-contract basis, employees performing on more than one contract subject to the Act must be furnished the full amount of fringe benefits to which they are entitled under each contract and applicable wage determination. Where a fringe benefit determination has been made requiring employer contributions for a specified fringe benefit in a stated amount per hour, a contractor employing employees part of the time on contract work and part of the time on other work, may only credit against the hourly amount required for the hours spent on the contract work, the corresponding proportionate part of a weekly, monthly, or other amount contributed by him for such fringe benefits or equivalent benefits for such employees. If, for example, the determination requires health and welfare benefits in the amount of 30 cents an hour and the employer provides hospitalization insurance for such employees at a cost of $10.00 a week, the employer may credit 25 cents an hour ($10.00 ÷ 40) toward his fringe benefit obligation for such employees. If an employee works 25 hours on the contract work and 15 hours on other work, the employer cannot allocate the entire $10.00 to the 25 hours spent on contract work and take credit for 30 cents per hour in that manner, but must spread the cost over the full forty hours.

§ 4.173 Meeting requirements for vacation fringe benefits.

(a) *Determining length of service for vacation eligibility.* It has been found that for many types of service contracts performed at Federal facilities a successor contractor will utilize the employees of the previous contractor in the performance of the contract. The employees typically work at the same location providing the same services to the same clientele over a period of years, with periodic, often annual, changes of employer. The incumbent contractor, when bidding on a contract, must consider his liability for vacation benefits for those workers in his employ. If prospective contractors who plan to employ the same personnel were not required to furnish these employees with the same prevailing vacation benefits, it would place the incumbent contractor at a distinct competitive disadvantage as well as denying such employees entitlement to prevailing vacation benefits.

(1) Accordingly, most vacation fringe benefit determinations issued under the Act require an employer to furnish to employees working on the contract a specified amount of paid vacation upon completion of a specified length of service with a contractor or successor. This requirement may be stated in the determination, for example, as "one week paid vacation after one year of service with a contractor or successor" or by a determination which calls for "one week's paid vacation after one year of service". Unless specified otherwise in an applicable fringe benefit determination, an employer must take the following two factors into consideration in determining when an employee has completed the required length of service to be eligible for vacation benefits:

(i) The total length of time spent by an employee in any capacity in the continuous service of the present (successor) contractor, including both the time spent in performing on regular commercial work and the time spent in performing on the Government contract itself, and

(ii) Where applicable, the total length of time spent in any capacity as an employee in the continuous service of any predecessor contractor(s) who carried out similar contract functions at the same Federal facility.

(2) The application of these principles may be illustrated by the example given above of a fringe benefit determination calling for "one week paid vacation after one year of service with a contractor or successor". In that example, if a contractor has an employee who has worked for him for 18 months on regular commercial work and only for 6 months on a Government service contract, that employee would be eligible for the one week vacation since his total service with the employer adds up to more than 1 year. Similarly, if a contractor has an employee who worked for 16 months under a janitorial service contract at a particular Federal base for two different predecessor contractors, and only 8 months with the present employer, that employee would also be considered as meeting the "after one year of service" test and would thus be eligible for the specified vacation.

(3) The "contractor or successor" requirement set forth in paragraph (a)(1) of this section is not affected by the fact that a different contracting agency may have contracted for the services previously or by the agency's dividing and/or combining the contract services. However, prior service as a Federal employee is not counted toward an employee's eligibility for vacation benefits under fringe benefit determinations issued pursuant to the Act.

(4) Some fringe benefit determinations may require an employer to furnish a specified amount of paid vacation upon completion of a specified length of service *with the employer*, for example, "one week paid vacation after one year

of service with an employer". Under such determinations, only the time spent in performing on commercial work and on Government contract work in the employment of the present contractor need be considered in computing the length of service for purposes of determining vacation eligibility.

(5) Whether or not the predecessor contract(s) was covered by a fringe benefit determination is immaterial in determining whether the one year of service test has been met. This qualification refers to work performed before, as well as after, an applicable fringe benefit determination is incorporated into a contract. Also, the fact that the labor standards in predecessor service contract(s) were only those required under the Fair Labor Standards Act has no effect on the applicable fringe benefit determination contained in a current contract.

(b) Eligibility requirement—*continuous service.* Under the principles set forth above, if an employee's total length of service adds up to at least one year, the employee is eligible vacation with pay. However, such service must have been rendered continuously for a period of not less than one year for vacation eligibility. The term "continuous service" does not require the combination of two entirely separate periods of employment. Whether or not there is a break in the continuity of service so as to make an employee ineligible for a vacation benefit is dependent upon all the facts in the particular case. No fixed time period has been established for determining whether an employee has a break in service. Rather, as illustrated below, the reason(s) for an employee's absence from work is the primary factor in determining whether a break in service occurred.

(1) In cases where employees have been granted leave with or without pay by their employer, or are otherwise absent with permission for such reasons as sickness or injury, or otherwise perform no work on the contract because of reasons beyond their control, there would not be a break in service. Likewise, the absence from work for a few days, with or without notice, does not constitute a break in service, without a formal termination of employment. The following specific examples are illustrative situations where it has been determined that a break in service did not occur:

(i) An employee absent for five months due to illness but employed continuously for three years.

(ii) A strike after which employees returned to work.

(iii) An interim period of three months between contracts caused by delays in the procurement process during which time personnel hired directly by the Government performed the necessary services. However, the successor contractor in this case was not held liable for vacation benefits for those employees who had anniversary dates of employment during the interim period because no employment relationship existed during such period.

(iv) A mess hall closed three months for renovation. Contractor employees were considered to be on temporary layoff during the renovation period and did not have a break in service.

(2) Where an employee quits, is fired for cause, or is otherwise terminated (except for temporary layoffs), there would be a break in service even if the employee were rehired at a later date. However, an employee may not be discharged and rehired as a subterfuge to evade the vacation requirement.

(c) *Vesting and payment of vacation benefits.*

(1) In the example given in paragraph (a)(1) of this section of a fringe benefit determination calling for "one week paid vacation after 1 year of service with a contractor or successor", an employee who renders the "one year of service" continuously becomes eligible for the "one week paid vacation" (i.e., 40 hours of paid vacation, unless otherwise specified in an applicable wage determination) upon his anniversary date of employment and upon each succeeding anniversary date thereafter. However, there is no accrual or vesting of vacation eligibility before the employee's anniversary date of employment, and no segment of time smaller than one year need be considered in computing the employer's vacation liability, unless specifically provided for in a particular fringe benefit determination. For example, an employee who has worked 13 months for an employer subject to such stipulations and is separated without receiving any vacation benefit is entitled only to one full week's (40 hours) paid vacation. He would not be entitled to the additional fraction of one-twelfth of one week's paid vacation for the month he worked in the second year unless otherwise stated in the applicable wage determination. An employee who has not met the "one year of service" requirement would not be entitled to any portion of the "one week paid vacation".

(2) Eligibility for vacation benefits specified in a particular wage determination is based on completion of the stated period of past service. The individual employee's anniversary date (and each annual anniversary date of employment thereafter) is the reference point for vesting of vacation eligibility, but does not necessarily mean that the employee must be given the vacation or paid for it on the date on which it is vested. The vacation may be scheduled according to a reasonable plan mutually agreed to and communicated to the employees. A "reasonable" plan may be interpreted to be a plan which allows the employer to maintain uninterrupted contract services but allows the employee some choice, by seniority or similar factor, in the scheduling of vacations. However, the required vacation must be given or payment made in lieu thereof before the next anniversary date, before completion of the current contract, or before the employee terminates employment, whichever occurs first.

(d) *Contractor liability for vacation benefits.*

(1) The liability for an employee's vacation is not prorated among contractors unless specifically provided for under a particular fringe benefit determination. The contractor by whom a person is employed at the time the vacation right vests, i.e., on the employee's anniversary date of employment, must provide the full benefit required by the determination which is applicable on that date. For example, an employee, who had not previously performed similar contract work at the same facility, was first hired by a predecessor contractor on July 1, 1978. July 1 is the employee's anniversary date. The predecessor's contract ended June 30, 1979, but the employee continued working on the contract for the successor. Since the employee did not have an anniversary date of employment during the predecessor's contract, the predecessor would not have any vacation liability with respect to this employee. However, on July 1, 1979 the employee's entitlement to the full vacation benefit vested and the successor contractor would be liable for the full amount of the employee's vacation benefit.

(2) The requirements for furnishing data relative to employee hiring dates in situations where such employees worked for "predecessor" contractors are set forth in § 4.6. However, a contractor is not relieved from any obligation to provide vacation benefits because of any difficulty in obtaining such data.

(e) *Rate applicable to computation of vacation benefits.*

(1) If an applicable wage determination requires that the hourly wage rate be increased during the period of the contract, the rate

applicable to the computation of any required vacation benefits is the hourly rate in effect in the workweek in which the actual paid vacation is provided or the equivalent is paid, as the case may be, and would not be the average of the two hourly rates. This rule would not apply to situations where a wage determination specified the method of computation and the rate to be used.

(2) As set forth in § 4.172, unless specified otherwise in an applicable fringe benefit determination, service employees must be furnished the required amount of fringe benefits for all hours paid for up to a maximum of 40 hours per week and 2,080 hours per year. Thus, an employee on paid vacation leave would accrue and must be compensated for any other applicable fringe benefits specified in the fringe benefit determination, and if any of the other benefits are furnished in the form of cash equivalents, such equivalents must be included with the applicable hourly wage rate in computing vacation benefits or a cash equivalent therefor. The rules and regulations for computing cash equivalents are set forth in § 4.177.

§ 4.174 Meeting requirements for holiday fringe benefits.

(a) *Determining eligibility for holiday benefits—in general.*

(1) Most fringe benefit determinations list a specific number of named holidays for which payment is required. Unless specified otherwise in an applicable determination, an employee who performs any work during the workweek in which a named holiday occurs is entitled to the holiday benefit, regardless of whether the named holiday falls on a Sunday, another day during the workweek on which the employee is not normally scheduled to work, or on the employee's day off. In addition, holiday benefits cannot be denied because the employee has not been employed by the contractor for a designated period prior to the named holiday or because the employee did not work the day before or the day after the holiday, unless such qualifications are specifically included in the determination.

(2) An employee who performs no work during the workweek in which a named holiday occurs is generally not entitled to the holiday benefit. However, an employee who performs no work during the workweek because he is on paid vacation or sick leave in accordance with the terms of the applicable fringe benefit determination is entitled to holiday pay or another day off with pay to substitute for the named holiday. In addition, an employee who performs no work during the workweek because of a layoff does not forfeit his entitlement to holiday benefits if the layoff is merely a subterfuge by the contractor to avoid the payment of such benefits.

(3) The obligation to furnish holiday pay for the named holiday may be discharged if the contractor furnishes another day off with pay in accordance with a plan communicated to the employees involved. However, in such instances the holidays named in the fringe benefit determination are the reference points for determining whether an employee is eligible to receive holiday benefits. In other words, if an employee worked in a workweek in which a listed holiday occurred, the employee is entitled to pay for that holiday. Some determinations may provide for a specific number of holidays without naming them. In such instances the contractor is free to select the holidays to be taken in accordance with a plan communicated to the employees involved, and the agreed-upon holidays are the reference points for determining whether an employee is eligible to receive holiday benefits.

(b) *Determining eligibility for holiday benefits—newly hired employees.* The contractor generally is not required to compensate a newly hired employee for the holiday occurring prior to the hiring of the employee. However, in the one situation where a named holiday falls in the first week of a contract, all employees who work during the first week would be entitled to holiday pay for that day. For example, if a contract to provide services for the period January 1 through December 31 contained a fringe benefit determination listing New Year's Day as a named holiday, and if New Year's Day were officially celebrated on January 2 in the year in question because January 1 fell on a Sunday, employees hired to begin work on January 3 would be entitled to holiday pay for New Year's Day.

(c) *Payment of holiday benefits.*

(1) A full-time employee who is eligible to receive payment for a named holiday must receive a full day's pay up to 8 hours unless a different standard is used in the fringe benefit determination, such as one reflecting collectively bargained holiday benefit requirements issued pursuant to Section 4(c) of the Act or a different historic practice in an industry or locality. Thus, for example, a contractor must furnish 7 hours of holiday pay to a full-time employee whose scheduled workday consists of 7 hours. An employee whose scheduled workday is 10 hours would be entitled to a holiday payment of 8 hours unless a different standard is used in the determination. As discussed in § 4.172, such holiday pay must include the full amount of other fringe benefits to which the employee is entitled.

(2) Unless a different standard is used in the wage determination, a full-time employee who works on the day designated as a holiday must be paid, in addition to the amount he ordinarily would be entitled to for that day's work, the cash equivalent of a full-day's pay up to 8 hours or be furnished another day off with pay.

(3) If the fringe benefit determination lists the employee's birthday as a paid holiday and that day coincides with another listed holiday, the contractor may discharge his obligation to furnish payment for the second holiday by either substituting another day off with pay with the consent of the employee, furnishing holiday benefits of an extra day's pay, or if the employee works on the holiday in question, furnish holiday benefits of two extra days' pay.

(4) As stated in paragraph (a)(1) of this section, an employee's entitlement to holiday pay fully vests by working in the workweek in which the named holiday occurs. Accordingly, any employee who is terminated before receiving the full amount of holiday benefits due him must be paid the holiday benefits as a final cash payment.

(5) The rules and regulations for furnishing holiday pay to temporary and part-time employees are discussed in § 4.178.

(6) The rules and regulations for furnishing equivalent fringe benefits or cash equivalents in lieu of holiday pay are discussed in § 4.177.

§ 4.175 Meeting requirements for health, welfare, and/or pension benefits.

(a) *Determining the required amount of benefits.*

(1) Most fringe benefit determinations containing health and welfare and/or pension requirements specify a fixed payment per hour on behalf of each service employee. These payments are usually also stated as weekly or monthly amounts. As set forth in § 4.172, unless specified otherwise in the applicable determination such payments are due for all hours paid for, including paid vacation, sick leave, and holiday hours, up to a maximum of 40 hours per week and 2,080 hours per year on each contract. The application of this rule can be illustrated by the following examples:

(i) An employee who works 4 days a week, 10 hours a day is entitled to 40 hours of health and welfare and/or pension fringe benefits. If an employee works 3 days a week, 12 hours a day, then such employee is entitled to 36 hours of these benefits.

(ii) An employee who works 32 hours in a workweek and also receives 8 hours of holiday pay is entitled to the maximum of 40 hours of health and welfare and/or pension payments in that workweek. If the employee works more than 32 hours and also received 8 hours of holiday pay, the employee is still only entitled to the maximum of 40 hours of health and welfare and/or pension payments.

(iii) If an employee is off work for two weeks on vacation and received 80 hours of vacation pay, the employee must also receive payment for the 80 hours of health and welfare and/or pension benefits which accrue during the vacation period.

(iv) An employee entitled to two weeks paid vacation who instead works the full 52 weeks in the year, receiving the full 2,080 hours worth of health and welfare and/or pension benefits, would be due an extra 80 hours of vacation pay in lieu of actually taking the vacation; however, such an employee would not be entitled to have an additional 80 hours of health and welfare and/or pension benefits included in his vacation pay.

(2) A fringe benefit determination calling for a specified benefit such as health insurance contemplates a fixed and definite contribution to a "bona fide" plan (as that term is defined in § 4.171) by an employer on behalf of each employee, based on the monetary cost to the employer rather than on the level of benefits provided. Therefore, in determining compliance with an applicable fringe benefit determination, the amount of the employer's contribution on behalf of each individual employee governs. Thus, as set forth in § 4.172, if a determination should require a contribution to a plan providing a specified fringe benefit and that benefit can be obtained for less than the required contribution, it would be necessary for the employer to make up the difference in cash to the employee, or furnish equivalent benefits, or a combination thereof. The following illustrates the application of this principle: A fringe benefit determination requires a rate of $36.40 per month employee for a health insurance plan. The employer obtains the health insurance coverage specified at a rate of $20.45 per month for a single employee, $30.80 for an employee with spouse, and $40.90 for an employee with a family. The employer is required to make up the difference in cash or equivalent benefits to the first two classes of employees in order to satisfy the determination, notwithstanding that coverage for an employee would be automatically changed by the employer if the employee's status should change (e.g., single to married) and notwithstanding that the employer's average contribution per employee may be equal to or in excess of $36.40 per month.

(3) In determining eligibility for benefits under certain wage determinations containing hours or length of service requirements (such as having to work 40 hours in the preceding month), the contractor must take into account time spent by employees on commercial work as well as time spent on the Government contract.

(b) Some fringe benefit determinations specifically provide for health and welfare and/or pension benefits in terms of average cost. Under this concept, a contractor's contributions per employee to a "bona fide" fringe benefit plan are permitted to vary depending upon the individual employee's marital or employment status. However, the firm's total contributions for all service employees enrolled in the plan must average at least the fringe benefit determination requirement per hour per service employee. If the contractor's contributions average less than the amount required by the determination, then the firm must make up the deficiency by making cash equivalent payments or equivalent fringe benefit payments to all service employees in the plan who worked on the contract during the payment period. Where such deficiencies are made up by means of cash equivalent payments, the payments must be made promptly on the following payday. The following illustrates the application of this principle: The determination requires an average contribution of $0.84 an hour. The contractor makes payments to bona fide fringe benefit plans on a monthly basis. During a month the firm contributes $15,000 for the service employees employed on the contract who are enrolled in the plan, and a total of 20,000 man-hours had been worked by all service employees during the month. Accordingly, the firm's average cost would have been $15,000 ÷ 20,000 hours or $0.75 per hour, resulting in a deficiency of $0.09 per hour. Therefore, the contractor owes the service employees in the plan who worked on the contract during the month an additional $0.09 an hour for each hour worked on the contract, payable on the next regular payday for wages. Unless otherwise provided in the applicable wage determination, contributions made by the employer for non-service employees may not be credited toward meeting Service Contract Act fringe benefit obligations.

(c) *Employees not enrolled in or excluded from participating in fringe benefit plans.*

(1) Some health and welfare and pension plans contain eligibility exclusions for certain employees. For example, temporary and part-time employees may be excluded from participating in such plans. Also, employees receiving benefits through participation in plans of an employer other than the Government contractor or by a spouse's employer may be prevented from receiving benefits from the contractor's plan because of prohibitions against "double coverage". While such exclusions do not invalidate an otherwise bona fide insurance plan, employer contributions to such a plan cannot be considered to be made on behalf of the excluded employees. Accordingly, under fringe benefit determination requirements as described in the preceding subparagraph (a)(2), the employees excluded from participation in the health insurance plan must be furnished equivalent bona fide fringe benefits or be paid a cash equivalent payment during the period that they are not eligible to participate in the plan.

(2) It is not required that all employees participating in a fringe benefit plan be entitled to receive benefits from that plan at all times. For example, under some plans, newly hired employees who are eligible to participate in an insurance plan from their first day of employment may be prohibited from receiving benefits from the plan during a specified "waiting period". Contributions made on behalf of such employees would serve to discharge the contractor's obligation to furnish the fringe benefit. However, if no contributions are made for such employees, no credit may be taken toward the contractor's fringe benefit obligations.

(d) *Payment of health and welfare and pension benefits.*

(1) Health and welfare and/or pension payments to a "bona fide" insurance plan or trust program may be made on a periodic payment basis which is not less often than quarterly. However, where fringe benefit determinations contemplate a fixed contribution on behalf of each employee, and a contractor exercises his option to make hourly cash equivalent or differential payments, such payments must be made promptly on the regular payday for wages. (See § 4.165.)

(2) The rules and regulations for furnishing health and welfare and pension benefits to temporary and part-time employees are discussed in § 4.178.

(3) The rules and regulations for furnishing equivalent fringe benefits or cash equivalents in lieu of health and welfare and pension benefits are discussed in § 4.177.

§ 4.176 Payment of fringe benefits to temporary and part-time employees.

(a) As set forth in § 4.165(a)(2), the Act makes no distinction, with respect to its compensation provisions, between temporary, part-time, and full-time employees. Accordingly, in the absence of express limitations, the provisions of an applicable fringe benefit determination apply to all temporary and part-time service employees engaged in covered work. However, in general, such temporary and part-time employees are only entitled to an amount of the fringe benefits specified in an applicable determination which is proportionate to the amount of time spent in covered work. The application of these principles may be illustrated by the following examples:

(1) Assuming the paid vacation for full-time employees is one week of 40 hours, a part-time employee working a regularly scheduled workweek of 16 hours is entitled to 16 hours of paid vacation time or its equivalent each year, if all other qualifications are met.

(2) In the case of holidays, a part-time employee working a regularly scheduled workweek of 16 hours would be entitled to two-fifths of the holiday pay due full-time employees. It is immaterial whether or not the holiday falls on a normal workday of the part-time employee. A temporary or casual employee hired during a holiday week, but after the holiday, would be due no holiday benefits for that week.

(3) Holiday or vacation pay obligations to temporary and part-time employees working an irregular schedule of hours may be discharged by paying such employees a proportion of the holiday or vacation benefits due full-time employees based on the number of hours each such employee worked in the workweek prior to the workweek in which the holiday occurs or, with respect to vacations, the number of hours which the employee worked in the year preceding the employee's anniversary date of employment. For example:

(i) An employee works 10 hours during the week preceding July 4, a designated holiday. The employee is entitled to 10/40 of the holiday pay to which a full-time employee is entitled (i.e., 10/40 times 8=2 hours holiday pay).

(ii) A part-time employee works 520 hours during the 12 months preceding the employee's anniversary date. Since the typical number of nonovertime hours in a year of work is 2,080, if a full-time employee would be entitled to one week (40 hours) paid vacation under the applicable fringe benefit determination, then the part-time employee would be entitled to 520/2,080 times 40=10 hours paid vacation.

(4) A part-time employee working a regularly scheduled workweek of 20 hours would be entitled to one-half of the health and welfare and/or pension benefits specified in the applicable fringe benefit determination. Thus, if the determination requires $36.40 per month for health insurance, the contractor could discharge his obligation towards the employee in question by providing a health insurance policy costing $18.20 per month.

(b) A contractor's obligation to furnish the specified fringe benefits to temporary and part-time employees may be discharged by furnishing equivalent benefits, cash equivalents, or a combination thereof in accordance with the rules and regulations set forth in § 4.177.

§ 4.177 Discharging fringe benefit obligations by equivalent means.

(a) *In general.*

(1) Section 2(a)(2) of the Act, which provides for fringe benefits that are separate from and in addition to the monetary compensation required under section 2(a)(1), permits an employer to discharge his obligation to furnish the fringe benefits specified in an applicable fringe benefit determination by furnishing any equivalent combinations of "bona fide" fringe benefits or by making equivalent or differential payments in cash. However, credit for such payments is limited to the employer's fringe benefit obligations under section 2(a)(2), since the Act does not authorize any part of the monetary wage required by section 2(a)(1) and specified in the wage determination and the contract, to be offset by the fringe benefit payments or equivalents which are furnished or paid pursuant to section 2(a)(2).

(2) When a contractor substitutes fringe benefits not specified in the fringe benefit determination contained in the contract for fringe benefits which are so specified, the substituted fringe benefits, like those for which the contract provisions are prescribed, must be "bona fide" fringe benefits, as that term is defined in § 4.171.

(3) When a contractor discharges his fringe benefit obligation by furnishing, in lieu of those benefits specified in the applicable fringe benefit determination, other "bona fide" fringe benefits, cash payments, or a combination thereof, the substituted fringe benefits and/or cash payments must be "equivalent" to the benefits specified in the determination. As used in this subpart, the terms "equivalent fringe benefit" and "cash equivalent" mean equal in terms of monetary cost to the contractor. Thus, as set forth in § 4.172, if an applicable fringe benefit determination calls for a particular fringe benefit in a stated amount and the contractor furnished this benefit through contributions in a lesser amount, the contractor must furnish the employee with the difference between the amount stated in the determination and the actual cost of the benefit which the contractor provides. This principle may be illustrated by the example given in § 4.175(a)(2).

(b) *Furnishing equivalent fringe benefits.*

(1) A contractor's obligation to furnish fringe benefits which are stated in a specified cash amount may be discharged by furnishing any combination of "bona fide" fringe benefits costing an equal amount. Thus, if an applicable determination specifies that 20 cents per hour is to be paid into a pension fund, this fringe benefit obligation will be deemed to be met if, instead, hospitalization benefits costing not less than 20 cents per hour are provided. The same obligation will be met if hospitalization benefits costing 10 cents an hour and life insurance benefits costing 10 cents an hour are provided. As set forth in § 4.171(c), no benefit required to be furnished the employee by any other law, such as workers' compensation, may be credited toward satisfying the fringe benefit requirements of the Act.

(2) A contractor who wishes to furnish equivalent fringe benefits in lieu of those benefits which are not stated in a specified cash amount, such as "one week paid vacation", must first determine the equivalent cash value of such benefits in accordance with the rules set forth in paragraph (c) of this section.

(c) *Furnishing cash equivalents.*

(1) Fringe benefit obligations may be discharged by paying to the employee on his regular payday, in addition to the monetary wage required, a cash amount per hour in lieu of the specified fringe benefits, provided such amount is equivalent to the cost of the fringe benefits required. If, for example, an employee's monetary rate under an applicable determination is $4.50 an hour, and the fringe benefits to be furnished are hospitalization benefits costing 20 cents an hour and retirement benefits costing 20 cents an hour, the fringe benefit obligation is discharged if instead of furnishing the required fringe

benefits, the employer pays the employee, in cash, 40 cents per hour as the cash equivalent of the fringe benefits in addition to the $4.50 per hour wage rate required under the applicable wage determination.

(2) The hourly cash equivalent of those fringe benefits which are not stated in the applicable determination in terms of hourly cash amounts may be obtained by mathematical computation through the use of pertinent factors such as the monetary wages paid the employee and the hours of work attributable to the period, if any, by which fringe benefits are measured in the determination. If the employee's regular rate of pay is greater than the minimum monetary wage specified in the wage determination and the contract, the former must be used for this computation, and if the fringe benefit determination does not specify any daily or weekly hours of work by which benefits are to be measured, a standard 8-hour day and 40-hour week will be considered applicable. The application of these rules in typical situations is illustrated in paragraphs (c)(3) through (7) of this section.

(3) Where fringe benefits are stated as a percentage of the monetary rate, the hourly cash equivalent is determined by multiplying the stated percentage by the employees' regular or basic (i.e., wage determination) rate of pay, whichever is greater. For example, if the determination calls for a 5 percent pension fund payment and the employee is paid a monetary rate of $4.50 an hour, or if the employee earns $4.50 an hour on a piece-work basis in a particular workweek, the cash equivalent of that payment would be 22½ cents an hour.

(4) If the determination lists a particular fringe benefit in such terms as $8 a week, the hourly cash equivalent is determined by dividing the amount stated in the determination by the number of working hours to which the amount is attributable. For example, if a determination lists a fringe benefit as "pension—$8 a week", and does not specify weekly hours, the hourly cash equivalent is 20 cents per hour, i.e., $8 divided by 40, the standard number of non-overtime working hours in a week.

(5) In determining the hourly cash equivalent of those fringe benefits which are not stated in the determination in terms of a cash amount, but are stated, for example, as "nine paid holidays per year" or "1 week paid vacation after one year of service", the employee's hourly monetary rate of pay is multiplied by the number of hours making up the paid holidays or vacation. Unless the hours contemplated in the fringe benefit are specified in the determination, a standard 8-hour day and 40-hour week is considered applicable. The total annual cost so determined is divided by 2,080, the standard number of non-overtime hours in a year of work, to arrive at the hourly cash equivalent. This principle may be illustrated by the following examples:

(i) If a particular determination lists as a fringe benefit "nine holidays per year" and the employee's hourly rate of pay is $4.50, the $4.50 is multiplied by 72 (9 days of 8 hours each) and the result, $324, is then divided by 2,080 to arrive at the hourly cash equivalent, $0.1557 an hour. See § 4.174(c)(4).

(ii) If the determination requires "one week paid vacation after one year of service", and the employee's hourly rate of pay is $4.50, the $4.50 is multiplied by 40 and the result, $180.00, is then divided by 2,080 to arrive at the hourly cash equivalent, $0.0865 an hour.

(6) Where an employer elects to pay an hourly cash equivalent in lieu of a paid vacation, which is computed in accordance with paragraph (c)(5) of this section, such payments need commence only after the employee has satisfied the "after one year of service" requirement. However, should the employee terminate employment for any reason before receiving the full amount of vested vacation benefits due, the employee must be paid the full amount of any difference remaining as the final cash payment. For example, an employee becomes eligible for a week's vacation pay on March 1. The employer elects to pay this employee an hourly cash equivalent beginning that date; the employee terminates employment on March 31. Accordingly, as this employee has received only 1/13 of the vacation pay to which he/she is entitled, the employee is due the remaining 1 1/13 upon termination. As set forth in § 4.173(e), the rate applicable to the computation of cash equivalents for vacation benefits is the hourly wage rate in effect at the time such equivalent payments are actually made.

(d) *Furnishing a combination of equivalent fringe benefits and cash payments.* Fringe benefit obligations may be discharged by furnishing any combination of cash or fringe benefits as illustrated in the preceding paragraphs of this section, in monetary amounts the total of which is equivalent, under the rules therein stated, to the determined fringe benefits specified in the contract. For example, if an applicable determination specifies that 20 cents per hour is to be paid into a pension fund, this fringe benefit obligation will be deemed to be met if instead, hospitalization benefits costing 15 cents an hour and a cash equivalent payment of 5 cents an hour are provided.

(e) *Effect of equivalents in computing overtime pay.* Section 8 of the Act excludes from the regular or basic hourly rate of an employee, for purposes of determining the overtime pay to which the employee is entitled under any other Federal law, those fringe benefit payments computed under the Act which are excluded from the regular rate under the Fair Labor Standards Act by provisions of section 7(e) (formerly designated as section 7(d)) of that Act (29 U.S.C. 207(e)). Fringe benefit payments which qualify for such exclusion are described in Subpart C of Regulations, 29 CFR Part 778. When such fringe benefits are required to be furnished to service employees engaged in contract performance, the right to compute overtime pay in accordance with the above rule is not lost to a contractor or subcontractor because it discharges its obligation under this Act to furnish such fringe benefits through alternative equivalents as provided in this section. If it furnishes equivalent benefits or makes cash payments, or both, to such an employee as authorized herein, the amounts thereof, which discharge the employer's obligation to furnish such specified fringe benefits, may be excluded pursuant to this Act from the employee's regular or basic rate of pay in computing any overtime pay due the employee under any other Federal law. No such exclusion can operate, however, to reduce an employee's regular or basic rate of pay below the monetary wage rate specified as the applicable minimum wage rates under sections 2(a)(1), 2(b), or 4(c) of this Act or under other law or an employment contract.

§ 4.176 Computation of hours worked.

Since employees subject to the Act are entitled to the minimum compensation specified under its provisions for each hour worked in performance of a covered contract, a computation of their hours worked in each workweek when such work under the contract is performed is essential. Determinations of hours worked will be made in accordance with the principles applied under the Fair Labor Standards Act as set forth in Part 785 of this title which is incorporated herein by reference. In general, the hours worked by an employee include all periods in which the employee is suffered or permitted to work whether or not required to do so, and all time during which the employee is required to be on duty or to be on the employer's premises or to be at a prescribed workplace. The hours worked which are subject to the

compensation provisions of the Act are those in which the employee is engaged in performing work on contracts subject to the Act. However, unless such hours are adequately segregated, as indicated in § 4.179, compensation in accordance with the Act will be required for all hours of work in any workweek in which the employee performs any work in connection with the contract, in the absence of affirmative proof to the contrary that such work did not continue throughout the workweek.

§ 4.179 Identification of contract work.

Contractors and subcontractors under contracts subject to the Act are required to comply with its compensation requirements throughout the period of performance on the contract and to do so with respect to all employees who in any workweek are engaged in performing work on such contracts. If such a contractor during any workweek is not exclusively engaged in performing such contracts, or if while so engaged it has employees who spend a portion but not all of their worktime in the workweek in performing work on such contracts, it is necessary for the contractor to identify accurately in its records, or by other means, those periods in each such workweek when the contractor and each such employee performed work on such contracts. In cases where contractors are not exclusively engaged in Government contract work, and there are adequate records segregating the periods in which work was performed on contracts subject to the Act from periods in which other work was performed, the compensation specified under the Act need not be paid for hours spent on non-contract work. However, in the absence of records adequately segregating non-covered work from the work performed on or in connection with the contract, all employees working in the establishment or department where such covered work is performed shall be presumed to have worked on or in connection with the contract during the period of its performance, unless affirmative proof establishing the contrary is presented. Similarly, in the absence of such records, an employee performing any work on or in connection with the contract in a workweek shall be presumed to have continued to perform such work throughout the workweek, unless affirmative proof establishing the contrary is presented. Even where a contractor can segregate Government from non-Government work, it is necessary that the contractor comply with the requirements of section 6(e) of the FLSA discussed in § 4.160.

Overtime Pay of Covered Employees

§ 4.180 Overtime pay—in general.

The Act does not provide for compensation of covered employees at premium rates for overtime hours of work. Section 6 recognizes however, that other Federal laws may require such compensation to be paid to employees working on or in connection with contracts subject to the Act (see § 4.181) and prescribes, for purposes of such laws, the manner in which fringe benefits furnished pursuant to the Act shall be treated in computing such overtime compensation as follows: "In determining any overtime pay to which such service employees are entitled under any Federal law, the regular or basic hourly rate of such an employee shall not include any fringe benefit payments computed hereunder which are excluded from the regular rate under the Fair Labor Standards Act by provisions of section 7(d) [now section 7(e)] thereof." Fringe benefit payments which qualify for such exclusion are described in Part 778, Subpart C of this title. The interpretations there set forth will be applied in determining the overtime pay to which covered service employees are entitled under other Federal statutes. The effect of section 6 of the Act in situations where equivalent fringe benefits or cash payments are provided in lieu of the specified fringe benefits is stated in § 4.177(e) of this part, and illustrated in § 4.182.

§ 4.181 Overtime pay provisions of other Acts.

(a) *Fair Labor Standards Act.* Although provision has not been made for insertion in Government contracts of stipulations requiring compliance with the overtime provisions of the Fair Labor Standards Act, contractors and subcontractors performing contracts subject to the McNamara-O'Hara Service Contract Act may be required to compensate their employees working on or in connection with such contracts for overtime work pursuant to the overtime pay standards of the Fair Labor Standards Act. This is true with respect to employees engaged in interstate or foreign commerce or in the production of goods for such commerce (including occupations and processes closely related and directly essential to such production) and employees employed in enterprises which are so engaged, subject to the definitions and exceptions provided in such Act. Such employees, except as otherwise specifically provided in such Act, must receive overtime compensation at a rate of not less than 1½ times their regular rate of pay for all hours worked in excess of the applicable standard in a workweek. See Part 778 of this title. However, the Fair Labor Standards Act provides no overtime pay requirements for employees, not within such interstate commerce coverage of the Act, who are subject to its minimum wage provisions only by virtue of the provisions of section 6(e), as explained in § 4.180.

(b) *Contract Work Hours and Safety Standards Act.* (1) The Contract Work Hours and Safety Standards Act (40 U.S.C. 327–332) applies generally to Government contracts, including service contracts in excess of $2,500, which may require or involve the employment of laborers and mechanics. Guards, watchmen, and many other classes of service employees are laborers or mechanics within the meaning of such Act. However, employees rendering only professional services, seamen, and as a general rule those whose work is only clerical or supervisory or nonmanual in nature, are not deemed laborers or mechanics for purposes of the Act. The wages of every laborer or mechanic for performance of work on such contracts must include compensation at a rate not less than 1½ times the employee's basic rate of pay for all hours worked in any workweek in excess of 40 or in excess of eight on any calendar days therein, whichever is the greater number of overtime hours. Exemptions are provided for certain transportation and communications contracts, contracts for the purchase of supplies ordinarily available in the open market, and work required to be done in accordance with the provisions of the Walsh-Healey Act.

(2) Regulations concerning this Act are contained in Subparts A and C of 29 CFR Part 5 which permit overtime pay to be computed in the same manner as under the Fair Labor Standards Act, subject of course to the differences in computations required by reason of the daily overtime provision of the Contract Work Hours and Safety Standards Act, which has no counterpart in the Fair Labor Standards Act.

(3) Although the application of the Contract Work Hours and Safety Standards Act does not depend on inclusion of its requirements in provisions physically made part of the contract, the Act and the regulations of the Secretary require such provisions to be set forth in contract clauses. (See § 5.5(c) of this subtitle.)

(c) *Walsh-Healey Public Contracts Act.* As pointed out in § 4.117, while some Government contracts may be subject both to the McNamara-O'Hara Service Contract Act and to the Walsh-Healey Public Contracts Act, the employees performing work on the contract which is subject to the latter

Act are, when so engaged, exempt from the provisions of the former. They are, however, subject to the overtime provisions of the Walsh-Healey Act if, in any workweek, any of the work performed for the employer is subject to such Act and if, in such workweek, the total hours worked by the employee for the employer (whether wholly or only partly on such work) exceed 40 hours in the workweek or 8 hours in any day therein. In any such workweek the Walsh-Healey Act requires payment of overtime compensation at a rate not less than 1½ times the employee's basic rate for such weekly or daily overtime hours, whichever are greater in number. The overtime pay provisions of the Walsh-Healey Act are discussed in greater detail in 41 CFR Part 50–201.

§ 4.182 Overtime pay of service employees entitled to fringe benefits.

Reference is made in § 4.180 to the rules prescribed by section 6 of the Act which permit exclusion of certain fringe benefits and equivalents provided pursuant to section 2(a)(2) of the Act from the regular or basic rate of pay when computing overtime compensation of a service employee under the provisions of any other Federal law. As provided in § 4.177, not only those fringe benefits excludable under section 6 as benefits determined and specified under section 2(a)(2), but also equivalent fringe benefits and cash payments furnished in lieu of the specified benefits may be excluded from the regular or basic rate of such an employee. The application of this rule may be illustrated by the following examples:

(a) The A company pays a service employee $4.50 an hour in cash under a wage determination which requires a monetary rate of not less than $4 and a fringe benefit contribution of 50 cents which would qualify for exclusion from the regular rate under section 7(e) of the Fair Labor Standards Act. The contractor pays the 50 cents in cash because he made no contributions for fringe benefits specified in the determination and the contract. Overtime compensation in this case would be computed on a regular or basic rate of $4 an hour.

(b) The B company has for some time been paying $4.25 an hour to a service employee as his basic cash wage plus 25 cents an hour as a contribution to a welfare and pension plan, which contribution qualifies for exclusion from the regular rate under the Fair Labor Standards Act. For performance of work under a contract subject to the Act a monetary rate of $4 and a fringe benefit contribution of 50 cents (also qualifying for such exclusion) are specified because they are found to be prevailing for such employees in the locality. The contractor may credit the 25 cent welfare and pension contribution toward the discharge of his fringe benefit obligation under the contract but must also make an additional contribution of 25 cents for the specified or equivalent fringe benefits or pay the employee an additional 25 cents in cash. These contributions or equivalent payments may be excluded from the employee's regular rate which remains $4.25, the rate agreed upon as the basic cash wage.

(c) The C company has been paying $4 an hour as its basic cash wage on which the firm has been computing overtime compensation. For performance of work on a contract subject to the Act the same rate of monetary wages and a fringe benefit contribution of 50 cents an hour (qualifying for exclusion from the regular rate under the Fair Labor Standards Act) are specified in accordance with a determination that these are the monetary wages and fringe benefits prevailing for such employees in the locality. The contractor is required to continue to pay at least $4 an hour in monetary wages and at least this amount must be included in the employee's regular or basic rate for overtime purposes under applicable Federal law. The fringe benefit obligation under the contract would be discharged if 50 cents of the contributions for fringe benefits were for the fringe benefits specified in the contract or equivalent benefits as defined in § 4.177. The company may exclude such fringe benefit contributions from the regular or basic rate of pay of the service employee in computing overtime pay due.

Notice to Employees

§ 4.183 Employees must be notified of compensation required.

The Act, in section 2(a)(4), and the regulations thereunder in § 4.6(e), require all contracts subject to the Act which are in excess of $2,500 to contain a clause requiring the contractor or subcontractor to notify each employee commencing work on a contract to which the Act applies of the compensation required to be paid such employee under section 2(a)(1) and the fringe benefits required to be furnished under section 2(a)(2). A notice form (WH Publication 1313 and any applicable wage determination) provided by the Wage and Hour Division is to be used for this purpose. It may be delivered to the employee or posted as stated in § 4.184.

§ 4.184 Posting of notice.

Posting of the notice provided by the Wage and Hour Division shall be in a prominent and accessible place at the worksite, as required by § 4.6(e). The display of the notice in a place where it may be seen by employees performing on the contract will satisfy the requirement that it be in a "prominent and accessible place". Should display be necessary at more than one site, in order to assure that it is seen by such employees, additional copies of the poster may be obtained without cost from the Division. The contractor or subcontractor is required to notify each employee of the compensation due or attach to the poster any applicable wage determination specified in the contract listing all minimum monetary wages and fringe benefits to be paid or furnished to the classes of service employees performing on the contract.

Records

§ 4.185 Recordkeeping requirements.

The records which a contractor or subcontractor is required to keep concerning employment of employees subject to the Act are specified in § 4.6(g) of Subpart A of this part. They are required to be maintained for 3 years from the completion of the work, and must be made available for inspection and transcription by authorized representatives of the Administrator. Such records must be kept for each service employee performing work under the contract, for each workweek during the performance of the contract. If the required records are not separately kept for the service employees performing on the contract, it will be presumed, in the absence of affirmative proof to the contrary, that all service employees in the department or establishment where the contract was performed were engaged in covered work during the period of performance. (See § 4.179.)

§ 4.186 [Reserved]

Subpart E—Enforcement

§ 4.187 Recovery of underpayments.

(a) The Act, in section 3(a), provides that any violations of any of the contract stipulations required by sections 2(a)(1), 2(a)(2), or 2(b) of the Act, shall render the party responsible liable for the amount of any deductions, rebates, refunds, or underpayments (which includes non-payment) of compensation due to any employee engaged in the performance of the contract. So much of the accrued payments due either on the contract or on any other contract (whether subject to the Service Contract

Act or not) between the same contractor and the Government may be withheld in a deposit fund as is necessary to pay the employees. In the case of requirements-type contracts, it is the contracting agency, and not the using agencies, which has the responsibility for complying with a withholding request by the Secretary or authorized representative. The Act further provides that on order of the Secretary (or authorized representatives), any compensation which the head of the Federal agency or the Secretary has found to be due shall be paid directly to the underpaid employees from any accrued payments withheld. In order to effectuate the efficient administration of this provision of the Act, such withheld funds shall be transferred to the Department of Labor for disbursement to the underpaid employees on order of the Secretary or his or her authorized representatives, or an Administrative Law Judge, and are not paid directly to such employees by the contracting agency without the express prior consent of the Administrator. (See Decision of the Comptroller General, B–170784, February 12, 1971.) It is mandatory for a contracting officer to adhere to a request from the Department of Labor to withhold funds where such funds are available. (See Decision of the Comptroller General, B–109257, October 14, 1952, arising under the Walsh-Healey Act.) Contract funds which are or may become due a contractor under any contract with the United States may be withheld prior to the institution of administrative proceedings by the Secretary. (*McCasland* v. *U.S. Postal Service*, 82 CCH Labor Cases ¶ 33,007 (N.D. N.Y. 1977.))

(b) *Priority to withheld funds.*

The Comptroller General has afforded employee wage claims priority over an Internal Revenue Service levy for unpaid taxes. (See Decisions of the Comptroller General, B–170784, February 17, 1971; B–189137, August 1, 1977; 546 Comp. Gen. 499 (1977); 55 Comp. Gen. 744 (1976), arising under the Davis-Bacon Act; B–178198, August 30, 1973; B–161460, May 25, 1967.)

(1) As the Comptroller General has stated, "[t]he legislative histories of these labor statutes [Service Contract Act and Contract Work Hours and Safety Standards Act, 41 U.S.C. 327, *et seq.*] disclose a progressive tendency to extend a more liberal interpretation and construction in successive enactments with regard to worker's benefits, recovery and repayment of wage underpayments. Further, as remedial legislation, it is axiomatic that they are to be liberally construed". (Decision of the Comptroller General, B–170784, February 17, 1971.)

(2) Since section 3(a) of the Act provides that accrued contract funds withheld to pay employees wages must be held in a deposit fund, it is the position of the Department of Labor that monies so held may not be used or set aside for agency reprocurement costs. To hold otherwise would be inequitable and contrary to public policy, since the employees have performed work from which the Government has received the benefit (see *National Surety Corporation* v. *U.S.*, 132 Ct. Cl. 724, 728, 135 F. Supp 361 (1955), cert. denied, 350 U.S. 902), and to give contracting agency reprocurement claims priority would be to require employees to pay for the breach of contract between the employer and the agency. The Comptroller General has sanctioned priority being afforded wage underpayments over the reprocurement costs of the contracting agency following a contractor's default or termination for cause. Decision of the Comptroller General, B–167000, June 28, 1969; B–178198, August 30, 1973; and B–189137, August 1, 1977.

(3) Wage claims have priority over reprocurement costs and tax liens without regard to when the competing claims were raised. See Decisions of the Comptroller General, B–161460, May 25, 1967; B–189137, August 1, 1977.

(4) Wages due underpaid on the contract workers have priority over any assignee of the contractor, including assignments made under the Assignment of Claims Act, 311 U.S.C. 203, 41 U.S.C. 115, to funds withheld, since an assignee can acquire no greater rights to withheld funds than the assignor has in the absence of an assignment. See *Modern Industrial Bank* v. *U.S.*, 101 Ct. Cl. 808 (1944); *Royal Indemnity Co.* v. *United States*, 178 Ct. Cl. 46, 371 F. 2d 462 (1967), cert. denied, 389 U.S. 833; *Newark Insurance Co.* v. *U.S.* 149 Ct. Cl. 170, 181 F. Supp. 246 (1960); *Henningsen* v. *United States Fidelity and Guaranty Company*, 208 U.S. 404 (1908). Where employees have been underpaid, the assignor has no right to assign funds since the assignor has no property rights to amounts withheld from the contract to cover underpayments of workers which constitute a violation of the law and the terms, conditions, and obligations under the contract. (Decision of the Comptroller General, B–164691, August 14, 1968; B–178198, August 30, 1973; 56 Comp. Gen. 499 (1977); 55 Comp Gen. 744 (1976); *The National City Bank of Evansville* v. *United States*, 143 Ct. Cl. 154, 163 F. Supp. 946 (1958); *National Surety Corporation* v. *United States*, 132 Ct. Cl. 724, 135 F. Supp. 361 (1955), cert. denied, 350 U.S. 902.)

(5) The Comptroller General, recognizing that unpaid laborers have an equitable right to be paid from contract retainages, has also held that wage underpayments under the Act have priority over any claim by the trustee in bankruptcy. 56 Comp. Gen. 499 (1977), citing *Pearlman* v. *Reliance Insurance Company*, 371 U.S. 132 (1962); *Hadden* v. *United States*, 132 Ct. Cl. 529 (1955), in which the courts gave priority to sureties who had paid unpaid laborers over the trustee in bankruptcy.

(c) Section 5(b) of the Act provides that if the accrued payments withheld under the terms of the contract are insufficient to reimburse all service employees with respect to whom there has been a failure to pay the compensation required pursuant to the Act, the United States may bring action against the contractor, subcontractor, or any sureties in any court of competent jurisdiction to recover the remaining amount of underpayments. The Service Contract Act is not subject to the statute of limitations in the Portal to Portal Act, 29 U.S.C. 255, and contains no prescribed period within which such an action must be instituted; it has therefore been held that the general period of six years prescribed by 28 U.S.C. 2415 applies to such actions, *United States of America* v. *Deluxe Cleaners and Laundry, Inc.*, 511 F. 2d 929 (C.A. 4, 1975). Any sums thus recovered by the United States shall be held in the deposit fund and shall be paid, on the order of the Secretary, directly to the underpaid employees. Any sum not paid to an employee because of inability to do so within 3 years shall be covered into the Treasury of the United States as miscellaneous receipts.

(d) Releases or waivers executed by employees for unpaid wages and fringe benefits due them are without legal effect. As stated by the Supreme Court in *Brooklyn Savings Bank* v. *O'Neil*, 324 U.S. 697, 704, (1945), arising under the Fair Labor Standards Act:

"Where a private right is granted in the public interest to effectuate a legislative policy, waiver of a right so charged or colored with the public interest will not be allowed where it would thwart the legislative policy which it was designed to effectuate."

See also *Schulte, Inc.* v. *Gangi*, 328 U.S. 108 (1946); *United States* v. *Morley Construction Company*, 98 F. 2d. 781 (C.A. 2, 1938), cert. denied, 305 U.S. 651.

Further, as noted above, monies not paid to employees to whom they are due because of violation are covered into the

U.S. Treasury as provided by section 5(b) of the Act.

(e)(1) The term "party responsible" for violations in section 3(a) of the Act is the same term as contained in the Walsh-Healey Public Contracts Act, and therefore, the same principles are applied under both Acts. An officer of a corporation who actively directs and supervises the contract performance, including employment policies and practices and the work of the employees working on the contract, is a party responsible and liable for the violations, individually and jointly with the company (*S & G Coal Sales, Inc.*, Decision of the Hearing Examiner, PC–946, January 21, 1965, affirmed by the Administrator June 8, 1965; *Tennessee Processing Co., Inc.*, Decision of the Hearing Examiner, PC–790, September 28, 1965).

(2) The failure to perform a statutory public duty under the Service Contract Act is not only a corporate liability but also the personal liability of each officer charged by reason of his or her corporate office while performing that duty. *United States* v. *Sancolmar Industries, Inc.*, 347 F. Supp 404, 408 (E.D. N.Y. 1972). Accordingly, it has been held by administrative decisions and by the courts that the term "party responsible", as used in section 3(a) of the Act, imposes personal liability for violations of any of the contract stipulations required by sections 2(a)(1) and (2) and 2(b) of the Act on corporate officers who control, or are responsible for control of, the corporate entity, as they, individually, have an obligation to assure compliance with the requirements of the Act, the regulations, and the contracts. See, for example, *Waite, Inc.*, Decision of the ALJ, SCA 530–566, October 19, 1976, *Spruce-Up Corp.*, Decision of the Administrator SCA 368–370, August, 19, 1976, *Ventilation and Cleaning Engineers, Inc.*, Decision of the ALJ, SCA 176, August 23, 1973, Assistant Secretary, May 17, 1974, Secretary, September 27, 1974; *Fred Van Elk*, Decision of the ALJ, SCA 254–58, May 28, 1974, Administrator, November 25, 1974; *Murcole, Inc.*, Decision of the ALJ, SCA 195–196, April 11, 1974; *Emile J. Bouchet*, Decision of the ALJ, SCA 38, February 24, 1970; *Darwyn L. Grover*, Decision of the ALJ, SCA 485, August 15, 1976; *United States* v. *Islip Machine Works, Inc.*, 179 F. Supp. 585 (E.D. N.Y. 1959); *United States* v. *Sancolmar Industries, Inc.*, 347 F. Supp. 404 (E.D. N.Y. 1972).

(3) In essence, individual liability attaches to the corporate official who is responsible for, and therefore causes or permits, the violation of the contract stipulations required by the Act, i.e., corporate officers who control the day-to-day operations and management policy are personally liable for underpayments because they cause or permit violations of the Act.

(4) It has also been held that the personal responsibility and liability of individuals for violations of the Act is not limited to the officers of a contracting firm or to signatories to the Government contract who are bound by and accept responsibility for compliance with the Act and imposition of its sanctions set forth in the contract clauses in § 4.6, but includes all persons, irrespective of proprietary interest, who exercise control, supervision, or management over the performance of the contract, including the labor policy or employment conditions regarding the employees engaged in contract performance, and who, by action or inaction, cause or permit a contract to be breached. *U.S.* v. *Islip Machine Works, Inc.*, 179 F. Supp. 585 (E.D. N.Y. 1959); *U.S.* v. *Sancolmar Industries, Inc.*, 347 F. Supp. 404 (E.D. N.Y. 1972); *Oscar Hestrom Corp.*, Decision of the Administrator, PC–257, May 7, 1940, affirmed, *U.S.* v. *Hedstrom*, 8 Wage Hour Cases 302 (N.D. Ill. 1948); *Craddock-Terry Shoe Corp.*, Decision of the Administrator, PC–330, October 3, 1947; *Reynolds Research Corp.*, Decision of the Administrator, PC–381, October 24, 1951; *Etowah Garment Co., Inc.*, Decision of the Hearing Examiner, PC–632, August 9, 1957, Decision of the Administrator, April 29, 1958; *Cardinal Fuel and Supply Co.*, Decision of the Hearing Examiner, PC–890, June 17, 1963.

(5) Reliance on advice from contracting agency officials (or Department of Labor officials without the authority to issue rulings under the Act) is not a defense against a contractor's liability for back wages under the Act. *Standard Fabrication Ltd.*, Decision of the Secretary, PC–297, August 3, 1948; *Airport Machining Corp.*, Decision of the ALJ, PC–1177, June 15, 1973; *James D. West*, Decision of the ALJ, SCA 397–398, November 17, 1975; *Metropolitan Rehabilitation Corp.*, WAB Case No. 78–25, August 2, 1979; *Fry Brothers Corp.*, WAB Case No. 76–6, June 14, 1977.

(f) The appellate rights of a contractor or subcontractor regarding violations of the Act, including back wage liability or the disposition of funds withheld by the agency for such liability are contained in Part 6 of this Title. Appeals in such matters have not been delegated to the contracting agencies and such matters cannot be appealed under the disputes clause in the contractor's contract.

(g) While the Act provides that action may be brought against a surety to recover underpayments of compensation, there is no statutory provision requiring that contractors furnish either payment or performance bonds before an award can be made. The courts have held, however, that when such a bond has been given, including one denominated as a performance rather than payment bond, and such a bond guarantees that the principal shall fulfill "all the undertakings, convenants, terms, conditions, and agreements" of the contract, or similar words to the same effect, the surety-guarantor is jointly liable for underpayments by the contractor of the wages and fringe benefits required by the Act up to the amount of the bond. *U.S.* v. *Powers Building Maintenance Co.*, 366 F. Supp. 619 (W.D. Okla. 1972); *U.S.* v. *Gillespie*, 72 CCH Labor Cases ¶ 33,986 (C.D. Cal. 1973) *U.S.* v. *Glens Falls Insurance Co.*, 279 F. Supp. 236 (E.D. Tenn. 1967); *United States* v. *Hudgins-Dize Co.*, 83 F. Supp. 593 (E.D. Va. 1949); *U.S.* v. *Continental Casualty Company*, 85 F. Supp. 573 (E.D. Pa. 1949), affirmed per curiam, 182 F.2d 941 (3rd Cir. 1950).

§ 4.188 Ineligibility for further contracts when violations occur.

(a) Section 5 of the Act directs the Comptroller General to distribute a list to all agencies of the Government giving the names of persons or firms that the Federal agencies or the Secretary has found violated this Act. Unless the Secretary otherwise recommends because of unusual circumstances, no contract of the United States or the District of Columbia (whether or not subject to the Act) shall be awarded to the persons or firms appearing on this list or to any firm, corporation, partnership, or association in which such persons or firms have a substantial interest until 3 years have elapsed from the date of publication of the list containing the names of such persons or firms. This prohibition against the award of a contract to an ineligible contractor applies to the contractor in its capacity as either a prime contractor or a subcontractor. Because the Act contains no provision authorizing removal from the list of the names of such persons or firms prior to the expiration of the three-year statutory period, the Secretary is without authority to accomplish such removal (other than in situations involving mistake or legal error). On the other hand, there may be situations in which persons or firms already on the list are

found in a subsequent administrative proceeding to have again violated the Act and their debarment ordered. In such circumstances, a new, three-year debarment term will commence with the republication of such names on the list.

(b)(1) The term "unusual circumstances" is not defined in the Act. Accordingly, the determination must be made on a case-by-case basis in accordance with the particular facts present. It is clear, however, that the effect of the 1972 Amendments is to limit the Secretary's discretion to relieve violators from the debarred list (H. Rept. 92–1251, 92d Cong., 2d Sess. 5; S. Rept. 92–1131, 92d Cong., 2d Sess. 3–4) and that the violator of the Act has the burden of establishing the existence of unusual circumstances to warrant relief from the debarment sanction, *Ventilation and Cleaning Engineers, Inc.*, SCA–176, Administrative Law Judge, August 23, 1973, Assistant Secretary, May 22, 1974, Secretary, October 2, 1974. It is also clear that unusual circumstances do not include any circumstances which would have been insufficient to relieve a contractor from the ineligible list prior to the 1972 amendments, or those circumstances which commonly exist in cases where violations are found, such as negligent or willful disregard of the contract requirements and of the Act and regulations, including a contractor's plea of ignorance of the Act's requirements where the obligation to comply with the Act is plain from the contract, failure to keep necessary records and the like. *Emerald Maintenance Inc.*, Supplemental Decision of the ALJ, SCA–153, April 5, 1973.

(2) The Subcommittee report following the oversight hearings conducted just prior to the 1972 amendments makes it plain that the limitation of the Secretary's discretion through the unusual circumstances language was designed in part to prevent the Secretary from relieving a contractor from the ineligible list provisions merely because the contractor paid what he was required by his contract to pay in the first place and promised to comply with the Act in the future. See, House Committee on Education and Labor, Special Subcommittee on Labor, The Plight of Service Workers under Government Contracts 12–13 (Comm. Print 1971). As Congressman O'Hara stated: "Restoration * * * [of wages and benefits] is not in and of itself a penalty. The penalty for violation is the suspension from the right to bid on Government contracts * * *. The authority [to relieve from blacklisting] was intended to be used in situations where the violation was a minor one, or an inadvertent one, or one in which disbarment * * * would have been wholly disproportionate to the offense." House Committee on Education and Labor, Special Subcommittee on Labor, Hearings on H.R. 6244 and H.R. 6245, 92d Cong., 1st Sess. 3 (1971).

(3)(i) The Department of Labor has developed criteria for determining when there are unusual circumstances within the meaning of the Act. See, e.g., *Washington Moving & Storage Co.*, Decision of the Assistant Secretary, SCA 68, August 16, 1973, Secretary, March 12, 1974; *Quality Maintenance Co.*, Decision of the Assistant Secretary, SCA 119, January 11, 1974. Thus, where the respondent's conduct in causing or permitting violations of the Service Contract Act provisions of the contract is willful, deliberate or of an aggravated nature or where the violations are a result of culpable conduct such as culpable neglect to ascertain whether practices are in violation, culpable disregard of whether they were in violation or not, or culpable failure to comply with recordkeeping requirements (such as falsification of records), relief from the debarment sanction cannot be in order. Furthermore, relief from debarment cannot be in order where a contractor has a history of similar violations, where a contractor has repeatedly violated the provisions of the Act, or where previous violations were serious in nature.

(ii) A good compliance history, cooperation in the investigation, repayment of moneys due, and sufficient assurances of future compliance are generally prerequisites to relief. Where these prerequisites are present and none of the aggravated circumstances in the preceding paragraph exist, a variety of factors must still be considered, including whether the contractor has previously been investigated for violations of the Act, whether the contractor has committed recordkeeping violations which impeded the investigation, whether liability was dependent upon resolution of a bona fide legal issue of doubtful certainty, the contractor's efforts to ensure compliance, the nature, extent, and seriousness of any past or present violations, including the impact of violations on unpaid employees, and whether the sums due were promptly paid.

(4) A contractor has an affirmative obligation to ensure that its pay practices are in compliance with the Act, and cannot itself resolve questions which arise, but rather must seek advice from the Department of Labor. *Marcole, Inc.*, Decision of the ALJ, SCA 195–198, April 10, 1974; *McLaughlin Storage, Inc.*, Decision of the ALJ, SCA 302–305, November 5, 1975, Administrator, March 25, 1976; *Able Building & Maintenance & Service Co.*, Decision of the ALJ, SCA 389–390, May 29, 1975, Assistant Secretary, January 13, 1976; *Aarid Van Lines, Inc.*, Decision of the Administrator, SCA 423–425, May 13, 1977.

(5) Furthermore, a contractor cannot be relieved from debarment by attempting to shift his/her responsibility to subordinate employees. *Security Systems, Inc.*, Decision of the ALJ, SCA 774–775, April 10, 1976; *Ventilation & Cleaning Engineers, Inc.*, Decision of the Secretary, SCA 176, September 27, 1974; *Ernest Roman*, Decision of the Secretary, SCA 275, May 6, 1977. As the Comptroller General has stated in considering debarment under the Davis-Bacon Act, "[n]egligence of the employer to instruct his employees as to the proper method of performing his work or to see that the employee obeys his instructions renders the employer liable for injuries to third parties resulting therefrom. * * * The employer will be liable for acts of his employee within the scope of the employment regardless of whether the acts were expressly or impliedly authorized. * * * Willful and malicious acts of the employee are imputable to the employer under the doctrine of respondeat superior although they might not have been consented to or expressly authorized or ratified by the employer." (Decision of the Comptroller General, B–145606, August 1, 1961.)

(6) Negligence per se does not constitute unusual circumstances. Relief on no basis other than negligence would render the effect of section 5(a) a nullity, since it was intended that only responsible bidders be awarded Government contracts. *Greenwood's Transfer & Storage, Inc.*, Decision of the Secretary, SCA 321–326, June 1, 1976; *Ventilation & Cleaning Engineers, Inc.*, Decision of the Secretary, SCA 176, September 27, 1974.

(c) Similarly, the term "substantial interest" is not defined in the Act. Accordingly, this determination, too, must be made on a case-by-case basis in light of the particular facts, and cognizant of the legislative intent "to provide to service employees safeguards similar to those given to employees covered by the Walsh-Healey Public Contracts Act". *Federal Food Services, Inc.*, Decision of the ALJ, SCA 585–592, November 22, 1977. Thus, guidance can be obtained from cases arising under the

Walsh-Healey Act, which uses the concept "controlling interest". See *Regal Mfg. Co.*, Decision of the Administrator, PC–245, March 1, 1946; *Acme Sportswear Co.*, Decision of the Hearing Examiner, PC–275, May 8, 1946; *Gearcraft, Inc.*, Decision of the ALJ, PCX–1, May 3, 1972. In a supplemental decision of February 23, 1979, in *Federal Food Services, Inc.* the Judge ruled as a matter of law that the term "does not preclude every employment or financial relationship between a party under sanction and another * * * [and that] it is necessary to look behind titles, payments, and arrangements and examine the existing circumstances before reaching a conclusion in this matter."

(1) Where a person or firm has a direct or beneficial ownership or control of more than 5 percent of any firm, corporation, partnership, or association, a "substantial interest" will be deemed to exist. Similarly, where a person is an officer or director in a firm or the debarred firm shares common management with another firm, a "substantial interest" will be deemed to exist. Furthermore, wherever a firm is an affiliate as defined in § 4.1a(g) of Subpart A, a "substantial interest" will be deemed to exist, or where a debarred person forms or participates in another firm in which he/she has comparable authority, he/she will be deemed to have a "substantial interest" in the new firm and such new firm would also be debarred (*Etowah Garment Co., Inc.*, Decision of the Hearing Examiner, PC–632, August 9, 1957).

(2) Nor is interest determined by ownership alone. A debarred person will also be deemed to have a "substantial interest" in a firm if such person has participated in contract negotiations, is a signatory to a contract, or has the authority to establish, control, or manage the contract performance and/or the labor policies of a firm. A "substantial interest" may also be deemed to exist, in other circumstances, after consideration of the facts of the individual case. Factors to be examined include, among others, sharing of common premises or facilities, occupying any position such as manager, supervisor, or consultant to, any such entity, whether compensated on a salary, bonus, fee, dividend, profit-sharing, or other basis of remuneration, including indirect compensation by virtue of family relationships or otherwise. A firm will be particularly closely examined where there has been an attempt to sever an association with a debarred firm or where the firm was formed by a person previously affiliated with the debarred firm or a relative of the debarred person.

(3) Firms with such identity of interest with a debarred person or firm will be placed on the debarred bidders list after the determination is made pursuant to procedures in Part 6, Subpart A, or § 4.12 and Part 6, Subpart D. Where a determination of such "substantial interest" is made after the initiation of the debarment period, contracting agencies are to terminate any contract with such firm entered into after the initiation of the original debarment period since all persons or firms in which the debarred person or firm has a substantial interest are also ineligible to receive Government contracts.

§ 4.189 Administrative proceedings relating to enforcement of labor standards.

The Secretary is authorized pursuant to the provisions of section 4(a) of the Act to hold hearings and make decisions based upon findings of fact as are deemed to be necessary to enforce the provisions of the Act. Pursuant to section 4(a) of the Act, the Secretary's findings of fact after notice and hearing are conclusive upon all agencies of the United States and, if supported by the preponderance of the evidence, conclusive in any court of the United States, without a trial de novo. *United States* v. *Powers Building Maintenance Co.*, 336 F. Supp. 619 (W.D. Okla. 1972). Rules of practice for administrative proceedings are set forth in Part 6 of this Title.

§ 4.190 Contract cancellation.

(a) As provided in section 3 of the Act, where a violation is found of any contract stipulation, the contract is subject upon written notice to cancellation by the contracting agency, whereupon the United States may enter into other contracts or arrangements for the completion of the original contract, charging any additional cost to the original contractor.

(b) Every contractor shall certify pursuant to § 4.6(n) of Subpart A that it is not disqualified for the award of a contract by virtue of its name appearing on the debarred bidders list or because any such currently listed person or firm has a substantial interest in said contractor, as described in § 4.188. Upon discovery of such false certification or determination of substantial interest in a firm performing on a Government contract, as the case may be, the contract is similarly subject upon written notice to immediate cancellation by the contracting agency and any additional cost for the completion of the contract charged to the original contractor as specified in paragraph (a), *supra*. Such contract is without warrant of law and has no force and effect and is void ab initio, 33 Comp Gen. 63; Decision of the Comptroller General, B–115051, August 6, 1953. Furthermore, any profit derived from said illegal contract is forfeited (*Paisner* v. *U.S.*, 138 Ct. Cl. 420, 150 F. Supp. 835 (1957), cert. denied, 355 U.S. 941.)

§ 4.191 Complaints and compliance assistance.

(a) Any employer, employee, labor or trade organization contracting agency, or other interested person or organization may report to any office of the Wage and Hour Division (or to any office of the Occupational Safety and Health Administration, in instances involving the safety and health provisions), a violation, or apparent violation, of the Act, or of any of the rules or regulations prescribed thereunder. Such offices are also available to assist or provide information to contractors or subcontractors desiring to insure that their practices are in compliance with the Act. Information furnished is treated confidentially. It is the policy of the Department of Labor to protect the identity of its confidential sources and to prevent an unwarranted invasion of personal privacy. Accordingly, the identity of an employee who makes a confidential written or oral statement as a complaint or in the course of an investigation, as well as portions of the statement which would reveal his identity, will not be disclosed without the prior consent of the employee. Disclosure of employee statements shall be governed by the provisions of the "Freedom of Information Act" (5 U.S.C. 552, see 29 CFR Part 70) and the "Privacy Act of 1974" (5 U.S.C. 552a).

(b) A report of breach or violation relating solely to safety and health requirements may be in writing and addressed to the Regional Administrator of an Occupational Safety and Health Administration Regional Office, U.S. Department of Labor, or to the Assistant Secretary for Occupational Safety and Health, U.S. Department of Labor, Washington, D.C. 20210.

(c) Any other report of breach or violation may be in writing and addressed to the Assistant Regional Administrator of a Wage and Hour Division's regional office, U.S. Department of Labor, or to the Administrator of the Wage and Hour Division, U.S. Department of Labor, Washington, D.C. 20210.

(d) In the event that an Assistant Regional Administrator for the Wage and Hour Division, Employment Standards Administration, is notified of

a breach or violation which also involves safety and health standards, the Regional Administrator of the Employment Standards Administration shall notify the appropriate Regional Administrator of the Occupational Safety and Health Administration who shall with respect to the safety and health violation take action commensurate with his responsibilities pertaining to safety and health standards.

(e) Any report should contain the following:

(1) The full name and address of the person or organization reporting the breach or violations.

(2) The full name and address of the person against whom the report is made.

(3) A clear and concise statement of the facts constituting the alleged breach or violation of any of the provisions of the McNamara-O'Hara Service Contract Act, or of any of the rules or regulations prescribed thereunder.

[FR Doc. 81-1262 Filed 1-12-81; 12:20 pm]
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January 16, 1981

Part IX

Department of Labor

**Employment Standards, Administration
Wage and Hour Division**

Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction (Also Labor Standards Provisions Applicable to Nonconstruction Contracts Subject to the Contract Work Hours and Safety Standards Act)

DEPARTMENT OF LABOR

Employment Standards Administration, Wage and Hour Division

29 CFR Part 5

Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction (Also Labor Standards Provisions Applicable to Nonconstruction Contracts Subject to the Contract Work Hours and Safety Standards Act)

AGENCY: Wage and Hour Division, Employment Standards Administration, Labor.

ACTION: Final rule.

SUMMARY: This document provides the final Regulations, 29 CFR Part 5, Subpart A, pertaining to labor standards applicable to contracts for Federally financed and assisted construction and to contracts subject to the Contract Work Hours and Safety Standards Act. Changes have been made in the contract labor standard clauses which are required to be included in such construction contracts, and provision has been made for withholding of funds due a contractor on other Federal and Federally assisted contracts in situations where laborers or mechanics have not been paid in compliance with the law and insufficient monies remain under the contract on which such violations occurred. Apprenticeship requirements have also been revised. Other changes have been made in debarment and enforcement procedures, and in the procedure for adding wage rates for classifications of workers which have been omitted from the prevailing wage determination applicable to the contract. Changes have also been made to preclude a debarred contractor from becoming either a contractor or a subcontractor on other Federal or Federally assisted projects, and to reduce the number of reports that contracting agencies must submit to the Department of Labor.

EFFECTIVE DATE: February 17, 1981.

FOR FURTHER INFORMATION CONTACT: Dorothy P. Come, Assistant Administrator, Wage and Hour Division, Department of Labor, Room S-3502, 200 Constitution Avenue, NW, Washington, D.C. 20210, telephone: (202) 523-8333.

SUPPLEMENTARY INFORMATION: On December 28, 1979, a proposal was published in the Federal Register (44 FR 77080) to make certain revisions to Subpart A of Regulations, 29 CFR Part 5, Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction (Also Labor Standards Provisions Applicable to Nonconstruction Contracts Subject to the Contract Work Hours and Safety Standards Act). The purpose of these changes was to revise, update, and clarify this subpart.

Interested persons were afforded the opportunity to submit comments to the Wage and Hour Division within 60 days after publication of the notice in the Federal Register. Subsequently, on February 15 and April 1, 1980, notice was given in the Federal Register extending the dates for submission of comments to March 27 and May 27, 1980, respectively. The first extension was granted at the request of various interested parties who needed additional time to prepare their comments. The second extension was granted in order to allow the comment period to run concurrently with that for the related procedural rules in revised Part 6 of this Title, published in proposed form on April 22, 1980.

Comments were received from approximately 246 interested parties, which included contracting agencies, contractor associations, contractors, labor unions and organizations, State and local governmental bodies, business organizations, law firms and individuals. In addition, the General Accounting Office submitted comments on the proposed regulations. Among those Federal agencies submitting comments were the Department of Defense, the Federal Highway Administration, the General Services Administration, the Department of Energy, the National Aeronautics and Space Administration, the Logistics Service and the Office of Airport Planning and Programming of the Federal Aviation Administration, and the Department of Housing and Urban Development. Contractor associations and business organizations submitting comments included the Associated General Contractors of America, the Associated Builders and Contractors, Inc., the National Association of Home Builders, the Chamber of Commerce of the United States, the National Association of Manufacturers, and the Business Roundtable. Labor unions and organizations commenting on the proposal included the Building and Construction Trades Department of the American Federation of Labor—Congress of Industrial Organizations (whose comments were endorsed by the Center to Protect Worker's Rights) and the International Brotherhood of Electrical Workers.

While some requests for public hearings were made, it was decided, after careful consideration that, in view of the broad range of the responses and issues addressed, such hearings would be redundant.

It has been determined that the amendments to these Regulations do not meet the criteria of Executive Order 12044 and the Department of Labor Guidelines (44 FR 5570) for a regulatory analysis. These regulations will not, in our opinion, cause major cost/price increases.

The following is an analysis of all the principal comments received and the concomitant changes made to the proposed rule. Each submission has been thoroughly reviewed, and each criticism and suggestion has been given careful consideration. For each section and, where appropriate, subsection of the final rule, the analysis contains a description of the major comments and recommendations, the Department's findings as to whether or not suggested changes to the proposed rule would be in accordance with the statutory language and intent of the Davis-Bacon Act, the Contract Work Hours and Safety Standards Act, and the Copeland Act, as appropriate, and the substantive changes herein adopted.

Discussion of Major Comments

Definitions (§ 5.2(a)–(r))

Comments were received concerning the definitions of the terms "contract"; "construction", "prosecution", "completion", or "repair"; "site of work"; "laborer" or "mechanic"; "apprentice" and "trainee"; "employed"; "wage determination"; and "any affiliated person".

A number of comments received from State and local Governments reflected a misunderstanding of the intent of our revisions to the definition of "contract". The revision does not extend coverage to State and local Government employees. There are, however, certain statutes which require the payment of Davis-Bacon prevailing wage rates to the recipient State and local Government's employees who are performing the construction work. For example, the U.S. Housing Act of 1937 requires the payment of the Davis-Bacon prevailing wage rates to all laborers or mechanics employed in the development of the project, including employees of the recipient local Government. Accordingly, we have amended the proposed regulations to clarify this term with respect to the application of prevailing wage standards to State and local Governmental employees.

Questions were raised as to whether the definition of the terms "construction", "prosecution",

"completion", or "repair" included the on-site installation of items fabricated off-site. Therefore, this subsection has been amended to include language to make it clear that on-site installation involving construction is within the meaning of these terms. In addition, as requested by the Federal Highway Administration, the citation for the Federal-Aid Highway Act of 1956 was changed.

Several comments were received objecting to the inclusion within the definition of "site of work" of such facilities as fabrication plants, mobile factories, batch plants, borrow pits, job headquarters, tool yards, etc., which are dedicated exclusively, or nearly so, to a particular contract and are located in close proximity to the actual location of construction. Contrary to the understanding of many of the commenters, we are not extending the scope of this definition. Rather, we are including in the regulations the Department's long-standing position with respect to the definition of this term which has been upheld by the Department's Wage Appeals Board. In this regard, it should be noted that the General Accounting Office has indicated that, despite its prior rulings on this issue, it does not object to the proposed definition of this term.

Numerous commenters objected to including working foremen in the definition of the term "laborer" or "mechanic" on the basis that "supervisors" and "foremen" should be excluded as part of management. Normally, anyone who performs duties which are manual or physical on a covered project is a "laborer" or "mechanic" during the time so spent. However, recognizing the realities of the construction industry and the fact that some employees are assigned managerial duties, it was decided to adopt a reasonable tolerance by applying a percentage limitation test on the amount of time which could be spent performing such non-managerial duties, after which working foremen would be considered "laborers or mechanics" for purposes of the Davis-Bacon Act. The language on working foremen and the 20 percent limitation on such work simply codify a long-standing policy of the Department which was adopted to accommodate the needs of the industry without ignoring the remedial purposes of the statute to protect the wages of the workers.

There were several comments concerning the definitions of the terms "apprentice" and "trainee". First, there were comments disapproving of the requirement that apprenticeship and training programs be registered with the Bureau of Apprenticeship and Training or with a State apprenticeship agency recognized by BAT. Numerous commenters shared the opinion that the policy of permitting only employment of apprentices and trainees under BAT approved programs was denying job opportunities to youths, minorities, and women. In addition, several parties recommended that changes be made in this subsection to reflect the provisions of 23 U.S.C. 113(c) which exempt apprentices and trainees certified by the Secretary of Transportation, rather than the Secretary of Labor, on Federal-Aid Highway projects, from the required payment of prevailing wage rates.

The Davis-Bacon Act requires that all laborers and mechanics be paid the applicable prevailing wage rate for the classification of work performed. However, in an effort to encourage meaningful training of workers in the construction industry, which will provide a ready and stable reservoir of skilled workers, the Department of Labor permits the use of apprentices and trainees at less than the required applicable predetermined rate for the work performed, where the apprentices and trainees are enrolled in training programs approved in accordance with the requirements of the Bureau of Apprenticeship and Training, or, with respect to apprentices, a similar State agency approved by BAT. We do this because we are assured that the training is real and is not a subterfuge to freeze young, minority, and female workers into low paying unskilled jobs. It should be stressed that the provisions allowing for the payment of less than the prevailing wage rates to apprentices and trainees is an exception to the requirements of the Davis-Bacon Act (see *Gevyn Construction Corporation* v. *United States*, No. 515-78 (Ct. Cl., September 12, 1980)) and that strict conditions must be maintained in order to prevent the circumvention of the Act's requirements, especially in the case of the young, minority, and female worker against whom job and wage discrimination might otherwise be widespread.

Contrary to some of the opinions expressed that the registration requirements deny employment opportunities to youths, minorities, and women, participation in apprenticeship and training programs is available to all of these groups.

The suggestions with respect to 23 U.S.C. section 113(c) have been implemented.

A number of commenters opposed including the phrase "regardless of any contractual relationship alleged to exist between the contractors or such person" in the definition of the term "employed". They argue that such language would encompass bona fide subcontractors and it was their belief that such language was only meant to apply to alleged subcontractors who are in fact employees. The phrase in question is required by the statute itself. Furthermore, the argument of these commenters was considered and rejected by the Attorney General (41 Op. Atty. Gen. 486 (1960)), who concluded that Congress intended to preserve the benefits of the Act for all engaged in laborer's or mechanic's work, whether they are independent contractors of employees.

There were objections to the deletion of the language "issued prior to the award of the contract" which had been contained in the previous definition of the term "wage determination" because it was felt that this change would give the Department "carte blanche" authority to change the wage determination in the contract after award. These comments are discussed together with the rules regarding application of wage determinations in Part 1 of this title.

Concern was expressed that the term "any affiliated person" would extend debarment to members of a contractor's immediate family who were not responsible for the violations which led to the debarment. This term was included in the text of the proposed subsection because of the Department's original intention to incorporate the existing Part 3 of this Title (concerning allowable deductions under the Copeland Act), where the term "affiliated person" is defined, as Subpart D of this Part. However, since the publication of Subpart D will be delayed, we are deleting this subsection and any concern of parties who have an interest in this issue should be dispelled.

Contract Provisions and Related Matters (Section 5.5)

Objections were raised to the deletion of former language allowing contracting agencies to insert modifications to the Davis-Bacon labor standards contract clauses to meet the particular needs of the agency, if first approved by the Department of Labor. Upon reconsideration, we have decided that the objections are valid and we are adding language to allow for the above.

Several parties took exception to the addition of the language "without regard to skill" in § 5.5(a)(1)(i), which deals with the issue of wage payments for laborers and mechanics. In addition, a suggestion was made to add language to make it clear that laborers and

mechanics performing work in more than one classification should receive the applicable rate for the time spent performing work in each classification. The addition of the phrase "without regard to skill" makes clear to the public the Department's long-standing policy on the minimum payment due to laborers or mechanics working in a given classification. There is no prohibition under the Davis-Bacon Act against payment of a higher rate than that found to be prevailing if the contractor wishes to recognize a worker's special skill. This policy has been upheld in administrative hearings and by the Wage Appeals Board. As suggested, we have added language to this subsection to reflect that laborers and mechanics must be paid the applicable prevailing wage rate for the classification of work performed.

A substantial number of comments were received concerning the provisions of § 5.5(a)(1)(ii), which deals with the issue of adding necessary classifications and rates omitted from the wage determination which has been made applicable to the project in question. Concern was expressed that the procedures in this subsection would impose collective bargaining, cause delays, create the potential for disruption and disagreement, and slow the construction process.

These changes proposed and finalized in this subsection will not impose collective bargaining. The Department of Labor will continue its long-standing policy of prohibiting the artificial splitting of classifications traditionally recognized in the construction industry and traditionally contained in Department of Labor wage determinations. The inclusion of employees, or their representatives, as interested parties in the process of adding classifications and rates which have been omitted from wage determinations recognizes the facts of economic reality, that workers bring a useful intelligence of the relationship of the work they are performing to that of other classes which helps set proper rate relationships. To deprive them of a right to have input in this process, as was the case in the past, would be to continue an unjustifiable inequity. This was recognized when the policy dealing with the same issue in cases arising under the Service Contract Act was adopted in 1965.

While we have included time limits on responding to agency conformance requests in (B) of this subsection to eliminate any unnecessary delays in processing requests for additional classifications, we agree with the commenters that the same limits should be followed under (C) of this subsection, concerning resolution of disputes, and the language has been changed accordingly.

Numerous comments were received opposing the addition of provisions in §§ 5.5(a)(2) and 5.5(b)(3) to allow agencies to withhold monies to satisfy DBRA/CWHSSA underpayments on contracts other than those in which the alleged violations occurred (hereafter referred to as "cross-withholding"). Some commenters argued that the statute did not authorize cross-withholding and that the decision in *Whitney Bros. Plumbing and Heating* v. *United States* (224 F. Supp. 860 (D. Alaska 1963)) specifically prohibited this. Several agencies state that these provisions would in effect remove authority from the contracting agency to withhold funds and redelegate it to the Department of Labor. Other commenters objected that the provisions would be unworkable when more than one agency was involved.

The language of both the DBA and the CWHSSA provide that stipulations (clauses) be included in each contract subject to the Acts to permit the contracting agency to withhold funds from the contract to satisfy unpaid wages due to laborers and mechanics employed on the contract. The clear Congressional intent of such language is to protect the wages of laborers and mechanics who perform work on the contract. In the past, due to the lack of the cross-withholding provisions, many contractors and subcontractors have escaped payment of back wages because violations were not discovered until after final payment on the contract had been made. To allow such practices to continue is contrary to the clear intent of the Acts. The decision in *Whitney Bros. Plumbing and Heating* v. *United States*, while precluding the withholding from another contract under the regulations as they existed at that time, did not indicate the cross-withholding would be prohibited if the Department adopted regulations to accomplish cross-withholding.

Provisions for cross-withholding have been contained in the Service Contract Act and the Walsh-Healey Public Contracts Act since their inception, and the Department's experience with this authority and its enforcement of such provisions under these Acts has not caused any of the disruptions and administrative delays anticipated by many of the commenters. It should be noted that the General Accounting Office commented in favor of cross-withholding. GAO concluded its comments on this matter by stating: "We believe that a cross-withholding procedure provided by regulations and contractual provision is not contrary to the DBA and CWHSSA, and indeed is consistent with the remedial purpose of those Acts."

While the Department recognizes that the contracting officer takes the action necessary to accomplish actual withholding of payment of contract funds, it is clear that to require such action be taken on a request by authorized representatives of the Department of Labor is not a usurpation of the contracting agency's authority but rather the exercise of an authority given to the Department by Reorganization Plan No. 14 of 1950 in order to accomplish the enforcement coordination and oversight responsibilities conferred upon it under that Plan, and to permit it to carry out its investigatory responsibilities.

With respect to the contract labor standards provision pertaining to the submission of weekly payrolls set forth in § 5.5(a)(3)(ii), commenters suggested that contractors be required to report the employee's address only in the first week of employment and thereafter only when there was a change in the address. A Federal agency questioned why the social security number was not required since such information would further aid in identifying employees, many of whom may have similar names. Another Federal agency commented that an agency should have the right to delegate its recordkeeping responsibilities to local Government agencies, which are the recipient of Federal funds, with monitoring authority only being retained by the agency. In response to the comments on employee addresses, the instructions for completing the Form WH-347 require only that the address of the employee be reported on the first payroll an employee works on the contract unless the address changes. Many firms do not use this optional form but submit the required information in a manner preferable to them, and therefore are not aware of these instructions. Accordingly, we have added language to this subsection to reflect the Department's policy. The inclusion of employees' social security numbers would assist the Federal agencies, the Department of Labor, and the General Accounting Office in making positive identification of employees and in making tax deductions on back wage payments, and we have added the social security number to the information which is to be reported on the payrolls.

Based on our experience there has been little or no review of certified payroll records by parties other than the Federal agencies, and consequently, we have not adopted the suggestion of delegating this responsibility since we want to insure that these documents so necessary to on-going compliance are fully used for the essential purpose for which they are intended.

Several contractors' associations and construction companies expressed dissatisfaction with the requirement in § 5.5(a)(4) to pay the full amount of the fringe benefits stipulated on the applicable wage decision for journeymen to apprentices and trainees when the apprenticeship or training program is silent regarding the payment of such benefits. There were also objections to the proposed requirement to observe the ratios and wage rates for apprentices and trainees in localities where construction is performed, rather than those ratios applicable in the locality in which the program is registered or approved. A Federal agency recommended that a minor language change be made to make it clear that it is the contractor's or subcontractor's obligation to furnish written evidence of the registration of the apprenticeship program or the certification of the training program without being specifically requested by the contracting officer to do so. Another Federal agency suggested that language similar to that in § 5.5(a)(4)(ii) regarding the withdrawal of approval of training programs by BAT be added to § 5.5(a)(4)(i) referencing apprentices.

It has been the Department's position that if the apprentice or trainee plan is silent on fringe benefits, the apprentices or trainees must receive the full amounts of the fringe benefits stipulated in the applicable wage decision for the classification of work performed. In situations where fringe benefits are listed on the wage determination for a particular craft, apprentices or trainees in that craft normally receive such benefits. In cases where the prevailing apprentice practice indicates they do not receive the full fringe benefits, or no benefits at all, we have made provisions in the regulations to allow for less than the payment of full fringe benefits. To allow a contractor to make its own decisions on the amount of fringe benefits to pay his apprentices and trainees when its approved plan is silent on the issue would give it a distinctly unfair competitive advantage with the cost to be borne by the apprentices and trainees employed by such a contractor. This is clearly against the intent of the law. We have, however, clarified the language in this subsection for easier comprehension.

We have also made revisions in this subsection to allow contractors to follow the ratios and wage rates stipulated in their approved programs at the "home" locality instead of requiring contractors to observe the ratios and wage rates for apprentices and trainees in the locality where the construction is performed, if it happens to be different from those required by their programs. Upon reconsideration, we decided that to impose different plans on contractors, many of which work in several locations where there could be differing apprenticeship standards, would be adding needless burdens to their business activities.

In addition, we adopted the Federal agencies' suggestions to change the language in § 5.5(a)(4) to make it clear it was the contractor's or subcontractor's obligation to submit written evidence of the program and to add the language in § 5.5(a)(4)(ii) concerning the withdrawal of registration of the program to § 5.5(a)(4)(i).

Several contractor associations objected to the new language of § 5.5(a)(7) which prohibits debarred persons or firms from performing not only as prime contractors but also as subcontractors on projects subject to any of the statutes listed in § 5.1. The change in this subsection is in accordance with the intent of the Acts that debarred contractors not perform any work on Government contracts. This has been a policy followed under the Service Contract Act from its inception. See § 4.188 of 29 CFR Part 4. In addition, this provision is consonant with the Federal Procurement Regulations, the Defense Acquisition Regulations, and other individual agency procurement regulations. Moreover, in its comments on the proposed regulations, the General Accounting Office stated that it had no objection to debarred contractors being ineligible to receive subcontracts from contractors having contracts with the Government.

A number of respondents objected to the portion of § 5.5(a)(9) which states that disputes arising out of the labor standards provisions of the contract are not subject to the general disputes clause of the contract, but to the provisions of Parts 5, 6, and 7 of this Title. Federal agencies commented that the provision conflicts with the authority of the contracting officer as set forth in the Contracts Dispute Act of 1978 (Pub. L. 95–563, 41 U.S.C. Sec. 601 et seq.). Reorganization Plan No. 14 of 1950, as explained in the President's message accompanying the Plan, invests in the Secretary of Labor the responsibility "to coordinate the administration of laws relating to wages and hours on Federally-financed or assisted projects by prescribing standards, regulations, and procedures to govern the enforcement activities of the various Federal agencies * * *". With respect to the Contract Disputes Act of 1978, section 14 of that statute sets forth the specific amendments to existing statutes. Significantly, no change, repeal, amendment, or other reference was made to the Davis-Bacon and Related Acts, the Contract Work Hours and Safety Standards Act, the Copeland Act, or Reorganization Plan No. 14 of 1950. Therefore, in our view, the Department's authority to resolve disputes under these statutes and Reorganization Plan No. 14 is not impinged by section 14 of the Contract Disputes Act. Also, section 9(a) of the Contract Disputes Act states, in part, that "the authority of this subsection shall not extend to a claim or dispute for penalties or forfeitures prescribed by statute or regulation which another Federal agency is specifically authorized to administer, settle, or determine".

Furthermore, logic would dictate that the authority to resolve labor disputes should reside in the agency which has the primary responsibility for protecting worker labor standards and the prerequisite expertise in administering the law and the regulations necessary to insure the effective and consistent enforcement of such labor standards provisions. Agencies should note that the General Accounting Office stated that it had no objection to the adoption of this provision.

Concern was expressed, particularly by contractor associations, about the possible interpretation of the term "interest" found in § 5.5(a)(10)(i) dealing with the debarment of contractors. The phrase "any person or firm who has an interest in the contractor's firm", is derived from the statutory language of the Davis-Bacon Act. The Department looks to each situation on a case by case basis and we will consider all the circumstances, including such factors as the question of a person's involvement with the firm's daily operations and policy decisions and the person's ownership interest in the firm.

As suggested by a Federal agency, we have amended § 5.5(c), which deals with the labor standards clauses which are to be inserted in contracts subject to the CWHSSA, to set forth in full the recordkeeping requirements.

Enforcement (Section 5.6)

Several Federal agencies commented that some of the enforcement

responsibilities set forth in § 5.6, such as the preservation of payrolls and the filing of certifications of compliance, should be delegated to grantees. Other contracting agencies recommended that the Department furnish agencies a copy of the entire investigation file, including the interview statements to enable the agencies to make a more intelligent decision on the assessment of liquidated damages. Concern was expressed about the requirement that no payments be made to the contractor until the agency insures that the contract contains the applicable labor standards clauses and wage determination since disputes occasionally arise and the Department would be given unwarranted control over the disbursement of agency funds.

It is clear from the definition of "Federal agency" in § 5.2(c) that this term does not include local Government grantees or recipients of Federal assistance. The Davis-Bacon enforcement responsibility lies solely with the Federal agencies and the Department of Labor and cannot be abdicated to local Governments who are the recipients of the Federal funds. We believe that this policy is mandated by the terms of Reorganization Plan No. 14 of 1950, and is necessary in order to maintain effective and efficient control over Federal construction monies and construction standards and the Davis-Bacon enforcement program. In reporting the results of its investigations to contracting agencies, the Department routinely furnishes all of the information which is necessary for an agency to complete its actions. Experience has shown that copies of employee interview statements, which are obtained under a pledge of confidentiality, have sometimes been provided to the contractors who have instituted reprisals against the affected employees. Nevertheless, if a contracting agency feels it is necessary in a particular case, we do, and will continue to, provide summaries of the information contained in the statements. Contrary to the understanding of some commenters, on § 5.5(a)(1), the Federal agency may approve the payment of funds when there is a dispute provided that there is a certification on file that there is a substantial dispute with respect to the required provisions. Of course, withholding must be effectuated before final payment is made.

Suspension of Funds (Section 5.9)

Several contracting agencies questioned the Department's authority to request the contracting agencies to withhold funds as provided in § 5.9. The authority delegated to the Secretary of Labor under Reorganization Plan No. 14 of 1950, contemplates that the Department of Labor, which is responsible for a coordinated Government-wide enforcement program, should have the concomitant authority to request the withholding of funds with the full expectation of having such requests honored by the agency. Without this authority to protect funds from which workers will be paid wages owed them, the Department's authority under the Plan to conduct investigations would be meaningless.

Department of Labor Hearings (Section 5.11)

In its comments on Part 6, containing enforcement procedures, the ABC, commented on the "loophole" it perceived in proposed section 5.11 pursuant to which the granting of evidentiary hearings on enforcement matters other than debarment was subject to the Administrator's discretion when the dispute involved significant sums of money, large groups of employees, or novel or unusual situations. ABC argued that this "loophole" constituted a denial of due process to contractors. Although hearings have commonly been afforded under the existing regulation, this regulation has been revised to provide hearings on disputes whenever there is a relevant issue of fact. However, in many instances a hearing is not necessary because there is no relevant issue of fact. Accordingly, in such a case the regulation provides that a ruling will be issued by the Administrator, and the contractor afforded an opportunity to seek review by the Wage Appeals Board.

As suggested by one of the respondents, we have increased the time in which a contractor may request a hearing from twenty days to thirty days from the date of the Administrator's letter.

Debarment Proceedings (Section 5.12)

There were several comments questioning why there are different periods of debarment under the Davis-Bacon Act and the Davis-Bacon and Related Acts, and different provisions for removal from the ineligible list under the Davis-Bacon and the Related Acts. It was also suggested that the Department provide for varied periods of debarment under the Davis-Bacon and the Related Acts.

Section 3(a) of the Davis-Bacon Act mandates a three-year period of debarment and there is no provision in the statute for removal from the ineligible bidders list prior to the expiration of the three years. Debarment under the Davis-Bacon and Related Acts is not mandated by these various statutes, but is provided for by regulations. In consonance with the ruling by the U.S. Court of Appeals for the District of Columbia in *Copper Plumbing and Heating Co.* v. *Campbell* (290 F 2d 368 (C.A.D.C. 1961)) we have provided by regulation for removal from the ineligible list of the contractors debarred under the Related Acts who can demonstrate a current responsibility to comply with labor standards requirements. Since these regulations provide procedures for removal from the ineligible list after six months, we are, in effect, allowing varying periods of debarment as suggested by some of the commenters.

There was also a suggestion to provide for an interim debarment mechanism during the pendency of administrative proceedings similar to the mechanisms currently utilized by other agencies. While no changes are being made in the regulations at this time, we are considering the development of interim debarment procedures.

As in § 5.11, we are changing the 20 day time limit in which to respond to the letter notifying the party of potential debarment to 30 days.

A new subsection (d) has been added to provide a procedure for determination of a debarred contractor's interest in another firm. This subsection provides for administrative law judge hearings where there is a relevant question of fact, or appeal to the Wage Appeals Board where relevant facts are not in dispute. This provision dovetails with the hearing procedure in 29 CFR Part 6, Subpart D, and corresponds with proposed 29 CFR 4.12. This change is procedural in nature and was omitted as an oversight.

In addition to the above, there were other comments recommending minor editorial and language changes which we deemed valid, and we have amended the affected sections.

This rule was drafted under the supervision and direction of Donald Elisburg, Assistant Secretary of Labor, Employment Standards Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, D.C. 20210 (202-523-6191).

Accordingly, 29 CFR Part 5 is revised as set forth below.

Signed at Washington, D.C., this 12th day of January, 1981.

Donald Elisburg,

Assistant Secretary of Labor, Employment Standards Administration.

PART 5—LABOR STANDARDS PROVISIONS APPLICABLE TO CONTRACTS COVERING FEDERALLY FINANCED AND ASSISTED CONSTRUCTION (ALSO LABOR STANDARDS PROVISIONS APPLICABLE TO NONCONSTRUCTION CONTRACTS SUBJECT TO THE CONTRACT WORK HOURS AND SAFETY STANDARDS ACT)

Subpart A—Davis-Bacon and Related Acts Provisions and Procedures

Sec.

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* * * * *

Authority: 40 U.S.C. 276a–276a–7; 40 U.S.C. 276c; 40 U.S.C. 327–332; Reorganization Plan No. 14 of 1950, 5 U.S.C. Appendix; 5 U.S.C. 301; and the statutes listed in section 5.1(a) of this part.

§ 5.1 Purpose and scope.

(a) The regulations contained in this part are promulgated under the authority conferred upon the Secretary of Labor by Reorganization Plan No. 14 of 1950 and the Copeland Act in order to coordinate the administration and enforcement of the labor standards provisions of each of the following acts by the Federal agencies responsible for their administration and of such additional statutes as may from time to time confer upon the Secretary of Labor additional duties and responsibilities similar to those conferred upon the Secretary of Labor under Reorganization Plan No. 14 of 1950:

1. The Davis-Bacon Act (sec. 1–7, 46 Stat. 1949, as amended; Pub. L. 74–403, 40 U.S.C 276a–276a–7).
2. Copeland Act (40 U.S.C. 276c).
3. The Contract Work Hours and Safety Standards Act (40 U.S.C. 327–332).
4. National Housing Act (sec. 212 added to c. 847, 48 Stat. 1246, by sec. 14, 53 Stat. 807; 12 U.S.C. 1715c and repeatedly amended).
5. Housing Act of 1950 (college housing) (amended by Housing Act of 1959 to add labor provisions, 73 Stat. 661; 12 U.S.C. 1749a(f)).
6. Housing Act of 1959 (sec. 401(f) of the Housing Act of 1950 as amended by Pub. L. 89–372, 73 Stat. 661; 12 U.S.C. 1701q(c)(3)).
7. Commercial Fisheries Research and Development Act of 1964 (sec. 7, 78 Stat. 198; 16 U.S.C. 779e(b)).
8. Library Services and Construction Act (sec. 7(a), 78 Stat. 13; 20 U.S.C. 355c(a)(4), as amended).
9. National Technical Institute for the Deaf Act (sec. 5(b)(5), 79 Stat. 126; 20 U.S.C. 684(b)(5)).
10. National Foundation on the Arts and Humanities Act of 1965 (sec. 5(k), 79 Stat. 848 as amended; 20 U.S.C. 954(j)).
11. Elementary and Secondary Education Act of 1965 as amended by Elementary and Secondary and other Education Amendments of 1969 (sec. 423 as added by Pub. L. 91–230, title IV, sec. 401(a)(10), 84 Stat. 183, and renumbered sec. 433, by Pub. L. 93–318; title III, sec. 301(a)(1), 88 Stat. 329; 20 U.S.C. 1232(b)). Under the amendment coverage is extended to all programs administered by the Commissioner of Education.
12. The Federal-Aid Highway Act of 1968 (sec. 108(b), 70 Stat. 378, recodified at 72 Stat. 895; 23 U.S.C. 113, as amended), see particularly the amendments in the Federal-Aid Highway Act of 1968 (Pub. L. 90–495, 82 Stat. 815).
13. Indian Self-Determination and Education Assistance Act (sec. 7, 88 Stat. 2206; 25 U.S.C. 450e).
14. Indian Health Care Improvement Act (sec. 303(b), 90 Stat. 1407; 25 U.S.C. 1633(b)).
15. Rehabilitation Act of 1973 (sec. 306(b)(5) 87 Stat. 384, 29 U.S.C. 776(b)(5)).
16. Comprehensive Employment and Training Act of 1973 (sec. 908, 87 Stat. 880, renumbered sec. 708 by 88 Stat. 1845; 29 U.S.C. 968; also sec. 604, 88 Stat. 1848; 29 U.S.C. 964(b)(3)).
17. State and Local Fiscal Assistance Act of 1972 (sec. 123(a)(6), 86 Stat. 933; 31 U.S.C. 1246(a)(6)).
18. Federal Water Pollution Control Act (sec. 513 of sec. 2, 86 Stat. 894; 33 U.S.C. 1372).
19. Veterans Nursing Home Care Act of 1964 (78 Stat. 502, as amended; 38 U.S.C. 5035(a)(8)).
20. Postal Reorganization Act (sec. 410(b)(4)(C); 84 Stat. 726 as amended; 39 U.S.C. 410(b)(4)(C)).
21. National Visitors Center Facilities Act of 1968 (sec. 110, 32 Stat. 45; 40 U.S.C. 808).
22. Appalachian Regional Development Act of 1965 (sec. 402, 79 Stat. 21; 40 U.S.C. App. 402).
23. Health Services Research, Health Statistics, and Medical Libraries Act of 1974 (sec. 107, see sec. 308(h)(2) thereof, 88 Stat. 370, as amended by 90 Stat. 378; 42 U.S.C. 242m(h)(2)).
24. Hospital Survey and Construction Act, as amended by the Hospital and Medical Facilities Amendments of 1964 (sec. 605(a)(5), 78 Stat. 453; 42 U.S.C. 291e(a)(5)).
25. Health Professions Educational Assistance Act (sec. 305(b), 90 Stat. 2254; 42 U.S.C. 293a(g)(1)(C); also sec. 308a, 90 Stat. 2258, 42 U.S.C. 293a(c)(7)).
26. Nurse Training Act of 1964 (sec. 941(a)(1)(C), 80 Stat. 384; 42 U.S.C. 296a(b)(5)).
27. Heart Disease, Cancer, and Stroke Amendments of 1965 (sec. 904, as added by sec 2, 79 Stat. 928; 42 U.S.C. 299d(b)(4)).
28. Safe Drinking Water Act (sec. 2(a) see sec. 1450e thereof, 88 Stat. 1661; 42 U.S.C. 300j–9(e)).
29. National Health Planning and Resources Act (sec. 4, see sec. 1604(b)(1)(H), 88 Stat. 2231, 42 U.S.C. 300o–3(b)(1)(H)).
30. U.S. Housing Act of 1937, as amended and recodified (50 Stat. 887; 42 U.S.C. 1437j).
31. Demonstration Cities and Metropolitan Development Act of 1966 (secs. 110, 311, 503, 1003, 80 Stat. 1259, 1270, 1277, 1284; 42 U.S.C. 3310; 12 U.S.C. 1715c; 42 U.S.C. 1437j).
32. Slum clearance program: Housing Act of 1949 (sec. 109, 63 Stat. 419, as amended; 42 U.S.C. 1459).
33. Farm housing: Housing Act of 1964 (adds sec. 516(f) to Housing Act of 1949 by sec. 503, 78 Stat. 797; 42 U.S.C. 1486(f)).
34. Housing Act of 1961 (sec. 707, added by sec. 907, 79 Stat. 486, as amended; 42 U.S.C. 1500c–3).
35. Defense Housing and Community Facilities and Services Act of 1951 (sec. 310, 65 Stat. 307; 42 U.S.C. 1592f).
36. Special Health Revenue Sharing Act of 1975 (sec. 303, see sec. 222(a)(5) thereof, 89 Stat. 324; 42 U.S.C. 2689j(a)(5)).
37. Economic Opportunity Act of 1964 (sec. 607, 78 Stat. 532; 42 U.S.C. 2947).
38. Headstart, Economic Opportunity, and Community Partnership Act of 1974 (sec. 11, see sec. 811 thereof, 88 Stat. 2327; 42 U.S.C. 2992a).
39. Housing and Urban Development Act of 1965 (sec 707, 79 Stat. 492 as amended; 42 U.S.C. 3107).
40. Older Americans Act of 1965 (sec. 502, Pub. L. 89–73, as amended by sec. 501, Pub. L. 93–29; 87 Stat. 50; 42 U.S.C. 3041a(a)(4)).
41. Public Works and Economic Development Act of 1965 (sec. 712; 79 Stat. 575 as amended; 42 U.S.C. 3222).
42. Juvenile Delinquency Prevention Act (sec. 1, 88 Stat. 830; 42 U.S.C. 3884).
43. New Communities Act of 1968 (sec. 410, 82 Stat. 516; 42 U.S.C. 3909).
44. Urban Growth and New Community Development Act of 1970 (sec. 727(f), 84 Stat. 1503; 42 U.S.C. 4529).
45. Domestic Volunteer Service Act of 1973 (sec. 406, 87 Stat. 410; 42 U.S.C. 5046).
46. Housing and Community Development Act of 1974 (secs. 110, 802(g), 88 Stat. 649, 724; 42 U.S.C. 5310, 1440(g)).
47. Developmentally Disabled Assistance and Bill of Rights Act (sec. 126(4), 89 Stat. 488; 42 U.S.C. 6042(4); title I, sec. 111, 89 Stat. 491; 42 U.S.C. 6063(b)(19)).
48. National Energy Conservation Policy Act (sec. 312, 92 Stat. 2294; 42 U.S.C. 8371j).
49. Public Works Employment Act of 1976 (sec. 109, 90 Stat. 1001; 42 U.S.C. 6709; also sec. 208, 90 Stat. 1008; 42 U.S.C. 6728).

80. Energy Conservation and Production Act (sec. 451(h), 90 Stat. 1166; 42 U.S.C. 6861(h)).

81. Solid Waste Disposal Act (sec. 2, 80 Stat. 2822; 42 U.S.C. 3976).

82. Rail Passenger Service Act of 1970 (sec. 405d, 84 Stat. 1337; 45 U.S.C. 565(d)).

83. Urban Mass Transportation Act of 1964 (sec. 10, 78 Stat. 307; renumbered sec. 13 by 88 Stat. 715; 49 U.S.C. 1609).

84. Highway Speed Ground Transportation Study (sec. 6(b), 79 Stat. 892; 49 U.S.C. 1636(b)).

85. Airport and Airway Development Act of 1970 (sec. 22(b), 84 Stat. 231; 49 U.S.C. 1722(b)).

86. Federal Civil Defense Act of 1950 (50 U.S.C. App. 2281i).

87. National Capital Transportation Act of 1965 (sec. 3(b)(4), 79 Stat. 844; 40 U.S.C. 682(b)(4). Note.—Repealed December 9, 1969, and labor standards incorporated in sec. 1–1431 of the District of Columbia Code).

88. Model Secondary School for the Deaf Act (sec. 4, 80 Stat. 1027. Pub. L. 89–694, but not in the United States Code).

89. Delaware River Basin Compact (sec. 15.1, 75 Stat. 714. Pub. L. 87–328) (considered a statute for purposes of the plan but not in the United States Code).

90. Energy Security Act (sec. 175(c), Pub. L. 96–294, 94 Stat. 611; 42 U.S.C. 8701 note).

(b) Part 1 of this subtitle contains the Department's procedural rules governing requests for wage determinations and the issuance and use of such wage determinations under the Davis-Bacon Act and its related statutes as listed in that part.

§ 5.2 Definitions.

(a) The term "Secretary" includes the Secretary of Labor, the Assistant Secretary of Labor for Employment Standards, and their authorized representatives.

(b) The term "Administrator" means the Administrator of the Wage and Hour Division or the authorized representative as set forth in this part. In the absence of the Wage-Hour Administrator, the Deputy Administrator of the Wage and Hour Division, is designated to act for the Administrator under this Part. Except as otherwise provided in this Part, the Assistant Administrator for Government Contract Wage Standards is the authorized representative of the Administrator in the administration of the statutes listed in § 5.1.

(c) The term "Federal agency" means the agency or instrumentality of the United States which enters into the contract or provides assistance through loan, grant, loan guarantee or insurance, or otherwise, to the project subject to a statute listed in § 5.1.

(d) The term "Agency Head" means the principal official of the Federal agency and includes those persons duly authorized to act in the behalf of the Agency Head.

(e) The term "Contracting Officer" means the individual, a duly appointed successor, or authorized representative who is designated and authorized to enter into contracts on behalf of the Federal agency.

(f) The term "labor standards" as used in this part means the requirements of the Davis-Bacon Act, the Contract Work Hours and Safety Standards Act (other than those relating to safety and health), the Copeland Act, and the prevailing wage provisions of the other statutes listed in § 5.1, and the regulations in Parts 1 and 3 of this subtitle and this part.

(g) The term "United States or the District of Columbia" means the United States, the District of Columbia, and all executive departments, independent establishments, administrative agencies, and instrumentalities of the United States and of the District of Columbia, including corporations, all or substantially all of the stock of which is beneficially owned by the United States, by the foregoing departments, establishments, agencies, instrumentalities, and including non-appropriated fund instrumentalities.

(h) The term "contract" means any contract in excess of $2,000 which is subject wholly or in part to the labor standards provisions of any of the acts listed in § 5.1 and any subcontract of any tier thereunder, let under the prime contract, which is entered into for the actual construction, alteration and/or repair, including painting and decorating, of a public building or public work, or building or work financed in whole or in part from Federal funds or in accordance with guarantees of a Federal agency or financed from funds obtained by pledge of any contract of a Federal agency to make a loan, grant or annual contribution, except where a different meaning is expressly indicated. A State or local Government is not regarded as a contractor under statutes providing loans, grants, or other Federal assistance in situations where construction is performed by its own employees. However, under certain enabling statutes, State and local recipients of Federal-aid must pay these employees according to Davis-Bacon labor standards.

(i) The terms "building" or "work" generally include construction activity as distinguished from manufacturing, furnishing of materials, or servicing and maintenance work. The terms include without limitation, buildings, structures, and improvements of all types, such as bridges, dams, plants, highways, parkways, streets, subways, tunnels, sewers, mains, power lines, pumping stations, heavy generators, railways, airports, terminals, docks, piers, wharves, ways, lighthouses, buoys, jetties, breakwaters, levees, canals, dredging, shoring, rehabilitation and reactivation of plants, scaffolding, drilling, blasting, excavating, clearing, and landscaping. The manufacture or furnishing of materials, articles, supplies or equipment (whether or not a Federal or State agency acquires title to such materials, articles, supplies, or equipment during the course of the manufacture or furnishing, or owns the materials from which they are manufactured or furnished) is not a "building" or "work" within the meaning of the regulations in this part unless conducted in connection with and at the site of such a building or work as is described in the foregoing sentence, or under the United States Housing Act of 1937 and the Housing Act of 1949 in the construction or development of the project.

(j) The terms "construction", "prosecution", "completion", or "repair" mean all types of work done on a particular building or work at the site thereof or under the United States Housing Act of 1937 and the Housing Act of 1949 in the construction or development of the project, including without limitation, altering, remodeling, installation (where appropriate) on-site of items fabricated off-site, painting and decorating, the transporting of materials and supplies to or from the building or work by the employees of the construction contractor or construction subcontractor, and the manufacturing or furnishing of materials, articles, supplies or equipment on the site of the building or work (or under the United States Housing Act of 1937 and the Housing Act of 1949 in the construction or development of the project), by persons employed by the contractor or subcontractor. However, the term "initial construction" in section 113 of Title 23, U.S.C., which pertains to Federal-aid highway work, does not include repair or maintenance work.

(k) The term "public building" or "public work" includes building or work, the construction, prosecution, completion, or repair of which, as defined above, is carried on directly by authority of or with funds of a Federal agency to serve the interest of the general public regardless of whether title thereof is in a Federal agency.

(l) The term "site of the work" is defined as follows:

(1) The "site of the work" is limited to the physical place or places where the construction called for in the contract will remain when work on it has been

completed and to other adjacent or nearby property used by the contractor or subcontractor in such construction which can reasonably be said to be included in the "site" because of its proximity.

(2) Fabrication Plants, "mobile factories," batch plants, borrow pits, job headquarters, tool yards, etc., are part of the "site of the work" provided they are dedicated exclusively, or nearly so, to performance of the contract and are so located in proximity to the actual construction location that it would be reasonable to include them.

(3) Not included in the "site of the work" are permanent home offices or branch plant establishments of a contractor or subcontractor, its fabrication plant and tool yard establishments, whose locations and continuance are governed by its general business operations.

(m) The term "laborer" or "mechanic" includes at least those workers whose duties are manual or physical in nature (including those workers who use tools or who are performing the work of a trade), as distinguished from mental or managerial. The term "laborer" or "mechanic" includes apprentices and trainees, and, in the case of contracts subject to the Contract Work Hours and Safety Standards Act, watchmen or guards. The term does not apply to workers whose duties are primarily administrative, executive, or clerical, rather than manual. Persons employed in a bona fide executive, administrative, or professional capacity as defined in Part 541 of this title are not deemed to be laborers or mechanics. Working foremen who devote more than 20 percent of their time during a workweek to mechanic or laborer duties, and who do not meet the criteria of Part 541, are laborers and mechanics for the time so spent.

(n) The terms apprentice and trainee are defined as follows:

(1) "Apprentice" means (i) a person employed and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or (ii) a person in the first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice;

(2) "Trainee" means a person registered and receiving on-the-job training in a construction occupation under a program which has been approved in advance by the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training as meeting its standards for on-the-job training programs and which has been so certified by that Bureau.

(3) These provisions do not apply to "apprentices" and "trainees" employed on projects subject to 23 U.S.C. 113 who ar enrolled in programs which have been certified by the Secretary of Transportation in accordance with 23 U.S.C. 113(c).

(o) Every person performing the duties of a laborer or mechanic in the construction, prosecution, completion, or repair of a public building or public work, or building or work financed in whole or in part by loans, grants, or guarantees from the United States is "employed" regardless of any contractual relationship alleged to exist between the contractor or such person.

(p) The term "wages" means the basic hourly rate of pay; any contribution irrevocably made by a contractor or subcontractor to a trustee or to a third person pursuant to a bona fide fringe benefit fund, plan, or program; and the rate of costs to the contractor or subcontractor which may be reasonably anticipated in providing bona fide fringe benefits to laborers and mechanics pursuant to an enforceable commitment to carry out a financially responsible plan or program, which was communicated in writing to the laborers and mechanics affected. The fringe benefits enumerated in the Davis-Bacon Act include medical or hospital care, pensions on retirement or death, compensation for injuries or illness resulting from occupational activity, or insurance to provide any of the foregoing; unemployment benefits; life insurance, disability insurance, sickness insurance, or accident insurance; vacation or holiday pay; defraying costs of apprenticeship or other similar programs; or other bona fide fringe benefits. Fringe benefits do not include benefits required by other Federal, State, or local law.

(q) The term "wage determination" includes the original decision and any subsequent decisions modifying, superseding, correcting, or otherwise changing the provisions of the original decision. The application of the wage determination shall be in accordance with the provisions of § 1.6 of this title.

§§ 5.3-5.4 [Reserved]

§ 5.5 Contract provisions and related matters.

(a) The Agency head shall cause or require the contracting officer to insert in full in any contract subject to the labor standards provisions of any of the acts listed in § 5.1, except those subject only to the Contract Work Hours and Safety Standards Act, the following clauses (or any modifications thereof to meet the particular needs of the agency: *Provided*, That such modifications are first approved by the Department of Labor):

(1) *Minimum wages.* (i) All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR Part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics. Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (a)(1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to the skill, except as provided in § 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: *Provided*, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage

determination (including any additional classification and wage rates conformed under paragraph (a)(1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

(ii)(A) The contracting officer shall require that any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefor only when the following criteria have been met:

(*1*) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(*2*) The classification is generally recognized in the area by the construction industry; and

(*3*) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, agree with the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, D.C. 20210. The Administrator, or an authorized representative, will respond within 30 days of receipt thereof and will approve, reverse, or modify every additional classification action.

(C) In the event the contractor, or the laborers or mechanics to be employed in the classification or their representatives, do not agree with the contracting officer on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt unless notice is otherwise furnished to the contracting agency within the 30 day period.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to subparagraphs (1)(B) or (C) of this paragraph, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, *Provided,* That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

(2) *Withholding.* The (write in name of Federal Agency or the loan or grant recipient) shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the contractor under this contract or any other Federal contract, or any other Federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices and trainees, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice or trainee, employed or working on the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the contract, the (Agency) may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(3) *Payrolls and basic records.* (i) Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits.

(ii) The contractor shall submit weekly a copy of all payrolls to the (write in name of appropriate Federal agency) if the agency is a party to the contract, but if the agency is not such a party the contractor will submit the payrolls to the applicant, sponsor, or owner, as the case may be for transmission to the (write in name of agency). The payrolls shall set out accurately and completely the name and address (on the first payroll on which the employee's name appears and on subsequent payrolls if the employee's address changes) and social security number of each laborer or mechanic, his or her correct classification, rate of pay, daily and weekly number of hours worked, deductions made, and actual wages paid. This information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be purchased from the Superintendent of Documents (Federal Stock Number 029-005-00014-1), U.S. Government Printing Office, Washington, D.C. 20402. Each payroll shall be accompanied by a "Statement of Compliance" as set forth on the reverse side of Optional Form WH-347 or on any form with identical wording, signed by the employer or his or her agent indicating that the payrolls are

correct and complete, that the wage rates and fringe benefits or cash equivalents shown therein are not less than those determined by the Secretary of Labor and that the classifications set forth for each laborer or mechanic conform with the work performed. The prime contractor shall be responsible for the submission of copies of payrolls of all subcontractors. The contractor or subcontractor will make the records required under the labor standards clauses of the contract available for inspection, copying, or transcription by authorized representatives of the (write the name of agency) and the Department of Labor, and will permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to make the required records available, the Federal agency may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Contractors employing apprentices or trainees under approved programs shall include a notation on the first weekly certified payrolls submitted to the contracting agencies that they are registered in an approved program and shall identify the program.

(4) *Apprentices and trainees—(i) Apprentices.* Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not a trainee as defined in subdivision (ii) of this subparagraph or is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. The contractor or subcontractor shall furnish to the contracting officer written evidence of the registration of the program, the registration of the apprentices, and the ratios and wage rates prescribed in the applicable program, prior to using any apprentices on the contract work. Every apprentice must be paid at not less that the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Bureau of Apprenticeship and Training, or a State Apprenticeship Agency recognized by the Bureau, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) *Trainees.* Except as provided in 29 CFR 5.16 trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Bureau of Apprenticeship and Training. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Bureau of Apprenticeship and Training shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. The contractor or subcontractor shall furnish the contracting officer written evidence of the certification of the program, the registration of the trainees, and the ratios and wage rates (expressed in percentages of the journeyman hourly rate) prescribed in that program prior to using any trainees on the contract work. In the event the Bureau of Apprenticeship and Training withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) *Equal employment opportunity.* The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR Part 30.

(5) *Compliance with Copeland Act requirements.* The contractor shall comply with the requirements of 29 CFR Part 3, which are incorporated by reference in this contract.

(6) *Subcontracts.* The contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the (write in the name of the Federal agency) may by appropriate

instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

(7) *Contract termination: debarment.* A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

(8) *Compliance with Davis-Bacon and Related Act requirements.* All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR Parts 1, 3, and 5 are herein incorporated by reference in this contract.

(9) *Disputes concerning labor standards.* Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR Parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

(10) *Certification of Eligibility.* (i) By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

(b) *Contract Work Hours and Safety Standards Act.* The Agency Head shall cause or require the contracting officer to insert the following clauses set forth in paragraphs (b)(1), (2), (3), and (4) of this section in full in any contract subject to the Contract Work Hours and Safety Standards Act. These clauses shall be inserted in addition to the clauses required by § 5.5(a) or § 4.6 of Part 4 of this title. As used in this paragraph, the terms "laborers" and "mechanics" include watchmen and guards.

(1) *Overtime requirements.* No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of eight hours in any calendar day or in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of eight hours in any calendar day or in excess of forty hours in such workweek, whichever is greater.

(2) *Violation; liability for unpaid wages; liquidated damages.* In the event of any violation of the clause set forth in subparagraph (1) of this paragraph, the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in subparagraph (1) of this paragraph, in the sum of $10 for each calendar day on which such individual was required or permitted to work in excess of eight hours or in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in subparagraph (1) of this paragraph.

(3) *Withholding for unpaid wages and liquidated damages.* The (write in the name of the Federal agency or the loan or grant recipient) shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract, or any other Federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in subparagraph (2) of this paragraph.

(4) *Subcontracts.* The contractor or subcontractor shall insert in any subcontracts the clauses set forth in subparagraphs (1) through (4) of this paragraph and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in subparagraphs (1) through (4) of this paragraph.

(c) In addition to the clauses contained in paragraph (b), in any contract subject only to the Contract Work Hours and Safety Standards Act and not to any of the other statutes cited in § 5.1, the Agency Head shall cause or require the contracting officer to insert a clause requiring that the contractor or subcontractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three years from the completion of the contract for all laborers and mechanics, including guards and watchmen, working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. Further, the Agency Head shall cause or require the contracting officer to insert in any such contract a clause providing that the records to be maintained under this paragraph shall be made available by the contractor or subcontractor for inspection, copying, or transcription by authorized representatives of the (write the name of agency) and the Department of Labor, and the contractor or subcontractor will permit such representatives to interview employees during working hours on the job.

§ 5.6 Enforcement.

(a)(1) It shall be the responsibility of the Federal agency to ascertain whether the clauses required by § 5.5 have been inserted in the contracts subject to the labor standards provisions of the Acts contained in § 5.1. Agencies which do not directly enter into such contracts shall promulgate the necessary regulations or procedures to require the recipient of the Federal assistance to insert in its contracts the provisions of § 5.5. No payment, advance, grant, loan, or guarantee of funds shall be approved by the Federal agency unless the agency insures that the clauses required by § 5.5 and the appropriate wage determination of the Secretary of Labor are contained in such contracts. Furthermore, no payment, advance, grant, loan, or guarantee of funds shall be approved by the Federal agency after the beginning of construction unless there is on file with the agency a certification by the contractor that the contractor and its subcontractors have complied with the provisions of § 5.5 or unless there is on file with the agency a certification by

the contractor that there is a substantial dispute with respect to the required provisions.

(2) The Federal agency shall make such examination of the submitted payrolls and statements of compliance as may be necessary to assure compliance with the labor standards clauses required by § 5.5 and the applicable statutes listed in § 5.1. In connection with such examination particular attention should be given to the correctness of classifications and disproportionate employment of laborers, of helpers where they are listed on the wage determination, and of apprentices or trainees registered in approved programs. Such payrolls and statements shall be preserved by the agency for a period of 3 years from the date of completion of the contract and shall be produced at the request of the Department of Labor at any time during the 3-year period.

(3) In addition to the examination of payrolls and statements required by paragraph (a)(2) of this section, the Federal agency shall cause such investigations to be made as may be necessary to assure compliance with the labor standards clauses required by § 5.5 and the applicable statutes listed in § 5.1. Investigations shall be made of all contracts with such frequency as may be necessary to assure compliance. Such investigations shall include interviews with employees, which shall be taken in confidence, and examinations of payroll data and evidence of registration and certification with respect to apprenticeship and training plans to determine the correctness of classifications and disproportionate employment of laborers, of helpers where they are listed on the wage determination, and of apprentices or trainees registered in approved programs. Such investigations shall also include evidence of fringe benefit plans and payments thereunder. Complaints of alleged violations shall be given priority.

(4) In accordance with normal operating procedures, the contracting agency may be furnished various investigatory material from the investigation files of the Department of Labor. None of the material, other than computations of back wages and liquidated damages and the summary of back wages due, may be disclosed in any manner to anyone other than Federal officials charged with administering the contract or program providing Federal assistance to the contract, without requesting the permission and views of the Department of Labor.

(5) It is the policy of the Department of Labor to protect the identity of its confidential sources and to prevent an unwarranted invasion of personal privacy. Accordingly, the identity of an employee who makes a written or oral statement as a complaint or in the course of an investigation, as well as portions of the statement which would reveal the employee's identity, shall not be disclosed in any manner to anyone other than Federal officials without the prior consent of the employee. Disclosure of employee statements shall be governed by the provisions of the "Freedom of Information Act" (5 U.S.C. 552, see 29 CFR Part 70) and the "Privacy Act of 1974" (5 U.S.C. 552a).

(b) The Administrator shall cause to be made such investigations as deemed necessary, in order to obtain compliance with the labor standards provisions of the applicable statutes listed in § 5.1, or to affirm or reject the recommendations by the Agency Head with respect to labor standards matters arising under the statutes listed in § 5.1. Federal agencies, contractors, subcontractors, sponsors, applicants, or owners shall cooperate with any authorized representative of the Department of Labor in the inspection of records, in interviews with workers, and in all other aspects of the investigations. The findings of such an investigation, including amounts found due, may not be altered or reduced without the approval of the Department of Labor. Where the underpayments disclosed by such an investigation total $1,000 or more, where there is reason to believe that the violations are aggravated or willful (or, in the case of the Davis-Bacon Act, that the contractor has disregarded its obligations to employees and subcontractors), or where liquidated damages may be assessed under the Contract Work Hours and Safety Standards Act, the Department of Labor will furnish the Federal agency an enforcement report detailing the labor standards violations disclosed by the investigation and any action taken by the contractor to correct the violative practices, including any payment of back wages. In other circumstances, the Federal agency will be furnished a letter of notification summarizing the findings of the investigation.

§ 5.7 Reports to the Secretary of Labor.

(a) *Enforcement reports.* (1) Where underpayments by a contractor or subcontractor total less than $1,000, and where there is no reason to believe that the violations are aggravated or willful (or, in the case of the Davis-Bacon Act, that the contractor has disregarded its obligations to employees and subcontractors), and where restitution has been effected and future compliance assured, the Federal agency need not submit its investigative findings and recommendations to the Administrator, unless the investigation was made at the request of the Department of Labor. In the latter case, the Federal agency shall submit a factual summary report detailing any violations including any data on the amount of restitution paid, the number of workers who received restitution, liquidated damages assessed under the Contract Work Hours and Safety Standards Act, corrective measures taken (such as "letters of notice"), and any information that may be necessary to review any recommendations for an appropriate adjustment in liquidated damages under § 5.8.

(2) Where underpayments by a contractor or subcontractor total $1,000 or more, or where there is reason to believe that the violations are aggravated or willful (or, in the case of the Davis-Bacon Act, that the contractor has disregarded its obligations to employees and subcontractors), the Federal agency shall furnish within 60 days after completion of its investigation, a detailed enforcement report to the Administrator.

(b) *Semi-annual enforcement reports.* To assist the Secretary in fulfilling the responsibilities under Reorganization Plan No. 14 of 1950, Federal agencies shall furnish to the Administrator by April 30 and October 31 of each calendar year semi-annual reports on compliance with and enforcement of the labor standards provisions of the Davis-Bacon Act and its related acts covering the periods of October 1 through March 31 and April 1 through September 30, respectively. Such reports shall be prepared in the manner prescribed in memoranda issued to Federal agencies by the Administrator.

(c) *Additional information.* Upon request, the Agency Head shall transmit to the Administrator such information available to the Agency with respect to contractors and subcontractors, their contracts, and the nature of the contract work as the Administrator may find necessary for the performance of his or her duties with respect to the labor standards provisions referred to in this part.

(d) *Contract termination.* Where a contract is terminated by reason of violations of the labor standards provisions of the statutes listed in § 5.1, a report shall be submitted promptly to the Administrator and to the Comptroller General (if the contract is subject to the Davis-Bacon Act) giving the name and address of the contractor

or subcontractor whose right to proceed has been terminated, and the name and address of the contractor or subcontractor, if any, who is to complete the work, the amount and number of the contract, and the description of the work to be performed.

§ 5.8 Liquidated damages under the Contract Work Hours and Safety Standards Act.

(a) The Contact Work Hours and Safety Standards Act requires that laborers or mechanics shall be paid wages at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of eight hours in any calendar day or forty hours in any work week. In the event of violation of this provision, the contractor and any subcontractor shall be liable for the unpaid wages and in addition for liquidated damages, computed with respect to each laborer or mechanic employed in violation of the Act, of $10, for each calendar day or workweek in which such individual was required or permitted to work without payment of required overtime wages. Any contractor or subcontractor aggrieved by the withholding of liquidated damages shall have the right to appeal to the head of the agency of the United States (or the territory or District of Columbia, as appropriate) for which the contract work was performed or for which financial assistance was provided.

(b) *Findings and recommendations of the Agency Head.* The Agency Head has the authority to review the administrative determination of liquidated damages and to issue a final order affirming the determination. It is not necessary to seek the concurrence of the Administrator but the Administration shall be advised of the action taken. Whenever the Agency Head finds that a sum of liquidated damages administratively determined to be due is incorrect or that the contractor or subcontractor violated inadvertently the provisions of the Act notwithstanding the exercise of due care upon the part of the contractor or subcontractor involved, and the amount of the liquidated damages computed for the contract is in excess of $500, the Agency Head may make recommendations to the Secretary that an appropriate adjustment in liquidated damages be made or that the contractor or subcontractor be relieved of liability for such liquidated damages. Such findings with respect to liquidated damages shall include findings with respect to any wage underpayments for which the liquidated damages are determined.

(c) The recommendations of the Agency Head for adjustment or relief from liquidated damages under paragraph (a) of this section shall be reviewed by the Administrator or an authorized representative who shall issue an order concurring in the recommendations, partially concurring in the recommendations, or rejecting the recommendations, and the reasons therefor. The order shall be the final decision of the Department of Labor, unless a petition for review is filed pursuant to Part 7 of this title, and the Wage Appeals Board in its discretion reviews such decision and order.

(d) Whenever the Agency Head finds that a sum of liquidated damages administratively determined to be due under section 104(a) of the Contract Work Hours and Safety Standards Act for a contract is $500 or less and the Agency Head finds that the sum of liquidated damages is incorrect or that the contractor or subcontractor violated inadvertently the provisions of the Contract Work Hours and Safety Standards Act notwithstanding the exercise of due care upon the part of the contractor or subcontractor involved, an appropriate adjustment may be made in such liquidated damages or the contractor or subcontractor may be relieved of liability for such liquidated damages without submitting recommendations to this effect or a report to the Department of Labor. This delegation of authority is made under section 105 of the Contract Work Hours and Safety Standards Act and has been found to be necessary and proper in the public interest to prevent undue hardship and to avoid serious impairment of the conduct of Government business.

§ 5.9 Suspension of funds.

In the event of failure or refusal of the contractor or any subcontractor to comply with the labor standards clauses contained in § 5.5 and the applicable statutes listed in § 5.1, the Federal agency, upon its own action or upon written request of an authorized representative of the Department of Labor, shall take such action as may be necessary to cause the suspension of the payment, advance or guarantee of funds until such time as the violations are discontinued or until sufficient funds are withheld to compensate employees for the wages to which they are entitled and to cover any liquidated damages which may be due.

§ 5.10 Restitution, criminal action.

(a) In cases other than those forwarded to the Attorney General of the United States under paragraph (b), of this section, where violations of the labor standards clauses contained in § 5.5 and the applicable statutes listed in § 5.1 result in underpayment of wages to employees, the Federal agency or an authorized representative of the Department of Labor shall request that restitution be made to such employees or on their behalf to plans, funds, or programs for any type of bona fide fringe benefits within the meaning of section 1(b)(2) of the Davis-Bacon Act.

(b) In cases where the Agency Head or the Administrator finds substantial evidence that such violations are willful and in violation of a criminal statute, the payment of wage underpayments shall not be requested and the matter shall be forwarded to the Attorney General of the United States for prosecution if the facts warrant. In all such cases the Administrator shall be informed simultaneously of the action taken.

§ 5.11 Disputes concerning payment of wages.

(a) This section sets forth the procedure for resolution of disputes of fact or law concerning payment of prevailing wage rates, overtime pay, or proper classification. The procedures in this section may be initiated upon the Administrator's own motion, upon referral of the dispute by a Federal agency pursuant to § 5.5(a)(9), or upon request of the contractor or subcontractor(s).

(b)(1) In the event of a dispute described in paragraph (a) of this section in which it appears that relevant facts are at issue, the Administrator will notify the affected contractor and subcontractor(s) (if any), by registered or certified mail to the last known address, of the investigation findings. If the Administrator determines that there is reasonable cause to believe that the contractor and/or subcontractor(s) should also be subject to debarment under the Davis-Bacon Act or § 5.12(a)(1), the letter will so indicate.

(2) A contractor and/or subcontractor desiring a hearing concerning the Administrator's investigative findings shall request such a hearing by letter postmarked within 30 days of the date of the Administrator's letter. The request shall set forth those findings which are in dispute and the reasons therefore, including any affirmative defenses, with respect to the violations and/or debarment, as appropriate.

(3) Upon receipt of a timely request for a hearing, the Administrator shall refer the case to the Chief Administrative Law Judge by Order of Reference, to which shall be attached a copy of the letter from the Administrator and response thereto, for designation of

an Administrative Law Judge to conduct such hearings as may be necessary to resolve the disputed matters. The hearing shall be conducted in accordance with the procedures set forth in 29 CFR Part 6.

(c)(1) In the event of a dispute described in paragraph (a) of this section in which it appears that there are no relevant facts at issue, and where there is not at that time reasonable cause to institute debarment proceedings under § 5.12, the Administrator shall notify the contractor and subcontractor(s) (if any), by registered or certified mail to the last known address, of the investigation findings, and shall issue a ruling on any issues of law known to be in dispute.

(2)(i) If the contractor and/or subcontractor(s) disagree with the factual findings of the Administrator or believe that there are relevant facts in dispute, the contractor or subcontractor(s) shall so advise the Administrator by letter postmarked within 30 days of the date of the Administrator's letter. In the response, the contractor and/or subcontractor(s) shall explain in detail the facts alleged to be in dispute and attach any supporting documentation.

(ii) Upon receipt of a response under paragraph (c)(1)(i) of this section alleging the existence of a factual dispute, the Administrator shall examine the information submitted. If the Administrator determines that there is a relevant issue of fact, the Administrator shall refer the case to the Chief Administrative Law Judge in accordance with paragraph (b)(3) of this section. If the Administrator determines that there is no relevant issue of fact, the Administrator shall so rule and advise the contractor and subcontractor(s) (if any) accordingly.

(3) If the contractor and/or subcontractor(s) desire review of the ruling issued by the Administrator under paragraphs (c)(1) or (2) of this section, the contractor and/or subcontractor(s) shall file a petition for review thereof with the Wage Appeals Board within 30 days of the date of the ruling, with a copy thereof to the Administrator. The petition for review shall be filed in accordance with Part 7 of this title.

(d) If a timely response to the Administrator's findings or ruling is not made or a timely petition for review is not filed, the Administrator's findings and/or ruling shall be final, except that with respect to debarment under the Davis-Bacon Act, the Administrator shall advise the Comptroller General of the Administrator's recommendation in accordance with § 5.12(a)(1). If a timely response or petition for review is filed, the findings and/or ruling of the Administrator shall be inoperative unless and until the decision is upheld by the Administrative Law Judge or the Wage Appeals Board.

§ 5.12 Debarment proceedings.

(a)(1) Whenever any contractor or subcontractor is found by the Secretary of Labor to be in aggravated or willful violation of the labor standards provisions of any of the applicable statutes listed in § 5.1, other than the Davis-Bacon Act, such contractor or subcontractor or any firm, corporation, partnership, or association in which such contractor or subcontractor has a substantial interest shall be ineligible for a period not to exceed 3 years (from the date of publication by the Comptroller General of the name or names of said contractor or subcontractor on the ineligible list as provided below) to receive any contracts or subcontracts subject to any of the statutes listed in § 5.1.

(2) In cases arising under contracts covered by the Davis-Bacon Act, the Administrator shall transmit to the Comptroller General the names of the contractors or subcontractors and their responsible officers, if any (and any firms in which the contractors or subcontractors are known to have an interest), who have been found to have disregarded their obligations to employees, and the recommendation of the Secretary of Labor or authorized representative regarding debarment. The Comptroller General will distribute a list to all Federal agencies giving the names of such ineligible person or firms, who shall be ineligible to be awarded any contract or subcontract of the United States or the District of Columbia and any contract or subcontract subject to the labor standards provisions of the statutes listed in § 5.1.

(b)(1) In addition to cases under which debarment action is initiated pursuant to § 5.11, whenever as a result of an investigation conducted by the Federal agency or the Department of Labor, and where the Administrator finds reasonable cause to believe that a contractor or subcontractor has committed willful or aggravated violations of the labor standards provisions of any of the statutes listed in § 5.1 (other than the Davis-Bacon Act), or has committed violations of the Davis-Bacon Act which constitute a disregard of its obligations to employees or subcontractors under section 3(a) thereof, the Administrator shall notify by registered or certified mail to the last known address, the contractor or subcontractor and its responsible officers, if any (and any firms in which the contractor or subcontractor are known to have a substantial interest), of the finding. The Administrator shall afford such contractor or subcontractor and any other parties notified an opportunity for a hearing as to whether debarment action should be taken under paragraph (a)(1) of this section or section 3(a) of the Davis-Bacon Act. The Administrator shall furnish to those notified a summary of the investigative findings. If the contractor or subcontractor or any other parties notified wish to request a hearing as to whether debarment action should be taken, such a request shall be made by letter postmarked within 30 days of the date of the letter from the Administrator, and shall set forth any findings which are in dispute and the reasons therefor, including any affirmative defenses to be raised. Upon receipt of such request for a hearing, the Administrator shall refer the case to the Chief Administrative Law Judge by Order of Reference, to which shall be attached a copy of the letter from the Administrator and the response thereto, for designation of an Administrative Law Judge to conduct such hearings as may be necessary to determine the matters in dispute. In considering debarment under any of the statutes listed in § 5.1 other than the Davis-Bacon Act, the Administrative Law Judge shall issue an order concerning whether the contractor or subcontractor is to be debarred in accordance with paragraph (a)(1) of this section. In considering debarment under the Davis-Bacon Act, the Administrative Law Judge shall issue a recommendation as to whether the contractor or subcontractor should be debarred under section 3(a) of the Act.

(2) Hearings under this section shall be conducted in accordance with 29 CFR Part 6. If no hearing is requested within 30 days of receipt of the letter from the Administrator, the Administrator's findings shall be final, except with respect to recommendations regarding debarment under the Davis-Bacon Act, as set forth in paragraph (a)(2) of this section.

(c) Any person or firm debarred under § 5.12(a)(1) may in writing request removal from the debarment list after six months from the date of publication by the Comptroller General of such person or firm's name on the ineligible list. Such a request should be directed to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, D.C. 20210, and shall contain a full explanation of the reasons why such person or firm should be removed from the ineligible list. In

cases where the contractor or subcontractor failed to make full restitution to all underpaid employees, a request for removal will not be considered until such underpayments are made. In all other cases, the Administrator will examine the facts and circumstances surrounding the violative practices which caused the debarment, and issue a decision as to whether or not such person or firm has demonstrated a current responsibility to comply with the labor standards provisions of the statutes listed in § 5.1, and therefore should be removed from the ineligible list. Among the factors to be considered in reaching such a decision are the severity of the violations, the contractor or subcontractor's attitude towards compliance, and the past compliance history of the firm. In no case will such removal be effected unless the Administrator determines after an investigation that such person or firm is in compliance with the labor standards provisions applicable to Federal contracts and Federally assisted construction work subject to any of the applicable statutes listed in § 5.1 and other labor statutes providing wage protection, such as the Service Contract Act, the Walsh-Healey Public Contracts Act, and the Fair Labor Standards Act. If the request for removal is denied, the person or firm may petition for review by the Wage Appeals Board pursuant to 29 CFR Part 7.

(d)(1) Section 3(a) of the Davis-Bacon Act provides that for a period of three years from date of publication on the ineligible list, no contract shall be awarded to any persons or firms placed on the list as a result of a finding by the Comptroller General that such persons or firms have disregarded obligations to employees and subcontractors, and further, that no contract shall be awarded to "any firm, corporation, partnership, or association in which such persons or firms have an interest." Paragraph (a)(1) of this section similarly provides that contracts subject to any of the statutes listed in § 5.1 (other than the Davis-Bacon Act) shall not be awarded to "any firm, corporation, partnership, or association" in which a contractor or subcontractor on the ineligible list pursuant to that paragraph has a "substantial interest." A finding as to whether persons or firms whose names appear on the ineligible list have an interest (or a substantial interest, as appropriate) in any other firm, corporation, partnership, or association, may be made through investigation, hearing, or otherwise.

(2)(i) The Administrator, on his/her own motion or after receipt of a request for a determination pursuant to paragraph (d)(3) of this section may make a finding on the issue of interest (or substantial interest, as appropriate).

(ii) If the Administrator determines that there may be an interest (or substantial interest, as appropriate), but finds that there is insufficient evidence to render a final ruling thereon, the Administrator may refer the issue to the Chief Administrative Law Judge in accordance with paragraph (d)(4) of this section.

(iii) If the Administrator finds that no interest (or substantial interest, as appropriate) exists, or that there is not sufficient information to warrant the initiation of an investigation, the requesting party, if any, will be so notified an no further action taken.

(iv)(A) If the Administrator finds that an interest (or substantial interest, as appropriate) exists, the person or firm affected will be notified of the Administrator's finding (by certified mail to the last known address), which shall include the reasons therefor, and such person or firm shall be afforded an opportunity to request that a hearing be held to render a decision on the issue.

(B) Such person or firm shall have 20 days from the date of the Administrator's ruling to request a hearing. A detailed statement of the reasons why the Administrator's ruling is in error, including facts alleged to be in dispute, if any, shall be submitted with the request for a hearing.

(C) If no hearing is requested within the time mentioned in paragraph (d)(2)(iv)(B) of this section, the Administrator's finding shall be final and the Administrator shall so notify the Comptroller General. If a hearing is requested, the ruling of the Administrator shall be inoperative unless and until the administrative law judge or the Wage Appeals Board issues an order that there is an interest (or substantial interest, as appropriate).

(3)(i) A request for a determination of interest (or substantial interest, as appropriate), may be made by any interested party, including contractors or prospective contractors and associations of contractors, representatives of employees, and interested Government agencies. Such a request shall be submitted in writing to the Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, D.C. 20210, to the attention of the Office of Government Contract Wage Standards.

(ii) The request shall include a statement setting forth in detail why the petitioner believes that a person or firm whose name appears on the debarred bidders list has an interest (or a substantial interest, as appropriate) in any firm, corporation, partnership, or association which is seeking or has been awarded a contract of the United States or the District of Columbia, or which is subject to any of the statutes listed in § 5.1. No particular form is prescribed for the submission of a request under this section.

(4) *Referral to the Chief Administrator Law Judge.* The Administrator, on his/her own motion under paragraph (d)(2)(ii) of this section or upon a request for hearing where the Administrator determines that relevant facts are in dispute, will by order refer the issue to the Chief Administrative Law Judge, for designation of an Administrative Law Judge who shall conduct such hearings as may be necessary to render a decision solely on the issue of interest (or substantial interest, as appropriate). Such proceedings shall be conducted in accordance with the procedures set forth at 29 CFR Part 6.

(5) *Referral to the Wage Appeals Board.* If the person or firm affected requests a hearing and the Administrator determines that relevant facts are not in dispute, the Administrator will refer the issue and the record compiled thereon to the Wage Appeals Board to render a decision solely on the issue of interest (or substantial interest, as appropriate). Such proceeding shall be conducted in accordance with the procedures set forth at 29 CFR Part 7.

§ 5.13 Rulings and interpretations.

All questions relating to the application and interpretation of wage determinations (including the classifications therein) issued pursuant to Part 1 of this subtitle, of the rules contained in this part and in Parts 1 and 3, and of the labor standards provisions of any of the statutes listed in § 5.1 shall be referred to the Administrator for appropriate ruling or interpretation. The rulings and interpretations shall be authoritative and those under the Davis-Bacon Act may be relied upon as provided for in section 10 of the Portal-to-Portal Act of 1947 (29 U.S.C. 259). Requests for such rulings and interpretations should be addressed to the Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, D.C. 20210.

§ 5.14 Variations, tolerances, and exemptions from Parts 1 and 3 of this subtitle and this part.

The Secretary of Labor may make variations, tolerances, and exemptions from the regulatory requirements of this part and those of Parts 1 and 3 of this subtitle whenever the Secretary finds that such action is necessary and proper in the public interest or to prevent injustice and undue hardship. Variations, tolerances, and exemptions may not be made from the statutory requirements of any of the statutes listed in § 5.1 unless the statute specifically provides such authority.

§ 5.15 Limitations, variations, tolerances, and exemptions under the Contract Work Hours and Safety Standards Act.

(a) *General.* Upon his or her own initiative or upon the request of any Federal agency, the Secretary of Labor may provide under section 105 of the Contract Work Hours and Safety Standards Act reasonable limitations and allow variations, tolerances, and exemptions to and from any or all provisions of that Act whenever the Secretary finds such action to be necessary and proper in the public interest to prevent injustice, or undue hardship, or to avoid serious impairment of the conduct of Government business. Any request for such action by the Secretary shall be submitted in writing, and shall set forth the reasons for which the request is made.

(b) *Exemptions.* Pursuant to section 105 of the Contract Work Hours and Safety Standards Act, the following classes of contracts are found exempt from all provisions of that Act in order to prevent injustice, undue hardship, or serious impairment of Government business:

(1) Contracts of $2,000.00 or less.

(2) Purchases and contracts other than construction contracts in the aggregate amount of $2,500.00 or less. In arriving at the aggregate amount involved, there must be included all property and services which would properly be grouped together in a single transaction and which would be included in a single advertisement for bids if the procurement were being effected by formal advertising.

(3) Contract work performed in a workplace within a foreign country or within territory under the jurisdiction of the United States other than the following: A State of the United States; the District of Columbia; Puerto Rico; the Virgin Islands; Outer Continental Shelf lands defined in the Outer Continental Shelf Lands Act (ch. 345, 67 Stat. 462); American Samoa; Guam; Wake Island; Eniwetok Atoll; Kwajalein Atoll; and Johnston Island;

(4) Agreements entered into by or on behalf of the Commodity Credit Corporation providing for the storing in or handling by commercial warehouses of wheat, corn, oats, barley, rye, grain sorghums, soybeans, flaxseed, rice, naval stores, tobacco, peanuts, dry beans, seeds, cotton, and wool.

(5) Sales of surplus power by the Tennessee Valley Authority to States, counties, municipalities, cooperative organization of citizens or farmers, corporations and other individuals pursuant to section 10 of the Tennessee Valley Authority Act of 1933 (16 U.S.C. 831i).

(c) *Tolerances.* (1) The "basic rate of pay" under section 102 of the Contract Work Hours and Safety Standards Act may be computed as an hourly equivalent to the rate on which time-and-one-half overtime compensation may be computed and paid under section 7 of the Fair Labor Standards Act of 1938, as amended (29 U.S.C. 207), as interpreted in Part 778 of this title. This tolerance is found to be necessary and proper in the public interest in order to prevent undue hardship.

(2) Concerning the tolerance provided in paragraph (c)(1) of this section, the provisions of section 7(d)(2) of the Fair Labor Standards Act and § 778.7 of this title should be noted. Under these provisions, payments for occasional periods when no work is performed, due to vacations, and similar causes are excludable from the "regular rate" under the Fair Labor Standards Act. Such payments, therefore, are also excludable from the "basic rate" under the Contract Work Hours and Safety Standards Act.

(3) See § 5.8(c) providing a tolerance subdelegating authority to the heads of agencies to make appropriate adjustments in the assessment of liquidated damages totaling $500 or less under specified circumstances.

(4)(i) Time spent in an organized program of related, supplemental instruction by laborers or mechanics employed under bona fide apprenticeship or training programs may be excluded from working time if the criteria prescribed in paragraphs (c)(4)(ii) and (iii) of this section are met.

(ii) The apprentice or trainee comes within the definition contained in § 5.2(n).

(iii) The time in question does not involve productive work or performance of the apprentice's or trainee's regular duties.

(d) *Variations.* (1) In order to prevent undue hardship, a workday consisting of a fixed and recurring 24-hour period commencing at the same time on each calendar day may be used in lieu of the calendar day in applying the daily overtime provisions of the Act to the employment of firefighters or fireguards, under the following conditions: (i) Where such employment is under a platoon system requiring such employees to remain at or within the confines of their post of duty in excess of eight hours per day in a standby or on-call status; and (ii) if the use of such alternate 24-hour day has been agreed upon between the employer and such employees or their authorized representatives before performance of the work; and (iii) provided that, in determining the daily and the weekly overtime requirements of the Act in any particular workweek of any such employee whose established workweek begins at an hour of the calendar day different from the hour when such agreed 24-hour day commences, the hours worked in excess of 8 hours in any such 24-hour day shall be counted in the established workweek (of 168 hours commencing at the same time each week) in which such hours are actually worked.

(2) In the event of failure or refusal of the contractor or any subcontractor to comply with overtime pay requirements of the Contract Work Hours and Safety Standards Act, if the funds withheld by Federal agencies for the violations are not sufficient to pay fully both the unpaid wages due laborers and mechanics and the liquidated damages due the United States, the available funds shall be used first to compensate the laborers and mechanics for the wages to which they are entitled (or an equitable portion thereof when the funds are not adequate for this purpose); and the balance, if any, shall be used for the payment of liquidated damages.

(3) In the performance of any contract entered into pursuant to the provisions of 38 U.S.C. 620 to provide nursing home care of veterans, no contractor or subcontractor under such contract shall be deemed in violation of Section 102 of the Contract Work Hours and Safety Standards Act by virtue of failure to pay the overtime wages required by such section for work in excess of 8 hours in any calendar day or 40 hours in the workweek to any individual employed by an establishment which is an institution primarily engaged in the care of the sick, the aged, or the mentally ill or defective who reside on the premises if, pursuant to an agreement or understanding arrived at between the employer and the employee before performance of the work, a work period of 14 consecutive days is accepted in lieu of the workweek of 7 consecutive

days for the purpose of overtime compensation and if such individual receives compensation for employment in excess of 8 hours in any workday and in excess of 80 hours in such 14-day period at a rate not less than 1½ times the regular rate at which the individual is employed, computed in accordance with the requirements of the Fair Labor Standards Act of 1938, as amended.

§ 5.16 Training plans approved or recognized by the Department of Labor prior to August 20, 1975.

(a) Notwithstanding the provisions of § 5.5(a)(4)(ii) relating to the utilization of trainees on Federal and federally assisted construction, no contractor shall be required to obtain approval of a training program which, prior to August 20, 1975, was approved by the Department of Labor for purposes of the Davis-Bacon and Related Acts, was established by agreement of organized labor and management and therefore recognized by the Department, and/or was recognized by the Department under Executive Order 11246, as amended. A copy of the program and evidence of its prior approval, if applicable shall be submitted to the Employment and Training Administration, Bureau of Apprenticeship and Training, which shall certify such prior approval or recognition of the program. In every other respect, the provisions of § 5.5(a)(4)(ii)—including those relating to registration of trainees, permissible ratios, and wage rates to be paid—shall apply to these programs.

(b) Every trainee employed on a contract executed on and after August 20, 1975, in one of the above training programs must be individually registered in the program in accordance with BAT procedures, and must be paid at the rate specified in the program for the level of progress. Any such employee listed on the payroll at a trainee rate who is not registered and participating in a program certified by BAT pursuant to this section, or approved and certified by BAT pursuant to § 5.5(a)(4)(ii), must be paid the wage rate determined by the Secretary of Labor for the classification of work actually performed. The ratio of trainees to journeymen shall not be greater than permitted by the terms of the program.

(c) In the event a program which was recognized or approved prior to August 20, 1975, is modified, revised, extended, or renewed, the changes in the program or its renewal must be approved by the Bureau of Apprenticeship and Training before they may be placed into effect.

§ 5.17 Withdrawal of approval of a training program.

If at any time the Employment and Training Administration, Bureau of Apprenticeship and Training determines, after opportunity for a hearing, that the standards of any program, whether it is one recognized or approved prior to August 20, 1975, or a program subsequently approved, have not been complied with, or that such a program fails to provide adequate training for participants, a contractor will no longer be permitted to utilize trainees at less than the predetermined rate for the classification of work actually performed until an acceptable program is approved. If the contractor files an appeal pursuant to § 5.18 within 30 days of receipt of a certified letter withdrawing the Bureau of Apprenticeship and Training's approval, the effect of the withdrawal of approval of the program will be delayed until a decision is rendered on the appeal.

§ 5.18 Appeal from Bureau of Apprenticeship and Training's decisions.

(a) Appeal from a withdrawal of approval of a training program by the Bureau of Apprenticeship and Training pursuant to § 5.17 may be made to the Assistant Secretary for Employment and Training, U.S. Department of Labor, Washington, D.C. 20210. Appeals brought more than 30 days after the contractor's receipt of notice of withdrawal of approval of a program will be processed, but the effects of withdrawal of approval of the program will not be delayed during consideration of such an appeal.

(b) Appeal from disapproval of new training programs whose approval is requested pursuant to these regulations may be made to the Assistant Secretary for Employment and Training, U.S. Department of Labor, Washington, D.C. 20210.

(c) The Assistant Secretary for Employment and Training (or designee) shall examine the complete record on the basis of which the denial was issued, including the application for the program, supporting data, Bureau of Apprenticeship and Training decision, and any written argument which the applicant may submit, and any reply thereto by the Bureau of Apprenticeship and Training. Copies of any such reply shall be served on the applicant. The Assistant Secretary, or designee, shall approve or disapprove the decision of the Bureau or shall advise what modifications are necessary for approval of the program. This decision by the Assistant Secretary or designee shall be final.

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January 16, 1981

Part X

Department of Labor

Office of the Secretary

Rules of Practice for Administrative Proceedings Enforcing Labor Standards in Federal and Federally Assisted Construction Contracts and Federal Service Contracts; Final Rule

Office of the Secretary

29 CFR Part 6

Rules of Practice for Administrative Proceedings Enforcing Labor Standards in Federal and Federally Assisted Construction Contracts and Federal Service Contracts

AGENCY: Department of Labor.

ACTION: Final rule.

SUMMARY: The revisions to this part are intended to provide administrative hearings in enforcement cases and substantial interest proceedings involving the Davis-Bacon and related acts, the Service Contract Act, and the Contract Work Hours and Safety Standards Act, and substantial variance and arm's length proceedings under Section 4(c) of the Service Contract Act. These revisions are designed to make such proceedings as uniform as possible. A procedure for appeal to the Secretary is provided instead of appeal to a Board, which had been proposed as a new Part 5 to 29 CFR.

EFFECTIVE DATE: February 17, 1981.

FOR FURTHER INFORMATION CONTACT: Gail V. Coleman, Counsel for Contract Labor Standards, General Legal Services, Office of the Solicitor, U.S. Department of Labor, Room N2464, 200 Constitution Ave., NW., Washington, D.C. 20210. Phone 202-523-8266.

SUPPLEMENTARY INFORMATION: On April 22, 1980, a proposal was published in the Federal Register (45 FR 27400) to make revisions to 29 CFR Part 6, Rules of Practice for Administrative Proceedings Enforcing Labor Standards in Federal and Federally Assisted Construction Contracts and Federal Service Contracts. As stated in the proposal, its purpose was primarily to make more uniform the proceedings for enforcement under the various labor standards statutes and to provide more expedited hearings under Section 4(c) of the Service Contract Act.

Interested persons were afforded the opportunity to submit comments to the Office of the Solicitor by May 27, 1980. Comments were received from eight interested parties, including the Department of Defense, the National Aeronautics and Space Administration, the Philadelphia Area Office of the Department of Housing and Urban Development, the American Federation of Labor and Congress of Industrial Organizations (AFL-CIO), the International Brotherhood of Electrical Workers, the Building and Construction Trades Department, AFL-CIO, the Associated Builders and Contractors, Inc. (ABC), and the Council of Defense and Space Industry Associations (CODSIA).

The following is an analysis of all the principal comments received and the corresponding changes made to the proposed rule. Each submission has been thoroughly reviewed and each criticism and suggestion has been given careful consideration. For each section and, where appropriate, subsection of the final rule, the analysis contains a description of the major comments and recommendations, the Department's findings as to whether or not suggested changes to the proposed rule are appropriate, and the substantive changes herein adopted.

The Building and Construction Trades Department, CODSIA, and the Philadelphia Area Office of the Department of Housing and Urban Development commented generally in favor of the proposed regulations, which are designed to ensure due process resolution of disputes.

The International Brotherhood of Electrical Workers and the Building and Construction Trades Department objected to the different standard for debarment of affiliated companies under the Davis-Bacon Act and the related acts, and suggested that the standard in § 6.2(d) and in Subparts C and D should be "interest" rather than "substantial interest." The regulations adopt the "interest" standard for debarment under the Davis-Bacon Act because it is the standard imposed by the statute. In determining both "interest" and "substantial interest" the Department looks to each situation on a case by case basis and considers all the circumstances, including such factors as the person's involvement with the firm's daily operations and policy decisions and the person's ownership interest in the firm. Although no change is made in the standard for debarment, the definition of "Respondent" is amended to include the Davis-Bacon statutory standard.

The Department of Defense suggested that service in Section 6.3 should be by certified mail. The Department of Labor in fact serves the complaint under the Service Contract Act and the notification letter under Davis-Bacon procedures (see 29 CFR 5.11 and 5.12) by certified or registered mail because of the legal ramifications of failure to respond to these documents. However, regular mail is the normal method of service of briefs, etc., and is more expeditious than certified mail. Therefore no change is adopted except to make it clear that filing is accomplished upon service.

The International Brotherhood of Electrical Workers suggested the addition of the Davis-Bacon Act to the subpoena provision in § 6.7. No change can be made in this provision since there is no statutory basis for administrative subpoenas under the Act. However, the concern is partially accommodated by § 6.8, concerning production of documents and witnesses.

The Department of Defense suggested that production of documents and witnesses should only be available against parties to the proceeding. However, this is already implicit in the regulation, which defines parties as the Department of Labor and the respondents. Section 6.8 has been amended to make it clear that confidential statements may not be disclosed prior to trial without the employee's consent.

The National Aeronautics and Space Administration expressed concern over the provision of proposed § 6.12(b) that permitted a party to appeal a decision although the party did not appear at the hearing. To address its concern, the regulation has been amended to limit appeal rights under these circumstances to non-evidentiary issues.

Because agency recommendations for waiver of liquidated damages under the Contract Work Hours and Safety Standards Act are not received until after violations are finally determined, § 6.26 has been amended to eliminate the possibility that the complaint might state that such a recommendation has been received. Appeals regarding the Department's actions in response to such agency recommendations will be heard by the Wage Appeals Board to provide uniform decisions, rather than two forums.

CODSIA suggested that § 6.26 should be amended to provide that the name of a contractor found to have violated the Service Contract Act would not be sent to the Comptroller General to be put on the ineligibility list until after federal court proceedings are completed. This suggestion is contrary to the mandate of Section 5(a) of the Service Contract Act, which requires that the violator's name be sent to the Comptroller General not later than 90 days after a finding of violation. However, § 6.24 and corresponding provisions have been amended to make it clear that the administrative law judge's decision is inoperative while it is being appealed.

The ABC suggested that Subpart C, concerning hearings under the Davis-Bacon and related acts, should contain a provision defining the burden of proof. Although the Department agrees in general that the initial burden is on it to establish the existence of violations, the

nature of the burden varies under the circumstances, particularly where the contractor has not kept required records. Furthermore, the burden of proof is a legal issue, rather than procedural. Therefore, this suggestion is not adopted.

The International Brotherhood of Electrical Workers suggested that employees should be parties to enforcement proceedings under Subpart C and suggested that § 6.30 be so amended. In the Department's view this change is not appropriate since the employees' interests are represented by the Department. However, employees are normally notified of such proceedings because their presence as witnesses may be necessary.

The Building and Construction Trades Department and the International Brotherhood of Electrical Workers commented on the delays that may be inherent in the debarment procedures in Subpart C. It is the Department of Labor's opinion that elimination of the appeal to the Administrator in the current procedure will result in a net decrease in the time to a final decision. However, the Department is looking into the possibility of an interim debarment mechanism similar to that of other agencies, as suggested by the Building Trades.

CODSIA opposed the provision in § 6.31 that the scope of the hearing can be expanded to include debarment. It suggested that the regulation should require that before such an amendment may be made additional substantial violations must be brought to light for the first time at the hearing. Protection against misuse of the provision is contained in the regulation since the approval of the administrative law judge is required, the amendment cannot prejudice the opposing party's presentation on the merits, and a continuance in the hearing may be granted if necessary to allow the party to address the charges. Evidence that violations previously uncovered are aggravated or willful may often be disclosed just prior to or at the hearing. Therefore the provision proposed is necessary to effectuate the Act and no change is recommended.

The ABC was pleased to see that Section 6.33(b) administrative law judge decisions are final if not appealed, rather than recommendations to the Wage and Hour Division. However, it suggested that § 6.33(b) specifically require issuance of findings of fact and conclusions of law. Although in the Department's view this requirement was implicit in the requirement for "a statement of findings and conclusions," it has been made explicit here and elsewhere in this part.

The ABC commented on the different time limits for filing by the parties of proposed findings and conclusions by the parties and petitions for review in Subparts C and D (§§ 6.23 and 6.24, 6.44 and 6.45) and suggested a uniform longer period of 60 days throughout. Relatively short time periods are provided in Subpart D because of the necessity of providing prompt notice to contracting agencies of firms found ineligible as a result of the existence of a substantial interest in the firm by a debarred contractor. The Department believes the time periods in Subparts C and D are generally sufficient, but notes that under Subpart C, additional time may be allowed. In the Department's view, 60 days as a general rule is unnecessary.

Because of the possibility of a good faith dispute regarding the violations, the Department of Defense opposed the provision in § 6.33(b)(2) that relief from debarment under the Davis-Bacon Act be conditioned upon payment of back wages. Since debarment is not effectuated until after the completion of administrative appeals on the issue of liability for back wages, this suggestion is not accepted.

In response to the comment of the Philadelphia Area Office of the Department of Housing and Urban Development, no specific time limit is put on the administrative law judge's decision under § 6.33 because there is no constraint imposed by procurement deadlines, and because of the complexity of some cases.

With regard to proceedings under Subpart E to determine a substantial variance pursuant to Section 4(c) of the Service Contract Act, the National Aeronautics and Space Administration commented generally that the procedures in Subpart E are potentially more formal and more time-consuming (if an appeal is taken to the Board of Service Contract Appeals) than in the current regulations. Contrary to NASA's view, it is the Department's opinion that hearings on the record are required by Section 4(c). Furthermore, because such proceedings often inherently involve substantive legal issues, an appellate forum appears to be necessary. To the extent possible the proposed and final regulations tighten the time frames and provide for more expeditious hearings. Time restrictions have not been placed on the Administrator's own decisions because further investigation is often required, although it is the Department's intent to act quickly with a view towards accommodating procurement deadlines. As discussed under new Subpart F below, it has been determined that appeals shall be to the Secretary rather than to a new board. In our view, this should result in more expeditious decisionmaking.

The AFL-CIO opposed what it perceived as two separate procedures for determining "substantial variance" and "arm's length" negotiations pursuant to Section 4(c) of the Act. To the contrary, § 4.11(d) of 29 CFR clearly states that where both questions are at issue, only one proceeding will be held.

The Department of Defense has suggested that contractors known to be desirous of bidding on a contract be eliminated from the list of parties notified in § 6.51(a). The Department of Labor agrees that as proposed the provision is overly broad, and therefore it has been amended to include only contractors known or believed to be interested in the issue, as well as other interested parties.

The AFL-CIO suggested the authorized representative of affected Federal employees should receive the Order of Reference pursuant to § 6.51(a). It is not anticipated that Federal employees would be affected by these proceedings since Section 4(c) of the Act concerns only contracts where there was a predecessor contract, not contract work previously performed by Federal employees. However, the section has been amended to include other affected parties known to be interested.

Section 6.54 has been amended to expressly preclude disclosure of source data collected by the Bureau of Labor Statistics as a result of comments concerning this issue on proposed 29 CFR Part 8 by several labor organizations.

Comments were received in support of and in opposition to the establishment of a Board of Service Contract Appeals, proposed as a new 29 CFR Part 8 (45 FR 27410, April 22, 1980). Those in favor were pleased to see an independent, appellate procedure. Those opposed were concerned that a hearing procedure for wage determinations would result in a court decision such as that in *Wirtz* v. *Baldor Electric Co.*, 337 F.2d 518 (D.C. Cir. 1963) (arising under the Walsh-Healey Public Contracts Act), and the cessation of wage determinations under the Service Contract Act. Other concerns were the length of time and cumbersomeness of the process, and a view that another Government body was unnecessary. Although the Department disagrees strongly with the analyses of *Baldor*, which was based on a provision in the Walsh-Healey Act, not contained in SCA, which required hearings on the record, the Department shares the other concerns expressed. Accordingly, it has

been determined to substitute for the proposed Board a formal appeal procedure to the Secretary. This procedure, which has been incorporated in a new Subpart F, will provide due process review of issues such as wage determinations and coverage, which have not previously been subject to any appeal procedure. This change was adopted to expedite the review process, thereby reducing administrative delays in the procurement process, and to further the goal of controlling the proliferation of Governmental bodies.

Accordingly, Part 8 has been withdrawn and a new Subpart F is being issued in substitution, to provide for administrative appeals of Service Contract Act matters to the Secretary. Appeals are permitted from decisions of administrative law judges pursuant to Subparts B, D and E of this part, and from any final decisions of the Administrator of the Wage and Hour Division (including wage determinations, additional classification actions, coverage decisions, etc.).

Subpart F adopts the same general framework as the procedures proposed for the Board. The comments received on the corresponding sections of proposed Part 8 are discussed herein.

The Department of Defense, NASA, CODSIA and NCTSI questioned the scope of the appeals permitted (see proposed § 8.1). Appeals on all final decisions are permitted pursuant to § 6.62, including conformance actions and rulings on issues such as the application wage determinations and of the Act (e.g., coverage). In addition, the Wage-Hour Administrator or authorized representative is substituted for the Department of Labor in this section to make it clear that only official agency actions may be appealed. This is not intended, however, to preclude review of decisions of the Assistant Secretary for Employment Standards acting in the stead of the Administrator.

NASA suggested that review by the Board should not be discretionary. The procedures adopted for appeals to the Secretary provide a right of review.

NCTSI suggested that some factfinding should be provided (see proposed § 8.1(e)). It has been the Department's experience that factfinding is not appropriate before an appellate body, and further that it is necessary for the Wage and Hour Division to evaluate data before it is submitted on appeal since the data may affect its decision and obviate the necessity of appeal. Therefore no such change has been made to § 6.61(d).

The AFGE and the Research Department of the AFL–CIO suggested that Federal employees should be parties able to petition for review of wage determinations (see proposed § 8.2(5)). Since Federal employees frequently have no substantial interest in a wage determination, they have not been specifically added to § 6.61(a). However, a general provision concerning parties whom the Secretary finds to have a sufficient interest in the wage determination has been added, which would presumably include Federal employees in appropriate cases.

The Department of Defense suggested that 30 days rather than 15 days should be allowed to appeal a wage determination (see proposed § 6.3(a)). In the Department's view this suggestion does not permit the expedited decisionmaking required by the procurement process. However, § 6.61(c) does allow 20 days to appeal. It is believed that this time is sufficient to prepare a petition and also accommodate procurement deadlines.

NASA, on the other hand, commented on the delays inherent in the Board procedure. To make it clear that the Secretary will act with a view to applicable procurement deadlines, appropriate provisions have been added to §§ 6.65 and 6.66.

NCTSI and the Department of Defense suggested that wage determinations be reviewable after contract award and be applicable to the contract (see proposed § 8.6(b)). The regulations provide (§ 6.61(e)(2)) that the Secretary in his/her discretion may review a case involving significant issues of general applicability after award, for application to future procurements where a contracting agency has incorporated the wage determination required by 29 CFR 4.4 and 4.5 into the contract specifications, changing that wage determination would be contrary to basic principles of competitive bidding and contrary to a long line of Wage Appeals Board precedent. Therefore the suggestions have not been adopted.

NASA suggested that proposed § 6.6(c) should include situations where it has been found that no substantial variance exists. This provision, now contained in § 6.61(e), concerns review of prevailing wage determinations, not determinations regarding the existence of a substantial variance. Appeals may be filed of determinations that no substantial variance exists, even if made after award, provided the time limitations of 29 CFR 4.10 have been met. See § 6.57.

Because of the concerns expressed by the various labor organizations regarding the *Baldor* decision, a provision has been added to § 6.64 to prohibit the inclusion of BLS source data in the wage determination record submitted to the Secretary. NCTSI also expressed concern over protection of proprietary and commercial information. The Department is sympathetic to this concern but at this time cannot envision a method of protecting such information and ensuring the ability to challenge the basis of a wage determination, when the data has been collected by Wage and Hour. Presumably the Secretary, if appropriate, could protect certain proprietary data, subject to the constraints of the Freedom of Information Act and 29 CFR Part 70, but it does not appear to be appropriate to make further specific changes to the regulations at this time.

The Department of Defense suggested that regulations of the Department of Labor should be reviewable or at least subject to interpretation (see proposed § 8.1(b)). It is the Department of Labor's view that duly promulgated regulations must be observed in any administrative proceedings unless amended pursuant to rulemaking procedures. The Secretary of course has the authority to interpret the regulations, and § 6.66 contains no limitation on this authority.

As suggested by the Department of Defense, the standard of review of findings of fact (proposed § 8.9(b)) has been changed in § 6.66 from "clearly erroneous" to "not supported by substantial evidence."

In addition to the above, other minor editorial and language changes have been made in various sections.

Because Part 6 is procedural in character, it was determined that it is not a significant regulation within the meaning of Executive Order 12044 and the Department's guidelines. Accordingly, no regulatory analysis was prepared.

This rule was drafted under the supervision and direction of Carin Ann Clauss, Solicitor of Labor, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, D.C. 20210.

29 CFR Part 6 is revised as set forth below.

Signed at Washington, D.C. this 12th day of January 1981.

Ray Marshall,

Secretary of Labor.

PART 6—RULES OF PRACTICE FOR ADMINISTRATIVE PROCEEDINGS ENFORCING LABOR STANDARDS IN FEDERAL AND FEDERALLY ASSISTED CONSTRUCTION CONTRACTS AND FEDERAL SERVICE CONTRACTS

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Authority: Secs. 4 and 5, 79 Stat. 1034, 1035 as amended by 86 Stat. 789, 790, 41 U.S.C. 353 and 354; 5 U.S.C. 301; Reorg. Plan No. 14 of 1950, 64 Stat. 1267, 5 U.S.C. Appendix; 48 Stat. 1494, as amended by 49 Stat. 1011, 76 Stat. 238, 40 U.S.C. 276a–276a–7; 76 Stat. 357–358, 40 U.S.C. 327–332; 48 Stat. 948, as amended by 63 Stat. 108, 72 Stat. 967, 40 U.S.C. 276c.

Subpart A—General

§ 6.1 Applicability of rules.

This part provides the rules of practice for administrative proceedings under the Service Contract Act, the Davis-Bacon Act and related statutes listed in § 5.1 of Part 5 of this title which require payment of wages determined in accordance with the Davis-Bacon Act, the Contract Work Hours and Safety Standards Act, and the Copeland Act. See Parts 4 and 5 of this title.

§ 6.2 Definitions.

(a) "Administrator" means the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, or authorized representative.

(b) "Associate Solicitor" means the Associate Solicitor for General Legal Services, Office of the Solicitor, U.S. Department of Labor, Washington, D.C. 20210.

(c) "Chief Administrative Law Judge" means the Chief Administrative Law Judge, U.S. Department of Labor, 1111 20th Street, N.W., Suite 700, Washington, D.C. 20036.

(d) "Respondent" means the contractor, subcontractor, person alleged to be responsible under the contract or subcontract, and/or any firm, corporation, partnership, or association in which such person or firm is alleged to have a substantial interest (or interest if the proceeding is under the Davis-Bacon Act) against whom the proceedings are brought.

§ 6.3 Service; copies of documents and pleadings.

(a) *Manner of service.* Service upon any party shall be made by the party filing the pleading or document by delivering a copy or mailing a copy to the last known address. When a party is represented by an attorney, the service should be upon the attorney. For purposes of this part, filing is accomplished upon the day of service, by mail or otherwise.

(b) *Proof of service.* A certificate of the person serving the pleading or other document by personal delivery or by mailing, setting forth the manner of said service shall be proof of the service. Where service is made by mail, service shall be complete upon mailing.

(c) *Service upon Department, number of copies of pleading or other documents.* An original and three copies of all pleadings and other documents shall be filed with the Department of Labor: The original and one copy with the Administrative Law Judge before whom the case is pending, one copy with the attorney representing the Department during the hearing, and one copy with the Associate Solicitor.

§ 6.4 Computation of time.

Saturdays, Sundays, and holidays shall be included in computing the time allowed for filing any document or paper under this part, but when such time expires on such a day, such period shall be extended to include the next following day which is not a Saturday, Sunday or holiday.

§ 6.5 Motions and requests.

Motions or requests on any matter, including discovery, shall be filed with the Chief Administrative Law Judge, except that those made during the course of the hearing shall be filed with the Administrative Law Judge or shall be stated orally and made part of the transcript. Each motion or request shall state the particular order, ruling, or action desired, and the grounds therefor. The Administrative Law Judge is authorized to rule upon all motions or requests filed or made prior to the filing of the decision.

§ 6.6 Depositions.

(a) *When, how, and by whom taken.* For good cause shown, the testimony of any witness may be taken by deposition in any proceeding, after a complaint has been filed. Depositions may be taken upon written interrogatories or orally before any person having power to administer oaths.

(b) *Application.* Any party desiring to take the deposition of a witness shall make application in writing to the Administrative Law Judge, setting forth the reasons why such deposition should be taken; the time when, the place where, and the name and address of the person before whom the deposition is to be taken; the name and address of each witness; and the subject matter concerning which each witness is expected to testify.

(c) *Notice.* Such notice as the Administrative Law Judge shall order shall be given for the taking of a

deposition, but this shall not be less than 5 days' written notice when the deposition is to be taken within the United States and not less than 20 days' written notice when the deposition is to be taken elsewhere.

(d) *Taking and receiving in evidence.* Each witness testifying upon deposition shall be sworn, and, with respect to oral depositions, the adverse party shall have the right to cross-examine. The questions propounded and the answers thereto, together with all objections made, shall be reduced to writing, read to and subscribed by the witness, and certified by the officer authorized to administer oaths. Thereafter, the officer shall seal the deposition, with two copies thereof, in an envelope and mail the same by registered mail to the Administrative Law Judge. Subject to such objections to the questions and answers as were noted at the time of taking the deposition and would be valid were the witness personally present and testifying, such deposition may be read and offered in evidence by the party taking it as against any party who was present or represented at the taking of the deposition or who had due notice thereof. No part of a deposition shall be admitted in evidence except for the limited purpose of impeachment, unless there is a showing that the witness is unavailable to testify (including a witness who cannot be subpoenaed or who is located outside of the State in which the hearing is held) or unless the parties stipulate regarding use of the deposition.

§ 6.7 Subpoenas.

All applications under the Service Contact Act for subpoenas ad testificandum and subpoenas duces tecum shall be made in writing to the Administrative Law Judge. Application for subpoenas duces tecum shall specify as exactly as possible the documents to be produced, showing their general relevancy and reasonable scope.

§ 6.8 Production of documents and witnesses.

The parties, who shall be deemed to be the Department of Labor and the respondent(s), may serve on any other party a request to produce documents or witnesses in the control of the party served, setting forth with particularity the documents or witnesses requested. The party served shall have 15 days to respond or object thereto unless a shorter or longer time is ordered by the Administrative Law Judge. The parties shall produce documents and witnesses to which no privilege attaches which are in the control of the party, if so ordered by the Administrative Law Judge upon motion therefor by a party. If a privilege is claimed, it must be specifically claimed in writing prior to the hearing or orally at the hearing, including the reasons therefor. In no event shall a statement taken in confidence by the Department of Labor or other Federal agency be ordered to be produced prior to the date of testimony at trial of the person whose statement is at issue unless the consent of such person has been obtained.

§ 6.9 Witnesses and fees.

Witnesses subpoenaed by any party shall be paid the same fees and mileage as are paid for like services in the District Court of the United States. The witness fees and mileage shall be paid by the party at whose instance the witnesses appear.

§ 6.10 Administrative Law Judge.

(a) *Who presides.* All hearings shall be presided over by an Administrative Law Judge appointed under section 11 of the Administrative Procedure Act.

(b) *How assigned.* The presiding Administrative Law Judge shall be designated by the Chief Administrative Law Judge.

(c) *Powers.* Administrative Law Judges shall have all powers necessary to the conduct of fair and impartial hearings, including the following:

(1) To administer oaths and affirmations;

(2) To issue subpoenas in proceedings under the Service Contract Act upon proper applications as provided in § 6.7 of this title;

(3) To rule upon offers of proof and receive relevant evidence;

(4) To take or cause to be taken depositions and to determine their scope;

(5) To regulate the course of the hearing and the conduct of the parties and their counsel therein;

(6) To hold conferences for the settlement or simplification of the issues by consent of the parties;

(7) To consider and rule upon procedural requests;

(8) To make and file decisions in conformity with this part;

(9) To take any action authorized by the rules in this part or in conformance with the Administrative Procedure Act.

(d) *Consultation.* The Administrative Law Judge shall not consult any person or party on any fact in issue unless upon notice and opportunity for all parties to participate.

(e) *Disqualification of Administrative Law Judge.* (1) When an Administrative Law Judge deems himself/herself disqualified to preside in a particular proceeding, he/she shall withdraw therefrom by notice on the record directed to the Chief Administrative Law Judge.

(2) Whenever any party believes the Administrative Law Judge for any reason to be disqualified to preside, or to continue to preside, in a particular proceeding, that party shall file with the Chief Administrative Law Judge a motion to disqualify and remove such Administrative Law Judge, such motion to be supported by affidavits setting forth the alleged grounds for disqualification. The Chief Administrative Law Judge shall rule upon the motion.

(f) *Contemptuous conduct: failure or refusal of a witness to appear or answer.* Contemptuous conduct at any hearing before an Administrative Law Judge shall be ground for exclusion from the hearing. The failure or refusal of a witness to appear at any hearing when so ordered by the Administrative Law Judge, or to answer any question which has been ruled to be proper, shall be ground for the action provided in section 5 of the Act of June 30, 1936 (41 U.S.C. 39) and, in the discretion of the Administrative Law Judge, for striking out all or part of the testimony which may have been given by such witness.

§ 6.11 Prehearing conferences.

(a) Upon his/her own motion or the motion of the parties, the Administrative Law Judge may direct the parties or their counsel to meet with the Administrative Law Judge for a conference to consider:

(1) Simplification of the issues;

(2) Necessity or desirability of amendments to pleadings for purposes of clarification, simplification, or limitation;

(3) Stipulations, admissions of fact and contents and authenticity of documents;

(4) Limitation of the number of expert witnesses; and

(5) Such other matters as may tend to expedite the disposition of the proceeding.

(b) The record shall show the matters disposed of by order and by agreement in such pretrial conferences. The subsequent course of the proceedings shall be controlled by such action.

§ 6.12 Appearances.

(a) *Representation.* The parties may appear in person, by counsel, or otherwise.

(b) *Failure to appear.* In the event that a party appears at the hearing and no party appears for the opposing side, the party who is present shall have an election to present evidence in whole or such portion thereof sufficient to make a prima facie case before the

Administrative Law Judge. Failure to appear at a hearing shall not be deemed to be a waiver of the right to be served with a copy of the Administrative Law Judge's decision and to file a petition for review thereof with the Secretary or the Wage Appeals Board, as appropriate. *Provided, however,* That no such petition for review may be filed concerning any findings of fact of the Administrative Law Judge or concerning the admissibility of evidence.

§ 6.13 Hearing.

(a) *Order of proceeding.* Except as may be determined otherwise by the Administrative Law Judge or where the only issue in the proceeding is the existence of unusual circumstances under section 5(a) of the Service Contract Act, counsel for the Department of Labor shall proceed first at the hearing.

(b) *Evidence*—(1) *In general.* The testimony of witnesses shall be upon oath or affirmation administered by the Administrative Law Judge and shall be subject to such cross-examination as may be required for a full and true disclosure of the facts. The Administrative Law Judge may exclude evidence which is immaterial, irrelevant, or unduly repetitious.

(2) *Objections.* If a party objects to the admission or rejection of any evidence or to the limitation of the scope of any examination or cross-examination or the failure to limit such scope, the party shall state briefly the grounds for such objection. Rulings on all objections shall appear in the record. Only objections made before the Administrative Law Judge may be relied upon subsequently in the proceeding. Formal exception to an adverse ruling is not required.

(c) *Official notice.* Official notice may be taken of any material fact not appearing in evidence in the record, which is among the traditional matters of judicial notice and also concerning which the Department of Labor by reason of its functions is presumed to be expert: *Provided,* That the parties shall be given adequate notice at the hearing or by reference in the Administrative Law Judge's decision of the matters so noticed, and shall be given adequate opportunity to show the contrary.

(d) *Transcript.* A transcript shall be made of the proceeding.

§ 6.14 Transmission of record.

If a petition for review of the Administrative Law Judge's decision is filed with the Secretary or the Wage Appeals Board, the Chief Administrative Law Judge shall promptly transmit the record of the proceeding. The record shall include: The pleadings, motions, and requests filed in written form, rulings thereon, the transcript of the testimony and proceeding taken at the hearing, together with the exhibits admitted in evidence, and documents or papers filed in connection with prehearing conferences, such proposed findings of fact, conclusions of law, orders, and supporting reasons, as may have been filed, the Administrative Law Judge's decision, and such other documents as may have been filed in the proceeding. If a petition for review is not filed within the time prescribed in this part, the Chief Administrative Law Judge shall so advise the Administrator.

Subpart B—Enforcement Proceedings Under the Service Contract Act (and Under the Contract Work Hours and Safety Standards Act for Contracts Subject to the Service Contract Act)

§ 6.20 Complaints.

(a) Enforcement proceedings under the Service Contract Act and under the Contract Work Hours and Safety Standards Act for contracts subject to the Service Contract Act, may be instituted by the Deputy Solicitor or a Regional Solicitor by issuing a complaint and causing the complaint to be served upon the respondent.

(b) The complaint shall contain a clear and concise factual statement of the grounds for relief and the relief requested.

(c) The Administrative Law Judge shall notify the parties of the time and place for a hearing.

§ 6.21 Answer.

(a) Within 20 days after the service of the complaint, the respondent shall file an answer with the Chief Administrative Law Judge. The answer shall be signed by the respondent or his/her attorney.

(b) The answer shall (1) contain a statement of the facts which constitute the grounds of defense, and shall specifically admit, explain, or deny, each of the allegations of the complaint unless the respondent is without knowledge, in which case the answer shall so state; or (2) state that the respondent admits all of the allegations of the complaint. The answer may contain a waiver of hearing. Failure to file an answer to or plead specifically to any allegation of the complaint shall constitute an admission of such allegation.

(c) Failure to file an answer shall constitute grounds for waiver of hearing and entry of a default judgment unless respondent shows good cause for such failure to file. In preparing the decision of default judgment the Administrative Law Judge shall adopt as findings of fact the material facts alleged in the complaint and shall order the appropriate relief and/or sanctions.

§ 6.22 Amendments to pleadings.

At any time prior to the close of the hearing record, the complaint or answer may be amended with the permission of the Administrative Law Judge and on such terms as he/she may approve. Such amendments shall be allowed when justice and the presentation of the merits are served thereby, provided there is no prejudice to the objecting party's presentation on the merits. A continuance in the hearing may be granted or the record left open to enable the new allegations to be addressed.

§ 6.23 Consent findings and order.

(a) At any time prior to the receipt of evidence or, at the discretion of the Administrative Law Judge, prior to the issuance of the decision of the Administrative Law Judge, the parties may enter into consent findings and an order disposing of the proceedings in whole or in part.

(b) Any agreement containing consent findings and an order disposing of a proceeding in whole or in part shall also provide:

(1) That the order shall have the same force and effect as an order made after full hearing;

(2) That the entire record on which any order may be based shall consist solely of the complaint and the agreement;

(3) A waiver of any further procedural steps before the Administrative Law Judge and Secretary regarding those matters which are the subject of the agreement; and

(4) A waiver of any right to challenge or contest the validity of the findings and order entered into in accordance with the agreement.

(c) Within 30 days after receipt of an agreement containing consent findings and an order disposing of the disputed matter in whole, the Administrative Law Judge shall accept such agreement by issuing a decision based upon the agreed findings and order. If such agreement disposes of only a part of the disputed matter, a hearing shall be conducted on the matters remaining in dispute.

§ 6.24 Decision of the Administrative Law Judge.

(a) *Proposed findings of fact, conclusions, and order.* Within 30 days of filing of the transcript of the testimony or such additional time as the Administrative Law Judge may allow, each party may file with the

Administrative Law Judge proposed findings of fact, conclusions of law, and order, together with a supporting brief expressing the reasons for such proposals. Such proposals and brief shall be served on all parties, and shall refer to all portions of the record and to all authorities relied upon in support of each proposal.

(b) *Decision of the Administrative Law Judge.* (1) Within a reasonable time after the time allowed for the filing of proposed findings of fact, conclusions of law, and order, or within 30 days after receipt of an agreement containing consent findings and order disposing of the disputed matter in whole, the Administrative Law Judge shall make his/her decision. If any aggrieved party desires review of the decision, a petition for review thereof shall be filed as provided in § 6.25 of this title, and such decision and order shall be inoperative unless and until the Secretary issues an order affirming the decision. The decision of the Administrative Law Judge shall include findings of fact and conclusions of law, with reasons and bases therefor, upon each material issue of fact, law, or discretion presented on the record. The decision of the Administrative Law Judge shall be based upon a consideration of the whole record, including any admissions made under §§ 6.21, 6.22, and 6.23 of this title. It shall be supported by reliable, probative, and substantial evidence. Such decision shall be in accordance with the regulations and rulings continued in Parts 4 and 5 and other pertinent parts of this title.

(2) If the respondent is found to have violated the Service Contract Act, the Administrative Law Judge shall include in his/her decision an order as to whether the respondent is to be relieved from the ineligible list as provided in Section 5(a) of the Act, and, if relief is ordered, findings of the unusual circumstances, within the meaning of Section 5(a) of the Act, which are the basis therefor. If respondent is found to have violated the provisions of the Contract Work Hours and Safety Standards Act, the Administrative Law Judge shall issue an order as to whether the respondent is to be subject to the ineligible list as provided in § 5.12(a)(1) of Part 5 of this title, including findings regarding the existence of aggravated or willful violations. If wages and/or fringe benefits are found due under the Service Contract Act and/or the Contract Work Safety Standards Act and are unpaid, no relief from the ineligible list shall be ordered except on condition that such wages and/or fringe benefits are paid.

(3) The Administrative Law Judge shall make no findings regarding liquidated damages under the Contract Work Hours and Safety Standards Act.

§ 6.25 Petition for review.

Within 40 days after the date of the decision of the Administrative Law Judge (or such additional time as is granted by the Secretary), any party aggrieved thereby who desires review thereof shall file a petition for review of the decision with supporting reasons. Such party shall transmit the petition in writing to the Secretary pursuant to Subpart E, with a copy thereof to the Chief Administrative Law Judge. The petition shall refer to the specific findings of fact, conclusions of law, or order at issue. A petition concerning the decision on the ineligibility list shall also state the unusual circumstances or lack thereof under the Service Contract Act, and/or the aggravated or willful violations of the Contract Work Hours and Safety Standards Act or lack thereof, as appropriate.

§ 6.26 Ineligible list.

(a) Upon the final decision of the Administrative Law Judge or Secretary, as appropriate, the Administrator shall promptly forward to the Comptroller General the name of any respondent found in violation of the Service Contract Act, including the name of any firm, corporation, partnership, or association in which the respondent has a substantial interest, unless such decision orders relief from the ineligible list because of unusual circumstances.

(b) Upon the final decision of the Administrative Law Judge or the Secretary, as appropriate, the Administrator promptly shall forward to the Comptroller General the name of any respondent found to be in aggravated or willful violation of the Contract Work Hours and Safety Standards Act, and the name of any firm, corporation, partnership, or association in which the respondent has a substantial interest.

Subpart C—Enforcement Proceedings Under the Davis-Bacon Act and Related Prevailing Wage Statutes, the Copeland Act, and the Contract Work Hours and Safety Standards Act (Except Under Contracts Subject to the Service Contract Act)

§ 6.30 Referral to Chief Administrative Law Judge.

(a) Upon timely receipt of a request for a hearing under §§ 5.11 (where the Administrator has determined that relevant facts are in dispute) or 5.12 of Part 5 of this title, the Administrator shall refer the case to the Chief Administrative Law Judge by Order of Reference, to which shall be attached a copy of the notification letter to the respondent from the Administrator and response thereto, for designation of an Administrative Law Judge to conduct such hearings as may be necessary to decide the disputed matters. A copy of the Order of Reference and attachments thereto shall be served upon the respondent.

(b) The notification letter from the Administrator and response thereto shall be given the effect of a complaint and answer, respectively, for purposes of the administrative proceedings. The notification letter and response shall be in accordance with the provisions of § 5.11 or § 5.12(b)(1) of Part 5 of this title, as appropriate.

§ 6.31 Amendments to pleadings.

At any time prior to the closing of the hearing record, the complaint (notification letter) or answer (response) may be amended with the permission of the Administrative Law Judge and upon such terms as he/she may approve. For proceedings pursuant to § 5.11 of Part 5 of this title, such an amendment may include a statement that debarment action is warranted under § 5.12(a)(1) of Part 5 of this title or under Section 3(a) of the Davis-Bacon Act. Such amendments shall be allowed when justice and the presentation of the merits are served thereby, provided there is no prejudice to the objecting party's presentation on the merits. A continuance in the hearing may be granted or the record left open to enable the new allegations to be addressed.

§ 6.32 Consent findings and order.

(a) At any time prior to the receipt of evidence or, at the discretion of the Administrative Law Judge, prior to the issuance of the decision of the Administrative Law Judge, the parties may enter into consent findings and an order disposing of the proceeding in whole or in part.

(b) Any agreement containing consent findings and an order disposing of a proceeding in whole or in part shall also provide:

(1) That the order shall have the same force and effect as an order made after full hearing;

(2) That the entire record on which any order may be based shall consist solely of the complaint and the agreement;

(3) That any order concerning debarment under the Davis-Bacon Act (but not under any of the other statutes listed in § 5.1 of Part 5 of this title) shall

constitute a recommendation to the Comptroller General;

(4) A waiver of any further procedural steps before the Administrative Law Judge and the Wage Appeals Board regarding those matters which are the subject of the agreement; and

(5) A waiver of any right to challenge or contest the validity of the findings and order entered into in accordance with the agreement.

(c) Within 30 days after receipt of an agreement containing consent findings and an order disposing of the disputed matter in whole, the Administrative Law Judge shall accept such agreement by issuing a decision based upon the agreed findings and order. If such agreement disposes of only a part of the disputed matter, a hearing shall be conducted on the matters remaining in dispute.

§ 6.33 Decision of the Administrative Law Judge.

(a) *Proposed findings of fact, conclusions, and order.* Within 30 days of filing of the transcript of the testimony or such additional time as the Administrative Law Judge may allow, each party may file with the Administrative Law Judge proposed findings of fact, conclusions of law, and order, together with a supporting brief expressing the reasons for such proposals. Such proposals and brief shall be served on all parties, and shall refer to all portions of the record and to all authorities relied upon in support of each proposal.

(b) *Decision of the Administrative Law Judge.* (1) Within a reasonable time after the time allowed for filing of proposed findings of fact, conclusions of law, and order, or within 30 days of receipt of an agreement containing consent findings and order disposing of the disputed matter in whole, the Administrative Law Judge shall make his/her decision. If any aggrieved party desires review of the decision, a petition for review thereof shall be filed as provided in § 6.34 of this title, and such decision and order shall be inoperative unless and until the Wage Appeals Board either declines to review the decision or issues an order affirming the decision. The decision of the Administrative Law Judge shall include findings of fact and conclusions of law, with reasons and bases therefor, upon each material issue of fact, law, or discretion presented on the record. Such decision shall be in accordance with the regulations and rulings contained in Part 5 and other pertinent parts of this title. The decision of the Administrative Law Judge shall be based upon a consideration of the whole record, including any admissions made in the respondent's answer (response) and § 6.32 of this title. It shall be supported by reliable, probative, and substantial evidence.

(2) If the respondent is found to have violated the labor standards provisions of any of the statutes listed in § 5.1 of Part 5 of this title other than the Davis-Bacon Act, and if debarment action was requested pursuant to the complaint (notification letter) or any amendment thereto, the Administrative Law Judge shall issue an order as to whether the respondent is to be subject to the ineligible list as provided in § 5.12(a)(1) of this title, including any findings of aggravated or willful violations. If the respondent is found to have violated the Davis-Bacon Act, and if debarment action was requested, the Administrative Law Judge shall issue as a part of the order a recommendation as to whether respondent should be subject to the ineligible list pursuant to Section 3(a) of the Act, including any findings regarding respondent's disregard of obligations to employees and subcontractors. If wages are found due and are unpaid, no relief from the ineligible list shall be ordered or recommended except on condition that such wages are paid.

(3) The Administrative Law Judge shall make no findings regarding liquidated damages under the Contract Work Hours and Safety Standards Act.

§ 6.34 Petition for review.

Within 40 days after the date of the decision of the Administrative Law Judge (or such additional time as is granted by the Wage Appeals Board), any party aggrieved thereby who desires review thereof shall file a petition for review of the decision with supporting reasons. Such party shall transmit the petition in writing to the Wage Appeals Board, pursuant to Part 7 of this title, with a copy thereof to the Chief Administrative Law Judge. The petition shall refer to the specific findings of fact, conclusions of law, or order at issue. A petition concerning the decision on debarment shall also state the aggravated or willful violations and/or disregard of obligations to employees and subcontractors, or lack thereof, as appropriate.

§ 6.35 Ineligible list.

Upon the final decision of the Administrative Law Judge or Wage Appeals Board, as appropriate, regarding violations of any statute listed in § 5.1 of Part 5 of this title other than the Davis-Bacon Act, the Administrator promptly shall forward to the Comptroller General the name of any respondent found to have committed aggravated or willful violations of the labor standards provisions of such statute, and the name of any firm, corporation, partnership, or association in which such respondent has a substantial interest. Upon the final decision of the Administrative Law Judge or Wage Appeals Board, as appropriate, regarding violations of the Davis-Bacon Act, the Administrator promptly shall forward to the Comptroller General any recommendation regarding debarment action against a respondent, and the name of any firm, corporation, partnership, or association in which such respondent has an interest.

Subpart D—Substantial Interest Proceedings

§ 6.40 Scope.

This subpart supplements the procedures contained in § 4.12 of Part 4 and § 5.12(d) of Part 5 of this title, and states the rules of practice applicable to hearings to determine whether persons or firms whose names appear on the ineligible list pursuant to Section 5(a) of the Service Contract Act or § 5.12(a)(1) of Part 5 of this title have a substantial interest in any firm, corporation, partnership, or association other than those listed on the ineligible list; and/or to determine whether persons or firms whose names appear on the ineligible list pursuant to Section 3(a) of the Davis-Bacon Act have an interest in any firm, corporation, partnership, or association other than those listed on the ineligible list.

§ 6.41 Referral to Chief Administrative Law Judge.

(a) Upon timely receipt of a request for a hearing under § 4.12 of Part 4 or § 5.12 of Part 5 of this title, where the Administrator has determined that relevant facts are in dispute, or on his/her own motion, the Administrator shall refer the case to the Chief Administrative Law Judge by Order of Reference, to which shall be attached a copy of any findings of the Administrator and response thereto, for designation of an Administrative Law Judge to conduct such hearings as may be necessary to decide the disputed matters. A copy of the Order of Reference and attachments thereto shall be served upon the person or firm requesting the hearing, if any, and upon the respondents.

(b) The findings of the Administrator and response thereto shall be given the effect of a complaint and answer, respectively, for purposes of the administrative proceedings.

§ 6.42 Amendments to pleadings.

At any time prior to the closing of the hearing record, the complaint (Administrator's findings) or answer (response) may be amended with the permission of the Administrative Law Judge and upon such terms as he/she may approve. Such amendments shall be allowed when justice and the presentation of the merits are served thereby, provided there is no prejudice to the objecting party's presentation on the merits. A continuance in the hearing may be granted or the record left open to enable the new allegations to be addressed.

§ 6.43 Consent findings and order.

(a) At any time prior to the receipt of evidence or, at the discretion of the Administrative Law Judge, prior to the issuance of the decision of the Administrative Law Judge, the parties may enter into consent findings and an order disposing of the proceeding in whole or in part.

(b) Any agreement containing consent findings and an order disposing of a proceeding in whole or in part shall provide:

(1) That the order shall have the same force and effect as an order made after full hearing;

(2) That the entire record on which any order may be based shall consist solely of the complaint and the agreement;

(3) A waiver of any further procedural steps before the Administrative Law Judge and the Secretary or Wage Appeals Board, as appropriate, regarding those matters which are the subject of the agreement; and

(4) A waiver of any right to challenge or contest the validity of the findings and order entered into in accordance with the agreement.

(c) Within 30 days after receipt of an agreement containing consent findings and an order disposing of the disputed matter in whole, the Administrative Law Judge shall accept such agreement by issuing a decision based upon the agreed findings and order. If such agreement disposes of only a part of the disputed matter, a hearing shall be conducted on the matters remaining in dispute.

§ 6.44 Decision of the Administrative Law Judge.

(a) *Proposed findings of fact, conclusions, and order.* Within 30 days of filing of the transcript of the testimony, each party may file with the Administrative Law Judge proposed findings of fact, conclusions of law, and order, together with a supporting brief expressing the reasons for such proposals. Such proposals and brief shall be served on all parties, and shall refer to all portions of the record and to all authorities relied upon in support of each proposal.

(b) *Decision of the Administrative Law Judge.* Within 60 days after the time allowed for filing of proposed findings of fact, conclusions of law, and order, or within 30 days after receipt of an agreement containing consent findings and order disposing of the disputed matter in whole, the Administrative Law Judge shall make his/her decision. If any aggrieved party desires review of the decision, a petition for review thereof shall be filed as provided in § 6.45 of this title, and such decision and order shall be inoperative unless and until the Secretary or the Wage Appeals Board, as appropriate, issues an order affirming the decision. The decision of the Administrative Law Judge shall include findings of fact and conclusions of law, with reasons and bases therefor, upon each material issue of fact, law, or discretion presented on the record. Such decision shall be in accordance with the regulations and rulings contained in Parts 4 and 5 and other pertinent parts of this title. The decision of the Administrative Law Judge shall be based upon a consideration of the whole record, including any admissions made in the respondents' answer (response) and § 6.43 of this title.

§ 6.45 Petition for review.

Within 30 days after the date of the decision of the Administrative Law Judge, any party aggrieved thereby who desires review thereof shall file a petition for review of the decision with supporting reasons. Such party shall transmit the petition in writing to the Secretary if the proceeding was under the Service Contract Act, or to the Wage Appeals Board if the proceeding was under § 5.12(a)(1) of Part 5 of this title or under Section 3(a) of the Davis-Bacon Act, with a copy thereof to the Chief Administrative Law Judge. The petition for review shall refer to the specific findings of fact, conclusions of law, or order at issue.

§ 6.46 Ineligible list.

Upon the final decision of the Administrative Law Judge, Secretary or Wage Appeals Board, as appropriate, the Administrator promptly shall forward to the Comptroller General the names of any firm, corporation, partnership, or association in which a person or firm debarred pursuant to Section 5(a) of the Service Contract Act or § 5.12(a) of Part 5 of this title has a substantial interest; and/or the name of any firm, corporation, partnership, or association in which a person or firm debarred pursuant to Section 3(a) of the Davis-Bacon Act has an interest.

Subpart E—Substantial Variance and Arm's-Length Proceedings

§ 6.50 Scope.

This subpart supplements the procedures contained in §§ 4.10 and 4.11 of Part 4 of this title and states the rules of practice applicable to hearings under Section 4(c) of the Act to determine whether the collectively bargained wages and/or fringe benefits otherwise required to be paid under that section and Sections 2(a) (1) and (2) of the Act are substantially at variance with those which prevail for services of a character similar in the locality, and/or to determine whether the wages and/or fringe benefits provided in the collective bargaining agreement were reached as a result of arm's-length negotiations.

§ 6.51 Referral to Chief Administrative Law Judge.

(a) Referral pursuant to § 4.10 or § 4.11 of Part 4 of this title will be by an Order of Reference from the Administrator to the Chief Administrative Law Judge, to which will be attached the material submitted by the applicant or any other material the Administrator considers relevant and, for proceedings pursuant to § 4.11 of this title, a copy of any findings of the Administrator. A copy of the Order of Reference and all attachments will be sent by mail to the following parties: the agency whose contract is involved, the parties to the collective bargaining agreement, any contractor or subcontractor performing on the contract, any contractor or subcontractor known to be desirous of bidding thereon or performing services thereunder who is known or believed to be interested in the determination of the issue, any unions or other authorized representatives of service employees employed or who may be expected to be employed by such contractor or subcontractor on the contract work, and any other affected parties known to be interested in the determination of the issue. The Order of Reference will have attached a certificate of service naming all interested parties who have been served.

(b) Accompanying the Order of Reference and attachments will be a notice advising that any interested party, including the applicant, who intends to participate in the proceeding shall submit a written response to the Chief Administrative Law Judge within 20 days of the date on which the certificate of service indicates the Order

of Reference was mailed. The notice will state that such a response shall include:

(1) A statement of the interested party's case;

(2) A list of witnesses the interested party will present, a summary of the testimony each is expected to give, and copies of all exhibits proposed to be proffered;

(3) A list of persons who have knowledge of the facts for whom the interested party requests that subpoenas be issued and a brief statement of the purpose of their testimony; and

(4) A certificate of service in accordance with § 6.3 of this title on all interested parties, including the Administrator.

§ 6.52 Appointment of Administrative Law Judge and notification of prehearing conference and hearing date.

Upon receipt from the Administrator of an Order of Reference, notice to the parties, attachments and certificate of service, the Chief Administrative Law Judge shall appoint an Administrative Law Judge to hear the case. The Administrative Law Judge shall promptly notify all interested parties of the time and place of a prehearing conference and of the hearing which shall be held immediately upon the completion of prehearing conference. The date of the prehearing conference and hearing shall be not less than 30 nor more than 40 days from the date on which the certificate of service indicates the Order of Reference was mailed.

§ 6.53 Prehearing Conference.

(a) At the prehearing conference the Administrative Law Judge shall attempt to determine the exact areas of agreement and disagreement raised by the Administrator's Order of Reference and replies thereto, so that the evidence and arguments presented at the hearing will be relevant, complete, and as brief and concise as possible.

(b) Any interested party desiring to file proposed findings of fact and conclusions of law shall submit them to the Administrative Law Judge at the prehearing conference.

(c) If the parties agree that no hearing is necessary to supplement the written evidence and the views and arguments that have been presented, the Administrative Law Judge shall forthwith render his/her final decision. The Administrative Law Judge with the agreement of the parties may permit submission of additional written evidence or argument, such as data accompanied by affidavits attesting to its validity or depositions, within ten days of commencement of the prehearing conference.

§ 6.54 Hearing.

(a) Except as provided in § 6.53(c) of this title, the hearing shall commence immediately upon the close of the prehearing conference. All matters remaining in controversy, including the presentation of additional evidence, shall be considered at the hearing. There shall be a minimum of formality in the proceeding consistent with orderly procedure.

(b) To expedite the proceeding the Administrative Law Judge shall, after consultation with the parties, set reasonable guidelines and limitations for the presentations to be made at the hearing. The Administrative Law Judge may limit cross-examination and may question witnesses.

(c) Under no circumstances shall source data obtained by the Bureau of Labor Statistics, U.S. Department of Labor, or the names of establishments contacted by the Bureau be submitted into evidence or otherwise disclosed. Where the Bureau has conducted a survey, the published summary of the data may be submitted into evidence.

(d) Affidavits or depositions may be admitted at the discretion of the Administrative Law Judge. The Administrative Law Judge may also require that unduly repetitious testimony be submitted as affidavits. Such affidavits shall be submitted within three days of the conclusions of the hearing.

(e) Counsel for the Administrator shall participate in the proceeding to the degree he/she deems appropriate.

(f) An expedited transcript shall be made of the hearing and of the prehearing conference.

§ 6.55 Closing of record.

The Administrative Law Judge shall close the record promptly and not later than 10 days after the date of commencement of the prehearing conference. Post-hearing briefs may be permitted, but the filing of briefs shall not delay issuance of the decision of the Administrative Law Judge pursuant to § 6.56 of this title.

§ 6.56 Decision of the Administrative Law Judge.

Within 15 days of receipt of the transcript, the Administrative Law Judge shall render his/her decision containing findings of fact and conclusions of law. The decision of the Administrative Law Judge shall be based upon consideration of the whole record, and shall be in accordance with the regulations and rulings contained in Part 4 and other pertinent parts of this title. If any party desires review of the decision, a petition for review thereof shall be filed as provided in § 6.57 of this title, and such decision and order shall be inoperative unless and until the Secretary issues an order affirming the decision. If a petition has not been filed within 10 days of issuance of the Administrative Law Judge's decision, the Administrator shall promptly issue any wage determination which may be required as a result of the decision.

§ 6.57 Petition for review.

Within 10 days after the date of the decision of the Administrative Law Judge, any interested party who participated in the proceedings before the Administrative Law Judge and desires review of the decision shall file a petition for review by the Secretary. The petition shall refer to the specific findings of fact, conclusions of law, or order excepted to and the specific pages of transcript relevant to the petition for review.

Subpart F—Appeals From Decisions Under the Service Contract Act (and Under the Contract Work Hours and Safety Standards Act for Contracts Subject to the Service Contract Act)

§ 6.60 Scope.

This subpart contains the rules regarding appeals to the Secretary from decisions of Administrative Law Judges under the Service Contract Act pursuant to Subparts B, D and E of this part, and from wage determinations and other final decisions of the Administrator or authorized representative under the Service Contract Act. These rules also apply to appeals to the Secretary from decisions under the Contract Work Hours and Safety Standard Act for contracts subject to the Service Contracts Act, issued by Administrative Law Judges pursuant to Subpart B of this part.

§ 6.61 Petitions for Review of Wage Determinations.

(a) Any interested party who is seeking a modification or other change in a wage determination under the Service Contract Act and who has requested the Administrator or authorized representative to make such modification or other change under § 4.55 of Part 4 of this title, and the request has been denied, shall have a right to petition for review of the action taken by that officer.

(b) For purposes of this subpart, the term "interested party" shall mean:

(1) Any employee or any labor organization which represents an employee who is likely to be employed or to seek employment under a contract containing a particular wage

determination, or any contractor or association representing a contractor who is likely to seek a contract or to work under a contract containing a particular wage determination;

(2) The Federal agency(ies) which will administer a proposed contract containing a particular wage determination issued pursuant to the Service Contract Act; and

(3) Any other party whom the Secretary finds to have a sufficient interest in the wage determination.

(c) Requests for review of wage determinations must be filed within 20 days of issuance of the Administrator's decision denying a request to make a change in the wage determination. The Secretary shall under no circumstances request any administering agency to postpone any contract action because of the filing of a petition.

(d) A petition for review of a wage determination shall:

(1) Be in writing and signed by the petitioner or his/her counsel (or other authorized representative);

(2) Be addressed to the Secretary;

(3) Identify clearly the wage determination, location where the contract will be performed, if known, and the agency concerned;

(4) State that the petitioner has requested reconsideration of the wage determination in question and describe briefly the action taken in response to the request;

(5) Contain a short and plain statement of the grounds for review;

(6) Be accompanied by supporting data, views, or arguments; and

(7) Contain a statement that all data or other evidence submitted have previously been submitted to the Administrator.

(e) Except as provided in paragraphs (d)(1) and (2) of this section, the Secretary will not review a wage determination after award, exercise of option, or extension of a contract, unless such procurement action was taken without the wage determination required pursuant to §§ 4.4 and 4.5 of Part 4 of this title.

(1) A wage determination may be reviewed after award, exercise of option, or extension of a contract if it is issued after a finding by an Administrative Law Judge that a substantial variance exists between collectively bargained wage rates and/or fringe benefits otherwise required to be paid pursuant to Section 4(c) of the Act and those prevailing for services of a character similar in the locality, or after a finding that such collective bargaining agreement was not reached as a result of arm's length negotiations.

(2) Where a petition for review of a wage determination is filed prior to award, exercise of option, or extension of a contract, the Secretary may review the wage determination after such award, exercise of option, or extension of a contract if the issue is a significant issue of general applicability. The Secretary's decision shall not affect the contract after such award, exercise of option or extension.

§ 6.62 Petitions for Review of Other Decisions.

(a) A petition for review of a decision of an Administrative Law Judge pursuant to Subparts B, D or E of this part shall be filed in accordance with the provisions therein.

(b) A petition for review of a final written decision (other than a wage determination) of the Administrator or authorized representative shall be filed within 60 days of the date of the decision of which review is sought. Where a case has been referred directly to the Secretary pursuant to § 4.11 or § 4.12 of this title, no petition for review shall be necessary; a brief in support of the aggrieved party's position shall be filed within 30 days of filing of the administrative record by the Administrator.

(c) The petition shall state concisely the points relied upon, and shall be accompanied by a statement setting forth supporting reasons.

§ 6.63 Filing and Service.

(a) *Filing.* An original and one copy of all papers submitted shall be filed with the Secretary of Labor, U.S. Department of Labor, Washington, D.C. 20210, Attention: Service Contract Act Appeals.

(b) *Manner of Service.* Service shall be personal or by mail. Service by mail is complete on mailing. For purposes of this subpart, filing is accomplished upon the day of service, by mail or otherwise.

(c) *Proof of Service.* Papers filed with the Secretary shall contain an acknowledgement of service by the person served or proof of service in the form of a statement of the date and the manner of service and the names of the person or persons served, certified by the person who made service.

(d) *Service upon the Department of Labor and other interested parties.* A copy of all documents filed shall be served upon the Associate Solicitor, Division of General Legal Services, U.S. Department of Labor, Washington, D.C. 20210; the Administrator; the Federal contracting agency involved; and all other interested parties.

§ 6.64 Filing of administrative record.

(a) If a petition for review has been filed concerning a decision pursuant to Subparts B, D or E of this part, the Chief Administrative Law Judge shall promptly forward the record of the proceeding before the Administrative Law Judge to the Secretary.

(b) If a petition for review has been filed concerning a wage determination or other final decision of the Administrator or authorized representative, the Associate Solicitor shall promptly file a record upon which the decision was based. The record of a wage determination shall under no circumstances include source data obtained by the Bureau of Labor Statistics, U.S. Department of Labor, or the names of establishments contacted by the Bureau. Where the Bureau has conducted a survey, the published summary of the data may be filed.

§ 6.65 Presentations of other interested parties.

(a) Where a petition has been filed for review of a wage determination or other final decision of the Administrator or authorized representative, the Wage and Hour Division shall notify the parties known or believed to be interested in the case. The Associate Solicitor and any other parties interested in presenting their views shall file a statement within 30 days of the filing of the petition (or such other time as is specified by the Secretary, with consideration of procurement deadlines, as appropriate).

(b) Where a petition has been filed for review of a decision issued pursuant to Subparts B, D or E of this part, any other parties to the proceeding interested in presenting their views shall file a statement within 30 days of the filing of the petition (or such other time as is specified by the Secretary, with consideration of procurement deadlines, as appropriate).

§ 6.66 Decision of the Secretary.

(a) The Secretary will issue his/her decision upon the basis of the entire record. The Secretary may affirm, modify or set aside, in whole or in part, the decision under review and will issue a decision including a statement of reasons or bases for the actions taken. The Secretary, in his/her decision, will observe the provisions of pertinent portions of the Code of Federal Regulations and, in reviewing decisions of Administrative Law Judges pursuant to Subparts B, D and E of this part, will modify or set aside findings of fact only when the Secretary has determined that those findings are not supported by substantial evidence. In any remand of a case, the Secretary will include any appropriate instructions.

(b) In issuing decisions, the Secretary will take into consideration procurement deadlines where appropriate.

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Friday
January 16, 1981

Part XI

Department of Labor

Occupational Safety and Health Administration

Hazards Indentification; Notice of Proposed Rulemaking and Public Hearings

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1910

Hazards Identification; Notice of Public Rulemaking and Public Hearings

AGENCY: Occupational Safety and Health Administration, Labor.

ACTION: Notice of proposed rulemaking; notice of public hearings.

SUMMARY: The proposed standard requires employers to identify the hazardous chemicals in their workplaces, and to inform their employees of the identity and nature of the employees' hazardous exposures. OSHA has determined that this standard is necessary because most employees are not aware of the presence of hazardous chemicals in their workplaces, or of the health effects exposure to these hazards may produce. Furthermore, many employers are also unaware of the complete chemical identities and hazards of the chemicals in their workplaces. The proposed standard would alleviate these problems through specific hazard identification and evaluation procedures, labeling requirements, and records preservation. Public hearings are being scheduled to permit interested parties the opportunity to orally present information and data related to the issues raised by this proposed rule.

DATES: Comments must be received on or before April 16, 1981.

Notices of intention to appear at the public hearings must be received on or before May 1, 1981.

The hearings are scheduled as follows:

Date Hearing Will Begin and City

1. May 26, 1981, Washington, D.C.
2. July 7, 1981, Houston, Texas
3. July 21, 1981, Chicago, Illinois
4. August 11, 1981, Philadelphia, Pennsylvania
5. September 1, 1981, San Francisco, California.

ADDRESS: Comments should be submitted, in quadruplicate, to the Docket Officer, Docket H–022, U.S. Department of Labor, Occupational Safety and Health Administration, 200 Constitution Avenue, N.W., Room S–6212, Washington, D.C. 20210; (202) 523–7894.

Notices of intention to appear should be submitted to Mr. Tom Hall, Division of Consumer Affairs, Room N3635, U.S. Department of Labor, Occupational Safety and Health Administration, 200 Constitution Avenue, N.W., Washington, D.C. 20210, (202) 523–8024.

Addresses for the hearing locations will be published in the Federal Register at a later date.

Written comments received and notices of intention to appear will be available for inspection and copying in the Docket Office, Room S6212 at the above address.

FOR FURTHER INFORMATION CONTACT:

Proposal

Mr. James Foster, Room N3641, Office of Public Affairs, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C., 20210; (202) 523–8151.

Hearings

Mr. Tom Hall, Division of Consumer Affairs, Room N–3635, U.S. Department of Labor, Occupational Safety and Health Administration, 200 Constitution Avenue, N.W., Washington, D.C. 20210. (202) 523–8024.

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I. Need for a Standard

Approxima workers are job to chemic many as 40 t percent of the may have be of the hazard regulated by their lifetime the NIOSH N Hazards Surv below, worke of the presen in the workpl potential that chemicals ma Furthermore, that even wh information a it is often ina

Thus, work representativ emphasized i rulemakings promulgate a substance ide testimony pre rulemaking h Employee Ex Records," OS evidence of w labeling regul

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(Mr. John Mro Steelworkers, Docket H–112

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*Numerical ref in this preamble,

V. Legal Authority

VI. Regulatory Analysis, Environmental Impact, and Regulatory Flexibility Requirements

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I. Need for a Hazards Identification Standard

Approximately 25 million American workers are currently exposed on the job to chemical or physical hazards. As many as 40 to 50 million Americans (23 percent of the entire U.S. population) may have been exposed to one or more of the hazardous chemicals presently regulated by OSHA at some point during their lifetime (1).* Yet, as indicated in the NIOSH National Occupational Hazards Survey (NOHS) discussed below, workers are generally unaware of the presence of hazardous chemicals in the workplace and of the very real potential that exposure to such chemicals may injure their health. Furthermore, some workers complain that even where they receive information about hazardous chemicals, it is often inaccurate or incomplete.

Thus, workers and their representatives have consistently emphasized in previous OSHA rulemakings the need for OSHA to promulgate a standard for chemical substance identification. The following testimony presented during the OSHA rulemaking hearings on "Access to Employee Exposure and Medical Records," OSHA Docket H–112, is evidence of workers' concerns about a labeling regulation (28).

(A)pproximately 150 new chemicals come into that plant every day, many of them with just trade names, many with just a code number. As I have been investigating, every company uses a different code number * * *

Many times our people are exposed for a month, six weeks or two months before we find out (the chemical identity) * * * then, after we have it evaluated, (the company) will remove it; but the damage is already done.

(Mr. John Mroczkowski, United Steelworkers, Tr. 1189–1190, OSHA Docket H–112.)

* * * * *

(N)ow our employees are rather well-schooled craftsmen. They can recognize hazards if they know what the hazard is. Our basic problem is on a daily exposure we have to work with coolants, lubricants, and the vapors that result from the use therein * * *

The thing we are asking for is a labeling, a chemical labeling of what really is contained in that lubricant or that coolant. And I think we can take it from there. We are not asking for a hell of a lot. But if the men don't know what they are being exposed to on a daily basis, there is nothing they can do about it until years later. And then it is too darn late.

(Mr. Victor Horvath, International Ass'n of Machinists, Tr. 1378, OSHA Docket H–112)

* * * * *

(W)e must reiterate the importance of labeling data * * * without some kind of very efficient labeling data we are absolutely in the dark about many chemicals that are used in our shop.

(Mr. Michael Gaffney, United Autoworkers, Tr. 1325, OSHA Docket H–112)

Without adequate chemical substance identification, millions of workers with routine exposures to hazardous chemical substances are unaware of the hazards posed by these substances, and are thus incapable of protecting themselves or ensuring that their employers provide adequate protection. The need for self-protection is no trivial matter. Workers are exposed to hazardous chemicals both in the workplace and the general environment, making them the greatest involuntary consumers of hazardous chemicals in the nation. And in many cases, exposure in the workplace is far greater than what occurs in the general environment. Consequently, to leave workers ignorant of the hazards they face, without the ability to protect themselves, would be incompatible with OSHA's duty under the Occupational Safety and Health Act of 1970, 29 U.S.C. 651 *et seq.*, to assure every working man and woman in the nation, so far as possible, safe and healthful working conditions.

This lack of an adequate system for the identification and labeling of hazardous substances in the workplace has been, and continues to be, a contributing factor in the occurrence of occupational disease. As the Committee on Government Operations, U.S. House of Representatives concluded in its report, *Chemical Dangers in the Workplace* (Thirty-forth Report, 1976) (26):

Identifying and controlling toxic substances in the workplace is becoming progressively more difficult as more chemicals, chemical processes, and chemical products are used in industry. Tens of thousands of trade-name products, whose chemical contents are not disclosed, are used daily. Lack of knowledge about exposure hampers the identification of occupationally caused diseases, illnesses, and deaths and is a major impediment to preventing them.

Dr. Thomas Mancuso, an occupational medicine practitioner for thirty years, addressed the problem of inadequate chemical substance identification at Congressional hearings held in 1978 on control of toxic substances in the workplace (25). Dr. Mancuso stated:

* * * the doctor in practice, if he is to make a medical diagnosis, needs information about the work environment and the specific work exposures, the specific chemicals to which his worker patient was exposed prior to the illness. Basically, this lack of information constitutes the fundamental obstacle to the recognition of causality of an occupational illness and appropriate steps and approaches must be evolved to overcome this fundamental problem.

Dr. Mancuso also indicated that there is a nation-wide lack of recognition of occupationally-related illness, disease, and death by the worker and his family, by the doctor, by the industry and by the government. He further stated:

This stems in general from the fact that for decades the workers, the doctors and society have been predominantly oriented and trained on the infectious causes of disease, due to bacteria and viruses, and there has been a corresponding lack of realization of the impact of the many thousands of chemicals—the microchemicals in the work environment—in the causation of illness, disability, and death.

Similarly, Dr. Daniel Teitelbaum, a practicing occupational toxicologist familiar with the problems of inadequate substance identification in occupational medicine, offered the following testimony at the OSHA hearings on access to records (28):

(W)hen such (chemical identification) information is not provided to a consultant, diagnostic difficulties often occur. Patients usually do not know what materials were used in the course of their employment. Even if they are familiar with the material, they do not know the health effects, the level of their exposure, or the chemistry of the material itself. They are usually unable to provide to me enough information for development of a definitive diagnostic and treatment program.

(Tr. 116, OSHA Docket H–112)

To end the disparity between what workers now know and what they should know about potential chemical hazards in the workplace, OSHA is today proposing a comprehensive hazard identification standard which will require employers to communicate two types of basic information to their employees. Under the standard, an employer must inform employees of the precise chemical identity of the hazardous chemicals with which they work. The employer must also warn employees of the particular hazards

*Numerical references are to the References listed in this preamble, *infra*.

posed by chemicals in the workplace, including any applicable precautions to be used when working with hazardous chemicals. This information would be conveyed to the workers by the use of container labels, placards, and material safety data sheets.

The benefit of informing workers of the particular hazards of a chemical is immediate and direct. The need for workers to know the precise chemical identities of the hazardous chemicals with which they work is less direct, but no less important.

Access to the precise chemical identity of hazardous chemicals will substantially improve the ability of workers to participate actively in the promotion of health and safety in the workplace, whether their efforts be individual or combined with the efforts of physicians, unions, or agencies of government concerned with worker health. For example, access to the precise chemical identities of hazardous chemicals will give workers the capability to:

—Provide physicians with exact descriptions of workplace exposures when workers suspect occupational causes of disease or material impairment of bodily functions;
—Complement incomplete information communicated to workers concerning the hazards of workplace chemicals;
—Participate with their employers on an intelligent basis in designing and implementing industrial hygiene precautions and procedures to promote workplace health and safety.

In addition, if a requirement for a substance-employee identification list is included in the finale rule, then workers will be able to:

—Obtain an accurate history of the hazardous chemicals to which a worker might have been exposed in the workplace as an aid in identifying the causes of chronic diseases and diseases with long latency periods;
—Determine, with scientific assistance, any additional adverse effects upon workers that are known to be caused by prolonged exposures to chemicals which have been classified as posing only a moderately acute hazard;
—Determine, with scientific assistance, whether worker exposure to various chemicals results in synergistic adverse effects not attributable to any one chemical.

Without access to precise chemical identity, workers must continue to rely principally upon their employers, and upon the limited resources of OSHA and NIOSH, for protection against injury and disease caused by hazardous chemicals. These resources are inadequate, and to fulfill its statutory mandate to strive for a safe and healthful workplace for every worker, OSHA must give workers the means to protect themselves.

OSHA realizes that some employers have already made efforts to institute substance identification and labeling practices in their establishments as part of their occupational safety and health programs. However, although they may conform to some industry consensus standard, such as that of ANSI, these programs are not uniformly designed or self-enforced. Also, the use of identification systems is not widespread in industry. Even when a system is in place, the system may be unique only to that establishment, and may not be as comprehensive as would be necessary to be truly effective. These inadequacies were clearly demonstrated by the results of the NIOSH occupational health survey, which is discussed below. As a result, the Committee on Government Operations concluded in its 1976 report that voluntary identification standards were not adequately protecting employees. The report stated (26):

> Attempts at self-regulation by the chemical industry have not generated adequate information for buyers and users about toxic chemicals in industrial products. Voluntary labeling guidelines developed by the chemical manufacturing industry are directed primarily to the avoidance of injury from single, accidental exposures and do not address the health hazards caused by chronic low-level exposure to toxic chemical substances.

As a result of their investigations in this regard, the Committee concluded:

> We believe that industry self-regulation is preferable to governmental intervention if it can produce the necessary level of safety. To this point, however, self-regulation, although laudable, has not been equal to the task.

Similarly, the provisions contained in the regulations of other Federal agencies and state governments, which are described below, are also not comprehensive in scope. None of the Federal statutes adequately addresses itself to the problems presented by hazardous materials in the workplace environment. While nine of the fifty states have regulations covering labeling in the workplace, these standards are not comprehensive or uniform, and this small number of state laws is not sufficient to adequately protect the vast majority of American workers. Nonetheless, the fact that the states are beginning to recognize the need for regulation of this type indicates the need for national, uniform standards to address a problem which, as Congress recognized in the OSH Act and in subsequent oversight hearings, is of nationwide scope. The proposed standard will help to avoid the potential for conflicting state-imposed burdens on interstate commerce.

The proposed hazards identification standard has been developed as the second major component of a total information system designed to convey to workers information essential to awareness of existing and potential job related health hazards. The first component of this system is OSHA's standard on Access to Employee Exposure and Medical Records, 29 CFR 1910.20 (45 Federal Register 35212 *et seq.*, May 23, 1980), which provides employees exposed to toxic substances and harmful physical agents with access to their employer maintained exposure and medical records.

The information provided by the existing access standard and the proposed hazard identification standard is complementary, and without the type of information provided by either standard, the ability of workers to understand and react to significant workplace hazards will be significantly diminished. The access standard generally assures employees access, upon request, to information concerning the identification of toxic substances and harmful physical agents to which they are exposed, as well as access to other exposure and health information, if such information has been recorded by the employer. Access by employees to such records thereby provides an early warning system of possible occupational health hazards and is crucial to the overall purposes of the Act. The access standard does not, however, require the creation of such records. The hazard identification standard, therefore, will significantly add to the informational rights provided to employees in the access standard by affirmatively assuring that chemical manufacturers and users will establish hazard identification systems within their workplaces. Furthermore, unlike the access standard, the hazards identification standard is designed to assure that hazards-related information will flow from the manufacturers and importers to the downstream employees of industrial users, who, because of the trade name problem, are themselves often unaware of the identities or hazards posed by chemicals in their workplaces. Accordingly, to provide anything less than the basic information afforded by these twin standards would deprive workers of the right to protect themselves from danger.

The two rules do, however, in some situations overlap; thus there may be a need to modify the language of the

access standard upon final promulgation of a chemical identification and labeling standard. Comments are invited as to which provisions, if any, in the access standard should be changed in light of the hazard identification standard. OSHA does not anticipate substantial alterations in the content of the Access standard, but does intend to make necessary conforming amendments so that similar terms are used consistently in both rules.

II. Background to the Hazard Identification Standard

A. Introduction

According to data obtained from the National Occupational Hazards Survey conducted by the National Institute for Occupational Safety and Health (NIOSH), approximately 25 million American workers, or one in four, are potentially exposed to one or more of the nearly 8,000 hazards identified by NIOSH (see references 1, 25, 26, and 27). Occupational exposure to the hazardous substances covered by this proposed standard is common. The proposed standard will provide information on potential hazardous exposures to the approximately 20.5 million people employed in the nearly 328,000 manufacturing facilities in SIC categories 20–39, including one million workers in the chemical industry (31). In addition, workers in other SIC categories will obtain partial information on potential hazardous exposures because the proposed standard requires that labels, once attached, remain affixed to containers with hazardous contents.

In its General Industry Standards (29 CFR Part 1910, Subpart Z), OSHA regulates approximately 430 toxic substances, a small percentage of the total number of toxic or hazardous materials present in the workplace. According to the Toxic Substances Control Act Chemical Substances Inventory (TSCAI) compiled by the Environmental Protection Agency (EPA), as of July, 1980, there are approximately 55,103 chemical substances which are manufactured, imported or processed for commercial purposes in the United States (4). The TSCAI figure includes only those substances which are covered by the Toxic Substances Control Act, and does not include many other substances, such as food additives, drugs, cosmetics, and pesticides, which can pose a hazard in the workplace. In addition, approximately 1,000 new chemicals are marketed each year. Thus, only gross estimates can be made of the total number of toxic or hazardous chemicals to which the American worker may be exposed, as well as the number of workers who are exposed to such substances. The data does indicate that both of these figures are extremely large.

The number of occupational illnesses resulting from occupational exposure to hazardous substances is difficult to quantify. The most comprehensive figures are compiled by the Bureau of Labor Statistics (BLS) in an annual survey of approximately 200,000 industrial facilities entitled, *"Occupational Injuries and Illnesses in the United States by Industry."* BLS reported approximately 166,000 new cases of occupational illness in 1976, and 162,000 in 1977. These figures do not include the number of workers totally disabled from occupational illness due to chemical exposures who have left the workforce.

An analysis of the survey reveals that 54.7 percent of occupational illnesses in 1976, and 57.9 percent of occupational illnesses in 1977 fell into the categories of illnesses (not counting malignant and benign tumors) most likely to be related to chemical exposures. This comes to a total of more than 180,000 illnesses in those two years, some of which are attributable to exposures which might have been avoided by proper labeling.

The BLS report also indicates that a large number of the total occupational illnesses recorded occur in manufacturing industries (SIC Major Groups 20–39). In 1976, employees in manufacturing industries reported 87.5 percent of all occupational illnesses, but accounted for less than 30 percent of total employment. The 20 industries with the highest rates of occupational illness were all manufacturing industries.

Although these figures are substantial, they probably underestimate the magnitude and severity of occupational illness and injury. The BLS reports that:

> The recording and reporting of illness continue to present some measuring problems, since employers (and even doctors) are often unable to recognize some illnesses as being work related. The annual survey includes data on only current and visible illnesses of workers; it does not include data on illnesses which might surface later.

Occupational diseases caused by chemical exposures are often not recognized as such, and thus under-reporting of chemically-caused occupational disease is a major problem. To assess the accuracy and completeness of worker compensation reports and OSHA Form 200 reports, the University of Washington conducted a two-year study for NIOSH which was published in 1975 (32). Medical examination of over 900 employees revealed 346 cases of "probable occupational disease". These were so classified only if the observed manifestations of the disease were consistent with those known to result from excessive exposure to a specific injurious agent, and the patient was known to have had significant contact with the particular agent during the course of a normal working day. Of these 346 cases, only 8 had been recorded on either the OSHA Form 200 or in worker compensation reports.

B. Survey Estimates of Potential Workplace Hazardous Exposures

The lack of adequate chemical substance identification in the workplace was investigated as part of the National Occupational Hazards Survey undertaken by NIOSH in 1972 (1, 25, 26, 27).

The NIOSH surveyors visited over 5,200 industrial plants that had been selected by the Bureau of Labor Statistics as a representative cross-section of industry type and size. General information was collected about each plant, such as its major product or service, the number of employees, and the availability and kind of medical care. The surveyors then conducted walk-through inspections of each facility to record worker exposures to specific health hazards. The NIOSH teams observed each process in the plants, recorded the number of workers in each job category, and listed the specific chemical and physical agents to which these workers were potentially exposed.

If an employee was exposed to a trade-name product, the surveyor recorded the name of the product, its manufacturer, and the ingredients listed on the product container. If labels on the containers did not list the ingredients, the surveyors tried to ascertain the composition from material safety data sheets or other sources at the plant. All these sources supplied the needed information for only 10% of the trade-name products.

The following is a summary of the NIOSH findings in regards to the adequacy of chemical substance identification in the workplace (25, 26, 27):

Table 1.—*NOHS Findings*

1. 85,000 individual trade-name products were identified.
2. These 85,000 products accounted for 70% of all recorded exposures. The remaining 30% of these exposures were either properly identified chemicals or physical agents.
3. The total number of 'hazardous' exposures represented by these trade-name products is not known, since NIOSH was unable to identify the chemical composition of all of these products.
4. In 50% of the trade-name product cases, neither the employer nor the employee knew the identity of the chemicals in the trade-name products.

NIOSH attempted to further identify the trade-name products by contacting the product manufacturers. This effort was complicated by the problem of "nested" trade names—that is, when the manufacturer supplied NIOSH with information on the chemical substances contained in trade-name products, approximately one-third contained secondary trade-name chemicals. If the secondary trade-name composed more than 10 percent of the mixture, NIOSH also pursued identification of it by contacting the manufacturer.

NIOSH contacted over 10,000 manufacturers to obtain additional information on the chemcial identification of the trade-name products. At the time they reported their findings to Congress in 1976, NIOSH had obtained product ingredient information on over 40,000 trade-name products. The following is a summary of NIOSH findings in regards to trade-name products (TRN) (25, 26):

Table 2.—*Potential Exposure to TRN Products Containing Hazards*

Total number of trade name products = 45,404
Total number of employees exposed to TRN products = 278,324
Total number of exposures for employees named above = 1,420,717
Of the total number of employees exposed to TRN products, the number exposed to OSHA-regulated chemicals = 126,089
Total number of exposures for the above employees = 309,857
Percentage of employees exposed to OSHA-regulated chemicals = 45%
Of employees exposed to TRN products which contain OSHA-regulated chemicals, the number of employees exposed to products whose composition is deemed to be a trade secret = 66,727
Total number of exposures for the above employees = 113,695

Table 3.—*Potential Exposure to TRN Products Containing Carcinogens*

Number of TRN products that contain at least one of the 15 OSHA regulated* carcinogens = 427
Total number of employees exposed to TRN products containing carcinogens = 5,636
Total number of carcinogen exposures for employees named above = 7,132
Percentage of employees exposed to carcinogens = 2%
Total number of employees exposed to TRN products containing carcinogens which the manufacturers call trade secret = 2,830
Total number of exposures for employees named above = 3,274

*Number of regulated carcinogens = 16

The NOHS survey promoted the Committee on Government Operations, in its report on chemical dangers in the workplace, to state that they thought the NOHS "* * * disclosed alarming conditions." They further indicated that:

[T]he problem of worker and employer ignorance of hazardous substances used in industry is far greater than previously supposed. The chief cause is the practice of identifying chemical compounds by trade names without the disclosure of ingredients, which thwarts even the most conscientious attempt to alert workers to exposures beyond specified limits.

They concluded:

It is clear that the major objectives of the Act override narrow self-interest on the part of manufacturers. No trade secret can justify exposing great numbers of American workers to cancer-causing agents or other toxic chemicals. Any trade-name product containing a substance known to be hazardous or a carcinogen must be clearly labeled so that precautions may be taken.

The NOHS survey thus provided strong evidence that chemical substance identification was not sufficiently widespread to protect employees adequately, and that an OSHA standard in this area is necessary to provide such protection.

C. Previous Recognition of the Need for Labeling

For nearly sixty years, various government, industry and professional organizations have recognized the need to label hazardous substances, and have sought to identify relevant issues, as well as to develop comprehensive and consistent systems. Several of the more recent documents of significance will be discussed.

1. *Occupational Safety and Health Administration (OSHA) Standards:* The Occupational Safety and Health Act, 29 U.S.C. 651 *et seq.*, was passed to assure safe and healthful working conditions for working men and women (5). Section 6(b)(7), one of the sections which delegates OSHA the authority to promulgate labeling requirements, states:

Any standard promulgated under this subsection shall prescribe the use of labels or other appropriate forms of warning as are necessary to insure that employees are apprised of all hazards to which they are exposed, relevant symptoms and appropriate emergency treatment, and proper conditions and precautions of safe use or exposure.

Several of OSHA's safety and health standards for General Industry in 29 CFR Part 1910(3) were subsequently promulgated with such labeling requirements for a relatively small number of specific substances. (These standards are listed in Tables 4 and 5 of section (C) below).

2. *National Institute for Occupational Safety and Health (NIOSH) Criteria Document:* OSHA and NIOSH have long recognized the desireability of a uniform and complete system to identify hazardous materials found in the workplace. Under section 22(c)(1) of the OSH Act, which authorized NIOSH to develop recommended occupational safety and health standards, a criteria document was published in 1974 which was entitled, "A Recommended Standard . . . An Identification System for Occupationally Hazardous Materials" (7). The recommended standard was designed to inform employees of potentially hazardous materials which are encountered in the workplace by a three-component warning system, including the use of placards, labels, and Material Safety Data Sheets.

A "hazardous material" was defined by NIOSH as "a substance or mixture of substances having intrinsic properties capable of producing adverse effects on the health or safety of the worker". NIOSH recognized that all materials "can cause unwanted changes under some circumstances, but a careful assessment of properties and circumstances will classify common substances such as water and sodium chloride as practically nonhazardous materials from the viewpoint of the need for informing the worker".

NIOSH further refined their definition of hazardous by stating that a material would be considered hazardous if it met any one of the following criteria:

"(1) Toxicity—A toxic substance is one that has demonstrated the potential to: endanger human life by exposure via any route found in the workplace; produce short or long-term disease or bodily injury; affect health adversely; induce cancer or other neoplastic effects in man or experimental animals; induce a transmissible change in the characteristics of an offspring from those of its human or experimental animal parents; or cause the production of physical defects in the developing human or experimental animal embryo.

"In the absence of human or animal effects data described above, a toxic substance is one that produces death in experimental animals exposed to the substances in quantities and by routes which are reasonable * * * The following cut-off points apply to animal exposure data:

A single oral LD50 of up to 5,000 mg/kg.
A single inhalation exposure LC 50 of up to 10,000 ppm for gases, or 100,000 mg/cu m by volume for mists or dusts.
A single skin absorption (percutaneous) LD50 of up to 2,800 mg/kg."

"(2) Flammability—A flammable substance is one that will burn in air when exposed to a temperature of 1,500 F (815 C) for a period of five (5) minutes or less."

"(3) Reactivity—A reactive substance is one that will release hazardous amounts of energy when subject to shock, spark, or light, during uncontrolled polymerization, or when contacted by common substances, e.g., water, air, or steel, or is a strong oxidizing or reducing material."

NIOSH further recommended that all materials that are toxic, flammable, or reactive be rated as to their relative hazard. For example, a toxic substance could be rated in any one of five toxicity categories, ranging from "no significant health hazard" (zero rating) to "extreme health hazard" (rating of four). Specific criteria for determining in which category a substance should be included were also recommended by NIOSH. Information to be used by the employer to determine the appropriate hazard rating was to be assembled from "reference sources, expert opinion, and direct experience and familiarity with the material or specific combination of materials". NIOSH also noted that references are "major sources of information on hazardous materials, but many other sources are equally valuable and should not be neglected."

No specific guidance was provided for employers to assist them in making the hazard determinations necessary to comply with the requirements of the NIOSH recommended standard. NIOSH simply stated that following a review of available information, "a composite statement of the potential hazard from the standpoint of health effect, flammability, and reactivity can then be formulated. The proper relative hazard ratings are then assessed by a comparison of the summary data with the tables and relative rating definitions." For health effects assessments, employers were directed to use available human experience data before using animal data, and to rate on the basis of the "worst effect" when both acute and chronic data are available. NIOSH did not provide any examples of how specific substances would be rated according to their recommended classification scheme.

In addition to labels, NIOSH recommended that employers be required to have a Material Safety Data Sheet (MSDS) for each hazardous material or mixture of hazardous materials. A format for the MSDS was also recommended by NIOSH, and included the following categories of information:

1. Product Identification
2. Hazardous Ingredients
3. Physical Data
4. Fire and Explosion Data
5. Health Hazard Information
6. Reactivity Data
7. Spill or Leak Procedures
8. Special Protection Information
9. Special Precautions

3. *Report of the OSHA Standards Advisory Committee.* In 1974, the OSHA Standards Advisory Committee on Hazardous Materials Labeling was formed in accordance with Section 7(b) of the OSH Act (8). The purpose of this committee, which was comprised of experts representing employers, employees, the Federal government, state governments, and the public, was to develop generic guidelines for the implementation of Section 6(b)(7) of the OSH Act. The recommendations of the Committee involved a "total systems" approach to the problem of labeling. This approach included classification of hazards and the use of warning devices, such as labels and placards, coupled with the use of physical/chemical data and employee training programs. The Committee "identified and confined its discussion to four categories of hazards, namely, flammability hazards, health hazards, reactivity hazards, and materials hazardous by reason of being under pressure in their container". For each of these categories, a number of sub-categories were developed and the Committee recommended the criteria a substance would have to meet to be included in these sub-categories. Wherever possible, the Committee defined these criteria similar to currently used and accepted definitions. For example, the definition of "unstable (reactive) material" was that which OSHA already used in 29 CFR 1910.106(a)(20). The Committee recommended adoption of such a labeling standard to serve both employer and employee by providing a safer and more healthy working environment. The final report of the Committee was submitted to the Assistant Secretary of Labor on June 6, 1975.

In terms of health hazards, the Committee recommended that a labeling standard be developed by OSHA to cover any material which is:

—a carcinogen;
—a corrosive to eyes;
—a corrosive to skin;
—extremely toxic;
—highly toxic;
—an irritant;
—a mutagen;
—a strong sensitizer;
—a teratogen; or
—toxic.

The Committee defined each of these terms, and based their definitions on available test methods wherever possible. However, in some cases they determined that the issues involved were so complex that the Committee thought resolution of them should be left to the Secretary of Labor. Carcinogens, mutagens, strong sensitizers, and teratogens were thus defined very generally, and OSHA would not have been able to incorporate the Committee's recommendations into a standard without further refining these definitions.

The definitions of "extremely toxic", "highly toxic", and "toxic" were based on estimates of lethal dose. For example, the following are the criteria recommended for determining that a material is "extremely toxic":

"(i) a material that has a median lethal dose (LD50) of 5 milligrams or less per kilogram of body weight when administered orally to albino rats weighing between 200 grams and 300 grams each;⊖

"(ii) a material that has a median lethal dose (LD50) of 20 milligrams or less per kilogram of body weight when administered by continuous contact for 24 hours or less with the bare skin of albino rabbits weighing between 2 kilograms and 3 kilograms each; or

"(iii) a material that has a median lethal concentration (LC50) in air of 50 parts per million by volume or less of gas or vapor or 0.5 milligrams per liter or less of mist, fume or dust when administered by continuous inhalation for one hour or less to albino rats weighing between 200 grams and 300 grams each."

Given this type of definition for toxicity, it is clear that chronic effects other than carcinogenicity, mutagenicity or teratogenicity would not be specifically covered by the standard recommended by the Advisory Committee. The Committee did recommend that the Secretary retain the right to regulate "special" hazards, not otherwise specifically designated, and assumed this method would be used to cover chronic hazards.

The Advisory Committee did not provide any guidance for employers to determine whether a substance meets the recommended criteria for being toxic. No indication of where employers can find the toxicity data needed to comply with the standard is given. The Committee also did not indicate how employers should assess available data. The question of how to resolve conflicting test results to determine the applicable LC50 was not addressed.

4. *American National Standards Institute (ANSI) Standard.* Industry also recognized the need for an official standard for the precautionary labeling of hazardous chemicals used in the workplace. In 1944, the Manufacturing Chemists Association, since renamed

Chemical Manufacturers Association (CMA), a trade association composed of members of the chemical industry, established their Labels and Precautionary Information (LAPI) Committee. This committee produced the first published guide to precautionary labeling for hazardous chemicals (Manual L-1) in 1948. In 1970, the LAPI voiced their strong support for precautionary labeling being part of worker safety programs in the following statement:

> Precautionary information should, as far as is practicable, reach every person using, handling, or storing hazardous substances. The most practical means of disseminating this information has been found to be by precautionary labels, affixed to containers of hazardous substances, bearing appropriate precautionary statements expressed as simply and briefly as possible. (Manufacturing Chemists Association, *Guide to Precautionary Labeling of Hazardous Chemicals*, Manual L-1, 7th ed. 1970, p. 9).

A subcommittee of the LAPI Committee also assisted in the development of the American National Standards Institute (ANSI) standard entitled "American National Standard for the Precautionary Labeling of Hazardous Industrial Chemicals" (8). This standard, published in 1978, is considered to be the official guideline for voluntary use by industry for the precautionary labeling of hazardous chemicals used in industrial operations.

Some industry representatives have maintained that an OSHA labeling standard is not necessary because industry already voluntarily complies with the ANSI standard. However, findings of the National Occupational Hazards Survey (NOHS) demonstrated that this is not the case in many situations. The ANSI standard is nearly identical to the manual produced by the CMA for its member companies. As stated above, this manual was first available in 1948. However, the NOHS found that CMA member companies did not fare well in terms of identifying dangerous products to purchasers. As reported in 1976 by NIOSH to the House of Representatives' Committee on Government Operations (29), CMA members manufactured almost 9,000 of the trade-name products found in the NOHS, and designated over 3,000 of these as trade secrets. In addition, over 3,000 of the 9,000 trade-name products contained OSHA-regulated chemicals, and 1,440 of these products were among those that CMA members had designated as trade secrets.

The ANSI standard applies to the precautionary labeling of "hazardous chemicals used under industrial occupational conditions". "Hazardous chemical" is defined as "a chemical or mixture of chemicals that is toxic, highly toxic, irritant, corrosive, a strong oxidizer, a strong sensitizer, combustible, flammable, extremely flammable, dangerously reactive, or pressure-generating, or which otherwise may cause substantial illness during or as a direct result of any customary or reasonable foreseeable handling or use". Each of the specific listed hazards is individually defined by ANSI. However, no definition or guidance is provided to help employers determine what a "substantial illness" is, or which substances may cause such illnesses.

The definitions of "toxic" and "highly toxic" involve lethal dose determinations. Thus chronic effects are not specifically addressed by the ANSI standard. In fact, the ANSI standard is even less protective in terms of chronic effects than the Advisory Committee's recommended standard would be since even carcinogenicity, mutagenicity, and teratogenicity are not covered by ANSI.

Furthermore, the ANSI standard does not specify the precise mode of identification required, simply stating that it should be "adequate to permit selection of proper action in case of exposure". ANSI also does not specify what percentage of a mixture a hazardous component must comprise to trigger the identification requirements, but indicates that "those compounds which contributes substantially to the hazard(s) shall be identified".

The House of Representatives' Committee on Government Operations concluded on the basis of their evaluation of testimony presented at their hearings that the ANSI standard does not adequately cover chemical substance identification (29). There were two major reasons for their conclusions. First of all, the ANSI standard is a guide for industry, and there is no requirement for industry to comply with such a guide. Second, the Committee recognized that the ANSI standard does not address chronic effects. Their report stated:

> A second problem with the ANSI standard is that, like the MCA guide, it is deficient in recognizing potential harm from continuous low-level exposures. It does not include labeling guidelines for chemicals that can cause cancer or genetic defects. Without such labeling, all known hazards are not addressed.

Most recently, the issue of labeling in the workplace was addressed in "An Interim Report to the Congress on Occupational Diseases," submitted by the U.S. Department of Labor in June, 1980 (2). In this report, OSHA indicates the importance of including in its health standards requirements for the use of hazard warning signs or labels. In health standards which regulate workplace exposures to hazardous substances, such labeling provisions are considered to be necessary to the primary prevention of occupational disease by informing workers of the dangers due to exposure and of methods of prevention. Other primary means of preventing occupational disease, to be used in conjunction with labeling, include employee exposure monitoring, medical surveillance, and training, as well as compliance with permissible exposure limits to regulate employee exposures to hazardous substances.

D. Selected Labeling Regulations Which Are Currently in Effect

1. *Occupational Safety and Health Administration (OSHA).* OSHA's safety and health standards for General Industry, 29 CFR Part 1910, were either adopted from voluntary consensus standards, in accordance with Section (6)(a) of the OSH Act, or were promulgated by OSHA through the rulemaking process prescribed by section (6)(b) of the Act (3, 5). Several standards from both sources currently contain provisions for labeling hazardous materials which are present in the workplace.

A number of the standards OSHA adopted under section (6)(a) of the Act require employers to placard, label or mark various types of work sites or containers (see Table 1). For example, 29 CFR 1910.103 covers hydrogen. The standard requires the employer to permanently placard hydrogen storage locations with a warning equivalent to: "HYDROGEN—FLAMMABLE GAS—NO SMOKING—NO OPEN FLAMES". In addition, a portable container of hydrogen must be legibly marked with the name "Hydrogen", in accordance with "Marking Portable Compressed Gas Containers to Identify the Material Contained" ANSI Z48.1–1954.

Another OSHA safety standard which addresses labeling of hazardous materials is 29 CFR 1910.252, which covers welding, cutting and brazing. For example, containers of welding materials with significant amounts of cadmium in them must be marked as follows:

WARNING
CONTAINS CADMIUM—POISONOUS FUMES MAY BE FORMED ON HEATING

Do not breathe fumes. Use only with adequate ventilation such as fume collectors, exhaust ventilators, or air-supplied respirators. See ANSI Z49.1–1967.

If chest pain, cough, or fever develops after use, call physician immediately.

The following table summarizes the OSHA safety standards which include requirements for hazard identification:

Table 4.—*OSHA Safety Standards Adopted Under Section 6(a) of the Act Which Contain Labeling Requirements*

Standard and name of substance/hazard	storage labeling required	Container labeling required
1910.96 Ionizing radiation	×	×
1910.103 Hydrogen	×	×
1910.104 Oxygen	×	×
1910.111 Anhydrous ammonia.	×	×
1910.144 Color coding		
1910.145 Accident prevention signs and tags.		
1910.252 Welding, cutting, and brazing.	×	×

The only OSHA health standard adopted under section (6)(a) of the Act, 29 CFR 1910.1000, Air Contaminants, does not include labeling provisions. However, each of the other health standards, which were promulgated for individual substances under section (6)(b) of the Act, do include provisions for signs and labels.

The warnings required under each standard are specific to the substance being regulated. Each sign or label must include the precise chemical identification of the substance, as well as whatever hazard warnings or precautionary measures are indicated in the standard. Table 5 is a compilation of these standards, including the section number of each, the substance covered, and the hazard or other information to be noted on the label.

Table 5.—*Subpart Z standards Which Contain Labeling Requirements*

Sec. No. and substance	Information on label
1910.1001 Asbestos	Breathing dust may cause serious bodily harm.
1910.1003 4-Nitrobiphenyl	Cancer-suspect agent.
1910.1004 alpha-Naphthylamine.	Cancer-suspect agent.
1910.1006 Methyl Chloromethyl Ether.	Cancer-suspect agent.
1910.1007 3,3'-Dichlorobenzidine (and its salts).	Cancer agent.
1910.1008 bis-Chloromethyl Ether.	Cancer-suspect agent.
1910.1009 beta-Naphthylamine.	Cancer-suspect agent.
1910.1010 Benzidine	Cancer-suspect agent.
1910.1011 4-Aminodiphenyl	Cancer-suspect agent.
1910.1012 Ethyleneimine	Cancer-suspect agent.
1910.1013 beta-Propriolactone.	Cancer-suspect agent.
1910.1014 2-Acetylaminofluorene.	Cancer-suspect agent.
1910.1015 4-Dimethylaminoazobenzene.	Cancer-suspect agent.
1910.1016 N-Nitrosodimethylamine.	Cancer-suspect agent.
1910.1017 Vinyl Chloride	Cancer-suspect,extremely flammable gas under pressure.
1910.1018 Inorganic Arsenic.	Cancer-suspect, harmful if inhaled or swallowed.
1910.1029 Coke Oven Emissions.	Cancer hazard.
1910.1043 Cotton Dust	May cause acute or delayed lung injury.

Table 5.—*Subpart Z standards Which Contain Labeling Requirements*—Continued

Sec. No. and substance	Information on label
1910.1044 1,2-dibromo-3-chloropropane.	Cancer hazard.
1910.1045 Acrylonitrile	Cancer hazard.

2. Fair Packaging and Labeling Act. Congress passed the Fair Packaging and Labeling Act (29) in 1966 to require information to be provided to consumers about the commodities they purchase. Congress stated: "Packages and their labels should enable consumers to obtain accurate information as to the quantity of the contents and should facilitate value comparisons." The Act applies to anyone engaged in packaging or labeling consumer commodities. The Food and Drug Administration is responsible for enforcing the Act in regards to food, drugs, devices or cosmetics which they regulate, while other consumer commodities are regulated by the Federal Trade Commission.

Basically, the Act requires consumer commodities distributed in commerce to be labeled with:

(1) The identity of the commodity, and the name and place of business of the manufacturer, packer, or distributor; and

(2) The net quantity of contents, in whatever measure is appropriate for the package and its contents (weight, linear measure, area).

FDA and FTC have specific regulations describing their implementation and enforcement of the Fair Packaging and Labeling Act. Since the Act is directed towards consumers, compliance with its requirements does not provide information for employees in the workplace.

3. Environmental Protection Agency (EPA). In 1976, the Toxic Substances Control Act (TSCA) (15 U.S.C. 2601 *et seq.)* was passed (18). This Act gives EPA broad authority to regulate chemical substances and mixtures which present an unreasonable risk of injury to health or the environment. Under TSCA, unreasonable risk to human health or the environment may be regulated wherever it occurs. TSCA also emphasizes delayed or chronic effects of chemical exposure, particularly cancer, gene mutations and birth defects.

Under Section 6(a)(3) of this Act, EPA may require that a substance, mixture or article be marked or accompanied by warnings and instructions with respect to its use, distribution and disposal. To date, no labeling rules have been promulgated under TSCA.

The Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136 *et seq.*) authorizes EPA to regulate pesticides (19). To carry out its statutory mandate to protect against "unreasonable adverse effects", EPA requires that pesticides be tested prior to registration, which licenses distribution and marketing, to determine their health and environmental effects. An array of acute, subchronic and chronic testing is required, together with environmental chemistry and safety data.

Acute effects testing generally includes acute oral, dermal and inhalation toxicity tests, and skin and eye effects potential. The following table summarizes the acute toxicity categorization scheme utilized by EPA (19):

Table 6.—*Toxicity Categories*

Hazard indicators	I	II	III	IV
Oral LD50	Up to and including 50 mg/kg.	From 50 thru 500 mg/kg.	From 500 thru 5,000 mg/kg.	Greater than 5,000 mg/kg.
Inhalation LC50	Up to and including .2 mg/liter.	From .2 thru 2 mg/liter.	From 2 thru 20 mg/liter.	Greater than 20 mg/liter.
Dermal LD50	Up to and including 200 mg/kg.	From 200 thru 2,000	From 2,000 thru 20,000.	Greater than 20,000.
Eye effects	Corrosive; corneal opacity not reversible within 7 days.	Corneal opacity irritation reversible within 7 days; irritation persisting for 7 days.	No corneal opacity; reversible within 7 days.	No irritation.
Skin effects	Corrosive	Severe irritation at 72 hours.	Moderate irritation at 72 hours.	Mild or slight irritation at 72 hours.

Required subchronic and chronic toxicity testing varies, but may include assessment of oncogenic, mutagenic, teratogenic, reproductive, and metabolic effects; other adverse effects on the central nervous system or hematopoietic system; and histological changes in the organs, including but not limited to liver, kidney, and both male and female

reproductive systems. The extent of chronic testing for a particular pesticide depends on a number of factors, such as the intended use, type of application and chemical family.

It should be noted, however, that many registered pesticides have not been adequately tested to determine chronic effects, and therefore such data is not always available. EPA discussed this lack of data in the preamble to their regulations on conditional registration of pesticides (44 FR 27035; May 11, 1979):

> There are many pesticides registered that have not yet been addressed by either the generic standards program, or the RPAR program, and thus may not have been evaluated against the unreasonable adverse effects standard of FIFRA section 3(c)(5). The Agency intends to move ahead rapidly with both programs. Nevertheless, it will be some time before a significant number of pesticides are reviewed within these systems, and an even longer time before chronic hazard studies to serve as a basis for reaching regulatory decisions are completed by registrants. During this interim period, many of the risks associated with the use of pesticides will not be identifed or fully quantified * * *

EPA has issued proposed testing guidelines for many of the studies that may now be required during the registration process (21).

Based on the testing results, EPA determines whether a pesticide may cause unreasonable adverse effects, and therefore whether it may be registered. In conjunction with registration, EPA may classify a product for restricted use, a determination that additional restrictions are necessary to prevent unreasonable adverse effects. Further, a pesticide product must be labeled according to Agency-established requirements. Labeling is a significant adjunct to the registration process because under FIFRA, the label is the legal standard by which pesticide misuse is judged. Under Section 12 of FIFRA, it is a violation of the Act to "use a registered pesticide in a manner inconsistent with its labeling", and penalties may be levied under Section 14 of FIFRA for this violation.

EPA specifies that the pesticide label must include the following information (40 CFR 162.10):

1. Product name;
2. Company name and address;
3. Net contents;
4. EPA (Product) Registration number;
5. EPA (Producing) Establishment number;
6. a. Ingredients statement, including the name and percentage of each active ingredient (accepted common name, if there is one, followed by the chemical name);

b. A signal word, based on the acute effects of the pesticide (Danger, Warning, or Caution);

c. A child hazard warning, "Keep Out of Reach of Children";

7. A series of precautionary statements addressing human health, environmental effects on fish and wildlife, and physical/chemical hazards the product may pose;

8. A statement of practical treatment in the event of exposure;

9. If restricted use, a statement to that effect; and

10. Directions for use, storage, disposal, and, if applicable, reentry into areas where the pesticide has been used.

Beyond these specified contents, labels are developed by the individual companies seeking registration and thus may vary in terms of additional contents and appearance for the same product from different producers.

EPA has instituted a Rebuttable Presumption Against Registration (RPAR) procedure to assess the risks and benefits of pesticides that are identified as exceeding a threshold level of hazard (40 CFR 162.11). Initially, identification of RPAR candidates has been accomplished through the registration program. A pesticide placed within the RPAR system is fully evaluated relative to all products and uses affected to determine whether the adverse effects identified are unreasonable. Evidence of either acute or chronic "unreasonable" health effects may result in initiation of an RPAR proceeding. If the adverse effects are demonstrated to be unreasonable during the RPAR, cancellation or denial of registration action may result. Thirty substances have been placed in the RPAR system, and five have been completed.

4. *Food and Drug Administration (FDA).* The Food, Drug, and Cosmetic Act, administered by the FDA, provides for the labeling of substances which are ingested or come into close contact with humans (24). The following products must be labeled:

Foods
Cosmetics
Prescription drugs
Over-the-counter drugs
Animal drugs
Biologics
Diagnostics
Radiological products
Medical devices

The labels required by FDA are applied to the final products prior to consumer distribution, and do not provide any information or protection for employees in the workplace who may be exposed to hazardous substances during the production process.

Food is defined as articles used for food or drink for man or other animals, components of such articles, and chewing gum. Section 403 of the Act requires that foods be labeled with the following information:

1. Name and address of the manufacturer, packer, or distributor;
2. Net amount of food in the package;
3. Common name of all nonstandardized foods or the complete name of a food listed in the Standard of Identity;
4. Presence of any artificial flavoring, artificial coloring, or chemical preservative, indicated by the chemical name of the substance;
5. Ingredients by weight (except for certain standardized foods);
6. Food for dietary uses must include information on vitamins, minerals, and other dietary properties; and
7. Imitations must be labeled as imitations.

FDA maintains a list of substances which are directly or indirectly added to food and which are "generally recognized as safe (GRAS)" (21 CFR Part 182). To be included on the GRAS list, a substance's safety must be determined by scientists who are experts in food safety. FDA defines the "safety" of food additives as follows:

> "Safe" or "safety" means that there is a reasonable certainty in the minds of competent scientists that the substance is not harmful under the intended conditions of use * * * (21 CFR 170.3(i))

Although FDA may determine that a substance is "safe" for purposes of their regulations, this does not mean that the same substances are necessarily "safe" for employees exposed in the occupational setting. Therefore, it seems reasonable that a number of the GRAS substances, as well as other food additives, will be evaluated as hazards under this proposed regulation.

Drugs are defined as articles recognized in the official United States Pharmacopeia, offical Homeopathic Pharmacopeia of the U.S., or official National Forumlary; or articles used to prevent, diagnose, or treat disease; or articles used to affect function or structure in man or animals (21 U.S.C. 321). Medical devices are regulated separately. Section 502 of the Food, Drug, and Cosmetic Act sets forth the following general labeling requirements for drugs:

1. Name and address of the manufacturer, packer, or distributor;
2. Net amount of drug in the package;
3. List of active ingredients, using established names (the established

name is the official name designated; if there is no such designation, the name used in an official compendium; or if a name is not otherwise available, the common name may be used);

4. "May be habit forming" if the drug contains certain substances such as opium;

5. Quantity of certain specified substances such as alcohol;

6. If a prescription drug:

a. "Caution: Federal law prohibits dispensing without prescription."

b. Quantity or proportion of each active ingredient.

c. Names and quantities of all ingredients if for injection.

d. Recommended dosage.

e. Full information on effects and purposes.

f. Established name in type at least half as high as trade name.

7. If an over-the-counter drug: a. Identity statement followed by general pharmacological category or principal intended action.

b. Quantity of contents.

8. Adequate directions for use including frequency, duration, and route of administration, preparation for use, and other dosage information; and

9. Adequate warnings (indications that the drug has narcotic or habit forming properties; warnings against use by persons having certain medical conditions or by children where use may be dangerous to health, precaution concerning safe dosage and manner of use).

FDA has promulgated extensive specific drug labeling provisions under these general requirements of the Act. These provisions are addressed to either the general categories of prescription or over-the-counter drugs, or to individual, specific drugs.

There may be several stages of labeling during the development and packaging of a drug product. The first involves bulk drug shipments from a pharmaceutical manufacturer to another establishment where the drug will be processed, labeled, or repacked in substantial quantity. This establishment then ships the drug product to a retail firm or other dispensing facility (e.g., a pharmacy). Then the drug is dispensed to a customer.

Bulk shipments are generally exempt from the specific drug labeling requirements of the Act but must bear the statement "Caution: For manufacturing, processing, or repacking." Bulk packages of dosage units (such as tablets or capsules) are not covered by this exemption. Certain bulk shipments of drugs must also bear the statement "Caution: Federal law prohibits dispensing without prescription" (21 CFR 201.122). If the bulk shipment is to be used in the manufacture, processing or repacking of a new drug, the shipper may be required to add to the warning as follows: "Caution: For manufacturing, processing, or repackaging in the preparation of a new drug or new animal drug limited by Federal law to investigational use" (21 CFR 201.122(b)).

Labeling requirments for products being shipped from the packager to the dispenser of the drug are different for prescription and over-the-counter drugs.

Generally, prescription drug labeling must meet the following requirements (21 CFR 201.56):

(a) The labeling shall contain a summary of the essential scientific information needed for the safe and effective use of the drug.

(b) The labeling shall be informative and accurate and neither promotional in tone nor false or misleading in any particular.

(c) The labeling shall be based whenever possible on data derived from human experience. No implied claims or suggestions of drug use may be made if there is inadequate evidence of safety or a lack of substantial evidence of effectiveness. Conclusions based on animal data but necessary for safe and effective use of the drug in humans shall be identified as such and included with human data in the appropriate section of the labeling * * *"

The information required is to be presented under the following subject headings, and in this order:

Description.
Clinical Pharmacology.
Indications and Usage.
Contraindications.
Warnings.
Precautions.
Adverse Reactions.
Drug Abuse and Dependence.
Overdosage.
Dosage and Administration.
How Supplied.

If necessary, the following headings may also be used:

Animal Pharmacology and/or Animal Toxicology.
Clinical Studies.
References.

FDA provides specific guidance indicating what information must be provided under each heading (21 CFR 201.57). In addition, for some individual drugs FDA has promulgated specific provisions requiring certain information to appear on the particular drug's label.

If the packager cannot fit all of this information about the drug on the container label, a package insert may be used to supplement the label.

The information FDA requires is intended for the use of the physician or pharmacist. Labels on dispensed drugs are regulated by the individual State Boards of Pharmacy, and thus vary from state to state.

FDA also has regulations specifying labeling requirements for over-the-counter drugs. Basically, the label must include a statement of identity and a declaration of the net quantity of the contents.

FDA has promulgated a number of regulations for specific drug labeling of both prescription and over-the-counter drugs.

For example, lozenges, mouth washes, gargles and other articles sold over-the-counter for relief of minor irritations of the mouth or throat can only be labeled "for the temporary relief of minor sore throats", if the following statement is also included: "Warning—Severe or persistent sore throat or sore throat accompanied by high fever, headache, nausea, and vomiting may be serious. Consult physician promptly. Do not use more than 2 days or administer to children under 3 years of age unless directed by physician."

Cosmetics are articles applied to the human body for cleanliness or to alter appearance. Soap is not classified as a cosmetic. Generally, under the Act a cosmetic label requires the name of the manufacturer, packer, or distributor and statement of weight, but does not require the listing of specific ingredients. An exception is coal-tar hair dyes which must be labeled to warn that they may cause skin irritations, and should not be used for eyebrows or lashes because they may cause blindness. However, FDA has promulgated in its regulations under the Act an additional provision which requires that each cosmetic package "bear a declaration of each ingredient in descending order of predominance, except that fragrance or flavor may be listed as fragrance or flavor" (21 CFR 701.3). The names of the ingredients are to be either the FDA adopted name, or in the absence of one, the common or usual name. If there is no adopted or common name, the chemical or technical name is to be used.

5. *Department of Transportation (DOT).* Section 105(a) of the Hazardous Materials Transportation Act, which was passed in 1975, gave DOT the authority to regulate the labeling of hazardous materials in transportation which may pose an unreasonable risk to health, safety, or property (22). The Secretary of Transportation is given the authority to designate which substances are hazardous. In addition, the Secretary has the authority to regulate substances which meet the definition of hazardous,

but are not specifically designated as such by the Secretary. The shipper is thus required to determine if an individual substance that is not on the list is hazardous, and thus must be labeled. Hazardous substances may include, but are not limited to, explosives, radioactive materials, etiologic agents, flammable liquids or solids, combustible liquids or solids, poisons (dangerous to life, known to be a human health hazard, or presumed to be a hazard on the basis of animal testing results), oxidizing or corrosive materials, and compressed gases.

Over 1500 individual substances or categories of substances have been designated as hazardous (49 CFR Part 172). Some of the categories are general in nature, and thus the categories cover most substances which are hazardous, but are not specifically or individually designated as such. For example, one category is "drugs, not otherwise specified; Poison B". If a drug fits the definition for a Poison B, it would thus have to be labeled, even though it is not individually listed by DOT by substance name. A table which is part of the DOT regulations indicates the specific labeling requirements for each of these designations.

The hazardous substances which are categorized on the basis of their health effects are designated as either Poison A or Poison B. The substances categorized as "Poison A" are considered to be "extremely dangerous", and those categorized as "Poison B" are considered to be "less dangerous". Approximately 20 individual substances are listed as Poison A, as well as 6 general categories. Nearly 130 substances are considered to be Poison B, and there are about 20 general categories listed as such.

Under DOT regulations, 49 CFR Part 172, all dangerous goods or their packages must have the designated labels. The label must include the name, DOT identification number, and a statement of the hazard. In addition, the regulations require the placarding of each motor vehicle, rail car, or freight container containing any quantity of a hazardous material.

DOT regulations cover interstate shipment by truck, rail, water, an air but vary depending on the mode of transportation. The responsibility for labeling is placed on manufacturers, shippers, and the reconditioners and testers of containers in which the hazardous materials are transported. Both the carrier and the manufacturer are forbidden to transport a package which is improperly labeled.

6. *The Consumer Product Safety Commission (CPSC).* The CSPC regulates the labeling of toxic substances in household products used by consumers as part of its broad mandate to protect the public against unreasonable risk of injury (23). The CPSC administers the Federal Hazardous Substances Act (FHSA) which requires the labeling of hazardous substances. "Hazardous substance" is defined in the FHSA regulations as "any substance or mixture of substances which is toxic, corrosive, an irritant, a strong sensitizer, flammable or combustible, or generates pressure through decomposition, heat or other means, if such substance or mixture of substances may cause substantial personal injury or substantial illness during or as a proximate result of any customary or reasonably forseeable handling or use, including reasonably foreseeable ingestion by children." A "toxic" substance is one which "has the capacity to produce personal injury or illness to man through ingestion, inhalation, or absorption through any body surface." A "highly toxic" substance is defined by lethal dose testing results. (These definitions may be found in 16 CFR 1500.3).

The person or firm who releases a product into interstate commerce (usually the manufacturer) has the primary responsibility for determining if the FHSA applies to their product and thus warrants labeling (section (4) of the FHSA). However, if CPSC finds that there may be uncertainty as to the application of the Act in certain instances, or if the hazard is such that the general labeling requirements will not protect consumers, individual specific regulations may be required for hazardous substances. This authority has only been used in a few cases, such as charcoal briquettes (16 CFR 1500.12 and 1500.14) and methyl alcohol (16 CFR 1500.14). CPSC may also ban hazardous substances if the degree of hazard warrants discontinuing consumer use. For example, carbon tetrachloride is a banned hazardous substance (16 CFR 1500.17).

The FHSA requires the following information on a label or tag attached to a hazardous substance:

1. Name and place of business of the manufacturer, packer, or distributor;
2. Common or chemical name of the hazardous substance or of each component which contributes substantially to its hazard;
3. The signal word *"danger"* on substances which are extremely flammable, corrosive, or highly toxic;
4. The signal word *"warning"* or *"caution"* on all other hazardous substances;
5. Affirmative statement of the principal hazard or hazards;
6. Precautionary measures describing the action to be followed or avoided;
7. Instruction, when necessary or appropriate, for first-aid treatment;
8. The word "poison" for any hazardous substance defined as highly toxic;
9. Instructions for handling and storage of packages if special care is required;
10. Statement "Keep out of the reach of children" or if intended for use by children, adequate directions for the protection of children.

As stated above, if this information is not adequate to protect consumer health and safety, additional requirements may be applicable. For example, special labeling is required at certain concentrations for benzene, toluene, xylene, and petroleum distillates (16 CFR 1500.14).

7. *State Regulations.* Twenty-four states have regulations which address labeling. However, only nine states have regulations which apply to labeling in the workplace environment (9, 10, 11, 12, 13, 14, 15, 16, and 17).

Table 7 lists all of the provisions contained in the state regulations. Also listed, by individual state, are the specific provisions applicable to each. This table was prepared by OSHA to give a general overview of existing state laws based on a review of the written regulations supplied by these states. It should not be considered to be a legal interpretation of these state requirements. Most of the states do not have any provisions pertaining to the protection of trade secret information, nor do they provide employers with any specific guidance for determining which substances in their workplaces are covered by the regulations.

Table 7.—*Summary of State Labeling Provisions*

Provisions which may be included in state regulations:
1. Substance Identification:
(a) Requires substance identification by chemical name or common name(s).
(b) Requires substance identification by chemical name and common name(s).
2. Identification Criteria:
(a) Includes a list of regulated substances.
(b) The employer determines which substances are regulated on the basis of definitions.

Table 7.—*Summary of State Labeling Provisions*—Continued

(c) Sources of information the employer can use are provided.
(d) A combination of lists and definitions is used.
2. Requires the Use of Material Safety Data Sheets.
4. Information Required to be Provided on Labels or Equivalent.
(a) Requires hazards warning information.
(b) Requires precautionary measures information.
5. Requires Employee Training.
6. Recordkeeping Requirements:
(a) Provides for employee access to records maintained by employer.
(b) Requires retention of records by employer.

Provisions included in regulations of specific states:
California—1(a), 2(c), 4(a) and (b).
Connecticut—1(a), 2(c), 4(b), 5, 6(a).
Maine—1(a), 2(d), 5, 6(a) and (b).
Massachusetts—1(a), 2(c), 4(a) and (b).
Michigan—1(a), 2(c), 3, 4(a) and (b), 6(a).
New Jersey—1(a), 2(d), 4(a) and (b).
New York—1(a), 2(c) and (d), 3, 4(a) and (b), 5, 6(a) and (b).
Oregon—1(a), 2(b), 4(a) and (b).
Washington—1(a), 2(b), 4(a) and (b).

6. *European Economic Community (EEC).* Since hazardous substances are frequently traded between the U.S. and other countries, the labeling requirements of those nations may have an impact on American labeling practices. The standards established by the EEC, an organization composed of nine member nations, is the most widely known of available standards in foreign countries.

The EEC standards were initiated in 1967 by the Council of the European Communities. Since that time, the Council has issued four Directives concerning the classification, packaging and labeling of "dangerous" chemical products (30). The term "dangerous" is similar to OSHA's definitions of "hazardous". These Directives require each member nation of the EEC to develop harmonious laws, regulations, and administrative provisions regarding trade in these products within a determined period of time.

Each Directive focuses on a distinct category of dangerous materials or products as follows:

1. *"Substance Directive":* Concerns the classification, packaging, and labeling of dangerous substances (Directive 67/548/EEC, August 16, 1967; as amended by Directive 79/831/EEC, September 18, 1979).

2. *"Solvents Directive":* Concerns dangerous preparations (i.e. mixtures) and certain substances that are intended for use as solvents (Directive 73/173/EEC, June 4, 1973).

3. *"Paints Directive":* Covers paints, varnishes, printing inks, adhesives, and similar products (Directive 77/728/EEC, November 7, 1977).

4. *"Pesticides Directive":* Covers pesticide products (Directive 78/631/EEC, June 26, 1978).

The Substance Directive specifies fourteen categories of dangerous products and the criteria by which they are defined. The EEC categories encompass products that may present health, physical, and environmental hazards during use, handling, or disposal. Eight categories identify products that pose health hazards or degrees of hazards: very toxic, toxic, harmful, corrosive, irritant, carcinogenic, teratogenic, and mutagenic. There are five categories of materials that pose physical hazards: explosives, oxidizing, extremely flammable, highly flammable, and flammable. A final category includes products whose use threatens the environment: dangerous for the environment. A dangerous product is one which can be classified in one or more of these categories.

Containers of dangerous substances that are distributed within the EEC must be labeled with the following information: (1) The name of the substance, (2) the name and address of the manufacturer, importer, or distributor of the substance, (3) hazard symbol(s), if applicable, and key hazard terms, (4) appropriate Risk Statements, and (5) appropriate standard Safety Advice Statements. Terms such as "non-toxic" or "non-harmful" must not appear on any package containing a dangerous substance.

The EEC labeling standard use symbols as the primary hazard warning method. Associated with nine categories are six pictograms: explosives—an exploding bomb; oxidizing—a flame over a circle; extremely flammable and highly flammable—a flame; very toxic and toxic—a skull and crossbones; harmful and irritant—the St. Andrew's cross (a bold-face "X"); corrosive—a symbol showing the destructive effects of an acid dripping from test tubes onto a hand and a bar. Containers of a product which satisfy the criteria for any of these categories must bear the corresponding pictogram(s) and key hazard term(s) on their labels. The pictograms must be printed in black and appear on a rectangular orange-yellow background. Together the pictogram and the hazard term constitute the EEC hazard warning symbol.

For products that satisfy the criteria for more than one of the danger categories, the EEC prescribes procedures for determining which pictograms take precedence over others on the label. These requirements determine which of the hazards are to be highlighted on the label by symbols (and, therefore, which are left to be dealt with by means of appropriate risk statements). A label may contain no more than two symbols.

The EEC has established specific labeling requirements for nearly 1,000 dangerous substances, which appear in an appendix to the Substance Directive. These requirements specify precisely what information must appear on the product's label, including the nomenclature for identifying each substance, hazard symbols, and standard risk and safety statements. However, substances which meet the criteria for being dangerous but do not appear in this appendix, must still be labeled.

The Substance Directive will go into effect in September 1981. The Paints Directives became effective on November 7, 1979; the Solvents Directive on June 4, 1978; and the Pesticides Directive on January 1, 1981.

E. History of OSHA's Proposed Labeling Standard

OSHA's involvement in the identification and labeling of hazardous chemicals in the workplace began several years ago. In 1974, the Standards Advisory Committee on Hazardous Materials labeling was established under Section 7(b) of the OSH Act to develop guidelines for the implementation of Section 6(b)(7) of the Act with respect to hazardous materials. On June 6, 1975, the Committee submitted its final report which identified issues and recommended guidelines for categorizing and ranking chemical hazards. Labels, data sheets, and training programs were also prescribed.

In 1976, Congressman Andrew Maguire (New Jersey) and the Health Research Group petitioned OSHA to issue a standard to require the labeling of all workplace chemicals. The House of Representatives' Committee on Government Operations in 1976 and 1977 recommended that OSHA should enforce the health provisions of the OSH Act by requiring manufacturers to disclose any toxic ingredients in their products, and by requiring employers to disclose this information to workers (House Report No. 94-1688 and House Report No. 95-710).

On January 28, 1977, OSHA published an advance notice of proposed rulemaking on chemical labeling in the Federal Register (42 FR 5372). The notice requested comments from the public regarding the need for a standard which would require employers to label hazardous materials. Information was also requested regarding the provisions to be included in such a standard to assure that employees are apprised of the hazards to which they are exposed.

A total of eight-one comments were received from a variety of federal, state, and local government agencies, trade associations, businesses, and labor

organizations. In general, there was support for the concept of a chemical identification and labeling standard. A number of commenters said that such a standard should be comprehensive in scope, but not too complex in design. Many expressed the opinion that OSHA's standard should be compatible with the standards of other regulatory agencies with labeling authority, such as the Department of Transportation (DOT), and with existing voluntary labeling standards, such as that of the American National Standards Institute (ANSI). A few commenters expressed concerns about protection of trade secret information and about labeling chemical intermediates.

Various suggestions were put forth for determining which materials should be covered by the standard. Some commenters thought that chemicals which met specified definitions or other classifications should be regulated. Others preferred that a list of substances to be regulated be provided, for example, those substances in 29 CFR 1910.1000 (OSHA's list of air contaminants), in the NIOSH Registry of Toxic Effects of Chemical Substances (RTECS), or in the DOT hazardous materials list.

Virtually all commenters recognized the need for labels in the workplace, and for inclusion of warnings and descriptive information. However, opinions varied as to what form these labels and information should take, or if an existing system should be adopted. Similarly, there was general recognition of the need to inform employees of the hazards to which they are exposed by means of data sheets and training programs, although suggestions as to content and format varied.

In developing this proposal, OSHA has considered all of the regulations, documents, and comments described above. Consideration has also been given to all other available information, such as that presented at conferences and at meetings of professional societies, and meetings with interested members of the public and other Federal agencies.

In addition, as a member of the Interagency Regulatory Liaison Group (IRLG), OSHA is working to assure that the provisions of this standard will not conflict with other related federal policies and regulations. The IRLG, which was established to coordinate federal regulatory activities, consists of representatives from OSHA, the Environmental Protection Agency (EPA), the Food and Drug Administration (FDA), the Consumer Product Safety Commission (CPSC), and the Food Safety and Quality Service of the Department of Agriculture. The "IRLG Labeling Regulations Task Force" and the "IRLG Labeling Education Task Force Group" are currently involved in planning research projects to determine the factors that contribute to effective labeling. OSHA recognizes the need for such research. However, the evidence found and presented in this document indicates that immediate action should be taken to protect employees. The IRLG deliberations and research findings will be entered into OSHA's rulemaking record as they become available, and will be given full consideration in the development of OSHA's final standard.

III. Summary of the Proposed Standard

The proposed hazards identification standard will establish a system designed to communicate to workers, employers and governmental agencies concerned with worker health, the essential facts necessary to assess the hazards of workplace chemicals. Chemicals are classified under the proposal as either "substances" or "mixtures." Information about the identities and hazardous properties of hazardous chemicals will be communicated primarily by means of labels and placards, and material safety data sheets. Container labels and placards will give workers immediate access to the identities of the hazardous chemicals and mixtures with which they work directly. Safety data sheets, when available, will provide workers and their representatives with detailed information about the properties and handling of hazardous chemicals and mixtures, supplementing the information on hazard warning labels. Hazard evaluation files will enable employees and their representatives to do their own hazard determinations and to check those done by the employer.

The key responsibility under this system for the evaluation of hazards lies with the manufacturer or importer of a substance or mixture of substances. This is because the manufacturer or importer is in the best position to know the chemical identity and properties of a substance or mixture.

The proposed hazard identification standard requires each manufacturer to evaluate each substance and mixture the manufacturer makes to determine if it is hazardous according to criteria the standard specifies. Importers of substances and mixtures destined for the workplaces of industrial users must evaluate them under the same criteria.

The evaluative procedures of the porposed standard do not require manufacturers and importers to test substances and mixtures for hazards. They do require a manufacturer or importer to determine whether any of the substances or mixtures which they manufacture or import poses a physical hazard (Category A hazard) or an acute or chronic health hazard (Category B hazard). To make this determination, the manufacturer is required to assemble scientific materials from specified sources, including both private and publicly available materials by means of the evaluation schemes set out in Appendices A and B.

Manufacturers and importers must maintain files on all chemicals and mixtures they manufacture or import. Each file must contain the references, studies, reports, or other documents upon which a conclusion of hazard, or lack of hazard, is based.

With certain shipments of chemical substances or mixtures from their premises, manufacturers and importers must forward the following information:

The precise identity of hazardous substances, and the identity of hazardous constituent substances which are part of a mixture;

An appropriate hazard warning and precautionary statement for the hazardous material shipped;

Where a substance or mixture has been determined not to meet the standard's criteria for a hazard, a statement to that effect.

This information must accompany shipments to any employer whose activities are classified under Division D (Manufacturing), Major Groups 20–39 of the Standard Industrial Classification Manual. These are employers who manufacture, process, formulate or use chemicals, and who are referred to in the proposed standard as "industrial users." This information must also accompany shipments to suppliers who will subsequently distribute a hazardous substance or mixture to an industrial user.

The proposed standard does not require manufacturers and importers to develop safety data sheets on the hazards of chemicals and mixtures. With the first shipment of a hazardous chemical or mixture to a workplace of an industrial user or a supplier of an industrial user, however, a manufacturer or importer must forward one copy of the most current safety data sheet which the manufacturer or importer does have concerning the dangers posed by the material shipped. A supplier must forward with every shipment to another supplier or to an industrial user the hazards-related information received from a manufacturer or importer. A supplier has no other duties under the proposed standard.

Industrial users are employers who manufacture, process, formulate or

otherwise use chemicals and mixtures. Thus, the manufacturer of a particular substance or mixture is also an industrial user. Protection of the employees of industrial users is the primary purpose of the hazards identification standard. To insure that employees of industrial users know the hazards of the substances and mixtures with which they work, the hazard identification standard would require such industrial users to:

Label containers of every hazardous substance in the workplace with the CAS number and common name of its contents, and with appropriate hazard warnings.

Label containers of mixtures with the CAS number and common name of its hazardous constituent substances, and with appropriate hazard warnings.

Provide employees with any available safety data sheets concerning the dangers posed by hazardous chemicals and mixtures in the workplace.

Update the information provided to employees as new information about the hazards of a substance or mixture becomes available.

Triggering the responsibility to label and to provide available safety data sheets is the determination that a substance or mixture is hazardous. In determining if a workplace substance or mixture is hazardous, only the manufacturer or importer of that substance or mixture need undertake a review and evaluation of internal records and of the scientific literature. Other industrial users of the substance or mixture may simply rely upon the determination made by the manufacturer or importer. These determinations will be evidenced by the hazard-related information received by industrial users with shipments of substances or mixtures from manufacturers, importers, or suppliers.

The proposed hazard identification standard would also provide employees, former employees, and their designated representatives, with access to safety data sheets relevant to the areas in which the requesting employee works or worked. A designated representative may be anyone the employee chooses, including, but not limited to, a union representative, a physician, or a family member. Unions representing employees in the workplace would have access to all safety data sheets in the workplace.

Under the proposed standard, employees, former employees, unions representing employees in the workplace and other designated representatives, OSHA, and NIOSH, may inspect any file containing the references and documents upon which hazard determinations for workplace chemicals and mixtures are based.

Safety data sheets and files containing hazard determination materials must be preserved for specified periods of time. The proposed standard makes provision for permanent transfer of these records in case an employer subject to its recordkeeping requirements goes out of business.

IV. Major Issues for the Rulemaking.

There are a number of major issues inherent in the provisions of the proposal concerning which OSHA specifically invites comment. A brief discussion of some of the most important of these issues follows. There are undoubtedly additional issues raised by this notice of proposed rulemaking which should and will be addressed, and OSHA may amend the proposed standard on the basis of comments received or alternatives discussed concerning such issues.

A. Issues of Scope and Type of Standard

1. *The generic approach to a hazard identification standard.* The proposed hazard identification standard embraces a generic approach to rulemaking. The standard sets out a list of defined hazards, mandates procedures which manufacturers and importers must follow to determine the existence of those hazards, and requires that substances and mixtures meeting any hazard definition be labeled and otherwise identified in various ways. Some industry representatives have strongly objected to the generic approach and have suggested that substances and mixtures in the workplace should be subjected to regulation by the standard on a case-by-case basis.

As discussed elsewhere in this preamble, OSHA believes that it is authorized by applicable law to undertake generic rulemaking. Moreover, OSHA believes strongly that the generic approach to rulemaking is particularly applicable to hazard identification. It is generally accepted among health scientists that literally thousands of chemicals in the workplace are capable of harming human health. Consequently, it would take many years to accomplish comprehensive and effective identification of hazardous chemicals in the workplace if there were separate rulemakings concerning each potentially hazardous workplace chemical. Indeed, in its entire ten (10) year history, through substance-specific rulemakings OSHA has been able to promulgate currently effective standards regulating only 20 chemicals.

The current proposed generic standard places the responsibility for the hazard determination process upon the manufacturer or importer (paragraph (l) of the standard). Without changing any of the other requirements of the standard or abandoning the generic approach, an alternative approach is conceivable in which the Agency itself could undertake to carry out the hazard determination process in the final rule. Thus, the final rule would retain the current scope of hazard coverage, the hazard determination process, the data evaluation scheme and the regulatory requirements concerning hazardous substances or mixtures.

The Agency could perform the hazard determination process in the following manner:

1. Appointed panels of experts would review classes of chemicals using the scientific materials mandated by Appendix A and the data evaluation scheme set out in Appendix B;

2. OSHA would review the expert determination of hazard and require conformity with the provisions of the standard for those substances or mixtures where it approves the expert panel's decision.

3. If an interested party disagreed with the Agency's hazard determination decision, then the Agency could apply a summary procedure to determine whether a hearing were required. Issues in the summary judgment procedure would be confined to the question of whether the quantity and quality of data underlying the positive hazard determination satisfied the rule's requirements.

The Federal Food and Drug Administration (FDA) has extensive experience in the use of the elements just described. Expert panels were utilized to evaluate 16573 claims of effectiveness for 4,000 drug formulations following passage of the 1962 Drug Amendment (see Note: *Drug Efficacy and the 1962 Drug Amendments*, 60 Geo. L. J. 185–224 (1971)). The FDA's summary judgment procedure has been upheld *(Weinberger v. Hynson, Westcoff and Dunning, Inc.*, 412 U.S. 609 (1973)). The summary judgment procedure involved regulations which defined, "* * * the essentials of adequate and well-controlled clinical investigations * * * (as a) * * * basis for the determination whether there is substantial evidence to support the claims of effectiveness * * * (21 CFR 314.111(a)(5)(ii) (1979)).

The Agency invites comments on the advisability of this alternative approach. The Agency did not choose this alternative because it believes that the hazard determination process which it has mandated in the proposal will result

in labeling of hazardous materials sooner.

OSHA solicits comments directed at the appropriateness of generic rulemaking in the context of the need for hazard identification in the workplace under either of the two alternative approaches described. Should OSHA conclude that generic rulemaking is inappropriate, OSHA may still adopt a two-tiered approach similar to its Cancer Policy (45 FR 5002 *et seq.*) Under such an approach, the hazard definitions and evaluation procedures proposed in the standard, with any appropriate modifications which arise from comments and testimony, would be adopted generically. Using these, OSHA would then formulate lists of hazardous chemicals which, either individually or in groups, may then be subjected to rulemakings to determine if they should trigger the informational requirements of the proposed standard.

2. *Employers covered by the standard.* The proposed standard is designed primarily to provide hazards-related information to employees of employers engaged in manufacturing. To this end, the standard regulates the activities of both manufacturers who produce chemicals (called "manufacturers" in the standard) and manufacturers who use chemicals (called "industrial users" in the standard), as well as importers and suppliers of hazardous chemicals. Under the standard, Division D (Manufacturing), Major groups 20–39, in the most recent revision of the Standard Industrial Classification Manual; Executive Office of the President—Office of Management and Budget, defines the class of manufacturers and industrial users covered by the standard. Employers excluded include those in agriculture and construction among others.

It should be noted, however, that the proposed standard intends that where an employer otherwise exempted from coverage works on the premises of a workplace covered by the standard, chemicals utilized by the exempted employer will be subject to the provisions of the standard.

Although evidence is presently lacking, the need for the protections of the hazards identification standard may well be as great in some industries excluded from coverage as they are in those covered. Accordingly, OSHA invites comment on the appropriate scope of coverage. Employers currently excluded from the scope of the proposal may be included in the scope of the final standard if evidence in the record ultimately warrants such inclusion. They and others interested in this issue are therefore given notice that they should be prepared to participate in the rulemaking and provide justification, if they so desire, of why particular classes of employers should or should not be excluded.

3. *Duty to disclose specific chemical identity and impact on trade secrets.* A keystone of the proposed hazard identification standard is the duty to provide workers with specific chemical identity of hazardous chemicals. As discussed elsewhere in this preamble, OSHA considers the disclosure of specific chemical identity in addition to basic hazard warning information as crucial to the goal of worker self-protection.

Certain industry representatives have stated that provision of the specific chemical identity of hazardous chemicals is inappropriate. They claim that workers and their representatives generally are neither properly trained or equipped to utilize the chemical identity of hazardous chemicals to decipher additional facts about their effects; nor to develop new modes of treatment for, or prevention of, such effects.

OSHA invites detailed comments on these contentions. OSHA also invites detailed comments from workers and their representatives concerning the need for and uses of the specific chemical identification which the proposed standard would make available to them.

OSHA is particularly interested in this issue because of the likely impact of this standard on employer trade secret interests. The trade secrets issue is presented by the proposal because, in some instances, disclosure of a hazardous substance's chemical identity may involve revelation of a trade secret.

In developing this proposal, therefore, OSHA has considered the effect of this standard on trade secrets. An extended legal analysis of OSHA's authority to issue standards requiring disclosures affecting trade secrets may be found in the preamble to the access to exposure and medical records standard (45 FR 35248–251). In general, OSHA believes that in rulemaking it must balance the safety and health interests in disclosure of hazards-related information with the employer's interest in trade secrets, but that it may require disclosure by rule, notwithstanding a trade secret interest, where non-disclosure could pose a significant risk to employees. In OSHA's view, this means that chemical identities of hazardous chemicals and their hazardous properties must be disclosed to employees, but that the secret chemical identities of non-hazardous chemicals, as well as secret process and formula information concerning hazardous chemicals, need not be disclosed. OSHA recognizes that the impact on trade secrets of this proposed rule is in some respects greater than the records access rule because of the element of "downstream" disclosure. On the other hand, the more focused scope of the chemicals covered by this standard and the percentage exclusion for chemical constituents of mixtures below 1.0% for non-carcinogens and 0.1% for carcinogens should eliminate some of the anticipated trade secret problems.

Industry representatives have suggested, however, that even where a substance is admittedly hazardous, disclosure of its identity should not automatically be required where a trade secret is involved. These representatives propose that industry be allowed in every case involving a claimed trade secret to challenge the need for disclosure. Presumably, the issue would be whether the potential for harm to workers risked by non-disclosure outweighs the damage to a firm by forced disclosure of its trade secrets in the individual case.

Once a firm has through its own evaluation found a chemical hazardous, OSHA believes that case by case adjudication is unjustified and unworkable. OSHA believes that each of the hazards it has identified in the proposed standard is significant. Consequently, if the potential for a hazard exposure in the workplace exists, disclosure of the identity of chemicals posing that hazard is clearly essential to providing the capability for workers to protect themselves from workplace hazards. Moreover, allowing individual challenges to the need for the disclosure of the chemical identity of hazardous chemicals might well create an administrative nightmare as thousands of challenges to disclosure were lodged. It could take years before a final decision were reached in any case. In the interim, with enough challenges, the standard's requirements for disclosure would be meaningless.

OSHA recognizes that the legal and policy issues surrounding the disclosure of trade secrets are troublesome and complex. OSHA solicits comments on all aspects of trade secrets disclosure and particularly on the following points:

—How important are trade secrets to the competitive structure of the industries covered under the proposal or which may be covered by any final standard?

—To what extent will the proposed standard require trade secrets disclosure?

—Are there ways to provide trade secrets protections greater than those afforded under the proposal, and still

insure that chemical identification is disclosed in a timely fashion to all those with a need to know?

B. Scientific Issues

The scientific elements occupy a central position in the proposed standard because the extent of regulation of a substance or mixture is controlled by the hazard determination process which, in turn, is constructed from these elements. The elements are most appropriately considered under three headings: scope of hazards covered, hazard determination process and the evaluation procedure.

1. *Hazards covered by the standard (general issues).* a. *Universal vs. hazard labeling.* The proposed standard would require provision of chemical identification and hazard warnings for chemicals which meet the criteria for any hazard as defined by the standard (see paragraphs (i)–(1) and Appendices A and B). Hazard definitions fall into two general categories, Category A and Category B, which generally correspond to physical and health hazards, respectively, and which together are calculated to embrace all significant workplace hazards.

By focusing on workplace hazards, the proposed standard falls short of a system of universal chemical identification. By contrast, some unions and other worker advocates have urged OSHA to require chemical identification of all substances in the workplace whether or not they pose proven hazards to human health. They claim that such identification is necessary to insure the capability of workers, and scientists assisting them, to identify the hazards of chemicals in the workplace before injury to worker health actually occurs. Without worker capability to conduct their own studies, these advocates claim that the identification of hazardous properties of workplace chemicals, especially those with long latency periods, will be unnecessarily delayed with a resultant increase in death or disablement of workers.

As previously stated, however, there is at least one major drawback to universal chemical identification of substances in the workplace: disclosure of chemical identity may, at times, reveal a trade secret. OSHA believes that the required disclosure of a trade secret is most clearly justified where the chemical involved poses a known hazard to human health. With universal chemical identification, the identity of chemicals which may turn out to be harmless would be revealed. This, in turn, risks the potential for unwarranted disclosure of industry trade secrets. To outweigh this important disadvantage, workers, and those assisting them, would have to show a comprehensive capability of using chemical identity to determine hidden hazardous effects of workplace chemicals with no present known potential to injure human health.

OSHA invites comments concerning the utility of a requirement for universal chemical identification in the workplace and any effects such a requirement might have upon trade secrets.

b. *General or workplace-specific hazard determinations.* Under the proposed standard, the determination of a hazard is not made dependent on the particular conditions under which the chemical will be used in a particular workplace. Instead, the proposal provides for a single hazards determination procedure.

On scientific grounds, OSHA believes that its proposed approach is preferable. Traditional public health preventive practice has considered a substance or mixture potentially hazardous for any occupational exposure once its toxicity, based upon definitions like the ones presented in this proposal, has been documented with sound toxicologic, clinical or epidemiologic studies. This current Agency position is consistent with the 1974 NIOSH criteria document (7).

Moreover, the Agency believes that adoption of the workplace-specific alternative would lead to an unreasonable demand on OSHA consultation and enforcement resources. Since manufacturers and importers have no reliable methods of knowing the conditions surrounding the end-use of their chemicals by industrial users, OSHA belives that the hazard determination process would need to be performed in that case by the industrial users themselves. Industrial users, as a class, in comparison to manufacturers and importers, have substantially less experience in making such basic hazard determinations for chemicals. As a consequence, industrial user hazard determinations would probably take longer, cost more and require greater OSHA involvement.

As a result of the single hazard determination approach of this proposal, some industry representatives have stated that the hazard definitions do not adequately take into account, and may in fact overstate, the true risk of potential hazards in the workplace. Thus, they feel it is unnecessary, or even harmful, to apprise workers of the hazards of chemicals tested in one physical form (solid, liquid, or gas) and presented in the workplace in another physical form. OSHA believes that, in the case of Category B health hazards, the physical form of a substance is largely irrelevant to the risk imposed by the exposure.

Moreover, these industry representatives would not apprise workers of the hazards of chemicals where the existence of a hazard was established at dosages, or by routes of administration, not frequently encountered in particular workplaces. OSHA invites further comment on this issue.

c. *Impurities, Intermediates, By-Products.* The proposed standard would require that impurities, intermediates, and by-products be evaluated and regulated, if known to be present (paragraphs (d)(2)(iv), (e)). OSHA does not intend that a manufacturer or importer perform chemical analysis to detect these materials in order to comply with this standard.

The Agency expects that its jurisdiction over these classes of materials, as potential workplace hazards, will extend to the point at which the Environmental Protection Agency assumes jurisdiction under the Solid Waste Disposal Act as amended by the Resource Conservation and Recovery Act (42 U.S.C. 6907(a)(3), 6944).

OSHA invites comment on the appropriateness of including these categories of chemicals in the proposed standard.

2. *Hazards covered by the standard (definitional issues).* a. *General.* The proposed standard covers physical hazards, acute health hazards and chronic health hazards. The covered hazards are categorized into these three categories as follows:

Table 8

Category		
(A)	(B)	(C)
Physical hazards	Acute/subacute health hazards	Chronic health hazards
Corrosives	Highly toxic material.	Sensitizers.
Extremely flammable liquids.	Toxic materials	Carcinogens
Flammable materials.	Irritants	Reproductive toxins.
Aerosols, gases	Materials that have endangered or killed workers.	Materials that cause other chronic adverse health effects.
Liquids, solids	Materials that cause other acute adverse health effects.	
Combustible liquids.		
Pyrophoric materials.		
Strong oxidizers		
Reactive materials:		
Explosives		
Organic peroxides.		
Pressure-generating materials.		

Table B—Continued

	Category	
(A)	(B)	(C)
Physical hazards	Acute/subacute health hazards	Chronic health hazards
Water-reactive materials.		
Compressed gases.		

b. *Physical Hazards.* The Category A (physical) hazards are defined in terms of objective physical properties to facilitate compliance. The definitions for physical hazards are stated in terms of numerical criteria (flammability, combustability, compressed gas), chemical structure (organic peroxides) or reactive properties (corrosives, pyrophoric materials, strong oxidizers, explosives, pressure-generating materials, water-reactive materials). Based upon discussions with industry and the Agency's own expertise, OSHA believes that data and studies necessary to determine whether a substance meets the objective criteria of the physical hazards' definitions are available either in company files or in the scientific literature. To comply, a manufacturer or importer would evaluate such data or studies for the presence of physical hazards using sound scientific judgment. An extensive literature search is not required (see Appendix A) nor need the formal evaluation scheme be followed (see Appendix B).

In the case of mixtures, the Agency understands that compliance based upon material in the scientific literature will not often be possible because of the scientists' tendency to evaluate the effects of pure substances. However, the Agency believes, based on discussions with industry, that many manufacturers of mixtures obtain the requisite physical hazards data on a proprietary basis as a customary incident of offering the mixture for sale. The Agency has, therefore, provided for the use of such data when available (paragraph (a), Appendix A). In general, however, OSHA does not rely on such mixture data and the standard provides that where data for the mixture as a whole is unavailable, the hazard determination for a mixture reflect the hazards of the constituent substances (paragraph (i) of the regulation and Appendix A).

c. *Health Hazards.* In addition to physical hazards, OSHA has provided for broad coverage of health hazards. OSHA recognizes that Category B hazard determinations are inherently more complex than Category A hazard determinations. Category B (health) hazard determinations will require greater expenditures of professional time and will call for the exercise of more sophisticated professional judgments (see Appendix B) than do the more mechanical Category A hazard determinations. Nevertheless, OSHA does not believe that complexity of the task or occasional ambiguities of the data are sufficient reason to omit coverage of various health hazards. Each of the covered health hazards is justified on the grounds that the category represents well-documented medical and/or toxicologic adverse health effects. The Agency believes that it is prudent public health policy to reflect in the proposed standard that range of adverse health effects already documented by occupational physicians, toxicologists and other health professionals.

In view of the complexity inherent in Category B hazard determinations, the proposed standard provides assistance in the form of explicit directions to the manufacturers or importers. The standard describes the hazard determination process (Appendix A), details the materials (including the output of a required literature search) that must be used for the determination (Appendix A) and provides an evaluative scheme for such materials (Appendix B). The Agency believes that the explicit directions for compliance just described reflect the best current scientific practice and will reduce the ambiguities inherent in a less detailed standard, will facilitate compliance and result in many fewer enforcement actions. Extensive discussions with industry have produced no alternative evaluative schemes. Moreover, specification of the Category B hazard determinations process is required to obtain uniformity of labeling.

Nevertheless, representatives of the chemical industry have informally advised OSHA that they believe OSHA's proposed hazard definitions are deficient in at least the following general respects:

—Some hazard definitions could include insignificant health effects that almost any workplace substance or mixture will cause. If this is true, implementation of the hazard identification standard would lead to overlabeling in the workplace, and the value of informing workers of chemical hazards would be greatly reduced. OSHA believes that it has dealt adequately with this issue by setting a threshold level of severity for diseases, signs and symptoms requiring a positive hazard determination (paragraph (gg)(31)).

—The hazard definitions for some Category B hazards are too imprecise, and the science for establishing such hazards is, in any case, presently inadequate to indicate the existence of such hazards reliably.

OSHA invites comments concerning these criticisms and other issues regarding its categorization of hazards.

d. *Specific definitional issues.* In selecting the particular Category B (health) hazard definitions contained in the proposed standard, OSHA has made a series of science policy decisions. OSHA believes that identification of the specific science policy decisions involved in each definition will ensure that the scientific issues are fully aired in subsequent hearings. The following discussion is not meant to be exhaustive but, rather, is meant to identify the most important of these issues. The Agency encourages affected parties to identify and discuss additional science policy issues involved in either Category A or Category B hazard determinations.

OSHA invites comment on the following issues of scientific definition, which it regards as particularly noteworthy:

(i) "Highly toxic" and "toxic" substances or mixtures. As noted in the discussion concerning Table 10 (below), several other regulatory efforts have included these hazard categories. The Agency believes that the boundaries it has selected for the two toxicity classes, varying by route of administration, represent a reasonable composite of what other regulatory bodies currently require. However, the Agency invites comments on whether the upper boundaries for each toxicity class should be raised to more nearly approximate the higher values adopted under the Federal Insecticide, Fungicide, and Rodenticide Act (see 40 CFR 162.10(h)(1)).

(ii) "Irritant". The Agency has adopted a somewhat more expansive definition than that used by other agencies in that results of testing in other mammalian species also must be considered in the hazard determination. Other definitions (Table 10 below) have relied only upon data from human and selected mammalian species. The Agency believes that all available data from mammalian species should be used to classify a substance or mixture as an irritant unless such studies utilize inappropriate animal models (paragraph (a)(1)(vi) of Appendix B) or human data of a specified quality establish a lesser risk (paragraphs (c)(3), (5) of Appendix B).

(iii) "Sensitizer". The Agency definition is more expansive than that generally in use for the following reasons:

A. The definition requires consideration of mammalian data as a part of the hazard determination

process. The Agency believes that this represents sound scientific policy since there is substantial scientific experience identifying human sensitizers in non-human mammalian test systems. (Also see the discussion under "Irritants" concerning the use of non-human mammalian data in general).

B. The definition requires classification of a substance or mixture as a "sensitizer" if it produces an allergic or photodynamic reaction in medically disabled as well as normal humans. This provision was included to increase the protection afforded workers who already have hypersensitivity diseases. Such workers are known to be at substantially greater risk of developing a hypersensitivity reaction to new substances or mixtures to which they are exposed. The Agency believes that it is appropriate to utilize data derived from such sensitized individuals for the purpose of classifying a substance or mixture as a "sensitizer".

C. The definition requires a substance or mixture to be classified as a "sensitizer" if the material produces a photodynamic reaction. The Agency believes that this additional definitional scope is justified by the extensive documentation of this effect for such chemical as drugs.

(iv) "Carcinogen". The Agency has adopted the definition contained in its recently promulgated standard, "Identification, Classification and Regulation of Potential Occupational Carcinogens" (Cancer Policy) (29 CFR 1990.101 *et seq*, 49 FR 5282, January 22, 1980). Inasmuch as the OSHA Cancer Policy was the product of an intensive three-year Agency effort which considered the definitional questions, this definition is the most appropriate for OSHA regulatory purposes.

However, the Agency recognizes that the proposed hazards identification standard would require a conforming amendment to its Cancer Policy if the proposed standard is enacted in its present form. OSHA would issue such a conforming amendment at the same time as the hazards identification standard is finally issued. This conforming amendment would reflect OSHA's determination that the labeling of carcinogens should be governed by the hazard determination process of this standard, just as are the labeling determinations of other hazards. The Agency invites comment on the advisability of such a conforming amendment.

The present standard differs from the Cancer Policy in the following ways:

A. A substance or mixture could be determined to be a cancer hazard upon less data than that currently required by the Cancer Policy. In the case of human data, the present standard utilizes case reports (paragraph (b)(3) of Appendix B) and/or formal epidemiologic studies (paragraph (b)(1) of Appendix B) to determine whether a substance or mixture is a carcinogen. The Cancer Policy does not explicitly accept case reports as "suggestive" evidence establishing a substance or mixture as a Category II potential occupational carcinogen. (cf. 45 FR 5044 and 45 FR 5026, January 22, 1980).

B. The carcinogen hazard determination is self-executing under the present proposal while the Cancer Policy specifies that the identification of a carcinogen is one of the issues to be addressed in an individual substance rulemaking (29 CFR 1990.1469)).

C. Under this proposal, Category II potential occupational carcinogens would, without exception, be labeled as cancer hazards, while the Cancer Policy indicates that the need for labeling of Category II carcinogens as such would be determined on a case-by-case basis.

The Agency believes that its present policy position is justified by the following rationale. First, and foremost, a requirement that carcinogen identification occur in the context of an individual rulemaking would preclude the agency from enacting an effective hazard identification standard. The Agency's experience with individual substance rulemakings indicates that for carcinogens, as well as other hazards, it would be well into the next century before current scientific material could be filtered through such hearings. The present proposal's hazard determination process (Appendix A) and evaluation scheme (Appendix B) should provide equivalently accurate results in much less time. Second, there appears to be no sound scientific rationale which would justify treating cancer hazard determinations differently from other health hazards. The Agency invites comments on the elements of this rationale. In addition, the Agency solicits comments on whether the present labeling standard should continue the distinction between Category I and II potential occupational carcinogens contained in the Cancer Policy for purposes of this standard (45 FR 5284, January 22, 1980). The Agency is interested to know whether such a dichotomy would facilitate worker education programs regarding the dangers of carcinogens.

(v) "Reproductive toxin". The definition is based upon objectively ascertainable end results in humans or other mammals. The end results could represent measures of adverse reproductive outcomes which are commonly accepted by the scientific community. The relevance of such measures to the identification of a human reproductive toxin seems apparent to the Agency. The definition does not require a positive hazard determination based upon *in vitro* evidence such as chromosomal abnormalities, including sister chromotid exchanges, mutagenic assays, or measures of DNA repair. The Agency has presently excluded such evidence from consideration because it is uncertain of the precise clinical significance of such *in vitro* results. The Agency invites comments on whether it should require utilization of such *in vitro* assay results in the final standard.

(vi) "Endangered worker life or caused worker death". This hazard category has been inserted to cover the situation where a substance or mixture has killed a worker or produced serious life threatening illness in workers but where data are unavailable which would permit its classification as "toxic" or "highly toxic."

The Agency anticipates that this hazard category will be particularly useful in the case of mixture hazard determinations. The Agency believes that acute toxicology information permitting mixture categorization as "toxic" or "highly toxic" is frequently unavailable and, as a result, a mixture might avoid a positive hazard determinations, were it not for this category.

OSHA anticipates that categorization into the "endangered worker life" category or one of the categories "toxic" or "highly toxic" would be made in addition to the category "other acute, subacute or chronic adverse health effects." There is a need to identify both the former and latter types of hazards on the label in that the former three hazard categories represent immediate lethal or life-threatening dangers which require separate emphasis.

The Agency does not intend that data or reports concerning intentional (self) poisonings be used to determine inclusion in this category, except to the extent that such data or reports reveal pathophysiologic mechanisms relevant to potential actual or emergency working conditions which are not discussed elsewhere.

OSHA invites comments on any perceived ambiguities in the definition of this health hazard.

(vii) "Other acute, sub-acute or chronic adverse health effects." This category, which includes decreased mental alertness and behavior alterations, is expected to generate substantial scientific comment. The category was inserted to reach

documented health effects not otherwise covered. These include such well-documented health effects as erosion of the nasal septum by chromium compounds, intoxication due to involuntary solvent vapor exposures, and liver toxicity from carbon tetrachloride. The Agency believes that potential ambiguities in the scope of coverage have been adequately addressed by restricting the health effects covered to those above a threshold severity (paragraph (gg)(31) of the regulation.)

This health effect threshold is meant to be identical to that severity level which should trigger the filing of an occupational illness report under the Occupational Safety and Health Act (Section 8(c)(2) of the Act; 29 U.S.C. 657(c)(2); cf. 29 CFR Part 1904). Though under-reporting of occupational illness is well documented, the Agency believes that the experience gained over the past 10 years by manufacturers and importers in the filing of such illness reports will facilitate their identification of adverse health effects which must be labeled. Moreover, no adverse health effect need be labeled unless the effect has been reported in the scientific literature as described in Appendices A and B.

Thus, the utilization of a two-step inquiry should permit the manufacturer or importer to determine whether a particular adverse health effect is a Category B hazard within the scope of this standard. First, is the adverse health effect one that must generally be reported? Note that actual reporting is not the determining factor in view of documented under-reporting of occupational illnesses. Second, and this is common to all health hazard determinations, is there scientific material documenting the effect (Appendix A) and does such material establish the hazard on a scientific basis (Appendix B)? The Agency believes that rigorous application of this two-step process will resolve any uncertainty surrounding this particular determination.

OSHA does not intend that chemical substances or mixtures which are intentionally ingested over a long period of time in reasonable quantities as part of a normal diet should be classified as producing "other chronic adverse health effects" solely because studies document adverse health effects from immoderate use, e.g., NaCl and hypertension. The Agency solicits comments on whether this interpretation sufficiently clarifies any ambiguities perceived in this hazard category.

In addition, OSHA requests comments on whether an alternative definition for this hazard category is preferable. In developing the present definition, the Agency considered defining the hazard either in terms of specified pathologic effects, e.g., inflammation, or fibrosis, or by specifying a list of disease outcomes which would trigger labeling. The Agency decided not to adopt either of these alternatives because they were less protective than the one selected.

e. *Regulation of Physical Hazards By Other Agencies.* A comparison of the scope of physical hazards coverage by OSHA, other Federal regulatory agencies, voluntary industry standards and the European Economic Community (EEC) is provided in Table 9. In general, the definitions are approximately equivalent when various Federal agencies regulate the same hazard. OSHA based its physical hazards definitions on the voluntary industry standards developed by the American National Standards Institute (ANSI) so that there are only minor discrepancies in scope of coverage. There are more discrepancies between OSHA's physical hazard definitions and comparable definitions developed by the EEC.

During the course of this standard's comment period, the Agency will make an effort to harmonize the minor inconsistencies, largely involving test procedures, among Federal agencies. A more intensive harmonization effort between OSHA and EEC appears to be required and OSHA expects to participate in such an effort, together with other affected United States agencies.

Table 9.—*Comparison of Scope of Coverage of Physical Hazards by U.S. Regulatory Agencies, European Economic Community and American National Standards Institute*

OSHA physical hazards (Category A) 29 CFR	DOT 49 CFR	CPSC (FHSA) 16 CFR	EPA (FIFRA) 40 CFR	ANSI Z 129.1-1976	EEC 79/831/ EEC Article 2
Corrosive material	173.240(a), (b) similar.	1500.3(b) (7)(ii)(C)(3)	162.10(h) (Category I) similar.	(2) Similar	(i) Similar.
Extremely flammable liquid	NRS (see flammable material).	1500.3(b) (10), (c) (6)(i) similar.	162.10(h)(2)(ii) S.	(2) S	(c)(ii) S.
Flammable material		1500.3(c) (6)(i)			
Aerosol	NRS (see flammable gas).	1500.3(c) (6)(iv)	162.10(h) (2)(iii) similar.	NSC (see flammable gas).	NC.
Gas	173.300(b) similar	NRS (see flammable).	NRS	(2) S	(d) Similar.
Liquid	173.115(a)S 173.115(a) similar.	1500.3(b) (10),(c) (6)(i) similar.	162.10(i) (2)(ii) (includes combustibles) M.	(2) S	(e) (includes combustibles) M.
Solid	173.150M	1500.3(c) (6)(iii), (iv).	NC	(2) S	(f) Similar.
Combustible liquid	173.115(b)S	1500.3(b) (10)M		(2) S	NRS (see flammable liquid).
Pyrophoric material	173.115(c)S	NC	NC	(2) S	(g) Similar.
Strong oxidizer	173.151S	NC	NC	(2) Similar	(h)-Corresponds to OSHA definition for reactive material.
Reactive material					
Explosive material	173.50S	1500.3(c) (7)(i) (A)M		NC	(a) Similar.
Organic peroxide	173.151(a)S	NC		NC	NC
Pressure-generating	NC	1500.3(c) (7)(i) (B), (C)M.		(2)S	NC
Water-reactive	NRS (see flammable solid).	NC		NC	(c) M.
Compressed gas	173.300(a) similar	1500.3(c) (7)(i) (D)M	162.10 (d)M	(2)S	

NOTE.—Reference is OSHA Standard; S = Same coverage; M = OSHA more inclusive; L = OSHA less inclusive; NRS = Not regulated separately; NC = No Category.

f. *Regulation of Health Hazards By Other Agencies.* Table 10 provides a comparison of the efforts of Federal agencies, ANSI and EEC to define health effects for the purposes of labeling regulations. All the organizations listed define and regulate all or most of the first four health hazards listed (highly toxic, irritant, sensitizer). Manufacturers and importers thus should be able to utilize their organizational experience in complying with the OSHA standard, though they must still perform the required OSHA hazard determination process. OSHA is particularly interested in comments which would lead to a harmonization of definitions among the various agencies involved. OSHA

expects to participate in international efforts aimed at harmonization in this area.

Regulatory experience with the remaining health effects that OSHA proposes to cover in this labeling standard is substantially more limited (see table 10). However, OSHA does not believe that lack of substantial regulatory experience by other organizations concerning carcinogens, reproductive toxins, and the categories involving endangerment to human life and other adverse health effects should preclude OSHA's regulatory effort concerning these health effects. OSHA believes that the validity of the scope of hazards coverd in this standard should be judged solely on whether the scope of hazards regulated corresponds to the scope of hazards which the worker faces. OSHA further believes, on the basis of its accumulated expertise in the development of health standards, that the current consensus among occupational physicians, industrial hygienists, toxicologists and other health personnel is that workers face hazards in all the health effects categories defined. Moreover, the agency does not believe that the technical problems involved with defining or identifying carcinogens or reproductive toxins are inherently more difficult than those involved with sensitizers and irritants, two health effects which have been extensively regulated. The Agency would benefit from an exchange of ideas in this area between government, academic, labor and industry witnesses in the course of extensive rulemaking proceedings.

Table 10.—*Comparison of Scope of Coverage of Health Hazards by U.S. Regulatory Agencies, European Economic Community and American National Standards Institute*

OSHA health hazards definitions (Category B) 29 CFR	DOT 49 CFR	CPSC (FHSA) 16 CFR	EPA (FIFRA) 40 CFR	ANSI Z129.1–1976	EEC 79/831/ EEC Article 2
Highly toxic	Poisons "B" 173.343 Similar.	1500.3(b), (9), (c) (1) Similar (But see "Endangered Life," "Other Adverse Health Effects" below).	162.10 (h) (1) (Category I)S.	(2)M	(i) Similar, qualitative definition.
Toxic	NC	1500.3(b) (5), (c) (2) Similar.	162.10(h) (1) (Category II).	(2)M	(ii, iii) qualitative definition.
Irritant	173.381 Different	500.3(b)(9), (c) (4)S.	162.10(h) (1) (Categories II–IV) Similar.	(2)M	(i) Similar.
Sensitizer	NC	1500.3(b) (9), (c) (5)M.	NC	(2)M	NC.
Carcinogen	NC	NC	162.11(a) (3) (i) (A) Similar Rebuttable Presumption against registration.	NC	(i) Similar-imprecise definition.
Reproductive toxin	NC	NC	Same reference as carcinogen.	NC	(vi), (x) Undefined.
Endangered worker life	173.326 Poison "A" Similar.	1500.3 (c) (1) (i)	162.1(a) (3) (i) M Rebuttable presumption against registration.	NC	NRS (see highly toxic and toxic).
Other adverse health effects	NRS (see highly toxic).	NC	162.1(a) (3) (i) (B) M Rebuttable presumption against registration.	NC	NRS (see toxic).

NOTE.—Reference is OSHA Standard S—Same coverage; M—OSHA more inclusive; L—OSHA less inclusive; NRS—Not regulated separately; NC—No category.

3. *Hazard determination process.* a. *Description.* The hazard determination process is described in Appendix A of the proposed standard. (References in this section of the preamble are to Appendix A). A manufacturer or importer must utilize this process in determining whether a substance is hazardous. However, the extent to which the process is applicable varies depending upon whether a substance is being evaluated as a Category A (physical) hazard or Category B (acute or chronic health) hazard.

To determine whether a substance poses a Category A hazard, the manufacturer or importer need only evaluate material contained either in the National Library of Medicine's Toxicology Data Bank (TDB) or in a representative selection of standard reference works or relevant NIOSH documents (See App. A paragraph (b)(1)). In addition, the manufacturer or importer may use any other relevant data (paragraph (b)(1)(ii)). The manufacturer or importer is not required to undertake a literature search (paragraph (c)). The evaluation is to be based upon sound scientific judgment (paragraph (b)(3)) and the formal evaluation scheme described in Appendix B is not required.

OSHA believes that an abbreviated hazard determination process for Category A hazards is adequate to determine whether the substance possesses the physical properties specified in the Category A definitions. The data sources required are sufficient because the physical properties are based upon standardized physical or chemical tests which ordinarily demonstrate rather small variations in results, if performed as specified. Analogously, there is no need for an extensive evaluation scheme since there is widespread professional agreement on the interpretation of such test results.

In contrast, the hazard determination process for Category B hazards for substances is more extensive, both in the scientific sources which are required to be consulted and the evaluation scheme to be applied. In addition to the sources required to be consulted for Category A hazard determinations, the manufacturer or importer is required to undertake a literature search using specified computerized data files, to obtain copies of the scientific studies so identified, and to evaluate such material using the scheme set out in Appendix B of the proposed standard (paragraph (c)). IN addition, a manufacturer's or importer's in-house health effects studies must be evaluated by the Appendix B scheme (paragraph (c)(1)(ii)). A manufacturer or importer need not evaluate search material or in-house health effects data for a particular health hazard, if he or she has elected to label the substance for the hazard based upon the TDB, standard reference works or NIOSH documents (paragraph (c)(1)).

Category B substance hazard determinations are necessarily more extensive than those required for Category A hazards because health effects studies involving animals or humans yield substantially more variable results than do purely physical

or chemical determinations and the interpretation of such results calls for more professional judgment. The Category B hazard determination process will ensure that the results of substantially all relevant scientific studies involving a substance are considered. Moreover, the Appendix B evaluation scheme should ensure uniform judgment outcomes based upon what the Agency believes is a sound scientific approach.

The present hazard determination process would not normally apply directly to mixtures. Mixtures are deemed to represent the same hazards posed by their constituent substances, with some qualifications (paragraph (i) of the standard). A similar assumption has been used by the European Economic Community in its directives (regulations) governing the labeling of preparations (mixtures) (73/173/EEC, 77/728/EEC, 78/631/EEC). If a manufacturer or importer is dissatisfied with the results of a hazard determination based upon its constituent substances, he is free to test the mixture. Of course, if a mixture has been evaluated for a particular hazard, then the manufacturer or importer must use his or her sound scientific judgment to determine whether a Category A hazard is present (paragraph (b)(3)) or the Appendix B evaluation scheme to determine whether a Category B hazard is present (see, in particular, paragraph (c)(5) in Appendix B). The proposed standard would not, however, require that a manufacturer or importer perform a literature search for mixture hazard determinations because OSHA believes that the yield from such searches would not justify the required expenditures of time and money. This belief is based upon a professional judgment that the scientific literature reflects a strong preference of epidemiologists and toxicologists for analyzing the properties of substances, rather than mixtures.

Thus, in view of the complexity inherent in Category B hazard determinations, the proposed standard provides assistance in the form of explicit directions to the manufacturers or importers. The standard describes the hazard determination process (Appendix A), details the materials (including the output of a required literature search) that must be used for the determination (Appendix A) and provides an evaluative scheme for such materials (Appendix B). The Agency believes that the explicit directions for compliance just described will reduce the ambiguities inherent in a less detailed standard, will facilitate compliance and result in many fewer enforcement actions. Moreover, specification of the Category B hazard determinations process is required to obtain uniformity of labeling.

b. *Performance vs. specification standard for the hazard determination process and evaluation scheme.* Some industry sources have objected to the approach taken in the proposal. They advocate a "performance" standard under which manufacturers or importers of a chemical would be free to determine the existence of a defined hazard by whatever procedures they consider appropriate.

These industry sources claim that there are alternatives to the hazard determination (Appendix A) and evaluative procedures (Appendix B) OSHA has chosen which are just as reliable. They also claim that these are presently in use, and that it therefore makes no sense to require firms to shift to the procedure OSHA prefers.

However, those making these claims have not, to date, actually described the procedures which might function adequately as alternatives to the procedures of the proposed standard. Nor have these sources informed OSHA of the hazard determination and data evaluation procedures presently employed by any particular firm. Consequently, OSHA presently has no information which would substantiate the claim that a performance standard is appropriate.

OSHA believes that it is appropriate and necessary to establish the quantity and quality of scientific evidence required in the hazards determination process. A performance standard would simply not guarantee that any firm would utilize an appropriate alternative to the hazard determination and evaluation procedures of the proposed standard. Under a performance standard, every firm would be free to utilize any procedure, or no procedure at all, to determine hazards.

Moreover, the enforcement mechanisms at OSHA's command are simply inadequate to protect against the very real possibility that under a performance standard a substantial number of firms might utilize procedures which are scientifically deficient or inconsistent to identify the hazards of workplace chemicals. There are thousands of chemicals which are manufactured in, or imported into, this country. Yet, OSHA has at its disposal only approximately 1500 inspectors, whose duties encompass enforcement of all requirements imposed by OSHA in the workplace. Obviously, in terms of total numbers and the considerable responsibilities already incumbent upon these inspectors, this inspection force would be utterly inadequate to ensure that each manufacturer and importer subject to the standard employed a reliable procedure to determine hazards.

OSHA is willing to consider reasonable alternatives to its proposed evaluation procedures. OSHA is also willing to offer the choice of a number of scientifically sound procedures, if they exist. Accordingly, OSHA solicits comments on these issues. Following comment, should OSHA choose to move to a performance standard, the agency may adopt Appendices A and B as recommended rather than mandatory procedures.

c. *Literature Search.* 1. OSHA has made a concerted effort in the course of revising earlier drafts to ensure that the search requirement is technically feasible. As a consequence of extensive discussion, and based upon sound science policy grounds, the Agency has decided not to include a search requirement for mixtures (paragraph (a)(2) of Appendix A), to permit manufacturers and/or importers to undertake hazard determinations jointly to the extent permitted by law (paragraph (a)(3) of Appendix A), and to extend compliance times for small manufacturers and importers (paragraph (ii)(1)(ii) of the standard). The delay in compliance dates for small manufacturers and importers will permit them to rely on hazard determinations of larger manufacturers or trade groups (paragraph (ii)(1)(ii) of the standard) by obtaining copies of their labels from a national label repository (subsection (w) of the standard).

The mandated literature search for Category B hazard determinations (paragraph (b)(2)(ii)(C) of Appendix A) appears well within the current search capability of existing computerized information services.

The following analysis, based upon material submitted in compliance with the Toxic Substances Control Act Inventory requirements (40 CFR Part 710), indicates that the present standard will impose a one (1) time increase in search requests of some 250,000.

Table 11.—*TSOSCAI Substances (33)*

Number of companies reporting a substance	percent of TOSCAI inventory	Number of substances reported (approximate)	Maximum of average number of companies reporting a substance	Estimated number of searches
1–4	90	49,500	2.5	123,750
5–9	5.3	3,465	7	24,255
10 (x=30)	3.7	2,035	30	61,050
Total				229,055

The estimate has been adjusted upward from that in the table to provide for search requests involving the other substances not on TOSCAT which must be evaluated (paragraph (d) of the standard). Taken together, such other substances contribute a comparatively small number to the total. The Agency wishes to stress that this is a "worst case" estimate in that the estimate has not been reduced to reflect the probable impact of joint evaluations or reliance on the national label repository in lieu of a search (paragraph (w) of the standard and paragraph (a)(3) of Appendix A).

On the supply side, OSHA understands that the recent expansion of the computer facilities for MEDLARS[SM], only one of the available computerized information services, has substantially increased search capacity. The August, 1980, search load of some 60,000 searches appears to represent less than half of the system's monthly capacity (Phone communication. NLM, 1980).

Thus, the Agency concludes that the literature search requirement is technically feasible. OSHA invites comments on the related issues of whether searches may be delayed in various regions because of a dearth of trained information system users and whether some manufacturers or importers lack access through inter-library loan programs to duplicates of the scientific material identified in the search.

While OSHA believes that the expansion of existing commercial information services will prevent any serious compliance problems in this area, the Agency intends to explore additional mechanisms for complying with the search requirement. Among the additional mechanisms under consideration are permitting reliance on duplicate copies of current searches (thus avoiding the actual search) with payment as appropriate and exploring creation of a central duplicating service for search materials. The Agency may, in addition, extend compliance dates if rulemaking comments so indicate.

d. *Use of TDB, standard reference works and NIOSH documents.* OSHA believes that TDB (paragraphs (b)(1) and (c)(1) of Appendix A), the NIOSH documents (paragraphs (b)(1)(5)(i)(B) and (c)(1) of Appendix A), and the standard reference works (paragraphs (b)(1)(i)(A) and (c)(1) of Appendix A) are essential elements of the hazard determination process. All these materials have been subject to scientific peer review and thus represent unusually reliable sources of scientific information. OSHA invites comments on whether alternative data sources should be considered.

The Agency does not, however, believe it would be productive in the rulemaking to urge consideration of a particular text not on the list of standard reference books, "Source Used to Prepared Toxicology Data Bank Records" (paragrahs (b)(1) and (c)(1) of Appendix A). Additional texts can already be used in determining whether a Category A hazard is present under paragraph (b)(1)(ii) of Appendix A. In the case of Category B hazard determinations, unrestricted expansion of the standard reference book list beyond that determined by the TDB expert scientist group would certainly cloud the compliance responsibility of the manufacturer or importer without necessarily improving the hazard determination process. OSHA believes that a current standard reference book list, developed by an expert committee, represents the most reliable list for the limited purposes for which it is intended, i.e., positive hazard determinations in the case of Category B hazards are ultimately dependent on evaluation of scientific studies and not on reference book content, unless the manufacturer or importer chooses to rely on the standard reference book (see paragraph (b)(2)(iii)). The standard provides for modification of the list.

e. *Search files.* The Agency also invites comments on the particular data files required for the literature search (paragraph (c)(1)(ii) of Appendix A) and whether equivalent alternative data files are available. CANCERLIT[SM] is required because it is a unique source of information on the National Cancer Institute's carcinogen bioassay program. OSHA specifically invites comment on the extent of duplication resulting from the use of the three remaining data files: MEDLINE[SM], TOXLINE[SM] and RTECS.

The Agency requires all three data files be used because it is current scientific practices to include all three in routine searches. Comments are also invited on the need for any additional data files. The Agency is aware of only the Excerpta Medica information file as a possible alternative but invites comment on this issue.

f. *Concentration of Constituent Substances and Mixtures Hazard Determination.* The proposed standard sets threshold limits for concentrations of hazardous substances in mixtures, above which, except in certain defined circumstances, such substances, and the mixtures in which they appear, are regulated by the standard. For non-carcinogens, the threshold value is at least 1.0% (by weight) of a mixture. For carcinogens, the threshold value is at least 0.1% (by weight) of a mixture (see paragraph (i)(2) of the standard).

OSHA believes that the uniform thresholds it has chosen are appropriate, and that the use of a uniform threshold is integral to the generic approach to regulation which the hazard identification standard embodies. Elimination of any threshold would greatly burden the hazard determination process and likely render it infeasible. On the other hand, adoption of a system which required the establishment of an individual threshold value for each substance, case by case, would in OSHA's view render the standard impossible to administer and enforce. There may, however, be acceptable formulas, taking account of the variables of potency and concentration, which can be applied reliably to determine whether constituent substances and the mixtures in which they appear should be regulated as hazards (see EEC directives for labeling mixtures 73/173/EEC, 77/728/EEC and 78/631/EEC). OSHA invites comments on this possibility and other issues germane to the threshold percentage exclusion question.

4. *Evaluation Procedure.* a. *In General.* The proposal mandates that a substance or mixture be classified as a Category B hazard, if the proprietary in-house studies or the studies identified in the literature search satisfy the following criteria:

1. The study is either "adequate and well-controlled" (paragraphs (a)(1) and (b)(1)(i) of Appendix B) or represents an acceptable "case report" (paragraphs (a)(2) and (b)(3) of Appendix B); and

2. The study establishes a "statistically significant" (paragraph (a)(6) of Appendix B) relationship between exposure to the substance and the subsequent occurrence of a covered hazard or "strongly suggests" such a relationship (paragraph (b)(3) of Appendix B); and

3. The relevant study conclusion is accepted by any subgroup of qualified experts (paragraph (b)).

OSHA believes that this hazard determination process and its

evaluation procedure represents the sequence and content of any inquiry that a reasonable and prudent modern scientist would undertake to determine whether a chemical is a Category B hazard. The evaluation procedure does not consider anecdotal material because the Agency does not believe that such "data" warrant a positive hazard determination under this standard. Nor does the evaluation procedure consider expert opinion evidence based upon structure-function or stereo isomer relationships. Although the Agency believes that such opinion evidence may be too problematic to warrant labeling, it invites comments on this point.

b. *Adequate and Well-controlled Study.* The definition of an "adequate and well-controlled" study is based upon the Epidemiology Work Group's "Draft I.R.L.G. Guideline for Documentation of Epidemiologic Studies" (34). The definition has been modified to meet the proposed standard's need to define a minimal set of criteria for evaluating studies that have already been performed. Consequently, while OSHA recognizes that some of the elements that have been dropped from the present definition would have enhanced the utility of some of the scientific studies that will be evaluated under this standard, their omission should not preclude consideration of such studies. The Agency invites comments on whether additional study elements should be required.

In addition, an alternative route of identifying an "adequate and well-controlled study" was provided to ensure that past studies which have achieved general professional acceptance would be considered in the evaluation. The Agency believes that publication of a study in a "peer review" journal (paragraphs (a)(1)(vii) and (a)(4) of Appendix B) provides sufficient scientific credibility as to warrant the standard's requirement that it be considered in the evaulation process. Such studies must still demonstrate "statistical significance" and be accepted by a subgroup of experts to warrant a positive hazard determination.

The Agency requests comments on its determination that a single adequate and well-controlled study shall trigger a positive hazard determination. In coming to this conclusion, OSHA weighed the possibility that there would be some false positive hazard determination under this approach, i.e., positive studies later invalidated, against the certainty that workers would experience prolonged exposures to hazardous chemicals if confirmation were required. NIOSH indicated the following periods required to complete a second study, assuming it is begun after the first study becomes available:

Table 12.—*Completion Times for Various Types of Epidemiologic Studies*

Types of study	Average time to completion (years)
1. Retrospective cohort mortality studies	[1] 5.0
2. Health hazard evaluations	.83
3. Case-control studies	.5

[1] Two in period 1975-80.

Source: Personal communication from Mr. Richard Lemen, NIOSH, 1980.

Of course, this table seriously underestimates the actual duration of continued exposure. The capacity of the scientific community to undertake major epidemiologic studies is limited. Therefore, considerable time may elapse before a confirming study may even be begun. In view of the extraordinary shortage of trained epidemiologists and toxicologists, delays in undertaking studies will likely be substantial.

c. *Case Studies Use.* The proposed standard requires reliance on well-documented case studies (paragraphs (a) (2) and (b) (3) of Appendix B). OSHA believes that such studies should serve as a basis for a positive hazard determination, e.g., vinyl chloride monomer exposure and resultant hemangiosarcoma. In response to a request from OSHA, NIOSH investigated two relevant issues: 1) the historical utility of case reports and 2) the current utility of case reports that would be generated from the required literature search. OSHA invites comments on the issue of reliance on case reports for Category B hazard determinations. The following are summary tables:

Table 13.— *Historical Utility of Case Reports—Selected Examples*

I. Substances first identified by case reports in occupational settings which are now widely accepted as hazardous to health
- Hydrogen Sulfide
- Methyl Alcohol
- Carbon Disulfide
- Nitrogen Oxides
- Asbestos
- Benzene

II. Hazardous substances called to attention following case reports of occupational exposure but for which preliminary animal data existed
- Vinyl Chloride
- Bis (chloromethyl) ether
- DBCP (dibromochloropropane)

Table 13.— *Historical Utility of Case Reports—Selected Examples*—Continued

III. Hazardous Substances first identified as carcinogens by case reports of occupational exposures which have been supported by epidemiological studies
- Chromium
- Nickel
- Arsenic
- Benzene

IV. Hazardous Substances first identified from case reports of occupational exposure which have not been addressed by epidemiological studies
- DMAPN (dimethylaminopropionitrile)
- Sodium Hydroxide

V. Substances first identified as hazardous by case reports which were later discredited by epidemiological and/or animal studies
- Aniline
- Fibrous Glass
- Hair Spray

Table 14.—*An Assessment of the Appropriateness of the Use of Case Reports for the Determination of a Hazard*

	Number of case reports published	
	1960-1976	1977-1998
Case reports reviewed (5% sample)	10 (100%)	14 (100%)
Causal relationship sufficiently established	6 (60%)	11 (79%)
Reported situation amenable to labeling	7 (70%)	10 (71%)
Reported situation possibly covered by the standard proposed by OSHA	5 (50%)	7 (50%)
First indication of the hazard	3 (30%)	4 (29%)
Based Only on the Case Reports Which Were the First Indication of the Hazard		
Causal relationship sufficiently established	3 (100%)	3 (75%)
Reported situation amenable to labeling	2 (66%)	3 (75%)
Reported situation possibly covered by the standard proposed by OSHA	2 (66%)	3 (75%)
May possibly indicate labeling is appropriate	2 (66%)	1 (25%)

Source: Personal communication from Mr. Richard Lemen, NIOSH, 1980.

The Agency believes that these data clearly support the necessity for including case reports as one basis for a positive hazard determination, especially in view of the probable difficulty in mounting epidemiologic studies to confirm the case reports. The Agency invites comments on the advisability of its decision to require utilization of case reports.

d. *Statistical Significance.* The significance level has been set at 0.10 rather than the customary 0.05 level (paragraph (a)(6) of Appendix B). While the increased Type I error results, by definition, in an increase in false positive hazard determinations, there will be a corresonding decrease in false negative determinations. While the Agency believes that this is an appropriate strategy for a preventive

health standard, it recognizes that the significance level chosen is non-traditional and invites testimony addressed to this issue.

Testimony is also invited on the related question of whether the criteria which govern the use of inconsistent data are advisable (paragraph (c) of Appendix B). For example, the power (0.80) of data to detect a hazard of a specified magnitude (25% increase in risk) is consistent with that of the Cancer Policy (29 CFR 1990.144 (a), 1980). However the magnitude of the risk that must be detectable by the negative study has been decreased from 50% to 25%. The Agency believes that, given data or studies that indicate a potential hazard, the worker should be informed of the potential hazard unless extremely reliable negative data are available.

e. *Expert Opinions.* The final element of the data evaluation scheme requires that a substance or mixture be classified as a hazard if a subgroup of experts accepts the conclusion of statistical significance for results in an adequate and well-controlled study (paragraph (b)(1) of Appendix B) or accept the cause-effect relationship demonstrated in case report(s). This acceptance may be manifested in a variety of ways and a rebuttable assumption of such acceptance is established when at least one qualified independent expert has endorsed the results (paragraph (d) of Appendix B).

The Agency understands that this position regarding the role of experts is different from that which prevails in the course of adjudication. However, as a matter of policy, OSHA believes that labeling a substance or mixture as a hazard should not require support from the majority of experts. Such an *ad hoc* choice of consultants does not guarantee that the entire spectrum of professional opinion is adequately represented. Rather, the Agency believes that a substance or mixture should be classified as a hazard if evidence of the specified quality is available, two or more experts (including the author) concur in the conclusion that a hazard is present, and strong evidence to the contrary is not available at the time of hazard determination (paragraph (d) of Appendix B). The Agency invites comments on this approach.

C. Regulatory Issues

1. *"Performance" vs. "specification" requirements.* As previously stated in the discussion of hazard evaluation procedures, OSHA believes that employers should be required to follow specified procedures where established scientific principles are applicable. OSHA is not opposed, however, in appropriate technical areas, to setting goals ("performance" standards) and allowing employers to reach these goals by whatever means they consider practicable. For instance, the proposal sets performance standards for labeling piping systems (paragraph (r)) and labeling continuous operations (paragraph (t)(6)). OSHA will consider performance standards in other areas where it can be shown that specifying particular procedures is unnecessary, and invites comment on this issue.

2. *Content and format of labels and placards.* The proposed standard would require chemical identification and hazard warning information on labels and placards for hazardous chemicals. This is because OSHA believes that labeling is the most immediate and reliable way of communicating hazard related information to workers.

Some industry representatives have expressed concerns about this requirement. they believe that it will be difficult to include all required information in readable form on normal size labels. There have also been suggestions from both industry and representatives of workers that the hazard warnings set out in Appendix C are either too comprehensive or not comprehensive enough. OSHA invites comments upon all aspects of the label format requirements of the proposed standard. OSHA also invites alternative proposals for labeling format.

As previsouly stated, the requirement for disclosure of chemical identity is closely related to the trade secrets issue. Some industry representatives have suggested that confidentiality for trade secrets might be enhanced if chemcial identity of hazardous materials were maintained in reference books stored centrally and made available to workers upon request. In this way, employers could keep track of those receiving potential trade secret information and require confidentiality agreements from those to whom trade secret information is disclosed.

Advocates for workers have opposed this alternative to labeling on several grounds. First, it is cumbersome. The worker must make a request to see information he or she wishes to check. Second, the worker must leave the work area in order to check such information. Third, the employer knows which employees are making requests concerning the identity of hazardous materials, and unions fear this may lead to reprisal and harassment. OSHA invites comment on whether possible enhancement of confidentiality afforded by a reference book system outweighs the drawbacks of removing a requirement for workplace labeling.

3. *Disclosure of chemical identity in labels shipped in commerce.* A closely related issue involves the inclusion of CAS numbers on labels being shipped downstream to industrial users. The proposed standard requires that labels indicating the chemical identity (the CAS number) of hazardous chemicals be placed on containers before being shipped downstream to workplaces where such substances and mixtures will be used (paragraph (o)). Industry representatives have stated that this requirement will only compound the trade secrets problem because the identity of hazardous trade secret chemicals will be open to scrutiny, not only in workplaces, but in commerce to other employers who may be competitors. Worker representatives have countered that without a requirement that labels be in place when containers reach a downstream workplace, there is no certainty that containers of hazardous materials in downstream workplaces will be speedily and accurately labeled.

The proposed policy to require labeling before hazardous materials are shipped is grounded on several preliminary conclusions. OSHA has concluded that once manufacturers and importers are required to disclose the chemical identity of hazardous substances to both their own employees and the employees of downstream users, the incremental damage to confidentiality caused by requiring chemical identification to appear on labels in commerce is relatively inconsequential. OSHA has also concluded, in the absence of evidence to the contrary, that there is a substantial possiblity for tardy and inaccurate labeling if labels are not required to be in place upon arrival at a downstream workplace. OSHA invites comments on these points.

4. *Exclusion of small containers.* The proposed standard provides for certain exemptions from labeling requirements applicable to containers of hazardous materials in the workplace (paragraphs (u)(i), (gg)(12)). Of particular concern may be the exemption for containers of 5 gallons (19 liters) or less in volume which are used to transfer hazardous materials from one container to another in a particular work area. OSHA requests comments concerning the sizes and purposes of containers which should be exempted from labeling requirements.

5. *Access to records and documents required by the standard.* The proposed standard would provide access to a number of types of records and

documents by workers, their designated representatives, their unions, and OSHA and NIOSH (paragraphs (cc) and (dd)). In addition, the standard requires manufacturers and importers to maintain separate files containing the materials relevant to the hazard evaluation for each substance and mixture they produce or import (paragraph (m)). The material in these files is to be made available on request to employees and former employees in work areas where the substance or mixture is or was present (paragraph (dd)). In the event a firm goes out of business, the standard provides for the transfer of documents and records to NIOSH (paragraph (ee)).

OSHA believes that maintenance of the specified documents and records is essential to the ability of workers to protect themselves from workplace hazards for several reasons. First, these documents and records may provide important information relevant to chemical hazards which is not required to be on labels. Second, access to the materials upon which a manufacturer or importer bases hazard evaluations provides workers and their representatives the means to verify the determination made. Likewise, these materials provide OSHA with the ready documentation intrinsic to efficient enforcement of the standard.

The benefits of the access and record keeping provisions of the standard must be weighed against the burdens these provisions will impose upon importers, manufacturers, and industrial users. Information presently available to OSHA indicates that in some workplaces at least some of the material covered by the access and record keeping provisions of the standard is presently made available. Whether filing systems similar to those proposed by the standard are in general use is less clear.

Comments on a number of issues would be helpful to OSHA in making a judgment as to the adequacy of its proposals concerning access and recordkeeping. These include:

The nature of the burden these provisions will place upon industry, with particular reference to existing industry practices in the access and recordkeeping areas;

The use to which information to which access is provided by the proposed standard will be put by workers and their representatives;

Whether employers who use chemicals should be entitled to inspect the records and documents of manufacturers and importers pertaining to those chemicals;

Whether the classes of persons and groups to whom access to records and documents are granted should otherwise be expanded or limited; and

Suggestions for any alternative access and record keeping mechanisms which would reduce the burden on industry, or make access to information by workers easier or more efficent.

6. *Worker access to safety data sheets.* The proposed standard would provide material safety data sheets (if they exist) to workers upon request. There is no requirement that an employer affirmatively make copies available to each worker in the workplace. This provision is intended to minimize the administrative burden upon employers of providing copies in every work area.

Representatives of workers have objected to such a provision, claiming that to require workers to request these documents will leave workers open to employer harassment and discrimination. These representatives would prefer that copies of relevant material safety data sheets be posted in each work area. They also suggest that additional copies be made available in work area locations where they can be picked up without a specific request. Finally, these representatives have stated that worker health and safety requires that these documents be available for immediate inspection on the job where necessary.

OSHA does not have before it specific evidence that would justify the allegation that workers who request documents will be harassed or discriminated against. Nor does OSHA have before it evidence of the need for material safety data sheets to be immediately available on the job. OSHA invites comments on these issues.

7. *Material safety data sheets.* The proposed standard requires that, where available, copies of material safety data sheets (MSDS) for hazardous substances and mixtures be given to workers and their representatives upon request (paragraph (cc)). The proposed standard does not, however, require that manufacturers and importers of hazardous substances and mixtures produce an MSDS for each hazardous substance and mixture. Nor does the proposed standard define the content of any MSDS a manufacturer or importer decides to produce (see the definition of an MSDS in paragraph (gg)(29)).

OSHA chose to impose neither of these requirements because, under the proposed regulation, the MSDS is not the primary vehicle for communicating essential hazard related information to workers. On this assumption, to have imposed such requirements would have put a large and unjustifiable burden upon industry.

OSHA invites comments on whether the MSDS should play a more prominent role than presently contemplated in the information system proposed under the hazard identification standard. If so, OSHA also invites comment on whether a MSDS should be produced under some defined format for every hazardous substance and mixture to be used in the workplace.

8. *Substance-employee identification lists.* In developing this proposal, OSHA very seriously considered requiring manufacturers and industrial users to develop substance-employee identification lists for each work area. Such lists would provide a cross-reference between the hazardous chemicals present in a given work area and the identities of the employees working in the area.

The purpose of such a listing requirement would be to give workers an overall picture of the hazardous chemicals present in the areas in which they work, and which might, therefore, adversely affect their health. If required to be preserved for extended periods of time, e.g., 30 years, these lists would also provide an accurate record of potential chemical exposures affecting a worker over time, although the lists would not establish quantitative levels of exposure. This information, in turn, could provide epidemiologists valuable assistance in tracking down potential sources of occupational disease.

The costs and administrative burden connected with the creation and long term preservation of substance-identification lists would not be insubstantial. Yet, as the Regulatory Analysis of the proposed standard shows, a requirement for such lists may well yield results which dramatically increase the benefits of the hazard identification in terms of improved worker health and safety over time.

OSHA did not include a requirement for the development and preservation of substance-employee identification lists because while they potentially would establish a record of basic evidence essential to determining the effects of hazardous chemicals with precision, the extent of the burden they would impose upon manufacturers and industrial users is not yet clear. In particular, OSHA is uncertain about the burden development and maintenance of such lists would place upon downstream users of chemicals, such as automobile manufacturer, whose operations tend to be labor-intensive and to use thousands of chemicals. This type of industrial structure would obviously compound the difficulty of tracking and cross-referencing chemicals and employees, but to what degree is unknown. On the

other hand, these employers, as well as others, may now have in place systems for keeping track of chemicals and employees which might be adapted to the same use as substance-employee identification lists, or might at least reduce the burden of putting substance-employee identification lists in place.

Accordingly, to determine whether a requirement for substance-employee identification lists should be incorporated in the final standard, OSHA invites comment upon the uses to which workers, their representatives, governmental agencies, and medical researchers would put the information provided by substance-employee identification lists. OSHA also invites comments upon the burden which compilation of such lists would impose upon industry, with particular reference to the extent industry presently compiles and maintains similar information.

9. *The need for generic training requirements.* The proposed standard does not include any requirement that workers be trained to use the hazard identification information communicated to them. This is not because OSHA believes that training is unimportant to the overall effort to make workplaces healthful and safe. It is because OSHA sees the communication of hazard-related information and worker training as distinct tasks which are not necessarily interdependent for the provision of meaningful benefits. Thus, although the usefulness of hazard related information would undoubtedly be enhanced by appropriate training, such information is extremely helpful to workers in and of itself. Moreover, OSHA is aware that some employers already provide employees with adequate training in hazard identification.

Furthermore, OSHA believes there is a major advantage in creating a comprehensive communication and training system in several stages. This procedure minimizes the burdens upon industry by spreading cost and effort over time, while still providing substantial benefits to workers with the promulgation of each component of the overall system. OSHA believes this to be a sound approach, and comment on this view is invited.

10. *Impact on small business.* OSHA recognizes that the proposed standard may impose greater burdens on small business than it does on large firms. For example, as mentioned, some large chemical manufacturers have indicated that they already follow chemical evaluation procedures similar in scope to those proposed in the standard. Consequently, the burden in additional cost and effort which implementation of the standard would impose such firms is less than that upon smaller firms which have no such procedures in place.

The proposed standard attempts to minimize the differential burden upon large and small firms by establishing a repository for hazard warning information and by delaying the dates by which small manufacturers and importers must complete evaluation of chemicals they produce or import (paragraphs (w) and (ii)). The repository for hazard warning information will contain all information relevant to the results of the hazard evaluation for any chemical. This information will be available to manufacturers and importers. Delaying the compliance dates for small manufacturers and importers will allow them to utilize the hazard evaluations made by large manufacturers or importers for chemicals they also produce or import.

There may be other provisions which would ease the burden upon small business without sacrificing the comprehensiveness and accuracy on which the hazard identification standard relies to help protect worker health. OSHA invites comments and suggestions regarding these.

11. *Miscellaneous issues.* Finally, there are several specific issues upon which comment in response to publicly released preliminary drafts has been sparse, but which may be controversial. Accordingly, OSHA seeks comment on the following:

Is the partial exemption from regulation which OSHA has allowed for research chemicals in paragraph (f) appropriate?

Are the special enforcement provisions OSHA has developed in paragraph (hh) adequate?

Should the compliance dates mandate by paragraph (ii) be either shortened or legthened?

Are there measures to assure the communication of updated hazard related information preferable to those proposed in paragraphs (z)–(aa)?

D. Selected References

1. National Occupational Hazards Survey, DHEW (NIOSH) Publication No. 78–114, December, 1977.

2. An Interim Report to the Congress on Occupational Diseases, submitted by the U.S. Department of Labor, December, 1979.

3. OSHA Safety and Health Standards for General Industry, 29 CRR Part 1910, OSHA 2206, revised, November 7, 1978.

4. Toxic Substances Control Act Chemical Substances Inventory, and Supplements, U.S. Environmental Protection Agency.

5. The Occupational Safety and Health Act, Pub. L. 91–596, 91st Congress, S. 2193, December 29, 1970.

6. Report of the Standards Advisory Committee on Hazardous Materials Labeling to the Assistant Secretary of Labor of Occupational Safety and Health, U.S. Department of Labor, submitted June 6, 1975.

7. A Recommended Standard * * * An Identification System for Occupational Hazardous Materials, DHEW (NIOSH) Publication No. 75–126, 1974.

8. American National Standard for the Precautionary Labeling of Hazardous Industrial Chemicals, American National Standards Institute, ANSI Z129.1—1976.

9. H.P. 750—Legislative Document 958, State of Maine.

10. Title 8, Article 112, State of California.

11. Public Act No. 80–257 and 80–130, State of Connecticut.

12. Act 51, Public Acts of 1980, State of Michigan.

13. 7103–D, State of New York.

14. General Occupational Health Regulations 22–015, State of Oregon.

15. Chapter 149, Commonwealth of Massachusetts.

16. Chapter 296–04 WAC, State of Washington.

17. N.J.A.C. 12:130, State of New Jersey.

18. Toxic Substances Control Act, Pub. L. 94–469, October 11, 1976.

19. Environmental Protection Agency, Pesticide Programs, 40 CFR Part 162.

20. Environmental Protection Agency, Pesticide Programs, Registration, Reregistration and Classification Procedures (40 FR 28242, July 3, 1975).

21. Environmental Protection Agency, Registration of Pesticides in the United States Proposed Guidelines (43 FR 29696, July 10, 1978).

22. Department of Transportation, Hazardous Materials Transportation, 49 CFR Part 172.

23. Consumer Product Safety Commission, Federal Hazardous Substanse Act Regulations, 16 CFR Part 1500.

24. Food and Drug Administration, Food for Human Consumption, 21 CFR Part 100; Drugs, 21 CFR Part 200; Cosmetics, 21 CFR Part 700.

25. Committee on Government Operations, House of Representatives, Transcript of Hearings Before a Subcommittee on Control of Toxic Substances in the Workplace, May 11, 12, and 18, 1978.

26. Committee on Government Operations, House of Representatives, Thirty-Fourth Report, Chemical Dangers in the Workplace, 1978.

27. Committee on Government Operations, House of Representatives, Tenth Report, Failure to Meet Commitments Made in the Occupational Safety and Health Act, 1977.

28. Transcripts of OSHA Hearings on "Access to Employee Exposure and Medical Records", Docket No. H–112.

29. Fair Packaging and Labeling Act, Pub. L. 89–755, s2, Nov. 3, 1966, 80 Stat. 1296.

30. European Economic Community Labeling Requirements, Directive 67/548/EEC, August 16, 1967, as amended by Directive 79/831/EEC, September 18, 1979; Directive 73/173/EEC, June 4, 1973; Directive 77/728/ EEC, November 7, 1977; and Directive 78/631/EEC, June 26, 1978.

31. Bureau of Labor Statistics, Occupational Injuries and Illnesses in the United States by Industry, 1977.

32. Pilot Study for Development of an Occupational Disease Surveillance Method, DHEW–NIOSH 75–162, 1975.

33. Draft I.R.L.G. Guideline for Documentation of Epidemiologic Studies, Interagency Regulatory Liaison Group, November, 1979.

34. Creech and Johnson, *Angiosarcoma of the Liver in the Manufacture of Polyvinyl Chloride*, 16 J. Occ. Med. 150 (1974).

V. Legal Authority

This notice of proposed rulemaking is being published in conformity with the requirements of section 6(b)(2) of the Occupational Safety and Health Act, 29 U.S.C. 655(b)(2), for publishing a proposed rule promulgating an occupational safety and health standard in the Federal Register, and section 4(b) of the Administrative Procedure Act, 5 U.S.C. 553(b) regarding the publication of notices of proposed rulemakings in the Federal Register.

Authority for issuance of this standard is found in sections 6(b) and 8(g)(2) of the Act, 29 U.S.C. 655(b) and 657(g)(2). Section 6(b) governs the issuance of an occupational safety and health standard, which is defined in section 3(8) of the Act, 29 U.S.C. 652(8), as:

> [A] standard which requires conditions, or the adoption or use of one or more practices, means, methods, operations, or processes, reasonably necessary or appropriate to provide safe or healthful employment and places of employment.

The proposal contemplates the issuance of a generic standard for the determination and communication of workplace hazards. This will require the adoption and use of one or more practices (e.g. labeling and access to records) which the secretary has reason to believe are reasonably necessary and appropriate to provide employees with safe and healthful employment and places of employment. The issuance of a generic standard is a necessary and effective means to carry out the purposes of the Act and to set priorities under the Act whenever the Secretary identifies common occupational health or safety problems which warrant common solutions (see the Cancer Policy standard, 45 FR 5002 et seq., and the access to exposure to exposure and medical records standard, 45 FR 35212 et seq.).

In particular, the proposed standard is a generic implementation of sections 6(b)(7) and 6(b)(5) of the Act, 29 U.S.C. 655 (b)(7) and (b)(5). Section 6(b)(7) pertinently states that:

> Any standard promulgated under this subsection shall prescribe the use of labels or other appropriate forms of warning as are necessary to insure that employees are apprised of all hazards to which they are exposed, relevant symptoms and appropriate emergency treatment, and proper conditions and precautions of safe use or exposure * * *.

Section 6(b)(5) authorizes the Secretary, in promulgating standards dealing with toxic materials or harmful physical agents:

> * * * to set the standard which most adequately assures, to the extent feasible, on the basis of the best available evidence, that no employee will suffer material impairment of health or functional capacity even if such employee has regular exposure to the hazard dealt with by such standard for the period of his working life * * *.

The philosophy of this proposal is to require the identification and disclosure of a hazard to employees as soon as the scientific literature reliably indicates such a conclusion, even though the evidence or OSHA's priorities may not yet warrant comprehensive regulation of the hazardous chemical. This is consistent with the Supreme Court's statement in *Industrial Union Dep't (IUD)* v. *American Petroleum Institute (API)*, 100 S.C.T. 2844, at 2872, fn. 66 that Congress had an "information-gathering function" in mind when it enacted section 6(b)(7), and that requirements of this nature may be imposed at lower levels than can currently be set for the regulation of a toxic substance on the basis of a finding of significant risk. This is so because it is necessary to "keep a constant check on the validity of the assumption made in developing the permissible exposure limit, giving it a sound evidentiary basis for decreasing the limit if it was initially set too high," id. at 2872, or, *a fortiori*, not at all.

The Secretary's authority to issue this proposed standard is further supported by the general rulemaking authority granted in section 8(g)(2) of the Act. This section empowers the Secretary "to prescribe such rules and regulations as he may deem necessary to carry out [his] responsibilities under the Act." The authority thus granted to the Secretary is as broad as the purposes of the Act, which include:

> Encouraging employers and employees in their efforts to reduce the number of occupational safety and health hazards at their places of employment, and to stimulate employers and employees to institute new and to perfect existing programs for providing safe and healthful working conditions (29 U.S.C. 651(b)(1)).
>
> Building upon advances already made through employee and employer initiative for providing safe and healthful working conditions (29 U.S.C. 651(b)(4)).
>
> Exploring ways to discover latent diseases, establishing causal connections between diseases and work in environmental conditions * * * (29 U.S.C. 651(b)(6))
>
> Encouraging joint labor-management efforts to reduce injuries and diseases arising out of employment (29 U.S.C. 651(b)(13)).

OSHA believes that this proposal, when issued in final form, will significantly advance these statutory goals.

In addition, Section 8(c)(1) of the Act, 29 U.S.C. 657(c)(1), authorizes the Secretary to issue regulations requiring employers to, "make, keep and preserve, and make available to the Secretary * * * such records regarding his activities relating to this Act as the Secretary * * * ¼deems¼ necessary or appropriate for the enforcement of this Act or for developing information regarding the causes and prevention of occupational accidents and illnesses."

This proposal directs its major obligations toward those employers who are in the best position to develop information concerning chemical hazards or who are the primary users of chemicals in industry. To this end, "manufacturers" and "industrial users" are limited, by definition, to employers in Division D (Manufacturing), Major Groups 20–39, of the SIC Manual. In issuing standards, the Secretary may, under his section 6(g), 29 U.S.C. 655(g), priority-setting discretion apply the standard only to certain segments of business, thus "[giving] due regard to the urgency of the need for mandatory safety and health standards for particular industries, trades, crafts, occupations, businesses, workplaces or work environments."

The system of hazard identification and communication established by this proposal is also designed to impose the duty of hazard evaluation primarily on the manufacturers and importers who distribute hazardous chemicals in commerce. It would require the

disclosure of hazard related information not only to employees involved in the manufacture of chemicals but also to the employers to whom the chemicals are shipped for the benefit of the employees of such employers. This approach is similar to the one OSHA used in its benzene standard and which was approved in relevant part by the Court of Appeals in *American Petroleum Institute v. OSHA*, 581 F. 2d 493 (5th Cir. 1978) (standard vacated on other grounds), aff'd other grounds *sub nom. Industrial Union Dep't., AFL–CIO* v. *American Petroleum Institute*, 100 S. ct. 2844 (1980). The Court stated (*Id.* at 510):

> Placing the responsibility to warn downstream employees of concealed hazards on those upstream employers who create the hazards and know of the hazard is consistent with the remedial purpose of the Act and is within OSHA's broad authority to prescribe warning labels.

The Court was also influenced by the fact that the upstream employer's own employees were exposed to the same hazards and had to be warned via labels in any event. The responsibility to warn downstream employees placed on manufacturers by this proposal is not conceptually different than in benzene. As in benzene, their own employees are at least as much exposed to the chemicals which they must evaluate for hazards and provide warning for accordingly. OSHA recognizes, however, that importers may be in a different position than manufacturers since, if they are not themselves manufacturers, they may not have employees exposed in any significant way to the chemicals they ship and may have difficulty getting information concerning the identities and hazards of the chemicals they import from overseas' suppliers. Nevertheless, the proposal treats importers like manufacturers because it appears necessary that chemical identification and hazard warnings be developed at the earliest possible point in the chain of distribution after a chemical enters the Customs Territory of the United States to avoid a significant regulatory gap. Cf. *Mourning v. Family Publications Services*, 411 U.S. 356 (1973). OSHA specifically invites comment on how best to regulate hazardous imported chemicals so that employees may be informed of their chemical identity and warned of their hazards.

VI. Regulatory Analysis, Environmental Impact and Regulatory Flexibility Requirements

This proposal has been developed in conformity with pertinent laws, regulations, and executive orders. In particular, pursuant to Executive Order 12044 and the implementing Secretary's Order (44 FR 5370; January 26, 1979) OSHA has developed a Regulatory Analysis that extensively considers the expected benefits and economic impacts of the proposed standard, together with regulatory alternatives considered by the Agency. This document is available to the public from the following address: Docket Officer, Docket No. H–022, Room S–6212, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210, Tel: (202) 523–7894.

The Regulatory Analysis also serves as the Agency's draft Environmental Impact Statement (EIS) and Regulatory Flexibility Analysis. Under the National Environmental Policy Act, 42 U.S.C. 4321 *et seq.*, as interpreted by 40 CFR Part 1500 *et seq.* (Council on Environmental Quality) and 29 CFR Part 11 (Department of Labor), (45 FR 51187 *et seq.*; August 1, 1980) OSHA is required to prepare a draft EIS if it determines that a proposed action will have significant environmental effects. Because OSHA has identified significant, albeit beneficial, effects external to the workplace resulting from this proposed standard, the Regulatory Analysis has accordingly been written so that it may simultaneously function as the draft EIS. The consolidation of documents in this manner is explicity permitted by 40 CFR 1506.4 and 29 CFR 11.12(d). In addition to assuring that the substantive subject matter required of a draft EIS has been addressed, OSHA has also undertaken to comply with the notice and filing requirements set forth in the NEPA regulations, 40 CFR 1506.6 and 1506.9 and 29 CFR 11.12(d).

In like manner, the Regulatory Analysis also contains an analysis of the proposed standard's impact on small businesses, as required by the Regulatory Flexibility Act of 1980, Pub. L. 96–353. As detailed in the Regulatory Analysis and in the preamble above, OSHA has not only considered the effects on small businesses, but also has taken steps designed to lessen the compliance burden on manufacturers and importers with 250 or fewer employees. The decision at this time to limit the scope of the proposed standard primarily to employers engaged in manufacturing (Division D, SIC Major Groups 20–39)—thereby excluding construction and other non-manufacturing industries from its scope—may also be seen in part as an attempt to minimize the impact of the proposed standard on small businesses.

To the extent necessary, OSHA will issue a final EIS and Regulatory Flexibility Analysis at the time of the final standard. It will also make final determinations regarding the technical and economic feasibility of the standard. To assist it in this task, the Agency specifically invites comments on any issue relating to the benefits, costs and other economic impacts, environmental consequences, and impacts on small business of the proposed standard.

VII. Public Participation

Interested persons are invited to submit written data, views, and arguments on this proposed standard. These comments must be received on or before April 16, 1981, and submitted in quadruplicate to the Docket Officer, Docket H–022, U.S. Department of Labor, Occupational Safety and Health Administration, 200 Constitution Avenue, N.W., Room S–6212, Washington, D.C., 20210; (202) 523–7894. Written submissions must clearly identify the provisions of the proposal which are addressed, and the position taken on each issue.

OSHA is scheduling public hearings in several locations to permit interested persons an opportunity to submit oral testimony concerning the issues raised by the proposed standard, including the economic and environmental impacts. The dates and cities for these hearings are as follows:

Date Hearing Will Begin in City

1. May 26, 1981, Washington, D.C.
2. July 7, 1981, Houston, Texas.
3. July 21, 1981, Chicago, Illinois.
4. August 11, 1981, Philadelphia, Pennsylvania.
5. September 1, 1981, San Francisco, California.

The addresses for the location of the hearing in each city will be announced in the Federal Register at a later date.

Notices of Intention to Appear

All persons wishing to participate in the public hearings must file a notice of intention to appear, in quadruplicate, on or before May 1, 1981, addressed to Mr. Tom Hall, OSHA Division of Consumer Affairs, Docket No. H–022, Room N3635, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210; (202) 523–8024.

The notices of intention to appear must contain the following information:

(1) The name, address and telephone number of each person to appear;

(2) The capacity in which the person will appear;

(3) The approximate amount of time requested for the presentation;

(4) The specific issues that will be addressed;

(5) A detailed statement of the position that will be taken on each issue addressed; and

(6) Whether the party intends to submit documentary evidence and if so, a brief summary of that evidence.

Filing of Testimony and Evidence Before Hearing

Any party requesting more than 15 minutes for a presentation at the hearing, or submitting documentary evidence, must provide in advance the complete text of the testimony or documentary evidence to be presented. These texts shall be submitted in quadruplicate to the OSHA Division of Consumer Affairs, at the above address, and must be submitted by May 8, 1981.

These submissions will be available for inspection and copying at the OSHA Docket Office, Room S-6212, at the above address.

Each submission received will be reviewed to ascertain if the amount of time requested in the notice of intention to appear is appropriate. In those instances where the information contained in the submission does not justify the amount of time requested, a more appropriate time allocation will be made and the participant will be notified of the change. Any party who has not substantially complied with this requirement may be limited to a 15-minute presentation, and may be requested to return for questioning at a later time.

Conduct of Hearings

The hearings will begin at 9:30 a.m. with resolution of any procedural matters relating to the proceeding. The hearings will be conducted in accordance with 29 CFR Part 1911, allowing full development of the record and permitting all parties to exercise their rights of participation.

The hearing will be presided over by an Administrative Law Judge who will have all the powers necessary or appropriate to conduct a full and fair informal hearing as provided in 29 CFR Part 1911. Following the close of the hearing or of any post hearing comment period, the presiding Administrative Law Judge will certify the record to the Assistant Secretary of Labor for Occupational Safety and Health.

All written and oral submissions, as well as other information gathered by the Agency, will be considered in any action taken. The record of this rulemaking, including written comments and materials submitted in response to this notice and notices of intention to appear at the public hearings, will be available for inspection and copying in the Docket Office, Room S-6212, at the above address, between the hours of 8:15 a.m. and 4:45 p.m.

VIII. Authority and Signature

This document was prepared under the direction of Eula Bingham, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, D.C. 20210.

(Secs. 6(b), 8(c), and 8(g), Pub. L. 91-596, 84 Stat. 1593, 1599, 1600; 29 U.S.C. 655, 657; 29 CFR Part 1911; Secretary of Labor's Order No. 8-76 (41 FR 25059))

Signed at Washington, D.C. this 13th day of January, 1981.

Eula Bingham,

Assistant Secretary of Labor.

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I. General

(a) *Overview.*

Paragraphs (a) and (b) of this standard do not themselves impose requirements on employers but are intended to set forth the general purpose of this standard and to summarize (with appropriate cross-references) the major provisions of the standard which implement that purpose.

This standard establishes a system designed to communicate to workers and employers essential information concerning the hazards of workplace chemicals. Chemicals are classified under the standard as either substances (paragraph (gg)(40)) or mixtures (paragraph (gg)(30)). Employers covered by the standard generally fall into four categories: manufacturers (paragraph (c)(1)(i)), importers (paragraph (c)(1)(ii)), suppliers (paragraph (c)(1)(iii)), and industrial users (paragraph (c)(1)(iv)). Manufacturers and industrial users covered by this standard are those whose establishments are covered by Division D (Manufacturing), Major groups 20–39, in the most recent revision of the Standard Industrial Classification Manual; Executive Office of the President-Office of Management and Budget. In addition, other employers (i.e. those which fall under other SIC categories) are required to leave labels on containers they receive unless or until the container is put up for retail sale (paragraph (v)).

This standard requires (1) the evaluation of substances and mixtures to determine whether they are hazardous according to the criteria specified in the standard (paragraph (i)-(1); Appendices A and B) and (2) certain regulatory actions to be taken with respect to those substances and mixtures which are determined to be hazardous. The responsibility for hazard evaluation is placed on the manufacturers or importers of a substance or mixture because they are in the best position to make such an evaluation. The standard identifies 17 different kinds of hazards which must be evaluated (paragraph (gg)(22)). The evaluation procedures of the standard require manufacturers or importers to make use of information available in

their own records and to search relevant scientific literature for evidence of those hazardous (paragraphs (k)–(l)). Appendices A and B of the standard specify the accepted scientific principles which are to be followed when evaluating the evidence indicating a possible hazard. The evaluation procedures of the standard, however, do not require manufacturers and importers to perform any tests to determine the hazardousness of a substance or mixture.

Once a substance or mixture is determined by a manufacturer or importer to be hazardous under the standard, the standard requires each manufacturer and industrial user to:

(1) Label every container of every hazardous substance in the workplace with the precise chemical identity of its contents, and with appropriate hazard warnings, (paragraph (q) and Appendix C);

(2) Label every container of a mixture with the precise chemical identities of the constituent chemicals which are or may be hazardous, and with appropriate hazard warnings (paragraph (q) and Appendix C);

(3) Provide employees with any available material safety data sheets concerning the dangers posed by hazardous substances and mixtures in the workplace (paragraph (cc)); and

(4) Update the information provided to employees as new information about hazards becomes available (paragraphs (x)–(aa)).

To provide the information which industrial users need to protect their employees, the standard requires manufacturers and importers to:

(1) Maintain files (i.e. references, studies, reports or other documents used in the hazards evaluation procedure) on all substances and mixtures they manufacture or import (paragraph (m));

(2) Assure that the appropriate chemical identity and hazard warning labels are affixed to containers that are being shipped to industrial users and the suppliers of industrial users (paragraph (o)); and

(3) Provide with the first shipment to an industrial user or supplier of an industrial user one copy of any safety data sheet which the manufacturer or importer has developed concerning the hazards posed by the substance or mixture being shipped (paragraph (o)(6)). The standard, however, does not require safety data sheets to be developed or published if they do not otherwise exist.

To assure that industrial users receive the chemical identification and hazard warning information developed by the manufacturer or importer, the standard requires suppliers to forward this information which they receive from manufacturers or importers with their shipments of hazardous substances and mixtures to industrial users and to other suppliers of industrial users (paragraph (o)(5)). The standard permits industrial users, for the purposes of complying with their labeling and placarding duties, to rely on the hazard-related information which they receive from manufacturers, importers or suppliers. (paragraph (p)).

The standard requires that material safety data sheets and files containing hazard determination references and documents must be preserved for specified periods of time. (paragraph (bb)). Access to these records is generally provided to employees (including former employees), their designated representatives (including unions with collective bargaining rights in the workplace), OSHA and NIOSH (the National Institute for Occupational Safety and Health, Department of Health and Human Services). (paragraphs (cc) and (dd)). The standard provides for the transfer of these records when an employer subject to its recordkeeping provisions goes out of business (paragraph (ee)). The standard also requires each manufacturer and importer to send to OSHA, after completing a hazard determination on a substance or mixture, either a notice stating that the substance or mixture has not been found to meet the criteria for a hazard or a copy of the appropriate hazard warning for the substance or mixture. This information will be kept in a central repository and made available to other employees on request (paragraph (w)). The compliance dates of the standard have been extended by three months for manufacturers and importers with less than 250 employees so that they may take advantage of the hazard evaluations on file with OSHA (paragraph (ii).)

(b) *Purpose.*

The system of hazards evaluation and communication established by this standard will, by making information about workplace hazards generally available to workers, their representatives, OSHA and NIOSH, yield direct and indirect improvements in occupational health. Container labels will give workers immediate access to the identities and dangers of the hazardous substances and mixtures with which they work directly. Material safety data sheets will provide workers and their representatives with detailed information about the properties and handling of hazardous substances and mixtures, supplementing the information on hazard warning labels. Hazard evaluation files will provide the documentation to enable workers and their representatives to make their own hazard determinations and to check the employer's determinations.

II. Scope and application

(c) *Employers covered by the standard.*

(1) This standard applies to any employer who:

(i) Is engaged in the manufacturing or processing of a substance or mixture for distribution in commerce and whose business is covered by Division D (Manufacturing), Major Groups 20–39, in the most recent revision of the *Standard Industrial Classification Manual,* Executive Office of the President—Office of Management and Budget (hereafter "manufacturer"); or

(ii) Imports a substance or mixture into the Customs Territory of the United States (i.e., the 50 States, Puerto Rico, and the District of Columbia), and is the first person who, knowing the substance or mixture will be imported, controls the identity and total amount of the substance or mixture to be imported (hereafter "importer"); or

(iii) Receives a substance or mixture regulated by this standard and distributes such substance or mixture to an industrial user or another supplier of an industrial user in unaltered form, whether or not in its original container (hereafter "supplier"); or

(iv) Uses a substance or mixture received from a manufacturer, importer, or supplier, and whose business is covered by Division D (Manufacturing), Major Groups 20–39, in the most recent revision of the *Standard Industrial Classification Manual,* Executive Office of the President—Office of Management and Budget (hereafter "industrial user").

(2) This standard applies to employers who are neither manufacturers, importers, suppliers, or industrial users only to the extent set forth in paragraph (v).

(d) *Substances covered by the standard.*

(1) Any substance covered by this standard must be evaluated in accordance with paragraphs (l)–(1) and Appendices A and B.

(2) This standard applies to any substance which is:

(i) Listed in the Toxic Substances Control Act Chemical Substance Inventory, including UVCBs; or

(ii) A pesticide; or

(iii) A food additive, a prior sanctioned food additive, a color additive, cosmetic or a drug; and includes

(iv) A by-product, intermediate, or impurity known to be present during the manufacturing or processing of a substance or mixture. Impurities include impurities in food and tobacco.

Note.—There is necessarily a continuum between "intermediates," "by-products," and "impurities." Any material within this continuum is a material subject to regulation under this standard.

(e) *Mixtures covered by the standard.*

(1) Any mixture covered by this standard must be evaluated in accordance with paragraphs (i)–(l) and Appendices A and B.

(2) This standard applies to any mixture all of whose constituent substances are covered by paragraph (d).

(f) *Coverage of research materials.*

(1) Substances or mixtures used for scientific experimentation or analysis, or chemical research, or product development are covered only by the requirements to maintain a hazard evaluation file for each such substance or mixture (paragraph (m)) and to provide access to such file (paragraph (dd)), provided that:

(i) The quantities used are no greater than reasonably necessary for such purposes; and

(ii) The substance or mixture is used by, or directly under the supervision of, an individual assigned to conduct research or product development; and

(iii) The importer, manufacturer, or industrial user conducting, sponsoring, or initiating the experimentation, analysis, research, or product development, uses the substance or mixture only for these purposes and not for any commercial application, and

(iv) The substance or mixture is not known to be used by any other person for any commercial application.

(g) *Coverage of non-hazardous substances and mixtures.*

Any substance or mixture which is determined not to be hazardous under the criteria of paragraphs (i)–(1) and Appendices A and B is regulated only to the extent specified in paragraphs (o)(4), (bb) and (dd)–(ee).

(h) *Substances not covered by the standard.*

(1) This standard does not apply to:

(a) A source material, special nuclear material, or by-product material as defined in the Atomic Energy Act of 1954, 42 U.S.C. 2014 *et. seq.*, and the regulations issued there under; or

(b) Food or tobacco; or

(c) Wood in any of its physical forms need not be evaluated for flammability.

(2)(a) An importer need not evaluate any substance if it is to be distributed directly or indirectly in unaltered form to:

(i) A workplace covered by this standard for personal use by employees; or

(ii) A destination other than a workplace covered by this standard.

(b) An importer who does not know the contemplated use or ultimate destination of a substance must evaluate such substance for hazards.

III. Evaluation and Communication of Hazards—Duties of Manufacturers and Importers

(i) *Evaluation of substances and mixtures for hazards.*

(1) Each manufacturer and importer of a substance covered by this standard shall determine whether that substance is to be regulated as a hazard in accordance with the requirements of paragraphs (j)–(l) and the procedures set forth in Appendices A and B.

(2) The manufacturer or importer of a mixture shall determine that it poses the hazards of its constituent substances if:

(i) The mixture contains a constituent substance in an amount of at least 0.1% (by weight) which is determined to be a carcinogen, unless the mixture as a whole is determined not to be a carcinogen (Appendices A and B); or

(ii) Any of the constituent substances of the mixture in an amount of at least 1.0% (by weight) meets the definition for one or more Category A or Category B hazards, and the mixture as a whole cannot be evaluated for that Category A or B hazard because of a lack of adequate information about the mixture's effects.

(3) If there is adequate information (Appendix A) to evaluate a mixture for a particular Category A or Category B hazard, the mixture shall be determined to be hazardous if, evaluated as a whole, it meets the definition of such a hazard. In such case, its constituent substances need not be evaluated for the same hazards.

Note.—For purposes of paragraphs (2) and (3), "adequate information" means studies or data which meet the requirements of Appendices A and B.

(4) Where a hazard can be traced to a general chemical structure (i.e., a chemical family), but not to a particular substance, the most specific chemical structure to which the hazard can be traced, and which the mixure contains in an amount of at least 1.0% (by weight), shall be treated for purposes of this standard as a substance.

(j) *Categories of hazards.*

An importer or manufacturer shall determine hazardous properties of substances and mixtures under two distinct sets of criteria and procedures. To reflect this fact, hazardous properties have been grouped in two categories, "Category A" (physical hazards) and "Category B" (health hazards) according to the hazard determination criteria and procedures by which they are governed. The hazards in each category are set out under the definition of "hazardous," under paragraph (gg)(22).

(k) *Determination of Category A hazards.*

A Category A hazard exists if:

(1) The substance or mixture possesses the physical or chemical properties specified in the definition for any Category A hazard as determined by the procedure set out in Appendix A; and

(2) The substance or mixture is present in the workplace under normal or emergency working conditions in the physical state and chemical form in which its hazardous properties were ascertained.

(l) *Determination of Category B hazards.*

A Category B hazard exists if:

(1) A substance meets the definition for any listed category B hazard as demonstrated by the procedures set out in Appendices A and B; and

(2) The substance or mixture is present in the workplace under normal or emergency working conditions in the chemical form in which its hazardous properties were ascertained.

(m) *Maintenance of hazard evaluation files.*

Each importer or manufacturer must maintain and make available, for examination and copying (see paragraph (dd)), a separate hazard evaluation file for each substance and mixture in the workplace. Each file shall contain all publicly unavailable documents, and a list of all publicly available documents and their sources, submitted to or in the possession of the importer or manufacturer concerning the substance or mixture relevant to the hazard determination process.

(n) *Deletion from hazard evaluation files of trade secret information.*

(1) An importer or manufacturer may delete from any publicly unavailable document produced for an employee, former employee, or certified or recognized collective bargaining agent, trade secret information which discloses manufacturing processes, or which discloses the percentage of a substance in a mixture.

(2) An importer or manufacturer may also delete from any publicly unavailable document produced for an employee, former employee, designated representative, or collective bargaining agent, trade secret information which discloses the chemical name of CAS number of a substance or a mixture:

(l) Where the importer or manufacturer has determined that the substance or mixture to which such document pertains is not hazardous; or

(ii) Where the importer or manufacturer has not yet determined whether such substance or mixture is hazardous; or

(iii) Where the substance or mixture is used solely in research as described in paragraph (f).

(3) Information which an importer or manufacturer is required to disclose to any agency of the federal government, or to any state or subdivision of a state, and which is available to competitors or the public without compensation to the provider of the information, shall not be considered "publicly unavailable" information entitled to trade secret status.

(o) *Information to accompany shipments.*

(1) No shipment of a hazardous substance may be sent by a manufacturer or importer to an industrial user or supplier, unless each container is labeled with the following information:

(i) The common name of the substance;

(ii) The CAS number of the substance; and

(iii) The appropriate hazard warning label prescribed by Appendix C.

(2) No shipment of a regulated mixture may be sent by a manufacturer or importer to an industrial user or supplier, unless each container is labeled with the following information:

(i) The common name of the mixture;

(ii) The CAS numbers and common names of all hazardous constituent substances in a mixture listed in order of relative concentration, by CAS number, with the substance of greatest concentration being listed first; and

(iii) The appropriate hazard warning label prescribed by Appendix C.

(3) The chemical names of substances and constituent substances of mixtures may either be placed on labels prepared for shipment, or may be forwarded, with appropriate cross references to common names and CAS numbers, in a separate listing accompanying the shipment.

(4) No shipment of a substance or mixture determined not to be hazardous may be sent by a manufacturer or importer to an industrial user or supplier without a written statement that the substance or mixture has been evaluated in compliance with this standard and found not to meet the critiera for a hazard as defined by this standard. Any industrial user or supplier who receives such a statement must forward it with any shipment of such substance or mixture to any other industrial user or supplier.

(5) A supplier who receives a shipment from an importer or manufacturer accompanied by the information described in this paragraph shall carry forward such information in any further shipment using either the labeling or separate listing format.

(6) Each importer, manufacturer, or supplier shall supply with the first shipmetn of a hazardous substance or a hazardous mixture to any workplace of any industrial user or supplier, one copy of any available material safety data sheet concerning such substance or mixture.

(7) Each printing of a material safety data sheet must reflect the most current pertinent information in possession of the importer or manufacturer who supplies it.

(8) An importer or manufacturer who does not know the contemplated use or ultimate destination of a shipment shall forward information as required by this paragraph with the shipment.

(9) A shipment of a hazardous substance or mixture by an importer or manufacturer shall not be subject to the labeling requirements of this paragraph if another OSHA standard has specific labeling requirements affecting the substance or mixture different from those of this paragraph. In such cases, an importer or manufacturer shall label in accordance with the requirements of the specific standard and shall assure that the label remains affixed to the container when sent to an industrial user or supplier.

(10) A hazardous substance or mixture which has been finally processed to a solid state, whether originally a solid, liquid or gas, and is inert and not susceptible to decomposition in any workplace, shall be subject only to the requirements of paragraph (o)(4).

IV. Workplace Requirements

(p) *Responsibility to determine hazards—industrial users and suppliers.*

An industrial user or supplier receiving a shipment may rely upon the determination by a manufacturer or importer that a hazard does or does not exist as required to be forwarded by paragraph (o) with shipments of substances and mixtures. However, an industrial user who has actual knowledge of hazards posed by a substance or mixture generally, or as used in the workplace, which has not been communicated to the industrial user by the manufacturer or importer, must convey the information regarding such hazards, as required by this standard, to his or her employees.

(q) *Workplace labels for hazardous substances and mixtures.*

(1) Except as provided by paragraph (u), each manufacturer and industrial user shall ensure that each container of a hazardous substance in the workplace is labeled with the common name and CAS number of the substance within.

(2) Each manufacturer and industrial user shall ensure that each container of a hazardous mixture in the workplace is labeled with:

(a) The common name of the mixture.

(b) The common name(s) and CAS number(s) of the mixture's hazardous constituent substances, listing CAS number(s) first. Constituent hazardous substances shall be listed on the label in order of relative concentration with the substance of highest concentration being listed first.

(3) Each manufacturer and industrial user shall ensure that each container of a hazardous substance or mixture in the workplace is labeled with the appropriate hazard warning label indicated in Appendix C.

(r) *Workplace labels or placards—piping systems.*

(1) The hazardous contents of a piping system shall be indentified by labels or placards. Labels or placards shall be placed at reasonable intervals along the piping system in places accessible to employee view. Labels or placards shall show the common name, the CAS number, and the hazard warning for each hazardous substance and mixture flowing through the piping system.

(2) Whenever an employee is assigned to do maintenance or repair work on a pipe, the employee must be notified of at least the common name and the hazard warnings pertinent to the substance or mixture in the pipe.

(s) *Hazard warning labels of other agencies.*

(1) Each manufacturer and industrial user shall ensure that hazard warning labels affixed to containers of substances or mixtures to comply with the regulations of other Federal agencies are not removed or obscured after entering the workplace. Such labels need not be transferred to other workplace containers into which a substance or mixture is subsequently placed.

(2) In addition to the common names and CAS numbers required by paragraph (q), a manufacturer or industrial user may use labels affixed in accordance with requirements of the Department of Transportation, 49 CFR Part 172, and the Environmental Protection Agency, 40 CFR Part 162, in lieu of the hazard warnings required by paragraph (q) and indicated by Appendix C of the standard.

(t) *Label and placard display requirements.*

(1) A label must be displayed on, or securely affixed to, the surface of the container. For the purposes of this section, "securely affixed" means that a label can reasonably be expected to remain affixed and legible during foreseeable conditions and the period of use. If a hazardous substance or mixture is packaged in a container that has a separate inner liner, the hazard warning label must be securely affixed to the outer surface of the container and not to the inner liner.

(2) A label or placard must be prominently displayed. Prominent display shall be achieved by the use of distinct typography and colors that contrast sharply with the background, and in the use of suitable size, design, and placement. In addition, any label which is affixed to comply with this standard shall contain a statement to that effect.

(3) A label or placard must be clearly legible to a person with normal vision. A label or placard must not be obscured by any other marking on the container (such as advertising) that could substantially reduce its legibility.

(4) All required label or placard text must be printed in English, and may be printed in languages other than English as well.

(5) A label or placard may include additional hazard warning information not required by this section, provided that the additional information does not contradict or detract from the required information. Terms such as "safe," "non-toxic," or "harmless" shall not appear on the label or placard.

(6) Chemical identification and hazard warning components may be included on a single label or appear on separate labels.

(7) A manufacturer or industrial user who refills a labeled container of a hazardous substance or mixture must remove or mask the hazard warning label before refilling the container with another substance or mixture.

(8) A manufacturer or industrial user need not change labels or placards to reflect every stage of a continuous reaction or every change in the contents of a container or pipe, provided the manufacturer or industrial user adopts any alternative system or format which:

(i) Utilizes labels and placards;

(ii) Accurately conveys the same information as would changing individual labels or placards contemporaneously with changing the contents of the container or pipe;

(iii) Is immediately accessible to employees nearby; and

(iv) Assures that all employees assigned to work on pipes or their attachments, labeled or placarded under this paragraph, are informed at all times of the chemical identity and hazard warnings appropriate to the contents of such pipes or containers.

(u) *Exceptions from workplace labeling and placarding requirements of this section.*

A manufacturer or industrial user need not label workplace containers as required by paragraph (q) or use placards as provided for in paragraph (r) if:

(1) The container is five gallons (19.0 liters) or less in volume, is used to transfer hazardous substances or hazardous mixtures from labeled containers, and is intended only for use in the work area where the transfer occurs; or

(2) Another OSHA standard has specific labeling or placarding requirements affecting a substance or mixture which are different from those of paragraph (q), in which case the manufacturer or industrial user shall label or placard in accordance with the requirements of the specific standard; or

(3) The hazardous substance or mixture, whether originally a solid, liquid or gas, has finally been processed to a solid state and is inert and not susceptible to decomposition in the workplace.

(v) *Labeling duties of other employers.*

Each employer who is not a manufacturer, importer, industrial user or supplier, and who receives a container labeled in compliance with this section, shall not remove or obscure the label unless and until the container is actually put up for retail sale.

(w) *Label reference service.*

(1) Upon completion of the hazard determination for a substance a manufacturer or importer of such substance shall forward to the Assistant Secretary within 60 days of such determination either:

(i) Notice that the chemical substance has been evaluated and determined not to meet the criteria for a hazard as defined by this standard; or

(ii) Notice that the substance is hazardous.

(2) Each notice shall include the common name, the chemical name, and the CAS number of the substance in question.

(3) The notice for a hazardous substance must also include all hazard warning information required by this standard to appear upon the container label.

(4) The Assistant Secretary will maintain a registry of the information required to be reported under this paragraph.

(5) Any manufacturer or importer may have access to the notices submitted for any substance appearing in the registry. The manufacturer or importer requesting this information must identify a substance by either its chemical name or its CAS number. OSHA will not release any information concerning the common name or trade name of any substance, or the identity of any manufacturer or importer of a substance.

(6) Information obtained from the registry may be relied upon to comply with the hazard determination and hazard warning requirements of this standard. Users of the registry are, however, under a continuing obligation to ensure that hazard determinations and hazard warnings are up to date.

(7) OSHA will charge users of the registry a reasonable fee reflecting the cost to OSHA of providing the requested information.

V. Updating Hazard Information and Hazard Determinations

(x) *Duty to update—importers and manufacturers.*

(1) Whenever an importer or manufacturer acquires private or public information:

(a) Concerning new hazards a hazardous substance or mixture has been found to pose;

(b) Concerning additional information about the hazards such substance or mixture has been found to pose; or

(c) Indicating that a substance or mixture previously determined to pose a hazard does not pose such hazard, the hazard determination for such substance or mixture and the information pertinent to it shall be updated accordingly.

(2) The procedures governing the determination of hazards under paragraphs (i)–(1) and Appendices A and B shall govern the determination of new hazards under this paragraph.

(y) *Duty to update—industrial users.*

Whenever an industrial user has actual knowledge, contrary to the information previously received with the shipment of a substance or mixture, that the substance or mixture is hazardous, or poses hazards additional to those of which he or she was informed, the industrial user shall revise the hazard determination for use in the workplace. An industrial user need not forward the revised determination, or the information underlying it, however, unless the information underlying the revised determination was actually generated by the industrial user. Likewise, where an industrial user discovers new information about the hazards of a currently hazardous

substance or mixture, such information need to be forwarded only if actually generated by the industrial user.

(z) *Communication of updated hazard determinations and information.*

(1) Updated hazard determinations and hazard information generated or received by an importer or manufacturer shall be distributed promptly as follows:

(i) To each industrial user, or supplier, to whom the importer or manufacturer has supplied the substance or mixture to which the updated determination or information refers within the lesser of:

(A) The period from the effective date of this standard (see paragraph (kk)) to the date the updated determination was made or the updated information was acquired; or

(B) The 24 month period immediately preceding the date the updated determination was made or acquired.

(2) Updated determinations and information generated by an industrial user shall be distributed promptly to the importer, manufacturer, or supplier who last supplied the substance or mixture to the industrial user.

(3) A supplier who receives an updated determination or updated information shall distribute it to the last manufacturer or importer who supplied the substance or mixture to the supplier. In addition such determinations and information shall be distributed promptly to each industrial user and supplier of an industrial user to whom the supplier has supplied the substance or mixture to which the updated determination or information refers within the lesser of:

(i) The period from the effective date of this section (see paragraph (kk)) to the date the updated determination was made or the updated information was acquired; or

(ii) The 24 month period immediately preceding the date the updated determination was made or the updated information was acquired.

(aa) *Duties upon receipt of updated information.*

(1) Each manufacturer and industrial user shall promptly make updated hazard information available with all relevant material safety data sheets.

(2) Each importer, manufacturer, industrial user, or supplier shall promptly revise relevant labels and information to accompany shipments to reflect accurately updated hazard determinations.

VI. Recordkeeping and Access Requirements.

(bb) *Records preservation.*

(1) Each manufacturer and industrial user shall preserve a copy of a material safety data sheet (if any) until it is replaced by a more recent copy or until the hazardous substance or mixture to which it pertains is no longer present in the workplace.

(2) Each importer and manufacturer shall preserve the hazard evaulation files required by paragraph (m) for three years.

(3) Each manufacturer and industrial user shall preserve the statement that a substance or mixture has been evaluated and determined not to meet the criteria for a hazard as defined by this standard unless and until the substance or mixture to which it applies is determined to be hazardous or the substance or mixture is no longer present in the workplace.

(cc) *Access to records.*

Within 48 hours of a request for any hazardous substance or mixture in a work area, each manufacturer or industrial user shall supply a copy of any available material safety data sheet, and the chemical name of any hazardous substance or constituent hazardous substance of a mixture, appropriately cross-referenced to the common name and CAS number, in writing to:

(1) Any employee assigned to, formerly assigned to, or about to be assigned to that work area.

(2) Any former employee who was assigned to that work area.

(3) The designated representative of any such employee or former employee.

(4) The recognized or certified bargaining representative for any employee in the workplace.

(5) The Assistant Secretary.

(6) The Director.

(dd) *Access to hazard evaluation files.*

(1) Within 7 calendar days of a request, each importer or manufacturer shall make available for examination and copying all publicly unavailable reports, studies, or other documents used, or being used, to assess whether a substance or mixture is hazardous by this standard, or to develop material safety data sheets or hazard warnings. Such materials shall be made available to the same persons specified in paragraph (cc).

(2) Where reports, studies, or other documents used, or being used, by the importer or manufacturer for such purposes are publicly available, the importer or manufacturer may, within the same time limits, provide a list of each document source, for examination and copying, instead of the reports, studies, or other documents themselves.

(ee) *Transfer of records.*

(1) Whenever an importer, manufacturer or industrial user ceases to do business, he or she shall transfer all records subject to this standard to his or her successor. The successor shall receive and maintain these records.

(2) Whenever an importer, manufacturer or industrial user ceases to do business and there is no successor to receive and maintain the records subject to this standard, the importer, manufacturer, or industrial user shall notify present or former affected employees who leave the employer's employment after this standard becomes effective of their rights of access to records. Notification shall be given at least three (3) months prior to disposal of such records. Former employees shall be considered notified if written notification has been sent to their last known address with a request to forward such notification.

(3) Whenever an importer or manufacturer ceases to do business and there is no successor to receive and maintain records, or whenever an importer or manufacturer intends to dispose of any hazard evaluation files, the importer or manufacturer shall:

(i) Notify the Director in writing of the impending disposal of records at least three (3) months prior to the disposal of the records. Upon request by the Director, the importer or manufacturer shall transfer such records to NIOSH; or

(ii) Transfer the records to the Director if so required by a specific occupational safety and health standard.

(ff) *Duty of a manufacturer or industrial user to inform employee of right of access.*

A manufacturer or industrial user shall inform his or her employees of their rights of access to information under the standard. A manufacturer or industrial user may comply with this requirement using any reasonable format, except that:

(1) The information on access required by this paragraph shall be permanently displayed in an area readily observable to employees in each work area, and

(2) The display format shall contain the words "Worker's Right to Know" in conspicious lettering.

VII. Definitions.

(gg) *Definitions.*

(1) The following terms shall have the meaning contained in the Federal Food, Drug and Cosmetic Act, 21 U.S.C. 321 *et seq.*, and the regulations issued under that Act: "food," "cosmetic," "drug," "food additive," "prior sanctioned food additive," "food ingredient generally recognized as safe," and "color additive."

(2) "Access" means the right and opportunity to examine and copy.

(3) "Assistant Secretary" means the Assistant Secretary of Labor for

Occupational Safety and Health, U.S. Department of Labor, or designee.

(4) "By-product" means a substance or mixture produced without separate commercial intent during the manufacture or processing of another substance(s) or mixture(s). A "by-product" is covered by this rule whether or not it is volatile.

(5) "Carcinogen" means a substance or mixture which meets the definition of a Potential Occupational Carcinogen as specified in 29 CFR 1990.103 and qualified in 29 CFR 1990.143–.144, (45 Fed. Reg. 5282, *et seq.*, January 22, 1980) or is identified in a previous Occupational Safety and Health Administration regulation as a carcinogen (29 C.F.R. Part 1910, Subpart Z).

(6) "CAS number" means the unique identification number assigned by the Chemical Abstracts Service to substances.

(7) "Chemical identity" means the "CAS number" or the "chemical name" of a substance.

(8) "Chemical name" is the scientific designation of a substance in accordance with the nomenclature system developed by the International Union of Pure and Applied Chemistry (IUPAC) or the Chemical Abstracts Service (CAS) rules of nomenclature.

(9) "Combustible liquid" means any liquid having a flash point at or above 100°F (37.8°C) but below 200°F (93.3°C), except that this term does not include any liquid mixture having one or more components with a flash point at or above 200°F (93.3°C) which together make up 99 percent or more of the total volume. (For test method, see definition of "flash point").

(10) "Common name" means any designation or identification such as code name, code number, trade name, brand name or generic name used by an industrial user to identify a substance or mixture other than by its chemical name.

(11) "Compressed gas" means:

(i) A gas or mixture of gases having in a container an absolute pressure exceeding 40 pounds per square inch at 70°F (21.1°C); or

(ii) A gas or mixture of gases having in a container an absolute pressure exceeding 104 pounds per square inch at 130°F (54.4°C), regardless of the pressure at 70°F (21.1°C).

(iii) A flammable liquid having a vapor pressure exceeding 40 pounds per square inch absolute pressure at 100°F (37.8°C), as determined by the American Standard Method of Test for Vapor Pressure of Petroleum Products (Reid Method), Z11.44–1973 (ASTM D 323–72).

(iv) The contents of a self-pressurized container.

(12) "Container" means any bag, barrel, bottle, box, can, cylinder, drum, stationary storage tank, pipe, pump, reaction vessel, stack, oven or the like that contains a substance or mixture and those inner surface is in direct contact with the substance or mixture. "Container" does not include a container with total contents of less than 500 milliliters (1.057 pints) in volume or less than 500 grams (1.102 pounds) in weight.

(13) "Corrosive material" means a substance or mixture which causes visible destruction of, or irreversible alterations in, living tissue by chemical action at the site of contact. A material is considered corrosive if, when tested on the intact skin of the albino rabbit by the method described by the U.S. Department of Transportation in Appendix A to 49 CFR Part 173 (Oct. 1, 1979), it destroys or changes irreversibly the structure of the tissue at the site of contact following an exposure period of no more than four hours.

(14) "Designated representative" means any individual or organization to whom an employee or former employee gives written authorization to exercise such employee's rights under this standard.

(15) "Director" means the Director, National Institute for Occupational Safety and Health, U.S. Department of Health and Human Services, or designee.

(16) "Emergency" means any occurrence such as, but not limited to, equipment failure, rupture of containers, or failure of control equipment which may or does result in an uncontrolled release of a hazardous substance or hazardous mixture into the workplace.

(17) "Employer" means one or more individuals, partnerships, associations, corporations, business trusts, legal representatives, or any organized group of persons engaged in a business affecting commerce who have employees. The term person does not include the United States or any state or political subdivision of a state.

(18) "Explosive material" means a substance or mixture that causes a sudden, almost instantaneous release of pressure, gas, and heat when subjected to sudden shock, pressure, or high temperature.

(19) "Extremely flammable liquid" means a liquid having a flash point at or below 20°F (−6.7°C) (For test method see definition of "Flash point")

(20) "Flammable" material means a substance or mixture that falls into one of the following categories:

(i) "Flammable aerosol." A substance or mixture dispensed from its container as a mist, spray, or foam by a propellant under pressure which, when tested by the method described in 16 CFR 1500.45 (Jan. 1, 1979), projects a flame longer than 18 inches when the valve is fully open or a flashback (a flame extending back to the valve) at any valve opening;

(ii) "Flammable gas." A gas which at atmospheric temperature and pressure, forms a flammable mixture with air when present at a concentration of 13 percent or less by volume, or the flammable range with air is wider than 12 percent regardless of the lower limit;

(iii) "Flammable liquid." A liquid that has a flash point above 20°F (−6.7°C) but below 100°F (37.8°C), except that this term does not include any liquid mixture having one or more components with a flash point at or above 100°F (37.8°C) which together make up 99 percent or more of its total volume (for test method, see definition of "Flash point");

(iv) "Flammable solid." A solid, other than an explosive that can cause fire through friction, absorption of moisture, spontaneous chemical change, or retained heat from manufacturing or processing, or that can be readily ignited and, when ignited, continues to burn vigorously and persistently after removal of the source of ignition. A material is considered a flammable solid if, when tested by the method described in 16 CFR 1500.44 (Jan. 1, 1979), it ignites and burns with a self-sustained flame at a rate greater than one-tenth of an inch per second along its major axis.

(21) "Flash point" means the minimum temperature at which a liquid gives off a vapor in sufficient concentration to ignite when tested as follows:

(i) Tagliabue Closed Tester (See American National Standard Method of Test for Flash Point by Tag Closed Tester, Z11.24–1979 (ASTM D 56–79))—for liquids with a viscosity of less than 45 Saybolt Universal Seconds (SUS) at 100°F (37.8°C), that do not contain suspended solids and do not have a tendency to form a surface film under test; or

(ii) Pensky-Martens Closed Tester (see American National Standard Method of Test for Flash Point by Pensky-Martens Closed tester, Z11.7–1979 (ASTM D 93–79))—for liquids with a viscosity equal to or greater than 45 SUS at 100°F (37.8°C), or that contain suspended solids, or that have a tendency to form a surface film under test; or

(iii) Setaflash Closed Tester (see American National Standard Method of Test for Flash Point by Setaflash Closed Tester (ASTM D 3278–78)).

Note.—For mixtures, if the result of any test method described in paragraphs (i)–(iii) is above 100°F (37.8°C), evaporate a fresh sample to 90 percent of the original volume and retest. The lower of the two values shall be taken as the flash point.

(22) "Hazardous" substance or mixture means a substance or mixture which meets the definition for one or more of the terms in the two following groups of hazards:

Category A Hazards

(i) A corrosive material;
(ii) An explosive material;
(iii) An extremely flammable liquid;
(iv) A flammable material;
(v) A combustible liquid;
(vi) A pyrophoric material;
(vii) A strong oxidizer;
(viii) A reactive material;
(ix) A compressed gas;

Category B Hazards

(x) A highly toxic material;
(xi) A toxic material;
(xii) An irritant;
(xiii) A sensitizer;
(xiv) A carcinogen;
(xv) A reproductive toxin;
(xvi) A material that has acutely endangered the life of a worker of either sex, whether normal or medically disabled, or has caused death from exposure via the respiratory tract (excluding asphyxiation), skin or mouth except that substances or mixtures shall not be placed in this category if available data permit their classification as "highly toxic" or "toxic"; or
(xvii) A material that causes the immediate or delayed onset of other acute, subacute or chronic adverse health effects in humans of either sex, normal or medically disabled, or experimental or domestic animals, if animal models of these human health effects are available.

Note.—Category B hazard (xvii) includes the immediate or delayed onset of acute, subacute or chronic dimunition in mental alertness or behavior alterations in humans of either sex, normal or medically disabled, or in experimental or domestic mammals if animal models of these human health effects are available.

(23) "Highly Toxic material" means a substance or mixture that kills within 14 days:
(i) At least half of a group of 10 or more albino rats weighing between 200 and 300 grams each, when administered orally at a single dose of 50 milligrams or less per kilogram of body weight (LD50); or
(ii) At least half of a group of 10 or more albino rabbits weighing between 2 and 3 kilograms each, tested at a dosage of 200 milligrams or less per kilogram of body weight, when administered by continuous contact with the bare skin for 24 hours (LD50); or
(iii) At least half of a group of 10 or more albino rats weighing between 200 and 300 grams each, tested at a concentration in air of 200 parts per million or less by volume of gas or vapor, or 2 milligrams or less per liter of mist, fume, or dust when administered by continuous inhalation at a steady concentration for one hour or for four hours when there is difficulty maintaining a steady concentration (LC50).

(24) "Impurity" means a substance which is unintentionally present with another substance or mixture.

(25) "Intermediate" means any substance which is present during the manufacture of other substances or mixtures and which either (1) is consumed in whole or in part in the course of manufacturing the other substances or mixtures or (2) is intentionally present for the purpose of altering the rate of such chemical reaction(s) (this latter category includes "catalysts").

(26) "Irritant" means a substance or mixture, not a corrosive, which on immediate, prolonged or repeated contact with living human or mammalian tissue induces the immediate or delayed onset of an acute, subacute or chronic local inflammatory response in the skin, eyes, or mucous membranes by chemical action. A substance or mixture is considered a skin irritant if it receives a score of five or more when tested by the method described in 16 CFR 1500.41 (Jan. 1, 1979). A substance or mixture is considered an eye irritant if a positive result is obtained when tested by the method described in 16 CFR 1500.42 (Jan. 1, 1979).

(27) "Label" means written, printed, or graphic matter displayed on or affixed to the containers of a substance or mixture.

(28) "Labeled container" means a container bearing hazard warning and content labels in accordance with the requirements of the section.

(29) "Material safety data sheet" means any safety data sheet or technical bulletin which contains information regarding the physical, chemical, and hazardous properties of a substance or mixture, e.g., OSHA Form 20.

(30) "Mixture" means any combination of two or more substances if the combination does not occur in nature and is not, in whole or in part, the result of a chemical reaction; except that such term does include any combination which occurs, in whole or in part, as a result of a reaction if none of the substances comprising the combination is a new chemical substance and if the combination could have been manufactured for commercial purposes without a chemical reaction at the time the substances comprising the combination were combined.

(31) "Other adverse health effects" means diseases, signs, or symptoms which (1) are caused wholly, or in part, by occupational exposures to a hazardous material; (2) occur either immediately or after a latency period which may extend into the retirement period; and (3) for which a reasonably prudent employee would seek medical treatment or a job transfer in order to mitigate or resolve the "other adverse health effect," or (4) which causes loss of consciousness or vision, restriction of worker motion, or has been associated with a reduction in working-life expectancy or total life expectancy. Reductions in working-life or total life expectancy shall be based, directly, upon standard life table methodologies or, indirectly, upon relative or attributable risk methodologies or proportional mortality studies.

(32) "Pesticide" shall have the meaning contained in the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136 *et seq.*) and the regulations under that Act.

(33) "Pipes" means any conduits for the transport of gases, liquids, semi-liquids, or fine particulate dust.

(34) "Piping system" means pipes of any type, including fittings, valves, and pipe coverings.

(35) "Pyrophoric material" means a substance or mixture that will ignite spontaneously in dry or moist air at or below 130°F (54.4°C).

(36) "Reactive material" means a substance or mixture that is able to undergo a violent, self-accelerating exothermic chemical reaction with common materials or by itself and includes a substance or mixture that falls within any of the following categories:

(i) "Organic peroxide." An organic compound that contains the bivalent —O—O— structure and which may be considered a structural derivative of hydrogen peroxide, in which one or both of the hydrogen atoms has been replaced by an organic radical.

(ii) "Pressure-generating material." A substance or mixture which may spontaneously polymerize, with an increase in pressure, unless protected by the addition of an inhibitor, or by refrigeration or other thermal control; or which may decompose to release gas in its container.

(iii) "Water-reactive material." A substance or mixture that reacts with water to release heat or a gas which is hazardous.

(37) "Reproductive toxin" means a substance or mixture which causes fetal wastage or undergrowth, malformation, growth retardation, or functional disorders in the products of mammalian conception, or prematurity or diminished fertility in mammals. For the purposes of regulation, it is immaterial whether a specific locus of action has been identified, assignment to this category being based upon the enumerated end-results.

(38) "Sensitizer" means a substance or mixture that causes humans of either sex, normal or medically disabled, or other mammals to develop either a hypersensitive allergic reaction involving normal tissue upon reapplication of the substance or mixture, or a photodynamic reaction. The hypersensitive reaction may be of the anaphylactic, immediate, delayed or fixed type, and may be of acute, subacute or chronic duration.

(39) "Strong oxidizer" means a substance or mixture that initiates or promotes combustion in other materials, thereby causing fire either of itself or through the release of oxygen or other gases.

(40) "Substance" means any organic or inorganic entity of a particular molecular identity, including any combination of such substances occurring in whole or in part as a result of a chemical reaction, or occurring in nature, and any chemical element or uncombined radical, except mixtures. For purposes of this section, a "UVCB" shall be treated as a chemical substance.

(41) "Toxic material" means a substance or mixture that kills within 14 days:

(a) At least half of a group of 10 or more albino rats weighing between 200 and 300 grams each, when administered orally at a single dose or more than 50 milligrams but not more than 500 milligrams per kilogram or body weight (LD 50); or

(b) At least half of a group of 10 or more albino rabbits weighing between 2 and 3 kilograms each tested at a dosage of more than 200 milligrams but not more than 1,000 milligrams per kilogram of body weight, when administered by continuous contact with the bare skin for 24 hours (LD 50); or

(c) At least half of a group of 10 or more albino rats weighing between 200 and 300 grams each tested at a concentration in air of more than 200 parts per million but not more than 2,000 parts per million by volume of gas or vapor, or more than 2 milligrams but not more than 20 milligrams per liter of mist, fume, or dust when administered by continuous inhalation at a steady concentration for one hour or for four hours when there is difficulty maintaining a steady concentration (LC 50).

(42) "UVCB" means a substance or mixture listed in the Toxic Substances Control Act Inventory which is of unknown or variable composition, a complex reaction product or biological material and which has been assigned a CAS number.

(43) "Work area" means a room or defined space in a room or open area where substances or mixtures are manufactured, handled, used, reacted, processed, packaged or repackaged, or transported and where employees are present. For the purposes of this section, each importer, manufacturer, industrial user or supplier shall designate a work area for each employee if no such designation now exists.

(44) "Workplace" means an establishment at one geographical location containing one or more work areas.

VIII. Miscellaneous

(hh) *Enforcement.*

To the extent and in the manner allowed by law, and for the purpose of determining compliance with this section, employees of OSHA, designated by OSHA, may enter the premises of any importer, manufacturer, industrial user, or supplier to take or require samples of the contents of any container. Pursuant to inspections to determine compliance with this section, the importer, manufacturer, industrial user, or supplier, whose premises are being inspected shall supply to any investigating OSHA employee, upon request, copies of any existing inventories of the substances and mixtures on the premises. These enforcement powers are in addition to OSHA's other enforcement powers which are not specified in this section.

(ii) *Compliance dates.*

(1)(i) Each manufacturer or importer of a substance or mixture who has two hundred and fifty or more employees shall comply with the provisions of this section as they apply to such substance or mixture within the following time frame:

(A) Regarding a substance, within one year of the effective date of this standard;

(B) Regarding a mixture, within two years of the effective date of this standard.

(ii) Each manufacturer or importer of a substance or mixture who has fewer than two hundred and fifty employees shall comply with the provisions of this section as they apply to such substance or mixture within the following time frame:

(A) Regarding a substance, within fifteen months of the effective date of this standard;

(B) Regarding a mixture, within twenty-seven months of the effective date of this standard.

(2) Each industrial user and supplier shall comply with the provisions of this section within the following time frame:

(i) Regarding a substance, within two years of the effective date of this standard;

(ii) Regarding a mixture, within three years of the effective date of this standard.

(jj) *Appendices.* The Appendices following this standard are mandatory unless otherwise stated.

(kk) *Effective dates.*

Appendix A—Hazard Determination Procedures

General

(1) A manufacturer or importer must evaluate each substance and mixture specified by paragraphs (d) and (e) of the standard for each of the Category A and Category B hazards listed in paragraph (gg)(22) of the standard. Appendix A describes the materials a manufacturer or importer must review, and the evaluative procedures a manufacturer or importer must follow, to determine whether a substance or mixture poses a particular Category A hazard. Appendix A also describes the materials a manufacturer or importer must review in considering whether a substance or mixture poses a particular Category B hazard. Generally, however, materials must be evaluated under the procedures and criteria of Appendix B to determine whether a particular Category B hazard exists.

(2) Unless a manufacturer or importer has hazard data or studies concerning a mixture as a whole and meeting the evaluative criteria of these Appendices, a mixture shall be deemed to pose the hazards of its hazardous constituent substances. For any particular hazard, available data and studies concerning a mixture as a whole meeting these criteria shall take precedence over conflicting data and studies concerning the constituent substances of the mixture.

(3) Hazard determinations may be undertaken individually or jointly by any group of manufacturers and importers.

(b) *Category A Hazard determinations.*

(1) To determine whether a substance or mixture poses a particular Category A hazard, a manufacturer or importer shall utilize the following materials:

(i) Any relevant data or statements contained in the National Library of Medicine's Toxicology Data Bank (TDB) file for a substance, or if there is no relevant information in the TDB, then any relevant information contained in a representative selection of standard reference works and documents published by the National Institute for Occupational Safety and Health.

(A) Standard reference works are textbooks and handbooks listed in the most recent compilation of "Sources Used to Prepare Toxicology Data Bank (TDB) Records" developed by the expert National Institutes of Health scientific peer review group responsible for evaluating information on TDB substances. A selection of standard reference works shall be considered representative if the selected references reflect all applicable techniques for measuring the Category A hazard being evaluated. Where more than one edition of a textbook or handbook is listed, the latest edition which discusses the hazard shall be used.

(B) Where a substance is not listed in TDB, the following NIOSH documents shall be reviewed: Criteria Documents; Special Hazard Reviews; Occupational Hazard Assessments; or Current Intelligence Bulletins.

For further information, contact: Publications Dissemination, DTS, National Institute for Occupational Safety and Health, 4676 Columbia Parkway, Cincinnati, Ohio 45226.

(ii) The manufacturer may also use any other relevant data in evaluating a substance or mixture for a Category A hazard.

(2) In the event that the data or statements identified indicate inconsistent conclusions, e.g., categorization as both an extremely flammable and flammable liquid, the manufacturer or importer shall classify a substance or mixture in the greatest hazard category. Where the inconsistency involves the presence or absence of a hazard the manufacturer or importer shall classify the substance or mixture as a hazard.

(3) In evaluating statements or data, the manufacturer shall exercise sound scientific judgment. Statements or data indicating a hazard may be disregarded if the physical measurements on which they are based are shown to be incorrect.

(c) *Category B Hazard Determinations.*

(1) *Materials To Be Reviewed.* To determine whether a substance or mixture poses a particular Category B hazard, a manufacturer or importer shall review statements and data in the TDB. If the substance is not listed in TDB, the manufacturer or importer shall review all standard reference works and relevant NIOSH documents specified in paragraph (b)(1) of this Appendix. A determination that a substance or mixture does not pose a particular Category B hazard may not be based upon data or statements discovered through this initial review. However, a positive determination that a substance or mixture poses a particular Category B hazard may be based upon statements or data discovered through this review, without further evaluation for that hazard. If a manufacturer or importer chooses not to base a positive hazard determination upon data or statements in the TDB, standard reference works, and NIOSH documents then to determine whether a substance or mixture poses the particular Category B hazard in question, the manufacturer or importer shall:

(i) Review unpublished studies or data subject to the manufacturer's or importer's custody or control, or the custody or control of the manufacturer's or importer's employees, agents, and contractors; and

(ii) Conduct a literature search, including available back files, utilizing the following four (4) computerized files or commercial on-line files containing at least the equivalent information: Medline ®, Toxline ®, Cancerlit ®, and RTECS.

For further information on the data files cited contact: National Library of Medicine, 8600 Rockville Pike, Bethesda, Maryland 20209, Telephone: (301) 496-6193.

Data Files:

Medline ®: This data base contains references to biomedical journal articles published in the current, as well as the two (2) preceding years. Medline ® can also be used to update a search periodically. Coverage of previous periods (back to 1966) is provided by back files. An English abstract, if available, is frequently included.

Toxline ®: (Toxicology Information Online) contains a collection of references published since 1976 together with earlier references concerning mutagens and teratogens. Coverage of previous periods (in some cases, antedating 1965) is provided by Toxback. Almost all references have abstracts or indexing terms.

Cancerlit ®: A large data file concerned with various aspects of cancer. All references have English abstracts.

RTECS: (Registry of Toxic Effects of Chemical Substances, formerly the Toxic Substances List) is a compilation prepared by the National Institute for Occupational Safety and Health (NIOSH). There is no back file. RTECS contains acute and chronic toxicity data.

(2) *Search Parameters.* The literature search shall:

Use CAS number, chemical name, generic name, trade name and brand name to identify the toxicologic and epidemiologic literature for the substance. Additional search parameters may be specified by a manufacturer or importer, as necessary, to expedite the search performance.

(3) *Search Output.* The material identified in the literature search shall be obtained and used for hazard determinations by the party performing the evaluation, under the following conditions:

(i) In the case of material published entirely in English (including material with a foreign language summary), all such material shall be evaluated.

(ii) In the case of material published entirely in a foreign language (including material with an English summary), such material shall be evaluated only if:

(A) The material is available for review by the manufacturer or importer as part of the National Library of Medicine inter-library loan program or any other inter-library loan program; and

(B) An English version of the summary indicates the possible existence of a regulated hazard not documented in the English literature.

(iii) Notwithstanding paragraphs (1) and (2), the manufacturer or importer has actual knowledge of the content of the foreign language material.

(4) Relevant unpublished studies and data, and relevant studies or data disclosed by a literature search, shall be evaluated as required by Appendix B.

(5) A review of unpublished studies and data, and a review of the materials covered by a literature search may not disclose evidence which meets the evaluative criteria of Appendix B demonstrating whether the substance or mixture poses the Category B hazard in question. In such cases, if the initial review of the TDB, or standard reference works and relevant NIOSH documents, disclosed or cited to relevant data or studies, these data or studies shall be evaluated as required by Appendix B.

(d) *Updating.* Following the initial evaluation of any substance or mixture for all Category A and Category B hazards, a manufacturer or importer shall remain current with the scientific

literature in a manner generally accepted by the scientific community.

Appendix B—Evaluation of Scientific Materials Relating to Category B Hazards

This Appendix describes how relevant unpublished data and studies and relevant material disclosed by a literature search is to be evaluated in determining whether a substance or mixture poses a Category B hazard. This Appendix is applicable both to evaluation of evidence concerning substances and mixtures as a whole. Substances regulated by 29 CFR Part 1910, Subpart Z are deemed to be hazardous without the need for an independent evaluation but must be evaluated to determine the particular hazard they pose.

(a) *Definitions*

(1) "Adequate and well-controlled study" means a study whose design and presentation incorporate principles that have been developed and recognized by the scientific community as essential to the production of valid scientific conclusions. A study which incorporates the following principles shall be considered "adequate and well-controlled" for the purpose(s) of this section:

(i) *Study subjects (Cases):* Study subjects shall constitute a representative sample from the source population. In the case of cross-sectional studies (see paragraph (3)(i) of this subsection of this Appendix) the study and comparison population are the same. This means that:

(1) The extent to which the study subjects represent the population from which they are drawn is documented.

(2) Although random selection of study cases is preferred, a systematic selection process which minimizes bias is acceptable.

(3) Selection and exclusion criteria are documented.

(ii) *Comparison subjects (Controls):* Comparison subjects shall constitute a representative sample from an appropriate comparison population. The term "appropriate comparison population" shall include populations used in studies utilizing matching techiques. This means that:

(1) The extent to which the comparison subjects represent the population from which they are drawn is documented.

(2) Although random selection of comparison cases is preferred, a systematic selection process which minimizes bias is acceptable. Where appropriate, an historical control is suitable for establishing that a substance or mixture is hazardous.

(3) The appropriateness of the control population is addressed.

(iii) *Data Collection.* The methods of data collection shall be fully described. This means that:

(1) The risk factors, including degree of exposure, are characterized.

(2) The diagnostic criteria for the health conditions are indicated.

(3) The steps taken to minimize observer bias in data collection–e.g., double-blind evaluation techniques, are documented.

(4) The potential sample biasing effect of differential response rates in study and comparison subjects is considered, where the situation arises.

(iv) *Analytic methods.* The analytic methods shall be identified precisely. This means that:

(1) Where differential response rates occur between study and comparison subjects, the method used to compensate for this differential is identified;

(2) Steps taken to identify observer bias are described;

(3) The use of appropriate methods to control confounding, e.g., matching or statistical techniques, such as blocking or covariance analysis, are documented; and

(4) The various quantitators of hypothesis testing, e.g., Type I and II error probabilities and one-tailed versus two-tailed tests, are specified.

(v) *Documentation.* The study shall provide sufficient documentation of results so as to permit adequate peer review.

(vi) *Animal studies.* In the case of paragraph (gg)(22)(xvii) of this regulation, other acute or chronic adverse health effects, the animal effects must be generally accepted as a model for the indicated human health effects.

(vii) Regardless of paragraphs (i)–(vi) of this definition of "adequate and well controlled," a study shall be considered "adequate and well-controlled" for the purposes of this section if the study has been published in a peer-reviewed journal in which the articles are published entirely in English (except for a foreign language summary), or the conclusions of the study have been substantially endorsed in standard reference works or NIOSH documents or material identified in the literature search (See Appendix A) or in other published material, by at least one (1) other independent qualified expert.

(2) "Case report" means, for the purposes of this section, a statistically uncontrolled report involving two or more cases which asserts a cause and effect relationship between exposure to a substance or mixture and the subsequent occurrence of adverse effects. At a minimum, to be acceptable for further evaluation under this Appendix, a "case report" must describe, at least qualitatively, the level and duration of exposure and specify the diagnostic criteria for the morbid condition described.

(3) "Epidemiological study" means a study employing one of the following sample designs:

(i) "Cross-sectional design" in which an evaluation is made of the differential prevalence of disease where individuals are classified by level of exposure and relevant characteristics and where neither disease nor exposure is selected for;

(ii) "Case-control design" in which an evaluation is made of the differential exposure to a substance or mixture for individuals who are initially selected according to the presence or absence of a specific disease or injury and relevant variables.

(iii) "Cohort design" in which an evaluation is made of the differential incidence of disease among two or more groups, the individuals of which are classified by level of exposure to a specific agent and relevant characteristics, each group being free of the outcome variable at the outset and followed over some period of time.

For purposes of this section, the term "cohort design" shall include "proportional mortality studies" in which the percent distribution of causes of death of a group exposed to a hazardous material is compared with that of an appropriate control group.

(4) "Peer-review" journal means a scientific journal which routinely distributes articles submitted for publication to one or more qualified experts whose judgment as to the quality of an article, including the appropriateness of its conclusions, is an important determinant in the journal's decision whether to publish the article.

(5) "Qualified expert" means a person who, because of his or her education, training, experience or a combination of these factors, is capable of evaluating and interpreting data on the hazards associated with exposure to, or of contact with, a substance or mixture.

(6) "Statistically significant" means a Type I error of 0.10 or less (significance level of 10 percent or less) for the particular statistic used for significance testing. The Type I error level may be based upon a one-or-two tailed significance test, at the investigator's discretion. In uncommon circumstances, the determination of a probability level in a particular study may be informal, e.g., the uniform occurrence of a tumor

following exposure which would otherwise be rarely encountered.

(b) *Ascertaining Hazardous Materials.* A substance or mixture shall be classified as a Category B hazard under paragraph (1) by an importer or manufacturer, if one or more of the following reports is found:

(1) A single adequate and well-controlled epidemiologic study demonstrates a statistically significant association between exposure to the substance or mixture and a covered hazard, and the conclusion that the hazard is the result of the exposure, in whole or in part, is accepted by any subgroup of experts qualified in epidemiology, biostatistics, clinical pharmacology or human genetics; or

(2) A single adequate and well-controlled laboratory experiment involving domestic or experimental mammals demonstrates a statistically significant relationship between exposure to the substance or mixture and a covered hazard, where the exposure is through routes of administration other than cavity instillation or implantation in any organ system and the conclusion that the hazard is the result of the exposure, in whole or in part, is accepted by a subgroup of experts qualified in biostatistics, pharmacology, physiology, toxicolity or genetics; or

(3) Case-reports involving a total of more than two individuals strongly suggest the conclusion that there is a cause and effect relationship, in whole or in part, between exposure to the substance or mixture and the subsequent occurrence of a covered hazard and the conclusion that such a relationship exists is accepted by a subgroup of experts qualified in the relevant scientific discipline.

(c) *Resolving a Material's Status Where Data or Analyses Are Inconsistent.*

In determining whether a substance or mixture is a Category B hazard, the following rules of data construction for evaluating studies shall apply:

(1) When comparing studies of the same type (human or animal) which yield conflicting results, the importer or manufacturer shall consider a substance or mixture as hazardous if a subgroup of qualified experts, considering the available studies, would conclude that the substance or mixture is hazardous. Studies which yield differing estimates of disease, all of which are greater than zero, shall not be considered in conflict;

(2) When considering inconsistent studies of different types (human and animal), the importer or manufacturer shall rely upon human data if the human data indicate a greater hazard than the animal data.

(3) The importer or manufacturer may rely upon human data if such data indicate a lesser hazard in humans than in animals, provided that the group of exposed human subjects was large enough for an increase in hazard incidence or prevalence (whichever statistic was used in the study) of 25% above that in controls not exposed to that substance to have been detected 80% of the time and the studies meet the criteria of subsection (a) of this Appendix. However, negative case reports in humans, i.e., no hazard on exposure, usually will not negate positive animal data.

(4) Where alternative analytic statistical techniques produce inconsistent results in terms of statistical significance, the study shall be considered to demonstrate statistical significance, provided that the alternative techniques demonstrating significance is acceptable to a subgroup of experts qualified in epidemiologic or toxicologic study methods.

(5) An importer or manufacturer may conclude that a mixture dos not present the same hazards as a hazardous constituent substance, provided that the group of animal or human subjects exposd to the mixture was large enough so that an increase in hazard incidence or prevalence equal to that established for the substance or 25% above that in unexposed controls, whichever is the lesser, would have been detected 80% of the time and the studies meet the criteria of subsection (a) of this Appendix.

(d) *Creation of a Rebuttable Presumption by Expert Opinion.* The determination that a subgroup of qualified experts accepts the conclusions of a study may be evidenced by informal memos, correspondence, evaluation or reference to published material such as the references, handbooks or NIOSH materials (See Appendix A). When the conclusions of a study have been substantially endorsed by at least one qualified independent expert, i.e., an expert not an author of the original study or a collaborator of any of the authors at the time of the endorsement, the conclusions of the study shall be rebuttably presumed to be acceptable to a subgroup of qualified experts, in the absence of strong evidence to the contrary.

(e) *Delabeling.* A determination by an importer or manufacturer that a substance or mixture is hazardous may be withdrawn by that importer or manufacturer if:

(1) Subsequent to the hazard determination, the methodology of the study or studies upon which the hazard determination is based are found to be critically flawed or inappropriate, i.e., the association originally observed is subsequently shown to be due to sample bias, observer bias or a confounding variable; or

(2) The availability of a negative adequate and well-controlled study or studies results in a revision of the opinion of qualified experts such that no subgroup of experts, considering all the relevant evidence, accepts the association or relationship between exposure to the substance or mixture and the covered hazard.

Appendix C—Hazard Warnings Information

Introduction

This APPENDIX specifies the hazard warnings for hazardous substances and mixtures. In using this APPENDIX, the following rules apply in communicating hazard warnings for mixtures:

1. Hazard warnings must appear for hazardous mixtures.

2. Hazard warnings must appear for hazardous constituent substances of a mixture where such substances pose hazards for which the mixture as a whole was not evaluated.

3. The priority of hazard warnings as set out in this Appendix is not affected by whether a hazard attaches to a mixture as a whole, or to one of its constituent substances.

(a) *Label Elements for Hazardous Warnings—Summary of Requirements.*

A hazard warning must include the following elements:

(1) Signal word, as prescribed in paragraph (b)(1) of this Appendix;

(2) The word POISON and the skull and crossbones symbol for highly toxic materials, as prescribed in paragraph (b)(2) of this Appendix;

(3) Statement of hazards, as prescribed in paragraph (b)(3) of this Appendix;

(4) Precautionary statements, as prescribed in paragraph (b)(4) of this Appendix;

(5) Additional labels elements, if appropriate, or specified in subsection (c) of this Appendix.

(6) Hazard warning elements (1)–(3) must be cross-referenced to the CAS number and common name of the substance or common name of the mixture producing the hazard.

(7) In the event that precautionary statements or additional label elements are contradictory in the case of mixture, the manufacturer or importer shall

resolve the contradiction using sound scentific judgment.

(b) *Label Elements—Description.*

(1) *Signal Word.* If a substance or mixture has more than one hazard a hazard warning label shall include only the signal word (DANGER!, WARNING!, OR CAUTION!) that corresponds to the category of its most severe hazard.

(2) *The Word POISON and the Skull and Crossbones Symbol.* A hazard warning for a highly toxic material must include the word POISON and the skull and crossbones symbol. On a hazard warning label, the word POISON and the symbol, in any color, must appear on a background of distinctly contrasting color. The symbol must appear in immediate proximity to the word POISON. Use the word POISON and the symbol, in addition to, and not in place of, the signal word DANGER!

(3) *Statement of Hazards.* A hazard warning label must include the statement of hazards prescribed in Table 1 for Category A hazards and Table 2 for Category B hazards for the appropriate hazard class. If the hazard may have a delayed onset, the hazard warning shall also indicate this. Subsection (d) of this APPENDIX lists examples of useful statements of hazard which may be used in addition to those mandated by Tables 1 and 2 of this APPENDIX. If a substance or mixture has more than one hazard, its hazard warning must include a statement of hazard of each hazard. If a substance or mixture has more than one hazard, statements of hazard for which the signal word "DANGER!" is required, together with the signal word, must precede statements of hazard for which the signal word "WARNING! or CAUTION!" is required, and statements of hazard for which the signal word "WARNING!" is required together with the signal word, must precede statements of hazard for which the signal word "CAUTION!" is required.

(4) *Precautionary Statements.* A hazard warning must describe appropriate precautionary measures (such as "Keep away from heat, sparks, or open flames" or "Wear rubber gloves") to avoid injury as a substance or mixture is used in the workplace. If a substance or mixture has more than one hazard, its hazard warning must include appropriate precautionary statements for each hazard. If precautionary statements can be combined for different classes of hazards, eliminate any redundant phrases.

Table 1.—*Hazard warning statements for Category A hazards*

Class of hazard	Signal word	Statement of hazard
Corrosive:		
Eye	Danger	Corrosive: Causes severe eye burns.
Eye and skin	do	Corrosive: Causes severe eye and skin burns.
Dangerously reactive material:		
Explosive	do	Explosive.
Water-reactive	do	Dangerous when wet: Reacts violently with water.
Organic peroxide	do	May form explosive organic peroxides.
Extremely flammable liquid.	do	Extremely flammable.
Pyrophoric material	do	Extremely flammable: Catches fire if exposed to air.
Strong oxidizer	do	Strong oxidizer: Contact with other material may cause fire.
Flammable material	Warning	Flammable.
Pressure-generating material.	do	May generate dangerous pressure.
Compressed gas	Caution	Contents under pressure.
Combustible liquid	do	Combustible.

Table 2.—*Hazard warning statements for Category B hazards*

Class of hazard	Signal word	Statement of hazard
Toxic:		
By inhalation	Warning	Toxic: May be fatal if inhaled.
By absorption	do	Toxic: May be fatal if absorbed through skin.
By ingestion	do	Toxic: May be fatal if swallowed.
Highly toxic:		
By inhalation	Danger! Poison.	Highly toxic: Fatal if inhaled.
By absorption	do	Highly toxic: Fatal if absorbed through skin.
By ingestion	do	Highly toxic: Fatal if swallowed.
Endangers human life.	do	Highly toxic: May be fatal if inhaled, absorbed, or swallowed.
Carcinogens	Danger	May cause (optional: Organ/system) cancer.
Reproductive toxins	do	May cause birth defects. May cause reproductive problems.
Irritant:		
Eye	Warning	Irritant: Causes eye irritation.
Eye and skin	do	Irritant: Causes eye and skin irritation.
Lung	do	Irritant: Causes lung (chest) irritation.
Sensitizer:		
Lungs	do	Sensitizer: Causes respiratory reaction.
Skin	do	Sensitizer: Causes allergic skin reaction.
Other adverse health effects.		Exposure may cause (specify disease(s), sign(s) or symptom(s)).
Includes mental or behavior alterations.	Warning	Or may cause acute or chronic health effects.

(c) *Additional Label Elements.*

(1) A hazard warning or other listing must include the following elements, if they are appropriate:

(i) Antidotes, as prescribed in paragraph (2); or

(ii) Instructions in case of fire, spill, or leak, as prescribed in paragraph (3).

(iii) Instructions for container handling and storage, as prescribed in paragraph (4).

(2) *Antidotes.* If there is any appropriate antidote that is generally available and may be administered by a layman, the hazard warning must include it.

(3) *Instructions in Case of Fire, Spill, or Leak.* If there are any special instructions for confining and extinguishing fires and for cleaning up spills or leaks, the hazard warning must include them.

(4) *Instructions for Container Handling and Storage.* If there are any special instructions for container handling and storage, the hazard warning must include them.

(5) *Optional Additional Information.* A hazard warning may include additional hazard warning information that is not required by this Part, provided that the additional information does not contradict or detract from the required information. Terms such as "safe," "non-toxic," or "harmless" must not be used on a hazard warning.

(d) *Useful Phrases for Category A and Category B Hazard Warnings.*

This subsection of the APPENDIX contains a listing of additional warning phrases that a manufacturer or importer of a hazardous substance or mixture may use together with the required hazard warning. The Agency is providing this subsection of this APPENDIX simply as a listing of useful warning phrases. OSHA does not require that a manufacturer or importer of a hazardous substance or mixture use any of these additional phrases with a hazard warning.

(a) *Statements of Hazard.*

(1) *Liberates Gas.* Liberates Poisonous Gas. Fire Liberates Poisonous Gas. Contact With Acid Liberates Poisonous Gas. Contact With Water or Acid Liberates Poisonous and Flammable Hydrogen Sulfide Gas.

Spills Liberates Dangerous Gas. Contact With Water or Moist Air Liberates Irritating Gas. Liberates Heavy Gas Which May Cause Suffocation.

(2) *Fire Hazard.* Contact With Water May Cause Flash Fire. May Catch Fire If Allowed To Become Damp. Spills May Cause Fire. Heat, Shock, or Contact With Other Materials May Cause Fire. Contact With Other Materials May Cause Fire, Especially if Heated Reacts Violently With Water to Liberate and Ignite Hydrogen Gas. Powerful Oxidizer.

May Form Flammable Dust-Air Mixtures.

(3) *Explosive.* Heat, Shock, or Contact With Other Materials May Cause Explosion.

Contact With Other Materials May Cause Explosion, Especially If Heated.

May Form Explosive Peroxides. Forms Shock-Sensitive Mixtures With Certain Other Materials. May Explode if Water Content is 10 percent or Below.

(4) *Pressure Hazard.* Contamination May Result in Buildup of Dangerous Pressure. Liquid (GAS) (VAPOR) Under Pressure. Extremely Hazardous Liquid (GAS) (VAPOR) Under Pressure.

(5) *Miscellaneous.* Cannot Be Made Nonpoisonous.

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Friday
January 16, 1981

Part XII

Department of the Interior

Bureau of Land Management

Draft Wilderness Management Policy; Opening of Public Comment Period

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Draft Wilderness Management Policy

AGENCY: Bureau of Land Management, Interior.

ACTION: Draft wilderness management policy and opening of public comment period.

SUMMARY: The Draft Wilderness Management Policy describes how the Bureau of Land Management (BLM) proposes to manage lands administered by the BLM which are designated by Congress as part of the National Wilderness Preservation System. The BLM's Wilderness Management Policy will apply to public lands specifically designated as wilderness by an Act of Congress. The document closely parallels the existing wilderness management policy of the U.S. Forest Service.

DATES: Comments by April 1, 1981.

ADDRESS: Comments or suggestions should be sent to: Director (430), Bureau of Land Management, 1800 C Street N.W., Washington, D.C. 20240. Comments will be available in Room 5600 of the above address during regular business hours (7:45 a.m. to 4:15 p.m.) Monday through Friday.

FOR FURTHER INFORMATION CONTACT: David E. Porter, Division of Wilderness and Environmental Areas, (202) 343-6064. Requests for copies of this draft should be addressed to: David E. Porter, Division of Wilderness and Environmental Areas (430), Bureau of Land Management, 1800 C Street NW, Washington, D.C. 20240. Copies will also be available from the Bureau of Land Management State Directors in the Western States.

SUPPLEMENTARY INFORMATION: Publication of the Draft Wilderness Management Policy opens a 75-day public comment period beginning January 16, 1981, and closing April 1, 1981. Copies of this will be available from the Bureau of Land Management in approximately two weeks. To compensate for this delay, a 75-day, rather than a 60-day, public comment period is provided. During this time, the public is encouraged to comment on the policy, standards and guidelines proposed in the draft.

Dated: January 12, 1981.

Ed Hastey,

Associate Director.

Draft—Wilderness Management Policy

January 16, 1981.

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Chapter I—Introduction

I. A. The Purpose of This Document

The purpose of this document is to describe how the Bureau of land Management (BLM) proposes to manage lands administered by the BLM which are designated by Congress as part of the National Wilderness Preservation System. This is a draft document which is being published for public review and comment. The document has been written to parallel closely the existing wilderness management policy of the U.S. Forest Service, as published in the Forest Service Manual, because the same statutory direction applies to both agencies.

At present, the Bureau of Land Management administers no wilderness areas. the Bureau is developing a Wilderness Management Policy at this time for the following reasons: (1) to inform BLM field officials, Congress, and the public as to how BLM will manage wilderness areas, so this can be taken into account during BLM wilderness studies and during deliberations on wilderness recommendations affecting BLM public lands, and (2) to provide guidance ready for BLM personnel to use in managing future BLM wilderness areas at such time as Congress designates them.

BLM's Wilderness Management Policy will apply to public lands administered by BLM that have been specifically designated as wilderness by an Act of Congress. The Wilderness Management Policy has a different purpose than BLM's *Interim Management Policy and Guideline for Lands Under Wilderness Review*. The *Interim* Management Policy is an interim measure governing lands under wilderness review. The Wilderness Management Policy governs lands designated by Congress as wilderness. (Appendix C of this document summarizes BLM's wilderness review process.) If Congress designates a wilderness study area as wilderness, the Interim Management Policy ceases to apply, and instead the Wilderness Management Policy applies thereafter. If Congress decides that a particular wilderness study area will *not* be designated as wilderness, the Interim Management Policy ceases to apply, and instead the area is managed as ordinary public lands, with the uses and activities indicated in the pertinent BLM planning documents for the areas.

B. Mandate From Congress

The BLM wilderness review program stems from Section 603 of the Federal Land Policy and Management Act of 1976 (FLPMA). In FLPMA, Congress gave BLM its first unified, comprehensive mandate on how the public lands should be managed. The law establishes a policy of generally retaining the public lands in Federal ownership, and it directs the BLM to manage them under principles of multiple use and sustained yield. The BLM is to prepare an inventory of the public lands and their resources, including identification of areas having wilderness characteristics. Management decisions for the public lands are to be made through a land-use planning process that considers all potential uses of each land area. All public lands are to be managed so as to prevent unnecessary or undue degradation of the lands.

Under FLPMA, wilderness preservation is part of BLM's multiple-use mandate, and wilderness values are recognized as part of the spectrum of resource values and uses to be considered in the inventory and in the land-use planning process. Section 603 of FLPMA specifically directs the BLM, for the first time, to carry out a wilderness review of the public lands. [The complete text of section 603 appears in Appendix A of this

document. The BLM's wilderness review process implementing section 603 is summarized in Appendix C.)

Section 603(c) of FLPMA tells the Bureau how to manage public lands designated as wilderness, in these words:

> Once an area has been designated for preservation as wilderness, the provisions of the Wilderness Act which apply to national forest wilderness areas shall apply with respect to the administration and use of such designated area, including mineral surveys required by section 4(d)(2) of the Wilderness Act, and mineral development, access, exchange of lands, and ingress and egress for mining claimants and occupants.

The Wilderness Act of 1964 contains a number of provisions addressing the administration and use of national forest wilderness areas. Those most pertinent to BLM wilderness management are cited in the following paragraphs. Section 2(a) says:

> . . . it is hereby declared to be the policy of the Congress to secure for the American people of present and future generations the benefit of an enduring resource of wilderness. For this purpose there is hereby established a National Wilderness Preservation System to be composed of federally-owned areas designated by Congress as "wilderness areas," and these shall be administered for the use and enjoyment of the American people in such manner as will leave them unimpaired for future use and enjoyment as wilderness, and so as to provide for the protection of these areas, the preservation of their wilderness character, and for the gathering and dissemination of information regarding their use and enjoyment as wilderness. . . .

Section 4 of the Wilderness Act is devoted to the use of wilderness areas. Section 4(b) says:

> Except as otherwise provided in this Act, each agency administering any area designated as wilderness shall be responsible for preserving the wilderness character of the area and shall so administer such area for such other purposes for which it may have been established as also to preserve its wilderness character. Except as otherwise provided in this Act, wilderness areas shall be devoted to the public purposes of recreational, scenic, scientific, educational, conservation, and historical use.

Section 4(c) prohibits certain activities, in these words:

> Except as specifically provided for in this Act, and subject to existing private rights, there shall be no commercial enterprise and no permanent road within any wilderness area designated by this Act and, except as necessary to meet minimum requirements for the administration of the area for the purpose of this Act (including measures required in emergencies involving the health and safety of persons within the area), there shall be no temporary road, no use of motor vehicles, motorized equipment or motorboats, no landing of aircraft, no other form of mechanical transport, and no structure or installation within any such area.

Sections 4(c), 4(d), and 5 provide special exceptions to the prohibitions in section 4(c) by providing for the following activities:

- Existing private rights.
- Measures required in emergencies involving the health and safety of persons within the area.
- Activities and structures that are the minimum necessary for the administration of the area as wilderness.
- Use of aircraft and motorboats, where already established.
- Measures necessary in the control of fire, insects, and diseases.
- Any activity, including prospecting, for the purpose of gathering information about mineral or other resources, if carried on in a manner compatible with the preservation of the wilderness environment. (This includes mineral surveys conducted on a planned, recurring basis by the U.S. Geological Survey and Bureau of Mines.)
- Continued application of the U.S. mining and mineral leasing laws until December 31, 1983.
- Water resource developments may be authorized by the President where he determines that such use will better serve the interests of the United States and the people thereof than will its denial.
- Livestock grazing, where already established.
- Commercial services necessary for activities which are proper for realizing the recreational or other wilderness purposes of the areas.
- Adequate access to surrounded State-owned and privately-owned lands, or such lands shall be exchanged for Federally-owned land.
- Ingress and egress to surrounded valid mining claims and other valid occupancies.

Section 5(c) provides land acquisition authority, in these words:

> Subject to the appropriation of funds by Congress, the Secretary of Agriculture is authorized to acquire privately owned land within the perimeter of any area designated by this Act as wilderness if (1) the owner concurs in such acquisition or (2) the acquisition is specifically authorized by Congress.

In addition to the basic management authority contained in the Wilderness Act, management provisions may appear in the legislation establishing each wilderness area. Standard provisions included in most wilderness legislation make clear that the effective date of the new law will apply wherever the Wilderness Act's management provisions mentioned the effective date of the Wilderness Act, and, for areas administered by the Department of the Interior, make clear that the Secretary of the Interior will continue to administer the areas.

In some cases, special provisions have been incorporated into the legislation (e.g., special mining area in the recently enacted River of No Return Wilderness in Idaho). These provisions override the general management provisions of the Wilderness Act and must be regarded as specific direction for management of the area in question.

Congress has subsequently commented on wilderness management in House and Senate committee reports and conference reports accompanying wilderness legislation. These reports are part of the legislative history of the laws they accompany and can be helpful in determining the intent of Congress where the language in the law itself is unclear. Although reports on wilderness laws passed after 1964 do not become part of the legislative history of the Wilderness Act, they nonetheless indicate the interpretation given to the Wilderness Act by the congressional committees during their consideration of the subsequent legislation. Such report language addresses a variety of subjects. For example, guidelines for administering grazing use in wilderness areas appear in the Conference Report (House Report 96–838) on the Central Idaho Wilderness Act of 1980 (P.L. 96–312). House Report 95–540 on the Endangered American Wilderness Act of 1978 discusses the interpretation of the Wilderness Act as it relates to such uses and activities as: hunting and fishing; trails, bridges, and trail signs; control of fire, insects, and diseases; cabins and sanitary facilities; shelters and campsite facilities; and weather modification and special equipment.

The provisions of FLPMA, the Wilderness Act, and future Acts of Congress designating specific BLM areas as wilderness are BLM's mandates on the management of wilderness areas. All activities in wilderness areas must be carried out in conformance with these mandates.

C. Meaning of the Congressional Mandate

The congressional mandate contains three basic concepts which form the basis for BLM's Wilderness Management Policy.

- *Wilderness Preservation Concept:* Congress has directed the BLM to perpetuate the wilderness resource by managing wilderness areas so that their wilderness character is preserved unimpaired.

• *Wilderness Use Concept:* Congress has directed the BLM to provide opportunities for the public to use wilderness areas for recreational, scenic, scientific, educational, conservation, and historical purposes in a manner so as to leave the wilderness area unimpaired for future use and enjoyment as wilderness.

• *Nonconforming Use Concept:* Congress has directed the BLM to accommodate in wilderness areas certain activities, existing uses, and private rights which are generally nonconforming to wilderness preservation and wilderness use.

The meaning of each of these concepts is discussed below.

1. *Wilderness Preservation Concept.* The Wilderness Act directs that wilderness areas be managed to provide for "the preservation of their wilderness character." The factors which make up an area's wilderness character are spelled out in the Wilderness Act's definition of wilderness (section 2(c)). These factors are referred to in FLPMA collectively as "wilderness characteristics," and they fall into three broad categories:

a. Naturalness—A wilderness area "generally appears to have been affected primarily by the forces of nature, with the imprint of man's work substantially unnoticeable." Wilderness areas must be managed to ensure that this description remains accurate.

b. Outstanding Opportunities for Solitude or a Primitive and Unconfined Type of Recreation—A wilderness area "has outstanding opportunities for solitude or a primitive and unconfined type of recreation." Solitude is defined as (1) the state of being alone or remote from habitations; isolation; (2) a lonely, unfrequented or secluded place. The emphasis is on the opportunities a person has to avoid the sights, sounds, and evidence of other people within a particular area, rather than on opportunities for solitude in comparison to habitations of man. Primitive and unconfined types of recreation are defined as those activities that provide dispersed, undeveloped recreation which do not require facilities or motorized equipment. In most cases, opportunities for solitude and primitive recreation go hand-in-hand, and both are dependent on naturalness. Wilderness areas must be managed to insure that these opportunities are not impaired.

c. Special Features—Congress specified that wilderness areas "may also contain ecological, geological, or other features of scientific, educational, scenic, or historical value." These are optional wilderness characteristics; an area may meet the Wilderness Act's definition of wilderness without having these special features, but they are usually present in wilderness areas, and in some cases they may be a prime reason for wilderness designation. Also, these features may contribute to an area's opportunities for primitive recreation. Wilderness areas must be managed to ensure that these features are not impaired.

In order to preserve these wilderness characteristics in perpetuity as Congress directed, the management of BLM-administered wilderness must be based on a *principle of nondegradation.* Under this principle, the central thrust of BLM wilderness management is to prevent degradation of natural conditions, opportunities for solitude or primitive recreation, and special features.

It is recognized that there is often variation in the level of naturalness, solitude, types of primitive recreation and special features present within a wilderness area—or between different wilderness areas. The principle of nondegradation means that wilderness areas will be managed to provide for the protection and perpetuation of the values of the wilderness resource and prevent deterioration caused by other resource activities or by visitor use, and, when necessary, to restore deteriorated sites to an acceptable condition. (Of course, some of the nonconforming uses authorized by Congress are exempt from the nondegradation principle, as is explained below.)

Most uses will result in some change in the condition of the wilderness resource. Some uses cause little or no change, while others have the potential for serious change. Therefore, it is necessary to define the acceptable level of change. This must be established using the conditions prevailing in each wilderness at the time of congressional designation as a benchmark, determining what human-caused changes can be allowed without causing degradation and what measures can be taken to bring situations below the level of acceptable change back within an acceptable level. This may influence the ways in which recreational, scenic, scientific, educational, conservation, and historical uses are done in the area, so their impact on the wilderness resource can be kept within the acceptable level of change.

In the case of some of the nonconforming uses, such as mining, provided for by Congress in the Wilderness Act and subsequent legislation, the condition of the wilderness resource may be degraded as a result of an allowed use; the nondegradation principle does not apply. However, in such cases, the principle of nondegradation and the acceptable level of change should be used as an analysis tool for the reasonable mitigation of impacts, consistent with the applicant's exercise of the allowed use, and as a standard for determining the condition to which the area will be returned where and when rehabilitation is appropriate.

In this document, the principle of nondegradation is reflected in the policies and guidelines for specific activities.

Two equivalent terms used many times in this document reflect the wilderness preservation concept—"preservation of wilderness character" and "protection of the wilderness resource."

2. Wilderness Use Concept. Section 4(b) of the Wilderness Act provides fundamental guidance on how wilderness areas shall be used, in these words:

> Except as otherwise provided in this Act, each agency administering any area designated as wilderness shall be responsible for preserving the wilderness character of the area and shall so administer such area for such other purposes for which it may have been established as also to preserve its wilderness character. Except as otherwise provided in the Act, wilderness areas shall be devoted to the public purposes of recreational, scenic, scientific, educational, conservation, and historical use.

Wilderness areas are thus open to use and provide a variety of benefits to society. Use might be "on-site," taking direct advantage of the multiple resources of the area, or the use and benefits may be derived "off-site," such as through enjoyment of the scenery at a distance from a nearby highway, through indirect benefits from the area's resources (i.e., water quality, wildlife, etc.), or just the knowledge that the area exists.

There is a limit to the extent to which such uses as recreation and education may take place within wilderness, because the Wilderness Act also says that they must occur in a manner so as to leave the wilderness unimpaired for future use and enjoyment as wilderness. Provision may be made for recreational, scenic, scientific, educational, conservation, and historical use of wilderness areas in ways that do not jeopardize the conditions of naturalness, the opportunities for solitude or a primitive and unconfirmed type of recreation, or the special features that existed at the time an area was designated as wilderness by Congress. All public use will be administered to ensure that the wilderness resource is kept unimpaired.

Public use for recreation purposes is generally a prevalent use of wilderness. However, the Wilderness Act makes it clear that recreation is only one of the purposes of the National Wilderness Preservation System. Sometimes there are places within wilderness where particularly sensitive values—such as colonial bird nesting sites—may dictate that recreation activities be restricted or entirely excluded. The recreation-use capacity, based on social and ecological elements, will be established for each wilderness area, and will be considered in determining how much recreational use to allow.

A second factor which may limit the use of wilderness has to do with the nonconforming use provisions of the Wilderness Act and subsequent legislation. Permitted activities such as mining or grazing may displace any of the public purposes listed in section 4(b) either temporarily or permanently.

3. *Nonconforming But Accepted Use Concept.* Congress specially provided for certain activities and existing uses which otherwise would have been prohibited in wilderness areas under the general management provisions of section 2(a), 4(b) and 4(c). For a complete list of these nonconforming but accepted activities, refer to section I.B.; generally they are: existing private rights; aircraft and motorboats; control of fire, insects, and diseases; gathering of resource information; mining; grazing; water resource development; commercial recreation services; and access to non-Federal inholdings.

FLPMA directs that all uses of the public lands be conducted so as to prevent unnecessary or undue degradation of the lands. In wilderness areas, this means that the BLM must manage the nonconforming but accepted uses described above so as to prevent unnecessary or undue degradation of the area's wilderness character, insofar as is consistent with the congressional mandate for the particular use in question.

II. Management Policy for BLM-Administered Wilderness

The policy guidance in this chapter is followed in Chapter III by guidelines for specific activities, based on these policies and on their interaction with other applicable policies for the management of public lands.

No policy document can address every potential situation. Managers must use their best judgment in applying these policies and guidelines to particular situations. In cases not covered by specific guidance, managers will resolve questions by testing alternative courses of action against the policies in this chapter to arrive at the alternative that is most consistent with the policy as a whole.

A. General Policy

1. The Department of the Interior's policy is, except as stated in paragraph 2 below, to manage wilderness areas under the administration of the Bureau of Land Management so as to preserve their wilderness character, and to manage them for the use and enjoyment of the American people in a manner that will leave them unimpaired for future use and enjoyment as wilderness. The wilderness areas will be devoted to the public purposes of recreational, scenic, scientific, educational, conservation, and historical use.

2. The Department's policy is to allow the nonconforming but accepted uses specifically permitted in wilderness areas by the Wilderness Act and subsequent laws in a manner that will prevent unnecessary or undue degradation of the area's wilderness character.

3. The Department's policy is to manage BLM wilderness areas consistent with the policies above so as to augment multiple use management of adjacent and nearby lands through protection of watersheds and water yield, wildlife habitat, natural plant communities, and similar natural values.

B. Specific Policy Guidance

1. *Preservation of Wilderness Character.* BLM wilderness areas will be managed so as to be affected primarily by the forces of nature, with the imprint of man's work substantially unnoticeable; so as to maintain the area's outstanding opportunities for solitude or primitive and unconfined recreation; and so as to protect any ecological, geological, or other features of scientific, educational, scenic, or historical value which the area may contain.

a. *Naturalness.* BLM will foster a natural distribution of native species of wildlife, fish, and plants by ensuring that natural ecosystems and ecological processes continue to function naturally. BLM will work to prevent the extinction by human causes of plants and animals found in the areas. BLM will minimize human influence on wildlife populations. Sport hunting, fishing, and trapping will continue as authorized by State law, when carried out in a manner consistent with preservation of an area's wilderness character.

The BLM will allow fire, insects, and diseases to play a natural role in the wilderness ecosystem, except where these activities threaten human life, property, or adjacent nonwilderness lands, or where these would result in unacceptable damage to the wilderness resource. (The guidelines in Chapter III will indicate some types of unacceptable damage.)

The BLM will keep watersheds, water bodies, water quality, and soils in a natural condition and will allow associated ecological processes previously altered by human influences to return to their natural condition.

The level of acceptable change will be defined in the wilderness management plan for each wilderness area, and the BLM will, at a minimum, endeavor to restore those sites which have dropped below this level.

b. *Solitude.* BLM will maintain and enhance the area's outstanding opportunities for solitude by providing natural settings with few reminders of human activity or civilization.

c. *Special Features.* BLM will maintain unimpaired the ecological, geological, and other features of scientific, educational, scenic, or historical value found in BLM wilderness areas.

2. *Visitor Use.* BLM wilderness areas will be managed to provide for their use and enjoyment in ways that are consistent with preservation of their wilderness character and that will leave them unimpaired for future use and enjoyment as wilderness.

Visitor use may be related to any of the following public purposes: recreational, scenic, scientific, educational, conservation, and historical use.

Visitor use facilities may be installed if they are the minimum necessary for the health and safety of wilderness visitors or for the protection of the wilderness resource. (See also "minimum tool," in section B.5. below.) facilities that are solely for the convenience of the visitor are not compatible with preservation of wilderness character and therefore will not be provided in wilderness areas.

The recreation-use capacity of the wilderness area will be determined, and will be used by managers to anticipate and avert degradation of the area's wilderness character.

If visitor use threatens to impair the area's wilderness character, managers will limit the threatening use to prevent impairment. Methods of reducing visitor's impact, such as low-impact camping techniques, will be preferred over outright limitations on visitor use. In case of conflict between visitor uses that depend upon a wilderness setting and those that do not, the uses dependent upon a wilderness setting will be favored.

Visitor use in wilderness involves certain risks to the visitor as a consequence of isolation from the conveniences of a technological world. The visitor accepts these risks in entering a wilderness area. In emergencies involving the health and safety of persons within the area, managers will take appropriate measures, such as search and rescue operations.

3. *Nonconforming Uses.* a. Valid Existing Rights. Private rights existing as of the date an area was designated as wilderness will be recognized. In some cases, such rights may involve activities addressed elsewhere in this document under standards prescribed by the Wilderness Act. (One example of this is valid mining claims, addressed in section (j).) Valid existing rights in situations not covered by these policies will be considered by the BLM on a case-by-case basis, in consultation with the Regional Solicitor, to determine the nature of the rights and the extent to which the BLM must regulate the exercise of those rights pursuant to the Wilderness Act and other laws.

b. *Aircraft and Motorboats.* Use of aircraft or motorboats may be permitted to continue in wilderness areas where such uses were established prior to the date the area entered the National Wilderness Preservation System. Such use will be monitored on a regular basis to determine if its continuation is appropriate. Use may be regulated as necessary to protect resources in the area.

c. *Control of Fires, Insects, and Diseases.* Where fire, insects and diseases threaten human life, property, or resources on adjacent nonwilderness lands, or where they would cause unacceptable damage to the wilderness resource, measures may be taken as necessary to control them. Allowable actions will be specified in the wilderness management plan for each wilderness area.

d. *Gathering Information About Resources.* Any activity, including mineral prospecting, for the purpose of gathering information about natural resources in wilderness, will be permitted provided it is carried on in a manner compatible with the preservation of the wilderness resource. (This section does not affect mineral prospecting activities conducted under the mining laws, which are covered in section (h) below. The Wilderness Act extends the mining laws to wilderness areas administered by BLM or the U.S. Forest Service until January 1, 1984.)

(1) No form of overland mechanical transport may be used in connection with prospecting for minerals or any activity for the purpose of gathering information about individual resources, unless approved by the BLM.

(2) Any person desiring to use motorized equipment, to land aircraft, or to conduct mineral prospecting or for other purposes is required to notify the BLM in writing. Approval documents will provide for the protection of public land resources, including wilderness values, protection of the public, and restoration of disturbed areas. Performance bonds may be required.

e. *Proposed Water Resource Facilities.* If the President authorizes new water resource facilities or activities, pursuant to section 4(d)(4)(1) of the Wilderness Act, the BLM will manage those authorized operations to prevent unnecessary or undue degradation of the area's wilderness character. (Existing water resource facilities are discussed in (f) below, and water facilities for livestock grazing are discussed in (g) below.)

f. *Existing Water Resource Facilities.* Some wilderness areas may contain minor water resource facilities that were found to be substantially unnoticeable in the area. If such structures are present and were explicitly recognized by Congress as being acceptable in a specific wilderness, they may be operated and maintained to keep them in an effective, usable condition. Maintenance may not change the location, size, or type of the facility, or increase the storage capacity of a reservoir.

g. *Livestock Grazing.* Grazing of livestock, where established prior to the effective date of the Act designating the area as wilderness, shall be permitted to continue subject to the BLM grazing regulations 43 CFR 4100. Existing grazing may include not only the utilization of the forage resource, but also the use and maintenance of livestock management improvements and facilities associated with the grazing activity at the time of designation and which are in compliance with an approved Allotment Management Plan.

Congressional guidelines regarding "Grazing in National Forest Wilderness Areas," published in House Report 96–1126, dated June 24, 1980, will be implemented in all BLM-administered wilderness with pre-existing grazing. These guidelines will be applied using the normal planning and environmental assessment process and will be integrated into all management plans for the wilderness area.

h. *Minerals Management.* Until December 31, 1983, the United States mining laws and all laws pertaining to mineral leasing shall extend to BLM-administered wilderness areas to the same extent as applicable prior to the date the wilderness was incorporated into the National Wilderness Preservation System.

(1) *Mining Claims.* Holders of unpatented mining claims validly established on any BLM-administered wilderness prior to inclusion of such unit in the National Wilderness Preservation System are accorded the rights provided by the United States mining laws as then applicable to public land involved. Persons prospecting or locating mining claims in BLM-administered wilderness on or after the date on which the said unit was included in the National Wilderness Preservation System are accorded similar rights subject to the provisions of the Wilderness Act and subsequent establishing legislation. All claimants must comply with reasonable conditions for the protection of resources in accordance with the general purposes of maintaining the National Wilderness Preservation System unimpaired for future use and enjoyment of its wilderness character.

Timber on mining claims within BLM-administered wilderness may be cut only for the actual development of the claim or uses reasonably incident thereto. Any severance or removal of timber, other than that necessary to provide clearance, shall be in accordance with sound principles of forest management and shall be done in such a manner as to minimize the adverse effect on the wilderness resource. In the development and operation of mining claims, claimants will be required to prevent erosion and the obstruction, pollution, or siltation of streams, lakes, or springs or deterioration of the land.

A bond as prescribed in 43 CFR 3809.1–9 may be required. All reasonable measures will be required to reclaim disturbed lands as soon as feasible after operations cease, and in every case needed work will be accomplished within one year after operations cease, unless provided otherwise by the BLM. Whenever possible and feasible the objectives of reclamation shall be to restore the surface as nearly as possible to its original conformation. Where such measures are impractical or impossible, the objective shall be to provide for the maximum achievable slope stability. Reclamation shall in cases include revegetation where feasible and practical. If revegetation by natural means will not occur in time to prevent serious soil loss or other damage to wilderness values, revegetation by planting may be required, with

preference given to the use of native species.

If an application for patent has been filed but not acted upon when the requirements of the immediately preceding paragraph would normally be invoked, the requirements will be suspended while the patent application is under consideration. However, those requirements for the prevention of erosion and pollution, siltation or obstruction of streams, lakes, or springs or deterioration of the land will continue to be observed.

The title to timber on patented mining claims validly established after the land was included in the National Wilderness Preservation System will remain in the United States, subject to a right of the patentee to cut and use timber. The patentee may cut and use as much of the mature timber as is needed in the extraction, removal and beneficiation of the mineral deposits, if needed timber is not otherwise reasonably available. The cutting shall comply with the requirements for sound principles of forest management as set forth in stipulations issued by the BLM.

In the development and operation of mining claims, claimants will be required to prevent unnecessary or undue degradation of the land.

(2) *Mineral Leasing.* Authority to issue mineral leases in wilderness is reserved to the Director. The Director's decision to issue leases will be based on an evaluation of all environmental and land use values, alternatives for operations, and mineral values.

(3) *Stipulations.* Reasonable stipulations for the protection of the wilderness character of the land will be incorporated into mineral leases, permits, and licenses covering lands within BLM-administered wilderness. Stipulations will be consistent with the use of the land for purposes for which they are leased, permitted, or licensed.

(4) *Common Varieties.* Permits shall not be issued for the removal of mineral materials commonly known as common varieties under the Materials Act of July 31, 1947, as amended and supplemented.

(5) *Withdrawal.* Subject to valid rights then existing, effective January 1, 1984, the minerals in lands designated as wilderness are withdrawn from all forms of appropriation under the mining laws and from disposition under all laws pertaining to mineral leasing, unless Congress specifically provides otherwise in the law designating the area as part of the National Wilderness Preservation System.

i. *Commercial Services.* Commercial services such as those provided by packers, outfitters, and guides may be provided within wilderness areas to the extent necessary for activities which are proper for realizing the recreational or other wilderness purposes of the areas.

j. *Access to Non-Federal Lands.* States or persons, and their successors in interest, who own land completely surrounded by a wilderness area shall be given such rights as may be necessary to assure adequate access to that land. Adequate access is defined as the combination of routes and modes of travel which will, as determined by the BLM cause the least lasting impact on the wilderness resource, and at the same time serve the reasonable purposes for which the State or private land is held or used.

No road shall be constructed across wilderness until authorized by the BLM. Access by routes or modes of travel not available to the general public may, when fully justified, be permitted by written authorization. The authorization will prescribe routes and modes of travel which will result in the least lasting impact on wilderness values and, at the same time, serve the reasonable purposes for which the land is held or used. A performance bond will usually be required. Where the exercise of rights of access to surrounded State or private land would be detrimental to wilderness values, the BLM shall, before granting access, attempt to acquire such land by purchase or by exchange.

4. *Prohibition of Certain Uses.* Except where subject to existing private rights, where necessary to meet minimum requirements for the administration of the wilderness area or as specifically provided for elsewhere in these policies, there shall be no temporary road, no use of motor vehicles, motorized equipment, or motor boats, no landing of aircraft, no other form of mechanical transport and no structure or installation within wilderness areas. There shall be no commercial enterprise or permanent road, except where subject to existing private rights or as specifically provided for in these policies.

5. *Minimum Tool.* Tools, equipment, or structures may be used for management when they are the minimum necessary for protection of the wilderness resource or when necessary for the health and safety of the visitor. Management will use the *minimum* tool, equipment, or structure necessary to successfully, safely, and economically accomplish the objective. When establishing the minimum tool, equipment, or structure necessary for a mangement need within wilderness areas, economic factors should be considered the least important of the three criteria. The chosen tool, equipment, or structure should be the one that least degrades wilderness values temporarily or permanently.

For the purpose of the above paragraph, accepted tools, equipment, and structures may include but are not limited to: fire towers, patrol cabins, pit toilets, temporary roads, spraying equipment, hand tools, fire-fighting equipment caches, fencing, and controlled burning. In special or emergency cases involving the health and safety of wilderness visitors or the protection of wilderness values, aircraft, motorboats, and motorized vehicles may be used.

6. *Existing Structures and Installations.* After Congress has designated a wilderness area, an inventory will be made of structures and installations existing in the area, critically evaluating the purposes and need for each, and its historical significance. If a structure or installation has historical significance, it may be retained as a historic feature of the area. If it does not have historical significance, it may be maintained for continued use either if it meets the "minimum tool" policy in paragraph 5 above, or if it is necessary for a use specifically permitted by the Wilderness Act or by the law designating the affected wilderness area. Any structure or installation that does not qualify for retention under the above criteria will be removed.

In maintaining or modifying existing structures and installations, the manager should consider the potential for using native materials and alternative technological approaches to make them as unobtrusive as possible.

7. *Acquisition of Non-Federal Lands.* Non-Federal lands within wilderness areas will be acquired by purchase or exchange when and where possible. BLM will seek to acquire the mineral rights as well as the surface rights. Acquisition of privately-owned lands will occur only if the private owner concurs with the acquisition, or if the acquisition is specifically authorized by Congress to be accomplished by eminent domain.

8. *Research and Collection of Management Information.* BLM-administered wilderness areas will provide opportunities for research and scientific activities that use wilderness areas for study of natural environments and ecosystems. Information collection activities by resource managers for wilderness and other purposes may also be conducted in wilderness. All research and collection of management information within the wilderness area will be conducted in an unobtrusive manner, by methods compatible with the preservation of the area's wilderness

character. (Refer to section II. B. 3. d. for policy on gathering information about resources.)

9. *Buffer Zones and Adjacent Lands.* No buffer zones will be created around wilderness areas to protect them from the influence of activities on adjacent land.

Adverse impacts upon the wilderness resource from activities both within the wilderness and on adjacent lands will be addressed in environmental assessments or environmental impact statements, as appropriate. Mitigation of impacts from outside wilderness will not be so stringent as to preclude or seriously impeded such activities.

10. *Visitor Information and Education.* Part of the wilderness experience valued by many visitors is the freedom from rules and regulations. Visitor education will be used to achieve management objectives where feasible. Only the minimum amount of regulation necessary to achieve desired objectives will be used.

To protect the natural appearance of wilderness areas, visitor informational and educational programs, signs, and poster boards will normally be located outside of the wilderness boundary. An exception to this general rule is that informational or regulatory signs may be placed within wilderness areas as a management tool to correct specific problems and protect the wilderness resource or for the health and safety of visitors when these signs meet the "minimum tool" standard (see section II B. 5.).

Informational and educational materials pertaining to the management of BLM-administered wilderness in general, or for specific wilderness areas will be readily available to the wilderness user at BLM offices. Such materials will inform visitors of the responsibilities and risks involved in visiting a wilderness area.

11. *Administration.* a. *Wilderness Management Plans.* A wilderness management plan will be developed for each BLM-administered wilderness area as a means of applying the Wilderness Management Policy to that specific area. The plan will be tailored to the local conditions of each wilderness by adopting any specific objectives appropriate to the area, consisent with the Wilderness Management Policy. Plans should reflect the different kinds of environmental settings, history of use, special congressional guidance, and management situations pertaining to the individual wilderness area. The wilderness management plan will describe the strategy to be used to implement both the Wilderness Management Policy and the specific objectives adopted for the area.

b. *Coordination.* When a wilderness area's boundaries overlap BLM administrative boundaries, management will be coordinated between District and State Offices to ensure uniformity in management practices.

When a wilderness area involves contiguous lands administered by BLM and by another Federal agency, the BLM will remain an active manager of lands under its administration, unless it has been determined that more effective management can be achieved by transferring the land to the other agency or by some form of cooperative management. State Directors have the option of approving cooperative management agreements with other Federal agencies on a case-by-case basis. Wherever appropriate, a joint management plan by all agencies involved will be encouraged.

Coordinated planning efforts will also involve State fish and wildlife agencies and all other State, county, and local agencies that may be affected by wilderness management activities.

c. *Wilderness Management Personnel.* Wilderness management personnel may be employed to help implement the provisions of a wilderness management plan on the ground. They can facilitate protecting the wilderness resource by assisting visitors with suggestions, advice, and information; enforcing regulations; performing minor trail repairs; and removing trash. Wilderness management personnel can reduce site-specific problems, such as the overuse of popular camp areas, by relocating camp sites and performing rehabilitation work. The manager may also use wilderness management personnel to gather information about existing conditions within an area. During their patrols, these employees can gather information about resource trends and visitor use. The decision to employ wilderness management personnel should be made on a case-by-case basis. Their use may or may not be required, depending on local conditions.

Chapter III. Guidelines for Specific Activities

The guidelines in this chapter are an application of the policies set forth in Chapter II to various activities that may or may not take place in BLM-administered wilderness areas. These guidelines are also based on other applicable laws and on other policies and regulations of the Department of the Interior. In addition, wherever feasible, these guidelines correlate closely with the wilderness management policies of the U.S. Forest Service, as that agency is the other multiple-use resource managing agency that administers lands in the National Wilderness Preservation System.

These guidelines will be used in developing a Wilderness Management Plan for each BLM-administered wilderness area, containing guidance on how specific activities will be treated in that area. Until such time as a Wilderness Management Plan is approved by the State Director, decisions on specific activities in a wilderness area will be made by BLM field officials based on these guidelines.

Decisions on any activities not addressed in these guidelines will be made on the basis of the policies in Chapter II.

A. Recreation and Visitor Use

BLM-administered wilderness areas shall provide a variety of uses including, but not limited to, recreational, scenic, scientific, educational, conservation, and historical.

The wilderness resource will be dominant in all management decisions where a choice must be made between preservation of wilderness character and visitor use. There are places and times within wilderness where unique values may require that recreation and visitor use activities be restricted or entirely prohibited in order that an enduring resource of wilderness be preserved. The highest priority among various kinds of visitor use will be accorded those activities which (1) are most dependent upon the wilderness environment and cannot be reasonably accommodated outside of wilderness, (2) least affect the wilderness environment.

Consideration must be given to the ability of the wilderness resource to sustain visitor use without loss or degradation of the wilderness resource itself. Carrying capacity, both psychological and physical, may vary widely between kinds of visitors, mode of travel, length of stay, kind of wilderness (desert, water, high mountain, etc.), size of wilderness area, and season of use. The leading management tool and document to consider these factors and set guidelines for managing visitor use will be the Wilderness Management Plan. These plans will describe the level at which an area is able to absorb use and impacts and describe measures needed to protect wilderness values.

The following specific guidance applies to visitor use within BLM wilderness:

1. *Visitor Management.* Visitor management techniques will be utilized in wilderness when necessary to

perserve both the wilderness resource and the visitor's wilderness experience and opportunities. Management and regulation of visitor use will be the minimum necessary to provide for use of the area as wilderness, and to preserve the wilderness character of the area.

Distribution of visitors should be planned to maintain a high-quality wilderness resource and to protect the quality of the wilderness experience. The Wilderness Management Plan will consider all appropriate and compatible methods to distribute the level of use that is within the capacity of the wilderness. Distribution can be influenced by both direct and indirect methods.

(a) *Indirect Methods.* Visitors may be distributed through such indirect management efforts as:

(1) Obliteration of improvements at overcrowded or undesirable sites.

(2) Stock grazing or canoe- and boat-beaching restrictions, both private and commercial, on overused or concentration areas.

(3) Improve access to tributary, lightly used areas.

(4) Information to (1) encourage use of lightly used or relatively unknown areas and to (2) stress the experience and value to be found outside the peak use period.

(5) Minimize the promotion of an outdoor experience in wilderness and emphasize such uses of undeveloped areas outside wilderness.

(6) Manipulation of the fishery resource in cooperation with fish and game agencies.

(7) Design and management of trail-head areas, including access roads and parking areas.

(8) Education of visitors about good wilderness manners and ethics.

(9) Use of built-in frictions or obstacles, such as low-standard access roads.

(10) Removal of trail-head improvements and/or restriction of travel into areas already overused or where capacity use already occurs.

(b) *Direct Methods.* More direct methods to achieve visitor distribution may include:

(1) Regulating the use of saddle horses and/or pack stock.

(2) Zoning of areas strictly for foot or horse use only, zoning to protect sensitive sites and resources, or zoning to provide different experiences within the wilderness.

(3) Requiring permits for specific areas or time periods. A permit or registration system can be an important tool for both the wilderness manager and wilderness visitor. Both systems provide visitor use data necessary to provide information regarding the number and distribution of visitors. In addition, a permit or registration system can give a visitor information on areas of use in preplanning a trip. A permit system can be utilized also to limit or redistribute and disperse visitor use.

(4) Wilderness Rangers informing visitors about less congested areas.

(5) Limiting the number of people in parties or the number permitted to stay overnight at specific locations.

(6) Limiting numbers of users. The Wilderness Management Plan will analyze needed methods and identify necessry measures.

2. *Improvements and Facilities.* Facilities and improvements such as trails, bridges, signs, and compsites, will be provided only where they are the minimum necessary for protection of the wilderness resource. No facilities or improvements will be provided primarily for the convenience of the visitor. The need for proposed facilities, such as latrines, fire circles, and fences will be explained in the Wilderness Management Plan. Improvements and facilities will be constructed of materials which harmonize with the natural environment.

Existing improvements or facilities not specifically provided for in these guidelines—those having no historical value and not necessary for preservation of an area's wilderness character—will be removed.

Construction, maintenance, and removal of facilities and improvements will be by primitive means. Exceptions to this policy, such as using handpowered portable tools and aircraft, may be approved by the State Director if no other alternatives exist, the mechanized or mechanical equipment is the minimum necessary, and they will not degrade or impair the area's wilderness character.

(a) Trail Systems. (1) New trails will be constructed only if they are needed to preserve wilderness values and resources and they will not significantly degrade the degree of naturalness or solitude in the area. Trails are an acceptable improvement provided they are constructed and maintained so they appear to be a part of the country rather than an intrusion upon it. Wilderness management plans will address where trails and related facilities are appropriate.

(2) Existing trails and trail systems will be evaluated for possible expansion, relocation, restoration, or closure. Wilderness Management Plans will address the present situation and evaluate future needs. Trailhead access points will be evaluated at this time. Trailhead locations should be carefully chosen as they have a profound influence over management of visitor use. It may be desirable to locate trailhead access points well outside the wilderness boundary to reduce their impact upon the wilderness area.

(3) Trail routes shall be selected to provide scenic vistas and, where possible, a varied scene. Heavily used areas should generally be served by spur trails and should be bypassed by primary trails. Trails will not be constructed with treads of more than 24 inches in width. Trails should follow natural contours where possible and results in minimum disturbance to soil and ground cover.

(4) Bridges will be designed an constructed so as to harmonize with the environment and will be the minimum size and complexity necessary to allow foot or stock use.

(b) *Signing.* Only a minimum of signs will be provided to aid the visitor, in combination with availability of accurate maps, route descriptions, brochures, etc.

(1) Signs may be erected at trail junctions, showing directions with arrows.

(2) Signs will not be placed within the wilderness for the convenience of the user. Informational or interpretive signs will not be used to mark streams, lakes, mountain peaks, passes, or points of interest.

(3) Regulatory signs will be kept to the minimum necessary, and may be of materials other than wood. When regulatory signs are posted within a wilderness, notice pertaining to these regulations will also be posted at trailheads and published where feasible on brochures or maps or otherwise made available to the user prior to entry into the wilderness.

(c) *Use of Campsites.* (1) Campsites or camping areas may be designated if necessary for the purpose of wilderness resource protection. They will be located sufficiently distant from lakes, streams, trails, or other natural attractions as to allow appropriate use without unacceptable depreciation of the focal point of public interest. Space between sites should be sufficient to ensure a reasonable degree of solitude and quiet.

(2) Shelters or lean-tos will not be constructed, and existing shelters will be removed from within wilderness. Shelters or lean-tos determined to have historical value may remain, and their protection and use will be addressed in the Wilderness Management Plan.

(3) Garbage pits will not be permitted, and existing garbage pits will be closed. A "pack-it-in, pack-it-out" philosophy will be encouraged with visitors. Every

practicable medium will be used to educate and inform the visitor on this point.

(4) Improvised camp structures constructed by visitors will not be permitted. They will be dismantled and obliterated when and where found.

(5) Hitchracks or corrals and other improvements to facilitate stock use may be used as necessary to prevent damage to the wilderness resource. They will be located away from main-traveled trails, streams, lakes, camping areas, and focal points of interest, and will be constructed of materials which harmonize with the government.

(d) *Outfitter Camps.* The Wilderness Management Plan will carefully analyze the role of the outfitter-guide in a particular wilderness. If outfitter-guide services are allowed, they will be planned and administered to meet public needs while maintaining the wilderness resource. Operations will be so administered as to be harmonious with those of wilderness visitors who do not employ such services. Outfitter-guide camps will be located off the primary trails or scenic spur trails and at sufficient distance from attractions to avoid conflicts with other visitors. The BLM will select the location of outfitter-guide campsites as necessary to protect wilderness resources and the wilderness experience of other visitors. Outfitter-guides will operate under special recreation permits. The Wilderness Management Plan will evaluate the need for caches and, if approved, shall designate their locations.

(3) *Fuelwood.* If campfires or cooking fires are permitted, fuelwood cutting should be limited to dead or down material. The use of portable cookstoves will be encouraged whenever possible. The Wilderness Management Plan will define any regulations or restrictions needed for wilderness resource protection.

(4) *Contests.* Contests, such as physical or mental endurance of a person or animal; foot races; canoe or boat races; competitive trail rides; survival contests or exercises (including military); and other activities of this nature shall not be permitted in wilderness areas. These activities do not depend on a wilderness setting, and they cause impacts that degrade the wilderness character of the area, thus adversely affecting wilderness-dependent uses.

(5) *Recreational or Hobby Mineral Collecting.* Recreational or hobby collecting of mineral specimens (rockhounding) will be allowed in wilderness. Such use will be limited to hand methods or detection equipment that does not cause surface disturbance, such as a metal detector or Geiger counter. In addition, methods shall not be permitted that in any way adversely affect or degrade the wilderness resource or the experiences of visitors in the area. (This paragraph does not cover mining claims, which are addressed in section I below.)

B. Cultural and Historic Resources

Archeological and historical sites and values are a unique and nonrenewable part of the wilderness resource. They are protected by provisions of the Uniform Rules and Regulations (43 CFR Part 3) to carry out the Antiquities Act of 1906, the Historic Sites Act of 1935, Executive Order 11593, the National Historic Preservation Act of 1966, as amended, and the Archaeological Resources Protection Act of 1979. To the extent not inconsistent with the concept of wilderness preservation and the intent of the Wilderness Act, and objectives for cultural resource management, these resources are available for recreational, scenic, scientific, educational, conservation, and historical uses (including ceremonial or religious use by Native Americans).

Cultural resources, in most instances, will be subject to the forces of nature in the same manner as other wilderness resources. Study or management will not normally include any excavation, stabilization, or interpretation activities. Salvage, rehabilitation, stabilization, reconstruction, and restoration work on archeological and historic sites; excavation; and intensive inventories may be permitted on a case-by-case basis where the project will not degrade the overall wilderness character of the area and such activity is needed to preserve the particular resource. State Director approval is required for all such projects.

The National Historic Preservation Act and Executive Order 11593 require an inventory and evaluation of cultural resources. The evaluation study for National Register of Historic Places eligibility is made using criteria in 36 CFR 1204 and in consultation with the State Historic Preservation Office (SHPO). Those cultural resources found to qualify are nominated to the National Register of Historic Places.

Those sites or structures that do not qualify for the National Register may be removed or obliterated unless they meet the "minimum tool" policy (refer to section II. B. 5.) or are necessary for a use specifically permitted by the Wilderness Act or by the law designating the affected wilderness area.

Management direction for cultural resources that qualify for nomination to the National Register is subject to compliance with Section 106 of the National Historic Preservation Act and 36 CFR 800. A decision to destroy, maintain, or allow historic or prehistoric structures to deteriorate naturally is a Federal undertaking which will affect the resources. In working through the compliance processes, a determination will be made as to what feasible and prudent alternatives exist to satisfactorily mitigate adverse effects of the proposed decision on the cultural resources. The range of alternatives might include recording to established standards (by drawings and photographs), salvage (by removing or dismantling), stablizing, or restoration. Stabilization or restoration and subsequent maintenance may be considered for administrative structures that meet the "minimum tool" policy (refer to section II. B. 5).

If the involved parties (SHPO, Advisory Council, BLM) agree upon data recovery as the appropriate mitigation action, they shall execute a Memorandum of Understanding specifying the steps to be taken to mitigate any adverse effects.

C. Forestry Resources

1. *Cutting of Trees and Shrubs.* Management of the forest cover will be directed toward retaining the primeval character of the environment and allowing natural ecological processes to operate freely. Trees, shrubs, and other vegetative products will not be sold or cut for nonwilderness purposes except under specified conditions set forth in these guidelines for valid mining claims and under emergency conditions such as fire, insect, and disease control.

2. *Cutting of Trees for Administrative Purposes.* Trees may be cut for use in the construction and maintenance of authorized improvements that are located within the wilderness when the necessary material cannot be reasonably obtained or brought in from outside the wilderness. Such cutting within the wilderness shall be done away from trails or campsites, and all evidence of cutting shall be disposed of insofar as possible.

3. *Cutting of Trees for Fuelwood.* (Refer to section III. A. 3., Fuelwood, for specific guidance.)

4. *Reforestation.* Reforestation, in the absence of natural revegetation, will generally be prohibited, but in rare cases may be authorized by the Director to prevent deterioration or loss of the wilderness resource when the cause of the damage or loss is due to human activities and there is no reasonable

expectation of natural reforestation. The natural processes of ecological succession will be the preferred method of site-restoration. When reforestation action is necessary, only native species and only primitive methods, such as hand seeding, will be used.

D. Fish and Wildlife

Management will seek a natural distribution, number, and interaction of indigenous species of fish and wildlife. Natural processes will be allowed to occur in wilderness ecosystems, which include fish and wildlife populations, as far as possible without human influences. Management will protect the conditions that allow natural processes a maximum degree of freedom.

To the extent possible, wildlife species in BLM wilderness should be allowed to maintain a natural balance with their habitat and with each other. Wildlife may be harvested under State regulations; fisheries management will be consistent with preservation of the area's wilderness character; and direct fish and wildlife control measures will be applied only upon a showing of need under standards described below.

The BLM, in cooperation with State and Federal public health and fish and game officials, may make special exceptions, where necessary to control disease epidemics or other health hazards in which wildlife species are involved as carriers.

The basic responsibilities of the BLM and other cooperating State and Federal agencies in the management of fish and wildlife are not altered by the Wilderness Act. However, the constraints of the Act and the intent of the Congress articulated in the Act and in subsequent legislation will guide the management of wildlife in wilderness.

The preservation of rare, threatened, and endangered species dependent on wilderness conditions will be favored.

The killing of native birds and animals which are a natural component of the biotic community, but are not provided protection by State or Federal law, will be discouraged or controlled if necessary through public education and cooperative agreements with State game and fish agencies.

1. *Hunting and Fishing.* Hunting and fishing are permitted in BLM-administered wilderness, subject to applicable State and Federal laws and regulations. Coordination with State game and fish agencies for the management of resident wildlife and fish species will be sought in order to ensure maintenance of the wilderness resource. Specific management criteria may be cited in cooperative agreements.

2. *Wildlife Habitat.* The proper balance of game animals with their habitat may be achieved by managing public hunting. Objectives for the management of wildlife habitat are normally compatible with the objectives for maintaining general wilderness character, or careful planning usually can make them so. Where incompatible, the requirements for maintenance of wilderness values will be overriding.

Vegetative manipulation projects for wildlife purposes may be approved if they do not degrade wilderness character, or if they correct conditions which are a result of man's influence, or the project will promote the perpetuation of a threatened or endangered species.

Habitat manipulation by chemical or mechanical means may only be approved on a project-by-project basis where necessary for threatened or endangered species, or to correct unnatural conditions resulting from human influence. Such activities will be allowed only where manipulation would enhance the wilderness resource and where natural processes have been unsuccessful. Hand or aerial seeding of native vegetation species may be permitted after disturbances, such as wildlife, to restore essential food plants to a wilderness where the natural process of healing is not expected to occur. Actions of this type will be allowed only to enhance wilderness values and not to optimize habitat needs of any single wildlife species at the detriment of wildlife diversity in an untrammeled environment.

Prescribed or controlled burning may be used as a wildlife management tool if carefully designed to maintain or enhance the wilderness resource. Prescribed or controlled burning is to be used only when the project can be accomplished without serious or long-lasting damage to watershed or the area's wilderness character. It may be done only for the following purposes:

a. It is needed to maintain the natural condition of a fire-dependent ecosystem or to re-introduce fire where past strict wildlife control measures had interfered with natural, ecological processes.

b. A primary value of a given wilderness will be sustained as a result of the burning.

c. It will promote the perpetuation of a threatened or endangered species.

Prescribed burning will not be permitted to improve wildlife utilization.

Additional specific guidelines on prescribed burning appear in section E, Fire Management.

The BLM may authorize State and Federal agencies to use temporary enclosures and facilities to trap or transplant wildlife as long as they are the minimum necessary to protect or maintain the wilderness resource.

Although construction of facilities to enhance an area's value for wildlife or fish is not consistent with the free operation of natural processes, there are situations where such measures may be necessary for the continued existence or welfare of wildlife or fish living in wilderness. This is particularly true in the case of species adversely affected through human activities in such areas. Certain permanent installations to maintain conditions for wildlife and fish, upon consideration of their design, placement, duration, and use, may be permitted if the resulting change is compatible with preservation of wilderness character and is consistent with wilderness management objectives for the area, and if the installations are the minimum necessary to accomplish the task. Permissible actions under these criteria may include: installations to protect sources of water on which native wildlife depend, such as exclosures; and water sources such as springs, wells, and guzzlers. Fisheries activities may be permitted as long as their purpose is to protect natural conditions, restore deteriorated habitat, and maintain wilderness values.

3. *Wildlife Manipulation.* In some instances, wildlife species once native to the wilderness have been forced from their original habitat by the encroachment of man and his activities. To the extent that these factors can be altered or managed within the intent of the Wilderness Act, native species no longer established in the wilderness area may be reintroduced and managed as a part of the wilderness resource. Proposals must be in concert with the concept of wilderness and must protect, or perpetuate, the wilderness resource. Care must be exercised to be certain that the species is native. Such programs will be carefully addressed in wilderness management plans.

Management of established exotic species (e.g., chukar partridge, pheasant) not natural to an area may continue where they enhance the wilderness character of a particular wilderness. Introduction of new exotics will not be permitted. Carefully coordination with State and Federal agencies should be established for control of undesirable exotic populations.

4. *Fish Stocking.* Fish-stocking programs needed to meet wilderness management objectives shall be developed in cooperation with the State agencies or the Fish and Wildlife Service and shall be coordinated with overall wilderness management objectives. The probability of increased

visitor use at stocked waters and their full impact and effect on the wilderness resources will be recognized and considered.

Cooperative agreements with State agencies should be developed to establish a stocking policy for each wilderness where stocking is permitted, as a basis for a stocking plan. Basic decisions will be spelled out in the wilderness management plan for each wilderness. Aerial stocking of fish by State agencies or the Fish and Wildlife Service may continue where this was an established practice prior to designation. Authorization will be on a case-by-case basis. Aerial stocking must be done outside of general visitor use seasons. Wilderness management plans should contain all necessary justification, mitigation, and definition of planting programs.

Some general guides for fish stocking in BLM wilderness units are: a. Native species should be favored in waters with a history of supporting such species. Species native to the vicinity or region may be considered as an alternative. Exotic fish will not be considered, except where such practice existed prior to wilderness designation.

b. Waters with established undesirable fish or where overpopulations of fish have occurred should be managed for fish best suited to the water under natural conditions, and to meet wilderness objectives. Barren waters may be stocked only if the wilderness management plan defines the desirability of such an action.

c. Presently nonstocked waters which at one time supported a native fish population, and which would provide suitable habitat for native fish species that would enhance the wilderness experience of visitors, may be considered for stocking on a case-by-case basis.

d. In all fish-stocking activities, threatened or endangered species shall receive primary consideration.

5. *Trapping.* Under State laws and regulations, trapping of furbearers will be allowed when population levels justify a harvest program. Commercial trapping will not be permitted.

6. *Rodents.* Rodents in BLM-administered wilderness areas shall be exempt from control programs, except where overpopulations pose a serious threat to other wilderness values or resources outside the boundaries of the wilderness. Control projects must be approved on a case-by-case basis.

7. *Predators.* Predacious animals and birds are an important part of natural life systems within wilderness. They play an important role in the natural selection and survival processes, helping to maintain critical population balances of wild species. They should be able to survive and compete with other species, free from the unregulated interference of man and his traditional pursuit of sport or bounty. Where control of predators is necessary to protect threatened or endangered wildlife species or on a case-by-case basis to prevent special and serious losses of domestic livestock, it will be accomplished by methods which are directed as eliminating the offending individuals while at the same time presenting the least possible hazard to other animals or to wilderness visitors. Poison baits or cyanide guns are not compatible. Control programs will be carried out by or under the direction of the U.S. Fish and Wildlife Service (FWS) and will be consistent with the Secretary of the Interior's policies on animal damage control and with the Memorandum of Understanding between the BLM and FWS. The State Director will approve predator-control programs on a case-by-case basis, and under such conditions as to ensure minimum disturbance to the wilderness resource and visitors.

Approval must be contingent upon a clear showing that the removal of the offending predators will not diminish the wilderness values of the area, because this kind of wildlife is an integral part of the wilderness, as well as an adjunct to the visitor's experience.

E. Fire, Insect, and Disease Management

1. *Fire Management*—a. *Overriding Fire Guidance.* All fires will be controlled to prevent loss of human life or property within wilderness areas or to prevent the spread of fire to areas outside of the wilderness where life, resources, or property may be threatened.

b. *Natural Fire.* Natural fire (i.e., lightning-caused) is normally a part of the ecology of the wilderness, and man's efforts to ban this agent may have resulted in significant ecological changes in the flora and fauna of some areas. In order to return some wilderness ecosystems to a more natural state, it may be appropriate to allow natural fire to burn. Natural fire will be allowed to burn only in conformance with an approved Fire Management Plan and the overriding fire guidance in section (a) above.

c. *Prescribed Burning.* Prescribed burning may be conducted to reintroduce or maintain the natural condition of a fire-dependent ecosystem or to restore fire where past strict fire control measures had interfered with natural, ecological processes, where a primary value of a given wilderness will be sustained as a result of the burning, or where it will perpetuate a threatened or endangered species. Prescribed fires will be allowed only in conformance with an approved Fire Management Plan.

d. *Removal of Evidence of Fire Control Activities.* Temporary fire camps, helispots, and other sites used for fire suppression or control activities shall be removed upon completion of use and the site rehabilitated to as natural a state as possible.

e. *Fire Detection.* Fire detection methods necessary to meet wilderness objectives will be used. Structures such as lookouts may be maintained or constructed if they are the minimum necessary to achieve wilderness management objectives. Preference will be given to detection methods which have the least permanent impact on wilderness values, such as aircraft overflights and lookouts located outside the wilderness boundary.

f. *Pre-Suppression.* Pre-suppression activities may be allowed where necessary to protect private property, and resources within and outside the wilderness boundary. All pre-suppression programs will be addressed in the Fire Management Plan.

g. *Suppression.* Fire-suppression measures and techniques shall be used which achieve the wilderness management objectives with the minimum adverse impact on the wilderness resource. Preference shall be given to the methods and equipment which least alter the landscape or disturb the land surface. Structures and improvements shall be located outside the wilderness boundary, except those that are the minimum necessary to achieve wilderness management objectives.

h. *Fire Management Plans.* The following considerations will be covered in each Fire Management Plan: wilderness management objectives for the area, historic fire occurrence, natural role of fire, proposed degree of suppression, expected fire behavior, acceptable suppression techniques, adequate buffer zones, smoke management, and effects on adjacent landowners. The plan will conform to criteria defined by the BLM defining the limits of acceptable fire weather, fire behavior, and fire effects. Each Fire Management Plan will be written to conform to the Wilderness Management Plan (WMP) for the area it addresses and will become an addendum to the WMP upon approval.

2. *Control of Insects and Diseases.* Insect and disease outbreaks will not be

artificially controlled, unless it is necessary to protect timber or other values outside of the wilderness area, or in special instances when loss to resources within a wilderness is undesirable (e.g., absence of control would threaten rare or endangered plants or animals). Such control measures will consist of the effective combination of actions which have the least adverse impact on the wilderness resource.

Special care must be taken when using chemicals or other artificial methods to control insect and disease outbreaks because of their possible adverse effect on the total biological community.

Insect or disease suppression projects in BLM wilderness must be approved by the Director.

F. Water Resources Management

1. *Watershed Restoration.* Watershed restoration may be undertaken where deteriorated soil and hydrologic conditions caused by man or his influences create a serious threat or loss of wilderness values; or where, even though not man-caused, these conditions present a definite hazard to life or property, or where such conditions could cause serious depreciation of important environmental quality outside the wilderness. Where such dangers are not imminent or where natural vegetation may be expected to return in a reasonable time, restoration work will not be done.

Re-establishment of vegetation as a watershed-restoration measure, where there is no reasonable expectation of natural healing, will be accomplished using native or naturalized species. Overland motorized equipment will not be used where more primitive equipment can accomplish the restoration objectives. Exceptions must be fully justified, based upon serious imminent threat to high downstream values. Approval by the Director is required for all watershed restoration proposals.

2. *Water Improvements*—a. *Water-yield Improvements.* Protection of wilderness values and management objectives generally preclude use of water-yield improvement techniques. Water-yield improvement prescriptions, if contemplated, must be clearly compatible with maintenance of the wilderness resource. The Director's approval is required for project approval.

b. *New Water-Development Structures.* The establishment of new water-regulating structures, power installations, and related improvements is subject to approval by the President. (Range and wildlife water-development structures are discussed under separate subheadings and are not subject to Presidential approval.)

The BLM's conclusions and recommendations in connection with proposals for new water-resource developments will be based upon comprehensive, factual information developed by an environmental analysis, and draft and final environmental impact statements, as prescribed by the National Environmental Policy Act. The final environmental impact statement requires the Director's approval. Any recommendation in favor of the proposal must be based upon a clear showing that the public values to be gained exceed the values that would be lost, and that the need cannot be met outside the wilderness. When a proposed structure is thus found to be in the public interest, consideration should also be given to a recommendation to exclude the applicable area from wilderness.

c. *Existing Structures.* Reservoirs, ditches, catchments, and related facilities for the control or use of water may have existed within BLM wilderness under valid permits or other authority prior to the area's designation as wilderness. These may be maintained if they are needed in the public interest, or are a part of a valid existing right.

Routine maintenance and repair of an existing structure which does not change the location, size, type, or increase the original intended storage capacity of a reservoir may be approved by the State Director. The operation, maintenance and repair of such facilities may include occasional motorized access where no other reasonable or practical alternatives exist.

Reconstruction of any structure or restoration of a natural body to its original or historic level must be approved by the Director. Primitive means of transport and hand tools will be used wherever and whenever feasible. Any proposal to increase the storage capacity of a reservoir, or the replacement of a reservoir, which was not under a valid permit at the time the unit was incorporated into the National Wilderness Preservation System, will be considered as a new structure and subject to approval by the President.

The wilderness management plan for the unit should carefully evaluate each improvement to determine if the continuation of the use is needed in the public interest, or is part of a valid existing right. Maintenance needs and methods of accomplishing maintenance must be specifically stated if the improvement is to remain. If not, the improvement should be allowed to deteriorate naturally. When natural processes themselves cannot effectively return the abandoned improvement back to a natural condition, restoration by other means may be used. Only hand labor and tools, and seeding with native or naturalized species may be permitted. All restoration projects are subject to approval by the State Director.

d. *Snow Measurement.* The measurement of snow within BLM wilderness is permitted under the following conditions: (1) Measurement of snow will be accomplished by primitive means. If use of a helicopter was an established practice in measuring snow within an area prior to wilderness designation, that same use may be permitted, however, ways and means of eliminating the need will be explored.

(2) No new data sites can be established unless they are parts of projects approved by the President under provisions of section 4(d)(4) of the Wilderness Act. Use of existing data sites may continue until adequate correlation can be established with data sites outside the wilderness. Installation of automated equipment (sensing devices, data collection platforms, etc.) may be permitted on a temporary basis at existing data sites to accelerate the development of correlations with data sites outside the wilderness. Access will be by primitive means. However, where the use of a helicopter was an established practice, the practice may be continued.

(3) Only miniaturized and unobtrusive types of equipment may be installed, and must be camouflaged to blend with the terrain as much as possible. Practices such as burying equipment and using antennae which can be removed during nonuse periods, will be used to minimize the visual impacts of the data site.

e. *Water Quality.* Maintaining or enhancing water quality is of high priority in management of the wilderness resource. Water quality monitoring instruments and hydrometeorological devices may be permitted if these are the minimum necessary for protection of the wilderness resources. All instruments and devices must be miniaturized and unobtrusive. No motorized vehicles will be permitted for installation, maintenance, or monitoring and surveillance.

f. *Weather Modification Over Wilderness.* Use of lands within the National Wilderness Preservation System as target areas for weather modification activities will not be

approved unless the following conditions are met:

1. The proponent can provide reasonable, scientifically supportable assurance that his activities will not produce permanent, substantial changes in natural conditions.

2. The proposal does not include any feature that might reasonably be expected to produce conditions incompatible in appearance with the wilderness environment or reduce its value for recreation, scenic, scientific, educational, conservation, or historical use.

The effects of weather modification activities may be permanent or temporary depending upon the type, duration, and degree of change in weather brought about by that activity.

Generally, short-term weather-modification activities, which will produce only occasional, incidental, temporary, or transitory changes in the weather with carryover effects on the ground lasting only a few days beyond the actual seeding period, can be permitted over wilderness because little or no permanent, identifiable ecological or physical impact is likely. Conversely, long-term weather modification programs, which will produce a repeated or prolonged change in the weather during any part of successive years, are likely to have a direct and often substantial impact in terms of ecological and physical effects. Even though the human contribution to these impacts on the ecology and physical conditions on the ground may be obscured by the fact that the activities are carried on outside or above the wilderness, they nevertheless can be recognized to be the result of human activities and therefore cannot be permitted where they will directly affect wilderness areas.

State Directors will gather necessary information relative to items 1 and 2 and make recommendations to the Director on any activity or application. The Director will approve activities or installations relative to weather modification affecting wilderness.

G. Air Quality

Under the Clean Air Act (as amended, 1977), BLM-administered lands were given Class II air quality classification, which allows moderate deterioration associated with moderate, well-controlled industrial and population growth. The BLM will manage designated wilderness areas as Class II unless they are reclassified by the State as a result of the procedures prescribed in the Clean Air Act (as amended, 1977).

According to the Clean Air Act, air quality reclassification is the prerogative of the States. The States must follow a process mandated by the Clean Air Act Amendments of 1977, involving a study of health, environmental, economic, social, and energy effects, a public hearing, and a report to the Environmental Protection Agency.

Administrative actions within wilderness areas will comply with the air quality classification for that specific area.

H. Rangeland Management

1. *Livestock Grazing Operations.* Section 4(d)(4)(2) of the Wilderness Act provides for continued livestock grazing where established prior to designating the area as wilderness. The objective of livestock management in wilderness is:

> Utilize the forage resource in conformity with established wilderness objectives for each area and the BLM grazing regulations (43 CFR 4100), and through practical, reasonable and uniform application of the committee guidelines and policy.

Further insight on the subject is in the Conference Report on S. 2009 (House Report 96–1126), under the heading "Grazing in National Forest Wilderness Areas." These committee guidelines and policy are to be considered in the overall context of the purposes and direction of the Wilderness Act and will be applied nationwide. They are reprinted here verbatim as an excerpt from House Report 96–1126:

Grazing in National Forest Wilderness Areas

Section 4(d)(4)(2) of the Wilderness Act states: "the grazing of livestock, where established prior to the effective date of this Act, shall be permitted to continue subject to such reasonable regulations as are deemed necessary by the Secretary of Agriculture."

The legislative history of this language is very clear in its intent that livestock grazing, and activities and the necessary facilities to support a livestock grazing program, will be permitted to continue in National Forest wilderness areas, when such grazing was established prior to classification of an area as wilderness.

Including those areas established in the Wilderness Act of 1964, Congress has designated some 188 areas, covering lands administered by the Forest Service, Fish and Wildlife Service, National Park Service and Bureau of Land Management as components of the National Wilderness Preservation System. A number of these areas contain active grazing programs, which are conducted pursuant to existing authorities. In all such cases, when enacting legislation classifying an area as wilderness, it has been the intent of the Congress, based on solid evidence developed by testimony at public hearings, that the practical language of the Wilderness Act would apply to grazing within wilderness areas administered by all Federal agencies, not just the Forest Service. In fact, special language appears in all wilderness legislation, the intent of which is to assure that the applicable provisions of the Wilderness Act, including Section 4(d)(4)(2), will apply to all wilderness areas, regardless of agency jurisdiction.

Further, during the 95th Congress, Congressional committees became increasingly disturbed that, despite the language of section 4(d)(4)(2) of the Wilderness Act and despite a history of nearly 15 years in addressing and providing guidance to the wilderness management agencies for development of wilderness management policies, National Forest administrative regulations and policies were acting to discourage grazing in wilderness, or unduly restricting on-the-ground activities necessary for proper grazing management. To address this problem, two House Committee on Interior and Insular Affairs Reports (95–620 and 95–1321) specifically provided guidance as to how section 4(d)(4)(2) of the Wilderness Act should be interpreted. This guidance appeared in these reports as follows:

> Section 4(d)(4)(2) of the Wilderness Act states that grazing in wilderness areas, if established prior to designation of the area as wilderness, "shall be permitted to continue subject to such reasonable regulations as are deemed necessary by the Secretary of Agriculture". To clarify any lingering doubts, the committee wishes to stress that this language means that there shall be no curtailment of grazing permits or privileges in an area simply because it is designated as wilderness. As stated in the Forest Service regulations (36 CFR 293.7), grazing in wilderness areas ordinarily will be controlled under the general regulations governing grazing of livestock on National Forests * * *. This includes the establishment of normal range allotments and allotment management plans. Furthermore, wilderness designation should not prevent the maintenance of existing fences or other livestock management improvements, nor the construction and maintenance of new fences or improvements which are consistent with allotment management plans and/or which are necessary for the protection of the range.

Despite the language of these two reports, RARE II hearings and field inspection trips in the 96th Congress have revealed that National Forest administrative policies on grazing in wilderness are subject to varying interpretations in the field, and are

fraught with pronouncements that simply are not in accordance with section 4(d)(4)(2) of the Wilderness Act. This had led to demands on the part of grazing permittees that section 4(d)(4)(2) of the Wilderness Act be amended to clarify the intentions of Congress. However, because of the great diversity of conditions under which grazing uses (including different classes of livestock) are managed on the public lands, the Conferees feel that the original broad language of the Wilderness Act is best left unchanged. Any attempts to draft specific statutory language covering grazing in the entire wilderness system (presently administered by four separate agencies in two different Departments) might prove to be unduly rigid in a specific area, and deprive the land management agencies of flexible opportunities to manage grazing in a creative and realistic site specific fashion.

Therefore, the conferees declined to amend section 4(d)(4)(2) of the Wilderness Act, agreeing instead to reaffirm the existing language and to include the following nationwide guidelines and specific statements of legislative policy. It is the intention of the conferees that the guidelines and policies be considered in the overall context of the purposes and direction of the Wilderness Act of 1964 and this Act, and that they be promptly, fully, and diligently implemented and made available to Forest Service personnel at all levels and to all holders of permits for grazing in National Forest Wilderness areas.

1. There shall be no curtailments of grazing in Wilderness areas simply because an area is, or has been designated as wilderness, nor should wilderness designations be used as an excuse by administrators to slowly "phase out" grazing. Any adjustments in the numbers of livestock permitted to graze in wilderness areas should be made as a result of revisions in the normal grazing and land management planning and policy setting process, giving consideration to legal mandates, range condition, and the protection of the range resource from deterioration.

It is anticipated that the numbers of livestock permitted to graze in wilderness would remain at the approximate levels existing at the time an area enters the wilderness system. If land management plans reveal conclusively that increased livestock numbers or animal unit months (AUMs) could be made available with no adverse impact on wilderness values such as plant communities, primitive recreation, and wildlife populations or habitat, some increases in AUMs may be permissible. This is not to imply, however, that wilderness lends itself to AUM or livestock increases and constuction of substantial new facilities that might be appropriate for intensive grazing management in non-wilderness areas.

2. The maintenance of supporting facilities, existing in an area prior to its classification as wilderness (including fences, line cabins, water wells and lines, stock tanks, etc.), is permissible in wilderness. Where practical alternatives do not exist, maintenance or other activities may be accomplished through the occasional use of motorized equipment. This may include, for example, the use of backhoes to maintain stock ponds, pickup trucks for major fence repairs, or specialized equipment to repair stock watering facilities. Such occasional use of motorized equipment should be expressly authorized in the grazing permits for the area involved. the use of motorized equipment should be based on a rule of practical necessity and reasonableness. For example, motorized equipment need not be allowed for the placement of small quantities of salt or other activities where such activities can reasonably and practically be accomplished on horseback or foot. On the other hand, it may be appropriate to permit the occasional use of motorized equipment to haul large quantities of salt to distribution points. Moreover, under the rule of reasonableness, occasional use of motorized equipment should be permitted where practical alternatives are not available and such use would not have a significant adverse impact on the natural environment. Such motorized equipment uses will normally only be permitted to those portions of a wilderness area where they had occurred prior to the area's designation as wilderness or are established by prior agreement.

3. The replacement or reconstruction of deteriorated facilities or improvements should not be required to be accomplished using "natural materials", unless the material and labor costs of using natural materials are such that their use would not impose unreasonable additional costs on grazing permittees.

4. The construction of new improvements or replacement of deteriorated facilities in wilderness is permissible if in accordance with those guidelines and management plans governing the area involved. However, the construction of new improvements should be primarily for the purpose of resource protection and the more effective management of these resources rather than to accommodate increased numbers of livestock.

5. The use of motorized equipment for emergency purposes such as rescuing sick animals or the placement of feed in emergency situations is also permissible. This privilege is to be exercised only in true emergencies, and should not be abused by permittees.

In summary, subject to the conditions and policies outlined above, the general rule of thumb on grazing management in wilderness should be that activities or facilities established prior to the date of an area's designation as wilderness should be allowed to remain in place and may be replaced when necessary for the permittee to properly administer the grazing programs. Thus, if livestock grazing activities and facilities were established in an area at the time Congress determined that the area was suitable for wilderness and placed the specific area in the wilderness system, they should be allowed to continue. With respect to areas designated as wilderness prior to the date of this Act, these guidelines shall not be considered as a direction to re-establish uses where such uses have been discontinued.

It is also the understanding of the conferees that the authorizing Committees intend to closely monitor the implementation of the guidelines through subsequent oversight hearings to insure that the spirit, as well as the letter, of the guidelines are adhered to by the Forest Service. Of course, the inclusion of these guidelines in this Joint Statement of Managers does not preclude the Congress from dealing with the issue of grazing in wilderness areas statutorily in the future.

This concludes the excerpt from House Report 96-1126.

a. *Management Plans.* The above committee guidelines and policies will be applied in accordance with the environmental analysis process. Management prescriptions will be determined through the BLM resource management planning process and implemented by the allotment management plan.

Planning for livestock grazing operations in designated wilderness will be through the normal BLM resource management planning processes.

(1) Resource management plans establish: (a) Objectives and prescriptions for management of wilderness. These are based on resource inventory data which includes, but is not limited to, ecosystem identification, rangeland conditions, existing uses, and areas of existing or potential conflict.

(b) Use of levels of the rangeland resource and its relationship with other uses.

(2) Allotment mangement plans, within the direction established by the resource management plan, prescribe: (a) The manner and extent to which livestock grazing will be conducted to meet wilderness, rangeland resource needs, desired conditions of ecosystems, and other resource values.

(b) Direction and scheduling for accomplishing goals and objectives on individual allotments including the development of rangeland improvement schedules and grazing system to be followed.

b. *Permits.* Grazing operations within wilderness areas will be authorized by grazing permits. Permits for livestock operations will be issued only in areas where grazing was established at the time the wilderness was designated.

c. *Rangeland Analysis.* (1) Rangeland analysis in wilderness areas will follow the normal BLM standards.

(2) The development of the allotment management plan will determine the need for and standards of rangeland improvements and will prescribe the grazing system to be followed.

Where an approved allotment management plan exists at the time an area is designated as wilderness it will be reviewed in context with the committee guidelines and policy. Necessary modifications will be integrated into the resource management plan and the allotment management plan.

Allotment management plans for allotments partially or entirely within designated wilderness will specifically identify the following:

(a) The use of motor vehicles, motorized equipment or other forms of mechanical equipment including: specific equipment, where it is to be used, when it is to be used, and what it is to be used for;

(b) Rangeland improvement structures and installations to be maintained, constructed, or reconstructed in achieving rangeland management objectives, including maintenance standards.

(c) The means to handle emergencies. In bonafide emergencies or urgent situations, decisions will be based on consideration of all relevant factors and use of good judgment.

d. *Rangeland Improvements.* The following criteria should be considered in determining the use of motor vehicles, motorized equipment or mechanical transport in constructing, maintaining or applying rangeland improvements and practices.

(1) Minimizing threat to or loss of property.

(2) Minimum use of motorized equipment within wilderness.

(3) Develop and manage the rangeland resource in cost-effective manner.

(4) Achieve least amount of impact by non-conforming uses on wilderness values through: (a) Scheduling during periods of low use.

(b) Harmonizing improvements to surrounding landscape.

(c) Locate improvements to achieve maximum screening and fully utilize natural feature opportunities.

(5) Type of practice or construction material.

(6) Timeliness, including frequency and time of year.

(7) Need to deal with emergency or urgent situations that develop through acts of nature, such as drought, heavy snow.

(8) Location of nearest ranch facilities in relation to the project.

(9) Availability of primitive transport, e.g., team and wagon, saddle and pack stock, etc.

(10) Length of time to complete a project by alternative methods.

(11) Availability of temporary camp and feed sites.

(12) Age and health factors of permittee.

Documentation of the environmental analysis which considers the authorization of rangeland improvement construction and/or maintenance, and the use of motor vehicles, motorized equipment, and mechanical transport shall be made in an environmental assessment.

e. *Structural Rangeland Improvements.* Rangeland improvement alternatives will be developed and evaluated through the environmental analysis process, including consultation with grazing permittees and other interested publics. Alternatives which utilize a practical and reasonable approach to meet rangeland and wilderness management objectives will be selected.

Permit modifications for the construction of new rangeland improvements or replacement of existing rangeland improvements will be made in accordance with BLM grazing regulations. Special consideration will be given to construction standards and techniques to achieve the most practical and reasonable approach considering the wilderness resource. Specific consideration will be given to:

—Costs of using natural materials.

—Alternative means of construction which harmonize to the extent possible with the wilderness resource.

—Use of motor vehicles, motorized equipment or mechanical transport needed for construction of improvements.

All rangeland improvements will be listed in the allotment management plan along with maintenance schedules.

(1) *Maintenance.* The maintenance of existing necessary rangeland improvements may be allowed to continue. Those determined unnecessary through an environmental analysis will be phased out and removed on an agreed upon schedule.

The techniques by which maintenance of rangeland improvements and other related grazing activities are performed will require careful study, consideration of options, and a practical and reasonable solution. Existing use and requests for new use of motor vehicles, motorized equipment or other forms of mechanical transport, including emergencies, will be reviewed and congressional grazing guidelines applied. The occasional use of motor vehicles, motorized equipment, or mechanical transport may be permitted where practical alternatives are not available.

The guidelines address occasional use of motor vehicles, motorized equipment, or mechanical transport where practical alternatives do not exist, with application only to those portions of a wilderness where they occurred prior to wilderness designation. It is important to look at all options and their impacts. Good judgments will be necessary in the decisionmaking process.

(2) *New Improvements.* The construction of new rangeland improvements is permissible if determined to be necessary for the purpose of resource protection (rangeland and/or wilderness) and the effective management of these resources rather than to accommodate increased numbers of livestock. The rangeland analysis may indicate that a reduction of use is necessary for rangeland protection, or new rangeland improvements are necessary for improved management or protection of wilderness values. New improvements will not be justified solely on the basis that they will aid intensive management resulting in increased grazing.

(3) *Types of materials.* When permitted, new or existing improvements should be of materials which harmonize with the wilderness character of the area to reduce the impact of artificial objects on the natural environment. Natural (native) materials for improvements will be used unless costs are prohibitive or they do not harmonize with the wilderness.

(a) The necessity of the rangeland improvement for livestock grazing operations, resource protection, or enhancement of wilderness values. Some improvements may no longer be needed or should be relocated. Existing rangeland improvements may be necessary for management of the rangeland and wilderness resources. Other alternatives for meeting needs will be explored.

(b) Design, location, and type of materials feasible to serve the purpose and yet be harmonious with natural features of the wilderness will be considered. A steel post and wire fence may be less obtrusive than native pole fence. A redwood water trough may be less noticeable than a steel one. A windmill may better harmonize with wilderness values than an earthen stock pond.

(c) Material and labor costs for natural materials vs. artificial materials. Good judgment, in consultation with permittees, will provide the basis for determining what is reasonable for the permittee's livestock grazing operation and the particular wilderness values involved.

f. *Non-Structural Rangeland Improvements.* Non-structural rangeland improvement practices can be approved where they were part of the management at the time the wilderness was established and where their continuance is necessary to maintain livestock grazing operations. The need for non-structural rangeland improvements and practices will be carefully analyzed using the following criteria: (1) *Seeding.* The need for seeding will be carefully analyzed. Seeding will be approved only for:

(a) Areas where human activities have caused the loss or threaten the existence of indigenous species.

(b) Areas where human activities have denuded or cause loss of soil, providing the actions or activities responsible for the deterioration have been corrected and natural vegetation is insufficient and ineffective.

(c) Maintenance of livestock grazing operations where seeding was practiced prior to the designation of wilderness. Species seeded will be those that are native or naturalized to the area. Seed will be broadcast, except in special situations where other seeding methods are necessary.

(2) *Plant Control.* Plant control will be approved only for: (a) Native plants when needed to maintain livestock grazing operations where practiced prior to the designation of wilderness.

(b) Noxious farm weeds by grubbing or with chemicals when they threaten lands outside wilderness or are spreading within the wilderness, provided the control can be effected without serious adverse impacts on wilderness values.

(3) *Irrigation.* Artifical irrigation or water spreading will be done only to maintain livestock grazing operations where practiced prior to the designation of wilderness.

(4) *Fertilizing.* Fertilization may be used only as an aid to revegetation of disturbed areas approved in item 1 or to maintain livestock grazing operations where practiced prior to the designation of wilderness. Liming will be considered a fertilization practice.

(5) *Prescribed Burning.* Prescribed burning will be approved for rangeland management purposes only where it was practiced prior to the designation of wilderness and is necessary to achieve maintenance of livestock grazing operations; such use must be approved in a fire management plan. (Prescribed burning may be permitted for other purposes, under guidelines in section III. D. 2. and III. E. 1 of this document, such as in cases where reestablishment of natural fire regimes is desired. Rangeland management objectives may be achieved through such prescribed burns and through management of natural fire as prescribed in fire management plans.)

2. *Recreational Livestock.* Commercial recreational livestock, such as that used by packers and outfitters, will be grazed under permit. Noncommercial recreational livestock may also be subject to permit when necessary for the administration or protection of the wilderness. All recreational livestock users, including commercial outfitters, will be required to pack in feed for their domestic animals when it is determined that adequate forage is not available within the area to be visited. The Wilderness Management Plan will analyze the need for regulations or restrictions relating to recreational saddle and pack stock; including, but not limited to hobbling rather than tethering of horses, restrictive zoning, and horse-party size limits.

3. *Wild Horses and Burros.* The Wild Free-Roaming Horse and Burro Act of 1971 declares that wild horses and burros ". . . are to be considered in the area where presently found, as an integral part of the natural system of the public lands."

Viable, healthy populations of wild horses and burros will be maintained in wilderness areas at levels determined appropriate by the BLM planning system. The herd numbers and management techniques will be compatible with preservation of the area's wilderness character.

Herd Management Area Plans (HMAP's) will be developed in wilderness areas with wild horses or burros. The plans will detail the present condition and potential of the herd and herd management area. The plans will describe management actions required to meet the wilderness objectives as well as the herd needs. HMAP's will establish the habitat requirements and any necessary improvements; herd structure (sex and age ratios, etc.); methods of population manipulation and control (including removal, if necessary); migratory habits; and projections of population changes over time. Monitoring studies for the herd and its habitat will be an integral part of the plan. HMAP's will describe the physical improvements necessary for maintenance of healthy, viable herds and their habitat.

Use of motorized vehicles, including aircraft; use and maintenance of equipment such as temporary corrals; and the location, frequency, and timing of such uses will be specified in HMAP's and wilderness management plans. Such uses will be allowed when no other alternatives exist, they are the minimum necessary to accomplish the task, and they are the least degrading of wilderness values temporarily or permanently. Use of these facilities and equipment require State Director approval.

Habitat manipulation and nonstructural improvements will conform to those described under 1.f. above.

Environmental assessments will analyze the impacts of the management prescribed by the HMAP's, and alternatives and mitigating measures to minimize those impacts upon the wilderness resource.

I. Minerals Management

1. *Prospecting and Mining.* The Wilderness Act recognizes the rights of the mining claimant under the mining laws and provides for prospecting and mining in wilderness while still recognizing the wilderness resource.

BLM officials considering operating or prospecting notices of intent or plans of operation are faced with the task of serving two masters which may tend to be mutually exclusive. Nevertheless, the rights of the mining claimant must be met with the least possible impact on the wilderness resource in accordance with the direction in the Wilderness Act.

All BLM officials involved must ensure that provisions approved in operating plans are the minimum necessary to accomplish the rights of the

claimant while creating the least impact on the wilderness resource. Operators must be allowed to carry out operations that are reasonably necessary and incidental to the mining operation, but may not, in any circumstance, cause unnecessary or undue degradation. District Managers will call for the expertise of mining engineers or geologists, soil experts, landscape architects, engineers, watershed specialists, and any other technical expertise necessary to ensure that both the wilderness and the rights of the minerals claimant are adequately and properly served. Appropriate mineral examination will be a part of consideration of any operating plan.

All prospecting and mining activities must comply with the mining laws, BLM and Department regulations and policies, and other applicable Regulations.

a. *Plans of Operations.* (1) An approved plan of operations is required prior to commencing any operation, except casual use, in all BLM-administered wilderness areas. Operations include all functions, work, facilities, and activities in connection with prospecting, development, extraction, and processing of mineral deposits and all other uses related to these activities. Casual use resulting in only negligible disturbance to wilderness resources and not involving the use of mechanized or mortorized equipment, overland mechanical transport, landing of aircraft, or explosives will not require an approved plan of operation.

(2) Contents of a plan of operations and plan approval shall comply with all items listed in the 3809 Regulations at § 3809.1–4(c) and 3809.1–5. The following criteria will also be considered:

(a) *Access*—Access may be proposed in a plan of operations by foot, horseback, road, cross-country vehicles, boat, or aircraft. From the wilderness resource standpoint, foot or horseback is the most preferable and this approach should be considered first. However, this may be impractical from the standpoint of the requirements of the proposed plan. BLM may assist the operator in selecting the most appropriate access route. The final approved method must be that which creates the least lasting impact on the wilderness resource, while still reasonably serving the needs of the operator. In some cases, consideration for the least lasting effect might override another form of access which has more short-term impact.

Those activities otherwise generally prohibited in wilderness, including the use of mechanized transport, motorized equipment, or aircraft, shall be authorized only when proved essential. An approved operating plan will serve as authorization for such otherwise prohibited activities on mining claims within wilderness. All access across wilderness by other than primitive means, whether on or off a mining claim, will be addressed under a plan of operation.

In consideration of the use of motorized equipment and means and type of access, the following criteria shall be satisfied in arriving at a decision:

i. District Managers shall determine that there is reasonable expectation of the presence of a mineral deposit.

ii. There is no reasonable alternative to the use of motorized or mechanical equipment.

iii. When authorized, the use of motorized or mechanical equipment should be timed to have the minimum possible impact on wilderness visitors' enjoyment.

iv. The transportation of prospecting personnel by helicopter or other forms of motorized transport may be approved after a satisfactory showing that the need is reasonably necessary and incidental to the mining operation.

(b) *Motorized Equipment*—The use of motorized equipment may be necessary and incidental to properly perform mining operations. Decisions whether or not to allow the use of such equipment will be based on whether the equipment is necessary to accomplish the task. Where possible, this use will be limited to periods outside the heaviest wilderness use.

(c) *Timber*—Timer determined necessary for removal will be cut in such a manner as to minimize lasting evidence of its removal. Individual trees will be carefully selected so as not to make obvious artificial openings. Stumps will be cut as close to the ground as practical.

(d) *Fire*—The operator will be required to keep spark arresters and fire extinguishers on all internal combustion engines during periods of fire danger. The operator will generally be required to maintain caches of handtools in sufficient quantities to equip those personnel expected to be on the operation. The operator and his personnel will be expected to take initial action on any fire in the vicinity of the operation.

Slash and other flammable debris will generally require complete disposal by burning to reduce fire hazard, prevent insect buildup, and more rapidly reduce evidence of the timber cutting. This will generally consist of careful hand piling away from standing green trees and burning at a time approved by the BLM District Manager. Careful attention during burning operations will be required to prevent damage to standing trees and to ensure a clean burn.

(e) *Site Reclamation*—The reclamation of the site and other disturbed areas will vary with the location, type of soil erosion hazard, type of vegetative cover, and type and extent of disturbance. As a minimum, all sites will be treated in such a manner that they will not cause accelerated erosion, siltation of streams, a hazard to wilderness visitors, or unnecessary or undue degradation of the land. Also, as a minimum, all excavations with vertical cuts in soil will be sloped to their natural angle of repose. Generally, hand-dug pits or shafts with the excavated material still at hand will be refilled. Here, as with timber cutting, the main objective will be to minimize remaining evidance of human activities. It may not be practical to return an area to its original contour, but it will generally be entirely reasonable to return it to a contour which might appear to be natural. An effort will be made to put topsoil equal in quality to that which was removed over disturbed soil surfaces to promote natural revegetation or to aid in seeding. Where native seed is available, disturbed areas will be seeded to native plant species provided the area originally supported such vegetation. Exotic species will not be used.

(f) *Structures and Improvements*—Plans of operations shall identify all structures and improvements planned as an adjunct to the operation. The plan will also show the ultimate disposition of the improvements and when this will occur. The objective will be to ensure the removal of all works or improvements when they are no longer needed for the prospect or future mining.

(g) *Unnecessary or Undue Degradation*—A plan of operations shall include measures to be taken to prevent unnecessary or undue degradation of the area resulting from the proposed operation. This may require measures to prevent water pollution through contamination or siltation of streams while the operation is in progress and to leave the site in such a condition that a vegetative cover can be reestablished when the operation is abandoned. Such measures may include trenching of disturbed slopes, placing retaining walls to prevent tailings from entering stream channels, etc. It may also require the scalping and stockpiling of the topsoil or sod from the area to be disturbed so that it might be spread over the surface to aid in reestablishing vegetation. Air and

noise pollution are also critical elements. Plans shall identify mitigating measures to minimize noise and air pollution.

(3) *Performance Bond.* No bond shall be required for operations considered as casual use. A bond may be required for any operator who conducts operations under an approved plan of operations. The primary purpose for a bond is to ensure compliance with the plan of operations. Requirement for posting a bond is at the discretion of the authorized officer.

(4) *Environmental Assessment.* Operating plans for prospecting and mining activities will normally involve surface disturbance of the wilderness resource and will require an environmental assessment which considers the impact of the proposed operation on the lands and all feasible alternatives for complying with the rights of the claimant. Upon completion of the analysis, the District Manager will determine if an environmental impact statement is needed.

b. *Mineral Leasing.* Mineral leasing will be governed by the policy stated in Chapter II, section 3. h. of this document.

c. *Mineral Patents.* The Wilderness Act, section 4(d)(3), states in part:

> Mining locations . . . shall be held and used solely for mining . . . and hereafter, subject to valid existing rights, all patents issued . . . affecting national forest lands designated by this Act as wilderness areas shall convey title to the mineral deposits . . . but each such patent shall reserve to the United States all title in or to the surface. . . .

The same subsection further states that:

> Mining claims located after the effective date of this Act within the boundaries of wilderness areas designated by this Act shall create no rights in excess of those rights which may be patented under the provisions of this subsection.

d. *Common Varieties of Mineral Materials.* Permits to remove such materials will not be issued.

e. *Paleontological Resources.* Paleontological resource inventories, studies, and research involving surface examination or limited subsurface sampling may be permitted. Salvage of paleontological sites, excavation, and collection of artifacts may be allowed if the project will not degrade the wilderness character of the area and such activity is needed to preserve the particular resource, and/or similar studies and research cannot be conducted elsewhere. Use of mechanized equipment and permanent physical protection structures may be permitted if all the above conditions are met and there are not other feasible alternatives. State Director approval is required for all projects.

J. Administrative Structures and Facilities

1. *Administrative Sites.* Existing administrative sites will be limited to the existing structures or their replacement with similar structures of compatible design provided their continued use is necessary to meet minimum requirements for the administration of the area. Tents will usually be used to supplement housing and kitchen demands brought about by special projects and expanding workloads. As maintenance becomes impractical, first consideration will be given to eliminating the site. Replacement of facilities will require the Director's approval. The Wilderness Management Plan will address the need for existing sites. No new sites will be planned unless they are the minimum necessary for management of the area as wilderness.

2. *Fences.* Corrals and fences for the control of administrative pack and saddle stock may be built only at administrative sites where the animals are regularly used for periods of more than a few days' duration. New permanent fences shall be constructed of materials compatible with the particular wilderness. The Wilderness Management Plan will consider the need for, location of, and material to be used in administrative fence construction.

3. *Trails.* Trails for administrative purposes may be constructed when they are the minimum necessary for the preservation of the wilderness resource and have been authorized in the Wilderness Management Plan. (Trails and associated structures for visitor use are discussed as part of the specific guidance under Recreation and Visitor Use, section III. A. of this document.)

4. *Airfields.* New airfields, including emergency airstrips, shall not be located in BLM-administered wilderness. The Wilderness Management Plan shall review existing airstrips and determine whether or not to permit the continued use of existing airfields. Such use will be monitored on a regular basis to determine if its continuation is appropriate. Use may be restricted when necessary to protect wilderness resources, such as wildlife values during nesting season. If use is approved, maintenance will generally be by primitive, non-motorized equipment only.

6. *Heliports and Helispots*—a. *Heliports.* Heliports may be constructed and maintained at existing administrative sites where they are the minimum necessary for wilderness purposes. Complete justification for continuing heliports or constructing new ones will be required. Unless otherwise approved by the Director, other heliports shall not be located within wilderness. The Wilderness Management Plan will fully evaluate the need for heliports. Only those heliports considered the minimum necessary for wilderness resource management will be continued.

b. *Helispots.* State Directors may approve construction of individual helispots or systems of helispots when they are the minimum necessary for administration or protection of the area as wilderness. The Wilderness Management Plan will fully evaluate helispot needs. Except for emergencies, helispot construction is prohibited if not specifically identified in the wilderness plan.

7. *Communication Facilities.* Communication facilities will be constructed and maintained only when they are the minimum necessary for administration and protection of the area as wilderness. The Wilderness Management Plan will fully evaluate the need for existing and proposed sites and their maintenance.

8. *Structures and Facilities Constructed, Used, or Proposed by Other Agencies.* Other agencies conducting activities within BLM wilderness shall be equally constrained by provisions of the Wilderness Act that are applicable to the BLM. These guidelines will apply: a. Authorized structures used by other agencies shall be reviewed periodically to determine whether their continued existence is essential for meeting the minimum requirements for administration of the area as wilderness. If it is not, the authorization shall be terminated and the structure removed. The Wilderness Management Plan will assess and determine the disposition of all such structures.

b. When existing improvements deteriorate to the point that normal maintenance will not suffice to keep them usable, the necessity for such buildings shall be critically analyzed. If they are not essential to meet the minimum requirements of administration of the wilderness, or essential to a continuing program that was established on the basis of the structure, they shall not be replaced. Permits for new buildings or replacement of existing structures must be approved by the Director.

c. The maintenance or replacement of existing signs, instruments, and other improvements of a minor nature, used in connection with such projects as snow surveys, water measurement, game and

fish management, and geological studies may be approved by the State Director. New installations may be approved if they are essential to meet the minimum requirements for administration of the wilderness for the purposes of the Wilderness Act.

K. Use of Motorized and Mechanical Equipment

Travel within a BLM-administered wilderness will normally be by nonmotorized, nonmechanical means consistent with the preservation of wilderness character.

The wilderness management plan will specify the instances and places in which administrative use of mechanized equipment, mechanical transport, or aircraft is the minimum necessary to protect and administer the wilderness resource or is necessary as part of a nonconforming, but accepted, use. Where approved, that equipment which is the minimum necessary to accomplish the task with the least lasting and damaging impact on the wilderness resource will be selected. Such motorized and mechanical equipment use will be scheduled at times and locations which will have the least impact on the visitors' wilderness experience.

Conditions under which use may be allowed (unless otherwise stated, all use is subject to the standards spelled out in the preceding paragraph) are: 1. The public use of aircraft or motorboats, where these uses were established prior to the area's designation as wilderness, may be permitted to continue. Wilderness Management Plans will assure periodic review of such use to determine if its continuation is necessary and impacts on the area's wilderness character are minimized.

2. Motorized and mechanical equipment use may be authorized for mining or prospecting purposes if approved in a Plan of Operation or in association with valid existing rights. Refer to specific guidance for Minerals Management.

3. The use of motor vehicles, motorized equipment, and mechanical transport may be approved for certain situations involving established livestock grazing operations. Refer to specific guidance for Rangeland Management.

4. Motorized equipment and mechanical transport use may be allowed when an emergency condition exists which involves the health and saftey of visitors. The Area Manager or District Manager may approve such action.

5. Motorized equipment and mechanical transport may be permitted during a fire suppression emergency. Impacts resulting from overland vehicle travel (either cross-country travel or temporary road construction) and impacts from equipment use will be obliterated and rehabilitated in a manner which permits the wilderness resource an opportunity to heal rapidly. Motorized equipment and mechanical transport uses will be specifically addressed in a wilderness area's Fire Management Plan. The Area Manager or District Manager may approve such action. Refer to specific guidance for Fire Management.

6. The use of aircraft may be allowed in nonemergency situations to deliver supplies or materials to construct or maintain improvements needed for administration of the area as wilderness when use of pack and saddle stock or other non-mechanized means is not feasible. Approval must be authorized by the State Director.

7. Powered hand-portable tools, such as chain saws or rock drills, may be approved by the State Director when they are the minimum necessary for administrative purposes where work cannot be accomplished with nonpowered tools. (In some cases, such tools may be necessary in trail construction and maintenance, due to limitations of time, season, etc.)

8. Mechanized or motorized equipment may be used for wilderness research, other wilderness-enhancing purposes where no other alternatives exist and where such use is the minimum necessary for administration of the area as wilderness and will not degrade the area's wilderness character. Instances could include wildlife transplants or fish stocking by State Divisions of Wildlife. State Director approval is required. (Refer also to specific guidance for Research and Studies.)

9. Mechanized or motorized equipment may be used in gathering information about resources, so long as the use is compatible with preservation of the wilderness environment. Instances could include mineral surveys by the U.S. Geological Survey or water resource investigations. State Director approval is required.

10. Where feasible, control of insects and diseases will be conducted without the use of motorized equipment, otherwise aircraft use is permissible without landing of aircraft. Approval must be authorized by the State Director.

11. Motorized equipment necessary to meet temporary emergencies involving violations of criminal law and/or including the pursuit of fugitives may be approved by the District Manager.

12. There is no specific prohibition of overflight of wilderness by aircraft. Low-flying aircraft cause disturbance of the solitude of an area. Except in bona fide emergencies, such as search and rescue efforts and essential military missions, low flight should be discouraged. Where low overflight is a problem, or expected to become a problem, wilderness management plans will provide for liaison with proper military authorities and the Federal Aviation Administration, and contact with pilots in the general area in an effort to reduce low flight.

L. Research and Studies

Research is a valid and important use of the wilderness resource. Research will be permitted and encouraged as long as all projects are conducted in such a manner as to preserve the area's wilderness character and they further the management, scientific, educational, and conservation purposes of the area.

Research will be conducted or supported to evaluate the effectiveness in achieving objectives of ongoing wilderness management. Research will also be encouraged to identify problems and improve management techniques to increase efforts to futher the purposes of the Wilderness Act.

Research and studies to investigate scientific value may also be conducted in wilderness provided that wilderness is essential to results of such research, and wilderness values would not be jeopardized.

Research and other studies will be conducted without use of motorized equipment or construction of temporary or permanent structures. Exceptions to this policy may be approved by the State Director in projects that are essential to management of the specific wilderness when no other feasible alternatives exist. Such use, when approved, must be the minimum necessary and must not degrade the area's wilderness character.

IV. Implementation of the Wilderness Management Policy

This chapter explains how the BLM will implement the Wilderness Management Policy through the process of developing a plan for each wilderness area under its administration.

The purpose of the Wilderness Management Plan (WMP) is to describe the management strategy that will be used to work toward attainment of the objectives of the Wilderness Management Policy. The plan must clearly show the actions that will be taken to preserve the wilderness resource, and the linkage between these actions and the objectives.

Each WMP will address the management situations present in an individual wilderness area or in two or more closely related areas. Plans should reflect the different kinds of environmental settings, history of use, and management situations found in individual areas within the framework of this policy.

Public involvement must be included in the development of each WMP. A minimum of at least one meeting or workshop must be open to the general public and the public must be given at least 45 days to comment upon the proposed Wilderness Plan. Issues, questions, and problems raised by the public will be considered during the development of the final WMP. WMP's will be updated on a regular basis or as conditions change. The public will be given the opportunity to be involved in plan changes.

The Wilderness Management Plan will include the general policy for all BLM wilderness areas. Additions may be made to tailor the policy to the current management situation for each area. Selected statements from the Wilderness Management Policy may be included to show the connection between actions proposed in the plan and the objective found in the management policy. Other policy statements may be included where appropriate, so long as they do not conflict with the Wilderness Management Policy.

During the time period before a WMP is prepared for a wilderness area, the Wilderness Management Policy will guide the conduct of day-to-day activities. The approval of activities, programs, or projects initiated by the Bureau, other governmental bodies, or private individuals will be contingent upon the completion of an environmental assessment. Proposals determined to be inconsistent with the intent of the Wilderness Management Policy or other elements of the BLM's legislative and regulatory mandate will be modified or disapproved as appropriate.

Upon completion of the WMP for an area, the viability of activities, programs, or projects will be determined through the BLM's environmental assessment process. If the proposed action is part of an approved WMP, the environmental assessment will consider if it is the best way to meet objectives of the plan from an on-the-ground perspective and if the action conforms to other applicable elements of the BLM's legislative and regulatory mandate. If the proposal is not part of the WMP, the environmental assessment will be used also to determine if it is in conformance with the WMP. Proposals found to be inconsistent with the WMP or other applicable Bureau guidance will be modified or disapproved as appropriate.

Specific guidance regarding the procedure for developing Wilderness Management Plans will be issued to BLM field offices after issuance of the final Wilderness Management Policy.

Appendix A—Section 603 of the Federal Land Policy and Management Act of 1976; Pub. L. 94-579

Sec. 603. (a) Within fifteen years after the date of approval of this Act, the Secretary shall review those roadless areas of the five thousand acres or more and roadless islands of the public lands, identified during the inventory required by section 201(a) of the Act as having wilderness characteristics described in the Wilderness Act of September 3, 1964 (78 Stat. 890; 16 U.S.C. 1131 et seq.) and shall from time to time report to the President his recommendation as to the suitability or nonsuitability of each such area or island for preservation as wilderness: Provided, that prior to any recommendations for the designation of an area as wilderness the Secretary shall cause mineral surveys to be conducted by the U.S. Geological Survey and the Bureau of Mines to determine the mineral values if any, that may be present in such areas: Provided further, that the Secretary shall report to the President by July 1, 1980, his recommendations on those areas which the Secretary has prior to November 1, 1975, formally identified as natural or primitive areas. The review required by this subsection shall be conducted in accordance with the procedures specified in section 3(d) of the Wilderness Act.

(b) The President shall advise the President of the Senate and the Speaker of the House of Representatives of his recommendations with respect to designation as wilderness of each such area, together with a map thereof and with a definition of its boundaries. Such advice by the President shall be given within two years of the receipt of each report from the Secretary. A recommendation of the President for designation as wilderness shall become effective only if so provided by an Act of Congress.

(c) During the period of review of such areas and until Congress has determined otherwise, the Secretary shall continue to manage such lands according to his authority under this Act and other applicable law in a manner so as not to impair the suitability of such areas for preservation as wilderness, subject, however, to the continuation of existing mining and grazing uses and mineral leasing in the manner and degree in which the same was conducted on the date of approval of this Act: Provided, that, in managing the public land the Secretary shall by regulation or otherwise take any action required to prevent unnecessary or undue degradation of the lands and their resources or to afford environmental protection. Unless previously withdrawn from appropriation under the mining laws, such lands shall continue to be subject to such appropriation during the period of review unless withdrawn by the Secretary under the procedures of section 204 of this Act for reasons other than the preservation of their wilderness character. Once an area has been designated for preservation as wilderness, the provisions of the Wilderness Act which apply to national forest wilderness areas shall apply with respect to the administration and use of such designated area, including mineral surveys required by section 4(d)(2) of the Wilderness Act, and mineral development, access, exchange of lands, and ingress and egress for mining claimants.

Appendix B—The Wilderness Act of September 3, 1964; Public Law 88-577; 88th Congress, S. 4

AN ACT

To establish a National Wilderness Preservation System for the permanent good of the whole people and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled:

Short Title

Section 1. This Act may be cited as the "Wilderness Act."

Wilderness System Established—Statement of Policy

Section 2. (a) In order to assure that an increasing population, accompanied by expanding settlement and growing mechanization, does not occupy and modify all areas within the United States and its possessions, leaving no lands designated for preservation and protection in their natural condition, it is hereby declared to be the policy of the Congress to secure for the American people of present and future generations the benefits of an enduring resource of wilderness. For this purpose there is hereby established a National Wilderness Preservation System to be composed of federally owned areas designated by Congress as "wilderness areas", and these shall be administered for the use and enjoyment of the American people in such manner as will leave them unimpaired for future use and enjoyment as wilderness, and so as to provide for the protection of these areas, the preservation of their wilderness character, and for the gathering and dissemination of information regarding their use and enjoyment as wilderness; and no Federal lands shall be designated as "wilderness areas" except as provided for in this Act or by a subsequent Act.

(b) The inclusion of an area in the National Wilderness Preservation System notwithstanding, the area shall continue to be managed by the Department and agency having jurisdiction thereover immediately before its inclusion in the National Wilderness Preservation System unless otherwise provided by Act of Congress. No appropriation shall be available for the payment of expenses or salaries for the administration of the National Wilderness Preservation System as a separate unit nor shall any appropriations be available for additional personnel stated as being required solely for the purpose of managing or administering areas solely because they are included within the National Wilderness Preservation System.

Definition of Wilderness

(c) A wilderness, in contrast with those areas where man and his own works dominate the landscape, is hereby recognized as an area where the earth and its community of life are untrammeled by man, where man himself is a visitor who does not remain. An area of wilderness is further defined to mean in this Act an area of undeveloped Federal land retaining its primeval character and influence, without permanent improvements or human habitation, which is protected and managed so as to preserve its natural conditions and which (1) generally appears to have been affected primarily by the forces of nature, with the imprint of man's work substantially unnoticeable; (2) has outstanding opportunities for solitude or a primitive and unconfined type of recreation; (3) has at least five thousand acres of land or is of sufficient size as to make practicable its preservation and use in an unimpaired condition; and (4) may also contain ecological, geological, or other features of scientific, educational, scenic, or historical value.

National Wilderness Preservation System—Extent of System

Section 3. (a) All areas within the national forests classified at least 30 days before the effective date of this Act by the Secretary of Agriculture or the Chief of the Forest Service as "wilderness," "wild" or "canoe" are hereby designated as wilderness areas. The Secretary of Agriculture shall—

(1) Within one year after the effective date of this Act, file a map and legal description of each wilderness area with the Interior and Insular Affairs Committees of the United States Senate and the House of Representatives, and such descriptions shall have the same force and effect as if included in this Act: *Provided, However,* That correction of clerical and typographical errors in such legal descriptions and maps may be made.

(2) Maintain, available to the public, records pertaining to said wilderness areas, including maps and legal descriptions, copies of regulations governing them, copies of public notices of, and reports submitted to Congress regarding pending additions, eliminations, or modifications. Maps, legal descriptions, and regulations pertaining to wilderness areas within their respective jurisdictions also shall be available to the public in the offices of regional foresters, national forest supervisors and forest rangers.

Classification. (b) The Secretary of Agriculture shall, within ten years after the enactment of this Act, review, as to its suitability or nonsuitability for preservation as wilderness, each area in the national forests classified on the effective date of this Act by the Secretary of Agriculture or the Chief of the Forest Service as "primitive" and report his findings to the President.

Presidential recommendation to Congress. The President shall advise the United States Senate and House of Representative of his recommendations with respect to the designation as "wilderness" or other reclassification of each area on which review has been completed, together with maps and a definition of boundaries. Such advice shall be given with respect to not less than one-third of all the areas now classified as "primitive" within three years after the enactment of this Act, not less than two-thirds within seven years after the enactment of this Act, and the remaining areas within ten years after the enactment of this Act.

Congressional approval. Each recommendation of the President for designation as "wilderness" shall become effective only if so provided by an Act of Congress. Areas classified as "primitive" on the effective date of this Act shall continue to be administered under the rules and regulations affecting such areas on the effective date of this Act until Congress has determined otherwise. Any such area may be increased in size by the President at the time he submits his recommendations to the Congress by not more than five thousand acres with no more than one thousand two hundred and eighty acres of such increase in any one compact unit; if it is proposed to increase the size of any such area by more than five thousand acres or by more than one thousand two hundred and eighty acres in any one compact unit the increase in size shall not become effective until acted upon by Congress. Nothing herein contained shall limit the President in proposing, as part of his recommendations to Congress, the alteration of existing boundaries of primitive areas or recommending the addition of any contiguous area of national forest lands predominantly of wilderness value. Notwithstanding any other provisions of this Act, the Secretary of Agriculture may complete his review and delete such areas as may be necessary, but not to exceed seven thousand acres, from the southern tip of the Gore Range-Eagles Nest Primitive Area, Colorado, if the Secretary determines that such action is in the public interest.

Report to President. (c) Within ten years after the effective date of this Act the Secretary of the Interior shall review every roadless area of five thousand contiguous acres or more in the national parks, monuments and other units of the national park system and every such area of, and every roadless island within, the national wildlife refuges and game ranges, under his jurisdiction on the effective date of this Act and shall report to the President his recommendation as to the suitability or nonsuitability of each such area or island for preservation as wilderness.

Presidential recommendation to Congress. The President shall advise the President of the Senate and the Speaker of the House of Representatives of his recommendation with respect to the designation as wilderness of each such area or island on which review has been completed, together with a map thereof and a definition of its boundaries. Such advice shall be given with respect to not less than one-third of the areas and islands to be reviewed under this subsection within three years after enactment of this Act, not less than two-thirds within seven years of enactment of this Act, and the remainder within ten years of enactment of this Act.

Congressional approval. A recommendation of the President for designation as wilderness shall become effective only if so provided by an Act of Congress. Nothing contained herein shall, by implication or otherwise, be construed to lessen the present statutory authority of the Secretary of the Interior with respect to the maintenance of roadless areas within units of the national park system.

Suitability. (d)(1) The Secretary of Agriculture and the Secretary of the Interior shall, prior to submitting any recommendations to the President with respect to the suitability of any area for preservation as wilderness—

Publication in Federal Register. (A) Given public notice of the proposed action as they deem appropriate, including publication in the Federal Register and in a newspaper having general circulation in the area or areas in the vicinity of the affected land;

Hearings. (B) Hold a public hearing or hearings at a location or locations convenient to the area affected. The hearings shall be announced through such means as the respective Secretaries involved deem appropriate, including notices in the Federal Register and in newspapers of general circulation in the area: *Provided,* That if the lands involved are located in more than one State, at least one hearing shall be held in each State in which a portion of the land lies;

(C) At least thirty days before the date of a hearing advise the Governor of each State and the governing board of each county, or in Alaska the borough, in which the lands are located, and Federal departments and agencies concerned and invite such officials and Federal agencies to submit their views on the proposed action at the hearing or by no later than thirty days following the date of the hearing.

(2) Any views submitted to the appropriate Secretary under the provisions of (1) of this subsection with respect to any area shall be included with any recommendations to the President and to Congress with respect to such area.

Proposed modification. (e) Any modification or adjustment of boundaries of any wilderness area shall be recommended by the appropriate Secretary after public notice of such proposal and public hearing or hearings as provided in subsection (d) of this section. The proposed modification or adjustment shall then be recommended with map and description thereof to the President. The President shall advise the United States Senate and the House of Representatives of his recommendations with respect to such modification or adjustment and such recommendations shall become effective only in the same manner as provided for in subsections (b) and (c) of this section.

Use of Wilderness Areas

Section 4. (a) The purposes of this Act are hereby declared to be within and supplemental to the purposes for which national forests and units of the national park and wildlife refuge systems are established and administered and—

(1) Nothing in this Act shall be deemed to be in interference with the purpose for which national forests are established as set forth in the Act of June 4, 1897 (30 Stat. 11), and the Multiple-Use Sustained-Yield Act of June 12, 1960 (74 Stat. 215).

(2) Nothing in this Act shall modify the restrictions and provisions of the Shipstead-Nolan Act (Public Law 539, Seventy-first Congress, July 10, 1930; 46 Stat. 1020), the Thye-Blatnik Act (Public Law 733, Eightieth Congress, June 22, 1948; 62 Stat. 568), and the Humphrey-Thye-Blatnik-Andresen Act (Public Law 607, Eighty-fourth Congress, June 22, 1956; 70 Stat. 326), as applying to the Superior National Forest or the regulations of the Secretary of Agriculture.

(3) Nothing in this Act shall modify the statutory authority under which units of the national park system are created. Further, the designation of any area of any park, monument, or other unit of the national park system as a wilderness area pursuant to this Act shall in no manner lower the standards evolved for the use and preservation of such park, monument, or other unit of the national park system in accordance with the Act of August 25, 1916, the statutory authority under which the area was created, or any other Act of Congress which might pertain to or affect such area, including, but not limited to, the Act of June 8, 1906 (34 Stat. 225; 16 U.S.C. 432 et. seq.); section 2(2)) of the Federal Power Act (16 U.S.C. 796 (2)); and the Act of August 21, 1935 (49 Stat. 666; 16 U.S.C. 461 et seq.).

(b) Except as otherwise provided in this Act, each agency administering any area designated as wilderness shall be reasonable for preserving the wilderness character of the area and shall so administer such area for such other purposes for which it may have been established as also to preserve its wilderness character. Except as otherwise provided in this Act, wilderness areas shall be devoted to the public purposes of recreational, scenic, scientific, educational, conservation, and historical use.

Prohibition of Certain Uses

(c) Except as specifically provided for in this Act, and subject to existing private rights, there shall be no commercial enterprise and no permanent road within any wilderness area designated by this Act and, except as necessary to meet minimum requirements for the administration of the area for the purpose of the Act (including measures required in emergencies involving the health and safety of persons within the area), there shall be no temporary road, no use of motor vehicles, motorized equipment or motorboats, no landing of aircraft, no other form of mechanical transport, and no structure or installation within any such area.

Special Provisions

(d) The following special provisions are hereby made: (1) Within wilderness areas designated by this Act the use of aircraft or motorboats, where these uses have already become established, may be permitted to continue subject to such restrictions as the Secretary of Agriculture deems desirable. In addition, such measures may be taken as may be necessary in the control of fire, insects, and diseases, subject to such conditions as the Secretary deems desirable.

Nothing in this Act shall prevent within national forest wilderness areas any activity, including prospecting, for the purpose of gathering information about mineral or other resources, if such activity is carried on in a manner compatible with the preservation of the wilderness environment. Furthermore, in accordance with such program as the Secretary of the Interior shall develop and conduct in consultation with the Secretary of Agriculture, such areas shall be surveyed on a planned, recurring basis consistent with the concept of wilderness preservation by the Geological Survey and the Bureau of Mines to determine the mineral values, if any, that may be present; and the results of such surveys shall be made available to the public and submitted to the President and Congress.

Mineral leases, claims, etc. (3) Notwithstanding any other provisions of this Act, until midnight December 31, 1983, the United States mining laws and all laws pertaining to mineral leasing shall, to the same extent as applicable prior to the effective date of this Act, extend to those national forest lands designated by this Act as "wilderness areas"; subject, however, to such reasonable regulations governing ingress and egress as may be prescribed by the Secretary of Agriculture consistent with the use of the land for mineral location and development and exploration, drilling, and production, and use of land for transmission lines, waterlines, telephone lines, or facilities necessary in exploring, drilling, producing, mining, and processing operations, including where essential the use of mechanized ground or air equipment and restoration as near as practicable of the surface of the land disturbed in performing prospecting, location, and, in oil and gas leasing, discovery work, exploration, drilling, and production, as soon as they have served their purpose. Mining locations, lying within the boundaries of said wilderness areas shall be held and use solely for mining or processing operations and uses reasonably incident thereto; and hereafter, subject to valid existing rights, all patents issued under the mining laws of the United States affecting national forest lands designated by this Act as wilderness areas shall convey title to the mineral deposits within the claim, together with the right to cut and use so much of the mature timber therefrom as may be needed in the extraction, removal, and beneficiation of the mineral deposits, if the timber is not otherwise reasonably available, and if the timber is cut under sound principles of forest management as defined by the national forest rules and regulations, but each such patent shall reserve to the United State all title in or to the surface of the lands and products thereof, and no use of the surface of the claim or the resources therefrom not reasonably required for carrying on mining or prospecting shall be allowed except as otherwise expressly provided in this Act: *Provided,* That, unless hereafter specifically authorized, no patent within wilderness areas designated by this Act shall issue after December 31, 1983, except for the valid claims existing on or before December 31, 1983. Mining claims located after the effective date of the Act within the boundaries of wilderness areas designated by this Act shall create no rights in excess of those rights which may be patented under the provisions of this subsection. Mineral leases permits, and licenses covering lands within national forest wilderness areas designated by this Act shall contain such reasonable stipulations as may be prescribed by the Secretary of Agriculture for the protection of the wilderness character of the land consistent with the use of the land for the purposes for which they are leased, permitted, or licensed. Subject to valid rights then existing, effective January 1, 1984, the minerals in lands designated by this Act as wilderness areas are withdrawn from all forms of appropriation under the mining laws and from disposition under all laws pertaining to mineral leasing and all amendments thereto.

Water resources. (4) Within wilderness areas in the national forests designated by this Act, (1) the President may, within a specific area and in accordance with such regulations as he may deem desirable, authorize prospecting for water resources, the establishment and maintenance of reservoirs, water conservation works, power projects, transmission lines, and other facilities needed in the public interest, including the road construction and maintenance essential to development and use thereof, upon his determination that such use or uses in the specific area will better serve the interests of the United States and the people thereof than will its denial; and (2) the grazing of livestock, where established prior to the effective date of this Act, shall be permitted to continue subject to such reasonable regulations as are deemed necessary by the Secretary of Agriculture.

(5) Other provisions of this Act to the contrary notwithstanding, the management of the Boundary Waters Canoe Area, formerly designated as the Superior, Little Indian Sioux, and Caribou Roadless Areas, in the Superior National Forest, Minnesota, shall be in accordance with regulations established by the Secretary of Agriculture in accordance with the general purpose of maintaining, without unnecessary restrictions on other uses, including that of timber, the primitive character of the area, particularly in the vicinity of lakes, streams, and portages: *Provided,* That nothing in this Act shall preclude the continuance within the area of any already established use of motorboats.

(6) Commercial services may be performed within the wilderness areas designated by this Act to the extent necessary for activities which are proper for realizing the recreational or other wilderness purposes of the areas.

(7) Nothing in this Act shall constitute an express or implied claim or denial on the part of the Federal Government as to exemption from State water laws.

(8) Nothing in this Act shall be construed as affecting the jurisdiction or responsibilities of the several States with respect to wildlife and fish in the national forests.

State and Private Lands Within Wilderness Areas

Section 5. (a) In any case where State-owned or privately owned land is completely surrounded by national forest lands within areas designated by this Act as wilderness, such State or private owner shall be given such rights as may be necessary to assure adequate access to such State-owned or privately owned land by such State or private owner and their successors in interest, or the

State-owned land or privately owned land shall be exchanged for federally owned land in the same State of approximately equal value under authorities available to the Secretary of Agriculture:

Transfer, restriction. Provided, however, That the United States shall not transfer to a State or private owner any mineral interests unless the State or private owner relinquishes or causes to be relinquished to the United States the mineral interest in the surrounded land.

(b) In any case where valid mining claims or other valid occupancies are wholly within a designated national forest wilderness area, the Secretary of Agriculture shall, by reasonable regulations consistent with the preservation of the area as wilderness, permit ingress and egress to such surrounded areas by means which have been or are being customarily enjoyed with respect to other such areas similarly situated.

Acquisition. (c) Subject to the appropriation of funds by Congress, the Secretary of Agriculture is authorized to acquire privately owned land within the perimeter of any area designated by this Act as wilderness if (1) the owner concurs in such acquisition or (2) the acquisition is specifically authorized by Congress.

Gifts, Bequests, and Contributions

Section 6. (a) The Secretary of Agriculture may accept gifts or bequests of land within wilderness areas designated by this Act for preservation as wilderness. The Secretary of Agriculture may also accept gifts or bequests of land adjacent to wilderness areas designated by this Act for preservation as wilderness if he had given sixty days advance notice thereof to the President of the Senate and the Speaker of the House of Representatives. Land accepted by the Secretary of Agriculture under this section shall become part of the wilderness area involved. Regulations with regard to any such land may be in accordance with such agreements, consistent with the policy of this Act, as are made at the time of such gift, or such conditions, consistent with such policy, as may be included in, and accepted with, such bequest.

(b) The Secretary of Agriculture or the Secretary of the Interior is authorized to accept private contributions and gifts to be used to further the purposes of this Act.

Annual Reports

Section 7. At the opening of each session of Congress, the Secretaries of Agriculture and Interior shall jointly report to the President for transmission to Congress on the status of the wilderness system, including a list and descriptions of the areas in the system, regulations in effect, and other pertinent information, together with any recommendations they may care to make.

Appendix C—The Bureau of Land Management Wilderness Review Process

To carry out the wilderness mandate of FLPMA, the Bureau of Land Management has developed a wilderness review process with three phases: Inventory, study, and reporting to Congress.

Inventory: In the wilderness inventory, the BLM examined the public lands, with public participation, and identified those areas that meet the definition of wilderness established by Congress. These areas were identified as wilderness study areas (WSA's). The inventory was completed by November 14, 1980, in the contiguous Western States, resulting in identification of approximately 24 million acres as wilderness study areas and in elimination from further wilderness consideration of approximately 150 million acres.

Study: Each wilderness study area will be studied through the BLM resource management planning system to analyze all values, resources, and uses within the area. The findings of the study, including public participation, determine whether the area will be recommended as suitable or nonsuitable for designation as wilderness. In practice, determining an area's "suitability or nonsuitability . . . for preservation as wilderness," in the words of FLPMA, means determining whether the area is more suitable for wilderness designation or more suitable for other uses.

Reporting: When the study has been completed, a recommendation as to whether the wilderness study area is suitable or nonsuitable for designation as wilderness is submitted through the Secretary of the Interior and the President to Congress. A mineral survey will be conducted by the U.S. Geological Survey and Bureau of Mines for any area recommended as suitable. Reports on all wilderness study areas must reach the President no later than October 21, 1991, and reach Congress by October 21, 1993. Only Congress can designate an area as wilderness.

Appendix D—Definitions

Some of the terms used in this document have specific meanings and are defined as follows:

Domestic Livestock: Aninals kept and managed for their products or for breeding purposes, not visitors' animals or administrative livestock.

FLPMA: The Federal Land Policy and Management Act of 1976 (Public Law 94–579, 90 Stat. 2743, 43 U.S.C. 1701).

Livestock Grazing Operations: Those operations under permit where the primary purpose is the grazing of livestock for the production of food and fiber. Includes pack and saddle stock used in conjunction with such operations.

Mechanized Transport: Includes any wheeled contrivance which constitutes a mechanical advantage to the user and which is powered by a living or nonliving source contained on, within, or attached thereto; such as bicycles, deer carriers, and wagons.

Motorized Equipment: Machines incorporating a motor, engine, or other nonliving power source to accomplish a task. Includes such machines as aircraft, hovercraft, motorboats, automobiles, motor scooters, snowmobiles, bulldozers, duffel carriers, chainsaws, rock drills, and generators. (For administrative guidance, this term is not interpreted to include such things as electric shavers or toothbrushes, portable radios or televisions, Geiger counters, wristwatches, gas stoves, flashlights, and other such small contrivances.)

Motor Vehicle: A device for transporting personnel or material, that incorporates a motor or engine of any type for propulsion, with wheels, tracks, skids, skis, air cushion, or other contrivance, for traveling on, over, through or adjacent to land and/or water.

Multiple Use: ". . . the management of the public lands and their various resource values so that they are utilized in the combination that will best meet the present and future needs of the American people; making the most judicious use of the land for some or all of these resources or related services over areas large enough to provide sufficient latitude for periodic adjustments in use to conform to changing needs and conditions; the use of some lands for less than all of the resources; a combination of balanced and diverse resource uses that take into account the long-term needs of future generations for renewable and nonrenewable resources, including, but not limited to, recreation, range, timber, minerals, watershed, wildlife and fish, and natural scenic, scientific and historical values; and harmonious and coordinated management of the various resources without permanent impairment of the productivity of the land and the quality of the environment with consideration being given to the relative values of the resources and not necessarily to the combination of uses that will give the greatest economic return or the greatest unit output." (From section 103, FLPMA)

Naturalized: Refers to a non-native species of plant or animal which is well established in the area as a part of the wilderness ecosystem and which sustains its population without requiring human assistance (such as stocking or reseeding). Non-native species that are not in equilibrium with the wilderness ecosystem (such as those which are

increasing their population and displacing native species) are not considered naturalized.

Naturalness: Refers to an area which "generally appears to have been affected primarily by the forces of nature, with the imprint of man's work substantially unnoticeable." (From section 2(c), Wilderness Act.)

Outstanding: Standing out among others of its kind; conspicious; prominent: Superior to others of its kind; distinguished; excellent.

Permanent Improvement: A manmade structural or nonstructural improvement which will remain at a particular location for more than one field season—as differentiated from temporary structures; includes such items as toilet buildings, trails, cabins, signs, fences, vegetative cover manipulation, shelters, and fire grills.

Primitive and Unconfined Recreation: Nonmotorized and nondeveloped types of outdoor recreational activities.

Rangeland Improvements: Any structural or nonstructural improvement which directly affects or supports the use of the forage resource by domestic livestock, such as fences, line cabins, water wells and lines, and stock tanks.

Recreational Livestock: Horses, mules, or burros used for recreational purposes to transport people and/or their supplies.

Solitude: The state of being alone or remote from habitations; isolation. A lonely, unfrequented, or secluded place.

Temporary Structure: Any structure which can be readily and completely dismantled and removed from the site between periods of actual use. It may or may not be authroized at the same site season to season or year to year.

Unnecessary or Undue Degradation: Surface disturbance greater than what would normally result when an activity is being accomplished by a prudent operator in usual, customary, and proficient operations of similar character and taking into consideration the effects of operations on other resources and land uses, including those resources and uses outside the area of operations. Failure to initiate and complete reasonable mitigation measures, including reclamation of disturbed areas or creation of a nuisance may constitute unnecessary or undue degradation. Failure to comply with applicable environmental protection statutes and regulations thereunder will constitute unnecessary or undue degradation.

Visitor Use: Visitor use of the wilderness resource for inspiration, stimulation, solitude, relaxation, education, pleasure, or satisfaction.

Wilderness: The definition contained in section 2(c) of the Wilderness Act of 1964 (78 Stat. 891). (See Appendix B for its full text).

Wilderness Area: An area formally designated by Act of Congress as part of the National Wilderness Preservation System.

Wilderness Characteristics: The definition contained in section 2(c) of the Wilderness Act of 1964. (78 Stat. 891) (See Appendix B for its full text).

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Friday
January 16, 1981

Part XIII

Department of Energy

Commercial and Apartment Conservation Service Program

DEPARTMENT OF ENERGY

10 CFR Part 458

[Docket No. CAS-RM-80-125]

Commercial and Apartment Conservation Service Program; Proposed Rulemaking and Public Hearing

AGENCY: Department of Energy.

ACTION: Notice of Proposed Rulemaking and Public Hearings.

SUMMARY: The Department of Energy (DOE) proposes to implement the Commercial and Apartment Conservation Service (CACS) Program pursuant to Title VII of the National Energy Conservation Policy Act (NECPA), Pub. L. No. 95-619, as amended by the Energy Security Act (ESA), Pub. L. No. 96-294. The purpose of the CACS Program is to encourage the installation of energy conservation measures and the adoption of energy conserving operation and maintenance procedures in existing small commercial buildings and large (five or more units) multifamily dwellings. Large gas and electric utilities are required, and building heating suppliers may volunteer, to offer and to provide, upon request, energy audits of commercial buildings and multifamily dwellings. The State may submit State Plans to DOE. The State Plans would require large utilities to participate and could include, in the Governor's discretion, nonregulated utilities (e.g., municipalities and cooperatives) and/or building heating suppliers. If a State chooses not to submit a plan, DOE would require covered utilities in the State to carry out a CACS Program for their customers. When a nonregulated utility is not included in a State Plan it is required to submit its own plan for the CACS Program.

The proposed rule sets out the requirements for State Plans and Nonregulated Utility Plans. In addition, it addresses procedures that must be followed in order for a utility to be exempted by the State Regulatory Authority from some requirements of the State Plan. The proposed rule describes the situations and terms under which the Federal Standby Authority would be exercised.

DOE also proposes in this rulemaking amendments to the RCS Program regulations (10 CFR 456) to extend coverage of the RCS Program to include residential units in residential buildings with five or more units which have neither central heating nor central cooling.

DATES: Written comments must be received no later than March 17, 1981, in order to ensure their consideration.

Public hearings will be held in three cities, beginning at 9:00 a.m. local time on the dates and at the locations specified below: February 19, 1981 in Washington, D.C., February 23 and 24, 1981 in San Francisco, California, and February 26, 1981 in Kansas City, Missouri. Requests to speak must be received no later than 4:00 p.m. on February 5, 1981 for Washington, D.C.; February 10, 1981 for San Francisco, CA; February 12, 1981 for Kansas City, Missouri.

ADDRESSES: Public hearings will be held at the following locations: Room 2105, 2000 M Street, N.W., Washington, D.C. 20036; Ramada Inn/Fisherman's Wharf, Crocker-Hopkins Room 509 Bay Street, San Francisco, California 94133; Federal Office Building, 911 Walnut Street, Room 302, Kansas City, Missouri 64106.

All written comments and requests to speak at the Washington, D.C. hearing should be addressed to Carol A. Snipes (Hearing Procedures), U.S. Department of Energy, Office of Conservation and Solar Energy, Office of Hearings and Dockets, Mail Station 6B-025, 1000 Independence Avenue, S.W., Washington, D.C. 20585 (202-252-9319).

Requests to speak at the San Francisco, California hearing should be addressed to Doris Harris, DOE Regional Office, Region IX, 333 Market Street, San Francisco, California 94105 (415-784-7027).

Requests to speak at the Kansas City, Missouri hearing should be addressed to Dottie Doll, DOE Regional Office, Region VII, 324 East 11th Street, Kansas City, Missouri 64106 (816-374-5533).

FOR FURTHER INFORMATION CONTACT:
James R. Tanck, Director, Building Conservation Services Division, Office of Conservation and Solar Energy, Department of Energy, 1000 Independence Avenue SW., Room GH-068, Washington, D.C. 20585, (202) 252-9161
Laura Rockwood, Office of General Counsel, Department of Energy, 1000 Independence Avenue SW., Room 6B-128, Washington, D.C. 20585, (202) 252-9519.

SUPPLEMENTARY INFORMATION:

I. Introduction.
II. Part 456—Amendments to the Residential Conservation Service Program.
III. Part 458, Subpart A—General Provisions and Definitions.
IV. Part 458, Subpart B—Preparation, Submission, and Approval of State Plans.
V. Part 458, Subpart C—Preparation, Submission, and Approval of Nonregulated Utility Plans.
VI. Part 458, Subpart D—Energy Conservation Services for Commercial Buildings.
VII. Part 458, Subpart E—Energy Conservation Services for Multifamily Dwellings.
VIII. Part 458, Subpart F—Federal Standby Planning Authority.
IX. Appendix—Program Measures by Climate and Category of Building.
X. Draft Regulatory Analysis and Urban and Community Impact Statement.
XI. Draft Supplement to the Environmental Impact Statement for the Residential Conservation Service Program.
XII. Consultation with Other Federal Agencies.
XIII. Contractor Contributions to Rulemaking.
XIV. Comment and Hearing Procedures.

I. Introduction

The Department of Energy (DOE) proposes to amend Title 10 CFR, Part 456, the regulations governing the RCS Program. The purpose of the amendment is to extend coverage of the RCS Program to include residential units in multifamily dwellings with 5 units or more which do not have central heating or cooling facilities (units in buildings with central heating or cooling are covered by the CACS Program). Beginning January 1, 1982, a newly eligible customer under the expanded RCS Program would be able to request the audit described in Section 456.307, and receive all the services available under the RCS Program, or request the audit described in Section 458.503(b) of the CACS proposed rule, and not receive the additional RCS Program services. DOE feels that in many cases the audit described in the CACS Program would be more appropriate for large residential buildings than would the audit described in the RCS Program. Furthermore, the additional RCS Program services often may not be necessary for the owners of larger residential buildings.

DOE also proposes to amend Chapter II of Title 10 CFR by adding a new Part 458. The proposed regulation will fulfill the requirements of Title VII of the National Energy Conservation Policy Act (NECPA), Pub. L. No. 95-619, as amended by the Energy Security Act (ESA), Pub. L. No. 96-294. The proposed regulation covers the Commercial and Apartment Conservation Service (CACS) Program. The program is aimed at aiding small businesses and apartment building owners in achieving energy savings that are cost effective. Since information is costly to obtain, and small businesses often lack the time and resources necessary to obtain and analyze such information, the utilities can play a useful role in making this

information available and in providing assistance.

DOE recognizes that the CACS Program as legislated is principally an information program that does not require any specific actions that will conserve energy. It will aid energy conservation only to the extent that the owners and tenants of commercial and residential buildings are stimulated to implement conservation measures and procedures. Thus, the impact of the program depends largely upon the extent to which owners and tenants are made aware of potential energy savings, and of the cost effectiveness of conservation measures and procedures. The utilities have the leading role in disseminating information and encouraging customer audit requests; the success of the program depends largely upon the enthusiasm with which the utility carries out the program in obtaining a high response rate for customers with high potentials for energy savings. DOE feels that the States and utilities are best able to judge how to reach the target groups in an effective manner within the local environment, and has proposed the rules so as to allow considerable latitude for innovation on the part of the State and the utilities.

In view of the above, DOE feels that emphasis should be placed throughout the program on actions that will facilitate the dissemination of information, and encourage a substantial response rate to the audit offer. Obviously, the success of the CACS Program will be measured by the extent to which it achieves the more efficient use of energy in the commercial buildings and multifamily dwellings sectors.

II. Part 456—Amendments to the RCS Program

A. Introduction

Title II of NECPA originally defined a covered residential building as a building with one to four dwelling units which has a heating or cooling system. The ESA amended Title II of NECPA extending coverage, after January 1, 1982, to residential buildings that contain five or more dwelling units unless such building contains a central heating or cooling system. (Those buildings containing a central heating or cooling system would be covered by the CACS Program.) Tenants and owners of such residential buildings may request the audit described in § 456.307, and receive all the services and benefits prescribed under the RCS Program. DOE proposes to allow tenants and owners to request, in the alternative, the audit described in Section 458.503(b), and to forego the additional RCS Program services and benefits. All utilities covered by the RCS Program would be covered by these proposed amendments to the RCS Program.

B. Definition of Residential Building

The proposed amended definition of the term "residential buildings" is based on the definition contained in Section 541 of the Energy Security Act. The definition, as amended, extends coverage of the RCS Program to residential buildings containing five or more dwelling units, unless such building is centrally heated, centrally cooled, or both. Buildings that are centrally heated or cooled are covered by the proposed CACS Program.

Either tenants or owners of residential buildings may request an audit and receive all the RCS Program services and benefits if such tenant or owner receives a fuel bill. DOE recognizes that in most cases tenants will not be able to install measures unless the building owner approves such installations. DOE has considered adding a provision to the proposed amendment requiring that tenants receive written permission from their landlord, indicating that the tenant is allowed to make such installations, before the utility is required to provide arranging services. DOE seeks comment concerning the necessity of such a requirement.

DOE also recognizes that several eligible customers in the same residential building may request audits at different times, thus placing a burden on utilities. DOE seeks comments or how to alleviate this burden while ensuring that eligible customers receive the benefits to which they are entitled.

C. Program Announcement

The proposed amendment would add a new § 456.320 to require utilities and participating home heating suppliers to include a special statement in all Program Announcements distributed to eligible customers in residential buildings containing five or more units. This statement would explain that an eligible customer has a choice between obtaining the RCS Program audit and all the RCS Program services and benefits, or obtaining the CACS Program audit. Nothing is intended to prohibit a utility company that so chooses to offer RCS-type services to customers receiving a CACS audit. The statement must also describe the differences between the two types of audits and services provided within each program. It must be clearly stated that election of one audit and its program services shall preclude the customer from future requests for the other program audit and its services.

Utilities and States could, of course, provide the complete range of RCS services to eligible customers in residential buildings containing five of more units who elect the CACS Program audit. However, this would create additional requirements for both the utility (i.e., arranging) and the State (i.e., listing), and therefore is not required by DOE. Comment is sought on this option.

D. Requirements for Program Audit

The proposed amendment would add a new § 456.321, which would require utilities and participating home heating suppliers to provide to eligible customers in residential buildings containing five or more units, upon request, either an RCS type audit and all the attendant services and benefits, or a CACS type audit.

DOE believes that an RCS audit might be less helpful to an eligible residential customer than would the CACS audit because the RCS audit covers measures applicable principally to single family residences. The CACS audit, on the other hand, is geared to the type of building (5 or more units) owned or occupied by the eligible customer covered by this proposed rule. Consequently, a CACS audit would provide more appropriate information.

Since Title VII of NECPA limits a customer's entitlement under the CACS Program to an energy audit, the additional services and benefits of the RCS Program are not available. As a result, the CACS audit, although more relevant to the large residential buildings, does not carry with it the advantages of extra services (i.e., arranging installation) or benefits (i.e., warranties and standards) provided under RCS.

Consequently, DOE has proposed that the eligible customer in a large residential building have a choice of audit based upon his or her judgment of the relative value of a more relevant audit (CACS audit) versus more services and benefits (RCS audit).

The major alternative would be to provide all RCS services and benefits and a CACS audit. This alternative would be particularly burdensome to States and utilities and would create substantial additional requirements in DOE's regulations. For example: States would be required to develop lists of suppliers, contractors, and lenders for the added measures applicable to the multifamily dwellings covered by the CACS Program, and would be required to provide redress, post-installation inspections, etc.; installers and contractors would have to follow DOE-

developed standards for materials and installations; and utilities would be required to provide the lists, arrange for installation and financing, etc. The additional regulatory burden of these requirements on States, utilities, suppliers, and contractors would be substantial. DOE recognizes this burden and in keeping with the requirement that the amendments contained in the Energy Security Act should not delay or impair implementation of the RCS Program, has decided against this alternative.

DOE is concerned that the eligible customers receive useful information and services, and seeks comment on the proposed approach and other alternatives to that approach.

III. Part 458, Subpart A–General Provisions and Definitions

Section 711 of NECPA states that "this program shall apply to any public utility for which coverage is provided under Section 211." DOE shall publish a list of covered utilities in the Federal Register before the beginning of each calendar year, which list shall apply equally to the RCS Program and to the CACS Program. It is made clear in Section 458.102(c) of the proposed rule that a utility which meets the definition of a covered utility is fully subject to the requirements of these rules and the applicable plan whether or not it is included on the list published in accordance with this provision. Inclusion or noninclusion on such list is not determinative of a utility's coverage.

This subpart also contains a provision which reflects the Secretary's authority to enforce the provisions of the CACS Program by petitioning the appropriate U.S. district court to enjoin any person from violating any provision, plan, or order under the CACS Program. Section 741(c) of NECPA. Although the statutory provision for this authority is contained under the section entitled "Federal Standby Authority," both the wording of Section 741(c) and the language of the Conference Report specifically state that the Secretary's authority to request injunctive relief extends to enforcing any provision of the regulations and not just to enforcing the Federal standby authority. The word "person" is not defined in the statute nor explained in the Conference Report. DOE interprets the word "person" to include any utility company, supplier, installer, contractor, financial institution, and State or municipal agency. We believe this is consistent with the statutory purpose of Federal standby authority and the need to ensure appropriate redress of violations of DOE regulations.

Section 710 of NECPA states that the definitions in Section 210 of NECPA are applicable to this program except as otherwise provided in Section 710. Several of the definitions in Section 210 are clearly not applicable to this program and have been deleted (i.e., Class B energy audit, measures warranty, residential building, and useful life). Nine definitions are given in Section 710 of NECPA, the applicable definitions of Section 210 of NECPA, and contains definitions of other terms used in the proposed rule. Many of these other definitions are identical to those contained in the RCS Program final rule (Part 456), and are listed in this proposed rule for convenience. Specific definitions are provided for the various "commercial energy conservation measures" listed in Section 710(b)(5) of NECPA, as well as for the conservation measures added by DOE. The term "energy efficient improvements," as defined in Section 710(b)(4) of NECPA, has been replaced by the term "energy conserving operation and maintenance procedures" to more clearly describe for a building owner the types of actions included. Specific definitions for each of the "energy conserving operation and maintenance procedures" recommended by DOE are provided. These include many of the practices defined in the RCS Program, as well as new procedures applicable to commercial buildings and multifamily dwellings. A number of practices, because of their cost implications in apartment buildings, are included as measures.

No discussion is provided here of the definitions contained in this part that are also contained in the final rule for the RCS Program.

The term "building heating supplier" means any person engaged in the business of providing No. 2, No. 4, or No. 6 heating oil, kerosene, or propane to owners or tenants of commercial buildings, or selling No. 2, No. 4, or No. 6 heating oil, kerosene, or propane to owners of multifamily dwellings.

The term "Commercial Announcement" means the brochure or letter which must be sent to each eligible commercial customer to announce the availability of an audit and provide information on the energy conservation and energy conserving operation and maintenance procedures. The term "Apartment Announcement" means the brochure or letter which must be sent to each eligible multifamily dwelling customer to announce the availability of an audit and provide information on the energy conservation and energy conserving operation and maintenance procedures. The more general term "program information" refers to all the information activities undertaken by a utility or building heating supplier related to the CACS Program. This includes the Commercial and Apartment Announcements and the Tenant's Energy Conservation Information Package.

The definition of "covered utility" is based on Section 211 of NECPA, and is identical to the definition given for this term in the RCS Program final rule. Coverage is limited to large gas and electric utilities.

DOE recognizes that the defintions of the terms "commercial building" and "eligible commercial customer" contained in Section 710(b) of NECPA, are subject to a variety of interpretations. In arriving at the definitions presented in the proposed rule, DOE carefully considered the language of the law, the intent of Congress as reflected in the committee reports, and the problems utilities might have in indentifying eligible customers.

The statutory definition of "commercial building" provides that the building must have been completed by June 30, 1980; the building is primarily used for carrying out a business (including nonprofit business) or for carrying out the activities of a State or local government; the building is not used primarily for the manufacture or production of products, raw material, or agricultural commodities; and it is not a Federal building. Finally, the average monthly usage of energy for 1980 for the building must be less than 4,000 kilowatt hours of electricity or 1,000 therms of natural gas or the Btu equivalent of other fuels. The Btu equivalent of 1,000 therms of natural gas is 100 million Btu.

DOE would define the term commercial building also as a roofed and walled structure. This would include, for example, the separate stores in a building containing several stores such as a shopping center, but would not include separate establishments in an office building. The term building is not defined in Title VII of NECPA. DOE feels it is appropriate to clarify the term building by including in the definition of commercial building, the definition used by the DOE Energy Information Administration.

The definition of "eligible commercial customer" for a public utility identifies the owner or tenant of a commercial building to which that public utility supplies gas or electricity as being potentially eligible for the program. This definition permits tenants in master-metered buildings to be eligible; it is not necessary to pay a utility bill directly to be considered an eligible customer. In this case, the burden is on the utility to obtain names of eligible customers who are not directly metered by the utility.

Similarly, an eligible commercial customer for a building heating supplier is the owner or tenant of a commercial building to which that building heating supplier supplies No. 2, No. 4, or No. 6 heating oil, kerosene, or propane.

The definition given in the proposed rule for the term "eligible multifamily dwelling customer" is identical to the definition contained in Section 710(b) of NECPA. Only the owner of a multifamily dwelling is eligible to request an audit. DOE considered allowing tenants to request audits of their individual dwelling units, but rejected this approach as not being cost effective and not being within the scope of the law.

The definition of the term "multifamily dwelling" is identical to the definition contained in Section 710(b)(3) of NECPA.

The two categories of "energy conservation measures" and "renewable resource measures" have been included in the proposed rule. DOE has attempted to maintain the same format for the proposed rule as for the existing RCS Program. Thus, each of the categories is similar to those in the RCS Program. However, while the renewable resource measures remain the same for the Title VII program, additional energy conservation measures and applicability criteria have been included for the proposed rule. The changes and rationale are discussed in the following paragraphs.

The proposed rule identifies twenty-two "energy conservation measures" for commercial and multifamily buildings. The list includes all of the energy conservation measures specified by the existing RCS program plus the additional measures specified by the Energy Security Act. The additional measures were required because large multifamily buildings and small commercial facilities may have substantially different energy requirements than smaller residential buildings. DOE specifically requests that commenters address the practicality of the applicability criteria with respect to the measures.

The lighting system in a smaller residential structure is considerably less energy intensive and less sophisticated than those commonly found in multifamily and commercial buildings. The potential for saving energy in lighting operations in the larger buildings is commensurately greater and therefore requires more attention. DOE believes that lighting systems will be similar in many building types and climate zones. Therefore, all of the eligible buildings would receive a lighting audit, subject to the building meeting the lighting applicability criteria.

Automatic energy control systems have been defined broadly to include a wide range of devices that regulate lighting, heating, cooling or ventilating systems. These devices reduce energy costs by providing automatic regulation based on time, temperature or humidity. Such equipment has been shown to reduce energy usage by allowing for more precise equipment control than is likely to occur manually. Examples are timers for lighting systems, temperature and humidity sensors for outside air intake, and outside temperature sensors for boiler water temperature control. The definition also includes programmable equipment, such as computerized energy management systems, control of ventilation on the basis of occupancy, electrical demand control equipment, or other types. Such equipment is often valuable in small commercial property, since there is not likely to be an individual assigned to controlling lighting, heating, and ventilating systems carefully. Automatic devices may therefore prove valuable.

Heating systems in multifamily facilities may be quite large as may those serving several small commercial facilities. In larger heating systems, modifications short of complete replacement are available that are more effective for reducing energy costs than with smaller systems. Efficiency of such systems can be increased by increasing heat exchanger surface areas; by adding devices to increase turbulence of hot gases, thereby increasing the residence time of the gases in the boiler; by recycling hot gases to burn remaining hydrocarbons; and by allowing controlled condensation of steam within the heat exchanger, thereby recovering the latent heat of vaporization. Consequently, DOE has broadened this definition for use in the CACS from that used in RCS.

Energy recovery systems are of value where there exists a source of energy which is presently disposed of into the atmosphere or into waste water, and where a building energy requirement exists which can be met by using this waste energy. Such opportunities are more likely to be available in facilities with multiple energy uses, such as refrigeration, ventilation, heating, hot water, and cooking. These activities are most often valuable in larger facilities. Therefore, this measure is included although only applicable to a portion of the covered facilities.

DOE recognizes that cogeneration systems have the potential to significantly reduce both energy consumption and environmental pollutants. For some small commercial facilities and multifamily buildings, there are opportunities to use cogeneration systems. DOE has attempted to leave the definition of a cogeneration system as broad as possible while at the same time prescribing energy demand limitations. DOE believes that this approach gives the auditor the requisite information necessary to determine applicability, while at the same time not excluding products currently available in the market place.

In the proposed rule DOE has retained all of the categories of "renewable resource measures" and all of the applicability criteria from the original RCS Program. DOE believes that the renewable resource measure will have similar applicability in the Title VII program. All of the identified measures have reached commercial acceptance. Retrofit domestic hot water systems, Trombe walls, and other passive applications are increasingly being installed in commercial facilities. Wind systems, combined active solar space heating and domestic hot water systems, and solar swimming pool heaters are also being installed in multifamily and commercial buildings with greater frequency. DOE believes that adoption of renewable resource measures will often result in substantial fossil fuel energy savings while at the same time being reasonably economically feasible.

DOE solicits comments on both the inclusion of renewable resource measures as a general category and on each specific measure.

The use of the term "energy conserving operation and maintenance procedures" is similar to the term energy conserving practices in Title II of NECPA, except for two additions. DOE believes that a building energy use monitoring list will be a useful item for a building manager and that the auditor is capable of providing the manager with such a list. DOE also believes that every building should receive a visual inspection of its steam distribution lines to check for obvious abnormalities, including steam trap failures and poorly functioning condensate lines. The terminology was changed from "practices" to "operation and maintenance procedures" to more clearly describe for a building owner the types of actions included.

DOE has attempted, buy use of the term "estimates based on typical practice," to define the minimum effort required of the auditor. Audit results which estimate energy savings and installation costs based on typical practice are perhaps the cheapest and quickest audit tool which retains a

degree of end-use accuracy. DOE believes that this approach is the minimum level of effort which will lead to adoption of energy conservation measures or renewable level of effort which will lead to adoption of energy conservation measures or renewable resource measures on the part of the building owner. The utility is encouraged to provide greater analysis if the utility believes it is necessary.

The definition of "participating building heating supplier" reflects the voluntary participation of building heating suppliers and the Governor's choice whether to include building heating suppliers in the State Plan.

The term "program measures" means those energy conservation or renewable resource measures which have been deemed appropriate by climatic region and building category, and which are found in the Appendix to this part. This listing is similar to the list used for the RCS Program. In addition, it includes new measures that are required under the CACS Program.

The term "State measures" means an energy conservation measure that has been approved by the Secretary in the State Plan pursuant to §§ 458.404 and 458.504 of the proposed rule.

The term "Tenant's Energy Conservation Information Package" means the information package required to be provided by a covered utility or participating building heating supplier to each owner of a multifamily dwelling once an audit has been requested by the owner of such dwelling. Prior to receiving the audit the owner must agree to distribute an Information Package to each tenant in the building.

IV. Part 458, Subpart B—Preparation, Submission and Approval of State Plans

A. Scope

This subpart identifies the responsibilities of the States and the Tennessee Valley Authority (TVA) in the preparation and submission of State Plans, and the procedures for approval of the State Plan by the Secretary. The authority for this subpart is derived from Section 721(a) of NECPA. Every attempt has been made to ensure that this Subpart of the proposed rule is consistent with the corresponding Subpart B of the final rule for the RCS Program.

B. Initial Submission, Lead Agency and Coverage of State Plan.

Section 458.202 of the proposed rule requires that, if a State intends to submit a State Plan, then the Governor or State agency specifically authorized by State law to submit a State Plan must inform the Secretary within 30 days of the promulgation of the final rules of the name and address of the Agency which will have principal responsibility for the development of the State Plan. This provision would enable the Secretary to provide technical assistance to the appropriate persons in the State, and inform the Secretary of the State's intentions. DOE has not proposed to require that the Lead Agency for this program be the same as the Lead Agency for the RCS Program. We invite comments on this decision, particularly as it will affect coordination between the two programs.

The Governor would be required to notify the Secretary, within 30 days of promulgation of the final rules, of which nonregulated covered utilities, if any, will be subject to the State Plan. Within 90 days of promulgation of the final rules, the Governor would be required to notify the Secretary whether or not any building heating suppliers will be included in the State Plan. These requirements parallel those in the RCS Program.

C. Coordination Requirements

Section 458.203 proposes three requirements for coordination in the development of the State Plan. Section 458.203(a) would require the Lead Agency to coordinate the Plan with neighboring States which have jurisdiction over any covered utility or participating building heating supplier subject to the Plan. Section 458.203(b) would require the Lead Agency, if such agency is not the State Regulatory Authority, to provide a copy of the Plan to such Authority 30 days prior to the public hearing required by § 458.204. In every State, regardless of who is the Lead Agency, the State Regulatory Authority will have a significant role to play in the implementation of utility programs. The purpose of § 458.203(b) is to emphasize DOE's interest in cooperation between State agencies in the development of the Plan. Section 458.203(c) would require States to coordinate their CACS Program with their RCS Program and with the State Plans developed under Section 367(b)(1) of the Energy Policy and Conservation Act (10 CFR Part 420, State Energy Conservation Plans). Such coordination must not have the effect of delaying implementation of the RCS Program. This provision is based on § 712(c) of NECPA, which instructs DOE to assure that the Title VII rules are coordinated with these other programs and requires that nothing in the Title VII rules will have the effect of delaying implementation of the RCS Program.

D. Notice, Comment, and Public Hearing

Section 458.204 reflects the provisions of Section 722(4) of NECPA, which requires that no State Plan shall be approved by the Secretary unless such plan is adopted after notice and public hearing. DOE expects that States will consult very early with utilities, building heating suppliers, consumers, Public Utility Commissions and others in the development of the Plan. Because NECPA allows only 180 days for the development of the State Plan, we decided not to include in the proposed Rule any prescription of the specific groups to be consulted or the schedule for their consultation.

E. Procedures for Submission and Approval of State Plans

Section 458.205 contains the proposed schedule for development, submission, and approval or disapproval of the State Plan. This section repeats the requirements of Section 721(a) of NECPA, and parallels the requirements contained in the RCS Program final rule. Ten copies of the proposed State Plan would be required to be submitted to the Secretary within 180 days of the promulgation of the final rule. If the plan were to meet the necessary requirements, it would be approved within 90 days of submittal. Within 30 days of approval of the State Plan, the Lead Agency would be required by Section 458.205(c) to notify the covered utilities and participating building heating suppliers of the approval of the State Plan by the Secretary, to direct their compliance with it and to certify their compliance to the Secretary within 13 months.

If the State Plan were not to meet the criteria of Subpart B, it would be disapproved within 90 days of submission, and the reasons for disapproval would be specified in writing. The Governor or Lead Agency would be allowed to submit another proposed State Plan within 60 days.

Section 458.205(e) provides for States to submit amendments to the State Plan to the Secretary. Such amendments shall be considered according to the same procedures and schedule as the original Plan, except that the Secretary may waive any of the submission requirements for amendments that would not have a substantial impact on large numbers of individuals or businesses.

F. Building Heating Suppliers

Section 721(c) of NECPA gives a Governor discretion to submit a plan applicable to building heating suppliers. Section 458.202(c), as proposed, requires

the Governor, within 90 days of promulgation of the final rules, to inform the Secretary whether building heating suppliers will be included in the State Plan. To give effect to the Congressional intent to encourage a unified State effort, Section 456.206 would require that, if the Governor elects to submit a plan for building heating suppliers, the plan must be part of the State Plan and be submitted according to the same procedures for submission of the State Plan. The mechanism for coordinating this plan with other elements of the State Plan would be left to the discretion of the Governor.

G. Special Provisions for TVA

NECPA gives the same authority to the TVA, with respect to those utilities over which TVA has ratemaking authority, as it does to both a Governor and a State Regulatory Authority. This creates an overlap of jurisdictions in those States where the TVA-regulated utilities are located. Section 456.207 contains provisions necessary to clarify the role of the TVA. In particular, DOE expects, the TVA to coordinate the development of its Plan closely with the States in which its utilities are located. In addition, the TVA Plan is not to cover building heating suppliers. We seek comment on additional provisions which may be required to reduce the potential for conflict or duplication of such Plans.

H. Special Procedures for Exemptions

Section 456.208 proposes provisions for exemption from the CACS Program. The statutory basis for these exemption provisions is given in Section 722 of NECPA. The major issues entailed in these exemption provisions stem from the act that Section 722 of NECPA leaves several questions unanswered. (Related issues result from the fact that other sections of NECPA give very specific treatment to concepts involved in the meaning of Section 722.)

Section 722 states, in essence, that no energy conservation plan (State Plan or Nonregulated Utility Plan) shall be approved by the Secretary unless it requires each regulated utility to implement a CACS Program, except that no such program "may be required to apply to all" of the eligible buildings in its service area if, within six months of the date of these rules, the State Regulatory Authority or other regulatory body having ratemaking authority "determines that the inclusion of such additional buildings or dwellings would significantly impair such utility's ability to carry out the RCS Program under Title II of NECPA or to provide utility service to its customers."

The major issues inherent in this section are:

(1) Is this intended to allow a partial or a total exemption from program requirements?

(2) Is this intended to be a permanent or a temporary exemption from program requirements?

(3) What is the definition of a "significant impairment" of a utility's ability to carry out the RCS program or to provide utility service?

(4) What is DOE's role in this exemption process? Does exemption authority belong solely to the State Regulatory Authority?

As a starting point, it is convenient to discuss the first two issues together. The language in Section 722 of NECPA does not make it clear whether the exemption is intended to be partial or temporary. The discussion of this section contained in the Conference Committee Report leaves these issues equally unclear. DOE believes, however, that the exemption is intended as an interim measure to allow more gradual program implementation in places where full and immediate implementation might be disruptive.

The interpretation reflected in the proposed rule is that DOE should have a role in defining significant impairment of the RCS Program but should not be involved in defining significant impairment of a utility's ability to provide utility service.

DOE has the clear authority to specify State Plan requirements (Section 712(a) of NECPA) and any other rules necessary to carry out Title VII provisions (Section 712(d) of NECPA). However, the State Regulatory Authority alone has the authority to determine the existence of "significant impairments." In the proposed rule DOE requires a record of the basis for State Regulatory Authority exemption decisions as a part of the State Plan submittal but DOE does not have authority to reverse these decisions. DOE's authority to determine the content of State Plans allows DOE to require that exemptions be only an interim measure and that full implementation is to ultimately follow. The proposed rule requires that State Plans contain "conditional programs" for those utilities that are granted an exemption. These are partial programs that must be implemented until the "conditions" causing significant impairments may be eliminated. State Plans containing conditional programs must also propose actions to be taken to remove these "conditions."

In the proposed rule, § 456.208(a) repeats the exemption provision of Section 722 of NECPA. Section 456.208(a) of the rule also outlines the exemption process whereby the criteria for significant impairment specified in § 456.208(b) are to be used by the State Regulatory Authority in making a determination of significant impairment via the procedure specified in § 456.208(c). A determination of significant impairment must be submitted in a State Plan containing a conditional program which meets the requirements given in § 456.208(d).

In defining "significant impairment of the RCS Program" in § 456.208(b) of the proposed rule, DOE proposes that nothing in these rules shall have the effect of delaying the submission, approval, or implementation of Residential Conservation Service Programs developed under Title II. This requirement is contained in Section 712(c) of NECPA. DOE believes that this provision of the law precludes any other possible definition of significant impairment of the RCS Program because any form of impairment may be thought of as a delay in program implementation. Consequently, this language from the law was adopted as the definition used in the proposed rule.

Section 456.208(b) of the proposed rule permits the State Regulatory Authority to establish its own definition of significant impairment of a utility's ability to provide utility service.

Section 456.208(c) of the proposed rule describes two procedures by which the State Regulatory Authority could make the determination of the existence of conditions of significant impairment. The first procedure reflects the provision of Section 722 of NECPA, which requires that the State Regulatory Authority make the significant impairment determination within six months of the final rules. The second procedure is intended to provide the State Regulatory Authority with the option to take more time to review cases. Under this approach, the State Regulatory Authority may, within six months of the effective date of these rules, make a preliminary determination that significant impairment is probable. The State Regulatory Authority would then be permitted to take up to one year from the effective date of the CACS rules to either confirm or reverse this determination. In the meanwhile, the State Plan would be required to propose full program implementation. If the State Regulatory Authority were to confirm its determination, however, then an amendment to the State Plan containing a proposal for a conditional program would be required. DOE invites comments on this alternative.

Section 456.208(d) defines conditional programs and specifies State Plan

requirements for conditional programs. A conditional program is defined as a program which temporarily provides only partial coverage of commercial buildings and multifamily dwellings. However, conditional programs would not be permitted to change the audit content requirements specified in NECPA. The proposed rule provides some permissible types of conditional programs. Comments proposing other alternatives will be carefully considered. A conditional program is further defined by § 458.206(d) to be conditioned on the existence of significant impairments and must be accompanied by a plan to remove such impairments.

The special State Plan requirements for conditional programs would include a technical analysis to support the significant impairment determination, the rationale for the conditional program, and specification of the steps to be taken to alleviate significant impairments and State enforcement measures to assure these steps are taken.

V. Part 458, Subpart C—Preparation, Submission, and Approval of Nonregulated Utility Plans

A. Scope

This subpart identifies the responsibilities of covered nonregulated utilities, not subject to a State Plan, for the preparation and submission of Nonregulated Utility Plans, the procedures for approval of Nonregulated Utility Plans by the Secretary, and the minimum requirements for the content of Nonregulated Utility Plans. Every effort has been made to coordinate this subpart of the proposed rule with the corresponding section, Subpart D, of the final rules for the RCS Program.

B. Coverage

Subpart C applies to all nonregulated utilities which are not covered by a State Plan.

C. Initial Submission

Section 458.303 would require each nonregulated utility not covered by a State Plan to notify the Secretary within 60 days of these rules of the person responsible for the preparation of its Nonregulated Utility Plans.

D. Coordination Requirements

Section 458.304 require each nonregulated utility subject to this subpart to coordinate the preparation of its Nonregulated Utility Plan with the preparation of the applicable State Plan for the purpose of minimizing inconsistent provisions between the two plans.

E. Notice, Comment, and Public Hearing

Section 458.305 sets forth the proposed requirements for public notice and the opportunity for public comment and public hearing on Nonregulated Utility Plans. These provisions are the same as those required of States and the same as those in the RCS Program.

F. Procedures for Submission and Approval of Nonregulated Utility Plans

Section 458.306 presents procedures for the submission, approval, disapproval, and amendment of Nonregulated Utility Plans. These procedures are the same as those for States and are the same as the RCS Program. Section 458.306 also provides special qualifications on the plan content requirements for nonregulated utilities.

G. Special Procedures for Exemptions

Section 723(a) of NECPA provides certain conditions under which nonregulated utilities may be exempted from some plan requirements. Section 723(a) accomplishes this by referring to Section 722 which provides exemption procedures for State Plans. In the case of nonregulated utilities all of the requirements are the same except that the Governor of the State is designated to perform the role of the State Regulatory Authority. Likewise, § 458.206 of these rules would refer to § 458.206 of these rules and change the designation from the State Regulatory Authority to the Governor. All of the issues discussed above in reference to § 458.206 also apply to § 452.307. Procedures and actions by the Governor in granting exemptions would be required in the Plan. If the State were not to submit a plan, the procedures and actions would be required to be submitted to DOE nonetheless.

VI. Part 458, Subpart D. Energy Conservation Services for Commercial Buildings

A. Scope and Coverage

The Commercial and Apartment Conservation Service Program is divided into two Subparts for purposes for clarity. Subpart D describes the proposed minimum requirements for the content of State Plans covering commercial building. The State would be allowed, and is encouraged, to include additional information and provide additional requirements in the State Plan pertaining to the commercial building in the CACS Program if such information and requirements are not specifically prohibited.

All utilities covered by the RCS Program are covered by the CACS Program. Title VII of NECPA contains no provisions for temporary programs. However, utilities may be exempted by the State Regulatory Authority from providing services to some commercial buildings. The State Plan is required to identify which utilities have received such exemptions and to which commercial buildings the exemptions applies.

B. Eligibility for Audit

To receive an audit from a public utility or participating building heating supplier, the requesting party must be an eligible commercial customer of that utility or building hearing supplier by being the owner or tenant of a commercial building as these terms are defined in Section 458.103.

Certain factors related to program coverage presented the most difficult problem DOE encountered in structuring the CACS Program. The proposed rule is a compromise of several desirable, but conflicting, objectives. The following discussion provides additional detail on the issues and alternatives considered for adoption. DOE solicits comments on the proposed rule and the alternatives discussed below, and welcomes suggestions of other approaches. Three key factors are involved in the commercial coverage problem the concept of "building" customer status relative to the utility or building heating supplier, and the level of energy usage. These factors will be discussed separately below and are followed by alternative approaches to coverage.

Commercial Building

The Energy Security Act refers to owners or tenants of "commercial buildings" in establishing the eligibility for energy audits. Since the intent of Congress was to assist small commercial enterprises in achieving energy conservation, DOE has interpretated the term "commercial building" to include any small commercial establishment with walls and a roof, whether or not the establishment is a part of a larger structure. This has the effect of extending commercial coverage to more small commercial enterprises than would the concept of a "commercial building" as only the outer structure and would include, for example, any establishments located in large shopping centers. Such shopping centers may not quality for an audit under the energy usage criteria, but the individual establishments might.

It is felt that such individual establishments should be included because they can engage in energy conservation apart from action directed toward the entire shopping center. Such tenant establishments may or may not be separately metered for energy usage. Those which are separately metered, or submetered have a direct incentive to invest in energy conservation. Those which are not separately metered or submetered have an incentive to cooperate with the landlord/owner to conserve energy since many commercial leases have energy cost pass-through provisions and because rents are affected by energy cost in any event.

DOE recognizes that buildings that are not at least submetered may present problems in terms of determining eligibility and identification (see also the discussion in the preamble on Section 456.403(a)). However, these problems can reasonably be addressed at the local level where the particular characteristics of the service population are available for structuring a program to reach the small end of the commercial sector.

DOE considered extending coverage of "commercial building" to all commercial establishents that met the energy usage requirments and that did not have their own direct roof (or their own walls). This alternative would include, for example, establishments in large office buildings. DOE rejected this alternative because it felt that it was not Congress' intent cover such establishemts and because the incentives for such establishments to invest in energy conservation are minimal. DOE invites comments on this determination.

As provided by Section 731(a) of NECPA, new customers are eligible for an audit unless the occupied space had previously been audited. In the letter event, the new customer could request a copy of the audit. The marginal benefits which could be expected to result from an additional audit may not justify the expense. DOE solicits comments on this determination.

Eligible Customer

The statue provides that an eligible commercial customer is an owner or tenant of a commercial building to whom a public utility, building heating supplier, covered by the program sells natural gas or electricity.

One interpretation of the statute is that the utility/building heating supplier is expected to offer the program only to direct customer (that is, those which are separately metered) of that concern. However, this interpretation would exclude from coverage many of the smaller businesses that were the major concern of Congress. DOE feels that the program should include all similar small commercial enterprises, regardless of particular metering arrangements in any particular case. For this reason, we have interpreted "eligible customer" to include any small commercial enterprise which is *supplied with* utility service by a participating utility/building heating supplier. The result is that similar establishment in two different buildings, one master-metered and one individually-metered, would be treated the same in terms of program eligibility. Again, DOE recognizes that this approach presents problems in terms of identifying and qualifying eligible customers but feels that at the local level reasonable solutions to these problems are possible.

Energy Usage

Congress specified the program as applying to building with monthly energy use less than 4000 kWh of electricity of 1000 therms of gas or the equivalent amount of certain other fuels in Btu. (Note that 4000 kWh=136 therms=13.6 million Btu, 1000 therms=100 million Btu.

The intent of Congress was the usage criteria would identify buildings of the same size, compatible with the small business focus of the program. After an extended period of discussion during which virtually all combinations of the usage criteria were considered, DOE has chosen 100 million Btu as the maximum limit for limit for average monthly energy usage of any fuel. This is equivalent in energy to 1000 therms of natural gas. The kWh criterion remains. The result is that a building would qualify, from a usage standpoint, if (a) it uses less than 4000 kWh of electricity, or (b) it uses less the 100 million Btu of natural gas or any other covered fuel.

One possible interpretation of the energy usage criterion contained in the Title VII definition of commercial building is that a building using more than 4000 kWh of electricity but using no natural gas would qualify, since zero Btu of natural gas is less that 100 million Btu. This case would result in making eligible for a CACS Program audit 20 percent of the total national commercial floor space. This "zero" case could result in covering some rather large buildings. However, it would ensure that small business occupying all electric buildings would receive CACS services. The "zero" case would be particularly important in climate zones where cooling is a significant energy use category in a building. (The "zero" natural gas case is more likely to arise than the "zero" electricity case since almost all buildings use some electricity. However, the "zero" natural gas case approach would also apply in cases of "zero"electricity.)

Another alternative regarding energy usage which DOE considered was assigning a specific minimum level—other than zero—of electricity and natural gas (or other fuel) consumption for CACS eligibility. However, the available data on building size versus energy usage was conflicting and not helpful. Consequently, DOE could establish no useful and rationally based minimum level of other fuel consumption. Moreover, to require a minimum would somewhat arbitrarily eliminate some small business from CACS coverage.

A third possile approach, which would avoid coverage of larger all-electric buildings, would be to require that such buildings use at least some natural gas or some fuel other than electricity in order to be covered (i.e., less than 4000 kWh of electricity, or, of another covered fuel is used in the eligible building, less the 100 million Btu of that fuel). DOE believes it is possible to imply from the statutory language the assumption that a building must consume some of a praticular fuel in order to include that fuel in the computation of eligibility. Under this approach, coverage of the CACS would drop to approximately 10 percent of the commercial floor space.

DOE invites comment and submission of documented data on this issue and on the three alternatives presented (the "zero usage" case, the "specific minimum usage" case, and the "any munimum usage" case). Commenters may also want to include comments on the alternatives discussed below which would require legislative change to accomplish.

Alternate Approaches

Serious consideration was given to three other approaches to determining program coverage or eligibility. One was to base eligibility on building size, instead of energy usage, that is, square feet of floor space. A size of 10,000 square feet was considered to be representative of the desired program coverage. A major disadvantage of this approach is that such data are not easily availabe to utilities or building heating suppliers. Additional problems arise when one conlders how to define "square feet." Should it include only usable floor space or gross building size? Perhaps it should only cover space that is either heated or cooled. These issues further complicate the problems

associated with acquiring the descriptive data needed to define eligibility. Use of this definition would require a legislative change.

A second alternative approach to eligibility that was considered was to use the Small Business Administration's definition of small business and to make all small businesses eligible. This approach also had problems in that such data are not readily available to utilities or building heating suppliers. Present SBA definition rely mainly on the dollar amounts of gross business volume and are related to Standard Industrial Classification (SIC) codes. SBA has recently proposed a new small business definition based on number of employees that is also SIC code specific. Use of this definition would also require a legislative change.

The third alternative considered was to interpret the 4000 kWh limit as applying to uses other than space conditioning, and the 1000 therms limit as applying to space conditioning. Under this interpretation, for example, an all electric building would be covered if it used less than 4000 kWh for lighting and less than 29,400 kWh (the Btu equivalent of 1000 therms) for space conditioning. DOE rejected this interpretation as being inconsistent with Congressional intent.

Again, DOE solicits comments and suggestions on the proposed approach to eligibility and on each of the above alternatives. The DOE wishes to point out that a variety of comprises were necessary regarding the proposed design of program coverage. Most of the difficulties are associated with restricting the program to the smaller commercial establishments mandated by Congress. In view of the gains, from the utility's or supplier's viewpoint, it may be very cost effective for the utility or supplier to extend the coverage of the program beyond the minimum required by the Energy Security Act and this proposed rule.

C. Commercial Announcement

Section 731(a)(1) of NECPA requires that each public utility offer to each eligible commercial customer an audit of the eligibile customer's commercial building. The offer of the audit must be made within 12 months of approval of the applicable State Plan, and every 24 months thereafter until 1990. The proposed rule requires the Commercial Announcement to be distributed to every eligible commercial customer, but the rule does not specify how this distribution is to be accomplished. DOE recognizes that utilities and participating building heating suppliers may have difficulties in identifying commercial tenants that are not individually metered. DOE invites comments on how these commercial tenants may be identified and on what requires concerning identification of such tenants may need to be included in the rules.

DOE has considered requiring utilities to send Commercial Announcements to all commercial customers and requesting such customers to distribute the announcements to all their commercial tenants. However, this would require the distribution of announcements to many customers that are not eligibile for the audit. This may lead to confusion on the part of customers which could result in great inconvenience to the utilities. Furthermore, there would be no assurance that owners would distribute the Commercial Announcement to their tenants. DOE has also considered, in addition to requiring utilities to send the announcement to all easily identifiable customers, requiring that utilities advertise the program through the mass media. The advertising would briefly describe the program, include a statement of eligibility, and give a contact point for additional information. The amount of advertising necessary to reach all eligible customers and the cost of such advertising have not been estimated. Further, advertising has the disadvantage of not insuring that all eligible customers have been reached. DOE invites comments on these alternative methods of distributing the Commercial Announcement.

The proposed rule would require that the Commercial Announcement include a list of program measures and energy conserving operation and maintenance procedures, an offer to perform an audit, a description of the audit, a brief explanation of applicable Federal, State, and local energy tax credits, and not include any advertising. Although Title VII of NECPA does not specify these requirements, they are similar, though not as extensive, as the requirements contained in the RCS Program final rule.

The Commercial Announcement would have to contain a list of the program measures and of any State measures included in the State Plan. Unlike the RCS Program, the proposed rule for the CACS Program would not require that measures be listed by building type. Listing measures by building type would place an extra burden on utilities which DOE wishes to avoid.

The proposed rule requires that Commercial Announcements list the energy conserving operation and maintenance procedures and state that they are low-cost or no-cost. Although Section 712(b) of NECPA indicates that DOE may specify energy conserving procedures by climatic region or building type, we have not done this in the proposed rule. Most of the operation and maintenance procedures are effective in all climatic regions and building types. The individual audit will provide specific information on the effectiveness of each procedure for the particular building.

Unlike the RCS Program, the proposed rule would not require that the Commercial Announcement include estimates of savings likely to result from installation of the measures or adoption of the energy conserving operation and maintenance procedures. It is felt that such estimates would create an additional burden for the utilities and complicate the announcement. The wide range of energy usages, business types, and other factors would make it very difficult for utilities to predict savings for all types of commercial buildings. The auditor is required to provide costs and savings information. DOE invites comment on this decision.

In the Commercial Announcement the utility must offer to perform an audit, explain how the audit may be requested, and state the cost, if any, of the audit. The aduits must be available when the Commercial Announcements are distributed, and must be performed within a reasonable period of time following the request for an audit. The Commercial Announcement may be distributed throughout the 12 month period, or at one time. It may be desirable to allow audits to be scheduled by neighborhood, type of building, or some other nondiscriminatory criterion. In order to mitigate impairment of the RCS Program, utilities will be allowed some flexibility in scheduling audits. However, as in the RCS Program, an unconditional offer of an audit must be made within 2 years of approval of the State Plan. DOE invites comment on this approach.

The proposed rule requires that the Commercial Announcement include an explanation of the benefits of the Federal energy tax credits, and any State or local energy tax credits. This explanation would also be required to include a list of eligible measures and the amounts of the credits.

The proposed rule contains a ban on advertising in the Commercial Announcement. However, it has been suggested that allowing advertising, especially by lenders, may improve the effectiveness of the program. Comments on the proposed ban are invited.

The proposed rule does not describe the form that the Commercial

Announcement must take. It was originally thought that it would resemble the Program Announcement for the RCS Program. However, the information required for this program is not as extensive as that required for the RCS Program. Also, it is recognized that a different group of people will be targeted by the Commercial Buildings Program. Therefore, it is possible that the offer of an audit might be made in a letter signed by the president of the utility of participating building heating supplier and addressed to the eligible commercial customer. It is felt that a Commercial Announcement of this type could be a convenient and effective vehicle for presenting the benefits of the commercial buildings audit program. DOE invites comments on what form the Commercial Announcement should take.

Section 456.403(a)(2) would define a new customer and require that a utility send a Commercial Announcement to such a customer. A new customer would be eligible for an audit unless the occupied space had previously been audited. In that case, the new customer could request a copy of the audit results.

D. Energy Audits for Commercial Buildings

DOE has attempted to retain, wherever practicable, both the audit requirements and the audit format from the existing RCS Program. DOE believes the similarities between the two programs will allow for coordination of the Title II and Title VII Programs. However, it has not been possible to retain all of the existing RCS audit program. The proposed regulations must take into account the differences in the building population and the customer population of this program as compared with Title II. Among the differences affecting the audit content are the following:

(1) Commercial buildings vary substantially in size, structure and energy use. The diversity is much greater than that of the Title II buildings.

(2) The owners are predominantly business persons, including the owners of the eligible multifamily buildings, which may affect the type and quantity of information and the need for services.

(3) The energy conservation measures available are diverse, and the equipment types in each category of building have a wide range of differences.

As a result of these differences, the level of regulation of audit content, measures and calculation procedures in the RCS Program is not always appropraiate for the CACS Program. Consequently, the proposed CACS regulations would allow substantially greater flexibility, fewer services, and greater use of estimates than in the RCS Program.

What can be provided effectively to an eligible customer by this program is information on the energy use of its facilities; estimates of the likely financial value of applicable measures; and guidance to further analysis, engineering, and implementation. Many of the estimates may be based on typical values achieved in similar facilities which, if properly applied to a customer's facility, produce results that demonstrate the likely value of measure implementation. However, full analysis, with sized equipment and carefully calculated costs and energy savings, is required for only a small number of measures. The full analyses are intended to serve as an example of an engineered solution for a recommended measure. It is anticipated that this approach would raise the credibility of the audit, the auditor, and the value of further services if necessary.

Building specific analyses are required for five measures: lighting systems, caulking and weather stripping, building insulation, storm windows and doors, and hot-water pipe insulation. These measures were selected on the basis of the limited expense and effort required to perform such analyses, their widespread applicability, and their high potential impact on energy use and costs. The audit of lighting systems meets these criteria for small commercial buildings, and these facilities use over 50 percent of their electricity for lighting. Through use of a light meter, a count of lamps and fixtures, and some straight forward calculations, the auditor can evaluate the cost and savings of a range of lighting energy measures. The remaining selected measures which reduce heat loss, can also be evaluated in a straight forward manner requiring only tape measurements for input data.

While these additional efforts may add thirty minutes to one hour to the audit and increase auditor training requirements, substantial benefits from these analyses are anticipated. First, the detailed analyses are more likely to promote early implementation of the selected measures, as all of the information needed by the building owner for implementation is provided. Second, the detailed analyses provide an example of more complete technical assistance. It is anticipated that these analyses will improve the credibility of the auditor and the audit. It is also possible that such examples of technical assistance will increase the owner's likelihood of seeking further technical services.

DOE considered two alternatives to the use of building specific analyses for a minority of measures. One alternative was to perform building specific analyses for all measures. This was rejected, as the expense of such an audit would be several times greater than as proposed. DOE also considered allowing all analyses to be performed on the basis of typical practice estimates. DOE believes that the benefits of improved audit credibility and higher retrofit rates justify the increased cost per audit. DOE requests specific comment on the cost and benefits of the proposed approach and the alternatives.

The audit can be designed to be completed in one day or less for all facilities through the use of estimation techniques and the adoption of systematized approaches, including computer applications. This would allow the utility to control costs while at the same time providing guidance to small businesses without supplanting the role of private engineering and technical energy services.

The regulations are considered sufficiently flexible to allow a utility to adapt its existing RCS program for larger residential buildings, or in some cases, commercial buildings. The regulations are designed to describe the minimum audit content. A State or utility has the option of requiring more of the auditor. The proposed minimum content is: the provision of information that describes how energy is used, a list of the measures that are the most attractive investments, cost and savings estimates for a few measures, notice of available government funds to reduce the costs of installation or financing, and guidance for the evaluation of competing products and services.

1.Requirements for Program Audit. DOE proposes to retain the single audit approach that is required in the existing RCS Program. DOE believes that audit cost will be minimized if the building receives only one audit. DOE estimates that a small commercial facility can be audited in approximately 3½ to 4 hours and that an auditor or audit team can average two buildings per day. From the evidence available to DOE, it is unlikely that any audit will require more than a full day. DOE invites comment on whether the minimum audit content may require more than one day, especially in respect to existing utility programs.

The provisions of the proposed rule do not mean that one person necessarily must perform the entire audit or that the audit must be carried out in one visit. DOE believes that it is possible for one person to be trained to address all measures in a particular building. This can be facilitated by the utility acquiring

certain information, such as type of furnace from the customer before the audit. However, a utility would be allowed to subcontract for all or part of its audit services. Whatever the contracting arrangement of the utility or the number of visits, the customer who requests an audit would be entitled to receive an analysis of all applicable program measures.

The following paragraphs provide a discussion of the requirements for the CACS Program audit. Those sections of the proposed rule which are not discussed are straightforward and do not appear to require further elaboration.

Section 458.403(b)(1)(i): DOE believes that changes in building operation and maintenance will generally involve little or no capital cost and will result in substantial energy savings. The changes can often be implemented rapidly by the building owner with no outside assistance. Therefore, DOE considers that such changes should be separately identified by the auditor and recommended to the building owner prior to any recommendations concerning applicable program measures.

Section 458.403(b)(1)(ii): DOE has attempted to make the proposed audit procedure similar to the audit procedures for the RCS Program to assure effective coordination between programs and to mitigate confusion over a new format. DOE would retain all of the program measures and applicability criteria from the existing RCS Program because small commercial buildings and multifamily dwellings will often require the same audit considerations as residential buildings. However, DOE realizes that there are measures which are unique to commerical buildings, for example, lighting systems, which require new applicability criteria. The proposed new applicability criteria are discussed below.

DOE has attempted to define useful applicability criteria which will allow an auditor to eliminate a measure from consideration by simple observation. However, because there is so much variety among the building types, it is probable that the applicability criteria will be insufficient for some buildings. It is DOE's intention to rely upon the discretion of the auditor in cases where the applicability criteria fail to give a reasonable initial indication as to the appropriateness of a measure.

DOE considered eliminating applicability criteria from the proposed rule. DOE believes, however, that the applicability criteria will be useful in establishing the minimum audit content. DOE invites comment on the concept of applicability criteria and on each criterion identified in the proposed rule.

Replacement or modification of lighting system: DOE recognizes that lighting systems will be similar in many building types and most climate zones. Studies have shown that lighting requires a substantial portion of typical commercial energy consumption and the potential for reducing waste is very high. Therefore, DOE intends that all commercial buildings should receive audits of the lighting systems. DOE has proposed stringent applicability criteria for the lighting systems to assure that buildings receive this audit. It is expected that the applicability criteria would cover most buildings and that buildings not falling within the applicability criteria already would have an efficient lighting system.

Ceiling and wall insulation: DOE has proposed the use of the same applicability criteria for commercial buildings insulation levels as it did for residential buildings in the Title II Program. The rationale for this approach is that small commercial facilities will exhibit building characteristics similar to residential buildings as regards building insulation. DOE also believes that the economics of retrofitting the commercial buildings to the levels identified in the Appendix will be similar to residential buildings. DOE recognizes that there may be instances where the applicability criteria are inadequate. It may be physically impossible to retrofit some building types without an inordinate effort and in other instances the auditor may not be able to determine the existing building insulation levels due to structural characteristics. DOE proposes to rely upon the discretion of the auditor to determine the applicability of retrofit insulation in buildings where DOE criteria are inadequate.

Stream/condensate pipe insulation: DOE believes that steam and condensate pipes should be insulated to at least the level of the thermal equivalent of one inch of fiberglass.

Automatic energy control systems, equipment associated with automatic energy control systems: The applicability criteria for this measure would describe the circumstances where automatic energy control systems could effectively reduce energy costs. Generally, where energy savings can be achieved by limiting equipment operation as a function of time, temperature, and humidity, automatic control should be considered.

Energy recovery systems: Energy recovery systems should only be considered once building energy wastes have been minimized. However, should such wastes remain where a requirement exists in the building for such energy, then energy recovery should be considered. Options include heat wheels, heat pipes, heat exchangers, and preheaters.

Cogeneration systems: DOE believes that cogeneration is a desirable method of reducing energy consumption but that cogeneration may not be appropriate for many small commercial facilities. Installing a cogeneration system requires that several technical, economic, environmental and regulatory criteria be met. Generally, it is difficult to achieve these criteria in a new facility and it is probable that it is more difficult to do so in a retrofit situation. Accordingly, DOE has attempted to define stringent applicability criteria which would allow the auditor to make a rapid judgement for most buildings. However, the applicability criteria attempt to define a situation in which a cogeneration system may meet technical and economic acceptance. In no instance does DOE anticipate that the auditor would be required to provide more than an estimate of the type of cogeneration system appropriate to a particular building or an estimate of the energy savings which could be achieved.

Renewable resource measures: It is the intent of DOE to foster the adoption of renewable resource measures whenever feasible. Small commercial facilities will generally exhibit similar characteristics as residential buildings in regard to the conditions appropriate for renewable resource measures. Accordingly, DOE has proposed to retain all of the applicability criteria from the existing RCS Program for renewable resource measures.

Section 458.403(b)(1)(iii): DOE intends to assure that an on-site visit include such items as measurement and inspection. It is expected that measurements will include such items as determining the area of building devoted to window space or counting the number of lamp fixtures. While DOE realizes that these actions would increase the length of the audit and therefore the cost, an audit without these actions could not make meaningful estimates of installation costs or energy savings.

Section 458.403(b))(1)(iv): DOE believes that installation costs and energy savings should be based on costs which the eligible customer is likely to encounter when attempting to implement a recommended program measure. This section is similar to the existing RCS requirements except that in the proposed program the auditor is to include an estimate of the real energy cost escalation rates which the eligible customer may experience. DOE believes

that energy cost savings estimates without this provision would be inadequate in that they would not accurately depict the financial conditions that the eligible customer is likely to experience. By using energy cost escalation rates in the calculation procedure, the potential for conservation can be more realistically conveyed to the building owner. DOE intends to allow any reasonable real price escalation on rates to be identified by the State or utility.

Section 458.403(b)(1)(v),(vi),(vii): The requirements for (v) (estimates for solar systems), (vi) (procedures to assure the validity of audits), and (vii) (cost and saving estimates of furnace efficiency modifications) are the same as in the RCS Program audit.

Section 458.403(b)(1)(viii): Calculation procedures. DOE has determined that several program measures are common to many building types in all climate zones, generally have rapid payback periods and do not involve complicated calculation procedures. Further, DOE believes that the audit will have enhanced value if audit calculations are performed that are unique to the building being audited. DOE therefore proposes that several program measures receive a level of attention greater than other program measures. It is anticipated that the State will require that the detailed analysis be consistent with accepted engineering practice. DOE expects that auditors will employ computerized or other forms of systematized approaches for the detailed analysis effort.

DOE considered allowing workbook format approaches for all program measures. This approach was rejected because no existing workbook was identified which covered all of the measures and all of the building types. Workbooks do exist for approximately 75 percent of the building types but the workbooks often have out-of-date energy costs and installation costs. The workbooks also generally are not comprehensive with respect to the eligible program measures for the proposed program. DOE believes that it will be less expensive to require that only a few program measures receive a detailed analysis as opposed to developing new workbooks to cover all building types and program measures. DOE has not proposed to restrict the use of workbooks that a State or utility believes meet the program criteria. DOE solicits comments on this approach.

Section 458.403(b)(1)(ix): DOE anticipates that the program measures will cover most of the energy consuming functions of the building. Because small commercial buildings are diverse and may include unique process applications, it is conceivable that a large energy consuming function may not receive an audit. DOE believes that if the audit did not address a major energy consuming function because of regulatory oversight, then the credibility of the audit process would be weakened. DOE therefore proposes that an energy consuming activity which accounts for more than ten percent of total energy use should receive particular attention during the audit.

DOE recognizes that some unique activities may be quite difficult to audit. It is DOE's intention that the auditor use discretion when addressing a unique function but in no case should the auditor be required to provide detailed costs and savings estimates for a unique function. DOE seeks comment on this approach. Further, in order to assist States and utilities in providing audits, DOE would develop and provide technical assistance.

2. Results of Program Audit The purpose of this section is to discuss the program audit end product: the delivery of results to the customers.

The requirements in the proposed section are intended to guide the developers of the State Plan as to the quantity and detail of information that would be provided by the audit. DOE has chosen not to propose specifics of format, computation, and delivery of results in the regulation in order to allow for flexibility on the part of a State or utility in the development of its audit program.

DOE considered requiring in-person delivery of audit results. Such delivery might be feasible if the auditor were to prepare the results at the site, or if the resources expended on the audit where substantial. However, DOE proposes not to require in-person delivery in order to permit flexibility in program design and in recognition of the limited time availability of many small businessowners who may not desire in-person presentation. However, DOE proposes to require that the customer have the opportunity to fully discuss the audit if he or she requests it.

Section 458.403(b)(2)(i): As proposed, the auditor must determine the type of fuels consumed by the building, and the quantities consumed annually, in order to provide a basis for evaluation of measures. Where data is lacking, estimates from part-year data or estimates from similar buildings can be used.

Section 458.403(b)(2)(ii): This section would require a determination of how much energy is consumed by the building, and where energy is consumed by quantity and end use. This proposed section describes the data required for evaluation of energy savings, and for selection of measures for analysis. The data is also believed to be useful to the building owner by providing an understanding of where his purchased energy is being consumed. In addition, the energy use per square foot calculation would allow for comparison with other buildings of similar type and climate. DOE considered requiring that such a comparison be performed by the auditor, but believes the expense of preparing normalized data is not justifiable.

DOE recognizes that an accurate end-use analysis for many businesses can be expensive and time-consuming to compute. Therefore, estimates of Btu consumption by end use would be allowable, and might be based on typical end use breakdowns for that building type and location. DOE recognizes that this might limit the ability of building owners and operators to compare energy performance, and seeks comment on this provision.

Section 458.403(b)(2)(iii): This section would require the audit to provide notice of any government incentives for energy conservation that may be available. DOE believes that a valuable service is provided to the customer by these notices, as the increasing number of such programs at the Federal, State, and local level have rarely been presented comprehensively to building owners. DOE considered proposing the inclusion of the benefits of these programs in the economic analyses of program measures where the availability of the benefits were certain, for example, tax credits. DOE believes that such a requirement may be overly burdensome. DOE requests comments on this decision.

Section 458.403(b)(2)(iv): This section proposes that at least limited guidance be provided to the customer to assist him in implementing applicable measures. DOE envisions that such guidance would include generic information on the types of equipment and/or kinds of businesses that are appropriate for proper implementation. DOE would not require the arrangement of services as is required for the RCS Program, presuming that the customers eligible under the CACS Program are more accustomed to arranging their own services. DOE, however, would not preclude the arranging of services should a State desire to include such a requirement.

Sections 458.403(b)(2)(vi),(vii): For limited number of measures, DOE proposes to require that costs and savings be specifically computed. DOE intends these analyses to describe the

type and amount of equipment recommended to be purchased, and to base costs and savings estimates on these measured quantities. DOE feels that such analyses, which are typical of privately-offered technical assistance audits, should be provided to the building owner as an example of the content of a technical assistance audit. DOE believes that sample full analyses would improve the credibility of the audit findings for all measures provided to the building owner.

Sections 458.403(b)(2)(viii),(ix): DOE has found that the program measures available to the building types have generalizable implementation costs, energy savings, and investment payback when properly qualified by building size, function, and operating characteristics. DOE is also interested in restricting the necessary cost of the program audit. As a result, DOE proposes to allow most measures to be analyzed based on typical practice, as defined in § 458.103.

Typical savings estimates could be based on examples from similar facilities. However, these estimates would have to be specific to the end-use analysis, most commonly as a likely percentage saved to the particular end-use category. The auditor would then determine the likely value of savings. Implementation costs would also be based on typical practice estimates specific to the building size, function, and operating characteristics. DOE solicits comment on this approach to audit analysis.

Section 458.403(b)(2)(x): Only simple payback, which is the ratio of implementation costs to first-year savings, is proposed to be required as part of the audit. DOE believes that other computations, including ten-year cash flow, internal rate of return, projected actual payback, and lifecycle cost computations are useful, but not for all owners or for all measures and that, therefore, the expense of such computations may be unjustified. States may, however, find such additional computation useful and would be allowed to include them in State Plans. DOE also seeks comment on whether additional computations should be required by rule.

Section 458.403(b)(2)(xi): Disclosure of the basis of cost and savings estimates are proposed to ensure that the findings are presented without unreasonable expectations for accuracy.

Section 458.403(b)(2)(xii): DOE feels that maintenance costs, where applicable, should be estimated to fully characterize the economic impact of implementing program measures.

Sections 458.403(b)(2)(xiii),(xiv),(xv): The proposed requirements for reporting on renewable energy resources are essentially the same as for the RCS Program.

Section 458.403(b)(2)(xvi): The measures recommended for detailed analysis were selected based on the level of applicability, the ease of evaluation, the quantity of energy savings, and the quickness of payback. Measures meeting these criteria can be fully analyzed without excessive costs in a wide range of buildings. DOE requests comments on the selected measures.

Section 458.403(b)(2)(xvii): The remaining proposed measures may be analyzed based on typical practice, as described above.

E. Reporting and Record Keeping Requirements

Section 458.403(c) sets forth proposed reporting the recordkeeping requirements. It would require each State to provide as a part of their State Plan an annual report to the Secretary apprising the Secretary of program features such as the identities of participating utilities, the estimated number of eligible customers, the number of people employed in the program, the number of audits requested, the program costs, the nature of complaints, and manpower shortages. The recordkeeping requirements would entail maintenance of audit data and related information for specified retention periods. The proposed rule in § 458.403(c) is taken to the maximum extent directly from the RCS regulations. Items pertaining to installation and financing requirements of Title II of NECPA were deleted, since Title VII contains no such prohibitions, and some other minor changes have been made.

F. Complaints Processing Procedures

Section 458.403(d) of the proposed rule, would require that the State Plan contain complaints processing procedures and that these be the same as those used in the RCS Program to the maximum extent possible. This is intended to simplify matters and provide some economy of costs. It is presumed that the new program woud not have significantly different compliant processing needs. Complaints would be limited to those incident to the Title VII Program. Consequently, complaints would involve those against utilities and, potentially, owners of multifamily buildings who fail to share audit results with tenants. DOE believes that some mechanism is necessary for handling complaints in order to ensure adequate implementation of the CACS Program, and believes the proposed approach will be both cost-effective and a reasonable method of providing for complaint resolution. Comments are invited on this proposed approach.

G. Addition of Measures by States

In the RCS program many States expressed the desire to have the flexibility to add measures which they believed to be particularly important. DOE subsequently developed a procedure which encouraged States to tailor additional program measures to best fit the needs of the State. In the Title VII Program DOE proposes to retain the same approach for State measures. Each State would be allowed to add either energy conservation measures or renewable resource measures if the State could demonstrate that the measures would save energy, not increase the consumption of oil, and not adversely affect the RCS Program.

DOE solicits comments on this proposed approach. DOE specifically requests that States address the issues of in-house technical expertise available to the Lead Agency and the State's ability to consider additional measures.

H. Auditor Qualification Requirements

Sections 458.405 and 458.505 outline the proposed requirements for auditor qualification through training. DOE proposes the same requirements as in the RCS Program to define areas in which the auditor must be knowledgeable, and has added to those requirements items concerning measures applicable to Title VII audits. It is DOE's intention that there need not be two classes of auditors, but rather that a pool of qualified personnel could be created which would be capable of performing audits under either Program. DOE proposes not to make the requirements for the CACS Program more rigorous than those for the RCS Program, in part because of the desire to keep the audit under both Programs simple, and in part to assure that costs would be minimized.

DOE would require that States develop a training curriculum which would assure that auditors completing the training would be able to analyze energy use and determine the advisability of implementing the applicable measures. Auditors would have to have an understanding of the various energy saving measures and will be able to discuss energy conserving operation and maintenance procedures with the customers. Under a model curriculum, which DOE intends to develop, auditors would also be required to be knowledgeable of the

advantages and disadvantages of State and program measures.

DOE considered requiring engineering training but rejected this approach because the intent of the program is not to compete with existing auditing companies but rather to give eligible customers a first step approach to energy savings at a reasonable cost. The amount of information that the audits would contain and the number and types of measures covered also dictate an uncomplicated approach. A full audit, including specifications and computed energy savings particular to the unit, would result in costs that would be prohibitive, or, at best, unjustified in relation to the amount of savings that would result. For example, DOE proposes that covered multifamily dwellings and commercial buildings be examined for the potential savings that could result from cogeneration. The result of such an investigation should be the indication of whether the customer should further pursue the option; a detailed analysis would be costly, and for a building where cogeneration is not justified irrelevant to potential energy measures. Therefore, DOE is not proposing to require specalized training such as requiring a college degree in engineering. DOE solicits comments on this approach, and specifically invites comments on the potential quality difference in this approach versus one requiring engineering or related field experience.

DOE has attempted through the proposed fourteen subsections in Section 458.405(a) to indicate specifically the areas in which States would be required to assure course training. DOE would not require that the training include field work, but would leave that option to the States. DOE has also not proposed the specific content of the curriculum. DOE is aware that curriculum development is expensive and that some States may prefer to have a model to use as with the RCS model curriculum. DOE solicits comments on the extent to which an additional curriculum is necessary for those sections not already covered in the RCS model.

(a) DOE has allowed States to determine whether RCS auditors must be qualified in the three phases of auditing—conservation, renewables, and furnace efficiency. The same flexibility is proposed for CACS auditors.

(b) DOE does not propose that States become the trainers, but rather is flexible in determining how auditors could be taught. This flexibility would allow a utility to be responsible for training its own personnel if a State so desired, for example. In return for this flexibility, however, DOE would require that the State Plan address how this utility training would be monitored to assure quality.

I. Procedures for Investigating and Enforcing Compliance With the State Plan

Section 458.406 of the proposed rule contains the same investigation and compliance provisions as the corresponding § 456.303 of the RCS Program.

J. Coordination

Section 458.407 contains the same provisions requiring coordination between energy conservation programs, energy suppliers, and regulatory agencies as those of the corresponding § 456.316 of the RCS regulations. One additional provision has been added to account for the requirement of Section 731(a)(4) of NECPA which requires that no utility may be required to audit a building which has been audited previously under Title VII of NECPA or under the Schools and Hospitals Program.

K. Accounting and Payment Requirements

The accounting and payment requirements proposed in § 458.408 rules are similar to the corresponding § 456.310 of the RCS regulations. The State Regulatory Authority would be given the responsibility of determining the customer charge, if any, and how utilities would recover the costs of providing commercial audits. Portions pertaining to installation and financing have been deleted, but the sections are otherwise identical. Not appearing in the proposed rule are provisions that are contained in § 456.311 of the RCS regulations concerning customer billing requirements and limitations on termination of service. These sections are not present because they were never included in Title VII of NECPA. We invite comments on whether such requirements should be included in this program.

VII. Part 458, Subpart E—Energy Conservation Services for Multifamily Dwellings

A. Scope and Coverage

Subpart E describes the proposed requirements for the content of State Plans pertaining to multifamily dwellings. All utilities covered by the RCS Program are covered by the Multifamily Dwellings Program. However, utilities may be exempted by the State Regulatory Authority from providing services to some multifamily dwellings. The State Plan would be required to identify which utilities have received exemptions and to which multifamily dwellings the exemption applies.

B. Eligibility for Audit

DOE considers the outreach portion of the program to be quite important to penetration efforts. Therefore, DOE proposes to review State descriptions of how program recipients learn of and participate in the program. While DOE proposes to leave implementation of this section to the States, DOE would reject a State Plan which contained procedures so cumbersome as to limit participation. DOE seeks comment on this proposal.

Section 458.502(b)(3) contains the proposed requirement that an owner of a multifamily dwelling agree to give his or her tenants information pertinent to the tenants' units as a precondition to receiving audit services. DOE has not, however, detailed procedures for gaining the customer's assurance to provide tenants with the information, but proposes to leave this area to the States. DOE solicits comment on whether specific regulatory language would be helpful. DOE has not required that tenants receive audit information about common areas or equipment, such as hallways or furnaces. Comments on the appropriateness of such a requirement are invited.

Section 458.502(b)(4) contains the proposed requirement that an owner of a multifamily dwelling agree to distribute to each tenent of such dwelling a Tenant's Energy Conservation Information Package as a precondition to receiving an audit. The Information Package would be supplied to the owner by the utility or the building heating supplier which would perform the audit. DOE considered proposed that the utility or building heating supplier distribute the Information Package directly to the tenants once an audit had been requested. This alternative was not proposed because DOE felt that it would place an unnecessary burden on utilities and participating building heating suppliers and not necessarily result in the tenant receiving the audit results to which the tenant is entitled. Comments on the proposed approach and the alternative are requested.

C. Apartment Announcement

Section 731(a)(1) of NECPA requires that each public utility offer to each eligible multifamily dwelling customer an audit of the eligible customer's multifamily dwelling. The offer of the audit must be made within 12 months of approval of the applicable State Plan, and every 24 months thereafter until 1990. Although the proposed rule would

require the Apartment Announcement to be distributed to every eligible multifamily dwelling customer, the rule does not specify how this distribution is to be accomplished. DOE believes that utilities and building heating suppliers will not find it difficult to identify eligible multifamily dwelling customers. Utilities and building heating suppliers may find it convenient to include the Apartment Announcement with the monthly bill. DOE seeks comments on methods of distributing the Apartment Announcement.

DOE considered requiring that Apartment Announcements be sent to all tenants of multifamily dwellings. It was thought that such a requirement might encourage tenants to request building owners to request an audit and might encourage tenants to conserve energy on their own regardless of the actions of the building owner. However, this requirement was not proposed because of the added expense to utilities, and because NECPA does not require a utility to offer services to multifamily dwelling tenants. DOE has proposed, however, that utilities and participating building heating suppliers distribute the Tenant's Energy Conservation Information Package to all owners of buildings for which a request for an audit is made. The owner would be required to distribute the Information Package to the tenants along with the audit results. This Information Package is discussed in detail in Section D below.

The proposed rule would require that the Apartment Announcement distributed to multifamily dwellings include a list of program measures and energy conserving operation and maintenance improvements; an offer to perform an audit and a description of the audit; an explanation of applicable energy tax credits and explanations of the Weatherization Assistance Program for Low Income Persons; no advertising; information on loans and grants available through the Solar Energy and Energy Conservation Bank; information on loans or grants available at the State or local level; and a notice that, in order to receive an audit, the owner must agree to make the results available to the tenants.

The proposed rule requires that Apartment Announcements list the program measures and any State measures included in the State Plan. It would not require that measures be listed by building category, such as building size or type of fuel used. Most of the measures are applicable to all multifamily buildings, and the audit, as proposed, would evaluate which measures are most appropriate for the specific building. The proposed Apartment Announcement would list the energy conserving operation and maintenance procedures and state which are low-cost and which are no-cost. It would not be required that these procedures be listed by building category, since most are applicable to any type of building. Because the RCS Program required that measures and energy efficient practices be listed by building category, DOE invites comments concerning the decision not to require such a listing for the Multifamily Dwellings Program.

The proposed rule does not require that the Apartment Announcement include estimates of savings likely to result from installation of the measures or adoption of the energy conserving operation and maintenance procedures. It is felt that such estimates may be misleading, and would create an additional burden for the utilities. The wide range of energy use habits, configuration of buildings, and other factors would make it very difficult to predict savings in a large multifamily dwelling. Comments are sought on this decision.

The proposed Apartment Announcement would offer to perform an audit, explain how the eligible customer may request the audit, and list the direct cost if any, of receiving the audit. The proposed rule also permits that offers of audits be conditional. This provision is similar to one contained in the original RCS Program. DOE considered eliminating conditional offers. However, in order to mitigate the chance that the expanded program would significantly impair a utility's ability to fulfill the requirements of the RCS Program or provide utility service to its customers, some flexibility in scheduling audits would be provided. DOE seeks comments on this provision.

DOE proposes to require in the Apartment Announcement an explanation of the Federal energy tax credits and a description of who is eligible for them. Although renters, not owners, are eligible for the residential tax credit, it is felt that there is a benefit in having this information included in the Apartment Announcement. Landlords may want to make this information available to their tenants, especially those that are submetered. In addition, cooperative housing corporations and associations of condominimum owners are eligible for the tax credit, and may request an audit directly. Information explaining the Weatherization Assistance Program for Low Income Persons should be included in the Apartment Announcement because the cooperation of the owner of the building is necessary in order for the tenant to take advantage of the Weatherization Program. It should be noted that under the Weatherization Assistance Program, no apartment can be weatherized without first having written permission of the owner, and rents cannot be raised because of the increased value of the unit due to the weatherization work. DOE seeks comments on the requirements concerning tax credit and weatherization information.

Apartment Announcements would not be allowed to include any advertising. The ban on advertising is proposed in this program for the same reason it was included in the RCS Program. Allowing advertising would give the utilities an unfair advantage over other suppliers, installers, and leaders. Because of the relative scarcity of energy conservation financing programs, utilities would be allowed to state that they finance the sale and installation of measures. DOE invites comment on this ban.

The Apartment Announcement should include a notice stating that, in order to receive the audit, the owner must agree to make the audit results available to the tenants. Title VII of NECPA requires that, in order to receive the audit, the owner must first agree to make the results available to tenants. There is some concern that, by stating this requirement in the Apartment Announcement, the response rate may suffer. The alternative is to make no such statement in the Announcement, but to notify the owner of the requirement when the request for an audit is made. DOE seeks comments on which approach would be more desirable.

DOE proposes to require that utilities and participating building heating suppliers distribute a supplement to the Apartment Announcement to eligible multifamily dwelling customers that have requested an audit. This supplement would contain information designed to show how landlords and tenants may share in the benefits of energy conservation, and would include sample landlord/tenant agreements demonstrating how such benefits may be shared. DOE invites comments regarding this proposed supplement.

D. Tenant's Energy Conservation Information Package

Section 458.403(a)(3) of the proposed rule would require utilities and participating building heating suppliers to distribute to all owners of multifamily buildings for which an audit has been provided a Tenant's Energy

Conservation Information Package, which would be distributed by the owner to each tenant. Although it is not specifically required by Title VII of NECPA, it is felt that distribution of such an Information Package would greatly enhance the success of the Title VII Program. Section 731(a)(2) of NECPA provides the Secretary the authority to require such a package.

The Title VII Program is an information program. The service specifically required is the conducting of an audit, upon request, of multifamily dwellings and small commercial buildings. The audit is intended to provide information on actions the building owner may take to conserve energy. In the case of multifamily dwellings, many of these actions would require the understanding and the cooperation of the tenants in order to be effective. This is especially true of the energy conserving operation and maintenance procedures, which, because of their low-cost/no-cost aspect, may be particularly attractive to the building owner. The audit would provide information to the building owner, but unless the tenants also are furnished with certain energy conservation information, they cannot be expected to cooperate with the owner.

On the other hand, many of the energy conservation measures require a substantial investment on the part of the owner. Understandably, may owners will be reluctant to make such investments. This reluctance may be tempered by tenants who have been informed about the benefits of energy conservation, and who urge such investments. Furthermore, if tenants have been notified of the audit program, and have been convinced of the beneifts of energy conservation, they may be able to persuade their landlord to take action on an audit when he or she might not otherwise do so.

DOE believes that the Tenant's Energy Conservation Information Package should also include suggestions of how the tenant may conserve energy in his or her apartment, regardless of the actions taken by the landlord. It is important, though, to encourage landlord/tenant cooperation in an effort to conserve energy.

The Information Package would be required to contain an explanation of how the installation of each program measure or the adoption of each energy conserving operation and maintenance procedure would affect the level of services the tenant receives. The effect on the level of services, such as lighting, in the common areas of the building as well as in individual units should be explained. DOE believes that this information should be designed to help the tenant understand that the goal of such actions is the conservation of energy, not the reduction of services. In many cases, energy can be conserved without any change in the comfort level the tenant experiences. In such cases there may be a reduction in costs which may eventually be passed on to the tenant. It might be pointed out that it is in the tenant's interest not only to conserve energy but to encourage his or her landlord to take energy conservation actions.

DOE considered, but did not propose, requiring an explanation of the Resident Utility Billing System (RUBS). RUBS is a pro-rata billing system that passes through energy costs to residents. DOE studies indicate that the adoption of RUBS can result in energy savings of 5 to 10 percent. Pamphlets explaining RUBS for tenants have been developed by DOE and are available through the University of Colorado (The RUBS Project, Campus Box 468, University of Colorado, Boulder, Colorado 80309, 303/492–6746). States may include a requirement in their State Plan that RUBS be described in the Information Package.

The proposed rule requires that the Information Package contain low-cost/no-cost energy conservation information. It is felt that such information would lead to substantial conservation regardless of the actions of the building owner. DOE seeks comments on this requirement.

The Information Package would be required to describe the residential energy tax credit and the Weatherization Assistance Program for Low Income Persons. In addition, State and local programs should be described. Such information would encourage tenants to install conservation measures.

DOE invites comments on the distribution and content of the proposed Tenant's Energy Conservation Information Package. Specific suggestions concerning additions and/or deletions would be appreciated.

E. Alternative for Disseminating Information

A State would be allowed to provide in its State Plan an alternative requirement for disseminating the program information contained in the Information Package to tenants. No such alternative is proposed for disseminating the Apartment Announcement.

F. New Customers

In addition to requiring the sending of announcements to current customers, the proposed rule in § 458.503(a)(5) requires that new eligible customers be sent Apartment Announcements. In addition, new tenants may request a copy of the results of an audit performed on the new tenant's multifamily dwelling that are applicable to that new tenant's individual dwelling unit.

G. Energy Audits for Multifamily Dwellings

DOE believes that the audit requirements for multifamily dwellings should be nearly identical to the audit procedure for commercial buildings. The buildings will, in general, exhibit similar characteristics in the building shell, HVAC system, hot water generation and air-conditioning systems. DOE believes that it is expedient to develop similar audit formats to allow close coordination between audits of these buildings types. DOE realizes that in most cases, the applicability of measures can be evaluated through an examination of only a sampling of dwelling units in a multifamily dwelling. For example, the cost and savings of storm windows can be evaluated for the entire building by examining a few typical units. DOE proposes to allow multifamily dwelling audits to be performed on such a basis. It is DOE's intention to rely upon the auditor to make the discretionary judgement in cases where program measures clearly do apply to the multifamily dwelling. A discussion of these proposed audit requirements can be found in the section of the preamble dealing with audits of commercial buildings.

H. Reporting and Recordkeeping Requirements

Section 458.503(c) proposes requirements for multifamily dwellings identical to those of § 458.403(c) for commercial buildings.

I. Complaints Processing Procedures

Section 458.503(d) proposes requirements for Subpart E identical to those of § 458.403(d) for Subpart D.

J. Addition of Measures by States

Section 458.504 proposes requirements for Subpart E identical to those of § 458.404 for Subpart D.

K. Auditor Qualification Requirements

Section 458.505 proposes requirements for Subpart E identical to those of § 450.405 for Subpart D.

L. Procedures for Investigating and Enforcing Compliance With the State Plan

Section 458.506 proposes requirements for Subpart E identical to those of § 458.406 for Subpart D.

M. Coordination

Section 458.507 proposes requirements for multifamily dwellings identical to those of § 458.407 for commercial buildings. Discussions on recordkeeping, complaints processing, investigation and enforcement, and coordination can be found in Part VI of the preamble.

N. Accounting and Payment Requirements

Section 458.508 proposes requirements for multifamily dwellings identical to those of § 450.408 for commercial buildings, except that § 458.508 contains a limit on audit charges to the multifamily dwelling customer of § 15.00 per dwelling unit or actual audit costs, whichever is less. This limit is specifically prescribed in Title VII of NECPA. Treatment of audit costs beyond those charged directly to the customer receiving the audit is in the discretion of the State Regulatory Authority.

VIII. Part 458, Subpart F—Federal Standby Authority and Enforcement Provisions

This subpart proposes the procedures to be followed to ensure that eligible customers receive the services of the program when a State or nonregulated utility does not submit an acceptable plan within the necessary time or fails to implement adequately an approved plan. This Federal Standby Authority is provided for in Section 741 of NECPA. The provisions of Section 741 are very similar to the provision of Title II. Likewise, the proposed rule corresponds to Subpart F of the RCS regulations. The proposed rule has been slightly restructured to make it easier to distinguish provisions pertaining to States from those pertaining to nonregulated utilities.

IX. Appendix—Program Measures by Climate and Category of Building

DOE proposes to include the majority of program measures and applicability criteria from Appendix I contained in the existing RCS Program in the CACS Program. The rationale for using this approach to the audit requirements is that the major building components exhibit similar characteristics between all building types covered by this proposed rule, regardless of general building category. DOE believes that the levels of insulation identified in Appendix I of the existing RCS Program are reasonable insulation levels for small commercial and multifamily buildings. DOE realizes that these insulation levels will not be appropriate for all of the diverse building types, but rather believes that the Appendix will serve as a general guide for the building auditor. DOE intends to rely upon the auditor to a greater degree in the CACS Program than in the existing RCS Program. In this regard, DOE has proposed several provisions for the auditor to use discretion when considering the applicability of program measures.

X. Draft Regulatory Analysis and Urban Community Impact Analysis

Executive Order 12044 directs agencies of the Executive Branch to conduct a Regulatory Analysis of regulations that are likely to have a major economic impact. The objective of the Regulatory Analysis is to examine alternative regulatory provisions which might permit achievement of the regulatory goals at a lower cost. The Department of Energy, in an Interim Management Directive dated April 25, 1978, expanded the scope of Regulatory Analyses conducted for regulations within its jurisdiction. DOE is requiring, in addition to economic impact estimates, projections of the impact of regulatory alternatives on the goals of the National Energy Plan and on institutional issues created by the proposed regulations. In keeping with these objectives, DOE has prepared a Draft Regulatory Analysis of the proposed rules published herein.

This Summary of the Draft Regulatory Analysis is published concurrently with the publication of the proposed rules for the RCS Program. A copy of the complete Regulatory Analysis may be obtained by contacting: Mr. James Tanck, Director, Building Conservation Services Division, Office of Assistant Secretary for Conservation and Solar Energy, U.S. Department of Energy, Room GH–068, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585, (202) 252–9161.

A. Legislative Background and Authority

On November 9, 1978, Public Law 95–619, the National Energy Conservation Policy Act (NECPA) was enacted into law. Under part 1 of Title II, Congress established a Residential Conservation Services (RCS) Program which requires that large public utilities and home heating oil suppliers provide energy audits and certain other conservation services to customers who reside in single-family homes or multi-family dwellings with up to four units per building.

On June 30, 1980, the Energy Security Act (ESA) was signed into law providing, inter alia for the expansion of Title II of NECPA to include, as of January 1, 1982, multi-family dwellings with five or more units which are neither centrally heated nor cooled. ESA also established a new Title VII of NECPA which provided for a similar program for small commercial buildings and multi-family dwellings with five or more units per buildings which are centrally heated, centrally cooled or both.

The ESA requires that DOE promulgate rules to implement the new provisions of Title II and Title VII of NECPA. The Draft Regulatory Analysis for the Commercial and Apartment Conservation Service (CACS) forms a part of DOE's rulemaking process for Title VII and supports the Proposed Rule as published herein. A broad spectrum of general options was considered to determine the relative effectiveness of the Proposed Rule in meeting national energy conservation objectives.

B. Scope of Regulations

The residential and commercial sectors which are the targets of the RCS and CACS Programs consume about 36 percent of the total U.S. energy use. In the residential sector, 90 percent of the energy is consumed in single-family homes and multi-family dwellings with fewer than five units. This subsector is covered under the RCS rules adopted by DOE in November, 1979. The remaining 10 percent of the energy use in the residential sector (representing 15 percent of the living units) is consumed in multi-family dwellings with five or more units and is a subject of this rulemaking.

C. Need for Regulations

The energy use in the sectors covered under this rulemaking, while smaller than that of single-family homes, is nonetheless very significant as evidenced by the fact that it represents 30 percent of the energy equivalent of U.S. oil imports. Numerous studies by DOE and others have demonstrated that a major fraction of this energy use could be eliminated by cost effective investments in retrofit of existing buildings. In June, 1980, Congress acted to extend DOE's regulatory authority, already in effect for single-family homes, to multi-family and small commercial buildings.

Because Congress specifically requires in Section 712 of NECPA that DOE promulgate regulations in this area, a discussion herein of the need for such regulations is not necessary.

D. General Provisions of the Proposed Rule

The Proposed Rule is set forth in detail elsewhere in the Federal Register. This section briefly summarizes the rule and indicates the general approach and applicability. Specific legal interpretations of the rule should not be derived from this material, which is merely an abstract of the rule.

The rule is modeled to the maximum extent possible after rules previously promulgated under Title II of NECPA. The new rule provides that:

1. Covered public utilities (gas and electric) and participating building heating suppliers are required to provide upon request to eligible customers an on-site energy audit. The offer is to be made in periodic announcements mailed directly to the eligible customers.

2. Covered utilities and participating heating suppliers must also provide certain other services such as information on availability of governmental financial assistance.

3. Each State may develop a State Plan and assume responsibility for administration of the program within the State. The State may also choose to provide certain services otherwise provided by the utilities or DOE.

4. Non-regulated utilities must either develop individual plans or be included under the State Plan.

5. DOE must develop and invoke its own plan in each State which has no approved State plan, or is inadequately implementing an approved State plan. DOE is also required to order a nonregulated utility to promulgate a plan if it is not covered by an approved plan or inadequately implementing an approved plan.

The coverage of the program is specified through the definition of eligible customers. Under the CACS Program, eligible customers include owners of certain centrally heated or cooled apartment buildings and tenants and owners of small commercial buildings. Small commercial buildings are those which used less than 1000 therms per month of fuel or 4000 KWH per month of electricity for 1980.

The proposed rule would require certain minimum information be provided in Program Announcements to assure that eligible customers are apprised of the audit program. The rule also establishes specific requirements to assure that all energy conservation and renewable resource measures are adequately considered in the audit.

E. Findings of the Regulatory Analysis

The findings of the Regulatory Analysis are that the Proposed Rule will:

1. result in a significant reduction in energy consumption in the multi-family dwelling and commercial sectors;

2. achieve energy savings at a cost well below the cost of oil imports;

3. lead to small but positive effects on employment; and

4. lead to small but positive effects on urban areas.

The Department finds that institutional impacts will be small and mostly positive on affected institutions.

Having evaluated a number of feasible alternatives to the Proposed Rule, the Department offers its rule for public comment as representing its best judgement at this time as to the appropriate rule pursuant to legislative authority. As is pointed out in the preamble to the rule, there are several issues in this rulemaking about which the Department is particularly desirous of obtaining public opinion.

The costs and benefits of the program as proposed are summarized below.

Summary of Cost/Benefit Analysis

	Multifamily	Commercial	Total
Energy savings, million BOE[1]			
Per year (1990)	9.8	5.20	14.36
Total to year 2000	136.2	79.5	215.7
Employment (jobs created, 1990)	11023	6600	17622
Cost (total to 1990, $ millions)	1026	677	1703
Federal Government	16	15	31
State governments	53	50	103
Utilities	252	210	462
Building owners and tenants	705	402	1107
Dollars per BOE			
Undiscounted	7.54	8.51	7.90
Discounted	11.50	12.99	12.05

[1] BOE = barrel of oil equivalent, 6.8 million BTU.

The summary table provides projected energy savings per year; total energy savings; jobs created; costs for Federal Government, State Governments, utilities, and building owners and tenants; and cost per unit of energy saved. The energy savings per year are given for 1990 after the completion of the retrofit program. Total savings, of course, continue to accumulate for the life of the retrofit measures. For the purpose of this analysis, savings are accumulated to the year 2000.

The employment impact includes actual employment by agencies responsible for the program (Federal, State, and utility jobs) as well as jobs created by retrofit activities, jobs eliminated in energy supply industries, and jobs created by increased funds available to customers after payback of retrofit investment.

Costs are totaled through the end of the program on an undiscounted basis and are given in 1980 dollars. Annual costs average about one-ninth of the total for the nine year program. The cost for an average State of 4 million population would be an aggregate 2 million dollars or about $220,000 per year. An average utility with 300,000 customers is estimated to have net program costs (after accounting for revenues from audit charges) of about 1.5 million dollars or $165,000 per year.

The cost/benefit measure used for the progam is the cost of displacing the energy equivalent of a barrel of oil. If this figure is below the cost of imported oil (about 30 dollars per barrel), the program provides net benefits over oil imports.

The program is highly cost effective as compared to imports of foreign oil at greater than 30 dollars per barrel. The Proposed Rule was found to be the most cost effective of the alternatives available to DOE in meeting national energy objectives within the authority granted by NECPA.

F. Analysis of Alternatives

DOE has evaluated four basic strategies which could be employed in a CACS Program: a non-action case which relies on existing programs and fuel price responses to achieve energy conservation; a limited rule which would provide only non-mandatory guidelines for the program; a case which represents the regulatory strategy embodied in the Proposed Rule; and an enhanced regulatory strategy which includes some provisions beyond DOE's existing authority under NECPA and would require additional legislation.

1. *No-Action Case.* Beginning with the 1973/74 oil embargo, significant moves have been made to reduce energy consumption in buildings in response to both economic incentives resulting from higher fuel prices and national policy objectives. Total energy use in the residential and commercial sectors has increased at a rate of only one percent per year, about the same rate of increase as the population.

One of the most important Federal actions initiated since the embargo was the Energy Tax Act of 1978 which provided a residential energy tax credit for investments in energy conservation in a taxpayer's principal residence. The tax credit serves not only as an incentive for conservation but also as a very broad based source of statistical information on baseline conservation actions in the residential sector.

According to the Internal Revenue Service (IRS) report on 1978 tax returns, over 5.9 million taxpayers claimed the credit for expenditures of 4.2 billion dollars. The predominant actions were insulation and storm windows/doors representing together over 84 percent of the investment. A substantial number of the returns claimed credit to several different measures.

The 1978 return includes a credit for not only 1978 but also for 1977 after April 20 of that year. Thus the returns represent actions taken over a period of 1.7 years. Overall this indicates that some conservation actions were being taken at a rate of about 6 percent of residences per year. However, most of the claims indicate only partial weatherization with only about one percent per year investing in full weatherization. Two-thirds of the claims indicated less than half the investment required for full weatherization. Preliminary data from IRS indicates claims have fallen about fifteen percent (on an annual basis) for 1979. The IRS statistics predominantly reflect retrofit of single-family homes. For the multi-family and small commercial sectors covered under this rulemaking, the Department's research indicates that significantly lower rates of retrofit than observed in the single-family sector may be expected.

2. *Limited Rule Case.* In the process leading to the drafting of the Proposed Rule, the Department considered as an alternative a much more limited rule than that proposed herein. The general approach of such a rule would be to provide general guidelines to States and utilities for establishing an effective multi-family and commercial audit program with essentially no mandatory requirements.

The Limited rule would have the following basic features:

- Participation by public utilities would be voluntary.
- Procedures for offering audits including the content and distribution of Program Announcements would not be specified.
- No requirements would be established for State Plans.
- No set time would be specified for initiating a program.
- The content of the audit would be entirely at the discretion of the utility. No particular energy conservation or renewable resource measures would be required to be included in the audit.

A Limited rule would be expected to have some favorable impact on energy conservation; however, a major part of the potential energy savings achievable under the program would not be realized.

3. *Proposed Rule Case.* This case represents the expected results from the promulgation of a Proposed Rule which is closely modelled after the RCS program for single-to-four unit family homes.

For the purpose of the Regulatory Analysis, DOE has identified certain existing utility programs which were established prior to the Federal program. The Department has closely examined these programs and found that a number of them are sufficiently similar to the program established by these rules to allow quantitative data obtained on participation rates of customers, conservation investments, and energy savings to be applied to projects for the Proposed Rule Case.

4. *Enhanced Regulation Case.* As previously discussed, the Proposed Rule is fundamentally permissive with respect to all sectors except large public utilities. This Proposed Rule is to some extent a guideline in that States, manufacturers, suppliers, installers, financial institutions, tenants, and building owners are not compelled to participate in the program. Even the public utility sector, the only sector facing obligatory requirements, is given extreme flexibility in carrying out the audit program. For example, no mandatory goals are established for the numbers of audits to be performed or for energy savings. Nonetheless, the Department's research has indicated that similar (non-Federal) utility programs have achieved the significant participation and energy savings projected for the Proposed Rule Case without mandatory goals.

This performance is due in large part to underlying economic incentives that, once clarified, documented, and elucidated, are extremely compelling to the public utilities as well as the other program participants. It also results from the clear signal inherent in Federal legislation and regulations that energy conservation is a primary national policy objective.

There are, however, further steps that could be taken by the Government to speed and insure energy conservation. In several areas other than retrofit of buildings, Congress has previously adopted such approaches as mandatory standards and requirements, for example, in setting mandatory requirements for gasoline mileage in new automobiles at lowest cost per unit of energy displaced of the cases studied. However, this regulatory strategy is beyond DOE's legislative authority.

Table 1 summarizes the cost/benefit analysis for multifamily. Table 2 covers commercial buildings.

G. Urban and Community Impact Analysis (UCIA)

The purpose of the UCIA is to assess the impacts of the proposed CACS program covering large centrally heated or colled multi-family dwellings and small commercial buildings. For the purposes of the UCIA, unit-heated and centrally heated apartments are treated as one group.

1. *Absolute Impacts.* Because of the geographic distribution of the majority of larger apartment buildings, the CACS program will have its greatest effect on urban areas. Other communities containing sizeable clusters of these buildings will also experience substantial program impacts. The small commercial building sector is more ubiquitously distributed on the landscape and will not likely result in any significant impacts occurring in any one particular area relative to any other.

2. *Relative Impacts.* A sizeable portion of the units in the covered buildings are occupied by low-income tenants. Buildings housing such tenants may be eligible for special grants and other weatherization assistance aimed specifically at this income group. If these financial programs are tapped in conjunction with CACS, this income group may receive a large proportion of the program impact. Other fiscal incentives exist for the overall apartment dwelling population (i.e., loans, tax credits, grants) which may serve to minimize the possible difference in program participation between income groups.

An enhanced regulatory approach could be directed to either State governments, utilities, tenants, building owners, or a combination of these sectors. The mandatory requirements could establish targets for energy audits or energy efficiency or for both.

5. *Program Coverage of Commercial Sector.* The Department's primary concern in the commercial sector relates to the degree of coverage of the sector. Congress has clearly stated in both the wording of the law itself and the adopted Conference Committee report that the program is meant to apply only to a part of the commercial sector, that part where modest amounts of energy are used by each customer.

This intent has been translated in the law into specific numerical limits on energy consumption per commercial customer (4000 KWH/month of electricity or 1000 therms/month of fuel). DOE has considered three options for qualification of eligible customers.

• Option 1—The customer must completely occupy a building. This limits coverage to buildings as well as customers which use less than the energy consumption limits.

• Option 2—The customer can occupy all or part of a building. This incorporates some larger buildings if each customer occupying the building is in itself a small direct energy user.

• Option 3—This option extends the definition of utility customer to include *indirect* customers; that is, firms which are not separately metered but which, in effect, pay for a portion of a building's energy use (incorporated in rent) which on a pro rata basis is less than the specified energy consumption limits.

In addition the Department considered three alternate interpretations as to application of the consumption limits on electricity and fuel. These were as follows:

• Alternative A—The limits on electricity and fuel consumption are applied on an *exclusive* basis. That is, a customer who exceeds either the electric limit or the fuel limit is excluded from the program.

• Alternative B—The limits are applied on an *inclusive* basis. That is, a customer qualifies for the program if he consumes less than either limit.

• Alternative C—This alternative is the same as alternative B except that special treatment is given to electrically heated buildings. Since 1000 therms of fuel has an energy content that is equivalent to 29,300 KWH of electricity, customers using electric heat would allowed to use up to 29,300 KWH for space conditioning in addition to the 4000 KWH specified for other uses.

Alternates A, B, and C were considered for option 1. Only alternate C was evaluated for options 2 and 3.

The analysis resulted in the following percentage coverage of commercial floorspace on a national basis.

Option				
1A	1B	1C	2	3
2.9	8.9	9.85	14.5	39.3

Percent of Floorspace Covered:

6. *Results of Cost/Benefit Analysis.* The quantitative results of the analysis are summarized below and presented in detail in the Draft Regulatory Analysis.

The No-Action Case requires no additional Federal expenditures but would realize little in energy savings. The limited rule achieve significant energy savings but at a relatively high cost per unit of energy saved. The proposed rule provides increased energy savings and considerably improved cost effectiveness. Enhanced regulations are estimated to result in the highest energy savings.

Table 1.—*Cost/Benefit Analysis for Multifamily*

	No-action case	Limited rule case	Proposed rules case	Enhanced rule case
Energy savings (million barrels of oil equivalent):				
Per year (1990)	0.76	3.03	9.08	21.18
Total to year 2000	11.35	46.38	136.15	317.69
Employment: Jobs created, 1990	999	4,230	11,023	25,078
COST (total to 1990, million dollars)	$61.3	$532.2	$1,088.1	$2,048.9
Federal Government	$0.0	$15.8	$16.0	$16.4
State governments	$0.0	$51.2	$52.6	$55.2
Utilities	$24.4	$235.3	$251.7	$294.6
Building owners and tenants	$36.9	$229.8	$705.8	$1,680.8
Dollars per barrel of oil equivalent saved:				
Undiscounted	$5.40	$11.73	$7.54	$8.44
Discounted	$8.24	$17.90	$11.50	$9.83

Table 2.—*Cost/Benefit Analysis for Small Commercial*

	No-action case	Limited rule case	Proposed rules case	Enhanced rule case
Energy savings (million barrels of oil equivalent):				
Per year (1990)	0.66	1.99	5.30	11.60
Total to year 2000	9.94	29.83	79.55	174.0
Employment: Jobs created, 1990	574	3,111	6,599	13,364
COST (total to 1990, million dollars)	$61.3	$439	$677	$1,166
Federal Government	$0	$15	$15	$16
State governments	$0	$50	$50	$51
Utilities	$20.9	$208	$210	$216
Building owners and tenants	$42.2	$153	$402	$883
Dollars per barrel of oil equivalent saved:				
Undiscounted	$6.26	$14.28	$8.51	$8.70
Discounted	$9.60	$21.79	$12.99	$10.23

The CACS program is expected to result in creation of about 17,000 jobs nationwide. While a portion of this employment will be in Federal and State Government and in administrative positions at utilities, a significant number of jobs will be available to the low-income urban sector.

8. *Conclusion.* The CACS program is seen as a particularly effective mechanism for improving the energy efficiency of large apartment dwellings and small commercial buildings. These needed improvements in apartment buildings should aid in upgrading the overall quality of life for the urban dweller.

XI. Environmental Impact Analysis

An environmental impact statement (EIS) was issued for the Residential Conservation Service program in November, 1979 (DOE–EIS–0060) in compliance with the National Environmental Policy Act (NEPA). The Department of Energy has determined that the extension of the Residential Conversation Service program to commercial and multi-family buildings involves "substantial changes" in the program "that are relevant to environmental concerns" (40 CFR 1502.9(c)(1)(i)). Therefore, a supplement to the existing environmental impact statement is required. A Notice of Intent regarding the preparation and scope of the supplement was published in the Federal Register on December 9, 1980. If you wish to receive a copy of the draft supplement when it is completed, please contact: Mr. James Tanck, Director, Building Conservation Services Division, M.S. GH–068, Forrestal Building, 1000 Independence Avenue SW., Washington, D.C. 20585, (202–252–9161)

The NEPA regulations issued by the Council on Environmental Quality state that publication of a draft rule shall "normally" be accompanied by issuance of a draft environmental impact statement (or draft supplement). In the present case this is not possible, if the statutory deadline for issuance of the proposed rule is to be met. DOE therefore plans to issue a draft supplement to the EIS for the Residential Conservation Service program after publication of this proposed rule. However, the supplement will be available to the public for review for a reasonable period of time prior to the public hearings on the proposed rule.

as specified in the Department's NEPA guidelines.

Key Environmental Issues

Under the existing Residential Conservation Service program, concerned utilities are required to make available a number of services to residential customers, including energy audits, and installation financing, and inspection of certain conservation measures. The existing environmental impact statement for the Residential Conservation Service program identifies a number of potential adverse health and safety impacts from measures covered in these programs. These impacts are related to four measures (urea-formaldehyde foam wall insulation, vent dampers, electric and mechanical ignition systems, and small wind energy conversion systems) which, in the event of improper performance, may have significant impacts. There is also a general concern about the increased concentration of certain indoor air pollutants due to reduction of the air exchange rate resulting from installation of certain energy conservation measures. The principal mitigating measures for these potential impacts are the installation standards and follow-up inspections mandated under the Residential Conservation Service program.

The legislation establishing the proposed Commercial and Apartment Conservation Service (CACS) program provides only for energy audits. Thus, the program does not include the mitigating measures noted above. The proposed program also includes several additional measures whose potential environmental impacts were not assessed in the existing environmental impact statement.

The environmental impacts related to single family and multifamily residence programs differ in the type of mitigating measures incorporated in the two programs and the types of conservation measures which may be installed. In the case of the single family and individually heated and cooled multifamily residences under the RCS program, several mitigating measures are available to reduce health and safety impacts. These include product standards and warranties, installation standards and inspections. Such measures, intended to reduce impacts related to indoor air quality and accidents, would not be available under the CACS program to centrally-heated and cooled multifamily residences. In addition, different measures or different participation rates may apply to multifamily residences. Air handling equipment may be present in multifamily dwellings which may increase air infiltration and reduce indoor air quality impacts. However, certain measures, such as changes in heating equipment, might increase the risk of indoor air quality degradation or accidents in the installation and use of the conservation measure. Similar considerations would apply to the application of the program to small commercial buildings.

The following issues will be analyzed during the preparation of the Supplement. This list is not intended to be all inclusive, nor is it intended to be a predetermination of impacts.

1. Effect on indoor air quality of decreased air infiltration due to conservation measures.
2. Effect on indoor air quality of increased emission sources from conservation measures.
3. Decrease in emissions due to decreased energy use.
4. Increased emissions due to production of conservation measures.
5. Regional distribution of impacts and benefits.
6. Health and safety impacts related to installation or utilization of the measures.
7. Land use and aesthetic impacts.
8. Socioeconomic impacts related to changes in employment and increase demand for conservation measures.

XII. Consultation With Other Federal Agencies

In preparing the proposed rule, DOE consulted with representatives of the Secretary of Housing and Urban Development (HUD), particularly to achieve continuity as HUD developed the proposed rule for Title V, Subtitle A, Solar Energy and Energy Conservation Bank.

XIII. Contractor Contributions to Rulemaking

The following entities made contributions to the development of the proposed rule for the Commercial and Apartment Conservation Service Program.

1. Jack Faucett Associates and its subcontractor, Xenergy, provided analytical and technical support for the proposed rule.

2. Oak Ridge National Laboratory (ORNL) and its subcontractor, TRW, assisted in the preparation of the Draft Regulatory Analysis and Urban and Community Impact Statement. ORNL and its subcontractor, Battelle-Columbus Laboratories assisted in the preparation of the Draft Supplement to the Environmental Impact Statement for the Residential Conservation Service Program.

XIV. Comment and Hearing Procedures

A. Written Comments

Interested persons are invited to participate in this rulemaking by submitting data, views, or arguments with respect to the proposed procedures, requirements, and criteria. Comments should be submitted to the address indicated in the addresses section of this preamble and should be identified on the envelope and on the documents submitted to DOE with the designation "Commercial and Apartment Conservation Service Program" (Docket No. CAS-RM-80-125). Fifteen copies should be submitted. All written comments must be received by (60 days after publication), to insure consideration.

All written comments received after publication of these proposed rules, whether or not submitted in accordance with these procedures, will be available for public inspection in the DOE Reading Room, Room 1E-190 Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. between the hours of 8:00 a.m. and 4:00 p.m., Monday through Friday. Any information or data considered by the person furnishing it to be confidential must be so identified and submitted in writing, one copy only. DOE reserves the right to determine the confidential status of the information or data and treat it according to its determination.

B. Hearing Procedures

The time and place of the public hearings are indicated in the dates and addresses section of this preamble. DOE invites any person who has an interest in the proposed rulemaking, or who is a representative of a group or class of persons that has an interest in the proposed rulemaking, to make a written request for an opportunity to make an oral presentation. Such a request should be direct to the address indicated in the addresses section of this preamble and must be received before 4:30 p.m. on January 21, 1981 for Kansas City, January 23, 1981 for Washington, D.C. and January 27 for San Francisco.

Such a request may be hand delivered to Room 1F-065, 1000 Independence Avenue, S.W., between the hours 9:00 a.m. and 4:30 p.m., Monday through Friday. A request should be labeled both on the document and on the envelope "Commercial and Apartment Conservation Service Program.", CAS-RM-80-125.

The person making the request should briefly describe the interest concerned; if appropriate, state why she or he is a proper representative of a group or class of persons that has an interest; give a

concise summary of the proposed oral presentation; and provide a telephone number where he or she may be contacted through the day of the hearing.

Each person who, in DOE's judgment, proposes to present relevant material and information shall be selected to be heard and shall be notified by DOE of his or her participation before 4:30 p.m. on: February 12 for Washington, D.C.; February 17 for San Francisco, California; and February 19 for Kansas City, Missouri.

Each person selected to appear at the hearing must bring 15 copies of her or his statement to the hearing at the address given to the addresses section of this preamble.

The hearings will be held beginning at 9:00 a.m., local time.

C. Conduct of Hearings

DOE reserves the right to arrange the schedule of representatives to be heard and to establish the procedures governing the conduct of the hearing. The length of each presentation may be asked only by those conducting the hearing, and there will be no cross-examination of persons presenting statements.

Any participant who wishes to ask a question at the hearing may submit the question, in writing, to the presiding officer. The presiding officer will determine whether the question is relevant and material, and whether the time limitations permit it to be presented for answer.

Any further procedural rules needed for the proper conduct of the hearing will be announced by the presiding officer.

A transcript of the hearing will be made and the entire record of the hearing, including the transcript, will be retained by DOE and made available for inspection at the DOE Freedom of Information Reading Room, Room GA-152, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585, between the hours of 8:00 a.m. and 4:30 p.m. Monday through Friday. Any person may purchase a copy of the transcript from the reporter.

In consideration of the foregoing, the Department of Energy hereby proposes to amend Chapter II of Title 10 of the Code of Federal Regulations, by establishing Part 458 and amending Part 456 as set forth below.

(Part 1 of Title II of the National Energy Conservation Policy Act, Pub. L. 95-619, 92 Stat. 3206 et seq., as amended by Title V, Subtitles B and D of the Energy Security Act, Pub. L. 96-294, 94 Stat. 611 et seq.; Department of Energy Organization Act, Pub. L. 95-91 Stat. 565 et seq., 42 U.S.C. 7101 et seq.)

Issued in Washington, D.C., January 7, 1981.

T. E. Stelson,

Assistant Secretary, Conservation and Solar Energy.

PART 456—RESIDENTIAL ENERGY CONSERVATION PROGRAM

1. The Table of Contents to Title 10, Part 456 of the Code of Federal Regulations is amended by revising the heading for § 456.306 ("Program Announcement.") to read "Program Announcement for residential buildings containing fewer than five dwelling units.", and by revising the heading for § 456.307 ("Requirements for program audits.") to read "Requirements for program audits for residential buildings containing fewer than five dwelling units."

2. The Table of Contents to Title 10, Part 456 of the Code of Federal Regulations is amended by adding two new headings to read as follows:

Sec.

456.320 Program Announcement for residential buildings containing five or more dwelling units.

456.321 Requirements for program audits for residental buildings containing five or more dwelling units.

3. Section 456.105(w) The definition of "Residential Building", is revised to read as follows:

§ 456.105 Definitions.

* * * * *

(w) Residential Building. The term "residential building" means any building used for residential occupancy which—

(1) Is not a new building to which final standards under Section 304(a) and 305 of the Energy Conservation and Production Act apply;

(2) Has a system for heating or cooling, or both heating and cooling, living spaces; and

(3) Contains at least one but not more than four dwelling units (townhouses and rowhouses in rows of more than four separate houses are included in this definition, but garden apartment complexes which contain clusters of four or fewer apartment units are not) except that after January 1, 1982, such term shall also include any building which contains more than four dwelling units (including garden apartment complexes) unless such building contains a heating or cooling system, or both, which is a central system.

4. Section 456.306 is amended by revising the section heading to read:

§ 456.306 Program announcement for residential buildings containing fewer than five dwelling units.

* * * * *

5. Section 456.307 is amended by revising the section heading to read:

§ 456.307 Requirements for program audits for residential buildings containing fewer than five dwelling units.

* * * * *

6. Part 456 is amended by adding a new § 456.320 to read as follows:

§ 456.320 Program announcement for residential buildings containing five or more dwelling units.

The State Plan shall require that beginning on January 1, 1982, each covered utility and each participating home heating supplier shall include a statement in all Program Announcements sent to eligible customers in residential buildings containing five or more dwelling units which are neither centrally heated nor centrally cooled that such persons may choose to either obtain an audit and be eligible for the services under the RCS Program as described in the Program Announcement or obtain an audit under the CACS Program (10 CFR 456). Such statement shall adequately describe the difference between the two types of audits and services provided within each program and shall clearly state, if appropriate, that an election of one audit and its program services shall preclude the customer from receiving in the future the other program audit and its services.

7. Part 456 is amended by adding a new § 456.321 to read as follows:

§ 456.321 Requirements for program audits for residential buildings containing five or more dwelling units.

The State Plan shall require that beginning on January 1, 1982, if an eligible customer in a residential building containing five or more dwelling units which is neither centrally heated nor centrally cooled requests an energy audit under the RCS Program, the covered utility or participating home heating supplier shall provide an energy audit which meets the requirements of § 456.307 of these regulations, and shall allow the customer to take advantage of the other services and benefits available under the RCS Program. If, however, such a customer requests a CACS Program audit, the State Plan shall require the covered utility or participating home heating supplier to provide an energy audit which meets the requirements of 10 CFR 456.503(b).

Chapter II, Title 10 of the Code of Federal Regulations is amended by

adding a new Part 458 to read as follows:

PART 458—COMMERCIAL AND APARTMENT CONSERVATION SERVICE PROGRAM

Subpart A—General Provisions and Definitions

Sec.
458.101 Purpose and scope.
458.102 List of covered utilities.
458.103 Definitions.
458.104 Enforcement.
458.105 Request for confidential treatment.

Subpart B—Preparation, Submission, and Approval of State Plans

458.201 Scope.
458.202 Initial submission.
458.203 Coordination requirements.
458.204 Notice, comment, and public hearing.
458.205 Procedures for submission and approval of state plans.
458.206 Building heating suppliers.
458.207 Special provisions for the Tennessee Valley Authority (TVA).
458.208 Special procedures for exemptions.

Subpart C—Preparation, Submission, and Approval of Nonregulated Utility Plans

458.301 Scope.
458.302 Coverage.
458.303 Initial submission.
458.304 Coordination requirements.
458.305 Notice, comment, and public hearing.
458.306 Procedures for submission and approval of nonregulated utility plans.
458.307 Special procedure for exemptions.

Subpart D—Energy Conservation Services for Commercial Buildings

458.401 Scope and coverage.
458.402 Eligibility for audit.
458.403 Services provided by utilities and participating building heating suppliers.
458.404 Addition of measures by states.
458.405 Auditor qualification requirements.
458.406 Procedures for investigating and enforcing compliance with the State Plan.
458.407 Coordination.
458.408 Accounting and payment of costs.
458.409 Plans for participating building heating suppliers.

Subpart E—Energy Conservation Services for Multifamily Dwellings

458.501 Scope and coverage.
458.502 Eligibility for audit.
458.503 Services provided by utilities and participating building heating suppliers.
458.504 Addition of measures by states.
458.505 Auditor qualification requirements.
458.506 Procedures for investigating and enforcing compliance with the State Plan.
458.507 Coordination.
458.508 Accounting and payment of costs.
458.509 Plans for participating building heating suppliers.

Subpart F—Federal Standby Authority and Enforcement Provisions

458.601 Scope.
458.602 Conditions under which Federal standby authority shall be invoked.
458.603 Procedures for Federal standby planning process.
458.604 Failure to comply with orders.
458.605 Enforcement provisions.
Appendix—Program Measures by Climate and Category of Building.

Authority: Part 1 of Title II and Title VII of the National Energy Conservation Policy Act, Pub. L. 95-619, 92 Stat. 3206, et. seq. (42 U.S.C. 8211 et seq.), as amended by Title V, Subtitles B and D, of the Energy Security Act, Pub. L. 96-294, 94 Stat. 611 et. seq.; Department of Energy Organization Act, Pub. L. 95-91 Stat. 565 et. seq., (42 U.S.C. 7101 et seq.).

Subpart A—General Provisions and Definitions

§ 458.101 Purpose and scope.

This part contains the regulations to implement Title VII of the National Energy Conservation Policy Act, 42 U.S.C. 8211 *et seq.*, as amended by the Energy Security Act, Pub. L. 96-294 (references to NECPA hereinafter refer to Title VII of the Act unless otherwise stated). NECPA requires the establishment of utility programs to provide energy audits of commercial and multifamily buildings, to encourage and facilitate the use of energy conserving operation and maintenance procedures and the installation of energy conservation measures and renewable resource measures.

§ 458.102 List of covered utilities.

(a) Before the beginning of each calendar year, the Department of Energy shall publish in the Federal Register a list of all covered utilities for that calendar year.

(b) After publication of the list, each State Regulatory Authority shall notify DOE in writing of those utilities on the list which are under the jurisdiction of that Regulatory Authority.

(c) The publication of the list is for informational purposes, and the failure to include a covered utility on the list or the failure of a State Regulatory Authority to designate a utility subject to its jurisdiction in no way affects the duties of or requirements upon such covered utility under these rules or any plan promulgated pursuant to these rules.

§ 458.103 Definitions.

For purposes of this Part:

(a) *Apartment Announcement.* The term "Apartment Announcement" means the CACS Programs information and offer of services required by § 458.503(a)(1)to be sent by a coverd utility or participating building heating supplier to each eligible multifamily dwelling customer.

(b) *Building Heating Supplier.* The term "building heating supplier" means a person who sells or supplies heating fuel (including No. 2, No. 4, and No. 6 heating oil, kerosene, butane, and propane) to an eligible customer for consumption in a commercial or multifamily building.

(c) *Commercial and Apartment Conservation Service (CACS) Program.* The term "Commercial and Apartment Conservation Service (CACS) Program" means the program required by Title VII of NECPA to be implemented by public utilities pursuant to an appeoved State Plan, and approved Nonregulated Utility Plan, or a Federal Standby Plan.

(d) *Commercial Announcement.* The term "Commerial Announcement" means the CACS Program information and offer of services required by § 458.403(a) to be sent by a coverd utility or participating building heating supplier to each eligible commercial customer.

(e) *Commercial Building.* The term "commercial building" means a building—

(1) Which was completed on or before the date of enactment of this Title,

(2) Which is a roofed and walled structure designed to shelter persons, animals, or things,

(3) Which is used primarily for carrying out a business (including a nonprofit business) of for carrying out the activities or administration of a State or local government,

(4) Which is not used primarily for the manufacture or production of products, raw materials, or agricultural commodities,

(5) For which the average monthly use of energy for the calendar year 1980 was

(i) Less than 4,000 kilowatt hours of electricity, or

(ii) Less the 100 million BTU of natural gas, No. 2, No. 4, or No. 6 heating oil, kerosene, or propane, except that such term does not include a Federal building as defined in § 458.103(1). The energy consumption of any energy using devices not inside the building, such as parking lot lights, in the area associated with a given building is attributed to the building for purposes of this definition.

(f) *Covered Utility.* The term "covered utility" means in any calendar year a public utility which during the second preceding calendar year had either:

(1) Sales of naturl gas for purposes other than resale which exceeded 10 billion cubic feet, or

(2) Sales of electric energy for purposes other than resale which exceed 750 million kilowatt-hours.

(g) *Eligible Commercial Customer.* The term "eligible commercial customer" means—

(1) With respect to a public utility, the owner or tenant of a commercial building to which that public utility

provides natural gas or electricity for use in such building.

(2) With respect to a building heating supplier, the owner or tenant of a commercial building to which that building heating supplier provides No. 2, No. 4, or No. 6 heating oil, kerosene, or propane for use in such building.

(h) *Eligible Multifamily Dwelling Customer.* The term "eligible multifamily dwelling customer" means—

(1) With respect to a public utility, the owner of a multifamily dwelling to whom that public utility sells naturl gas or electricity for use in such dwelling, or

(2) With respect to a building heating supplier, the owner of a multifamily dwelling to whom that building heating supplier sells No. 2, No. 4, or No. 6 heating oil, kerosene, or propane for use in such dwelling.

(i) *Energy Conservation Measures.* The term "energy conservation measures" means the following measures:

(1) *Caulking.* The term "caulking" means pliable materials used to reduce the passage of air and moisture by filling small gaps including a fixed joints on a building, uderneath baseboards inside a building, in exterior walls at electric outlets, around pipes and wires entering a building, and around dryer vents and exhaust fans in exterior walls. Caulking includes, but is not limited to, materials commonly known as "sealants," "putty," and "glazing compounds."

(2) *Weatherstripping.* The term "weatherstripping" means narrow strips of material placed over or in movable joints of windows and doors to reduce the passage of air and moisture.

(3) *Furnace Efficiency Modifications.* The term "furnace efficiency modifications" means:

(i) *Replacement Furnaces or Boilers.* The term "replacement furnaces or boilers" means a furnace or boiler, including a heat pump, which replaces an exising furnance or boiler of the same fuel type and which reduces the amount of fuel consumed due to an increase in combustion efficiency, improved heat generation or reduced heat losses.

(ii) *Furnace Replacement Burner (Oil).* The term "furnace replacement burner (oil)" means a device which atomizes the fuel oil, mixes it with air, and ignites the fuel-air mixture, and is an integral part of an oil-fired furnance or boiler including the combustion chamber, and which because of its design, achieves a reduction in the oil used from that used by the device which it replaces.

(iii) *Flue Opening Modifiction (Vent Damper).* The term "flue opening modification (vent damper)" means an automatically operated damper installed in a gas-fired furnance which:

(A) Is installed dowstream from the drafthood; and

(B) Conserves energy by substantially reducing the flow of heated air through the chimney when the furnace is not in operation.

(iv) *Automatic Intermittent Pilot Ignition Device (IID).* The term "automatic intermittent pilot ignition device (IID)" means a device which, when installed in a gas-fired furnace or boiler, automatically ignites the gas burner and replaces a gas pilot light.

(4) *Replacement Central Air Conditioner.* The term "replacement central air conditioner" means a central air conditioner which replaces an existing central air conditioner of the same fuel type and which reduces the amount of fuel consumed due to an increase in efficiency.

(5) *Ceiling Insulation.* The term "ceiling insulation" means a material primarily designed to resist heat flow which is installed between the conditioned area of a building and an unconditioned attic. Where the conditioned area of a building extends to the roof, the term "ceiling insulation" also applies to such material used between the underside and upperside of the roof. The term "ceiling insulation" also includes such material installed on the exterior of the roof.

(6) *Wall Insulation.* The term "wall insulation" means a material primarily designed to resist heat flow which is installed within or on the walls between conditioned areas of a building and unconditioned areas of a building or the ouside.

(7) *Floor Insulation.* The term "floor insulation" means a material primarily designed to resist heat flow which is installed between the first level conditioned area of a building and an unconditioned basement, a crawl space, or the outside beneath it. Where the first level conditioned area of a building is on a ground level concrete slab, the term "floor insulation" also means such material installed around the perimeter of or on the slab. In the case of mobile homes, the term "floor insulation" also means skirting to enclose the space between the building and the ground.

(8) *Duct Insulation.* The term "duct insulation" means a material primarily designed to resist heat flow which is installed on a heating or cooling duct in an unconditioned area of a building.

(9) *Pile Insulation.* The term "pipe insulation" means a material primarily designed to resist heat flow which is installed on a heating or cooling pipe in an unconditioned area of a building.

(10) *Water Heater Insulation.* The term "water heater insulation" means a material primarily designed to resist heat flow which is suitable for wrapping around the exterior surface of the water heater casing.

(11) *Storm Window.* The term "storm window" means a window or glazing material placed outside or inside an ordinary or prime window, creating an air space, to provide greater resistance to heat flow than the prime windows alone.

(12) *Thermal Window.* The term "thermal window" means a window unit with improved thermal performance through the use of two or more sheets of glazing materials affixed to a window frame to create one of more insualted air spaces. It may also have an insulating frame and sash.

(13) *Storm or Thermal Door.* The term "storm or thermal door" means:

(i) A second door, installed outside or inside a prime door, creating an insulating air space,

(ii) A door with enhanced resistance to heat flow through the glass area by affixing two or more sheets of glazing material, or

(iii) A prime exterior door with a R-value of at least 2.

(14) *Heat Reflective and Heat Absorbing Window or Door Material.* The term "heat reflective and heat absorbing window or door material" means a window or door glazing material with exceptional heat-absorbing or heat-reflecting properties; or reflective or absorptive films and coatings applied to an existing window or door which thereby result in exceptional heat-absorbing or heat-reflecting properties.

(15) *Devices Associated with Electric Load Management Techniques.* The term "devices associated with electric load management techniques" means customer-owned or leased devices that reduce the maximum kilowatt demand on an electric utility and which are either:

(i) Part of a radio, ripple or other utility controlled load switching system on the customer's premises;

(ii) Clock-controlled load switching devices;

(iii) Interlocks, and other load-actuated, load-limiting devices; or

(iv) Energy storage devices with control systems.

(16) *Clock Thermostat.* The term "clock thermostat" means a device which is designed to reduce energy consumption by regulating the demand on the heating or cooling system in which it is installed, and uses:

(i) A temperature control device for interior spaces incorporating more than one temperature control level, and

(ii) a clock or other automatic mechanism for switching from one control level to another.

(17) *Automatic Energy Control System.* The term "automatic energy control system" means devices which regulate the operation of lighting, heating, cooling, or ventilating equipment automatically based on time, inside and/or outside temperature or humidity, or space utilization. Such equipment can include, but is not limited to:

(i) Temperature or humidity control devices or any type which are not replacing an existing device;

(ii) Temperature or humidity control devices which, due to their automatic control capabilities, can be expected to reduce the overall energy consumption of the facility compared to those presently in place.

(18) *Equipment Associated with Automatic Energy Control Systems.* The term "equipment associated with automatic energy control systems" means devices including but not limited to, automatic dampers on ventilating equipment and boiler stacks, wiring, relays, valves and other equipment which, when regulated by automatic energy control systems, produces a reduction in energy consumption.

(19) *Replacement or Modification of Lighting Systems.* The term "replacement or modification of lighting systems" means devices and actions which reduce overall lighting energy consumption while maintaining satisfactory lighting levels. These devices and actions include:

(i) Reducing light levels to levels cited in applicable codes and standards in each area of the building. This action may include installation of task lighting and reduction of general area lighting;

(ii) Controlling lamp operating time to limit lighting operation to periods of area use. Installation of local switching, time control devices and sensing devices are included;

(iii) Replacement of lamps with more efficient sources. These devices and actions may include, but are not limited to, replacement of incandescent and fluorescent lighting with low energy equivalent lamps, or replacement of any fixture type with one of greater lumens per watt efficiency such that total lighting demand can be reduced.

(20) *Furnace, or Utility Plant and Distribution System Modifications.* The term "furnace, or utility plant and distribution system modifications" means:

(i) With respect to replacement burners, furnaces, boilers, or any combination thereof, equipment which substantially increases the combustion of the fuel undergoing combustion as a result of:

(A) Greater heat exchange surface and/or turbulence;

(B) Recombustion of gases; or

(C) Recovery of latent heat of vaporization.

(21) *Energy Recovery Systems.* The term "energy recovery systems" means any of the following equipment:

(i) Recuperator,

(ii) Heat wheel,

(iii) Regenerator,

(iv) Heat exchanger, or

(v) Economizer.

(22) *Cogeneration System.* The term "cogeneration system" means any system which can be used to simultaneously produce electricity, as well as steam or other forms of thermal or mechanical energy.

(j) *Energy Conserving Operation and Maintenance Procedures.* The term "energy conserving operation and maintenance procedures" means:

(1) Furnace Efficiency Maintenance and Adjustments, which means cleaning and combustion efficiency adjustment of gas or oil furnaces, periodic cleaning or replacement of air filters on forced-air heating or cooling systems, lowering the bonnet or plenum thermostats to 80°F on a gas or oil forced-air furnace, and turning off the pilot light on a gas furnace during the summer;

(2) Nighttime Temperature Setback, which means manually lowering the thermostat control setting for the furnace during the heating season to a maximum of 55°F during sleeping hours or hours when building is unoccupied;

(3) Reducing Thermostat Settings in Winter, which means limiting the maximum thermostat control setting for the furnace to 66°F during the heating season;

(4) Raising Thermostat Setting in Summer, which means setting the thermostat control for an air conditioner to 78°F or higher during the cooling season;

(5) Water Flow Reduction in Showers and Faucets, which means placing a device in a shower head or faucet to limit the maximum flow to three gallons per minute or less, or replacing existing showerheads or faucets with those having built-in provisions for limiting the maximum flow to three gallons per minute or less;

(6) Reducing Hot Water Temperatures, which means manually setting back the water heater thermostat setting to 120°F, and reducing the use of heated water for clothes washing and other purposes when high temperatures are not needed;

(7) Reducing Energy Use When a Building is Unoccupied, which means reducing the thermostat setting to 55°F when a building is empty for four hours or longer in the heating season, turning an air conditioner off in the cooling season when no one is present and turning a water heater off when a building is vacant for two days or longer;

(8) Plugging Leaks in Ceiling Space and Basements, which means (i) installing scrap insulation or other pliable materials in gaps around pipes, ducts, fans, or other items which enter the ceiling space or basement from a heated space, (ii) adding insulation to a ceiling or basement door;

(9) Sealing Leaks in Pipes and Ducts, which means installing caulking in any leak in a heating or cooling duct, tightening or plugging any leaking joints in hot water or steam pipes, and replacement of washers in leaking water valves;

(10) Efficient Use of Shading, which means using shades or drapes (i) to block sunlight from entering a building in the cooling season, (ii) to allow sunlight to enter during the heating season, and (iii) to cover windows tightly at night during the heating season;

(11) Building Energy Use Monitoring List, which means a worksheet which allows a building owner to monitor energy cost and energy use on a monthly basis for at least a two year period;

(12) Steam Distribution System Maintenance Procedures, which means the visual inspection of the steam distribution system for the purpose of detecting steam leaks, ensuring that steam is not entering the condensate system and operation of condensate return lines to return all condensate to the boiler;

(13) Such other low or no cost practices designated by the Governor and approved by the Secretary in a State Plan which (i) save energy; (ii) do not require the installation of energy conservation or renewable resource measures; and (iii) do not adversely impact the CACS Program.

(k) *Estimates Based on Typical Practice.* The term "estimates based on typical practice" means a determination of energy savings, implementation costs, or energy end-usage based upon the experience of facilities of the same function and climate for which full analyses have been performed. In order to perform estimates based on typical practice, the utility must document and update the results of full analysis audits that provide the basis for the estimate. The data may include, but is not limited to, the State commercial and multifamily audit data base, government or trade association studies or guidebooks, or

other compiled results from the implementation of program audits.

(l) *Federal Building.* The term "Federal building" means any building or other structure owned in whole or part by the United States or any Federal agency, including any such structure occupied by a Federal agency under a lease-acquisition agreement under which the United States or a Federal agency will receive fee simple title under the terms of such agreement without further negotiation.

(m) *Governor.* The term "Governor" means the Governor or chief executive officer of a State or his designee.

(n) *Multifamily Dwelling.* The term "multifamily dwelling" means a building which is used for residential occupancy, was completed on or before June 19, 1980, and contains five or more dwelling units and a central heating or central cooling system, or both.

(o) *Nonregulated Utility.* The term "nonregulated utility" means a public utility which is not a regulated utility.

(p) *Nonregulated Utility Plan.* The term "nonregulated utility plan" means a plan developed pursuant to Subpart C of this Part.

(q) *Participating Building Heating Supplier.* The term "participating building heating supplier" means a building heating supplier that has elected to participate in a State CACS Program which includes building heating suppliers.

(r) *Program Audit.* The term "program audit" means an energy audit in which the estimates of costs and savings are based on an on-site inspection of the building of an eligible customer by an auditor qualified according to a State or Nonregulated Utility Plan.

(s) *Program Information.* The term "program information" means the CACS Announcement and any information dissemination activities related to a Commercial and Apartment Conservation Service Program.

(t) *Program Measures.* The term "program measures" means those energy conservation or renewable resource measures which the Secretary has by rule determined to be appropriate by climatic region and building category and which are found in the Appendix to this Part.

(u) *Public Utility.* The term "public utility" means any person, State agency, or Federal Agency which is engaged in the business of selling natural gas or electric energy, or both, to commercial or multifamily dwelling customers for use in a commercial building or multifamily dwelling.

(v) *Rate.* The term "rate" means any price, rate, charge, or classification made, demanded, observed, or received with respect to sales of electric energy or natural gas, any rule, regulation, or practice respecting any such rate, charge or classification, and any contract pertaining to the sales of electric energy or natural gas.

(w) *Ratemaking Authority.* The term "ratemaking authority" means authority to fix, modify, approve, or disapprove rates.

(x) *Regulated Utility.* The term "regulated utility" means a public utility with respect to whose rates a State regulatory authority has ratemaking authority.

(y) *Renewable Resource Measure.* The term "renewable resource measure" means the following measures in or with respect to a commercial building or multifamily dwelling:

(1) *Solar Domestic Hot Water Systems.* The term "solar domestic hot water systems" means equipment designed to absorb the sun's energy and to use this energy to heat water for use in a commercial building or multifamily dwelling other than for space heating, including thermosiphon hot water heaters.

(2) *Active Solar Space Heating Systems.* The term "active solar space heating systems" means equipment designed to absorb the sun's energy and to use this energy to heat space by use of mechanically forced energy transfer, such as fans or pumps.

(3) *Combined Active Solar Space Heating and Solar Domestic Hot Water System.* The term "combined active solar space heating and solar domestic hot water system" means equipment designed to perform both of the functions described in paragraphs (1) and (2) above.

(4) *Passive Solar Space Heating and Cooling Systems.* The term "passive solar space heating and cooling systems" means systems that make most efficient use of, or enhance the use of, natural forces—including solar isolation, winds, night time coolness and opportunity to lose heat by radiation to the night sky—to heat or cool space by the use of conductive, convective or radiant energy transfer. Passive solar systems include only:

(i) *Direct Gain Glazing Systems.* The term "direct gain glazing systems" means the use of south-facing (+ or −45° or True South) panels of insulated glass, fiberglass, or other similar transparent substances that admit the sun's rays into the space where the heat is retained. Glazing is either double-paned, or single-paned equipped with moveable insulation.

(ii) *Indirect Gain Systems.* The term "indirect gain systems" means the use of panels of insulated glass, fiberglass or other transparent substances that direct the sun's rays into specially constructed thermal walls, ceilings, rockbeds, or containers of water or other fluids where heat is stored and radiated.

(iii) *Solaria/Sunspace Systems.* The term "solaria/sunspace systems" means a structure of glass, fiberglass or similar transparent material which is attached to the South-facing (+ or −45° of True South) wall of a structure which allows for air circulation to bring heat into the building, and which is able to be closed off from the structure during periods of low solar insulation.

(iv) *Window Heat Gain and/or Loss Retardants.* The term "window heat gain and/or loss retardants" means those mechanisms which significantly reduce summer heat gain or wintertime heat loss through windows by use of devices such as awnings, insulated rollup shades (external or internal), metal or plastic solar screens, or moveable rigid insulation.

(5) *Wind Energy Devices.* The term "wind energy devices" means equipment that uses wind energy to produce energy in any form for personal purposes.

(6) *Replacement Solar Swimming Pool Heaters.* The term "replacement solar swimming pool heaters" means devices which are used solely for the purpose of using the sun's energy to heat swimming pool water and which replace a swimming pool heater using electricity, gas or other fossil fuel.

(z) *Secretary.* The term "Secretary" means the Secretary of Energy.

(aa) *Standard Industrial Classification Code.* The term "Standard Industrial Classification Code" means the numerical codes used by the Department of Commerce to classify industries.

(bb) *State.* The term "State" means a State, the District of Columbia, and Puerto Rico.

(cc) *State Agency.* The term "State agency" means a State, a political subdivision thereof, or any agency or instrumentality of either.

(dd) *State Measure.* The term "State measure" means an energy-saving measure which has been approved by the Secretary in the State Plan pursuant to § 456.404 and § 456.504.

(ee) *State Plan.* The term "State Plan" means a plan developed pursuant to Subpart B of this Part.

(ff) *State Regulatory Authority.* The term "State regulatory authority" means any State agency which has ratemaking authority with respect to the sales of electric energy or natural gas by any public utility (other than by such State agency); except that in the case of a public utility with respect to which the

Tennessee Valley Authority has ratemaking authority, such term means the Tennessee Valley Authority.

(gg) *Tenant's Energy Conservation Information Package.* The term "Tenant's Energy Conservation Information Package" means the Information Package required to be provided, by § 458.503(a)(2), by a covered utility or participating building heating supplier to each owner for distribution to each tenant in a multifamily dwelling for which an audit has been performed.

§ 458.104 Enforcement.

If the Secretary determines that any person, including an individual, corporation, association, public or private organization, or State or municipal agency, has violated any provisions of these regulations, any plan approved or promulgated under these regulations, or any order issued pursuant thereto, the Secretary may file a petition in the appropriate United States district court to enjoin such person from violating such provision, plan, or order.

§ 458.105 Request for confidential treatment.

(a) *Request.* If you wish to file a document with DOE claiming some or all of the information contained in the document is exempt from the mandatory public disclosure requirements of the Freedom of Information Act (FOIA), 5 U.S.C. Section 552, or is otherwise exempt by law from public disclosure, and if you wish to request that DOE not disclose information, you must comply with the DOE FOIA regulations set forth in 10 CFR 1004 (44 FR 1908, January 8, 1979).

(b) *Disposition of Request.* DOE retains the right to make its own determination with regard to any claim of confidentiality. Notice of the decision by DOE to deny such claim, in whole or in part, and an opportunity to respond thereto, will be given to the person claiming confidentiality of the information no less than seven days prior to the public disclosure of such information.

(c) *Document by Document Identification.* Each request for confidential treatment must be made with respect to each separately identified document and must be made at the time that document is first submitted to DOE.

Subpart B—Preparation, Submission, and Approval of State Plans

458.201 Scope.

This Section identifies the responsibilities of the States and the Tennessee Valley Authority (TVA) in the preparation and submission of a State Plan, hereinafter referred to as "State Plan," if a State or the TVA chooses to submit a State Plan; and the procedures for approval of the State Plan by the Secretary.

458.202 Initial submission.

If a State intends to submit a State Plan, the Governor or State Agency specifically authorized by State law to submit a State Plan shall submit the following information to the Secretary:

(a) *Lead Agency.* Within 30 days of the effective date of this rule, the name and address of the State Agency, hereinafter referred to as "Lead Agency," which has principal responsibility for the development of the State Plan. The Lead Agency shall be either:

(1) An Agency designated by the Governor to develop and submit a State Plan; or

(2) A State Agency specifically authorized by law to develop and submit a State Plan.

(b) *Nonregulated Utilities.* Within 30 days of the effective date of this rule, a list of which nonregulated covered utilities, if any, operating in the State will be subject to the State Plan; and

(c) *Building Heating Suppliers.* Within 90 days of the effective date of this rule, whether or not building heating suppliers will be included in the State Plan.

458.203 Coordination requirements.

(a) *Among States.* The Lead Agency shall, to the extent feasible, coordinate the preparation of the State Plan with any other State which has jurisdiction over any covered utility or participating building heating supplier subject to the State Plan for the purpose of minimizing any inconsistent provisions governing such covered utility or participating building heating supplier.

(b) *Between the Lead Agency and the State Regulatory Authority.* If the Lead Agency is not the State Regulatory Authority, then the Lead Agency shall provide such Authority a copy of the proposed State Plan 30 days prior to the public hearing required by § 458.204.

(c) *Between State Plans.* The Lead Agency shall coordinate the State Plan for the Commercial and Apartment Conservation Service (CACS) Program with any existing or proposed State Energy Conservation Plan developed under Section 367(b)(1) of the Energy Policy and Conservation Act and with any State Plan for the Residential Conservation Service (RCS) Program established under Title II of the National Energy Conservation Policy Act (NECPA). Such coordination shall not have the effect of delaying the submission, approval, or implementation of the RCS State Plans developed under Title II of NECPA.

458.204 Notice, comment, and public hearing.

Prior to submission of the State Plan to the Secretary for approval, the Governor or Lead Agency shall:

(a) *Notice and Comment.* Provide meaningful public notice of the intention of the State to submit a State Plan. To be meaningful, this notice shall, at a minimum—

(1) Appear in newspapers of general circulation published in the State;

(2) Indicate where a copy of and information pertaining to the proposed State Plan can be obtained;

(3) Indicate the date, time, and location of each public hearing to be held pursuant to § 458.204(b) at least 30 days prior to such hearing; and

(4) Invite public comments on the content of the proposed State Plan, with at least 30 days notice.

(b) *Hearing.* Hold at least one public hearing in the State for the purpose of hearing testimony and receiving comments on the content of the proposed State Plan.

458.205 Procedures for submission and approval of State Plans.

(a) *Who Shall Submit.* Ten (10) copies of the proposed State Plan shall be submitted to the Secretary by either:

(1) The Governor of the State;

(2) The Lead Agency; or

(3) the TVA with respect to all covered utilities over which the TVA has exclusive ratemaking authority and, in the discretion of TVA, with respect to any covered utility over which the TVA and another State Regulatory Authority have ratemaking authority.

(b) *Time for Submission.* The proposed State Plan shall be submitted within 180 days of the effective date of this rule. The time for submission may be extended by the Secretary if:

(1) The Governor or Lead Agency requests an extension at least 10 days prior to the formal deadline; and

(2) Good cause is shown for allowing an extension.

(c) *Approval.*

(1) If a proposed State Plan meets the criteria of Subparts B, D, and E of this Part, the Secretary shall approve it

within 90 days of the date the proposed State Plan was submitted.

(2) Within 13 months after the date of approval of a State Plan, the Lead Agency shall provide to the Secretary a statement certifying whether or not all covered utilities and building heating suppliers subject to the State Plan are in compliance with the State Plan.

(3) The Lead Agency shall, within 30 days of approval of the State Plan:

(i) Inform covered utilities subject to the State Plan and participating building heating suppliers of the contents of the State Plan;

(ii) Direct such covered utilities and participating building heating suppliers to comply with the State Plan; and

(iii) Inform such covered utilities and participating building heating suppliers of the State procedures for investigating and enforcing compliance with the State Plan.

(d) *Disapproval.*

(1) If a proposed State Plan does not meet the criteria of Subparts B, D, and E of this Part, the Secretary shall, within 90 days of the date the proposed State Plan was submitted, disapprove the proposed State Plan in writing and shall specify in writing the grounds for disapproval.

(2) Within 60 days of the date of disapproval of a proposed State Plan, or such longer period as the Secretary may determine pursuant to the criteria of § 458.206(b), the Governor or Lead Agency may submit another proposed State Plan. Except for the time in which a proposed State Plan must be submitted and the requirment for notice, comment, and public hearing, all procedures of this Subpart for submission of the original proposed State Plan shall be applicable to the submission of any proposed State Plan submitted after initial disapproval. The Secretary may, in disapproving a State Plan, require that the notice, comment, and public hearing requirements be complied with prior to resubmission.

(e) *Amendments.*

(1) The Governor or Lead Agency may submit proposed amendments to an approved State Plan at any time.

(2) Except for the time in which a proposed State Plan must be submitted, all procedures of this Subpart for submission of the original State Plan shall be applicable to the submission of proposed amendments to any approved State Plan. Exception: The Secretary may waive any of the submission requirements for proposed amendments if the Secretary finds that the amendment is unlikely to have a substantial impact on large numbers of individuals or businesses.

§ 458.206 Building heating suppliers.

If the Governor or Lead Agency submits a plan applicable to building heating suppliers in the State, it shall be a part of the State Plan and shall be submitted in accordance with the procedures of this Subpart applicable to the submission of the State Plan.

§ 458.207 Special provisions for the Tennessee Valley Authority (TVA).

In this Part, except as otherwise specified, references to the Lead Agency shall be deemed to refer also to the TVA and references to the State Plan shall be deemed to refer also to the TVA Plan. References in this Part to a State as a geographic area shall, with respect to the TVA Plan, be references to the service areas of the covered utilities subject to the TVA Plan. Reference in this Part to a State as a governmental entity (other than references to State laws or regulations) or to any State Agency or officer shall be deemed to refer also to the TVA. If the TVA chooses to submit a Plan, it shall be subject to the following exceptions and additional requirements:

(a) *Exclusion from Initial Submission.* The TVA need not submit the Initial Submission as required in § 458.202. However, within 30 days after the effective date of this rule, the TVA shall notify the Secretary of the person(s) in charge of its Plan and shall submit to the Secretary a list of which covered utilities will be subject to its Plan.

(b) *Coordination Requirement.* The TVA shall coordinate its Plan with each State Plan developed by a State in which the utilities covered by the TVA Plan are located.

(c) *Exclusion of Building Heating Suppliers.* The TVA Plan shall not cover building heating suppliers.

§ 458.208 Special procedures for exemptions.

(a) *Exemption Procedure.* If the State Regulatory Authority having ratemaking authority over a utility determines, according to the criteria of § 458.208(c) and the procedures of § 458.208(d), that the full implementation by that utility of a CASC Program meeting the requirements of this part would produce a significant impairment of such utility's ability to fulfill the requirements of the RCS program, 10 CFR Part 456, or to provide utility service to its customers, then a State Plan may be submitted which instead proposes a conditional program, meeting the requirements of § 458.208(d), for such utility.

(b) *Criteria for Significant Impairment.*

(1) The criteria for determining the existence of a significant impairment of a utility's ability to provide utility service to its customers shall be established by the State Regulatory Authority which exercises ratemaking authority over the utility subject to the following restriction specified by NECPA.

(2) A significant impairment of the RCS Program is defined as anything which has the effect of delaying the submission, approval, or implementation of residential energy conservation plans under 10 CFR Part 456. The criteria for significant impairment, as determined by the State Regulatory Authority, shall be included in the State Plan. If there is no State Plan submitted, such criteria shall be included in a separate submission.

(c) *Determination of Significant Impairment.* A determination of the existence of a significant impairment must be made by the State Regulatory Authority having ratemaking authority over the utility through either of the following two procedures:

(1) Within 6 months of the date of these rules, the State Regulatory Authority may establish its criteria for significant impairment (consistent with § 458.208(b)), review exemption requests with regard to these criteria, and produce findings of significant impairment. In such cases, the State Plan may be submitted containing conditional programs which meet the requirements of § 458.208(d) for the exempted utilities; or

(2) Alternatively, within six months of the date of these rules, the State Regulatory Authority may make a preliminary determination of significant impairment. In this case, the State Plan submitted shall provide for full implementation of the CACS Program by utilities applying for exemption under this procedure. The State Plan submission should include, as an appendix, a description of the basis for the preliminary determination specified by the State Regulatory Authority. If, within one year of the effective date of this rule, the State Regulatory Authority confirms its finding of significant impairment, then an amended State Plan may be submitted containing conditional programs which meet the requirements of § 458.208(d) for the exempted utilities.

(d) *Requirements for State Plans Containing Conditional Programs.*

(1) *Conditional Programs.* A conditional program is a partial CACS Program which is permitted due to the existence of certain conditions which would produce significant impairments, as described in § 458.208(b), if full implementation were undertaken.

(2) A conditional program need not provide immediate coverage of all of the commercial buildings and multifamily dwellings in the utility's service area. Conditional programs may not have the effect of changing the nature of the program as defined by Subpart D and E of this part. Allowable partial programs include the following possibilities:

(i) All commercial, no multifamily;

(ii) All multifamily, no commercial;

(iii) Geographic partitioning of utility service area; or

(iv) Partitioning of commercial sector on a Standard Industrial Classification code basis.

(3) A conditional program is conditioned on the existence of significant impairments as described in § 458.208(a). Accompanying a conditional program there must be a plan to alleviate such impairments if possible, whereupon the conditional program shall be converted to a full program meeting all the requirements of this Part.

(4) *State Plan Requirements.* State Plans containing conditional programs must include for each such program the following items:

(i) Specification of the significant impairment(s) and analysis sufficient to demonstrate the engineering and/or economic basis for this determination;

(ii) Specification of the partial program to be implemented and analysis sufficient to demonstrate the rationale for this program as an interim means of avoiding significant impairments;

(iii) Specification of the conditions which will ultimately result in complete alleviation of the impairment(s) and of the steps the utility will take to bring about such conditions;

(iv) Specification of an implementation schedule, identifying the target dates for alleviation of significant impairments and full program implementation;

(v) Specification of special enforcement measures which the State shall employ to monitor the progress of utilities in alleviating significant impairments; and

(vi) Specification of procedures the State will employ to regularly update and review the State Plan until all conditional programs have been brought to full implementation.

Subpart C—Preparation, Submission, and Approval of Nonregulated Utility Plans

§ 458.301 Scope.

This Subpart identifies the responsibilities of covered nonregulated utilities not subject to a State Plan for the preparation and submission of Nonregulated Utility Plans, the procedures for approval of Nonregulated Utility Plans by the Secretary, and the minimum requirements for the content of Nonregulated Utility Plans.

§ 458.302 Coverage.

Subpart C shall apply to all nonregulated covered utilities which are not covered by a State Plan.

§ 458.303 Initial submission.

Each nonregulated utility subject to this Subpart shall notify the Secretary within 60 days after the effective date of these rules, of the person responsible for the preparation of its Nonregulated Utility Plan.

§ 458.304 Coordination requirements.

Each nonregulated utility subject to this Subpart shall, to the extent feasible, coordinate the preparation of its Nonregulated Utility Plan with the preparation of the applicable State Plan for the purpose of minimizing inconsistent provisions between the two plans.

§ 458.305 Notice, comment, and public hearing.

Prior to submission of the Nonregulated Utility Plan to the Secretary for approval, the nonregulated utility shall:

(a) Notice and Comment. Provide meaningful public notice of the requirement for the nonregulated utility to submit a Nonregulated Utility Plan. To be meaningful, this notice shall, at a minimum:

(1) Appear in newspapers of general circulation published in the nonregulated utility's service area;

(2) Indicate where a copy of the proposed Nonregulated Utility Plan can be obtained and where questions concerning the Plan can be answered;

(3) Indicate the date, time, and location of each public hearing to be held with at least 30 days notice; and

(4) Invite public comments on the content of the proposed Nonregulated Utility Plan, at least 30 days prior to the final date for receiving such comments.

(b) *Hearing.* Hold at least one public hearing in the nonregulated utility's service area for the purpose of hearing testimony and receiving comments on the content of the proposed Nonregulated Utility Plan.

§ 458.306 Procedures for submission and approval of nonregulated utility plans.

(a) *Submission.* Each nonregulated utility subject to this Section shall submit to the Secretary within 180 days of the effective date of these rules a proposed Nonregulated Utility Plan. The time for submission may be extended by the Secretary if:

(1) The nonregulated utility requests an extension at least 10 days prior to the formal deadline; and

(2) Good cause is shown for allowing an extension.

(b) *Approval* (1) If a proposed Nonregulated Utility Plan meets the criteria of Subpart C the Secretary shall approve it within 90 days of the date the proposed Nonregulated Utility Plan was submitted.

(2) Within 13 months after the approval of the Nonregulated Utility Plan, the nonregulated utility shall provide to the Secretary a statement certifying whether or not it is in compliance with its Nonregulated Utility Plan.

(c) *Exceptions to Plan Requirements for Nonregulated Utilities.* (1) Except as provided in this Section, each Nonregulated Utility Plan shall meet all the requirements for State Plans in Subparts D and E.

(2) Except as otherwise provided in this Section, all references in Subparts D and E to:

(i) Covered utilities shall be deemed to refer to utilities subject to this section;

(ii) A State Plan shall be deemed to refer to a Nonregulated Utility Plan;

(iii) Participating building heating suppliers shall not apply;

(iv) A State (as a governmental entity, other than references to State laws or regulations) or any State Agency or officer shall be deemed to refer to the nonregulated utility submitting the plan; and

(v) A State (as a geographic area) shall be deemed to refer to the nonregulated utility's service area.

(3) A nonregulated utility shall coordinate with the State Lead Agency to minimze inconsistencies with respect to the estimates of costs and savings contained in the Commercial Announcement and the Apartment Announcement distributed by the nonregulated utility and those distributed by utilities subject to the State Plan in the same area.

(4) A Nonregulated Utility Plan must provide complaint processing procedures similar to those required in State Plans under Subparts D and E, but need not provide a basis in State law for enforcing decisions or appealing decisions.

(5) The requirements of § 458.407 (b) and (c) and of § 458.507 (b) and (c) are not applicable to Nonregulated Utility Plans.

(6) In a State submitting a State Plan, a nonregulated utility may, by written understanding with the appropriate

State agency, utilize services which have been provided for in the State Plan.

(7) If the Nonregulated Utility Plan utilizes State Plan services all references in the State Plan to those services with regard to utilities subject to the State Plan shall be deemed to refer to the nonregulated utility.

(8) If the Nonregulated Utility Plan proposes to utilize any of the State Plan services, the Plan shall so state and copies of the written agreements with the appropriate State Agencies shall be included with the Nonregulated Utility Plan in the submission to the Secretary.

(d) *Disapproval.* (1) If the Nonregulated Utility Plan does not meet the criteria of this Section, the Secretary shall, within 90 days of the date the proposed Nonregulated Utility Plan was submitted, disapprove Nonregulated Utility Plan and specify in writing the grounds for disapproval.

(2) Within 60 days of the date of disapproval of a proposed Nonregulated Utility Plan, or such longer period as the Secretary may determine, the nonregulated utility shall submit another proposed Nonregulated Utility Plan. Except for the time in which a proposed Nonregulated Utility Plan must be submitted and the requirements for notice, comment, and a public hearing, the procedures of this Section for submission of the original proposed Nonregulated Utility Plan shall be applicable to the submission of any proposed Nonregulated Utility Plan submitted after initial disapproval. The Secretary may, in disapproving a plan, require that the notice, comment, and public hearing requirements be complied with prior to resubmission.

(e) *Amendments.* (1) The nonregulated utility may submit proposed amendments to an approved Nonregulated Utility Plan at any time.

(2) Except for the time in which a proposed plan must be submitted, the procedures of this Section for submission of the original Nonregulated Utility Plan shall be applicable to the submission of proposed amendments to an approved Nonregulated Utility Plan. Exception: The Secretary may waive any of the submission requirements for proposed amendments if the Secretary finds that the amendment is unlikely to have a substantial impact on large number of individuals or businesses.

§ 458.307 Special procedures for exemptions.

The procedures for exemptions which apply to State Plans, specified in § 458.206, shall also apply to a nonregulated utility seeking exemption except that, in applying the specifications of § 458.206 in the case of a nonregulated utility, any reference to a regulated utility shall be treated as a reference to a nonregulated utility; any reference to a State (government) or lead agency shall be treated as a reference to a nonregulated utility; any reference to a State Plan shall be treated as a reference to a Nonregulated Utility Plan; and any reference to a State Regulatory Authority shall be treated as a reference to the Governor.

Subpart D—Energy Conservation Services for Commercial Buildings

§ 458.401 Scope and coverage.

(a) *Scope.* This Subpart prescribes the minimum requirements for the content of State Plans regarding energy conservation services for commercial buildings. The State may include additional information and provide additional requirements in the State Plan for commercial buildings in the Commercial and Apartment Conservation Service Program if such information and requirements are not specifically prohibited by these rules or by any applicable law or regulation. All references in this Subpart to covered utilities apply to regulated and nonregulated covered utilities subject to the State Plan.

(b) *Coverage.* (1) *Regulated Utilities.* All regulated utilities providing utility service in a State which meet the definition of "covered utility" in § 458.105(g) shall be subject to the State Plan and shall be identified in the State Plan.

(2) *Nonregulated Utilities.* The State Plan shall identify which nonregulated covered utilities, if any, are covered under the State Plan.

(3) *Building Heating Suppliers.* The State Plan shall state whether or not it includes a Commercial and Apartment Conservation Service Program for building heating suppliers.

(4) *Exemptions.* The State Plan shall identify which regulated utilities have been exempted by the State Regulatory Authority from providing services to commercial buildings, and which nonregulated utilities have been exempted by the Governor from providing services to commercial buildings.

§ 458.402 Eligibility for audit.

(a) The State Plan shall describe how an eligibile commercial customer may request an audit. Such procedures shall not be so cumbersome as to unreasonably limit participation.

(b) The State Plan shall provide that, in order to request an audit from a public utility or participating building heating supplier, the requesting party must:

(1) Be an owner or tenant of a commercial building; and

(2) Be an eligible customer of such public utility or participating building heating supplier.

(c) The State Plan shall include procedures designed to provide that each public utility shall not be required to conduct an energy audit of a commercial building which has been audited previously pursuant to this part or pursuant to Chapter II, Title 10 CFR Part 455 (Grant Programs for Schools and Hospitals and Buildings Owned by Units of Local Government and Public Care Institutions).

§ 458.403 Services provided by utilities and participating building heating suppliers.

(a) *Information to Eligible Customers.* (1) *Commercial Announcement, Distribution and Content.* The State Plan shall require each covered utility and each participating building heating supplier to send to each eligible commercial customer, no later than 12 months after approval of the State Plan and every two years thereafter until January 1, 1990, a Commercial Announcement which shall—

(i) List the program measures and, if any, the State measures applicable to commercial buildings;

(ii) List the energy conserving operation and maintenance procedures and state that they are of low or no cost;

(iii) Offer and describe the audit;

(A) The offer of the program audit may be conditioned upon a nondiscriminatory and reasonable factor such as serving one geographic area at a time. At a minimum, the State Plan shall contain procedures to assure that all customers who receive a conditional offer of a program audit are recontacted and receive an unconditional offer of a program audit within one year of receiving the conditional offer;

(B) Explain how the eligible customer may request the audit; and

(C) List the direct cost, if any, of receiving the audit.

(iv) Include a brief explanation of the benefits of the Federal energy tax credits, and State energy tax credits, if any;

(v) Not include any advertising for the sale, installation or financing by any supplier, contractor, or lender (including the covered utility) of any energy conservation measure, renewable resource measure, State measure, or energy conserving operation and maintenance procedure; however, if the covered utility or participating building heating supplier finances the sale or

installation of such measures, the Commercial Announcement may so state;

(vi) Not include any information regarding any product which is not an energy conservation measure, a renewable resource measure, a State measure, or an energy conserving operation and maintenance procedure.

(2) *New Customers.* (i) A new customer is a person who becomes an eligible customer after initial distribution of the Commercial Announcement but before January 1, 1990.

(ii) The State Plan shall require that each covered utility and participating building heating supplier send a Commercial Announcement which meets the requirements of this section to each new customer within 60 days of such customer becoming a new customer.

(iii) The State Plan shall require that covered utilities and participating building heating suppliers inform each new customer that upon request the customer may receive a copy of the results of any program audit of the customer's building which the covered utility or participating building heating supplier may have performed pursuant to the State Plan and require that upon such a request such utility or building heating supplier provide such results.

(b) *Energy Audits.* (1) *Requirements for Program Audits.* The State Plan shall describe the program audit services to be offered by covered utilities and participating building heating suppliers and shall require at a minimum that each covered utility and participating building heating supplier provide to each eligible customer a comprehensive program audit which addresses all applicable energy conserving operation and maintenance procedures, program measures and State measures, if any, upon request by such eligible customer.

(i) The State Plan shall require that in each program audit, the auditor determines which of the energy conserving operation and maintenance procedures would save energy in the commercial building, inform the eligible customer of such changes in building operation and maintenance, emphasize the importance of the changes and recommend that they be accomplished before the installation of any program measure or State measure.

(ii) The State Plan shall require that in each program audit the auditor determine the applicability of each program measure in the commercial building. If the program measure is not applicable, then the requirements of this section to provide estimates of the cost and savings of the installation of such measures in such building need not apply. A program measure is applicable in a commercial building if:

(A) The measure is not already present in the commercial building.

(B) Installation of the measure is not a violation of Federal, State, or local law or regulation.

(C) With respect to lighting systems, the hours of lighting system operation are greater than the period of time the building is open for occupancy; the existing lighting levels exceed the applicable State regulations; if any of the following conditions exist; if incandescent lighting is present in general use; if mercury lighting is present in general use; if outdoor lighting or security lighting is done with other than high or low pressure sodium lighting; or (for all instances of fluorescent lighting) where low energy lamps or ballasts are not in use.

(D) With respect to ceiling insulation, the difference between the effective R-value of any existing insulation and the program measure level for that building is R–11 or more. If it is not possible to determine the existing insulation level then analysis is not required.

(E) With respect to wall insulation, there is no insulation in a substantial portion of the exterior walls and it is practical to insulate the wall.

(F) With respect to water heater insulation, the remaining useful life of the water heater appears to the auditor to be at least three years and space is available around the water heater to install insulation.

(G) With respect to steam/condensate pipe insulation, the existing insulation level is less than the thermal equivalent of one inch of fiberglass.

(H) With respect to hot water pipe insulation with the presence of a continuous hot water circulator, the insulation level is less than the thermal equivalent of one inch of fiberglass.

(I) With respect to window heat gain and/or loss, retardants, the building has mechanical cooling.

(J) With respect to automatic energy control systems, there is the capability to reduce the period of consumption of energy for lighting, heating, or cooling systems through automatic time regulation; or the capability to reduce the rate of consumption of energy through equipment modulation based on inside or outside temperature and/or humidity or building occupancy; or the the capability to reduce electricity costs through regulation of demand; or the capability to reduce costs through regulation of demand; or the capability to reduce mechanical heating or cooling requirements through replacement with outside air based on inside or outside temperature and/or humidity.

(K) With respect to equipment associated with automatic energy control systems which is required to operate steam, hydronic or ventilating systems, there is an applicable automatic energy control system whose function requires or can be enhanced by electrical or mechanical equipment.

(L) With respect to replacement burners, furnaces, boilers, or any combination thereof, the existing burner, furnace, boiler or combination are approximately five years old or older.

(M) With respect to flue opening modifications, the furnace combustion air is taken from a conditioned area.

(N) With respect to energy recovery systems (which may include but not be limited to, water-to-water, air-to-air and other heat recovery systems), there exists a source of energy presently disposed to the atmosphere or to waste water, while a building energy requirement exists which can be met with the waste energy in a manner that reduces total building energy consumption, and after other measures for reducing the wasted energy have been considered, and is in compliance with all applicable building, health, and safety codes.

(O) With respect to cogeneration systems which produce electricity, as well as steam or other forms of thermal of mechanical energy, there exists a ratio of kilowatt electrical demand to thermal demand of one kilowatt to the range of 4,000 to 12,000 BTU thermal and the demand is coincident on an annual basis.

(P) With respect to wind energy devices: the estimated average annual wind resource in the vicinity of the site is 10 miles per hour, or greater, adjusted to 10 meters (33 feet) above ground level; and there are no major wind obstructions over 55 feet high, greater than 30 feet wide, within 100 feet of a potential location for the wind energy device.

(Q) With respect to active solar heating systems, or combined active solar systems, a site exists on or near the building which is free of major obstruction to solar radiation and the building has a space heating system other than a steam heating, electric resistance radiant heating, or electric resistance baseboard heating system.

(R) With respect to active domestic hot water systems, a site exists on or near the building which is free of major obstruction to solar radiation.

(S) With respect to solaria/sunspace systems, the building has a South-facing ground level wall, which is free of major obstruction to solar radiation.

(T) With respect to replacement central air conditioners, the building has a central air conditioner that is approximately five years old or older.

These above applicability criteria may in a State Plan be expanded or restricted, subject to the approval of the Secretary.

(iii) The State Plan shall require that each estimate of energy cost savings and of installation costs provided as a result of a program audit be based on an adequate assessment including actual measurements or inspections, as appropriate, performed on-site by the auditor, of the building shell, the lighting system and of the space heating, space cooling, and water heating equipment.

(iv) The State Plan shall contain procedures to assure that the estimates of energy cost savings and of installation costs and any other economic calculation provided as a result of a program audit shall be based on typical recent local electricity rates, reasonable real energy cost escalation rates that are likely to be experienced by the eligible customer, typical local prices for materials and installation of program measures, and typical local climate data for the eligible customer's location.

(v) The State Plan shall require that the estimates of energy cost savings for active solar space heating systems, solar domestic hot water systems, and combined active solar space heating and solar domestic hot water systems be based on the calculation procedures contained in the HUD Intermediate Minimum Property Standards Supplement, Solar Heating and Domestic Hot Water Systems, 4930.2, 1977 Edition; U.S. Department of Housing and Urban Development, or equivalent calculation procedures, included in the State Plan and approved by the Secretary.

(vi) The State plan shall contain procedures to assure the validity of the program audit with respect to all program measures and shall contain either:

(A) A brief description of the program audit procedures which shall be followed under the State Plan and a detailed description of the method which will be used by the State to assure the accuracy of these procedures; or

(B) A detailed description of the program audit procedures which shall be followed under the State Plan, subject to the approval of the Secretary as to their validity; and

(C) A certification that the State has sought the approval of the Secretary as to the accuracy of the program audit procedures.

For the purposes of this paragraph, the term "program audit procedures" means the measurements or inspections which the auditor must make in a customer's building and the calculations which must be performed in making energy costs savings estimates.

(vii) The State Plan shall require that any cost and savings estimate for any applicable furnace efficiency modification to a gas or oil furnace or boiler be based on an evaluation of the seasonal efficiency of such furnace or boiler. This seasonal efficiency shall be based on estimated peak (tuned up) steady state efficiency corrected for cycling losses. Steady state efficiency shall be derived from the manufacturer's design data and observation of the furnace components, or alternatively, by a flue gas analysis of measured flue gas temperature and carbon dioxide content.

(viii) The State Plan shall require that detailed costs and savings estimates be calculated for the applicable program measures identified in § 458.403(b)(2)(xvi). The State Plan shall require that the detailed analysis calculations be consistent with accepted engineering practice. The analytic approach shall not be limited to exclude systematized procedures, including computer-based analysis.

(ix) The State Plan shall require that the auditor provide at least installation costs and energy savings estimates based on typical practice for any energy consuming function within the building, including but not limited to the measures identified in § 458.103, if the function accounts for more than ten percent of the total building energy consumption.

(2) *Results of Program Audits.* The State Plan shall require that the auditor deliver the following information in writing, to each eligible commercial customer who receives a program audit, upon completion of the audit. The State Plan shall require that the auditor offer to the eligible customer an opportunity to discuss upon request the audit results.

(i) An estimate of the type, quantity, and rate of energy consumption of the eligible customer's building;

(ii) A determination of the total BTU of fuel consumed by the building, as measured at the building line, of the energy use in BTU per square foot of building floor space as well as description of the BTU consumed by each fuel as proportion of total BTU and of the costs of each fuel as a proportion of total costs, and an estimate of the proportion of each fuel that is consumed by at least the following end-uses: space heating, space cooling, ventilation, lighting, and domestic hot water. This estimate may be based on typical practice in buildings of the same type and climate.

(iii) Notice as to the availability of Government sponsored low-interest loans, weatherization programs, competitive grants, applicable tax credits and other forms of assistance which may reduce implementation costs.

(iv) Guidance for implementation of recommended measures. This activity may include methods of finding and evaluating contractors, suppliers and financing institutions.

(v) An estimate of the costs and savings that the eligible building may experience with adoption of appropriate changes in building operation and maintenance.

(vi) An estimate, based on the calculation procedures developed pursuant to § 458.403(b)(1)(viii), of the total installed cost of each applicable program measure identified in § 458.403(b)(2)(xvi).

(vii) An estimate, based on the calculation procedures developed pursuant to § 458.403(b)(1)(viii), of the energy savings which would occur during the first year from installation of each applicable program measure identified in § 458.403(b)(2)(xvi).

(viii) An estimate, based on typical practice in similar building types in the same climate zone, of the installed total cost of the measure expressed in a range of dollars for the applicable program measures identified in § 458.403(b)(xvii).

(ix) An estimate of the savings in energy costs, based on typical practice in similar building types in the same climate zone, which would occur during the first year from installation of each applicable program measure identified in § 458.403(b)(2)(xvii).

(x) An estimate of the simple payback period of each applicable program measure, taking into account the interactions among the various measures. The simple payback period is calculated by dividing the estimated total cost of the measure, as determined pursuant to § 458.403(b)(2)(vi) or § 458.403(b)(2)(viii), by the estimated annual cost saving accruing from the measure, as determined pursuant to § 458.403(b)(2)(vii) or § 458.403(b)(2)(ix). Other economic analyses, such as life-cycle costing, which consider all costs and cost savings, such as maintenance costs and/or savings, resulting from an energy conservation measure, are recommended, but are not required.

(xi) The following disclosure or its equivalent: "The procedures used to make these estimates are consistent with DOE criteria for commercial energy audits or have been evaluated by the State for accuracy. However, the actual installation costs you incur and energy

savings you realize from installing these measures may be different from the estimates contained in this audit report. Although the estimates are based on measurements of your building, they are also based on assumptions which may not be totally correct for your establishment."

(xii) An estimate of the annual normal maintenance costs, if any, of each applicable program measure.

(xiii) With respect to a program audit addressing an applicable solar domestic hot water system or active solar space heating system, or combination thereof, a description of the solar system assumed by the auditor in preparing energy savings estimates which shall include the following information:

(A) Square feet of collector;

(B) Collector characteristics, including glazing materials and other collector materials;

(C) Any storage system needed, including the capacity of storage;

(D) Any freeze protection needed;

(E) The estimated percent of the space and/or water heating load to be met by solar energy;

(F) Any physical connections needed with existing heating systems;

(G) Any site preparation needed; and

(H) If the results are based on a simulation, the following disclosure or its equivalent: "The energy cost savings estimates you receive are based on systems which may be different from the ones you purchase. Also, these estimates were not determined using actual conditions but using simulated measurements. Therefore, the cost savings we have estimated may be different from the savings which actually occur."

(xiv) With respect to a program audit addressing an applicable passive solar space heating and cooling system:

(A) The generic designation and a pictorial description of the particular system considered by the auditor;

(B) The estimated percent of the heating load to be met by such system;

(C) The approximate dimensions of such system;

(D) Collection storage characteristics, including the recommended heat capacity of storage; and

(E) The disclosure provided in § 458.403(b)(2)(xii)(H) of this subsection.

(xv) With respect to a program audit addressing an applicable wind energy device:

(A) Installation cost estimates as required in § 458.403(b)(2)(viii) based on commercially available wind devices of a kilowatt rating appropriate to the level of electricity consumption in the customer's building;

(B) Estimates of energy cost savings as required in § 458.403(b)(2)(ix), provided in the form of a function of average yearly wind speeds for the system used in § 458.403(b)(2)(xv)(A);

(C) A description of the type of wind energy device used by the auditor in preparing the energy saving estimates;

(D) The average yearly wind speed as indicated by the appropriate Wind Energy Resource Atlas for the region, and the relationship between that data and the likely wind speeds at the residence; or

(E) The average yearly wind speed at the nearest qualified measuring station and the relationship between that data and the likely wind speeds at the residence. A qualified measuring station is one which meets the following requirements:

(1) The anemometer is located no less than 6 meters (19.8 feet) above ground level;

(2) Data used to determine the annual average wind speed has been collected for one year or more; and

(3) Calibration of the data collection and recording instrument(s) had been certified by the instrument manufacturer(s) at the time of purchase.

(xvi) A detailed analysis, developed pursuant to § 458.403(b)(1)(viii), shall be provided for the following energy conservation measures, except where the applicability criteria militate otherwise:

(A) Lighting systems,

(B) Caulking and weatherstripping,

(C) Ceiling, roof and wall insulation,

(D) Storm windows and storm doors, and

(E) Hot water/steam/condensate pipe insulation.

(xvii) The following measures shall be audited for cost and savings estimates determined pursuant to typical practice in similar building types in the same climate zone:

(A) Hot water generation and distribution system;

(B) Furnace, or utility plant and distribution system, modifications, including replacement burners, furnaces, boilers, or any combination thereof, which substantially increase the energy efficiency of the heating system; devices for modifying flue openings which will increase the energy efficiency of the heating system; intermittent pilot ignition devices (IID's) which replace standing gas pilot lights; and devices for modifying and improving the air-conditioning and air-handling systems which may include but are not limited to enthalpy controls, economizers and various load management techniques;

(C) Heat absorbing or heat reflecting window and door systems, reductions in glass area, and other window and door system modifications;

(D) Automatic energy control systems (which include, but are not limited to, computer control systems, time clocks, thermostats, and damper motors);

(E) Equipment, associated with automatic energy control systems, which is required to operate variable steam, hydronic, or ventilating systems;

(F) A solar energy system, as defined in Section 504(8) of the Solar Energy and Energy Conservation Bank Act;

(G) Energy recovery systems (which may include, but are not limited to, water-to-water, air-to-air and other heat recovery systems); and

(H) Cogeneration systems which produce electricity, as well as steam or other forms of thermal or mechanical energy, and which meet such fuel efficiency requirements as the Secretary may, by rule, prescribe.

(c) *Reporting and Record Keeping Requirements.* (1) *Reporting.* The State Plan shall contain provisions to assure that a report is submitted to the Secretary on July 1, 1981, and annually thereafter through July 1, 1990. The report shall contain the following information for the twelve-month period ending the preceding April 1, except that the Secretary may waive any of the reporting requirements, in approving the State Plan, for good cause:

(i) Any revision to the list of covered utilities and a list of participating building heating suppliers subject to the State Plan;

(ii) For each covered utility or participating building heating supplier:

(A) The approximate number of eligible commercial customers and, if available, the percentage of those customers for whom the utility or heating supplier is the primary heating fuel supplier;

(B) A copy of the Commercial Announcement distributed to eligible commercial customers;

(C) The number of eligible commercial customers who have requested an audit and the number of requests the utility or participating building heating supplier has fulfilled;

(D) The number and function of people assigned to the covered utility's or participating building supplier's program, including part-time employees; and

(E) The costs incurred by the utility or building heating supplier in providing commercial audits under the CACS Program including separately those costs paid by individual customers for services received and those costs paid by all ratepayers.

(iii) The number and nature of complaints by eligible customers against

the utility which have been handled through the procedures established under § 459.403(d);

(iv) A brief description of the status of activities carried out pursuant to § 458.405 (Auditor Qualification Requirements) including whether sufficient qualified personnel are available for program needs, the reasons for any shortages and the proposed resolution of any such shortage problem;

(v) The cost to the State of developing and implementing the State Plan; and

(vi) A citation to and brief description of any State or local law or regulation relevant to the State Plan and the status of any proposed State or local legislation or regulation relevant to the State Plan.

(2) *Record Keeping.* The State Plan shall contain procedures to assure that the following records are kept for the periods indicated and made available to the Secretary upon request, except that the Secretary may for good cause waive any of the record keeping requirements in approving the State Plan:

(i) The name and address of each eligible commercial customer who receives a program audit, which shall be kept for ten years from the date of such program audit;

(ii) A copy of the data collected during the audit, and a copy of the estimates of costs and savings presented to the customer, which shall be kept for ten years from the data of such program audit;

(iii) The amount and cost of fuel purchased each month or other billing period for the twelve months following each program audit for each eligible commercial customer, which shall be kept for two years from the date of such program audit; and

(iv) The names of the individuals who have met the qualification criteria described in § 458.405, which records shall be updated within a reasonable time following the qualification of such individuals.

(d) *Complaints Processing Procedures.* The State Plan shall contain procedures for resolving complaints against utilities. The complaint resolution procedures should use the procedures established under the RCS Program, § 456.315, as much as practicable.

§ 458.404 Addition of measures by States.

(a) The State may require or allow covered utilities or participating building heating suppliers to offer services for State measures in conjunction with the CACS Program subject to the approval of the Secretary in the State Plan.

(b) The Secretary may approve a State measure to be offered in conjunction with the CACS Program if:

(1) The measure is an energy conservation measure;

(2) The measure is a renewable resource measure; or

(3) The State Plan contains the following:

(i) Information demonstrating that the measure effectively saves non-renewable energy sources and does not increase the consumption of oil;

(ii) A method for adequately ensuring safe installation and use of such measure;

(iii) Adequate assurances that offering such measure in conjunction with the CACS Program will not adversely affect the environment, competition or the CACS Program in the State and will not increase the cost to an elibible customer of a program audit under the CACS Program; and

(iv) An adequate analysis of the effects on the environment of offering the State measures in conjunction with the CACS Program.

(c) The State plan shall describe how the State measures are to be offered in conjuction with the CACS Program.

§ 458.405 Auditor qualification requirements.

(a) The State Plan shall provide for an auditor training course. At a minimum, course content shall assure that a successful trainee will have gained the following:

(1) A general understanding of the three types of heat transfer and the effects of temperature and humidity on heat transfer;

(2) A general understanding of commercial construction terminology and components;

(3) A general knowledge of the operation of the heating and cooling systems used in the commercial building;

(4) A general knowledge of the different types of each applicable program and State measure of the advantages, disadvantages and applications of each;

(5) The capacity to conduct the audit as required in § 458.403(b), including:

(i) A familiarity with the energy conserving operation and maintenance procedures required to be audited for;

(ii) The capability to determine the applicability of the program measures and any State measures; and

(iii) A proficiency in the pertinent auditing procedures, as prescribed in or pursuant to the State Plan, for each applicable program and State measure.

(6) Where a furnace efficiency modification is an applicable program measure, and the source of fuel for the existing furnace or boiler is either gas or oil, a working ability to calculate the steady state efficiency of the furnace or boiler as required by § 458.403(b)(1)(vii);

(7) Where a renewable resource measure, other than a wind energy device, is an applicable program or State measure, an understanding of the nature of solar energy and its commercial buildings applications, including:

(i) Insulation;

(ii) Shading;

(iii) Heat capture and transport; and

(iv) Where appropriate, heat transfer for hot water and space heating;

(8) Where a wind energy device is an applicable program or State measure, an understanding of the nature of wind energy and its commercial building applications, including:

(i) Wind availability;

(ii) Effects of obstruction;

(iii) Wind capture;

(iv) Power generation; and

(v) Interfaces with residential and utility power lines;

(9) A general understanding of the applicability of air-to-air, water-to-water and air-to-water heat exchangers and the criteria for cost-effective applications;

(10) A general knowledge of pneumatic, electrical and hydronic control systems and their applicability to automatic energy control systems;

(11) The ability to recognize the compatibility between process heat loads and electrical loads in the eligible building population and to recognize when the criteria for potential applicability is appropriate;

(12) A general knowledge of lamps and lighting systems used in commercial buildings;

(13) A general knowledge of the functions and operating characteristics and the various modes and symptoms of failures of steam traps in commercial buildings;

(14) Where an automatic energy control system is an applicable measure, an understanding of the relationships between heating, air-conditioning and lighting systems and the common elements which require system automation;

(b) Each State may determine whether to teach the course in the entirety or in parts, and the State Plan shall indicate how each subject in section (a) will be taught.

(c) The State Plan shall specify how course content shall be monitored to ensure compliance with the requirements of § 458.405(a) above.

(d) The State Plan shall describe the following:

(1) Length of training program,
(2) Name of entity which developed the curriculum,
(3) Subject areas covered,
(4) How trainers shall be selected,
(5) An estimate of how many trainers will be required, and
(6) A description of the facilities and materials to be used.

§ 458.406 Procedures for investigating and enforcing compliance with the State plan.

(a) The State Plan shall require each covered utility and participating building heating supplier to comply with the State Plan.

(b) The State Plan shall contain adequate procedures for investigating and enforcing compliance with the State Plan by covered utilities and participating building heating suppliers.

(c) The State Plan shall cite and describe the existing or proposed State authority(ies) for such investigation and enforcement, including authorities with respect to any nonregulated utility covered in the State Plan.

(d) The State Plan shall identify the State agency(ies) responsible for such investigation and enforcement and shall include a description of the resources available for such investigation and enforcement.

§ 458.407 Coordination.

(a) *Other Programs.* The State Plan shall provide procedures to ensure effective coordination between its CACS Program as described in the State Plan and all local, State and Federal energy conservation programs within and affecting the State which shall include, but not be limited to:

(1) The Residential Conservation Service Program;

(2) The Federal Energy Extension Service;

(3) The Basic State Energy Conservation Program of the Department of Energy; and

(4) The Supplemental State Energy Conservation Program of the Department of Energy.

(b) *Energy Suppliers.* If the State Plan permits coordination of the CACS Program among energy suppliers in the State then it shall provide procedures describing how such coordination may occur and ensuring that no collusion on prices charged to eligible customers will occur.

(c) *State Regulatory Authority.* If the Lead Agency is not the State regulatory authority, then the State Plan shall contain a description of how the Lead Agency shall coordinate the implementation of the State Plan with the State regulatory authority

(d) The State Plan may contain provisions for coordination between utilities and building heating suppliers to ensure that a utility is not required to conduct an energy audit of a commercial building which has been audited previously pursuant to this section or pursuant to Chapter II, 10 CFR Part 455 (Grant Programs for Schools and Hospitals and Buildings Owned by Units of Local Government and Public Care Institutions).

§ 458.408 Accounting and payment of costs.

(a) *Accounting.* The State Plan shall require, and may permit with respect to costs of revenues directly associated with State measures, that covered utilities use the following accounts and procedures:

(1) All amounts expended or received by a covered utility which are attributable to the CACS Program, including any penalties paid under Subpart F (Federal Standby Authority) shall be accounted for on the books and records separately from amounts attributable to all other activities of the covered utility.

(2) Covered utilities subject to the jurisdiction of the Federal Energy Regulatory Commission (FERC) shall utilize the Uniform System of Accounts as prescribed in Title 18, CFR Parts 101, 104, 201 and 204. Covered rural electric cooperatives shall utilize the Uniform System of Accounts as prescribed by the Rural Electrification Administration (REA) in Title 7, CFR Part 1701, Appendix A. Other covered nonregulated utilities shall adopt accounts within their accounting system with the attributes of the appropriate accounts prescribed by the FERC.

(i) All amounts expended by a covered utility for the CACS Program shall be charged to subaccounts within Account 908, Customer Assistance Expenses, its equivalent or successor, or the appropriate account designated specifically by FERC or REA for CACS Program expenses. Appropriate records shall be maintained thereunder so as to allow ready indentification of costs attributable to the following program elements:

(A) Program Information and

(B) Program Audit;

(ii) Billed income attributable to the CACS Program shall be accounted for in subaccounts within Account 456, Other Electric Revenue (for electric utilities) or Account 495, Other Gas Revenues (for gas utilities), their equivalents or successors, or the appropriate account designated specifically by FERC or REA for Program billed income.

(b) *Payment of Costs.* The State Plan shall contain provisions requiring that a covered utility treat costs as described below and shall contain a description of how such costs will be treated.

(1) All amounts expended by a covered utility for the Commerical Announcement and all public education and program promotion directly related to providing information about a utility's Commercial CACS Program shall be treated as a current expense of providing utility service and be charged to all ratepayers of the covered utility in the same manner as other current operating expenses of providing such utility service.

(2) Other costs will be charged as determined by the State Regulatory Authority for all regulated utilities covered by the State Plan and individually by each nonregulated utility covered by the State Plan. Such costs include administrative and general expenses, including those associated with program audits.

(3) Costs incurred by a covered utility for services carried out by such utility on behalf of the State may be reimbursed by the State.

(c) *Duplication of Audits.* The State Plan shall contain a provision stating that a covered utility need not conduct an energy audit of a commercial building which has been previously audited pursuant to this Part or pursuant to 10 CFR Part 455 (Grant Programs for Schools and Hospitals and Buildings Owned by Units of Local Government and Public Care Institutions).

§ 458.409 Plans for participating building heating suppliers.

(a) *Requirements.* The procedures for each building heating supplier program shall be identical to the procedures required for utilities in this Subpart.

(b) *Participation and Withdrawal.* The State Plan, if it covers building heating suppliers, shall include a procedure by which the Governor shall allow a building heating supplier to participate in the commerical part of its CACS Program. The State Plan shall also provide for the voluntary withdrawal of participating building heating suppliers from the commercial part of its CACS Program.

(c) *Waiver of Requirements.* The State Plan shall contain a procedure by which the Governor may waive for any participating building heating supplier any requirement of the State Plan, except those listed below, upon a demonstration to the Governor's satisfaction that the resources of such supplier do not enable it to comply with the particular requirement. The requirements which the Governor shall

not waive with respect to any building heating supplier who chooses to participate in the program are those established according to:

(1) Section 458.406 (Procedures for Investigating and Enforcing Compliance with the State Plan);

(2) Section 458.405(b)(1)(iii)–(vii) (Accuracy of Auditing Procedures), for those measures for which a participating building heating supplier performs program audits for its eligible commercial customers;

(3) Section 458.405 (Auditor Qualification Requirements); and

(4) The following reporting and record keeping requirements:

(i) Section 458.403(c)(1)(i);

(ii) Section 458.403(c)(1)(ii), except that the Governor may waive § 458.403(c)(1)(ii)(E) concerning the accounting of program costs; and

(iii) Section 458.403(d) (Record Keeping).

Subpart E—Energy Conservation Services for Multifamily Dwellings

§ 458.501 Scope and coverage.

(a) *Scope.*

This Subpart prescribes the minimum requirements for the content of State Plans regarding energy conservation services for multifamily dwellings. The State may include additional information and provide additional requirements in the State Plan for multifamily dwellings in the CACS Program if such information and requirements are not specifically prohibited by these rules or by any applicable law or regulation. All references in this Subpart to covered utilities apply to regulated and nonregulated covered utilities subject to the State Plan.

(b) *Coverage.*

(1) *Regulated Utilities.* All regulated utilities providing utility service in a State which meet the definition of "covered utility" in § 458.105(g) shall be subject to the State Plan and shall be identified in the State Plan.

(2) *Nonregulated Utilities.* The State Plan shall identify which nonregulated covered utilities, if any, are covered under the State Plan.

(3) *Building Heating Suppliers.* The State Plan shall state whether or not it includes a CACS Program for building heating suppliers.

(4) *Exemptions.* The State Plan shall identify which regulated utilities have been exempted pursuant to § 458.208 in whole or in part by the State Regulatory Authority from providing services to multifamily dwellings, and which nonregulated utilities have been exempted pursuant to § 458.307 in whole or in part by the Governor from providing services to multifamily dwellings.

§ 458.502 Eligibility for audit.

(a) The State Plan shall describe how an eligible multifamily dwelling customer may request an audit. Such procedures shall not be so cumbersome as to unreasonably limit participation.

(b) The State Plan shall require that covered utilities and participating building heating suppliers provide, upon request, an audit to any party who:

(1) Is an owner of a multifamily dwelling,

(2) Is an eligible customer of such public utility or building heating supplier,

(3) Agrees to provide to the tenants, if any, of the customer's multifamily dwelling, the information developed by such audit concerning energy conserving operation and maintenance procedures, program measures, and State measures, if any, applicable to the individual dwelling units in such dwelling, and

(4) Agrees to provide to each tenant of the customer's multifamily dwelling a copy of the Tenant's Energy Conservation Information Package supplied by the utility or building heating supplier that would conduct the audit.

(c) The State Plan shall include procedures to provide that each public utility shall not be required to conduct an energy audit of a multifamily dwelling which has been audited previously pursuant to this part or pursuant to Chapter II, 10 CFR Part 455 (Grant Programs for Schools and Hospitals and Buildings Owned by Units of Local Government and Public Care Institutions).

§ 458.503 Services provided by utilities and participating building heating suppliers.

(a) *Information to Eligible Customers.*

(1) *Apartment Announcement: Distribution and Content.*

The State Plan shall require each covered utility and each participating building heating supplier to send to each eligible multifamily dwelling customer, no later than 12 months after approval of the State Plan and every two years thereafter until January 1, 1990, an Apartment Announcement which shall:

(i) List the program measures and, if any, the State measures applicable to multifamily dwellings.

(ii) List the energy conserving operation and maintenance procedures and state that they are of low or no cost.

(iii) Offer and describe the audit:

(A) The offer of the program audit may be conditioned upon a nondiscriminatory and reasonable factor such as serving one geographic area at a time. At a minimum, the State Plan shall contain procedures to assure that all customers who receive a conditional offer of a program audit are recontacted and receive an unconditional offer of a program audit within two years of receiving the conditional offer.

(B) Explain how the eligible customer may request the audit; and

(C) List the direct cost, if any, of receiving the service.

(iv) Include a brief explanation of the benefits of the Federal energy tax credits, and a description of who is eligible for them. This explanation should include at least the following information:

The Energy Tax Act of 1978 provides a residential energy credit for insulation, certain other energy-conservation components, and certain renewable energy source property expenditures made in connection with the taxpayer's principal residence. In the case of insulation and other energy conserving components, the credit is 15 percent of the first $2,000 of expenditures, or a maximum credit of $300. In the case of solar, wind, and geothermal energy expenditures, the credit is 40 percent of the first $10,000 spent, for a maximum credit of $4,000.

(v) Include a brief explanation of the benefits of the Weatherization Assistance Program for Low Income Persons, 10 CFR Part 440, and a brief description of who is eligible for such assistance.

(vi) Not include any advertising for the sale, installation or financing by any supplier, contractor, or lender (including the covered utility) of any energy conservation measure, renewable resource measure, State measure, or energy conserving practice; however, if the covered utility or participating heating supplier finances the sale or installation of such measures, the Apartment Announcement may so state.

(vii) Not include any information regarding any product which is not an energy conservation measure, a renewable resource measure, a State measure, or an energy conserving operation and maintenance procedure.

(viii) Include information on loans and grants available through the Solar Energy and Energy Conservation Bank.

(ix) Include information on any other loan grant programs available at the State or local level.

(x) Include a notice that, in order to receive the audit, the owner must agree to make any results of the audit applicable to an individual dwelling unit available to the tenant of such unit.

(3) *Supplemental Apartment Announcement.*

The State Plan shall require that a supplement to the Apartment Announcement shall be provided to eligible multifamily customers that have requested an audit. This supplement will contain information designed to show how landlords and tenants may share in the benefits of energy conservation, and will include sample landlord/tenant agreements showing how such benefits may be shared.

(3) *Tenant's Energy Conservation Information Package, Distribution and Content.*

The State Plan shall require each covered utility and each participating building heating supplier to supply to each customer who receives an audit under this subpart, for distribution by such customer to each tenant in the customer's multifamily dwelling, a Tenant's Energy Conservation Information Package (Information Package). The Information Package shall:

(i) List the energy conservation measures and energy conserving operation and maintenance procedures applicable to multifamily dwellings.

(ii) Explain how each of these measures or procedures would affect the level of utility service the tenant receives.

(iii) Contain a pamphlet describing how tenants may conserve energy in their apartments.

(iv) Contain low-cost/no-cost information.

(v) Contain information on tax credits and weatherization programs for renters.

(4) *Alternative.*

The State Plan may contain an alternative requirement for disseminating program information that shall be used instead of the Information Package described in § 458.503(a)(3), if the Secretary determines that such alternative requirement fulfills the same functions as the Information Package in an equivalent manner.

(5) *New Customers.*

(i) A new customer is a person who becomes an eligible customer after initial distribution of the Apartment Announcement but before January 1, 1990.

(ii) The State Plan shall require that each covered utility and participating building heating supplier send an Apartment Announcement which meets the requirements of this section to each new customer within 60 days of such customer becoming a new customer.

(iii) The State Plan shall require that covered utilities and participating building heating suppliers inform each new customer that upon request the customer may receive a copy of the results applicable to the new customer's dwelling unit of any program audit of the customer's building which the covered utility or participating heating supplier may have performed pursuant to the State Plan and require that upon such a request such utility or heating supplier provide such results.

(b) *Energy Audits.*

(1) *Requirements for Program Audits.*

The State Plan shall describe the program audit services to be offered by covered utilities and participating building heating suppliers and shall require at a minimum that each covered utility and participating building heating supplier provide to each eligible multifamily customer a comprehensive program audit which addresses all applicable energy conserving operation and maintenance procedures, program measures and State measures, if any, upon request by such eligible customer.

(i) The State Plan shall require that, in each program audit, the auditor determines which of the energy conserving operation and maintenance procedures would save energy in the multifamily dwelling, inform the eligible customer of such changes in building operation and maintenance, emphasize the importance of the changes and recommended that they be accomplished before the installation of any program measure or State measure.

(ii) The State Plan shall require that, in each program audit, the auditor determine the applicability of each program measure in the multifamily dwelling. If the program measure is not applicable, then the requirements of this section to provide estimates of the cost and savings of the installation of such measures in such multifamily dwelling need not apply.

A program measure is applicable in a multifamily dwelling if:

(A) The measure is not already present in the multifamily dwelling.

(B) Installation of the measure is not a violation of federal, State, or local law or regulation.

(C) With respect to lighting systems, the existing lighting levels exceed the applicable State regulations, if incandescent lighting is present in general use, if mercury lighting is present in general use, if outdoor lighting or security lighting is done with other than high or low pressure sodium lighting, (for all instances of fluorescent lighting) where low energy lamps or ballasts are not in use.

(D) With respect to ceiling insulation, the difference between the effective R-value of any existing insulation and the program measure level for that building is R-11 or more. If it is not possible to determine the existing insulation level then analysis is not required.

(E) With respect to wall insulation, there is no insulation in a substantial portion of the exterior walls and it is practical to insulate the wall.

(F) With respect to water heater insulation, the remaining useful life of the water heater appears to the auditor to be at least three years and space is available around the water heater to install insulation.

(G) With respect to steam/condensate pipe insulation, the existing insulation level is less than the thermal equivalent of one inch of fiberglass.

(H) With respect to hot water pipe insulation with the presence of a continuous hot water circulator, the insulation level is less than the thermal equivalent of one inch of fiberglass.

(I) With respect to window heat gain and/or loss retardants, the building has mechanical cooling.

(J) With respect to automatic energy control systems, there is the capability to reduce the period of consumption of energy for lighting, heating, or cooling systems through automatic time regulation; or the capability to reduce the rate of consumption of energy through equipment modulation based on inside or outside temperature and/or humidity or building occupancy; or the capability to reduce electricity costs through regulation of demand; or the capability to reduce costs through regulation of demand; or the capability to reduce mechanical heating or cooling requirements through replacement with outside air based on inside or outside temperature and/humidity.

(K) With respect to equipment associated with automatic energy control systems which is required to operate steam, hydronic or ventilating systems, there is an applicable automatic energy control system whose function requires or can be enhanced by electrical or mechanical equipment.

(L) With respect to replacement burners, furnaces, boilers, or any combination thereof, the existing burner, furnace, boiler or combination are approximately five years old or older.

(M) With respect to flue opening modifications, the furnace combustion air is taken from a conditioned area.

(N) With respect to energy recovery systems (which may include but not be limited to, water-to-water, air-to-air and other heat recovery systems), there exists a source presently disposed to the atmosphere or to waste water, while a building energy requirement exists which can be met with the waste energy in a manner that reduces total building energy consumption, and after other

measures for reducing the wasted energy have been considered, and is in compliance with all applicable building, health, and safety codes.

(O) With respect to cogeneration systems which produce electricity, as well as steam or other forms of thermal or mechanical energy, there exists a ratio of kilowatt electrical demand to thermal demand of one kilowatt to the range of 4,000 to 12,000 BTU's thermal and the demand is coincident on an annual basis.

(P) With respect to wind energy devices: the estimated average annual wind resource in the vicinity of the site is 10 miles per hour, or greater, adjusted to 10 meters (33 feet) above ground level; and there are no major wind obstructions over 55 feet high, greater than 30 feet wide, within 100 feet of a potential location for the wind energy device.

(Q) With respect to active solar heating systems, or combined active solar systems, a site exists on or near the building which is free of major obstruction to solar radiation and the building has a space heating system other than a steam heating, electric resistance radiant heating, or electric resistance baseboard heating system.

(R) With respect to active domestic hot water systems, a site exists on or near the building which is free of major obstruction to solar radiation.

(S) With respect to solaria/sunspace systems, the building has a South-facing ground level wall, which is free of major obstruction to solar radiation.

(T) With respect to replacement central air conditioners, the building has a central air conditioner that is approximately five years old or older.

(U) The above applicability criteria may in a State Plan be expanded or restricted, subject to the approval of the Secretary. If a large residential building customer covered by the RCS Program requests a CACS type audit, the auditor may substitute alternative applicability criteria for those contained in C, G, J, K, N, and O.

(iii) The State Plan shall require that each estimate of energy cost savings and of installation costs provided as a result of a program audit be based on an adequate assessment including actual measurements or inspections, as appropriate, performed onsite by the auditor, of the building shell, the lighting system and of the space heating, space cooling, and water heating equipment.

(iv) The State Plan shall contain procedures to assure that the estimates of energy cost savings and of installation costs and any other economic calculation provided as a result of a program audit shall be based on typical recent local electricity rates, reasonable real energy cost escalation rates that are likely to be experienced by the eligible customer, typical local prices for materials and installation of program measures, and typical local climate data for the eligible customer's location.

(v) The State Plan shall require that the estimates of energy cost savings for active solar space heating systems, solar domestic hot water systems, and combined active solar space heating and solar domestic hot water systems be based on the calculation procedures contained in the HUD Intermediate Minimum Property Standards Supplement, Solar Heating and Domestic Hot Water Systems, 4930.2, 1977 Edition; U.S. Department of Housing and Urban Development, or equivalent calculation procedures, included in the State Plan and approved by the Secretary.

(vi) The State Plan shall contain procedures to assure the validity of the program audit with respect to all program measures and shall contain either:

(A) A brief description of the program audit procedures which shall be followed under the State Plan and a detailed description of the method which will be used by the State to assure the accuracy of these procedures; or

(B) A detailed description of the program audit procedures which shall be followed under the State Plan, subject to the approval of the Secretary as to their validity; and

(C) A certification that the State has sought the approval of the Secretary as to the accuracy of the program audit procedures.

(D) For the purposes of § 458.503(b)(1)(vi), the term "program audit procedures" means the measurements or inspections which the auditor must make in a customer's building and the calculations which must be performed in making energy costs savings estimates.

(vii) The State Plan shall require that any cost and savings estimate for any applicable furnace efficiency modification to a gas or oil furnace or boiler be based on an evaluation of the seasonal efficiency of such furnace or boiler. This seasonal efficiency shall be based on estimated peak (tuned up) steady state efficiency corrected for cycling losses. Steady state efficiency shall be derived from manufacturer's design data and observation of the furnace components, or alternatively, by a flue gas analysis of measured flue gas temperature and carbon dioxide content.

(viii) The State Plan shall require that detailed costs and savings estimates be calculated for the applicable program measures identified in § 458.503 (b)(2)(xvi). The State Plan shall require that the detailed analysis calculations be consistent with accepted engineering practice. The analytic approach shall not be limited to exclude systematized procedures, including computer-based analysis.

(ix) The State Plan shall require that the auditor provide at least installation costs and energy savings estimates based on typical practice for any energy consuming function within the building, including but not limited to the measures identified in Subpart A 105, if the function accounts for more than ten percent of the total building energy consumption.

(2) *Results of Program Audits.*

The State Plan shall require that the auditor deliver the following information in writing, to each eligible customer who receives a program audit, upon completion of the audit. The State Plan shall require that the auditor offer to the eligible customer an opportunity to discuss the audit results if the customer requests an explanation.

(i) An estimate of the type, quantity, and rate of energy consumption of the eligible customer's building.

(ii) A determination of the total BTU's of fuel consumed by the building, as measured at the building line, of the energy use in BTU's per square foot of building floor space as well as description of the BTU's consumed by each fuel as a proportion of total BTU's and of the costs of each fuel as a proportion of total costs, and an estimate of the proportions of each fuel that are consumed by at least the following end-uses: space heating, space cooling, ventilation, lighting, and domestic hot water. This estimate may be based on typical practice of buildings of the same type and climate.

(iii) Notice as to the availability of Government sponsored low-interest loans, weatherization programs, competitive grants, applicable tax credits and other forms of assistance which may reduce implementation costs.

(iv) Guidance to implementation of recommended measures. This activity may include methods of finding, and evaluating contractors, suppliers and financing institutions.

(v) An estimate of the cost and savings that the eligible building may experience with adoption of appropriate changes in building operation and maintenance.

(vi) An estimate, based on the calculation procedures determined pursuant to § 458.503(b)(1)(viii), of the

total installed cost of each applicable program measure identified in § 458.503(b)(2)(xvi).

(vii) An estimate, based on the calculation procedures determined pursuant to § 458.503(b)(1)(viii), of the energy savings which would occur during the first year from installation of each applicable program measure identified in § 458.503(b)(2)(xvi).

(viii) An estimate, based on typical practice of similar building types in the same climate zone, of the total installed cost of the measure expressed in range of dollars for the applicable program measures identified in § 458.503(b)(2)(xvii).

(ix) An estimate of the savings in energy costs, based on typical practice of similar building types in the same climate zone, which would occur during the first year from installation of each applicable program measure identified in § 458.503(b)(2)(xvii)

(x) An estimate of the simple payback period of each applicable program measure, taking into account the interactions among the various measures. The simple payback period is calculated by dividing the estimated total cost of the measure, as determined pursuant to § 458.503(b)(2)(vi) or § 458.503(b)(2)(viii), by the estimated annual cost saving accruing from the measure, as determined pursuant to § 458.503(b)(2)(vii) or § 458.503(b)(2)(ix). Other economic analyses, such as life-cycle costing, which consider all costs and cost savings, such as maintenance costs and/or savings, resulting from an energy conservation measure, are recommended, but not required.

(xi) The following disclosure or its equivalent: "The procedures used to make these estimates are consistent with DOE criteria for apartment energy audits or have been evaluated by the State for accuracy. However, the actual installation costs you incur and energy savings you realize from installing these measures may be different from the estimates contained in this audit report. Although the estimates are based on measurements of your building, they are also based on assumptions which may not be totally correct for your establishment."

(xii) An estimate of the annual normal maintenance costs, if any, of each applicable program measure.

(xiii) With respect to a program audit addressing an applicable solar domestic hot water system or active solar space heating system, or combination thereof, a description of the solar system assumed by the auditor in preparing energy savings estimates which shall include the following information:

(A) Square feet of collector;

(B) Collector characteristics, including glazing materials and other collector materials;

(C) Any storage system needed, including the capacity of storage;

(D) Any freeze protection needed;

(E) The estimated percent of the space and/or water heating load to be met by solar energy;

(F) Any physical connections needed with existing heating systems;

(G) Any site preparation needed; and

(H) If the results are based on a simulation, the following disclosure or its equivalent:

The energy cost savings estimates you receive are based on systems which may be different from the ones you purchase. Also, these estimates were not determined using actual conditions but using simulated measurements. Therefore, the cost savings we have estimated may be different from the savings which actually occur.

(xiv) With respect to a program audit addressing and applicable passive solar space heating and cooling system:

(A) The generic designation and a pictoral description of the particular system considered by the auditor,

(B) The estimated percent of the heating load to be met by such system,

(C) The approximate dimensions of such system,

(D) Collection storage characteristics, including the recommended heat capacity of storage, and

(E) The disclosure provided in § 458.503(b)(2)(xiii)(H).

(xv) With respect to a program audit addressing an applicable wind energy device:

(A) Installation cost estimates as required in § 458.403(b)(2)(viii) based on commercially available wind devices of kilowatt rating appropriate to the level of electricity consumption in the customer's building;

(B) Estimates of energy cost savings as required in § 458.403(b)(2)(ix), provided in the form of a function of average yearly wind speeds for the system used in § 458.403(b)(2)(xv)(A);

(C) A description of the type of wind energy device used by the auditor in preparing the energy saving estimates,

(D) The average yearly wind speed as indicated by the appropriate Wind Energy Resource Atlas for the region, and the relationship between that data and the likely wind speeds at the residence, or

(E) The average yearly wind speed at the nearest qualified measuring station and the relationship between that data and the likely wind speeds at the residence. A qualified measuring station is one which meets the following requirements:

(1) The anemometer is located no less than 6 meters (19.8 feet) above ground level;

(2) Data used to determine the annual average wind speed has been collected for one year or more; and

(3) Calibration of the data collection and recording instrument(s) had been certified by the instrument manufacturer(s) at the time of purchase.

(xvi) A detailed analysis, developed pursuant to § 458.503(b)(1)(viii) shall be provided for the following energy conservation measures, except where the applicability criteria militate otherwise:

(A) Lighting systems,

(B) Caulking and Weatherstripping,

(C) Ceiling, roof and wall insulation,

(D) Storm windows and storm doors, and

(E) Hot water/steam/condensate pipe insulation.

(xvii) The following measures shall be audited for cost and savings estimates determined pursuant to typical practice in similar building types in the same climate zone:

(A) Hot water generation and distribution system;

(B) Furnance, or utility plant and distribution system, modifications, including replacement burners, furnaces, boilers, or any combination thereof, which substantially increase the energy efficiency of the heating system; devices for modifying flue openings which will increase the energy efficiency of the heating system; intermittent pilot ignition devices (IID's) which replace standing gas pilot lights; and devices for modifying and improving the air-conditioning and air-handling systems which may include but are not limited to enthalpy controls, economizers and various load management techniques.

(C) Heat absorbing or heat reflecting window and door systems, reductions in glass area, and other window and door system modifications;

(D) Automatic energy control systems (which include, but are not limited to, computer control systems, time clocks, thermostats, and damper motors);

(E) Equipment, associated with automatic energy control systems, which is required to operate variable steam, hydronic, or ventilating systems;

(F) A solar energy system, as defined in section 504(8) of the Solar Energy and Energy Conservation Bank Act;

(G) Energy recovery systems (which may include, but are not limited to, water-to-water, air-to-air and other heat recovery systems); and

(H) Cogeneration systems which produce electricity, as well as steam or other forms of thermal or mechanical energy, and which meet such fuel

efficiency requirements as the Secretary may, by rule, prescribe.

(c) *Reporting and Record Keeping Requirements*

(1) *Reporting.* The State Plan shall contain provisions to assure that a report is submitted to the Secretary on July 1, 1981, and annually thereafter through July 1, 1990. The report shall contain the following information for the twelve-month period ending the preceding April 1, except that the Secretary may waive any of the reporting requirements, in approving the State Plan, for good cause:

(i) Any revision to the list of covered utilities and a list of participating building heating suppliers subject to the State Plan;

(ii) For each covered utility or participating building heating supplier:

(A) The approximate number of eligible multifamily dwelling customers and, if available, the percentage of those customers for whom the utility or heating supplier is the primary heating fuel supplier;

(B) A copy of the Apartment Announcement distributed to eligible multifamily dwelling customers;

(C) The number of eligible multifamily dwelling customers who have requested an audit and the number of requests the utility or participating building heating supplier has fulfilled;

(D) The number and function of people assigned to the covered utility's or participating building heating supplier's program, including part-time employees; and

(E) The costs incurred by the utility or building heating supplier in providing audits under the CACS Program including separately those costs paid by individual customers for services received and those costs paid by all ratepayers.

(iii) The number and nature of complaints by eligible multifamily dwelling customers against the utility which have been handled through the procedures established under § 458.503(d);

(iv) A brief description of the status of activities carried out pursuant to § 458.505 (Qualification Procedures for Auditors) including whether sufficient qualified personnel are available for program needs, the reasons for any shortages and the proposed resolution of any such shortage problem;

(v) The cost to the State of developing and implementing the State Plan; and

(vi) A citation to and brief description of any State or local law or regulation relevant to the State Plan and the status of any proposed State or local legislation or regulation relevant to the State Plan.

(2) *Record Keeping.* The State Plan shall contain procedures to assure that the following records are kept for the periods indicated and made available to the Secretary upon request, except that the Secretary may for good cause waive any of the record keeping requirements in approving the State Plan:

(i) The name and address of each eligible multifamily dwelling customer who receives a program audit, which shall be kept for ten years from the date of such program audit;

(ii) A copy of the data collected during the audit, and a copy of the estimates of costs and savings presented to the customer, which shall be kept for ten years from the date of such program audit;

(iii) The amount and cost of fuel purchased each month or other billing period for the twelve months following each program audit for each eligible multifamily dwelling customer, which shall be kept for two years from the date of such program audit, and

(iv) The names of the invididuals who have met the qualification criteria described in § 458.505. These records shall be updated within a reasonable period of time following each implementation of the qualification procedures.

(d) *Complaints Processing Procedures.*

The State Plan shall contain procedures for resolving complaints against utilities. The complaint resolution procedures should use the procedures established under the RCS Program, § 456.315, as much as practicable.

§ 458.504 Addition of measures by states.

(a) The State may require or allow covered utilities participating building heating suppliers to offer services for State measures in conjunction with the CACS Program subject to the approval of the Secretary in the State Plan.

(b) The Secretary may approve a State measure to be offered in conjunction with the CACS Program if:

(1) The measure is an energy conservation measure;

(2) The measure is a renewable resource measure; or

(3) The State Plan contains the following: (i) Information demonstrating that the measure effectively saves nonrenewable energy sources and does not increase the consumption of oil;

(ii) A method for adequately ensuring safe installation and use of such measure;

(iii) Adequate assurances that offering such measure in conjunction with the CACS Program will not adversely affect the environment, competition or the CACS Program in the State and will not increase the cost to an eligible customer of a program audit under the CACS Program; and

(iv) An adequate analysis of the effects on the environment of offering the State measures in conjunction with the CACS Program.

(c) The State plan shall describe how the State measures are to be offered in conjunction with the CACS Program.

§ 458.505 Auditor qualification requirements.

(a) The State Plan shall provide for an auditor training course. At a minimum, course content shall assure that a successful trainee will have gained the following: (1) A general understanding of the three types of heat transfer and the effects of temperature and humidity on heat transfer;

(2) A general understanding of multifamily construction terminology and components;

(3) A general knowledge of the operation of the heating and cooling systems used in the multifamily building;

(4) A general knowledge of the different types of each applicable program and State measure, of the advantages, disadvantages and applications of each;

(5) The capacity to conduct the audit as required in § 458.503(b), including: (i) A familiarity with the energy conserving practices and energy conserving operation and maintenance procedures required to be audited for;

(ii) The capability to determine the applicability of the program measures and any State measures; and

(iii) A proficiency in the pertinent auditing procedures, as prescribed in or pursuant to the State Plan, for each applicable program and State measure.

(6) Where a furnace efficiency modification is an applicable program measure, and the source of fuel for the existing furnace or boiler is either gas or oil, a working ability to calculate the steady state efficiency of the furnace or boiler as required by § 458.503(b)(1)(vii);

(7) Where a renewable resource measure, other than wind energy devices, is an applicable program or State measure, an understanding of the nature of solar energy and its multifamily dwelling applications, including: (i) Insulation,

(ii) Shading,

(iii) Heat capture and transport, and

(iv) Where appropriate, heat transfer for hot water and space heating.

(8) Where a wind energy device is an applicable program or State measure, an understanding of the nature of wind energy and its multifamily dwelling

applications, including: (i) Wind availability,

(ii) Effects of obstruction,

(iii) Wind capture,

(iv) Power generation, and

(v) Interfaces with residential and utility power lines.

(9) A general understanding of the applicability of air-to-air, water-to-water and air-to-water heat exchangers and the criteria for cost-effective applications.

(10) A general knowledge of pneumatic, electrical and hydronic control systems and their applicability to automatic energy control systems.

(11) The ability to recognize the compatibility between process heat loads and electrical loads in the eligible building population and to recognize when the criteria for potential applicability is appropriate.

(12) A general knowledge of lamps and lighting systems used in multifamily dwellings.

(13) A general knowledge of the functions and operating characteristics and the various modes and symptoms of failures of steam traps in multifamily dwellings.

(14) Where an automatic energy control system is an applicable measure, an understanding of the relationships between heating, air-conditioning and lighting systems and the common elements which require system automation.

(b) Each State may determine whether to teach the course in the entirety or in parts, and the State Plan shall indicate how each subject in § 458.505(a) will be taught.

(c) The State Plan shall specify how course content shall be monitored to ensure compliance with the requirements of § 458.505(a) above.

(d) The State Plan shall describe the following: (1) Length of training program,

(2) Name of entity which developed the curriculum,

(3) Subject areas covered,

(4) How trainers shall be selected,

(5) An estimate of how many trainers will be required, and

(6) A description of the facilities and materials to be used.

§ 458.506 Procedures for investigating and enforcing compliance with the State Plan.

(a) The State Plan shall require each covered utility and participating building heating supplier to comply with the State Plan.

(b) The State Plan shall contain adequate procedures for investigating and enforcing compliance with the State Plan by covered utilities and participating building heating suppliers.

(c) The State Plan shall cite and describe the existing or proposed State authority(ies) for such investigation and enforcement, including authorities with respect to any nonregulated utility covered in the State Plan.

(d) The State Plan shall identify the State agency(ies) responsible for such investigation and enforcement and shall include a description of the resources available for such investigation and enforcement.

§ 458.507 Coordination.

(a) *Other Programs.* The State Plan shall provide procedures to ensure effective coordination between its Commercial and Apartment Conservation Service Program as described in the State Plan and all local, State and Federal energy conservation programs within and affecting the State which shall include, but not be limited to: (1) The Residential Conservation Service Program;

(2) The Federal Energy Extension Service;

(3) The Basic State Energy Conservation Program of the Department of Energy; and

(4) The Supplemental State Energy Conservation Program of the Department of Energy.

(b) *Energy Suppliers.* If the State Plan permits coordination of the Commercial and Apartment Conservation Service Program among energy suppliers in the State then it shall provide procedures describing how such coordination may occur and ensuring that no collusion on prices charged to eligible customers will occur.

(c) *State Regulatory Authority.* If the Lead Agency is not the State regulatory authority, then the State Plan shall describe how the Lead Agency shall coordinate the implementation of the State Plan with the State Regulatory Authority.

(d) The State Plan may provide for coordination between utilities and building heating suppliers to ensure that a utility is not required to conduct an energy audit of a multifamily dwelling which has been audited previously pursuant to this section or pursuant to Chapter II, 10 CFR Part 455 (Grant Programs for Schools and Hospitals and Buildings Owned by Units of Local Government and Public Care Institutions).

§ 458.508 Accounting and payment of costs.

(a) *Accounting.* The State Plan shall require, and may permit with respect to costs of revenues directly associated with State measures, that covered utilities use the following accounts and procedures: (1) All amounts expended or received by a covered utility which are attributable to the CACS Program, including any penalties paid under Subpart F (Federal Standby Authority) shall be accounted for on the books and records separately from amounts attributable to all other activities of the covered utility.

(2) Covered utilities subject to the jurisdiction of the Federal Energy Regulatory Commission (FERC) shall utilize the Uniform System of Accounts as prescribed in Title 18, CFR Parts 101, 104, 201 and 204. Covered rural electric cooperatives shall utilize the Uniform System of Accounts as prescribed by the Rural Electrification Administration (REA) in Title 7, CFR Part 1701, Appendix A. Other covered nonregulated utilities shall adopt accounts within their accounting system with the attributes of the appropriate accounts prescribed by the FERC.

(i) All amounts expended by a covered utility for the CACS Program shall be charged to subaccounts within Account 908, Customer Assistance Expenses, its equivalent or successor, or the appropriate account designated specifically by FERC or REA for CACS Program expenses. Appropriate records shall be maintained thereunder so as to allow ready identification of costs attributable to the following program elements: (A) Program Information, and

(B) Program Audit;

(ii) Billed income attributable to the CACS Program shall be accounted for in subaccounts within Account 456, Other Electric Revenue (for electric utilities) or Account 495, Other Gas Revenues (for gas utilities), their equivalents or successors, or the appropriate account designated specifically by FERC or REA for Program billed income.

(b) *Payment of Costs.* The State Plan shall require that covered utilities treat cost as described below and shall describe how the costs described in this section will be treated.

(1) All amounts expended by a covered utility for the Apartment Announcement, the Tenant's Information Package, and all public education and program promotion directly related to providing information about a utility's multifamily dwelling CACS Program shall be treated as a current expense of providing utility service and be charged to all ratepayers of the covered utility in the same manner as other current operating expenses of providing such utility service.

(2) That all other amounts expended by a public utility to carry out the provisions of this title, are recovered in the manner specified by the State

Regulatory Authority which has ratemaking authority over such utility (or in the case of a nonregulated utility in the manner specified by such nonregulated utility); except that the amount which may be recovered directly from an eligible multifamily dwelling customer for whom the activities described in § 458.503(b) are performed shall not exceed a total of $15 per dwelling unit or the actual cost of such activities, whichever is less; in determining the amount to be recovered directly from customers as provided under this paragraph, the State Regulatory Authority (in the case of a regulated utility) shall take into consideration, to the extent practicable, the customers' ability to pay and the likely levels of participation in the CACS Program which will result from such recovery.

(3) Costs incurred by a covered utility for services carried out by such utility on behalf of the State may be reimbursed by the State.

(c) *Duplication of Audits.* The State Plan shall contain a provision stating that a covered utility need not conduct an energy audit of a multifamily dwelling which has been audited previously pursuant to this Part or pursuant to 10 CFR Part 455 (Grant Programs for Schools and Hospitals and Buildings Owned by Units of Local Government and Public Care Institutions).

§ 458.503 Plans for participating building heating suppliers.

(a) *Requirements.* The procedures for each building heathing supplier program shall be identical to the procedures required for utilities in this Subpart.

(b) *Participation and Withdrawal.* The State Plan, if it includes building heating suppliers, shall include a procedure by which the Governor shall allow a building heating supplier to participate in the multifamily dwelling part of its CACS Program. The State Plan shall also provide for the voluntary withdrawal of participating building heating suppliers from the multifamily dwelling part of its CACS Program.

(c) *Waiver of Requirements.* The State Plan shall contain a procedure by which the Governor may waive for any participating building heating supplier any requirement of the State Plan, except those listed below, upon a demonstration to the Governor's satisfaction that the resources of such supplier do not enable it to comply with the particular requirement. The requirements which the Governor shall not waive with respect to any building heating supplier who chooses to participate in the program are those established according to: (1) Section 458.506 (Procedures for Investigating and Enforcing Compliance with the State Plan);

(2) Sections 458.506(b)(1)(iii)-(vii) (Accuracy of Auditing Procedures), for those measures for which a participating building heating supplier performs program audits for its eligible multifamily dwelling customers;

(3) Section 458.506 (Auditor Qualification Requirements); and

(4) The following reporting and record keeping requirements: (i) Section 458.503(c)(1)(i);

(ii) Section 458.506(c)(1)(ii), except that the Governor may waive 458.506 (c)(1)(ii)(E) concerning the accounting of program costs; and

(iii) Section 458.503(d) (Record Keeping).

Subpart F—Federal Standby Authority and Enforcement Provisions

§ 458.601 Scope.

The Subpart specifies the procedures to be followed to ensure that eligible customers receive the services of the audit program when a State or nonregulated utility does not submit an acceptable State plan within the necessary time or fails to implement adequately an approved plan. These procedures are required to be implemented by the Secretary by Section 741 of NECPA. Section 458.602 specifies the conditions under which the Secretary shall invoke standby authority for covered regulated utilities (a) and covered nonregulated utilities (b). Sections 458.603(a) and (b) specify the content of the Federal plans for States and nonregulated utilities, respectively. Section 458.604 specifies the procedures followed by the Secretary if a public utility fails to comply with a Federal standby order issued pursuant to 458.603(a) or (b). Section 458.605 specifies the civil penalties which the secretary may assess and the enforcement provisions.

§ 458.602 Conditions under which Federal standby authority shall be invoked.

(a) The Secretary shall invoke standby authority for States and the TVA if he determines: (1) That a State fails to submit a Plan meeting the requirements of Subparts B, D and E within 180 days after the effective date of these rules or within such additional period as the Secretary allows, or

(2) After notice and opportunity for a public hearing, that an approved State plan is not being adequately implemented in a State.

(b) The Secretary shall invoke standby authority for non-regulated utilities if he determines: (1) That a nonregulated utility fails to submit a plan meeting the requirements of Subparts C, D and E within 180 days after the effective date of these rules or within such additional periods as the Secretary allows, or

(2) After notice and opportunity for a public hearing, that an approved plan is not being adequately implemented by a covered nonregulated utility.

§ 458.603 Procedures for Federal standby planning process.

(a) *For States.* When the Secretary determines that one of the conditions specified in § 458.602(a) exists: (1) The Secretary shall promulgate a Plan which meets the appropriate requirements of Subparts B, D and E of this part and which is applicable to each covered regulated utility in the State;

(2) The Secretary shall, by order, require each covered regulated utility in the State to carry out a CACS Program, which meets the requirements of the plan promulgated pursuant to § 458.603(a)(1), within 90 days of the issuance of the order; and

(3) If the State had an approved plan which included nonregulated utilities, the Secretary shall take the actions described in § 458.603(b) with respect to such nonregulated utilities.

(b) *For Nonregulated Utilities.* When the Secretary determines that one of the conditions specified in § 458.602(b) exists: (1) The Secretary shall, by order, require the covered nonregulated utility to promulgate a plan which meets the requirements of Subparts C, D and E of this part; and

(2) The Secretary shall, by order, require such nonregulated utility to carry out a CACS Program, which meets the requirements of the plan promulgated pursuant to paragraph (1) of this section, within 90 days of the issuance of the order.

§ 458.604 Failure to comply with orders.

If the Secretary determines that any covered utility to which an order has been issued pursuant to § 458.603 (a) or (b) has failed to comply with such order, the Secretary may file a petition in the appropriate United States district court to enjoin such utility from violating the order.

§ 458.605 Enforcement provisions.

(a) Any covered utility which violates any requirement of a plan promulgated under § 458.603(a)(1) or § 458.603(b)(1) or which fails to comply with an order under § 458.603(a)(2), § 458.603(a)(3) or § 458.603(b)(2) within 90 days from issuance of such order, shall be subject

to a civil penalty of not more than $25,000 for each violation.

(b) Each day that such violation continues shall be considered a separate violation.

(c) A civil penalty under this section shall be assessed by an order of the Secretary.

(d) Before issuing an order assessing a civil penalty against any person under this section, the Secretary shall provide to such person notice of the proposed penalty. The notice of the proposed penalty shall inform the person of the opportunity to make an election, in writing, within 30 days after receipt of the notice. The election involves deciding whether to have the procedures of § 458.605(f) apply, in lieu of the procedures in § 458.605(e) with respect to the assessment of a civil penalty.

(e)(1) Unless the election described in § 458.605(d) is made within 30 calendar days after receipt of the notice given under § 458.605(d) the Secretary shall assess the penalty, by order, after a determination of violation has been made on the record. Such determination of violation shall be made after an opportunity has been afforded for an agency hearing pursuant to Section 554 of Title 5, United States Code, before an administrative law judge appointed under Section 3105 of Title 5, United States Code. The assessment order shall include the administrative law judge's findings and the basis for such assessment.

(2) Any person against whom a civil penalty is assessed under this subsection may, within 60 Calendar days after the date of the order of the Secretary assessing the penalty, institute an action in the United States court of appeals for the appropriate judicial circuit for judicial review of such order in accordance with Chapter 7 of Title 5, United States Code. The court shall have jurisdiction to enter a judgement affirming, modifying, or setting aside, in whole or in part, the order of the Secretary, or the court may remand the proceeding to the Secretary for such further action as the court may direct.

(f)(1) In any case where the procedures of this subsection have been elected, as described in § 458.605(d) the Secretary shall assess such penalty by order. The order shall be made not later than 60 calendar days after the alleged violator's date of receipt of notice of the proposed penalty § 458.605(d).

(2) If the civil penalty assessed by order under § 458.605(f)(1) has not been paid within 60 calendar days after the assessment order was made, the Secretary shall institute an action in the appropriate district court of the United States for an order affirming the assessment of the civil penalty. The court shall have authority to review de novo the law and the facts involved, and shall have jurisdiction to enter a judgement enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part, such assessment.

(3) Any election to have this Subsection apply may not be revoked, except with the consent of the Secretary.

(g) If any person fails to pay an assessment of a civil penalty after it has become a final and unappealable order under § 458.605(e), or after the appropriate district court has entered final judgement in favor of the Secretary under § 458.605(f), the Secretary shall recover the amount of such penalty in any appropriate district court of the United States. In such action, the validity and appropriateness of the respective final order or judgement imposing the civil penalty shall not be subject to review.

(h) Notwithstanding the provisions of Title 28, United States Code, or of Section 502 of the Department of Energy Organization Act, the Secretary shall be represented by the General Counsel of the Department of Energy (or any attorney or attorneys within the Department of Energy designated by the Secretary) who shall supervise, conduct, and argue any civil litigation to which this section applies (including any related collection action) in a court of the United States or in any other court, except the Supreme Court. However, the Secretary or the General Counsel shall consult with the Attorney General concerning such litigation and the Attorney General shall provide, on request, such assistance in the conduct of such litigation as may be appropriate.

Appendix: Program Measures by Climate and Category of Building

(a) Climate Zones for Program Measures. In the table of program measures shown in (c) below, the climate zones are as follows:

Climate and Heating Degree-Days

1—0-1000
2—1001–2500
3—2501–3500
4—3501–4500
5—4501–5000
6—5001–6000
7—6001–7000
8—7001 and above

(b) Category of Residential, Multifamily and Commercial Buildings. The program measures are designated in the following tables by cateogries of residential, multifamily and commerical buildings. These categories are: (1) For energy conservation measures and wind energy devices: (i) "Electricity", which includes all buildings in which the principal source of space heating is an electric resistance heating system;

(ii) "Gas", which includes all buildings in which either natural gas, propane, or butane is the principal space heating fuel;

(iii) "Oil", which includes all buildings in which either No. 2, No. 4, or No. 6 heating oil or kerosene is the principal space heating fuel, and includes all other buildings not included in the categories "Electricity", "Gas" or "Heat Pump";

(iv) "Heat Pump", which includes all buildings in which the principal source of space heating is a electric pump;

(2) For solar domestic hot water systems; (i) "Electricity", which includes all buildings in which electricity is the principal fuel for domestic water heating;

(ii) "Gas", which includes all buildings in which either natural gas, or butane is the principal fuel for domestic water heating; and

(iii) "Oil" which includes all buildings in which No. 2, No. 4, or No. 6 heating oil or kerosene is the principal fuel for domestic water heating, and includes all other buildings not included in the categories of "Gas" or "Electricity";

(3) For active solar space heating systems and for combined active solar space heating and solar domestic hot water systems, "Electricity", "Gas", "Oil", and "Heat Pump" (as in (1) above) with respect to each of the building types.

(4) For passive solar space heating and cooling systems, "all buildings."

(c) (1) The following are program measures for all cateories of buildings in all States and climate zones:
(i) Replacement furnaces or boilers,
(ii) Replacement central air conditioning,
(iii) Caulking and weatherstripping,
(iv) Duct insulation,
(v) Pipe insulation,
(vi) Water heater insulation,
(vii) Heat reflective and heat absorbing window or door material,
(viii) Clock thermostats,
(ix) Passive solar space heating and cooling systems,
(x) Steam/condensate pipe insulation,
(xi) Automatic energy control systems,
(xii) Equipment associated with automatic energy control systems,
(xiii) Energy recovery systems,
(xiv) Cogeneration systems.

(2) Devices associated with electric load managment techniques are program measures for all categories of buildings if the local electric utility offers a rate which relects any differences in the

utility's cost-of-service (either energy or demand costs) between peak and off-peak periods.

(3) Furnace replacement burners (oil). Furnace replacement burners (oil) are program measures for the category "oil" in all States and climate zones.

(4) Flue opening modifications. Flue opening modifications are program measures for the category "gas" in all States and climate zones.

(5) Electrical or mechanical ignition systems. Electrical or mechanical ignition systems are program measures for the category "gas" in all States and Climate zones.

(d) Table of Program Measures by State. All other program measures are displayed in the following table organized by States.

BILLING CODE 6450-01-M

STATE	HUD/MPD REGION	CATEGORY OF BUILDING	CONSERVATION MEASURES					RENEWABLE RESOURCE MEASURES				
			Ceiling Insulation (R-Value)*	Wall Insulation	Floor Insulation (R-Value)*	Storm or Thermal Windows	Storm or Thermal Doors	Solar Domestic Hot Water Systems	Active Solar Space Heating Systems	Combined Active Solar Space Heating & Hot Water Systems	Passive Solar Design Features	Wood Stove Systems
Alabama	3	Electricity	22	x		x		x				
		Gas	19	x				x				
		Oil	19	x				x				
		Electric Heat Pump	19	x								
	3	Electricity	30	x	11	x		x				
		Gas	22	x								
		Oil	22	x				x				
		Electric Heat Pump	22	x								
Alaska	9	Electricity	38	x	19	x	x					x
		Gas	38	x	19	x	x					x
		Oil	38	x	19	x	x					x
		Electric Heat Pump	38	x	19	x	x					x
Arizona	9	Electricity	19	x				x		x		
		Gas	19	x				x				
		Oil	19	x				x				
		Electric Heat Pump	19	x								
	9	Electricity	22	x		x		x	x	x		
		Gas	19	x				x				
		Oil	19	x				x		x		
		Electric Heat Pump	19	x								
	9	Electricity	30	x	11	x		x	x	x		
		Gas	22	x				x	x			
		Oil	22	x				x	x			
		Electric Heat Pump	22	x								
	4	Electricity	30	x	19	x		x	x	x		x
		Gas	30	x	11	x		x	x	x		x
		Oil	30	x	11	x		x	x	x		x
		Electric Heat Pump	30	x	11	x						
	9	Electricity	30	x	19	x	x	x	x	x		
		Gas	30	x	11	x		x	x	x		
		Oil	30	x	11	x		x	x	x		
		Electric Heat Pump	30	x	11	x						
	6	Electricity	30	x	19	x	x	x	x	x		
		Gas	30	x	11	x		x	x	x		
		Oil	30	x	11	x		x	x	x		
		Electric Heat Pump	30	x	19	x	x					
	7	Electricity	38	x	19	x	x	x	x	x		
		Gas	38	x	11	x		x	x	x		
		Oil	38	x	11	x		x	x	x		
		Electric Heat Pump	38	x	19	x	x					

These R-Values are minimum. The State may propose, in a State Plan, either (1) to substitute a higher level, subject to the Secretary's approval, as the program measure, or (2) to offer other levels (higher or lower) as States measures in addition to the program measures.

STATE	HUD/MPD REGION	CATEGORY OF BUILDING	CONSERVATION MEASURES					RENEWABLE RESOURCE MEASURES				
			Ceiling Insulation (R-Value)*	Wall Insulation	Floor Insulation (R-Value)*	Storm or Thermal Windows	Storm or Thermal Doors	Solar Domestic Hot Water Systems	Active Solar Space Heating Systems	Combined Active Solar Space Heating & Hot Water Systems	Passive Solar Design Features	Wood Stove Systems
Arkansas	6	Electricity	30	x	11	x		x		x		
		Gas	22	x				x				
		Oil	22	x				x				
		Electric Heat Pump	22	x								
	4	Electricity	38	x	19	x		x		x		x
		Gas	38	x	11	x		x				x
		Oil	38	x	11	x		x				x
		Electric Heat Pump	38	x	19	x						
California	9	Electricity	30	x		x		x	x	x	x	x
		Gas	19	x				x				
		Oil	19	x				x				
		Electric Heat Pump	19	x								
	9	Electricity	30	x	11	x		x	x		x	
		Gas	22	x				x				
		Oil	22	x				x				
		Electric Heat Pump	22	x								
	4	Electricity	38	x	19	x		x	x	x	x	x
		Gas	38	x	11	x		x	x			x
		Oil	38	x	11	x		x	x			x
		Electric Heat Pump	38	x	11	x						
	5	Electricity	38	x	19	x	x	x				x
		Gas	38	x	11	x		x				x
		Oil	38	x	11	x		x				x
		Electric Heat Pump	38	x	11	x						
	8	Electricity	38	x	19	x	x	x				x
		Gas	38	x	11	x		x				x
		Oil	38	x	11	x		x				x
		Electric Heat Pump	38	x	19	x	x					
	7	Electricity	38	x	19	x	x	x	x	x		
		Gas	38	x	11	x		x	x	x		
		Oil	38	x	11	x		x	x	x		
		Electric Heat Pump	38	x	19	x	x					
	8	Electricity	38	x	19	x	x	x	x	x		
		Gas	38	x	11	x		x	x	x		
		Oil	38	x	11	x		x	x	x		
		Electric Heat Pump	38	x	19	x	x					
Colorado	8	Electricity	38	x	19	x	x	x	x	x		x
		Gas	38	x	11	x		x	x	x		x
		Oil	38	x	11	x		x	x	x		x
		Electric Heat Pump	38	x	19	x	x					

These R-Values are minimum. The State may propose, in a State Plan, either (1) to substitute a higher level, subject to the Secretary's approval, as the program measure, or (2) to offer other levels (higher or lower) as States measures in addition to the program measures.

STATE	HUD/MPD REGION	CATEGORY OF BUILDING	CONSERVATION MEASURES					RENEWABLE RESOURCE MEASURES				
			Ceiling Insulation (R-Value)*	Wall Insulation	Floor Insulation (R-Value)*	Storm or Thermal Windows	Storm or Thermal Doors	Solar Domestic Hot Water Systems	Active Solar Space Heating Systems	Combined Active Solar Space Heating & Hot Water Systems	Passive Solar Design Features	Wood Stove Systems
Connecticut	1	Electricity	38	x	19	x	x	x	x	x	x	x
		Gas	38	x	11	x		x	x	x	x	x
		Oil	38	x	11	x		x	x	x	x	x
		Electric Heat Pump	38	x	19	x	x					
Delaware	3	Electricity	30	x	19	x	x	x	x	x		x
		Gas	22	x	11	x		x	x	x		x
		Oil	22	x	11	x		x	x	x		x
		Electric Heat Pump	22	x	19	x	x					
District of Columbia	3	Electricity	30	x	19	x	x	x	x	x		x
		Gas	22	x	11	x		x	x	x		x
		Oil	22	x	11	x		x	x	x		x
		Electric Heat Pump	22	x	19	x	x					
Florida	4	Electricity	19	x				x				
		Gas	19	x				x				
		Oil	19	x				x				
		Electric Heat Pump	19	x								
	4	Electricity	22	x		x		x	x	x		
		Gas	19	x				x				
		Oil	19	x				x				
		Electric Heat Pump	19	x								
	4	Electricity	30	x	19	x		x	x	x		x
		Gas	22	x	11	x		x	x	x		x
		Oil	22	x	11	x		x	x	x		x
		Electric Heat Pump	22	x	19	x						
	4	Electricity	38	x	19	x	x	x	x	x		x
		Gas	38	x	11	x		x	x	x		x
		Oil	38	x	11	x		x	x	x		x
		Electric Heat Pump	38	x	19	x	x					
Georgia	4	Electricity	30	x	19	x		x	x	x		x
		Gas	22	x	11	x		x	x	x		x
		Oil	22	x	11	x		x	x	x		x
		Electric Heat Pump	22	x	19	x						
	4	Electricity	38	x	19	x	x	x	x	x		x
		Gas	38	x	11	x		x	x	x		x
		Oil	38	x	11	x		x	x	x		x
		Electric Heat Pump	38	x	19	x	x					
Hawaii	9	Electricity	38	x	19	x	x	x	x	x		x
		Gas	38	x	11	x		x	x	x		x
		Oil	38	x	11	x		x	x	x		x
		Electric Heat Pump	38	x	19	x	x					
Idaho	10	Electricity	38	x	19	x	x	x	x	x		x
		Gas	38	x	11	x		x	x	x		x
		Oil	38	x	11	x		x	x	x		x
		Electric Heat Pump	38	x	19	x	x					
Illinois	5	Electricity	38	x	19	x	x	x	x	x		x
		Gas	38	x	11	x		x	x	x		x
		Oil	38	x	11	x		x	x	x		x
		Electric Heat Pump	38	x	19	x	x					
Indiana	5	Electricity	38	x	19	x	x	x	x	x		x
		Gas	38	x	11	x		x	x	x		x
		Oil	38	x	11	x		x	x	x		x
		Electric Heat Pump	38	x	19	x	x					
Iowa	7	Electricity	38	x	19	x	x	x	x	x		x
		Gas	38	x	11	x		x	x	x		x
		Oil	38	x	11	x		x	x	x		x
		Electric Heat Pump	38	x	19	x	x					
Kansas	7	Electricity	38	x	19	x	x	x	x	x		x
		Gas	38	x	11	x		x	x	x		x
		Oil	38	x	11	x		x	x	x		x
		Electric Heat Pump	38	x	19	x	x					
Kentucky	4	Electricity	30	x	19	x		x	x	x		x
		Gas	22	x	11	x		x	x	x		x
		Oil	22	x	11	x		x	x	x		x
		Electric Heat Pump	22	x	19	x						
	4	Electricity	38	x	19	x	x	x	x	x		x
		Gas	38	x	11	x		x	x	x		x
		Oil	38	x	11	x		x	x	x		x
		Electric Heat Pump	38	x	19	x	x					
Louisiana	6	Electricity	30	x	19	x		x	x	x		x
		Gas	22	x	11	x		x	x	x		x
		Oil	22	x	11	x		x	x	x		x
		Electric Heat Pump	22	x	19	x						
	6	Electricity	38	x	19	x	x	x	x	x		x
		Gas	38	x	11	x		x	x	x		x
		Oil	38	x	11	x		x	x	x		x
		Electric Heat Pump	38	x	19	x	x					
Maine	1	Electricity	38	x	19	x	x	x	x	x		x
		Gas	38	x	11	x		x	x	x		x
		Oil	38	x	11	x		x	x	x		x
		Electric Heat Pump	38	x	19	x	x					
Maryland	3	Electricity	30	x	19	x	x	x	x	x		x
		Gas	22	x	11	x		x	x	x		x
		Oil	22	x	11	x		x	x	x		x
		Electric Heat Pump	22	x	19	x	x					
Massachusetts	1	Electricity	38	x	19	x	x	x	x	x		x
		Gas	38	x	11	x		x	x	x		x
		Oil	38	x	11	x		x	x	x		x
		Electric Heat Pump	38	x	19	x	x					
Michigan	5	Electricity	38	x	19	x	x	x	x	x		x
		Gas	38	x	11	x		x	x	x		x
		Oil	38	x	11	x		x	x	x		x
		Electric Heat Pump	38	x	19	x	x					
Minnesota	5	Electricity	38	x	19	x	x	x	x	x		x
		Gas	38	x	11	x		x	x	x		x
		Oil	38	x	11	x		x	x	x		x
		Electric Heat Pump	38	x	19	x	x					
Mississippi	4	Electricity	30	x	19	x		x	x	x		x
		Gas	22	x	11	x		x	x	x		x
		Oil	22	x	11	x		x	x	x		x
		Electric Heat Pump	22	x	19	x						
	4	Electricity	38	x	19	x	x	x	x	x		x
		Gas	38	x	11	x		x	x	x		x
		Oil	38	x	11	x		x	x	x		x
		Electric Heat Pump	38	x	19	x	x					
Missouri	7	Electricity	38	x	19	x	x	x	x	x		x
		Gas	38	x	11	x		x	x	x		x
		Oil	38	x	11	x		x	x	x		x
		Electric Heat Pump	38	x	19	x	x					
Montana	8	Electricity	38	x	19	x	x	x	x	x		x
		Gas	38	x	11	x		x	x	x		x
		Oil	38	x	11	x		x	x	x		x
		Electric Heat Pump	38	x	19	x	x					
Nebraska	7	Electricity	38	x	19	x	x	x	x	x		x
		Gas	38	x	11	x		x	x	x		x
		Oil	38	x	11	x		x	x	x		x
		Electric Heat Pump	38	x	19	x	x					
Nevada	9	Electricity	38	x	19	x	x	x	x	x		x
		Gas	38	x	11	x		x	x	x		x
		Oil	38	x	11	x		x	x	x		x
		Electric Heat Pump	38	x	19	x	x					
New Hampshire	1	Electricity	38	x	19	x	x	x	x	x		x
		Gas	38	x	11	x		x	x	x		x
		Oil	38	x	11	x		x	x	x		x
		Electric Heat Pump	38	x	19	x	x					
New Jersey	2	Electricity	30	x	19	x	x	x	x	x		x
		Gas	22	x	11	x		x	x	x		x
		Oil	22	x	11	x		x	x	x		x
		Electric Heat Pump	22	x	19	x	x					
New Mexico	6	Electricity	38	x	19	x	x	x	x	x		x
		Gas	38	x	11	x		x	x	x		x
		Oil	38	x	11	x		x	x	x		x
		Electric Heat Pump	38	x	19	x	x					
New York	2	Electricity	38	x	19	x	x	x	x	x		x
		Gas	38	x	11	x		x	x	x		x
		Oil	38	x	11	x		x	x	x		x
		Electric Heat Pump	38	x	19	x	x					
North Carolina	4	Electricity	30	x	19	x		x	x	x		x
		Gas	22	x	11	x		x	x	x		x
		Oil	22	x	11	x		x	x	x		x
		Electric Heat Pump	22	x	19	x						
	4	Electricity	38	x	19	x	x	x	x	x		x
		Gas	38	x	11	x		x	x	x		x
		Oil	38	x	11	x		x	x	x		x
		Electric Heat Pump	38	x	19	x	x					
North Dakota	8	Electricity	38	x	19	x	x	x	x	x		x
		Gas	38	x	11	x		x	x	x		x
		Oil	38	x	11	x		x	x	x		x
		Electric Heat Pump	38	x	19	x	x					
Ohio	5	Electricity	38	x	19	x	x	x	x	x		x
		Gas	38	x	11	x		x	x	x		x
		Oil	38	x	11	x		x	x	x		x
		Electric Heat Pump	38	x	19	x	x					
Oklahoma	6	Electricity	30	x	19	x		x	x	x		x
		Gas	22	x	11	x		x	x	x		x
		Oil	22	x	11	x		x	x	x		x
		Electric Heat Pump	22	x	19	x						
	6	Electricity	38	x	19	x	x	x	x	x		x
		Gas	38	x	11	x		x	x	x		x
		Oil	38	x	11	x		x	x	x		x
		Electric Heat Pump	38	x	19	x	x					
Oregon	10	Electricity	38	x	19	x	x	x	x	x		x
		Gas	38	x	11	x		x	x	x		x
		Oil	38	x	11	x		x	x	x		x
		Electric Heat Pump	38	x	19	x	x					
Pennsylvania	3	Electricity	38	x	19	x	x	x	x	x		x
		Gas	38	x	11	x		x	x	x		x
		Oil	38	x	11	x		x	x	x		x
		Electric Heat Pump	38	x	19	x	x					
Rhode Island	1	Electricity	38	x	19	x	x	x	x	x		x
		Gas	38	x	11	x		x	x	x		x
		Oil	38	x	11	x		x	x	x		x
		Electric Heat Pump	38	x	19	x	x					
South Carolina	4	Electricity	30	x	19	x		x	x	x		x
		Gas	22	x	11	x		x	x	x		x
		Oil	22	x	11	x		x	x	x		x
		Electric Heat Pump	22	x	19	x						
	4	Electricity	38	x	19	x	x	x	x	x		x
		Gas	38	x	11	x		x	x	x		x
		Oil	38	x	11	x		x	x	x		x
		Electric Heat Pump	38	x	19	x	x					
South Dakota	8	Electricity	38	x	19	x	x	x	x	x		x
		Gas	38	x	11	x		x	x	x		x
		Oil	38	x	11	x		x	x	x		x
		Electric Heat Pump	38	x	19	x	x					
Tennessee	4	Electricity	30	x	19	x		x	x	x		x
		Gas	22	x	11	x		x	x	x		x
		Oil	22	x	11	x		x	x	x		x
		Electric Heat Pump	22	x	19	x						
	4	Electricity	38	x	19	x	x	x	x	x		x
		Gas	38	x	11	x		x	x	x		x
		Oil	38	x	11	x		x	x	x		x
		Electric Heat Pump	38	x	19	x	x					
Texas	6	Electricity	30	x	19	x		x	x	x		x
		Gas	22	x	11	x		x	x	x		x
		Oil	22	x	11	x		x	x	x		x
		Electric Heat Pump	22	x	19	x						
	6	Electricity	38	x	19	x	x	x	x	x		x
		Gas	38	x	11	x		x	x	x		x
		Oil	38	x	11	x		x	x	x		x
		Electric Heat Pump	38	x	19	x	x					
Utah	8	Electricity	38	x	19	x	x	x	x	x		x
		Gas	38	x	11	x		x	x	x		x
		Oil	38	x	11	x		x	x	x		x
		Electric Heat Pump	38	x	19	x	x					
Vermont	1	Electricity	38	x	19	x	x	x	x	x		x
		Gas	38	x	11	x		x	x	x		x
		Oil	38	x	11	x		x	x	x		x
		Electric Heat Pump	38	x	19	x	x					
Virginia	3	Electricity	30	x	19	x	x	x	x	x		x
		Gas	22	x	11	x		x	x	x		x
		Oil	22	x	11	x		x	x	x		x
		Electric Heat Pump	22	x	19	x	x					
Washington	10	Electricity	38	x	19	x	x	x	x	x		x
		Gas	38	x	11	x		x	x	x		x
		Oil	38	x	11	x		x	x	x		x
		Electric Heat Pump	38	x	19	x	x					
West Virginia	3	Electricity	38	x	19	x	x	x	x	x		x
		Gas	38	x	11	x		x	x	x		x
		Oil	38	x	11	x		x	x	x		x
		Electric Heat Pump	38	x	19	x	x					
Wisconsin	5	Electricity	38	x	19	x	x	x	x	x		x
		Gas	38	x	11	x		x	x	x		x
		Oil	38	x	11	x		x	x	x		x
		Electric Heat Pump	38	x	19	x	x					
Wyoming	8	Electricity	38	x	19	x	x	x	x	x		x
		Gas	38	x	11	x		x	x	x		x
		Oil	38	x	11	x		x	x	x		x
		Electric Heat Pump	38	x	19	x	x					

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STATE	HUD/MPS REGION	CATEGORY OF BUILDING	CONSERVATION MEASURES					RENEWABLE RESOURCE MEASURES			
			Ceiling Insulation (R-Value)*	Wall Insulation	Floor Insulation (R-Value)*	Storm or Thermal Windows	Storm or Thermal Doors	Solar Domestic Hot Water Systems	Active Solar Space Heating Systems	Combined Active Solar Space Heating & Solar Domestic Hot Water Systems	Wind Energy Devices
Colorado (Continued)	7	Electricity	38	x	19	x		x	x	x	x
		Gas	38	x	11	x		x	x	x	x
		Oil	38	x	11	x					x
		Electric Heat Pump	38	x	19	x	x				x
	8	Electricity	38	x	19	x	x	x	x	x	
		Gas	38	x	19	x	x				
		Oil	38	x	19	x	x	x	x	x	
		Electric Heat Pump	38	x	19	x	x				
Connecticut	8	Electricity	38	x	19	x	x	x			x
		Gas	38	x	11	x					x
		Oil	38	x	11	x					x
		Electric Heat Pump	38	x	19	x	x				x
Delaware	4	Electricity	38	x	19	x		x		x	x
		Gas	38	x	11	x		x			x
		Oil	38	x	11	x					x
		Electric Heat Pump	38	x	11	x					x
District of Columbia	4	Electricity	38	x	19	x		x			
		Gas	38	x	11	x		x			
		Oil	38	x	11	x					
		Electric Heat Pump	38	x	11	x					
Florida	1	Electricity	19	x				x			x
		Gas	19	x				x			x
		Oil	19	x							x
		Electric Heat Pump	19	x							x
	2	Electricity	22	x		x		x			
		Gas	19	x				x			
		Oil	19	x							
		Electric Heat Pump	19	x							
Georgia	2	Electricity	22	x		x		x			
		Gas	19	x				x			
		Oil	19	x							
		Electric Heat Pump	19	x							
	3	Electricity	30	x	11	x		x			
		Gas	30	x				x			
		Oil	30	x							
		Electric Heat Pump	30	x							
	4	Electricity	38	x	19	x		x			
		Gas	38	x	11	x		x			
		Oil	38	x	11	x					
		Electric Heat Pump	38	x	11	x					

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STATE	HUD/MPS REGION	CATEGORY OF BUILDING	CONSERVATION MEASURES					RENEWABLE RESOURCE MEASURES			
			Ceiling Insulation (R-Value)*	Wall Insulation	Floor Insulation (R-Value)*	Storm or Thermal Windows	Storm or Thermal Doors	Solar Domestic Hot Water Systems	Active Solar Space Heating Systems	Combined Active Solar Space Heating & Solar Domestic Hot Water Systems	Wind Energy Devices
Hawaii	1	Electricity	19	x				x			x
		Gas	19	x				x			x
		Oil	19	x				x			x
		Electric Heat Pump	19	x							x
Idaho	7	Electricity	38	x	19	x	x				
		Gas	38	x	11	x					
		Oil	38	x	11	x					
		Electric Heat Pump	38	x	19	x	x				
	8	Electricity	38	x	19	x	x				
		Gas	38	x	19	x	x				
		Oil	38	x	19	x	x	x	x	x	
		Electric Heat Pump	38	x	19	x	x				
Illinois	4	Electricity	38	x	19	x		x			
		Gas	38	x	11	x		x			
		Oil	38	x	11	x					
		Electric Heat Pump	38	x	11	x					
	5	Electricity	38	x	19	x	x	x			x
		Gas	38	x	11	x		x			x
		Oil	38	x	11	x					x
		Electric Heat Pump	38	x	11	x					x
	6	Electricity	38	x	19	x	x	x			x
		Gas	38	x	11	x		x			x
		Oil	38	x	11	x					x
		Electric Heat Pump	38	x	19	x	x				x
	7	Electricity	38	x	19	x	x	x			x
		Gas	38	x	11	x		x			x
		Oil	38	x	11	x					x
		Electric Heat Pump	38	x	19	x	x				x
Indiana	5	Electricity	38	x	19	x		x			
		Gas	38	x	11	x		x			
		Oil	38	x	11	x					
		Electric Heat Pump	38	x	19	x					
	6	Electricity	38	x	19	x	x	x			x
		Gas	38	x	11	x		x			x
		Oil	38	x	11	x					x
		Electric Heat Pump	38	x	19	x	x				x

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STATE	HUD/MPS REGION	CATEGORY OF BUILDING	Ceiling Insulation (R-Value)*	Wall Insulation	Floor Insulation (R-Value)*	Storm or Thermal Windows	Storm or Thermal Doors	Solar Domestic Hot Water Systems	Active Solar Space Heating Systems	Combined Active Solar Space Heating & Solar Domestic Hot Water Systems	Wind Energy Devices
Indiana (Continued)	5	Electricity	38	x	19	x	x				x
		Gas	30	x	11	x					
		Oil	30	x	11	x					
		Electric Heat Pump	38	x	19	x	x				
Iowa	6	Electricity	30	x	19	x	x		x		x
		Gas	30	x	11	x					x
		Oil	30	x	11	x			x		x
		Electric Heat Pump	30	x	19	x	x				x
	7	Electricity	38	x	19	x	x		x		x
		Gas	30	x	11	x					x
		Oil	30	x	11	x			x		x
		Electric Heat Pump	38	x	19	x	x				x
	8	Electricity	38	x	19	x	x		x		x
		Gas	38	x	19	x	x				x
		Oil	38	x	19	x	x		x		x
		Electric Heat Pump	38	x	19	x	x				x
Kansas	4	Electricity	30	x	19	x			x		x
		Gas	30	x	11	x					x
		Oil	30	x	11	x			x		x
		Electric Heat Pump	30	x	11	x					x
	5	Electricity	30	x	19	x	x		x		x
		Gas	30	x	11	x					x
		Oil	30	x	11	x			x		x
		Electric Heat Pump	30	x	11	x					x
	6	Electricity	30	x	19	x	x		x		x
		Gas	30	x	11	x					x
		Oil	30	x	11	x			x		x
		Electric Heat Pump	30	x	19	x	x				x
	7	Electricity	30	x	19	x	x		x	x	x
		Gas	30	x	11	x					x
		Oil	30	x	11	x			x		x
		Electric Heat Pump	30	x	19	x	x				x
Kentucky	4	Electricity	30	x	19	x			x		x
		Gas	30	x	11	x					x
		Oil	30	x	11	x			x		x
		Electric Heat Pump	30	x	11	x					x
	5	Electricity	30	x	19	x	x		x		x
		Gas	30	x	11	x					x
		Oil	30	x	11	x			x		x
		Electric Heat Pump	30	x	11	x					x

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STATE	HUD/MPS REGION	CATEGORY OF BUILDING	Ceiling Insulation (R-Value)*	Wall Insulation	Floor Insulation (R-Value)*	Storm or Thermal Windows	Storm or Thermal Doors	Solar Domestic Hot Water Systems	Active Solar Space Heating Systems	Combined Active Solar Space Heating & Solar Domestic Hot Water Systems	Wind Energy Devices
Kentucky (Continued)	6	Electricity	30	x	19	x	x	x			
		Gas	30	x	11	x					
		Oil	30	x	11	x		x			
		Electric Heat Pump	30	x	19	x	x				
Louisiana	6	Electricity	30	x		x		x			x
		Gas	30	x							
		Oil	30	x				x			
		Electric Heat Pump	30	x							x
	8	Electricity	30	x	19	x		x			
		Gas	30	x							
		Oil	30	x				x			
		Electric Heat Pump	30	x							
Maine	1	Electricity	30	x	19	x	x				x
		Gas	30	x	19	x	x				x
		Oil	30	x	19	x	x				x
		Electric Heat Pump	30	x	19	x	x				x
Maryland	4	Electricity	30	x	19	x			x		x
		Gas	30	x	11	x					x
		Oil	30	x	11	x			x		x
		Electric Heat Pump	30	x	11	x					x
	5	Electricity	30	x	19	x	x		x		x
		Gas	30	x	11	x					x
		Oil	30	x	11	x			x		x
		Electric Heat Pump	30	x	11	x					x
	6	Electricity	30	x	19	x	x		x		
		Gas	30	x	11	x					
		Oil	30	x	11	x			x		
		Electric Heat Pump	30	x	19	x	x				
Massachusetts	1	Electricity	30	x	19	x	x		x		x
		Gas	30	x	11	x					x
		Oil	30	x	11	x			x		x
		Electric Heat Pump	30	x	19	x	x				x
	7	Electricity	30	x	19	x	x		x		x
		Gas	30	x	11	x					x
		Oil	30	x	11	x			x		x
		Electric Heat Pump	30	x	19	x	x				x
Michigan	7	Electricity	30	x	19	x	x		x		x
		Gas	30	x	11	x					x
		Oil	30	x	11	x			x		x
		Electric Heat Pump	30	x	19	x	x				x

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CONSERVATION MEASURES RENEWABLE RESOURCE MEASURES

STATE	HUD/MFB REGION	CATEGORY OF BUILDING	Ceiling Insulation (R-Value)*	Wall Insulation	Floor Insulation (R-Value)*	Storm or Thermal Windows	Storm or Thermal Doors	Solar Domestic Hot Water Systems	Active Solar Space Heating Systems	Combined Active Solar Space Heating & Solar Domestic Hot Water Systems	Wind Energy Devices
Michigan (Continued)	6	Electricity	38	x	19	x	x	x			x
		Gas	38	x	19	x	x				x
		Oil	38	x	19	x	x				x
		Electric Heat Pump	38	x	19	x	x				x
Minnesota	5	Electricity	38	x	19	x	x	x			x
		Gas	38	x	19	x	x				x
		Oil	38	x	19	x	x				x
		Electric Heat Pump	38	x	19	x	x				x
Mississippi	3	Electricity	22	x		x		x			
		Gas	19	x							
		Oil	19	x				x			
		Electric Heat Pump	19	x							
	3	Electricity	38	x	11	x		x			x
		Gas	22	x							x
		Oil	22	x				x			x
		Electric Heat Pump	22	x							x
Missouri	4	Electricity	38	x	19	x		x			x
		Gas	38	x	11	x					x
		Oil	38	x	11	x		x			x
		Electric Heat Pump	38	x	11	x					x
	5	Electricity	38	x	19	x	x	x			x
		Gas	38	x	11	x					x
		Oil	38	x	11	x		x			x
		Electric Heat Pump	38	x	11	x					x
	6	Electricity	38	x	19	x	x	x			x
		Gas	38	x	11	x					x
		Oil	38	x	11	x		x			x
		Electric Heat Pump	38	x	19	x	x				x
Montana	8	Electricity	38	x	19	x	x				
		Gas	38	x	19	x	x				
		Oil	38	x	19	x	x	x			
		Electric Heat Pump	38	x	19	x	x				
Nebraska	6	Electricity	38	x	19	x	x	x			x
		Gas	38	x	19	x	x				x
		Oil	38	x	19	x	x				x
		Electric Heat Pump	38	x	19	x	x				x
	7	Electricity	38	x	19	x	x	x			x
		Gas	38	x	11	x					x
		Oil	38	x	11	x		x			x
		Electric Heat Pump	38	x	19	x	x				x

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Nebraska (Continued)	8	Electricity	38	x	19	x	x	x	x	x	x
		Gas	38	x	19	x	x				x
		Oil	38	x	19	x	x	x			x
		Electric Heat Pump	38	x	19	x	x				x
Nevada	9	Electricity	22	x		x		x	x	x	x
		Gas	19	x				x			x
		Oil	19	x				x	x	x	x
		Electric Heat Pump	19	x							x
	3	Electricity	38	x	11	x		x	x	x	x
		Gas	22	x				x			x
		Oil	22	x				x	x	x	x
		Electric Heat Pump	22	x							x
	4	Electricity	38	x	19	x		x	x	x	x
		Gas	38	x	11	x		x			x
		Oil	38	x	11	x		x	x	x	x
		Electric Heat Pump	38	x	11	x					x
	5	Electricity	38	x	19	x	x	x	x	x	x
		Gas	38	x	11	x		x			x
		Oil	38	x	11	x		x	x	x	x
		Electric Heat Pump	38	x	11	x					x
	6	Electricity	38	x	19	x	x	x	x	x	x
		Gas	38	x	11	x		x			x
		Oil	38	x	11	x		x	x	x	x
		Electric Heat Pump	38	x	19	x	x				x
	7	Electricity	38	x	19	x	x	x	x	x	x
		Gas	38	x	11	x		x			x
		Oil	38	x	11	x		x	x	x	x
		Electric Heat Pump	38	x	19	x	x				x
	8	Electricity	38	x	19	x	x	x	x	x	x
		Gas	38	x	19	x	x	x			x
		Oil	38	x	19	x	x	x	x	x	x
		Electric Heat Pump	38	x	19	x	x				x
New Hampshire	1	Electricity	38	x	19	x	x				x
		Gas	38	x	11	x					x
		Oil	38	x	11	x					x
		Electric Heat Pump	38	x	19	x	x				x
	2	Electricity	38	x	19	x	x	x			x
		Gas	38	x	19	x	x				x
		Oil	38	x	19	x	x				x
		Electric Heat Pump	38	x	19	x	x				x

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STATE	HUD/HPS REGION	CATEGORY OF BUILDING	CONSERVATION MEASURES					RENEWABLE RESOURCE MEASURES				
			Ceiling Insulation (R-Value)*	Wall Insulation	Floor Insulation (R-Value)*	Storm or Thermal Windows	Storm or Thermal Doors	Solar Domestic Hot Water Systems	Active Solar Space Heating Systems	Combined Active Solar Space Heating & Solar Domestic Hot Water Systems	Passive Solar Systems	Wind Energy Devices
New Jersey	6	Electricity	38	x	19	x	x	x				x
		Gas	38	x	11	x		x				x
		Oil	38	x	11	x		x				x
		Electric Heat Pump	38	x	19	x						x
	6	Electricity	38	x	19	x	x	x				x
		Gas	38	x	11	x		x				x
		Oil	38	x	11	x		x				x
		Electric Heat Pump	38	x	19	x	x					x
New Mexico	6	Electricity	30	x	11	x		x	x	x		x
		Gas	22	x				x				x
		Oil	22	x				x				x
		Electric Heat Pump	22	x								x
	4	Electricity	30	x	19	x		x	x	x		x
		Gas	38	x	11	x		x	x	x		x
		Oil	38	x	11	x		x				x
		Electric Heat Pump	38	x	11	x						x
	6	Electricity	38	x	19	x	x	x	x	x		x
		Gas	38	x	11	x		x				x
		Oil	38	x	11	x		x				x
		Electric Heat Pump	38	x	11	x						x
	6	Electricity	38	x	19	x	x	x	x	x		x
		Gas	38	x	11	x		x				x
		Oil	38	x	11	x		x				x
		Electric Heat Pump	38	x	19	x	x					x
	7	Electricity	38	x	19	x	x	x	x	x		x
		Gas	38	x	11	x		x				x
		Oil	38	x	11	x		x				x
		Electric Heat Pump	38	x	19	x	x					x
	8	Electricity	38	x	19	x	x	x	x	x		x
		Gas	38	x	19	x	x	x				x
		Oil	38	x	19	x	x	x				x
		Electric Heat Pump	38	x	19	x	x					x
New York	6	Electricity	38	x	19	x	x	x				x
		Gas	38	x	11	x						x
		Oil	38	x	11	x						x
		Electric Heat Pump	38	x	19	x	x					x
	7	Electricity	38	x	19	x	x	x				x
		Gas	38	x	11	x						x
		Oil	38	x	11	x						x
		Electric Heat Pump	38	x	19	x	x					x

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STATE	HUD/HPS REGION	CATEGORY OF BUILDING	CONSERVATION MEASURES					RENEWABLE RESOURCE MEASURES				
			Ceiling Insulation (R-Value)*	Wall Insulation	Floor Insulation (R-Value)*	Storm or Thermal Windows	Storm or Thermal Doors	Solar Domestic Hot Water Systems	Active Solar Space Heating Systems	Combined Active Solar Space Heating & Solar Domestic Hot Water Systems	Passive Solar Systems	Wind Energy Devices
New York (Continued)	6	Electricity	38	x	19	x	x	x				x
		Gas	38	x	11	x						x
		Oil	38	x	11	x						x
		Electric Heat Pump	38	x	19	x	x					x
North Carolina	4	Electricity	30	x		x		x				x
		Gas	22	x				x				
		Oil	22	x				x				
		Electric Heat Pump	22	x								
	6	Electricity	30	x	11	x		x				x
		Gas	22	x				x				
		Oil	22	x				x				
		Electric Heat Pump	22	x								
	4	Electricity	38	x	19	x		x				
		Gas	38	x	11	x		x				
		Oil	38	x	11	x		x				
		Electric Heat Pump	38	x	11	x						
	8	Electricity	38	x	19	x	x	x				
		Gas	38	x	11	x		x				
		Oil	38	x	11	x		x				
		Electric Heat Pump	38	x	11	x						
North Dakota	8	Electricity	38	x	19	x	x					x
		Gas	38	x	19	x	x					x
		Oil	38	x	19	x	x					x
Ohio	5	Electricity	38	x	19	x	x					
		Gas	38	x	11	x						
		Oil	38	x	11	x						
		Electric Heat Pump	38	x	11	x						
	6	Electricity	38	x	19	x	x					
		Gas	38	x	11	x						
		Oil	38	x	11	x						
		Electric Heat Pump	38	x	19	x	x					
	7	Electricity	38	x	19	x	x					x
		Gas	38	x	11	x						x
		Oil	38	x	11	x						x
		Electric Heat Pump	38	x	19	x	x					x
Oklahoma	6	Electricity	38	x	11	x		x		x		x
		Gas	22	x								x
		Oil	22	x				x				x
		Electric Heat Pump	22	x								x

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STATE	HUD/HPS REGION	CATEGORY OF BUILDING	CONSERVATION MEASURES					RENEWABLE RESOURCE MEASURES				
			Ceiling Insulation (R-Value)*	Wall Insulation	Floor Insulation (R-Value)*	Storm or Thermal Windows	Storm or Thermal Doors	Solar Domestic Hot Water Systems	Active Solar Space Heating Systems	Combined Active Solar Space Heating & Solar Domestic Hot Water Systems	Passive Solar Systems	Wind Energy Devices
Oklahoma (Continued)	6	Electricity	38	x	11	x		x		x		x
		Gas	22	x				x				x
		Oil	22	x				x				x
		Electric Heat Pump	22	x								x
Oregon	10	Electricity	38	x	19	x	x	x	x	x		x
		Gas	38	x	11	x		x				x
		Oil	38	x	11	x		x				x
		Electric Heat Pump	38	x	19	x	x					x
Pennsylvania	3	Electricity	38	x	19	x	x	x				x
		Gas	38	x	11	x		x				x
		Oil	38	x	11	x		x				x
		Electric Heat Pump	38	x	19	x	x					x
	6	Electricity	38	x	19	x	x	x				x
		Gas	38	x	11	x		x				x
		Oil	38	x	11	x		x				x
		Electric Heat Pump	38	x	19	x	x					x
Rhode Island	1	Electricity	38	x	19	x	x	x				x
		Gas	38	x	11	x		x				x
		Oil	38	x	11	x		x				x
		Electric Heat Pump	38	x	19	x	x					x
South Carolina	4	Electricity	30	x	11	x		x				x
		Gas	22	x				x				x
		Oil	22	x				x				x
		Electric Heat Pump	22	x								x
South Dakota	8	Electricity	38	x	19	x	x	x				x
		Gas	38	x	11	x		x				x
		Oil	38	x	11	x		x				x
		Electric Heat Pump	38	x	19	x	x					x

*These R-Values are minimum. The State may propose, in a State Plan, either (1) to substitute a higher level, subject to the Secretary's approval, as the program measure, or (2) to offer other levels (higher or lower) as States measures in addition to the program measures.

STATE	HUD/HPS REGION	CATEGORY OF BUILDING	CONSERVATION MEASURES: Ceiling Insulation (R-Value)*	Wall Insulation	Floor Insulation (R-Value)*	Storm or Thermal Windows	Storm or Thermal Doors	RENEWABLE RESOURCE MEASURES: Solar Domestic Hot Water Systems	Active Solar Space Heating Systems	Combined Active Solar Space Heating & Hot Water Systems	Heat Pump Systems
Oklahoma (Continued)	4	Electricity	30	x	19	x		x		x	x
		Gas	30	x	11	x					x
		Oil	30	x	11	x		x			x
		Electric Heat Pump	30	x	11	x					x
	5	Electricity	30	x	19	x	x	x	x	x	x
		Gas	30	x	11	x					x
		Oil	30	x	11	x		x	x	x	x
		Electric Heat Pump	30	x	11	x					x
	6	Electricity	30	x	19	x	x	x	x	x	x
		Gas	30	x	11	x					x
		Oil	30	x	11	x		x	x	x	x
		Electric Heat Pump	30	x	19	x	x				
Oregon	4	Electricity	30	x	19	x					
		Gas	30	x	11	x					
		Oil	30	x	11	x					
		Electric Heat Pump	30	x	11	x					
	5	Electricity	30	x	19	x	x				
		Gas	30	x	11	x					
		Oil	30	x	11	x					
		Electric Heat Pump	30	x	11	x					
	6	Electricity	30	x	19	x	x				
		Gas	30	x	11	x					
		Oil	30	x	11	x					
		Electric Heat Pump	30	x	19	x	x				
	7	Electricity	30	x	19	x	x				
		Gas	30	x	11	x					
		Oil	30	x	11	x		x			
		Electric Heat Pump	30	x	19	x	x				
	8	Electricity	30	x	19	x	x				
		Gas	30	x	11	x					
		Oil	30	x	11	x					x
		Electric Heat Pump	30	x	19	x	x				
Pennsylvania	3	Electricity	30	x	19	x	x		x		x
		Gas	30	x	11	x					
		Oil	30	x	11	x			x		
		Electric Heat Pump	30	x	11	x					x
	4	Electricity	30	x	19	x	x		x		
		Gas	30	x	11	x					
		Oil	30	x	11	x					
		Electric Heat Pump	30	x	19	x	x				

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STATE	HUD/HPS REGION	CATEGORY OF BUILDING	CONSERVATION MEASURES: Ceiling Insulation (R-Value)*	Wall Insulation	Floor Insulation (R-Value)*	Storm or Thermal Windows	Storm or Thermal Doors	RENEWABLE RESOURCE MEASURES: Solar Domestic Hot Water Systems	Active Solar Space Heating Systems	Combined Active Solar Space Heating & Hot Water Systems	Heat Pump Systems
Pennsylvania (Continued)	7	Electricity	30	x	19	x	x	x			
		Gas	30	x	11	x					
		Oil	30	x	11	x					
		Electric Heat Pump	30	x	19	x	x				
	8	Electricity	30	x	19	x	x				x
		Gas	30	x	11	x					x
		Oil	30	x	11	x					x
		Electric Heat Pump	30	x	19	x	x				x
Rhode Island	1	Electricity	30	x	19	x	x	x			x
		Gas	30	x	11	x					x
		Oil	30	x	11	x					x
		Electric Heat Pump	30	x	19	x	x				x
South Carolina	2	Electricity	30	x		x		x			x
		Gas	30	x				x			
		Oil	30	x							
		Electric Heat Pump	30	x							
	3	Electricity	30	x	11	x		x			x
		Gas	30	x				x			
		Oil	30	x							x
		Electric Heat Pump	30	x							
	4	Electricity	30	x	19	x		x			
		Gas	30	x	11	x		x			
		Oil	30	x	11	x					
		Electric Heat Pump	30	x	11	x					
South Dakota	7	Electricity	30	x	19	x	x	x			x
		Gas	30	x	11	x		x			
		Oil	30	x	11	x		x			x
		Electric Heat Pump	30	x	19	x	x				
	8	Electricity	30	x	19	x	x	x			x
		Gas	30	x	11	x					
		Oil	30	x	11	x		x			x
		Electric Heat Pump	30	x	19	x	x				x
Tennessee	3	Electricity	30	x	19	x		x			
		Gas	30	x				x			
		Oil	30	x							
		Electric Heat Pump	30	x							
	4	Electricity	30	x	19	x					
		Gas	30	x	11	x				x	
		Oil	30	x	11	x					
		Electric Heat Pump	30	x	19	x					

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STATE	HUD/HPB REGION	CATEGORY OF BUILDING	CONSERVATION MEASURES					RENEWABLE RESOURCE MEASURES				
Tennessee (Continued)	5	Electricity	30	x	10	x	x					
		Gas	15	x	11	x						
		Oil	15	x	11	x						
		Electric Heat Pump	30	x	11	x						
Texas	1	Electricity	10	x								x
		Gas	15	x								
		Oil	15	x								
		Electric Heat Pump	15	x								x
	2	Electricity	30	x			x				x	x
		Gas	15	x								
		Oil	15	x								
		Electric Heat Pump	15	x								x
	3	Electricity	30	x	11	x					x	x
		Gas	15	x								
		Oil	15	x								
		Electric Heat Pump	30	x								x
	4	Electricity	30	x	10	x					x	x
		Gas	15	x	11	x						
		Oil	15	x	11	x						
		Electric Heat Pump	30	x	11	x						x
	5	Electricity	30	x	10	x	x				x	x
		Gas	15	x	11	x						
		Oil	15	x	11	x						
		Electric Heat Pump	30	x	11	x						x
Utah	8	Electricity	30	x	10	x	x	x	x	x		
		Gas	15	x	11	x						
		Oil	15	x	11	x						
		Electric Heat Pump	30	x	11	x						
	9	Electricity	30	x	10	x	x	x	x	x		
		Gas	15	x	11	x						
		Oil	15	x	11	x						
		Electric Heat Pump	30	x	10	x	x					
	7	Electricity	30	x	10	x	x	x	x	x		
		Gas	15	x	11	x						
		Oil	15	x	11	x						
		Electric Heat Pump	30	x	10	x	x					
	8	Electricity	30	x	10	x	x	x	x	x		
		Gas	15	x	10	x	x					
		Oil	15	x	10	x	x					
		Electric Heat Pump	30	x	10	x	x					

These R-Values are minimum. The State may propose, in a State Plan, either (1) to substitute a higher level, subject to the Secretary's approval, as the program measure, or (2) to offer other levels (higher or lower) as States measures in addition to the program measures.

STATE	HUD/HPB REGION	CATEGORY OF BUILDING	CONSERVATION MEASURES					RENEWABLE RESOURCE MEASURES				
Vermont	1	Electricity	30	x	10	x	x					x
		Gas	15	x	11	x						
		Oil	15	x	11	x						
		Electric Heat Pump	30	x	10	x	x					x
	2	Electricity	30	x	10	x	x					
		Gas	15	x	10	x	x					
		Oil	15	x	10	x	x					
		Electric Heat Pump	30	x	10	x	x					
Virginia	3	Electricity	30	x	11	x			x			x
		Gas	15	x					x			
		Oil	15	x								
		Electric Heat Pump	30	x								x
	4	Electricity	30	x	10	x			x			
		Gas	15	x	11	x						
		Oil	15	x	11	x						
		Electric Heat Pump	30	x	11	x			x			
	5	Electricity	30	x	10	x	x	x	x			
		Gas	15	x	11	x						
		Oil	15	x	11	x						
		Electric Heat Pump	30	x	11	x			x			
	6	Electricity	30	x	10	x	x	x	x			
		Gas	15	x	11	x						
		Oil	15	x	11	x						
		Electric Heat Pump	30	x	10	x	x		x			
Washington	6	Electricity	30	x	10	x	x					
		Gas	15	x	11	x						
		Oil	15	x	11	x						
		Electric Heat Pump	30	x	10	x	x					
	7	Electricity	30	x	10	x	x					
		Gas	15	x	11	x						
		Oil	15	x	11	x						
		Electric Heat Pump	30	x	10	x	x					
	8	Electricity	30	x	10	x	x					
		Gas	15	x	10	x	x					
		Oil	15	x	10	x	x	x				
		Electric Heat Pump	30	x	10	x	x					
West Virginia	3	Electricity	30	x	10	x	x	x				
		Gas	15	x	11	x						
		Oil	15	x	11	x						
		Electric Heat Pump	30	x	11	x						

These R-Values are minimum. The State may propose, in a State Plan, either (1) to substitute a higher level, subject to the Secretary's approval, as the program measure, or (2) to offer other levels (higher or lower) as States measures in addition to the program measures.

STATE	HUD/HPB REGION	CATEGORY OF BUILDING	CONSERVATION MEASURES					RENEWABLE RESOURCE MEASURES				
Wisconsin	5	Electricity	30	x	10	x	x					x
		Gas	15	x	11	x						
		Oil	15	x	11	x						
		Electric Heat Pump	30	x	10	x	x					x
Wyoming	8	Electricity	30	x	10	x	x	x	x	x		
		Gas	15	x	11	x						
		Oil	15	x	11	x						
		Electric Heat Pump	30	x	10	x	x					
Guam	9	Electricity	30	x	10	x	x	x	x	x		
		Gas	15	x	11	x						
		Oil	15	x	11	x						
		Electric Heat Pump	30	x	10	x	x					
American Samoa	9	Electricity	30	x	10	x	x	x	x	x		
		Gas	15	x	11	x						
		Oil	15	x	11	x						
		Electric Heat Pump	30	x	10	x	x					
Trust Territories	9	Electricity	30	x	10	x	x	x	x	x		
		Gas	15	x	11	x						
		Oil	15	x	11	x						
		Electric Heat Pump	30	x	10	x	x					
Virgin Islands	2	Electricity	30	x	10	x	x	x	x	x		
		Gas	15	x	11	x						
		Oil	15	x	11	x						
		Electric Heat Pump	30	x	10	x	x					
Puerto Rico	2	Electricity	30	x	10	x	x	x	x	x		
		Gas	15	x	11	x						
		Oil	15	x	11	x						
		Electric Heat Pump	30	x	10	x	x					

STATE	HUD/HEW REGION	CATEGORY OF BUILDING	CONSERVATION MEASURES					RENEWABLE RESOURCE MEASURES				
			Ceiling Insulation (R-Value)*	Wall Insulation	Floor Insulation (R-Value)*	Storm or Thermal Doors	Storm or Thermal Windows	Solar Domestic Hot Water System	Active Solar Space Heating System	Passive Solar Features (Direct Gain, Thermal Storage Wall, Sunspace)	Wood Burning Stove	Photovoltaic System
West Virginia (continued)	6	Electricity										
		Gas										
		Oil										
		Electric Heat Pump										
Wisconsin	7	Electricity										
		Gas										
		Oil										
		Electric Heat Pump										
	8	Electricity										
		Gas										
		Oil										
		Electric Heat Pump										
Wyoming	7	Electricity										
		Gas										
		Oil										
		Electric Heat Pump										
	8	Electricity										
		Gas										
		Oil										
		Electric Heat Pump										
Puerto Rico	1	Electricity										
		Gas										
		Oil										
		Electric Heat Pump										

*These R-Values are minimum. The State may propose, in a State Plan, either (1) to substitute a higher level, subject to the Secretary's approval, as the program measure, or (2) to offer other levels (higher or lower) as States measures in addition to the program measure.

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federal register

Friday
January 16, 1981

Part XIV

Department of Education

Office of Elementary and Secondary Education

Asbestos Detection and Control: Local Educational Agencies: Asbestos Detection and State Plan: State Educational Agencies; Final Regulations

DEPARTMENT OF EDUCATION

Office of Elementary and Secondary Education

34 CFR Parts 230 and 231

Asbestos Detection and Control: Local Educational Agencies; Asbestos Detection and State Plan: State Educational Agencies

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary of Education issues these regulations to implement the Asbestos School Hazard Detection and Control Act of 1980. These regulations establish procedures to make available Federal grants to assist local educational agencies (LEAs) and State educational agencies (SEAs) in the identification of asbestos hazards in school buildings and Federal interest-free loans to LEAs to correct those hazards.

EFFECTIVE DATE: February 17, 1981.

FOR FURTHER INFORMATION CONTACT: Dr. Herman Goldberg, U.S. Department of Education, Room 2079, FOB–6, 400 Maryland Avenue, SW., Washington, D.C. 20202. Telephone: (202) 245–8094.

SUPPLEMENTARY INFORMATION: Regulations to implement the Asbestos School Hazard Detection and Control Act of 1980 (the Act) were published as a notice of proposed rulemaking (NPRM) in the Federal Register on September 17, 1980 (45 FR 61956). The purposes of the Act and the major provisions of the proposed regulations were outlined in the preamble to the NPRM.

The Department of Education received a number of comments from the public on those proposed regulations. A summary of the comments and the Secretary's responses, including changes made in the regulations, is attached as Appendix F to this document.

Members of the Asbestos Task Force, an advisory body established in accordance with the Act, played a significant role in reviewing the regulations and the comments, particularly with regard to the scientific procedures for asbestos detection and control. The Environmental Protection Agency, the source of many of those procedures and a member agency of the Task Force, was also helpful to the Secretary in preparing the Secretary's responses to comments requiring scientific expertise.

Members of the Task Force suggested a number of changes in the proposed regulations that reflect their scientific and technical expertise in asbestos-related activities. These changes, which were adopted by the Secretary, are summarized below.

1. The statutory definition of "imminent hazard to the health and safety," which was paraphrased in the proposed regulations, has been changed. The Task Force believes that the change will make the definition more precise scientifically and, thus, less confusing to school districts.

2. The statutory term "likelihood of leakage of asbestos fibers," which appeared in several sections of the proposed regulations, has been changed to read "likelihood of *release* of asbestos fibers." The Task Force believes that the revised language is more precise and more in keeping with current usage.

3. The "Asbestos Exposure Assessment Algorithm," which appeared as Appendix A to the proposed regulations, has been revised. The Task Force believes that a less rigid system for guiding school districts in evaluating the health risks associated with the likelihood of release of asbestos fibers is preferable. The new document, entitled "Guidance System for Assessing Exposure to Asbestos," appears as Appendix B to these regulations. A more detailed summary of the changes made to the original algorithm is contained in the introduction to the new document.

4. A new paragraph has been added to § 230.43 ("What standards does a grantee apply in determining the qualifications of a contractor to carry out an asbestos detection program?"). The Task Force believes this new paragraph will help a grantee avoid a possible conflict-of-interest problem by hiring to carry out its asbestos detection project a contractor different from the one it might later consider hiring to carry out its asbestos control project.

5. The regulations in § 230.11(b) make it clear that loans cannot be provided for management systems. However, the Secretary and the Task Force encourage schools to consider management systems where there are low risks and when corrective actions are not necessary.

At present no funds have been appropriated under the Act for either the Asbestos Detection Program or the Asbestos Control Program. Despite the lack of an appropriation, however, every SEA should note that the Act requires it to have submitted a State plan as described in Part 231 of these regulations by December 15, 1980. Those SEAs that have already submitted their State plans based on the provisions in the NPRM will have an opportunity to amend plans that do not comply with the amended § 231.70(b)(1) of these regulations but will be held accountable for meeting only the statutory requirements.

Citation of Legal Authority

A citation of statutory or other legal authority is placed in parentheses on the line following each substantive provision of these proposed regulations.

Dated: January 9, 1981.

Shirley M. Hufstedler,

Secretary of Education.

(Catalog of Federal Domestic Assistance Number not assigned)

The Secretary amends Title 34 of the Code of Federal Regulations by adding a new Part 230 to read as follows:

PART 230—ASBESTOS DETECTION AND CONTROL: LOCAL EDUCATIONAL AGENCIES

Subpart A—General

Sec.

230.1 Asbestos Detection and Control: Local Educational Agencies.
230.2 Who is eligible for assistance under these programs?
230.3 What regulations apply to these programs?
230.4 What definitions apply to these programs?

Subpart B—What Kinds of Projects Does the Department of Education Assist Under These Programs?

230.10 What kinds of activities are assisted under the LEA Asbestos Detection Program?
230.11 What kinds of activities are assisted under the LEA Asbestos Control Program?

Subpart C—How Does One Apply Under These Programs?

230.20 How does one apply for a grant under the LEA Asbestos Detection Program?
230.21 How does one apply for a loan under the LEA Asbestos Control Program?
230.22 In what circumstances may an LEA apply for a grant or loan greater than 50 percent?
230.23 What records must an LEA maintain?

Subpart D—How Does the Secretary Make an Award?

230.30 How does the Secretary determine the amount of a grant for an asbestos detection project?
230.31 What criteria does the Secretary apply in selecting loan recipients?
230.32 How does the Secretary determine the amount of a loan for an asbestos control project?
230.33 What criteria does the Secretary apply in considering an application for a grant or loan greater than 50 percent?
230.34 What criteria does the Secretary apply if appropriations do not meet the 50 percent levels of assistance?

Subpart E—What Conditions Must Be Met by a Recipient?

Procedures and Standards for an Asbestos Detection Project

230.40 What are the procedures for conducting an asbestos detection project?
230.41 What are the safety measures for conducting an asbestos detection project?
230.42 How does a grantee evaluate the likelihood of release of asbestos fibers?
230.43 What standards does a grantee apply in determining the qualifications of a contractor to carry out an asbestos detection project?
230.44 [Reserved]

Procedures and Standards for an Asbestos Control Project

230.45 What are the procedures for containing or removing asbestos materials?
230.46 What are the procedures for replacing building materials and restoring school buildings?
230.47 What standards does a recipient of a loan apply in determining the qualifications of a contractor to carry out an asbestos control project?
230.48-230.49 [Reserved]

Fiscal Requirements

230.50 What are the rules for repayment of a loan?

Subpart F—What Are the Administrative Responsibilities of a Grantee?

230.60 What report must a grantee submit?

Authority: The Asbestos School Hazard Detection and Control Act of 1980. Pub. L. 96-270 (20 U.S.C. 3601-3611, 94 Stat. 487) and Section 414(a) of the Department of Education Organization Act, Pub. L. 96-88 (20 U.S.C. 3474(a), 93 Stat. 668).

Subpart A—General

§ 230.1 Asbestos Detection and Control: Local Educational Agencies.

The Asbestos Detection and Control Programs for Local Educational Agencies (LEAs) consist of—

(a) *LEA Asbestos Detection Program.* This program provides Federal grants to LEAs to identify asbestos hazards in school buildings; and

(b) *LEA Asbestos Control Program.* This program provides Federal interest-free loans to LEAs to correct imminent hazards to the health and safety of school children and school employees posed by the presence of asbestos in school buildings.

(20 U.S.C. 3604(a)(1)(A); 20 U.S.C. 3605(a)(1) and (2))

§ 230.2 Who is eligible for assistance under these programs?

(a)(1) An LEA [1] is eligible for a grant under the LEA Asbestos Detection Program if that LEA proposes to conduct or has not completed before January 1, 1976 an asbestos detection project that is in conformity with the procedures and standards in §§ 230.40 through 230.42, and 230.43 if applicable.

(2) As used in paragraph (a)(1) of this section and throughout this part, the term "conformity" in reference to any asbestos detection project conducted prior to the effective date of these regulations means substantial conformity.

(b)(1) An LEA is eligible for a loan under the LEA Asbestos Control Program if that LEA—

(i) Has conducted an asbestos detection project in conformity with the procedures and standards in §§ 230.40 through 230.42, and 230.43 if applicable; and

(ii) Proposes to carry out or has not completed before January 1, 1978 an asbestos control project—

(A) In conformity with the procedures and standards in §§ 230.45 through 230.47, as applicable;

(B) Involving more than 2,500 square feet of surface in the school buildings in the LEA; and

(C) Meeting the criteria established by the Secretary under Section 7(a)(2) of the Act. These criteria will be established if appropriations become available for the LEA Asbestos Control Program.

(2) As used in paragraphs (b)(1)(i) and (b)(1)(ii)(A) of this section and throughout this part, the term "conformity" in reference to any asbestos control project conducted prior to the date—which will be published in the Federal Register—when loan applications will be accepted means substantial conformity.

(20 U.S.C. 3604(a)(1)(A) and (b)(3); 20 U.S.C. 3605(a)(2) and (c)(1) and (3))

§ 230.3 What regulations apply to these programs?

(a) In addition to the regulations in this Part 230, the following regulations apply to the LEA Asbestos Detection Program and the LEA Asbestos Control Program:

(1) The Education Division General Administrative Regulations (EDGAR) in 34 CFR Part 77 (General) except the following definitions:

(i) Award.

(ii) Recipient.

(2) The regulations in 34 CFR Part 231 (Asbestos Detection and State Plan: State Educational Agencies).

(b) In addition to the regulations in paragraph (a) of this section, the LEA Asbestos Detection Programs is governed by the regulations in EDGAR, 34 CFR Part 75 (Direct Grant Programs) except the following:

(1) Sections 75.107 and 75.108 (pertaining to applications for new grants under discretionary grant program and under formula grant programs).

(2) Section 75.111 (pertaining to the description of a project).

(3) Section 75.116 (pertaining to the demonstration of capability).

(4) Sections 75.200 through 75.215 (pertaining to the selection of new projects, including selection criteria).

(5) Sections 75.217 through 75.220 (pertaining to selection procedures and procedures for making a grant).

(20 U.S.C. 3474(a))

§ 230.4 What definitions apply to these programs?

The following definitions apply to the LEA Asbestos Detection Program and the LEA Asbestos Control Program:

(a) *Definitions in EDGAR.* The following terms used in this part are defined in 34 CFR 77.1:

Applicant
Application
EDGAR
Grant
Grantee
Nonprofit
Private
Project
Secretary
State educational agency (SEA)

(b) *Definitions that apply to this part.* The following definitions apply to this part:

"Act" means the Asbestos School Hazard Detection and Control Act of 1980 (Pub. L. 96-270).

"Asbestos" means—

(a) Chrysotile, amosite, or crocidolite; or

(b) In fibrous form, tremolite-asbestos, anthophyllite-asbestos, or actinolite-asbestos.

"Asbestos control project" means activities—described in § 230.11—designed to correct imminent hazards to the health and safety of school children and school employees posed by the presence of asbestos in school buildings.

"Asbestos detection project" means activities—described in § 230.10—designed to identify asbestos hazards in school buildings.

"Award" means—

[1] (Note: As used in these programs, the term LEA includes the governing authority of a nonprofit private elementary or secondary school as defined in § 230.4(b))

(1) The amount of funds that the Secretary provides to a grantee under the LEA Asbestos Detection Program; or

(2) The amount of funds that the Secretary provides to an applicant for a loan under the LEA Asbestos Control Program.

"Friable" means able to be crumbled, pulverized, or reduced to powder by hand.

"Imminent hazard to the health and safety" means, with reference to asbestos, that the asbestos is contained in building material whose fibers could be released into a school building environment.

"Local educational agency" means—

(1) An LEA as defined in EDGAR, 34 CFR 77.1;

(2) The governing authority of a nonprofit private elementary or secondary school, as defined in Section 11 of the Act; or

(3) A school of an agency of the United States.

"Management system" is a system in which the condition of materials that contain asbestos are monitored to ascertain any changes in the materials that may require direct corrective action.

"Recipient" means—

(1) A grantee under the LEA Asbestos Detection Program; or

(2) An applicant that receives a loan under the LEA Asbestos Control Program.

"School buildings" means—

(1) Structures suitable for use as classrooms, laboratories, libraries, school eating facilities, or school facilities used for the preparation of food;

(2) Gymnasiums or other facilities designed especially for athletic or recreational activities included in an academic course in physical education in the regular curriculum;

(3) Other facilities used for the instruction of students, for research, or for the administration of educational or research programs; or

(4) Maintenance, storage, or utility facilities essential to the operation of any of the facilities listed in paragraphs (1) through (3) of this definition.

"State" means—

(1) A State as defined in EDGAR, 34 CFR 77.1; and

(2) The Bureau of Indian Affairs.

(20 U.S.C. 3810; 20 U.S.C. 2854; 34 CFR 77.1)

Subpart B—What Kinds of Projects Does the Department of Education Assist Under These Programs?

§ 230.10 What kinds of activities are assisted under the LEA Asbestos Detection Program?

(a) The Secretary provides a grant to an eligible applicant under the LEA Asbestos Detection Program for the following activities conducted in accordance with the procedures and standards in §§ 230.40 through 230.42, and 230.43 if applicable:

(1) Making a visual inspection of school buildings to detect friable building materials.

(2) Collecting samples of the friable building materials referred to in paragraph (a)(1) of this section, including insulation materials.

(3) Analyzing the samples referred to in paragraph (a)(2) of this section to determine the presence of asbestos and the level of asbestos content.

(4) Determining the extent of the imminent hazards posed by the asbestos referred to in paragraph (a)(3) of this section by evaluating the likelihood of the release of fibers of that asbestos into the school environment.

(b) If appropriate, the Secretary may also provide funds for administrative costs incurred in the preparation and supervision of the LEA Asbestos Detection Program.

(20 U.S.C. 3804(b)(4))

§ 230.11 What kinds of activities are assisted under the LEA Asbestos Control Program?

(a) The Secretary provides a loan to an eligible applicant under the LEA Asbestos Control Program for the following activities conducted in accordance with the procedures and standards in §§ 230.45 through 230.47, as applicable:

(1) Containing or removing school building materials that contain asbestos posing an imminent hazard to the health and safety of school children and school employees.

(2) Replacing the removed materials referred to in paragraph (a) of this section with other appropriate building materials.

(3) Making repairs the Secretary considers necessary to restore school buildings to conditions comparable to those that existed before the activities in paragraphs (a) (1) and (2) of this section were carried out.

(b) The Secretary does not provide loans for an asbestos management system.

Note.—Although the asbestos control program does not fund asbestos management systems, the Secretary and the Asbestos Hazards School Safety Task Force encourage schools to carefully consider this alternative before engaging in costly control projects. These projects may not be funded if a management system is more appropriate and cost-effective.

(Cross-Reference: 34 CFR 230.31)

(20 U.S.C. 3805(a)(2))

Subpart C—How Does One Apply Under These Programs?

§ 230.20 How does one apply for a grant under the LEA asbestos detection program?

(a) To apply for a grant under the LEA Asbestos Detection Program, an applicant must file with the Secretary an application that—

(1) Meets the requirements of—

(i) EDGAR, 34 CFR 75.109 and 75.110; and

(ii) EDGAR, 34 CFR 75.112 through 75.115;

(2) Contains a description of the methods to be used by the LEA to determine whether hazardous concentrations of asbestos fibers or materials emitting those fibers exist in school buildings under the jurisdiction of the applicant agency;

(3) Contains an estimate of the total cost of the detection project, including whatever detailed descriptions of the costs of each component of the project the Secretary may require;

(4) Designates the party that will conduct the detection project and describes that party's qualifications for conducting that project;

(5) Contains assurances that—

(i) The project will be carried out in conformity with the requirements in §§ 230.40 through 230.42;

(ii) Any party employed to carry out the project will satisfy the competency standards established under § 230.43; and

(6) Contains any other information or assurances the Secretary may require.

(b) An applicant for a grant for an asbestos detection project conducted prior to the date of its application but not completed before January 1, 1978 shall include in its application—in addition to the information required in paragraph (a) of this section—an assurance that it conducted the project in conformity with the requirements in §§ 230.40 through 230.42, and 230.43 if applicable.

(20 U.S.C. 3804(b)(1) and (3); 34 CFR 75.109–110; 34 CFR 75.112–115)

§ 230.21 How does one apply for a loan under the LEA Asbestos Control Program?

(a) To apply for a loan under the LEA Asbestos Control Program, an applicant must file with the Secretary an application containing—

(1) All information the Secretary may require, including information describing—

(i) The nature of the asbestos problem for which the loan is sought;

(ii) The asbestos content of the material to be contained or removed by the LEA, as determined from the results of an asbestos detection project conducted in conformity with the requirements in §§ 230.40 through 230.42, and 230.43 if applicable;

(iii) The methods to be used to contain or remove the asbestos materials, in conformity with the requirements in §§ 230.45 through 230.47, as applicable; and

(iv) Any other pertinent details relating to the control project; and

(2) Assurances that—

(i) The LEA conducting the asbestos control project—

(A) Will notify in writing any employee engaged in any activity to carry out the project of the hazards of working with asbestos; and

(B) Will require each employee to use all appropriate safety procedures to minimize health risks;

(ii) The LEA will not permit a child, or a school employee not engaged in asbestos containment, removal, or replacement activity to be in the vicinity of such activity; and

(iii) The LEA will pay employees engaged in containment, removal, or replacement activities to carry out the asbestos control project, reasonable rates of pay, as established by the Secretary on the basis of prevailing wage rates in the location of that work.

(b) An applicant for a loan for an asbestos control project conducted prior to the date of its application but not completed before January 1, 1976 shall include in its application—in addition to the information required in paragraph (a) of this section—an assurance that it conducted the project in conformity with the requirements in §§ 230.45 through 230.47, as applicable.

(20 U.S.C. 3605(c)(1) and (3))

§ 230.22 In what circumstances may an LEA apply for a grant or loan greater than 50 percent?

(a) If an LEA believes that it has limited resources and would be unable to participate in the LEA Asbestos Detection Program or the LEA Asbestos Control Program without an increased award, the LEA may submit to the Secretary, together with its application, a request for a grant or loan greater than the amount provided by the Secretary under §§ 230.30 or 230.32.

(b) The LEA shall include in its request for an increased award information that substantiates its claim of limited financial resources. This may include the most recently available data describing any applicable factors listed in § 230.33(b).

(20 U.S.C. 3604(a)(2); 20 U.S.C. 3605(a)(3); 20 U.S.C. 3474(a))

§ 230.23 What records must an LEA maintain?

An LEA that applies for a grant under the LEA Asbestos Detection Program or a loan under the LEA Asbestos Control Program shall maintain and make available to the Secretary on request whatever records are necessary to substantiate claims—including cost claims—in the LEA's application.

(20 U.S.C. 3604(b)(1); 20 U.S.C. 3605(c)(1); 20 U.S.C. 3474(a))

Subpart D—How Does the Secretary Make an Award?

§ 230.30 How does the Secretary determine the amount of a grant for an asbestos detection project?

(a) Except as provided in §§ 230.33 and 230.34, the Secretary makes a grant equal to 50 percent of the costs that an eligible LEA incurs or has incurred in conducting an asbestos detection project.

(b)(1) The amount awarded by the Secretary is the Federal share of the grantee's project.

(2) This applies whether Federal funds for the project are paid—

(i) Directly to the LEA;

(ii) To the SEA under 34 CFR Part 231 for reimbursement of funds it has paid to the LEA for this project; or

(iii) To both the LEA and the SEA.

(20 U.S.C. 3604(a)(2) and (a)(1)(B))

§ 230.31 What criteria does the Secretary apply in selecting loan recipients?

In selecting loan recipients under the LEA Asbestos Control Program, the Secretary applies the following criteria:

(a)(1) The likelihood of release of asbestos fibers into a school environment, as determined under the Guidance System for Assessing Potential Asbestos Problems in Schools in Appendix B of these regulations; or

(2) Any other evidence of the extent of the hazards caused by the presence of asbestos.

(b)(1) The extent to which the corrective action proposed by the applicant will reduce the imminent hazards to the health and safety of school children and school employees; or

(2) The extent to which corrective action that the applicant took in a control project not completed before January 1, 1976 was successful in reducing imminent hazards to the health and safety of school children and school employees.

(c)(1) The extent to which the corrective action proposed by the applicant is cost-effective compared to other techniques including management of material containing asbestos; or

(2) The extent to which corrective action that the applicant took in a control project not completed before January 1, 1976 was cost-effective compared to other techniques, including management of material containing asbestos.

(20 U.S.C. 3605(a)(2))

§ 230.32 How does the Secretary determine the amount of a loan for an asbestos control project?

Except as provided in §§ 230.33 and 230.34, the Secretary may make an interest-free loan equal to 50 percent of the costs that an eligible LEA incurs or has incurred in conducting an asbestos control project.

(20 U.S.C. 3605(a)(2))

§ 230.33 What criteria does the Secretary apply in considering an application for a grant or loan greater than 50 percent?

(a) The Secretary may increase the amount of a grant or loan if the Secretary determines that an eligible LEA has limited financial resources and would be unable to participate in the LEA Asbestos Detection Program or the LEA Asbestos Control Program without an increased award.

(b) The Secretary considers one or more of the following factors in making the determination described in paragraph (a) of this section:

(1) A measure of financial need used by the State in which the LEA is located.

(2) The per capita income of the LEA or county.

(3) The local school millage rate compared with the millage rate that the State determines to be reasonable for that LEA or county.

(4) The ratio, expressed as a percentage, of the cost of the project to the total budget of the LEA.

(5) Any other factor that demonstrates that the LEA has limited financial resources.

(20 U.S.C. 3604(a)(2); 20 U.S.C. 3605(a)(3))

§ 230.34 What criteria does the Secretary apply if appropriations do not meet the 50 percent levels of assistance?

(a) If appropriations under the LEA Asbestos Detection Program or the LEA Asbestos Control Program do not meet the levels of assistance described in §§ 230.30 and 230.32, the Secretary determines which applicant LEAs have the greatest financial need for receiving

funds to conduct asbestos detection or control activities.

(b) In making the determination described in paragraph (a) of this section, the Secretary considers:

(1) One or more of the factors in paragraph (b) of § 230.33; and

(2) One or more of the following factors:

(i) The square footage of the structures to be included in the project compared with the total square footage of school buildings in the LEA.

(ii) The known or estimated asbestos content in friable building materials used in the LEA's school buildings.

(iii) The likelihood of release of asbestor fibers in building materials used in the LEA's school buildings.

(iv) The number of persons using the LEA's school buildings who are or will be exposed to asbestos that poses an imminent hazard.

(v) Any other factor that demonstrates the extent of the LEA's financial need for receiving funds to conduct asbestos detection or control activities.

(20 U.S.C. 3611(c); 20 U.S.C. 1225a)

Subpart E—What Conditions Must Be Met by a Recipient?

Procedures and Standards for an Asbestos Detection Project

§ 230.40 What are the procedures for conducting an asbestos detection project?

In conducting an asbestos detection project, a grantee under the LEA Asbestos Detection Program shall adhere to the following procedures:

(a) For making a visual inspection of school buildings, the procedures in Part I of Appendix A.

(b) For sampling friable materials, the procedures in Part II of Appendix A.

(c) For analyzing friable materials to determine their asbestos content, the procedures in Part III of Appendix A.

(d) For evaluating the likelihood of release of asbestos fibers, the procedures referred to in § 230.42.

(20 U.S.C. 3606(a)(1) and (c))

§ 230.41 What are the safety measures for conducting an asbestos detection project?

A grantee under the LEA Asbestos Detection Program shall comply with the best available safety measures for conducting its asbestos detection project. A grantee is considered by the Secretary to be in compliance with this section if that grantee adheres to the following safety measures:

(a) Material is sampled only when the area in which that material is located is not in use.

(b) Only persons needed for sampling are present.

(c) The sampling container is held away from the face during the actual collection of the sample.

(d) The material is not disturbed more than is necessary.

Note.—The Secretary and the Task Force recommend that when persons take bulk samples, they use respirators or other respiratory protection.

(20 U.S.C. 3606(a)(1) and (c))

§ 230.42 How does a grantee evaluate the likelihood of release of asbestos fibers?

A grantee under the LEA Asbestos Detection Program shall apply the Guidance System for Assessing Potential Asbestos Problems in Schools in Appendix B of these regulations to evaluate the likelihood of the release of asbestos fibers into a school environment.

(20 U.S.C. 3606(a)(1) and (c))

§ 230.43 What standards does a grantee apply in determining the qualifications of a contractor to carry out an asbestos detection project?

(a) A grantee under the LEA Asbestos Detection Program may, if it so chooses, select a contractor to carry out any or all of the activities under the grantee's asbestos detection project.

(b) A grantee that selects a contractor to carry out any or all of the activities under the grantee's asbestos detection project shall determine the qualifications of that contractor by applying the following standards:

(1) For making a visual inspection of school buildings, the contractor's knowledge of and ability to comply with the procedures in Part I of Appendix A.

(2) For sampling friable materials, the contractor's knowledge of and ability to comply with the procedures in Part II of Appendix A.

(3)(i) For analyzing friable materials to determine their asbestos content, the contractor's knowledge of and ability to comply with the analytic techniques in Part III of Appendix A.

(ii) In addition, the Secretary encourages the grantee to consult the results of the Asbestos Analytic Laboratory Proficiency Program developed by the Environmental Protection Agency (EPA), which assessed the ability of participating laboratories to analyze materials for asbestos.

(iii) The Secretary makes available to SEAs on request the results of the analytical proficiency program referred to in paragraph (b)(3)(ii) of this section.

(4)(i) For evaluating the likelihood of release of asbestos fibers, the contractor's knowledge of and familiarity with the Guidance System for Assessing Potential Asbestos Problems in Schools in Appendix B of these regulations.

(ii) In addition, the Secretary encourages the grantee to consider the contractor's—

(A) Experience with the guidance system referred to in paragraph (b)(4)(i) of this section; and

(B) Past participation in training programs for using the guidance system or an EPA algorithm.

(iii) The Secretary makes available to SEAs on request training materials and instructional aids to assist contractors in applying the guidance system referred to paragraph (b)(4)(i) of this section.

(c) The Secretary encourages a grantee to consider hiring a different contractor to carry out the grantee's control activities than the one the grantee hired to carry out its detection activities.

(20 U.S.C. 3606(a)(1) and (c))

§ 230.44 [Reserved]

Procedures and Standards for an Asbestos Control Project

§ 230.45 What are the procedures for containing or removing asbestos materials?

(a) A recipient of a loan under the LEA Asbestos Control Program shall comply with the applicable procedures in Appendix C of these regulations if the asbestos control project involves—

(1) Removal of asbestos materials; or

(2) Containment of asbestos materials and there is a significant risk of friable materials being released in the air.

(b) If the asbestos control project involves containment of asbestos materials and there is *no* significant risk of friable materials being released in the air, less restrictive procedures than those in Appendix C may be appropriate. Nevertheless, the Secretary recommends, in this case that the recipient follow the applicable procedures in Appendix C.

(20 U.S.C. 3606(b)(1) and (c))

§ 230.46 What are the procedures for replacing building materials and restoring school buildings?

(a) In replacing building materials and restoring a school building to its previous condition, the recipient of a loan under the LEA Asbestos Control Program shall use materials that do not pose an imminent hazard to the health and safety of school children and school employees.

(b) In conducting replacement and restoration activities, the recipient of a loan shall use the most appropriate method. This method should be the most cost-effective.

(c) In conducting restoration activities, the recipient of a loan under the LEA Asbestos Control Program may use those funds to make only those repairs the Secretary considers necessary to restore a school building to a condition comparable to the condition that existed before the recipient carried out activities in § 230.11(a)(1).

(20 U.S.C. 3606(b)(1))

§ 230.47 What standards does a recipient of a loan apply in determining the qualifications of a contractor to carry out an asbestos control project?

(a) If the recipient of a loan under the LEA Asbestos Control Program selects a contractor to contain or remove asbestos materials as part of the recipient's asbestos control project, the recipient shall determine the qualifications of that contractor on the basis of the contractor's—

(1) Knowledge of and ability to comply with EPA's National Emission Standards for Hazardous Air Pollutants, 40 CFR 61.01 through 61.25;

(2) Knowledge of and ability to comply with the standards in the Occupational Safety and Health Act (OSHA) asbestos regulations, 29 CFR 1910.1001;

(3)(i) Knowledge of and ability to comply with the containment and removal practices described in Appendix C of these regulations.

(ii) In addition, the Secretary encourages the grantee to consider the contractor's experience in carrying out asbestos containment and removal operations and past participation in training programs for proper containment and removal operations.

(iii) The Secretary makes available to SEAs on request training materials and instructional aids to assist contractors in carrying out proper containment and removal operations.

(b) If the recipient of a loan under the LEA Asbestos Control Program selects a contractor to replace building materials and restore school buildings as part of the recipient's asbestos control project, the recipient shall determine the qualifications of that contractor on the basis of the contractor's knowledge of and ability to comply with the requirement of § 230.46(a).

(20 U.S.C. 3606 (b)(2) and (c))

§§ 230.48–230.49 [Reserved]

Fiscal Requirements

§ 230.50 What are the rules for repayment of a loan?

The following provisions apply to an interest-free loan to an LEA under the LEA Asbestos Control Program:

(a) The loan period begins on the effective date of the loan agreement.

(b) The LEA shall repay the loan within the period determined by the Secretary, but not to exceed 20 years.

(c) All other terms and conditions of the loan are contained in a loan agreement that the Secretary prepares and sends to the LEA.

(20 U.S.C. 3605(b))

Subpart F—What Are the Administrative Responsibilities of a Grantee?

§ 230.60 What report must a grantee submit?

In addition to any reports required by EDGAR, 34 CFR Part 75, a grantee under the LEA Asbestos Detection Program shall, not later than 120 days after receiving its grant, file with the Secretary a report that shall include—

(a) A detailed accounting of the funds used to carry out the grantee's asbestos detection project; and

(b) A description of—

(1) The detection activities that the grantee conducted;

(2) The results of the asbestos detection project, incuding any findings of the presence in school building materials of asbestos that poses an imminent hazard to the health and safety of school children and school employees; and

(3) The grantee's plans for correcting any imminent asbestos hazards that it detected.

(20 U.S.C. 3604(c); 34 CFR Part 75)

Note.—Information in the following part—34 CFR Part 231—has a direct bearing on programs carried out under this Part 230. Readers are encouraged to read the following part for that information.

The Secretary amends Title 34 of the Code of Federal Regulations by adding a new Part 231 to read as follows:

PART 231—ASBESTOS DETECTION AND STATE PLAN: STATE EDUCATIONAL AGENCIES

Subpart A—General

Sec.

231.1 Asbestos Detection and State Plan: State Educational Agencies.
231.2 Who is eligible for a grant under the SEA Asbestos Detection Program?
231.3 What regulations apply to this part?
231.4 What definitions apply to this part?

Subpart B—[Reserved]

Subpart C—How Does One Apply for a Grant Under the SEA Asbestos Detection Program?

231.20 How does an SEA apply for a grant under the SEA Asbestos Detection Program?
231.21 In what circumstances may an SEA apply for a grant greater than 80 percent?
231.22 What records must an SEA maintain?

Subpart D—How Does the Secretary Make an Award?

231.30 How does the Secretary determine the amount of a grant under the SEA Asbestos Detection Program?
231.31 In what circumstances may the Secretary award a grant greater than 80 percent?
231.32 What criteria does the Secretary apply if appropriations do not meet the 80 percent level of assistance?

Subpart E—[Reserved]

Subpart F—What Are the Administrative Responsibilities of a Grantee?

231.50. What report must a grantee submit?

Subpart G—[Reserved]

Subpart H—What Is the State Plan Under This Act?

231.70 What must a State plan contain?
231.71. What information must a State distribute to its LEAs?
231.72 What records must a State maintain?
231.73 What reports must a State submit?
Appendix A—Procedures for Conducting an Asbestos Detection Project
Appendix B—Guidance System for Assessing Potential Asbestos Problems in Schools
Appendix C—Procedures for Containing and Removing Asbestos-Containing Building Materials
Appendix D—Comments and Responses

Authority: The Asbestos School Hazard Detection and Control Act of 1980, Pub. L. 96-270 (20 U.S.C. 3601–3611, 94 Stat. 497) and Section 414(a) of the Department of Education Organization Act, Pub. L. 96-88 (20 U.S.C. 3474(a), 93 Stat. 695).

Subpart A—General

§ 231.1 Asbestos Detection and State Plan: State Educational Agencies.

The Asbestos Detection Program and State Plan for State Educational Agencies (SEAs) consists of—

(a) *SEA Asbestos Detection Program.* This program provides Federal grants to SEAs to reimburse those States that have made or are making grants to their local educational agencies (LEAs) [1] to conduct asbestos detection projects; and

(b) *State Plan.* The SEA of any State that receives Federal funds for the administration of any applicable program—as defined in Section 400(c)(1)(A) of the General Education Provisions Act—shall submit to the Secretary a plan as described in Subpart H of these regulations. Under the Asbestos School Hazard Detection and Control Act of 1980, the SEA shall

[1] (Note: As used in this part the term LEA includes the governing authority of a nonprofit private elementary or secondary school as defined in 34 CFR 230.4(b))

submit this plan regardless of whether the SEA or its LEAs participate in the SEA or LEA asbestos detection programs.

(20 U.S.C. 3604(a)(1)(B); 20 U.S.C. 3603(a))

§ 231.2 Who is eligible for a grant under the SEA Asbestos Detection Program?

An SEA is eligible for a grant under the SEA Asbestos Detection Program if the State—through the SEA or other appropriate State agency—has made or is making grants to its LEAs to conduct asbestos detection projects—

(a) Conducted on or after the effective date of these regulations in conformity with the procedures and standards in 34 CFR 230.40 through 230.42, and 230.43 if applicable; or

(b) Conducted prior to the effective date of these regulations, but not completed before January 1, 1978, in substantial conformity with the procedures and standards in 34 CFR 230.40 through 230.42, and 230.43 if applicable.

(20 U.S.C. 3604(a) (B) and (b)(3))

§ 231.3 What regulations apply to this part?

In addition to the regulations in this Part 231, the following regulations apply to Asbestos Detection and State Plan: State Educational Agencies:

(a) The Education Division General Administrative Regulations (EDGAR) in 34 CFR Part 75 (Direct Grant Programs) and 34 CFR Part 77 (General) except the following:

(1) Sections 75.107 and 75.108 (pertaining to applications for new grants under discretionary grant programs and under formula grant programs).

(2) Section 75.111 (pertaining to the description of a project).

(3) Section 75.116 (pertaining to the demonstration of capability).

(4) Sections 75.200 through 75.215 (pertaining to the selection of new projects, including selection criteria).

(5) Sections 75.217 through 75.230 (pertaining to selection procedures and procedures for making a grant).

(b) The regulations in 34 CFR Part 230 (Asbestos Detection and Control: Local Educational Agencies).

(20 U.S.C. 3474(a))

§ 231.4 What definitions apply to this part?

The following definitions apply to Asbestos Detection and State Plan: State Educational Agencies:

(a) *Definitions in EDGAR.* The following terms used in this part are defined in 34 CFR 77.1:

Applicant
Application
Award
EDGAR
Grant
Grantee
Nonprofit
Private
Project
Recipient
Secretary
State educational agency (SEA).

(b) *Definitions in 34 CFR Part 230.* The definitions in 34 CFR 230.4(b) (the definitions section of Asbestos Detection and Control: Local Educational Agencies) apply also to this Part 231 except the following:

Award
Recipient.

(c) As used in this part, the term "State plan" or "plan" means the plan referred to in § 231.1(b) and described in Subpart H of these regulations.

(20 U.S.C. 3610; 20 U.S.C. 2854; 34 CFR 77.1)

Subpart B—[Reserved]

Subpart C—How Does One Apply for a Grant Under the SEA Asbestos Detection Program?

§ 231.20 How does an SEA apply for a grant under the SEA Asbestos Detection Program?

(a) To apply for a grant under the SEA Asbestos Detection Program, an SEA must file with the Secretary an application that—

(1) Meets the requirements of—

(i) EDGAR, 34 CFR 75.109 and 75.110; and

(ii) EDGAR, 34 CFR 75.112 through 75.115;

(2) Contains a description of the methods to be used by the LEAs receiving grants from the State to determine whether hazardous concentrations of asbestos fibers or materials emitting those fibers exist in school buildings of the LEA;

(3) Contains an estimate of the total cost of LEA detection projects receiving grants from the State, including whatever detailed descriptions of the costs of the components of the projects the Secretary may require;

(4) Designates the parties conducting LEA detection projects that receive grants from the State, and describes those parties' qualifications for conducting those projects;

(5) Contains assurances that LEA detection projects receiving grants from the State are being carried out in conformity with the requirements in 34 CFR 230.40 through 230.42, and that parties employed to carry out those projects satisfy the competency standards established under 34 CFR 230.43; and

(6) Contains any other information or assurances the Secretary may require.

(b)(1) For asbestos detection projects conducted by its LEAs prior to the effective date of these regulations, but not completed before January 1, 1978, an assurance by the SEA that the LEAs conducted those projects in substantial conformity with the requirements in 34 CFR 230.40 through 230.42, and 230.43 if applicable; and

(2) For asbestos detection projects conducted by its LEAs on or after the effective date of these regulations, an assurance by the SEA that the LEAs conducted those projects in compliance with the requirements in 34 CFR 230.40 through 230.42, and 230.43 if applicable.

(20 U.S.C. 3604 (b)(1); and (b)(3); 34 CFR 75.109–75.110; 34 CFR 75.112–75.115)

§ 231.21 In what circumstances may an SEA apply for a grant greater than 50 percent?

(a) If an SEA believes that it has limited financial resources and would be unable to participate in the SEA Asbestos Detection Program without an increased award, the SEA may submit to the Secretary, together with its application, a request for a grant greater than the amount provided by the Secretary under § 231.30.

(b) The SEA shall include in its request for an increased award information that substantiates its claim of limited financial resources.

(20 U.S.C. 3604(a); 20 U.S.C. 3474(a))

§ 231.22 What records must an SEA maintain?

An SEA that applies for a grant under the SEA Asbestos Detection Program shall maintain and make available to the Secretary on request whatever records are necessary to substantiate claims—including cost claims—in the SEA's application.

(20 U.S.C. 3604(b)(1); 20 U.S.C. 3474(a))

Subpart D—How Does the Secretary Make an Award?

§ 231.30 How does the Secretary determine the amount of a grant under the SEA Asbestos Detection Program?

(a) Except as provided in §§ 231.31 and 231.32, the Secretary makes a grant to an SEA equal to 50 percent of that State's award to its LEAs to conduct asbestos detection projects.

(b) However, the Secretary may restrict the amount of the grant to the SEA to ensure that the Federal share of any LEA asbestos detection project in the State does not exceed the Federal share as specified in 34 CFR 230.30.

(20 U.S.C. 3604(a)(2))

§ 231.31 In what circumstances may the Secretary award a grant greater than 50 percent?

The Secretary may increase the amount of a grant if the Secretary determines that an eligible SEA has limited financial resources and would be unable to participate in the SEA Asbestos Detection Program without an increased award.

(20 U.S.C. 3604(a)(2))

§ 231.32 What criteria does the Secretary apply if appropriations do not meet the 50 percent level of assistance?

If appropriations under the Act do not meet the level of assistance described in § 231.30, the Secretary may determine which applicant SEAs have the greatest financial need for assistance under the SEA Asbestos Detection Program by—

(a) Considering in each of those States the percentage of LEAs that have requested State funds for detecting asbestos hazards; and

(b) Considering—according to one or more of the factors in each of paragraphs (b) (1) and (2) of 34 CFR 230.34—the needs of the LEAs that those SEAs have funded or are funding.

(20 U.S.C. 3611(c))

Subpart E—[Reserved]

Subpart F—What Are the Administrative Responsibilities of a Grantee?

§ 231.50 What report must a grantee submit?

In addition to any reports required by EDGAR, 34 CFR 75, an SEA that receives a grant under the SEA Asbestos Detection Program shall, not later than 120 days after receiving its grant, file with the Secretary a report that shall include—

(a) A detailed accounting of the funds that LEAs have received from the State to conduct asbestos detection projects; and

(b) A description of—

(1) The asbestos detection projects conducted by LEAs with financial assistance from the State;

(2) The results of those asbestos detection projects, including any findings of the presence in school building materials of asbestos that poses an imminent hazard to the health and safety of school children and school employees; and

(3) The plans of the assisted LEAs for correcting any imminent asbestos hazards that those LEAs detected.

(20 U.S.C. 3604(c); 34 CFR Part 75)

Subpart G—[Reserved]

Subpart H—What Is the State Plan Under This Act?

§ 231.70 What must a State plan contain?

An SEA, as described in § 231.1(b)(1), shall submit to the Secretary not later than December 15, 1980, a plan that—

(a) Describes the manner in which the State shall distribute to its LEAs the information required in § 231.71;

(b)(1) Describes the content of the information required in § 231.71(a) and any additional information the State considers desirable to distribute to its LEAs; and

(2) Provides an assurance that the State will continually revise, as necessary, the information described in § 231.71 and distribute the revised information to its LEAs;

(c) Describes the procedures the State will use for maintaining records as required in § 231.72; and

(d)(1) Designates a State agency or other State administrative unit responsible for submitting to the Secretary the reports required under § 231.73; and

(2) Provides an assurance that the designated agency or unit will carry out the duties required under § 231.73.

(20 U.S.C. 3603(a))

§ 231.71 What information must a State distribute to its LEAs?

(a) Not later than March 15, 1981, a State shall distribute to its LEAs information describing—

(1) The asbestos detection and control programs under this Act;

(2) The procedures and standards for conducting asbestos detection projects;

(3) The procedures and standards for conducting asbestos control projects; and

(4) The health hazards associated with exposure to asbestos fibers.

(b) A State that distributes to each of its LEAs a copy of these regulations, including all appendices, is considered by the Secretary to be in compliance with paragraphs (a)(1)–(3) of this section.

(20 U.S.C. 3603(a)(1))

§ 231.72 What records must a State maintain?

(a) A State shall maintain records on every LEA within its jurisdiction concerning the following:

(1) The asbestos detection activities conducted by the LEA.

(2) The presence, if any, of friable building materials containing asbestos in each school building of the LEA.

(3) The asbestos control activities conducted by the LEA. These include any activities related to the—

(i) Containment of asbestos materials;

(ii) Removal of asbestos materials;

(iii) Replacement of asbestos materials with other appropriate building materials;

(iv) The repairs made by the LEA to restore school buildings to conditions comparable to those that existed before the LEA conducted any of the activities listed in paragraphs (a)(3)(i) and (ii) of this section.

(b) A State is considered by the Secretary to be in compliance with paragraphs (a) (1) and (2) of this section if that State maintains a copy of a form filled out by each of its LEAs in compliance with any EPA procedures that require an LEA to record the information in paragraphs (a) (1) and (2) of this section.

(20 U.S.C. 3603(a)(3))

§ 231.73 What reports must a State submit?

(a) The State agency or other administrative unit designated by the State in its State plan (see § 231.70(d)(1)) shall submit to the Secretary reports describing the actions taken by the State in accordance with its plan.

(b)(1) The designated agency or unit shall submit its first report no later than six months after the State submits its State plan.

(2) The designated agency or unit shall submit its subsequent reports every six months after submitting its first report.

(3) The designated agency or unit shall submit its final report no later than June 15, 1982.

(20 U.S.C. 3603(b))

Note.—Information in the preceding part—34 CFR Part 230—has a direct bearing on this Part 231. Readers are encouraged to read the preceding part for that information.

Appendix A—Procedures for Conducting Asbestos Detection Projects

Note.—These procedures originally appeared as 40 CFR 763.3 through 763.5 in proposed EPA regulations published in 45 FR 61987 (September 17, 1980). The Department of Education has made minor stylistic changes in the original procedures.

I. Inspection of School Buildings

LEAs shall visually inspect each school building under their authority to locate all friable materials. This inspection shall include surfaces behind suspended ceilings or other non-permanent structures that may be entered during normal building maintenance or repairs. For further information on inspection procedures,

officials should consult Chapter 4, "Asbestos-Containing Materials in School Buildings: A Guidance Document," Part 1 (EPA No. C00090), which is incorporated by reference. Copies of the document can be obtained by calling 800-424-9065 (in Washington, D.C., call 554-1404). The document is also available for inspection at the Office of the Federal Register Library, Room 8301, 1100 L Street, NW., Washington, D.C. 20408.

II. Sampling Friable Materials

If friable materials are found in a school building, an LEA shall:

(a) Identify each distinct sampling area of friable materials within the school building.

(b) Take at least three samples from locations distributed throughout the sampling area. Sampling locations should not be selected for convenience (ease of reaching the sample) or because the sampler judges the location to be representative. Samples shall be taken using small sealable containers. Samples shall penetrate the depth of the friable material to the substrate.

(c) Label each sample container with a sample identification number unique to the sampling location and building. Officials should consult "Asbestos-Containing Materials in School Building: A Guidance Document," Part 1, Chapter 5, for further information on sampling procedures. The requirement that at least three samples be taken in each sampling area supersedes the recommendation made in the Guidance Document to take one sample per 5,000 square feet of friable material.

"Sampling area" means, within a school building, any area, whether contiguous or not, that contains friable material that is homogeneous in texture and appearance.

III. Analyzing Friable Materials

LEA's shall have all samples of friable material analyzed for asbestos—using Polarized Light Microscopy (PLM), supplemented, if necessary, by X-ray Diffraction—in accordance with "Interim Method for the Determination of Asbestiform Minerals in Bulk Insulation Samples," which is incorporated by reference.

Persons interested in analyzing bulk samples for asbestos can obtain copies of the document by calling 800-424-9065 (in Washington, D.C., call 554-1404) The document is also available for inspection at the Office of the Federal Register Library, Room 8301, 1100 L Street, NW., Washington, D.C. 20408.

A list of laboratories capable of conducting analyses of friable materials can be obtained by calling 800-334-8571, extension 6741. Officials should consult "Asbestos-Containing Materials in School Buildings: A Guidance Document," Part 1, Chapter 6, for further information on analysis of friable materials.

Appendix B—Guidance System for Assessing Potential Asbestos Problems in Schools

I. Introduction

Asbestos fibers may be released within schools from friable materials containing asbestos, leading to exposure of building occupants. A variety of factors may influence the potential for release of fibers. By considering these factors, a school official can determine which friable materials containing asbestos pose the greatest potential to release fibers and, therefore, which materials may require corrective action.

To assist school officials in evaluating health risks, the Education Department and the Task Force has prepared a guidance system for assessing exposure. It must be emphasized that this guidance system does not quantify health risks. It does assist in assessing the potential for contamination. The most important use of this system is to rank several buildings or areas within buildings in order of priority for corrective action.

This guidance system is designed to assist officials to determine not only whether a building has a problem, but, also, which sections of the building have a higher potential for the release of fibers. The system can also be used a number of times within one room, such as a large auditorium, where the content of the material might be the same but the condition of the material changes.

The four factors used in the guidance system are—

(a) Condition of the material;

(b) Proportion of the material exposed;

(c) Friability (very soft to quite hard); and

(d) Total asbestos content.

The guidance system is a numerical combination of these four factors.

The guidance system should be used on friable materials that contain more than 5 percent asbestos. Materials with less than 5 percent asbestos are generally less friable and, therefore, less easily damaged than materials with larger amounts of fiber. A material with less than 5 percent asbestos can usually be assigned a low priority, and may not need corrective action, keeping in mind that the material must be maintained in good condition.

The guidance system presented here is a revision of an earlier draft that has been used by the Environmental Protection Agency (EPA) for the past year. It incorporates a number of changes recommended by persons with extensive experience in using this method.

In order to use this assessment method effectively, evaluators—whether they be school officials or State or local health personnel—should be trained. There is a degree of subjectivity in applying the factors used in the system. To ensure that these factors are uniformly applied, evaluators should visit schools with a range of conditions to become familiar with the various types of materials that may be encountered. Because of extensive evaluating experience, EPA Regional Asbestos Coordinators are able to assist evaluators in the use of the guidance system.

II. Using the Guidance System

Using the guidance system is a two step process: assigning a factor value to each of the four factors (Step A); and then calculating the guidance number (Step B).

Step A. Assigning Values to Each Factor

In each area with friable material containing asbestos, the evaluator must choose the factor score that corresponds to the description best fitting the area. An evaluated area could be an entire building having constant values for each factor, separate rooms, or even sections of one room. For example, an auditorium with a sloping floor might have a section of the ceiling that is accessible and shows marks caused by vandalism, while other sections, beyond reach, remain unmarked. After the evaluator applies the guidance system *specifically to that section of the damaged ceiling,* the evaluator might find that it might be the *only* portion of the ceiling requiring direct corrective action.

Note that for condition of the material, the evaluator assigns only the values 0, 2, or 5; for friability, only 1, 2, or 3. For exposed surface, the evaluator assigns a value between 0 and 4 (it may be a decimal) that is proportional to the percent of the surface exposed. For asbestos content, the evaluator converts the reported mean asbestos concentration to a value between 1 and 3.

Factor One—Condition of Material

This factor is a measure of damage or disruption. Poor condition may be a result of a number of events. These include: everyday use, vandalism, maintenance, building vibration, water damage, or deterioration of the material itself. This damage or deterioration may appear as material delaminating or

separating from the substrate, water spots, gouged out areas, missing pieces of material, or indented areas. The condition shall be scored as follows:

Virtually No Damage or Deterioration: Score 0

The material is intact and shows no signs of deterioration. The material is adhering to the substrate. Essentially there are no missing pieces and no significant water spotting.

Moderate Damage or Deterioration: Score 2

The material is breaking up into layers or beginning to come loose from the substrate. There may be small areas (less than 10% of the total area) where the material is deteriorating. There are signs of accidental or intentional damage that cover no more than 10% of the area.

Extensive Damage or Deterioration: Score 5

Pieces are dislodged, and debris may be evident. Parts of the material may be hanging from the ceiling or may have fallen to the floor. Damage extends over more than 10% of the surface.

Note.—IF FRIABLE MATERIAL CONTAINING ASBESTOS IS WATER DAMAGED, CORRECT THE CONDITION THAT CAUSED THE WATER DAMAGE (e.g. roof leak) BEFORE PROCEEDING WITH ANY CORRECTIVE ACTION.

Factor Two: Proportion of the Material Exposed

The material is exposed if it can be seen by occupants of the area. The material is not exposed if it lies behind a false or suspended ceiling or other barrier that is intact. The exposed surface shall be evaluated as follows:

Estimate the percent of the surface of the friable material containing asbestos that is exposed. Multiply by 4 to convert to the factor score.

(Examples: 25% exposed—Therefore, 0.25 × 4=1.0; 60% exposed—Therefore, 0.60 × 4=2.40)

Proportion of the Material Exposed: Score 0–4

Factor Three: Friability

The term friable is applied to material that can be crumbled, pulverized, or reduced to powder by hand pressure. The evaluator must touch the material in order to score friability.

Material containing asbestos can vary in degree of friability. Sprayed asbestos material is generally more friable than trowelled material.

MATERIAL EVALUATED AS NOT FRIABLE NEED NOT BE FURTHER CONSIDERED.

Note.—It is possible to have friable materials with little or no asbestos content. Cellulose, fibrous glass, and other fibers can produce a material that is friable.

Friability shall be evaluated as follows:

Not Friable: Score 0

Low Friability: Score 1

The material can be damaged by hand but with difficulty.

Moderate Friability: Score 2

It is fairly easy to mark, damage, or dislodge the material by hand or to crush or pulverize it by hand. The material can be removed in small or large pieces.

High Friability: Score 3

The material is fluffy in appearance and is soft or spongy to the touch. It may be flaking. It is easy to penetrate the material with the fingers. Almost any brushing or touching of the material causes a visible breaking away or dusting.

Factor Four: Total Asbestos Content

The percentages for all types of asbestos present in a given sample shall be added to determine the total asbestos content.

The asbestos content must be determined by bulk sample analysis. Building records or assumptions are not reliable or acceptable. Only materials with greater than 5 percent asbestos should be evaluated using the guidance system. This cut-off is due to the difficulty of analysis below 5 percent and the uncertainty of establishing percentage of content.

Generally, materials containing less than 5 percent asbestos need not be considered further; however, unusual circumstances, such as extensive damage, may require special consideration.

Asbestos content is scored on a scale of 1 to 3. Convert the mean concentration of asbestos to a score in this range by multiplying the concentration by 2 and adding the result to 1.

(Example: A material has average content of 10% chrysotile-asbestos and 15% amosite-asbestos. The total concentration of asbestos is, therefore, 25%. Convert to a decimal for use in the formula—0.25)

Score=1+(0.25 x 2)=1+(0.50)=1.50.
The asbestos content score is 1.50.

Step B. Calculating the Guidance Number

Once scores have been assigned to the individual factors, the evaluator must calculate the guidance number. The number is simply the sum of the first two factors (condition of material and proportion of the material exposed) multiplied by the product of the next two factors (friability and total asbestos content).

Enter the factor numbers in the following table and compute the guidance number—

1. Condition of material:
   No damage, 0
   Moderate damage, 2
   Severe damage, 5, ———
2. Proportion of the material exposed:
   Scale, 0–4+———
   Sum (No. 1 + No. 2)=(Sum)———
3. Friability (not friable=0):
   Low, 1
   Moderate, 2
   High, 3, ———
4. Total asbestos content:
   Scale, 1–3×———
   Product (No. 3 × No. 4)=(Product)———
   Guidance No. = Sum (No. 1 + No. 2) × Product of (No. 3 × No. 4) (Guidance No.)———

Example

An 8th grade classroom has been evaluated and found to have the following:

1. Condition of Material: Some of the ceiling material is hanging, and the custodian reports frequently finding clumps of the ceiling material on the floor. Also, the damage covers 25% of the ceiling's surface—Score: 5.

2. Proportion of the Material Exposed: The ceiling material is totally visible and there is no hung ceiling. (100% exposed; 1.0×4=4)—Score: 4.

3. Friability: The material is fairly easy to dislodge and can be crushed by hand—Score: 2.

4. Total Asbestos Content: The analysis of the sample indicates 10–15% chrysotile-asbestos, and 80–85% fibrous glass. (Average the reported asbestos content if a range is given. In this case use 12.5%)

Calculation: 1+(0.125×2)=1.25—Score=1.25
Guidance No. is: (5+4)×(2×1.25)=22.5

Step C. Interpreting the Guidance No.

The four approaches for dealing with asbestos are—

(1) A management system that monitors the condition of the material (but does not require direct corrective action unless the condition of the material changes);

(2) Enclosure with a containment system to isolate the material behind a solid barrier;

(3) Encapsulation with sealant; and

(4) Removal.

After applying the guidance system, the evaluator shall determine whether a management system or direct corrective action is appropriate. In many cases, the use of a management system to monitor an asbestos condition, prevent material disturbance, and control any necessary disturbance is adequate. In other cases, only some type of direct corrective action is appropriate.

The guidance system does not determine the type of action required. The choice of removal, encapsulation, or enclosure will be determined by a number of other factors as listed in Section III. Removal, encapsulation, and enclosure have advantages and disadvantages that must be considered in each case.

The guidance number can provide guidance for the decision maker. The guidance number is to be used as an indicator for the appropriate approach. The final determination should take into consideration such specific conditions of the building and room as those listed in Section III.

Note.—At present there are no specific guidance numbers that establish criteria to assist school administrators in deciding whether a management program or corrective action program needs to be implemented once asbestos is found. Several members of the Asbestos Hazards School Safety Task Force are conducting a comprehensive analysis of data in order to develop these guidance numbers. When the Task Force completes its analysis, the Secretary will distribute guidance numbers to the appropriate organizations and educational agencies.

The appropriateness of a management program should be reevaluated if the use of the area changes in such a way that damage may increase; e.g., because a more active population uses the space. Also, officials should periodically reconsider the effectiveness of a management program if the condition of the material changes.

III. Other Factors To Be Considered When Deciding Which Approach Is Most Appropriate

A school official will encounter conditions and considerations not explicitly included in the rating system that will influence the action decision. The approach selected will depend on factors not specified in the guidance system. The following is a non-exhaustive list of these considerations and how they may affect the decision:

A. *Number of persons using the area.* This affects likelihood of damage and overall risk because of exposure to the person involved.

B. *Planned renovations and frequency of maintenance and repair.* If renovations are planned or the asbestos is in an area frequently subject to repair work, it may be best to remove the material.

C. *Complexity of surface.* It is difficult to remove friable materials containing asbestos from very complex surfaces. Encapsulation or enclosure may be preferred.

D. *Remaining life of building.* If the building is soon to be demolished or abandoned, good management of the material may be preferred in the interim.

E. *Accessibility.* A highly accessible material should not be encapsulated. A material that is inaccessible (e.g., a very high ceiling)—even though it is totally exposed and has a high asbestos content—might be a candidate for a management approach, rather than direct corrective action, if the material were in good, undamaged condition.

F. *Change in use, activity, and movement.* Increased or changed activity may lead to damage. For example, placing 7th and 8th graders in what had been a kindergarten-through-6th-grade school might make previously inaccessible surfaces vulnerable to damage.

G. *Need to maintain fire rating.* If the friable material containing asbestos is needed to meet fire codes, it cannot be removed without being replaced. Similarly, if it is to be encapsulated, check the fire-retardant characteristics of the sealant.

H. *Need to maintain acoustics.* A material that has acoustic properties may have to be replaced if removed. It may not be appropriate to encapsulate the material since most sealants eliminate the acoustical quality of the material on which they are sprayed.

Some of these factors do not directly affect exposure (e.g., fire rating). However, they will affect the decision to correct a material by limiting the scope of available actions, increasing the cost, etc.

Appendix C—Procedures for Containing and Removing Building Materials Containing Asbestos

These procedures have been developed by the Environmental Protection Agency and represent the best information currently available on controlling the release of fibers from friable materials containing asbestos. The purpose of the procedures is to reduce to the maximum extent possible the risk of contamination of areas of a building adjacent to the area in which asbestos containment or removal activities are being conducted and to provide maximum protection for workers involved in those activities and other users of the building.

I. Introduction

(a)(1) The three methods for containing or removing material containing asbestos are: (i) Encapsulation, in which the material is coated with a bonding agent called a sealant to prevent the release of fibers.

(ii) Enclosure, in which the material is separated from the building environment by impermeable barriers.

(iii) Removal.

(2) Each of these methods can be used separately or in combination with one or both of the others.

(b) In order for encapsulation, enclosure, or removal to reduce imminent hazards to the health and safety of school children and school employees, the work must be performed carefully. Poorly performed work not only creates a risk for persons performing this work, but is likely to increase the risk to students, school employees, and other persons using the building. To insure that the building environment and the outside air are not contaminated and that workers are protected from exposure to asbestos, all procedures for encapsulation, enclosure, or removal must—

(1) Conform to the procedures contained in Section II (of this appendix), General Work Practices;

(2) Conform to the specific work practices contained in the appropriate section of this appendix for the specific control method used. Section III contains work practices for encapsulation. Section IV contains work practices for enclosure. Section V contains work practices for removal;

(3) Comply with OSHA asbestos regulations, 29 CFR 1910.1001; and

(4) Comply with EPA regulations, 40 CFR Part 61, Subpart B, National Emission Standards for Hazardous Air Pollutants (NESHAPS): Asbestos

(c) Persons who perform encapsulation, enclosure, or removal must become familiar with these requirements before taking any action. The OSHA and NESHAPS regulations can be found in "Asbestos-Containing Materials in School Buildings: A Guidance Document," Part 1, which is available by calling 800-424-9065 (in Washington, D.C. 554-1404).

II. General Work Practices

All procedures for containment and removal of asbestos must comply with the following:

(a) *Medical services.* The party responsible for the encapsulation, enclosure, or removal (referred to in these appendices as "the contractor") shall provide medical services to employees as required by OSHA regulations, 29 CFR 1910.1001(j).

(b) *Worker Instruction.* The contractor and its employees shall be instructed, prior to the beginning of the encapsulation, enclosure, or removal, in—

(1) The health hazards of asbestos;

(2) The use of respirators and protective clothing;

(3) Work practices and safety procedures;

(4) Control of the release of asbestos fibers; and

(5) Proper prepation and decontamination of a worksite.

(c) *Materials.* The contractor shall obtain the following materials, which are necessary for any procedure related to the encapsulation, enclosure, or removal of asbestos:

Note.—The following list does not include ordinary construction materials such as lumber and hardware. It also does not include materials that are necessary for one procedure but not the others. These are discussed in the individual sections on encapsulation, enclosure, and removal.

(1) Respirators (see paragraph (d)).
(2) Replacement cartridges for respirators.
(3) Disposable clothing for workers, including headgear and footwear.
(4) Shoes for use in the work area. Workers may not wear the same pair of shoes in the work area as they do in the clean areas of the building.
(5) Duct tape.
(6) Polyethylene sheets (6 mil., and 2 or 4 mil.).
(7) Warning signs. (See OSHA regulations, 29 CFR 1910.1001(g).)

(d) *Respirators.* The contractor shall select the proper type of respirator in accordance with OSHA regulations 29 CFR 1910.1001(d). The contractor shall be able to demonstrate that the type of respirator used by its employees is appropriate for the level of fibers found or expected in the work area, as required by § 1910.1001(d)(2).

(e) *Decontamination area.*

(1) Before beginning the encapsulation, enclosure, or removal, the contractor shall construct a decontamination area to prevent release of fibers to the exterior environment and to protect workers and others from fiber inhalation. This decontamination area must consist of three rooms: (i) A clean room where workers enter and leave the job area.

(ii) A shower for decontamination of workers before they leave the job area.

(iii) A room for removal and storage of contaminated items. This room is referred to in this appendix as the "contaminated room."

(2) If it is possible to use existing rooms in close proximity to the worksite, it may be necessary to construct temporary tunnels, from lumber and plastic, to connect these rooms to the work area. If it is not possible to use existing rooms in close proximity to the worksite, it may be necessary to construct a temporary clean room, shower, and contaminated room, from lumber and plastic, near the work area. Although some innovation is likely to be necessary, the arrangement for the decontamination area must include the following features: (i) There must be one clearly designated route from the clean room through the contaminated room into the work area, and back out. The shower may be used as a segment of the passageway between the clean room and the contaminated room. The doorway between the contaminated room and the work area is the only doorway through which anyone may be allowed to enter the work area; there may not be any other entrance. If there is a doorway directly from the clean room to the contaminated room, it must be used for traffic in that direction only. No one may be allowed to go from the contaminated room to the clean area without first passing through, and using, the shower.

(ii)(A) The contractor shall construct airlocks in any passages between the clean room and the contaminated room. Each airlock must consist of two sets of two plastic sheets: one set at one end of the airlock and the other at the other end, at least two meters away. Each of the sheets must extend from floor to ceiling and be constructed of 2 or 4 mil plastic. The plastic sheets must be hung close together, with one sheet taped along the top of the doorway and down one side and the other taped along the top and down the other side.

(B) The shower should also function as an airlock with a set of two sheets at each entrance. If the shower is the only passage between the clean room and the contaminated room, no other airlocks are necessary.

(iii) The clean room must contain a space where workers can place their street clothes and a space for the storage of clean work clothes, respirators, respirator cartridges, soap, and towels.

(iv) If there are no usable permanent shower facilities, the contractor shall construct a temporary shower. The shower must have a ceiling. The shower must have a container for the disposal of used respirator cartridges. Water from the shower must be pumped to an existing drain in the building or collected for disposal.

(v) The contaminated room must have an area for workers to remove contaminated clothing and shoes and to store contaiminated personal items (such as workshoes and gloves) and contaminated tools and equipment. It must also have containers for disposal of contaminated clothing as contaminated waste (see paragraph (k)).

(vi) Toilets, permanent or portable, must be available in the work area or contaminated room.

(f) *Work area preparation.* Before beginning the encapsulation, enclosure, or removal, the contractor and its employees shall use the following procedures to prevent the release of asbestos fibers from the work area: (1) Clean all movable items—such as furniture and equipment—with damp cloths and store them in a clean area outside of the work area. Clean all immovable items with damp cloths, wrap the immovable items completely in plastic, and secure the plastic with duct tape. Dispose of the cleaning cloths as contaminated waste (see paragraph (k)).

(2) Bring in any large pieces of equipment, such as scaffolds and airless sprayers, that will not fit easily through the airlocks.

(3) Isolate the work area completely from the rest of the building by constructing barriers across all doorways or corridors except those in the decontamination area that are to be used by the workers. Construct the barriers so as to prohibit passage through them. Use 6 mil plastic, and tape the seams securely.

(4) Turn off all heating, ventilation, and air conditioning systems. Seal all heating registers, vents, and air ducts with plastic sheeting and duct tape. Lock windows and seal them with plastic tape. Remove all curtains, blinds, and other window coverings.

(5) Cover the floors with at least one layer of 6 mil plastic sheets. Bring the floor coverings up the walls and attach them with duct tape to the wall coverings approximately two feet above the floor. cover the walls with 2 or 4 mil plastic sheets so that the sheets overlap the floor sheets, and secure them in place with tape.

(6) Turn off all electrical circuits and lock the electrical panels or boxes. If necessary, install temporary lighting.

(7) Post warning signs outside all entrances to contaminated areas of the building as specified in OSHA regulations, 29 CFR 1910.1001(g).

(8)(i) Arrange for air monitoring and inspections as required by OSHA regulations, 29 CFR 1910.1001(f) (air monitoring services should be provided by a reputable laboratory under direct contract to the building owner). At a minimum, have a single environmental sample collected outside the building at the beginning of the project.

(ii) Each day during the encapsulation, enclosure, or removal procedure, collect at least two air samples within the work area and two air samples immediately outside the work area.

(9) Take down light fixtures in the work area. Clean them with damp cloths and remove them from the work area. or—if debris on the fixtures cannot be removed—discard the fixtures as contaminated waste (see paragraph (k)).

(10) If it is necessary to remove a suspended ceiling to reach the materials containing asbestos, carefully take down the ceiling. Clean the ceiling tiles with damp cloths and store them outside the work area, or—if debris on the tiles cannot be removed—dispose of the tiles as contaminated waste (see paragraph (k)).

(g) *Measures for worker protection.* Each worker, and any other person who enters the job site (e.g., an industrial hygienist, an inspector, etc.) shall follow these procedures: (1) In the clean room before entering the work area, remove all street clothing, underwear, and shoes. Put on respirator, then dress in disposable coveralls and headgear (note that it is necessary to put on the respirator before the disposable headgear). Pass through the airlocks into the contaminated room. Then proceed to the work area.

(2) Never remove respirator while in the work area. No one may eat, drink, smoke, or chew tobacco or gum while in the work area.

(h) *Procedures for worker decontamination.* At the end of each work shift and before breaks, workers and any other persons in the work area shall follow these procedures when leaving the work area: (1) Before entering the contaminated room, remove all gross contamination from disposable clothing.

(2) In the contaminated room, remove all clothing and work shoes, leaving on only the respirator.

(3) Proceed to the shower and wet hair, body, and respirator before removing respirator. Complete shower, washing thoroughly with soap and water.

(4) Remove and discard respirator cartridges in the container provided in the shower. Proceed to the clean room. Clean respirator with a disinfectant, dry it, insert new cartridges, and place respirator in a dry, clean plastic bag.

(5) Put on street clothes and shoes or a new set of disposable clothing.

(i) *Corrective action.* Refer to Sections III, IV, and V of this appendix for directions on the specific control procedures being used.

(j) *Procedures for cleaning the work area.*

Note.—The contractor and its employees shall follow personal protection procedures (see paragraphs (g) and (h)) while conducting steps (1) through (7) of this paragraph (j).

(1) Dispose of all scrap and debris from the work area, the contaminated room, and the clean room. Treat this debris as contaminated waste (see paragraph (k)).

(2) Remove all floor and wall coverings except heating and ventilation duct covers, barriers, and airlocks. Dispose of the plastic and other materials as contaminated waste.

(3) Wet-clean—with a damp mop, sponge, or cloth—all floors, walls, and other surfaces—including any furniture and equipment in the work area or contaminated room. Wait 24 hours to allow airborne fibers to settle; during this period allow no ventilation or traffic in the area.

(4) Wet-clean all surfaces again, and again wait 24 hours.

(5) Wet-clean all surfaces once more (EPA recommends that this final cleaning be supplemented by the use of a High Efficiency Particulate Absolute (HEPA) vacuum cleaner).

(6) Visually inspect the entire area to make sure it is clean. If dry wiping of surfaces reveals dust contamination, do further wet-cleaning. The monitoring of air may be required by the State or locality or specified in the contract.

(7) When the entire area is clean, dismantle all airlocks, barriers, and temporary shower facilities. Remove coverings from heating and ventilation ducts. Inspect all ducts, especially the horizontal sections, for debris containing asbestos, and vacuum with a HEPA vacuum or wet-clean the ducts, as necessary. Replace all heating, ventilation, and air conditioning filters, and dispose of old filters as contaminated waste. Dispose of all plastic and lumber as contaminated waste. Remove from the work area all cleaned equipment belonging to the contractor.

(8) Return to the work area furniture and other movable items stored during the encapsulation, enclosure, or removal. Restore electrical and other systems to operation, and return the building to normal use.

(k) *Disposal of contaminated waste.* The contractor and its employees shall follow the procedures in paragraphs (k)(1) through (4) when disposing of asbestos-contaminated waste—including asbestos-containing materials removed from the building structure, lumber and plastic used in barriers and airlocks, debris remaining on the floor, cleaning cloths, and any other contaminated materials.

(1) Place the waste in impermeable containers (EPA recommends that the waste be placed in 6 mil. polyethylene bags and that the bags be placed in sealable fiber drums). The waste containers must be sealed and labeled with warning signs as required by OSHA regulations, 29 CFR 1910.1001(g)(2).

(2) Handle containers carefully so that they do not break. The containers must be taken to the entrance of the work area, cleaned with a damp cloth, and placed in the airlock.

(3) A decontaminated worker shall take the waste containers from the airlock to a loading area for transportation to a disposal site.

(4) EPA recommends that all workers involved in disposal activities wear respirators.

(5) Dispose of the waste in compliance with EPA regulations, 40 CFR 61.22 and 61.25.

(6) Contractors using bags and drums shall observe the following procedures:

(i) If a bag is intact, it may be removed from the drum before disposal, and the drum may be recycled.

(ii) If a drum has been contaminated by leakage from a broken bag inside it, it must be buried with the bags.

III. Work Practices for Removal

These procedures are for wet removal of building materials containing asbestos. Wet removal is the most common removal method. Removal operations using other techniques are also acceptable if the contractor can demonstrate that those techniques are in compliance with EPA and OSHA regulations.

After completing construction of the decontamination area and preparation of the work area, the contractor and its employees shall follow these procedures in removing and disposing of materials containing asbestos:

(a) *The removal process.*

(1) Thoroughly saturate with water the material containing asbestos. EPA recommends the use of water that has been amended with a surfactant, or wetting agent, to increase its penetration and reduce the volume of water required. This surfactant is usually 50 percent polyoxyethylene ether and 50 percent polyoxyethylene ester or the equivalent (such as a low-sudsing soap). It is mixed with water at a rate of one ounce of surfactant to five gallons of water.

(2) Spray the amended water onto the material in a fine mist, using either an airless spray gun set at low pressure or some other low-pressure applicator such as a hand-held pesticide applicator.

(3) To make sure the material is thoroughly saturated, it may be necessary to spray it several times or to spray it once the night before removal is planned and again immediately before removal.

(4) Remove material containing asbestos, using broad-bladed putty knives or any other suitable tools. If any dry areas are exposed during the course of removal, stop scraping immediately and spray the dry material with water. To remove the last of the material containing asbestos, use a wire brush, wet rag, or sponge.

(5) Usually the material containing asbestos is allowed to drop to the ground. If the workers are standing on the ground, they can immediately place

the removed material directly into sealable, impermeable containers. If scaffolding is used, the wet material containing asbestos can be collected in sealable, impermeable containers mounted on the scaffolding. One convenient method involves constructing chutes that lead directly into containers that are also attached to the scaffolding near the floor.

(6) No matter what collection technique is used, the wet material must be placed in sealable, impermeable containers before it dries.

(7) If the material is to remain on the floor for any length of time, it must be periodically resprayed with water to keep it moist.

(8) EPA recommends that 6 mil. plastic bags be used as containers for asbestos waste and that the bags be placed in fiber drums for transportation to the disposal site.

(9) OSHA requires that the filled containers be sealed and warning labels attached. (See 29 CFR 1910.1001(g)(2).)

(b) *The disposal process.*

(1) The contractor shall dispose of containers of asbestos-contaminated waste in accordance with the provisions of paragraph (k) of Section II of this appendix.

IV. Work Practices for Encapsulation

(A) A contractor that encapsulates material containing asbestos in order to reduce imminent hazards to the health and safety of school children and school employees shall use sealants that have been awarded fireproofing ratings of Class "A."

(b)(1) In order to minimize the release of fibers, sealants should be applied with an airless spray gun set at the minimum pressure at which the sealant can be applied.

(2) Sealants that cannot be applied by airless spray shall be applied at the lowest possible pressure to reduce fiber release.

(c) The contractor shall consult with the sealant's manufacturer to learn the recommended coverage rate, number of coats, time allowed between coats, and dilution of sealant, if any.

V. Work Practices For Enclosure

(a) A contractor that encloses material containing asbestos in order to reduce imminent hazards to the health and safety of school children and school employees shall insure that—

(1) The material to be enclosed is not exposed to an air plenum system; and

(2) The barriers constructed to enclose the material are airtight and impermeable.

(b) Installation of an enclosure barrier usually necessitates either penetrating or touching the material containing asbestos. Because this operation is usually performed dry, higher fiber levels than those created during removal operations are usually present and may require more stringent respiratory protection for workers. These requirements are described in OSHA regulations, 29 CFR 1910.1001.

Appendix D—Comments and Responses to Notice of Proposed Rulemaking (NPRM)

These comments and responses are arranged in order of the sections in the NPRM.

§ 230.2 Who is eligible for assistance under these programs?

Comments. One commenter made the following comments: 1. Paragraph (a)(1) of this section refers to projects *conducted* since January 1, 1976, whereas the Act prohibits funding of projects *completed* before January 1, 1976. Also, paragraph (b)(1)(ii) of this section refers to projects *carried out* before January 1, 1976, whereas the Act uses the term *completed.*

2. A provision of the Act states that projects completed before the effective date of the Act must be in substantial conformity with the requirements established by the Secretary for conducting an asbestos detection project. Paragraph (a)(2) of this section, however, changes this provision to apply before the effective date of the *regulations,* and furthermore changes substantial conformity to *substantial compliance.*

3. Paragraph (b)(1)(ii)(B) of this section is vague as to whether the 2,500 square feet minimum applies to the entire LEA or a single school.

4. Paragraph (b)(1)(ii)(C) of this section states that the criteria for determining the minimum asbestos level will be established by the Secretary if appropriations become available for the control program. It would seem preferable to establish those criteria in the one regulations package.

5. Paragraph (b)(2) of this section states that control projects conducted *prior to the date when loans are available* must be in substantial compliance with applicable procedures, whereas the Act refers to projects conducted *prior to the effective date of the Act.* Also, it is unclear what *prior to the date when loans are available* means.

Responses. 1. Paragraph (a)(1) has been changed and now reads: "An LEA is eligible for a grant * * * if that LEA proposes to conduct or has not completed before January 1, 1978 an asbestos detection project * * *." Paragraph (b)(1)(ii) has been changed and now reads: "Proposes to carry out or has not completed before January 1, 1978 an asbestos control project * * *." (Also, paragraph (b) of § 231.2—the analogous section applicable to SEAs—has been similarly changed.)

2. Paragraph (a)(2) has been changed and now reads: "* * * the term 'conformity' in reference to any asbestos detection project conducted prior to the effective date of these regulations means substantial conformity." (Also, paragraph (b) of § 231.2 has been similarly changed.)

The Act itself does not establish the standards and procedures for conducting an asbestos detection project but leaves those requirements for the Secretary to establish in consultation with the Task Force. Those standards and procedures are established in the final regulations. LEAs cannot conform strictly to the standards until the regulations take effect because they will not know what the standards are. Under the Act the Secretary has authority to define conformity with the standards and procedures the Secretary has established. The Secretary has used that authority to establish the "grace period" between the effective date of the Act and the effective date of the regulations.

3. The regulations have been changed. Paragraph (b)(1)(ii)(B) tracks verbatim the language of the Act. The Secretary felt that the only reasonable interpretation of the Act is to apply the minimum to the entire LEA. To remove any doubt, paragraph (b)(1)(ii)(B) now reads "Involving more than 2,500 square feet of surface in the school buildings in the LEA * * *."

4. No change has been made. The Task Force has informed the Secretary that this is an area which calls for extensive analysis based on the scientific and technical expertise of the Task Force. A subcommittee headed by one of the Task Force members is expected to review this area and make recommendations to the Secretary. The scientific information necessary to establish the criteria referred to in paragraph (b)(1)(ii)(C) is currently incomplete.

5. The regulations have been clarified. The comment on paragraph (b)(2) does not take into account the language of the Act. Section 6(C)(3) of the Act reads: "No loans may be made * * * for projects * * * which commenced before the *availability of loans under the loan program* unless * * * any work completed by the applicant has been carried out in substantial conformity * * *." (emphasis ours). The Secretary interprets the underscored phrase to mean the date—published in the Federal

Register—when applications for loans will begin to be accepted. For clarity, paragraph (b)(2) has been changed to read" * * * [t]he term 'conformity' in reference to any asbestos control project conducted prior to the date—which will be published in the Federal Register—when loan applications will be accepted means substantial conformity."

Comment. One commenter suggested that the regulations should make assistance under these programs available to universities, colleges, and public meeting places, as well as schools.

Response. No change has been made. The Act, which is concerned with the particular vulnerability of children to environmentally induced illnesses, authorizes funds for these programs in elementary and secondary schools only.

Comment. One commenter felt that the 2,500- square-foot minimum surface amount for a project's eligibility under the LEA Asbestos Control Program discriminates against persons exposed to asbestos found in surface areas that do not meet the minimum square footage.

Response. No change has been made. The 2,500-square-foot minimum is a statutory requirement, which the Secretary is unauthorized to change. The legislative history explains that the reason for the minimum square footage is that school districts are believed to be able to support the costs of very small projects without Federal assistance.

§ 230.4 What definitions apply to these programs?

Comments. One commenter made the following comments on the definitions in paragraph (b):

1. "Asbestos detection project." According to the legislation, detection encompasses more than just the testing of building materials.

2. "Imminent hazards." The term "to the health and safety" was deleted. Also, the Act gives the Secretary the authority to establish additional standards to further interpret this definition, yet this authority was not exercised.

3. "Local educational agency." The regulations use the term "governing body," whereas the Act uses "governing authority." Also, the definition should repeat Section 11 of the Act rather than incorporate it by reference.

4. "School buildings." the regulations add the word "indoor" before "facilities."

5. "State." The regulations should repeat the EDGAR definition rather than incorporate it by reference.

6. The Office of Overseas Schools, which is included in the definition of "State" in the law, is omitted in the regulations.

Responses. 1. The regulations have been changed and now read: "* * * activities—described in § 230.10—designed to identify asbestos hazards in school buildings."

2. The regulations have been changed and now read: "imminent hazards to the health and safety * * *." The Secretary feels that the definition is satisfactory and that there is no need at this time to establish additional standards to interpret the definition further.

3. The regulations have been changed and now read: "* * * the governing authority * * *." The reference to Section 11 of the Act is not meant to incorporate it by reference, but, rather, to highlight to the reader that the statute mandates the expansion of the traditional definition of an LEA to include nonprofit private schools.

4. The regulations have been changed and now read: "Gymnasiums or other facilities * * *."

5. No change has been made. The EDGAR document was compiled with the intention that it was to be read in conjunction with most grant programs operated by the Department. To incorporate the relevant provisions of EDGAR into all of the Department's grant regulations, including these, would result in very bulky documents and needless duplication. Therefore, the Secretary's general policy, in most instances, is not to reprint relevant EDGAR provisions and definitions in the Department's regulations.

6. No change has been made. The Office of Overseas Schools in the Department of Defense (now called the Office of Dependents' Education) would not qualify as a State under the statute either for purposes of the SEA Asbestos Detection program or the State plan. Therefore, it was omitted from the definition of "State."

Comment. One commenter suggested that the definition of "local building" be modified to reflect ownership rather than function, since many schools use for school activities facilities that are not under their jurisdiction.

Response. No change has been made. The Act clearly defines "school building" according to function, not ownership, and the Department is not authorized to alter the plain wording and meaning of the Act.

Comment. Several commenters felt that the definition of "imminent hazards" is too broad.

Response. A change was made. The Secretary and the Task Force carefully reviewed the definition. The Secretary changed the definition to be more scientifically precise and less confusing to school administrators.

§ 230.10 What kinds of activities are assisted under the LEA Asbestos Detection Program?

Comments. One commenter made the following comments:

1. Paragraph (a) of this section limits the visual inspection to seeking out *friable* materials when the Act does not so limit it. Furthermore, paragraph (b) of this section limits sampling to friable materials when the Act does not so restrict it.

2. The Act states that insulation materials, as well as building materials, can be sampled. Why are insulation materials omitted from paragraph (b)?

3. There is no reference, in paragraph (c) of this section, to tests to determine the level of asbestos content, as suggested in the Act.

4. There is no reference in this section to the use of funds for administrative costs, as suggested in the Act.

Responses. 1. No change has been made. The Environmental Protection Agency (EPA) has concluded—based on available data on exposure and health effects—that friable building materials containing asbestos constitute the major hazard to the health and safety of school children. Based on this conclusion, EPA's proposed regulations published simultaneously with the Department's proposed regulations mandate only that friable school building materials be inspected for asbestos.

Since the Act and legislative history direct the Department to cooperate with EPA and to avoid interference with that agency's efforts to correct asbestos hazards, the inspection and sampling requirements in these regulations are limited to friable building materials to be consistent with the requirements and conclusions of EPA. The Task Force has reviewed those requirements and expressed satisfaction with them.

2. Paragraph (b) has been changed and now reads as paragraph (a)(2): "Collecting samples of the friable building materials referred to in paragraph (a)(1) of this section, including insulation materials."

3. Section 230.10(c) has been changed and now reads as § 230.10(a)(3): "Analyzing the samples * * * to determine the presence of asbestos and the level of asbestos content."

4. The regulations have been changed. A provision has been added to § 230.10, which now reads, as new paragraph (b): "If appropriate, the Secretary may also provide funds for administrative costs incurred in the preparation and supervision of the LEA Asbestos Detection Program."

§ 230.11 What kinds of activities are assisted under the LEA Asbestos Control Program?

Comments. One commenter made the following comments:

1. Paragraph (b) of this section is unclear because it suggests, contrary to the Act, that materials that have been contained, as well as removed, should be replaced.

2. Paragraph (c) of this section refers to restoring school buildings to conditions comparable to those that existed before the containment, removal, and *replacement* activities, whereas the Act speaks only to conditions that existed before the containment and removal activities.

3. What factors will the Secretary take into consideration to make this determination of comparable building conditions?

Responses. 1. Section 230.11(b) has been changed and now reads as paragraph (a)(2): "Replacing the removed materials referred to in paragraph (a) * * *."

2. Section 230.11(c) has been changed and now reads as paragraph (a)(3): "* * * conditions comparable to those that existed before the activities in paragraphs (a)(1) and (2) of this section were carried out."

3. No change has been made. The Secretary believes that school districts will have no trouble in determining what are comparable building conditions. In the absence of any indication that school districts need additional guidance in this matter, the Secretary has not established factors for making this determination. If and when the need for establishing these factors is demonstrated, the Secretary will amend the regulations.

§ 230.20 How does one apply for a grant under the LEA Asbestos Detection Program?

and

§ 230.21 How does one apply for a loan under the LEA Asbestos Control Program?

Comments. One commenter made the following comments:

1. The applicable statutory sections concerning the contents of the applications should be repeated instead of incorporated by reference.

2. See comment No. 1 for § 230.2 regarding the use of the term "conducted" rather than "completed."

3. Is a mere assurance, without substantiating information, adequate grounds for the Secretary to determine whether the detection and control activities were in substantial conformity with the Secretary's guidelines?

Responses. 1. Sections 230.20(a)(3) and 230.21(a) have been changed to include the applicable statutory language, with minor wording changes to be consistent with the language in the regulations. Similarly, paragraph (a)(3) of § 231.20, describing the SEA's procedures in applying for a detection grant, has been changed to include the applicable statutory language.

2. Section 230.20(b) has been changed and now reads: "An applicant for a grant for an asbestos detection project conducted prior to the date of its application but not completed before January 1, 1978 shall include in its application * * *."

Section 230.21(b) has been changed and now reads: "An applicant for a loan for an asbestos control project conducted prior to the date of its application but not completed before January 1, 1978 shall include in its application * * *."

3. No change has been made. Although the Act appears to require only "assurances" of substantial conformity (sections 5(b)(3)(B) and 6(c)(3)(B)), it does provide that the applications contain "such other information * * * as the Secretary may require" (sections 5(b)(1)(E) and 6(c)(1)(A)). Therefore, should the Secretary feel that assurances are not sufficient, the Act authorizes the Secretary to require substantiating information. Paragraph (a)(6) of this section in the regulations reflects this statutory authorization.

Comment. One commenter suggested funding options for the LEA's detection projects other than the direct grant program—such as a reimbursement system—to insure that LEAs are funded only for actual work completed.

Response. No change has been made. Except, of course, for work already completed, the Act provides for a funding system in which the Secretary makes grants to eligible LEAs, based on information in their applications, to conduct asbestos detection activities. The regulations implement this funding system. To insure that the grant funds are to be used to pay for the actual costs of the detection project, these regulations (and the Act) require that, within 120 days of the receipt of a grant, an LEA must submit to the Secretary a report that includes a detailed accounting of the funds used to carry out the detection project (§ 230.60).

Comment. Several commenters felt that requiring LEAs to apply directly to the Secretary for assistance for the detection and control programs circumvents the role of the SEA, and suggested that applications be sent to the SEA for review and sign-off.

Response. No change has been made. The Act establishes application procedures that require LEAs desiring assistance to apply directly to the Secretary. Of course, an SEA on its own may choose to require its LEAs first to submit their applications to the SEA to review for compliance with those procedures. Alternatively, an SEA may require that a copy of an LEA's application to the Secretary be sent to the SEA.

Comment. One commenter pointed out that a State statute currently prohibits boards controlling local school districts from obligating their districts to an indebtedness that extends more than one year without voter approval. The commenter expressed concern that, in light of that statute, LEAs in that State would be reluctant to participate in the Asbestos Control Program.

Response. No change has been made. The Secretary is sympathetic with the potential dilemma in that State, as well as in other States that may have similar statutes. Both the Act and the legislative history, however, make it very clear that the control phase of the Asbestos Program is to be funded by long-term, no-interest loans. The Secretary cannot change the method of funding for the control program, as that would subvert the language and intent of the Congress in enacting this law. Of course, the State statute described by the commenter would not prevent the LEAs from participating in the control program if they obtained voter approval for the long-term indebtedness or agreed to repay the debt within one year.

§ 230.22 In what circumstances may an LEA apply for a grant or loan greater than 50 percent?

Comment. One commenter noted that Section 5(a)(2) of the Act pertains to LEAs that would be unable to participate in the detection and control programs *without receiving such increased award*, whereas this section of the regulations refers to LEAs that would be unable to participate in any event.

Response. Section 230.22(a) has been changed and now reads: "If an LEA believes that it has limited resources and would be unable to participate in the LEA Asbestos Detection Program or the LEA Asbestos Control Program without an increased award * * *."

§ 230.30 How does the Secretary determine the amount of a grant for an asbestos detection project?

Comment. One commenter wanted to know why this section omits the statutory language that the Secretary considers recommendations made by

the Task Force before determining the amount of a grant.

Response. No change has been made. There are several provisions in the Act that indicate that certain decisions of the Secretary will be made in consultation with the Task Force. These are matters of internal procedure; they do not affect the rights or duties of the public or grantees. The Secretary's policy is to omit internal procedures of this sort from the Department's regulations. Repeating those procedures in the regulations whenever they are found in the Act would not be of particular value to an SEA or a potential applicant for whom, primarily, the regulations were written.

The lack of specific references to the Task Force should not be taken to mean that the Task Force has been assigned a secondary role in the decision-making process. On the contrary, the Task Force has met regularly, formed into subcommittees, and is playing an active role in the development of these programs and regulations.

Because the law requires the Secretary to promulgate final regulations within 240 days of the effective date of the statute, it was necessary, in order to meet the deadline, to begin drafting the notice of proposed rulemaking (NPRM) before the Task Force was fully organized. The Secretary expected the Task Force to take a major role in revising the NPRM and in considering the public comments. This expectation has proved correct. At their first meeting members of the Task Force expressed gratitude at having before them the published NPRM to use as a working document. The Task Force has closely reviewed the NPRM and made a number of valuable recommendations to the Secretary.

Furthermore, as outlined in the Act, the Secretary will rely heavily on the recommendations of the Task Force in making decisions mandated by statute, such as approval of applications and determining the amount of an award.

§ 230.31 What criteria does the Secretary apply in selecting loan recipients?

Comment. One commenter noted that the criterion in paragraph (a) of this section—the likelihood of leakage as determined under the algorithm—applies only to prospective projects and therefore penalizes already completed projects that are in competition for loans.

Response. The regulations have been changed. Paragraph (a) has been renumbered (a)(1). Paragraph (a)(2) has been added and reads: "Any other evidence of the extent of the hazards caused by the presence of asbestos."

Comment. One commenter felt that the criterion of "cost effectiveness" in paragraphs (c) (1) and (2) is out of place in dealing with health hazards.

Response. No change has been made. The "cost effectiveness" criterion is only one of several criteria that the Secretary considers in selecting loan recipients and does not take precedence over any of the other criteria dealing with the extent of the health hazards. Nevertheless, this criterion is an important consideration in selecting loan recipients, since it would not be sound public policy to fund corrective action that an LEA proposes to conduct, or has conducted, in an unnecessarily costly manner. For example, the Secretary may reasonably not choose to fund a particular applicant that proposes to remove (or has removed) asbestos-containing materials, if, judging from the extent of the health hazards, containment or management would be (or would have been) a more appropriate corrective action.

§ 230.33 What criteria does the Secretary apply in considering an application for a grant or loan greater than 50 percent?

Comment. One commenter felt that the factors listed in paragraphs (c)(2) through (c)(5)—relating to the Secretary's determination of whether an LEA would be unable to participate in the LEA detection or control program without an increased award—are non-financial factors and have nothing to do with an LEA's ability to participate.

Response. The regulations have been changed. The Act reads: "Upon a determination by the Secretary that an applicant has limited fiscal resources and would be unable to participate in the program * * * (without an increased award) * * *." (Section 5(a)(2)) Originally, the Secretary felt that this language meant that an applicant must meet two separate but related tests to qualify for an increased award: (1) Limited fiscal resources and (2) inability to participate in the program due to non-financial factors relating to the nature of the project. On reconsideration the Secretary concluded that the intention was to base this determination on financial factors only. Therefore, paragraph (c) has been eliminated—except for the first factor relating to fiscal need; that has been placed in paragraph (b).

Comments. One commenter felt that this section addressed only those LEAs that have not yet conducted a detection or control project and was concerned that LEAs that have already completed projects would not be eligible for an increased award. Another commenter expressed difficulty in understanding how LEAs that have already completed projects would qualify for an increased award.

Response. No change has been made. The Act does not rule out making increased awards to LEAs that have already completed detection and control activities. The Secretary will consider the same financial factors in this section to determine whether an eligible LEA that has already completed a detection or control project qualifies for an increased award.

Comment. One commenter urged that the section be revised to indicate to what extent the Secretary will consider one or more of the factors listed in paragraph (b) in determining eligibility for an increased award.

Response. No change has been made. The Secretary determines an LEA's eligibility for an increased award on a case-by-case basis, based upon all the information the LEA submits to demonstrate its financial need. The factors listed in paragraphs (b) (1)–(4) are meant to give an LEA some idea of the type of financial information the Secretary looks for, but, as evidenced by paragraph (b)(5), the Secretary considers any demonstration of an LEA's financial need.

§ 230.34 What criteria does the Secretary apply if appropriations do not meet the 50 percent levels of assistance?

Comment. One commenter made several points. Section 230.34 ties the criteria the Secretary applies if appropriations do not meet the 50 percent levels of assistance to the criteria the Secretary applies for making an increased award. Since the Act makes clear that these are two separate issues, separate criteria for this section should be established. Also, most of the factors that this section incorporates by reference from section 230.33 are not relevant to the determination of greatest financial need.

Response. No substantive change has been made. The Secretary recognizes that the two determinations—which LEAs have limited financial resources and would be unable to participate in the program without an increased award, and which LEAs have the greatest need for financial assistance in the event appropriations are insufficient—involve two separate issues. The Secretary also recognizes that, as explained previously, the non-financial factors in proposed paragraphs (c)(2) through (c)(5) of § 230.33 are *not* relevant to the *first* determination.

However, the Secretary does feel that these non-financial factors *are* relevant to the latter determination in § 230.34. This view is based on sound public policy. If funds are not available to meet all needs, the Secretary cannot ignore students' and teachers' health needs in deciding which containment projects should be funded. A very poor school district with a very modest asbestos problem should not be preferred over a school district that is somewhat less poor but has extremely dangerous levels of asbestos in its schools.

This view is also based on language in the Act. The stated purpose of the Act is to reduce health hazards associated with the presence of asbestos. Section 12(c) provides that if funds appropriated under the Act are insufficient, the Secretary shall establish criteria to be used in determining which applicants have the "greatest financial need for receiving funds *under this Act*" (emphasis ours). A district may have great financial need but still not have the greatest need for assistance under the Act. Therefore, the factors in paragraphs (c) (2) through (5), which have been taken out of § 230.33, are retained and renumbered in § 230.34.

§ 230.40 What are the procedures for conducting an asbestos detection project?

Comment. One commenter asked why the Department chose to adopt EPA's proposed standards for conducting a detection project, and how the Department will proceed if the final EPA regulations should be delayed or substantially changed.

Response. The regulations have been changed. As explained in the preamble to the NPRM, the Secretary's reliance on EPA's procedures is part of a larger effort to coordinate requirements and procedures between two agencies, as contemplated in the Act. The Act states, once in connection with the Task Force and once in connection with the Secretary, that the Department should avoid, to the maximum extent practicable, duplicating similar activities undertaken by EPA. The legislative history makes note of the strides that EPA has made in the matters of asbestos detection and removal and states that the Act is not intended to interfere with the current activities of EPA in these matters.

Since EPA not only has published guidance documents on asbestos detection but, also, was in the process of publishing its own proposed regulation on that subject, and since both the Act and the legislative history contemplate coordination between the Department and EPA, it seemed only reasonable that the Secretary initially rely on EPA's technical and scientific expertise.

As indicated, the Task Force has been reviewing those procedures as part of the regulations document and has made recommendations to the Secretary regarding their adoption. Because EPA's regulations are not yet final however, EPA's proposed procedures—along with any modifications made by EPA and the Secretary in consultation with the Task Force—are now adopted as the Secretary's procedures in this section. Therefore, all citations to the proposed EPA regulations have been deleted from these final regulations. Instead, reference is made in this section to Appendix A, in which the procedures adopted from EPA are reprinted in full as the Secretary's procedures. When EPA publishes final regulations, the Secretary, in consultation with the Task Force will consider what, if any, changes in the Secretary's procedures are appropriate.

§ 230.41 What are the safety measures for conducting an asbestos detection project?

Comment. One commenter inquired from what source the Secretary derived the safety measures in this section.

Response. Those measures were taken from recommendations by EPA as reflected in that agency's guidance documents on asbestos detection.

Comment. One commenter felt that the enumerated safety measures in this section should be made mandatory, since the Act requires the Secretary to establish safety measures for the detection program and requires that grantees comply with those measures.

Response. The regulations have been changed. In the NPRM the Secretary was reluctant to adopt the enumerated safety measures recommended by EPA since various jurisdictions may have adopted other and equally effective measures for the safety of workers conducting asbestos detection projects. The section now reads: "A grantee under the LEA Asbestos Detection Program shall comply with the best available safety measures for conducting its asbestos detection project. A grantee is considered by the Secretary to be in compliance with this section if that grantee adheres to the following safety measures: * * *." (Also, the Task Force recommended that paragraph (e)—"The material should be sprayed with a light mist of water to prevent fiber release during sampling"—be omitted since it may not be an effective safety measure.

§ 230.42 How does a grantee evaluate the likelihood of leakage of asbestos fibers?

Comment. One commenter pointed out that the algorithm method of determining the likelihood of leakage is under question, even by members of the Task Force. The commenter inquired how the Secretary will proceed if the algorithm is changed by EPA or repudiated by the Task Force.

Response. The regulations have been changed. The Task Force reviewed the Asbestos Exposure Assessment Algorithm developed by the EPA that appeared as Appendix A to the proposed regulations and was generally satisfied with it. However, members of the Task Force expressed a preference for a less rigid system for guiding school districts in evaluating the health risks associated with the likelihood of release of asbestos fibers. Therefore, the Task Force suggested a number of changes to the original document, including substituting the term "guidance system" for "algorithm." The revised document, entitled "Guidance System for Assessing Exposure to Asbestos," is found in Appendix B of these regulations, with an introduction explaining the major changes made in the original algorithm.

§ 230.43 What standards does a grantee apply in determining the qualifications of a contractor to carry out an asbestos detection project?

Comments. One commenter made the following comments:

1. The standards a grantee uses for determining the qualifications of a contractor to carry out a detection project—knowledge and familiarity with EPA procedures—are too lenient. They should include the ability, manpower, and equipment to carry out these procedures.

2. The regulations should state who conducted the Asbestos Analytic Laboratory Proficiency Program referred to in § 230.43(c)(2).

3. Are the results of the Analytic Proficiency Program currently available? Also, why aren't those materials included in the information a State must distribute to its LEAs under § 231.71?

Responses. 1. Paragraphs (a) and (b) of this section have been changed and now read, as paragraphs (b) (1) and (2): "* * * the contractor's knowledge of an ability to comply with the procedures * * *." Paragraph (c)(1) has been changed and now reads, as paragraph (b)(3)(i): "* * * the contractor's knowledge of and ability to comply with the analytic techniques * * *."

2. Paragraph (c)(2) has been changed and now reads, as paragraph (b)(3)(ii): "In addition, the Secretary encourages the grantee to consult the results of the Asbestos Analytic Laboratory Proficiency Program developed by EPA. * * *."

3. No change has been made. The results of this program are currently available. Requiring that those materials be included in the information a State must distribute to its LEAs under § 231.71 would be going beyond the requirements of the Act and result in increased burdens on the States. As noted in this section, those materials will be made available to the States upon request, and the States may distribute them to their LEAs.

Comment. One commenter suggested that this section be eliminated since grantees have the resources to conduct the detection projects themselves.

Response. The regulations have been changed. In many instances a grantee may have the resources to conduct some or all of the activities under the detection project. However, there may be a number of grantees with limited resources that would prefer to rely on the expertise of a contractor to carry out those activities. Section 230.43 has been changed to make it clear that a grantee is by no means obligated to select a contractor to carry out the detection project.

Comments. Two commenters suggested that the rules should state the minimum qualifications necessary for a grantee LEA to conduct a detection project, particularly in applying the algorithm. They suggested that the regulations should require some sort of formal instruction in the use of the algorithm. One commenter recommended that SEAs should be required to review and audit their LEAs to determine if they are meeting the minimum qualifications.

Response. No change has been made. The Secretary feels that a grantee is able to determine from the information provided in these regulations and the guidance materials prepared by EPA whether it is capable of conducting the detection project itself or whether it should rely on the expertise of a contractor. The Secretary is not inclined to impose on LEAs and SEAs additional requirements and minimum standards not imposed by the Act. However, an SEA is encouraged to conduct workshops or seminars for its LEAs on how to conduct the detection projects, and the Secretary will make available at the SEA's request helpful materials. The SEA, on its own, may choose to audit or review its LEAs to ensure their compliance with the required procedures.

§ 230.45 What are the procedures for containing or removing asbestos materials?

Comment. One commenter felt that LEAs receiving loans for the control program should not have to adhere to the strict standards in this section but, rather, should be given broad flexibility in deciding when and to what extent to institute corrective procedures.

Response. No change has been made. The Act requires the Secretary to establish, by regulation, procedures for containing and removing asbestos in school buildings. Those procedures, for the most part, have been adopted from EPA guidelines that have proved successful in the past. Furthermore, the Asbestos Task Force, which is charged with reviewing those guidelines, is satisfied that the corrective procedures are based on sound scientific principles for eliminating health hazards associated with asbestos.

Comment. One commenter questioned the stringency of provisions in Appendix C and suggested that ED allow less restrictive practices if the party conducting an asbestos control project employs low-pressure encapsulation or enclosure without disturbance of the asbestos-containing materials.

Response. The regulations have been changed. Section 230.45 now indicates that the procedures outlined in Appendix C are recommended guidelines, rather than requirements, in the case of asbestos control projects that involve containment and present no significant risk of releasing friable materials into the air. These procedures represent the best information currently available on controlling the release of fibers from friable materials containing asbestos. They were developed to protect workers and control contamination during remedial operations.

The Secretary and EPA recommend stringent work practices even in the case of containment because even low-pressure spraying of a sealant will release fibers in elevated concentrations. In addition, reports from contractors have noted that friable surfaces, when heavy with a sealant, often separate from their substrates. Stringent working conditions are recommended in the face of such possibilities.

§ 230.46 What are the procedures for replacing building materials and restoring school buildings?

Comment. One commenter was of the opinion that replacement and restoration are two very different types of activities, and, therefore, the procedures for each of those activities should not be the same. Also, the commenter felt that the procedures seem to be the barest minimum and are too vague to provide any guidance to LEAs.

Response. No change has been made. The Secretary recognizes that replacement and restoration are two different, albeit related, activities. However, the procedures established in paragraphs (a) and (b) of this section are equally applicable to both replacement and restoration. The standards set for restoration and replacement are indeed general. The Department has a policy against excessively detailed or unnecessary regulations. The Secretary is not aware of any particular abuses or improper practices that require more specific regulations than those proposed. If and when the need for more prescriptive rules is demonstrated, the Secretary will amend the regulations.

§ 230.47 What standards does a recipient of a loan apply in determining the qualifications of a contractor to carry out an asbestos control project?

Comments. One commenter made the following comments: 1. The EPA emission standards and the worker protection standards of the Occupational Health and Safety Hazards Administration that are cross-referenced in paragraphs (a) (1) and (2) of this section should be reprinted in full.

2. Are the EPA National Emission Standards referenced in paragraph (a)(1) of this section intended to apply to public buildings?

3. Why was the decision made to hold contractors to the OSHA standards in paragraph (a)(2) of this section since those standards were written to apply to asbestos manufacturing and workplace situations?

4. Paragraph (a)(3)(i) of this section should be consistent with the preceding paragraphs to refer to knowledge of and *ability to comply with*, rather than knowledge of and *familiarity*.

5. Are the training materials and instructional aids referred to in paragraph (a)(3)(iii) of this section already available?

6. The standard for selecting a contractor for replacement or restoration activities in paragraph (b) of this section is too lenient.

Responses. 1. The EPA and OSHA standards referenced in paragraphs (a)(1) and (2) have not been reprinted as appendices to these regulations, because Federal Register regulations do not permit combining regulations of several agencies in one document.

2. Yes. The EPA National Emission Standards referenced in paragraph (a)(1) of this section are intended to apply to public buildings.

3. The legislative history makes clear that the Act is not meant to interfere with the efforts that have already been made by other agencies to set standards for asbestos control. Therefore, the Secretary has agreed that OSHA should have the prime authority to set worker protection standards and that the OSHA regulations apply to contractors who undertake to contain or remove asbestos. The Task Force has reviewed the OSHA standards and generally is satisfied with them. The representative from OSHA who sits on the Task Force indicated at the first Task Force meeting that OSHA would try to take a second look at some of its standards to make sure they reflect the most currently accepted thinking on worker protection in asbestos control situations.

4. Paragraph (a)(3)(i) has been changed to read: "Knowledge of and ability to comply with the containment and removal practices * * *."

5. Yes. The training materials and instructional aids referred to in paragraph (a)(3)(iii) of this section are available.

6. No change has been made. See response to comment for § 230.46 concerning the procedures for replacement and restoration.

Comment. One commenter asked several questions: Is there a standard of protection that a contractor must meet for workers on corrective projects? Are there standards for environmental protection in removing and disposing of asbestos? If so, will those standards be used to determine compliance or eligibility for funding?

Response. These regulations provide that, before an LEA can be considered eligible for a loan to conduct its asbestos control project, it must submit an application that meets certain requirements. If an applicant intends to hire a contractor, the application must contain a description of the methods to be used by the applicant to conduct the control project *in conformity with* § *230.47*, the standards for determining the qualifications of a contractor. Those standards include the contractor's knowledge of and ability to comply with the EPA National Emission Standards (which include procedures to prevent emissions of asbestos materials in the air) and the OSHA Asbestos Regulations (which contain standards for the protection of private contractors engaged in asbestos-related activities).

A qualified contractor must also, according to § 230.47, have knowledge of and ability to comply with the containment and removal practices in Appendix C of these regulations. That appendix includes a description of methods to protect the worker.

§ 230.50 *What are the rules for repayment of a loan?*

Comment. One commenter noted that there is no mention in this section that the loans are interest-free.

Response. This section has been changed to read: "The following provisions apply to an interest-free loan to an LEA * * *."

§ 230.60 *What report must a grantee submit?*

Comment. Several commenters felt that a grantee LEA should be required to submit to its SEA a copy of the report the LEA must submit to the Secretary describing its detection project.

Response. No change has been made. The Secretary has no inclination to impose on grantee LEAs requirements in addition to those mandated by the Act. However, the Secretary will make available to an SEA on request copies of reports that the Secretary receives from the LEAs. An SEA, on its own, may wish to require or request from its LEAs copies of those reports.

§ 231.2 *Who is eligible for a grant under the SEA Asbestos Detection Program?*

Comment. One commenter asked if an SEA can receive a grant under the SEA Asbestos Detection Program if it does not currently have an "on-going" budget line specifically covering that program under the Act.

Response. According to the Act, an SEA is eligible for a grant under the SEA Asbestos Detection Program if it has made or is making grants to its LEAs to conduct asbestos detection projects. Although the SEA need not have a specific budget line covering this program, it must be able in its post-grant report (§ 231.50) to give a detailed account of the funds it has provided its LEAs to conduct asbestos detection projects.

§ 231.31 *In what circumstances may the Secretary award a grant greater than 50 percent?*

Comment. One commenter noted that the criteria in this section are so much broader than the related criteria for LEAs in § 230.33.

Response. No change has been made. The factors for making a determination of an LEA's financial need are much easier to specify than those for making the same determination with regard to an SEA. Furthermore, most of the factors listed in § 230.33 are not applicable to an SEA. Since the number of SEAs in the country is so much smaller than the number of LEAs, and since few SEAs will likely claim fiscal need, the Secretary feels it more reasonable to make those determinations on a case-by-case basis. This approach allows an SEA maximum latitude to demonstrate its need for an increased award.

§ 231.50 *What report must a grantee submit?*

Comment. One commenter noted that paragraphs (a) and (b)(1) of this section seem to require an accounting of *all* State funds granted to LEAs to assist them in conducting their detection projects. The commenter was of the opinion that those paragraphs should require an accounting only of the *Federal* funds granted to SEAs to reimburse them for the grants they made to their LEAs.

Response. No change has been made. It is the intention that the report required from an SEA grantee include an account of not just the federally reimbursed funds, but, rather, of all State funds granted to its LEAs for their detection projects. This is to ensure that the amount awarded the SEA does not exceed the Federal share of *any* LEA asbestos detection project in that State, as explained in § 231.30(b).

§ 231.70 *What must a State plan contain?*

Comments. One commenter made the following comments: 1. Since the regulations will not be final before the State plans are required, will States be held accountable for complying with the proposed guidelines? If not, what guidelines are the States expected to follow in submitting their plans?

2. The Act requires an SEA in its State plan to describe the contents of the information the State is required to distribute to its LEAs, in addition to any other information the State desires to distribute (Section 4(a)(2)). Paragraph (b)(1) of the proposed regulations, however, requires only that the State plan describe the information distributed to the LEAs that is *in addition* to the information the State is required to distribute.

Responses. 1. No change has been made. For the most part, the proposed regulations on the State plan mirrored the statutory requirements, which themselves provide adequate guidance to SEAs in preparing their State plans. SEAs are required by the Act to have submitted their State plans by December 15, 1980. An SEA that submitted its State plan before the publication of these final regulations will have an opportunity to amend its plan in accordance with the

amended § 231.70(b)(1), but will be held accountable for meeting only the statutory requirements.

2. Paragraph (b)(1) has been changed and now reads: "Describes the content of the information required in § 231.71(a) and any additional information the State considers desirable to distribute to its LEAs * * *"

Comment. Several commenters expressed concern that there are insufficient State funds available to implement the required activities under the State plan and to take care of administrative costs incurred in conducting the SEA Asbestos Detection Program.

Response. No change has been made. While the Secretary is sympathetic with the concerns of those commenters, the Congress has already spoken on this subject in the Act. The Act does not authorize the appropriation of any Federal funds to be used toward fulfilling the requirements of the State plan; States must use their own funds to meet those requirements. Also, the Act does not provide for any Federal funds to be used to carry out the State's administrative responsibilities under the SEA Asbestos Detection Program.

Comments. One commenter felt that the "SEA"—not the "State" as referred to in this section—should be the entity that distributes the necessary information and maintains the required records. Another commenter felt that the term "designates" in paragraph (d)(1) is misleading, since SEAs have no authority to assign responsibilities, such as submitting reports to the Secretary, to other State agencies.

Response. No change has been made. This section tracks the language of the Act, which requires the State—not necessarily the SEA—to carry out many of the responsibilities under the State plan. The use of the term "designate" in paragraph (d)(1)—also a statutory term—is not meant to imply that an SEA always has the authority to assign responsibilities to other agencies. Rather, this paragraph allows an SEA the option of identifying another agency, presumably with the agreement of that agency, that is to be responsible for submitting the required reports to the Secretary.

Comment. Several commenters suggested that, for purposes of the Secretary's determination that an LEA is in need of an increased award, this section should require the State plan to include factors used by the State to determine fiscal need of its LEAs.

Response. No change has been made. The Secretary does not want to impose on a State requirements in addition to those mandated by the Act. However, since this section lists only the information that a State plan *must* include, an SEA is free to provide in its State plan whatever additional information it considers helpful to the Secretary.

Comment. Several commenters suggested that the Secretary should provide a form to assist the SEAs in preparing their State plans.

Response. No change has been made. Since there is no prescribed form for the State plan, an SEA is free to prepare its State plan in whatever format it finds most convenient. The Secretary feels that a prescribed form would limit an SEA's flexibility in this regard.

§ 231.71 What information must a State distribute to its LEAs?

Comments. One commenter made the following comments: 1. Regarding paragraph (a)(4) of this section, how far along is the Task Force in developing materials on health hazards, and how will the materials be worked into the States' information program? Also, if the Task Force has not completed this task by next March, are there any other relevant documents prepared by the Department, EPA or another group that the States could use to fulfill this requirement?

2. Regarding paragraph (b) of this section, a State, in order to comply fully with the Act, would also have to distribute to its LEAs a copy of the EPA proposed regulations regarding detection standards that are cross-referenced in the Department's regulations.

3. How will the Task Force's education and technical assistance program be tied in to the information that States are required to distribute under § 231.71? The regulations should mention the future availability of this information.

Responses. 1. No change has been made. The Task Force is in the process of compiling materials on the health hazards associated with exposure to asbestos. These materials will be made available on request for States to distribute, if they so desire, to their LEAs. If the Task Force has not completed compiling these materials before March 15, 1980, a State will be considered to be in compliance with paragraph (a)(4) if it distributes to its LEAs copies of the relevant portions of the preamble to EPA's proposed regulations that document the health hazards associated with exposure to asbestos fibers (45 FR 61966, and 61969 through 61971, September 17, 1980). The Secretary, however, encourages the States to distribute to their LEAs any other available materials on asbestos-related health hazards.

2. Since these regulations have been changed to include the texts of the relevant EPA proposed regulations in the appendices, distribution of the Education Department's regulations is all that is necessary to comply with the law.

3. No change has been made. Any information compiled by the Task Force will be made available on request for States to distribute, if they so desire, to their LEAs. Since these materials are being compiled and, thus, are not yet available, the Secretary feels that a reference in the regulations to their future availability would not at this time be of particular benefit to the States. Omission of this reference is in line with the Secretary's general policy to avoid in regulations prescriptive and descriptive information that would not provide helpful and timely guidance to the reader.

§ 231.72 What records must a State maintain?

Comments. One commenter made the following comments: 1. Paragraph (a)(2) of this section differs from the Act in that it requires recordkeeping of *friable* building materials only.

2. Paragraph (a)(3)(iv) of this section incorrectly refers to conditions that existed prior to *replacement* activities, since the Act refers to conditions that existed prior to containment or removal.

3. Regarding paragraph (b) of this section, if EPA decides not to require every school district to fill out a particular recordkeeping form, how will the Department proceed?

Responses. 1. No change has been made. See response no. 1 to comments for § 230.10 concerning the use of the term "friable."

2. Paragraph (a)(3)(iv) has been changed and now reads: "The repairs * * * before the LEA conducted any of the activities listed in paragraphs (a)(3) (i) and (ii) of this section."

3. If EPA's requirement that LEAs fill out a particular recordkeeping form is eliminated or substantially altered in EPA's final regulations, or if EPA has not yet produced final regulations, States will still have to comply with paragraphs (a) (1) and (2). Paragraph (b) has been changed, however, to provide for the possibility that at some future time EPA may promulgate final regulations that would require LEAs to record the same information SEAs are required to maintain in paragraphs (a) (1) and (2).

Comments. One commenter raised the question whether the requirement on a State to *maintain* records also included

the requirement to *obtain* records, and another commenter suggested revising the section to include the term "obtain."

Response. No change has been made. Since both the statutory language and the legislative history use the term "maintain," the regulations also use that term. However, it is obvious that if a State does not have in its possession the records that it is required to maintain, it must obtain them.

Comment. One commenter asked whether there is a date by which a State must have the records on file.

Response. The Act does not mandate a date. However, in describing in its State plan the procedures it will use to maintain records, a State may wish to set a target date by which it believes it can set up the required recordkeeping system on its LEAs.

Comments. One commenter inquired how long a State must maintain these records. Two commenters suggested that the section require a State to maintain *permanent* records.

Response. No change has been made. Neither the Act nor the legislative history gives an indication of the exact length of time a State must maintain the records. However, the legislative history notes that a file would be necessary if an LEA were to do remodeling or renovation in the future. Bearing this in mind, the Secretary recommends that an SEA, in preparing its State plan, set a reasonable length of time during which it intends to maintain the records.

Comments. Several commenters felt that requiring States to maintain records as described in this section imposed excessive burdens on the States. One commenter suggested the regulations should provide that a State that is aware of the location of an LEA's asbestos files shall be deemed to comply with this section. One commenter suggested that an LEA be required to forward to the SEA a summary of the information recorded from each of the school buildings in the LEA. Another commenter felt that those records should be sent directly from the LEAs to the Secretary.

Response. No change has been made. The requirement that a State maintain records on the asbestos activities of its LEAs was imposed by the Congress. The Secretary has no authority to alter this requirement. Nevertheless, the Secretary has made every effort within the confines of the Act to lessen the record-keeping burdens on the States. For example, the regulations do not require that a State maintain a file on each school building in the State, but, rather, that the State maintain records on each of its LEAs.

Therefore, nothing prevents a State from requiring or requesting each of its LEAs to obtain the necessary information on each of the school buildings in that LEA and to forward that information to the State. Furthermore, paragraph (b) of this section would lessen the burdens on States if EPA should at some future time require LEAs to maintain records on the same information.

Comment. One commenter asked if nonpublic schools are deemed to be under the jurisdiction of the State for purposes of this section.

Response. Since the Act defines "LEA" to include the governing authority of a nonprofit school, states are required to maintain records on the private schools if they are in any way under the jurisdiction of the State.

General

Comments. One commenter asked two questions: Why is there no provision in the regulations pertaining to Section 8 of the Act, which provides that recipients of grants or loans shall permit the United States to sue on their behalf? Also, why is there no provision in the regulations pertaining to section 9 of the Act, which prohibits SEAs and LEAs that receive assistance from discriminating against employees who have brought attention to an asbestos problem?

Response. No change has been made. As explained previously, these regulations were written primarily to guide an LEA and SEA in the grant and loan application process, and to assist an SEA in the development of its State plan. Thus, any provisions in the Act that do not bear on the application and State plan procedures (such as sections 8 and 9) are not repeated or referenced in these regulations on the theory that, initially at least, they would have no particular benefit to an LEA or SEA. This decision is in line with the general policy of the Department to exclude unnecessary material from its regulatory documents.

Comments. One commenter was concerned that the proposed regulations require school administrators to make technical decisions—on inspecting, sampling, and the competence of contractors—that are outside the professional capacities of those officials. Since officials must rely on the expertise of laboratories to analyze samples accurately and must trust in the competence of contractors to contain or remove asbestos properly, the commenter recommends that EPA develop a plan to help school officials ensure the quality of analysis and of contractors throughout the country.

Response. No change has been made. The Secretary and EPA recognize the burden on school administrators, and EPA has taken measures to enable administrators to identify qualified laboratories and contractors.

EPA has developed materials to provide guidance for the analysis of samples. Standards for analysis were published in "Interim Method for the Determination of Asbestiform Minerals in Bulk Insulation Samples." EPA has distributed that publication to 100 participating laboratories.

In addition, EPA has developed a program to identify laboratories capable of performing the analysis. EPA distributed samples to 75 laboratories that claimed expertise in analysis, compared their results with reference analyses, and compiled a list of laboratories that successfully identified the asbestos content of those samples.

EPA is making this list available to the public via the toll-free EPA assistance line (800) 424-9065 (in Washington, D.C. 554-1404). EPA is planning to expand the list of competent laboratories and will publish its findings as soon as they are available.

A description of the methodology used in evaluating laboratories is available in the publication "Asbestos-Containing Materials in School Buildings: Bulk Sample Analysis Quality Assurance Program" (EPA 560/13-80-23). This is also available through the toll-free information line. EPA has also published the document "Asbestos-Containing Materials in School Buildings: Guidance for Asbestos Analytical Programs" (EPA 560/13-80-017). This document provides local school officials with guidance for implementing an analytical program that will, at reasonable cost, provide the information necessary to identify and assess hazards and, if officials choose to remedy hazards, to decide which remedial measures are appropriate.

The Secretary and EPA are similarly concerned about the quality of contractors for abatement. EPA has published "Asbestos-Containing Materials in School Buildings: A Guidance Document," part I and part II, which contains guidance on techniques for containment or removal of hazardous materials in order to enable administrators to assess contracts and monitor operations.

The Secretary and EPA have also developed "Procedures for Containing and Removing Building Materials Containing Asbestos," attached as Appendix C to the regulations. These are specifications for corrective measures, and represent the best information currently available on

containing or eliminating hazards posed by friable materials containing asbestos.

EPA is currently developing additional guidance for encapsulation and removal. This will be published as soon as it is complete. EPA has also trained regional asbestos coordinators in the practices EPA recommends so they can assist local officials in each region.

The Secretary and EPA do not feel that it is appropriate for Federal officials to monitor contractors that carry out remedial operations. By providing local school officials with information and specifications, sponsoring regional asbestos coordinators, and maintaining the toll-free technical assistance information line, EPA furnishes local school administrators with the resources to make accurate assessments of contractors.

Comments. 1. One commenter suggested that schools be required to analyze the materials used in boiler and pipe coverings so that if those coverings contain asbestos, they can be treated appropriately. The commenter recommended that school officials be required to sample and analyze suspect boiler and pipe coverings when renovation or demolition is contemplated.

2. The commenter also indicated that brake shoes and pads used in school automotive shops contain asbestos and pointed out that blowing dust out of brake drums and wheel assemblies with an air hose and resurfacing brake shoes on grinding equipment release fibers into the air. Therefore, the commenter recommended that EPA and ED consider requiring schools to acquire appropriate asbestos containment equipment and train shop teachers to reduce exposure.

Responses. 1. No change has been made. The Secretary and EPA have determined that all types of friable building materials containing asbestos can pose hazards to health. The Secretary intends that its regulations apply to boiler and pipe coverings, as well as to materials applied to ceilings and walls. Section 230.10 of the regulations requires that local educational agencies inspect school buildings "to detect friable building materials," whether on pipes, discarded in a crawl space, or on a ceiling.

2. No changes have been made. The purpose of the Act is to detect and contain or remove asbestos used in the fixed structure of school buildings. The Secretary and EPA are aware of the hazards posed by dust released in automotive shops and EPA has developed a program independent of these rules to address them. Along with the Consumer Product Safety Commission, EPA is considering controlling the use of asbestos in brakes through rulemaking announced in its Advanced Notice of Proposed Rulemaking published in the Federal Register on October 17, 1979.

In the interim, while the rules are being developed, EPA is promoting a program, jointly sponsored with the Occupational Safety and Health Administration (OSHA), to alert mechanics to reduce risks. The program consists of (1) distributing educational pamphlets to people exposed to dust generated in brakes, (2) loaning audio-visual materials to interested groups, and (3) providing training manuals to instructors of automobile repair courses. The program will be aimed at automotive shops in a variety of settings, including schools. EPA expects this educational program to be in operation by mid-1981.

For further information about the Advance Notice published on October 17, 1980, please contact Mr. Peter Principe Chief, Minerals Groups, Chemical Control Division, EPA (202) 755–8023. For further information concerning the educational program, please contact Mr. Albert Colli, Chemical Control Division, EPA (202) 755–8023.

Comments. 1. One commenter pointed out that, based on the experience of State officials who used the guidance system, persons should receive training before using the algorithm. The commenter suggested that States be required to schedule training sessions for LEA personnel.

2. The commenter also suggested that the regulations require persons taking bulk samples to be equipped with an approved respirator while sampling, and to take precautions to avoid contamination of clothing.

Responses. 1. No change has been made. Training would be useful, but the Secretary does not require it. However, EPA has trained the regional asbestos coordinators in the use of the best methods currently available and encourages local officials to refer to those asbestos coordinators.

2. A change has been made. A note has been added, after § 230.41 of the regulations, to indicate that the Secretary recommends the use of respiratory protection when persons take bulk samples.

[FR Doc. 81-1288 Filed 1-15-81; 8:45 am]
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federal register

Friday
January 16, 1981

Part XV

Department of Education

Refugee Education Assistance Act; Proposed Regulations

DEPARTMENT OF EDUCATION

34 CFR Part 540

General Education Assistance for Cuban and Haitian Refugee Children Program

AGENCY: Department of Education.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The Secretary of Education proposes new regulations to implement the General Education Assistance for Cuban and Haitian Refugee Children Program under the authority of Title II of the Refugee Education Assistance Act of 1980 (Pub. L. 96-422). This program assists local educational agencies in meeting the costs of providing basic educational services to Cuban and Haitian refugee children enrolled in public and secondary schools within their jurisdictions.

DATES: Comments must be received on or before March 17, 1981.

ADDRESSES: Comments should be addressed to Dr. Josue M. Gonzalez, U.S. Department of Education, 400 Maryland Avenue, S.W., (421 Reporters Building), Washington, D.C. 20202.

FOR FURTHER INFORMATION CONTACT: Mr. James Lockhart (202) 472-7177.

SUPPLEMENTAL INFORMATION: The Refugee Education Assistance Act of 1980 (Pub. L. 96-422), signed into law on October 10, 1980, authorizes a new three-year program of grants to States for the purpose of assisting school districts in meeting the general and special educational needs of Cuban and Haitian refugee children (including entrant children) who have entered the United States on or after November 1, 1979 and Indochinese refugee children who have entered the United States on or after January 1, 1979. These proposed regulations implement Title II of the Act, which authorizes grants to States based on the numbers of eligible Cuban and Haitian refugee children enrolled in public elementary and secondary schools in school districts in the States for the purpose of providing basic educational services for those children.

Funds under this program are distributed to States on a formula basis, with each State entitled by law to receive $450 per eligible child. The amount of a grant award to a State and the amount of a subgrant to a school district would be ratably reduced if the appropriation for this program in a given year is not sufficient to provide $450 per eligible child. In addition, the amount which a State is entitled to receive under this program is reduced if the State is entitled to receive funds under formula grant program that makes assistance available to the State based on the refugee, parolee, or asylee status of the children to be served under this program.

The amount which a State is entitled to receive will be based on a count of eligible children in the State taken on a date specified by the Secretary in a notice published in the Federal Register. To allow for a substantial and disproportionate increase in the enrollment of eligible children that may occur after the award of grants, the Secretary proposes in these regulations (§ 540.20) to provide an opportunity for States with increased enrollments to present evidence of the increases. Where funds are available, the Secretary may then provide additional assistance to States that report increases. A State that receives additional assistance would then increase the amount of subgrants to LEAs based on the increased enrollments of eligible children. An equal amount would be provided for each new child reported. Under no circumstances would the Secretary reduce the award in a particular year to a State on the basis of decreased enrollment of eligible children during that year.

To minimize the reporting burden on States and school districts eligible for assistance under the various Department of Education (ED) programs that authorize support for educational services for refugee and entrant children, (Transition Program for Refugee Children, 34 CFR Part 538; Educational Services for Cuban and Haitian Entrant Children, 34 CFR Part 539; and Impact Assistance for Refugee Children, 34 CFR Part 541), the Secretary expects to require only one count of eligible refugee and entrant children that identifies whether the children of Indochinese, Cuban and Haitian, or other origin, and the recency of their arrival in the United States (in years). The Secretary believes this counting and reporting format will provide reasonable estimates of children eligible for assistance under the various programs and will simplify the reporting and administrative responsibilities and requirements for States and school districts.

Invitation to Comment:

Interested persons are invited to submit comments and recommendations regarding these proposed regulations. Written comments and recommendations may be sent to the address given at the beginning of this preamble. All comments received on or before the 60th day after publication of this document will be considered in the development of the final regulations.

All comments submitted in response to these proposed regulations will be available for public inspection, during and after the comment period, in Room 421, Reporters Building, 7th and D Streets, S.W., Washington, D.C. between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday of each week except Federal holidays.

Citation of Legal Authority:

A citation of statutory of other legal authority is placed in parentheses on the line following each substantive provision of these proposed regulations.

(Catalog of Federal Domestic Assistance Number not assigned yet)

Dated: January 12, 1981.

The Secretary proposes to add a new Part 540 to Title 34 of the Code of Federal Regulations to read as follows:

Part 540—General Education Assistance for Cuban and Haitian Refugee Children Program

Subpart A—General

Sec.

540.1 What is the General Education Assistance for Cuban and Haitian Refugee Children Program?
540.2 Who is eligible to apply for financial assistance?
540.3 What regulations apply to this program?
540.4 What definitions apply to this program?

Subpart B—How Does a State Apply for a Grant?

540.10 What documents does the State submit to receive a grant?
540.11 How is the number of eligible children determined?
540.12 When does a State submit its application?

Subpart C—How is a Grant Made to a State?

540.20 How does the Secretary provide for a substantial and disproportionate increase in the enrollment of eligible children that may occur after a grant has been made?

Subpart D—How Does a Local Educational Agency Apply to the State for a Subgrant?

540.30 What documents must an applicant submit to receive a subgrant?
540.31 When does an applicant submit its application for a subgrant?

Subpart E—How is a Subgrant Made to an Applicant?

540.40 How is the amount of a subgrant determined?
540.41 When is the amount of a subgrant increased?

Subpart F—What Conditions Must Be Met by the State and its Subgrantees?

540.50 What are the restrictions on administrative costs for a State and its subgrantees?

Subpart A—General

§ 540.1 What is the General Education Assistance for Cuban and Haitian Refugee Children Program?

This program assists local educational agencies (LEAs) in providing basic educational services to Cuban and Haitian refugee children enrolled in public elementary and secondary schools within their jurisdictions.

(Sections 201(a) and 202(a) of the Refugee Education Assistance Act of 1980)

§ 540.2 Who is eligible to apply for financial assistance?

(a) A State educational agency (SEA) may apply for a grant to assist LEAs in its State in providing basic educational services to Cuban and Haitian refugee children enrolled in public elementary and secondary schools in its State.

(b) An LEA or a consortium of LEAs may apply to the SEA for a subgrant to provide basic educational services to Cuban and Haitian refugee children enrolled in public elementary and secondary schools within its jurisdiction.

(Section 201(a) of the Refugee Education Assistance Act of 1980)

§ 540.3 What regulations apply to this program?

The following regulations apply to this program:

(a) The regulations in this part 539.

(b) The Education Department General Administrative Regulations (EDGAR) 34 CFR Parts 74, 76, 77, and 78, except—

(1) Section 76.101 (The general State application); and

(2) Section 76.103 (Three-year State plans).

(20 U.S.C. 3474(a))

§ 540.4 What definitions apply to this program?

(a) The following definitions in EDGAR (34 CFR Part 77) apply to these regulations: Applicant; Application; Award; EDGAR; Elementary; Local educational agency; Project; Secondary school; Secretary; State; and State educational agency.

(b) The following definitions are specific to these regulations:

"Act" means the Refugee Education Assistance Act of 1980.

"Cuban and Haitian refugee children" means aliens who have fled from Cuba or Haiti and who—

(1) On or before November 1, 1979—

(i) Have been admitted into the United States as refugees under Section 207 of the Immigration and Nationality Act;

(ii) Have been paroled into the United States by the Attorney General under Section 212(d)(5) of such Act; or

(iii) Are applicants for asylum, or have been granted asylum, in the United States; or

(2) Are Cuban or Haitian entrants (status pending) who entered the United States on or after November 1, 1979. Any child described in this subparagraph (2) is considered to maintain that status for purposes of this part regardless of any subsequent change in status under any other law.

"Eligible children" means Cuban and Haitian refugee children enrolled in public elementary and secondary schools.

(Section 101 of the Refugee Education Assistance Act of 1980)

Subpart B—How Does a State Apply for a Grant?

§ 540.10 What documents does the State submit to receive a grant?

To receive a grant, an SEA shall submit to the Secretary an application containing the following:

(a) A count of the number of eligible children in the State, as required in § 540.11;

(b) A program plan that includes—

(1) A description of the SEA's method of counting children eligible for assistance under this program;

(2) A brief description of the SEA's plan for administering, monitoring, and evaluating the program.

(c) The following assurances:

(1) An assurance that the SEA will distribute funds among the LEAs in the State in accordance with the provisions in § 540.41.

(2) An assurance that the SEA will not disapprove in whole or in part an application submitted by an LEA for a subgrant without first affording the LEA a hearing according to the provisions in EDGAR (34 CFR 76.104).

(Section 202(a) of the Refugee Education Assistance Act of 1980; 20 U.S.C. 3474(a))

§ 540.11 How is the number of eligible children determined?

On a date specified by the Secretary through a notice published in the Federal Register, an SEA shall count the number of eligible children in its State.

(20 U.S.C. 3474(a))

§ 540.12 When does a State submit its application?

To be eligible for funds, an SEA must transmit its application in accordance with an application notice published in the Federal Register that establishes a deadline for the transmittal of State applications.

(20 U.S.C. 3474(a))

Subpart C—How is a Grant Made to a State?

§ 540.20 How does the Secretary provide for a substantial and disproportionate increase in the enrollment of eligible children that may occur after a grant has been made?

(a)(1) If the Secretary determines that there has been a substantial and disproportionate increase in enrollment of eligible children, the Secretary may provide SEAs an opportunity to submit evidence of the increase of the nmber of eligible children enrolled in schools in the State.

(2) Through a notice published in the Federal Register, the Secretary invites SEAs with increased enrollments of eligible children to submit a recount of the number of eligible children enrolled in schools in the State, according to the provisions in § 540.11.

(b) The Secretary may provide additional assistance to an SEA based on the increase in the number of eligible children in the State if—

(1) Funds are available, and;

(2) The SEA submits a plan outlining how the additional funds would be spent to provide services for those children.

(c) The Secretary does not decrease the amount of an award during that year to an SEA where there is a decrease in the enrollment of eligible children.

(Sections 103(b) and 201 (b) and (c) of the Refugee Education Assistance Act and 20 U.S.C. 3474(a))

Subpart D—How Does a Local Educational Agency Apply to the State for a Subgrant?

§ 540.30 What documents must an applicant submit to receive a subgrant?

To receive a subgrant, an LEA or a consortium of LEAs shall submit to the SEA an application containing the following information:

(a) A count of the number of eligible children in its jurisdiction, as required in § 540.11.

(b) A brief description of the educational services to be provided for the eligible children.

(20 U.S.C. 3474(a))

§ 540.31 When does an applicant submit its application for a subgrant?

An SEA shall establish a deadline for receipt of applications for subgrants in any fiscal year that funds are available under this program.

(20 U.S.C. 3474(a))

Subpart E—How Is a Subgrant Made to an Applicant?

§ 540.40 How is the amount of a subgrant determined?

(a) To determine the amount of a subgrant, the SEA—

(1) Subtracts from the SEA's award, the costs budgeted for the administration of the SEA grant award (these costs may not exceed one percent of the SEA award);

(2) Divides the remainder by the total number of eligible children to be served by LEAs in its State under subgrants under the program; and

(3) Multiplies that dividend by the number of eligible children to be served under the subgrant.

(Sections 104 and 201(b)(1) of the Refugee Education Assistance Act of 1980)

§ 540.41 When is the amount of a subgrant increased?

(a) If an SEA receives additional assistance under § 540.24, the SEA shall increase the amount of a subgrant to an LEA, based on the number of new eligible children to be served under the subgrant.

(b) In distributing funds to subgrantees under this paragraph, the SEA shall provide an equal amount for each new child reported.

(Sections 104 and 201 (b) and (c) of the Refugee Education Assistance Act of 1980)

Subpart F—What Conditions Must Be Met by the State and Its Subgrantees?

§ 540.50 What are the restrictions on administrative costs for a State and its subgrantees?

An SEA and each subgrantee are limited to an administrative cost of one percent of the total amount of funds that each receives under the program.

(Section 104 of the Refugee Education Assistance Act of 1980)

[FR Doc. 81-1618 Filed 1-15-81; 8:45 am]
BILLING CODE 4000-01-M

34 CFR Part 541

Impact Assistance for Refugee Children Program

AGENCY: Department of Education.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The Secretary of Education proposes new regulations to implement the Impact Assistance for Refugee Children Program under the authority of Title III of the Refugee Education Assistance Act of 1980 (Pub. L. 96–422). This program assists local educational agencies, which have experienced substantial increases in the enrollment of Cuban, Haitian, and Indochinese refugee children, in meeting the costs of providing educational services to those children.

DATE: Comments must be received on or before March 17, 1981.

ADDRESSES: Comments should be addressed to Dr. Josue Gonzalez, U.S. Department of Education, 400 Maryland Avenue, S.W., (421 Reporters Building), Washington, D.C., 20202.

FOR FURTHER INFORMATION CONTACT: Mr. James Lockhart, (202) 472–7177.

SUPPLEMENTAL INFORMATION: The Refugee Education Assistance Act of 1980 (Pub. L. 96–422), signed into law on October 10, 1980, authorizes a new three-year program of grants to States for the purpose of assisting school districts in meeting the general and special educational needs of Cuban and Haitian refugee children (including entrant children) who have entered the United States on or after November 1, 1979 and Indochinese refugee children who have entered the United States on or after January 1, 1979. These proposed regulations implement Title III of the Act, which authorizes grants to States, based on the numbers of eligible Cuban, Haitian, and Indochinese refugee children enrolled in elementary or secondary public schools under the jurisdiction of, or in elementary or secondary nonpublic schools within the district served by, school districts that meet the eligibility threshold established in the legislation. To be eligible for a subgrant, a school district's enrollment of Cuban, Haitian, and Indochinese refugee children must be at least 500 students or five percent of the total student enrollment, whichever number is smaller. Eligible school districts may apply to the State for a subgrant to serve those refugee children.

Activities eligible for assistance under this program include the provision of educational services designed to improve the English language skills of the refugee children and to assist the

children in achieving and maintaining a satisfactory level of academic performance. Funds may also be used for inservice training of education personnel that work with these refugee children and may cover basic costs associated with instruction that the school district has incurred due to the influx of the refugee children. Section 541.10 of the proposed regulations describes in detail the activities eligible for support under this program.

The amount which a State is entitled to receive will be based on a count of Cuban, Haitian, and Indochinese refugee children enrolled in schools in the eligible school districts in the State, taken on a date specified by the Secretary in a notice published in the Federal Register.

Funds are distributed through grants to States and subgrants to school districts on the basis of the formula described in Section 301(b)(1) of the Act, which makes funds available to school district. More money is provided for children who have been enrolled in schools in a school district for a shorter period of time. School districts should, therefore, strive to maintain accurate records on the enrollment of the Cuban, Haitian, and Indochinese refugee children.

To allow for a substantial and disproportionate increase in the enrollment of eligible Cuban, Haitian, and Indochinese refugee children that may occur after the award of grants, the Secretary proposes in these regulations (§ 541.30) to provide an opportunity for States with increased enrollments to present evidence of the increases. Where funds are available, the Secretary may provide additional assistance to States that report increases. In addition, assistance may be provided to a newly eligible school district that was previously ineligible for assistance because of low concentration of eligible children. A State that receives additional assistance would then increase the amounts of subgrants to school districts based on the increased enrollment of eligible children. Under no circumstances would the Secretary reduce the award in a particular year to a State on the basis of decreased enrollment of eligible children during that year.

If the appropriation for this program in a given year is insufficient to provide the full amounts to which a State is entitled, the amounts of grant awards to States and the amounts of subgrants to school districts would be ratably reduced. In addition, the amount which a State is entitled to receive under this program shall be reduced if the State is entitled to receive funds under another formula grant program that makes assistance available to the State because of significant concentrations of Cuban, Haitian, and Indochinese refugee children in the State. However, the level of funding which a State is entitled to receive under this program will not be reduced because of funds made available under the Transition Program for Refugee Children or under the Educational Services for Cuban and Haitian Entrant Children Program.

To minimize the reporting burden on States and school districts eligible for assistance under the various Department of Education (ED) programs that authorize support for educational services for refugee and entrant children (Transition Program for Refugee Children, 34 CFR Part 536; Educational Services for Cuban and Haitian Entrant Children, 34 CFR Part 538; and General Education Assistance for Cuban and Haitian Refugee Children, 34 CFR Part 540), the Secretary expects to require only one annual count of eligible refugee and entrant children that identifies whether the children are of Indochinese, Cuban or Haitian, or other origin, and the recency of their arrival in the United States (in years). The Secretary believes this counting and reporting format will provide reasonable estimates of children eligible for assistance under the various programs and will simplify the reporting and administrative responsibilities and requirements for SEAs and LEAs.

Invitation to Comment: Interested persons are invited to submit comments and recommendations regarding the proposed regulations. Written comments and recommendations may be sent to the address given at the beginning of this preamble. All comments received on or before the 60th day after publication of this document will be considered in the development of the final regulations.

All comments submitted in reponse to these proposed regulations will be available for public inspection, during and after the comment period, in Room 421, Réporters Building, 7th and D Streets, S.W., Washington, D.C., between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday of each week except Federal holidays.

Citation of Legal Authority: A citation of statutory or other legal authority is placed in parentheses on the line following each substantive provision of these proposed regulations.

(Catalog of Federal Domestic Assistance Number not assigned yet)

Dated: January 12, 1981.

Shirley M. Hufstedler

Secretary of Education.

The Secretary proposes to add a new Part 541 to Title 34 of the Code of Federal Regulations to read as follows:

PART 541—IMPACT ASSISTANCE FOR REFUGEE CHILDREN PROGRAM

Subpart A—General

Sec.

541.1 What is the Impact Assistance for Refugee Children Program?
541.2 Who is eligible to apply for financial assistance?
541.3 What regulations apply to this program?
541.4 What definitions apply to this program?

Subpart B—What Activities May Be Supported Under this Program?

541.10 What activities are eligible for support?

Subpart C—How Does a State Apply for a Grant?

541.20 What documents does the State submit to receive a grant?
541.21 How is the number of children eligible for services determined?
541.22 To what extent must a State provide services to eligible children enrolled in nonpublic schools?
541.23 When does a State submit its application?

Subpart D—How Is a Grant Made to a State?

541.30 How does the Secretary provide for a substantial and disproportionate increase in the enrollment of eligible children that may occur after a grant has been made?

Subpart E—How Does a Local Educational Agency Apply to the State for a Subgrant?

541.40 What documents must an applicant submit to receive a subgrant?
541.41 When does an applicant submit its application for a subgrant?

Subpart F—How Is a Subgrant Made to an Applicant?

541.50 How is the amount of a subgrant determined?
541.51 When is the amount of a subgrant increased?

Subpart G—What Conditions Must Be Met by a State and its Subgrantees?

541.60 What are the restrictions on administrative costs for a State and its subgrantees?

Subpart A—General

§ 541.1 What is the Impact Assistance for Refugee Children Program?

This program provides assistance to local educational agencies (LEAs) which have experienced substantial increases in the enrollment of Cuban, Haitian, or Indochinese refugee children in elementary or secondary public and private schools within their districts.

(Section 301(a) of the Refugee Education Assistance Act of 1980)

§ 541.2 Who is eligible to apply for financial assistance?

(a) A State educational agency (SEA) may apply for a grant to assist LEAs in its State that are eligible under paragraph (b) of this section in meeting the costs of providing basic and supplementary educational services for Cuban, Haitian, and Indochinese refugee children.

(b)(1) An LEA that meets either of the following requirements may apply to the SEA for a subgrant.

(i) *Concentration.* There are at least 500 Cuban, Haitian, or Indochinese refugee children who are enrolled in elementary or secondary public schools under the LEA's jurisdiction or in elementary or secondary nonpublic schools within the districts served by the LEA.

(ii) *Proportion.* The enrollment of Cuban, Haitian, or Indochinese refugee children in the schools described in paragraph (b)(1)(i) of this section comprises at least 5 percent of the total student enrollment in those schools.

(2) For the purposes of determining eligibility to apply under paragraph (b)(1)(i) or (ii) of this section, an LEA counts the number of eligible children who are enrolled in elementary or secondary public schools under the LEA's jurisdiction or elementary or secondary nonpublic schools within the districts served by the LEA.

(Section 301(b)(2) of the Refugee Education Assistance Act of 1980)

§ 541.3 What regulations apply to this program?

The following regulations apply to this program:

(a) The regulations in this part 541.

(b) The Education Department General Administrative Regulations (EDGAR) 34 CFR Parts 74, 76, 77, and 78, except—

(1) Section 76.101 (The general State application); and

(2) Section 76.103 (Three-year State plans).

(20 U.S.C. 3474(a))

§ 541.4 What definitions apply to this program?

(a) The following definitions in EDGAR (34 CFR Part 77) apply to these regulations:

Applicant
Application
Award
EDGAR
Elementary school
Local educational agency
Secondary school
Secretary
State
State educational agency

(20 U.S.C. 2854)

(b) The following definitions are specific to these regulations:

"Act" means the Refugee Education Assistance Act of 1980.

"Cuban and Haitian refugee children" means aliens who have fled from Cuba or Haiti and who—

(1) On or after November 1, 1979—

(i) Have been admitted into the United States as refugees under Section 207 of the Immigration and Nationality Act;

(ii) Have been paroled into the United States by the Attorney General under Section 212(d)(5) of such Act; or

(iii) Are applicants for asylum, or have been granted asylum, in the United States; or

(2) Are Cuban or Haitian entrants (status pending) who entered the United States on or after November 1, 1979. Any child described in this subparagraph (2) is considered to maintain that status for purposes of this part regardless of any subsequent change in status under any other law.

"Elementary or secondary nonpublic schools"—

(1) Means schools that—

(i) Comply with the compulsory education laws of the State; and

(ii) Are exempt from taxation under Section 501(c)(3) of the Internal Revenue Code of 1954; and

(2) Includes the term "private school" used in EDGAR (34 CFR 76.650–76.662).

"Eligible children" means Cuban, Haitian, or Indochinese refugee children who are enrolled in public elementary or secondary schools under the jurisdiction of an LEA or who are enrolled in elementary and secondary nonpublic schools within the districts served by an LEA that is eligible to apply for assistance under this program.

"Indochinese refugee children" means aliens who have fled from Cambodia, Vietnam, or Laos, and, on or after January 1, 1979—

(1) Have been admitted into the United States as refugees under Section 207 of the Immigration and Nationality Act;

(2) Have been paroled into the United States by the Attorney General under Section 212(d)(5) of the Immigration and Nationality Act; or

(3) Are applicants for asylum, or have been granted asylum in the United States.

(Sections 101(1)(B) and 101(4) of the Refugee Education Assistance Act of 1980)

Subpart B—What Activities May Be Supported Under This Program?

§ 541.10 What activities are eligible for support?

Funds under this program may be used to meet the costs of providing the following educational services for eligible children:

(a) Supplementary educational services necessary to enable eligible children to achieve a satisfactory level of performance. These services include, but are not limited to, the provisions of—

(1) English language instruction;

(2) Other bilingual education services; and

(3) Special materials and supplies.

(b) Basic instructional services that may be directly attributed to the presence of eligible children. Allowable costs related to the provision of these services include, but are not limited to,—

(1) The costs of additional classroom supplies;

(2) Additional overhead costs;

(3) Additional construction costs;

(4) Additional costs for the acquisition and rental of space; and

(5) Additional transportation costs.

(c) Special inservice training for education personnel to enable them to provide more effectively the basic and supplementary educational services described in paragraphs (a) and (b) of this section.

(Section 302 of the Refugee Education Assistance Act of 1980)

Subpart C—How Does a State Apply for a Grant?

§ 541.20 What documents does the State submit to receive a grant?

To receive a grant, an SEA shall submit to the Secretary an application containing the following:

(a) A count or estimate as required in § 541.21 of the number of eligible children in the State.

(b) A program plan that includes—

(1) A description of the SEA's method of counting children eligible for assistance under this program;

(2) A brief description of the services to be provided for those children; and

(3) A brief description of the SEA's plan for administering, monitoring, and evaluating the program.

(c) The following assurances:

(i) An assurance that funds under this program will be used to meet the costs of providing the supplementary educational services described in § 541.10.

(ii) An assurance that the SEA will distribute funds among LEAs in the State according to the provisions in § 541.50.

(iii) An assurance that the SEA will not disapprove in whole or in part an application submitted by an LEA for a subgrant without first affording the LEA a hearing according to the provisions in EDGAR (34 CFR 76.401(d)).

(iv) An assurance that the SEA will provice educational services for children eligible for services who are enrolled in elementary and secondary private schools in the State, according to the provisions in EDGAR (34 CFR 76.650–76.662).

(v) The certification required in EDGAR (34 CFR 76.104).

(Section 303(a) of the Refugee Education Assistance Act of 1980; 20 U.S.C. 3474(a))

§ 541.21 How is the number of children eligible for services determined?

(a) For the purposes of this section, the term "schools in the LEA" means elementary or secondary schools under the jurisdiction of an LEA and elementary and secondary nonpublic schools within districts served by an LEA.

(b) On a date specified by the Secretary through a notice published in the Federal Register, an SEA makes a count of the number of eligible children enrolled in schools in the LEAs in its State to determine which LEAs meet the eligibility requirement in § 541.2(b).

(c)(1) For each LEA that meets the eligibility requirement, an SEA reports in its application the total number of Cuban, Haitian, and Indochinese refugee children enrolled in schools in the LEA.

(2) An SEA reports its count in the following manner:

(i) An SEA applying for a grant in fiscal year (FY) 1981 reports the number of eligible children in each LEA.

(ii) An SEA applying for a grant in FY 1982 identifies in its count the number of eligible children in each LEA—

(A) Who were first enrolled in schools in the LEA during FY 1982; and

(B) Those who were enrolled in schools in the LEA in FY 1981.

(iii) An SEA applying for a grant in FY 1983 identifies in its count of the number of eligible children in each LEA—

(A) Those children who were first enrolled in schools in the LEA during FY 1983;

(B) Those children who first enrolled in schools in the LEA during FY 1982; and

(C) Those children who were enrolled in schools in the LEA in FY 1981.

(Sections 301 (b)(1), (b)(2), and (c) of the Refugee Education Assistance Act of 1980)

§ 541.22 To what extent must a State provide services to eligible children enrolled in nonpublic schools?

(a)(1) The SEA shall provide—through subgrants to LEAs, through contracts or cooperative arrangements with public and nonprofit agencies, organizations, and institutions, or through direct services—opportunities for eligible children enrolled in nonpublic schools to receive educational services under this program.

(2) The requirements which must be met by an SEA with respect to eligible children enrolled in nonpublic schools are set forth in EDGAR (34 CFR 76.651–76.662).

(b) If a State is prohibited by law from providing educational services for eligible children enrolled in elementary and secondary nonpublic schools, as required in Section 303(a)(6) of the Act, or if the Secretary determines that an LEA has failed or is unwilling to provide for the participation on an equitable basis of children enrolled in such schools, the Secretary may waive such requirements and arrange for the provision of services to meet the requirements of the Act.

(Sections 303(a)(6) and 304(b) of the Refugee Education Assistance Act of 1980; 20 U.S.C. 3474(a))

§ 541.23 When does a State submit its application?

To be eligible for funds, an SEA must transmit its application in accordance with an application notice published in the Federal Register that establishes a deadline for the receipt of State applications.

(20 U.S.C. 3474(a))

Subpart D—How Is a Grant Made to a State?

§ 541.30 How does the Secretary provide for a substantial and disproportionate increase in the enrollment of eligible children that may occur after a grant has been made?

(a)(1) If the Secretary determines that there has been a substantial and disproportionate increase in the enrollment of eligible children, the Secretary may prove SEAs an opportunity to submit evidence of the increase of the number of eligible children enrolled in schools in the State.

(2) Through a notice published in the Federal Register, the Secretary invites SEAs with increased enrollments of eligible children to submit a recount of the number of eligible children enrolled in schools in the State according to the provision in § 541.21.

(b) The Secretary may provide additional assistance to an SEA based

on the increase in the number of eligible children in the State, if—

(1) Funds are available; and

(2) The SEA submits a plan outlining how the additional funds would be spent to provide services for those children.

(c) The Secretary does not decrease the amount of an award during that year to an SEA where there is a decrease in the enrollment of eligible children.

(Sections 301(b) and (c) of the Refugee Education Assistance Act of 1980 and U.S.C. 3474(a))

Subpart E—How Does a Local Educational Agency Apply to the State for a Subgrant?

§ 541.40 What documents must an applicant submit to receive a subgrant?

To receive a subgrant, an LEA that meets the eligibility requirements in § 541.2(b) shall submit to the SEA an application containing the following:

(a) A count of the number of eligible children who are enrolled in elementary or secondary public schools under the LEA's jurisdiction or elementary or secondary nonpublic schools within the districts served by the LEA;

(b) A brief description of the educational services to be provided for the eligible children; and

(c) The information required in EDGAR (34 CFR 76.656), pertaining to the participation of students enrolled in private schools.

(20 U.S.C. 3474(a))

§ 541.41 When does an applicant submit its application for a subgrant?

An SEA shall establish a deadline for receipt of applications for subgrants in any fiscal year that funds are available under this program.

(20 U.S.C. 3474(a))

Subpart F—How Is a Subgrant Made to an Applicant?

§ 541.50 How is the amount of a subgrant determined?

(a) In determining the amounts of subgrants to LEAs, the SEA—

(1) Subtracts from the SEA's award, the costs budgeted for the administration of the SEA grant award (these costs may not exceed one percent of the SEA award);

(2) Divides the remainder of the award into subgrants for LEAs in its State based on application of the appropriate formula in Section 301(b)(1) of the Act.

(Sections 102(b)(1), 103 and 301(b)(1) of the Refugee Education Assistance Act of 1980)

§ 541.51 When is the amount of a subgrant increased?

(a) If an SEA receives additional assistance under § 541.30, the SEA shall increase the amounts of the subgrants to LEAs based on the number of new eligible children under each subgrant.

(b) In distributing funds to subgrantees, the SEA—

(1) Determines the amounts that each child is entitled to receive based on application of the appropriate formula in Section 301(b)(1) of the Act;

(2) Ratably reduces these amounts, if necessary, to bring the total amount of the increases to subgrantees to an amount within the increase received by the SEA.

(Sections 102(b)(1), 104, and 301(b)(1) and (c) of the Refuge Education Assistance Act of 1980).

Subpart G—What Conditions Must Be Met by a State and Its Subgrantees?

§ 541.60 What are the restrictions on administrative costs for a State and its subgrantees?

An SEA and a subgrantee are each limited to an administrative cost of one percent of the total amount of funds that it receives under the program.

(Section 104 of the Refugee Education Assistance Act of 1980)

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Part XVI

Department of Labor

Employment and Training Administration

Labor Certification Process for the Temporary Employment of Aliens in Agriculture: Adverse Effect Wage Rate Methodology

DEPARTMENT OF LABOR

Employment and Training Administration

20 CFR Part 655

Labor Certification Process for the Temporary Employment of Aliens in Agriculture: Adverse Effect Wage Rate Methodology

AGENCY: Employment and Training Administration, Labor.

ACTION: Final rule.

SUMMARY: The Employment and Training Administration (ETA) of the Department of Labor (DOL) is establishing a new methodology for computing the agricultural-adverse effect wage rate (AEWR), that is, the minimum wage rate which DOL has determined must be offered and paid by the employers proposing to employ nonimmigrant alien agricultural workers in the United States. The new methodology would set a single national rate governing the admission of foreign temporary workers admitted to perform agricultural employment, principally cultivation and harvesting of crops, anywhere in the United States.

A separate and distinct methodology for sheepherding historically has been used. No change is made in that methodology other than updating the data base and rounding the figure to the nearest dollar rather than to the nearest five dollars as was past practice. No change is made for logging employment, which has been governed by the prevailing wage rates for the occupation in the area of intended employment.

EFFECTIVE DATE: This amendment is effective with respect to applications for temporary alien labor certification received for processing on or after February 17, 1981.

FOR FURTHER INFORMATION CONTACT: Mr. Kenneth D. Bell, Office of Technical Support, United States Employment Service, Telephone: 202-376-6297.

SUPPLEMENTARY INFORMATION:

Introduction

The Employment and Training Administration (ETA) of the Department of Labor (DOL) is amending its regulations at 20 CFR 655.207, to establish a new methodology for computing the adverse effect wage rate for the temporary employment of nonimmigrant aliens in agricultural occupations. DOL's regulations for the certification of temporary employment of nonimmigrant aliens are issued pursuant to the Immigration and Naturalization Service (INS) regulations at 8 CFR 214.2(h)(3)(i), set forth in pertinent part below:

> Either a certification from the Secretary of Labor or his designated representative stating that qualified persons in the United States are not available and that the employment of the beneficiary will not adversely affect the wages and working conditions of workers in the United States similarly employed, or a notice that such certification cannot be made, shall be attached to every nonimmigrant visa petition to accord an alien a classification under section 101(a)(15)(H)(ii) of the [Immigration and Nationality] Act [8 U.S.C. 1101(a)(15)(H)(ii)].

Temporary Alien Employment Certification Process

Whether to grant or deny a nonimmigrant visa petition under 8 U.S.C. 1101(a)(15)(H)(ii) and 1184 is solely the decision of INS. It is INS policy, however, as expressed in its above-quoted regulation, that, before INS will grant or deny such a visa, it first requests DOL to advise INS with respect to two issues:

(a) Whether there are a sufficient number of able, willing, and qualified U.S. workers available to do the work proposed to be done by the alien; and

(b) Whether the employment of the alien will adversely affect the wages and working conditions of similarly employed U.S. workers.

If DOL determines that there are not able, willing, qualified, and available U.S. workers, and that the employment of the alien will not adversely affect similarly employed U.S. workers, DOL advises INS of these findings, by issuing a temporary labor certification. The employer proposing to use the alien for temporary work then attaches the certification as part of the alien's visa petition, pursuant to 8 CFR 214.2(h)(3)(i). INS then considers the "H-2" visa petition submitted by the employer on behalf of the alien(s).

If DOL cannot make one or both of the above findings, DOL so advises INS. DOL may be unable to make the two required findings for any of one or more reasons, including, but not limited to:

(a) The employer seeking the temporary labor certification on behalf of the alien has not submitted a proper application, or has not followed the proper procedural steps.

(b) The employer has not submitted sufficient evidence of attempts to obtain available U.S. workers; and/or the employer has not submitted sufficient evidence that the wages and working conditions which the employer is offering will not adversely affect the wages and working conditions of similarly employed U.S. workers; and thus the employer has not met its burden of proof under section 291 of the Immigration and Nationality Act (INA) (8 U.S.C. 1361):

> Whenever any person makes application for a visa or any other document required for entry, or makes application for admission, or otherwise attempts to enter the United States, the burden of proof shall be upon such person to establish that he is eligible to receive such visa or such document, or is not subject to exclusion under any provision of this Act * * *.

(c) DOL through its own knowledge and experience, has found that U.S. workers are available and/or that an adverse effect on similarly employed U.S. workers will result, and the employer has not met the burden of rebutting DOL's finding or findings.

Department of Labor Regulations

DOL has published regulations at 20 CFR Part 655, Subpart C, governing the labor certification process for the temporary employment of nonimmigrant aliens in the United States in agricultural and logging occupations. Part 655 was promulgated pursuant to the INS regulations at 8 CFR 214.2(h)(3)(i), quoted above.

The regulations in 20 CFR Part 655, Subpart C, set forth the factfinding process resulting in the granting or denial of a temporary alien agricultural labor certification. They describe the potential of the Federal-State system of public employment offices (established pursuant to the Wagner-Peyser Act, 29 U.S.C. 49 *et seq.*) for assisting employers in finding available U.S. workers, and how this process is utilized by DOL as a basis of information for the certification determination. See also 20 CFR Parts 602, 621, 651, 654, and 656-658.

Part 655, Subpart C, also sets forth the responsibilities of employers who desire to employ nonimmigrant aliens in temporary agricultural and logging jobs. Such employers are required to demonstrate that they have attempted to recruit U.S. workers through advertising, through the Federal-State job service system, and by other specified means. The purpose is to assure an adequate test of the availability of U.S. workers to perform the work, and to insure that aliens are not admitted for employment under conditions adversely affecting the wages and working conditions of similarly employed U.S. workers.

Adverse Effect Wage Rates

So that the importation of temporary nonimmigrant alien agricultural workers will not adversely affect the wages of similarly employed U.S. workers, DOL has since 1964 computed and published

adverse effect wage rates (AEWRs).[1] See, *e.g.*, 29 FR 19101, 19102 (December 30, 1964); 32 FR 4568, 4571 (March 28, 1967); 35 FR 12304–12305 (August 4, 1970); and 43 FR 10306, 10317 (March 10, 1978). The AEWR is the minimum wage rate that agricultural employers seeking temporary nonimmigrant alien workers are required to offer to and pay their U.S. and alien workers.

AEWRs apply only to those employers who are seeking certification to import temporary foreign labor into the United States. Employers applying for temporary labor certifications also must agree to comply with all employment-related laws. 20 CFR 655.203(b); see also 8 CFR 214.1(h)(3)(i). If the employment is covered by a higher wage standard applicable under any Federal, State, or local minimum wage law, the employer must comply with that law. See, *e.g.*, 29 U.S.C. 206(a). If the prevailing wage for the occupation in the labor market is higher, the employer must offer and pay that wage. Thus, a worker in employment under the temporary alien labor certification program must be compensated at the highest of the applicable wage rates, whether that highest rate is the AEWR, the prevailing wage, or the Federal, State, or local statutory minimum wage.

The purpose of an AEWR, as described by the Fifth Circuit U.S. Court of Appeals, is "to neutralize any 'adverse effect' resultant from the influx of temporary foreign workers." It is a "method of avoiding wage deflation." *Williams* v. *Usery*, 531 F. 2d 305, 306 (5th Cir. 1976), *cert. denied*, 429 U.S. 1000; see *Florida Sugar Cane League* v. *Usery*, 531 F. 2d 305 (5th Cir. 1976); see also *Limoneira Co.* v. *Wirtz*, 225 F. Supp. 961 (S.D. Cal. 1963), *aff'd*, 327 F. 2d 499 (9th Cir. 1964).

The U.S. Court of Appeals for the First Circuit has recognized that the AEWR is a minimum and neither forbids employers from offering more, nor employees from seeking more. See *Flecha* v. *Quiros*, 567 F.2d 1154, 1156 (1st Cir. 1977). However, that court recognized two competing statutory purposes, quoting from a Third Circuit decision:

> The common purposes are to assure [employers] an adequate labor force on the one hand and to protect the jobs of citizens on the other. Any statutory scheme with these two purposes must inevitably strike a balance between the two goals. Clearly, citizen-workers would best be protected and assured high wages if no aliens were allowed to enter. Conversely, elimination of all restrictions upon entry would most effectively provide employers with an ample labor force. *Rogers* v. *Larson*, 3 Cir. 1977, 568 F.2d 617, 626.

The First Circuit then capsulized the purpose of the statute and regulations as "to provide a manageable scheme * * * that is fair to both sides." 567 F.2d at 1156. Thus, the AEWR computation methodology must recognize the need to balance the goals of supplying an adequate labor force and protecting the jobs of citizens.

The current AEWR methodology is published at 20 CFR 655.207 (1980). However, based on requests for rulemaking received from farmworker groups and the Department's experience in the temporary labor certification program over the past 15 years, and on comments received from the public in writing and at recent public hearings, DOL has concluded that the current AEWR methodology has not successfully achieved the purpose of preventing wage deflation of similarly employed U.S. workers, occasioned by the presence of significant numbers of nonimmigrant alien workers. This adverse effect has reduced the number of U.S. workers available for employment in agriculture. Therefore, DOL is revising the methodology, as described below, in furtherance of the statutory objective of preserving U.S. jobs for U.S. workers. See *Elton Orchards, Inc.* v. *Brennan*, 508 F.2d 493, 500 (1st Cir. 1974).

Development of Final Rule

I. Necessity to Change Methodology

Before 1968, AEWRs were established at the State level and modified periodically. Since 1968, these rates have been indexed to changes in the previous season's annual average hourly wages of livestock and field hands in each State as estimated by the U.S. Department of Agriculture. (USDA).[2]

AEWR wages currently apply directly to the approximately 500 agricultural employers using temporary foreign workers, out of a total of over 700,000 agricultural employers nationwide. The rates are guaranteed to about 18,000 workers out of total harvest seasonal workforce of over 1.3 million.[3] The AEWR workers are typically paid piece rates and work in hand-picked crops. The largest agricultural users of nonimmigrant aliens admitted on H–2 visas (so-called "H–2 workers") are the East Coast apple growers (6,552 H–2 workers certified by DOL for 1979) and Florida sugarcane producers (8,530 H–2 workers certified by DOL for 1979).

In re-examining the methodology used since 1968, DOL found that fixed base annual adjustment approach for determining AEWRs resulted in AEWRs that were based neither on prevailing wage levels nor on relevant labor markets. Pegging AEWRs to annual changes in wage series indexed to a low base has led to AEWRs computed substantially below prevailing wages and sometimes even below the Fair Labor Standards Act minimum wage.[4] See 29 U.S.C. 206(a)(1). As a result, the traditional methodology was found to be an ineffective tool for testing the availability of domestic workers and in neutralizing adverse wage effects for U.S. farmworkers.

Specifically: a. Significant variations in AEWRs had developed between States using H–2 alien farmworkers (so-called "user States") and those not using such workers, with rates in States using H–2 alien farmworkers generally well below those not using such workers.

b. This led to significant distortions in agricultural wages between user and nonuser States. Relative growth rates in wages were also lower in States using H–2 alien farmworkers.

c. Within the same crop, variations in average wage levels had developed between user and nonuser States.

d. Piece rates in areas which heavily use H–2 alien farmworkers had remained unchanged for long periods and actually declined substantially in real terms.

In addition to the shortcomings noted above, it is particularly important to change the methodology at this time, to avoid the loss to H–2 aliens of jobs which currently go to U.S. workers. As the FLSA minimum wage (which applies to many agricultural workers) increases and approaches the level of the AEWR, the H–2 aliens become more economically attractive to the growers. Thus, the existing methodology poses grave risks in the next two or three years for the continued loss of jobs for U.S. workers.

These factors led DOL to re-evaluate the existing methodology. DOL realized

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[1] Congress recognized some years before 1964 that the Department of Labor had the authority to set adverse effect rates. H. Rept. 274 (on H.R. 2010), 87th Cong., 1st Sess. (1961) at 9. Similar language appeared in the Senate debate on H.R. 2010. H.R. 2010 was enacted as Public Law 87–345. 75 Stat. 761 (October 3, 1961).

[2] The USDA data had been published each February in the USDA publication *Farm Labor*. However, publication of combined field and livestock worker data was discontinued after 1978, but was prepared by USDA specifically for DOL use in 1980. *Farm Labor* is published by the Crop Reporting Board, of the Economics, Statistics, & Cooperatives Service, USDA, Washington, D.C. 20250.

[3] Various sources indicate that virtually all of the H–2 alien workers are hired for harvest season jobs.

[4] Even if computed below the FLSA minimum wage, the AEWR would never be set below that wage. See 20 CFR § 655.207(e) (1980).

that any solution which tended to correct these distortions would, by definition, have an impact on H–2 growers. After a series of six public hearings (see 44 FR 59990 (October 16, 1979)), DOL proposed a new methodology for establishing an AEWR. 45 FR 15914 (March 11, 1980). The proposal is outlined below. After several extensions, the comment period closed on July 14, 1980. 45 FR 29654 (May 6, 1980). During the comment period, several problems were raised by the public commenters, which led to this re-evaluation of the initially-proposed AEWR formula. DOL considered each comment in designing the final rule. Because of the large number of written comments received (307 from 29 States, including 210 comments from the State of Virginia alone), DOL contracted with Ruttenberg, Friedman, Kilgallon, Gutchess & Associates, Inc., to assist DOL in organizing and summarizing the comments. Selected portions of Ruttenberg's summary are excerpted in the *Appendix* to this document.

II. Designing an Appropriate Regulation; Comments on Proposed Rule

The AEWR should be designed to mirror, to the extent possible, rates that would be determined by competitive domestic labor market forces. Thus, the wage-setting methodology should parallel the piece-rates actually paid during the harvest season for those hand-picked crops where H–2 temporary workers dominate; but it should take into account the fact that wages are currently depressed for crops and areas which make heavy use of alien workers. It should also compensate for the labor cost differential between domestic and alien farmworkers (currently about 15 percent) that results from social security and unemployment insurance tax requirements for U.S. workers. See, *e.g.*, 26 U.S.C. 3306(c)(1)(B) and (18). Finally, the AEWR methodology should reflect the structure of domestic agricultural labor markets for hand-picked crops.

While agricultural labor markets for seasonal, labor-intensive crops have a local component, an interstate character to these markets emerges in the presence of migratory workers that move from State-to-State and crop-to-crop. This interstate labor supply source would tend to equalize seasonal farm wages across local labor markets in the absence of regulation.

The fixed base annual adjustment approach, as noted above, reflects neither prevailing wage levels nor the interstate movement of farmworkers and thus perpetuates artificial variations in wage rates among user and non-user States. It is based on arbitrarily established State wage bases indexed to changes in previous season rates not closely related to harvest activity.

The methodology proposed in March 1980 would have set a single AEWR for all States based on a historical relationship between the average hourly earnings of piece-rate paid hired workers in agriculture and the average hourly wages paid private nonfarm workers during the previous year. This relationship, established through a regression model, would predict farmworkers' wages for the upcoming harvest season.

The March 1980 proposed approach more accurately reflects agricultural labor market conditions than the fixed base annual adjustment methodology. It would have eliminated noncompetitive interstate wage differentials that have led to distortions in labor costs between user and nonuser States. The proposed rule thus would have afforded a fairer test of labor availability and more effective protection of the wages of similarly employed agricultural workers. That proposed methodology also would have directly linked the AEWR to prevailing hourly wages for piece-rate paid hired farmworkers, the group most affected by the importation of temporary alien workers.[5] Finally, the proposed rule would have established a single AEWR which is easy to administer and does not call for additional data collection.

While the March 1980 proposal was clearly superior to the methodology used since 1968, it raised several new problems. These problems were suggested by many of the commenters responding to the proposed rule. First, the proposed methodology carried higher initial costs for impacted growers estimated at $2.72 million in 1980. While these overall costs are not significant when applied industry-wide, they hide relatively large increases for certain crops that use H–2 labor. Labor cost increases for growers using H–2 workers, under the March 1980 proposal, are estimated at 25.8 percent for tobacco, 19.8 percent for citrus, and 16.2 percent for apples. These larger initial cost increases reflect in part the movement from a wage determination based on the past year's wages to one based on projected wages for the upcoming harvest season. The large cost increases in some crops also stem from much lower prevailing wages and AEWRs. In addition to these direct costs, there was concern over the likelihood of spillovers or induced wage effects into other agricultural labor markets that could add unnecessarily to the costs of the proposal.

Secondly, the regression methodology, while based on sound mathematics, was criticized by some commenters as needlessly complex and confusing to the industry. Other commenters raised questions of statistical accuracy, given the limited nature of the data available at the present time.

Finally, while alleging that the current AEWR methodology incorrectly treated each State as a separate labor market, some commenters suggested that labor markets are better characterized as regional rather than national. The proposed methodology implied a national scope to such labor markets, which would operate to eliminate regional wage differentials in the absence of regulation. However, if legitimate regional wage variations exist, *i.e.*, regional labor markets, multiple AEWRs that follow existing labor market contours might better approximate competitive conditions in the absence of H–2 workers. Since this criticism focuses most directly on the generic approach of setting a single AEWR, rather than on any specific formula, DOL carefully reviewed the structure of agricultural labor markets, as discussed below.

III. The Structure of Agricultural Labor Markets

The seasonality of labor demand and skill requirements define the nature and scope of individual agricultural labor markets. With the mechanization of most agricultural production, the principal crops currently using seasonal labor are fruit and vegetable crops, and (to a lesser extent) tobacco. These crops exhibit an intensive need for labor during the heaviest season. These hand-picked crops also display few skill requirements, in contrast to the highly mechanized forage operations. Thus, livestock operations, as one example, have relatively stable employment requirements.

These characteristics determine the structure of agricultural labor markets. Year-round farm activities will tend to be met by full-time farmworkers, while seasonal labor-intensive crops give rise to casual, seasonal and migratory farmworkers to meet peak demand requirements. An interstate character to labor markets for certain crops emerges in the presence of migrant workers who move to job opportunities away from their home location when sufficient local workers are not available. However,

[5] However, the prevailing rate refers to yearly averages and not harvest season wages (which are higher). Also, the initially proposed AEWR did not address the issue of added compensation for the payroll tax savings associated with hiring H–2 temporary workers. See, *e.g.*, 26 U.S.C. 3306(c)(1)(B) and (18), cited above.

labor mobility is not perfect; there is also evidence of segmentation across certain crops (particularly, highly mechanized operations) and non-crop agricultural activities.

The majority of hired farmworkers are employed on a casual or seasonal basis. Casual workers are defined as those working less than 25 days on farms and seasonal workers are those working 25 to 149 days. Most of these workers are local residents. USDA data (1977) show the local casual farmworkers comprise about 38 percent of the hired farm workforce and non-migrant seasonals represent an additional 32 percent. Together these groups performed only 30 percent of the total person-days worked in 1977. Many of the local casual and seasonal workers are students and homemakers who work in the fields for several weeks or a month each year during peak harvest periods.

Only limited statistics exist on the current migrant farmworker population. The most recent USDA estimate (1977) indicates about 191,000 migrant workers, or seven percent of the U.S. agricultural labor force. This represents a 50-percent drop in the number of persons performing migrant farmwork since 1960. However, most of this decline occurred during 1960–69. Since 1970, the migrant farmworker population has remained relatively stable at about 200,000. Nearly half of the migrant workers in 1977 were employed in farm jobs that were over 500 miles from their home base and about 20 percent traveled distances in excess of 1500 miles. While migrant farmworkers are not a numerically large group, they work more days than nonmigrants and are heavily concentrated in the seasonal, labor-intensive fruit and vegetable crops.

To account for this interstate movement of farmworkers in the AEWR methodology, labor market boundaries must be established based on migratory travel patterns. The March 1980 proposed methodology would have set a single nationwide AEWR, implicitly assuming a national labor market. Some commenters suggested that there are three regional migratory streams—a Pacific Coast stream with a home base in Southern California; a Mid-Continent stream that begins in the Rio Grande region of Texas; and an Atlantic stream that starts in Florida flowing up the Eastern Seaboard. These commenters rely upon information published by the Public Health Service in 1965. However, more recent data suggest that this simple three-stream pattern may no longer apply.

For example, recent USDA data (1977) reveals that the Southwest standard Federal region (which includes Texas) is the largest home base, representing 37 percent of migrant farmworkers. The Southeast (with Florida) and the lower Pacific Coast region (with Southern California) follow with 14 percent each. These correspond to the three regional home bases described by the Public Health Service in 1965. However, a survey of migrant programs and DOL Employment Services conducted by the Legal Services Corporation in 1977 shows a wide dispersion of States of origin. While this survey supports the USDA results of large home bases in Texas, Florida, and California, more than half the States were represented as home bases for migrants.

The Legal Services Corporation found further evidence of the increasing complexity of patterns of movement in the preceding and succeeding interstate destinations of migrant workers for each State. While some heavy migrational flows do follow the traditional patterns, the wide diversity of interstate movements is also evident. This data clearly shows the increasing fragmentation of historical migratory streams.

Other evidence also points to a breakdown of traditional flow patterns. DOL's State-by-State data on peak month employment activity fail to show a steady progression of employment from May to September across neighboring States up the East Coast. While based solely on the number of workers appearing in adjacent areas according to some hypothetical flow sequence, this data raises serious questions about the current validity of traditional migrant circles. The 1977 survey documented numerous cases of Florida migrants in Washington and Puerto Rican and Florida migrants in California. Conversely, California migrants were regularly found in New Jersey.

The relative importance of structural trends in explaining the breakdown of the simple, three-stream migratory concept strongly suggests that this dispersion represents a permanent change in agricultural markets resulting in a national agricultural labor market structure for H–2 crops.

IV. Description of Final Rule

Since agricultural labor markets for H–2 crops are national in scope, the final rule retains the proposed single nationwide AEWR concept. However, instead of predicting upcoming season wages, the methodology in the final rule uses last year's USDA annual average hourly wage for piece-rate paid hired agricultural workers, phased in over a three-year period. This methodology would be easy to understand and administer because the AEWR would be tied exclusively to prevailing wages in the agricultural sector and would not rely on a regression model linked to nonfarm wages.

Setting the AEWR at last year's annual average hourly wage rate for piece-rate paid hired farmworkers will reduce substantially the cost impact of setting a single nationwide AEWR. In addition, a three-step phase-in will further reduce this cost impact by allowing H–2 growers to adjust to the proposed increase over a three-year period.

This final rule improves the wage levels for the U.S. and alien workers while showing substantial employer savings over the proposed rule, with estimated direct costs for H–2 growers in 1980 (had the final rule been in effect for the 1980 harvest season) of only $3,851.00 compared with $2,720,000.00 under the initial proposal. When compared with the March 1980 initial proposal, costs for impacted growers are lowered by over 77 percent during the phase-in period, and in 1981 will be an estimated $288,027 compared with $2,910,291 under the initial proposal. See Table I, *infra*.

This approach also reduces substantially the direct cost increases for individual crops. Labor costs increases would be under one percent in tobacco. Apple and citrus growers would have experienced no labor cost increase in 1980 had the rate been in effect for the entire 1980 harvest season. No added costs are foreseen for sugar cane (about half the agricultural H–2 workers are employed in sugar cane harvesting, where wages have been above the applicable AEWR since at least 1976).

While these cost estimates refer only to the direct economic impact of establishing a single nationwide AEWR, potential spillover effects are expected to be limited by such factors as (1) a lower AEWR resulting from the use of previous season wages phased in over a three-year period; (2) the small number of workers to whom this final rule applies relative to the labor force; and (3) partial segmentation of agricultural labor markets based on skill needs and seasonality of demand.

V. Direct Cost Estimates

This section compares the projected *direct* cost impacts for H–2 growers of the initially proposed rule and the final rule. These costs are also compared with those calculated under the current methodology. Although the new formula will not go into effect for a full year until the 1981 harvest season, the cost

estimates on which this rule was based were prepared for the period 1980–1983. In making these estimates, DOL used data on labor force in prevailing wages by crops for 1979 which were the most recent data available when these estimates were prepared.

To derive the 1980 cost estimates, DOL has assumed that the 1979 levels of H–2 employment (both domestic and alien workers employed by impacted growers) by crop activity continued in 1980. Prevailing hourly wages for these crops in H–2 States were projected forward to 1980 using the average annual growth rate in USDA average hourly wages for piece-rate hired agricultural workers for the period 1974–1979, which is 9.6 percent. Projected hourly wages in 1980 by crop were then compared to the relevant AEWRs (either State or national) to obtain estimates of the costs added by these proposals for changing the AEWR methodology over those under the current methodology.

A. *Proposed Rule Costs.* As stated above, under the March 1980 proposed rule, the AEWR would have been set at $4.51 per hour in all H–2 workers user States in 1980. The overall direct cost increase would have been estimated at a modest $2.72 million nationwide for all crop activities in 1980. However, the aggregate cost estimate obscures relatively large increases for certain crops that use H–2 labor. Estimated labor cost increases resulting from the initial proposal would have been 25.8 percent for tobacco, 16.2 percent for apples, and 19.6 percent for citrus. These large cost increases reflect in part the movement from a wage determination based on prior year wages to one based on projected wages for the upcoming harvest season. The large cost increases in some crops also stem from much lower prevailing wages and AEWRs.

B. *Final Rule Phase-in Costs.* Establishing a nationwide AEWR based on last year's annual average hourly wage rate for piece-rate paid hired agricultural workers, phased in over a three-year period, would produce substantial cost savings for impacted growers relative to the initial proposal. To calculate the four-year cost of this approach, DOL predicted the 1982 United States annual average hourly wages of piece-rate paid hired farmworkers which, under the rule, would become the 1983 AEWR. This rate was calculated by using the actual average 1979 wages of $4.07 (as determined by the USDA) and the 9.6 percent average annual increase in this wage series over the 1974–1979 period.[6] By 1983, 100 percent of the 1982 United States annual average hourly earnings of piece-rate paid hired farmworkers would become the 1983 AEWR under the final rule.

The estimated cost of this phase-in approach depends on the 1979 baseline selected from which to extrapolate interim AEWR's until reaching an estimated $5.36 in 1983. If DOL uses the average 1979 H–2 user state AEWR of $3.10, calculated under the current methodology,[7] as the baseline for 1979 and the estimated $5.36 for the 1983 end period of the phase-in, a straight-line phase-in methodology would produce intermediate AEWRs of approximately 90 percent the USDA rate for 1980 ($3.67), approximately 95 percent for 1981 ($4.23), and approximately 98 percent for 1982 ($4.80). If DOL had chosen to apply the new methodology in the final rule without a phase-in, the AEWRs would be estimated to be $4.07 for 1980, $4.46 for 1981 and $4.89 for 1982. If DOL had chosen to apply the methodology initially proposed in the March 11, 1980, document, the AEWRs would be estimated to be $4.51 for 1980, $4.89 for 1981, $5.32 for 1982, and $5.77 for 1983.

Cost estimates for the phase-in approach adopted in this final rule are presented in Table I below. The final rule shows substantial cost savings, with projected direct costs in 1980 of only $3,651.00 compared with $2.72 million, and in 1983, of $1.41 million compared with $3.10 million. When compared with the proposal, annual costs spread out over the four-year period for impacted growers are reduced by over 77 percent under the final rule, averaging $851,695.00 per year. See Table I, *infra.*

This final rule establishes a nationwide AEWR based on the previous year's annual average hourly wage for piece-rate paid hired farmworkers nationwide, and both avoids imposing a double increase in the first year and reduces substantially the direct cost increases for individual crops. Labor costs increases for tobacco growers would be limited to under one percent. Apple and citrus growers are expected to experience no cost increases in 1980 under the final rule.

While these estimates do not account for any wage spillover to non H–2 growers or other indirect effects in local labor markets, these secondary effects are expected to be limited, as noted earlier.

[6] Alternatively, DOL could predict average hourly earnings of piece-rate hired farmworkers for 1982 from the estimated parameters in the regression methodology used in the initial proposal to establish the 1980 AEWR. For this projection, production worker earnings were assumed to increase at 7.8 percent, the average annual increase in production worker earnings over the 1973–1979 period. These calculations would produce a similar AEWR for 1983 of $5.32. However, DOL has based the cost estimates on the approach likely to be used by DOL to set interim AEWRs during the phase-in period.

[7] The average AEWR is calculated as the unweighted mean of the relevant State AEWRs.

Table I.—*Estimated Additional Cost of Implementing Previous Season AEWR by Major Crops Using Alien Labor in 1980 to 1983 With a 3-Year Phase-in (1980–1983)* [1]

Crop	Net cost added by $3.67 AEWR in 1980 [2]	Cost added $4.23 AEWR in 1982 [2]	Cost added $4.80 AEWR in 1982 [2]	Cost added $5.36 AEWR in 1983 [2]
Apples	0	0	$427,319	$772,089
Sugarcane	0	0	0	0
Tobacco	$3,651	$227,643	309,553	375,452
Citrus	0	60,184	168,549	243,410
Peaches/pears	0	0	2,776	17,324
Peaches	0	0	0	0
Estimated added cost of final rule	3,651	288,027	908,197	1,408,905
Estimated added cost of initial proposal [3]	2,717,544	2,916,291	3,028,695	3,071,808

[1] A linear technique was applied to extrapolate predicted AEWR's for 1980, 1981, and 1982, using the unweighted average 1979 AEWR under the current methodology for 1979 and the predicted AEWR of $5.36 for 1983. This Table should *not* be taken to indicate that the actual AEWR's will equal these estimates.

[2] Estimated added costs under the current methodology were not rated out for 1981, 1982, and 1983. The $3.67, $4.23, $4.80, and $5.36 AEWR's are approximately 90 percent, 94 percent, 98 percent, and 100 percent of the estimated United States annual average hourly wage rates of piece-rate paid hired farmworkers for the years 1979–82, respectively. However, based on data published in the USDA publication *Farm Labor* on February 21, 1980, the 1979 average was $4.07, 90 percent of which would be $3.66, or 20.01 *less* than the 1980 AEWR used in the cost estimate.

[3] The regression model of the initial proposal predicted AEWR's of $4.51 for 1980, $4.89 for 1981, $5.32 for 1982, and $5.77 for 1983.

VI. Piece rates

As in the proposed rule, piece rates for workers under the final rule would be examined annually. Growers requesting temporary nonimmigrant alien workers would submit to ETA (or

to a State job service agency designated by ETA) data on their previous year's employment and earnings, and on the piece rate paid to workers in the applicable crop activity.

Using the data, the employer would be required to calculate new piece rates for the coming season. The employer would be required to adjust the previous year's piece rate(s) upward by the same percentage as the increase in the hourly AEWR for the coming season, provided, however, that the employer first would be required to demonstrate that the previous season's piece rate was adequate to yield the previous season's AEWR, based upon the employer's average worker's production in that activity in that season.

Thus, if the previous season's hourly AEWR was $4.00 and the coming season's hourly AEWR would be $4.40 (a 10% increase), an employer whose average harvester picked 8 bushels per hour last season at a piece rate of $.50 per bushel would have to offer and pay its workers $.55 per bushel for that activity in the coming season.

However, if the employer's average worker picked only 7 bushels per hour in the previous season, at a piece rate of $.50 per bushel that worker would have earned only $3.50 per hour (absent make-up pay), $.50 per hour less than the hourly AEWR for that season. To earn last year's hourly AEWR, at a production rate of 7 bushels per hour, that average harvester should have been paid a piece rate of $.571 per bushel ($.571 piece rate=$4.00 AEWR divided by 7 bu./hr. average production). In that situation, the employer must offer and pay to its workers in the coming season a piece rate based upon what the previous season's piece rate should have been ($.571 per bushel), increased by the same percentage as the increase in the hourly AEWR (10%). Thus, the employer's piece rate in the coming season would have to be $.628 per bushel (110% of $.571 per bushel).

Each worker who earns less than the hourly AEWR at the applicable piece rate would have to be paid make-up pay, to bring his/her hourly earnings up to the season's hourly AEWR.

The employer would be required to offer and to pay to workers at least that adjusted piece rate for the growing season, so that the wages of similarly employed U.S. workers will not be adversely affected by the employment of the aliens. If a grower pays separate rates for different activities in the same crop (*e.g.*, spot picking vs. stripping fruit trees) or separate rates for different crops, then piece rates shall be adjusted independently for each activity.

If, during a pay period, any individual worker did not earn at least the AEWR for the number of hours he/she worked, the employer would have to pay that worker the piece rate earned, plus the difference, to achieve the AEWR for the number of hours worked. When this occurs, the employer would be required to notify the local job service office that makeup pay has been provided to the worker(s). The grower may be audited by DOL to ensure the piece rate actually is generating the AEWR for the average worker.

Where an employer has no historical data available from which an adjusted piece rate may be computed (*i.e.*, where the employer is growing a crop for the first time), and the employer elects to use a piece-rate system, the employer will be required to establish a piece rate reasonably expected to generate the AEWR, for inclusion in the job order for U.S. workers. The employer's specific methodology for establishing a piece rate resulting in the AEWR for such a crop would have to be submitted in writing to the ETA Regional Administrator for approval. DOL may then audit the employer to ensure that the piece rate is actually generating the AEWR. "DOL" has been substituted to indicate that the auditing agency may be a DOL auditing agency other than ETA giving DOL a greater degree of flexibility in utilizing its resources.

If another grower or growers produce the same crop in the area of employment, the employer producing the crop for the first time may base its piece rate on the average hourly earnings and production of workers employed in that crop activity in the area of intended employment. The State job service would determine what those average hourly earnings are, through its in-season wage surveys or its collected prevailing wage information.

VII. Sheepherding Employment

Sheepherding employment has been included as farm work covered by 20 CFR Part 655, Subpart C, since the promulgation of the subpart. See 43 FR 10307 (March 10, 1978). Because of the unique nature of the hours and the work involved in sheepherding, it would be inappropriate to set an hourly AEWR for that occupation. The final rule continues the practice of setting a monthly wage for range sheepherding, which must be guaranteed to the worker unless the local prevailing wage for such work is higher. As in past years, the monthly AEWR will be changed annually by the average percentage change in the USDA-determined hourly wage rates (set forth in each February issue of *Farm Labor*), for livestock farm workers in the eleven Western States where the aliens historically have been employed.

The base rate will be the 1980 AEWR, which was $523.00 per month. [8] The wage is rounded off to the nearest $1.00. The 1980 rate has been substituted for the 1979 rate, since that new data became available after the development of the proposed rule. The new data result in no greater costs to the employers.

VIII. Logging Employment

The current methodology for wages in logging employment is unchanged in the final rule, because loggers' wages have equalled or exceeded the annual average hourly wages of nonagricultural production workers. The AEWR for logging is the prevailing wage for the occupation in the area of intended employment.

Development of Final Rule

The final rule was prepared under the direction and control of Mr. David O. Williams, Administrator, United States Employment Service, Employment and Training Administration, United States Department of Labor, Washington, D.C.

Regulatory Impact

The rule affects only those agricultural employers who request certification to employ nonimmigrant alien workers, and has less impact than specified in DOL's criteria, so that the effect of the proposed regulation is not so major as to require the preparation of a regulatory analysis. See 44 FR 5576 (January 26, 1979).

Catalog of Federal Domestic Assistance Number

This program is listed in the *Catalog of Federal Domestic Assistance* at Number 17.202, "Certification of Foreign Workers for Agricultural and Logging Employment".

Final Rule

Accordingly, § 655.207 of Part 655 of Chapter V of Title 20, Code of Federal Regulations, is revised to read as follows:

§ 655.207 Adverse effect rates.

(a) *Scope.* This section sets forth the methodology by which the adverse effect rates are computed for agricultural employment and for logging employment.

(b) *Agriculture.* For all agricultural employment in the United States (except

[8] Employers were required to pay the higher prevailing rates in 1980 in Nevada ($525.60) and California ($550.00).

sheepherding), the hourly adverse effect rate shall be the previous calendar year's United States annual average hourly wage rate for "piece-rate paid hired farmworkers". This annual average hourly rate is determined by the United States Department of Agriculture (USDA) and is published in the USDA publication *Farm Labor* in the February following the calendar year reported. For agricultural employment (except sheepherding), the single adverse effect rate applicable nationwide shall be:

(1) 90 percent of the 1979 USDA rate, for the period from the effective date of this regulation through March 31, 1981;

(2) 95 percent of the 1980 USDA rate, for the period from April 1, 1981, through March 31, 1982;

(3) 98 percent of the 1981 USDA rate, for the period from April 1, 1982, through March 31, 1983; and

(4) 100 percent of the previous calendar year's USDA rate, for each 12-month period beginning April 1, 1983, and April 1 of each calendar year thereafter.

(c) *Logging and sheepherding.* (1) For logging employment, the adverse effect rate shall be the prevailing wage rate in the area of intended employment.

(2) For sheepherding employment, the monthly adverse effect rate for each year shall be computed and set by adjusting the prior year's sheepherding adverse effect rate by the average percentage change (from the second year previous to the prior year) in the U.S. Department of Agriculture hourly wage rates for livestock farm workers for the following States: Arizona, California, Colorado, Idaho, Oregon, Nevada, Montana, Texas, Utah, Washington, and Wyoming. The base adverse effect rate for sheepherding, which is the rate that must be paid in the season beginning in 1980, is $523.00 per month. The rate shall be rounded off to the nearest $1.00.

(d) *Piece rate adjustments.* (1)(i) In any year in which the applicable hourly adverse effect rate is increased, the employer shall increase the piece rate for such activity by the same percentage as the increase in the hourly adverse effect rate over the previous season's adverse effect rate. Before calculating the increase in the piece rate, the employer first must adjust the previous season's piece rate upward to a point where the employer's average worker in that activity would have made hourly earnings equal to that season's adverse effect rate (absent make-up pay described in paragraph (e) of this section).

(ii) If a grower pays separate rates for different activities in the same crop (*e.g.*, spot picking vs. stripping) or separate rates for different crops, then piece rates shall be adjusted independently for each activity.

(2) Where an employer has no historical data available from which an adjusted piece rate may be computed (*i.e.*, where the employer is growing a crop for the first time), the employer will be required to establish a piece rate reasonably expected to generate the adverse effect rate. The employer's specific methodology for establishing a piece rate resulting in the adverse effect rate for such a crop would have to be submitted in writing to the RA for approval. The Department of Labor (DOL) then may audit the employer to ensure that the piece rate is actually generating the adverse effect rate. If another grower or growers produce the same crop in the area of employment, the employer producing the corp for the first time would base its piece rate on the average hourly earnings and production of workers employed in that crop activity in the area of intended employment. The State job service shall determine what those average hourly earnings are, through its in-season wage surveys or its collected prevailing wage information.

(e) *Make-up pay.* If, during a pay period, any individual worker working for the employer did not earn at least the adverse effect rate for the number of hours the worker worked, the employer shall pay that worker the piece rate earned, plus the difference, to achieve the adverse effect rate for the number of hours worked (see § 655.202(b) (9) (ii) of this Part). When this occurs, the employer shall notify the local job service office that makeup pay has been provided to the worker(s). The grower may be audited by DOL to ensure that the piece rate is actually generating the adverse effect rate for the employer's average worker.

(f) *Minimum and prevailing wage rates.* Notwithstanding any other provision of this Subpart, an employer seeking labor certification(s) or to whom labor certifications have been granted must offer and pay to its workers a wage no lower than the highest of the adverse effect rate, the prevailing wage for the occupation in the area of intended employment, or the Federal, State, or local statutory minimum wage applicable to the occupation.

(g) *Publication.* The Administrator annually shall publish in the Federal Register a notice announcing the adverse effect rates computed pursuant to paragraphs (b) and (c)(2) of this section.

(Immigration and Nationality Act, (8 U.S.C. 1101, 1184(c)); 8 CFR 214.2(h)(3)(i); (5 U.S.C. 301))

Signed at Washington, D.C. this 13th day of January, 1981.

Ray Marshall,
Secretary of Labor.

Appendix

Note.—This Appendix will not appear in the Code of Federal Regulations.

The following are selected excerpts from the report prepared by Ruttenberg, Friedman, Kilgallon, Gutchess & Associates, Inc., for the U.S. Employment Service, summarizing the comments received from the public in response to the March 11, 1980 proposed rule (see 45 FR 15914):

I. Overview of Public Comments Received

* * * * *

Commenters

A total of 307 individuals submitted written comments to the Department of Labor on the proposed methodology. More than three-fourths were employers or employer representatives. Over one-tenth were worker representatives. Other commentors included elected officials, representatives of a state Employment Service and other state agencies, members of private nonprofit organizations, and persons with other or unidentified affiliations.

Table 1.—Number of Comments Received by Interest Group.

Employer representatives, 240
Worker representatives, 37
Elected officials, 3
State Employment Service, 1
Other state agencies, 5
Private nonprofit organizations, 4
Other, 13
Unidentified, 4

A preponderance of commentors, over two thirds, were Virginians, apparently reflecting a letter-writing campaign mounted by the tobacco growers' association there. The remainder were from 28 other states.

Table 2.—Number of Comments Received by State.

Virginia, 210
New York, 12
California, 10
North Carolina, 9
Washington, D.C., 9
Washington, 7
West Virginia, 6
Texas, 4
Florida, 4
Idaho, 4
Massachusetts, 4
Pennsylvania, 4
Illinois, 2
Maryland, 2
Michigan, 2
Ohio, 2
Oregon, 2
Wisconsin, 2
Connecticut, 1
Iowa, 1
Louisiana, 1
Maine, 1
Montana, 1
Nevada, 1
New Hampshire
Tennessee, 1
Vermont, 1
Wyoming, 1

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Table 3.—Numb
Crop Activity.

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Tobacco and w
Apples, 28
Apples and tob
Apples and oth
Other fruit, 5
Sugar, 2
Citrus, 1
Sugar and citru
Vegetables, 2
Logging, 1
Not applicable,
Unidentified, 21

Positions on P

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Michigan, 2
Ohio, 2
Oregon, 2
Wisconsin, 2
Connecticut, 1
Iowa, 1
Louisiana, 1
Maine, 1
Montana, 1
Nevada, 1
New Hampshire, 1
Tennessee, 1
Vermont, 1
Wyoming, 1

Tobacco was the crop activity with which commentors were most frequently associated, with over 30 percent identifying themselves in this way. Another large response came from persons associated with apples, who comprised 14 percent of the commentors. One hundred commentors were placed for purposes of this report in the category of "general agriculture" because they indicated an involvement in agriculture but not in a specific crop[s]. Smaller numbers of commentors represented sugar, vegetables, citrus, logging, and fruit other than apples. For the remaining commentors, a crop activity was either not applicable or not identifiable.

Table 2.—Number of Comments Received by Crop Activity.

General agriculture, 100
Tobacco, 80
Tobacco and vegetables, 1
Apples, 28
Apples and tobacco, 2
Apples and other fruit, 13
Other fruit, 5
Sugar, 2
Citrus, 1
Sugar and citrus, 1
Vegetables, 2
Logging, 1
Not applicable, 40
Unidentified, 21

Positions on Proposed Methodology

Public comments received by the Labor Department tended to be of two general kinds. In the first group were the majority of comments, which were directed to the methodology itself. These usually offered criticisms or endorsements of the technique by which the Labor Department proposed to set the AEWR, sometimes suggesting modifications or alternative methodologies. In some cases, the commentors focused narrowly on the proposed 1980 wage rate of $4.51, which the Labor Department announced would result from the proposed methodology, without addressing the technique by which it was computed. All of these comments on issues raised by the proposed methodology are discussed and analyzed in Section II of this paper.

* * * * *

Persons commenting on the methodology tended to be critical of the proposal, with relatively few indicating that it satisfied them completely. A total of 257 commentors expressed generally negative positions on the methodology; 39 expressed generally positive positions; 7 rejected the concept of an AEWR methodology entirely; and 4 wrote only to ask for an extended comment period. Of those whose comments were considered "generally positive," some nevertheless criticized aspects of the methodology; similarly, some "generally negative" comments indicated acceptance of portions of the proposal. One of the positive comments was conditional upon effective monitoring and enforcement to protect workers.

Fifty-seven commentors suggested modifications of or alternatives to the proposed methodology. These are analyzed in the discussion of issues in Section II, and are briefly mentioned below:

- There were 30 commentors who advocated using the federal minimum wage, either

Alone,

In combination with the area's prevailing wage rate,

In combination with the state or local minimum wage,

In combination with the state or local minimum wage, whichever was the highest, unless the Labor Department determined the prevailing rate was necessary to offset the adverse effect of H–2 workers in the area, or

As a base rate to which a certain percentage would be added.

- The pre-1968 AEWR methodology, setting rates by state and crop, was advocated by seven commentors.
- One individual proposed setting local crop-by-crop rates, adjusted to compensate for the depressant effect of H–2s in the area and for the tax advantages enjoyed by H–2 employers.
- Three persons recommended setting the AEWR state-by-state without regard to crop as is presently done.
- Two additional letter writers offered detailed proposals for an AEWR set state-by-state, with no state's AEWR to be lower than a national rate.
- Setting regional AEWRs was recommended by one commentor.
- Another commentor suggested use of the prevailing wage rate in an area.
- A methodology utilizing adjustments of the employer's basic (but not abnormal) piece rate was offered by one letter writer.

Relying upon the forces of supply and demand to set the rate was put forth by another commentor.

- Nine persons recommended setting the AEWR at $6.50 an hour, the average nonagricultural production workers wage rate.
- One letter writer suggested that the AEWR be applied to the workforce of the employer rather than to each individual worker.

Congressional and White House Letters

The Department of Labor also received 41 letters from representatives of Congress and White House staff. The White House letters and most of the Congressional ones forwarded correspondence on the AEWR methodology from constituents. Most of these constituents had also separately submitted comments directly to the Department of Labor.

The Congressional and White House correspondence came from 18 states: California, Connecticut, Florida, Idaho, Illinois, Maine, Maryland, Massachusetts, New Hampshire, New York, North Carolina, Oregon, South Carolina, Texas, Vermont, Virginia, Washington, and West Virginia.

In addition to forwarding constituent correspondence, some Members of Congress wrote to express a particular point of view or to request extension of the comment period. Ten Congressional commentors were opposed to the proposed methodology, with seven citing the proposed methodology's impact on wage levels, two opposing a single national rate, two disagreeing with the farm-nonfarm wage relationship, and one discussing the issue of available domestic farmworkers.

II. Comments on the Proposed Methodology

This section discusses the specific comments submitted to the Labor Department on the proposed AEWR methodology, as well as alternative methodologies suggested.

For purposes of this report and analysis, comments have been examined in relation to 10 principal issues which are involved in the setting of the adverse effect rate. These issues are:

Use of a single national rate
Application of a relationship between farm and nonfarm wages
The setting of adverse effect piece rates
Use of average piece-rate earnings data
Impact of the AEWR on wage levels
Make-up pay requirement
Ease of use and comprehension
Administration and enforcement
Timing of publication of the AEWR

Methodology for logging and sheepherding

Each of these principal issues is discussed in turn. Comments for and against the methodology are described.

Issue: Single national rate

Fifty-one of those commenting on the proposed methodology directed their remarks to the establishment of a single national adverse effect wage rate—a feature that is in contrast to the present system of setting separate AEWRs for each user state. Twenty-one persons were generally positive toward a single national rate, and 30 were generally negative.

Arguments for

Support for a single national rate came almost exclusively from farmworkers and their representatives, although worker opinions on this point were not unanimous. Proponents believed that a single national rate would more accurately reflect the interstate nature of the workforce and the competitive market forces that affect agricultural employment. Some commended the proposal for recognizing that American workers can and do cross state lines to obtain employment.

A representative of a nonpartisan, private nonprofit organization commented that by establishing AEWR comparability among states, the single national rate would strike a better balance between the needs of employers to obtain labor and the needs of workers to avoid wage deflation and exploitation. "The present haphazard pattern of geographically based AEWRs does not accomplish either of these ends," he said.

Another argument given in favor of the single rate was that it would end confusion that presently exists as to the AEWR level that applies in a particular locale.

Several worker representatives voiced acceptance of a single national rate but said their preference would have been a rate set by crop and location, capable of reflecting higher regional or local wage levels. This concern was evident among commentors from California and New York State, where the average earnings of piece-rate-paid agricultural workers are higher than the national average. (In California, where farmworkers have made wage gains through collective bargaining, piece-rate-paid farmworkers earned an average of $5.42 per hour in 1979, according to one letter writer, and the 1980 level was of course expected to be higher.) Most (though not all) of these commentors believed, however, that workers in their areas would be protected against wage depression by the provisions of § 655.207(f) of the proposed methodology, which requires employers to offer and pay the prevailing wage for the occupation in the area of intended employment if it is higher than the adverse effect wage rate. With this protection, as one worker representative put it, "we can live with a national rate." Another said he could accept one national rate "as an initial benchmark" but asked DOL to hold open the possibility of regional adjustments if experience with a national rate indicates a need.

Two worker advocates who supported the methodology as proposed nevertheless offered alternative methodologies which they would have preferred:

One recommended setting a separate AEWR for each federal region, based on the relationship between regional earnings of nonfarm production workers and piece-rate-paid hired farmworkers. In no case would the regional AEWR be permitted to be less than the corresponding national rate similarly computed. This method would have the advantage of eliminating any regional wage depression; it would not be confusing to employers or workers; and it would utilize data by region which is presently available, its proponent stated.

The other recommended calculating local crop-by-crop piece rates as follows:

1. Use data gathered by the Employment Service on Form 232, regarding piece rates in certain crops which are used in determining whether clearance orders offer prevailing wages and working conditions.
2. Find the "top rate" paid to local domestic workers by crop—i.e., the wage that is at the 90th percentile of local wages.
3. Adjust the top rate to correct for the depressant effect of any H–2 workers in the area. This would be done by increasing the top rate in proportion to the penetration of the labor market by H–2 workers—e.g., a 0.5 percent increase in the top rate for each 1 percent of market penetration.
4. Use DOL's proposed methodology for projecting next season's rates.
5. Increase the anticipated piece rate by 10 percent to offset the tax advantages of H–2 workers.
6. A similar methodology should be followed to compute hourly rates.

A number of worker representatives called attention to what they felt were inequities of the present state-by-state AEWRs, which they believed would be corrected by a single national rate. The lowest adverse effect wage rates, some pointed out, have often occurred in states where wages (presumably nonagricultural wages) are highest. This has meant exploitation of foreign workers at low wages, they contended, and has discouraged domestic workers from accepting agricultural jobs in which they cannot earn a living wage.

Some worker representatives said they supported a national rate because it would require growers with low average wages to increase their wage rates. One commented that the single rate would uniformly protect not only U.S. workers but also employers, who would not face competition from others paying lower wages.

Arguments against

Those opposed to a single national wage rate usually objected to it because it would fail to take into account the differences between states, regions, crops, or harvesting conditions. A few rejected the Labor Department's assertion that agriculture utilizes a national workforce. Opposition was voiced mainly by employers and their representatives, but worker representatives also raised objections—particularly with regard to the depressant effect of a single national rate in high-wage areas.

A worker representative claimed the national rate could have a "devastating effect" in California where wages and working conditions generally exceed the national average. While acknowledging that the methodology would require growers to pay the prevailing wage if it exceeds the AEWR, this commentor asserted that the national AEWR would still have the effect of putting a ceiling on wages which would prevent the natural rise resulting from normal economic interaction.

Several commentors cited the varying degree of difficulty in harvesting different crops as justification for setting adverse effect wage rates by crop. Harvesting conditions also need to be considered in setting the wage, some said—e.g., the size of the crop per tree.

An employer representative from North Carolina offered data which he said supported his view that agriculture does not utilize a national workforce: Out of 145,000 farmworkers in North Carolina in 1978, 85,000 were family workers and 60,000 were hired workers. As family workers, the majority were not part of a mobile, interstate, or national workforce, he asserted. Therefore, wages in other areas of the U.S. have little if any influence on wages paid in North Carolina, where the wage rate is a function of the work to be done and the availability of local labor.

An employer advocate recommended that DOL develop an AEWR for his state

of New Hampshire specifically, using only New Hampshire wages as a base and excluding nonfarm wages.

An alternative methodology utilizing the prevailing hourly wage for the crop and location was suggested by one employer representative. Where piece rates are paid, he recommended that the AEWR would be no less than the prevailing hourly wage or the applicable federal or state minimum wage, whichever was higher.

Another commentor similarly urged the use of the prevailing wage as the AEWR where wages were expressed in hourly rates. But where the wage is expressed as a piece rate, he asserted that "the federal minimum wage is the only appropriate adverse effect hourly wage rate." The minimum wage is simple, widely understood, and commonly accepted by both employer and employee, he stated. Furthermore, Congress has determined that that wage is sufficient to protect the interests of workers.

Still another methodology proposed as an alternative to a single national rate was as follows:

1. Determine what percentage of foreign workers employed in specific jobs in an area will have an adverse effect on U.S. workers. "We suggest that where foreign workers constitute less than 10 percent of the jobs in specific employment in a specific area it would be reasonable to expect no adverse effect, since it has always cost employers more to employ temporary foreign workers than to employ domestic workers under the H(ii) program."

2. Set the AEWR at the highest of the federal, state, or local minimum wage, except where the Labor Department determines that there will be an adverse effect on U.S. workers because foreign workers will exceed the level set in the first step, above. In such cases, the prevailing wage should be the AEWR.

3. Where the prevailing wage is determined to be necessary, set the AEWR as was done prior to 1986: Make crop-by-crop, area-by-area wage surveys to set a prevailing wage, and adjust this annually for actual economic and market conditions.

Another alternative methodology proposed by this commentor would be for employers to submit a statement of wages or piece rates paid in the previous year, and the wages and benefits planned for the coming year. Employers would have to show evidence that wages would approximate the prevailing wage of the crop and area.

Several growers' organizations recommended setting the AEWR by state on the basis of the U.S. Department of Agriculture's state-by-state data on average hourly earnings of field workers (or field and livestock workers, some said). This relates more closely to the wages being paid in the areas in which H-2 certification is sought, in their opinion. One of these commentors said this data should be used as follows to set the AEWR:

1. Compute a state-by-state AEWR each year by adjusting the previous year's field and livestock worker hourly average rate, as determined by USDA for that state, by the average percentage change in the rate during each of the five preceding years.

2. DOL would use the same formula to calculate an adjusted rate for the nation. If a state's adjusted field and livestock worker rate fell below the national rate, the state would have to use the national rate.

The commentor claimed this procedure would be "self-correcting" and would not compound errors in the AEWR from year to year. It would also recognize workers' geographical and occupational mobility.

Another commentor elaborated on a similar state-by-state methodology:

1. Use USDA annual average hourly wage data for field workers, both by state and nationally.

2. One-year projections should be made by state each year, based on a simple average of the percentage increase over the past five years applied to the prior year's actual field worker hourly rate (not to the prior year's AEWR).

3. If the rate for any state, after this adjustment, fell below the nationally adjusted rate, that state would use the national rate as its AEWR. But the annual increase in any state would be limited to 150 percent of the percentage change in the national rate. (This, according to the commentor, would result in a "self-correcting" formula which would not compound aberrations in the prior year's AEWR.)

4. If the new AEWR, set in this way, is lower than the rate under the old methodology, the old AEWR would be increased at a rate of 50 percent of the actual percentage increase in field workers' earnings over the five year period, until it caught up to the rate computed by this new approach.

* * * * *

Issue: Application of Relationship Between Farm and Nonfarm Wages

Twenty-seven persons discussed the proposed methodology's application of the relationship between farm and nonfarm wages as a means of predicting the AEWR for the coming year. Nine of these generally favored this feature of the methodology, and 18 were generally opposed to it.

Arguments for

Several persons, mainly worker representatives, endorsed the Labor Department's rationale for establishing a relationship between farm and nonfarm wages for purposes of setting the adverse effect wage rate. One applauded the methodology's "recognition that farm earnings are affected by the same forces that impact on other sectors of the economy and the earnings of laborers in those sectors" and "that farm and nonfarm earnings are not independent of each other."

A few supporters said they would prefer to link the AEWR even more closely to nonagricultural wages but could accept this methodology. Among these were several representatives of organized labor who said the rate should be based upon wages paid to production workers alone and not related to the current U.S. farmworker wage rate at all, because farmworker wage rates have been historically depressed. Low farm wages simply prove that farmworkers have been discriminated against in the past and were treated as "second-class citizens" in labor legislation such as the lower federal minimum wage in agriculture, one said. Rather than penalize farmworkers for their past low wages, these organized labor representatives reasoned, the AEWR should be set at the $6.50-an-hour average wage rate of nonfarmworkers. At this wage rate, American workers could be found to fill the jobs and the need for foreign workers would be averted.

Endorsing a link to nonfarm wage rates, one organized labor spokesman stated that when Secretary of Labor Willard Wirtz commented on the first DOL regulations for importing foreign labor in 1964, he anticipated that their entry would be "greatly reduced or hopefully eliminated."

Instead, more alien workers entered the U.S. in 1979 than in 1978, with 80,000 entering over the last five years, the commentor said. At the same time, there have been an average of seven million persons aged 16 or over unemployed in the U.S. With domestic unemployment so high, it appears questionable to import labor at $2.00-an-hour less than the average wage paid to production and nonsupervisory workers in nonagricultural industries, he said.

Arguments Against

Those opposed to this aspect of the methodology came from two polar camps: Some felt the formula's farm-

nonfarm wage relationship inflated the AEWR too much, and the others felt it kept the AEWR from rising high enough.

Employers and their representatives comprised the first group. Many of these asserted it is illegal to include nonagricultural wages in the AEWR formula. They contended that the Immigration and Nationality Act and INS regulations seek to prevent an adverse effect on workers "similarly employed." Nonagricultural workers, they argued, are not employed "similarly" to those agricultural workers whom the adverse effect wage rate seeks to protect. Their earnings therefore are not relevant to a determination of adverse effect * * *.

Another argument voiced by employer representatives was the lack of reliable evidence of a relationship between farm and nonfarm earnings. The two sectors are influenced by different factors, they said. "While there may be a demonstrable relationship between the two to date, there is no assurance it will continue," one employer representative wrote. "Nonagricultural workers' earnings, tied to union contracts in many instances, will not jibe with the economics of agricultural endeavors."

Nor are the farm and nonfarm sectors related through the relative movements of wages, an employer representative argued. Industrial workers will not leave their urban homes to become farmworkers, and farmworkers do not move regularly from country to city in response to fluctuating wage rates.

Other employer representatives argued that production workers are more highly skilled than agricultural workers and therefore command a higher wage rate. A comparison of farm and nonfarm wages ignores the differences in education and abilities required in the two sectors. The inclusion of these skilled production workers' wages in the formula distorts the AEWR, they said. In this vein, one commenter suggested that if nonfarm workers' earnings are considered in calculating the AEWR, only entry-level wages should be used and overtime pay should be omitted, along with workers' earnings in industries that have hefty collective bargaining agreements. Earnings of workers employed in industries operating in a limited competitive business environment should also be excluded, this commentor said.

In the second group of opponents to this feature of the methodology were worker representatives. They felt that the formula will maintain the historical disparity between agricultural and nonagricultural wages, so farm wages can never catch up. One commented that the methodology "insufficiently emphasizes the competitive market" by relying too heavily on an "asserted correlation" between farm and nonfarm earnings.

* * * * *

Issue: Setting adverse effect piece rates

Twenty-one people commented on the setting of adverse effect piece rates. Six responded positively and fifteen negatively.

Arguments for

Worker representatives were in favor of the Department of Labor setting adverse effect piece rates. They noted that as the hourly adverse effect wage rate was increased in past years, piece rates remained fairly stable. The growers adjusted the piece rate minimums upward, expecting farmworkers to produce more quickly or be fired. Thus, farmworkers paid on a piece rate basis did not experience increases in earnings as the hourly adverse effect wage rate was raised. One worker representative expressed approval of the requirement that each employer should make an initial adjustment in his/her piece rates from last season such that the employer's average worker would have earned the hourly AEWR without makeup pay.

Another worker representative endorsed the annual adjustment of piece rates but offered an additional suggestion. This involved setting the adverse effect piece rate to produce either the hourly adverse effect wage rate or the "90th percentile rate" for farmworkers in the area of intended employment, whichever was higher.

Yet a third worker representative was concerned with cases in which an employer paid piece rates in past years higher that the proposed adverse effect wage rate. To clarify the issue, he suggested that language be added preventing employers from decreasing an existing piece rate which is higher than the AEWR and preventing employers from allowing these higher piece rates to remain stagnant while the AEWR increases.

Arguments Against

Many growers were concerned about the possibility of an abnormally high piece rate serving as their base which would put them at a disadvantage with their competitors forever. An apple grower with lightly loaded trees, either due to their youth or poor weather conditions, must pay higher piece rates for picking. As the trees mature and in years with better weather, the grower would ordinarily be able to pay a relatively lower piece rate. From the employer's viewpoint, this would not be the case under the Department of Labor's methodology.

An employer representative therefore recommended that paragraph (d) be revised to provide that piece rates which reflect abnormal or unusual conditions shall not be the basis for future years' adverse effect piece rates.

Other employers believed that piece rates should be left to the determination of the grower. According to many, only the farmer is knowledgeable enough concerning crop size, tree size, etc. to set piece rates. As long as the piece rates are locally competitive and produce wages above the federal minimum, a commentor felt the Department of Labor should not make an "unwarranted intrusion" into a grower's business operations. Another employer believed it was unfair to require set annual increases in piece rates if his workers' average piece rate earnings were greater than the national average.

Some letter writers pointed out that H–2 workers are already protected through the hourly adverse effect wage rate and make-up pay. In Florida, an employer representative wrote, piece rates have kept pace with increases in the hourly adverse effect wage rate in order to maintain workers incentive.

* * * * *

Issue: Use of Average Piece-Rate Earnings Data

Of the 10 individuals who commented on the use of average piece-rate data in the proposed methodology, 1 was in favor and 9 were in opposition.

Arguments for

The current methodology for computation of the adverse effect wage rate is based upon annual average wage rates of all field and livestock workers combined. However, the U.S. Department of Agriculture (USDA) has stopped compiling data for the combined worker category; only separate figures are available for field workers and for livestock workers.

Due to this change in the current methodology's data base and the determination by the Department of Labor that another data base is more appropriate, the proposed methodology partly relies upon the USDA national average hourly earnings of piece-rate-paid hired workers in agriculture. The incorporation of piece rates into the methodology recognizes that most agricultural jobs for which H–2 workers are employed are paid on a piece-rate basis.

This proposed change was termed its "principal strength," according to one farmworker advocate. Use of piece-rate

earnings data was considered to be more realistic and a shift that "farmworker advocates have been urging for years."

Arguments Against

Opponents pointed out that the proposed use of piece-rate data contradicts the Department of Labor's earlier position with regard to this data base. According to one employer representative, the Department of Labor believed the field and livestock worker figures preferable to the piece-rate data base because the latter included packing-house workers, machine operators, and supervisors. The commentor contended that the presence of piece-rate-paid crew foremen and harvest equipment operators inflates the piece-rate data base by about 10 percent. Rather than abandoning the field and livestock wage concept entirely, this letter writer suggests using just the field workers' hourly average earnings. This field worker category was believed to be a very relevant comparison, more so than the diverse piece-rate-paid hired farmworker group.

Several employer representatives noted that the AEWR under the proposed methodology would, in effect, be a new minimum wage. This guaranteed wage, imposed by regulation rather than legislation, would be almost 50 percent higher than the federal minimum wage for agricultural workers. It would be derived from average wages, meaning some people earned more and others less, but would serve as a guaranteed floor for each agricultural worker in the H–2 program. For these reasons, a number of employer representatives recommended that the AEWR should simply be the federal minimum wage, or the highest of the federal or state minimum wage; some commentors suggested it be set at the federal minimum wage plus some percentage.

Worker representatives tended to view the AEWR as a ceiling rather than a minimum rate, however. To try to avoid placing an artificially low ceiling on wages in determining the availability of workers, the ceiling should be the highest prevailing wage rate in the nation for agricultural work, in the view of one commentor. Consequently, he favored the Department of Labor's regulation which states that if the prevailing wage rate in a given location were above the adverse effect wage rate, employers wishing to use H–2 workers should pay both domestic and foreign workers the prevailing wage rate.

Rather than applying the adverse effect wage rate to each worker, an employer representative suggested its application to an employer's workforce such that, on average, his employees earned a piece-rate equivalent to the adverse effect wage rate. The commentor recommended that the period for determining the average workforce wage should be long enough so that temporary crop factors do not require abnormally high make-up pay.

A worker representative proposed that greater than average earnings should form the basis of the adverse effect wage rate. For example, the AEWR might be derived from hourly earnings or piece rates in the peak season, i.e., the quarter of greatest agricultural employment in each state.

* * * * *

Issue: Impact on wage levels

A large number of letter-writers—293—commented on the impact of the proposed methodology on farmworkers' wage levels. As calculated by the Department of Labor, the 1980 AEWR under this new system would have been $4.51 per hour. Sixteen commentors took positions in favor of the methodology's impact on worker wage levels. The remaining 177—two-thirds of whom were Virginia employers—objected to the methodology's impact on wage levels. It should be noted that many of the negative comments being counted in this category were presented as objections to *any* increase in the AEWR and did not relate specifically to the methodology being proposed.

Arguments for

As would be expected, proponents of this aspect of the methodology were primarily worker representatives. The old AEWR was too low to encourage growers to recruit domestic workers or to attract U.S. workers to harvesting jobs, in their view. By increasing the AEWR, it was felt that employers would be given more incentive to seek U.S. rather than foreign workers. At the same time, U.S. workers would benefit from the improved wages. The increase was not deemed excessive; even at $4.51 an hour, it would give an average sugarcane farmworker in Louisiana less than $6,800 a year, according to one commentor (apparently assuming a full year's work cutting cane).

Supporters tried to anticipate opponents' arguments by asserting that the new AEWR would produce a negligible inflationary effect. One person stated that the proposed rate is less inflationary than the national average pay increases of farmworkers in recent years. No direct correlation exists between the farm labor price and prices paid by consumers, said a representative of a nonpartisan, private nonprofit organization. "As farmers have said for many years, their portion of the ultimate purchase price is minuscule compared to that part charged by middlemen," this commentor asserted. This, he said, is especially true of sugar prices, where the major influences are internationally controlled price fluctuations and the effect of U.S. government subsidies.

Some worker advocates expressed reservations about the impact on wages, although they considered this methodology an improvement over the existing one. "Any AEWR places an artificial ceiling on potential wages to farmworkers and inhibits the ability of farmworkers to negotiate the most optimum wage possible for their labor," one cautioned. The proposed methodology will still depress wages and reduce the number of U.S. workers available, another said. One supporter recommended that U.S. agricultural policy should recognize the rights of farmworkers to an adequate and decent living; compensate them for the variables inherent in agricultural work, such as the uncertainty of wages, hours, and working conditions; and recognize their contributions to the agriculture industry. These persons nevertheless supported the methodology as "a step in the right direction," as one put it.

Arguments against

Nearly all the negative comments concerning the impact on wage rates came from employers and employer representatives, with a few representatives of rural business joining in.

A large number of Virginia tobacco growers protested that the wage increase would exceed employers' ability to pay and would "put us out of business."

Many commentors expressed opposition to any increase over the federal minimum wage, or to any increase opposition over the existing AEWR level, but offered no criticisms of the specific methodology by which the rate was derived.

Numerous employers and their representatives viewed the proposed AEWR as inflationary. It would hurt farmers at a time when their costs would be passed on to consumers. Others said farmers are unable to pass on increased costs as other businesses can since tobacco companies and large growers dictate the crop prices.

Some employers objected to the "ripple effect" or "domino effect" of the higher wage. They expected the higher rate would cause other farm laborers to demand higher pay. The result, they

believed, would be that non-criteria employers would have to raise their wages to compete for workers. In addition, criteria employers would have to raise the wages of packers, office workers, and others in non-H–2 occupations. The area's minimum wage would effectively become the AEWR, $4.51.

A number of employer representatives believed the proposed AEWR would violate the guidelines of the Council on Wage and Price Stability. A representative of the Florida sugarcane growers stated that the $4.51 AEWR as proposed for 1980 would be creating wage increases ranging from a low of 19 percent in Florida to a high of 55.52 percent in Massachusetts and Rhode Island. This, he claimed, would violate the wage and price guidelines, which allow increases of just 7.5 to 9.5 percent.

Many employer representatives raised the issue of wage comparability with other workers. Free room and transportation (which H–2 employers must provide) plus the minimum wage "are already more than many U.S. workers are earning," one said. A Virginia grower commented that local factory workers in his area earn less than the proposed AEWR of $4.51; another said $4.51 would exceed the $3.01 rate of local farmworkers in the tobacco industry as well as the prevailing wage rate in rural Virginia.

The comparability issue was also a concern of two nonagricultural workers who commented on the proposed AEWR. "Why should an alien make more per hour than I do?" was one letter writer's comment.

Some employers raised the issue of productivity in objecting to the proposed wage level. The unskilled domestic workers being hired cannot work productively enough to earn the higher wage, in their view. Employers should be able to pay less during periods of lower productivity.

One employer felt the higher wage would contribute to "economic disruption and unemployment" by luring lower-paid nonagricultural workers away from their jobs to take seasonal farm jobs at $4.51 an hour; after the harvest ended, these workers would go on unemployment where their benefits would nearly equal their present earnings, he claimed.

* * * * *

Issue: Make-up pay

Of the five people who commented on the provisions for make-up pay, four supported the proposal and one objected to it.

Arguments for

Supporters embraced the make-up pay provisions as an endorsement of the concept of the adverse effect wage rate as a guaranteed earnings floor for the entire work force.

Some of the supporters urged that the make-up pay provisions be strictly enforced. Employers must also be monitored carefully to assure there are no firings of less productive workers.

Arguments Against

The employer who commented on make-up pay warned that if the difference between workers' piece-rate earnings and the AEWR is too great, employers will have to fire a greater percentage of workers.

* * * * *

Issue: Ease of Use, Comprehension

Six persons commented on the ease of use of the proposal methodology. One of these felt it would be readily comprehended by employers and workers. Five felt it would be too complicated or confusing to be easily understood.

Arguments for

A worker representative indicated that the single national rate would be less confusing than the present state-by-state methodology. It would be more easily understood, and hence, compliance would be more effectively assured, he stated.

Arguments Against

Several commentors called for a more complete explanation of the proposed formula for determining the AEWR. It is not enough, one employer representative declared, for the Labor Department simply to say "there is a relation between farm and nonfarm rates and that relationship generates an AEWR of $4.51 for 1980." He called for an explanation of that relationship. A worker representative urged that Section 655.207(b) of the proposed regulations "so vague that probably only the Department (of Labor) will ever know that figure was derived."

An employer representative recommended, instead of the regression equation, a simple averaging of the past five years' average wage data. The difference in results, he claimed, would be insignificant, but it would be comprehensible "to the regulators and to those being regulated."

One grower said the complexity of the methodology would frustrate small farmers' efforts to apply for H–2 certification; they would be forced to go out of business and "convert their land to development."

* * * * * *

Issue: Administration and Enforcement

Six commentors addressed the issue of how the AEWR will be administered and enforced by the Labor Department. Three endorsed the methodology's provisions for enforcement; one opposed them; and two rejected them as inadequate.

Arguments for

Approval was expressed by worker representatives for paragraph (d) of the methodology, authorizing ETA audits for employers' piece rates. Workers groups emphasized the need for careful monitoring of employers regarding piece rates, make-up pay, and productivity firings. Without close monitoring, these commentors felt, it would be easy for employers to pay less than the required piece rate and to circumvent the make-up pay requirement by firing less productive workers.

Arguments Against

Both employer and worker representatives expressed concern about the capability of the Labor Department to operate, monitor, and enforce such a complex and large program. On the employer side, concern was voiced that the Employment and Training Administration has insufficient staff to undertake the administration of such a program, and objections were raised to the expanded bureaucracy its implementation would entail. With the proposed piece-rate adjustments, DOL will be forever mediating piece-rate disputes, one said. On the worker side, ETA's reliance on wage and productivity data supplied by growers was characterized by one commentor as "akin to relying on the fox to guard the chicken coop." This letter writer also noted that the transient nature of these farmworkers necessitates prompt enforcement; otherwise workers will have moved on and will not benefit from corrective action.

The following recommendations were proposed by a worker representative:

To assure that growers adjust their adverse effect piece rates in accordance with DOL's regulations.

1. Employers should be required to submit to DOL, within 20 days after DOL publishes the new AEWR, a written statement showing the employer's piece-rate adjustment. The statement would show:

a. The percentage change in the piece rate, based on the percentage in the hourly AEWR.

b. How the grower determined whether an initial adjustment was necessary to bring last season's average worker up to the AEWR without make-up pay.

2. DOL should review the employer's pay and productivity records to verify that the required piece rates have been made.

To assure that employers pay the proper piece rates and make-up pay:

1. Before beginning work, employers should be required to give workers a written statement explaining the adverse effect wage rate.

2. Employers should be required to keep daily records of hours and productivity for each worker. A copy would be given to each worker at the end of the day showing:

Hours worked
Producitivity
Piece-rate earnings
Make-up pay, if any
Gross earning
Deductions

3. Employers should be required to file the pay and productivity records with DOL at the end of each pay period. DOL would review the records, monitor employers on-site, and conduct audits to assure compliance. In their reports, employers would be required to make a statement as to whether make-up pay was or was not required and paid.

To insure against productivity firings:

1. H–2 growers should not be permitted to fire domestic workers without first giving notice in writing to the appropriate DOL representative.

2. DOL should review each situation to determine if the worker is making "reasonable efforts to produce."

* * * * *

Issue: Timing of publication

Only one commentor directly addressed the issue of the timing of publication of the coming season's adverse effect wage rate. This representative of sugarcane growers recommended that the Labor Department should publish the AEWR no later than March 1, to be effective June 1 of each year. He noted that this would be early enough to prevent last minute confusion about wages in the sugar harvest, which begins in early August.

* * * * *

Issue: Methodologies for logging and sheepherding

Of the two individuals who remarked on the methodologies for logging and sheepherding, both were negative toward the proposal.

Arguments For

None.

Arguments Against

A representative of fruit growers objected to the unique treatment of logging and sheepherding compared with the rest of the agricultural sector. The letter writer contended that production workers' earnings should be used in calculating an adverse effect wage rate for logging and sheepherding if they were used for the remainder of agriculture. In addition, the Department of Labor violated its nationwide approach in the case of logging and sheepherding by limiting their adverse effect wage rate determination to the area of intended employment, according to the commentor.

A logging worker representative was opposed to continuing the use of the prevailing wage rate as it is currently calculated to set the logging AEWR. It was felt that the 40 and 51 percent rules which are used to establish prevailing rates tend to fix the prevailing wage rate in the mid-range of surveyed wages, enabling employers who paid in the upper ranges to offer lower wages the next year and still be eligible for foreign labor, as well as artificially inhibiting the normal rise in wage rates. In addition, the prevailing wage rate is a full year out-of-date even before being implemented. Consequently, the writer concluded that the current methodology "guarantees an adverse effect on domestic loggers' wages."

As an alternative to continuing the current methodology, the commentor made two suggestions. To determine the prevailing wage rate a 90 percent rule should be applied: that is, array the actual wage rates paid in ascending order along with the number of workers who received the corresponding rate; cumulate the number of workers starting at the lowest wage rates until 90 percent of the workers surveyed are reached; the corresponding rate at this point should be derived by way of "a percentage formula based upon the demonstrated historical relationship between the national average of wages paid in logging and those paid to production workers in the private nonfarm economy during the previous year."

The letter writer disputed the Department of Labor's contention that loggers' wages equal or exceed the "annual hourly earnings" of nonfarm production workers. Since loggers are paid a piece rate, they are not paid for down time due to equipment breakdown or traveling time between the camp and cutting location, for example. The equipment rental fee that loggers do receive rarely covers their equipment costs in full, and the fee is received only during the months the loggers can find work while their payments extend throughout the year.

The logging worker representative noted that the adverse effect wage rate should continue to be applied to an employer's entire workforce, as the new methodology would do. Permitting less than 100 percent of the workforce to be covered (a possibility the Labor Department raised for discussion at last year's regional hearings) would not comply with the intent of the law which was designed to protect all domestic workers. It would also add to the Department of Labor's monitoring workload to assure compliance, the commentor noted.

A final point made by the representative dealt with whether loggers were being denied an hourly adverse effect wage rate since the rate in logging is based upon the prevailing (piece) rate. If this is the case, the farmworker representative objected. An hourly adverse effect wage rate above the prevailing piece rate wage is needed for loggers "to protect them from frequent breakdown in their expensive equipment. Also, woodsmen working with Canadian H–2's are often placed in poor cutting areas while Canadians receive better chances. An hourly wage would be some hedge against this kind of discrimination." Lastly, the commentor wrote that without an hourly wage woodsmen would not be protected while they developed the requisite skills, thus, they would be discouraged from entering and remaining in the labor market which is contrary to the intent of the H–2 program.

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Note.—The remainder of the Ruttenberg summary discusses comments which were received on issues other than the substance of the proposed rule, and which were not material to this rulemaking proceeding.

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Friday
January 16, 1981

Part XVII

Department of Health and Human Services

Social Security Administration

Disability Insurance and Supplemental Security Income; Determinations of Disability

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Parts 404 and 416

Disability Insurance and Supplemental Security Income; Determinations of Disability

AGENCY: Social Security Administration, HHS.

ACTION: Proposed rule.

SUMMARY: These regulations for administering the disability determination function implement section 304 of Pub. L. 96-265 (the "Social Security Disability Amendments of 1980") which amends section 221 of the Social Security Act.

The disability determination function is now carried out by the States and the Federal Government under negotiated agreements between the Social Security Administration (SSA) and States. The law provides that, effective June 1, 1981, disability determinations will be made by the State agencies in compliance with regulations containing performance standards and other administrative requirements and procedures relating to the disability determination function. States will have the option of turning the function over to the Federal Government if they do not wish to make disability determinations and the Federal Government has the authority to partially or wholly assume the disability determination function of any State that does not meet the prescribed minimum performance standards.

The proposed regulations specify the responsibilities of the Secretary and the States in administering the disability program. They prescribe standards for accuracy of performance and processing time that State agencies must meet in making disability determinations, and provide the administrative requirements and procedures SSA and the State agencies will follow in carrying out the disability determination function. Provisions are included specifying how SSA or a State may terminate the State agency's performance of this function.

The primary purpose of these regulations is to improve the quality of State agency performance in following our adjudicative criteria and to improve the timeliness of disability determinations. These regulations will afford the States maximum practicable management flexibility in meeting objectives.

DATES: We will consider your comments if we receive them no later than March 17, 1981.

ADDRESSES: Send your written comments to the Commissioner of Social Security, Department of Health and Human Services, P.O. Box 1585, Baltimore, Maryland 21203. You may see copies of all comments we receive at the Washington Inquiries Section, Office of Governmental Affairs, Social Security Administration, Department of Health and Human Services, Room 1212, Switzer Building, 330 C Street, S.W., Washington, D.C. 20201.

FOR FURTHER INFORMATION CONTACT:

Harry J. Short or William J. Ziegler, Legal Assistants, Office of Regulations, Social Security Administration, 6401 Security Boulevard, Baltimore, Maryland 21235, telephone 301-594-7337 or 301-594-7415.

SUPPLEMENTARY INFORMATION:

Federal-State Structure Before Public Law 96-265

The disability programs under title II and title XVI of the Social Security Act (The Act) are administered under a Federal-State mechanism having its origins in the disability freeze provisions of the 1954 Amendments to the Act. At that time, Congress specified that determinations of disability should be made by State agencies under agreement with the Secretary. Wherever possible the State rehabilitation agency was to be the contracting agency to encourage rehabilitation contacts by disabled persons and to take advantage of the medical and vocational expertise of those agencies.

Negotiated agreements are currently in effect for 54 State agencies for making disability determinations for claimants applying for disability benefits under title II and title XVI of the Act. The agreements cover all the States plus the District of Columbia, Puerto Rico, and Guam; in South Carolina there are separate agencies for the blind and the disabled.

Under these agreements the State agencies, on behalf of the Secretary of Health and Human Services, make determinations of disability on the basis of standards and guides issued by SSA. SSA pays 100 percent of the costs incurred by the States in performing this function. The State agency function includes obtaining medical and vocational evidence from the applicant and his or her medical treatment sources, and where necessary, arranging for one or more examinations of the applicant by a medical specialist. Each determination of disability is made by a team consisting of a lay disability examiner and a physician on the State agency staff.

Section 221(a) of the Act provided that the determination of whether a person was disabled, and when a disability began and ended, would be made by a State agency under an agreement between the State and the Secretary and that, for purposes of the Act, determinations by the State are determinations of the Secretary. Section 1633(a) of the Act authorized the Secretary to make the same arrangements for title XVI purposes. Section 221(c) provided that the Secretary, on her own motion, could reverse the State's determination that a person was disabled, or could determine that a disability began later or ended earlier than the State had determined. In other important respects, the Act generally limited the Secretary's authority to make disability determinations. By precluding the Secretary from reaching a more favorable finding on a disability issue in reviewed cases, it gave the State what amounted to final authority in many cases for determining which applicants were disabled and, consequently, to a large extent how the SSA program was administered.

In 1978, the General Accounting Office (GAO) at the request of the Honorable James A. Burke, Chairman, Subcommittee on Social Security of the Committee on Ways and Means, U.S. House of Representatives, studied the effectiveness of SSA's management of the disability determination process of State agencies. GAO issued a report criticizing the quality and uniformity of the disability determination process. GAO recommended that SSA adopt a stronger and more active management role and that SSA revise the Federal-State agreements to clearly define the responsibilities of each party consistent with a uniform disability determination process. Papers prepared by the staff of the Subcommittee on Social Security for the use of the Committee on Ways and Means also recommended stronger Federal control.

The Federal-State model agreement was therefore revised. The revised model agreement reflected SSA's intentions to administer the program through standards, to take a lead role in assuring uniform training of State agency personnel, and to deal with those State practices that over the years had become impediments to effective administration.

SSA tried to get all the States to enter into the new agreement during the summer and fall of 1978, but considerable resistance was encountered. The revisions in the agreement were viewed by various State

officials and organizations as interfering with traditional State prerogatives to manage their own affairs. This concern is reflected in the fact that only 21 of 54 State agencies signed the new agreement.

PUB. L. 96-265—SECTION 304

General

Congress amended the Act to increase the Secretary's ability to influence State performance. The Secretary is required to establish, by regulation, whatever standards of performance and administrative requirements and procedures she considers necessary for the States to follow to insure effective and uniform administration of the SSA disability programs. Section 221(a), amended by Pub. L. 96-265, provides that beginning June 1981, disability determinations will be made by the State unless it notifies the Secretary, in writing, of its wishes to no longer make the determinations, and if the Secretary has not found that the State has failed to make determinations consistent with standards to be prescribed by the Secretary. Section 221(c) authorizes the Secretary to review State determinations and, based on the review, to make findings as to whether a person is or is not disabled and, if disabled, whether the disability began on an earlier or later date or ended on an earlier or later date than that determined by the State.

The amendments also provide that a State which wishes to discontinue making disability determinations or, is found to be failing to make disability determinations as prescribed by standards, must continue to make the determinations for at least 180 more days. The Secretary is required to make the disability determinations thereafter. The Secretary is further required to develop and initiate a plan for the partial or complete assumption of a State's disability determination function if such a step becomes necessary. The plan must provide for the continuation of the disability determination function and for the protection of any affected State employees. The Secretary must five preference to capable State employees in filling appropriate employment positions, and may not assume a State's function until the State has made a fair and equitable arrangement to protect the rights of displaced State personnel (with some limited exceptions) not utilized by the Secretary. (The Secretary of Labor will determine if this has been done.) The Secretary is directed to advise the Congress of any amendments of Federal law and regulations needed to carry out the plan.

The amendments also place responsibility upon the Secretary to provide for the continued effective operation of the disability program in the event of the non-participation of one or more States. This is to be done with only limited time to prepare for the State's non-participation and the need to assure protection of the employment rights of the displaced State personnel before the Secretary can assume the State's function.

Specific Provisions of the Law Subject to Regulations

Pub. L. 96-265 eliminates the system of negotiated agreements between the Secretary and the States and requires the Secretary to establish, through regulations, the procedures and performance standards for the State disability determination function in whatever detail appears appropriate.

The law gives the Secretary broad discretion to determine, for example, what matters to regulate, in how much detail to regulate them, and whether to regulate or to issue "other written guidelines." The Secreatary may regulate such matters as:

- The administrative structure and the relationship between various units of the State agency;
- The physical location of, and relationship among, agency staff units and other organizations performing tasks for the State agency;
- Standards for the availability to applicants and beneficiaries of facilities for making disability determinations;
- State agency performance criteria, including the rate of accuracy of decisions and the time periods within which determinations must be made;
- The procedures for and the scope of review by the Secretary and, as she finds appropriate, by the State, of its performance in individual cases and classes of cases;
- Rules governing access of appropriate Federal officials to State offices and to State records relating to its administration of the disability determination function;
- Fiscal control procedures that the State agency may be required to adopt; and
- The submission of reports and other data, in such form and at such time as the Secretary may require, concerning the State agency's activities relating to the disability determination function.

Congressional Concerns

In its deliberation during the development of Pub. L. 96-265, Congress was aware of the problems in the existing Federal-State structure. It felt that significant improvement in Federal management and control was necessary and that the amendments would strengthen the Federal role in how disability determinations are made in the State agencies.

Congress recognized the possibility that under Pub. L. 96-265 some States may decide not to participate under the program, or that the Secretary may determine that a State is not complying with the regulatory requirements promulgated under this legislation. It was concerned that there be adequate procedures to establish Federal administration if State administration ended for either reason. Two issues were of particular concern: the potential disruption of the ongoing determination process which could create hardship for disability applicants, and the positions of the State employees involved.

Congress concluded that the Department did not appear to have any extensive planning for Federal assumption of the State agencies' functions. Therefore, to stimulate planning for such a contingency, Pub. L. 96-265 required that the Secretary submit to Congress a detailed plan of how the Secretary expects to assume the functions and operations of a State disability determination function should it become necessary. The plan is to assume the uninterrupted operation of the disability determination process, including the utilization of the best-qualified personnel to carry out this function. Congress also recommended that the Department give consideration to establishing conditions of employment so that the best-qualified State employees would not be substantially disadvantaged in transferring to Federal employment, in the event that a State quits or is terminated for poor performance.

Basic Considerations for Assuming State Functions

If a State chooses to stop making disability determinations, or if the Secretary finds it necessary to assume the function because a State fails to meet the standards, several legislated requirements and responsibilities will govern the Secretary's action.

A. Requirements.

Pub. L. 96-265 imposes four conditions on the Secretary's assumption of the disability determination function. These are:

1. The Secretary must assume the disability determination function no earlier than 180 days after a finding that the State is substantially failing to make disability determinations consistent with regulations or after receipt of a

State's notice of its intentions to stop making disability determinations;

2. The Secretary's assumption must be made without any interruption in services to the residents of the State;

3. The Secretary must (with some very limited exceptions) give hiring preference to State agency employees who are capable of performing duties in the disability determination process for the Secretary; and

4. The Secretary may not assume a State's function until after the Secretary of Labor has determined that the State has made fair an equitable arrangements under applicable law to protect the interests of those State agency employees who will be displaced from their employment on account of the Secretary's assumption and who will not be hired by the Secretary.

B. *Responsibilities.*

When the Secretary has determined that a State agency's function must be terminated or when a State decides to stop making disability determinations, the Secretary of HHS, the State, and the Secretary of Labor must fulfill certain responsibilities.

1. The Secretary of HHS's responsibilities are to:

a. Begin making disability determinations no sooner than 180 days after notice that a State agency's disability determination function will end;

b. Develop and initiate procedures to give hiring preference to State agency employees who are capable of performing duties in the disability determination process; and

c. Insure that the Secretary of Labor has determined that the State has made fair and equitable arrangements for any State agency employees who will be displaced by the assumption and who will not be hired by the Secretary.

2. The terminating State's responsibilities are to:

a. Continue making disability determinations for not less than 180 days after a termination notice, or until the Secretary has fulfilled his or her responsibilities; and

b. Make fair and equitable arrangements to protect the interests of State agency employees who will not be hired by SSA. Employees' interests must be protected in accordance with applicable Federal, State, and local statutes.

3. The Secretary of Labor's responsibility is to determine that the State has made fair and equitable arrangements for protecting State personnel.

State Involvement in Development of the Regulations

In January 1980, SSA convened a two-day work group meeting of SSA central and regional office and State personnel to give us their views on developing the performance standards required by the disability bill. This work group developed some tentative guides for such performance standards.

During the summer of 1980, SSA invited to the headquarters in Baltimore, all of the DDS administrators, and in a series of four meetings, plans for issuing regulations under Public Law 96-265 were discussed. These were meetings in which the DDS administrators had an opportunity to comment on the general direction of our plans and to offer specific suggestions for the scope of the regulation. The reactions of these State administrators were considered in developing the regulations, and a number of significant changes resulted from their recommendations.

Our Basic Implementation Approach

It is our intention to use these regulations and the statutory authority derived from Pub. L. 96-265 to improve the overall administration and delivery of the disability program. We will accomplish these improvements by:

1. Setting a targeted level of performance that we will work to attain in the future.

2. Creating a system of intermediate goals to serve as stepping stones to progress towards our targeted level of performance;

3. Establishing a threshold level clearly defining the lowest level of acceptable performance by a State agency;

4. Setting forth those actions that we will take to make sure unacceptable performance does not continue; and,

5. Establishing administrative requirements that will provide the States with management flexibility, establishing the framework for the Federal-State partnership, and at the same time, allow us to retain our program stewardship responsibilities.

The proposed regulations use standards as the mechanism to "drive" the disability determination process towards continued improvement.

We will specify the outcome expected. We will carefully monitor the States' disability determination process in terms of performance accuracy and processing time. The States will have control over management of their operation as long as performance is adequate under the standards which we set.

If a State's performance becomes unacceptable, these regulations provide for Federal involvement in the State's activities in making disability determinations for the purpose of improving the State's performance. We have a responsibility under the law for seeing that the disability programs are efficiently and equitably administered. If, even after our assistance, a State's performance is not adequate, we will take action to take over the disability program from the State.

While we are proposing regulations to establish national standards for performance accuracy and processing time, we will continue to assure the fiscal integrity of the States' operations through the budget process. Individual State budgets will continute to be negotiated on the regional level. The objective of negotiations is to determine a level of funding within available resources that will be perceived by Federal and State officials as sufficient to meet standards and stated goals. The negotiated budget is an integral part of the decision of setting goals. States will be expected to meet standards and goals within the negotiated budget.

The Target Level

We have developed target levels for State agency combined title II and title XVI initial accuracy, title II initial processing time, and title XVI processing time. The values selected for the target levels represent a difficult challenge but are designed to reflect what we believe to be a level of performance and service delivery that we should constantly strive to attain.

Intermediate Goals for State Performance Between the Target and Threshold Levels

We will establish intermediate performance goals between the threshold standards and the target standards in order to assure continued movement towards our targeted level of performance. Our regional offices will annually negotiate a new set of individual State agency goals to help them move from the current levels of performance to target levels. Failure to meet these intermediate goals will not be cause for considering a State to be substantially failing to comply with the regulations. However, such failure will be a matter of concern to us and may result in our requesting the State to take corrective action and possibly offering technical assistance.

The Threshold Levels

We are also establishing threshold levels for State agency performance accuracy and processing time. These are minimum acceptable levels for combined title II and title XVI initial performance accuracy, title II initial processing time, and title XVI initial processing time. We established the threshold levels for processing time and performance accuracy by using the national mean and applying a measurement of one standard deviation from the mean. (A standard deviation is a mathematical way of measuring the variability of items around an average.) Data from the fiscal year ending September 30, 1979 was used to establish the levels. Falling below these threshold levels will be unacceptable and will mandate appropriate action on our part to improve the situation. These actions are set forth in §§ 404.1650 and 416.1050

We will reexamine the threshold levels annually, but we will not make changes or modifications automatically. Instead, any decision to adjust the prevailing threshold standards will be made based on current State performance, procedural changes, systems modifications and resources.

In making any changes in the threshold levels we will continue to use the mean and standard deviation approach. In §§ 404.1040 through 404.1650 and in §§ 416.1040 through 416.1050, we explain how the threshold standards are used by us in evaluating State performance.

Determining Performance Accuracy

"Performance accuracy" refers to the realiability of State agency adjudication. In determining a national standard for State agency performance accuracy for purposes of section 304, we consider not only whether disability decisions are right or wrong for payment, but also whether the claims have all the desired evidence and whether all factors contributing to a sound decision were considered. Accordingly, the percentage of cases that can be processed without being returned to the State agency for further development or for correction of decisions based on evidence in the file represents the State agency's performance accuracy rate. The State agency's original decision is not changed in the majority of cases that are returned for additional development. Errors in performance accuracy identified by the quality assurance system should not be interpreted as exclusively reflecting decisions that either incorrectly deny or award benefit payments. Since the quality assurance system measures factors that have the potential for impacting decisions as well as the correctness of the decision, the rate of incorrect decisions is significantly lower than what is reflected in the standards cited in these regulations. Nevertheless, we believe we must measure accuracy using a higher standard than correct decisions.

Our most current data indicates that with a national level of performance accuracy of about 93 percent the rate of correct decisions is approximately 97 percent. Since decisional accuracy is tied to performance accuracy, the system we are establishing to use goals and standards to improve performance will also improve decisional accuracy. We estimate that our target level of 87 percent performance accuracy will yield a decisional accuracy rate of 99 percent.

Performance Accuracy Threshold Level

The national performance accuracy threshold level was established using fiscal year 1979 State-by-State title II and title XVI performance accuracy rates for disability determinations at the initial (first) level of adjudication. These data were obtained from the Disability Quality Assurance System. A combined title II and title XVI national mean and standard deviation were calculated together. Separate calculations were not made for each title as they were for processing time. The national mean was formulated using the individual State agency fiscal year 1979 performance accuracy rates. The title II initial performance accuracy rates and the title XVI initial performance accuracy rates were statistically weighted by workload size for each individual State agency. A national mean was then computed for combined title II and title XVI initial performance accuracy. The combined title II and title XVI initial performance accuracy national mean for fiscal year 1979 resulted in a rate of 92.5 percent. The standard deviation was calculated and resulted in a rate of 1.9 percent.

The threshold level for State agency performance accuracy has been established at one standard deviation below the national combined title II and title XVI initial performance accuracy mean. This threshold level was set after considering historical trends in State agency performance accuracy, past performance, and statistical theory. In addition, the selection of the threshold level was dependent upon our staffing and fiscal capacities for providing necessary technical and management assistance to State agencies whose performance is likely to fall below the threshold levels. Applying the one standard deviation measurement to the fiscal year 1979 national combined title II and title XVI performance accuracy mean, the threshold is 90.6 percent for combined title II and title XVI initial performance accuracy.

Determining Processing Time

State agency processing time for title II initial disability claims is the average number of days from the time the State agency receives the claim until the determination is put into the Social Security Administration Case Control System (SSACCS). Saturdays, Sundays, and holidays are counted.

State agency processing time for title XVI initial disability claims is the average number of days from release of the claim by the social security district office to the State agency until the determination by the State agency is put into the Supplemental Security Income Case Control System (SSICCS). Saturdays, Sundays and holidays are counted.

Determining Processing Time Threshold Levels

Processing time threshold levels were formulated using fiscal year 1979 State-aby-State title II and title XVI mean processing time data for disability determinations at the initial (first) level of adjudication.These data were obtained from the Social Security Administration Case Control System (SSACCS) for title II and the Supplemental Security Income Control System (SSICCS) for title XVI. National means and standard deviations were calculated separately for title II and title XVI from these data. The national means were calculated using two steps.

First, the fiscal year 1979 mean processing time was established for each State agency by taking the average of the 12 monthly State agency processing time means. Then, the average of the individual State agency means was calculated to produce the national mean. This two-step process was applied separately to title II data and on title XVI data and resulted in the following national means:

Title II initial processing time—43.2 days.

Title XVI initial processing time—54.3 days.

The standard deviations for initial title II and title XVI fiscal year 1979 processing time data were calculated using established statistical techniques and resulted in the following:

Title II initial processing time—6.3 days.

Title XVI initial processing time—7.8 days.

The threshold levels for State agency processing time have been set at 1 standard deviation above the fiscal year

1979 national mean processing time. This decision was based on past State agency processing time, historical trends in State agency processing time, and statistical theory. In addition to mathematical and statistical considerations, the 1 standard deviation level was established based on our fiscal and staffing capabilities for providing necessary technical and management assistance to State agencies whose performance is likely to fall below the threshold levels. Applying the 1 standard deviation measurement to the fiscal year 1979 national processing time means, the thresholds are as follows:

Title II initial processing time—49.5 days.

Title XVI initial processing time—57.9 days.

The title XVI processing time threshold was reduced by 4 days to account for a computer systems modification which was activated in May 1979. This change stopped the measurement of State agency processing time when a State agency presumptive disability determination was put into SSICS, rather than when the final decision was made. (A finding of presumptive disability is made before obtaining the evidence needed for a final determination when there is a high degree of probability of disability on the basis of the evidence available at the time.) After extensive study, it was determined that this modification lowered State agency title XVI initial mean processing time by 4 days on the average.

Target Levels and Intermediate Goals

Target levels represent the highest level of performance and service delivery presently achievable. They will, by their very nature, challenge nearly all agencies to improve. Each State each year is expected to make progress toward the target. The extent of progress will be negotiated annually on the regional level as part of the State agency budget process.

Other than the annually negotiated goal, there is no time frame for meeting the target. States will always be constrained by workloads, availability and competency of staff, and available money.

Technical and Management Assistance

We will do ongoing monitoring to evaluate State agency performance of combined title II and title XVI initial performance accuracy, of title II initial processing time, and title XVI initial processing time. The monitoring will allow us to determine whether a State agency will receive either mandatory or optional technical and management assistance. A State agency will receive mandatory assistance if it fails to meet two of three established threshold levels (one being accuracy) for two consecutive quarters. Failure to meet any one of the threshold levels for 2 consecutive quarters may result in mandated technical assistance.

A State agency will receive optional technical and management assistance when our regular monitoring reveals State agency performance has significantly declined although not so low as to require mandatory assistance. We will offer optional assistance at our discretion based on our available resources. The technical and management assistance we will give a State agency is explained in §§ 404.1661 and 416.1061.

"Substantial Failure"

If a State agency substantially fails to make disability determinations consistent with the Secretary's regulations and other written guidelines, Pub. L. 96–265 requires the Secretary (after giving the State notice and an opportunity for a hearing) to make the disability determinations.

Our approach will be to closely monitor and evaluate State agency performance of title II and XVI performance accuracy, title II processing time, and title XVI processing time. If a State agency is falling below 2 of the 3 threshold levels (one of which must be accuracy) for 2 consecutive quarters, we will provide technical and management assistance to the State agency for up to 12 months. After the assistance period, the State agency will have a 3-month adjustment period. After the adjustment period, if the State agency again falls below 2 of the 3 threshold levels (one being accuracy) in 2 consecutive quarters, during the next 12 months, we will notify the State that the State agency is in danger of being found to be in substantial failure and give the State an opportunity for a hearing. If it is found that the State substantially failed to comply with the regulations and written guidelines, the Secretary must take over the disability determination function. We explain "substantial failure" in more detail in §§ 404.1670 through 404.1675 and in §§ 416.1070 through 416.1075.

Right to Hearing

We will notify a State that we are proposing to terminate its performance of the disability determination function if it is substantially failing to make disability determinations consistent with our regulations. The State will have an opportunity for a hearing before any termination. The hearing will be conducted as described in §§ 404.1660 through 404.1662 and in §§ 416.1060 through 416.1062.

Administrative Requirements and Procedures

Basically, our implementation approach is to specify certain performance results and let the States perform through their best management procedures with minimum Federal involvement as long as their performance is acceptable.

Accordingly, we are regulating administrative areas only to the extent necessary to insure effective stewardship of the disability program. This is a significant shift in our administrative relationship with the States under the agreements. We explain administrative requirements and procedures in §§ 404.1620 and through 404.1633 and in §§ 416.1020 through 416.1033. Specifically, here is what we are proposing to do, and not do, in the regulations with respect to the various administrative areas that have to be addressed.

Adjudication

The State will make disability determinations in initial, reconsideration, and continuing eligibility cases under the various provisions of the Act.

A State disability examiner (lay) and physician team will make these determinations. However, we do not propose regulating the types of positions to be established beyond the adjudication team.

In making determinations, the State will use our forms and procedures and adhere to the policies we may require to insure uniform and effective administration of the disability program throughout the United States.

However, we are not proposing to regulate the internal case flow procedures except where they appear to contribute to unacceptable performance by a State.

Organization

The State will be expected to provide an organizational structure, sufficient qualified personnel, and medical consultative services that will result in timely processing and accurate decisionmaking of disability claims. We will not impose requirements, either through regulation or other directive, for a specific organizational structure unless State performance approaches unacceptable levels. We also do not propose to regulate the place in the State hierarchy of the State agency, or the relation of the State agency to other

components in State government. The State will be responsible for producing an accurate and timely disability decision.

Personnel

In general, the State will be responsible for establishing positions, recruitment, selection, tenure, compensation, and staff development policies. The State will insure an acceptable level of competency of all employees through selection, ongoing training and staff development. However, we will provide technical training materials. We will become further involved only when State performance approaches unacceptable levels, or where the State requires complex instructional or training materials or the capacity of the State to deliver adequate training is in doubt. The State will make personnel available to attend meetings or conferences as may be necessary for furthering the purpose of the disability programs. The State must comply with equal employment opportunity directives in making disability determinations as specified in executive orders or the Code of Federal Regulations.

To the extent that Federal funding is available, the State will contribute to the processing of disability claims by avoiding, to the extent feasible and permissible under State law, personnel freezes, restrictions against overtime work, or other curtailment of facilities or activities.

Facilities

To the extent that Federal funding is available, the State will provide space, equipment, supplies and other services as will contribute to the timely and accurate processing of disability claims. The State will determine the locations where disability determinations are to be made. However, the State will provide the Secretary with access to the premises for the purpose of inspecting the work and activities required by these regulations. We will always give the State reasonable notice of the times of our visits.

Medical and Other Purchased Services

The State will determine the rates of payment to be used in arranging for medical or other examinations necessary to make determinations of disability. These rates should be designed to aid in the procurement of needed services but may not exceed the highest rate paid by Federal or other agencies in the State for the same or a similar type of service. The State will maintain documentation to support the rates of payment it uses.

Records and Reports

The State will furnish schedules, financial and cost reports, and other reports relating to the administration of the disability program that we may require. Records relating to the work being performed under these regulations will be retained by the State for a period of time specified by us. We will have access to these records for purposes of monitoring, research and development and audit.

Research and Demonstration Projects

We will request State participation in federally funded research and demonstration projects to assess the effectiveness of the disability program and to ascertain the effect of program policy changes. Where we determine that participation is necessary for the project to be complete, e.g., to provide national uniformity in a claims process, State participation will be mandatory.

Fiscal

We will provide the State with funds in advance or by way of reimbursement for necessary costs incurred by the State in making disability determinations under these regulations. The State will submit estimates of anticipated costs for the periods, and at the time and in the manner we may request. After considering all pertinent information, we will notify the State of the amount which will be made available to it for the period, as well as what anticipated costs are being approved. The State will not incur or make expenditures for the period for items which we do not approve, or in excess of the amount we certify as available.

After the close of a period for which funds have been certified to the State, the State will submit a certified report of its actual expenditures. We will inform the State by audit whether expenditures were necessary and proper under standards in effect at the time expenditures were made or incurred. The standards may be found in subpart 1–15.7 of part 1–15 of the Federal Procurement Regulations (41 CFR 1–15.7) and in the Disability Insurance section of the Program Operations Manual System (POMS).

Any monies we pay to the State which are used for purposes not within the scope of these regulations will be paid back to the Treasury of the United States.

Considerations in Developing Standards

Performance Standards

Our primary considerations are related to fostering improvement in the adjudication process. In developing performance threshold levels, we took a middle of the road approach. We considered setting the threshold higher, but rejected it as imposing an unrealistic demand on States in the beginning stages of our changed relationship to the States. We also considered setting the threshold low, but dropped the option as doing little more than reinforcing the status quo. Our middle of the road approach will mean providing technical assistance to possibly 13 States with 2 of them likely to be in substantial failure.

Administrative Standards

Again our approach is moderate. We have elected to regulate only to the extent necessary to insure the Secretary's responsible stewardship and foster effective and uniform administration of the program. The proposed regulations on travel, training, access, records and reports, fiscal, and research and demonstration projects are examples in point.

We decided not to regulate specifically in more areas as inconsistent with our objective of giving the States management flexibility. On the other hand, we opted against regulating less specifically as failing to carry out our statutory mandate to assure effective and uniform administration of the disability insurance program throughout the United States.

Conclusion

We believe that these regulations will improve the quality of State agency performance and insure that claimants throughout the country are judged under national standards and procedures while preserving the basic Federal-State structure. However, we are publishing these amendments now only as proposals. They will not become effective as regulations unless they are adopted and published again in the Federal Register as final regulations. Although the policies, procedures, and rules which we are proposing have been developed over a long period of time with participation of the States and others, we are planning to continue an outreach effort during the comment period so as to obtain the widest practicable responses from the public, including the disabled.

The purpose of this notice is to give the public an opportunity to participate in the rulemaking process before the adoption of the final rules.

While we have already met with State agency administrators, certain agency directors, and representatives of other organizations, we would still like to get any additional views they may have.

We would also like to have the views of other people who are interested in the administration of the title II and title XVI disability programs. We welcome comments from State employees, especially other administrators, disability examiners, and medical consultants. We also believe that comments from employee unions, legal advocacy groups, and other organizations and associations concerned with the title II and title XVI disability programs will be most helpful to us. Since these proposed regulations are intended ultimately to benefit those members of the public who file disability claims, the general public has significant interest in regulations designed to serve it. Therefore, we will carefully consider any comments we receive from private citizens as well as from representatives of organizations.

The proposed amendments are issued under the authority contained in sections 205, 221, 1102, 1614 and 1631 of the Social Security Act, as amended; 53 Stat. 1368, as amended; 66 Stat. 1081, as amended; 49 Stat. 647, as amended; 86 Stat. 1471; 86 Stat. 1473; 42 U.S.C. 405, 421, 1302, 1382c, and 1383.

(Catalog of Federal Domestic Assistance, Program No. 13.802, Disability Insurance; No. 13.807, Supplemental Security Income Program.)

Dated: November 10, 1980.

William J. Driver,

Commissioner of Social Security.

Approved: January 9, 1981.

Patricia Roberts Harris,

Secretary of Health and Human Services.

PART 404—FEDERAL OLD-AGE, SURVIVORS, AND DISABILITY INSURANCE (1950-)

Part 404 of Chapter III of Title 20 of the Code of Federal Regulations is amended as follows:

1. Section 404.1502 is revised to read as follows:

§ 404.1502 General definitions and terms for this subpart.

As used in the subpart—

"Secretary" means the Secretary of Health and Human Services.

"State agency" means that agency of a State which has been designated by the State to carry out the disability determination function.

"We" or "us" refers to either the Social Security Administration or the State agency making the disability or blindness determination.

"You" refers to the person who has applied for benefits or for a period of disability or is receiving benefits based on disability or blindness.

2. Section 404.1503 is revised to read as follows:

§ 404.1503 Who makes disability and blindness determinations.

(a) *State agencies.* State agencies make disability and blindness determinations for the Secretary for most persons living in the State. State agencies make these disability and blindness determinations under regulations containing performance standards and other administrative requirements relating to the disability and blindness determination function. States have the option of turning the function over to the Federal Government if they no longer want to make disability determinations. Also, the Secretary may take the function away from any State which has substantially failed to make disability and blindness determinations in accordance with these regulations. Subpart Q of this Part contains the rules the States must follow in making disability and blindness determinations.

(b) *Social Security Administration.* The Social Security Administration will make disability and blindness determinations for the Secretary for—

(1) Any person living in a State which is not making for the Secretary any disability and blindness determinations or which is not making those determinations for the class of claimants to which that person belongs; and

(2) Any person living outside the United States.

(c) *What determinations are authorized.* The Secretary has authorized the State agencies and the Social Security Administration to make determinations about—

(1) Whether you are disabled or blind;

(2) The date your disability or blindness began; and

(3) The date your disability or blindness stopped.

(d) *Review of State Agency determinations.* On review of a State agency determination or redetermination of disability or blindness we may find that—

(1) You are, or are not, disabled or blind, regardless of what the State agency found;

(2) Your disability or blindness began earlier or later than the date found by the State agency; and

(3) Your disability or blindness stopped earlier or later than the date found by the State agency.

§§ 404.1601–404.1610 (Subpart Q) [Redesignated as

§§ 404.2001–404.2010 (Subpart U)]

3. The headings and text of §§ 404.1601–404.1610 (Subpart Q) are redesignated as §§ 404.2001—404.2010 (Subpart U) respectively. The heading for Subpart U is "Representative Payee". (A proposed revision of present Subpart Q has been published in the Federal Register. These regulations will be redesignated when adopted as final).

4. A new Subpart Q is added to Part 404 to read as follows:

Subpart Q—Determinations of Disability

General Provisions

Sec.
404.1601 Purpose and scope.
404.1602 Definitions.
404.1603 Basic responsibilities for us and the State.

Responsibilities for Performing the Disability Determination Function

404.1610 How a State notifies us that it wishes to perform the disability determination function.
404.1611 How we notify a State whether it may perform the disability determination function.
404.1613 Disability determinations the State makes.
404.1614 Responsibilities for obtaining evidence to make disability determinations.
404.1615 Making disability determinations.
404.1618 Notifying claimants of the disability determination.

Administrative Responsibilities and Requirements

404.1620 Organization.
404.1621 Personnel.
404.1622 Training.
404.1623 Facilities.
404.1624 Medical and other purchased services.
404.1625 Records and reports.
404.1626 Fiscal.
404.1627 Audits.
404.1628 Property.
404.1629 Participation in research and demonstration projects.
404.1630 Coordination with other agencies.
404.1631 Confidentiality of information and records.
404.1632 Other Federal laws and regulations.
404.1633 Policies and operating instructions.

Performance Standards

404.1640 General.
404.1641 Standards of performance.
404.1642 Processing time standard.
404.1643 Performance accuracy standard.
404.1644 How and when we determine whether the processing time standards are met.
404.1645 How and when we determine whether the performance accuracy standard is met.
404.1650 If a State agency is not meeting the standards.

Technical and Management Assistance

404.1660 When we will provide assistance.
404.1661 What assistance we will provide.

Substantial Failure

404.1670 General.

404.1671 Good cause for not meeting the established threshold levels.
404.1675 Finding of substantial failure.

Hearings and Appeals

404.1680 Notice of right to hearing on proposed finding of substantial failure.
404.1681 Disputes on fiscal matters.
404.1682 Who conducts the hearings.
404.1683 Hearings and appeals process.

Assumption of Disability Determination Function

404.1690 Assumption when we make a finding of substantial failure.
404.1691 Assumption when State no longer wishes to perform the disability determination function.
404.1692 Protection of State employees.
404.1693 Limitation on State expenditures after notice.
404.1694 Final accounting by the State.

Authority: Issued under secs. 205, 221 and 1102 of the Social Security Act, as amended: 53 Stat. 1368, as amended; 68 Stat. 1081, as amended; 49 Stat. 647, as amended; 42 U.S.C. 405, 421 and 1302.

Subpart Q—Determinations of Disability

General Provision

§ 404.1601 Purpose and scope.

This subpart describes the standards of performance and administrative requirements and procedures for States making determinations of disability for the Secretary under title II of the Act. It also establishes the Secretary's responsibilities in carrying out the disability determination function.

(a) Sections 404.1601–404.1603 describe the purpose of the regulations and the meaning of terms frequently used in the regulations. They also briefly set forth the responsibilities of the Secretary and the States covered in detail in other sections.

(b) Sections 404.1610–404.1618 describe the Secretary's and the State's responsibilities in performing the disability determination function.

(c) Sections 404.1620–404.1633 describe the administrative responsibilities and requirements of the States. The corresponding role of the Secretary is also set out.

(d) Sections 404.1640–404.1650 describe the performance accuracy and processing time standards for measuring State agency performance.

(e) Sections 404.1660–404.1661 describe when and what kind of assistance the Secretary will provide State agencies to help them improve performance.

(f) Sections 404.1670–404.1675 describe the level of performance below which the Secretary will consider a State agency to be substantially failing to make disability determinations consistent with the regulations and other written guidelines and the resulting action the Secretary will take.

(g) Sections 404.1680–404.1682 describe the rules for resolving disputes concerning fiscal issues and providing hearings when we propose to find that a State is in substantial failure.

(h) Sections 404.1690–404.1694 describe when and what action the Secretary will take and what action the State will be expected to take if the Secretary assumes the disability determination function from a State agency.

§ 404.1602 Definitions.

For purposes of this subpart:

"Act" means the Social Security Act, as amended.

"Class or classes of cases" means the categories into which disability claims are divided according to their characteristics.

"Determination of disability" or "disability determination" means one or more of the following decisions:

(a) Whether or not a person is under a disability;

(b) The date a person's disability began; or

(c) The date a person's disability ended.

"Disability" means "disability" or "blindness" as defined in sections 216(i) and 223 of the Act or as defined in title IV of the Federal Mine Safety and Health Act of 1977, as amended.

"Disability determination function" means making determinations as to disability and carrying out related administrative and other responsibilities.

"Disability program" means, as appropriate, the Federal programs for providing disability insurance benefits under title II of the Act and disability benefits under title IV of the Federal Mine Safety and Health Act of 1977, as amended.

"Initial" means the first level of disability adjudication.

"Other written guidelines" means the policies, procedures, guides, and operating instructions in the Disability Insurance section of the Program Operations Manual System that are not designated as advisory or discretionary.

"Regulations" means regulations in this subpart issued under §§ 205(a), 221 and 1102 of the Act, unless otherwise indicated.

"Secretary" means the Secretary of the Department of Health and Human Services or the Secretary's delegate.

"State" means any of the 50 States of the United States, the Commonwealth of Puerto Rico, the District of Columbia, or Guam. It includes the State agency.

"State agency" means that agency of a State which has been designated by the State to carry out the disability determination function.

"We", "us," and "our" refers to the Social Security Administration (SSA) or the Secretary, as appropriate.

§ 404.1603 Basic responsibilities for us and the State.

(a) *General.* We will work with the State to provide and maintain an effective system for processing claims of those who apply for and who are receiving benefits under the disability program. We will provide program standards, leadership, and oversight. We do not intend to become involved in the State's ongoing management of the program except as is necessary and in accordance with these regulations. The State will comply with our regulations and other written guidelines.

(b) *Our responsibilities.* We will:

(1) Periodically review the regulations and other written guidlines to determine whether they insure effective and uniform administration of the disability program. To the extent feasible, we will consult with and take into consideration the experience of the States in issuing regulations and guidelines necessary to insure effective and uniform administration of the disability program;

(2) Provide training materials or in some instances conduct or specify training, see § 404.1622;

(3) Provide funds to the State agency for the necessary cost of performing the disability determination function, see § 404.1626;

(4) Monitor and evaluate the performance of the State agency under the established standards, see §§ 404.1644 and 404.1645; and

(5) Maintain liaison with the medical profession nationally and with national organizations and agencies whose interests or activities may affect the disability program.

(c) *Responsibilities of the State.* The State will:

(1) Provide management needed to insure that the State agency carries out the disability determination function so that disability determinations are made accurately and promptly;

(2) Provide an organizational structure, adequate facilities, qualified personnel, and medical consultant services (§§ 404.1620–404.1624);

(3) Furnish reports and records relating to the administration of the disability program (§ 404.1625);

(4) Submit budgets (§ 404.1626);

(5) Cooperate with audits (§ 404.1627);

(6) Insure that all applicants for and recipients of disability benefits are treated equally and courteously;

(7) Be responsible for property used for disability program purposes (§ 404.1628);

(8) Take part in the research and demonstration projects (§ 404.1629);

(9) Coordinate with other agencies (§ 404.1630);

(10) Safeguard the records created by the State in performing the disability determination function (§ 404.1631);

(11) Comply with other provisions of the Federal law and regulations that apply to the State in performing the disability determination function;

(12) Comply with other written guidelines (§ 404.1633);

(13) Maintain liaison with the medical profession and organizations that may facilitate performing the disability determination function; and

(14) Assist us in other ways that we determine may promote the objectives of effective and uniform administration.

Responsibilities For Performing the Disability Determination Function

§ 404.1610 How a State notifies us that it wishes to perform the disability determination function.

(a) *Deemed notice.* Any State that has in effect as of June 1, 1981, an agreement with us to make disability determinations will be deemed to have given us notice that it wishes to perform the disability determination function, in lieu of continuing the agreement in effect after June 1, 1981.

(b) *Written notice.* After June 1, 1981, a State not making disability determinations that wishes to perform the disability determination function under these regulations must notify us in writing. The notice must be from an official authorized to act for the State for this purpose. The State will provide an opinion from the State's Attorney General verifying the authority of the official who sent the notice to act for the State.

§ 404.1611 How we notify a State whether it may perform the disability determination function.

(a) If a State notifies us in writing that it wishes to perform the disability determination function, we will notify the State in writing whether or not it may perform the function. The State will begin performing the disability determination function beginning with the month we and the State agree upon.

(b) If we have previously found that a State agency has substantially failed to make disability determinations in accordance with the law or these regulations and other written guidelines or if the State has previously notified us in writing that it does not wish to make disability determinations, the notice will advise the State whether the State agency may again make the disability determinations and, if so, the date and the conditions under which the State may again make them.

§ 404.1612 Disability determinations the State makes.

(a) *General rule.* A State agency will make determinations of disability with respect to all persons in the State except those individuals whose cases are in a class specifically excluded by our written guidelines. A determination of disability made by the State is the determination of the Secretary.

(b) *New classes of cases.* Where any new class or classes of cases arise requiring determinations of disability, we will determine the conditions under which a State may choose not to make the disability determinations. We will provide the State with the necessary funding to do the additional work.

(c) *Temporary transfer of classes of cases.* We will make disability determinations for classes of cases temporarily transferred to us by the State agency if the State agency asks us to do so and we agree. The State agency will make written arrangements with us which will specify the period of time and the class or classes of cases we will do.

§ 404.1614 Responsibilities for obtaining evidence to make disability determinations.

(a) The State agency will secure from the claimant or other sources any evidence it needs to make a disability determination.

(b) We will secure from the claimant or other special arrangement sources, any evidence we can obtain as adequately and more readily than the State agency. We will furnish the evidence to the State agency for use in making a disability determination.

(c) At our request, the State agency will obtain and furnish medical or other evidence and provide assistance as may be necessary for us to carry out our responsibilities—

(1) For making disability determinations in those classes of cases described in the written guidelines for which the State agency does not make the determination; or

(2) Under international agreements with respect to social security benefits payable under section 223 of the Act.

§ 404.1615 Making disability determinations.

(a) When making a disability determination, the State agency will apply subpart P, Part 404 of our regulations.

(b) The State agency will make disability determinations based only on the medical and nonmedical evidence in its files.

(c) Disability determinations will be made by a State agency medical consultant and another person qualified to interpret and evaluate medical reports and other evidence relating to the claimant's physical or mental impairments and as necessary to determine the capacities of the claimant to perform substantial gainful activity. (See § 404.1572 of this part for what we mean by "substantial gainful activity".)

(d) The State agency will certify each determination of disability to us on forms we provide.

(e) The State agency will furnish us with all the evidence it considered in making its determination.

§ 404.1616 Notifying claimants of the disability determination.

The State agency will prepare denial notices in accordance with subpart J of this Part whenever it makes a disability determination which is wholly or partly unfavorable to the claimant.

Administrative Responsibilities and Requirements

§ 404.1620 Organization.

(a) The State will provide the organizational structure, sufficient qualified personnel and medical consultant services to insure disability determinations are made accurately and promptly. We may impose specific organizational requirements on the State, but only if a State's performance approaches the threshold level described in §§ 404.1641–404.1650.

(b) The State is responsible for making accurate and prompt disability determinations.

§ 404.1621 Personnel.

(a) *Equal Employment Opportunity.* The State will comply with all applicable Federal statutes, executive orders and regulations concerned with equal employment opportunities.

(b) *Selection, tenure, and compensation.* The State agency will, except as may be inconsistent with paragraph (a) of this section, adhere to applicable State approved personnel standards in the selection, tenure, and compensation of any individual employed in the disability program.

(c) *Travel.* The State will make personnel available to attend meetings or workshops as may be sponsored or approved by us for furthering the purposes of the disability program.

(d) *Restrictions.* Subject to appropriate Federal funding, the State will, to the best of its ability, facilitate the processing of disability claims by avoiding personnel freezes, restrictions

against overtime work, or curtailment of facilities or activities.

§ 404.1622 Training.

The State will insure that all employees have an acceptable level of competence. We will provide training and other instructional materials to facilitate basic and advanced technical proficiency of disability staff in order to insure uniformity and effectiveness in the administration of the disability program. We will conduct or specify training, as appropriate, but only if:

(a) a State agency's performance approaches unacceptable levels; or

(b) the material required for the training is complex or the capacity of the State to deliver the training is in doubt and uniformity of the training is essential.

§ 404.1623 Facilities.

(a) *Space, equipment, supplies, and other services.* Subject to appropriate Federal funding, the State will provide adequate space, equipment, supplies, and other services to facilitate making accurate and prompt disability determinations.

(b) *Location of facilities.* Subject to appropriate Federal funding, the State will determine the location where the disability determination function is to be performed so that disability determinations are made accurately and promptly.

(c) *Access.* The State will permit us access to the premises where the disability determination function is performed for the purposes of inspecting the work and activities required by the regulations and assuring compliance with pertinent Federal statutes and regulations. We will contact the State and give reasonable prior notice of the times and purposes of any visit.

§ 404.1624 Medical and other purchased services.

The State will determine the rates of payment to be used for purchasing medical or other services necessary to make determinations of disability. The rates may not exceed the highest rate paid by Federal or other agencies in the State for the same or similar type of service. The State will maintain documentation to support the rates of payment it uses.

§ 404.1625 Records and reports.

(a) The State will establish and maintain the records and furnish the schedules, financial, cost, and other reports relating to the administration of the disability programs as we may require.

(b) The State will permit us and the Comptroller General of the United States (including duly authorized representatives) access to and the right to examine records relating to the work which the State performs under these regulations. These records will be retained by the State for the periods of time specified for retention of records in the Federal Procurement Regulations (41 CFR Parts 1–20).

§ 404.1626 Fiscal.

(a) We will give the State funds, in advance or by way of reimbursement, for necessary costs in making disability determinations under these regulations. Necessary costs mean direct as well as indirect costs as defined in title 41 CFR subpart 1–15.7 and in Federal Management Circular 74–4, as amended or superseded.

(b) The State will submit estimates of anticipated costs in the form of a budget at the time and in the manner we require.

(c) We will notify the State of the amount which will be made available to it as well as what anticipated costs are being approved.

(d) The State may not incur or make expenditures for items of cost not approved by us or in excess of the amount we make available to the State.

(e) After the close of a period for which funds have been made available to the State, the State will submit a report of its actual expenditures. We will give the State an audit report showing whether the expenditures were consistent with cost principles described in subpart 1–15.7 of part 1–15 of the Federal Procurement Regulations (41 CFR 1–15.7) and in written guidelines in effect at the time the expenditures were made or incurred.

(f) Any monies paid to the State which are used for purposes not within the scope of these regulations will be paid back to the Treasury of the United States.

§ 404.1627 Audits.

As soon as practicable after the close of each budgetary period, or at other times as necessary, the books of account and records in each State pertaining to the administration of the disability program under the Act will be audited by our Inspector General's office. These audits are conducted to determine whether the expenditures were made for the purpose intended and in amounts necessary for the proper and efficient administration of the disability program. The State will make every effort to act upon and resolve any items questioned in an audit.

(a) *Questioned items.* Expenditures of State agencies will be audited on the basis of cost principles and written guidelines in effect at the time the expenditures were made or incurred. Both the State and the State agency will be informed and given a full explanation of any questioned items. They will be given reasonable time to explain questioned items or expenditures. Any explanation furnished by the State or State agency will be given full consideration before a final determination is made on questioned items in the audit report.

(b) *State appeal of audit determinations.* The appropriate SSA regional commissioner will notify the State of his or her determination on the audit report. If the State disagrees with that determination, the State may request reconsideration in writing within 30 days of the date of the regional commissioner's notice of the determination. The written request may be made, through the Associate Commissioner, Office of Operational Policy and Procedures, to the Commissioner of Social Security, Room 900 Altmeyer Building, 6401 Security Boulevard, Baltimore, Maryland 21235. The Commissioner will make a determination and notify the State of that decision in writing no later than 45 days from the date of the State's appeal. The decision by the Commissioner will be final and conclusive upon the State unless the State appeals that decision in writing within 30 days of the date of the decision by the Commissioner to the Department of Health and Human Services Departmental Grant Appeals Board (the Board). See § 404.1680.

§ 404.1628 Property.

The State will have title to equipment purchased for disability program purposes. The State will be responsible for maintaining all property it acquires or which we furnish to it for performing the disability determination function. The State will identify the equipment by labeling and by inventory and will credit the SSA account with the fair market value of disposed property.

§ 404.1629 Participation in research and demonstration projects.

We will invite State participation in federally funded research and demonstration projects to assess the effectiveness of the disability program and to ascertain the effect of program policy changes. Where we determine that State participation is necessary for the project to be complete, for example, to provide national uniformity in a claims process, State participation is mandatory.

§ 404.1632 Coordination with other agencies.

(a) The State will establish cooperative working relationships with other agencies concerned with serving the disabled and, insofar as practicable, use their services, facilities, and records to:

(1) Assist the State in developing evidence and making determinations of disability; and

(2) Insure that referral of disabled or blind persons for rehabilitation services will be carried out effectively.

(b) The State may pay these agencies for the services, facilities, or records they provide. The State will include these costs in its estimates of anticipated costs and reports of actual expenditures.

§ 404.1631 Confidentiality of information and records.

The State will comply with the confidentiality of information and records requirements described in 20 CFR Part 401 and pertinent written guidelines (see § 404.1633).

§ 404.1633 Other Federal laws and regulations.

The State will comply with the provisions of other Federal laws and regulations that directly affect its responsibilities in carrying out the disability determination function; for example, Treasury Department regulations on letters of credit (31 CFR Part 205).

§ 404.1633 Policies and operating instructions.

(a) We will provide the State agency with written guidelines necessary for it to carry out its responsibilities in performing the disability determination function.

(b) The State agency making determinations of disability will comply with the written guidelines in the Disability Insurance section of the Program Operations Manual System. This manual will also include certain policies, procedures, guides and operating instructions designated as advisory or discretionary.

(c) A representative group of State agencies will be given an opportunity to participate in formulating disability program policies that have an affect on their role in carrying out the disability determination function. State agencies will also be given an opportunity to comment before changes are made in written guidelines unless delay in issuing a change may impair service to the public.

Performance Standards

§ 404.1640 General

The following sections provide the procedures and guidelines we use to determine whether the State agency meets established national performance standards. We use these performance standards to help assure effective and uniform administration of our disability programs throughout the United States and to measure whether each State agency's performance of the disability determination function is acceptable. Also, the standards are designed to improve overall State agency performance in the disability determination process. We measure the State agency performance in two areas—processing time and performance accuracy.

§ 404.1641 Standards of performance.

(a) *General.* The performance standards include both a target level of performance and a threshold level of performance for the State agency. The target level represents a level of performance that we and the States will work to attain in the future. The threshold level is the minimum acceptable level of performance. Performance below the threshold level will be the basis for the Secretary's taking from the State agency partial or complete responsibility for performing the disability determination function. Intermediate State agency goals are designed to help each State agency move from its current performance levels to the target levels.

(b) *The target level.* The target level is the optimum level of performance. There are three targets—one for combined title II and title XVI initial performance accuracy, one for title II initial processing time, and one for title XVI initial processing time.

(c) *The threshold level.* The threshold level is the minimum acceptable level of performance. There are three thresholds—one for combined title II and title XVI initial performance accuracy, one for title II initial processing time, and for title XVI initial processing time.

(d) *Intermediate goals.* Intermediate goals are levels of performance between the threshold levels and the target levels established by negotiation between SSA's regional commissioner and each State agency. The intermediate goals are stepping stones designed to help the State agencies reach the target levels. Failure to meet these goals is not a cause for considering the State agency to be substantially failing to comply with the performance standards. However, failure to meet the intermediate goals may result in consultation and an offer of optional technical and management assistance depending on the availability of SSA resources.

§ 404.1642 Processing time standards.

(a) *General.* Title II processing time refers to the average number of days (including Saturday, Sunday and holidays) it takes a State agency to process an initial disability claim from the day it is received in the State agency until the day it is released by the State agency. Title XVI processing time refers to the average number of days (including Saturday, Sunday and holidays) from release of the initial disability claim by the SSA district office until systems input of the disability determination.

(b) *Target levels.* The processing time target levels are:

(1) 37 days for title II initial claims.

(2) 43 days for title XVI initial claims.

(c) *Threshold levels.* The processing time threshold levels are:

(1) 49.5 days for title II initial claims.

(2) 57.9 days for title XVI initial claims.

§ 404.1643 Performance accuracy standard.

(a) *General.* Performance accuracy refers to the percentage of cases that do not have to be returned to State agencies for further development or correction of decisions based on evidence in the files and as such represents the reliability of State agency adjudication. The definition of performance accuracy includes the measurement of factors that have a potential for affecting a decision, as well as the correctness of the decision. For example, if a particular item of medical evidence should have been in the file but was not included, even though its inclusion does not change the result in the case, that is a performance error. Performance accuracy, therefore, is a higher standard than decisional accuracy. As a result, the percentage of correct decisions is significantly higher than what is reflected in the error rate established by SSA's quality assurance system.

(b) *Target level.* The State agency initial performance accuracy target level for combined title II and title XVI cases is 97 percent with a corresponding decision accuracy rate of 99 percent.

(c) *Intermediate Goals.* These goals will be negotiated annually between SSA's regional commissioner and the State and should be used as stepping stones to progress towards our targeted level of performance.

(d) *Threshold levels.* The State agency initial performance accuracy threshold level for combined title II and title XVI cases is 90.8 percent.

§ 404.1644 How and when we determine whether the processing time standards are met.

(a) *How we determine processing times.* For all initial title II cases, we calculate the mean number of days (including Saturday, Sunday and holidays) from the time the case folder is received in the State agency until it is released to us by the State agency. For initial title XVI cases, we calculate a mean number of days (including Saturday, Sunday and holidays) from the release of the case folder by the social security district office until systems input of the disability determination.

(b) *Frequency of review.* Title II processing times and title XVI processing times are monitored separately on a quarterly basis. The determination as to whether or not the processing time thresholds have been met is made at the end of each quarter each year. Quarterly State-by-State mean processing times are compared with the threshold levels for both title II and title XVI.

§ 404.1645 How and when we determine whether the performance accuracy standard is met.

(a) *How we determine performance accuracy.* We determine a State agency's performance accuracy rate on the basis of decision and documentation errors identified in our review of the sample cases.

(b) *Frequency of review.* Title II and title XVI initial performance accuracy are monitored together on a quarterly basis. The determinations as to whether the performance accuracy threshold has been met is made at the end of each quarter each year. Quarterly State-by-State combined initial performance accuracy rates are compared to the established threshold level.

§ 404.1650 If a State agency is not meeting the standards.

If a State agency falls below 2 of the 3 established threshold levels (one of which must be performance accuracy) for 2 or more consecutive quarters, we will notify the State agency in writing that it is not meeting the standards. Following our notification we will as soon as practicable provide the State agency appropriate technical and management assistance described in §§ 404.1660 and 404.1661 of these regulations for a period of up to 12 months.

Technical and Management Assistance

§ 404.1660 When we will provide assistance.

(a) *General.* We will maintain a regular monitoring program to evaluate State agency performance of combined title II and title XVI initial performance accuracy, title II initial processing time and title XVI initial processing time. This regular monitoring program will allow us to determine the type of technical and management assistance a State agency may need to improve its perfoemance. In addition, the results of this monitoring will show whether we will give a State agency mandatory or optional technical and management assistance.

(b) *Mandatory assistance.* (1) We will provide a State agency mandatory technical and management assistance if it fails to meet two of three threshold levels (one being performance accuracy) for two consecutive quarters. These levels are—

(i) Combined title II and title XVI initial performance accuracy—90.8 percent

(ii) Title II initial processing time—49.5 days

(iii) Title XVI initial processing time—57.9 days

(2) Failure to meet any one of the threshold levels for two consecutive quarters may result in mandated technical assistance.

(c) *Optional assistance.* We may offer a State agency technical and management assistance when regular monitoring reveals that performance has significantly declined or that intermediate goals have not been met. We will offer this technical and management assistance at our discretion based on available resources.

§ 404.1661 What assistance we will provide.

We will initiate a program of technical and management assistance in order to improve performance in those State agencies where it has been determined that such help is necessary. This program will include any or all of the following—

(a) An onsite review of cases processed by the State agency emphasizing adherence to written guidelines.

(b) A fiscal and administrative management review (FAMR) to:

(1) Identify particular aspects of State agency operations which can receive immediate help and thus improve performance accuracy or processing time; and

(2) Develop a long-range plan based on the FAMR results to help the State agency prevent its performance from falling below the threshold levels in the future.

(c) A request that necessary administrative measures be implemented (e.g., filling staffing vacancies, using overtime, assisting with training activities, etc.).

(d) Provisions for Federal personnel to perform onsite reviews, conduct training, or perform other functions needed to improve performance.

(e) Provisions for fiscal aid to allow for overtime, temporary hiring of additional staff, etc., above the authorized budget.

Substantial Failure

§ 404.1670 General.

After a State agency falls below 2 of 3 established threshold levels, one being performance accuracy, for 2 consecutive quarters, and after the mandatory technical and management assistance period, we will give the State agency a 6-month adjustment period. During this 3-month period we will not require the State agency to meet the threshold levels. Following the adjustment period, if the State agency again falls below 2 of 3 threshold levels, one being performance accuracy, in 2 consecutive quarters during the next 12 months, we will notify the State that we proposed to find the State agency to be in substantial failure and advise it that it may request a hearing on that issue. After giving the State notice and an opportunity for a hearing, if we find that a State agency has substantially failed to make disability determinations consistent with the regulations and other written guidelines, we will assume partial or complete responsibility for performing the disability determination function after we have complied with § 404.1690 and § 404.1692.

§ 404.1671 Good cause for not meeting the established threshold levels.

If we find that a State agency did not meet the threshold levels because of factors beyond its control, we will not find the State agency to be in substantial failure. Some of the factors we will consider are:

(a) Disasters such as fire, flood, or civil disorder, that—

(1) Require the diversion of significant personnel normally assigned the disability determination function, or

(2) Destroyed or delayed access to significant records needed to make accurate disability determinations;

(b) Strikes of State agency staff or other government or private personnel necessary to the performance of the disability determination function; or

(c) Sudden and unanticipated workload changes which result from changes in Federal law, regulation, or written guidelines, systems modifications or systems malfunctions, or rapid, unpredictable caseload growth for a 6-month period or longer.

§ 404.1675 Finding of substantial failure.

A finding of substantial failure with respect to a State may not be made unless and until the State is afforded an opportunity for a hearing.

Hearings and Appeals

§ 404.1680 Notice of right to hearing on proposed finding of substantial failure.

If, following the mandatory technical and management assistance period and the 3-month adjustment period, a State agency again falls below 2 of 3 threshold levels (one being performance accuracy) in 2 consecutive quarters in the succeeding 12 months, we will notify the State in writing that we will find the State agency in substantial failure unless the State asks for a hearing within 30 days from the date of the notice. The notice will identify the threshold levels that were not met by the State agency, the period during which the thresholds were not met, and the accuracy and processing time levels attained by the State agency during this period. If a hearing is not requested, the State agency will be found in substantial failure and we will implement our plans to assume the disability determination function.

§ 404.1681 Disputes on fiscal matters.

Disputes concerning fiscal issues will be resolved in proceedings before the Grant Appeals Board if the issue cannot be resolved between us and the State. (See § 404.1627.)

§ 404.1682 Who conducts the hearings.

If a hearing is required, it will be conducted by the Health and Human Services Departmental Grant Appeals Board (the Board).

§ 404.1683 Hearings and appeals process.

The rules for hearings and appeals before the Board are provided in 45 CFR Part 16. The following terms used in those rules have the following meanings for purposes of this subpart:

(a) "Grantee" includes the State involved in making disability determinations.

(b) "Grant" includes the performance of the disability determination function by a State agency as provided in this subpart.

(c) "Termination" includes the assumption by us of the disability determination function from a State agency as provided in this subpart.

Assumption of Disability Determination Function

§ 404.1690 Assumption when we make a finding of substantial failure.

(a) *Notice to State.* When we find that substantial failure exists, we will notify the State in writing that we will assume reponsibility for performing the disability determination function from the State agency, whether the assumption will be partial or complete, and the date on which the assumption will be effective.

(b) *Effective date of assumption.* The date of any partial or complete assumption of the disability determination function from a State agency may not be earlier than 180 days after our finding of substantial failure, and not before compliance with the requirements of § 404.1692.

§ 404.1691 Assumption when State no longer wishes to perform the disability determination function.

(a) *Notice to the Secretary.* If a State no longer wishes to perform the disability determination function, it will notify us in writing. The notice must be from an official authorized to act for the State for this purpose. The State will provide an opinion from the State's Attorney General verifying the authority of the official who gave the notice.

(b) *Effective date of assumption.* The State agency will continue to perform whatever activities of the disability determination function it is performing at the time the notice referred to in paragraph (a) of this section is given for not less than 180 days or, if later, until we have complied with the requirements of § 404.1692. For example, if the State is not making disability determinations (because we previously assumed responsibility for making them) but is performing other activities related to the disability determination function at the time it gives notice, the State will continue to do these activities until the requirements of this paragraph are met. Thereafter, we will assume complete responsibility for peforming the disability determination function.

§ 404.1692. Protection of State employees.

(a) *Hiring preference.* We will develop and initiate procedures to implement a plan to partially or completely assume the disability determination function from the State agency under § 404.1690 or § 404.1691, as appropriate. Except for the State agency's administrator, deputy administrator, or assistant administrator (or his equivalent), we will give employees of the State agency who are capable of performing duties in the disability determination function preference over any other persons in filling positions with us for which they are qualified. We may also give a preference in hiring to the State agency's administrator, deputy administrator, or assistant administrator (or his equivalent). We will establish a system for determining the hiring priority among the affected State agency employees in those instances where we are not hiring all of them.

(b) *Determination by Secretary of Labor.* We will not assume responsibility for performing the disability determination function from a State until the Secretary of Labor determines that the State has made fair and equitable arrangements under applicable Federal, State and local law to protect the interests of employees who will be displaced from their employment because of the assumption and who we will not hire.

§ 404.1693 Limitation on State expenditures after notice.

The State agency may not, after it receives the notice referred to in § 404.1690, or gives the notice referred to in § 404.1691, make any new commitments to spend funds allocated to it for performing the disability determination function without the approval of the appropriate SSA regional commissioner. The State will make every effort to close out as soon as possible all existing commitments that relate to performing the disability determination function.

§ 404.1694 Final accounting by the State.

The State will submit its final claims to us as soon as possible, but in no event later than 1 year from the effective date of our assumption of the disability determination function unless we grant an extension of time. When the final claim(s) is submitted, a final accounting will be made by the State of any funds paid to the State under § 404.1626 which have not been spent or committed prior to the effective date of our assumption of the disability determination function.

PART 416—SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND, AND DISABLED

Part 416 of Chapter 111 of Title 20 of the Code of Federal Regulations is amended as follows:

1. Section 416.902 is revised to read as follows:

§ 416.902 General definitions and terms for this subpart.

As used in the subpart——

"Secretary" means the Secretary of Health and Human Services.

"State agency" means the agency of a State which has been designated by the State to carry out the disability determination function.

"We" or "us" refers to either the Social Security Administration or the State agency making the disability or blindness determination.

"You" refers to the person who has applied for or is receiving benefits based on disability or blindness.

2. Section 416.903 is revised to read as follows:

§ 416.903 Who makes disability and blindness determinations.

(a) *State agencies.* State agencies make disability and blindness determinations for the Secretary for most persons living in the State. State agencies make these disability and blindness determinations under regulations containing performance standards and other administrative requirements relating to the disability and blindness determination function. States have the option of turning the function over to the Federal Government if they no longer want to make disability determinations. Also, the Secretary may take the function away from any State which has substantially failed to make disability and blindness determinations in accordance with these regulations. Subpart J of this Part contains the rules the States must follow in making disability and blindness determinations.

(b) *Social Security Administration.* The Social Security Administration will make disability and blindness determinations for the Secretary for—

(1) Any person living in a State which is not making for the Secretary any disability and blindness determinations or which is not making those determinations for the class of claimants to which that person belongs; and

(2) Any person living outside the United States.

(c) *What determinations are authorized.* The Secretary has authorized the State agencies and the Social Security Administration to make determinations about—

(1) Whether you are disabled or blind;

(2) The date your disability or blindness began; and

(3) The date your disability or blindness stopped.

(d) *Review of State Agency determinations.* On review of a State agency determination or redetermination of disability or blindness we may find that—

(1) You are, or are not, disabled or blind, regardless of what the State agency found;

(2) Your disability or blindness began earlier or later than the date found by the State agency; and

(3) Your disability or blindness stoped earlier or later than the date found by the State agency.

§§ 416.1001–416.1078 [Redesignated as §§416.1801–416.1878 (Subpart R)]

3. The section headings and the text of §§ 416.1001–416.1078 are redesignated as §§ 416.1801–416.1878 (Subpart R). The title of Subpart R is "Relationship".

4. A new Subpart J is added to Part 416 to read as follows:

Subpart J—Determinations of Disability

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416.1090 Assumption when we make a finding of substantial failure.
416.1091 Assumption when State no longer wishes to perform the disability determination function.
416.1092 Protection of State employees.
416.1093 Limitation on State expenditures after notice.
416.1094 Final accounting by the State.

Authority: Issued under secs. 1102, 1614, and 1631 of the Social Security Act, as amended; 49 Stat. 647, as amended; 86 Stat. 1471, as amended by 86 Stat. 12; 86 Stat. 1475; 42 U.S.C. 1302, 1382c, and 1383.

Subpart O—Determinations of Disability

General Provisions

§ 416.1001 Purpose and scope.

This subpart describes the standards of performance and administrative requirements and procedures for States making determinations of disability for the Secretary under title XVI of the Act. It also establishes the Secretary's responsibilities in carrying out the disability determination function.

(a) Sections 416.1001–416.1003 describe the purpose of the regulations and the meaning of terms frequently used in the regulations. They also briefly set forth the responsibilities of the Secretary and the States covered in detail in other sections.

(b) Sections 416.1010–416.1018 describe the Secretary's and the State's responsibilities in performing the disability determination function.

(c) Sections 416.1020–416.1033 describe the administrative responsibilities and requirements of the States. The corresponding role of the Secretary is also set out.

(d) Sections 416.1040–416.1050 describe the performance accuracy and processing time standards for measuring State agency performance.

(e) Sections 416.1060–416.1061 describe when and what kind of assistance the Secretary will provide State agencies to help them improve performance.

(f) Sections 416.1070–416.1075 describe the level of performance below which the Secretary will consider a State agency to be substantially failing to make disability determinations consistent with the regulations and other written guidelines and the resulting action the Secretary will take.

(g) Sections 416.1080–416.1082 describe the rules for resolving disputes concerning fiscal issues and providing hearings when we propose to find that a State is in substantial failure.

(h) Sections 416.1090–416.1094 describe when and what action the Secretary will take and what action the State will be expected to take if the Secretary assumes the disability determination function from a State agency.

§ 416.1002 Definitions.

For purposes of this subpart:

"Act" means the Social Security Act, as amended.

"Class or classes of cases" means the categories into which disability claims are divided according to their characteristics.

"Determination of disability" or "disability determination" means one or more of the following decisions:

(a) Whether or not a person is under a disability;

(b) The date a person's disability began; or

(c) The date a person's disability ended.

"Disability" means "disability" or "blindness" as defined in sections 1614(a) (2) and (3) of the Act.

"Disability determination function" means making determinations as to disability or blindness and carrying out related administrative and other responsibilities.

"Disability program" means the Federal program for providing supplemental security income benefits for the blind and disabled under title XVI of the Act, as amended.

"Initial" means the first level of disability or blindness adjudication.

"Other written guidelines" means the policies, procedures, guides, and operating instructions in the Disability Insurance section of the Program Operations Manual System that are not designated as advisory or discretionary.

"Regulations" means regulations in this subpart issued under §§ 1102, 1631(c) and 1633(e) of the Act, unless otherwise indicated.

"Secretary" means the Secretary of the Department of Health and Human Services or the Secretary's delegate.

"State" means any of the 50 States of the United States and the District of Columbia. It includes the State agency.

"State agency" means that agency of a State which has been designated by the State to carry out the disability determination function.

"We", "us," and "our" refers to the Social Security Administration (SSA) or the Secretary, as appropriate.

§ 416.1003 Basic responsibilities for us and the State.

(a) *General.* We will work with the State to provide and maintain an effective system for processing claims of those who apply for and who are receiving benefits under the disability program. We will provide program standards, leadership, and oversight. We do not intend to become involved in the State's ongoing management of the program except as is necessary and in accordance with these regulations. The State will comply with our regulations and other written guidelines.

(b) *Our responsibilities.* We will:

(1) Periodically review the regulations and other written guidelines to determine whether they insure effective and uniform administration of the disability program. To the extent feasible, we will consult with and take into consideration the experience of the States in issuing regulations and guidelines necessary to insure effective and uniform administration of the disability program;

(2) Provide training materials or in some instances conduct or specify training (see § 416.1022);

(3) Provide funds to the State agency for the necessary cost of performing the disability determination function, (see § 416.1026);

(4) Monitor and evaluate the performance of the State agency under the establishment standards (see §§ 416.1044 and 416.1045); and

(5) Maintain liaison with the medical profession nationally and with national organizations and agencies whose interests or activities may affect the disability program.

(c) *Responsibilities of the State.* The State will:

(1) Provide management needed to insure that the State agency carries out the disability determination function so that disability determinations are made accurately and promptly;

(2) Provide an organizational structure, adequate facilities, qualified personnel, and medical consultant services (§§ 416.1020–416.1024);

(3) Furnish reports and records relating to the administration of the disability program (§ 416.1025);

(4) Submit budgets (§ 416.1026);

(5) Cooperate with audits (§ 416.1027);

(6) Insure that all applicants for and recipients of disability benefits are treated equally and courteously;

(7) Be responsible for property used for disability program purposes (§ 416.1028);

(8) Take part in the research and demonstration projects (§ 416.1029);

(9) Coordinate with other agencies (§ 416.1030);

(10) Safeguard the records created by the State in performing the disability determination function (§ 416.1031);

(11) Comply with other provisions of the Federal law and regulations that apply to the State in performing the disability determination function;

(12) Comply with other written guidelines (§ 416.1033);

(13) Maintain liaison with the medical profession and organizations that may facilitate performing the disability determination function; and

(14) Assist us in other ways that we determine may promote the objectives of effective and uniform administration.

Responsibilities for Performing the Disability Determination Function

§ 416.1010 How a State notifies us that it wishes to perform the disability determination function.

(a) *Deemed notice.* Any State that has in effect as of June 1, 1981, an agreement with us to make disability determinations will be deemed to have given us notice that it wishes to perform the disability determination function, in lieu of continuing the agreement in effect after June 1, 1981.

(b) *Written notice.* After June 1, 1981, a State not making disability determinations that wishes to perform the disability determination function under these regulations must notify us in writing. The notice must be from an official authorized to act for the State for this purpose. The State will provide an opinion from the State's Attorney General verifying the authority of the official who sent the notice to act for the State.

§ 416.1011 How we notify a State whether it may perform the disability determination function.

(a) If a State notifies us in writing that it wishes to perform the disability determination function, we will notify the State in writing whether or not it may perform the function. The State will begin performing the disability determination function beginning with the month we and the State agree upon.

(b) If we have previously found that a State agency has substantially failed to make disability determinations in accordance with the law or these regulations and other written guidelines

or if the State has previously notified us in writing that it does not wish to make disability determinations, the notice will advise the State whether the State agency may again make the disability determinations and, if so, the date and the conditions under which the State may again make them.

§ 416.1013 Disability determinations the State makes.

(a) *General rule.* A State agency will make determinations of disability with respect to all persons in the State except those individuals whose cases are in a class specifically excluded by our written guidelines. A determination of disability made by the State is the determination of the Secretary.

(b) *New classes of cases.* Where any new class or classes of cases arise requiring determinations of disability, we will determine the conditions under which a State may choose not to make the disability determinations. We will provide the State with the necessary funding to do the additional work.

(c) *Temporary transfer of classes of cases.* We will make disability determinations for classes of cases temporarily transferred to us by the State agency if the State agency asks us to do so and we agree. The State agency will make written arrangements with us which will specify the period of time and the class or classes of cases we will do.

§ 416.1014 Responsibilities for obtaining evidence to make disability determinations.

(a) The State agency will secure from the claimant or other sources any evidence it needs to make a disability determination.

(b) We will secure from the claimant or other special arrangement sources, any evidence we can obtain as adequately and more readily than the State agency. We will furnish the evidence to the State agency for use in making a disability determination.

(c) At our request, the State agency will obtain and furnish medical or other evidence and provide assistance as may be necessary for us to carry out our responsibility for making disability determinations in those classes of cases described in the written guidelines for which the State agency does not make the determination.

§ 416.1015 Making disability determinations.

(a) When making a disability determination, the State agency will apply subpart I, Part 416 of our regulations.

(b) The State agency will make disability determinations based only on the medical and nonmedical evidence in its files.

(c) Disability determinations will be made by a State agency medical consultant and another person qualified to interpret and evaluate medical reports and other evidence relating to the claimant's physical or mental impairments and as necessary to determine the capacities of the claimant to perform substantial gainful activity. (See § 416.1072 of this part for what we mean by "substantial gainful activity".)

(d) The State agency will certify each determination of disability to us on forms we provide.

(e) The State agency will furnish us with all the evidence it considered in making its determination.

§ 416.1016 Notifying claimant of the disability determination.

The State agency will prepare denial notices in accordance with subpart N of this Part whenever it makes a disability determination which is wholly or partly unfavorable to the claimant.

Administrative Responsibilities and Requirements

§ 416.1020 Organization.

(a) The State will provide the organizational structure, sufficient qualified personnel and medical consultant services to insure disability determinations are made accurately and promptly. We may impose specific organizational requirements on the State, but only if a State's performance approaches the threshold level described in §§ 416.1041–416.1050.

(b) The State is responsible for making accurate and prompt disability determinations.

§ 416.1021 Personnel.

(a) *Equal Employment Opportunity.* The State will comply with all applicable Federal statutes, executive orders and regulations concerned with equal employment opportunities.

(b) *Selection, tenure, and compensation.* The State agency will, except as may be inconsistent with paragraph (a) of this section, adhere to applicable State approved personnel standards in the selection, tenure, and compensation of any individual employed in th disability program.

(c) *Travel.* The State will make personnel available to attend meetings or workshops as may be sponsored or approved by us for furthering the purposes of the disability program.

(d) *Restrictions.* Subject to appropriate Federal funding, the State will, to the best of its ability, facilitate the processing of disability claims by avoiding personnel freezes, restrictions against overtime work, or curtailment of facilities or activities.

§ 416.1022 Training.

The State will insure that all employees have an acceptable level of competence. We will provide training and other instructional materials to facilitate basic and advanced technical proficiency of disability staff in order to insure uniformity and effectiveness in the administration of the disability program. We will conduct or specify training, as appropriate but only if:

(a) a State agency's performance approaches unacceptable levels or

(b) the material required for the training is complex or the capacity of the State to deliver the training is in doubt and uniformity of the training is essential.

§ 416.1023 Facilities.

(a) *Space, equipment, supplies, and other services.* Subject to appropriate Federal funding, the State will provide adequate space, equipment, supplies, and other services to facilitate making accurate and prompt disability determinations.

(b) *Location of facilities.* Subject to appropriate Federal funding, the State will determine the location where the disability determination function is to be performed so that disability determinations are made accurately and promptly.

(c) *Access.* The State will permit us access to the premises where the disability determination function is performed for the purposes of inspecting the work and activities required by the regulations and assuring compliance with pertinent Federal statutes and regulations. We will contact the State and give reasonable prior notice of the times and purposes of any visit.

§ 416.1024 Medical and other purchased services.

The State will determine the rates of payment to be used for purchasing medical or other services necessary to make determinations of disability. The rates may not exceed the highest rate paid by Federal or other agencies in the State for the same or similar type of service. The State will maintain documentation to support the rates of payment it uses.

§ 416.1025 Records and reports.

(a) The State will establish and maintain the records and furnish the schedules, financial, cost, and other reports relating to the administration of the disability programs as we may require.

(b) The State will permit us and the Comptroller General of the United

States (including duly authorized representatives) access to and the right to examine records relating to the work which the State performs under these regulations. These records will be retained by the State for the periods of time specified for retention of records in the Federal Procurement Regulations (41 CFR parts 1–20).

§ 416.1026 Fiscal.

(a) We will give the State funds, in advance or by way of reimbursement, for necessary costs in making disability determinations under these regulations. Necessary costs mean direct as well as indirect costs as defined in title 41 CFR subpart 1–15.7 and in Federal Management Circular 74–4, as amended or superseded.

(b) The State will submit estimates of anticipated costs in the form of a budget at the time and in the manner we require.

(c) We will notify the State of the amount which will be made available to it as well as what anticipated costs are being approved.

(d) The State may not incur or make expenditures for items of cost not approved by us or in excess of the amount we make available to the State.

(e) After the close of a period for which funds have been made available to the State, the State will submit a report of its actual expenditures. We will give the State an audit report showing whether the expenditures were consistent with cost principles described in subpart 1–15.7 of part 1–15 of the Federal Procurement Regulations (41 CFR 1–15.7) and in written guidelines in effect at the time the expenditures were made or incurred.

(f) Any monies paid to the State which are used for purposes not within the scope of these regulations will be paid back to the Treasury of the United States.

§ 416.1027 Audits.

As soon as practicable after the close of each budgetary period, or at other times as necessary, the books of account and records in each State pertaining to the administration of the diability program under the Act will be audited by our Inspector General's office. There audits are conducted to determine whether the expenditures were made for the purposes intended and in amounts necessary for the proper and efficient administration of the disability program. The State will make every effort to act upon and resolve any items questioned in an audit.

(a) *Questioned items.* Expenditures of State agencies will be audited on the basis of cost principles and written guidelines in effect at the time the expenditures were made or incurred. Both the State and the State agency will be informed and given a full explanation of any questioned items. They will be given reasonable time to explain questioned items or expenditures. Any explanation furnished by the State or State agency will be given full consideration before a final determination is made on questioned items in the audit report.

(b) *State appeal of audit determinations.* The appropriate SSA regional commissioner will notify the State of his or her determination on the audit report. If the State disagrees with that determination, the State may request reconsideration in writing within 30 days of the date of the regional commissioner's notice of the determination. The written request may be made, through the Associate Commissioner, Office of Operational Policy and Procedures, to the Commissioner of Social Security, Room 900 Altmeyer Building, 6401 Security Boulevard, Baltimore, Maryland 21235. The Commissioner will make a determination and notify the State of that decision in writing no later that 45 days from the date of the State's appeal. The decision by the Commissioner will be final and conclusive upon the State unless the State appeals that decision in writing within 30 days of the date of the decision by the Commissioner to the Department of Health and Human Services Departmental Grant Appeals Board (the Board). See § 416.1060.

§ 416.1028 Property.

The State will have title to equipment purchased for disability program purposes. The State will be responsible for maintaining all property it acquires or which we furnish to it for performing the disability determination function. The State will identify the equipment by labeling and by inventory and will credit the SSA account with the fair market value of disposed property.

§ 416.1029 Participation in research and demonstration projects.

We will invite State participation in federally funded research and demonstration projects to assess the effectiveness of the disability program and to ascertain the effect of program policy changes. Where we determine that State participation is necessary for the project to be complete, for example, to provide national uniformity in a claims process, State participation is mandatory.

§ 416.1030 Coordination with other agencies.

(a) The State will establish cooperative working relationships with other agencies concerned with serving the disabled and, insofar as practicable, use their services, facilities, and records to:

(1) Assist the State in developing evidence and making determinations of disability; and

(2) Insure that referral of disabled or blind persons for rehabilitation services will be carried out effectively.

(b) The State may pay these agencies for the services, facilities, or records they provide. The State will include these costs in its estimates of anticipated costs and reports of actual expenditures.

§ 416.1031 Confidentiality of information and records.

The State will comply with the confidentiality of information and records requirements described in 20 CFR Part 401 and pertinent written guidelines (see § 416.1023).

§ 416.1032 Other Federal laws and regulations.

The State will comply with the provisions of other Federal laws and regulations that directly affect its responsibilities in carrying out the disability determination function; for example, Treasury Department regulations on letters of credit (31 CFR Part 205).

§ 416.1033 Policies and operating instructions.

(a) We will provide the State agency with written guidelines necessary for it to carry out its responsibilites in performing the disability determination function.

(b) The State agency making determinations of disability will comply with the written guidelines in the Disability Insurance section of the Program Operations Manual System. This manual will also include certain policies, procedures, guides and operating instructions designated as advisory or discretionary.

(c) A representative group of State agencies will be given an opportunity to participate in formulating disability program policies that have an effect on their role in carrying out the disability determination function. State agencies will also be given an opportunity to comment before changes are made in written guidelines unless delay in issuing a change may impair service to the public.

Performance Standards

§ 416.1040 General

The following sections provide the procedures and guidelines we use to determine whether the State agency meets established national performance standards. We use these performance standards to help assure effective and uniform administration of our disability programs throughout the United States and to measure whether each State agency's performance of the disability determination function is acceptable. Also, the standards are designed to improve overall State agency performance in the disability determination process. We measure the State agency performance in two areas—processing time and performance accuracy.

§ 416.1041 Standards of performance.

(a) *General.* The performance standards include both a target level of performance and a threshold level of performance for the State agency. The target level represents a level of performance that we and the States will work to attain in the future. The threshold level is the minimum acceptable level of performance. Performance below the threshold level will be the basis for the Secretary's taking from the State agency partial or complete responsibility for performing the disability determination function. Intermediate State agency goals are designed to help each State agency move from its current performance levels to the target levels.

(b) *The target level.* The target level is the optimum level of performance. There are three targets—one for combined title II and title XVI initial performance accuracy, one for title II initial processing time, and for title XVI initial processing time.

(c) *The threshold level.* The threshold level is the minimum acceptable level of performance. There are three thresholds—one for combined title II and title XVI initial performance accuracy, one for title II initial processing time, and one for title XVI initial processing time.

(d) *Intermediate goals.* Intermediate goals are levels of performance between the threshold levels and the target levels established by negotiation between SSA's regional commissioner and each State agency. The intermediate goals are stepping stones designed to help the State agencies reach the target levels. Failure to meet these goals is not a cause for considering the State agency to be substantially failing to comply with the performance standards. However, failure to meet the intermediate goals may result in consultation and an offer of optional technical and management assistance depending on the availability of SSA resources.

§ 416.1042 Processing time standards.

(a) *General.* Title II processing time refers to the average number of days (including Saturday, Sunday and holidays) it takes a State agency to process an initial disability claim from the day it is received in the State agency until the day it is released by the State agency. Title XVI processing time refers to the average number of days (including Saturday, Sunday and holidays) from release of the initial disability claim by the SSA district office until systems input of the disability determination.

(b) *Target levels.* The processing time target levels are:

(1) 37 days for title II initial claims.

(2) 43 days for title XVI initial claims.

(c) *Threshold levels.* The processing time threshold levels are:

(1) 49.5 days for title II initial claims.

(2) 57.9 days for title XVI initial claims.

§ 416.1043 Performance accuracy standard.

(a) *General.* Performance accuracy refers to the percentage of cases that do not have to be returned to State agencies for further development or correction of decisions based on evidence in the files and as such represents the reliability of State agency adjudication. The definition of performance accuracy includes the measurement of factors that have a potential for affecting a decision, as well as the correctness of the decision. For example, if a particular item of medical evidence should have been in the file but was not included, even though its inclusion does not change the result in the case, that is a performance error. Performance accuracy, therefore, is a higher standard than decisional accuracy. As a result, the percentage of correct decisions is significantly higher than what is reflected in the error rate established by SSA's quality assurance system.

(b) *Target level.* The State agency initial performance accuracy target level for combined title II and title XVI cases is 97 percent with a corresponding decision accuracy rate of 90 percent.

(c) *Intermediate Goals.* These goals will be negotiated annually between SSA's regional commissioner and the State and should be used as stepping stones to progress towards our targeted level of performance.

(d) *Threshold levels.* The State agency initial performance accuracy threshold level for combined title II and title XVI cases is 80.6 percent.

§ 416.1044 How and when we determine whether the processing time standards are met.

(a) *How we determine processing times.* For all initial title II cases, we calculate the mean number of days (including Saturday, Sunday and holidays) from the time the case folder is received in the State agency until it is released to us by the State agency. For initial title XVI cases, we calculate a mean number of days (including Saturday, Sunday and holidays) from the release of the case folder by the social security district office until systems input of the disability determination.

(b) *Frequency of review.* Title II processing times and title XVI processing times are monitored separately on a quarterly basis. The determination as to whether or not the processing time thresholds have been met is made at the end of each quarter each year. Quarterly State-by-State mean processing times are compared with the threshold levels for both title II and title XVI.

§ 416.1045 How and when we determine whether the performance accuracy standard is met.

(a) *How we determine performance accuracy.* We determine a State agency's performance accuracy rate on the basis of decision and documentation errors identified in our review of the sample cases.

(b) *Frequency of review.* Title II and title XVI initial performance accuracy are monitored together on a quarterly basis. The determinations as to whether the performance accuracy threshold has been met is made at the end of each quarter each year. Quarterly State-by-State combined initial performance accuracy rates are compared to the established threshold level.

§ 416.1060 If a State agency is not meeting the standards.

If a State agency falls below 2 of the 3 established threshold levels (one of which must be performance accuracy) for 2 or more consecutive quarters, we will notify the State agency in writing that it is not meeting the standards. Following our notification we will as soon as practicable provide the State agency appropriate technical and management assistance described in §§ 416.1060 and 416.1061 of these regulations for a period of up to 12 months.

Technical and Management Assistance

§ 416.1080 When we will provide assistance.

(a) *General.* We will maintain a regular monitoring program to evaluate State agency performance of combined title II and title XVI initial performance accuracy, title II initial processing time and title XVI initial processing time. This regular monitoring program will allow us to determine the type of technical and management assistance a State agency may need to improve its performance. In addition, the results of this monitoring will show whether we will give a State agency mandatory or optional technical and management assistance.

(b) *Mandatory assistance.* (1) We will provide a State agency mandatory technical and management assistance if it fails to meet two of three threshold levels (one being performance accuracy) for two consecutive quarters. These levels are—

(i) Combined title II and title XVI initial performance accuracy—90.6 percent.

(ii) Title II initial processing time—49.5 days.

(iii) Title XVI initial processing time—57.9 days.

(2) Failure to meet any one of the threshold levels for two consecutive quarters may result in mandated technical assistance.

(c) *Optional assistance.* We may offer a State agency technical and management assistance when regular monitoring reveals that performance has significantly declined or that intermediate goals have not been met. We will offer this technical and management assistance at our discretion based on available resources.

§ 416.1081 What assistance we will provide.

We will initiate a program of technical and management assistance in order to improve performance in those State agencies where it has been determined that such help is necessary. This program will include any or all of the following—

(a) An onsite review of cases processed by the State agency emphasizing adherence to written guidelines.

(b) A fiscal and administrative management review (FAMR) to:

(1) Identify particular aspects of State agency operations which can receive immediate help and thus improve performance accuracy or processing time; and

(2) Develop a long-range plan based on the FAMR results to help the State agency prevent its performance from falling below the threshold levels in the future.

(c) A request that necessary administrative measures be implemented (e.g., filling staffing vacancies, using overtime, assisting with training activities, etc.).

(d) Provisions for Federal personnel to perform onsite reviews, conduct training, or perform other functions needed to improve performance.

(e) Provisions for fiscal aid to allow for overtime, temporary hiring of additional staff, etc., above the authorized budget.

Substantial Failure

§ 416.1070 General.

After a State agency falls below 2 of 3 established threshold levels, one being performance accuracy, for 2 consecutive quarters, and after the mandatory technical and management assistance period, we will give the State agency a 3-month adjustment period. During this 3-month period we will not require the State agency to meet the threshold levels. Following the adjustment period, if the State agency again falls below 2 of 3 threshold levels, one being performance accuracy, in 2 consecutive quarters during the next 12 months, we will notify the State that we propose to find the State agency to be in substantial failure and advise it that it may request a hearing of that issue. After giving the State notice and an opportunity for a hearing, if we find that a State agency has substantially failed to make disability determinations consistent with the regulations and other written guidelines, we will assume partial or complete responsibility for performing the disability determination function after we have complied with § 416.1090 and § 416.1092.

§ 416.1071 Good cause for not meeting the established threshold levels.

If we find that a State agency did not meet the threshold levels because of factors beyond its control, we will not find the State agency to be in substantial failure. Some of the factors we will consider are:

(a) Disasters such as fire, flood, or civil disorder, that—

(1) Require the diversion of significant personnel normally assigned the disability determination function, or

(2) Destroyed or delayed access to significant records needed to make accurate disability determinations;

(b) Strikes of State agency staff or other government or private personnel necessary to the performance of the disability determination function; or

(c) Sudden and unanticipated workload changes which result from changes in Federal law, regulation, or written guidelines, systems modifications or systems malfunctions, or rapid, unpredictable caseload growth for a 6-month period or longer.

§ 416.1075 Finding of substantial failure.

A finding of substantial failure with respect to a State may not be made unless and until the State is afforded an opportunity for a hearing.

Hearings and Appeals

§ 416.1080 Notice of right to hearing on proposed finding of substantial failure.

If, following the mandatory technical and management assistance period and the 3-month adjustment period, a State agency again falls below 2 of 3 threshold levels (one being performance accuracy) in 2 consecutive quarters in the succeeding 12 months, we will notify the State in writing that we will find the State agency in substantial failure unless the State asks for a hearing within 30 days from the date of the notice. The notice will identify the threshold levels that were not met by the State agency, the period during which the thresholds were not met, and the accuracy and processing time levels attained by the State agency during this period. If a hearing is not requested, the State agency will be found in substantial failure and we will implement our plans to assume the disability determination function.

§ 416.1081 Disputes on fiscal matters.

Disputes concerning fiscal issues will be resolved in proceedings before the Grant Appeals Board if the issue cannot be resolved between us and the State. (See § 416.1027.)

§ 416.1082 Who conducts the hearings.

If a hearing is required, it will be conducted by the Health and Human Services Departmental Grant Appeals Board (the Board).

§ 416.1083 Hearings and appeals process.

The rules for hearings and appeals before the Board are provided in 45 CFR Part 16. The following terms used in those rules have the following meanings for purposes of this subpart:

(a) "Grantee" includes the State involved in making disability determinations.

(b) "Grant" includes the performance of the disability determination function by a State agency as provided in this subpart.

(c) "Termination" includes the assumption by us of the disability

determination function from a State agency as provided in this subpart.

Assumption of Disability Determination Function

§ 416.1089 Assumption when we make a finding of substantial failure.

(a) *Notice to State.* When we find that substantial failure exists, we will notify the State in writing that we will assume responsibility for performing the disability determination function from the State agency, whether the assumption will be partial or complete, and the date on which the assumption will be effective.

(b) *Effective date of assumption.* The date of any partial or complete assumption of the disability determination function from a State agency may not be earlier than 180 days after our finding of substantial failure, and not before compliance with the requirements of § 416.1092.

§ 416.1091 Assumption when State no longer wishes to perform the disability determination function.

(a) *Notice to the Secretary.* If a State no longer wishes to perform the disability determination function, it will notify us in writing. The notice must be from an official authorized to act for the State for this purpose. The State will provide an opinion from the State's Attorney General verifying the authority of the official who gave the notice.

(b) *Effective date of assumption.* The State agency will continue to perform whatever activities of the disability determination function it is performing at the time the notice referred to in paragraph (a) of this section is given for not less than 180 days or, if later, until we have complied with the requirements of § 416.1092. For example, if the State is not making disability determinations (because we previously assumed responsibility for making them) but is performing other activities related to the disability determination function at the time it gives notice, the State will continue to do these activities until the requirements of this paragraph are met. Thereafter, we will assume complete responsibility for performing the disability determination function.

§ 416.1092 Protection of State employees.

(a) *Hiring preference.* We will develop and initiate procedures to implement a plan to partially or completely assume the disability determination function from the State agency under § 416.1090 or § 416.1091, as appropriate. Except for the State agency's administrator, deputy administrator, or assistant administrator (or his equivalent), we will give employees of the State agency who are capable of performing duties in the disability determination function preference over any other persons in filling positions with us for which they are qualified. We may also give a preference in hiring to the State agency's administrator, deputy administrator, or assistant administrator (or his equivalent). We will establish a system for determining the hiring priority among the affected State agency employees in those instances where we are not hiring all of them.

(b) *Determination by Secretary of Labor.* We will not assume responsibility for performing the disability determination function from a State until the Secretary of Labor determines that the State has made fair and equitable arrangements under applicable Federal, State and local law to protect the interests of employees who will be displaced from their employment because of the assumption and who we will not hire.

§ 416.1093 Limitation on State expenditures after notice.

The State agency may not, after it receives the notice referred to in § 416.1090, or gives the notice referred to in § 416.1091, make any new commitments to spend funds allocated to it for performing the disability determination function without the approval of the appropriate SSA regional commissioner. The State will make every effort to close out as soon as possible all existing commitments that relate to performing the disability determination function.

§ 416.1094 Final accounting by the State.

The State will submit its final claims to us as soon as possible, but in no event later than 1 year from the effective date of our assumption of the disability determination function unless we grant an extension of time. When the final claim(s) is submitted, a final accounting will be made by the State of any funds paid to the State under § 416.1026 which have not been spent or committed prior to the effective date of our assumption of the disability determination function.

[FR Doc. 81-1542 Filed 1-15-81; 8:45 am]
BILLING CODE 4110-07-M

federal register

Friday
January 16, 1981

Part XVIII

Department of Education

Arts in Education Program; Final Regulations Announcement of Applications for Noncompeting Continuation Award

DEPARTMENT OF EDUCATION

34 CFR Part 753

Arts in Education Program

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary of Education issues final regulations for the Arts in Education Act of 1978. These regulations replace the final regulations that were issued for the Act on April 3, 1980. They delete requirements that each project include cost sharing by the grantee, address at least four art forms, and have an advisory committee representative of community resources. Other changes are also made. These revised regulations are substantially shorter and less prescriptive than the earlier regulations. These regulations are redesignated from 45 CFR Part 161c to 34 CFR Part 753, and all section numbers are renumbered accordingly.

EFFECTIVE DATE: These regulations are expected to take effect 45 days after they are transmitted to Congress. Regulations are transmitted to Congress several days before they are published in the Federal Register. The effective date is changed by statute if Congress takes certain adjournments. If you wish to know the effective date of these regulations, call or write the Department of Education contact person.

FOR FURTHER INFORMATION CONTACT: Harold Arberg, Director, of Arts and Humanities Staff, U.S. Department of Education, Room 3720 Donohoe Building, Washington, D.C. 20202. Telephone: (202) 472-7793.

SUPPLEMENTARY INFORMATION: A notice of proposed rulemaking (NPRM) for the Arts in Education Act, published in the Federal Register on September 22, 1980 (45 FR 62855) contained background information on policy changes in the program and how the regulations are intended to work and invited public comment. The NPRM proposed to replace the final regulations issued on April 3, 1980 (45 FR 22742) as the result of the Secretary's conclusion that the purposes of the Act could be best achieved by shortening and simplifying the program regulations in response to the concerns raised. Most of the public responses support the proposed changes that have been made in these regulations. Some commenters requested clarification of allowable expenses. Several suggested specific changes in the regulations. A majority of the respondents commented on the three major changes proposed—deletion of the cost-sharing, "four arts," and advisory committee requirements. Many addressed the Secretary's discretionary authority to assign points to specific funding priorities. Several commented on the proposed inclusion of geographic and programmatic diversity, and a number expressed a desire that the evaluation process include separate points for the States' review of local applications. Several of the commenters expressed the desire to return to former programmatic policy, i.e., "seed money" for SEAs and LEAs. Comments that resulted in alterations to the proposed regulations are discussed in paragraph A below; other comments requiring clarification or explanation follow in paragraph B.

A. Comments Resulting in Changes

§ 753.4 Definition of "rural or small community."

Comment. Several respondents expressed a concern that the proposed definition might exclude a typical applicant who may not fall within either the rural or the urban category under the proposed definitions.

Response. The definition has been modified to cover any applicant not included in the State or urban categories.

§ 753.11 What are the requirements regarding cooperation?

Comment. Several respondents opposed the requirement for intensive collaboration on the basis that they believed fewer programs would be funded and less money would be available directly to the SEAs and LEAs. Others favored this approach, which they felt would lead to more local involvement of resources and talent and would have more lasting impact. One commenter felt the regulations should be more specific on how the collaboration among agencies should be accomplished. Another commenter noted that the authorizing statute does not specifically require such arrangements.

Response. Section 753.11 has been deleted in order to remove any requirement concerning collaboration. However, collaboration is considered an important factor bearing on the quality of an application. The criterion in § 753.31(g) addresses it. School-community cooperation encourages maximum use of community resources and reduction of competing applications for scarce funds from the same community. This has been an important element of the Arts in Education Program since its inception. The issue of the number and size of awards is not addressed in these regulations but it may be addressed in the annual application notice in the light of available appropriations.

§ 753.22 What are the requirements for State review of local applications?

Comment. One commenter expressed concern that § 753.22(a) and former § 753.22(b) could be interpreted as requiring States to have a State advisory council, when this is not required by the authorizing statute. Several commenters felt that the State Alliance for Arts Education Committee should serve this function. Many expressed a need for a governing body of some type.

Response. Section 753.22(a) has been amended to specify the Alliance for Arts Education Committee as an example of a State advisory council. Section 753.22(b) has been deleted to clarify that a State is not required to establish or designate an advisory council.

§ 753.30 How does the Secretary evaluate an application?

Comment. One commenter questioned the scope and rationale of § 753.30 (§ 161c.32(c) of the NPRM) concerning projects within the priorities of other agencies.

Response. The provision has been amended to clarify that the Secretary may decline to fund a project that comes within the priority of another Federal agency. The rationale is to avoid duplication and promote coordination with other Federal activities that support related purposes, so that taxpayers' funds are spent most efficiently.

§ 753.31 What selection criteria does the Secretary use?

Comment. One commenter stated that the law does not specify that projects must be innovative or new, nor does it require that they be comprehensive or that material be disseminated.

Response. The criterion related to new or innovative approaches, methods, and materials is necessary to comply with the purpose of title III, section 301 of the Education Amendments of 1978. The Arts in Education program will carry out projects that emphasize new or innovative approaches, methods, or materials. There is no longer a specific criterion on dissemination. The criterion regarding "comprehensive" projects has been modified to allow for more flexibility. As amended, it allows the Secretary, in judging the quality of an application, to consider whether the major arts are integrated into the curriculum. Dance, music, theater, and the visual arts are mentioned only as examples of the major arts. The criterion reflects research that shows that the

combination of multiple arts in an integrated program has the most effective impact on the overall elementary and secondary school curriculum.

§ 753.32 Are priorities for funding established?

Comment. Many respondents wanted to know how the Secretary will decide which of the designated funding areas should receive priority and how the public would be notified of priority decisions. One commenter asked what the rationale was for selecting these areas. Several expressed concern that the Secretary could override reviewers' or States' evaluations. Two States, one city, and one public school system favored the discretionary authority if it were used to make their agencies the priority for bonus points.

Response. These provisions have been amended to clarify how the funding categories would work, in accordance with the concerns expressed in the comments. The categories collectively encompass all eligible projects at the State or local level. They are designed to insure a fair competition between State-level, urban, and rural applications.

§ 753.33 What is the length of a project period?

Comment. Several respondents were interested in the regulations as they pertain to continuation awards. One expressed concern that school-community cooperation was a determining factor.

Response. The subject criterion on school-community collaboration with regard to continuation awards has been deleted. Coordination and cooperation are a criterion for all new awards, and it is unnecessary to have a separate criterion on this subject related to continuation awards.

§ 753.40 What are the limitations on costs?

Comment. One commenter asked if stipends to teachers for in-service training would be allowed.

Response. The word, "stipends," is misleading and has been deleted. Payments are allowable to teachers for in-service training.

Comment. One commenter asked why equipment is limited to 5% of the project costs.

Response. The 5% limitation has been deleted in the interest of greater program flexibility.

B. Response to Other Comments

The following comments did not result in changes in the regulations, either because the comments requested provisions beyond the authority of the Act or concerned matters already addressed in the regulations. Commenters are referred to the proposed regulations, which present the basis and rationale for changes from previous regulations. Only comments considered to raise regulatory issues are discussed below.

§ 753.10 What are the required elements of an arts in education project?

Comment. One commenter felt that the language in § 753.10(a) should include vocation-oriented institutions.

Response. While the Act contains no limit on non-profit institutions that are eligible, the purpose of the Act is to integrate the arts into elementary and secondary school curricula. The regulations reflect these statutory provisions.

Comment. One-third of the respondents desired modification of § 753.10(b). Many felt that at least two of the arts should be required to avoid dependence on one teacher or administrator and to strengthen the curriculum as an aid to learning.

Response. Section 753.31(h) provides that in making a judgment as to the best applications, the Secretary may consider the degree to which the major arts are integrated into the regular curriculum. However, § 753.10 has not been amended to require a particular number of the arts in a project. The statute does not contain this requirement, and Congress objected to the provision in previous regulations requiring four major art forms in each project.

§ 753.22 What are the requirements for State review of local applications?

Comment. Several respondents wanted separate points to be assigned in the award process to State comments or rankings of local applications.

Response. State comments bearing on the published criteria will be carefully considered by the Secretary. However, the Secretary does not wish to prejudice or exclude an applicant from a State that may not have a specific mechanism in place to evaluate these applications, or that may choose not to evaluate them. No specific procedure is prescribed for State review.

§ 753.31 What selection criteria does the Secretary use?

Comment. One commenter argued that the geographic distribution criterion pits State against local applicants from the same State.

Response. The regulations contain no specific limit on the number of applications that may be funded in a particular State. However, it is appropriate for the Secretary to consider geographic distribution in awarding limited funds. If a disproportionate number of applications were funded in particular States or regions, to the neglect of other parts of the country, this could detract from the national purposes of the Act.

Comment. Some commenters argued that deletion of the cost-sharing requirement may weaken local support of the project and result in increased competition for funds.

Response. Section 753.31(l) contains a criterion that allows the Secretary, in selecting the best applications, to consider the strength of local commitment and stability of the program following the Federal funding period. However, to avoid being overly prescriptive, the cost-sharing requirement has been deleted.

Comment. Many respondents believed that the deletion of the advisory committee requirement might weaken the project, make it less responsive to community needs and resources, and provide less collaboration among organizations involved. One believed that collaboration can weaken or dilute as well as strengthen.

Response. Section 753.31(g)(1) includes a criterion that allows the Secretary, in selecting the best applications, to consider coordination and collaboration. A specific method or strategy is not prescribed. § 753.11 has been deleted, and § 753.31(g) no longer provides for an advisory committee.

Comment. One respondent requested that the regulations clarify how the elderly are to be included in the project (§ 753.31 (a) and (b)). Another commenter applauded the spirit of equal opportunity in the proposed regulations.

Response. These provisions are derived from Department-wide criteria contained in the Education Department General Administrative Regulations (EDGAR). They would apply to the extent appropriate to a particular project. In elementary and secondary projects, the elderly might be included, for example, in in-service training or technical assistance activities.

Comment. One commenter urged that Congress intended private school children to be included in all programs for public school children under Title III of the Elementary and Secondary Education Act, and not only those controlled by SEAs and LEAs.

Response. These comments pertain to Department-wide provisions derived from EDGAR. The comments will be considered in any future amendments to EDGAR.

§ 753.32 Are priorities for funding established?

Comment. One respondent wanted a special category of grants to small urban systems.

Response. The change in the definition of "rural or small community" under § 753.4 clarifies that small urban systems are eligible to apply under the rural or small community category. See Subpart D, § 753.32, for how the Secretary will establish categories for funding.

§ 753.40 What are the limitations on cost?

Comment. One commenter asked that the regulations clarify the wording in § 753.40(a)(2) on unallowable expenses.

Response. The wording, "Salaries of regular, full-time instructional personnel" refers to teachers' salaries for regular classroom instruction. Payments may be made to part-time or substitute teachers or to regular teachers on released time to attend in-service training or to perform other project-related functions.

Citation of Legal Authority

A citation of statutory or other legal authority has been placed in parentheses on the line following each provision.

Dated: January 12, 1981.

Shirley M. Hufstedler,

Secretary of Education.

(Catalog of Federal Domestic Assistance No. 84.084, Arts Education Program)

The Secretary of Education amends Title 34 of the Code of Federal Regulations by adding a new Part 753 reading as follows:

PART 753—ARTS IN EDUCATION PROGRAM

Subpart A—General

Sec.

753.1 Arts in Education Program.
753.2 Eligible parties.
753.3 Regulations that apply to this program.
753.4 Definitions.

Subpart B—What Kinds of Activities Does the Secretary Assist Under This Program?

753.10 What are the required elements of an arts in education project?

Subpart C—How Does One Apply for a Grant?

753.20 What limitations apply to applicants?
753.21 What are the application requirements?
753.22 What are the requirements for State review of local applications?

Subpart D—How Is a Grant Made?

753.30 How does the Secretary evaluate an application?
753.31 What selection criteria does the Secretary use?
753.32 Are priorities for funding established?
753.33 What is the length of a project period?

Subpart E—What Conditions Must Be Met by a Grantee?

753.40 What are the limitations on costs?

Authority: Part C, Title III of the Elementary and Secondary Education Act of 1965, as amended by the Education Amendments of 1978, Pub. L. 95-561, 92 Stat. 2212 (20 U.S.C. 2981).

Subpart A—General

§ 753.1 Arts in education program.

The Arts in Education Program assists in establishing, conducting or improving programs in which the arts are an integral part of elementary and secondary school curricula.

(20 U.S.C. 2982)

§ 753.2 Eligible parties.

(a) State educational agencies (SEAs), local educational agencies (LEAs), and public or private nonprofit agencies, organizations, and institutions are eligible to apply for grants.

(b) Agencies, organizations, and institutions may include, but are not limited to, libraries, museums, theaters, arts councils and centers, colleges and universities, performing arts groups, and parent, youth, and civic organizations.

(20 U.S.C. 2942, 2982)

§ 753.3 Regulations that apply to this program.

The following regulations apply to grants under the Arts in Education Program:

(a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Part 75 (Direct Grant Programs) and 34 CFR Part 77 (General); and

(b) The regulations in this Part 753.

(20 U.S.C. 1221e-3, 2982)

§ 753.4 Definitions.

In addition to the definitions in 34 CFR Part 77 of EDGAR, the following definitions apply in these regulations:

"Arts" includes, but is not limited to, music, dance, drama, folk art, creative writing, architecture and allied fields, painting, sculpture, photography, graphic and craft arts, industrial design, costume and fashion design, motion pictures, television, radio, and tape and sound recording; the presentation, performance, execution, and exhibition of these art forms; and the study and application of the arts to the human environment.

(20 U.S.C. 2981, 982(b), Pub. L. 96-209)

"Rural or small community" means a geographic area other than a State.

"Urban or large community" means a standard metropolitan statistical area (the area in and around a city of fifty thousand inhabitants or more as defined by the Office of Management and Budget).

(20 U.S.C. 2982, 3207)

Subpart B—What Kinds of Activities Does the Secretary Assist Under This Program?

§ 753.10 What are the required elements of an arts in education project?

The Secretary assists an arts in education project only if it is designed to—

(a) Integrate one or more of the arts into the regular educational curricula of the schools served; and

(b) Provide opportunities for all students in the schools served to acquire skills and understanding in and through arts media.

(20 U.S.C. 2981, 2982)

Subpart C—How Does One Apply for a Grant?

§ 753.20 What limitations apply to applicants?

The Secretary approves no more than one project application from an applicant in a fiscal year, whether or not the application is filed jointly with that of other applicants.

(20 U.S.C. 1221e-3, 2982)

§ 753.21 What are the application requirements?

An applicant must demonstrate, on the application form furnished by the Secretary, that the proposed project meets the requirements of the Act and applicable regulations. An applicant should address each funding criterion.

Cross references:
EDGAR § 75.127-129 (Group applications).
EDGAR § 75.138-141 (Open meeting).
§ 302(b) of the ESEA, EDGAR § 75.650 (Participation of students in private schools).

(20 U.S.C. 1221e-3, 2982)

§ 753.22 What are the requirements for State review of local applications?

(a) The SEA, working with the State arts education advisory committee (such as the Alliance for Arts Education Committee), if any, may review and comment on local applications.

(b) The local applicant must send a copy of its application to the SEA, at the same time it sends the application to the Secretary. The application must show that a copy was sent to the SEA.

(c) To ensure that its comments are considered in the application review, an

SEA should send its comments to the Secretary no later than 30 days after the closing date for receipt of applications.

(20 U.S.C. 1221e-3, 2982)

Subpart D—How Is a Grant Made?

§ 753.30 How does the Secretary evaluate an application?

(a) The Secretary evaluates an application on the basis of the criteria in § 753.31.

(b) The Secretary awards up to 100 possible points for these criteria.

(c) The maximum possible score for each complete criterion is indicated in parentheses.

(d) The Secretary may decline to approve applications that are within the funding priorities of other Federal agencies.

(20 U.S.C. 2982)

§ 753.31 What selection criteria does the Secretary use?

(a) *Plan of Operation.* (10 points)

(1) The Secretary reviews each application for information that shows the quality of the plan of operation for the project.

(2) The Secretary looks for information that shows—

(i) High quality in the design of the project;

(ii) An effective plan of management that insures proper and efficient administration of the project;

(iii) A clear description of how the objectives of the project relate to the purpose of the program;

(iv) The way the applicant plans to use its resources and personnel to achieve each objective;

(v) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented, such as members of racial or ethnic minority groups, women, handicapped persons, and the elderly.

(vi) If the applicant is a State or local educational agency, how the applicant will provide an opportunity for the participation of children in private schools.

(b) *Quality of key personnel.* (7 points)

(1) The Secretary reviews each application for information that shows the quality of key personnel the applicant plans to use on the project.

(2) The Secretary looks for information that shows—

(i) The qualifications of the project director (if one is to be used);

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (b)(2)(i) and (ii) of this section plans to commit to the project; and

(iv) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as members of racial or ethnic minority groups, women, handicapped persons, and the elderly.

(3) To determine the qualifications of a person, the Secretary considers evidence of past experience and training, in fields related to the objectives of the project, as well as other information that the applicant provides.

(c) *Budget and cost effectiveness.* (5 points)

(1) The Secretary reviews each application for information that shows that the project has an adequate budget and is cost effective.

(2) The Secretary looks for information that shows—

(i) The budget for the project is adequate to support the project activities; and

(ii) Costs are reasonable in relation to the objectives of the project.

(d) *Evaluation plan.* (5 points)

(1) The Secretary reviews each application for information that shows the quality of the evaluation plan for the project. (See 34 CFR 75.590—Evaluation by the grantee.)

(2) The Secretary looks for information that shows methods of evaluation that are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable.

(e) *Adequacy of resources.* (3 points)

(1) The Secretary reviews each application for information that shows that the applicant plans to devote adequate resources to the project.

(2) The Secretary looks for information that shows—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies that the applicant plans to use are adequate.

(f) *Needs assessment.* (5 points)

The Secretary reviews each application for information that shows the extent to which the applicant—

(1) Identifies and analyzes, objectively and comprehensively, the need for arts education programs in the area to be served; and

(2) Establishes clear and measurable objectives that relate to the identified needs.

(g) *Coordination and collaboration.* (15 points)

(1) The quality of the applicant's plan to mobilize and coordinate activities of all agencies, organizations, and institutions involved. In judging this criterion, the Secretary considers the applicant's description of how and why each entity is cooperating in the project.

(2) The consistency with plans and activities previously carried out in arts education including the State plan for arts education, if any.

(3) The extent to which the applicant has developed and will employ effective methods, throughout the project period, for continuing consultation with the groups involved.

(h) *Arts integration.* (10 points)

The extent to which the project is designed to integrate the major arts (for example, dance, music, theater, and the visual arts) into the regular educational program of the schools served.

(i) *Commitment.* (15 points)

The extent to which the applicant's activities to make the arts an integral part of the elementary and secondary school curricula are likely to continue and expand when Federal assistance for the project ends.

(j) *Results.* (15 points)

(1) The extent to which the project is likely to result in new or innovative approaches, methods, or materials designed to achieve the purpose of the Act; and

(2) The likelihood that the materials to be developed by the project would be useful and effective for other potential users.

(k) *Special needs.* (10 points)

The extent to which the project is designed to serve the special needs of the handicapped, gifted, and underprivileged.

(l) *Diversity—geographic and programmatic.* To ensure geographic and programmatic diversity, the Secretary may add up to 10 points to the score of an application that will contribute to—

(1) An equitable geographic distribution of arts education programs throughout the United States in both urban and rural areas; and

(2) A variety in types of projects funded that collectively demonstrate diverse approaches to arts education.

(20 U.S.C. 2982)

§ 753.32 Are priorities for funding established?

(a) The Secretary funds projects in the following categories:

(1) State-wide projects;

(2) Urban or large community projects; and

(3) Rural or small community projects.

(b)(1) The Secretary decides annually how many grants to award in each category based on:

(i) The number of applications in each category;

(ii) The relative quality of the applications; and

(iii) The Secretary's goal to achieve a reasonable balance among projects funded in these categories.

(2) Through advance notice in the Federal Register, the Secretary may announce the distribution by category of previously funded projects eligible for non-competing continuation and its effect on new awards under paragraph (b)(1)(iii) of this section.

(20 U.S.C. 2982)

§ 753.33 What is the length of a project period?

(a) The Secretary usually approves a project for a maximum of three years. The budget period is twelve months.

(b) In deciding whether or not to make a continuation award within the approved project period, the Secretary considers the factors in § 75.253 of EDGAR.

(20 U.S.C. 1221e-3, 2982)

Subpart E—What Conditions Must Be Met by a Grantee?

§ 753.40 What are the limitations on costs?

(a) A grantee may not use federal funds for—

(1) Direct student financial aid; or

(2) Salaries for regular, full-time instructional personnel.

(b) A grantee may use up to ten percent of total project costs for outside evaluation of the project.

(20 U.S.C. 2982)

[FR Doc. 81-1685 Filed 1-15-81; 8:45 am]
BILLING CODE 4000-01-M

DEPARTMENT OF EDUCATION

Arts in Education Program

AGENCY: Department of Education.

ACTION: Application notice.

Applications are invited for noncompeting continuation projects under the Arts in Education Program.

Authority for this program is contained in Part C of Title III of the Elementary and Secondary Education Act of 1965, as amended by Pub. L. 95-561.

(20 U.S.C. 2961)

This program awards grants to State educational agencies (SEAs), local educational agencies (LEAs) and other public or private nonprofit agencies, organizations, and institutions.

The purpose of the awards is to establish or conduct programs in which the arts are an integral part of elementary and secondary school curricula.

Closing Date for Transmittal of Applications: To be assured of consideration for continued funding, an application for a noncompeting continuation award should be mailed or hand delivered by April 1, 1981.

Applications Delivered by Mail: An application for a noncompeting continuation award sent by mail must be addressed to the U.S. Department of Education, Application Control Center, Attention: 84.084, Washington, D.C. 20202.

An applicant must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier."

(4) Any other proof of mailing acceptable to the Secretary of Education.

If an application is sent through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing: (1) A private metered postmark, or (2) a mail receipt that is not dated by the U.S. Postal Service.

An applicant should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

An applicant is encouraged to use registered or at least first class mail. Each late applicant will be notified that its application will not be considered.

Applications Delivered by Hand: An application that is hand-delivered must be taken to the U.S. Department of Education, Application Control Center, Room 5673, Regional Office Building 3, 7th and D Streets, SW., Washington, D.C.

The Application Control Center will accept a hand-delivered application between 8:00 a.m. and 4:30 p.m. (Washington, D.C. time) daily, except Saturdays, Sundays, and Federal holidays.

Available Funds: It is estimated that $750,000 of FY 1981 funds will be available for continuation of 15 projects at the continuation level requested in the initial application. This estimate does not bind the U.S. Department of Education except as may be required by the applicable statute and regulations.

Application Forms: Application forms and program information packages may be obtained by writing to the Arts and Humanities Staff, U.S. Department of Education (Room 3728, Donohoe Building), 400 Maryland Avenue, SW., Washington, D.C. 20202.

Applications must be prepared and submitted in accordane with the regulations, instructions, and forms included in the program information package. The Secretary urges that applicants not submit information that is not requested.

Applicable Regulations: The following regulations apply under this program.

(a) Final regulations governing the Arts Education Program (34 CFR Part 753) published in this issue of the Federal Register.

(b) The Education Department General Administrative Regulations (EDGAR) redesignated in the Federal Register as 34 CFR Parts 75 (Direct Grant Programs) and 77 (General) on November 21, 1980 (45 FR 77368).

(c) The Administration of Grants Regulations in 34 CFR 74 published in the Federal Register on May 9, 1980 (45 FR 30856).

Further Information: For further information, contact the Arts and Humanities Staff, U.S. Department of Education (Room 3728, Donohoe Building), 400 Maryland Avenue, SW., Washington, D.C. 20202. Telephone (202) 472-7793.

(20 U.S.C. 2961)

(Catalog of Federal Domestic Assistance Program No. 84.084, Arts Education Program)

Dated: January 12, 1981.

F. James Rutherford,

Assistant Secretary for Educational Research and Improvement

[FR Doc. 81-1080 Filed 1-15-81; 8:45 am]

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Friday
January 16, 1981

Part XIX

Environmental Protection Agency

Identification and Listing of Hazardous Waste; Final Rule and Temporary Suspension of Interim Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[SWH-FRL 1627-3]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste

AGENCY: U.S. Environmental Protection Agency.

ACTION: Final rule and temporary suspension of interim final rule.

SUMMARY: In response to public comment, the Environmental Protection Agency (EPA) today is finalizing the listings of thirteen hazardous wastes from specific sources that were proposed or promulgated in interim final form in the Federal Register on July 16, 1980 (45 FR 47832–47836). In addition EPA is deleting two wastes from its interim final hazardous waste list, and is deferring action on and suspending the effectiveness of nine wastes listed in interim final form on July 16, 1980, as well as deferring action on one waste that was proposed on that date.

EPA is also amending Appendix VII of this Part by finalizing the toxic constituents of concern for each listed waste promulgated today.

DATES: Effective dates: Waste listings promulgated in interim final form on July 16, 1980, which are finalized today, become effective on January 16, 1981. Waste listings which were proposed on July 16, 1980, and which are finalized today, become effective on July 16, 1981.

See supplementary information for further details.

ADDRESSES: The public docket for this regulation is located in Room 2711, U.S. Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460, and is available for viewing from 9:00 a.m. to 4:00 p.m., Monday through Friday, excluding holidays.

FOR FURTHER INFORMATION CONTACT: Dr. Judith S. Bellin, Office of Solid Waste (WH–565), U.S. Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460, (202) 755–9187.

SUPPLEMENTARY INFORMATION: Before discussing the substance of today's action, the Agency wishes to state clearly the regulatory obligations which result from it.

I. Compliance Dates for Regulatory Obligations

A. Notification

1. Finalized Waste Listings Promulgated in Interim Final Form on July 16, 1980.

Persons who generate, transport, treat, store, or dispose of any hazardous waste listed in interim final form on July 16, 1980 which waste listing is now being finalized, are not required to notify EPA as a result of today's action. Wastes in this category are hazardous wastes K071, K073, K083, K084, K085, K086, and K087. We do not consider today's action to be a revision of the Section 3001 regulations within the meaning of Section 3010(b). All such persons, of course, should have already notified EPA by or before October 16, 1980.

2. Finalized Waste Listings Which Were Proposed on July 16, 1980.

Persons who generate, transport, treat, store, or dispose of wastes which were proposed for listing on July 16, 1980 which are being finalized today—hazardous wastes K101–K106—are not required to notify so long as they previously have notified the Agency that they handle a hazardous waste and have received an I.D. number. Persons who have not previously notified EPA and who generate or handle these wastes must now notify EPA of their activities under Section 3010 no later than April 16, 1981. Notification instructions are set forth in 45 FR 12746 (February 26, 1980).[1]

B. Other Compliance Dates

Beginning on January 16, 1981, persons handling wastes listed in final form in § 261.32, which listings were promulgated in interim final form on July 16, 1980, must comply with all applicable standards for hazardous waste generators, transporters, and owners or operators of hazardous waste management facilities set forth in 40 CFR Parts 262 through 266 and 122 through 124.

Beginning on July 16, 1981, persons handling wastes listed in final form in § 261.32 which were proposed for inclusion on July 16, 1980, must comply with all applicable standards for hazardous waste generators, transporters, and owners or operators of hazardous waste management facilities set forth in 40 CFR Parts 262 through 266 and 122 through 124.

The owners or operators of all existing hazardous waste management facilities which treat, store or dispose of wastes listed in these regulations which were proposed for inclusion on July 16, 1980, and who wish to qualify for interim status under Section 3005(e) of RCRA, must file a notification by April 16, 1981 unless they have notified previously (as described in A. 2. above), and must file a permit application by July 16, 1981 (see 40 CFR 122.23(a) (1) and (2)).

Owners or operators of facilities who have qualified for interim status and wish to manage wastes listed in the final regulations which were proposed for listing on July 16, 1980 must submit an amended permit application by July 16, 1981 (see 40 CFR 122.23(c)(1)). Owners or operators of facilities with interim status who do not comply with these requirements are precluded from managing these wastes after July 16, 1981.

Table I summarizes the Agency's action on each waste stream discussed in the July 16 Federal Register notice, and gives the effective date of each final regulation.

[1] Our authority for this action is the recent amendment to Section 3010(a) of RCRA contained in the Solid Waste Disposal Act Amendments of 1980 (Pub. L. 96–452 (October 21, 1980)), which amendment leaves the requirement for notification following revision of the Section 3001 regulations to the discretion of the Administrator.

Table I.—*Summary of the Agency's Disposition of Each Waste Stream Listed in Interim Final Form or Proposed for Listing on July 16, 1980*

EPA hazardous waste No.	Hazardous waste	Effective date and disposition
	§ 261.31 Hazardous Waste From Nonspecific Sources	
F017	Paint residues or sludges from industrial painting in the mechanical and electrical products industry.	Suspended temporarily.
F018	Wastewater treatment sludge from industrial painting in the mechanical and electrical products industry.	Suspended temporarily.

Table I.—*Summary of the Agency's Disposition of Each Waste Stream Listed in Interim Final Form or Proposed for Listing on July 16, 1980*—Continued

EPA hazardous waste No.	Hazardous waste	Effective date and disposition
	§ 261.32 Hazardous Waste From Specific Sources	
K071	Brine purification muds from the mercury cell process in chlorine production, where separately prepurified brine is not used.	Jan. 16, 1981.
K106	Wastewater treatment sludge from the mercury cell process in chlorine production.	(6 months after publication.)
K073	Chlorinated hydrocarbon wastes from the purification step of the diaphragm cell process using graphite anodes in chlorine production.	Jan. 16, 1981.
K074	Wastewater treatment sludges from the production of TiO_2 pigment using chromium bearing ores by the chloride process.	Deleted (see 45 FR 72024, Oct. 30, 1980).
K078	Solvent cleaning wastes from equipment and tank cleaning from paint manufacturing.	Suspended temporarily.
K079	Water or caustic cleaning wastes from equipment and tank cleaning from paint manufacturing.	Suspended temporarily.
K081	Wastewater treatment sludges from paint manufacturing	Suspended temporarily.
K082	Emission control dust or sludge from paint manufacturing	Suspended temporarily.
K083	Distillation bottoms from aniline production	Jan. 16, 1981.
K103	Process residues from aniline extraction from the production of aniline.	(6 months after publication.)
K104	Combined wastewater streams generated from nitrobenzene/aniline production.	(6 months after publication.)
K084	Wastewater treatment sludges generated during the production of veterinary pharmaceuticals from arsenic or organo-arsenic compounds.	Jan. 16, 1981.
K101	Distillation tar residues from the distillation of aniline compounds in the production of veterinary pharmaceuticals from arsenic or organo-arsenic compounds.	(6 months after publication.)
K102	Residue from the use of activated carbon for decolorization in the production of veterinary pharmaceuticals from arsenic or organo-arsenic compounds.	(6 months after publication.)
K085	Distillation or fractionation column bottoms from the production of chlorobenzenes.	Jan. 16, 1981.
K105	Separated aqueous stream from the reactor product washing step in the production of chlorobenzenes.	(6 months after publication.)
K086	Solvent washes and sludges, caustic washes and sludges, or water washes and sludges from cleaning tubs and equipment used in the formulation of ink from pigments, driers, soaps, and stabilizers containing chromium and lead.	Jan. 16, 1981.
K087	Decanter tank tar sludge from coking operations	Jan. 16, 1981.
K088	Spent potliners from primary aluminum production	Suspended temporarily.
K090	Emission control dust or sludge from ferrochromium-silicon production.	Suspended temporarily.
K091	Emission control dust or sludge from ferrochromium production	Suspended temporarily.
K092	Emission control dust or sludge from ferromanganese production	Deleted.
(Proposed)	Emission control dust from gray and ductile iron foundry cupola furnaces.	Deferred.

II. Finalization of §§ 261.31 and 261.32 Hazardous Waste Lists

On July 16, 1980, EPA amended Subpart D of Part 261 by adding eighteen wastes to EPA's hazardous waste list (§§ 261.31 and 261.32, 45 FR 47833–47834). These lists were published in interim final form to allow the public an opportunity to comment on additional data the Agency had collected on these wastes since the close of the initial public comment period on the proposed Subtitle C regulations (43 FR 58957–58959, December 18, 1978).

At the same time, the Agency also proposed for comment seven additional hazardous waste listings (45 FR 47835–47836, July 16, 1980). All of these wastes were identified by the Agency in the course of developing the necessary technical data to support the July 16, 1980, interim final hazardous waste list.

The Agency received a number of comments on both the interim final and proposed hazardous waste listings. We have evaluated these comments carefully and responded in detail in the respective listing background documents. We are setting forth in this preamble our disposition of the listings published in interim final and proposed form on July 16, 1980, summarizing the basis for our actions as to each of these listings. We also are responding to comments criticizing the Agency's decision to defer temporarily the listing of wastes from the woven fabric dyeing and finishing industry.

A. Wastes for Which No Comments Were Received and No Changes Were Made to the Hazardous Waste Listings or to the Respective Background Documents

No comments were received on four of the hazardous waste listings published on July 16, 1980. In addition, the Agency is not making any substantive changes to either the hazardous waste listings or to the respective background documents as a result of its evaluation of these listings. Included in this category are certain wastes from the production of veterinary pharmaceuticals (EPA Hazardous Waste Nos. K084, K101 and K102), and wastes from ink formulation (EPA Hazardous Waste No. K086). We therefore are promulgating all of these listings as final regulations.

B. Waste for Which No Comments Were Received and No Changes Were Made to the Hazardous Waste Listing or Respective Background Document, But Final Implementation Has Been Temporarily Suspended

The Agency also received no comment on the hazardous waste listing of "spent potliners from primary aluminum production" (EPA Hazardous Waste No. K088). The Agency has no doubt that this waste should be listed as a hazardous waste, since it contains high concentrations of cyanide and has been involved in damage incidents. The lack of comment on the listing reflects further consensus that these wastes are indeed hazardous. However, the waste is excluded temporarily from control under Subtitle C under § 261.4(b) of the regulations. This provision implements Section 7 of the recently enacted Solid Waste Disposal Act Amendments of 1980 (Pub. L. 94–482, October 21, 1980), and states that solid wastes from the extraction, beneficiation and processing of ores and minerals (including coal) are excluded from regulation under Subtitle C of RCRA. For the time being, the Agency interprets the language of this exclusion to include solid wastes generated during the smelting and refining of ores and minerals, and so would exclude the waste streams from primary aluminum production. (See 45 FR 76618–76620 (November 19, 1980)). After reviewing the applicable legislative history and receiving public comment, the Agency may amend this exclusion to bring this waste (and others already promulgated) back under Subtitle C control.

C. Wastes for Which Comments Were Received But No Changes Were Made to the Hazardous Waste Listings

The Agency received comments disputing the hazardousness of, or challenging aspects of the Agency's rationale for listing, certain wastes from the production of chlorine (EPA Hazardous Waste No. K073), aniline/nitrobenzene (EPA Hazardous Waste Nos. K083, K103 and K104), and coking operations (EPA Hazardous Waste No. K087). In evaluating these comments, the Agency did not agree with the substantive criticisms, and did not modify the listing descriptions or the

constituents which form the basis for listing the waste. The applicable background documents have been revised to respond to each comment.

D. Wastes for Which Comments Were Received Which Resulted in Modifications to the Hazardous Waste Listing Descriptions, or to the Applicable Background Documents

Comments were also submitted on hazardous wastes K085 and K105 (chlorobenzene production), and K071 and K106 (wastes from chlorine production by the mercury cell process). EPA has carefully reviewed these comments and has concluded that the listing description or the basis for listing should be changed, or the respective background document should be changed. The amended hazardous waste listings or background documents are discussed below, together with the reason for EPA's determination. More detailed discussion of the reasons underlying the respective dispositions is contained in the applicable background documents.

(1) *Wastes from the Production of Chlorobenzenes (EPA Hazardous Waste Nos. K085 and K105).*

(a) In listing the separate aqueous stream from the reactor product washing step in the production of chlorobenzenes, (K085) phenol, 2-chlorophenol and 2,4-dichlorophenol were included as toxic constituents of concern. After reviewing the comments, we believe that these constituents should not be so listed because they do not occur in this waste stream in concentrations sufficient to cause concern, even if the wastes were mismanaged. The background document has been changed, and Appendix VII has been revised to reflect this determination. However, we believe the waste stream to be hazardous because it contains benzene (a carcinogen), certain chlorinated benzenes, and the carcinogen 2,4,6-trichlorophenol in potentially harmful concentrations, as explained more fully in the listing background document.

(b) In response to a comment received from one manufacturer of chlorobenzenes, we have changed the listing description for the aqueous waste (K105) to indicate that the listed aqueous waste stream may result from some continuous processes, as well as from batch processes.

(c) One comment questioned whether distillation residues from chlorobenzene production (in this case, hexachlorobenzene production) were still intended to be listed when the hexachlorobenzene was then used as a reactant in the production of pentachloronitrobenzene, rather than sold as a product. The distillation residues are indeed a listed hazardous waste in this case. The end usage of the hexachlorobenzene is irrelevant to the potential of the listed waste stream to cause harm. Therefore, any waste stream meeting the listing description contained in § 261.31 or § 261.32 is covered by the listing regardless of the end disposition of the material being produced.

(2) Wastes from Chlorine Production via the Mercury Cell Process (EPA Hazardous Waste Nos. K071 and K106).

Several commenters argued that data used by the Agency in support of the listings was outdated and therefore did not accurately reflect the hazardousness of the wastes listed. In reviewing the data submitted by the commenters, the Agency agrees that the data was old, and therefore has revised the background document to reflect the more recent information. The background document was revised in order to reflect new data on siting, production capacity, source of raw materials, concentration of mercury in these wastes and volume of wastes generated. The new data still indicates, however, that these wastes contain significant concentrations of mercury (a very toxic constituent), and are generated in substantial quantities. Furthermore, these wastes are reliably believed to have caused substantial damage in actual waste management practice, and therefore should be listed as hazardous wastes. A more detailed discussion of the comments received are available in the listing background document.

E. Wastes for Which Comments Were Received Which Resulted in the Deletion of the Wastes from the Hazardous Waste List

Two of the wastes listed in interim final form on July 16, 1980, were deleted from the list as a result of industry comment. Our basis for removing these wastes are discussed below. It must be emphasized, however, that it is still the responsibility of all generators of these wastes to determine whether they exhibit any of the characteristics of hazardous waste in Subpart C of Part 261.

(1) Emission control dust/sludge from the production of ferromanganese (EPA Hazardous Waste No. K092).

The Ferroalloys Association submitted EP leachate analyses from these ferromanganese production wastes which indicate that the extracts from these wastes do not contain significant concentrations of either chromium or lead, the waste constituents of concern. The Agency has, therefore, determined that emission control dust/sludge from ferromanganese production should not be listed as a hazardous waste.

(2) *Wastewater treatment sludges from the production of TiO_2 pigment using chromium-bearing ores by the chloride process (EPA Hazardous Waste No. K074).*

On October 30, 1980 (45 FR 72037), the Agency published as a final rule an amendment to § 261.32 which removed this waste stream from the list of hazardous wastes since it derives from a trivalent chromium-based process and contains trivalent chromium exclusively or nearly exclusively.

F. Wastes for Which Comments were Received and a Final Determination was Deferred

(1) *Emission control dust or sludge from ferrochrome and ferrochrome-silicon production (EPA Hazardous Waste Nos. K090 and K091).*

These wastes are presently excluded from Subtitle C coverage due to the mining waste exclusion contained in § 261.4. However, the Agency also has some substantive doubts about whether these waste streams should be listed.

The Ferroalloys Association submitted extensive data which indicates that the EP extract from these wastes contains insignificant concentrations of lead. The Agency has therefore determined that lead should be deleted as a toxic constituent of concern in these wastes. In this same set of comments, however, the concentration of total chromium in the extracts of many of the sampled wastes was well above the limit set in § 261.24 (5 mg/1). There is real uncertainty, however, as to the valence state of the chromium in these wastes. Since the Agency has indicated that hexavalent chromium is the species of regulatory concern (45 FR 72029, October 30, 1980), we believe that additional data is needed. The Ferroalloys Association has agreed to conduct a sampling and analysis effort to determine whether significant levels of total chromium, hexavalent chromium, and manganese appear in the extract from ferrochrome and ferrochromium-silicon wastes. Manganese is of concern because its presence can result in the oxidation of trivalent chromium. After this data is received, the Agency will make a final decision on whether to list these wastes. This decision is expected to be made in the Spring of 1981.

(2) *Wastes from Gray and Ductile Iron Foundries (proposed listings).*

Over the past eighteen months the Agency has proposed for listing a

number of wastes from both gray and ductile iron foundries, namely lead bearing wastewater treatment sludges from gray iron foundries, and emission control dust from gray and ductile iron foundry cupola furnaces (see discussion in 45 FR 47836, July 16, 1980). These wastes were proposed for listing since they were shown in certain cases to contain or release significant concentrations of the toxic metals lead or cadmium. However, as a result of industry comment, the Agency undertook further study of these wastes, beginning last summer, to determine their hazardousness. The report of this study is expected to be available for public comment in the near future. After evaluating this data and the public comments received, the Agency will consider the hazards posed by various wastes from foundry operations. We are, accordingly, deferring final action on these wastes. (All of these wastes are hazardous, of course, if they exhibit any of the characteristics of hazardous waste, and generators of these wastes are obligated to make this determination.)

(3) *Wastes From the Use and Manufacture of Paints (EPA Hazardous Waste Nos. F017, F018, K078, K079, K081, and K082).*

Many comments were received from various trade organizations and interested individuals, who objected to the listing of these paint wastes.

In general, most commenters criticized the waste listings as overly broad, resulting in regulation of both hazardous and non-hazardous paint wastes. In re-evaluating the data, the Agency agrees that further study of these wastes is needed before a final listing can be promulgated. We anticipate that our re-examination of paint wastes will be completed by the Spring of 1981. The Agency therefore has decided to suspend temporarily the interim final listings of these paint wastes. Paint wastes which exhibit any of the hazardous waste characteristics remain subject to Subtitle C controls.

G. Response to Comments Criticising the Agency's Decision to Defer Temporarily Listings of Waste Streams from the Woven Fabric Dyeing and Finishing Industry

The Agency indicated in the preamble to the July 16, interim final regulations that it was deferring temporarily listing of wastewater treatment sludges from the woven fabric dyeing and finishing industry (45 FR at 47832–47833).

One commenter objected to this decision, arguing that the Agency had improperly relied on EP protocol test data to evaluate the migratory potential of organic contaminants in these wastes. The commenter further stated that there is no documentation for the Agency's determination that chromium (which had been cited as a waste constituent of concern) is used in the manufacturing process in insignificant amounts. The commenter also felt that data submitted by industry sufficiently supports listing of these wastes as hazardous.

The Agency agrees with the commenter that the EP test may not be an appropriate measure of the potential for migration of all organic contaminants. Therefore, in evaluating the potential mobility of organic contaminants in textile waste, the Agency did not nor will it rely on the EP test to determine the potential mobility of possible organic waste constituents. In evaluating all the data currently in its possession, the Agency believes that it does not have sufficient data to assess the potential hazard to human health and the environment that would be presented by these wastes if improperly managed. The Agency, however, is still very concerned with the potential hazards that may be presented by these wastes, and therefore still intends to study further the wastes generated by the textile industry, paying particular attention to the many toxic organic constituents used in the production process such as dyes and pigments derived from benzidine, *o*-dianisidine, *o*-tolidine, and 3,3'-dichlorobenzidine, as well as acrylonitrile, trichlorobenzene, bis-(2-ethyl hexylphthalate), flame retardants and other additives.

With respect to the commenter's concern as to the lack of documentation on the use of chromium compounds in the textiles industry, the Agency not only was provided this information by industry, but possessed corroborating data in its own files. However, the Agency will reevaluate this information when further studying these wastes.

III. Finalization of Appendix VII to Part 261

Appendix VII to Part 261 sets forth the hazardous constituents for which each of the wastes in §§ 261.31 and 261.32 are listed. This appendix has been amended to reflect changes made in the underlying listings, and is being finalized in this revised form.

IV. Economic, Environmental and Regulatory Impacts

In accordance with Executive Order 11821, as amended by Executive Order 11949 and Executive Order 12044, EPA has prepared an Economic Impact Analysis of the hazardous waste program promulgated on May 19, 1980. The net effect of today's action reduces the overall cost, economic impact, and reporting and recording impact of EPA's hazardous waste management regulations, since the overall scope of Subtitle C jurisdiction is being reduced. Since this action will decrease the regulatory impact of the Subtitle C regulatory program, we have not prepared a new Economic Impact Analysis or Regulatory Analysis. The Agency has also voluntarily prepared an Environmental Impact Statement on the program under the National Environmental Policy Act, 42 U.S.C. 4321 et seq.

(Sec. 3001 of the Resource Conservation and Recovery Act)

Dated: January 13, 1981.

Douglas M. Costle,

Administrator.

For the reasons and as set out in the preamble, 40 CFR Part 261 is amended as follows:

1. The authority citation for Part 261 reads as follows:

Authority: Secs. 1006, 2002(a), 3001, and 3002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6906, 6912, 6921 and 6922).

2. Revise § 261.31 to read as follows:

§ 261.31 Hazardous waste from nonspecific sources.

Industry and EPA hazardous waste No.	Hazardous waste	Hazard code
Generic:		
F001	The following spent halogenated solvents used in degreasing: tetrachloroethylene, trichloroethylene, methylene chloride, 1,1,1-trichloroethane, carbon tetrachloride, and chlorinated fluorocarbons; and sludges from the recovery of these solvents in degreasing operations.	(T)
F002	The following spent halogenated solvents: tetrachloroethylene, methylene chloride, trichloroethylene, 1,1,1-trichloroethane, chlorobenzene, 1,1,2-trichloro-1,2,2-trifluoroethane, ortho-dichlorobenzene, and trichlorofluoromethane; and the still bottoms from the recovery of these solvents.	(T)
F003	The following spent non-halogenated solvents: xylene, acetone, ethyl acetate, ethyl benzene, ethyl ether, methyl isobutyl ketone, n-butyl alcohol, cyclohexanone, and methanol; and the still bottoms from the recovery of these solvents.	(I)
F004	The following spent non-halogenated solvents: cresols and cresylic acid, and nitrobenzene; and the still bottoms from the recovery of these solvents.	(T)

Industry and EPA hazardous waste No.	Hazardous waste	Hazard code
F005	The following spent non-halogenated solvents: toluene, methyl ethyl ketone, carbon disulfide, isobutanol, and pyridine; and the still bottoms from the recovery of these solvents.	(I, T)
F006	Wastewater treatment sludges from electroplating operations except from the following processes: (1) sulfuric acid anodizing of aluminum; (2) tin plating on carbon steel; (3) zinc plating (segregated basis) on carbon steel; (4) aluminum or zinc-aluminum plating on carbon steel; (5) cleaning/stripping associated with tin, zinc and aluminum plating on carbon steel; and (6) chemical etching and milling of aluminum.	(T)
F019	Wastewater treatment sludges from the chemical conversion coating of aluminum	(T)
F007	Spent cyanide plating bath solutions from electroplating operations (except for precious metals electroplating spent cyanide plating bath solutions).	(R, T)
F008	Plating bath sludges from the bottom of plating baths from electroplating operations where cyanides are used in the process (except for precious metals electroplating plating bath sludges).	(R, T)
F009	Spent stripping and cleaning bath solutions from electroplating operations where cyanides are used in the process (except for precious metals electroplating spent stripping and cleaning bath solutions).	(R, T)
F010	Quenching bath sludge from oil baths from metal heat treating operations where cyanides are used in the process (except for precious metals heat-treating quenching bath sludges).	(R, T)
F011	Spent cyanide solutions from salt bath pot cleaning from metal heat treating operations (except for precious metals heat treating spent cyanide solutions from salt bath pot cleaning).	(R, T)
F012	Quenching wastewater treatment sludges from metal heat treating operations where cyanides are used in the process (except for precious metals heat treating quenching wastewater treatment sludges).	(T)
F014	Cyanidation wastewater treatment tailing pond sediment from mineral metals recovery operations	(T)
F015	Spent cyanide bath solutions from mineral metals recovery operations	(R, T)

3. Revise § 261.32 to read as follows:

§ 261.32 Hazardous waste from specific sources.

Industry and EPA hazardous waste No.	Hazardous waste	Hazard code
Wood Preservation:		
K001	Bottom sediment sludge from the treatment of wastewaters from wood preserving processes that use creosote and/or pentachlorophenol	(T)
Inorganic Pigments:		
K002	Wastewater treatment sludge from the production of chrome yellow and orange pigments	(T)
K003	Wastewater treatment sludge from the production of molybdate orange pigments	(T)
K004	Wastewater treatment sludge from the production of zinc yellow pigments	(T)
K005	Wastewater treatment sludge from the production of chrome green pigments	(T)
K006	Wastewater treatment sludge from the production of chrome oxide green pigments (anhydrous and hydrated)	(T)
K007	Wastewater treatment sludge from the production of iron blue pigments	(T)
K008	Oven residue from the production of chrome oxide green pigments	(T)
Organic Chemicals:		
K009	Distillation bottoms from the production of acetaldehyde from ethylene	(T)
K010	Distillation side cuts from the production of acetaldehyde from ethylene	(T)
K011	Bottom stream from the wastewater stripper in the production of acrylonitrile	(R, T)
K013	Bottom stream from the acetonitrile column in the production of acrylonitrile	(R, T)
K014	Bottoms from the acetonitrile purification column in the production of acrylonitrile	(T)
K015	Still bottoms from the distillation of benzyl chloride	(T)
K016	Heavy ends or distillation residues from the production of carbon tetrachloride	(T)
K017	Heavy ends (still bottoms) from the purification column in the production of epichlorohydrin	(T)
K018	Heavy ends from the fractionation column in ethyl chloride production	(T)
K019	Heavy ends from the distillation of ethylene dichloride in ethylene dichloride production	(T)
K020	Heavy ends from the distillation of vinyl chloride in vinyl chloride monomer production	(T)
K021	Aqueous spent antimony catalyst waste from fluoromethanes production	(T)
K022	Distillation bottom tars from the production of phenol/acetone from cumene	(T)
K023	Distillation light ends from the production of phthalic anhydride from naphthalene	(T)
K024	Distillation bottoms from the production of phthalic anhydride from naphthalene	(T)
K093	Distillation light ends from the production of phthalic anhydride from ortho-xylene	(T)
K094	Distillation bottoms from the production of phthalic anhydride from ortho-xylene	(T)
K025	Distillation bottoms from the production of nitrobenzene by the nitration of benzene	(T)
K026	Stripping still tails from the production of methy ethyl pyridines	(T)
K027	Centrifuge and distillation residues from toluene diisocyanate production	(R)
K028	Spent catalyst from the hydrochlorinator reactor in the production of 1,1,1-trichloroethane	(T)
K029	Waste from the product steam stripper in the production of 1,1,1-trichloroethane	(T)
K095	Distillation bottoms from the production of 1,1,1-trichloroethane	(T)
K096	Heavy ends from the heavy ends column from the production of 1,1,1-trichloroethane	(T)
K030	Column bottoms or heavy ends from the combined production of trichloroethylene and perchloroethylene	(T)
K083	Distillation bottoms from aniline production	(T)
K103	Process residues from aniline extraction from the production of aniline	(T)
K104	Combined wastewater streams generated from nitrobenzene/aniline production	(T)
K085	Distillation or fractionation column bottoms from the production of chlorobenzenes	(T)
K105	Separated aqueous stream from the reactor product washing step in the production of chlorobenzenes	(T)
Inorganic Chemicals:		
K071	Brine purification muds from the mercury cell process in chlorine production, where separately prepurified brine is not used	(T)
K073	Chlorinated hydrocarbon waste from the purification step of the diaphragm cell process using graphite anodes in chlorine production	(T)
K106	Wastewater treatment sludge from the mercury cell process in chlorine production	(T)
Pesticides:		
K031	By-product salts generated in the production of MSMA and cacodylic acid	(T)
K032	Wastewater treatment sludge from the production of chlordane	(T)
K033	Wastewater and scrub water from the chlorination of cyclopentadiene in the production of chlordane	(T)
K034	Filter solids from the filtration of hexachlorocyclopentadiene in the production of chlordane	(T)
K097	Vacuum stripper discharge from the chlordane chlorinator in the production of chlordane	(T)
K035	Wastewater treatment sludges generated in the production of creosote	(T)
K036	Still bottoms from toluene reclamation distillation in the production of disulfoton	(T)
K037	Wastewater treatment sludges from the production of disulfoton	(T)
K038	Wastewater from the washing and stripping of phorate production	(T)
K039	Filter cake from the filtration of diethylphosphorodithioic acid in the production of phorate	(T)
K040	Wastewater treatment sludge from the production of phorate	(T)

Industry and EPA hazardous waste No.	Hazardous waste	Hazard code
K041	Wastewater treatment sludge from the production of toxaphene	(T)
K099	Untreated process wastewater from the production of toxaphene	(T)
K042	Heavy ends or distillation residues from the distillation of tetrachlorobenzene in the production of 2,4,5-T	(T)
K043	2,6-Dichlorophenol waste from the production of 2,4-D	(T)
K099	Untreated wastewater from the production of 2,4-D	(T)
Explosives:		
K044	Wastewater treatment sludges from the manufacturing and processing of explosives	(R)
K045	Spent carbon from the treatment of wastewater containing explosives	(R)
K046	Wastewater treatment sludges from the manufacturing, formulation and loading of lead-based initiating compounds	(T)
K047	Pink/red water from TNT operations	(R)
Petroleum Refining:		
K048	Dissolved air flotation (DAF) float from the petroleum refining industry	(T)
K049	Slop oil emulsion solids from the petroleum refining industry	(T)
K050	Heat exchanger bundle cleaning sludge from the petroleum refining industry	(T)
K051	API separator sludge from the petroleum refining industry	(T)
K052	Tank bottoms (leaded) from the petroleum refining industry	(T)
Iron and Steel:		
K061	Emission control dust/sludge from the primary production of steel in electric furnaces	(T)
K062	Spent pickle liquor from steel finishing operations	(C, T)
Primary Copper:		
K064	Acid plant blowdown slurry/sludge resulting from the thickening of blowdown slurry from primary copper production	(T)
Primary Lead:		
K065	Surface impoundment solids contained in and dredged from surface impoundments at primary lead smelting facilities	(T)
Primary Zinc:		
K066	Sludge from treatment of process wastewater and/or acid plant blowdown from primary zinc production	(T)
K067	Electrolytic anode slimes/sludges from primary zinc production	(T)
K068	Cadmium plant leachate residue (iron oxide) from primary zinc production	(T)
Secondary Lead:		
K069	Emission control dust/sludge from secondary lead smelting	(T)
K100	Waste leaching solution from acid leaching of emission control dust/sludge from secondary lead smelting	(T)
Veterinary Pharmaceuticals:		
K084	Wastewater treatment sludges generated during the production of veterinary pharmaceuticals from arsenic or organo-arsenic compounds	(T)
K101	Distillation tar residues from the distillation of aniline-based compounds in the production of veterinary pharmaceuticals from arsenic or organo-arsenic compounds.	(T)
K102	Residue from the use of activated carbon for decolorization in the production of veterinary pharmaceuticals from arsenic or organo-arsenic compounds.	(T)
Ink Formulation:		
K086	Solvent washes and sludges, caustic washes and sludges, or water washes and sludges from cleaning tubs and equipment used in the formulation of ink from pigments, driers, soaps, and stabilizers containing chromium and lead.	(T)
Coking:		
K060	Ammonia still lime sludge from coking operations	(T)
K087	Decanter tank tar sludge from coking operations	(T)

Part 261, Appendix [Amended]

4. Revise Appendix VII to Part 261 to read as follows:

Appendix VII—Basis for Listing Hazardous Waste

EPA hazardous waste No.	Hazardous constituents for which listed
F001	Tetrachloroethylene, methylene chloride trichloroethylene, 1,1,1-trichloroethane, carbon tetrachloride, chlorinated fluorocarbons.
F002	Tetrachloroethylene, methylene chloride, trichloroethylene, 1,1,1-trichloroethane, chlorobenzene, 1,1,2-trichloro-1,2,2-trifluoroethane, ortho-dichlorobenzene, trichlorofluoromethane.
F003	N.A.
F004	Cresols and cresylic acid, nitrobenzene.
F005	Toluene, methyl ethyl ketone, carbon disulfide, isobutanol, pyridine.
F006	Cadmium, hexavalent chromium, nickel, cyanide (complexed).
F007	Cyanide (salts).
F008	Cyanide (salts).
F009	Cyanide (salts).
F010	Cyanide (salts).
F011	Cyanide (salts).
F012	Cyanide (complexed).
F014	Cyanide (complexed).
F015	Cyanide (salts).
F019	Hexavalent chromium, cyanide (complexed).
K001	Pentachlorophenol, phenol, 2-chlorophenol, p-chloro-m-cresol, 2,4-dimethylphenyl, 2,4-dinitrophenol, trichlorophenols, tetrachlorophenols, 2,4-dinitrophenol, creosote, chrysene, naphthalene, fluoranthene, benzo(b)fluoranthene, benzo(a)pyrene, indeno(1,2,3-cd)pyrene, benz(a)anthracene, dibenz(a)anthracene, acenaphthalene.
K002	Hexavalent chromium, lead
K003	Hexavalent chromium, lead.
K004	Hexavalent chromium.
K005	Hexavalent chromium, lead.
K006	Hexavalent chromium.
K007	Cyanide (complexed), hexavalent chromium.
K008	Hexavalent chromium.
K009	Chloroform, formaldehyde, methylene chloride, methyl chloride, paraldehyde, formic acid.
K010	Chloroform, formaldehyde, methylene chloride, methyl chloride, paraldehyde, formic acid, chloroacetaldehyde.
K011	Acrylonitrile, acetonitrile, hydrocyanic acid.
K013	Hydrocyanic acid, acrylonitrile, acetonitrile.
K014	Acetonitrile, acrylamide.
K015	Benzyl chloride, chlorobenzene, toluene, benzotrichloride.
K016	Hexachlorobenzene, hexachlorobutadiene, carbon tetrachloride, hexachloroethane, perchloroethylene.
K017	Epichlorohydrin, chloroethers [bis(chloromethyl) ether and bis (2-chloroethyl) ethers], trichloropropane, dichloropropanols.
K018	1,2-dichloroethane, trichloroethylene, hexachlorobutadiene, hexachlorobenzene.
K019	Ethylene dichloride, 1,1,1-trichloroethane, 1,1,2-trichloroethane, tetrachloroethanes (1,1,2,2-tetrachloroethane and 1,1,1,2-tetrachloroethane), trichloroethylene, tetrachloroethylene, carbon tetrachloride, chloroform, vinyl chloride, vinylidene chloride.
K020	Ethylene dichloride, 1,1,1-trichloroethane, 1,1,2-trichloroethane, tetrachloroethanes (1,1,2,2-tetrachloroethane and 1,1,1,2-tetrachloroethane), trichloroethylene, tetrachloroethylene, carbon tetrachloride, chloroform, vinyl chloride, vinylidene chloride.
K021	Antimony, carbon tetrachloride, chloroform.
K022	Phenol, tars (polycyclic aromatic hydrocarbons).
K023	Phthalic anhydride, maleic anhydride.
K024	Phthalic anhydride, 1,4-naphthoquinone.
K025	Meta-dinitrobenzene, 2,4-dinitrotoluene.
K026	Paraldehyde, pyridines, 2-picoline.
K027	Toluene diisocyanate, toluene-2, 4-diamine.
K028	1,1,1--trichloroethane, vinyl chloride.
K029	1,2-dichloroethane, 1,1,1-trichloroethane, vinyl chloride, vinylidene chloride, chloroform.
K030	Hexachlorobenzene, hexachlorobutadiene, hexachloroethane, 1,1,1,2-tetrachloroethane, 1,1,2,2-tetrachloroethane, ethylene dichloride.
K031	Arsenic.
K032	Hexachlorocyclopentadiene.
K033	Hexachlorocyclopentadiene.
K034	Hexachlorocyclopentadiene.
K035	Creosote, chrysene, naphthalene, fluoranthene benzo(b) fluoranthene, benzo(a)pyrene, indeno(1,2,3-cd) pyrene, benzo(a)anthracene, dibenzo(a)anthracene, acenaphthalene.
K036	Toluene, phosphorodithioic and phosphoro-thioic acid esters.
K037	Toluene, phosphorodithioic and phosphoro-thioic acid esters.
K038	Phorate, formaldehyde, phosphorodithioic and phosphorothioic acid esters.
K039	Phosphorodithioic and phosphorothioic acid esters.
K040	Phorate, formaldehyde, phosphorodithioic and phosphorothioic acid esters.
K041	Toxaphene.
K042	Hexachlorobenzene, ortho-dichlorobenzene.
K043	2,4-dichlorophenol, 2,6-dichlorophenol, 2,4,6-trichlorophenol.
K044	N.A.
K045	N.A.
K046	Lead.

Appendix VII—Basis for Listing Hazardous Waste—Continued

EPA hazardous waste No.	Hazardous constituents for which listed
K047	N.A.
K048	Hexavalent chromium, lead.
K049	Hexavalent chromium, lead.
K050	Hexavalent chromium.
K051	Hexavalent chromium, lead.
K052	Lead.
K060	Cyanide, naphthalene, phenolic compounds, arsenic.
K061	Hexavalent chromium, lead, cadmium.
K062	Hexavalent chromium, lead.
K064	Lead, cadmium.
K065	Lead, cadmium.
K066	Lead, cadmium.
K067	Lead, cadmium.
K068	Lead, cadmium.
K069	Hexavalent chromium, lead, cadmium.
K071	Mercury.
K073	Chloroform, carbon tetrachloride, hexachloroethane, trichloroethane, tetrachloroethylene, dichloroethylene, 1,1,2,2-tetrachloroethane.
K083	Aniline, diphenylamine, nitrobenzene, phenylenediamine.
K084	Arsenic.
K085	Benzene, dichlorobenzenes, trichlorobenzenes, tetrachlorobenzenes, pentachlorobenzene, hexachlorobenzene, benzyl chloride.
K086	Lead, hexavalent chromium.
K087	Phenol, naphthalene.
K093	Phthalic anhydride, maleic anhydride.
K094	Phthalic anhydride.
K095	1,1,2-trichloroethane, 1,1,1,2-tetrachloroethane, 1,1,2,2-tetrachloroethane.
K096	1,2-dichloroethane, 1,1,1-trichloroethane, 1,1,2-trichloroethane.
K097	Chlordane, heptachlor.
K098	Toxaphene.
K099	2,4-dichlorophenol, 2,4,6-trichlorophenol.
K100	Hexavalent chromium, lead, cadmium.
K101	Arsenic.
K102	Arsenic.
K103	Aniline, nitrobenzene, phenylenediamine.
K104	Aniline, benzene, diphenylamine, nitrobenzene, phenylenediamine.
K105	Benzene, monochlorobenzene, dichlorobenzenes, 2,4,6-trichlorophenol.
K106	Mercury.

N.A.—Waste is hazardous because it fails the test for the characteristic of ignitability, corrosivity, or reactivity.

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federal register

Friday
January 16, 1981

Part XX

Department of Agriculture

Food and Nutrition Service

Department of Labor

Office of the Secretary

Food Stamp Program; Work Registration and Job Search

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

DEPARTMENT OF LABOR

Office of Secretary

7 CFR Parts 272 and 273

[Amdt. No. 165]

Food Stamp Program; Work Registration and Job Search

AGENCY: Food and Nutrition Service, USDA.

ACTION: Final rule.

SUMMARY: The Food Stamp Act of 1977 requires that those food stamp participants who must register for employment must also search for employment on their own. This final rule provides procedures for participants to actively search for employment. Also, this final rule clearly delineates the roles of State welfare agencies, State employment security agencies (SESAs), and food stamp participants alike in order to effect a work registration/job search system that will aid in carrying out the intent of the Act that able-bodied participants seek and find gainful employment. The Department of Agriculture (USDA) proposed regulations on this subject in the Federal Register of August 8, 1980 (45 FR 53067). Since the Act requires these rules to be jointly issued with the Department of Labor (DOL), the provisions of this final rule, as well as current work registration provisions, will be published at a later date by the Department of Labor.

EFFECTIVE DATE: January 16, 1981 to be fully implemented no later than the first of the month following 120 days from date of publication.

FOR FURTHER INFORMATION CONTACT: Larry R. Carnes, Chief, Policy and Regulations Section, Program Standards Branch, Program Development Division, Family Nutrition Programs, Food and Nutrition Service, USDA, Washington, D.C. 20250; telephone (202) 447-9075; or Michele Casey, Chief, Food Stamp Unit, Office of Work Incentive Programs, Employment and Training Administration, U.S. Department of Labor, Washington, D.C. 20313; telephone (202) 376-7589. The Final Impact Statement describing the options considered in developing this final rule and the impact of implementing each option is available on request from Mr. Carnes.

SUPPLEMENTARY INFORMATION:

Classification

This final action has been reviewed under USDA procedures established in Secretary's Memorandum 1955 to implement Executive Order 12044, and has been classified not significant.

Introduction

The Food Stamp Act of 1977 (Pub. L. 95-113, 91 Stat. 958, September 29, 1977) authorized the Secretary of Agriculture to require certain members of food stamp households to register for work, inquire about employment, and report the results of that inquiry (Section 6(d)(1) of the Act). On August 8, 1980 the Departments of Agriculture and Labor published in the Federal Register a proposed rule on this subject inviting comments from the public (45 FR 53066). The Departments received 166 comment letters. The majority of the commenters were public interest groups, State employment agencies, and State and local welfare agencies. Six FNS Regional Offices, two DOL Regional Offices, one Indian Tribal organization, one Federal Government office, and several individual citizens also commented. This preamble discusses changes made as a result of those comments. Also discussed are provisions which were of major concern to the commenters, but which have not been changed. Therefore, it may be necessary for the reader to refer to the August 8, 1980 proposed rulemaking for a complete understanding of the basis and purpose of this final rule.

Forty-two of the commenters expressed general support for the rule and for the idea of job search (27 individuals, 7 State agencies, 5 local agencies, and 3 public interest groups). Twenty-five commenters opposed the rule as being vague, cumbersome, punitive or insufficiently sensitive to local conditions (8 individuals, 2 State agencies, 2 local agencies, 9 public interest groups, and 4 State employment agencies). Almost all commenters addressed specific provisions in the rulemaking. In revising the proposed regulations to take these commenters into account, the Department has somewhat restructured the final rule.

Work Registration

Persons required to register. The Departments received few comments on § 273.7(a). The comments received indicated some confusion over whether each household member must personally register for work. Current regulations (§ 273.1(f)) provide a means by which another household member or an authorized representative designated by the household can make application for the program on behalf of the household head (or spouse). Since application for the program includes completion of work registration forms, the current provisions governing "authorized representatives" in the application process shall also apply in the case of making registration for work. Paragraphs (a) and (f) of § 273.1 have been amended to clarify that a household member or authorized representative may complete work registration forms for other household members. Clarification is also added that registrants who move from the area and enter a new SESA jurisdiction must reregister. (If the registrant moves but remains within the SESA office jurisdiction, the State agency would notify SESA of the change of address, but deregistration and reregistration would not occur.)

Other commenters requested changes in the procedures of registration, such as requiring only certified participants to register or allowing up to one month for reregistration. The Food Stamp Act does not permit these changes. Work registration, under Section 6(d) of the Act, is a prerequisite of participation.

Exemptions from work registration. Many commenters requested additions to the proposed list of persons exempted from registration in § 273.7(b)—e.g., all applicants for unemployment insurance (UI) benefits, pregnant women, migrants, and persons not likely to be placed in jobs, among others. The list of people exempt from work registration cannot be expanded. Doing this would counter Congressional intent that all able-bodied Food Stamp Program participants, except those specified in the 1977 Act, be subject to work requirements. Therefore, no additional exemptions have been granted.

Substitutions for food stamp work registration. Current rules (§ 273.7(k)) allow State agencies to substitute State or local work requirements imposed on GA households, and those PA households not subject to WIN work requirements, for food stamp work registration in certain instances. If work requirements in these other programs are at least equivalent to the food stamp work requirements, then an additional food stamp work registration is not required. However, if a recipient fails, without good cause, to comply with a work requirement in one of these other programs that is equivalent to a food stamp work requirement, then the recipient's household is disqualified from the Food Stamp Program just as when the food stamp work requirements are not complied with.

Section 273.7(k) has been revised to apply this same approach to participants

enrolled in refugee resettlement programs, such as the Indochinese Refugee Assistance Program (IRAP), which have work registration requirements at least equivalent to Food Stamp Program requirements and which FNS approves as substitutable. These refugee programs provide special services designed to enhance employment opportunities, and are especially suited to merging refugees into the work force and minimizing their need for public assistance.

This provision will avoid the need for duplicate work registration under the refugee program and the Food Stamp Program, thereby increasing efficiency and avoiding unnecessary paperwork and administrative costs. This substitution of IRAP registration for food stamp registration will be allowed only to the extent that the IRAP requirements are comparable to those of the Food Stamp Program. For instance, individuals will not necessarily be exempt from food stamp work registration because they are exempt under IRAP. Different rules concerning age, language, medical or social characteristics may cause a person to be exempt under IRAP. Unless that person were also exempt under current food stamp regulations, food stamp work registration would be required.

Verification of work registration exemptions. Upon the recommendation of numerous commenters, the proposed procedures for verifying exemptions from work registration have been revised. The proposed regulations called for verification of WIN participation through the SESA. It was pointed out that such verification would likely be available from a participant's PA file. When this is the case, a food stamp worker would have either direct access to the file or access to the participant's PA caseworkers. Therefore, the final rule (§ 273.7(b)(1)) has been changed to allow the State agency to verify WIN participation through whatever means the State agency finds most advantageous. Section 273.7(b)(1) has also been revised to clarify the student exemption for the few students remaining eligible for food stamps.

Reporting loss of an exemption for work registration. The proposed rule specified conditions for reporting the loss of a work registration exemption to the food stamp office (§ 273.7(b)(2)). Participating households had to report their changed circumstances (other than loss of an exemption due to a change in age), in person, by mail, by telephone, or via another household member. Household members who reported a change in person had to register when they visited the food stamp office. Others had ten days in which to register. The comments included allowing thirty days to report these changes; allowing the participant to register at recertification; allowing all participants to mail in the work registration forms, and allowing no participants to register by mail.

This provision has been rewritten in the final rule. A participant must report the loss of exemption when it results from any change that must already be reported under current provisions noted in 7 CFR 273.12(a). Examples are loss of employment that produces a change in income of more than $25 a month, or departure of a household member who is the sole dependent child of an otherwise nonexempt household member. These persons must register for work unless they are otherwise exempt. Others who lose their exemptions for reasons not required to be reported between certifications, such as a change in age or physical condition, will register at recertification. This is in keeping with current policy on work registration and does not add to reporting requirements. At the same time, it ensures that those who leave employment will register promptly.

State Agency Responsibilities

Comments on this topic, primarily from State agencies and SESA's, discussed the role of the State agency in developing the State Work Registration Plan and the requirements of the work registration form. Issues regarding the work registration form are discussed below. Issues addressed in the plan are discussed under the State Employment Agency Responsibilities portion of this preamble. With regard to the registration form, § 273.7(c) of the proposed rule did not define "identifiable work registration form." Many definitions were suggested. A common element of the comments was that an identifiable form should require only limited information. Many commenters also asked that food stamp caseworkers annotate the forms to identify participants who would be exempt from job search (See 7 CFR 273.7(f)(1)(ii)(c) of this rulemaking and the discussion of job search categorization in this preamble).

These comments have been taken into account in re-writing paragraph 273.7(c). The final rule stipulates that an identifiable form need include only the following: the household member's name, address, telephone number, Social Security number (or other identifying number), the expiration date of the certification period, an indication of exemption from job search, and any other information that is agreed to by the State agency and SESA.

The commenters varied widely in their suggestions about when the State agency should report information to the SESA. The proposed rule required the State agency to send the work registration form to the SESA within five days of the date of certification. Alternate time limits ranged from same-day forwarding to transmitting the form within ninety days. The longer periods of time were to be used to avoid the processing of participants who were in the program for only a short period of time.

The five day time limit for submitting work registration forms to the SESA has been retained. If the work registration and job search provisions are to be as effective as possible, it is necessary that contact between SESA and the participant take place at the earliest possible time. Therefore, there should be no undue delay in the submission of the form.

The proposed regulation also provided for the State agency to notify the SESA within five days when work registrants become exempt or are no longer certified for food stamps. Two changes have been made in this provision, § 273.7(c)(3). Some commenters pointed out that requiring a report to SESA within five days would result in the de-registration of persons who failed to timely reapply for food stamps, but who evidently do reapply. Such persons would then have to be re-registered for work. This would create added work for State agencies and for SESA, as persons were de-registered and re-registered. Other State agencies commented that the maximum 5-day time limit was administratively impossible for them to meet. One State agency commented that it could not quickly distinguish between those households that had left the Program and those that simply submitted late applications for recertification. The final rule (§ 273.7(c)) has been amended to provide that a reasonable timeframe shall be established through mutual agreement of the State agency and SESA's. In no event, however, shall the time limit established exceed thirty days from the date the change becomes known to the State agency.

Those two time limits, five days to submit work registration forms and up to thirty days to de-register household members, should not be construed as a means of improperly prolonging an individual's status as a work registrant. Persons who become exempt or leave the Program are no longer subject to the work registration requirement. Any delay in submitting the paperwork for

de-registration does not affect an individual's entitlement to an exemption. Permitting the time limit to be as long as thirty days should help to reduce the need for re-registration.

Paragraph 273.7(c)(3) has also been revised to require the State agency to inform the SESA when a household moves from the project area. As discussed under the heading *persons required to register*, moving to a new project area that is in a new SESA jurisdiction requires a new registration. To avoid confusion and duplication, it is necessary that the names of those who move be taken off the SESA's Employment Service Automated Reporting System (ESARS) until they register again. The paragraph also states when a registrant moves (either within the project area or to a new project area) but remains within the same SESA jurisdiction, the State agency shall notify SESA of the registrant's change of address.

State Employment Security Agency (SESA) Responsibilities

The majority of comments received on this portion of the proposed rule (§ 273.7(d)) were from State Employment Security Agencies. The commenters expressed concern regarding whether sufficient funds will be available to enable them to carry out the provisions of these regulations. Some commenters suggested that the regulations be more specific on the way funds will be allocated.

The requirements of these regulations are issued on the assumption that sufficient funds will be provided to the Department of Labor. Specific funding levels are dependent upon appropriations; arrangements are handled through an interagency letter of agreement. The Interagency Agreement will make clear that the responsibility of the Department of Labor to perform work registration and job search activities pursuant to the Food Stamp Act of 1977 does not extend beyond the funds made available for such purposes. Section 273.7(d) has been revised in the final rule to clarify the funding process.

Work Registration Plan. Many commenters addressed the matter of the Work Registration Plan. Questions were raised regarding the contents of the plan; responsibility for writing, reviewing and approving it; where the plan will be available for public inspection and monitoring the State agency's compliance with the plan. Paragraph (d) of § 273.7 has been rewritten to clarify that the SESA will have the primary responsibility for drafting the plan, although the State agency is a full partner in it. Part of the plan will be the agreements between the State agency and SESA at the State and local levels as to how each party will fulfill its respective requirements. This agreement will contain the specific procedures the agencies will use to deal with one another.

Although the Department of Labor's regional office will have primary responsibility for approval of the Plan, the Plan will be submitted to the FNS Regional office for review and comment. The final rule also contains a provision that the State agency and the SESA will review their plan yearly and make any necessary changes. This is seen as an appropriate way to take into account changes in the resources each agency has to meet its requirements. The yearly review will also be a means of correcting any problems that have arisen due to changes in the labor market, conflicting demands on the two agencies, and changes in the Food Stamp Program. In addition, the Plan will be available for public inspection at State agency headquarters.

There were many comments on the interviewing responsibilities and procedures of the SESA. The paragraph dealing with scheduling interviews (§ 273.7(d)(2)(ii)) has been clarified to allow the State agency to schedule a participant's appointment with the SESA, subject to the SESA's approval. The proposed rule called for the SESA to conduct the initial assessment interview within two weeks of the date it receives a participant's work registration form. While we continue to expect that the two week standard will be met in most cases, we do recognize that SESA's may not always be able to meet the standard. SESA's are responsible for providing employment services to a variety of clients, including WIN participants and UI claimants. In the event a local area were hit by a strike, a layoff, or the closing of a major factory, the SESA could not be expected to meet both that emergency and the normal requirements of its regular work. Therefore, the final rule states that the initial assessment interview will normally take place within two weeks.

There was some confusion over what services the SESA would provide to work registrants. The proposed rule listed a number of these services: referrals, counseling, testing and training. In addition, the SESA would provide job market information to registrants. We did not intend to imply that all registrants will receive all these services. Rather, registrants will receive the services which are most appropriate for them, as would any persons seeking the SESA's assistance in finding a job.

Many commenters opposed the automatic entry of registrants into the ESARS (§ 273.7(d)(2)). These commenters wanted certain households excluded from ESARS: registrants who have requested fair hearings, registrants whose nonexempt status is being questioned by SESA, and all registrants until the initial assessment interview is held. These suggestions have not been adopted, since ESARS is the main recordkeeping instrument of work registration. SESA's will be reimbursed by the Department of Labor according to the number of household members registered and the number placed in jobs. ESARS will maintain the records necessary to justify these reimbursements. It is ESARS which will maintain information on all work registrants for purposes of referral to jobs, something separate from the job search provision's assessment interview. Even a household member who requests a fair hearing must be retained in ESARS, since that household member will remain registered and subject to the work registration requirements.

Because the Food Stamp Program has specific standards for providing bilingual services there were many comments received on this subject. The final rules do not apply the food stamp bilingual standards to SESA's. The food stamp standards (7 CFR 272.4) were designed specifically for food stamp offices to provide services to households that are eligible for food stamps. The SESA's, which serve a broader target population and have different service areas, have their own bilingual standards. These standards are based upon the needs of SESA clients, and should provide bilingual services to a large number of food stamp participants in need of these services. In any event, no households will be penalized for their inability to speak English.

Job Search Provisions

The majority of interested parties commenting on this portion of the proposed regulations (§ 273.7(e)) were public interest groups and SESA's (Section 273.3(e) of the proposed rule is redesignated as § 273.7(f) in the final rule.)

Public interest groups mainly recommended exemptions from job search for certain individuals, or groups of individuals. State employment agencies wanted more flexibility in handling job searches. State welfare agencies and State employment agencies alike expressed a general concern of the applicability of the job search regulations when the registrant's

household was certified for short periods of time (one and two months).

Length of Job Search Period, Number of Job Contacts, and Number of Follow-up Interviews. Under the Food Stamp Act of 1977, persons required to register for work must do so every six months. The proposed regulations specified that within the six-month registration period persons considered job-ready would search for employment for 8 weeks.

Two principal issues arose regarding the job search period. Several commenters recommended that the job search period be changed to eight weeks in a year to conform with Public Law 96-258 (the 1980 amendments to the Social Security Act). The provisions of Public Law 96-258 were signed into law only shortly before publication of the proposed rules in the Federal Register, and had not been considered in developing the proposed rules. P.L. 96-258 represented the first time Congress has spoken to what it regards as an appropriate duration for job search in a public assistance program.

Public Law 96-258 amended the Social Security Act to provide that persons must search for employment as a condition of eligibility for benefits under the Aid to Families With Dependent Children (AFDC) Program. The length of the job search period for AFDC's Work Incentive Program (WIN) was mandated in that law to be no more than eight weeks in a year.

This law is particularly significant to the development of these final rules because of the requirement in section 6 of the Food Stamp Act of 1977 that food stamp work requirements be patterned on WIN requirements "to the maximum extent practicable."

A second issue that arose concerned how to handle work registrants who either become exempt from work registration for a period of time or leave the Food Stamp Program altogether for a period, but who subsequently become food stamp work registrants again several months later. Persons who have intermittent employment can easily fit into such a category. Under the proposed rules, the SESA would have had to monitor and keep records on the exact portions of the eight week requirement served each time such a person was a work registrant to determine how much of the requirement still existed if the person became a registrant again within the six month period. Given that large numbers of work registrants have short food stamp certification periods, and that a number of these persons may go on and off the program as short-term employment ends and then begins again, the tracking requirements could prove a significant problem for SESAs.

The final rules address both of these issues. The rules specify that registrants shall be subject to the eight week job search requirement each time they are newly added to ESARS (which occurs after losing a work registration exemption or reentering the Food Stamp Program after a period of absence), or each twelve months, whichever occurs first. This modification both reduces paperwork and administrative burdens on SESA's while providing for consistency with the WIN requirements to the degree practicable.

This approach can result in more job search activity for persons who, during the course of a year, leave and then return to the Food Stamp Program due to periods of intermittent employment. Such persons are generally job-ready and may resume employment more quickly if active job search activity is undertaken. On the other hand, the SESA may determine that an immediate resumption of job search activity may not be productive and can modify the job search requirements accordingly. In order to maintain a maximum level of cost effectiveness and to target SESA resources where they will be most productive, the rules allow the SESA to take into account the amount of job search a registrant has already undertaken during the year, and the likely impact of additional job search activity, in assigning new job search requirements.

Persons who remain continuously on the program (and remain continuously in ESARS) would not be subject to a new eight week job search requirement at the time of their routine semi-annual reregistration. Such persons could, of course, have some or all of their annual eight week job search requirement still to serve at the time of their reregistration.

The final rules also allow the SESA some flexibility in determining how the eight week job search period would be applied. A single continuous eight week period would be simple to administer, but might not always expose participants to the labor market at the time that jobs are most readily available. Accordingly, the final rules allow SESA to divide the eight week job search into two separate blocks of time. For example, if the SESA determined that two one month job search periods spaced six months apart were most appropriate for a particular registrant, the SESA could implement the requirement in this fashion. In addition, the SESA could suspend a job search period and then resume it later if factory closings or other circumstances made it likely that the job search period would be more productive at a subsequent point in time.

Some State employment agencies raised concerns about requiring from 8 to 24 job contacts, as had been proposed. These agencies preferred more flexibility in these areas. Some employment agencies commented that in some small towns and rural areas, there were an insufficient number of employers to justify the number of job contacts. These agencies stated that if employers who list jobs with SESA's were flooded with contacts by large numbers of recipients rather than by a smaller number of applicants carefully screened by SESA, that these employers might cease listing jobs with SESA. If that occurred, fewer recipients would end up being placed and the purpose of the work requirements would be thwarted.

The rules were not intended to subject employers to an unnecessary stream of applicants. At the same time, this problem should generally be limited to rural areas with few employers. These areas also contain only a small portion of the food stamp caseload. The final rules resolve this problem by removing the requirement for a minimum number of contacts, so that the SESA can take into account local employment conditions. The upper limit of 24 contacts has been retained.

Some commenters asked that the number of required contacts be derived through a mathematical formula based on the local unemployment rate. This would be administratively impractical since unemployment rates fluctuate frequently. It would not account for registrants' varying circumstances and would not necessarily guarantee equity. This suggestion has not been adopted.

Job Search Categorization. Comments received on this section of the proposed job search provisions were mainly from public interest groups. One concern was that the proposed language specifying what circumstances would result in a registrant being determined non-job ready (Category II) was too vague. These commenters asked for more precise definitions of "transportation difficulties", "family problems", "intermittent medical problems", etc. The commenters also recommended that lack of education or training, language difficulties, and mental or emotional problems should be added to the general criteria for determining Category II registrants.

With the exception of problems posed when registrants do not speak English, the Departments determined that these additional circumstances should not be added as criteria resulting in a

classification as "non-job ready." These additional circumstances do not warrant an across-the-board (as opposed to a case-by-case) application that necessarily results in a non-job ready classification.

The final rules do, however, include language difficulties among the criteria used to determine a registrant's job search categorization. This does not mean that non-English speaking persons are necessarily placed in Category II or III. There are many areas of the country in which a non-English speaking person can readily communicate with potential employers. This criterion only applies where language actually is a barrier to gaining employment.

Several organizations working with migrant farmworkers, as well as some State employment agencies and a religious organization, recommended including migrant and seasonal farmworkers in Category III. The final rules adopt this recommendation, but only for those households away from their home base and moving with the work stream. Persons traveling hundreds or thousands of miles with the migrant stream are clearly engaging in a job search of their own. A requirement for formal contact and reporting to SESA would burden both these households and SESA offices while not serving to increase chances of employment. Lack of transportation and long distances in the rural areas where instream migrants reside would often, in themselves, qualify these persons for Category III status.

Searching for other work could also adversely affect a migrant family's housing situation, if the family is living in housing provided by a grower during a slow work period.

In order to implement this provision efficiently, the final rules require State agencies to note migrant status on the work registration form before forwarding it to the SESA office. This will avoid placing burdens on both SESA and migrants that would result if migrants were called in for an assessment interview just to classify them in Category III.

The work registration section of the final rules also provides clarification sought by some commenters on when migrants must register for work. The rules specify that migrants who are under contract or similar agreement to begin full-time employment within 30 days are considered exempt from work registration, while migrants who do not have such a work agreement and are not otherwise exempt must register.

Many commenters also sought an exemption for persons where the unemployment rate is above a specified percentage or above the national average. This recommendation has not been accepted. Its adoption could mean exemption of a significant number of persons in high unemployment areas, even though there may be some potential employers in the areas. In addition, this recommendation would be difficult to administer as the formula would have to be adjusted when unemployment rates fluctuated.

Failure to Comply

A number of commenters urged that the noncomplying member, rather than the entire household, be disqualified if the work registration or job search requirements are not complied with. The Food Stamp Act of 1977 is explicit in its disqualification of the entire household and this provision remains in the final rule.

Some public interest organizations commented that a representative from the State employment agency should be required to attend fair hearings involving a SESA determination of noncompliance with work requirements.

The Departments agree that SESA should be represented at fair hearings. However, § 273.7(g)(1) clarifies that such representation normally need not be in person. The regulations permit representation of SESA by phone. The number of food stamp offices in many areas are greater than the number of SESA offices. A requirement for a SESA representative to appear in person could require SESA officials to travel long distances at some expense. There may be unusual circumstances where the hearing official determines at the hearing, after examining the case and pursuant to a request by the household for SESA to be represented in person, that a proper decision cannot be reached unless a SESA representative is present in person at the hearing. In such circumstances, the hearing would be adjourned and rescheduled for a later time at which SESA could be represented in person. The number of cases in which a hearing official finds it necessary to make such a determination should be very small, and there should be no appreciable impact on SESA's from this provision.

The Program's general fair hearing regulations provide recipients the right to confront and cross-examine adverse witnesses. The purpose of the new provision is to maintain this important procedural right where the recipient believes its use to be necessary in the presentation of its case, and the hearing official determines that a factual issue exists regarding matters peculiarly within the knowledge of SESA and that fairness requires that the recipient be given the right to confront the SESA representative face to face. At the same time, the rule will minimize unnecessary expenditures of time and funds where the presence of a SESA representative at the hearing would serve no useful purpose.

Some commenters asked for clarification on whether a household could appeal any action by SESA through the State agency fair hearing process. A number of commenters sought assurance that any action affecting a household's participation in the program could be appealed.

The Food Stamp Act of 1977 and regulations issued to implement it specify that a household is entitled to a fair hearing to appeal any action by the State agency that may adversely affect a household's participation. This is a basic due process right. Therefore, any action by SESA that results in a State agency action which the household wishes to contest may be appealed through a fair hearing.

However, the appeal is taken in response to the State agency action. The fair hearing cannot be requested prior to notification to the State agency by SESA of a registrant's failure to comply, because the State agency has not itself acted at that point. When SESA informs the State agency of a failure to comply and the State agency acts to disqualify the household, the household may request a fair hearing. The decision of the hearing official would be binding on both the State agency and SESA. It could result in a reversal of a SESA determination in some cases (such as a SESA decision to place a registrant in a particular job search category or a SESA determinaton that a registrant had not made the requisite number of job contacts).

Registrants may secure more rapid action through a SESA review of a SESA determination such as a job search classification. This may serve to resolve some disputes quickly and reduce the number of instances in which formal fair hearing are needed.

Determining Good Cause

Commenters generally supported this portion of the proposed rule (§ 273.7(h)), and it remains essentially unchanged. Clarification is added to indicate that inability to speak or write English could in certain instances constitute good cause if such inability was responsible for the noncompliance. (Section 273.7(h) of the proposed rule is redesignated as § 273.7(m) in this final rule.)

Ending Disqualification

The proposed rules (§ 273.7(i)) specified that if a household member

fails to appear at SESA for an assessment or follow-up interview or fails to make the required number of job search contacts, the entire household is disqualified. The proposed rules maintained the disqualification regardless of whether the noncomplying household member subsequently took the action he or she had failed to take before. In other words, no "cure" provision was provided under which the disqualification would end if the noncomplaint member appeared for an interview or completed the required job search contacts.

A number of commenters objected to this policy, arguing that a "cure" provision should be provided, especially since the entire household and not just the noncomplying member is disqualified. However, the Departments believe that lack of a cure provision makes these requirements more effective and gives them more enforcement power.

Therefore, these comments have not been adopted. Households containing a member who fails to comply with the requirements of appearing for an interview or completing the requisite number of job contacts shall be barred from the program for the full duration of the disqualification period unless the noncompliant member becomes exempt from the work requirements during this time.

A number of commenters also suggested modification of procedues governing disqualification of a household containing a member who has voluntarily quit a job. The Commenters felt that if the household member who quit the job subsequently resumed employment during the disqualification period, the disqualification should end at that point. However, the Departments believe that Congress intended that the voluntary quit disqualification period not be subject to being shortened for any reason and have not made this change.

The final rules do clarify what happens if the composition of a disqualified household changes. (Section 273.7(i) of the proposed rule is redesignatd as § 273.7(h) in this final rule.)

Accordingly 7 CFR Parts 272 and 273 are amended as follows:

PART 272—REQUIREMENTS FOR PARTICIPATING STATE AGENCIES

7 CFR Part 272 is being amended as follows:

1. In § 272.1, a new paragraph (28) is added to paragraph (g) in numerical order to read as follows:

§ 272.1 General terms and conditions.

* * * * *

(g) *Implementation.* * * *

* * * * *

(28) *Amendment No. 165.* State welfare agencies and State employment agencies shall implement the provisions of amendment 165 no later than the first of the month following 120 days from publication of amendment 165 in the Federal Register as follows:

(i) Both agencies shall begin immediately to develop the work registration plan and agreements discussed in § 273.7(c) and (d) of amendment 165. The plan and agreements must be approved and implemented within the 120 day timeframe established for implementation of all provisions of the final rule.

(ii) The provisions of amendment 165 shall be applied to households at the time of initial application, recertification, or reregistration, beginning no later than the first of the month following 120 days from publication of the amendment.

* * * * *

PART 273—CERTIFICATION OF ELIGIBLE HOUSEHOLDS

7 CFR Part 273 is being amended as follows:

2. In § 273.1(f), paragraph (1)(i) is revised as follows:

§ 273.1 Application processing.

* * * * *

(f) * * *

(1) * * *

(i) *Making application for the program.* When the head of the household or the spouse cannot make application, another household member may apply or an adult nonhousehold member may be designated as the authorized representative for that purpose. The head of the household or the spouse should prepare or review the application whenever possible, even though another household member or the authorized representative will actually be interviewed. In conjunction with these provisions, another household member, or the household's authorized representative, may complete work registration forms for those household members required to register for work. The State agency shall inform the household that the household will be held liable for any overissuance which results from erroneous information given by the authorized representative, except as provided in § 273.11(e)(6). Adults who are non-household members may be designated as authorized representatives for certification purposes only under the following conditions:

(A) The authorized representative has been designated in writing by the head of the household, or the spouse, or another responsible member of the household; and

(B) The authorized representative is an adult who is sufficiently aware of relevant household circumstances.

* * * * *

3. In § 273.7, paragraph (a) is revised to read as follows:

§ 273.7 Work registration requirements.

(a) *Persons required to register.* The State agency shall determine which household members are required to register for employment. Each household member who is not exempt by paragraph (b)(1) of this section shall be registered for employment at the time of application, and once every six months after initial registration, as a condition of eligibility. Registrants who move out of a project area shall reregister at their new location unless the registrant's new address is within the same SESA jurisdiction (in which case the State agency shall notify SESA of the registrant's change in address). Under the provisions of § 273.1(f)(1), the registration form need not be completed by the member required to register.

* * * * *

4. In § 273.7(b), the number "(1)" is added after the word "*registration*", in the heading, and before the word "The". Paragraphs (b)(1) through (b)(9) are redesignated as paragraphs (b)(1)(i) through (b)(1)(ix), respectively. Newly redesignated paragraphs (b)(1)(iii), (b)(1)(vi), (b)(1)(viii) and (b)(1)(ix) are revised, and a new paragraph (b)(2) is added. The revisions and addition read as follows:

* * * * *

(b) *Exemptions from work registration.*

(1) * * *

(iii) A household member subject to and participating in the work incentive program (WIN) under Title IV of the Social Security Act. If the exemption claimed is questionable, the State agency shall be responsible for verifying the exemption.

* * * * *

(vi) A person is in receipt of unemployment compensation. A person who has applied for, but has not yet begun to receive, unemployment compensation shall also be exempt if that person was required to register for work with the SESA as part of the unemployment compensation application process. If the exemption claimed is questionable, the State

agency shall be responsible for verifying the exemption with the appropriate office of the SESA.

* * * * *

(viii) A person who is employed or self-employed and working a minimum of 30 hours weekly or receiving weekly earnings at least equal to the Federal minimum wage multiplied by 30 hours. This shall include migrant and seasonal farmworkers who are under contract or similar agreement with an employer or crew chief to begin employment within 30 days (although this shall not prevent individuals from seeking additional services from SESA). For work registration purposes, a person residing in certain designated areas of Alaska, as specified in § 274.10(e), who subsistence hunts and/or fishes a minimum of 30 hours weekly shall be considered exempt as self-employed.

(ix) A student enrolled at least half time in any recognized school, training program, or institution of higher education. A student enrolled in a school, training program or institution of higher education shall remain exempt during normal periods of class attendance, vacation and recess, unless the student graduates, is suspended or expelled, drops out, or does not intend to register for the next normal school term (excluding summer school). Persons who are not enrolled at least half time or who experience a break in enrollment status due to graduation, expulsion, or suspension, or who drop out or otherwise do not intend to return to school, shall not be considered students for the purpose of qualifying for this exemption.

(2)(i) Persons losing exemption status due to any change in circumstances that is subject to the reporting requirements of § 273.12 (such as a loss of employment that also results in a loss in income of more than $25 a month, or departure from the household of the sole dependent child for whom an otherwise nonexempt household member was caring) shall register for employment when the change is reported. If the change is reported in person by the household member required to register, the person shall complete the work registration form at the time the change is reported, unless this is not possible, in which case the household member shall return the form to the State agency within 10 days. If the change is reported in person by a household member other than the member required to register, the person reporting the change may complete the form at the time the change is being reported or deliver the form to the member required to register. If the change is reported by phone or through the mail, the State agency shall be responsible for providing the participant with a work registration form. Participants shall be responsible for returning the form to the State agency within 10 calendar days from either the date the form was handed to the household member reporting the change in person, or the date the State agency mailed the form. If the household fails to return the form, the State agency shall issue a notice of adverse action stating that the household is being terminated, but that the household can avoid termination by returning the form.

(ii) Those persons who lose their exemption due to a change in circumstances that is not subject to the reporting requirements of § 273.12 shall register for employment at their household's next recertification.

* * * * *

5. In § 273.7, paragraph (c), Voluntary quit, is redesignated as (n) and a new paragraph (c) is added. Additionally, in the newly designated paragraph (n)(3), the reference to § 273.7(g) is changed to refer to § 273.7(m). The addition reads as follows:

* * * * *

(c) *State agency responsibilities.* (1) The State agency shall participate with the SESA in the development of a State Work Registration Plan and in annually reviewing and updating the plan, as prescribed under paragraph (d) of this section. The Plan/agreements (including annual updates) shall be submitted to the FNS Regional Office for review and comment. The Plan and agreements shall be available for public inspection at the State agency headquarters.

(2) Upon reaching a determination that an applicant or a member of the applicant's household is required to register, the State agency shall explain to the applicant the work registration and job search requirements, his or her rights and responsibilities, and the consequences of failure to comply. The State agency shall provide work registration forms to the applicant for each household member required to register for employment, and permit the applicant to complete the form for those members in accordance with paragraph (a) of this section. Household members are considered to have registered when an identifiable work registration form is submitted to the State agency. An identifiable form shall contain those items necessary for partial entry into the Employment Service Automated Reporting System (ESARS): the applicant's name, address, phone number, social security number (or some other identifying number when a social security number is not available), the expiration date of the household's certification period, an indication of exemption from job search, and any other information agreed upon by the State agency and SESA in their operating agreements. The State agency and SESA must agree before any information in the last category can be specifically required. If the registrant is an instream migrant and seasonal farmworker, or if the State agency knows that the registrant would otherwise be exempt from job search under the provisions of paragraph (f)(1)(ii)(c) of this section, the State agency shall also indicate this on the registration form. The State agency shall not forward work registration forms to SESA until the household is certified, so that SESA will not have to expend unnecessary efforts on applicants who are subsequently denied rather than certified for food stamps. No later than five days after the date of household certification, the State agency shall forward the completed work registration form to the SESA having jurisdiction over the area where the registrant resides.

(3) The State agency shall be responsible for notifying the appropriate SESA of those work registrants who become exempt from the work registration requirement subsequent to registration, are no longer certified for participation in the Program, or move from the area. Such notification shall be provided to the SESA within a reasonable timeframe established and agreed on by both agencies, but not to exceed 30 days from the date the change becomes known to the State agency. The State agency shall also notify SESA promptly of a change in address if the State agency becomes aware that a work registrant has moved from one location to another within the same SESA jurisdiction.

* * * * *

6. In § 273.7, paragraph (d), which was previously reserved for *Job Search*, is used for a new paragraph, *State Employment Security Agency (SESA) responsibilities*, to read as follows:

* * * * *

(d) *State Employment Security Agency (SESA) responsibilities.* (1) *Funding.* Each SESA shall participate in the work registration and job search activities for food stamp registrants to the extent that the funds necessary for proper and efficient administration are made available. Each year the Employment and Training Administration of the Department of Labor and FNS will negotiate funding levels based on available appropriations and on agreed upon projections of

workload levels and the types of services to be provided. These funding levels will be included in an interagency agreement between the U.S. Department of Agriculture and the Department of Labor regarding the administration and operation of the work registration provisions of the Food Stamp Act of 1977.

(2) *Development of Plans/agreements.* The SESA shall have primary responsibility for developing with the State agency a Work Registration Plan. The Plan shall set forth workload projections, staffing, and other information requested by the Departments. It shall also include the specific operational agreements developed by the State agency and the SESA at the State and local levels in meeting the requirements of this section. Such plan and agreements shall be annually reviewed by the State agency and the SESA and updated as appropriate. Additionally, the Plans/agreements (including annual updates) shall be submitted to the DOL Regional Office for review and approval.

(3) *Other responsibilities.* Following receipt of the work registration form from the State agency the SESA shall be responsible for taking the following actions:

(i) Entering the information from the work registration form into the Employment Service Automated Reporting System (ESARS).

(ii) Scheduling work registrants for interview appointments with the exception that those persons who would be exempt from job search, as defined in § 273.7(f)(1)(ii)(c) of this section, shall not be required to report for such an interview. The SESA shall send the registrant a letter informing the registrant of the date of the interview, that appearance for an interview at SESA is a condition of participation in the food stamp program, and how the registrant can contact SESA to reschedule the interview if necessary. Such interview shall normally be scheduled to occur within 2 weeks of the date the work registration form reaches the SESA. If the work registrant fails to appear for the first interview and has not contacted SESA in advance to reschedule the initial interview, the SESA shall send a second letter scheduling another interview to occur within the next two weeks. This letter shall inform the registrant of the date of the rescheduled interview, explain to the registrant that this is SESA's last attempt to schedule the interview and the consequences of failing to appear for the rescheduled interview appointment without good cause, and the procedures for the household to contact the SESA if the rescheduled interview cannot be attended by the work registrant for good cause. SESA and the State agency may establish alternative methods for scheduling or rescheduling interviews (such as allowing the State agency to schedule a participant's appointment with the SESA) so long as the registrant is contacted and afforded an opportunity to reschedule a missed interview and the time frames established above are met.

(iii) Interviewing work registrants for potential job placement. At the time of the interview, the SESA will complete the work registration form if needed information on the work registrant's past experience or skills is missing. The SESA shall attempt to match the work registrant with an available job opening. If the work registrant has specific counselling or testing needs, the services shall be provided in the same manner in which they are provided to all persons seeking employment assistance through the SESA. If the SESA finds that the work registrant has training needs, and knows of services such as CETA or the Job Corps which could meet these needs, the work registrant shall be directed to those services, if available. SESA will provide the work registrant with job market information (such as a list of available job opportunities) and referrals to available employment in the same manner that such services are provided to all persons seeking employment assistance through the SESA.

(iv) If the State agency has required an individual to register for work and the SESA disagrees, the SESA shall request the State agency to reconsider its determination. The State agency's response will be accepted by the SESA as final. If the State agency reverses its decision or does not respond to the request within 30 days, the SESA shall inactivate the registrant from ESARS.

(v) Establishing and maintaining the job search requirements established in § 273.7(f) of this section, administering the job search requirement, and assisting the work registrant in conducting his or her job search.

(vi) Attempting to match work registrants with available job openings at the time of the work registrant's initial and subsequent visits to the SESA and on a continuing basis.

(vii) Reporting to the State agency both on work registrants who fail to comply, without good cause, with either the job search requirements established in § 273.8(f) or the additional work requirements established in § 273.7(e), and on those registrants who obtain employment. The SESA shall notify the State agency within five working days of the date such information becomes known to the SESA.

7. In § 273.7, paragraph (g) is redesignated as paragraph (m); paragraph (f), Failure to comply, is redesignated as paragraph (g) and is revised. A new paragraph (f), *Job Search*, is added. The revision and addition read as follows:

* * * * *

(f) *Job Search.* Persons required to register for work shall be subject to the appropriate job search requirements discussed below. The appropriate requirement shall be established at the time of the initial assessment interview with SESA and at each subsequent interview. If it is known, or the SESA determines from available information that the work registrant would be exempt from actively engaging in a job search based on the criteria established in paragraph (f)(1) (ii)(c) of this section, no assessment interview will be required. Failure to comply with the job search requirements, without good cause, shall result in household disqualification as established in paragraph (g) of this section.

(1) *Job Search Assignment.* (i) During the initial assessment interview, the SESA shall determine the job search category of each work registrant. The SESA shall provide to each registrant written notification regarding his or her job search requirements, procedures to be followed, and the consequences of failure to comply.

(ii) Based on the capabilities and characteristics of the participant, including his or her age, physical condition, ability or inability to speak English, current enrollment in job training programs, and recent employment history, as well as the job market situation in the area, the SESA shall put each work registrant into one of the followng categories:

(A) *Category I—Job ready.* Those work registrants that have no apparent substantial barriers to employment.

(B) *Category II—Non-job ready.* Those work registrants with substantial barriers to employment, e.g., medical, transportation, language, or family problems, that alone or in conjunction with adverse labor market conditions, would make them difficult to place. Transportation problems shall include the unavailability on a regular basis of either private or public transportation or the minimum financial resources necessary to obtain available public transportation. Job attached persons, e.g., those on temporary layoff or those expecting to return to work within 60 day, shall be placed in this category for 60 days from the date of initial

registration. At the end of the 60 days period, job attached persons, if still unemployed, may be recategorized as appropriate.

(C) *Category III—Exempt.* Those work registrants for whom a job search is determined to be impractical, specifically including those individuals residing an unreasonable distance from the appropriate SESA office or potential employers (a distance shall be considered unreasonable if the round trip exceeds 2 hours by reasonably available public or private transportation), and migrant and seasonal farmworkers away from their home base and following the work stream. SESA's must insure that migrant and seasonal farmworkers are offered all services described in Subpart B of 20 CFR Part 653. The SESA determination of exempt status shall be made at the time the work registration form is received from the State agency to preclude the need of such persons to travel to the SESA for an assessment interview, unless it is impossible for the SESA to determine exempt status from the form for a particular registrant. The SESA office should be able to determine from the form those work registrants who are exempt because of distance, as the registrant's address is contained on the form. In addition, State agencies are required to note the status of instream migrant or seasonal farmworkers on the form, and also to indicate on the form whenever the State agency knows that an exemption would apply for any other reason. FNS and the Department of Labor may also jointly establish general exemptions for residents of certain areas or certain groups if, due to geographic or economic characteristics or similar reasons, application of the job search requirements is determined impracticable. For example, exemptions could be provided for residents of all or part of an Indian reservation where there are few job opportunities within reasonable distance, or for an area with an extremely high unemployment rate and a virtual absence of employment opportunities. Requests for such general exemptions may originate with the local or State level SESA or State agency, or from other knowledgeable sources (such as an Indian tribal organization).

(2) *Requirements.* (i) Persons classified as Category I shall be subject to and must comply with the job search requirements discussed below for a period of eight weeks each time they are entered into ESARS (which occurs after losing a work registration exemption or reentering the food stamp program after a period of absence), or each twelve months, whichever occurs sooner. The SESA office may require either that the eight week period be one continuous period, or that it be divided into two separate job search periods that total eight weeks. For example, the SESA office might require a registrant to undertake two four-week job searches, with the second period following six months after the first. The SESA may schedule the job search period(s) at the time(s) it believes the job search would be most effective, taking into account job market conditions and the registrant's skills and experience. SESA may shorten or suspend the job search period if economic or personal circumstances warrant. The SESA could suspend a job search period and then resume it later if factory closings or other circumstances made it likely that the job search period would be more productive at a subsequent time. Registrants who remain continuously on the program are not subject to a new job search requirement at the time of semi-annual routine re-registration. These requirements are effective for 12 months starting with the month of initial registration and remain in effect until a registrant's information is removed from ESARS (inactivated), or the 12 months expire, whichever occure first. Once a registrant is removed from ESARS, any new entry for that registrant into ESARS constitutes a new 12 month timeframe and a new job search activity of up to 8 weeks. If SESA is aware that a registrant has been entered into ESARS more than once in a 12-month period, the SESA shall consider the registrant's previous job search activity during the 12-month period, and the anticipated impact of additional job search, in determining the registrant's new job search requirements. Registrants subject to the job search requirements must take the following actions:

(A) Contact, as required by SESA, up to twenty-four prospective employers during the eight-week period. If the job search period is shortened, the number of required job contacts shall be reduced on a pro-rata basis, to the maximum extent practicable. A referral by SESA to an employer shall be considered a job contact for Food Stamp Program purposes, provided the registrant presents himself/herself to the employer as described in paragraph (f)(4) of this section.

(B) Twice during the eight-week job search period, report at a prescheduled time to the SESA on the result of all job contacts. If the eight-week job search activity is divided into two separate periods, SESA may require the registrant to report once during each period of job search activity. Job contacts shall be reported in written form as discussed in paragraph (f)(5) of this section. At the time of each subsequent interview, as discussed in paragraph (f)(5), the SESA will be responsible for reviewing its files to determine if current referral possibilities exist.

(ii) Work registrants classified as Category II will not be assigned any specific job search activity. Job attached persons who have not returned to their jobs or otherwise become exempt from the work registration requirement may be called in for reassessment at the end of sixty days. Other persons may be called in by the SESA during the six-month registration period. During subsequent interviews, job files will be reviewed for potential referrals, and the job search categorization of such individuals will be reassessed.

(iii) Work registrants classified as Category III will not be required to fulfill job search requirements until such time as that classification as Category III is no longer applicable and the work registrant is reclassified into an active job search category.

(3) *Follow-up activities.* (i) At the time of the initial assessment interview with the work registrant, the SESA will establish a schedule for two follow-up interviews over the job search period for Category I registrants. SESA may reduce the number of follow-up interviews to one for Category I registrants when the job search period and number of job contacts are reduced. Such schedules shall be documented and provided in written form to the work registrant. Category II registrants will be informed that they may be contacted either within the six-month registration period or in 60 days if they are job attached. If the work registrant fails to report for the follow-up interview for any reason, and has not contacted SESA in advance to reschedule the interview, the SESA shall contact the work registrant by letter to schedule another interview within the next two weeks. The letter shall inform the registrant of the date of the rescheduled interview, explain to the registrant the consequences of failing to appear for the rescheduled interview without good cause, and provide procedures for contacting the SESA if the rescheduled interview cannot be attended by the work registrant for good cause. If the work registrant fails to report to the rescheduled interview, without good cause, the State agency shall be notified of the failure within five working days of the date of the failure. Follow-up interviews will normally consist of in-person interviews at the SESA office, but SESA may make alternate arrangements where necessary

(for example, SESA could conduct a follow-up interview by telephone and direct the registrant to mail its report on job contacts to SESA if roads are impassable due to snow).

(ii) At the time of each follow-up interview, the SESA shall review the job contacts made by the work registrant, review job listings for potential referrals, and assist the work registrant in establishing his or her future plans for seeking employment.

(4) *Job contact.* To qualify as a job contact, two conditions must be met. First, the work registrant must present himself or herself to a prospective employer as available for work. Second, the prospective employer must ordinarily employ persons in areas of work that meet the suitability requirements discussed in paragraph (i) of this section and for which the work registrant is reasonably qualified by means of experience, training or ability. Depending upon the position being sought, the job contact requirement may be fulfilled by either a personal visit to the prospective employer or another method of application which is considered by the SESA to be generally accepted practice. The work registrant cannot contact the same employer in subsequent weeks unless the initial contact indicated that vacancies in suitable job positions may soon exist.

(5) *Reporting Job Contacts.* (i) Job contacts shall be reported in writing in a manner prescribed by the SESA. At the time of the initial interview with the SESA, the work registrant shall be told about the manner of reporting. While such reporting will not require the employer's written confirmation of the job contact, the work registrant shall be required to sign the written documentation to attest to its validity. The written report shall be submitted to the SESA at the time of the work registrant's follow-up interviews.

(ii) The work registrant shall be responsible for providing the SESA, upon reasonable request, any additional information regarding job contacts.

(iii) At the end of the job search period, the SESA shall determine if the work registrant has completed the assigned number of job contacts. If the work registrant was assigned a continuous job search period of less than 8 weeks, the registrant shall have two additional weeks to complete any missed contacts. If the work registrant was assigned a single continuous 8-week job search period, no additional time shall be allowed unless the SESA fails to accept, for reasons such as suitability or manner of contact, a job contact(s) reported by the registrant. In such instances, the work registrant shall be allowed an additional two weeks to make-up the disallowed contact(s). Persons failing to complete the required number of job contacts with good cause shall be excused from completion of the job search requirements.

(6) *SESA review.* If a work registrant believes that a SESA determination is improper, review of the determination may be obtained from a designated SESA official not involved in the original determination. For example, if the work registrant believes he or she has been improperly assigned to a job search category or assigned an improper number of job search contacts, or that an action which should have been counted as a contact was not, a review may be obtained. This would also apply to a SESA determination that noncompliance was not for good cause.

(g) *Failure to comply.* If the State agency is informed by the SESA that a household member has refused or failed without good cause to comply with the requirements of this section, the entire household shall be ineligible to participate as provided in this paragraph. Such ineligibility shall continue until either the member complies with the requirement in paragraph (h) of this section, or the member becomes exempt, or for 2 months, whichever occurs earlier. Prior to informing the State agency of the registrant's noncompliance, the SESA shall be responsible for contacting the work registrant to determine if good cause existed, as discussed in paragraph (h) of this section. Within 10 days after the SESA provides notification of the work registrant's failure to comply with the requirements of this section, the State agency shall provide the household with a notice of adverse action, as specified in § 273.13. Such notification shall contain the proposed period of disqualification and shall specify that the household may reapply at the end of the disqualification period. Information shall also be included with the notification on the procedures and requirements contained in paragraph (h) of this section. The disqualification period shall begin with the first month following the expiration of the adverse notice period, unless a fair hearing is requested. Each household has a right to a fair hearing to appeal a denial, reduction, or termination of benefits due to a determination of nonexempt status, or a SESA determination of failure to comply with the work registration and job search requirements of this section. The household can appeal SESA actions such as the job search category assigned, the number of job search contacts required, SESA refusal to accept an action as a job search contact, or SESA refusal to make a finding of good cause, if the household believes that a finding that the household has failed to comply has resulted from improper decisions on these matters. If a fair hearing is scheduled, the State agency shall provide the SESA sufficient advance notice to either permit the attendance of a SESA representative or ensure that a SESA representative will be available for questioning over the phone during the hearing. SESA shall be available to participate in the hearing through one of these means. The availability of a SESA representative for questioning over the phone shall be sufficient, unless the hearing official determines at the hearing (after examining the facts of the case and pursuant to a request for such a ruling by the household) that, taking into account the nature of the issues in dispute and the nature and importance of the evidence to be given by the SESA representative, fairness requires that the household be given an opportunity to confront the SESA representative in person. Such a determination should be necessary in only a very small number of cases. If such a determination is made, the hearing shall be adjourned, and rescheduled for a time at which the SESA representative is able to attend. In such an event, the timeframes prescribed by § 273.15(c) for State agencies to render fair hearing decisions shall be extended for as many days as elapse between the original fair hearing and the rescheduled fair hearing. A household shall be allowed to examine its SESA casefile at a reasonable time before the date of the fair hearing, except for confidential information (which may include test results) that SESA determines should be protected from release. Information not released to a household may not be used by the State agency or SESA at the fair hearing. The results of the State agency fair hearing shall be binding on both the State and SESA.

* * * * *

6. In § 273.7, paragraph (h) is amended by numbering the introductory paragraph as (h)(1), deleting existing paragraph (h)(2), redesignating existing paragraphs (h)(1), (h)(3), (h)(4), (h)(5), and (h)(6) as (h)(1)(i), (h)(1)(ii), (h)(1)(iii), (h)(1)(iv), and (h)(1)(v), respectively. Newly designated paragraphs (h)(1), (h)(1)(iv), and (h)(1)(v) are revised, and new paragraph (h)(2) is added. The revisions and additions read as follows:

* * * * *

(h) *Ending disqualification.* (1) Following the end of the 2-mounth disqualification period for

noncompliance with the work registration and/or job search provisions prescribed under paragraphs (a), (e), or (f) of this section, a household may resume participation in the program if it applies again and is determined eligible. Eligibility may be reestablished during a disqualification period and the household shall (if otherwise eligible) be permitted to resume participation if the member who caused the disqualification becomes exempt from the work requirement, is no longer a member of the household (although any new household containing this member shall be subject to disqualification for the remainder of the disqualification period), or the member complies as follows: * * *

(iv) Refusal to accept a bona fide offer of suitable employment to which referred by the SESA—acceptance of the employment if still available to the participant, or securing other employment which yields earnings per week equivalent to the refused job, or securing employment of at least 30 hours per week with weekly earnings equal to the Federal minimum wage multiplied by 30 hours.

(v) Refusal to continue suitable employment to which referred by the SESA—returning to this employment, if still available to the participant, or securing any other employment which yields earnings per week equivalent to the refused job, or securing any other employment of at least 30 hours per week or securing employment of less than 30 hours per week but with weekly earnings equal to the Federal minimum wage multiplied by 30 hours.

(2) Persons failing to comply initially with the job search requirements, i.e., the assessment interview, follow-up interviews, and job contacts, are provided with a second opportunity to comply by the procedures established in paragraph (f) of this section. If the work registrant fails to comply on the second opportunity, without good cause, and such failure results in disqualification, the disqualification of the household containing the work registrant may be ended only if the person who caused the disqualification becomes exempt from the work registration requirements or is no longer a member of the household (although any new household containing this person shall be subject to disqualification for the remainder of the disqualification period), or at the end of two months, whichever occurs earlier. This means, for example, that if the noncomplaint household member secures full-time employment and thereby becomes exempt from the work registration requirement before the two month disqualification period is over, the disqualification would end at that point.

* * * * *

9. In § 273.7, the heading of paragraph (k) and paragraph (k)(1) are revised to read as follows:

* * * * *

(k) *Registration of certain PA, GA, and refugee households.* (1) State agencies may request approval from FNS to substitute State or local procedures for work registration for PA households not subject to the WIN registration requirements or for GA households. Work requirements imposed on refugees participating in refugee resettlement programs including but not limited to the Indochinese Refugee Assistance Program may also be substituted, with FNS approval. To receive approval, it must be demonstrated that:

(i) The work registration procedures are at least equivalent to food stamp work registration requirements;

(ii) Registrants' activities are monitored so that appropriate sanctions as required by these regulations will be applied. However, if additional work requirements (beyond those required under this section) are placed on household members, a household's food stamp benefits shall not be denied for the failure of a household member to comply with a requirement that exceeds the requirements of this section. For example, if a State rule requires individuals to register for work through age 65, any individual 60 years of age or older who fails to comply shall not be denied food stamp benefits as a result of that failure;

(iii) All household members which are not exempt under paragraph (b)(1) are either registered for work under such Federal, State or local programs as described in this paragraph, or are registered for work as provided in paragraph (a) of this section.

* * * * *

10. In § 273.7, the newly redesignated paragraph (m), *Determining Good Cause,* (formerly paragraph (g)) is revised to read as follows:

* * * * *

(m) *Determining good cause.* The SESA shall be responsible for determining good cause in those instances where the work registrant has failed to comply with the additional work registration and job search requirements of this section. The State agency shall determine good cause in these cases where an applicant has voluntarily quit a job. The SESA and the State agency shall consider the facts and circumstances, including information submitted by the household member involved and the employer. Good cause shall include circumstances beyond the member's control, such as, but not limited to, illness, illness of another household member requiring the presence of the member, a household emergency, or the unavailability of transportation. Problems caused by inability of the work registrant to speak or write English could constitute good cause (for example, a registrant who could not read English would have good cause for not appearing for a SESA interview if the appointment notice was written only in English).

Note.—The reporting and recordkeeping requirements contained in this rule are being submitted for approval by the Office of Management and Budget (OMB) in accordance with the Federal Reports Act of 1942. The reporting and recordkeeping requirements may be subject to revision prior to implementation if the requirements as presently formulated are not approved without change by OMB.

(91 Stat. 958, as amended (7 U.S.C. 2011–2027)).

(Catalog of Federal Domestic Assistance Programs, No. 10.551, Food Stamp).

Dated: December 31, 1980.

Carol Tucker Foreman,

Assistant Secretary for Food and Consumer Services, U.S. Department of Agriculture.

Dated: January 12, 1981.

Ernest Green,

Assistant Secretary, U.S. Department of Labor.

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Part XXI

Department of Health and Human Services

Food and Drug Administration

Proposed Revision of Reclassification Procedures To Determine That Licensed Biological Products Are Safe, Effective, and Not Misbranded Under Prescribed, Recommended, or Suggested Conditions of Use

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 601

[Docket No. 80N-0529]

Reclassification Procedures to Determine That Licensed Biological Products are Safe, Effective, and Not Misbranded Under Prescribed, Recommended, or Suggested Conditions of Use; Proposed Revision

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) proposes to revise the existing regulations governing the review and classification of biological products and issue new regulations to reclassify Category IIIA biological products as either safe, effective, and not misbranded (Category I), or unsafe, ineffective, or misbranded (Category II). The agency further proposes to permit interim marketing pending completion of clinical studies of any biological product reclassifed into Category II for which there is a compelling medical need and no suitable alternative therapeutic, prophylactic, or diagnostic agent.

DATES: Comments by March 17, 1981; if a final rule based on this proposal is issued, the agency proposes that it become effective on the date of publication.

ADDRESS: Written comments to the Dockets Management Branch (formerly the Hearing Clerk's office) (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Albert Rothschild, Bureau of Biologics (HFB-620), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-1308.

SUPPLEMENTARY INFORMATION:

I. General Background

In the Federal Register of February 13, 1973 (38 FR 4319), the Commissioner of Food and Drugs promulgated § 601.25 (21 CFR 601.25) which established procedures for the review of all biological products license prior to July, 1972. The propose of the biologics review was to determine whether the licenses for the biological products reviewed met contemporary standards of safety, purity, and potency (the statutory standard for licensing biological products under section 351 of the Public Health Service Act (42 U.S.C. 262)). The biologics review was also intended to determine whether the biological products reviewed are effective for their labeled uses and therefore not misbranded within the meaning of section 502(a) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 352(a)).

Under § 601.25, the Commissioner assigned responsibility for the initial review of all biological products licensed prior to 1972 to six independent advisory review panels consisting of non-FDA qualified experts. Each of the advisory review panels was assigned to review a specific category of biological products. These panel assignments were published in the Federal Register of June 19, 1974 (39 FR 21176). The six categories of biological products to which the panels were assigned are: (1) Bacterial vaccines and bacterial antigens with "no U.S. standards of potency," (2) bacterial vaccines and toxoids with "U.S. standards of potency," (3) viral and rickettsial vaccines, (4) allergenic extracts, (5) skin test antigens, and (6) blood and blood derivatives.

Each panel was charged with preparing an advisory report to the commissioner which was to: (1) Evaluate the safety and effectiveness of the biological product; (2) review the labeling of the biological product; and (3) advise the Commissioner on which biological products under review are safe, effective, and not misbranded. See § 601.25(e).

Each advisory review panel report is to include a statement classifying products into one of the three following categories:

1. Category I: Biological products determined by the panel to be safe, effective, and not misbranded. The panel's statement may include any condition relating to active components, labeling, tests required prior to release of batches, product standards, or other conditions necessary or appropriate for their safety and effectiveness. See § 601.25(e)(1).

2. Category II: Biological products determined by the panel to be unsafe, ineffective, or misbranded. See § 601.25(e)(2).

3. Category III: Biological products determined by the panel not to fall within either Category I or II because the available data are insufficient for classification and further testing is therefore required. See § 601.25(e)(3). These products fall into two subcategories:

a. Category IIIA: Biological products recommended for continued licensing, manufacturing, and marketing while questions raised concerning the products are being resolved by further study. This recommendation is based on an assessment of the present evidence of safety and effectiveness of the product and the potential benefits and risks likely to result from the continued use of the product for a limited period of time.

b. Category IIIB: Biological products that a panel recommends should not be marketed and should not be licensed for general use while further studies are undertaken.

After reviewing the conclusions and recommendations of an advisory review panel, FDA publishes a proposed order in the Federal Register containing: (1) A statement designating the biological products reviewed into Category I, II, IIIA or IIIB; (2) a statement of the conditions under which Category IIIA biological products can continue to be marketed; and (3) the complete panel report to FDA. See § 601.25(f). After reviewing comments addressed to the proposed order, the agency publishes a final order. See § 601.25(g).

The current status of the biologics review is as follows:

1. The Commissioner's final order on the report of the Panel on Review of Bacterial Vaccines and Bacterial Antigens with "no U.S. Standards of Potency" was published in the Federal Register of January 5, 1979 (44 FR 1544) and placed eight products in Category IIIA because of questions about their effectiveness (not safety). Of those eight Category IIIA products, only two are being marketed. The licenses for other products classified in Category IIIA by this panel have been revoked at the manufacturer's request. The testing recommended by the panel is under way for those Category IIIA products being marketed.

2. The Commissioner's final order on the report of the Skin Test Antigens Panel was published in the Federal Register of July 10, 1979 (44 FR 40284) and placed five biological products in Category IIIA because of questions about their effectiveness (not safety). Of those five Category IIIA products, only three are being marketed. The licenses for those other products classified in Category IIIA have been revoked at the manufacturers' request. The testing recommended by the panel is under way for those Category IIIA products being marketed.

3. FDA's proposed order on the report of the Panel on Review of Viral and Rickettsial Vaccines was published in the Federal Register of April 15, 1980 (45 FR 25652). In that proposal, five products were classified in Category IIIA. Only one of those five products was being marketed when the panel submitted its report and, in any event, all five product

licenses are now revoked at the manufacturers' request. See 21 CFR 601.5(b)(2).

4. The agency has yet to issue proposed orders for the reports of the Panels on Review of Bacterial Vaccines and Toxoids with "U.S. Standards of Potency" and the Review of Blood and Blood Derivatives. These Panels have submitted their final reports to FDA and these reports recommended that a small number of products reviewed by these Panels be placed in Category IIIA. (Copies of these reports have been placed on file with FDA's Dockets Management Branch.) FDA plans to issue proposed orders based on these panel reports prior to issuance of any final rule for reclassification of Category IIIA products.

5. The agency expects that the report of the Panel on Review of Allergenic Extracts will be completed in the near future. Discussions of the Panel at both open and closed sessions, and the Panel minutes indicate that the vast majority of allergenic products—more than 6,000 specific company products (about 1,800 generic products) were reviewed—will be placed in what is now designated as Category IIIA.

II. Health Research Group Petition to Eliminate Category IIIA

On February 19, 1980, Sidney Wolfe, M.D., Director of the Public Citizen Health Research Group (HRG), a consumer research and advocacy organization concerned with the safety and efficacy of drugs, filed a petition under 21 CFR 10.30 requesting that FDA begin procedures to remove from the market all biological products which have not been shown to be effective. (A copy of the HRG petition has been placed on file with FDA's Dockets Management Branch.) The petitioner expressed the opinion that the marketing of such products is inconsistent with two decisions of the United States District Court for the District of Columbia, *American Public Health Association* v. *Veneman*, 349 F. Supp. 1311 (D.D.C. 1972) and *Cutler* v. *Kennedy*, 475 F. Supp. 838 (D.D.C. 1979). Specifically, HRG requested that the Category IIIA designation of the biologics review be eliminated. In addition, HRG contended that biological products are subject to the new drug provisions of the act and that the standard for determining their effectiveness was that prescribed for new drugs, namely, "substantial evidence" consisting of "adequate and well-controlled clinical investigations * * *." 21 U.S.C. 355(e).

The Commissioner responded to the HRG petition on August 19, 1980. (A copy of the Commissioner's response has been placed on file with FDA's Dockets Management Branch.) In his response, the Commissioner stated that "While I do not agree with the petitioner's arguments as to the applicable law, I have nevertheless tentatively decided to amend the regulations governing the biologics review (21 CFR 601.25) and, as appropriate, establish new procedural regulations, in order to eliminate the Category IIIA designation and to proceed to either reaffirm or initiate proceedings to revoke affected licenses."

By letter dated August 26, 1980, HRG contended that the Commissioner's August 19, 1980 response was incomplete because it did not contain an explanation of why the agency had been unable to reach a final decision on the petition. The HRG letter further asserted that biological products are subject to the new drug provisions of the act, 21 U.S.C. 355.

In a response dated September 18, 1980, the Commissioner explained that the agency's August 19, 1980 response was appropriately denominated "tentative" because FDA had not made a final decision as to which procedures would be used to eliminate Category IIIA. (A copy of the Commissioner's September 18, 1980 response has been placed on file with FDA's Dockets Management Branch.)

The Commissioner's response also rejected HRG's legal argument that the new drug provisions of the act apply to biological products. The Commissioner explained that FDA regulations make clear that biological products have never been subject to the new drug provisions of the act. See 21 CFR 310.4 (1980). The Commissioner's response further stated that:

> While the agency has affirmed many times that biological products are drugs within the meaning of the act, they are not subject to the new drug provisions. Rather, biological products have been regulated for nearly 60 years under the Biologics Control Act of 1902, recodified in 1944 as § 351 of the Public Health Service Act, 42 U.S.C. 262. Like new drugs, biological products must be licensed before they can be marketed. However, the critiera for marketing biological products under § 351 of the Public Health Service Act are that they have been shown to be safe, pure, and potent. These differ from the statutory criteria for new drugs under the Federal Food, Drug, and Cosmetic Act. While it is clear that as drugs biological products are misbranded if they are not effective for their labeled uses, and that the applicable statutory requirement for potency in the Public Health Service Act has been interpreted as requiring that a product be effective, the specific statutory criteria governing new drugs, "adequate and well-controlled clinical studies," have not been applied to biological drugs. Compare 21 CFR 600.3(s) with 21 CFR Part 314.

Finally, the response stated that FDA would propose amendments to the biologics review regulations and/or new procedural regulations, as necessary, to eliminate the Category IIIA designation by or before December 31, 1980.

III. The Procedures For Reclassification of Category IIIA Biological Products into Category I or II

The Category IIIA designation reflects a determination that there are doubts about whether the data are sufficient to support an action by the agency to revoke a license and that, based on an assessment of the present evidence of safety and effectiveness of a product, the potential benefits outweigh the potential risks likely to result from continued use of a product for a limited period of time. See § 601.25(f)(3). The Category IIIA designation does not, however, reflect a finding that the biologics license for a product should be withdrawn because it does not meet the statutory standard for approval of a biologics license. To eliminate Category IIIA, the data for each Category IIIA biological product will therefore need to be reviewed again to determine whether the product should be classified in Category I or II. FDA believes that there may be products now classified in Category IIIA that can and should be reclassified into Category II and removed from the marketplace. FDA is therefore proposing to eliminate the Category IIIA designation from § 601.25 (by deleting § 601.25(e)(3), (f)(3) and (h)), and to establish procedures for the review and reclassification of all Category IIIA products. These procedures are analogous to the procedures established in § 601.25 for the 1972 biologics review (described above).

Under the proposed procedures, panels of non-FDA qualified experts would submit to the Commissioner a report containing the panel's conclusions and recommendations as to whether the Category IIIA products reviewed should be placed in Category I or II. The deliberations of the panels would be governed by § 601.25(c) and their final reports by § 601.25(e). (Sections 601.25 (c) and (d) govern the deliberations of the existing panels involved in the 1972 biologics review.)

The procedure for the Commissioner's consideration of panel recommendations and the issuance of proposed and final orders would be the same as the procedures currently followed as part of the biologics review. See § 601.25 (f) and (g).

As part of the reclassification process, the advisory review panels could recommend that a biological product reclassified into Category II should remain on the market pending the completion of further clinical studies, if the panel finds that there is a compelling medical need and no suitable alternative therapeutic, prophylactic, or diagnostic agent for the product. This determination would involve consideration of the seriousness of the condition the product is intended to treat, prevent, or diagnose and the likelihood that, based on existing data, the effectiveness of the product can eventually be established by further testing and new test development. After consideration of the recommendations, FDA would include in the proposed order designating all reclassified Category I or II products, a proposal agreeing or disagreeing with the panel's recommendations. After consideration of comments on the proposal, FDA would publish a final order. Following issuance of a final order, FDA would issue notices of opportunity for hearing proposing to revoke the licenses of those Category II products for which interim marketing is not permitted.

The agency strongly emphasizes that the proposed provision for interim marketing of certain medically necessary Category II biological products is quite different from Category IIIA. Category IIIA is a broad classification that permits the continued marketing of products even though those products might not be a medical necessity or might be intended to treat a condition for which there is suitable alternative therapy. Thus, many, if not all, of the products which have been classified in Category IIIA may well fail to meet the strict criteria the agency is establishing for the continued marketing of a product under Category II pending further testing. Indeed, the agency is hopeful that it will not need to invoke this provision. However, the agency also believes that it is in the best interests of the public to allow interim marketing of biological products that are medically necessary and for which there is no suitable alternative therapy pending the completion of clinical studies.

FDA believes that it has legal authority to permit the continued marketing pending testing of Category II products that meet these criteria. FDA is eliminating Category IIIA for policy reasons and not because of any lack of legal authority. FDA does not believe that the cases relied on by HRG preclude the continued marketing of medically necessary biological products even though those products have been found not to meet the statutory standard for approval of a biologics license.

The first case, *American Public Health Association* v. *Veneman*, 349 F. Supp. 311 (D.D.C. 1972), involved a challenge to FDA's administration of section 505 of the act. The Court held that once FDA concluded that a drug did not meet the threshold statutory standard for approval of a new drug application, FDA was required to begin procedures to remove the product from the market. *Id.* at 1315. The Court based its holding on the following:

> [T]he statute states unequivocably that the Secretary shall * * * withdraw approval of an application with respect to any drug under this section if the Secretary finds * * * that there is a lack of substantial evidence that the drug will have the effect it purports or is represented to have under the conditions of use prescribed * * * 21 U.S.C. 355 * * *.
> * * * * *
> Thus, it could not be clearer that the Secretary *must* begin the procedures to withdraw a drug when he concludes that there is no substantial evidence of effectiveness.
> *Id.* at 1315. (Emphasis in original.)

The action FDA proposes to take in this document is distinguishable from *Veneman* because there is no statutory provision similar to section 505 of the act that applies to biological products. The Public Health Service Act does not mandate the revocation of licenses upon specific conditions, but rather provides that biologics licenses "shall be issued, suspended, and revoked as prescribed by regulations * * *." 42 U.S.C. 262(d). Thus, Congress gave FDA discretion to determine when and in what manner licenses should be revoked.

The regulations governing the revocation of a license provide that the Commissioner shall notify a licensee of its intention to revoke a license if the Commissioner concludes that the licensed product is not safe and effective for all of its intended uses or it is misbranded with respect to any such use. See 21 CFR 601.5(b)(6). The regulations further provide that:

> * * * the notification required in this paragraph shall provide a reasonable period for the licensee to demonstrate or achieve compliance with requirements of this chapter, before proceedings will be instituted for the revocation of a license. * * *
> 21 CFR 601.5(b)(6).

Thus, the statutory and regulatory scheme for revocation of biologics licenses is quite different from the statutory scheme for withdrawal of new drug applications and the former scheme authorizes the interim marketing of a biological product pending the completion of testing designed to demonstrate that the product meets statutory standards for licensing.

The *Veneman* case is also distinguishable because it involved drugs marketed under new drug applications approved prior to 1962 when the effectiveness requirement was added to section 505. Those drugs, therefore, had never been administratively determined to meet the "substantial evidence" standard of effectiveness. In marked contrast, all of the biological products subject to the biologics review have been found by FDA to be safe, pure, and potent, the standard set by the Public Health Service Act.

Even if the holding in *Veneman* did apply to the biologics review, it does not prohibit FDA from permitting the continued marketing of a limited category of medically necessary durgs pending the completion of clinical studies. The Court in *Veneman* did not declare the review scheme illegal, but rather prepared a timetable for compliance. The Court's order included the provision that "[a] limited number of drugs may remain on the market pending completion of scientific studies to determine effectiveness where there is a compelling justification of the medical need for the drug." Reported in Kleinfeld, Kaplan, and Weitzman, "Federal Food, Drug, and Cosmetic Act 1969–1974" at 540. Thus, the *Veneman* case fully supports the action FDA proposes to take with respect to biological products for which there is a medical need and no suitable alternative therapy.

In a subsequent judicial decision, *Hoffman-La Roche, Inc.* v. *Weinberger*, 425 F. Supp. 390 (D.D.C. 1975), Judge June Green followed the precedent set in the *Veneman* decision. In *Hoffman-La Roche*, Judge Green invalidated an FDA policy that allowed manufacturers of certain new drugs that had been found to be effective by the National Academy of Sciences/National Research Council to be marketed upon submission, but before approval of a new drug application. Following issuance of this decision, FDA argued that the language of the Court's decision could be construed to prohibit FDA's established use of the new drug procedures to require a holder of a new drug application (NDA) to perform further testing on a drug by initiating proceedings to withdraw approval of the NDA under section 505(e) of the act. FDA contended that the Court's decision might require FDA to effectuate removal from the marketplace of such drugs—even though medically necessary—in advance of completion of studies. In

response to this argument, Judge Green issued a supplementary order (No. 75–0270, filed Nov. 7, 1975) providing that:

> * * * nothing * * * shall prevent defendants, upon making * * * a determination that prescription new drugs in the following categories are medically necessary, from allowing such drugs to continue to be marketed pending completion of scientific studies required for an evaluation of their safety and effectiveness: (a) Drugs covered by approved new drug applications with respect to which new information causes defendants to initiate proceedings to withdraw approvals of applications pursuant to provisions of 21 U.S.C. 355(e) * * *.

(A copy of Judge Green's order has been placed on file with FDA's Dockets Management Branch.)

Judge Green thus allowed FDA to permit continued marketing of medically necessary drugs pending the completion of clinical studies, even though proceedings had been initiated to withdraw approval of the drug's new drug application under section 505(e) of the act.

The second case relied on by HRG, *Cutler* v. *Kennedy*, 475 F. Supp. 838 (D.D.C. 1979), is also inapposite. The *Cutler* case involved FDA's OTC drug review. The Court declared unlawful a procedure by which FDA permitted the continued marketing of drugs requiring further testing (OTC Category III). However, most of the OTC drugs marketed after 1962 had been marketed without a license or an approved NDA. Judge Sirica placed great reliance on the fact that there was no previous administrative determination that the Category III OTC drugs met the applicable statutory standard:

> The Commissioner's OTC regulations formally authorize the continued marketing of Category III drug products in the absence of an administrative determination that those products are today generally recognized by experts as safe and effective. This flies in the face of the statutory scheme.
> 475 F. Supp. at 854.

Biological products, on the other hand, have already been administratively determined to have met the statutory criteria of the Public Health Service Act.

Moreover, the Category III OTC drug designation does not involve a finding that those drugs were medically necessary. Category III for OTC drugs is therefore distinguishable from the interim marketing provisions proposed here as well as the provisions involved in the *Veneman* and *Hoffman-La Roche* cases.

FDA believes that it has authority to permit the interim marketing pending the completion of clinical studies of biological products reclassified from Category IIIA to Category II if those products are medically necessary and meet the other proposed criteria.

IV. Proposed Revision of the Regulatory Standard for Reclassification of Category IIIA Products

The regulations governing the 1972 biologics review contained a standard for determining the effectiveness of the products reviewed. See § 601.25(d)(2). FDA proposes to use the same regulatory standard for reclassification of Category IIIA biologics. FDA has, however, in preparing the proposal, reexamined this standard to determine if it can be better defined to facilitate the reclassification process. FDA believes that while the standard is adequate, some explanation of the special problems that must be dealth with in establishing the effectiveness of certain biological products would be helpful. These problems are particularly acute with allergenic extracts and these products will be used in providing examples.

The Public Health Service act requires that to be licensed a biological product must be shown to be safe, pure, and potent (42 U.S.C. 262). Although there is no specific requirement that biological products be shown to be effective, the requirement that biological products be shown to be potent has been interpreted to include the concept of effectiveness. The term "potency" is defined in 21 CFR 600.3(s) to mean the specific ability or capacity of a product, as indicated by appropriate laboratory tests or by adequately controlled clinical data obtained through the administration of the product in the manner intended, to obtain a given result. This definition of potency is reflected in the effectiveness standard for the 1972 biologics review. See 21 CFR 601.25(d)(2). Section 601.25(d)(2) provides that "adequate and well-controlled studies" need not exist where such studies are "not reasonably applicable to the biological product or essential to the validity of the investigation, and that an alternative method of investigation is adequate to substantiate effectiveness."

The agency believes that the evaluation of allergenics presents scientific problems that may often require the acceptance of alternative methods of testing to substantiate effectiveness. The first problem in the testing of allergenics is that in many instances it is difficult to determine the cause of causes of allergic symptoms (e.g., sneezing or other respiratory symptoms, blistering or rashes, or indigestion). The substances that can cause allergies are almost without number. Inhaled substances include tree, weed, and grass pollens, house and factory dust, mold spores, and animal danders (skin or hair shed by domestic animals). Allergic symptoms can also be caused by drugs and foods. A person may be allergic to more than one allergen and it may be difficult to determine the identity of all the allergens causing that person's allergic symptoms. This can complicate the testing of an allergenic product because, if the persons being tested are allergic to allergens other than the allergen being tested, the allergic symptoms may continue even though the tested allergenic may be effective. These factors can make the classical assessment of effectiveness by an "adequate and well-controlled clinical trial" (as defined in 21 CFR 314.111(a)(5)) impractical or impossible for particular allergenics.

Other factors that can complicate the testing of allergenics are variables such as seasonality, geography, spontaneous remission and the variability of the disease itself. These problems are especially difficult in testing pollen allergies because pollen production is seasonal, and will vary depending on geographic location. The amount of pollen production can also be affected by the amount of sun, rain, and wind. These latter factors can not only affect the total pollen production for a given year, but also the amount of pollen in the air at any particular time. As a result, an allergenic being tested may appear to be effective when in fact the improvement is due to a reduction in the amount of pollen in the air.

Another problem relates to current limitations in the state of the art as applicable to allergenics. In the case of many, perhaps most, of the allergenic extracts it is not possible with existing technology to identify and quantitate all active ingredients.

FDA recognizes that as the state-of-the-art progresses, the licensing standard can become more exacting. However, given the current state-of-the-art of biologics testing, it may not be feasible or practical to require all allergenic products to meet the "adequate and well-controlled studies" standard. Of course, even if such studies are not feasible, allergenics must nevertheless be shown to be safe, pure, and potent by suitable alternative testing methods. The proposed effectiveness standard provides that, for such a method to be acceptable, there must be a previously accepted correlation between data generated by use of the alternative testing method and clinical effectiveness.

FDA believes that there may be suitable alternative testing methods to

establish that many allergenics meet the statutory requirements for continued licensing. The use of such alternative methods as skin reaction tests,[1] RAST (radioallergosorbent technique) tests [2] and other appropriate assays in vitro or in experimental animals may be adequate to substantiate effectiveness where such data can be correlated with clinical effectiveness. The assessment of short ragweed and insect venom allergens provide examples. Each of these allergenics has been proven effective by well-controlled clinical trials and, for each, effectiveness has been shown to correlate with skin reaction test response, RAST activity and potency as determined by various in vitro assays of product ingredients. The advisory review panels used in the reclassification process and FDA will make full use of appropriate data provided by alternative methods in making accurate determinations as to whether the product under review should be placed in Category I or II.

The agency is not now expressing any final conclusions as to which, if any, allergenics or other biological products cannot be feasibly tested in an adequate and well-controlled study and whether the correlation between data derived from alternative methods is sufficient to substantiate a conclusion that the license for any particular product cannot be revoked. These decisions will be made in the course of the reclassification process.

V. Implementation of Reclassification Procedures

If this reclassification proposal is issued in final form, the reclassification process would begin immediately upon issuance of a final rule. The agency recognizes that the 1972 biologics review process will probably not be completed when a final rule is issued. The agency nevertheless plans to reclassify all Category IIIA products upon issuance of a final rule, even if those products are not the subject of final orders. Thus, this proposal provides that products classified in Category IIIA by either advisory review panel reports, proposed orders, or final orders shall, at the time this proposal is final, be immediately submitted to the advisory review panels responsible for reclassification of Category IIIA biological products.

[1] A skin reaction test involves injecting a diluted amount of each individual allergenic under the skin on the patient's arm or back. A small raised red area will develop at the test site in an allergic person.

[2] The RAST test uses samples of a patient's blood to determine the extent of IgE (a class of blood proteins responsible for skin sensitizing anti-bodies) production in response to a particular allergen.

Specifically, the reclassification panels would receive for review all Category IIIA products identified in FDA's (1) final order on Skin Test Antigens and Bacterial Vaccines and Antigens with "no U.S. Standards of Potency"; (2) proposed orders on Blood and Blood Derivatives and bacterial Vaccines and antigens with "U.S. Standards of Potency"; and (3) the final report of the Allergenics Review Panel. (All products classified in Categories I, II, and IIIB in these documents would be reviewed by FDA in accordance with the existing biologics review regulations (§ 601.25).)

This procedure will expedite the reclassification process. Moreover, since the reclassification process will include notice and comment procedures the public will have an adequate opportunity to comment upon the reclassification of those biological products that have not been subject to notice and comment procedures under the existing biologics review procedures.

VI. Conclusion

After consideration of all comments received in response to this notice of proposed rulemaking, the agency will decide whether to publish a final regulation in the **Federal Register** establishing the reclassification procedures.

The agency has determined pursuant to 21 CFR 25.24(d)(10) (proposed December 11, 1979; 44 FR 71742) that this proposed action is of a type that does not individually or cumulatively have a significant impact on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 201, 502, 701, 52 Stat. 1040-1042 as amended, 1050–1051 as amended, 1055–1056 as amended by 70 Stat. 919 and 72 Stat 948 (21 U.S.C. 321, 352, 371)), the Public Health Service Act (sec. 351, 58 Stat. 702 as amended (42 U.S.C. 262)), and the Administrative Procedure Act (secs. 4, 10, 60 Stat. 238 and 243 as amended; 5 U.S.C. 553, 702, 703, 704) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.1), it is proposed that Part 601 be amended as follows:

§ 601.25 [Amended]

1. In § 601.25 *Review procedures to determine that licensed biological products are safe, effective, and not misbranded under prescribed, recommended, or suggested conditions of use* by removing paragraphs (e)(3), (f)(3), and (h).

2. By adding a new § 601.26 to read as follows:

§ 601.26 Reclassification procedures to determine that licensed biological products are safe, effective, and not misbranded under prescribed, recommended, or suggested conditions of use.

This regulation establishes procedures for the reclassification of all biological products that have been classified into category IIIA. A Category IIIA biological product is one for which an advisory review panel has recommended under § 601.25(e)(3);[1] the Commissioner has proposed under § 601.25(f)(3):[1] or the Commissioner has finally decided under § 601.25(g) that available data are insufficient to determine whether the product license should be revoked or affirmed and which may be marketed pending the completion of further testing. All of these Category IIIA products will either be reclassified into Category I (safe, effective, and not misbranded) or Category II (unsafe, ineffective, or misbranded) in accordance with the procedures set forth below.

(a) *Advisory review panels.* The Commissioner of Food and Drugs shall appoint advisory review panels and use existing advisory review panels to (1) evaluate the safety and effectiveness of all Category IIIA biological products; (2) to review the labeling of such products; and (3) to advise the Commissioner on which Category IIIA biological products are safe, effective, and not misbranded. These advisory review panels will be established in accordance with procedures set forth in § 601.25(a).

(b) *Deliberations of advisory review panels.* The deliberations of advisory review panels will be conducted in accordance with § 601.25(d).

(c) *Advisory review panel report to the Commissioner.* An advisory review panel shall submit to the Commissioner of Food and Drugs a report containing the panel's conclusions and recommendations with respect to the biological products falling within the category of products reviewed by the panel. The panel report shall include:

(1) A statement designating the biological products in the category under review in accordance with either § 601.25(e)(1) or § 601.25(e)(2).

(2) A statement identifying those biological products designated under § 601.25(e)(2) that the panel recommends should remain on the market pending completion of further testing because there is a compelling medical need and no suitable alternative therapeutic,

[1] Although § 601.25(e)(3) and (f)(3) is proposed for deletion, it is referenced here and will be the text of a footnote to the final regulation.

prophylactic, or diagnostic agent for the product. In making this recommendation, the panel shall take into account the seriousness of the condition intended to be treated, prevented, or diagnosed by the product and the likelihood that, based upon existing data, the effectiveness of the product can eventually be established by further testing and new test development. The report shall also recommend with as much specificity as possible the type of further testing and new test development required and the time period within which it might reasonably be concluded.

(d) *Proposed order.* After reviewing the conclusions and recommendations of the advisory review panels, the Commissioner of Food and Drugs shall publish in the **Federal Register** a proposed order containing statements designating each biological product reviewed in accordance with § 601.25(e)(1) and (2) and the full panel report or reports in accordance with § 601.25(f)(2). The proposed order shall further identify those biological products designated under § 601.26(c)(2) that the Commissioner proposes should be permitted to remain on the market pending completion of further testing because there is a compelling medical need and no suitable alternative therapeutic, prophylactic, or diagnostic agent for the product. In making this proposal, the Commissioner shall take into account the seriousness of the condition to be treated, prevented, or diagnosed by the product and the likelihood that, based upon existing data, the effectiveness of the product can eventually be established by further testing and new test development.

(e) *Final order.* After reviewing the comments on the proposed order, the Commissioner of Food and Drugs shall publish in the **Federal Register** a final order on the matters covered in the proposed order. Where the Commissioner determines that there is a compelling medical need and no suitable alternative therapeutic, prophylactic, or diagnostic agent for any biological product, the final order shall provide that the product license for that biological product will not be revoked, but will remain in effect on an interim basis while the data necessary to support its continued marketing are being obtained for evaluation by the Food and Drug Administration. The tests necessary to resolve whatever effectiveness questions exist shall be described.

(f) *Additional studies and labeling.* (1) Within 30 days following publication of the final order, each licensee for a biological product designated as requiring further study to justify continued marketing on an interim basis, pursuant to paragraph (e) of this section, shall satisfy the Commissioner of Food and Drugs in writing that studies adequate and appropriate to resolve the questions raised about the product have been undertaken, or the Federal Government may undertake the studies. The Commissioner may extend this 30-day period if necessary, either to review and act on proposed protocols or upon indication from the licensee that the studies will commence at a specified reasonable time. If no such commitment is made, or adequate and appropriate studies are not undertaken, the product license or licenses shall be revoked.

(2) A progress report shall be filed on the studies every January 1 and July 1 until completion. If the progress report is inadequate or if the Commissioner of Food and Drugs concludes that the studies are not being pursued promptly and diligently, or if interim results indicate the product is not a medical necessity, the product license or licenses shall be revoked.

(3) Promptly upon completion of the studies undertaken on the product, the Commissioner of Food and Drugs will review all available data and will either retain or revoke the product license or licenses involved. In making this review the Commissioner may again consult the advisory review panel which prepared the report on the product, or other advisory committees, professional organizations, or experts. The Commissioner shall take such action by notice published in the **Federal Register.**

(4) Labeling and promotional material for those biological products requiring additional studies shall bear a box statement in the following format:

Based on a review by the Panel on Review of (*insert name of appropriate panel)* and other information, the Food and Drug Administration has directed that further investigation be conducted before this product is determined to be fully effective for labeled indication(s).

(5) A written informed consent shall be obtained from participants in any additional studies required under paragraph (f)(1) of this section, explaining the nature of the product and the investigation. The explanation shall consist of such disclosure and be made so that intelligent and informed consent be given and that a clear opportunity to refuse is presented.

(g) *Court appeal.* The final order(s) published pursuant to paragraph (e) of this section, constitute final agency action from which appeal lies to the courts. The Food and Drug Administration will request consolidation of all appeals in a single court. Upon court appeal, the Commissioner of Food and Drugs may, at the Commissioner's discretion, stay the effective date for part or all of the final order or notice, pending appeal and final court adjudication.

Interested persons may, on or before March 17, 1981, submit to the Dockets Management Branch (formerly the Hearing Clerk's office) (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, written comments regarding this proposal. Four copies of any comments shall be submitted, except that individual may submit single copies of comments. The comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

In accordance with Executive Order 12044, as amended by Executive Order 12221, the economic effects of this proposal have been carefully analyzed, and it has been determined that the proposed rulemaking does not involve major economic consequences as defined by that order.

In addition, the agency has determined that the proposed rule should only affect a small number of small entities as defined by the Regulatory Flexibility Act (Pub. L. 96–354). FDA therefore certifies that the proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities.

Dated: January 13, 1981.

Jere E. Goyan,

Commissioner of Food and Drugs.

[FR Doc. 81-1744 Filed 1-15-81; 8:45 am]

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Friday
January 16, 1981

Part XXII

Department of Agriculture

Food and Nutrition Service

Food Stamp Program, 1980 Amendments to the Food Stamp Act of 1977; Policy Interpretations, Miscellaneous Technical Amendments

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Parts 271, 272, 273, 274, 278

[Amdt. No. 199]

Food Stamp Program; 1980 Amendments to the Food Stamp Act of 1977; Policy Interpretations, Miscellaneous Technical Amendments

AGENCY: Food and Nutrition Service, USDA.

ACTION: Proposed rulemaking.

SUMMARY: This rulemaking contains proposed regulations for the Food Stamp Program to implement certain segments of the 1980 amendments to the Food Stamp Act of 1977. Included in this rulemaking are provisions of the Act on: certifying residents of Shelters for battered women and children; referring illegal aliens to the Immigration and Naturalization Service (INS); prorating income and counting resources of ineligible aliens; making fraud determination hearings optional; and eliminating depreciation as a cost of doing business for self-employed households.

In addition to these newly enacted provisions, a series of policy interpretations and technical amendments are incorporated in this rulemaking to clarify provisions published on October 17, 1978 and also to certain provisions of the 1977 Act. A number of the policy interpretations were included in a proposed rulemaking published on December 28, 1979. These interpretations and technical amendments cover numerous aspects of program operations, including bilingual services, certification processing standards, treatment of income, and claims processing requirements.

DATES: Comments must be received by March 17, 1981 to be assured of consideration.

ADDRESS: Comments should be submitted to Alberta C. Frost, Deputy Administrator for Family Nutrition Programs, Food and Nutrition Service, USDA, Washington, D.C. 20250. All written comments will be available for public inspection at the office of the Food and Nutrition Service during regular business hours (8:30 a.m. to 5:00 p.m. Monday through Friday) at Room 670, 500 12th Street, SW., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Larry R. Carnes, Chief, Policy and Regulations Section, Program Standards Branch, Program Development Division, Family Nutrition Programs, Food and Nutrition Service, United States Department of Agriculture, Washington, D.C. 20250: 202-447-9075. A draft Impact Analysis describing the options considered in developing this proposed rule is available from the above address.

SUPPLEMENTARY INFORMATION: This proposed action has been reviewed under USDA procedures established in Secretary's Memorandum 1955 to implement Executive Order 12044 and has been classified "not significant."

The proposal has been reviewed with regard to the requirements of Pub. L. 96-354, 94 Stat. 1164, Sept. 19, 1980. Robert Greenstein, Administrator of the Food and Nutrition Service, has certified that the proposal does not have a significant economic impact on a substantial number of small entities. The proposal would implement several provisions of Pub. L. 96-249 which affect food stamp certification issues. Examples are requirements to count the income and resources of ineligible aliens, to report persons determined to be illegal aliens to the Immigration and Naturalization Service, and to allow persons residing in battered women's shelters to receive food stamps. These provisions do not represent major changes in certification policy and should have no significant impact on State or county agency workload, staffing needs, or paperwork. The provisions allowing persons residing in battered women's shelters to receive food stamps affects only persons in those shelters which provide meals to their residents. There are not a large number of such shelters, and a substantial number of small entities will not be affected by this provision. Where this is in effect, it will be to increase the shelter's resources. The proposed rule also contains provisions to clarify the application of a provision of the Food Stamp Act of 1977 that General Assistance payments may not be reduced because of food stamps. This will not have an impact on a substantial number of small governments as the Department is aware of few if any jurisdictions not already in compliance.

1980 AMENDMENTS TO THE FOOD STAMP ACT

Pub. L. 96-249, 958 Stat. 357, May 26, 1980, was enacted to amend the Food Stamp Act of 1977, Pub. L. 95-113, Stat. 958, Sept. 28, 1977, as previously amended. This rulemaking contains proposed regulations implementing the following statutory provisions. Section 101 of the new law exempts shelters or battered women and children from being considered institutions, and therefore permitting shelter residents who are otherwise eligible to receive food stamps. Section 116 of the 1980 amendments to the Food Stamp Act requires the reporting of illegal aliens to the Immigration and Naturalization Service (INS) as well as prorating the income and counting the resources of ineligible aliens who would otherwise be household members. This would eliminate windfall benefits to a household in which an ineligible alien was the major breadwinner. Section 109 makes the administrative fraud hearing system a State option in order to avoid duplicative systems if States have an effective fraud prosecution system. Additionally, the Conference Committee Report (H.R. Rep. No. 96-957, 96th Cong., 2nd Sess. (1980) p. 29) indicates that the Committee intended that the Secretary no longer permit depreciation as an allowable cost of doing business for self-employed households. This rulemaking proposes such a change in program policy.

Regulations implementing other provisions of the 1980 Amendments were published on July 8, 1980 (45 FR 46036). These included restrictions on participation of students, changes in the resources provisions and exclusion of certain energy assistance payments as income and resources. Regulations for certain remaining provisions including new requirements on the use of photo identification, 74% federal financial participation in the development and design of new computer systems, enhanced ability for State agencies and FNS to match wage and unemployment compensation data, and provisions for monthly reporting and retrospective accounting and enhanced funding are currently in preparation. Still other provisions of the law have an effective date of October 1, 1981 and will not be published until 1981. These concern changes in the current medical, shelter, and dependent care deductions.

Shelters for Battered Women and Children

Section 5(a) of the 1977 Food Stamp Act limits participation in the program to individuals and groups of individuals constituting households and section 3(i) of the Act excludes from the definition of household those people who reside in an institution. However, section 3(i) also exempts federally subsidized housing for the elderly and drug addict/alcoholic treatment centers from being considered as institutions. Certain group living arrangements certified under Section 1616(e) of the Social Security Act, as amended, were additionally exempted by the 1979 Amendments to the Food Stamp Act of 1977 (Pub. L. 96-58, 93 Stat. 389, August 14, 1979; 45 FR 23288, April 4, 1980.) The 1980 Amendments

expanded this exemption to include shelters for battered women and children which provide meals to their residents. Residents of such shelters that do not provide meals may already participate (if otherwise eligible) because under program regulations at 7 CFR 273.1(e) they are not considered as residing in institutions. This position was published in the **Federal Register** on December 28, 1979. (Policy Interpretation Response Number 80-5, 44 FR 76329.)

This proposed rulemaking incorporates the statutory change with regard to shelters for battered women and their children and introduces some special procedures for handling shelter residents. Those shelter residents who were previously eligible under existing regulations will continue to be eligible. However, in order for residents to be eligible for these special procedures the facility would need to meet the proposed definition of a shelter for battered women and children. This definition is discussed in detail below. Upon final publication of this rule, shelters with residents that are already permitted to participate should contact their local project area office to determine if they qualify under the new definition. This would ensure prompt certification of eligible residents under the proposed procedures.

Statutorily Required Changes

Shelters for battered women differ from other exempt institutions. Treatment centers and group living arrangements have authorizing agencies within the State, are limited to those facilities listed in certain statutes, and have residents that are incapacitated in some way. None of these characteristics necessarily apply to a shelter for battered women or its residents. Therefore, the Department believes that some criteria need to be proposed to identify such shelters.

The statute and the legislative history specify that a shelter must be public or private non-profit and exclusively serve battered women and their children Pub. L. 96-249, § 101; H.R. Rep. No. 96-788, 96th Cong., 2nd Sess. (1980), pp. 148-149. The Department proposes that if a facility, such as a YWCA, serves persons other than battered women and their children, it must have a wing or rooms set aside on a long-term basis to shelter such women. This definition would be added to § 271.2. The Department also proposes that the shelter must be a residence, not just a meeting place or meal provider in order to prevent participation by facilities that are not truly providing shelter; i.e., a temporary place to live, not just a place to eat (§ 271.2 and § 278.1). The Department proposes to allow shelters serving meals to accept coupons from its residents in payment, to set forth FNS' responsibility for authorizing shelters to redeem coupons through wholesalers and to prohibit shelters from redeeming coupons directly through banks (§ 274.10 and 278.2). This last prohibition is currently applicable to all such exempt institutions and is designed to prevent the potential abuse of redeeming coupons for cash and using the cash for purposes other than food purchases.

Before a shelter can be considered exempt under the proposed rule, the State agency or FNS must determine if it meets the regulatory definition. As mentioned earlier, shelters with residents already participating in the Food Stamp Program would contact the State agency for such a determination so that their residents are certified without delay under the special procedures. In addition, shelters that are not currently participating, either because they are classified as institutions or for any other reason, should contact their local project area offices for a determination. Shelters wishing to redeem coupons through wholesalers may contact FNS for authorization; this authorization will substitute for a State agency determination. Local project areas would maintain a list of shelters meeting the definition. This will expedite certification of eligible residents. FNS will provide the names of any shelters it authorizes to redeem coupons through wholesalers to the State agency for dissemination to the local project areas.

Special Procedures Regarding Household Concept and Application Processing

The Conference Report on the 1980 Amendments states that residents of shelters for battered women and children shall "* * * be considered for eligibility as individual (parent/child) units, rather than considered as part of a single household consisting of all shelter residents." See H.R. Rep. No. 96-957, 96th Cong., 2nd Sess., p. 11. The Department is proposing that residents of shelters be certified as individual units only (§ 273.1). A single woman or a woman with her children would be considered an individual household rather than part of a group of shelter residents. This limitation is made both in response to the legislative history and to ease the transition of residents from the shelter and is similar to the requirement that residents of drug addict/alcoholic treatment centers always apply as one-person households. Because of the short stay of most residents, it would be advantageous to certify the women/children as a household to make on-going certification simpler. Upon leaving the shelter the women/children would have ready access to their coupon allotment rather than trying to divide the allotment between the household members remaining in the shelter and those leaving. Residents of those shelters not meeting the definition may continue to be certified based on their own household composition, like any other applicants.

Under these regulations, the shelter would *not* automatically act as the authorized representative, unlike the procedures regarding addict/alcoholic treatment centers and some group living arrangements. The woman would apply on behalf of herself and her children, although she may name an authorized representative. She may, of course, name a shelter staff member or volunteer. This procedure may be necessary in cases where a woman and her children would be endangered if they left the shelter. In such cases a woman may be unable to appoint an authorized representative of her choice. State agencies should provide such persons with a home visit or telephone interview. The availability of these alternatives should be explained to the shelter and to shelter residents who inquire about applying.

Resources

The Department proposes that any resources jointly held with the former houshold be considered inaccessible to the shelter residents in order to be responsive to the special needs of women who have been abused and to expedite handling of the cases (§ 273.8). Because a woman could be in danger if she tried to obtain her share, for example, of a bank account and because of the high probability of her resources being under the statutory maximum of $1,500, the Department believes this provision is both needed and not very costly. This proposal should also speed-up processing of the case as the inaccessibility of the resources would not have to be determined.

Expedited Service

The Department is proposing that the shorter 2 or 3 day standard for expedited service already provided for in the regulations apply to shelter residents eligible for expedited service (§ 273.2). This is in lieu of the 7 day service standard which is used for residents of treatment centers and group living arrangements. Relatively few shelters routinely provide meals as do treatment centers or group living arrangements. Shelter residents apply as

individuals. Therefore, the extended limit in effect for other facilities would not adequately meet the food needs of shelter residents.

Residents Who Have Left Households Already Participating in the Program

It is possible that some applicants from the battered women's shelters may come from an already participating food stamp household. Normal program rules would deny program benefits to these women until a notice of adverse action could be issued to their former household and its allotment reduced. However, such a procedure would work severe hardship on these women and children. Therefore, the Department is proposing that the State agency determine the eligibility of women and children in shelters based on their current circumstances as a separate household, regardless of their past participation (§ 273.11). Applicants from battered women's shelters would be allowed to participate as a separate household while the former household continues to participate under notice of adverse action or notice of expiration procedures. This approach cannot be used more than once a month. Under the proposed rules a battered woman leaves a participating household and enters a shelter, returns to the household, and then returns to a shelter for the second time in one month, she may receive food stamps for only one of the times she enters a shelter.

These special provisions would apply only to residents of battered women's shelters, and not to other persons who leave a participating household during a certification period. The Department believes the legislation contemplates special rules for only residents of these shelters.

Also, the provision would apply only to women leaving the household containing the person who had abused them (§ 273.13). This limits use of the provision to those shelter residents who were actually forced to leave their prior place of residence. The Department is interested in public comment on this provision and in any alternative methods of meeting the needs of battered women without imposing complex administrative rules on state agencies. The Department is also interested in how State agencies are currently handling separated households when the participating members apply on their own behalf.

Coupon Use and Redemption

Provisions on coupons use and redemption which are found in § 274.10(d), and § 278.1(g) would be revised and a new paragraph would be added to § 278.2(g) as conforming amendments. As mentioned earlier, residents of shelters would be permitted to use their coupons to purchase meals prepared for them at the shelter. In addition, a provision outlining FNS' responsibility for authorizing the shelters to redeem coupons through wholesalers would be added. This authorization would be based on the proposed definition of an exempt shelter and, where granted by FNS, would relieve the State from any responsibilities for determining if the shelter met the proposed definition. Shelters, like other exempt institutions, would be prohibited from redeeming coupons directly through banks.

A significant issue which may affect many residents of these shelters concerns the use of coupons. Residents often stay in a shelter for a short period of time. As a result, the shelter might provide them with only a few meals. Current regulations forbid retailers to accept loose $5 or $10 coupons without book covers (§ 278.2(c)). Without a special provision, shelters would be forced to accept loose $5 or $10 coupons which could not be redeemed at retailers, or to redeem them at wholesalers. Unlike other, larger facilities, shelters may be small operations for which volume purchases from wholesalers are impractical. One way to address this problem would be to issue a specialy annotated identification card to each shelter wishing to redeem loose $5 of $10 coupons, and to allow these shelters to redeem the loose coupons at retailers. However, authorizing only shelters for battered women and their children to redeem loose coupons could be seen as discriminating against group living arrangements and drug treatment centers. Most of the residents of these other facilities remain for longer periods of time, but some may be short-term residents. Short-term residents of any facility would benefit from the use of loose $5 and $10 coupons. Further, current FNS publications instruct retailers to refuse loose coupons, and there is a likelihood that retailers will become confused over who may and may not redeem loose coupons. This confusion could weaken the ban on redeeming loose coupons at retailers, a ban designed to discourage the use of illegally obtained coupons. In addition, a change in policy, even for a small group of participants, will require a costly change in FNS's publications and instructions. A final problem concerns the issuance of ID cards. Whether this special card would be an annotated State card or a specially issued FNS card, the card would be an additional complication.

A second option is not to prescribe any special procedures, and not to permit shelters to redeem loose coupons.

The Department recognizes the costs, benefits and problems associated with each of these two approaches and especially seeks comments on how to resolve this issue.

Whether this special card would be an annotated State card or a specially issued FNS card, the card would be an additional complication.

A second option is not to prescribe any special procedures, and not to permit shelters to redeem loose coupons.

The Department recognizes the costs, benefits and problems associated with each of these two approaches and especially seeks comments on how to resolve this issue.

A few minor revisions are also proposed to the drug addict/alcoholic treatment center and group living arrangement provisions in § 273.11(e) and (f). The changes in the provisions on treatment centers and group living arrangements require the facility to return to the local food stamp office any unused coupons not provided to departing residents. This resolves the problem, discovered in audits, that some facilities retain coupons of departing residents. Additional clarifications are made in the area of handling allotments for departing residents.

Reporting Illegal Aliens

Section 118 of Pub. L. 96–249 requires that the State agency report to the Immigration and Naturalization Service (INS) when certification personnel determine that any household member is ineligible to receive food stamps because that member is present in the U.S. in violation of the Immigration and Nationality Act.

In the Food Stamp Certification Handbook that was in effect under the 1964 Food Stamp Act, FNS (FS), 732–1, certification workers were instructed in section 2208.9 that: "If in the application process, it becomes known to the State agency that an alien has entered or remained in the United States illegally and INS (Immigration and Naturalization Service) has not declined deportation action, such alien shall be promptly brought to the attention of the FNS district office for appropriate action." See H.R. Rep. No. 95–464, 95th Cong., 1st Sess., 1977, p. 586. This provision was incorporated into State handbooks and was administered nationwide.

This provision of the FNS Handbook was subsequently withdrawn as a result of a consent decree in *Rodriquez*

v. Texas Department of Public Welfare, Civ. Action No. A–78–CA–57 (W.D. Tex. Mar. 31, 1978), a legal challenge based on the privacy restrictions of section 10(e) of the 1964 Food Stamp Act, Pub. L. 88–525, 78 Stat. 706 (1964), as amended. Moreover, section 11(e)(8) of the Food Stamp Act of 1977 specifies that a State agency shall not use or disclose information obtained from applicant households to persons not directly connected with the administration or enforcement of the Food Stamp Act or its regulations. Current regulations prohibit contact with INS by certification personnel without written consent by the household (§ 273.2(f)(1)(ii)(d)).

Section 118 of the 1980 amendments amends Section 11(e) to require "* * * the immediate reporting to the Immigration and Naturalization Service by the State agency of a determination by personnel responsible for the certification or recertification of households that any member of a household is ineligible to receive food stamps because that member is present in the United States in violation of the Immigration and Nationality Act."

The House Committee report contains considerable discussion (H.R. Rep. No. 96–788, pp. 134–136) of how the Department should implement this provision. The Committee Report specifies that an alien should be reported to INS only when food stamp certification workers are able to make a determination that the alien is present in the United States in violation of immigration laws. The Committee Report states that "[b]ecause under the laws of this country, an illegal alien or person 'known to be an alien in the United States in violation of the Immigration and Nationality Act' * * * is only known to have such status when he or she is found in this country and is known to have a final order of deportation outstanding against him or her * * * the Department may wish to incorporate this restriction in its regulations governing the reporting requirement." H.R. Rep. No. 96–788, pp. 135–136. This approach is also suggested by the legislation history to Pub. L. 96–68, the Departments of State, Justice and related agencies Appropriations Act of 1980, which calls for defining persons known to be illegal aliens as persons concerning whom "a final judicial determination as to the client's residency status has been reached" 125 Cong. Rec. § 12.286 (1980).

The Department found the question of how to determine that an applicant or participant is an illegal alien a particularly difficult issue. These proposed regulations attempt to set forth clearly defined statements to govern reporting requirements to INS. The Department is very interested in comment on this issue.

Under these proposals, State agencies would report to INS when, (1) the applicant or the household's authorized representative admits that illegal aliens are present in the household; (2) forged INS documents are presented by the household during the application or recertification process; or (3) a formal order of deportation is presented by the household during the application or recertification process.

These standards do not permit reporting to INS based on mere suspicion or prejudice. Firm evidence that a household member is illegally in the U.S. would be required. This procedure should facilitate the work of INS by not subjecting it to large numbers of reports that are not substantiated by evidence.

While the House Committee report suggested, but did not require, limiting the definition of an illegal alien to a person with a formal order of deportation, the Report is unequivocal in its directive that food stamp offices must "rely solely upon facts appearing on the face of the household's application form or revealed by the household in the course of the requisite interview * * * directly demonstrating illegal status * * * The worker could not undertake to investigate the matter on his own or attempt to ferret out further facts by going beyond the ordinary verification process * * *", H.R. Rep. No. 96–788, p. 136.

The Committee Report further notes that in 1977 Congress eliminated food stamp eligibility for many legal aliens, and that a determination that an alien is ineligible for food stamps does not constitute a determination that the alien is here illegally. The Report directs that food stamp personnel not devote time (beyond what is necessary in the certification process to determine eligibility) to the work that properly falls within the sphere of INS, H.R. Rep. No. 96–788, pp. 135–136.

Only if, in the process of determining food stamp eligibility, it is determined that an alien applicant is here illegally, may a food stamp office report the alien to INS. The Committee Report makes clear that a person who declines to be evaluated for food stamp eligibility as an ineligible alien shall not be reported to INS, H.R. Rep. No. 96–788, p. 136. The caseworker would be under no obligation to require the alien to clarify his status (although inquiry might need to be made into the alien's income and resources if other household members remain eligible for food stamps). The proposed regulations reflect these directives.

The Department is also proposing a review beyond the caseworker level of the determination of illegal alien status prior to any referral to INS. Such a review would be aimed at ensuring uniformity of practice and at ensuring that sufficient evidence exists to warrant a determination that an alien's status is illegal. The review would be conducted by a State agency official not involved in the initial determination. The Department strongly encourages State agencies to designate particular persons to review referrals to INS, and to provide training to such persons in the applicable immigration laws.

In view of the complexity of the immigration laws, the House Committee Report directs the Department to exclude worker failure to report illegal aliens as an error from measurement by the quality control system. This is reflected in these proposed regulations.

The Department would like to note that other than in those situations where a determination has been made that an applicant or participant is an illegal alien, current regulations prohibiting a State agency from contacting INS without the household's written consent would remain unchanged.

Income and Resources of Ineligible Aliens

Section 115 of Pub. L. 96–249 provides that the income (less a prorata share) and resources of an ineligible alien are to be attributed to the Food Stamp household of which such a person would otherwise be a member.

The Food Stamp Act of 1977 excluded the income and resources of ineligible aliens from consideration in determining the eligibility and allotment entitlement of a household. Under this provision it was possible for substantial amounts of actually available to a household income and resources to be disregarded in determining household eligibility.

In an effort to target benefits more narrowly, Section 115 of the 1980 Amendments mandate the Department to treat the income and resources of ineligible aliens in the same manner as that of disqualified individuals. Resources which would otherwise be considered household resources were they not owned by an ineligible alien shall continue to be counted as household resources in the same manner as if they were owned by a household member. For example, a vehicle used to produce earned income which is owned by an ineligible alien who would otherwise be a household member

would continue to be treated as an exempt vehicle.

Optional Fraud Hearings

Section 109 of Pub. L. 96-249 amends Section 6(b) of the 1977 Act to make an administrative fraud hearing system a State option. The State agency is, therefore, given the option of pursuing suspected fraud through an administrative fraud hearing and/or through prosecution. However, the legislative history states that the Secretary may require a State agency to establish a fraud hearing system if the State is not promptly, actively, and seriously handling civil or criminal fraud cases. (H.R. Rep. No. 96-780, 115).

The Department proposes that § 273.16(d) be revised to require that a State have an administrative fraud hearing system *unless* the State agency has an agreement with the State's Attorney and/or county prosecutors to ensure the prompt prosecution of appropriate cases. This agreement would list any criteria set by the prosecutor for accepting cases for prosecution at either level and delineate how and under what circumstances cases would be accepted and possibly prosecuted.

The State agency would demonstrate to FNS that such an agreement is in effect prior to deleting the administrative fraud hearing system. The agreement is in lieu of setting specific standards, such as a rate of successful prosecutions that must equal or exceed that of successful fraud hearings or some other quantifiable measure. The Department does not have sufficient data to establish such quantifiable measures and in many instances the success rate on prosecutions is out of the State agency's control. A strict tolerance level of this sort would also be too inflexible and would not allow States enough of an opportunity to attempt to use prosecutions rather than a fraud hearing system.

Self-Employment—Depreciation as a cost of doing business

The regulations implementing the 1977 Act included a provision allowing depreciation as a cost of doing business for self-employed households (§ 273.11(a)(4)(ii)). This was done in compliance with the legislative history, H.R. Rep. No. 95-464, p. 25. The Conference Report accompanying the 1980 Amendments suggests that the Secretary delete depreciation, H.R. Rep. No. 96-957, p. 29. Allowing such costs when determining net self-employment income results in an exemption of mounts not constituting "actual costs" to the household; households are, in a sense, given a deduction in advance for the cost of capital goods which is otherwise not allowed. Appropriate changes are being proposed to § 273.11(a) to correspond to the Conference Report's suggestion.

Policy Interpretations

Introduction

Since the publication on October 17, 1978 of final rules implementing the Food Stamp Act of 1977, the Food and Nutrition Service has responded to over 600 policy inquiries with the intention of interpreting, clarifying and correcting the regulations for the benefit of food stamp clients and their representatives, State agencies and FNS regional offices.

On December 28, 1979, FNS published a notice in the **Federal Register** (44 FR 76329) proposing a system for informing State agencies and the interested public of changes and clarifications in the Food Stamp Program policy. This Policy Interpretation Response System (PIRS) describes four categories into which policy inquiries will be placed: inquiries requiring rulemaking, inquiries requiring interpretation of the Food Stamp Act or regulations of major importance and general applicability, inquiries requiring interpretations or clarification of the Act or regulations of a limited nature or applying to a particular group of households, and inquiries which can be answered by direct reference to the Act or regulations which apply to one household. Previously, inquiries in all four categories were answered by policy memoranda. Under PIRS, the first type of inquiry will be answered by rulemaking, the second type by notice in the **Federal Register**, the third type by policy memoranda indexed in the *FNS Index of Records* and the fourth type by FNS regional offices' responses. This proposed rulemaking responds to inquiries in the first category, those which require changes in the food stamp regulations. The rules discussed in this section have come about as a result of implementing the PIRS.

Earned Income Received by Non-Household Members

Section 273.11(d) of the current regulations discusses how State agencies should handle deductible expenses incurred jointly by household members and non-members. The regulations instruct State agencies to prorate such expenses as rent billed to a non-member but paid partly by the household, if the State agency cannot otherwise assign a portion of the expense to the household. The regulations do not currently discuss how to handle earned income which is received in the same way.

As an example, a household of six members may have four who work with an ineligible alien, but the ineligible alien receives the wages of all five workers. The Department proposes that the State agency attempt to determine the amount earned by each household member and non-member and count the household's portion as earned income (§ 273.11(d)). The employer might be able to verify the amount earned by each person, even though for everyone's convenience, only one paycheck was issued. If the State agency could not assign the earned income in this way, the agency would prorate the income to all of those intended to receive it, to the five workers in the example, and count the wages of the household members. In this case, that State agency would count four-fifths of the wages as earned income to the household.

The Department proposes to prorate only earned income under this provision. Unearned income received in this way, such as an assistance grant received by a household for the benefit of a third party, is already covered by the regulations (§ 273.9). Therefore, it is anticipated this provision will affect only a few households. Mainly, these will be households working in agriculture, such as migrants who are frequently paid as groups rather than as individuals. This proposed procedure of prorating earned income is similar to the procedure used in determining the income of a household with a disqualified member, as required by § 273.11(c). The Department believes that this already existing procedure is the fairest way to determine household income under these questionable circumstances.

Verification of Citizenship

The regulations which detail the Program's verificafion requirements currently allow participation for two months by household members with questionable but unverified citizenship (§ 273.2(p)(2)(ii)(B)). Elsewhere the regulations allow some households to move from one project area to another and have their certification continued (§ 273.19(a)). Currently the regulations do not provide a mechanism for the two project areas to keep tract of the two-month period of conditional participation so as to terminate the certification of such persons after the second month. The Department proposes to require the old project area to enter information about this aspect of a case on form FNS-286, Certification of Transfer of Household Benefits. The Department further proposes that the

new project area terminate the certification of such individuals if verification has not been provided to either project area by the end of the second month (§ 273.19(b) and (c)). Prior to issuing a notice of adverse action or terminating the certification of such persons, the new project area shall attempt to contact the old project area to confirm that verification had not been provided in the intervening time. These proposals do not impose any additional burden on participants and simply shift the burden of adjusting the certification from the old project area to the new one.

Technical Amendments

Introduction

On October 17, 1978 (43 FR 47846), the Department published final rules that implemented major portions of the Food Stamp Act of 1977. Based on an ongoing analysis of program operations and rules, several sections of these regulations were identified as needing modifications to correct oversights or to clarify the October 17 rulemaking. Therefore, on June 8, 1979, the Department published Miscellaneous and Technical Amendments to address these problems. The State agencies have now worked with this new program for approximately two years and other items have been identified as requiring clarification. This segment of the rulemaking addresses these items.

Drug and Alcoholic Treatment Centers on Reservations

Section 3(f) of the 1977 Food Stamp Act, as amended, and its implementing regulations (7 CFR 273.1), prohibit anyone residing in an institution from constituting a household for Program purposes. However, residents of drug or alcoholic treatment programs as defined by section 3(f) of the Act and § 271.2 of the regulations are not to be considered residents of institutions.

The current statutory and regulatory definitions of such treatment programs require them to be certified by the State agency responsible for their administration. This certification is performed pursuant to Pub. L. 91–616, "Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970" and Pub. L. 92–255, "Drug Abuse Office and Treatment of 1972." FNS has learned that many Indian reservation based alcoholism programs are not State certified due to various agreements between the States and the reservations within their jurisdictions. However, the Indian alcoholism programs were originally Pub. L. 91–616 programs, funded by the National Institute on Alcohol Abuse and Alcoholism (NIAAA). Pursuant to a Memorandum of Agreement Between NIAAA and the Indian Health Service (IHS), dated May 5, 1978 and Modified October 29, 1980, these programs are being transferred from NIAAA to IHS as they meet specified transfer criteria. Many Indian alcoholism programs cannot seek State certification, yet there appears to be no reason why these programs should be denied the participation granted to non-reservation based programs. Therefore, the Department is proposing amendments to § 271.2, *Definitions* and paragraphs § 278.1(e), *Approval of Retail Stores and Wholesale Food Concerns*. These amendments would permit the Program participation of sponsored NIAAA or IHS sponsored reservation based treatment center residents.

Availability of Program Regulations, State Plans and Procedures

Current regulations mandate that all State agencies and local project areas maintain Federal regulations and procedures, State plans and the State handbook (manual) for public inspection (§ 272.1(d)). The Department is proposing that the regulations be altered: (1) To delete the requirement that State plans and Federal procedures be maintained in each project area, and (2) to delete the requirement that Federal regulations be maintained in project areas other than large project areas as defined under the Performance Reporting System regulations (project areas with caseloads of more than 7,000). State handbooks would still be required to be available in all local offices. Federal regulations and procedures and State plans would be available at State agency headquarters.

The Department is proposing this change for several reasons. Many local project area offices fail to receive on a timely basis copies of State plan amendments and Federal regulations and procedures, and may have incomplete records of these materials. Secondly, even if a food stamp office has copies of all the Federal regulations and procedures, it is often difficult, because of heavy workloads, for a staff person to find the time to update this material continually. Due to the large number of changes in Federal regulations, a significant amount of work is involved in ensuring that a complete compilation of current regulations, with all the latest changes inserted in the proper places, exists at all points in time. As a result, many project areas are not maintaining current regulations, and regulations that are not current are of limited use. Moreover, local offices generally do not use Federal regulations in making eligibility determinations. They use the state handbook.

State handbooks are generally the policy vehicle for the administration of the Program at the local level. Each is approved, then periodically reviewed by FNS. The Department is committed to having current and accurate State handbooks available in each certification office. If, through the Federal monitoring system handbooks are found to be misinterpreting or lacking regulations pertinents to a State, corrective action is required. State handbooks may also contain more precise information concerning application processing issues for specific locations than do the Federal regulations. The Federal regulations may contain options not relevant to a particular State.

If a client or member of the public requests access to Federal guidelines at a local office, the handbook should contain the informaiton desired if it is accurate and up-to-date. Generally, the Federal regulations and procedures are used less to resolve such questions at the local level than are State handbooks. Nevertheless, the Department recognizes that Federal regulations can serve some important functions at the local level. They may be of use in preparing for fair hearings or implementing fair hearing decisions. In addition, it is possible for a State handbook to be out of date or imprecise in an area that may be illuminated by examining the Federal regulations.

The Department has sought to balance these concerns by requiring that the regulations be available at a minimum of one location in large project areas, but not in other project areas. Large project areas have far more clients and hence more use of the regulations is likely. They also have more staff. In all cases, the regulations would be available at the State level, and the State handbook would be available in all local offices.

The Department is especially interested in comment on this matter.

Bilingual Services

The bilingual services standards set forth in § 272.4(c), require that the initial determination of bilingual needs be accomplished within specified time frames so that the bilingual provisions would be implemented uniformly and concurrently nationwide.

The Department is aware tha the need for bilingual services may change over time. The Department proposes to amend § 272.4(c)(6) to make clear that the need to meet the bilingual services

standards in an ongoing obligation. The Department proposes to require a redetermination of bilingual needs at least once every ten years, or more frequently if either the State agency or FNS determine that such a redetermination is needed in a particular area due to significant demographic changes.

Processing Requirements

It has been suggested that since the Food Distribution Program's regulations state "the household, if it wishes, may be accompanied to the interview by anyone of its choice" [§ 283.7(a) (50, 44 FR 35936, June 19, 1979)], a sentence should be added to the food stamp regulations stating the same. The proposed rule would adopt this suggested by amending § 273.2(e)(i).

30 Day Standard Processing

Section 11(e)(3) of the Food Stamp Act of 1977 mandates that State agencies provide eligible households an opportunity to participate as soon as possible but no later than 30 days after an application is filed. There were several inquiries about whether the day of application was included in the 30-day standard. The Department's intent was not to include the day of application in the standard. In other words, the first day of the 30-day standard for counting purposes is the day after the day of application. The Department is proposing language to emphasize this point.

Alien Status

The Department is proposing a technical amendment to the provisions setting forth requirements for alien eligibility for the Program (§ 273.2(f)(i)(ii) and 273.4(a)). This revision is required to conform with recent changes in the Immigration and Nationality Act (INA) required by the passage of the Refugee Act of 1980 (Pub. L. 96–212, 94 Stat. 108, 3/17/80). This revision to the INA provides permanent provisions in the law for the admission of aliens, defines refugee and formalizes the practice of admitting refugees under the asylum provisions.

Treatment of Payments to Yakima and Mescalero Apache Tribes

Pub. L. 95–433, 92 Stat. 1047, Oct. 10, 1978, provides for payments to members of the Yakima and Mescalero Apache Indians by the Indian Claims Commission. Under the language of the law both Federal and federally-assisted programs are prohibited from considering the judgment funds as income or resources when determining eligibility for assistance. These funds include those paid on a per capita basis and those held in trust for the benefit of tribal members. The Department proposes to revise § 273.8(e) "Exclusion from resources" and § 273.9(e) "Income exclusions" to reflect this provision.

Treatment of Social Security Payments to Eligible Students

Section 5(d) of the Food Stamp Act provides that scholarships, grants, veterans' educational benefits and similar educational benefit payments shall be excluded from income to the extent the payment is used for tuition and mandatory fees at institutions of higher education. The Department proposes to amend the regulations to clarify that the portion of social security educational benefits used for tutition and mandatory fees is excluded under this provision (§ 273.9(c)). These benefits are provided under certain conditions to students between 18 and 22 years old whose parents are deceased, or are disabled or retired and receiving Social Security benefits. There is no solid basis for distinguishing Social Security educational benefits from other sorts of student support payments (such as veterans educational benefits). The portion of these benefits going for tuition and fees should be excluded.

Since recently published food stamp regulations (45 FR 46040, July 8, 1980) eliminated many students from the Program, the number of eligible students affected by this clarification concerning Social Security benefits is expected to be small.

Treatment of VISTA Payments

Since the publication of the October 17, 1978 regulations several changes have taken place in Title I, II and III of the Volunteer Service Act of 1973, as amended. The Department proposes to update the references made to these programs in 7 CFR 273.9. Title II programs ACE and SCORE are being deleted since they are no longer being administered by ACTION, but instead were transferred to the Small Business Administration. Title II now includes RSVP, Foster Grandparents, Older American Community Service Program and Senior Companion Program. Currently Title I programs include VISTA, University Year for Action, National Student Volunteer Programs and a new program added in 1980, Urban Crime Prevention Program. Specifying the programs in question will benefit eligibility staff and facilitate accurate eligibility decisions.

In addition, a clarification is being added concerning the treatment of the subsistence allowance received from Title I programs (VISTA) as earned income. Regulations now state that persons who were not receiving public assistance or food stamps at the time they joined VISTA or other Title I programs will have these volunteer payments included as earned income. Wording is being added clarifying that since these payments are treated as earned income, they are subject to the 20% earned income deduction. This represents no change from current policy. These payments are provided in return for work performed in the VISTA or other Title I programs, and persons receiving these payments may incur work related expenses in performing this work.

Change Reporting Requirements for Applicants and Households with Fluctuating Income

The Department proposes to amend § 273.2 which requires households to report certain changes in income. Currently, households are required to report changes in the source of income, and gross monthly income changes exceeding $25, with some exceptions. While this requirement causes no confusion in those instances when income either does not change or changes in a way which can be anticipated, the requirement is not clear with regard to fluctuating income. This lack of clarity has led to disputes over the utility of quality control reviews in measuring the accuracy of food stamp benefit level determinations. The confusion about what households have been required to report may best be explained by an example. If a household reported weekly earnings of $100, $150, $175 and $200 in a month, it might be certified as having $670 in total gross income (the four weekly amounts averaged to $156 and converted by 4.3 to $670 monthly gross income). What should such a household report? One interpretation is that the household must report changes of more than $25 in the gross income, any amount above $695 or below $645. Another interpretation would have required reporting changes of more than $25 above the highest paycheck (more than $225) or below the lowest (under $75). A third interpretation would require the household to report any change of more than $25 measured from the average itself. In the example, that would mean reporting the receipt of only a paycheck greater than $181 or less than $131.

The above three interpretations were considered, along with three others: To give households with fluctuating income certification periods of no more than three months; to require State agencies to anticipate specific monthly income amounts; or to require households with

fluctuating incomes to report changes in the sources of income, the rate at which the income is received (the hourly or piece-work rates, for example), and changes between part-time and full-time employment status—instead of reporting changes in monthly income exceeding $25 a month.

The Department proposes to require households with fluctuating income to report changes in the source of income, in the wage rate of fluctuating income, and changes between full-time and part-time employment—rather than changes of more than $25 a month. (There would be no change in the reporting requirements for households who do not have fluctuating incomes). By requiring clients to report these changes, the Department and State agencies would be as responsive to changes as they would be under the first option. Error in household income is more frequently attributable to changes in basic employment status, such as converting from unemployed to employed or part-time to full-time employment, than fluctuations in the hours worked. The reporting of permanent changes in wage rates would allow State agencies to more exactly match benefits to household's long term circumstances.

Under this option, households would report permanent changes in their circumstances. These would be changes that would affect future month's income and not sporadic changes, which are of little value in an anticipatory system. Because only permanent changes would be reported and, the handling of changes by clients and caseworkers would be less susceptible to error. A client would have a better understanding of what would have to be reported; a caseworker would know the exact effect of the change on future income. To simplify reporting, over-time work, if done frequently, would already have been projected in the average. Finally, this option would allow clients to comply without keeping track of a particular income figure (figures) and would be the easiest option for State agencies to monitor.

The Department recognizes that this proposal poses some issues of its own, such as the need to have a different set of income reporting requirements for households with fluctuating income than for other households. Determining the reporting requirements for households with fluctuating income is a difficult task, and no entirely satisfactory solution exists. The Department is especially anxious to receive comments on this proposal.

Current regulations do not provide for the reporting of changes by households which have filed food stamp applications but have not yet been certified. Both section 6(c) of the Food Stamp Act of 1977 and § 273.12(a)(1) of the current regulations require only participating or certified households to report. The Department proposes to correct this omission by requiring applying households to report changes which have occurred since the filing of the application at the food stamp interview. Applicants and eligibility workers would discuss such changes when attempting to anticipate future circumstances. The Department further proposes that households report changes that occur between a food stamp interview and actual eligibility determination within ten days after being certified. This procedure will avoid imposing an unnecessary burden on households not yet participating in the program, yet will not allow important changes to go unreported. Allowing such households ten days after being certified the report is consistent with current reporting requirements.

Disqualification of Authorized Representatives

Current regulations permit a responsible household member to designate an authorized representative to act on the household's behalf when no responsible household member is able to do so (§ 273.1(f)). Authorized representatives may make application for the program, obtain the coupons and use the coupons to purchase food for the household's consumption. The household is held liable for any overissuance which results from erroneous information given by the authorized representative.

In a few cases, however, it has been determined that an authorized representative has knowingly given false information to the State agency without the household's knowledge. The Department proposes that in cases where the State agency can substantiate that such misrepresentation has occurred the State agency has the power to disqualify the authorized representative for up to one year from acting for the certified household in question and for all other households that he/she might be authorized to represent (§ 273.1(f)(4)(iii)). The households and the authorized representative will be notified of this determination in writing thirty days prior to the date of disqualification. The thirty days option was chosen over ten days to give the affected households more time to select another authorized representative. The notification would include the proposed action, the reason for the action, the right of the household and authorized representative to request a fair hearing, the telephone number and if possible, the name of the person to contact for additional information.

Claims Processing

The Department proposes to alter some of the claims provisions in § 273.18. These proposed changes may enable State agencies to recover a larger portion of non-fraud overissuance and enable States to more efficiently conduct fraud hearings. One of the amendments would permit households which have received an overissuance of coupons to repay those claims with coupons in lieu of cash.

Under the 1964 Food Stamp Act, households in certain situations could repay overissuances with coupons. There were problems encountered, however, with some caseworkers coercing clients into using a portion of their needed food stamp allotment to pay back claims. In some cases this action was deemed detrimental to household members since they were then unable to obtain enough food for the entire issuance period. For the protection of households, the option of accepting coupons in lieu of cash was omitted from the October 17, 1978 regulations.

However, prohibiting the use of coupons for repayment turns out to produce problems of its own. This prohibition can cause hardships on families that prefer that method of repayment. For example, a household certified to receive $50 worth of coupons monthly, but which receives $500 instead because of a keypunch error must, according to current regulations, repay the overissuance in cash. This repayment requirement would cause a hardship on the household.

In addition, some State agencies believe that non-fraud claims collection will increase if clients are allowed to repay with food stamp coupons. The Department is therefore proposing to allow repayment of non-fraud claims with coupons (§ 273.18(e)(1)(iii)). However, the Department emphasizes that repayment with coupons is to be strictly a household option, and that no coercion may be used by the State agency in recovery efforts.

The second aspect of change in the regulations regarding claim processing would increase the $35 initial limit for processing fraud and non-fraud claims. This limit also applies to the amount involved in initiating fraud hearings which lead to fraud overissuance recovery. It has been determined that in nearly all instances the costs associated with overissuance recovery significantly exceed the $35 limit and the consequent amount recovered. It is presently

estimated that an administrative fraud hearing costs between $200 and $400. Nonetheless, a State agency is required to initiate fraud hearing procedures if a client is alleged to have committed food stamp fraud resulting in at least a $35 overissuance. A recent survey indicated that the same situation is true with costs associated with non-fraud collection activities. Most State agencies spend much more money in administrative costs and staff time pursuing a non-fraud claim of $35 than will be collected. Based on these cost factors, the Department proposes to raise the limit to $100 or whatever lesser amount is determined cost effective by the State agency (§ 273.18(d) and § 273.18(6)(3)(i)(A)). The Department realizes that the sole criterion is not cost effectiveness when handling fraud claims collection; also considered is the deterrent effect collection activities have on reducing program fraud and abuse. This issue was taken into consideration when arriving at the $100 limit by giving State agencies the option of decreasing this figure if a lower amount is deemed appropriate.

Also proposed is a requirement that multiple overissuances having a combined total exceeding $100, or the minimum limit set by the State agency (within a twelve-month period) be processed in the same manner as a single overissuance of an equal amount. In the event that a State agency does not initiate collection on a claim below the initial limit, the agency may later offset the claim against a future restoration of lost benefits. However, the Department is retaining the current time limit of one year for establishing non-fraud claims.

Nonfraud Claims Demand Letter

The proposed regulation would also delete from § 273.18(b)(3)(ii) the requirement that a non-fraud demand letter contain the statement that household eligibility or benefits will not be affected if a household falls behind in making payments or is unable to pay the claim. This change is proposed in response to views expressed by some State agencies and officials of the Office of Inspector General that removal of the statement from the demand letter may increase claims collections. It should be noted that this proposal does not permit benefits actually to be terminated or reduced if a household is unable to pay a non-fraud claim.

Section 273.18(e)(2)(iv) which allows for termination or reduction of benefits with regard to nonpayment of a fraud claim, but does not permit such an action in the case of nonpayment of a non-fraud claim, would remain intact.

These claim processing changes are intended to make recovery efforts more efficient in application.

Destruction of Coupons

Current regulations require that prior to any destruction of improperly manufactured or mutilated coupons valued at more than $200 per coupon issuer or bulk storage point per month, the State agency must request permission from FNS (§ 274.6(b)(3)). It has been noted that the current practice is an excessive economic burden due to traveling costs and need for FNS staff to be present at the destruction site. The Department requested comments from Regional offices concerning the $200 limitation. All offices that responded supported raising the $200 ceiling because it is not cost effective and because most States have mutilated coupons in excess of the $200. The Department, therefore, proposes that the limit be raised to $500 per coupon issuer or bulk storage point per month, since according to the survey, most State agency coupon destruction rates fall below this figure.

Implementation

The Department proposes that State agencies implement these regulations on the first day of the month 120 days after it publishes them in a final rulemaking. These 120 days should provide sufficient time to amend State food stamp handbooks and forms, make any necessary changes in data processing systems and administrative procedures, train eligibility workers and inform food stamp recipients and the general public.

Accordingly, the Department proposes to amend Parts 271, 272, 273, 274, and 278 as follows:

PART 271—GENERAL INFORMATION AND DEFINITIONS

1. In § 271.2, the definitions of "drug addiction or alcoholic treatment and rehabilitation program," "eligible foods," "retail food store", and "Shelters for Battered Women and Children" are added in alphabetical order. The additions read as follows:

§ 271.2 Definitions.

* * * * *

"Drug addiction or alcoholic treatment and rehabilitation program" means any drug addiction or alcoholic treatment and rehabilitation program conducted by a private nonprofit organization or institution which is certified by the State agency or agencies designated by the Governor as responsible for the administration of the State's programs for alcoholics and drug addicts pursuant to Pub. L. 91-616, "Comprehensive Alcohol Abuse and Alcoholism Prevention Treatment and Rehabilitation Act of 1970" and Pub. L. 92-255, "Drug Abuse Office and Treatment Act of 1972" as providing treatment that can lead to the rehabilitation of drug addicts or alcoholics. If an alcoholic treatment and rehabilitation program is located on an Indian reservation and the State does not certify or license reservation-based centers, approval to participate may be granted if the requirements of paragraphs (a), (b), and (d)(1) of § 278.1 are met and the program either is funded by the National Institute on Alcohol Abuse and Alcoholism (NIAAA) pursuant to Pub. L. 91-616 or was so funded and has subsequently been transferred to Indian Health Service (IHS) funding.

* * * * *

"Eligible foods" means (1) any food or food product intended for human consumption except alcoholic beverages, tobacco, and hot foods and hot-food products prepared for immediate consumption; (2) seeds and plants to grow foods for the personal consumption of eligible households; (3) meals prepared and delivered by an authorized meal delivery service to households eligible to use coupons to purchase delivered meals or meals served by a communal dining facility for the elderly, for SSI households or both, to households eligible to use coupons for communal dining; (4) meals prepared and served by an authorized drug addict or alcoholic treatment and rehabilitation center to households eligible to use coupons to purchase those meals; (5) meals prepared and served by an authorized group living arrangement facility to residents who are blind or disabled recipients of benefits under title II or title XVI of the Social Security Act; (6) meals prepared by and served by an authorized shelter for battered women and children to its residents; and (7) in the case of certain areas of Alaska where access to food stores is extremely difficult and the households rely on hunting and fishing for subsistence, equipment for the purpose of procuring food for eligible households, including nets, lines, hooks, fishing rods, harpoons, knives, and other equipment necessary for subsistence hunting and fishing, but not equipment for the purpose of transportation, clothing or shelter, nor firearms, ammunition or other explosives.

* * * * *

"Retail food store" means (1) an establishment or recognized department of an establishment, or a house-to-house trade, route, whose eligible food sales

volume is more than 50 percent staple food items for home preparation and consumption; (2) public or private communal dining facilities and meal delivery services; drug addict or alcoholic treatment and rehabilitation programs; public or private nonprofit group living arrangements; or shelters for battered women and children; (3) any store selling equipment for procuring food by hunting and fishing to eligible households in Alaska, as specified in the definition of eligible food; (4) any private nonprofit cooperative food purchasing venture, including those whose members pay for food prior to receipt of the food; and (5) a farmers' market.

* * * * *

"Shelter for Battered Women and Children" means a public or private nonprofit residential facility that serves battered women and their children. If such a facility serves other individuals, a portion of the facility must be set aside on a long-term basis to serve only battered women and children.

* * * * *

PART 272—REQUIREMENTS FOR PARTICIPATING STATE AGENCIES

2. In § 272.1, paragraphs (a) and (b) are revised; paragraphs (c) through (g) are redesignated as (d) through (h) and a new paragraph (c) is added; newly redesignated paragraph (e)(2) is revised; and a new subparagraph (27) is added to the newly redesignated paragraph (h). The changes are as follows:

§ 272.1 General terms and conditions.

(a) *Coupons as income.* The value of the food stamp allotment provided any eligible household shall not be considered income or resources for any purpose under any Federal, State, or local laws including, but not limited to, laws on taxation, welfare, and public assistance programs.

(b) *No aid reduction.* No participating State or political subdivision shall decrease the assistance paid directly to an individual or individuals because of receipt of a coupon allotment. Per diem payments to an exempt institution made expressly for a particular individual or individuals shall also be considered direct payments. Block grants or other types of funding provided to a drug or alcoholic treatment center, a shelter for battered women and children or group home for the disabled are not considered direct assistance and, therefore, are not subject to this reduction prohibition. A decrease in benefits for the purpose of the food stamp program shall be any actual reduction in an established benefit level because of the receipt of food stamp benefits.

(1) An established benefit level is one that has been established by a specific legislative mandate prescribing either a specific benefit level or a formula resulting in a specific level, a judicial determination as to the appropriate benefit level, or simple use of a given benefit level in the absence of a legislative or judicial prescription. Illegal reductions include but are not limited to the following situations:

(i) State or local assistance benefits are reduced because food stamp benefits are counted as income or resources in determining GA eligibility or benefits levels.

(ii) Persons who are members of households eligible for or participating in the food stamp program are, as a class, given lower benefits than other recipients. Violations in this category could occur in any of a number of ways. Counties which provide a single total GA grant with no specific amount allocated for food, rent, etc. could reduce the overall GA payment, or counties which calculate the total GA grant by adding separate components for food, rent, etc. could reduce the amount of the food component for a GA participant who is eligible for or receives food stamps. A violation could also occur if the county gives participants who do not receive or are not eligible for food stamps greater GA benefits than are given to food stamp participants or eligibles.

(iii) The jurisdiction operating the State or local program specifically includes food stamp benefits as part of its benefit standard. In such circumstances, the payment is less than the benefit standard because food stamp benefits are being used to make up part of the standard.

(iv) The overall State or local benefit standard has been reduced, or the food component of the standard has been reduced, since inception of the food stamp program in the jurisdiction because of the availability of food stamps. For example, if the food stamp program were instituted in a jurisdiction and the jurisdiction subsequently reduced its GA grant, or the food component of grant, because of the availability of food stamp benefits, such action would, in the view of FNS, constitute an illegal reduction.

(v) A jurisdiction has reduced its benefits standard or the food component of the grant due to the elimination of the food stamp purchase requirement. If the jurisdiction previously included the cost of the food stamp purchase requirement (or the cost of a voucher in this amount) in its overall benefit standard, or in the food component of the benefit standard, and has reduced the benefit standard or the food component of the standard by this amount since the elimination of the purchase requirement, such action would, in the view of FNS, constitute an illegal reduction.

(2) The institution of a reduction in grant levels or in the food component of the grant does not automatically mean the reduction is illegal. For example, if budget reductions resulted in a reduction of the overall GA allowance, no violation would occur: *Provided,* That the food allowance is not reduced disproportionately, and provided that no part of the reduction is due to the availability of food stamps.

(3) The following situations do not constitute illegal reductions in State or local benefits in the view of FNS.

(i) Grants or food allowances are low but have not been reduced since inception of the food stamp program. Mere failure to increase benefits to allow for inflation would not, of itself, constitute a violation.

(ii) The food component of the State or local grant is less than the Thrifty Food Plan, unless the benefit program has a food standard that is equal to or greater than the Thrifty Food Plan.

(iii) Despite the availability of studies showing that food needs are higher than the food allowance, the jurisdiction has not adopted a recommended increase for reasons other than the availability of food stamps (e.g., lack of funds).

(c) *State Agency Liability.* The State agency shall be liable for any overissuances resulting from violations as outlined in paragraphs (a) and (b) of this section.

* * * * *

(e) *Information available to the public.* * * *

(2) Federal regulations, Federal procedures embodied in FNS Notices and policy memos, and State Plans of Operation (including specific planning documents such as Outreach and Corrective Action Plans) shall be available upon request for examination by members of the public during office hours at the State agency headquarters as well as at FNS Regional and National offices. The State agency handbook will be available for examination upon request at each local certification office within each project area as well as at the State agency headquarters and FNS Regional and National offices. Federal regulations shall also be available for examination upon request in at least one office in each large project area as defined in § 275.5 (project areas with a monthly caseload of more than 7,000).

(h) *Implementation.* * * *

(27) *Amendment 180.* State agencies shall implement these regulations on the first day of the month 120 days after publication.

3. In § 272.4, a sentence is added to the end of paragraph (c)(6).

§ 272.4 Program administration and personnel requirements.

* * * * *

(c) *Bilingual requirements.* * * *

(6) * * * The State Agency shall re-evaluate the need for bilingual services at least once every ten years, or more frequently if the State agency or FNS determines that a more frequent re-evaluation is necessary due to significant demographic changes in an area. The methodology for such a re-evaluation and subsequent State agency action on the results of the re-evaluation may be subject to approval by FNS.

* * * * *

PART 273—CERTIFICATION OF ELIGIBLE HOUSEHOLDS

4. In § 273.1:

(1) Paragraph (7) of paragraph (b) is revised;

(2) The introductory paragraph (e) is revised and a new subparagraph (4) is added to subparagraph (e);

(3) The 3rd sentence of paragraph (f)(1)(i) and the last sentence of paragraph (f)(4)(iii) are revised.

The revisions and additions read:

§ 273.1 Household concept.

* * * * *

(b) *Nonhousehold members.* * * *

(7) *Disqualified individuals.* Individuals disqualified for fraud, as set forth in § 273.16, or persons disqualified for failure to obtain a social security number, as set forth in § 273.6, or ineligible aliens as set forth in § 273.4.

* * * * *

(e) *Residents of institutions.* Individuals shall be considered residents of an institution when the institution provides them with the majority (at least 50% of three meals daily) of their meals as part of the institution's normal services. Residents of institutions are not eligible for participation in the program, with the following exceptions:

* * * * *

(4) Women or women with their children temporarily residing in a shelter for battered women and children as defined in § 271.2. Such persons temporarily residing in shelters for battered women and children shall be considered individual household units for the purposes of applying for and participating in the Program.

* * * * *

(f) *Authorized representatives* * * *

(1) * * *

(i) *Making application for the program.*

* * * The State agency shall inform the household that the household will be held liable for any overissuance which results from erroneous information given by the authorized representative, except as provided in § 273.11(e)(6) and § 273.16(a). * * *

* * * * *

(4) * * *

(iii) * * * State agencies which have substantiated that an authorized representative has misrepresented a household's circumstances and has knowingly provided false information pertaining to the household, or has made improper use of coupons, may disqualify that authorized representative from participating as an authorized representative in the Food Stamp Program for up to one year. The State agency shall send written notification to the affected households and the authorized representative thirty days prior to the date of disqualification. The notification shall include: The proposed action; the reason for the proposed action; the household and authorized representative's right to request a fair hearing; the telephone number of the office and if possible, the name of the person to contact for additional information.

* * * * *

5. In § 273.2:

(1) A new sentence is added after the second sentence in paragraph (e)(1);

(2) A new sentence is added to the end of paragraph (f)(1)(ii)(B); and paragraphs (f)(1)(ii)(C), (f)(1)(ii)(E), (f)(1)(ii)(F), and (f)(2)(ii)(B) are revised;

(3) The first sentence of paragraph (g)(1) is revised;

(4) The introductory text of paragraph (h) is revised; the first sentence of paragraph (h)(1)(i)(D) is revised; the third and fourth sentences of paragraph (h)(2)(i)(A) are revised; the second sentence of paragraph (h)(3)(i) is revised, and the third sentence of paragraph (h)(4)(iii) is revised; and

(5) A new subdivision (v) is added to paragraph (i)(3).

The revisions and additions read:

§ 273.2 Application processing.

* * * * *

(e) *Interviews.*

(1) * * * The applicant may bring any person he or she chooses to the interview. * * *

* * * * *

(f) *Verification.* * * *

(1) *Mandatory verification.* * * *

(ii) *Alien status.*

* * * * *

(B) * * * However, delays for delivering these cards are lengthy so an interim document is provided to new immigrants, Form I–181–B. This form is given at the time of adjustment of status to lawful permanent residence. It is imprinted with the stamped annotation, "Processed for I–551, Temporary Evidence of Lawful Admission for Permanent Residence."

(C) Aliens in the categories specified in § 273.4(a)(4) through (a)(6) shall present an INS form I–94—"Arrival—Departure Record". The State agency shall accept the INS form I–94 as verification of eligible alien status only if the form is annotated with section 203(a)(7), 207, 208, 212(d)(5) or 243(h) of the Immigration and Nationality Act. The form may also be annotated with one of the following terms: Refugee, parolee, paroled, conditional entry or entrant, or asylum. An INS form I–94 annotated with the letters (A) through (L) shall be considered verification of ineligible alien status unless the alien can provide other documentation from INS which indicates that the alien is eligible. If the INS form I–94 does not bear any of the above annotations and the alien has no other verification of alien classification in his or her possession, the State agency shall advise the alien to submit Form G–641, Application for Verification of Information from Immigration and Naturalization Service Records. This form when properly annotated at the bottom by an INS representative and delivered directly to a State agency office, may be accepted as evidence of lawful admission for permanent residence or parole for humanitarian reasons. The alien shall also be advised that classification under section 203(a)(7), 207, 208, 212(d)(5), or 243(h) of the Immigration and Nationality Act shall result in eligible status; that the alien may be eligible if acceptable verification is obtained; and that the alien may contact INS as stated previously, or otherwise obtain the necessary verification or, if the alien wishes and signs a written consent, that the State agency will contact INS to obtain clarification of the alien's status.

* * * * *

(E) If the proper INS documentation is not available, the alien may state the reason and submit other conclusive verification. The State agency shall accept other forms of documentation or corroboration from INS that the alien is classified pursuant to section 101(a)(15), 101(a)(20), 203(a)(7), 207, 208, 212(d)(5), 243, or 249 of the Immigration and

Nationality Act, or other conclusive evidence such as a court order stating that deportation has been withheld pursuant to section 243(h) of the Immigration and Nationality Act.

(F) While awaiting acceptable verification, the alien whose status is questionable shall be ineligible, but the eligibility of the remaining members (if any) of the household shall be determined in accordance with the procedures in § 273.11(c). If the alien does not wish to contact INS, the household shall be given the option of withdrawing its application or participating without that member.

* * * * *

(2) *Verification of questionable information.* * * *

(ii) *Citizenship.* * * *

(B) The member whose citizenship is in question shall be allowed to participate for 2 months pending verification of citizenship, if the household is otherwise eligible and efforts are being made to obtain the necessary verification. If verification has not been obtained within 2 months, the member whose citizenship is in question shall be ineligible and that member's income and resources shall be considered available to any remaining household members as set forth in § 273.11(c).

* * * * *

(g) *Normal processing standard*—(1) *Thirty-day processing.* The State agency shall provide eligible households that complete the initial application process an opportunity to participate as soon as possible, but not later than 30 calendar days following the date the application was filed.* * *

* * * * *

(h) *Delays in processing.* If that State agency does not determine a household's eligibility and provide an opportunity to participate within 30 days following the date the application was filed, the State agency shall take the following action:

(1) *Determining cause.* * * *

(i) * * *

(D) For households that have failed to appear for an interview, the State agency must have attempted to reschedule the initial interview within 30 days following the date the application was filed. * * *

* * * * *

(2) *Delays caused by the household.*

(i) * * *

(A) * * * However, if a notice of denial is sent and the household takes the required action within 60 days following the date the application was filed, the State agency shall reopen the case without requiring a new application. No further action by the State agency is required after the notice of denial or pending status is sent if the household failed to take the required action within 60 days following the date the application was filed, or the State agency chooses the option of holding the application pending for only 30 days following the date of the initial request for the particular verification that was missing, and the household fails to provide the necessary verification by this 30th day.

* * * * *

(3) *Delays caused by the State agency.*

(i) * * * The State agency shall not deny the application if it caused the delay, but shall instead notify the household by the 30th day following the date the application was filed that its application is being held pending. * * *

* * * * *

(4) *Delays beyond 60 days.* * * *

(iii) * * * A notice of denial need not be sent if the notice of pending status informed the household that it would have to file a new application if verification was not received within 30 days following the date of the initial request. * * *

* * * * *

(i) *Expedited service.* * * *

(3) *Processing standards.* * * *

(v) *Residents of Shelters for Battered Women and Children.* Residents of shelters for battered women and children who are otherwise entitled to expedited service shall be handled in accordance with the time limits in subparagraph (3)(i) of this action.

* * * * *

6. Section 273.3 is revised to read as follows:

§ 273.3 Residency.

Households must be living in the project areas in which they file applications for participation unless the State agency has made arrangements, in accordance with the provisions of § 272.5, to allow particular households to file applications for participation in nearby specified project areas. Unless an individual is a resident of a shelter for battered women and children as defined in § 271.2 and was a member of a household containing the person who had abused him or her, he or she shall not participate as a member of more than one household or in more than one project area, in any month. Residents of shelters for battered women and children shall be handled in accordance with § 273.11(g). The State agency shall not impose any durational residency requirements. A fixed residence is not required; for example, migrant campsites satisfy the residency requirement. Nor shall residency require an intent to reside permanently in the State or project area. Persons in a project area solely for vacation purposes shall not be considered residents.

7. Section 273.4 is revised as follows:

§ 273.4 Citizenship and alien status.

(a) *Citizens and eligible aliens.* State agencies shall prohibit participation in the program by any person who is not a resident of the United States and one of the following:

(1) A United States citizen.

(2) An alien lawfully admitted for permanent residence as an immigrant as defined in sections 101(a)(15) and 101(a)(20) of the Immigration and Nationality Act.

(3) An alien who entered the United States prior to June 30, 1948, or some later date as required by law, and has continuously maintained residency in the United States since then, and is not ineligible for citizenship, but is considered to be lawfully admitted for permanent residence as a result of an exercise of discretion by the Attorney General pursuant to section 249 of the Immigration and Nationality Act.

(4) An alien who qualified for conditional entry because of persecution on account of race, religion, or political opinion or because of being uprooted by a catastrophic natural calamity pursuant to section 203(a)(7), 207, or 208 of the Immigration and Nationality Act.

(5) An alien lawfully present in the United States as a result of an exercise of discretion by the Attorney General for emergent reasons or reasons deemed strictly in the public interest pursuant to section 212(d)(5) of the Immigration and Nationality Act, or as a result of a grant of parole by the Attorney General.

(6) An alien living within the United States for whom the Attorney General has withheld deportation pursuant to section 243 of the Immigration and Nationality Act because of the judgement of the Attorney General that the alien would otherwise be subject to persecution on account of race, religion, or political opinion.

(b) *Ineligible aliens.* Aliens other than those described above shall not be eligible to participate in the program as a member of any household. Among those excluded are alien visitors, tourists, diplomats and students who enter the United States temporarily with no intention of abandoning their residence in a foreign country.

(c) *Income and resources.* The income and resources of an ineligible alien who would be considered a member of a household if he or she did not have ineligible alien status shall be

considered in determining eligibility or level of benefits of the household, as specified in § 273.11(c).

(d) *Awaiting verification.* If verification of eligible alien status as required by § 273.2(f) is not provided on a timely basis, the eligibility of the remaining household members shall be determined. The alien whose status is unverified shall be treated as a disqualified member, and the eligibility of the remaining household members determined in accordance with § 273.11(c). If verification of eligible alien status is subsequently received, the State agency shall act on the information as a reported change in household membership in accordance with timeliness standards in § 273.12.

(e) *Reporting illegal aliens.* The State agency shall immediately inform the local INS office whenever personnel responsible for the certification or recertification of households determine that any member of a household is ineligible to receive food stamps because the member is present in the United States in violation of the Immigration and Nationality Act. Because many aliens who are legally present in the U.S. are not eligible for food stamps, State Agencies are cautioned that a determination that a person is an ineligible alien is not equivalent to a determination that a person is an illegal alien. Any decision to report a household member to INS shall be reviewed by State Agency personnel unconnected with the initial determination. State Agencies are encouraged to designate a particular individual to conduct such a review and to provide training in the appropriate laws to reduce the possibility of an erroneous reporting decision.

(1) A determination that a person is an illegal alien shall be based solely upon information obtained from the household (and not from a third party source) during the course of the application or interview. The State agency shall focus solely on information necessary to the certification process. A report to INS shall be based on solid evidence. The State agency shall document in the household casefile the basis for any report to INS.

(2) A determination that a person is an illegal alien shall be based only on:

(i) Admissions by the applicant or another household member (or the household's authorized representative) that illegal aliens are present in the Household;

(ii) INS documents presented by the household during the application or recertification process that are determined to be forged; or

(iii) A formal order of deportation presented by the household during the application or recertification process.

(3) Absence of documentation, or inability or refusal to provide documentation of alien status shall not be grounds for reporting to INS. When a household indicates inability or unwillingness to provide documentation of alien status for any household member, that member shall be classified as an ineligible alien. When a person indicates inability or unwillingness to provide documentation of alien status, the State agency shall not continue efforts to obtain that documentation. In such cases, if the State agency does not already have sufficient documentation to require a report to INS, the state agency shall not contact INS.

(4) Failure to report an illegal alien to INS shall not be considered a QC error or assessed as an administrative deficiency.

8. In § 273.8, paragraph (d) is amended by removing the third sentence and substituting two new sentences in its place; new paragraphs (e)(11)(x) and (e)(12) are added; paragraphs (h)(1)(iii), (h)(1)(vi), (h)(3)(iii) are revised, paragraphs (i)(1) and (i)(2)(iii) are revised; and paragraph (j) is revised; as follows:

§ 273.8 Resource eligibility standards.

* * * * *

(d) * * * The resource shall be considered totally inaccessible to the household (or to the ineligible alien or disqualified person whose resources are being considered available to the household) if the resource cannot practically be subdivided and the household's access to the value of the resource is dependent on the agreement of a joint owner who refuses to comply. Resources shall be considered inaccessible to persons residing in shelters for battered women and children, as defined in § 271.1, if the resources are jointly owned by such persons and by members of their former household.

* * * * *

(e) * * *

(11) * * *

(x) Payments received by the Confederated Tribes and bands of the Yakima Indian Nation and the Apache Tribe of the Mescalero Reservation from the Indian Claims Commission as designated under Pub. L. 94–433, Section 2.

(12) Where an exclusion applies because of use of a resource by or for a household member, the exclusion shall also apply when the resource is being used by or for an ineligible alien or disqualified person whose resources are being counted as part of the household's resources. For example, work related equipment essential to the employment of an ineligible alien or disqualified person shall be excluded (in accordance with paragraph (e)(5) of this section), as shall one burial plot per ineligible alien or disqualified household member (in accordance with paragraph (e)(2) of this section).

* * * * *

(h) *Handling of licensed vehicles.*

* * *

(1) * * *

(iii) Necessary for long distance travel, other than daily commuting, that is essential to the employment of a household member (or ineligible alien or disqualified person whose resources are being considered available to the household), for example, the vehicle of a traveling sales person or a migrant farmworker following the work stream,

* * * * *

(vi) Necessary to transport a physically disabled household member (or ineligible alien or disqualified person whose resources are being considered available to the household) regardless of the purpose of such transportation (limited to one vehicle per physically disabled person). A vehicle necessary to transport a physically disabled person need not have special equipment or be used primarily by the physically disabled person. The exclusion in paragraph (h)(1) (i) through (v) of this section will apply when the vehicle is not in use because of temporary unemployment, such as when a taxi driver is ill and cannot work, or when a fishing boat is frozen in and cannot be used.

* * * * *

(3) * * *

(iii) Any other vehicle used to transport household members (or an ineligible alien or disqualified household member whose resources are being considered available to the household) to and from employment or to and from training or education which is preparatory to employment, or to seek employment in compliance with the job search criteria. A vehicle customarily used to commute to and from employment shall be covered by this equity exclusion during temporary periods of unemployment. The equity value of licensed vehicles not covered by this exclusion, and of unlicensed vehicles not excluded by paragraphs (e)(3), (4), and (5) of this section, shall be attributed toward the household's resource level.

* * * * *

(i) *Transfer of resources.* (1) At the time of application, households shall be

asked to provide information regarding any resources which any household member (or ineligible alien or disqualified person whose resources are being considered available to the household) has transferred within the 3-month period immediately preceding the date of application. * * *

(2) * * *

(iii) Resources which are transferred between members of the same household (including ineligible aliens or disqualified persons whose resources are being considered available to the household); and (iv) resources which are transferred for reasons other than qualifying or attempting to qualify for food stamp benefits, for example, a parent placing funds into a educational trust fund described in paragraph (e) (8) of this section.

* * * * *

(j) *Resources of nonhousehold members.* The resources of nonhousehold members, defined in § 273.1(b), shall not be counted as available to the household unless the member is disqualifed from the program for fraud in accordance with § 273.16 or for failing to comply with the requirement to provide an SSN in accordance with § 273.6, or is an ineligible alien who would be considered a household member if not for his or her ineligible alien status.

* * * * *

9. In § 273.9, paragraph (iv) is added to paragraph (b)(1); the first sentence of paragraph (b)(3) is revised; the first sentence of (c)(3) is revised, paragraph (c)(10)(iii) is revised, and a new subdivision (ix) is added to (c)(10).

The addition and revisions read as follows:

§ 273.9 Income and deductions.

* * * * *

(b) *Definition of income.* * * *

(1) * * *

(iv) Payments under Title I (VISTA, University Year for Action, etc.) of the Domestic Volunteer Service Act of 1973 (Pub. L. 93–113) as amended, shall be considered earned income and subject to the 20 percent earned income deduction, excluding payments made to those households specified in paragraph (c)(1)(iii) of this section.

* * * * *

(3) The earned or unearned income of an individual disqualified from the household for fraud in accordance with § 273.16, for failing to comply with the requirement to provide an SSN in accordance with § 273.6, or for being an ineligible alien in accordance with § 273.4, shall continue to be counted as income, less a prorata share for the individual. Procedures for calculating this prorata share are described in § 273.11(c). * * *

(c) *Income exclusions.* * * *

(3) Education loans on which payment is deferred, grants, scholarships, fellowships, veterans' education benefits, Social Security student benefits, and the like to the extent that they are used for tuition and mandatory school fees at an institution of higher education, including correspondence schools at that level, or a school at any level for the physically or mentally handicapped. * * *

* * * * *

(10) * * *

(iii) Any payment to volunteers under Title II (RSVP, Foster Grandparents and others) of the Domestic Volunteer Services Act of 1973 (Pub. L. 93–113) as amended. Payments under Title I (VISTA, University Year for Action, Urban Crime Prevention Program and others) to volunteers shall be excluded for those individuals receiving food stamps or public assistance at the time they joined the Title I program, except that households which were receiving an income exclusion for a VISTA or other Title I subsistence allowance at the time of conversion to the Food Stamp Act of 1977 shall continue to receive an income exclusion for VISTA for the length of their volunteer contract in effect at the time of conversion. Temporary interruptions in food stamp participation shall not alter the exclusion once an initial determination has been made. New applicants who are not receiving public assistance or food stamps at the time they joined VISTA shall have these volunteer payments included as earned income.

* * * * *

(ix) Payments by the Indian Claims Commission to the Confederated Tribes and Bands of the Yakima Indian Nation or the Apache Tribe of the Mescalero Reservation (Pub. L. 95–443).

* * * * *

10. In § 273.11;

(1) The last sentence of paragraph (a)(2)(ii) is revised; paragraph (a)(4)(ii) is removed; (a)(4)(iii) is redesignated as (a)(4)(ii); and a new paragraph (D) is added to the newly redesignated (a)(4)(ii);

(2) The introductory text of paragraph (c), and paragraphs (c)(5)(i), and (c)(5)(ii) are revised and a new paragraph (iii) is added to (c)(5);

(3) The first sentence of the introductory language for paragraph (d) is revised and a new sentence is added at the end of the introductory language of paragraph (d); and new paragraphs (d)(1) and (d)(2) are added.

(4) Paragraph (e)(5) is revised;

(5) Paragraphs (f)(5)(i) and (ii) are revised and a new paragraph (iii) is added to paragraph (f)(5);

(6) Paragraphs (g)(1) and (g)(2) are redesignated as (h)(1) and (h)(2) respectively and a new paragraph (g) is added.

The changes read as follows:

§ 273.11 Action on households with special circumstances.

* * * * *

(a) *Self-employment income.* * * *

(2) *Determining monthly income from self-employment.* * * *

(ii) * * * The cost of producing the self-employment income shall be calculated by anticipating the monthly allowable costs of producing the self-employment income.

* * * * *

(4) *Allowable costs of producing self-employment income:* * * *

(ii) * * *

(D) Depreciation.

* * * * *

(c) *Treatment of income and resources of disqualified members.* Individual household members may be disqualified for fraud, or for failure to obtain, or refusal to provide, an SSN, or for being an ineligible alien. During the period of time a household member is disqualified, the eligibility and benefit level of any remaining household members shall be determined as follows:

* * * * *

(5) *Reduction or termination of benefits within the certification period.* When an individual is disqualified within the household's certification period, the State agency shall determine the eligibility or ineligibility of the remaining household members based, as much as possible, on information in the case file.

(i) *Fraud disqualification.* If a household's benefits are reduced or terminated within the certification period because one of its members has been disqualified for fraud, the State agency shall notify the remaining members of their eligibility and benefit level at the same time the disqualified member is notified of his or her disqualification. The household is not entitled to a notice of adverse action but may request a fair hearing to contest the reduction or termination of benefits.

(ii) *SSN disqualification.* If a household's benefits are reduced or terminated within the certification period because one or more of its members required to provide an SSN is being disqualified for failure to meet the SSN requirement the State agency shall

issue a notice of adverse action in accordance with § 273.13(a)(2), which informs the household that the individual without an SSN is being disqualified, the reason for the disqualification, the eligibility and benefit level of the remaining members, and the actions the household must take to end the disqualification.

(iii) *Ineligible alien disqualification.* If a household's benefits are reduced or terminated within the certification period because one or more of its members is being disqualified as an ineligible alien, the State agency shall issue a notice of adverse action, in accordance with § 273.13(a)(2), which informs the household that the alien is being disqualified, the reason for the disqualification, the eligibility and benefit level of the remaining members, and the actions the household must take to end the disqualification.

(d) *Treatment of income and resources of other nonhousehold members.* For those nonhousehold members that have not been disqualified such as ineligible students or SSI recipients in cash-out States, the income and resources of the nonhousehold member shall not be considered available to the household. * * * When the earned income of one or more household members and the earned income of a non-household member are combined into one wage, the income of the household members shall be determined as follows:

(1) If the household's share can be identified, the State agency shall count that portion due to the household as earned income.

(2) If the household's share cannot be identified the State agency shall prorate the earned income among all those whom it was intended to cover and count that portion prorated to the household.

* * * * * *

(e) *Residents of drug/alcoholic treatment and rehabilitation* * * *

(5)(i) When the household leaves the center, the center shall provide the resident household with its ID card and any untransacted ATP cards. The household, not the center, shall be allowed to negotiate any untransacted HIR cards. The departing household shall also receive its full allotment if already issued and if no coupons have been spent on behalf of that individual household. These procedures are applicable at any time during the month. However, if the coupons have already been issued and any portion spent on behalf of the individual, and the household leaves the treatment and rehabilitation program prior to the 16th day of the month, the treatment center shall provide the household with one half of its monthly coupon allotment. If the household leaves after the 16th day of the month and the coupons have already been issued and used, the household does not receive any coupons.

(ii) Once the household leaves the treatment center, the center is no longer allowed to act as that household's authorized representative. The center, if possible, shall provide the household with a change report form to report to the State agency the individual's new address and other circumstances after leaving the center and shall advise the household to return the form to the appropriate office of the State agency within 10 days.

(iii) The treatment center shall return to the State agency any coupons not provided to departing residents at the end of each month. These returned coupons shall include those not provided to departing residents because they left after the 16th of the month or they left prior to the 16th and the center was unable to provide the individual with the coupons.

* * * * *

(f) *Residents of group living arrangements who receive benefits under title II or title XVI of the Social Security Act.* * * *

(5)(i) When the household leaves the facility, the group living arrangement, either acting as an authorized representative or retaining use of the coupons on behalf of the residents (regardless of the method of application), shall provide residents with their ID cards (if applicable) and any untransacted ATP cards. The household, not the group living arrangement, shall be allowed to negotiate any untransacted HIR cards. Also, the departing household shall receive its full allotment if issued and if no coupons have been spent on behalf of that individual household. These procedures are applicable at any time during the month. However, if the coupons have already been issued and any portion spent on behalf of the individual, and the household leaves the group living arrangement prior to the 16th day of the month, the facility shall provide the household with its ID card (if applicable) and one-half of its monthly coupon allotment. If the household leaves after the 16th day of the month and the coupons have already been issued and used, the household does not receive any coupons. If a group of residents have been certified as one household and have returned the coupons to the facility to use, the departing residents shall be given a prorata share of one half of the coupon allotment if leaving prior to the 16th day of the month, and shall be instructed to obtain ID cards or written authorizations to use the coupons from the local office.

(ii) Once the resident leaves, the group living arrangement no longer acts as his/her authorized representative. The group living arrangement, if possible, shall provide the household with a change report form to report to the State agency the individual's new address and other circumstances after leaving the group living arrangement and shall advise the household to return the form to the appropriate office of the State agency within 10 days.

(iii) The group living arrangement shall return to the State agency any coupons not provided to departing residents at the end of each month. These returned coupons shall include those not provided to departing residents because they left after the 16th or before the 16th and the facility was unable to provide them with the coupons.

* * * * *

(g) *Shelters for Battered Women and Children.* (1) Prior to certifying its residents under this paragraph, the State agency shall verify that the shelter for battered women and children meets the definition in § 271.2. Shelters having FNS authorization to redeem at wholesalers shall be considered as meeting the definition and the State agency is not required to do further verification. Shelters should contact their local project area office to determine if they meet the definition in § 271.2. The local project area shall maintain a list of shelters meeting the definition to insure prompt certification of eligible residents following the special procedures outlined below.

(2) Many shelter residents have recently left a household containing the person who has abused them. Their former household may be certified for participation in the Program, and its certification may be based on a household size that includes the women and children who have just left. Shelter residents who are included in other certified households may nevertheless apply for and (if otherwise eligible) participate in the Program as separate households if the other certified household which includes them is the household containing the person who subjected them to abuse. Shelter residents who are included in other certified households may receive an additional allotment as a separate household only once a month.

(3) Shelter residents who apply as separate households shall be certified solely on the basis of the income and resources currently available to them and the expenses for which they are currently responsible. They shall be certified without regard to the income, resources, and expenses of their former household. Jointy held resources are considered inaccessible in accordance with § 273.8. Room payments to the shelter shall be considered as shelter expenses.

(4) Any shelter residents eligible for expedited service shall be handled in accordance with § 273.2(i).

(5) The former household of shelter residents shall be provided a notice of expiration in accordance with § 273.14(b) and Policy Interpretation 79-108.

* * * * *

11. In § 273.12, paragraphs (a)(1)(i) and (a)(2) are revised as follows:

§ 273.12 Reporting changes.

(a) *Household responsibility to report.* (1) Certified and applicant households are required to report the following changes in circumstances:

(i) Changes in income:

(A) Households with fluctuating income shall report changes in the source or in the wage rate of fluctuating income and changes in the full or part-time employment status of household members with fluctuating income;

(B) Households without fluctuating income shall report changes in the sources of income or in the amount of gross, monthly, non-fluctuating income of more than $25;

(C) Households shall not be required to report changes in the public assistance grant, or in the general assistance grant in project areas where GA and food stamp cases are jointly processed in accord with § 273.2(j)(2). Since the State agency has prior knowledge of all changes in the public assistance grant and these general assistance grants, action shall be taken on the State agency information;

* * * * *

(2) Certified households shall report changes within 10 days of the date the change becomes known to the household. Applicant households that have not yet been certified when the change occurs shall report changes at the certification interview or, for changes occurring after the interview but before the eligibility determination, within 10 days after the date of the determination. Optional procedures for reporting changes are contained in § 273.12(f) for households in States with FNS-approved forms for jointly reporting food stamp and public assistance changes and food stamp and general assistance changes.

* * * * *

§ 273.16 [Amended]

12. In § 273.16, paragraph (d) is revised to read as follows:

* * * * *

(d) *Administrative disqualification.* State agencies shall establish procedures for conducting fraud hearings which must conform with the procedures outlined in this section. In addition States may also pursue alleged fraud cases through prosecution. FNS shall permit a State to delete its administrative fraud hearing system if the State agency has entered into an agreement with the State's attorney general's office or where necessary, county prosecutors. The agreement shall provide that prosecution will be pursued in cases where appropriate. This agreement shall inlude information on how, and under what circumstances, cases will be accepted for possible prosecution and any other criteria set by the prosecutor for accepting cases for prosecution, such as a minimum amount of fraudulent overissuance. An administrative fraud hearing or referral for prosecution action shall be initiated by the State agency whenever the State agency has documented evidence substantiating that a currently certified household member has committed one or more acts of fraud as defined in paragraph (b) of this section and the State agency believes the household member should be disqualified. Such cases may include those in which the State agency believed the facts of the individual case do not warrant civil or criminal prosecution through the appropriate court system. Other cases may be those previously referred for prosecution but for which prosecution was declined by the appropriate legal authority. The State agency may initiate an administrative fraud hearing regardless of the current eligibility of the individual. The disqualification period for nonparticipants at the time of the fair hearing decision shall be deferred until the individual applies for and is determined eligible for program benefits. Fraud hearings need not be conducted if the amount the State agency contends has been fraudulently obtained is less than $100 or if the value of the coupons used to obtain ineligible items is under $100, or a less amount of suspected fraud can be pursued if it is cost effective to the State agency. The administrative fraud hearing may be conducted regardless of whether other legal action is planned against the household member. FNS may require a State agency to establish an administrative fraud hearing system if it determines that the State agency is not promptly or actively pursuing suspected fraud claims through the courts.

* * * * *

13. In § 273.18, paragraph (b)(3)(i)(A) is revised; paragraph (b)(3)(ii) is revised; and new subdivision (iii) is added to paragraph (e)(1).

The revision and addition read as follows:

§ 273.18 Claims against households.

(b) *Nonfraud Claims.* * * *

(3) *Collecting nonfraud claims.*

(i) * * *

(A) The total amount of the nonfraud claim is less than $100 or whatever lesser amount is deemed cost effective by the State agency. State agencies shall accept voluntary payments by households for overissuances of less than the established amount set by the State agency, although these losses need not be pursued through demand letters. State agencies are encouraged, however, to advise households orally or in writing of claims in amounts under the designate sum and advise the household that the State agency may offset the amount of the claim against any future restoration of lost benefits accrued by them. The household shall also be informed that if it disagrees with the State agency over the claim or its amount, the household has the right to a fair hearing. State agencies shall keep records of all overissuances even if collection procedures are not initiated. At such time that multiple ovarissuances for a household total $100 or more within a 12-month period, then State agencies shall proceed with collection activities as described in subparagraph (3)(ii) of this paragraph. Households shall be informed of this policy.

* * * * *

(ii) State agencies shall initiate collection action by sending the household a written demand letter, designed by FNS, which informs the household of the amount owed, the reason for the claim, the period of time the claim covers, any offsetting that was done to reduce claims, how the household may pay the claim, and the household's right to a fair hearing if the household disagrees with the State agency's determination. FNS may grant deviations from the designed letter under conditions specified in § 273.2(b). If the household pays the claim, payments shall be accepted and submitted to FNS in accordance with the procedures outlined in paragraphs (e) and (f) of this section. If the household

does not respond to the first demand letter, additional demand letters shall be sent at reasonable intervals such as 30 days, until the household has responded by paying or agreeing to pay the claim, or until the criteria for suspending collection action, as specified in paragraph (b)(4) of this section, have been met. The State agency may postpone collection action on nonfraud claims in cases where an overissuance is being referred for possible prosecution or for a fraud hearing and the State agency is advised in writing that collection action will prejudice the case.

* * * * *

(e) *Methods of collecting payments.*

(1) * * *

(iii) *Coupons for repayment.* The State agency shall accept food stamp coupons as partial or full payment of a nonfraud claim if the household prefers to use this method of repayment. Choice of this option is entirely up to the household and no household shall be required or pressured to pay a nonfraud claim with coupons.

* * * * *

14. In § 273.19, two new sentences are added to the end of paragraph (b) and a new subparagraph (5) is added to (c). The additions read as follows:

§ 273.19 Sixty day continuation of certification.

* * * * *

(b) *Former project area.* * * * Using form FNS-296, Item 15, the former project area shall inform the new project area of any member whose citizenship is questionable but who is participating in accordance with § 273.2(f)(2)(ii)(B). The form shall also show the last month that a member may participate without verification of citizenship.

(c) *New project area.* * * *

(5) If the household was certified in accordance with § 273.2(f)(2)(ii)(B), and the member whose citizenship is in question has not verified that citizenship, the State agency shall act in accordance with that § 273.2(f)(2)(ii)(B).

* * * * *

PART 274—ISSUANCE AND USE OF FOOD COUPONS

15. In § 274.8, paragraphs (b)(1)(i) and (b)(3) are revised and read as follows:

§ 274.8 State agency reporting and destruction of unusable coupons.

* * * * *

(b) *Destruction of unusable coupons.* * * *

(1) * * *

(i) It has been determined that the value of coupons does not exceed $500.00 per coupon issuer or bulk storage point for any month; and

* * * * *

(3) If the value of the coupons to be destroyed exceeds $500.00 per coupon issuer or bulk storage point per month, the State agency shall request FNS approval prior to any destruction of the coupons.

* * * * *

16. In § 274.10, a new sentence is added to the end of paragraph (d) to read as follows:

§ 274.10 Use or redemption of coupons by eligible households.

* * * * *

(d) *Residents of certain institution.* * * * Eligible residents of a group living arrangement, acting on their own behalf, may use coupons issued to them to purchase meals prepared especially for them at a group living arrangement. Residents of shelters for battered women and children may also use their coupons to purchase meals prepared especially for them at such shelters.

* * * * *

PART 278—PARTICIPATION OF RETAIL FOOD STORES, WHOLESALE FOOD CONCERNS AND BANKS

17. In § 278.1, a new sentence is added after the first sentence in paragraph (e); paragraphs (g) through (m) are redesignated as (h) through (n) and a new paragraph (g) is added. The revisions and additions read as follows:

§ 278.1 Approval of retail food stores and wholesale food concerns.

* * * * *

(e) *Treatment programs.* * * * If an alcoholic treatment and rehabilitation program is located on an Indian reservation and the State does not certify or license reservation-based centers, approval to participate may be granted if the requirements of paragraphs (a), (b), and (d)(1) of this section are met and the program either is funded by the National Institute on Alcohol Abuse and Alcoholism (NIAAA) pursuant to Pub. L. 91-616 or was so funded and has subsequently been transferred to Indian Health Service (IHS) funding. * * *

* * * * *

(g) *Shelters for battered women and children.* FNS shall authorize shelters for battered women and children at retail food stores to redeem coupons directly through wholesalers. The shelter must be public or private nonprofit, as defined in paragraph (d)(1) of this section, and meet the requirements of paragraphs (a) and (b) of this section. Shelters which also serve other groups of individuals must have a portion of the facility set aside on a long-term basis to shelter battered women and their children. Also required is that the shelter be a residence which serves meals or provides food to its residents.

* * * * *

18. In § 278.2, paragraph (g) is revised as follows:

§ 278.2 Participation of retail food stores.

* * * * *

(g) *Redeeming coupons.* Authorized retail food stores may exchange coupons in accordance with this part for face value upon presentation through the banking system or through a wholesale food concern to accept coupons from that retailer. Authorized drug addict or alcoholic treatment and rehabilitation programs, group living arrangements, and shelters for battered women and children may present coupons for redemption through authorized wholesale food concerns. A drug addict or alcoholic treatment center, group living arrangement, or shelter for battered women and children may purchase food in authorized retail food stores as the authorized representative of its participating households. Authorized drug addict and alcoholic treatment and rehabilitation programs, group living arrangements, and shelters for battered women and children shall not present coupons directly to a bank for redemption.

* * * * *

Note.—Food Stamp forms are being revised in accordance with the requirements of this amendment. The reporting and/or record keeping requirements anticipated in this amendment resulting from the forms will be forwarded to the Office of Management and Budget for approval in accordance with the Federal Reports Act of 1942.

(91 Stat. 958 (7 U.S.C. 2011–2027))

(Catalog of Federal Domestic Assistance Program N. 10551, Food Stamps)

Dated: January 13, 1981.

Carol Tucker Foreman,

Assistant Secretary.

[FR Doc. 81-1697 Filed 1-15-81; 8:45 am]

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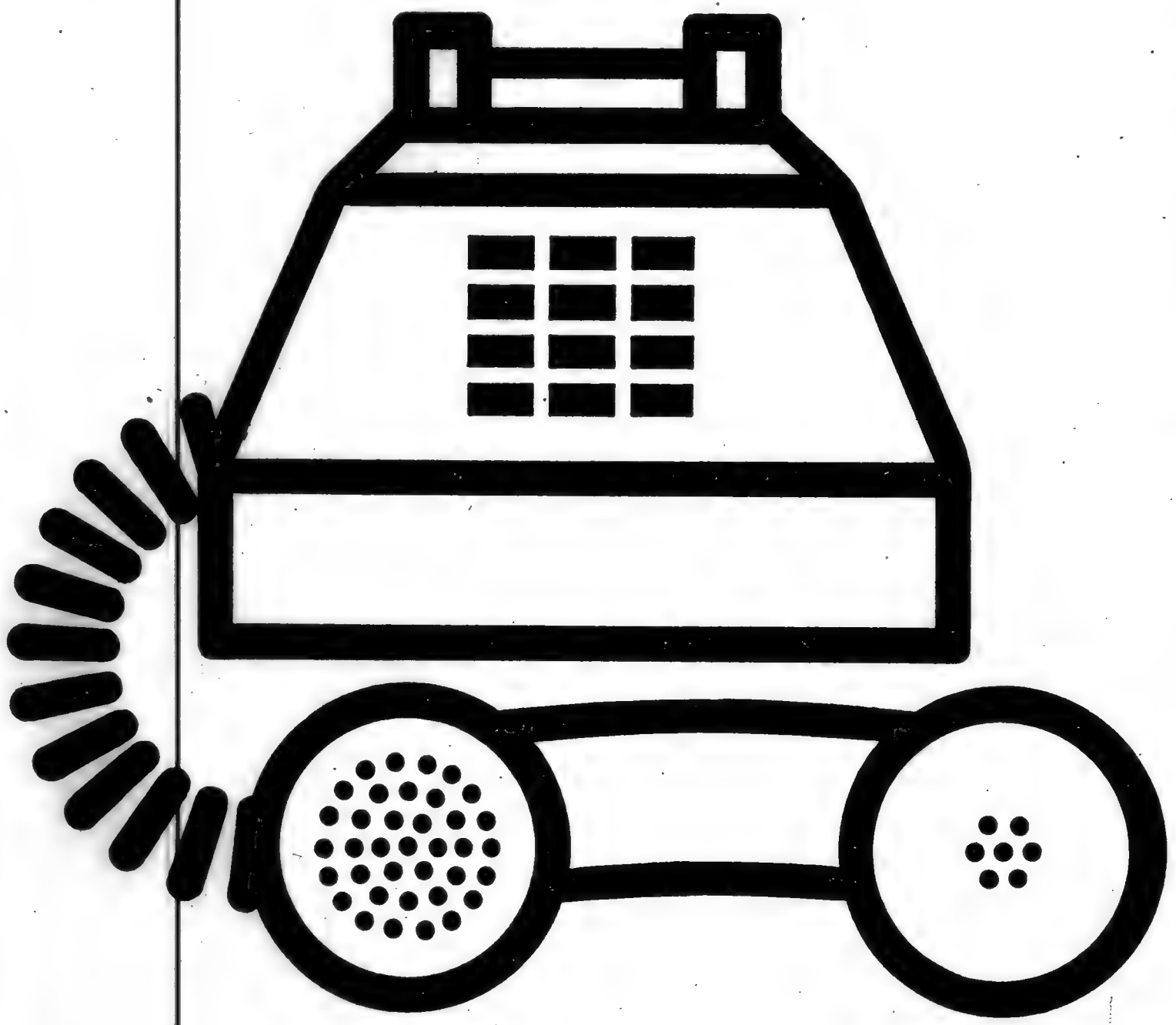

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FEDERAL REGISTER Published daily, Monday through Friday, (not published on Saturdays, Sundays, or on official holidays), by the Office of the Federal Register, National Archives and Records Service, General Services Administration, Washington, D.C. 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

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Title 3—

The President

Executive Order 12264 of January 15, 1981

On Federal Policy Regarding the Export of Banned or Significantly Restricted Substances

By the authority vested in me as President by the Constitution of the United States of America, and in order to further the foreign policy interests of the United States and to provide for effective and responsible implementation of the Export Administration Act of 1979 (50 U.S.C. App. 2401 *et. seq.*) and other statutes insofar as they relate to the export of banned or significantly restricted substances, it is hereby ordered as follows:

1–1. Scope of the Order

1–101. For the purposes of this Order, the term "banned or significantly restricted substance" means:

(a) a food or class of food which

(1) is adulterated, as defined by rules or orders issued under Sec. 402 (a) or (c) (21 U.S.C. 342 (a) or (c)), or

(2) is in violation of emergency permit controls issued under Sec. 404 (21 U.S.C. 344)

of the Federal Food, Drug, and Cosmetic Act;

(b) a drug which is

(1) adulterated, as defined by rules or orders issued under Sec. 501 (a), (b), (c), or (d) (21 U.S.C. 351 (a), (b), (c), or (d)),

(2) misbranded, as defined by rules or orders issued under Sec. 502(j) (21 U.S.C. 352(j)) or

(3) a new drug or new animal drug for which an approval is not in effect under Sec. 505 (21 U.S.C. 355) or Sec. 512 (21 U.S.C. 360), respectively,

of the Federal Food, Drug, and Cosmetic Act;

(c) an antibiotic drug which has not been certified under Sec. 507 (21 U.S.C. 357) of the Federal Food, Drug, and Cosmetic Act;

(d) a drug containing insulin which has not been certified under Sec. 506 (21 U.S.C. 356) of the Federal Food, Drug, and Cosmetic Act;

(e) a device which

(1) is adulterated, as defined by rules or orders issued under Sec. 501(a) (21 U.S.C. 351(a)),

(2) is misbranded, as defined by rules or orders issued under Sec. 502(j) (21 U.S.C. 352(j)),

(3) does not conform with a performance standard issued under Sec. 514 (21 U.S.C. 360d),

(4) has not received premarket approval under Sec. 515 (21 U.S.C. 360e), or

(5) is banned under Sec. 516 (21 U.S.C. 360f)

of the Federal Food, Drug, and Cosmetic Act;

(f) a cosmetic which is adulterated, as defined by rules or orders issued under Sec. 601 (21 U.S.C. 361) of the Federal Food, Drug, and Cosmetic Act;

(g) a food additive or color additive which is deemed unsafe within the meaning of Sec. 409 (21 U.S.C. 348) or Sec. 706 (21 U.S.C. 376), respectively, of the Federal Food, Drug, and Cosmetic Act;

(h) a biological product which has been propagated or manufactured and prepared at an establishment which does not hold a license as required by Sec. 351 (42 U.S.C. 262) of the Public Health Service Act;

(i) an electronic product which does not comply with a performance standard issued under Sec. 358 (42 U.S.C. 263f) of the Public Health Service Act;

(j) a consumer product which

(1) does not comply with a consumer product safety standard adopted under Secs. 7 and 9 (15 U.S.C. 2056 and 2058) other than one relating solely to labeling,

(2) has been declared to be a banned hazardous product under Secs. 8 and 9 (15 U.S.C. 2057 and 2058),

(3) presents a substantial product hazard under Sec. 15 (15 U.S.C. 2064), or

(4) is an imminently hazardous consumer product under Sec. 12 (15 U.S.C. 2061)

of the Consumer Product Safety Act;

(k) a fabric, related material, or product which does not comply with a flammability standard (other than one relating to labeling) adopted under Sec. 4 (15 U.S.C. 1193) of the Flammable Fabrics Act;

(l) a product which is a banned hazardous substance (including a children's article) under Secs. 2 and 3 (15 U.S.C. 1261 and 1262) of the Federal Hazardous Substances Act;

(m)(1) a pesticide which, on the basis of potential risks to human health or safety or to the environment,

(A) has been denied registration for all or most significant uses under Sec. 3(c)(6) (7 U.S.C. 136a(c)(6)),

(B) has been classified for restricted use under Sec. 3(d)(1)(C) (7 U.S.C. 136a(d)(1)(C)),

(C) has had its registration cancelled or suspended for all or most significant uses under Sec. 6 (7 U.S.C. 136d),

(D) has been proceeded against and seized under Sec. 13(b)(3) (7 U.S.C. 136k), or

(E) has not had its registration cancelled, but requires an acknowledgement statement under Sec. 17(a)(2) (7 U.S.C. 136o(a)(2))

of the Federal Insecticide, Fungicide, and Rodenticide Act, or

(2) a pesticide chemical for which a tolerance has been denied or repealed under Sec. 408 (21 U.S.C. 346(a)) of the Federal Food, Drug, and Cosmetic Act; and

(n) a chemical substance or mixture

(1) which is subject to an order or injunction issued under Sec. 5(f)(3) (15 U.S.C. 2604(f)(3)),

(2) which is subject to a requirement issued under Sec. 6(a)(1), 6(a)(2), 6(a)(5), or 6(a)(7) (15 U.S.C. 2605(a)(1), 2605(a)(2), 2605(a)(5), or 2605(a)(7)) or

(3) for which a civil action has been brought and relief granted under Sec. 7 (15 U.S.C. 2606)

of the Toxic Substances Control Act.

1–102. Each agency that is responsible for the administration of a statute or statutory provision referenced in Subsection 1–101 shall compile and, within 90 days after the issuance of this Order, shall publish in the Federal Register a list of those substances within its jurisdiction that are banned or significantly

restricted substances as defined by Subsection 1–101. Each agency shall revise the list of banned or significantly restricted substances within its jurisdiction as necessary to reflect new regulatory actions by the agency.

1–2. Regularization of Notification Procedures

1–201. Each agency that is required by statute to notify, or to be apprised of notifications to, foreign countries regarding exports of banned or significantly restricted substances to those countries shall adhere, to the extent not inconsistent with applicable law, to the following procedures:

(a) Each agency shall promptly provide to the Department of State such information regarding an export of banned or significantly restricted substances to a foreign government as is required by statute or agency regulation to be forwarded to the foreign government, either by the agency or by another party required to apprise the agency of its notification, and by the notification forms and procedures to be established by the Department of State pursuant to Subsection 1–201(b). As soon as feasible after the receipt of the required information from an agency, the Department of State shall transmit the information to the government of the foreign country to which the banned or significantly restricted substance is to be exported.

(b) The Department of State shall consult with affected agencies regarding the format and content appropriate for required notifications to foreign governments and shall establish, within 90 days after the issuance of this Order, notification forms and procedures. At a minimum, the following information shall be transmitted to foreign governments regarding banned or significantly restricted substances to be exported to them from the United States:

(1) the name of the substance to be exported;

(2) a concise summary of the agency's regulatory actions regarding that substance, including the statutory authority for such actions and the timetable for any further actions that are planned; and,

(3) a concise summary of the potential risks to human health or safety or to the environment that are the grounds for the agency's actions.

In addition, to the extent deemed appropriate by the agency with jurisdiction over the banned or significantly restricted substance to be exported, copies of additional documents may be forwarded to a foreign government, either at the same time as or subsequent to the required notification, to assist the foreign government in its assessment of the nature and extent of the risks associated with the substance.

(c) With respect to each required notification regarding an export of a banned or significantly restricted substance, each agency shall identify for the Department of State the persons or offices within that agency to be contacted in the event that the foreign government receiving the notification wishes to obtain through the Department of State additional information regarding the risks of, or regulatory actions taken with respect to, the banned or significantly restricted substance that is the subject of the notification.

(d) When it is required by statute or agency regulation that a foreign government acknowledge that it has received notification of an export of banned or significantly restricted substances, express approval of the export, or make any other type of response to notification, the notification shall advise the foreign government that its response should be directed to the Department of State for transmittal to the agency.

1–202. The procedures established by Subsection 1–201 shall not preclude an agency from contacting a foreign government directly regarding the export of banned or significantly restricted substances to that country, providing that such contacts are supplementary to, rather than substitutes for, adherence to the procedures established by Subsection 1–201.

1–203. Each United States embassy shall maintain on file, for a period of one year after transmission, copies of the notifications transmitted through the Department of State to the government of the foreign country in which the

embassy is located, as well as lists of United States agency contact points sent to the Department of State in connection with those notifications.

1–3. Export Control Procedures

1–301. It is the intent of this Order to rely primarily on the notification procedures, annual report, and participation in international efforts provided for in Sections 1–2, 1–4, and 1–5, respectively, in implementing the Order, and to resort to the imposition of export controls only in a very few instances. Specifically, export controls should be limited to extremely hazardous substances, as determined by the agency primarily responsible for regulating a substance on the basis of the record compiled in connection with regulatory action taken by that agency concerning that substance—

(a) which represent a substantial threat to human health or safety or to the environment,

(b) the export of which would cause clear and significant harm to the foreign policy interests of the United States, and

(c) for which export licenses would be granted only in exceptional cases.

Export controls shall not be applied to substances specified in Sections 1–101(b)(3), 1–101(e)(4), and 1–101(m)(1)(E) of this Order. Nor shall export controls be applied to "medicine or medical supplies," which are excluded from such controls by Section 6(f) of the Export Administration Act of 1979 (50 U.S.C. App. 2405(f)). For the purposes of this Order the phrase "medicine or medical supplies" shall be construed so as to permit consideration for inclusion on the Commodity Control List of drugs and devices within the categories specified in Subsection 1–101(b–e) and representing a substantial threat to human health or safety or to the environment. Wherever practicable, export controls should be no more restrictive than the controls applicable to domestic commerce and use.

1–302. Within 90 days after the issuance of this Order, the Department of Commerce shall develop for interagency review proposed regulations to govern its consideration of applications for licenses to export banned or significantly restricted substances included on the Commodity Control List. Within 120 days after the issuance of this Order, the Department of Commerce shall publish the proposed regulations in the **Federal Register** for public comment.

1–303. In accord with its statutory role under the Export Administration Act, and consistent with the policy and standards enunciated in Subsection 1–301, the Department of State shall identify, subject to the concurrence of the Department of Commerce, candidates for inclusion on the Commodity Control List. If the Department of State and Department of Commerce are unable to agree on the inclusion on the Commodity Control List of a particular substance, the matter shall be referred to the President.

1–304. In order to assist the Department of State in the development of its advice to the Department of Commerce under subsection 1–303, there is hereby established an interagency task force, to be chaired by the Department of State. The task force shall consist of representatives of the following agencies:

(a) Department of State.

(b) Department of Commerce.

(c) Environmental Protection Agency.

(d) Food and Drug Administration, Department of Health and Human Services.

(e) Consumer Product Safety Commission.

(f) Office of the U.S. Special Trade Representative.

The Department of State, as chair of the task force, may invite representatives of non-member agencies to participate from time to time in the functions of the task force. The task force shall provide technical advice to the Department of

State as to which substances should be considered candidates for inclusion on the Commodity Control List. The task force shall endeavor to reach consensus on its advice, consistent with the policy and standards enunciated in Subsection 1–301.

1–305. To the extent possible, within the limits of available information and consistent with the policy and standards enunciated in Subsection 1–301, the task force shall consider, with respect to each banned or significantly restricted substance that is proposed for inclusion on the Commodity Control List by a member of the task force:

(a) the type, extent, and severity of the potential detrimental effects of the substance;

(b) the likelihood of the effects;

(c) the duration of the effects;

(d) the ability of foreign countries to avoid or mitigate the effects;

(e) the availability of the substance from sources other than the United States;

(f) the availability of other substances or methods that would serve the same purposes as the substance; and,

(g) the importance of the beneficial uses of the substances.

1–306. Before deciding whether to grant a validated license for the export of any banned or significantly restricted substance that is included on the Commodity Control List, the Department of Commerce shall consult with the Department of State, the agency with domestic regulatory authority, and any other agency deemed relevant by the Department of Commerce. Such consultation by the Department of Commerce is necessary within the meaning of Section 10(a)(3) of the Export Administration Act of 1979 (50 U.S.C. App. 2409(a)(3)). The Department of State shall not recommend issuing a license unless (1) it has determined that the export would not cause clear and significant harm to the foreign policy interests of the United States and (2) after appropriate consultations, it has received no objections to the export from the government of the foreign country to which the banned or significantly restricted substance is to be exported. The findings and recommendations of the Department of State shall be conveyed in writing to the Department of Commerce.

1–307. Except to the extent supplemented or further detailed by this Order, the procedures established by the Export Administration Act of 1979 (50 U.S.C. App. 2401 *et. seq.*), including required consultations with industry, shall be followed in all their particulars in the utilization of export control authority on foreign policy grounds with respect to banned or significantly restricted substances.

1–4. Annual Report on Regulatory Actions

1–401. The Regulatory Council shall compile each year a report that

(a) summarizes all final regulatory actions of the types described in Subsection 1–101 that were taken by Federal agencies by the end of the previous calendar year, including those antedating that calendar year but continuing in force, and that are of significant international interest;

(b) summarizes all proposed regulatory actions of the types described in Subsection 1–101 that were pending before agencies at the end of the previous calendar year and that are of significant international interest;

(c) indicates generally what additional information is available with respect to each of the final or proposed regulatory actions listed and how such information may be obtained; and

(d) contains such information as the Council, in consultation with affected agencies, determines is appropriate to include regarding substances the use of which in the United States is not generally banned but, on the basis of

potential risks to human health or safety or to the environment, is subject to maximum exposure levels or other restrictions or conditions.

1–402. Each agency shall provide to the Regulatory Council the information necessary for the preparation of the annual report on regulatory actions. The Regulatory Council shall establish, after consultation with affected agencies and within 90 days after the issuance of this Order, a standard format and timetable for the submission of information by the agencies.

1–403. The Regulatory Council shall publish the report required by subsection 1–401 in the Federal Register by March 1 of each year, and the Department of State shall distribute copies of the report to foreign countries and to appropriate public and private international organizations as soon as feasible after its publication.

1–5. Participation in International Efforts

1–501. The Department of State, and other agencies and officials of the United States government in consultation with the Department of State, shall encourage and participate actively in international efforts to develop improved worldwide hazard alert systems, export notification programs, uniform hazard labeling, and other common standards and practices with respect to the export of banned or significantly restricted substances.

1–6. Evaluation

1–601. The Council on Environmental Quality, the Department of State, and the Department of Commerce, in consultation with agencies affected by this Order, shall submit to the President 18 months after the effective date of the Order and annually thereafter, a report summarizing U.S. agency activities pursuant to the Order, evaluating the effectiveness of the Order, and making any recommendations that are deemed appropriate.

1–7. Trade Secret Protection

1–701. Trade secrets or other confidential commercial or financial information that pertain to a banned or significantly restricted substance to be exported shall not be forwarded to a foreign government in the notifications or other documents prepared pursuant to this Order unless authorized or required by existing law.

Jimmy Carter

WHITE HOUSE,
January 15, 1981.

[FR Doc. 81–3038
Filed 1–15–81; 3:24 pm]
Billing code 3195–01–M

EDITORIAL NOTE: The President's statement of Jan. 15, 1981, on signing Executive Order 12264, is printed in the Weekly Compilation of Presidential Documents (vol. 17, no. 3).

Presidential Documents

Executive Order 12285 of January 15, 1981

Providing for Enhancement and Coordination of Federal Consumer Programs

By the authority vested in me as President by the Constitution of the United States of America, and in order to enlarge the membership of the Consumer Affairs Council from twelve to twenty-four, Section 1–102 of Executive Order No. 12160 of September 26, 1979, is hereby amended to read as follows:

"1–102. The Council shall consist of representatives of the following agencies and such other officers or employees of the United States as the President may designate as members:

(a) Department of Agriculture.

(b) Department of Commerce.

(c) Department of Defense.

(d) Department of Energy.

(e) Department of Health and Human Services.

(f) Department of Housing and Urban Development.

(g) Department of the Interior.

(h) Department of Justice.

(i) Department of Labor.

(j) Department of State.

(k) Department of Transportation.

(l) Department of the Treasury.

(m) ACTION Agency.

(n) Administrative Conference of the United States.

(o) Community Services Administration.

(p) Department of Education.

(q) Environmental Protection Agency.

(r) Equal Employment Opportunity Commission.

(s) Federal Emergency Management Agency.

(t) General Services Administration.

(u) Small Business Administration.

(v) Tennessee Valley Authority.

(w) Veterans Administration.

(x) Commission on Civil Rights is invited to participate.

Each agency on the Council shall be represented by the head of the agency or by a senior-level official designated by the head of the agency.".

Jimmy Carter

THE WHITE HOUSE,
January 15, 1981.

[FR Doc. 81-2039
Filed 1-15-81; 2:25 pm]
Billing code 3195-01-M

Presidential Documents

Executive Order 12266 of January 15, 1981

Food Security Wheat Reserve

By the authority vested in me as President of the United States of America by Section 302(a) of the Food Security Wheat Reserve Act of 1980 (Title III of the Agricultural Act of 1980 (Public Law 96-494)), it is hereby ordered as follows:

1-101. There is hereby established a Food Security Wheat Reserve composed of a reserve stock of wheat, which shall not exceed four million metric tons.

1-102. The Secretary of Agriculture is responsible for designating, in accordance with Section 302 of the Food Security Wheat Reserve Act of 1980, the specific reserve stocks of wheat which shall comprise the Food Security Wheat Reserve.

Jimmy Carter

THE WHITE HOUSE,
January 15, 1981.

[FR Doc. 81-2040
Filed 1-15-81; 3:20 pm]
Billing code 3195-01-M

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Presidential Documents

Executive Order 12267 of January 15, 1981

Amending the Generalized System of Preferences

By the authority vested in me as President by the Constitution and statutes of the United States of America, including Title V and Section 604 of the Trade Act of 1974, as amended (19 U.S.C. 2461 *et seq.*; 19 U.S.C. 2483), and in order (1) to provide for the continuation, to the greatest extent possible, of preferential treatment under the Generalized System of Preferences (GSP) for articles which are currently eligible for such treatment from countries designated as beneficiary developing countries, notwithstanding the changes to the Tariff Schedules of the United States (TSUS) (19 U.S.C. 1202) which have resulted from the recent enactment of legislation, (2) to remove certain items from preferential treatment, (3) to make technical corrections to Executive Order No. 11888, of November 24, 1975, as amended, and (4) to make conforming modifications to the TSUS, it is hereby ordered as follows:

1–101. The Tariff Schedules of the United States are modified by amending the article description for item 652.97 by adding "and parts thereof" to the present article description therefor.

1–102. Annex II of Executive Order No. 11888 of November 24, 1975, as amended, listing articles that are eligible for benefits of the GSP when imported from any designated beneficiary country is further amended as provided in the Annex to this Order.

1–103. Annex III of Executive Order No. 11888, as amended, listing articles that are eligible for benefits of the GSP when imported from all designated beneficiary countries except those specified in General Headnote 3(c)(iii) of the TSUS, is further amended by deleting items 176.17 and 520.35 therefrom.

1–104. General Headnote 3(c)(iii) of the TSUS, listing articles that are eligible for benefits of the GSP except when imported from the beneficiary countries listed opposite those articles, is amended by deleting therefrom the following:

"176.17	Philippines
520.35	Thailand".

1–105. The amendments made with respect to items 470.15, 470.18, 470.25, 470.55, 708.51, 708.52, and 725.38 by Section 1–102 of this Order shall be effective as to articles that are both (1) imported on or after January 1, 1976, and (2) entered, or withdrawn from warehouse for consumption, on or after October 17, 1980, and as to which the liquidations of the entries or withdrawals have not become final and conclusive under Section 514 of the Tariff Act of 1930 (19 U.S.C. 1514).

1–106. The amendments made with respect to items 407.15, 407.18, and 408.31 by Section 1–102 of this Order shall be effective as to articles that are both (1) imported on or after January 1, 1976, and (2) entered, or withdrawn from warehouse for consumption, on or after December 2, 1980, and as to which the liquidations of the entries or withdrawals have not become final and conclusive under Section 514 of the Tariff Act of 1930 (19 U.S.C. 1514).

1–107. The amendments made by this Order, with the exception of those listed in Sections 1–105 and 1–106 shall be effective as to articles that are both (1) imported on or after January 1, 1976 and (2) entered, or withdrawn from warehouse for consumption, on or after January 16, 1981.

Jimmy Carter

THE WHITE HOUSE,
January 15, 1981.

ANNEX

Annex II to Executive Order No. 11888, as amended, is further amended—

(a) by deleting the following TSUS item numbers:

106.80	240.03	413.98	649.39
107.76	240.08	417.30	703.51
125.70	251.49	437.00	708.52
153.02	252.79	437.34	725.10
153.06	304.04	470.15	725.38
156.45	373.22	470.25	760.65
240.00	407.15	470.55	and

(b) by adding, in numerical sequence, the following TSUS item numbers:

407.18	406.31	412.96	470.18

[FR Doc. 81-2042
Filed 1-15-81; 2:37 pm]
Billing code 3195-01-M

Presidential Documents

Executive Order 12268 of January 15, 1981

Hostage Relief Act of 1980

By the authority vested in me as President by the Constitution and statutes of the United States of America, including the Hostage Relief Act of 1980 (Public Law 96-449; 94 Stat. 1967; 5 U.S.C. 5561 note) and Section 301 of Title 3 of the United States Code, and in order to provide for the implementation of that Act, it is hereby ordered as follows:

1-101. The functions vested in the President by Sections 103, 104, 105 and 301 of the Hostage Relief Act of 1980 (5 U.S.C. 5561 note) are delegated to the Secretary of State.

1-102. The Secretary of State shall consult with the heads of appropriate Executive agencies in carrying out the functions in Sections 103, 104, and 105 of the Act.

Jimmy Carter

THE WHITE HOUSE,
January 15, 1981.

[FR Doc. 81-2043
Filed 1-15-81; 3:28 pm]
Billing code 3195-01-M

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[FR Doc. 81-
Filed 1-15-81
Billing code

Presidential Documents

Executive Order 12288 of January 15, 1981

President's Committee on Small Business Policy

By the authority vested in me as President by the Constitution of the United States of America, and in order to establish, in accord with the Federal Advisory Committee Act, as amended (5 U.S.C. App. I), an advisory committee on the recommendations of the White House Conference on Small Business, it is hereby ordered as follows:

1–101. There is established a President's Committee on Small Business Policy which shall be composed of seven members appointed by the President.

1–102. The Committee shall advise the President, through the Administrator of the Small Business Administration, on appropriate responses to the recommendations of the White House Conference on Small Business.

1–103. The Administrator of the Small Business Administration shall provide the Committee with such administrative services and support as may be necessary.

1–104. Notwithstanding the provisions of any other Executive Order, the functions of the President under the Federal Advisory Committee Act (5 U.S.C. App. I), except that of reporting annually to the Congress, which are applicable to the Committee, shall be performed by the Administrator of the Small Business Administration in accordance with guidelines and procedures established by the Administrator of General Services.

1–105. The Committee shall terminate on December 31, 1982, unless sooner extended.

Jimmy Carter

THE WHITE HOUSE,
January 15, 1981.

[FR Doc. 81–3044
Filed 1–15–81; 3:29 pm]
Billing code 3195–01–M

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[FR Doc. 81
Filed 1-15-
Billing code

Presidential Documents

Executive Order 12270 of January 15, 1981

President's Council on Spinal Cord Injury

By the authority vested in me as President by the Constitution of the United States of America, and in order to establish, in accord with the Federal Advisory Committee Act, as amended (5 U.S.C. App. I), an advisory committee on spinal cord injury, it is hereby ordered as follows:

1–101. There is established a President's Council on Spinal Cord Injury which shall be composed of twelve members appointed by the President.

1–102. The Committee shall advise the President, through the Secretary of Education, on appropriate responses to the goals of prevention, diagnosis, treatment, and reversal of spinal cord injury.

1–103. The Secretary of Education shall provide the Council with such administrative services and support as may be necessary.

1–104. Notwithstanding the provisions of any other Executive Order, the functions of the President under the Federal Advisory Committee Act (5 U.S.C. App. I), except that of reporting annually to the Congress, which are applicable to the Council, shall be performed by the Secretary of Education in accordance with guidelines and procedures established by the Administrator of General Services.

1–105. The Committee shall terminate on December 31, 1981, unless sooner extended.

Jimmy Carter

THE WHITE HOUSE,
January 15, 1981.

[FR Doc. 81–2045
Filed 1–15–81; 3:30 pm]
Billing code 3195–01–M

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[FR Doc. 81-30
Filed 1-15-81;
Billing code 21

Presidential Documents

Executive Order 12271 of January 15, 1981

Continuance of Certain Federal Advisory Committees

By the authority vested in me as President by the Constitution and statutes of the United States of America, in accordance with the provisions of the Federal Advisory Committee Act, as amended (5 U.S.C. App. I), and in order to correct typographical errors, it is hereby ordered as follows:

1–101. So much of Section 1–101(h) of Executive Order No. 12258 (relating to the President's Advisory Committee for Women) that reads "Executive Order No. 12050" is corrected to read "Executive Order No. 12135".

1–102. So much of Section 1–101(o) of Executive Order No. 12258 (relating to the Federal Advisory Council on Occupational Safety and Health) that reads "Executive Order No. 12195" is corected to read "Executive Order No. 12196".

Jimmy Carter

THE WHITE HOUSE,
January 15, 1981.

[FR Doc. 81-2048
Filed 1-15-81; 3:31 pm]
Billing code 3195-01-M

Presidential Documents

Proclamation 4815 of January 15, 1981

American Heart Month, 1981

By the President of the United States of America

A Proclamation

Diseases of the heart and blood vessels afflict 40 million Americans, cause 950,000 deaths annually, and cost the Nation more than $60 billion each year in lost wages and productivity and in direct costs of medical care.

Cardiovascular diseases, still our Nation's leading cause of death, have been the target of a continuing national effort since 1948. Leading this assault on illness, disability, and premature death are the American Heart Association, a private health organization supported by individual contributions, and the National Heart, Lung and Blood Institute, part of the National Institutes of Health, a Federal agency supported by tax dollars. For more than 30 years, the two organizations have worked closely together conducting and supporting research, training, education and community service directed against heart diseases. In that joint effort, they have enlisted the cooperation and resources of numerous organizations and agencies—both public and private.

Diseases of the heart and blood vessels remain the number one killer in the United States, but we have made substantial and heartening progress toward reducing the devastating toll. Deaths from coronary heart disease have declined by 25 percent during the past decade. Deaths from stroke have declined by 37 percent during the same period. These dramatic declines are a significant factor in the marked increase over the past decade in life expectancy for all Americans.

We have developed a much better understanding of the disease process and in the detection and treatment of cardiovascular disease. As a people, we have improved our overall health practices. For example, there has been a sharp drop in cigarette smoking among middle-aged men who are at the highest risk of heart attack. There has been much progress in the control of high blood pressure which is the major cause of stroke and gratifying and productive changes in our approach to diet and physical fitness.

We still have a long way to go before diseases of the heart and blood vessels are brought under control or eliminated as a major cause of suffering and premature death. In recognition of the seriousness of this menace to the Nation's health and well-being, and to encourage the consolidation and extension of our efforts against cardiovascular disease, the Congress, by joint resolution approved December 30, 1963 (77 Stat. 843; 36 U.S.C. 169b) has requested the President to issue annually a proclamation designating February as American Heart Month.

NOW, THEREFORE, I, JIMMY CARTER, President of the United States of America, do hereby proclaim the month of February 1981, as American Heart Month. I invite the Governors of the States, the Commonwealth of Puerto Rico, the officials of other areas subject to the jurisdiction of the United States, and the American people, to join with me in reaffirming our commitment to the fight against cardiovascular disease.

IN WITNESS WHEREOF, I have hereunto set my hand this fifteenth day of January, in the year of our Lord nineteen hundred and eighty-one, and of the Independence of the United States of America the two hundred and fifth.

Jimmy Carter

[FR Doc. 81-2134
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CFR Part 9

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Rules and Regulations

Federal Register
Vol. 46, No. 12
Monday, January 19, 1981

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each month.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

CFR Part 910

[Lemon Reg. 286, and Lemon Reg. 287, Amendment 1]

Lemons Grown in California and Arizona; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This action establishes the quantity of California-Arizona lemons that may be shipped to the fresh market during the period January 18–24, 1981, and increases the quantity of such lemons that may be so shipped during the period January 11–17. Such action is needed to provide for orderly marketing of fresh lemons for the period specified due to the marketing situation confronting the lemon industry.

DATES: The regulation becomes effective January 18, 1981 and the amendment is effective for the period January 11–17, 1981.

FOR FURTHER INFORMATION CONTACT:
William J. Doyle, 202–447–5975.

SUPPLEMENTARY INFORMATION: *Findings.* This regulation and amendment are issued under the marketing agreement, as amended, and Order No. 910, as amended (7 CFR Part 910), regulating the handling of lemons grown in California and Arizona. The agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). The action is based upon the recommendations and information submitted by the Lemon Administrative Committee and upon other available information. It is hereby found that this action will tend to effectuate the declared policy of the act.

This action is consistent with the marketing policy for 1980–81 which was designated significant under the procedures of Executive Order 12044. The marketing policy was recommended by the committee following discussion at a public meeting on July 8, 1980. A final impact analysis on the marketing policy is available from William J. Doyle, Acting Chief, Fruit Branch, F&V, AMS, USDA, Washington, D.C. 20250, telephone 202–447–5975.

The committee met again publicly on January 13, 1981, at Los Angeles, California, to consider the current and prospective conditions of supply and demand and recommended a quantity of lemons deemed advisable to be handled during the specified weeks. The committee reports the demand for lemons is easier.

It is further found that there is insufficient time between the date when information became available upon which this regulation and amendment are based and when the actions must be taken to warrant a 60 day comment period as recommended in E.O. 12044, and that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rulemaking, and postpone the effective date until 30 days after publication in the Federal Register (5 U.S.C. 553), and the amendment relieves restrictions on the handling of lemons. It is necessary to effectuate the declared purposes of the act to make these regulatory provisions effective as specified, and handlers have been apprised of such provisions and the effective times.

1. Section 910.586 is added as follows:

§ 910.586 Lemon regulation 286.

(a) The quantity of lemons grown in California and Arizona which may be handled during the period January 18, 1981, through January 24, 1981, is established at 215,000 cartons.

(b) As used in this section, "handled" and "cartons" mean the same as defined in the marketing order.

2. Paragraph (a) of § 910.587 Lemon Regulation 287 (46 FR 2336) is amended to read as follows:

§ 910.587 Lemon regulation 287.

(a) the quantity of lemons grown in California and Arizona which may be handled during the period January 11, 1981, through January 17, 1981 is established at 235,000 cartons.

* * * * *

(Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674)

Dated: January 14, 1981.

D. S. Kuryloski,
Acting Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 81–1809 Filed 1–14–81; 4:29 pm]
BILLING CODE 3410–02–M

Farmers Home Administration

7 CFR Ch. XVIII

Revision and Redesignation of Section 502 Rural Housing Loan Policies, Procedures, and Authorizations

AGENCY: Farmers Home Administration, USDA.

ACTION: Final rule.

SUMMARY: The Farmers Home Administration redesignates and amends its regulations for Section 502 Rural Housing Loan Policies, Procedures, and Authorizations. The action is taken to conform with general administrative restructuring of the Agency regulations, comply with requirements of Executive Order 12044 and recent legislation. The action clarifies and updates the regulation, revises income limitations, provides for interest credit for moderate-income borrowers, and will facilitate and improve the administration of services provided by the program.

EFFECTIVE DATE: March 20, 1981.

ADDRESSES: Submit written comments on Item C, "Granting Interest Credits to Moderate-Income Borrowers," only, in duplicate, to the Office of the Chief, Directives Management Branch, Farmers Home Administration, U.S. Department of Agriculture, Room 6346, South Agriculture Building, Washington, DC 20250. All written comments made pursuant to this notice will be available for public inspection at the above address.

FOR FURTHER INFORMATION CONTACT:
Daryl L. Grove, Farmers Home Administration, USDA, Room 5345, South Agriculture Building, 14th and Independence Avenue, SW., Washington, DC 20250, Telephone 202–447–4295.

The Final Impact Statements describing the options considered in developing the final rule for Items A and B in the supplementary information and the impact of implementing each option

is available on request from the Office of the Chief, Directives Management Branch, Farmers Home Administration, U.S. Department of Agriculture, Room 6346, Washington, DC 20250. The Final Impact Statement for Item C in the supplementary information will be developed after publication and comments have been received.

SUPPLEMENTARY INFORMATION: This final action has been reviewed under USDA procedures established in the Secretary's Memorandum 1955 to implement Executive Order 12044. This Instruction does not directly affect any FmHA programs or projects which are subject to A-95 clearinghouse review. The reference in the Catalog of Federal Domestic Assistance is 10.410 Low- to Moderate-Income Housing Loans.

A. On February 14, 1980, the Farmers Home Administration published a notice of proposed rulemaking (45 FR 10240 through 10268) to amend its regulations to establish under Chapter XVIII, Subchapter H, Title 7 in the Code of Federal Regulations, a new Part 1944 "Housing," Subpart A, "Section 502 Rural Housing Loan Policies, Procedures and Authorizations." The action was classified as "not significant." This new Part 1944, Subpart A will replace Part 1822, Subparts A and H. Interested persons were invited to submit comments concerning the proposed rule by April 14, 1980. In response to the notice of proposed rulemaking, written comments from 60 individuals and organizations were received by FmHA. This final rule contains revisions to the proposed rule which reflect FmHA's consideration of the comments received as well as other information available to FmHA. The following is a discussion of the comments received:

1. § *1944.1 General:* It was suggested the reference to FmHA Instruction 1901-E be deleted. This Instruction covers civil rights compliance requirements which must be applied as appropriate.

2. § *1944.2(c) Adjusted Annual Income:* Four comments recommended that the adjustments of 5 percent and $300 per dependent minor be increased to more accurately reflect current cost of living. This change is not made since income limitations as required by Pub. L. 96-153 will result in changes which more accurately reflect living costs by areas.

3. § *1944.2(d) Annual Income:* Comments requested clarification of income to be considered for those adults who live in the dwelling for less than a full year. The change made will require consideration of the income of all adult members of the household during the next twelve months.

4. § *1944.2(f) County Supervisor:* As per comment the paragraph has been amended to include Assistant County Supervisor only by delegation of authority.

5. § *1944.2(h) Extended Family:* One comment recommended this paragraph be eliminated because of cost of providing such housing. The suggestion is not adopted since all other eligibility requirements also apply. Other comments requested clarification of the term "Close relative." The examples cited are eliminated to coordinate with the definition of a household.

6. § *1944.3(a)(3) Refinancing Debts:* Change is made to clarify difference of authority to refinance secured or unsecured debts.

7. § *1944.3(b)(1)* The term minimum adequate site is cross referenced to § 1944.11 (c).

8. § *1944.3 (b)(12) Loan Purpose—Payment of Real Estate Taxes:* Two comments recommended authority to pay real estate taxes for subsequent loan applicants. No change is made because payment of such taxes is a part of the borrower's obligation as required by the security instrument.

9. § *1944.3 (15)(ii)* Soil and water (SW) Association loan is changed to Community Facilities loan.

10. § *1944.4(b)(1)* For the purpose of clarification the word repair is changed to "improve" and non-essential buildings are added as a restricted use of loan funds.

11. § *1944.8(a)(2) Repayment Ability:* As recommended by comments the reference to interest credit is changed to § 1944.20(g) which includes other considerations. The term "adequate repayment ability" is changed to "repayment ability." Guidelines for the determination of dependable income are also added.

12. § *1944.8(b)* One comment requested adult children not be required to sign the promissory note. Another believes a conflict exists with the applicant's right to maintain an account as an individual. No change was made.

13. § *1944.8(c)(1)* This paragraph is added to provide for a statement of intent for adults not presently employed but who have a recent work history. This is necessary to improve the accuracy of planned household income.

14. § *1944.8(c)(2)* Seasonal work which can be expected to be repetitious is added to be considered as part of annual income in paragraph (i). Paragraph (vi) is changed to qualify "living apart" as for reasons other than military or work assignment and to remove paragraphs (B) and (C) which are not necessary.

15. § *1944.8(c)(3)* One comment suggested inconsistency between § 1944.8(b) and (c)(3)(i) regarding household members whose income will be included. No change is made since § 1944.8 (b) considers total household income necessary for repayment ability and (c)(3)(i) refers only to adjusted income. Paragraph (vi) is added to exclude payments received by "live-in" aides for senior citizens.

16. § *1944.8(c)(4)* One comment recommended allowing an income deduction for the moving expenses of migrant farm workers. Work related moving expenses are not allowed for any other applicants and for uniformity no change is made. It was also recommended this paragraph include a deduction for extraordinary medical expenses. This is not incorporated since all income calculations are based on projections for the next year. Such expenses cannot be projected with any accuracy. Paragraph (iii) is revised to clarify the term "limited expenditures" to "based only on income" actually paid to individuals or institutions.

17. § *1944.9(a)(1)* As suggested by comment this paragraph is changed to define "adequate dwelling."

18. § *1944.9(c)* One comment recommended the removal of the requirement for citizenship, permanent residence or indefinite parole. No change is made since most loans are amortized over a period of 33 years and repayment requries an extended commitment to residency in this country. Loans will therefore be limited to persons capable of meeting such a commitment.

19. § *1944.9(e)* One comment objected to the reference to military personnel as related to the requirement to occupy the dwelling on a permanent basis. Another recommended the reference to students be modified and migrant farmworkers be specifically excluded. No change is made since the regulation does provide exclusion under conditions which would result in a reasonable anticipation of a permanent residence.

20. § *1944.10(e)* Changed to provide for a State Supplement for identification of rural areas with population between 10,000 and 20,000 population. The change eliminates the proposed Exhibit A.

21. § *1944.10* Five comments suggested subsequent loans be allowed in areas which have been redesignated from rural to non-rural. In accordance with recent statutory amendments this change has been made to allow for necessary repairs.

22. § *1944.11(c)* Three comments recommended allowing the purchase of

more than one acre sites if necessary to comply with local zoning code requirements. The change was not adopted since allowance is established for adequate water supply or waste disposal systems. Additional exception is not in keeping with the basic objective of providing minimum adequate housing. The paragraph is revised to specify a limitation on the site for existing dwellings.

23. § *1944.15(a)(5)* Two comments recommended specific reference to Community Land Trusts as qualified lessors. No change is made as the regulation makes no exclusion.

24. § *1944.16(a)(1)* A total of 33 comments made reference to this paragraph. 15 objected to the reduction of the maximum allowable living area while 9 were supportive of the proposal. There were also objections to the limitation of only one bathroom. There was expressed some confusion and objection to the proposed method of calculating living area. In response to the comments the maximum living area is increased to 1200 square feet, the reference to 1 bathroom is removed, and the term unusually large family is more specifically defined. The reference to specific designs of homes is removed and the definition of space not to be included as living area is broadened.

25. § *1944.16(a)(3)* Four comments referring to this paragraph made recommendations ranging from authorization of double garages to disallowing garages of any kind. The paragraph as originally proposed remains unchanged.

26. § *1944.16(a)(4)* In regard to the authorization of solar systems one comment recommended involvement of the State Architect and four suggested the regulation discourages solar systems by requiring the State Director's authorization. The paragraph is revised to require the approval of the State Architect. This is considered necessary because County Supervisors do not have the expertise to complete a cost effective analysis of the many varied proposals. The agency is in the process of developing guidelines and plans for homes utilizing solar energy. To assure adequate safety and efficiency, woodburning devices must be approved by the State Architect and authorized by the State Director.

27. § *1944.16(b)* In response to comments the paragraph is revised to clarify the application of limitations of maximum living area and to cross reference the requirement of compliance with minimum standards.

28. § *1944.16(c)* The maximum limit for repairs under which the dwelling may lack some features is increased from $5,000 to $7,500 to coordinate with the maximum loan limit for Section 504 loans for repairs.

29. § *1944.17* One comment suggested the 10 year warranty will discourage builders. No change is made since the 10 year warranty is optional. Another comment questioned the effect of the 10 year insured warranty on FmHA responsibility for final inspections and construction defects. Because this paragraph is concerned only with maximum loan amounts and those responsibilities are required by other regulations, no change is made.

30. § *1944.18* In response to comment the terms "good reputation" and "strong financial position" are removed from subparagraph (b)(1). "Reputation" is replaced with "credit history which indicates an ability and willingness to pay debts when they are due".

31. § *1944.22* This paragraph is rewritten to comply with Pub. L. 96–153, The Housing and Community Development Amendments of 1979. The 5 year limitation on refinancing of debts is removed.

32. § *1944.24* In response to comments all reference to a $5,000 maximum loan is changed to $7,500. This will correspond with the maximum loan limit for Section 504 loans.

33. § *1944.25* It was suggested that the term of the note be reduced to a 5 year term to facilitate graduation. This is not considered feasible due to the administrative burden which would be imposed.

34. § *1944.26(a)* Many respondents commented on this paragraph. In response to those comments the entire paragraph is revised to provide a one-time numerical rating of applicants and to provide a specific objective basis for determining that rating. Applications for subsequent loans to complete assumptions, credit sales or essential repairs are removed from the priority rating. Applications for the refinancing of debts are also not included in the rating system. Exhibit F is included to provide a uniform method for recording the priority rating.

35. § *1944.26(c)* Four comments included the recommendation that the priority rating be considered an appealable decision. No change is made because the changes cited in subparagraph (a) set forth objective standards for the rating.

36. § *1944.26(f)* It was suggested that greater emphasis be placed on credit counseling and a pamphlet be prepared to advise applicants in plain English of their various rights and obligations. Such a publication will be considered as an item separate from this regulation.

37. § *1944.26(g)* A cross reference is added to tie in considerations for repayment ability. The use of budget forms to determine repayment ability is added. One comment recommended that paragraph (5)(ii)(E) be revised to define repayment ability of other credit as a housing cost of not more than 20 percent of the applicant's adjusted income. No change is made since there is no known lender who uses such a criteria and many FmHA loans currently being made exceed such a limitation.

38. § *1944.32* In response to several comments the wording in paragraph (a)(3) is changed to clarify when a single advance may be requested.

39. § *1944.33* In response to recommendations, paragraph (a) is revised to clarify the authority to close loans with interest credit when the income increases above the maximum limitation after loan approval. Several comments objected to the requirement to reverify employment. This requirement is not changed since the intent is to allow such cases to receive only the interest credit to which they are entitled at the time the interest credit agreement is effective. Paragraph (c)(1) is amended to clarify the deferment of principal and interest during construction and subparagraphs (ii), (iii) and (iv) are removed because they are a duplication of specific instructions in the paragraphs to which they refer. One comment suggested paragraph (f) will confuse borrowers while two agreed with the paragraph as published. No change is made since experience with this method has proven effective in assisting borrowers to maintain good payment records.

40. § *1944.34(b)* An objection was stated to paragraph (b)(4) including "regardless of whether such exemptions are actually claimed and received". No change is made as a result of this comment since the paragraph restricts the reduction to exemptions available to the borrower. It was also suggested that a paragraph should be included to define the type of insurance coverage which is acceptable. This addition is not made because the requirement is covered in § 1944.32(e).

41. § *1944.34(c)* One comment recommended that County Office Assistants be authorized to approve Interest Credit Agreements. This is not adopted since such approval is considered similar to loan approval authority and is not included in the responsibilities of a County Office Assistant.

42. § *1944.34(d)* One comment recommended paragraph (d)(1)(i) be changed to allow the inclusion of existing mortgage payments as a part of

the calculation of the borrower's total housing payment. This change is included. A change is also included to provide a method of calculating interest credit for moderate-income borrowers.

43. § *1944.34(f)* Three comments recommended that paragraph (f)(1)(i) be amended to provide interest credit for moderate income borrowers. This change is incorporated in the revision. Six comments referred to paragraph (f)(1)(ii). Two suggested the reserve allowed for the elderly be more specific, two believe the net worth limitation inequitable for farmers, two recommended increasing the limitation and one suggested all applicants over $5,000 net worth should be ineligible for loans. In response, the maximum net worth is increased to $7,500 except a limit of $10,000 is established for senior citizens. The reference to a reasonable reserve for elderly is eliminated. The total asset limitation is also removed. One comment suggested paragraph (f)(1)(iii) be revised to allow interest credit on loans with a term of less than 25 years because it would be less costly to the Government. This change is not made because the intent is to provide the lowest possible payment requirement for low income borrowers. Paragraph (f)(3) is revised to clarify the use of interest credit with transfers and credit sales and to include cases of reamortization. One respondent recommended paragraph (f)(4)(ii) be revised to allow interest credit for loans closed prior to August 1, 1968. No change is made as that is the date on which the law authorizing interest credit was effective. Paragraph (f)(5) is corrected to indicate a maximum income limitation of $10,000 to correspond with paragraph (d)(2)(iii).

44. § *1944.34(g)* Two comments suggested that the requirement for a new verification of employment is an unfair penalty on borrowers. No change is made since the intent is to provide the amount of interest credit which the borrower is properly entitled to receive at the time the interest credit agreement is approved. Paragraph (3) is changed to correct the distribution of items to the Finance Office and include reamortization. The reference to the date of the last cash charge is removed from paragraph (4). This is not considered when determining the effective date of interest credit.

45. § *1944.34(h)* Paragraph (2) has been revised to clarify the time when a corrected interest credit agreement is to be forwarded to the Finance Office. In response to comment, Exhibit G, referred to in paragraph (3), is revised to inform the borrowers of income deductions or exemptions to which they may be entitled. Other editorial changes are made in Exhibit G for clarity.

46. § *1944.34(i)* One comment recommended that paragraph (1)(iii) regarding home improvement is unnecessary and should be deleted. This change is not made because the agency believes the intent of authority for interest credit was to provide modest housing. In response to another comment the word "substantially" is removed and the standard is referred to that for previously occupied homes. As recommended by comment paragraph (3) is revised to delete the reference to "substantial" and to provide for corrective action on interest credit prior to the review period when the County Supervisor becomes aware of increases in borrower income. Paragraph (3)(ii) is changed to remove the determination of necessity to avoid liquidation to qualify for an increase of interest credit.

47. § *1944.34(j)* One comment recommended revision to consider instances where the applicant is receiving too little interest credit. Paragraph (j)(4)(ii) is added to incorporate the change. It was suggested that the requirement for payment in full as outlined in paragraph (3)(ii)(C) be deleted. No change is made since this covers a loan made to an ineligible borrower and the State Director's authority to continue with the loan is adequate provision for justified cases. One comment expressed the belief that borrowers should not be requested to repay improper interest credit in lump sum and that interest should not be charged on such improper advances. This is not adopted since there is provision for regular partial payments and interest is justified since the borrower received benefit to which there was not proper entitlement. Paragraph (4)(i) is revised to clarify the submission of corrected interest credit agreements.

48. § *1944.34(k)* The reasons for cancellation have been expanded to include all reasons covered in other paragraphs. As suggested by two comments a provision has been added for retroactive reinstatement of interest credits after a foreclosure action has been withdrawn.

49. § *1944.34(l)* As recommended the paragraph is revised to clarify that notice of appeal will not be given when the borrower acknowledges a disqualifying income.

50. § *1944.37* One comment suggested that borrowers receiving interest credit loans should not be eligible for unsecured note-only loans. This is not adopted but reference to § 1944.18(b)(1) is added to clarify the fact that all borrowers must meet the same requirements to qualify for a loan secured by note only. Paragraph (f) concerning subsequent loans for construction defects is removed as it is provided for in other paragraphs and has no application under present conditions.

51. § *1944.39* In response to one comment paragraph (g) is revised to clarify and simplify the requirements for servicing loans to employees and allow the State Director to designate servicing by an employee outside the borrower's area of employment. Two comments recommended allowing employees to purchase FmHA inventory property. This is not adopted because of the potential appearance of favoritism in establishing the value of such properties.

52. § *1944.45* One comment recommended that loan funds be set aside when conditional commitments are issued. This is not considered feasible under present shortage of loan funds and the policy of providing such limited funds to applicants having the greatest need for housing. Another suggested conditional commitment applicants be required to certify they have advised potential borrowers that they are not FmHA employees, that the borrowers may report discrimination and have given them the location of the FmHA office. No change is made since applicant eligibility is determined by FmHA only after a personal interview is held in the county office with each applicant.

53. *Exhibit A "Rural Areas of 10,000 to 20,000 Population":* This exhibit is removed and paragraph § 1944.10(e) is revised to require the list to be published in State Supplements.

54. *Exhibit E "Interest Credit Agreement Renewal":* This exhibit is redesignated as "Exhibit G." Changes are made to indicate income deductions to which the borrower may be entitled and to clarify instructions for completing necessary information.

55. *Exhibit E–1 "Borrowers Receiving Forms for Renewing Interest Credit Agreements":* This exhibit is removed since it is a routine report made by the Finance Office and serves no purpose as an exhibit.

56. *Exhibit E–2 "Borrowers Whose Interest Credit Agreements Have Not Been Received":* This exhibit is removed since it is a routine report made by the Finance Office and serves no purpose as an exhibit.

57. *Exhibit F "Mutual Self-Help Housing Guidelines":* The exhibit is redesignated as "Exhibit H." Several comments suggested a complete revision in conjunction with regulations covering

technical assistance grants. Such a revision is planned.

58. *Exhibit G "Information Required to Package Applications for Section 502 Rural Housing Loans"*: This exhibit is redesignated as "Exhibit A."

59. *Exhibit H "Rural Housing Applicant Interview"*: This exhibit has been redesignated as "Exhibit E."

60. *Exhibits F, F-1 and F-2* have been added as guides for the implementation of Application Priority Rating.

61. Two comments were received with recommendation that the regulation should include provision to allow repairs to mobile homes. The inclusion of mobile homes in the FmHA loan program is under consideration.

B. *Exhibit C—Maximum Adjusted Incomes for Rural Housing Programs.* This action has been classified as "significant."

The revision to Exhibit C and the deletion of Exhibit D of Subpart A of Part 1944 was a separate proposed action published for prior rule in the Federal Register September 19, 1980, pages 62432 to 62474. The combining of this action with the revision of 1944–A is taken because Exhibit C is an intricate part of 1944–A and putting the actions together adds to clarity.

In the proposed rule the definition of low income was 80 percent of area median income, or an income necessary to carry a mortgage on a new modest dwelling at a 2 percent interest rate, or the state average of area median income, whichever is greater, except that where 80 percent of area medians exceeds $14,000, low income is the same as the next highest low income in the state which is at or below $14,000, provided it is not lower than an income required to carry a mortgage on a new dwelling with interest at 2 percent.

We received 50 comments, most of which related to the definition of low income. Four comments expressed complete agreement with the definition. Most of the comments expressed disagreement and some stated the definition violated the intent of the law.

We grouped the comments into three general categories as follows:

(1) No low income limit should be below the current national limit of $11,200.

Concern was expressed that the lowering of the income limit eliminates many families from the market who were previously eligible as low income. The concerns were tempered with an understanding that the Agency could not arbitrarily determine that no income limit presently in use would be lowered. The respondents recommended that the benefit of interest credit be extended to moderate-income applicants to offset the deleterious effect of this action on the ability of the FmHA subsidized housing program to meet the needs of applicants at the thresholds that in the past could be served by the program.

No changes were made to the definition of low income because of these comments. The law is clear in its intent that some areas have a lower limit than the current national limit of $11,200. Simultaneously, with the change of income limits we are extending the benefit of interest credits to moderate-income applicants.

(2) Housing cost (affordability) should not be universally applied to all areas, but adjustments to the low income limit for cost justified on an area-by-area basis only after it is determined that the objectives of the RH programs cannot be met without such adjustments.

We agree and affordability is not part of the definition of low income in this Final Rule. A study of housing cost, on an area-by-area basis, showed a need to adjust above 80 percent of area median in the following areas: Puerto Rico, Northern Marianas, and the Trust Territories of the Pacific. No downward adjustments were made to the low income limit because of housing cost. The main impact of adopting this change is that in many areas low income limits are lower than in the proposed rule. This change more closely aligns the low income limit to 80 percent of area median income as intended by law.

(3) Adjusting area low income up to 80 percent of State median or down to 80 percent or the national median (estimated to be $14,000).

Comments received expressed the concern that this adjustment did not accomplish our defined intent.

The intent was to reduce the affect a concentration of an unusually low or high income group has on median income of a small area. Further, it was intended to reduce the affect a city has on the income of the rural areas surrounding the city. This adjustment avoided penalizing these and recognized that in some areas an estimate of median income may be imprecise.

We made the following change to the low income limit in the Final Rule because of these comments. To reduce the affect that an unusually high income group or cities have on rural median income, no area low income limit is higher than 80 percent of the non-metro census regional income (census regions are east, central, south and west). Also, no low income limit is below 60 percent of the non-metro census regional income. The upward adjustment to 80 percent reduces the affect a large concentration of a low-income group may have on the median income in a small area. The adjustment down to 60 percent of the non-metro census regional income reduces the effect an urban center has on rural median incomes.

In addition to the above three general categories of comments, we received comments on the proposed definition of an area. Some comments favored the definition and most preferred a State income limit.

No changes were made to the final rule because of these comments.

The proposed rule also included new moderate-income limits. As proposed moderate income is 110 percent of median, 4,400 over low income or $15,600, whichever was greater.

No changes were made to this definition because of comments received.

Therefore, the low and moderate income limits as set forth in Exhibit C are:

(a) Low income is 80 percent of area median but not less than 60 percent or greater than 80 percent of the non-metro census regional income with some adjustments for housing cost, and

(b) Moderate income is 110 percent of area median, 4,400 over low income or $15,600, whichever is greater.

C. *Granting Interest Credits to Moderate-Income Borrowers.* This final action has been reviewed under procedures established in Secretary's Memorandum 1955 to implement Executive Order 12044, and has been classified as "significant." The emergency nature of this action warrants publication of this final action without completion of a Final Impact Statement. A Final Impact Statement will be developed after public comments have been received.

Gordon Cavanaugh, Administrator, has determined that an emergency situation exists which warrants publication without opportunity for a public comment period on this final action because this action is a statutory requirement and previous public participation indicates a strong need for immediate action. Furthermore, the housing industry is suffering because high interest costs are keeping otherwise eligible families from purchasing homes. Comments have been solicited for 60 days after publication of this document, and this emergency final action will be scheduled for review so that a final document, discussing comments

received and any amendments required, can be published in the Federal Register as soon as possible.

FmHA has granted interest credits to low-income borrowers since 1968. In 1972, interest credits were extended to moderate-income borrowers if they were low income at the time the loan was made. This action extends interest credit to new and existing moderate-income borrowers who may qualify. The benefit will be extended to new borrowers at time of loan closing. It is also available to existing moderate-income borrowers if they qualify and request the County Supervisor to extend the benefit. Within the next six months FmHA will develop procedures for notifying existing moderate-income borrowers in writing that they may apply for interest credit.

Borrowers who take advantage of this benefit are affected by the provision of Part 1951, Subpart I of Chapter XVIII, Subtitle B, Title 7 of Code of Federal Regulations. (Recapture of Section 502 Rural Housing Subsidy.) In brief, this part requires that any subsidy (interest credit) received by the borrower may be recaptured at time of sale or non-occupancy of the dwelling by the borrower.

In this rule, the amount of interest credit a moderate-income borrower may receive is the lesser of an amount determined by formula or the use of an interest rate as determined from Exhibit D. The formula calls for 20 percent of the adjusted family income to pay principal, interest, taxes and insurance. Exhibit D sets minimum interest rates for different income levels. The minimum interest rate is 3½ percent at the lowest moderate income level for an area and ½ of a percent higher for each increase in income of $400 over the low income limit for an area.

The interest rates in Exhibit D are structured to provide a continuum of service from maximum subsidy for low income to full interest rate for those borrowers whose income exceeds median income level.

This method of granting interest credit to moderate-income borrowers was selected because it should encourage the participation of moderate-income applicants from the complete range of moderate-income households. It provides an incentive for applicants to negotiate the best price on a dwelling and for a level of subsidy which makes housing affordable and reduces government costs.

Therefore, Chapter XVIII is amended as follows:

Subchapter B—Loans and Grants Primarily for Real Estate Purposes

PART 1822—RURAL HOUSING LOANS AND GRANTS

Subpart A—Section 502 Rural Housing Loan Policies, Procedures, and Authorizations [Removed]

1. Subpart A of Part 1822 is hereby removed from the Code of Federal Regulations.

Subpart B—Section 502 Rural Housing Weatherization Loans

§ 1822.21 [Amended]

2. In § 1822.21, lines 13, 14, 15, 16, 17, and 18 change the reference from "§ 1822.3(c), and (d), and § 1822.5 (FmHA Instruction 444.1, paragraph III C and D and paragraph V). Section 1822.3(e), (n), (o), and § 1822.4 (FmHA Instruction 444.1, paragraph III E, N, and O, and paragraph IV)" to "§§ 1944.10 and 1944.26(b) of Part 1944 Subpart A. §§ 1944.8, 1944.9 and 1944.15 of Part 1944 Subpart A".

§ 1822.25 [Amended]

3. In § 1822.25(a), line 10, change the reference from "1822" to "1944".

Exhibit A [Amended]

4. In Exhibit A, paragraph A.1., line 9, change the reference from "7 CFR 1822.3(c)" to "7 CFR § 1944.10".

5. In Exhibit A, paragraph A.2., lines 3 and 4, change the reference from "this part, available in any FmHA office" to "Part 1944."

Subpart G—Rural Housing Site Loan Policies, Procedures, and Authorizations

§ 1822.263 [Amended]

6. In § 1822.263(c), line 2, change the reference from "§ 1822.3(c)" to "§ 1944.10 of Part 1944 Subpart A".

§ 1822.267 [Amended]

7. In § 1822.267(1)(1), lines 1 and 2, change the reference from "Subpart H of Part 1822" to "§ 1944.44 of Part 1944 Subpart A".

Subpart H—Rural Housing Conditional Commitments [Removed]

8. Part 1822 Subpart H is hereby removed from the Code of Federal Regulations.

SUBCHAPTER F—SECURITY SERVICING AND LIQUIDATIONS

PART 1872—REAL ESTATE SECURITY

Subpart A—Servicing and Liquidation of Real Estate Security for Loans to Individuals and Certain Note-Only Cases

§ 1872.18 [Amended]

9. In § 1872.18(b)(14), line 12, change the reference from "1822 of Subchapter B" to "1944."

§ 1872.23 [Amended]

10. In § 1872.23, line 1, change the reference from "§ 1822.3(e)" to "§ 1944.2(e) of Part 1944 Subpart A".

SUBCHAPTER H—PROGRAM REGULATIONS

PART 1904—LOAN AND GRANT PROGRAMS (INDIVIDUAL)

Subpart G—Section 504 Rural Housing Loans and Grants

§ 1904.301 [Amended]

11. In § 1904.301, lines 10 and 11, change the reference from "Part 1822 of this Chapter (FmHA Instruction 444.1)" to "Part 1944".

§ 1904.304 [Amended]

12. In § 1904.304(a), lines 6 and 7, change the reference from "Part 1822 of this Chapter, (FmHA Instruction 444.1)" to "Part 1944".

13. In § 1904.304(a)(2), lines 8, 9 and 10, change the reference from "§ 1822.4(d) and § 1822.12(d) of this Chapter (Paragraph IV D and XII D of FmHA Instruction 444.1)" to "§§ 1944.8(a)(2)(ii) and 1944.30(b)(7) of Part 1944 Subpart A".

§ 1904.305 [Amended]

14. In § 1904.305(g), lines 2, 3 and 4, change the reference from "§ 1822.6(a)(14) of this Chapter, (Paragraph VI A 14 of FmHA Instruction 444.1.)" to "§ 1944.3(b) (9) and (10) of Part 1944 Subpart A".

§ 1904.306 [Amended]

15. In § 1904.306(d) lines 3, 4, and 5 change the reference from "§ 1822.12(d) of this Chapter (Paragraph XII D of FmHA Instruction 444.1)" to "1944.30(b)(7) of Part 1944 Subpart A".

PART 1910—GENERAL

Subpart B—Credit Reports (Individual)

§ 1910.53 [Amended]

16. In § 1910.53, lines 9, 10, 11 and 12, change the reference from "§ 1822.12(d), Subpart A, Part 1822, Subchapter B of this Chapter (paragraph XII D of FmHA

Instruction 444.1)" to "§ 1944.30(b)(7) of Part 1944 Subpart A."

PART 1924—CONSTRUCTION AND REPAIR

Subpart A—Planning and Performing Construction and Other Development

§ 1924.5 [Amended]

17. In § 1924.5(i) lines 5, 6, 7, 8 and 22, 23 and 24 change the reference from "FmHA Instruction 444.2 (available in all FmHA offices) and Subpart H of Part 1822 of this Chapter (FmHA Instruction 444.9)" to "Part 1944 Subpart A" and from "Subparts A and D of Part 1822 of this Chapter (FmHA Instructions 444.1 and 444.5)" to "Subpart D of Part 1822 (FmHA Instruction 444.5) and Part 1944 Subpart A".

PART 1933—LOAN AND GRANT PROGRAM (GROUP)

Subpart I—Self-Help Technical Assistance Grants

§ 1933.403 [Amended]

18. In § 1933.403(j), lines 2, 3 and 4, change the reference from "§ 1822.3(c) of this Chapter (FmHA Instruction 444.1)." to "§ 1944.10 of Part 1944 Subpart A".

PART 1943—FARM OWNERSHIP, SOIL AND WATER AND RECREATION

Subpart A—Insured Farm Ownership Loan Policies, Procedures, and Authorizations

§ 1943.24 [Amended]

19. In § 1943.24(b)(2) lines 9, 10 and 11, change the reference from "Part 1822 of this Chapter (FmHA Instruction 444.1)" to "Part 1944".

PART 1944—HOUSING

Subpart D—Farm Labor Housing Loan and Grant Policies, Procedures, and Authorizations

§ 1944.153 [Amended]

20. In § 1944.153(e), lines 4 and 5, change the reference from "Subpart A of Part 1822 of this Chapter (FmHA Instruction 444.1)" to "Part 1944 Subpart A".

§ 1944.164 [Amended]

21. In § 1944.164(j)(2)(ii) lines 2, 3, 4 and 5, change the reference from "Subpart A of Part 1822 and Subpart D of Part 1804 of this Chapter (FmHA Instruction 444.1 and 424.5)" to "Part 1804 Subpart D (FmHA Instruction 424.5) and Part 1944 Subpart A".

22. In § 1944.164(n), lines 5, 6, 7 and 8, change reference from "§ 1822.7 (j) of Subpart A of Part 1822 of this Chapter (FmHA Instruction 444.1, paragraph VII J)" to "§ 1944.18 (b) (5) of Part 1944 Subpart A".

§ 1944.168 [Amended]

23. In § 1944.168(c)(1)(ii) lines 3, 4, 5 and 6, change the reference from "Section 1822.10(b)(2) of Subpart A of Part 1822 of this Chapter (paragraph X B 2 of FmHA Instruction 444.1)" to § 1944.18(b)(6) of Part 1944 Subpart A".

Subpart E—Rural Rental Housing Loan Policies, Procedures, and Authorizations

§ 1944.205 [Amended]

24. In § 1944.205(d) change the reference from "Exhibits C and D of Subpart A of part 1822, (Farmers Home Administration (FmHA) Instruction 444.1)" to "Exhibit C of Part 1944 Subpart A."

25. In § 1944.205(1) change the reference from "§ 1822.3(c) of Subpart A to Part 1924 (paragraph III C of FmHA Instruction 444.1)" to "§ 1944.10 of Part 1944 Subpart A."

§ 1944.215 [Amended]

26. In § 1944.215(i) (1) change the reference from "Exhibits C and D of Subpart A to Part 1822, (FmHA Instruction 444.1)" to "Exhibit C of Part 1944 Subpart A."

§ 1944.222 [Amended]

27. In § 1944.222(b) change the reference from "Part 1807 and Subpart A of Part 1822 of this Chapter (FmHA Instructions 427.1 and 444.1, respectively)" to "Subpart A of Part 1944 and Part 1807 of this Chapter (FmHA Instruction 427.1)".

Subpart K—Technical and Supervisory Assistance Grants

§ 1944.506 [Amended]

28. In § 1944.506(d) lines 5, 6 and 9, 10 and 11 change the reference from "§ 1822.3(o) of this Chapter (FmHA Instruction 444.1, paragraph III O)" to "§ 1944.2(c) of Part 1944 Subpart A", and from "1822 of this Chapter (Exhibit C of FmHA Instruction 444.1)" to "1944."

29. In § 1944.506(f), lines 2, 3 and 4, change the reference from "§ 1822.3(c) of Subpart A of Part 1822 of this Chapter (paragraph III C of FmHA Instruction 444.1)" to "§ 1944.10 of Part 1944 Subpart A".

PART 1945—EMERGENCY

Subpart A—Emergency Loan Policies, Procedures, and Authorizations

§ 1945.89 [Amended]

30. In § 1945.89(a)(2)(ii), lines 8 and 9, change the reference from "1822 of this Chapter (FmHA Instruction 444.1)" to "1944".

Subpart C—Economic Emergency Loans

§ 1945.129 [Amended]

31. In § 1945.129(b)(2)(i)(D), lines 8 and 9, change the reference from "§ 1822 of this Chapter (FmHA Instruction 444.1)" to "1944".

PART 1948—RURAL DEVELOPMENT

Subpart B—Section 601—Energy Impacted Area Development Assistance Program

§ 1948.84 [Amended]

32. In § 1948.84(d)(2), lines 8 and 9, change the reference from "Part 1822 Subpart A (FmHA Instruction 444.1)" to "Part 1944 Subpart A".

PART 1951—SERVICING AND COLLECTIONS

Subpart A—Account Servicing Policies

§ 1951.17 [Amended]

33. In § 1951.17(a)(2)(i)(B), lines 4, 5 and 6, change the reference from "§ 1822.3(n) of Subpart A of Part 1822 of this Chapter (paragraph N of FmHA Instruction 444.1)" to "§ 1944.2(d) of Part 1944 Subpart A".

34. In § 1951.17(b)(1)(i), lines 2, 3, 4, change the reference from "§ 1822.11(c) of Subpart A of Part 1822 of this Chapter, (Paragraph XI of FmHA Instruction 444.1)" to "§ 1944.20(e) of Part 1944 Subpart A".

35. In § 1951.17(b)(6), lines 8, 9 and 10, change the reference from "Exhibit E Subpart A of Part 1822 of this Chapter (FmHA Instruction 444.1)" to "§ 1944.34 of Part 1944 Subpart A".

PART 1980—GENERAL

Subpart D—Rural Housing Program Loans

§ 1980.302 [Amended]

36. In § 1980.302(a), lines 5 and 6, change the reference from "Exhibit D to Part 1822, Subpart A (FmHA Instruction 444.1, Exhibit D)" to "Exhibit C of Part 1944 Subpart A".

§ 1980.306 [Amended]

37. In § 1980.306, lines 3, 4, 5 and 6, change the reference from "§ 1822.3(c) of Subpart A of Part 1822 of this Chapter (FmHA Instruction 444.1, paragraph III C)" to "§ 1944.10 of Part 1944 Subpart A".

§ 1980.330 [Amended]

38. In § 1980.330(h)(1), lines 6, 7 and 8, change the reference from "C to Subpart A, Part 1944 of this Chapter."

PART 1944—HOUSING

39. As added, Part 1944, Subpart A reads as follows:

Subpart A—Section 502 Rural Housing Loan Policies, Procedures, Authorizations

Sec.

1944.1 General.
1944.2 Definitions.
1944.3 Loan purposes.
1944.4 Loan restrictions.
1944.5–1944.7 [Reserved]
1944.8 Income eligibility requirements.
1944.9 Other eligibility requirements.
1944.10 Rural area designation.
1944.11 Property requirements.
1944.12–1944.14 [Reserved]
1944.15 Ownership requirements.
1944.16 Building requirements.
1944.17 Maximum loan amounts.
1944.18 Security requirements.
1944.19–1944.21 [Reserved]
1944.22 Refinancing debts.
1944.23 Loans to Farm Ownership (FO), Individual Soil and Water (SW), and Recreation (RL) borrowers.
1944.24 Technical services.
1944.25 Rates, terms, and source of funds.
1944.26 Application processing.
1944.27–1944.29 [Reserved]
1944.30 Preparation of loan docket.
1944.31 Loan approval.
1944.32 Actions subsequent to loan approval.
1944.33 Loan closing.
1944.34 Interest credit.
1944.35–1944.36 [Reserved]
1944.37 Subsequent section 502 loans.
1944.38 Mutual self-help housing loans.
1944.39 RH loans to FmHA employees and loan closing officials.
1944.40 Rural housing disaster (RHD) loans.
1944.41–1944.43 [Reserved]
1944.44 Borrower graduation.
1944.45 Conditional commitments.
1944.46 Construction financing for builders by private credit sources.
1944.47–1944.50 [Reserved]
Exhibit A Information Required to Package Applications for Section 502 Rural Housing Loans
Exhibit B Address for Authentication of Alien Registration Cards
Exhibit C Maximum Adjusted Income Limits for Rural Housing Programs
Exhibit D Minimum Interest Rates for Calculating Interest Credit for Moderate-Income Borrowers
Exhibit E Rural Housing Applicant Interview
Exhibit F Application Priority Rating
Exhibit F–1 Sample letter to applicants for quarterly notice of RH application priority
Exhibit F–2 Sample letter to notify those with applications on file, of the processing priority system
Exhibit G Interest Credit Agreement Renewal
Exhibit H Mutual Self-Help Housing Guidelines
Exhibit H–1 Membership agreement
Exhibit H–2 Promissory note

Subpart A—Section 502 Rural Housing Loan Policies, Procedures, and Authorizations

§ 1944.1 General.

This Subpart sets forth the policies and procedures and delegates authority for making Section 502 Rural Housing (RH) loans to individuals under Title V of the Housing Act of 1949 as amended. The objective of Section 502 loans is to provide eligible persons who will live in rural areas an opportunity to obtain adequate but modest, decent, safe, and sanitary dwellings and related facilities. The requirements of Farmers Home Administration (FmHA) Instruction 1901–E "Civil Rights Compliance Requirement" will be applied as appropriate. Loans and services provided under this Subpart shall not be denied to any person or applicant as a result of race, sex, national origin, color, religion, marital status, age, physical or mental handicap (applicant must possess the capacity to enter into a legal contract for services), receipt of income from public assistance, or because the applicant has, in good faith, exercised any right under the Consumer Protection Act.

§ 1944.2 Definitions.

The following definitions apply to this Subpart:

(a) *Area.* Areas for the purpose of determining maximum income limitations are set forth in Exhibits C and D. They may include substate planning districts, entire states, counties or FmHA districts.

(b) *Above-moderate income.* An adjusted annual income that exceeds the maximum limit for moderate-income households for the area as provided in Exhibit C of this Subpart.

(c) *Adjusted annual iincome.* Annual income as defined in Paragraph (d) of this section less 5 percent thereof and less an additional $300 for each dependent minor person (excluding the applicant and foster children) who is a member of the household.

(d) *Annual income.* Planned income to be received by the applicant, and all adult members of the household during the next twelve months. See § 1944.8(c) for supplemental rules on determining annual income.

(e) *Cosigner.* A party who joins in the execution of a promissory note to guarantee its repayment by the borrower. The cosigner becomes jointly and severally liable to comply with the terms of the note in the event of the borrower's default.

(f) *County Supervisor.* Includes Assistant County Supervisor for all duties and responsibilities which are included in the employee's job description and for authorizations which have been delegated in writing in accordance with FmHA Instruction 2006–F (available in any FmHA office.) For the areas of Alaska and the Western Pacific Territories it also includes the Area Supervisor.

(g) *Existing dwelling.* One which is (1) more than 1 year old, or (2) previously occupied as a residence.

(h) *Extended family.* A family unit consisting of parents, children and other relatives who will live together on a permanent basis as a part of the household.

(i) *Farm.* Includes the total acreage of one or more tracts of land which (1) is owned by the applicant, (2) is operated as a single unit, (3) is in agricultural production, and (4) annually will produce agricultural commodities for sale and home use with a gross value of at least $400 based on 1944 prices. To aid in estimating the gross annual value of agricultural commodities produced on a particular farm, a State Supplement will be issued listing the 1944 prices for the principal farm commodities in the State.

(j) *Household.* The applicant and all other persons who will make the applicant's dwelling their primary residence for all or part of the next 12 months.

(k) *Low income.* 80 percent of the area median income except that it shall not be less than 60 percent or greater than 80 percent of the non-metro census regional income adjusted for housing cost. Maximum limits for low-income are set forth in Exhibit C of this Subpart.

(l) *Moderate income.* The greater of 110 percent of the area median income, low-income +$4,400, or $15,600. Maximum limits for moderate-income are set forth in Exhibit C of this Subpart.

(m) *Nonfarm tract.* A parcel of land that is not a farm and is located in a rural area, or a building site that is part of a farm, and which secures an RH loan in accordance with § 1944.18(b)(10).

(n) *Place.* An area containing a concentration of inhabitants within a determinable unincorporated area.

(o) *Rehabilitation.* Major repairs and improvements to existing dwellings such as the installation or completion of bathroom facilities, installation of major items of equipment, additions, or structural changes.

(p) *Senior citizen.* A "senior citizen" is a person who is 62 years of age or older.

(q) *Town.* A "town" means a municipality similar to a city but not a New England-type town which resembles a township or county in most States.

(r) *Urban area.* Either a town, village, city, place or any associated combination thereof, which with the immediately adjacent densely settled areas has a population in excess of the limits prescribed in § 1944.10(a)(2) (i) and (ii).

(s) *Very low-income.* 50 percent of area median income. Maximum limits for very low-income are set forth in Exhibit C of this Subpart.

§ 1944.3 Loan purposes.

(a) A loan may be made to an eligible applicant for the following purposes:

(1) To buy, build, rehabilitate, improve or relocate a dwelling and provide related facilities for use by the applicant as a permanent residence.

(2) To buy, build, rehabilitate, improve or relocate a dwelling, and provide related facilities for a farm owner to provide housing to be occupied by the farm manager, tenants, sharecroppers or farm laborers.

(3) To refinance secured debts or unsecured debts incurred after the date of application as provided in § 1944.22.

(b) A loan made under § 1944.3(a) (1) or (2) may be used to:

(1) Purchase, in fee title, a minimum adequate site, as outlined in § 1944.11(c) on which the improvements are or will be located, if the applicant does not own an adequate site.

(2) Pay reasonable acquisition cost for a leasehold interest in a minimum adequate site at the time of making the initial RH loan.

(3) Provide an adequate and safe water supply and/or an adequate sewage disposal facility.

(4) Provide site preparation, including grading, foundation plantings, seeding or sodding of lawns, trees, walks, yard fences and driveways to building sites.

(5) Purchase and install essential equipment in the dwelling including items such as a range, refrigerator, clothes washer or clothes dryer, if these items are normally sold with dwellings in the area and if purchase of these items is not the primary purpose of the loan.

(6) Provide special design features or equipment when necessary because of physical handicap or disability of the applicant or a member of the household.

(7) Purchase and install approved solar systems and approved furnaces and space heaters which use a type of fuel that is commonly used, and is economical and dependably available.

(8) Provide storm cellars, and similar protective structures.

(9) Pay incidental expenses such as fees for credit reports, tax monitoring service, legal, title clearance, loan closing, architectural, surveying and other technical services.

(10) Pay reasonable connection fees for utilities such as water, sewer, electric or gas, which are required to be paid by the borrower and which cannot be paid from other funds.

(11) Pay the borrower's share of Social Security taxes for labor hired by the borrower in connection with making the planned improvements.

(12) Pay real estate taxes which are due and payable on the building and/or site at the time of closing on an initial loan, if this amount is not a substantial part of the loan.

(13) To establish escrow accounts for the payment of real estate taxes or property insurance premiums in those states where the use of escrow accounts is authorized by the National Office.

(14) Provide living area for all members of the applicant's household, including "extended family," as provided in § 1944.16(a)(5).

(15) Pay part of the cost of constructing, remodeling, repairing or buying a domestic water system or waste disposal system, provided that the following conditions are met, unless exceptions are authorized by the National Office:

(i) The facility must be jointly owned and used by not more than 10 participants.

(ii) The domestic water or waste disposal system cannot be provided with a Community Facilities loan.

(iii) The group must act as individuals and not as a legal entity such as a partnership, corporation or association.

(iv) The facility will be located in a rural area and will be used only for normal home use.

(v) The applicant will give FmHA a mortgage as required in § 1944.18(a), including the applicant's interest in the system if it is practical to mortgage the system. The interest of any co-owners of the jointly owned facility who are not applicants may be excluded from the mortgage on prior approval by the State Director, as provided in § 1944.18(b)(8).

(vi) The owners have written agreements as to the construction, use, maintenance and repair of the facility and obtain necessary jointly owned easements.

(vii) The facility will cost not more than $50,000 or have a depreciated replacement value that does not exceed $50,000 if such facility is being purchased, enlarged, or improved.

(viii) All funds to be used to finance construction or installation of the joint facility will be deposited in a supervised bank account.

§ 1944.4 Loan restrictions.

(a) Loans will not be made to a homestead entryman or desert entryman to improve the entry prior to receipt of patent.

(b) Loan funds may not be used to:

(1) Buy or improve income-producing land, or buildings to be used for income-producing purposes or buildings not essential for RH purposes.

(2) Pay fees, charges or commissions such as finders' fees, fees for packaging the application or placement fees for the referral of prospective applicants to FmHA.

(c) A loan will not be made to an applicant whose previous FmHA debts have been settled pursuant to Part 1864 of this Chapter (FmHA Instruction 456.1) or by release from personal liability under Subpart A of Part 1955, as reflected by the County Office records, or where settlement under such regulation is contemplated, unless failure to pay the indebtedness was the result of circumstances beyond the applicant's control, or the conditions which necessitated the debt settlement or release, other than weather hazards, disasters, or price fluctuations, have been removed or will be removed by making the loan. Before approving the property or causing such an applicant to incur any expense in connection with the loan the County Supervisor will complete Form FmHA 431–2, "Farm and Home Plan," or Form 431–3, "Household Financial Statement and Budget," and send it with the application, any available case folders, and recommendations to the State Office for a determination as to whether to proceed with the development of the loan docket.

§§ 1944.5–1944.7 [Reserved]

§ 1944.8 Income eligibility requirements.

(a) An applicant is eligible for a Section 502 loan only if the following requirements are met:

(1) The adjusted annual income of the applicant's household as defined in § 1944.2(c) does not exceed the applicable income limit in Exhibit C. Exceptions to this requirement may be authorized by the State Director in accordance with § 1944.33 (a) or (b), or by the National Office.

(2) Repayment ability, as provided in § 1944.20(g), is demonstrated in the following manner:

(i) The applicants have adequate and dependably available income. The

determination of income dependability will include consideration of the applicant's past history of annual income and/or the history of the typical annual income of others in the area with similar types of employment. Such income should be sufficient to meet living expenses, pay taxes, insurance and maintenance costs, and to make required payments on all obligations including the Section 502 loan; or

(ii) The applicants obtain a co-signer with dependably available income which, together with the applicants' income, will be sufficient to repay the loan. The co-signer must be an individual but may not be a member of the applicant's household.

(b) All adult members of the household whose income must be included to meet the repayment requirements in paragraph (a)(2)(i) of this section will be considered applicants, and their signatures on the promissory note will be required as necessary to assure repayment.

(c) Annual income as defined in § 1944.2(c) will be determined as follows:

(1) The income of all adults, including the spouse, will be included for either full-time or part-time employment if presently employed. If the other adult or spouse is not presently employed but there is a recent history of such employment, that person's income will be considered unless the borrower and the person involved sign a statement that the person is not presently employed and does not intend to resume employment in the foreseeable future or, if interest credit is involved, during the term of the Interest Credit Agreement. The statement will be filed in the borrower's case file.

(2) Income from all sources is included except as provided in paragraph (c)(3) of this section. Income sources include, but are not limited to:

(i) Gross income from wages, salaries, and commissions, including that from seasonal type work which can be expected to be repetitious.

(ii) All expected overtime and bonus income which can reasonably be considered dependable.

(iii) All net farm and nonfarm business income. Projected farm or nonfarm business losses will be considered as "0" in determining annual income.

(iv) Pensions, Social Security, welfare, and unemployment compensation.

(v) Child support payments and other payments made on behalf of minors.

(vi) The income of an applicant's spouse unless the spouse has been living apart from the applicant for at least six months for reasons other than military or work assignment or court proceedings for divorce or legal separation have been commenced.

(vii) GI bill benefits, fellowships, scholarships, and assistantships.

(viii) Alimony, or other spousal support payment.

(ix) Proceeds from the sale of equipment, mineral rights or real estate sold under long-term contract (usually more than 3 years).

(3) The following income will not be included in determining annual adjusted income, although it will be included under § 1944.26 (c)(2) and (f) for documenting repayment ability:

(i) Income received by a full time student (*who is not* the applicant or co-applicant) from employment or income from GI Bill benefits, fellowships, scholarships, or assistantships for schooling.

(ii) Proceeds from the sale of equipment, mineral rights, or real estate sold under a short term contract (usually 3 years or less).

(iii) Cash value of food stamps, real estate tax exemptions, or similar types of assistance.

(iv) Payments received for the care of foster children, foster adults or for services rendered as a volunteer on a project sponsored by any of the following programs:

(A) Retired Senior Volunteer Program.

(B) Foster Grandparent and Older American Community Service Programs (as either a foster grandparent, senior health aide or senior companion).

(C) National Volunteer Programs to Assist Small Business and Promote Volunteer Service by Person With Business Experience.

(D) Peace Corps, VISTA, or any other volunteer program sponsored by ACTION.

(v) Allowances, such as training and travel expenses, paid by the Department of Labor to CETA participants. (Wages paid by the employers of CETA workers will be included.)

(vi) Any payments received by "live in" aides for members of a senior citizen borrower's household, paid by state or federal programs which specifically exclude the cost of shelter from the amount received.

(4) In determining the applicant's annual income the following deductions are allowed:

(i) A deduction may be made in the same manner as outlined in Internal Revenue Service (IRS) regulations for the exhaustion, wear and tear, and obsolescence of depreciable property used in the applicant's trade, business, or farming operation. The applicant must provide an itemized schedule showing the depreciation claimed. The schedule should be consistent with the amount of depreciation actually claimed for these items for Federal income tax purposes.

(ii) A deduction may be made in the same manner as outlined in IRS regulations for necessary work related expenses actually paid by the employee in excess of the amount reimbursed by the employer. The deduction must be reasonable and, in the judgment of the approving official, should be deducted from an employee's income to reflect annual income on an equal basis with other employed persons. Deductions, however, are not permitted for the following:

(A) Transportation to and from work.

(B) Cost of meals incurred on one day business trips.

(C) Educational expenses except those incurred to meet the minimum requirements for the employee's present position.

(D) Fines and penalties for violation of laws.

(iii) A maximum aggregate deduction of $400 per month may be made for child care or disabled dependent care which is necessary to enable the borrower to be gainfully employed. The deduction will be based only on monies actually paid for care services. Payments for these services may not be made to persons whom the borrower is entitled to claim as dependents for income tax purposes. Full justification for such deduction must be recorded in detail in the applicant's loan docket.

(iv) A maximum aggregate deduction of $400 per month may be made for full time nursing home or institutional type care which cannot be provided in the home, for a member of the household. Such care must be expected to be required for a period of six months or more. The deduction will be limited to expenditures actually paid for such services.

§ 1944.9 Other eligibility requirements.

In addition to the income eligibility requirements of § 1944.8, the applicant must:

(a) Qualify as one of the following:

(1) A person who does not own a dwelling which is structurally sound, functionally adequate, and which is large enough to accommodate the needs of the applicant, or

(2) A farmowner without decent, safe and sanitary housing for the farmowner's own use or for the use of farm tenants, sharecroppers, farm laborers, or farm manager.

(b) Be without sufficient resources to provide the necessary housing or related facilities, and be unable to secure the necessary credit from other sources

upon terms and conditions which the applicant could reasonably be expected to fulfill. If the applicant has only an undivided interest in the land to be improved, those co-owners whose execution of the mortgage is required under § 1944.18(b)(8) must also be unable to provide the improvement with their own resources or obtain the necessary credit elsewhere either individually or jointly with the applicant.

(c) Be a natural person (individual) who resides as a citizen in any of the 50 States, the Commonwealth of Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, or the Trust Territory of the Pacific Islands, or a non-citizen who resides in one of the foregoing areas after being legally admitted for permanent residence or on indefinite parole. Permanent residents can verify their status by presentation of Form I–551 "Alien Registration Receipt Card" or any later revision of the form. Those on indefinite parole must present Form I–94 "Arrival/Departure Card" or any later revision of the form. The County Supervisor must further authenticate such information through the Immigration and Naturalization Service if the authenticity of the information provided is in doubt (See Exhibit B).

(d) Possess legal capacity to incur the loan obligation, and have reached the legal age of majority in the State, or have had the disability of minority removed by court action.

(e) Have the potential ability to personally occupy the home on a permanent basis, if the loan is to provide housing for the applicant's own use. To illustrate, because of the probability of their being transferred or moving after graduation, military personnel on active duty and full-time students will not be granted loans unless:

(1) The applicant, if military personnel, will be discharged at an early date (usually within 1 year). The family must continue to occupy the home in case the borrower is transferred to another duty station before discharge, and

(2) The applicant intends to make the home a permanent residence and there are reasonable prospects that employment will be available in the area after graduation or discharge, and

(3) An adult member of the household will be available to make inspections if the home is being constructed and to sign checks for work performed.

(f) Have a credit history which indicates a reasonable ability and willingness to meet obligations as they become due. The following *will not* indicate an unacceptable credit history:

(1) "No history" of credit transactions by the applicant.

(2) Bankruptcies, foreclosures, judgments, or delinquent payment records which occurred more than 36 months before the application if no recent similar situations have occurred.

(3) Isolated incidents of delinquent payments which do not represent a general pattern of unsatisfactory or slow payment.

(4) Recent bankruptcy, foreclosure, judgment or delinquent payment when the applicant can satisfactorily demonstrate that:

(i) The circumstances causing any of the above were of a temporary nature, were beyond the applicant's control and have been removed. Examples: loss of job; delay or reduction in government benefits, or other loss of income; increased expenses due to illness, death, etc.

(ii) The adverse action or delinquency was the result of a refusal to make full payment because of defective goods or services or as a result of some other justifiable dispute relating to the goods or services purchased or contracted for.

§ 1944.10 Rural area designation.

(a) For the purposes of this Subpart, a rural area is:

(1) Open country which is not part of or associated with an urban area, or

(2) Any town, village, city or place, including the immediately adjacent densely settled area, which is not part of or associated with an urban area and which:

(i) has a population not in excess of 10,000 if it is rural in character, or

(ii) has a population in excess of 10,000 but not in excess of 20,000, and

(A) is not contained within a Standard Metropolitan Statistical Area (SMSA), and

(B) has a serious lack of mortgage credit for low- and moderate-income households as determined by the Secretary of Agriculture and the Secretary of Housing and Urban Development.

(b) A determination that open country, or any town, village, city, or place is not part of or associated with an urban area must include a finding that any densely populated section of the area in question is separated from the densely populated section of any adjacent urban area by open spaces (which are undeveloped, agricultural, or sparsely settled) other than open spaces due to physical barriers, commercial or industrial developments, public parks and similar open spaces, and areas reserved for recreational purposes. This determination should also consider such other factors as:

(1) The existence of known plans for development within the near future (e.g., 3 to 5 years) of a substantial portion of the intervening land between the area in question and an urban area.

(2) Separate school systems and separate utilities such as water and sewer and solid waste disposal; however, consolidated schools and/or combined facilities do not necessarily indicate being "associated with".

(c) Two or more towns, villages, cities, and places may have contiguous boundaries, and each be considered separately if they are not otherwise associated with each other, as determined after consideration of paragraphs (a) and (b) of this section.

(d) The latest official Bureau of the Census data or more recent official population counts will be used in determining population.

(e) The State Director will be responsible for determining boundaries of rural areas and shall issue an appropriate State Supplement to identify such areas by list and maps. Areas in excess of 10,000 population will be identified as "rural areas" in a State Supplement only after written authorization by the National Office and compliance with the requirement of subparagraph (a)(2)(ii) above.

(f) When a change of designation from rural to nonrural is anticipated, all developers and other interested parties should be notified.

(g) If an area designation is changed from rural to nonrural, loans may be made only in the following instances:

(1) Applications received by FmHA prior to the change of designation may be processed.

(2) New conditional commitments will be issued and existing conditional commitments will be honored only in conjunction with the approval of RH loan applications which were received prior to the date the area was designated nonrural.

(3) Credit sales and transfers with assumptions may be processed in such areas as authorized by § 1955.103(e) of Subpart C of Part 1955, and § 1872.18(c)(1)(i) of Subpart A, Part 1872, (FmHA Instruction 465.1 paragraph XVIII(C)(1)(a)).

(4) Subsequent loans may be made on property in an area where the designation was changed from rural to nonrural after the initial loan was made:

(i) To make necessary repairs.

(ii) To pay equity in connection with an assumption and transfer of an RH loan.

§ 1944.11 Property requirements.

(a) The property on which the loan is made must be located on a farm, or in a designated rural area as defined in § 1944.10 or in an area the designation of which has been changed as provided in § 1944.10(g). A nonfarm tract to be purchased or improved with loan funds must not include or be closely associated with farm service buildings.

(b) Unless an exception is granted by the National Office (notwithstanding the requirement of Part 1804 Subpart D § 1804.67(b) FmHA Instruction 424.5 Paragraph VII B) the property must be contiguous to and have direct access from an:

(1) All-weather street which has been dedicated to and accepted by a public body which shall be responsible for continuous maintenance, or

(2) Extended driveway if:

(i) The driveway does not potentially serve more than two individual dwellings,

(ii) The applicant obtains title or an easement to the driveway and it is included in the security for the loan, and

(iii) The maintenance cost for the driveway is considered in determining the applicant's repayment ability.

(c) If the property is being purchased with loan funds, it may not be larger than a minimum adequate site, which is the smallest area sufficient for the dwelling, related facilities, and a yard. In determining whether the property is a minimum adequate site the following considerations apply:

(1) In case of purchase of a site on which to construct a dwelling, or purchase of a new dwelling and site, the site should be not more than one acre of land unless more than one acre is needed to provide for an adequate water supply or waste disposal system.

(2) When an existing dwelling is being purchased or debts are being refinanced, the site may include more than one acre only under the following conditions:

(i) When an existing dwelling is being purchased, the seller will sell the dwelling only with the entire site on which it is located and the cost of extra land is not a substantial portion of the loan, or

(ii) In a refinancing case, the extra land cannot be sold for a significant amount, or

(iii) More than one acre is needed to provide an adequate water supply or waste disposal system.

(3) In all cases, the buying of a site of more than one acre must be fully justified and the reasons recorded in the loan docket. In no case may more than three acres be purchased unless authorized by the National Office.

(d) Loans made to buy, build, or repair dwellings located in an area having special flood or mudslide hazards are subject to the conditions of Subpart B of Part 1806, Subchapter A of this Chapter (FmHA Instruction 426.2).

§§ 1944.12—1944.14 [Reserved]

§ 1944.15 Ownership requirements.

(a) After the loan is closed, the applicant must have an interest in the property to be purchased, improved, or refinanced, which qualifies as one of the following:

(1) Full marketable title.

(2) The purchaser's interest under a land purchase contract which obligates payment of the purchase price, gives the rights of present possession, control and beneficial use of the property, and entitles the purchaser to a deed upon paying all or a specific part of the purchase price.

(3) An undivided fee interest if the co-owners meet the security requirements imposed by § 1944.18(b)(8).

(4) A life estate interest with rights of present possession, control and beneficial use of the property if the remaindermen meet the security requirements imposed by § 1944.18(b)(9).

(5) Leasehold interst if all of the following conditions are met:

(i) The applicant is unable to obtain fee title to the property and the rent charged for the lease does not exceed the rate being paid for similar leases.

(ii) The lessor owns the fee simple title.

(iii) Neither the leasehold nor the fee simple title is subject to a prior lien, unless the County Supervisor submits complete information to the State Director for review and authorization prior to approval of the loan. The amount of the RH loan plus any prior liens may not exceed the recommended market value of the leasehold.

(iv) The written lease contains the following provisions:

(A) The lessor's consent to the RH mortgage.

(B) Reasonable security of tenure. The borrower's interest must not be subject to summary forfeiture or cancellation.

(C) The right of FmHA to foreclose the RH mortgage and sell without restrictions that would adversely affect the market value of the security.

(D) The right of FmHA to bid at foreclosure sale or to accept voluntary conveyance of the security in lieu of foreclosure.

(E) The right of FmHA, after acquiring the leasehold through foreclosure or voluntary conveyance in lieu of foreclosure, or in event of abandonment by the borrower, to occupy the property or sublet it, and to sell for cash or credit. In case of a credit sale, FmHA will take a mortgage with rights similar to those under the original RH mortgage.

(F) The right of the borrower, in the event of default or inability to continue with the lease and the RH loan, to transfer the leasehold, subject to the RH mortgage, to an eligible transferee with assumption of the RH debt.

(G) Advance notice of a least 90 days to FmHA of lessor's intention to cancel or terminate the lease. Such advance notice will be long enough to permit FmHA to ascertain the amount of delinquencies, the total amount of the lessor's and any other prior interests, and the market value of the leasehold interest and, if litigation is involved, to refer the case with a report of the facts to the United States Attorney for appropriate action.

(H) Express provisions covering the question of liability of FmHA for unpaid rentals or other charges accrued at the time it acquires possession of the property or title to the leasehold, and those which become due during FmHA's possession or ownership, pending further servicing or liquidation.

(I) Any necessary provisions to assure fair compensation to the lessee for any part of the premises taken by condemnation.

(v) The lease has an unexpired term, from the date of loan approval, of at least 50 years (a lease for 25 years with an option to the lessee to renew for an additional 25 years would be considered a 50 year lease) except where:

(A) A lease is granted for the purpose of permitting a person to obtain an RH loan and the time required to process and approve the loan results in the unexpired term of the lease being not less than 40 years, or

(B) A lease is in existence at least 1 year prior to the date of the loan approval, and the unexpired term of the lease is at lease 50 percent longer than the repayment period of the loan. In no case may the unexpired term of the lease be less than 15 years.

(6) Possessory rights on an Indian reservation or State-owned land if the security requirements imposed by § 1944.18(b)(2) are met.

(7) The interest of an Indian in land held in severalty under trust patents or deeds containing restrictions against alienation if the security requirements imposed by § 1944.18(b)(3) are met.

(b) If an applicant's title to any part of the property does not qualify as an ownership interest under paragraph (a) of this section and is therefore defective, an RH loan may nevertheless be made if:

(1) The defect cannot be cured at a reasonable cost, and

(2) No improvements to be constructed or repaired with loan funds will be located on the parcel to which title is defective, and

(3) No security value will be accorded to the parcel to which title is defective.

§ 1944.16 Building requirements.

(a) *New dwellings:* Dwellings to be built or purchased new must provide decent, safe and sanitary housing that is modest in size, design, and cost, and consistent with the market and other dwellings owned or being built in the area by others with similar incomes. The dwelling should be designed to fit the needs of the applicant but may include 3 bedrooms and 1½ bathrooms if such a dwelling is within the applicant's repayment ability.

(1) The dwelling will contain no more than 1,200 square feet of living area. When the size of the household results in an average of more than two persons per bedroom a larger dwelling may be justified to provide adequate sleeping space. The following will be considered in determining living area:

(i) Living area will include all finished areas as well as unfinished areas that are designed for or normally considered as living area. This will include those areas which meet or can be improved to meet the Housing and Urban Development (HUD) Minimum Property Standards (MPS) requirements for habitable area.

(ii) Living area will not include such space as a stairway between living areas, enclosed stairway, enclosed entryway, space necessary for utilities in a home without a basement, general storage area, porch not suited for year-round use, solar greenhouse which provides heat to the living area, garage or carport which is attached, detached or in the basement area; basement or other area not designed for or normally considered living area.

(2) Special design features or equipment may be included when necessary because of physical handicap or disability.

(3) Two-car garages or carports will not be authorized. Single-car garages or carports may be included if customarily included in other homes in the area.

(4) Solar systems will be used only after approval by the State Architect and authorization by the State Director. Fireplaces and other woodburning devices may be authorized only if the loan approval official determines and documents that a dependable and economical wood supply is available. All fireplaces and other woodburning devices must comply with HUD Minimum Property Standards and with Exhibit D of FmHA Instruction 1924–A. To assure compliance and to remove uncertainties regarding safety and efficiency, fireplaces and other woodburning devices are authorized only after approval by the State Architect and subsequent authorization by the State Director.

(5) A dwelling for an extended family as defined in § 1944.2(g) may include bedroom area with an exterior entrance and an additional bathroom. This area should be designed in a manner that will not adversely affect the home's potential for resale.

(b) *Existing dwellings:* Existing dwellings purchased with RH funds must be structurally sound, functionally adequate, either be in good repair or placed in good repair with loan funds and meet the standards required by § 1924.5 (d) (1) (ii). The policies stated in paragraph (a) (1) of this section may be used as a guide in making a determination of adequate but modest existing dwellings, however, the maximum square footage of living area should be flexible to adjust for modest adequate existing homes that may be available.

(c) *Repairs:* Any dwelling repaired with RH funds must be structurally sound, functionally adequate, and be placed in good repair with loan funds. If the loan is not more than $7,500 and is scheduled for repayment in not more than 15 years from the date of the note, the dwelling may lack some equipment or features such as a complete bath, kitchen cabinets, closets, or completely finished interior in some rooms. Such dwellings must meet the basic housing needs of the applicant and provide decent, safe, and sanitary living conditions when the improvements financed with the loan are completed.

(d) *Improvements.* Improvements financed with loan funds must be on land which, after loan closing, is part of a tract owned by the borrower in accordance with § 1944.15(a), or on an easement appurtenant to such a tract.

§ 1944.17 Maximum loan amounts.

(a) An RH loan to buy or build a dwelling may be made up to the market value of the security less the unpaid principal balance and past-due interest of any other liens against the security property for:

(1) An existing dwelling which is more than a year old or previously occupied as a residence.

(2) A new dwelling when any of the following conditions exist:

(i) A conditional commitment was issued in accordance with § 1944.45.

(ii) The RH loan will be closed prior to the start of construction.

(iii) Construction is financed in accordance with § 1944.46.

(iv) The required construction inspections were made by the Federal Housing Administration (FHA) or Veterans Administration (VA). A complete set of plans and specifications will be submitted together with copies of inspection reports or certification by FHA or VA indicating the dwelling was build in accordance with approved plans and specifications. The builder will also furnish a certification of compliance with FmHA thermal standards for new construction as required by FmHA Instruction § 1924–A.

(v) The dwelling was constructed under an insured 10 year warranty plan. The builder will provide complete plans and specifications together with a certification that construction was completed in compliance with the plans and specifications, HUD–FHA Minimum Property Standards and FmHA thermal standards for new construction. The cost of the insured warranty will be included in the sale price of the dwelling, if it is to be charged to the borrower.

(b) Except as provided in paragraph (c) of this section a loan will be limited to 90 percent of the market value of the security for any dwelling that does not meet the requirements of paragraph (a) of this section.

(c) A loan which causes the total secured indebtedness to exceed the appraised value of the property securing the loan may be made when the amount exceeding the appraised value is all or part of a lien held by a public body, hospital or welfare institution for advances made for medical bills, welfare payments, or State motor vehicle judgments provided:

(1) The borrower is unable to settle or compromise such lien sufficiently to avoid exceeding the market value, and

(2) The lien securing the excess amount will at all times be inferior to the FmHA mortgage securing the initial loan and any subsequent loan or advances determined by the FmHA to be reasonably necessary to carry out the purpose of the initial loan or to protect the Government's financial interest, and

(3) The existence of the excess lien will not jeopardize the security or servicing so as to preclude the making of a sound RH loan, and

(4) The borrower has the ability to meet any payments on the excess debt as they become due or are likely to become due.

§ 1944.18 Security requirements.

(a) *Adequate security.* To protect the interests of FmHA all loans must be adequately secured. Except as provided in paragraph (b) of this section, a loan is adequately secured only when all of the following requirements are met:

(1) FmHA obtains at closing a mortgage on all ownership interests in the entire tract.

(2) No liens prior to the FmHA mortgage exist at the time of closing, and no junior liens are likely to be taken immediately subsequent to or at the time of closing.

(3) The provisions of Part 1807 of this Chapter (FmHA Instruction 427.1) regarding title clearance, and the use of legal services are complied with.

(b) *Exceptions.* Exceptions to the usual security requirements will be made as follows:

(1) *Note only.* A loan of $2,500 or less scheduled for repayment in not more than 10 years from the date of the note may be secured by the borrower's promissory note alone when the County Supervisor determines that:

(i) The applicant has a credit history which indicates an ability and willingness to pay debts when they are due;

(ii) The applicant will have sufficient income to readily meet all obligations; and

(iii) The applicant's equity in the real estate as improved equals or exceeds the amount of the proposed loan.

(2) *Mortgage insurance.* When the applicant is the holder of possessory rights on an Indian reservation or State-owned land, adequate security in the form of mortgage insurance guaranteeing payment from a State agency or Indian tribe will be acceptable. Separate State Supplements covering loan approval, title clearance, closing, appropriate loan documents and a Memorandum of Understanding with the State or Indian tribe insuring agency should be developed and used with the approval of the State Director and the concurrence of the Office of General Counsel (OGC). Approval of such supplements by the National Office is required prior to participation in any such program.

(3) *Indian land.* Indian land in trust or restricted status acquired with an RH loan will remain in trust or restricted status. In these cases mortgages must be approved by the Secretary of the Interior. When a lien is to be taken on trust or restricted property, the local Bureau of Indian Affairs (BIA) representative will be requested to furnish advice and information with respect to the property and each applicant. The FmHA State Director should arrange with the BIA Area Director or other appropriate local BIA official as to how the information will be requested and furnished. A State Supplement will be issued to prescribe the actions to be taken by FmHA personnel to implement the making of loans under such conditions.

(4) *Best mortgage obtainable.* Loans of $7,500 or less scheduled for repayment in not more than 15 years from the date of the note must be secured by a mortgage, except as provided in paragraph (b)(1) of this section, but title clearance and the use of legal services in accordance with Part 1807 of this Chapter (FmHA Instruction 427.1) are not required. The best mortgage obtainable without use of these procedures will be sufficient unless the loan approval official determines that the procedures in Part 1807 of this Chapter (FmHA Instruction 427.1) are necessary to assure repayment or accomplish the objective of the loan. Evidence of ownership must comply with § 1944.24 (d)(2) of this Subpart.

(5) *Leasehold.* When the applicant owns only a leasehold interest, FmHA may not require a mortgage on the lessor's interest but will treat the lessee's interest like any other type of ownership interest in determining whether a mortgage on the leasehold is required. The lease must meet the requirements of § 1944.15(a)(5) (iv) and (v). In any State in which applicants are likely to own a leasehold interest, the State Director will issue a State Supplement outlining the technical requirements for making such loans.

(6) *Security by junior lien.* FmHA may take a junior mortgage as security for an RH loan if the tract which will secure the FmHA mortgage provides adequate security for the entire prior lien debt and the RH loan, and

(i) The prior mortgage does not contain provisions that may jeopardize FmHA's security position or the borrower's ability to repay the loan, such as provisions for future advances, forfeiture, cancellation, foreclosure without adequate notice to junior lienholders; or

(ii) Such provisions are satisfactorily limited, modified, or waived.

(7) *Liens junior to FmHA lien.* Liens junior to the FmHA lien will be allowed at closing or immediately subsequent to closing only when:

(i) The junior lien will not interfere with the purposes or repayment of the RH loan, and

(ii) The total amount of the RH loan, the junior lien, and any prior liens will not exceed the market value of the security except as provided in § 1944.17(c).

(8) *Undivided interest.* When the applicant owns an undivided interest in the property, the co-owners' interests need not be included in the mortgage in the following cases:

(i) When one or more of the co-owners are not legally competent, or cannot be located, or the ownership rights are divided among such a large number of co-owners that it is not practical for all their interests to be mortgaged, the mortgaging of interests not exceeding 50 percent may be excluded from the security requirements upon prior approval by the State Director. The State Director should review the County Supervisor's recommendation accompanied by a full statement of ownership and conditions which justify the exclusion. All legally competent co-owners using or occupying the property will be required to sign the mortgage. Co-owners will be required to sign the note when necessary for a sound loan or to obtain the required security. The loan may not exceed the percentage of the market value of the property represented by the interests of the owners who sign the mortgage. In determining such value, consideration will be given to any adverse effect which might result from sale of the mortgaged interests separately from the nonmortgaged interests.

(ii) When an applicant owns an undivided interest in part of a farm and seeks a loan to build or improve facilities on another part in which the applicant owns the entire interest, or the applicant owns only an undivided interest in a building site which will be a part of the farm, the interest of the applicant's co-owners may be excluded from the security requirements upon approval by the State Director if:

(A) The loan will be adequately secured by the applicant's equity in the wholly owned tract,

(B) The market value of the jointly owned tract is at least equal to the debts against it, and

(C) The applicant's participation in the joint ownership of part of the farm and its operations has been and is likely to continue to be successful.

(9) *Life estate.* When the applicant owns a life estate interest in the property, the remaindermen's interests need not be included in the mortgage if one or more of the remaindermen are not legally competent or cannot be located or if the remainder rights are divided among such a large number of remaindermen that it is not practicable to obtain the signatures of all the remaindermen. In that case, the mortgaging of remainder interests, not exceeding 50 percent of the total remainder interest may be excluded

from the security requirements upon prior approval by the State Director. The State Director should review the County Supervisor's and District Director's recommendations accompanied by a memorandum stating complete ownership information and circumstances which justify the exclusion. In such cases, the loan may not exceed the percentage of market value of the property represented by the interests of those remaindermen who sign the mortgage, determined with due regard to all adverse factors involved. Remaindermen will be required to sign the note when necessary for a sound loan or to obtain the required security.

(10) *Farm dwelling.* When the applicant is the owner of a farm, a mortgage may be taken only on the dwelling and dwelling site provided the following conditions can be met:

(i) The tract to be mortgaged must not include or be close to farm service buildings, must be in a good residential location, be otherwise suitable as a residential type of nonfarm tract, provide adequate security for the loan, be contiguous to and have direct access to a public road, or

(ii) The tract to be mortgaged must contain at least enough land to clearly provide adequate security for the loan and to make the tract readily saleable in the area.

(11) *Land Purchase Contract.* When the ownership interest is by virtue of a land purchase contract a prior lienholder's agreement must be obtained as required by Part 1807, (FmHA Instruction 427.1 Paragraph II F 5.)

(c) *Additional security.* When necessary to supplement the applicant's equity in the farm or nonfarm tract on which the dwelling is located, or to facilitate servicing the loan, FmHA may also take a mortgage on other real estate owned by the applicant.

(d) *Assignment of income from real estate to be mortgaged.* Income to be received by the borrower from royalties, leases, or other existing agreements under which the value of the real estate security will be depreciated will be assigned and disposed of in accordance with § 1872.11 of Part 1872, of this Chapter (FmHA Instruction 465.1, paragraph XI), and the provisions for written consent of any prior lienholder. In small nonfarm tract cases, the State Director may authorize witholding transmittal of assignments to lessees for execution until production begins. The State Director may, in individual cases, waive the requirement of taking an assignment if repayment of the loan is reasonably assured from other sources.

§§ 1944.19–1944.21 [Reserved]

§ 1944.22 Refinancing debts.

(a) Refinancing of FmHA debts is not authorized.

(b) Loan funds may be used for refinancing non-FmHA debts only if the debt was incurred by the applicant prior to the date the application was filed and the following conditions can be met:

(1) The debt was incurred for purposes for which a Section 502 RH loan could be made or is a protective advance by the mortgagee for items covered by the mortgage to be refinanced, such as accrued interest, insurance premium or real estate tax advances or preliminary foreclosure costs.

(2) The debt must be a lien against the property which will be security for the RH loan. The promissory note and security instrument for the debt must represent rates and terms that were typical and customary for long-term residential financing in the area at the time the debt was incurred. A loan to refinance a qualified secured debt may also include short-term or unsecured debts, if necessary to establish a sound repayment ability, if such short-term or unsecured debts were incurred for authorized Section 502 loan purposes and are not a significant portion of the loan.

(3) Payments on the debt are so seriously delinquent, for reasons beyond the control of the applicant, except as noted in Paragraph (b)(4) below of this section, that the applicant is likely to lose the dwelling at an early date if the debt is not refinanced. Such delinquency must be due to loss of employment or income, illness, or such other similar events or unforeseen circumstances.

(4) If a loan of $5,000 or more is necessary for repairs to correct major deficiencies to make the dwelling decent, safe and sanitary, an existing lien may be refinanced regardless of delinquency, if necessary for the applicant to have repayment ability for the existing loan and the requested loan for repairs.

(5) A statement will be obtained for each debt to be refinanced showing the purpose for which the debt was incurred, the date on which it was incurred, the final due date, interest rate, amount and frequency of installment. Amount of delinquency, unpaid principal and accrued interest.

(c) Debts or costs incurred after the date of application may be refinanced if the costs were incurred for:

(1) Fees for legal, architectural and other technical services, or

(2) Materials, construction or site acquisition. The County Supervisor may authorize the use of RH funds to pay such costs only when all of the following conditions exist:

(i) The costs were incurred after the applicant filed a written application for a loan but before the loan was closed. In the case of a subsequent loan to complete improvements previously planned, the costs must have been incurred after the initial loan was closed.

(ii) The applicant is unable to pay such costs from personal resources or to obtain credit from other sources and failure to authorize the use of RH funds to pay such costs would jeopardize the applicant's capability of repaying the loan.

(iii) The construction or repair work conforms to that shown on the building plans and specifications or Form FmHA 424–1, "Development Plan," when applicable, and the costs were incurred for authorized Section 502 loan purposes.

§ 1944.23 Loans to Farm Ownership (FO), Individual Soil and Water (SW), and Recreation (RL) borrowers.

A Section 502 loan may be made to an FO, SW, or RL borrower or simultaneously with an FO loan and a loan from another lender if all conditions of this Subpart are met. In these cases, the borrower's current FO, SW, or RL loan may be reamortized in accordance with § 1951.40 of Subpart A, Part 1951.

§ 1944.24 Technical services.

(a) *Planning and performing construction work.* Any construction work will be planned and completed in accordance with Part 1924 Subpart A.

(b) *Planning and performing site development work.* Any site development will be planned and completed in accordance with Subpart D of Part 1804. (FmHA Instruction 424.5).

(c) *Appraisal.* The value of property securing RH loans will be determined as follows:

(1) When a mortgage will be taken on a nonfarm tract or small farm, or on a leasehold interest in a nonfarm tract or small farm, to secure a total indebtedness of more than $7,500, an appraisal of the security property will be made in accordance with FmHA Instruction 422.3 (available in any FmHA office). A small farm for the purpose of this Subpart is a farm as defined in § 1944.2(h) of this Subpart which has value primarily as a residence rather than for the production of agricultural commodities, and repayment of the RH loan is not dependent on farm income.

(2) When a mortgage will be taken on a farm tract or leasehold interest in a farm tract to secure a total indebtedness of more than $7,500, an appraisal of the security property will be made in accordance with Subpart A of Part 1809, of this Chapter (FmHA Instruction 422.1).

(3) When the total indebtedness will be not more than $7,500, an appraisal of the real estate or leasehold interest is not required, unless the County Supervisor or loan approval official is uncertain as to the adequacy of the security. When an appraisal is not completed the County Supervisor will document in the case file the estimated market value of the property.

(4) When a loan is being made to an FmHA real estate borrower and the FmHA appraisal report in the borrower's case folder indicates the value of the security property is adequate to secure the total real estate indebtedness, including the planned loan, an appraisal is not required.

(5) Real estate mortgaged as additional security will be appraised when it represents a substantial portion of the security for the loan or when requested by the loan approving official.

(d) *Title Clearance and legal services.* (1) When real estate will be taken as security except on a least mortgage obtainable basis (including a mortgage on a leasehold), title clearance and legal services for making and closing the loan will be provided in accordance with Part 1807, of this Chapter (FmHA Instruction 427.1). Title clearance and legal services will not be requested until the loan is approved.

(2) When real estate will not be mortgaged or when the best real estate mortgage obtainable is taken as security without title clearance or use of legal services, each applicant will be required to submit evidence of ownership of the farm or nonfarm tract. This may be the original or a certified or photostatic copy of the deed, purchase contract, or other instrument evidencing ownership. When the County Supervisor is uncertain as to whether or not the applicant is a qualified owner, such action will be taken as the County Supervisor considers necessary, such as requiring the applicant to furnish additional information or obtaining the advice of the OGC regarding the evidence of ownership submitted and any further information or action that may be needed. Proof of ownership need not be as much as that required by Part 1807, of this Chapter (FmHA Instruction 427.1). For example, it may include such evidence as the levy and payment, in the applicant's name, of taxes on the real estate and affidavits by others in the community to the effect that the applicant has occupied the property as the apparent owner for a given length of time and is believed and generally reputed to be the owner. No loan will be made if the County Supervisor has actual knowledge that the applicant does not have a valid title to the property.

§ 1944.25 Rates, terms, and source of funds.

(a) *Source of funds.* Insured loan funds from the Rural Housing Insurance Fund (RHIF) will be used for all Section 502 loans.

(b) *Interest rate per annum on unpaid principal.* Loans will be made at the interest rate(s) specified in FmHA Instruction 440.1, Exhibit B (available in any FmHA office). If only one interest rate is so specified such rate will be the maximum interest rate established for mortgages under section 203(b) of the National Housing Act by the Secretary of Housing and Urban Development (HUD). If there are two interest rates for section 502 insured RH loans specified in FmHA Instruction 440.1, Exhibit B, borrowers will pay the HUD rate if the annual payments required for principal and interest on existing section 502 RH loans, if any, the annual principal and interest payments on the loan for which application is being made (with payments calculated at the HUD rate), taxes, and insurance are not more than twenty percent (20%) of the borrower's adjusted annual income; in all other cases the borrower will pay the rate specified as the section 502 rate.

(c) *Amortization.* Each loan will be scheduled for repayment over a period not to exceed 33 years from the date of the note or such shorter period as may be necessary to assure that the loan will be adequately secured, taking into account the probability of depreciation of the security. A loan for $2,500 or less not secured by a real estate mortgage will be scheduled for repayment over a period not to exceed 10 years from the date of the note.

(d) *Interest credit.* Borrowers may be eligible for an interest credit subsidy which can reduce the borrower's effective interest rate to as low as 1 percent. The policies and procedures for granting and servicing interest credit on RH loans are set forth in § 1944.34.

§ 1944.26 Application processing.

(a) *Processing priorities.* In an effort to provide assistance to applicants with the greatest need, the order of processing applications will be determined in each county office in accordance with the provisions of this paragraph. Applications for persons who have been advised that funds are available for their loan, and for whom loan processing has begun, will be processed to completion without regard to priorities. Seventy-five (75) percent of each quarterly allocation will be used to process, in the order received, the other applications received prior to the effective date of this instruction. Until the applications on hand prior to the date of this instruction have been processed, 25 percent of each quarterly allocation will be used for applications with the highest numerical priority ranking, including those received after the effective date of this instruction.

(1) Those with applications on file and not in process prior to the effective date of this subpart will be given the opportunity to keep their application on file or have it withdrawn. Such applicants may be considered for processing in the order received or under the priority rating, which ever is to the applicants' benefit. Each applicant will be assigned a numerical rating in accordance with § 1944.26(a)(3). Exhibit F-2 may be used as a guide letter to notify those applicants of the implementation of the priority system and to request them to furnish information necessary for a priority rating. Those who do not respond will be processed for possible withdrawal of the application on accordance with § 1910.4(f) of Part 1910 Subpart A.

(2) Applications for the following types of loans will not be subject to the priority system and will be processed as they are received:

(i) Subsequent loans which are necessary to complete transfers by assumption, credit sales, essential improvements or repairs, or weatherization purposes;

(ii) Refinancing of debts in accordance with Section 1944.22(b).

(3) Numerical ratings will be completed for all other signed applications received in the county office on or after the effective date of this Subpart. During the applicant interview, the County Supervisor will obtain from the applicant the information required to assign a numerical rating and will provide each applicant a full explanation of the factors considered in establishing the order of processing applications. The County Supervisor is not required to make a physical inspection to verify the information but should do so if there is reason to believe the information provided may not be accurate. Subsequent changes may be made in the numerical rating if verified information becomes available which would justify a change. Exhibit F may be used as a guide for the rating and documentation

which will be made a part of the application file. The numerical rating will be based solely and directly on the following objective standards.

(i) *40 points (maximum).* Adjusted annual income at the following levels for a period of at least 6 months prior to the date of application.

(A) *20 points.* Not more than 85 percent of medial income for the area.

(B) *40 points.* Not more than 50 percent of median income for the area.

(ii) *30 points (maximum).* Applicants living in deficient housing either owned or rented, for a period of more than 6 months prior to the date of application. A maximum of 30 points may be assigned using any combination of the following:

(A) *30 points.* Lack of complete plumbing; the housing does not have a bathtub or shower, wash basin, flush toilet or hot running water, for the exclusive private use of the occupant.

(B) *30 points (maximum).* Overcrowded; more than one person per room. The number of rooms in a dwelling will include bedrooms, living rooms, dining rooms, kitchen, and any other rooms designed for living area.

(1) 15 points. More than 2 persons per bedroom.

(2) 30 points. More than 3 persons per bedroom.

(iii) *20 points.* Low-income participants in FmHA authorized Mutual Self-Help projects.

(iv) *10 points.* Household with 2 or more persons.

(4) Application processing order will be determined one month prior to the beginning of each quarterly funding period with those applications not subject to the priority system to be processed first then those applications having the highest number of points on the numerical rating. All applications having the same numerical rating will be processed in the order received, after all applications having a higher numerical rating are processed. Those applicants for whom funds are expected to be available will be notified and be requested to furnish all information necessary to complete the application processing. The applicant should be given a time limit, usually 60 days, to provide the required information. Should the applicant not respond within the specified time limit the priority for that funding period will be assigned to the next applicant with priority rating.

(5) When available funds are not adequate to complete the processing of all applications as they are received, a preliminary determination of eligibility will be made in accordance with § 1910.6(c) of Part 1910 Subpart A. Applicants who appear eligible will be advised of the estimated waiting period and that a final determination of eligibility will be made when loan funds are available for the processing of their application. Applicants on the waiting list and not in process will be notified at the beginning of each quarter after the applications to be processed have been selected. Exhibit F–1 may be used as a guide for preparation of the notice.

(6) The State Office will maintain a reserve fund to be used for those loans listed in paragraph (a)(2) of this section which are not subject to priority ratings and which are received during a quarter after all of the county office allocation has been committed to other applicants. The amount of the reserve will be determined by past lending history, but should not exceed 10 percent of the quarterly allocation without prior authorization by the National Office.

(b) *Veterans preference.* Veterans preference will apply within each priority criteria when:

(1) There is a shortage of funds,

(2) Obligating forms are ready to be submitted to the Finance Office, and

(3) There is more than one application having the same date.

(c) *Appeal.* Since the priority given any applicant is based solely on objective standards the placing of an application in a particular priority is not a decision appealable under FmHA Instruction 1900–B.

(d) *Application forms.* (1) Applications for Section 502 RH loans will be made on Form FmHA 410–4, "Application for Rural Housing Loans (Nonfarm Tract)", or Form FmHA 410–1, "Application for FmHA Services", which are available at local County Offices, and processed in accordance with Subpart A of Part 1910 of this Chapter.

(2) If Form FmHA 410–4 does not provide sufficient information to clearly determine the applicant's repayment ability, or if the applicant needs credit counseling, Form FmHA 431–3 will be completed by the applicant and County Supervisor. In preparing Form FmHA 431–3 the following will be considered:

(i) Non-cash items (e.g., food stamps, scholarships, free clothing, or transportation which help reduce the applicant's budgeted expenses) will be properly documented, and budgeted expenses will be reduced accordingly.

(ii) Income from all sources not used to determine adjusted annual income, such as earnings from employment of minors or full-time students, foster care payments, and similar income items, will be considered to the extent it is used to offset budgeted expenses even though such income will not be included in "annual income."

(3) An applicant who completes Form FmHA 410–1 will also complete Form FmHA 431–2 as prescribed in Subpart B of Part 1924. In preparing Form 431–2, the provisions of paragraphs (2) (i) and (ii) of this section will apply to allow consideration of all income and non-cash items. When a loan is to be made to a non-operator farmowner, the colums in Tables B and C pertaining to the operator's share will be changed to the owner's share. If an application is being considered early in the crop year for a borrower who has a current Form FmHA 431–2, such form will be revised to show changes in the financial statement and significant changes in the planned operation. However, if the crop year is well advanced or completed, a farm and home plan will be developed for the ensuing year. The applicant will also complete Form FmHA 431–1, "Long-Time Farm and Home Plan", when needed.

(e) *Applicant interview.* A personal interview will be conducted by FmHA employees with all applicants before approval of the requested loan. During the interview, the applicant will verify information, including any submitted by a packager or others, concerning the applicant's employment and income. The applicant will also verify information concerning persons who will occupy the dwelling and on whose income eligibility for the loan and any interest credit is based. The County Supervisor will inform the applicant, and reach an understanding with the applicant, as to the FmHA loan making and servicing authorities, and the responsibilities of the borrower. The *discussion* will include an explanation of all options of assistance which may be available to the applicant or borrower. A documentation of the items *discussed* will be placed in each borrower case file and will be dated and signed by both the applicant and County Supervisor. A copy will be provided to the applicant or borrower at the time of the personal interview. Exhibit E of this Subpart sets forth items which must be included and may be used as a guide in preparing the required documentation for this purpose. *No housing loan will be approved without such evidence that a personal interview has been completed.*

(f) *Credit counseling.* During the time of the applicant's initial interview and application processing, consultation will be provided as necessary to assist the applicant in preparing and understanding a meaningful budget, Form FmHA 431–2, or Form FmHA 431–3, which will reasonably reflect the applicant's repayment ability. County Supervisors will work closely with

applicants to better understand all sources of income and cash substitutes. Credit and financial counseling will also be provided, as needed, to suggest financial management methods by which the applicant's success as a homeowner may most likely be achieved. When the County Supervisor determines that the applicant does not have sufficient income to repay the requested loan, other alternatives will be considered such as reducing amenities in the dwelling, selecting a less expensive dwelling or site, obtaining a cosigner, reduction of present debt load or when appropriate, building the dwelling by the self-help method.

(g) *Determining eligibility.* (1) The County Committee will determine eligibility of RH applicants who are also applying for or are indebted for a Farmer Program loan. The County Supervisor will determine eligibility for all other RH applicants.

(2) Repayment ability as outlined in § 1944.8(a)(2), will be evaluated on the circumstances surrounding the individual case including possible eligibility for interest credits as provided in § 1944.34. Obvious repayment ability may be determined by use of the short budget on Form FmHA 410–4. Form FmHA 431–3 will be completed by the applicant and the County Supervisor if eligibility cannot be clearly determined from the short budget. Under no condition will arbitrary guidelines or "rules of thumb" be used. If the applicant(s) can verify payment of a comparable or greater amount for housing costs for the previous 12 months, the applicant will be presumed to have repayment ability for the requested loan unless:

(i) Projected annual income is less than current or past income,

(ii) Planned expenses are proportionally greater than current expenses, when compared to income, or

(iii) The applicant has increased debts, or failed to pay existing debts in order to maintain the present standard of living.

(3) Credit history will be considered to the extent that it is used in evaluating all applicants for similar types and amounts of credit. For instance, credit requirements for a female applicant will not differ from those of a male applicant.

(4) The age of the applicant will not be used as a consideration of eligibility, except as provided in § 1944.9(d).

(5) The County Supervisor must determine whether the applicant could obtain housing credit elsewhere as follows:

(i) In any case in which a County Supervisor determines there is no possibility of the applicant's obtaining adequate housing credit elsewhere and, therefore, does not require the applicant to provide evidence that an effort has been made to obtain such credit, the County Supervisor will record that conclusion and the basis for it in the loan docket.

(ii) In any case where there may be a possibility that credit could be obtained from another source, the County Supervisor will require the applicant to make a diligent effort to obtain other credit.

(A) Applicants will be expected to apply for credit from lenders engaged in extending long-term housing credit in the area.

(B) Applicants should be advised to request lenders to indicate the amount, interest rate, and terms of housing credit they would be willing to extend to the applicant.

(C) When appropriate, the County Supervisor should verify evidence presented by an applicant that adequate credit is not available elsewhere.

(D) Letters from the lenders and any other evidence indicating that the applicant is unable to obtain credit elsewhere will be included in the loan docket.

(E) In no case will a loan be made to an applicant who is able to obtain the credit needed at terms that can reasonably be expected to be within the applicant's repayment ability.

(h) *Optioning of real estate.* The County Supervisor should advise the applicant with respect to the size, design, quality, cost and location of the dwellings and dwelling sites suitable for the RH program. If possible this should be done before the applicant selects a property to be purchased. Form FmHA 440–34, "Option to Purchase Real Property", should be used; however, other option forms may be used if their provisions are acceptable.

(i) *Application assistance.* Builders, brokers, contractors, and others including organizations such as those providing self-help assistance, who can provide complete information on the applicant and the house that is to be purchased, may assist in the assembly and processing of loan applications. Form FmHA 1944–12 "Rural Housing Loan Application Package" will be used for this purpose. Builders or sellers who received Conditional Commitments may also assist applicants in applying for an RH loan to buy a house for which a Conditional Commitment was issued in accordance with § 1944.45 of this Subpart. The County Supervisor will meet with such interested parties to explain:

(1) The eligibility requirements of RH loans,

(2) The size, design, cost and location of homes that can be financed,

(3) The requirements of Farmers Home Administration (FmHA) Instruction 1901–E "Civil Rights Compliance Requirements",

(4) How applications will be handled, and

(5) The type of information that must be submitted. The information to be submitted is listed in Exhibit A of this Subpart which may be used as a guide for preparation of information material for interested parties.

§§ 1944.27–1944.29 [Reserved]

§ 1944.30 Preparation of loan docket.

(a) Forms and documents will be fastened in the designated filing positions of the case folder as prescribed in Exhibit A of FmHA Instruction 2033–A (available in any FmHA office). Appropriate loan docket forms will be prepared in accordance with the Forms Manual Insert (FMI) for distribution as follows:

BILLING CODE 3410-07-M

Form No.

FmHA 410–

FmHA 410–

FmHA 1944

FmHA 410–

FmHA 410–

FmHA 410–

FmHA 431–

FmHA 431–

FmHA 431–

FmHA 440–

FmHA 427–

Form No.	Name of Form	Total No. of Copies	No. Signed by Borrower	Loan Docket	Copy for Borrower
FmHA 410-1	Application for FmHA Services	1	1-0	1-0	
FmHA 410-4	Application for Rural Housing Loans (Nonfarm Tract)	1	1-0	1-0	
FmHA 1944-12	Rural Housing Loan Application Package	1		1-0	
FmHA 410-5	Request for Verification of Employment	1		1-0	
FmHA 410-7	Notification to Applicant on use of Financial Information from Financial Institution	2		1-C	1-0
FmHA 410-8	Applicant Reference Letter	1		1-0	
FmHA 410-9	Statement required by the Privacy Act	2	2-0 & C	1-C	1-0
FmHA 431-2	Farm and Home Plan	1	1-0	1-0	(in record book)
FmHA 431-1	Long-Time Farm and Home Plan	2	2-0&C	1-C	1-0
FmHA 431-3	Household Financial Statement and Budget	2	2-0&C	1-C	1-0
FmHA 440-2	County Committee Certification or Recommendation	1		1-0	
FmHA 427-8	Agreement with Prior Lienholder (or similar form)	3***		1-0	1-C

Form No.	Name of Form	Total No. of Copies	No. Signed by Borrower	Loan Docket	Copy for Borrower
FmHA 440-34	Option to Purchase Real Property	3****	2-O&C	1-O	1-C
FmHA 424-1	Development Plan (including any plans, specifications, and cost estimates)	2**	1-O	1-O	1-C
FmHA 422-1	Appraisal Report (Farm Tract) (with attachments)	1		1-O	
FmHA 427-9	Preliminary Title Opinion	2		1-O	1-C(Designated Attorney)
FmHA 1944-6	Interest Credit Agreement (Section 502 RH Loans)	3	1-O	1-O	1-C(Finance) 1-C
FmHA 440-1	Request for Obligation of Funds	4	2-O&C	1-O	1-C
FmHA 444-2	Single Family Housing Fund Analysis	4		1-C	
FmHA 440-35	Acceptance of Option	2	1-O	1-C	1-O
FmHA 440-42	Credit Sale Disclosure Statement	3	(See FMI)	1-C	2-O+C
FmHA 440-43	Notice of Right to Rescind	3	(See FMI)	1-C	
FmHA 400-3	Notice to Contractors and Applicants	3		1-C	1-C 1-O(contractor)
FmHA 400-6	Compliance Statement	3		1-C	1-O(contractor) 1-C
FmHA 440-9	Supplementary Payment Agreement	2	1-O	1-O	1-C
FmHA 440-45	Nondiscrimination Certificate (Individual Housing)	2	2-O	1-O	1-C

O Original; C - Copy

** When contract method will be used, 3 copies of plans and specifications will be required.

*** Copy to lienholder

**** Signed copy of option previously delivered to seller.

+ Original to seller.

BILLING CODE 3410-07-C

(b) All other documents necessary for approval of the particular loan will be included in the loan docket. This will include the following or others as appropriate:

(1) A copy of Exhibit E, "Rural Housing Applicant Interview", or a similar document executed by the applicant.

(2) Credit report(s) on the applicant(s).

(3) Evidence of ownership such as a certified copy of the applicant's deed, lease, purchase contract, or other evidence specified in § 1944.24(d), or a statement by the County Supervisor that such documents have been reviewed.

(4) Estimates of the value of any security for which a formal appraisal report is not required.

(5) Agreements from prior lienholders, if any, when necessary to comply with § 1944.18(b)(6) and Part 1807 § 1807.2(f). If required by a State Supplement issued in accordance with § 1807.2(f)(5) (paragraph II F 5 of FmHA Instruction 427.1), foreclosure or assignment notice agreements should also be included in the docket.

(6) When the loan is to be secured by a junior real estate mortgage, the docket must include a copy of each prior mortgage and, if available, a copy of each secured note or other obligation, furnished by the applicant at the applicant's own expense. The docket must include a current statement signed by the mortgagee showing the amount of unpaid principal secured by the mortgage; the amount of any accrued interest; the amount of any delinquency, with interest and principal shown separately; and, if a copy of the note is not furnished, its maturity date, payment schedule, interest rate, and a summary of any other provisions of the note.

(7) When the applicant obtains a co-signer, the docket must include that co-signer's current financial statement, income statement, and employment or business history. This will be supplemented by a statement from the County Supervisor as to the co-signer's financial condition and reputation for paying debts, and any other information, such as a credit report, that will be of assistance to the loan approval official.

§ 1944.31 Loan approval.

(a) The State Director, District and Assistant District Directors, County and Assistant County Supervisors are authorized to approve or disapprove loans in accordance with FmHA Instruction 1901–A (available in any FmHA office).

(b) The loan approval official is responsible for reviewing the docket to determine that the proposed loan complies with established policies and all pertinent regulations and that funds are available for the loan.

(c) Prior to loan approval a new verification of employment will be required if more than 90 days have elapsed since the date of the last verification of employment, or if evidence is brought to the attention of the loan approval official that indicates the applicant's financial status has changed significantly.

(d) When a loan is approved, the loan approval official will:

(1) Indicate on all copies of Form FmHA 440–1 any condition that must be met before the loan is closed. Also, the loan approval official will specify all security requirements that the applicant will need to meet, such as a first real estate lien or a junior lien subject to certain prior liens. If title evidence is required in accordance with Part 1807 of this Chapter (FmHA Instruction 427.1) or in accordance with any special requirements for the loan but is not included in the docket, the loan may be approved subject to the applicant's furnishing the required title evidence. When the applicant furnishes required title evidence, the County Supervisor will proceed with processing the loan. In those cases in which the title evidence does not comply with the conditions specified by the approval official, the docket will be reconsidered by the loan approval official.

(2) Sign the approval certification on the original and one copy of Form FmHA 440–1 and insert title in the space provided. The remaining copies will be conformed.

(3) If a loan is not approved after the docket has been developed, the reason for such action with date and initial of the approval official will be shown on the original Form FmHA 440–1; the County Supervisor will notify the applicant in accordance with § 1910.6.(b) of Subpart A of Part 1910.

(e) After the loan is approved the docket forms will be distributed as outlined below.

(1) *To the Finance Office.*

(i) Form FmHA 440–1 (original)

(ii) Form FmHA 444–2 (original)

(2) *To the State Office.* If the loan is approved by the County Supervisor, or the District Director, an unsigned copy of Form FmHA 440–1 (unless exempted by State Supplement) and a copy of Form FmHA 444–2 will be sent to the State Office. If the loan is approved in the State Office, an unsigned copy of Form FmHA 440–1 and a copy of Form FmHA 444–2 will be retained in the State Office.

(3) *To the borrower.* A signed copy of Form FmHA 440–1, the original of Form FmHA 440–41, "Disclosure Statement for Loans Secured by Real Estate," and if applicable, the original and copy of Form FmHA 440–43.

§ 1944.32 Actions subsequent to loan approval.

(a) *Requesting a loan check.* (1) A loan check may be requested when all approval conditions can be met and necessary curative actions have been taken to provide a satisfactory title to real estate security. Form FmHA 440–57, "Acknowledgment of Obligated Funds/Check Request," will be completed and a copy sent to the Finance Office to request the check.

(2) A loan check may be requested at the time of loan approval by entering the amount of the check requested on Form FmHA 440–1 when one of the following conditions exist:

(i) The loan will be secured by a promissory note only, or

(ii) Real estate security will be taken and the County Supervisor is reasonably certain that satisfactory title evidence can be obtained and the loan can be closed within 21 days from the date of the check request.

(3) When not more than $4,000 of the loan funds will remain unexpended for more than 15 days after loan closing the total amount of the loan will be requested in a single advance.

(4) If loan funds cannot be expended within 15 days the County Supervisor will enter in the appropriate "block" of Form FmHA 440–1 the amount of loan funds to be disbursed at loan closing. Additional loan funds will be requested when, and in amounts, needed by submitting a completed copy of Form 440–57 to the Finance Office, or by telephone request if the additional funds cannot be received by the date needed using mail service. The County Supervisor should work with borrowers, developers, and others to be sure that funds will be available when needed and to reduce the future advances to a reasonable number. Any loan funds not requested by the "amortization effective date" for the loan, will be disbursed by the Finance Office to the County Office by check dated on the amortization effective date. The check will be deposited in the borrower's supervised bank account if it cannot be endorsed directly to a payee within 20 working days from the date of the check.

(b) *Handling Loan Checks.* (1) When the loan check or borrower's personal funds are to be deposited in the designated loan closing agent's escrow account, this will be done no later than the date of loan closing. If loan funds or borrower's personal funds are to be deposited in a supervised bank account,

this will be done in accordance with § 1902.6 of Part 1902 Subpart A no later than the first banking day following the date of loan closing.

(2) If a loan check is received and the loan cannot be closed within 20 working days from the date of the check, the County Supervisor will take appropriate action in accordance with FmHA Instruction 102.1 (available in any FmHA office).

(c) *Cancellation of loan.* Loans may be cancelled before loan closing by the use of Form FmHA 440–10, "Cancellation of Loan or Grant Check and/or Obligation", prepared in accordance with the FMI for that form. Checks received in the County Office will be returned with a copy of Form FmHA 440–10 to the Disbursing Center, U.S. Treasury Department, P.O. Box 3329, Kansas City, Kansas 66103. Interested parties will be notified of the cancellation as provided in § 1807.6 of Part 1807, of this Chapter (FmHA Instruction 427.1). If the cancellation is not a voluntary action by the applicant, the applicant will be notified in accordance with § 1910.6(b) of Part 1910 Subpart A.

(d) *Increase or decrease in amount of loan.* If it becomes necessary that the amount of the loan be increased or decreased prior to loan closing, the County Supervisor will request that all distributed docket forms be returned to the County Office. The loan docket will be revised accordingly and reprocessed.

(e) *Property insurance.* Buildings on the property which is to be taken as security for the loan will be insured in accordance with Subparts A and B of Part 1806 of this Chapter (FmHA Instructions 426.1 and 426.2) when appropriate.

§ 1944.33 Loan closing.

(a) *Loans approved with interest credit.* If the loan will be closed and Form FmHA 1944–8 or 1944–A8, "Interest Credit Agreement (Section 502 RH Loans)", will be executed more than 90 days after the last "Verification of Employment", or if there is evidence to indicate the applicant's financial status has changed significantly, a current "Verification of Employment" will be obtained and the amount of interest credit will be determined on the basis of the applicant's new circumstances. If the adjusted income exceeds the moderate-income limit set forth in Exhibit C of this Subpart, the loan will not be closed unless authorized by the State Director. Such authorization may be granted if there is documented evidence to clearly indicate other credit is not available. Interest credit will not be granted in any case in which the adjusted income exceeds the moderate-income limit set forth in Exhibit C.

(b) *Loans approved without interest credit.* Further review of the applicant's financial status is not required at the time of closing unless the loan is closed more than 90 days after the date of loan approval, or there is evidence to indicate the financial status has changed significantly. If the adjusted income exceeds the limit for moderate-income set forth in Exhibit C of this Subpart, the case will be referred to the State Director. The State Director may authorize closing of the loan if there is documented evidence to clearly indicate other credit is not available.

(c) *Promissory note.* Form FmHA 440–16, "Promissory Note", will be prepared and signed in accordance with Part 1807 of this Chapter (FmHA Instruction 427.1), and the FMI for the form.

(1) The payment alternatives of the note will be completed in accordance with the FMI for the form. Payments of principal and interest will be deferred during the period the dwelling is not expected to be suitable for occupancy as a residence because of construction or repairs to be made. In such cases if the loan is closed before any funds are advanced by the Finance Office or loan funds are distributed by multiple advance, accrued interest is added to principal and repaid in regular amortized installments (payment alternative II) after the deferment period.

(2) The payment provision of the note will be completed in accordance with the FMI for the form and the following:

(i) The monthly payment provision will be used for all borrowers who regularly receive monthly income and who can repay the loan in 12 equal monthly payments.

(ii) The annual payment provision will be used only for borrowers who do not regularly receive monthly income throughout the year. If installments are not to be deferred, the following provisions apply:

(A) The amount of the first installment will be determined by the County Supervisor after considering the immediate debt paying ability of the borrower. The amount of the first installment may be less, but not more, than a regular annual installment.

(B) The amount of the first installment may not be less than the amount equal to interest on the loan from the date of loan closing to the next January 1.

(C) Form FmHA 440–9 should be used to supplement this payment provision to facilitate servicing of loans for borrowers who pay more than one time a year.

(d) *Real estate mortgage.* Form FmHA 427–1, "Real Estate Mortgage for (state)————" will be used for loans to be secured by a real estate mortgage. Any changes made in the text by deletion, substitution, or addition (excluding filling in blanks) will be initialed in the margin by all persons signing the mortgage. Additions will be made on the mortgage in the following cases:

(1) For a loan secured by a mortgage on a leasehold, the following language, or similar language which in the opinion of OGC is legally adequate, will be inserted in the mortage just before the legal description of the real estate:

All Borrower's right, title, and interest in and to the leasehold estate for a term of—— years beginning on————, 19—, created, executed and established by certain Lease dated——, 19—, by ————as lessor(s), and recorded at Book——, Page ——of the —— Records of said County and State, and any renewals and extensions thereof, and all Borrower's right, title, and interest in and to said Lease, covering the following real estate:

(2) For a loan secured by a mortgage on a leasehold an additional covenant will be inserted in the mortgage to read as follows:

Borrower will pay when due all rents and any and all other charges required by said Lease, will comply with all other requirements of said Lease, and will not surrender or relinquish, without the Government's written consent, any of Borrower's right, title or interest in or to said leasehold estate or under said Lease while this instrument remains in effect.

(3) For all initial and subsequent Section 502 RH loans, until the mortgages are revised, the following additional covenant will be inserted above the signature line on the mortgage and be initialed at loan closing by all parties signing the mortgage.

This instrument also secures the recapture of any interest credit or subsidy which may be granted to the borrower(s) by the Government pursuant to 42 U.S.C. 1490a.

(e) *Collection of first installment.* If the annual payment provision of the note is used and payments are not deferred, the first installment of a loan closed during December will be collected at the time of loan closing.

(f) *Direct payments.* Direct payment cards for all new borrowers, including transferees, will be retained in the County Office until the borrower has made at least three monthly payments on time. The cards will then be delivered to the borrower and payments will be made direct to the Finance Office. The County Supervisor may retain the payment cards for a longer period if such action is considered to be necessary to determine that the

borrower is able to make timely payments as agreed. Payments made to the County Office will be forwarded to the Finance Office with the appropriate direct payment card in the Finance Office mail. Cash payments, refunds, and extra payments made by borrowers will be handled in accordance FmHA Instruction 451.2.

(g) *Owner's policy of title insurance.* If an owner's policy of title insurance is obtained, it will be delivered to the borrower as soon as it is received from the title insurance company.

(h) *Real estate mortgage after filing.* When the real estate mortgage is returned by the filing official or loan closing official, the original will be filed in the borrower's case folder. If the original is retained by the filing official in the official records, a copy conformed to show the recording data including the date and place of recording and the book and page number will be filed in the borrower's case folder. A copy of the mortgage will be delivered to the borrower.

(i) *Effective date of loan closing.* A loan secured by a real estate mortgage is closed when the mortgage is filed for record. In other cases a loan is closed when the borrower executes the note and any other required instruments.

(j) *Water stock certificate or other such collateral.* When water stock certificates or other such collateral are part of the security, they will be retained in the County Office. A notation will be made on Form FmHA 1905–1, "Management System Card—Individual", or Form FmHA 1905–5, "Management System Card—Individual (RH only)", as appropriate, showing that such security has been retained.

(k) *Account record and case folder.* The account record and case folder will be established in accordance with FmHA Instruction 2033–A and 1905–A (available at any FmHA office).

§ 1944.34 Interest credit.

(a) *General.* It is the policy of FmHA to grant interest credit on loans to lower income borrowers to assist them in obtaining decent, safe, and sanitary dwellings and related facilities.

(b) *Definitions.* (1) *Annual payment borrowers.* Borrowers who signed promissory notes providing for annual payments, including borrowers converted to monthly payments through the use of Form FmHA 451–37, "Additional Partial Payment Agreement".

(2) *Monthly payment borrowers.* Borrowers who signed promissory notes providing for monthly payments.

(3) *Review period.* The review period for an annual payment borrower will be the months of August, September, and October. The review period for a monthly payment borrower will be the third, fourth, and fifth months prior to the anniversary date of the borrower's current Interest Credit Agreement.

(4) *Real estate taxes.* Real estate taxes for interest credit purposes means the amount of real estate taxes and assessments that will actually be due and payable on the dwelling and the dwelling site during the interest credit period, reduced by the amount of any tax exemption available to the borrower, regardless of whether such exemption is actually claimed. Tax exemptions may include such things as homestead exemptions, special exemptions for low-income families, senior citizens, veterans and others

(c) *Approval authority.* Those FmHA officials who are authorized to approve Section 502 loans are also authorized to approve the Interest Credit Agreement.

(d) *Amount of interest credit.* (1) Loans qualified to be considered in the interest credit calculation include only those advanced for authorized section 502 RH purposes and which are a lien against the FmHA security by virture of a prior mortgage or a junior mortgage consented to by FmHA. Except as provided in paragraph (d)(2) of this section, the amount of interest credit will be determined as follows:

(i) For low-income borrowers the amount of interest credit will be the lesser of:

(A) The difference between 20 percent of the borrower's adjusted annual income and the sum of the annual installment due at the note interest rate on qualified loans plus the cost of real estate taxes and insurance, or

(B) The difference between the annual installment due on the FmHA promissory notes eligible for interest credit and the amount the borrower would pay if the loan were amortized at an interest rate of 1 percent.

(ii) For moderate-income borrowers the amount of interest credit will be the lesser of:

(A) The amount as calculated in paragraph (d)(i)(A) of this section, or

(B) The difference between the annual installment due on the FmHA promissory notes eligible for interest credit and the amount the borrower would pay if the loan were amortized at the appropriate rate specified for the borrower's area and income in Exhibit D.

(2) For repair and rehabilitation loans which meet the requirements of paragraph (f)(5) of this section, interest credit will be granted in an amount to achieve the following effective interest rates:

(i) For borrowers whose adjusted annual income is not more than $5,000, interest credit will be calculated to reduce the effective interest rate to 1 percent.

(ii) For borrowers whose adjusted annual income is more than $5,000 but not more than $7,000, interest credit will be calculated to reduce the effective interest rate to 2 percent.

(iii) For borrowers whose adjusted annual income is more than $7,000 but not more than $10,000, interest credit will be calculated to reduce the effective interest rate to 3 percent.

(3) Borrowers qualifying for interest credit assistance under both paragraphs (d) (1) and (d) (2) of this section will be granted only the one type of interest credit assistance that is most beneficial to them. Interest credit on initial and subsequent loans will always be the same type. There is no provision for switching from one type of interest credit to the other.

(e) *Recapture.* At the applicant interview, the County Supervisor will advise all Section 502 RH applicants that interest credit is subject to recapture. Applicants who receive interest credit will be required to sign a "Subsidy Repayment Agreement" (Part 1951, Subpart I, Exhibit A) at the time the initial interest credit agreement is signed.

(f) *Eligibility.* To be eligible for interest credit, a borrower must qualify for a Section 502 loan, must personally occupy the dwelling, and must meet the following additional requirements:

(1) *Initial loans.* Interest credit may be granted at loan closing if:

(i) The borrower's adjusted annual income does not exceed the applicable moderate-income limit in Exhibit C.

(ii) The borrower's net worth does not exceed $7,500 (a maximum net worth of $10,000 will be allowed for senior citizens) unless an exeption is authorized. The calculation of net worth will exclude the value of the dwelling and dwelling site, cash on hand which will be used to reduce the amount of the loan, and household goods and the debts against them. For the purpose of determining whether an exception is justified, consideration will be given to the nature of the assets, particularly whether they are assets upon which a borrower is currently dependent for a livelihood or which could be used to reduce or eliminate the need for interest credit. The District Director may authorize exceptions of the net worth limitation up to $20,000. Cases recommended by the State Director for which the net worth exceeds $20,000 will be submitted to the National Office for authorization to grant interest credit.

(iii) The term of the loan is for 33 years, unless authorized otherwise by the State Director, based on complete documentation of the justifiable reasons on an individual case basis. Interest credit will not be granted on loans with a term of less than 25 years, except as provided in paragraph (f) (5) of this section.

(iv) The loan was approved on or after August 1, 1968.

(v) The amount of interest credit exceeds $5 per month or $60 annually.

(2) *Subsequent loans.* Interest credit may be granted on subsequent loans which meet the requirements of paragraph (f) (1) of this section or the following conditions:

(i) Interest credit is presently being or will be granted on the initial loan and the borrower's adjusted income does not exceed the moderate income limit for the State as shown in Exhibit C, and

(ii) The sum of interest credit being granted on the initial and subsequent loans will be $5 or more per month or $60 or more per year.

(3) *Reamortization, transfers and credit sales.* Interest credit may be granted to a borrower buying an inventory dwelling or assuming an RH loan, or when a loan approved after August 1, 1968, is being reamortized provided:

(i) The requirements of paragraph (f)(1) of this section are met except that if the loan being assumed was initially approved before August 1, 1968, the assumption must be on new terms.

(ii) The loan will be reamortized for a term of 25 years or more except as provided in paragraph (f)(5) of this section.

(iii) The note being assumed is not an above-moderate loan.

(4) *Existing loans.* Interest credit may be granted at any time after loan closing if:

(i) The requirements of paragraph (f) (1) of this section are met.

(ii) The loan was approved as a "low or moderate" Section 502 loan on or after August 1, 1968.

(iii) The borrower requests interest credit, or the County Supervisor determines that interest credit is needed to enable the borrower to repay the loan. In the case of married borrowers, when one spouse has left the dwelling due to marital discord, interest credit based on the remaining spouse's income may be extended to the remaining spouse if:

(A) The remaining spouse is occupying the dwelling, owns a legal interest in the property, and is liable for the debt,

(B) The FmHA loan account is put in the remaining spouse's name,

(C) Legal papers have been filed with the appropriate court to commence divorce or legal separation proceedings, or one spouse has not been living in the dwelling for at least six months. Interest credit will not be granted if separation is due only to work assignment or military order.

(D) The remaining spouse is informed and agrees that should the spouse begin to live in the dwelling, that spouse's income will then be counted toward annual income and interest credit may be reduced or cancelled.

(5) *Repair and rehabilitation loans.* Interest credit may be granted on Section 502 RH loans made to repair or rehabilitate a dwelling already owned by the applicant provided the following conditions are met:

(i) The initial interest credit will be granted at the time of loan closing;

(ii) The dwelling is, or will be, occupied by an eligible borrower after the loan is made;

(iii) The amount of the loan may not exceed $10,000, or be amortized for more than 25 years;

(iv) The applicant's adjusted annual income does not exceed $10,000;

(v) The repairs will be made to bring a substandard dwelling up to the standards outlined in § 1944.16(c); and

(vi) The net worth requirements in paragraph (f)(1)(ii) of this section are met.

(g) *Processing interest credit.* (1) *General.* The amount of interest credit for which a borrower may be eligible will be determined by use of Form FmHA 1944–6 or Form FmHA 1944–A6 as outlined in paragraph (d) of this section.

(i) *Determination of income.* The County Supervisor is responsible for determining the borrower's adjusted annual and annual income as defined in § 1944.2, paragraphs (c) and (d) respectively of this subpart. A borrower interview will be conducted in all cases for granting interest credit. Form FmHA 410–5 will be used to verify the earnings from employment of all persons whose income is included in "Annual Income".

(ii) *Effective period.* Interest Credit Agreements on loans made to monthly payment borrowers will be effective for a two-year period. For annual payment borrowers the agreement will be in effect until the second December 31 after the effective date. The effective date will be as indicated on the FMI.

(iii) *Partial year interest credit.* For an annual payment borrower with an initial installment less than a regular installment, and who will receive less than a full year of interest credit assistance, the interest credit granted will be a pro rata portion calculated on the number of months left in the current calendar year, including the month in which the loan is closed.

(iv) *Advance from the insurance fund.* The repayment schedule for advances made from the Rural Housing Insurance Fund will be computed at the interest rate shown on the promissory note. However, interest will accrue and payments will be applied on the amount advanced at the reduced interest rate in effect at the time of payment.

(v) *Preparation of the transaction record.* For borrowers receiving interest credit, the following changes will be shown on Form FmHA 451–26, "Transaction Record", when prepared by the Finance Office:

(A) Interest rate field. The interest rate field of the form will continue to show the interest rate on the note. The Finance Office will compute the effective interest rate charged the borrower based on the amount of interest credit granted. The computed rate, rounded to the nearest ⅛ of a percent, will be shown as a footnote on the form as "Interest Rate reduced to ——%". Subsequent transactions will be applied to the loan by the Finance Office at the reduced interest rate until such time as renewal, change, or cancellation occurs.

(B) Daily interest accural field. The daily interest accrual will be shown at the reduced interest rate and the interest will accrue at the same interest rate until such time as the interest credit is renewed, changed, or cancelled.

(C) Application of credit field. The initial transaction record form will not have an entry in the "Application of Credit" field. The Interest Credit Transaction Code for this method of processing interest credit will be 4 Z.

(D) Payment status field. The payment status field will not reflect the dollar amount of the interest credit granted. No entry will be made for monthly payment borrowers.

(E) Minimum amount due by date shown field. For annual payment borrowers, the amount of the installment, reduced by the amount of interest credit granted, will be shown. For monthly payment borrowers the word "monthly" will be entered in the space provided.

(2) *Initial and subsequent loans.* (i) County office action. The County Supervisor will:

(A) Determine the borrower's adjusted annual income and document the calculations in the case file running record.

(B) Enter on Form FmHA 440–1, the adjusted annual income, the estimated real estate taxes that will become due and payable during the first and second

years of the agreement, and the amount of the annual property insurance premium for the dwelling.

(C) For initial loans approved with interest credit and closed under the multiple advance feature of the loan disbursement system outlined in Part 1902 Subpart A, further review of the borrower's financial status is not required unless the Interest Credit Agreement will be approved more than 90 days after the last "Verification of Employment", or there is evidence which indicates the borrower's financial status has changed significantly. If prior to approval of the Interest Credit Agreement the County Supervisor finds that the adjusted income has increased, interest credit will be granted on the basis of the borrower's new circumstances. Interest credit will not be granted if the borrower's adjusted income exceeds the moderate income limit indicated in Exhibit C of this Subpart.

(D) Complete and submit a corrected Interest Credit Agreement to the Finance Office when the loan is closed, or at the amortization effective date, if the borrower's circumstances have changed so that the amount of interest credit would be increased or decreased by at least $5 monthly or $60 annually.

(ii) Finance office actions. The Finance office will:

(A) Enter the information concerning adjusted annual income, the estimated real estate taxes, and the insurance premium on Form FmHA 440–57.

(B) Calculate the amount of interest credit to be granted to the borrower. The amount of interest credit will be determined from the information initially shown on Form FmHA 440–1.

(C) Prepare and mail Form FmHA 1944–A6 to the County Office when the final loan check is issued. Upon receipt, the form will be completed and a copy returned to the Finance Office only when indicated on the form.

(D) Prepare and issue payment cards to the County Office.

(3) *Reamortization, credit sales and transfers.* Interest credit to a borrower whose loan is being reamortized or, a borrower who assumes an RH loan or purchases property from inventory will be calculated by the County Office on Form FmHA 1944–6. A copy of Form FmHA 1944–6 will be forwarded to the Finance Office along with the copy of the Reamortization Agreement, Advice of Mortgaged Real Estate Sold, or Assumption Agreement. The Finance Office will issue payment cards to the County Office.

(4) *Existing loans.* Interest credit granted in accordance with paragraph (f)(4) of this section can be processed at any time in the same manner as interest credit on initial loans, except that the County Office will complete Form FmHA 1944–6 and calculate the amount of interest credit assistance the borrower will receive. A copy of Form FmHA 1944–6 will be used to send interest credit information to the Finance Office. The daily interest accrual will be reduced as of the effective date entered on the form or as of the date the last cash credit was made to the account, whichever is later.

(h) *Interest credit modification.* (1) *Before expiration.* When approving a change in interest credit assistance before the expiration of a current Interest Credit Agreement in accordance with paragraph (i)(3) of this section, the County Supervisor will again determine the borrower's adjusted annual income and document the findings in the case file running record. A Form FmHA 1944–6 will be completed in accordance with the FMI and a copy of the form will be forwarded to the Finance Office. The Finance Office will adjust the daily interest accrual as of the date entered on the form or as of the date of the last cash credit made to the account, whichever is later.

(2) *Correction of Interest Credit Agreements.* A corrected Interest Credit Agreement will be prepared if the borrower is still eligible to receive interest credit. The corrected agreement will be submitted to the Finance Office only after the borrower's appeal right has expired or, if the borrower has filed an appeal, after a final decision has been made. In such cases, a Form FmHA 1944–6 showing the proper amount of interest credit which the borrower is entitled to receive will be submitted to the Finance Office to replace the incorrect agreement. The notation "Corrected in accordance with § 1944.34" will be entered on the face of the form. The Finance Office will cancel the incorrect Interest Credit Agreement as of its effective date. Payments made under the previous agreement will be reversed and reapplied at the adjusted interest rate of the new Interest Credit Agreement.

(3) *Interest credit renewal.* (i) *Initiation of renewal action.* At the beginning of the review period, the Finance Office will mail to the County Office a list of borrowers whose Interest Credit Agreements are expiring, together with a package to be mailed by the County Supervisor to each borrower. The package will contain the following:

(A) A letter of explanation and the instructions for completing the Interest Credit Agreement (Exhibit G of this Subpart).

(B) Form FmHA 1944–A6 (3 parts with carbon interleaved).

(C) Two Forms FmHA 410–A5, "Request for Verification of Employment". The County Office name and address will be preprinted in the space provided.

(D) Three window envelopes to be used by the borrower in mailing Interest Credit Agreements to the County Office, and for the employer to mail the Verification of Employment form to the County Office.

(ii) *Borrower responsibility.* Upon receipt of the package, the borrower will give one copy of the Verification of Employment form to the employer or employers of each member of the household who has income to be considered. A window envelope will be provided each employer to facilitate the mailing of the Verification of Employment form directly to the County Office. The borrower will also complete part II of the Interest Credit Agreement form (leaving carbon intact), sign the original form and mail the original and all copies to the County Office.

(iii) *County office actions.* The County Supervisor will:

(A) Maintain the list of borrowers as a record of Interest Credit Agreements processed and sent to the Finance Office.

(B) Review the information on Forms FmHA 1944–A6 and 410–A5 for completeness and accuracy. Interviews with borrowers should be scheduled if the borrower needs assistance in completing the form or provides incomplete or apparently inaccurate information.

(C) Determine the adjusted annual income and document the calculations in the case file running record.

(D) Complete the Interest Credit Agreement and send a copy of the agreement to the Finance Office. If the borrower is not eligible for interest credit, enter "0" in the block(s) which indicates the amount of interest credit.

(E) If the Form FmHA 1944–A6 is mutilated or unusable, transfer *all* information preprinted on the form to a new Form FmHA 1944–6 to be signed by the borrower and submit the completed form to the Finance Office.

(F) Retain the original of the Interest Credit Agreement and return the other copy to the borrower.

(G) Notify by letter borrowers not eligible for continued interest credit of the amount of their revised payments.

The letter must notify the borrower of the right to appeal as outlined in § 1944.34(1). A new Form FmHA 440–9 will be obtained when needed.

(iv) *Finance Office actions.* The Finance Office will:

(A) Upon receipt of Form FmHA 1944–A6 from the County Office, send the borrower or the County Office a new set of payment cards.

(B) Before the end of the review period, send the County Office a list of borrowers for whom a renewal Interest Credit Agreement has not been received. The County Office staff will place a checkmark in the appropriate column of the list to indicate those borrowers who are no longer eligible for interest credit or whose agreements will not be renewed. The original of the completed list will be retained in the County Office and a copy returned to the Finance Office.

(v) *Processing interest credit renewals not received during the review period.* The County Supervisor may approve interest credit renewals not completed during the review period. They will be handled as follows:

(A) The amount of interest credit assistance granted will be based on the borrower's planned annual income during the first year of the agreement. The effective date of the Interest Credit Agreement will be as indicated on the FMI for the form.

(B) Payments made by the borrower after the expiration date of the previous Interest Credit Agreement will be applied at the note interest rate until the Finance Office receives a new Form FmHA 1944–6.

(C) Upon receipt of Form FmHA 1944–6, the Finance Office will reduce the daily interest accrued in accordance with the following conditions and limitations:

(*1*) If failure to renew was due to error or oversight by FmHA, the State Director will authorize the Finance Office to reduce the interest accrual as of the effective date entered on the form and reverse and reapply payments processed after the effective date. Such authorization must be in writing.

(*2*) In all other cases the Finance Office will reduce the daily interest accrual as of the effective date entered on the form or as of the date of the last cash credit made to the account, whichever, is later.

(i) *Eligibility Review.* The eligibility of those borrowers currently receiving interest credit will be reviewed as follows:

(1) *Biennial review.* The eligibility of all borrowers will be redetermined biennially during the review period.

(i) If the borrower's net worth increases above the applicable eligibility limit, interest credit may nevertheless be renewed unless the increase is sufficient to enable the borrower to graduate to another source of credit.

(ii) Interest credit will not be renewed if:

(A) The amount of interest credit for which the borrower qualifies is less than $5 monthly or $60 annually, or

(B) The borrower's adjusted annual income exceeds the moderate-income limit set forth in Exhibit C of this Subpart.

(iii) Interest credit will not be renewed if the borrower has enlarged or improved the dwelling or added related facilities so that the housing exceeds modest standards for size, design, and cost for previously occupied homes as compared to other housing in the locality for low and moderate income families.

(2) *Renewals not completed during the review period.* When the borrower's renewal Interest Credit Agreement is not completed during the review period, it will be processed in accordance with § 1944.34(h)(3)(v).

(3) *Change in borrower's circumstances.* The County Supervisor is not responsible for monitoring whether a borrower's income, family size, real estate taxes, or insurance costs have changed after an Interest Credit Agreement is approved. If, however, it becomes known that the borrower's circumstances have changed so that the amount of interest credit assistance the borrower is eligible to receive has increased or decreased, the County Supervisor will take action in accordance with the following:

(i) *Increased adjusted income.* If the County Supervisor determines that the borrower's income exceeds the applicable moderate income limit in Exhibit C, or that the amount of interest credit for which the borrower qualifies is $5 or less per month or $60 or less per year, interest credit will be cancelled in accordance with § 1944.34(k). If the interest credit will be decreased by $15 or more per month or $180 or more per year a revised interest credit agreement will be submitted to the Finance Office. If the term of the agreement has less than five months remaining no action will be taken until the review period and the change will be effective at the expiration of the current agreement.

(ii) *Decreased adjusted income.* Changes in interest credit may be approved at any time if the amount of interest credit the borrower is eligible to receive is increased by at least $15 per month or $180 per year. Such changes noted during the review period will not be effective until the expiration of the current agreement. Cases involving marital separation must meet the requirements of paragraph (f)(4)(iii) before existing interest credit can be increased.

(j) *Improper interest credit.* (1) *When to take action.* Servicing under this section will be taken when, at the time of interest credit approval, incorrect information was provided by a borrower or any other person or an error by any FmHA employee results in the borrower receiving improper interest credit of $5 or more per month or $60 or more annually.

(2) *Determining improper interest credit.* Whenever there is a reason to believe a borrower was granted improper interest credit the County Supervisor will immediately reverify the information on which the interest credit was based. The County Supervisor will determine if improper interest credit was granted. If there is reason to believe there may be fraud or fiscal irregularities the complete case file together with all facts will be submitted to the State Director. If the State Director believes there is indication of fraud or fiscal irregularity, further investigation will be considered as provided in FmHA Instruction 2012–B (available in any FmHA office). If there is no indication of fraud or fiscal irregularity the case will be returned to the County Supervisor for appropriate corrective action.

(3) *Falsification or error by borrower.* The following actions will be taken when it is determined that excessive interest credit was granted because the borrower intentionally or otherwise provided incorrect information.

(i) The County Supervisor will inform the borrower by certified mail (return receipt requested) of the intent to cancel the Interest Credit Agreement and the effective date of such cancellation. The notice to the borrower will include the right to appeal as provided in § 1900.53 of Subpart B, Part 1900. The borrower will also be informed of the amount of monthly payment required after proper corrections are made. A corrected Interest Credit Agreement will be prepared if the borrower remains eligible for a reduced amount of interest credit. The corrected agreement or cancellation will be submitted to the Finance Office only after the borrower's appeal right has expired or if the borrower has filed an appeal, and a final decision has been made.

(ii) If the borrower does not appeal, or it is determined that the appeal is not valid, the case will be handled by one of the following methods:

(A) The State Director will request the Finance Office to cancel the Interest Credit Agreement as of the effective date of the current Form FmHA 1944–6 or earlier Form FmHA 1944–6 involved in the period of review or investigation. The Finance Office will then reapply

any payment to the account at the note rate of interest or at the rate of the corrected Interest Credit Agreement and will notify the County Supervisor and borrower of any adjustment made in the account.

(B) If the borrower's action appears to have been deliberate and a major error occurred, liquidation may be warranted. For example, such actions may be taken if the information obtained indicates that the borrower was not eligible for an RH loan. Such a borrower will be asked to repay the RH loan by refinancing or otherwise satisfying the account. In other cases, the borrower may already be in default and the fact that the borrower had not correctly reported income may justify liquidation of the loan. The State Director may authorize the account to be repaid under an acceleration agreement if the conditions of § 1872.17(g) of this Chapter (FmHA Instruction 465.1 paragraph XVII G) are met.

(C) When falsified information is provided to FmHA in order to qualify the borrower for interest credit (for example, a packager provides information for a borrower), but there is evidence that the borrower is not at fault or definitely did not intend to provide false information, the borrower will be requested to pay the loan in full, including any improper and excessive interest credit that may have been granted. If, however, the borrower is unable to satisfy the account and the State Director determines that the Government's financial interest would not be jeopardized by leaving the loan outstanding, and that it would be inequitable to call it, the loan may be continued.

(D) In cases for which immediate liquidation is not warranted and the State Director determines the loan may be continued, the County Supervisor will make a diligent effort to obtain a lump sum restitution of the improperly advanced interest credit. If the borrower is unable to pay by lump sum payment Form FmHA 451–37 will be used to establish a new repayment schedule. The borrower will be charged interest on the improperly advanced interest credit at the same rate charged on the principal indebtedness.

(4) *Error by FmHA employee.* (i) When the borrower presented correct information and an FmHA employee erroneously granted excessive credit, the following action will be taken:

(A) The County Supervisor will inform the borrower by letter of the action to be taken and of the right to appeal as provided in paragraph (1) of this section.

(B) A cancellation of interest credit or a corrected interest credit agreement will be submitted to the Finance Office only after the borrower's appeal right has expired or if the borrower has filed an appeal and a final decision has been made. The State Director will authorize the Finance Office in writing to reverse and reapply payments made since the effective date of the cancellation or the corrected agreement. The Finance Office will then reapply any payments made on the account during the period in which incorrect interest credit was granted. Interest will be charged at the note rate or at the corrected interest credit rate as provided in paragraph (h)(2) of this section. The amount of improper interest credit will be charged to the borrower's account and become immediately due and payable. The County Supervisor and borrower will be notified of adjustments made in the account.

(C) If the Interest Credit Agreement is cancelled, the County Supervisor will make a diligent effort to obtain a lump sum restitution of the improperly advanced interest credit from the borrower. If this cannot be done, the County Supervisor will take one of the following courses of action:

(*1*) If the borrower can repay the improperly advanced interest credit over a reasonable period of time, the County Supervisor will use Form FmHA 451–37 to establish a new repayment schedule. The borrower will be charged interest on the improperly advanced interest credit at the same rate charged on the principal indebtedness.

(*2*) If the County Supervisor determines that the borrower is unable to repay the improperly granted interest credit, that fact should be documented and the case forwarded to the State Director for review. If the State Director concurs with the findings of the County Supervisor, the case will be forwarded to the National Office with recommendations that the improperly advanced interest credit be forgiven.

(ii) When an error by an FmHA employee results in too little interest credit being granted a corrected agreement will be prepared effective the date of the error, if the error is $5 or more per month or $60 or more per year.

(k) *Cancellation of interest credit agreements.* (1) *Reasons for cancellation.* An existing Interest Credit Agreement will be cancelled whenever:

(i) The borrower has never occupied the dwelling and FmHA will not continue with the loan.

(ii) The borrower ceases to occupy the dwelling.

(iii) The borrower sells or conveys the title to the property.

(iv) The borrower has received improper interest credit as outlined in § 1944.34(j) and a corrected Interest Credit Agreement will not be submitted.

(v) The borrower has an increase in income as outlined in § 1944.34(i)(3)(i) and is no longer eligible for interest credit.

(vi) The borrower has enlarged or improved the dwelling or added related facilities so that the housing exceeds modest standards for size, design and cost for previously occupied homes compared to other housing in the locality for low and moderate income families.

(2) *Effective date of cancellation.* The effective date of cancellation for paragraph (k)(1)(i) of this section will be date of loan closing. The effective date of cancellation for paragraphs (k)(1) (ii), (iii), and (iv) of this section will be the date on which the earliest action occurs which causes the cancellation. If the date cannot be determined, the date on which the County Supervisor became aware of the situation will be used. The effective date of cancellation for paragraph (k)(1) (v) and (vi) of this section will be the date on which the County Supervisor became aware of the situation. When an account has been accelerated and none of the conditions outlined in paragraph (k)(1) of this section exist, the Interest Credit Agreement will remain in effect until the final foreclosure action is completed. However, if the existing agreement expires before the foreclosure action is completed an interest credit renewal agreement will not be prepared. If foreclosure action is dismissed, withdrawn or terminates without sale of the property or payment of the loan in full a renewal agreement will be prepared with an effective date as of the expiration of the previous agreement.

(3) *Notification to the Finance Office.* The County Supervisor will determine the date of cancellation and notify the Finance Office on Form FmHA 1944–15, "Interest Credit Agreement Cancellation (Section 502 RH Loans)." The Finance Office will process the cancellation and will accrue interest from the date of cancellation at the rate of interest shown on the promissory note. Prompt notification to the Finance Office, using Form 1944–15, is extremely important, as any transaction affecting the borrower's account subsequent to cancellation will be incorrect if cancellation action has not been completed by the Finance Office.

(l) *Applicant or borrower notice of right to appeal.* All applicants or borrowers who request and are denied interest credit or whose interest credits are reduced, cancelled, or not renewed, will be notified of their appeal rights as

required by § 1910.53 of Part 1900 Subpart B except when:

(1) Interest credit is denied and the borrower acknowledges income is above published limits, or

(2) Interest credit is reduced because of income increases which the borrower acknowledges.

(m) *Submission to National Office.* The State Director may submit to the National Office for determination by the Administrator or a delegate any proposed transaction in which the conditions prescribed in the foregoing paragraphs of this section cannot be met, and it is determined that interest credit is necessary to avoid extreme hardship to the family or prevent foreclosure action. This paragraph is primarily intended to be used for those cases in which the granting of interest credit is necessary for the borrower to retain a dwelling for the borrower's own use, and there are no other means to do so. The State Director will submit to the National Office the County Office files together with full facts, justification, and recommendation.

§§ 1944.35–1944.36 [Reserved]

§ 1944.37 Subsequent Section 502 loans.

Subsequent Section 502 loans may be made to present borrowers for the same purpose and under the same conditions and limitations as initial loans, except as provided in this section.

(a) The subsequent loan will be processed in the same manner as initial loans, except that a new appraisal report will be required in accordance with § 1944.24 only when real estate will be taken as security and at least one of the following conditions exists:

(1) The property was not appraised in connection with the initial loan.

(2) The latest appraisal report of the real estate is over two years old.

(3) The physical characteristics of the property have changed significantly.

(4) The County Supervisor or loan approval official is uncertain of the adequacy of the security and requests a new appraisal report.

(b) A subsequent RH loan may be made on a note-only basis, provided the amount of the subsequent loan plus the unpaid principal balance of any prior note-only RH loan or loans does not exceed $2,500. Applicants for such loans must meet the requirements of § 1944.18(b)(1).

(c) When a real estate mortgage is required in connection with a subsequent RH loan, any outstanding RH notes will be described in the mortgage unless an exception can be made in accordance with Exhibit A, paragraph II F of FmHA Instruction 427.1 (available at any FmHA office).

(d) The subsequent loan will bear interest at a rate determined in accordance with Exhibit B of FmHA Instruction 440.1 (available in any FmHA office).

(e) When necessary to settle a divorce action, a subsequent loan may be made to permit the remaining borrower, if eligible, to obtain a loan to purchase the equity of the departing spouse.

(f) When an area designation has been changed from rural to non-rural, subsequent RH loans may be made only in accordance with the provisions of § 1944.10(g)(4).

(g) The initial RH loan may be reamortized with the prior authorization of the District Director. Authority to reamortize an account will be granted in those cases in which it is determined that the borrower cannot reasonably be expected to meet installments due unless the account is reamortized. It will be processed in accordance with § 1951.20 or § 1951.40 of Part 1951 Subpart A.

§ 1944.38 Mutual self-help housing loans.

Applicants who are unable to build modest dwellings by customary methods, because of limited income and repayment ability, may build their homes by participating in a mutual self-help housing project. The County Supervisor will not approve RH loans or proceed in the development of a self-help project without prior authorization of the State Director. If an organization applies for a Technical Assistance (TA) grant, the District Director will submit Form AD–625, "Application for Federal Assistance (Short Form)", and all related information concerning the technical assistance grant to the State Director. If it is determined that the technical assistance grant has been approved for funding, the State Director may issue written authorization for the County Supervisor to approve Mutual Self-Help Housing loans. Exhibit H, "Mutual Self-Help Housing Guidelines", will be used as a guide for developing self-help projects and counseling with participating families. The County Supervisor, in counseling with families participating in self-help housing projects, will determine the anticipated time required for construction.

§ 1944.39 RH loans to FmHA employees and loan closing officials.

FmHA employees, County Committee members, and loan-closing officials, or their spouses may receive a Section 502 RH loan subject to the provisions of this Subpart and the following conditions:

(a) The application will be submitted to the County Office in the usual manner. Written evidence indicating the applicant's inability to obtain the needed credit will be included. The County Office will obtain the verification of employment and credit report and submit the application and related information to the District Director for review. The District Director will forward the applicant's docket, along with written recommendation concerning the applicant's eligibility, to the State Director for eligibility determination.

(b) The State Director will determine the eligibility of the applicant. If eligible, the docket will be returned to the District Director for processing. If the applicant is determined ineligible, the State Director will notify the applicant in writing and will provide the applicant all information required by § 1910.6(b) of Part 1910 Subpart A.

(c) The application will be retained in the County Office and will be processed in the same order as other applications. The District Director will be notified when the application is in order for processing and will be responsible for the complete loan processing.

(d) If the loan applicant works outside the county in which the application is filed, the District Director may permit authorized County Office staff to perform the appraisal function. In all other cases the District Director will appraise the property or have it appraised by a qualified FmHA appraiser from outside the County Office area in which the loan is to be made. The completed loan docket together with the District Director's written recommendation will be submitted to the State Director for consideration of approval.

(e) If the applicant is an employee in the District Office, the State director will designate another District Director to process the application.

(f) The State Director must, before approving the loan, determine that the applicant has not been and will not be given any advantage because of the FmHA relationship and the making of a loan will not result in a conflict of interest under FmHA Instruction 2045–BB (available in any FmHA office). The dwelling may not exceed the needs of the applicant or be excessive in size, design, or cost when compared to other FmHA financed dwellings in the area.

(g) If the loan is approved, the borrower's case file will not be maintained or serviced in the office where the borrower is or will be employed. If the property is in the area serviced by the office of employment the State Director will designate another

District or County Office to service the loan.

(h) If the loan involves any type of construction, the inspections for FmHA will be made by the District Director or another member of the District Director's staff as designated by the District Director. Under no circumstances will the employee receiving the loan make the inspections for FmHA.

(i) Loans, credit sales, or assumption agreements *will not* be approved under this authority for any of the following purposes:

(1) Purchase of inventory property.

(2) Purchase of a dwelling from a RH borrower.

(3) Purchase of FmHA security property being sold at foreclosure sale.

§ 1944.40 Rural housing disaster (RHD) loans.

RHD loans may be made to repair or replace dwellings which were damaged or destroyed by a natural disaster such as earthquake, flood, forest fire, severe windstorm, or lightning.

(a) *Eligibility requirements.* (1) The applicant must meet the requirements of § 1944.8 and § 1944.9 of this Subpart.

(2) Nonfarm applicants must have occupied the dwelling as their permanent residence.

(3) The loss by a nonfarm applicant was not the result of a major disaster designated by the President or a natural disaster designated by the Administrator of the Small Business Administration.

(4) The loss by a farmer was not the result of a major disaster designated by the President or a natural disaster designated by the Secretary of Agriculture.

(5) The loan application must be filed within 12 months after the date the loss occurred.

(6) The applicant must use available assets, including insurance loss payments, and other assistance, to the extent available, to repair or replace the damaged or destroyed buildings.

(b) *Repair or replacement of buildings.* Repair or replacement of any damaged or destroyed building must be consistent with the basic Section 502 loan policies. Changes may be made in the building, but in any case the repaired or replaced building should not be significantly larger or more costly than the original building except as necessary to provide a building which is adequate but modest. Any new dwelling constructed must meet the limitations established by § 1944.16 of this Subpart.

(c) *Interest rate and source of funds.* (1) RHD loans will be made at an interest rate of 5 percent. Interest credit will not be granted for RHD loans.

(2) Insured loan funds will be used for RHD loans.

(d) *Approval authorization.* The State Director, County and Assistant County Supervisors are authorized to approve RHD loans in accordance with FmHA Instruction 1901-A (available in any FmHA office) for Section 502 RH loans.

(e) *Deferred payments.* The initial payments of principal and interest, or principal only, may be deferred so as not to become due until as late as the third January 1 for annual payment notes, or the third anniversary date of the note for monthly payment notes, subject to all of the following conditions:

(1) The applicant, as a result of the loss suffered from the disaster, has had a substantial loss of income; or debts, including the proposed RHD loan, have increased substantially as a result of the disaster.

(2) The income loss or increase in debts must be sufficiently great so that the applicant will not likely be able to pay in full the installments that ordinarily would be due during the proposed deferment period and also meet other obligations.

(3) The applicant's other debts must be adjusted by reduction, reamortization, extension, or other means to the extent possible by negotiation with other creditors.

(4) The applicant's income will be sufficient after the deferment period to enable the applicant to meet the payments on the RHD loan and all other obligations.

(f) *Form FmHA 440–1.* The appropriate assistance code number will be entered in the space provided to indicate the nature of the loss.

§§ 1944.41–1944.43 [Reserved]

§ 1944.44 Borrower graduation.

Borrowers will be requested to apply for refinancing of RH loans if credit may be available from another source at rates and terms prevailing in the area for homeownership loans. The borrower must apply for and, if approved by the lender, accept the refinancing loan. Graduation reviews will be conducted in accordance with Part 1865, of this Chapter (FmHA Instruction 451.6).

§ 1944.45 Conditional commitments.

(a) *General.* A conditional commitment is assurance from FmHA to a qualified builder or seller that dwellings to be built or rehabilitated and offered for sale, will be acceptable for purchase by qualified RH loan applicants if built in accordance with FmHA approved plans and specifications and priced at not more than a specified maximum amount. The conditional commitment does not reserve funds for a loan nor does it assure that a loan applicant will be available to buy the dwelling.

(b) *Eligibility:* To be eligible for conditional commitments, the builder or seller must:

(1) Be the owner as defined in § 1944.15, before construction is started, of the site on which the dwelling is located or to be built, except as indicated in Part 1822, Subpart G (paragraph VII L of FmHA Instruction 444.6).

(2) Have the experience and ability to complete the type of proposed work in a competent and workmanlike manner.

(3) Be financially responsible and have the ability to finance or obtain financing for the proposed housing or rehabilitation.

(4) Comply with the requirements of Part 1901 Subpart E "Civil Rights Compliance Requirements" and the Equal Credit Opportunity Act as required by § 1910.2 of Part 1910 Subpart A.

(5) Plan to build or rehabilitate dwellings which will qualify for purchase by RH applicants and which will be in compliance with all applicable laws, ordinances, and codes.

(6) Have the legal capacity to enter into the required agreements and the actual capacity to carry them out.

(c) *Limitations:* (1) Conditional commitments will be issued only in cases where the commitment applicant's selling price does not exceed the commitment price, which will never be more than the appraised value minus customary closing costs.

(2) Conditional commitments will be issued by FmHA only for new homes to be constructed or existing homes to be rehabilitated.

(3) Conditional commitments will not be issued after construction has started.

(4) Number of conditional commitments.

(i) The total number of commitments issued in any locality will not exceed the number of homes for which there is an immediate and ready market in that locality.

(ii) The number of houses on which conditional commitments will be outstanding to a commitment applicant at any time will not exceed 15 in any one county unless authorized by the State Director after the State Director:

(A) Determines that a larger number of commitments must be made to meet the immediate housing needs in the area;

(B) Determines that authorizing more than 15 commitments to one

commitment applicant will not reduce the participation of small volume builders in the Rural Housing program; and

(C) Provides guidelines to the County Supervisor to assure that all builders active in the area have equal opportunity to obtain more than 15 conditional commitments.

(iii) The total number of conditional commitments outstanding in the area served by a County Office will not exceed the number on which the County Supervisor can reasonably expect to be able to approve RH loans within 3 months after the houses covered by the commitments are completed, considering the availability of loan funds and the number of applications in the County Office.

(5) The period of the conditional commitment will be for 12 months from the date of issue. The commitment may be extended for an additional 6 months if justified because of (1) unexpected delays in construction caused by such factors as bad weather or materials shortages, or (2) marketing difficulties.

(6) When five or more conditional commitments have been issued during a 12 month period an affirmative marketing plan will be submitted in accordance with § 1901.203(c) of Part 1901 of Subpart E.

(d) *Conditional commitments involving packaging of applications:* A conditional commitment may be made to a builder who packages a Rural Housing application for an applicant to buy the property. In cases when the dwelling is presold and is to be constructed for sale only to a specific applicant and the information on the house and the loan applicant is submitted at the same time, all of the following conditions must be met to avoid misunderstanding of FmHA's obligation to either the RH applicant or the conditional commitment applicant:

(1) The conditional commitment will not be approved until the RH loan has been approved.

(2) Construction will not begin until the County Office has received notice from the Finance Office that funds are obligated for the RH loan.

(3) The RH loan will be closed only after the dwelling is constructed or the rehabilitation completed and final inspection has been made.

(e) *Fees:* Each commitment applicant will pay an application fee at the time an application is submitted for a conditional commitment. The fee for each dwelling will be:

(1) For proposed construction of new dwellings—$65.

(2) For existing dwellings to be rehabilitated—$50.

(f) *Processing applications:* (1) Applications for conditional Commitments will be submitted on Form FmHA 1944–36 "Application for Conditional Commitment". Attachments as outlined on the form will be included for each individual dwelling for which a Conditional Commitment is requested.

(2) *Transmittal of fees.* The County Supervisor will transmit application fees on Form FmHA 451–2, "Schedule of Remittances". The payment will be handled with all other payments for the day in accordance with Part 1951 Subpart B and the FMI for Form FmHA 451–2.

(3) *Evaluation of applications.* The County Supervisor will take the following actions in the order specified:

(i) Determine whether the commitment applicant meets the requirements of paragraphs (b) and (c) of this section.

(ii) Determine whether the dwelling and site meet the requirements of this Subpart and Subpart A, Part 1924 and will comply with all local codes and ordinances. The property must meet the requirements of Part 1804, Subpart D (FmHA Instruction 424.5).

(iii) If the commitment applicant and the dwelling and site have qualified, an appraisal will be made in accordance with FmHA Instruction 422.3 (available in any FmHA office).

(4) *Failure of applicant or dwelling to qualify.* In case any commitment applicant or dwelling does not qualify for a conditional commitment, the documents attached to the application will be returned to the commitment applicant with a letter explaining why the application was not approved. If the application is denied for failure to meet the requirements of paragraph (b) (2) or (3) of this Section, notice of appeal rights will be given as required by § 1900.53, of Part 1900, Subpart B.

(i) The application fee will be refunded if for any reason preliminary inspection of the property or investigation of the commitment applicant indicates that a conditional commitment cannot be issued. For example, the property might be located in a nonrural area or the dwellings may not be of a type that the FmHA can appropriately finance. If a refund is required, a memorandum should be sent to the Finance Office indicating the commitment applicant's name together with the date and amount of fees paid. The memorandum should also indicate the number of commitments being denied and amount of fees to be refunded.

(ii) Application fees will not be refunded for any property on which the appraisal has been made.

(5) *Conditional commitment approval.* The State Director, District Director, County and Assistant County Supervisors are authorized to approve conditional commitments provided the commitment price does not exceed the loan approval authority for Section 502 RH loans as outlined in Subpart A, Part 1901, (available in any FmHA office). If the application is approved, the County Supervisor will complete and sign Form FmHA 444–11 "Conditional Commitment". When a qualified applicant applies for a loan to buy a dwelling on which a conditional commitment has been issued, the commitment documents will be transferred to the RH loan docket.

(g) *Inspections.* Inspections of work to be done will be performed in accordance with Part 1924 Subpart A. The original and one copy of Form FmHA 424–12, "Inspection Report", will be prepared. The County Supervisor will give the commitment applicant the original of Form FmHA 424–12 and the copy will be retained in the County Office case file. Failure to correct any deficiencies or to complete the work in accordance with plans and specifications approved by FmHA will be a basis for cancelling the conditional commitment.

(h) *Changes in plans, specifications, and/or commitment price.* The County Supervisor is authorized to approve changes in plans and specifications that are consistent with HUD MPS and Exhibit D of Part 1924 Subpart A. If the changes are requested after an option has been executed by a rural housing applicant, the change will be approved only after the applicant and the builder submit a written request for approval.

If a change will reduce or increase the appraised value of the property, the County Supervisor will revise the commitment price and inform the commitment applicant. Also, in cases when the holder of a commitment reports to the County Supervisor that costs associated with the construction or repair of a dwelling have increased, the approval official may increase the commitment price provided the property has not been optioned by an RH applicant, and the County Supervisor determines that the increase is clearly justified, the circumstances causing the price increase were beyond the commitment applicant's control, and the value of the property is adequate to permit the increased commitment price. A revised appraisal report will be prepared. The conditional commitment will be revised, initialed, and dated by the person authorizing the change.

(i) *Cancellation of outstanding conditional commitments.* (1)

Conditional commitments may be cancelled when construction of the dwelling is not begun within 60 days after the commitment is issued.

(2) Conditional commitments will be cancelled when construction is not in accordance with all FmHA requirements, approved plans, specifications, or MPS, and the builder refuses to make corrections necessary for compliance.

(j) *Folder maintenance.* Documents prescribed in this Subpart will be filed in accordance with FmHA Instruction 2033–A (available at any FmHA office).

(k) *Builder's warranty.* The builder or seller, as appropriate, will execute Form FmHA 424–19, "Builder's Warranty", or provide a 10 year insured warranty when the loan to buy the dwelling is closed.

§ 1944.46 Construction financing for builders by private credit sources.

(a) The purpose of this section is to provide a method by which a builder may be able to obtain construction credit from commercial sources of credit. It may eliminate the need to use a supervised bank account and also eliminate the need for the borrower to make payments on the loan during construction.

(b) This method may be used under the following conditions:

(1) A conditional commitment has been or will be issued, an RH loan approved, and funds obligated for the applicant in accordance with § 1944.45, or

(2) The applicant owns a building site and will contract the construction or improvement of the building or buildings. In such a case:

(i) The applicant will retain ownership of the site and not convey title to the builder, and

(ii) The lender providing the construction financing will not take a mortgage on the site owned by the applicant or otherwise require the applicant to secure the construction loan.

(c) This method may not be used if the RH loan is made in participation with an FO or an individual SW loan.

(d) Loan docket forms will be prepared in accordance with § 1944.30 of this Subpart. Applicants who own the building site will be required to obtain and submit to the County Supervisor preliminary title evidence in accordance with Part 1807 (FmHA Instruction 427.1). Satisfactory title or leasehold interest in the property must be confirmed before execution of Form FmHA 424–6, "Construction Contract" (available in all County Offices), and Form FmHA 444–16, "Notice of Loan Approval".

(e) When the processed original of Form FmHA 440–1, is received from the Finance Office, the County Supervisor will complete and sign an orginal and one copy of Form FmHA 444–16. The original of Form FmHA 444–16 will be given to the builder and a copy will be retained in the loan docket.

(f) The builder may present Form FmHA 444–16, Form FmHA 444–11, FmHA 440–34, or FmHA 424–6, as appropriate, to a commercial lender to obtain construction financing. The County Supervisor will make no commitments to the lender except as indicated on the above forms.

(g) The required inspections will be made by FmHA or a firm or company that will provide a 10 year insured warranty. In all cases the final inspection will be made by FmHA. Copies of Form FmHA 424–12, will be provided to the builder and, if requested, to the commercial lender.

(h) The lender is responsible for determining the amount that will be advanced to the builder under the construction financing arrangement, and for determining any measures necessary to protect its interest.

(i) When construction is completed, the loan will be closed in accordance with Part 1807 of Subpart A of this Chapter (FmHA Instruction 427.1), usually within 10 days after satisfactory competition of construction.

§§ 1944.47–1944.50 [Reserved]

Exhibit A—Information Required To Package Applications for Section 502 Rural Housing Loans

I. General Information

Persons or organizations that want to assist applicants in submitting applications to the Farmers Home Administration (FmHA) should first meet with the County Supervisor. If these discussions indicate that the person or organization is capable of satisfactorily delivering complete information about applicants and houses that are likely to qualify for Rural Housing (RH) loans, the County Supervisor will review in detail the information that is needed and the processing steps required in competing an RH loan. The County Supervisor will provide assistance and guidance to all packagers in obtaining the required information. The following FmHA forms and this exhibit may be provided to prospective packagers as needed:

(A) Form FmHA 1944–12, "Rural Housing Loan Application Package."

(B) Form FmHA 410–4, "Application for Rural Housing Loans (Nonfarm Tract)."

(C) Form FmHA 410–1, "Application for FmHA Services."

(D) Form FmHA 410–5, "Request for Verification of Employment."

(E) Form FmHA 424–2, "Description of Materials."

(F) Form FmHA 440–34, "Option to Purchase Real Property."

II. Information Packager or Applicant Must Provide

(A) *Information To Be Submitted For All Applicants.*

(1) The applicant should complete the appropriate application form (FmHA Form 410–1 or 410–4).

(a) All information must be complete and accurate.

(b) If the applicant has business income, the current operating statement must be attached.

(c) The applicant must date and sign the application form.

(2) Form FmHA 410–5, is used to check employment and income of applicants. The form should be mailed to the employer to be completed and returned directly to the County Office. FmHA will not provide franked envelopes to a packager for this purpose.

(3) In cases where it appears that the applicant has sufficient income or assets to qualify for housing credit from another source, a diligent effort must be made to obtain such credit from at least two lenders who customarily make long-term hous...g loans in the area. If such lenders are unable to provide the credit needed, their written response stating why they cannot assist the applicant should be included in the loan package.

(4) The information specified in paragraphs II B or II C of this Exhibit, whichever is applicable, will be submitted. In case FmHA has issued a conditional commitment on the property, information on the house will be on file in the County Office and need not be resubmitted.

(5) If a house to be purchased is under construction, the loan will not be closed until construction is completed. In such a case the information in paragraph II C of this Exhibit will be submitted.

(B) *Information needed for loans to purchase new homes or to build or rehabilitate homes.* The information requested on the front page of Form FmHA 1944–36 will be submitted along with the completed form. This applies regardless of whether a conditional commitment is being requested in connection with the package.

(C) *Information to be Submitted for Loans To Buy Existing Homes.*

(1) Form FmHA 1944–12 "Rural Housing Loan Application Package."

(2) A signed or certified copy of an option on the property. The option must provide that any payments made by the applicant will be refunded if the loan cannot be made. Form FmHA 440–34, may be used for this purpose.

(3) A termite certification whenever required.

(4) In case major improvements are involved, submit three sets of complete drawings and specifications of the work that must be done, and a contractor's bid or a reliable cost estimate.

(5) If the house qualifies as an existing home, is less than a year old, and an individual water or sewage system is involved, include a certification by the builder that the house and any water and waste disposal system have been or will be built or installed in accordance with the local building codes and plans and specifications.

Such plans and specifications will also be submitted. Evidence of approval by health authorities having jurisdiction in the area also wil be included. If the house is a year or more old, the County Supervisor will determine that the water and/or sewage system is functionally adequate and that the house meets FmHA requirements.

(6) Direction map to the property.

(7) Plot plan drawn to scale showing house location and related facilities.

III Review and Acceptance of Completed Package

During the initial discussions with packagers, the packager should understand the necessity for, and agree that, the loan packages will be assembled in the order shown on Form FmHA 1944–12 before they are delivered to the County Office. Form FmHA 1944–12 must be signed by the packager and be included with the materials submitted; otherwise, the packaged application will not be accepted. The County Supervisor will review each loan package when it is received and request any additional information needed. An affirmative fair housing plan will be submitted in accordance with § 1901.203(c) of Part 1901 Subpart E. The County Supervisor will determine eligibility according to Part 1910 Subpart A but will not proceed with the processing of the loan until the applicant has been interviewed. A personal interview will be conducted by an FmHA employee with all applicants before approval of the requested loan in accordance with § 1944.26(e) of this Subpart.

(A) If the applicant appears to be qualified and all needed material is available, the County Supervisor will process the application in accordance with the regulations.

(B) If a loan can be approved, the County Supervisor will notify the applicant including any requirements that must be met prior to closing the loan. If for any reason a loan cannot be made, the County Supervisor will notify the applicant and the packager. If the loan is denied because the applicant is determined ineligible the applicant will be notified in accordance with § 1910.6 of Subpart A, Part 1910.

IV Packagers' Responsibilities

Packagers should fully understand their responsibilities in helping applicants to assemble their RH loan applications and that no fees may be charged for providing this service. Packagers must also comply with the requirements of Part 1901 Subpart E "Civil Rights Compliance Requirements" and the Equal Credit Opportunity Act as provided in § 1910.2 of Part 1910 Subpart A.

V District Directors' Review of Loans Originated by Application Packagers

District Directors are responsible for reviewing the file of a representative number of borrowers whose RH applications were submitted to the County Office by a packager. At least 5 percent of the cases packaged by each packager working in the county will be reviewed. The folders reviewed will be randomly selected and reviewed at scheduled office visits throughout the year in accordance with §§ 2006.604(c) and 2006.605(a)(1) of FmHA Instruction 2006–M (available in any FmHA office). The review will be made to determine whether: The applicant's income was properly verified; any credit report received was mailed from the Credit Reporting firm directly to the County Supervisor; the County Supervisor interviewed and counseled with the applicant prior to loan approval; the applicant was eligible for the RH assistance granted; and the loan was in accordance with FmHA procedures. Any incidence of unethical activity by a packager or the approval of improper loans by a County Supervisor will be reported promptly to the State Director for appropriate handling.

Exhibit B—Addresses for Authentication of Alien Registration Cards

This Exhibit lists the addresses of the Immigration and Naturalization Service district offices. To comply with § 1944.9(c) of this Subpart, County Supervisors will request verification of the validity of alien registration cards by writing to the nearest office. Following the list of offices is a sample letter that may be used for authenticating the Alien Registration cards.

A list of these offices follows:

Albany, New York 12207,Post Office and Courthouse, Room 220, 445 Broadway
Anchorage, Alaska 99501, U.S. Post Office and Courthouse Building, Room 401, 632 W. 6th Avenue
Atlanta, Georgia 30309, 1430 West Peachtree Street, NW.
Baltimore, Maryland 21201, E. A. Garmatz Federal Building, 100 S. Hanover St.
Boston, Massachusetts 02203, John Fitzgerald Kennedy Federal Building, Government Center
Buffalo, New York 14202, 68 Court Street
Chicago, Illinois 60604, Dirksen Federal Office Building, 219 South Dearborn Street
Cincinnati, Ohio 45201, U.S. Post Office and Courthouse, 5th and Walnut Street, Post Office Box 537
Cleveland, Ohio 44199, Anthony J. Ciebrezze, Room 1917, Federal Building, 1240 East 9th Street
Dallas, Texas 75202, Room 1C13, Federal Building, 1100 Commerce Street
Denver, Colorado 80202, 17027 Federal Office Building
Detroit, Michigan 48207, Federal Building, 333 Mount Elliott Street
El Paso, Texas 79984, 343 U.S. Courthouse, Post Office Box 9398
Hammond, Indiana 46320, 102 Federal Building, 507 State Street
Hartford, Connecticut 06105, 900 Asylum Avenue
Helena, Montana 59601, Federal Building, Post Office Box 1724
Honolulu, Hawaii 96809, 595 Ala Moana Boulevard, Post Office Box 461
Houston, Texas 77208, Federal Building, U.S. Courthouse, 515 Rusk Avenue, Post Office Box 61630
Kansas City, Missouri 64106, Suite 1100, 324 E Eleventh Street
Los Angeles, California 90012, 300 North Los Angeles Street
Memphis, Tennessee 38104, 814 Federal Building, 167 North Main Street
Miami, Florida 33130, Room 1324, Federal Building, 51 Southwest First Avenue
Milwaukee, Wisconsin 53202, Room 186 Federal Building, 517 East Wisconsin Avenue
Newark, New Jersey 07102, Federal Building, 970 Broad Street
New Orleans, Louisiana 70113, Postal Services Building, 701 Loyola Avenue
New York, New York 10007, 26 Federal Plaza
Norfolk, Virginia 23502, Room 207, Bank of Virginia Building, 870 North Military Highway
Omaha, Nebraska 68102, Room 1006, Federal Office Building, 106 South 15th Street
Philadelphia, Pennsylvania 19106, Room 1321 U.S. Courthouse, Independence Mall West, 601 Market Street
Phoenix, Arizona 85025, Federal Building, 230 North First Avenue
Pittsburgh, Pennsylvania 15222, 2130 Federal Building, 1000 Liberty Avenue
Port Isabel, Texas 78566, Rural Route 3, Los Fresnos, Texas
Portland, Maine 04112, 76 Pearl Street
Portland, Oregon 97209, Federal Office Building, 511 N.W. Broadway
Providence, Rhode Island 02903, Federal Building, U.S. Post Office, Exchange Terrace
Reno, Nevada 89502, Suite 150, 350 South Center Street
Saint Albans, Vermont 05478, Federal Building, Post Office Box 501
Saint Louis, Missouri 63101, Room 423, U.S. Courthouse and Customhouse, 1114 Market Street
Saint Paul, Minnesota 55111, 180 East Kellog Blvd.
Salt Lake City, Utah 84138, Room 4103, New Federal Building, 125 South State Street
San Antonio, Texas 78206, Suite A301, U.S. Federal Building, 727 East Durango
San Diego, California 92188, 880 Front Street
San Francisco, California 94111, Appraisers Building, 630 Sansome Street
San Juan, Puerto Rico 00936, U.S. Immigration and Naturalization Service, GPO Box 5068 Hato Rey, Puerto Rico
Seattle, Washington 98134, 815 Airport Way, South
Spokane, Washington 99201, 691 U.S. Courthouse Building
Washington, D.C. 20536, 1025 Vermont Avenue NW.

Sample Letter for Authenticating Alien Registration Cards

To: Immigration and Naturalization Officer —

Subject: (Mr.) and (and Mrs.) ———
(Passport or Alien Registration Number) ——
(Address) ———

(Mr.) (and Mrs.) (Ms.) ——— (has) applied for a Rural Housing loan from the Farmers Home Administration (FmHA). One condition for eligibility of noncitizens is that the applicant has been admitted to the United States for permanent residency or on indefinite parole.

Please advice whether the identified alien registration card is valid and entitles the holder to remain in the United States for permanent residency or on indefinite parole by completing the last paragraph of this letter and signing in the space provided. Attached is a self-addressed franked envelope for returning the information to this office.

Sincerely,

County Supervisor, FmHA ——————
County Office Address ——————

Privacy Act Consent

I have stated to FmHA personnel that I have been admitted to the U.S. (for permanent residency) (on indefinite parole). My signature below authorizes verification of the requested information.
Applicant ——————

Alien Registration Card No. —— [is] (is not) valid and [does] (does not) entitle the holder to remain in the U.S. (for permanent residency) (on indefinite parole).
Signature ——————
Title ——————
Immigration and Naturalization Service

Exhibit C—Maximum Adjusted Income Limits for Rural Housing Programs

BILLING CODE 3410-07-M

Exhibit C - Maximum Adjusted Income Limits for Rural Housing Programs

MAXIMUM ADJUSTED INCOMES FOR RURAL HOUSING PROGRAMS IN ALABAMA

AREA/COUNTY	VERY LOW 50% MEDIAN	65% MEDIAN	LOW INCOME	MODERATE INCOME
NORTHWEST	6,900	9,000	11,000	15,600
COLBERT	FRANKLIN	LAUDERDALE	MARION	WINSTON
WEST	5,600	7,300	9,300	15,600
BIBB PICKENS	FAYETTE TUSCALOOSA	GREENE	HALE	LAMAR
BIRMINGHAM	8,100	10,600	12,400	17,900
BLOUNT WALKER	CHILTON	JEFFERSON	SHELBY	ST CLAIR
EAST	6,600	8,600	10,500	15,600
CALHOUN COOSA	CHAMBERS ETOWAH	CHEROKEE RANDOLPH	CLAY TALLADEGA	CLEBURNE TALLAPOOSA
SOUTH CENTRAL	4,900	6,400	9,300	15,600
BULLOCK PIKE	BUTLER	CRENSHAW	LOWNDES	MACON
TOMBIGBEE	5,300	6,900	9,300	15,600
CHOCTAW MONROE	CLARKE PERRY	CONECUH SUMTER	DALLAS WASHINGTON	MARENGO WILCOX
SOUTHEAST	6,200	8,100	9,900	15,600
BARBOUR HENRY	COFFEE HOUSTON	COVINGTON	DALE	GENEVA

MAXIMUM ADJUSTED INCOMES FOR RURAL HOUSING PROGRAMS IN ALABAMA

AREA/COUNTY	VERY LOW 50% MEDIAN	65% MEDIAN	LOW INCOME	MODERATE INCOME
SOUTH	7,400	9,600	11,700	16,200
BALDWIN	ESCAMBIA	MOBILE		
CENTRAL	8,300	10,800	12,400	18,300
AUTAUGA	ELMORE	MONTGOMERY		
LEE CO	7,500	9,700	11,900	16,400
LEE	RUSSELL			
NORTH CENTRAL	6,600	8,600	10,500	15,600
CULLMAN	LAWRENCE	MORGAN		
TOP OF ALA	6,900	9,000	11,000	15,600
DEKALB	JACKSON	LIMESTONE	MADISON	MARSHALL

MAXIMUM ADJUSTED INCOMES FOR RURAL HOUSING PROGRAMS IN ARIZONA

AREA/COUNTY	VERY LOW 50% MEDIAN	65% MEDIAN	LOW INCOME	MODERATE INCOME
MARICOPA	9,200	12,000	14,700	20,300
MESA	PEORIA	BUCKEYE	AVONDALE	
TUCSON	8,400	10,900	13,400	18,400
TUCSON				
DIST III	6,400	8,400	11,200	15,600
PRESCOTT	COTTONWOOD	FLAGSTAFF	HOLBROOK	SNOWFLAKE
SPRINGERVILLE	WINLOW ROCK			
DIST IV	8,200	10,600	13,000	18,000
KINGMAN	LAKE HAVASU	PARKER	YUMER	
DIST V	7,400	9,700	11,800	16,300
SACATON	FLORENCE	ELOY	CASA GRANDE	GLOBE
DIST VI	7,700	10,000	12,200	16,900
WILCOX	BENSON	DOUGLAS	NOGALES	SAFFORD

MAXIMUM ADJUSTED INCOMES FOR RURAL HOUSING PROGRAMS IN ARKANSAS

AREA/COUNTY	VERY LOW SOI MEDIAN	65% MEDIAN	LOW INCOME	MODERATE INCOME
WEST CENTRAL	6,000	7,800	9,600	15,600
CLARK	CONWAY	GARLAND	HOT SPRINGS	JOHNSON
MONTGOMERY	PERRY	PIKE	POPE	YELL
SOUTHWEST	6,100	7,900	9,700	15,600
CALHOUN	COLUMBIA	DALLAS	HEMSTEAD	HOWARD
LAFAYETTE	LITTLE RIVER	MILLER	NEVADA	OUACHITA
SEVIER	UNION			
SOUTHEAST	5,600	7,300	9,300	15,600
ARKANSAS	ASHLEY	BRADLEY	CHICOT	CLEVELAND
DESHA	DREW	GRANT	JEFFERSON	LINCOLN
NORTHWEST	6,000	7,800	9,600	15,600
BAXTER	BENTON	BOONE	CARROLL	MADISON
MARION	NEWTON	SEARCY	WASHINGTON	
EAST	5,600	7,300	9,300	15,600
CLAY	CRAIGHEAD	CRITTENDEN	CROSS	GREENE
LAWRENCE	LEE	MISSISSIPPI	PHILLIPS	POINSETT
RANDOLPH	ST FRANCIS			
WHITE RIVER	5,100	6,600	9,300	15,600
CLEBURNE	FULTON	INDEPENDENCE	IZARD	JACKSON
SHARP	STONE	VAN BUREN	WHITE	WOODRUFF
CENTRAL	7,500	9,700	11,900	16,400
FAULKNER	LONOKE	MONROE	PRAIRIE	PULASKI
SALINE				

MAXIMUM ADJUSTED INCOMES FOR RURAL HOUSING PROGRAMS IN ARKANSAS

AREA/COUNTY	VERY LOW 50% MEDIAN	65% MEDIAN	LOW INCOME	MODERATE INCOME
WESTERN	5,800	7,500	9,300	15,600
CRAWFORD	FRANKLIN	LOGAN	POLK	SCOTT
SEBASTIAN				

MAXIMUM ADJUSTED INCOMES FOR RURAL HOUSING PROGRAMS IN CALIFORNIA

AREA/COUNTY	VERY LOW 50% MEDIAN	65% MEDIAN	LOW INCOME	MODERATE INCOME
DISTRICT 1	7,600	9,900	12,100	16,700
COLUSA	DEL NORTE	GLENN	HUMBOLDT	LASSEN
MODOC	SHASTA	SISKIYOU	TEHAMA	TRINITY
DISTRICT 2	8,800	11,500	14,100	19,400
BUTTE	EL DORADO	NEVADA	PLACER	PLUMAS
SACRAMENTO	SIERRA	SUTTER	YOLO	YUBA
DISTRICT 3	8,300	10,800	13,200	18,200
ALPINE	AMADOR	CALAVARAS	MADERA	MARIPOSA
MERCED	SAN JOAQUIN	STANISLAUS	TUOLUMNE	
DISTRICT 4	8,800	11,500	14,100	19,400
ALAMEDA	CONTA COSTA	LAKE	MARIN	MENDOCINO
MONTEREY	NAPA	SAN BENITO	SAN FRANCISCO	SAN LUIS
SANTA CRUZ	SANTA BARBARA	SOLANO	SONOMA	VENTURA
SAN MATIO	STS CLARA			
DISTRICT 5	7,400	9,600	11,800	16,200
FRESNO	KINGS	TULARE		
DISTRICT 6	9,400	12,300	14,900	20,700
IMPERIAL	INYO	KERN	ORANGE	RIVERSIDE
SAN BERNARDINO	SAN DIEGO	LOS ANGELES	NONO	

MAXIMUM ADJUSTED INCOMES FOR RURAL HOUSING PROGRAMS IN COLORADO

AREA/COUNTY	VERY LOW 50% MEDIAN	65% MEDIAN	LOW INCOME	MODERATE INCOME
REGION 1	7,600	9,900	12,100	16,700
MORGAN	WASHINGTON	LOGAN	SEDGWICK	YUMA
PHILLIPS				
REGION 2	8,700	11,300	13,800	19,100
WILD	LARIMER			
REGION 3	10,300	13,400	14,900	22,700
BOULDER	GILPIN	CLEAR CREEK	JEFFERSON	ADAMS
ARAPAHOE	DOUGLAS			
REGION 4	8,400	10,900	13,400	18,400
PARK	TELLER	EL PASO		
REGION 5	7,200	9,400	11,300	15,900
ELBERT	LINCOLN	CHEYENNE	KIT CARSON	
REGION 6	6,300	8,200	11,200	15,600
BACA	BENT	PROWERS	KIOWA	OTERO
CROWLEY				
REGION 7	8,600	11,200	13,700	18,900
PUEBLO				
REGION 7B	5,700	7,400	11,200	15,600
LAS ANIMAS	HUERFANO			

MAXIMUM ADJUSTED INCOMES FOR RURAL HOUSING PROGRAMS IN COLORADO

AREA/COUNTY	VERY LOW 50% MEDIAN	65% MEDIAN	LOW INCOME	MODERATE INCOME
REGION 8	6,600	8,600	11,200	15,600
SAGUACHE COSTILLA	MINERAL	RIO GRANDE	ALAMOSA	CONEJOS
REGION 9	7,400	9,600	11,800	16,200
DOLORES	MONTEZUMA	SAN JUAN	LA PLATA	ARCHULETA
REGION 10	6,700	8,800	11,200	15,600
GUNNISON DELTA	HINSDALE	OURAY	SAN MIGUEL	MONTROSE
REGION 11	7,600	10,200	12,800	17,200
MESA	GARFIELD	RIO BLANCO	MOFFAT	
REGION 12	9,200	11,900	14,600	20,200
ROUTT PITKIN	JACKSON	GRAND	SUMMIT	EAGLE
REGION 13	7,200	9,400	11,600	16,000
LAKE	CHAFFEE	FREMONT	CUSTER	

MAXIMUM ADJUSTED INCOMES FOR RURAL HOUSING PROGRAMS IN CONNECTICUT

AREA/COUNTY	VERY LOW 50% MEDIAN	65% MEDIAN	LOW INCOME	MODERATE INCOME
HARTFORD	10,600	13,800	14,900	23,300
LITCHFIELD	10,100	13,200	14,900	22,300
MIDDLESEX	10,600	13,800	14,900	23,300
NEW HAVEN	10,100	13,200	14,900	22,300
NEW LONDON(E)	10,500	13,600	14,900	23,000
NEW LONDON(W)	10,500	13,600	14,900	23,000
WINDHAM (E)	9,200	11,900	14,700	20,200
WINDHAM (W)	9,200	11,900	14,700	20,200
TOLLAND	11,600	15,100	14,900	25,600
FAIRFIELD	15,100	19,600	15,100	33,200

MAXIMUM ADJUSTED INCOMES FOR RURAL HOUSING PROGRAMS IN DELAWARE

AREA/COUNTY	VERY LOW 50% MEDIAN	65% MEDIAN	LOW INCOME	MODERATE INCOME
KENT	8,500	11,000	12,400	18,600
NEW CASTLE	11,000	14,300	12,400	24,200
SUSSEX	8,300	10,800	12,400	18,200

MAXIMUM ADJUSTED INCOMES FOR RURAL HOUSING PROGRAMS IN FLORIDA

AREA/COUNTY	VERY LOW 50% MEDIAN	65% MEDIAN	LOW INCOME	MODERATE INCOME
DISTRICT 1	7,800	10,100	12,400	17,100
ESCAMBIA	OKALOOSA	SANTA ROSA		
DISTRICT 2	6,400	8,300	10,200	15,600
BAY	CALHOUN	FRANKLIN	GADSDEN	GULF
HOLMES	JACKSON	JEFFERSON	LEON	LIBERTY
WAKULLA	WALTON	WASHINGTON		
DISTRICT 3	7,100	9,300	11,400	15,800
ALACHUA	BRADFORD	COLUMBIA	DIXIE	GILCHRIST
HAMILTON	LAFAYETTE	SUWANNEE	MADISON	TAYLOR
UNION				
DISTRICT 4	8,200	10,700	12,400	18,100
BAKER	CLAY	DUVAL	FLAGLER	NASSAU
PUTNAM	ST JOHN			
DISTRICT 5	6,100	8,000	9,800	15,600
CITRUS	HERNANDO	LEVY	MARION	SUMTER
DISTRICT 6	7,900	10,300	12,400	17,300
BREVARD	LAKE	SEMINOLE	ORANGE	OSCEOLA
VOLUSIA				
DISTRICT 7	7,600	9,900	12,200	16,800
DE SOTO	HARDEE	HIGHLANDS	OKEECHOBEE	POLK

MAXIMUM ADJUSTED INCOMES FOR RURAL HOUSING PROGRAMS IN FLORIDA

AREA/COUNTY	VERY LOW 50% MEDIAN	65% MEDIAN	LOW INCOME	MODERATE INCOME
DISTRICT 8	7,500	9,800	12,000	16,500
HILLSBOROUGH	MANATEE	PASCO	PINELLAS	
DISTRICT 9	7,800	10,200	12,400	17,200
CHARLOTTE LEE	COLLIER	GLADES	HENDRY	SARASOTA
DISTRICT 10	8,400	11,000	12,400	18,500
INDIAN RIVER	MARTIN	PALM BEACH	ST LUCIE	
DISTRICT 11	9,500	12,300	12,400	20,800
BROWARD	DADE	MONROE		

MAXIMUM ADJUSTED INCOMES FOR RURAL HOUSING PROGRAMS IN GEORGIA

AREA/COUNTY	VERY LOW 50% MEDIAN	65% MEDIAN	LOW INCOME	MODERATE INCOME
COASTAL APDC	7,500	9,700	11,900	16,400
LIBERTY EFFINGHAM	LONG BRYAN	MC INTOSH CHATHAM	GLYNN	CAMDEN
NORTHEAST	7,600	9,900	12,100	16,700
JACKSON OGLETHORPE	BARROW OCONEE	MADISON WALTON	ELBERT MORGAN	CLARKE GREENE
CEN SAVANNAH R	6,600	8,600	10,500	15,600
LINCOLN GLASCOCK COLUMBIA	WILKER JEFFERSON BURKE	TALIAFERRO EMANUEL RICHMOND	WARREN SCREVAN	MC DUFFIE JENKINS
ALTAMAHA RC.	5,900	7,700	9,500	15,600
APPLING TATTNALL	CANDLER TOOMBS	BULLOCH WAYNE	EVANS	JEFF DAVIS
ATLANTA REG	10,300	13,400	12,400	22,700
COBB ROCKDALE	DOUGLAS GWINNETT	FULTON	CLAYTON	DE KALB
MIDDLE	8,000	10,400	12,400	17,500
MONROE PEACH	JONES HOUSTON	CRAWFORD	BIBB	TWIGGS
SOUTH	6,200	8,000	9,800	15,600
TURNER BERRIEN	BEN HILL BROOKS	IRWIN LOWNDES	TIFT LANIER	COOK ECHOLS

MAXIMUM ADJUSTED INCOMES FOR RURAL HOUSING PROGRAMS IN GEORGIA

AREA/COUNTY	VERY LOW 50% MEDIAN	65% MEDIAN	LOW INCOME	MODERATE INCOME
MIDDLE FLINT	5,800	7,800	9,300	15,600
WEBSTER DOOLY	TAYLOR CRISP	MACON SUMPTER	MARION	SCHLEY
LOWER CHATTAHO	5,600	7,300	9,300	15,600
CLAY STEWART	COLUMBUS QUITMAN	HARRIS RANDOLPH	TALBOT	CHATTAHOOCHEE
OCONEE AREA	6,400	8,400	10,300	15,600
JASPER WILKINSON	PUTNAM JOHNSON	HANCOCK	BALDWIN	WASHINGTON
COOSA REGION	8,100	10,500	12,400	17,800
DADE GORDON	MARALSON FLOYD	WALKER BARTOW	CATOOSA POLK	CHATTOOGA PAULDING
SOUTHEAST	6,000	7,800	9,600	15,600
COFFEE BRANTLEY	BACON CLINCH	ATKINSON CHARLTON	WARE	PIERCE
CHATTAHO-FLINT	7,100	9,200	11,300	15,700
CARROLL	HEARD	COWETA	TROUP	MERIWETHER
MCINTOSH TRAIL	9,000	11,700	12,400	19,800
HENRY PIKE	FAYETTE LAMAR	SPALDING UPSON	NEWTON	BUTTS

MAXIMUM ADJUSTED INCOMES FOR RURAL HOUSING PROGRAMS IN GEORGIA

AREA/COUNTY	VERY LOW 50% MEDIAN	65% MEDIAN	LOW INCOME	MODERATE INCOME
SOUTHWEST	5,900	7,700	9,500	15,600
TERRELL EARLY SEMINOLE	LEE BAKER DECATUR	CALHOUN MITCHELL GRADY	DOUGHERTY COLQUITT THOMAS	WORTH MILLER
NORTH	8,300	10,800	12,400	18,200
WHITFIELD CHEROKEE	MURRAY	FANNIN	GILMER	PICKENS
HEART OF GA	5,700	7,400	9,300	15,600
LAURENS WILCOX	TREUTLEN WHEELER	BLECKLEY TELFAIR	PULASKI MONTGOMERY	DODGE
GA. MOUNTAINS	7,200	9,400	11,500	15,900
TOWNS HABERSHAM FRANKLIN	RABUN DAWSON HART	UNION FORSYTH STEPHENS	LUMPKIN HALL	WHITE BANKS

MAXIMUM ADJUSTED INCOMES FOR RURAL HOUSING PROGRAMS IN IDAHO

AREA/COUNTY	VERY LOW 50% MEDIAN	65% MEDIAN	LOW INCOME	MODERATE INCOME
DISTRICT I	7,500	9,800	12,000	16,500
BOUNDARY	BENEWAH	KOOTENAI	SHOSHONE	BONNER
DISRTICT II	8,100	10,600	13,000	17,900
IDAHO	LEWIS	CLEARWATER	NEZPERCE	LATAH
DISTRICT III	8,200	10,600	13,000	18,000
CANYON ADA	BOISE ELMORE	GEM PAYETT	VALLEY ADAMS	OWYHEE WASHINGTON
DISTRICT IV	7,000	9,100	11,200	15,600
CASSIA MINIDOKA	CAMAS LINCOLN	GOODING TWIN FALLS	BLAINE	JEROME
DISTRICT V	7,800	10,100	12,400	17,100
BINGHAM FRANKLIN	ONEIDA CARIBOU	BEAR LAKE	BANNOCK	POWER
DISTRICT VI	7,600	9,900	12,200	16,800
BUTTE MADISON	CUSTER TETON	BONNEVILLE JEFFERSON	CLARK LEMHI	FREMONT

MAXIMUM ADJUSTED INCOMES FOR RURAL HOUSING PROGRAMS IN ILLINOIS

AREA/COUNTY	VERY LOW 50% MEDIAN	65% MEDIAN	LOW INCOME	MODERATE INCOME
DISTRICT I	9,000	11,700	14,300	19,700
JO DAVIES MARSHALL	STEPHENSON PUTNAM	OGLE	BUREAU	STARK
NORTHWEST	9,200	12,000	14,700	20,300
CARROLL	LEE	WHITESIDE		
DISTRICT II	9,500	12,400	14,900	20,900
DE KALB IROQUOIS	LASALLE	KENDALL	GRUNDY	KANKAKEE
ROCK VALLEY	10,500	13,700	14,900	23,100
WINNEBAGO	BOONE			
NORTHEASTERN	11,600	15,100	14,900	25,600
COOK LAKE	DU PAGE	KANE	MC HENRY	WILL
DISTRICT III(PT	9,700	12,700	14,900	21,400
KNOX	LIVINGSTON	MC LEAN		
BI-STATE METRO	10,200	13,300	14,900	22,500
MERCER	HENRY	ROCK ISLAND		
DIST IV (PART)	9,400	12,200	14,900	20,600
MACON	SANGAMON	CASS	MORGAN	SCOTT

MAXIMUM ADJUSTED INCOMES FOR RURAL HOUSING PROGRAMS IN ILLINOIS

AREA/COUNTY	VERY LOW 50% MEDIAN	65% MEDIAN	LOW INCOME	MODERATE INCOME
WESTERN	7,200	9,300	11,500	15,900
FULTON	HANCOCK	HENDERSON	MC DONOUGH	WARREN
DISTRICT V	8,700	11,300	13,900	19,100
FORD PIATT DOUGLAS	MASON CHAMPAIGN COLES	MENARD VERMILLION EDGAR	LOGAN SHELBY	DE WITT MOULTRIE
TRI-COUNTY	10,800	14,000	14,900	23,700
PEORIA	WOODFORD	TAZEWELL		
DIST VI(PART)	7,500	9,800	12,000	16,500
CLARK	CUMBERLAND			
TWO RIVER	7,500	9,800	12,000	16,500
ADAMS	SCHUYLER	BROWN	PIKE	
WEST CENTRAL V	7,800	10,100	12,400	17,100
CALHOUN CHRISTIAN	GREENE	JERSEY	MACOUPIN	MONTGOMERY
SOUTHWESTERN ME	9,800	12,700	14,900	21,500
MADISON WASHINGTON	BOND RANDOLPH	ST CLAIR	MONROE	CLINTON
SOUTH CENTRAL	7,400	9,700	11,900	16,300
EFFINGHAM	FAYETTE	MARION		

MAXIMUM ADJUSTED INCOMES FOR RURAL HOUSING PROGRAMS IN ILLINOIS

AREA/COUNTY	VERY LOW 50% MEDIAN	65% MEDIAN	LOW INCOME	MODERATE INCOME
GREATER EGYPT	7,300	9,500	11,600	16,000
JEFFERSON	FRANKLIN	PERRY	JACKSON	WILLIAMSON
SOUTHERN FIVE	6,100	8,000	11,200	15,600
UNION	JOHNSON	ALEXANDER	PULASKI	MASSAC
EMBARRAS	7,400	9,700	11,800	16,300
JASPER	CRAWFORD	CLAY	LAWRENCE	RICHLAND
GREATER WABASH	7,000	9,100	11,200	15,600
WAYNE	EDWARDS	WABASH	WHITE	
SOUTHEASTERN	6,200	8,000	11,200	15,600
HAMILTON	SALINE	GALLATIN	POPE	HARDIN

MAX

AREA/
DISTRICT
LAKE
DISTRICT
NEWTON
DISTRICT
LA PORTE
DISTRICT
WHITLEY
DISTRICT
DE KALB
DISTRICT
BENTON
CARROLL
DISTRICT
FULTON
TIPTON
DISTRICT
GRANT
RANDOLPH

MAXIMUM ADJUSTED INCOMES FOR RURAL HOUSING PROGRAMS IN INDIANA

AREA/COUNTY	VERY LOW 50% MEDIAN	65% MEDIAN	LOW INCOME	MODERATE INCOME
DISTRICT 1A	10,800	14,100	14,900	23,800
LAKE	PORTER			
DISTRICT 1B	7,900	10,300	12,600	17,300
NEWTON	JASPER	STARKE	PULASKI	
DISTRICT 2	9,500	12,300	14,900	20,800
LA PORTE	ST JOSEPH	ELKHART	MARSHALL	KOSCUISKO
DISTRICT 3A	8,500	11,000	13,500	18,600
WHITLEY	NOBLE	LA GRANGE	HUNTINGTON	STEUBEN
DISTRICT 3B	10,000	13,000	14,900	21,900
DE KALB	ALLEN	WELLS	ADAMS	
DISTRICT 4	8,800	11,400	14,000	19,300
BENTON CARROLL	WHITE MONTGOMERY	WARREN CLINTON	FOUNTAIN	TIPPECANOE
DISTRICT 5	8,900	11,600	14,200	19,500
FULTON TIPTON	CASS	MIAMI	WABASH	HOWARD
DISTRICT 6	8,800	11,400	14,000	19,300
GRANT RANDOLPH	BLACKFORD HENRY	JAY	MADISON	DELWARE

MAXIMUM ADJUSTED INCOMES FOR RURAL HOUSING PROGRAMS IN INDIANA

AREA/COUNTY	VERY LOW 50% MEDIAN	65% MEDIAN	LOW INCOME	MODERATE INCOME
DISTRICT 7	8,200	10,700	13,100	18,100
PUTNAM SULLIVAN	PARKE	VIGO	VERMILLION	CLAY
DISTRICT 8	10,000	13,000	14,900	22,000
BOONE MORGAN	HAMILTON JOHNSON	HENDRICKS SHELBY	MARION	HANCOCK
DISTRICT 9	8,400	10,900	13,400	18,400
WAYNE	RUSH	FAYETTE	UNION	FRANKLIN
DISTRICT 10	8,000	10,400	12,800	17,500
OWEN	MONROE			
DISTRICT 11	8,400	10,900	13,400	18,400
BROWN	BARTHOLOMEW	DECATUR	JACKSON	JENNINGS
DISTRICT 12	8,100	10,500	12,900	17,800
RIPLEY	DEARBORN	OHIO	JEFFERSON	SWITZERLAND
DISTRICT 13A	7,800	10,100	12,400	17,100
GREENE	LAWRENCE	MARTIN	DAVIESS	KNOX
DISTRICT 13B	8,300	10,800	13,200	18,200
GIBSON	PIKE	VANDERBURGH	POSEY	WARRICK

MAXIMUM ADJUSTED INCOMES FOR RURAL HOUSING PROGRAMS IN INDIANA

AREA/COUNTY	VERY LOW 50% MEDIAN	65% MEDIAN	LOW INCOME	MODERATE INCOME
DISTRICT 14	8,100	10,500	12,900	17,800
WASHINGTON	SCOTT	CLARK	HARRISON	FLOYD
DISTRICT 15	7,700	10,000	12,300	16,900
ORANGE	DUBOIS	CRAWFORD	SPENCER	PERRY

MAXIMUM ADJUSTED INCOMES FOR RURAL HOUSING PROGRAMS IN IOWA

AREA/COUNTY	VERY LOW 50% MEDIAN	65% MEDIAN	LOW INCOME	MODERATE INCOME
DISTRICT 1	7,200	9,400	11,600	16,000
ALLAMAKEE	CLAYTON	FAYETTE	HOWARD	WINNESHIEK
DISTRICT 2	8,100	10,500	12,900	17,800
CERRO GORDO MITCHELL	FLOYD WINNEBAGO	FRANKLIN WORTH	HANCOCK	KOSSUTH
DISTRICT 3	7,700	10,100	12,300	17,000
BUENA VISTA O BRIEN	CLAY OSCEOLA	DICKINSON PALO ALTO	EMMET SIOUX	LYON
DISTRICT 4	8,100	10,500	12,900	17,800
CHEROKEE	IDA	MONONA	PLYMOUTH	WOODBURY
DISTRICT 5	8,100	10,600	13,000	17,900
CALHOUN WRIGHT	HAMILTON	HUMBOLDT	POCAHONTAS	WEBSTER
DISTRICT 6	8,500	11,000	13,500	18,600
HARDIN	MARSHALL	POWESHIEK	TAMA	
DISTRICT 7	8,600	11,200	13,700	19,000
BLACK HAWK GRUNDY	BREMER	BUCHANAN	BUTLER	CHICKASAW
DISTRICT 8	9,000	11,700	14,300	19,700
CEDAR	CLINTON	DELAWARE	DUBUQUE	JACKSON

MAXIMUM ADJUSTED INCOMES FOR RURAL HOUSING PROGRAMS IN IOWA

AREA/COUNTY	VERY LOW 50% MEDIAN	65% MEDIAN	LOW INCOME	MODERATE INCOME
DISTRICT 9	10,200	13,300	14,900	22,500
MUSCATINE	SCOTT			
DISTRICT 10	9,100	11,900	14,500	20,100
BENTON WASHINGTON	IOWA	JOHNSON	JONES	LINN
DISTRICT 11	9,400	12,200	14,900	20,600
BOONE POLK	DALLAS STORY	JASPER WARREN	MADISON	MARION
DISTRICT 12	7,500	9,800	12,000	16,500
AUDUBON SAC	CARROLL	CRAWFORD	GREENE	GUTHRIE
DISTRICT 13	8,200	10,700	13,100	18,100
CASS PAGE	FREMONT POTTAWATTANIE	HARRISON SHELBY	MILLS	MONTGOMERY
DISTRICT 14	6,600	8,600	11,200	15,600
ADAIR TAYLOR	ADAMS UNION	CLARKE	DECATUR	RINGGOLD
DISTRICT 15	7,000	9,100	11,200	15,600
APPANOOSE WAHASKA	DAVIS MONROE	JEFFERSON VAN BUREN	KEOKUK WAPELLO	LUCAS WAYNE

MAXIMUM ADJUSTED INCOMES FOR RURAL HOUSING PROGRAMS IN IOWA

AREA/COUNTY	VERY LOW 50% MEDIAN	65% MEDIAN	LOW INCOME	MODERATE INCOME
DISTRICT 16	8,900	11,600	14,100	19,500
DES MOINES	HENRY	LEE	LOUISA	

MAXIMUM ADJUSTED INCOMES FOR RURAL HOUSING PROGRAMS IN KANSAS

AREA/COUNTY	VERY LOW 50% MEDIAN	65% MEDIAN	LOW INCOME	MODERATE INCOME
NORTHWEST	7,600	9,900	12,100	16,700
CHEYENNE	RAWLINS	DECATUR	NORTON	PHILLIPS
SMITH	SHERMAN	THOMAS	SHERIDAN	GRAHAM
ROOKS	OSBORNE	WALLACE	LOGAN	GOVE
TREGO	ELLIS	RUSSELL		
GR. SOUTHWEST	8,300	10,800	13,300	18,300
GREELEY	WICHITA	SCOTT	LANE	NESS
HAMILTON	KEARNY	FINNEY	HODGEMAN	STANTON
GRANT	HASKELL	GRAY	FORD	MORTON
STEVENS	SEWARD	MEADE	CLARK	
NORTH CENTRAL	7,000	9,100	11,200	15,600
JEWELL	REPUBLIC	MITCHELL	CLOUD	LINCOLN
OTTAWA	ELLSWORTH	SALINE		
GOLDEN BELT	8,100	10,500	12,900	17,800
RUSH	BARTON	PAWNEE	STAFFORD	EDWARDS
INDIAN HILL	8,000	10,400	12,700	17,500
KIOWA	PRATT	COMANCHE	BARBER	
MID-STATE	8,200	10,600	13,000	18,000
RICE	MC PHERSON	RENO		
CHIKASKIA	7,300	9,500	11,600	16,000
KINGMAN	HARPER	SUMNER		

MAXIMUM ADJUSTED INCOMES FOR RURAL HOUSING PROGRAMS IN KANSAS

AREA/COUNTY	VERY LOW 50% MEDIAN	65% MEDIAN	LOW INCOME	MODERATE INCOME
BLUE STEM	7,000	9,100	11,200	15,600
GREENWOOD	ELK	CHAUTAUGUA	COWLEY	
CENTRAL PLAIN	9,000	11,700	14,300	19,700
HARVEY	SEDGWICK	BUTLER		
FLINT HILLS	7,100	9,300	11,400	15,800
DICKINSON	MORRIS	MARION	CHASE	LYONS
BIG LAKE	7,300	9,500	11,600	16,000
CLAY	RILEY	POTTAWATOMIE	GEARY	
NO-KAN	7,400	9,700	11,800	16,300
DONIPHAN	ATCHISON			
MARC	9,500	12,400	14,900	20,900
LEAVENWORTH	WYANDOTTE	JOHNSON		
SOUUTHERST	6,500	8,500	11,200	15,600
WOODSEN CRAWFORD	ALLEN MONTGOMERY	BOURBON LABETTE	WILSON CHEROKEE	NEOSHO
IN PROCESS	8,200	10,700	13,100	18,100
JEFFERSON MIAMI	SHAWNEE COFFEY	DOUGLAS ANDERSON	OSAGE LINN	FRANKLIN

MAXIMUM ADJUSTED INCOMES FOR RURAL HOUSING PROGRAMS IN KANSAS

AREA/COUNTY	VERY LOW 50% MEDIAN	65% MEDIAN	LOW INCOME	MODERATE INCOME
UNORGANIZED	6,700	8,800	11,200	15,600
WASHINGTON WABAUNSEE	MARSHALL	NEMAHA	BROWN	JACKSON

MAXIMUM ADJUSTED INCOMES FOR RURAL HOUSING PROGRAMS IN KENTUCKY

AREA/COUNTY	VERY LOW 50% MEDIAN	65% MEDIAN	LOW INCOME	MODERATE INCOME
BARRON RIVER	5,800	7,600	9,300	15,600
ALLEN LOGAN	BARREN METCALFE	BUTLER MONROE	EDMONSON SIMPSON	HART WARREN
BIG SANDY	5,200	6,800	9,300	15,600
FLOYD	JOHNSON	MAGOFFIN	MARTIN	PIKE
BLUEGRASS	7,700	10,100	12,300	17,000
ANDERSON FAYETTE LINCOLN SCOTT	BOURBON FRANKLIN MADISON WOODFORD	BOYLE GARRARD MERCER	CLARK HARRISON NICHOLAS	ESTILL JESSAMINE POWELL
BUFFALO TRACE	5,000	7,800	9,600	15,600
BRACKEN	FLEMING	LEWIS	MASON	ROBERTSON
CUMBERLAND V	4,600	6,000	9,300	15,600
BELL LAUREL	CLAY ROCKCASTLE	HARLAN WHITLEY	JACKSON	KNOX
FIVCO	6,600	8,600	10,500	15,600
BOYD	CARTER	ELLIOTT	GREENUP	LAWRENCE
GATEWAY	5,700	7,400	9,300	15,600
BATH	MENIFEE	MONTGOMERY	MORGAN	ROWAN

MAXIMUM ADJUSTED INCOMES FOR RURAL HOUSING PROGRAMS IN KENTUCKY

AREA/COUNTY	VERY LOW 50% MEDIAN	65% MEDIAN	LOW INCOME	MODERATE INCOME
GREEN RIVER	7,500	9,800	12,000	18,500
DAVIESS WEBSTER	HENDERSON HANCOCK	MC LEAN	OHIO	UNION
KENTUCKIANA	8,400	11,000	12,400	18,500
BULLITT SPENCER	HENRY TRIMBLE	JEFFERSON	OLDHAM	SHELBY
KENTUCKY R	4,100	5,300	9,300	15,600
BREATHITT OWSLEY	KNOTT PERRY	LEE WOLFE	LESLIE	LETCHER
LAKE CUMBER	5,100	6,700	9,300	15,600
ADAIR MC CREARY	CASEY PULASKI	CLINTON RUSSELL	CUMBERLAND TAYLOR	GREEN WAYNE
LINCOLN TRAIL	6,700	8,800	10,700	15,600
BRECKINRIDGE MEADE	GRAYSON NELSON	HARDIN WASHINGTON	LARUE	MARION
NORTHERN	8,500	11,100	12,400	18,700
BOONE KENTON	CAMPBELL OWEN	CARROLL PENDLETON	GALLATIN	GRANT
PENNYRILE	6,500	8,500	10,400	15,600
CALDWELL LYON	CHRISTIAN MUHLENBERG	CRITTENDEN TODD	HOPKINS TRIGG	LIVINGSTON

MAXIMUM ADJUSTED INCOMES FOR RURAL HOUSING PROGRAMS IN KENTUCKY

AREA/COUNTY	VERY LOW 50% MEDIAN	65% MEDIAN	LOW INCOME	MODERATE INCOME
PURCHASE	6,900	9,000	11,000	15,600
BALLARD HICKMAN	CALLOWAY MARSHALL	CARLISLE MCCRACKEN	FULTON	GRAVES

MAXIMUM ADJUSTED INCOMES FOR RURAL HOUSING PROGRAMS IN LOUISIANA

AREA/COUNTY	VERY LOW 50% MEDIAN	65% MEDIAN	LOW INCOME	MODERATE INCOME
ACADIANA	6,000	7,800	9,600	15,600
ACADIA	EVANGELINE	IBERIA	LAFAYETTE	ST LANDRY
ST MARTIN	ST MARY	VERMILLION		
CENTRAL REG	5,800	7,500	9,300	15,600
AVOYELLES	CATAHOULA	CONCORDIA	GRANT	LASALLE
RAPIDES	VERNON	WINN		
FLORIDA	7,100	9,200	11,300	15,700
ASCENSION	E BATON ROUGE	E FELICIANA	IBERVILLE	LIVINGSTON
POINTE COUPEE	ST HELENA	TANGIPAHOA	WASHINGTON	W BATON ROUGE
W FELICIANA				
NORTHEAST	5,400	7,100	9,300	15,600
CALDWELL	E CARROLL	FRANKLIN	JACKSON	MADISON
MOREHOUSE	OUACHITA	RICHLAND	TENSAS	UNION
W CARROLL				
NORTHWEST	6,200	8,000	9,900	15,600
BIENVILLE	BOSSIER	CADDO	CLAIBORNE	DESOTA
LINCOLN	NATCHITOCHES	RED RIVER	SABINE	WEBSTER
IMPERIAL CAL	7,000	9,100	11,200	15,600
ALLEN	BEAUREGARD	CALCASIEU	CAMERON	JEFF DAVIS
TECHE	7,900	10,300	12,400	17,400
ASSUMPTION	LA FOURCHE	ST CHAS	ST JAMES	ST JOHN
TERREBONNE				

MAXIMUM ADJUSTED INCOMES FOR RURAL HOUSING PROGRAMS IN LOUISIANA

AREA/COUNTY	VERY LOW 50% MEDIAN	65% MEDIAN	LOW INCOME	MODERATE INCOME
METRO-REG	8,500	11,100	12,400	18,700
JEFFERSON	ORLEANS	PLAQUEMINES	ST BERNARD	ST TAMMANY

MAXIMUM ADJUSTED INCOMES FOR RURAL HOUSING PROGRAMS IN MAINE

AREA/COUNTY	VERY LOW 50% MEDIAN	65% MEDIAN	LOW INCOME	MODERATE INCOME
ANDROSCOGGIN	7,500	9,800	12,000	16,500
AROOSTOOK	6,300	8,200	11,200	15,600
CUMBERLAND	7,700	10,000	12,300	16,900
FRANKLIN	7,300	9,500	11,700	16,100
HANCOCK	6,900	9,000	11,200	15,600
KENNEBEC	8,100	10,600	12,900	17,900
KNOX	6,700	8,700	11,200	15,600
LINCOLN	7,000	9,100	11,200	15,600
OXFORD	7,400	9,600	11,700	16,200
PENOBSCOT	7,500	9,800	12,000	16,500

MAXIMUM ADJUSTED INCOMES FOR RURAL HOUSING PROGRAMS IN MAINE

AREA/COUNTY	VERY LOW 50% MEDIAN	65% MEDIAN	LOW INCOME	MODERATE INCOME
PISCATAQUIS	6,600	8,600	11,200	15,600
SAGADAHOC	7,400	9,700	11,800	16,300
SOMERSET	6,800	8,900	11,200	15,600
WALDO	6,800	8,900	11,200	15,600
WASHINGTON	5,600	7,300	11,200	15,600
YORK	7,700	10,100	12,300	17,000

MAXIMUM ADJUSTED INCOMES FOR RURAL HOUSING PROGRAMS IN MARYLAND

AREA/COUNTY	VERY LOW 50% MEDIAN	65% MEDIAN	LOW INCOME	MODERATE INCOME
LOWER EASTERN S	7,700	10,100	12,300	17,000
DORCHESTER	WICOMICO	WORCESTER	SOMERSET	
UPPER EAST S	7,900	10,300	12,600	17,300
KENT	QUEEN ANNES	CAROLINE	TALBOT	
WILMAPCO	11,000	14,300	14,900	24,200
CECIL				
TRI-CTY SOUTH	10,400	13,500	14,900	22,800
CHARLES	CALVERT	ST MARYS		
WASHINGTON	13,000	16,900	14,900	28,600
MONTGOMERY	PRINCE GEORGES			
BALTIMORE-NP	10,700	13,900	14,900	23,500
BALTIMORE	HARFORD	CARROLL	HOWARD	ANNE ARUNDEL
FREDERICK	9,200	12,000	14,700	20,300
FREDERICK				
TRI-COUNTY-8	7,800	10,100	12,400	17,100
GARRETT	ALLEGANY	WASHINGTON		

MAXIMUM ADJUSTED INCOMES FOR RURAL HOUSING PROGRAMS IN MASSACHUSETTS

AREA/COUNTY	VERY LOW 50% MEDIAN	65% MEDIAN	LOW INCOME	MODERATE INCOME
DISTRICT 1	9,400	12,300	14,900	20,700
BERKSHIRE	FRANKLIN	HAMPSHIRE	HAMPDEN	WORCESTER
DISTRICT 2	9,300	12,100	14,900	20,500
MIDDLESEX	ESSEX	SUFFOLK	NORFOLK	BRISTOL
PLYMOUTH	BARNSTABLE	DUKES	NANTUCKET	

MAXIMUM ADJUSTED INCOMES FOR RURAL HOUSING PROGRAMS IN MICHIGAN

AREA/COUNTY	VERY LOW 50% MEDIAN	65% MEDIAN	LOW INCOME	MODERATE INCOME
REGION 1	11,100	14,500	14,900	24,500
LIVINGSTON	MACOMB	MONROE	OAKLAND	ST CLAIR
WASHTENAW	WAYNE			
REGION 2	10,000	13,000	14,900	21,900
HILLSDALE	JACKSON	LENAWEE		
REGION 3	9,700	12,600	14,900	21,300
BARRY	BRANCH	CALHOUN	KALAMAZOO	ST JOSEPH
REGION 4	9,500	12,300	14,900	20,800
BERRIEN	CASS	VAN BUREN		
REGION 5	10,000	13,000	14,900	22,000
GENESEE	LAPEER	SHIAWASSEE		
REGION 6	9,800	12,700	14,900	21,500
CLINTON	EATON	INGHAM		
REGION 7	8,800	11,500	14,100	19,400
ARENAC	BAY	CLARE	GLADWIN	GRATIOT
HURON	IOSCO	ISABELLA	MIDLAND	OGEMAW
ROSCOMMON	SAGINAW	SANILAC	TUSCOLA	
REGION 8	9,100	11,900	14,500	20,100
ALLEGAN	IONIA	KENT	LAKE	MASON
MECOSTA	MONTCALM	NEWAYGO	OSCEOLA	

MAXIMUM ADJUSTED INCOMES FOR RURAL HOUSING PROGRAMS IN MICHIGAN

AREA/COUNTY	VERY LOW 50% MEDIAN	65% MEDIAN	LOW INCOME	MODERATE INCOME
REGION 9	7,500	9,800	12,000	16,500
ALCONA OSCODA	ALPENA OTSEGO	CHEBOYGAN PRESQUE ISLE	CRAWFORD	MONTMORENCY
REGION 10	7,900	10,300	12,700	17,400
ANTRIM KALKASKA	BENZIE LEELANAU	CHARLEVOIX MANISTEE	EMMET MISSAUKEE	GRAND TRAVERSE WEXFORD
REGION 11	6,900	9,000	11,200	15,600
CHIPPEWA	LUCE	MACKINAC		
REGION 12	8,000	10,400	12,800	17,500
ALGER SCHOOLCRAFT	DELTA	DICKINSON	MARQUETTE	MENOMINEE
REGION 13	6,600	8,600	11,200	15,600
BARAGA ONTONAGON	GOGEBIC	HOUGHTON	IRON	KEWEENAW
REGION 14	9,400	12,300	14,900	20,700
MUSKEGON	OCEANA	OTTAWA		

MAXIMUM ADJUSTED INCOMES FOR RURAL HOUSING PROGRAMS IN MINNESOTA

AREA/COUNTY	VERY LOW 50% MEDIAN	65% MEDIAN	LOW INCOME	MODERATE INCOME
RDC 1	7,200	9,400	11,500	15,900
KITTSON	MARSHALL	NORMAN	PENNINGTON	POLK
REDLAKE	ROSEAU			
RDC2	6,200	8,000	11,200	15,600
BELTRAMI	CLEARWATER	HUBBARD	LK OF WOODS	MAHNOMEN
RDC-3	8,200	10,600	13,100	18,000
AITKIN	CARLTON	COOK	ITASCA	KOOCHICHING
LAKE	ST LOUIS			
RDC 4	6,900	9,000	11,200	15,600
BECKER	CLAY	DOUGLAS	GRANT	OTTER TAIL
POPE	STEVENS	TRAVERSE	WILKIN	
RDC 5	6,500	8,400	11,200	15,600
CASS	CROW WING	MORRISON	TODD	WADENA
RDC VI-E	7,500	9,700	12,000	16,400
KANDIYOHI	MC LEOD	MEEKER	RENVILLE	
RDC VI-W	6,500	8,400	11,200	15,600
BIG STONE	CHIPPEWA	LAC QUI PARLE	SWIFT	YELLOW MEDICINE
RDC VII-E	8,800	11,500	14,100	19,400
CHISAGO	ISANTI	KANABEC	MILLE LACS	PINE

MAXIMUM ADJUSTED INCOMES FOR RURAL HOUSING PROGRAMS IN MINNESOTA

AREA/COUNTY	VERY LOW 50% MEDIAN	65% MEDIAN	LOW INCOME	MODERATE INCOME
RDC VII-W	9,200	12,000	14,700	20,300
BENTON	SHERBURNE	STEARNS	WRIGHT	
RDC VIII	7,200	9,400	11,500	15,900
COTTONWOOD	JACKSON	LINCOLN	LYON	MURRAY
NOBLES	PIPESTONE	REDWOOD	ROCK	
RDC IX	8,000	10,400	12,800	17,600
BLUE EARTH	BROWN	FARIBAULT	LESUEUR	MARTIN
NICOLL	SIBLEY	WASECA	WATONWAN	
RDC X	8,900	11,600	14,200	19,500
DODGE	FILMORE	FREEBORN	GOODHUE	HOUSTON
MOWER	OLMSTED	RICE	STEELE	WABASHA
WINONA				
RDC XI	11,300	14,700	14,900	24,900
ANOKA	CARVER	DAKOTA	HENNEPIN	RAMSEY
SCOTT	WASHINGTON			

MAXIMUM ADJUSTED INCOMES FOR RURAL HOUSING PROGRAMS IN MISSISSIPPI

AREA/COUNTY	VERY LOW 50% MEDIAN	65% MEDIAN	LOW INCOME	MODERATE INCOME
SOUTHWEST	4,900	6,400	9,300	15,600
CLAIBORNE AMITE	JEFFERSON PIKE	ADAMS WALTHALL	FRANKLIN LINCOLN	WILKINSON LAWRENCE
CENTRAL	6,400	8,300	10,200	15,600
YAZOO RANKIN	MADISON SIMPSON	WARREN	HINDS	COPIAH
NORTH CENTRAL	4,700	6,200	9,300	15,600
YALOBUSHA HOLMES	GRENADA ATTALA	LEFLORE	CARROLL	MONTGOMERY
SOUTH DELTA	4,400	5,700	9,300	15,600
BOLIVAR SUNFLOWER	HUMPHREYS	SHARKEY	ISSAQUENA	WASHINGTON
NORTH DELTA	5,000	6,500	9,300	15,600
COAHOMA TATE	DE SOTO TUNICA	QUITMAN	PANOLA	TALLAHATCHIE
NORTH EAST	5,500	7,200	9,300	15,600
ALCORN TISHOMINGO	BENTON	MARSHALL	PRENTISS	TIPPAH
THREE RIVER	5,800	7,500	9,300	15,600
CALHOUN PONTOTOC	CHICKASAW MONROE	ITAWAMBA UNION	LAFAYETTE	LEE

MAXIMUM ADJUSTED INCOMES FOR RURAL HOUSING PROGRAMS IN MISSISSIPPI

AREA/COUNTY	VERY LOW 50% MEDIAN	65% MEDIAN	LOW INCOME	MODERATE INCOME
GOLDEN TRI	5,600	7,300	9,300	15,600
CLAY	LOWNDES	CHOCTAW	OKTIBBEHA	NOXUBEE
WEBSTER	WINSTON			
EAST CENTRAL	5,200	6,700	9,300	15,600
CLARKE	JASPER	LEAKE	KEMPER	LAUDERDALE
NEWTON	NESHOBA	SMITH	SCOTT	
SOUTHERN	6,100	8,000	9,800	15,600
COVINGTON	JONES	WAYNE	JEFF DAVIS	MARION
LAMAR	FORREST	PERRY	GREENE	GEORGE
STONE	PEARL RIVER	JACKSON	HARRISON	HANCOCK

MAXIMUM ADJUSTED INCOMES FOR RURAL HOUSING PROGRAMS IN MISSOURI

AREA/COUNTY	VERY LOW 50% MEDIAN	65% MEDIAN	LOW INCOME	MODERATE INCOME
LAKE OF OZARKS	5,800	7,500	9,300	15,600
CAMDEN	LACLEDE	MILLER	MORGAN	PULASKI
MARK TWAIN	6,900	9,000	11,000	15,600
LEWIS RALLS	MACON RANDOLPH	MARION SHELBY	MONROE	PIKE
OZARK FOOTHILLS	4,900	6,400	9,300	15,600
BUTLER	CARTER	REYNOLDS	RIPLEY	WAYNE
OZARK GATEWAY	6,100	7,900	9,700	15,600
BARTON	JASPER	MC DONALD	NEWTON	
SHOW-ME	7,000	9,100	11,200	15,600
JOHNSON	LAFAYETTE	PETTIS		
SO. CENT. OZARK	4,800	6,200	9,300	15,600
DOUGLAS TEXAS	HOWELL WRIGHT	OREGON	OZARK	SHANNON
SOUTHEAST	6,800	8,900	10,900	15,600
BOLLINGER ST FRANCOIS	CAPE GIRARDEAU ST GENEVIEVE	IRON	MADISON	PERRY
SOUTHWEST	6,000	7,800	9,600	15,600
BARRY LAWRENCE	CHRISTIAN POLK	DADE STONE	DALLAS TANEY	GREENE WEBSTER

MAXIMUM ADJUSTED INCOMES FOR RURAL HOUSING PROGRAMS IN MISSOURI

AREA/COUNTY	VERY LOW 50% MEDIAN	65% MEDIAN	LOW INCOME	MODERATE INCOME
KAYSINGER B	5,300	6,900	9,300	15,600
BATES ST CLAIR	BENTON VERNON	CEDAR	HENRY	HICKORY
GREEN HILLS	5,600	7,300	9,300	15,600
CALDWELL LIVINGSTON	DAVIESS MERCER	GRUNDY PUTNAM	HARRISON SULLIVAN	LINN
BOOTHEEL	5,400	7,000	9,300	15,600
DUNKLIN STODDARD	MISSISSIPPI	NEW MADRID	PEMISCOT	SCOTT
NORTHWEST	6,100	7,900	9,700	15,600
ATCHISON	GENTRY	HOLT	NODAWAY	WORTH
NORTHEAST	6,000	7,800	9,600	15,600
ADAIR	CLARK	KNOX	SCHUYLER	SCOTLAND
MO-KAN	7,100	9,200	11,300	15,700
ANDREW	BUCHANAN	CLINTON	DE KALB	
VALLEY-REGION	6,400	8,400	10,200	15,600
CARROLL	CHARITON	SALINE		
MID-MISSOURI	8,000	10,400	12,400	17,500
AUDRAIN HOWARD	BOONE MONITEAU	CALLAWAY OSAGE	COLE	COOPER

MAXIMUM ADJUSTED INCOMES FOR RURAL HOUSING PROGRAMS IN MISSOURI

AREA/COUNTY	VERY LOW 50% MEDIAN	65% MEDIAN	LOW INCOME	MODERATE INCOME
MERAMEC	6,500	8,400	10,400	15,600
CRAWFORD	DENT	GASCONADE	MARIES	PHELPS
WASHINGTON				
E-W GATEWAY	10,000	13,000	12,400	22,000
ST LOUIS CITY	JEFFERSON	ST CHARLES	ST LOUIS	FRANKLIN
MID-AMERICA	9,900	12,900	12,400	21,700
CASS	CLAY	JACKSON	PLATTE	RAY
BOONSLICK	7,500	9,700	11,900	16,400
MONTGOMERY	LINCOLN	WARREN		

MAXIMUM ADJUSTED INCOMES FOR RURAL HOUSING PROGRAMS IN MONTANA

AREA/COUNTY	VERY LOW 50% MEDIAN	65% MEDIAN	LOW INCOME	MODERATE INCOME
DISTRICT 1	7,500	9,800	12,000	16,500
DANIELS	PHILLIPS	ROOSEVELT	SHERIDAN	VALLEY
DISTRICT 2	7,700	10,000	12,200	16,900
DAWSON MIBAUX	GARFIELD	MC CONE	PRAIRIE	RICHLAND
DISTRICT 3	7,100	9,300	11,400	15,800
CARTER TREASURE	CUSTER	FALLON	POWDER RIVER	ROSEBUD
DISTRICT 4	7,600	9,900	12,200	16,800
BLAINE	HILL	LIBERTY		
DISTRICT 5	7,600	9,900	12,100	16,700
CASCADE TOOLE	CHOUTEAU	GLACIER	PONDERA	TETON
DISTRICT 6	7,100	9,300	11,300	15,700
FERGUS	GOLDEN VALLEY	JUDITH BASIN	PETROLEUM	WHEATLAND
DISTRICT 7	7,000	9,100	11,200	15,600
BIG HORN	CARBON	STILLWATER	SWEET GRASS	YELLOWSTONE
DISTRICT 8	8,500	11,100	13,600	18,700
BROADWATER	JEFFERSON	LEWIS&CLARK		

MAXIMUM ADJUSTED INCOMES FOR RURAL HOUSING PROGRAMS IN MONTANA

AREA/COUNTY	VERY LOW 50% MEDIAN	65% MEDIAN	LOW INCOME	MODERATE INCOME
DISTRICT 9	7,500	9,700	11,900	16,400
GALLATIN	MEAGHER	PARK		
DISTRICT 10	7,600	9,900	12,100	16,700
FLATHEAD	LAKE	LINCOLN	SANDERS	
DISTRICT 11	7,700	10,000	12,200	16,900
MINERAL	MISSOULA	RAVALLI		
DISTRICT 12	7,500	9,800	12,000	16,500
BEAVERHEAD SILVER BOW	DEER LODGE	GRANITE	MADISON	POWELL

MAXIMUM ADJUSTED INCOMES FOR RURAL HOUSING PROGRAMS IN NEBRASKA

AREA/COUNTY	VERY LOW 50% MEDIAN	65% MEDIAN	LOW INCOME	MODERATE INCOME
SCOTTSBLUFF	7,400	9,700	11,800	16,300
SIOUX	DAWES	SHERIDAN	BOX BUTTE	SCOTTS BLUFF
MORRILL	GARDEN	BANNER	CHEYENNE	DEUEL
KIMBALL				
AINSWORTH	6,100	7,900	11,200	15,600
CHERRY	KEYA PAHA	BOYD	BROWN	ROCK
HOLT	BLAINE	LOUP	GARFIELD	WHEELER
CUSTER	VALLEY	GREELEY	SHERMAN	
NORTH PLATTE	7,400	9,600	11,700	16,200
GRANT	HOOKER	THOMAS	ARTHUR	MC PHERSON
LOGAN	KEITH	LINCOLN	PERKINS	CHASE
HAYES	FRONTIER	GOSPER	DUNDY	HITCHCOCK
RED WILLOW	DAWSON			
KEARNEY	7,400	9,700	11,900	16,300
HOWARD	HARRICK	BUFFALO	HALL	HAMILTON
PHELPS	KEARNEY	ADAMS	CLAY	FURNAS
HARLAN	FRANKLIN	WEBSTER	NUCKOLLS	
NORFOLK	7,100	9,200	11,300	15,700
KNOX	CEDAR	DIXON	DAKOTA	THURSTON
CUMING	BURT	ANTELOPE	PIERCE	WAYNE
BOONE	MADISON	PLATTE	COLFAX	WANCE
STANTON				
OMAHA	8,900	11,600	14,200	19,600
DODGE	WASHINGTON	DOUGLAS	SAUNDERS	SARPY
CASS	OTOE			

MAXIMUM ADJUSTED INCOMES FOR RURAL HOUSING PROGRAMS IN NEBRASKA

AREA/COUNTY	VERY LOW 50% MEDIAN	65% MEDIAN	LOW INCOME	MODERATE INCOME
LINCOLN	7,600	9,900	12,100	16,700
BUTLER	POLK	YORK	SEWARD	FILLMORE
LANCASTER	SALINE	THAYER	JEFFERSON	GAGE
JOHNSON	PAWNEE	RICHARDSON	NEMAHA	

MAXIMUM ADJUSTED INCOMES FOR RURAL HOUSING PROGRAMS IN NEVADA

AREA/COUNTY	VERY LOW 50% MEDIAN	65% MEDIAN	LOW INCOME	MODERATE INCOME
DISTRICT 6	8,100	10,500	12,900	17,800
HUMBOLDT	PERSHING	LANDER	ELKO	EUREKA
WHITE PINE	NYE			
DISTRICT 7	9,400	12,200	14,900	20,600
WASHOE	STOREY	CARSON CITY	DOUGLAS	LYON
CHURCHILL	MINERAL	ESMERALDA	CLARK	LINCOLN

MAXIMUM ADJUSTED INCOMES FOR RURAL HOUSING PROGRAMS IN NEW HAMPSHIRE

AREA/COUNTY	VERY LOW 50% MEDIAN	65% MEDIAN	LOW INCOME	MODERATE INCOME
DISTRICT III VE	7,800	10,200	12,500	17,200
COOS	CARROLL	GRAFTON	BELKNAP	SULLIVAN
DISTRICT IV VER	8,700	11,400	13,900	19,200
CHESHIRE	HILLSBORO	MERRIMACK	ROCKINGHAM	STRAFFORD

MAXIMUM ADJUSTED INCOMES FOR RURAL HOUSING PROGRAMS IN NEW JERESY

AREA/COUNTY	VERY LOW 50% MEDIAN	65% MEDIAN	LOW INCOME	MODERATE INCOME
DISTRICT 1	10,900	14,200	14,900	23,900
BERGEN	ESSEX	HUDSON	HUNTERDON	MERCER
MIDDLESEX	NORRIS	PASSAIC	SOMMERSET	SUSSEX
UNION	WARREN			
DISTRICT 11	9,700	12,600	14,900	21,300
ATLANTIC	BURLINGTON	CAPE MAY	MONMOUTH	OCEAN
DISTRICT 111	10,100	13,200	14,900	22,300
CAMDEN	CUMBERLAND	GLOUCESTER	SALEM	

MAXIMUM ADJUSTED INCOMES FOR RURAL HOUSING PROGRAMS IN NEW MEXICO

AREA/COUNTY	VERY LOW 50% MEDIAN	65% MEDIAN	LOW INCOME	MODERATE INCOME
SAN JUAN	6,400	8,900	11,200	15,600
SAN JUAN	MC KINLEY			
NORTH CENTRAL	5,100	6,700	11,200	15,600
COLFAX	MORA	RIO ARRIBA	SAN MIGUEL	SANTA FE
TAOS				
MID RIO GRANDE	8,000	10,400	12,800	17,600
BERNALILLO	LOS ALMOS	SANDOVAL	TORRANCE	VALENCIA
EASTERN PLS	5,800	7,600	11,200	15,600
CURRY	DE BACA	GUADALUPE	HARDING	QUAY
ROOSEVELT	UNION			
SOUTH WEST	6,500	8,400	11,200	15,600
CATRON	GRANT	HIDALGO	LUNA	
SOUTHEASTERN	7,100	9,200	11,300	15,700
CHAVES	EDDY	LEA	LINCOLN	OTERO
SOUTH RIO GRAND	6,100	8,000	11,200	15,600
DONA ANA	SIERRA	SOCORRO		

MAXIMUM ADJUSTED INCOMES FOR RURAL HOUSING PROGRAMS IN NEW YORK

AREA/COUNTY	VERY LOW 50% MEDIAN	65% MEDIAN	LOW INCOME	MODERATE INCOME
DISTRICT 1	10,600	13,800	14,900	23,400
ALLEGANY	CATTARAUGUS	CHAUTAUQUA	ERIE	NIAGARA
DISTRICT 2	9,200	11,900	14,700	20,200
GENESEE	LIVINGSTON	MONROE	ONTARIO	ORLEANS
SENECA	WAYNE	WYOMING	YATES	
DISTRICT 3	7,700	10,100	12,300	17,000
BROOME	CHEMUNG	CHENANGO	DELAWARE	OTSEGO
SCHUYLER	STEUBEN	TIOGA	TOMPKINS	
DISTRICT 4	7,800	10,200	12,500	17,200
CAYUGA	CORTLAND	MADISON	ONEIDA	ONONDAGA
OSWEGO	HERKIMER			
DISTRICT 5	10,000	13,000	14,900	22,000
FRANKLIN	JEFFERSON	LEWIS	ST LAWRENCE	
DISTRICT 6	8,400	10,900	13,400	18,400
CLINTON	ESSEX	HAMILTON	WARREN	WASHINGTON
DISTRICT 7	10,400	13,600	14,900	22,900
ALBANY	COLUMBIA	FULTON	GREENE	MONTGOMERY
RENSSELAER	SARATOGA	SCHENECTADY	SCHOHARIE	
DISTRICT 8	8,800	11,500	14,100	19,400
DUTCHESS	NASSAU	ORANGE	PUTNAM	ROCKLAND
SUFFOLK	SULLIVAN	ULSTER	WESTCHESTER	

MAXIMUM ADJUSTED INCOMES FOR RURAL HOUSING PROGRAMS IN NORTH CAROLINA

AREA/COUNTY	VERY LOW 50% MEDIAN	65% MEDIAN	LOW INCOME	MODERATE INCOME
DISTRICT A	6,100	8,000	9,800	15,600
MACON JACKSON	SWAIN HAYWOOD	CLAY	CHEROKEE	GRAHAM
DISTRICT B	7,400	9,700	11,800	16,300
BUNCOMBE	TRANSYLVANIA	HENDERSON	MADISON	
DISTRICT C	7,300	9,500	11,600	16,000
MC DOWELL	POLK	RUTHERFORD	CLEVELAND	
DISTRICT D	5,700	7,500	9,300	15,600
YANCEY WATAUGA	ASHE WILKES	ALLEGHANY	AVERY	MITCHELL
DISTRICT E	8,000	10,400	12,400	17,500
ALEXANDER	CALDWELL	BURKE	CATAWBA	
DISTRICT F	8,900	11,600	12,400	19,600
STANLY UNION	MECKLENBURG ROWAN	CABARRUS IREDELL	GASTON	LINCOLN
DISTRICT G	8,700	11,300	12,400	19,100
ALAMANCE CASWELL	GUILFORD	RANDOLPH	DAVIDSON	ROCKINGHAM
DISTRICT H	6,500	8,500	10,400	15,600
MOORE	RICHMOND	MONTGOMERY	ANSON	

MAXIMUM ADJUSTED INCOMES FOR RURAL HOUSING PROGRAMS IN NORTH CAROLINA

AREA/COUNTY	VERY LOW SOI MEDIAN	SOI MEDIAN	LOW INCOME	MODERATE INCOME
DISTRICT I	8,400	11,000	12,400	18,500
STOKES	SURRY	FORSYTH	DAVIE	YADKIN
DISTRICT J	8,200	10,700	12,400	18,100
DURHAM	ORANGE	CHATHAM	WAKE	LEE
JOHNSTON				
DISTRICT K	6,300	8,200	10,000	15,600
VANCE	FRANKLIN	GRANVILLE	PERSON	WARREN
DISTRICT L	6,100	7,900	9,700	15,600
HALIFAX	NORTHAMPTON	NASH	EDGECOMBE	WILSON
DISTRICT M	6,800	8,900	10,900	13,600
SAMPSON	CUMBERLAND	HARNETT		
DISTRICT N	6,000	7,400	9,600	15,600
BLADEN	SCOTLAND	ROBESON	HOKE	
DISTRICT O	7,100	9,200	11,300	15,700
BRUNSWICK	PENDER	NEW HANOVER	COLUMBUS	
DISTRICT P	6,700	8,700	10,700	15,600
CARTERET	WAYNE	ONSLOW	DUPLIN	LENOIR
CRAVEN	PAMLICO	GREENE	JONES	

MAXIMUM ADJUSTED INCOMES FOR RURAL HOUSING PROGRAMS IN NORTH CAROLINA

AREA/COUNTY	VERY LOW 50% MEDIAN	65% MEDIAN	LOW INCOME	MODERATE INCOME
DISTRICT 0	6,000	7,800	9,600	15,600
PITT	BEAUFORT	MARTIN	BERTIE	HERTFORD
DISTRICT 8	6,500	8,400	10,400	15,600
TYRRELL GATES	CAMDEN PERQUIMANS	CURRITUCK WASHINGTON	PASQUOTANK HYDE	CHOWAN DARE

MAXIMUM ADJUSTED INCOMES FOR RURAL HOUSING PROGRAMS IN NORTH DAKOTA

AREA/COUNTY	VERY LOW 50% MEDIAN	65% MEDIAN	LOW INCOME	MODERATE INCOME
DISTRICT 1	7,900	10,300	12,600	17,300
DIVIDE	MC KENZIE	WILLIAMS		
DISTRICT 2	7,400	9,600	11,800	16,200
BURKE MC HENRY	MOUNTRAIL PIERCE	RENVILLE	BOTTINEAU	WARD
DISTRICT 3	6,800	8,800	11,200	15,600
ROLETTE EDDY	TOWNER	CAVALIER	BENSON	RAMSEY
DISTRICT 4	7,600	9,900	12,200	16,800
PEMBINA	WALSH	NELSON	GRAND FORKS	
DISTRICT 5	7,700	10,000	12,200	16,900
STEELE RICHLAND	TRAILL	CASS	RANSOM	SARGENT
DISTRICT 6	7,300	9,500	11,700	16,100
WELLS LOGAN	FOSTER LA MOURE	GRIGGS MC INTOSH	STUTSMAN DICKEY	BARNES
DISTRICT 7	7,100	9,300	11,300	15,700
MC LEAN NORTON	SHERIDAN GRANT	MERCER EMMONS	OLIVER SIOUX	BURLEIGH KIDDER

MAXIMUM ADJUSTED INCOMES FOR RURAL HOUSING PROGRAMS IN NORTH DAKOTA

AREA/COUNTY	VERY LOW 50% MEDIAN	65% MEDIAN	LOW INCOME	MODERATE INCOME
DISTRICT 8	7,000	9,100	11,200	15,600
ADAMS	BILLINGS	GOLDEN VALLEY	BOWMAN	SLOPE
DUNN	METTINGER	STARK		

MAXIMUM ADJUSTED INCOMES FOR RURAL HOUSING PROGRAMS IN OHIO

AREA/COUNTY	VERY LOW 50% MEDIAN	65% MEDIAN	LOW INCOME	MODERATE INCOME
DISTRICT 1	9,300	12,100	14,800	20,400
WILLIAMS	FULTON	LUCAS	OTTAWA	SANDUSKY
SENECA	HANCOCK	WYANDOT	HARDIN	PUTNAM
HENRY	DEFIANCE	PAULDING	VAN WERT	ALLEN
AUGLAIZE	MERCER	SHELBY	DARKE	MIAMI
WOOD				
DISTRICT II	9,200	12,000	14,700	20,300
PREBLE	MONTGOMERY	GREENE	FAYETTE	BUTLER
WARREN	CLINTON	HAMILTON	CLERMONT	BROWN
HIGHLAND	PIKE	ADAMS	SCIOTO	
DISTRICT III	9,700	12,600	14,900	21,300
ASHTABULA	LAKE	GEAUGA	CUYAHOGA	LORAINE
ERIE	HURON	MEDINA	SUMMIT	PORTAGE
TRUMBULL	MAHONING	COLUMBIANA	CARROLL	JEFFERSON
STARK	WAYNE	HOLMES	ASHLAND	RICHLAND
CRAWFORD				
DISTRICT 4	7,500	9,800	12,000	16,500
TUSCARAWAS	HARRISON	GUERNSEY	BELMONT	MUSKINGUM
NOBLE	MONROE	MORGAN	WASHINGTON	ATHENS
VINTON	JACKSON	MEIGS	GALLIA	LAWRENCE
DISTRICT 5	8,600	11,200	13,700	18,900
LOGAN	UNION	MARION	MORROW	KNOX
COSHOCTON	LICKING	DELAWARE	CHAMPAIGN	CLARK
MADISON	FRANKLIN	PICKAWAY	FAIRFIELD	PERRY
HOCKING	ROSS			

MAXIMUM ADJUSTED INCOMES FOR RURAL HOUSING PROGRAMS IN OKLAHOMA

AREA/COUNTY	VERY LOW 50% MEDIAN	65% MEDIAN	LOW INCOME	MODERATE INCOME
KEDDO	5,500	7,100	9,300	15,600
PITTSBURG CHOCTAW	HASKELL MC CURTAIN	LE FLORE	LATIMER	PUSHMATAHA
SODA	6,000	7,800	9,500	15,600
GARVIN JOHNSTON	PONTOTOC ATOKA	COAL LOVE	CARTER MARSHALL	MURRAY BRYAN
OEDA	7,400	9,600	11,800	16,200
CIMARRON WOODS	TEXAS WOODWARD	BEAVER DEWEY	HARPER	ELLIS
NODA	7,500	9,700	12,000	16,400
ALFALFA NOBLE	GRANT BLAINE	KAY KINGFISHER	MAJOR	GARFIELD
AGOC	9,100	11,900	12,400	20,100
CANADIAN	LOGAN	OKLAHOMA	CLEVELAND	
ASCOG	6,300	8,200	10,100	15,600
CADDO TILLMAN	GRADY COTTON	MC CLAIN JEFFERSON	COMANCHE	STEPHENS
EODD	5,800	7,600	9,300	15,600
OKMULGEE ADAIR	MC INTOSH SEQUOYAH	WAGONER	MUSKOGEE	CHEROKEE

MAXIMUM ADJUSTED INCOMES FOR RURAL HOUSING PROGRAMS IN OKLAHOMA

AREA/COUNTY	VERY LOW 50% MEDIAN	65% MEDIAN	LOW INCOME	MODERATE INCOME
COEDD	6,600	8,600	10,500	15,600
PAWNEE OKFUSKEE	PAYNE HUGHES	LINCOLN	POTTAWATOMIE	SEMINOLE
SWODA	6,400	8,300	10,200	15,600
ROGER MILLS GREER	CUSTER KIOWA	BECKHAM JACKSON	WASHITA	HARMON
INCOG	9,000	11,700	12,400	19,800
CREEK	TULSA	OSAGE		
NECO	5,500	7,200	9,300	15,600
WASHINGTON MAYES	NEWATTA DELAWARE	CRAIG	OTTAWA	ROGERS

MAXIMUM ADJUSTED INCOMES FOR RURAL HOUSING PROGRAMS IN OREGON

AREA/COUNTY	VERY LOW 50% MEDIAN	65% MEDIAN	LOW INCOME	MODERATE INCOME
DISTRICT 1	8,200	10,700	13,100	18,100
CLATSOP	TILLAMOOK			
DISTRICT 2	9,600	12,500	14,900	21,100
CLACKAMAS	COLUMBIA	MULTNOMAH	WASHINGTON	
DISTRICT 3	8,200	10,700	13,100	18,100
MARION	POLK	YAMHILL		
DISTRICT 4	8,200	10,600	13,000	18,000
BENTON	LINCOLN	LINN		
DISTRICT 5	8,600	11,200	13,700	18,900
LANE				
DISTRICT 6	7,800	10,200	12,500	17,200
DOUGLAS				
DISTRICT 7	8,000	10,400	12,800	17,600
COOS	CURRY			
DISTRICT 8	7,300	9,500	11,700	16,100
JACKSON	JOSEPHINE			

MAXIMUM ADJUSTED INCOMES FOR RURAL HOUSING PROGRAMS IN OREGON

AREA/COUNTY	VERY LOW 50% MEDIAN	65% MEDIAN	LOW INCOME	MODERATE INCOME
DISTRICT 9	8,000	10,400	12,800	17,600
HOOD RIVER	SHERMAN	WASCO		
DISTRICT 10	8,100	10,600	12,900	17,900
CROOK	DESCHUTES	JEFFERSON		
DISTRICT 11	7,800	10,200	12,500	17,200
KLAMATH	LAKE			
DISTRICT 12	7,700	10,100	12,300	17,000
GILLIAM	GRANT	MORROW	UMATILLA	WHEELER
DISTRICT 13	7,600	9,900	12,100	16,800
BAKER	UNION	WALLOWA		
DISTRICT 14	7,800	10,200	12,500	17,200
HARNEY	MALHEUR			

MAXIMUM ADJUSTED INCOMES FOR RURAL HOUSING PROGRAMS IN PENNSYLVANIA

AREA/COUNTY	VERY LOW 50% MEDIAN	65% MEDIAN	LOW INCOME	MODERATE INCOME
NORTHWESTERN	8,000	10,400	12,800	17,600
CLARION MERCER	CRAWFORD VENANGO	ERIE WARREN	FOREST	LAWRENCE
SOUTHWESTERN	8,500	11,100	13,600	18,700
ALLEGHENY GREENE	ARMSTRONG INDIANA	BEAVER WASHINGTON	BUTLER WESTMORELAND	FAYETTE
NORTH CENTRAL	7,200	9,300	11,500	15,900
CAMERON POTTER	CLEARFIELD	ELK	JEFFERSON	MC KEAN
SO. ALLEGHENIES	7,900	10,300	12,700	17,400
BEDFORD SOMERSET	BLAIR	CAMBRIA	FULTON	HUNTINGDON
SED-COG	7,600	9,900	12,100	16,800
CENTRE MIFFLIN	CLINTON NORTHUMBERLAND	COLUMBIA MONTOUR	JUNIATA SNYDER	LYCOMING UNION
NORTHERN TIER	7,600	9,900	12,100	16,800
BRADFORD	SULLIVAN	SUSQUEHANNA	TIOGA	WYOMING
NORTHEASTERN	7,600	9,900	12,100	16,800
CARBON SCHUYLKILL	LACKAWANNA WAYNE	LUZERNE	MONROE	PIKE

MAXIMUM ADJUSTED INCOMES FOR RURAL HOUSING PROGRAMS IN PENNSYLVANIA

AREA/COUNTY	VERY LOW 50% MEDIAN	65% MEDIAN	LOW INCOME	MODERATE INCOME
DEL VALLEY	10,100	13,200	14,900	22,300
BUCKS, BERKS, CHESTER, LEHIGH, DELAWARE, NORTHAMPTON, MONGOMERY, PHILADELPHIA				
CAPITAL REG	9,500	12,300	14,900	20,600
ADAMS, PERRY, CUMBERLAND, YORK, DAUPHIN, FRANKLIN, LANCASTER, LEBANON				

MAXIMUM ADJUSTED INCOMES FOR RURAL HOUSING PROGRAMS IN RHODE ISLAND

AREA/COUNTY	VERY LOW 50% MEDIAN	65% MEDIAN	LOW INCOME	MODERATE INCOME
ENTIRE STATE	8,900	11,600	14,200	19,500
BRISTOL, KENT, NEWPORT, PROVIDENCE, WASHINGTON				

MAXIMUM ADJUSTED INCOMES FOR RURAL HOUSING PROGRAMS IN SOUTH CAROLINA

AREA/COUNTY	VERY LOW 50% MEDIAN	65% MEDIAN	LOW INCOME	MODERATE INCOME
APPALACHIAN	8,400	11,000	12,400	16,600
ANDERSON	CHEROKEE	GREENVILLE	OCONEE	PICKENS
SPARTANBURG				
BER-CHA-DOR	7,700	10,000	12,200	16,900
BERKELEY	CHARLESTON	DORCHESTER		
LOW COUNTRY	6,100	8,000	9,800	15,600
BEAUFORT	COLLETON	HAMTON	JASPER	
LOWER SAVANNAH	6,600	8,600	10,500	15,600
AIKEN	ALLENDALE	BAMBERG	BARNWELL	CALHOUN
ORANGEBURG				
MACCAHAW	6,300	8,200	10,000	15,600
GEORGETOWN	HORRY	WILLIAMSBURG		
PEE DEE	6,500	8,500	10,400	15,600
CHESTERFIELD	DARLINGTON	DILLON	FLORENCE	MARION
MARLBORO				
SANTEE WATEREE	6,000	7,800	9,600	15,600
CLARENDON	KERSHAW	LEE	SUMTER	
CENTRAL MIDLAND	7,500	9,800	12,000	16,500
FAIRFIELD	LEXINGTON	RICHLAND	NEWBERRY	

MAXI

AREA/C
CATAWBA
CHESTER
UPPER SAVA
ABBEVILLE
SALUDA

MAXI

AREA/C
DISTRICT 1
GRANT
KINGSBURY
DISTRICT 2
MC COOK
UNION
DISTRICT 3
JERAULD
HANSON
BON HOMME
DISTRICT 4
HAND
SPINK
DISTRICT 5
PERKINS
WALWORTH
HYDE
MELLETTE
DISTRICT 6
HARDING
JACKSON
BENNETT

MAXIMUM ADJUSTED INCOMES FOR RURAL HOUSING PROGRAMS IN SOUTH CAROLINA

AREA/COUNTY	VERY LOW 50% MEDIAN	65% MEDIAN	LOW INCOME	MODERATE INCOME
CATAWBA	7,600	9,900	12,200	16,800
CHESTER	LANCASTER	UNION	YORK	
UPPER SAVANNAH	5,700	7,400	9,300	15,600
ABBEVILLE	EDGEFIELD	GREENWOOD	LAURENS	MC CORMICK
SALUDA				

MAXIMUM ADJUSTED INCOMES FOR RURAL HOUSING PROGRAMS IN SOUTH DAKOTA

AREA/COUNTY	VERY LOW 50% MEDIAN	65% MEDIAN	LOW INCOME	MODERATE INCOME
DISTRICT 1	6,800	8,900	11,200	15,600
GRANT	CLARK	CODINGTON	DEUEL	HAMLIN
KINGSBURY	BROOKINGS	MINER	LAKE	MOODY
DISTRICT 2	7,400	9,700	11,800	16,300
MC COOK	MINNEHAHA	TURNER	LINCOLN	CLAY
UNION				
DISTRICT 3	6,500	8,500	11,200	15,600
JERAULD	SANBORN	BRULE	AURORA	DAVISON
HANSON	GREGORY	CHARLES MIX	DOUGLAS	HUTCHINSON
BON HOMME	YANKTON			
DISTRICT 4	6,700	8,800	11,200	15,600
HAND	FAULK	EDMUNDS	MC PHERSON	BROWN
SPINK	BEADLE	MARSHALL	DAY	ROBERTS
DISTRICT 5	7,000	9,100	11,200	15,600
PERKINS	CORSON	CAMPBELL	ZIEBACH	DEWEY
WALWORTH	HAAKON	STANLEY	POTTER	SULLY
HYDE	HUGHES	JONES	LYMAN	BUFFALO
HELLETTE	TODD	TRIPP		
DISTRICT 6	7,400	9,600	11,800	16,200
HARDING	BUTTE	MEADE	LAWRENCE	PENNINGTON
JACKSON	CUSTER	SHANNON	WASHABAUGH	FALL RIVER
BENNETT				

MAXIMUM ADJUSTED INCOMES FOR RURAL HOUSING PROGRAMS IN TENNESSEE

AREA/COUNTY	VERY LOW 50% MEDIAN	65% MEDIAN	LOW INCOME	MODERATE INCOME
FIRST TENNESSEE	6,600	8,600	10,600	15,600
CARTER	GREENE	HANCOCK	HAWKINS	JOHNSON
SULLIVAN	WASHINGTON	UNICOI		
EAST	6,900	9,000	11,000	15,600
ANDERSON	CAMPBELL	CLAIBORNE	COCKE	HAMBLEN
GRAINGER	UNION	JEFFERSON	BLOUNT	KNOX
SEVIER	LOUDON	MONROE	MORGAN	ROANE
SCOTT				
SOUTHEAST	6,700	8,700	10,700	15,600
BRADLEY	POLK	GRUNDY	MCMINN	MEIGS
MARION	RHEA	HAMILTON	SEQUATCHIE	BLEDSOE
UPPER CUMBERLAN	5,500	7,200	9,300	15,600
CANNON	CUMBERLAND	DEKALB	VAN BUREN	WARREN
WHITE	CLAY	FENTRESS	JACKSON	MACON
OVERTON	PICKETT	PUTNAM	SMITH	
MID-CUMBERLAND	8,600	11,200	12,400	18,900
CHEATHAM	MONTGOMERY	ROBERTSON	DAVIDSON	STEWART
HOUSTON	SUMNER	DICKSON	HUMPHREYS	RUTHERFORD
TROUSDALE	WILLIAMSON	WILSON		
SOUTH CENTRAL	6,100	8,000	9,800	15,600
BEDFORD	COFFEE	FRANKLIN	MOORE	LINCOLN
MARSHALL	GILES	HICKMAN	LEWIS	LAWRENCE
MAURY	WAYNE	PERRY		

MAXIMUM ADJUSTED INCOMES FOR RURAL HOUSING PROGRAMS IN TENNESSEE

AREA/COUNTY	VERY LOW 50% MEDIAN	65% MEDIAN	LOW INCOME	MODERATE INCOME
NORTHWEST	6,400	8,300	10,200	15,600
BENTON	CARROLL	CROCKETT	DYER	GIBSON
HENRY	OBION	LAKE	WEAKLEY	
SOUTHWEST	5,700	7,500	9,300	15,600
CHESTER	DECATUR	HARDEMAN	HARDIN	HAYWOOD
HENDERSON	MCNAIRY	MADISON		
MEMPHIS-DELTA	7,100	9,200	11,300	15,700
FAYETTE	LAUDERDALE	SHELBY	TIPTON	

MAXIMUM ADJUSTED INCOMES FOR RURAL HOUSING PROGRAMS IN TEXAS

AREA/COUNTY	VERY LOW 50% MEDIAN	65% MEDIAN	LOW INCOME	MODERATE INCOME
PANHANDLE	8,000	10,400	12,400	17,500
DALLAM	SHERMAN	HANSFORD	OCHILTREE	LIPSCOMB
HARTLEY	MOORE	HUTCHISON	ROBERTS	HEMPHILL
OLDHAM	POTTER	CARSON	GRAY	WHEELER
DEAF SMITH	RANDALL	ARMSTRONG	DONLEY	COLLINGSWORTH
PARMER	CASTRO	SWISHER	BRISCOE	HALL
SOUTH PLAINS	7,000	9,100	11,100	15,600
BAILEY	LAMB	HALE	FLOYD	MOTLEY
COCHRAN	HOCKLEY	LUBBOCK	CROSBY	DICKENS
KING	YOAKUM	TERRY	LYNN	GARZA
NORTEX	6,900	9,000	11,000	15,600
CHILDRESS	HARDEMAN	COTTLE	FOARD	WILBARGER
BAYLOR	WICHITA	ARCHER	YOUNG	CLAY
JACK	MONTAGUE			
NORTH CENTRAL	8,900	11,600	12,400	19,500
WISE	DENTON	COLLIN	HUNT	PALOPINTO
PARKER	TARRANT	DALLAS	ROCKWALL	ERATH
HOOD	JOHNSON	ELLIS	SOMERVELL	NAVARRO
KAUFMAN				
TEXOMA	7,200	9,400	11,600	16,000
COOKE	GRAYSON	FANNIN		
ARK-TEX	6,500	8,500	10,400	15,600
LAMAR	RED RIVER	BOWIE	DELTA	HOPKINS
FRANKLIN	TITUS	MORRIS	CASS	

MAXIMUM ADJUSTED INCOMES FOR RURAL HOUSING PROGRAMS IN TEXAS

AREA/COUNTY	VERY LOW 50% MEDIAN	65% MEDIAN	LOW INCOME	MODERATE INCOME
WEST TEXAS	6,900	9,000	10,900	15,600
ELPASO	HUDSPETH	CULBERSON	JEFF DAVIS	PRESIDIO
BREWSTER				
PERMIAN	8,400	10,900	12,400	18,400
GAINES	DAWSON	BORDEN	ANDREWS	MARTIN
HOWARD	LOVING	WINKLER	ECTOR	MIDLAND
GLASSCOCK	REEVES	WARD	CRANE	UPTON
PECOS	TERRELL			
WEST CENTRAL	6,500	8,400	10,300	15,600
KNOX	KENT	STONEWALL	HASKELL	THROCKMORTON
SCURRY	FISHER	JONES	SHACKELFORD	STEPHENS
MITCHELL	NOLAN	TAYLOR	CALLAHAN	EASTLAND
RUNNELS	COLEMAN	BROWN	COMANCHE	
CONCHO VALLEY	5,900	7,700	9,400	15,600
STERLING	COKE	REAGAN	IRION	TOM GREEN
CONCHO	CROCKETT	SCHLEICHER	MENARD	MC CULLOCH
MASON	SUTTON	KIMBLE		
MID RIO GRANDE	4,900	6,480	9,300	15,600
VALVERDE	EDWARDS	REAL	KINNEY	UVALDE
MAVERICK	ZAVALA	DIMMIT	LASALLE	
CENTRAL TEXAS	6,200	8,000	9,800	15,600
MILLS	HAMILTON	SAN SABA	LAMPASAS	CORYELL
BELL	MILAM			

MAXIMUM ADJUSTED INCOMES FOR RURAL HOUSING PROGRAMS IN TEXAS

AREA/COUNTY	VERY LOW 50% MEDIAN	65% MEDIAN	LOW INCOME	MODERATE INCOME
HEART OF TEXAS	6,100	8,000	9,800	15,600
BOSQUE	HILL	MC LENNAN	LIMESTONE	FREESTONE
FALLS				
EAST TEXAS	6,600	8,600	10,500	15,600
RAINS	WOOD	CAMP	UPSHUR	MARION
VANZANDT	SMITH	GREGG	HARRISON	HENDERSON
RUSK	PANOLA	ANDERSON	CHEROKEE	
ALAMO	7,100	9,300	11,400	15,600
GILLESPIE	KERR	KENDALL	BANDERA	COMAL
BEXAR	MEDINA	GUADALUPE	FRIO	ATASCOSA
KARNES				
CAPITAL AREA	6,700	8,800	10,700	15,600
LLANO	BURNET	WILLIAMSON	BLANCO	TRAVIS
LEE	BASTROP	HAYES	CALDWELL	FAYETTE
BRAZOS	5,600	7,300	9,300	15,600
LEON	ROBERTSON	BRAZOS	MADISON	BURLESON
GRIMES	WASHINGTON			
DEEP EAST TEXAS	5,700	7,500	9,300	15,600
SHELBY	NACOGDOCHES	HOUSTON	TRINITY	POLK
SAN JACINTO	TYLER	JASPER	NEWTON	SAN AUGUSTINE
SABINE	ANGELINA			
SOUTHEAST TEX	8,800	11,500	12,400	19,400
HARDIN	ORANGE	JEFFERSON		

MAXIMUM ADJUSTED INCOMES FOR RURAL HOUSING PROGRAMS IN TEXAS

AREA/COUNTY	VERY LOW 50% MEDIAN	65% MEDIAN	LOW INCOME	MODERATE INCOME
LOWER RIO GRAND	5,000	6,500	9,300	15,600
HIDALGO	WILLACY	CAMERON		
SOUTH TEXAS	3,800	5,000	9,300	15,600
WEBB	ZAPATA	JIM HOGG	STARR	
COASTAL BEND	6,900	9,000	11,000	15,600
MC MULLEN	LIVE OAK	BEE	REFUGIO	DUVAL
JIM WELLS	NUECES	SAN PATRICIO	ARANSAS	KLEBERG
BROOKS	KENEDY			
GOLDEN CRESCENT	6,400	8,400	10,200	15,600
GONZALES	LAVACA	DEWITT	JACKSON	VICTORIA
GOLIAD	CALHOUN			
HOUSTON GALVEST	10,000	13,000	12,400	22,000
WALKER	MONTGOMERY	AUSTIN	WALLER	HARRIS
LIBERTY	COLORADO	FT BEND	CHAMBERS	MATAGORDA
BRAZORIA	GALVESTON	WHARTON		

MAXIMUM ADJUSTED INCOMES FOR RURAL HOUSING PROGRAMS IN UTAH

AREA/COUNTY	VERY LOW 50% MEDIAN	65% MEDIAN	LOW INCOME	MODERATE INCOME
DISTRICT I	8,200	10,700	13,100	18,100
BOX ELDER	CACHE	RICH		
DISTRICT II	9,200	12,000	14,700	20,300
TOOELE	WEBER	DAVIS	MORGAN	SALT LAKE
DISTRICT III	8,100	10,500	12,900	17,800
UTAH	WASATCH	SUMMIT		
DISTRICT IV	6,700	8,700	11,200	15,600
JUAB WAYNE	MILLARD	SANPETE	SEVIER	PIUTE
DISTRICT V	8,500	8,400	11,200	15,600
BEAVER	IRON	WASHINGTON	GARFIELD	KANE
DISTRICT VI	7,700	10,100	12,300	17,000
DUCHESNE	UINTAH	DAGGETT		
DISTRICT VII	7,300	9,500	11,700	16,100
CARBON	EMERY	GRAND	SAN JUAN	

MAXIMUM ADJUSTED INCOMES FOR RURAL HOUSING PROGRAMS IN VERMONT

AREA/COUNTY	VERY LOW 50% MEDIAN	65% MEDIAN	LOW INCOME	MODERATE INCOME
DISTRICT I	7,800	10,200	12,500	17,200
CALEDONIA GRAND ISLE	ESSEX LAMOILLE	ORLEANS WASHINGTON	CHITTENDEN ORANGE	FRANKLIN
DISTRICT II	7,900	10,300	12,600	17,300
ADDISON	BENNINGTON	RUTLAND	WINDHAM	WINDSOR

MAXIMUM ADJUSTED INCOMES FOR RURAL HOUSING PROGRAMS IN VIRGINIA

AREA/COUNTY	VERY LOW 50% MEDIAN	65% MEDIAN	LOW INCOME	MODERATE INCOME
DISTRICT 1	6,000	7,800	9,600	15,600
LEE	WISE	SCOTT		
DISTRICT 2	6,600	8,600	10,500	15,600
DICKENSON	RUSSELL	BUCHANAN	TAZEWELL	
DISTRICT 3	6,700	8,800	10,700	15,600
WASHINGTON CARROLL	SMYTH	BLAND	WYTHE	GRAYSON
DISTRICT 4	8,300	10,800	12,400	18,300
GILES	PULASKI	MONTGOMERY	FLOYD	
DISTRICT 5	8,600	11,400	12,400	19,300
CRAIG	ALLEGHANY	BOTETOURT	ROANOKE	
DISTRICT 6	8,100	10,600	12,400	17,900
BATH	ROCKBRIDGE	HIGHLAND	AUGUSTA	ROCKINGHAM
DISTRICT 7	7,700	10,000	12,300	16,900
SHENANDOAH	PAGE	WARREN	FREDERICK	CLARKE
DISTRICT 8	13,000	16,900	13,000	28,600
LOUDOUN	PRINCE WILLIAM	FAIRFAX	ARLINGTON	

MAXIMUM ADJUSTED INCOMES FOR RURAL HOUSING PROGRAMS IN VIRGINIA

AREA/COUNTY	VERY LOW 50% MEDIAN	65% MEDIAN	LOW INCOME	MODERATE INCOME
DISTRICT 9	7,100	9,300	11,400	15,600
MADISON	ORANGE	CULPEPPER	RAPPAHANNOCK	FAUQUIER
DISTRICT 10	7,900	10,300	12,400	17,300
NELSON	ALBEMARLE	FLUVANNA	LOUISA	GREENE
DISTRICT 11	8,500	11,000	12,400	18,600
BEDFORD	AMHERST	CAMPBELL	APPOMATTOX	
DISTRICT 12	7,400	9,600	11,800	16,200
PATRICK	FRANKLIN	HENRY	PITTSYLVANIA	
DISTRICT 13	6,200	8,100	10,000	15,600
HALIFAX	MECKLENBURG	BRUNSWICK		
DISTRICT 14	6,200	8,100	9,900	15,600
BUCKINGHAM CHARLOTTE	CUMBERLAND LUNENBURG	AMELIA	PRINCE EDWARD	NOTTOWAY
DISTRICT 15	10,100	13,100	12,400	22,200
HANOVER CHARLES CITY	GOOCHLAND POWHATAN	HENRICO	CHESTERFIELD	NEW KENT
DISTRICT 16	8,100	10,600	12,400	17,900
STAFFORD	SPOTSYLVANIA	KING GEORGE	CAROLINE	

MAXIMUM ADJUSTED INCOMES FOR RURAL HOUSING PROGRAMS IN VIRGINIA

AREA/COUNTY	VERY LOW 50% MEDIAN	65% MEDIAN	LOW INCOME	MODERATE INCOME
DISTRICT 17	6,000	7,800	9,600	15,600
WESTMORELAND	NORTHUMBERLAND	RICHMOND	LANCASTER	
DISTRICT 18	7,500	9,700	11,900	16,400
ESSEX	KING&QUEEN	KING WILLIAM	MIDDLESEX	MATHEWS
GLOUCESTER				
DISTRICT 19	8,000	10,400	12,400	17,500
DINWIDDIE	PRINCE GEORGE	SURRY	SUSSEX	GREENSVILLE
DISTRICT 20	8,100	10,500	12,400	17,800
SOUTHAMPTON	ISLE OF WIGHT	CITY OF SUFFOLK	CITY VA BEACH	
DISTRICT 21	8,700	11,400	12,400	19,200
JAMES CITY	YORK			
DISTRICT 22	5,400	7,100	9,300	15,600
NORTHAMPTON	ACCOMACK			

MAXIMUM ADJUSTED INCOMES FOR RURAL HOUSING PROGRAMS IN WASHINGTON

AREA/COUNTY	VERY LOW 50% MEDIAN	65% MEDIAN	LOW INCOME	MODERATE INCOME
DISTRICT I	10,100	13,200	14,900	22,300
KING	KITSAP	PIERCE	SNOHOMISH	
DISTRICT II	8,500	11,100	13,600	18,700
CLALLAM SAN JUAN	ISLAND	JEFFERSON	SKAGIT	WHATCOM
DISTRICT III	8,800	11,500	14,100	19,400
CLARK MASON	COWLITZ PACIFIC	GRAYS HARBOR SKAMANIA	KLICKITAT THURSTON	LEWIS WAHKIAKUM
DISTRICT IV	7,700	10,000	12,200	16,900
CHELAN	DOUGLAS	KITTITAS	OKANOGAN	YAKIMA
DISTRICT V	8,300	10,800	13,200	18,200
ADAMS FRANKLIN SPOKANE	ASOTIN GARFIELD STEVENS	BENTON GRANT WALLA WALLA	COLUMBIA LINCOLN WHITMAN	FERRY PEND OREILLE

MAXIMUM ADJUSTED INCOMES FOR RURAL HOUSING PROGRAMS IN WEST VIRGINIA

AREA/COUNTY	VERY LOW 50% MEDIAN	65% MEDIAN	LOW INCOME	MODERATE INCOME
REGION I	7,000	9,100	11,100	15,600
MC DOWELL WYOMING	MERCER	MONROE	RALEIGH	SUMMERS
REGION II	7,000	9,100	11,200	15,600
CABELL	LINCOLN	LOGAN	MINGO	WAYNE
REGION III	8,100	10,600	12,400	17,900
BOONE	CLAY	KANAWHA	PUTNAM	
REGION IV	6,400	8,300	10,200	15,600
FAYETTE	GREENBRIER	NICHOLAS	POCAHANTAS	WEBSTER
REGION V	7,400	9,700	11,800	16,100
CALHOUN TYLER	JACKSON WIRT	PLEASANTS WOOD	RICHIE	ROANE
REGION VI	7,400	9,600	11,800	16,200
DODDRIDGE PRESTON	HARRISON	MARION	MONONGALIA	TAYLOR
REGION VII	5,700	7,400	9,300	15,600
BARBOUR TUCKER	BRAXTON UPSHUR	GILMER	LEWIS	RANDOLPH
REGION VIII	6,300	8,200	10,100	15,600
GRANT	HAMPSHIRE	HARDY	MINERAL	PENDLETON

MAXIMUM ADJUSTED INCOMES FOR RURAL HOUSING PROGRAMS IN WEST VIRGINIA

AREA/COUNTY	VERY LOW 50% MEDIAN	65% MEDIAN	LOW INCOME	MODERATE INCOME
REGION IX	7,800	10,200	12,400	17,200
BERKELEY	JEFFERSON	MORGAN		
REGION X	8,200	10,600	12,400	18,000
MARSHALL	OHIO	WETZEL		
REGION XI	8,300	10,800	12,400	18,300
BROOKE	HANCOCK			

MAXIMUM ADJUSTED INCOMES FOR RURAL HOUSING PROGRAMS IN WISCONSIN

AREA/COUNTY	VERY LOW SOI MEDIAN		65% MEDIAN		LOW INCOME		MODERATE INCOME	
SOUTHWEST	8,700		11,300		13,800		19,100	
GRANT	IOWA		LAFAYETTE		GREEN		RICHLAND	
SAUK	COLUMBIA		DODGE		JEFFERSON			
DANE	10,700		14,000		14,900		23,600	
DANE								
ROCK VALLEY	9,600		12,500		14,900		21,200	
ROCK								
SOUTHEASTERN	10,200		13,300		14,900		22,500	
KENOSHA	RACINE		WALWORTH		WAUKESHA		MILWAUKEE	
OZAUKEE	WASHINGTON							
BAY LAKE	8,700		11,300		13,800		19,100	
SHEBOYGAN	MANITOWOC		BROWN		KEWAUNEE		DOOR	
OCONTO	MARINETTE		FLORENCE					
EAST CENTRAL	8,500		11,100		13,600		18,700	
FOND DU LAC	GREEN LAKE		MARQUETTE		WAUSHARA		WINNEBAGO	
CALUMET	OUTAGAMIE		WAUPACA		SHAWANO		MENOMINEE	
NORTH CENTRAL	7,900		10,300		12,600		17,300	
VILAS	FOREST		ONEIDA		LINCOLN		LANGLADE	
MARATHON	WOOD		PORTAGE		JUNEAU		ADAMS	

MAXIMUM ADJUSTED INCOMES FOR RURAL HOUSING PROGRAMS IN WISCONSIN

AREA/COUNTY	VERY LOW 50% MEDIAN	65% MEDIAN	LOW INCOME	MODERATE INCOME
NORTHWESTERN	6,600	8,600	11,200	15,600
DOUGLAS WASHBURN	BAYFIELD SAWYER	ASHLAND PRICE	IRON RUSK	BURNETT TAYLOR
WEST CENTRAL	8,300	10,800	13,300	18,300
POLK EAU CLAIRE	BARRON CLARK	ST CROIX	DUNN	CHIPPEWA
MISSISSIPPI	7,700	10,000	12,200	16,900
PIERCE MONROE	PEPIN LA CROSSE	BUFFALO VERNON	TREMPEALEAU CRAWFORD	JACKSON

MAXIMUM ADJUSTED INCOMES FOR RURAL HOUSING PROGRAMS IN WYOMING

AREA/COUNTY	VERY LOW 50% MEDIAN	65% MEDIAN	LOW INCOME	MODERATE INCOME
DISTRICT 1	8,000	10,400	12,800	17,600
PARK HOT SPRINGS	BIGHORN FREMONT	SHERIDAN	JOHNSON	WASHAKIE
DISTRICT 2	8,800	11,500	14,100	19,400
CAMPBELL ALBANY	CROOK NATRONA	WESTON PLATTE	CONVERSE GOSHEN	NIOBRARA LARAMIE
DISTRICT 3	8,500	11,100	13,600	18,700
TETON CARBON	SUBLETTE	LINCOLN	SWEETWATER	UINTA

MAXIMUM ADJUSTED INCOMES FOR RURAL HOUSING PROGRAMS IN ALASKA

AREA/COUNTY	VERY LOW 50% MEDIAN	65% MEDIAN	LOW INCOME	MODERATE INCOME
SOLDOTNA	11,200	14,500	17,840	24,600
PALMER	10,900	14,200	17,440	24,000
FAIRBANKS	10,200	13,200	16,240	22,400
JUNEAU	13,000	16,900	19,700	28,500

MAXIMUM ADJUSTED INCOMES FOR RURAL HOUSING PROGRAMS IN HAWAII

AREA/COUNTY	VERY LOW 50% MEDIAN	65% MEDIAN	LOW INCOME	MODERATE INCOME
HONOLULU	11,200	14,500	14,900	24,600
KAUAI	9,800	12,800	14,900	21,600
MAUI	9,600	12,500	14,900	21,100
HAWAII	9,600	12,500	14,900	21,200

MAXIMUM ADJUSTED INCOMES FOR RURAL HOUSING PROGRAMS IN GUAM

AREA/COUNTY	VERY LOW 50% MEDIAN	65% MEDIAN	LOW INCOME	MODERATE INCOME
ENTIRE	6,200	8,000	13,600	18,000

MAXIMUM ADJUSTED INCOMES FOR RURAL HOUSING PROGRAMS IN PUERTO RICO

AREA/COUNTY	VERY LOW 50% MEDIAN	65% MEDIAN	LOW INCOME	MODERATE INCOME
AGUADILLA	1,800	2,400	8,000	15,600
AGUADA SAN SEBASTIAN	AGUADILLA	ISABELA	MOCA	RINCON
ARECIBO	1,900	2,500	8,400	15,600
ARECIBO HATILLO	BARCELONETA LARES	CAMUY MANATI	FLORIDA QUEBRADILLARS	CIALES UTUADO
BAYAMON	2,200	2,900	7,700	15,600
BOYAMON DORADO VEGA BAJA	BARRANQUITAS NARANJITO	CATANO TOA BAJA	CONERIO TOA ALTA	COROZAL VEGA ALTA
CAGUAS	2,700	3,500	8,500	15,600
AIBONITO JUNCOS	AGUAS BUENAS SAN LORENZO	CAYEY CAGUAS	CIDRA	GURABO
GUAYAMA	2,400	3,200	7,400	15,600
GUAYAMA	ARROYO	MAUNABO	PATILLAS	SALINAS
HUMACAO	2,300	3,000	7,900	15,600
HUMACAO	CEIBA	LAR PIEDRAS	NAGUABO	YABUCOA
MAYAGUEZ	2,300	3,000	8,000	15,600
MAYAGUEZ LAR MARIAS	ANASCO MARICAO	CABO SABANA GRANDE	HORMIGUEROS SAN GERMAN	LAJAS

MAXIMUM ADJUSTED INCOMES FOR RURAL HOUSING PROGRAMS IN PUERTO RICO

AREA/COUNTY	VERY LOW 50% MEDIAN	65% MEDIAN	LOW INCOME	MODERATE INCOME
PONCE	1,900	2,500	8,000	15,600
PONCE JUANA DIAZ YAUCO	ADJUNTAS OROCOVIS GUAYANILLA	COAMO PENUELAS	GUANICA SANTA ISABEL	JOYUYA VILLALBA
SAN JUAN	3,100	4,100	8,000	15,600
SAN JUAN GUAYNABO VIEQUES	CAROLINA LOIZA	CANOVANAS LUQUILLO	CULEBRAS RIO GRANDE	FAJARDO TRUJILLO ALTO

MAXIMUM ADJUSTED INCOMES FOR RURAL HOUSING PROGRAMS IN VIRGIN ISLANDS

AREA/COUNTY	VERY LOW 50% MEDIAN	65% MEDIAN	LOW INCOME	MODERATE INCOME
ENTIRE AREA	7,300	9,500	11,600	16,000
ST CROIX	ST THOMAS	ST JOHN		

MAXIMUM ADJUSTED INCOMES FOR RURAL HOUSING PROGRAMS IN NO. MARIANAS

AREA/COUNTY	VERY LOW 50% MEDIAN	65% MEDIAN	LOW INCOME	MODERATE INCOME
ENTIRE AREA	1,700	2,300	11,200	15,600

MAXIMUM ADJUSTED INCOMES FOR RURAL HOUSING PROGRAMS IN TRUST TERRITORY

AREA/COUNTY	VERY LOW 50% MEDIAN	65% MEDIAN	LOW INCOME	MODERATE INCOME
ENTIRE	1,300	1,700	11,200	15,600

PALAU PONAPE TRUK YAP

MAXIMUM ADJUSTED INCOMES FOR RURAL HOUSING PROGRAMS IN AM. SAMOA

AREA/COUNTY	VERY LOW 50% MEDIAN	65% MEDIAN	LOW INCOME	MODERATE INCOME
ENTIRE	2,000	2,600	11,200	15,600

Exhibit D - Minimum Interest Rates for Calculating Interest Credit for Moderate-Income Borrowers

MINIMUM INTEREST RATES FOR THE CALCULATION OF INTEREST CREDITS FOR MODERATE INCOME BORROWER IN ALABAMA

INTEREST RATE	3.5%	4%	4.5%	5%	5.5%	6%	6.5%	7%	7.5%	8%	8.5%	9%	9.5%	10%	10.5%	11%	11.5%	12%

Exhibit D - Minimum Interest Rates for Calculating Interest Credit for Moderate-Income Borrowers

MINIMUM INTEREST RATES FOR THE CALCULATION OF INTEREST CREDITS FOR MODERATE INCOME BORROWER IN ALABAMA

INTEREST RATE	3.5%	4%	4.5%	5%	5.5%	6%	6.5%	7%	7.5%	8%	8.5%	9%	9.5%	10%	10.5%	11%	11.5%	12%
AMORT RATE ANNUAL	51.58	55.11	58.75	62.50	66.34	70.28	74.30	78.41	82.60	86.86	91.18	95.57	100.01	104.50	109.05	113.63	118.26	122.93
AMORT RATE MONTH	4.27	4.56	4.86	5.17	5.48	5.81	6.14	6.49	6.83	7.19	7.55	7.92	8.29	8.66	9.04	9.43	9.81	10.20
NORTHWEST	11400	11800	12200	12600	13000	13400	13800	14200	14600	15000	15400	15600						
WEST	09700	10100	10500	10900	11300	11700	12100	12500	12900	13300	13700	14100	14500	14900	15300	15600		
BIRMINGHAM	12800	13200	13600	14000	14400	14800	15200	15600	16000	16400	16800	17200	17600	17900				
EAST	10900	11300	11700	12100	12500	12900	13300	13700	14100	14500	14900	15300	15600					
SOUTH CENTRAL	09700	10100	10500	10900	11300	11700	12100	12500	12900	13300	13700	14100	14500	14900	15300	15600		
TOMBIGBEE	09700	10100	10500	10900	11300	11700	12100	12500	12900	13300	13700	14100	14500	14900	15300	15600		
SOUTHEAST	10300	10700	11100	11500	11900	12300	12700	13100	13500	13900	14300	14700	15100	15500	15600			
SOUTH	12100	12500	12900	13300	13700	14100	14500	14900	15300	15700	16100	16200						
CENTRAL	12800	13200	13600	14000	14400	14800	15200	15600	16000	16400	16800	17200	17600	18000	18300			
LEE CO	12300	12700	13100	13500	13900	14300	14700	15100	15500	15900	16300	16400						
NORTH CENTRAL	10900	11300	11700	12100	12500	12900	13300	13700	14100	14500	14900	15300	15600					
TOP OF ALA	11400	11800	12200	12600	13000	13400	13800	14200	14600	15000	15400	15600						

INSTRUCTIONS FOR USE OF EXHIBIT D.

THIS EXHIBIT WILL BE USED TO DETERMINE THE MINIMUM INTEREST RATE FOR A MODERATE INCOME BORROWER IN THE COMPLETION OF PART III, LINE 13 OF FORM 1944-6 (INTEREST CREDIT AGREEMENT). AMORTIZATION FACTORS FOR 33 YEARS ARE SHOWN BELOW THE INTEREST RATES. FACTORS OTHER THAN 33 YEARS MUST BE OBTAINED FROM AMORTIZATION TABLES.

DETERMINE THE APPROPRIATE INTEREST RATE BY: (1) SELECTING THE APPROPRIATE DISTRICT; (2) SELECT AN INCOME THAT IS THE SAME OR THE NEXT HIGHER THAN THE ADJUSTED ANNUAL HOUSEHOLD INCOME OF THE BORROWER. (LINE 4 OF PART III OF 1944-6); (3) SELECT THE APPROPRIATE INTEREST RATE SHOWN AT THE TOP OF THE SELECTED INCOME COLUMN.

* MODERATE-INCOME BORROWER'S WHOSE INCOME EXCEEDS THE LIMITS SET FORTH IN THIS EXHIBIT WILL NOT RECEIVE INTEREST CREDIT.

MINIMUM INTEREST RATES FOR THE CALCULATION OF INTEREST CREDITS FOR MODERATE INCOME BORROWER IN ARIZONA

INTEREST RATE	3.5%	4%	4.5%	5%	5.5%	6%	6.5%	7%	7.5%	8%	8.5%	9%	9.5%	10%	10.5%	11%	11.5%	12%
AMORT RATE ANNUAL	51.58	55.11	58.75	62.50	66.34	70.28	74.30	78.41	82.60	86.86	91.18	95.57	100.01	104.50	109.05	113.63	118.26	122.93
AMORT RATE MONTH	4.27	4.56	4.86	5.17	5.48	5.81	6.14	6.49	6.83	7.19	7.55	7.92	8.29	8.66	9.04	9.43	9.81	10.20
MARICOPA	15100	15500	15900	16300	16700	17100	17500	17900	18300	18700	19100	19200	19900	20300				
TUCSON	13800	14200	14600	15000	15400	15800	16200	16600	17000	17400	17800	18200	18400					
DIST III	11600	12000	12400	12800	13200	13600	14000	14400	14800	15200	15600							
DIST IV	13400	13800	14200	14600	15000	15400	15800	16200	16600	17000	17400	17800	18000					
DIST V	12200	12600	13000	13400	13800	14200	14600	15000	15400	15800	16200	16300						
DIST VI	12600	13000	13400	13800	14200	14600	15000	15400	15800	16200	16600	16900						

INSTRUCTIONS FOR USE OF EXHIBIT D.

THIS EXHIBIT WILL BE USED TO DETERMINE THE MINIMUM INTEREST RATE FOR A MODERATE INCOME BORROWER IN THE COMPLETION OF PART III, LINE 13 OF FORM 1944-6 (INTEREST CREDIT AGREEMENT). AMORTIZATION FACTORS FOR 33 YEARS ARE SHOWN BELOW THE INTEREST RATES. FACTORS OTHER THAN 33 YEARS MUST BE OBTAINED FROM AMORTIZATION TABLES.

DETERMINE THE APPROPRIATE INTEREST RATE BY: (1) SELECTING THE APPROPRIATE DISTRICT; (2) SELECT AN INCOME THAT IS THE SAME OR THE NEXT HIGHER THAN THE ADJUSTED ANNUAL HOUSEHOLD INCOME OF THE BORROWER. (LINE 4 OF PART III OF 1944-6); (3) SELECT THE APPROPRIATE INTEREST RATE SHOWN AT THE TOP OF THE SELECTED INCOME COLUMN.

* MODERATE-INCOME BORROWER'S WHOSE INCOME EXCEEDS THE LIMITS SET FORTH IN THIS EXHIBIT WILL NOT RECEIVE INTEREST CREDIT.

MINIMUM INTEREST RATES FOR THE CALCULATION OF INTEREST CREDITS FOR MODERATE INCOME BORROWER IN ARKANSAS

INTEREST RATE	3.5%	4%	4.5%	5%	5.5%	6%	6.5%	7%	7.5%	8%	8.5%	9%	9.5%	10%	10.5%	11%	11.5%	12%
AMORT RATE ANNUAL	51.58	55.11	58.75	62.50	66.34	70.28	74.30	78.41	82.60	86.86	91.18	95.57	100.01	104.50	109.05	113.63	118.26	122.93
AMORT RATE MONTH	4.27	4.56	4.86	5.17	5.48	5.81	6.14	6.49	6.83	7.19	7.55	7.92	8.29	8.66	9.04	9.43	9.81	10.20
LITTLE ROCK	13800	14200	14600	15000	15400	15800	16200	16600	17000	17400	17800	18200	18400					
DIST II	12000	12400	12800	13200	13600	14000	14400	14800	15200	15600								
DIST III	12600	13000	13400	13800	14200	14600	15000	15400	15800	16200	16600	16900						
DIST IV	12200	12600	13000	13400	13800	14200	14600	15000	15400	15800	16200	16300						
DIST V	11600	12000	12400	12800	13200	13600	14000	14400	14800	15200	15600							
DIST VI	12200	12600	13000	13400	13800	14200	14600	15000	15400	15800	16200	16300						

MINIMUM INTEREST RATES FOR THE CALCULATION OF INTEREST CREDITS FOR MODERATE INCOME BORROWER IN ARKANSAS

INTEREST RATE	3.5%	4%	4.5%	5%	5.5%	6%	6.5%	7%	7.5%	8%	8.5%	9%	9.5%	10%	10.5%	11%	11.5%	12%
AMORT RATE ANNUAL	51.58	55.11	58.75	62.50	66.34	70.28	74.30	78.41	82.60	86.86	91.18	95.57	100.01	104.50	109.05	113.63	118.26	122.93
AMORT RATE MONTH	4.27	4.56	4.86	5.17	5.48	5.81	6.14	6.49	6.83	7.19	7.55	7.92	8.29	8.66	9.04	9.43	9.81	10.20
WEST CENTRAL	10000	10400	10800	11200	11600	12000	12400	12800	13200	13600	14000	14400	14800	15200	15600			
SOUTHWEST	10100	10500	10900	11300	11700	12100	12500	12900	13300	13700	14100	14500	14900	15300	15600			
SOUTHEAST	09700	10100	10500	10900	11300	11700	12100	12500	12900	13300	13700	14100	14500	14900	15300	15600		
NORTHWEST	09900	10300	10700	11100	11500	11900	12300	12700	13100	13500	13900	14300	14700	15100	15500	15600		
EAST	09700	10100	10500	10900	11300	11700	12100	12500	12900	13300	13700	14100	14500	14900	15300	15600		
WHITE RIVER	09700	10100	10500	10900	11300	11700	12100	12500	12900	13300	13700	14100	14500	14900	15300	15600		
CENTRAL	12300	12700	13100	13500	13900	14300	14700	15100	15500	15900	16300	16400						
WESTERN	09700	10100	10500	10900	11300	11700	12100	12500	12900	13300	13700	14100	14500	14900	15300	15600		

INSTRUCTIONS FOR USE OF EXHIBIT D.

THIS EXHIBIT WILL BE USED TO DETERMINE THE MINIMUM INTEREST RATE FOR A MODERATE INCOME BORROWER IN THE COMPLETION OF PART III, LINE 13 OF FORM 1944-8 (INTEREST CREDIT AGREEMENT). AMORTIZATION FACTORS FOR 33 YEARS ARE SHOWN BELOW THE INTEREST RATES. FACTORS OTHER THAN 33 YEARS MUST BE OBTAINED FROM AMORTIZATION TABLES.

DETERMINE THE APPROPRIATE INTEREST RATE BY: (1) SELECTING THE APPROPRIATE DISTRICT; (2) SELECT AN INCOME THAT IS THE SAME OR THE NEXT HIGHER THAN THE ADJUSTED ANNUAL HOUSEHOLD INCOME OF THE BORROWER. (LINE 4 OF PART III OF 1944-8); (3) SELECT THE APPROPRIATE INTEREST RATE SHOWN AT THE TOP OF THE SELECTED INCOME COLUMN.

* MODERATE-INCOME BORROWER'S WHOSE INCOME EXCEEDS THE LIMITS SET FORTH IN THIS EXHIBIT WILL NOT RECEIVE INTEREST CREDIT.

MINIMUM INTEREST RATES FOR THE CALCULATION OF INTEREST CREDITS FOR MODERATE INCOME BORROWER IN CALIFORNIA

INTEREST RATE	3.5%	4%	4.5%	5%	5.5%	6%	6.5%	7%	7.5%	8%	8.5%	9%	9.5%	10%	10.5%	11%	11.5%	12%
AMORT RATE ANNUAL	51.58	55.11	58.75	62.50	66.34	70.28	74.30	78.41	82.60	86.86	91.18	95.57	100.01	104.50	109.05	113.63	118.26	122.93
AMORT RATE MONTH	4.27	4.56	4.86	5.17	5.48	5.81	6.14	6.49	6.83	7.19	7.55	7.92	8.29	8.66	9.04	9.41	9.81	10.20
DISTRICT 1	12500	12900	13300	13700	14100	14500	14900	15300	15700	16100	16500	16700						
DISTRICT 2	14500	14900	15300	15700	16100	16500	16900	17300	17700	18100	18500	18900	19300	19400				
DISTRICT 3	13600	14000	14400	14800	15200	15600	16000	16400	16800	17200	17600	18000	18200					
DISTRICT 4	14500	14900	15300	15700	16100	16500	16900	17300	17700	18100	18500	18900	19300	19400				
DISTRICT 5	12200	12600	13000	13400	13800	14200	14600	15000	15400	15800	16200							
DISTRICT 6	15300	15700	16100	16500	16900	17300	17700	18100	18500	18900	19300	19700	20100	20500	20700			

INSTRUCTIONS FOR USE OF EXHIBIT D.

THIS EXHIBIT WILL BE USED TO DETERMINE THE MINIMUM INTEREST RATE FOR A MODERATE INCOME BORROWER IN THE COMPLETION OF PART III, LINE 13 OF FORM 1944-6 (INTEREST CREDIT AGREEMENT). AMORTIZATION FACTORS FOR 33 YEARS ARE SHOWN BELOW THE INTEREST RATES. FACTORS OTHER THAN 33 YEARS MUST BE OBTAINED FROM AMORTIZATION TABLES.

DETERMINE THE APPROPRIATE INTEREST RATE BY: (1) SELECTING THE APPROPRIATE DISTRICT; (2) SELECT AN INCOME THAT IS THE SAME OR THE NEXT HIGHER THAN THE ADJUSTED ANNUAL HOUSEHOLD INCOME OF THE BORROWER. (LINE 4 OF PART III OF 1944-6); (3) SELECT THE APPROPRIATE INTEREST RATE SHOWN AT THE TOP OF THE SELECTED INCOME COLUMN.

* MODERATE-INCOME BORROWER'S WHOSE INCOME EXCEEDS THE LIMITS SET FORTH IN THIS EXHIBIT WILL NOT RECEIVE INTEREST CREDIT.

MINIMUM INTEREST RATES FOR THE CALCULATION OF INTEREST CREDITS FOR MODERATE INCOME BORROWER IN COLORADO

INTEREST RATE	3.5%	4%	4.5%	5%	5.5%	6%	6.5%	7%	7.5%	8%	8.5%	9%	9.5%	10%	10.5%	11%	11.5%	12%
AMORT RATE ANNUAL	51.58	55.11	58.75	62.50	66.34	70.28	74.30	78.41	82.60	86.86	91.18	95.57	100.01	104.50	109.05	113.63	118.26	122.93
AMORT RATE MONTH	4.27	4.56	4.86	5.17	5.48	5.81	6.14	6.49	6.83	7.19	7.55	7.92	8.29	8.66	9.04	9.41	9.81	10.20

MINIMUM INTEREST RATES FOR THE CALCULATION OF INTEREST CREDITS FOR MODERATE INCOME BORROWER IN COLORADO

INTEREST RATE	3.5%	4%	4.5%	5%	5.5%	6%	6.5%	7%	7.5%	8%	8.5%	9%	9.5%	10%	10.5%	11%	11.5%	12%
AMORT RATE ANNUAL	51.58	55.11	58.75	62.50	66.34	70.28	74.30	78.41	82.60	86.86	91.18	95.57	100.01	104.50	109.05	113.63	118.26	122.93
AMORT RATE MONTH	4.27	4.56	4.86	5.17	5.48	5.81	6.14	6.49	6.83	7.19	7.55	7.92	8.29	8.66	9.04	9.43	9.81	10.20
REGION 1	12500	12900	13300	13700	14100	14500	14900	15300	15700	16100	16500	16700						
REGION 2	14200	14600	15000	15400	15800	16200	16600	17000	17400	17800	18200	18600	19000	19100				
REGION 3	15300	15700	16100	16500	16900	17300	17700	18100	18500	18900	19300	19700	20100	20500	20900	21300	21700	22100*
REGION 4	13800	14200	14600	15000	15400	15800	16200	16600	17000	17400	17800	18200	18400					
REGION 5	11900	12300	12700	13100	13500	13900	14300	14700	15100	15500	15900							
REGION 6	11600	12000	12400	12800	13200	13600	14000	14400	14800	15200	15600							
REGION 7	14100	14500	14900	15300	15700	16100	16500	16900	17300	17700	18100	18500	18900					
REGION 7B	11600	12000	12400	12800	13200	13600	14000	14400	14800	15200	15600							
REGION 8	11600	12000	12400	12800	13200	13600	14000	14400	14800	15200	15600							
REGION 9	12200	12600	13000	13400	13800	14200	14600	15000	15400	15800	16200							
REGION 10	11600	12000	12400	12800	13200	13600	14000	14400	14800	15200	15600							
REGION 11	12900	13300	13700	14100	14500	14900	15300	15700	16100	16500	16900	17200						
REGION 12	15000	15400	15800	16200	16600	17000	17400	17800	18200	18600	19000	19400	19800	20200				
REGION 13	12000	12400	12800	13200	13600	14000	14400	14800	15200	15600	16000							

INSTRUCTIONS FOR USE OF EXHIBIT D.

THIS EXHIBIT WILL BE USED TO DETERMINE THE MINIMUM INTEREST RATE FOR A MODERATE INCOME BORROWER IN THE COMPLETION OF PART III, LINE 13 OF FORM 1944-6 (INTEREST CREDIT AGREEMENT). AMORTIZATION FACTORS FOR 33 YEARS ARE SHOWN BELOW THE INTEREST RATES. FACTORS OTHER THAN 33 YEARS MUST BE OBTAINED FROM AMORTIZATION TABLES.

DETERMINE THE APPROPRIATE INTEREST RATE BY: (1) SELECTING THE APPROPRIATE DISTRICT; (2) SELECT AN INCOME THAT IS THE SAME OR THE NEXT HIGHER THAN THE ADJUSTED ANNUAL HOUSEHOLD INCOME OF THE BORROWER. (LINE 4 OF PART III OF 1944-6); (3) SELECT THE APPROPRIATE INTEREST RATE SHOWN AT THE TOP OF THE SELECTED INCOME COLUMN.

* MODERATE-INCOME BORROWER'S WHOSE INCOME EXCEEDS THE LIMITS SET FORTH IN THIS EXHIBIT WILL NOT RECEIVE INTEREST CREDIT.

MINIMUM INTEREST RATES FOR THE CALCULATION OF INTEREST CREDITS FOR MODERATE INCOME BORROWER IN CONNECTICUT

INTEREST RATE	3.5%	4%	4.5%	5%	5.5%	6%	6.5%	7%	7.5%	8%	8.5%	9%	9.5%	10%	10.5%	11%	11.5%	12%
AMORT RATE ANNUAL	51.58	55.11	58.75	62.50	66.34	70.28	74.30	78.41	82.60	86.86	91.18	95.57	100.01	104.50	109.05	113.63	118.26	122.93
AMORT RATE MONTH	4.27	4.56	4.86	5.17	5.48	5.81	6.14	6.49	6.83	7.19	7.55	7.92	8.29	8.66	9.04	9.43	9.81	10.20
HARTFORD	15300	15700	16100	16500	16900	17300	17700	18100	18500	18900	19300	19700	20100	20500	20900	21300	21700	22100*
LITCHFIELD	15300	15700	16100	16500	16900	17300	17700	18100	18500	18900	19300	19700	20100	20500	20900	21300	21700	22100*
MIDDLESEX	15300	15700	16100	16500	16900	17300	17700	18100	18500	18900	19300	19700	20100	20500	20900	21300	21700	22100*
NEW HAVEN	15300	15700	16100	16500	16900	17300	17700	18100	18500	18900	19300	19700	20100	20500	20900	21300	21700	22100*
NEW LONDON(E)	15300	15700	16100	16500	16900	17300	17700	18100	18500	18900	19300	19700	20100	20500	20900	21300	21700	22100*
NEW LONDON(W)	15300	15700	16100	16500	16900	17300	17700	18100	18500	18900	19300	19700	20100	20500	20900	21300	21700	22100*
WINDHAM (E)	15100	15500	15900	16300	16700	17100	17500	17900	18300	18700	19100	19500	19900	20200				
WINDHAM (W)	15100	15500	15900	16300	16700	17100	17500	17900	18300	18700	19100	19500	19900	20200				
TOLLAND	15300	15700	16100	16500	16900	17300	17700	18100	18500	18900	19300	19700	20100	20500	20900	21300	21700	22100*
FAIRFIELD	15500	15900	16300	16700	17100	17500	17900	18300	18700	19100	19500	19900	20300	20700	21100	21500	21900	22300*

INSTRUCTIONS FOR USE OF EXHIBIT D.

THIS EXHIBIT WILL BE USED TO DETERMINE THE MINIMUM INTEREST RATE FOR A MODERATE INCOME BORROWER IN THE COMPLETION OF PART III, LINE 13 OF FORM 1944-6 (INTEREST CREDIT AGREEMENT). AMORTIZATION FACTORS FOR 33 YEARS ARE SHOWN BELOW THE INTEREST RATES. FACTORS OTHER THAN 33 YEARS MUST BE OBTAINED FROM AMORTIZATION TABLES.

DETERMINE THE APPROPRIATE INTEREST RATE BY: (1) SELECTING THE APPROPRIATE DISTRICT; (2) SELECT AN INCOME THAT IS THE SAME OR THE NEXT HIGHER THAN THE ADJUSTED ANNUAL HOUSEHOLD INCOME OF THE BORROWER. (LINE 4 OF PART III OF 1944-6); (3) SELECT THE APPROPRIATE INTEREST RATE SHOWN AT THE TOP OF THE SELECTED INCOME COLUMN.

* MODERATE-INCOME BORROWER'S WHOSE INCOME EXCEEDS THE LIMITS SET FORTH IN THIS EXHIBIT WILL NOT RECEIVE INTEREST CREDIT.

MINIMUM INTEREST RATES FOR THE CALCULATION OF INTEREST CREDITS FOR MODERATE INCOME BORROWER IN DELAWARE

INTEREST RATE	3.5%	4%	4.5%	5%	5.5%	6%	6.5%	7%	7.5%	8%	8.5%	9%	9.5%	10%	10.5%	11%	11.5%	12%
AMORT RATE ANNUAL	51.58	55.11	58.75	62.50	66.34	70.28	74.30	78.41	82.60	86.86	91.18	95.57	100.01	104.50	109.05	113.63	118.26	122.93
AMORT RATE MONTH	4.27	4.56	4.86	5.17	5.48	5.81	6.14	6.49	6.83	7.19	7.55	7.92	8.29	8.66	9.04	9.43	9.81	10.20

MINIMUM INTEREST RATES FOR THE CALCULATION OF INTEREST CREDITS FOR MODERATE INCOME BORROWER IN DELAWARE

INTEREST RATE	3.5%	4%	4.5%	5%	5.5%	6%	6.5%	7%	7.5%	8%	8.5%	9%	9.5%	10%	10.5%	11%	11.5%	12%
AMORT RATE ANNUAL	51.58	55.11	58.75	62.50	66.34	70.28	74.30	78.41	82.60	86.86	91.18	95.57	100.01	104.50	109.05	113.63	118.26	122.93
AMORT RATE MONTH	4.27	4.56	4.86	5.17	5.48	5.81	6.14	6.49	6.83	7.19	7.55	7.92	8.29	8.66	9.04	9.43	9.81	10.20
KENT	12800	13200	13600	14000	14400	14800	15200	15600	16000	16400	16800	17200	17600	18000	18400	18800		
NEW CASTLE	12800	13200	13600	14000	14400	14800	15200	15600	16000	16400	16800	17200	17600	18000	18400	18800	19200	19600*
SUSSEX	12800	13200	13600	14000	14400	14800	15200	15600	16000	16400	16800	17200	17600	18000	18200			

INSTRUCTIONS FOR USE OF EXHIBIT D.

THIS EXHIBIT WILL BE USED TO DETERMINE THE MINIMUM INTEREST RATE FOR A MODERATE INCOME BORROWER IN THE COMPLETION OF PART III, LINE 13 OF FORM 1944-6 (INTEREST CREDIT AGREEMENT). AMORTIZATION FACTORS FOR 33 YEARS ARE SHOWN BELOW THE INTEREST RATES. FACTORS OTHER THAN 33 YEARS MUST BE OBTAINED FROM AMORTIZATION TABLES.

DETERMINE THE APPROPRIATE INTEREST RATE BY: (1) SELECTING THE APPROPRIATE DISTRICT; (2) SELECT AN INCOME THAT IS THE SAME OR THE NEXT HIGHER THAN THE ADJUSTED ANNUAL HOUSEHOLD INCOME OF THE BORROWER. (LINE 4 OF PART III OF 1944-6); (3) SELECT THE APPROPRIATE INTEREST RATE SHOWN AT THE TOP OF THE SELECTED INCOME COLUMN.

* MODERATE-INCOME BORROWER'S WHOSE INCOME EXCEEDS THE LIMITS SET FORTH IN THIS EXHIBIT WILL NOT RECEIVE INTEREST CREDIT.

MINIMUM INTEREST RATES FOR THE CALCULATION OF INTEREST CREDITS FOR MODERATE INCOME BORROWER IN FLORIDA

INTEREST RATE	3.5%	4%	4.5%	5%	5.5%	6%	6.5%	7%	7.5%	8%	8.5%	9%	9.5%	10%	10.5%	11%	11.5%	12%
AMORT RATE ANNUAL	51.58	55.11	58.75	62.50	66.34	70.28	74.30	78.41	82.60	86.86	91.18	95.57	100.01	104.50	109.05	113.63	118.26	122.93
AMORT RATE MONTH	4.27	4.56	4.86	5.17	5.48	5.81	6.14	6.49	6.83	7.19	7.55	7.92	8.29	8.66	9.04	9.43	9.81	10.20
DISTRICT 1	12600	13200	13600	14000	14400	14800	15200	15600	16000	16400	16800	17100						
DISTRICT 2	10600	11000	11400	11800	12200	12600	13000	13400	13800	14200	14600	15000	15400	15600				
DISTRICT 3	11800	12200	12600	13000	13400	13800	14200	14600	15000	15400	15800							
DISTRICT 4	12600	13200	13600	14000	14400	14800	15200	15600	16000	16400	16800	17200	17600	18000	18100			
DISTRICT 5	10200	10600	11000	11400	11800	12200	12600	13000	13400	13800	14200	14600	15000	15400	15600			
DISTRICT 6	12600	13200	13600	14000	14400	14800	15200	15600	16000	16400	16800	17200	17300					
DISTRICT 7	12600	13000	13400	13800	14200	14600	15000	15400	15800	16200	16600	16800						
DISTRICT 8	12400	12800	13200	13600	14000	14400	14800	15200	15600	16000	16400	16500						
DISTRICT 9	12600	13200	13600	14000	14400	14800	15200	15600	16000	16400	16800	17200						
DISTRICT 10	12600	13200	13600	14000	14400	14800	15200	15600	16000	16400	16800	17200	17600	18000	18400	18500		
DISTRICT 11	12600	13200	13600	14000	14400	14800	15200	15600	16000	16400	16800	17200	17600	18000	18400	18600	19200	19600*

INSTRUCTIONS FOR USE OF EXHIBIT D.

THIS EXHIBIT WILL BE USED TO DETERMINE THE MINIMUM INTEREST RATE FOR A MODERATE INCOME BORROWER IN THE COMPLETION OF PART III, LINE 13 OF FORM 1944-6 (INTEREST CREDIT AGREEMENT). AMORTIZATION FACTORS FOR 33 YEARS ARE SHOWN BELOW THE INTEREST RATES. FACTORS OTHER THAN 33 YEARS MUST BE OBTAINED FROM AMORTIZATION TABLES.

DETERMINE THE APPROPRIATE INTEREST RATE BY: (1) SELECTING THE APPROPRIATE DISTRICT; (2) SELECT AN INCOME THAT IS THE SAME OR THE NEXT HIGHER THAN THE ADJUSTED ANNUAL HOUSEHOLD INCOME OF THE BORROWER. (LINE 4 OF PART III OF 1944-6); (3) SELECT THE APPROPRIATE INTEREST RATE SHOWN AT THE TOP OF THE SELECTED INCOME COLUMN.

* MODERATE-INCOME BORROWER'S WHOSE INCOME EXCEEDS THE LIMITS SET FORTH IN THIS EXHIBIT WILL NOT RECEIVE INTEREST CREDIT.

MINIMUM INTEREST RATES FOR THE CALCULATION OF INTEREST CREDITS FOR MODERATE INCOME BORROWER IN GEORGIA

INTEREST RATE	3.5%	4%	4.5%	5%	5.5%	6%	6.5%	7%	7.5%	8%	8.5%	9%	9.5%	10%	10.5%	11%	11.5%	12%
AMORT RATE ANNUAL	51.58	55.11	58.75	62.50	66.34	70.28	74.30	78.41	82.60	86.86	91.18	95.57	100.01	104.50	109.05	113.63	118.26	122.93
AMORT RATE MONTH	4.27	4.56	4.86	5.17	5.48	5.81	6.14	6.49	6.83	7.19	7.55	7.92	8.29	8.66	9.04	9.43	9.81	10.20

MINIMUM INTEREST RATES FOR THE CALCULATION OF INTEREST CREDITS FOR MODERATE INCOME BORROWER IN GEORGIA

INTEREST RATE	3.5%	4%	4.5%	5%	5.5%	6%	6.5%	7%	7.5%	8%	8.5%	9%	9.5%	10%	10.5%	11%	11.5%	12%
AMORT RATE ANNUAL	51.58	55.11	58.75	62.50	66.34	70.28	74.30	78.41	82.60	86.86	91.18	95.57	100.01	104.50	109.05	113.63	118.26	122.93
AMORT RATE MONTH	4.27	4.56	4.86	5.17	5.48	5.81	6.14	6.49	6.83	7.19	7.55	7.92	8.29	8.66	9.04	9.43	9.81	10.20
COASTAL APDC	12300	12700	13100	13500	13900	14300	14700	15100	15500	15900	16300	16400						
NORTHEAST	12500	12900	13300	13700	14100	14500	14900	15300	15700	16100	16500	16700						
CEN SAVANNAH R	10900	11300	11700	12100	12500	12900	13300	13700	14100	14500	14900	15300	15600					
ALTAMAHA SO.	09900	10300	10700	11100	11500	11900	12300	12700	13100	13500	13900	14300	14700	15100	15500	15600		
ATLANTA REG	12800	13200	13600	14000	14400	14800	15200	15600	16000	16400	16800	17200	17600	18000	18400	18800	19200	19600*
MIDDLE	12800	13200	13600	14000	14400	14800	15200	15600	16000	16400	16800	17200	17500					
SOUTH	10200	10600	11000	11400	11800	12200	12600	13000	13400	13800	14200	14600	15000	15400	15600			
MIDDLE FLINT	09700	10100	10500	10900	11300	11700	12100	12500	12900	13300	13700	14100	14500	14900	15300	15600		
LOWER CHATTAHO	09700	10100	10500	10900	11300	11700	12100	12500	12900	13300	13700	14100	14500	14900	15300	15600		
OCONEE AREA	10700	11100	11500	11900	12300	12700	13100	13500	13900	14300	14700	15100	15500	15600				
COOSA REGION	12800	13200	13600	14000	14400	14800	15200	15600	16000	16400	16800	17200	17600	17800				
SOUTHEAST	10000	10400	10800	11200	11600	12000	12400	12800	13200	13600	14000	14400	14800	15200	15600			
CHATTAHO-FLINT	11700	12100	12500	12900	13300	13700	14100	14500	14900	15300	15700							
MCINTOSH TRAIL	12800	13200	13600	14000	14400	14800	15200	15600	16000	16400	16800	17200	17600	18000	18400	18800	19200	19600*
SOUTHWEST	09900	10300	10700	11100	11500	11900	12300	12700	13100	13500	13900	14300	14700	15100	15500	15600		
NORTH	12800	13200	13600	14000	14400	14800	15200	15600	16000	16400	16800	17200	17600	18000	18200			

INSTRUCTIONS FOR USE OF EXHIBIT D.

THIS EXHIBIT WILL BE USED TO DETERMINE THE MINIMUM INTEREST RATE FOR A MODERATE INCOME BORROWER IN THE COMPLETION OF PART III, LINE 13 OF FORM 1944-6 (INTEREST CREDIT AGREEMENT). AMORTIZATION FACTORS FOR 33 YEARS ARE SHOWN BELOW THE INTEREST RATES. FACTORS OVER THAN 33 YEARS MUST BE OBTAINED FROM AMORTIZATION TABLES.

DETERMINE THE APPROPRIATE INTEREST RATE BY: (1) SELECTING THE APPROPRIATE DISTRICT; (2) SELECT AN INCOME THAT IS THE SAME OR THE NEXT HIGHER THAN THE ADJUSTED ANNUAL HOUSEHOLD INCOME OF THE BORROWER. (LINE 4 OF PART III OF 1944-6); (3) SELECT THE APPROPRIATE INTEREST RATE SHOWN AT THE TOP OF THE SELECTED INCOME COLUMN.

* MODERATE-INCOME BORROWER'S WHOSE INCOME EXCEEDS THE LIMITS SET FORTH IN THIS EXHIBIT WILL NOT RECEIVE INTEREST CREDIT.

MINIMUM INTEREST RATES FOR THE CALCULATION OF INTEREST CREDITS FOR MODERATE INCOME BORROWER IN GEORGIA

INTEREST RATE	3.5%	4%	4.5%	5%	5.5%	6%	6.5%	7%	7.5%	8%	8.5%	9%	9.5%	10%	10.5%	11%	11.5%	12%
AMORT RATE ANNUAL	51.58	55.11	58.75	62.50	66.34	70.28	74.30	78.41	82.60	86.86	91.18	95.57	100.01	104.50	109.05	113.63	118.26	122.93
AMORT RATE MONTH	4.27	4.56	4.86	5.17	5.48	5.81	6.14	6.49	6.83	7.19	7.55	7.92	8.29	8.66	9.04	9.43	9.81	10.20
HEART OF GA	09700	10100	10500	10900	11300	11700	12100	12500	12900	13300	13700	14100	14500	14900	15300	15600		
GA. MOUNTAINS	11900	12300	12700	13100	13500	13900	14300	14700	15100	15500	15900							

INSTRUCTIONS FOR USE OF EXHIBIT D.

THIS EXHIBIT WILL BE USED TO DETERMINE THE MINIMUM INTEREST RATE FOR A MODERATE INCOME BORROWER IN THE COMPLETION OF PART III, LINE 13 OF FORM 1944-6 (INTEREST CREDIT AGREEMENT). AMORTIZATION FACTORS FOR 33 YEARS ARE SHOWN BELOW THE INTEREST RATES. FACTORS OTHER THAN 33 YEARS MUST BE OBTAINED FROM AMORTIZATION TABLES.

DETERMINE THE APPROPRIATE INTEREST RATE BY: (1) SELECTING THE APPROPRIATE DISTRICT; (2) SELECT AN INCOME THAT IS THE SAME OR THE NEXT HIGHER THAN THE ADJUSTED ANNUAL HOUSEHOLD INCOME OF THE BORROWER. (LINE 4 OF PART III OF 1944-6); (3) SELECT THE APPROPRIATE INTEREST RATE SHOWN AT THE TOP OF THE SELECTED INCOME COLUMN.

* MODERATE-INCOME BORROWER'S WHOSE INCOME EXCEEDS THE LIMITS SET FORTH IN THIS EXHIBIT WILL NOT RECEIVE INTEREST CREDIT.

MINIMUM INTEREST RATES FOR THE CALCULATION OF INTEREST CREDITS FOR MODERATE INCOME BORROWER IN IDAHO

INTEREST RATE	3.5%	4%	4.5%	5%	5.5%	6%	6.5%	7%	7.5%	8%	8.5%	9%	9.5%	10%	10.5%	11%	11.5%	12%
AMORT RATE ANNUAL	51.58	55.11	58.75	62.50	66.34	70.28	74.30	78.41	82.60	86.86	91.18	95.57	100.01	104.50	109.05	113.63	118.26	122.93
AMORT RATE MONTH	4.27	4.56	4.86	5.17	5.48	5.81	6.14	6.49	6.83	7.19	7.55	7.92	8.29	8.66	9.04	9.43	9.81	10.20

MINIMUM INTEREST RATES FOR THE CALCULATION OF INTEREST CREDITS FOR MODERATE INCOME BORROWER IN IDAHO

INTEREST RATE	3.5%	4%	4.5%	5%	5.5%	6%	6.5%	7%	7.5%	8%	8.5%	9%	9.5%	10%	10.5%	11%	11.5%	12%
AMORT RATE ANNUAL	51.58	55.11	58.75	62.50	66.34	70.28	74.30	78.41	82.60	86.86	91.18	95.57	100.01	104.50	109.05	113.63	118.26	122.93
AMORT RATE MONTH	4.27	4.56	4.86	5.17	5.48	5.81	6.14	6.49	6.83	7.19	7.55	7.92	8.29	8.66	9.04	9.43	9.81	10.20
DISTRICT I	12400	12800	13200	13600	14000	14400	14800	15200	15600	16000	16400	16800						
DISRTICT II	13400	13800	14200	14600	15000	15400	15800	16200	16600	17000	17400	17800	17900					
DISTRICT III	13400	13800	14200	14600	15000	15400	15800	16200	16600	17000	17400	17800	18000					
DISTRICT IV	11600	12000	12400	12800	13200	13600	14000	14400	14800	15200	15600							
DISTRICT V	12800	13200	13600	14000	14400	14800	15200	15600	16000	16400	16800	17180						
DISTRICT VI	12600	13000	13400	13800	14200	14600	15000	15400	15800	16200	16600	16800						

INSTRUCTIONS FOR USE OF EXHIBIT D.

THIS EXHIBIT WILL BE USED TO DETERMINE THE MINIMUM INTEREST RATE FOR A MODERATE INCOME BORROWER IN THE COMPLETION OF PART III, LINE 13 OF FORM 1944-8 (INTEREST CREDIT AGREEMENT). AMORTIZATION FACTORS FOR 33 YEARS ARE SHOWN BELOW THE INTEREST RATES. FACTORS OTHER THAN 33 YEARS MUST BE OBTAINED FROM AMORTIZATION TABLES.

DETERMINE THE APPROPRIATE INTEREST RATE BY: (1) SELECTING THE APPROPRIATE DISTRICT; (2) SELECT AN INCOME THAT IS THE SAME OR THE NEXT HIGHER THAN THE ADJUSTED ANNUAL HOUSEHOLD INCOME OF THE BORROWER. (LINE 4 OF PART III OF 1944-8); (3) SELECT THE APPROPRIATE INTEREST RATE SHOWN AT THE TOP OF THE SELECTED INCOME COLUMN.

MODERATE-INCOME BORROWER'S WHOSE INCOME EXCEEDS THE LIMITS SET FORTH IN THIS EXHIBIT WILL NOT RECEIVE INTEREST CREDIT.

MINIMUM INTEREST RATES FOR THE CALCULATION OF INTEREST CREDITS FOR MODERATE INCOME BORROWER IN ILLINOIS

INTEREST RATE	3.5%	4%	4.5%	5%	5.5%	6%	6.5%	7%	7.5%	8%	8.5%	9%	9.5%	10%	10.5%	11%	11.5%	12%
AMORT RATE ANNUAL	51.58	55.11	58.75	62.50	66.34	70.28	74.30	78.41	82.60	86.86	91.18	95.57	100.01	104.50	109.05	113.63	118.26	122.93
AMORT RATE MONTH	4.27	4.56	4.86	5.17	5.48	5.81	6.14	6.49	6.83	7.19	7.55	7.92	8.29	8.66	9.04	9.43	9.81	10.20
~~DISTRICT I~~	~~14700~~	~~15100~~	~~15500~~	~~15900~~	~~16300~~	~~16700~~	~~17100~~	~~17500~~	~~17900~~	~~18300~~	~~18700~~	~~19100~~	~~19500~~	~~19900~~	~~20300~~			
NORTHWEST	15100	15500	15900	16300	16700	17100	17500	17900	18300	18700	19100	19500	19900	20300				
DISTRICT II	15300	15700	16100	16500	16900	17300	17700	18100	18500	18900	19300	19700	20100	20500	20900			
ROCK VALLEY N	15300	15700	16100	16500	16900	17300	17700	18100	18500	18900	19300	19700	20100	20500	20900	21300	21700	22100*
NORTHEASTERN	15300	15700	16100	16500	16900	17300	17700	18100	18500	18900	19300	19700	20100	20500	20900	21300	21700	22100*
DISTRICT III(PT	15300	15700	16100	16500	16900	17300	17700	18100	18500	18900	19300	19700	20100	20500	20900	21300	21400	
BI-STATE METRO	15300	15700	16100	16500	16900	17300	17700	18100	18500	18900	19300	19700	20100	20500	20900	21300	21700	22100*
DIST IV (PART)	15300	15700	16100	16500	16900	17300	17700	18100	18500	18900	19300	19700	20100	20500	20600			
WESTERN	11900	12300	12700	13100	13500	13900	14300	14700	15100	15500	15900							
DISTRICT V	14300	14700	15100	15500	15900	16300	16700	17100	17500	17900	18300	18700	19100					
TRI-COUNTY	15300	15700	16100	16500	16900	17300	17700	18100	18500	18900	19300	19700	20100	20500	20900	21300	21700	22100*
DIST VI(PART)	12400	12800	13200	13600	14000	14400	14800	15200	15600	16000	16400	16500						
TWO RIVER	12400	12800	13200	13600	14000	14400	14800	15200	15600	16000	16400	16500						
WEST CENTRAL V	12800	13200	13600	14000	14400	14800	15200	15600	16000	16400	16800	17100						
SOUTHWESTERN ME	15300	15700	16100	16500	16900	17300	17700	18100	18500	18900	19300	19700	20100	20500	20900	21300	21500	
SOUTH CENTRAL	12300	12700	13100	13500	13900	14300	14700	15100	15500	15900	16300							

INSTRUCTIONS FOR USE OF EXHIBIT D.

THIS EXHIBIT WILL BE USED TO DETERMINE THE MINIMUM INTEREST RATE FOR A MODERATE INCOME BORROWER IN THE COMPLETION OF PART III, LINE 13 OF FORM 1944-6 (INTEREST CREDIT AGREEMENT). AMORTIZATION FACTORS FOR 33 YEARS ARE SHOWN BELOW THE INTEREST RATES. FACTORS OTHER THAN 33 YEARS MUST BE OBTAINED FROM AMORTIZATION TABLES.

DETERMINE THE APPROPRIATE INTEREST RATE BY: (1) SELECTING THE APPROPRIATE DISTRICT; (2) SELECT AN INCOME THAT IS THE SAME OR THE NEXT HIGHER THAN THE ADJUSTED ANNUAL HOUSEHOLD INCOME OF THE BORROWER. (LINE 4 OF PART III OF 1944-6); (3) SELECT THE APPROPRIATE INTEREST RATE SHOWN AT THE TOP OF THE SELECTED INCOME COLUMN.

* MODERATE-INCOME BORROWER'S WHOSE INCOME EXCEEDS THE LIMITS SET FORTH IN THIS EXHIBIT WILL NOT RECEIVE INTEREST CREDIT.

MINIMUM INTEREST RATES FOR THE CALCULATION OF INTEREST CREDITS FOR MODERATE INCOME BORROWER IN ILLINOIS

INTEREST RATE	3.5%	4%	4.5%	5%	5.5%	6%	6.5%	7%	7.5%	8%	8.5%	9%	9.5%	10%	10.5%	11%	11.5%	12%
AMORT RATE ANNUAL	51.58	55.11	58.75	62.50	66.34	70.28	74.30	78.41	82.60	86.86	91.18	95.57	100.01	104.50	109.05	113.63	118.26	122.93
AMORT RATE MONTH	4.27	4.56	4.86	5.17	5.48	5.81	6.14	6.49	6.83	7.19	7.55	7.92	8.29	8.66	9.04	9.43	9.81	10.20

MINIMUM INTEREST RATES FOR THE CALCULATION OF INTEREST CREDITS FOR MODERATE INCOME BORROWER IN ILLINOIS

INTEREST RATE	3.5%	4%	4.5%	5%	5.5%	6%	6.5%	7%	7.5%	8%	8.5%	9%	9.5%	10%	10.5%	11%	11.5%	12%
AMORT RATE ANNUAL	51.58	55.11	58.75	62.50	66.34	70.28	74.30	78.41	82.60	86.86	91.18	95.57	100.01	104.50	109.05	113.63	118.26	122.93
AMORT RATE MONTH	4.27	4.56	4.86	5.17	5.48	5.81	6.14	6.49	6.83	7.19	7.55	7.92	8.29	8.66	9.04	9.43	9.81	10.20
GREATER EGYPT	12000	12400	12800	13200	13600	14000	14400	14800	15200	15600	16000							
SOUTHERN FIVE	11600	12000	12400	12800	13200	13600	14000	14400	14800	15200	15600							
EMBARRAS	12200	12600	13000	13400	13800	14200	14600	15000	15400	15800	16200	16300						
GREATER WABASH	11600	12000	12400	12800	13200	13600	14000	14400	14800	15200	15600							
SOUTHEASTERN	11600	12000	12400	12800	13200	13600	14000	14400	14800	15200	15600							

INSTRUCTIONS FOR USE OF EXHIBIT D.

THIS EXHIBIT WILL BE USED TO DETERMINE THE MINIMUM INTEREST RATE FOR A MODERATE INCOME BORROWER IN THE COMPLETION OF PART III, LINE 13 OF FORM 1944-6 (INTEREST CREDIT AGREEMENT). AMORTIZATION FACTORS FOR 33 YEARS ARE SHOWN BELOW THE INTEREST RATES. FACTORS OTHER THAN 33 YEARS MUST BE OBTAINED FROM AMORTIZATION TABLES.

DETERMINE THE APPROPRIATE INTEREST RATE BY: (1) SELECTING THE APPROPRIATE DISTRICT; (2) SELECT AN INCOME THAT IS THE SAME OR THE NEXT HIGHER THAN THE ADJUSTED ANNUAL HOUSEHOLD INCOME OF THE BORROWER. (LINE 4 OF PART III OF 1944-6); (3) SELECT THE APPROPRIATE INTEREST RATE SHOWN AT THE TOP OF THE SELECTED INCOME COLUMN.

* MODERATE-INCOME BORROWERS WHOSE INCOME EXCEEDS THE LIMITS SET FORTH IN THIS EXHIBIT WILL NOT RECEIVE INTEREST CREDIT.

MINIMUM INTEREST RATES FOR THE CALCULATION OF INTEREST CREDITS FOR MODERATE INCOME BORROWER IN INDIANA

INTEREST RATE	3.5%	4%	4.5%	5%	5.5%	6%	6.5%	7%	7.5%	8%	8.5%	9%	9.5%	10%	10.5%	11%	11.5%	12%
AMORT RATE ANNUAL	51.58	55.11	58.75	62.50	66.34	70.28	74.30	78.41	82.60	86.86	91.18	95.57	100.01	104.50	109.05	113.63	118.26	122.93
AMORT RATE MONTH	4.27	4.56	4.86	5.17	5.48	5.81	6.14	6.49	6.83	7.19	7.55	7.92	8.29	8.66	9.04	9.43	9.81	10.20
DISTRICT 1A	15300	15700	16100	16500	16900	17300	17700	18100	18500	18900	19300	19700	20100	20500	20900	21300	21700	22100*
DISTRICT 1B	13000	13400	13800	14200	14600	15000	15400	15800	16200	16600	17000	17300						
DISTRICT 2	15300	15700	16100	16500	16900	17300	17700	18100	18500	18900	19300	19700	20100	20500	20900			
DISTRICT 2A	13900	14300	14700	15100	15500	15900	16300	16700	17100	17500	17900	18300	18600					
DISTRICT 2B	15300	15700	16100	16500	16900	17300	17700	18100	18500	18900	19300	19700	20100	20500	20900	21300	21700	21900
DISTRICT 4	14400	14800	15200	15600	16000	16400	16800	17200	17600	18000	18400	18800	19200	19300				
DISTRICT 5	14600	15000	15400	15800	16200	16600	17000	17400	17800	18200	18600	19000	19400	19500				
DISTRICT 6	14400	14800	15200	15600	16000	16400	16800	17200	17600	18000	18400	18800	19200	19300				
DISTRICT 7	13500	13900	14300	14700	15100	15500	15900	16300	16700	17100	17500	17900	18100					
DISTRICT 8	15300	15700	16100	16500	16900	17300	17700	18100	18500	18900	19300	19700	20100	20500	20900	21300	21700	22000
DISTRICT 9	13800	14200	14600	15000	15400	15800	16200	16600	17000	17400	17800	18200	18400					
DISTRICT 10	13200	13600	14000	14400	14800	15200	15600	16000	16400	16800	17200	17500						
DISTRICT 11	13800	14200	14600	15000	15400	15800	16200	16600	17000	17400	17800	18200	18400					
DISTRICT 12	13300	13700	14100	14500	14900	15300	15700	16100	16500	16900	17300	17700	17800					
DISTRICT 13A	12800	13200	13600	14000	14400	14800	15200	15600	16000	16400	16800	17100						
DISTRICT 13B	13600	14000	14400	14800	15200	15600	16000	16400	16800	17200	17600	18000	18200					

INSTRUCTIONS FOR USE OF EXHIBIT D.

THIS EXHIBIT WILL BE USED TO DETERMINE THE MINIMUM INTEREST RATE FOR A MODERATE INCOME BORROWER IN THE COMPLETION OF PART III, LINE 13 OF FORM 1944-8 (INTEREST CREDIT AGREEMENT). AMORTIZATION FACTORS FOR 33 YEARS ARE SHOWN BELOW THE INTEREST RATES. FACTORS OTHER THAN 33 YEARS MUST BE OBTAINED FROM AMORTIZATION TABLES.

DETERMINE THE APPROPRIATE INTEREST RATE BY: (1) SELECTING THE APPROPRIATE DISTRICT; (2) SELECT AN INCOME THAT IS THE SAME OR THE NEXT HIGHER THAN THE ADJUSTED ANNUAL HOUSEHOLD INCOME OF THE BORROWER. (LINE 4 OF PART III OF 1944-8); (3) SELECT THE APPROPRIATE INTEREST RATE SHOWN AT THE TOP OF THE SELECTED INCOME COLUMN.

* MODERATE-INCOME BORROWER'S WHOSE INCOME EXCEEDS THE LIMITS SET FORTH IN THIS EXHIBIT WILL NOT RECEIVE INTEREST CREDIT.

MINIMUM INTEREST RATES FOR THE CALCULATION OF INTEREST CREDITS FOR MODERATE INCOME BORROWER IN INDIANA

INTEREST RATE	3.5%	4%	4.5%	5%	5.5%	6%	6.5%	7%	7.5%	8%	8.5%	9%	9.5%	10%	10.5%	11%	11.5%	12%
AMORT RATE ANNUAL	51.58	55.11	58.75	62.50	66.34	70.28	74.30	78.41	82.60	86.86	91.18	95.57	100.01	104.50	109.05	113.63	118.26	122.93
AMORT RATE MONTH	4.27	4.56	4.86	5.17	5.48	5.81	6.14	6.49	6.83	7.19	7.55	7.92	8.29	8.66	9.04	9.43	9.81	10.20

MINIMUM INTEREST RATES FOR THE CALCULATION OF INTEREST CREDITS FOR MODERATE INCOME BORROWER IN INDIANA

INTEREST RATE	3.5%	4%	4.5%	5%	5.5%	6%	6.5%	7%	7.5%	8%	8.5%	9%	9.5%	10%	10.5%	11%	11.5%	12%
AMORT RATE ANNUAL	51.58	55.11	58.75	62.50	66.34	70.28	74.30	78.41	82.60	86.86	91.18	95.57	100.01	104.50	109.05	113.63	118.26	122.93
AMORT RATE MONTH	4.27	4.56	4.86	5.17	5.48	5.81	6.14	6.49	6.83	7.19	7.55	7.92	8.29	8.66	9.04	9.43	9.81	10.20
DISTRICT 14	13300	13700	14100	14500	14900	15300	15700	16100	16500	16900	17300	17700	17800					
DISTRICT 15	12700	13100	13500	13900	14300	14700	15100	15500	15900	16300	16700	16900						

INSTRUCTIONS FOR USE OF EXHIBIT D.

THIS EXHIBIT WILL BE USED TO DETERMINE THE MINIMUM INTEREST RATE FOR A MODERATE INCOME BORROWER IN THE COMPLETION OF PART III, LINE 13 OF FORM 1944-6 (INTEREST CREDIT AGREEMENT). AMORTIZATION FACTORS FOR 33 YEARS ARE SHOWN BELOW THE INTEREST RATES. FACTORS OTHER THAN 33 YEARS MUST BE OBTAINED FROM AMORTIZATION TABLES.

DETERMINE THE APPROPRIATE INTEREST RATE BY: (1) SELECTING THE APPROPRIATE DISTRICT; (2) SELECT AN INCOME THAT IS THE SAME OR THE NEXT HIGHER THAN THE ADJUSTED ANNUAL HOUSEHOLD INCOME OF THE BORROWER. (LINE 4 OF PART III OF 1944-6); (3) SELECT THE APPROPRIATE INTEREST RATE SHOWN AT THE TOP OF THE SELECTED INCOME COLUMN.

* MODERATE-INCOME BORROWER'S WHOSE INCOME EXCEEDS THE LIMITS SET FORTH IN THIS EXHIBIT WILL NOT RECEIVE INTEREST CREDIT.

MINIMUM INTEREST RATES FOR THE CALCULATION OF INTEREST CREDITS FOR MODERATE INCOME BORROWER IN IOWA

INTEREST RATE	3.5%	4%	4.5%	5%	5.5%	6%	6.5%	7%	7.5%	8%	8.5%	9%	9.5%	10%	10.5%	11%	11.5%	12%
AMORT RATE ANNUAL	51.58	55.11	58.75	62.50	66.34	70.28	74.30	78.41	82.60	86.86	91.18	95.57	100.01	104.50	109.05	113.63	118.26	122.93
AMORT RATE MONTH	4.27	4.56	4.86	5.17	5.48	5.81	6.14	6.49	6.83	7.19	7.55	7.92	8.29	8.66	9.04	9.43	9.81	10.20
~~DISTRICT 1~~	~~12000~~	~~12400~~	~~12800~~	~~13200~~	~~13600~~	~~14000~~	~~14400~~	~~14800~~	~~15200~~	~~15600~~	~~16000~~							
DISTRICT 2	13300	13700	14100	14500	14900	15300	15700	16100	16500	16900	17300	17700	17900					
DISTRICT 3	12700	13100	13500	13900	14300	14700	15100	15500	15900	16300	16700	17000						
DISTRICT 4	13300	13700	14100	14500	14900	15300	15700	16100	16500	16900	17300	17700	17900					
DISTRICT 5	13400	13800	14200	14600	15000	15400	15800	16200	16600	17000	17400	17800	17900					
DISTRICT 6	13900	14300	14700	15100	15500	15900	16300	16700	17100	17500	17900	18300	18600					
DISTRICT 7	14100	14500	14900	15300	15700	16100	16500	16900	17300	17700	18100	18500	18900	19000				
DISTRICT 8	14700	15100	15500	15900	16300	16700	17100	17500	17900	18300	18700	19100	19500	19700				
DISTRICT 9	15300	15700	16100	16500	16900	17300	17700	18100	18500	18900	19300	19700	20100	20500	20900	21300	21700	22100*
DISTRICT 10	14900	15300	15700	16100	16500	16900	17300	17700	18100	18500	18900	19300	19700	20100				
DISTRICT 11	15300	15700	16100	16500	16900	17300	17700	18100	18500	18900	19300	19700	20100	20500	20900			
DISTRICT 12	12400	12800	13200	13600	14000	14400	14800	15200	15600	16000	16400	16500						
DISTRICT 13	13500	13900	14300	14700	15100	15500	15900	16300	16700	17100	17500	17900	18100					
DISTRICT 14	11600	12000	12400	12800	13200	13600	14000	14400	14800	15200	15600							
DISTRICT 15	11600	12000	12400	12800	13200	13600	14000	14400	14800	15200	15600							
DISTRICT 16	14500	14900	15300	15700	16100	16500	16900	17300	17700	18100	18500	18900	19300	19500				

INSTRUCTIONS FOR USE OF EXHIBIT D.

THIS EXHIBIT WILL BE USED TO DETERMINE THE MINIMUM INTEREST RATE FOR A MODERATE INCOME BORROWER IN THE COMPLETION OF PART III, LINE 13 OF FORM 1944-8 (INTEREST CREDIT AGREEMENT). AMORTIZATION FACTORS FOR 33 YEARS ARE SHOWN BELOW THE INTEREST RATES. FACTORS OTHER THAN 33 YEARS MUST BE OBTAINED FROM AMORTIZATION TABLES.

DETERMINE THE APPROPRIATE INTEREST RATE BY: (1) SELECTING THE APPROPRIATE DISTRICT; (2) SELECT AN INCOME THAT IS THE SAME OR THE NEXT HIGHER THAN THE ADJUSTED ANNUAL HOUSEHOLD INCOME OF THE BORROWER. (LINE 4 OF PART III OF 1944-8); (3) SELECT THE APPROPRIATE INTEREST RATE SHOWN AT THE TOP OF THE SELECTED INCOME COLUMN.

* MODERATE-INCOME BORROWER'S WHOSE INCOME EXCEEDS THE LIMITS SET FORTH IN THIS EXHIBIT WILL NOT RECEIVE INTEREST CREDIT.

MINIMUM INTEREST RATES FOR THE CALCULATION OF INTEREST CREDITS FOR MODERATE INCOME BORROWER IN KANSAS

INTEREST RATE	3.5%	4%	4.5%	5%	5.5%	6%	6.5%	7%	7.5%	8%	8.5%	9%	9.5%	10%	10.5%	11%	11.5%	12%
AMORT RATE ANNUAL	51.58	55.11	58.75	62.50	66.34	70.28	74.30	78.41	82.60	86.86	91.18	95.57	100.01	104.50	109.05	113.63	118.26	122.93
AMORT RATE MONTH	4.27	4.56	4.86	5.17	5.48	5.81	6.14	6.49	6.83	7.19	7.55	7.92	8.29	8.66	9.04	9.43	9.81	10.20

MINIMUM INTEREST RATES FOR THE CALCULATION OF INTEREST CREDITS FOR MODERATE INCOME BORROWER IN KANSAS

INTEREST RATE	3.5%	4%	4.5%	5%	5.5%	6%	6.5%	7%	7.5%	8%	8.5%	9%	9.5%	10%	10.5%	11%	11.5%	12%
AMORT RATE ANNUAL	51.58	55.11	58.75	62.50	66.34	70.28	74.30	78.41	82.60	86.86	91.18	95.57	100.01	104.50	109.05	113.63	118.26	122.93
AMORT RATE MONTH	4.27	4.56	4.86	5.17	5.48	5.81	6.14	6.49	6.83	7.19	7.55	7.92	8.29	8.66	9.04	9.43	9.81	10.20
NORTHWEST	12500	12900	13300	13700	14100	14500	14900	15300	15700	16100	16500	16700						
GR. SOUTHWEST	13700	14100	14500	14900	15300	15700	16100	16500	16900	17300	17700	18100	18300					
NORTH CENTRAL	11600	12000	12400	12800	13200	13600	14000	14400	14800	15200	15600							
GOLDEN BELT	13300	13700	14100	14500	14900	15300	15700	16100	16500	16900	17300	17700	17800					
INDIAN HILL	13100	13500	13900	14300	14700	15100	15500	15900	16300	16700	17100	17500						
MID-STATE	13400	13800	14200	14600	15000	15400	15800	16200	16600	17000	17400	17800	18000					
CHIKASKIA	12000	12400	12800	13200	13600	14000	14400	14800	15200	15600	16000							
BLUE STEM	11600	12000	12400	12800	13200	13600	14000	14400	14800	15200	15600							
CENTRAL PLAIN	14700	15100	15500	15900	16300	16700	17100	17500	17900	18300	18700	19100	19500	19700				
FLINT HILLS	11800	12200	12600	13000	13400	13800	14200	14600	15000	15400	15800							
BIG LAKE	12000	12400	12800	13200	13600	14000	14400	14800	15200	15600	16000							
NO-KAN	12200	12600	13000	13400	13800	14200	14600	15000	15400	15800	16200	16300						
MARC	15300	15700	16100	16500	16900	17300	17700	18100	18500	18900	19300	19700	20100	20500	20900			
SOUUTHEAST	11600	12000	12400	12800	13200	13600	14000	14400	14800	15200	15600							
IN PROCESS	13500	13900	14300	14700	15100	15500	15900	16300	16700	17100	17500	17900	18100					
UNORGANIZED	11600	12000	12400	12800	13200	13600	14000	14400	14800	15200	15600							

INSTRUCTIONS FOR USE OF EXHIBIT D.

THIS EXHIBIT WILL BE USED TO DETERMINE THE MINIMUM INTEREST RATE FOR A MODERATE INCOME BORROWER IN THE COMPLETION OF PART III, LINE 13 OF FORM 1944-6 (INTEREST CREDIT AGREEMENT). AMORTIZATION FACTORS FOR 33 YEARS ARE SHOWN BELOW THE INTEREST RATES. FACTORS OTHER THAN 33 YEARS MUST BE OBTAINED FROM AMORTIZATION TABLES.

DETERMINE THE APPROPRIATE INTEREST RATE BY: (1) SELECTING THE APPROPRIATE DISTRICT; (2) SELECT AN INCOME THAT IS THE SAME OR THE NEXT HIGHER THAN THE ADJUSTED ANNUAL HOUSEHOLD INCOME OF THE BORROWER. (LINE 4 OF PART III OF 1944-6); (3) SELECT THE APPROPRIATE INTEREST RATE SHOWN AT THE TOP OF THE SELECTED INCOME COLUMN.

* MODERATE-INCOME BORROWER'S WHOSE INCOME EXCEEDS THE LIMITS SET FORTH IN THIS EXHIBIT WILL NOT RECEIVE INTEREST CREDIT.

MINIMUM INTEREST RATES FOR THE CALCULATION OF INTEREST CREDITS FOR MODERATE INCOME BORROWER IN KENTUCKY

INTEREST RATE	3.5%	4%	4.5%	5%	5.5%	6%	6.5%	7%	7.5%	8%	8.5%	9%	9.5%	10%	10.5%	11%	11.5%	12%
AMORT RATE ANNUAL	51.58	55.11	58.75	62.50	66.34	70.28	74.30	78.41	82.60	86.86	91.18	95.57	100.01	104.50	109.05	113.63	118.26	122.93
AMORT RATE MONTH	4.27	4.56	4.86	5.17	5.48	5.81	6.14	6.49	6.83	7.19	7.55	7.92	8.29	8.66	9.04	9.43	9.81	10.20
BARKON RIVER	09700	10100	10500	10900	11300	11700	12100	12500	12900	13300	13700	14100	14500	14900	15300	15600		
BIG SANDY	09700	10100	10500	10900	11300	11700	12100	12500	12900	13300	13700	14100	14500	14900	15300	15600		
BLUEGRASS	12700	13100	13500	13900	14300	14700	15100	15500	15900	16300	16700	17000						
BUFFALO TRACE	10000	10400	10800	11200	11600	12000	12400	12800	13200	13600	14000	14400	14800	15200	15600			
CUMBERLAND V	09700	10100	10500	10900	11300	11700	12100	12500	12900	13300	13700	14100	14500	14900	15300	15600		
FIVCO	10900	11300	11700	12100	12500	12900	13300	13700	14100	14500	14900	15300	15600					
GATEWAY	09700	10100	10500	10900	11300	11700	12100	12500	12900	13300	13700	14100	14500	14900	15300	15600		
GREEN RIVER	12400	12800	13200	13600	14000	14400	14800	15200	15600	16000	16400	16500						
KENTUCKIANA	12800	13200	13600	14000	14400	14800	15200	15600	16000	16400	16800	17200	17600	18000	18400	18500		
KENTUCKY R	09700	10100	10500	10900	11300	11700	12100	12500	12900	13300	13700	14100	14500	14900	15300	15600		
LAKE CUMBER	09700	10100	10500	10900	11300	11700	12100	12500	12900	13300	13700	14100	14500	14900	15300	15600		
LINCOLN TRAIL	11100	11500	11900	12300	12700	13100	13500	13900	14300	14700	15100	15500	15600					
NORTHERN	12800	13200	13600	14000	14400	14800	15200	15600	16000	16400	16800	17200	17600	18000	18400	18700		
PENNYRILE	10800	11200	11600	12000	12400	12800	13200	13600	14000	14400	14800	15200	15600					
PURCHASE	11400	11800	12200	12600	13000	13400	13800	14200	14600	15000	15400	15600						

INSTRUCTIONS FOR USE OF EXHIBIT D.

THIS EXHIBIT WILL BE USED TO DETERMINE THE MINIMUM INTEREST RATE FOR A MODERATE INCOME BORROWER IN THE COMPLETION OF PART III, LINE 13 OF FORM 1944-6 (INTEREST CREDIT AGREEMENT). AMORTIZATION FACTORS FOR 33 YEARS ARE SHOWN BELOW THE INTEREST RATES. FACTORS OTHER THAN 33 YEARS MUST BE OBTAINED FROM AMORTIZATION TABLES.

DETERMINE THE APPROPRIATE INTEREST RATE BY: (1) SELECTING THE APPROPRIATE DISTRICT; (2) SELECT AN INCOME THAT IS THE SAME OR THE NEXT HIGHER THAN THE ADJUSTED ANNUAL HOUSEHOLD INCOME OF THE BORROWER. (LINE 4 OF PART III OF 1944-6); (3) SELECT THE APPROPRIATE INTEREST RATE SHOWN AT THE TOP OF THE SELECTED INCOME COLUMN.

* MODERATE-INCOME BORROWER'S WHOSE INCOME EXCEEDS THE LIMITS SET FORTH IN THIS EXHIBIT WILL NOT RECEIVE INTEREST CREDIT.

MINIMUM INTEREST RATES FOR THE CALCULATION OF INTEREST CREDITS FOR MODERATE INCOME BORROWER IN LOUISIANA

INTEREST RATE	3.5%	4%	4.5%	5%	5.5%	6%	6.5%	7%	7.5%	8%	8.5%	9%	9.5%	10%	10.5%	11%	11.5%	12%
AMORT RATE ANNUAL	51.58	55.11	58.75	62.50	66.34	70.28	74.30	78.41	82.60	86.86	91.18	95.57	100.01	104.50	109.05	113.63	118.26	122.93
AMORT RATE MONTH	4.27	4.56	4.86	5.17	5.48	5.81	6.14	6.49	6.83	7.19	7.55	7.92	8.29	8.66	9.04	9.43	9.81	10.20
ACADIANA	12800	13200	13600	14000	14400	14800	15200	15600	16000	16400	16800	17200	17600	18000	18400	18700		
ARK-LA-TEX	12800	13200	13600	14000	14400	14800	15200	15600	16000	16400	16800	17200	17600	18000	18400	18700		
BAYOU LAND	12800	13200	13600	14000	14400	14800	15200	15600	16000	16400	16800	17200	17600	18000	18400	18700		
CENLA	12800	13200	13600	14000	14400	14800	15200	15600	16000	16400	16800	17200	17600	18000	18400	18700		
DELTA	12800	13200	13600	14000	14400	14800	15200	15600	16000	16400	16800	17200	17600	18000	18400	18700		
FELICIANA	12800	13200	13600	14000	14400	14800	15200	15600	16000	16400	16800	17200	17600	18000	18400	18700		
FLORIDA PARISHES	12800	13200	13600	14000	14400	14800	15200	15600	16000	16400	16800	17200	17600	18000	18400	18700		
NORTHEAST	12800	13200	13600	14000	14400	14800	15200	15600	16000	16400	16800	17200	17600	18000	18400	18700		
NORTHWEST	12800	13200	13600	14000	14400	14800	15200	15600	16000	16400	16800	17200	17600	18000	18400	18700		
SOUTHEAST	12800	13200	13600	14000	14400	14800	15200	15600	16000	16400	16800	17200	17600	18000	18400	18700		
SOUTHWEST	12800	13200	13600	14000	14400	14800	15200	15600	16000	16400	16800	17200	17600	18000	18400	18700		

MINIMUM INTEREST RATES FOR THE CALCULATION OF INTEREST CREDITS FOR MODERATE INCOME BORROWER IN LOUISIANA

INTEREST RATE	3.5%	4%	4.5%	5%	5.5%	6%	6.5%	7%	7.5%	8%	8.5%	9%	9.5%	10%	10.5%	11%	11.5%	12%
AMORT RATE ANNUAL	51.58	55.11	58.75	62.50	66.34	70.28	74.30	78.41	82.60	86.86	91.18	95.57	100.01	104.50	109.05	113.63	118.26	122.93
AMORT RATE MONTH	4.27	4.56	4.86	5.17	5.48	5.81	6.14	6.49	6.83	7.19	7.55	7.92	8.29	8.66	9.04	9.43	9.81	10.20
ACADIANA	10000	10400	10800	11200	11600	12000	12400	12800	13200	13600	14000	14400	14800	15200	15600			
CENTRAL REG	09700	10100	10500	10900	11300	11700	12100	12500	12900	13300	13700	14100	14500	14900	15300	15600		
FLORIDA	11700	12100	12500	12900	13300	13700	14100	14500	14900	15300	15700							
NORTHEAST	09700	10100	10500	10900	11300	11700	12100	12500	12900	13300	13700	14100	14500	14900	15300	15600		
NORHWEST	10300	10700	11100	11500	11900	12300	12700	13100	13500	13900	14300	14700	15100	15500	15600			
INPERIAL CAL	11600	12000	12400	12800	13200	13600	14000	14400	14800	15200	15600							
TECHE	12800	13200	13600	14000	14400	14800	15200	15600	16000	16400	16800	17200	17400					
METRO-REG	12800	13200	13600	14000	14400	14800	15200	15600	16000	16400	16800	17200	17600	18000	18400	18700		

INSTRUCTIONS FOR USE OF EXHIBIT D.

THIS EXHIBIT WILL BE USED TO DETERMINE THE MINIMUM INTEREST RATE FOR A MODERATE INCOME BORROWER IN THE COMPLETION OF PART III, LINE 13 OF FORM 1944-6 (INTEREST CREDIT AGREEMENT). AMORTIZATION FACTORS FOR 33 YEARS ARE SHOWN BELOW THE INTEREST RATES. FACTORS OTHER THAN 33 YEARS MUST BE OBTAINED FROM AMORTIZATION TABLES.

DETERMINE THE APPROPRIATE INTEREST RATE BY: (1) SELECTING THE APPROPRIATE DISTRICT; (2) SELECT AN INCOME THAT IS THE SAME OR THE NEXT HIGHER THAN THE ADJUSTED ANNUAL HOUSEHOLD INCOME OF THE BORROWER. (LINE 4 OF PART III OF 1944-6); (3) SELECT THE APPROPRIATE INTEREST RATE SHOWN AT THE TOP OF THE SELECTED INCOME COLUMN.

MODERATE-INCOME BORROWER'S WHOSE INCOME EXCEEDS THE LIMITS SET FORTH IN THIS EXHIBIT WILL NOT RECEIVE INTEREST CREDIT.

MINIMUM INTEREST RATES FOR THE CALCULATION OF INTEREST CREDITS FOR MODERATE INCOME BORROWER IN MAINE

INTEREST RATE	3.5%	4%	4.5%	5%	5.5%	6%	6.5%	7%	7.5%	8%	8.5%	9%	9.5%	10%	10.5%	11%	11.5%	12%
AMORT RATE ANNUAL	51.58	55.11	58.75	62.50	66.34	70.28	74.30	78.41	82.60	86.86	91.18	95.57	100.01	104.50	109.05	113.63	118.26	122.93
AMORT RATE MONTH	4.27	4.56	4.86	5.17	5.48	5.81	6.14	6.49	6.83	7.19	7.55	7.92	8.29	8.66	9.04	9.43	9.81	10.20
ANDROSCOGGIN	12400	12800	13200	13600	14000	14400	14800	15200	15600	16000	16400	16500						
AROOSTOOK	11600	12000	12400	12800	13200	13600	14000	14400	14800	15200	15600							
CUMBERLAND	12700	13100	13500	13900	14300	14700	15100	15500	15900	16300	16700	16900						
FRANKLIN	12100	12500	12900	13300	13700	14100	14500	14900	15300	15700	16100							
HANCOCK	11600	12000	12400	12800	13200	13600	14000	14400	14800	15200	15600							
KENNEBEC	13300	13700	14100	14500	14900	15300	15700	16100	16500	16900	17300	17700	17900					
KNOX	11600	12000	12400	12800	13200	13600	14000	14400	14800	15200	15600							
LINCOLN	11600	12000	12400	12800	13200	13600	14000	14400	14800	15200	15600							
OXFORD	12100	12500	12900	13300	13700	14100	14500	14900	15300	15700	16100	16200						
PENOBSCOT	12400	12800	13200	13600	14000	14400	14800	15200	15600	16000	16400	16500						
PISCATQUIS	11600	12000	12400	12800	13200	13600	14000	14400	14800	15200	15600							
SAGADAHOC	12200	12600	13000	13400	13800	14200	14600	15000	15400	15800	16200	16300						
SOMERSET	11600	12000	12400	12800	13200	13600	14000	14400	14800	15200	15600							
WALDO	11600	12000	12400	12800	13200	13600	14000	14400	14800	15200	15600							
WASHINGTON	11600	12000	12400	12800	13200	13600	14000	14400	14800	15200	15600							
YORK	12700	13100	13500	13900	14300	14700	15100	15500	15900	16300	16700	17000						

INSTRUCTIONS FOR USE OF EXHIBIT D.

THIS EXHIBIT WILL BE USED TO DETERMINE THE MINIMUM INTEREST RATE FOR A MODERATE INCOME BORROWER IN THE COMPLETION OF PART III, LINE 13 OF FORM 1944-6 (INTEREST CREDIT AGREEMENT). AMORTIZATION FACTORS FOR 33 YEARS ARE SHOWN BELOW THE INTEREST RATES. FACTORS OTHER THAN 33 YEARS MUST BE OBTAINED FROM AMORTIZATION TABLES.

DETERMINE THE APPROPRIATE INTEREST RATE BY: (1) SELECTING THE APPROPRIATE DISTRICT; (2) SELECT AN INCOME THAT IS THE SAME OR THE NEXT HIGHER THAN THE ADJUSTED ANNUAL HOUSEHOLD INCOME OF THE BORROWER. (LINE 4 OF PART III OF 1944-6); (3) SELECT THE APPROPRIATE INTEREST RATE SHOWN AT THE TOP OF THE SELECTED INCOME COLUMN.

* MODERATE-INCOME BORROWER'S WHOSE INCOME EXCEEDS THE LIMITS SET FORTH IN THIS EXHIBIT WILL NOT RECEIVE INTEREST CREDIT.

MINIMUM INTEREST RATES FOR THE CALCULATION OF INTEREST CREDITS FOR MODERATE INCOME BORROWER IN MARYLAND

INTEREST RATE	3.5%	4%	4.5%	5%	5.5%	6%	6.5%	7%	7.5%	8%	8.5%	9%	9.5%	10%	10.5%	11%	11.5%	12%
AMORT RATE ANNUAL	51.58	55.11	58.75	62.50	66.34	70.28	74.30	78.41	82.60	86.86	91.18	95.57	100.01	104.50	109.05	113.63	118.26	122.93
AMORT RATE MONTH	4.27	4.56	4.86	5.17	5.48	5.81	6.14	6.49	6.83	7.19	7.55	7.92	8.29	8.66	9.04	9.43	9.81	10.20

MINIMUM INTEREST RATES FOR THE CALCULATION OF INTEREST CREDITS FOR MODERATE INCOME BORROWER IN MARYLAND

INTEREST RATE	3.5%	4%	4.5%	5%	5.5%	6%	6.5%	7%	7.5%	8%	8.5%	9%	9.5%	10%	10.5%	11%	11.5%	12%
AMORT RATE ANNUAL	51.58	55.11	58.75	62.50	66.34	70.28	74.30	78.41	82.60	86.86	91.18	95.57	100.01	104.50	109.05	113.63	118.26	122.93
AMORT RATE MONTH	4.27	4.56	4.86	5.17	5.48	5.81	6.14	6.49	6.83	7.19	7.55	7.92	8.29	8.66	9.04	9.43	9.81	10.20
LOWER EASTERN S	12700	13100	13500	13900	14300	14700	15100	15500	15900	16300	16700	17000						
UPPER EAST S	13000	13400	13800	14200	14600	15000	15400	15800	16200	16600	17000	17300						
WILMAPCO	15300	15700	16100	16500	16900	17300	17700	18100	18500	18900	19300	19700	20100	20500	20900	21300	21700	22100*
TRI-CTY SOUTH	15300	15700	16100	16500	16900	17300	17700	18100	18500	18900	19300	19700	20100	20500	20900	21300	21700	22100*
WASHINGTON	15300	15700	16100	16500	16900	17300	17700	18100	18500	18900	19300	19700	20100	20500	20900	21300	21700	22100*
BALTIMORE-MP	15300	15700	16100	16500	16900	17300	17700	18100	18500	18900	19300	19700	20100	20500	20900	21300	21700	22100*
FREDERICK	15100	15500	15900	16300	16700	17100	17500	17900	18300	18700	19100	19500	19900	20300				
TRI-COUNTY-W	12800	13200	13600	14000	14400	14800	15200	15600	16000	16400	16800	17100						

INSTRUCTIONS FOR USE OF EXHIBIT D.

THIS EXHIBIT WILL BE USED TO DETERMINE THE MINIMUM INTEREST RATE FOR A MODERATE INCOME BORROWER IN THE COMPLETION OF PART-III, LINE 13 OF FORM 1944-6 (INTEREST CREDIT AGREEMENT). AMORTIZATION FACTORS FOR 33 YEARS ARE SHOWN BELOW THE INTEREST RATES. FACTORS OTHER THAN 33 YEARS MUST BE OBTAINED FROM AMORTIZATION TABLES.

DETERMINE THE APPROPRIATE INTEREST RATE BY: (1) SELECTING THE APPROPRIATE DISTRICT; (2) SELECT AN INCOME THAT IS THE SAME OR THE NEXT HIGHER THAN THE ADJUSTED ANNUAL HOUSEHOLD INCOME OF THE BORROWER. (LINE 4 OF PART III OF 1944-6); (3) SELECT THE APPROPRIATE INTEREST RATE SHOWN AT THE TOP OF THE SELECTED INCOME COLUMN.

* MODERATE-INCOME BORROWER'S WHOSE INCOME EXCEEDS THE LIMITS SET FORTH IN THIS EXHIBIT WILL NOT RECEIVE INTEREST CREDIT.

MINIMUM INTEREST RATES FOR THE CALCULATION OF INTEREST CREDITS FOR MODERATE INCOME BORROWER IN MASSACHUSETTS

INTEREST RATE	3.5%	4%	4.5%	5%	5.5%	6%	6.5%	7%	7.5%	8%	8.5%	9%	9.5%	10%	10.5%	11%	11.5%	12%
AMORT RATE ANNUAL	51.58	55.11	58.75	62.50	66.34	70.28	74.30	78.41	82.60	86.86	91.18	95.57	100.01	104.50	109.05	113.63	118.26	122.93
AMORT RATE MONTH	4.27	4.56	4.86	5.17	5.48	5.81	6.14	6.49	6.83	7.19	7.55	7.92	8.29	8.66	9.04	9.43	9.81	10.20
DISTRICT 1	15300	15700	16100	16500	16900	17300	17700	18100	18500	18900	19300	19700	20100	20500	20700			
DISTRICT 2	15300	15700	16100	16500	16900	17300	17700	18100	18500	18900	19300	19700	20100	20500				

INSTRUCTIONS FOR USE OF EXHIBIT D.

THIS EXHIBIT WILL BE USED TO DETERMINE THE MINIMUM INTEREST RATE FOR A MODERATE INCOME BORROWER IN THE COMPLETION OF PART III, LINE 13 OF FORM 1944-6 (INTEREST CREDIT AGREEMENT). AMORTIZATION FACTORS FOR 33 YEARS ARE SHOWN BELOW THE INTEREST RATES. FACTORS OTHER THAN 33 YEARS MUST BE OBTAINED FROM AMORTIZATION TABLES.

DETERMINE THE APPROPRIATE INTEREST RATE BY: (1) SELECTING THE APPROPRIATE DISTRICT; (2) SELECT AN INCOME THAT IS THE SAME OR THE NEXT HIGHER THAN THE ADJUSTED ANNUAL HOUSEHOLD INCOME OF THE BORROWER. (LINE 4 OF PART III OF 1944-6); (3) SELECT THE APPROPRIATE INTEREST RATE SHOWN AT THE TOP OF THE SELECTED INCOME COLUMN.

* MODERATE-INCOME BORROWER'S WHOSE INCOME EXCEEDS THE LIMITS SET FORTH IN THIS EXHIBIT WILL NOT RECEIVE INTEREST CREDIT.

MINIMUM INTEREST RATES FOR THE CALCULATION OF INTEREST CREDITS FOR MODERATE INCOME BORROWER IN MICHIGAN

INTEREST RATE	3.5%	4%	4.5%	5%	5.5%	6%	6.5%	7%	7.5%	8%	8.5%	9%	9.5%	10%	10.5%	11%	11.5%	12%
AMORT RATE ANNUAL	51.58	55.11	58.75	62.50	66.34	70.28	74.30	78.41	82.60	86.86	91.18	95.57	100.01	104.50	109.05	113.63	118.26	122.93
AMORT RATE MONTH	4.27	4.56	4.86	5.17	5.48	5.81	6.14	6.49	6.83	7.19	7.55	7.92	8.29	8.66	9.04	9.43	9.81	10.20

MINIMUM INTEREST RATES FOR THE CALCULATION OF INTEREST CREDITS FOR MODERATE INCOME BORROWER IN MICHIGAN

INTEREST RATE	3.5%	4%	4.5%	5%	5.5%	6%	6.5%	7%	7.5%	8%	8.5%	9%	9.5%	10%	10.5%	11%	11.5%	12%
AMORT RATE ANNUAL	51.58	55.11	58.75	62.50	66.34	70.28	74.30	78.41	82.60	86.86	91.18	95.57	100.01	104.50	109.05	113.63	118.26	122.93
AMORT RATE MONTH	4.27	4.56	4.86	5.17	5.48	5.81	6.14	6.49	6.83	7.19	7.55	7.92	8.29	8.66	9.04	9.43	9.81	10.20
REGION 1	15300	15700	16100	16500	16900	17300	17700	18100	18500	18900	19300	19700	20100	20500	20900	21300	21700	22100*
REGION 2	15300	15700	16100	16500	16900	17300	17700	18100	18500	18900	19300	19700	20100	20500	20900	21300	21700	21900
REGION 3	15300	15700	16100	16500	16900	17300	17700	18100	18500	18900	19300	19700	20100	20500	20900	21300		
REGION 4	15300	15700	16100	16500	16900	17300	17700	18100	18500	18900	19300	19700	20100	20500	20900			
REGION 5	15300	15700	16100	16500	16900	17300	17700	18100	18500	18900	19300	19700	20100	20500	20900	21300	21700	22000
REGION 6	15300	15700	16100	16500	16900	17300	17700	18100	18500	18900	19300	19700	20100	20500	20900	21300	21500	
REGION 7	14500	14900	15300	15700	16100	16500	16900	17300	17700	18100	18500	18900	19300	19400				
REGION 8	14900	15300	15700	16100	16500	16900	17300	17700	18100	18500	18900	19300	19700	20100				
REGION 9	12400	12800	13200	13600	14000	14400	14800	15200	15600	16000	16400	16500						
REGION 10	13100	13500	13900	14300	14700	15100	15500	15900	16300	16700	17100	17400						
REGION 11	11600	12000	12400	12800	13200	13600	14000	14400	14800	15200	15600							
REGION 12	13200	13600	14000	14400	14800	15200	15600	16000	16400	16800	17200	17600						
REGION 13	11600	12000	12400	12800	13200	13600	14000	14400	14800	15200	15600							
REGION 14	15300	15700	16100	16500	16900	17300	17700	18100	18500	18900	19300	19700	20100	20500	20700			

INSTRUCTIONS FOR USE OF EXHIBIT D.

THIS EXHIBIT WILL BE USED TO DETERMINE THE MINIMUN,INTEREST RATE FOR A MODERATE INCOME BORROWER IN THE COMPLETION OF [redacted] III, LINE 13 OF FORM 1944-6 (INTEREST CREDIT AGREEMENT). AMORTIZATION FACTORS FOR 33 YEARS ARE SHOWN BELOW THE INTEREST RATES. FACTORS OTHER THAN 33 YEARS MUST BE OBTAINED FROM AMORTIZATION TABLES.

DETERMINE THE APPROPRIATE INTEREST RATE BY: (1) SELECTING THE APPROPRIATE DISTRICT; (2) SELECT AN INCOME THAT IS THE SAME OR THE NEXT HIGHER THAN THE ADJUSTED ANNUAL HOUSEHOLD INCOME OF THE BORROWER. (LINE 4 OF PART III OF 1944-6); (3) SELECT THE APPROPRIATE INTEREST RATE SHOWN AT THE TOP OF THE SELECTED INCOME COLUMN.

* MODERATE-INCOME BORROWER'S WHOSE INCOME EXCEEDS THE LIMITS SET FORTH IN THIS EXHIBIT WILL NOT RECEIVE INTEREST CREDIT.

MINIMUM INTEREST RATES FOR THE CALCULATION OF INTEREST CREDITS FOR MODERATE INCOME BORROWER IN MINNESOTA

INTEREST RATE	3.5%	4%	4.5%	5%	5.5%	6%	6.5%	7%	7.5%	8%	8.5%	9%	9.5%	10%	10.5%	11%	11.5%	12%
AMORT RATE ANNUAL	51.58	55.11	58.75	62.50	66.34	70.28	74.30	78.41	82.60	86.86	91.18	95.57	100.01	104.50	109.05	113.63	118.26	122.93
AMORT RATE MONTH	4.27	4.56	4.86	5.17	5.48	5.81	6.14	6.49	6.83	7.19	7.55	7.92	8.29	8.66	9.04	9.43	9.81	10.20
RDC 1	11900	12300	12700	13100	13500	13900	14300	14700	15100	15500	15900							
RDC2	11600	12000	12400	12800	13200	13600	14000	14400	14800	15200	15600							
RDC-3	13500	13900	14300	14700	15100	15500	15900	16300	16700	17100	17500	17900	18000					
RDC 4	11600	12000	12400	12800	13200	13600	14000	14400	14800	15200	15600							
RDC 5	11600	12000	12400	12800	13200	13600	14000	14400	14800	15200	15600							
RDC VI-E	12400	12800	13200	13600	14000	14400	14800	15200	15600	16000	16400							
RDC VI-W	11600	12000	12400	12800	13200	13600	14000	14400	14800	15200	15600							
RDC VII-E	14500	14900	15300	15700	16100	16500	16900	17300	17700	18100	18500	18900	19300	19400				
RDC VII-W	15100	15500	15900	16300	16700	17100	17500	17900	18300	18700	19100	19500	19900	20300				
RDC VIII	11900	12300	12700	13100	13500	13900	14300	14700	15100	15500	15900							
RDC IX	13200	13600	14000	14400	14800	15200	15600	16000	16400	16800	17200	17600						
RDC X	14600	15000	15400	15800	16200	16600	17000	17400	17800	18200	18600	19000	19400	19500				
RDC XI	15300	15700	16100	16500	16900	17300	17700	18100	18500	18900	19300	19700	20100	20500	20900	21300	21700	22100*

INSTRUCTIONS FOR USE OF EXHIBIT D.

THIS EXHIBIT WILL BE USED TO DETERMINE THE MINIMUM INTEREST RATE FOR A MODERATE INCOME BORROWER IN THE COMPLETION OF PART III, LINE 13 OF FORM 1944-6 (INTEREST CREDIT AGREEMENT). AMORTIZATION FACTORS FOR 33 YEARS ARE SHOWN BELOW THE INTEREST RATES. FACTORS OTHER THAN 33 YEARS MUST BE OBTAINED FROM AMORTIZATION TABLES.

DETERMINE THE APPROPRIATE INTEREST RATE BY: (1) SELECTING THE APPROPRIATE DISTRICT; (2) SELECT AN INCOME THAT IS THE SAME OR THE NEXT HIGHER THAN THE ADJUSTED ANNUAL HOUSEHOLD INCOME OF THE BORROWER. (LINE 4 OF PART III OF 1944-6); (3) SELECT THE APPROPRIATE INTEREST RATE SHOWN AT THE TOP OF THE SELECTED INCOME COLUMN.

* MODERATE-INCOME BORROWER'S WHOSE INCOME EXCEEDS THE LIMITS SET FORTH IN THIS EXHIBIT WILL NOT RECEIVE INTEREST CREDIT.

MINIMUM INTEREST RATES FOR THE CALCULATION OF INTEREST CREDITS FOR MODERATE INCOME BORROWER IN MISSISSIPPI

INTEREST RATE	3.5%	4%	4.5%	5%	5.5%	6%	6.5%	7%	7.5%	8%	8.5%	9%	9.5%	10%	10.5%	11%	11.5%	12%
AMORT RATE ANNUAL	51.58	55.11	58.75	62.50	66.34	70.28	74.30	78.41	82.60	86.86	91.18	95.57	100.01	104.50	109.05	113.63	118.26	122.93

MINIMUM INTEREST RATES FOR THE CALCULATION OF INTEREST CREDITS FOR MODERATE INCOME BORROWER IN MISSISSIPPI

INTEREST RATE	3.5%	4%	4.5%	5%	5.5%	6%	6.5%	7%	7.5%	8%	8.5%	9%	9.5%	10%	10.5%	11%	11.5%	12%
AMORT RATE ANNUAL	51.58	55.11	58.75	62.50	66.34	70.28	74.30	78.41	82.60	86.86	91.18	95.57	100.01	104.50	109.05	113.63	118.26	122.93
AMORT RATE MONTH	4.27	4.56	4.86	5.17	5.48	5.81	6.14	6.49	6.83	7.19	7.55	7.92	8.29	8.66	9.04	9.43	9.81	10.20
SOUTHWEST	09700	10100	10500	10900	11300	11700	12100	12500	12900	13300	13700	14100	14500	14900	15300	15600		
CENTRAL	10600	11000	11400	11800	12200	12600	13000	13400	13800	14200	14600	15000	15400	15600				
NORTH CENTRAL	09700	10100	10500	10900	11300	11700	12100	12500	12900	13300	13700	14100	14500	14900	15300	15600		
SOUTH DELTA	09700	10100	10500	10900	11300	11700	12100	12500	12900	13300	13700	14100	14500	14900	15300	15600		
NORTH DELTA	09700	10100	10500	10900	11300	11700	12100	12500	12900	13300	13700	14100	14500	14900	15300	15600		
NORTH EAST	09700	10100	10500	10900	11300	11700	12100	12500	12900	13300	13700	14100	14500	14900	15300	15600		
THREE RIVER	09700	10100	10500	10900	11300	11700	12100	12500	12900	13300	13700	14100	14500	14900	15300	15600		
GOLDEN TRI	09700	10100	10500	10900	11300	11700	12100	12500	12900	13300	13700	14100	14500	14900	15300	15600		
EAST CENTRAL	09700	10100	10500	10900	11300	11700	12100	12500	12900	13300	13700	14100	14500	14900	15300	15600		
SOUTHERN	10200	10600	11000	11400	11800	12200	12600	13000	13400	13800	14200	14600	15000	15400	15600			

INSTRUCTIONS FOR USE OF EXHIBIT D.

THIS EXHIBIT WILL BE USED TO DETERMINE THE MINIMUM INTEREST RATE FOR A MODERATE INCOME BORROWER IN THE COMPLETION OF PART III, LINE 13 OF FORM 1944-6 (INTEREST CREDIT AGREEMENT). AMORTIZATION FACTORS FOR 33 YEARS ARE SHOWN BELOW THE INTEREST RATES. FACTORS OTHER THAN 33 YEARS MUST BE OBTAINED FROM AMORTIZATION TABLES.

DETERMINE THE APPROPRIATE INTEREST RATE BY: (1) SELECTING THE APPROPRIATE DISTRICT; (2) SELECT AN INCOME THAT IS THE SAME OR THE NEXT HIGHER THAN THE ADJUSTED ANNUAL HOUSEHOLD INCOME OF THE BORROWER. (LINE 4 OF PART III OF 1944-6); (3) SELECT THE APPROPRIATE INTEREST RATE SHOWN AT THE TOP OF THE SELECTED INCOME COLUMN.

* MODERATE-INCOME BORROWER'S WHOSE INCOME EXCEEDS THE LIMITS SET FORTH IN THIS EXHIBIT WILL NOT RECEIVE INTEREST CREDIT.

MINIMUN INTEREST RATES FOR THE CALCULATION OF INTEREST CREDITS FOR MODERATE INCOME BORROWER IN MISSOURI

INTEREST RATE	3.5%	4%	4.5%	5%	5.5%	6%	6.5%	7%	7.5%	8%	8.5%	9%	9.5%	10%	10.5%	11%	11.5%	12%
AMORT RATE ANNUAL	51.58	55.11	58.75	62.50	66.34	70.28	74.30	78.41	82.60	86.86	91.18	95.57	100.01	104.50	109.05	113.63	118.26	122.93
AMORT RATE MONTH	4.27	4.56	4.86	5.17	5.48	5.81	6.14	6.49	6.83	7.19	7.55	7.92	8.29	8.66	9.04	9.43	9.81	10.20
LAKE OF OZARKS	09700	10100	10500	10900	11300	11700	12100	12500	12900	13300	13700	14100	14500	14900	15300	15600		
MARK TWAIN	11400	11800	12200	12600	13000	13400	13800	14200	14600	15000	15400	15600						
OZARK FOOTHILLS	09700	10100	10500	10900	11300	11700	12100	12500	12900	13300	13700	14100	14500	14900	15300	15600		
OZARK GATEWAY	10100	10500	10900	11300	11700	12100	12500	12900	13300	13700	14100	14500	14900	15300	15600			
SHOW-ME	11600	12000	12400	12800	13200	13600	14000	14400	14800	15200	15600							
SO. CENT. OZARK	09700	10100	10500	10900	11300	11700	12100	12500	12900	13300	13700	14100	14500	14900	15300	15600		
SOUTHEAST	11300	11700	12100	12500	12900	13300	13700	14100	14500	14900	15300	15600						
SOUTHWEST	10000	10400	10800	11200	11600	12000	12400	12800	13200	13600	14000	14400	14800	15200	15600			
KAYSINGER B	09700	10100	10500	10900	11300	11700	12100	12500	12900	13300	13700	14100	14500	14900	15300	15600		
GREEN HILLS	09700	10100	10500	10900	11300	11700	12100	12500	12900	13300	13700	14100	14500	14900	15300	15600		
BOOTHEEL	09700	10100	10500	10900	11300	11700	12100	12500	12900	13300	13700	14100	14500	14900	15300	15600		
NORTHWEST	10100	10500	10900	11300	11700	12100	12500	12900	13300	13700	14100	14500	14900	15300	15600			
NORTHEAST	10000	10400	10800	11200	11600	12000	12400	12800	13200	13600	14000	14400	14800	15200	15600			
MO-KAN	11700	12100	12500	12900	13300	13700	14100	14500	14900	15300	15700							
VALLEY-REGION	10600	11000	11400	11800	12200	12600	13000	13400	13800	14200	14600	15000	15400	15600				
MID-MISSOURI	12800	13200	13600	14000	14400	14800	15200	15600	16000	16400	16800	17200	17500					

INSTRUCTIONS FOR USE OF EXHIBIT D.

THIS EXHIBIT WILL BE USED TO DETERMINE THE MINIMUM INTEREST RATE FOR A MODERATE INCOME BORROWER IN THE COMPLETION OF PART III, LINE 13 OF FORM 1944-6 (INTEREST CREDIT AGREEMENT). AMORTIZATION FACTORS FOR 33 YEARS ARE SHOWN BELOW THE INTEREST RATES. FACTORS OTHER THAN 33 YEARS MUST BE OBTAINED FROM AMORTIZATION TABLES.

DETERMINE THE APPROPRIATE INTEREST RATE BY: (1) SELECTING THE APPROPRIATE DISTRICT; (2) SELECT AN INCOME THAT IS THE SAME OR THE NEXT HIGHER THAN THE ADJUSTED ANNUAL HOUSEHOLD INCOME OF THE BORROWER. (LINE 4 OF PART III OF 1944-6); (3) SELECT THE APPROPRIATE INTEREST RATE SHOWN AT THE TOP OF THE SELECTED INCOME COLUMN.

* MODERATE-INCOME BORROWER'S WHOSE INCOME EXCEEDS THE LIMITS SET FORTH IN THIS EXHIBIT WILL NOT RECEIVE INTEREST CREDIT.

MINIMUN INTEREST RATES FOR THE CALCULATION OF INTEREST CREDITS FOR MODERATE INCOME BORROWER IN MISSOURI

INTEREST RATE	3.5%	4%	4.5%	5%	5.5%	6%	6.5%	7%	7.5%	8%	8.5%	9%	9.5%	10%	10.5%	11%	11.5%	12%
AMORT RATE ANNUAL	51.58	55.11	58.75	62.50	66.34	70.28	74.30	78.41	82.60	86.86	91.18	95.57	100.01	104.50	109.05	113.63	118.26	122.93
AMORT RATE MONTH	4.27	4.56	4.86	5.17	5.48	5.81	6.14	6.49	6.83	7.19	7.55	7.92	8.29	8.66	9.04	9.43	9.81	10.20

MINIMUM INTEREST RATES FOR THE CALCULATION OF INTEREST CREDITS FOR MODERATE INCOME BORROWER IN MISSOURI

INTEREST RATE	3.5%	4%	4.5%	5%	5.5%	6%	6.5%	7%	7.5%	8%	8.5%	9%	9.5%	10%	10.5%	11%	11.5%	12%
AMORT RATE ANNUAL	51.58	55.11	58.75	62.50	66.34	70.28	74.30	78.41	82.60	86.86	91.18	95.57	100.01	104.50	109.05	113.63	118.26	122.93
AMORT RATE MONTH	4.27	4.56	4.86	5.17	5.48	5.81	6.14	6.49	6.83	7.19	7.55	7.92	8.29	8.66	9.04	9.43	9.81	10.20
MERANEC	10800	11200	11600	12000	12400	12800	13200	13600	14000	14400	14800	15200	15600					
E-N GATEWAY	12800	13200	13600	14000	14400	14800	15200	15600	16000	16400	16800	17200	17600	18000	18400	18800	19200	19600*
MID-AMERICA	12800	13200	13600	14000	14400	14800	15200	15600	16000	16400	16800	17200	17600	18000	18400	18800	19200	19600*
BOONSLICK	12300	12700	13100	13500	13900	14300	14700	15100	15500	15900	16300	16400						

INSTRUCTIONS FOR USE OF EXHIBIT D.

THIS EXHIBIT WILL BE USED TO DETERMINE THE MINIMUM INTEREST RATE FOR A MODERATE INCOME BORROWER IN THE COMPLETION OF PART III, LINE 13 OF FORM 1944-6 (INTEREST CREDIT AGREEMENT). AMORTIZATION FACTORS FOR 33 YEARS ARE SHOWN BELOW THE INTEREST RATES. FACTORS OTHER THAN 33 YEARS MUST BE OBTAINED FROM AMORTIZATION TABLES.

DETERMINE THE APPROPRIATE INTEREST RATE BY: (1) SELECTING THE APPROPRIATE DISTRICT; (2) SELECT AN INCOME THAT IS THE SAME OR THE NEXT HIGHER THAN THE ADJUSTED ANNUAL HOUSEHOLD INCOME OF THE BORROWER. (LINE 4 OF PART III OF 1944-6); (3) SELECT THE APPROPRIATE INTEREST RATE SHOWN AT THE TOP OF THE SELECTED INCOME COLUMN.

* MODERATE-INCOME BORROWER'S WHOSE INCOME EXCEEDS THE LIMITS SET FORTH IN THIS EXHIBIT WILL NOT RECEIVE INTEREST CREDIT.

MINIMUM INTEREST RATES FOR THE CALCULATION OF INTEREST CREDITS FOR MODERATE INCOME BORROWER IN MONTANA

INTEREST RATE	3.5%	4%	4.5%	5%	5.5%	6%	6.5%	7%	7.5%	8%	8.5%	9%	9.5%	10%	10.5%	11%	11.5%	12%
AMORT RATE ANNUAL	51.58	55.11	58.75	62.50	66.34	70.28	74.30	78.41	82.60	86.86	91.18	95.57	100.01	104.50	109.05	113.63	118.26	122.93
AMORT RATE MONTH	4.27	4.56	4.86	5.17	5.48	5.81	6.14	6.49	6.83	7.19	7.55	7.92	8.29	8.66	9.04	9.43	9.81	10.20
DISTRICT 1	12400	12800	13200	13600	14000	14400	14800	15200	15600	16000	16400	16500						
DISTRICT 2	12600	13000	13400	13800	14200	14600	15000	15400	15800	16200	16600	16900						
DISTRICT 3	11800	12200	12600	13000	13400	13800	14200	14600	15000	15400	15800							
DISTRICT 4	12600	13000	13400	13800	14200	14600	15000	15400	15800	16200	16600	16800						
DISTRICT 5	12500	12900	13300	13700	14100	14500	14900	15300	15700	16100	16500	16700						
DISTRICT 6	11700	12100	12500	12900	13300	13700	14100	14500	14900	15300	15700							
DISTRICT 7	11600	12000	12400	12800	13200	13600	14000	14400	14800	15200	15600							
DISTRICT 8	14000	14400	14800	15200	15600	16000	16400	16800	17200	17600	18000	18400	18700					
DISTRICT 9	12300	12700	13100	13500	13900	14300	14700	15100	15500	15900	16300	16400						
DISTRICT 10	12500	12900	13300	13700	14100	14500	14900	15300	15700	16100	16500	16700						
DISTRICT 11	12600	13000	13400	13800	14200	14600	15000	15400	15800	16200	16600	16900						
DISTRICT 12	12400	12800	13200	13600	14000	14400	14800	15200	15600	16000	16400	16500						

INSTRUCTIONS FOR USE OF EXHIBIT D.

THIS EXHIBIT WILL BE USED TO DETERMINE THE MINIMUM INTEREST RATE FOR A MODERATE INCOME BORROWER IN THE COMPLETION OF PART III, LINE 13 OF FORM 1944-6 (INTEREST CREDIT AGREEMENT). AMORTIZATION FACTORS FOR 33 YEARS ARE SHOWN BELOW THE INTEREST RATES. FACTORS OTHER THAN 33 YEARS MUST BE OBTAINED FROM AMORTIZATION TABLES.

DETERMINE THE APPROPRIATE INTEREST RATE BY: (1) SELECTING THE APPROPRIATE DISTRICT; (2) SELECT AN INCOME THAT IS THE SAME OR THE NEXT HIGHER THAN THE ADJUSTED ANNUAL HOUSEHOLD INCOME OF THE BORROWER. (LINE 4 OF PART III OF 1944-6); (3) SELECT THE APPROPRIATE INTEREST RATE SHOWN AT THE TOP OF THE SELECTED INCOME COLUMN.

* MODERATE-INCOME BORROWER'S WHOSE INCOME EXCEEDS THE LIMITS SET FORTH IN THIS EXHIBIT WILL NOT RECEIVE INTEREST CREDIT.

MINIMUM INTEREST RATES FOR THE CALCULATION OF INTEREST CREDITS FOR MODERATE INCOME BORROWER IN NEBRASKA

INTEREST RATE	3.5%	4%	4.5%	5%	5.5%	6%	6.5%	7%	7.5%	8%	8.5%	9%	9.5%	10%	10.5%	11%	11.5%	12%
AMORT RATE ANNUAL	51.58	55.11	58.75	62.50	66.34	70.28	74.30	78.41	82.60	86.86	91.18	95.57	100.01	104.50	109.05	113.63	118.26	122.93
AMORT RATE MONTH	4.27	4.56	4.86	5.17	5.48	5.81	6.14	6.49	6.83	7.19	7.55	7.92	8.29	8.66	9.04	9.43	9.81	10.20
DISTRICT 1	12400	12800	13200	13600	14000	14400	14800	15200	15600	16000	16400	16500						
DISTRICT 2	12600	13000	13400	13800	14200	14600	15000	15400	15800	16200	16600	16900						
DISTRICT 3	11800	12200	12600	13000	13400	13800	14200	14600	15000	15400	15800							
DISTRICT 4	12600	13000	13400	13800	14200	14600	15000	15400	15800	16200	16600	16800						
DISTRICT 5	12500	12900	13300	13700	14100	14500	14900	15300	15700	16100	16500	16700						
DISTRICT 6	11700	12100	12500	12900	13300	13700	14100	14500	14900	15300	15700							
DISTRICT 7	11600	12000	12400	12800	13200	13600	14000	14400	14800	15200	15600							
DISTRICT 8	14000	14400	14800	15200	15600	16000	16400	16800	17200	17600	18000	18400	18700					
DISTRICT 9	12300	12700	13100	13500	13900	14300	14700	15100	15500	15900	16300	16400						
DISTRICT 10	12500	12900	13300	13700	14100	14500	14900	15300	15700	16100	16500	16700						
DISTRICT 11	12600	13000	13400	13800	14200	14600	15000	15400	15800	16200	16600	16900						
DISTRICT 12	12400	12800	13200	13600	14000	14400	14800	15200	15600	16000	16400	16500						

MINIMUM INTEREST RATES FOR THE CALCULATION OF INTEREST CREDITS FOR MODERATE INCOME BORROWER IN NEBRASKA

INTEREST RATE	3.5%	4%	4.5%	5%	5.5%	6%	6.5%	7%	7.5%	8%	8.5%	9%	9.5%	10%	10.5%	11%	11.5%	12%
AMORT RATE ANNUAL	51.58	55.11	58.75	62.50	66.34	70.28	74.30	78.41	82.60	86.86	91.18	95.57	100.01	104.50	109.05	113.63	118.26	122.93
AMORT RATE MONTH	4.27	4.56	4.86	5.17	5.48	5.81	6.14	6.49	6.83	7.19	7.55	7.92	8.29	8.66	9.04	9.43	9.81	10.20
SCOTTSBLUFF	12200	12600	13000	13400	13800	14200	14600	15000	15400	15800	16200	16300						
AINSWORTH	11600	12000	12400	12800	13200	13600	14000	14400	14800	15200	15600							
NORTH PLATTE	12100	12500	12900	13300	13700	14100	14500	14900	15300	15700	16100	16200						
KEARNEY	12300	12700	13100	13500	13900	14300	14700	15100	15500	15900	16300							
NORFOLK	11700	12100	12500	12900	13300	13700	14100	14500	14900	15300	15700							
OMAHA	14600	15000	15400	15800	16200	16600	17000	17400	17800	18200	18600	19000	19400	19600				
LINCOLN	12500	12900	13300	13700	14100	14500	14900	15300	15700	16100	16500	16700						

INSTRUCTIONS FOR USE OF EXHIBIT D.

THIS EXHIBIT WILL BE USED TO DETERMINE THE MINIMUM INTEREST RATE FOR A MODERATE INCOME BORROWER IN THE COMPLETION OF PART III, LINE 13 OF FORM 1944-6 (INTEREST CREDIT AGREEMENT). AMORTIZATION FACTORS FOR 33 YEARS ARE SHOWN BELOW THE INTEREST RATES. FACTORS OTHER THAN 33 YEARS MUST BE OBTAINED FROM AMORTIZATION TABLES.

DETERMINE THE APPROPRIATE INTEREST RATE BY: (1) SELECTING THE APPROPRIATE DISTRICT; (2) SELECT AN INCOME THAT IS THE SAME OR THE NEXT HIGHER THAN THE ADJUSTED ANNUAL HOUSEHOLD INCOME OF THE BORROWER. (LINE 4 OF PART III OF 1944-6); (3) SELECT THE APPROPRIATE INTEREST RATE SHOWN AT THE TOP OF THE SELECTED INCOME COLUMN.

* MODERATE-INCOME BORROWER'S WHOSE INCOME EXCEEDS THE LIMITS SET FORTH IN THIS EXHIBIT WILL NOT RECEIVE INTEREST CREDIT.

MINIMUM INTEREST RATES FOR THE CALCULATION OF INTEREST CREDITS FOR MODERATE INCOME BORROWER IN NEVADA

INTEREST RATE	3.5%	4%	4.5%	5%	5.5%	6%	6.5%	7%	7.5%	8%	8.5%	9%	9.5%	10%	10.5%	11%	11.5%	12%
AMORT RATE ANNUAL	51.58	55.11	58.75	62.50	66.34	70.28	74.30	78.41	82.60	86.86	91.18	95.57	100.01	104.50	109.05	113.63	118.26	122.93
AMORT RATE MONTH	4.27	4.56	4.86	5.17	5.48	5.81	6.14	6.49	6.83	7.19	7.55	7.92	8.29	8.66	9.04	9.43	9.81	10.20
DISTRICT 8	13300	13700	14100	14500	14900	15300	15700	16100	16500	16900	17300	17700	17800					
DISTRICT 7	15300	15700	16100	16500	16900	17300	17700	18100	18500	18900	19300	19700	20100	20500	20600			

INSTRUCTIONS FOR USE OF EXHIBIT D.

THIS EXHIBIT WILL BE USED TO DETERMINE THE MINIMUM INTEREST RATE FOR A MODERATE INCOME BORROWER IN THE COMPLETION OF PART III, LINE 13 OF FORM 1944-6 (INTEREST CREDIT AGREEMENT). AMORTIZATION FACTORS FOR 33 YEARS ARE SHOWN BELOW THE INTEREST RATES. FACTORS OTHER THAN 33 YEARS MUST BE OBTAINED FROM AMORTIZATION TABLES.

DETERMINE THE APPROPRIATE INTEREST RATE BY: (1) SELECTING THE APPROPRIATE DISTRICT; (2) SELECT AN INCOME THAT IS THE SAME OR THE NEXT HIGHER THAN THE ADJUSTED ANNUAL HOUSEHOLD INCOME OF THE BORROWER. (LINE 4 OF PART III OF 1944-6); (3) SELECT THE APPROPRIATE INTEREST RATE SHOWN AT THE TOP OF THE SELECTED INCOME COLUMN.

* MODERATE-INCOME BORROWER'S WHOSE INCOME EXCEEDS THE LIMITS SET FORTH IN THIS EXHIBIT WILL NOT RECEIVE INTEREST CREDIT.

MINIMUM INTEREST RATES FOR THE CALCULATION OF INTEREST CREDITS FOR MODERATE INCOME BORROWER IN NEW HAMPSHIRE

INTEREST RATE	3.5%	4%	4.5%	5%	5.5%	6%	6.5%	7%	7.5%	8%	8.5%	9%	9.5%	10%	10.5%	11%	11.5%	12%
AMORT RATE ANNUAL	51.58	55.11	58.75	62.50	66.34	70.28	74.30	78.41	82.60	86.86	91.18	95.57	100.01	104.50	109.05	113.63	118.26	122.93
AMORT RATE MONTH	4.27	4.56	4.86	5.17	5.48	5.81	6.14	6.49	6.83	7.19	7.55	7.92	8.29	8.66	9.04	9.43	9.81	10.20

MINIMUM INTEREST RATES FOR THE CALCULATION OF INTEREST CREDITS FOR MODERATE INCOME BORROWER IN NEW HAMPSHIRE

INTEREST RATE	3.5%	4%	4.5%	5%	5.5%	6%	6.5%	7%	7.5%	8%	8.5%	9%	9.5%	10%	10.5%	11%	11.5%	12%
AMORT RATE ANNUAL	51.58	55.11	58.75	62.50	66.34	70.28	74.30	78.41	82.60	86.86	91.18	95.57	100.01	104.50	109.05	113.63	118.26	122.93
AMORT RATE MONTH	4.27	4.56	4.86	5.17	5.48	5.81	6.14	6.49	6.83	7.19	7.55	7.92	8.29	8.66	9.04	9.43	9.81	10.20
DISTRICT III VE	12900	13300	13700	14100	14500	14900	15300	15700	16100	16500	16900	17200						
DISTRICT IV VER	14300	14700	15100	15500	15900	16300	16700	17100	17500	17900	18300	18700	19100	19200				

INSTRUCTIONS FOR USE OF EXHIBIT D.

THIS EXHIBIT WILL BE USED TO DETERMINE THE MINIMUM INTEREST RATE FOR A MODERATE INCOME BORROWER IN THE COMPLETION OF PART III, LINE 13 OF FORM 1944-6 (INTEREST CREDIT AGREEMENT). AMORTIZATION FACTORS FOR 33 YEARS ARE SHOWN BELOW THE INTEREST RATES. FACTORS OTHER THAN 33 YEARS MUST BE OBTAINED FROM AMORTIZATION TABLES.

DETERMINE THE APPROPRIATE INTEREST RATE BY: (1) SELECTING THE APPROPRIATE DISTRICT; (2) SELECT AN INCOME THAT IS THE SAME OR THE NEXT HIGHER THAN THE ADJUSTED ANNUAL HOUSEHOLD INCOME OF THE BORROWER. (LINE 4 OF PART III OF 1944-6); (3) SELECT THE APPROPRIATE INTEREST RATE SHOWN AT THE TOP OF THE SELECTED INCOME COLUMN.

* MODERATE-INCOME BORROWER'S WHOSE INCOME EXCEEDS THE LIMITS SET FORTH IN THIS EXHIBIT WILL NOT RECEIVE INTEREST CREDIT.

MINIMUM INTEREST RATES FOR THE CALCULATION OF INTEREST CREDITS FOR MODERATE INCOME BORROWER IN NEW JERSEY

INTEREST RATE	3.5%	4%	4.5%	5%	5.5%	6%	6.5%	7%	7.5%	8%	8.5%	9%	9.5%	10%	10.5%	11%	11.5%	12%
ANNUAL RATE ANNUAL	51.58	55.11	58.75	62.50	66.34	70.28	74.30	78.41	82.60	86.86	91.18	95.57	100.01	104.50	109.05	113.63	118.26	122.93
ANNUAL RATE MONTH	4.27	4.56	4.86	5.17	5.48	5.81	6.14	6.49	6.83	7.19	7.55	7.92	8.29	8.66	9.04	9.43	9.81	10.20
DISTRICT 1	15300	15700	16100	16500	16900	17300	17700	18100	18500	18900	19300	19700	20100	20500	20900	21300	21700	22100*
DISTRICT 11	15300	15700	16100	16500	16900	17300	17700	18100	18500	18900	19300	19700	20100	20500	20900	21300		
DISTRICT 111	15300	15700	16100	16500	16900	17300	17700	18100	18500	18900	19300	19700	20100	20500	20900	21300	21700	22100*

INSTRUCTIONS FOR USE OF EXHIBIT D:

THIS EXHIBIT WILL BE USED TO DETERMINE THE MINIMUM INTEREST RATE FOR A MODERATE INCOME BORROWER IN THE COMPLETION OF PART III, LINE 13 OF FORM 1944-6 (INTEREST CREDIT AGREEMENT). AMORTIZATION FACTORS FOR 33 YEARS ARE SHOWN BELOW THE INTEREST RATES. FACTORS OTHER THAN 33 YEARS MUST BE OBTAINED FROM AMORTIZATION TABLES.

DETERMINE THE APPROPRIATE INTEREST RATE BY: (1) SELECTING THE APPROPRIATE DISTRICT; (2) SELECT AN INCOME THAT IS THE SAME OR THE NEXT HIGHER THAN THE ADJUSTED ANNUAL HOUSEHOLD INCOME OF THE BORROWER. (LINE 4 OF PART III OF 1944-6); (3) SELECT THE APPROPRIATE INTEREST RATE SHOWN AT THE TOP OF THE SELECTED INCOME COLUMN.

* MODERATE-INCOME BORROWER'S WHOSE INCOME EXCEEDS THE LIMITS SET FORTH IN THIS EXHIBIT WILL NOT RECEIVE INTEREST CREDIT.

MINIMUM INTEREST RATES FOR THE CALCULATION OF INTEREST CREDITS FOR MODERATE INCOME BORROWER IN NEW MEXICO

INTEREST RATE	3.5%	4%	4.5%	5%	5.5%	6%	6.5%	7%	7.5%	8%	8.5%	9%	9.5%	10%	10.5%	11%	11.5%	12%
ANNUAL RATE ANNUAL	51.58	55.11	58.75	62.50	66.34	70.28	74.30	78.41	82.60	86.86	91.18	95.57	100.01	104.50	109.05	113.63	118.26	122.93
ANNUAL RATE MONTH	4.27	4.56	4.86	5.17	5.48	5.81	6.14	6.49	6.83	7.19	7.55	7.92	8.29	8.66	9.04	9.43	9.81	10.20

MINIMUM INTEREST RATES FOR THE CALCULATION OF INTEREST CREDITS FOR MODERATE INCOME BORROWER IN NEW MEXICO

INTEREST RATE	3.5%	4%	4.5%	5%	5.5%	6%	6.5%	7%	7.5%	8%	8.5%	9%	9.5%	10%	10.5%	11%	11.5%	12%
AMORT RATE ANNUAL	51.58	55.11	58.75	62.50	66.34	70.28	74.30	78.41	82.60	86.86	91.18	95.57	100.01	104.50	109.03	113.62	118.26	122.93
AMORT RATE MONTH	4.27	4.56	4.86	5.17	5.48	5.81	6.14	6.49	6.83	7.19	7.55	7.92	8.29	8.66	9.04	9.43	9.81	10.20
SAN JUAN	11600	12000	12400	12800	13200	13600	14000	14400	14800	15200	15600							
NORTH CENTRAL	11600	12000	12400	12800	13200	13600	14000	14400	14800	15200	15600							
MID RIO GRANDE	13200	13600	14000	14400	14800	15200	15600	16000	16400	16800	17200	17600						
EASTERN PLS	11600	12000	12400	12800	13200	13600	14000	14400	14800	15200	15600							
SOUTH WEST	11600	12000	12400	12800	13200	13600	14000	14400	14800	15200	15600							
SOUTHEASTERN	11700	12100	12500	12900	13300	13700	14100	14500	14900	15300	15700							
SOUTH RIO GRAND	11600	12000	12400	12800	13200	13600	14000	14400	14800	15200	15600							

INSTRUCTIONS FOR USE OF EXHIBIT D.

THIS EXHIBIT WILL BE USED TO DETERMINE THE MINIMUM INTEREST RATE FOR A MODERATE INCOME BORROWER IN THE COMPLETION OF PART III, LINE 13 OF FORM 1944-8 (INTEREST CREDIT AGREEMENT). AMORTIZATION FACTORS FOR 33 YEARS ARE SHOWN BELOW THE INTEREST RATES. FACTORS OTHER THAN 33 YEARS MUST BE OBTAINED FROM AMORTIZATION TABLES.

DETERMINE THE APPROPRIATE INTEREST RATE BY: (1) SELECTING THE APPROPRIATE DISTRICT; (2) SELECT AN INCOME THAT IS THE SAME OR THE NEXT HIGHER THAN THE ADJUSTED ANNUAL HOUSEHOLD INCOME OF THE BORROWER. (LINE 4 OF PART III OF 1944-8); (3) SELECT THE APPROPRIATE INTEREST RATE SHOWN AT THE TOP OF THE SELECTED INCOME COLUMN.

* MODERATE-INCOME BORROWER'S WHOSE INCOME EXCEEDS THE LIMITS SET FORTH IN THIS EXHIBIT WILL NOT RECEIVE INTEREST CREDIT.

MINIMUM INTEREST RATES FOR THE CALCULATION OF INTEREST CREDITS FOR MODERATE INCOME BORROWER IN NEW YORK

INTEREST RATE	3.5%	4%	4.5%	5%	5.5%	6%	6.5%	7%	7.5%	8%	8.5%	9%	9.5%	10%	10.5%	11%	11.5%	12%
AMORT RATE ANNUAL	51.58	55.11	58.75	62.50	66.34	70.28	74.30	78.41	82.60	86.86	91.18	95.57	100.01	104.50	109.05	113.63	118.26	122.93
AMORT RATE MONTH	4.27	4.56	4.86	5.17	5.48	5.81	6.14	6.49	6.83	7.19	7.55	7.92	8.29	8.66	9.04	9.43	9.81	10.20
DISTRICT 1	15300	15700	16100	16500	16900	17300	17700	18100	18500	18900	19300	19700	20100	20500	20900	21300	21700	22100*
DISTRICT 2	15100	15500	15900	16300	16700	17100	17500	17900	18300	18700	19100	19500	19900	20200				
DISTRICT 3	12700	13100	13500	13900	14300	14700	15100	15500	15900	16300	16700	17000						
DISTRICT 4	12900	13300	13700	14100	14500	14900	15300	15700	16100	16500	16900	17200						
DISTRICT 5	15300	15700	16100	16500	16900	17300	17700	18100	18500	18900	19300	19700	20100	20500	20900	21300	21700	22000
DISTRICT 6	13800	14200	14600	15000	15400	15800	16200	16600	17000	17400	17800	18200	18400					
DISTRICT 7	15300	15700	16100	16500	16900	17300	17700	18100	18500	18900	19300	19700	20100	20500	20900	21300	21700	22100*
DISTRICT 8	14500	14900	15300	15700	16100	16500	16900	17300	17700	18100	18500	18900	19300	19400				

INSTRUCTIONS FOR USE OF EXHIBIT D.

THIS EXHIBIT WILL BE USED TO DETERMINE THE MINIMUM INTEREST RATE FOR A MODERATE INCOME BORROWER IN THE COMPLETION OF PART III, LINE 13 OF FORM 1944-6 (INTEREST CREDIT AGREEMENT). AMORTIZATION FACTORS FOR 33 YEARS ARE SHOWN BELOW THE INTEREST RATES. FACTORS OTHER THAN 33 YEARS MUST BE OBTAINED FROM AMORTIZATION TABLES.

DETERMINE THE APPROPRIATE INTEREST RATE BY: (1) SELECTING THE APPROPRIATE DISTRICT; (2) SELECT AN INCOME THAT IS THE SAME OR THE NEXT HIGHER THAN THE ADJUSTED ANNUAL HOUSEHOLD INCOME OF THE BORROWER. (LINE 4 OF PART III OF 1944-6); (3) SELECT THE APPROPRIATE INTEREST RATE SHOWN AT THE TOP OF THE SELECTED INCOME COLUMN.

* MODERATE-INCOME BORROWER'S WHOSE INCOME EXCEEDS THE LIMITS SET FORTH IN THIS EXHIBIT WILL NOT RECEIVE INTEREST CREDIT.

MINIMUM INTEREST RATES FOR THE CALCULATION OF INTEREST CREDITS FOR MODERATE INCOME BORROWER IN NORTH CAROLINA

INTEREST RATE	3.5%	4%	4.5%	5%	5.5%	6%	6.5%	7%	7.5%	8%	8.5%	9%	9.5%	10%	10.5%	11%	11.5%	12%
AMORT RATE ANNUAL	51.58	55.11	58.75	62.50	66.34	70.28	74.30	78.41	82.60	86.86	91.18	95.57	100.01	104.50	109.05	113.63	118.26	122.93
AMORT RATE MONTH	4.27	4.56	4.86	5.17	5.48	5.81	6.14	6.49	6.83	7.19	7.55	7.92	8.29	8.66	9.04	9.43	9.81	10.20
DISTRICT 1	15300	15700	16100	16500	16900	17300	17700	18100	18500	18900	19300	19700	20100	20500	20900	21300	21700	22100*
DISTRICT 2	15100	15500	15900	16300	16700	17100	17500	17900	18300	18700	19100	19500	19900	20200				
DISTRICT 3	12700	13100	13500	13900	14300	14700	15100	15500	15900	16300	16700	17000						
DISTRICT 4	12900	13300	13700	14100	14500	14900	15300	15700	16100	16500	16900	17200						
DISTRICT 5	15300	15700	16100	16500	16900	17300	17700	18100	18500	18900	19300	19700	20100	20500	20900	21300	21700	22000
DISTRICT 6	13800	14200	14600	15000	15400	15800	16200	16600	17000	17400	17800	18200	18400					
DISTRICT 7	15300	15700	16100	16500	16900	17300	17700	18100	18500	18900	19300	19700	20100	20500	20900	21300	21700	22100*
DISTRICT 8	14500	14900	15300	15700	16100	16500	16900	17300	17700	18100	18500	18900	19300	19400				

MINIMUM INTEREST RATES FOR THE CALCULATION OF INTEREST CREDITS FOR MODERATE INCOME BORROWER IN NORTH CAROLINA

INTEREST RATE	3.5%	4%	4.5%	5%	5.5%	6%	6.5%	7%	7.5%	8%	8.5%	9%	9.5%	10%	10.5%	11%	11.5%	12%
AMORT RATE ANNUAL	51.58	55.11	58.75	62.50	66.34	70.28	74.30	78.41	82.60	86.86	91.18	95.57	100.01	104.50	109.03	113.63	118.26	122.93
AMORT RATE MONTH	4.27	4.56	4.86	5.17	5.48	5.81	6.14	6.49	6.83	7.19	7.55	7.92	8.29	8.66	9.04	9.43	9.81	10.20
DISTRICT A	10200	10600	11000	11400	11800	12200	12600	13000	13400	13800	14200	14600	15000	15400	15800			
DISTRICT B	12200	12600	13000	13400	13800	14200	14600	15000	15400	15800	16200	16300						
DISTRICT C	12000	12400	12800	13200	13600	14000	14400	14800	15200	15600	16000							
DISTRICT D	09700	10100	10500	10900	11300	11700	12100	12500	12900	13300	13700	14100	14500	14900	15300	15600		
DISTRICT E	12800	13200	13600	14000	14400	14800	15200	15600	16000	16400	16800	17200	17500					
DISTRICT F	12800	13200	13600	14000	14400	14800	15200	15600	16000	16400	16800	17200	17600	18000	18400	18800	19200	19600
DISTRICT G	12800	13200	13600	14000	14400	14800	15200	15600	16000	16400	16800	17200	17600	18000	18400	18800	19100	
DISTRICT H	10800	11200	11600	12000	12400	12800	13200	13600	14000	14400	14800	15200	15600					
DISTRICT I	12800	13200	13600	14000	14400	14800	15200	15600	16000	16400	16800	17200	17600	18000	18400	18500		
DISTRICT J	12800	13200	13600	14000	14400	14800	15200	15600	16000	16400	16800	17200	17600	18000	18100			
DISTRICT K	10400	10800	11200	11600	12000	12400	12800	13200	13600	14000	14400	14800	15200	15600				
DISTRICT L	10100	10500	10900	11300	11700	12100	12500	12900	13300	13700	14100	14500	14900	15300	15600			
DISTRICT M	11300	11700	12100	12500	12900	13300	13700	14100	14500	14900	15300	15600						
DISTRICT N	10000	10400	10800	11200	11600	12000	12400	12800	13200	13600	14000	14400	14800	15200	15600			
DISTRICT O	11700	12100	12500	12900	13300	13700	14100	14500	14900	15300	15700							
DISTRICT P	11100	11500	11900	12300	12700	13100	13500	13900	14300	14700	15100	15500	15600					

INSTRUCTIONS FOR USE OF EXHIBIT B.

THIS EXHIBIT WILL BE USED TO DETERMINE THE MINIMUM INTEREST RATE FOR A MODERATE INCOME BORROWER IN THE COMPLETION OF PART III, LINE 13 OF FORM 1944-8 (INTEREST CREDIT AGREEMENT). AMORTIZATION FACTORS FOR 33 YEARS ARE SHOWN BELOW THE INTEREST RATES. FACTORS OTHER THAN 33 YEARS MUST BE OBTAINED FROM AMORTIZATION TABLES.

DETERMINE THE APPROPRIATE INTEREST RATE BY: (1) SELECTING THE APPROPRIATE DISTRICT; (2) SELECT AN INCOME THAT IS THE SAME OR THE NEXT HIGHER THAN THE ADJUSTED ANNUAL HOUSEHOLD INCOME OF THE BORROWER. (LINE 4 OF PART III OF 1944-8); (3) SELECT THE APPROPRIATE INTEREST RATE SHOWN AT THE TOP OF THE SELECTED INCOME COLUMN.

* MODERATE-INCOME BORROWER'S WHOSE INCOME EXCEEDS THE LIMITS SET FORTH IN THIS EXHIBIT WILL NOT RECEIVE INTEREST CREDIT.

MINIMUM INTEREST RATES FOR THE CALCULATION OF INTEREST CREDITS FOR MODERATE INCOME BORROWER IN NORTH CAROLINA

INTEREST RATE	3.5%	4%	4.5%	5%	5.5%	6%	6.5%	7%	7.5%	8%	8.5%	9%	9.5%	10%	10.5%	11%	11.5%	12%
AMORT RATE ANNUAL	51.58	55.11	58.75	62.50	66.34	70.28	74.30	78.41	82.60	86.86	91.18	95.57	100.01	104.50	109.05	113.63	118.26	122.93
AMORT RATE MONTH	4.27	4.56	4.86	5.17	5.48	5.81	6.14	6.49	6.83	7.19	7.55	7.92	8.29	8.66	9.04	9.43	9.81	10.20
DISTRICT 0	10000	10400	10800	11200	11600	12000	12400	12800	13200	13600	14000	14400	14800	15200	15600			
DISTRICT R	10800	11200	11600	12000	12400	12800	13200	13600	14000	14400	14800	15200	15600					

INSTRUCTIONS FOR USE OF EXHIBIT D.

THIS EXHIBIT WILL BE USED TO DETERMINE THE MINIMUM INTEREST RATE FOR A MODERATE INCOME BORROWER IN THE COMPLETION OF PART III, LINE 13 OF FORM 1944-6 (INTEREST CREDIT AGREEMENT). AMORTIZATION FACTORS FOR 33 YEARS ARE SHOWN BELOW THE INTEREST RATES. FACTORS OTHER THAN 33 YEARS MUST BE OBTAINED FROM AMORTIZATION TABLES.

DETERMINE THE APPROPRIATE INTEREST RATE BY: (1) SELECTING THE APPROPRIATE DISTRICT; (2) SELECT AN INCOME THAT IS THE SAME OR THE NEXT HIGHER THAN THE ADJUSTED ANNUAL HOUSEHOLD INCOME OF THE BORROWER. (LINE 4 OF PART III OF 1944-6); (3) SELECT THE APPROPRIATE INTEREST RATE SHOWN AT THE TOP OF THE SELECTED INCOME COLUMN.

* MODERATE-INCOME BORROWER'S WHOSE INCOME EXCEEDS THE LIMITS SET FORTH IN THIS EXHIBIT WILL NOT RECEIVE INTEREST CREDIT.

MINIMUM INTEREST RATES FOR THE CALCULATION OF INTEREST CREDITS FOR MODERATE INCOME BORROWER IN NORTH DAKOTA

INTEREST RATE	3.5%	4%	4.5%	5%	5.5%	6%	6.5%	7%	7.5%	8%	8.5%	9%	9.5%	10%	10.5%	11%	11.5%	12%
AMORT RATE ANNUAL	51.58	55.11	58.75	62.50	66.34	70.28	74.30	78.41	82.60	86.86	91.18	95.57	100.01	104.50	109.05	113.63	118.26	122.93
AMORT RATE MONTH	4.27	4.56	4.86	5.17	5.48	5.81	6.14	6.49	6.83	7.19	7.55	7.92	8.29	8.66	9.04	9.43	9.81	10.20

* MODERATE-INCOME BORROWER'S WHOSE INCOME EXCEEDS THE LIMITS SET FORTH IN THIS EXHIBIT WILL NOT RECEIVE INTEREST CREDIT.

* MINIMUM INTEREST RATES FOR THE CALCULATION OF INTEREST CREDITS FOR MODERATE INCOME BORROWER IN NORTH DAKOTA

INTEREST RATE	3.5%	4%	4.5%	5%	5.5%	6%	6.5%	7%	7.5%	8%	8.5%	9%	9.5%	10%	10.5%	11%	11.5%	12%
AMORT RATE ANNUAL	51.58	55.11	58.75	62.50	66.34	70.28	74.30	78.41	82.60	86.86	91.18	95.57	100.01	104.50	109.05	113.63	118.26	122.93
AMORT RATE MONTH	4.27	4.56	4.86	5.17	5.48	5.81	6.14	6.49	6.83	7.19	7.55	7.92	8.29	8.66	9.04	9.43	9.81	10.20
DISTRICT 1	13000	13400	13800	14200	14600	15000	15400	15800	16200	16600	17000	17300						
DISTRICT 2	12200	12600	13000	13400	13800	14200	14600	15000	15400	15800	16200							
DISTRICT 3	11600	12000	12400	12800	13200	13600	14000	14400	14800	15200	15600							
DISTRICT 4	12600	13000	13400	13800	14200	14600	15000	15400	15800	16200	16600	16800						
DISTRICT 5	12600	13000	13400	13800	14200	14600	15000	15400	15800	16200	16600	16900						
DISTRICT 6	12100	12500	12900	13300	13700	14100	14500	14900	15300	15700	16100							
DISTRICT 7	11700	12100	12500	12900	13300	13700	14100	14500	14900	15300	15700							
DISTRICT 8	11600	12000	12400	12800	13200	13600	14000	14400	14800	15200	15600							

INSTRUCTIONS FOR USE OF EXHIBIT D.

THIS EXHIBIT WILL BE USED TO DETERMINE THE MINIMUM INTEREST RATE FOR A MODERATE INCOME BORROWER IN THE COMPLETION OF PART III, LINE 13 OF FORM 1944-8 (INTEREST CREDIT AGREEMENT). AMORTIZATION FACTORS FOR 33 YEARS ARE SHOWN BELOW THE INTEREST RATES. FACTORS OTHER THAN 33 YEARS MUST BE OBTAINED FROM AMORTIZATION TABLES.

DETERMINE THE APPROPRIATE INTEREST RATE BY: (1) SELECTING THE APPROPRIATE DISTRICT; (2) SELECT AN INCOME THAT IS THE SAME OR THE NEXT HIGHER THAN THE ADJUSTED ANNUAL HOUSEHOLD INCOME OF THE BORROWER. (LINE 4 OF PART III OF 1944-8); (3) SELECT THE APPROPRIATE INTEREST RATE SHOWN AT THE TOP OF THE SELECTED INCOME COLUMN.

* MODERATE-INCOME BORROWER'S WHOSE INCOME EXCEEDS THE LIMITS SET FORTH IN THIS EXHIBIT WILL NOT RECEIVE INTEREST CREDIT.

MINIMUM INTEREST RATES FOR THE CALCULATION OF INTEREST CREDITS FOR MODERATE INCOME BORROWER IN OHIO

INTEREST RATE	3.5%	4%	4.5%	5%	5.5%	6%	6.5%	7%	7.5%	8%	8.5%	9%	9.5%	10%	10.5%	11%	11.5%	12%
AMORT RATE ANNUAL	51.58	55.11	58.75	62.50	66.34	70.28	74.30	78.41	82.60	86.86	91.18	95.57	100.01	104.50	109.05	113.63	118.26	122.93
AMORT RATE MONTH	4.27	4.56	4.86	5.17	5.48	5.81	6.14	6.49	6.83	7.19	7.55	7.92	8.29	8.66	9.04	9.43	9.81	10.20
DISTRICT I	13200	13600	14000	14400	14800	15200	15600	16000	16400	16800	17200	17600	18000	18400	18800	19200	19600	20000	20400	
DISTRICT II	15100	15500	15900	16300	16700	17100	17500	17900	18300	18700	19100	19500	19900	20300				
DISTRICT III	15300	15700	16100	16500	16900	17300	17700	18100	18500	18900	19300	19700	20100	20500	20900	21300		
DISTRICT 4	12400	12800	13200	13600	14000	14400	14800	15200	15600	16000	16400	16500						
DISTRICT 5	14100	14500	14900	15300	15700	16100	16500	16900	17300	17700	18100	18500	18900					

INSTRUCTIONS FOR USE OF EXHIBIT D.

THIS EXHIBIT WILL BE USED TO DETERMINE THE MINIMUM INTEREST RATE FOR A MODERATE INCOME BORROWER IN THE COMPLETION OF PART III, LINE 13 OF FORM 1944-6 (INTEREST CREDIT AGREEMENT). AMORTIZATION FACTORS FOR 33 YEARS ARE SHOWN BELOW THE INTEREST RATES. FACTORS OTHER THAN 33 YEARS MUST BE OBTAINED FROM AMORTIZATION TABLES.

DETERMINE THE APPROPRIATE INTEREST RATE BY: (1) SELECTING THE APPROPRIATE DISTRICT; (2) SELECT AN INCOME THAT IS THE SAME OR THE NEXT HIGHER THAN THE ADJUSTED ANNUAL HOUSEHOLD INCOME OF THE BORROWER. (LINE 4 OF PART III OF 1944-6); (3) SELECT THE APPROPRIATE INTEREST RATE SHOWN AT THE TOP OF THE SELECTED INCOME COLUMN.

* MODERATE-INCOME BORROWER'S WHOSE INCOME EXCEEDS THE LIMITS SET FORTH IN THIS EXHIBIT WILL NOT RECEIVE INTEREST CREDIT.

MINIMUM INTEREST RATES FOR THE CALCULATION OF INTEREST CREDITS FOR MODERATE INCOME BORROWER IN OKLAHOMA

INTEREST RATE	3.5%	4%	4.5%	5%	5.5%	6%	6.5%	7%	7.5%	8%	8.5%	9%	9.5%	10%	10.5%	11%	11.5%	12%
AMORT RATE ANNUAL	51.58	55.11	58.75	62.50	66.34	70.28	74.30	78.41	82.60	86.86	91.18	95.57	100.01	104.50	109.05	113.63	118.26	122.93
AMORT RATE MONTH	4.27	4.56	4.86	5.17	5.48	5.81	6.14	6.49	6.83	7.19	7.55	7.92	8.29	8.66	9.04	9.43	9.81	10.20

MINIMUM INTEREST RATES FOR THE CALCULATION OF INTEREST CREDITS FOR MODERATE INCOME BORROWER IN OKLAHOMA

INTEREST RATE	3.5%	4%	4.5%	5%	5.5%	6%	6.5%	7%	7.5%	8%	8.5%	9%	9.5%	10%	10.5%	11%	11.5%	12%
AMORT RATE ANNUAL	51.58	55.11	58.75	62.50	66.34	70.28	74.30	78.41	82.60	86.86	91.18	95.57	100.01	104.50	109.05	113.63	118.26	122.93
AMORT RATE MONTH	4.27	4.56	4.86	5.17	5.48	5.81	6.14	6.49	6.83	7.19	7.55	7.92	8.29	8.66	9.04	9.43	9.81	10.20
KEDDO	09700	10100	10500	10900	11300	11700	12100	12500	12900	13300	13700	14100	14500	14900	15300	15600		
SODA	09900	10300	10700	11100	11500	11900	12300	12700	13100	13500	13900	14300	14700	15100	15500	15600		
OEDA	12200	12600	13000	13400	13800	14200	14600	15000	15400	15800	16200							
NODA	12400	12800	13200	13600	14000	14400	14800	15200	15600	16000	16400							
AGOC	12800	13200	13600	14000	14400	14800	15200	15600	16000	16400	16800	17200	17600	18000	18400	18800	19200	19600*
ASCOG	10500	10900	11300	11700	12100	12500	12900	13300	13700	14100	14500	14900	15300	15600				
EODD	09700	10100	10500	10900	11300	11700	12100	12500	12900	13300	13700	14100	14500	14900	15300	15600		
COEDD	10900	11300	11700	12100	12500	12900	13300	13700	14100	14500	14900	15300	15600					
SWODA	10600	11000	11400	11800	12200	12600	13000	13400	13800	14200	14600	15000	15400	15600				
INCOG	12800	13200	13600	14000	14400	14800	15200	15600	16000	16400	16800	17200	17600	18000	18400	18800	19200	19600*
NECO	09700	10100	10500	10900	11300	11700	12100	12500	12900	13300	13700	14100	14500	14900	15300	15600		

INSTRUCTIONS FOR USE OF EXHIBIT D.

THIS EXHIBIT WILL BE USED TO DETERMINE THE MINIMUM INTEREST RATE FOR A MODERATE INCOME BORROWER IN THE COMPLETION OF PART III, LINE 13 OF FORM 1944-6 (INTEREST CREDIT AGREEMENT). AMORTIZATION FACTORS FOR 33 YEARS ARE SHOWN BELOW THE INTEREST RATES. FACTORS OTHER THAN 33 YEARS MUST BE OBTAINED FROM AMORTIZATION TABLES.

DETERMINE THE APPROPRIATE INTEREST RATE BY: (1) SELECTING THE APPROPRIATE DISTRICT; (2) SELECT AN INCOME THAT IS THE SAME OR THE NEXT HIGHER THAN THE ADJUSTED ANNUAL HOUSEHOLD INCOME OF THE BORROWER. (LINE 4 OF PART III OF 1944-6); (3) SELECT THE APPROPRIATE INTEREST RATE SHOWN AT THE TOP OF THE SELECTED INCOME COLUMN.

* MODERATE-INCOME BORROWER'S WHOSE INCOME EXCEEDS THE LIMITS SET FORTH IN THIS EXHIBIT WILL NOT RECEIVE INTEREST CREDIT.

MINIMUM INTEREST RATES FOR THE CALCULATION OF INTEREST CREDITS FOR MODERATE INCOME BORROWER IN OREGON

INTEREST RATE	3.5%	4%	4.5%	5%	5.5%	6%	6.5%	7%	7.5%	8%	8.5%	9%	9.5%	10%	10.5%	11%	11.5%	12%
AMORT RATE ANNUAL	51.58	55.11	58.75	62.50	66.34	70.28	74.30	78.41	82.60	86.86	91.18	95.57	100.01	104.50	109.05	113.63	118.26	122.93
AMORT RATE MONTH	4.27	4.56	4.86	5.17	5.48	5.81	6.14	6.49	6.83	7.19	7.55	7.92	8.29	8.66	9.04	9.43	9.81	10.20
DISTRICT 1	13500	13900	14300	14700	15100	15500	15900	16300	16700	17100	17500	17900	18100					
DISTRICT 2	15300	15700	16100	16500	16900	17300	17700	18100	18500	18900	19300	19700	20100	20500	20900	21100		
DISTRICT 3	13500	13900	14300	14700	15100	15500	15900	16300	16700	17100	17500	17900	18100					
DISTRICT 4	13400	13800	14200	14600	15000	15400	15800	16200	16600	17000	17400	17800	18000					
DISTRICT 5	14100	14500	14900	15300	15700	16100	16500	16900	17300	17700	18100	18500	18900					
DISTRICT 6	12900	13300	13700	14100	14500	14900	15300	15700	16100	16500	16900	17200						
DISTRICT 7	13200	13600	14000	14400	14800	15200	15600	16000	16400	16800	17200	17600						
DISTRICT 8	12100	12500	12900	13300	13700	14100	14500	14900	15300	15700	16100							
DISTRICT 9	13200	13600	14000	14400	14800	15200	15600	16000	16400	16800	17200	17600						
DISTRICT 10	13300	13700	14100	14500	14900	15300	15700	16100	16500	16900	17300	17700	17900					
DISTRICT 11	12900	13300	13700	14100	14500	14900	15300	15700	16100	16500	16900	17200						
DISTRICT 12	12700	13100	13500	13900	14300	14700	15100	15500	15900	16300	16700	17000						
DISTRICT 13	12500	12900	13300	13700	14100	14500	14900	15300	15700	16100	16500	16800						
DISTRICT 14	12900	13300	13700	14100	14500	14900	15300	15700	16100	16500	16900	17200						

INSTRUCTIONS FOR USE OF EXHIBIT D.

THIS EXHIBIT WILL BE USED TO DETERMINE THE MINIMUM INTEREST RATE FOR A MODERATE INCOME BORROWER IN THE COMPLETION OF PART III, LINE 13 OF FORM 1944-6 (INTEREST CREDIT AGREEMENT). AMORTIZATION FACTORS FOR 33 YEARS ARE SHOWN BELOW THE INTEREST RATES. FACTORS OTHER THAN 33 YEARS MUST BE OBTAINED FROM AMORTIZATION TABLES.

DETERMINE THE APPROPRIATE INTEREST RATE BY: (1) SELECTING THE APPROPRIATE DISTRICT; (2) SELECT AN INCOME THAT IS THE SAME OR THE NEXT HIGHER THAN THE ADJUSTED ANNUAL HOUSEHOLD INCOME OF THE BORROWER. (LINE 4 OF PART III OF 1944-6); (3) SELECT THE APPROPRIATE INTEREST RATE SHOWN AT THE TOP OF THE SELECTED INCOME COLUMN.

* MODERATE-INCOME BORROWER'S WHOSE INCOME EXCEEDS THE LIMITS SET FORTH IN THIS EXHIBIT WILL NOT RECEIVE INTEREST CREDIT.

MINIMUM INTEREST RATES FOR THE CALCULATION OF INTEREST CREDITS FOR MODERATE INCOME BORROWER IN PENNSYLVANIA

INTEREST RATE	3.5%	4%	4.5%	5%	5.5%	6%	6.5%	7%	7.5%	8%	8.5%	9%	9.5%	10%	10.5%	11%	11.5%	12%
AMORT RATE ANNUAL	51.58	55.11	58.75	62.50	66.34	70.28	74.30	78.41	82.60	86.86	91.18	95.57	100.01	104.50	109.05	113.63	118.26	122.93
AMORT RATE MONTH	4.27	4.56	4.86	5.17	5.48	5.81	6.14	6.49	6.83	7.19	7.55	7.92	8.29	8.66	9.04	9.43	9.81	10.20

MINIMUM INTEREST RATES FOR THE CALCULATION OF INTEREST CREDITS FOR MODERATE INCOME BORROWER IN PENNSYLVANIA

INTEREST RATE	3.5%	4%	4.5%	5%	5.5%	6%	6.5%	7%	7.5%	8%	8.5%	9%	9.5%	10%	10.5%	11%	11.5%	12%
AMORT RATE ANNUAL	51.58	55.11	58.75	62.50	66.34	70.28	74.30	78.41	82.60	86.86	91.18	95.57	100.01	104.50	109.05	113.63	118.26	122.93
AMORT RATE MONTH	4.27	4.56	4.86	5.17	5.48	5.81	6.14	6.49	6.83	7.19	7.55	7.92	8.29	8.66	9.04	9.43	9.81	10.20
NORTHWESTERN	13200	13600	14000	14400	14800	15200	15600	16000	16400	16800	17200	17600						
SOUTHWESTERN	14000	14400	14800	15200	15600	16000	16400	16800	17200	17600	18000	18400	18700					
NORTH CENTRAL	11900	12300	12700	13100	13500	13900	14300	14700	15100	15500	15900							
SO. ALLEGHENIES	13100	13500	13900	14300	14700	15100	15500	15900	16300	16700	17100	17400						
SED-COG	12500	12900	13300	13700	14100	14500	14900	15300	15700	16100	16500	16800						
NORTHERN TIER	12500	12900	13300	13700	14100	14500	14900	15300	15700	16100	16500	16800						
NORTHEASTERN	12500	12900	13300	13700	14100	14500	14900	15300	15700	16100	16500	16800						
DEL VALLEY	15300	15700	16100	16500	16900	17300	17700	18100	18500	18900	19300	19700	20100	20500	20900	21300	21700	22100*
CAPITAL REG	15300	15700	16100	16500	16900	17300	17700	18100	18500	18900	19300	19700	20100	20500	20800			

INSTRUCTIONS FOR USE OF EXHIBIT D.

THIS EXHIBIT WILL BE USED TO DETERMINE THE MINIMUM INTEREST RATE FOR A MODERATE INCOME BORROWER IN THE COMPLETION OF PART III, LINE 13 OF FORM 1944-6 (INTEREST CREDIT AGREEMENT). AMORTIZATION FACTORS FOR 33 YEARS ARE SHOWN BELOW THE INTEREST RATES. FACTORS OTHER THAN 33 YEARS MUST BE OBTAINED FROM AMORTIZATION TABLES.

DETERMINE THE APPROPRIATE INTEREST RATE BY: (1) SELECTING THE APPROPRIATE DISTRICT; (2) SELECT AN INCOME THAT IS THE SAME OR THE NEXT HIGHER THAN THE ADJUSTED ANNUAL HOUSEHOLD INCOME OF THE BORROWER. (LINE 4 OF PART III OF 1944-6); (3) SELECT THE APPROPRIATE INTEREST RATE SHOWN AT THE TOP OF THE SELECTED INCOME COLUMN.

* MODERATE-INCOME BORROWER'S WHOSE INCOME EXCEEDS THE LIMITS SET FORTH IN THIS EXHIBIT WILL NOT RECEIVE INTEREST CREDIT.

MINIMUM INTEREST RATES FOR THE CALCULATION OF INTEREST CREDITS FOR MODERATE INCOME BORROWER IN RHODE ISLAND

INTEREST RATE	3.5%	4%	4.5%	5%	5.5%	6%	6.5%	7%	7.5%	8%	8.5%	9%	9.5%	10%	10.5%	11%	11.5%	12%
AMORT RATE ANNUAL	51.58	55.11	58.75	62.50	66.34	70.28	74.30	78.41	82.60	86.86	91.18	95.57	100.01	104.50	109.05	113.63	118.26	122.93
AMORT RATE MONTH	4.27	4.56	4.86	5.17	5.48	5.81	6.14	6.49	6.83	7.19	7.55	7.92	8.29	8.66	9.04	9.43	9.81	10.20
ENTIRE STATE	14000	15000	15400	15000	16200	16600	17000	17400	17800	18200	18600	19000	19400	19800				

INSTRUCTIONS FOR USE OF EXHIBIT D.

THIS EXHIBIT WILL BE USED TO DETERMINE THE MINIMUM INTEREST RATE FOR A MODERATE INCOME BORROWER IN THE COMPLETION OF PART III, LINE 13 OF FORM 1944-6 (INTEREST CREDIT AGREEMENT). AMORTIZATION FACTORS FOR 33 YEARS ARE SHOWN BELOW THE INTEREST RATES. FACTORS OTHER THAN 33 YEARS MUST BE OBTAINED FROM AMORTIZATION TABLES.

DETERMINE THE APPROPRIATE INTEREST RATE BY: (1) SELECTING THE APPROPRIATE DISTRICT; (2) SELECT AN INCOME THAT IS THE SAME OR THE NEXT HIGHER THAN THE ADJUSTED ANNUAL HOUSEHOLD INCOME OF THE BORROWER. (LINE 4 OF PART III OF 1944-6); (3) SELECT THE APPROPRIATE INTEREST RATE SHOWN AT THE TOP OF THE SELECTED INCOME COLUMN.

* MODERATE-INCOME BORROWER'S WHOSE INCOME EXCEEDS THE LIMITS SET FORTH IN THIS EXHIBIT WILL NOT RECEIVE INTEREST CREDIT.

MINIMUM INTEREST RATES FOR THE CALCULATION OF INTEREST CREDITS FOR MODERATE INCOME BORROWER IN SOUTH CAROLINA

INTEREST RATE	3.5%	4%	4.5%	5%	5.5%	6%	6.5%	7%	7.5%	8%	8.5%	9%	9.5%	10%	10.5%	11%	11.5%	12%
AMORT RATE ANNUAL	51.58	55.11	58.75	62.50	66.34	70.28	74.30	78.41	82.60	86.86	91.18	95.57	100.01	104.50	109.05	113.63	118.26	122.93
AMORT RATE MONTH	4.27	4.56	4.86	5.17	5.48	5.81	6.14	6.49	6.83	7.19	7.55	7.92	8.29	8.66	9.04	9.43	9.81	10.20

MINIMUM INTEREST RATES FOR THE CALCULATION OF INTEREST CREDITS FOR MODERATE INCOME BORROWER IN SOUTH CAROLINA

INTEREST RATE	3.5%	4%	4.5%	5%	5.5%	6%	6.5%	7%	7.5%	8%	8.5%	9%	9.5%	10%	10.5%	11%	11.5%	12%
AMORT RATE ANNUAL	51.58	55.11	58.75	62.50	66.34	70.28	74.30	78.41	82.60	86.86	91.18	95.57	100.01	104.50	109.05	113.63	118.26	122.93
AMORT RATE MONTH	4.27	4.56	4.86	5.17	5.48	5.81	6.14	6.49	6.83	7.19	7.55	7.92	8.29	8.66	9.04	9.43	9.81	10.20
APPALACHIAN	12800	13200	13600	14000	14400	14800	15200	15600	16000	16400	16800	17200	17600	18000	18400	18600		
BER-CHA-DOR	12600	13000	13400	13800	14200	14600	15000	15400	15800	16200	16600	16900						
LOW COUNTRY	10200	10600	11000	11400	11800	12200	12600	13000	13400	13800	14200	14600	15000	15400	15600			
LOWER SAVANNAH	10900	11300	11700	12100	12500	12900	13300	13700	14100	14500	14900	15300	15600					
WACCAMAW	10400	10800	11200	11600	12000	12400	12800	13200	13600	14000	14400	14800	15200	15600				
PEE DEE	10800	11200	11600	12000	12400	12800	13200	13600	14000	14400	14800	15200	15600					
SANTEE WATEREE	10000	10400	10800	11200	11600	12000	12400	12800	13200	13600	14000	14400	14800	15200	15600			
CENTRAL MIDLAND	12400	12800	13200	13600	14000	14400	14800	15200	15600	16000	16400	16500						
CATAWBA	12600	13000	13400	13800	14200	14600	15000	15400	15800	16200	16600	16800						
UPPER SAVANNAH	09700	10100	10500	10900	11300	11700	12100	12500	12900	13300	13700	14100	14500	14900	15300	15600		

INSTRUCTIONS FOR USE OF EXHIBIT D.

THIS EXHIBIT WILL BE USED TO DETERMINE THE MINIMUM INTEREST RATE FOR A MODERATE INCOME BORROWER IN THE COMPLETION OF PART III, LINE 13 OF FORM 1944-8 (INTEREST CREDIT AGREEMENT). AMORTIZATION FACTORS FOR 33 YEARS ARE SHOWN BELOW THE INTEREST RATES. FACTORS OTHER THAN 33 YEARS MUST BE OBTAINED FROM AMORTIZATION TABLES.

DETERMINE THE APPROPRIATE INTEREST RATE BY: (1) SELECTING THE APPROPRIATE DISTRICT; (2) SELECT AN INCOME THAT IS THE SAME OR THE NEXT HIGHER THAN THE ADJUSTED ANNUAL HOUSEHOLD INCOME OF THE BORROWER. (LINE 4 OF PART III OF 1944-8); (3) SELECT THE APPROPRIATE INTEREST RATE SHOWN AT THE TOP OF THE SELECTED INCOME COLUMN.

* MODERATE-INCOME BORROWER'S WHOSE INCOME EXCEEDS THE LIMITS SET FORTH IN THIS EXHIBIT WILL NOT RECEIVE INTEREST CREDIT.

MINIMUM INTEREST RATES FOR THE CALCULATION OF INTEREST CREDITS FOR MODERATE INCOME BORROWER IN SOUTH DAKOTA

INTEREST RATE	3.5%	4%	4.5%	5%	5.5%	6%	6.5%	7%	7.5%	8%	8.5%	9%	9.5%	10%	10.5%	11%	11.5%	12%
AMORT RATE ANNUAL	51.58	55.11	58.75	62.50	66.34	70.28	74.30	78.41	82.60	86.86	91.18	95.57	100.01	104.50	109.05	113.63	118.26	122.93
AMORT RATE MONTH	4.27	4.56	4.86	5.17	5.48	5.81	6.14	6.49	6.83	7.19	7.55	7.92	8.29	8.66	9.04	9.43	9.81	10.20
DISTRICT 1	11600	12000	12400	12800	13200	13600	14000	14400	14800	15200	15600							
DISTRICT 2	12200	12600	13000	13400	13800	14200	14600	15000	15400	15800	16200	16300						
DISTRICT 3	11600	12000	12400	12800	13200	13600	14000	14400	14800	15200	15600							
DISTRICT 4	11600	12000	12400	12800	13200	13600	14000	14400	14800	15200	15600							
DISTRICT 5	11600	12000	12400	12800	13200	13600	14000	14400	14800	15200	15600							
DISTRICT 6	12200	12600	13000	13400	13800	14200	14600	15000	15400	15800	16200							

INSTRUCTIONS FOR USE OF EXHIBIT D.

THIS EXHIBIT WILL BE USED TO DETERMINE THE MINIMUM INTEREST RATE FOR A MODERATE INCOME BORROWER IN THE COMPLETION OF PART III. LINE 13 OF FORM 1944-6 (INTEREST CREDIT AGREEMENT). AMORTIZATION FACTORS FOR 33 YEARS ARE SHOWN BELOW THE INTEREST RATES. FACTORS OTHER THAN 33 YEARS MUST BE OBTAINED FROM AMORTIZATION TABLES.

DETERMINE THE APPROPRIATE INTEREST RATE BY: (1) SELECTING THE APPROPRIATE DISTRICT; (2) SELECT AN INCOME THAT IS THE SAME OR THE NEXT HIGHER THAN THE ADJUSTED ANNUAL HOUSEHOLD INCOME OF THE BORROWER. (LINE 4 OF PART III OF 1944-6); (3) SELECT THE APPROPRIATE INTEREST RATE SHOWN AT THE TOP OF THE SELECTED INCOME COLUMN.

* MODERATE-INCOME BORROWER'S WHOSE INCOME EXCEEDS THE LIMITS SET FORTH IN THIS EXHIBIT WILL NOT RECEIVE INTEREST CREDIT.

MINIMUM INTEREST RATES FOR THE CALCULATION OF INTEREST CREDITS FOR MODERATE INCOME BORROWER IN TENNESSEE

INTEREST RATE	3.5%	4%	4.5%	5%	5.5%	6%	6.5%	7%	7.5%	8%	8.5%	9%	9.5%	10%	10.5%	11%	11.5%	12%
AMORT RATE ANNUAL	51.58	55.11	58.75	62.50	66.34	70.28	74.30	78.41	82.60	86.86	91.18	95.57	100.01	104.50	109.05	113.63	118.26	122.93
AMORT RATE MONTH	4.27	4.56	4.86	5.17	5.48	5.81	6.14	6.49	6.83	7.19	7.55	7.92	8.29	8.66	9.04	9.43	9.81	10.20

MINIMUM INTEREST RATES FOR THE CALCULATION OF INTEREST CREDITS FOR MODERATE INCOME BORROWER IN TENNESSEE

INTEREST RATE	3.5%	4%	4.5%	5%	5.5%	6%	6.5%	7%	7.5%	8%	8.5%	9%	9.5%	10%	10.5%	11%	11.5%	12%
AMORT RATE ANNUAL	51.58	55.11	58.75	62.50	66.34	70.28	74.30	78.41	82.60	86.86	91.18	95.57	100.01	104.50	109.05	113.63	118.26	122.93
AMORT RATE MONTH	4.27	4.56	4.86	5.17	5.48	5.81	6.14	6.49	6.83	7.19	7.55	7.92	8.29	8.66	9.04	9.43	9.81	10.20
FIRST TENNESSEE	11000	11400	11800	12200	12600	13000	13400	13800	14200	14600	15000	15400	15600					
EAST	11400	11800	12200	12600	13000	13400	13800	14200	14600	15000	15400	15600						
SOUTHEAST	11100	11500	11900	12300	12700	13100	13500	13900	14300	14700	15100	15500	15600					
UPPER CUMBERLAN	09700	10100	10500	10900	11300	11700	12100	12500	12900	13300	13700	14100	14500	14900	15300	15600		
MID-CUMBERLAND	12800	13200	13600	14000	14400	14800	15200	15600	16000	16400	16800	17200	17600	18000	18400	18800	18900	
SOUTH CENTRAL	10200	10600	11000	11400	11800	12200	12600	13000	13400	13800	14200	14600	15000	15400	15600			
NORTHWEST	10600	11000	11400	11800	12200	12600	13000	13400	13800	14200	14600	15000	15400	15600				
SOUTHWEST	09700	10100	10500	10900	11300	11700	12100	12500	12900	13300	13700	14100	14500	14900	15300	15600		
MEMPHIS-DELTA	11700	12100	12500	12900	13300	13700	14100	14500	14900	15300	15700							

INSTRUCTIONS FOR USE OF EXHIBIT D.

THIS EXHIBIT WILL BE USED TO DETERMINE THE MINIMUM INTEREST RATE FOR A MODERATE INCOME BORROWER IN THE COMPLETION OF PART III, LINE 13 OF FORM 1944-6 (INTEREST CREDIT AGREEMENT). AMORTIZATION FACTORS FOR 33 YEARS ARE SHOWN BELOW THE INTEREST RATES. FACTORS OTHER THAN 33 YEARS MUST BE OBTAINED FROM AMORTIZATION TABLES.

DETERMINE THE APPROPRIATE INTEREST RATE BY: (1) SELECTING THE APPROPRIATE DISTRICT; (2) SELECT AN INCOME THAT IS THE SAME OR THE NEXT HIGHER THAN THE ADJUSTED ANNUAL HOUSEHOLD INCOME OF THE BORROWER. (LINE 4 OF PART III OF 1944-6); (3) SELECT THE APPROPRIATE INTEREST RATE SHOWN AT THE TOP OF THE SELECTED INCOME COLUMN.

* MODERATE-INCOME BORROWER'S WHOSE INCOME EXCEEDS THE LIMITS SET FORTH IN THIS EXHIBIT WILL NOT RECEIVE INTEREST CREDIT.

MINIMUM INTEREST RATES FOR THE CALCULATION OF INTEREST CREDITS FOR MODERATE INCOME BORROWER IN TEXAS

INTEREST RATE	3.5%	4%	4.5%	5%	5.5%	6%	6.5%	7%	7.5%	8%	8.5%	9%	9.5%	10%	10.5%	11%	11.5%	12%
AMORT RATE ANNUAL	51.58	55.11	58.75	62.50	66.34	70.28	74.30	78.41	82.60	86.86	91.18	95.57	100.01	104.50	109.05	113.63	118.26	122.93
AMORT RATE MONTH	4.27	4.56	4.86	5.17	5.48	5.81	6.14	6.49	6.83	7.19	7.55	7.92	8.29	8.66	9.04	9.43	9.81	10.20
PANHANDLE	12800	13200	13600	14000	14400	14800	15200	15600	16000	16400	16800	17200	17500					
SOUTH PLAINS	11500	11900	12300	12700	13100	13500	13900	14300	14700	15100	15500	15600						
NORTEX	11400	11800	12200	12600	13000	13400	13800	14200	14600	15000	15400	15600						
NORTH CENTRAL	12800	13200	13600	14000	14400	14800	15200	15600	16000	16400	16800	17200	17600	18000	18400	18800	19200	19500
TEXOMA	12000	12400	12800	13200	13600	14000	14400	14800	15200	15600	16000							
ARK-TEX	10800	11200	11600	12000	12400	12800	13200	13600	14000	14400	14800	15200	15600					
WEST TEXAS	11300	11700	12100	12500	12900	13300	13700	14100	14500	14900	15300	15600						
PERMIAN	12800	13200	13600	14000	14400	14800	15200	15600	16000	16400	16800	17200	17600	18000	18400			
WEST CENTRAL	10700	11100	11500	11900	12300	12700	13100	13500	13900	14300	14700	15100	15500	15600				
CONCHO VALLEY	09800	10200	10600	11000	11400	11800	12200	12600	13000	13400	13800	14200	14600	15000	15400	15600		
MID RIO GRANDE	09700	10100	10500	10900	11300	11700	12100	12500	12900	13300	13700	14100	14500	14900	15300	15600		
CENTRAL TEXAS	10200	10600	11000	11400	11800	12200	12600	13000	13400	13800	14200	14600	15000	15400	15600			
HEART OF TEXAS	10200	10600	11000	11400	11800	12200	12600	13000	13400	13800	14200	14600	15000	15400	15600			
EAST TEXAS	10900	11300	11700	12100	12500	12900	13300	13700	14100	14500	14900	15300	15600					
ALAMO	11800	12200	12600	13000	13400	13800	14200	14600	15000	15400	15800							
CAPITAL AREA	11100	11500	11900	12300	12700	13100	13500	13900	14300	14700	15100	15500	15600					

INSTRUCTIONS FOR USE OF EXHIBIT D.

THIS EXHIBIT WILL BE USED TO DETERMINE THE MINIMUM INTEREST RATE FOR A MODERATE INCOME BORROWER IN THE COMPLETION OF PART III, LINE 13 OF FORM 1944-6 (INTEREST CREDIT AGREEMENT). AMORTIZATION FACTORS FOR 33 YEARS ARE SHOWN BELOW THE INTEREST RATES. FACTORS OTHER THAN 33 YEARS MUST BE OBTAINED FROM AMORTIZATION TABLES.

DETERMINE THE APPROPRIATE INTEREST RATE BY: (1) SELECTING THE APPROPRIATE DISTRICT; (2) SELECT AN INCOME THAT IS THE SAME OR THE NEXT HIGHER THAN THE ADJUSTED ANNUAL HOUSEHOLD INCOME OF THE BORROWER. (LINE 4 OF PART III OF 1944-6); (3) SELECT THE APPROPRIATE INTEREST RATE SHOWN AT THE TOP OF THE SELECTED INCOME COLUMN.

* MODERATE-INCOME BORROWER'S WHOSE INCOME EXCEEDS THE LIMITS SET FORTH IN THIS EXHIBIT WILL NOT RECEIVE INTEREST CREDIT.

MINIMUM INTEREST RATES FOR THE CALCULATION OF INTEREST CREDITS FOR MODERATE INCOME BORROWER IN TEXAS

INTEREST RATE	3.5%	4%	4.5%	5%	5.5%	6%	6.5%	7%	7.5%	8%	8.5%	9%	9.5%	10%	10.5%	11%	11.5%	12%
AMORT RATE ANNUAL	51.58	55.11	58.75	62.50	66.34	70.28	74.30	78.41	82.60	86.86	91.18	95.57	100.01	104.50	109.05	113.63	118.26	122.93
AMORT RATE MONTH	4.27	4.56	4.86	5.17	5.48	5.81	6.14	6.49	6.83	7.19	7.55	7.92	8.29	8.66	9.04	9.43	9.81	10.20

MINIMUM INTEREST RATES FOR THE CALCULATION OF INTEREST CREDITS FOR MODERATE INCOME BORROWER IN TEXAS

INTEREST RATE	3.5%	4%	4.5%	5%	5.5%	6%	6.5%	7%	7.5%	8%	8.5%	9%	9.5%	10%	10.5%	11%	11.5%	12%
AMORT RATE ANNUAL	51.58	55.11	58.75	62.50	66.34	70.28	74.30	78.41	82.60	86.86	91.18	95.57	100.01	104.50	109.05	113.63	118.26	122.93
AMORT RATE MONTH	4.27	4.56	4.86	5.17	5.48	5.81	6.14	6.49	6.83	7.19	7.55	7.92	8.29	8.66	9.04	9.43	9.81	10.20
BRAZOS	09700	10100	10500	10900	11300	11700	12100	12500	12900	13300	13700	14100	14500	14900	15300	15600		
DEEP EAST TEXAS	09700	10100	10500	10900	11300	11700	12100	12500	12900	13300	13700	14100	14500	14900	15300	15600		
SOUTHEAST TEX	12800	13200	13600	14000	14400	14800	15200	15600	16000	16400	16800	17200	17600	18000	18400	18800	19200	19400
LOWER RIO GRAND	09700	10100	10500	10900	11300	11700	12100	12500	12900	13300	13700	14100	14500	14900	15300	15600		
SOUTH TEXAS	09700	10100	10500	10900	11300	11700	12100	12500	12900	13300	13700	14100	14500	14900	15300	15600		
COASTAL BEND	11400	11800	12200	12600	13000	13400	13800	14200	14600	15000	15400	15600						
GOLDEN CRESCENT	10600	11000	11400	11800	12200	12600	13000	13400	13800	14200	14600	15000	15400	15600				
HOUSTON GALVEST	12800	13200	13600	14000	14400	14800	15200	15600	16000	16400	16800	17200	17600	18000	18400	18800	19200	19600*

INSTRUCTIONS FOR USE OF EXHIBIT D.

THIS EXHIBIT WILL BE USED TO DETERMINE THE MINIMUM INTEREST RATE FOR A MODERATE INCOME BORROWER IN THE COMPLETION OF PART III, LINE 13 OF FORM 1944-6 (INTEREST CREDIT AGREEMENT). AMORTIZATION FACTORS FOR 33 YEARS ARE SHOWN BELOW THE INTEREST RATES. FACTORS OTHER THAN 33 YEARS MUST BE OBTAINED FROM AMORTIZATION TABLES.

DETERMINE THE APPROPRIATE INTEREST RATE BY: (1) SELECTING THE APPROPRIATE DISTRICT; (2) SELECT AN INCOME THAT IS THE SAME OR THE NEXT HIGHER THAN THE ADJUSTED ANNUAL HOUSEHOLD INCOME OF THE BORROWER. (LINE 4 OF PART III OF 1944-6); (3) SELECT THE APPROPRIATE INTEREST RATE SHOWN AT THE TOP OF THE SELECTED INCOME COLUMN.

* MODERATE-INCOME BORROWER'S WHOSE INCOME EXCEEDS THE LIMITS SET FORTH IN THIS EXHIBIT WILL NOT RECEIVE INTEREST CREDIT.

MINIMUM INTEREST RATES FOR THE CALCULATION OF INTEREST CREDITS FOR MODERATE INCOME BORROWER IN UTAH

INTEREST RATE	3.5%	4%	4.5%	5%	5.5%	6%	6.5%	7%	7.5%	8%	8.5%	9%	9.5%	10%	10.5%	11%	11.5%	12%
AMORT RATE ANNUAL	51.58	55.11	58.75	62.50	66.34	70.28	74.30	78.41	82.60	86.86	91.18	95.57	100.01	104.50	109.05	113.63	118.26	122.93
AMORT RATE MONTH	4.27	4.56	4.86	5.17	5.48	5.81	6.14	6.49	6.83	7.19	7.55	7.92	8.29	8.66	9.04	9.43	9.81	10.20
DISTRICT I	13500	13900	14300	14700	15100	15500	15900	16300	16700	17100	17500	17900	18100					
DISTRICT II	15100	15500	15900	16300	16700	17100	17500	17900	18300	18700	19100	19500	19900	20300				
DISTRICT III	13300	13700	14100	14500	14900	15300	15700	16100	16500	16900	17300	17700	17800					
DISTRICT IV	11600	12000	12400	12800	13200	13600	14000	14400	14800	15200	15600							
DISTRICT V	11600	12000	12400	12800	13200	13600	14000	14400	14800	15200	15600							
DISTRICT VI	12700	13100	13500	13900	14300	14700	15100	15500	15900	16300	16700	17000						
DISTRICT VII	12100	12500	12900	13300	13700	14100	14500	14900	15300	15700	16100							

INSTRUCTIONS FOR USE OF EXHIBIT B.

THIS EXHIBIT WILL BE USED TO DETERMINE THE MINIMUM INTEREST RATE FOR A MODERATE INCOME BORROWER IN THE COMPLETION OF PART III, LINE 13 OF FORM 1944-6 (INTEREST CREDIT AGREEMENT). AMORTIZATION FACTORS FOR 33 YEARS ARE SHOWN BELOW THE INTEREST RATES. FACTORS OTHER THAN 33 YEARS MUST BE OBTAINED FROM AMORTIZATION TABLES.

DETERMINE THE APPROPRIATE INTEREST RATE BY: (1) SELECTING THE APPROPRIATE DISTRICT; (2) SELECT AN INCOME THAT IS THE SAME OR THE NEXT HIGHER THAN THE ADJUSTED ANNUAL HOUSEHOLD INCOME OF THE BORROWER. (LINE 4 OF PART III OF 1944-6); (3) SELECT THE APPROPRIATE INTEREST RATE SHOWN AT THE TOP OF THE SELECTED INCOME COLUMN.

* MODERATE-INCOME BORROWER'S WHOSE INCOME EXCEEDS THE LIMITS SET FORTH IN THIS EXHIBIT WILL NOT RECEIVE INTEREST CREDIT.

MINIMUM INTEREST RATES FOR THE CALCULATION OF INTEREST CREDITS FOR MODERATE INCOME BORROWER IN VERMONT

INTEREST RATE	3.5%	4%	4.5%	5%	5.5%	6%	6.5%	7%	7.5%	8%	8.5%	9%	9.5%	10%	10.5%	11%	11.5%	12%
AMORT RATE ANNUAL	51.58	55.11	58.75	62.50	66.34	70.28	74.30	78.41	82.60	86.86	91.18	95.57	100.01	104.50	109.05	113.63	118.26	122.93
AMORT RATE MONTH	4.27	4.56	4.86	5.17	5.48	5.81	6.14	6.49	6.83	7.19	7.55	7.92	8.29	8.66	9.04	9.43	9.81	10.20

MINIMUM INTEREST RATES FOR THE CALCULATION OF INTEREST CREDITS FOR MODERATE INCOME BORROWER IN VERMONT

INTEREST RATE	3.5%	4%	4.5%	5%	5.5%	6%	6.5%	7%	7.5%	8%	8.5%	9%	9.5%	10%	10.5%	11%	11.5%	12%
AMORT RATE ANNUAL	51.58	55.11	58.75	62.50	66.34	70.28	74.30	78.41	82.60	86.86	91.18	95.57	100.01	104.50	109.05	113.63	118.26	122.93
AMORT RATE MONTH	4.27	4.56	4.86	5.17	5.48	5.81	6.14	6.49	6.83	7.19	7.55	7.92	8.29	8.66	9.04	9.43	9.81	10.20
DISTRICT I	12900	13300	13700	14100	14500	14900	15300	15700	16100	16500	16900	17200						
DISTRICT II	13000	13400	13800	14200	14600	15000	15400	15800	16200	16600	17000	17300						

INSTRUCTIONS FOR USE OF EXHIBIT D.

THIS EXHIBIT WILL BE USED TO DETERMINE THE MINIMUM INTEREST RATE FOR A MODERATE INCOME BORROWER IN THE COMPLETION OF PART III, LINE 13 OF FORM 1944-6 (INTEREST CREDIT AGREEMENT). AMORTIZATION FACTORS FOR 33 YEARS ARE SHOWN BELOW THE INTEREST RATES. FACTORS OTHER THAN 33 YEARS MUST BE OBTAINED FROM AMORTIZATION TABLES.

DETERMINE THE APPROPRIATE INTEREST RATE BY: (1) SELECTING THE APPROPRIATE DISTRICT; (2) SELECT AN INCOME THAT IS THE SAME OR THE NEXT HIGHER THAN THE ADJUSTED ANNUAL HOUSEHOLD INCOME OF THE BORROWER. (LINE 4 OF PART III OF 1944-6); (3) SELECT THE APPROPRIATE INTEREST RATE SHOWN AT THE TOP OF THE SELECTED INCOME COLUMN.

* MODERATE-INCOME BORROWER'S WHOSE INCOME EXCEEDS THE LIMITS SET FORTH IN THIS EXHIBIT WILL NOT RECEIVE INTEREST CREDIT.

MINIMUM INTEREST RATES FOR THE CALCULATION OF INTEREST CREDITS FOR MODERATE INCOME BORROWER IN VIRGINIA

INTEREST RATE	3.5%	4%	4.5%	5%	5.5%	6%	6.5%	7%	7.5%	8%	8.5%	9%	9.5%	10%	10.5%	11%	11.5%	12%
AMORT RATE ANNUAL	51.58	55.11	58.75	62.50	66.34	70.28	74.30	78.41	82.60	86.86	91.18	95.57	100.01	104.50	109.05	113.63	118.26	122.93
AMORT RATE MONTH	4.27	4.56	4.86	5.17	5.48	5.81	6.14	6.49	6.83	7.19	7.55	7.92	8.29	8.66	9.04	9.43	9.81	10.20
DISTRICT 1	10000	10400	10800	11200	11600	12000	12400	12800	13200	13600	14000	14400	14800	15200	15600			
DISTRICT 2	10900	11300	11700	12100	12500	12900	13300	13700	14100	14500	14900	15300	15600					
DISTRICT 3	11100	11500	11900	12300	12700	13100	13500	13900	14300	14700	15100	15500	15600					
DISTRICT 4	12000	13200	13600	14000	14400	14800	15200	15600	16000	16400	16800	17200	17600	18000	18300			
DISTRICT 5	12000	13200	13600	14000	14400	14800	15200	15600	16000	16400	16800	17200	17600	18000	18400	18800	19200	19300
DISTRICT 6	12000	13200	13600	14000	14400	14800	15200	15600	16000	16400	16800	17200	17600	17900				
DISTRICT 7	12700	13100	13500	13900	14300	14700	15100	15500	15900	16300	16700	16900						
DISTRICT 8	13400	13800	14200	14600	15000	15400	15800	16200	16600	17000	17400	17800	18200	18600	19000	19400	19800	20200*
DISTRICT 9	11800	12200	12600	13000	13400	13800	14200	14600	15000	15400	15800							
DISTRICT 10	12000	13200	13600	14000	14400	14800	15200	15600	16000	16400	16800	17200	17300					
DISTRICT 11	12000	13200	13600	14000	14400	14800	15200	15600	16000	16400	16800	17200	17600	18000	18400	18600		
DISTRICT 12	12200	12600	13000	13400	13800	14200	14600	15000	15400	15800	16200							
DISTRICT 13	10400	10800	11200	11600	12000	12400	12800	13200	13600	14000	14400	14800	15200	15600				
DISTRICT 14	10300	10700	11100	11500	11900	12300	12700	13100	13500	13900	14300	14700	15100	15500	15600			
DISTRICT 15	12000	13200	13600	14000	14400	14800	15200	15600	16000	16400	16800	17200	17600	18000	18400	18800	19200	19600*
DISTRICT 16	12000	13200	13600	14000	14400	14800	15200	15600	16000	16400	16800	17200	17600	17900				

INSTRUCTIONS FOR USE OF EXHIBIT D.

THIS EXHIBIT WILL BE USED TO DETERMINE THE MINIMUM INTEREST RATE FOR A MODERATE INCOME BORROWER IN THE COMPLETION OF PART III, LINE 13 OF FORM 1944-6 (INTEREST CREDIT AGREEMENT). AMORTIZATION FACTORS FOR 33 YEARS ARE SHOWN BELOW THE INTEREST RATES. FACTORS OTHER THAN 33 YEARS MUST BE OBTAINED FROM AMORTIZATION TABLES.

DETERMINE THE APPROPRIATE INTEREST RATE BY: (1) SELECTING THE APPROPRIATE DISTRICT; (2) SELECT AN INCOME THAT IS THE SAME OR THE NEXT HIGHER THAN THE ADJUSTED ANNUAL HOUSEHOLD INCOME OF THE BORROWER. (LINE 4 OF PART III OF 1944-6); (3) SELECT THE APPROPRIATE INTEREST RATE SHOWN AT THE TOP OF THE SELECTED INCOME COLUMN.

* MODERATE-INCOME BORROWER'S WHOSE INCOME EXCEEDS THE LIMITS SET FORTH IN THIS EXHIBIT WILL NOT RECEIVE INTEREST CREDIT.

MINIMUM INTEREST RATES FOR THE CALCULATION OF INTEREST CREDITS FOR MODERATE INCOME BORROWER IN VIRGINIA

INTEREST RATE	3.5%	4%	4.5%	5%	5.5%	6%	6.5%	7%	7.5%	8%	8.5%	9%	9.5%	10%	10.5%	11%	11.5%	12%
AMORT RATE ANNUAL	51.58	55.11	58.75	62.50	66.34	70.28	74.30	78.41	82.60	86.86	91.18	95.57	100.01	104.50	109.05	113.63	118.26	122.93
AMORT RATE MONTH	4.27	4.56	4.86	5.17	5.48	5.81	6.14	6.49	6.83	7.19	7.55	7.92	8.29	8.66	9.04	9.43	9.81	10.20

MINIMUM INTEREST RATES FOR THE CALCULATION OF INTEREST CREDITS FOR MODERATE INCOME BORROWER IN VIRGINIA

INTEREST RATE	3.5%	4%	4.5%	5%	5.5%	6%	6.5%	7%	7.5%	8%	8.5%	9%	9.5%	10%	10.5%	11%	11.5%	12%
AMORT RATE ANNUAL	51.58	55.11	58.75	62.50	66.34	70.28	74.30	78.41	82.60	86.86	91.18	95.57	100.01	104.50	109.05	113.63	118.26	122.93
AMORT RATE MONTH	4.27	4.56	4.86	5.17	5.48	5.81	6.14	6.49	6.83	7.19	7.55	7.92	8.29	8.66	9.04	9.43	9.81	10.20
DISTRICT 17	10000	10400	10800	11200	11600	12000	12400	12800	13200	13600	14000	14400	14800	15200	15600			
DISTRICT 18	12300	12700	13100	13500	13900	14300	14700	15100	15500	15900	16300	16400						
DISTRICT 19	12800	13200	13600	14000	14400	14800	15200	15600	16000	16400	16800	17200	17600					
DISTRICT 20	12800	13200	13600	14000	14400	14800	15200	15600	16000	16400	16800	17200	17600	17800				
DISTRICT 21	12800	13200	13600	14000	14400	14800	15200	15600	16000	16400	16800	17200	17600	18000	18400	18800	19200	
DISTRICT 22	09700	10100	10500	10900	11300	11700	12100	12500	12900	13300	13700	14100	14500	14900	15300	15600		

INSTRUCTIONS FOR USE OF EXHIBIT D.

THIS EXHIBIT WILL BE USED TO DETERMINE THE MINIMUM INTEREST RATE FOR A MODERATE INCOME BORROWER IN THE COMPLETION OF PART III, LINE 13 OF FORM 1944-6 (INTEREST CREDIT AGREEMENT). AMORTIZATION FACTORS FOR 33 YEARS ARE SHOWN BELOW THE INTEREST RATES. FACTORS OTHER THAN 33 YEARS MUST BE OBTAINED FROM AMORTIZATION TABLES.

DETERMINE THE APPROPRIATE INTEREST RATE BY: (1) SELECTING THE APPROPRIATE DISTRICT; (2) SELECT AN INCOME THAT IS THE SAME OR THE NEXT HIGHER THAN THE ADJUSTED ANNUAL HOUSEHOLD INCOME OF THE BORROWER. (LINE 4 OF PART III OF 1944-6); (3) SELECT THE APPROPRIATE INTEREST RATE SHOWN AT THE TOP OF THE SELECTED INCOME COLUMN.

* MODERATE-INCOME BORROWER'S WHOSE INCOME EXCEEDS THE LIMITS SET FORTH IN THIS EXHIBIT WILL NOT RECEIVE INTEREST CREDIT.

MINIMUM INTEREST RATES FOR THE CALCULATION OF INTEREST CREDITS FOR MODERATE INCOME BORROWER IN WASHINGTON

INTEREST RATE	3.5%	4%	4.5%	5%	5.5%	6%	6.5%	7%	7.5%	8%	8.5%	9%	9.5%	10%	10.5%	11%	11.5%	12%
AMORT RATE ANNUAL	51.58	55.11	58.75	62.50	66.34	70.28	74.30	78.41	82.60	86.86	91.18	95.57	100.01	104.50	109.05	113.63	118.26	122.93
AMORT RATE MONTH	4.27	4.56	4.86	5.17	5.48	5.81	6.14	6.49	6.83	7.19	7.55	7.92	8.29	8.66	9.04	9.43	9.81	10.20
DISTRICT I	15300	15700	16100	16500	16900	17300	17700	18100	18500	18900	19300	19700	20100	20500	20900	21300	21700	22100*
DISTRICT II	14000	14400	14800	15200	15600	16000	16400	16800	17200	17600	18000	18400	18700					
DISTRICT III	14500	14900	15300	15700	16100	16500	16900	17300	17700	18100	18500	18900	19300	19400				
DISTRICT IV	12600	13000	13400	13800	14200	14600	15000	15400	15800	16200	16600	16900						
DISTRICT V	13600	14000	14400	14800	15200	15600	16000	16400	16800	17200	17600	18000	18200					

INSTRUCTIONS FOR USE OF EXHIBIT D.

THIS EXHIBIT WILL BE USED TO DETERMINE THE MINIMUM INTEREST RATE FOR A MODERATE INCOME BORROWER IN THE COMPLETION OF PART III. LINE 13 OF FORM 1944-6 (INTEREST CREDIT AGREEMENT). AMORTIZATION FACTORS FOR 33 YEARS ARE SHOWN BELOW THE INTEREST RATES. FACTORS OTHER THAN 33 YEARS MUST BE OBTAINED FROM AMORTIZATION TABLES.

DETERMINE THE APPROPRIATE INTEREST RATE BY: (1) SELECTING THE APPROPRIATE DISTRICT; (2) SELECT AN INCOME THAT IS THE SAME OR THE NEXT HIGHER THAN THE ADJUSTED ANNUAL HOUSEHOLD INCOME OF THE BORROWER. (LINE 4 OF PART III OF 1944-6); (3) SELECT THE APPROPRIATE INTEREST RATE SHOWN AT THE TOP OF THE SELECTED INCOME COLUMN.

* MODERATE-INCOME BORROWER'S WHOSE INCOME EXCEEDS THE LIMITS SET FORTH IN THIS EXHIBIT WILL NOT RECEIVE INTEREST CREDIT.

MINIMUM INTEREST RATES FOR THE CALCULATION OF INTEREST CREDITS FOR MODERATE INCOME BORROWER IN WEST VIRGINIA

INTEREST RATE	3.5%	4%	4.5%	5%	5.5%	6%	6.5%	7%	7.5%	8%	8.5%	9%	9.5%	10%	10.5%	11%	11.5%	12%
AMORT RATE ANNUAL	51.58	55.11	58.75	62.50	66.34	70.28	74.30	78.41	82.60	86.86	91.18	95.57	100.01	104.50	109.05	113.63	118.26	122.93
AMORT RATE MONTH	4.27	4.56	4.86	5.17	5.48	5.81	6.14	6.49	6.83	7.19	7.55	7.92	8.29	8.66	9.04	9.43	9.81	10.20
DISTRICT I	15300	15700	16100	16500	16900	17300	17700	18100	18500	18900	19300	19700	20100	20500	20900	21300	21700	22100*
DISTRICT II	14000	14400	14800	15200	15600	16000	16400	16800	17200	17600	18000	18400	18700					
DISTRICT III	14500	14900	15300	15700	16100	16500	16900	17300	17700	18100	18500	18900	19300	19400				
DISTRICT IV	12600	13000	13400	13800	14200	14600	15000	15400	15800	16200	16600	16900						
DISTRICT V	13600	14000	14400	14800	15200	15600	16000	16400	16800	17200	17600	18000	18200					

INSTRUCTIONS FOR USE OF EXHIBIT D.

THIS EXHIBIT WILL BE USED TO DETERMINE THE MINIMUM INTEREST RATE FOR A MODERATE INCOME BORROWER IN THE COMPLETION OF PART III. LINE 13 OF FORM 1944-6 (INTEREST CREDIT AGREEMENT). AMORTIZATION FACTORS FOR 33 YEARS ARE SHOWN BELOW THE INTEREST RATES. FACTORS OTHER THAN 33 YEARS MUST BE OBTAINED FROM AMORTIZATION TABLES.

DETERMINE THE APPROPRIATE INTEREST RATE BY: (1) SELECTING THE APPROPRIATE DISTRICT; (2) SELECT AN INCOME THAT IS THE SAME OR THE NEXT HIGHER THAN THE ADJUSTED ANNUAL HOUSEHOLD INCOME OF THE BORROWER. (LINE 4 OF PART III OF 1944-6); (3) SELECT THE APPROPRIATE INTEREST RATE SHOWN AT THE TOP OF THE SELECTED INCOME COLUMN.

* MODERATE-INCOME BORROWER'S WHOSE INCOME EXCEEDS THE LIMITS SET FORTH IN THIS EXHIBIT WILL NOT RECEIVE INTEREST CREDIT.

MINIMUM INTEREST RATES FOR THE CALCULATION OF INTEREST CREDITS FOR MODERATE INCOME BORROWER IN WEST VIRGINIA

INTEREST RATE	3.5%	4%	4.5%	5%	5.5%	6%	6.5%	7%	7.5%	8%	8.5%	9%	9.5%	10%	10.5%	11%	11.5%	12%
AMORT RATE ANNUAL	51.58	55.11	58.75	62.50	66.34	70.28	74.30	78.41	82.60	86.86	91.18	95.57	100.01	104.50	109.05	113.63	118.26	122.93
AMORT RATE MONTH	4.27	4.56	4.86	5.17	5.48	5.81	6.14	6.49	6.83	7.19	7.55	7.92	8.29	8.66	9.04	9.43	9.81	10.20
REGION I	11500	11900	12300	12700	13100	13500	13900	14300	14700	15100	15500	15600						
REGION II	11600	12000	12400	12800	13200	13600	14000	14400	14800	15200	15600							
REGION III	12800	13200	13600	14000	14400	14800	15200	15600	16000	16400	16800	17200	17600	17900				
REGION IV	10600	11000	11400	11800	12200	12600	13000	13400	13800	14200	14600	15000	15400	15800				
REGION V	12200	12600	13000	13400	13800	14200	14600	15000	15400	15800	16200	16300						
REGION VI	12200	12600	13000	13400	13800	14200	14600	15000	15400	15800	16200							
REGION VII	09700	10100	10500	10900	11300	11700	12100	12500	12900	13300	13700	14100	14500	14900	15300	15600		
REGION VIII	10500	10900	11300	11700	12100	12500	12900	13300	13700	14100	14500	14900	15300	15600				
REGION IX	12800	13200	13600	14000	14400	14800	15200	15600	16000	16400	16800	17200						
REGION X	12800	13200	13600	14000	14400	14800	15200	15600	16000	16400	16800	17200	17600	18000				
REGION XI	12800	13200	13600	14000	14400	14800	15200	15600	16000	16400	16800	17200	17600	18000	18300			

INSTRUCTIONS FOR USE OF EXHIBIT D.

THIS EXHIBIT WILL BE USED TO DETERMINE THE MINIMUM INTEREST RATE FOR A MODERATE INCOME BORROWER IN THE COMPLETION OF PART III, LINE 13 OF FORM 1944-6 (INTEREST CREDIT AGREEMENT). AMORTIZATION FACTORS FOR 33 YEARS ARE SHOWN BELOW THE INTEREST RATES. FACTORS OTHER THAN 33 YEARS MUST BE OBTAINED FROM AMORTIZATION TABLES.

DETERMINE THE APPROPRIATE INTEREST RATE BY: (1) SELECTING THE APPROPRIATE DISTRICT; (2) SELECT AN INCOME THAT IS THE SAME OR THE NEXT HIGHER THAN THE ADJUSTED ANNUAL HOUSEHOLD INCOME OF THE BORROWER. (LINE 4 OF PART III OF 1944-6)) (3) SELECT THE APPROPRIATE INTEREST RATE SHOWN AT THE TOP OF THE SELECTED INCOME COLUMN.

* MODERATE-INCOME BORROWER'S WHOSE INCOME EXCEEDS THE LIMITS SET FORTH IN THIS EXHIBIT WILL NOT RECEIVE INTEREST CREDIT.

MINIMUM INTEREST RATES FOR THE CALCULATION OF INTEREST CREDITS FOR MODERATE INCOME BORROWER IN WISCONSIN

INTEREST RATE	3.5%	4%	4.5%	5%	5.5%	6%	6.5%	7%	7.5%	8%	8.5%	9%	9.5%	10%	10.5%	11%	11.5%	12%
AMORT RATE ANNUAL	51.58	55.11	58.75	62.50	66.34	70.28	74.30	78.41	82.60	86.86	91.18	95.57	100.01	104.50	109.05	113.63	118.26	122.93
AMORT RATE MONTH	4.27	4.56	4.86	5.17	5.48	5.81	6.14	6.49	6.83	7.19	7.55	7.92	8.29	8.66	9.04	9.43	9.81	10.20
SOUTHWEST	14200	14600	15000	15400	15800	16200	16600	17000	17400	17800	18200	18600	19000	19100				
DANE	15300	15700	16100	16500	16900	17300	17700	18100	18500	18900	19300	19700	20100	20500	20900	21300	21700	22100*
ROCK VALLEY	15300	15700	16100	16500	16900	17300	17700	18100	18500	18900	19300	19700	20100	20500	20900	21200		
SOUTHEASTERN	15300	15700	16100	16500	16900	17300	17700	18100	18500	18900	19300	19700	20100	20500	20900	21300	21700	22100*
BAY LAKE	14200	14600	15000	15400	15800	16200	16600	17000	17400	17800	18200	18600	19000	19100				
EAST CENTRAL	14000	14400	14800	15200	15600	16000	16400	16800	17200	17600	18000	18400	18700					
NORTH CENTRAL	13000	13400	13800	14200	14600	15000	15400	15800	16200	16600	17000	17300						
NORTHWESTERN	11600	12000	12400	12800	13200	13600	14000	14400	14800	15200	15600							
WEST CENTRAL	13700	14100	14500	14900	15300	15700	16100	16500	16900	17300	17700	18100	18300					
MISSISSIPPI	12600	13000	13400	13800	14200	14600	15000	15400	15800	16200	16600	16900						

INSTRUCTIONS FOR USE OF EXHIBIT B.

THIS EXHIBIT WILL BE USED TO DETERMINE THE MINIMUM INTEREST RATE FOR A MODERATE INCOME BORROWER IN THE COMPLETION OF PART III, LINE 13 OF FORM 1944-6 (INTEREST CREDIT AGREEMENT). AMORTIZATION FACTORS FOR 33 YEARS ARE SHOWN BELOW THE INTEREST RATES. FACTORS OTHER THAN 33 YEARS MUST BE OBTAINED FROM AMORTIZATION TABLES.

DETERMINE THE APPROPRIATE INTEREST RATE BY: (1) SELECTING THE APPROPRIATE DISTRICT; (2) SELECT AN INCOME THAT IS THE SAME OR THE NEXT HIGHER THAN THE ADJUSTED ANNUAL HOUSEHOLD INCOME OF THE BORROWER. (LINE 4 OF PART III OF 1944-6); (3) SELECT THE APPROPRIATE INTEREST RATE SHOWN AT THE TOP OF THE SELECTED INCOME COLUMN.

* MODERATE-INCOME BORROWER'S WHOSE INCOME EXCEEDS THE LIMITS SET FORTH IN THIS EXHIBIT WILL NOT RECEIVE INTEREST CREDIT.

MINIMUM INTEREST RATES FOR THE CALCULATION OF INTEREST CREDITS FOR MODERATE INCOME BORROWER IN WYOMING

INTEREST RATE	3.5%	4%	4.5%	5%	5.5%	6%	6.5%	7%	7.5%	8%	8.5%	9%	9.5%	10%	10.5%	11%	11.5%	12%
AMORT RATE ANNUAL	51.58	55.11	58.75	62.50	66.34	70.28	74.30	78.41	82.60	86.86	91.18	95.57	100.01	104.50	109.05	113.63	118.26	122.93
AMORT RATE MONTH	4.27	4.56	4.86	5.17	5.48	5.81	6.14	6.49	6.83	7.19	7.55	7.92	8.29	8.66	9.04	9.43	9.81	10.20
CASPER	14200	14600	15000	15400	15800	16200	16600	17000	17400	17800	18200	18600	19000	19100				
CHEYENNE	15300	15700	16100	16500	16900	17300	17700	18100	18500	18900	19300	19700	20100	20500	20900	21300	21700	22100*
LARAMIE	15300	15700	16100	16500	16900	17300	17700	18100	18500	18900	19300	19700	20100	20500	20900	21300	21700	22100*
ROCK SPRINGS	14200	14600	15000	15400	15800	16200	16600	17000	17400	17800	18200	18600	19000	19100				
SHERIDAN	14000	14400	14800	15200	15600	16000	16400	16800	17200	17600	18000	18400	18700					
WORLAND	13000	13400	13800	14200	14600	15000	15400	15800	16200	16600	17000	17300						

MINIMUM INTEREST RATES FOR THE CALCULATION OF INTEREST CREDITS FOR MODERATE INCOME BORROWER IN WYOMING

INTEREST RATE	3.5%	4%	4.5%	5%	5.5%	6%	6.5%	7%	7.5%	8%	8.5%	9%	9.5%	10%	10.5%	11%	11.5%	12%
AMORT RATE ANNUAL	51.58	55.11	58.75	62.50	66.34	70.28	74.30	78.41	82.60	86.86	91.18	95.57	100.01	104.50	109.05	113.63	118.26	122.93
AMORT RATE MONTH	4.27	4.56	4.86	5.17	5.48	5.81	6.14	6.49	6.83	7.19	7.55	7.92	8.29	8.66	9.04	9.43	9.81	10.20
DISTRICT 1	13200	13600	14000	14400	14800	15200	15600	16000	16400	16800	17200	17600						
DISTRICT 2	14500	14900	15300	15700	16100	16500	16900	17300	17700	18100	18500	18900	19300	19400				
DISTRICT 3	14000	14400	14800	15200	15600	16000	16400	16800	17200	17600	18000	18400	18700					

INSTRUCTIONS FOR USE OF EXHIBIT D.

THIS EXHIBIT WILL BE USED TO DETERMINE THE MINIMUM INTEREST RATE FOR A MODERATE INCOME BORROWER IN THE COMPLETION OF PART III, LINE 13 OF FORM 1944-6 (INTEREST CREDIT AGREEMENT). AMORTIZATION FACTORS FOR 33 YEARS ARE SHOWN BELOW THE INTEREST RATES. FACTORS OTHER THAN 33 YEARS MUST BE OBTAINED FROM AMORTIZATION TABLES.

DETERMINE THE APPROPRIATE INTEREST RATE BY: (1) SELECTING THE APPROPRIATE DISTRICT; (2) SELECT AN INCOME THAT IS THE SAME OR THE NEXT HIGHER THAN THE ADJUSTED ANNUAL HOUSEHOLD INCOME OF THE BORROWER, (LINE 4 OF PART III OF 1944-6)); (3) SELECT THE APPROPRIATE INTEREST RATE SHOWN AT THE TOP OF THE SELECTED INCOME COLUMN.

• MODERATE-INCOME BORROWER'S WHOSE INCOME EXCEEDS THE LIMITS SET FORTH IN THIS EXHIBIT WILL NOT RECEIVE INTEREST CREDIT.

MINIMUM INTEREST RATES FOR THE CALCULATION OF INTEREST CREDITS FOR MODERATE INCOME BORROWER IN ALASKA

INTEREST RATE	3.5%	4%	4.5%	5%	5.5%	6%	6.5%	7%	7.5%	8%	8.5%	9%	9.5%	10%	10.5%	11%	11.5%	12%
AMORT RATE ANNUAL	51.58	55.11	58.75	62.50	66.34	70.28	74.30	78.41	82.60	86.86	91.18	95.57	100.01	104.50	109.05	113.63	118.26	122.93
AMORT RATE MONTH	4.27	4.56	4.86	5.17	5.48	5.81	6.14	6.49	6.83	7.19	7.55	7.92	8.29	8.66	9.04	9.43	9.81	10.20
~~SOLDOTNA~~	~~18240~~	~~18640~~	~~19040~~	~~19440~~	~~19840~~	~~20240~~	~~20640~~	~~21040~~	~~21440~~	~~21840~~	~~22240~~	~~22640~~	~~23040~~	~~23440~~	~~23840~~	~~24240~~	~~24600~~	
PALMER	17840	18240	18640	19040	19440	19840	20240	20640	21040	21440	21840	22240	22640	23040	23440	23840	24000	
FAIRBANKS	16640	17040	17440	17840	18240	18640	19040	19440	19840	20240	20640	21040	21440	21840	22240	22400		
JUNEAU	20100	20500	20900	21300	21700	22100	22500	22900	23300	23700	24100	24500	24900	25300	25700	26100	26500	26900*

INSTRUCTIONS FOR USE OF EXHIBIT D.

THIS EXHIBIT WILL BE USED TO DETERMINE THE MINIMUM INTEREST RATE FOR A MODERATE INCOME BORROWER IN THE COMPLETION OF PART III, LINE 13 OF FORM 1944-6 (INTEREST CREDIT AGREEMENT). AMORTIZATION FACTORS FOR 33 YEARS ARE SHOWN BELOW THE INTEREST RATES. FACTORS OTHER THAN 33 YEARS MUST BE OBTAINED FROM AMORTIZATION TABLES.

DETERMINE THE APPROPRIATE INTEREST RATE BY: (1) SELECTING THE APPROPRIATE DISTRICT; (2) SELECT AN INCOME THAT IS THE SAME OR THE NEXT HIGHER THAN THE ADJUSTED ANNUAL HOUSEHOLD INCOME OF THE BORROWER. (LINE 4 OF PART III OF 1944-6); (3) SELECT THE APPROPRIATE INTEREST RATE SHOWN AT THE TOP OF THE SELECTED INCOME COLUMN.

* MODERATE-INCOME BORROWER'S WHOSE INCOME EXCEEDS THE LIMITS SET FORTH IN THIS EXHIBIT WILL NOT RECEIVE INTEREST CREDIT.

MINIMUM INTEREST RATES FOR THE CALCULATION OF INTEREST CREDITS FOR MODERATE INCOME BORROWER IN HAWAII

INTEREST RATE	3.5%	4%	4.5%	5%	5.5%	6%	6.5%	7%	7.5%	8%	8.5%	9%	9.5%	10%	10.5%	11%	11.5%	12%
AMORT RATE ANNUAL	51.58	55.11	58.75	62.50	66.34	70.28	74.30	78.41	82.60	86.86	91.18	95.57	100.01	104.50	109.05	113.63	118.26	122.93
AMORT RATE MONTH	4.27	4.56	4.86	5.17	5.48	5.81	6.14	6.49	6.83	7.19	7.55	7.92	8.29	8.66	9.04	9.43	9.81	10.20

MINIMUM INTEREST RATES FOR THE CALCULATION OF INTEREST CREDITS FOR MODERATE INCOME BORROWER IN HAWAII

INTEREST RATE	3.5%	4%	4.5%	5%	5.5%	6%	6.5%	7%	7.5%	8%	8.5%	9%	9.5%	10%	10.5%	11%	11.5%	12%
AMORT RATE ANNUAL	51.58	55.11	58.75	62.50	66.34	70.28	74.30	78.41	82.60	86.86	91.18	95.57	100.01	104.50	109.05	113.63	118.26	122.93
AMORT RATE MONTH	4.27	4.56	4.86	5.17	5.48	5.81	6.14	6.49	6.83	7.19	7.55	7.92	8.29	8.66	9.04	9.42	9.81	10.20
HONOLULU	15300	15700	16100	16500	16900	17300	17700	18100	18500	18900	19300	19700	20100	20500	20900	21300	21700	22100*
KAUAI	15300	15700	16100	16500	16900	17300	17700	18100	18500	18900	19300	19700	20100	20500	20900	21300	21600	
MAUI	15300	15700	16100	16500	16900	17300	17700	18100	18500	18900	19300	19700	20100	20500	20900	21100		
HAWAII	15300	15700	16100	16500	16900	17300	17700	18100	18500	18900	19300	19700	20100	20500	20900	21200		

INSTRUCTIONS FOR USE OF EXHIBIT D.

THIS EXHIBIT WILL BE USED TO DETERMINE THE MINIMUM INTEREST RATE FOR A MODERATE INCOME BORROWER IN THE COMPLETION OF PART III, LINE 13 OF FORM 1944-6 (INTEREST CREDIT AGREEMENT). AMORTIZATION FACTORS FOR 33 YEARS ARE SHOWN BELOW THE INTEREST RATES. FACTORS OTHER THAN 33 YEARS MUST BE OBTAINED FROM AMORTIZATION TABLES.

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* MODERATE-INCOME BORROWER'S WHOSE INCOME EXCEEDS THE LIMITS SET FORTH IN THIS EXHIBIT WILL NOT RECEIVE INTEREST CREDIT.

MINIMUM INTEREST RATES FOR THE CALCULATION OF INTEREST CREDITS FOR MODERATE INCOME BORROWER IN GUAM

INTEREST RATE	3.5%	4%	4.5%	5%	5.5%	6%	6.5%	7%	7.5%	8%	8.5%	9%	9.5%	10%	10.5%	11%	11.5%	12%
AMORT RATE ANNUAL	51.58	55.11	58.75	62.50	66.34	70.28	74.30	78.41	82.60	86.86	91.18	95.57	100.01	104.50	109.05	113.63	118.26	122.93
AMORT RATE MONTH	4.27	4.56	4.86	5.17	5.48	5.81	6.14	6.49	6.83	7.19	7.55	7.92	8.29	8.66	9.04	9.43	9.81	10.20
ENTIRE	14000	14400	14800	15300	15600	16000	16400	16800	17300	17600	18000							

INSTRUCTIONS FOR USE OF EXHIBIT D.

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DETERMINE THE APPROPRIATE INTEREST RATE BY: (1) SELECTING THE APPROPRIATE DISTRICT; (2) SELECT AN INCOME THAT IS THE SAME OR THE NEXT HIGHER THAN THE ADJUSTED ANNUAL HOUSEHOLD INCOME OF THE BORROWER. (LINE 4 OF PART III OF 1944-6); (3) SELECT THE APPROPRIATE INTEREST RATE SHOWN AT THE TOP OF THE SELECTED INCOME COLUMN.

* MODERATE-INCOME BORROWER'S WHOSE INCOME EXCEEDS THE LIMITS SET FORTH IN THIS EXHIBIT WILL NOT RECEIVE INTEREST CREDIT.

MINIMUM INTEREST RATES FOR THE CALCULATION OF INTEREST CREDITS FOR MODERATE INCOME BORROWER IN PUERTO RICO

INTEREST RATE	3.5%	4%	4.5%	5%	5.5%	6%	6.5%	7%	7.5%	8%	8.5%	9%	9.5%	10%	10.5%	11%	11.5%	12%
AMORT RATE ANNUAL	51.58	55.11	58.75	62.50	66.34	70.28	74.30	78.41	82.60	86.86	91.18	95.57	100.01	104.50	109.05	113.63	118.26	122.93
AMORT RATE MONTH	4.27	4.56	4.86	5.17	5.48	5.81	6.14	6.49	6.83	7.19	7.55	7.92	8.29	8.66	9.04	9.43	9.81	10.20

MINIMUM INTEREST RATES FOR THE CALCULATION OF INTEREST CREDITS FOR MODERATE INCOME BORROWER IN PUERTO RICO

INTEREST RATE	3.5%	4%	4.5%	5%	5.5%	6%	6.5%	7%	7.5%	8%	8.5%	9%	9.5%	10%	10.5%	11%	11.5%	12%
AMORT RATE ANNUAL	51.58	55.11	58.75	62.50	66.34	70.28	74.30	78.41	82.60	86.86	91.18	95.57	100.01	104.50	109.05	113.63	118.26	122.93
AMORT RATE MONTH	4.27	4.56	4.86	5.17	5.48	5.81	6.14	6.49	6.83	7.19	7.55	7.92	8.29	8.66	9.04	9.43	9.81	10.20
AGUADILLA	08400	08800	09200	09600	10000	10400	10800	11200	11600	12000	12400	12800	13200	13600	14000	14400	14800	15200*
ARECIBO	08800	09200	09600	10000	10400	10800	11200	11600	12000	12400	12800	13200	13600	14000	14400	14800	15200	15600
BAYAMON	08100	08500	08900	09300	09700	10100	10500	10900	11300	11700	12100	12500	12900	13300	13700	14100	14500	14900*
CAGUAS	08900	09300	09700	10100	10500	10900	11300	11700	12100	12500	12900	13300	13700	14100	14500	14900	15300	15600
GUAYAMA	07800	08200	08600	09000	09400	09800	10200	10600	11000	11400	11800	12200	12600	13000	13400	13800	14200	14600*
HUMACAO	08300	08700	09100	09500	09900	10300	10700	11100	11500	11900	12300	12700	13100	13500	13900	14300	14700	15100*
MAYAGUEZ	08400	08800	09200	09600	10000	10400	10800	11200	11600	12000	12400	12800	13200	13600	14000	14400	14800	15200*
PONCE	08400	08800	09200	09600	10000	10400	10800	11200	11600	12000	12400	12800	13200	13600	14000	14400	14800	15200*
SAN JUAN	08400	08800	09200	09600	10000	10400	10800	11200	11600	12000	12400	12800	13200	13600	14000	14400	14800	15200*

INSTRUCTIONS FOR USE OF EXHIBIT D.

THIS EXHIBIT WILL BE USED TO DETERMINE THE MINIMUM INTEREST RATE FOR A MODERATE INCOME BORROWER IN THE COMPLETION OF PART III, LINE 13 OF FORM 1944-6 (INTEREST CREDIT AGREEMENT). AMORTIZATION FACTORS FOR 33 YEARS ARE SHOWN BELOW THE INTEREST RATES. FACTORS OTHER THAN 33 YEARS MUST BE OBTAINED FROM AMORTIZATION TABLES.

DETERMINE THE APPROPRIATE INTEREST RATE BY: (1) SELECTING THE APPROPRIATE DISTRICT; (2) SELECT AN INCOME THAT IS THE SAME OR THE NEXT HIGHER THAN THE ADJUSTED ANNUAL HOUSEHOLD INCOME OF THE BORROWER. (LINE 4 OF PART III OF 1944-6); (3) SELECT THE APPROPRIATE INTEREST RATE SHOWN AT THE TOP OF THE SELECTED INCOME COLUMN.

* MODERATE-INCOME BORROWER'S WHOSE INCOME EXCEEDS THE LIMITS SET FORTH IN THIS EXHIBIT WILL NOT RECEIVE INTEREST CREDIT.

MINIMUM INTEREST RATES FOR THE CALCULATION OF INTEREST CREDITS FOR MODERATE INCOME BORROWER IN VIRGIN ISLANDS

INTEREST RATE	3.5%	4%	4.5%	5%	5.5%	6%	6.5%	7%	7.5%	8%	8.5%	9%	9.5%	10%	10.5%	11%	11.5%	12%
AMORT RATE ANNUAL	51.58	55.11	58.75	62.50	66.34	70.28	74.30	78.41	82.60	86.86	91.18	95.57	100.01	104.50	109.05	113.63	118.26	122.93
AMORT RATE MONTH	4.27	4.56	4.86	5.17	5.48	5.81	6.14	6.49	6.83	7.19	7.55	7.92	8.29	8.66	9.04	9.43	9.81	10.20
ENTIRE AREA	12000	12400	12800	13200	13600	14000	14400	14800	15200	15600	16000							

INSTRUCTIONS FOR USE OF EXHIBIT D.

THIS EXHIBIT WILL BE USED TO DETERMINE THE MINIMUM INTEREST RATE FOR A MODERATE INCOME BORROWER IN THE COMPLETION OF PART III, LINE 13 OF FORM 1944-6 (INTEREST CREDIT AGREEMENT). AMORTIZATION FACTORS FOR 33 YEARS ARE SHOWN BELOW THE INTEREST RATES. FACTORS OTHER THAN 33 YEARS MUST BE OBTAINED FROM AMORTIZATION TABLES.

DETERMINE THE APPROPRIATE INTEREST RATE BY: (1) SELECTING THE APPROPRIATE DISTRICT; (2) SELECT AN INCOME THAT IS THE SAME OR THE NEXT HIGHER THAN THE ADJUSTED ANNUAL HOUSEHOLD INCOME OF THE BORROWER. (LINE 4 OF PART III OF 1944-6); (3) SELECT THE APPROPRIATE INTEREST RATE SHOWN AT THE TOP OF THE SELECTED INCOME COLUMN.

.8 MODERATE-INCOME BORROWER'S WHOSE INCOME EXCEEDS THE LIMITS SET FORTH IN THIS EXHIBIT WILL NOT RECEIVE INTEREST CREDIT.

MINIMUM INTEREST RATES FOR THE CALCULATION OF INTENEST CREDITS FOR MODERATE INCOME BORROWER IN NO. MARIANAS

INTEREST RATE	3.5%	4%	4.5%	5%	5.5%	6%	6.5%	7%	7.5%	8%	8.5%	9%	9.5%	10%	10.5%	11%	11.5%	12%
AMORT RATE ANNUAL	51.58	55.11	58.75	62.50	66.34	70.28	74.30	78.41	82.60	86.86	91.18	95.57	100.01	104.50	109.05	113.63	118.26	122.93
AMORT RATE MONTH	4.27	4.56	4.86	5.17	5.48	5.81	6.14	6.49	6.83	7.19	7.55	7.92	8.29	8.66	9.04	9.43	9.81	10.20

MINIMUM INTEREST RATES FOR THE CALCULATION OF INTEREST CREDITS FOR MODERATE INCOME BORROWER IN NO. MARIANAS

INTEREST RATE	3.5%	4%	4.5%	5%	5.5%	6%	6.5%	7%	7.5%	8%	8.5%	9%	9.5%	10%	10.5%	11%	11.5%	12%
AMORT RATE ANNUAL	51.58	55.11	58.75	62.50	66.34	70.28	74.30	78.41	82.60	86.86	91.18	95.57	100.01	104.50	109.05	113.63	118.26	122.93
AMORT RATE MONTH	4.27	4.56	4.86	5.17	5.48	5.81	6.14	6.49	6.83	7.19	7.55	7.92	8.29	8.66	9.04	9.43	9.81	10.20
ENTIRE AREA	11600	12000	12400	12800	13200	13600	14000	14400	14800	15200	15600							

INSTRUCTIONS FOR USE OF EXHIBIT D.

THIS EXHIBIT WILL BE USED TO DETERMINE THE MINIMUM INTEREST RATE FOR A MODERATE INCOME BORROWER IN THE COMPLETION OF PART III, LINE 13 OF FORM 1944-6 (INTEREST CREDIT AGREEMENT). AMORTIZATION FACTORS FOR 33 YEARS ARE SHOWN BELOW THE INTEREST RATES. FACTORS OTHER THAN 33 YEARS MUST BE OBTAINED FROM AMORTIZATION TABLES.

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MINIMUM INTEREST RATES FOR THE CALCULATION OF INTEREST CREDITS FOR MODERATE INCOME BORROWER IN TRUST TERRITORY

INTEREST RATE	3.5%	4%	4.5%	5%	5.5%	6%	6.5%	7%	7.5%	8%	8.5%	9%	9.5%	10%	10.5%	11%	11.5%	12%
ANORT RATE ANNUAL	51.58	55.11	58.75	62.50	66.34	70.28	74.30	78.41	82.60	86.66	91.18	95.57	100.01	104.50	109.05	113.63	118.26	122.93
ANORT RATE MONTH	4.27	4.56	4.86	5.17	5.48	5.81	6.14	6.49	6.83	7.19	7.55	7.92	8.29	8.66	9.04	9.43	9.81	10.20

ENTIRE	11500	12000	12500	13000	13500	14000	14400	14800	15200	15600

MINIMUM INTEREST RATES FOR THE CALCULATION OF INTEREST CREDITS FOR MODERATE INCOME BORROWER IN AM. SAMOA

INTEREST RATE	3.5%	4%	4.5%	5%	5.5%	6%	6.5%	7%	7.5%	8%	8.5%	9%	9.5%	10%	10.5%	11%	11.5%	12%
ANORT RATE ANNUAL	51.58	55.11	58.75	62.50	66.34	70.28	74.30	78.41	82.60	86.66	91.18	95.57	100.01	104.50	109.05	113.63	118.26	122.93
ANORT RATE MONTH	4.27	4.56	4.86	5.17	5.48	5.81	6.14	6.49	6.83	7.19	7.55	7.92	8.29	8.66	9.04	9.43	9.81	10.20

INSTRUCTIONS FOR USE OF EXHIBIT D.

THIS EXHIBIT WILL BE USED TO DETERMINE THE MINIMUM INTEREST RATE FOR A MODERATE INCOME BORROWER IN THE COMPLETION OF PART III, LINE 13 OF FORM 1944-6 (INTEREST CREDIT AGREEMENT). AMORTIZATION FACTORS FOR 33 YEARS ARE SHOWN BELOW THE INTEREST RATES. FACTORS OTHER THAN 33 YEARS MUST BE OBTAINED FROM AMORTIZATION TABLES.

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* MODERATE-INCOME BORROWER'S WHOSE INCOME EXCEEDS THE LIMITS SET FORTH IN THIS EXHIBIT WILL NOT RECEIVE INTEREST CREDIT.

MINIMUM INTEREST RATES FOR THE CALCULATION OF INTEREST CREDITS FOR MODERATE INCOME BORROWER IN AM. SAMOA

INTEREST RATE		3.5%	4%	4.5%	5%	5.5%	6%	6.5%	7%	7.5%	8%	8.5%	9%	9.5%	10%	10.5%	11%	11.5%	12%
AMORT RATE	ANNUAL	51.58	55.11	58.75	62.50	66.34	70.28	74.30	78.41	82.60	86.86	91.18	95.57	100.01	104.50	109.05	113.63	118.26	122.93
AMORT RATE	MONTH	4.27	4.56	4.86	5.17	5.48	5.81	6.14	6.49	6.83	7.19	7.55	7.92	8.29	8.66	9.04	9.43	9.81	10.20
ENTIRE		11600	12000	12400	12800	13200	13600	14000	14400	14800	15200	15600							

INSTRUCTIONS FOR USE OF EXHIBIT D.

THIS EXHIBIT WILL BE USED TO DETERMINE THE MINIMUM INTEREST RATE FOR A MODERATE INCOME BORROWER IN THE COMPLETION OF PART III, LINE 13 OF FORM 1944-6 (INTEREST CREDIT AGREEMENT). AMORTIZATION FACTORS FOR 33 YEARS ARE SHOWN BELOW THE INTEREST RATES. FACTORS OTHER THAN 33 YEARS MUST BE OBTAINED FROM AMORTIZATION TABLES.

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BILLING CODE 3410-07-C

Exhibit E—Rural Housing Applicant Interview

The following items will be reviewed in detail during a personal interview between the rural housing loan applicant and County Supervisor to assure an understanding of Farmers Home Administration loan making and loan servicing authorities, and the responsibilities of the applicant/borrower. *No loan will be closed without signed evidence that this interview has been held.*

1. *Equal Credit Opportunity:* FmHA assistance and services shall not be denied to any person or applicant as a result of race, sex, national origin, color, religion, marital status, age, physical or mental handicap (applicant must possess the capacity to enter into a legal contract for services), receipt of income from public assistance, or because the applicant has, in good faith, exercised any right under the Consumer Credit Protection Act.

2. *Income:* Eligibility is limited to those applicants with low or moderate income who are creditworthy and have repayment ability for the loan requested. The planned income to be received by the applicant and all other adults who live or propose to live in the dwelling during the next 12 months must be included.

3. *Adjusted Income:* Qualification for low or moderate income is based on adjusted income. This is the total annual income less 5 percent thereof and less $300 for each minor person who is a member of the immediate household and lives in the home. Other deductions are contained in the regulations.

4. *Eligibility:* A determination of applicant eligibility is not an assurance that a loan will be approved. Loan approval will depend on an inspection and appraisal of the dwelling the applicant wishes to purchase and the applicant's repayment ability for the amount of loan needed to purchase the dwelling.

5. *Application Processing Priorities:* Applications will be processed in the order of priorities as outlined in FmHA regulations. When funds are inadequate to serve all eligible applicants the order of processing will be established at the beginning of each funding period considering applications on hand and not in process at that time.

6. *Counseling:* Credit counseling is available at the local County Office for any applicant or borrower who needs or desires such assistance. This will include assistance in budgeting and the use and management of household income.

7. *Energy Conservation:* The local county office will provide suggested ways homeowners may conserve on the use of energy in the home. They can also provide local sources of information such as utility companines and county extension offices, which may suggest methods of conservation.

8. *Cosigner:* An applicant who does not have repayment ability may furnish a cosigner who will guarantee repayment of the loan. Such cosigner must be approved by Farmers Home Administration.

9. *Legal Fees:* The applicant must pay necessary legal fees for title examination and loan closing. Escrow Agents or Designated Attorneys will be employed for this service. In some cases the fees may be included in the loan.

10. *Interest Credit:* Interest credit is available to qualified applicants whereby the interest rate on the loan may be reduced to a minimum of 1 percent. The amount of interest credit granted depends on the borrower's income which will be reviewed at least every 2 years.

11. *Improper Interest Credit:* Interest Credit or other subsidy assistance granted improperly either as a result of false information or through error, will be repaid by the borrower.

12. *Recapture of Interest Credit:* Interest credit received by a borrower will be subject to repayment to the Government when the mortgage is released, when the loan is assumed by another person(s), when the property is sold, or when it is no longer occupied by the borrower.

13. *Monthly Payments:* Regular payments must be made on or before the due date. Payments will be applied first to unpaid interest and the balance to principal. If for any reason a payment cannot be made on time the borrower should immediately contact the local county office.

14. *Insurance:* Every borrower will be required to obtain property insurance in a minimum amount specified by FmHA. The cost must be paid by the borrower and is not included in the regular monthly payment.

15. *Taxes:* All real estate taxes must be paid by the borrower directly to the local taxing office. They are not included in the regular monthly payment. Nonpayment of taxes can result in public sale of the property by the local tax authority or foreclosure by the Farmers Home Administration.

16. *Graduation:* FmHA is a supplemental source of credit and does not replace conventional lenders. When it appears another source of credit may be available, the borrower will be so advised and will be expected to make application for such credit and, if available, pay the FmHA loan in full.

17. *Inspection of Property:* The borrower will be responsible for making inspections necessary to protect the borrower's interest. The FmHA inspections create or imply no duty or obligation to the particular borrower but are, rather, for the dual purpose of determining that FmHA has adequate security for its loan and to enable FmHA to determine that the agency is working toward achieving the statutory goal of providing adequate housing.

18. *Compensation for Construction Defects:* For newly built dwellings the government may in some cases pay for major defects in dwelling construction which are not repaired by the builder. To be eligible, a claim must be filed at the FmHA County Office within 18 months after financial assistance is granted.

19. *Moratorium:* Borrowers may apply for a postponement of payments if due to circumstances beyond their control they are unable to continue making scheduled payments on the loan without unduly impairing their standard of living. Some of these circumstances are: Loss of job or sudden reduction of income from other sources; a loss of income or a substantial increase in expenses due to injury, illness, or death in the family.

20. *Occupancy:* Borrowers must personally occupy the dwelling. Failure to do so may result in the loan being declared due and payable in full. If for reasons beyond their control it becomes necessary to rent the dwelling temporarily, permission may be granted by the County Supervisor.

21. *Home improvements or additions:* If a borrower's home is enlarged or improved so that it exceeds modest standards for size, design and cost, the borrower may no longer be eligible to receive interest credit.

22. *Appeal:* Applicants or borrowers may appeal any FmHA program administrative action by which they are directly or adversely affected. This includes having a request for FmHA assistance denied or having FmHA assistance reduced, cancelled, or not renewed. The County Supervisor will provide information on appeal procedures.

The above items were discussed on ——— and we acknowledge receipt of a copy of the discussion outline.
County Supervisor
Applicant
Original to Borrower case file
Copy to Borrower
Co-Applicant

Exhibit F—Application Priority Rating

Applicant (Name)
Date ———

—— Points (1) *40 points (maximum)*—Adjusted annual income at the following levels for a period of more than 6 months prior to the date of application.
(a) *20 points*—Not more than 65 percent of median income for the area.
(b) *40 points*—Not more than 50 percent of median income for the area.

—— Points (2) *30 points (maximum)*—Applicant living in deficient housing, either owned or rented, for a period of more than 6 months prior to the date of application. A maximum of 30 points may be assigned using any combination of the following:
(a) *30 points*—Lack of complete plumbing; the housing does not have a bathtub or shower, wash basin, flush toilet, or hot running water for the exclusive private use of the occupant.
(b) *30 points (maximum)*—Overcrowded; more than one person per room. The number of rooms in a dwelling will include bedrooms, living rooms, dining rooms, kitchen, and any other rooms designed for living area.
(i) *15 points*—More than two persons per bedroom.
(ii) *30 points*—More than three persons per bedroom.

—— Points (3) *20 points*—Low-income participants in FmHA authorized Mutual Self-Help projects.
—— Points (4) *10 points*—Household with two more persons.
—— Total Points (maximum 100)
County Supervisor (signature)
(0+1 to be completed by the County Supervisor. Original to be placed in the application file and copy to applicant)

Exhibit F–1—Sample Letter To Applicants for Quarterly Notice of RH Application Priority

Date: ——
Dear (Applicant) ——

Loan funds are not sufficient for us to process your rural housing application during the coming quarter. If there should be any change by which funds might be available during the next quarter for your application, we will notify you immediately.

All applications which cannot be processed at this time, together with additional applications received during the coming quarter, will be considered for processing priority prior to the beginning of the next quarter. We will notify you as soon as funds are available to process your application.

The County Office telephone number is ——.

County Supervisor ——

Exhibit F–2—Sample Letter To Notify Those With Applications on File of the Processing Priority System

Date: ——
Dear (Applicant) ——

A recent revision of Farmers Home Administration (FmHA) regulations established a numerical rating system by which priorities for processing rural housing loan applications will be determined. Items to be considered in establishing the numerical rating include income, physical condition of the applicant's current housing, participation in self-help projects and number of persons in the household.

To implement the priority system, 75 percent of each quarterly allocation of loan funds will be used to process applications presently on hand, in the order received, until all such applications have been processed. Twenty-five percent of the allocated funds will be used to process applications in order of priority rating. Your application may be processed under whichever process will be most beneficial to you. It will be necessary that you contact our office and provide the information necessary to establish a priority rating. Please complete the questionnaire at the bottom of this letter and return it to this office as soon as possible.

If we do not hear from you within 30 days, we will assume you are not interested in a loan at this time and we will consider withdrawal of your application. You are welcome to file a new application at any time in the future if you wish to do so.

The Federal Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicants on the basis or race, color, religion, national origin, sex, marital status and age (provided the applicant has the capacity to enter into a binding contract); because all or part of the applicant's income is derived from public assistance program; or because the applicant has in good faith exercised any right under the Consumer Protection Act. The Federal agency that administers compliance with this law is the Federal Trade Commission, Equal Credit Opportunity, Washington, D.C. 20580.

The County Office telephone number is ——.

County Supervisor ——

1. —— Total current annual income of all adult members of your household.

2. Indicate by a check mark any of the following items which *are not* available in your present housing:
☐ Bathtub or shower
☐ Wash basin
☐ Flush toilet
☐ Hot running water

3. Living area of your present housing:
——Total number of rooms
——Number of bedrooms
——Total number of persons in your household who reside there on a permanent basis.

Date ——
Signature Applicant ——

Exhibit G—Interest Credit Agreement Renewal

Dear (FmHA Borrower):

The Interest Credit Agreement you signed, reducing the effective interest rate on your Rural Housing loan, expires soon. To determine whether you are eligible to continue to receive a reduction in your housing loan payment, we will need information about:

1. Your income and the incomes of all other adults who live or propose to live in the dwelling during the next 12 months. You should report *all* income to be received from employment, including overtime pay, bonuses, commissions, tips, etc. You should also include *all* income to be received from other sources such as unemployment benefits, workman's compensation, disability income, pensions, veteran's benefits, social security, child support, alimony, welfare payments, and any other source.

2. Information that will justify income deductions or exemptions to which you may be entitled. This may include items such as: (1) income received for the care of foster children, (2) income for services rendered as a volunteer in organizations such as VISTA, Peace Corps, Foster Grandparent and Retired Senior Volunteer, (3) payment received for training or travel expenses paid by the Department of Labor to CETA participants, (4) depreciation of essential business or farm property, (5) qualified work related expenses, (6) qualified payment for child care or disabled dependent care, and (7) qualified payments for nursing home or institutional type care.

3. The number of dependent minor children (not including foster children) residing in the dwelling.

4. The amount of real estate taxes paid by you on your dwelling last year reduced by any tax exemptions available but not taken.

5. The amount you pay each year for fire or hazard insurance on your dwelling.

This information must be provided promptly to the Farmers Home Administration (FmHA) by completing the enclosed Interest Credit Agreement. When applicable, the enclosed Request for Verification of Employment should also be completed.

1. Interest Credit Agreement—Complete section II of the agreement, sign the form in the space provided, and send all copies of the form to the FmHA County Office using one of the enclosed envelopes. If you are self-employed or a farmer, contact the County Supervisor for an appointment so that the County Supervisor may assist you in providing the required information.

2. Request for Verification of Employment—You and each of the employed adult members of your household must complete one of the forms for each source of employment income. Items 1, 2, and 3 must be completed and the form signed in block 4. The form and one of the enclosed envelopes should be sent or given to each employer. You should request the employer to complete and send the form to the FmHA County Office within 10 days. To ensure that the form is returned you should place a stamp on the envelope before giving it to the employer. If additional copies of the form are needed they may be obtained from the FmHA County Office.

After the County Supervisor has received all of the required information, a copy of the Interest Credit Agreement form will be returned to you. The agreement will show the amount of interest credit, if any, that will be credited to your loan account.

Failure to provide complete and accurate information or to return the forms promptly to the FmHA may result in your not receiving all of the interest credit to which you may be entitled, thus increasing the payments on your loan.

The enclosed Interest Credit Agreement and Verification of Employment must be completed and returned to your local County Supervisor by (date). Failure to return the forms with information completed as requested will result in loss of interest credit for which you may otherwise be eligible to receive and your loan payments will be increased to $ —— beginning with your (date) payment. Please see that *all* papers are returned as all income must be considered to compute Interest Credit. If you have any questions you should contact the local County Supervisor immediately at (phone number).

Exhibit H—Mutual Self-Help Housing Guidelines

Introduction
Leadership and Supervision
Basic Requirements
Organization and Agreements
Preconstruction Meetings
Construction
Membership Agreement (Exhibit H–1)
Promissory Note (Exhibit H–2)

How to give low-income rural people an opportunity to have a decent home of their own is a major challenge in rural America. To help such persons have an adequate home at a cost they can afford, the Farmers Home Administration (FmHA) makes Rural Housing (RH) loans to individual persons to enable them to participate in a mutual self-help housing project. This program is specifically designed to help those who do not have enough income to build modest homes by

customary methods, to work together to build modest homes of their own.

Participating applicants who are approved by FmHA may obtain rural housing loans to buy materials, to pay for any skilled labor and contract costs required for work on their own homes and if necessary buy a building site. Basic construction labor will be performed by families mutually helping each other, after forming an unincorporated or incorporated association for this purpose.

This exchange of labor, without a cash cost to the families, is the key to the mutual self-help housing program. In this way the houses can be built for considerably less cash cost than by customary methods.

There also may be savings in the cost of materials purchased. All members of the group may buy their materials from suppliers who offer the most favorable prices. Material suppliers may offer discounts to those participating in mutual self-help housing if they know they will have a large volume of sales to members of the group.

Families have been able to build modest homes suited to their needs at savings of several thousand dollars. This substitution of labor equity for cash can reduce the cost of homes enough to bring the price of a modest home within reach of low-income rural families.

Persons interested in working with other families on an organized basis to build their own homes should contact the FmHA County Supervisor serving the area in which the housing will be located.

The County Supervisor will obtain the prior approval of the State Director for committing the FmHA to participate in each mutual self-help project.

Leadership and Supervision

FmHA will provide the overall leadership and supervision and determine the eligibility of the participating applicants to receive Rural Housing loans. A special construction supervisor may, with prior authorization of the National Office, be hired by the State Director to help the applicants with their home building. In some cases construction supervision assistance may be offered by another agency or organization. FmHA will consider such offers under the following conditions:

1. The agency or organization must have the legal, financial and actual capacity and resources to provide the construction supervision assistance under the direction of the FmHA County Supervisor.

2. The respective responsibilities of all parties should be clearly defined and stated in a written agreement to be signed by the participating agencies.

3. The proposal must be compatible with the FmHA borrower method of operation, more specifically:

a. FmHA will make Rural Housing loans to applicants based on the need and qualifications of each.

b. FmHA will determine the eligibility of each applicant, approve the house plans, inspect the construction, and disburse loan funds as needed on an individual-case basis. Loan funds will *not* be pooled.

c. No advance commitments of loan funds will be made for any project. A commitment of funds will be made for each loan when it is approved subject to the conditions stated in each loan approval.

d. No loan funds may be used to pay for construction supervision or to pay borrowers for working on their homes or on the homes of others who are participating.

e. The construction will involve as much on-site work as practicable, to obtain maximum savings to those participating.

f. Basic plans and construction methods should be standardized to the extent practicable.

Basic Requirements

Rural housing loans will be made by FmHA to those who participate in a self-help housing group and who:

1. Do not have sufficient income to build a modest home by customary methods.

2. Are creditworthy by FmHA standards and can comply with all other eligibility requirements for rural housing loans.

3. Desire to build a home of their own that is simple in design, structurally sound, and low in cost.

The following basic conditions are essential to the success of a self-help housing venture:

1. A sincere spirit of cooperation on the part of all participants.

2. Competent leadership and technical supervision.

3. A complete understanding by each person of the responsibilities involved.

4. Adequate time available to participants to do the work.

5. Sufficient skills among the members of the group to do at least the basic construction work.

6. All the building sites must be close enough together to permit convenient exchange of work.

7. Ordinarily from 6 to 10 families can work together satisfactorily.

Organization and Agreements

An understanding should be reached on important items such as when the individuals in the group will be available to work, the amount of work to be performed, the number to be involved in the various work groups and the amount of time each will spend working on the homes. The group will develop a written agreement drawn so as to be binding upon all members signing it. Attached as Exhibit H–1 is a suggested form of such an agreement called Membership Agreement. All participating members will sign the Membership Agreement and each applicant will be given a copy. Any such document used will be given prior review and approval by the FmHA to be sure that it is legally adequate and does not conflict with applicable State laws of FmHA regulations. This should be done with the assistance of the Office of the General Counsel.

Each applicant will execute a promissory note for an amount equal to the value of the services they agree to perform for the association to build the houses. See Exhibit H–2. Such a note should not be secured by a lien against the property.

Preconstruction Meetings

The successful conduct of a mutual self-help housing program requires a series of meetings with those participating. These meetings should be held to discuss fully all of the planning, construction, and maintenance of a home, the responsibilities of home ownership, and the requirements for a FmHA rural housing loan. These meetings also will familiarize the applicants with the self-help approach, develop mutual confidences among participants and develop the interest of community leaders in the project. During the group meetings the FmHA County Supervisor and those who will be responsible for the supervision of the construction should be able to learn about the capabilities of the individuals and determine the extent to which construction can be carried out under the self-help method.

The actual number of meetings held will depend on the rate at which the group progresses toward reaching a full understanding of the responsibilities involved. Experience indicates that from 8 to 10 meetings usually will be adequate. Local people should be used, where practical, to discuss appropriate subjects in the meetings. This will help in making the local community aware of the self-help program, and also help obtain local acceptance and support for the project. The following is a recommended sequence of meetings and suggested list of subjects to be discussed:

The first meeting should be explanatory in nature. The FmHA County Supervisor should discuss the basic principles involved in mutual self-help housing, together with a brief explanation of the purposes and limitations of and the requirements for rural housing loans. The County Supervisor should also discuss obligations of home ownership such as loan payments, taxes, insurance and maintenance. At the first meeting, time should be allowed for the individuals to become acquainted with one another. In closing the first meeting, the group should be informed of the duties and responsibilities of the officers and committees needed to carry out a mutual self-help program. The members of the group should be considering a name for the organization and the persons best suited for the various positions in order that the officers and committees can be selected at the next meeting.

At the second meeting an association should be formed and the officers and committees selected. They might include the following:

1. President
2. Vice-President
3. Secretary-Treasurer
4. Labor Manager
5. Purchasing Committee
6. Program Committee

Additional meetings are essential, but the order in which the subjects are presented or the number of subjects included in any meeting may vary. The following topics are suggested for a series of meetings:

1. *Site Planning and Building Codes.* An architect, FmHA engineer, or a good builder who also does home designing could be invited to discuss factors in selecting house size. The local building inspector could be asked to speak on building and health code requirements.

2. *Home Planning.* An architect or home economist may be invited to discuss home

kitchen layouts, traffic patterns, window placement, economical construction, and other considerations in the selection of a good house plan.

3. *Plans and Specifications.* The group will probably have questions and need individual help in making decisions concerning plans and specifications for their homes. The County Supervisor and the construction supervisor should help each applicant develop suitable specifications.

4. *Cost of Materials.* The purchasing committee will obtain and review prices of materials and contract work. At one of the last meetings to be held before the construction starts, the purchasing committee should report on its recommendations for buying materials and awarding contracts.

5. *Taxes.* A discussion of the method of tax appraising could be given by the local tax assessor. Based on plans and locations a rough estimate should be made of expected taxes.

6. *Insurance.* A local insurance agent may be asked to speak on insurance for fire and extended coverage, household policies, and other coverages of interest to the group such as liability insurance. The FmHA County Supervisor should discuss fire, windstorm and other hazard insurance requirements of RH loans.

7. *Mortgage Requirements.* The FmHA County Supervisor might discuss the FmHA mortgage and related requirements. A local attorney might be asked to discuss other legal aspects of the program.

8. *Maintenance Costs.* The County Supervisor, the construction supervisor or a local real estate agent might discuss the importance of proper maintenance for a home. They should emphasize how money spent for maintenance improves appearance, helps maintain value and saves money in the long run.

9. *Money Management.* The FmHA County Supervisor should impress upon the group the necessity of following the basic principles of money management such as keeping records, following a budget, and not overspending on non-essentials.

10. *Labor Sharing Arrangement.* The group should discuss and reach decisions as to how the members will share the labor, how records will be kept of time worked, how to make sure that labor will be exchanged on a basis that is fair to all members and how to evidence and record these decisions.

11. *Use of Tools.* One or more of the meetings should include demonstrations and training by the construction supervisor of the safe and proper use of tools. Special attention should be given to the use of basic tools such as level, square, rule, saw, and any power tools that might be used in the construction.

12. *Construction and Work Procedures.* The authority and duties of the Construction Supervisor will be discussed in detail. The procedures for actual construction will be discussed including labor sharing, work teams, order of development, function of committees, time reporting for work completed and future hours available.

13. *Ground Breaking Plans.* The final preconstruction meeting should be more of a social get-together than a business meeting. This is also the logical time to plan a ground breaking ceremony for the day the loans are closed.

Construction

The basic work is performed, largely on a labor exchange basis, by the participating families under the guidance of the construction supervisor.

The group may, depending on the skills of the individuals, plan to do all the work or plan to contract for work which they cannot do readily, such as installation of wiring, plumbing and kitchen cabinets and equipment, excavating for basements and dry-wall finishing. Highly skilled or specialized jobs will be contracted when such services are not available in the group.

There may be an inclination on the part of some participants to want to concentrate on their own homes, particularly after the framing is in place. Therefore, a prior understanding should be reached regarding the specific responsibilities of each family. Rather than completing or nearly completing each house one at a time, work should start on all houses and each stage of construction be finished on all before starting the next stage of construction on any house, to the extent consistent with good construction practices.

To effect savings, materials for all the houses may be purchased from the one or several suppliers who offer the lowest prices. Also, all contracts for members of the group may be awarded to the same contractors. To illustrate, the plumbing contractor offering the lowest price ordinarily should perform the plumbing for all of the dwellings.

Each borrower will pay the material supplier for materials used, and the contractor for work done, on its own home. All deliveries of materials will be itemized separately for each home. The Association as a whole, after considering the suggestions of the purchasing committee will recommend the suppliers from whom materials will be purchased and the contractors to whom the contracts will be awarded.

The construction supervisor with the advice of the president of the association should divide the group into work teams. Work teams should be organized on the basis of skills, compatability, and availability. For example, one team could lay out and pour footings and another team could lay bricks. The third team could begin framing as soon as the foundation is ready.

A firm understanding will be reached that no changes in construction from the approved plans and specifications may be made without furnishing the County Supervisor with full cost figures and obtaining approval in advance. If any change results in a need for additional funds, they must be furnished by the borrower before approval. All homes should be finished at or about the same time and none should be occupied prior to completion of them all.

The Association should have brief meetings, at least once a week, to:

1. Report on performance and hours of work performed.
2. Settle any disagreements.
3. Plan work schedule and purchases for the coming week.

Exhibit H-1—Membership Agreement

Membership Agreement ———— Association

We understand that by signing this agreement we will become members in the ———— Association when we receive adequate credit to finance the home we intend to build. We have read the agreement or have had it read to us and agree to comply with all its provisions. Each applicant has been given a copy to keep.

Purpose

The purpose of this Association is to provide a way whereby each member can help itself and every other member to build its own home.

Membership

Membership will be limited to those persons who:

1. Do not have an adequate home;
2. Are willing to work with the other members of the Association in building their homes;
3. Have a commitment to obtain financing for the cash cost of their home; and
4. Sign the Membership Agreement.

Applicants and co-applicants may both sign the Membership Agreement. As used in this agreement the term "Applicant" means either applicant or co-applicant when both sign the agreement, or the person signing when only one signs.

Voting Rights

Each member will have one vote in the election of officers and all other matters involving a decision by the membership.

Officers

The officers of the Association will be a President, Vice-President and a Secretary-Treasurer. Each will be elected, at a meeting, by a majority vote of all the members and will continue to hold office unless the officer resigns, dies, is incapacitated, or is removed by vote of two-thirds of all the members at a called meeting for the purpose of considering such removal. The duties of the officers will be as follows:

The President will:

1. Call membership meetings and officers' meetings;
2. Preside over all meetings;
3. Work closely with the construction supervisor; and
4. See that committees and members carry out their responsibilities in connection with mutual self-help project.

The Vice-President will:

1. Act for the President in the President's absence; and
2. Be chairman of the Program Committee.

The Secretary-Treasurer will:

1. Keep the minutes of each meeting.
2. Handle correspondence of the Association.
3. Collect and handle through a checking account in the Association's name, funds the organization may need. These may include items such as stationery, stamps and record book.
4. Maintain other records of the Association at the direction of the President.

Appointed Committees and Positions

The officers by majority vote will appoint the following from the membership:

1. A Labor Manager who will keep records of the hours worked by each member and notify the construction supervisor as to the availability of members for work on the housing.

2. A Purchasing Committee of three members of the Association that will obtain and review prices and cost estimates for the houses to be built and recommend contractors and suppliers to be used by the members.

3. Two of the three members of the Program Committee. The third member will be the Vice-President, who will be chairperson. This committee will help plan meetings and assist in obtaining outside speakers.

Meetings

Meetings of officers and meetings of members will be held as often as necessary to successfully complete the mutual self-help housing. Meetings may be called by the President when considered advisable and will be called by the President at the written request of not less than —— members, or at the request of the Farmers Home Administration County Supervisor or other authorized Farmers Home Administration employee. Each officer or member will be notified at least three days before the meeting as to the time, date and place of each meeting by mail, telephone or by announcement at the preceding meeting.

Labor Exchange Agreement

Each member agrees to furnish 700 hours of labor for the construction of houses of the other members of this Association in return for 1,500 hours of labor from other members in the actual construction of its house. We understand that if more than 1,500 hours labor is required from each member to complete all houses, each member will furnish its share of additional labor needed. In case less than 1,500 hours labor is required from each to complete all the houses, each family's obligation under this agreement will be satisfied when it has contributed the number of hours labor actually required.

The number of hours worked by each member or by any other person for any applicant credit will be verified by the Labor Manager. Each member will sign a promissory note to the Association in the amount of $——. It is understood the amount of $—— for each approved hour of labor performed will be credited on the note and that the note will be satisfied when the number of hours required of each member has been worked. However, if any member because of death, illness, or injury is unable to make its full labor contribution personally or from other sources as required, that member will be excused to that extent from performing its labor agreement, and all the other members will assist such a member in completing its house and will contribute the additional amount of labor for all the houses which otherwise the stricken member would have furnished.

We agree to exchange labor on the following basis:

1. Equal time will be allowed for labor performed by members in the actual construction of the homes regardless of the type of work involved.

2. Rates for time allowances for labor performed by persons other than members, will be determined by the Officers with the approval of the Labor Manager and the construction supervisor.

3. A member may not work alone on the members own house unless the job can be done alone and the consent of the construction supervisor has been obtained.

4. The hours worked will be reported by each worker to the construction supervisor each day. The construction supervisor will promptly turn in a work sheet for each worker to the Labor Manager, who will credit the hours worked to that member's account. In case of a dispute as to the number of hours to be credited, the question will be resolved by a majority vote of the officers of the Association.

General Agreements

We agree that:

1. The Association, by majority vote, will determine and recommend the best way to buy materials and recommend contractors for any skilled work. Each member shall make its own decision in selecting the type of building materials and in selecting a contractor from those recommended by the Association. Each member shall pay the cost of materials and the contractor in connection with its own home.

2. The Association will collect cost of operation of the Association from members, not to exceed $—— from each member.

3. The Association will collect, by any means available, payment for failing to provide the amount of labor agreed.

4. The Association will act for the group in other matters related to the project when authorized by a majority of the members.

5. Property insurance will be obtained by the members as required by the Farmers Home Administration. Members also will obtain workmen's compensation insurance as required by State law or public liability insurance against claims of others when required by the Farmers Home Administration.

Dissolution

After a determination is made by the officers that the last house is completed and that there are no obligations of or to the Association, upon majority vote of the members and with the consent of the Farmers Home Administration the Association shall terminate.

Amendments

Amendments to this agreement may be made by a majority vote of the members, at a meeting called for the announced purpose of considering amendments, to take effect upon approval by the Farmers Home Administration County Supervisor; but no amendments may decrease the rights or increase the liability of any member without such member's consent.

Date ——, Signed (Applicant) ——,
Dated: ——, Signed (Co-applicant)
——,

Date ——, Signed (Applicant) ——,
Dated: ——, Signed (Co-applicant)
——,

Date ——, Signed (Applicant) ——,
Dated: ——, Signed (Co-applicant)
——,

Date ——, Signed (Applicant) ——,
Dated: ——, Signed (Co-applicant)
——,

Exhibit H-2—Promissory Note

Date ——

Eighteen months after date for value received, we promise to pay to the —— Association or order the sum of —— ($). We have agreed to furnish said Association 700 hours of our own labor or the labor of other persons as approved by the officers and Labor Manager of the Association and the construction supervisor in accordance with the Membership Agreement of the Association. Credits will be made on this note at the rate of $—— for each hour worked by either of the undersigned, and at a rate determined in accordance with the Membership Agreement for each hour worked by any other person for the account of the undersigned, in the next eighteen months. This note will be satisfied when the undersigned have furnished the actually required number of hours labor. All time worked must be approved by the Labor Manager of the Association. This note is subject to all provisions of the Membership Agreement.

Applicant——
Witness——
Co-applicant——
Address——

Note.—This document has been reviewed in accordance with FmHA Instruction 1901-G, "Environmental Impact Statements." It is the determination of FmHA that this action does not constitute a major Federal action significantly affecting the quality of the human environment, and in accordance with the National Environmental Policy Act of 1969, Pub. L. 91-190, an Environmental Impact Statement is not required.

The reporting and/or recordkeeping requirements contained herein have been approved by the Office of Management and Budget in accordance with the Federal Reports Act of 1942.

(42 USC 1480; 7 CFR 2.23; 7 CFR 2.70)

Dated: January 8, 1981.

Alex P. Mercure,

Under Secretary for Small Community and Rural Development.

[FR Doc. 81-1874 Filed 1-16-81; 8:45 am]
BILLING CODE 3410-07-M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Parts 211 and 214

Documentary Requirements: Immigrants; Waivers; Nonimmigrant Classes: The Effect of a Strike on the Admission and Continued Employment of Certain Nonimmigrants

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: These final rules set forth the restrictions on the admission and continued employment of nonimmigrant temporary workers, intra-company transferees, and students in the occupations and at the place of a strike or other labor disputes involving a work stoppage. The rules are necessary to protect U.S. labor. These rules also eliminate a restriction on the admission of commuters destined to the site of a strike, which was declared invalid by a U.S. Court of Appeals.

EFFECTIVE DATE: February 18, 1981.

FOR FURTHER INFORMATION CONTACT:
For General Information: Stanley J. Kieszkiel, Acting Instructions Officer, Immigration and Naturalization Service, 425 Eye Street, N.W., Washington, DC 20536. Telephone: (202) 633-3048.
For Specific Information: Michael Heilman, General Attorney, Immigration and Naturalization Service, 425 Eye Street, N.W., Washington, DC 20536. Telephone: (202) 633-2620.

SUPPLEMENTARY INFORMATION: On April 18, 1979, the Department of Justice, Office of Legal Counsel ("OLC") advised the Immigration and Naturalization Service ("INS") that 8 CFR 214.2(h)(10), which relates to the effect of a labor dispute on H nonimmigrants did not apply to aliens in the United States. In the opinion, the OLC questioned whether the regulation was rationally related to the purpose of 8 U.S.C. 1101(a)(15)(H)(ii) and concluded that its application to an alien already in the United States would contravene the alien's right to strike or not to strike guaranteed him under section 7 of the National Labor Relations Act ("NLRA").

The Department of Labor expressed its concern over the OLC opinion. It contended that the continued employment or training of H nonimmigrants during a strike would adversely affect U.S. labor. Moreover, it argued that, as a practical matter, the rights of a nonimmigrant under the NLRA are more theoretical than real, and urged that the labor policy interests underlying the Immigration and Nationality Act outweighed those underlying the NLRA in most strike situations.

In our view the amendment to 8 CFR 214.2(h)(10) protects U.S. labor while satisfying the legal concerns of the OLC. In the case of aliens covered by the NLRA, work authorization is suspended unless the employer establishes that less than 30% of the workers involved are U.S. citizens or lawful permanent resident aliens. In addition, the Department of Labor must certify that the strike has been authorized by a majority of such workers, or that a majority of such workers are participating in the strike. This latter provision is included to provide the public with guidelines to identify those situations where the impact upon U.S. labor would not be considered significant enough to override the alien's rights under the NLRA.

A similar amendment has also been added to 8 CFR 214.2(1)(3a) pertaining to petitions for intra-company transferees. The regulation also suspends employment authorization for nonimmigrant students upon certification by the Department of Labor that a strike or other labor dispute involving a work stoppage is in progress in the occupation at the place of employment and that the continued employment of the nonimmigrant student would adversely affect U.S. labor.

Numerous comments were received from the public, including representatives of labor unions and employers of temporary workers, and from the Department of Labor. The views expressed ranged from criticism of any control over the employment of nonimmigrants during a strike to support for automatic suspension of employment authorization during labor disputes. The majority of commentators criticized the proviso applicable to strikes involving nonimmigrants covered by the NLRA.

In our view it is essential that the Attorney General's authority to suspend work authorization of nonimmigrants who have entered this country for the sole purpose of working be exercised only under exceptional circumstances. Some commentators contend that a strike constitutes such exceptional circumstances to justify exercising this authority. In support of their argument they point out that, because the stay of nonimmigrants in this country depends in large part on the goodwill of the employer, abuses by an employer during a labor dispute are more likely to occur where temporary workers are employed.

We find this argument persuasive in the case of workers for whom there is no protection under federal law from unfair labor practices committed by employers. In such a situation no conflict exists with Section 7 of the NLRA which guarantees a worker the right to choose whether or not to strike. Therefore, we are providing for suspension of work authorization for these workers upon a finding of adverse effect to domestic workers. Consequently, given the Department's concern, and the Department of Labor's strong policy, we are publishing a regulation which essentially balances the interests of U.S. labor with the rights granted to certain workers under Section 7 of the NLRA.

Suspension of student employment is being provided regardless of whether or not the student qualifies as an "employee" under the NLRA. The reason for this was expressed in our proposal: inasmuch as the student is not in the U.S. for the purpose of employment, his/her rights under the NLRA are viewed as less significant than those of a temporary worker.

In order to insure that the temporary worker program is not utilized to import "strikebreakers", the final rule bars the admission of all temporary workers in the event of a strike or other labor dispute involving a work stoppage in the occupation at the place of employment regardless of whether or not they would be covered by the NLRA.

Since 8 CFR 211.5(d), relating to the admission of commuters destined to the site of a strike, has been declared invalid by the U.S. Court of Appeals for the Ninth Circuit in *Sam Andrews' Sons v. Mitchell*, 457 F.2d 745 (9th Cir. 1972), it is deleted consistent with our proposal.

In view of the above, the following amendments are made to Chapter I of Title 8 of the Code of Federal Regulations:

PART 214—NONIMMIGRANT CLASSES

§ 214.2 [Amended]

1. 8 CFR 214.2(h)(10) is revised to read as follows:

(h) * * *

(10) *Effect of Strike.* (i) A petition to classify an alien as a nonimmigrant as defined in section 101(a)(15)(H) of the Act shall be denied if the Secretary of Labor or his designee certifies to the Commissioner of Immigration and Naturalization or his designee that a strike or other labor dispute involving a work stoppage of workers is in progress in the occupation and at the place the beneficiary is to be employed or trained and that the employment or training of the beneficiary would adversely affect the wages and working conditions of U.S. citizen or lawful permanent resident workers.

(ii) If a petition has been approved, but the beneficiary has not yet entered the United States to take up the approved employment or training, and the Secretary of Labor or his designee certifies to the Commissioner of Immigration and Naturalization or his designee that a strike or other labor dispute involving a work stoppage of workers is in progress in the occupation and at the place the beneficiary is to be

employed or trained, and that the employment or training of the beneficiary would adversely affect the wages and working conditions of U.S. citizen or lawful permanent resident workers, the approval of the petition is automatically suspended and the application for admission on the basis of the petition shall be denied.

(iii) If a petition has been approved, and the beneficiary has entered the United States to take up the employment or training, if the beneficiary is not an "employee" as defined in the National Labor Relations Act (29 U.S.C. 152(3)), and the Secretary of Labor or his designee certifies to the Commissioner of Immigration and Naturalization or his designee that a strike or other labor dispute involving a work stoppage of workers is in progress in the occupation and place of employment or training, and that the employment or training of the beneficiary would adversely affect the wages and working conditions of U.S. citizens or lawful permanent resident workers, the approval of the petition is automatically suspended.

(iv) If a petition has been approved, and the beneficiary has entered the United States to take up employment, if the beneficiary is an "employee" within the definition of the NLRA, the existence of a strike in the occupation at the place of employment shall result in suspension of the beneficiary's authorization to work, unless the employer establishes to the satisfaction of the Secretary of Labor or his designee, who in turn certifies to the Commissioner of Immigration and Naturalization or his designee, that less than 30 percent of the work force in the occupation at the place of employment are U.S. citizens or lawful permanent resident workers, provided that the Secretary of Labor or his designee also certifies that the strike has been authorized by a majority of such U.S. citizen or lawful permanent resident workers who voted, or a majority of such workers are participating in the strike.

(v) As used in this section, "place of employment" shall mean wherever the employer or a joint employer does business.

§ 214.2 [Amended]

2. 8 CFR 214.2(1)(3a) is revised to read as follows:

* * * * *

(1) * * *

(3a) *Effect of strike:* (i) A petition to classify an alien as a nonimmigrant as defined in section 101(a)(15)(L) of the Act shall be denied if the Secretary of Labor or his designee certifies to the Commissioner of Immigration and Naturalization or his designee that a strike or other labor dispute involving a work stoppage (or layoff) of workers is in progress in the occupation at the place the beneficiary is to be employed, and that the employment of the beneficiary would adversely affect the wages and working conditions of U.S. citizens or lawful permanent resident workers.

(ii) If a petition has already been approved, but the beneficiary has not yet entered the United States to take up the approved employment, and the Secretary of Labor or his designee certifies to the Commissioner of Immigration and Naturalization or his designee that a strike or other labor dispute involving a work stoppage of workers is in progress in the occupation at the place the beneficiary is to be employed, and that the employment of the beneficiary would adversely affect the wages and working conditions of the U.S. citizens or lawful permanent resident workers, the approval of the petition is automatically suspended and the application for admission on the basis of the petition shall be denied.

(iii) If a petition has already been approved, and the beneficiary has entered the United States to take up the employment, if the beneficiary is not an "employee" as defined in the National Labor Relations Act (29 U.S.C. 152(3)), and the Secretary of Labor or his designee certifies to the Commissioner of Immigration and Naturalization or his designee that a strike or other labor dispute involving a work stoppage of workers is in progress in the occupation at the place the beneficiary is to be employed, and that the employment of the beneficiary would adversely affect the wages and working conditions of U.S. citizens or lawful permanent resident workers, the approval of the petition is automatically suspended.

(iv) If a petition has been approved and the beneficiary has entered the United States to take up employment, if the beneficiary is an "employee" within the definition of the NLRA, the existence of a strike in the occupation at the place of employment shall result in revocation of the beneficiary's authorization to work, unless the employer establishes to the satisfaction of the Secretary of Labor or his designee, who in turn certifies to the Commissioner of Immigration and Naturalization or his designee, that less than 30 percent of the work force in the occupation at the place of employment are U.S. citizens or lawful permanent resident workers, provided that the Secretary of Labor or his designee also certifies that the strike has been authorized by a majority of such U.S. citizens or lawful permanent resident workers who voted, or a majority of such workers participating in the strike.

(v) As used in this section, "place of employment" shall mean wherever the employer or a joint employer does business.

* * * * *

3. 8 CFR 214.2(f)(6) is amended by revising the last sentence in the paragraph to read as follows:

§ 214.2 Special requirements for admission, extension, and maintenance of status.

* * * * *

(f) * * *

(6) *Employment.* * * * Permission which is granted to a student to engage in any employment shall not extend beyond the expiration date of his/her authorized stay, and authorization for all employment, whether or not part of any academic program, is automatically suspended upon certification by the Secretary of Labor or his designee to the Commissioner of Immigration and Naturalization or his designee that a strike or other labor dispute involving a work stoppage of workers is in progress in the occupation at the place of employment. As used in this section, "place of employment" shall mean wherever the employer or a joint employer does business.

* * * * *

PART 211—DOCUMENTARY REQUIREMENTS: IMMIGRANTS: WAIVERS

4. 8 CFR 211.5(d) is removed in its entirety.

§ 211.5 Alien Commuters

* * * * *

(d) [Revoked]

(Sec. 103, and 214; (8 U.S.C. 1103, and 1184))

Dated: January 12, 1981.

David Crosland,

Acting Commissioner, Immigration and Naturalization Service.

[FR Doc. 81-1709 Filed 1-16-81; 8:45 am]

BILLING CODE 4410-10-M

NUCLEAR REGULATORY COMMISSION

10 CFR Part 73

Physical Protection of Plants and Materials: Reporting of Physical Security Events

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its regulations to clarify existing requirements dealing with the reporting of events which significantly affect physical security effectiveness. Proposed amendments were published for comment in October 1979, and have been revised to take into consideration public comment. Instead of reporting within 1 hour as originally proposed, a range of reporting times up to 24 hours or the recording of an event in the licensees' records would be allowed, depending on the severity of the event and compensatory measures taken.

Concurrently with the issuance of the final rule, the NRC staff is issuing a Regulatory Guide which provides a procedure that may be used to determine whether an event is reportable, including a partial list of typical events that a licensee should report. This guide was issued for comment along with the proposed regulation and has been revised to reflect both the changes made in the effective regulation and the comments received on the proposed guide.

EFFECTIVE DATE: April 6, 1981.

NOTE: The Nuclear Regulatory Commission has submitted this rule to the Comptroller General for review of its reporting requirement under the Federal Reports Act, as amended, 44 U.S.C. 3512. The date on which the reporting requirement of the rule becomes effective, unless advised to the contrary, includes a 45-day period which that statute allows for Comptroller General review (44 U.S.C. 3512(c)(2)).

FOR FURTHER INFORMATION CONTACT: Mr. James Prell, Office of Standards Development, U.S. Nuclear Regulatory Commission, Washington, DC 20555 (301-443-5903).

SUPPLEMENTARY INFORMATION: On October 22, 1979, the NRC published in the **Federal Register** (44 FR 60743) proposed amendments to 10 CFR Part 73 of its regulations concerning reporting of safeguards events. Interested persons were invited to submit written comments and suggestions in connection with the proposed amendments, within 60 days after publication in the **Federal Register**. Concurrently with the publication of the proposed amendments, the NRC issued for comment a guide which provides a procedure for implementing the regulations (Draft Regulatory Guide, Reporting of Safeguard Events, SG 901-4). After reviewing public comments on the regulation and the guide, the NRC has decided to make a number of changes to both documents.

Following is a summary of the substantive changes to the amendments. These changes were accompanied by appropriate changes to the guide.

1. *Reporting Times.* Several comments suggest that a clearer distinction be made between serious and less serious types of events, and that reporting times be made commensurate with the severity of the event. The NRC agrees with this suggestion and has developed criteria for classifying event severity and the associated reporting times. The final rule makes a distinction between events which must be reported by phone within 1 hour and those that must be reported within 24 hours. Events which must be reported within 1 hour are those that involve an explicit threat or a major loss of physical security effectiveness. Events that must be reported within 24 hours are those involving a potential threat or a moderate loss of physical security effectiveness. Reporting of a major loss of physical security effectiveness can be delayed for 24 hours if: (a) compensatory measures specified in an approved security or contingency plan have been taken, or (b) within ten minutes of that event's occurrence, compensatory measures are implemented that provide a level of security equivalent to that existing prior to the event. Similarly, a moderate loss of physical security effectiveness event need not be reported if equivalent compensatory measures have been implemented. Every event must be entered into the licensee's records. Events that have been defined in a licensee's approved security or contingency plan as not being reportable need not be reported to the NRC.

2. *Compensating Measures.* Several comments suggest that when, following an event, compensating measures are placed into force that provide a level of security equivalent to that existing prior to the event, it need not be reported to the NRC but merely recorded in the licensee's records. This suggestion has been adopted for a moderate loss of physical security event. However, for a compensated major loss of physical security effectiveness event, a report must be made within 24 hours instead of 1 hour. Even though measures have been taken to compensate for this type of event, a report is required because the NRC needs to be informed of the cause of such an event and the action taken to correct it.

3. *Distinction in Reporting Requirements Between High and Low Enriched Uranium.* One comment suggests that reporting requirements for events involving formula quantities of strategic special nuclear material should be different from those involving moderate and low strategic significance material. The basis cited for this suggestion is the considerable differences in their respective physical security requirements, as specified in §§ 73.25, 73.26, 73.45, 73.46 versus 73.67. The NRC agrees with this comment with regard to the loss of physical security effectiveness type events. Accordingly, events pertaining to material or moderate strategic significance, which must meet the safeguard requirements of Section 73.67 paragraphs (d) and (e), have been placed in the moderate loss of physical security effectiveness category, while events pertaining to material of low strategic significance, which must meet the safeguard requirements of Section 73.67 paragraphs (f) and (g), do not have to be reported. However, explicit or potential threats concerning all types of material covered by safeguards regulations must be reported.

4. *Material Control and Accounting.* Some comments suggest that material control and accounting reporting requirements are adequately addressed by existing regulations. The NRC has reevaluated the need for the reporting of events involving material control and accounting and agrees with these comments.

5. *More Definite Description of Authorized Individual.* Some comments suggested there are many "authorized individuals" at fuel cycle facilities who could feel bound to report the same event. The commenters proposed that a responsible individual be more specifically identified. The NRC disagrees with this suggestion. The Commission is not concerned with who reports the security event, but rather that the event be reported within the required time frame beginning at the moment of discovery by a member of the security organization or any other employee of the licensee. The requirement has been changed to better reflect this concern.

Pursuant to the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and sections 552 and 553 of Title 5 of the United States Code, the following amendments to Title 10, Chapter 1, Code of Federal Regulations, Part 73, are published as a document subject to codification.

1. Section 73.71 of 10 CFR Part 73 is amended by adding a new paragraph (c) to read as follows:

§ 73.71 Reports of unaccounted-for shipments, suspected thefts, unlawful diversion, radiological sabotage, or events which significantly threaten or lessen the effectiveness of safeguards.

* * * * *

(c) Each licensee under either a specific or general license shall report to the director of the appropriate Nuclear Regulatory Commission Inspection and Enforcement Regional Office listed in Appendix A of this Part, by telephone, any event which significantly threatens or lessens the effectiveness of a physical security system as established by regulations in this chapter, or by the licensee's approved physical security, contingency, and security personnel qualification and training plans or by both. This report shall be made within the time period specified below. The time period begins upon discovery of the event by any member of the security organization or any other employee of the licensee. The licensee shall submit a written report to the appropriate NRC Regional Office listed in Appendix A of this Part describing the event in detail within 5 days of the time of discovery. A copy of such written report shall be sent to the Director of Inspection and Enforcement, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. Such notification and reports satisfy both the notification requirements of Part 21 of this chapter, if the event is also reportable under Part 21, and Section 50.72(a)(4) of Part 50 of this chapter, if applicable. A separate log shall be maintained to record events reportable under Section 73.71. Licensees need not report any event which is designated as not reportable in their security or contingency plans.

Reporting of Physical Security Events

Note.—This Table should be used in conjunction with the Responsibility Matrix developed under the requirements of 10 CFR Part 73, Appendix C—Licensee Safeguards Contingency Plans.

Event	Reporting time to NRC
Explicit threat[1]	Within 1 hour.
Major loss of physical security effectiveness[2].	Within 1 hour.
Potential threat[3]	Within 24 hours.
Major loss of physical security effectiveness which has been properly compensated[4].	Within 24 hours.
Moderate loss of physical security effectiveness[5].	Within 24 hours.
Moderate loss of physical security effectiveness which has been properly compensated.	No requirement, log in licensee's records.

[1] Explicit Threat. An explicit threat is information received by a security organization that an act of theft or radiological sabotage will be attempted. All licensees may be subject to this event.

[2] Major Loss of Physical Security Effectiveness. A major loss of physical security effectiveness occurs when security features breakdown which allow unauthorized or undetected access to material access or vital areas, shipments of formula quantities of SSNM, or shipments of irradiated reactor fuel, or at facilities licensed to possess formula quantities of SSNM the communication systems used to summon offsite response become inoperative. Licensees which are required to meet the requirements of 10 CFR § 73.50, § 73.67, and § 73.60 may be subject to this event.

[3] Potential Threat. A potential threat is information received by a security organization which supports a belief that an act of theft or radiological sabotage will be attempted. All licensees may be subject to this event.

[4] Properly Compensated. Properly compensated means measures as specified in a security or contingency plan or, if the event is not specified in either of these plans, it means measures implemented within 10 minutes of an event's occurrence that provide a level of security equivalent to that existing before the event. Licensees which are required to meet the requirements of 10 CFR § 73.50, § 73.67 and § 73.60 may be subject to this event.

[5] Moderate Loss of Physical Security Effectiveness. A moderate loss of physical security effectiveness occurs when: (1) a major loss of effectiveness occurs but is properly compensated, (2) security features breakdown which allow unauthorized or undetected access to protected or controlled access areas or shipments of moderate strategic significance nuclear material, (3) a breakdown in security features protecting material access or vital areas occurs which leaves these areas under the protection of only one security system. (This includes loss of either alarm station.) All licensees may be subject to this event.

(Sec. 53, 161o, Pub. L. 83–703, 68 stat. 50, as amended, Pub. L. 85–507, 72 Stat 327; Sec. 201, Pub. L. 93–438, 88 Stat. 1242–1243 (42 U.S.C. 2073, 2201, 5841))

Dated at Washington, DC this 31st day of December, 1980.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 81-1414 Filed 1-16-81; 8:45 am]

BILLING CODE 7590-01-M

DEPARTMENT OF ENERGY

Economic Regulatory Administration

10 CFR Part 210

[Docket No. ERA–R–80–28]

Amendments to Normal Business Practices Rule

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Final rule.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) is amending the normal business practices rule, 10 CFR 210.62, to eliminate DOE's restrictions on extensions of credit for purchases of motor gasoline at the retail level.

DATES: Effective date: September 5, 1980.

FOR FURTHER INFORMATION CONTACT:

William Webb (Office of Public Information), Economic Regulatory Administration, Room B–110, 2000 M Street N.W., Washington, D.C 20461, (202) 634–2170.

Maurice Boehl (Regulations and Emergency Planning), Economic Regulatory Administration, Room 2304, 2000 M Street, N.W., Washington, D.C 20461, (202) 653–4290.

William Funk or Sue Sheridan (Office of General Counsel), Department of Energy, Room 6A–127, 1000 Independence Ave., S.W., Washington, D.C. 20585, (202) 252–6736 or 252–6754.

SUPPLEMENTARY INFORMATION:

I. Background.
II. Comments Received and Discussion
III. Amendments Adopted
IV. Procedural Requirements

I. Background

On August 20, 1980, we issued a notice of proposed rulemaking (45 FR 57138, August 27, 1980) to amend the normal business practices rule by removing credit controls on sales of gasoline to consumers at retail sales outlets and in retail sales to wholesale purchaser-consumers and bulk purchasers. We also proposed an alternate amendment to the normal business practices rule to eliminate credit controls only with respect to consumer sales of gasoline at retail sales outlets. We also requested comments on, but did not propose, the general elimination of credit controls at all levels of gasoline distribution and possible amendments to the price regulations that would enable retail sellers to offer price discounts for cash purchases of gasoline.

II. Comments Received and Discussion

Public hearings were held in Houston, Texas, on October 2, 1980, and in Washington, D.C., on October 7, 1980. A total of thirty-seven oral and written comments were submitted by twenty-two refiners, eight trade associations representing wholesale and retail gasoline distributors, one trade association representing independent refiners, one trade association representing financial institutions that issue credit cards, one federal government department, one Member of Congress, one gasoline reseller and one private citizen.

The refiners who commented generally supported the primary proposal to eliminate credit controls in all sales of gasoline to ultimate consumers, primarily because they felt that abolishing DOE's credit controls at the retail level would be a logical step in the transition to decontrol. The majority of these refiners, however, stated that the proposal did not go far enough and expressed a preference for the elimination of DOE's credit controls at all levels of distribution. The Department of Justice also favored the elimination of all existing credit controls, on the ground that continued regulatory interference is not justified by current market conditions. We will take these comments into consideration as we consider the advisability of eliminating DOE's credit controls in sales between refiners, jobbers, and

dealers. In the event that we decide to propose such action, however, a separate rulemaking proceeding would be required.

Of the eight trade associations representing wholesale and retail gasoline distributors, two endorsed the primary proposal, one supported the alternate proposal, and five were opposed to any change in the rule. In addition to the reasons given by refiners, those trade associations that supported the primary proposal favored it because it would eliminate existing inconsistencies in credit restrictions as they pertain to retailers and reseller-retailers that price under different provisions of DOE's price rules. The trade association that favored the alternate proposal expressed the opinion that, while gasoline consumers enjoy considerable flexibility in choosing sellers on the basis of favorable credit terms, neither wholesale purchaser-consumers nor bulk purchasers have such flexibility in selecting suppliers, particularly in times of tight supplies. Although we appreciate the fact that wholesale purchaser-consumers and bulk purchasers may under certain circumstances have less freedom to select suppliers on the basis of favorable credit terms, we believe that the advantages of the rule we are adopting, in terms of easing the transition to decontrol and eliminating credit restrictions that apply to refiners and reseller-retailers that price under § 212.93(a)(5), far outweigh any disadvantages with regard to credit which wholesale purchaser-consumers and bulk purchasers might experience.

The five trade associations that expressed opposition to any change in the normal business practices rule did so primarily on the basis that there had been no demonstrated necessity to eliminate credit controls at the retail level and that adoption of either proposal would likely lead to the elimination of refiner credit cards and a resulting loss of business to retailers that currently accept such cards. The dissenting trade associations also expressed concern that dealers associated with refiners who withdraw their retail credit cards will be placed at a competitive disadvantage relative to other dealers whose suppliers retain credit cards. For the reasons discussed at length in the August 20 notice of proposed rulemaking, we believe that the proposed amendments are appropriate, not only as transitional steps towards decontrol, but also to eliminate inconsistencies in the credit restrictions applicable to various retailers and reseller-retailers and to clarify the interaction of the rule with Federal Reserve Board policies. Moreover, we do not believe that refiners are likely to discontinue the use of retail credit cards, since consumer credit is a well-established marketing practice among competing sellers of gasoline. Finally, even were some refiners to selectively or totally discontinue the use of credit cards under this rule, this would merely reflect marketing actions that could occur after September 30, 1981.

Some trade associations were concerned that the proposed amendments would place branded jobbers at a disadvantage relative to unbranded jobbers, since the cost of credit is already built into their suppliers' product prices and would remain even after the competitive advantage of being able to offer the use of credit cards to consumers ended. We do not believe that this problem is likely to occur because, with the elimination of the equal application rule on November 1, 1980, which grants refiners greater pricing flexibility, refiners that eliminate credit cards are not likely to maintain pricing structures that place branded jobbers at a competitive disadvantage relative to unbranded jobbers. Moreover, for the reasons stated above, we believe that refiners are unlikely to eliminate the use of credit cards. In any event, we believe that the advantage of easing the transition to decontrol which will be accomplished by adopting the primary proposal outweighs the possibility that certain jobbers might experience temporary competitive disadvantages prior to September 30, 1981, when all of DOE's price controls expire.

The majority of commenters who opposed any change in the rule were concerned that adoption of this proposal would open the door to total elimination of credit controls at all levels of distribution. While this rulemaking requested comments on the possible total elimination of DOE's credit controls, it specifically did not *propose* such a change to the existing rule, and should not be interpreted as a signal that such a change is necessarily forthcoming. As noted earlier, DOE will continue to consider proposals to modify various aspects of the normal business practices rule in light of the comments received.

Most of the commenters also responded to our second request for comments, regarding a proposal to amend the price rules to allow incentives for dealers to offer price discounts for cash purchases of gasoline at retail sales outlets. Reaction to the proposal was mixed, with refiners generally favoring such a rule change and dealers' and distributors' trade associations generally opposed to it. We will continue to study Exxon's cash discount proposal and alternate proposals in light of these comments, but wish to make clear that such a rule change would have to be the subject of a separate rulemaking proceeding.

With regard to the proposed regulatory language, one commenter expressed concern that the proposal was unclear as to whether the rule authorized refiners to change the terms of their consumer credit cards not only in their own retail outlets and direct retail sales but also in sales by branded independent dealers that accept those refiners' credit cards. In response to these comments, we are modifying the proposed regulatory language in this final rule to clarify our intent that the amendment applies to all credit extended in retail gasoline sales.[1] In addition, we are also modifying the proposed regulatory language to make it clear that the amendments apply only to retail sales of *gasoline*. Sales of propane at the retail level and at all other levels of distribution are still subject to the credit restrictions of the normal business practices rule.

We would also like to make clear that the amendments adopted today only affect credit terms to ultimate consumers of gasoline, and leave intact existing credit controls with respect to supplier-purchaser relationships between refiners, jobbers and retailers.

Since DOE eliminated the equal application rule [45 FR 72626, November 3, 1981], some questions have arisen in connection with that rulemaking and its effect on suppliers' obligations to maintain historical discounts to purchasers. There is no explicit prohibition in § 210.62 against changes in discounts generally. Section 210.62(c), which mentions discounts, does so only as an example of practices that are prohibited if they constitute a means to obtain a price higher than permitted by the regulations.[2] Section 210.62(b) prohibits any form of discrimination that has the effect of extending a preference that frustrates the objectives of the Emergency Petroleum Allocation Act of 1973 (EPAA) or the regulations

[1] This does not mean, however, that refiners can alter the terms upon which these credit card slips are used by retailers to reimburse refiners for gasoline.

[2] Prior to November 3, 1980, both the class of purchaser concept and the equal application rule effectively made reductions or eliminations of discounts a means to attain a price higher than permitted by the regulations.

thereunder. Section 210.62(a) prohibits expressly only more stringent credit terms or payment schedules. Thus, under the normal business practices rule suppliers may eliminate non-credit discounts so long as that elimination does not result in higher than lawful prices and does not extend a sales preference that frustrates the objectives of the EPAA or the regulations thereunder. For example, if a refiner has sufficient increased costs to cover the additional revenue generated by the elimination of a trade discount (e.g., 2¢ off DTW), generally we believe that after November 3, 1980, there would be no regulatory bar to the elimination of that discount. On the other hand, a refiner could *not* alter any credit discount (e.g., a 5% discount if the invoice is paid within 10 days), except in its retail sales or with respect to consumers using its credit card. In short, while the normal business practices rule continues to require the maintenance of *credit* terms historically offered to purchasers other than ultimate consumers, including *credit-related* discounts, suppliers are now generally free to eliminate other types of discounts and establish new prices for various classes of purchasers, so long as doing so does not result in a supplier's recovering more than its total allowable costs under DOE's price regulations. ERA will, however, review any pricing practices which appear to constitute an attempt to discourage purchases by historical or assigned customers, as such practices would constitute unlawful discrimination under § 210.62(b).

III. Amendments Adopted

This rule amends the normal business practices rule to abolish the rule's restrictions with respect to credit in all retail sales of gasoline to ultimate consumers, including wholesale purchaser-consumers and bulk purchasers. The rule adds a new § 210.62(d)(4) and makes conforming changes to 210.62(d)(3). Refiners, as well as reseller-retailers that price under 212.93(a)(5), may now change their credit terms and payment schedules in sales of gasoline to consumers.

IV. Procedural Requirements

A. Section 404 of the DOE Act

Pursuant to the requirements of section 404 of the Department of Energy Act, a copy of the proposed rule was sent to the Federal Energy Regulatory Commission (FERC) for review. The FERC determined that this rule would not significantly affect any of its functions.

B. National Environmental Policy Act

It has been determined that this rule does not constitute a "major Federal action significantly affecting the quality of the human environment" within the meaning of the National Environmental Policy Act (NEPA), 42 U.S.C. 4321 *et seq.*, and therefore an environmental assessment or an environmental impact statement is not required by NEPA and the applicable DOE regulations for compliance with NEPA.

C. Executive Order 12044

ERA has decided that the preparation of a regulatory analysis under Executive Order No. 12044, entitled "Improving Government Regulations" (43 FR 12661, March 24, 1978), is not required for this rule. A detailed explanation of the basis for this decision may be found in the August 20 Notice.

D. Effective Date

The provisions of 5 U.S.C. 553(d) generally requiring that a substantive rule may not be made effective less than 30 days following publication do not apply to rules that grant an exemption, relieve a restriction, are interpretative or if the agency finds good cause for the rule's earlier effectiveness. In this instance, the rule relieves a restriction. For the reasons discussed at length in the August 20 notice, we are making this rule effective retroactively to September 5, 1980.

(Emergency Petroleum Allocation Act of 1973, 15 U.S.C. § 751 *et seq.*, Pub. L. 93-159, as amended, Pub. L. 93-511, Pub. L. 94-99, Pub. L. 94-133, Pub. L. 94-163, and Pub. L. 94-385; Federal Energy Administration Act of 1974, 15 U.S.C. § 787 *et seq.*, Pub. L. 93-275, as amended, Pub. L. 94-332, Pub. L. 94-385, Pub. L. 95-70, and Pub. L. 95-91; Energy Policy and Conservation Act, 42 U.S.C. § 6201 *et seq.*, Pub. L. 94-163, as amended, Pub. L. 94-385, Pub. L. 95-70, Pub. L. 95-619, and Pub. L. 96-30; Department of Energy Organization Act, 42 U.S.C. § 7101 *et seq.*, Pub. L. 95-91, Pub. L. 95-509, Pub. L. 95-619, Pub. L. 95-620, and Pub. L. 95-621; E.O. 11790, 39 FR 23185; E.O. 12009, 42 FR 46267.)

In consideration of the foregoing, we are amending Part 210 of Chapter II, Title 10 of the Code of Federal Regulations, as set forth below, effective September 5, 1980.

Issued in Washington, D.C., January 12, 1981.

Hazel R. Rollins,
Administrator, Economic Regulatory Administration.

1. Section 210.62(d) is amended by revising paragraph (3) and adding a new paragraph (4) to read as follows:

§ 210.62 Normal business practices rule.

* * * * *

(d) Notwithstanding the provisions of this section:

* * * * *

(3) A retailer or reseller-retailer, which establishes maximum lawful selling prices pursuant to § 212.93(a)(2), may offer in retail sales discounts, premiums, and different commodities, services, and equipment than previously offered or sold.

(4) A retailer, reseller-retailer or refiner may offer in retail sales of gasoline (including any sale to a consumer with a consumer credit card) different credit terms or payment schedules than previously offered.

* * * * *

[FR Doc. 81-1810 Filed 1-16-81; 8:45 am]
BILLING CODE 6450-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 80-NW-45-AD, Amdt. 39-4024]

Airworthiness Directives: Boeing Model 727-100 and 727-100C Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This Airworthiness Directive (AD) requires replacement or modification of the aft airstair emergency extension control handle on certain Model 727-100 and 727-100C airplanes. There have been four instances in which the control handle broke during attempts to lower the stairway. A broken handle could prevent actuation of the emergency extension system, which could leave the exit unusable in an evacuation.

DATES: Effective date February 21, 1981.

ADDRESSES: The service bulletin specified in this directive may be obtained upon request to Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124. These documents may be examined at FAA Northwest Region, 9010 East Marginal Way South, Seattle, Washington 98108.

FOR FURTHER INFORMATION CONTACT:
Mr. Roger S. Young, Airframe Branch, ANW120S, Seattle Area Aircraft Certification Office, FAA Northwest Region, 9010 East Marginal Way South, Seattle, Washington 98108, telephone (206) 767-2516.

SUPPLEMENTARY INFORMATION: During a recent evacuation, a flight attendant attempted to lower the aft airstair by pulling the emergency extension control handle, which broke. The attendant then lowered the airstair by pulling on the cable that actuates the system. The control handle is plastic and can be broken when it is allowed to cock when attempting to activate the system. Since this situation may result in the aft airstair being unusable during an evacuation, this AD require replacement or modification of the control handle.

Public Participation

This amendment is based on a Notice of Proposed Rulemaking (NPRM) (45 FR 67678, October 14, 1980). All interested persons have been given an opportunity to participate in the rulemaking of the amendment and due consideration has been given to all matters presented. Two comments were received.

Discussion of Comments

Both commenters noted that this AD should not apply to airplanes on which the aft airstair emergency extension system has been deactivated and one commenter requested that the compliance time be extended to one year to permit the modification to be accomplished during "C" checks.

The FAA did not intend to require modification of the control handle on airplanes where the FAA has approved deactivation of the emergency extension system and those airplanes have been excluded from compliance with the requirements of this AD.

Because of the safety implications of this AD, and since the required modification should not result in any additional-airplane down-time, the FAA does not agree that the compliance time for this minor modification should be extended.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, § 39.13 of the Federal Aviation Regulations (14 CFR 39.13) is amended by adding the following new Airworthiness Directive:

Boeing: Applies to all Boeing Model 727-100 and 727-100C series airplanes equipped with the aft airstair emergency extension system, except all-cargo configurations and those airplanes where the aft stair emergency extension system has been deactivated. Compliance is required as indicated. Accomplish the following:

A. Prior to June 1, 1981, replace or modify the aft airstair emergency extension control handle in a manner approved by the Chief, Seattle Area Aircraft Certification Office, FAA Northwest Region. (Note: Accomplishment of Boeing Service Bulletin 727-52-120 dated March 21, 1980, or later FAA approved revisions has been approved as a means of compliance with the requirements of this AD).

B. Upon request of the operator, an FAA aviation safety inspector, subject to prior approval by the Chief, Seattle Area Aircraft Certification Office, FAA Northwest Region, may adjust the compliance date if the request contains substantiating data to justify the change.

This amendment becomes effective February 21, 1981.

(Secs. 313(a), 601, and 603, Federal Aviation Act of 1958, as amended (49 U.S.C. 1354(a), 1421, and 1423); sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); and 14 CFR 11.89).

Note.—The FAA has determined that this document involves a regulation which is not considered to be significant under the provisions of Executive Order 12044, as implemented by Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979).

Issued in Seattle, Washington, on January 7, 1981.

Charles R. Foster,
Director, Northwest Region.

[FR Doc. 81-4736 Filed 1-16-81; 8:45 am]
BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 81-NW-1-AD; Amdt. 39-4023]

Airworthiness Directives: Lockheed-California Company Model L-1011 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), which requires the replacement of all one-man old design type fixed chemical oxygen generators on Lockheed Model L-1011 series aircraft. This AD is needed to insure that emergency oxygen will be supplied to cabin attendants and passengers in the event of cabin decompression.

DATES: Effective January 27, 1981. Compliance schedule—as prescribed in the body of the AD.

ADDRESSES: The applicable service information may be obtained from: Lockheed-California Company, P.O. Box 551, Burbank, California 91520, Attention: Commercial Support Contracts, Dept. 63-11, U-33, B-1. This information may also be examined at FAA Northwest Region, 9010 East Marginal Way South, Seattle, Washington 98108; or 15000 Aviation Boulevard, Hawthorne, California 90261, Room 6W14.

FOR FURTHER INFORMATION CONTACT:
Anthony Bonanno, Aerospace Engineer, Systems and Equipment Branch, ANW-130L, Los Angeles Area Aircraft Certification Office, Federal Aviation Administration, Northwest Region, P.O. Box 92007, World Way Postal Center, Los Angeles, California 90009, telephone (213) 536-6387.

SUPPLEMENTARY INFORMATION: There have been reports of electrical shorting failures of the ceramic coated wires within the case of one specific type of Scott Aviation fixed chemical oxygen generators on Lockheed L-1011 series aircraft. These failures were discovered during an inspection phase of a requalification test program. This type of failure can prevent the initiation of oxygen generation within the affected unit. Therefore, this AD action is being taken to require replacement of the Scott Aviation one-man fixed chemical oxygen generators, P/N 801462-01, with Scott Aviation P/N 801462-04 oxygen generators.

There are approximately 99 United States registered L-1011 aircraft in service. The cost of the replacement oxygen generators for these aircraft will be approximately $102,435. The labor cost associated with the installation of the replacement oxygen generators, based on an assumption of 14 manhours per aircraft at $35 per manhour, is estimated to be $46,550. This results in an estimated cost impact to the U.S. L-1011 fleet of $148,985.

Since a situation exists that requires immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable, and good cause exists for making this amendment effective in less than 30 days.

Adoption of Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) is amended by adding the following new airworthiness directive.

Lockheed-California: Applies to all Model L-1011 series airplanes certificated in all categories. Compliance required within 300 hours time-in-service after the effective date of this AD. To assure availability of emergency passenger oxygen, accomplish the following:

A. Replace all one-man fixed chemical oxygen generators, Scott Aviation P/N

801462-01 with Scott Aviation P/N 801462-04 oxygen generators, in accordance with a method approved by the Chief, Los Angeles Area Aircraft Certification Office.

(Note.—Accomplishment of Lockheed Service Bulletin 093-35-030, dated September 15, 1980, has been approved as a means of compliance with this requirement.)

B. Alternative means of compliance or other actions which provide an equivalent level of safety may be used when approved by the Chief, Los Angeles Area Aircraft Certification Office, FAA Northwest Region.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

This amendment becomes effective January 27, 1981.

(Secs. 313(a), 601, and 603, Federal Aviation Act of 1958, as amended (49 U.S.C. 1354(a), 1421, and 1423; Sec. 6(c) Department of Transportation Act (49 U.S.C. 1655(c)); and 14 CFR 11.89))

Note.—The Federal Aviation Administration has determined that this document involves a proposed regulation which is not considered to be significant under Executive Order 12044 and as implemented by DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979).

Issued in Seattle, Washington, on January 7, 1981.

Charles R. Foster,

Director, Northwest Region.

[FR Doc. 81-1709 Filed 1-16-81; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 80-WE-28-AD; Amdt. 39-4022]

Airworthiness Directives; McDonnell Douglas Model DC-8 Series Airplanes Equipped with Upper Main Cargo Doors

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new Airworthiness Directive (AD) which requires inspection, replacement as necessary, lubrication, and sealing of upper cargo door attach hardware on McDonnell Douglas Model DC-8 series airplanes equipped with such cargo doors. This AD is needed to prevent stress corrosion cracking of the upper cargo door spool fitting attach bolts, which could jeopardize the door latching/locking capability, resulting in a possible loss of cabin pressure.

DATES: Effective date February 19, 1981.

Compliance schedule—as prescribed in the body of the AD.

ADDRESSES: The applicable service information and copies may be obtained from McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Director, Publications and Training C1750, (54 60). This information may also be examined at FAA Northwest Region, 9010 East Marginal Way South, Seattle, Washington 98108, or 15000 Aviation Boulevard, Hawthorne, California 90261, Room 6W14.

FOR FURTHER INFORMATION CONTACT: Michael E. O'Neil, Aerospace Engineer, Airframe Branch, ANW-120L, Federal Aviation Administration, Los Angeles Area Aircraft Certification Office, Northwest Region, P.O. Box 92007 World Way Postal Center, Los Angeles, California 90009, telephone (213) 536-6356.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an Airworthiness Directive requiring inspection, lubrication, and sealing of upper cargo door attach hardware of McDonnell Douglas Model DC-8 series airplanes so equipped was published in the Federal Register on June 30, 1980 (45 FR 43782).

The proposal was prompted by reports of upper cargo door latch spool fitting attach bolt failures on McDonnell Douglas Model DC-8 series airplanes, which could jeopardize the door latching/locking capability. This has been attributed to stress corrosion produced by bolt preload and entrapped moisture in the void area between the bolts and spool attach fittings. Since this condition is likely to exist or develop in other airplanes of the same type design, this AD requires inspection, lubrication and sealing and bolt replacement, if required, on upper main cargo door latch spool fitting attach bolts on McDonnell Douglas Model DC-8 series airplanes so equipped.

Interested persons have been afforded an opportunity to participate in the making of this amendment. One commenter opposed the issuance of the AD contending that voluntary operator compliance with applicable service bulletins would be sufficient. The FAA's position is that an unsafe condition exists for which mandatory airworthiness directive action is necessary in the interest of safety.

Subsequent to the issuance of the NPRM, the Douglas Aircraft Company released Douglas Aircraft Company Service Bulletin DC-8 SB 52-82, dated October 28, 1980, which includes the detailed instructions set forth in the NPRM. For purposes of simplicity and to allow operators to use alternative methods of compliance with this AD when they are approved, the detailed instructions which were set forth in the NPRM have not been repeated in the rule as adopted. Rather, the rule as adopted permits compliance in accordance with any method approved by the Chief, Los Angeles Area Aircraft Certification Office, FAA Northwest Region. Douglas Aircraft Company Service Bulletin DC-8 SB 52-82 is noted as an approved means of compliance.

It is estimated that 66 U.S. operated aircraft will be affected by this AD, that it will take approximately 60 manhours per aircraft to accomplish the required actions, and that the average labor cost will be $35 per hour. Based on these figures, the total cost impact of this amendment is estimated to be approximately $138,600.

Adoption of Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, § 39.13 of the Federal Aviation Regulations (14 CFR 39.13) is amended by adding the following new airworthiness directive:

McDonnell Douglas

Applies to all Model DC-8 series airplanes equipped with upper main cargo door, certificated in all categories. Compliance required as indicated unless already accomplished. To prevent stress corrosion cracking of the upper cargo door spool fitting attach bolts accomplish the following:

A. For airplanes not modified per Douglas Aircraft Company Service Bulletin DC-8 SB 52-78, dated May 5, 1978, within 12 months after the effective date of this AD, inspect, lubricate, replace as necessary, and seal the cargo door latch spool fitting attach bolts in accordance with a method approved by the Chief, Los Angeles Area Aircraft Certification Office. (Note: Accomplishment of the instructions in Figure 1 of Douglas Aircraft Company Service Bulletin DC-8 SB 52-82, dated October 28, 1980, has been approved as a means of compliance with this requirement.)

B. For airplanes modified per Douglas Aircraft Company Service Bulletin DC-8 SB 52-78, within 24 months after the effective date of this AD, inspect, lubricate, replace as necessary, and seal the cargo door latch spool fitting attach bolts in accordance with a method approved by the Chief, Los Angeles Area Aircraft Certification Office. (Note: Accomplishment of the instructions in Part II, Group II, Paragraph C of DC-8 SB 52-82 has been approved as a means of compliance with this requirement.)

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes unpressurized to a base for the accomplishment of inspections/modifications required by this AD.

D. Alternative inspections, modifications, or other actions which provide an equivalent level of safety may be used when approved by the Chief, Los Angeles Area Aircraft Certification Office, FAA Northwest Region.

This amendment becomes effective February 19, 1981.

(Secs. 313(a), 601, and 603, Federal Aviation Act of 1958, as amended (49 U.S.C. 1354(a), 1421, and 1423); Sec. 6(c) Department of Transportation Act (49 U.S.C. 1655(c)); and 14 CFR 11.89)

Note.—The Federal Aviation Administration has determined that this document involves a regulation which is not considered to be significant under the provisions of Executive Order 12044 and as implemented by DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979).

Issued in Seattle, Washington on January 6, 1981.

Charles R. Foster,

Director, Northwest Region.

[FR Doc. 81-1718 Filed 1-16-81; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 80-WE-29-AD; Amdt. 39-4020]

Airworthiness Directives; McDonnell Douglas Model DC-9 Series Airplanes Equipped With Upper Main Cargo Doors

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new Airworthiness Directive (AD) which requires inspection, replacement as necessary, lubrication, and sealing of upper cargo door attach hardware on McDonnell Douglas Model DC-9 series airplanes equipped with such cargo doors. This AD is needed to prevent stress corrosion cracking of the upper cargo door spool fitting attach bolts, which could jeopardize the door latching/locking capability, resulting in a possible loss of cabin pressure.

DATES: Effective date February 19, 1981. Compliance schedule as prescribed in the body of the AD, unless already accomplished.

ADDRESSES: The applicable service information and copies may be obtained from: McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Director, Publications and Training C1750, (54 60).

This information may also be examined at FAA Northwest Region, 9010 East Marginal Way South, Seattle, Washington 98108; or 15000 Aviation Boulevard, Hawthorne, California 90261, Room 6W14.

FOR FURTHER INFORMATION CONTACT: Michael E. O'Neil, Aerospace Engineer, Airframe Branch, ANW-120L, Federal Aviation Administration, Los Angeles Area Aircraft Certification Office, Northwest Region, P.O. Box 92007 World Way Postal Center, Los Angeles, California 90009, telephone (213) 536-6356.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an Airworthiness Directive requiring inspection, lubrication, and sealing of upper cargo door attach hardware of McDonnell Douglas Model DC-9 series airplanes so equipped was published in the **Federal Register** on June 30, 1980 (45 FR 43791).

The proposal was prompted by reports of upper cargo door latch spool fitting attach bolt failures on McDonnell Douglas Model DC-9 series airplanes, which could jeopardize the door latching/locking capability. This has been attributed to stress corrosion produced by bolt preload and entrapped moisture in the void area between the bolts and spool attach fittings. Since this condition is likely to exist or develop in other airplanes of the same type design, this AD requires inspection, lubrication and sealing, and bolt replacement if required, on upper main cargo door latch spool fitting attach bolts on McDonnell Douglas Model DC-9 series airplanes so equipped.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No objections were received.

Subsequent to the issuance of the NPRM the Douglas Aircraft Company released Douglas Aircraft Company Service Bulletin DC-9 SB 52-119, dated October 28, 1980, which includes the detailed instructions set forth in the NPRM. For purposes of simplicity, and to allow operators to use alternative methods of compliance with this AD when they are approved, the detailed instructions which were set forth in the NPRM have not been repeated in the rule as adopted. Rather, the rule as adopted permits compliance in accordance with any method approved by the Chief, Los Angeles Area Aircraft Certification Office, FAA Northwest Region. Douglas Aircraft Company Service Bulletin DC-9 SB 52-119 is noted as an approved means of compliance.

It is estimated that 42 U.S. operated aircraft will be affected by this Airworthiness Directive; that it will take approximately 60 manhours per aircraft to accomplish the required actions; and that the average labor cost will be $35 per hour. Based on these figures the total cost impact of this amendment is estimated to be approximately $88,200.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) is amended, by adding the following new Airworthiness Directive:

McDonnell Douglas: Model DC-9 series airplane equipped with an upper main cargo door; certificated in all categories.

Compliance required as indicated, unless already accomplished.

To prevent stress corrosion of the upper cargo door spool fitting attach bolts accomplish the following:

(a) For fuselage numbers 0 through 675, within 12 months after the effective date of this AD, inspect, lubricate, replace as necessary, and seal the latch spool fitting attach bolts in accordance with a method approved by the Chief, Los Angeles Area Aircraft Certification Office, FAA Northwest Region. (Note: Douglas Aircraft Company Service Bulletin DC-9 SB 52-119, dated October 28, 1980, has been approved as a means of compliance with this requirement).

(b) For fuselage numbers 676 and subsequent and those airplanes modified in accordance with Douglas Aircraft Company DC-9 AOL 9-633A, dated April 2, 1979, within 24 months after the effective date of this AD, inspect, lubricate, replace as necessary, and seal the upper cargo door latch spool fitting attach bolts in accordance with a method approved by the Chief, Los Angeles Area Aircraft Certification Office, FAA Northwest Region. (Note: Accomplishment of the instructions set forth in Part 2, Group II, Paragraph C of Douglas Aircraft Service Bulletin DC-9 SB 53-119 has been approved as a means of compliance with this requirement.)

(c) Special flight permits may be issued in accordance with FAR 21.197 and 121.199 to operate airplanes unpressurized to a base for the accomplishment of inspections/modifications required by this AD.

This amendment becomes effective February 19, 1981.

(Secs. 313(a), 601, and 603, Federal Aviation Act of 1958, as amended (49 U.S.C. 1354(a), 1421, and 1423); Sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); and 14 CFR 11.85)

Note.—The FAA has determined that this document involves a regulation which is not considered to be significant under the provisions of Executive Order 12044, as implemented by Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979).

Issued in Seattle, Washington, on January 6, 1981.

Charles R. Foster,

Director, Northwest Region.

[FR Doc. 81-1720 Filed 1-16-81; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 80-WE-30-AD; Amdt. 39-4021]

Airworthiness Directives; McDonnell Douglas Model DC-10 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new Airworthiness Directive (AD) which requires inspection, replacement as necessary, lubrication, and sealing of cargo door attach hardware on McDonnell Douglas Model DC-10 series airplanes. This AD is needed to prevent stress corrosion cracking of the upper and lower cargo door spool fitting attach bolts, which could jeopardize the door latching/locking capability, resulting in a possible loss of cabin pressure.

DATE: Effective date February 19, 1981.

Compliance schedule as prescribed in the body of the AD, unless already accomplished.

ADDRESSES: The applicable service information and copies may be obtained from: McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Director, Publication and Training C1750 (54 60). This information may also be examined at FAA Northwest Region, 9010 East Marginal Way South, Seattle, Washington 98108; or 15000 Aviation Boulevard, Hawthorne, California 90261, Room 6W14.

FOR FURTHER INFORMATION CONTACT: Michael E. O'Neill, Aerospace Engineer, Airframe Branch, ANW-120L, Federal Aviation Administration, Los Angeles Area Aircraft Certification Office, Northwest Region, P.O. Box 92007 World Way Postal Center, Los Angeles, California 90009, telephone (213) 536-6358.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an Airworthiness Directive requiring inspection, lubrication, and sealing of cargo door attach hardware of McDonnell Douglas Model DC-10 series airplanes so equipped was published in the Federal Register on June 30, 1980 (45 FR 43791).

The proposal was prompted by reports of cargo door latch spool fitting attach bolt failures on McDonnell Douglas Model DC-10 series airplanes, which could jeopardize the door latching/locking capability. This has been attributed to stress corrosion produced by bolt preload and entrapped moisture in the void area between the bolts and spool attach fittings. Since this condition is likely to exist or develop in other airplanes of the same type design, this AD requires inspection, lubrication and sealing, and bolt replacement, if required, of cargo door latch spool fitting attach bolts on McDonnell Douglas Model DC-10 series airplanes.

Interested persons have been afforded an opportunity to participate in the making of this amendment. One commenter opposed the issuance of the AD, contending that voluntary operator compliance with applicable service bulletins would be sufficient. The FAA's position is that an unsafe condition exists for which mandatory airworthiness directive action is necessary in the interest of safety.

Subsequent to the issuance of the NPRM, the Douglas Aircraft Company released Douglas Aircraft Company Service Bulletin DC-10 SB 52-183, dated October 28, 1980, which includes the detailed instructions set forth in the NPRM. For purposes of simplicity, and to allow operators to use alternative methods of compliance with this AD when they are approved, the detailed instructions which were set forth in the NPRM have not been repeated in the rule as adopted. Rather, the rule as adopted permits compliance in accordance with any method approved by the Chief, Los Angeles Area Aircraft Certification Office, FAA Northwest Region. Douglas Aircraft Company Service Bulletin DC-10 SB 52-183 is noted as an approved means of compliance.

It is estimated that 154 U.S. operated aircraft will be affected by this Airworthiness Directive, that it will take approximately 170 manhours per aircraft to accomplish the required actions, and that the average labor cost will be $35 per hour. Based on these figures, the total cost impact of this amendment is estimated to be approximately $916,300.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) is amended by adding the following new airworthiness directive:

McDonnell Douglas: Applies to all Model DC-10 series airplanes certificated in all categories. Compliance required as indicated, unless already accomplished. To prevent stress corrosion cracking of the upper and lower cargo door spool fitting attach bolts accomplish the following:

A. For fuselages 1-125, within 12 months after the effective date of this AD, inspect, lubricate, replace as necessary, and seal the cargo door latch spool fitting attach bolts in accordance with a method approved by the Chief, Los Angeles Area Aircraft Certification Office, FAA Northwest Region.

Note.—Accomplishment of the instructions set forth in Figure 1 of Douglas Aircraft Company Service Bulletin DC-10 SB 52-183, dated October 28, 1980, has been approved as a means of compliance with this requirement.

B. For fuselage 126 and subsequent, within 24 months after the effective date of this AD, inspect, lubricate, replace as necessary, and seal the cargo door latch spool fitting attach bolts in accordance with a method approved by the Chief, Los Angeles Area Aircraft Certification Office, FAA Northwest Region.

Note.—Accomplishment of the instructions set forth in Part 2, Group II, Paragraph C of Douglas Aircraft Company Service Bulletin DC-10 SB 52-183, dated October 28, 1980, has been approved as a means of compliance with this AD.

C. Special flight permits may be issued in accordance with FARs 21.197 and 21.199 to operate airplanes unpressurized to a base for the accomplishment of inspections/modifications required by this AD.

D. Alternative inspections, modifications, and other actions which provide an equivalent level of safety may be used when approved by the Chief, Los Angeles Area Aircraft Certification Office, FAA Northwest Region.

This amendment becomes effective February 19, 1981.

(Secs. 313(a), 601, and 603, Federal Aviation Act of 1958, as amended (49 U.S.C. 1354(a), 1421, and 1423); Sec. 6(c) Department of Transportation Act (49 U.S.C. 1655(c)); and 14 CFR 11.89)

Note.—The Federal Aviation Administration has determined that this document involves a regulation which is not considered to be significant under the provisions of Executive Order 12044 and as implemented by DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979).

Issued in Seattle, Washington, on January 6, 1981.

Charles R. Foster,

Director, Northwest Region.

[FR Doc. 81-1719 Filed 1-16-81; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 80-ASW-52]

Designation of Federal Airways, Area Low Routes, Controlled Airspace, and Reporting Points; Revocation of Offshore Transition Areas

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule, request for comments.

SUMMARY: This action revokes two 700-foot transition areas over the Gulf of

Mexico. These transition areas are no longer required for air traffic control purposes and their revocation reduces the burden on the public by eliminating flight operational requirements associated with controlled airspace.

DATES: Effective date February 19, 1981. Comments must be received by February 19, 1981.

ADDRESSES: Send comments on the proposal in triplicate to: Director, FAA Southwest Region, Attention: Chief, Air Traffic Division, Docket No. 80-ASW-52, Federal Aviation Administration, P.O. Box 1689, Fort Worth, Tex. 76101.

The official docket may be examined at the following location: FAA Office of the Chief Counsel, Rules Docket (AGC-204), Room 916, 800 Independence Avenue, SW., Washington, D.C. 20591.

An informal docket may be examined at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: John Watterson, Airspace Regulations Branch (AAT-230), Airspace and Air Traffic Rules Division, Air Traffic Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; telephone: (202) 426-8525.

SUPPLEMENTARY INFORMATION:

Request for Comments

The purpose of this amendment is to revoke two 700-foot transition areas over the Gulf of Mexico. These transition areas were originally designated in 1976 for the use of IFR helicopters executing instrument approach procedures to offshore oil rigs. These oil rigs have been relocated and the airspace associated with their use are no longer required. Because this action removes a burden on the public by reducing the amount of controlled airspace, I find that notice and public procedure are unnecessary. However, comments are invited on the rule. When the comment period ends, the FAA will use the comments received and any other information available to review the regulation. Since this action involves, in part, the designation of navigable airspace outside the United States, the Administrator has consulted with the Secretary of State and the Secretary of Defense in accordance with the provisions of Executive Order 10854.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations (14 CFR Part 71) revokes the Sabine Pass, Tex., and the Galveston, Tex., 700-foot offshore areas. Section 71.161 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) was republished in the Federal Register on January 2, 1981, (46 FR 540).

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, § 71.161 of the Federal Aviation Regulations (14 CFR Part 71) as republished (46 FR 540) is amended, effective 0901 GMT, February 19, 1981, as follows:

In § 71.161: The title and text of the "Galveston, Tex., (Offshore)" and the "Sabine Pass, Tex., (Offshore)" transition areas are revoked in their entirety.

(Secs. 307(a), 313(a), and 1110, Federal Aviation Act of 1958 (49 U.S.C. 1348(a), 1354(a), and 1510; Executive Order 10854 (24 FR 9565); Sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); and 14 CFR 11.69.).

Note.—The FAA has determined that this document involves a regulation which is not significant under Executive Order 12044, as implemented by DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). Since this regulatory action involves an established body of technical requirements for which frequent and routine amendments are necessary to keep them operationally current and promote safe flight operations, the anticipated impact is so minimal that this action does not warrant preparation of a regulatory evaluation.

Issued in Washington, D.C., on January 13, 1981.

Shelomo Wugalter,

Acting Chief, Airspace and Air Traffic Rules Division.

[FR Doc. 81-1757 Filed 1-16-81; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 282

[Docket No. RM79-14]

Order of the Director, OPPR of Publication of Incremental Pricing Acquisition Cost Thresholds Under Title II of the NGPA

AGENCY: Federal Energy Regulatory Commission.

ACTION: Order prescribing incremental pricing thresholds.

SUMMARY: The Director of the Office of Pipeline and Producer Regulation is issuing the incremental pricing acquisition cost thresholds prescribed by Title II of the Natural Gas Policy Act and 18 CFR 282.304. The Act requires the Commission to compute and publish the threshold prices before the beginning of each month for which the figures apply. Any cost of natural gas above the applicable threshold is considered to be an incremental gas cost subject to incremental pricing surcharging.

EFFECTIVE DATE: January 1, 1981.

FOR FURTHER INFORMATION CONTACT: Kenneth A. Williams, Federal Energy Regulatory Commission, 825 N. Capitol Street, N.E., Washington, D.C. 20426, (202) 357-8500.

Order of the Director, OPPR

Issued: January 12, 1981.

Section 203 of the NGPA requires that the Commission compute and make available incremental pricing acquisition cost threshold prices prescribed in Title II before the beginning of any month for which such figures apply.

Pursuant to that mandate and pursuant to § 375.307(1) of the Commission's regulations, delegating the publication of such prices to the Director of the Office of Pipeline and Producer Regulation, the incremental pricing acquisition cost threshold prices for the month of January 1981, is issued by the publication of a price table for the applicable month.

Kenneth A. Williams,

Director, Office of Pipeline and Producer Regulation.

Table I.—*Incremental Pricing Acquisition Cost Threshold Prices*

Calendar year 1980

	January	February	March	April	May	June	July	August	September	October	November	December
Incremental Pricing Threshold	$1.702	$1.738	$1.750	$1.762	$1.776	$1.790	$1.804	$1.819	$1.834	$1.849	$1.863	$1.877
NGPA Section 102 Threshold	2.356	2.381	2.404	2.428	2.453	2.478	2.504	2.532	2.560	2.588	2.614	2.640
NGPA Section 109 Threshold	1.786	1.799	1.812	1.825	1.839	1.853	1.867	1.883	1.899	1.915	1.929	1.943
130% of No. 2 Fuel Oil in New York City Threshold	7.170	7.280	7.410	7.110	7.380	8.040	7.840	7.280	7.400	7.400	7.490	7.580

Table L—*Incremental Pricing Acquisition Cost Threshold Prices*—Continued

Calendar Year 1981

	January	February	March	April	May	June	July	August	September	October	November	December
Incremental Pricing Threshold	$1.991											
NGPA Section 102 Threshold	2.667											
NGPA Section 109 Threshold	1.667											
150% of No. 2 Fuel Oil in New York City Threshold	7.810											

[FR Doc. 81-1833 Filed 1-16-81; 8:45 am]

BILLING CODE 4410-08-M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 4

[T.D. 81-14]

Vessels in Foreign and Domestic Trades; Coastwise Transportation

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations to add the Polish People's Republic and Kuwait to the lists of nations which permit vessels of the United States to transport certain articles specified in section 27, Merchant Marine Act of 1920, as amended, between their ports. The Department of State has received satisfactory evidence that both the Polish People's Republic and Kuwait place no restrictions on the transportation of the specified articles by vessels of the United States between ports in those countries. This amendment provides reciprocal privileges for vessels registered in the Polish People's Republic and Kuwait.

EFFECTIVE DATES: May 14, 1980, as to vessels of the Polish People's Republic and May 16, 1980, as to vessels of Kuwait.

FOR FURTHER INFORMATION CONTACT: Donald H. Reusch, Carriers, Drawback and Bonds Division, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229 [202-566-5706].

SUPPLEMENTARY INFORMATION:

Background

Section 27, Merchant Marine Act of 1920, as amended (46 U.S.C. 883) (the "Act"), provides generally that no merchandise shall be transported by water, or by land and water, between points in the United States except in vessels built in and documented under the laws of the United States and owned by U.S. citizens. However, the Act, as amended by Pub. L. 90-474 (82 Stat. 700; T.D. 68-227), provides that if the Secretary of State advises the Secretary of the Treasury that a foreign nation does not restrict the transportation of certain articles between its ports by vessels of the United States, reciprocal privileges will be accorded to vessels of that nation, and the prohibition against the transportation of those articles between points in the United States will not apply to its vessels.

Section 4.93(b)(1), Customs Regulations (19 CFR 4.93(b)(1)), lists those nations found to extend reciprocal privileges to vessels of the United States for the transportation of empty cargo vans, empty lift vans, and empty shipping tanks. The Polish People's Republic is among the countries listed. Those nations found to grant reciprocal privileges to vessels of the United States for the transportation of equipment for use with cargo vans, lift vans, or shipping tanks; empty barges specifically designed for carriage aboard a vessel and certain equipment for use with such barges; certain empty instruments of international traffic; and certain stevedoring equipment and material are listed in section 4.93(b)(2), Customs Regulations (19 CFR 4.93(b)(2)).

On May 14, 1980, the Department of State advised the Secretary of the Treasury that the Polish People's Republic now places no restrictions on the transportation of equipment for use with cargo vans, lift vans, or shipping tanks; empty barges specifically designed for carriage aboard a vessel and certain equipment for use with such barges; certain empty instruments of international traffic; and certain stevedoring equipment and material by vessels of the United States between ports in that country. In addition, on May 16, 1980, the Department of State advised the Secretary of the Treasury that Kuwait places no restrictions on the transportation of any of the articles listed in the Act by vessels of the United States between ports in that country. Therefore, appropriate reciprocal privileges are to be accorded to vessels registered in the Polish People's Republic as of May 14, 1980, and to vessels registered in Kuwait as of May 16, 1980.

Finding

On the basis of the information received from the Secretary of State, as described above, I find that the Governments of the Polish People's Republic and Kuwait place no restrictions on the transportation of the articles specified in section 27 of the Merchant Marine Act of 1920, as amended, by vessels of the United States between ports in those countries. Therefore, appropriate reciprocal privileges are accorded to vessels registered in the Polish People's Republic as of May 14, 1980, and to vessels registered in Kuwait as of May 16, 1980.

Amendments to the Regulations

To reflect the reciprocal privileges granted to vessels registered in the Polish People's Republic and Kuwait, section 4.93(b)(1), Customs Regulations (19 CFR 4.93(b)(1)), is amended by inserting "Kuwait" in appropriate alphabetical order in the list of nations under that section. Section 4.93(b)(2), Customs Regulations (19 CFR 4.93(b)(2)), is amended by inserting "Kuwait" and "Polish People's Republic" in appropriate alphabetical order in the list of nations under that section.

(Sec. 27, 41 Stat. 999, as amended, sec. 14, 67 Stat. 516, Pub. L. 90-474, 82 Stat. 700 (5 U.S.C. 301, 19 U.S.C. 1322(a), 46 U.S.C. 883)).

Inapplicability of Public Notice and Delayed Effective Date Requirements

Because these are minor amendments in which the public is not particularly interested and there is a statutory basis for the described extension of reciprocal privileges, notice and public procedure pursuant to 5 U.S.C. 553(b)(B) are unnecessary. In accordance with 5 U.S.C. 553(d)(1), a delayed effective date is not required because these amendments grant an exemption.

Regulation Determined To Be Nonsignificant

In a directive published in the Federal Register on November 8, 1978 (43 FR 52120), implementing Executive Order 12044, "Improving Government Regulations," the Treasury Department stated that it considers each regulation or amendment to an existing regulation published in the Federal Register and codified in the Code of Federal Regulations to be significant. However, regulations which are nonsubstantive, are essentially procedural, do not materially change existing or establish new policy, and do not impose substantial additional requirements or

costs on, or substantially alter the legal rights or obligations of, those affected, with Secretarial approval may be determined not to be significant. Accordingly, it has been determined that this document does not meet the Treasury Department criteria in the directive for "significant" regulations.

Drafting Information

The principal author of this document was James A. Seal, Regulations and Information Division, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other offices of the Customs Service and the Departments of State and the Treasury participated in its development.

Dated: December 30, 1980.

Richard J. Davis,

Assistant Secretary of the Treasury.

[FR Doc. 81-1623 Filed 1-19-81; 8:45 am]

BILLING CODE 4810-22-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Parts 404 and 416

[Regulations Nos. 4, 16]

Determining Disability and Blindness Supplemental Security Income for the Aged, Blind, and Disabled; and Determining Disability and Blindness Substantial Gainful Activity Earnings Guidelines for 1980

AGENCY: Social Security Administration, HHS.

ACTION: Final rule.

SUMMARY: These regulations finalize the interim rules published on March 18, 1980 (45 FR 17131). Those rules increased the money amounts used as earnings guidelines to determine whether persons with impairments other than blindness are able to do substantial gainful activity.

DATES: The regulations are effective on January 1, 1980.

FOR FURTHER INFORMATION CONTACT: David Smith, Office of Regulations, Social Security Administration, 6401 Security Boulevard, Baltimore, Maryland 21235, telephone 301-594-7336.

SUPPLEMENTARY INFORMATION: These regulations increase the earnings guidelines we use to evaluate the work activity of claimants and beneficiaries with impairments other than blindness under titles II and XVI of the Social Security Act. We use these guidelines to determine whether an individual has shown the ability to do substantial gainful activity (SGA).

Under the increased guideline amounts, we consider a person's earnings from work activity averaging more than $300 a month in calendar year 1980 and later years as showing that he or she is able to do SGA, unless there is other evidence that the person is not able to do SGA.

Under the increased guideline amounts, we consider an employee's earnings from work activity averaging less than $190 a month in calendar year 1980 and later years as showing he or she did not do SGA unless there is other evidence to the contrary.

The increased guideline amounts reflect the general rise in earnings levels of workers in the national economy. The new amounts also maintain the same relationship to earnings levels which has existed in the past. The upper level amount was determined by multiplying $280 (the 1979 upper level amount) by 1.079410 (the ratio of the average of the total wages (as defined in § 404.1048(c)) reported for 1978 to those reported for 1977). This produced the amount of $302.23, which was rounded to $300, the nearest multiple of $10. The 1980 lower level amount was determined by multiplying $180 (the 1979 lower level amount) by the same ratio. This produced the amount of $194.29, which was rounded to $190. We published these rules as interim regulations on March 18, 1980 (45 FR 17131). Interested persons were given the opportunity to submit, within 60 days, comments on the changes. We received six comments. Five commenters felt the new guidelines were still too low. The other commenter was opposed to any increases which would correspondingly increase State medicaid caseloads.

In response to comments that the increases are too low, we believe they fairly reflect the general rise in the earnings levels of workers in the national economy and maintain the same relationship to those earnings as have SGA increases in prior years. In response to the comment opposing the increase, were we not to raise the guidelines as we have it would impose an undue hardship on those who are attempting to work in an economy where each dollar of earnings has lost a significant amount of its purchasing power.

Section 302 of Pub. L. 96-265, effective December 1, 1980, enables disabled persons, in arriving at their earnings for SGA purposes, to deduct the costs they personally incur for drugs, services, and other items, in order to work. Under this provision a substantial number of disabled persons will be able to increase their earnings and still receive benefits. That provision, however, does not affect this regulation. We will be publishing in the near future a notice of proposed rulemaking explaining how we propose to implement section 302 of Pub. L. 96-265.

These rules were recodified on August 20, 1980 (45 FR 55593 and 55832) but the amounts were not given final effect. What appeared as § 404.1534 in the interim regulations is now § 404.1574. What was § 416.934 in the interim regulations is now § 416.974. There were minor irregularities in the format of that part of the recodification which affect §§ 404.1574, 404.1575, 416.974, and 416.975. We are setting out the full text of these paragraphs as corrected.

The amendments to §§ 404.1574, 404.1575, 416.974, and 416.975 of Title 20 CFR Parts 404 and 416 are adopted as set forth below.

(Secs. 205, 223, 1102, 1614 and 1631 of the Social Security Act; 53 Stat. 1368, as amended, 70 Stat. 815, as amended, 49 Stat. 647, as amended, and 86 Stat. 1471, 1475, as amended; 42 U.S.C. 405, 423, 1302, 1382c and 1383)

(Catalog of Federal Domestic Assistance Program No. 13.802 Disability Insurance; 13.807 Supplemental Security Income)

Dated: December 18, 1980.

William J. Driver,

Commissioner of Social Security.

Approved: January 13, 1981.

Patricia Roberts Harris,

Secretary of Health and Human Services.

Chapter III of Title 20 of the Code of Federal Regulations is amended as follows:

1. §§ 404.1574 and 404.1575 are revised to read as follows:

§ 404.1574 Evaluation guides if you are an employee.

(a) *General.* We use several guides to decide whether you have done substantial gainful activity.

(1) *Your earnings may show you have done substantial gainful activity.* The amount of your earnings from work you have done may show that you have engaged in substantial gainful activity. Generally, if you worked for substantial earnings, this will show that you are able to do substantial gainful activity. On the other hand, the fact that your earnings are not substantial will not necessarily show that you are not able to do substantial gainful activity. Earnings from work that you were forced to stop after a short time because of your impairment will not show that you are able to do substantial gainful activity.

(2) *We consider only the amounts you earn.* We do not consider any income

not directly related to your productivity when we decide whether you have done substantial gainful activity. If your earnings are being subsidized, the amount of the subsidy is not counted when we determine whether or not your work is substantial gainful activity. Thus, where work is done under special conditions, we only consider the part of your pay which you actually "earn". For example, where a handicapped person does simple tasks under close and continuous supervision, we would not determine that the person worked at the substantial gainful activity level only on the basis of the amount of pay. An employer may set a specific amount as a subsidy after figuring the reasonable value of the employee's services. If your work is subsidized and your employer does not set the amount of the subsidy or does not adequately explain how the subsidy was figured, we will investigate to see how much your work is worth.

(3) *If you are working in a sheltered or special environment.* If you are working in a sheltered workshop, you may or may not be earning the amounts you are being paid. The fact that the sheltered workshop or similar facility is operating at a loss or is receiving some charitable contributions or governmental aid does not establish that you are not earning all you are being paid. Since persons in military service being treated for severe impairments usually continue to receive full pay, we evaluate work activity in a therapy program or while on limited duty by comparing it with similar work in the civilian work force or on the basis of reasonable worth of the work, rather than on the actual amount of the earnings.

(4) *If you have special work-related expenses.* If you have out-of-the-ordinary expenses in connection with your work and because of your impairment (for example, you may require special transportation), we will deduct these from your earnings if they exceeded the normal work-related expenses you would have if you were not impaired. When we decide if your work is substantial gainful activity, however, we do not deduct expenses for those things (e.g., medication or equipment) which you need even when you are not working.

(b) *Earnings guidelines.* (1) *General.* If you are an employee, we first consider the criteria in paragraph (a) of this section, and then the guides in paragraphs (b) (2), (3), (4), (5), and (6) of this section.

(2) *Earnings that will ordinarily show that you have engaged in substantial gainful activity.* We will consider that your earnings from your work activities as an employee show that you have engaged in substantial gainful activity if—

(i) Your earnings averaged more than $200 a month in calendar years prior to 1976;

(ii) Your earnings averaged more than $230 a month in calendar year 1976;

(iii) Your earnings averaged more than $240 a month in calendar year 1977;

(iv) Your earnings averaged more than $260 a month in calendar year 1978;

(v) Your earnings averaged more than $280 a month in calendar year 1979; or

(vi) Your earnings averaged more than $300 a month in calendar years after 1979.

(3) *Earnings that will ordinarily show that you have not engaged in substantial gainful activity.* We will generally consider that the earnings from your work as an employee will show that you have not engaged in substantial gainful activity if—

(i) Your earnings averaged less than $130 a month in calendar years before 1976;

(ii) Your earnings averaged less than $150 a month in calendar year 1976;

(iii) Your earnings averaged less than $160 a month in calendar year 1977;

(iv) Your earnings averaged less than $170 a month in calendar year 1978;

(v) Your earnings averaged less than $180 a month in calendar year 1979; or

(vi) Your earnings averaged less than $190 a month in calendar years after 1979.

(4) *If you work in a sheltered workshop.* If you are working in a sheltered workshop or a comparable facility especially set up for severely impaired persons, your earnings and activities will ordinarily establish that you have not done substantial gainful activity if—

(i) Your average earnings are not greater than $200 a month in calendar years prior to 1976;

(ii) Your average earnings are not greater than $230 a month in calendar year 1976;

(iii) Your average earnings are not greater than $240 a month in calendar year 1977;

(iv) Your average earnings are not greater than $260 a month in calendar year 1978;

(v) Your average earnings are not greater than $280 a month in calendar year 1979; or

(vi) Your average earnings are not greater than $300 a month in calendar years after 1979.

(5) *If there is evidence showing that you may have done substantial gainful activity.* If there is evidence showing that you may have done substantial gainful activity, we will apply the criteria in paragraph (b)(6) of this section regarding comparability and value of services.

(6) *Earnings that are not high of low enough to show whether you engaged in substantial gainful activity.* If your earnings, on the average, are between the amounts shown in paragraphs (b)(2) and (3) of this section, we will generally consider other information in addition to your earnings, such as whether—

(i) Your work is comparable to that of unimpaired people in your community who are doing the same or similar occupations as their means of livelihood, taking into account the time, energy, skill, and responsibility involved in the work, or

(ii) Your work, although significantly less than that done by unimpaired people, is clearly worth the amounts shown in paragraph (b)(2) of this section, according to pay scales in your community.

§ 404.1575 Evaluation guides if you are self-employed.

(a) *If you are a self-employed person.* We will consider your activities and their value to your business to decide whether you have engaged in substantial gainful activity if you are self-employed. We will not consider your income alone since the amount of income you actually receive may depend upon a number of different factors like capital investment, profit sharing agreements, etc. However, income from activities that you were forced to stop after a short time because of your impairment will not show that you are able to do substantial gainful activity. We will evaluate your work activity on the value to the business of your services regardless of whether you receive an immediate income for your services. We consider that you have engaged in substantial gainful activity if—

(1) Your work activity, in terms of factors such as hours, skills, energy output, efficiency, duties, and responsibilities, is comparable to that of unimpaired individuals in your community who are in the same or similar businesses as their means of livelihood;

(2) Your work activity, although not comparable to that of unimpaired individuals, is clearly worth the amount shown in § 404.1574(b)(2) when considered in terms of its value to the business, or when compared to the salary that an owner would pay to an employee to do the work you are doing; or

(3) You render services that are significant to the operation of the

business and receive a substantial income from the business.

(b) *What we mean by significant services.* (1) If you are not a farm landlord and you operate a business entirely by yourself, any services that you render are significant to the business. If your business involves the services of more than one person, we will consider you to be rendering significant services if you contribute more than half the total time required for the management of the business, or you render management services for more than 45 hours a month regardless of the total management time required by the business.

(2) If you are a farm landlord, that is, you rent farm land to another, we will consider you to be rendering significant services if you materially particpate in the production or the management of the production of the things raised on the rented farm. (See § 404.1082 of this chapter for an explanation of "material participation".) If you were given social security earnings credits because you materially participated in the activities of the farm and you continue these same activities, we will consider you to be rendering significant services.

(c) *What we mean by substantial income.* We will consider the income you receive from a business, after we deduct from gross income the reasonable value of any significant amount of unpaid help and any soil bank payments that were included as farm income, as well as normal business expenses, to be substantial if—

(1) Your net income from the business averages more than the amounts described in § 404.1574(b)(2); or

(2) Your net income from the business averages less than the amounts described in § 404.1574(b)(2) but the livelihood which you get from the business is either comparable to what it was before you became disabled or is comparable to that of unimpaired self-employed persons in your community who are in the same or similar businesses as their means of livelihood.

2. §§ 416.974 and 416.975 are revised to read as follows:

§ 416.974 Evaluation guides if you are an employee.

(a) *General.* We use several guides to decide whether you have done substantial gainful activity.

(1) *Your earnings may show you have done substantial gainful activity.* The amount of your earnings from work you have done may show that you have engaged in substantial gainful activity. Generally, if you worked for substantial earnings, this will show that you are able to do substantial gainful activity. On the other hand, the fact that your earnings are not substantial will not necessarily show that you are not able to do substantial gainful activity. Earnings from work that you were forced to stop after a short time because of your impairment will not show that you are able to do substantial gainful activity.

(2) *We consider only the amounts you earn.* We do not consider any income not directly related to your productivity when we decide whether you have done substantial gainful activity. If your earnings are being subsidized, the amount of the subsidy is not counted when we determine whether or not your work is substantial gainful activity. Thus, where work is done under special conditions, we only consider the part of your pay which you actually "earn". For example, where a handicapped person does simple tasks under close and continuous supervision, we would not determine that the person worked at the substantial gainful activity level only on the basis of the amount of pay. An employer may set a specific amount as a subsidy after figuring the reasonable value of the employee's services. If your work is subsidized and your employer does not set the amount of the subsidy or does not adequately explain how the subsidy was figured, we will investigate to see how much your work is worth.

(3) *If you are working in a sheltered or special environment.* If you are working in a sheltered workshop, you may or may not be earning the amounts you are being paid. The fact that the sheltered workshop or similar facility is operating at a loss or is receiving some charitable contributions or governmental aid does not establish that you are not earning all you are being paid. Since persons in military service being treated for severe impairments usually continue to receive full pay, we evaluate work activity in a therapy program or while on limited duty by comparing it with similar work in the civilian work force or on the basis of reasonable worth of the work, rather than on the actual amount of the earnings.

(4) *If you have special work-related expenses.* If you have out-of-the ordinary expenses in connection with your work and because of your impairment (for example, you may require special transportation), we will deduct these from your earnings if they exceeded the normal work-related expenses you would have if you were not impaired. When we decide if your work is substantial gainful activity, however, we do not deduct expenses for those things (e.g., medication or equipment) which you need even when you are not working.

(b) *Earnings guidelines.*—(1) *General.* If your are an employee, we first consider the criteria in paragraph (a) of this section, and then the guides in paragraphs (b) (2), (3), (4), (5), and (6) of this section.

(2) *Earnings that will ordinarily show that you have engaged in substantial gainful activity.* We will consider that your earnings from your work activities as an employee show that you have engaged in substantial gainful activity if—

(i) Your earnings averaged more than $200 a month in calendar years prior to 1976;

(ii) Your earnings averaged more than $230 a month in calendar year 1976;

(iii) Your earnings averaged more than $240 a month in calendar year 1977;

(iv) Your earnings averaged more than $260 a month in calendar year 1978; or

(v) Your earnings averaged more than $280 a month in calendar year 1979; or

(vi) Your earnings averaged more than $300 a month in calendar years after 1979.

(3) *Earnings that will ordinarily show that you have not engaged in substantial gainful activity.* We will generally consider that the earnings from your work as an employee will show that you have not engaged in substantial gainful activity if—

(i) Your earnings averaged less than $130 a month in calendar years before 1976;

(ii) Your earnings averaged less than $150 a month in calendar year 1976;

(iii) Your earnings averaged less than $160 a month in calendar year 1977;

(iv) Your earnings averaged less than $170 a month in calendar year 1978; or

(v) Your earnings averaged less than $180 a month in calendar year 1979; or

(vi) Your earnings averaged less than $190 a month in calendar years after 1979.

(4) *If you work in a sheltered workshop.* If you are working in a sheltered workshop or a comparable facility especially set up for severely impaired persons, your earnings and activities will ordinarily establish that you have not done substantial gainful activity if—

(i) Your average earnings are not greater than $200 a month in calendar years prior to 1976;

(ii) Your average earnings are not greater than $230 a month in calendar year 1976;

(iii) Your average earnings are not greater than $240 a month in calendar year 1977;

(iv) Your average earnings are not greater than $260 a month in calendar year 1978;

(v) Your average earnings are not greater than $280 a month in calendar year 1979; or

(vi) Your average earnings are not greater than $300 a month in calendar years after 1979.

(5) *If there is evidence showing that you may have done substantial gainful activity.* If there is evidence showing that you may have done substantial gainful activity, we will apply the critera in paragraph (b)(6) of this section regarding comparability and value of services.

(6) *Earnings that are not high or low enough to show whether you engaged in substantial gainful activity.* If your earnings, on the average, are between the amounts shown in paragraphs (b)(2) and (3) of this section, we will generally consider other information in addition to your earnings, such as whether—

(i) Your work is comparable to that of unimpaired people in your community who are doing the same or similar occupations as their means of livelihood, taking into account the time, energy, skill, and responsibility involved in the work, or

(ii) Your work, although significantly less than that done by unimpaired people, is clearly worth the amounts shown in paragraph (b)(2) of this section, according to pay scales in your community.

§ 416.975 Evaluation guides if you are self-employed.

(a) *If you are a self-employed person.* We will consider your activities and their value to your business to decide whether you have engaged in substantial gainful activity if your are self-employed. We will not consider your income alone since the amount of income you actually receive may depend upon a number of different factors like capital investment, profit sharing agreements, etc. However, income from activities that you were forced to stop after a short time because of your impairment will not show that you are able to do substantial gainful activity. We will evaluate your work activity on the value to the business of your services regardless of whether you receive an immediate income for your services. We consider that you have engaged in substantial gainful activity if—

(1) Your work activity, in terms of factors such as hours, skills, energy output, efficiency, duties, and responsibilities, is comparable to that of unimpaired individuals in your community who are in the same or similar businesses as their means of livelihood;

(2) Your work activity, although not comparable to that of unimpaired individuals, is clearly worth the amount shown in § 416.974(b)(2) when considered in terms of its value to the business, or when compared to the salary that an owner would pay to an employee to do the work you are doing; or

(3) You render services that are significant to the operation of the business and receive a substantial income from the business.

(b) *What we mean by significant services.* (1) If you are not a farm landlord and you operate a business entirely by yourself, any services that you render are significant to the business. If your business involves the services of more than one person, we will consider you to be rendering significant services if you contribute more than half the total time required for the management of the business, or you render management services for more than 45 hours a month regardless of the total management time required by the business.

(2) If you are a farm landlord, that is, you rent farm land to another, we will consider you to be rendering significant services if you materially participate in the production or the management of the production of the things raised on the rented farm. (See § 404.1082 of this chapter for an explanation of "material participation".) If you were given social security earnings credits because you materially participated in the activities of the farm and you continue these same activities, we will consider you to be rendering significant services.

(c) *What we mean by substantial income.* We will consider the income you receive from a business, after we deduct from gross income the reasonable value of any significant amount of unpaid help and any soil bank payments that were included as farm income, as well as normal business expenses, to be substantial if—

(1) Your net income from the business averages more than the amounts described in § 416.974(b)(2); or

(2) Your net income from the business averages less than the amounts described in § 416.974(b)(2) but the livelihood which you get from the business is either comparable to what it was before you became disabled or is comparable to that of unimpaired self-employed persons in your community who are in the same or similar businesses as their means of livelihood.

[FR Doc. 81-1858 Filed 1-15-81; 8:45 am]
BILLING CODE 4110-07-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Part 201

[Docket No. R-81-838]

Property Improvement and Manufactured (Mobile) Home Loans

AGENCY: Department of Housing and Urban Development (HUD)

ACTION: Final rule.

SUMMARY: This rule provides for increases in loan amounts for manufactured (mobile) home loans as authorized by Section 308 of the Housing and Community Development Act of 1980.

EFFECTIVE DATE: February 18, 1981.

FOR FURTHER INFORMATION CONTACT: John L. Brady, Director, Office of Title I Insured Loans, Department of Housing and Urban Development, Room 9172, 451 Seventh Street, S.W., Washington, D.C. 20410. Telephone (202) 755-6680 (this is not a toll free number).

SUPPLEMENTARY INFORMATION: Section 308 of the Housing and Community Development Act of 1980 amended Section 2(b) of the National Housing Act to authorize increases for manufactured (mobile) home loans in the following amounts: (1) On single-wide homes from $18,000 to $20,000; (2) on double-wide homes from $27,000 to $30,000.

The term, manufactured housing, has been used throughout this rule to reflect the new terminology of the 1980 Act. However, the word, mobile, is used parenthetically as a guide to persons familiar with the old terminology.

The Secretary has determined that the benefits afforded by these increases be made available as soon as possible. The rule removes a current restriction and the Secretary has therefore determined that public notice and procedure pursuant to 24 CFR Part 10 are unnecessary with regard to this rule.

The legislative review provisions of Section 7(o) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(o) have been met.

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR Part 50, which implement Section 102(2)(C) of the

National Environmental Policy Act of 1969. The Finding of No Significant Impact is available for public inspection during regular business hours at the Office of the Rules Docket Clerk, Office of General Counsel, Room 5218, Department of Housing and Urban Development, 451 Seventh Street, S.W., Washington, D.C. 20410.

This rule is not listed in the Department's semi-annual agenda of Significant Rules pursuant to Executive Order 12044, as extended by Executive Order 12221.

The program number and title in the Catalog of Federal Domestic Assistance is 14.110, Manufactured (Mobile) Home Loan Insurance-Financing Purchase of Manufactured (Mobile) Homes as Principal Residences of Borrowers (Title I).

Accordingly, 24 CFR Part 201 is amended by amending the first sentence of paragraph (a) and by revising paragraph (c) to read as follows:

§ 201.530 Maximum loan amount.

(a) *Basic limitation.* The proceeds of a manufactured (mobile) home loan shall not exceed the lesser of $20,000 ($30,000 where the manufactured (mobile) home is composed of two or more modules) * * *

(b) * * *

(c) The charges and fees authorized in paragraph (b) of this section may be added to the loan, if the inclusion of such items does not increase the total loan proceeds to more than $20,000 ($30,000 where the manufactured (mobile) home is composed of two or more modules).

(Sec. 7(d), Department of Housing and Urban Development Act 42 U.S.C. 3535(d) Title I, sec. 2, 48 Stat. 1246 (12 U.S.C. 1703 as amended))

Issued at Washington, D.C., December 4, 1980.

Lawrence B. Simons,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 81-1832 Filed 1-16-81; 8:45 am]

BILLING CODE 4210-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Part 256

Off-Reservation Treaty Fishing; Extension of Deadline for Issuance of Fishing Identification Cards

January 7, 1981.

AGENCY: Bureau of Indian Affairs (BIA).

ACTION: Final rule.

SUMMARY: Temporary off-reservation fishing identification cards may be issued to any member of a tribe whose tribal roll is not yet current and approved, providing the member submits appropriate evidence of entitlement to membership. Under the present regulations, the expiration date for issuance of identification cards is December 31, 1980. The BIA is amending its regulations to continue issuance of cards to members of tribes whose roll is not yet current and complete. This extension will allow the BIA to continue issuing the temporary identification fishing cards until December 31, 1982.

DATE: This regulation is effective January 19, 1981.

FOR FURTHER INFORMATION CONTACT: Ulyses S. St. Arnold, Acting Chief, Division of Fish, Wildlife and Recreation, Bureau of Indian Affairs, 1951 Constitution Avenue, N.W., Washington, D.C. 20245.

SUPPLEMENTARY INFORMATION: On page 4257 of February 1, 1978, Federal Register (43 FR 4257), there was published a notice of amendment to final rulemaking to extend the deadline for issuing temporary identification cards to tribal members in connection with treaty fishing rights. Since this revision extends a deadline for issuing temporary identification cards to tribal members to be used in connection with treaty fishing rights, advance notice and public procedure would delay issuance of the identification cards to those entitled to receive them and this delay is deemed contrary to the public interest; therefore, advance notice and public procedure are dispensed with under the exception provided in 5 U.S.C. 553(b)(B) (1970). Furthermore, the only change made by this amendment is to extend the date of expiration in § 256.3(b) from December 31, 1980, to December 31, 1982, for issuance of tribal identification cards concerning Indian treaty fishing. This change is deemed to be minor and technical in nature. For the above reasons, the Department has also determined that this amendment will be effective upon publication.

The authority for issuing this amendment is contained in 5 U.S.C. 301, and sections 463 and 465 of the revised statutes (25 U.S.C. 2 and 9), and 209 DM 8.

The Department of the Interior has determined that this document is not a significant rule and does not require a regulatory analysis under Executive Order 12044 and 43 CFR Part 14.

The primary author of this document is Ulyses S. St. Arnold, Division of Fish, Wildlife and Recreation, Office of Trust Responsibilities, Bureau of Indian Affairs, telephone: 202-343-6574.

Section 256.3(b) of Subchapter W of Chapter I of title 25 of the Code of Federal Regulations is hereby amended by revising § 256.3(b) to read as follows:

PART 256—OFF-RESERVATION TREATY FISHING

§ 256.3 Identification cards.

* * * * *

(b) No such card shall be issued to any Indian who is not on the official membership roll of the tribe which has been approved by the Secretary of the Interior. *Provided,* That until December 31, 1982, a temporary card may be issued to any member of a tribe not having an approved current membership roll who submits evidence of his entitlement thereto satisfactory to the issuing officer and, in the case of a tribally issued card, to the countersigning officer. Any Indian claiming to have been wrongfully denied a card may appeal the decision in accordance with Part 2 of this chapter.

* * * * *

Thomas W. Fredericks,

Deputy Assistant Secretary—Indian Affairs.

[FR Doc. 81-1799 Filed 1-16-81; 8:45 am]

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 180

[T.D. 7756]

Temporary Excise Tax Regulations Under the Crude Oil Windfall Profit Tax Act of 1980; Windfall Profit Tax Administrative Provisions

AGENCY: Internal Revenue Service, Treasury.

ACTION: Amendment of temporary regulations.

SUMMARY: This document amends temporary excise tax regulations relating to the windfall profit tax on domestic crude oil imposed by title I of the Crude Oil Windfall Profit Tax Act of 1980. The new temporary regulations relate primarily to administrative aspects of the tax. In addition, the text contained in the temporary regulations set forth in this document serves as the text of the proposed regulations cross-referenced in the notice of proposed rulemaking in the Proposed Rules section of this issue of the Federal Register.

DATE: These temporary regulations are effective with respect to oil removed

after February 28, 1980, except as specifically provided otherwise in the regulations.

FOR FURTHER INFORMATION CONTACT: David B. Cubeta of the Legislation and Regulations Division, Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC 20224 (Attention: CC:LR:T) (202-566-3297).

SUPPLEMENTARY INFORMATION: Initial regulatory flexibility analysis.

Background

On April 4, 1980, the Federal Register published temporary regulations (45 FR 23384) under sections 4986, 4987, 4988, 4989, 4991, 4992, 4993, 4994, 4995, 4996, 4997, 6050C, 6076, and 6402 of the Internal Revenue Code of 1954. The temporary regulations were required to implement various sections of the Crude Oil Windfall Profit Tax Act of 1980. Certain amendments to the temporary regulations have since been published. This document contains further amendments to several sections of those temporary regulations (relating primarily to various administrative provisions). The rules will apply to all entities, large and small, engaged in the production or purchase of domestic crude oil and related activities. The amendments add no rules that duplicate, overlap, or conflict with any other known Federal rules.

Explanation of Provisions

Under the temporary regulations published on April 4, 1980, the first purchaser of domestic crude oil is the person charged with the withholding obligation. A limited exception to this rule is provided by § 150.4995–4 which permits the operator and purchaser to elect to have the operator responsible for all windfall profit tax responsibilities otherwise imposed upon the purchaser. However, the election is only available if the operator is otherwise required to make deposits as a purchaser of oil produced from a different reservoir.

Commentators, large and small, on the proposed windfall profit tax regulations have suggested that more flexibility should be permitted in determining who the withholding agent is to be. The commentators have pointed out that in many cases the operator of a property or a designated disburser rather than the gathering company or refinery purchasing the oil holds a division order. It is that person who is responsible for distributing the sales proceeds to the various producers. In those instances, the purchaser of the oil must be informed of the amount to be taxed at different rates in order to correctly withhold. The after-tax proceeds are then distributed by the disburser to the producers in accordance with the division order. This extra level of information exchange gives rise to a greater potential for error and subsequent adjustments. Consequently, many commentators, large and small, have requested that the holder of the basic division order be permitted to elect to act as the withholding agent because it is the person who is in the best position to know the producers' tax status, to be aware of transfers of title, and to more efficiently comply with the withholding requirements.

It is recognized that the parties to the purchasing transaction are in a position to determine which of those parties are best able to act as the withholding agent. However, a substantial problem is encountered in defining the "holder of the basic division order", particularly in the case of a unitization where there may be many "division orders". A rule specifying which of several division orders is the "basic division order" would cause many of the same problems that the suggested rule was intended to relieve.

Accordingly, a system has been adopted that avoids this definitional problem and provides flexibility for the parties. The system is based upon a series of potential elections available to those holding division orders and other disbursers of payments for oil which will allow them to act as the withholding agent for the producers to whom they make payment. To the extent that the elections are not made, the purchaser of the oil is required to withhold as under current regulations.

The regulations fix the obligation to withhold upon the purchaser in the absence of any elections. The purchaser is defined as the first person purchasing domestic crude oil production.

Any other party making disbursements of 20 percent or more of the entire proceeds from the sale of oil from the property (excluding that person's own share of production) or any federally registered partnership may elect to act as the withholding agent with respect to his payee producers. If a disburser does so elect, he furnishes a certificate to the person from whom he receives payment. Any person receiving the certificate then knows not to withhold and furnishes a copy through intermediate disbursers to the purchaser. The purchaser is require to furnish a copy of the certificate to the Service. A separate certificate is required for each property with respect to which an election is made. If the disburser subsequently wishes to revoke the election, the disburser must furnish a revocation certificate to the person who received the election certificate. The disburser must also furnish a copy of the revocation to the Service and must notify the operator and all affected producers of the revocation. The election to act as withholding agent is a one-way election that does not require the consent of the party otherwise required to withhold.

The qualified disburser election is in addition to the current operator election and available to all eligible persons regardless of whether that person is an operator who previously elected under § 150.4995–4. Persons eligible for both elections may choose either election. If an operator who prefers the qualified disburser election has previously elected under § 150.4995–4, the operator should terminate the previous election under the rules of § 150.4995–4 and follow the rules for making the new election provided by § 150.4995–5.

Persons making either election who are also producers of oil from the property subject to the election are to treat the tax on their own production as an amount not subject to withholding. Therefore, the net income limitation with respect to this production may be taken into account in determining the amount to be deposited although the net income limitation may not be considered in determining the amount to be withheld and deposited with respect to the other producers.

In determining the deposit schedule applicable to a qualified disburser for both amounts withheld and amounts paid on the qualified disburser's own production, the qualified disburser's status as an integrated oil company or an independent producer or purchaser generally is controlling. However, a special rule is provided for disbursers undertaking division order responsibilities held by an integrated oil company on December 31, 1980. In those instances, the deposit obligation of the integrated oil company applies.

These regulations also amend the definition of "integrated oil company" and provide an election for companies whose status changes from quarter to quarter.

The April 4, 1980, regulations recognized that, in certain situations, the withholding agent will withhold more or less than the amount of tax imposed by section 4986 with respect to oil purchased. For instance, the special rules to be followed in the absence of a valid operator's certificate may result in the withholding of tax in excess of the amount that would have been withheld if the certificate had been received, or computational errors by one of the parties to a transaction may cause under

or overwithholding. Therefore, the regulations provided rules to be followed in withholding on later payments in order to adjust the under or overpayment. If the error is one of overwithholding, the regulations required the adjustment to be made by reducing the amount of tax withheld from subsequent payments to the same producer. Commentators on the regulations noted that if the amount overwithheld is large, the purchaser must carry a windfall profit tax credit forward from payment to payment, and the producer may be required to file a claim for refund if the overwithholding is not fully adjusted. Therefore, some purchasers requested the flexibility to adjust overwithholding errors by making an immediate payment of the overwithheld amount from the pool of tax that would otherwise be deposited. The amended regulations provide withholding agents with the requested flexibility on a voluntary basis.

Under the temporary regulations, all purchasers subject to the withholding rules are required to provide each producer from whom they have purchased crude oil a monthly statement of the amount of tax withheld. An annual statement of the producer's tax liability and a variety of other information are to be sent both to the producer and to the Internal Revenue Service. The annual statement was originally required to be furnished to the producer by January 31 and to IRS by February 28. Form 6248 has been provided for this purpose. If the purchaser withheld tax from payments made to an operator or partnership rather than directly to the producer of oil, the purchaser is to furnish the statement to the person who received the payment. Generally, that person is then required to relay the information within 15 days and to file information returns with the Internal Revenue Service.

For most taxpayers, the income tax deduction for the windfall profit tax will be the amount actually withheld during the year, rather than the amount of tax imposed upon oil removed during the year (some of which will be withheld in the subsequent tax year). Therefore, the regulations also require that the annual statement set forth the amount withheld in the course of the year.

If the producer's liability for tax exceeds the amount of tax withheld, the regulations originally required the producer to file an annual return due by the last day of February.

Several commentators, large and small, on the proposed regulations suggested that problems arise with respect to the interrelationship between the withholding adjustment mechanism, the annual information statement, and the annual return for producers subject to windfall profit tax withholding. For instance, if a price adjustment occurs with respect to oil removed late in a calendar year, the annual information statement may not be accurate. Consequently, many amended annual information statements and amended producers' returns would be required. Another potential problem discussed in the comments involves the requirement that an underwithheld producer file a return by the last day of February. In order to file an accurate return, the producer needs the annual information statement from each purchaser. However, if the producer does not deal directly with the purchaser, it is possible that the producer would not receive the statement until after the due date of the return.

Finally, the temporary regulations do not permit withholding adjustments in payments made after the annual information statement has been furnished. Consequently, many adjustments may be precluded, thereby requiring the producer to file a return or claim for refund that would otherwise be avoided.

In order to ease these potential difficulties, the amended regulations postpone the time for furnishing the annual statement to March 31 and the due date of the producer's return to May 31. These changes should permit the purchaser to furnish an accurate statement that will be received by the producer in time to file an accurate return. Withholding adjustments are permitted for all payments made before the statement is furnished.

Large and small producers commenting on the proposed windfall profit tax regulations have requested that purchasers be required to furnish more information to producers on a monthly basis. These producers have argued that a monthly statement detailing the removal price, base price, and severance tax adjustment for each barrel of oil removed during the month is necessary to enable the producer to calculate the barrels subject to the lower rate of tax for independent producer oil and the barrels subject to the net income limitation. Purchasers, on the other hand, have expressed concern that a detailed monthly reporting requirement could become unduly burdensome. Since the net income limitation is calculated on an annual basis and independent producer status is determined on a quarterly basis, a monthly statement does not appear to be essential. Therefore, the amended regulations require that a detailed report be furnished on a quarterly or annual basis when requested by a producer, operator, partnership, or disburser.

Numerous large and small commentators on the April 4, 1980, regulations stressed that the absence of withholding when oil is removed from the premises before sale may cause difficulty, particularly when the oil is transported to a near by storage tank where the oil is commingled with oil from other properties. The regulations adopt a new definition of "removed from premises" that will generally treat oil as removed only after removal from the storage tank. Therefore, withholding will generally be required at that point. Furthermore, the amended regulations provide the withholding agent with the option of withholding when oil is removed from the premises before sale. It is anticipated that this option will be exercised most frequently when a qualified disburser has elected to become the withholding agent. For instance, an operator who has made the disburser election may compute and withhold the tax from all the producers even though the oil is delivered to the purchaser away from the lease. These amendments should mitigate the removal before sale problem to a large extent, especially for small entities who would generally be withheld upon.

It was also suggested that withholding should not be required on the Federal royalty share of oil produced from a Federal lease. This suggestion has been adopted and a certificate procedure with respect to that share provided.

These regulations also address the concern expressed by independent producers (generally small entities) that the independent producer certification requirements may result in overwithholding. Those requirements are amended to clarify that the certificate may be furnished on a property-by-property basis and to achieve more accurate withholding.

A large volume of comments on the April 4, 1980 regulations was received, and the comments addressed many issues not dealt with in these temporary regulations. Those issues are outside the scope of these amendments which are primarily administrative in nature. For instance, numerous commentators requested a clarification of "newly discovered oil" and "incremental tertiary oil". The fact that a particular issue has not been addressed in these amendments to the regulations should not be construed as foreclosing the issuance of amended regulations providing further guidance on those issues.

Waiver of Procedural Requirements of Treasury Directive

The expeditious adoption of the provisions contained in this document is necessary because of the need for immediate guidance to taxpayers liable for the windfall profit tax on domestic crude oil and to other persons required to withhold and deposit tax, file returns, provide information, etc. For this reason, William E. Williams, Acting Commissioner of Internal Revenue, has determined that the provisions of paragraphs 8 through 14 of the Treasury Department directive implementing Executive Order 12044 must be waived.

Drafting Information

The principal author of these regulations is David B. Cubeta of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations, both on matters of substance and style.

Adoption of amendments to the regulations

Accordingly, Part 150, Temporary Excise Tax Regulations under the Crude Oil Windfall Profit Tax Act of 1980, is amended as follows:

Paragraph 1. Section 150.4986–1 is amended by revising paragraph (b)(1) to read as follows:

§ 150.4986–1 Windfall profit; removal price.

* * * * *

(b) *Removal price*—(1) *In general.* The "removal price" generally is the amount for which the barrel is sold to the purchaser (including any adjustments to the sales price made after sale). However, in the case of a sale between related persons (within the meaning of section 103(b)(6)(C)), the removal price shall not be less than the constructive sales price for purposes of determining gross income from the property under section 613. Also, if crude oil is removed from the premises before it is sold (or is deemed removed under section 4986(c)(4) or § 150.4986–1(d)), the removal price shall be the constructive sales price for purposes of determining gross income from the property under section 613.

* * * * *

Par. 2. Section 150.4995–1 is amended by revising paragraphs (a) and (b) (3), by deleting subparagraph (4) of paragraph (b), and by revising paragraph (c). The revised provisions read as follows:

§ 150.4995–1 Requirement of withholding.

(a) *General rule; when required*—(1) *In general.* Except as otherwise provided in this section, the purchaser (as defined in § 150.4996–1 (a)) of domestic crude oil shall deduct and withhold tax from amounts payable by that purchaser for the oil. However, the preceding sentence shall not apply if—

(i) The crude oil is removed from the premises (as defined in § 150.4996–1 (d)) before it is sold, or

(ii) The manufacture or conversion of crude oil into refined products begins before the oil is removed from the premises, or

(iii) The producer of the oil is an integrated oil company (as defined in § 150.4996–1 (g)) that has furnished a certificate to the purchaser pursuant to paragraph (c) (2) of § 150.4995–2 (or, in the case of any payment for oil produced by an integrated oil company made before February 18, 1981 the purchaser does not in fact deduct, withhold, and deposit the tax), or

(iv) The purchaser has received a qualified disburser's certificate pursuant to § 150.4995–5 with respect to that oil and the certificate is still in effect, or

(v) In the case of oil removed after March 31, 1981, the United States (or any agency or instrumentality thereof) is the producer of the oil as holder of a royalty or net profits interest and the oil is sold to the purchaser directly by the Department of the Interior, or

(vi) The purchaser has received a Federal royalty certificate from an operator or lessee pursuant to paragraph (c) (3) of § 150.4995–2.

The amount of tax to be deducted and withheld shall be determined in accordance with the rules of paragraphs (b) and (c) of this section. See, however, paragraph (d) of this section for rules applicable to certain payments made prior to June 4, 1980. For purposes of the tax imposed by section 4986, the producer shall be treated as having paid on the last day of the first February after the calendar year in which the oil is removed from the premises the amount deducted and withheld with respect to such oil by the purchaser under this section.

(2) *Special rule for oil removed before sale.* If the purchaser of crude oil would be required to deduct and withhold tax from amounts payable for the oil but for the fact that the oil was removed from the premises before sale, and if the purchaser can determine the amount of tax imposed by section 4986 with respect to the oil, the purchaser may elect to withhold. If the purchaser elects to withhold, the purchaser shall be deemed to be required to withhold under paragraph (a) (1) of this section. The election shall be made by furnishing to the operator of the property from which the oil was produced and to each person to whom the purchaser makes payment for the oil a document that informs the recipient that the tax is being withheld. The election document shall be furnished within 5 days of receipt of the first oil to which it applies. Unless the election document specifies otherwise, the election shall remain effective until 30 days after the purchaser furnishes each recipient of the election document (or a successor in interest) a document informing the recipient that the tax will not be withheld. See §§ 150.4995–4 and 150.4995–5 for the elections pursuant to which an operator or qualified disburser is treated as the purchaser.

See § 150.4995–3 for the depository rules applicable to oil removed during each month (semi-monthly period in the case of certain integrated oil companies).

(b) *Amount to be deducted and withheld.* * * *

(3) *Producer's certification.* If, pursuant to § 150.4995–2, the purchaser has received a certification that a producer's share of production from a property qualifies as "exempt oil" or "independent producer oil", and if the purchaser has no reason to believe that any statement in the certification bearing on such qualification is not correct, the purchaser—

(i) Shall not withhold tax from amounts payable for the share of production that has been certified as exempt oil (the provisions of paragraph (b) (1) and (2) of this section notwithstanding), and

(ii) In determining the amount to be withheld under paragraph (b)(1) of this section from amounts payable for the share of production that has been certified as independent producer oil, shall apply the rates provided in section 4987(b)(2) and, in determining the amount to be withheld under paragraph (b)(2) of this section, shall substitute 50 percent for 70 percent.

If a payment by a purchaser is made to an operator, partnership, or other disburser, rather than directly to the producer of the oil, the amount of exempt oil and independent producer oil shall be determined on the basis of information provided to the purchaser by the operator, partnership, or disburser pursuant to paragraph (e) of § 150.4995–2.

(c) *Withholding adjustments*—(1) *General rule.* (i) A purchaser who ascertains that the amount of tax withheld from any payment for crude oil

was more or less than the amount of tax imposed by section 4986 (computed without regard to the net income limitation) with respect to that crude oil shall make adjustments in the amount to be withheld from subsequent payments to the same person as provided in this paragraph. For purposes of this paragraph, a purchaser has ascertained that the amount withheld was more or less than the tax imposed when the purchaser has sufficient information to be able to determine the amount of tax imposed by section 4986 (computed without regard to the net income limitation) with respect to that crude oil. Thus, adjustments are generally required when the purchaser made an incorrect calculation with respect to a prior payment, when the purchaser has withheld in accordance with the rules of paragraph (b)(2) because of the absence of an effective operator's certification and the purchaser later receives an effective certification, when an earlier certification is corrected, or when the purchaser has withheld tax from a producer at the generally applicable rates and the purchaser subsequently receives a retroactively effective independent producer's certificate. Every adjustment under this paragraph shall be reflected on Form 720 (the return from which is prescribed for use in reporting windfall profit tax withholding). If the entire adjustment would be reported in the return for the same taxable period as the withholding giving rise to the adjustment, the return for that period shall reflect only the amount withheld as adjusted. Otherwise, every return on which an overpayment or underpayment is adjusted pursuant to this paragraph must include such statements and other information as may be required by the instructions to the return.

(ii) Except as otherwise provided in subparagraph (3) of this paragraph, the purchaser must make a full adjustment by underwithholding or overwithholding in subsequent payments to the same person (whether or not from the same property) so that the total amount withheld is equal to the tax imposed by section 4986 (computed without regard to the net income limitation).

The full adjustment must be made, if possible, in the next payment. If it is not possible to complete the adjustment in the next payment, the purchaser shall adjust by underwithholding or overwithholding to the fullest extent possible in each subsequent payment until the adjustment is completed. However, no adjustment is to be made in the amount withheld from payments made after the statement required by § 150.4997–2(c) (relating to annual statement of windfall profit tax liability) is furnished. Furthermore, no adjustment is required to be made in the amount withheld from payments made for oil removed in a subsequent calendar year, although the purchaser may make such an adjustment if the adjustment is reflected in the statement required by § 150.4997–2(c) for the year in which the error occurred. If the error is one of underwithholding that is not fully adjusted under this paragraph (*e.g.*, where the relationship between the producer and the purchaser has terminated), the producer is required to file a return at the end of the year in accordance with § 150.4997–1 unless the producer's entire liability for tax under section 4986 has been satisfied by reason of overwithholding by another purchaser. If the error is one of overwithholding that is not fully adjusted under this paragraph, the rules of § 150.6402–1 with respect to claims for credit or refund are applicable to the producer.

(iii) If the purchaser is required to make an adjustment by overwithholding under this paragraph because the purchaser withheld less than the amount required to be withheld from an earlier payment, the overwithholding under this paragraph shall not be treated as an amount withheld or required to be withheld for purposes of § 150.4995–3 (relating to depositary requirements) to the extent that the excess of the amount originally required to be withheld over the amount actually withheld has been deposited by the purchaser (and reported if the underwithholding occurred in an earlier taxable period).

(2) *Special rules.* (i) No amount shall be deducted or withheld from any payment in excess of the windfall profit with respect to the oil giving rise to that payment.

(ii) If, pursuant to section 4995(a)(3)(D), the producer and purchaser agree to additional withholding, any amount withheld pursuant to the agreement shall be treated as an amount required to be withheld.

(iii) If, under the rules of this paragraph, the purchaser would otherwise be required (or permitted) to make an adjustment by underwithholding in subsequent payments, the purchaser may (at the purchaser's option) adjust the overwithholding (in full or in part) by making a payment to the producer or the producer's agent in the amount of the overwithheld tax (or a portion thereof). For purposes of § 150.4995–3 (relating to depositary requirements), any amount paid pursuant to the preceding sentence shall be treated as a reduction in the amount required to be deposited under § 150.4995–3 with respect to oil removed from the premises during the month immediately preceding the month of payment (during the semi-monthly period of the payment in the case of an integrated oil company making deposits under paragraph (a) of § 150.4995–3). However, any adjustment by payment under this subdivision shall not exceed the amount that would reduce to zero the amount otherwise required to be deposited under § 150.4995–3 for the depositary period referred to in the preceding sentence.

(3) *Examples.* The provisions of this paragraph may be illustrated by the following examples:

Example (1). A, a purchaser of crude oil, has been withholding in accordance with the special rules of paragraph (b)(2) because the operator of the property from which A purchases oil has not provided A with the certification required by § 150.4995C–1. Subsequently, the operator does provide A with the certification, and A, withholding under the rules of paragraph (b)(1), ascertains that the amount withheld earlier exceeds the amount of tax imposed by section 4986 based upon the information provided by the operator. Although A withheld properly in accordance with the information available during the earlier period, the amount withheld is subject to the adjustment rules of this paragraph.

Example (2). Purchaser B, in the third calendar quarter of the year, ascertains that too little tax was withheld from payments for oil purchased in the preceding calendar quarter with respect to producer C. B must attempt to fully adjust the underwithholding by increasing the amount withheld from subsequent payments made to C (up to the full amount of windfall profit). If the adjustment has not been completed when B makes the final payment for oil removed during the calendar year, B is permitted, but not required, to continue the adjustments in payments for oil removed after the close of the calendar year so long as the annual information statement and return required by § 150.4997–2 (c) reflects the adjustment. B is required to inform C of C's liability for any amount remaining unadjusted and to provide that information to the Internal Revenue Service in accordance with the rules of § 150.4997–2.

Example (3). D, the producer of exempt oil, failed to provide purchaser E with an exemption certificate in time to avoid the withholding of tax from a payment made by E to D. Under paragraph (c)(2)(iii), E has the option of adjusting the overwithholding by making a payment to D.

* * * * *

Par. 3. Section 150.4995–2 is amended to read as follows:

§ 150.4995–2 Producer's certificate.

(a) *In general.* The producer of "exempt front-end oil" (as defined in section 4994(c)) or "exempt Indian oil"

(as defined in section 4994(d)), or the holder of any interest in crude oil that is a "qualified governmental interest" (as defined in section 4994(a)) or is a "qualified charitable interest" (as defined in section 4994(b)), may execute an exemption certificate with respect to such oil. In the case of "exempt Indian oil" produced from lands administered by the Bureau of Indian Affairs, the certificates may be furnished and filed by the Commissioner of Indian Affairs or his delegate on behalf of the producer. Any producer of "independent producer oil" (as defined in section 4992) may execute a certificate with respect to such oil. Any certificate executed pursuant to this paragraph shall be furnished to the purchaser of the oil or, if the producer receives payment for the oil through the operator of the property from which the oil is produced, a partnership, or other disburser of the sales proceeds, to such operator, partnership, or disburser. Every integrated oil company shall follow the rules of paragraph (c)(2) of this section (relating to mandatory and optional withholding exemption certificates). Any certificate provided under this section must set forth the facts that establish entitlement to the exemption or lower rates claimed. The certificate (or any revocation of a certificate) shall identify the producer by name, address, and employer identification number (or, if none, social security number) and shall be signed by the producer (under the penalties of perjury except in the case of a revocation). Form 8458 is provided for this purpose. For the requirement that the operator of a property, partnership, or other disburser who has received such a certificate furnish a copy of the certificate, or certify as to its contents, to the person making payment for oil, see paragraph (e) of this section. For the certification requirement of operators or lessees selling certain oil from a Federal lease, see paragraph (c)(3) of this section. For the effect of the furnishing of certificates, see § 150.4995–1(b)(3) (relating to the withholding requirement). For the criminal penalty applicable to the furnishing of a false statement, see section 7206.

(b) *Exemption certificate.* For purposes of this section, an exemption certificate is a written statement certifying that the producer's oil is exempt from the tax imposed by section 4986 because the oil constitutes exempt Indian oil or exempt front-end oil or the oil is from a qualified governmental interest or a qualified charitable interest. Any producer who furnishes an exemption certificate to an operator, purchaser, partnership, or other disburser shall also file an exemption certificate with the Internal Revenue Service Center, Austin, Texas (unless the producer filed the certificate with a different service center prior to January 19, 1981. Only one such certificate need be filed even though the producer may furnish certificates to more than one operator, purchaser, partnership, or other disburser.

(c) *Other producers' certificates*—(1) *Independent producer's certificate.* An independent producer's certificate is a written statement certifying that the producer holds a working interest (as defined in section 4992(d)(2)) in a certain property and that the entire amount of production attributable to that interest is qualified production of oil as defined in section 4992(d). No certificate may be furnished with respect to oil if it is reasonable to believe that the number of barrels to be affected by the certificate, taken together with all other oil with respect to which an independent producer's certificate has been furnished by the producer to any operator, purchaser, partnership, or other disburser, will exceed the producer's independent producer amount (see section 4992 (c) and (e)). Producers who are members of a related group (within the meaning of section 4992(e)(2)) shall set forth in the certificate the members of the related group identified by employer identification number (or, if none, social security account number), and shall file one such certificate with the Internal Revenue Service Center, Austin, Texas. Only one such certificate need by filed even though the producer may furnish certificates to more than one operator, purchaser, partnership, or other disburser. The certificate shall be filed by the 30th day following the day that the producer first furnishes such a certificate to any operator, purchaser, partnership, or other disburser (or May 31, 1981, if later). Independent producers who are not members of a related group need not file the independent producer certificate with the Internal Revenue Service.

(2) *Integrated oil company's certificate*—(i) *Mandatory certificates.* Every integrated oil company that is a producer of oil from a property of which that company is the operator (or would be the operator in the absence of a designation under § 150.4996–1(c)) shall furnish the statement described in paragraph (c)(2)(iii) of this section to each purchaser of oil from that property no later than the date by which the first statement by the operator to the purchaser under § 150.6050C–1 is required to be furnished (or May 12, 1980, if later).

(ii) *Optional certificate.* Any integrated oil company that is a producer of oil from a property of which that company is not the operator may, at its option, furnish such a statement with respect to such oil to the purchaser of the oil or, if the producer receives payment for the oil through the operator of the property from which the oil is produced, a partnership, or other disburser of the sales proceeds, to such operator, partnership, or disburser.

(iii) *Contents of certificate.* The certificate furnished pursuant to this subparagraph shall state that the producer is an integrated oil company (as defined in § 150.4996–1(g)), that the producer will deposit its own windfall profit tax liability, and that the producer's share of production is not to be withheld upon under § 150.4995–1.

(iv) *Date certificate becomes effective.* Any certificate furnished pursuant to this subparagraph shall apply to all payments for oil of which the integrated oil company is the producer made by or for the purchaser after the date on which the purchaser received the certificate.

(3) *Federal royalty certificate*—(i) *Certificate required.* If the United States (or any agency or instrumentality thereof) is the producer of oil that is sold to the purchaser by the lessee or operator for the Department of the Interior, the lessee or operator shall furnish the statement described in paragraph (c)(3)(ii) of this section to each purchaser of such oil no later than the date by which the first statement by the operator to the purchaser under § 150.6050C–1 is required to be furnished (or March 15, 1981, if later). The statement described in paragraph (c)(3)(ii) need not be furnished if the United States, acting through the Department of the Interior, sells its production directly to the purchaser.

(ii) *Contents of certificate.* The certificate furnished pursuant to this subparagraph shall state that the United States (or any agency or instrumentality thereof) is the producer of the oil (or a specified portion of the oil), that the oil is sold for the Department of the Interior, and that the United States' share of production is not to be withheld upon under § 150.4995–1.

(d) *Revocation of certificate.* If the producer has furnished a certificate with respect to oil, and the producer subsequently discovers that the oil is not, or has ceased to be, eligible for certification under the rules of paragraphs (a) through (c) of this section, the producer shall furnish notice within 10 days to the person to whom

the certificate was furnished that the certificate is revoked.

(e) *Operators, partnerships, and other disbursers.* If payment for a producer's oil is to be made by the purchaser through one or more operators, partnerships, or other disbursers rather than to each producer individually, the information contained in any certifications permitted by this section shall be aggregated in a certification by the operator, partnership, or disburser to the person from whom payment is received, unless such operator, partnership, or disburser has undertaken the withholding obligation of the purchaser pursuant to §§ 150.4995–4 or 150.4995–5. Each certification shall state the percentage of the oil that is certified as exempt from tax or subject to a lower rate of tax. The certification may certify oil as exempt from tax or subject to a lower rate of tax only to the extent that the operator, partnership, or disburser has received certifications from the producers (or another operator, partnership, or disburser). Any operator, partnership, or disburser furnishing a certification shall retain in its records, for so long as material in the administration of any internal revenue law, each certification that was used as the basis for the certification furnished by the operator, partnership, or disburser under this section.

(f) *Substitution of operator or qualified disburser for purchaser.* If, pursuant to §§ 150.4995–4 or 150.4995–5, the operator of a property or a qualified disburser elects to be responsible for the obligations otherwise imposed upon the purchaser, the purchaser shall forward to the responsible person, at the time of the election, any exemption certificate or any notice of revocation previously received by the purchaser. The purchaser shall immediately forward to the responsible person any exemption certificate or any notice of revocation received after the election. The operator or qualified disburser shall treat any exemption certificate or any notice of revocation forwarded by a purchaser as an exemption certificate or notice of revocation from the producer.

Par. 4. Section 150.4995–3 is amended by revising so much of paragraph (a)(1) as precedes subdivision (i), by revising paragraphs (a)(2), (b), (c), (d), (f)(2), (g), and (i) (2) and (3). The revised provisions read as follows:

§ 150.4995–3 Depositary requirements.

(a) *Deposits by integrated oil companies other than independent refiners*—(1) *In general.* Every integrated oil company (as defined in § 150.4996–1(g)) other than an independent refiner (as defined in § 150.4996–1(h)) that is either liable as a producer for the tax imposed by section 4986 (unless such tax is required by § 150.4995–1 to be deducted and withheld by the purchaser) or is required as a purchaser to deduct and withhold tax pursuant to § 150.4995–1 shall make deposits with respect to semimonthly periods (as defined in paragraph (a)(3)(i) of this section). The amount to be deposited for each semimonthly period is the amount of tax imposed by section 4986 (computed with regard to the net income limitation provided in section 4988(b), if applicable) on the removal in that semimonthly period of oil that is not subject to withholding under § 150.4995–1 for which the company is liable as a producer, plus the amount required to be withheld by the company as a purchaser pursuant to § 150.4995–1 from payments that have been or will be made for oil removed from the premises during that semimonthly period. However, if the amount withheld by the company as a purchaser from any payment is more than the amount required to be withheld, the amount to be deposited shall be the amount withheld. The deposits shall be made on or before the depositary date (as defined in paragraph (a)(3)(ii) of this section) for the semimonthly period in which the oil is removed. These depositary requirements will be considered to have been met for a semimonthly period with respect to estimated deposits, including deposits based upon the producer's estimate of the effect of the net income limitation provided in section 4988(b) only if—

* * * * *

(2) *Special requirement.* If the aggregate amount of deposit liability for a taxable period (determined without regard to subdivisions (i) through (iv) of paragraph (a) (1) of this section) exceeds the total amount deposited by the company pursuant to paragraph (a) (1) of this section for such taxable period, then the company shall, on the removal in that semimonthly period of oil that is not subject to withholding under § 150.4995–1 for which the company is liable as a producer, plus the amount required to be withheld by the company as a purchaser pursuant to § 150.4995–1 from payments that have been or will be made for oil removed from the premises during that semimonthly period. However, if the amount withheld by the company as a purchaser from any payment is more than the amount required to be withheld, the amount to be deposited shall be the amount withheld. The deposits shall be made on or before the depositary date (as defined in paragraph (a) (3) (ii) of this section) for the semimonthly period in which the oil is removed. These depositary requirements will be considered to have been met for a semimonthly period with respect to estimated deposits, including deposits based upon the producer's estimate of the effect of the net income limitation provided in section 4988 (b), only if—

* * * * *

(2) *Special requirement.* If the aggregate amount of deposit liability for a taxable period (determined without regard to subdivisions (i) through (iv) of paragraph (a) (1) of this section) exceeds the total amount deposited by the company pursuant to paragraph (a) (1) of this section for such taxable period, then the company shall, on or before the last day of the second month following the close of the taxable period, deposit an amount equal to the amount by which the deposit liability exceeds the total deposits made pursuant to paragraph (a) (1) of this section for the taxable period.

* * * * *

(b) *Independent refiners purchasing oil pursuant to a delayed payment contract.* Purchasers that are independent refiners (as defined in § 150.4996–1 (h)) shall make deposits for each calendar month in accordance with the rules of paragraph (c) of this section except in the case of oil purchased under a contract therefor under which no payment is required to be made by the purchaser before the 46th day after the close of the month in which the oil is purchased. In the case of oil purchased under such a contract, the deposits shall be made for each calendar month not later than the last day of the second month which begins after the month in which the oil was removed. The amount to be deposited for each month is the amount required to be withheld pursuant to § 150.4995–1 from payments that have been or will be made for oil removed during that month. However, if the amount withheld by the purchaser from any payment is more than the amount required to be withheld, the amount to be deposited shall be the amount withheld.

(c) *Deposits by other purchasers.* Except as provided in paragraph (a) or (b) of this section, purchasers shall make deposits for each calendar month not later than 45 days after the close of that month. The amount to be deposited for each month is the amount required to be withheld pursuant to § 150.4995–1 from payments that have been or will be made for oil removed from the premises during that month. However, if the amount withheld by the purchaser from any payment is more than the amount

required to be withheld, the amount to be deposited shall be the amount withheld.

(d) *Special rules for electing operators and qualified disbursers*—(1) *Electors who are also producers.* Any operator or qualified disburser who makes the election provided by §§ 150.4995–4 or 150.4995–5 and who is the producer of oil subject to the election shall deposit with respect to that oil by treating the oil as not subject to withholding. However, if section 4995 (a) (7) (A) (ii) applies to amounts withheld by the operator electing under § 150.4995–4, that section shall also apply to amounts deposited by the operator under the preceding sentence.

(2) *Special rules for qualified disbursers.* The rules of this subparagraph apply to every qualified disburser making the election provided by § 150.4995–5 regardless of whether that qualified disburser is an operator entitled to make (or who has previously made) the election provided by § 150.4995–4. Except as provided in the following sentence, a qualified disburser shall deposit both the amount required to be deposited as a purchaser and the liability of the qualified disburser as a producer (if any) in accordance with the rules of paragraph (a) of this section if the qualified disburser is an integrated oil company (other than an independent refiner) and in accordance with the rules of paragraphs (c) and (f) of this section in any other case. However, if, on December 31, 1980, an integrated oil company (other than an independent refiner) was a disburser (as defined in § 150.4996–1(j)) with respect to a property, any qualified disburser subsequently undertaking any portion of the distribution responsibility of the integrated oil company shall deposit all amounts attributable to that property in accordance with the rules of paragraph (a) of this section.

* * * * *

(f) *Deposits by producers of tax due on oil not subject to withholding.* * * *

(2) *Special requirement.* If the total liability for the tax imposed by section 4986 for a taxable period exceeds the total amount deposited by the producer pursuant to subparagraph (1) of this paragraph for such taxable period, then the producer shall deposit the difference not later than the last day of the second month following the close of the taxable period.

(g) *Special rules applicable to overdeposits*—(1) *Purchasers who are not also depositing tax as a producer.* If, for any taxable period, a purchaser is not also depositing tax as a producer, the excess (if any) of the purchaser's deposits for a semimonthly period (calendar month in the case of purchasers depositing under paragraph (b) or (c) of this section) with respect to the removal of oil in that semimonthly period (or month) over the amount required to be deposited shall be applied in order of time to each of the purchaser's succeeding semimonthly periods (or months) in the same taxable period, to the extent that the amount by which the purchaser's deposit liability for that period (or month) exceeds the deposit for such subsequent period (or month), until such excess is exhausted.

(2) *Treatment of deposits by a producer in excess of liability*—(i) *In general.* The rules of this subparagraph apply to producers required to deposit tax under paragraph (a) or (f) of this section, including producers who are also depositing as a purchaser. The excess (if any) of a producer's deposits for a semimonthly period (calendar month in the case of producers depositing under paragraph (f) of this section) with respect to the tax imposed by section 4986 on the removal in that semimonthly period (or month) of oil that is not subject to withholding under § 150.4995–1 plus the amount deposited as a purchaser for oil removed during that period (or month) over the sum of the tax imposed by section 4986 (computed with regard to the net income limitation) on the removal of oil that is not subject to withholding plus the amount required to be deposited as a purchaser shall be applied in order of time to each of the producer's succeeding semimonthly periods (or months), to the extent that the amount by which the total deposit liability (as a producer and purchaser) for that period (or month) exceeds the deposit for such subsequent period (or month), until such excess is exhausted. The preceding sentence shall not apply to any amount for which the producer files a claim for credit or refund pursuant to § 150.6402–1. Furthermore, no amount shall be applied to a deposit for a subsequent semimonthly period (or month) that occurs in a taxable period beginning in a different taxable year (for Federal income tax purposes).

(ii) *Examples.* The rules of this paragraph and their relationship to the rules of § 150.6402–1 may be illustrated by the following examples:

Example (1). A, whose taxable year (for Federal income tax purposes) ends September 30, is the producer of oil from property X. For each taxable period (calendar quarter) within his taxable year ending September 30, 1981, A's windfall profit tax liability, determined without taking the net income limitation into account, is $1,000. The purchaser of A's oil is not required to withhold any windfall profit tax, and for the last taxable period of 1980 A has deposited $1,000. At the beginning of the first taxable period of 1981, A determines that the net income limitation will reduce the windfall profit tax with respect to the oil removed from property X during the taxable year ending September 30, 1981, by approximately 10 percent. Therefore, A concludes that the tax paid for the preceding taxable period (calendar quarter) exceeds his liability for tax for that period, although the exact amount of the excess cannot be determined until the taxable year ends. Under § 150.6402–1 A may not claim a refund for the amount of any such excess until the taxable year ends on September 30, 1980. However, paragraphs (a) and (f) of § 150.4995–3 do not require deposit of more than the tax imposed by section 4986. Therefore, A may estimate the effect of the net income limitation in determining the amount of windfall profit tax to be deposited for each taxable period. Furthermore, the amount by which the tax deposited by A for a preceding deposit period exceeds the actual liability for that period is treated as deposited for the next period. Accordingly, A deposits a total of $900 for the first taxable period of 1981 and $900 for each of the next two taxable periods. Thus, at the end of the four taxable periods ending within A's taxable year, A has made the following deposits:

October–December 1980, $1,000
January–March 1981, $900
April–June 1981, $900
July–September 1981, $900

After September 30, 1981, A computes his net income limitation for property X and determines that his actual tax liability was $650 for each taxable period. A has satisfied the deposit requirements and is entitled to file a claim for credit or refund of $200.

Example (2). Assume the same facts as in example (1), except that A overestimates the effect of the net income limitation and deposits a total of $800 for the first taxable period of 1981 and $800 for each of the next two taxable periods. After September 30, 1981, A's deposits are as follows:

October–December 1980, $1,000
January–March 1981, $800
April–June 1981, $800
July–September 1981, $800

$150 of the deposits for October, November, and December 1980 is treated as carried over to and deposited in the next taxable period, bringing the total deposit required for Jan–Mar 1981 to $700 (the amount equal to the $650 actual liability less $150 carried from the preceding period). However, due to the overestimation of the effect of the net income limitation, A has not deposited the total liability for that period or the next two taxable periods. Therefore, A is liable for $200 in undeposited tax (the amount equal to $3,400 total liability less $3,200 total deposits) plus interest and penalties (unless A's error was due to reasonable cause).

(iii) *Reporting requirements.* For the requirement that the producer file quarterly and annual statements if windfall profit tax deposits have been based on an application of the net

income limitation provided in section 4998(b), see § 150.4997–1

* * * * *

(i) *Depositary forms.* * * *

(2) *Tax deposit forms.* Each remittance of amounts required to be deposited by this section shall be accompanied by an FTD (Federal Tax Deposit, Excise Taxes) form (Form 504). Such form shall be prepared in accordance with the instructions applicable thereto. The remittance, together with FTD Form 504, shall be forwarded to a financial institution authorized as a depositary for Federal taxes in accordance with 31 CFR 214 or, at the election of the person remitting the tax, to a Federal Reserve bank. For procedures governing the deposit of Federal taxes at a Federal Reserve bank see 31 CFR 214.7. The timeliness of the deposit is determined by the date stamped on the Federal Tax Deposit form by the Federal Reserve bank or the authorized financial institution or, if section 7502(e) applies, by the date the deposit is treated as received under section 7502(e). Each person making deposits pursuant to this section shall report on the return for the period with respect to which such deposits are made information regarding such deposits in accordance with the instructions applicable to such return.

(3) *Procurement of prescribed forms.* Copies of the applicable deposit forms will so far as possible be furnished to purchasers and producers. Such a person will not be excused from making a deposit, however, by the fact that no form has been furnished to it. A person not supplied with the proper form should make application therefor in ample time to make the required deposits within the time prescribed. A person may secure the forms or additional forms by applying therefor and supplying its name, identification number, address, and the taxable period to which the deposits will relate. Copies of FTD Form 504 may be secured by application to a director of an Internal Revenue Service Center.

Par. 5. Paragraph (a) of § 150.4995–4 is amended to read as follows:

§ 150.4995–4 Election of purchaser and operator to have operator withhold, deposit tax, etc.

(a) *General rule.* Pursuant to section 4995(a)(7)(B), it has been determined that the substitution of the operator for the purchaser will make the administration of the windfall profit tax more practicable only when the operator is otherwise required by § 150.4995–4 to make deposits as a purchaser of oil produced from a different oil reservoir. Consequently, a purported election pursuant to section 4995(a)(7) is invalid except in that circumstance. In the allowed case, the operator of the property and a purchaser of crude oil produced from that property may make a joint election under this section with respect to oil produced from the entire property or any portion thereof. While the election is in effect, and to the extent of the oil subject to the election, the operator shall be treated as the purchaser for purposes of chapter 45 (or related provisions of subtitle F of the Code) and this part and, accordingly, is subject to all of the requirements imposed thereby upon the purchaser (except to the extent that a qualified disburser's election under § 150.4995–5 relieves the operator of those requirements). The purchaser shall not be held responsible for failing to meet those requirements. The operator shall promptly notify all producers of oil from that property (or portion) that a joint election has been made and that all information otherwise required to be sent to the purchaser should be sent to the operator. If the operator makes payment for oil produced from the property to a partnership rather than directly to the producers, the notice shall be sent to the partnership. The operator and the purchaser must agree to transfer to the operator responsibility for meeting all the requirements otherwise imposed upon the purchaser in order for the agreement to constitute an effective election.

* * * * *

Par. 6. A new § 150.4995–5 is added immediately after § 150.4995–4. Section § 150.4995–5 reads as follows:

§ 150.4995–5 Election of qualified disburser to withhold, deposit tax, etc.

(a) *In general.* Any "qualified disburser", as defined in paragraph (b) of this section, may make an election under this section to act as the withholding agent with respect to the oil the sales proceeds of which are distributed by that qualified disburser and to treat as not subject to withholding amounts received for its own production. While the election is in effect, and to the extent of the oil subject to the election, the qualified disburser shall be treated as the purchaser for purposes of chapter 45 (and related provisions of subtitle F of the Code) and this part (other than this section), and, accordingly, is subject to all of the requirements imposed thereby upon the purchaser. The qualified disburser shall promptly notify the operator of the property and every payee of any portion of its disbursements that the election has been made and that all information otherwise required to be sent to the purchaser should be sent to the qualified disburser.

(b) *Qualified disburser defined.* The term "qualified disburser" means either—

(1) A disburser (as defined in § 150.4995–1 (j)) who distributes 20 percent or more of the entire proceeds from the sale of oil from a property (or a portion of a property if that portion constituted a separate property prior to a unitization or aggregation), exclusive of that person's own share of the proceeds (if any), or

(2) A federally registered partnership as defined in section 6501(o)(4).

(c) *Method of making election; termination of election.* (1) The election shall be made by furnishing to the purchaser a signed and dated document that states facts that would establish that the person making the election is a "qualified disburser" and makes clear that the person has assumed complete responsibility for meeting all the requirements otherwise imposed upon the purchaser by chapter 45 (or related provisions of subtitle F) of the Code or by this part (other than this section) with respect to the oil the sales proceeds of which are distributed by the qualified disburser and for treating as not subject to withholding amounts received for its own production. The election document shall set forth the elector's identifying number (employer identification number or, if none, social security account number) and the property subject to the election, including the lease name, location, and identifying number, if any. Form 6458 is provided for this purpose. If the election is made with respect to more than one property, a separate document shall be furnished for each property. Generally, the election shall become effective on the date the election document is furnished to the purchaser (or a later effective date specified in the election document). However, the election may be made retroactively effective with respect to all oil removed after December 31, 1980, if the purchaser and qualified disburser so agree in writing, and if the election is made no later than March 1, 1981. The election shall remain in effect until 60 days after the qualified disburser furnishes the purchaser a signed and dated document that declares that the election is terminated (or a later date specified in the termination document) unless the purchaser agrees in writing to an earlier termination date. The qualified disburser shall promptly notify the operator and all affected producers of the termination and the resulting changes in responsibilities and shall, within 10 days of furnishing the

termination document to the purchaser, forward a copy to the Internal Revenue Service Center, Austin, Texas. Both the purchaser and qualified disburser shall retain in their records, for so long as they may be material in the administration of any internal revenue law, a copy of the election document and any subsequent termination document. If a qualified disburser making the election provided by this section receives payment of the sales proceeds of the oil from an intermediate disburser rather than directly from the purchaser, any document required by this section to be furnished to the purchaser shall be furnished to such other disburser. Any person receiving such a document shall furnish a copy to the person from whom that person receives payment.

(2) Any qualified disburser who, acting in good faith, undertook the responsibilities of the purchaser with respect to disbursements made after February 29, 1980, and before January 19, 1981 for oil removed from a property (or portion of a property) and who, on or before February 18, 1981, makes the election provided by this section with respect to oil removed from that property (or portion) may treat the election as being retroactively effective by so stating in the election document. However, the preceding sentence shall not have the effect of retroactively relieving the actual purchaser of any liability for failure to meet the requirements imposed upon the purchaser by chapter 45 (or related provisions of subtitle F of the Code) or this part.

(d) *Obligation of purchaser to furnish copy of election document to the Internal Revenue Service.* Within 10 days of receipt of an election document under this section, the purchaser shall forward a copy to the Internal Revenue Service Center, Austin, Texas.

(e) *Status of electing qualified disburser who is also a producer.* An electing qualified disburser who is also a producer of oil from the property subject to the election shall comply with all the requirements of this part that are imposed upon a producer whose oil is not subject to withholding (see, e.g., § 150.4995–3 (a) and (f) relating to the deposit schedules for producers not subject to withholding; see also, § 150.4995–3(d) relating to special deposit rules for certain operators and electing qualified disbursers).

(f) *Authority of district director to revoke election, require bond, etc.* If the district director for the district in which the principal place of business of the qualified disburser is located determines that the election under this section of any qualified disburser is not in the best interest of the Government in the effective collection and administration of the windfall profit tax, the district director may revoke the election or may permit the election to continue upon compliance with reasonable conditions, such as the posting of a bond. In the case of a revocation, the district director shall promptly notify the purchaser or other affected disbursers of the change in responsibilities.

(g) *Examples.* The provisions of this section may be illustrated by the following examples:

Example (1). P purchases crude oil from a lease operated by O. P pays 100 percent of the sales proceeds to O who retains 80 percent (the amount attributable to O's share of production) and distributes the remaining 20 percent to all the other producers in accordance with their percentage share of production. Since O is a qualified disburser, O may elect under this section to undertake all the windfall profit tax responsibilities otherwise imposed upon P. If O does elect, O furnishes P the election document and P withholds no windfall profit tax from payments to O. P must submit a copy of the election document to the Internal Revenue Service.

Example (2). Assume the same facts as in example (1) except that one of the producers receiving payment from O is a federally registered partnership. The partnership and O are both qualified disbursers entitled to make the election provided by this section. If the partnership and O both make the election, O must not withhold tax from payments to the partnership and must furnish a copy of the partnership's election document to P together with O's election document. If the partnership makes the election but O does not, O must furnish a copy of the partnership's election document to P. P should withhold tax from payments made to O except for the portion of the payment that is attributable to the partnership's share of production. P must submit to the Internal Revenue Service a copy of any election document received by P.

Example (3). Assume the same facts as in example (1). Assume further that O pays A, a producer, 20 percent of the entire sales proceeds, and that A retains 50 percent of the 20 percent payment from O and distributes the remaining 50 percent to producer B. A is not a qualified disburser because A distributes only 10 percent of the entire proceeds of sale.

Example (4). Assume the same facts as in example (1) except that P directly pays producer C, who has a 20 percent share of production and that the remaining 80 percent is paid to O who retains the 50 percent share attributable to O's share of production and distributes the remaining 30 percent to the other producers. O is a qualified disburser who may make the election provided by this section with respect to the sales proceeds received by O. C, who retains the entire proceeds received from P, is not a qualified disburser. Thus, P must withhold upon the payment to C in accordance with the rules of § 150.4995–1.

Example (5). Assume the same facts as in example (1) except that O, after retaining the 80 percent share of the sales proceeds attributable to O's production, distributes the remaining proceeds to producer A. Assume further that A retains 20 percent of the 80 percent payment from O and distributes the remaining 60 percent to other producers. O and A are both qualified disbursers because O distributes 80 percent of the entire sales proceeds and A distributes 40 percent. If both O and A make the election provided by this section, O does not withhold tax from the payments to A and deposits tax with respect to O's own production as a producer whose oil is not subject to withholding.

Par. 7. Section 150.4996–1 is amended by revising paragraphs (a), (c), (d), and (g), by revising so much of paragraph (h) as precedes subparagraph (1), by redesignating paragraph (j) as paragraph (k), and by adding new paragraphs (j) and (l). The revised and added provisions read as follows:

§ 150.4996–1 Definitions.

For purposes of this part and chapter 45 of the Code—

(a) *Purchaser.* The term "purchaser" includes only the first person (as defined in section 7701(a)(1)) purchasing production of domestic crude oil.

* * * * *

(c) *Operator.* The term "operator" means the person who bears more of the responsibility for the management and operation of crude oil production from the property than any other person. In the case of a business entity, the operator is the entity and not its employee or owner. However, under section 4996(a)(2)(B), another person may be designated as the operator, for purposes of chapter 45 of the Code, by persons holding 50 percent or more of the total shares of production attributable to operating mineral interests in the property. Such a designation must be made in writing and signed by all persons participating in the designation. A copy of the designation document shall be furnished to the district director for the district in which the principal place of business of the designated operator is located within 30 days of its effective date.

(d) *Removed from the premises; deemed removed.* (1) Oil is removed from the premises when the oil is physically transported off the premises. The term "premises" has the same meaning as it has for purposes of determining gross income from the property under section 613. See § 1.613–3(a). However, oil shall not be considered removed from the premises when, prior to sale, it is transported a short distance from the premises to a storage facility where the oil is to be held until sale. In that case, the oil shall

be considered to be removed from the premises when it is removed from the storage facility. Except as otherwise provided in this paragraph, if oil is used on the premises or if the manufacture or conversion of crude oil into refined products begins on the premises, the oil shall be treated as removed on the day the use, manufacture or conversion begins. However, oil that is produced and then reinjected into the reservoir or used on the premises to power a production process or production equipment is not removed from the premises so long as the oil is at no time transported from the premises from which it was produced.

(2) Oil used to power a production process or production equipment will not be considered removed from the premises if it is transported from one tract or parcel of land to a contiguous tract or parcel of land, provided that 100 percent of the operating mineral interests (as defined in § 1.614–2 (b)) in both tracts or parcels of land is held by the same persons. For purposes of the preceding sentence, in the case of oil produced from a property from which more than one tier of oil (as defined in section 4991) is produced, the oil used to power a production process or production equipment shall be deemed of the higher or highest tier designation to the extent of production in such tier and thereafter of the next lower tier. The rules of this paragraph apply only for purposes of the tax imposed by section 4986.

* * * * *

(g) *Integrated oil company.* Except as provided in paragraph (g)(4) of this section, the term "integrated oil company" means a taxpayer that is a "retailer" or "refiner" or a taxpayer who has made the election provided in paragraph (g)(3) of this section.

(1) *Retailer.* The term "retailer" means any taxpayer described in section 613A(d)(2), applying that section on a quarterly basis, i.e., one who directly, or through a related person, sells oil or natural gas (excluding bulk sales to commercial or industrial users) or any product derived from oil or natural gas—

(i) Through any retail outlet operated by the taxpayer or a related person, or

(ii) To any person—

(A) Obligated under an agreement or contract with the taxpayer or related person to use a trademark, trade name, or service mark or name owned by such taxpayer or related person, in marketing or distributing oil or natural gas or any product derived from oil or natural gas, or

(B) Given authority, pursuant to an agreement or contract with the person or related person, to occupy any retail outlet owned, leased, or in any way controlled by the taxpayer or related person.

However, notwithstanding the preceding sentence, this subparagraph shall not apply in any case where the combined gross receipts from the sale of such oil, natural gas, or any product derived therefrom, for the taxable period of all retail outlets taken into account for purposes of this subparagraph do not exceed $1,250,000. For purposes of this subparagraph, sales of oil, natural gas, or any product derived from oil or natural gas shall not include sales made of such items outside the United States, if no domestic production of the person or a related person is exported during the taxable period of immediately preceding taxable period.

(2) *Refiner.* The term "refiner" means any taxpayer described in section 613A(d)(4), applying that section on a quarterly basis, i.e., one who is engaged in the refining of crude oil or is related to a person so engaged, provided that on any day during the taxable period the refinery runs of the person and any related person exceed 50,000 barrels.

(3) *Election to be treated as an integrated oil company.* Any taxpayer who was an integrated oil company during any taxable period of the current or preceding calendar year may elect, for purposes of administering the windfall profit tax, to be treated as an integrated oil company for some or all of the taxable periods in the current year during which the taxpayer would not otherwise be considered to be an integrated oil company. The election shall be made by filing a document with the Internal Revenue Service Center, Austin, Texas. The document shall state that the election is made and shall set forth the facts that entitle the taxpayer to make the election. The election shall be considered to take effect with the first taxable period beginning after the election document is received by the Internal Revenue Service Center and to remain in effect for all taxable periods until revoked, unless the election document specifies a different effective period. The election may be revoked at any time by filing with the Internal Revenue Service Center, Austin, Texas a document that states that the election is revoked. The revocation shall be effective with the first taxable period beginning after the revocation document is received by the Internal Revenue Service Center unless a later effective date is specified in the revocation document. If an election or revocation document is sent to the service center by mail, it shall be considered received when posted by United States mail, properly addressed, and with sufficient postage.

(4) *Special rule.* For purposes of administering the windfall profit tax for any taxable period, if a taxpayer is an integrated oil company solely because that taxpayer is related to a person who is an independent refiner (as defined in paragraph (h) of this section), such taxpayer shall not be considered an integrated oil company for that taxable period.

For purposes of this paragraph, the term "related person" has the same meaning as in section 613A(d) (2) and (4).

(h) *Independent refiner.* The term "independent refiner" means any taxpayer who is engaged in the refining of crude oil and who

* * * * *

(j) *Disburser.* The term "disburser" means a person receiving payments from the sale of crude oil who is responsible for distributing some or all of the payment to one or more producers of the oil (either directly or through intermediate disbursers).

(k) *Other.* * * *

(l) *Effective dates.* Paragraphs (c) and (d)(1) of this section are effective with respect to oil removed from the premises (as defined in § 150.4986–1(d) of Treasury Decision 7900) on or after January 1, 1981, and so much of paragraph (g) of this section as precedes subparagraph (1) is effective with respect to oil so removed on or after the date that is 30 days after publication of final regulations under section 4986(b)(3). For the text of those paragraphs as in effect prior to those dates, see T.D. 7900, 45 FR 23384 (April 4, 1980).

Par. 8. Section 150.4997–1 is amended to read as follows:

§ 150.4997–1 Returns and recordkeeping.

(a) *Returns.* Returns with respect to windfall profit taxes imposed by section 4986 shall be made as provided in this section.

(1) *Quarterly return.* A return for each taxable period (on Form 720, with Form 6047 attached thereto, in accordance with the instructions on those forms) shall be made by the following:

(i) Each purchaser of crude oil required to deduct and withhold tax pursuant to § 150.4986–1;

(ii) Each operator of a property or qualified disburser who, having made an election pursuant to §§ 150.4986–4 or 150.4986–5, is required to deduct and withhold tax; and

(iii) Each producer of crude oil the tax with respect to which is excepted from

the withholding requirement by a subparagraph of § 150.4995–1(a).

(2) *Annual return.* A return for each calendar year shall be made by each producer of crude oil whose liability for tax with respect to oil that was removed during the four taxable periods of the calendar year exceeds the amount of tax withheld with respect to that oil.

See § 150.6070–1 for the rules relating to the time for filing the returns required by this section.

(b) *Recordkeeping requirements.* Each taxpayer liable for tax under section 4986, each producer or purchaser of domestic crude oil, each operator of a property from which domestic crude oil was produced, each disburser, and each partnership or other person receiving information on behalf of or providing information to producers under this part shall keep records of all documents, material, and information necessary to the determination of the windfall profit tax or that affect his or her administrative obligations under the Crude Oil Windfall Profit Tax Act of 1980 or the regulations in this part, including material furnished to other persons, as well as information received from other persons. The records shall be kept at all times available for inspection by authorized internal revenue officers or employees, and shall be retained so long as the contents thereof may become material in the administration of any internal law.

Par. 9. Section 150.4997–2 is amended to read as follows:

§ 150.4997–2 Certain information to be furnished by purchaser and others.

(a) *In general*—(1) *Purchasers.* If a purchaser is subject to the rules for collection and deposit of tax under §§ 150.4995–1 and 150.4995–3 with respect to any crude oil purchased (or would be subject to such rules in the absence of an exemption certificate given pursuant to § 150.4995–1(b)(3)), such purchaser shall furnish statements in accordance with paragraphs (b), (c), (d) and (e) of this section to each producer of the crude oil purchased, except that, if payment for the oil purchased is made to the operator of the property from which the oil is produced, a partnership, or other disburser (whether or not a "qualified disburser", as defined in § 150.4996–5) rather than to each producer individually, the statements shall be furnished to the operator, partnership, or other disburser, as the case may be. Such purchaser shall also file the information return required by paragraph (c) of this section with the Internal Revenue Service (in the case of yearly statements).

(2) *Operators, partnerships, disbursers.* Any person who receives a statement pursuant to paragraph (a)(1) of this section with respect to oil of which such person is not the producer shall, within 15 days of receipt of the statement, furnish to each producer, operator, partnership, or disburser to whom such person makes payment for the oil the information relating to the share of oil attributable to that producer, operator, partnership, or disburser. However, the rule of the preceding sentence shall apply to the statement required by paragraph (b) of this section (relating to monthly statements of tax withheld) to be furnished by a partnership to a partner only if the partner to receive the statement has requested that it be furnished. In the case of a partnership furnishing the statement required by paragraph (c) (Form 6248) or an annual statement required by paragraph (d) directly to any of its partners, the statement shall be furnished by the date that is the later of—

(i) 15 days following receipt of the statement by the partnership, or

(ii) The first April 30 following the end of the year to which the statement relates.

Any person furnishing the statement required by paragraph (c) (Form 6248) shall file a copy with the Internal Revenue Service as an information return. If a person required to furnish a statement or file a return under this paragraph receives more than one statement with respect to the same producer, operator, partnership, or disburser, all such statements may be aggregated in the statement and information return furnished under this paragraph.

(3) *Producer's and disburser's identifying numbers.* Every person with respect to whom the annual information return prescribed by paragraph (c) of this section (Form 6248) is required to be made by another person and every person who is required to be shown as a member of a related group on another person's independent producer certificate pursuant to § 150.4995–2(c)(1) shall furnish to such other person the person's employer identification number, or if an employer identification number has not been assigned, the person's social security account number.

(b) *Monthly statement*—(1) *In general.* The purchaser shall furnish statements for each calendar month showing the total amount of windfall profit tax withheld by the purchaser from payments made to the producer, operator, partnership, or disburser with respect to oil removed during that month. If the purchaser did not withhold tax from payments to that person because of the receipt of an exemption certificate, the monthly statement need only state the reason for the absence of withholding.

(2) *Time for furnishing monthly statement.* Any statement required to be furnished by a purchaser under this paragraph for any calendar month shall be furnished before the first day of the second month which begins after the close of the month to which the statement applies.

(c) *Yearly statement of windfall profit tax liability*—(1) *In general.* For each calendar year, the purchaser shall furnish statements and shall file information returns with the Internal Revenue Service. A separate statement shall be furnished to and a separate information return shall be filed for each producer, operator, partnership, or disburser to whom the purchaser made payments for oil purchased during the calendar year. Each statement and information return shall contain the following information with respect to oil for which that person received payment:

(i) The quantity, removal price, severance tax adjustment, adjusted base price, and windfall profit tax liability (computed without regard to the net income limitation) for taxable crude oil in each tier that was removed during that calendar year;

(ii) The total quantity of the taxable crude oil that was removed during that year;

(iii) The total amount of the windfall profit tax liability incurred with respect to the oil removed during that year;

(iv) The total amount of windfall profit tax withheld by the purchaser with respect to the oil removed during that year; and

(v) The total amount of windfall profit tax withheld by the purchaser from payments made during the calendar year without regard to when the oil was removed.

If the purchaser did not withhold tax from payments to that person because of the receipt of an exemption certificate, the yearly statement and information return shall identify the applicable exemption and set forth the number of barrels that would have been in each tax tier if the oil had been taxable crude oil. For purposes of the preceding two sentences, each category of tier 3 oil, independent producer oil withheld upon at a 50 percent rate, and independent producer oil withheld upon at a 30 percent rate shall be treated as a separate tier.

(2) *Additional information the case of withholding adjustments.* In the case of

withholding adjustments that were not completed under paragraph (c) of § 150.4995–1, the purchaser shall provide additional information in the yearly statement and information return with respect to the person subject to the adjustment. The statement and information return shall set forth the amount ascertained to have been underwithheld or overwithheld, the amount actually adjusted, and the amount remaining unadjusted. If the adjustment was due to underwithholding, the statement shall also inform the recipient that the producer is liable for the amount of the tax under section 4986 in excess of the amount of such tax withheld by the purchaser. If the withholding adjustment was due to overwithholding, the statement shall inform the recipient that the purchaser was unable to fully adjust the overpayment under paragraph (c) of § 150.4995–1 and that the producer is eligible for a credit or refund which he may claim in accordance with the rules provided in § 150.6402–1.

(3) *Producers not subject to withholding.* Every producer of oil not subject to withholding under § 150.4995–1 shall file the information return with respect to that oil that would otherwise have been required to be filed by the purchaser.

(4) *Prescribed form.* The statement and information return required by this paragraph shall be furnished and filed on Form 6248. The statement and return shall also contain such other information as is required by the form or its instructions. The statement shall be furnished in duplicate. The information return shall be filed in the place and in the manner provided in the instructions to Form 6248.

(5) *Time for furnishing yearly statement of windfall profit tax liability and filing yearly information returns.* Each yearly statement required to be furnished by a purchaser under this paragraph for any calendar year shall be furnished on or before March 31 of the year immediately following the calendar year to which the statement applies, and each yearly information return required to be filed by a purchaser shall be filed on or before April 30 of that year.

(6) *Correction of errors in statements and returns.* If a person required to furnish a statement or file a return under this paragraph ascertains after the statement has been furnished or the return filed that the person has made an error on the statement or return such person shall correct the error within 60 days of ascertaining the error by furnishing a corrected statement and filing a corrected return. On the other hand, where it is ascertained that the statement or return contains an inaccuracy not within the control of such person (e.g., where a producer's certificate provided to such person is incorrect), such person shall correct the inaccuracy not later than the next following date for furnishing such a statement or filing such a return by either furnishing a corrected statement and filing a corrected return or by indicating the correction on the statement furnished and return filed for the year within which the error was ascertained.

(7) *Identifying numbers.* Any person required to make an information return with respect to any other person under this paragraph shall request from that other person that person's identifying number (employer identification number or, if none, social security account number) and shall include that number in the information return. Furthermore, any person required to make an information return that is based, in whole or in part, upon information received from another person shall include that other person's identifying number in the information return.

(d) *Detailed statement to be furnished upon request.* (1) Any producer, operator, partnership, or disburser receiving sales proceeds from which windfall profit tax has been withheld may furnish the person from whom the proceeds are received a written request for some or all of the following information with respect to the computation of the withheld tax: The quantity of oil in each tax tier and the removal price, severance tax adjustment, adjusted base price, and tax rate applicable to that quantity. The information request may specify that the information is requested either on a property-by-property basis or in the aggregate. Any person receiving such a request who has made payments to the person making the request shall provide the requested information for the period and at the time specified in paragraph (d)(2).

(2) For taxable periods beginning after December 31, 1980, if the information request specifies that the information is requested for each taxable period, the information shall be provided for each taxable period not later than the last day of the second month following the end of the taxable period. If the information request states that the person requesting the information has an income tax year (for Federal income tax purposes) that ends on a date other than the last day of a calendar quarter and states the date on which the taxable year ends, the information for the taxable period within which the taxable year (for Federal income tax purposes) ends shall be provided for each month in that period. In any other case, the requested information shall be provided for each calendar year not later than March 31 of the following calendar year.

(e) *Suspended accounts.* If, due to the fact that the identity of the producer is not known or is in dispute, the sales proceeds of oil have been placed in escrow or otherwise held in suspense and have not been distributed to the producer at the time that the information return is required to be filed under paragraph (c), a return for each such account shall be filed with an indication that the return relates to suspended funds. At the filer's option, some or all of the returns may be aggregated into a single return. Not later than 60 days after the sales proceeds have been released to the producer, an information return shall be filed with an identification of the producer, and the statements required by paragraphs (c) and (d) of this section for past periods shall be furnished to the producer.

(f) *Cross reference.* For the requirement that the operator or qualified disburser furnish the statements and file the returns required by this section in the event that the election has been made to have the operator or qualified disburser deduct and withhold tax, etc. see §§ 150.4995–4 and 150.4995–5.

Par. 18. Section 150.6050C–1 is amended by revising paragraphs (a), (c), and (f). The revised paragraphs read as follows:

§ 150.6050C–1 Information furnished by operator for purposes of windfall profit tax.

(a) *In general.* The operator of any property from which domestic crude oil is removed during a calendar month shall furnish a monthly statement, signed under the penalties of perjury if the statement is furnished to the purchaser, certifying the information specified in paragraph (b) of this section to:

(1) The purchaser of the oil, if the purchaser is required to withhold tax from payments for the oil pursuant to § 150.4995–1 (see paragraph (c) of this section for the requirement that the statement be furnished to a qualified disburser), or

(2) The producer, in any other case, except that if the producer of oil is a partner in a partnership, this statement may be furnished to the partnership if the producer and the partnership so agree. In that case, the partnership shall furnish the information to the producer with respect to that producer's share of the oil within 15 days of receipt.

* * * * *

(e) *Special rule.* If an election under § 150.4995–1 is in effect under which a qualified disburser assumes the obligations of the purchaser, the statement otherwise required by this section to be furnished to the purchaser shall be furnished to the qualified disburser.

(f) *Producer's certificate.* For the requirement that certain operators furnish producer certificates to purchasers, see § 150.4995–2(e).

* * * * *

Par. 11. Section 150.6076–1 is amended to read as follows:

§ 150.6076–1 Time for filing return of windfall profit tax.

Each quarterly return required by paragraph (a)(1) of § 150.4997–1 shall be filed not later than the last day of the second month following the close of the taxable period. Each annual return required by paragraph (a)(2) of § 150.4997–1 shall be filed not later than May 31 of the first year following the close of the calendar year in which the oil giving rise to the underpayment was removed.

Par. 12. Section 6402–1 is amended by revising paragraphs (a) and (b) to read as follows:

§ 150.6402–1 Credit or refund of overpayment of windfall profit tax.

(a) *In general.* Any purchaser or producer who pays, or is deemed to have paid under section 4995(a)(4), more than the correct amount of the crude oil windfall profit tax imposed by chapter 45 for a taxable period may file a claim for refund of the overpayment or may claim credit for such overpayment, in the manner and subject to the conditions stated in this section and § 301.6402–2 of this chapter (Regulations on Procedure and Administration).

(b) *Overpayments by purchasers and by producers depositing tax*—(1) *In general.* If, for any taxable period, a purchaser or a producer (or a person acting in both capacities) has paid more than the sum of the amount required to be deposited as a purchaser for oil removed during that taxable period plus the amount of tax imposed by section 4986 (computed without regard to the net income limitation on windfall profit provided in section 4988(b)) on the removal in that taxable period of oil that is not subject to withholding, the purchaser or producer may file a claim for refund of that overpayment on or after the date for filing the return of such tax for such taxable period under section 6076 or may claim credit for such overpayment against any liability for a tax imposed by chapter 1 or 45 in accordance with the forms and instructions provided for that purpose.

(2) *Producers; net income limitation.* Except as provided in paragraph (b)(1), if, for any taxable period, a producer has paid more than the amount of tax imposed by section 4986 (computed with regard to the net income limitation provided in section 4988(b)) on the removal in that taxable period of oil that is not subject to withholding, the producer may file a claim for credit or refund of that overpayment only after the end of the producer's taxable year (for Federal income tax purposes) with respect to which the limitation is computed. At that time, the producer may claim a credit or refund of the overpayment as provided in paragraph (b)(1) of this section.

(3) *Purchasers unable to recover underwithholding through subsequent overwithholding.* A purchaser who withheld less than the amount required to be withheld from a payment under § 150.4995–1, who deposited the amount required to be withheld, and who has not corrected the underwithholding pursuant to § 150.4995–1(c) before the expiration of the adjustment period, may file a claim for refund of the excess of the amount deposited over the amount withheld if the amount claimed has been reported as underwithholding on the appropriate Form 6248 furnished and filed pursuant to § 150.4997–2(c). The claim for refund shall be filed on Form 843.

* * * * *

There is need for the immediate guidance provided by the provisions contained in this Treasury decision. For this reason, it is found impracticable to issue this Treasury decision with notice and public procedure under subsection (b) of section 553 of title 5 of the United States Code or subject to the effective date limitation of subsection (d) of that section.

This Treasury decision is issued under the authority contained in sections 4995, 4996, 4997, 6050C, 6109, and 7805 of title 26 of the United States Code (94 Stat. 244, 247, 249–250, and 251, 75 Stat. 828 and 68A Stat. 917; 26 U.S.C. 4995, 4996, 4997, 6050C, 6109, and 7805).

William E. Williams,

Acting Commissioner of Internal Revenue.

Approved: January 14, 1981.

Emil M. Sunley,

Acting Assistant Secretary of the Treasury.

[FR Doc. 81–1880 Filed 1–16–81; 2:44 pm]

BILLING CODE 4830–01–M

DEPARTMENT OF LABOR

Office of the Secretary

29 CFR Part 4

Labor Standards for Federal Service Contracts

AGENCY: Wage and Hour Division, Labor.

ACTION: Final rule.

SUMMARY: This rule revises § 4.133 of the regulations of the Department of Labor (29 CFR 4.133) to clarify the treatment of concession contracts under the Service Contract Act. Subsection (a) of the revised regulation makes it clear that government concession contracts, like all other government contracts for services, are covered by the Act. Subsection (b) indicates the types of concession contracts the Secretary of Labor is exempting from the Act's coverage pursuant to his authority under Section 4(b) of the Service Contract Act.

EFFECTIVE DATE: February 18, 1981.

FOR FURTHER INFORMATION CONTACT: Dorothy P. Come, Assistant Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Room S–3502, 200 Constitution Avenue, NW., Washington, D.C. 20210. Telephone: 202–523–8333.

SUPPLEMENTARY INFORMATION: Coverage of the Service Contract Act is broad. It encompasses all contracts, or any bid specifications therefor, entered into by and with the Government, which have as their principal purpose the furnishing of "services in the United States through the use of service employees." Since 1966 the Department of Labor excepted from the Act's requirements those concession contracts which provide services of "indirect or remote" benefit to the Government, for example, National Park Service food and lodging concessionaires serving the general public.

However, difficulties were encountered in applying the language of 29 CFR 4.133, particularly in circumstances where it is difficult to determine how "indirect or remote" is the benefit to the Government. Further, the regulation was susceptible of being misconstrued as providing that the Act itself does not cover a contract unless the services provided are of direct benefit to the Government.

For these reasons, the Department of Labor proposed to recast the regulation to indicate that the Act covered all government concession contracts for services, and to continue to provide an exemption for National Park Service

concession contracts which furnish food or lodging services to the general public. This proposed revision of § 4.133 was published in the Federal Register (44 FR 77057) on December 28, 1979. Comments concerning this proposed revision were received from the National Counsel of Technical Service Industries and three government agencies—the Federal Aviation Administration (FAA), the National Aeronautics Space Administration (NASA), and the General Services Administration (GSA). All except GSA questioned the correctness of the interpretation of the Department of Labor that the Service Contract Act covers concession contracts for services irrespective of the beneficiary of the contract services. NASA and FAA contended that the Act was intended to cover only concession contracts which are of a direct benefit to the Government or its personnel, and was not intended to cover concession contracts which primarily benefit the general public.

However, these contentions must be rejected. As previously noted, the language of the Act is very broad and covers all contracts the principal purpose of which is furnishing services. The Act's language makes no distinction based on the beneficiary of the contract services. In addition, the legislative history of the statute provides no evidence of a Congressional intent to limit coverage to service contracts of direct benefit to the Government. Comments by members of Congress that the Act should not be applied to certain concession contracts providing services to the general public were made after the passage of the Act, and do not constitute part of the statute's legislative history.

GSA and the National Council of Technical Service Industries submitted comments questioning whether there was a sufficient basis to exempt concession contracts in National Parks while not exempting similar concession contracts involving other Federal agencies. As a consequence of these comments, the Department of Labor proposed additional revisions to the regulation, which were published in the Federal Register (45 FR 81785) on December 12, 1980. Under this further proposed revision, subsection (b) was modified and clarified to specifically list which types of concession contracts were exempt, and to indicate that the exemption is not limited to National Park Service concession contracts but applies to qualifying concession contracts of other government agencies as well.

FAA and NASA submitted additional comments concerning these further proposed revisions. FAA generally approved of the revisions, but recommended that the list of exempt concession contracts be expanded to include those involving taxicabs, barber shops, commercial advertising displays and aircraft fuel sales. This recommendation is rejected as not being appropriate for incorporation in the regulation at this time. Further information is needed to establish both the basis for and the precise scope of these additionally suggested exemptions.

NASA submitted additional comments again contesting the interpretation of the Act found in § 4.133 that concession contracts which provide services of indirect or remote benefit to the Government are covered by the Act. NASA expressed concern with the possible effect this proposed regulation might have on the status of a pending lawsuit, and recommended that the proposed regulation be held in abeyance until the court rules in the case. However, in light of the real need for clarification of the position of the Department of Labor concerning the application of the Service Contract Act to government concession contracts, and the fact that it has been over a year since publication of the proposed revision of the regulation, the Department of Labor feels it would not be in the public interest to further delay publication of the regulation as a final rule.

The Secretary of Labor has determined, based on the information available, that because the proposed exemption is supported by statements of members of Congress, it is necessary and proper in the public interest; and further that because the proposed regulation will clarify the limits and make clear the basis of the previous exemption, it is therefore in accord with its remedial purpose to protect prevailing labor standards.

It has been determined that the amendments to this Regulation do not meet the criteria of Executive Order 12044 and the Department of Labor Guidelines (44 FR 5570) for a regulatory analysis. The revised regulation essentially clarifies interpretations and policies, and will not, in any event, cause major cost/price increases.

Accordingly, 29 CFR § 4.133 is revised as set forth below:

§ 4.133 Beneficiary of contract services.

(a) The Act does not say to whom the services under a covered contract must be furnished. So far as its language is concerned, it is enough if the contract is "entered into" by and with the government and if its principal purpose is "to furnish services in the United States through the use of service employees". It is clear that Congress intended to cover at least contracts for services of direct benefit to the Government, its property, or its civilian or military personnel for whose needs it is necessary or desirable for the government to make provision for such services. For example, the legislative history makes specific reference to such contracts as those for furnishing food service and laundry and dry cleaning service for personnel at military installations. Furthermore, there is no limitation in the Act regarding the beneficiary of the services, nor is there any indication that only contracts for services of direct benefit to the Government, as distinguished from the general public, are subject to the Act. Therefore, where the principal purpose of the Government contract or any bid specification therefor is to provide services through the use of service employees, the contract is covered by the Act, regardless of the direct beneficiary of the services or the source of the funds from which the contractor is paid for the service, and irrespective of whether the contractor performs the work in its own establishment, on a Government installation, or elsewhere. The fact that the contract requires or permits the contractor to provide the services directly to individual personnel as a concessionaire, rather than through the contracting agency, does not negate coverage by the Act.

(b) Because of comments made shortly after the Act's passage by some members of Congress that the Act's requirements should not be imposed on certain concession contracts providing services to the general public, the Department of Labor, pursuant to Section 4(b) of the Act, exempts from the provisions of the Act certain kinds of concession contracts as provided herein. Specifically, concession contracts (such as those entered into by the National Park Service) for the furnishing of food, lodging, automobile fuel, souvenirs, newspaper stands, and recreational equipment to the general public, as distinguished from the United States Government or its personnel, are exempt. Where concession contracts, however, include specifications for services other than those stated, such as the maintenance of government buildings and grounds, and the dissemination of information about government programs or facilities, those services are not exempt. Exemption of additional recreational or similar

services under concession contract will be determined in the discretion of the Secretary on a case-by-case basis in accordance with 29 CFR 4.123 and section 4(b) of the Act. The exemption provided does not affect a concession contractor's obligation to comply with the labor standards provisions of any other statutes such as the Contract Work Hours and Safety Standards Act, the Davis-Bacon Act (40 U.S.C 276 *et seq.*; see Part 5 of this title) and the Fair Labor Standards Act (29 U.S.C. 201 *et seq.*). This clarification and limitation of the exemption previously granted (33 FR 9660, July 10, 1968) is necessary and proper in the public interest and is in accord with the remedial purpose of the Act.

(Secs. 2(a) and 4, 79 Stat. 1034, 1035; 41 U.S.C. 351, 353, and under 5 U.S.C. 301)

Signed at Washington, D.C. this 14th day of January, 1981.

Donald Elisburg,

Assistant Secretary of Labor, Employment Standards Administration.

[FR Doc. 81-1527 Filed 1-16-81; 8:45 am]

BILLING CODE 4510-27-M

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

29 CFR Part 1620

Equal Pay Act; Final Recordkeeping and Administrative Regulations

AGENCY: Equal Employment Opportunity Commission.

ACTION: Final recordkeeping and administrative regulations.

SUMMARY: The Equal Employment Opportunity Commission publishes regulations to codify its previously adopted policy regarding investigation, enforcement, and record-keeping under the Equal Pay Act. These sections supercede the administrative portions of a document published July 2, 1979. (*See* 44 FR 38670.)

DATE: The regulations are effective January 19, 1981.

FOR FURTHER INFORMATION CONTACT: Anthony J. De Marco (tele: 202-634-6595) or Clement Hyland (tele: 202-653-5490), Legal Counsel Division, EEOC, 2401 E Street, NW., Washington, D.C. 20506.

SUPPLEMENTARY INFORMATION: Pursuant to Reorganization Plan No. 1 of 1978, 43 FR 19807 (May 9, 1978), and E.O. 12144, 44 FR 37193 (June 26, 1979), responsibility and authority for enforcement of the Equal Pay Act of 1963, 29 U.S.C. 206(d), was transferred from the Department of Labor (DOL) to the Equal Employment Opportunity Commission (EEOC) on July 1, 1979. Effective July 1, 1979, the Commission adopted the Department of Labor's administrative procedures for investigation and enforcement under the Equal Pay Act and the Department of Labor's record-keeping regulations. 44 FR 38670 (July 2, 1979).

The Department of Labor's regulations regarding investigation, enforcement and record-keeping under the Equal Pay Act were set forth in 29 CFR Parts 516 and 800. The Commission's regulations, §§ 1620.19-1620.23, will appear at new Part 1620 of Title 29 of the CFR. (It is expected that §§ 1620.1-1620.18 will consist of Equal Pay Act interpretations.) Sections 1620.19, 1620.20 and 1620.21 cover the subject matter formerly included in § 800.164, § 800.165 and codify what the Commission had previously adopted regarding investigation, enforcement and record-keeping under the Equal Pay Act. *See* 44 FR 38670 (July 2, 1979). These sections supercede the administrative portions of the July 2nd notice. The difference between the new administrative regulations and the July 2nd notice are explained below.

Section 1620.19(b) reflects the action taken by the Commission at the May 13, 1980, Commission meeting where the Commission delegated authority to the General Counsel to seek preliminary relief under the Act. Section 1620.20 provides that any member of the Commission may sign a subpoena and that there is not right of appeal from the issuance of such a subpoena. In § 1620.21, the Commission has adopted the recordkeeping regulations of the Department of Labor found at 29 CFR Part 516. Sections 1620.21 (b) and (c) set forth the specific recordkeeping requirements applicable to the Equal Pay Act which formerly appeared at 29 CFR 516.66(d) and 516.32. The Commission has not made any substantive changes to the DOL regulations. Section 1620.22 covers the subject matter formerly included in § 800.18. Section 1620.22(b) contains different language from § 800.166(b) because of statutory amendments.

Section 1620.23 has been added to provide that rules and regulations should be liberally construed. Paragraphs (b) and (c) of § 1620.23 modify the language set forth in paragraph (e) of the notice previously published in the **Federal Register** at 44 FR 38670 (July 2, 1979) so that an aggrieved person desiring to make an allegation of an employment violation under one of the laws administered by the Commission may specify such law or, if no law is specified, will allow Commission staff to contact the aggrieved person and ascertain the appropriate law. By considering the allegation under all laws administered by the Commission as the July 2, 1979, notice stated, the identity of the aggrieved person could unnecessarily be disclosed.

Accordingly, a new Part 1620 is added to Chapter XIV of 29 CFR. The regulations appear below. Signed at Washington, D.C., this 9th day of January 1981.

For the Commission.

Eleanor Holmes Norton,

Chair, Equal Employment Opportunity Commission.

PART 1620—THE EQUAL PAY ACT

Sec.

1620.1–1620.18 [Reserved]
1620.19 Investigation and compliance assistance.
1620.20 Issuance of Subpoenas.
1620.21 Recordkeeping requirements.
1620.22 Recovery of wages due; injunctions; penalties for willful violations.
1620.23 Rules to be liberally construed.

Authority: Sec. 1–19, 52 Stat. 1060, as amended; Sec. 10, 61 Stat. 84; Pub. L. 88–38, 77 Stat. 56 (29 U.S.C. 201 et seq.); sec. 1, Reorg. Plan No. 1 of 1978, 43 FR 19807; Executive Order No. 12144, 44 FR 37193.

§§ 1620.1–1620.18 [Reserved]

§ 1620.19 Investigations and compliance assistance.

(a) As provided in sections 9, 11, 16, and 17 of the FLSA, the Commission and its authorized representatives under the Act may (1) investigate and gather data; (2) enter and inspect establishments and records, and make transcriptions thereof, and interview individuals; (3) advise employers regarding any changes necessary or desirable to comply with the Act; (4) subpoena witnesses and order production of documents and other evidence; (5) supervise the payment of amounts owing pursuant to section 16(c) of the FLSA; (6) initiate and conduct litigation.

(b) The General Counsel, District Directors, the Director of Field Services, and the Director of Systemic Programs, or the designees of any of them are hereby delegated authority to exercise the powers enumerated in paragraphs (a) (1), (2), (3), and (5) of this section and to serve subpoenas. The General Counsel is delegated authority to seek preliminary relief under the Act. The General Counsel is hereby delegated authority to initiate other litigation at the direction of the Commission and to conduct such litigation.

(c) The identity or identifying details of persons giving information as to violations of the Act shall not be

disclosed unless necessary in a court proceeding.

§ 1620.20 Issuance of subpoenas.

(a) With respect to the enforcement of the Equal Pay Act, any member of the Commission shall have the authority to sign a subpoena requiring:

(1) The attendance and testimony of witnesses;

(2) The production of evidence including, but not limited to, books, records, correspondence, or documents, in the possession or under the control of the person subpoenaed; and

(3) Access to evidence for the purposes of examination and the right to copy.

(b) There is no right of appeal to the Commission from the issuance of such a subpoena.

(c) Upon the failure of any person to comply with a subpoena issued under this section, the Commission may utilize the provisions of sections 49 and 50 of Title 15 of the United States Code to compel enforcement of the subpoena.

§ 1620.21 Recordkeeping requirements.

(a) Employers having employees subject to the Act are required to keep records in accordance with U.S. Department of Labor regulations found at 29 CFR Part 516 (Records To Be Kept by Employers Under the FLSA). The regulations of that Part are adopted herein by reference.

(b) Every employer subject to the equal pay provisions of the Act shall maintain and preserve all records required by the applicable sections of 29 CFR Part 516 and in addition, shall preserve any records which he makes in the regular course of his business operation which relate to the payment of wages, wage rates, job evaluations, job descriptions, merit systems, seniority systems, collective bargaining agreements, description of practices or other matters which describe or explain the basis for payment of any wage differential to employees of the opposite sex in the same establishment, and which may be pertinent to a determination whether such differential is based on a factor other than sex.

(c) Each employer shall preserve for at least two years the records he makes of the kind described in § 1620.21(b) which explain the basis for payment of any wage differential to employees of the opposite sex in the same establishment.

§ 1620.22 Recovery of wages due; injunctions; penalties for willful violations.

(a) Wages withheld in violation of the Act have the status of unpaid minimum wages or unpaid overtime compensation under the FLSA. This is true both of the additional wages required by the Act to be paid to an employee to meet the equal pay standard, and of any wages that the employer should have paid an employee whose wages he reduced in violation of the Act in an attempt to equalize his or her pay with that of an employee of the opposite sex performing equal work, on jobs subject to the Act.

(b) The following methods are provided under sections 16 and 17 of the FLSA for recovery of unpaid wages: The Commission may supervise payment of the back wages and may bring suit for back pay and an equal amount as liquidated damages. The employee may sue for back pay and an additional sum, up to the amount of back pay, as liquidated damages, plus attorney's fees and court costs. The employee may not bring suit if he or she has been paid back wages in full under supervision of the Commission, or if the Commission has filed suit under the Act to collect the wages due the employee. The Commission may also obtain a court injunction to restrain any person from violating the law, including the unlawful withholding by an employer of proper compensation. A 2-year statute of limitations applies to the recovery of unpaid wages, except that an action on a cause of action arising out of a willful violation may be commenced within 3 years after the cause of action accrued.

(c) Willful violations of the Act may be prosecuted criminally and the violator fined up to $10,000. A second conviction for such a violation may result in imprisonment.

(d) Violation of any provision of the Act by any person, including any labor organization or agent thereof, is unlawful, as provided in section 15(a) of the FLSA. Accordingly, any labor organization, or agent thereof, who violates any provision of the Act is subject to injunction proceedings in accordance with the applicable provisions of section 17 of the FLSA. Any such labor organization, or agent thereof, who willfully violates the provisions of section 15 is liable to the penalties set forth in section 16(a) of the FLSA.

§ 1620.23 Rules to be liberally construed.

(a) These rules and regulations shall be liberally construed to effectuate the purpose and provisions of this Act and any other Act administered by the Commission.

(b) Any person claiming to be aggrieved or the agent for such person may advise the Commission of the statute or statutes under which he or she wishes the Commission to commence its inquiry.

(c) Whenever the Commission is investigating a charge or allegation relating to a possible violation of one of the statutes which it administers and finds a violation of one or more of the other statutes which it administers, the Commission may seek to remedy such violation in accordance with the procedures of all relevant statutes.

[FR Doc. 81-1550 Filed 1-16-81; 8:45 am]
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DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1990

Identification, Classification and Regulation of Potential Occupational Carcinogens; Conforming Deletions

AGENCY: Occupational Safety and Health Administration, Department of Labor.

ACTION: Final Rule.

SUMMARY: Deletions are made to the permanent standard for the Identification, Classification and Regulation of Potential Occupational Carcinogens ("Cancer Policy" standard, 45 FR 5002, Jan. 22, 1980) to conform it to the recent Supreme Court decision on OSHA's benzene standard, *Industrial Union Department, AFL-CIO* v. *American Petroleum Institute, et al.* 65 L. Ed. 2d 1010, 100 S. Ct. 2844 (July 2, 1980). The deletions carry out the Court's interpretation of the Occupational Safety and Health Act of 1970 that consideration must be given to the significance of the risk in the issuance of a carcinogen standard and that OSHA must consider all relevant evidence in making these determinations.

EFFECTIVE DATE: February 18, 1981.

FOR FURTHER INFORMATION CONTACT: Mr. James F. Foster, OSHA Office of Public Affairs, Room N-3641, U.S. Department of Labor, Third Street and Constitution Avenue, NW., Washington, D.C. 20210, telephone (202) 523-8151.

SUPPLEMENTARY INFORMATION:

1. Introduction

On January 22, 1980, the Occupational Safety and Health Administration published a final standard (29 CFR Part 1990) for the Identification, Classification and Regulation of Potential Occupational Carcinogens (the "Cancer Policy") at 45 FR 5002. On June 27, 1980, OSHA issued a correction document at 45 FR 43408. The Cancer Policy included scientific policies,

regulatory policies and procedures designed to lead to the more effective regulation of occupational carcinogens. Among the regulatory policies was the provision that exposures to Category I Occupational Carcinogens be reduced to the lowest feasible level taking into account economic and technical considerations. Limitations on the consideration of some types of evidence already considered in the cancer Policy were also included.

On July 2, 1980, the Supreme Court issued its decision on the OSHA benzene standard, *Industrial Union Department, AFL-CIO* v. *American Petroleum Institute et al.*, 65 L. Ed. 2d 1010, 100 S. Ct. 2844 (the "benzene decision" or *"I.U.D.* v. *A.P.I."*). The Court held that OSHA must consider the significance of the risk before regulating toxic substances and that OSHA had the burden of demonstrating the significance of the risk.

The Cancer Policy shares certain policies with the benzene standard.

Therefore to conform the Cancer Policy to the benzene decision, OSHA is deleting the provisions of the Cancer Policy which required the automatic setting of the lowest feasible level for Category I Potential Carcinogens. Also deleted are limitations on the evidence which OSHA may consider in determining the exposure limit for carcinogens. The results of these deletions are that in setting exposure limits for carcinogens on a substance by substance basis, OSHA will take into account significance of the risk, feasibility, all relevant provisions of the Act, court interpretations, all relevant evidence, prudent occupational health policy and its experience in regulating toxic substances. No automatic setting of exposures at the lowest feasible level will occur.

Most provisions of the Cancer Policy are not affected by the benzene decision. These include scientific policies, priority setting, identification criteria and classification criteria. OSHA is, of course, not deleting them and they remain in force.

2. OSHA's Cancer Policy

The Cancer Policy preamble discusses the basis for the policy at great length. Very briefly occupational carcinogens pose a serious health problem. OSHA had regulated a number of such chemicals, (asbestos, vinyl chloride, coke oven emissions, arsenic, etc.), but discovered that it was a slow process, in part because it was necessary to reevaluate the scientific basis for identifying potential human carcinogens in each rulemaking. Therefore there were a significant number of likely occupational carcinogens which OSHA would not be able to regulate for a substantial period of time. However, during the course of the earlier rulemakings, it became clear that there was a significant body of well established scientific data to provide the basis for identifying and regulating carcinogenic substances.

In the Cancer Policy proposal, OSHA proposed to make use of this scientific data and its regulatory experience, to lead to a more efficient regulatory process and better protection for employees exposed to carcinogens. The proposal was intensively and extensively explored in a 10 week hearing during which many scientific and policy experts testified, and literally hundreds of scientific articles were submitted. That record and the final standard are analyzed in a 300 page Federal Register preamble.

The final Cancer Policy modified the proposal in a number of ways to meet suggestions and criticism made in the record and the scientific evidence. The final standard includes provisions for setting priorities (see §§ 1990.131, .132). There are provisions to amend the policies to reflect advances in science and changes in policy (see §§ 1990.104 and .145).

The Cancer Policy sets forth scientific principles for the identification and classification of carcinogenic chemicals. These principles are primarily stated in §§ 1990.111, .112 and .143. They deal with the relevance of animal data to humans, the appropriateness of high dose testing, the relevance of various routes of exposure to the chemical in test animals, the uses and abuses of human data, the relevance of benign tumors in test animals, and other scientific principles. These scientific principles are based on an extensive scientific record and are analyzed in depth in the preamble.

The Cancer Policy treats these scientific policies as binding on the Agency and the public. Inconsistent evidence may not be considered, unless it is substantial and new and forms the basis for amending the Cancer Policy (see § 1990.145).

The Supreme Court's benzene decision is fully consistent with the aspects of the Cancer Policy just discussed, including the scientific principles and all the identification and classification provisions of the Cancer Policy. Therefore, there is no need to change any of these provisions of the Cancer Policy based on the benzene decision. It should also be noted that all these provisions and specifically the identification and classification provisions of the Cancer Policy are readily severable from the regulatory policies, and it is OSHA's intention that they be considered severable.

3. Conforming Changes to Regulatory Sections

The following paragraphs discuss those sections of the Cancer Policy standard required to be deleted by the Supreme Court's decision in *I.U.D.* v. *A.P.I.* and explain why the Court's decision compels the changes made.

Section 1990.111(h)

This paragraph states that for Category I Potential Carcinogens, exposures will be reduced to the lowest feasible level primarily through engineering and work practice controls. The words "to the lowest feasible level" are deleted. In consequence no binding requirement for exposure level is included in the Cancer Policy and the level will be set on a substance by substance basis taking into account all relevant evidence and statutory provisions. Obviously included within this would be consideration of the significance of the risk present by each substance.

The last sentence in § 1990.111(h) is deleted to avoid the inappropriate inference that the significance of the risk should be ignored. However, the general scientific principle concerning thresholds is already included in § 1990.143(h) and it remains one of those principles adopted by OSHA based on the record evidence in the Cancer Policy rulemaking.

No change is made in the regulatory policy of primary reliance on engineering and work practice controls. That policy was adopted by OSHA based on an extensive analysis of the record (see the discussion at 45 FR 5222) and was not affected by the Supreme Court's decision.

Section 1990.111(i)

This paragraph provided that exposures to Category II Potential Carcinogens "will be reduced as appropriate and consistent with the statutory requirements on a case-by-case basis." No changes are needed, since the formulation of the criterion for setting the exposure limit is "as appropriate and consistent with statutory requirements." the existing language therefore automatically incorporates the Supreme Court's interpretation in *I.U.D.* v. *A.P.I.* and consideration of the significance of the risk becomes an issue.

Section 1990.111(j)

This paragraph states that risk assessments will be performed based on

the available data utilizing cautious and prudent assumptions and that they will depend on the Secretary's judgment. The last sentance has been deleted to eliminate the possible interpretation that the risk assessments would depend solely on the Secretary's judgment. The assessment of risk and its significance have become regulatory issues as a result of the Supreme Court's decision. In consequence, determinations by the Secretary are to be based on the evidence in the record as to factual matters, and appropriate reasonable policies.

The clause that "cautious and prudent assumptions" are to be used remains. The Supreme Court held this was appropriate, stating that,

> So long as they are supported by a body of reputable scientific thought, the agency is free to use conservative assumptions in interpreting the data with respect to carcinogens, risking error on the side of over protection, rather than under-protection, (slip. op. p. 45)

Section 1990.111(k)

This paragraph provides that when suitable substitutes exists for a use of a chemical, a no occupational exposure limit should be set for that use to encourage substitution. Criteria are set for the determination of the suitability of substitutes including consideration of "regulatory requirements".

That terminology, of course, automatically incorporates into the determination of suitability, the regulatory requirements of the Supreme Court that OSHA consider the significance of the risk. Therefore there is no need to change the language of the paragraph to conform to the benzene decision. OSHA, before it encourages substitution, must consider whether the significance of the risk presented by the carcinogen makes it appropriate to encourage substitution.

Section 1990.142(a)(2)(iii)

This paragraph provided that exposure limits for Category I Carcinogens be set at the lowest feasible level achieved through engineering and work practice controls. For the reasons stated in the discussion of § 1990.111(h), the deletion of the reference to the lowest feasible level conforms the paragraph to *I.U.D.* v. *A.P.I.* No change in the suitable substitute language is required because as stated in the discussion of § 1990.111(k), the language of that section automatically incorporates into the suitability determination the significant risk question.

Section 1990.142(b)(2)

This paragraph stated that Category I Potential Carcinogens automatically create a "grave danger" for purposes of determining whether an Emergency Temporary Standard may be issued pursuant to section 6(c) of the OSH Act. (29 U.S.C. 655(c)). The Supreme Court's decision interpreted the Act to require non-emergency regulation of carcinogens to be based on consideration of the significance of the risk as well as qualitative evidence of their carcinogenicity. Clearly then, qualitative evidence of carcinogenicity must be accompanied by consideration of the gravity of the danger before the issuance of an ETS. (See sl. op. p. 30, n. 45). Therefore, this interpretation of the Court requires the deletion of § 1990.142(b)(2). In consequence, the issuance of an ETS under the Cancer Policy requires that the agency determine that a "grave danger" exists and that an "emergency standard is necessary to protect employees from such danger" as provided by § 6(c) of the Act. Conforming changes in numeration are also made.

Section 1990.142(b)(3)(iii) (Renumbered to § 1990.142(b)(2)(iii))

This section provided that the exposure limit for Emergency Temporary Standards shall be set at the lowest feasible level through any practical combination of engineering and work practice controls and respiratory protection. The deletion of the words "set as low as feasible," conforms the paragraph to *I.U.D.* v. *A.P.I.* for the same reasons specified in the discussion of § 1990.111(h).

Section 1990.143

This section sets forth scientific principles to be utilized in the identification of carcinogenic chemicals. They are based on an extensive scientific record including review of many hundreds of scientific articles, testimony of more than 100 scientific witnesses and extensive OSHA experience in earlier rulemaking proceedings. They are discussed in over 200 pages of Federal Register preamble. The agency is to apply these principles unless contrary arguments are based on substantial new evidence not considered by the agency, substantial new issues (§ 1990.145), or upon evidence which meets certain threshold criteria (§ 1990.144).

The Supreme Court's decision is consistent with OSHA's recognizing scientific principles and policies based on a substantial evidentiary record. Several Supreme Court cases have recognized the appropriateness of generic policies in those areas so that the same issues need not be constantly repeated.

> To require the Commission to proceed only on a case-by-case basis would require it, so long as its policy outlawed indefinite price changing provisions, to repeat in hearing after hearing its conclusions that condemn all of them. There would be a vast proliferation of hearings * * *. We see no reason why under the statutory scheme the process of regulation need be so prolonged and so crippled. (*F.P.C.* v. *Texaco*, 377 U.S. 33, 112 (1964).)

See also *United States* v. *Storer Broadcasting*, 351 U.S. 192 (1956) and *Weinberger* v. *Hynson*, 412 U.S. 609 (1973). Therefore these scientific principles remain established for the identification of carcinogens and the language of the introductory paragraph of the section indicates that their purpose is for the identification of carcinogens.

However, arguments based on evidence which would not be relevant for identification (such as the dose levels in animal testing) could be relevant in assessing the significance of the risk. Since § 1990.143 only refers to identification, arguments and evidence inconsistent with the principles may be introduced and considered on their merits for purposes of setting exposure limits. Therefore, no changes are made in § 1990.143.

Section 1990.144

This section sets minimum quality standards for the consideration of certain types of evidence for the identification, classification and regulation of carcinogens. As discussed in regard to § 1990.143, the criteria are based on an extensive scientific record and are consistant with the Supreme Court's decision when utilizing the criteria for the identification and classification of carcinogens. However, data which do not meet those criteria may be relevant to assessing the significance of the risk pursuant to the Supreme Court's decision. Therefore, the word "regulating" is deleted from the third line, to indicate that evidence not meeting the quality criteria will nonetheless be considered for purposes of assessing the significance of the risk.

Section 1990.145

This section lists the issues to be considered during the rulemaking proceeding on a carcinogen. Paragraph (h) provides for the consideration of "issues required by statute or executive order." The preamble discussion at 45 FR 5214 states that "this issue recognizes that future court decisions

interpreting the Act and amendments to the Act may require OSHA to consider additional issues". Clearly then, the issues required to be considered by the benzene decision such as the significance of the risk and its assessment become germane to the proceeding. Evidence and arguments on each issue may be introduced in the proceeding and will be considered by the Secretary in his decision.

Paragraph (i) of this section provided for the consideration of the "lowest feasible level to control exposure to Category I Potential Carcinogens * * *." The words "lowest feasible" are deleted to conform the paragraph to the benzene decision for the reasons stated in the discussion of § 1990.111(h). As a result of the deletion all evidence and arguments as to the setting of exposure levels consistent with the statute and the benzene decision are relevant.

Sections 1990.151(c) and .152(c)

Sections 1990.151 and .152 are the model standards for permanent and emergency temporary standards setting forth guidelines for monitoring, exposure limit format, control strategy, medical protection, housekeeping and other provisions. Conforming deletions are made by striking the lowest feasible terminology from the time weighted average limit, ceiling limit, eye exposure limit and dermal limit. The reasons are explained in the discussion of § 1990.111(h). The suitable substitutes provisions automatically pick up the significant risk requirements of *I.U.D.* v. *A.P.I.* as discussed above. Certain minor typographical errors are also corrected.

5. The Process for Conforming the Cancer Policy to the Benzene Decision

As this discussion indicates, the Supreme Court's interpretation of the OSHA Act is clear and the deletions necessary to make the Cancer Policy standard consistent with the Act as interpreted are relatively simple. The deletions merely incorporate the law, as stated by the Supreme Court, into the language of the Cancer Policy, where the Court found OSHA's policy inconsistent with the OSHA Act. Indeed the Supreme Court's benzene decision has already legally nullified those sections of the Cancer Policy inconsistent with the decision, and these changes merely conform the regulations to the law. The agency has not changed any of the factual determinations and has not changed any policies except as required by the Supreme Court's holding in interpreting the OSHA Act.

It is true that the determination of what constitutes significant risk and the role of risk assessment in making these determinations may include many difficult policy and factual questions. However, the agency, by these changes, is not determining those policy or factual questions or setting criteria for those determinations. Rather, those determinations will be made in the regulatory proceedings on specific substances.

It should be noted that the Supreme Court required consideration of the significance of the risk including risk assessments when they could be appropriately performed. The Court stated this requirement was not to be a "mathematical straitjacket"; "OSHA is not required to support its finding that significant risk exists with anything approaching scientific certainty." The agency can utilize the "best available evidence" and "there are a number of ways in which the agency can make a rational judgment about the relative significance of the risks * * *" (sl. op. pp. 44, 45, 46). Therefore, when data are not available to perform a formal quantitative risk assessment, qualitative evidence, expert testimony and other evidence may be appropriately utilized to base a determination of significance of risk.

OSHA has therefore concluded that notice and comment is unnecessary in the process of conforming the Cancer Policy to the holding of the Supreme Court in the benzene decision. The deletions of certain Cancer Policy provisions are compelled by the Supreme Court's benzene decision. They concern only matters of law and they do not involve the reconsideration of evidentiary issues. OSHA's decision would be neither enhanced nor assisted by the receipt of evidence on the issue of what changes are compelled.

In addition, as also discussed above, OSHA recognized when it issued the Cancer Policy that changes in the issues considered may become necessary because of changes in law and provided that such issues would be automatically considered without the need to amend the Cancer Policy. Section 1990.146(h) provides for the consideration of "any issues required by statute or executive order." The preamble discussion at 45 FR 5214 states that "this issue recognizes that future court decisions interpreting the Act and amendments to the Act may require OSHA to consider additional issues." The requirement for consideration of additional issues required by court decision clearly implies that those issues become relevant to the Secretary's decisions. Therefore the conforming deletions from the Cancer Policy merely make explicit the issues which have already become relevant to the Cancer Policy as a result of the Supreme Court's decision.

This document was prepared under the direction and supervision of Eula Bingham, Assistant Secretary of Labor for Occupational Safety and Health.

Accordingly, pursuant to sections 4(b), 6(b), 8(c) and 8(g) of the Occupational Safety and Health Act of 1970 (84 Stat. 1592, 1593, 1599; 29 U.S.C. 653, 655, 657), the Secretary of Labor's Order 8–76 (41 FR 25059), and section 4 of the Administrative Procedure Act (5 U.S.C. 553), Part 1990, of Title 29, of the Code of Federal Regulations is hereby amended as set forth below.

Signed at Washington, D.C. this 14th day of January, 1981. This amendment is effective on February 18, 1981.

Eula Bingham,

Assistant Secretary of Labor.

Part 1990 of Title 29, Code of Federal Regulations, is amended as follows:

1. Section 1990.111 is amended by revising paragraphs (h) and (j) to read as follows:

§ 1990.111 General statement of regulatory policy.

* * * * *

(h) Worker exposure to Category I Potential Carcinogens will be reduced primarily through the use of engineering and work practice controls.

* * * * *

(j) The assessment of cancer risk to workers resulting from exposure to a potential occupational carcinogen will be made on the basis of available data. Because of the uncertainties and serious consequences to workers if the estimated risk is understated, cautious and prudent assumptions will be utilized to perform risk assessments.

* * * * *

2. Section 1990.142 is amended by revising paragraph (a)(2)(iii), removing paragraph (b)(2) and renumbering paragraph (b)(3) as new paragraph (b)(2) and by revising newly redesignated paragraph (b)(2)(iii) as follows:

§ 1990.142 Initiation of rulemaking.

* * * * *

(a) * * *

(2) * * *

(iii) The permissible exposure limit shall be achieved primarily through engineering and work practice controls except that if a suitable substitute is available for one or more uses no occupational exposure shall be permitted for those uses.

* * * * *

(b) * * *

(2) * * *

(iii) The permissible exposure limit shall be achieved through any practicable combination of engineering controls, work practice controls and respiratory protection.

3. Section 1990.144 is amended by revising the introductory paragraph as follows:

§ 1990.144 Criteria for consideration of arguments on certain issues.

Arguments on the following issues will be considered by the Secretary in identifying or classifying any substance pursuant to this Part, if evidence for the specific substance subject to the rulemaking conforms to the following criteria. Such arguments and evidence will be evaluated based upon scientific and policy judgments.

* * * * *

4. Section 1990.146 is amended by revising paragraph (i) as follows:

§ 1990.146 Issues to be considered in the rulemaking.

* * * * *

(i) The determination of the level to control exposures to Category I Potential Carcinogens primarily through the use of engineering and work practice controls including technological and economic considerations.

* * * * *

5. Section 1990.151 is amended by revising paragraph (c) as follows:

§ 1990.151 Model standard pursuant to section 6(b) of the Act.

* * * * *

(c) Permissible exposure limits provisions. (1) Inhalation. (i) Time weighted average limit (TWA). Within (insert appropriate time period) of the effective date of this section, the employer shall assure that no employee is exposed to an airborne concentration of———in excess of: (insert appropriate exposure limit or when it is determined by the Secretary that there are available suitable substitutes for uses or classes of uses that are less hazardous to humans, the proposal shall permit no occupational exposure) as an eight (8)-hour-time-weighted average.

(Where the Secretary finds that suitable substitutes for———may exist, the determination of the ———level shall include consideration of the availability, practicability, relative degree of hazard, and economic consequences of the substitutes.)

(ii) Ceiling limit. (If appropriate.) Within (insert appropriate time period) of the effective date of this section, the employer shall assure that no employee is exposed to an airborne concentration of———in excess of: (insert exposure limit) as averaged over any: (insert appropriate time period) during the working day.

(2) Dermal and eye exposure. (As appropriate.) (i) Within (insert appropriate time period) of the effective date of this section, the employer shall (If eye exposure to———does not create a risk of cancer, insert exposure level or criteria which will prevent other adverse health affects of eye exposure to———if any. If eye exposure creates a risk of cancer, insert exposure level or criteria which represents the level of eye exposure to———).

(ii) Within (insert appropriate time period) of the effective date of this section, the employer shall (If skin exposure to———does not create a risk of cancer, insert exposure level or criteria which will prevent other adverse health effects of skin exposure to——— if any. If skin exposure creates a risk of cancer, insert exposure level or criteria which represents the level of skin exposure to———).

6. Section 1990.152 is amended by revising paragraph (c) as follows:

§ 1990.151 Model emergency temporary standard pursuant to section 6(c) of the Act.

* * * * *

(c) Permissible exposure limits—(1) Inhalation. (i) Time-weighted average limit (TWA). Within (insert appropriate time) from the effective date of this emergency temporary standard, the employer shall assure that no employee is exposed to an airborne concentration of———in excess of: (insert appropriate exposure limit representing a level that can be complied with immediately) as an eight (8)-hour-time-weighted average.

(ii) Ceiling limit. (If appropriate.) The employer shall assure that no employee is exposed to an airborne concentration of———in excess of: (insert appropriate exposure limit representing a level that can be complied with immediately) as averaged over any: (insert appropriate time period) during the working day.

(2) Dermal and eye exposure. (As appropriate.)

(i) Within (insert appropriate time period) of the effective date of this section, the employer shall (If eye exposure to———does not create a risk of cancer, insert exposure level or criteria which will prevent other adverse effects of eye exposure to———, if any. If eye exposure creates a risk of cancer, insert exposure level or criteria which represent the level of eye exposure to———.)

(ii) Within (insert appropriate time period) of the effective date of this section, the employer shall (If skin exposure to———does not create a risk of cancer, insert exposure level or criteria which will prevent other adverse health affects of skin exposure to——— if any. If skin exposure creates a risk of cancer, insert exposure level or criteria which represents the level of skin exposure to———).

[FR Doc. 81-1944 Filed 1-16-81; 8:45 am]
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PENSION BENEFIT GUARANTY CORPORATION

29 CFR Part 2604

Intent to Terminate; Amendment Changing Mailing Address

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: Plan administrators of terminating defined benefit pension plans covered under the plan termination insurance program of Title IV of the Employee Retirement Income Security Act of 1974 ("ERISA") must submit to the Pension Benefit Guaranty Corporation ("PBGC") a Notice of Intent to Terminate the plan at least 10 days prior to the proposed date of termination. This document changes the address to which the required notice must be submitted. The new address will insure a more timely receipt by the PBGC of these notices.

EFFECTIVE DATE: January 19, 1981.

FOR FURTHER INFORMATION CONTACT: William E. Seals, Deputy Assistant General Counsel, Office of the General Counsel, Pension Benefit Guaranty Corporation, 2020 K Street, N.W., Washington, D.C. 20006, 202-254-4895. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Section 4041(a) of the Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. 1341(a), requires the plan administrator of a terminating defined benefit pension plan covered under the plan termination insurance program of Title IV of ERISA, to file with the Pension Benefit Guaranty Corporation ("PBGC") at least 10 days prior to the proposed date of termination, a notice that the plan is to be terminated. The PBGC Notice of Intent to Terminate regulation ("regulation"), 29 CFR Part 2604, contains a Post Office Box address for receipt of those notices.

In order to insure timely receipt of the notices, the PBGC has discontinued use of the Post Office Box address and now requires that on or after the effective date of this amendment, all Notices of Intent to Terminate covered plans must be mailed or delivered to PBGC's Office

of Program Operations, Room 5300A, 2020 K Street, N.W., Washington, D.C. 20006.

Because this amendment is a non-substantive technical change to the regulation and is necessary because the PBGC has changed its mailing address, the PBGC finds that notice of and public comment on this amendment are impracticable and unnecessary. Moreover, because of the need to insure timely receipt of the statutory Notice of Intent to Terminate a covered plan, and because no adjustment by ongoing plans is required by this amendment, the PBGC finds that good cause exists for making this amendment to the final regulation effective immediately.

The PBGC has determined that this amendment to the Notice of Intent to Terminate regulation is not "significant" under the criteria prescribed by Executive Order 12044, "Improving Government Regulations," 43 FR 12661 (March 24, 1978), and the PBGC's Statement of Policy and Procedures implementing the Order, 43 FR 58237 (December 13, 1978). The reasons for this determination are that this amendment is not likely to engender substantial public interest or controversy, does not affect another Federal agency, and will not have a major economic impact.

In consideration of the foregoing, Part 2604 of Chapter XXVI of Title 29, Code of Federal Regulations is hereby amended by revising paragraph (d) of § 2604.3 to read as follows:

§ 2604.3 Requirement of Notice.

* * * * *

(d) *Where to file.* A Notice or supplemental information required to be filed with the PBGC under the provisions of this part may be sent by mail or submitted by hand to the Office of Program Operations, Pension Benefit Guaranty Corporation, Room 5300A, 2020 K Street, N.W., Washington, D.C. 20006.

* * * * *

(Secs. 4002, 4041, Pub. L. 93-406, 88 Stat. 1004, 1020 (29 U.S.C. 1302, 1341))

Issued at Washington, D.C. this 12th day of January, 1981.

Robert E. Nagle,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 81-2348 Filed 1-16-81; 8:45 am]

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29 CFR Part 2622

Allocating Unfunded Vested Benefits

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Interim rule.

SUMMARY: This interim regulation prescribes modifications to the statutory methods for allocating unfunded vested benefits in determining the withdrawal liability of an employer that withdraws from a multiemployer pension plan covered by Title IV of the Employee Retirement Income Security Act of 1974, as amended by the Multiemployer Pension Plan Amendments Act of 1980. These modifications may be adopted by plan amendment. The interim regulation also establishes the procedure under which the plan sponsor of a multiemployer plan may submit an alternative allocation method to the Pension Benefit Guaranty Corporation for approval.

Multiemployer plans that are not amended to adopt another allocation method must use the presumptive method, which is one of four allocation methods contained in the Act. Until October 1, 1983, a plan may adopt one of the other statutory allocation methods, with or without any of the modifications prescribed in this regulation, without PBGC approval. In addition, a plan may adopt a non-statutory allocation method subject to approval by PBGC. Amendments adopted before February 1, 1981 may be used to determine the withdrawal liability of all employers that withdraw from the plan both before and after that date. Amendments adopted after January 31, 1981 may not be used to determine liability for a complete or partial withdrawal which occurred before the amendment was adopted, unless the employer consents.

The effect of the interim regulation is to permit plans to adopt certain modifications to the statutory allocation methods without PBGC approval, and to provide procedures for obtaining PBGC's approval of non-statutory allocation methods.

EFFECTIVE DATE: January 19, 1981.

FOR FURTHER INFORMATION CONTACT: Ellen A. Hennessy, Office of the Executive Director, Policy and Planning, Suite 7100, 2020 K Street, N.W., Washington, D.C. 20006; 202-254-4856.

SUPPLEMENTARY INFORMATION: The Multiemployer Pension Plan Amendments Act of 1980, Pub. L. No. 96-364, 94 Stat. 1208, (the "Multiemployer Act"), became law on September 26, 1980 and amended the Employee Retirement Income Security Act of 1974. Under the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), an employer that withdraws from a multiemployer plan may be liable to the plan for a portion of the plan's unfunded vested benefits. The withdrawal liability rules generally apply to withdrawals after April 28, 1980 (May 2, 1979 for certain employers in the seagoing industry).

Determining an Employer's Withdrawal Liability

The plan sponsor of a multiemployer plan must make a determination as to the withdrawal liability of each employer that withdraws from a multiemployer plan after April 28, 1980. In calculating an employer's withdrawal liability, the plan sponsor first allocates to the withdrawing employer a portion of the plan's unfunded vested benefits. The amount of a plan's unfunded vested benefits is determined by subtracting the value of plan assets from the value of all nonforfeitable benefits.

Section 4211 of ERISA prescribes four methods for determining an employer's allocable share of the plan's unfunded vested benefits: the presumptive method, the modified presumptive method, the rolling-5 method and the direct attribution method. In addition, the Pension Benefit Guaranty Corporation ("PBGC") may prescribe modifications to these methods or approve other alternative allocation methods. Any multiemployer plan that is not amended to adopt an alternative method is required under the statute to allocate unfunded vested benefits using the presumptive method.

Under section 4214 of ERISA, plan amendments adopted before February 1, 1981, may be applied to all withdrawals occurring after April 28, 1980. Plan amendments adopted after January 31, 1981 may not be applied to determine an employer's withdrawal liability for a withdrawal before adoption of the amendment without that employer's consent.

The presumptive method may not be a suitable allocation method for all plans. For this reason, Congress provided three statutory alternatives, set forth in section 4211(c)(2), (3) and (4), which may be adopted by plans without PBGC approval. Congress recognized, however, that some plans may not have adequate records to perform the computations necessary under the statutory methods, and that such computations may involve unreasonable administrative burdens. Sections 4211(c)(2)(D) and (c)(5)(D) authorize the PBGC to prescribe by regulation various adjustments to the statutory allocation rules that a plan may adopt without seeking approval from PBGC. In addition, section 4211(c)(5)(A) permits plans to adopt other alternative allocations subject to the approval of PBGC.

Under section 4220(a) of ERISA, no plan amendments relating to withdrawal liability may be adopted more than 36 months after enactment of the Multiemployer Act without PBGC approval. Section 2652.5(a) and (b) of this regulation permits plans to adopt specified amendments without PBGC approval at any time before October 1, 1983 (36 whole calendar months after enactment).

Subpart B of this interim regulation (§§ 2652.5–2652.7) prescribes adjustments to the statutory methods that may be adopted without PBGC approval prior to October 1, 1983. These modifications can be adopted only by plan amendment. Subpart C of the interim regulation (§§ 2652.11–2652.16) establishes a procedure under which plan sponsors may submit other alternative allocation methods for PBGC approval. These other alternative allocation methods must be adopted by plan amendment before submission to PBGC for approval. A plan amendment adopted before February 1, 1981 may be applied to all withdrawals after April 28, 1980, even though PBGC's approval is not received before February 1.

Modifications to the Presumptive, Modified Presumptive and Rolling-5 Methods

Under the presumptive method, a withdrawing employer's liability consists of three elements. The first element is the unfunded vested benefits under the plan for the last plan year ending before April 29, 1980 ("the plan's pre-1980 liability"). The second element is the change in unfunded vested benefits for plan years ending on or after April 29, 1980, in which the employer was obligated to contribute under the plan. The third element is a share of the liabilities that became uncollectible in that plan year as a result of the insolvency of previously withdrawn employers or as a result of statutory provisions, such as the *de minimis* rule of section 4209, that relieve withdrawn employers of all or a portion of their withdrawal liability.

The withdrawing employer's share of each element of liability is based on its proportion of contributions to the plan during the five year plan years preceding the plan year in which the element arose. In determining the employer's share of the plan's pre-1980 liability, the plan's pre-1980 liability is multiplied by a fraction ("the pre-1980 fraction"), the numerator of which is the employer's total required contributions to the plan for the five plan years ending before April 29, 1980, and the denominator of which is the total contributions received from all employers for the same period (excluding contributions of employers that withdrew before April 29, 1980). The employer's shares of the annual change in unfunded vested benefits and of the amounts that became uncollectible during a plan year ending after April 28, 1980 are determined by a similar fraction using contributions over a five-plan-year period ("the annual fraction").

Under the modified presumptive method, the employer's share of the plan's pre-1980 liability is allocated using the same pre-1980 fraction as under the presumptive method. For plan years ending after April 29, 1980, however, the plan sponsor determines the change in unfunded vested benefits from the date for determining the pre-1980 liability (the last day of the last plan year ending before April 29, 1980) to the end of the plan year preceding withdrawal, rather than determining a separate change for each plan year as under the presumptive method. The employer's share of this post-1980 liability is determined using a fraction ("the post-1980 fraction"), the numerator of which is the employer's total required contributions for the five plan years preceding the employer's withdrawal, and the denominator of which includes the contributions made by all employers for the same period (excluding contributions of employers who withdrew during that period).

Under the rolling-5 method, a share of the plan's unfunded vested benefits as of the end of the plan year preceding withdrawal is allocated to the employer using the same post-1980 fraction as under the modified presumptive rule. The plan's pre-1980 liabilities are not separately allocated to pre-1980 employers under this method.

Sections 4211(c)(2)(D) and (c)(5)(D) permit the PBGC to prescribe adjustments for the denominators of any fractions "to ease administrative burdens of plan sponsors in calculating such denominators." Each denominator in the first three statutory methods is based on "the sum of all contributions made" or "total amount contributed" for a period of five plan years. As indicated in § 2652.6(a) of this interim regulation, this means the amount considered contributed to the plan for those plan years for purposes of the minimum funding standard of section 412 of the Internal Revenue Code.* Plans are currently required to report this figure on Schedule B of the Form 5500. For plan years in which the plan was not subject to the minimum funding requirements of ERISA, plans should use the amount reported on line 14(c) of the Form 5500. For plan years occurring before the Form 5500 was required, plans should use the total contribution figure reported to the Internal Revenue Service or the Department of Labor on predecessor forms to the Form 5500.

Under section 412(c)(10) of the Internal Revenue Code and Treasury Regulation § 11.412(c)–12, certain contributions for a plan year made within 8½ months after the end of the plan year may be treated as made for that plan year. Plans that treat such contributions received during this 8½-month period as contributions for the prior year for funding purposes may not want to delay that long in assessing withdrawal liability. Section 2652.6(b) of this regulation provides, therefore, that plan sponsors may amend their plans to provide that the denominator of each of the fractions under any of the three methods will be based on (1) contributions actually received during the plan year, or (2) contributions actually received during the plan year and contributions received after the close of the plan year within a specified period, which may not be longer than the period described in section 412(c)(10) of the Internal Revenue Code and the regulations thereunder, or (3) contributions actually received during the plan year and contributions accrued during the plan year and received after the close of the plan year within a specified period, as described in (2). If the 8½-month period currently permitted under the Treasury regulations is changed, the maximum period allowed under this regulation is automatically adjusted to the new funding period. Except as noted below, no contribution may be counted for more than one plan year.

Plans are currently required to report contributions on a month-by-month basis on Schedule B of the Form 5500. Therefore, adoption of one of these modifications will not require additional record-keeping. However, some plans may wish to allocate pre-1980 liabilities using the total contributions reported on line 14(c) of the Form 5500 for the five years ending before April 29, 1980, while adopting a different period for allocating post-1980 liabilities. Section 2652.6 of this interim regulation permits plans to do so, even if the plan was subject to the minimum funding standard for some of those years.

*The denominator of the post-1980 fraction used in the modified presumptive and rolling-5 methods includes certain delinquent contributions. If these delinquent contributions have already been included for purposes of the minimum funding standard, they should not be added again in determining the denominator.

Excluding Contributions of Withdrawn Employers

As discussed above, under the presumptive, modified presumptive and rolling-5 methods, contributions of employers that have previously withdrawn must be excluded from all denominators in the allocation fraction. Thus, contributions of employers that withdrew before April 28, 1980 must be excluded from all fractions. In addition, contributions of certain employers that withdraw after April 28, 1980 must be excluded from the annual fractions under the presumptive method and from the post-1980 fraction under the modified presumptive and rolling-5 methods. Specifically, plans must exclude contributions of all employers that have ceased to contribute to the plan or ceased covered operations, even if those employers have no liability to the plan, unless the employer's obligation to contribute is assumed by a successor employer. Therefore, plans required to use a narrower definition of complete withdrawal (under the building and contruction industry rule of section 4203(b) of ERISA, for example) must exclude contributions of employers who have ceased to contribute or ceased covered operations, even if those employers have not withdrawn in a "complete withdrawal" under the narrower definition.

Plans with many employers may find it costly to maintain records on all previously withdrawn employers. For years prior to 1980, plans may lack adequate records to determine which employers had withdrawn and the amount of their contributions. Therefore, § 2652.6(c) of this interim regulation permits a plan to modify, by amendment to the plan, the denominators in the first three statutory allocation methods to exclude fewer than all employers that have ceased to contribute to the plan. Instead of excluding all employers that have left the plan, where required by any of the fractions, the plan may provide that only contributions of significant employers that have left the plan shall be excluded from the denominator. "Significant withdrawn employer" is defined in § 2652.6(c)(2) as an employer to whom the plan has sent a notice of withdrawal liability or any other withdrawn employer required to contribute the lesser of $250,000 or 1% of total contributions for any plan year included in the denominator. Any plan amendment adopting this modification must use this definition of "significant withdrawn employer". If a group of employers (such as members of a trade association) withdraws in the same year in a concerted withdrawal, as defined in § 2652.6(c)(3), and the group's contributions equal or exceed the 1% or $250,000 limit for any plan year included in the denominator, all contributions made by members of the group must be excluded under this modification.

Direct Attribution Method

Under the direct attribution method (the fourth statutory allocation method), an employer is allocated (1) the share of unfunded vested benefits attributable to participants' service with the employer and (2) a share of the plan's unattributable liabilities. The plan's unattributable liabilities should be allocated to employers in proportion to each employer's share of the plan's attributable liabilities. However, section 4211 (c) (4) (F) of the Act, which describes the allocation of unattributable liabilities, contains a typographical error. In the phrase "as the amount determined under subparagraph (C) for the employer bears to the sum of the amounts determined under subparagraph (C) for all employers under the plan", the reference to subparagraph (C) is meaningless. Therefore, § 2652.7(a) of the interim regulation provides that plans adopting the direct attribution method should substitute "subparagraph (B)" for "subparagraph (C)" in both places that it appears in section 4211(c) (4) (F).

As an alternative, § 2652.7(b) of this interim regulation permits a plan adopting the direct attribution method to allocate unattributable liabilities on the basis of the employer's share of contributions over a period of plan years. The fraction set forth in § 2652.7(b) is based on the fraction used in the rolling-5 method to allocate all unfunded vested benefits under section 4211(c) (3) (B) of ERISA. The plan may choose any period of years not less than 5 plan years. This period may be stated as a fixed number of years (such as 5), or as all plan years after a certain date (for example, all plan years since adoption of the plan).

Combining Modifications

Combinations of the modifications set forth in this interim regulation may be adopted without PBGC approval. For example, a plan that adopts the denominators set forth in § 2652.6(d) may define contributions made for a plan year in accordance with one of the modifications set forth in § 2652.6(b). Similarly, a plan that adopts the direct attribution method as modified by § 2652.7(b) may further modify the fraction described in § 2652.7(b) using any modification permitted under § 2652.6(b) or (c).

Alternative Methods for Allocating Unfunded Vested Benefits

Section 4211(c)(5) (A) of ERISA provides that a multiemployer plan may adopt by plan amendment alternative methods for allocating unfunded vested benefits. However, any such alternative method is subject to PBGC approval based on a determination that use of the alternative method would not "significantly increase" the risk of financial loss to plan participants, beneficiaries or the PBGC.

The PBGC recognizes that use of the allocation methods described in section 4211 of ERISA may be administratively cumbersome for some multiemployer plans, and that a literal application of the statutory allocation rules could result in an inequitable allocation in some cases. PBGC anticipates that the procedures described herein will enable such plans to develop and obtain PBGC approval of allocation rules which meet their particular needs and circumstances.

Section 2652.11 of the interim regulation prescribes the procedure under which multiemployer plans may seek approval of an alternative allocation method from the PBGC. Under the interim regulation, all requests for approval must be in writing, and must be filed with the PBGC. Section 2652.13(a) provides that generally a request must be filed with PBGC as soon as practicable after adoption of the amendment. However, for amendments adopted prior to February 1, the request for approval must be submitted on or before March 16, 1981. This deadline is included because of the importance of ascertaining what allocation method will be used to determine the withdrawal liability of employers who withdrew from a plan after April 28, 1980 and before the adoption of the alternative allocation method. A method submitted for approval must actually have been adopted by a plan; PBGC will not consider requests for approval of proposed allocation methods.

Plan sponsors should note that there are restrictions on the implementation of an amendment adopting an alternative allocation method prior to approval of the method by the PBGC. A plan amendment adopting an alternative method may provide that the method shall be applied against any employer that withdraws from the plan after the date the amendment is adopted. Section 2652.11 of the interim regulation provides that the plan may use the method as a basis for calculating an employer's withdrawal liability prior to obtaining PBGC's approval of the

method. However, until the PBGC actually approves the method, the plan may issue a demand for withdrawal liability pursuant to section 4219 of the Act only for the lesser of (1) the amount calculated under the alternative method or (2) the amount calculated under the allocation method that would have to be used by the plan if the alternative method is not approved by PBGC. Once the alternative method has been approved by the PBGC, the plan may adjust the amount demanded from the withdrawn employer.

Section 2652.11(c) of the interim regulation contains a special rule concerning the effective date of plan amendments adopted on or before January 31, 1981. Section 4214 of ERISA provides that an alternative allocation method that is adopted on or before January 31, 1981 may, if the PBGC approves the method, be applied to employers that withdrew before the date the method was adopted. However, that section does not require that the PBGC approve such an amendment before February 1, 1981. Accordingly, § 2652.11(c) of the interim regulation specifies that an alternative method that was adopted on or before January 31, 1981 may be applied to all employers withdrawing before that date, even though PBGC approval does not occur until after January 31, 1981.

Section 2652.12 of the interim regulation contains a separate rule applicable to plans which are primarily composed of employees in the building and construction industry. Such plans are required to use the presumptive method to allocate unfunded vested benefits to construction industry employers. However, section 4211(c)(1) of ERISA provides that a construction industry plan may, to the extent provided by PBGC regulations, adopt a different allocation method for non-construction industry employers who contribute to the plan. Under § 2652.12 of the interim regulation, a construction industry plan may adopt a different rule for non-construction employers. Use of any such method, including an allocation method described in section 4211 of ERISA, is subject to PBGC approval. However, a construction industry plan may adopt the modifications to the presumptive rule set forth in § 2652.6 without PBGC approval.

As noted above, the PBGC will approve an alternative allocation method only if it determines that use of the alternative method does not significantly increase the risk of financial loss to plan participants or the PBGC. In general, an alternative method will not significantly increase the risk of financial loss if the method satisfies three conditions. First, the method must allocate a plan's total unfunded vested benefits, on both a current and prospective basis, to the same extent as any of the statutory allocation methods. The statutory methods provide a basis for allocating substantially all of a plan's unfunded vested benefits among employers. Therefore, a method that satisfies this test ensures that withdrawing employers will not avoid their obligation to fund a share of the plan's liability for unfunded vested benefits.

Second, the alternative method must calculate the amount allocated to an employer either on the basis of that employer's share of total contributions to the plan over a specified period, or on the basis of the plan benefits attributable to employees of that employer. This test is designed to ensure that an alternative method is not used to shift plan liabilities in order to penalize certain employers or to increase the burdens on the insurance system. An allocation method that does shift liability in this manner might create incentives for favored employers to withdraw. An allocation method that allocates plan liabilities on the basis of contributions or benefits is neutral, and ensures that withdrawal liability will be allocated on the same basis as under one of the statutory methods.

Finally, the alternative method must provide a procedure for fully allocating amounts of uncollectible employer withdrawal liability among other employers. This is necessary to protect plans from being saddled with unfunded liabilities when withdrawn employers are unable to pay their withdrawal liability because of bankruptcy or insolvency.

In order to ascertain whether an allocation method meets these three conditions, the PBGC must be able to examine the application of the alternative method. Consequently, § 2652.13(d)(6) of the interim regulation requires that a request for approval of an alternative method contain an example demonstrating the application of the method in various circumstances.

This requirement may be satisfied in one of two ways, set forth in §§ 2652.14 and 2652.15 of the interim regulation. Under § 2652.14, a plan may demonstrate how the alternative method would allocate unfunded vested benefits among employers contributing to the plan. The example must also show how the method would allocate unfunded vested benefits to an employer that enters the plan after the method is adopted. In order to satisfy this requirement, the plan must posit the entry of a hypothetical employer in the third plan year after the method is adopted. In addition, the plan must demonstrate the treatment of outstanding claims for withdrawal liability against all employers who withdrew before the method was adopted. The plan will satisfy this requirement by showing the amount of each withdrawn employer's annual withdrawal liability payment and, for each of the five plan years, the unpaid balance of the employer's liability, assuming that the employer makes each required annual payment. The plan must also demonstrate the treatment of a liability claim against an employer that is hypothesized to withdraw from the plan in the third plan year after the method was adopted. Any employer who would have withdrawal liability (*e.g.*, who not qualify for total relief under the *de minimis* rule of section 4209 of ERISA) may be selected to illustrate this example. Finally, for purposes of the required example the plan should assume that no employer qualifies for relief under the so-called "free look" rule of section 4210 of ERISA.

Alternatively, under § 2652.15, the plan may submit an example showing the operation of the alternative method on a group of hypothetical employers who contribute to a hypothetical plan. The interim regulation provides that the hypothetical plan must have specific characteristics, which are enumerated in § 2652.15(b). For example, the hypothetical plan must contain at least five employers, and at least one of the employers must make over 20% of the contributions under the plan. The example must demonstrate, among other things, how the method allocates unfunded benefits to an employer that withdraws from the plan in the third year after the method is adopted, and how benefits are allocated to another employer that enters the plan that same year and subsequently withdraws. Finally, the example must demonstrate the treatment of outstanding claims for withdrawal liability against two employers, one of whom withdrew from the plan before the method was adopted, and one who withdrew three years after the method is adopted.

Construction industry plans must furnish a different example, described in § 2652.14(b) and § 2652.15(d) and (e), which illustrates the application of the presumptive method to construction employers and the alternative method to non-construction employers. This is needed because of the statutory requirement that construction industry

plans use the presumptive method for construction employers. The example will enable PBGC to determine whether the use of the two allocation methods together will significantly increase the risk of financial loss to the PBGC.

Section 2652.16(c) of the interim regulation sets forth the procedure whereby the PBGC will approve an alternative allocation method. The PBGC will either approve or disapprove the method within 120 days after receipt of a complete request for approval. The 120-day period does not begin until PBGC receives all the information required under § 2652.13; the PBGC will notify the plan sponsor of the date on which the 120-day period begins. Further, the PBGC may extend the 120-day period for good cause. The PBGC will notify the plan sponsor if an extension is necessary, and the notice will specify the additional time required to process the request for approval.

The PBGC will issue a written decision on a plan's request for approval of an alternative method. If the PBGC disapproves a request, the decision will state the grounds on which the PBGC based its determination, and will advise the plan sponsor of the right to request reconsideration of the determination pursuant to Part 2618 of this chapter. Under § 2652.16(c) of the interim regulation, an alternative method is approved if the PBGC either does not disapprove the method within 120 days after receipt of the complete request, or if the PBGC fails to extend the 120-day period.

Because of the need to provide immediate guidance to plan sponsors who wish to amend plans before February 1, 1981, to come within the special rule in section 4214 of ERISA, and because the effect of this regulation is to relieve administrative burdens that may be imposed by the statute on certain plans, the PBGC finds that notice of and public comment on this interim regulation prior to issuance are impractical and contrary to the public interest. For these same reasons and because this regulation does not require any actions by plans, the PBGC finds that good cause exists for making this interim regulation effective immediately.

Interested parties are invited to submit comments on this interim regulation. Comments should be addressed to: Assistant Executive Director for Policy and Planning, Suite 7100, 2020 K Street, N.W., Washington, D.C. 20006. Written comments will be available for public inspection at the above address between the hours of 9:00 a.m. and 4:30 p.m. Each person submitting comments should include his or her name and address, identify this interim regulation, and give reasons for any recommendation. Comments received will be considered in preparation of a regulation on alternate allocation of unfunded vested benefits, which, when issued, will supersede this interim regulation. The public will have an opportunity to comment on a proposed version of that regulation before it is adopted.

In consideration of the foregoing, Chapter XXVI of Title 29, Code of Federal Regulations, is amended by adding a new Part 2652 as follows:

PART 2652—INTERIM REGULATION ON ALLOCATING UNFUNDED VESTED BENEFITS

Subpart A—General

Sec.
2652.1 Purpose and scope.
2652.2 Definitions.

Subpart B—Modifications to the Statutory Allocation Methods

2652.5 Statutory allocation methods.
2652.6 Modifications to the presumptive, modified presumptive and rolling-5 methods.
2652.7 Modifications to the direct attribution method.

Subpart C—Approval of Alternative Allocation Methods

2652.11 Requirement of approval.
2652.12 Building and construction industry plans.
2652.13 Requests for PBGC approval.
2652.14 Application of alternative method to the plan.
2652.15 Application of alternative method to a hypothetical plan.
2652.16 Approval of alternative method.

Authority: Sections 4002(b)(3) 29 U.S.C. 1302 and 4211(c)(1), 29 U.S.C. 1391 (c)(2)(D), (c)(5)(A) and (c)(5)(D), Pub. L. 93-406, 88 Stat. 1004, (1974), as amended by Sections 403(1), 29 U.S.C. 1305 and 104 (respectively), Pub. L. 96-364, 94 Stat. 1208 (1980).

Subpart A—General

§ 2652.1 Purpose and scope.

(a) *Purpose.* The purposes of this part are—

(1) to prescribe permissible modifications to the methods in section 4211 of the Act for allocating unfunded vested benefits to a withdrawing employer; and

(2) to establish procedures under which a multiemployer plan may adopt a method for allocating unfunded vested benefits to a withdrawing employer other than one of the allocation methods described in section 4211 of the Act.

(b) *Scope.* This part applies to multiemployer plans covered by section 4021 of the Act.

§ 2652.2 Definitions.

For purposes of this part:

"Act" means the Employee Retirement Income Security Act of 1974, as amended.

"Internal Revenue Code" means the Internal Revenue Code of 1954, as amended.

"Multiemployer plan" means a pension plan described in section 4001(a)(3) of the Act.

"Nonforfeitable benefit" means a benefit described in section 4001(a)(8) of the Act.

"PBGC" means the Pension Benefit Guaranty Corporation.

"Plan" means a multiemployer plan.

"Plan year" means the calendar, policy or fiscal year on which the records of the plan are kept.

"Post-1980 fraction" means the fraction described in section 4211(c)(2)(C)(ii) or (c)(3)(B) of the Act.

"Pre-1980 fraction" means the fraction described in section 4211(b)(3)(B) or (c)(2)(B)(ii) of the Act.

"Unfunded vested benefits" means an amount by which the value of nonforfeitable benefits under the plan exceeds the value of the assets of the plan.

"Withdrawing employer" means the employer for whom withdrawal liability is being calculated under section 4201 of the Act.

"Withdrawn employer" means an employer who, prior to the withdrawing employer, has discontinued contributions to the plan or covered operations under the plan and whose obligation to contribute has not been assumed by a successor employer within the meaning of section 4204 of the Act. A temporary suspension of contributions, including a suspension described in section 4216(2) of the Act, is not considered a discontinuance of contributions.

Subpart B—Modifications to the Statutory Allocation Methods

§ 2652.5 Statutory allocation methods.

(a) *General rule.* The Act provides four methods for allocating unfunded vested benefits to a withdrawing employer:

(1) The presumptive method, described in section 4211(b).

(2) The modified presumptive method, described in section 4211(c)(2).

(3) The rolling-5 method, described in section 4211(c)(3).

(4) The direct attribution method, described in section 4211(c)(4).

Except as provided in paragraph (c) of this section, the amount of unfunded vested benefits allocable to an employer is determined in accordance with the presumptive method unless the plan is amended to adopt an alternative

allocation method. Any of the alternative methods listed in paragraphs (a)(2) through (4) of this section may be adopted before October 1, 1983 without the approval of the PBGC, except as provided in § 2652.12 (relating to the building and construction industry plans).

(b) *Modifications to the statutory methods.* Before October 1, 1983, a plan may be amended to adopt any of the modifications set forth in §§ 2652.6 and 2652.7 without the approval of the PBGC.

(c) *Special rule.* A plan described in section 404(c) of the Internal Revenue Code (a plan established prior to January 1, 1954 as a result of an agreement between employer representatives and the United States during a period of government operation, under seizure powers, of a major part of the productive facilities of an industry) or a continuation of such a plan must allocate unfunded vested benefits in accordance with the rolling-5 method unless an alternative method is adopted by plan amendment.

§ 2652.6 Modifications to the presumptive, modified presumptive and rolling-5 methods.

(a) *"Contributions made" and "total amount contributed".* Each of the allocation fractions used in the presumptive, modified presumptive and rolling-5 methods is based on contributions made by certain employers to the plan over a five-year period. For purposes of these methods, and except as provided in paragraph (b) of this section, "the sum of all contributions made" and "total amount contributed" by employers for a plan year means the amounts considered contributed to the plan for the plan year for purposes of section 412(b)(3)(A) of the Internal Revenue Code. For plan years before section 412 applies to the plan, "the sum of all contributions made" and "total amount contributed" means the amount reported to the Internal Revenue Service or the Department of Labor as total contributions for the plan year; for example, for plan years in which the plan filed the Form 5500, the amount reported as total contributions on line 14(c) of that form.

(b) *Changing the period for counting contributions.* A plan may be amended to modify the denominators in the presumptive, modified presumptive and rolling-5 methods in accordance with one of the alternatives described in this paragraph. Except as provided in paragraph (b)(4) of this section, any amendment adopted under this paragraph must be applied consistently to all plan years. Contributions counted for one plan year may not be counted for any other plan year.

(1) The plan may be amended to provide that "the sum of all contributions made" and "total amount contributed" for a plan year means the amount of contributions actually received during the plan year, without regard to whether the contributions are treated as made for that plan year under section 412(b)(3)(A) of the Internal Revenue Code.

(2) The plan may be amended to provide that "the sum of all contributions made" and "total amount contributed" for a plan year includes contributions received during a specified period of time after the close of the plan year, not to exceed the period described in section 412(c)(10) of the Internal Revenue Code and regulations thereunder.

(3) The plan may be amended to provide that "the sum of all contributions made" and "total amounts contributed" for a plan year includes the amount of contributions accrued during the plan year and received during a specified period of time after the close of the plan year, not to exceed the period described in section 412(c)(10) of the Internal Revenue Code and the regulations thereunder.

(4) The plan may be amended to provide that—

(i) for plan years ending before April 29, 1980, "the sum of all contributions made" or "total amount contributed" means the amount reported on line 14(c) of Form 5500 and for years before the plan was required to file the Form 5500, the amount of total contributions reported on any predecessor reporting form required by the Department of Labor or the Internal Revenue Service; and

(ii) for subsequent plan years, "the sum of all contributions made" or "total amount contributed" is determined in accordance with the statutory language or one of the modifications described in paragraph (b)(1), (b)(2) or (b)(3).

(c) *Excluding contributions of significant withdrawn employers.* Contributions of certain withdrawn employers are excluded from the denominator in each of the fractions used to determine the withdrawing employer's share of unfunded vested benefits under the presumptive, modified presumptive and rolling-5 methods. Except as provided in paragraph (c)(1) of this section, contributions of all employers that cease to have an obligation to contribute to the plan or cease covered operations before the end of the plan year preceding the plan year in which the withdrawing employer withdraws (and contributions of all employers that withdrew before April 29, 1980) are excluded from the denominators of the fractions used to allocate unfunded vested benefits under the presumptive, modified presumptive and rolling-5 methods.

(1) A plan using the presumptive, modified presumptive or rolling-5 method may be amended to provide that only the contributions of significant withdrawn employers shall be excluded from the denominators of fractions described in section 4211(b) or (c) of the Act.

(2) For purposes of this paragraph (c), "significant withdrawn employer" means—

(i) an employer to whom the plan has sent a notice of withdrawal liability under section 4219 of the Act; or

(ii) a withdrawn employer that in any plan year used to determine the denominator of a fraction contributed at least $250,000 or, if less, 1% of all contributions made by employers for that year.

(3) A group of employers shall be treated as a single employer for determining whether they are a significant withdrawn employer under paragraph (c)(2) of this section if they withdraw in a concerted withdrawal. A "concerted withdrawal" means a discontinuance of contributions to the plan during a single plan year—

(i) by an employer association;

(ii) by all or substantially all of the employers covered by a single collective bargaining agreement; or

(iii) by all or substantially all of the employers covered by agreements with a single labor organization.

(d) *Examples.* The following examples illustrate the adjustments described in paragraph (c) of this section. Plans that adopt the adjustments must also adopt the definition of significant withdrawn employer in paragraph (c)(2).

Example (1)—Pre-1980 fraction. Under the presumptive and modified presumptive methods, the following language may be substituted for the denominator of the pre-1980 fraction (section 4211(b)(3)(B)(ii) for the presumptive method and section 4211(c)(2)(B)(ii)(II) for the modified presumptive method): "the denominator of which is the total amount contributed by all employers for the most recent 5 plan years ending before April 29, 1980, reduced by the contributions made in those years by significant withdrawn employers that withdrew from the plan before April 29, 1980".

Example (2)—Annual fraction. Under the presumptive method, the following language may be substituted for denominator of the annual fraction described in section 4211(b)(2)(B)(ii)(II): "the denominator of which is the sum of all contributions made by

all employers for the plan year in which such change arose and the 4 preceding plan years, reduced by the contributions made in those years by significant withdrawn employers that withdrew from the plan in or before the year in which the change arose".

Examples (3)—post-1980 fraction. Under the modified presumptive method and the rolling-5 method, the following language may be substituted for the denominator of the post-1980 fraction [described in section 4211(c)(2)(C)(ii)(II) of the Act for the modified presumptive method and in section 4211(c)(3)(B)(ii) for the rolling-5 method]: "the denominator of which is the total amount contributed under the plan by all employers for the last 5 plan years ending before the date on which the employer withdraws, reduced by the contributions made in those plan years by significant withdrawn employers that withdrew from the plan during those plan years".

§ 2652.7 Modifications to the direct attribution method.

(a) *Direct attribution method.* The direct attribution method allocates to a withdrawing employer two portions of the plan's unfunded vested benefits:

(1) The employer's attributable liability, determined under section 4211(c)(4)(A)(i) and (c)(4)(B).

(2) The employer's share of the plan's unattributable liability, determined under section 4211(c)(4)(E), allocated to the employer under section 4211(c)(4)(F). Unattributable liabilities should be allocated on the basis of the employer's share of the attributable liabilities. However, section 4211(c)(4)(F) of the Act, which describes the allocation of unattributable liabilities, contains a typographical error. Therefore, plans adopting the direct attribution method should modify the phrase "as the amount determined under subparagraph (C) for the employer bears to the sum of the amounts determined under subparagraph (C) for all employers under the plan" in section 4211(c)(4)(F) by substituting "subparagraph (B)" for "subparagraph (C)" in both places it appears.

(b) *Allocating unattributable liability based on contributions in period before withdrawal.* A plan that is amended to adopt the direct attribution method may provide that instead of allocating the unattributable liability in accordance with section 4211(c)(4)(F) of the Act, the employer's share of the plan's unattributable liability shall be determined by multiplying the plan's unattributable liability determined under section 4211(c)(4)(E) by a fraction—

(1) the numerator of which is the total amount of contributions required to be made by the withdrawing employer over a period of consecutive plan years (not less than five) ending before the withdrawal; and

(2) the denominator of which is the total amount contributed under the plan by all employers for the same period of years used in paragraph (b)(1) of this section, decreased by any amount contributed by an employer who withdrew from the plan during those plan years.

(c) *Contributions received reduced by significant withdrawn employers.* The denominator used in the modification described in paragraph (b) and the denominators used under two of the alternatives for allocating plan assets under the direct attribution method (the fractions described in section 4211(c)(4)(D)(ii) and (iii)) are similar to the denominators used in the presumptive, modified presumptive, and rolling-5 methods. Therefore, plans may modify these denominators under the direct attribution method using any of the modifications described in § 2652.6.

Subpart C—Approval of Alternative Allocation Methods

§ 2652.11 Requirement of approval.

(a) *General.* A multiemployer plan may adopt, by plan amendment and subject to approval of the PBGC, an alternative allocation method in lieu of the allocation methods described in section 4211 of the Act and § 2652.5(a) of this regulation.

(b) *Use of method prior to approval.* A plan may implement an alternative allocation method adopted pursuant to this subpart in accordance with its terms before the PBGC approves the method. However, until the PBGC approves the method, the plan may not demand withdrawal liability under section 4219 of the Act in an amount that exceeds the lesser of—

(1) the amount calculated under the alternative allocation method; or

(2) the amount calculated under the allocation method that the plan would be required to use if the alternative method is not approved by the PBGC. When necessary, the plan shall adjust the amount demanded from the employer after the alternative method has been approved by PBGC.

(c) *Effect of approval.* An alternative method adopted on or before January 31, 1981, may be applied to an employer that withdraws from a multiemployer plan before the method was adopted, even though PBGC does not approve the method by January 31, 1981.

§ 2652.12 Building and construction industry plans.

A multiemployer plan which primarily covers employees in the building and construction industry ("construction industry plan") must use the presumptive method to allocate unfunded vested benefits. However, such a plan may be amended to provide for the use of an alternative allocation method with respect to employers that are not construction industry employers within the meaning of section 4203(b)(1)(A) of the Act. Use of any alternative allocation method for non-construction employers, including a method described in section 4211 of the Act, must be approved by the PBGC under this subpart. However, a construction industry plan may adopt the modifications to the presumptive rule set forth in § 2652.6 without PBGC approval.

§ 2652.13 Requests for PBGC approval.

(a) *General.* A request for approval of an alternative allocation method shall be filed with the PBGC. A request for approval of a method that is adopted before February 1, 1981 must be filed with the PBGC no later than March 16, 1981. A method adopted on or after February 1, 1981 should be filed as soon as practicable after its adoption date. The request is deemed to be filed on the date it is received by PBGC.

(b) *Who shall file.* The plan sponsor, or a duly authorized representative acting on behalf of the plan sponsor, shall sign the request.

(c) *Where to file.* The request shall be delivered by mail or submitted by hand to the Office of Program Operations, Pension Benefit Guaranty Corporation, Room 5300A, 2020 K Street, N.W., Washington, D.C. 20006.

(d) *Content.* Each request shall contain the following information:

(1) The name, address and telephone number of the plan sponsor, and of the duly authorized representative, if any, of the plan sponsor.

(2) The name of the plan.

(3) The nine-digit Employer Identification Number (EIN) assigned by the Internal Revenue Service to the plan sponsor and the three-digit Plan Identification Number (PIN) assigned by the plan sponsor to the plan, and, if different, also the EIN–PIN last filed with the PBGC. If EIN–PIN has not been assigned, that must be indicated.

(4) The date the amendment was adopted.

(5) A copy of the amendment, which must set forth the full text of the alternative allocation method.

(6) An example demonstrating the operation of the alternative allocation method that meets the requirements of either § 2652.14, or, if the plan sponsor chooses, § 2652.15.

(7) Copies of any previous plan amendment adopting an alternative allocation method or modification of a statutory allocation method.

(e) *Additional information.* In addition to the information described in paragraph (d) of this section, the PBGC may require the plan sponsor to submit any other information the PBGC determines it needs to review an alternative allocation method.

§ 2652.14 Application of alternative method to the plan.

(a) *General.* A plan sponsor that chooses to demonstrate the application of the alternative allocation method to the plan shall provide an example in accordance with this section. The example shall assume that one employer withdraws from the plan in the third plan year beginning after the alternative method is adopted and incurs withdrawal liability. The example shall also assume that a new employer joins the plan in the same year. Except for construction industry plans covered by paragraph (b) of this section, the example shall show the following information:

(1) The amount of unfunded vested benefits allocable under the method to each employer that has an obligation to contribute to the plan, calculated as if each employer were to withdraw individually from the plan in the plan year during which the method is adopted (the "adoption year").

(2) For each of the five subsequent plan years, the amount of unfunded vested benefits (projected on the basis of reasonable assumptions) that would be allocable under the method to each employer if the employer individually withdrew from the plan in that year.

(3) For the fourth and fifth plan years beginning after the adoption year, the amount of unfunded vested benefits that would be allocable to an employer who entered the plan in the third plan year beginning after the adoption year if that employer withdrew in the fourth or fifth plan year.

(4) For each of the five plan years following the adoption date, the balance of the outstanding claims for withdrawal liability against each employer that withdrew from the plan before the adoption date and incurred withdrawal liability assuming the employer makes each required annual payment, and the amount of that employer's annual withdrawal liability payment.

(5) For the fourth and fifth plan years beginning after the adoption year, the balance of an outstanding claim for withdrawal liability against the employer that withdrew from the plan in the third plan year beginning after the adoption date and incurred withdrawal liability, and the amount of that employer's annual withdrawal liability payment.

(b) *Building and construction plans.* In the case of a construction industry plan described in § 2652.12, the information required under paragraphs (a) (1) and (2) of this section must be supplied for both construction and non-construction employers to show the amount of unfunded vested benefits allocable to each employer under the allocation method that applies to that employer. In lieu of the information required under paragraph (a)(3) of this section, the example must show the amounts allocable under the alternative method to a non-construction employer, and the amounts allocable under the presumptive method to a construction employer, each of whom entered the plan in the third plan year after the adoption year. The information under paragraph (a)(5) of this section must show the balance of outstanding claims for withdrawal liability and the amounts of annual withdrawal liability payments for both a construction employer and a non-construction employer.

§ 2652.15 Application of alternative method to a hypothetical plan.

(a) *Use of a hypothetical plan.* Except with respect to a construction industry plan, a plan sponsor that chooses to demonstrate the application of an alternative allocation method under this section shall provide an example that shows the information described in paragraph (c) of this section for a hypothetical plan having the characteristics described in paragraph (b) of this section. The sponsor of a construction industry plan shall provide an example that shows the information described in paragraph (e) of this section for a hypothetical plan having the characteristics described in paragraph (d) of this section.

(b) *Characteristics of hypothetical plan.* The hypothetical plan used under this section shall have the following characteristics:

(1) The plan has unfunded vested benefits.

(2) One employer withdrew from the plan before the adoption date of the alternative allocation method and incurred withdrawal liability.

(3) At least five employers made contributions to the plan in the plan year during which the alternative method was adopted (the "adoption year").

(4) In the adoption year, and in each of the succeeding 5 plan years, at least one of the employers made over 20% of the contributions under the plan, three employers each made between 10% and 20% of the contributions under the plan, and at least one employer made over 1% but less than 10% of the required contributions under the plan. The sum of these employers' contributions must equal 100% of the contributions made under the plan.

(5) One of the employers described in paragraph (b)(3) of this section withdrew from the plan in the third plan year after the adoption year.

(6) All other employers described in paragraph (b)(3) of this section continued to make contributions to the plan for five plan years after the adoption year.

(7) A new employer entered the plan in the third plan year after the adoption year.

(c) *Required information.* The example of the application of the alternative method to the hypothetical plan shall show the following information:

(1) The amount of unfunded vested benefits allocable to each employer described in paragraph (b)(3) of this section, calculated as if each employer had individually withdrawn from the plan in the adoption year.

(2) For each of the five subsequent plan years, the amount of unfunded vested benefits that would be allocable to each employer described in paragraph (b)(3) of this section if the employer individually withdrew from the plan.

(3) For the new employer described in paragraph (b)(7) of this section, the amount of unfunded vested benefits that would be allocable to it for a withdrawal in the fourth plan year and a withdrawal in the fifth plan year after the adoption year.

(4) For each of the five plan years following the adoption date, the balance of the outstanding claim for withdrawal liability attributable to the employer described in paragraph (b)(2) of this section, assuming the employer makes each of the required annual payments, and the amount of the employer's annual withdrawal liability payment.

(5) For the fourth and fifth plan years after the adoption year, the balance of an outstanding claim for withdrawal liability attributable to the employer described in paragraph (b)(5) of this section and the employer's annual withdrawal liability payment.

(d) *Construction industry plans.* The sponsor of a construction industry plan who chooses to illustrate the application of an alternative method under this section shall submit an example based on a hypothetical plan that has the following characteristics:

(1) The plan has unfunded vested benefits.

(2) One non-construction employer withdrew from the plan before the adoption date of the alternative allocation method and incurred withdrawal liability.

(3) At least ten employers, an equal number of whom must be construction and non-construction employers, made contributions to the plan in the plan year during which the alternative method was adopted (the "adoption year").

(4) At least one construction employer and at least one non-construction employer each made over 10% of the required contributions under the plan, three construction and three non-construction employers each made between 5% and 10% of the contributions required under the plan, and at least one construction employer and at least one non-construction employer each made over 1% but less than 5% of the contributions required under the plan. The sum of these employers' contributions must equal 100% of the contributions made under the plan.

(5) One non-construction employer described in paragraph (d)(3) of this section withdrew from the plan in the third plan year after the adoption year, and one construction employer described in paragraph (d)(3) of this section also withdrew from the plan in that year.

(6) All other employers described in paragraph (d)(3) of this section continued to make contributions to the plan for five plan years after the adoption year.

(7) A new non-construction employer entered the plan in the third plan year after the adoption year.

(e) *Required information for construction industry plans.* The example of the application of the alternative method to the hypothetical construction industry plan shall show the information required in paragraph (c) of this section, substituting "paragraph (d)" for each reference to "paragraph (b)" in that paragraph. For example, in paragraph (c)(1), "paragraph (d)(3)" should be substituted for "paragraph (b)(3)".

§ 2652.13 Approval of alternative method.

(a) *General.* The PBGC shall approve an alternative allocation method if PBGC determines that the method and the supplementary information supplied under § 2652.14 or § 2652.15 indicate that adoption of the method would not significantly increase the risk of loss to plan participants and beneficiaries or to the PBGC.

(b) *Criteria.* An alternative allocation method satisfies the requirements of paragraph (a) of this section if it satisfies the following three conditions:

(1) The method allocates a plan's unfunded vested benefits, both for the adoption year and for the five subsequent plan years, to the same extent as any of the statutory allocation methods, or any modification to a statutory allocation method permitted under this part.

(2) The method allocates unfunded vested benefits to each employer on the basis of—

(i) The employer's share of contributions to the plan; or

(ii) The unfunded vested benefits directly attributable to each employer (the method may take into account differences in contribution rates paid by the employer and differences in benefits of the employer's employees).

(3) The method fully reallocates among employers who have not withdrawn from the plan all unfunded vested benefits—

(i) Which the plan sponsor has determined cannot be collected from withdrawn employers; or

(ii) Which are not assessed against withdrawn employers because of sections 4209, 4219(c)(1)(B) or 4225 of the Act (the *de minimis* rule, the 20-year cap, and the insolvent employer provision, respectively).

(c) *PBGC action on request.* Except as provided in paragraph (c)(2) of this section, the PBGC shall approve or disapprove an alternative allocation method within 120 days after receipt of a complete request for approval. The PBGC will notify the sponsor of the date on which the 120-day period begins. Failure of the PBGC to act within the 120-day period shall constitute approval of the request, unless PBGC extends the time pursuant to paragraph (c)(2) of this section. If the request does not contain all of the information required by § 2652.13, the 120-day period will not begin until PBGC receives all of the information.

(1) PBGC's decision on a request for approval shall be in writing. If the PBGC disapproves the request, the decision shall state the reasons therefore and will include a statement of the sponsor's right to request a reconsideration of the decision pursuant to Part 2618 of this chapter.

(2) The PBGC may, for good cause, extend the 120-day period referred to in paragraph (c) of this section. When PBGC does so, it shall notify the plan sponsor, in writing, of the amount of additional time required.

Issued at Washington, D.C. on this 15th day of January, 1981.

Ray Marshall,

Chairman, Board of Directors, Pension Benefit Guaranty Corporation.

Issued on the date set forth above, pursuant to a resolution of the Board of Directors approving this regulation and authorizing its Chairman to issue same.

Henry Rose,

Secretary, Pension Benefit Guaranty Corporation.

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DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 936

Conditional Approval of the Permanent Regulatory Program Submission From the State of Oklahoma Under the Surface Mining Control and Reclamation Act of 1977

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), U.S. Department of the Interior.

ACTION: Final rule; conditional approval of Oklahoma's permanent regulatory program.

SUMMARY: The State of Oklahoma resubmitted to the Department of the Interior its proposed permanent regulatory program under the Surface Mining Control and Reclamation Act of 1977 (SMCRA), following an initial approval in part and disapproval in part. The notice announcing the initial decision was published in the Federal Register, October 10, 1980 (45 FR 67361–67372). The purpose of the resubmission is to demonstrate the State's intent and capability to administer and enforce the provisions of SMCRA and the permanent regulatory program regulations, 30 CFR Chapter VII.

After providing opportunities for public comment and conducting a thorough review of the program submission, the Secretary of the Interior has determined that the Oklahoma program meets the minimum requirements of SMCRA and the Federal permanent program regulations, except for minor deficiencies discussed below under "SUPPLEMENTARY INFORMATION." Accordingly, the Secretary of the Interior has conditionally approved the Oklahoma program. A new Part 936 is being added to 30 CFR Chapter VII to implement this decision.

EFFECTIVE DATE: This approval is effective January 19, 1981. As discussed below under "State Court Litigation", there may be a delay in the States implementation of the permanent program. This conditional approval will terminate as specified in 30 CFR 936.11 unless the defiencies identified below have been corrected in accord with 30 CFR 936.11.

FOR FURTHER INFORMATION CONTACT: Carl C. Close, Assistant Director, State and Federal Programs, Office of Surface Mining Reclamation and Enforcement, U.S. Department of the Interior, South Building, 1951 Constitution Avenue, N.W., Washington, D.C. 20240, Telephone (202) 343–4225.

ADDRESSES: Copies of the Oklahoma program and the administrative record on the Oklahoma program, including the telegram from the Oklahoma Department of Mines (DOM) agreeing to correct the deficiencies which resulted in the conditional approval, are available for public inspection and copying during business hours at:

Office of Surface Mining Reclamation and Enforcement, Region IV, 5th Floor, Scarritt Building, 818 Grand Avenue, Kansas City, Missouri 64106, Telephone: (816) 374–3920

Office of Surface Mining Reclamation and Enforcement, Room 153, Interior South Building, 1951 Constitution Avenue, N.W., Washington, D.C. 20240, Telephone: (202) 343–4728

Oklahoma Department of Mines, 4040 N. Lincoln, Suite 107, Oklahoma City, Oklahoma 73105, Telephone: (405) 521–3859

SUPPLEMENTARY INFORMATION: The general background on the permanent program, the general background on the state program approval process, and the background on the Oklahoma program submission were discussed in the Federal Register, October 10, 1980 (45 FR 67361–67372).

In that notice the Secretary announced his partial approval and partial disapproval of the Oklahoma program. Under 30 CFR 732.13(f), Oklahoma had 60 days from the date of partial approval and partial disapproval to resubmit a revised program.

Oklahoma resubmitted its program on December 8, 1980. Announcement of Oklahoma's resubmission was made in three newspapers of general circulation within the State of Oklahoma and published in the Federal Register on December 8, 1980 (45 FR 80837–80839).

A public hearing on the resubmission was announced in the December 8, 1980, Federal Register, and was held in Muskogee, Oklahoma on December 23, 1980. The Oklahoma program was resubmitted pursuant to 30 CFR 732.13(f). The post-resubmission public comment period ended December 24, 1980. Public disclosure of comments by Federal agencies was made on January 9, 1981 (45 FR 2269).

On January 12, 1981, the Administrator of the Environmental Protection Agency transmitted to the Secretary written concurrence with the decision on the Oklahoma program.

The Regional Director completed his program review on January 7, 1981, and forwarded the public hearing transcripts, written presentations, and copies of all comments to the Director together with a recommendation that the program be conditionally approved.

On January 8, 1981, the Director recommended to the Secretary that the Oklahoma program be approved conditionally.

In a telephone call to the Acting Chief Mine Inspector for the Oklahoma Department of Mines on January 12, 1981, OSM asked the State if they would agree to meet the proposed conditions if the Secretary were to offer conditional approval. On January 12, 1981, the State replied and accepted the conditions of approval. Copies of the documents recording these communications are available for review in the Administrative Record. (*See* Administrative Record Nos. OK–259, OK–260, and OK–261.) The Oklahoma program consists of the formal submission of February 28, 1980 (Administrative Record Nos. OK–7–8–12–13–14–16–17), as amended on June 11, 1980 (Administrative Record No. OK–98), as revised on December 8, 1980 (Administrative Record No. OK–226), and as corrected on December 22, 1980 (Administrative Record No. OK–227).

Throughout the review period, beginning with the submission of the program, OSM has had frequent contact and discussions on the State program submission with the staff of the Oklahoma Department of Mines. Minutes or notes of the discussions were placed in the Oklahoma Administrative Record and made available for public review. All contacts between officials or staffs of the Department of the Interior and the State of Oklahoma were conducted in accordance with the Department's guidelines for such contacts published September 19, 1979 (44 FR 54444–54445).

The Secretary is subject to an order requiring him to affirmatively disapprove State regulations derived from certain OSM regulations suspended by OSM or remanded by the U.S. District Court for the District of Columbia. See the discussion 45 FR 67363, October 10, 1980. A list of the suspended and remanded OSM regulations was published in the Federal Register on July 7, 1980 (45 FR 45804). A proposed list of 38 provisions in the Oklahoma program incorporating suspended or remanded Federal regulations was available at a public hearing in Muskogee, Oklahoma, held on July 15, 1980, and at the Region IV Office of OSM and at the Oklahoma Department of Mines Office (*See* addresses above). Although no public comments were received on the proposed list, OSM determined that the list was incomplete in that it did not include Part 845 of Oklahoma's regulations to the extent that Part 845 contains a point system for civil penalty assessment.

In the initial decision on the Oklahoma program published in the Federal Register on October 10, 1980 (45 FR 67361–67372), the Secretary did not affirmatively disapprove any of Oklahoma's provisions incorporating suspended or remanded Federal regulations resulting from the court orders of May 18, 1980, and August 15, 1980, because the submission did not contain fully enacted regulations.

The program resubmitted by Oklahoma on December 8, 1980, included regulations enacted on December 1, 1980. The fully-enacted regulations contain provisions which incorporate most of the Federal rules suspended or remanded by the U.S. District Court for the District of Columbia. However, in a preface to those regulations, Oklahoma lists 28 provisions to be disapproved by the Secretary of the Interior. The Secretary is affirmatively disapproving the 28 provisions requested by Oklahoma in 30 CFR 936.10(b), adopted below. The eleven provisions not specifically required to be disapproved remain a part of the conditionally approved program. Throughout the remainder of this notice, the term "Oklahoma program" or "Oklahoma submission" is used to mean the resubmission together with those parts of the original submission partially approved on October 10, 1980.

After the Secretary announced his initial decision on the Oklahoma program, OSM notified Oklahoma by letter dated October 31, 1980 (Administrative Record OK–188) of its analysis of the Oklahoma program including tentative findings on the proposed regulatory provisions not enacted by the 104th day following the initial program submission, and of the Secretary's disposition of public comments reported in the October 10,

1980, Federal Register notice (45 FR 67361–67372).

In the initial decision notice approving in part and disapproving in part the Oklahoma program, the Secretary made findings on the Oklahoma provisions pursuant to Section 503 of SMCRA and 30 CFR 732.15. Oklahoma's resubmission, except as noted below in the "Secretary's Findings," amends the program to correct the deficiencies identified in that notice. The contents of the October 10, 1980, notice constitute part of the basis for the following findings and for this decision.

Secretary's Findings

In reaching his decision to approve conditionally the Oklahoma program submission, the Secretary makes the following findings pursuant to Section 503 of SMCRA and 30 CFR 732.15. Also, see the paragraph below entitled "Additional Findings."

1. The Secretary makes the following findings for the provisions of Section 503(a) of SMCRA:

(a) The Oklahoma Coal Reclamation Act (OCRA) and the Oklahoma Administrative Procedures Act (OAPA) and the regulations adopted thereunder provide for the regulation of surface coal mining and reclamation operations on non-Indian and non-Federal lands in Oklahoma in accordance with SMCRA, with the exceptions noted in Findings 1d, 1g, 3, 4a, 4c, 4k, 4n, 4p, 4r.

In the Federal Register notice of October 10, 1980, the Secretary found two additional problems with the Oklahoma statutes which are no longer regarded as deficiencies. (See 45 FR 67364, Finding 1a, item Nos. 1 and 4).

Item No. 1 expressed concern for the fact that OCRA appeared to apply to "operators" instead of "persons," raising the possibility that OCRA does not regulate all entities required to be regulated by SMCRA. Based upon the resubmission, the Secretary now finds that this difference is not a program deficiency, as explained further in Finding 4a below.

Item No. 4 concerned whether Oklahoma DOM personnel would have rights of entry under Section 33.A of OCRA (45 O.S. 1979 Section 766) coextensive with the Secretary's powers under Section 517(b)(3) of SMCRA. It now appears that the DOM does have those powers as explained further in Finding 4f below.

(b) The OCRA provides sanctions for violations of Oklahoma laws, regulations or conditions of permits concerning surface coal mining and reclamation operations, and these sanctions meet the requirements of SMCRA, including civil and criminal actions, forfeiture of bonds, suspensions, revocations, withholding of permits, and the issuance of cessation orders by the Oklahoma Department of Mines or its inspectors;

(c) The Oklahoma Department of Mines (DOM) has sufficient administrative and technical personnel and sufficient funding to enable Oklahoma to regulate surface coal mining and reclamation operations in accordance with the requirements of SMCRA; in the Federal Register notice of October 10, 1980, the Secretary was unable to find that the Oklahoma Department of Mines had sufficient administrative and technical personnel and sufficient funding because Oklahoma's initial program submission did not describe how their proposed staff would be sufficient to administer the program as required by 30 CFR 731.14(j). [(See Finding 1c (45 FR 67364); Finding 3, (45 FR 67365); and Finding 4a, (45 FR 67367)).] Oklahoma's resubmission of December 8, 1980 contained the necessary description of how the proposed staff would be adequate to administer the proposed program. Based on Section E of the resubmission the Secretary now finds that the DOM has sufficient administrative and technical personnel and necessary funding.

(d) The OCRA provides for the effective implementation, maintenance, and enforcement of a permit system that meets the requirements of SMCRA for the regulation of surface coal mining and reclamation operations on non-Indian and non-Federal lands within Oklahoma except as noted in Finding 4n;

(e) The OCRA has established a process for the designation of areas as unsuitable for surface coal mining in accordance with Section 522 of SMCRA, 30 U.S.C. 1272;

(f) Oklahoma has established, for the purpose of avoiding duplication, a process for coordinating the review and issuance of permits for surface coal mining and reclamation operations with other Federal and State permit processes applicable to a proposed operation;

(g) Oklahoma has fully enacted regulations consistent with regulations issued pursuant to SMCRA, with the exceptions noted below in Findings 3, 4a, 4c, 4k, 4n, 4p and 4r.

2. As required by Sections 503(b)(1)–(3) of SMCRA, 30 U.S.C. 1253(b)(1)–(3) and 30 CFR 732.11–732.13, the Secretary has, through OSM:

(a) Solicited and publicly disclosed the views of the Administrator of the Environmental Protection Agency, the Secretary of Agriculture, and the heads of other Federal agencies concerned with or having special expertise pertinent to the proposed Oklahoma program (45 FR 2269, January 9, 1981);

(b) Obtained the written concurrence of the Administrator of the Environmental Protection Agency with respect to those aspects of the Oklahoma program that relate to air or water quality standards promulgated under the authority of the Federal Clean Water Act as amended, (33 U.S.C. 1151–1175), and the Clean Air Act as amended, (42 U.S.C. 7401 *et seq.*), and;

(c) Held a public review meeting in Oklahoma City, Oklahoma, on April 17, 1980, to discuss the completeness of the Oklahoma program submission and subsequently held public hearings in Muskogee, Oklahoma, on July 15, 1980, on the substance of the program submission, and on December 23, 1980, on the substance of the resubmitted program.

3. In accordance with Section 503(b)(4) of SMCRA (30 U.S.C. 1253 (b) (4)) the Secretary finds the State of Oklahoma has the legal authority and qualified personnel necessary for the enforcement of the environmental protection standards of SMCRA and 30 CFR Chapter VII, subject to the exceptions noted in findings 1a, 1d, 1g, 4a, 4c, 4k, 4n, 4p and 4r.

4. In accordance with 30 CFR 732.15, and on the basis of information in the Oklahoma program submission, including the section-by-section comparison of the Oklahoma law and regulations with SMCRA and 30 CFR Chapter VII, public comments, testimony and written presentations at the public meeting and hearings, and other relevant information, the Secretary makes the following findings:

(a) Pursuant to the requirements of 30 CFR 732.15(a), the Secretary finds that the proposed Oklahoma program provides for the Oklahoma Department of Mines (DOM) to carry out the provisions and meet the purposes of SMCRA and 30 CFR Chapter VII with the exceptions noted in findings 1a, 1d, 1g, 3, 4c, 4k, 4n, 4p and 4r.

The Secretary further finds that Oklahoma, in its resubmission, has not proposed any alternative approaches to the requirements of 30 CFR Chapter VII pursuant to 30 CFR 731.13. As explained in 45 FR 67365 (October 10, 1980), Finding 4a, the original submission contained a state window proposal relating to 30 CFR 816.116, that was disapproved. The resubmission contains Oklahoma regulation Section 816.116 that is identical to 30 CFR 816.116 and no proposed alternatives under 30 CFR 731.13.

In the October 10, 1980, decision, finding 4a (45 FR 67365) expressed the Secretary's concern that OCRA and the regulations thereunder were inadequate to regulate all coal mining operations required to be regulated by SMCRA because of the opinions of the Attorney General of Oklahoma (Admin. Record Doc. No.'s OK-16 and OK-85), that it is beyond the authority of OCRA for DOM to propose a rule to regulate "persons" rather than "operators." However, the Secretary notes that those opinions stop short of stating what entities are not subject to regulation as "operators" under Section 4 of OCRA. (45 O.S. 1979 Supp. Section 745.1). At issue is whether the term "operator," as defined in section 3(26) of OCRA [45 O.S. 1979 Supp. Section 742.26(26)], and which is identical to the definition of "operator" in SMCRA Section 701(13), is broad enough to cover coal mining entities other than corporations, partnerships and individual proprietorships. The definition of "operator" includes the term "person," but OCRA fails to define what is meant by "person." The Attorney General has ruled that DOM cannot define that term by regulations, but has not answered the question of what was meant by the legislature when "person" was included in the definition of "operator."

Pursuant to the Attorney General's opinions, DOM has replaced the term "person" that appeared in its originally-proposed regulations with the term "operator" in the enacted regulations included with the resubmission.

In the same resubmission (Section A, Chapter I), the DOM has strongly committed itself to requiring all entities that mine coal in Oklahoma to obtain permits under the provisions of OCRA except those entities specifically exempted by OCRA. (See letter from Blaney Qualls to Raymond Lowrie, December 3, 1980.) The four exemptions listed are consistent with Sections 528 and 701 (13) of SMCRA. Therefore the matter is reduced to whether the Secretary believes DOM has authority to regulate all the entities SMCRA requires to be regulated. Based on his reading of the entire Oklahoma statute and other recent Oklahoma law, the Secretary finds that DOM does have that authority. The basis for this finding is as follows.

Included in the resubmission was a copy of 25 O.S. 1979 Supp. Section 16, which defines "person" for general use in the Oklahoma statutes as follows:

Section 16. Person includes corporation.—The word "person," except when used by way of contrast, includes not only human beings, but bodies politic or corporate.

A recent Oklahoma Supreme Court decision, *State of Oklahoma ex rel Nesbitt* v. *APCO Oil Corporation*, 569 P. 2d 434 (OK. 1977), stated a general belief that the definition of "person" in 25 O.S. Section 16 is broad enough to encompass any "legal, commercial [or] governmental entity," citing *Oklahoma Human Rights Commission* v. *Hotie, Inc.*, 505 P.2d 1320 (OK. 1973). In *Hotie*, "person" was interpreted to include legal, commercial and governmental entities for purposes of enforcing the anti-discrimination statute, 25 O.S. 1971 Section 1402.

The *APCO* court, in deciding that "person" did not include the State of Oklahoma for purposes of collecting treble damages under the Civil Rights statute, 79 O.S. 1976 Supp. Section 25, based its decision primarily on the preceived intent of the legislature. The court reasoned that the State had no need for treble damages and that the legislature intended the treble damage remedy only for private litigants.

Following the court's direction, the Secretary has examined OCRA for an expression of legislative intent. That intent is clearly expressed in Section 2 of OCRA, 45 O.S. 1979 Supp. Section 742.1:

This act shall be known and may be cited as the "Coal Reclamation Act of 1979." It is the intent of the Oklahoma Legislature that the Coal Reclamation Act of 1976, Sections 742 et seq. of Title 45 of the Oklahoma Statutes, and this Coal Reclamation Act of 1979, be read together as the law regulating the reclamation of lands affected by surface coal mining operations and the surface effects of underground coal mining, to bring Oklahoma into compliance with Public Law 95-87, the Surface Mining Control and Reclamation Act of 1977.

The Secretary finds that the Oklahoma legislature intended to comply with SMCRA and that the use of the term "operator" in Section 4 of OCRA was not intended to exclude from regulation any entity required by SMCRA to be regulated. The Secretary is satisfied that the Oklahoma courts would reach this decision based upon the stated legislative intent and the precedents established by the *Hotie* and *APCO* cases cited above.

Therefore, the Secretary will not disapprove Section 4 of the Oklahoma statute or the regulations that use "operator" rather than "person." However, this matter will necessarily require close attention by the Secretary in his oversight capacity under Sections 504(a)(3) and 521(b) of SMCRA. If the Oklahoma courts should enjoin enforcement of OCRA against certain surface coal mining operations that must be regulated under SMCRA, the Secretary will have to require amendment of OCRA and take immediate steps to enforce SMCRA against those entities directly.

(b) Pursuant to the requirements of 30 CFR 732.15(b)(1), the Secretary finds that the Oklahoma DOM has the authority under Oklahoma law and regulations to implement, administer and enforce all applicable requirements consistent with 30 CFR Chapter VII, Subchapter K. The Oklahoma law and regulations on performance standards are consistent with SMCRA and those sections of 30 CFR Chapter VII, Subchapter K, that have not been suspended by the Secretary or remanded by the District Court of the District of Columbia.

(c) Pursuant to the requirements of 30 CFR 732.15(b)(2), the Secretary finds that the Oklahoma DOM has the authority under Oklahoma law and regulations and the Oklahoma program includes provisions to implement, administer and enforce a permit system consistent with 30 CFR Chapter VII, Subchapter G, and prohibit surface coal mining and reclamation operations without a permit issued by the regulatory authority subject to the exception noted in Finding 4n. These provisions are incorporated in Sections 4-8 of the OCRA and Parts 770-788 of Oklahoma's regulations.

(d) Pursuant to the requirements of 30 CFR 732.15(b)(3), the Secretary finds that the Oklahoma DOM has the authority under Oklahoma law and regulations to regulate coal exploration consistent with 30 CFR Part 776 and 30 CFR 815, and to prohibit coal exploration that does not comply with 30 CFR Parts 776 and 815. These provisions are incorporated in Section 14 of the OCRA and Parts 776 and 815 of Oklahoma's regulations.

(e) Pursuant to the requirements of 30 CFR 732.15(b)(4), the Secretary finds that the Oklahoma DOM has the authority under Oklahoma law and regulations and the Oklahoma program includes provisions to require that persons extracting coal incidental to government-financed construction maintain information on-site consistent with 30 CFR Part 707. These provisions are incorporated in Section 4.F of the OCRA and Part 707 of Oklahoma's regulations.

(f) Pursuant to the requirements of 30 CFR 732.15(b)(5), the Secretary finds that the Oklahoma DOM has the authority under Oklahoma law and regulations to provide for entry, inspections, and monitoring of all coal exploration and surface coal mining and reclamation operations on non-Indian and non-Federal lands within Oklahoma

consistent with Section 517 of SMCRA and 30 CFR Chapter VII, Subchapter L. These provisions are incorporated in Sections 32–35 of the OCRA and Part 840 of Oklahoma's regulations. Section 33.A of OCRA provides inspectors the right to enter for purposes of inspection "upon the lands of the operator," whereas Section 517(b)(3) of SMCRA provides the right of entry "to, upon, or through any surface coal mining and reclamation operations" or any premises where records required to be kept are maintained. Although the statutory authority for State inspectors appears to be different from that provided Federal inspectors in Section 517(b)(3), Oklahoma has promulgated State regulations Part 840 consistent with the Federal regulations in 30 CFR Part 840. Therefore, the Secretary finds that Oklahoma has the appropriate authority for inspection and monitoring.

(g) Pursuant to the requirements of 30 CFR 732.15(b)(6), the Secretary finds that the Oklahoma DOM has the authority under Oklahoma law and regulations to provide for implementation and enforcement of a system for performance bonds and liability insurance, or other equivalent guarantees, consistent with 30 CFR Chapter VII, Subchapter J. These provisions are incorporated in Sections 9 and 37–40 of the OCRA and Parts 800–809 of Oklahoma's regulations.

(h) Pursuant to the requirements of 30 CFR 732.15(b)(7), the Secretary finds that the Oklahoma DOM has the authority under Oklahoma law and regulations to provide for civil and criminal sanctions for violations of the Oklahoma law, regulations and conditions of permits and exploration approvals including civil and criminal penalties in accordance with Section 518 of SMCRA and 30 CFR Part 845 including the same or similar procedural requirements. These provisions are incorporated in Section 56 of the OCRA and Part 845 of Oklahoma's regulations.

(i) Pursuant to the requirements of 30 CFR 732.15(b)(8), the Secretary finds that the Oklahoma DOM has the authority under Oklahoma law and regulations to issue, modify, terminate and enforce notices of violation, cessation orders and show cause orders in accordance with Section 521 of SMCRA and with 30 CFR Chapter VII, Subchapter L. These provisions are incorporated in Sections 42–47 of the OCRA and Parts 840–842 of Oklahoma's regulations.

(j) Pursuant to the requirements of 30 CFR 732.15(b)(9), the Secretary finds that the Oklahoma DOM has the authority under Oklahoma law and regulations to provide for designation of areas as unsuitable for surface coal mining consistent with 30 CFR Chapter VII, Subchapter F. These provisions are incorporated in Sections 49–50 of the OCRA and Parts 760–769 of Oklahoma's regulations.

(k) Pursuant to the requirements of 30 CFR 732.15(b)(10), the Secretary finds that the Oklahoma DOM has authority under Oklahoma law and regulations to provide for public participation in the development and revision of Oklahoma regulations consistent with the public participation requirements of SMCRA and 30 CFR Chapter VII. Oklahoma also has authority under Oklahoma law and regulations to provide for public participation in the permitting process and the enforcement of its laws and regulations consistent with SMCRA and 30 CFR Chapter VII, with three exceptions:

(1) Section 520 of SMCRA provides for citizen's suits against government agencies or other persons where there is alleged a violation of the Act or any rule, regulation, order or permit issued pursuant to it, to compel compliance with the Act or performance of non-discretionary duties. It contemplates an original civil action, as distinguished from judicial review of administrative action, pursuant to Section 526 of the Federal Act. However, Section 41.C of OCRA, which corresponds to Section 520(c) of SMCRA, provides that "(a)ny action respecting a violation of this act or the regulations thereunder may be brought only pursuant to the Administrative Procedures Act * * *." The Oklahoma Attorney General has interpreted the Oklahoma statute as being inconsistent with the Federal law because, according to his opinion of February 25, 1980, no action may be commenced unless relief is first pursued before the Oklahoma DOM, through some unspecified administrative procedure. It also appears that the only further relief available after exhaustion of administrative remedies would be judicial review of the administrative determination which under both State and Federal law is not the required *de novo* proceeding. The Secretary agrees with the Attorney General that Section 41.C is inconsistent with Section 520(c) of SMCRA.

In its resubmission of December 8, 1980, Oklahoma indicated that it would have legislation introduced to amend Section 41.C of the OCRA to remove the phrase "only pursuant to the Administrative Procedures Act." This would alleviate the inconsistency with Section 520 of SMCRA. The resubmission also included the Oklahoma mandamus statute, 12 O.S. 1979 Supp. Section 1451, that is in effect and will remain in effect pending amendment of Section 41.C of the OCRA by the legislature. Section 1451 is available to citizens to compel any official action or decision required by law. However, where the law requires an exercise of discretion, mandamus can only order that the discretionary decision to be made. It is not a vehicle for questioning whether the official discretion was properly exercised. For that, judicial review under 75 O.S. 1976 Supp. Section 318 is the only available proceeding, which is essentially the proceeding available under Section 41.C of OCRA. Therefore, the appoval of the Oklahoma program is conditioned upon Oklahoma's amending Section 41.C of OCRA so that citizens, under OCRA, have the same access to courts as provided under Section 520 SMCRA.

(2) 43 CFR 4.1280–1296, implementing Section 525(e) of SMCRA, provides for the award of costs and expenses, including attorneys' fees, in administrative proceedings. These provisions are made applicable to state programs through Section 503(a) and 525(c) of SMCRA and 30 CFR 840.15. The resubmitted Oklahoma program, at page 259 of the regulations, is similar except for provisions that would provide the award of appropriate costs and expenses from the Oklahoma DOM (1) to any person other than a permittee or his representative and (2) to a permittee, after making necessary demonstrations and findings. These exceptions are not in accordance with 43 CFR 4.1294(b) and (c). In an opinion dated December 12, 1980, the Attorney General of Oklahoma ruled that the DOM lacked statutory authority to promulgate regulations requiring such awards from the DOM (OK Administrative Record No. 223).

The absence of these provisions causes the State rules for the award of costs and expenses to be inconsistent with 43 CFR 4.1294 and to inhibit the right of operators and the pubic to exercise all the rights they would have under Section 525(e) of SMCRA if the Secretary were the regulatory authority. Therefore, the approval of the Oklahoma program is conditioned upon Oklahoma's enacting a statute that authorizes the award of costs and expenses against the Oklahoma DOM in appropriate cases, and upon the promulgation of regulations consistent with 43 CFR 4.1294 (b) and (c).

(3) As indicated in (2) above, 30 CFR 840.15 requires states to provide for public participation in the enforcement of the state program consistent with 30 CFR 842, 843 and 43 CFR 4. Part 4 of 43 CFR, at Subpart L, contains the

Secretary's rules applicable to surface coal mining hearings and appeals. The Oklahoma resubmission includes "Rules of Practice for Hearings" (Rules) at pp. 260–264 of the regulations (Section B, Chapter I). The Secretary finds that the Rules are inadequate to provide meaningful participation by operators and the public in the enforcement of the Oklahoma program because they do not establish the procedures with sufficient specificity to enable operators or others to prepare their arguments and participate in proceeding with an understanding of what is expected in such proceedings. For example, the Oklahoma program does not set forth what the hearing officers and the Chief Mine Inspector (CMI) can expect in the way of initial pleadings and answers for the various kinds of formal and informal proceedings, including temporary relief proceedings, that will occur and does not inform potential litigants as to who will have the burden of going forward and the burden of persuasion in the different kinds of cases.

Nor does the program require service of pleadings on adversary parties which is the only guarantee a member of the public has of full participation in a proceeding. While Section 2.2 governs cessation order reveiws, the rules do not provide for proceedings to review notices of violations. While Rule 8.1 contemplates appeals, there are no procedures for the time, content, form or nature of appellate review. Rule 8.1 requires that hearing examiners make their decisions "within thirty days," but does not say whether that is thirty days from the hearing or thirty days from a request for a hearing. The rule does not address the requirement of Section 53.B of OCRA that written decisions on the review of cessation orders must be issued by the CMI within thirty days of a request for review, except where temporary relief has been granted (*See* 43 CFR 4.1160, Expedited Review of Orders of Cessation). Rule 8.2 does properly reflect the five day decision deadline on requests for temporary relief from cessation orders required by Section 53.C. Rule 8 also fails to reflect the decision timeframe for permit decision reviews from Section 18.C of OCRA.

Rule 2.1, concerning review of civil penalty assessments, fails to accommodate the assessment conference procedure of DOM rule 845.18.

Section 7 of the Rules deals exclusively with "applicants" and "protestants." These terms are not defined and do not appear applicable to OCRA. Rules 7.5 and 7.6 contain procedures that are not relevant to OCRA which would be confusing to operators and citizens.

Because of the lack of detail and clarity of the Rules, and because of the inconsistencies with 43 CFR Part 4 and OCRA discussed above, the Secretary finds that the "Rules of Practice for Hearings" do not allow citizens, operators, and attorneys practicing before the Chief Mine Inspector to exercise fully the rights to administrative hearings granted by SMCRA and OCRA, and that they are inconsistent with the public participation provisions of SMCRA, 30 CFR Chapter VII, and 43 CFR Part 4. The approval of the Oklahoma program is conditioned upon Oklahoma's promulgating amendments to the "Rules of Practice for Hearings" that correct the problems identified above, to make the public participation aspects of those rules consistent with the public participation provisions of SMCRA, 30 CFR Chapter VII, and 43 CFR Part 4.

(l) Pursuant to the requirements of 30 CFR 732.15(b)(11), the Secretary finds that the Oklahoma DOM has the authority under Oklahoma law and regulations to monitor, review, and enforce the prohibition against indirect or direct financial interests in coal mining operations by employees of the Oklahoma DOM consistent with 30 CFR Part 705. These provisions are incorporated in Section 34 of the OCRA and Part 705 of Oklahoma's regulations.

(m) Pursuant to the requirements of 30 CFR 732.15(b)(12), the Secretary finds that the Oklahoma DOM has the statutory authority under 45 O.S. 1979 Section 902, but does not have the authority under fully enacted regulations, to require the training, examination, and certification of persons engaged in or responsible for blasting and the use of explosives in accordance with Section 719 of SMCRA. Under 30 CFR 732.15(b)(12), the State is not required to implement regulations governing such training, examination and certification until six months after Federal regulations have been promulgated for these provisions. The Secretary promulgated a new Subchapter M and Part 850 to 30 CFR Chapter VII, covering this subject, on December 12, 1980. (*See* 45 FR 82004–82100, effective January 12, 1981.) However, the new Subchapter M is not complete and, as explained at 45 FR 82087, Oklahoma will have six months to submit to OSM regulations in compliance with Subchapter M after it is complete. Therefore, Oklahoma's present inability to comply with Section 719 of SMCRA has no effect on the Secretary's decision published today.

(n) Pursuant to the requirements of 30 CFR 732.15(b)(13), the Secretary finds that the Oklahoma DOM does not have authority under State law and regulations to operate a small operator assistance program (SOAP). According to the May 27, 1980, opinion of the Oklahoma Attorney General (*See* Administrative Record Document No. OK–85), the payment of State tax dollars to mine operators pursuant to 45 O.S. Supp. 1979, Section 745.16 (Section 19 of OCRA) violates Article X, Section 15 of the Oklahoma Constitution and is therefore invalid because it constitutes a "gift". In its resubmission of December 8, 1980, Section A, Chapter 1, page 5, Oklahoma proposed a resolution by the Legislature that would declare the expenditure of State funds for SOAP to be a public purpose. If such a resolution passes the Legislature, the DOM is expected to be able to promulgate regulations consistent with 30 CFR Part 795. The Oklahoma resubmission proposed a memorandum of agreement for the joint administration of SOAP until the Legislature enacts the proposed resolution and the DOM promulgates regulations consistent with 30 CFR Part 795. (*See* Section D, Chapter VII–16 and Administrative Record No. OK–193.) The proposed memorandum of agreement provides for Oklahoma to perform all functions required in SOAP except for contracting and funding which would be performed by OSM. The Oklahoma Attorney General, in a letter to the Chief Mine Inspector dated September 2, 1980 (Administrative Record No. OK–186), indicated approval of such an agreement as long as OSM reimburses the State DOM for its administrative costs. As an interim arrangement, this is acceptable to the Secretary.

However, the Secretary finds the absence of valid SOAP provisions inconsistent with Section 507(c) of SMCRA and 30 CFR Part 795. The approval of the Oklahoma program is conditioned upon Oklahoma's obtaining authority to promulgate regulations consistent with 30 CFR Part 795.

(o) Pursuant to the requirements of 30 CFR 732.15(b)(14), the Secretary finds that the Oklahoma has statutory authority under Section 36.I of OCRA, and the Oklahoma program contains provisions for protection of DOM employees consistent with the protection afforded federal employees under Section 704 of SMCRA.

(p) Pursuant to the requirements of 30 CFR 732.15(b)(15), the Secretary finds that the Oklahoma DOM has the authority under Sections 53 and 54 of

OCRA to provide for administrative and judicial review of the Oklahoma program actions in accordance with Sections 525 and 526 of SMCRA. The Secretary also finds that DOM Regulations, Parts 840–845, are consistent with 30 CFR Chapter VII, Subchapter L. However, as explained in finding 4(k)(3) above, the "Rules of Practice for Hearings" are inconsistent with Parts 840–845, and with OCRA in several ways. The DOM program is deficient to the extent the "Rules of Practice for Hearings" interfere with Parts 840–834.

(q) Pursuant to the requirements of 30 CFR 732.15(b)(16), the Secretary finds that the Oklahoma DOM has authority under the OCRA and the Oklahoma program contains provisions to cooperate and coordinate with, and provide documents and other information to, the Office of Surface Mining under the provisions of 30 CFR Chapter VII.

(r) Pursuant to the requirements of 30 CFR 732.15(c), the Secretary finds that the laws and regulations of Oklahoma contain provisions that would interfere with or preclude implementation of the provisions of SMCRA and 30 CFR Chapter VII. The provisions of the OCRA that would interfere with or preclude implementation of SMCRA and the Secretary's regulations are detailed in findings 1a, 4a, 4k, and 4n. In his decision of October 10, 1980, 44 FR 67367, the Secretary was unable to determine whether Oklahoma's water quality statutes and regulations contained provisions in conflict with the proposed program. The resubmission package contained Oklahoma's water quality statutes (Section C, Chapter II), Oklahoma's Water Quality Standards of 1979, and the 1979 revision to the Rules, Regulations and Modes of Procedure of the Oklahoma Water Resources Board. The Secretary has examined these documents and finds that they do not preclude implementation of the Oklahoma program and do not interfere or conflict with OCRA or the DOM regulations.

(s) Pursuant to the requirements of 30 CFR 732.15(d), the Secretary finds that the Oklahoma DOM and other agencies having a role in the program have sufficient legal, technical, and administrative personnel and sufficient funding to implement, administer, and enforce the provisions of the program, the requirements of 30 CFR 732.15(b), and other applicable State and Federal laws.

However, the Secretary does wish to note that the Chief Mine Inspector (CMI) has not shown in the program how he will allocate his personnel for purposes of the various formal and informal hearings under OCRA. The program envisions the CMI appointing hearing examiners for some adjudicatory hearings and, the CMI exercising appellate, jurisdiction in those cases. The program does not show how hearing examiners will be selected, who will advocate the DOM's position before them and the CMI, and how the impartiality of the CMI will be maintained for appellate review. Note that OCRA Section 17.C requires different personnel for informal permit hearings and later adjudicatory hearings. The Secretary finds that DOM has sufficient personnel and budget to accommodate these duties and assumes that the CMI will allocate his resources in a manner consistent with the obligations discussed above.

Public and Government Agency Comments

The Secretary received comments from the public and government agencies on Oklahoma's program. All of these comments were reviewed and considered by the Secretary in making the decision to conditionally approve the Oklahoma program.

The Secretary intends to publish in the **Federal Register** within the next few days, a summary of the comments received and his disposition of each significant issue they raise.

Background on Conditional Approval

The Secretary is fully committed to two key aims which underlie SMCRA. The Act calls for comprehensive regulation of the effects of surface coal mining on the environment and public health and safety, and for the Secretary to assist the states in becoming the primary regulators under the Act. To enable the states to achieve that primacy, the Secretary has undertaken many activities of which several are particularly noteworthy.

The Secretary has worked closely with several state organizations, such as the Interstate Mining Compact Commission, the Council of State Governments, the National Governors Association and the Western Interstate Energy Board. Through these groups OSM has frequently met with state regulatory authority personnel to discuss informally how the Act should be administered, with particular reference to unique circumstances in individual states. Often these meetings have been a way for OSM to explain portions of the Federal requirements and how the states might meet them. Alternative state regulatory options, the "state window" concept, for example, were discussed at several meetings of the Interstate Mining Compact Commission and the National Governors Association.

The Secretary has dispensed over $6.9 million in program development grants and over $37.6 million in initial program grants to help the states to develop their programs, to administer their initial programs, to train their personnel in the new requirements and to purchase new equipment. In several instances OSM detailed its personnel to states to assist in the preparation of their permanent program submissions. OSM has also met with individual states to determine how best to meet the Act's environmental protection goals.

Equally important, the Secretary structured the state program approval process to assist the states in achieving primacy. He voluntarily provided his preliminary views on the adequacy of each state program to identify needed changes and to allow them to be made without penalty to the state. The Secretary adopted a special policy to insure that communication between him and the states remained open and uninhibited at all times. This policy was critical to avoiding a period of enforced silence with a state after the close of the public comment period on its program and has been a vital part of the program review process (*see* 77 FR 54444, September 19, 1979).

The Secretary has also developed in his regulations the critical ability to approve conditionally a state program.

Under the Secretary's regulations, conditional approval gives full primacy to a state even though there are minor deficiencies in a program. This power is not expressly authorized by the Act; it was adopted through the Secretary's rulemaking authority under 30 U.S.C. 201(c), 503(b), and 503(a)(7). The Act expressly gives the Secretary only two options—to approve or disapprove a state program. Read literally, the Secertary would have no flexibility; he would have to approve those programs that are letter-perfect and disapprove all others. To avoid that result, and in recognition of the difficulty of developing an acceptable program, the Secretary adopted the regulation providing the authority to approve conditionally a program.

Conditional approval has a vital effect for programs approved in the Secretary's initial decision: it results in the implementation of the permanent program in a state monts earlier than might otherwise be anticipated. While this may not be significant in states that already have comprehensive surface mining regulatory programs, in many states that earlier implementation will initiate a much higher degree of

environmental protection. It also implements the rights SMCRA provides to citizens to participate in the regulation of surface coal mining through soliciting their views at hearings and meetings and enabling them to file requests to designate lands as unsuitable for mining if they are fragile, historic, critical to agriculture, or simply cannot be reclaimed to their prior productive capability.

The Secretary considers three factors in deciding whether a program qualifies for conditional approval. First is the state's willingness to make good faith efforts to effect the necessary changes. Without the state's commitment, the option of conditional approval may not be used.

Second, no part of the program can be incomplete. As the preamble to the regulations says, the program, even with deficiencies, must "provide for implementation and administration for all processes, procedures, and systems required by the Act and these regulations" (44 FR 14961). That is, a state must be able to operate the basic components of the permanent program: the designation process; the permit and coal exploration systems; the bond and insurance requirements; the performance standards; and the inspection and enforcement system. In addition there must be a functional regulatory authority to implement the other parts of the program. If some fundamental component is missing, conditional approval may not be used.

Third, the deficiencies must be minor. For each deficiency or group of deficiencies, the Secretary considers the significance of the deficiency in light of the particular state in question. Examples of deficiencies that would be minor in virtually all circumstances are correction of clerical errors and resolution of ambiguities through attorneys general opinions, revised regulations, policy statements, and changes in the narrative or the side-by-side.

Other deficiencies require individual consideration. An example of a deficiency that would most likely be major would be a failure to allow meaningful public participation in the permitting process. Although this would not render the permit system incomplete because permits could still be issued, the lack of any public participation could be such a departure from a fundamental purpose of the Act that the deficiency would most likely be major. The use of a conditional approval is not and cannot be a substitute for the adoption of an adequate program. Section 732.13(i) of Title 30 of the regulations gives the Secretary little discretion in terminating programs where the state, in the Secretary's view, fails to fulfill the conditions. The purpose of the conditional authority power is to assist the states, not to excuse them from achieving compliance with SMCRA.

Conditional Approval

As indicated above under the Secretary's Findings, there are four minor deficiencies which the Secretary requires be corrected. In all other respects, the Oklahoma program meets the criteria for approval. The deficiencies identified in prior findings and the reasons why they are considered minor are summarized below.

1. Section 41.C of OCRA does not provide citizens with the same access to courts for citizen suits as provided under Section 520 of SMCRA.

The deficiency is minor because a citizen would eventually have access to judicial review of the DOM actions or failure to act, but only after exhausting administrative remedies. In addition, a citizen would also have access to federal courts under Section 520 for review of the Oklahoma DOM's actions. Further, Oklahoma mandamus statute would enable a citizen to obtain a writ of mandamus against the State if it fails to perform its mandatory duties.

2. The Oklahoma Department of Mines does not have statutory authority to award appropriate costs and expenses including attorneys' fees to (a) any person other than a permittee or his representative and (b) a permittee in administrative proceedings consistent with 43 CFR 4.1294 (b) and (c).

This deficiency is minor because it would not interfere with the rights of citizens or permittees to administrative review of actions by the Oklahoma DOM. There is only a slight possibility that there will be a need for such an award prior to amending the statute and regulations. Furthermore, such awards are authorized during judicial review of the Department's actions.

3. The Oklahoma Department of Mines does not have authority to administer the Small Operator Assistance Program (SOAP) consistent with Section 507(c) of SMCRA and 30 CFR Part 795.

This deficiency is minor because the number of operators in Oklahoma eligible to receive SOAP assistance is so few. Only six operators are eligible to receive SOAP funds and of these only one has applied for assistance. Furthermore, Oklahoma has proposed a memorandum of agreement for the joint administration of SOAP until the Legislature enacts the resolution and the DOM promulgates regulations consistent with 30 CFR Part 795. The agreement provides for Oklahoma to perform all functions required in SOAP except for contracting and funding which would be performed by OSM, and is a viable interim arrangement.

The Rules of Practice for Hearings are not consistent with the public participation aspects of SMCRA, 30 CFR Chapter VII, and 43 CFR Part 4. This deficiency is minor because it can be quickly remedied by ordinary rulemaking before most of the adjudicatory procedures called for under OCRA and other DOM rules are likely to be used by anyone.

The substantive rights, remedies and procedures required by SMCRA are reflected in OCRA and DOM rules Parts 700-845. The problems lie only in the "Rules of Practice for Hearings," which either omit or conflict with the procedures of OCRA and Parts 700-845 of the DOM rules.

Given the nature of these deficiencies and their magnitude in relation to all the other provisions of the Oklahoma program, the Secretary of the Interior has concluded they are minor deficiencies. Accordingly, the program is eligible for conditional approval under 30 CFR 732.13(i), because:

1. The deficiencies are of such a size and nature as to render no part of the Oklahoma program incomplete since all other aspects of the program meet the requirements of SMCRA and 30 CFR Chapter VII and these deficiencies, which will be promptly corrected, will not directly affect environmental performance at coal mines;

2. Oklahoma has initiated and is actively proceeding with steps to correct the deficiencies; and

3. Oklahoma has agreed, by telegram dated January 12, 1981, to correct deficiencies (1) and (4) by July 1, 1981, and deficiencies (2) and (3) by November 1, 1981.

Accordingly, the Secretary is conditionally approving the Oklahoma program. This approval shall terminate if deficiencies 1 and 4 are not corrected by July 1, 1981, and deficiencies 2 and 3 by November 1, 1981.

This conditional approval is effective January 19, 1981. Beginning on that date, and subject to the delay discussed below under "State Court Litigation", the Oklahoma Department of Mines shall be deemed the regulatory authority in Oklahoma and all surface coal mining and reclamation operations on non-Federal and non-Indian lands and all coal exploration on non-Federal and non-Indian lands in Oklahoma shall be subject to the permanent regulatory program.

On non-Federal and non-Indian lands in Oklahoma the permanent regulatory program consists of the State program as approved by the Secretary.

On federal lands, the permanent regulatory program will consist of the federal rules made applicable under 30 CFR Chapter VII, Subchapter D—Parts 740–745. In addition, in accordance with Section 523(a) of the SMCRA, 30 USC 1273(a), the Federal lands program in Oklahoma shall include the requirements of the approved Oklahoma permanent regulatory program.

Oklahoma and the Department of the Interior will have the opportunity to enter into a cooperative agreement to allow Oklahoma to enforce the requirements of the approved Oklahoma permanent regulatory program on Federal lands.

The Secretary's approval of the Oklahoma program relates at this time only to the permanent regulatory program under Title V of SMCRA. The approval does not constitute approval of any provisions related to implementation of Title IV under SMCRA, the abandoned mine lands reclamation program. In accordance with 30 CFR Part 884, Oklahoma may submit a State reclamation plan now that its permanent program has been approved. At the time of such a submission, all provisions relating to abandoned mined lands reclamation will be reviewed by officials of the Department of the Interior.

State Court Litigation

The coal industry in Oklahoma filed a lawsuit in the District Court for Oklahoma County, Oklahoma, seeking relief from the permanent program within the context of Section 503(d) of SMCRA. (*Oklahoma Mining and Reclamation Association* v. *Oklahoma*, No. CJ–80–5520). On December 23, 1980 the court issued a permanent injunction holding that Oklahoma's permanent program regulations were arbitrary and capricious and ordered the Department of Mines (DOM) (1) to not enforce its proposed permanent program and (2) to withdraw the program submitted to the Secretary on December 8, 1980. The Oklahoma Attorney General opposed the lawsuit vigorously and appealed the decision immediately. A stay of the trial court decision was sought in the Oklahoma district court.

On January 9, 1981, the judge of the district court dissolved his order of December 23, 1980. He then issued a new temporary injunction which enjoins Oklahoma from enforcing the permanent program until further order from the court. However, the judge ordered the state to continue to enforce the interim program and stated that Oklahoma is not required to withdraw its program submission. The judge gave the plaintiffs 45 days to outline their specific objections to the Oklahoma program and the State 30 days thereafter to comment on the plaintiff's objections. The judge has scheduled a hearing on or about March 30 to further consider the injunction.

Although the judge did not specifically address the question of whether or not the State could agree to meet the Office of Surface Mining's conditions for approval, the Oklahoma Assistant Attorney General advised the OSM Regional Solicitor that he interprets the judge's order that the Department of Mines could agree to the conditions if it desires. (Administrative Record No. OK–262) The Oklahoma Department of Mines has agreed to the conditions in a telegram sent to the Secretary on January 12, 1981. (Administrative Record No. OK–261)

The Secretary considered several alternative courses in light of these developments. First, he considered disapproving the program on the grounds that the state did not have the authority to enforce its program as required under Section 503(b)(4) of SMCRA, 30 USC 1253(b)(4). This alternative was rejected, on the grounds that Section 503(d) of SMCRA, (30 USC 1253(d)) intends that for a period of up to one year, the existence of an injunction against State enforcement of its program does not constitute a defect requiring disapproval of a State program.

Second, the Secretary considered delaying his decision until the State court litigation was completed. This alternative was rejected because it would violate the Secretary's duty to approve or disapprove the program within sixty days after resubmission, as required by section 503(c) of SMCRA, 30 USC 1253(c).

Third, the Secretary considered announcing that he would approve this program once the injunction is lifted, so long as it is unchanged from the existing submission. This alternative was rejected because it might lead to additional delay in implementing the permanent program, by requiring reconsideration of the program before an approval could be given if any changes to the program are made during the court action.

Finally, the Secretary considered conditionally approving the program at this time, recognizing that the State may not be able to immediately enforce it. This option was accepted, because it fulfills the Secretary's obligation to make a decision within 60 days of resubmission by the State, it makes the State immediately eligible to qualify for its share of the abandoned mine land fund and it minimizes delay in the effectiveness of the permanent program.

As a result of the existence of the temporary injunction, Oklahoma cannot now enforce the program conditionally approved today. Under section 503(d) of SMCRA, 20 U.S.C. 1253(d), in these circumstances the regulation of surface coal mining and reclamation operations covered by the State program shall be conducted by the State pursuant to Section 502 of SMCRA, 30 U.S.C. 1252. In other words, the initial program will remain in effect in Oklahoma until the injunction terminates or for one year, whichever is shorter.

If the injunction terminates before the end of one year from its issuance, then this conditionally approved program shall become immediately effective in Oklahoma. If the injuction does not terminate within one year, then either a federal program will be implemented or the Secretary will enforce the conditionally approved State program. If the pending lawsuit results in any changes to the program conditionally approved today, these changes must be submitted for approval as revisions or amendments to the approved program under 30 CFR 732.17.

Additional Findings

The Secretary has determined that, pursuant to Section 702(d) of SMCRA, 30 USC 129(d), no environmental impact statement need be prepared on this conditional approval.

The Secretary has determined that this document is not a significant rule under E.O. 12044 or 43 CFR Part 14, and no regulatory analysis is being prepared on this conditional approval.

Dated: January 13, 1981.

Joan Davenport,

Assistant Secretary for Energy and Minerals.

A new Part, 30 CFR Part 936, is adopted to read as follows:

PART 936—OKLAHOMA

Sec.
936.1 Scope.
936.2–936.9 [Reserved]
936.10 State program approval.
936.11 Conditions of State program approval.

Authority: Sec. 503, Pub. L. 95–87, 91 Stat. 407 (30 USC 1253).

§ 936.1 Scope.

This part contains all rules applicable only within Oklahoma that have been adopted under the Surface Mining Control and Reclamation Act of 1977.

§§ 936.2–936.9 [Reserved]

§ 936.10 State program approval.

(a) The Oklahoma State Program, as submitted on February 28, 1980, and amended on June 11, 1980, and resubmitted on December 8, 1980, is approved subject to the conditions set forth in 30 CFR 936.11. Copies of the approved program together with copies of the letter from the Oklahoma Department of Mines agreeing to the conditions in 30 CFR 936.11, are available at:

Office of Surface Mining Reclamation and Enforcement, Region IV, 5th Floor, Scarritt Building, 818 Grand Avenue, Kansas City, Missouri 64106, Telephone: (816) 374–3920.
Oklahoma Department of Mines, 4040 N. Lincoln, Suite 107, Oklahoma City, Oklahoma 73105, Telephone (405) 521–3859.
Office of Surface Mining Reclamation and Enforcement, Room 153, Interior South Building, 1951 Constitution Avenue, NW., Washington, D.C. 20240, Telephone: (202) 343–4728.

(b) In its May 16, 1980, opinion, the U.S. District Court for the District of Columbia ordered the Secretary to affirmatively disapprove any regulation in a state program which incorporates a suspended or remanded Federal regulation. A list follows of provisions contained in the Oklahoma submission which are based on suspended or remanded Federal regulations. These regulations are affirmatively disapproved to the extent indicated or, if no limitation is indicated, in their entirety.

1. Section 701.5, the definition of "mine plan area," and the use of the term in Sections 779, 780, 783, and 784, to the extent of the court's decision regarding requirements of information outside the permit area.
2. Section 701.5, the definition of "public road."
3. Section 701.5(a)(2)(ii), the definition of "valid existing rights," to the extent it does not allow recognition of such rights an operator may claim by having made a good faith effort to obtain all permits before 8/3/77 as stipulated by the court's decision.
4. Sections 761.11(c) and 761.12(f)(1) to the extent that they prohibit or restrict mining near places only eligible for listing on the National Register of Historic Places, and the words "or a statutory or regulatory responsibility for" in Section 761.12(f). Further, both rules to the extent that they apply to privately-owned places listed on the National Register of Historic Places in addition to publicly-owned places.
5. Sections 779.20, 780.16, 783.20 and 784.21 requiring a permit application to contain a study of fish and wildlife and to include a fish and wildlife reclamation plan.
6. Section 783.14(a)(1) insofar as it requires a geologic description of the strata down to and immediatly below any coal seam for areas to be affected only by "surface operations and facilities," where no removal of overburden down to the level of the coal seam will occur.
7. Section 785.17(a) concerning the prime farmland grandfather clause.
8. Sections 785.17(b)(3) and 823.14(c) concerning excessive soil compaction.
9. Section 785.17(b)(8) to the extent that it requires prime farmland reclamation target yields to be based on estimated yields under a high level of management rather than a level of management equivalent to that used on prime farmlands in the surrounding area.
10. Section 786.5 to the extent that "or has not been" is no longer part of the definition of "irreparable damage to the environment."
11. Sections 816.42(a) (1) and (7) and 817.42(a) (1) and (7) to the extent they apply effluent standards to the reclamation phase of a surface coal mining operation.
12. Sections 816.42(b) and 817.42(b) relating to effluent standard exemptions during major storm periods.
13. Sections 816.46(b) and 817.46(b) concerning sediment storage volume in sediment ponds.
14. Sections 816.46(c) and 817.46(c) concerning detention time for water in sediment ponds.
15. Sections 816.46(d) and 817.46(d) to the extent they require dewatering devices to have a discharge rate to achieve and maintain the theoretical detention time for sediment ponds.
16. Sections 816.46(h) and 817.46(h) concerning sediment removal from sediment ponds.
17. Sections 816.65(f) and 817.65(f) requiring special approval prior to blasting within 1,000 feet of certain buildings and 500 feet of other facilities and which restrict blasting at distances greater than 300 feet.
18. Sections 816.83(a) and 817.83(a) concerning coal processing waste banks to the extent they preclude a possible exemption from the underdrain requirement where the operator can demonstrate that an alternative would ensure structural integrity of the waste bank and protection of water quality.
19. Sections 816.95 and 817.95 concerning air resources protection to the extent they apply to air pollution not caused by erosion.
20. Sections 816.103(a)(1) and 817.103(a)(1) to the extent they do not provide operators the option of treating acid-forming and toxic-forming material in lieu of covering such materials.
21. Sections 816.115 and 817.115 to the extent they require an operator who proposes range or pasture as the post-mining land use to use actually the land for grazing for the last two years of bond liability.
22. Sections 823.11(c), 823.15(b) and 823.15(c) to the extent they require an operator on prime farmland actually to return the land to crop production.
23. Sections 817.101(b)(1) and 817.102 applying the "approximate original contour" (AOC) regulations to underground mining.
24. Section 823 to the extent that it does not provide an exemption for surface facilities actively used over extended periods, but which affect a minimal amount of land.
25. Sections 816.116(b) and 817.116(b) to the extent that they state that an operator's responsibility for successful revegetation is not commenced until the vegetation reaches 90 percent of the natural cover in the area.
26. Sections 816.133(c) (4) and (9) and 817.133(c) (4) and (9) to the extent they require an operator to provide "letters of commitment" for proposed land use changes or for proposed cropland use.
27. Section 817.52(a)(1) to the extent that it requires ground water monitoring to determine the effects of underground mining activities on the recharge capacity of reclaimed land.
28. Sections 845.12–845.16 to the extent they impose a civil penalty point system.

§ 936.11 Conditions of State program approval.

(a) The approval found in Section 936.10 will terminate on July 1, 1981, unless Oklahoma submits to the Secretary by that date copies of a fully enacted statute which amends Section 41.C of OCRA to provide citizens, under OCRA, with the same access to courts as provided under Section 520 of SMCRA, or otherwise amends its program to accomplish the same result.

(b) The approval found in Section 936.10 will terminate on July 1, 1981, unless Oklahoma submits to the Secretary by that date copies of promulgated regulations which amend the Rules of Practice for Hearings to make the public participation aspects of those rules consistent with the public participation aspects of SMCRA, 30 CFR Chapter VII, and 43 CFR Part 4 or otherwise amends its program to accomplish the same result.

(c) The approval found in Section 936.10 will terminate on November 1, 1981, unless Oklahoma submits to the Secretary by that date copies of a fully enacted statute and implemented regulations which provide the Oklahoma Department of Mines to award costs and expenses, including attorney's fees, in administrative proceedings, in accordance with 43 CFR 4.1294 (b) and (c), or otherwise amends its program to accomplish the same result.

(d) The approval found in Section 936.10 will terminate on November 1, 1981, unless Oklahoma submits to the Secretary by that date copies of appropriate statutory authority and implemented regulations consistent with 30 CFR Part 705, or otherwise amends its program to accomplish the same result.

[FR Doc. 81-1918 Filed 1-16-81; 8:45 am]
BILLING CODE 4310-05-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 40

[CGD 81-004]

Cadets of the Coast Guard; Appointment Program

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard previously deleted from the Code of Federal Regulations all provisions concerning its cadet appointment program. In order that its regulations may reflect the existence of this program, this action will replace the deleted material with a single section that generally describes the appointment process and provides an address where further information may be obtained.

EFFECTIVE DATE: February 18, 1981.

FOR FURTHER INFORMATION CONTACT: Coleman Sachs, Office of the Chief Counsel, (G-LRA/34), U.S. Coast Guard Headquarters, Washington, D.C. 20593 (202) 426-1534.

SUPPLEMENTARY INFORMATION: On May 24, 1979, the Coast Guard published notice in the Federal Register (44 FR 30094) that Part 40, governing the appointment of cadets, was being deleted from Title 33, Code of Federal Regulations. This action was taken because the information in Part 40 had become outdated and was inconsistent with internal directives on the appointment of cadets published in the Coast Guard Personnel and Medical Manuals. The need for flexibility in setting the standards for appointment of cadets made publication of current material in the Code of Federal Regulations impractical.

The Coast Guard has since determined that some mention of the Cadet appointment program should be retained in the CFR. It is therefore replacing Part 40 with a single section that contains a general description of the appointment process and an address where further information may be obtained. This will provide recognition of the program's existence and allow a broader dissemination of information concerning it.

This rulemaking has been reviewed and determined to be nonsignificant under the Department of Transportation's Regulatory Policies and Procedures published on February 26, 1979 (44 FR 11034). It was determined to have insufficient economic impact to warrant the preparation of a draft evaluation. Since it is concerned with agency personnel, this action is exempted from the provisions of 5 U.S.C. 553 requiring advance notice and an opportunity for public comment.

In consideration of the foregoing, Title 33 of the Code of Federal Regulations is amended by adding a new Part 40, to read as follows:

PART 40—CADETS OF THE COAST GUARD

Sec.

40.1 Program for appointing cadets.

Authority: 14 U.S.C. 182 and 633, 49 CFR 1.46(b).

§ 40.1 Program for appointing cadets.

The Coast Guard conducts a program for appointing qualified men and women as cadets who are admitted to the Coast Guard Academy, New London, Connecticut. The Superintendent of the Coast Guard Academy tenders appointments on the basis of previous academic performance, reported College Entrance Examination Board or American College Testing scores, and the findings of a Cadet Candidate Evaluation Board, consisting of Coast Guard officers appointed by the Superintendent of the Coast Guard Academy, which reviews each applicant's personal qualifications. In addition, a Service Academy Medical Examination must be satisfactorily completed before appointment. Applications must be submitted on Coast Guard form CG-4151. This form, along with additional information on the Cadet appointment program, may be obtained from the Director of Admissions, U.S. Coast Guard Academy, New London, CT 06230.

(14 U.S.C. 182 and 633, 49 CFR 1.46(b))

Dated: January 13, 1981.

W. H. Stewart,

Rear Admiral, U.S. Coast Guard, Chief, Office of Personnel.

[FR Doc. 81-1911 Filed 1-16-81; 8:45 am]

BILLING CODE 4910-14-M

DEPARTMENT OF EDUCATION

Office of Special Education

34 CFR Parts 104 and 300

Assistance to States for Education of Handicapped Children, and Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance; Notice of Interpretations

AGENCY: Department of Education.

ACTION: Notice of Interpretation.

SUMMARY: The Secretary of Education interprets Part B of the Education of the Handicapped Act and Section 504 of the Rehabilitation Act of 1973 to require public educational agencies to provide clean intermittent catheterization as a "related service" when it is required to provide a free appropriate public education, including services in the least restrictive environment, to handicapped children who are entitled to receive services under those statutes. This interpretation is issued in response to public inquiries regarding Department policy on the matter.

EFFECTIVE DATE: This interpretation is expected to take effect 45 days after it is transmitted to Congress. Interpretations are usually transmitted to Congress several days before they are published in the Federal Register. The effective date of interpretations that are subject to the transmittal requirement is changed by statute if Congress takes certain adjournments. Although the interpretation of Section 504 is not subject to this requirement, the Secretary has decided to set its effective date for the same day as the interpretation of Part B of the Education of the Handicapped Act. If you want to know the effective date of this interpretation, call or write the Department of Education contact persons.

FOR FURTHER INFORMATION CONTACT: Ms. Shirley A. Jones, Office of Special Education, Department of Education, Donohoe Building, 4th Floor, 400 Maryland Avenue, S.W., Washington, D.C. 20202, telephone: (202) 472-7921. Mr. Edward A. Stutman, Office for Civil Rights, Department of Education, Switzer Building, Room 5430, 300 C Street, S.W., Washington, D.C. 20202, telephone: (202) 245-0781.

SUPPLEMENTARY INFORMATION:

The Issue

The issue presented is whether Part B of the Education of the Handicapped Act, as amended ("Part B"; 20 U.S.C. 1411-1420) and its regulations (34 CFR Part 300; formerly 45 CFR Part 121a) and Section 504 of the Rehabilitation Act of 1973, as amended ("Section 504"; 29 U.S.C. 794) and its regulations (34 CFR Part 104; formerly 45 CFR Part 84) require public educational agencies to provide clean intermittent catheterization as a related service to eligible handicapped children when those children require the service to receive a free appropriate public education, including services in the least restrictive environment.

The Interpretation

Both Part B and Section 504 require public educational agencies to provide clean intermittent catheterization as a "related service" to handicapped children who are entitled to receive services under those statutes, when it is required to provide a free appropriate public education, including services in the least restrictive environment.

Background

A procedure called "clean intermittent catheterization" "(CIC)" is often recommended for physically handicapped children who have impaired function of the urinary bladder. It is usually a relatively simple procedure to administer with minimal training and can be performed by a school nurse, the individual requiring catheterization, or another responsible person, none of whom need to be licensed to perform the service. Therefore, for the limited purpose of interpretating Part B or Section 504, the Secretary does not interpret CIC to be a medical service. In fact, a number of educational agencies are not providing this service to handicapped children as a part of their school health services. A report on the use of CIC accepted and endorsed by the Urology Section of the American Academy of Pediatrics on October 23, 1978, states that "CIC in infancy must be carried out by an adult, but with normal intelligence most children are able to self-catheterize from approximately six to seven years of age, sometimes even earlier."

While the number of children in the United States who currently require assistance with CIC cannot be stated with precision, those children who most often use CIC have myelodysplasia (spine bifida), which medical authorities estimate to occur in 1–2 live births per thousand in the United States. However, not all children with spina bifida require catheterization, and the majority of children who are catheterized do not require assistance with catheterization throughout the years they attend elementary and secondary school.

Part B

Under Part B of the Education of the Handicapped Act, a handicapped child within the eligible age ranges is entitled to receive a free appropriate public education, a term defined in Section 602 of the Act to include special education and related services. 20 U.S.C. 1401. The term "related services" is defined in Section 602(17) to mean:

"* * * transportation, and such developmental, corrective, and other supportive services (including speech pathology and audiology, psychological services, physical and occupational therapy, recreation, and medical and counseling services, except that such medical services shall be for diagnostic and evaluation purposes only) as may be required to assist a handicapped child to benefit from special education, and * * * the early identification and assessment of handicapping conditions in children."

The regulations implement this section by defining each statutorily-specified related service, and by specifying other services, including school health services, as well. Moreover, while catheterization is not specifically listed as a "related service", the "Comment" that follows 34 CFR 300.13 states:

"The list of related services is not exhaustive and may include other developmental, corrective, or supportive services * * * if they are required to assist a handicapped child to benefit from special education."

In addition to the related services requirements outlined above, each public agency must ensure that to the maximum extent appropriate, handicapped children are educated with children who are not handicapped, and that special classes, separate schooling, or other provision of education to handicapped children outside of the regular environment occurs only when the nature or severity of the handicap is such that education in the regular classes cannot be satisfactorily achieved with the use of supplementary aids and services. 20 U.S.C. 1412(5)(B); 34 CFR 300.550.

In light of the above, the Secretary concludes that clean intermittent catheterization is a "related service" as that term is defined in the Education of the Handicapped Act. CIC must be provided when it is required to provide a free appropriate public education, including services in the least restrictive environment, to handicapped children receiving special education. A public agency is not required to provide CIC to a child who is enrolled in a day program when that child is not in school. Nor is the agency required to provide routine medical services, such as laboratory analysis, that may be related to the provision of CIC. (These services are also not required under Section 504.)

Section 504

Under Section 504 and the Department's implementing regulation, public educational agencies are required to provide regular or special education and related aids and services to eligible handicapped children. 34 CFR 104.3(j), 104.3(k)(2). Those handicapped children entitled to services under Section 504 must be provided a free appropriate public education "regardless of the nature or severity of the person's handicap". 34 CFR 104.33(a). Moreover, Section 104.34 of the regulation requires that handicapped persons be educated in the regular educational environment unless this cannot be satisfactorily achieved with the use of supplementary aids and services.

Therefore, the Secretary concludes that, under Section 504, clean intermittent catheterization is a "related service" when it is necessary to ensure the provision of a free appropriate public education, including services in the least restrictive environment, for handicapped children requiring regular or special education.

Judicial Precedent

The limited judicial precedent on catheterization as a required service is consistent with the Secretary's interpretation. See *Tatro* v *State of Texas*, 625 F.2d 557 (5th Cir. 1980); *Tokarcik* v. *Forest Hills School District*, No. 79–338 (W.D. Pa. Oct. 31, 1980); and *Hairston* v. *Drosick*, 423 F. Supp. 180 (S.D. W.Va. 1976). In the cases decided after publicaition of regulations under Part B and Section 504, the courts held that CIC is a related service which must be provided to handicapped children. In the case decided before publication of the regulations, the court held that a handicapped child could not be excluded from the regular classroom because she needed CIC.

(20 U.S.C. 1401, 1411–1420; 29 U.S.C. 794)

Dated: January 13, 1981.

Shirley M. Hufstedler,

Secretary of Education.

[FR Doc. 81–1883 Filed 1–16–81; 8:45 am]

BILLING CODE 4000-01-M

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34 CFR Part 322

Training Programs for Teachers of Handicapped Children in Areas With a Shortage

AGENCY: Department of Education.

ACTION: Final regulation with comments invited.

SUMMARY: The Secretary issues regulations to establish a new program for training teachers of handicapped children. This program authorizes the Secretary to make grants to State education agencies for fellowships to students and allowances to institutions of higher education for teacher training in the area of special education for handicapped children. The regulations state criteria the Secretary uses to determine areas of teacher shortage.

criteria for assuring that the training programs for the fellowship recipients are appropriate, certain requirements that a State agency must meet to obtain a grant, and restrictions relating to students who hold jobs during the period of a fellowship.

DATES: These regulations are expected to take effect 45 days after they are transmitted to Congress. Regulations are usually transmitted to Congress several days before they are published in the Federal Register. The effective date is changed if Congress takes certain adjournments. If you want to know the effective date of these regulations, call or write the Department of Education contact person.

Comments on these regulations must be received on or before March 5, 1981.

ADDRESS: Comments should be addressed to William Wolfe, Budget Officer, Office of Special Education, Room 4130, Donohoe Building, 400 Maryland Avenue SW., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: William Wolfe, telephone (202) 245-2709.

SUPPLEMENTARY INFORMATION:

Waiver of Proposed Rulemaking Procedures

Section 548(b) of the Higher Education Act, as added by the Education Amendments of 1980 (Pub. L. 96-374), requires the Secretary to publish regulations governing this program not later than 30 days after the enactment of Pub. L. 96-374 (October 3, 1980). Given this extremely short deadline, the Secretary has determined in accordance with 5 U.S.C. 553(b) that public participation in the rulemaking process is impracticable. However, interested persons may submit comments and recommendations regarding future revisions to the regulations.

Purpose of the Regulations

The new teacher training program is intended to increase the number of special education teachers in areas that need more of these teachers. The statute authorizes fellowships to students who agree to teach in areas identified as needing special education teachers or other specialists; they must agree to teach in those areas for two out of the first five years after they complete their training.

The statute requires the Secretary to publish regulations covering the following topics:

(1) The Secretary is required to establish criteria for—

a. determining whether there is a shortage of teachers in a State;

b. assuring that the institutions of higher education where recipients of fellowships pursue their studies offer a program designed to prepare them in the area of special education for handicapped children; and

c. assuring that the individuals trained with assistance under this program receive specialized training in subject areas in which there is the greatest need for teachers of handicapped children.

(2) The Secretary is also required to promulgate regulations setting forth detailed requirements with respect to—

a. the agreement between a State and a student who receives a fellowship that the student will teach for a two-year period in a public school or program that provides or will provide special education; and

b. procedures for reducing the repayment requirement that the statute places on a fellowship recipient who teaches less than the required two-year period.

(3) The statute provides that students who receive fellowships are not allowed to engage in gainful employment unless approved by the Secretary by or pursuant to regulations. Further, payments to a student engaged in gainful employment must be appropriately reduced pursuant to regulations of the Secretary.

The regulations in this document are limited to those that are required by the Act.

To determine areas with a shortage, the regulations require a State to submit in its application evidence upon which the Secretary can determine the extent of any teacher shortages. However, to minimize reporting requirements, the Secretary may accept as evidence of teacher shortages the information relating to personnel development provided by a State in its State plan under Part B of the Education of the Handicapped Act, as amended by Pub. L. 94-142. (See 34 CFR Part 300, formerly 45 CFR Part 121a.)

To assure that students receive appropriate training under the program, the regulations require the State to award fellowships only in institutions of higher education that offer programs meeting applicable State standards, and only for training that meets the greatest need in the State for teachers of handicapped children. The regulations also require a student to carry at least a half-time course load and maintain satisfactory progress, as determined by the institution of higher education that the student attends.

The statute encourages students to work in public education programs that provide services to handicapped children. It does so by requiring each student to enter into an agreement with the State that the student will either teach for two years in such a program, or repay all of the stipends the student received plus any allowances paid to the institution of higher education where the student attended. A State is permitted to reduce the repayment if the student does not meet the two-year teaching requirement for reasons beyond the student's control.

The regulations set forth the statutory requirements, provide guidance on the type of school or program that meets the intent of the statute, and authorize the State to determine the amount of any necessary repayment of a stipend by a student who does not meet the two-year provision.

With respect to the statutory restrictions on employment, the regulations permit gainful employment without reduction in stipend if the employment is in a federally-assisted program providing services to handicapped children. This is consistent with the statutory provisions relating to the two-year teaching requirement.

Stipends for students and allowances for institutions of higher education are governed by section 543 of the Act. Section 544 of the Act includes certain provisions regarding reports to the State educational agency and a requirement that no fellowship may be awarded for study at a school or department of divinity. The regulations do not elaborate on these statutory provisions.

Invitation to Comment

Interested persons are invited to submit comments and recommendations regarding these regulations. Written comments and recommendations may be sent to the address given at the beginning of this preamble. All comments received on or before March 5, 1981, will be considered in any future revisions of the final regulations.

All comments submitted in response to these final regulations will be available for public inspection during and after the comment period in Room 4130, Donohoe Building, 6th & D Street, S.W., Washington, D.C. between 8:30 a.m. and 4:00 p.m. Monday through Friday, except Federal holidays.

Comments are particularly invited on whether the regulations in this document require any information that is already being gathered by or is available from any other agency or authority of the United States.

Regulatory Flexibility Act Analysis

The Regulatory Flexibility Act (Pub. L. 96-354, enacted Sept. 19, 1980) requires each Federal agency to prepare an initial regulatory flexibility analysis and

a final regulatory flexibility analysis for each regulation that —

(1) Is published as a notice of proposed rulemaking after January 1, 1981, and

(2) Has a significant economic impact on a substantial number of small entities (small businesses, small organizations, or small governmental jurisdictions).

Because the Department has not yet established its own definitions of "small organization" and "small governmental jurisdiction", as contemplated by the Act, it is not possible to prepare a full intial regulatory flexibility analysis at this time. Further, since the regulations in this document are required by statute to be published immediately, it is impracticable to delay publication while the necessary definitions are being developed. As noted elsewhere in this preamble, it was impracticable to take public comments before publishing these regulations as final. For the same reasons, it was impracticable to delay the regulations while an initial regulatory flexibility analysis was prepared. In these circumstances, the Regulatory Flexibility Act permits a waiver or delay of the initial regulatory flexibility analysis. If it is determined that these regulations are subject to that Act, the Secretary will prepare the necessary analyses at a later date.

As an interim measure, this document, to the maximum extent possible, includes information of the kind contemplated by the Regulatory Flexibility Act, including the reasons for the regulations, the objectives and legal basis for the regulations, and any significant issues and alternatives for consideration by the public. To assist the Department in determining whether the Regulatory Flexibility Act applies to these regulations, and in complying with the Act's requirements, public comment is especially invited on the following matters:

(1) The number and kind of small entities (small businesses, small organizations, or small governmental jurisdictions) affected by the regulations;

(2) The reporting, recordkeeping, and compliance burdens imposed by the regulations on small entities;

(3) The type of professional skills necessary for preparation of any reports or records required by the regulations;

(4) Any Federal rules that may duplicate, overlap, or conflict with the regulations;

(5) Any significant alternatives that would accomplish the purposes of the applicable statute but would minimize any significant economic impact of the regulations on small entities. The Secretary is particularly interested in suggestions on alternatives such as the following:

- The establishment of differing reporting or compliance requirements or timetables that take into account the resources available to small entities.
- The clarification, consolidation, or simplification of compliance and reporting requirements for small entities.
- The use of performance rather than design standards.
- An exemption for small entities from coverage of part or all of the regulations.

Citation of Legal Authority

A citation of statutory or other legal authority is placed in parentheses on the line following each substantive provision of these proposed regulations.

(No Catalog of Federal Domestic Assistance number has been assigned.)

Dated: January 13, 1981.

Shirley M. Hufstedler,

Secretary.

Title 34 of the Code of Federal Regulations is amended by adding a new Part 322 to read as follows:

PART 322—TRAINING PROGRAM FOR TEACHERS OF HANDICAPPED CHILDREN IN AREAS WITH A SHORTAGE

Subpart A—General

Sec.

322.1 Purpose of the program.
322.2 Eligible applicants.
322.3 Regulations that apply to this program.
322.4 Definitions that apply to this part.

Subpart B—[Reserved]

Subpart C—How Does a State Educational Agency Apply for a Grant?

322.10 Application requirements.

Subpart D—How Does the Secretary Make a Grant?

322.20 Distribution of grants.
322.21 Criteria for determination of need for teachers and other specialists.

Subpart E—What Conditions Must Be Met by Grantees and by Students Who Receive Fellowships?

322.30 Criteria to assure appropriate training.
322.31 Two-year teaching requirement.
322.32 Restrictions on employment.

Authority: Title V-C of the Higher Education Act of 1965, as amended, (20 U.S.C. 1119b–1119b–5), unless otherwise noted.

Subpart A—General

§ 322.1 Purpose of the program.

(a) This program is intended to increase the numbers of persons qualified to teach handicapped children in areas that have a shortage of those persons.

(b) The program provides grants to States to fund fellowships at institutions of higher education.

(20 U.S.C. 1119b)

§ 322.2 Eligible applicants.

State educational agencies are eligible to apply for grants under this part.

(20 U.S.C. 1119b)

§ 322.3 Regulations that apply to this program.

The following regulations apply to this program:

(a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Parts 76 (State-administered programs) and 77 (Definitions).

(b) The regulations in this Part 322.

(20 U.S.C. 3474)

§ 322.4 Definitions that apply to this part.

(a) *Definitions in EDGAR.* The following terms used in this part are defined in 34 CFR Part 77:

Application
EDGAR
Grant
Local educational agency
Secretary
State
State educational agency

(b) *Other definitions.* The following definitions also apply to the regulations in this part:

"Act" means Title V-C of the Higher Education Act of 1965, as amended.

"Special education" has the same meaning as defined in section 602(16) of the Education of the Handicapped Act, as amended. (See 34 CFR 300.14—formerly 45 CFR 121a.14—Definition of "special education".)

(20 U.S.C. 3474)

Subpart B—[Reserved]

Subpart C—How Does a State Educational Agency Apply for a Grant?

§ 322.10 Application requirements.

To receive a grant, a State educational agency shall submit an application that meets the requirements of EDGAR Part 76, Subpart C, and Section 542 of the Act.

(20 U.S.C. 1119b–1)

Subpart D—How Does the Secretary Make a Grant?

§ 322.20 Distribution of grants.

(a) The Secretary makes a grant to each State that—(1) Has a shortage of teachers or other specialists in special education; and

(2) Meets the requirements under the Act and the regulations in this part.

(b) The Secretary determines the amount of each State's grant by dividing the number of teachers and other specialists needed in that State by the total number needed by all States, and multiplying that percentage by the amount of funds available for grants under this program.

(20 U.S.C. 1119b(c))

§ 322.21 Criteria for determination of need for teachers and other specialists.

(a) The Secretary determines a State's need for teachers and other specialists based on information provided by the State.

(b) A State may provide this information—

(1) In its application; or

(2) By reference to the information relating to personnel development in its State plan under Part B of the Education of the Handicapped Act, as amended.

(20 U.S.C. 1119b(b)(c))

Cross reference: 34 CFR Part 300 (Formerly 45 CFR Part 121a)—Assistance to States for Education of Handicapped Children.

Subpart E—What Conditions Must Be Met by a Grantee or by a Student Who Receives a Fellowship?

§ 322.30 Criteria to assure appropriate training.

(a) A State may not award a fellowship unless the State determines that—

(1) The student receiving the fellowship will attend an institution of higher education that offers a program in special education that meets applicable State standards; and

(2) The specialized training that the student receives will be in the subject areas in which there is the greatest need in the State for teachers of special education.

(b) A student receiving a fellowship under this part shall—

(1) Devote at least one-half of a full-time academic workload to study in the area of special education for which the fellowship is awarded; and

(2) Maintain satisfactory progress, as determined by the institution of higher education that the student attends.

(20 U.S.C. 1119b(b) (2) and (3); 1119b–3(a))

§ 322.31 Two-year teaching requirement.

(a)(1) Within the five-year period after a student completes the training for which a fellowship was awarded under this part, the student must teach for a period of not less than two years in—

(i) An elementary or secondary school of a local educational agency of the State that awarded the fellowship;

(ii) A public elementary or secondary school of that State; or

(iii) A public educational program, approved by the local educational agency or the State, which has (or has provided assurances that it will have) a special education program.

(2) The student must obtain State educational agency approval of the school or program in which the student intends to teach. The school or program must be located in an area with a shortage of teachers or other specialists in special education, as measured by—

(i) Lack of special education services for handicapped children in the area;

(ii) Lack of other specialized services for handicapped children in the area; or

(iii) High ratio of students to teachers in the special education programs in the area.

(b)(1) If the student does not meet the conditions of paragraph (a), the State shall require the student to repay the stipend provided to the student and the allowances paid to the institution of higher education.

(2) If the State educational agency determines that the student did not meet the requirements of paragraph (a) for reasons beyond the student's control, the State educational agency shall reduce or eliminate the amount of the student's repayment. The amount of any reduction is at the discretion of the State educational agency.

(20 U.S.C. 1119b–1(b))

§ 322.32 Restrictions on employment.

(a) A student may not engage in gainful employment unless the employment is in a federally-assisted program providing services to handicapped children.

(b)(1) If the student engages in any other gainful employment, the State educational agency shall reduce the student's stipend.

(2) The State educational agency may set the amount of reduction of a stipend as appropriate under the particular circumstances.

(20 U.S.C. 1119b–3(a))

[FR Doc. 81–1062 Filed 1–16–81; 8:45 am]

BILLING CODE 4000–01–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A–1–FRL 1729–1]

Approval and Promulgation of Implementation Plans; Massachusetts Revision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: On March 2, 1979, the Commissioner of the Massachusetts Department of Environmental Quality Engineering (the Massachusetts Department) submitted to EPA for approval a revision to the Massachusetts State Implementation Plan (SIP) which would permanently amend Regulation 310 CMR 7.05(1)(e) "Sulfur Content of Fuels and Control Thereof" for the Pioneer Valley Air Pollution Control District (the Pioneer Valley). The revision increases the maximum sulfur-in-fuel limit from 1% to 2.2%. EPA is today approving this revision for all sources in Franklin and Hampshire Counties rated at less than 100 million Btu heat input capacity with the exception of three sources which EPA is disapproving. A proposed rulemaking on this revision was published on August 28, 1980 (45 FR 57459). Three letters of comment were received.

EFFECTIVE DATE: January 19, 1981.

ADDRESSES: Copies of the Massachusetts document which is incorporated by reference are available for public inspection during regular business hours at the Environmental Protection Agency, Region I, Room 1903, JFK Federal Building, Boston, Massachusetts 02203; Public Information Reference Unit, Environmental Protection Agency, 401 M St., S.W., Washington, D.C. 20460; Office of the Federal Register, 1100 L Street, N.W., Room 8401, Washington, D.C.; and the Massachusetts Department of Environmental Quality Engineering, 600 Washington Street, Room 320, Boston, MA 02111.

FOR FURTHER INFORMATION CONTACT: Margaret McDonough, Air Branch, EPA Region I, Room 1903, JFK Federal Building, Boston, Massachusetts 02203, (617) 223–5609.

SUPPLEMENTARY INFORMATION: The Commissioner of the Massachusetts Department submitted to EPA for approval on March 2, 1979 a revision to the Massachusetts SIP which amends Regulation 7.05 "Sulfur Content of Fuels and Control Thereof". Additional

technical information was submitted on January 18, 1980.

The original Massachusetts SIP, approved by EPA on May 31, 1972 (37 FR 10842), allowed all sources in the Pioneer Valley to burn fuel oil having a sulfur content of not more than 1%. Pursuant to Chapter 494 of the Massachusetts General Laws of 1974, the Massachusetts Department was required to periodically review its control strategies and to relax any regulation which was more stringent than necessary to attain National Ambient Air Quality Standards (NAAQS). As a result, the Massachusetts Department submitted revisions to its SIP to allow the burning of higher sulfur fuel. These revisions, approved by EPA on May 21, 1979 (44 FR 29452) and October 2, 1979 (44 FR 56694), excluded sources rated at less than 100 million Btu per hour.

The Massachusetts Department's March 2, 1979 submittal requested approval of a revision which amends the SIP by adding a new subparagraph (3) to regulation 310 CMR 7.05(1)(e) that allows sources in Hampshire and Franklin Counties rated at less than 100 million Btu per hour to burn residual fuel oil having a sulfur content of not more than 1.21 pounds per million Btu heat release potential. Accompanying the Massachusetts Department's submittal was technical support which included a mathematical modeling analysis to predict the effect on the ambient air quality of additional sulfur dioxide (SO_2) emissions which would be permitted by the revision. Subsequently, EPA performed additional modeling analyses to supplement the work of the Massachusetts Department. This analysis is discussed in detail in the August 28, 1980 Notice of Proposed Rulemaking (45 FR 57459). The mathematical modeling performed was used to determine compliance with NAAQS and Class II Prevention of Significant Deterioration (PSD) increments for SO_2. The NAAQS are maximum allowable ambient air pollutant concentrations which are set to protect public health and welfare. The NAAQS for SO_2 is 80 $\mu g/m^3$ based on annual averaging time; 365 $\mu g/m^3$ based on a 24-hour averaging time and 1300 $\mu g/m^3$ based on a 3-hour averaging time. The PSD increments are allowable incremental increases in ambient pollutant concentrations which are set to limit the degradation of air quality over baseline levels. The Class II PSD increments which apply to Hampshire and Franklin Counties for SO_2 are 91 $\mu g/m^3$ based on a 24-hour averaging time; 512 $\mu g/m^3$ based on a 3-hour averaging time; and 20 $\mu g/m^3$ based on an annual averaging time. The baseline date is the date on which a source subject to the PSD regulations filed a permit application to construct or modify in an area designated attainment or unclassifiable under Section 107(d)(1) of the Clean Air Act. The baseline date has been set for the State of Massachusetts which is the Section 107 designated attainment area where the sources subject to these revisions are located. The date is August 4, 1978 which was set by the PSD application filed by the Massachusetts Municipal Wholesale Electric Company (MMWEC).

The MMWEC Plant consumes increment in part of the same area that Texon, Inc. of South Hadley consumes increment. A conservative mathematical modeling analysis of the predicted combined increment consumption shows that the increments are not in danger of being violated.

SO_2 data from six monitoring stations were examined for the years 1978 and 1979. Based on these data EPA determined maximum background levels of SO_2 in the two county area of 31 $\mu g/m^3$ (annual average), 179 $\mu g/m^3$ (24-hour average) and 452 $\mu g/m^3$ (3-hour average).

The mathematical modeling analysis predicted that four sources would cause violations of ambient air quality standards if allowed to burn 2.2% sulfur fuel oil. Therefore, in its proposed rulemaking EPA proposed to disapprove the burning of higher sulfur fuel oil at the following sources: Butler and Ullman, Inc., Hadley; Esleeck Manufacturing Co., Montague; Strathmore Paper Co., Montague; and Millers Falls Paper Co., Millers Falls.

EPA received three comments during the 30 day comment period. One comment submitted by the Massachusetts Department effects EPA's decision on Butler and Ullman, Inc., Hadley, Massachusetts. The Massachusetts Department submitted corrected annual fuel use data for this source. EPA then re-analyzed this source using the corrected data, and found that no violations of air quality standards were predicted by the mathematical models. Therefore, EPA is approving the burning of 2.2% sulfur fuel oil at Butler and Ullman, Inc.

Comments were also received from Miller Falls Paper Company and Esleeck Manufacturing Company. These two sources are investigating any measures which may be taken to gain approval to burn 2.2% sulfur fuel oil. The Massachusetts Department has indicated that Strathmore Paper Company is also investigating alternative measures. If the Massachusetts Department submits information (for example, ambient air monitoring data or evidence that SO_2 control equipment has been installed) at a later date which demonstrates that air quality standards will be maintained, EPA will again consider approval of these sources. EPA is disapproving these three sources in this final rule.

Based on the mathematical modeling performed and comments received EPA is approving the revision for all sources located in Hampshire and Franklin Counties rated at less than 100 million Btu per hour to burn 2.2% sulfur fuel oil with the exception of the following sources which EPA is disapproving: Esleeck Manufacturing Company, Montague; Strathmore Paper Company, Montague; Millers Falls Paper Company, Millers Falls.

EPA finds good cause for making this revision effective immediately for the following reasons:

1. The implementation plan is already in effect under State Law and poses no additional regulatory burdens.

2. The immediate use of less expensive higher sulfur fuel oil will ease the economic burden of burning residual fuel oil.

Under Section 307(b)(1) of the Clean Air Act, judicial review of this SIP revision is available *only* by the filing of a petition for review in the United States Court of Appeals for the appropriate circuit within 60 days from today. Under Section 307(b)(2) of the Clean Air Act, the requirements which are the subject of today's notice may *not* be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

Under Executive Order 12044, EPA is required to judge whether a regulation is "significant" and therefore subject to the procedural requirements of the Order or whether it may follow other specialized development procedures. EPA labels these other regulations "specialized". I have reviewed this regulation and determined that it is a specialized regulation not subject to the procedural requirements of Executive Order 12044.

After evaluation of the State's submittal, the Administrator has determined that the Massachusetts revision meets the requirements of the Clean Air Act and 40 CFR Part 51. Accordingly, this revision is approved as a revision to the Massachusetts SIP.

Authority: Section 110(a) of the Clean Air Act, as amended, 42 U.S.C. 7410.

Dated: January 13, 1981.

Douglas M. Costle,

Administrator.

Note.—Incorporation by reference of the State Implementation Plan for the State of Massachusetts was approved by the Director of the Federal Register on July 1, 1980.

Part 52 of Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

Subpart W—Massachusetts

1. Section 52.1120, Paragraph (c) is amended by adding subparagraph (33) as follows:

§ 52.1120 Identification of plan.

* * * * *

(c) * * *

(33) A revision to Regulation 310 CMR 7.05(1) (formerly Regulation 5.1) "Sulfur Content of Fuels and Control Thereof" for the Pioneer Valley Air Pollution Control District submitted by the Commissioner of the Massachusetts Department of Environmental Quality Engineering on March 2, 1979.

2. Section 52.1125, paragraph (b) is amended by adding the following paragraph after the words "Mount Tom Generating Station, Holyoke":

§ 52.1126 Control strategies: sulfur oxides.

* * * * *

(b) Massachusetts Regulation 310 CMR 7.05(1)(e)(3) for Pioneer Valley, as submitted on March 2, 1979, which allows sources in Hampshire and Franklin Counties rated at less than 100 million Btu per hour heat input capacity to burn fuel oil having a sulfur content of not more than 1.21 pounds per million Btu heat release potential (approximately equivalent to 2.2% sulfur content) is approved for all such sources with the exception of:

Esleeck Manufacturing Co., Montague
Strathmore Paper Co., Montague
Millers Falls Paper Co., Millers Falls.

[FR Doc. 81-1852 Filed 1-16-81; 8:45 am]

BILLING CODE 6560-38-M

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40 CFR Part 52

[A-2-FRL 1626-8]

Approval and Promulgation of Implementation Plans; New Jersey

AGENCY: Environmental Protection Agency.

ACTION: Final rule related notice.

SUMMARY: EPA, under the provisions of a federally promulgated regulation published in the June 4, 1979, Federal Register (44 FR 31979), and corrected in the July 2, 1979 Federal Register (44 FR 38471), requires the State of New Jersey to submit to EPA a copy of the permit application for specific coal conversions, together with an air quality analysis employing methodology acceptable to EPA. On November 26, 1980 the New Jersey Department of Environmental Protection submitted the permit and an air quality analysis for the conversion from oil to coal at unit 8 of Atlantic City Electric Company's Deepwater Generating Station, Deepwater, New Jersey. EPA has reviewed the impact of the proposed conversion and determined on the basis of the air quality modeling results that the proposed coal conversion will not interfere with the attainment or maintenance of air quality standards and will not cause any Prevention of Significant Deterioration (PSD) increment to be exceeded.

FOR FURTHER INFORMATION CONTACT: William S. Baker, (202) 284-2517.

(Secs. 110 and 301 of the Clean Air Act, as amended (42 U.S.C. 7410, 7601))

Dated: January 8, 1981.

Charles S. Warren,

Regional Administrator, Environmental Protection Agency.

[FR Doc. 81-1776 Filed 1-19-81; 8:45 am]

BILLING CODE 6560-38-M

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40 CFR Part 205

[N-FRL-1517-8]

Noise Emission Standards for Transportation Equipment; Motorcycles and Motorcycle Exhaust Systems

Correction

In FR Doc. 80-40478, at page 86694, in the issue of Wednesday, December 31, 1980, on page 86723, in the first column, the first full paragraph, the last line, insert the word "except" between the words "section" and "with".

BILLING CODE 1505-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Assistant Secretary for Health

42 CFR Part 52

Extension of Applicability Provisions of 42 CFR Part 52 to Include the Research Grant Program of the National Center for Health Care Technology; Technical Amendment

AGENCY: National Center for Health Care Technology, Office of Health Research, Statistics, and Technology, Public Health Service.

ACTION: Final rule; technical amendment.

SUMMARY: The National Center for Health Care Technology, Office of Health Research, Statistics, and Technology, Public Health Service (NCHCT/OHRST/PHS) by publishing this technical amendment of 42 CFR Part 52, Grants for Research Projects, incorporates a program of research grants authorized by section 309(b) of the Public Health Service Act (PHSA) into the group of programs to which Part 52 applies. Paragraph (b) of section 309 authorizes a program of grants to support research on health care technologies. This research grant program is to be administered by the NCHCT. The amendment to 42 CFR Part 52 does not expand the scope of the current regulations to include a new type of research project. Rather it indicates that in addition to grants for research on health care technologies made under sections 301, 303 and other provisions of the PHSA enumerated in the regulation, Part 52 will also apply to grants for such research authorized by section 309(b). No further amendments to Part 52, beyond that described, are necessary to implement this grant program.

The Department is not requesting public comment on the amended Part 52 since no substantive change is being made in the grant award procedures set forth in this regulation. It is a well-known and long-established rule of broad applicability including applicability to research on health care technologies and is familiar to the public and the scientific community which will seek support for grants authorized by section 309(b). There have been prior opportunities for public comment when substantive changes have been made in the rule.

EFFECTIVE DATE: January 19, 1981.

FOR FURTHER INFORMATION CONTACT: Norman Weissman, Ph.D., Associate Director of Extramural Research/NCHCT, Room 17A-29, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443-1620.

Dated: December 17, 1980.

Julius B. Richmond,

Assistant Secretary for Health and Surgeon General.

Approved: January 13, 1981.

Patricia Roberts Harris,

Secretary.

Part 52, Grants for Research Projects, of Title 42 of the Code of Federal Regulations is hereby amended by

adding the following citation to the end of the Statement of Authority, "Sec. 309(b), 92 Stat. 3447 (42 U.S.C. 242n)," and by adding a paragraph (8) to § 52.1(a) to read as follows:

§ 52.1 [Amended]

(a) * * *

(8) Health care technology assessments, including studies of the safety, efficacy, effectiveness, and cost effectiveness of particular technologies, their social, ethical, and economic impacts, as well as studies of methods of dissemination of information about technologies, and factors affecting the use of technologies as authorized by section 309(b) of the Act (42 U.S.C. 242n).

* * * * *

The word "and" is removed from the end of paragraph 52.1(a)(6) and inserted instead at the end of paragraph 52.1(a)(7), following a semicolon which replaces the period at the end of paragraph 52.1(a)(7).

[FR Doc. 81-1869 Filed 1-16-81; 8:45 am]

BILLING CODE 4110-85-M

Social Security Administration

45 CFR Part 233

Financial Assistance Programs; Need and Amount of Assistance; Using Equity Value for Resources

AGENCY: Social Security Administration, HHS.

ACTION: Final rule; extension of grace period.

SUMMARY: On July 8, 1980, this final regulation which requires that the value of resources be determined based on equity was published in the **Federal Register** (45 FR 45911). A 90-day grace period for quality control purposes was provided for States to amend their rules and procedures. Based on information received after the final regulation was published, it is apparent that the 90-day grace period was not sufficient for State and local welfare agencies to take appropriate actions. Therefore, we are extending the grace period through January 31, 1981, so that it now incompasses 6 full months after publication of the final regulation.

EFFECTIVE DATE: This regulation was effective July 8, 1980. However, the grace period has been extended to a full 6 months during which States that have to amend their rules and procedures in order to comply with this regulation will not be adversely affected by quality control sanctions. States will have through January 31, 1981, to implement the changes.

FOR FURTHER INFORMATION CONTACT:
Mrs. Juanita Henderson, Office of Family Assistance, Social Security Administration, 2100 Second Street, S.W., Washington, D.C. 20024, telephone (202) 245-2021.

(Secs. 402 and 1102 of the Social Security Act, as amended, 49 Stat. 629 as amended, 49 Stat. 647 as amended; 42 U.S.C. 602 and 1302)

(Catalog of Federal Domestic Assistance Program No. 13.808, Assistance Payments—Maintenance Assistance (State Aid).)

Dated: December 22, 1980.

William J. Driver,

Commissioner of Social Security.

Approved: January 13, 1981.

Patricia Roberts Harris,

Secretary of Health and Human Services.

[FR Doc. 81-1868 Filed 1-16-81; 8:45 am]

BILLING CODE 4110-07-M

COMMUNITY SERVICES ADMINISTRATION

45 CFR Part 1069

Interpretive Ruling and Waiver of Special Conditions

AGENCY: Community Services Administration.

ACTION: Notice of interpretive ruling and waiver of certain grantee special conditions.

SUMMARY: The Community Services Administration is publishing an interpretive ruling issued by the General Counsel on January 12, 1981, regarding CSA grantee lobbying prohibitions. This interpretive ruling provides the Agency's legal position on the effect of certain lobbying prohibitions attached to CSA's appropriations acts for fiscal 1980 and 1981 (Pub. L. 96-123, Pub. L. 96-369 and H.J.R. 644 (12/15/80)). The purpose of publishing this interpretive ruling is to inform CSA grantees of the effect of the statutory lobbying prohibitions on present CSA regulations (45 CFR 1069.6). This notice and interpretive ruling also serves to waive special conditions attached to CSA grantees' fiscal 1980 and 1981 grants relating to lobbying prohibitions.

FOR FURTHER INFORMATION CONTACT:
Thomas J. Mack, General Counsel, Community Services Administration, Room 546-I, 1200 19th Street, N.W., Washington, D.C. 20506, Telephone: (202) 254-6004.

(Sec. 602, 78 Stat. 530 (42 U.S.C. 2942))

Richard J. Rios,

Director.

Notice of Interpretive Ruling and Waiver of Special Conditions

1. *Interpretive Ruling*

"Memorandum to: Richard J. Rios, Director
From: Thomas J. Mack, General Counsel
Subject: Interpretive Ruling on Grantee Lobbying Prohibitions

Continuing resolutions providing appropriations for CSA and other agencies for fiscal 1981 (Pub. L. 96-369 and H.J.R. 644) incorporate a two-paragraph lobbying prohibition provision found in H.R. 4389 as passed by the House of Representatives on August 2, 1979. Identical provisions were passed by the House on August 27, 1980 in H.R. 7996. The latter bill is also incorporated in Pub. L. 96-369 and H.J.R. 644, but the relevant portions of these two acts make H.R. 4389's lobbying prohibition applicable to CSA. This prohibition is also applicable to fiscal 1980 appropriations through Pub. L. 96-123.

Section 407 of H.R. 4389 provides:

"Sec. 407. No part of any appropriation contained in this Act shall be used, other than for normal and recognized executive-legislative relationships, for publicity or propaganda purposes, for the preparation, distribution, or use of any kit, pamphlet, booklet, publication, radio, television, or film presentation designed to support or defeat legislation pending before the Congress, except in presentation to the Congress itself. No part of any appropriation contained in this Act shall be used to pay the salary or expenses of any grant or contract recipient or agent acting for such recipient to engage in any activity designed to influence legislation or appropriations pending before the Congress."

The Office of General Counsel has reviewed the legislative history behind Section 407 for guidance on how this provision should be implemented in the case of CSA. While other agencies receiving appropriations subject to H.R. 4389 may have no difficulty, CSA's statutory obligations create a question of conflict. The second paragraph of the provision, if read without regard to the first paragraph or to legislative history, could be interpreted to prevent all contact between CSA grantees and Congress regarding legislation, even where requested by Congress itself.

Many of CSA grantees have contract responsibilities which include advocacy on behalf of the poor, i.e., seeking those changes necessary to improve conditions for the poor, changes which often necessitate passage, elimination or amendment of laws, regulations, etc.

Congress has by statute mandated CSA to stimulate a better focusing of Federal resources on behalf of the poor. (Sec. 101, 201, Economic Opportunity Act of 1964, as amended).

Given this mandate, CSA has an obligation to interpret both its own statutory obligation and the more general lobbying prohibition in a manner which gives reasonable effect to both. While no direct legislative history exists, the issue is easily resolved when reference is made to comparable lobbying prohibitions. While Congress has often "prohibited" lobbying, it has never intended to eliminate contact between its members and affected constituencies on relevant pending legislation. At least two other Federal statutes with prohibitions comparable to those contained in Section 407 have been interpreted by the General Accounting Office in a manner which allows CSA to give reasonable effect to Section 407 and its own enabling legislation. In 18 U.S.C. 1913, a penal statute in effect since 1919, Congress prohibited Federal agency lobbying:

"No part of the money appropriated by an enactment of Congress shall in the absence of express authorization by Congress, be used directly or indirectly to pay for any personal service, advertisement, telegram, telephone, letter, printed or written matter, or other device, intended or designed to influence in any manner a Member of Congress, to favor or oppose, by vote or otherwise, any legislation or appropriation by Congress, whether before or after the introduction of any bill or resolution proposing such legislation or appropriation; but this shall not prevent officers or employees of the United States or of its departments or agencies from communicating to Members of Congress on the request of any Member or to Congress, through the proper official channels, requests for legislation or appropriations which they deem necessary for the efficient conduct of the public business.

"Whoever, being an officer or employee of the United States or of any department or agency thereof, violates or attempts to violate this section, shall be fined not more than $500 or imprisoned not more than one year, or both; and after notice and hearing by the superior officer vested with the power of removing him, shall be removed from office or employment."

The Comptroller General has stated that the primary purpose of Section 1913 is to prohibit Government officials from making appeals to the public to in turn contact their representatives with respect to legislation, but not to prohibit agency officials from expressing their views and agency policy on pending legislation and appropriation matters. (B-196550 (12/3/79), at 4). In short, Government officials cannot participate in grassroots lobbying. Another lobbying prohibition applicable to any and all appropriations has been enacted since 1973 as Section 607(a) of the Treasury, Postal Service, and General Government Appropriations Act. That section states:

"No part of any appropriation contained in this or any other Act, or of the funds available for expenditure by any corporation or agency, shall be used for publicity or propaganda purposes designed to support or defeat legislation pending before Congress."

As with 1913, the Comptroller General has interpreted 607(a) to apply primarily to expenditures involving appeals addressed to members of the public suggesting that they contact their elected representatives and indicate support of or opposition to pending legislation, or urge their elected representatives to vote in a particular manner. (B-196559, at 3).

Thus, the Section 1913 and Section 607(a) statutory prohibitions, which are similar to H.R. 4389's Section 407 prohibition have been found to prohibit primarily grassroots lobbying by Federal officials. It is unclear whether Section 1913 and Section 607(a) apply to grantees of a Federal agency, although Comptroller General decisions appear to conclude the Section 1913 prohibition does not, while the Section 607(a) prohibition may apply to grantees in certain instances.

It is General Counsel's opinion that the restrictions of Section 407 of H.R. 4389 are properly subject to the same interpretation as GAO has given 1913 and 607(a) except that Congress has made it clear by adding the second paragraph of Section 407 that such prohibitions apply to Federal grantees as well as Federal agencies. Congress has instructed the agencies receiving appropriations under H.R. 4389 to insure that its grantees do not participate in grassroots lobbying, at least as regards pending legislation before the United States Congress, but it did not intend to cut off all contact between grantees and Congress with regard to such legislation.

A recent communication from Senator Warren Magnuson, Chairman of the Senate Labor, Health and Human Services and Education Appropriations Subcommittee confirms this Office's position. The Senator, in a letter to the Director of CSA, stated that his Committee agreed to the language of Section 407 of H.R. 4389, in large part, to restrict the use of Government funds to transport groups of people to Washington, D.C., for the purpose of affecting legislation. The Senator stated further:

Congress has mandated that the Community Services Administration assist this Nation's poor by serving, training, and representing them as stated in the Economic Opportunity Act of 1964 and ensuing amendments. The Senate Appropriations Committee did not intend by the above-quoted [407] language for CSA and its grantees to be prevented from carrying out its mandate to represent the poor in the following ways:

1. To respond to any requests for information from Members of Congress.
2. To provide educational information to Congress and the public in general on the effects of legislative issues on individuals and/or communities.
3. To provide information to Congress concerning legislative issues which directly affect the continued existence of CSA or its grantees.

The Senator concluded that allowance of these activities was consistent with Congressional intent that CSA assist the poor as well as with the guidelines that the Internal Revenue Service applies for non-profit organizations.

The letter from Senator Magnuson substantiated the General Counsel's conclusion that 407, like 1913 and 607(a) is intended to prohibit the Agency and its grantees from using CSA funds for grassroots lobbying or for financing large groups of people coming to Washington to lobby Congress directly.

Given the conclusions above, this Office does not believe CSA need amend its present rule on grantee lobbying activities, found at 45 CFR 1069.6. That regulation already states that CSA funds may not be used to support:

(3) Any campaign of advertising carried on through commercial media for the purpose of influencing the passage or defeat of legislation.

(4) Any campaign of letter writing, of other mass communications, or of mass visits to individual members of Congress or State legislatures for the purpose of influencing the passage or defeat of legislation. This restriction does not prohibit purely informational and educational activities involving target areas and groups. (45 CFR 1069.6-2(a) (3) and (4).)

The above regulatory provisions will continue to be interpreted to preclude the use of CSA appropriations for direct appeals addressed to the public suggesting that they contact their elected officials and indicate their support or opposition to pending legislation, i.e., appeals to members of the public for them in turn to urge their

representatives to vote in a particular manner.

The obvious question that arises from this conclusion is that if our regulation already prohibited such grassroots activities, why would Congress attach the prohibition in an appropriation act. Congress put the prohibition on an appropriation bill that funded a number of Federal agencies including CSA. Congress obviously did not make a study or a judgment of CSA's regulations or the regulations of the other agencies funded by the appropriation acts. It merely attached the prohibition to apply to all of the affected agencies, a number of which did not have controlling regulations. Congress merely legislated a prohibition that CSA already abides by.

This Office believes that publication of this interpretive ruling as a Notice in the **Federal Register** is the appropriate means of notifying grantees of the effect of Section 407 on CSA's present lobbying regulation. This approach is preferable since no regulatory amendment to 1069.6–2(a) (3) and (4) is required. It is also preferable since it provides the speediest vehicle for notifying grantees, many of whom are presently expending fiscal 1980 and 1981 funds at this time and are presently confused and concerned about the impact of 407 and of H.R. 4389. This point is particularly relevant since the present appropriations act (H.J. Res. 644) which contains reference to H.R. 4389 expires no later than June 5, 1981.

Finally, many grantees who have received fiscal 1980 and 1981 funds presently have a special condition in their grant that reflects a broader interpretation of 407. These special conditions were attached prior to General Counsel's conclusions regarding statutory provisions 607(a) and 18 U.S.C. 1913 and the receipt of the letter from Senator Magnuson.

These special conditions should be waived in the Federal Register Notice so that all grantees will be bound by the same interpretation of Section 407 and 1069.6–2(a) (3) and (4)."

2. *Waiver of Special Conditions*

Based on the interpretive ruling of the General Counsel, the Director is waiving special conditions attached to CSA grantees' fiscal 1980 and 1981 grants relating to grantee lobbying prohibitions. Grantees, instead, are to comply with the above interpretive ruling.

[FR Doc. 81–1889 Filed 1–16–81; 8:45 am]
BILLING CODE 6315–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Human Development Services

45 CFR Part 1300

Consolidated Grants to Insular Areas

AGENCY: Office of Human Development Services (HDS), Department of Health and Human Services (HHS).

ACTION: Final rule.

SUMMARY: These regulations implement the program of consolidated grants to the Insular Areas authorized by Title V of Pub. L. 95–134, commonly known as the Omnibus Territories Act, as amended. Title V authorizes each Federal agency to consolidate into a single grant award any or all grant funds to the Virgin Islands, Guam, American Samoa, the Trust Territory of the Pacific Islands, and the Commonwealth of the Northern Mariana Islands (the "Insular Areas"). The purpose of these regulations is to minimize the burden caused by existing application and reporting procedures for certain HDS formula grants for social services programs awarded to the Insular Areas.

EFFECTIVE DATE: These regulations are effective January 19, 1981, rather than 30 days thereafter, because they grant an exemption from requirements for multiple grant awards to certain Insular Areas. Waiver of the 30 day period will not adversely affect any Insular Area. However, for an exception affecting §§ 1300.4 and 1300.7, see Supplementary Information.

FOR FURTHER INFORMATION CONTACT: Mrs. Johnnie U. Brooks, Room 722E, HHH Building, Department of Health and Human Services, 200 Independence Avenue, SW., Washington, D.C. 20201, (202) 472–4415.

SUPPLEMENTARY INFORMATION:

Background

Although the name "Omnibus Territories Act" is not listed as the popular name of the law in Pub. L. 95–134, we are using this name since it is a convenient shorthand and since the law has been referred to throughout the government as the Omnibus Territories Act. Section 510 of Pub. L. 95–134, the Omnibus Territories Act, as amended, permits Federal agencies to revise existing application and reporting procedures for certain grant-in-aid programs available to the Virgin Islands, Guam, American Samoa, the Trust Territory of the Pacific Islands, and the Commonwealth of the Northern Mariana Islands (The "Insular Areas"). Specifically Section 501 permits:

(a) A Federal agency to consolidate any or all grants to each of these Insular Areas except those grants used to make direct payments to individuals. A consolidated grant for any Insular Area cannot be less than the sum of all grants which such area would otherwise be entitled to receive for such year;

(b) A Federal agency to waive requirements for matching funds, applications, and reports with respect to the consolidated grant; and

(c) An Insular Area to use the consolidated grant funds for any purpose or purposes authorized under any of the grant programs that have been consolidated.

Participation by an Insular Area in the consolidated grant program is voluntary. If an Insular Area does not wish to participate in the consolidated grant program, it must follow current application and reporting procedures to receive funds for services under titles I, IV–A, IV–B, X, XIV, XVI (AABD) and XX of the Social Security Act. At the present time only the Virgin Islands, Guam and the Commonwealth of the Northern Mariana Islands are eligible to receive consolidated grants under these titles.

The Secretary of Health and Human Services decided to allow consolidation of only the formula grant funds administered by the Public Health Service and the Office of Human Development Services (HDS) and decided not to waive the current matching, application, and reporting requirements. These final regulations apply only to formula grant funds available for social services from the Office of Human Development Services to the Insular Areas. Final regulations for consolidated grant awards from the Public Health Service were published in the **Federal Register** on November 9, 1979.

HDS is also developing guidelines that give specific procedures on how to apply for a report on the use of the consolidated funds. We expect that by the end of December 1980 these guidelines will be ready to submit for official OMB clearance with respect to reporting and recordkeeping requirements. Sections 1300.4, Grant application procedures, and 1300.7, Reporting requirements, will not take effect until the guidelines receive OMB clearance. The Insular Areas will be notified when official OMB clearance is obtained.

Affected HDS Formula Grants

Subsequent to passage of Pub. L. 95–134, Congress enacted legislation (Section 102(h) of Pub. L. 95–478) exempting from consolidation any

formula grants authorized by the Older Americans Act of 1965, as amended. Consequently, an Insular Area may only apply for a grant consolidating funds available for social services under the following titles of the Social Security Act:

Title I—Grants to States for Old-Age Assistance and Medical Assistance for the Aged
Title IV, Part A—Aid to Families With Dependent Children
Title IV, Part B—Child Welfare Services
Title X—Grants to States for Aid to the Blind
Title XIV—Grants to States for Aid to the Permanently and Totally Disabled
Title XVI—Grants to States for Aid to the Aged, Blind or Disabled
Title XX—Grants to States for Services (for the purposes authorized under Section 2002(a)(2)(C) of the Act)

Additional formula grant programs may be added in the future.

Specific Information About HDS Formula Grants

The Insular Areas are eligible to receive funds for services under several Social Security Act titles:

1. Under authority of titles I, IV–A, X, XIV and XVI(AABD), funds are made available to the Virgin Islands and Guam for income maintenance payments and the provision of social services to eligible individuals. Section 1108 of the Social Security Act imposes a ceiling on the amount of such Federal funds allotted to each of the Insular Areas under these titles. Although the Commonwealth of the Northern Mariana Islands is authorized to participate in programs under these titles, at this time it is still in its early stages of developing social services programs.

The Department's Social Security Administration makes grant awards to the Virgin Islands and Guam for their income maintenance programs in accordance with Section 1108. If the Virgin Islands or Guam decides to use a portion of the Section 1108 funds for the provision of social services, HDS awards the grant for services. Of the funds available under Section 1108 only those awarded by HDS for social services are eligible for consolidation under Pub. L. 95–134.

2. Title IV–B (Child Welfare Services) funds are eligible for consolidation under Pub. L. 95–134 to the Virgin Islands, Guam and the Commonwealth of the Northern Mariana Islands.

3. Prior to enactment of Pub. L. 96–272 ("Adoption Assistance and Child Welfare Act of 1980") on June 17, 1980, Section 2002(a)(2)(C) of the Act authorized certain unused title XX funds to be allotted to the Virgin Islands and Guam if any of the 50 States and the District of Columbia certified that they would not use all of their title XX allotment. This did not authorize these Insular Areas to participate in the title XX social services program. Pub. L. 96–272 amended Section 2002(a)(2)(C) of the Act to make a separate allocation available to the Virgin Islands and Guam, rather than an amount dependent on funds unused by the States, beginning in fiscal year 1980. In addition, Pub. L. 96–272 makes funds available to the Commonwealth of the Northern Mariana Islands under Section 2002(a)(2)(C) of the Act. Pub. L. 96–272 retains the requirement in Section 2002(a)(2)(C) of the Act that the Virgin Islands and Guam spend the Section 2002(a)(2)(C) funds they receive on behalf of services authorized under titles I, IV–A, X, XIV and XVI (AABD) of the Act; the Commonwealth of the Northern Mariana Islands must spend its Section 2002(a)(2)(C) funds on services provided to title IV–A recipients or to other individuals as determined by the Secretary.

However, notwithstanding the above provisions or any other provisions of law to the contrary, Pub. L. 95–348 amended Pub. L. 95–134 to allow an Insular Area to use the funds received under a consolidated grant for any of the programs included in the consolidated grant (including the use of funds authorized by Section 2002(a)(2)(C) of the Act for services provided under title IV–B of the Act).

Response to the NPRM

A Notice of Proposed Rulemaking was published on April 7, 1980 (45 FR 23477) followed by a 45-day comment period. The Government of Guam sent its general support of the proposed regulations and requested the Secretary to reconsider the decision not to waive the matching funds requirement. This decision was reconsidered. However, consistent with her policy to encourage increases, not decreases, in services, the Secretary chose to stay with the Department's original decision not to waive the matching funds requirement. No other comments were received as a result of the NPRM.

Differences Between the Proposed Regulations and the Final Rule

The final rule includes the following changes:

1. Throughout the final rule, wherever a cross-reference such as "§ 1300.2, Scope," appeared in the NPRM, the cross-reference is changed to "§ 1300.2." The title of the section has been dropped.

2. Table of Contents—Reflects the title change for § 1300.5 from "Matching Funds Requirements" to "Fiscal and Administrative Requirements."

3. Authority—Reflects the addition of "a" at the end of the statutory citation as follows: 48 U.S.C. 1469a.

4. Sections 1300.1, 1300.2, 1300.4, 1300.5, 1300.6 and 1300.7 are recoded for clarity.

5. Section 1300.1—A statement of purpose is added.

6. Section 1300.2—A new parenthetical phrase is added to paragraph (b) to read as follows: Title XX—Grants to States for Services (for the purposes authorized under Section 2002(a)(2)(C) of the Act). This phrase is added to clarify that Section 2002(a)(2)(C) includes an entitlement of funds to certain Insular Areas (including the Virgin Islands, Guam, and the Commonwealth of the Northern Mariana Islands) even though the Insular Areas are not authorized to have a title XX program.

7. Section 1300.3—A definition of single grant application is added to clarify the responsibility of the Insular Area, as distinct from the consolidated grant award which is the responsibility of the Department.

8. Section 1300.4—The text is changed slightly, but no substantive change in policy is intended.

9. Section 1300.5—The title of the Section is changed from "Matching Funds Requirements" to "Fiscal and Administrative Requirements". A paragraph (b) is added to affirm the requirement in § 501(b) of Pub. L. 95–134 that any consolidated grant for any Insular Area shall not be less than the sum of all grants which such area would otherwise be entitled to receive for such year. A paragraph (c) is also added to affirm that the provisions of 45 CFR Part 74, establishing uniform administrative requirements and cost principles, shall apply to all consolidated grants made under this Subpart.

10. The final rule drops the provision in the NPRM that funds made available under title XX can only be used for social services authorized by titles I, IV–A, X, XIV, or XVI (AABD). Based on a legislative amendment (Section 9 of Pub. L. 95–348) to Pub. L. 95–134, the final regulations allow any funds from a consolidated grant award to be spent for any of the programs included in the consolidated grant (including the use of funds authorized by Section 2002(a)(2)(C) of the Act for services provided under title IV–B of the Act.)

11. Section 1300.7—A paragraph (b) is added to affirm the requirement in § 501(d) of Pub. L. 95–134 for the Department's continued responsibilities

to provide adequate procedures for accounting, auditing, evaluating, and reviewing any programs or activities receiving benefits from any consolidated grant.

(Sec. 501 of Title V of Pub. L. 95–134, the Omnibus Territories Act, as amended, 48 U.S.C. 1469a)

(Catalog of Federal Domestic Assistance Programs No. 13.642, Social Services for Low Income and Public Assistance Recipients; No. 13.645, Child Welfare Services.)

Dated: November 25, 1980.

Cesar A. Perales,

Assistant Secretary for Human Development Services.

Approved: January 3, 1981.

Patricia Roberts Harris,

Secretary.

PART 1300—GENERAL REGULATIONS

Title 45 is amended to add a new Part 1300 consisting of Subpart A to read as follows:

Subpart A—Consolidated Grants to Insular Areas

Sec.

1300.1 Basis and purpose.
1300.2 Scope.
1300.3 Definitions.
1300.4 Grant application procedures.
1300.5 Fiscal and administrative requirements.
1300.6 Use of consolidated grant funds.
1300.7 Reporting requirements.

Authority: Sec. 501 of Title V of Pub. L. 95–134, the Omnibus Territories Act, as amended, 48 U.S.C. 1469a.

Subpart A—Consolidated Grants to Insular Areas

§ 1300.1 Basis and purpose.

(a) These regulations implement Title V of Pub. L. 95–134, the Omnibus Territories Act, as amended, by allowing an Insular Area: (1) to submit a single application and other supporting documentation in order to receive a single grant award consolidating the formula grant funds available for social services under certain titles of the Social Security Act; and (2) to allocate the funds among one or more of the various titles consolidated under the grant awards.

(b) The purpose of this Subpart is to minimize the burden caused by existing application and reporting procedures for certain formula grants awarded to the Insular Areas by the Office of Human Development Services.

§ 1300.2 Scope.

(a) These regulations apply to the consolidation of formula grant funds for social services available to the Virgin Islands, Guam, American Samoa, the Trust Territory of the Pacific Islands, and the Commonwealth of the Northern Mariana Islands under the Social Security Act titles listed in paragraph (b) of this section.

(b) The following formula grant funds for social services may be consolidated under these regulations:

(1) Title I—Grants to States for Old-Age Assistance and Medical Assistance for the Aged.

(2) Title IV, Part A—Aid to Families with Dependent Children.

(3) Title IV, Part B—Child Welfare Services.

(4) Title X—Grants to States for Aid to the Blind.

(5) Title XIV—Grants to States for Aid to the Permanently and Totally Disabled.

(6) Title XVI—Grants to States for Aid to the Aged, Blind, or Disabled.

(7) Title XX—Grants to States for Services (for the purposes authorized under Section 2002(a)(2)(C) of the Act).

§ 1300.3 Definitions.

(a) "Assistant Secretary" means the Assistant Secretary for Human Development Services.

(b) "Single Grant Application" means the document or documents an Insular Area must submit to HDS in any fiscal year to apply for a consolidated grant award.

(c) "Consolidated Grant Award" means the single quarterly grant award to an Insular Area, the funds for which are derived from the allocations under the programs specified in Section 1300.2

(d) "Insular Area" means the Virgin Islands, Guam, American Samoa, the Trust Terrritory of the Pacific Islands, and the Commonwealth of the Northern Mariana Islands.

§ 1300.4 Grant application procedures.

(a) An Insular Area may apply for a grant award consolidating two or more of the formula grant funds specified in § 1300.2(b) by submitting a single grant application, budget, and any supporting documentation, rather than the various applications and budgets which must be submitted under any of these Social Security Act titles.

(b) The single application must be submitted within time limits and in the format prescribed by the Assistant Secretary in guidelines.

§ 1300.5 Fiscal and administrative requirements.

(a) Grant funds awarded under a consolidated grant are subject to the matching funds requirements applicable to the Social Security Act titles under which the funds are made available.

(b) Any consolidated grant for any Insular Area cannot be less than the sum of all the grants which such area would otherwise be entitled to receive for such year.

(c) The provisions of Part 74 of this title establishing uniform administrative requirements and cost principles, shall apply to all consolidated grants made under this Subpart.

§ 1300.6 Use of consolidated grant funds.

(a) An Insular Area may use funds awarded under a consolidated grant for that fiscal year for any social services authorized by any of the titles listed in § 1300.2(b) that are included in the consolidated grant award.

(b) Except as provided in these regulations, an Insular Area that receives funds under a consolidated grant made under this Subpart must meet the statutory, regulatory, and administrative requirements applicable to the titles for which those funds are spent.

§ 1300.7 Reporting requirements.

(a) An Insular Area which receives a consolidated grant under this Subpart must submit a single report on the use of the funds to the Assistant Secretary. The single report must be in the format and contain the information prescribed by the Assistant Secretary in guidelines.

(b) Nothing in paragraph (a) of this section shall preclude the Department from continuing to carry out its responsibility to provide adequate procedures for accounting, auditing, evaluation, and reviewing any programs or activities receiving benefits from any consolidated grant awarded under this Subpart.

[FR Doc. 81-1882 Filed 1-16-81; 8:45 am]
BILLING CODE 4110-92-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 15

[FCC 80-706]

Radio Frequency Devices; Order Granting Waiver

AGENCY: Federal Communications Commission.

ACTION: Order granting waiver.

SUMMARY: In 1979, the FCC promulgated rules to control the interference potential of electronic products to radio communications. Under these rules, personal computers manufactured after January 1, 1981 must be certificated by the Commission as a Class B Computing Device. In response to two petitions for special relief, the Commission granted a 3-month extension to two manufacturers

of personal computers. Delegated authority was granted to the Commission's Chief Scientist to grant similar short term waivers where the petitioner provided certain information.

EFFECTIVE DATE: December 4, 1980.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Herman Garlan or Sydney Bradfield, Office of Science and Technology, (202-653-8121 or 202-653-8131).

SUPPLEMENTARY INFORMATION:

Order Granting Waiver

Adopted: December 4, 1980.

Released: December 5, 1980.

By the Commission:

In the matter of petition by Apple Computer, Inc. and Heath Company for a limited extension of § 15.834 as it requires certification of personal computers, and peripherals capable of being attached to a personal computer, manufactured after January 1, 1981.

1. On October 11, 1979, the Commission released rules establishing technical standards and equipment authorization procedures for computing equipment.[1] These rules were revised on reconsideration. The revised rules were released on April 9, 1980.[2]

2. These computer rules establish two classes of computing equipment: Class B which is basically marketed for use in a residential environment; and, Class A for use in a commercial/industrial environment. They specify limits for conducted and radiated interference. They also specify the equipment authorization procedure to be used to demonstrate compliance. Finally, the rules provide a labelling procedure to make the purchaser aware of compliance with our rules and the interference potential of the equipment.

3. Among other things, these rules specifically classify personal computers and their peripheral devices as Class B computing equipment (Section 15.834(a)(1)) and require such equipment manufactured after January 1, 1981 be certificated [3] by the Commission (Section 15.834(a)).

4. Apple Computer, Inc. (Apple) on November 3, 1980, and Heath Company (Heath) on October 20, 1980, each filed requests for the Commission to delay the January 1, 1981, certification date for their products.[4] The Heath petition was put on public notice October 31, 1980. The Apple petition was put on public notice November 7, 1980. Comments regarding the Heath petition were received from Tandy Corporation (Tandy) on November 10, 1980.

5. Both the Heath and Apple petitions cite the fact that they have expended considerable sums of time and money in an effort to redesign their products to meet the new criteria, but that because of unforseen technical problems, and, in the case of Apple, delays in vendor deliveries, neither can guarantee the products they manufacture after January 1, 1981, will meet the Class B limits. In addition, both petitioners cite economic hardship as a result of their inability to manufacture their products if the Commission does not grant their petitions.

6. In its petition, Apple enumerated the exact nature of their redesign and procurement problems. In addition, Apple laid out a specific date beyond which they guarantee they will only manufacture and market products that comply with the Class B standards. Apple has also stated that as parts necessary to achieve compliance arrive at their manufacturing location they will immediately be installed in manufactured units, thereby reducing the degree of non-compliance for these future units in advance of the delay date. Finally, Apple has submitted to the Commission applications for certification on nine of their product line and has promised to provide the hardware for each of the products as soon as it is available.

7. We feel the petition from Apple has merit. In the First Report and Order establishing the limits we stated we would accept waivers in special hardship cases.[5] We also stated that, in the event a waiver were granted, we would require equipment produced under the waiver to bear a label indicating the equipment was likely to cause interference to radio and television reception. The wording specified in that order appears appropriate in this case:

> This equipment is marketed pursuant to a waiver of FCC Rules Part 15 Subpart J. Operation of this computer in a residential area is likely to cause objectionable interference to radio and TV reception, because it emits more radio frequency energy than the FCC Rules allow. If interference occurs, the user will be required to take all steps necessary to correct the interference.

8. In order to efficiently consider and act on any additional waiver requests for extensions of time by personal computer and peripheral manufacturers, delegated authority is hereby granted to the Chief Scientist to grant waivers of this type. The Chief Scientist shall base his decision on a petitioner satisfactorily providing the following information:

a. The steps taken by the manufacturer to meet the established date, and the reasons why the date cannot be met. The steps and reasons may be different for different products.

b. An exact timetable by which the manufacturer fully expects to have each product in compliance (including certification by the Commission).

c. An assurance by the manfacturer that equipment produced will include as many RF supression techniques and components that are possible during the waiver period.

9. In contrast to the Apple petition, Heath submitted relatively little information about its products. Although Heath did enumerate the approximate amount of money expended on the redesign and testing of their products to comply with the Commission's standards, they did not specifically propose a timetable around which its products will meet the standards. In addition, Heath did not indicate that as components of their products necessary for the standards to be met became available, they would utilize the newly arrived components to lessen the severity of the interference from the subsequently produced devices. In addition, Heath has not applied for certification of their products.

10. In their comments to the Heath petition, Tandy opposes the postponement of the January 1, 1981, certification date for only one manufacturer. Instead, Tandy believes the date should be postponed for the entire industry "to make for a smoother transition." There is no justification provided to support this argument.

11. Although the Heath petition did not contain all the elements enumerated in paragraph 8, we will grant them some extension of time for two reasons. First, they filed sufficiently ahead of the January 1, 1981, date to allow adequate Commission consideration. Second, Heath, unlike future petitioners did not have the benefit of the guidance of this order. If Heath desires time extension beyond that granted herein, we will consider additional petitions provided they contain the information requested in paragraph 8.

12. Accordingly, it is ordered that the date in Section 15.834(a) for certification of personal computers and accompanying peripheral equipment

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[1] First Report and Order in Docket 20780, adopted September 18, 1979, released October 11, 1979, 44 FR 59630, October 16, 1979.

[2] Order Granting in Part Reconsideration in Docket 20780, adopted March 27, 1980, released April 9, 1980, 45 FR 24134, April 9, 1980.

[3] The Commission's equipment authorization program is described in Part 2 Subparts I, J, K and L of our rules (47 CFR Part 2 Subpart I, J, K and L).

[4] Apple requested a ninety day delay; Heath requested a six month delay.

[5] See 44 FR 59530, October 16, 1979, at par. 47.

manufactured by Apple Computer, Inc. and the Heath Company is hereby stayed from January 1, 1981 to April 1, 1981 subject to the condition that each unit manufactured under this waiver carries the following warning label:

This equipment is marketed pursuant to a waiver of FCC Rules Part 15 Subpart J. Operation of this computer in a residential area may cause objectionable interference to radio and TV reception, because it emits more radio frequency energy than the FCC Rules allow. If interference occures, the user will required to take all steps necessary to correct the interference.

13. It is further ordered that, pursuant to § 1.427(b), since it relieves a regulatory restriction, this order shall become effective on December 4, 1980.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 81-1975 Filed 1-16-81; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 15

[FCC 80-709]

Radio Frequency Devices; Order Granting Waiver

AGENCY: Federal Communications Commission.

ACTION: Order granting waiver.

SUMMARY: The Commission has granted to manufacturers of personal computers a conditional waiver of its requirements for computing devices for certain interface units which can only be attached to a personal computer manufactured before January 1, 1981. The Commission also delegated authority to its Chief Scientist to grant similar waivers for peripherals that can only be attached to personal computers manufactured before January 1, 1981 and do not significantly increase the interference potential of the complete system to radio and TV reception.

EFFECTIVE DATE: December 4, 1980.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Herman Garlan or Sydney Bradfield, Office of Science and Technology, (202-653-8121 or 202-653-8131).

SUPPLEMENTARY INFORMATION:

Order Granting Waiver

Adopted: December 4, 1980.

Released: December 10, 1980.

By the Commission:

In the matter of Tandy Corporation petition for conditional waiver of Part 15, Sections 15.830, 15.832, and 15.834 for Radio Shack Computer Interface Device Models 26.1140, 26.1141, and 26.1142.

1. The Tandy Corporation on August 22, 1980, filed a petition for conditional waiver of Sections 15.830, 15.832, and 15.834 of Part 15 for its Radio Shack Computer Interface Device Models 26.1140, 26.1141, and 26.1142. These interface devices are a means of connecting various peripheral devices to Radio Shack Computer TRS 80 Model I for the purpose of expanding the capability of this TRS 80 Model I computer. Tandy asserts that these interface models are totally incompatible with any other computer marketed by Tandy. The only possible market for these interface devices according to Tandy, are the approximately 100,000 consumers who purchased TRS 80 Model I computers, but who did not buy the mentioned computer interface device. Tandy is accordingly seeking a waiver to permit it to continue manufacturing the said interface devices until January 1, 1983.

2. The subject petition was placed on public notice on September 8, 1980, FCC mimeo 35675, asking for comments by September 22, 1980. Comments were received from the Association of Maximum Service Telecasters, Inc. (MST) and from Texas Instruments (TI). Reply comments were received from Tandy on September 29, 1980.

3. Tandy states that when it sold the TRS 80 Model I computer, it assured its customers that the subject interfaces would be available in the future if the purchaser wanted to expand the capability of his basic TRS 80 Model I computer. The waiver sought by Tandy is to fulfill this promise and retain its credibility with its customers.

4. Tandy points out that this promise to its customers could be maintained in either of two ways. It could have accelerated its manufacturing and stock piled as many of these interface devices as it estimated it would sell within the next two years. This course of action is permitted under the Commission's computer rules.[1] Tandy elected not to follow this procedure, because of the unpredictability of the market and the likelihood of over or under estimating the demand for these interface devices. Instead, Tandy requested a conditional waiver of the rules to permit a monthly production of only those units requested by its customers.

5. The Association of Maximum Service Telecasters, Inc. (MST),[2] in their comments filed on September 22, 1980, submits that "Tandy's Petition should be denied outright due to its (Tandy) failure to provide any supporting material, let alone technical data permitting evaluation of possible interference to the public's television reception." In absence of technical data, MST asserts the interference potential of the interface devices cannot be evaluated and no favorable decision on the waiver is justifiable.

6. Texas Instruments Incorporated (TI), in its comments to the Tandy petition filed on September 22, 1980, states that the Tandy petition lacks specificity on two crucial questions: "First, one must assume that the TRS 80 Model I is not capable of certification and will not be manufactured after December 31, 1980; and second, one must assume that Tandy will not manufacture a new computer after January 1, 1981 which could use the expansion interfaces which would remain on the market." If these premises are confirmed by Tandy, TI states that it would have no objection to the granted waiver.

6. In its reply comments filed on September 29, 1980, Tandy assures the Commission, TI and MST that it will not manufacture a computer that can be operated with the subject interface models after January 1, 1981. Furthermore, the TRS 80 Model I computer will not be manufactured after January 1, 1981. Tandy argues that MST missed the real question with respect to its petition. Tandy restates that its request is merely to continue to honor its obligation to market the subject units which interface to a computer that will cease production on or before December 31, 1980. Moreover, there are many interface units already sold with no cases of reported interference where the interface was identified as the source.

7. In a letter dated November 14, 1980, Tandy supplements its comments by stating the attachment of the subject interface units do not significantly increase the interference potential of TRS 80 Model I. This is based on a cursory evaluation of the interfaces attached to Model I computers by Tandy's engineers. The letter also states that Tandy does not expect to sell more than 30,000 units of the subject interfaces.

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[1] Section 15.834(a)(3) requires "peripherals, terminals, etc. that are capable of being attached to a personal computer" which are manufactured after January 1, 1981 shall be certificated by the Commission to show compliance with the technical standards for computing equipment. Since the Radio Shack TRS 80 Model I has been found to be a personal computer, any attachment thereto that can be sold separately must likewise be certificated.

[2] MST is an organization of more than 240 television broadcast stations, UHF and VHF in small, medium and large markets across the country, interested in maintaining and improving high technical quality television broadcast service.

Commission Decision

8. The new rules adopted on September 18, 1979 are designed to reduce the interference potential of personal computers and other electronic devices to radio and TV reception.[3] The effective date was postponed and other changes were made to these rules in an Order Granting Reconsideration adopted by the Commission on March 27, 1980.[4] As stated in the first Report and Order, the Commission is particularly concerned about the interference caused by personal computers to radio and TV reception.[5] A number of cases of interference were reported to the Commission in 1978 and 1979. Because of these reported interference cases, the Commission required certification for personal computers and all peripherals which are attached to personal computers. Certification is a prerequisite for marketing of personal computers manufactured after January 1, 1981, pursuant to Section 15.834 of the rules, as revised on March 27, 1980. Certification is expected to provide additional assurance that such devices do in fact comply with the Commission's rules and therefore can be expected to provide reasonable assurance that it will not cause interference to radio and TV reception.

9. In our opinion, there are a number of factors that warrant the relief requested by Tandy. First and foremost is the fact that the production of non-complying computers will cease on or before January 1, 1981, which satisfies one of the concerns expressed by TI. Second, the subject interface unit can only be attached to the TRS 80 Model I computers. Newer computers are said to have a different input bus and therefor the subject interface units cannot be used with computers manufactured after January 1, 1981. This should satisfy the second concern expressed by TI. Third, Tandy asserts that the attachment of the subject interfaces to the TRS 80 Model I will not significantly increase the interference potential of the non-complying system. Unfortunately, these are only non-conclusive opinions which cannot be substantiated before a decision from the Commission is required. To defer action on this petition, or to deny it outright as suggested by MST, until tests have been made, would, in our opinion, be unresponsive to this request for relief. Therefore, to satisfy the concern expressed by MST, we are placing a 6dB limit on the increase interference potential of the system. Finally, in view of the current economic situation and the fact that the interference units marketed under this waiver will not perpetuate the production of new computers capable of causing interference to TV reception, the Commission is persuaded to grant the relief sought by Tandy. Conditions are attached to the waiver to deal with the above stated concerns.

10. Accordingly, the Commission hereby waives §§ 15.830, 15.832, 15.834 for Radio Shack Computer Interface Device Models 26.1140, 26.1141, 26.1142 subject to the following conditions:

1. The waiver is limited to one year; i.e., manufacture of the subject equipment must cease December 31, 1981.

2. Test data must accompany the petition showing that the interference potential of the non-complying computer will not be increased by more than 6dB when the peripheral is attached to the computer.

3. Not more than 30,000 units of the subject models may be manufactured under the terms of this waiver.

4. The subject devices shall be incapable of being attached to a personal computer manufactured after January 1, 1981.

5. The grantee accepts the responsibility to correct any interference complaints where its equipment has been identified as the source or to refund the purchase price of the equipment.

11. It is further ordered that, pursuant to § 1.427(b), since it grants an exemption from a regulatory requirement, this order shall become effective December 4, 1980.

12. Since it is conceivable that other manufacturers may have peripherals that can be used on non-complying personal computers manufactured prior to January 1, 1981, the Commission will entertain applications for similar waivers to manufacturers. The Chief Scientist is hereby granted delegated authority to grant waivers for devices that satisfactorily meet these same conditions.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 81-1876 Filed 1-16-81; 8:45 am]

BILLING CODE 6712-01-M

[3] First Report & Order in Docket 20780 adopted September 18, 1979 and published in the Federal Register on October 16, 1979 at 44 FR 59630.

[4] Order Granting in Part Reconsideration adopted March 27, 1980 and published in the Federal Register on April 9, 1980 at 45 FR 24124.

[5] See paragraphs 14–22 of the First Report and Order in Docket 20780, footnote 3, supra.

INTERSTATE COMMERCE COMMISSION

49 CFR Parts 1003, 1100

[Ex Parte No. 55 (Sub-No. 44)]

Rules Governing Applications Filed by Motor Carriers

AGENCY: Interstate Commerce Commission.

ACTION: Notice of Final Rules.

SUMMARY: Section 27 of The Motor Carrier Act of 1980 establishes time frames for the processing of motor carrier acquisition applications. In order to immediately implement these time frames, the Commission, in this proceeding adopted interim rules governing applications filed by motor carriers (1) to consolidate, purchase, merge, or lease operating rights and properties, or to acquire control of motor carriers pursuant to 49 U.S.C. 11343 and (2) to be granted temporary authority to engage in operations under 49 U.S.C. 11349 corresponding to permanent authority which is sought under 49 U.S.C. 11343 and 10926. The notice of interim rules included a request for public comment on the feasibility of the rules as final rules.

DATES: These regulations are effective January 19, 1981.

FOR FURTHER INFORMATION CONTACT: Eliot Horowitz, (202) 275–7657.

For copies of these rules: Office of the Secretary 202–275–7428 or 800–424–5230.

SUPPLEMENTARY INFORMATION: These rules are designed to ensure that the Commission processes motor carrier acquisition cases as efficiently as possible while also meeting the time-frames established under 49 U.S.C. 11345a. The statute provides that within 30 days of the filing of an application, the Commission must either (1) publish notice of the proposal in the Federal Register or (2) reject it if improperly filed. Once an application is published, written comments about it must be received by the Commission within the following 45 day period. The Commission must conclude all evidentiary proceedings within 240 days from the Federal Register publication and render a final decision within the next 180 day period.

Applications Affected by These Rules

Applications filed on or after January 19, 1981 will use these rules. Applications filed between July 3, 1980 and January 18, 1981, will continue to use the interim rules.

Preliminary Matters

On July 3, 1980, the Commission published interim rules in this proceeding to be codified at 49 CFR 1100.240(A) through 1100.240(E). On October 1, 1980, the Commission published notice (at 49 FR 64958) of a change in the codification of these rules as follows:

Old section No.	New section No.
1100.240(A)	1100.240
1100.240(B)	1100.241
1100.240(C)	1100.242
1100.240(D)	1100.243
1100.240(E)	1100.244

In order to avoid confusion, whenever reference is made in this notice to an interim regulation, both codifications will be cited (e.g. § 1100.241(a)(1), formerly § 1100.240(b)(a)(1)).

The comments of the Motor Carrier Lawyers Association embrace a motion (1) to dismiss the interim application of these rules and (2) for oral arguments in this proceeding.

The MCLA claims that the Commission has failed to establish a sufficient basis under 5 U.S.C. 553(b) (A) and (B) for the immediate use of these rules. Furthermore, it argues that, in view of the significance of this proceeding, oral argument would provide the Commission with the best means of receiving input from the public, and ultimately formulating sound, final regulations.

As we pointed out in the notice of interim rules and request for comments, these rules are designed to ensure Commission compliance with the statutory time frames governing "acquisition" transactions contained in section 11345a of the Motor Carrier Act of 1980. The Act, of course, became effective on July 1, 1980, necessitating the immediate use of the interim rules prior to our formulation of final regulations. We disagree with the MCLA's contentions that the rules place a greater burden on parties to acquisition proceedings than on the Commission (respecting time frames) or that the procedural changes involved (for reasons discussed *infra*) do not afford parties adequate opportunity to prepare their cases.

Secondly, we do not perceive a need for oral argument in this proceeding. The issues involved can be adequately addressed and resolved based on a written record. This is particularly true in this proceeding where procedural rather than substantive changes in the law are contemplated.

Accordingly, the motion filed by the MCLA is denied.

The Interim Rules

Under the interim rules, applicants have been required to submit all of their information in support of a proposal along with their application. (See § 1100.240, formerly § 1100.240(A)). This requirement does not constitute a departure from past practice, since the involved application forms elicit all of the information required for the processing of an application. Significantly, under the interim rules no substantive changes have been made to the application forms. Minor modifications have been made to the instructions accompanying the forms to reflect technical changes in case processing.

The intgrim rules do require, for the first time, that protestants file all of their evidence in opposition to a proposal within 45 days from the date notice of an application is published in the Federal Register. (See § 1100.241, formerly § 1100.240(B)). Applicants are afforded 15 days for the filing of an (optional) reply. All pleadings, other than those consisting wholly of legal argument (e.g. arguments of counsel and motions) must be verified.

The Commission will decide a case once the record of evidence is closed. No need exists for the service of a "designation" or "modified procedure" order upon parties to a proceeding. The decision-notice format adopted by the Commission in *Summary Grant Procedure (Finance)*, 49 FR 41203 (July 16, 1979) has been retained.

While we do not contemplate that many cases will be assigned to oral hearing, the rules include procedures (1) under which parties may request hearings and (2) pertaining to the Commission's handling of such requests. (See § 1100.242 formerly § 1100.240(C)).

Several general rules (concerning such matters as verification and copies of pleadings) are set forth at the § 1100.243, formerly § 1100.240(D).

Finally, the rules at § 1100.244, formerly § 1100.240(E), concern the filing and processing of applications filed under 49 U.S.C. 11344. These applications involve requests for temporary authority to conduct operations corresponding to those sought in permanent applications filed under 49 U.S.C. 11344 or 10928. The involved rules have not been substantively changed but merely reworded for clarification.

Summary of Comments

Comments have been received from a federal agency, several associations representing industry members and practitioners, and from individual practitioners and motor carrier firms.

Several commenters argue that the Commission should not require applicants in acquisition cases to file their entire case at the outset of a proceeding. These persons claim that the Act does not impose time frames which require this practice to be followed. As a consequence of such a rule, however, they contend that applicants will often have to engage in unnecessary time, effort and expense (where, for example, a proceeding is ultimately unopposed). In essence, these commenters suggest that the Commission is imposing unreasonable restraints upon applicants in order to facilitate its own goal of timely processing cases.

In a related matter, several commenters argue that the requirement that applications be complete upon filing will delay the filing and processing of applications for temporary authority under 49 U.S.C. 11349. Since temporary authority applications are filed for the purpose of preserving the integrity of operating rights which are the subject of a proposed permanent acquisition transaction, they suggest that such proposals should be permitted to accompany incomplete permanent application filings.

A number of commenters also challenge the rule which would bar the filing of amendments to an application. Basically, they feel that such a rule merely deprives the Commission of exercising its discretion with respect to the merits of a given, proposed amendment.

The Department of Justice (DOJ) has expressed concern regarding the 45 day "protest period," believing it to be too short in those cases which may contain significant anticompetitive consequences. In such cases, DOJ argues that this time frame may prove inadequate to permit interested persons to scrutinize closely troublesome transactions. DOJ argues that these rules may prove inconsistent with the Commission's own intention [recently expressed, for example, in Ex Parte No. 55 (Sub-No. 38), *Antitrust and Competition Factors in Motor Carrier Finance Cases*, 45 FR 26395 (April 18, 1980)] to analyze carefully the competitive implications of acquisition transactions.

Several other procedural aspects of these rules have been brought into question. These include the circumstances under which applications are made available to interested persons, and the Commission's policy regarding extensions of time for the

filing of pleadings. Finally, concern has been raised over whether the Commission has adequately addressed the impact of this proceeding upon energy consumption.

Discussion

In enacting the 1980 legislation, Congress was very clear in its resolve to expedite the processing of motor carrier application cases. (See H.R. Rep. No. 96–1069, 96th Cong., 2d Sess. §§ 25 and 27 [1980]).

The "complete application" requirement is designed to remove what has previously proven to be a major obstacle to the prompt processing of acquisition applications. In the past, Commission staff has expended a great deal of time in assisting applicants in correcting either incomplete or incorrectly filed applications (prior to publishing notice of the application) in the **Federal Register**. This practice is no longer feasible.

Section 11345a (a) of the new Act requires the Commission to either reject or publish notice of an application within 30 days of its filing date. As a practical matter, this time frame leaves the Commission little time to review the completeness of applications filed (in light of the time which must be allotted to purely administrative functions).

We disagree with the notion that the "complete filing" requirement places an unreasonable burden upon applicants. In fact, applicants are not required to file any new or different information with their applications than has previously been required. Also, if an application is rejected, the applicants are, of course, free to file a new application for the same transaction.

The information which must be filed is set forth in the pertinent finance application forms (OP–F–44 and 45). These forms have not been revised in this proposal. Only the instructions accompanying them have been modified to reflect technical changes in the processing of the applications.

The argument that incomplete applications should be permitted for the purpose of expediting the filing and processing of temporary authority applications is specious. Section 11349 of the Act allows for the filing of the latter-type applications pending the Commission's determination of a permanent acquisition application. It is the existence of the permanent application, then, which gives rise to the need for filing a proposal for temporary authority. An incomplete application under 49 U.S.C. 11343 *et seq.* is no application at all. Rather, it is a proposal which must be rejected within 30 days of its filing.

Secondly, the rules do permit applicants to file, concurrently, permanent and temporary authority applications. The situation may arise where a temporary authority application which establishes a valid basis for granting the proposal under section 11349 will accompany an incomplete or improperly filed permanent application.

Conceivably, the temporary proposal could be granted prior to the Commission's publishing or rejecting the permanent application filing. If, however, the permanent application is rejected, the Commission will immediately issue a notice revoking the temporary authorization. If, on the other hand, the permanent application is acceptable and notice is published in the **Federal Register**, the temporary authorization will remain in effect during the pendency of the permanent application proceeding. Under these circumstances, we seriously doubt that the effect of the rules in question could be to undermine the value of operating rights which are the subject of a finance transaction. Nonetheless, in order to obviate potential problems (such as discussed above) and to provide the Commission with sufficient flexibility to deal with these matters, we will include a provision to the rules which will allow applicants to seek a waiver from any of the informational requirements in the application.

Rule 1100.240(c), formerly § 1100.240(A)(c), will be revised by adding a subsection which will permit applicants to file a petition for this purpose. Such a petition would have to be filed, and acted upon by the Commission, prior to the filing of the application itself. Petitioners would have to meet a two part test to obtain a waiver from the filing requirements. First, they would have to demonstrate that the information, for which a waiver from the filing requirement is sought, is unnecessary for the disposition of the case, or unavailable, and that the Commission could make its requisite statutory findings without benefit of such information. Secondly, they must show that as a consequence, the requirement for the filing of such information would impose an undue burden upon applicants.

As a matter of internal procedure, the Commission will give such a petition a docket number (MC–F— * * *) which will thereafter remain with the later-filed application. While the decision of the Commission's decisional body is not subject to any statutory time frames, the Commission will attempt to render it as quickly as possible. If a waiver is authorized, the **Federal Register** notice of the later-filed application will indicate that "by decision of (date), in this proceeding, the Commission (decisional body) granted applicants a waiver from the filing requirements set forth in parts (specifically enumerated) of application form OP–F– (44 or 45)."

This procedure constitutes a codification of a past Commission practice in motor carrier acquisition cases. It also parallels procedures currently employed by the Commission in certain rail proceedings (See 49 CFR 1110.10). We believe that the "waiver" procedure will provide applicants with a valuable tool for dealing with problems they may foresee as a consequence of the "complete application" filing requirement set forth in the rules. Additionally, it will relieve the Commission (in cases where a waiver is granted) of having to review extraneous information while helping to narrow the issues in a case.

With respect to "amendments" to applications, the interim rules state that "amendments which change the scope of the authority sought are not allowed after the **Federal Register** publication" (49 CFR 1100.240(h), formerly 1100.240(A)(h)). This practice will encourage parties carefully to consider their requests, while eliminating the amendment process as an applicant's device for limiting opposition possibly at the expense of the shipping public.

There are times, however, when a decisional body, upon reviewing an acquisition application (prior to publication) may require it to be modified to conform to the law and/or Commission practice. (In the past, this has occurred, for example, to avoid unlawful splits or duplication of authority.) This latter type situation is clearly distinguishable from the one the rule is designed to eliminate, and the rule will not affect this practice in the future.

When an impediment is noted in the **Federal Register** (decision) notice of an application, applicants will have to submit a pleading suggesting a cure to the noted impediment and/or containing argument on the issue, within a time certain from the publication date. (Failure to "cure" will result in the dismissal or denial of the application.) Moreover, protestants (if any) must be afforded an opportunity to comment not only on the applicants' "complete" application but also on the impediment issue, and applicants' responsive pleading. As a practical matter we must vary somewhat the time frames generally governing the submission of pleadings to accommodate the occasions in which impediments are noted in an application proceeding.

We will revise interim rule 1100.240(g), formerly 1100.240(A)(g) to indicate initially, that the Commission's decisional body may note an impediment to an application in the Federal Register notice which will require applicants to amend their proposal. Secondly, we will apply the following time frame structure to govern only cases falling within this category.

(1) Where an impediment to an application is noted, applicants must file their responsive pleading no sooner than 50 days and no later than 55 days from the date upon which notice of the application was published in the Federal Register. Applicants must certify that a copy of this pleading has been simultaneously served upon all parties of record.

(2) Protestants (if any) will be afforded 20 days from the filing date of the pleading in (1) above to file responsive pleadings.

(3) Applicants may file an optional rebuttal statement to protestants' pleading, in (2) above, within 15 days from the date upon which protestants' statements are due.

While this rule is designed to accommodate a particular type of proceeding, we recognize that the complexity of the issues in any case may warrant affording the parties additional time to file their evidence. We are also mindful of the fact that while 49 U.S.C. 11345a(b) requires written comments about an application to be filed within 45 days of an application's publication, the Commission has 240 days (from publication) to conclude the evidence of record.

We anticipate that most cases can be decided expeditiously upon the initial and "complete" evidentiary presentation of the parties (within 60 days of the application's publication). The rules are designed to achieve this goal. However, these rules do not preclude this Commission, or interested parties from identifying issues they feel warrant additional study or comment in light of their complexity, or from seeking additional time or procedural avenues to develop such issues. For example, a given case may contain antitrust considerations, or an issue concerning the transferability of dormant authority the resolution of which will require the submission of additional evidence from the parties. (In this context, note the multi-step evidentiary procedure employed by this Commission in cases involving a "dormancy" issue. See *Central Transport, Inc. Pur. Piedmont Petroleum*, 127 M.C.C. 1 (1977).)

In Ex Parte No. 55 (Sub-No. 38F), *supra*, we indicated our desire to streamline our case processing system in order to facilitate indentifying whether cases have significant anticompetitive or public interest consequences. We proposed to (1) revise the motor finance application forms (OP–F–44 and 45) to elicit necessary information; (2) accord each case an appropriate measure of agency review in light of its significance; and (3) develop guidelines helpful to our staff and the public concerning how information received in any case would be analyzed in determining the measure of agency review required.

We believe, however, that the finance case processing time frames set forth in the 1980 Act, and these procedural rules, already provide us with a useful method for achieving our purpose. The information elicited in the application forms will furnish the Commission and interested parties with a sufficient basis for raising the "anti-trust, competition" issue, and for determining whether additional information should be submitted by the parties. Any interested person could file a motion for this purpose, defining, precisely, the grounds therefor and the nature of the information which is necessary to supplement the existing record. In addition, where the Commission identifies anti-competitive issues, we can direct the submission of specific additional data.

Whenever the Commission's decisional body reviewing an application finds, in its discretion, that further information is required of the parties to a given proceeding, it shall issue an interim order eliciting further comment on the specific issue(s) involved. In such cases, the "close of evidence" will occur only after all responsive pleadings are received. The Commission must, of course, render its final decision (in every case) within 180 days from the date the evidentiary record is closed. Rules 1100.240(c) and 241(b)(2) (formerly §§ 1100.240(A)(c) and 1100.240(B)(b)(2)) will be amended to indicate that the Commission may elicit additional information from the parties to a proceeding.

As previously noted, several comments address the procedural rules concerning such practical matters as the fee to be paid by an interested person wishing to acquire a copy of an application, or the maximum extension of time the Commission will permit for the filing of any pleading. We believe that with the exceptions noted below, the scheme for processing applications set forth in the interim rules represents the best approach for compliance with the letter and spirit of the new Act. Our experience with the implementation of the interim rules has proven highly successful to date, due in substantial part to the cooperative efforts of the parties practicing before this Commission. Moreover, we recognize that new procedures may give rise to new problems in the future. We encourage practitioners in the motor carrier industry to continue to work with the Commission to ensure that our procedures are always as efficient and reasonable as possible.

In this context, we have found, for example, that the interim rules have created a practical problem concerning the receipt of a request and accompanying $10 fee for a copy of an application. We believe that it would be more efficient for the request and the payment to be made directly to applicants' representative. This would facilitate the handling of the request and the negotiation of the check. Rule 1100.240(h)(3), formerly § 1100.240(A)(h)(3), will be modified accordingly.

We believe, further, that rule 1100.240(h)(3) should be modified to require applicants' representative to furnish a copy of the application within 3 days of the receipt of a request. This will assist interested parties in the preparation of their cases, without imposing an undue burden upon applicants.

We will also revise rule 1100.243(e)(2), formerly 1100.240(d)(e)(2), to facilitate the manner in which a pleading containing statements of fact must be verified. The person offering the statement will be required to make the following declaration:

I, _____, verify under penalty of perjury under the laws of the United States of America, that the information above is true and correct. Further, I certify that I am qualified and authorized to file this statement. (See 18 U.S.C. 1001 and 18 U.S.C. 1621 for penalties).

_____
(Signature)

Consequently, we shall no longer require such statements to be notarized.

The basis for this revision is set forth in detail in the notice of final rules in Ex Parte No. 55 (Sub-No. 43), *Rules Governing Applications for Operating Authority* (45 FR 86771, December 31, 1980), in which we have adopted the identical requirement. Essentially, we have determined that existing Federal statutes governing perjury and fraudulent representations are adequate to ensure that persons offering statements in application proceedings will make complete and honest disclosures.

We have amended rule 1100.242(b)(1), formerly § 1100.240(C)(b)(1), to allow parties to a proceeding to request oral hearing at any time during the pendency of a proceeding. This rule reflects our belief that a material issue may arise during the pendency of a given proceeding warranting a hearing. While we anticipate this occurrence only in rare cases, the rule will provide us with the necessary flexibility.

Finally, a minor modification is required to interim rule 1100.240(d), formerly § 1100.240(A)(d) which concerns the filing of "directly related applications" (i.e. applications filed under other provisions of the Act which either directly affect or are directly affected by the acquisition transaction proposed under 49 U.S.C. 11343). This rule requires the concurrent filing of the acquisition and related application, and that each makes reference to the other in its caption summary. In order to ensure that cases are timely processed, however, we believe it also necessary for applicants to file related cases "under the same cover" (i.e. in a single package). This procedure will facilitate the internal handling of such cases by Commission personnel. The related cases will be handled on a consolidated record, and decided within the time frames established under 49 U.S.C. 11345(a) governing acquisition transactions. [The instructions acompanying application forms OP–F–44 and 45 will be modified to reflect this change.]

Environmental Impact

We conclude that this proceeding will not have a significant impact upon either the quality of the human environment, or the conservation of energy resources. This conclusion is premised in large part on the fact that each case processed under 49 U.S.C. 11343 *et seq.* must contain an independent environmental finding. It is also noteworthy that these rules do not contain substantive changes to the law governing acquisition transactions and will not affect the ultimate disposition of any case. The nature of the evidence submitted by parties and the manner in which the evidence will be weighed has not been changed.

Final Matters

One significant consequence of the new motor carrier legislation and our own adoption of these implementing regulations, is that a number of Commission regulations codified in the Code of Federal Regulations are either outdated, incorrect or redundant. For example, the information contained in 49 CFR 1134.1 (a)–(c), relating to "applications for authority to merge properties or franchises" is clearly unnecessary and somewhat in conflict with the rules adopted here. Also, for example, information contained in 49 CFR 1134.3 ("computation of gross operating revenues of carriers involved in unifications") (1) cites the former sections of the Interstate Commerce Act which was recodified (without substantive change) by Act of Congress in October, 1978 (See Pub. L. 95–473, 92 Stat. 1339 (1978), recodification of subtitle IV of Title 49, United States Code, "Transportation") and (2) furthermore, relies on jurisdictional monetary limits which were raised by provisions of the Motor Carrier Act of 1980. We have elected not to revise or delete these and other inappropriate sections of the Code in this particular proceeding because the necessary revisions are being made in other rulemaking and policy proceedings currently pending before this Commission. (The revisions will be made regardless of the ultimate disposition of the substantive issues involved in these other cases). To the extent, however, that ambiguities and conflicts hereafter appear in the regulations during the brief period preceding recodification of the involved Code sections, the 1980 legislation and the rules adopted in this proceeding will, of course, control.

Lastly, a number of the interim rules adopted in this proceeding were cross-referenced to interim rules adopted by the Commission in Ex Parte No. 55 (Sub-No. 43), *Rules Governing Applications for Operating Authority*, 45 FR 45534, July 3, 1980. Cross-referencing was employed where the two sets of regulations (49 CFR 1100.240 and 49 CFR 1100.247) duplicated one another. However, the final rules for each part shall be set forth in their entirety.

This will eliminate possible confusion and also any extra effort in the future if rule changes are made to any subsection of these mutually exclusive regulations.

Summary

We adopt the final rules set forth below, and the instructions accompanying acquisition application forms set forth in Appendix A.

This action is taken under the authority of 49 U.S.C. 10321, and 11343 *et seq.*, and 5 U.S.C. 553.

Decided: January 6, 1981.

By the Commission, Chairman Gaskins, Vice-Chairman Gresham, Commissioners Clapp, Trantum, Alexis and Gilliam.

Agatha L. Mergenovich,

Secretary.

Introduction

These rules govern the processing of motor carrier applications to consolidate, purchase, merge, or lease operating rights and properties, or acquire control of motor carriers pursuant to 49 U.S.C. 11344 and to be granted authority temporarily to do so under 49 U.S.C. 11349.

The general topics covered are:

Sec.

1100.240 Filing of applications under 49 U.S.C. 11344.
1100.241 How to oppose applications filed under 49 U.S.C. 11344.
1100.242 Procedures relating to oral hearings.
1100.243 General rules governing the applications filed under 49 U.S.C. 11344.
1100.244 Processing of applications filed for temporary authority under 49 U.S.C. 11349 corresponding to applications filed under 49 U.S.C. 11344 or 10926.

Sections 1100.240 through 1100.244 are revised to read as follows:

§ 1100.240 Filing of applications under 49 U.S.C. 11344.

(a) *Procedures used generally.* The Interstate Commerce Commission uses two basic types of procedures. Most cases are processed under the *modified procedure* (on the basis of an evidentiary record composed entirely of written statements). Occasionally, a case involves extraordinary substantive issues, the resolution of which requires taking testimony from persons at an *oral hearing.* These rules govern both types of proceedings. It is the Commission's policy to process cases under the modified procedure where at all possible.

(b) *Starting the application process.* Carriers that seek to consolidate, purchase, merge, or lease operating rights and properties, or acquire control of motor carriers shall properly complete an application to do so. (See 49 CFR 1003.1 and 1002 regarding the forms and filing fees.) Application forms are available at Commission field or regional offices or at the Office of the Secretary.

(c) *Information to be submitted by applicants*—(1) *The application form.* Application forms are explicit concerning the information which shall be submitted. Failure to fully comply with the instructions on the application form may result in the rejection, dismissal, or denial of the application. Persons shall resolve any questions relating to the application form by

contacting the Commission before filing the application.

(2) *Petitions for waiver of application requirements.* Prior to filing an application under this section, applicants may file a petition seeking waiver from any of the filing requirements set forth in the application form. With respect to the information for which a waiver from the filing requirement is sought, petitioners must demonstrate that (i) it is unavailable or that it is unnecessary for the disposition of the case, (ii) the Commission can make the requisite statutory findings governing the transaction without benefit of such information, and (iii) consequently, the filing requirement would impose an undue burden upon applicants.

Applicants may not file their application until after the Commission's decisional body reviewing the petition has rendered its decision on the waiver request. Where a waiver request is granted, the Federal Register notice of the application will indicate the extent to which applicants have been relieved from the usual filing requirements.

(3) *Caption summary.* Each application shall be accompanied by a caption summary: (i) Describing the proposed transaction, and indicating (ii) (A) whether any portion of the operating rights involved in the transaction is proposed to be cancelled or restricted, (B) whether an application under 49 U.S.C. 11349 to perform temporarily the service proposed to be acquired in the permanent application has been filed, and (C) whether another application has been filed under provisions of Title 49, Subtitle IV, U.S. Code, "Transportation" which is directly related to the proposed transaction. (See 49 CFR 1100.240(d) regarding directly related applications.)

(4) The completed application form shall contain applicants' entire case (other than an optional reply statement in an opposed proceeding) under the modified procedure, unless (i) the Commission finds, upon its own motion or that of a party to the proceeding, that additional evidentiary submissions are required to resolve the issues in a particular case, or (ii) the application contains an impediment. (See rule 240(g) *infra.*)

Any statements submitted on behalf of an applicant supporting the transaction shall be verified. Pleadings consisting strictly of legal argument, however, need not be verified.

(d) *Directly related applications.* (1) Directly related applications shall be filed along with the proposed acquisition transaction under the same cover (i.e. in a single submission). These applications are filed under other provisions of title 49, Subtitle IV, U.S. Code, "Transportation" which either directly affect or are directly affected by the application filed under 49 U.S.C. 11344. Typically, they include requests for authority to obtain new operating authority, to modify or convert existing operating authority, or to issue securities or assume debt obligations. Whenever an application is filed under these rules and a directly related application is also filed, the caption summary of each shall make reference to both applications.

(2) Whenever possible, the Commission will decide directly related applications in a consolidated proceeding. In such cases, the statutory time frames governing the (lead) proceeding under 49 U.S.C. 11344 will be applied.

(e) *Where the application is sent.* (1) The original and (2) two copies of the application shall be sent to the Office of the Secretary, Interstate Commerce Commission, Washington, DC 10423, along with the application fee.

(2) Copies of the application shall be sent to the Commission personnel and State officials specified in the application form.

(f) *Commission review of the application.* (1) Interstate Commerce Commission staff will review the application for correctness and completeness. Minor errors will be corrected without notification to applicant. Incomplete applications may be rejected.

(2) The caption summary will be published in the Federal Register to give notice to the public in case anyone wishes to oppose the application. It will be published in the form of a tentative grant of authority. (Also, see rule 240(g) *infra,* regarding applications published with impediments).

(3) If the Federal Register publication does not properly describe the authority sought because of ministerial error, applicant shall inform the Interstate Commerce Commission within 10 days of the publication date.

(g) *Changing the request for authority after notice of the application appears in the* Federal Register. (1) After notice of an application is published in the Federal Register, applicants are not permitted to file amendments to their proposal, unless specifically required to do so by the Commission because of an "impediment" in the application. Any such impediment will be indicated in the Federal Register publication.

(2) If an impediment is noted, applicants must file a pleading suggesting a "cure" to the impediment and/or containing legal argument within no less than 50 days or more than 55 days of the Federal Register publication. Also, the pleading must contain a certification that a copy of this pleading has been served, simultaneously, upon all parties of record. Failure to comply with these provisions will result in the dismissal of the application.

(3) Protestants wishing to file a reply to the applicants' pleading must do so within 20 days from the date applicants' pleading is filed. (Protestant's pleading will be filed in addition to the evidence previously submitted within the time frame noted in § 1100.240(h) *infra*).

(4) If replies to applicants' pleading are filed (under paragraph (g)(3) of this section) applicants may file an (optional) rebuttal within 15 days from the due date of the replies in paragraph (g)(3) of this section. This (optional) pleading will be in addition to any evidence previously submitted by applicants in compliance with rule 240(c) *supra.*

(h) *After publication in the* Federal Register. (1) Interested persons have 45 days to file comments at the Commission. See § 1100.241.

(2) If no one opposes the application, it will be decided using the information submitted with the application.

(3) Applicants are required to furnish a copy of the application to any interested person. The request for a copy shall be made to applicants' representative (noted in the Federal Register publication) and shall contain a check for $10 payable to applicants' representative. This fee will cover (at least partially) reproduction and mailing costs. Applicants' representative need not supply copies to any person not sending the appropriate payment. Applicants' representative is required to mail the copy within 3 days of the request being received.

(4) If the application is opposed, opposing parties are required to send a copy of their protest to the applicants, see § 1100.241(a)(2).

(i) *Filing a reply statement.* (1) If the application is opposed, applicants may file a reply to the protests. This reply statement is due at the Commission within 60 days of the Federal Register publication.

(2) The reply statement may not contain new evidence. It shall only rebut or further explain matters previously raised.

(3) The reply statement shall be verified (unless it consists strictly of legal argument), and a copy served upon protestants.

(j) *After all statements are submitted.* (1) When the proceeding is to be handled under the modified procedure a decisional body will review the

evidence and serve an initial decision on the parties

(2) If the proceeding is to be handled by oral hearing, parties will receive a notice to this effect.

(k) *Applicant withdrawal.* If applicants wish to withdraw an application, they shall jointly request dismissal in writing. This request shall be directed to the Office of the Secretary, Interstate Commerce Commission, Washington, DC 20423, with the docket number of the case.

§ 1100.241 How to oppose finance applications.

(a) *Filing a protest to an acquisition application.* (1) Protests to an acquisition application (filed under 49 U.S.C. 11344) shall be filed (received at the Commission), within 45 days from the date the application is published in the Federal Register.

(2) A protest filed under these rules shall also be served upon applicants' representatives.

(3) Failure to file timely a protest waives further participation in the proceeding.

(b) *Contents of a protest.* (1) Protests shall be verified.

(2) All information upon which the protestant plans to rely shall be put in the protest including:

(i) The grounds upon which the protest is made and the protestant's interest in the proceeding;

(ii) All facts, matters, and things relied upon by the protestant in opposing the application; and

(iii) A request for oral hearing if one is desired. See 49 CFR 1100.242.

(3) A protestant may include, in the protest, a request that the Commission allow for (i) additional evidentiary submissions from the parties to a proceeding or (ii) further procedural steps to develop the evidentiary record (e.g. discovery) in a proceeding. The request must demonstrate that this procedure is necessary to resolve the *specific issues* giving rise to the request. If the Commission finds, either upon its own motion, or that of a party to a proceeding, that the evidentiary record requires supplementation, it shall issue a decision indicating the precise nature of the additional information required of the parties and the time frames within which such information must be submitted. Upon receipt of all such information the record of evidence will be closed and the case will go forward to decision.

(c) *To whom the protest is sent.* (1) An original and one copy of the protest is to be sent to the Office of the Secretary, I.C.C., Washington, D.C. 20423. The docket number of the proceeding shall be placed conspicuously on the top of the first page of the protest.

(2) Concurrently with the filing in paragraph (c)(1) of this section, a copy shall be sent to applicants' representative(s).

(d) *Obtaining a copy of the application.* A copy of the application is available for inspection at the Commission's offices in Washington, D.C., or the regional office of each applicant's domicile. In addition, applicants' representative is required to send a copy to interested persons upon payment of a $10.00 charge. See 49 CFR 1100.240(b)(3).

(e) *Withdrawal by protestant.* A protestant wishing to withdraw from a proceeding shall inform the Commission and the applicants in writing.

§ 1100.242 Procedures relating to oral hearing.

(a) *Requests for oral hearing.* It is the policy of the Commission to handle motor finance application proceedings under § 1100.240 using the modified procedure if at all possible.

(1) If a person believes that a proceeding should be orally heard because of the significance of the case, or because material issues are in dispute, the person may request oral hearing. A request for oral hearing may be made at any time during the pendency of a proceeding.

(2) The request shall specifically state the evidence that would be presented, the reason why the evidence is material to determine the merits of the proceeding, why an oral hearing with cross-examination is necessary to bring it out, and what evidence already in the record would be contravened (with specific page references).

(3) The person requesting a hearing shall further indicate the approximate number of witnesses to be presented, an estimate of the hearing time required for such presentation, and a suitable location for the hearing.

(b) *Designation of case for oral hearing.* (1) The Commission will determine whether an assignment for oral hearing should be made, either before or after notice to interested persons of the filing of the application has been published in the **Federal Register** and the period for filing protests has expired.

(2) Notice of the time and place of any hearing, conference, or other proceedings will be given to interested parties by mailing to them the order or notice assigning the application for hearing, conference, or other procedure.

(3) Unless a request for oral hearing is specifically granted (under paragraph (b)(2) of this section) it is deemed denied.

(c) *Change of place or time of assigned hearing.* (1) A request by any party for a change in the time or place of an assigned hearing shall set forth emergency circumstances warranting the change; shall be in writing and filed with the Commission within 10 days of the date of the notice assigning the proceeding for a hearing, and shall be served on all known parties of record at the same time and by the same method of communication as service is made on the Commission.

(2) The applicants' representatives, protestants, and those who request notice of changes in time or place of hearing, conference, or other proceedings will be informed of any changes if notice is given by mail. If telegraphic notice becomes necessary, notice of any changes will be given by telegram only to those who request telegraphic notice at their expense.

(d) *Applicant's withdrawal.* Upon receipt of an order or notice of a hearing assignment, applicants who no longer intend to proceed to hearing shall immediately and jointly request dismissal of their application, with appropriate notification to all protestants, failing which applicants or their representatives, or both, may be subject to censure.

(e) *Failure of protestant to appear at hearing.* The failure of any person filing a protest to an application to appear at a scheduled hearing shall be construed as a waiver of the person's rights to participate further in the proceeding. Additionally, that person and any representative responsible for participation in the proceeding may be subject to censure for failure to appear.

§ 1100.243 General rules governing the application process.

(a) *Contacting another party.* When a person wishes to contact another party or serve a pleading on that party, it shall do so through the party's representative (if any).

(b) *Serving copies of pleadings, and the certificate of service.* (1) Where the rules require service of a pleading on another party, that pleading shall be mailed or delivered by hand concurrently with its service on the Commission.

(2) The pleading shall contain a statement (certificate of service) that the pleading has been mailed or hand delivered in accordance with paragraph (b)(1) of this section.

(3) All motions and replies shall be served on all parties.

(4) All pleadings mailed to the Commission in Washington, D.C., should

be addressed to "Office of the Secretary, I.C.C., Washington, D.C., 20423".

(c) *Copies.* (1) An original and *two* copies of acquisition applications must be filed.

(2) All other material forwarded to the Commission in Washington, D.C., shall consist of an original and one copy.

(d) *Requests for extensions of time.* (1) Requests for extensions of time may be granted only in extraordinary circumstances. Parties' or their representatives' workload, personnel changes, or scheduling problems are not sufficient cause.

(2) No extension will be granted for more than 3 working days.

(e) *Verification of statements.* (1) All statements and shipper certifications (except motions to strike, replies thereto, and other pleadings which consist only of legal argument) must be verified by the person offering the statement.

(2) The manner of verification must be as follows:

I, _____, verify under penalty of perjury under the laws of the United States of America, that the information above is true and correct. Further, I certify that I am qualified and authorized to file this statement. (See 18 U.S.C. 1001 and 18 U.S.C. 1621 for penalties).

(f) *Caption summary.* The caption summary which must accompany all applications shall be in the form prescribed by the Commission. Commission field and regional offices offer assistance in preparing correct caption summaries.

§ 1100.244 Processing of temporary authority applications filed under 49 U.S.C. 11349 corresponding to applications filed under 49 U.S.C. 11344 or 10926.

(a) *Applications governed by these rules.* These rules govern the handling of applications filed for temporary authority to operate motor carrier properties sought to be acquired by the applicants under separately filed applications under

(1) 49 U.S.C. 11344 (for authority to consolidate, purchase, merge or lease operating rights and properties, or to acquire control of motor carriers), and

(2) 49 U.S.C. 10926 (for the transfer of motor carrier certificates and permits).

(b) *Procedures used generally.* Since the basis for filing applications for temporary authority under these rules is to prevent destruction or injury to motor carrier properties sought to be acquired under 49 U.S.C. 11343 and 11344 or 10926 these rules are designed to permit the Commission to decide expeditiously temporary authority applications. The Commission has no obligation to give public notice of applications filed under these rules for temporary authority. Cases are decided by an appropriate decisional body without hearings or other formal proceedings. However, the rules do permit the Commission, where it is feasible, to publish notice of temporary authority applications, and applications may be opposed.

(c) *Starting the application process.* (1) Persons seeking temporary authority under this section shall properly complete an application. [See 49 CFR Part 1003 and § 1002.1 regarding forms and filing fees].

(2) *Note.* an application for temporary authority may only be filed concurrently with, or subsequent to, the filing of a related application under 49 U.S.C. 11344 or 10926.

(d) *Information to be submitted by applicants.* The completed application form contains all of the information necessary to allow the Commission to decide a case. It consists of applicants' entire case and shall contain all of the information upon which applicants intend to rely.

(e) *Where the application is sent.* (1) The original and two copies of the application shall be sent to the Interstate Commerce Commission, Office of the Secretary, Washington, D.C., 20423 along with the application fee.

(2) Copies of the application shall be sent by applicants to the persons and State officials specified on the application form.

(3) *Provided that,* for an application for temporary authority which is filed subsequent to the filing and Federal Register publication of the related acquisition transaction (under 49 U.S.C. 11344 or 10926) applicants shall serve a copy of the temporary authority application upon all parties of record without charge as of the date of the filing.

(f) *Commission review of an application.* (1) Where an application for temporary authority is filed concurrently with the related acquisition application (under 49 U.S.C. 11344 or 10926), notice of the filing of the temporary authority application will appear in the Federal Register publication of the corresponding permanent transaction. The Federal Register publication will be of the decision-notice in the section 11344 proceeding, and of the service conditionally authorized in the section 10926 proceeding.

(2) A concurrently filed temporary authority application (and protests, if any) will be submitted to an appropriate decisional body for disposition as soon after its filing as possible. These rules do not provide for any specific time period for the filing of opposition to concurrently filed temporary authority applications. A case may be decided prior to the Federal Register publication of the related 49 U.S.C. 11344 or 10926 proposal.

(3) Where an application for temporary authority is filed subsequent to the filing of a related 49 U.S.C. 11344 or 10926 application to which protests have been filed, the Commission will seek to refrain from deciding the temporary application until at least 20 days from the date applicant served protestants with a copy of the temporary authority application. This procedure, when employed, will afford protestants of record an opportunity to file opposing comments in the temporary application proceeding. However, the Commission will take immediate action if warranted.

(4) A copy of the Commission's decisions will be served upon all parties of record.

(g) *Who can oppose an application.* A protest to an application filed for temporary authority under these rules may only be filed by persons who oppose, or intend seasonably to oppose, the related application filed under 49 U.S.C. 11344 or 10926.

(h) *Acquiring notice of the application.* Notice of the filing of an application may be afforded potential protestants in one of the following ways:

(1) Where the temporary application is filed concurrently with the acquisition transaction under 49 U.S.C. 11344 or 10926, notice of the acquisition transaction will appear in the Federal Register publication. (See 49 CFR 1100.244 (f)(1).)

(2) Where the temporary authority application is filed subsequent to the filing and Federal Register publication of the related acquisition transaction under 49 U.S.C. 11344 or 10926, applicant shall serve a copy of the temporary authority application without charge on parties of record as of that date. (See § 1100.244 (e)(3).)

(3) A copy of the temporary authority application is available for inspection at the Commission's Offices in Washington, DC, and the Regional Office(s) in which each applicant is domiciled.

(i) *Contents of a protest.* (1) A protest to an application for temporary authority shall be in writing, but in no particular form. It may, for example, consist of a telegram, letter, or pleading.

(2) The protest shall state the protestant's interest in the proceeding and the specific grounds upon which protestant relies in opposing the temporary authority application.

(3) The protest shall also indicate that a copy has been served on applicants' representative(s).

(j) *To whom the protest is sent.* (1) Only the original need be sent to the Commission (Office of the Secretary, Washington, DC, 20423).

(2) A copy of the protest shall be served on applicants' representative(s).

Appendix A.—Instructions for Forms OP-F-44 and OP-F-45

Instructions

1. *Reference*—See 49 U.S.C. 11343–11344; 49 CFR 1100.240.

2. *Filing Fee* Applicant must submit, with the application, a check or money order payable to the Interstate Commerce Commission for the amount listed at 49 CFR 1002.2.

3. *Form*—If this form is not used, application shall be typewritten or printed on paper 8½ inches wide and 13 inches long, with a margin of 1½ inches on the left side and 1 inch on the right side. Indent quotations and use only one side of the paper. White-line blueprints which cannot be reproduced by photography are not acceptable.

4. *Appendices*—Shall be folded to conform to the size of the application.

5. *Manner of Execution*—The original application shall be signed in ink by applicant(s), if individual(s); by all general partners, if a partnership; and if a corporation, association, or other similar form of organization, by an executive officer having knowledge of all matters in the application.

6. *Number of copies*—File with the Interstate Commerce Commission at Washington, D.C. 20423, the original and (two) copies of each application. Concurrently furnish one copy to each of the Regional Managing Directors of the Commission's Office of Consumer Protection in which are located the headquarters of the carriers involved in the application, and upon written request, to the Board, Commission, or Official (or to the Governor where there is no Board, Commission or Official) having authority to regulate the business of transportation by motor vehicle in each State in or through which operations may be conducted under the operating authorities involved in the application. Signatures on copies may be stamped or typed. A summary of the application shall be delivered by first-class mail to the appropriate official (described above) of the State in which the headquarters of applicants are located.

7. *Notice to Competitors*—Applicants are not required to give notice to competitors. Notice to interested persons of the filing of the application will be given by the publication of a summary of the authority sought in the Federal Register.

8. *Amendments*—Amendments to applications will not be permitted after notice of the filing of the application has been published in the Federal Register, unless the Commission requires the application to be amended to cure a legal impediment. Notice of an impediment will appear in the Federal Register publication of the authority sought.

9. *When Additional Space Required*—Attach to the application supplemental sheets making specific reference to the supplements.

10. *Information Required*—Must be given unless not known, unavailable or inapplicable. However, an explicit statement to the effect shall be made in the application, stating why the information has not been given.

11. *Hearing*—Requests for postponement, or change of location of a hearing, must be made in writing and filed with the Commission within 10 days of the date of the notice assigning the proceeding for a hearing. Any request must state the emergency circumstances warranting the change. An ample supply of exhibits to be used at a hearing should be prepared so that copies are available for all parties, and where practicable should be distributed in advance.

12. *Related Applications*—Applicant shall bring to the Commission's attention any application it has filed under any other provision of title 49, Subtitle IV, U.S. Code, "Transportation" which is directly related to the proposed transaction. Directly related applications must be filed contemporaneously, and under the same cover.

13. *Federal Register Summary*—The applicant shall prepare a summary of the authority sought for the Federal Register in the form prescribed by the Commission. The caption summary shall indicate, in part, whether an application has been filed under (a) 49 U.S.C. 11349 for temporary authority and/or (b) another section of the Act which is directly related to the proposed finance transaction.

Instructions for Form OP-F-46

Instructions

1. *Reference*—See 49 U.S.C. 11349 and 10928, 49 CFR 1100.244.

2. *Fees*—Applicant shall submit with the application a check or money order made out to the Interstate Commerce Commission for the amount listed at 49 CFR 1002.2.

3. *Form*—If this form is not used, application shall be typewritten or printed on paper 8½ inches wide and 13 inches long, with a margin of 1½ inches on the left side and 1 inch on the right side. Indent quotations and use only one side of the paper. White-line blueprints which cannot be reproduced by photography are not acceptable.

4. *Exhibits*—Shall be folded to conform to the size of the application.

5. *Manner of Execution*—The original application shall be signed in ink by applicant(s), if individual(s); by all general partners, if a partnership; and if a corporation, association, or other similar form of organization, by an executive officer having knowledge of all matters in the application.

6. *Number of Copies*—File with the Interstate Commerce Commission at Washington, D.C. 20423, the original and (two) copies of each application. Concurrently furnish one copy to each of the Regional Managing Directors of the Commission's Office of Consumer Protection in which are located the headquarters of the carriers involved in the application, and upon written request, to the Board, Commission, or Official (or to the Governor where there is no Board, Commission or Official) having authority to regulate the business of transportation by motor vehicle in each State in or through which operations may be conducted under the operating authorities involved in the application. Signatures on copies may be stamped or typed. A summary of the application shall be delivered by first-class mail to the appropriate official (described above) of the State in which the headquarters of applicants are located.

7. *Notice*—If applicants file this application subsequent to the filing of a related application under 49 U.S.C. 11344 or 10928, they shall serve a copy of this application upon all parties of record to date. If this application is filed concurrently with the corresponding application under 49 U.S.C. 11344 or 10928, the Commission will give notice of both filings by Federal Register publication of a summary of the authority sought. (Applicants shall prepare the summary in conjunction with the filing of the application under 49 U.S.C. 11344 or 10928).

8. *When Additional Space Required*—Attach to the application supplemental sheets, making specific reference to the supplements in the form. Do not paste riders to any page.

9. *Lease or Other Agreement*—The written instrument filed as Exhibit B should provide for a specific monetary monthly rental or management fee commensurate with the value of the properties to be operated temporarily. Temporary authority should not be requested for the purpose of making legal a violation of 49 U.S.C. 11343.

10. *General*—No consideration will be given to an application for temporary authority under 49 U.S.C. 11349 unless a corresponding application under 49 U.S.C. 11344 or 10928 has been filed.

[FR Doc. 81-1837 Filed 1-16-81; 8:45 am]
BILLING CODE 7035-01-M

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49 CFR Part 1033

[Fifth Revised Service Order No. 1474; Amdt. No. 1]

Various Railroads Authorized To Use Tracks and/or Facilities of Chicago, Milwaukee, St. Paul and Pacific Railroad Co., Debtor (Richard B. Ogilvie, Trustee)

AGENCY: Interstate Commerce Commission.

ACTION: Amendment No. 1 to Fifth Revised Service Order No. 1474.

SUMMARY: Fifth Revised Service Order No. 1474, authorized various railroads to use tracks and/or facilities of Chicago, Milwaukee, St. Paul and Pacific Railroad Company, Debtor (Richard B. Ogilvie, Trustee). The provisions of this order are extended to permit an additional thirty (30) days for carriers to undertake compensation negotiations, and shall expire at 11:59 p.m., February 15, 1981.

EFFECTIVE DATES: 11:59 p.m., January 15, 1981, and continuing in effect until 11:59 p.m., February 15, 1981, unless modified,

amended or vacated by order of this Commission.

FOR FURTHER INFORMATION CONTACT:
M. F. Clemens, Jr. (202) 275-7840.

SUPPLEMENTARY INFORMATION:

Decided: January 13, 1981.

Upon further consideration of Fifth Revised Service Order No. 1474 (45 FR 41688, 43788, 46894, 52158, 53157, 64065, and 68226), and good cause appearing therefor:

It is ordered,

§ 1033.1474 *Various railroads authorized to use tracks and/or facilities of the Chicago, Milwaukee, St. Paul and Pacific Railroad Company, Debtor (Richard B. Ogilvie, Trustee),* Fifth Revised Service Order No. 1474 is amended by substituting the following paragraph (a) for paragraph (a) thereof:

(a) *Expiration date.* The provisions of this order are extended to permit an additional thirty (30) days for carriers named to undertake compensation negotiations, and shall expire at 11:59 p.m., February 15, 1981, unless otherwise modified, amended or vacated by order of this Commission.

Effective date. This amendment shall become effective at 11:59 p.m., January 15, 1981.

This action is taken under authority of 49 U.S.C. 10304–10305 and Section 122, Pub. L. 96–254.

This amendment shall be served upon the Association of American Railroads, Car Service Division, as agent of the railroads subscribing to the car service and car hire agreement under the terms of that agreement and upon the American Short Line Railroad Association. Notice of this amendment shall be given to the general public by depositing a copy in the Office of the Secretary of the Commission at Washington, D.C., and by filing a copy with the Director, Office of the Federal Register.

By the Commission, Railroad Service Board, members Joel E. Burns, Robert S. Turkington and John H. O'Brien.

Agatha L. Mergenovich,
Secretary.

[FR Doc. 81-1832 Filed 1-16-81; 8:45 am]
BILLING CODE 7035-01-M

Proposed Rules

Federal Register
Vol. 46, No. 12
Monday, January 19, 1981

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 907 and 908

Navel Oranges and Valencia Oranges Grown in Arizona and Designated Parts of California; Proposed Amendments of Rules and Regulations

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rules.

SUMMARY: This notice invites written comments on a proposal to amend rules and regulations governing the exemption for the handling of California-Arizona Navel and Valencia oranges for commercial processing into by-products. The proposed action is designed to clarify the basis for such exemption and specify safeguards to prevent oranges shipped under exemption from entering regulated fresh markets.

DATES: Comments must be received on or before February 3, 1981.

ADDRESSES: Send two copies of comments to the Hearing Clerk, United States Department of Agriculture, Room 1077 South Building, Washington, D.C. 20250, where they will be available for public inspection during regular business hours (7 CFR 1.27(b)).

FOR FURTHER INFORMATION CONTACT: Malvin E. McGaha, Chief, Fruit Branch, F&V, AMS, USDA, Washington, D.C. 20250, telephone 202-447-5975. The Draft Impact Analysis relative to this proposed action is available on request from the above named individual.

SUPPLEMENTARY INFORMATION: This proposed action has been reviewed under the USDA procedures established in Secretary's Memorandum 1955 to implement Executive Order 12044 and is classified "not significant." The proposal is being published with less than a 60-day comment period because there is insufficient time between the date when the information upon which it is based became available and the effective date necessary to effectuate the declared policy of the act.

The Department is considering issuing the proposed amendments of Subpart-Rules and Regulations under Marketing Order Nos. 907 and 908, both as amended (7 CFR Parts 907 and 908), regulating the handling of Navel oranges and Valenica oranges grown in Arizona and designated parts of California. These agreements and orders are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674). The proposed amendments were recommended by the Navel Orange Administrative Committee, and the Valencia Orange Administrative Committee, which locally administer these marketing order programs.

The committees believe the proposed amendments are necessary to prevent oranges shipped under marketing order exemption provisions from entering into commercial channels of trade. The proposed amendments are designed to clarify criteria by which the committee determines eligibility for exemption. Under the proposals, applicants who desire to acquire oranges for commercial processing into by-products would need to provide specified information relating to their manufacturing operations and the intended disposition of the oranges, and have their names placed on the list of "approved by-products manufacturers" by the appropriate committee. The proposed action specifies that no person shall handle oranges for commercial processing into by-products unless such oranges are handled under allotment or the processor is an approved by-product manufacturer.

1. The first proposal is to amend 7 CFR Part 907; Subpart-Rules and Regulations by revising paragraph (d) of § 907.100, by removing current paragraph (a)(2) and redesignating current (a)(3) as (a)(2) in § 907.131, and by revising paragraph (b) of § 907.131 to read as follows:

§ 907.100 Definitions.

* * * * *

(d) "Handle oranges to commercial processors for processing into products, including juice" means the handling of oranges to a person on the list of approved by-product manufacturers, as provided in § 907.131(b).

* * * * *

§ 907.131 By-product oranges.

(a) *Notice to committee.* No person shall handle oranges for commercial processing into by-products unless (1) such oranges are, or have been, handled pursuant to an allotment therefor; or (2) the processor is an approved by-product manufacturer, as prescribed in paragraph (b) of this section.

(b) *Approved by-products manufactuer.* (1) Any person who desires to acquire oranges as an approved by-products manufacturer for commercial processing into by-products exempt from regulation pursuant to § 907.67(b) must first apply to and obtain approval from the committee. Applicants for such exemption shall submit to the committee an application on NOAC Form No. 14 containing the following information: (i) the name and address of applicant; (ii) the proposed type of by-product(s) to be made or derived from oranges; (iii) the approximate quantity of oranges to be used annually; (iv) a description of the product(s) to be manufactured and the equipment to be used in manufacturing such by-products and the capacity per hour thereof; (v) the intended disposition of unused components of the oranges; (vi) a statement describing the manner in which the by-product(s) will be sold, whether at wholesale, retail, or both; (vii) a statement whether orange juice will be pasteurized and, if so, a description of the manner in which such pasteurization will be accomplished; (viii) the location of the plant(s); (ix) a statement that the exempt oranges acquired hereunder will be used for by-products manufacturing only and will not be resold or disposed of in fresh fruit channels; and (x) an agreement to submit such reports as may be required by the committee.

(2) Such application shall be referred to the committee's Compliance Department for investigation and reported back to the committee. The committee shall approve the application if, in it's opinion: (i) the applicant's principal occupation is manufacturing food by-products, including orange by-products, except those applicants providing oranges or by-products for animal feeding purposes; (ii) all orange by-products, including juice, will be sold at wholesale only or will be used for animal feeding; (iii) the applicant agrees to submit such reports as may be required by the committee; (iv) the

oranges obtained under this exemption will not be resold or disposed of in fresh fruit channels; and (v) approval of the application will not be contrary to the purposes of this part. If an application is denied, the committee shall within a reasonable time inform the applicant in writing of the facts and reasons therefor, and afford the applicant an opportunity, either orally or in writing, to present opposing facts and reasons. If the application is approved, the applicant's name shall be placed on the list of approved by-products manufacturers. The applicant shall be informed of the committee's determination in a timely manner.

(3) A commercial processor on the list of approved by-products manufacturers who: (i) fails to commercially process oranges into by-products for a period of one year or more; (ii) sells or otherwise disposes of any orange by-product(s) manufactured from oranges at the retail level other than for animal feeding; (iii) sells or otherwise disposes of oranges obtained under this exemption in fresh fruit channels; (iv) fails or refuses to submit reports required by the committee, may be determined by the committee to be ineligible to acquire oranges under this exemption and the committee may suspend or remove it's name from the list of approved by-products manufacturers for such time as the committee deems appropriate in the circumstances. Prior to making such determination the committee shall give the processor reasonable advance notice in writing of it's intention, the facts and reasons therefor; and afford the processor an opportunity, either orally or in writing, to present opposing facts and reasons. After a processor's name has been removed from the list of approved by-products manufacturers, it must submit a new application and secure approval of the committee in order to acquire exempt oranges pursuant to § 907.67(b).

* * * * *

2. The second proposal is to amend 7 CFR Part 906; Subpart-Rules and Regulations by revising paragraph (d) of § 906.100, by removing current paragraph (a)(2) and redesignating current (a)(3) as (a)(2) in § 906.131, and by revising paragraph (b) of § 906.131 to read as follows:

§ 906.100 Definitions.

* * * * *

(d) "Handle oranges to commercial processors for processing into products, including juice" means the handling of oranges to a person on the list of approved by-product manufacturers, as provided in § 906.131(b).

* * * * *

§ 906.131 By-product oranges.

(a) *Notice to committee.* No person shall handle oranges for commercial processing into by-products unless (1) such oranges are, or have been, handled pursuant to an allotment therefor; or (2) the processor is an approved by-product manufacturer, as prescribed in paragraph (b) of this section.

(b) *Approved by-products manufacturer.* (1) Any person who desires to acquire oranges as an approved by-products manufacturer for commercial processing into by-products exempt from regulation pursuant to § 906.67(b) must first apply to and obtain approval from the committee. Applicants for such exemption shall submit to the committee an application on VOAC Form No. 14 containing the following information: (i) the name and address of applicant; (ii) the proposed type of by-product(s) to be made or derived from oranges; (iii) the approximate quantity of oranges to be used annually, (iv) a description of the product(s) to be manufactured and the equipment to be used in manufacturing such by-products and the capacity per hour thereof; (v) the intended disposition of unused components of the oranges; (vi) a statement describing the manner in which the by-product(s) will be sold, whether at wholesale, retail, or both; (vii) a statement whether orange juice will be pasteurized and, if so, a description of the manner in which such pasteurization will be accomplished; (viii) the location of the plant(s); (ix) a statement that the exempt oranges acquired hereunder will be used for by-products manufacturing only and will not be resold or disposed of in fresh fruit channels; and (x) an agreement to submit such reports as may be required by the committee.

(2) Such application shall be referred to the committee's Compliance Department for investigation and reported back to the committee. The committee shall approve the application if, in it's opinion: (i) the applicant's principal occupation is manufacturing food by-products, including orange by-products, except those applicants providing oranges or by-products for animal feeding purposes; (ii) all orange by-products, including juice, will be sold at wholesale only or will be used for animal feeding; (iii) the applicant agrees to submit such reports as may be required by the committee; (iv) the oranges obtained under this exemption will not be resold or disposed of in fresh fruit channels; and (v) approval of the application will not be contrary to the purposes of this part. If an application is denied the committee shall within a reasonable time inform the applicant in writing of the facts and reasons therefor, and afford the applicant an opportunity, either orally or in writing, to present opposing facts and reasons. If the application is approved, the applicant's name shall be placed on the list of approved by-products manufacturers. The applicant shall be informed of the committee's determination in a timely manner.

(3) A commercial processor on the list of approved by-products manufacturers who: (i) fails to commercially process oranges into by-products for a period of one year or more; (ii) sells or otherwise disposes of any orange by-product(s) manufactured from oranges at the retail level other than for animal feeding; (iii) sells or otherwise disposes of oranges obtained under this exemption in fresh fruit channels; (iv) fails or refuses to submit reports required by the committee, may be determined by the committee to be ineligible to acquire oranges under this exemption and the committee may suspend or remove it's name from the list of approved by-products manufacturers for such time as the committee deems appropriate in the circumstances. Prior to making such determination the committee shall give the processor reasonable advance notice in writing of it's intention, the facts and reasons therefor; and afford the processor an opportunity, either orally or in writing, to present opposing facts and reasons. After a processor's name has been removed from the list of approved by-products manufacturers, it must submit a new application and secure approval of the committee in order to acquire exempt oranges pursuant to § 906.67(b).

* * * * *

Dated: January 13, 1981.

D. S. Kuryloski,

Acting Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 81-1899 Filed 1-16-81; 8:45 am]

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SMALL BUSINESS ADMINISTRATION

13 CFR Part 122

Business Loans; Delegation of Certain Authority and Responsibility to Preferred Lending Institutions

AGENCY: Small Business Administration.

ACTION: Proposed rule.

SUMMARY: Section 114 of Pub. L. 96-302, enacted July 2, 1980, (94 Stat. 838) amended section 5(b)(7) of the Small Business Act (15 U.S.C. 634) to authorize SBA to delegate to certain lending institutions, with respect to deferred participation (guaranteed) loans, the authority to determine eligibility, creditworthiness, loan monitoring, collection, and liquidation. These proposed regulations implement this recent enactment. These proposed regulations cite the statutory authority for these delegations of authority and responsibility to certain "preferred" lenders; set forth the objectives of this new initiative; detail the limitations on these delegations; provide eligibility criteria for a lender seeking to attain (and retain) this "Preferred" status vis-a-vis SBA; and, detail the respective roles of the "Preferred Lenders" and the SBA in terms of making decisions or taking actions with respect to loan eligibility, loan processing, loan closing; loan administration (servicing/ collection) and loan liquidation.

DATE: Comments must be received on or before March 20, 1981.

ADDRESS: Written comments, in duplicate, are to be addressed to: Wayne S. Foren, Director, Office of Lender Relations and Certification—Room 720, Small Business Administration, 1441 L Street, N.W., Washington, D.C. 20416.

FOR FURTHER INFORMATION CONTACT: Danny J. Gibb, Lender Relations and Certification, Room 720, Washington, D.C. 20416, 202-653-8423.

These proposed rules and regulations create a Preferred Lenders Program and are within the letter, and in the spirit, of the Act. Conceptually, we are establishing three strata of private sector lending partners with the SBA.

(1) *Regular Participating Lenders.* These are either banks or non-bank lenders that have executed a Guaranty Agreement with the SBA. This strata of lenders is the entry level or participants with the SBA and, typically, these lenders are relatively inactive participants. SBA's standard loan processing, servicing and liquidation procedures apply to these lender's involvement and interaction with the SBA.

(2) *Certified Lenders.* These are either banks or non-banks lenders that have executed with the SBA the standardized SBA Forms 750, 750B and 1186 (respectively, "Guaranty Agreement (Deferred Participation) (5-78)", "Loan Guaranty Agreement (Deferred Participation) For Short-Term Loans (3-80)", and "Loan Guaranty Agreement (Deferred Participation) Supplemental Guaranty Agreement Bank Certification Program (BCP) (2-79 or 1-80)". These lenders are relatively active with the SBA, and we rely to a great degree on these lenders' evaluations of the small business concerns' loan applications. These lenders include the Agency's Fiscal Years' 1979 and 1980 participants in the Bank Certification Program. Because these lenders have proven "track records" with the Agency, thereby justifying SBA's great reliance upon their abilities to present *complete* and *well-analyzed* loan guaranty application packages to us, SBA is able to provide these Certified Lenders with our final decisions on their loans within three (3) of SBA's working days. For these lenders, SBA retains all *final* decision-making authorities in all aspects of our financial assistance delivery system.

Note.—Details concerning participation in the Certified Lender Program may be obtained from any local SBA office. The mechanics of how a "Certified Lender Program" participant (such as those 252 lenders included in the Bank Certification Program during SBA's Fiscal Years 1979 and 1980) interacts with SBA are contained in the February 26, 1979, SBA publication, "The Information Book For The SBA Bank Certification Program", and the SBA/Lender Guaranty Agreements [SBA Form 750 (as of 5/78), SBA Form 750B (as of 3/80), and SBA Form 1186 (as of 2/79 or 1/80)]. The SBA reserves the right to revise and re-issue these documents as is deemed appropriate and necessary.

(3) *Preferred Lenders.* These are our best and most reliable lending partners. To acquire this preferred status, a participating lender must have performed satisfactorily in our Certified Lenders Program. The Preferred Lenders are the recipients of SBA's delegations of authority/responsibility for all aspects of our financial assistance delivery system. These proposed rules and regulations deal almost solely with this new strata of SBA's lending partners, the Preferred Lenders Program (PLP).

In effect, these and regulations establish framework for SBA's development of three, dynamic tiers of the SBA/lender partnership:

1. Regular loan processing, administration and liquidation (non-BCP; SBA involvement in each case).
2. Certified Lenders Program's loan processing, administration and liquidation (3-day service to lenders).
3. Preferred Lenders Program's loan processing, administration and liquidation (lender makes many final decisions).

There are built-in incentives for lenders to work themselves up the latter from regular SBA handling to CLP and

on the PLP authorities and responsibilities. There are built-in safeguards for the SBA whereby each participant (in any of the three tiers) is evaluated fairly and on a timely basis as to its performance (successful or unsuccessful) at any rung on the SBA's ladder, and both upward and downward mobility are possible.

Also, SBA's evaluation of three-tier system will permit us to adapt the better ideas from each tier for the utilization by the other tiers. For instance, if the PLP's rules for loan administration and liquidation prove not be too "liberal" (from SBA's standpoint), the Agency could decide to adapt those rules for usage by CLP's participants, or, even for Regular Participants (probably to a lesser degree).

SUPPLEMENTARY INFORMATION: Section 122.102 provides that the policy of the Act and this Subpart B is to transfer from SBA to qualified, "Preferred Lenders" certain financial assistance delivery system functions (as delineated hereinafter in Subpart B) relating to determinations of eligibility and creditworthiness, loan closing, loan administering (including monitoring, collecting and servicing) and loan liquidating. Such delegations are limited to deferred participation (guaranteed) loans as described in § 122.6(b) of SBA regulations [13 CFR 122.6(b)] and as limited, further, in Sections 122.106(c) and (d) of this proposed regulation. These additional delegations of authority to qualified, approved lenders are restricted to those lenders selected by this Agency to become participants in the "Preferred Lender Program" (PLP), having met the SBA's eligibility criteria for such designation as set forth later in this section. Within this section, the SBA explains the eligibility *and* performance criteria for a lender to be:

(a) Approved as a "Preferred Lender Program" participant [defined as being a lender which has been delegated by SBA to take specific, *final* actions (as delineated hereinafter in Subpart B) on behalf of the Agency with regard to SBA's financial assistance delivery system].

(b) Re-certified/de-certified as a participant in the "Preferred lender Program" [to be determined by SBA at least once every three (3) years].

These proposed regulations apply only to PLP participants, insofar as they delineate SBA's delegations of the financial assistance delivery system's authorities/ responsibilities. It should be noted, however, that the eligibility and performance criteria set forth herein (as to how a lender can be selected, for retained in, or removed from the Preferred Lender Program) *will* apply to all prospective participants in the PLP. The remainder of this Supplementary Information portion summarizes the rationale used in determining the proposed regulations' content with respect to Preferred Lender Program certification, re-certification and de-certification criteria.

These eleven (11) eligibility criteria pertain to the factors for the "Preferred Lender Program" and include such *quantifiable* factors as the lender's required experience as an SBA participating lender, lenders' loss rate on their non-SBA commercial loan portfolio, years' passage since the lenders have had any difficulty with SBA vis-a-vis denial(s) of liability and/ or involuntary termination(s) of guaranty, and acceptable volumes of Lender disbursed, SBA-guaranteed business loans. This later criteria (loan volume) becomes more restrictive as a lender seeks to be *re-certified* by SBA as a "Preferred Lender Program" participant. The SBA will develop specific criteria for re-certification and de-certification. Such proposed criteria and related procedures will be published in the Federal Register within 120 days of these rules' effective date. The acceptable SBA-loan purchase rate (as to dollars) for lenders is to be at least twenty (20 percentum *less* than the *average* purchase rate percentage experienced (over SBA's three (3) fiscal years immediately preceding lender's application) by the local (Branch or District) SBA office servicing the territory in which the lender's principal office is located. For instance, if a particular SBA office's average loan purchase rate (as to dollars) on all of its *guaranteed* business loans during our Fiscal Years 1978/1980 were fifteen (15) percentum, a local lender apply for PLP status would have to have a purchase rate on SBA's guaranteed business loans for the that same period of time of no more than twelve (12) percentum (20% less than the overall, localized average).

These selection criteria are designed to make certain that the "Preferred Lender Program" is selective and is reserved for our more experienced, more active and least troublesome lending partners. Among our *qualitative* factors for PLP participation selection, is a proven commitment to small business generally, including concerns owned and operated by women, members of socially and economically disadvantaged groups (such as minorities), etc. In these proposed regulations, we do not establish specific (numeric) goals, targets or requirements as to how many SBA-guaranteed loans

must or should be made to SBA's "priority" groups' members or to our "priority" types of business activities. However, we do propose to reserve such goal-setting rights to the Agency. Of course, such goals would be as localized as is possible. We expect that our preferred lending partners will cooperate fully in helping SBA meet higher, national objectives, such as equal credit opportunities, etc. Lenders' performance in these areas will be monitored very closely to make certain that the PLP does not operate to the detriment or exclusion of our "priority" groups' members or "priority" types of business activities.

Our final points with respect to *eligibility* criteria for lenders to be selected as PLP participants are that:

(1) the process begins at the lender's local SBA office (and *not* in Washington, D.C.);

(2) any of the criteria can be waived by the SBA's Associated Administrator for Financial Assistance *if* there are extenuating circumstances and *if* SBA's regional and district or branch offices request such waiver(s) with full explanation and justification; and

(3) Certain re-certification/de-certification *quantifiable* criteria permit deviations (with the "benchmark" being twenty (20) percentum from the established, published performance standards).

As for the Preferred Lender Program's policies with respect to loan processing (including decision-making as to loan eligibility, creditworthiness, structuring, approving/disapproving, and closing), Section 122.106 provides that SBA is willing to transfer from SBA to "Preferred Lender Program" participants many, final decision-making and action authorities and responsibilities relevant to most of SBA's deferred participation business loans. In these proposals, we intend (at least for now) to restrict the "Preferred Lender Program" authority to 7(a) business loans [excluding Handicapped Assistance Loans, Economic Opportunity Loans, Energy Loans, Employee Stock Ownership Plan (Trust) loans, etc.]. The 7(a) business loan eligibles are restricted further by listing specific types of business activities which pose particular eligibilty—determination problems, such as media loans, and are ineligibles for "Preferred Lender Program" processing. Many of these "ineligibles" are eligible for processing under the "Certified Lender Program" and/or SBA's "regular" business loan procedures.

The rationale for proposing these restrictions is the need to be cautious in exercising the authorities granted by Pub. L. 96-302 and the need to keep the rules as clear and simple as possible, especially in the beginning of the "Preferred Lender Program". It should be noted that PLP participants are to process all PLP-eligible loans under the PLP procedures. Other SBA loans are to be processed, as appropriate, under the auspices of either the Certified Lenders or Regular Participating Lenders Programs.

Most of the types of loans ineligible for "Preferred Lender Program" processing are so categorized because of their eligibility-determination complexities, most of which evove from the Small Business Act's provisions and their implementing regulations.

It would be difficult for PLP participants to determine whether some particular type of loan, e.g., media, could or could not be processed, unilaterally, without any SBA guidance. This matter is all the more critical when one recognizes that SBA *cannot* honor its guaranty to a lender on what was an illegal loan, according to SBA's statutes, rules and regulations, etc. These restrictions will enhance the SBA/Lender partnership.

The authority contained in Pub. L. 96-302 does not relieve SBA from complying with the statutory requirements that apply to any other loan guarantee of the Agency. Therefore, any lender exercising PLP authority to obligate the Agency on a loan must also assume the responsibility of compliance with all limitations on such loans. It would defeat the purpose of the delegation if all applications, first, had to be submitted to SBA for its review of all statutory requirements before the lender processed the loan. All loan guarantee approvals, whether approved by SBA or a lender, are subject to the total authority appropriated by Congress in the Agency's budget. In order to avoid any possibility of exceeding the budget authority, it is necessary for SBA to control the amount of approvals by the lenders. The amount of approval authority allocated to various lenders must be subject to the Agency's right to increase, decrease or terminate unused portions of the authority at any time, as required by various budget actions by the Congress.

This program represents the vast majority of SBA loan guarantee approvals, and the specified limitations eliminate the need for lenders to become familiar with the many special eligibility requirements involved with the additional loan guarantee programs.

Also, many of the other loan programs require SBA to get the assistance of other agencies before action can be taken. The total amount of the lender's PLP loan approval authority is limited at

this time to under $300,000 (SBA *and* lender's shares) because loans less than this amount are categorically excluded from the requirements of the National Evironmental Protection Act (NEPA). Since these requirements specify several actions that *must be taken by SBA* (on loans of $300,000 or more in face value), it is not feasible for the lender to process the loan up to the point of approval and then forward the loan application to SBA for the NEPA evaluations. SBA will continue to work with the Council on Environmental Quality to see if NEPA restrictions can be clarified and/or simplified in such a way that PLP participants could process, unilaterally, *all* otherwise eligible, SBA-guaranteed 7(a) business loans, up to the SBA's statutory limitation as to SBA's share of the loan, rather than having to "cap" this PLP authority at the $300,000 total amount, (SBA and Lender) level.

These proposed regulations, also, deal specifically with:

(1) Requirements of "Preferred Lender Program" participants to have SBA's "Statements of Personal History" (SBA Form 912) *cleared* by SBA's Office of Security and Investigations (for determinations of good character on the part of the small businesses' owners, principal stockholders, etc.);

(2) Maximum flexibility to PLP participants [and their local SBA office(s)] with respect to mutually-agreed upon *loan closing* documents and requirements;

(3) A *specific* listing of those types of SBA's guaranteed, 7(a) business loans which are *not* eligible for unilateral (PLP) processing by the lender participants (though they may be eligible for *either* "Certified Lender Program" *or* SBA's regular loan-processing procedures);

(4) A prohibition against the usage of the Preferred Lender Program's procedures if the loan's proceeds are to be used to reduce the lender's exposure or the exposure of any other lender affiliated through common ownership, such as through a holding company; and,

(5) No more than twenty-five (25) percent of the loan proceeds can be used for debt payment, including debt owed to the lender or its affiliates. Payment of trade accounts payable is *not* considered to be debt payment.

As for the Preferred Lender Program's loan administration (collection and servicing) and loan liquidation policies, §§ 122.107 and 122.108 specify that SBA is willing to transfer to "Preferred Lender Program" participants many final decision-making and action authorities and responsibilities.

Under § 122.107, SBA permits participants in the "Preferred Lender Program" to take (on or after the effective date of this regulation) such future servicing actions as specified on *all* Guaranteed Loans (including prospective actions on those SBA-guaranteed loans which were in the participant's portfolio *prior* to the lender having become approved by SBA as being a "Preferred Lender Program" participant).

Each qualified lender, under this proposed delegation of authority, must follow accepted standards of loan servicing (including collection follow-up, borrower services and accounting controls) employed by prudent lenders. Each qualified lender would retain all documents relating to the loan, would receive all payments from the borrower, and be responsible for the loan's proper servicing. SBA *does not* propose that PLP participants be permitted to sell the guaranteed portion of SBA loans in the secondary market without prior SBA review or consent.

With respect to loan administration (servicing and collection), a qualified lender would have to obtain prior SBA written consent if it plans to (1) release or waive any claim against any borrower, guarantor, obligor, or standby creditor; (2) sell any primary obligation or other evidence of a Guaranteed Loan to anyone other than another Preferred Lender, or for an amount less than the total amount due; (3) accept a compromise settlement for less than the total amount due; (4) advance funds which would be chargeable to SBA or added to an outstanding loan balance; or, (5) take or consent to any action that would confer a preference on the qualified lender over SBA. SBA shall have the responsibility to ensure that the borrower complies with the non-discrimination provisions set forth in Title 13 CFR Part 113 and Part 117 (when promulgated) of SBA Rules and Regulations.

SBA will continue to make its loan officers and management assistance personnel available to the borrower and the preferred lender. If the borrower defaults, the regular procedures prescribed in Subpart A of this Part [§ 122.10(b)] shall be applicable.

If a preferred lender is determined to be negligent in its responsibilities under the delegation of authority, one of SBA's possible remedies may be the removal of the institution from our Preferred Lender status.

Section 122.108 is devoted to the authorities and responsibilities of the preferred lender with respect to loan liquidation. The section requires, before any determination to liquidate a loan is made, that the lender develop a written liquidation plan having the concurrence of SBA. Such plan must consider, among other items, the possibility of a work-out, the estimated cost of planned actions, and the necessary time frame. The plan could be amended with the concurrence of SBA and the preferred lender. The lender, within the confines of state and local law, would have the authority to work on legal and credit aspects of the liquidation relating to, among other items, work-outs, taking possession, appraisals, foreclosures, and litigation. Prior SBA approval is required with respect to several listed items. Proceeds from the liquidation may be used to reduce the total outstanding loan balance, except that, if SBA has purchased the guaranteed portion, SBA shall share the liquidation proceeds ratably with the preferred lenders. Upon termination of a liquidation, the lender must provide SBA with a detailed accounting.

Accordingly, pursuant to the authority contained in Section 5(b)(7) of the Small Business Act [15 U.S.C. *et. seq.*], it is proposed to amend Part 122, Chapter I, Title 13 of the Code of Federal Regulations as follows:

1. Present Part 122 is amended by designating it as Subpart A.

2. A new Subpart B, to include §§ 122.100–122.108 (including Tables A & B), is added to read as follows:

PART 122—BUSINESS LOANS

Subpart A—General Procedures

* * * * *

Subpart B—Delegation of Authority to Certain Lending Institutions

Sec.

122.100 Captions.
122.101 Statutory provision.
122.102 Objectives.
122.103 Limitation.
122.104 Definitions.
122.105 Eligibility of preferred lender program status.
122.106 Loan processing.
122.107 Loan administration.
122.108 Liquidation procedures and responsibilities.

Table A Volume criteria for certification of preferred lenders.

Table B Volume criteria for re-certification of preferred lenders.

Authority: 15 U.S.C. 634(b)(7). Pub. L. 96-302, approved July 2, 1980 (94 Stat. 833,838).

§ 122.100 Captions.

Where captions are inserted as headings, they are inserted for convenience, and are not a part of these regulations.

§ 122.101 Statutory provision.

The statutory provision is found at 15 U.S.C. 634(b)(7) (94 Stat. 838).

§ 122.102 Objectives.

The intent of Congress and of the provisions of this Subpart B is to delegate to certain lending institutions, herein called Preferred Lenders, limited

loan processing, administration and liquidation authority. SBA's own authority is conditioned and limited by law, and such delegation is confined within such conditions and limits, and such further conditions as herein set forth. SBA shall deny its liability on Guaranteed Loans when statutory conditions or limitations of the Act are violated, and in cases of negligence, fraud or material misrepresentation, including the willful omission of a material fact necessary to make a statement not misleading. Where an alleged fact is peculiarly within the knowledge of a loan applicant, and the Preferred Lender has no reason to discredit such allegation, the Preferred Lender may rely on such allegation: *Provided,* That such allegation is made subject to the criminal provisions of Title 18, U.S.C. and Section 16 of the Act.

§ 122.103 Limitation.

The delegation of SBA's authority to Preferred Lenders shall be limited to Guaranteed Loans, and is further limited by § 122.107(b) and § 122.108(c) below. Within these limitations, Preferred Lenders shall process, administer and liquidate all Guaranteed Loans under the provisions of this Subpart and of the participation agreement.

§ 122.104 Definitions.

Defined terms are capitalized through this subpart.

"*Act*" means the Small Business Act, 15 USC 631 *et seq.*

"*Preferred Lender*" is a lending institution subject to continuing supervision and examination by a State or Federal chartering, licensing, or similar regulatory authority satisfactory to SBA. Certification authorizes such lender to process, administer and liquidate its Guaranteed Loans pursuant to the Act, to this Subpart and to the participation agreement with SBA.

"*Guaranteed Loan*" means a deferred participation loan pursuant to §§ 7(a) and 13 of the Act [15 USC 636(a)], not including group loans under Subsection 7(a)(5), see §§ 120.2 and 122.9 of this Chapter.

"*Small Business Concern*" means a concern (and its affiliates) defined as in § 3(a) of the Small Business Act, [15 USC 632(a)], and the regulations thereunfer (including, but not limited to, applicable size standards, Part 121 of this Chapter).

§ 122.105 Eligibility of preferred lender.

SBA will require a Preferred Lender to meet the following basic requirements:

(a) *Participation with SBA.* Lender shall have been an active participant in SBA's Guaranteed Loan program (as defined in Table A below) for not less than five (5) years.

(b) *Average Loan Activity.* Lender shall maintain an average loan activity for each three-year period in accordance with Table B below.

(c) *Loss Ratio.* The percentage of loss on lender's commercial loans which are not Guaranteed Loans shall not exceed an average of one percent (1%) per year for the previous three years.

(d) *SBA Purchases.* The purchase by SBA of Guaranteed Loans from lender over SBA's three fiscal years immediately preceding lender's application has been (in dollar amounts) at least twenty percent below the average purchase rate experienced by the SBA office serving the territory in which lander's principal office is located.

e. *Acceptance of Responsibility.* Unless SBA requests otherwise, in writing, Lender shall accept in all respects such authority and responsibilities as SBA hereby delegates to it: *Provided,* That SBA agrees to remain available for consultations and advice as lender deems appropriate.

(f) *Complete Packages.* Lender shall have demonstrated, to SBA's satisfaction, that it has the consistent ability to present complete and well-analyzed loan packages to SBA.

(g) *Lawful Operations.* Lender shall have demonstrated to SBA's satisfaction that it has complied with SBA's regulations and published policies, in addition to showing that it complies with other applicable law: *Provided,* That SBA shall have the responsibility for borrower's compliance with the non-discrimination provisions of Title 13 CFR Parts 113 and 117 (when promulgated) of this Chapter.

(h) *SBA Priorities.* Lenders shall demonstrate, to SBA's satisfaction, that it will extend assistance to creditworthy Small Business Concerns engaged in pursuits, or owned and operated by groups, on SBA's priority list. At present, SBA assigns priority to energy, job creation, high technology, innovation, export and community development. SBA further assigns priority to women, the disadvantaged, veterans and the handicapped. SBA may, from time to time, subsequent to the effective date of these regulations, establish (as appropriate and on as localized a basis as is practicable) loan objectives for such priority pursuits or groups, and attainment of such objectives will be a factor when SBA evaluates the performance of the Preferred Lender.

(i) *Quality of Lending.* By becoming a Preferred Lender, Lender shall be deemed to have affirmed that it will follow generally accepted standards of loan making, servicing and collection employed by prudent lenders, and in no event apply lower standards for Guaranteed Loans than for its own loans.

(j) *Regulatory Reports.* By becoming a Preferred Lender, Lender shall be deemed to have agreed that State or Federal chartering, licensing, or similar regulatory authority may furnish to SBA copies of examination reports and other information affecting SBA.

(k) *Inspection.* Lender shall agree in writing that representatives of SBA shall have access, during normal business hours, to audit and inspect all documents in the Lender's possession relating to Guaranteed Loans.

(l) *Past Denial Liability.* Lender must not have suffered a partial or total denial of liability or termination of guaranty (except upon the lender's request) on any Guaranteed Loan during the preceding five calendar years.

(m) *Waiver.* The Associate Administrator for Financial Assistance may waive any requirement of this Section for good cause shown in furtherance of the objectives of the Small Business Act.

(n) *No Entitlement.* Approval of lenders by SBA pursuant to this Subpart is discretionary and may be withdrawn if, upon evaluation, a Preferred Lender is found deficient in meeting the responsibilities specified in this Subpart.

§ 122.106 Loan processing.

(a) *Loan Approval.* A Preferred Lender is responsible for all decisions relating to eligibility, size, creditworthiness, loan closing and compliance with all requirements of law or SBA regulations, such as, for example, terms and conditions prescribed in § 120.3 of this Chapter relating to maturities, guaranty fees and interest rates, service and applicant's fees, and insurance. The Preferred Lender's approval of a loan must be evidenced by the signatures of two loan officers or by its loan committee.

(b) *Credit Allocations.* Each Preferred Lender shall receive a periodic allocation of credit which shall be its maximum authority to commit SBA on Guaranteed Loans for the period. Such lender's allocation shall be increased only by written authority of SBA and shall not be restored by payments received on SBA-related loans; however, loan cancellations shall be credited to the lender's allocation of SBA's credit if the cancellation occurs in the same SBA Fiscal Year as the cancelled loan originally was approved and debited to the allocation's account.

(c) *Limitations on Preferred Lender's authority.*

(1) Within the allocation described in paragraph (b) of this section, the Preferred Lender is authorized to approve loans to a borrower and its affiliates (as defined in § 121.3–2(a) of this Chapter), if the aggregate of such loans does not exceed the lesser of (i) $500,000 or (ii) the amount which the SBA district or branch office, serving the territory where such borrower is located, is authorized to approve. The amount of $500,000 in (i) above applies to the total amount of a loan, and does not refer to SBA's guaranteed share.

(2) A Preferred Lender shall obtain written SBA consent before approving any loan request.

(i) if the loan applicant has received financial assistance from SBA other than through a Guaranteed Loan from such lender, or a disaster loan or other financial assistance under Secs. 5(e), 7(b), or 7(g) of the Act, see Parts 131 and 123 of this Chapter;

(ii) to effect a change of ownership;

(iii) for recreational or amusement enterprises;

(iv) for private or membership organizations;

(v) to pay off a creditor who is inadequately secured and is in a likely position to suffer a loss;

(vi) to provide funds for, or replace, working capital used for distribution or loans to owners, partners or shareholders of the Small Business Concerns [See also § 120.2(d)(1)(ii)];

(vii) to refund a debt of a small business investment company licensed by SBA under Title III of the Small Business Investment Act, 15 U.S.C. 661 *et seq.*;

(viii) for investment in real or personal property other than for purposes of growth, modernization or expansion of the loan applicant. Examples of proscribed loan purposes include rental or leasing property, relending or reinvesting (including insurance companies and agents);

(ix) for any broadcaster, producer or distributor of print media, film, records, tape, or live performance of art or entertainment;

(x) for oil and natural gas exploration (i.e. 'wildcatting');

(xi) to any concern whose income (or that of its principals) in whole or in part is derived from gambling;

(xii) the effect of which would be to create or encourage a monopoly in violation of § 120.2(d)(8) of this Chapter;

(xiii) to any concern engaged in illegal activity or in the production, servicing or distribution of products or services used in connection with an illegal activity;

(xiv) to any concern if any of its principals has been convicted of a felony, is imprisoned, on parole, on probation or is appealing a felony conviction;

(xv) to any cooperative.

(d) *Refinancing.* Up to twenty-five percent (25%) of any loan made pursuant to this Subpart B may be used to refinance existing debt, but the exposure of the Preferred Lender and its Affiliates after such refinancing shall at least equal such lender's and Affiliates outstanding loans or ten percent (10%) of such loan whichever is more. Payment of trade accounts payable shall not be considered debt payment for the purposes of this subsection.

§ 122.107 Loan administration.

(a) *Servicing.* SBA authorizes Preferred Lenders to take [on or after the effective date of this regulation] such servicing actions as herein specified on all Guaranteed Loans.

(b) *Standard.* Each Preferred Lender shall follow, in servicing such loans, generally accepted standards of loan servicing employed by prudent lenders.

(c) *Scope of Service.* Subject to limitations hereafter described, each Preferred Lender shall have the authority and responsibility with respect to each Guaranteed Loan, to administer such loan in a manner reasonably comparable to that of its non-SBA portfolio. The Preferred Lender (1) shall hold the note, instruments of hyporthecation, and all other agreements and documents obtained by it in connection with such loan, subject, however, to paragraphs (d) (2) and (3) of this section; (2) shall receive all payments of principal and interest on such loan and shall be responsible for all loan servicing [including (but not limited to) collection follow-up, borrower's services and accounting controls] until such time as the SBA expressly accepts responsibility for service; and (3) shall have the authority to sell the guaranteed portion of each SBA guaranteed loan in the secondary market, subject to prior SBA review.

(d) *Limitations on Servicing.* Each Preferred Lender shall be required to obtain the prior written consent of SBA only if it plans to:

(1) Release or waive any claim arising out of the loan against any borrower, guarantor, obligor, or standby creditor;

(2) Sell any primary obligation or other evidence of indebtedness of loans guaranteed by SBA to any one other than another Preferred Lender;

(3) Sell any primary obligation or other evidence of indebtedness of loans guaranteed by SBA for a sum less than the total amount due thereon;

(4) Accept a compromise settlement of an indebtedness owed to the Preferred Lender on loans guaranteed by SBA;

(5) Advance funds for any purpose (for example, preservation of collateral) if such funds are to be chargeable to SBA or added to the outstanding loan balance; and

(6) Take or consent to any action that benefits or confers a preference on the Preferred Lender or its Associates.

(e) *SBA Assistance.* SBA shall continue its policy to aid and assist Small Business Concerns to discharge their financial obligations and to advise Small Business Concerns in the management, production and financial aspects of their business in order to encourage the development of sound and growing Small Business Concerns. Towards this end, SBA shall continue to make available the support assistance of SBA loan officers, management assistance officers etc. at the request of Small Business Concerns or their lenders. The moratorium provisions of Sec. 5(e) of the Act, 15 U.S.C. 634(e) and Part 131 of this Chapter shall be applicable to loans under this Subpart.

(f) *Purchase by SBA.* If a Small Business Concern defaults on a loan being serviced by a Preferred Lender for more than sixty (60) calendar days, or if SBA otherwise determines to purchase the guaranteed portion of a loan, the purchase provisions of § 122.10(b) shall apply.

(g) *Negligence by Preferred Lender.* If a Preferred Lender is negligent in its servicing responsibilities under this subpart B, SBA may remove the financial institution as a Preferred Lender, and deny liability pursuant to § 122.102.

§ 122.108 Liquidation procedures and responsibilities.

(a) *Policy.* It is SBA policy, in liquidation activities, to take severe corrective action in a careful and considered manner. Once a final decision to liquidate is made, prompt action is necessary to ensure maximum recovery in the minimum time with equity to the affected borrower and guarantors During such proceedings SBA remains alert to the possible resolution of the borrower's problem and eventual return to regular servicing, and will make special efforts to retain the small firm in existence as a viable business entity rather than to allow a piecemeal sale of assets with the resulting loss to the local economy as well as to SBA. Keeping the foregoing in mind, Preferred Lenders shall have the authority to liquidate Guaranteed Loans, subject to these regulations.

(b) *Scope.* Subject to the limitations listed in paragraph (c) of this section and the limitations in this paragraph, each Preferred Lender shall have the responsibility to resolve problems and to protect its interest and that of SBA with respect to any Guaranteed Loan after a plan of liquidation pursuant to paragraph (c) of this section has been agreed upon. The Preferred Lender, after ensuring that it is in compliance with the plan of liquidation and with all state and local laws and customs pertaining to liquidation, shall have the responsibility to work on legal and credit considerations which include sending notices to borrowers and guarantors, workouts, taking possession, care and protection of collateral, appraisals, foreclosures, all sales related activities (*e.g.* advertising, determination of sales methods, accounting for proceeds), establishing deficiencies, as well as litigation actions. SBA's prior written consent shall be required only if the Preferred Lender:

(1) plans to accelerate the maturity of any note or sue upon any loans instrument, or

(2) proposes to take actions contrary to, or in conflict with, the liquidation plan.

(c) *Plan.* Before any determination of liquidate is made, a written liquidation plan shall be developed by the Preferred Lender for the written concurrence of SBA. Such plan shall, at a minimum, reflect due consideration of the possibility of a work-out, the extent, nature and collateral for any non-SBA lending by the Preferred Lender to the borrower/guarantors, the estimated cost (*e.g.* legal fees) of the planned actions, method of public offering, the bonded auctioneer, the estimated overall recovery, protective bids and the time necessary to complete this effort The plan should also cover possible litigation. As needed, the plan may be amended with the written concurrence of SBA and the Preferred Lender. In implementing the plan, the Preferred Lender shall provide to SBA copies of pertinent letters, notices, pleadings, liquidation sale materials and such other documents as SBA may request. SBA encourages Preferred Lenders to consult freely with SBA.

(d) *Proceeds from Liquidation.* If the Preferred Lender is solely responsibile for the liquidation of the loan, it may apply the proceeds derived from the liquidation to reduce the total outstanding loan balance. If, however, the Preferred Lender has elected to make demand upon SBA under SBA regulations to purchase the guaranteed portion of an SBA guaranteed loan, the proceeds derived from the liquidation shall be shared ratably by it and SBA. If the Preferred Lender has not previously done so, it may upon completion of the liquidation make demand upon SBA for payment of SBA's share of the deficiency.

(e) *Accounting.* Upon the completion of a liquidation, the Preferred Lender shall provide SBA with a detailed accounting.

Dated: January 9, 1981.

A. Vernon Weaver,

Administrator.

[Catalog of Federal Domestic Assistance No. 59.012 (Small Business Loans)]

Table A.—(*Re:* § *122.105(b)*); *Active Participant in SBA's Guarantee Loan Program*

Lender's deposits range	*(1 and 2) number of loans
Less than $50 million	40
$50 million to $100 million	44
$100 million to $150 million	48
$150 million to $200 million	52
$200 million to $250 million	56
$250 million to $300 million	60
$300 million to $350 million	64
$350 million to $400 million	68
$400 million to $450 million	72
$450 million to $500 million	76
$500 million to $550 million	80
$550 million to $600 million	84
$600 million to $650 million	88
$650 million to $700 million	92
$700 million to $750 million	96
$750 million to $800 million	100
$800 million to $850 million	104
$850 million to $900 million	108
$900 million to $950 million	112
$950 million to $1 billion	116
$1,000 million to $2 billion	196
$2,000 million to $3 billion	276
$3,000 million to $4 billion	356
$4,000 million to $5 billion	436
$5,000 million to $10 billion	836

*1. Minimum Number of SBA Loan Disbursements Required over the immediately preceding 5 of SBA's Fiscal Years. 2. For each additional $50 million deposit-size increment, there is a requirement for an additional 4 SBA loans over the 5-years.

Table B.—(*Re:* § *122.105(c)*); *Average Loan Activity for Each Three-Year Period (Subsequent to Becoming a Preferred Lender)*

Lender's deposits range	*(1 and 2) number of loans
Less than $50 million	72
$50 million to $100 million	78
$100 million to $150 million	84
$150 million to $200 million	90
$200 million to $250 million	96
$250 million to $300 million	102
$300 million to $350 million	108
$350 million to $400 million	114
$400 million to $450 million	120
$450 million to $500 million	126
$500 million to $550 million	132
$550 million to $600 million	138
$600 million to $650 million	144
$650 million to $700 million	150
$700 million to $750 million	156
$750 million to $800 million	162
$800 million to $850 million	168
$850 million to $900 million	174
$900 million to $950 million	180
$950 million to $1 billion	186
$1,000 million to $2 billion	306
$2,000 million to $3 billion	396
$3,000 million to $4 billion	546
$4,000 million to $5 billion	666

Table B.—(*Re:* § *122.105(c)*); *Average Loan Activity for Each Three-Year Period (Subsequent to Becoming a Preferred Lender)*—Continued

Lender's deposits range	*(1 and 2) number of loans
$5,000 million to $10 billion	1,266

*1. Minimum Number of SBA Loan Disbursements Required of Lender to be eligible for SBA's Re-Certification (after 3 of SBA's full Fiscal Years, subsequent to the Lender's Certification.) 2. For each additional $50 million deposit-size increment, there is a requirement for an additional 6 SBA loans over 3 years.

[FR Doc. 81-1720 Filed 1-16-81; 8:45 am]
BILLING CODE 6325-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Ch. 1

[Summary Notice No. PR-81-1]

Petitions for Rulemaking; Summary of Petitions Received and Dispositions of Petitions Denied

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for rulemaking and of dispositions of petitions denied.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for rule making (14 CFR Part 11), this notice contains a summary of certain petitions requesting the initiation of rule making procedures for the amendment of specified provisions of the Federal Aviation Regulations and of denials of certain petitions previously received. The purpose of ths notice is to improve the public's awareness of this aspect of FAA's regulatory activities. Publication of this notice and any information it contains or omits is not intended to affect the legal status of any petition or its final disposition.

DATE: Comments on petitions received must identify the petition docket number involved and be received on or before: January 30, 1981.

ADDRESSES: Send comments on the petition in triplicate to: Federal Aviation Adminstrtion, Office of the Chief Counsel, Attn: Rules Docket (AGC-204), Petition Docket No.——, 800 Independence Avenue, SW., Washington, D.C. 20591.

FOR FURTHER INFORMATION: The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC-204), Room 916, FAA

Headquarters Building (FOB 10A), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; telephone (202) 426–3644.

This notice is published pursuant to pargraphs (b) and (f) of § 11.27 of Part ,11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, D.C., on January 2, 1981.

John H. Cassady,

Acting Assistant Chief Counsel, Regulations and Enforcement Division Federal Aviation Administration.

Petitions for Rulemaking

Docket No.	Petitioner	Description of the rule requested
19949	Eastern Air Lines	Description of petition: Reconsideration of the Final Rule delaying the introduction of widebody aircraft operations at Washington National Airport from January 5 to April 26, 1981. Regulations affected: 14 CFR Parts 93 and 159. Petitioners reasons for rule: The continued ban of widebody aircraft service at National are contrary to the public interest, unjustifiable by substantial evidence of record before the FAA, and an abuse of the FAA's rulemaking authority.

Additional Information: The regulations implementing the Metropolitan Washington Airports (MWA) Policy were issued on September 16, 1980 (45 FR 62268, September 18, 1980) and were to become effective on January 5, 1981, amont other things, the regulations would allow widebody aircraft to use Washington National Airport. Public Law 96–400 prohibited the full implementation of the MWA policy until April 26, 1981. The FAA has determined that the effective date of MWA policy should be changed from January 5 to April 26 and no positions of the policy should be implemented before that date (45 FR 71291, October 27, 1980). The FAA has not been presented with adequate reasons to implements portins of the policy while the other interrelated elements are deferred. Furthermore, insufficient time remains to receive input from the public in time to grant the Petitioners request to allow wide body aircraft into National beginning January 5, 1981.

[FR Doc. 81-1717 Filed 1-16-81; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 80–ARM–15]

Establishment of Control Zone

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This Notice of Proposed Rulemaking (NPRM) proposes to establish a control zone at Provo, Utah, to provide additional controlled airspace for aircraft executing the new instrument landing system (ILS) standard instrument approach procedure (SIAP) developed for the Provo Municipal Airport, Provo, Utah.

DATES: Comments must be received on or before February 17, 1981.

ADDRESSES: Send comments on the proposal to: Chief, Air Traffic Division, Attn: ARM–500, Federal Aviation Administration, 10455 East 25th Avenue, Aurora, Colorado 80010.

A public docket will be available for examination by interested persons in the docket of the Regional Counsel, Federal Aviation Administration, 10455 East 25th Avenue, Aurora, Colorado 80010.

FOR FURTHER INFORMATION CONTACT: Pruett B. Helm, Airspace and Procedures Specialists, Operations, Procedures and Airspace Branch (ARM–530), Air Traffic Division, Federal Aviation Administration, Rocky Mountain Region, 10455 East 25th Avenue, Aurora, Colorado 80010; telephone (303) 837–3937.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons may participate in the proposed rulemaking by submitting such written data, views, or arguments as they may desire. Communications should be submitted in triplicate to the Chief, Air Traffic Division, Federal Aviation Administration, 10455 East 25th Avenue, Aurora, Colorado 80010. All communications received will be considered before action is taken on the proposed amendment. No public hearing is contemplated at this time, but arrangements for informal conferences with Federal Aviation Administration officials may be made by contacting the Regional Air Traffic Division Chief. Any data, views, or arguments presented during such conferences must also be submitted in writing in accordance with this notice in order to become part of the record for consideration. The proposal contained in this notice may be changed in the light of comments received.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA–430, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 426–8058. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2 which describes the application procedure.

The Proposal

The Federal Aviation Administration (FAA) is considering an amendment to subpart F of Part 71 of the Federal Aviation Regulations (14 CFR 71) to establish a control zone at Provo, Utah. This proposal is necessary to provide additional controlled airspace for aircraft executing the new ILS standard instrument approach procedure developed for the Provo Municipal Airport, Provo, Utah. Accordingly, the Federal Aviation Administration proposes to amend subpart F of Part 71 of the Federal Aviation Regulations (14 CFR 71) as follows:

By amending subpart F, § 71.171 so as to establish the following control zone to read:

Provo, Utah

Within a 5-mile radius of Provo Municipal Airport (latitude 40°12'56"., longitude 111°43'14" W.). This control zone is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time thereafter to be continuously published in the Airport/Facility Directory.

Drafting Information

The principal authors of this document are Pruett B. Helm, Air Traffic Division, and Daniel J. Peterson, Office of the Regional Counsel, Rocky Mountain Region.

This amendment is proposed under authority of section 307(a) of the Federal Aviation Act of 1958, as amended, (49 U.S.C. 1348(a)), and of section 6(c) of the Department of Transportation Act (49 U.S.C. 1655(c)).

Note.—The FAA has determined that this document involves a proposed regulation which is not significant under Executive Order 12044, as implemented by DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). Since this regulatory action involves an established body of technical requirements for which

frequent and routine amendments are necessary to keep them operationally current and promote safe flight operations, the anticipated impact is so minimal that this action does not warrant preparation of a regulatory evaluation, and a comment period of less than 45 days is appropriate.

Issued in Aurora, Colorado on January 6, 1981.

Walter A. Barbe,
Acting Director.

[FR Doc. 81-1710 Filed 1-16-81; 8:45 am]
BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 80-AWA-22]

Williston, North Dakota; Alteration of Control Zone and Transition Areas

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This Notice of Proposed Rulemaking (NPRM) proposes to alter the control zone and 700' and 1,200' transition areas at Williston, North Dakota, to provide additional controlled airspace for aircraft executing the new VOR/DME runway 29 standard instrument approach procedure (SIAP) developed for the Sloulin Field International Airport, Williston, North Dakota.

DATES: Comments must be received on or before Feburary 23, 1981.

ADDRESSES: Send comments on the proposal to: Chief, Air Traffic Division, Attn: ARM-500, Federal Aviation Administration, 10455 East 25th Avenue, Aurora, Colorado 80010.

A public docket will be available for examination by interested persons in the office of the Regional Counsel, Federal Aviation Administration, 10455 East 25th Avenue, Aurora, Colorado 80010.

FOR FURTHER INFORMATION CONTACT: Pruett B. Helm, Airspace and Procedures Specialist, Operations, Procedures and Airspace Branch (ARM-530), Air Traffic Division, Federal Aviation Administration, Rocky Mountain Region, 10455 East 25th Avenue, Aurora, Colorado 80010; telephone (303) 837-3937.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons may participate in the proposed rulemaking by submitting such written data, views, or arguments as they may desire. Communications should be submitted in triplicate to the Chief, Air Traffic Division, Federal Aviation Administration, 10455 East 25th Avenue, Aurora, Colorado 80010. All communications received will be considered before action is taken on the proposed amendment. No public hearing is contemplated at this time, but arrangements for informal conferences with Federal Aviation Administration officials may be made by contacting the Regional Air Traffic Division Chief. Any data, views, or arguments presented during such conferences must also be submitted in writing in accordance with this notice in order to become part of the record for consideration. The proposal contained in this notice may be changed in the light of comments received.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA-430, 800 Independence Avenue SW., Washington, D.C. 20591, or by calling (202) 426-8058. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2 which describes the application procedure.

The Proposal

The Federal Aviation Administration is considering an amendment to Subparts F and G of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to alter the control zone and the 700' and 1,200' transition areas at Williston, North Dakota. This proposal is necessary as the present control zone and the 700' and 1,200' transition areas are inadequate in size to contain the new VOR/DME runway 29 standard instrument approach procedure developed for the Sloulin Field International Airport, Williston, North Dakota. Accordingly, the Federal Aviation Administration proposes to amend Subparts F and G of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

By amending Subpart F, § 71.171 so as to alter the following control zone to read:

Williston, North Dakota

With a 5-mile radius of the Sloulin International Airport (latitude 48°10'37" N., longitude 103°36'16" W.); within 1.5 miles each side of the Williston VORTAC 136° radial, extending from the 5-mile radius area to 1.5 miles southeast of the Williston VORTAC, and within 2 miles north and 3 miles south of the 128° bearing from the Sloulin International Airport, extending from the 5-mile radius area to 10 miles southeast of the airport. This control zone is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will, thereafter, be continuously published in the Airport/Facility Directory.

By amending Subpart G, § 71.181 so as to alter the following transition area to read:

Williston, North Dakota

That airspace extending upward from 700' above the surface within a 10-mile radius of the Sloulin Field International Airport (latitude 48°10'37" N., longitude 103°36'16" W.); within 3.5 miles each side of the Williston VORTAC 216° radial, extending from the 10-mile radius area to 11.5 miles northwest of the VORTAC; within 3.5 miles north and 5.5 miles south of the 128° bearing from the Sloulin Field International Airport extending from the 10-mile radius area to 16 miles southeast of the airport; and that airspace extending upward from 1,200' above the surface within a 25-mile radius of the Williston VORTAC (latitude 48°18'12" N., longitude 103°45'01" W.) extending from the west edge of V-439 clockwise to the north edge of V-430, and within 45 miles of the Williston VORTAC extending from the south edge of V-430 clockwise to the east edge of V-439 excluding the Watford and Newtown 1,200' transition areas.

Drafting Information

The principal authors of this document are Pruett B. Helm, Air Traffic Division, and Daniel J. Peterson, office of the Regional Counsel, Rocky Mountain Region.

(Section 307(a) of the Federal Aviation Act of 1958, as amended, (49 U.S.C. 1348(a)), and of section 6(c) of the Department of Transportation Act (49 U.S.C. 1655(c)))

Note.—The FAA has determined that this document involves a proposed regulation which is not significant under Executive Order 12044, as implemented by DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). Since this regulatory action involves an established body of technical requirements for which frequent and routine amendments are necessary to keep them operationally current and promote safe flight operations, the anticipated impact is so minimal that this action does not warrant preparation of a regulatory evaluation, and a comment period of less than 45 days is appropriate.

Issued in Aurora, Colorado on January 9, 1981.

Arthur Vernado,
Director.

[FR Doc. 81-1754 Filed 1-16-81; 8:45 am]
BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 80-ASW-57]

Andrews, Texas; Proposed Alteration of Transition Area

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rule making.

SUMMARY: The nature of the action being taken is to proposed alteration of the transition area at Andrews, Tex. The intended effect of the proposed action is to provide controlled airspace for aircraft executing instrument approach procedures to the Andrews County Airport. The circumstance which created the need for this action is that a review of the controlled airspace revealed there is an excess of designated airspace for the protection of aircraft executing instrument approaches to the airport.

DATES: Comments must be received on or before February 18, 1981.

ADDRESSES: Send comments on the proposal to: Chief, Airspace and Procedures Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration, P.O. Box 1689, Fort Worth, Texas 76101.

The official docket may be examined at the following location: Office of the Regional Counsel, Southwest Region, Federal Aviation Administration, 4400 Blue Mound Road, Forth Worth, Texas. An informal docket may be examined at the Office of the Chief, Airspace and Procedures Branch, Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Kenneth L. Stephenson, Airspace and Procedures Branch, ASW-535, Air Traffic Division, Southwest Region, Federal Aviation Administration, P.O. Box 1689, Forth Worth, Texas 76101; telephone: (817) 624-4911, extension 302.

SUPPLEMENTARY INFORMATION: Subpart G, § 71.181 (45 FR 445) of FAR Part 71 contains the description of transition areas designated to provide controlled airspace for the benefit of aircraft conducting Instrument Flight Rules (IFR) activity. Alteration of the transition area at Andrews, Tex., will necessitate an amendment to this subpart.

Comments Invited

Interested persons may submit such written data, views, or arguments as they may desire. Communications should be submitted in triplicate to Chief, Airspace and Procedures Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration, P.O. Box 1689, Fort Worth, Texas 76101. All communications received on or before February 18, 1981, will be considered before action is taken on the proposed amendment. No public hearing is contemplated at this time, but arrangements for informal conferences with Federal Aviation Administration officials may be made by contacting the Chief, Airspace and Procedures Branch. Any data, views, or arguments presented during such conferences must, also be submitted in writing in accordance with this notice in order to become part of the record for consideration. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available, both before and after the closing date for comment, in the Rules Docket for examination by interested persons.

Availability of NPRM

Any persons may obtain a copy of this notice of proposed rule making (NPRM) by submitting a request to the Chief, Airspace and Procedures Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration, P.O. Box 1689, Fort Worth, Texas 76101, or by calling (817) 624-4911, extension 302. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should contact the office listed above.

The Proposal

The FAA is considering an amendment to Subpart G of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to alter the transition area at Andrews, Tex. The FAA believes this action will enhance IRF operations at the Andrews County Airport by providing controlled airspace for aircraft executing proposed instrument approach procedures. Subpart G of Part 71 was republished in the Federal Register on January 2, 1980 (45 FR 445).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the FAA proposes to amend § 712.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as republished (45 FR 445) by deleting the present description and substituting the following:

Andrews, Texas

That airspace extending upward from 700 feet above the surface within a 7-mile radius of the Andrews County Airport, Andrews, Texas (latitude 32°19'33"N., longitude 102°31'36"W.), and within 3 miles each side of the 355° true bearing from the Andrews County NDB (latitude 32°20'56"N., longitude 102°32'10"W.), extending from the 7-mile radius area to 8.5 miles north of the Andrews County NDB.

(Sec. 307(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a)); and Sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)).)

Note.—The FAA has determined that this document involves a proposed regulation which is not significant under Executive Order 12044, as implemented by DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). Since this regulatory action involves an established body of technical requirements for which frequent and routine amendments are necessary to keep them operationally current and promote safe flight operations, the anticipated impact is so minimal that this action does not warrant preparation of a regulatory evaluation and comment period of less than 45 days is appropriate.

Issued in Fort Worth, Texas on January 7, 1981.

F.E. Whitfield,

Acting Director, Southwest Region.

[FR Doc. 81-1788 Filed 1-16-81; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 80-ASW-56]

Midland, Texas; Proposed Alteration of Transition Area

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The nature of the action being taken is to propose alteration of the transition area at Midland, Tex. The intended effect of the proposed action is to provide controlled airspace for aircraft executing instrument approach procedures to the Midland Regional, Odessa-Schlemeyer, Midland Airpark, and Mabee Ranch Airports. The circumstance which created the need for this action is that a review of the airspace revealed there is an excess of airspace needed for protection of aircraft executing instrument approach procedures to the four airports.

DATES: Comments must be received on or before February 18, 1981.

ADDRESSES: Send comments on the proposal to: Chief, Airspace and Procedures Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration, P.O. Box 1689, Fort Worth, Texas 76101.

The official docket may be examined at the following location: Office of the Regional Counsel, Southwest Region, Federal Aviation Administration, 4400 Blue Mound Road, Fort Worth, Texas.

An informal docket may be examined at the Office of the Chief, Airspace and Procedures Branch, Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Kenneth L. Stephenson, Airspace and Procedures Branch, ASW-535, Air Traffic Division, Southwest Region, Federal Aviation Administration, P.O. Box 1689, Fort Worth, Texas 76101; telephone: (817) 624-4911, extension 302.

SUPPLEMENTARY INFORMATION: Subpart G, § 71.181 (45 FR 445) of FAR Part 71 contains the description of transition areas designated to provide controlled airspace for the benefit of aircraft

conducting Instrument Flight Rules (IFR) activity. Alteration of the transition area at Midland, Tex., will necessitate an amendment to this subpart.

Comments Invited

Interested persons may submit such written data, views, or arguments as they may desire. Communications should be submitted in triplicate to Chief, Airspace and Procedures Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration, P.O. Box 1689, Fort Worth, Texas 76101. All communications received on or before February 18, 1981, will be considered before action is taken on the proposed amendment. No public hearing is contemplated at this time, but arrangements for informal conferences with Federal Aviation Administration officials may be made by contacting the Chief, Airspace and Procedures Branch. Any data, views, or arguments presented during such conferences must also be submitted in writing in accordance with this notice in order to become part of the record for consideration. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons.

Availability of NPRM

Any person may obtain a copy of this notice of proposed rulemaking (NPRM) by submitting a request to the Chief, Airspace and Procedures Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration, P.O. Box 1689, Fort Worth, Texas 76101, or by calling (817) 624-4911, extension 302. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should contact the office listed above.

The Proposal

The FAA is considering an amendment to Subpart G of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to alter the transition area at Midland, Tex. The FAA believes this action will enhance IFR operations at the Midland regional, Odessa-Schlemeyer, Midland Airpark, and Mabee Ranch Airports by providing controlled airspace for aircraft executing proposed instrument approach procedures. Subpart G of Part 71 was republished in the Federal Register on January 2, 1980 (45 FR 445).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the FAA proposes to amend § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as republished (45 FR 445) by deleting the present description and substituting the following:

Midland, Texas

That airspace extending upward from 700 feet above the surface within a 9.5-mile radius of the Midland Regional Airport (31°56'32"N., 102°12'07"W.), and within 9.5-mile radius of the Midland Airpark Airport (32°01'45"N., 102°06'15"W.), and within 9.5-mile radius of the Odessa-Schlemeyer Airport (31°55'00"N., 102°23'15"W.), and within a 7-mile radius of the Mabee Ranch Airport (32°12'56"N., 102°09'45"W.).

(Sec. 307(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a)); and Sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)).)

Note.—The FAA has determined that this document involves a proposed regulation which is not significant under Executive Order 12044, as implemented by DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). Since this regulatory action involves an established body of technical requirements for which frequent and routine amendments are necessary to keep them operationally current and promote safe flight operations, the anticipated impact is so minimal that this action does not warrant preparation of a regulatory evaluation and a comment period of less than 45 days is appropriate.

Issued in Fort Worth, Texas on January 7, 1981.

F. E. Whitfield,

Acting Director, Southwest Region.

[FR Doc. 81-1720 Filed 1-16-81; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 80-ASW-58]

Big Lake, Texas; Proposed Designation of Transition Area

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The nature of the action being taken is to propose designation of a transition area at Big Lake, Tex. The intended effect of the proposed action is to provide controlled airspace for aircraft executing a new instrument approach procedure to the Reagan County Airport. The circumstance which created the need for this action is the proposed establishment of a nondirectional radio beacon (NDB) on the Reagan County Airport.

DATES: Comments must be received on or before February 18, 1981.

ADDRESSES: Send comments on the proposal to: Chief, Airspace and Procedures Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration, P.O. Box 1689, Fort Worth, Texas 76101.

The official docket may be examined at the following location: Office of the Regional Counsel, Southwest Region, Federal Aviation Administration, 4400 Blue Mound Road, Fort Worth, Texas.

An informal docket may be examined at the Office of the Chief, Airspace and Procedures Branch, Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Kenneth L. Stephenson, Airspace and Procedures Branch, ASW-535, Air Traffic Division, Southwest Region, Federal Aviation Administration, P.O. Box 1689, Fort Worth, Texas 76101; telephone: (817) 624-4911, extension 302.

SUPPLEMENTARY INFORMATION: Subpart G, § 71.181 (45 FR 445) of FAR Part 71 contains the description of transition areas designated to provide controlled airspace for the benefit of aircraft conducting Instrument Flight Rules (IFR) activity. Designation of a transition area at Big Lake, Tex., will necessitate an amendment to this subpart.

Comments Invited

Interested persons may submit such written data, views, or arguments as they may desire. Communications should be submitted in triplicate to Chief, Airspace and Procedures Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration, P.O. Box 1689, Fort Worth, Texas 76101. All communications received on or before February 18, 1981, will be considered before action is taken on the proposed amendment. No public hearing is contemplated at ths time, but arrangements for informal conferences with Federal Aviation Administration officials may be made by contacting the Chief, Airspace and Procedures Branch. Any data, views, or arguments presented during such conferences must also be submitted in writing in accordance with this notice in order to become part of the record for consideration. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons.

Availability of NPRM

Any person may obtain a copy of this notice of proposed rulemaking (NPRM) by submitting a request to the Chief, Airspace and Procedures Branch, Air Traffic Division, Southwest Region,

Federal Aviation Administration, P.O. Box 1689, Fort Worth, Texas 76101, or by calling (817) 624-4911, extension 302. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should contact the office listed above.

The Proposal

The FAA is considering an amendment to Subpart G of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to designate a transition area at Big Lake, Tex. The FAA believes this action will enhance IFR operations at the Reagan County Airport by providing controlled airspace for aircraft executing proposed instrument approach procedures using the proposed NDB. Subpart G of Part 71 was republished in the Federal Register on January 2, 1980 (45 FR 445).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the FAA proposes to amend § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as republished (45 FR 445) by adding the following:

Big Lake, Texas

That airspace extending upward from 700 feet above the surface within a 7-mile radius of Big Lake, Texas, Reagan County Airport, (latitude 31°11'31", longitude 101°28'21") and within 3 miles each side of the 345° bearing from the NDB (latitude 31°11'35"N., longitude 101°28'06"W.) extending from the 7-mile radius area to 8.5 miles northwest of the NDB.

(Sec. 307(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a)); and Sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)).)

Note.—The FAA has determined that this document involves a proposed regulation which is not significant under Executive Order 12044, as implemented by DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). Since this regulatory action involves an established body of technical requirements for which frequent and routine amendments are necessary to keep them operationally current and promote safe flight operations, the anticipated impact is so minimal that this action does not warrant preparation of a regulatory evaluation and a comment period of less than 45 days is appropriate.

Issued in Fort Worth, Texas on January 7, 1981.

F. E. Whitfield,

Acting Director, Southwest Region.

[FR Doc. 81-1702 Filed 1-16-81; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Part 416

[Regulation No. 16]

Supplemental Security Income for the Aged, Blind, and Disabled Income

AGENCY: Social Security Administration, HHS.

ACTION: Proposed Rule.

SUMMARY: These proposed regulations reflect the provisions of two public laws. Section 101(a)(2)(B) of Pub. L. 96-222 amends section 1612(a)(1) of the Social Security Act by adding a new type of earned income—advance payments by employers and refunds of Federal income taxes made by reason of the earned income credits provisions of the Internal Revenue Code of 1954. Section 202 of Pub. L. 96-265 also amends the same section, 1612(a)(1) of the Act, by designating as earned income all payments for services performed in a sheltered workshop or work activities center.

DATES: Your comments will be considered if we receive them no later than March 20, 1981.

ADDRESSES: Send your written comments to Social Security Administration, Department of Health and Human Services, P.O. Box 1585, Baltimore, Maryland 21203.

Copies of all comments we receive can be seen at the Washington Inquiries Section, Office of Government Affairs, Department of Health and Human Services, Switzer Building, Room 1212, 330 C Street, S.W., Washington, D.C. 20201.

FOR FURTHER INFORMATION CONTACT: Rita Hauth, Legal Assistant, Room 4234, West High Rise Building, 6401 Security Boulevard, Baltimore, Maryland 21235, (301) 594-7112.

SUPPLEMENTARY INFORMATION: We plan to revise our recodified regulations on income under the Supplemental Security Income program, Part 416 of the Code of Federal Regulations. The recodified regulations, Subpart K of Part 416, were published October 3, 1980 (45 FR 65541). These revisions are necessary because of recently enacted legislation. The effect of the public laws is significant because the amount of income individuals have is a factor in determining eligibility for SSI and the amount of benefits payable. The law and regulations classify income as either earned or unearned and provide greater exclusions from earned income than from unearned income. Thus, a beneficiary who receives a given amount of earned income can receive a higher benefit than another who receives a like amount of unearned income.

Sections 416.1110 and 416.1111 of the regulations are being amended to include two changes in the definition of earned income because of the enactment of Pub. L. 96-222 and Pub. L. 96-265. The amended § 416.1110 describes the new types of earned income and § 416.1111 tells how we count that income to determine the amount of benefits payable.

Pub. L. 96-222, Section 101(a)(2), adds a new type of earned income for SSI purposes—refunds of Federal income taxes made under the earned income credits provisions of § 43 of the Internal Revenue Code of 1954 and advance payments of these credits made by employers under § 3507 of the same code. These payments are earned income as of January 1, 1980. The retroactive effective date of this law fills the gap that occurred because section 105(f) of the prior statute, Pub. L. 95-600, included an expiration date of December 31, 1979 for exclusion of these payments for SSI purposes. If the new statute had not been enacted, SSA would have counted the earned income credits as unearned income when the exclusion expired. This is because the payments would not meet the definition of earned income under the SSI program prior to enactment of the new statute. Thus, individuals who receive payments of earned income credits in 1980 or later would have received lower benefits since unearned income is subject to fewer exclusions than earned income.

Earned income credits are paid to people who meet certain conditions of family composition and amount of income. The credits can be received in a single payment subsequent to the filing of an income tax return as an addition to any regular income tax refund due the individual. As an alternative, they may be advanced to individuals by employers over a period of employment during the tax year under procedures established by the Internal Revenue Service. If the advanced payments turn out to be incorrect because the employer advanced more than was due, SSA adjusts benefits at the time the correct amount is established. The new statute states that the adjustment will be made in benefits payable to the individual. SSA will carry out this provision under the rules in Subpart E of the Regulations (20 CFR, Part 416). These rules provide that an SSI underpayment will be made to the underpaid individual or, if the individual is deceased, to his or her eligible spouse.

Pub. L. 96-265, section 202, states that beginning October 1, 1980, payment for services performed in a sheltered

workshop or work activities center constitutes earned income. Since payments for these services are now earned income, there is no need to distinguish them from payments received from other employers and, therefore, no need to define what constitutes a sheltered workshop or work activities center. Prior to Pub. L. 96–265, these payments were either earned income or unearned income depending on whether the individual's effort constituted employment or therapy. Thus, if two beneficiaries receive payments in the same workship, one may have been receiving earned income as an employee and the other unearned income because he or she was in a rehabilitative training program. The second beneficiary received a lower benefit because unearned income is subject to fewer exclusions. Beneficiaries found the different treatment hard to understand and considered it unfair. Also, agencies concerned with the handicapped individuals have commented adversely. SSA was obliged to develop cases extensively to determine whether the income received in a sheltered workshop or work activities center was earned or unearned. The new law and regulations will advantage beneficiaries as well as end these administrative problems.

(Catalog of Federal Domestic Assistance Program No. 13.807, Supplemental Security Income Program)

Dated: December 10, 1980.

William J. Driver,

Commissioner of Social Security.

Approved: January 12, 1981.

Patricia Roberts Harris,

Secretary of Health and Human Services.

Part 416 of Title 20 of the Code of Federal Regulations is amended as follows:

1. The authority citation for Subpart K of Part 416 is revised to read as follows:

Authority: Secs. 1102, 1601, 1602, 1611, 1612, 1613, 1614 and 1631 of the Social Security Act as amended; Sec. 211 of Pub. L. 93–66; 49 Stat. 647, as amended, 86 Stat. 1465, 1466, 1468, 1470, 1471, 1473, 1475, 87 Stat. 154; 42 U.S.C. 1302, 1381, 1381a, 1382, 1382a, 1382b, 1383c and 1383. Sec. 202 of Pub. L. 96–265, 94 Stat. 449; 42 U.S.C. 1382c.

2. Section 416.1110 is amended by revising the material preceding paragraph (a) and by adding new paragraphs (c) and (d) to read as follows:

§ 416.1110 What is earned income.

Earned income may be in cash or in kind and consists of the following types of payments:

* * * * *

(c) *Refunds of Federal income taxes and advance payments by employers made in accordance with the earned income credit provisions of the Internal Revenue Code.* Refunds on account of earned income credits are payments made to you under the provisions of section 43 of the Internal Revenue Code of 1954, as amended. Earned income credits may be paid to you separately or included with the Federal income tax refund you receive because of overpayment of your income tax. (Federal income tax refunds made on the basis of taxes you have already paid are not income to you as stated in § 416.1103(d).) Advance payments of earned income credits are made by your employer under the provisions of section 3507 of the same code. Earned income credit payments are made to you if you meet certain requirements of family composition and income limits. These earned income credit payments are earned income beginning January 1, 1980.

(d) *Payments for services performed in a sheltered workshop or work activities center.* Payments for services performed in a sheltered workshop or work activities center are what you receive for participating in a program designed to help you become self-supporting. Beginning October 1, 1980, these payments are earned income.

3. Section 416.1111 is being revised by redesignating paragraph (c) as paragraph (e) and adding new paragraphs (c) and (d) to read as follows:

§ 416.1111 How we count earned income.

* * * * *

(c) *Refunds of Federal income taxes and advance payments by employers made under the earned income credit provisions of the Internal Revenue Code.* We count payments advanced by your employer and refunds of Federal income taxes made under the earned income credit provisions of the Internal Revenue Code of 1954 in the quarters in which you receive them. You receive refunds in a single quarter if they are paid as a result of the filing of your income tax return and as an addition to the refund of taxes withheld by your employer. You receive payments advanced by your employer along with your wages spread over the period of your employment. If we do not pay you the correct amount of benefits (that is, we withheld too much from your benefits) because your employer has advanced you more than was actually due, SSA will make up the difference in benefits when the correct amount of your earned income credits is determined by the Internal Revenue Service (see § 416.542 for the rules on underpayments). If your employer advanced less than you were actually due we will count the additional amount in the quarter in which you receive it from Internal Revenue Service.

(d) *Payments for services in a sheltered workshop or activities center.* We count payments you receive for services performed in a sheltered workshop or work activities center when you receive them or when they are set aside for your use. We determine the amount of the payments for each calendar quarter.

* * * * *

[FR Doc. 81-1997 Filed 1-16-81; 8:45 am]

BILLING CODE 4110-07-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 51

[LR–48–80]

Windfall Profit Tax Administrative Provisions

AGENCY: Internal Revenue Service, Treasury.

ACTION: Amendment of proposed rulemaking by cross-reference to amended temporary regulations.

SUMMARY: In the Rules and Regulations portion of this Federal Register, the Internal Revenue Service is issuing temporary excise tax regulations that relate primarily to administrative aspects of the tax imposed by title I of the Crude Oil Windfall Profit Tax Act of 1980. The text of those temporary regulations also serves as the comment document for this proposed rulemaking.

DATES: Written comments and requests for a public hearing must be delivered or mailed by March 20, 1981.

ADDRESS: Send comments and requests for a public hearing to: Commissioner of Internal Revenue, Attention: CC:LR:T (LR–48–80), Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: David B. Cubeta of the Legislation and Regulations Division, Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, D.C. 20224 (Attention: CC:LR:T) (202–566–3297).

SUPPLEMENTARY INFORMATION:

Initial Regulatory Flexibility Analysis

The amendments to the temporary regulations are published in response to public comment received after the temporary regulations were originally

published on April 4, 1980 (45 FR 23384) and are designed to relieve many of the compliance problems raised in the comments. The rules will apply to all entities, large and small, engaged in the production or purchase of domestic crude oil and related activities. The preamble to the temporary regulations, contained in the Rules and Regulations portion of this Federal Register, explains the amendments, describes the reporting and recordkeeping rules, and discusses the various alternatives considered.

Comments and Public Hearing

Before the adoption of the final regulations, consideration will be given to any written comments that are submitted (preferably six copies) to the Commissioner of Internal Revenue. All comments will be available for public inspection and copying. A public hearing will be held upon written request to the Commissioner by any person who has submitted written comments. If a public hearing is held, notice of the time and place will be published in the Federal Register.

The temporary regulations in the Rules and Regulations portion of this issue of the Federal Register amend part 150 of title 26 of the Code of Federal Regulations. The final regulations, which are proposed to be based on the temporary regulations, would amend 26 CFR Part 51.

For the text of the temporary regulations, see FR Doc. 81-1660 (T.D. 7785) published in the Rules and Regulations portion of this issue of the Federal Register.

William E. Williams,

Acting Commissioner of Internal Revenue.

[FR Doc. 81-1661 Filed 1-16-81; 8:45 am]

BILLING CODE 4830-01-M

DEPARTMENT OF LABOR

Office of the Secretary

29 CFR Part 8

Practice Before the Board of Service Contract Appeals

AGENCY: Office of the Secretary, Labor.

ACTION: Withdrawal of proposed regulations.

SUMMARY: It had been proposed to create a new Board of Service Contract Appeals and to give it broad jurisdiction to hear the various kinds of issues which can arise under the Service Contract Act. The appeals would arise from either rulings of the Wage and Hour Administrator or from the decisions of the administrative law judges. Because of concerns expressed during the notice and comment period, this proposal is now withdrawn. An appeal to the Secretary of Labor has been substituted as Subpart F of the revision of 29 CFR Part 6.

FOR FURTHER INFORMATION CONTACT: Gail V. Coleman, Counsel for Contract Labor Standards, General Legal Services, Office of the Solicitor, Department of Labor Building, 200 Constitution Avenue, NW, Washington, D.C. 20212. Phone 202-523-8256.

SUPPLEMENTAL INFORMATION: On April 22, 1980, a proposal was published (45 FR 27410) to create a Board of Service Contract Appeals to hear appeals from rulings of the Wage and Hour Division and from decisions by administrative law judges involving Service Contract Act matters and related Contract Work Hours and Safety Standards Act matters. Great concern was expressed in the comments received that such a formal appeal mechanism would create unacceptable delays in areas of procurement requiring quick decisions, such as wage determinations. There was also concern expressed regarding the creation of another formal review body.

Upon reflection, the Department has decided to withdraw the proposal and to substitute what should be a more expeditious appeal to the Secretary. These regulations are being published as a new Subpart F to 29 CFR Part 6.

Signed at Washington, D.C. this 14th day of January, 1981.

Ray Marshall,

Secretary of Labor.

[FR Doc. 81-1660 Filed 1-16-81; 8:45 am]

BILLING CODE 4510-28-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 913

Surface Coal Mining and Reclamation and Enforcement Under Federal Program for Illinois

AGENCY: Office of Surface Mining Reclamation and Enforcement, Department of the Interior.

ACTION: Notice of intent to prepare Federal program, Suspension of schedule for resubmission of Illinois Program and Notice of Public comment period.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) was advised by the State of Illinois of the existence of an injunction issued on December 11, 1980, by the Seventh Circuit Court for Sangamon County, Illinois, enjoining the State from resubmitting a State program to the Department of the Interior. Accordingly, the Secretary of the Interior is temporarily suspending the Illinois schedule for resubmission and is initiating action to prepare a federal program for the regulation of surface coal mining on non-Federal and non-Indian lands in Illinois. The Federal program will not be implemented before December 31, 1981, unless the injunction ends sooner or is no longer determined effective under Section 523(d) of the Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. 1201 *et seq.* In any event, Illinois will be given the opportunity to resubmit a state program before a Federal program is implemented. If Illinois does resubmit, its program will be reviewed in accordance with the Secretary's regulations. A Federal program will be implemented only if the State fails to resubmit, or if the resubmitted program is disapproved. Public comment is also being sought on the preparation of a Federal program for Illinois and on Illinois's actions under the interim program.

DATE: Public comments must be received by OSM by 5:00 p.m., February 18, 1981.

ADDRESSES: Information and comments should be sent to: Office of Surface Mining, Room 153, South Interior Building, 1951 Constitution Avenue, N.W., Washington, D.C. 20240

FOR FURTHER INFORMATION CONTACT: Carl C. Close, Assistant Director, OSM, State and Federal Programs, 1951 Constitution Avenue, NW., U.S. Department of the Interior, Washington, D.C. 20240, (202) 343-4225.

SUPPLEMENTARY INFORMATION: Under the Surface Mining Control and Reclamation Act of 1977, a State which seeks to regulate surface coal mining and reclamation operations within its border may apply to the Secretary of the Interior for approval of a State program. In order for a program to be approved, a State must develop a program that contains laws and regulations which are consistent with the Act and the regulations of the Secretary of the Interior. Section 503 of the Act provides that once a State makes a program submission, the Secretary of the Interior has six months in which to consider the State's application. At the end of that six-month period, the Secretary has to decide whether to approve, conditionally approve, approve in part and disapprove in part, or completely disapprove the State program submission. If the Secretary only partially approves or completely disapproves the State program

submission, the State has sixty days to revise and resubmit its program. The Act then gives the Secretary sixty days to review the resubmitted program and make a final decision. If, after the end of this ten month period, the Secretary is unable to approve or conditionally approve the State program, he is required to promulgate a Federal program.

As announced in the Federal Register Notice of October 31, 1980, 45 FR 72488, the Secretary of the Interior reviewed the State of Illinois's initial program submission and partially approved and partially disapproved that program. Illinois had until December 31, 1980, to resubmit a revised program.

By letter dated December 22, 1980, Bradley Evilsizer, Director of the Illinois Department of Mines and Minerals, informed the Office of Surface Mining that the Illinois Department for Natural Resources and Environmental Protection was enjoined on December 11, 1980, by the Seventh Circuit Court of Sangamon County, Illinois, from submitting to the Secretary of the Interior a State program for the regulation of surface coal mining and reclamation operations. The injunction issued by the Seventh Circuit Court enjoins the Illinois resubmission for six months, at which time the court will further consider the matter. Illinois did not resubmit a program by its December 31, 1980, deadline (60 days after the Secretary's partial approval).

Section 503(d) of the Surface Mining Control and Reclamation Act provides:

> * * * [T]he inability of State to take any action, the purpose of which is to prepare, submit on enforce a State program, or any portion thereof, because the action is enjoined by the issuance of an injunction by any court of competent jurisdiction shall not result * * * in the imposition of a Federal program. Regulations of the Surface Coal Mining and Reclamation operations covered or to be covered by the State program subject to an injunction shall be conducted by the State pursuant to Section 502 of the Act, until such time as the injunction terminates or for one year, whichever is shorter, at which time the requirements of Section 503 and 504 shall again be fully applicable.

The Secretary has completed all the actions in reviewing the Illinois program that can be done without further participation by Illinois. Because the Secretary of the Interior has been notified that Illinois is enjointed from taking further formal action, the Secretary has temporarily suspended the State program approval process for Illinois as of December 11, 1980, (the date of the injunction), which was the 41st day of the 60 days that Illinois had for resubmission.

The effect of this action is that federal enforcement of the interim program requirements, e.g., two federal inspections per year of each mine or regulated facility, will continue until the injunction is lifted, expires, or is determined not to invoke the operation of Section 503(d). Since the Act allows the State access to its reserved portion of the Abandoned Mine Land Fund only after it has achieved regulatory primacy, Illinois's access to the Fund must be delayed. The amount currently reserved for Illinois is $18,357,342.97.

The Secretary has considered various options in rescheduling Illinois's State program review. First, because the 60 day resubmission period expired on December 31, 1980, and because the injunction gives Illinois more time than the 60 days normally allowed, Illinois could be required to resubmit its State program on the day the injunction is lifted. However, an immediate deadline for resubmission after the injunction is lifted appears abrupt and would ignore the fact that Illinois still had 19 days remaining in its 60-day resubmittal period when the injunction was issued. Second, Illinois could be given 60 days after the lifting of the injunction to resubmit its State program. However, 60 additional days appears excessive, because (1) Illinois has already had 41 days to develop its resubmission, (2) it would be unfair to other States which only had 60 days to resubmit and (3) the operation of the injunction has already given Illinois considerably more time than the normal 60 days to develop an acceptable program. Third, Illinois could be given the 19 days that it had remaining to resubmit its program. This would take into account the time that Illinois already had for resubmission, would be fair to other States involved in the process, and would be a reasonable deadline for the State to meet.

The Secretary has chosen the third option. Beginning on December 11, 1981, or, if the injunction is lifted or determined to be ineffective before the date, then on the date when the injunction is lifted or determined ineffective, Illinois will have 19 days to resubmit an acceptable program. In any event, the deadline for Illinois' resubmission will not be later December 31, 1981. The Secretary will make every effort to notify Illinois by letter prior to the date for resubmission in order to assist Illinois in meeting the deadline.

The legislative history of Section 503(d) indicates that its purpose is to avoid penalizing States which make good faith efforts to comply with the Act but are prevented by court action from achieving full compliance. Where, however, attendant circumstances lead the Secretary to determine that an injunction does not invoke the operation of Section 503(d), or that the State has failed to make a good faith effort to comply with the Act, the Secretary will not suspend the statutory timetable for State programs beyond the date of such determination. The Secretary has not yet determined, at this time, whether Section 503(d) is applicable in Illinois. The Secretary is reviewing the circumstances under which the Illinois injunction was entered and the jurisdictional competence of the Illinois court to hear the matter. The Secretary believes that the delay and relief available under Section 503(d) are limited to those States which are seeking in good faith to prepare and adopt a permanent surface coal mining and reclamation program. Section 503 is not meant to be used as an artifice or device to avoid the requirements of the Surface Mining Act. Section 503(d) does not provide general authority to extend the statutory timetable established under the Act.

Accordingly, the Secretary requests public comment on the issues bearing upon the applicability of Section 503(d) in Illinois. If, after review of those comments and other information, the Secretary determines that Section 503(d) is inapplicable to Illinois under the circumstances, Illinois will have 19 days from the effective date of such determination within which to resubmit an acceptable State program. If it fails to do so, the Secretary will implement a Federal program for Illinois in accordance with Section 504 of the Act. Until a determination is made, the Secretary will presume that Section 503(d) applies, and thus will suspend the running of the resubmission period provided by Section 503(c). However, the Secretary expressly reserves the right to take appropriate action at any time if he concludes that the circumstances surrounding the entry of the injunction warrant doing so.

Section 503(d) also requires a State which is subject to an injunction prohibiting resubmission of a state program to regulate surface coal mining and reclamation operations pursuant to Section 502 of the Act (the interim program) until such time as the injunction terminates or until one year after the injunction is entered, whichever comes first. The Secretary construes Section 503(d) of the Act to authorize implementation of a Federal program if a State fails to implement Section 502 during the term of an injunction. Thus, while the Secretary fully endorses the intent of Congress to have the State assume regulatory primacy under the Act, he also is

required to implement a Federal program in cases where that becomes necessary because of a State's failure to carry out its responsibilities under Section 502.

Consequently, the Secretary is also examining the compliance by Illinois with Section 502 of the Surface Mining Control and Reclamation Act and the interim program regulations issued by the Department of the Interior related to Section 502 (42 FR 62639, December 13, 1977). Within the next three months and after receipt of public comments and completion of this preliminary analysis, the Secretary will decide what further administrative steps are necessary. At that time, he may conclude that there is no basis for further examination because Illinois is adequately enforcing the requirements of Section 502 of the Act; alternatively, he may decide that there is the need for a public hearing or additional public comment. If the Secretary ultimately determines there is a lack of compliance, he will recommence the State program review process after appropriate notice to Illinois.

One additional effect of the injunction, if it runs a full year, is to delay the permanent program in Illinois for a period of approximately eight to twelve months beyond that applicable to most other States in the country. In addition, if Illinois is ultimately unsuccessful in obtaining approval of its program, the Secretary will then have to adopt a Federal program for that State. This could cause an additional delay of six months or more if the process for adoption of the Federal program were delayed until after the injunction is lifted.

To reduce the potential delay in the application of the permanent surface coal mining reclamation program in Illinois if a Federal program becomes necessary, the Secretary has decided to begin preparation of a Federal program for Illinois within the next three months. This action is considered necessary both to reduce the time during which the environmental objectives established by Congress are not fully achieved because a permanent program has not been implemented and to reduce the potential for competitive economic disadvantages among states because implementation of permanent programs in the different states are unlikely to be concurrent. The Secretary will not actually implement this program until Illinois either fails to meet the 19 day deadline to resubmit its program or resubmits but fails to obtain approval of its program.

In the meantime, the Secretary has instructed the Director of the Office of Surface Mining to make every effort during the period of the injunction to accomplish the following: (1) work with Illinois toward correcting the remaining deficiencies in its proposed program to the extent that Illinois can participate in such an effort, given the existence of the injunction; (2) ensure that the Federal enforcement program under Section 502 is diligently pursued in order to obtain compliance with the provisions of the act and the interim program regulations; and (3) determine whether Illinois is adequately carrying out its responsibilities under Section 502 of the Act.

A major purpose of this notice is to seek public comment on preparing a Federal program in Illinois and to receive specific suggestions for how the Secretary of the Interior ought to adopt or modify the permanent program regulations to meet the local conditions in Illinois. Section 504(a) of the Act and 30 CFR 736.22(a)(1) require that each Federal program consider the nature of the topography soils, climate and biological chemical, geological, hydrological, agronomic and other physical conditions of the State involved. For important information, the reader is referred to "General Background on the Permanent Program" and "Criteria for Promulgating Federal programs" previously published in the Federal Register on May 16, 1980 (45 FR 32328). That notice explains how the Secretary will consider unique conditions in a State, how existing State laws will be considered, and what standards will be used in adopting regulations. The reader should also refer to the Secretary's decision concerning the Illinois program published in the Federal Register on October 31, 1980 (45 FR 72468 *et seq.*).

This notice describes the administrative actions being taken in response to the injunction entered against Illinois. The Secretary is also exploring appropriate courses of action in the Courts, and may seek to initiate a new proceeding or participate in existing actions related to the Illinois program.

This action of proposing the preparation of a contingent Federal program for Illinois is not significant under the criteria of Executive Order 12044 and 43 CFR Part 14 and does not require preparation of regulatory analysis, nor is this action a major Federal action signficantly effecting the environment under the National Environmental Policy Act.

PUBLIC COMMENT PERIOD: The comment period announced in this notice will extend until February 18, 1981. All written comments must be received at the address given above by 5:00 p.m. on the date.

Comments on the preparation of Federal program received after that hour will not be considered in drafting the proposed Federal program; they will be considered to the extent applicable in subsequent actions under that program.

Dated: January 9, 1981.

Joan Davenport

Assistant Secretary, Energy and Minerals.

[FR Doc. 81-1781 Filed 1-16-81; 8:45 am]

BILLING CODE 4310-05-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CAD 81-003]

Drawbridge Operation Regulations; Atlantic Intracoastal Waterway, Charleston County, S.C.

AGENCY: Coast Guard, DOT.

ACTION: Proposed rule.

SUMMARY: At the request of the South Carolina Department of Highways and Public transportation, the Coast Guard will consider amending the regulations governing the operations of the Ben M. Sawyer Bridge, mile 462.2, and the Wappoo Cut Bridge, mile 470.8, across the Atlantic Intracoastal Waterway (AIWW). This would eliminate morning and evening closed periods on weekends and legal holidays, but add afternoon restrictions on those days that would only require the draws to open on the hour and half hour to allow accumulated vessels to pass. This would accommodate heavy afternoon and evening vehicle traffic. In addition, the morning closed period on the Wappoo Cut Bridge would be extended to accommodate an altered traffic pattern. On both bridges, commercial vessels, except tugs with tows, would no longer be allowed to pass during closed or restricted periods. This action may relieve vehicular traffic during the morning rush hour on the Wappoo Cut Bridge and may provide relief for the heavy weekend vehicular traffic on both bridges, and may still provide for the reasonable needs of navigation.

DATE: Comments must be received on or before February 20, 1981.

ADDRESS: Comments should be submitted to and are available for examination from 7:30 a.m. to 4 p.m., Monday through Friday, at the office of the Commander (oan), Seventh Coast Guard District, 51 Southwest First Avenue, Miami, Florida 33130.

FOR FURTHER INFORMATION CONTACT: James R. Kretschmer, Bridge Administrator, Bridge Section (oan), Room 1006, Federal Building, 51 Southwest First Avenue, Miami, Florida 33130, telephone: (305) 350-4108.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this proposed rulemaking by submitting written views, comments, data or arguments. Persons submitting comments should include their name and address, identify the bridge and give reasons for concurrence with or any recommended change in the proposal. Persons desiring acknowledgement that their comments have been received should enclose a stamped self-addressed envelope or post card.

The Commander, Seventh Coast Guard District will evaluate all communications received and determine a course of final action on the proposal. The proposed regulations may be changed in the light of comments received.

Drafting Information

The principal persons involved in drafting this proposal are: Ensign Jane L. Hamilton, Bridge Administration Officer, Office of Aids to Navigation Bridge Section and Lieutenant John M. Griesbaum, Office of Commander, Seventh Coast Guard District, Legal Office.

Discussion of the Proposed Regulations

Drawbridge regulations which currently govern the operation of the Ben M. Sawyer and Wappoo Creek bridges would be modified by replacing morning and evening closed periods Saturdays, Sundays, and legal holidays with an afternoon restricted period that would run from 2 p.m. to 6 p.m. with openings on the hour and half hour. This modification would provide for more openings on both bridges on weekends. The morning closed period on the Wappoo Creek bridge which currently runs from 7 a.m. to 9 a.m. would be modified to run from 6:30 a.m. to 9 a.m. The list of vessels currently allowed to pass during the closed or restricted periods would be modified to exclude all commercial vessels except tugs with tows.

These modifications are being considered to more closely match and relieve peak vehicular traffic periods on both bridges. Vehicular traffic on the Ben Sawyer Bridge from Monday through Friday between the hours of 7 a.m. and 9 a.m., has increased from an average of 536 vehicles per hour to an average of 925 vehicles per hour, a 72% increase in traffic flow. A similar increase has occurred from 4 p.m. to 6 p.m., Monday through Friday. On Saturdays, Sundays, and legal holidays from 2 p.m. to 6 p.m. traffic has increased a total of 66%. From an average 836 vehicles per hour to an average of 1,523 vehicles per hour. The Wappoo Creek Bridge between the hours of 6:30 a.m. and 9 a.m. has shown an increase of 12% from an average of 2,330 vehicles per hour to an average of 2,608 vehicles per hour. A similar increase has occurred from 4 p.m. to 6 p.m., Monday through Friday. On Saturdays, Sundays, and legal holidays from 2 p.m. to 6 p.m., traffic has increased a total of 10% from 2,387 vehicles per hour to 2,623 vehicles per hour. The traffic counts taken when the existing regulations were established were used as a basis for comparison.

The Coast Guard is therefore presenting this proposal for comment from affected and interested parties.

In consideration of the foregoing, it is proposed that Part 117 of Title 33 of the Code of Federal Regulations be amended as set forth below:

1. By revising § 117.365 to read as follows:

§ 117.365 Sullivan's Island Narrows, AIWW, mile 462.2, Ben M. Sawyer Bridge, State Road 703 between Sullivan's Island and Mount Pleasant, SC.

(a) The owner of or agency controlling the bridge need not open the draw from 7 a.m. to 9 a.m. and from 4 p.m. to 6 p.m., Monday through Friday. On Saturdays, Sundays, and legal holidays from 2. p.m. to 6 p.m. the draw need open only on the hour and half-hour to pass accumulated vessels. However, the draw shall open promptly upon signal for the passage of tugs with tows, vessels owned and operated by the United States, and vessels in distress. The opening signal from these vessels is four blasts of a whistle, horn, or by shouting.

(b) The owner of or agency controlling the bridge shall post on both sides of the bridge, signs that state the essential features of the regulations in this section. These signs shall be of such size that they may be easily read from an approaching vessel at any time.

2. By revising § 117.370 to read as follows:

§ 117.370 Wappoo Creek, AIWW, mile 470.8, Wappoo Creek Bridge, State Road 171/700, Charleston, SC.

(a) The owner of or agency controlling the bridge need not open the draw from 6:30 a.m. to 9 a.m. and from 4 p.m. to 6 p.m., Monday through Friday. On Saturdays, Sundays, and legal holidays from 2 p.m. to 6 p.m. the draw need open only on the hour and half-hour to pass accumulated vessels. However, the draw shall open promptly upon signal at any time for the passage of tugs with tows, vessels owned and operated by the United States, and vessels in distress. The opening signal from these vessels in four blasts of a whistle, horn, or by shouting.

(b) The owner of or agency controlling the bridge shall post on both sides of the bridge, signs that state the essential features of the regulations in this section. These signs shall be of such size that they may be easily read from an approaching vessel at any time.

(33 U.S.C. 499, 49 U.S.C. 1655(g)(2); 49 CFR 1.46(c)(5), 33 CFR 1.05-1(g)(3))

Dated: January 1, 1981.

B. L. Stabile,

Rear Admiral, U.S. Coast Guard Commander, Seventh Coast Guard District.

[FR Doc. 81-2359 Filed 1-19-81; 8:45 am]

BILLING CODE 4910-14-M

DEPARTMENT OF EDUCATION

Office for Civil Rights

34 CFR Part 104

Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance

AGENCY: Department of Education.

ACTION: Notice of intent to develop regulations.

SUMMARY: The Secretary of Education provides notice that the Department intends to amend regulations under Section 504 of the Rehabilitation Act of 1973, as amended, to define the rights of hearing-impaired persons to access to television programs.

DATE: All comments in response to this Notice must be received on or before March 5, 1981.

ADDRESS: Comments should be addressed to Mr. Edward A. Stutman, Office for Civil Rights, Department of Education, 400 Maryland Avenue, S.W., Washington, D.C. 20202.

FOR FURTHER INFORMATION CONTACT: Mr. Edward W. Stutman telephone (202) 245-0781 (VOICE or TTY).

SUPPLEMENTARY INFORMATION: Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), provides as follows:

> No otherwise qualified handicapped individual in the United States * * * shall, solely by reason of his handicap, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

Final regulations implementing the statute were issued on May 4, 1977 by the Department of Health, Education, and Welfare. 45 CFR Part 84. On May 9, 1980, the new Department of Education reissued these regulations as 34 CFR Part 104. 45 FR 30936. These regulations apply to all recipients of financial assistance from the Department, and define and forbid acts of discrimination against qualified handicapped persons in the operation of assisted programs and activities.

The Secretary of Education is currently one of several defendants in a lawsuit filed in Federal district court on behalf of two hearing-impaired individuals and an organization of hearing-impaired persons, *Greater Los Angeles Council on Deafness, Inc., et al.* v. *Community Television of Southern California, et al.* (C.D. Cal., Civil No. CV-78-4715R). The plaintiffs have requested the court to order the Department to withhold financial assistance to broadcast entities that fail to caption their programs. The district court has ordered the Department to publish compliance standards under Section 504 governing the access to public television programming by hearing-impaired persons. An appeal is pending in the United States Court of Appeals for the Ninth Circuit.

The Department intends to amend its Section 504 regulations by adding provisions setting forth the rights of persons with impaired hearing to access to television programs.

The Department of Education provides funds for the production of television programs. The programs are generally made available, at no cost or at less than fair market value to broadcasters or to systems of broadcasters. The Department intends to publish detailed provisions concerning the Section 504 obligations that the availability of these programs may impose. In doing so, the Department will use its normal rulemaking procedures, including publication of a proposed regulation in the Federal Register with an opportunity for public comment. Before issuing a proposed regulation, the Department is requesting public comment on several issues which the regulation may address. In addition, commenters are invited to provide information on the costs that regulating in this area may impose on the broadcasting industry.

Specifically, the Department requests comment on each of the following questions:

1. Should the Department pursue its intention to issue detailed regulations on the Section 504 obligations of television broadcasters and systems of broadcasters? Are there other means of defining and ensuring compliance with these obligations?

2. What is the nature and extent of the benefit derived by broadcasters from the availability of television programs produced with Department of Education funds?

3. What is the nature and extent of the benefit derived by systems of broadcasters, such as the Public Broadcasting Service (PBS) and regional networks, from the availability of these programs?

Section 504 by reason of the benefits referred to above? For example, would broadcasters and systems of broadcasters be required to make some or all programs that they broadcast or distribute accessible to persons with impaired hearing by reason of the availability of programs produced with Department funds? By what regulatory standard should any obligation to make programs accessible be determined?

5. What differences, if any, should there be in the Department's treatment of commercial and non-commercial broadcasters and systems of broadcasters? Why?

6. What are the advantages and disadvantages of using the various available methods of making television programs accessible to persons with impaired hearing? Currently available methods include open captioning, closed captioning, and sign language interpreting. Commenters are invited to consider, with regard to these and other possible methods, such factors as effectiveness in making programs accessible to the greatest possible number of hearing-impaired persons, the extent to which the method adversely affects the video portion of programs, cost availability of resources (such as captioning capacity or qualified interpreters), and anticipated technological developments. Are particular methods better suited for some programs than others?

7. Should the Department limit the methods which may be used? If so, which method or methods should the Department select, and why?

8. Should the Department differentiate between various types of programs in setting standards for program accessibility? Examples of such programs include live programs, programs broadcast shortly after being recorded, programs intended only for local use, and programs recorded before a certain date. If so, what should be the basis for distinctions? Commenters are invited to consider such factors as technological feasibility, cost, availability of resources to provide access, and size of potential audience.

9. How soon after publication should any requirements for program accessibility take effect?

Dated: January 13, 1981.

Shirley M. Hufstedler,

Secretary of Education.

[FR Doc. 81-1709 Filed 1-16-81; 8:45 am]

BILLING CODE 4110-01-M

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34 CFR Part 322

Training Programs for Teachers of Handicapped Children in Areas With a Shortage

AGENCY: Department of Education.

ACTION: Notice of proposed rulemaking; Cross-reference.

SUMMARY: The Secretary proposes new regulations for the program to train teachers of handicapped children in areas with a shortage.

The text of the regulations on which the Secretary invites comments is published in the Rules and Regulations section of this issue of the Federal Register. They have been adopted as final regulations and will govern these programs until the Secretary issues new regulations based on public comment.

DATES: All comments, suggestions, or objections must be received on or before March 5, 1981.

ADDRESSES: Comments should be addressed to: William Wolfe, Budget Officer, Office of Special Education, U.S. Department of Education, 400 Maryland Avenue, S.W., (Room 4130, Donohoe Building), Washington, D.C. 20202.

FOR FURTHER INFORMATION CONTACT: William Wolfe, Telephone: (202) 245-2709.

Invitation To Comment

For additional details on how to comment, see the Preamble of the final regulations for these programs published in this issue of the Federal Register.

Dated: January 13, 1981.

Shirley M. Hufstedler,

Secretary of Education.

(No Catalog of Federal Domestic Assistance Number has been assigned)

[FR Doc. 81-1691 Filed 1-16-81; 8:45 am]

BILLING CODE 4110-01-M

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34 CFR Part 366

Centers for Independent Living Program

AGENCY: Department of Education.

ACTION: Notice of proposed rulemaking; Cross-reference.

SUMMARY: The Secretary proposed regulations for the Centers for Independent Living Program in Part 366 of Title 34 of the Code of Federal Regulations:

The Secretary invites comments on these proposed regulations.

The texts of the regulations on which the Secretary invites comments are published in the Rules and Regulations section of this issue of the Federal Register. They have been adopted as final regulations and will govern these programs until the Secretary issues new regulations based on public comment.

DATES: All comments, suggestions, or objections must be received on or before March 20, 1981.

ADDRESSES: Comments should be addressed to: Mr. Harold F. Shay, Director, Division of Manpower Development, Rehabilitation Services Administration, Office of Special Education and Rehabilitative Services, Room 3321, Mary E. Switzer Building, 330 C Street, SW., Washington, D.C. 20201.

FOR FURTHER INFORMATION CONTACT: Mr. Harold F. Shay, Telephone: (202) 245-0079.

Invitation to Comment: For additional details on how to comment, see the Preamble of the final regulations for these programs published in this issue of the Federal Register.

(Catalog of Federal Domestic Assistance Numbers 84.132, Centers for Independent Living)

Dated: January 12, 1981.

Shirley M. Hufstedler,

Secretary of Education.

[FR Doc. 81-1797 Filed 1-16-81; 8:45 am]

BILLING CODE 4110-01-M

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34 CFR Parts 617, 618, 619, 620, and 621

Financial Assistance for Construction, Reconstruction, and Renovation of Higher Education Facilities; Correction

AGENCY: Department of Education.

ACTION: Correction.

SUMMARY: In the regulations published in the Federal Register on December 30, 1980, pages 86340-86359, a technical correction needs to be made.

FOR FURTHER INFORMATION CONTACT: Thomas F. McAnallen, Telephone: (202-245-3253).

SUPPLEMENTARY INFORMATION: On page 86340, column 1, *For Further Information Contact*, the telephone number is corrected to read: (202) 245-3253.

Dated: January 12, 1981.

Stewart A. Baker,

Deputy General Counsel for Legislation and Regulations.

[FR Doc. 81-1941 Filed 1-16-81; 8:45 am]

BILLING CODE 4110-01-M

Office of Student Financial Assistance

34 CFR Part 682

Parent Loans for Undergraduate Students (PLUS) Program

AGENCY: Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary proposes regulations to implement the Parent Loans to Undergraduate Students (PLUS) Program. These proposed regulations will implement the provisions of the Education Amendments of 1980 authorizing a program of loan insurance for parents who wish to borrow to meet the educational costs of dependent undergraduate students attending postsecondary schools.

DATES: Comments must be received on or before March 20, 1981.

ADDRESSES: Written comments should be addressed to Jane A. Bryson, Chief, Guaranteed Student Loan Policy Section, Division of Policy and Program Development, Office of Student Financial Assistance, Department of Education, 400 Maryland Ave., SW., (Room 4310, ROB-3), Washington, D.C. 20202.

FOR FURTHER INFORMATION CONTACT: Jane A. Bryson or Anne Carlucci. Telephone (202) 245-2475.

SUPPLEMENTARY INFORMATION:

Background

The Education Amendments of 1980 added provisions to Part B of Title IV of the Higher Education Act of 1965 authorizing expansion of the present Guaranteed Student Loan (GSL) Program, under which the Federal Government insures or reinsures loans made to students, to include loans made to parents of dependent undergraduate students. The Act specifies that unless otherwise stated, PLUS loans shall have the same terms, conditions, and benefits as those available to students under the GSL Program. The Act:

1. Limits the amount a parent may borrow to $3,000 per academic year on behalf of each dependent student, with an aggregate maximum of $15,000 for each student;

2. Limits the combined amount a parent and student may borrow in an academic year to the student's estimated cost of attendance less estimated financial assistance;

3. Sets the initial interest rate for these loans at 9 percent, but provides that, based on 91-day Treasury bill rates, the interest rate may in the future be reduced to 8 percent for certain loans;

4. Prohibits the payment of interest benefits on behalf of parent borrowers (although lenders will qualify for special allowance payments);

5. Requires that repayment begin within 60 days of the loan's disbursement;

6. Requires the Secretary of Education to define the term "parents of a dependent undergraduate student"; and

7. Provides that the terms "student" and "student borrower" in the Act include a parent borrower, wherever necessary to carry out the PLUS program provisions.

Under the PLUS program, as under the GSL program, loans may be insured by either a State or private nonprofit guarantee agency or by the Federal Government. However, the circumstances under which the Federal PLUS program may operate are statutorily different from those permitting the Federal Insured Student Loan Program (FISIP) to operate. The Federal Government reimburses a guarantee agency for up to 100 percent of its losses on default claims, pays the agency certain administrative cost allowances, and provides advances to strengthen the agency's reserve fund.

The Federal PLUS program operates in the following circumstances:

1. In a State that is not served by a State or private nonprofit guarantee agency.

2. In a State served by a State or private nonprofit guarantee agency, if such agency, has not authorized a PLUS program by May 1, 1981, and is not prohibited from doing so by State law.

3. If the State guarantee agency is prohibited by State law from authorizing a PLUS program, one hundred and twenty days after the adjournment of the next regular session of the State legislature which convenes after January 1, 1981.

Therefore, if a State guarantee agency is currently prohibited by State law from authorizing a PLUS program, it is possible that the PLUS program will not be available in that State for several months, or even years, depending upon the date of adjournment of the next regular session of the State legislature.

Even where there are no State legal prohibitions to implementing the PLUS program, a period of time will be required in most States after the guarantee agency authorizes the

program before it can be implemented. The amount of time will vary from State to State depending on how long the agency requires to issue its own regulations, print and distribute forms, provide orientation to lenders, and develop computer software programs.

Major Provisions of the Regulations

To the extent possible, the Secretary has modeled the PLUS program regulations, which are found in 34 CFR Part 683, after the existing GSL regulations, which were formerly in 45 CFR Part 177 but are now in 34 CFR Part 682, in an effort to initiate the program with a minimum amount of confusion. However, in extending program to parents, several issues have arisen that are unique to the PLUS program and which require further regulations. Prior to formulating new policies, the Secretary consulted with representatives from various groups that participate in the GSL program and will play active roles in the PLUS program. Their opinions and recommendations were taken into consideration in establishing the regulations.

There are several provisions in the GSL regulations which the Secretary realizes may need revision, and a Notice of Proposed Rulemaking (NPRM) is scheduled to be published in the spring which will address these areas and subject them to public comment. However, in an effort to adhere as closely as possible to existing program regulations, the Secretary is not incorporating those proposed revisions into this regulation. The following summarizes the major changes from the GSL to the PLUS program regulations and cites the provisions due for revision in the upcoming NPRM.

1. *Definition of Parent.*—By statute the Secretary is responsible for defining the term "parent." The Secretary has defined "parent" as a persons natural or adoptive mother or father or legal guardian, which is consistent with the definition used for other ED financial aid programs.

Unlike loans under the GSLP, in the PLUS program there may be two eligible borrowers for a single loan: mother and father. Therefore, these regulations permit, but do not require, co-makers (persons who are jointly liable) on PLUS loans. It is important to note that if there are co-makers, both parties to the loan are equally liable and, therefore, both must qualify for any special benefit associated with the loan, such as deferment and cancellation provisions. Endorsers (persons who are secondarily liable) are prohibited by statute on Federal PLUS loans, and a matter of guarantee agency policy or State law on guarantee agency loans.

2. *Federal Reinsurance.*—PLUS loans guaranteed by State and private nonprofit guarantee agencies are eligible for Federal reinsurance on the same basis as GSLs. Guarantee agencies that meet certain statutory criteria qualify to receive reimbursement of 80 percent of their default losses (reinsurance). In addition, guarantee agencies which meet additional criteria may receive reimbursement of up to 100 percent on their losses (supplemental reinsurance).

It has been suggested that a guarantee agency establish its eligibility for reinsurance or supplemental reinsurance jointly for both the GSL and PLUS programs. There are two ways in which this could be done: An agency which qualified for supplemental reinsurance on GSLs would automatically qualify for supplemental reinsurance on PLUS loans; or an agency which could not qualify for supplemental reinsurance for either GSL or PLUS loans would be eligible only for 80 percent reinsurance on both. Although this policy would be most advantageous administratively for both the Department of Education and the guarantee agencies, it is contrary to the statutory provisions governing reinsurance. Therefore, these regulations require the guarantee agency to qualify for Federal reinsurance separately for the GSL and PLUS programs. With separate eligibility criteria it is possible, although not probable, that a guarantee agency may not qualify, or wish to qualify, to enter into the same reinsurance agreement for both the GSL and PLUS programs.

In this event these regulations impose additional recordkeeping requirements on that guarantee agency.

3. *Lender Agreements.*— New Section 433A of the Act requires that the Secretary of Education enter into agreements with all eligible lenders in both the Federal and guarantee agency programs to ensure that each lender provides thorough and accurate loan information to student and parent borrowers.

The Secretary has recently revised the Federal contract of insurance to fulfill this requirement under the Federal Insured Student Loan Program (FISLP) and the Federal PLUS program. In addition, the Secretary has provided the required agreement for all guarantee agency lenders. No PLUS program loan or GSL may be insured, guaranteed, or endorsed for a lender without an executed contract or agreement on file with the Secretary.

This new statutory provision has been incorporated into the PLUS program regulations. It does not appear in current GSL regulations but will be added when the NPRM is published this spring.

4. *Insurance Premium.*—The insurance premium rates which the guarantor may charge the lender under the PLUS program are the same as those authorized under the GSL program: one-fourth of 1 percent per year for a loan insured by the Federal Government under the FISLP and 1 percent per year for a loan guaranteed by a State or private nonprofit guarantee agency. Under the student loan program, the Federal Government and many guarantee agencies charge the insurance premium from the date of disbursement to the anticipated graduation date plus 12 months. In the event an agency also charges a premium during the repayment period, GSL regulations require it to make a refund if the borrower prepays, defaults, dies, becomes totally and permanently disabled, or if the loan is discharged in bankruptcy. The refund requirement proved to be a costly and troublesome procedure; therefore to avoid making refunds no guarantee agency charges the premium during the repayment period.

Under the PLUS program the loan is in repayment from the date of disbursement. Therefore, there is not a formula parallel to the one used in the GSLP which can be applied to PLUS loans. Under the Federal PLUS program the Secretary plans to charge the insurance premium on the declining principal balance over the life of the loan, which would result in a maximum premium of approximately $37. The same policy under a guarantee agency program which charges 1 percent would result in a maximum premium of approximately $150. Some guarantee agencies suggested that the PLUS program insurance premium be charged on the declining principal balance for the life of the loan or for five years, whichever is less, with no refunds required for any reason. The Secretary is concerned with the financial burden which may be imposed on the borrowers under guarantee agency programs by charging the 1 percent premium over the life of the loan. The policy suggested by the agencies appears to be a fair and equitable one and the Secretary would like to promote that policy among the agencies. However, the Secretary is reluctant to regulate that policy without a notice of proposed rulemaking. Therefore, in these regulations the Secretary has taken a more liberal position and permits the insurance premium to be charged on the declining principal balance for the life of the loan (not to exceed 10 years) with no refunds required.

5. *Deferment and Cancellation Provisions.*—Borrowers under the PLUS program are entitled to the same deferment and cancellation provisions as authorized under the GSL program. In the event a borrower is eligible for an authorized deferment at the time the loan is made (e.g., in military service), the borrower is entitled to an immediate deferment. However, it should be pointed out that if the loan was obtained jointly with a co-maker, both parties to the loan must qualify before a deferment can be granted. If there is an endorser, who is secondarily liable, only the borrower need qualify for the deferment or cancellation. With co-makers, the borrower that does not qualify for a deferment would be required to make the scheduled payments on the loan. Likewise, with respect to cancellation because of death or total and permanent disability, if there are co-makers, both borrowers must be eligible for the cancellation; otherwise the borrower not eligible for the cancellation would be required to make the scheduled payments. Also, if one borrower's loan is discharged in bankruptcy, the co-maker is responsible for repayment of the loan. It should be noted that the deferment and cancellation provisions apply solely to the parent borrower, as the condition of the student has no bearing on the status of the PLUS loans.

The deferment and cancelation provisions are identical to those in the GSL regulations. Five new deferment provisions authorized by the Education Amendments of 1980 are included; those new provisions also are being added to GSL regulations by final regulation with invitation to comment.

6. *Check Disbursement.*—Under the student loan regulations, all FISLP checks are mailed directly to the school for delivery to the borrower. This fulfills the statutory requirement that the school which the borrower attends is to be notified of the amount of the loan and the name of the lender.

The Secretary has modified the check disbursement procedure for Federal PLUS loans to require that all loan checks be sent directly to the parent. The lender must notify the school of the name of the student for whom the loan was intended and the amount of the loan. In all cases, the check must be payable to the parent, who is the person obligated to repay the loan, and must require the parent's endorsement. Unlike the student borrower, who must be enrolled at the school for which the loan was intended, the parent borrower will not be at the school to directly receive the check. Processing checks through the mail, especially in cases of jointly payable checks, would be a cumbersome and administratively burdensome process for both parents and schools.

Since the option for an insurer to require that the check be mailed to the school for delivery to the borrower is a statutory provision, it is retained in these regulations as an option for guarantee agencies. However, guarantee agencies are urged to carefully review the ramification this procedure would have on the parent loan program before adopting it. The Secretary has included provisions in the regulations, similar to the GSL regulations, for schools and lenders must process the checks, should an agency require that parent loan checks to be sent to the school.

7. *School Responsibilities.*—Because only parents of a dependent student may borrow under the PLUS program a determination will have to be made as to whether the student for whom the parent is borrowing is, in fact, dependent. This determination will be made by the school. In most cases, the information will be readily accessible from the financial aid application the student has already submitted to the school. In the event the student has not applied for other aid, the school is required to have the student complete a separate form to be kept in the student's file which establishes whether the student is dependent or independent based upon the definition contained in these regulations. The definition of "dependent student" in these regulations is consistent with the definition used by all other ED student aid programs.

8. *Future Proposed Changes.*— A. *Rule of 78's.* Currently GSL regulations do not prohibit lenders from using the "Rule of 78's" in their various loan computations. Some lenders, but not all, use this method for computing the rebate of unearned interest to borrowers who prepay their loans, or for determining the outstanding principal balance and earned interest for purposes of the special allowance and Federal interest benefits. Because of some significant developments in the program since the Rule of 78's was first permitted, and because of the dramatic differences in the results often obtained by the Rule of 78's when compared to an actuarial method, the Secretary is considering discontinuing the future use of the Rule of 78's in the GSLP and PLUS programs. Therefore, although lenders are advised that they are not prohibited from using the Rule of 78's in the PLUS program under these regulations, they are encouraged to employ an actuarial method for computing interest at the very outset of their participation in the PLUS program to avoid difficulties in the future if the use of the Rule of 78's is prohibited. Lenders are advised that the Secretary shortly will propose a rule which prohibits future use of the Rule of 78's in the GSLP and PLUS programs.

B. *Social Security and Veterans Benefits.* For purposes of GSL, social service benefits such as veterans and social security payments are not included in calculating a student's estimated financial assistance. There has been some concern that excluding such benefits results in a duplication of government assistance. This provision is retained in the PLUS program regulations but will be open for comment in the upcoming NPRM.

Invitation To Comment

Interested persons are invited to submit comments and recommendations regarding these regulations. Written comments and recommendations may be sent to the address given at the beginning of this preamble. All comments received on or before the 45th day after publication of this document will be considered in any future revisions of the final regulations.

All comments submitted in response to these final regulations will be available for public inspection, during and after the comment period, in Room 4130, Donohoe Building, 6th & D Streets, SW., Washington, D.C. between 8:30 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

Comments are particularly invited on whether the regulations in this document require any information that is already being gathered by or is available from any other agency or authority of the United States.

Information Requirements

The Department particularly requests comments on whether the proposed regulations in this document would require submission of information that is already being gathered by or is available from any other agency or authority of the United States.

Regulatory Flexibility Act Analysis

The Regulatory Flexibility Act (Pub. L. 96-354, enacted Sept. 19, 1980) requires each Federal agency to prepare an initial regulatory flexibility analysis and a final regulatory flexibility analysis for each set of regulations that—

(1) Is published as a notice of proposed rulemaking after January 1, 1981; and

(2) Has a significant economic impact on a substantial number of small entities (small businesses, small organizations, or small governmental jurisdictions).

Because the Department has not yet established its own definitions of "small organization" and "small governmental jurisdiction," as contemplated by the Act, it is not possible to prepare a full initial regulatory flexibility analysis at this time. Further, since the regulations in this document are required by statute to be published immediately, it is impracticable to delay publication while the necessary definitions are being developed.

In these circumstances, the Regulatory Flexibility Act permits a waiver or delay of the initial regulatory flexibility analysis. If it is determined that these regulations are subject to that Act, the Secretary will prepare the necessary analyses at a later date.

As an interim measure, this document, to the maximum extent possible, includes information of the kind contemplated by the Regulatory Flexibility Act, including the reasons for the regulations, the objectives and legal basis for the regulations, and any significant issues and alternatives for consideration by the public. To assist the Department in determining whether the Regulatory Flexibility Act applies to these regulations, and in complying with the Act's requirements, public comment is especially invited on the following matters:

(1) The number and kind of small entities (small businesses, small organizations, or small governmental jurisdictions) affected by the regulations;

(2) The reporting, recordkeeping, and compliance burdens imposed by the regulations on small entities;

(3) The type of professional skills necessary for preparation of any reports or records required by the regulations;

(4) Any Federal rules that may duplicate, overlap, or conflict with the regulations; and

(5) Any significant alternatives that would accomplish the purposes of the applicable statute but would minimize any significant economic impact of the regulations on small entities.

The Secretary is particularly interested in suggestions on alternatives such as the following:

- The establishment of differing reporting or compliance requirements or timetables that take into account the resources available to small entities.
- The clarification, consolidation, or simplification of compliance and reporting requirements for small entities.
- The use of performance rather than design standards.
- an exemption for small entities from coverage by part or all of the regulations.

Citation of Legal Authority

A citation of statutory or other legal authority is placed in parentheses on the line following each substantive provision of these proposed regulations.

Dated: January 13, 1981.

Shirley M. Hufstedler,

Secretary of Education.

(Catalog of Federal Domestic Assistance No. 84.032, Parent Loans for Undergraduate Students)

The Secretary proposes to add a new 34 CFR Part 683 to Title 34 of the Code of Federal Regulations to read as follows:

PART 683—THE PARENT LOANS FOR UNDERGRADUATE STUDENTS PROGRAM

Subpart A—Purpose and Scope

Sec.
683.1 The parent loans for undergraduate students program.
683.2 Guarantee agency programs.
683.3 The Federal PLUS program.
683.4 Applicability of subparts of this regulation.

Subpart B—General Provisions

683.10 General definitions.
683.11 Parent and student eligibility.
683.12 Statement of educational purpose.
683.13 Permissible charges to parents.
683.14 Special allowance payments to lenders.
683.15 Prohibited transactions.
683.16 Provision of loan information by lenders.
683.17 Treatment of refunds by lenders.

Subpart C—Guarantee Agency Programs

683.30 Agreements between a guarantee agency and the Secretary.
683.31 Basic PLUS program agreement.
683.32 Death, disability, and bankruptcy payments.
683.33 Applicability of GSL Federal advance funds provisions.
683.34 Federal reinsurance agreement.
683.35 Supplemental Federal reinsurance.
683.36 Administrative cost allowances for guarantee agencies.
683.37 Records, reports, and inspection requirements for guarantee agency programs.

Subpart D—Federal Insured Parent Loans for Undergraduate Students Program

683.50 Circumstances under which loans may be insured.
683.51 Extent of Federal insurance.
683.52 Application to become a lender under the Federal PLUS program..
683.53 The lender insurance contract.
683.54 Issuance of Federal loan insurance.
683.55 Limitations on maximum loan amounts..
683.56 Insurance premiums.
683.57 Repayment of loans.
683.58 Deferment.
683.59 Due diligence in making and disbursing a loan.
683.60 Due diligence in collecting a loan.
683.61 Forbearance.
683.62 Assignment of a loan.
683.63 Death, disability, and bankruptcy.
683.64 Cessation of lender collection activity in certain cases.
683.65 Procedures for filing claims.
683.66 Determination of amount of loss on claims.
683.67 The Secretary's collection efforts after payment of a default claim.
683.68 Records, reports, and inspection requirements for lenders.

Subpart E—Requirements, Standards, and Payments for Participating Schools

683.80 Participation agreement between an eligible school and the Secretary for participation in the PLUS Program.
683.81 Agreement between the Secretary and a school that makes or originates PLUS loans.
683.82 Providing information to prospective students.
683.83 Correspondence school schedule requirements.
683.84 Certifications by a participating school in connection with a parent's loan application.
683.85 Administrative cost allowance to participating schools.
683.86 The parent loan check.
683.87 Refund policy.
683.88 Determining the date of a student's withdrawal.
683.89 Payment of a refund to a lender.
683.90 Termination of a school's lending eligibility.
683.91 Records, reports and inspection requirements for participating schools.

Subpart F—Limitation, Suspension, or Termination of Lender Eligibility Under the Federal Parent Loans for Undergraduate Students Program

683.100 Purpose and scope.
683.101 Definitions of terms used in this subpart.
683.102 Effect on prior participation.
683.103 Informal compliance procedure.
683.104 Emergency action.
683.105 Suspension proceedings.
683.106 Limitation or termination proceedings.
683.107 Initial and final decisions.
683.108 Verification of mailing dates.
683.109 Effect of suspension or termination proceeding.
683.110 Limitation.
683.111 Reimbursements, refunds, and offsets.
683.112 Reinstatement after termination.
683.113 Removal of limitation.
Appendix A—Standards for Acceptable Refund Policies by Participating Schools.

Authority: Title IV, Part B, of the Higher Education Act of 1965, as amended (20 U.S.C. 1071–1087–3a), unless otherwise noted.

Subpart A—Purpose and Scope

§ 683.1 The parent loans for undergraduate students program.

(a) The Parent Loans for Undergraduate Students (PLUS) program makes low interest loans

available to the parents of dependent students in undergraduate study at postsecondary schools. A parent borrower must use the loan funds to pay for the student's educational costs. Lenders loan their own funds, and the Federal Government or a guarantee agency insures against loss. The program has two parts: guarantee agency programs and the Federal PLUS program.

(1) State agencies or private nonprofit agencies guarantee loans and are reimbursed by the Secretary for part or all of the insurance claims they pay to lenders. Guarantee agency programs must meet certain Federal requirements, but there may be variation among programs in such areas as the loan maximums and the parent's or the student's eligibility.

(2) The Federal PLUS program operates in States not served by guarantee agencies and in certain prescribed circumstances in which a guarantee agency program does not serve the parents of eligible students in a State. The Secretary directly insures lenders against losses on Federal PLUS loans.

(b) *Participation in the PLUS program.* (1) Banks, savings and loan associations, credit unions, pension funds, insurance companies, schools, State agencies and, in certain instances, the Student Loan Marketing Association may be lenders. The Student Loan Marketing Association and some State agencies purchase and hold loans and function as secondary markets.

(2) Most colleges and universities, and many vocational, technical, and correspondence schools are eligible to participate as educational institutions.

(3) Only the parents of dependent undergraduate students who meet certain requirements, including enrollment at a participating school, may borrow. Information for parents and students about the PLUS program and the Guaranteed Student Loan program (GSLP) is available on request from the Department of Education.

(4) All lenders, schools, parents, and students must meet certain requirements in order to participate in the PLUS program. These regulations contain all of the eligibility requirements for the Federal PLUS program and Federal eligibility requirements for participation in guarantee agency programs. Each guarantee agency may establish additional requirements within these Federal limits.

(c) *Repayment.* The parent who borrows under the PLUS program is obligated to repay the lender the full amount borrowed, plus interest. Unlike the interest on a student loan under the GSLP, interest on a PLUS loan is not subsidized by the Secretary and the parent borrower must begin payment on the loan within 60 days after the loan is disbursed. In some cases repayment may be deferred for a time, but the parent is still responsible for repaying the entire loan amount plus interest. The parent's obligation to repay is cancelled only if he or she dies or becomes totally and permanently disabled or if the the loan is discharged in bankruptcy.

(d) *Default.* If a parent defaults on a loan, the Secretary or the guarantee agency pays the lender the amount of its loss. The parent then owes the debt to the Secretary or the guarantee agency. The Secretary or guarantee agency actively attempts to collect the debt.

(20 U.S.C. 1071 to 1087–3a)

§ 683.2 Guarantee agency programs.

(a) The Secretary pays special allowance to lenders on guarantee agency loans. The Secretary also pays a PLUS borrower's loan obligation if the borrower dies, or becomes totally and permanently disabled, of if the loan is discharged in bankruptcy.

(b) The Secretary pays 80 percent of the guarantee agency's default losses under a reinsurance agreement. If the guarantee agency meets additional requirements, the Secretary pays up to 100 percent of the agency's default losses, depending on its default experience.

(c) The Secretary encourages State and private nonprofit guarantee agencies to establish PLUS programs. Federal loan advances are available to help start or strengthen an agency's reserve fund, which backs its PLUS and GSLP loan guarantees. Administrative cost allowances based upon the dollar amount of the GSLP and PLUS loans guaranteed are also available to the agencies.

(d) To administer a PLUS program and to qualify itself and lenders for these benefits, an agency must meet the requirements under subparts B, C, and E.

(20 U.S.C. 1071, 1072, 1078–1, 1078–2, 1082, 1087, 1087–1)

§ 683.3 The Federal PLUS program.

(a) *Where does the Federal PLUS program operate?* The specific conditions under which the Federal PLUS program may operate in a State are given in § 683.50. In general, the Federal PLUS program is available to all lenders in a State if there is no guarantee agency program in that State which insures parent loans.

(b) *Payments to lenders.* Lenders qualify for the payment of special allowance on Federal PLUS loans. The Secretary pays a borrower's loan obligation if the borrower dies or becomes totally and permanently disabled or the loan is discharged in bankruptcy. The Secretary also pays the lender's insurance claim if the borrower defaults.

(c) To qualify for Federal insurance and special allowance benefits, the lender must meet certain requirements established by law and these regulations.

(20 U.S.C. 1071 to 1087–3a)

§ 683.4 Applicability of subparts of this regulation.

Subpart B contains general provisions that are applicable to all PLUS program participants. In addition, guarantee agency programs are subject to Subparts C and E, and the Federal PLUS program is subject to Subparts D, E, and F. Schools are governed by Subpart E.

(20 U.S.C. 1071 to 1087–3a)

Subpart B—General Provisions

§ 683.10 General definitions.

Academic year: (a) A period of time, typically eight or nine months, in which a full-time student is expected to complete the equivalent of at least two semesters, two trimesters or three quarters at a school using credit hours; or

(b) At least 900 clock hours of training for a program at a school using clock hours; or

(c) Eighteen months for a correspondence program.

Act: Title IV, Part B of the Higher Education Act of 1965, as amended (20 U.S.C. 1071 *et seq*).

Borrower: One or more of a student's parents to whom a PLUS loan is made. If the loan is made to two parents, each parent is liable for repayment of the entire amount of the loan, including interest, and the loan is eligible for deferment, cancellation, and forbearance benefits only if both parents qualify for such benefits.

Clock hour: A period of time that is the equivalent of—

(a) A 50 to 60 minute class, lecture, or recitation; or

(b) A 50 to 60 minute faculty supervised laboratory, shop training, or internship.

Commercial lender: A commercial bank, savings and loan association, credit union, or mutual savings bank.

Default: The failure of a borrower to make an installment payment when due, or to meet other terms of the promissory note under circumstances where the Secretary or the pertinent guarantee agency finds it reasonable to conclude that the borrower no longer intends to

honor the obligation to repay, provided that this failure persists for—

(a) 120 days for a loan repayable in monthly installments; or;

(b) 180 days for a loan repayable in less frequent installments.

Dependent student: A student who is not an independent student

Disbursement: The transfer of funds by a lender to a borrower by means of issuing a check or draft payable to the order, and requiring the personal endorsement, of the borrower.

Due diligence: The utilization by a lender in the making and collection of PLUS loans of practices at least as extensive and forceful as those generally practiced by financial institutions for consumer loans. The procedures for establishing due diligence under the Federal PLUS program are described in § 683.59 and § 683.60. The procedures for establishing due diligence under a guarantee agency program are set forth by the guarantee agency.

Endorser: An individual who is secondarily liable for the loan obligation.

Enrolled: The status of a student who—

(a) Has completed the registration requirements at the school he or she is attending and has commenced the attendance period; or

(b) Has been admitted into a correspondence study program and has submitted one lesson, completed by him or her after acceptance for enrollment and without the help of a representative of the school.

Estimated cost of attendance: (a) A student's cost of attendance includes—

(1) Tuition and fees normally assessed a full-time student at the institution at which the student is in attendance;

(2) An allowance for books, supplies, transportation, and miscellaneous personal expenses;

(3) An allowance for room and board costs incurred by the student which—

(i) Beginning in academic year 1981–82 shall be an allowance of not less than $1,100 for a student without dependents residing at home with parents;

(ii) For students without dependents residing in institutionally owned or operated housing, shall be a standard allowance determined by the institution based on the amount normally assessed most of its residents for room and board;

(iii) For all other students without dependents, shall be a standard allowance determined by the institution based on the expenses reasonably incurred by such students for room and board; and

(iv) For students with dependents, shall be an allowance based on the expenses reasonably incurred by such students for room and board;

(4) For a student engaged in a program of study by correspondence, only tuition and fees and, if required, books and supplies, and travel, and room and board costs incurred specifically in fulfilling a required period of residential training;

(5) For a student enrolled in an academic program which normally includes a formal program of study abroad, reasonable costs associated with such study;

(6) For a student with dependent children, an allowance based on the expenses reasonably incurred for child care; and

(7) For a handicapped student, an allowance for those expenses related to his handicap, including special services, transportation, equipment, and supplies that are reasonably incurred and not provided for by other assisting agencies.

(b) *Adjustments.* The institution, in individual cases, may adjust the cost of attendance if—

(1) The financial aid administrator believes the cost of attendance determined in accordance with paragraph (a) does not accurately reflect the student's actual cost of attendance; and

(2) The institution documents all adjustments in writing with an accompanying explanation and makes them part of the institution's records.

Estimated financial assistance: For the period for which a loan is sought, the estimated amount of assistance that a school is aware a student has been or will be awarded in Federal, State, or privately supported scholarship, grant, work, or loan programs. Any PLUS loans applied for by the student's parents on that student's behalf may be considered financial assistance. The following may not be considered financial assistance:

(a) Veterans' benefits.

(b) Students' benefits under Social Security.

(c) Resources or financial support from the student or the student's family.

Full-time student: (a) A student enrolled in an institution of higher education (other than a correspondence school) who is carrying a full-time academic workload as determined by the school, under standards applicable to all students enrolled in that student's particular program. The student's workload may include any combination of courses, work experience, research, or special studies, whether or not for credit, that the school considers sufficient to classify the student as a full-time student; or

(b) A student enrolled in a vocational school (other than a correspondence school) who is carrying a workload of not less than 24 clock hours per week or 12 semester or quarter hours of instruction, or its equivalent.

Graduate or professional student: A student who—

(a) Is pursuing a program, or has a bachelor's degree and is enrolled in courses which are normally part of a program, leading to a graduate or professional degree or certificate at an institution of higher education; and

(b) Has successfully completed the equivalent of at least three years of full-time study at an institution of higher education either prior to entrance into the program or as part of the program itself.

Guarantee agency: A State or private nonprofit agency that administers a loan insurance program under the Act.

Guaranteed Student Loan program (GSLP): A loan program as described in 34 CFR Part 682 in which the Federal Government insures low-interest, long-term educational loans to eligible students. Loans are made under the GSLP by eligible lending institutions, such as commercial lenders, pension funds or insurance companies.

(a) Under the Federal Insured Student Loan program (FISLP), loans are directly insured by the Federal Government.

(b) Under guarantee agency programs, loans are insured by State agencies or private nonprofit agencies and are re-insured by the Federal government.

Half-time student: An enrolled student who is carrying a half-time academic workload as determined by the school, and that amounts to at least one half the workload of a full-time student. A student enrolled solely in an eligible program of study by correspondence is considered a half-time student.

Holder: An eligible lender in possession of a PLUS loan.

Independent student (effective for loans to be used for any period of instruction which begins not later than June 30, 1981):

(a) A student who for 1979 and 1980—

(1) Has not been claimed and will not be claimed as an exemption for Federal income tax purposes by his or her parent(s);

(2) Has not received and will not receive financial assistance of more than $750 in each year from his or her parent(s);

(3) Has not lived and will not live for more than six weeks in each year in the home of his or her parent(s).

(b) However, the Secretary considers that a student will not have been claimed as an exemption by a parent, will not have received more than $750 from a parent and will not have lived in

the parent's home for more than six weeks if that parent dies before the student submits his or her application.

Independent student (effective for loans to be used for any period of instruction which begins on or after July 1, 1981, but not later than June 30, 1982):

(a) A student who for 1980 and 1981—

(1) Has not been claimed and will not be claimed as an exemption for Federal income tax purposes by his or her parent(s);

(2) Has not received and will not receive financial assistance of more than $1,000 in each year from his or her parent(s);

(3) Has not lived and will not live for more than six weeks in each year in the home of his or her parent(s).

(b) However, the Secretary considers that a student will not have been claimed as an exemption by a parent, will not have received more than $1,000 from a parent, and will not have lived in the parent's home for more than six weeks if that parent dies before the student submits his or her application.

Institution of higher education:

(a) An institution that—

(1) Is in a State;

(2) Admits as a regular student only a person who has a certificate of graduation or its equivalent from a secondary school;

(3) Is legally authorized in each State in which it is physically located to provide, and provides within that State, a program of post-secondary education that—

(i) Awards a bachelor's degree; and

(ii) Provides not less than a two year program which is acceptable for full credit toward such a degree;

(4) Is a public or other nonprofit institution; and

(5)(i) Is accredited by a nationally recognized accrediting agency or association approved by the Secretary for this purpose; or

(ii) If not so accredited—

(A) Is an institution which the Secretary determines will meet the accreditation standards of such an agency or association within a reasonable period of time; or

(B) Is an institution whose credits are transferrable, for credit on the same basis, to at least three institutions that are so accredited; or

(iii) If the Secretary determines that there is no nationally recognized accrediting agency or association qualified to accredit the type of school applying for eligibility, is approved by an advisory committee that the Secretary established, in accordance with the standards of content, scope and quality that the Committee prescribes for that purpose.

(b) The term also includes an institution that provides not less than a one year program of training to prepare students for gainful employment in a recognized occupation and, with the exception of paragraph (a)(3), meets the other requirements of paragraph (a) of this section.

(c) The Secretary publishes a list of nationally recognized accrediting agencies or associations that the Secretary has determined to be reliable authorities as to the quality of education or training offered.

Legal guardian: An individual who is appointed by a court as a "legal guardian" of a person and who is specifically required by the court to use his or her own financial resources to support that person.

Lender: A lender, including a subsequent holder, that is—

(a) A National or State chartered bank, a mutual savings bank, a savings and loan association, or a credit union that—

(1) Is subject to examination and supervision in its capacity as a lender by an agency of the United States or of the State in which its principal place of operation is established; and

(2) Does not make or hold loans to students and parents under the GSLP and the PLUS programs that total more than one-half of its consumer credit loan dollar volume, including home mortgages, unless it is a bank that is wholly owned by a State; or

(b) A pension fund as defined in the Employees Retirement Income Security Act; or

(c) An insurance company that is subject to examination and supervision by an agency of the United States or a State; or

(d) In any State, a single agency of the State or a single private nonprofit agency designated by the State; or

(e) For purposes only of purchasing and holding loans made by other lenders under this program, the Student Loan Marketing Association or an agency of any State functioning as a secondary market; or

(f) For purposes of making loans of last resort under section 428(h) or section 439(q) of the Act—

(1) the Student Loan Marketing Association or

(2) a State or private nonprofit guarantee agency; or

(g) For purposes of making consolidation loans under section 439(o) of the Act, the Student Loan Marketing Association; or

(h) A participting school that—

(1) Is not a correspondence school. An eligible school that offers both correspondence study and noncorrespondence study programs may be an eligible lender only for parents of students enrolled in the noncorrespondence study programs; and

(2) Employs at least one full-time financial aid administrator.

National of the United States: (a) A citizen of the United States.

(b) A person who, though not a citizen of the United States, owes permanent allegiance to the United States.

Origination: A special relationship between a school and a lender, in which the lender delgates to the school substantial functions or responsibilities normally performed by lenders before making loans. In this situation, the school is considered to have "originated" a loan made by the lender. The Secretary determines that "origination" exists if—

(a) A school determines who will receive a loan and the amount of the loan; or

(b) The lender has the school verify the identity of the borrower or complete forms normally completed by the lender.

Parent: A person's mother or father or legal guardian. An adoptive parent is considered to be the person's mother or father.

Participating school: A school that has entered into an agreement with the Secretary under § 682.80 to participate in the PLUS program.

Post deferment grace period: The six-month period following a deferment period during which time payments of principal and interest are suspended.

School: (a) An educational institution that is—

(1) An institution of higher education or a vocational school; or

(2) With respect to students who are nationals of the United States, a school outside the United States that is comparable to an institution of higher education or to a vocational school and that has been approved by the Secretary for purposes of the PLUS program.

(b) The term includes only those individual units or programs within a school that have been determined by the Secretary to meet all the requirements for school eligibility.

(c) A school that employs or uses commissioned salespersons to promote the availability of the GSLP or the PLUS program is not eligible to participate in either program. For this purpose—

(1) A "commissioned salesperson" is one who receives compensation in any form or amount that is related to, or calculated on the basis of, student applications for enrollement, student enrollments, or student acceptances for enrollment; and

(2) "Promote the availability" means provide prospective or enrolled students

or their parents with application forms, names of eligible lenders or other information designed to encourage the parents of eligible students to seek GSLP or PLUS loans. This term does not include providing general financial aid information to prospective or enrolled students or their parents.

School lender: Any participating school that has been approved as a lender and has entered into a contract of insurance under the Federal PLUS program or a guarantee agency PLUS program.

State lender: In any State, a State agency or a single, private nonprofit agency designated by the State that has been approved as a lender and has entered into a contract of insurance under the Federal PLUS program or a guarantee agency PLUS program.

Totally and permanently disabled: Unable to engage in any substantial gainful activity because of a medically determinable impairment that is expected to continue for a long and indefinite period of time or to result in death.

Undergraduate student: A student who is not a graduate or professional student.

Vocational school: (a) A business or trade school, or technical institution, or other technical or vocational school that—

(1) Is in a State;

(2) Admits as a regular student only a person who

(i) Has completed or left elementary or secondary school; and

(ii) Has the ability to benefit from the training offered by the school.

(3) Is legally authorized in each State in which it is physically located to provide, and provides within that State, a program of postsecondary vocational or technical education that—

(i) Is designed to provide occupational skills more advanced than those generally offered at the high school level and to fit individuals for useful employment in recognized occupations; and

(ii) Provides no less than 300 clock hours of classroom instruction or its equivalent, or in the case of a program offered by correspondence, requires not less than an average of 12 hours of preparation per week over each 12-week period and completion in not less than 6 months; and

(iii) In the case of a flight school program, maintains current valid certification by the Federal Aviation Administration;

(4) Has been in existence for 2 years or has been specially determined by the Secretary to be a school meeting the other requirements of this paragraph and to be eligible to participate in the PLUS program; and

(5)(i) Is accredited by a nationally recognized accrediting agency or association recognized by the Secretary for this purpose; or

(ii) In the case of a public institution offering postsecondary vocational education, is approved by a State approval agency recognized by the Secretary for this purpose; or

(iii) If the Secretary determines that there is no nationally recognized accrediting agency or association qualified to accredit the type of school applying for eligibility, is approved by a State approval agency recognized by the Secretary for this purpose; or

(iv) If the Secretary determines that there is no nationally recognized accrediting agency or association or State approval agency qualified to accredit or approve the type of school applying for eligibility, is approved by the National Advisory Committee on Accreditation and Institutional Eligibility, in accordance with the standards of content, scope, and quality that the Committee prescribes for that purpose. A school that has been approved by the Committee must, in order to remain an eligible school, become accredited within 3 years after the Secretary has designated a nationally recognized accrediting or State approval agency for the type of school applying for eligibility.

(b) For the purpose of this definition, the Secretary publishes a list of nationally recognized accrediting agencies or associations and State approval agencies that the Secretary has determined to be reliable authorities as to the quality of education or training offered.

(20 U.S.C. 1071–1087–3a; 1088, 1088a, 1088f, 1088f–1, 1089.)

§ 683.11 Parent and student eligibility

(a) *Parent eligibility.* A parent is eligible to receive a PLUS loan if the parent—

(1) Is borrowing to pay for the educational costs of an eligible student (as described in paragraph (b) of this section); and

(2) Meets one of the following qualifications:

(i) Is a national of the United States.

(ii) Is a permanent resident of the United States.

(iii) Is in the United States for other than a temporary purpose and can provide evidence from the Immigration and Naturalization Service of his or her intent to become a permanent resident.

(iv) Is a permanent resident of the Trust Territory of the Pacific Islands or the Northern Mariana Islands; and

(3) Except as described in paragraph (d) of this section, is not in default on any PLUS loan received for attendance at the school in which the student is enrolled or is accepted for enrollment; and

(4) Except as described in paragraph (d) of this section, is not in default on any GSLP loan received for attendance at the school in which the student is enrolled or is accepted for enrollment; and

(5) Except as provided in paragraph (d) of this section, is not in default on any National Defense or Direct Student Loan (NDSL) made by the school in which the student is enrolled or is accepted for enrollment; and

(6) Except as provided in paragraph (e) of this section, does not owe a refund on a Pell Grant, a Supplemental Educational Opportunity Grant (SEOG), or a State Student Incentive Grant (SSIG) received for attendance at the school in which the student is enrolled or is accepted for enrollment.

(b) *Student eligibility requirements.* A student is eligible to have his or her parent receive a PLUS loan to pay for his or her educational costs if he or she—

(1) Is a dependent student; and

(2) Is enrolled or accepted for enrollment as an undergraduate student in a participating school as at least a half-time student; and

(i) If currently enrolled, is in good standing and maintaining satisfactory progress as determined by the school;

(ii) If enrolled or accepted for enrollment in a vocational school, is attending neither elementary nor secondary school and has the ability to benefit from the training offered, as required under the definition of "vocational school" in § 683.10;

(iii) If enrolled or accepted for enrollment in a school outside the United States, is a national of the United States; and

(3) Meets one of the following qualifications:

(i) Is a national of the United States.

(ii) Is a permanent resident of the United States.

(iii) Is in the United States for other than a temporary purpose and can provide evidence from the Immigration and Naturalization Service of his or her intent to become a permanent resident.

(iv) Is a permanent resident of the Trust Territory of the Pacific Islands or the Northern Mariana Islands; and

(4) If enrolled in a flight school program at a vocational school or an institution of higher education—

(i) Plans to pursue or is pursuing a full-time program leading to commercial flight ratings;

(ii) Has completed ground school training or is taking it concurrently with flight training;

(iii) Holds a private pilot's certificate or has sufficient flight hours to qualify for such certificate; and

(iv) Holds at least a Class-II medical certificate; and

(5) Except as described in paragraph (d) of this section, is not in default on any PLUS loan received for attendance at the school in which the student is enrolled or is accepted for enrollment; and

(6) Except as described in paragraph (d) of this section, is not in default on any GSLP loan received for attendance at the school in which the student is enrolled or is accepted for enrollment; and

(7) Except as described in paragraph (d) of this section, is not in default on any NDSL loan made by the school in which the student is enrolled or is accepted for enrollment; and

(8) Except as described in paragraph (e) of this section, does not owe a refund on a Pell, SEOG, or SSIG Grant received for attendance at the school in which the student is enrolled or is accepted for enrollment; and

(9) Authorizes the school to return any refund attributable to the PLUS loan to the lender.

(c) In determining whether a parent or student is in default on a PLUS, GSLP, or NDSL loan, a school may rely on that parent's or student's written statement that he or she is not in default, unless the school has information to the contrary.

(d) *Effect of default on eligibility.* (1) If a parent is in default on a PLUS, GSLP, or NDSL loan that was received for attendance at the same school, or if the student on whose behalf the parent is borrowing is in default on a GSLP or NDSL loan that was received for attendance at the same school, that parent may receive a PLUS loan only under the following conditions:

(i) *Parent Loans for Undergraduate Students or Guaranteed Student Loans.* A Parent or student who is in default on a PLUS or a GSLP loan may be eligible under the PLUS program if the Secretary or a guarantee agency (for a loan insured by that guarantee agency) determines that the parent or the student has made satisfactory arrangements to repay the defaulted loan.

(ii) *National Defense Student Loan or National Direct Student Loan.* A parent or student who is in default on a NDSL loan may be eligible under the PLUS program if the parent or student has made arrangements, satisfactory to the school or the Secretary, to repay the defaulted loan.

(2) The Secretary does not consider a PLUS, GSLP, or NDSL loan that is discharged in bankruptcy to be in default for purposes of this section.

(e) *Effects of indebtedness for refund on eligibility.* A parent or student who receives an overpayment of a grant may be eligible under the PLUS program under the following conditions:

(1) *Overpayment of a Pell Grant.* If the parent or student is overpaid on a Pell Grant, that parent or student may still be eligible under the PLUS program if—

(i) The parent or student is otherwise eligible; and

(i) The parent or student is otherwise eligible; and

(ii) The overpayment can be eliminated in the award period in which it occurred by adjusting the subsequent Pell Grant payments for that award period.

(2) *Overpayment of a Pell Grant due to school error.* If the parent or student is overpaid as a result of school error, and the overpayment cannot be eliminated by adjusting subsequent Pell Grant payments in the award year, that student or parent may still be eligible under the PLUS program if—

(ii) The parent or student acknowledges in writing the amount of the Pell Grant overpayment and agrees to repay it in a reasonable period of time.

(3) *Overpayment on a Supplemental Educational Opportunity Grant.* If the parent or student is overpaid on a SEOG Grant, that parent or student may still be eligible under the PLUS program if—

(i) The parent or student is otherwise eligible; and

(ii) An adjustment in subsequent financial aid payments (other than Pell Grants) eliminates the overpayment in the same award year in which it occurred.

(f) For purposes of this part—

(1) "Overpayment of a grant" means that a parent or student received payment of a grant greater than the amount he or she was entitled to receive;

(2) "Pell Grant" means a grant authorized under Title IV–A–1 of the Higher Education Act of 1965;

(3) "National Defense Student Loan" means a loan made under Title II of the National Defense Education Act;

(4) "National Direct Student Loan" means a loan made under Title IV–E of the Higher Education Act of 1965;

(5) "State Student Incentive Grant" means a grant authorized under Title IV–A–3 of the Higher Education Act of 1965; and

(6) "Supplemental Educational Opportunity Grant" means a grant authorized under Title IV–A–2 of the Higher Education Act of 1965.

(20 U.S.C. 1077, 1078, 1078–2, 1085, 1091).

§ 683.12 Statement of educational purpose.

(a)(1) No loan may be insured under this program unless the parent declares in a written statement that the loan proceeds will be used solely for costs of attendance at the school that the student on whose behalf the parent is borrowing is or will be attending.

(2) The statement must be in a form approved by the Secretary.

(b) The parent must file his or her statement with the lender. The lender shall retain a copy of the statement as required in § 683.68 or by a guarantee agency that insures the loan.

(20 U.S.C. 1078–2, 1082, 1091).

§ 683.13 Permissible charges to parents.

(a) *Interest*—(1) *Rate.* (i) Exclusive of any insurance premium, and unless affected by Section 427A(b) of the Act, a lender shall charge an interest rate of 9 percent per year on the unpaid principal balance of a PLUS loan.

(ii) The unpaid principal balance of a loan may include capitalized interest under circumstances described in paragraph (a)(3) of this section.

(2) *Method of calculation.* The lender shall calculate the interest from the date of disbursement of funds to the borrower. In calculating the interest, the lender may use either of the following methods:

(i) The "Approximate Time-Ordinary Interest" method; or

(ii) The "Exact Time-Exact Interest" method. Use of the "Banker's Rule" ("Exact Time-Ordinary Interest") is prohibited because this method results in an actual rate in excess of the allowable rate of interest.

(3) *Capitalizing interest.* "Capitalization" means increasing the unpaid principal of a loan through the addition of accrued interest to the previously unpaid principal balance.

(i) *Federal PLUS Program.* For a PLUS loan insured under the Federal program, a lender may capitalize accrued interest covering any period in which the borrower is unable or is not required to make payments.

(ii) *Guarantee agency PLUS Programs.* For a PLUS loan insured under a guarantee agency program, a lender may add accrued interest and unpaid insurance premiums to the borrower's unpaid principal balance as authorized by guarantee agency policy.

(4) *Payment.* Interest is payable by the borrower in installments over the life of

the loan. However, a lender may permit a borrower to postpone payment of interest as described in paragraph (a)(3) of this section. This accrued interest either may be paid when payment of principal begins or resumes or may be capitalized.

(b) *Insurance premium.* (1) The term "insurance premium" covers those charges made by the guarantee agency or the Secretary to the lender to insure the lender of a PLUS loan against losses it may suffer if the borrower defaults or has filed a bankruptcy petition. The insurance premium also may be used by the guarantee agency or the Secretary to cover costs incurred in the administration of the applicable loan insurance program. Premiums may not be retained by the lender to cover the costs of making a loan or for any other purpose.

(2) Specific rules on insurance premiums, including the rate that may be charged the lender and passed on to the borrower, the method of calculation, and refund requirements are contained in § 683.31 for PLUS loans insured under guarantee agency programs, and § 683.56 for Federal PLUS loans.

(c) *Late charges.* To the extent provided in the promissory note and permitted by State law, the lender may require that the borrower pay a late charge if the borrower fails to pay any or all of a required installment payment within 10 days after its due date or fails to provide written evidence that verifies eligibility for authorized deferment of the payment. The late charge may not exceed 5 cents for each dollar of each installment due or $5 for each installment, whichever is less.

(d) *Collection charges—(1) Permissible charges.* If provided in the note, the lender also may require that the borrower pay the lender for certain reasonable costs incurred by the lender or its agent in collecting any installment not paid when due. These costs may include attorney's fees, court costs, telegrams, and long-distance phone calls.

(2) *Non-permissible charges.* Other than those authorized by this secion, no charges may be passed on to the borrower, either directly or indirectly. Examples of charges that are not permitted are as follows:

(i) Normal collection costs associated with preparing letters or notices or making personal contacts or local telephone calls.

(ii) Fees charged by a servicing or collection or skip tracing agency, to the extent they exceed permissible charges.

(iii) Loan origination fees.

(20 U.S.C. 1077, 1077a, 1078, 1078–2, 1079, 1082, 1087–1)

§ 683.14 Special allowance payments to lenders.

(a) *General.* (1) The Secretary pays a special allowance to lenders on all PLUS loans. The special allowance is equal to a percentage of the average unpaid balance of principal, including capitalized interest, for all PLUS loans a lender has held during a 3-month period. The 3-month periods end (1) March 31; (2) June 30; (3) September 30; and (4) December 31 of each year.

(2) If a lender makes or purchases loans with funds obtained from an Authority issuing obligations, the income from which is exempt from taxation under the Internal Revenue Code of 1954, the Secretary pays the special allowance to that lender on those loans only if the Authority had had a plan for doing business approved by the Secretary in accordance with section 420(b) of the Education Amendments of 1980 (Pub. L. 96–374).

(b) *Lender's reports.* To receive the special allowance payment, a lender shall submit periodic reports to the Secretary stating the average unpaid balance of principal for all its PLUS loans. These reports must be in a form prescribed by the Secretary.

(C) *Determining the special allowance rate.* (1) Unless affected by Section 427A(b) of the Act, the percentage rate for the special allowance for a 3-month period is determined by—

(i) Subtracting 5.5 percent from the average of the bond equivalent rates of the 91-day Treasury bills auctioned during the 3-month period;

(ii) Rounding the resulting percent upward to the nearest one-eighth of one percent; and

(iii) Dividing the resulting percent by 4.

(2) After the close of each 3-month period, the Secretary announces the rate of the special allowance for that period.

(D) *Determining the average unpaid balance of principal.* (1) There are two methods a lender may use to determine the average unpaid balance of principal for purposes of the special allowance:

(i) *The average quarterly balance method.* Add the unpaid balance of principal of all loans outstanding on the first day of the 3-month period to the unpaid balance of principal of all loans outstanding on the last day of the period and divide by 2.

(ii) *The average daily balance method.* Add the unpaid balance of principal of all loans outstanding on each day of the 3-month period and divide by the number of days in that period.

(2) The lender may not change its method of determining the average unpaid balance of principal without the prior written approval of the Secretary.

(3) For the purpose of this determination, a loan is considered outstanding if—

(i) The borrower has not repaid the loan;

(ii) The lender has not received payment on a claim for loss on the loan; and

(iii) The lender has not been advised that the Secretary or a guarantee agency has finally refused a claim for loss on the loan.

(e) *Special allowance rates applicable to loans made or purchased with funds obtained from the issuance of obligations that generate tax-exempt income.* (1) The Secretary pays a lender one-half the special allowance rate computed under paragraph (c) of this section for PLUS loans, but no less than the rate specified in paragraph (e)(2) of this section, if that lender makes or purchases those loans with funds obtained by the lender—

(i) From the issuance of obligations the income from which is exempt from taxation under the Internal Revenue Code of 1954; or

(ii) From collections, default reimbursements, interest, special allowances or other income obtained from loans made or purchased with funds obtained as described in subdivision (i) of this subparagraph; or

(iii) From the investment of funds obtained as described in subdivisions (i) or (ii) of this subparagraph.

(2) The minimum special allowance the Secretary pays to a lender for PLUS loans described in paragraph (e)(1) of this section, unless affected by Section 427A(b) of the Act, is 0.5 percent per year.

(f) *Payment of penalty interest.* (1) If the Secretary has not authorized the United States Department of the Treasury to pay special allowance within 30 days after receipt of an accurate, timely and complete request for payment from any lender, the Secretary pays that lender an additional amount known as penalty interest.

(2) *Determining the amount of penalty interest.* (i) Penalty interest is the daily interest that accrues on the special allowance payments otherwise due to the lender. That interest is computed at the daily equivalent rate of the sum of the special allowance on a loan for the 3-month period for which the special allowance is being paid plus the interest rate at which the loan was made.

(ii) The Secretary pays penalty interest for—

(A) The 31st day after receipt of the request for payment or the 31st day after the final day of the period (or periods) covered by the request, whichever is later; and

(B) Each succeeding day until the Secretary authorizes payment. The day on which payment is authorized is also counted.

(20 U.S.C. 1078-2, 1082, 1087-1, Pub. L. 96-374, § 420(b))

§ 663.15 Prohibited transactions.

(a)(1) No points, premiums, payments, or additional interest of any kind may be paid or otherwise extended to any eligible lender or other party in order to—

(i) Secure funds for making PLUS loans; or

(ii) Induce a lender to make loans to either the parents of students of a particular school or the parents of any particular category of students.

(2) The following are examples of transactions which, if entered into for the purposes described in paragraph (a)(1)(i) or (ii) of this section, are prohibited:

(i) Cash payments by or on behalf of a school made to a lender or other party.

(ii) The maintaining of a compensating balance by or on behalf of a school with a lender.

(iii) Payments ostensibly made for other purposes.

(iv) Payments by or on behalf of a school to a lender of servicing costs on loans that the school does not own.

(v) Payment by or on behalf of a school to a lender of unreasonably high servicing costs on loans that the school does own.

(vi) Purchase by or on behalf of a school of stock of the lender.

(b) Except when purchased by the Student Loan Marketing Association or an agency of any State functioning as a secondary market or in other circumstances approved by the Secretary, notes, or any interest in notes, shall not be sold or otherwise transferred at discount if the underlying loans were made—

(1) By a school; or

(2) To parents of students attending a school by a lender having common ownership with that school.

(c) Except to secure a loan from the Student Loan Marketing Association or an agency of a State functioning as a secondary market or in other circumstances approved by the Secretary, a school or a lender with respect to a loan made to a parent of a student attending a school having common ownership with the lender, may not pledge a loan made under the PLUS program as security for any loan bearing aggregate interest and other charges in excess of the sum of the interest rate applicable to the loan plus the rate of the then most recently prescribed special allowance under § 663.14.

(d) The prohibitions described in paragraphs (a), (b), and (c) of this section apply to any school or lender which would be a party to the prescribed transactions.

(e) The performance by a school of substantial functions or responsibilities normally performed by a lender which results in the school "originating" loans made by the lender is not a prohibited transaction.

(f) *Warranty.* (1) Nothing in this section shall preclude a buyer of loans made by a school from obtaining a warranty from the seller of those loans.

(2) The warranty may cover future reductions by the Secretary or a guarantee agency in computing the amount of insurable loss, if any, on default claims filed on the loans where the reductions are attributable to an act or failure to act of the seller or previous holder.

(3) The warranty shall not cover matters for which a purchaser is charged with responsibility under this Part, such as due diligence in collecting loans.

(g) Section 490(c) of the Act provides that any person who knowingly and willfully makes an unlawful payment to an eligible lender as an inducement to make, or to acquire by assignment, a PLUS loan, shall upon conviction thereof be fined not more than $1,000 or imprisoned not more than one year, or both.

(20 U.S.C. 1078-2, 1082, 1097)

§ 663.16 Provision of loan information by lenders.

By no later than when the note is signed the lender shall provide the borrower with thorough and accurate information regarding a loan made under the PLUS program including—

(a) The annual and aggregate maximum amounts that the parent may borrow under the program;

(b) The terms on which repayment of the loan will begin;

(c) The maximum number of years in which the loan must be repaid;

(d) The interest rate that must be repaid, and the minimum amount of required monthly payment;

(e) Rights or options the borrower may have for deferment, cancellation, prepayment, consolidation, or other refinancing of the loan;

(f) A definition of default and the consequences to the parent if he or she should default, including a description of any arrangements made with credit bureaus; and

(g) To the extent practicable, the effect that the parent's accepting the loan has on the eligibility of the parent for future borrowing under the PLUS program and on the eligibility of that parent and student to receive student financial assistance under the Act.

(20 U.S.C. 1078-2, 1082, 1083a)

§ 663.17 Treatment of refunds by lenders.

(a) A lender shall treat a payment from a school representing a refund to a student whose parent obtained a PLUS loan from that lender as a credit against the amount owed by the parent borrower on the PLUS loan.

(b) If a lender receives from a school a refund payment on a loan that is no longer held by that lender, the lender shall—

(1) Transmit the amount of the refund payment to the holder to whom the loan has been assigned with an explanation of the payment's source; and

(2) Provide simultaneous written notice to the borrower that a payment has been transferred to the new holder.

(20 U.S.C. 1078-2, 1082)

Subpart C—Guarantee Agency Programs

§ 663.20 Agreements between a guarantee agency and the Secretary.

(a) The Secretary enters into agreements with a guarantee agency, enabling the agency to participate in the PLUS program, if the Secretary and the guarantee agency have corresponding agreements in effect under the Guaranteed Student Loan program (GSLP) (34 CFR Part 682) and the Secretary determines that the guarantee agency program meets the requirements of this subpart. Separate agreements, based on various requirements, are necessary for the agency to receive some or all of the benefits available to it.

(b) *Types of agreements.* There are six agreements. Specific requirements for each agreement, and additional requirements for receiving some benefits, are described in this subpart.

(1) *Basic PLUS program agreement.* A guarantee agency must have a basic agreement to participate in the PLUS program in any way. Under this agreement—

(i) Lenders may receive special allowance and penalty interest payments and, through the guarantee agency, death, disability, and bankruptcy claim payments;

(ii) The guarantee agency may apply for the primary administrative cost allowance, and for the agreements listed below.

(2) *Federal advances for reserve fund agreement.* A guarantee agency must have this agreement to receive and use Federal advances to help establish or strengthen the reserve fund that backs the agency's PLUS loan guarantees.

(3) *Additional Federal advances for claim payments agreements.* A guarantee agency must have this agreement to receive and use Federal advances to pay PLUS program insurance claims.

(4) *Reinsurance agreement.* A guarantee agency must have a reinsurance agreement to receive reimbursement of 80 percent of its losses on default claims.

(5) *Supplemental reinsurance agreement.* A guarantee agency, with this agreement, receives reimbursement of up to 100 percent of its losses on default claims.

(6) *Secondary administrative cost allowance agreement.* A guarantee agency establishes this agreement by applying for and receiving the secondary administrative cost allowance.

(c) *Failure to comply with agreements.* If the Secretary finds that a guarantee agency has made incomplete or incorrect statements in connection with an agreement, or has failed to comply with an agreement or with applicable Federal law or regulations, the Secretary takes actions necessary to protect the interests of the United States. These actions may include—

(1) Withholding payments to the guarantee agency;

(2) Requiring reimbursement of payments; or

(3) Suspending or terminating an agreement.

(d) *Remedial actions.*

(1)(i) The Secretary or the guarantee agency may terminate any agreement upon 60 days written notice.

(ii) The Secretary terminates an agreement only under circumstances described in paragraph (c) of this section.

(iii) Termination does not affect obligations incurred under the agreement before the effective date of the termination.

(2) The Secretary's suspension or termination of an agreement, requirement of reimbursement, or withholding of payments is not final until the guarantee agency has been given reasonable notice of the intended action and an opportunity for a hearing. The Secretary withholds payments or suspends an agreement prior to giving notice and opportunity for a hearing only if the Secretary finds this emergency action necessary to prevent substantial harm to Federal interests.

(e) The Secretary's execution of an agreement does not indicate acceptance of any current or past standards or procedures used by the agency.

(f) All the agreements are subject to subsequent changes in the Act or regulations.

(20 U.S.C. 1072, 1078, 1078–1, 1078–2, 1082, 1087, 1087–1)

§ 683.31 Basic PLUS program agreement.

(a) *General.* (1) The basic agreement is required for all participation by a guarantee agency in the PLUS program. In this agreement, the guarantee agency assures the Secretary that its program meets the requirements of paragraph (b) of this section and agrees to maintain the administrative and fiscal standards of paragraph (c) of this section.

(2) The basic agreement shall contain other provisions and be supported by any material required by the Secretary.

(b) *Program requirements.* The guarantee agency ensures, through its policies and the requirements that it imposes on participating lenders, schools, parents, and students, that its program meets the requirements of this paragraph.

(1) *Aggregate loan limits.* The aggregate insured principal amount for all PLUS loans made to a borrower on behalf of one eligible student may not exceed $15,000.

(2) *Annual amounts.* (i) The maximum loan amount authorized for any one academic year must be at least $1,000, but may not exceed $3,000, on behalf of each eligible student.

(ii) If the program insures loans to a borrower on behalf of an eligible half-time student, the loan maximum must be at least $500 for such borrower for each half-time student in any academic year.

(iii) A guarantee agency does not violate paragraphs (b)(2) (i) or (ii) of this section if it makes the maximum loan amounts listed in those paragraphs applicable to either of the following periods:

(A) A period that does not exceed 12 months; or

(B) A period in which the student on behalf of whom the loan is made earns the credits required by the student's school to advance in academic standing, as normally measured on an academic year basis (for example, from freshman to sophomore).

(iv) In no case may the amount of a loan exceed the student's estimated cost of attendance less estimated financial assistance.

(3) *Duration of borrower eligibility.* A parent is eligible to borrow funds on behalf of a dependent undergraduate student in any year of study at a participating school.

(4) *Parent borrower responsibilities.* (i) The borrower shall promptly notify the lender of any change of his or her name or address.

(ii) The borrower shall give the lender, as part of the loan application process—

(A) The statement, described in § 683.12, that the loan will be used for the cost of the student's attendance;

(B) Information that provides a basis for determining that the parent qualifies as an eligible borrower;

(C) Information concerning the borrower's outstanding PLUS loans received on behalf of the same student;

(D) A statement from the student which authorizes the school to release information contained in the students file relevant to the students' eligibility to have the parent borrow on his or her behalf (e.g., the students' enrollment status, financial assistance or employment).

(E) A statement from the student which authorizes the school to return any refund attributable to the PLUS loan to the lender; and

(F) Information from the school that provides a basis for determining that the student qualifies as an eligible student and the maximum amount the parent may borrow on behalf of the student.

(5) *Disbursement requirements.* (i) The lender shall disburse the loan funds by means of a check payable to the borrower or, if authorized by the borrower in writing, jointly to the borrower and the school that the student on whose behalf the parent is borrowing is to attend. The check must require the personal endorsement of the borrower. For this purpose, a check is a draft drawn on a bank and payable on demand, and deposit of the check by the borrower in his or her own account at a bank or other financial institution constitutes endorsement.

(ii) The borrower must personally endorse the check and may not authorize anyone else to endorse it on his or her behalf.

(iii) Neither a lender nor a school may obtain a borrower's power of attorney or other authorization to endorse a check on behalf of a borrower.

(iv) The lender may not disburse loan funds earlier than is reasonably necessary to meet the student's cost of attendance for the period for which the loan is intended.

(6) *School notification requirements.* For each PLUS loan, as a condition of insurance, the school that certified the student's enrollment shall be notified of the insurance, the name of borrower, the name of the student on whose behalf the loan was made, the amount of the loan, and the name of the lender.

This notification may be made either—

(i) By the lender or the guarantee agency informing the school of these facts no later than 30 days after the initial disbursement of the loan.

(ii) By the lender sending all loan checks to the school for delivery to the borrower, specifying in each case the name of the student on whose behalf the loan is made.

(7) *Commencement of repayment.* The borrower's repayment period shall begin on the day the loan is disbursed. The borrower's first payment shall be due within 60 days after the loan is disbursed.

(8) *Length of repayment period.* In general, the lender must allow the borrower at least 5 years but not more than 10 years to repay a loan, calculated from the beginning of the repayment period. The borrower, however, shall fully repay the loan within 15 years after it is made. There are exceptions, however, to these rules:

(i) If the borrower receives a deferment or has been granted forbearance under procedures approved by the guarantee agency, the period of deferment or forbearance is not counted in the 5-, 10-, and 15-year periods.

(ii) If the minimum annual repayment required in subdivision (iv) of this paragraph would result in complete repayment of the loan in less than 5 years, the borrower is not entitled to the full 5-year period.

(iii) *Prepayment.* The borrower may prepay the whole or any part of the loan at any time without penalty.

(iv) *Minimum annual payment.* During each year of the repayment period, the borrower's payments to all holders of his or her PLUS and GSLP loans must total at least $360 or the unpaid balance of all the loans including interest, whichever amount is less. There are, however, exceptions to this rule:

(A) If the borrower and lender agree, the amount paid may be less.

(B) If the borrower and his or her spouse have separate PLUS loans, or one or more PLUS loans and one or more GSLP loans, their combined annual payment must meet this requirement.

The provisions of subparagraphs (A) and (B) may not result in an extension of the 10- and 15-year repayment period maximums, unless forbearance has been granted under procedures approved by the guarantee agency.

(9) *Deferment.* During the repayment period, principal payments are postponed during specified periods and under conditions described in § 683.58. However, during these periods, interest shall accrue and be payable unless the lender capitalizes the interest, if permitted by the guarantee agency.

(10) *Interest.* (i) Exclusive of any insurance premium and unless affected by Section 427A(b) of the Act, a lender shall charge an interest rate of 9 percent per year on the unpaid principal balance of a PLUS loan. The unpaid principal balance of a loan may include capitalized interest to the extent authorized by the guarantee agency.

(ii) No payments to reduce interest costs shall be paid by the Secretary on PLUS loans.

(11) *Insurance premiums.* (i) The guarantee agency may charge an insurance premium to the lender on each loan. This insurance premium may be used only to insure loans and to cover costs incurred by the guarantee agency in the administration of its PLUS loan insurance program. The lender may pass this charge on to the borrower.

(ii) *Rate.* The insurance premium may not exceed one percent per year of the unpaid principal balance of the loan, excluding interest or other charges that may have been added to the principal.

(iii) *Refund requirement.* The insurance premium need not be refunded by either the guarantee agency or lender to the borrower, even if the borrower prepays, defaults, dies, becomes totally and permanently disabled or files a bankruptcy petition.

(12) *Insurance liability.* The guarantee agency must insure at least 80 percent of the unpaid prinicpal balance of each loan insured.

(13) *Guarantee agency administration.* In the case of a State loan insurance program, the program shall be administered by a single State agency, or by one or more private nonprofit institutions or organizations under supervision of a single State agency. For this purpose, "supervision" includes setting policies and procedures for, and having full responsibility for, the operation of the program.

(14) *Loan assignment.* A loan may be assigned only to—

(i) An eligible lender; or

(ii) The guarantee agency, in the case of a borrower's default, death, total and permanent disability, or filing a bankruptcy petition. "Assigned" means any kind of transfer, including transfer as security.

(15) *Loan information.* Each eligible lender shall provide thorough and accurate loan information to borrowers as specified in § 683.16. The lender shall enter into an agreement with the Secretary to ensure that it will provide this information.

(c) *Administrative and fiscal standards required of the guarantee agency.*—(1) *Establishment of procedures.* To enter into a basic PLUS agreement, the guarantee agency shall establish administrative and fiscal procedures that the Secretary may require to ensure proper administration of the agency's loan insurance program.

(2) *Dissemination of standards and procedures.* The guarantee agency shall establish and disseminate to concerned parties its standards and procedures for—

(i) School and lender participation in its program;

(ii) Limitation, suspension, or termination of school and lender participation;

(iii) Approval of forbearance;

(iv) Timely filing of default, death, disability, and bankruptcy claims by lenders; and

(v) Due diligence in making and collecting loans.

(3) *Due diligence.* The guarantee agency shall ensure that due diligence, including resort to litigation as appropriate, will be exercised by lenders in making and collecting loans. The guarantee agency also shall exercise due diligence, including resort to litigation as appropriate, in collecting loans on which default claims have been paid. "Due diligence" is defined in § 683.10.

(20 U.S.C. 1078, 1078-2, 1082; 42 U.S.C. 3055(e))

§ 683.32 Death, disability, and bankruptcy payments.

(a) If a borrower dies or becomes totally and permanently disabled, the Secretary cancels the borrower's obligation on a PLUS loan by paying the lender the amount owed. If a borrower files a petition for bankruptcy, the Secretary pays the amount owed. However, if both parents of a student obtained a loan as co-makers, in order for a loan to qualify for these payments the applicable condition must apply to both parents. The Secretary cancels these loans whether the holder of the loan is a lender or the guarantee agency.

(b) The procedures in § 683.63 concerning death, total and permanent disability, and bankruptcy apply to guarantee agency programs with the following modifications:

(1) The references to the Secretary in §§ 683.63(a)(3) and 683.63(c)(2) shall be understood to mean the guarantee agency if the loan is held by a lender.

(2) References to the Federal PLUS program shall be understood to mean the guarantee agency program.

(3) References to the lender shall be understood to mean the guarantee agency if the loan is held by a guarantee agency.

(c) No death, disability, or bankruptcy claim may be paid if the loan is not considered insurable by the guarantee agency or if a default claim for that loan previously has been disapproved by the guarantee agency.

(d) *Claim procedures for loans held by a lender*—(1) *Claim submission.* (i) The lender shall submit evidence that the borrower has died, became totally and permanently disabled, or has filed a bankruptcy petition to the guarantee agency. The agency shall return to the lender any submission that is not accurate and complete.

(ii) After determining that a claim is valid the guarantee agency may pay the lender the amount authorized by paragraph (d)(2) of this section. The Secretary periodically reimburses the guarantee agency for these payments.

(2) *Amount of claim payment.* The Secretary determines the amount of the loss to be paid the lender according to the standards used to determine claim payments under the Federal PLUS program. These are found in § 683.66 (a) and (b), with the following modifications:

(i) References to Federal PLUS program insurance shall be understood to mean guarantee agency insurance.

(ii) Paragraph (b)(1)(i) of § 683.66 shall be understood to mean the period prescribed by the guarantee agency.

(iii) References to the Secretary shall be understood to mean the guarantee agency in paragraphs (b)(1)(ii) and (iii) of § 683.66.

(e) *Claim procedures for loans held by the guarantee agency.*

(1) The Secretary pays a death, disability, or bankruptcy claim on a loan held by the guarantee agency after payment of a default claim to the lender only if—

(i) The borrower (in the case of co-makers, both parents), dies, become totally and permanently disabled, or files a bankruptcy petition within 15 years of the date the loan was made, exclusive of periods of deferment or periods of forbearance granted by the lender that extend the 15-year period;

(ii) The guarantee agency has not written off the loan as uncollectible; and

(iii) The guarantee agency exercised due diligence in the collection of the loan until the borrower died, became totally and permanently disabled, or filed a bankruptcy petition.

(2) *Amount of claim payment.* (i) The Secretary pays the guarantee agency the amount owed on the loan, including accrued interest. The Secretary pays interest that accrues for a period of up to 60 days from the date the guarantee agency determines that the borrower is dead, totally and permanently disabled, or has filed a bankruptcy petition until the guarantee agency submits the claim to the Secretary. The amount of the payment is reduced by the amount of any reinsurance claim paid by the Secretary for the loan, less any subsequent reimbursement to the Secretary from amounts collected from or on behalf of the borrower.

(ii) If the guarantee agency receives any payments from or on behalf of the borrower on a loan on which the Secretary paid a bankruptcy claim, the guarantee agency shall submit 100 percent of these payments to the Secretary.

(3) If a loan that the Secretary has paid as a bankruptcy claim under this paragraph is not discharged in bankruptcy it will be treated as a default. The guarantee agency shall pay to the Secretary the difference between the amount received from the Secretary as a bankruptcy claim and the amount it would have recieved as default claim. In determining the difference, the guarantee agency shall take into account any payments made by or on behalf of the borrower that the agency would have retained on a default claim but submitted to the Secretary under paragraph (e)(2)(ii) of this section.

(20 U.S.C. 1078–2, 1082, 1087)

§ 683.33 Applicability of GSLP Federal advance funds provisions.

(a) Funds appropriated under Section 422 of the Act may be used for purposes of the PLUS program under the terms and conditions specified in § 682.403 and § 682.404 of the GSLP regulations.

(b) The Secretary considers both PLUS loans and GSLP loans in determining the amount of advance funds an agency is eligible to receive under Section 422(c)(2) of the Act.

(c) A guarantee agency shall include both PLUS loans and GSLP loans in making the calculation required under § 682.404(e)(3) of the GSLP regulations.

(20 U.S.C. 1072, 1078–2, and 1082)

§ 683.34 Federal reinsurance agreement.

(a) The Secretary may enter into a reinsurance agreemetn with a guarantee agency that has a basic PLUS program agreement. Under a reinsurance agreement, the Secretary will reimburse the guarantee agency for 80 percent of its losses on PLUS loans. This agreement is a prerequisite for the supplemental reinsurnace agreement, under which the Secretary reimburses the guarantee agency for up to 100 percent of its losses.

(1) *Defintion of losses.* In this section, "losses" means the amount the agency pays a lender for a default claim minus payments made by, or on behalf of, the borrower after the lender's claim is paid and before the Secretary reimburses the agency. Losses may include unpaid principal and accrued interest.

(2) *Exclusion.* Death and disability claims on loans are not covered by the reinsurance agreement. Claims on loans to borrowers who have filed a bankruptcy petition also are not covered. Those claims are paid under § 683.32.

(b) The Secretary will enter into a reinsurance agreement only if the agreement would be consistent with any State laws or regulations, and with agreements between lenders and the guarantee agency, regarding the maintenance of the guarantee agency's reserve fund.

(c) The Secretary may find that there is a Federal interest in other aspects of the guarantee agency's operations and may review those operations in deciding whether to enter into or extend a reinsurance agreement.

(d) In deciding whether to enter into a reinsurance agreement, or, if an agreement has terminated, whether to make a subsequent agreement, the Secretary may consider the adequacy of—

(1) The lenders' and the guarantee agency's efforts to collect defaulted loans; and

(2) The guarantee agency's efforts to provide PLUS loans for all eligible borrowers.

(e) Losses on loans that are covered by a reinsurance agreement and were outstanding when the reinsurance agreement was entered into are covered by the agreement only if the default occurs after that time or, if later, after the effective date of the agreement.

(f) *Terms and conditions.* The agreement must contain terms and conditions that the Secretary finds necessary to promote the purposes of the PLUS program and to protect the United States from unreasonable loss, including the following terms and conditions:

(1) The guarantee agency shall assure the Secretary that, for every reinsurance claim it submits—

(i) The terms of the loan comply with all Federal requirments;

(ii) All reasonable efforts have been made by the lender that submitted the default claim to collect the loan;

(iii) The loan was in default before the lender was paid for the claim; and

(iv) The agency will make all reasonable efforts to collect the loan after the Secretary pays the reinsurance claim.

(2) The Secretary prescribes the documentation required to receive payment, and the manner in which

payment is made. The Secretary may subtract amounts owed by the guarantee agency from amounts owed to the guarantee agency.

(3) An amount equal to each reinsurance payment shall be credited promptly by the agency to its reserve fund.

(4) Payments made by the borrower to the guarantee agency on a defaulted loan after the Secretary has paid a reinsurance claim on that loan may be applied first to reduce either the principal or interest owed. The borrower's payments may be applied to other charges, such as late charges or attorney's fees, only after the repayment of all principal and interest. If the borrower's repayment schedule or actual payments result in payments that are too small to pay the interest as it accrues, the guarantee agency shall review the borrower's financial situation at least every six months. If feasible, the agency shall adjust the distribution of each payment between principal and interest so that the principal will be paid within a reasonable time.

(5) The guarantee agency shall pay the Secretary an equitable share of any payment made by or on behalf of a defaulted borrower after the Secretary has reimbursed the agency.

(6) Unless the Secretary approves otherwise, the guarantee agency shall submit the Secretary's equitable share of borrower payments to the Secretary within 60 days of its receipt of the payments.

(7) There is no other subrogation of the United States to the rights of the guarantee agency on any loan that is subject to this agreement.

(8) Nothing in a reinsurance agreement shall be construed to keep a lender from granting forbearance to a borrower under published criteria of the guarantee agency.

(g) The "Secretary's equitable share" of borrower payments is defined in Section 428(c)(6) of the Act, and is calculated for a complete fiscal year.

(1) The term "overhead" used in that definition includes space and utilities costs.

(2) By December 31 of the succeeding fiscal year, the guarantee agency must submit to the Secretary, in a manner prescribed by the Secretary, information concerning its total borrower payments received and its total administrative costs of collection of loans and preclaims assistance for default prevention incurred during the fiscal year. If this submission shows that the guarantee agency has not paid all the "Secretary's equitable share" of borrower payments to the Secretary for the fiscal year, the guarantee agency must at that time pay the additional amount due to the Secretary.

(20 U.S.C. 1078, 1078–2, 1082)

§ 683.35 Supplemental Federal reinsurance.

(a) The Secretary may enter into a supplemental reinsurance agreement annually with a guarantee agency that has a reinsurance agreement and that meets the conditions of this section.

(b) *Amount of supplemental reinsurance payments.* (1) The Secretary reimburses a guarantee agency having supplemental reinsurance for 100 percent of its losses, with the following exceptions:

(i) *When reinsurance claims paid by the Secretary to a guarantee agency for any fiscal year reach 5 percent of the "amount of loans in repayment" at the end of the preceding fiscal year.* In this event, the Secretary's reinsurance liability on a claim subsequently paid for that fiscal year will be 90 percent of the amount of the unpaid principal balance plus accrued interest.

(ii) *When reinsurance claims paid by the Secretary to a guarantee agency for any fiscal year reach 9 percent of the "amount of loans in repayment" at the end of the preceding fiscal year.* In this event, the Secretary's reinsurance liability on a claim subsequently paid for that fiscal year will be 80 percent of the amount of the unpaid principal balance plus accrued interest.

(2) *Exception for a new guarantee agency.* For a guarantee agency that entered into a basic agreement under Section 428(b) of the Act after September 30, 1976, or was not actively carrying on a program covered by such agreement on October 1, 1976, the Secretary pays 100 percent of its losses for five consecutive fiscal years beginning with the first year of its operation. The Secretary monitors programs of this type and, if an agency does not prudently administer its program, the Secretary may determine that it does not continue to qualify for this exception.

(c) *Consolidation of the GSLP and PLUS programs for supplemental reinsurance.* (1) If a guarantee agency enters into a supplemental reinsurance agreement for both the GSLP and PLUS programs, that agency shall consolidate the two programs for the purpose of:

(i) Calculating the amount of loans in repayment as described in paragraph (d)(2) of this section, and

(ii) Calculating the extent of the Secretary's liability as described in paragraph (b) of this section.

(2) If a guarantee agency that has a reinsurance agreement for PLUS loans and GSLP loans under § 683.34 enters into a supplemental reinsurance agreement for one but not both of the GSLP and PLUS programs, the guarantee agency shall not consolidate the two programs, but must continue to maintain records on reinsurance separately for each program to enable the Secretary to determine:

(i) The rate of reimbursement to be paid on reinsurance claims under each program, and

(ii) The Secretary's equitable share of collections received after payment of a reinsurance claim under each program.

(d) *Definitions.* (1) "Losses" is defined in § 683.34(a)(1).

(2) For purposes of this section, the "amount of loans in repayment" means the original principal amount of all loans subject to a supplemental reinsurance agreement insured by the agency minus—

(i) The original principal amount of loans on which—

(A) The borrower has not yet reached the repayment period;

(B) Payment in full by the borrower has been made; or

(C) The borrower was in deferment status at the time repayment was scheduled to begin, and remains in deferment status; and

(ii) The amount paid by the agency for insurance claims on loans.

(e) *Program requirements.* To enter into a supplemental reinsurance agreement, a guarantee agency program must meet the following conditions:

(1) *Annual amounts.* The maximum annual PLUS loan amount must be at least $2,500 but not more than $3,000 for a borrower on behalf of each dependent undergraduate student who is carrying at least a half-time workload in an academic year.

(2) *Aggregate loan limits.* The agency shall insure an aggregate unpaid principal amount of at least $12,500 but not more than $15,000 for a borrower on behalf of each dependent undergraduate student.

(3) *Extent of insurance.* The agency shall insure 100 percent of the unpaid principal of loans made by lenders under its program.

(4) *School eligibility.* Except in the case of correspondence schools, the agency's eligibility criteria for schools may not be more stringent than those of the Federal PLUS program. However, the agency may exclude a school if—

(i) The school's eligibility is limited, suspended, or terminated by the Secretary under 34 CFR Part 668, or by the agency under comparable standards and procedures; or

(ii) There is a State constitutional prohibition affecting a school's eligibility.

(5) *Out-of-State schools.* The agency shall insure loans made to borrowers who are legal residents of the State where the agency operates, but who are borrowing for students attending out-of-State schools. In insuring these loans, the agency shall not impose any restrictions not applicable to borrowers who are legal residents of the State and who borrow for students attending in-State schools.

(6) *School lender provisions.* (i) The agency shall provide that a school may be a lender under reasonable criteria unless—

(A) The school's lending eligibility has been limited, suspended or terminated by the Secretary under § 663.90 or Subpart F or by the agency under comparable criteria and procedures; or

(B) There is a State constitutional prohibition affecting the school's lending eligibility.

(ii) The agency may not insure loans made by school lenders that are not located in the geographic area that the agency serves.

(7) *Reports.* The agency shall agree to report to the Secretary by July 1 of each year regarding—

(i) Its school lender eligibility criteria;

(ii) Its procedures for the limitation, suspension, and termination of school lenders;

(iii) A list of all schools that applied for lender eligibility in the preceding 12 months, and a summary of the actions taken on the applications; and

(iv) A list of all eligible school lenders under the agency's programpm.

(f) *Terms and conditions.* The supplemental reinsurance agreement will contain, at a minimum, the following terms and conditions, in addition to other provisions of the basic agreement or the reinsurance agreement that the Secretary includes:

(1) *Adherence to qualifying standards.* The agency shall assure that the program requirements of paragraph (e) of this section are continuously met.

(2) Reports and records. The agency shall make reports and keep records that the Secretary reasonably requires. It shall give the Secretary access to those records to verify their correctness.

(3) *Application of payments.* If a borrower makes payments on a loan after the Secretary has paid a reinsurance claim on that loan, the agency shall return to the Secretary an equitable share of the payments. The "Secretary's equitable share" is defined in Section 428(c)(6) of the Act and is calculated for a complete fiscal year.

(i) The term "overhead" used in that definition includes space and utilities costs.

(ii) By December 31 of the succeeding fiscal year, the guarantee agency must submit to the Secretary, in a manner prescribed by the Secretary, information concerning its total borrower payments received and its total administrative costs of collection of loans and preclaim assistance for default prevention incurred during the fiscal year. If this submission shows that the guarantee agency has not paid all of the "Secretary's equitable share" of borrower payments to the Secretary for the fiscal year, the guarantee agency must at that time pay the additional amount due to the Secretary.

(4) An agreement is renewed only if the agency's program complies with all the terms of the agreement and all pertinent provisions of these regulations.

(5) Before the Secretary pays a supplemental reinsurance claim, the guarantee agency must give the Secretary a statement of its "amount of loans in repayment" at the end of the preceding fiscal year. The method for determining this amount is given in paragraph (d)(2) of this section.

(20 U.S.C. 1078, 1078-1 1078-2)

§ 663.36 Administrative cost allowances for guarantee agencies.

(a) *General.* To the extent that funds are appropriated by Congress in any fiscal year for this purpose, the Secretary may make payments to a guarantee agency having a basic PLUS program agreement for the primary and secondary administrative cost allowances.

(1) *Total payments.* Payments of allowances to a guarantee agency for any fiscal year made under paragraphs (b) and (c) of this section do not exceed, for each allowance, one-half of 1 percent of the total principal amount of loans for which the guarantee agency issued insurance during that fiscal year.

(i) If the amount appropriated for any fiscal year is insufficient to pay all guarantee agencies the full amounts for which they would otherwise be eligible, payments to all agencies are proportionately reduced.

(ii) In the event of such an insufficiency, if additional funds become available for making payments for that fiscal year, additional payments are distributed on the same basis as they were reduced.

(2) *Application.* The guarantee agency shall submit an application for each allowance to the Secretary by January 1 of the fiscal year for which it is requesting the allowance. The application must contain information and assurances that the Secretary reasonably requires, including the following—

(i) Information showing the agency's ability to collect loans and provide preclaim assistance to its lenders, including descriptions of staff size and activities in these areas;

(ii) An estimate of the costs that will be eligible for payments under this section (categorized by the types of costs listed in paragraph (a)(3)(i) of this section);

(iii) Assurances that sufficient administrative and fiscal procedures, including an annual independent audit or, if a State guarantee agency is subject to State audit procedures not under its control, a biennial independent audit, will be used to ensure that the administrative allowances are used in accordance with the provisions of this section, and that the audit report will be made available to the Secretary on request;

(iv) Assurances that the guarantee agency will furnish any further information, including estimates, that the Secretary may reasonably require to carry out the provisions of this section;

(v) For the primary allowance application only, an estimate of the total amount on new loan volume expected to be insured during the fiscal year; and

(vi) For the secondary allowance only, assurance that the agency's program—

(A) Meets all the requirements for a supplemental reinsurance agreement; and

(B) Insures loans to borrowers who are not legal residents of the State, but who are borrowing for students attending participating schools in the State (other than correspondence schools), without imposing any restrictions not imposed on borrowers who are legal residents of the State and who borrow for students attending schools in the State other than correspondence schools.

(3) *Definitions.* (i) The terms "administrative costs of promotion of commercial lender participation," "administrative costs of collection of loans," and "administrative costs of preclaims assistance for default prevention," as used in paragraphs (b) and (c) of this section, are defined in Section 428(f)(3) of the Act. The term "administrative costs of monitoring the enrollment status of students and the repayment status of borrowers," as used in paragraphs (b) and (c) of this section, has the same meaning as "administrative costs of monitoring the enrollment and repayment status of students," as defined in Section 428(f)(3) of the Act, except that the reference to repayment status shall be understood to refer to that of the parent borrowers.

(ii) The term "overhead costs" used in those definitions includes space and utilities costs.

(b) *Primary allowance*—(1) *Basic qualification.* The agency must have a basic PLUS program agreement.

(2) *Use of funds.* The primary allowance must be used by the agency only to meet administrative costs of promotion of commercial lender participation, administrative costs of collection of loans, administrative costs of preclaim assistance for default prevention, administrative costs of monitoring the enrollment status of students and the repayment status of borrowers, and other administrative costs related to the PLUS program of the guarantee agency. Also, these payments must be used to meet only administrative costs not taken into account by the agency under the formula for determining the "Secretary's equitable share" of borrower payments made after the Secretary has paid reinsurance claims to the agency.

(c) *Secondary allowance.* (1) Payment of the secondary allowance is made in addition to payment of the primary allowance.

(2) *Basic qualification.* The agency must have a reinsurance agreement.

(3) *Use of funds.* These payments may be used by the agency only to meet administrative costs of promotion of commercial lender participation, administrative costs of collection of loans, administrative costs of preclaim assistance for default prevention, administrative costs of monitoring the enrollment status of students and the repayment status of borrowers, and other administrative costs related to the program of the guarantee agency. Also, these payments must be used to meet only administrative costs not taken into account by the agency under the formula for determining the "Secretary's equitable share" of borrower payments made after the Secretary has paid reinsurance claims to the agency.

(4) The Secretary's payment of the secondary allowance establishes an agreement between the Secretary and the guarantee agency with respect to the assurances contained in the application.

(20 U.S.C. 1078, 1078-1, 1078-2, 1082)

§ 682.37 Records, reports, and inspection requirements for guarantee agency programs.

(a) *Records.* (1) A guarantee agency shall keep the records specifically required by this section and the records necessary to make reports required by this subpart. The guarantee agency shall retain records for each loan for at least five years after the loan is paid in full or has been determined to be uncollectible. For the purposes of this section, the term "paid in full" includes loans paid by the Secretary on account of the borrower's death, permanent and total disability, or bankruptcy. These records must be as complete and accurate as is necessary to document fully the agency's reports.

(2) The guarantee agency shall require participating lenders to keep records on guaranteed loans as prescribed by the Secretary. These shall include complete and accurate records of each loan account, showing each transaction and affording ready identification of the borrower's status. A lender shall retain records of a loan for at least five years from the date the loan has been paid in full by the borrower or the lender has been reimbursed for a loss on the loan by the guarantee agency. The Secretary may, in particular cases, require the retention of records beyond this 5-year minimum period.

(3) Guarantee agencies and lenders may store records in microfilm or computer format. However, the lender or guarantee agency holding a promissory note shall retain the actual note until the loan is paid in full or determined by the guarantee agency to be uncollectible. When repayment is complete, the lender or guarantee agency shall return the actual note to the borrower and retain a copy of the prescribed period. If a loan is written off as uncollectible, the original note need not be retained, but a copy must be retained for the prescribed period.

(b) *Reports.*

(1) The agency shall submit reports to the Secretary upon request concerning the status of its reserve funds, and the operations of its loan insurance program.

(2) The agency shall submit to the Secretary, at least annually, a report of the total insured loan volume and default volume and rate on all loans insured after December 31, 1980, for each of the following categories of lenders:

(A) Schools.

(B) State or private nonprofit direct lenders.

(C) Commercial financial institutions (banks, savings and loan associations, or credit unions).

(D) All other types of institutions or agencies. Loan volume and default data shall be reported according to the category of original lender, not subsequent holder. If a guarantee agency operates in more than one State, a separate report must be submitted for each State of operation.

(3) The agency shall submit to the Secretary its application forms, promissory notes, regulations, and statements of procedures and standards—including standards for due diligence and timely claims filing—as well as other materials that substantially affect the operation of the agency's program, whenever requested to do so by the Secretary and whenever changes or new materials are proposed. The Secretary reviews these materials for administrative and fiscal sufficiency and for conformance to statutory and regulatory provisions.

(4) Lenders shall submit to the agency the information necessary for the agency to complete its reports to the Secretary.

(5) The agency shall submit, or require its lenders to submit, upon the Secretary's request, information the Secretary needs to determine the amount of special allowance to be paid on the agency's insured loans.

(c) *Inspections.* (1) A guarantee agency shall give the Secretary, or other agencies of the government designated by the Secretary, access to its records in order to assure the accuracy of the reports described in paragraph (b) of this section.

(2) A guarantee agency shall provide in its agreement with a lender or in its statements of procedures that the lender shall give the Secretary, or other agencies of the government designated by the Secretary, and the agency access to the lender's records in order to assure the accuracy of the reports required under paragraphs (b) (4) and (5) of this section.

(20 U.S.C. 1072, 1078, 1078-2, 1082)

Subpart D—Federal Parent Loans for Undergraduate Students Program

§ 682.50 Circumstances under which loans may be insured.

The Secretary insures PLUS loans made by lenders located in a State in the following circumstances:

(a) Where no guarantee agency is insuring GSLP loans in that State;

(b) Where a guarantee agency is insuring GSLP loans in that State but is not insuring PLUS loans—

(1) After May 1, 1981; or

(2) In the case of a guarantee agency prohibited by State law enacted prior to January 1, 1981 from insuring PLUS loans, after 120 days following the adjournment of the next regular session of the State legislature which convenes after January 1, 1981.

(20 U.S.C. 1078-2, 1082)

§ 682.51 Extent of Federal insurance.

(a) *General rule.* Except as provided in paragraph (b) of this section, the Secretary's insurance liability on any Federal PLUS loan is 100 percent of the unpaid balance of principal and accrued interest.

(b) *Special provisions for State lenders.* For purposes of this calculation, State lenders may consolidate FISL and PLUS loans.

(1) Except as described in subparagraph (2), of this paragraph, the Secretary's insurance liability is less than 100 percent under the following conditions:

(i) *When the total of default claims for the FISL and PLUS programs paid by the Secretary to a State lender for any fiscal year reaches 5 percent of the amount of the FISL and PLUS loans in repayment at the end of the preceding fiscal year.* In this event, the Secretary's insurance liability on a claim subsequently paid for that fiscal year will be 90 percent of the amount of the unpaid principal balance plus accrued interest.

(ii) *When the total of default claims for the FISL and PLUS programs paid by the Secretary to a State lender for any fiscal year reaches 9 percent of the amount of the FISL and PLUS loans in repayment at the end of the preceding fiscal year.* In this event, the Secretary's insurance liability on a claim subsequently paid for that fiscal year will be 80 percent of the amount of the unpaid principal balance plus accrued interest.

(2) The potential reduction in insurance liability does not apply to a State lender during the first Federal fiscal year of its operation as a lender the FISL or PLUS programs, and during each of the four succeeding fiscal years. If the lender has not previously participated in the FISL program, this 5-year period begins to run with the first Federal fiscal year of the State lender's operation as a lender under the Federal PLUS program.

(3) For purposes of this section, the "amount of loans in repayment" means the original principal amount of both student and parent loans insured by the Secretay minus—

(i) The original principal amount of loans on which—

(A) The borrower has not yet reached the repayment period;

(B) Payment in full by the borrower has been made; or

(C) The borrower was in deferment status at the time repayment was scheduled to begin, and remains in deferment status; and

(ii) The amount paid by the Secretary for insurance claims on loans.

(4) For purposes of this paragraph, payments by the Secretay on a loan that the original lender assigned to a subsequent holder are considered payments made to the original lender.

(20 U.S.C. 1075, 1078-2, 1082)

§ 682.52 Application to become a lender under the Federal PLUS program.

(a) *General.* To participate in the Federal PLUS program, a lender that does not hold a "Federal contract of insurance" must submit an application to the Secretary for an insurance contract. The Secretary responds to the lender's request to participate in the Federal PLUS program within 30 days of receipt of an application.

(b) *Criteria for evaluating an application.* In determining whether to enter into an insurance contract with an applicant and what the terms of that contract should be, the Secretary may consider the following criteria:

(1) Whether the applicant is capable of complying with these regulations as they apply to lenders.

(2) Whether the applicant is capable of implementing adequate procedures for making and collecting loans.

(3) If the applicant has had prior experience with a similar Federal, State or private nonprofit student or parent loan program, the amount and rate of loans that currently are delinquent or in default under that program.

(4) The financial resources of the applicant.

(5) In the case of a school that is seeking approval as a lender, its accreditation status, with the preferred condition being accreditation.

(c) The Secretary may require an applicant to submit sufficient materials with its application so that the Secretary may evaluate it fairly in accordance with these criteria.

(d) *Denial of participation.* (1) If the Secretary decides not to approve the application for an insurance contract, the reason for the decision is included in the Secretary's response.

(2) The Secretary provides an opportunity for the lender to meet with a designated Department of Education official if the lender wishes to appeal the Secretary's decision.

(3) However, the Secretary need not explain the reasons for the denial, or grant the lender an opportunity to appeal, if the lender submits its application within 6 months of a previous denial.

(20 U.S.C. 1078-2, 1082.)

§ 682.53 The lender insurance contract.

(a) *Approval of insurance contract.* (1) If the Secretary approves a lender's application to be a Federal PLUS lender, the Secretary and the lender sign an insurance contract. No loan is insured unless covered by an insurance contract.

(2) In general, under an insurance contract the lender agrees to comply with all laws, regulations and other requirements applicable to its participation as a lender in the Federal PLUS program, and the Secretary agrees to insure each eligible Federal PLUS loan held by the lender against the borrower's default, death, total and permanent disability, or bankruptcy.

(3) The Secretary's insurance liability is the amount of unpaid principal and interest, except for certain loans made by a State lender as provided in § 682.51(b).

(4) The contract may contain a limit on the duration of the contract and the number or amount of Federal PLUS loans a lender may make or hold.

(b)(1) Except as otherwise approved by the Secretary, an insurance contract with a school lender shall limit the PLUS loans made by that school lender which will be covered by Federal loan insurance to those made to parents borrowing on behalf of students—

(i) Who are in attendance at that school; or

(ii) Who are in attendance at other schools under the same ownership; or

(iii) Who are employees, or whose parents are employees, of that school lender or other schools under the same ownership, under circumstances the Secretary considers appropriate for insurance.

(2) A limit imposed under paragraph (a)(4) of this section on a school lender which makes loans to parents of students in attendance at other schools under the same ownership, or to employees or parents of employees of those other schools, may be imposed on a school-by-school basis.

(20 U.S.C. 1078-2, 1078, 1082)

§ 682.54 Issuance of Federal loan insurance.

(a) *Application for insurance.* A lender having an insurance contract shall submit an application to the Secretary for Federal loan insurance on each intended PLUS loan that the lender determines to be eligible for insurance. The application shall be on a form prescribed by the Secretary. The Secretary notifies the lender whether the loan is or is not insurable and the amount of the insurance. No disbursement on a loan made prior to the Secretary's approval of that loan is insurable.

(b) *Conditions of insurance coverage.* The Secretary issues insurance on a PLUS loan in reliance on the implied representations of the lender that all requirements for the initial insurability of the loan have been met. As described in § 682.60, the continuance of the insurance is conditioned upon compliance by all holders of the loan with these regulations. The delegation of

functions to a servicing agency or party does not relieve the lender of its responsibilities in the making and collection of a Federal PLUS loan.

(20 U.S.C. 1078-2, 1079, 1082)

§ 683.55 Limitations on maximum loan amounts.

(a) *Annual amounts.* The Secretary does not insure a loan that would exceed the student's estimated cost of attendance for the academic period for which the loan is intended less estimated financial assistance awarded for that period. The total amount of all PLUS loans made on behalf of an eligible dependent undergraduate student for any academic year of study may not exceed $3,000.

(b) *Aggregate loan limits.* The Secretary does not insure a loan in an amount which, together with all other PLUS loans made on behalf of the eligible dependent undergraduate student on whose behalf the loan is sought, would result in an aggregate loan amount in excess of $15,000.

(c) *Limitation on a loan on behalf of a student enrolled in a correspondence course.* The Secretary does not insure a loan on behalf of a student enrolled in a correspondence course in an amount which exceeds tuition and fees and, if required, books and supplies, and travel and room and board costs incurred specifically in fulfilling a required period of residential training.

(20 U.S.C. 1075, 1078-2, 1079, 1082, 1089)

§ 683.56 Insurance premiums.

(a) *General.* The Secretary charges the lender an insurance premium for each loan that is insured.

(b) *Rate.* The rate of the insurance premium is one-fourth of one percent per year of the loan principal, excluding interest or other charges that may have been added to the principal.

(c) *How the insurance premium is calculated.* (1) The insurance premium is calculated by:

(i) Using the actual repayment period as a base;

(ii) Amortizing the loan in monthly installments over the repayment period;

(iii) Determining one-fourth of 1 percent of each monthly declining balance; and

(iv) Totaling the monthly amounts derived in subdivision (iii) of this subparagraph.

(d) *Collection from lenders.* (1) The Secretary requires the lender to pay the insurance premium when the disbursement is reported. At the Secretary's discretion, the Secretary may collect the insurance premium by offsetting it against amounts payable by the Secretary to the lender.

(2) Insurance coverage on a Federal PLUS loan ceases to be effective when the lender fails to pay the insurance premium within 60 days of the date payment is due. The Secretary may, however, excuse late payment of an insurance premium, and reinstate the insurance on a loan, if the Secretary is satisfied that the loan is not in default and the borrower is not delinquent in making installment payments.

(e) *Collection from borrowers.* The lender may pass along the cost of the insurance premium to the borrower in the form of a one-time charge. The lender may bill the borrower for the insurance premium or may deduct the amount from the loan proceeds. The lender must clearly identify to the borrower the amount of insurance premium and the method of calculation.

(f) *Refund provisions.* The premium is not refundable by the Secretary, and need not be refunded by the lender to the borower, even if the borrower prepays, defaults, dies, becomes totally and permanently disabled, or files a petition for bankruptcy.

(20 U.S.C. 1077, 1078-2, 1079, 1082)

§ 683.57 Repayment of loans.

(a) *Commencement of repayment.* (1) The repayment period begins on the day the loan is disbursed, and interest begins to accrue on that date. the first payment is due within 60 days after the date of disbursement.

(2) If a condition that justifies a deferment of repayment exists when the loan is disbursed, both the deferment and the accrual of interest commence on that date. Repayment resumes following the expiration of the post-deferment grace period.

(b) *Length of repayment period.* In general, a lender shall allow a borrower at least 5 years, but not more than 10 years, to repay a loan, calculated from the beginning of the repayment period. The borrower shall, however, fully repay a loan within 15 years after it is made. There are exceptions, however, to these rules:

(1) If the borrower receives an authorized deferment or has been granted forbearance, as described in § 683.61(c), the periods of deferment or forbearance are generally excluded from determinations of the 5-, 10-, and 15-year periods. However, the 5-, 10-, and 15-year periods include each post-Deferment grace period following each authorized deferment.

(2) If the minimum annual repayment required in paragraph (d) of this section would result in complete repayment of the loan in less than 5 years, the borrower is not entitled to the full 5-year period.

(c) *Prepayment.* The borrower may prepay the whole or any part of a loan at any time without penalty.

(d) *Minimum annual payment.* (1) During each year of the repayment period, a borrower's total payments to all holders of his or her PLUS loans and GSLP loans must total at least $360 or the unpaid balance of all loans, including interest, whichever amount is less. There are, however, two exceptions to this rule:

(i) If the borrower and the lender agree, the amount paid may be less.

(ii) If the borrower and his or her spouse have separate PLUS loans, or one or more PLUS loans and one or more GSLP loans, their combined annual payment must meet this requirement.

(2) The provisions of subparagraphs (1)(i) and (ii) may not result in an extension of the 10- and 15-year repayment period maximums, unless forbearance has been approved under § 683.61(c).

(e) *Student failure to enroll on at least a half-time basis.* If a lender disburses a PLUS loan and later learns that the student on whose behalf the parent borrowed has not been or will not be enrolled on at least a half-time basis at a participating school during the period for which the loan was intended, the lender shall notify the borrower that full payment of the loan is immediately due. If the lender determines such action is necessary to prevent default, the lender may allow the borrower to repay the loan in installments. However, the borrower is not entitled to periods of deferment under § 683.58.

(f) *Repayment schedule.* The repayment schedule may provide for substantially equal installment payments or for installment payments that increase in amount over the repayment period. If a graduated repayment schedule is established, it may not provide for any single installment that is more than 3 times greater than any other installment.

(g) *Supplemental repayment agreement.* (1) For a loan made by a school lender, the lender and the borrower may enter into an agreement supplementing the regular repayment schedule under paragraph (f) of this section. Under a supplemental repayment agreement, the lender agrees that the borrower is deemed to meet the terms of the regular repayment schedule as long as the borrower makes payments in accordance with a separate schedule. However, the regular schedule must provide for equal installments.

(2) The purpose of a supplemental repayment agreement is to extend the 10- and 15-year repayment period maximums and to permit a lender to

offer a borrower a repayment schedule based on other than equal or graduated payments. For example, a supplemental repayment agreement may base the amount of the borrower's payment on the borrower's income.

(3) The agreement and separate schedule must contain terms that the Secretary believes do not unduly burden the borrower and do not subject the Secretary to undue liability. A lender and borrower may not enter into a supplemental repayment agreement unless the lender has obtained the Secretary's prior approval of its terms.

(4) The borrower may not insist upon the establishment of a supplemental repayment agreement.

(5) A lender may assign a loan subject to a supplemental repayment agreement only if the buyer agrees to accept the loan subject to the terms of the supplemental agreement.

(6) For purposes of the special allowance, and the determination of the amount of loss on an insurance claim, the unpaid principal balance of the loan is based on the regular repayment agreement.

(20 U.S.C. 1077, 1078, 1078–2, 1079, 1082.)

§ 682.210 Deferment.

(a) *Borrower eligibility.* (1) A borrower is entitled to have periodic installment payments of principal deferred during authorized periods and during the post-deferment grace period after the completion of each such period or combination of periods. Except as provided in paragraph (e)(4) of this section, a period of authorized deferment begins when the condition entitling a borrower to deferment first exists. Interest accrues and is payable by the borrower during the deferment and post-deferment grace periods. The borrower shall provide to the lender all documentation required to establish eligibility for a specific type of deferment.

(2) A deferment cannot be denied by a lender when the borrower meets the eligibility criteria, even though the borrower may be delinquent, but not in default, in making required installment payments. The 120- or 180-day period required to establish a default does not run during the deferment and post-deferment grace periods. When the post-deferment grace period expires, a borrower resumes any delinquent status that existed when the deferment period began.

(3) A borrower whose loan is in default is not eligible for a deferment unless the borrower has made satisfactory arrangements with the lender to bring the account current.

(4) If both parents of a student have obtained a loan as co-makers, both parents must be eligible for a deferment in order for payments of principal to be deferred.

(b) *Authorized deferments.* Deferment is authorized during periods when a borrower is engaged in at least one of the following activities:

(1)(i) Full-time study at a participating school, unless the borrower is not a national of the United States and is pursuing a course of study at a school not located in a State; or

(ii) Full-time study at a school which meets the definition of an institution of higher education or a vocational school and is operated by an agency of the Federal government (e.g., the service academies), unless the borrower is not a national of the United States and is pursuing a course of study at a school not located in a State.

(2) Study under an eligible graduate fellowship program, as described in paragraph (c) of this section.

(3) Up to 3 years of active duty service in the United States Armed Forces or of service as an officer in the Commissioned Corps of the United States Public Health Service.

(4) Up to 3 years of volunteer service under the Peace Corps Act.

(5) Up to 3 years of service as a full-time volunteer under Title I of the Domestic Volunteer Service Act of 1973 (ACTION programs).

(6) Up to 3 years of full-time volunteer service which the Secretary has determined is comparable to service referred to in paragraphs (b)(4) and (b)(5) of this section for a tax-exempt organization, as described in paragraph (d) of this section.

(7) Conscientiously seeking but unable to find full-time employment in the United States over a single period of up to twelve months, as described in paragraph (e) of this section.

(8) Pursuing a course of study under a rehabilitation training program for disabled individuals, as described in paragraph (f) of this section.

(9) Up to 2 years of service as an intern, as described in paragraph (g) of this section.

(10) Up to 3 years during which the borrower is temporarily totally disabled, as described in paragraph (h) of this section, or during which the borrower is unable to secure employment because he or she is caring for a spouse who is temporarily totally disabled, as described in paragraph (i) of this section.

(c) *Graduate fellowship deferment.* To qualify for a deferment for study under a graduate fellowship program, a borrower shall provide the lender with a statement from an official of the borrower's fellowship program certifying that—

(1) The fellowship program—

(i) Provides sufficient financial support to graduate fellows to allow for full-time study for at least six months;

(ii) Requires, prior to the award of that financial support, a written statement from each applicant which explains the applicant's objectives; and

(iii) Requires a graduate fellow to submit periodic reports, projects, or other evidence of the graduate fellow's progress; and

(2) The borrower—

(i) Holds at least a baccalaureate degree conferred by an institution of higher education;

(ii) Is engaged in full-time study, that may be independent of an educational or cultural institution, in an academic or professional subject area for which the borrower has shown an interest and ability; and

(iii) Has been recommended by an institution of higher education for acceptance into the graduate fellowship program.

(d) *Full-time volunteer service for a tax-exempt organization deferment.* To qualify for a deferment for full-time volunteer service for a tax-exempt organization comparable to volunteer service in the Peace Corps or full-time volunteer service in a program administered by the ACTION agency, a borrower shall provide the lender with a statement from an official of the borrower's volunteer program certifying that—

(1) The borrower serves in an organization which is exempt from taxation under Section 501(c)(3) of the Internal Revenue Code of 1954;

(2) The borrower provides service to low-income persons and their communities to assist them in eliminating poverty and poverty-related human social, and environmental conditions;

(3) The borrower's compensation does not exceed the compensation received by a full-time volunteer in the Peace Corps or in a program administered by the ACTION agency. Compensation includes a subsistence allowance, necessary travel expenses and stipends;

(4) The borrower, as part of his or her duties, does not give religious instruction, conduct worship services, engage in religious proselytizing, or engage in fundraising to support religious activities; and

(5) The borrower has agreed to serve on a full-time basis for a term of at least one year.

(e)(1) *Basic eligibility for an unemployment deferment.* (i) For

purposes of this section, full-time employment involves at least 30 hours of work per week and is expected to last at least 3 months.

(ii) A borrower is entitled to the deferment whether or not he or she has been previously employed. If previously employed, the borrower is entitled to a deferment regardless of the circumstances under which the employment ended.

(iii) An unemployment deferment is not justified if the borrower has sought employment only in kinds of positions or at salary and responsibility levels for which he or she feels qualified by virtue of education or previous experience.

(2) *Submission of request.* To receive an unemployment deferment, a borrower shall submit a request for the deferment in writing to the holder of the loan. To continue the deferment for more than 6 months, the borrower shall submit a second request by the end of that 6-month period. Each request must be signed and dated and contain the following:

(i) A statement from the borrower describing his or her conscientious search for full-time employment.

(ii) The borrower's latest permanent home address and, if applicable the borrower's latest temporary address.

(iii) Certification that the borrower has registered with a public or private employment agency, if one is accessible, specifying its name and address.

(iv) The borrower's agreement to notify the lender promptly when he or she becomes employed full-time.

(3) *Lender's approval or disapproval of request.* (i) The lender must review the borrower's request and notify the borrower of its decision within one month after receipt of the request.

(ii) The lender may rely upon the written statements provided by the borrower, unless the lender has information to the contrary.

(iii) If the lender is satisfied that the borrower has conscientiously searched for full-time employment and otherwise meets the requirements for an unemployment deferment, the lender shall approve the request.

(iv) If the borrower's request does not justify an unemployment deferment, the lender may grant the borrower forbearance if authorized under § 683.61.

(4) *When the unemployment deferment begins.* An unemployment deferment begins—

(i) On the date that the lender approves the request; or

(ii) On a date not in excess of 60 days prior to the lender's approval if the unemployment existed at the earlier date.

(5) *When the unemployment deferment ends.* An unemployment deferment ends on the earliest of—

(i) The date the lender learns that the borrower has become employed full-time;

(ii) One month after the date when a certification of unemployment deferment eligibility is due from the borrower but has not been received; or

(iii) 12 months after the commencement of the deferment period.

(f) *Rehabilitation training program deferment.* (1) To qualify for this deferment—

(i) The borrower must either be receiving or be scheduled to receive services under a program designed to rehabilitate disabled individuals; and

(ii) The borrower's rehabilitation program must meet the Secretary's criteria for approval.

(2) *Criteria for the Secretary's approval of rehabilitation training programs.* The Secretary approves a rehabilitation training program if the organization providing rehabilitation services to the borrower—

(i) Is licensed, approved, certified or otherwise recognized as providing rehabilitation training to disabled individuals by any of the following agencies—

(A) A State vocational rehabilitation agency;

(B) A State agency for drug abuse treatment;

(C) A State agency for mental health services;

(D) A State agency for alcohol abuse treatment; or

(E) The Veterans Administration; and

(ii) Provides or has agreed to provide that borrower with services for his or her rehabilitation under a rehabilitation plan that is—

(A) Written;

(B) Individualized to meet the borrower's needs;

(C) Specific as to the date on which the services to the borrower are expected to end; and

(D) Structured in a way that requires a substantial commitment by the borrower to his or her rehabilitation. The Secretary considers a substantial commitment by the borrower to be a commitment of time or effort that would normally prevent an individual from engaging in full-time employment either because of the number of hours that he or she must devote to rehabilitation or because of the nature of his or her rehabilitation. For the purpose of this paragraph, full-time employment involves at least 30 hours of work per week.

(3) *Qualification for a rehabilitation training program deferment.* (i) To obtain a rehabilitation training deferment, a borrower shall provide the lender with evidence that he or she qualifies for the deferment, in a form approved by the Secretary. The evidence must include—

(A) The statement of the provider of the rehabilitation services certifying that the borrower either is receiving or is scheduled to receive rehabilitation training services from the provider; and

(B) A statement from an agency described in paragraph (e)(2)(i) of this section certifying that the provider from which the borrower is receiving services or is scheduled to receive services meets the requirements of paragraph (e)(2) of this section with respect to that borrower.

(ii) On receipt of the properly completed request, the lender shall grant the borrower a deferment.

(4) *When the rehabilitation training program deferment begins.* The rehabilitation training deferment begins—

(i) In the case of a borrower who is actually receiving rehabilitation services under an approved program, on the date specified in the borrower's rehabilitation plan as the beginning date for his or her receipt of services through that program, but no earlier than November 1, 1978; or

(ii) In the case of a borrower who is requesting deferment based on being scheduled to receive rehabilitation services under an approved program, on the date that the borrower provides the lender with a properly completed request.

(5) *When the rehabilitation training program deferment ends.* Unless the borrower re-establishes his or her eligibility to continue a deferment by repeating the request procedure described in paragraph (f)(3) of this section, the rehabilitation training program deferment ends on the earliest of the following dates:

(i) In the case of a borrower who was granted deferment based on being scheduled to receive rehabilitation services under an approved program, the date the borrower informs the lender that he or she no longer plans to receive rehabilitation services; or

(ii) In the case of a borrower who was granted deferment based on being scheduled to receive rehabilitation services under an approved program, the date three months from the date the borrower submitted a request for a rehabilitation deferment; or

(iii) The date the borrower ceases rehabilitation training; or

(iv) The date specified in the borrower's rehabilitation plan as the

date on which rehabilitation services to the borrower are anticipated to end; or

(v) The date twelve months from the date the borrower begins receiving services.

(g) *Internship deferment.* To qualify for an internship deferment, a borrower shall provide the lender with evidence that he or she is serving in an eligible internship, after obtaining a baccalaureate or professional degree, which the Secretary has determined is required to receive professional recognition required to begin professional practice or service. The Secretary has determined that medical residency is an example of such an internship.

(h) *Borrower's temporary total disability deferment.* (1) To qualify for this deferment the borrower shall give the lender an affidavit of a qualified physician stating that the borrower is temporarily totally disabled.

(2) For purposes of this section, a borrower who is "temporarily totally disabled" is one who, by reason of injury of illness, cannot be expected to be able to attend school or to be gainfully employed during an extended period of time needed to recover from such an injury or illness.

(i) *Deferment for a borrower whose spouse is temporarily totally disabled.* In order to qualify for this deferment the borrower shall give the lender—

(1) An affidavit of a qualified physician stating that the borrower's spouse is temporarily totally disabled. For purposes of this section a spouse who is "temporarily totally disabled" is one who, by reason of injury or illness, cannot be expected to be gainfully employed during an extended period of time needed to recover from such injury or illness and who during that period requires continuous nursing or other similar services; and

(2) A statement from the borrower certifying that he or she is unable to secure employment because he or she is providing this care.

(20 U.S.C. 1077, 1078, 1082, 1085; 42 U.S.C. 5055(e))

§ 683.58 Due diligence in making and disbursing a loan.

(a) *General.* (1) The loan-making process includes the processing of necessary forms, the approval of a borrower for a loan, the determination of the loan amount, the explanation to a borrower of the borrower's responsibilities under the loan, the completion by the borrower of the promissory note, and the disbursement of the loan proceeds.

(2) Except as may be authorized by the Secretary, a lender may not delegate its loan-making functions except to a school with whom the lender has an origination relationship. If an origination relationship exists, the lender may rely in good faith upon statements of the borrower and the student contained in the loan application, but may not rely upon statements made by the school in the application. A non-school lender which does not have an origination relationship with a school may rely in good faith upon statements of the borrower, the student and the school which are contained in the application. A school lender may rely in good faith upon statements made by the borrower and the student in the loan application.

(b) *Processing of forms.* Before making a loan, a lender must, subject to paragraph (a)(2) of this section, determine that all required forms have been accurately completed by the borrower, the student, the school, and the lender. A lender must not ask the borrower to sign any form before all information requested of the borrower on that form has been supplied.

(c) *Approval of borrower and determination of loan amount.* (1) A lender may make a loan only to an eligible parent who is borrowing on behalf of an eligible student. To the extent authorized in paragraph (a)(2), the lender may make this determination based on the information provided by the school, the borrower, and the student on the application form.

(2) In determining the amount of the loan to be made, within the limitations of § 683.55, the lender should review the data on the student's cost of attendance and estimated financial assistance which is provided on the application form. In no case may the loan amount exceed the student's estimated cost of attendance for the academic period for which the loan is intended less estimated financial assistance.

(d) *Borrower interview.* (1) Before making an initial loan to a parent, a lender should meet personally with the parent in order to ensure that the parent understands his or her rights and responsibilities under the loan.

(2) In particular, the lender should explain that the loan funds may be applied only toward educational expenses of the student listed on the application.

(e) *Establishing repayment terms.* When establishing repayment terms, the lender should take into consideration the financial obligations and the current and potential income of the borrower. The lender should design a repyament schedule that retires the loan obligation, as soon as possible, as permitted under § 683.57(b), without leading to default caused by the borrower's inability to make payments.

(f) *Providing loan information.* By no later than when the note is signed, the lender shall provide the borrower with information including the repayment schedule concerning his or her rights and responsibilities under the loan, as set forth in § 683.16

(g) *Promissory note.* (1) The lender shall obtain from the borrower an executed promissory note for each loan as proof of the borrower's indebtedness.

(2) The Secretary periodically makes an approved promissory note form available to Federal PLUS lenders. A lender may not add any clauses to, or modify any of the provisions of, the most current promissory note provided by the Secretary without the Secretary's prior approval.

(3) The lender must give the borrower a copy of each executed note.

(4) The lender shall retain the original promissory note until the loan is paid in full. Within 30 days of the date the loan has been paid in full, the lender shall give the borrower the original promissory note.

(h) *Security, endorsement and co-makers.* (1) A Federal PLUS loan must be made without security.

(2) A Federal PLUS loan must be made without endorsement or other secondary liability on the note.

(3) A Federal PLUS loan may be made to two eligible parents who agree to be jointly liable for repayment of the loan as co-makers.

(i) *Loan disbursement.* (1) A lender may not disburse a loan prior to the issuance of the insurance commitment by the Secretary. The lender shall disburse loan funds by means of a check payable only to the borrower. The check must require the personal endorsement of the borrower. Deposit of the check by the borrower in his or her account at a bank or other financial institution constitutes endorsement for purposes of this paragraph.

(i) The lender shall disburse the loan check directly to the borrower, either in person or by mail. The lender may not disburse the check to the borrower earlier than is reasonably necessary to meet the student's cost of attendance for the period for which the loan is made and in no case, without the Secretary's approval, earlier than 30 days prior to the date on which the student is scheduled to enroll.

(ii) Within 30 days following the date of the disbursement of a loan to a borrower, the lender shall provide the following information to the school that the student is attending:

(A) The name of the student on whose behalf the loan was made;

(B) The name of the borrower; and

(C) The amount of the loan disbursed and the fact that it is a Federal PLUS loan.

(2) Neither a lender nor a school may obtain a borrower's power of attorney or other authorization to endorse a disbursement check on behalf of a borrower. The borrower shall personally endorse the check and may not authorize anyone else to endorse it on his or her behalf.

(3) For purposes of the Federal PLUS program, a check is a draft drawn on a bank and payable on demand.

(4) *Late disbursements.* (i) Under certain circumstances a lender, with the prior approval of the Secretary, may disburse a Federal PLUS loan after the student on whose behalf it is being made has ceased to be enrolled on at least a half-time basis or after the expiration date of the insurance commitment.

(ii) The Secretary will approve a lender's request to make a disbursement under these circumstances only if satisfied that the loan proceeds will be used for the student's cost of attendance for the period of enrollment for which the loan was intended.

(iii) If the lender, after receiving the Secretary's prior approval, makes a late disbursement, the lender shall give notice of that approval to the school at the time it sends the loan check to the school.

(20 U.S.C. 1077, 1078–2, 1080, 1082, 1083, 1085)

§ 683.60 Due diligence in collecting a loan.

(a) *General.* (1) A lender must exercise due diligence in the collection of a Federal PLUS loan. In order to exercise due diligence, a lender, except as provided in subparagraph (2) of this paragraph, shall implement the following procedures when a borrower fails to honor his or her payment obligation. If two parents are liable for repayment of a loan as co-makers, the lender shall follow these procedures with respect to both parents.

(2) A lender shall respond on a timely basis to written inquiries and other communications from a borrower.

(3) Paragraphs (b) through (f) of this section shall not apply—

(i) After it has been determined, or while a lender is seeking to have a determination made, that a borrower has died, becomes totally and permanently disabled, or has filed a bankruptcy petition as set forth in § 683.63; or

(ii) After it has been determined that any of the conditions for filing a default claim without previous collection efforts exist, as set forth in §§ 683.64 and 683.66(e).

(b) *Initial delinquency.* When a borrower is delinquent in making a payment, the lender shall remind the borrower within 15 working days of the date the payment was due by means of a letter, notice, telephone call, or personal contact. If payments do not begin or resume, the lender must attempt to contact the borrower at least 3 more times at regular intervals during the rest of the 4-month period that started on the due date of the delinquent payment. These contacts should become progressively more forceful in tone.

(c) *Skip-tracing assistance.* Whenever a lender does not know the borrower's current address, the lender shall attempt to locate the borrower through normal commercial collection techniques, including contacting any other individuals named on the borrower's loan application. If these efforts are unsuccessful, the lender shall attempt to learn the borrower's current address through use of the Department of Education's skip-tracing assistance. The Secretary does not pay insurance on a default claim if the lender did not know the borrower's address but failed to request this skip-tracing assistance. If the lender obtains knowledge of the borrower's address prior to filing a default claim, the lender must attempt to contact the borrower.

(d) *Pre-claim assistance.* When a borrower is 60 days delinquent in making payment, the lender must request pre-claim assistance from the Department of Education. This pre-claim assistance consists of a series of letters being sent to the borrower, urging the borrower to contact the lender and begin or resume payments. The Secretary does not pay insurance on a default claim if the lender failed to request this pre-claim assistance.

(e) *Final demand letter.* A lender must send a final demand letter to the borrower at least 30 days before the lender files a default claim. The lender must allow the borrower at least 30 days to respond to the final demand letter. However, a lender need not send a final demand letter to a borrower whose address is unknown.

(f) *Litigation.* (1) If the borrower's loan is in default and the lender determines that the borrower has the ability to repay the loan, the lender may bring suit against the borrower to recover the amount of the unpaid principal and interest together with reasonable attorney's fees. Prior to bringing suit the lender shall—

(i) Obtain the Secretary's approval. A lender may seek the Secretary's approval to bring suit in anticipation that the lender's collection efforts will be unsuccessful. The Secretary will normally approve a lender's request to bring suit if the Secretary is satisfied that the borrower has the ability to repay the loan and that the collection efforts required by this section have been, or will be, made prior to the lender's bringing suit;

(ii) Notify the borrower that the Secretary's approval to bring suit has been obtained, and that suit will be brought unless the borrower cures the default; and

(iii) Indicate to the borrower that the lender will seek a judgment under which the borrower will be legally liable for payment of reasonable attorney's fees and court costs in addition to the unpaid principal and interest. The lender shall mail the notice to the borrower by certified mail, return receipt requested.

(2) The lender may bring suit if the borrower does not meet the terms of the lender's demand for payment within 10 days following the date of delivery of the notice to the borrower indicated on the receipt.

(3) A lender may first apply the proceeds of any judgment against its reasonable attorney's fees and court costs, whether or not the judgment provides for these fees and costs.

(20 U.S.C. 1078–2, 1080, 1082, 1085)

§ 683.61 Forbearance.

(a) *General.* (1) The Secretary encourages a lender under the Federal PLUS program to grant forbearance for the benefit of a borrower in order to prevent a borrower from defaulting on his or her payment obligations. "Forbearance" means permitting the temporary cessation of payments, allowing an extension of time for making payments, or accepting smaller payments than were previously scheduled.

(2) A lender may grant forbearance under paragraph (b) or (c) whenever poor health or other personal problems affect the ability of the borrower to make scheduled payments. If two parents are liable for repayment of a loan as co-makers, the lender shall grant forbearance only when the ability of both parents to make scheduled payments is adversely affected.

(3) If payments of interest are forborne they may be added to the principal amount of the loan obligation on the date that repayment resumes or at the end of the period of forbearance.

(b) *Basic repayment terms.* A lender may grant forbearance on terms that are consistent with the minimum annual payment requirement and the 10- and 15-year limitations on length of repayment if the lender and the borrower agree in writing to the new terms.

(c) *Inconsistent repayment terms.* A lender may also grant forbearance for a period of up to one year at a time on terms that are inconsistent with the minimum annual repayment requirement and the 10- and 15-year limitations on length of repayment if the lender complies with these requirements:

(1) The lender must reasonably believe that the borrower intends to repay the loan but is currently unable to make payments in accordance with the terms of the loan note. The lender shall state the basis for its belief in writing and maintain that statement in its loan file on that borrower.

(2) Both the borrower and an authorized official of the lender shall sign a written agreement of forbearance.

(3) If the agreement between the borrower and lender provides for postponement of all payments, the lender shall contact the borrower at least every 3 months during the period of forbearance in order to remind the borrower of the outstanding obligation to repay.

(20 U.S.C. 1078-2, 1080, 1082)

§ 683.62 Assignment of a loan.

(a) *General.* A Federal PLUS note may be assigned except to another eligible lender. In this section "seller" means any kind of assignor, "buyer" means any kind of assignee, and "assignment" means any kind of transfer, including assignment as security.

(b) *Procedure.* (1) A Federal PLUS note assigned from one lender to another must be subject to a blanket endorsement together with other Federal PLUS notes being assigned or must individually bear effective words of assignment. Either the blanket endorsement or the note must be signed and dated by an authorized official of the seller.

(2) The buyer must—

(i) Notify the Secretary of the assignment if the right to receive special allowance has been assigned; and

(ii) Ensure that borrower is notified promptly if the assignment results in the borrower being required to make installment payments, or direct other matters connected with the loan, to a party other than the party whom the borrower dealt with before the assignment. The buyer must include in the notice to the borrower a clear statement of all the borrower's rights and responsibilities which arise from the assignment of the loan, including a statement regarding the consequences of making payments to the seller or any prior holder of the loan, subsequent to receipt of the notice.

(c)(1) *Risks assumed by the buyer.* Upon acquiring a Federal PLUS note, a new holder assumes responsibility for the consequences of any previous violation of applicable statutes or regulations or the terms of the note. A Federal PLUS note is not a negotiable instrument, and a subsequent holder is not a holder in due course. If the borrower has a valid legal defense that could be asserted against the original holder, the borrower can also assert the defense against the new holder. If the new holder files a default claim on a loan, the Secretary denies the default claim if there was a legal defect affecting the initial validity or insurability of the loan and to the extent of the borrower's legal defenses. Furthermore, when a new holder files a claim on a Federal PLUS loan, it must provide the Secretary with the same documentation that would have been required of the original lender.

(2) *Special additional rules for assignment of loans made or originated by a school.* The buyer shall not be entitled to rely upon the statements provided by a school in the making or origination of a loan by the school. In addition, the Secretary considers any unpaid tuition refund that was due to the student under § 683.87 before the assignment from a school that made or originated the loan as having been paid to the subsequent holder on the borrower's behalf.

(d) *The Secretary's approval.* (1) The approval of the Secretary is required prior to the assignment of a note to any eligible lender which has not entered into a Federal PLUS insurance contract with the Secretary. The Secretary approves such an assignment only if the Secretary is satisfied that one of the parties to the assignment will comply with all the requirements applicable to lenders under the PLUS program regulations.

(2) Any arrangement where the loan is assigned to an eligible lender that would hold the loan in trust must receive the Secretary's prior approval. A lender that holds a loan as a trustee assumes responsibility for complying with all applicable statutory and regulatory requirements imposed on a holder of a loan.

(e) *Warranty.* (1) Nothing in this section precludes the buyer of a Federal PLUS loan from obtaining a warranty from the seller covering certain future reductions by the Secretary in computing the amount of insurable loss, if any, on a claim filed on the loan.

(2) The warranty may only cover reductions which are attributable to an act or failure to act of the seller or other previous holder.

(3) The warranty may not cover matters that the buyer is responsible for under the PLUS program regulations.

(20 U.S.C. 1078-2, 1078, 1080, 1082)

§ 683.63 Death, disability, and bankruptcy.

(a) *Death.* (1) If a borrower dies, the borrower's obligation to make any further payments of principal and interest on a Federal PLUS loan is cancelled. However, if the loan was obtained by two parents as co-makers, and only one of the borrowers dies, the surviving borrower remains obligated to repay the loan and the loan is not eligible for cancellation.

(2) The lender may not attempt to collect on the loan from the borrower's estate.

(3) The lender may make a determination that the borrower has died on the basis of a death certificate or other proof of death which is acceptable under applicable State law. If a death certificate or other acceptable proof of death is not available, the borrower's obligation on the loan is cancelled only upon a determination by the Secretary on the basis of other evidence that the Secretary finds conclusive.

(4) The lender shall return to the sender any payments received from the estate of the borrower or paid on behalf of the borrower after the date of death.

(b) *Disability.* (1) If the lender determines that a borrower is totally and permanently disabled, the borrower's obligation to make any further payments of principal and interest on a Federal PLUS loan is cancelled. However, if the loan was obtained by two parents as co-makers, and only one of the borrowers becomes totally and permanently disabled, the other borrower remains obligated to repay the loan and the loan is not eligible for cancellation. A borrower is not considered totally and permanently disabled on the basis of a condition that existed prior to his or her loan application unless the borrower's condition has substantially deteriorated since he or she submitted the loan application.

(2) After being notified by the borrower or the borrower's representative that the borrower claims to be totally and permanently disabled, the lender may not attempt to collect on the loan from the borrower. The lender shall promptly request that the borrower or his or her representative obtain a certification from a physician who is a doctor of medicine or osteopathy and legally authorized to practice, on a form provided by the Secretary, that the borrower is totally and permanently

disabled. If the form is not submitted to the lender within 60 days of the date the lender requested it, the lender may resume collection unless the physician has notified the lender that a longer period of time is required to make the determination.

(3) If the lender receives a certification from a physician, as described in paragraph (b)(2), that the borrower is totally and permanently disabled, the lender must return to the borrower any payments that it may have received from or on behalf of the borrower after being notified that the borrower claims to be totally and permanently disabled.

(c) *Bankruptcy.* (1) If a borrower has filed a bankruptcy petition, the Secretary will assume the borrower's liability for unpaid principal and interest. However, if the loan was obtained by two parents as co-makers and only one of the borrowers has filed a bankruptcy petition, the other borrower remains obligated to repay the loan and the Secretary does not assume liability for unpaid principal and interest.

(2) Once a lender determines that a borrower has filed a bankruptcy petition, the lender may not attempt to collect on the loan and must file a bankruptcy claim with the Secretary.

(3) The lender may determine that a borrower has filed a bankruptcy petition upon receipt of notice of the first meeting of creditors from the bankruptcy court.

(4) If the loan obligation is not discharged in bankruptcy, the Secretary shall treat the claim as a default claim. The lender shall not be required to repurchase the loan.

(20 U.S.C. 1078-2, 1082, 1087)

§ 638.64 Cessation of lender collection activity in certain cases.

(a) A lender shall cease collection activity on a Federal PLUS loan, and file a default claim with the Secretary within 60 days after the lender determines that any of the following conditions exist, whether or not the borrower is eligible for deferment:

(1) The school in which the student on whose behalf the loan was made was enrolled terminated its teaching activities involving that student during the academic period covered by the loan.

(2) The Secretary—

(i) Has instituted an action to limit, suspend, or terminate the eligibility of the school in which the student, on whose behalf the loan was made, was enrolled for the academic period covered by the loan, or the eligibility of any lender that has held the loan; and

(ii) Has directed that a claim be filed on the loan.

(3)(i) A school or a lender is the subject of a lawsuit or Federal administrative proceeding and the Secretary determines that the proceeding involves allegations that, if proven, would entitle the borrower to refuse to repay all or a portion of the loan, or to obtain a judgment to recover payments made on the loan, or would entitle the student on whose behalf the loan was made to take such action if the loan had been made to the student; and

(ii) The Secretary has directed that a claim be filed on the loan.

(b)(1) If the Secretary finds that a determination made by a lender under this section is correct, the Secretary pays the default claim as otherwise provided for under these regulations.

(2) If the Secretary finds that the lender's determination is not correct, the Secretary refuses payment and the lender shall resume normal collection activity on the loan.

(c) A lender may not, as a result of a default claim filed with the Secretary under this section, make a report to any credit bureau or other third party concerning the borrower's failure to repay his or her loan.

(20 U.S.C. 1078-2, 1080, 1082)

§ 638.65 Procedures for filing claims.

(a)(1) A lender may file an insurance claim for any of the following reasons:

(i) The loan is in default. A loan is not in default until the 120-day or, if applicable, the 180-day period, described in the definition of "default" in § 663.10, has elapsed. If the borrower fails to make an installment payment when due, the 120- or 180-day period begins the day after the due date of that installment.

(ii) Any of the conditions for filing a default claim without collection efforts exist, as set forth in §§ 663.64 and 663.65(e).

(iii) The borrower has died.

(iv) The borrower is totally and permanently disabled.

(v) The borrower has filed a bandruptcy petition.

(2) If a loan was obtained by two parents as co-makers, the applicable condition described above must apply to both parents.

(b) *Filing a claim application.* A lender shall file an insurance claim on a form provided by the Secretary. The lender shall attach to the claim all documentation that the Secretary may require. Failure to submit the required documentation may result in a claim not being honored. The Secretary may also deny a claim that is not filed on time.

(c) *Documentation required for all PLUS program claims.* The Secretary requires the following documentation for all claims:

(1) The original promissory note.

(2) The loan application.

(3) A payment history, as described in § 663.66(a)(1)(viii), if any payments have been made.

(4) A collection history, as described in § 663.66(a)(1)(ix).

(d) *Assignment of note.* The Secretary's payment of a claim is contingent upon receipt of an assignment to the United States of America of all right, title, and interest of the lender in the note underlying the claim. The lender shall agree to reimburse the Secretary for any overpayments of special allowance that the Secretary may have made for the loan.

(e) *Specific procedures applicable to the individual claim categories.* A lender must also comply with the following requirements for filing default, death, disability, and bankruptcy claims:

(1) *Default claims.* (i) Unless a lender has notified the Secretary that it has filed suit against the defaulted borrower, after obtaining the Secretary's approval for the suit, it must file a default claim with the Secretary within 90 days after the loan has been determined to be in default, or the lender has determined that any of the conditions for filing a default claim without collection efforts exist, as set forth in §§ 663.64 and 663.65(e).

(ii) In addition to the documentation required for all claims, the lender must submit with its default claim the following:

(A) A collection history, as described in § 663.66(a)(1)(ix).

(B) A copy of the final demand letter, if required under § 663.60.

(C) The original or a copy of all personal correspondence addressed to or from, or on behalf of, the borrower relevant to the amount owed by the borrower, whether that correspondence involved the original lender, a subsequent holder, or an independent servicing agency.

(D) Evidence of the lender's requests to the Department of Education for pre-claim assistance and, if a request was required under § 663.60(c), skip-tracing assistance.

(iii) If the lender files a default claim on a loan and subsequently receives a notice of the first meeting of creditors in the proceeding of the borrower in bankruptcy, the lender shall promptly forward that notice to the Department of Education. The lender may not file a proof of claim with the bankruptcy court in this situation.

(2) *Death claims.* A lender shall file a death claim with the Secretary within 60 days after the lender determines that a borrower is dead. In addition to the documentation required for all claims, the lender shall submit with its death claim those documents which formed the basis for its determination of death.

(3) *Disability claims.* A lender shall file a disability claim with the Secretary within 60 days after it receives a certification from a licensed physician that a borrower is totally and permanently disabled. In addition to the documentation required for all claims, the lender shall submit with its disability claim a copy of the certification.

(4) *Bankruptcy claims.* A lender shall file a bankruptcy claim with the Secretary within 60 days after the lender receives a notice that the borrower has filed a bankruptcy petition. In addition to the documentation required for all claims, the lender shall submit with its bankruptcy claim to the Secretary the following:

(i) An assignment to the United States of America of its proof of claim.

(ii) Evidence that a bankruptcy petition has been filed and all pertinent documents sent to or received from the bankruptcy court.

(iii) A statement of any facts of which the lender is aware that may form the basis for an objection to the bankrupt's discharge or an exception to the discharge.

(20 U.S.C. 1078-2, 1080, 1082, 1087)

§ 683.86 Determination of amount of loss on claims.

(a) *General.* The amount of loss to be paid on a claim for a Federal PLUS loan shall be equal to the unpaid balance of the principal and interest. The unpaid principal amount of the loan may include capitalized interest.

(b) *Payment of insured interest.* (1) The payment of an approved claim covers the unpaid interest that accrues during the following periods:

(i) During the period before the claim is filed, not to exceed the period permitted under paragraph (e) of § 683.85 for filing the claim.

(ii) During a period not to exceed 30 days following the return of the claim to the lender by the Secretary for additional documentation necessary for the claim to be approved by the Secretary.

(iii) Durng the period required by the Secretary to approve the claim and to authorize payment.

(2) The Secretary pays the unpaid interest that accrues during other periods which are tied to the type of claim involved:

(i) The payment on a default claim covers unpaid interest that accrues through the date of default.

(ii) The payment on a bankruptcy claim covers unpaid interest that accrues before the lender receives notice that the borrower filed a bankruptcy petition.

(iii) The payment on a death claim covers unpaid interest that accrues before the lender determines that the borrower is deceased.

(iv) The payment on a disability claim covers unpaid interest that accrues before the lender receives a certification from a physician that the borrower is totallly and permanently disabled.

(c) *Factors affecting the insurability of a loan.* (1) In determining whether to approve an insurance claim for payment, the Secretary considers legal defects affecting the initial validity or insurability of the loan.

(2) The Secretary also deducts from a claim any amount that is not a legally enforceable obligation of the borrower.

(3) The Secretary further considers whether all holders of the loan have complied with the requirements of the Federal PLUS regulations, including those concerned with making and collecting a loan, the timely filing of a claim, and the submission of documents with a claim.

(4) The Secretary does not pay a death, disability, or bankruptcy claim for a loan after a default claim for that loan has been disapproved by the Secretary.

(d) *Special rules for a loan acquired by assignment.* If a claim is filed by a lender that obtained a loan by assignment, that lender is not entitled to any payment under this section greater than that to which a previous holder would have been entitled. In particular, the Secretary deducts from the claim any amounts that are attributable to payments made by the borrower to a prior holder of the loan before the borrower received proper notice of the assignment of the loan.

(e) *Special rules for loans made by school lenders.*

(1) If the loan for which a claim is filed was originally made by a school and the claim is filed by that school, the Secretary deducts from the claim—

(i) An amount equal to any unpaid refund that the school owes the student on whose behalf the loan was made under § 683.87; or

(ii) An amount attributable to any portion of the program of study that the student on whose behalf the loan was made was unable to complete because the school terminated its teaching activities during the period of time for which the parent obtained a Federal PLUS loan. If this situation occurs, the lender shall immediately file a default claim with the Secretary. The Secretary reimburses the lender in an amount which bears the same ratio to the total amount of the claim as the amount of the educational services that the student received before the school terminated its teaching activities bears to the total services which the student would have received, during the period for which the loan was obtained, had the school not terminated its teaching activities.

(2) If the loan for which a claim is filed was originally made by a school but the claim is filed by another lender that obtained the note by assignment, the Secretary deducts from the claim—

(i) An amount equal to any unpaid refund that the school owed the student on whose behalf the loan was under § 683.87 prior to the assignment of the loan to a subsequent holder;

(ii) An amount attributable to any portion of the program of study that the student on whose behalf the loan was made was unable to complete because the school terminated its teaching activities during the period of time for which the borrower obtained a Federal PLUS loan. If this situation occurs, the lender shall immediately file a default claim with the Secretary. The Secretary reimburses the lender in an amount which bears the same ratio to the total amount of the claim as the amount of the educational services that the student received before the school terminated its teaching activities bears to the total services which the student would have received, during the period for which the loan was obtained, had the school not terminated its teaching activities.

(f) *Special rules for a loan originated by a school.* For purposes of this section, a loan which is originated by a school shall be treated in accordance with paragraph (e)(1) of this section as if it were a loan made and still held by a school.

(g) *Circumstances under which defects in claims may be cured or excused.* (1) The Secretary may permit a lender to cure certain defects in a specified manner as a condition for payment of a default claim.

(2) The Secretary may excuse certain defects—

(i) If the holder submitting the default claim satisfies the Secretary that the defect did not contribute to the default or prejudice the Secretary's attempt to collect on the loan from the borrower; or

(ii) If the defect arose while the holder submitting the default claim was holding the loan but the Secretary had previously found that the holder had procedures in effect sufficient to ensure

that such a defect would not normally arise.

(3) The Secretary may also excuse certain defects if the Secretary is satisfied that—

(i) The defect arose while the loan was held by another lender;

(ii) The assignment of the loan was an arm's length transaction;

(iii) The present holder did not know of the defect at the time of the assignment; and

(iv) (A) The present holder could not have become aware of the defect through an examination of the loan documents; or

(B) The present holder had relied on a finding by the Secretary that the lender holding the loan when the defect arose had procedures in effect sufficient to ensure that such a defect would not normally arise.

(20 U.S.C. 1078-2, 1080, 1082)

§ 683.87 The Secretary's collection efforts after payment of a default claim.

After paying a default claim on a Federal PLUS loan, the Secretary attempts to collect from the borrower in accordance with the Federal Claims Collection Standards (4 CFR Parts 101–105). The Secretary attempts collection of all unpaid principal and accrued interest, except in the following situations:

(a) *The borrower has a valid defense on the loan.* In this situation, the Secretary refrains from collection against the borrower to the extent of any defense that the borrower may have.

(b) *A school owes the student on whose behalf the loan was made a refund for the period covered by the loan.* In this situation, the Secretary refrains from collection to the extent of the unpaid refund the school owes the student on whose behalf the loan was made under § 683.87, if the student assigns to the Secretary the right to receive the refund and the borrower agrees in writing to pay the Secretary the remaining portion of his or her indebtedness on the loan.

(c) *The school attended by the student on whose behalf the loan was made closes during the academic period covered by the loan.* (1) In this situation, the Secretary refrains from collection against the borrower to the extent that the student would have had a defense on the loan if the loan was—

(i) Made by the school to the student;

(ii) Part of the same transaction as the enrollment at the school of the student on whose behalf the loan was made; and

(iii) Paid to the school in consideration for the educational services that were to be provided by the school.

(2) As a condition of this forgiveness—

(i) The student on whose behalf the loan was made must assign to the Secretary the right to receive any refund that the school owes the student under § 683.87; and

(ii) The borrower must agree in writing to pay the Secretary the remaining portion of his or her indebtedness on the loan.

(d) *A school or lender is the subject of a lawsuit or Federal administrative proceeding.* In this situation, if the Secretary determines that the proceeding involves allegations that, if proven, would provide the borrower with a full or partial defense on the loan, or would provide the student on whose behalf the loan was made with such a defense if the loan had been made to the student, then the Secretary may suspend collection activity on all or part of a loan until the proceeding ends. The Secretary suspends collection activity only for so long as the Secretary believes that the proceeding is being prosecuted in good faith and that the allegations that relate to the borrower's or student's defense are reasonably likely to be proven. When a final resolution is reached, the Secretary collects from the borrower to the extent appropriate.

(e) *A school or lender is the subject of a limitation, suspension, or termination action by the Secretary.* In this situation, if the Secretary determines that the final outcome of the action could provide the borrower with a full or partial defense on the loan, or would provide the student on whose behalf the loan was made with such a defense if the loan had been made to the student, then the Secretary may suspend collection activity pending the final resolution of the action. When a final resolution is reached, the Secretary collects from the borrower to the extent appropriate.

(f) *The borrower dies, becomes totally and permanently disabled, or has the Federal PLUS loan discharged in bankruptcy.* In this situation, the Secretary terminates all collection activity against the borrower. However, if the loan was obtained by two parents as co-makers, and only one of the borrowers meets one of these conditions, the Secretary continues collection activity against the other borrower.

(20 U.S.C. 1078-2, 1080, 1082)

§ 683.88 Records, reports, and inspection requirements for lenders.

(a) *Records.* (1) A lender shall keep complete and accurate records of each Federal PLUS loan which it holds. The records must be organized in a way that permits ready identification of the current status of each loan. The required records include—

(i) The loan application;

(ii) The original promissory note until it is paid in full, after which a copy is required;

(iii) A record of each disbursement of loan proceeds;

(iv) Notices of changes in a borrower's address;

(v) Evidence of the borrower's eligibility for a deferment;

(vi) The documents required for the exercise of forbearance;

(vii) Documentation of the assignment of the loan;

(viii) A payment history showing the date and amount of each payment received from or on behalf of the borrower, and the amounts attributable to principal and interest;

(ix) A collection history showing the date and subject of each communication with the borrower for collection of a delinquent loan; and

(x) Any additional records as specifically required by these regulations which are necessary to document the validity of an insurance claim or to make any reports required by the Secretary under these regulations.

(2)(i) A lender shall retain the records required for each loan for not less than 5 years following the date the loan is repaid in full by the borrower or the lender is reimbursed on a claim. However, in particular cases the Secretary may require the retention of records beyond this minimum period.

(ii) The lender may store records in microfilm or computer format. However, the holder of a promissory note must retain the original note until the loan is fully repaid. At that time the lender shall return the original note to the borrower, and retain copies for the prescribed period.

(b) *Reports.* A lender shall submit reports to the Secretary at the time and in the manner the Secretary may reasonably require, including but not limited to the following:

(1) The Lender's Manifest.

(2) The Lender's Request for Payment of Interest and Special Allowance.

(3) The Lender's Annual Report on Outstanding Loans.

(c) *Inspections.* Upon request, a lender shall afford the Secretary, the Comptroller General of the United States, and any of their authorized representatives access to its records in order to assure the correctness of its reports.

(20 U.S.C. 1077, 1078, 1078-2, 1079, 1080, and 1082)

Subpart E—Requirements, Standards, and Payments for Participating Schools

§ 682.80 Participation agreement between an eligible school and the Secretary for participation in the PLUS program.

(a) *General.* Participation of a school in the PLUS program means that the parents of a school's students are eligible to receive PLUS loans. To participate in the PLUS program, under either the Federal PLUS program or a guarantee agency program, a school must—

(1) Establish its basic eligibility as an institution of higher education or a vocational school, as defined in § 682.10, through certification by the Division of Eligibility and Agency Evaluation, Office of Postsecondary Education, Department of Education; and

(2) Enter into a written agreement with the Secretary. The agreement must be signed by an appropriate official of the school on a form provided by the Secretary.

(b) *Terms of the agreement.* In the agreement, the school promises to comply with the applicable provisions of—

(1) The Act and the PLUS regulations;

(2) 34 CFR Part 668 (Student Assistance General Provisions); and

(3) 34 CFR Part 670 (Student Consumer Information Services).

(c) *Time to respond.* The Secretary responds to a school's request for an agreement to participate in the PLUS program within 30 days after receiving the request.

(d) *Denial or limitation of participation.* (1) If the Secretary decides not to approve a request for an agreement or approves only limited participation in the PLUS program by the school, the reason for the decision is included in the response.

(2) The Secretary provides an opportunity for the school to meet with a designated Department of Education official, if the school wishes to appeal a decision involving either—

(i) Denial of and agreement for participation; or

(ii) Approval of an agreement that limits the school's participation.

(3) The Secretary does not, however, grant an opportunity for appeal or give reasons for denying the participation, or approving only the limited participation, of a school if the school submits its request within 6 months of a previous denial or limited approval.

(e) *Change in ownership or form of control.* A PLUS program participation agreement automatically terminates when a school changes its ownership or form of control. The termination is effective at the time the change occurs. A new agreement must be signed and approved by the Secretary for the school to participate under the new ownership or form of control.

(f) *Extension of current agreements.* Until the Secretary makes a PLUS program participation agreement available, a school that has entered into an agreement with the Secretary to participate in the GSLP may participate in the PLUS program in accordance with applicable provisions of these regulations.

(20 U.S.C. 1078-2, 1082, 1094)

§ 682.81 Agreement between the Secretary and a school that makes or originates PLUS loans.

(a) *General.* (1) A school must have an agreement with the Secretary in order to make or originate PLUS loans under either the Federal PLUS program or a guarantee agency PLUS program. The definition of origination is in § 682.10.

(2) *Extension of current agreements.* Until the secretary makes a PLUS program origination agreement available, a school that has entered into an agreement with the Secretary to make or originate loans in the GSLP may participate in the PLUS program in accordance with applicable provisions of these regulations.

(b) *Terms of the agreement.* An agreement to allow a school either to make or originate loans contains the following terms:

(1) The school will not make or originate GSL or PLUS loans which would be outstanding or more than 50 percent of its undergraduate students, who are in attendance at that school on at least a half-time basis, or the parents of such students. An exception to this rule, however, is contained in paragraph (d) of this section.

(2) The school will inform any parent who seeks to obtain a PLUS loan for an undergraduate student attending the school, on whose behalf the parent has not previously obtained a PLUS loan made or originated by the school, that the parent must first make a good faith effort to obtain a loan from a commercial lender.

(3)(i) The school will not make or originate a loan for an academic period to a parent described in paragraph (b)(2) of this section until the parent provides the school with evidence of denial of a loan by a commercial lender for the same academic period. Evidence acceptable for this purpose is described in paragraph (c) of this section.

(ii) In determining whether a school has complied in good faith with this requirement, the Secretary may take into consideration any pattern reflected by letters of denial or parents' statements referred to in paragraph (c) of this section that indicate that the school has not given sufficient counseling to parents to seek loans first from a commercial lender. An example of an unacceptable pattern would be if all loan denials to the parents of a school's students were made by a small number of lenders.

(c) *Establishing a loan denial by a commercial lender.* (1) To ensure under paragraph (b)(3) of this section that a parent has sought and been denied a loan from a commercial lender for an academic period, the school shall obtain from the parent—

(i) A written statement from a commercial lender indicating that the lender denied the parent a loan for that academic period; or

(ii) The parent's statement, made under penalty of perjury, indicating both the refusal of a loan by a commercial lender and that lender's refusal to provide a written statement of the denial.

(2) If the parent's statement, is used to establish the denial of a loan, that statement must include—

(i) The name of the lender that denied the loan;

(ii) The approximate date on which the loan was denied;

(iii) The name of the official who communicated the denial to the parent; and

(iv) The parent's signature. The statement must be signed by the parent under penalty of perjury.

(3) The refusal of a lender to make a loan to a parent for the entire amount requested by the parent constitutes a denial of a loan, if the school determines that the parent is eligible for a loan of that amount. If the denial is based upon the parent's inability to obtain the entire amount requested, the school may either—

(i) Make or originate a loan to that parent for the entire amount; or

(ii) Supplement the loan that the commercial lender is willing to make with a second loan to the parent.

(d) *Waiver of the 50 percent lending limit.* A school may request a waiver of the 50 percent lending limit under paragraph (b)(1) if adherence to that limit would create a substantial hardship to the school's present or prospective students or their parents. The Secretary determines whether to grant the school a waiver after considering the following:

(1) The extent to which the school provides, and expects to continue providing, educational opportunities to economically disadvantaged students, as measured by the percentage of these students enrolled at the school who—

(i) Fall within the "low-income family" category used by the Bureau of the Census;

(ii) Would not be able to enroll, or continue their enrollment, at that school without a GSLP or PLUS loan made or originated by the school; and

(iii) Would not be able to obtain a comparable education at another school.

(2) The extent to which the school offers academic programs that—

(i) Are unique in the geographical area the school serves; and

(ii) Would not be available to some students if the school adhered to the 50 percent lending limit.

(3) The quality of improvements expected in the school's—

(i) Management of student financial assistance programs; and

(ii) Conformance with sound business practices.

(20 U.S.C. 1075, 1078, 1078-2, 1082, 1083)

§ 683.82 Providing information to prospective students.

(a) *General.* (1) A school shall present each of its prospective students with a complete and accurate statement containing information about the school. The statement must be in written form and must be presented to the prospective student prior to the time that he or she becomes obligated to pay the school any tuition or fees.

(2) The statement provided by the school must include information pertaining to—

(i) The school's current academic or training programs in which the student has expressed interest;

(ii) The school's faculty in those programs; and

(iii) The school's facilities relating to those programs.

(b) *Providing employment data.* In addition to the information required by paragraph (a) of this section, a school that offers programs or courses of study designed to prepare students for a particular vocational, trade or career field (e.g., truck driving, teaching or pharmacy) shall provide a prospective student in that field with a written statement regarding the employment of students previously enrolled in those programs or courses.

(1) The employment information must include data regarding the percentage of previously enrolled students who entered positions of employment directly related to their enrollment at the school and data regarding the average starting salaries of those students.

(2) The school may provide the prospective student with the most recent comparable regional or national statistical student employment data in lieu of the information about the school's own students if—

(i) After a reasonable effort, the school cannot obtain meaningful data on the employment of its own students; or

(ii) The data the school possesses regarding its own students is more than 3 years old and cannot, after a reasonable effort, be updated.

(3) To the extent that information is available, the school should provide a prospective student with information regarding the long range prospects for employment in the particular vocational, trade or career field that the student intends to prepare for at the school.

(20 U.S.C. 1078-2, 1082, 1085, 1088f-1)

§ 683.83 Correspondence school schedule requirements.

((a) *General.* A school offering a course of study by correspondence shall establish a schedule for submission of lessons by its students. This schedule must be given to a prospective student prior to that person's enrollment.

(b) *Information in the schedule.* The school shall include the following information in its schedule:

(1) The number of lessons in the course.

(2) The intervals at which lessons are to be submitted.

(3) The date by which the course is to be completed.

(4) The period of time within which any resident training must be completed.

(c) *Additional requirements.* The schedule must conform to the requirements set forth in paragraph (a)(3)(ii) of the definition of "vocational school" in § 683.10.

(20 U.S.C. 1078-2, 1082)

§ 683.84 Certifications by a participating school in connection with a parent's loan application.

A school shall accurately and completely fill out its portion of a parent's loan application. The information requested of the school pertains to the following:

(a) The eligibility of the student on whose behalf the loan is sought to have a parent borrow on his or her behalf as determined in accordance with § 683.11.

(b) The parent's eligibility for a loan determined in accordance with § 683.11.

(c) The student's estimated cost of attendance for the period for which the loan is sought.

(d) The student's estimated financial assistance for the period for which the loan is sought.

(20 U.S.C. 1077, 1078, 1078-2, 1085, 1094)

§ 683.85 Administrative cost allowance to participating schools.

(a) *General.* The Secretary pays an administrative cost allowance to a participating school. Payment is based on the number of students enrolled at the school on whose behalf a GSLP loan or PLUS loan is made during the award period.

(b) *Amount of payment.* Each school is paid $10 for each student who received a GSLP loan or whose parent received a PLUS loan on behalf of that student for a period of enrollment beginning in an award period.

(c) *Student count.* Each student can be counted only once in the same award period for purposes of determining the number of students enrolled at a school who have received GSL loans or whose parents have received PLUS loans on their behalf.

(d) *Award period.* For the purpose of this section, "award period" means a 12-month period beginning on July 1 of each calendar year.

(e) *Use of the administrative cost allowance funds.* A school that receives an administrative cost allowance payment shall use those funds to pay for costs of administering the GSLP and PLUS programs under Title IV of the Higher Education Act of 1965.

(f) *Applying for the administrative cost allowance.* To receive the administrative cost allowance payment, a school must submit an application on a form and within the time limit prescribed by the Secretary.

(20 U.S.C. 1078, 1078-2, 1082)

§ 683.86 The parent loan check.

(a) *Purpose.* This section establishes rules for how a school must process a parent's loan check. The school must also comply with any rules for processing a loan check contained in 34 CFR Part 668 (Student Assistance General Provisions). The rules in this section do not apply to a PLUS loan issued by a school lender if the student on whose behalf the loan was made in attending the school that made the loan.

(b) *General.* (1) A check issued by a Federal PLUS program lender is sent directly to the borrower.

(2) A loan check issued by a lender under a guarantee agency program may be sent directly to the borrower or to the school where the student on whose behalf the loan is made is enrolled or will be enrolling.

(3) A loan check that is sent directly to the school is payable either jointly to

the school and the parent or only to the parent.

(4) Generally, the school may only release a check to the parent of a student on whose behalf the loan was made if the student has maintained eligibility for the loan by enrolling or continuing enrollment on at least a half-time basis. Exceptions to this rule are contained in paragraph (f) of this section.

(c) *A check made payable to the parent.* (1) When a school receives a loan check that is payable to the parent of one of its students, the school shall promptly deliver the check to the parent.

(2) If after receiving a check for a parent, the school determines that the student on whose behalf the loan was made has not enrolled as expected, the school must return the check to the lender within 30 days of this determination.

(d) *A jointly payable check.* When a school receives a loan check that is made jointly payable to the school and the parent, the school shall process the check as follows:

(1) Endorse the check on its own behalf and deliver it to the parent; or

(2) Obtain the parent's endorsement, and—

(i) Retain that portion of the loan proceeds currently owed the school for educational costs as described in paragraph (e) of this section; and

(ii) Promptly give the remaining funds to the parent.

(3) If the school receives the check before the student on whose behalf the loan is made enrolls for the academic period for which the loan is intended, the school must hold the check until the student enrolls and then follow the procedures under (d)(1) or (2) of this section. If after receiving a check for a parent, the school determines that the student on whose behalf the loan was made has not enrolled as expected, the school must return the check to the lender within 30 days of this determination.

(e) *Retaining PLUS loan proceeds.* A school may only retain loan proceeds covering costs of attendance owed to the school over that part of the academic year for which substantially all of the school's students have been billed, unless the parent requests in writing that the school retain additional loan proceeds in order to assist in budgeting his or her funds for the remainder of the academic year.

(f) *Processing a late disbursement check.* (1) For purposes of this paragraph, a parent loan check is considered a late disbursement check if the school receives the loan check from the lender either—

(i) After the expiration of the academic period for which the loan was intended (the expiration date of the insurance commitment); or

(ii) Prior to the expiration of the academic period for which the loan was intended but after the student on whose behalf the loan was made ceased to be enrolled at the school on at least a half-time basis.

(2) If the late disbursement check is accompanied by a notice from the lender that the late disbursement has been approved by the appropriate guarantee agency, the school shall follow the applicable procedure described in paragraph (c) or (d) of this section.

(3) If the late disbursement check is not accompanied by the notice described in paragraph (f)(2) of this section, the school shall—

(i) Return the check to the lender within 30 days of its determination that one of the conditions described in paragraph (f)(1) of this section exists;

(ii) Send with the check—

(A) A notice that one of the conditions described in paragraph (f)(1) of this section exists; and

(B) If applicable, information concerning the student's date of withdrawal and costs of attendance owed the school for the period the student was enrolled on at least a half-time basis;

(iii) Advise the parent that the lender may, in accordance with rules established by the guarantee agency similar to those in § 683.59(i)(4), redisburse funds for the student's costs of attendance incurred before the existence of one of the conditions described in paragraph (f)(1) of this section.

(20 U.S.C. 1078, 1078–2, 1082)

§ 683.87 Refund policy.

(a) *General.* (1) A school shall have a fair and equitable refund policy under which it will make a refund of unearned tuition, fees and room and board charges to a student whose parent received a PLUS loan on his or her behalf if the student—

(i) Does not enroll for the academic period for which the loan was intended; or

(ii) Does not complete the academic period for which the loan was made.

(2) The school shall state its refund policy clearly in writing. The school shall include in its refund policy the procedure a student would follow to obtain a refund.

(3) The school shall provide the written statement containing its refund policy to a prospective student prior to the student's acceptance for initial enrollment. The school shall also make its refund policy known to currently enrolled students. If the school changes its refund policy, the school shall ensure that all students are made aware of the new policy.

(b) *Fair and equitable refund policy.* A school's refund policy is fair and equitable if that policy conforms with—

(1) The requirements of applicable State law; and

(2)(i) Specific refund standards set by the school's nationally recognized accrediting agency and approved by the Secretary;

(ii) If no such standards exist, other specific refund policy standards, either contained in Appendix A to this Part or set by another association of institutions of postsecondary education and approved by the Secretary.

(20 U.S.C. 1078–2, 1082, 1088f–1(a)(2))

§ 683.88 Determining the date of a student's withdrawal.

(a) *Purpose.* This section establishes rules for how a school must determine the date (to include day, month and year) on which a student withdraws from the school for the purpose of—

(1) Calculating the amount of a refund due the student; and

(2) Reporting that the student has left the school.

(b) *The withdrawal date.* The school shall establish the date of a student's withdrawal as follows:

(1) Generally, the student's withdrawal date is the earlier of—

(i) The date the student notifies the school of his or her withdrawal; or

(ii) The date the school determines that a student has withdrawn.

Paragraphs (b)(2) and (b)(3) contain additional rules applicable to particular situations.

(2) If the student has not returned to school at the expiration of a leave of absence approved under paragraph (c), the student's withdrawal date is the date of the first day of the leave of absence.

(3) If the student is enrolled in a program of study by correspondence, the student's withdrawal date is normally 60 days after the due date of a required lesson that the student failed to submit in accordance with the schedule for lessons established by the school under § 683.83. However, if the student establishes in writing, within the 60-day period, a desire to continue in the program and an understanding that the required lessons must be submitted on time, the school may grant that student a resotration to in-school status. However, the school may not grant the student more than one restoration to in-school status on this basis.

(c) *Leaves of absence.* A student who is absent from school and who has been granted a leave of absence by the school, in accordance with this paragraph, is not considered to have withdrawn from school for purposes of this section. A school may grant a leave of absence to a student provided—

(1) The student has made a written request to be granted a leave of absence;

(2) The leave of absence involves no additional charges by the school to the students;

(3) The leave of absence does not—

(i) Exceed 60 days; or

(ii) Exceed six months if either of the following circumstances exists;

(A) The school is not a correspondence school and the school's next period of enrollment after the start of the leave of absence would begin more than 60 days after the first day of the leave of absence; or

(B) The absence is requested because of the student's medically determinable conditions. In this case, the student must provide the school with a recommendation from a physician for leave of absence longer than 60 days; and

(4) The student has not previously been granted a leave of absence by the school. Additional leaves of absence for a student must be approved by the Secretary.

(20 U.S.C. 1078-2, 1082, 1085f-1(a)(2))

§ 682.89 Payment of a refund to a lender.

(a)(1) A school shall pay that portion of the student's refund that is allocable to a PLUS loan to—

(i) The original lender; or

(ii) A subsequent holder, if the loan has been transferred and the school knows the new holder's identity.

(2) When the school pays refund monies to a lender on behalf of a student whose parent received a PLUS loan on his or her behalf, the school shall provide simultaneous written notice to the parent and the student of this action.

(b) *Calculating what portion of the refund to allocate to the loan.* In determining what portion of a student's refund for an academic period is allocable to a PLUS loan received by the student's parent for the same academic period, the school must follow the procedures established in 34 CFR Part 668 (Student Assistance General Provisions).

(c) *Timely payment of refund.* A school shall pay each refund that is due in accordance with the following:

(1) Within 40 days after the date of the student's withdrawal from the school, as determined in accordance with § 683.85(b); or

(2) In the case of a student who does not return to school at the expiration of an approved leave of absence (see § 683.88(b)), within 40 days after the last day of that leave of absence.

(d) *Transition requirements.* In the event of a school's closure, termination, suspension of operations, or change in ownership, the school or its successors shall make provision for compliance with the requirements of this section with regard to students on whose behalf parents obtained loans for periods of attendance at the school prior to the school's change in status.

(20 U.S.C. 1078-2, 1082, 1094)

§ 683.90 Termination of a school's lending eligibility.

(a) *General.* The Secretary terminates a school's eligibility to make GSLP and PLUS loans, under the Federal PLUS program, the FISLP or a guarantee agency program, if the school reaches the 15 percent limit on loan defaults described in paragraph (b) of this section.

(b) *The 15 percent limit.* (1) The Secretary terminates a school's eligibility to make GSLP and PLUS loans if, during each of the two most recent consecutive one-year periods for which data is available, the total amount of loans described in paragraph (b)(1)(i) of this section is equal to or greater than 15 percent of the total amount of loans described in paragraph (b)(1)(ii) of this section.

(i) The original principal amount of loans the school has ever made that went into default during that period.

(ii) The original principal amount of all loans the school has ever made, including loans in deferment status, that—

(A) Were in repayment status at the beginning of that period; or

(B) Entered repayment status during that period.

(2) In making the determination required by this section, the Secretary considers the status of all GSLP and PLUS loans made by the school, whether the loans are held by the school or a subsequent holder.

(c) *Exception based on hardship.* The Secretary does not terminate a school's lending eligibility under paragraph (a) of this section if the Secretary determines that the termination would result in a hardship condition for the school or its students. The Secretary makes this determination if the school shows that—

(1) Termination is not justified in light of recent improvements the school has made in its collection capabilities that will cause the school's loan delinquency rate to improve within the next year. Examples of these improvements include the following:

(i) Adopting more efficient collection procedures.

(ii) Employing increased collection staff; or

(2) Termination would cause a substantial hardship to the school's current or prospective students or their parents based on—

(i) The extent to which the school provides, and expects to continue to provide, educational opportunities to economically disadvantaged students, as measured by the percentage of students enrolled at the school who—

(A) Fall within the "low-income family" category used by the Bureau of the Census;

(B) Would not be able to enroll, or continue their enrollment, at that school without a GSLP or PLUS loan from the school; and

(C) Would not be able to obtain a comparable education at another school.

(ii) The extent to which the school offers academic programs that—

(A) Are unique in the geographical area the school serves; and

(B) Would not be available to some students if they or their parents could not obtain loans from the school.

(iii) The quality of improvements the school has made in its—

(A) Management of student financial assistance programs; and

(B) Conformance with sound business practices.

(d) *Termination procedures.* The Secretary does not terminate the lending eligibility of a school under this section until the school has been notified of the impending action and has had an opportunity for a hearing.

(1) *The termination notice.* A Department of Education official designated by the Secretary begins a termination action by sending a notice to the school. The notice is sent by certified mail with a return receipt requested. In the notice, the designated official—

(i) Informs the school of the intent to terminate the school's lending eligibility because of the school's default experience;

(ii) Specifies the proposed effective date of the termination as the next October 1;

(iii) Informs the school that it has 15 days to do the following—

(A) Submit any written material it wants considered in determining whether its lending eligibility should be terminated under paragraph (a) of this section, including written material in support of a hardship exception under paragraph (c) of this section; or

(B) Request a hearing to show why the school should not be terminated.

(2) *If a hearing is not requested.* If the school does not request a hearing but submits written material, the designated official considers that material and notifies the school as to whether the termination action will be taken.

(3) *The hearing.* The designated official schedules the date and place of a hearing for a school that has requested a hearing. The date of the hearing is at least 15 days from the date that the designated official received the request.

(i) A presiding officer (defined in § 683.101) conducts the hearing.

(ii) The presiding officer considers all written material presented before the hearing and any other material presented during the hearing.

(iii) The presiding officer determines if termination of the school's lending eligibility is warranted.

(4) *Review of a termination of a school's lending eligibility.* The decision of the presiding officer, or of the designated official, in the event that the school has submitted written material but has not requested a hearing, is subject to review by the Secretary.

(e) *Reinstatement of lending eligibility.* (1) A school that has its lending eligibility terminated under this section may not make further GSLP or PLUS loans unless it has entered into a new lending agreement with the Secretary under § 683.81.

(2) A new agreement may not take effect until at least one year after a school's lending eligibility has been terminated under this section.

(f) *Schools under the same ownership.* If a school makes loans to students or parents of such students in attendance at other schools under the same ownership, the Secretary may make the determinations required by this section by—

(1) Treating all the schools as one; or

(2) Treating each school on a school-by-school basis.

(20 U.S.C. 1078–2, 1082, 1085)

§ 683.91 Records, reports and inspection requirements for participating schools.

(a) *General.* (1) Each school shall establish and maintain proper administrative and fiscal procedures and all necessary records, as set forth in these regulations and 34 CFR Part 668 (Student Assistance General Provisions), in order to—

(i) Protect the rights of parents and students;

(ii) Protect the United States from unreasonable risk of loss due to defaults; and

(iii) Comply with any specific requirements in these regulations and 34 CFR Part 668 (Student Assistance General Provisions).

(2) Each school shall submit such reports, as prescribed by the Secretary, as are necessary to comply with these regulations and 34 CFR Part 668 (Student Assistance General Provisions).

(b) *Loan record requirements.* In addition to records required by 34 CFR Part 668, for each loan received by the parents of its students a school shall maintain a record of—

(1) The name of the borrower;

(2) The name of the student on whose behalf the loan was made;

(3) The name of the lender;

(4) The amount of the loan;

(5) The period for which the loan was intended;

(6) The data used to construct an individual student budget or the school's itemized standard budget used in calculating the student's estimated cost of attendance;

(7) The amount of the student's tuition and fees paid for that period;

(8) The date the student paid the tuition and fees;

(9) The date the school received each loan check, if the loan check was disbursed through the school and the school itself was not the lender;

(10) The date the school gave each loan check to the parent, unless disbursement was made directly to the parent by a lender;

(11) The date the school endorsed each loan check, if the school was a co-payee;

(12) The date of disposition of the loan proceeds, if the school was a co-payee and the parent endorsed the check before the school did.

(c) *Retention requirement for records and reports.*

(1) Unless otherwise directed by the Secretary, the school shall keep all records required under these regulations for 5 years, following the last date of the period for which the loan was intended.

(2) Unless otherwise directed by the Secretary, the school shall also keep, for 5 years after their completion, copies of reports and other forms utilized by the school related to PLUS loans.

(3) In the event of the closure, termination, suspension or change of ownership of a participating school, that school or its successor must make provision for the retention of the records and reports required by these regulations and for access to these records and reports for purposes of paragraph (d) of this section.

(4) Records and reports may be kept on microfilm or computer format.

(d) *Federal audits.* For purposes of audit and examination, the school shall give the Secretary, the Comptroller General of the United States, or any of their duly authorized representatives access to records required by these regulations and by 34 Part 668 (Student Assistance General Provisions) and to any other pertinent books, documents, papers and records.

(e) *Non-Federal audits.* (1) The school shall, in conformance with 34 CFR Part 668 (Student Assistance General Provisions), audit or have audited under its direction, all of the school's PLUS transactions to determine at a minimum—

(i) The fiscal integrity of financial transactions and reports; and

(ii) Whether the transactions are in compliance with the applicable laws and regulations.

(2) Audits shall be performed in accordance with the Department of Education's "Audit Guide for the Guaranteed Student Loan Program."

(3) The school shall have an audit performed at least once every two years. Each audit must cover the entire period of time that elapsed since the last audit that was performed.

(4) The school shall submit the audit report to the appropriate regional office of the Department of Education's Audit Agency for review.

(20 U.S.C. 1078–2, 1082, 1083)

Subpart F—Limitation, Suspension, or Termination of Lender Eligibility Under the Federal Parent Loans for Undergraduate Students Program

§ 683.100 Purpose and scope.

(a) This subpart establishes rules for the limitation, suspension, or termination of the eligibility of an otherwise eligible lender to participate in the Federal PLUS Program. These rules apply to a lender that violates any provision of the Federal PLUS program statute or any regulation, special arrangement, agreement, or limitation prescribed under the Federal PLUS program.

(b) This subpart does not apply to a determination that an organization fails to meet the definition of "lender" in § 683.10, nor to a school's loss of lending eligibility due to its default experience under § 683.88.

(c) This subpart also does not apply to administrative action by the Department of Education, based on any alleged violation of—

(1) Title VI of the Civil Rights Act of 1964, which is governed by 34 CFR Parts 100 and 101;

(2) Title IX of the Education Amendments of 1972 (relating to sex discrimination), which is governed by 34 CFR Part 106; or

(3) The Family Educational Rights and Privacy Act of 1974 (§ 438 of the General Education Provisions Act, as amended) which is governed by 34 CFR Part 99.

(20 U.S.C. 1078–2, 1080, 1082, 1085f–1)

§ 682.101 Definitions of terms used in this subpart.

Designated ED official: An official of the United States Department of Education to whom the Secretary has delegated the responsibility for initiating and pursuing limitation, suspension, and termination procedures.

Limitation: The continuation of a lender's eligibility, subject to compliance with special conditions set by the Secretary as a result of a limitation or termination proceeding.

Presiding officer: An impartial person who has no prior involvement with the facts giving rise to a limitation, suspension or termination proceeding, and who is selected by the Secretary to conduct a hearing.

Suspension: The removal of a lender's eligibility for a specified period of time or until the lender meets certain requirements.

Termination: The removal of a lender's eligibility for an indefinite period of time.

(20 U.S.C. 1078–2, 1080, 1082, 1085f–1)

§ 682.102 Effect on prior participation.

Limitation, suspension, or termination proceedings do not affect a lender's responsibilities, or rights to benefits and claim payments, that are based on the lender's prior participation in the program, except as provided in § 682.109.

(20 U.S.C. 1078–2, 1080, 1082, 1085f–1)

§ 682.103 Informal compliance procedure.

(a) If the Secretary receives a complaint, or other information that the Secretary believes to be reliable, indicating that a lender may be violating applicable laws, regulations, special arrangements, agreements, or limitations, the Secretary may give the lender a reasonable opportunity to—

(1) Respond to the complaint or other information;

(2) Show that the matter has been corrected; or

(3) Submit an acceptable plan to correct the violation and prevent its recurrence.

(b) Limitation, suspension or termination procedures need not be delayed during the informal compliance procedure under paragraph (a) if the Secretary believes—

(1) The delay would harm the Federal PLUS program; or

(2) The informal compliance procedure would not correct the alleged violation.

(20 U.S.C. 1078–2, 1080, 1082, 1085f–1)

§ 682.104 Emergency action.

(a) The Secretary, through a designated ED official, may take emergency action to stop issuing insurance commitments to a lender if the designated ED official—

(1) Receives information, which the official believes to be reliable, that the lender is violating applicable laws, regulations, special arrangements, agreements, or limitations;

(2) Determines that immediate action is necessary to prevent the likelihood of substantial losses by the Federal Government, students or parents; and

(3) Determines that the likelihood of loss outweighs the importance of following the procedures for limitation, suspension, or termination.

(b) The designated ED official begins an emergency action by notifying the lender, by certified mail with return receipt requested, of the action and the reasons for it. The effective date of the action is the date that the notice is mailed.

(c) An emergency action does not exceed 30 days unless a limitation, suspension, or termination proceeding is begun before that period expires. In that event, the emergency action may be extended until the completion of the proceeding, including any appeal that may be made to the Secretary.

(d) If a limitation, suspension, or termination proceeding is begun, the Secretary provides the lender, upon request, an opportunity to demonstrate that the emergency action is unwarranted.

(20 U.S.C. 1078–2, 1080, 1082, 1085f–1)

§ 682.105 Suspension proceedings.

(a) *Scope and consequences.* A suspension removes a lender's eligibility under the Federal PLUS program for a period of time. That period does not exceed 60 days from the effective date of the suspension unless—

(1) The lender and the designated ED official agree to an extension, if the lender has not requested a hearing; or

(2) The designated ED official begins a limitation or termination proceeding.

(b) *Procedure.* (1) The designated ED official begins a suspension proceeding by sending a notice to the lender by certified mail with return receipt requested. In the notice, the designated ED official—

(i) Informs the lender of the Secretary's intent to suspend the lender's eligibility, cites the consequences of that action, and identifies the alleged violations on which that action is based;

(ii) Specifies the proposed effective date of the suspension, which is at least 20 days after the date of mailing of the notice of intent;

(iii) Informs the lender that the suspension will not take effect on the date specified in the notice if the designated ED official receives, at least five days before that date, a request for a hearing or written material showing why the suspension should not take place; and

(iv) Asks the lender to correct voluntarily the alleged violation(s).

(2) If the lender does not request a hearing but submits written material the designated ED official considers that material and notifies the lender that—

(i) The proposed suspension is dismissed; or

(ii) The suspension is effective as of a specified date.

(3) If the lender requests a hearing by the time specified in paragraph (b)(1)(iii) of this section the designated ED official sets the date and place. The date is at least 15 days after the designated ED official receives the request. No suspension takes place until a hearing is held.

(4) A presiding officer conducts the hearing and a written record of the hearing is made.

(5) At the hearing, the presiding officer shall consider any written material presented before the hearing and all other evidence presented during the hearing.

(6) If the presiding officer concludes that the suspension is warranted, the presiding officer issues an initial decision suspending the lender's eligibility.

(7) The Secretary reviews the initial decision of the presiding officer and issues a final decision. The Secretary adopts the initial decision unless it is clearly unsupported by the evidence.

(c) Notice of the suspension is promptly mailed to the lender. The suspension takes effect either on the date that the initial decision notice is mailed to the lender or on the original proposed effective date stated in the notice of intent, whichever is later.

(d) If the designated ED official begins a limitation or termination proceeding before the suspension period ends, the suspension period may be extended until the completion of that proceeding, including any appeal to the Secretary.

(20 U.S.C. 1078–2, 1080, 1082, 1085f–1)

§ 683.106 Limitation or termination proceedings.

(a) *Scope and consequences.* A limitation or termination either—

(1) Limits in a specified manner the eligibility of a lender to participate in the Federal PLUS program; or

(2) Removes the eligibility of a lender to make any new Federal PLUS loans.

(b) *Procedure.* (1) The designated ED official begins a limitation or termination proceeding, whether or not a suspension proceeding has begun, by sending the lender a notice by certified mail with return receipt requested. In the notice, the designated ED official—

(i) Informs the lender of the Secretary's intent to limit or terminate the lender's eligibility, cites the consequences of that action, identifies the alleged violations on which that action is based, and in the case of a limitation states the limits which may be imposed;

(ii) Specifies the proposed effective date of the limitation or termination, which is at least 20 days after the date of mailing of the notice of intent;

(iii) Informs the lender that the limitation or termination will not take effect on the date specified in the notice if the designated ED official receives, at least 5 days before that date, a request for a hearing or written material showing why the limitation or termination should not take place; and

(iv) Asks the lender to correct voluntarily the alleged violation(s).

(2) If the lender does not request a hearing but submits written material the ED official considers that material and notifies the lender that either—

(i) The proposed action is dismissed;

(ii) Limitations are effective as of a specified date; or

(iii) The termination is effective as of a specified date.

(3) If the lender requests a hearing by the time specified in paragraph (b)(1)(iii) of this section the designated ED official sets the date and place. The date is at least 15 days after the designated ED official receives the request. No proposed limitation or termination takes place until after a hearing is held.

(4) A presiding officer conducts the hearing, and a written record of the hearing is made.

(5) At the hearing the presiding officer shall consider any written material presented before the hearing and all other evidence presented during the hearing.

(6) If the presiding officer concludes that limitation or termination is warranted the presiding officer issues an initial decision that limits or terminates the lender's eligibility.

(7) If a termination action is brought against a lender, and the presiding officer believes a limitation to be more appropriate, the presiding officer may issue a decision imposing one or more limitations on a lender rather than terminating its eligibility.

(c) *Expedited hearings.* With the approval of the presiding officer and the consent of the designated ED official and the lender any time schedule specified in this section may be shortened.

(20 U.S.C. 1078–2, 1080, 1082, 1085f–1)

§ 683.107 Initial and final decisions.

(a) The presiding officer issues an initial decision in any limitation, suspension, or termination proceeding based on findings of fact and conclusions of law. The presiding officer shall base findings of fact only on evidence considered at the hearing and matters given official notice. The presiding officer's initial decision is mailed promptly to the lender.

(b) In a suspension proceeding, the Secretary reviews the presiding officer's initial decision and issues a final decision. The Secretary adopts the initial decision unless it is clearly unsupported by the evidence.

(c)(1) In a limitation or termination proceeding, the presiding officer's initial decision automatically becomes the Secretary's final decision 20 days after it is issued unless, within that 20-day period, the lender or designated ED official appeals the decision to the Secretary.

(2) Within a period of time specified by the Secretary the appealing party may submit additional written material including exceptions to the initial decision, proposed findings and conclusions, and supporting briefs and statements. The Secretary sets a time by which the opposing party shall respond. Any party submitting material to the Secretary shall provide a copy to each party that participated in the hearing.

(3) The presiding officer's initial decision limiting or terminating the lender's eligibility does not take effect pending the appeal, unless the Secretary determines that a stay of the effective date would seriously and adversely affect the Federal PLUS program, students or parents.

(4) After an appeal the Secretary issues a final decision affirming, modifying, or reversing the initial decision, including a statement of reasons for the Secretary's decision.

(20 U.S.C. 1078–2, 1080, 1082, 1085f–1)

§ 683.108 Verification of mailing dates.

The Department of Education's mailing dates are verified by the original receipts from the United States Postal Service.

(20 U.S.C. 1078–2, 1080, 1082, 1085f–1)

§ 683.109 Effect of suspension or termination proceeding.

After the effective date of a lender's suspension or termination, the Secretary does not insure new loans made by that lender. Also, the Secretary may prohibit the lender from making further disbursements on a loan for which an insurance commitment already has been issued.

(20 U.S.C. 1078–2, 1080, 1082, 1085f–1)

§ 683.110 Limitation.

A limitation may include—

(a) A limit on the number or total amount of Federal PLUS loans that a lender may make, purchase, or hold;

(b) A limit on the number or total amount of Federal PLUS loans a lender may make to parents on behalf of students at a particular school; and

(c) Other reasonable requirements or conditions.

(20 U.S.C. 1078–2, 1080, 1082, 1085f–1)

§ 683.111 Reimbursements, refunds, and offsets.

(a) The Secretary, designated ED official, or presiding officer may require a lender to take reasonable corrective action to remedy a violation of applicable laws, regulations, special arrangements, agreements, or limitations.

(b) The corrective action may include payment to the Secretary or to designated recipients of any funds that the lender improperly received, withheld, disbursed, or caused to be disbursed. Corrective action may, for example, relate to—

(1) Interest benefits, special allowance, or other claims paid by the Secretary; or

(2) Required refunds to students whose parents receive PLUS loans on their behalf, in the case of a school lender.

(c) If a final decision requires a lender to reimburse or make any payment to the Secretary, the Secretary may offset these claims against any benefits or claims due the lender.

(20 U.S.C. 1078–2, 1080, 1082, 1085f–1)

§ 683.112 Reinstatement after termination.

(a) A lender whose eligibility has been terminated may file a request for reinstatement of its eligibility. This request may not, however, be filed

within 18 months of the effective date of the termination.

(b) The reinstatement request must be in writing and must show that the lender has corrected the violation(s) on which its termination was based and meets all qualifications for eligibility.

(c) A school lender whose eligibility as a participating school has been terminated under 34 CFR Part 668 (Student Assistance General Provisions) may not be reinstated as a Federal PLUS program lender until it is reinstated as a participating school. However, the school may request reinstatement as both a school and a lender at the same time.

(d) The Secretary, within 60 days of receiving the reinstatement request either—

(1) Grants the request;

(2) Denies the request; or

(3) Grants the request subject to limitations.

(e)(1) If the Secretary denies the request or establishes other limitations the lender, upon request, will be granted an opportunity, including a meeting, to show why its eligibility should be fully reinstated.

(2) A lender that is reinstated with limitations may participate in the Federal PLUS program under the limitations pending this appeal.

(20 U.S.C. 1078-2, 1080, 1082, 1088f-1)

§ 683.113 Removal of limitation.

(a) A lender may request removal of the Secretary's limitation imposed under these regulations no sooner than 12 months after the effective date of the limitation.

(b) The request must be in writing and show that the lender has corrected the violation(s) on which the limitation was based.

(c) The Secretary within 60 days of receiving the request, either—

(1) Grants the request;

(2) Denies the request; or

(3) Grants the request subject to other limitations.

(d) If the Secretary denies the request or establishes other limitations the lender, upon request, will be granted an opportunity, including a meeting, to show why its eligibility should be fully reinstated.

(e) The lender may participate in the Federal PLUS program under the limitations pending this appeal.

(20 U.S.C. 1078-2, 1080, 1082, 1088f-1)

Appendix A—Standards for Acceptable Refund Policies by Participating Schools

For purposes of § 683.8(b) the Secretary considers guidelines VI, VII, and VIII of the following document to be acceptable elements of a fair and equitable school refund policy. The document, which is reproduced in its entirety for the convenience of the reader, was developed by the National Association of College and University Business Officers. The document does not affect a school's obligation to comply with other Department of Education regulations.

Policy Guidelines for Refund of Student Charges

(I) *The governing board of the institution should review and approve the schedule of all institutional charges and refund policies applicable to students.* The pricing of services and refund policies have important consequences to students, parents, the institution, and society; as such, pricing and refund policies should receive board attention and approval.

(II) *Institutions should seek consumer views in the process of establishing and amending charge and refund structures.* Decisions regarding institutional funds are ultimately the sole responsibility of the institution's legally designated fund custodians. However, consumer concerns do affect decision making, and involving consumers in decision making related to charges and refunds is a desirable approach for assessing student needs and creating public awareness of institutional requirements.

(III) *Institutions should publish a current schedule of all student charges, a statement of the purpose for such charges, and related refund policies, and have them readily available free of charge to current and prospective students.* Students and parents have a right to know what charges they will be expected to pay and what will or will not be refunded. They also have a right to know what services accompany payment of the charges. Informational materials published free for students and prospective students are ideal for this purpose.

(IV) *Institutions should clearly designate all optional charges as "optional" in all published schedules and related materials. Clearly, charges that are mandatory and charges that are optional must be plainly differentiated in all printed materials.* Also, the institution should state clearly in its schedule if a charge is optional for some students but required for others. Statements accompanying the schedule may include institutional endorsements of the optional program or service.

(V) *Institutions should clearly identify charges and deposits that are nonrefundable as "nonrefundable" on all published schedules.* Institutions determine on an individual basis which of their charges are refundable or nonrefundable. In general, admission fees, application fees, laboratory fees, facility and student activity fees, and other similar charges are not refundable. These fees are generally charged to cover the cost of activities such as processing applications and other student information, reserving academic positions, and establishing the limits of institutional programs and services, reserving housing space, and otherwise setting the fixed costs of the institution for the coming academic periods.

Institutions determine on an individual basis which of their deposits are refundable or nonrefundable. Some deposits will be nonrefundable or will be credited to a student's account (e.g., tuition deposits). Others are refundable according to the terms of the deposit agreement (e.g., deposits for breakage).

(VI) *Institutions should refund housing rental charges, less a deposit, so long as written notification of cancellation is made prior to a well-publicized date that provides reasonable opportunity to make the space available to other students.* Written notification on or before the beginning of the term of the contract is necessary to ensure utilization of housing units. During the term of the contract, room charges are generally not refundable. However, based on the program offered, space availability, debt service requirements, State and local laws, and other individual circumstances, institutions may provide for some more flexible refund guideline for housing.

(VII) *Institutions should refund board charges in full, less a deposition, if written notification of cancellation is made prior to a well-publicized date that falls on or before the beginning of the term of the contract. Subsequent board charges should be refunded on a pro rata basis less a withdrawal fee.* It is reasonable to make a refund for those goods and services not consumed. The withdrawal charge should reflect that portion of an institution's costs that are fixed for the term of the contract.

(VIII) *The institutional tuition refund policy for an academic period should include the following minimum guidelines:*

A. *The institution should refund 100 percent of the tuition charge, less a deposit fee, if written notification of cancellation is made prior to a well-publicized date that falls on or before the first day of classes.*

B. *The institution should refund at least 25 percent of the tuition charge if written notification of withdrawal is made during the first 25 percent of the academic period.* It is reasonable to

refund tuition charges on a sliding scale if a student withdraws from his or her program prior to the end of the first 25 percent of the academic period unless state law imposes a more restrictive refund policy.

(IX) *The institution should assess no penalty charges where the institution, as opposed to the student, is in error. The institution should make refunds in cases where the institution has assessed charges in error.* Penalty charges, such as those involving late registration fees, change of schedule fees, late payment fees, should not be assessed if it is determined that the student is not responsible for the action causing the charge to be levied.

(X) *Institutions should advise students that any notifications of withdrawal or cancellation and requests for refund must be in writing and addressed to the designated institutional officer.* A student's written notification of withdrawal or cancellation and request for a refund provides an accurate record of transactions and also ensures that such request will be processed on a timely basis. Acceptance of oral requests is an undesirable practice.

(XI) *Institutions should pay or credit refunds due on a timely basis.* The definition of "timely basis' should include the time required to process a formal student request for refund, to process a check if required, and toi allow for mail delievery, when neccessary. If an institution has a policy that a refund of an inconsequential amount will not be made, this policy should be published in part of all materials related to refund policies.

(XII) *Institutions should publicize, as a part of their dissemination of information on charges and refunds, that an appeals process exists for students or parents who feel that individual circumstances warrant exceptions from published policy. The informational materials should include the name, title, and address of the official responsible.* Although charges and refund policies should reflect extensive consideration of student and institutional needs, it will not be possible to encompoes in these structures the variety of personal circumstances that may exist or develop. Institutions are required to provide a system of due process to their students, and charges and refund policies are legitimately a part of that process. Students and parents should be informed regularly of procedures for requesting information concerning exceptions to published policies.

[FR. Doc. 81-1880 Filed 1-16-81; 8:45 am]
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34 CFR Parts 791, 792, 793, 794

Teacher Corps Program Grants

AGENCY: Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary proposes to amend the regulations governing grants under the Teacher Corps Program. These proposed regulations implement the provisions of Section 502 of the Education Amendments of 1980. They also clarify the differences among the three types of projects funded under the program and organize the program into four parts to promote ease of understanding.

DATES: Comments must be received on or before March 5, 1981.

ADDRESSES: Comments on these proposed regulations should be submitted to Dr. Preston Royster, Teacher Corps Program, U.S. Department of Education, Room 720, Riviere Building, 1832 M Street, N.W., Washington, D.C. 20036.

FOR FURTHER INFORMATION CONTACT: Dr. Preston Royster. Telephone (202) 653-8320.

SUPPLEMENTARY INFORMATION: The regulations for the Teacher Corps Program, currently Part 793 of Title 34 of the Code of Federal Regulations, are reorganized by these proposed regulations into four parts.

34 CFR Part 791 contains provisions applicable to all types of projects under the program. The three other parts contain provisions specific to each type of project as follows:

34 CFR Part 792—Teacher Corps—Training Projects.

34 CFR Part 793—Teacher Corps—Youth Advocacy Projects.

34 CFR Part 794—Teacher Corps—Mathematics and Science Developmental Projects.

Part 794 implements Section 502 of the Education Amendments of 1980 authorizing the Secretary to award grants, under the Teacher Corps Program, to improve instruction in mathematics and science.

As proposed in the regulations, these projects are designed to—

(a) Develop or improve, and test curricular and instructional materials for teacher training in mathematics and science; and

(b) Provide training for teachers to increase their effectiveness in developing instructional materials and in teaching mathematics and science in schools that have a high concentration of children for low-income families.

The Secretary's interpretation of the authorizing statute focuses attention on teacher training because teacher training projects would be consistent with other types of projects under the Teacher Corps Program. The Secretary invites comments on this interpretation.

In addition to introducing these new types of projects, the proposed regulations make certain changes in the current regulations governing Teacher Corps Training Projects and Youth Advocacy Projects. These changes include the following:

(a) The proposed regulations delete the requirement that a project be conducted under the supervision of a policy board.

(b) The criteria the Secretary uses in selecting grantees have been rewritten for clarity.

(c) The proposed regulations contain a new selection criterion dealing with the involvement of the community council in developing, implementing, and evaluating a project.

(d) The proposed regulations permit greater flexibility in the use of existing community councils.

(e) Funding for the fourth and fifth years of projects would be limited to projects that, the Secretary determines, have proven exceptionally successful during their first three years and, because of their high promise, warrant further support to demonstrate and disseminate the educational improvements they have achieved.

Invitation To Comment

Interested persons are invited to submit comments and recommendations regarding these proposed regulations. Written comments and recommendations may be sent to the address given at the beginning of this preamble. All comments received on or before March 5, 1981 will be considered in the development of the final regulations. All comments submitted in response to these proposed regulations will be available for public inspection, during and after the comment period, in Room 720, Riviere Building, 1832 M Street, N.W., Washington, D.C., between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday of each week except Federal holidays.

Information Requirements

The Department particularly requests comments on whether the proposed regulations in this document would require transmission of information that is already being gathered by or is

available from any other agency or authority of the United States.

Regulatory Flexibility Act Analysis

The Regulatory Flexibility Act (Pub. L. 96–354, enacted Sept. 19, 1980) requires each Federal agency to prepare an initial regulatory flexibility analysis for each set of regulations that—

(1) Is published as a notice of proposed rulemaking after January 1, 1981; and

(2) Has a significant economic impact on a substantial number of small entities (small businesses, small organizations, or small governmental jurisdictions).

Because the Department has not yet established its own definitions of "small organization" and "small governmental jurisdiction" as contemplated by the Act, it is not possible to prepare a full initial regulatory flexibility analysis at this time. Further, since the regulations in this document are required by statute to be published in final form no later than May 31, 1981, it is impracticable to delay publication while the necessary definitions are being developed.

In these circumstances, the Regulatory Flexibility Act permits a waiver or delay of the initial regulatory flexibility analysis. If it is determined that these regulations are subject to that Act, the Secretary will prepare the necessary analyses at a later date.

As an interim measure, this document, to the maximum extent possible, includes information of the kind contemplated by the Regulatory Flexibility Act, including the reasons for the regulations, and any significant issues and alternatives for consideration by the public. To assist the Department in determining whether the Regulatory Flexibility Act applies to these regulations, and in complying with the Act's requirements, public comment is especially invited on the following matters:

(1) The number and kind of small entities (small businesses, small organizations, or small governmental jurisdictions) affected by the regulations.

(2) The reporting, recordkeeping, and compliance burdens imposed by the regulations on small entities.

(3) The types of professional skills necessary for preparation of any reports or records required by the regulations.

(4) Any Federal rules that may duplicate, overlap, or conflict with the regulations.

(5) Any significant alternatives that would accomplish the purposes of the applicable statute but would minimize any significant economic impact of the regulations on small entities. The Secretary is particularly interested in suggestions on alternatives such as the following:

- The establishment of differing reporting or compliance requirements or timetables that take into account the resources available to small entities.
- The clarification, consolidation, or simplification of compliance and reporting requirements for small entities.
- The use of performance rather than design standards.
- An exemption for small entities from coverage by part or all of the regulations.

Citation of Legal Authority

A citation of statutory or other legal authority has been placed in parentheses on the line following each substantive provision of these proposed regulations.

(Catalog of Federal Domestic Assistance Program No. 84.045, Teacher Corps Program)

Dated: January 13, 1981.

Shirley M. Hufstedler,

Secretary of Education.

The Secretary proposes to add a new Part 791 to Title 34 of the Code of Federal Regulations to read as follows:

PART 791—TEACHER CORPS PROGRAM

Subpart A—General

Sec.

791.1 What is the Teacher Corps Program?
791.2 [Reserved]
791.3 What regulations apply to the Teacher Corps Program?
791.4 What definitions apply to the Teacher Corps Program?

Subpart B—[Reserved]

Subpart C—How Does One Apply for a Grant?

791.20 Joint applications.
791.21 Institutions of higher education.
791.22 Local educational agencies.
791.23 Released time for educational personnel.
791.24 State approval of applications.

Subpart D—How Does the Secretary Make a Grant?

791.30 How does the Secretary evaluate an application?
791.31 What selection criteria does the Secretary use?
791.32 Separate grants.

Subpart E—[Reserved]

Subpart F—What are the Administrative Responsibilities of a Grantee?

791.50 Employment of project administrative staff.
791.51 Project director and project staff.
791.52 Members of the Teachers Corps.
791.53 Supervision of Teacher Corps members.
791.54 Coordination with State educational agency.

Authority: Title V–A of the Higher Education Act of 1965 (Pub. L. 89–329), as amended by the Education Amendments of 1980 (Pub. L. 96–374) (20 U.S.C. 1101 *et seq.*).

Subpart A—General

§ 791.1 What is the Teacher Corps Program?

(a) The Teacher Corps Program provides Federal financial assistance to—

(1) Strengthen the educational opportunities available to children in areas having concentrations of low-income families;

(2) Encourage colleges and universities to broaden their programs of teacher preparation; and

(3) Encourage institutions of higher education and local educational agencies (LEAs) to improve programs of training and retraining for teachers, teacher aides, and other educational personnel.

(b) Through the Teacher Corps Program the Secretary assists three types of projects:

(1) Teacher Corps Training Projects.

(2) Youth Advocacy Projects.

(3) Mathematics and Science Developmental Projects.

(20 U.S.C. 1101 *et seq.*)

§ 791.2 [Reserved]

§ 791.3 What regulations apply to the Teacher Corps Program?

The following regulations apply to the Teacher Corps Program:

(a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Part 75 (Direct Grant Programs) and 34 CFR Part 77 (General).

(b) The regulations in this Part 791.

(c)(1) For Teacher Corps Training Projects, the regulations in 34 CFR Part 792;

(2) For Youth Advocacy Projects, the regulations in 34 CFR Part 793; and

(3) For Mathematics and Science Developmental Projects, the regulations in 34 CFR Part 794.

(20 U.S.C. 3474)

§ 791.4 What definitions apply to the Teacher Corps program?

(a) *Definitions in EDGAR.* The following terms used in 34 CFR Parts 791 through 794 are defined in 34 CFR Part 77:

Applicant
Application
Award
Budget period
Department
EDGAR
Elementary school
Fiscal year

Grant period
Local educational agency (LEA)
Nonprofit
Nonpublic
Preschool
Private
Project
Project period
Public
Secondary school
Secretary
State
State educational agency (SEA)

(b) *Other definitions that apply to the Teacher Corps Program.* The following additional definitions apply to the regulations in this part and in 34 CFR Parts 792, 793, and 794:

"Feeder system."

This term means two, three, or four complete schools—

(1) That together include—

(i) All grade levels provided by the LEA; and

(ii) At least grades one through twelve;

(2) A majority of whose pupils enrolled in the elementary grades progress to the high school, or to the intermediate school if one is included; and

(3) A majority of whose children from the intermediate school, if one is included, progress to the high school.

"Institution of higher education" means an institution of higher education as defined in Section 1201 of the Higher Education Act of 1965, as amended.

"Low-income family" means a family with a child whom the LEA may count under Section 111 of Title I of the Elementary and Secondary Education Act of 1965, as amended.

"Other educational personnel" means administrators, supervisors, and other specialized educational personnel.

"Teacher" means a person who has a teaching certificate valid in the State in which the Teacher Corps project is located, and who has had full-time, paid teaching experience.

"Teacher aide."

(1) This term means a person employed as a paraprofessional in a school or correctional facility who assists a teacher in performing educational duties.

(2) The term does not include teacher-interns or noneducational personnel.

(3) State and local rules determine whether certification is required for a teacher aide.

"Teacher-intern."

(1) This term means a person who—

(i) Is recruited to serve in a Teacher Corps project;

(ii) Has a bachelor's degree or its equivalent, with or without a teaching certificate; but

(iii) Has not had full-time, paid teaching experience.

(2) However, a person who has successfully completed two or more years of a program for which credit was given toward a bachelor's degree may serve as a teacher-intern if there are not enough teacher-itern candidates who have a bachelor's degree.

"Teacher Corps members."

(1) This term means persons who participate in a project conducted under 34 CFR Part 792 or 793 and who are—

(i) Teachers and other educational personnel employed by a project school;

(ii) Volunteers who serve as part-time tutors or full-time instructional assistants in project schools;

(iii) Teacher-interns; or

(iv) Team leaders.

(2) The term does not include the project director and project administrative staff.

(20 U.S.C. 3474)

Subpart B—[Reserved]

Subpart C—How Does One Apply for a Grant?

§ 791.20 Joint applications.

Each application for a project under the Teacher Corps Program must be a joint application submitted by the eligible parties listed in 34 CFR 792.2, 34 CFR 793.2, or 794.2, as applicable.

(20 U.S.C. 1103)

§ 791.21 Institutions of higher education.

(a) An application from one or more institutions of higher education must include a description of each institution of higher education that will participate in the project, including—

(1) Its degree offerings in education; and

(2) Its preservice and in-service graduate training program in education.

(b) The application must also include a description of—

(1) Past and current efforts by the institution of higher education to improve its educational personnel training programs; and

(2) The way those efforts relate to the proposed project.

(20 U.S.C. 1101, 1103, and 3474)

§ 791.22 Local educational agencies.

An application from one or more LEAs must include the following:

(a) A brief description of each project school, including the size of the educational staff and the grade structure and other relationships among the schools.

(b) A description of the past and current efforts to improve each project school and the way those efforts relate to the proposed project.

(c) A description of the LEA's current teacher development program.

(d) An assurance that educational personnel employed by each project school will be involved in planning and carrying out the project in that school.

(20 U.S.C. 1101, 1103, and 3474)

§ 791.23 Released time for educational personnel.

If an LEA intends to use grant funds to pay the cost of releasing educational personnel from their regular duties in a project school to enable them to participate in training in a Teacher Corps project, the LEA must demonstrate in its application that the success of the project will be jeopardized by the lack of compensation for released time.

(20 U.S.C. 1106)

§ 791.24 State approval of applications.

(a) The Secretary does not approve an application unless the State educational agency (SEA) of the State in which the project is located has approved the application. (See, EDGAR 34 CFR 75.154, State approval procedures.)

(b) The SEA shall approve an application that—

(1) Conforms with all applicable State laws, rules, and regulations; and

(2) Is consistent with overall plans for teacher education in that State.

(20 U.S.C. 1103, 3474)

Subpart D—How Does the Secretary Make a Grant?

§ 791.30 How does the Secretary evaluate an application?

(a) The Secretary evaluates an application on the basis of the criteria in § 791.31. Additional criteria for Teacher Corps Training Projects, Youth Advocacy Projects, and Mathematics and Science Developmental Projects are found in 34 CFR Parts 792, 793, and 794 respectively.

(b) The Secretary awards up to 30 possible points for the criteria in § 791.31.

(c) The maximum possible score for each complete criterion is indicated in parentheses.

(20 U.S.C. 1101 *et seq.* and 3474)

§ 791.31 What selection criteria does the Secretary use?

(a) *Plan of Operation.* (10 points)

(1) The Secretary reviews each application for information that shows the quality of the plan of operation for the project.

(2) The Secretary looks for information that shows—

(i) High quality in the design of the project;

(ii) An effective plan of management that ensures proper and efficient administration of the project;

(iii) A clear description of how the objectives of the project relate to the purpose of the program;

(iv) The way the applicant plans to use its resources and personnel to achieve each objective; and

(v) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(b) *Quality of key personnel.* [7 points]

(1) The Secretary reviews each application for information that shows the quality of the key personnel the applicant plans to use on the project.

(2) The Secretary looks for information that shows—

(i) The qualifications of the project director;

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (b)(2)(i) and (ii) of this section plans to commit to the project; and

(iv) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as members of racial or ethnic minority groups, women, handicapped persons, and the elderly.

(3) To determine the qualifications of a person, the Secretary considers evidence of past experience and training, in fields related to the objectives of the project, as well as other information that the applicant provides.

(c) *Budget and cost effectiveness.* (5 points)

(1) The Secretary reviews each application for information that shows that the project has an adequate budget and is cost effective.

(2) The Secretary looks for information that shows—

(i) The budget for the project is adequate to support the project activities; and

(ii) Costs are reasonable in relation to the objectives of the project.

(d) *Evaluation plan.* (5 points)

(1) The Secretary reviews each application for information that shows the quality of the evaluation plan for the project. (See 34 CFR 75.590, Evaluation by the grantee.)

(2) The Secretary looks for information that shows methods of evaluation that are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable.

(e) *Adequacy of resources.* (3 points)

(1) The Secretary reviews each application for information that shows that the applicant plans to devote adequate resources to the project.

(2) The Secretary looks for information that shows—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies that the applicant plans to use are adequate.

(20 U.S.C. 1101 *et seq.* and 3474)

§ 791.22 Separate grants.

(a) If an application is selected for funding, the Secretary awards a grant to the institution of higher education and a grant to the LEA. If an SEA or State correctional facility participates in a project, the Secretary may award a separate grant to the SEA or correctional facility.

(b) An institution of higher education must use its grant funds under this program to enable its school, college, or department of education to participate in the project.

(c) If the application includes more than one institution of higher education, more than one LEA, or more than one correctional facility, the Secretary may award a grant to one or more of those institutions or agencies.

(d) (1) A Teacher Corps grantee—

(i) May not participate in more than one Teacher Corps project simultaneously; and

(ii) Is not eligible to receive a grant to carry out a new Teacher Corps project for two years after the end of the first project. However, a grantee under 34 CFR Part 792 (Teacher Corps Training Projects) or 34 CFR Part 793 (Youth Advocacy Projects) may receive a grant to carry out a project under 34 CFR Part 794 (Mathematics and Science Developmental Projects) that begins when the preceding project ends.

(2) If an LEA is divided into districts, these limitations apply to a district LEA that participates in a project.

(20 U.S.C. 1103 and 3474)

Subpart E—[Reserved]

Subpart F—What Are the Administrative Responsibilities of a Grantee?

§ 791.50 Employment of project administrative staff.

A grantee shall—

(a) To the extent possible hire the project's administrative staff from the grantee's regular employees; and

(b) In hiring its administrative staff, give consideration to persons who are broadly representative of the ethnic and cultural characteristics of the community served by the project.

(20 U.S.C. 1103 and 3474)

§ 791.51 Project director and project staff.

(a) Each project must have a project director.

(b) A grantee may appoint a temporary project director at the beginning of the initial project year.

(c) The grantee shall appoint a permanent project director before the end of the initial project year.

(20 U.S.C. 1103 and 3474)

§ 791.52 Members of the Teacher Corps.

Members of the Teacher Corps—

(a) Are not Federal employees, except for the purposes of the Federal Tort Claims provisions of Title 28 of the United States Code; and

(b) Are not eligible to receive a loan under the National Direct Student Loan Program (authorized by Title IV–E of the Higher Education Act of 1965, as amended) or a grant under the Supplemental Educational Opportunity Grant Program (authorized by Title IV A–2 of the Higher Education Act of 1965, as amended).

(20 U.S.C. 1103)

§ 791.53 Supervision of Teacher Corps members.

(a) Teacher Corps members must be under the direct supervision of the LEA to which they are assigned.

(b) Subject to the requirements concerning teacher-interns in Teacher Corps projects, the LEA shall retain the authority to—

(1) Assign Teacher Corps members within its system;

(2) Transfer Teacher Corps members within its system;

(3) Determine the terms and conditions of assignment of Teacher Corps members; and

(4) Determine the subject matter to be taught.

(20 U.S.C. 1103)

§ 791.54 Coordination with State education agency.

The grantee shall keep the SEA informed of the progress of the project, including project matters that would contribute to the improvement of State teacher certification requirements.

(20 U.S.C. 1101 *et seq.* and 3474)

The Secretary proposes to add a new Part 792 to Title 34 of the Code of Federal Regulations to read as follows:

PART 792—TEACHER CORPS—TRAINING PROJECTS

Subpart A—General

Sec.

792.1 What are Teaching Corps Training Projects?
792.2 Eligible parties.
792.3 What regulations apply to Teacher Corps Training Projects?
792.4 What definitions apply to Teacher Corps Training Projects?

Subpart B—What Kinds of Projects Does the Secretary Assist under This Program?

792.10 Nature of Teacher Corps Training Projects.
792.11 Activities of an institution of higher education.
792.12 Activities of an LEA.

Subpart C—How Does One Apply for a Grant?

792.20 Joint participation required.
792.21 Project schools.

Subpart D—How Does the Secretary Make a Grant?

792.30 How does the Secretary evaluate an application?
792.31 What selection criteria does the Secretary use?
792.32 Project duration.

Subpart E—What Conditions Must Be Met by a Grantee?

792.40 Community council.
792.41 Participation.
792.42 First year of project.

Training

792.43 Training by institutions of higher education.
792.44 Training: General.
792.45 Training program for teacher-interns.
792.46 Teacher-interns.

Allowable Costs and Required Expenditures

792.47 General allowable costs: institution of higher education.
792.48 General allowable costs: LEA.
792.49 Stipends.
792.50 Compensation.
792.51 Travel expenses.
792.52 Medical insurance.

Authority: Title V–A of the Higher Education Act of 1965 (Pub. L. 89–329), as amended by the Education Amendments of 1980 (Pub. L. 96–374) (20 U.S.C. 1101 *et seq.*).

Subpart A—General

§ 792.1 What are Teacher Corps Training Projects?

(a) Teacher Corps Training Projects provide specialized programs of training—and, if necessary, retraining—to enable teachers, teacher-aides, teacher-interns, and other educational personnel to work more effectively in schools that have a high concentration of children from low-income families.

(b) Teacher Corps Training Projects do not provide specialized training such as that required for school counseling, teaching handicapped children, or teaching vocational education.

(20 U.S.C. 1103)

§ 792.2 Eligible parties.

The following are eligible to apply for a grant to carry out a Teacher Corps Training Project:

(a) A local educational agency (LEA).

(b) An institution of higher education.

(c) A State educational agency (SEA).

(20 U.S.C. 1103 and 3474)

§ 792.3 What regulations apply to Teacher Corps Training Projects?

The following regulations apply to Teacher Corps Training Projects:

(a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Part 75 (Direct Grant Programs) and 34 CFR Part 77 (General).

(b) The regulations in 34 CFR Part 791.

(c) The regulations in this Part 792.

(20 U.S.C. 3474)

§ 792.4 What definitions apply to Teacher Corps Training Projects?

The definitions in 34 CFR 791.4 apply to projects under this part.

(20 U.S.C. 3474)

Subpart B—What Kinds of Projects Does the Secretary Assist Under This Program?

§ 792.10 Nature of Teacher Corps Training Projects.

The Secretary awards grants under this part for projects designed to—

(a) Develop educational methods and procedures for increasing learning opportunities for children in areas that have a high concentration of low-income families;

(b) Develop and demonstrate innovative and improved approaches to train teachers, teacher-aides, teacher-interns, and other school personnel to teach these children; and

(c) Install and disseminate improved practices of teacher education.

(20 U.S.C. 1101 *et seq.* and 3474)

§ 792.11 Activities of an institution of higher education.

The Secretary provides assistance under this part to an institution of higher education to carry out activities that include, but are not restricted to, the following:

(a) Recruiting, selecting, and enrolling Teacher Corps members.

(b) Training Teacher Corps members.

(20 U.S.C. 1103)

§ 792.12 Activities of an LEA.

The Secretary provides assistance under this part to an LEA to carry out activities that include, but are not restricted to the following:

(a) Recruiting, selecting, and enrolling Teacher Corps members.

(b) Training Teacher Corps members.

(20 U.S.C. 1103)

Subpart C—How Does One Apply for a Grant?

§ 792.20 Joint participation required.

(a) In its application an applicant for a grant for a Teacher Corps Training Project shall provide for the joint participation in the proposed project by—

(1) One or more LEAs;

(2) One of more institutions of higher education; and

(3) A community council established under § 792.40.

(b) In its application the applicant may also provide for the participation in the project by an SEA to provide training to Teacher Corps members.

(c) The institutions and agencies that will participate in the proposed project shall collaborate in planning the project.

(d) If a community council, as described in § 792.40, exists prior to the submission of the application, the applicant shall also involve the council in planning the project.

(e) The applicant shall involve the educational personnel of a proposed project school in planning the proposed project in that school.

(20 U.S.C. 1103; EDGAR, 34 CFR 75.127–75.129)

§ 792.21 Project schools.

(a)(1) In its application an applicant for a grant for a Teacher Corps Training Project shall provide for the inclusion in the proposed project, if feasible, of schools that constitute a feeder system.

(2) If the applicant LEA does not have a feeder system, the following are acceptable alternatives:

(i) A single school if that school includes grades one through twelve.

(ii) More than four schools if additional schools are needed to include all grade levels in the feeder system.

(iii) More than four schools if one or more schools in the feeder system employ 12 or fewer teachers.

(iv) Two to four schools in a feeder system that does not include a high school (grades eight or nine through twelve) if the high school is in a separate LEA.

(b) If the alternatives in paragraph (a) of this section do not fit the organizational pattern of the applicant LEA, it may propose another arrangement provided the entire educational staffs of schools serving a definable low-income community are included.

(c) Each project school that includes elementary grades must be eligible for a project under Title I of the Elementary and Secondary Education Act of 1965, as amended.

(20 U.S.C. 1103)

Subpart D—How Does the Secretary Make A Grant?

§ 782.30 How does the Secretary evaluate an application?

(a) The Secretary evaluates an application for a grant for a Teacher Corps Training Project on the basis of—

(1) The criteria in § 782.31; and

(2) The criteria in 34 CFR 791.31 as follows:

(i) Plan of operation. (10 points) (See 34 CFR 791.31(a)).

(ii) Quality of key personnel. (7 points) (See 34 CFR 791.31(b)).

(iii) Budget and cost effectiveness. (5 points) (See 34 CFR 791.31(c)).

(iv) Evaluation plan. (5 points) (See 34 CFR 791.31(d)).

(v) Adequacy of resources. (3 points) (See 34 CFR 791.31(e)).

(b) The Secretary awards—

(1) Up to 70 possible points for the criteria in § 782.31; and

(2) Up to 30 possible points for the criteria in 34 CFR § 791.31.

(c) the maximum possible score for each complete criterion in § 782.31 is indicated in parentheses.

(20 U.S.C. 1103 and 3474)

§ 782.31 What selection criteria does the Secretary use?

(a) *Improved educational opportunities.* (20 points)

The Secretary reviews each application for information that shows that the project is likely to improve—

(1) The learning of children of low-income families; and

(2) The capabilities of the educational personnel in the project schools, including teacher-interns, to—

(i) Provide instruction that is sensitive to the needs of diverse cultures;

(ii) Deal effectively with children who have a wide variety of educational needs; and

(iii) Identify children with learning and behavioral problems, establish their special needs, and prescribe appropriate learning activities.

(b) *Educational personnel development system.* (25 points)

The Secretary reviews each application for information that shows that the project is likely to improve the applicant's personnel development system for persons who serve or who are preparing to serve in schools attended by children of low-income families. The Secretary looks for information that shows—

(1) A likely improvement in the methods used by the applicants to train educational personnel; and

(2) The extent to which preservice and in-service training are integrated.

(c) *Continuation of improvements.* (15 points)

The Secretary reviews each application for information that shows that, to the extent possible, the educational improvements made as a result of the project will continue after Federal funding ends.

(d) *Collaboration.* (10 points)

The Secretary reviews each application for information—in the form of a detailed governance plan—that shows the extent to which the applicants, the community council, affected teachers, local school administrators, and—in the case of a Youth Advocacy Project under 34 CFR Part 793—the correctional facility will collaborate in planning, carrying out, and evaluating the project.

(20 U.S.C. 1101 et. seq. and 3474)

§ 782.32 Project duration.

(a) *Basic Project.* (1) Eligible parties may submit an application for a project period of up to five years.

(2) The Secretary awards grants for the second and third years of a project subject to the provisions of EDGAR, 34 CFR 75.253 (Continuation of multi-year project after the first budget period).

(b) *Extended Project.* (1) The Secretary may award to a grantee a fourth or fifth year of funding to enable the grantee to demonstrate and disseminate its educational improvements to other schools, educational institutions communities, and interested persons.

(2) The Secretary provides funding for the fourth and fifth year of the project only if the Secretary determines that—

(i) The requirements of EDGAR, 34 CFR 75.253 have been met;

(ii) The grantee has been exceptionally successful in achieving the objectives of its basic project;

(iii) The educational processes and products that have been developed are of exceptionally high quality and worthy of demonstration and dissemination; and

(iv) The demonstration and dissemination activities the grantee proposes to carry out are likely to lead to the widespread adoption of those high-quality educational processes and practices by other schools.

(20 U.S.C. 1103)

Subpart E—What Condition Must Be Met by a Grantee?

§ 782.40 Community council.

(a) Each project must include an elected community council.

(b) The community council must be representative of—

(1) Parents of the children attending the project schools; and

(2) Other residents of the areas served by the project schools.

(c) An existing elected council that is broadly representative of the community in which the project is located may serve as the community council under this part.

(d)(1) The grantee shall hold a community-wide election to elect a community council for the project within three months after the date of the initial grant award if the community council referred to in paragraph (c) does not exist.

(2) For purposes of paragraph (d)(1) of this section, the term community-wide means within the attendance boundaries of the project schools.

(20 U.S.C. 1103)

§ 782.41 Participation.

(a) The institutions, agencies, and community council that participate in a project shall collaborate in carrying out and evaluating the project.

(b) The grantee shall involve the educational personnel of a project school in carrying out the project in that school.

(20 U.S.C. 1103)

§ 782.42 First year of project.

(a) During the first year of its project—or less, if these functions can be completed in a shorter time—the grantee shall—

(1) If necessary, further develop and organize the project;

(2) Hold an election for members of the community council;

(3) Hire the team leader;

(4) Recruit the teacher-interns; and

(5) Plan and develop any revisions of the project's objectives.

(20 U.S.C. 1103 and 3474)

Training

§ 792.43 Training by institutions of higher education.

(a) Each institution of higher education that receives a grant under this part shall provide training to Teacher Corps members, including preservice training for teacher-interns and in-service training for other educational personnel employed by the project schools.

(b) An institution of higher education that does not offer academic course work beyond the bachelor's degree level may provide training for volunteers and teacher aides.

(20 U.S.C. 1103)

§ 792.44 Training: general.

(a) Training of Teacher Corps members must be primarily field-based and carried out in the community served by the project.

(b)(1) Training for teachers and teacher-interns who have a bachelor's degree must be at the graduate level.

(2) However, training for teacher-interns who do not have a bachelor's degree may be at the undergraduate level.

(c) A grantee may provide training to prepare volunteers for service in the project.

(20 U.S.C. 1103)

§ 792.45 Training program for teacher-interns.

(a) The training program for a teacher-intern must be developed by the project director in consultation with the team leader and the institution of higher education that provides the training.

(b) The training must include—

(1) Practical classroom experience—related to the institution of higher education's degree and certification program—in each of the project schools;

(2) Academic study; and

(3) Practical experience and training in the community served by the project.

(c) The practical classroom experience of a teacher-intern may not average more than one half of each school day during the period of his or her internship.

(d) Training for a teacher-intern may be provided in an pre-school, early-childhood setting.

(e)(1) Training must be designed so that a teacher-intern begins his or her internship three months before the beginning of the second school year of the project and has the opportunity to complete the internship and receive a degree and teaching certification by the end of the third school year of the project.

(2) If a project does not have an initial planning year, the training of interns must begin three months before the beginning of the first school year of the project.

(20 U.S.C. 1103)

§ 792.46 Teacher-interns.

(a) Each project must include at least four teacher-interns.

(b) Each project may include up to one teacher-intern for each five teachers in the project schools if the LEA will employ all teacher-interns who complete their internships.

(c)(1) A grantee shall organize teacher-interns into teams that include at least four teacher-interns and one experienced teacher who serves as a team leader.

(2)(i) Each team shall spend a portion of the internship together in each project school.

(ii) However, if a project school has a teaching staff of fewer than 20 teachers, a team of two interns may be used.

(d) In recruiting teacher-interns, the grantee shall give consideration to persons who are broadly representative of the ethnic and cultural characteristics of the community served by the project.

(e) The Secretary publishes annually in the Federal Register a notice that explains how to apply for teacher-internships.

(f) The grantee may not use a teacher-intern—

(1) To replace or carry out the functions of a teacher who is or would otherwise have been employed in a project school; or

(2) As a substitute teacher.

(20 U.S.C. 1103)

Allowable Costs and Required Expenditures

§ 792.47 General allowable costs: institution of higher education.

In addition to the provisions of §§ 792.49, 792.50(c), 792.51, and 792.52, an institution of higher education may use its grant under this part to pay the following:

(a) The administrative costs of the community council.

(b) The cost of project administration, including planning, documentation, evaluation, and dissemination.

(c) The compensation of teacher-interns.

(20 U.S.C. 1103 and 1104)

§ 792.48 General allowable costs: LEA.

In addition to the provisions of §§ 792.49 through 792.52, an LEA may use its grant under this part to pay the following:

(a) The compensation of Teacher Corps members.

(b) The compensation for released time for educational personnel while in training, within the limitations of 34 CFR 791.23.

(c) The administrative costs of the community council.

(d) The cost of project administration, including planning, documentation, evaluation, and dissemination.

(20 U.S.C. 1103 and 1104)

§ 792.49 Stipends.

(a) *Training stipends for teachers and other educational personnel.* (1) An institution of higher education or LEA that receives a grant under this part may pay a training stipend to each of the teachers and other educational personnel of a project school who participates in training under this part during a period of the year, if any, not covered by a local employment contract.

(2) The training stipend—

(i) May not exceed $100 per week for any person; and

(ii) Must be reduced proportionally if the training is part-time.

(3) The grantees may use funds under their grants to pay up to 100 percent of the cost of stipends paid under paragraph (a) of this section.

(b) *Training stipends for teacher-interns.* (1)(i) The institution of higher education shall pay a training stipend of $175 per week to each teacher-intern during each period he or she receives training at that institution.

(ii) The institution of higher education may not pay this stipend during periods the teacher-intern serves in project schools.

(2) The training stipend must include an additional $25 per week for each dependent who receives more than one half of his or her support from the teacher-intern.

(3) The institution of higher education may use funds under its grant to pay up to 100 percent of the cost of stipends paid under paragraph (b) of this section.

(20 U.S.C. 1104)

§ 792.50 Compensation.

(a) *Teacher-interns.* (1) An LEA shall compensate a teacher-intern during each period he or she serves in project schools at a rate of $175 per week, subject to paragraph (a)(3) of this section.

(2) This compensation must include an additional $25 per week for each dependent who receives more than one half of his or her support from the teacher-intern, subject to paragraph (a)(3) of this section.

(3) The total compensation paid to a teacher-intern under paragraphs (a)(1) and (2) of this section may not exceed the compensation paid to a beginning teacher employed by the LEA for comparable period of time.

(4) The LEA may use funds under its grant to pay up to 90 percent of the compensation paid under paragraph (a) of this section.

(b) *Team leaders.* (1) The LEA employ each teacher-intern team leader.

(2) The LEA shall compensate a team leader at a rate comparable to that being paid to other personnel in the LEA who perform similar work.

(3) The LEA may use funds under its grants to pay up to 90 percent of the compensation paid under paragraph (b)(2) of this section.

(c) *Volunteers.* (1) Volunteers who serve as part-time tutors or full time instructional aides in project schools may be paid or unpaid, according to local policy.

(2) If a grantee pays volunteers, it must compensate them at a rate equal to that being paid other volunteers for similar work.

(3) A granteee that pays any compensation under paragraph (c)(of this section may use funds under its grants to pay up to 90 percent of that compensation.

(20 U.S.C. 1106 and 1104)

§ 792.51 Travel expenses.

(a) Subject to paragraph (b) of this section a grantee shall pay—

(1) The necessary travel expenses of Teacher Corps members and their dependents;

(2) The necessary expenses for transportation of the household goods and personal effects of Teachers Corps members and their dependents; and

(3) Other necessary expenses of Teacher Corps members and their dependents that are directly related to their service in the project, including readjustment allowances proportionate to that service.

(b) A teacher-intern whose last permanent address before coming to a project is outside the community served by the project, shall be paid—

(1) By the institution of higher education for his or her necessary expenses for travel to the project—by the least expensive common carrier or by private automobile, subject to any institutional rules on reimbursement for mileage; and

(2) By the LEA for—

(i) The necessary expenses for travel to the project by dependents of teacher-interns—by the least expensive common carrier or by private automobile, subject to any agency limits on reimbursement for mileage; and

(ii) The necessary expenses for shipment to the project of up to 11,000 pounds of household goods and personal effects owned by the teacher-intern or his or her dependents.

(20 U.S.C. 1104)

§ 792.52 Medical insurance.

(a) A grantee shall provide teacher-interns and team leaders with medical insurance coverage—including hospitalization—during their participation in a project.

(b) Each dependent who receives more than one half of his or her support from a teacher-intern or team leaders must be included in the insurance coverage.

(c) The grantee may use funds under its grant to pay up to 100 percent of the cost of the insurance.

(20 U.S.C. 1104)

The Secretary proposes to revise Part 793 of Title 34 of the Code of Federal Regulations to read as follows:

PART 793—TEACHER CORPS—YOUTH ADVOCACY PROEJECTS

Subpart A—General

Sec.

793.1 What are Youth Advocacy Projects?
793.2 Eligible parties.
793.3 What regulations apply to Youth Advocacy Projects?
793.4 What definitions apply to Youth Advocacy Projects?

Subpart B—What Kind of Projects Does the Secretary Assist Under This Program?

793.10 Nature of Youth Advocacy Projects.
793.11 Activities of an institution of higher education.
793.12 Activities of an LEA.
793.13 Activities of a correctional facility.

Subpart C—How Does One Apply for a Grant?

793.20 Joint participation required.
793.21 Project schools.

Subpart D—How Does the Secretary Make a Grant?

793.30 How does the Secretary evaluate an application?
793.31 Project duration.

Subpart E—What Conditions Must Be Met by a Grantee?

793.40 Community council.
793.41 Participation.
793.42 First year of project.
793.43 Training.
793.44 Training program for teacher-interns.
793.45 Teacher-interns.
793.46 General allowable costs: institution of higher education.
793.47 General allowable costs: LEA.
793.48 General allowable costs: correctional facility.
793.49 Stipends, compensation, travel expenses, and medical expenses.

Authority: Title V–A of the Higher Education Act of 1965 (Pub. L. 89–329), as amended by the Education Amendments of 1980 (Pub. L. 96–374) (20 U.S.C. 1101 *et seq.*).

Subpart A—General

§ 793.1 What are Youth Advocacy Projects?

Youth Advocacy Projects train educational personnel to provide remedial, basic and secondary educational training—including literacy and communication skills training—to juvenile delinquents and youth offenders.

.S.C. 1103)

§ 793.2 Eligible parties.

The following are eligible to apply for a grant to carry out a Youth Advocacy Project:

(a) A local educational agency;

(b) An institution of higher education; and

(c) An agency or institution—that functions as a correctional facility—approved by the Secretary. (See § 793.20(a)(4)).

(20 U.S.C. 1103)

§ 793.3 What regulations apply to Youth Advocacy Projects?

The following regulations apply to Youth Advocacy Projects:

(a) The Education Division General Administrative Regulation (EDGAR) in 34 CFR Part 75 (Direct Grant Programs) and 34 CFR Part 77 (General);

(b) The regulations in Part 791; and

(c) The regulations in this Part 793.

(20 U.S.C. 3474)

§ 793.4 What definitions apply to Youth Advocacy Projects?

The definitions in 34 CFR 791.4 apply to projects under this part.

(20 U.S.C. 3474)

Subpart B—What Kinds of Projects Does the Secretary Assist Under This Program?

§ 793.10 Nature of Youth Advocacy Projects.

The Secretary awards grants under this part for projects designed to train educational personnel to meet the special educational needs of juvenile delinquents or youth offenders.

(20 U.S.C. 1103)

§ 793.11 Activities of an institution of higher education.

The Secretary provides assistance under this part to an institution of higher education to carry out activities that

include, but are not restricted to, those listed in 34 CFR 792.11.

(20 U.S.C. 1103)

§ 793.12 Activities of an LEA.

The Secretary provide assistance under this part to an LEA to carry out activities that include, but are not limited to, those listed in 34 CFR 792.12.

(20 U.S.C. 1103)

§ 793.13 Activities of a correctional facility.

The Secretary provides assistance under this part to a correctional facility to carry out activities that include, but are not restricted to, the following:

(a) Recruiting, selecting, and enrolling Teacher Corps members.

(b) Training Teacher Corps members.

(20 U.S.C. 1103)

Subpart C—How Does One Apply for a Grant?

§ 793.20 Joint participation required.

(a) In its application an applicant for a grant for a Youth Advocacy Project shall provide for the joint participation in the proposed project by—

(1) One or more LEAs;

(2) One or more institutions of higher education;

(3) A community council established under § 793.40; and

(4) One or more of the following correctional facilities:

(i) A detention center.

(ii) An incarcerative institution.

(iii) A public or nonprofit private alternative school for delinquent youth.

(iv) A special center, within a public school, that serves the special needs of juvenile delinquents, youth offenders, or both.

(b) The institutions, agencies, and correctional facilities that will participate in the proposed project shall collaborate in planning the project.

(c) If a community council, as described in § 793.40, exists prior to the submission of the application, the applicant shall also involve the council in planning the project.

(20 U.S.C. 1103; EDGAR, 34 CFR 75.127–75.129)

§ 793.21 Project schools.

In its application an applicant for a grant for a Youth Advocacy Project shall provide for the inclusion in the proposed project of—

(1) One or more junior high schools or senior high schools, or both, of the LEA; and

(2) One or more schools of the correctional facility.

(20 U.S.C. 1103)

Subpart D—How Does the Secretary Make a Grant?

§ 793.30 How does the Secretary evaluate an application?

(a) The Secretary evaluates an application for a grant for a Youth Advocacy Project on the basis of—

(1) The criteria in 34 CFR 791.31 as follows:

(i) Plan of operation. (10 points) (See 34 CFR 791.31(a))

(ii) Quality of key personnel. (7 points) (See 34 CFR 791.31(b))

(iii) Budget and cost effectiveness. (5 points) (See 34 CFR 791.31(c))

(iv) Evaluation plan. (5 points) (See 34 CFR 791.31(d))

(v) Adequacy of resources. (3 points) (See 791.31(e)); and

(2) The criteria in 34 CFR 792.31 as follows:

(i) Improved educational opportunities. (25 points)

(See 34 CFR 792.31(a))

(ii) Educational personnel development system. (20 points) (See 34 CFR 792.31(b))

(iii) Continuation of improvements. (15 points) (See 34 CFR 792.31(c))

(ii) Collaboration. (10 points) (See 34 CFR 792.31(d)).

(b) The Secretary thus awards up to 100 possible points as follows:

(1) Up to 30 possible points for the criteria in 34 CFR 791.31(d)

(2) Up to 70 possible points for the criteria in 34 CFR 792.31.

(20 U.S.C. 1103 and 3474)

§ 793.31 Project duration.

The provisions of 34 CFR 792.32 apply to the duration of Youth Advocacy Projects.

(20 U.S.C. 1103 and 3474)

Subpart E—What Condition Must Be Met by a Grantee?

§ 793.40 Community council.

(a) Each Youth Advocacy Project must include an elected community council.

(b) The community council must be representative of—

(1) If possible, the parents of the juvenile delinquents or youth offenders participating in the project; and

(2) The residents of the areas served by the project schools.

(c) The provisions of 34 CFR 792.40(c) and (d) apply to Youth Advocacy Projects.

(20 U.S.C. 1103)

§ 793.41 Participation.

The institutions, agencies, community council, and correctional facilities that participate in a Youth Advocacy Project shall collaborate in carrying out and evaluating the project.

(20 U.S.C. 1103)

§ 793.42 First year of project.

The provisions of 34 CFR 792.42 apply to Youth Advocacy Projects.

(20 U.S.C. 1103 and 3474)

§ 793.43 Training.

The provisions of 34 CFR 792.43 and 792.44 apply to Youth Advocacy Projects.

(20 U.S.C. 1103)

§ 793.44 Training program for teacher-interns.

(a) The provisions of 34 CFR 792.45 apply to Youth Advocacy Projects.

(b) In addition, a Youth Advocacy Project must include teacher-intern training in a correctional facility in which youths are—

(1) Incarcerated;

(2) Having problems adjusting to traditional educational programs; or

(3) Preparing to return to the school-community environment.

(20 U.S.C. 1103 and 3474)

§ 793.45 Teacher-interns.

The provisions of 34 CFR 792.46 apply to Youth Advocacy Projects.

(20 U.S.C. 1103 and 1104)

§ 793.46 General allowable costs: institution of higher education.

The provisions of 34 CFR 792.47 apply to Youth Advocacy Projects.

(20 U.S.C. 1103 and 1104)

§ 793.47 General allowable costs: LEA.

The provisions of 34 CFR 792.48 apply to Youth Advocacy Projects.

(20 U.S.C. 1103)

§ 793.48 General allowable costs: correctional facility.

A correctional facility may use its grant under this part to pay the following:

(a) The compension of Teacher Corps members.

(b) Compensation for released time for educational personnel while in training, within the limitations in 34 CFR 791.23.

(c) The administrative costs of the community council.

(d) The cost of project administration, including planning, documentation, evaluation, and dissemination.

(20 U.S.C. 1103 and 1104)

§ 793.49 Stipends, compensation, travel expenses, and medical expenses.

The provisions of 34 CFR 792.49 through 792.52 apply to Youth Advocacy Projects.

(20 U.S.C. 1103 and 1104)

The Secretary proposes to add a new Part 794 to Title 34 of the Code of Federal Regulations to read as follows:

PART 794—TEACHER CORPS—MATHEMATICS AND SCIENCE DEVELOPMENTAL PROJECTS

Subpart A—General

Sec.

794.1 What are Mathematics and Science Developmental Projects?
794.2 Eligible parties.
794.3 What regulations apply to Mathematics and Science Developmental Projects?
794.4 What definitions apply to Mathematics and Science Developmental Projects?

Subpart B—[Reserved]

Subpart C—How Does One Apply for a Grant?

794.20 Joint participation required.
794.21 Project schools.
794.22 Provision for testing materials.

Subpart D—How Does the Secretary Make a Grant?

794.30 How does the Secretary evaluate an application?
794.31 What selection criteria does the Secretary use?
794.32 Project duration.

Subpart E—What Conditions Must Be Met by a Grantee?

794.40 Collaboration of grantees.
794.41 Project sequence.
794.42 Allowable costs.

Authority: Title V-A of the Higher Education Act of 1965 (Pub. L. 89-329), as amended by the Education Amendments of 1980 (Pub. L. 96-374) (20 U.S.C. 1101 *et seq.*).

Subpart A—General

§ 794.1 What are Mathematics and Science Developmental Projects?

Mathematics and Science Developmental Projects—

(a) Develop, improve, or expand curriculum offerings or instructional materials for the training of teachers in mathematics and science in schools with a high concentration of children from low-income families; and

(b) Provide training opportunities for teachers to increase their effectiveness in developing instructional materials and in teaching mathematics and science in schools with a high concentration of children from low-income families.

(20 U.S.C. 1103)

§ 794.2 Eligible parties.

The following are eligible to apply for a grant to carry out a Mathematics and Science Developmental Project:

(a) A local educational agency. (LEA).

(b) An institution of higher education.

(20 U.S.C. 1103 and 3474)

§ 794.3 What regulations apply to Mathematics and Science Developmental Projects?

The following regulations apply to Mathematics and Science Developmental Projects:

(a) The Educational Department General Administrative Regulations (EDGAR) in 34 CFR Part 75 (Direct Grant Programs) and 34 CFR Part 77 (General).

(b) The regulations in 34 CFR Part 791.

(c) The regulations in this Part 794.

(20 U.S.C. 3474)

§ 794.4 What definitions apply to Mathematics and Science Developmental Projects?

The following definitions apply to Mathematics and Science Developmental Projects:

(a) The definitions in 34 CFR 791.4.

(b) The following term:

"Science" means biological sciences, natural sciences, earth sciences, and physical sciences.

(20 U.S.C. 3474 and 1103)

Subpart B—[Reserved]

Subpart C—How Does One Apply for a Grant?

§ 794.20 Joint participation required.

(a) In its application an applicant for a grant for a Mathematics and Science Developmental Project shall provide for joint participation in the proposed project by—

(1) One or more LEAs; and

(2) One or more institutions of higher education.

(b) The institutions and agencies that will participate in a proposed project shall collaborate in planning the project.

(20 U.S.C. 1103; EDGAR 34 CFR 75.127-75.129)

§ 794.21 Project schools.

The provisions of 34 CFR § 792.21 (regarding a feeder school system) apply to Mathematics and Science Developmental Projects.

(20 U.S.C. 1103)

§ 794.22 Provision for testing materials.

In its application an applicant shall describe its proposed plan for testing, in project schools, the appropriateness of the curricular or instructional materials, or both, that will have been developed or revised under its proposed project.

(20 U.S.C. 1103 and 3474)

Subpart D—How Does the Secretary Make a Grant?

§ 794.30 How does the Secretary evaluate an application?

(a) The Secretary evaluates an application for a grant for a Mathematics and Science Developmental Project on the basis of—

(1) The criteria in § 794.31; and

(2) The criteria in 34 CFR 791.31 as follows:

(i) Plan of operation. (10 points) (See 34 CFR 791.31(a))

(ii) Quality of key personnel. (7 points) (See 34 CFR 791.31(b))

(iii) Budget and cost effectiveness. (5 points) (See 34 CFR 791.31(c))

(iv) Evaluation plan. (5 points) (See 34 CFR 791.31(d))

(v) Adequacy of resources. (3 points) (See 34 CFR 791.31(e))

(b) The Secretary awards up to 100 possible points as follows:

(1) Up to 70 possible points for the criteria in § 794.31.

(2) Up to 30 possible points for the criteria in 34 CFR 791.31.

(c) The maximum possible score for each complete criterion in § 794.31 is indicated in parentheses.

(20 U.S.C. 1103 and 3474)

§ 794.31 What selection criteria does the Secretary use?

(a) *Curricular and instructional materials.* (25 points)

The Secretary reviews each application for information that shows the extent to which the project will—

(1) Develop or improve curricular or instructional materials, or both, for teacher training in mathematics and science;

(2) Test the effectiveness of those curricular or instructional materials;

(3) Incorporate promising curricular and instructional materials into the regular teacher training program of the participating project schools, the participating colleges or departments of education, and other schools in the participating LEA that have high concentrations of children from low-income families; and

(4) Package promising curricular and instructional materials in appropriate form for dissemination to other schools, colleges or departments of education, and LEAs.

(b) *Improved teacher training.* (25 points)

The Secretary reviews each application for information that shows that the project will provide a training program to increase the effectiveness of teachers and other educational personnel in developing instructional materials and in teaching mathematics

and science to children with a wide variety of educational needs.

(c) *Coordination.* (10 points)

The Secretary reviews each application for information that shows the extent to which the applicant plans to coordinate the project with other local teacher training activities.

(d) *Collaboration.* (10 points)

The Secretary reviews each application for information—in the form of a detailed plan—that shows the extent to which the applicants, the parents of children attending project schools, the teachers in project schools, and local school administrators will participate in planning, carrying out, and evaluating the project.

(20 U.S.C. 1103 and 3474)

§ 794.32 Project duration.

(a) The Secretary may award a grant for a Mathematics and Science Developmental Project for a project period of up to three years.

(b) The Secretary awards a separate grant for each fiscal year of the project, subject to the provisions of EDGAR, 34 CFR 75.253 (Continuation of multi-year project after the first budget period.)

(20 U.S.C. 1103)

Subpart E—What Conditions Must Be Met by a Grantee?

§ 794.40 Collaboration of grantees.

An LEA and an institution of higher education that have received a grant for a Mathematics and Science Developmental Project shall collaborate in—

(a) Recruiting and selecting the project director;

(b) Recruiting and selecting all other staff;

(c) Planning, developing, implementing and evaluating the project; and

(d) Developing curricular and instructional materials.

(20 U.S.C. 1103 and 3474)

§ 794.41 Project sequence.

(a) During the first year of a project, the grantee shall—

(1) Select a project director who is responsible for the overall administration of the project, and

(2) Develop or revise the curricular or instructional material or both.

(b) During the second and third year of the project, the grantees shall carry out for teachers a training program through which the grantees will test and improve curricular and instructional materials that have been developed or revised under the project.

(20 U.S.C. 1103 and 3474)

§ 794.42 Allowable costs.

A grantee may use its grant under this part to pay the following:

(a) Training stipends for teachers and other educational personnel, as provided in 34 CFR 792.49(a).

(b) The compensation for released time for educational personnel while in training, within the limitations of 34 CFR 791.23.

(c) Other reasonable costs necessary for carrying out the project.,

(20 U.S.C. 1103 and 1104; EDGAR, 34 CFR Part 75)

[FR Doc. 81-1879 Filed 1-16-81; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF COMMERCE

Patent and Trademark Office

37 CFR Part 1

Advance Notice of Proposed Rulemaking for Implementing the Reexamination and Fee; Provisions of Pub. L. 96-517 (H.R. 6933)

AGENCY: Patent and Trademark Office/ Commerce.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The purpose of this advance notice of proposed rulemaking is to advise the public of the Office's current plans for implementing the reexamination and fee provisions of Pub. L. 96-517, enacted on December 12, 1980. The reexamination provisions of this new law, including reexamination fees, will take effect on July 1, 1981. New patent and trademark fees, other than reexamination fees, must be established no later than October 1, 1982.

Insofar as the reexamination provisions are concerned, it is expected that proposed rules to implement them will be published in the **Federal Register** by the middle of January, 1981, with publication to follow in the Official Gazette as soon thereafter as possible. Assuming the proposed rules are published by the middle of January, a public hearing on the proposed rules could be held as early as the first half of April, 1981, with the rules being completed and promulgated thereafter.

It will be some time before the Office is ready to publish proposed rules implementing the fee provisions, but the same procedure will be followed as for the reexamination rules. A public hearing will be held following publication of the proposed rules. Completion and promulgation of the rules will follow both an adequate comment period and the public hearing.

ADDRESS: Persons wishing to submit written comments before the proposed rules are published should address them to Michael K. Kirk, Director, Office of Legislation and International Affairs, whose address is: Box 4, Commissioner of Patents and Trademarks, Washington, D.C. 20231.

SUPPLEMENTARY INFORMATION: New fees under the provisions of Public Law 96-517 will not become effective until appropriate rules are promulgated. Until that time, which the Office presently anticipates will be no earlier than July 1, 1981, the present fee provisions will remain in effect. Maintenance fees will be required for any patent actually applied for on or after December 12, 1980, whether or not the patent is entitled to the benefit of an earlier filing date under section 120 of title 35, U.S.C. or a right of priority under section 119 of title 35, U.S.C. The amounts of maintenance fees have not yet been set.

The text of Pub. L. 96-517 will be published shortly in the Official Gazette.

This advance notice of proposed rulemaking is issued under the authority of 35 U.S.C. 6 and 41.

Dated: December 19, 1980.

Sidney A. Diamond,

Commissioner of Patents and Trademarks.

Dated: January 8, 1981.

Approved:

Jordan J. Baruch,

Assistant Secretary for Productivity, Technology and Innovation.

[FR Doc. 81-1875 Filed 1-16-81; 8:45 am]

BILLING CODE 3510-17-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 86

[EN-FRL 1720-2]

Motor Vehicle Pollution Control; Waiver of Oxides of Nitrogen Emission Standards; Notice of Opportunity for Public Hearing and Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Opportunity for public Hearing and Comments to Consider Applications for Waivers.

SUMMARY: Automobiles Peugeot (Peugeot) has submitted an application to EPA for waiver of the 1982 NOx emission standard for certain diesel light-duty vehicles pursuant to section 202(b)(6)(B) of the Clean Air Act (Act).

This notice announces an opportunity for public hearing and requests comment on Peugeot's application for waiver of

the 1982 oxides of nitrogen (NOx) emission standard.

DATES AND ADDRESSES: Interested parties may submit a *bona fide* written request for a public hearing by January 22, 1981. If EPA receives such a hearing request the Agency will hold a public hearing on February 2, 1981, beginning at 9:00 a.m., at EPA Conference Room 3906, Waterside Mall, 401 M Street, S.W., Washington, D.C. Otherwise, EPA will publish a notice in the Federal Register by January 28, 1981, announcing the cancellation of this public hearing. Regardless of whether a hearing is requested, EPA will consider written comments on Peugeot's waiver request received by February 5, 1981. Requests for public hearing or comments on Peugeot's waiver request should be sent to the Director, Manufacturers Operations Division (EN-340), U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460. Information submitted by Peugeot, as well as any comments received from interested parties, will be available for public inspection between 8 a.m. and 4 p.m., Monday through Friday, at: U.S. Environmental Protection Agency, Central Docket Section (A-130), Gallery I, Waterside Mall, 401 M Street, S.W., Washington, D.C. 20460 (Docket Number EN-81-1).

FOR FURTHER INFORMATION CONTACT: Mr. Jerry Schwartz, Manufacturers Operations Division (EN-340), U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460, (202) 472-9421.

SUPPLEMENTARY INFORMATION:

I. Background:

Section 202(b)(6)(B) of the Clean Air Act, as amended, 42 U.S.C. 7521(b)(6)(B)(1977), allows any light-duty diesel manufacturer to petition the Administrator of EPA for waiver of the 1981-1984 model year NOX standard of 1.0 gpm. The Administrator, after notice and opportunity for public hearing, may waive the standard for any class or category of light-duty vehicles manufactured during the four model year period, beginning in model year 1981, up to a maximum level of 1.5 gpm, if the manufacturer can show that the waiver is necessary to permit diesel engine technology to be used on the subject vehicles. The waiver may be granted if the Administrator determines:

(i) That the waiver will not endanger public health;

(ii) That the waiver will result in significant fuel savings at least equal to the fuel economy standard applicable in each year under the Energy Policy and Conservation Act, and

(iii) That the technology has a potential for long-term air quality benefit and has the potential to meet or exceed the average fuel economy standard applicable under the Energy Policy and Conservation Act at the expiration of the waiver.

Guidelines for diesel NOx waiver applications were published in the Federal Register at 43 FR 30341, July 14, 1978, in order to apprise manufacturers of the information deemed necessary to demonstrate that a waiver should be granted.

II. Waiver Application

On December 16, 1980, Peugeot submitted an application for waiver of the 1982 statutory NOx emission standard for its XD2C diesel engine family to an interim standard of 1.2 gpm.

In order to grant a waiver, the Administrator must determine that the applicant has provided information sufficient to satisfy each of the waiver criteria set out above. The Administrator is not required to make his determination solely on the record of the hearing, and may consider any additional information as well. All information considered by the Administrator for this waiver decision will be included in public docket EN-81-1.

III. Procedures for Public Participation

EPA is offering an opportunity for public hearing by tentatively scheduling one for February 2, 1981, at the time and place specified in the "Dates and Addresses" section of this notice if EPA receives a *bona fide* request for such a hearing. If EPA does not receive such a request, it will publish a notice cancelling the February 2 hearing. Regardless of whether or not EPA holds a public hearing, it still will consider any written comments submitted for the record by the deadlines specified in the "Dates and Addresses" section.

The public hearing tentatively scheduled will provide an opportunity for interested persons to state their views or arguments, or to provide pertinent information concerning the waiver requests at issue. Any party desiring to make an oral statement at the hearing should file a notice of such intention and 10 copies of the proposed testimony and other relevant material with the Director of EPA's Manufacturers Operations Division at the address listed above not later than January 22, 1981. If feasible, these parties also should submit at least 25 copies of their statements or material for the hearing record for general circulation to the Presiding Officer at the time of the hearing. In addition, any person may submit written questions at any time during the hearing, which the hearing panel may propound to witnesses to the extent practicable. Relevant statements and information not specifically required by the hearing panel may be filed in the public docket by February 5, 1981, to ensure their consideration as part of the waiver decision.

The Presiding Officer will have the responsibility for maintaining order, excluding irrelevant or repetitious material, scheduling presentations, directing participants to submit corroborative material in writing and, to the extent possible, notifying participants of the time at which they may appear.

Presentations by the participants should address the considerations set forth in detail by the guidelines for submission of waiver requests published in the Federal Register, 43 FR 30341, July 14, 1978. Participants should be prepared to respond to questions from the Hearing Panel on the following issues:

1. Whether a waiver is necessary to permit the use of diesel engine technology in the class or category of vehicles or engines for which an applicant requests a waiver;
2. Whether the waiver would endanger the public health;
3. Whether the waiver would result in significant fuel savings at least equal to the fuel economy standard applicable under the Energy Policy and Conservation Act ("EPCA");
4. Whether the technology utilized in the class or category for which a waiver is sought: (a) has a potential for long-term air quality benefit, and (b) has the potential to meet or exceed the average fuel economy standard applicable under EPCA at the expiration of the waiver, and;
5. The level of NO_x emissions, not to exceed 1.5 gpm, which an applicant's diesel vehicle class or category could meet in each of the model years for which an applicant requests a waiver.

A verbatim record of the proceedings will be available for public inspection in public docket EN-81-1. Any interested party may request a copy of the transcript from the hearing reporter during the hearing at the party's own expense. Interested parties also may obtain copies of other documents in the public docket as provided in 40 CFR Part 2.

Dated: January 14, 1981.

Jeffrey G. Miller,

Acting Assistant Administrator for Enforcement.

[FR Doc. 81-1879 Filed 1-16-81; 8:45 am]

BILLING CODE 6560-26-M

40 CFR Part 180

[OPP-300043; PH-FRL 1730-2]

Lecithin; Exemption From the Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed Rule.

SUMMARY: This action proposes that lecithin be exempted from the requirement of a tolerance when used as an inert (or occasionally active) ingredient in pesticide formulations applied to growing crops or to raw agricultural commodities after harvest. This amendment was requested by Decco Tiltbelt Agricultural Technology.

DATE: Written comments must be received on or before February 18, 1981.

ADDRESS: Written comments to: John A. Shaughnessy, Registration Division (TS-767), Office of Pesticide Programs, Environmental Protection Agency, Rm. E-229, 401 M St. SW., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: John A. Shaughnessy (202-426-9425).

SUPPLEMENTARY INFORMATION: At the request of Decco Tiltbelt Division, the Administrator proposes to amend 40 CFR § 180.1001(c) to include lecithin. Inert ingredients are all ingredients which are not active ingredients as defined in 40 CFR § 162.3(c), and include, but are not limited to, the following types of ingredients (except when they have pesticidal efficacy of their own): solvents such as water; baits such as sugar, starches and meat scraps; dust carriers such as talc and clay; fillers; wetting and spreading agents; propellan in aerosol dispensers; and emulsifiers. The term inert is not intended to imply nontoxicity; the ingredient may or may not be chemically active.

Preambles to proposed rulemaking documents of this nature include the common or chemical name of the substance under consideration, the name and address of the firm making the request for the exemption, and toxicological and other scientific bases used in arriving at a conclusion of safety in support of the exemption.

Name of inert ingredient	Name and address of requestor	Basis for approval
Lecithin	Decco Tiltbelt Agricultural Technology Division of Pennwalt Corp., Box 120, 1713 S. California Ave., Monrovia, CA 91016.	Lecithin is found in all living cells, principally in the form of the phosphatides (Phosphatidylcholine, phosphatidylethanolamine and inositolphosphatide). It is readily catabolized and anabolized (see H. R. Mahler and E. H. Cordes, *Biological Chemistry* 2nd ed. Harper and Row, New York, 1971, pp. 686, 723) and is a precursor of the neurotransmitter, acetylcholine.

Lecithin is generally recognized as safe (21 CFR § 182.1400) and has been extensively reviewed by the Federation of American Societies for Experimental Biology (FASEB) for the Food and Drug Administration. Their conclusion was:

"There is no evidence in the available information on lecithin and lecithin bleached with hydrogen peroxide that demonstrates or suggests reasonable grounds to suspect a hazard to the public when they are used at levels that are now current or that might reasonably be expected in the future."

According to FASEB, the average U.S. daily consumption of lecithin is 92 milligrams (mg) (or about 1.5 mg/kilograms (kg). Clearance of lecithin under 180.1001(c) is not expected to significantly increase the exposure of the public to lecithin; furthermore, there is no reason to believe that increased exposure to lecithin would, in fact, be undesirable.

Based on the above information, the chemistry of this substance, and review of its use, it has been found that, when used in accordance with good agricultural practice, this ingredient is useful and does not pose a hazard to the environment. It is concluded therefore, that the proposed amendment to 40 CFR § 180.1001 will protect the public health, and it is proposed that the regulation be established as set forth below.

Any person who has registered or submitted an application for the registration of a pesticide, under the Federal Insecticide, Fungicide, and Rodenticide Act, which contains this inert ingredient may request, on or before February 18, 1981, that this rulemaking proposal be referred to an advisory committee in accordance with section 408(e) of the Federal Food, Drug, and Cosmetic Act.

Interested persons are invited to submit written comments on the proposed regulation. The comments must bear notation indicating both the subject and the petition/document control number "[OPP-300043]." All written comments filed in response to this notice of proposed rulemaking will be available for public inspection in the Process Coordination Branch (TS-767), Room E-229, Environmental Protection Agency, 401 M St. SW., Washington, D.C. 20460 from 8:00 a.m. to 4:00 p.m. Monday through Friday, except legal holidays.

Under Executive Order 12044, EPA is required to judge whether a regulation is "significant" and therefore subject to the procedural requirements of the Order or whether it may follow other specialized development procedures. EPA labels these other regulations "specialized." This proposed rule has been reviewed, and it has been determined that it is a specialized regulation not subject to the procedural requirements of Executive Order 12044.

(Sec. 408(e) 68 Stat. 514, (21 U.S.C. 346a(e)))

Dated: January 12, 1981.

Douglas D. Campt,

Director, Registration Division, Office of Pesticide Programs.

Therefore, it is proposed that Subpart D of 40 CFR Part 180 be amended by alphabetically inserting "lecithin" in the list under § 180.1001(c) to read as follows:

§ 180.1001 Exemptions from the requirement of a tolerance.

* * * * * * *

(c) * * *

Inert ingredient	Limits	Uses
* * * * *		
Lecithin	Meeting Food Chemicals Codex specification.	Emulsifier.
* * * * *		

[FR Doc. 81-1813 Filed 1-16-81; 8:45 am]

BILLING CODE 6560-26-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration, Public Health Service

42 CFR Parts 50 and 441

Requirements Applicable to Sterilizations (Hysterectomies)

AGENCIES: Health Care Financing Administration (HCFA), Public Health Service (PHS).

ACTION: Proposed rule.

SUMMARY: Current Department regulations for the Medicaid and Public Health Service programs provide that no Federal funds are available for hysterectomies unless the woman or her representative has signed an acknowledgment that she was informed that the operation would make her sterile. These amended rules would eliminate the "acknowledgment requirement" in certain situations where the patient is already sterile or an emergency situation exists. We will also clarifying certain ambiguities. The purpose of the proposed regulations is to remove an unnecessary administrative burden created by the current requirements.

DATE: To assure consideration, comments should be mailed by March 20, 1981.

ADDRESSES: Address comments in writing to: For the Health Care Financing Administration: Administrator, Department of Health and Human Services, Health Care Financing Administration, P.O. Box 17070, Baltimore, Md. 21235.

If you prefer, you may deliver comments to: Room 309–G, Hubert H. Humphrey Building, 200 Independence Avenue SW., Washington, D.C.; or to Room 789 East High Rise, 6401 Security Blvd.; Baltimore, Maryland.

In commenting, please refer to file code BPP–82–FC.

For the Public Health Service: Director, Office of Population Affairs, Room 722–H, Hubert H. Humphrey Building, 220 Independence Avenue SW., Washington, D.C. 20201, (202) 245–7591.

Agencies and organizations are requested to submit their comments in duplicate. Comments will be available for public inspection, beginning approximately 2 weeks after publication, at the following offices on Monday through Friday of each week during regular business hours:

Health Care Financing Administration, Room 309–G, Hubert H. Humphrey Building, 200 Independence Avenue, S.W., Washington, D.C. 20201, (202) 245–0950

Public Health Service, Room 722–H, Hubert H. Humphrey Building, 200 Independence Avenue, S.W., Washington, D.C. 20201, (202) 245–7581

Because of the large number of comments we receive, we cannot acknowledge or respond to them individually. However, in preparing the final rule, we will consider all comments and will respond to them in the preamble to that rule.

FOR FURTHER INFORMATION, CONTACT:

For the Health Care Financing Administration: Raymond T. Johnson, (301) 594–9370

For the Public Health Service: Marilyn L. Martin, (202) 245–7581

SUPPLEMENTARY INFORMATION:

Background

On November 8, 1978, the Department of Health, Education, and Welfare issued final rules governing expenditures for sterilizations under certain federally assisted programs administered by the Health Care Financing Administration (HCFA), Public Health Service (PHS), and the Administration for Public Services (APS) of the Office of Human Development Services (OHDS) (see 43 FR 52146). These rules are codified at 42 CFR Part 441, Subpart F for HCFA; 42 CFR Part 50, Subpart B for PHS; and 45 CFR §§ 220.21, 222.59, and 228.63 for APS, OHDS. The rules include the following requirements for the availability of Federal funds for hysterectomies: (1) the hysterectomy cannot be performed solely for the purpose of sterilizing the patient, or, if there was more than one purpose to the procedure, it would not have been performed but for the purpose of making the patient permanently incapable of reproducing; (2) the person securing authorization to perform the hysterectomy must inform the patient, and her representative, if any, orally and in writing, that the operation will make her sterile; and (3) the patient, or her representative, if any, must sign a statement acknowledging receipt of that information. Items 2 and 3 constitute the "acknowledgment requirement".

The purposes of these requirements are to: (1) safeguard patients' rights by ensuring that women will make informed voluntary choices; (2) emphasize that hysterectomies are not an appropriate or acceptable means of sterilization; (3) remove the financial incentive to perform hysterectomies for contraceptive purposes since this is the most dangerous and expensive sterilization method; (4) provide effective safeguards against abuse; and (5) permit effective enforcement of the procedural safeguards.

Since these rules became effective, we have received various inquiries from Congress, providers of services, State agencies, and the general public that have brought to the Department's attention certain situations in which the "acknowledgment requirement" is unnecessary and overly broad in scope.

In the inquiries, these commenters questioned the need to inform a patient who is already sterile due to age, prior sterilization, or congenital disorder that a hysterectomy will make her sterile. They further questioned the need to obtain a written acknowledgement to that effect. Physicians also questioned the reasonableness of this requirement when a patient must undergo a hysterectomy on an emergency basis. In emergency situations, it may be impossible to inform the woman of the consequences of the hysterectomy prior to the procedure, because the need for it is unanticipated. For example, one physician reported discovering an undiagnosed fibroid uterine tumor while performing a caesarean section. It had to be incised in order to deliver the baby, and the resultant bleeding could be controlled only by an emergency hysterectomy.

The Department believes that these points are valid and that the regulations should be amended to take these situations into consideration. The amendments we are proposing to make to eliminate the "acknowledgment requirement" in certain situations are consistent with the policy behind that requirement, which is that a woman should be aware that a hysterectomy will make her sterile, so that she may make a informed decision regarding the procedure in light of that information. If she is already sterile, this information would have no bearing on her decision on whether to have the hysterectomy. In those situations where life-threatening circumstances indicate that an emergency hysterectomy is required, and there is insufficient time to inform the patient that the operation will make her sterile, we believe it woud be appropriate to presume that the woman would concur in her physician's decision and choose to have the hysterectomy.

The proposed amendments below affect only the HCFA and PHS regulations, since those regulations spell out the detailed requirements described above. We will not amend the OHDS regulations because they are cross-referenced to the Medicaid regulations. Consequently, the proposed changes in Medicaid requirements would automatically apply to the OHDS regulations.

Regulation Provisions

a. Amendment of Acknowledgment Requirement

The Department is proposing to amend the regulations to provide for an exception to the "acknowledgment requirement" for hysterectomies when one or more of the following circumstances exist:

(1) The individual is 58 years of age or older;

(2) The individual is sterile due to a congenital disorder;

(3) The individual was previously sterilized; or

(4) The individual requires a hysterectomy on an emergency basis because of life-threatening circumstances.

We chose the age of 58 as an upper age limit, beyond which all women would be considered sterile for purposes of these proposed regulations, because data from the U.S. Health Examination Survey of Adults, 1960–1962, show that, by the age of 58, 100 percent of the women in the survey were postmenopausal. The survey included 3,581 women, and consisted of a nationwide probability sample of persons 18–79 years of age selected from the U.S. civilian, noninstitutional population. We believe it would constitute an adequate basis for determination of the specific age beyond which the protection otherwise afforded by the proposed regulation is not needed. We will, however, consider any information individuals may wish to submit indicating that a different age would be more appropriate.

The Department selected the proposed exceptions 2 through 4 for several reasons. We believe the "acknowledgment requirement" in an unnecessary procedural requirement to be met for a woman already sterile because of a congenital disorder, or because of a prior sterilization. In addition, it could be embarrassing to a woman in either of these situations to receive and acknowledge receipt of this information in writing. Lastly, the "acknowledgment requirement" is also an unfeasible requirement in emergency situations since the physician, in most instances, would not have the opportunity to inform the woman and obtain the required acknowledgment. We are, however, requesting comment on the appropriateness of these exceptions to the requirements, and whether (and if so, what) other exceptions should be provided for.

Although we believe that these proposed exceptions to the "acknowledgment requirement" are consistent with the purposes of the present rules, we are concerned that the exceptions not be abused. Therefore, in order to assure that the proposed exceptions are applied only in appropriate circumstances, the amended regulations would require the State agency, prior to paying the claim, to obtain the certification of the physician who performs the procedure that one of these specific circumstances we are proposing existed in each case when the "acknowledgment requirement" was not met. This approach is similar to the certification requirement applicable to the sterilization consent form requirements of the regulations (see 42 CFR 441.258(c) and 42 CFR 50.206(c)(2)). We propose to use this approach for the same reasons that prompted that certification requirement (i.e., assuring that the requirement is met, while at the same time, imposing minimal burdens on providers and patients.)

We believe the data generated from these proposed certifications will provide sufficient information about the procedures to facilitate monitoring without creating an undue burden for providers and patients. However, if there are other safeguards that might more effectively prevent program abuse of these exceptions, we welcome suggestions and recommendations on this point.

b. Retroactivity of Regulation

1. *Reasons for Retroactivity.* We propose to make the final regulations retroactive to the date the final rules on sterilization were effective, March 8, 1979. There are two reasons for this provision.

First, because the Department believes the "acknowledgment requirement" is unnecessary and too broad in certain circumstances, we want to avoid a disallowance of Federal funds for failure to follow this requirement when those circumstances already existed.

Second, we want to allow providers to be reimbursed if they performed the operation in good faith without having the opportunity to satisfy this requirement because an emergency medical situation existed.

2. Handling of a claims. When a provider submits a claim for hysterectomy services, and the "acknowledgment requirement" hs not been satisfied, FFP would be available only if the physician's certification meets the requirements of the new regulations; that is, the physician would have to certify that the circumstances meet the criteria in regulations for dispensing with the acknowledgment requirement.

If a provider's claim was previously denied solely because the "acknowledgment requirement" was not met, the provider would be allowed to submit a new claim under these proposed regulations. This new claim, however, would have to include the physician's certification before payment can be made.

Regulations at 42 CFR 447.45 specify that the Medicaid agency must require providers to submit all claims within a specified time period not to exceed 12 months after the date of service. For purposes of this proposed sterilization regulation only, a retroactive claim for performance of a hysterectomy falling within its exceptions would be considered timely under § 447.45 if it is submitted (or resubmitted) within the State's specified time period beginning with the publication date of the final rule.

In addition, FFP would be available for hysterectomy services furnished between March 8, 1979 and 30 days after publication of the final rule, if (1) one of the circumstances specified in § 441.255(c) applies, and (2) the agency was not entitled to FFP because it did not have the required documentation on hand before it paid the claim. In these cases, the agency could submit a request for FFP if it obtains a physician's certification as to the applicable circumstance. We believe that 30 days after publication is a reasonable period for States to notify providers of the new certification requirements and put appropriate procedures into effect; however, we welcome suggestions and recommendations on this point also. For services furnished after that date, the State would be required to meet the prior documentation requirements specified in § 441.256.

Federal financial assistance would also be available under the Public Health Service Act for the same period if the new physician's certification is obtained.

Report Burden Requirements

The reporting requirements in 42 CFR 441.256 and 42 CFR 50.209 are subject to the Federal Reports Act. They have been approved by the Office of Management and Budget (OMB). The OMB approval number is 0880129.

42 CFR Parts 50 and 41 are amended as set forth below.

1. Section 50.207 is amended by revising paragraph (b) and adding paragraph (c) as follows:

§ 50.207 Sterilization by hysterectomy.

* * * * *

(b) Except as provided in paragraph (c) of this section, programs or projects to which this subpart applies may perform or arrange for the performance of a hysterectomy not covered by paragraph (a) of this section only if:

(1) The person who secures the authorization to perform the hysterectomy has informed the individual and her representative, if any, orally and in writing, that the hysterectomy will render her

permanently incapable of reproducing; and

(2) The individual or her representative, if any, has signed a written acknowledgment of receipt of that information.

(c)(1) A program or project is not required to follow the procedures of paragraph (b) if any of the following circumstances exists:

(i) The individual is 58 years of age or older;

(ii) The individual is sterile due to a congenital disorder;

(iii) The individual was previously sterilized;

(iv) The individual requires a hysterectomy on an emergency basis because of life-threatening circumstances.

(2) If the procedures of paragraph (b) are not followed because one or more of the circumstances of paragraph (c)(1) exist, the physician performing the hysterectomy must certify in writing,

(i) That the woman was already sterile, stating the cause of that sterility (paragraph (c) (i), (ii), or (iii) of this section) and, if sterility is due to a congenital disorder, stating the nature of that disorder; or

(ii) That the hysterectomy was performed under emergency circumstances, describing the nature of the emergency.

(2) Section 50.209 is amended by revising paragraph (b) as follows—

§ 50.209 Use of Federal financial assistance.

* * * * *

(B) A program or project shall not use Federal financial assistance for any sterilization or hysterectomy without first receiving documentation showing that the requirements of this subpart have been met. Documentation includes consent forms, and as applicable, either acknowledgments of receipt of hysterectomy information or certifications for hysterectomies.

Authority: Sec. 215, Public Health Service Act, as amended (42 U.S.C. 216).

3. Section 441.255 is amended by revising paragraphs (b) and adding paragraphs (c) and (d), as follows:

§ 411.255 Sterilization by hysterectomy.

* * * * *

(b) Except as provided in paragraph (c) of this section, FFP is available in expenditures for a hysterectomy not covered by paragraph (a) of this section only if—

(1) The person who secured authorization to perform the hysterectomy has informed the individual and her representative, if any, orally and in writing, that the hysterectomy will render the individual permanently incapable of reproducing; and

(2) The individual or her representative, if any, has signed either a written acknowledgement of receipt of that information.

(c) The limitations of paragraph (b) of this section do not apply when any of the following circumstances exist:

(1) The individual is 58 years of age or older;

(2) The individual is sterile due to a congenital disorder;

(3) The individual was previously sterilized; or

(4) The individual required a hysterectomy on an emergency basis because of life-threatening circumstances;

(d) When the procedures in paragraph (b) are not followed because one or more of the circumstances of paragraph (c) exist, the physician performing the hysterectomy must certify in writing:

(1) That the woman was already sterile, stating the cause of the sterility (paragraph (c)(1), (2), or (3) of this section); and, if sterility is due to a congenital disorder, specifying the nature of tha disorder; or

(2) That the hysterectomy was performed under emergency circumstances, describing the nature of the emergency.

4. Section 441.256 is revised to read as follows:

§ 441.256 Additional condition for Federal financial participation (FFP).

FFP is not available in expenditures for any sterilization or hysterectomy unless the Medicaid agency, before making payment, obtained documentation showing that the requirements of this subpart were met. This documentation must include a consent form or an acknowledgement of receipt of hysterectomy information or a certification for the hysterectomy, as applicable.

(b) With regard to the requirements of § 441.255(d) for hysterectomies performed from March 8, 1979 through [30 days after date of publication], FFP is available if the Medicaid agency obtained the documentation showing that the requirements of that paragraph were met before submitting a claim for FFP for that procedure.

(Sec. 1102 of the Social Security Act (42 U.S.C. 1302)

(Catalog of Federal Domestic Assistance Program No. 13.714, Medical Assistance)

Dated: October 1, 1980.

Howard Newman,

Administrator, Health Care Financing Administration.

Dated: October 29, 1980.

Julius B. Richmond,

Assistant Secretary for Health.

Approved: January 13, 1981.

Patricia Roberts Harris,

Secretary.

[FR Doc. 81-1982 Filed 1-19-81; 8:45 am]
BILLING CODE 4110-03-M

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42 CFR Part 405

Medicare Program; Shared-Services Organizations and Cost to Related Organizations

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Withdrawal of notices of proposed rulemaking.

SUMMARY: This notice withdraws two notices of proposed rulemaking relating to Medicare reimbursement of providers of health care services. Current regulations limit the amount a provider may be reimbursed when it obtains services, facilities, or supplies from an organization to which it is related by common ownership or control. We published two proposed amendments to those regulations. The first would have exempted, from the related organizations regulations, costs incurred by providers for items furnished by certain shared-services organizations. The second proposal would have revised the definition of a related organization and made certain other changes in application of the rules.

After considering the responses of the public to the proposed regulations and our own policy analyses, we have concluded that we should retain the flexibility provided by existing regulations and that there is no current need to amend these regulations. We are, therefore, withdrawing the proposals from further action.

EFFECTIVE DATE: January 19, 1981.

FOR FURTHER INFORMATION CONTACT: Paul Trimble, Bureau of Program Policy, Health Care Financing Administration, Room 1–G–1, East Low Rise Building, 6401 Security Boulevard, Baltimore, Maryland 21235, 301–594–8640.

SUPPLEMENTARY INFORMATION:

Background

General Medicare reimbursement policy on reasonable cost provides that reimbursement to a provider for services, facilities, or supplies furnished to it by another organization is normally

based on charges made by the supplying organization. However, a special rule applies when a provider obtains these items from a supplier to which it is related by common ownership or control. In this situation, Medicare reimbursement to a provider for items obtained from the supplying organization is limited to the related organization's costs rather than its charges, provided those costs do not exceed the open market price of the items (42 CFR 405.427). This policy is intended to prevent Medicare from paying the provider a profit from dealing with itself through the related organization.

The current regulations define relatedness in terms of a significant degree of common ownership, equity or controlling power (i.e., the ability to influence or direct). They also provide for an exception to the rule when specified circumstances exist, such as situations in which the supplying organization also conducts a substantial amount of business activity, of the type transacted with the provider, with nonrelated organizations.

We published two notices of proposed rulemaking in the Federal Register that were intended to: (1) recognize the recent development of "shared-services" organizations by providing for them in an additional specific exception to the rule; and (2) alleviate problems we had perceived in interpretation of the "related organization" concept. However, for reasons explained below, we have decided not to proceed with development of final rules.

Shared-Services Organizations (SSOs)

On August 17, 1978, we published in the Federal Register (43 FR 36468) proposed regulations on SSOs. In the proposal, we defined an SSO as a nonprofit organization that furnishes health care services, facilities, supplies, or support services, to two or more providers. For example, an SSO might be formed to furnish linens to several hospitals at a lower cost than could be obtained from a regular supplier. SSOs are generally established by a group of providers, that subsequently retain an ownership or management interest in the organization.

As explained above, the usual method for reimbursing providers related to supplying organizations is the lower of cost or the price of comparable items in the open market. For SSOs, however, we proposed to add an exception to the related organization regulations to reimburse providers the lower of the SSO charge to the provider or the open market price rather than the lower of cost or open market price. The purpose of the SSO proposal was to encourage the use of SSOs by providers in those cases where it would reduce the cost of furnishing health care.

Comments received on the proposed SSO regulations raised concerns about creating competition unfair to small suppliers, the administrative difficulty of implementation, and the participation of certain types of organizations in SSOs (for example, proprietary providers, chain organizations, and management services firms).

In addition to the concerns raised during the public comment period, we analyzed other information on SSO development and operations. A survey by the American Hospital Association in late 1978 showed that there has been a very rapid increase in the number and use of SSOs and that over 80 percent of the 6,223 responding hospitals in the country shared one or more services. One of the main reasons for developing the SSO regulation was to encourage the use of SSOs. It is apparent, however, that growth in shared-services arrangements is taking place without the need for regulatory encouragement.

Moreover, our research into the organizational and operational aspects of SSOs has led us to believe that our proposed regulations would have been difficult to administer effectively and fairly. For example, our intent in proposing the regulation was to ensure that the margin of revenue over cost retained by the SSO be channeled into patient-care-related activities (i.e., expansion of the SSO's service to providers). However, we now believe this policy would be difficult to enforce. The funds retained by the SSO under the proposal could be diverted into nonpatient-care-related activities with little opportunity for detection by Medicare intermediaries that have no statutory right of access to the books and records of SSOs.

Also, under the current related organization rule, SSOs as we defined them, typically would not be related to their member providers. This is because, when viewed on an individual provider basis, each provider typically does not have a significant ownership or control interest in the SSO. Therefore, there is no need to except most SSOs because the rule does not apply to them.

Based on the reasons explained above, particularly the fact that the industry appears to be moving in the desired direction quite well without Federal regulation, we have decided to withdraw the proposed regulations on SSOs.

Cost to Related Organizations

Our proposed amendments to the general rules on related organizations were published on January 26, 1979 (44 FR 5479). Their purpose was to clarify the intent of the regulation by defining terms and adding explanatory language emphasizing that a related supplying organization's allowable costs are determined in accordance with general Medicare reimbursement principles. Questions had arisen, for example, on specific applications of the "common ownership or control "provision.

In the proposal, therefore, we attempted to eliminate some of the subjectivity in the current regulations by defining providers and suppliers as related if there were "any" common control or common ownership. Commenters responded to this proposal by pointing out the rigidity of such a definition and recommending either that we attempt to quantify relatedness in terms of a percentage of ownership or control, or that we leave the current regulations unchanged.

We have now been persuaded, both by the comments and a review of our experience since we began the development of the proposed rule, that we should retain the flexibility of existing regulations. While there are supportable reasons to select any one of several figures in setting a specific percentage of common ownership or control, we believe that the figure chosen could prove to be arbitrary and inappropriate when applied in a particular situation. Finally, during the period since the proposed regulations were published, we have found that Medicare intermediaries, that interpret and apply the regulation with respect to specific provider expenditures, appear to be able to resolve most of the issues equitably. We believe, therefore, in light of these considerations, that further regulation in this area of provider reimbursement is unnecessary at this time.

(Sec. 1102, 1861(v), and 1871 of the Social Security Act (42 U.S.C. 1302, 1395x(v), and 1395hh))

(Catalog of Federal Domestic Assistance Program No. 13.773, Medicare-Hospital Insurance; No. 13.774, Medicare-Supplementary Medical Insurance)

Dated: December 1, 1980.

Howard Newman,
Administrator, Health Care Financing Administration.

Approved: January 12, 1981.

Patricia Roberts Harris,
Secretary.

[FR Doc. 81-1770 Filed 1-16-81; 8:45 am]
BILLING CODE 4110-85-M

Health Care Financing Administration

42 CFR Part 435

Medicaid Program; Entitlement of Individuals Receiving Cash Assistance Under the Foster Care Maintenance Payments Program or the Adoption Assistance Program

Correction

In FR Doc. 80-40557, published at page 86850, in the issue of Wednesday, December 31, 1980, the section heading on page 86852, first column, first line, now reading

"§ 435.4000 • • • "

should read

"§ 435.1009 Definitions relating to institutional status."

BILLING CODE 1505-01-M

FEDERAL MARITIME COMMISSION

46 CFR Part 524

[General Order 23; Docket No. 81-3]

Exemption of Agreements for Cargo Inspection Services or Self-Policing, or Both, Between Conferences or Rate Agreements From Section 15 Filing and Approval Requirements

AGENCY: Federal Maritime Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: Agreements for joint cargo inspection services or self-policing, or both, between the members of two or more conferences or other rate-fixing agreements would be exempt from the filing and approval requirements of section 15 of the Shipping Act, 1916. Experience shows the anticompetitive impact of such agreements to be minimal. This exemption will lessen regulatory requirements.

DATE: Comments (original and 15 copies) by March 20, 1981.

ADDRESS: Comments and Inquiries to: Secretary, Federal Maritime Commission, 1100 L Street, N.W., Room 11101, Washington, D.C. 20573, (202) 523-5725.

FOR FURTHER INFORMATION CONTACT: Mr. Frances C. Hurney, Secretary, Federal Maritime Commission, (202) 523-5725.

SUPPLEMENTARY INFORMATION: The Federal Maritime Commission is considering the promulgation of a rule to exempt agreements for joint cargo inspection services or self-policing, or both, between the members of two or more conferences or other rate-fixing agreements from the filing and approval requirements of section 15 of the Shipping Act, 1916 (46 U.S.C. 814).

Agreements for joing cargo inspection services or self-policing, or both, between the members of two or more conferences or other rate-fixing agreements, are cooperative working arrangements within the meaning of section 15. Such agreements usually contain uniform self-policing provisions and authorize the employment of a common neutral body or cargo inspection services with authority to collect delinquent freight and other tariff charges. Since these agreements do not directly concern the pricing or operational activities of the parties involved, their anticompetitive impact appears to be minimal.

Section 35 of the Shipping Act, 1916, permits the Commission to exempt certain activities from regulation, provided that the exemption will not substantially impair effective regulation, be unjustly discriminatory, or be detrimental to commerce. The Commission believes that full section 15 regulation of such agreements of the type described above serves no substantive purpose, and that their exemption from filing and prior approval requirements should not substantially or significantly affect the overall design of regulation contemplated by the Shipping Act, 1916.

Therefore, pursuant to sections 15, 35, and 43 of the Shipping Act, 1916 (46 U.S.C. 814, 833a and 841a), and 5 U.S.C. 553, the Commission proposes to amend 46 CFR Part 524 by adding a new paragraph (c) to § 524.2 *Definitions*. The new material would read as follows:

§ 524.2 Definitions.

* * * * *

(c) An agreement for joint cargo inspection services or self-policing, or both, between the members of two or more conferences or other rate-fixing agreements authorizes the signatories to discuss and agree upon a common self-policing system which includes establishment of uniform investigation and enforcement provisions and the employment of a common neutral body or cargo inspection service(s).

By the Commission.

Francis C. Hurney,

Secretary.

[FR Doc. 81-1540 Filed 1-16-81; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Ch. I

[CC Docket No. 80-634]

Changes in the Corporate Structure and Operations of the Communications Satellite Corporation; Order Extending Time for Filing Comments and Reply Comments.

AGENCY: Federal Communications Commission.

ACTION: Proposed Rule; Extension of comment and reply comment period.

SUMMARY: This Order extends the time for filing comments in response to No. 80-634 on corporate structure and operations of the Communications Satellite Corporation from January 12, 1981, to January 16, 1981. It extends the time for filing reply comments from February 9, 1981, to February 20, 1981. The extension was granted pursuant to a request filed by Western Union International, Inc.

DATES: Comments shall be filed on or before January 16, 1981, and reply comments on or before February 20, 1981.

ADDRESS: Comments and replies should be submitted to: The Secretary, Federal Communications Commission, 1919 M Street, NW., Washington, D.C. 20554

FOR FURTHER INFORMATION CONTACT: James L. Ball/Glenn deChabert, International Facilities Planning Division, Common Carrier Bureau, Federal Communications Commission, 1919 M Street, NW., Washington, D.C. 20554 (202) 632-3214.

Order

(45 FR 71620)

Adopted: January 7, 1981.

Released: January 9, 1981.

In the Matter of: Changes in the Corporate Structure and Operations of the Communications Satellite Corporation; Request for Extension of Time.

1. Western Union International, Inc. (WUI) has filed a request for a four-day extension of time, until January 16, 1981, to file comments in response to the Commission's Notice of Proposed Rulemaking in Docket No. 80-634. *Communications Satellite Corporation*, 81 FCC 2d 287 (1980). The Commission's Notice requests comments on tentative proposals made in the Comsat study for changes in the corporate structure and operations of Comsat.

2. WUI states that the extension it requests is justified in view of the court schedule confronting it during the final

week before the current deadline for comments in this proceeding. WUI indicates that its counsel will be involved in oral argument in the appeals of four Commission decisions scheduled for January 8, 1981, in the U.S. Court of Appeals for the District of Columbia.[1] It states that its counsel therefore has been unable to devote sufficient attention to preparation of comments in this proceeding and argues that a four-day extension would afford a reasonable opportunity to complete this task.

3. We will grant WUI's request. Under the circumstances that it presents, a short extension is reasonable and will not unduly delay this proceeding in relation to other Commission policy initiatives in the international communications area.

4. Accordingly, IT IS ORDERED, pursuant to authority delegated in § 0.291 of the Commission's Rules and Regulations, 47 CFR 0.291 (1979), that the request of Western Union International, Inc., for an extension to file comments in CC Docket No. 80-634 IS GRANTED.

5. IT IS FURTHER ORDERED, that interested parties shall file comments in this proceeding on or before January 16, 1981. Replies shall be filed on or before February 20, 1981.

Federal Communications Commission.

Willard L. Demory,

Assistant Bureau Chief, International Common Carrier Bureau.

[FR Doc. 81-1941 Filed 1-16-81; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 2

[Gen. Docket No. 80-740; FCC 80-696]

Amendment of Part 2 of the Rules Regarding Use of the High Frequency Radio Spectrum

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rule making.

SUMMARY: The Commission proposes to revise its policy on the use of the radio spectrum below 25 MHz by fixed and land mobile services as a result of the Final Acts of the World Administrative Radio Conference, Geneva, 1979.

DATES: Comments must be submitted on or before January 30, 1981, and Reply Comments on or before March 2, 1981

ADDRESS: Federal Communications Commission, 1919 M Street, NW., Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Donald Draper Campbell, Office of Science and Technology, Washington, D.C. 20554, (202) 653-8178—Room 7307.

In the matter of amendment of Part 2 of the Rules regarding use of the High Frequency radio spectrum.

Adopted: November 25, 1980.

Released: December 31, 1980.

By the Commission:

1. The United States has observed a domestic policy which generally prohibits the use of the High Frequency (HF) Fixed Service for internal domestic communications. This policy results from the following conditions.

(a) The U.S. has implemented high-quality domestic microwave, land-line and satellite facilities.

(b) The HF band is characterized by lower availability than higher frequency bands due primarily to propagation anomalies and vagaries that occurr in the HF band.

(c) The HF spectrum is highly congested internationally and domestic operations would affect, and be affected by, this situation.

Further, authority to operate in the HF spectrum has been generally prohibited to the Land Mobile Service.

2. The Final Acts of the World Administrative Radio Conference, Geneva, 1979 (WARC), reflect a number of allocation changes in the radio spectrum between 3 and 27.5 MHz which generally reduce the amount of spectrum space allocated to the Fixed Service and increase the spectrum space allocated to the Broadcasting Service, the Maritime Mobile Service, the Amateur Service and the Radio Astronomy Service. The effective implementation dates for these international allocation changes will vary over a wide range due to a complex reaccommodation process contained in Resolution CV of the Final Acts (given at Appendix A) and because further specific actions must be taken at future International Telecommunication Union (ITU) conferences.[1] The timeframe for this transition will extend from early 1982 through approximately 1994. Although U.S. domestic allocation changes are not yet determined, consideration of the propagation characteristics at HF would restrict us to closely follow the international allocations.[2] The WARC recognized the congestion existing in the High Frequency portion of spectrum and called for a review of entries in the Master International Frequency Register (MIFR) with a view toward deleting unused entries and prioritizing the remainder (Resolution CT given in Appendix A). It also recognized the possibilities for relief through application of new technologies as expressed in Recommendation YI (given at Appendix A).

3. It is our belief that the basis United States domestic policy should continue. Newer technologies will provide high-quality communications service within the United States, but the international congestion at HF will remain as other countries must continue and increase their domestic usage as stated in the Recommendation YI. Because of that usage and congestion, it does not appear feasible to guarantee protection from international interference on frequency assignments in the HF spectrum, even though such assignments are for primary services. We would not, however, wish to totally foreclose the use of HF spectrum by the Fixed and Land Mobile Services. That spectrum could be useful, in certain instances, to provide backups to higher technology communications facilities, to provide for intermittent uses occasioned by disasters and emergencies, and to provide important communications links when other facilities are unavailable (such as circuits necessary to provide for public health and safety in isolated communities and circuits necessary in exploration for energy resources).

4. As a result of the circumstances outlined above, the Commission feels that it is necessary to amend its Rules regarding the use of the spectrum below 25 MHz by stations in the Fixed and Land Mobile Services. Currently, Rule Sections 2.102 and 2.105 (a) and (b) set forth the authority for stations in the Fixed Service and Mobile Service to operate on frequencies below 25 MHz. The Commission, therefore proposes to amend Section 2.102 by adding a new subparagraph (h), given at Appendix B, which states provisions for use of the HF spectrum by the Fixed and Land Mobile services and to delete paragraphs (a) and (b) from Section 2.105 so that it contains only information regarding the format of the Table of Frequency Allocations. Further, the Commission proposes to add a new

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[1] The four decisions on appeal are: (1) *Gateways*, 76 FCC 2d 118 (1979); (2) *Unbundling*, 76 FCC 2d 61 (1979); (3) *International Formula*, 75 FCC 2d 345 (1979); and (4) *Domestic Public Message Service*, 71 FCC 2d 471 (1979).

[1] World Administrative Radio Conference (WARC) for Mobile Telecommunications (March 1982); WARC for Planning of the High Frequency Bands Allocated to the Broadcasting Services (1st Session, January 1983 and 2nd Session, October 1984); and WARC for the Mobile Services (October 1983).

[2] Proposals concerning domestic allocation changes which take into account the results of WARC are contained in a Notice of Inquiry (FCC 80-696) in Docket 80-739.

§ 2.106, given at Appendix C, to help accomplish re-accommodation actions which may become necessary as a result of changes made by the 1979 WARC.

5. Authority for issuance of this Notice is contained in Section 4(i) and 303(r) of the Communications Act 1934, as amended, 47 U.S.C. 154(i) and 303(r). Pursuant to procedures set out in Section 1.415 of the Rules and Regulations, 47 CFR 1.415, interested persons may file comments on or before January 30, 1981 and reply comments on or before March 2, 1981. All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding. In reaching its decision, the Commission may take into consideration information and ideas not contained in the comments, provided that such information or a writing indicating the nature and source of such information is placed in the public file, and provided that the fact of the Commission's reliance on such information is noted in the Report and Order.

6. In accordance with the provisions of Section 1.419 of the Rules and Regulations, 47 CFR 1.419, formal participants shall file an original and 5 copies of their comments and other materials. Participants wishing each Commissioner to have a personal copy of their comments should file an original and 11 copies. Members of the general public who wish to express their interest by participating informally may do so by submitting one copy. All comments are given the same consideration, regardless of the number of copies submitted. All documents will be available for public inspection during regular business hours in the Commission's Public Reference Room at its headquarters in Washington, D.C.

7. For purpose of this non-restricted notice and comment rulemaking proceeding, members of the public are advised that *ex parte* contacts are permitted from the time the Commission adopts a notice of proposed rulemaking until the time a public notice is issued stating that a substantive disposition of the matter is to be considered at a forthcoming meeting or until a final order disposing of the matter is adopted by the Commission, whichever is earlier. In general, an *ex parte* presentation is any written or oral communication (other than formal written comments/pleadings and formal oral arguments) between a person outside the Commission and a Commissioner or a member of the Commission's staff which addresses the merits of the proceeding. Any person who submits a written *ex parte* presentation must serve a copy of that presentation on the Commission's Secretary for inclusion in the public file. Any person who makes an oral *ex parte* presentation addressing matters not fully covered in any previously-filed written comments for the proceeding must prepare a written summary of that presentation; on the day of oral presentation, that written summary must be served on the Commission's Secretary for inclusion in the public file, with a copy to the Commission official receiving the oral presentation. Each *ex parte* presentation described above must state on its face that the Secretary has been served, and must also state by docket number the proceeding to which it relates. See generally, Section 1.1231 of the Commission's rules, 47 CFR 1.1231.

8. For further information concerning this Notice, contact Donald D. Campbell, FCC, Office of Science and Technology, Spectrum Planning Branch, Washington, D.C. 20554, telephone (202) 653-8176. However, members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, *ex parte* contracts made to members of the Federal Communications Commission in this proceeding must be disclosed in the public docket file. A summary of the Commission's procedure governing *ex parte* contacts in rulemaking proceedings is available from the Commission's Consumer Assistance Office, FCC Washington, D.C. 20554, (201) 532-2700.

Federal Communications Commission.

William J. Tricarico,

Secretary.

Note.—In an effort to minimize publishing costs, Appendix A has been omitted. However, interested parties may inspect that appendix on file in the Dockets Branch, Room 239, 1919 M St., N.W., Washington, D.C. 20554.

Appendix B

47 CFR § 2.102 is amended by adding a new (h) to read as follows:

§ 2.102 Assignment of frequencies.

* * * * *

(h) Special provisions regarding the use of spectrum allocated to the Fixed and Land Mobile Service below 25 MHz by non-Government stations.

(1) Only in the following circumstances will authority be extended to stations in the Fixed Service to operation on frequencies below 25 MHz.

(i) With respect to Aeronautical Fixed Stations, only when a showing can be made that more suitable facilities are not available.

(ii) With respect to Fixed Stations, only to:

- provide standby and/or backup facilities to satellite and cable circuits used for international public correspondence;
- provide communications circuits in emergency and/or disaster situations, where safety of life and property are concerned;
- provide standby and/or backup communications circuits to regular domestic communications circuits which have been disrupted by disasters and/or emergencies; and
- provide communications circuits wholely within the State of Alaska and the United States Possessions in the Pacific;
- provide communications circuits to support operations which are highly important to the national interest and where other means of telecommunication are unavailable.

(2) Only in the following circumstances will authority be extended to stations in the Land Mobile Service to operate below 25 MHz.

(i) To provide communications circuits in emergency and/or disaster situations where safety of life and property are concerned,

(ii) To provide standby and/or backup communication circuits to regular domestic communication circuits which have been disrupted by disaster and/or emergency, and

(iii) To provide communication circuits wholely within the State of Alaska and the United States Possessions in the Pacific.

(iv) To provide communications circuits to support operations which are highly important to the national interest and where other means of telecommunication are unavailable.

(3) The circuits provided for situations described in (1) and (2) will not usually be notified to the International Frequency Registration Board and, thus, will not be entered into the Master International Frequency Register; this results in the following constraints upon such circuits.

(i) The FCC will not accept responsibility for protection of the circuits from harmful interference caused by foreign operations.

(ii) In the event that a complaint of harmful interference resulting from operation of these circuits is received from a foreign source, the offending circuit(s) must cease operation on the particular frequency concerned.

(iii) In order to accommodate the situations described in (i) and (ii) the circuits must utilize frequency

synthesized equipments which are capable of tuning among frequencies assigned to the particular operation.

Appendix C

47 CFR is amended by adding a new § 2.106 to read as follows:

§ 2.106 Special provisions regarding the implementation of the final acts of the World Administration Radio Conference (WARC), Geneva, 1979.

(a) High Frequency Bands. (1) The Table of Frequency Allocations, § 2.106, contains a number of bands in the High Frequency portion of the radio frequency spectrum which have been reallocated by the 1979 World Administration Radio Conference. The effective implementation dates for the allocations vary over a wide range due to a complex reaccommodation process for affected operations and an associated revision of entries in the Master International Frequency Register and because specific actions must be taken at International Telecommunications Union conferences before exact implementation dates can be determined. The transition period will extend from early 1982 to 1989 for frequency bands above 10 MHz and to 1994 for bands below 10 MHz.

(2) The following is a list of bands which are involved in the international re-allocation process:

Bands kHz and Radio Services To Be Excluded After Implementation

9775–9900, fixed
11650–11700, fixed
11975–12050, fixed
12230–12330, fixed
13600–13800, fixed
15450–15600, fixed
16360–16460, fixed
17360–17410, fixed
17550–17700, fixed
18068–18168, fixed
18780–18900, fixed
19680–19800, fixed
21750–21850, fixed
22720–22855, fixed
24890–24990, fixed & land mobile
25110–25210, fixed & land mobile
25550–25600, fixed & mobile
25600–25670, broadcasting
26100–26175, fixed & land mobile

(3) In order to facilitate the timely domestic implementation of revised High Frequency allocations, non-Government entities should consider the following principles as a guide:

(i) New frequency assignments in the 3–27.5 MHz portion of the spectrum which require international protection and which are required for a long period of time (i.e., after the transition period) should be made in appropriate bands given in the Table of Frequency Allocations, § 2.106. This approach should preclude the necessity for removal into another band.

(ii) New frequency assignments which are required for a short period of time (i.e., not beyond the transition period) and which do not require international interference protection or do not pose an international interference potential should be made in bands which will be released to other radio services. Applicants requesting assignments in the bands which are to be used by other services must fully accept the fact that such assignments may be terminated by the Commission at such time without prior notice as either national or international implementation plans and schedules are adopted.

[FR Doc. 81-1877 Filed 1-16-81; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Parts 2, 22, and 90

[General Docket No. 80-183; RM-2365; RM-2750; RM-3047; RM-3088]

Amendment of Parts 2, 22, and 90 of the Commission's Rules To Allocate Spectrum in the 928–941 MHz Band and To Establish Other Rules Policies, and Procedures for One-Way Paging Stations in the Domestic Public Land Mobile Radio Service and the Private Land Mobile Radio Services; Order Extending Time for Comments and Reply Comments

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; extension of comment and reply comment period.

SUMMARY: The FCC has extended the deadline for comments and reply comments in this proceeding, due to concern that inadequate time had been left from the release of the Supplemental Notice of Proposed Rule Making on November 4, 1980.

The FCC had originally released a Notice of Proposed Rule Making on May 8, 1980, allocating three MHz of spectrum for private and common carrier paging systems. The Supplemental Notice proposed a more flexible allocation plan, featuring potential use of private paging frequencies by common carriers and vice-versa. Parties to the proceeding were invited to comment on both regulatory approaches with the comments deadline established as December 15, 1980, and the reply comments deadline established as January 30, 1981. However, parties to the proceeding expressed concern that more time was needed to fully analyze both proposals; hence, the extension of time.

DATES: The deadline for comments has been extended to January 16, 1981, and the deadline for reply comments has been extended to March 6, 1981.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Rodney T. Small (Office of Science and Technology), (202) 653-8160; Michael D. Sullivan (Common Carrier Bureau), (202) 632-6450; or Eugene Bowler (Private Radio Bureau), (202) 632-6497.

SUPPLEMENTARY INFORMATION:

In the matter of amendment of Parts 2, 22 and 90 of the Commission's rules to Allocate Spectrum in the 928–941 MHz Band and to Establish Other Rules Policies, and Procedures for One-Way Paging Stations in the Domestic Public Land Mobile Radio Service and the Private Land Mobile Radio Services, General Docket No. 80-183, RM-2365, RM-2750, RM-3047, RM-3088.

Adopted: December 12, 1980.

Released: December 15, 1980.

1. The Commission has before it a motion for extension of time in this proceeding filed by DPRS, Inc. t/a Zip/Call. Other parties have also informally expressed an interest in an extension of time.

2. In view of the fact that the release date of the *Supplemental Notice of Proposed Rule Making* in this proceeding was delayed beyond our expectations, the Commission believes that an extension of time for both the original *Notice* and the *Supplemental Notice* would be in the public interest.

3. Therefore, it is ordered, that the date for filing is extended to and including January 16, 1981, and the date for filing reply comments is extended to and including March 6, 1981.

4. This action is taken pursuant to authority found in Sections 4(i), 5(d), and 303 of the Communications Act of 1934, as amended, and § 0.241 of the Commission's rules.

Elliot Maxwell,

Deputy Chief Scientist.

[FR Doc. 81-1779 Filed 1-16-81; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[BC Docket No. 80-701; RM-3818; RM-3831]

FM Broadcast Stations in Andrews and Pawley's Island, South Carolina; Order Extending Time for Filing Comments and Reply Comments

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; extension of comment and reply comment period.

SUMMARY: This action extends the time for filing comments and reply comments in a proceeding on FM broadcast stations in Andrews and Pawley's Island, South Carolina in response to the request from Linda S. Knop who has petitioned for the assignment of an FM channel to Pawley's Island, South Carolina.

DATES: Comments must be filed on or before January 29, 1981, and reply comments on or before February 19, 1981.

ADDRESS: Submit comments to Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Mark N. Lipp, Broadcast Bureau, (202) 632-7792.

SUPPLEMENTARY INFORMATION:

Order Extending Time for Filing Comments and Reply Comments

Adopted: December 29, 1980.

Released: January 9, 1981.

In the Matter of Amendment of § 73.202(b), Table of Assignments, FM Broadcast Stations. (Andrews and Pawley's Island, South Carolina).

By the Chief, Policy and Rules Division:

1. On October 30, 1980, the Commission adopted a *Notice of Proposed Rule Making*, 45 FR. 73719, published November 6, 1980, concerning the above entitled proceeding. The date for filing comments and reply comments are currently December 29, 1980, and January 19, 1981, respectively.

2. On December 23, 1980, counsel for Linda S. Knop filed a request to extend for 30 days the comment deadline so that the necessary information to respond to the issues in this proceeding can be assembled.

3. We believe it would be appropriate to extend the deadline for comments in this proceeding so that Ms. Knop can provide information which would be helpful to us in resolving this proceeding. It will also be necessary to extend the reply comment deadline.

4. Accordingly, IT IS ORDERED, that the dates for filing comments and reply comments in BC Docket No. 80-701 ARE EXTENDED to and including January 29, 1981, and February 19, 1981, respectively.

5. This action is taken pursuant to authority found in Sections 4(i), 5(d)(1) and 303(r) of the Communications Act of 1934, as amended, and § 0.281 of the Commission's Rules.

Federal Communications Commission.

Henry L. Baumann,

Chief, Policy and Rules Division, Broadcast Bureau.

[FR Doc. 81-1960 Filed 1-16-81; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Chapter V

Five-year Priorities for Motor Vehicle Safety Rulemaking and Research

AGENCY: National Highway Traffic Safety Administration, Department of Transportation.

ACTION: Publication of the National Highway Traffic Safety Administration's "Five Year Priorities for Motor Vehicle Safety Rulemaking and Research."

SUMMARY: This document, discussing NHTSA's priorities for motor vehicle safety rulemaking and research, is an update of the similar five year plan published on April 26, 1979 (44 FR 24591). The plan discusses the Agency's rulemaking goals and addresses accomplishments since the last plan. It then describes NHTSA's anticipated rulemaking initiatives on which we expect formal action in the near future. The plan concludes with a discussion of motor vehicle safety related research which the Agency has underway or anticipates intiating within the next five years.

Past NHTSA plans discussed both safety and fuel economy rulemaking. However, fuel economy rulemaking is not addressed in this plan since it is complete for the 1980 to 1985 period, which the plan encompasses. Decisions as to potential fuel economy rulemaking in the post-1985 time frame are pending.

The plan will be updated periodically in response to the dynamic environment in which rulemaking and its research must occur. It is an expression of NHTSA's current intentions, should aid the automobile industry in anticipating NHTSA's priorities for use in developing their own long range corporate plans, and assist the public in understanding what to expect, as part of NHTSA's long-standing involvement of the public in research and rulemaking efforts. The information provided in this plan offers citizens the basis for actively participating in the rulemaking process.

ADDRESS: Interested persons may obtain copies of the plan free of charge by contacting Ms. Eleanor Kitts, Office of Management Services (NAD-42), National Highway Traffic Safety Administration, Room 4423, 400 Seventh Street, SW., Washington, D.C. 20590 (202-426-0674).

FURTHER INFORMATION: For further information about this plan, contact Deborah L. Parker, Special Projects Planning Staff (NPP-30), National Highway Traffic Safety Administration, Room 5212, 400 Seventh Street, SW., Washington, D.C. 20590 (202-426-1570).

(Sec. 9, Pub. L. 89-670, 80 Stat. 931 (49 U.S.C. 1657); sec. 301, Pub. L. 94-163, 89 Stat. 901 (15 U.S.C. 2002); secs. 103,112, 119, 202, Pub. L. 89-563, 80 Stat. 718 (15 U.S.C. 1392, 1401, 1407, 1423); delegation of authority at 49 CFR 1.50)

Issued on January 5, 1981.

Joan Claybrook,

Administrator.

Update—Five-Year Priorities for Motor Vehicle Safety Rulemaking and Research

This document reflects the National Highway Traffic Safety Administration's current priorities for potentially proposing motor vehicle safety rulemaking and conducting motor vehicle safety research. (More detail can be found in the U.S. Department of Transportation's Regulations Agenda, published semi-annually in the Federal Register.) Priorities have been established for the next five years. This document updates the plan published on April 26, 1979 (44 FR 24591). The Agency's objectives in publicly stating and seeking comment on its priorities are two-fold.

- First, to provide policy guidance for use within NHTSA for the possible development and issuance of motor vehicle safety standards.
- Second, to provide the public with information on proposed future activities and priorities, and to permit the regulated industries to anticipate potential requirements in their long-range planning.

Our priorities are presented in three sections. Section I describes NHTSA's rulemaking goals and accomplishments since the April 26, 1979, publication.

Section II describes NHTSA's anticipated rulemaking initiatives along with estimated dates for issuance of proposals, or, where the proposal has already been issued, an estimated final rule date. Although we offer this information to provide the industry and the public with a sense of our timing, it must be recognized that the rulemaking process is a search for a solution to a problem. After consideration of alternatives and the impact of each, the process may or may not lead to a formal rulemaking action.

Section III describes areas where safety problems have been identified and where rulemaking is anticipated later (1982–1985) in the five year period covered by this plan. It further describes the motor vehicle safety related research which NHTSA has underway or anticipates initiating within the next five years. This research supports problem identification; development and assessment of alternative remedies; definition of costs, benefits, and leadtimes for major alternatives; and development of specific countermeasures.

This statement of priorities is intended to be a dynamic document. Just as this document revises the April 26, 1979, version, it is expected that future amendments will occur in response to technological innovations, new accident injury findings, pesistent safety hazards, petitions from the public and industry, changes in Agency resource availability, formal Agency evaluations, or other pertinent information. This document is an expression of the Agency's current intent, that can serve as a guide to the Government's performance. It does not in any way indicate the time frame within which a manufacturer could upgrade the relevant safety performance of its vehicles, as this can always be accomplished more rapidly on a voluntary basis than can be effectuated through government rulemaking activities.

The priorities which follow reflect a careful assessment of the capabilities of the Agency. They include the use of all the funding and staffing resources NHTSA now has available for motor vehicle safety rulemaking and research, appropriately distributed among those areas where the greatest payoff lies. Additional resources would be required to pursue additional areas of safety rulemaking. Although the plan is ambitious in relation to Agency resources, it is anticipated that with efficient and effective management, it can be successfully implemented.

Section I: Rulemaking Priorities

A. *Major Accomplishments Since the April 1979 Draft Plan.*

In performing its mission to improve motor vehicle safety over the last year, NHTSA achieved a number of accomplishments in the areas it had identified as priorities for safety rulemaking; i.e., occupant protection, light trucks and vans, pedestrian safety, braking systems and motorcycles. These include the following major regulatory actions:

1. NHTSA has issued final rules for Federal Motor Vehicle Safety Standards (FMVSS) 201, 203, and 204 for light trucks and multipurpose passenger vehicles (MPV's) under 10,000 pounds Gross Vehicle Weight Rating (GVWR), effective in Model Year 1982.[1] The standards require specific performance in these vehicles for Occupant Protection in Interior Impact, Impact Protection for the Driver from the Steering Control System, and Steering Column Rearward Displacement. Similar standards have applied to passenger vehicles for a number of years, and the application of these to light trucks is necessary because of the recent large increase in their use, particularly for carrying passengers. Last year (1979), this vehicle class had over 7,100 occupant fatalities—an increase of more than 50 percent since 1975. Many of those deaths could have been prevented through the application of standards similar to those now required for passenger vehicles. The three standards cited above are expected to save about 200 lives per year when fully implemented.[2]

2. We have also issued a final rule revising FMVSS 213, Child Restraint Systems, to require the dynamic testing of child restraint systems sold as optional vehicle equipment. The standard took effect beginning January 1981, and applies to child auto seats, harnesses, and other components which vehicle owners purchase to protect their children. The standard covers those restraint systems which fit children from birth to about age 5 years, and establishes minimum performance requirements for reducing the chance of injury and death from both interior vehicle impact and the restraint system itself. If used conscientiously, the restraints meeting this standard could significantly reduce the approximately 1,000 fatalities and 100,000 injuries each year to children ages 0 to 5, resulting from motor vehicle accidents. To encourage and permit the use of child restriant systems in vehicles which might have automatic restraint systems without lap belts or anchorage points for child restraint tethers, we have published an NPRM addressing these issues.

The Agency has also issued two final rules for Part 572, Anthropomorphic Test Dummies: one to include performance standards for the child surrogate dummies used in the dynamic testing of infant restraints and child harnesses, the other to specify the use of triaxial accelerometers for the elimination of calibration problems during compliance testing.

3. The Agency has issued a final rule amending FMVSS 218, Motorcycle Helmets. This amendment increases the percentage of helmet sizes covered by FMVSS 218 from 40 percent to over 90 percent by testing large and extra large helmets with the medium (size "C") headform. Prevously, only medium size helmets were covered. Future rulemaking is anticipated to extend the standard to cover headform sizes "A" and "D", to assure all production helmets meet the standard.

4. NHTSA issued both a Notice of Proposed Rulemaking (NPRM) and a Final Rule for FMVSS 105–75, Hydraulic Brake Systems, establishing a brake system performance standard for trucks, buses and MPV's of up to 10,000 pounds GVWR. (Several requirements are also extended to trucks, buses and MPV's with a GVWR greater than 10,000 pounds.) There had not been a standard for the stopping distance performance of these vehicles. This standard requires performance similar to the existing standard for passenger vehicles to assure compatible braking performance throughout the Nation's vehicle fleet. As the number of light trucks and MPV's in the fleet grew because of both utility and popularity, compatible brake performance to prevent rear end collisions became essential. The standard also requires all heavy duty vehicles over 10,000 pounds GVWR using hydraulic brakes to provide a specific braking performance in the event of partial brake system failure. The performance requirements are effective for vehicles manufactured after September 1, 1983.

5. Both the NPRM and the Final Rule have been issued establishing comfort and convenience performance standards for safety belts, applicable to FMVSS 208, 209, and 210 (Occupant Restraints, Seat Belt Assemblies and Seat Belt Assembly Anchorages). The most frequent reasons given by the public for not wearing seat belts and shoulder belts are that they are uncomfortable to wear and inconvenient to use. This occurs because of improper fit to the occupant, pressure exerted by the restraint on the occupant when in place, inadequate clearance for entry and exit without encumberance, and inconvenient mounting locations causing poor access during donning.

This standard, just issued, requires specific mandatory performance specifications for seat belt and restraint comfort and convenience parameters to ensure that people are not discouraged from using these safety devices. Because

[1] FMVSS No. 204 is limited to vehicles other than passenger cars with an unloaded vehicle weight of 4,000 pounds or less.

[2] Additional agency action to raise the unloaded vehicle weight in FMVSS No. 204 from 4,000 pounds or less to 5,500 pounds or less, may be initiated.

of cost and leadtime considerations and to encourage innovative occupant restraint designs, the Agency will issue additional specifications as performance guidelines. The guidelines will encourage manufacturers to follow several of the procedures proposed but not promulgated as a final rule by the Agency, or to find alternative means to accomplish the same ends. The mandatory requirements are in effect beginning September 1, 1982, for all vehicles under 10,000 pounds GVWR.

6. NHTSA issued a final rule amending FMVSS 121, Air Brake Systems, to require air brake equipped trucks, truck-tractors, and trailers to be manufactured with brakes that act on all wheels. Several truck manufacturers had been considering removing front axle brakes to reduce truck weight and costs, an action which NHTSA test data show could lengthen stopping distances substantially. The amendment, effective July 24, 1980, requires that the industry continue its general practice of having brake systems acting on all wheels.

7. NHTSA issued a final rule amending the Consumer Information Regulation, Part 575, by deleting the requirement that manufacturers supply information on acceleration and passing ability to vehicle first purchasers and prospective purchasers. In deleting the requirement, NHTSA felt that the national interest in energy conservation had substantially reduced the demand for rapid acceleration capability and that the high speed driving permitted by the test procedures appeared to contradict the safety and energy saving policies behind the national 55-mph speed limit. The final rule also moves up the timing of manufacturers' submissions to NHTSA of other vehicle performance data which are provided to the consumer. This benefits the consumer in his or her purchase decisions by making the information available earlier in the model year. Rulemaking to delete those information requirements was initiated in response to a petition from General Motors Corporation.

8. NHTSA recently issued a final rule for improving the theft protection capabilities of motor vehicles by amending FMVSS 114, Theft Protection. The revised safety standard extends the existing passenger car requirements for theft protection to light trucks and MPV's of up to 10,000 pounds GVWR. It also revises the standard to prevent the inadvertent locking of the steering mechanism of a moving vehicle by removal of the ignition key or shutting off the engine. The effective date for passenger cars is September 1, 1982, and for light trucks and MPV's the date is September 1, 1983.

9. A Final Rule for FMVSS 128, Direct Fields of View, was just issued establishing performace requirements for maximum permissible size of obstructions (e.g., roof pillars) in the field of view of the driver, a minimum field of view for the driver through the windshield, and the light transmittance of the windshield. The standard will be effective for Model Year 1985 passenger vehicles.

10. An NPRM has been published proposing that the tire identification number molded on tires be more accessible to the owner. Improved access of the tire identification number would greatly enhance the owner's ability to determine if the tires had been recalled. Currently, the number is placed on the blackwall side of white wall tires and on only one side of the blackwall tires, making the number inaccessible on about 90 percent of the tires. To read the number, the owner would now have to crawl under the car, remove each tire, or have a service station perform either of those tasks. The proposed requirement would eliminate the difficulty of reading the number by requiring that the number be placed on both sidewalls of a blackwall tire and on the whitewall side of a whitewall tire. The improved access would help increase the number of motorists who respond to recall campaigns and thereby reduce the number of motorists who unknowingly continue to drive on potentially unsafe tires.

11. An NPRM was recently published proposing a new safety standard entitled, "Rear Underride Protection" for specifying performance requirements for rear underride protective devices on most trucks and trailers that are over 10,000 pounds GVWR. The standard would reduce the death and injury which occur as a result of vehicle collision and the attendant sliding of the car under the rear ends of trucks and trailers.

12. An NPRM has just been published proposing an amendment to FMVSS 108 to require the installation of a single center, high mounted stoplamp on passenger cars in addition to the stoplamps presently required. The purpose is to reduce rear end collisions by providing a more effective indication to following drivers that the brake had been applied. The amendment is proposed to be effective for Model Year 1984 passenger cars.

13. NHTSA has published an Advanced Notice of Proposed Rulemaking (ANPRM) for updating the requirements of FMVSS 214, Side Impact Protection. Because about one-third of the occupant deaths and life threatening injuries for all vehicles occur from side impact accidents, the opportunity for preventing fatalities and injuries is significant. The upgrade focuses on four major areas: performance criteria for higher levels of occupant protection, extending coverage from just passenger cars to all passenger vehicles under 10,000 pounds GVWR, the upgrading of testing requirements by using a moving barrier to more closely simulate real world conditions, and incorporating some of the safety requirements from FMVSS 206, Door Locks and Door Retention Components. The ANPRM addresses preliminary test requirements for moving barrier impactor tests and suggest potential performance criteria for evaluating the anthropomorphic test dummy response. The test dummy would be the key element in measuring the level of occupant protection.

14. NHTSA issued an ANPRM to consider an amendment to FMVSS 108, Lamps, Reflective Devices, and Associated Equipment, which would improve the noticeability of large commercial vehicles. The purpose of the amendment would be to prevent accidents in which these vehicles are struck by other vehicles in the rear or side, by improving the probability of motorists seeing these larger vehicles. This improved noticeability could be accomplished by better lighting and signalling systems or increased use of reflectorized and fluorescent materials.

Other Accomplishments Since the Previous Plan

1. Public Meetings to Discuss Motor Vehicle Safety

During the past year and a half, NHTSA held over 19 public meetings to discuss various motor vehicle safety related problems and their potential solutions. Early involvement of the public in research and rulemaking efforts is a longstanding NHTSA policy. It offers the public a view of our efforts to improve motor vehicle safety, and the opportunity to actively participate in this process. In turn, it provides NHTSA with a wider range of information, ideas and views than would otherwise occur. Public meetings serve to develop open lines of communication among all people involved in motor vehicle safety and lay the groundwork for a cooperative effort among motor vehicle manufacturers, users, and safety regulators. These meetings have covered a variety of topics including heavy truck safety, vehicle safety technical issues, bumper and consumer information programs, child safety, and motor vehicle safety research study results.

Some of the major meetings are discussed briefly below:

• Heavy Duty Truck Safety Meetings (September 10, 1979 and February 19, 1980) were held to discuss ways of improving safety in designing, manufacturing, operating, and maintaining heavy duty trucks.

• Symposium on Side Impact Protection (January 23, 1980) was held to provide a forum for the exchange of information on side impact protection and to inform the public and industry of the status of the NHTSA rulemaking activities in upgrading side impact protection.

• National Conference on Child Passenger Protection and public meeting on Child Safety and Motor Vehicles (December 10 through 12, 1979) were held to provide a public forum to discuss and broaden NHTSA's knowledge of the hazards that vehicles pose to children, and to determine the possible means for reducing those hazards.

• Seventh International Technical Conference on Experimental Safety Vehicles (June 5 through 8, 1979) was held to exchange information on the development of experimental safety vehicles and progress in the supporting research work.

• Eighth International Technical Conference on Experimental Safety Vehicles (October 21–24, 1980) was held to continue the process of information exchange between countries and manufacturers developing experimental safety vehicles which incorporate advanced systems to satisfy national goals in safety, fuel economy, and vehicle emissions.

• Small Car Safety News Exhibit (August 19, 1980) was held to highlight the serious small car safety problem and the Agency's concern that the growing number of small fuel efficient cars on the Nation's highways will result in sharp increases in fatalities and serious injuries unless significant improvements are made in car safety.

• National Accident Sampling System Advisory Committee Meeting (February 25, 26, 1980) was the initial meeting of 25 nationally recognized highway safety experts gathered to advise NHTSA on the implementation and operation of NHTSA's National Accident Sampling Sytstem. This system was established to provide representative field accident data in support of NHTSA's mission to reduce highway injuries and fatalities through vehicle and highway safety improvements. This initial meeting addressed issues relating to data privacy and release, vehicle identification, accident exposure, and estimation of characteristics of unreported accidents. A second public meeting was held November 17 and 18 to review the program status and make recommendations on data collected, field procedures and analysis.

• International Automotive Rating Symposium (December 9–11, 1980) was held between representatives of the automotive and insurance industries, and various governments, to discuss the past, present, and future of automotive ratings systems for crashworthiness, damageability, and maintainability.

• Quarterly NHTSA/Industry Technical Meetings at which NHTSA answers technical questions posed by the automotive industry and other interested parties on the Agency's safety-related activities and research.

2. Petitions

NHTSA devotes considerable resources responding to petitions from the automotive industry, its suppliers, and other interested parties. These petitions may address the commencing of proceedings on rulemaking, the determination and consequentiality of motor vehicle safety defects, and relief for noncompliance because of inconsequentiality.

Petitions for new or amended standards may address vehicle equipment or may request that performance specifications and test procedures be revised or updated. Petitions receive a technical review by the Agency to assist in determining the likelihood that the requested action will result in a formal Agency response, such as a rule. The review may consist of an analysis of the materials submitted, together with existing Agency information, or additional information collected by the Agency directly or through public meetings.

At the conclusion of the technical review, based on the merits of the case, the Agency determines the likelihood that the action requested will be issued. If there is a reasonable likelihood, NHSTA grants the petition. If not, the petition is denied.

If the petition is granted, a rulemaking proceeding is begun. It does not, however, signify that a rule will necessarily result from the petition. If the petition is in respect to the consequentiality of noncompliance or defect, a proceeding will begin to assess the issues.

a. Responses to Petitions for Rulemaking from the Public and Industry.

This past year, NHTSA has responded to a number of petitions for the commencement of rulemaking. An example of this type of petition was a request from Volvo to permit the retaining of the front seat during side impact tests of vehicles. The manufacturer's position was that the seat could serve as an integral part of the side impact protection system. This petition was granted, and subsequently resulted in an amendment to FMVSS 214, Side Door Strength, which allowed the use of the seats during testing under an alternative test procedure.

When petitions for rulemaking are received, NHTSA may investigate them individually, or if a number are related, may elect to combine them into one rulemaking action. Our investigation on the merits of the petition may result in a denial or grant, and if granted, may further result in the issuance of an ANPRM, an NPRM or a final rule. Additionally, some petitions may be granted in part, and denied in part. As a result of these variables, the following compilation is only a rough guide for showing the level of effort and disposition of the petitions for rulemaking that NHTSA has worked on since the publication of the last plan.

• Granted—12.

• Published rulemaking actions (Rules, NPRM's, ANPRM's)—27.

• Denied—12.

b. Responses to Petitions for Inconsequential Defects or Noncompliance.

Vehicle and equipment manufacturers whose products fail to comply or contain safety related defects of a minor nature, have a statutory right to petition for a determination that the fault is "inconsequential as it relates to motor vehicle safety." A grant relieves the manufacturer of any obligation to notify purchasers and remedy the condition. An example might be a production lot of seat belts which was inadvertently not marked in accordance with Standard No. 209. If the Agency determined the problem was inconsequentially related to motor vehicle safety, it would grant the petition for exemption. The compilation below shows the disposition of petitions for inconsequence addressed since the last plan:

• Granted—8.

• Denied—12.

B. Motor Vehicle Safety

This section discusses the vehicle environment and trends which will affect the health and safety of motor vehicle occupants. It is followed by a section which describes NHTSA's response to these safety problems.

Motor vehicle traffic crashes claimed over 51,000 lives in 1979, or almost 140 lives every day of the year. This represents about one-half of the deaths due to all types of accidents in the United States, and constitutes a major

public health problem of epidemic proportions. The motor vehicle death rate is comparable to the typhoid and diptheria death rates of the early 1900's. Motor vehicle accidents are the sixth leading cause of death in the Nation, exceeded significantly only by cancer, heart disease, and stroke, and the leading cause of death for Americans age 44 and under. One of every 40 infants born today will die in an auto-related crash.

But fatalities are only a part of the problem. Injuries and their debilitating effects are another part of the toll on society. Approximately 2 million people suffer disabling injuries each year and millions more are injured less severely. Two of every three infants born today can expect to suffer a vehicle related injury in their lifetime. Vehicle crashes are the single most common cause of paraplegia and a major cause of epilepsy.

The societal loss due to these accidents is estimated to be more than $50 billion per year, a sum that does not begin to show the magnitude of the cost since it is impossible to place a true dollar value on life or to quantify the cost of pain and suffering. Highway crashes rob this Nation of significant productive working years of their victims. Because the average age of a motor vehicle fatality victim is only 34, compared to about double that for the leading causes of death—cancer, heart disease, and stroke—the "work years" lost by such victims is tremendous—more than 1.5 million person years annually. And this figure does not include lost work time for the millions who are injured.

With the increase in small car sales, motor vehicle crashes may become an even more serious problem unless appropriate actions are taken to ensure adequate levels of occupant protection. The full implementation of automatic restraint systems is expected to reduce significantly this hazard confronting the motoring public. The automatic restraint standard, FMVSS 208, Occupant Restraint Systems, is the first safety standard to require the measurement of occupant injury levels as a performance requirement for improved safety. Because of the standard, it is estimated that between 10,500 and 13,600 lives would be saved annually by the early 1990's. NHTSA is following closely the progress of the manufacturers and suppliers in responding to the automatic restraint system rule and will be evaluating the effectiveness of their production systems. The Agency has proposed a plan to evaluate automatic restraint systems and FMVSS 208 during the period 1980–1986. The plan, "Evaluation Plan for Motor Vehicle Safety Standard 208, Occupant Crash Protection," was announced in the October 22, 1979 Federal Register (44 FR 60771), and covers passenger automobiles built with automatic crash protection both prior to and after the standard's effective dates.

Unfortunately the need for improved safety continues to grow. The highway and vehicle environment is changing, and new problems are emerging. The number of people killed annually has increased in each of the past 5 years. Motor vehicle deaths rose to approximately 51,000 in 1979, and may exceed 52,500 in 1980. For 1979, this is an increase of more than 6 percent from the 1977 figure of 47,800. The increase occurred despite a decrease in overall travel that resulted from gasoline shortages and substantial price increases.

One of the reasons for this upward trend in fatalities is the increase in the number of lightweight passenger cars and heavy trucks on the roads creating a greater risk for occupants of the smaller automobiles. There are also more occupants at risk as a result of the greater number of light trucks and vans which are increasingly used for passengers, and a signficant increase in heavy trucks in the last 5 years. These are not subject to many of the safety requirements applicable to passenger cars. Motorcycle safety continues to be a serious problem, particularly for motorcyclists who do not wear protective helmets. In the last four years, 28 States have repealed or weakened their helmet use laws. Over the same time period, annual motorcyle fatalities have gone up by more than 50 percent.

Fortunately, progress in motor vehicle safety techology to prevent and mitigate the annual loss of lives, limbs and livelihood is advancing. And due to improved accident data and NHTSA's growing ability to analyze the accident environment, we now better understand highway losses and what can be done to reduce them. Equally important has been the agency's work in integrating many vehicle systems and subsystems into specific vehicles which meet the goals of safety and fuel economy. The agency's production of the Experimental Safety Vehicle (ESV) has shown that small, fuel-efficient cars that are also safe are well within the state-of-the-art. The subsequent Research Safety Vehicle (RSV) Program continued this work in demonstrating what is possible in safety, integrated with fuel economy, low emissions, and comfort features people want in a family car. The RSV has shown extraordinary safety performance in front and side crashes up to 50 mph.

C. Rulemaking Approach

The challenge now facing the Agency is to address those areas and vehicles where the promulgation of Federal Motor Vehicle Safety Standards would significantly enhance the safety of the public. In some areas, where there exists a serious safety hazard as well as a clear solution or reasonable chance of developing a solution to that problem, the rulemaking process can be initiated quickly. On the other hand, where certain types of deaths and injuries are occurring but solutions are not readily apparent, research is required. Even where solutions may be available, research may be necessary to characterize the cause of the harm with sufficient precision that an objective performance standard to reduce the injuries can be established. In other cases, innovative suppliers have developed remedies which make it possible for the Agency to move more quickly.

Of course, as part of each rulemaking initiative and consistent with the Administration's emphasis on regulatory reform, the Agency will continue its efforts to analyze alternative technical and non-technical solutions to each safety problem, including their costs, benefits, economic and employment impacts, to assure maximum benefits and minimum burdens to the industry and to consumers.

The Agency's safety program is not restricted to vehicle safety regulation, but includes driver safety improvements as well. The most cost effective combination of traffic and vehicle safety program elements is always being sought by the Agency. Each program element must meet the same stringent tests of cost-effectiveness. For example, the Agency's traffic safety programs aimed at improved driver performance are evaluated along with programs for vehicle improvements. Standards for vehicles are adopted when they promise to be more effective in preventing death and injury than can be expected from attempts to modify human behavior. But the important point to bear in mind is that a multifaceted approach must be undertaken if there is to be an effective reduction in highway deaths.

Consumer information is another major approach NHTSA is exploring. The Agency's New Car Assessment Program, initiated in 1979, is being carried out under Title II of the Motor Vehicle Information and Cost Savings Act. This Act requires NHTSA to

develop and publish comparative ratings for cars by make and model in three categories: crashworthiness, damageability, and ease of diagnosis and repair. In addition to establishing a foundation for a crashworthiness rating system, the purpose of the New Car Assessment Program is to increase consumer awareness of automotive safety. With better information consumers could choose safer vehicles, and competition to satisfy consumer demand could result in improved levels of automotive safety. We view this approach as a supplement to, and not a substitute for, vehicle regulation.

The Agency's safety regulations have been a major factor in the decline of the fatality rate over the last decade. Based on a General Accounting Office procedure, NHTSA estimates that its safety standards have saved approximately 73,000 lives through 1980. In addition, automotive safety regulations has a strong positive economic impact on society as well as individuals and families. Regulatory related costs are moderate compared with the spending on comfort and convenience automobile options, and when compared with the societal cost of failing to require reasonable safety measures. In addition, since the Agency issues performance standards rather than design standards, there is a variety of ways a manufacturer can comply with the regulations. Since the manufacturer determines how it will comply, the manufacturer exercises significant control over the actual costs of regulation.

The Agency's estimate of the average price to consumers of the safety features contained in a model year 1979 automobile is only about $250–$300. The basis for this estimate is described in the NHTSA report, "The Contributions of Automobile Regulation," December 1979. Over the last seven model years, only two percent of the price increases of new automobiles can be attributed to changes to meet Federal safety standards. The source of data for this figure is the information on the costs of implementing NHTSA regulations which the manufacturers themselves have provided to the Bureau of Labor Statistics. Furthermore, our planning and regulatory analyses are helping to ensure that our regulatory program will be responsive to highway loss needs, and the realities of industry and consumer economics.

D. NHTSA's Planned Vehicle Safety Emphasis

NHTSA expects to have a significant effect on safety through its potential rulemaking initiatives which are spelled out in this Five Year Plan. Several major safety problems have been identified for which reasonable technological countermeasures appear to be available. The following are the major potential rulemaking initiatives for near term action which are expected to begin saving lives and preventing injuries in the mid 1980's.

Side Impact Protection.—Nearly 10,000 people are killed and several hundred thousand disabled in side impact crashes each year. Improved vehicle side impact performance could significantly reduce the safety hazard in this crash situation. This standard will be the second safety standard, after the Occupant Restraint standard, to require performance as measured by occupant injury levels.

Pedestrian Protection.—Each year about 130,000 people are struck by motor vehicles and about 8,000 are killed. Soft (foam filled) front bumpers are now in production in the automobile industry, and offer potential for reducing pedestrian fatalities if properly optimized.

Automatic Frontal Crash Protection for Light Trucks and Vans.—Each year over 3,000 people are killed in light truck and van frontal crashes. The extension of FMVSS 208, Occupant Crash Protection, to cover these vehicles is contemplated by issuance of a Notice of Proposed Rulemaking in 1981.

Heavy Truck Brakes.—The 54 percent increase in deaths of heavy truck occupants since 1975 has been accompanied by a 53 percent increase in fatalities in other vehicles involved in crashes with heavy trucks. NHTSA believes that rulemaking to improve brakes on heavy trucks is clearly needed for improved accident avoidance performance. However, in view of the recent court decision to eliminate some aspects of FMVSS 121, Air Brake Systems until further work is done by the Agency, NHTSA is conducting further research on performance and reliability characteristics before carrying out major rulemaking to improve truck braking performance. The initial step is to establish a new stopping distance requirement with a Notice of Proposed Rulemaking planned for 1981.

Rulemaking beyond the mid 1980's will to a large extent be based on research currently underway in the Integrated Vehicle Systems Research Program. Vehicles developed under this program will demonstrate if the technology exists to allow for the mass production of vehicles that provide higher levels of crash protection, greater fuel economy, and lower emission levels, and are acceptable to the public in terms of price, style and comfort.

NHTSA is also contemplating amending its existing occupant protection standards into overall performance standards. These overall performance standards, called the "400 Series" of Motor Vehicle Safety Standards, are being designed as a total system concept that would provide minimum occupant protection in frontal, side, rear and rollover crashes through crash performance standards which measure occupant injury levels. Passenger cars, light trucks, and MPV's would be covered. The "400 Series" will come as close to being a totally integrated performance standard as is possible to achieve with the present state-of-the-art. The Automatic Restraint Standard, FMVSS 208, is a step in the direction of overall performance standards. FMVSS 208 does not regulate vehicle components but rather sets safety performance requirements directly for the vehicle occupant by means of injury criteria as measured on an anthropomorphic dummy. Maximum acceptable injury criteria are specified in FMVSS 208 for various types of accident modes. the planned upgrade of FMVSS 214, Side Door Strength, to increase side impact protection is another step in this same direction toward overall performance standards based on injury reduction requirements.

Section II: Rulemaking Initiatives

Rulemaking initiatives describe areas where a course of action taken by NHTSA to resolve a safety problem usually leads to the issuance of a rule, when there exists both sufficient evidence of the problem and a cost effective solution. A rulemaking initiative typically begins as the result of a petition to NHTSA for action on a particular safety problem or from the identification of a safety problem in NHTSA's anticipated rulemaking efforts.

The issuance and effective dates shown below are estimates based on the Agency's best judgment at the time this Plan was prepared. The indication of a date for a final rule does not necessarily mean that a rule will be issued. The Agency may alternatively decide on that date not to issue any rule.

A. Crash Avoidance Rulemaking Initiatives

Vehicle crashes can be avoided in a number of ways, including better highway engineering, driver improvement, and improvements in the vehicle itself. Crash avoidance rulemaking addresses the safety performance characteristics of the vehicle and its components, such as

braking, handling and stability, tires and wheels, lamps and reflectors, and other features that enable the vehicle to be driven in a safe and efficient manner.

FMVSS 108: Lamps, Reflective Devices, and Associated Equipment (High Mounted Brake Lamps)

NPRM 1981 (Issued)

Rule 1981

Effective model 1984

A recent study has shown that rear-end accidents were reduced by more than 50 percent on taxicabs equipped with a separate high-mounted brake light. This finding has been verified by another study of American Telephone and Telegraph Company, Inc., fleets also using high mounted brake light. FMVSS 108 would be amended to require a separate high-mounted brake light on all passenger vehicles to ensure that following drivers would be provided a more effective indication that the brakes had been applied. Three alternative requirements were proposed to accommodate the placement of the lamp by manufacturers. The final rule would adopt one of those or a modification of one.

FMVSS 108: Lamps, Reflective Devices, and Associated Equipment (Headlamp Retaining Ring)

NPRM 1981

The standard would be amended to delete the dimensional specifications of headlamp retaining rings. (This initiative results from a petition from Toyota.)

FMVSS 108: Lamps, Reflective Devices, and Associated Equipment (Modify Reflex Reflector Tests for Rear Lamps)

NPRM 1981

The standard would be amended to permit manufacturers to use a different test parameter than originally specified, while still keeping the original photometric performance requirements. (This initiative results from a petition from the Motor Vehicle Manufacturers Association.)

FMVSS 108: Lamps, Reflective Devices, and Associated Equipment (Heavy Duty Vehicle Conspicuity)

ANPRM 1980 (Issued)

NPRM 1982

The standard would be amended to require improved lighting and conspicuity performance for heavy duty vehicles to reduce the probability of rear and side collisions.

FMVSS 109: Pneumatic Tires for Passenger Cars (Delete Tire Tables)

NPRM 1980 (Issued)

Rule 1981

Effective 1982

This initiative is designed to reduce the regulatory burden by deleting the tire tables of Appendix A from the standard. The tire industry presently compiles and publishes the same information as the tire tables, and the deletion of the table would reduce redundancy and permit faster introduction of new tires sizes and designs, such as those for improved fuel economy. (This initiative results from a petition from the Michelin Tire Corporation.)

FMVSS 110: Tire Selection and Rims, Passenger Cars (Tire Reserve Load)

NPRM 1981

This initiative would require a minimum tire reserve load for all vehicles covered by the standard.

FMVSS 111: Rearview Mirrors (Update)

NPRM 1978 (Issued)

Rule 1981

Effective Model 1984

This update would require that drivers of all vehicles under 10,000 pounds GVWR, including motorcycles, be able to see specified percentages of target areas directly behind and on either side of the rear of the vehicle, and require that outside mirrors meet breakaway or foldaway requirements to reduce pedestrian injuries.

FMVSS 111/128: Fields of View (Heavy Duty Vehicles)

NPRM 1978 (Issued)

NPRM (Revised) 1982

This effort would address blind spots, improvements in mirror systems including the use of heated mirrors, and provide specifications for visibility of ground surface targets for both front and rear fields of view, for vehicles over 10,000 GVWR.

FMVSS 120: Tire Selection and Rims, Non-Passenger (Rim Marking)

NPRM 1979 (Issued)

Rule 1981

These amendments would clarify existing requirements and resolve some technical problems in labeling, used tire selection, and rim size designation. It will also clarify references to standards from other organizations.

FMVSS 121: Air Brake Systems (New Stopping Distances, Technical Amendments)

NPRM 1981

High speed stopping distance requirements were dropped as a result of the court decision on the enforceability of various sections of FMVSS 121. This initiative would establish new stopping distance requirements in accordance with NHTSA research and the mandate of the court, and without the prohibition of wheel lockup during testing which is being considered in a separate longer term rulemaking. Several other minor technical issues would also be addressed.

FMVSS 122: Direct Fields of View (Light Trucks, MPV's and Buses)

NPRM 1978 (Issued)

Rule 1981

This rule would specify requirements for light trucks, MPV's, and buses by (1) limiting the extent to which vehicle structures obstruct the driver's line of sight, (2) improving night-time visibility by specifying light transmission performance, and (3) specifying viewing area through windshields.

FMVSS (New): Battery Explosion

NPRM 1981

This initiative would provide requirements to insure battery safety by reducing the likelihood of battery explosion from lead acid batteries in all vehicles.

FMVSS (New): Hydraulic Brake Systems (Brake System Inspectability)

NPRM 1981

This initiative would require that brake system components such as pads and shoes be capable of being inspected without removal of the vehicle's wheels or brake drums. This will promote easier and more frequent inspection and reduce the likelihood of brake failure and degradation.

FMVSS (New): Low Tire Pressure Warning

ANPRM 1981

This initiative would require the installation of a low tire pressure warning device on all passenger cars, trucks and buses which would warn when tire inflation pressure drops below recommended levels. The initiative would also specify minimum performance for these devices.

Tire Identification and Record Keeping, Part 574

NPRM 1980 (Issued)

Rule 1981

Part 574 would be amended to provide for tire identification on the tire outside sidewall. (This initiative results from a petition from the Center for Auto Safety)

Consumer Information Regulation, Part 575 (Uniform Tire Quality Grading Standards)

NPRM 1981

This initiative would include rolling resistance for tire as a criterion in the Uniform Tire Quality Grading Standards. Because there is a correlation between the rolling resistance of a tire and the energy it consumes in rolling, publication of tire rolling resistance information would assist tire purchasers in choosing tires to increase the fuel efficiency of their vehicle.

Consumer Information Regulation, Part 575 (Vehicle Stopping Distance)

NPRM 1981

This initiative would amend Part 575 by adding a wet stopping distance requirement.

B. Crashworthiness Rulemaking Initiatives

NHTSA's crashworthiness rulemaking program is directed at reducing injuries and fatalities through vehicle performance requirements which provide occupant protection in a motor vehicle crash. These vehicle performance requirements encompass occupant protection, vehicle structures, biomechanics and anthropomorphic devices, and pedestrian protection.

FMVSS 205: Glazing Materials (Update of technical references)

NPRM 1981

The existing standard would be upgraded to reference the 1977 edition of the American National Standards Institute (ANSI) Safety Code for Safety Glazing Materials for Motor Vehicles Operating on Land Highways, and the performance requirements for bullet resisting glazing will be modified. (This initiative results from petitions form Rohm and Haas, General Electric, and the Society for Automotive Engineers.)

FMVSS 205: Glazing Materials (Anti-laceration Safety Shield)

ANPRM 1981

NPRM 1981

FMVSS 205 would be amended to permit the use of a plastic laminate on the interior surface of the vehicle's windshields as an anti-laceration safety sheild. The current standard specifies abrasion and chemical resistance requirements which plastics cannot now meet. This issue needs to be resolved before an amendment is issued. (This initiative results from a petition from Saint-Gobain Vitrage.)

FMVSS 205: Glazing Materials (Abrasion resistance)

Rule 1981

Rule Effective on Day of Issuance

This amendment would delete abrasion resistance performance for vehicle glazing locations which do not require driving visibility. (This initiative results from petitions the California Highway Patrol, PPG Industries and the Speciality Equipment Manufacturers Association.)

FMVSS 206: Door Locks and Retention Components (Transverse Rear Doors)

NPRM 1981

This amendment would extend applicability of the present FMVSS 206 to cover transverse rear doors; e.g., those on hatchback passenger cars. Existing 206 test procedures will also be clarified.

FMVSS 208: Occupant Crash Protection (Light truck applications of automatic restraints)

NPRM 1981

The automatic restraint requirements would be extended to light trucks, vans and multi-purpose vehicles under 10,000 pounds GVWR.

FMVSS 209: Seat Belt Assemblies (Update ASTM References)

NPRM 1981

This initiative would update the standard by citing the current American Society of Testing Materials' (ASTM) specifications.

FMVSS 209: Seat Belt Assemblies (Modify resistance to light procedure)

NPRM 1980 (Issued)

Rule 1981

Effective 1981

This amendment would remove the bias against polyester material in the resistance to the light test procedure in the standard. (This initiative results from a petition from the Narrow Fabrics Institute.)

FMVSS 210: Seat Belt Assembly Anchorages (Tether anchorages for child restraints)

NPRM 1980 (Issued)

Rule 1981

FMVSS 210 would be amended to include provisions for tether anchorages for rearmost seating positions in all passenger vehicles under 10,000 pounds GVWR, and provisions for anchorages for the convenient installation of child restraint attachments in passenger seats equipped with automatic belts not suitable for attachment of child restraints.

FMVSS 214: Side Door Strength (Side impact protection upgrade)

ANPRM 1979 (Issued)

NPRM 1981

FVMSS 214 would be amended to upgrade performance and to introduce a moving barrier compliance test. Requirements would be based on dummy performance and would include occupant protection and possibly compartment integrity and ejection criteria. Applicability would be to passenger cars, light trucks, and multi-purpose passenger vehicles.

FMVSS 218: Motorcycle Helmets (Upgrade to all sizes)

NPRM 1981

The existing standard requires compliance testing for only those production helmets which can be placed on a size "C" headform, regardless of the size of the helmet. FMVSS 218 would be amended to permit the use of the additional size "A" and "D" headforms for compliance testing. The effect would be that all sizes of production helmets would be required to be tested for compliance.

FMVSS 222: School Bus Passenger Seating (Activity Buses)

NPRM 1981

FMVSS 222 would be amended to permit seating on school activity buses to be spaced farther apart for greater passenger comfort on long distance and special activity trips.

FMVSS (New): Pedestrian Impact Protection

NPRM 1981

This possible standard would require appropriate modification to passenger car bumpers to reduce the severity of pedestrian impact injuries.

FMVSS (New): Truck Rear End Underride Protection

NPRM 1980 (Issued)

Rule 1981

Effective: Proposed for September 1, 1983

The standard would require protective devices to reduce injuries to occupants of passenger cars and other small vehicles caused by impact into and penetration under the rear-ends of heavy trucks and trailers during truck rear-end accidents.

Part 572: Anthropomorphic Test Dummies (Adult Dummy for FMVSS 214: Side Door Strength, Impact Protection Upgrade)

NPRM 1981

The standard would provide performance criteria for the adult surrogate dummies which would be required in dynamic testing of vehicles if FMVSS 214, Side Door Strength, is upgraded.

New Car Assessment Program

NPRM 1981

This initiative would require automobile manufacturers to disclose 35 mph frontal crash test performance results for their cars.

Section III: Anticipated Rulemaking (1982–1985)

In addition to the research carried out in direct support of the regulations described in Section II, research efforts are also being undertaken in high priority areas where a specific rulemaking schedule has not yet been established. This investigative work is performed by collecting and analyzing data to verify pressing safety problems; conducting research, engineering development, tests, demonstrations and evaluations of vehicle safety improvements; and then defining the most promising performance oriented solutions, considering both progress in motor vehicle technology and the impacts of potential solutions on the public, the industry, and the nation.

As general support for potential and existing vehicle standards, NHTSA carries out the following activities: development and implementation of computer programs and simulations depicting crash scenarios, vehicle dynamics, and crash avoidance capabilities; standards maintenance and responses to petitions which require research to stay abreast of advancing automotive technology; applied research to advance the state-of-the-art in automotive technology; cost, weight and leadtime analyses to support development of cost effectiveness analyses; and special research projects to develop quick reaction responses to critical problem areas.

The research described in this section does not involve the design of vehicles or vehicle components; this is left to the manufacturers. The emphasis is on the design of tests to determine the level of protection needed and feasible, to measure the performance of the industry-designed safety improvements in alleviating known safety problems, and to provide quantitive estimates of safety payoff. This research is expected to lead to rulemaking in the areas shown below in the 1982–1985 period.

A. Passenger Cars, Light Trucks and Multipurpose Passenger Vehicles under 10,000 Pounds GVWR

1. *Crashworthiness. Pedestrian Impact Protection.* The pedestrian impact rulemaking initiative described in Section II would modify passenger car bumper areas. As a complement to that activity, NHTSA will direct research at the pedestrian safety effects of modifying hood edges and surfaces and windshield headers. The critical need here is to develop a human surrogate which can accurately measure human injuries under pedestrian impact test conditions.

Interior Impact Protection. Current restraint systems do not adequately fit children ages 4 through 12. Research will be performed to determine potential improvements to the safety effectiveness of various types and combinations of restraint systems. Greater protection is also needed for unrestrained children who impact the lower surfaces of the instrument panel and seat backs and NHTSA will research the available means of protection to determine their feasibility and cost-effectiveness. Additional research is being done on the performance of steering columns to determine methods of improving driver impact protection during accidents where the front of the vehicle is hit at an angle.

Occupant Protection Upgrade: "400 Series". The 400 Series will take a systems approach to occupant crash protection, permitting vehicle manufacturers wide latitude in designing the vehicle interior and structure as long as the occupant injury criteria are met. The 400 Series integrates a major portion of the existing crashworthiness standards into a set of comprehensive performance standards along with an upgrade in performance levels. The standard will address all crash modes (frontal, side, rear, rollover) for passenger cars, light trucks, and vans. NHTSA is developing both advanced human surrogates (dummies) and advanced compliance tools (barriers) to better simulate different crash modes. Demonstration vehicles will also be developed as part of the project to identify, test, and evaluate the technical and economic feasibility of various proposals.

2. *Crash Avoidance. Brakes.* The braking system is probably the most critical of all safety systems found in a car. Because of the high safety payoff of reliable and effective braking systems, NHTSA continually seeks to advance technological applications. Automatic warning and actuation systems (radar braking) appear to hold promise in preventing accidents. NHTSA's research will focus first on determining the cost-effectiveness of the system and, as a next step, on developing performance specifications and compliance test procedures. Another research focus is on long-life brakes, particularly to develop accurate and repeatable test procedures for brake lining wear performance.

Tires. NHTSA currently has no traction performance standard, although new tires are graded for traction along with treadwear and temperature resistance. Since traction and treadwear are to a large extent inversely related, consumer interest in high treadwear could possibly result in degradation of traction performance. NHTSA is monitoring traction performance to keep apprised of any possible degradation of traction levels and to determine if a standard is needed to prevent such degradation. Other tire research focuses on radial tire performance since FMVSS 109 (New Pneumatic Tires) as currently written does not address certain problems uniquely associated with radial tires, such as tread separation. The research will focus on defining performance specifications for radial tire safety.

Controls and Displays. NHTSA will assess the safety effects of standardized control and display locations on the instrument panel that will enable drivers to quickly locate and operate critical displays and controls used when the vehicle is being driven. Also, the use of multifunctional stalk controls mounted on the steering column will beresearched, by using human factors engineering to determine how many controls and modes of operation can be safely used.

Lighting. Because adequate lighting of the roadway is so important to safe nighttime driving, improvements in vehicle headlamps may do much to reduce accidents at night. The low

beam, used for most night driving, has been studied to determine likely performance improvements which would help increase visibility without adding undue glare. The high beam photometrics have just recently undergone performance improvements through an upgrade in the standard. In studying improvements in headlamp photometrics, it is our intention to develop an internationally acceptable headlamp beam specification to promote international harmonization and its consequent economies through standardization. Headlamp research is also being performed as a result of petitions requesting more headlamp configurations for styling purposes, and for the use of plastic as a headlamp construction material for fuel economy weight reduction.

Handling and Stability. Analyses of accident data show that light duty vehicles pulling trailers are overrepresented in accidents. The most commonly stated causes for these accidents are wind gusts and passing vehicles. NHTSA is conducting research on the aerodynamics of light duty vehicle-trailer combinations to determine the nature of this problem and to then generate solutions.

Electromagnetic Interference. Past experience with vehicular electronic systems has shown that they may be subject to malfunctions as a result of electromagnetic interference. To assure that systems such as antilock brakes, air cushion restraint controls, and drivetrain controls remain reliable and safe, NHTSA is conducting research on their electromagnetic compatibility with the automotive environment.

B. Motorcycles/Mopeds

1. *Rider Protection.* Accident analyses have shown that the crash bars currently on the market have significantly variable protection performance, in some cases causing rider injuries. Data also show that fuel spillage in motorcycle accidents occurs much more often than for other vehicles and consequently the potential for fire is greater. Therefore, NHTSA will research the potential for improved rider leg protection through performance requirements for crash bars, and the potential of fuel system integrity countermeasures to prevent fires in accidents.

2. *Crash Avoidance. Brakes.* In-use motorcycle braking performance depends greatly on the skill and experience of the rider. However, skill and experience deficiencies can be compensated for in part by the use of antilock brake systems, because these systems prevent wheel lockup and avoid the consequent loss of stability and steering control. Prototypes of these systems will be tested to determine their characteristics, performance, and level of overall motorcycle performance improvement. NHTSA is also performing research to improve the current motorcycle brake systems standard compliance test procedure.

Lighting. The motorcycle headlamp has offered only limited visibility compared to automobile headlamps. Recent allowances for the use of higher power European type lamps have helped improve the situation for some riders. However, improved lighting is not available for many motorcycles because of the vast array of non-standardized headlamp sizes. Because reliable and adequate roadway illumination is so important for motorcycles, NHTSA is performing research on improvements for both the photometric and physical characteristics of motorcycle headlamps.

Other. Data analyses will be performed to determine whether users of large displacement motorcycles have higher rates of injury than users of smaller size motorcycles.

C. Electric, Hybrid and Restricted Performance Vehicles

These types of vehicles are presently being built by various manufacturers and tested for performance by the Department of Energy (DOE). These vehicles may be the beginning of a new generation of transportation. To assure that crashworthiness and crash avoidance safety features are being properly considered, NHTSA, in cooperation with DOE, will be performing safety research experiments on these vehicles.

1. *Crashworthiness.* Vehicle studies and crash tests will be performed to determine safety hazards unique to electric vehicles, such as electric shock, fire hazard, retention of batteries, and spillage of electrolyte, in an effort to prevent the introduction of any new hazards to the vehicular environment.

2. *Crash Avoidance.* Evaluation of existing motor vehicle safety standards will be performed to assure that they are appropriate when applied to electric and hybrid vehicles, and a review will be undertaken to determine the impact which Restricted Performance Vehicles will have on urban highway safety.

D. Heavy Duty Vehicles

1. *Crash Avoidance. Brakes.* The high speed stopping distance and no-wheel-lockup requirement provisions of FMVSS 121, Air Brake Systems were invalidated by a Federal court. The court questioned the reliability of the hardware used by manufacturers in complying with the regulation. The court said that the requirements could be reestablished, but the safety and reliability of the components used for the requirements would have to be verified. Consequently, NHTSA is performing a field testing program to gather data on component reliability and the stopping and stability performance of air brake systems. Longer term research goals on heavy duty vehicle brake systems are to provide better performance capabilities and improvements to lateral stability to reduce stopping distances, improve reliability and reduce loss of vehicle control. Another area of research addresses the level of added braking capability afforded by engine and driveline retarders, especially for vehicles operating in mountainous regions, where vehicle runaway accidents are so disastrous. The use of retarders may significantly improve the safety in these situations. In addition, NHTSA is gathering information to more fully understand problems in heavy duty vehicle handling, as related not only to braking but also to alternate vehicle configurations and loading practices.

Tires. Heavy duty vehicle tires do not now have traction performance requirements. To improve the stopping and handling capability of heavy duty vehicles, tire traction is being examined to determine the current levels of traction available, and how they affect overall vehicle performance. Efforts will then focus on developing a traction measuring methodology, and on the feasibility of setting a minimum traction standard.

Controls and Displays. Existing controls and displays in heavy vehicles will be evaluated for factors of commonality, convenience and safety. A human factors study will then be performed to recommend standardized control and display configurations.

Splash and Spray. Visibility reduction from the splash and spray of heavy duty vehicles operating on wet roads has been cited as the cause of many accidents. NHTSA is reviewing the performance characteristics of various splash and spray reduction devices, as well as researching their cost-effectiveness.

Defrosters and Wipers. While heavy duty vehicles are required to have windshield wipers and defrosters, there is no performance standard for them. Because adequate visibility is so important to safe driving, windows must remain clean and clear; this is especially important for heavy duty vehicle operators relying on mirrors visible only through side windows. NHTSA will

study the need for and feasibility of minimum performance standards for assuring that adequate visibility is maintained by the required defrosters and wipers.

Truck Ride Quality. Poor truck ride quality is cited by heavy duty vehicle operators as a significant cause of driver fatigue which can have dire safety consequences, and also bring about health problems. In view of the authority of the Occupational Health and Safety Administration to deal with health problems, NHTSA is concentrating mainly on the safety rather than the health aspects of poor ride quality in its research efforts. Research will determine the extent of the safety problem and potential solutions.

Multi-Piece Wheels. Multi-piece wheel rim assemblies, which are found on the majority of domestically produced heavy trucks and buses, are subject to failure through explosive disassembly, resulting in a serious safety hazard. The problem causing the failure is usually improper assembly of the unit. NHTSA is exploring means of mitigating the problem through options such as positive locking indicators assuring proper assembly, or the manufacture of single piece rims.

2. *Crashworthiness, Truck and Bus Crashworthiness/Aggressiveness.* Presently there are no standards governing the crashworthiness of heavy trucks, although heavy truck occupant fatalities represent a disproportionately large share of fatalities in the commercial driver occupation. NHTSA is studying the crashworthiness and aggressiveness characteristics of heavy duty vehicles to determine those crash scenarios that could be effectively addressed by applying occupant protection techniques, such as padding, improved restraint systems, improved door latching and retention, and windshield retention. The research is designed to determine those techniques which would yield a significant improvement with minimal cost impact.

Fuel System Integrity. Accident data show an increasing trend of fires in heavy duty vehicle accidents. Information from the Bureau of Motor Carrier Safety (BMCS) and other sources will be reviewed to determine the nature of this increased hazard and whether there is need for upgrading the existing fuel system integrity requirements now administered by BMCS.

Seat Belt Comfort and Convenience. As occurs in passenger cars and light trucks, users of heavy duty vehicle seat belts and restraints complain that the devices are uncomfortable and inconvenient to use. For example, seat belts in the truck environment tend to get very dirty; the operator, in turn, stops using the restraint because it soils his or her clothes. NHTSA plans to study the comfort and convenience aspects of heavy duty vehicle restraints in an effort to find ways to improve them and, in turn, bring about greater restraint usage.

[FR Doc. 81-1875 Filed 1-13-81; 8:59 am]
BILLING CODE 4910-59-M

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49 CFR Part 531

[Docket No. LVM 77-01; Notice 5]

Passenger Automobile Average Fuel Economy Standards; Proposed Decision To Grant Exemption

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Proposed decision to grant exemption from average fuel economy standards and to establish alternative standards.

SUMMARY: This notice is being issued in response to a petition by Avanti Motors Corporation (Avanti) requesting that it be exempted from the generally applicable average fuel economy standards of 19.0 miles per gallon (mpg) and 20.0 mpg for 1979 and 1980 model year passenger automobiles, respectively, and that lower alternative standards be established for it. This notice proposes that the requested exemptions be granted and that alternative standards of 14.5 mpg and 15.8 mpg be established for those model years.

DATE: Comment closing date: March 5, 1981.

ADDRESS: Comments on this notice must refer to Docket No. LVM 77-01 and should be submitted to: Docket Section, National Highway Traffic Safety Administration, Room 5108, 400 Seventh Street, SW, Washington, D.C. 20590. The Docket Section is open to the public daily Monday through Friday from 8:00 a.m. to 4:00 p.m.

FOR FURTHER INFORMATION CONTACT: Robert A. Mercure, Office of Automotive Fuel Economy Standards, National Highway Traffic Safety Administration, Washington, D.C. 20590 (202-755-9384).

SUPPLEMENTARY INFORMATION: Section 502(c) of the Motor Vehicle Information and Cost Savings Act, as amended (the Act), provides that a low volume manufacturer of passenger automobiles may be exempted from the generally applicable average fuel economy standards for passenger automobiles if those standards are more stringent than the maximum feasible average fuel economy for that manufacturer and if the National Highway Traffic Safety Administration (NHTSA) establishes an alternative standard for the manufacturer at its maximum feasible level. Under the Act, a low volume manufacturer is one which manufactures fewer than 10,000 passenger automobiles worldwide in the model year for which the exemption is sought (the affected model year) and which manufactured fewer than 10,000 passenger automobiles worldwide in the second model year before the affected model year. In determining maximum feasible average fuel economy, the agency is required by section 502(e) to consider:

(1) Technological feasibility;
(2) Economic practicability;
(3) The effect of other Federal motor vehicle standards on fuel economy; and
(4) The need of the Nation to conserve energy.

Requested alternative standards. In its petition, Avanti requested that its alternative standard for the 1979 model year be set at 16.1 mpg and that its 1980 standard be set at 17.1 mpg. Avanti provided later information showing that it would actually achieve a fuel economy of 14.5 mpg in the 1979 model year, but that its 1980 average fuel economy would rise to 15.8 mpg. The company asked that this information be considered by NHTSA in establishing its alternative standards. In evaluating these requests and in setting today's proposed alternative standards, NHTSA has employed the methodology described below.

Methodology used in setting alternative standards. The methodology used in this exemption differs in some respects from that typically used in the promulgation of generally applicable average fuel economy standards. Generally, the agency begins formulating those standards several years in advance of the model years in which they will apply. When establishing standards in advance of the affected model years, the agency must first select a baseline model year for which Environmental Protection Agency (EPA) fuel economy data exists. Then NHTSA projects the fuel economy improvements which could be obtained by making changes to the baseline vehicles. In accord with the statutory criteria discussed earlier, the fuel economy improvements are figured only if analysis shows such improvements to be both technologically feasible and economically practicable. Once completed, these projections are published in a notice of proposed rulemaking for public comment. For at least some of the proposed fuel economy

improvements, the automobile manufacturers submit test data that permit the agency to refine its projections. A final rule reflecting the refined projections is then published.

In this proceeding, the agency is not promulgating standards in advance of the model year to which they will apply. The vehicles subject to the standards already exist and, in most cases, their fuel economy levels have been measured using the EPA procedures. Thus, the agency has a more reliable method for determining the fuel economy levels that can be achieved by these vehicles when equipped with a particular mix of technologies and does not have to rely on projections of the fuel economy benefits contributed by each component system. However, the projection method must still be used with respect to the technologies which the manufacturer might have incorporated in its vehicles but did not.

The following discussion is, therefore, divided into two parts. First, there is a description of the specifications of the the Avanti vehicles for the 1979 and 1980 model years and their respective fuel economy measurements. Second, there is a tentative determination of whether Avanti could have further increased the fuel efficiency of its 1979 and 1980 model year automobiles by using the methods for improving fuel economy which this agency examined in establishing average fuel economy standards for 1981–84 passenger automobiles (43 FR 11995, June 30, 1977). These methods include weight reduction, engine improvements, accessory improvements (engine and vehicle), transmission and driveline improvements, and reductions in aerodynamic drag and rolling resistance.

In reaching its tentative determination of what would be technologically feasible for Avanti in the 1979 and 1980 model years, the agency has considered: Avanti's engineering capabilities, the technology available to it, and the leadtime available to Avanti for making changes to its 1979 and 1980 model year automobiles. In making a tentative determination of what would have been economically practicable for Avanti, the agency considered the company's size, the resources available to it for product development, and the market for its vehicles.

1979 and 1980 Avanti automobiles: technical characteristics and fuel economy ratings. According to information submitted by Avanti and confirmed by EPA, all Avantis are represented in a single vehicle configuration. This means that Avanti need test only one vehicle for fuel economy and that the fuel economy level measured for that vehicle will be Avanti's corporate average fue economy for that model year. Avanti automobiles use the body designed by Raymond Loewy for the Studebaker Avanti. The 350 cubic inch displacement (CID) V–8 engine and the drivetrain used in these automobiles are purchased from General Motors. Since Avanti considers its vehicle's image to be that of a "family sports car", it uses the same engine and drivetrain used in the Corvette. The axle ratio is 3.07:1. Since Avanti produces only one vehicle configuration, that configuration must be certified to comply with the more stringent California emissions standards as well as the 49-state emission standards. The emissions control system on all 1979 and 1980 Avanti automobiles consists of a four barrel carburator with a single oxidation catalyst.

The average fuel economy for 1979 Avanti automobiles was 14.5 mpg, as measured by the EPA. The 1980 average for Avanti rose to 15.8 mpg. This fuel economy gain resulted from engine calibration changes made by General Motors.

Weight of Avanti vehicles in the affected model years. The loaded vehicle weight of 1979 and 1980 Avanti automobiles is 4045 pounds, which places the vehicle in the 4000 pound test weight class. For the results of any weight reduction by Avanti to show up on EPA fuel economy tests, the vehicles would have to move into a lower test weight class. For the 1979 Avanti automobiles, this would have meant reducing the vehicle weight by 295 pounds, so the vehicle could be tested in the 3500 pound weight class.

For model year 1980, EPA changed the fuel economy test procedures by increasing the number of test weight classes. Thus, in addition to the pre-existing 3500 pound class and the 4000 pound class, there is a new 3750 pound weight class. For the 1980 Avantis to be tested in the 3750 pound class, they would have to shed 106 pounds.

Weight reduction. In determining whether Avanti could have made the weight reductions needed to have the vehicles produced in 1979 and 1980 tested in a lower inertia weight class, the agency has considered two options—downsizing and material substitution. The goal of downsizing is to reduce the exterior dimensions of the automobile without reducing significantly the interior passenger and luggage volume of the automobile. Avanti is severely limited in its ability to make design changes that would modify the vehicle's general shape and appearance, because the demand for its automobiles is, in large part, based on the fact that it is a reproduction of a now-classic sports car. Any changes in this appearance could significantly decrease the market for the automobiles. Accordingly, the agency has tentatively concluded achieving weight reduction by making design changes is not practicable for Avanti in either the 1979 or 1980 model years.

"Materials substitution", the other weight reduction option indicated above, refers to the substitution of lighter materials, such as aluminum, plastics, and high strength low alloy steels for currently used materials. Avanti currently uses a fiberglass body, which is a very light weight material. Further, the 4-seat Avanti has the same equivalent test weight as the 2-seat Chevrolet Corvette. Avanti purchases the Corvette engine and a transmission from General Motors, so the weight of these components is outside the control of Avanti. After a consideration of these factors, the agency has tentatively concluded that it would not have been technologically feasible and economically practicable for Avanti to have reduced the weight of its 1979 and 1980 automobiles.

Aerodynamic improvements. For all model years after 1978, the EPA has established fuel economy test procedures that take into account the aerodynamics of the test vehicle. Under these procedures, each test vehicle is assigned a dynamometer road load setting which reflects the vehicle's aerodynamic drag and its test weight. This value is usually assigned by use of an EPA formula which results in what is commonly referred to as the "book value". When calculated in this manner, the road lad increases to the extent that the vehicle's frontal area is greater than average and to the extent that the combined area of all-equipment protruding from the front view of the vehicle exceeds established reference values. Test vehicles are also penalized with a higher road load setting if they do not use radial tires.

The EPA also permits a manufacturer, at its option, to use an alternative procedure to calculate the road load setting for the test vehicle. The alternative procedure, commonly referred to as "coastdown", measures the aerodynamic drag of the entire vehicle. This alternative procedure generally yields a lower road load setting than the book value for vehicles with lower than average frontal area for the particular test weight class.

The Avanti's design gives it a very low drag coefficient, and the company took advantage of this fact by using the coastdown procedure in both the 1979 and 1980 model years. In both model

years, all Avanti automobiles have radial tires as standard equipment, so no penalty was added to the road load settings. Hence, the only way in which Avanti could have improved its fuel economy would have been through design changes to the automobiles to improve their aerodynamic drag.

As explained above in the section titled *Weight reduction*, one consequence of Avanti building copies of the famous Studebaker sports car designed by Raymond Loewy is that the company's ability to make design changes which would modify the vehicles' general shape and appearance is quite limited. Since the frontal area of the car is already well below average for its test weight class, any changes to improve the aerodynamic drag would almost certainly have to modify its shape and appearance. Accordingly, NHTSA tentatively concludes that it would not have been economically practicable and technologically feasible for Avanti to have improved its average fuel economy in the 1979 and 1980 model years by means of aerodynamic improvements.

Engine improvements. NHTSA has also considered whether Avanti could have further improved its fuel economy in the 1979 and 1980 model years by using an alternative emissions control system or a smaller engine. Avanti purchases its engines from General Motors, and does not have the engineering or production capabilities to design and build its own engine. Therefore, its choice of engine is limited by the types that are available from other manufacturers. Avanti has used the same engine as the Corvette since the mid-60's, and currently uses the 350 CID V–8 engine used in the Corvette.

Avanti could use the smaller General Motor 305 CID V–8 engine, but there are two reasons it did not do so. First, Avanti believes that its automobiles must be high performance automobiles in order to maintain their current sales levels, and it is therefore reluctant to use a smaller engine than the Corvette. Since Avantis have the same curb weight as a Corvette, the use of a small engine would almost certainly give Avantis lower performance than the Corvette, and possibly reduce the demand for its vehicles.

Second, Avanti's automobiles are tested for compliance with the emissions standards by General Motors along with the Corvette. If Avanti uses a different engine than the Corvette engine, this testing would not be possible, and Avanti would have to conduct the tests itself. Since EPA certification is estimated by NHTSA to cost between $80,000 and $85,000, Avanti is loath to take the step (Avanti's net profit in 1979 was between $90 and $100,000). In consideration of these factors, NHTSA has tentatively determined that it would not have been economically practicable for Avanti to have used a smaller engine on its 1979 and 1980 automobiles.

With respect to the emissions control system, as noted earlier, Avanti used the same system on its 1979 and 1980 automobiles. This system was a single oxidation catalyst. As was also noted earlier, Avanti produces only one vehicle configuration, which must pass both the Federal and the California emission standards. Avanti formerly followed the practice of larger manufacturers of producing a separate configuration of automobiles for each set of emission standards. The problem with this was that the company had its marketing flexibility tightly constrained—Avanti could not sell its 49-state certified vehicles in California when California has a larger-than-expected demand for the vehicles, nor could it shift its California cars for sale outside that state if California's demand was less than expected. To avoid these situations, Avanti began producing only one type of vehicle (one which had been certified for compliance with both California and the 49-state emission standards) in the 1979 model year.

In the 1979 model year, the California emissions standards were low enough to permit manufacturers to comply with them by using the same emission control technology used on 49-state vehicles and adjusting the timing of the engines.

In the 1980 model year, the California emission standards became so much more stringent than the 49-state standards that most manufacturers used different emission control technology on their California vehicles (the 3-way catalyst is used on almost all 1980 California models) than is used on most 49-state models, which still employ the oxidation catalyst. For the 1981 model year, both 49-state and California emission standards will require use of a 3-way catalyst. Thus, in 1980, Avanti was faced with the unique dilemma of choosing whether to equip their automobiles with the emission control equipment generally used in California or the equipment generally used in the 49 states.

It chose to use its 49 state emission control system on all its vehicles, and retarded the timing to comply with the California emission standards. However, this adjustment caused Avanti's 1980 automobiles to have a lower average fuel economy than they would have had if equipped with a 3-way catalyst. Using a 3-way catalyst would have allowed Avanti to have used a more optimal timing.

Avanti's decision not to use the 3-way catalyst on all their cars was made for financial reasons. It would have cost Avanti between $250 and $300 for each 3-way catalyst (depending on the size of the catalyst needed), for a total cost of about $55,000 to the company. Avanti projects that it will sell 200 1980 vehicles. Considering that Avanti's net annual profit is about $100,000, it chose to use a less efficient means of controlling emissions, instead of spending half of its net profits. This choice does not appear unreasonable. Accordingly, the agency tentatively concludes that it would not have been economically practicable for Avanti to have used an alternative emissions control system.

Transmission improvements. In the final rule establishing generally applicable fuel economy standards for 1981–1984 model year passenger cars, NHTSA noted that automatic transmission improvements such as lock-up clutch in the torque converter can result in a fuel economy improvement of as much as 10 percent. Since all Avanti automobiles in the 1979 and 1980 model years came with automatic transmissions, this section will examine if it was feasible and practicable to have made such transmission improvements on its 1979 and 1980 cars.

As noted above, Avanti purchases its transmissions from General Motors. General Motors produces a 3-speed automatic transmission with a lock-up clutch. However, General Motors has stated that this transmission was not available to outside companies in either the 1979 and 1980 model years. Ford Motor Company also produces a 4-speed transmission, but also indicated that this was not available to outside companies during the affected model years. In light of these factors, NHTSA tentatively concludes that it would not have been technologically feasible for Avanti to have made transmission improvements on its 1979 and 1980 automobiles.

Improved lubricants. In the final rule setting forth the 1980 and 1981 average fuel economy standards for light truck (43 FR 11995, March 23, 1978), this agency projected that the use of synthetic, lower viscosity, or friction modified lubricants in the crankcase and axle of an automobile would result in at least a three percent fuel economy benefit (two percent from the crankcase lubricants and one percent from axle lubricants). However, the use of crankcase lubricants has not yet been approved by the EPA for use in fuel economy testing. Accordingly, the

agency indicated in that rule that it would not project the use of these lubricants before the 1981 model year.

Although use of modified axle lubricants in fuel economy testing does not require EPA approval, the notice treated those lubricants in the same manner as crankcase lubricants, i.e., assumed that these lubricants would not be used before the 1981 model year. This was due to questons regarding the performnace of modified axle lubricants in durability testing and the availability of such lubricants to the manufacturers generally before the 1981 model year. In light of these facts, any fuel economy benefits which Avanti could have obtained by using these modified crankcase and axle lubricants has not been considered feasible in today's proposed alternative fuel economy standards for the 1979 and 1980 model years.

Reduction of rear axle ratio. In setting fuel economy standards for 1980–81 light trucks and 1981–84 passenger cars, NHTSA stated that the reduction of the ratio of engine speed to vehicle speed (N/V) would generally result in fuel economy improvements. The agency also noted that, when it is possible to make this reduction by such means as reducing the axle ratio, it can be implemented very economically.

Avanti automobiles produced during the 1979 and 1980 model years both use a rear axle ratio of 3.07:1. This ratio is comparable to or less than the ratio for other sports cars. For instance, the Corvette uses 3.07:1, the Datsun 280 ZX uses 3.545 and 3.9, and the Aston Martin uses 3.07 and 3.54. In this agency's technical judgment, it would not have been feasible for Avanti to lower its axle ratio while maintaining a sports car image, and maintaining that image is deemed a significant factor for Avanti's sales levels. Because of this, NHTSA proposes to conclude that it would not have been economically practicable for Avanti to have further increased the fuel economy of its 1979 and 1980 models by reducing the rear axle ratio.

Mix shifts. The term "mix shifts", as used in prior NHTSA fuel economy rulemaking refers to shifting the percentage of vehicles sold by a manufacturer from those models with lower fuel economy to those models with higher fuel economy. Since Avanti markets only one model, it is obviously unable to increase its average fuel economy through the use of mix shifts.

Impact of other Federal standards. Avanti has not claimed any negative fuel economy impacts on its 1979 or 1980 average fuel economy from Federal safety, damageability, emissions, or noise standards, other than the 1980 California emissions standards discussed above. In the absence of a showing to the contrary, NHTSA will continue to assume that any fuel economy loss caused by compliance with other Federal standards will be reflected in the fuel economy test results of the EPA, and will, therefore, be taken into account by the NHTSA in establishing alternative standards.

The need of the Nation to conserve energy. The daily extra U.S. petroleum demand that will result from Avanti achieving an average fuel economy of 14.5 and 15.8 mpg in the 1979 and 1980 model years, respectively, rather than the generally applicable average fuel economy levels of 19.0 and 20.0 mpg in those model years is estimated to be 3.2 barrels per day over the life of the 1979 Avantis and 2.6 barrels per day over the life of the 1980 Avantis. To give a perspective on these numbers, the fuel consumed by passenger cars in the United States is about 5 million barrels each day. For all purposes, the United States currently consumes about 17 million barrels of petroleum each day.

Proposed alternative standards. Based on its tentative conclusions that it would not have been technologically feasible and economically practicable for Avanti to improve the average fuel economy of its 1979 and 1980 automobiles above an average of 14.5 mpg and 15.8 mpg, respectively, that other Federal automoble standards did not affect achievable fuel economy beyond the extent considered in this analysis, and that the national effort to conserve energy will be minimally affected by granting the requested exemptions and establishing alternative standards, NHTSA tentatively concludes that the maximum feasible average fuel economy for Avanti in the 1979 and 1980 model years if 14.5 mpg and 15.8 mpg, respectively. Therefore, the agency proposes to exempt Avanti from the generally applicable standards of 19.0 and 20.0 mpg and to establish alternative standards of 14.5 mpg in the 1979 model year and 15.8 mpg in the 1980 model year.

In consideration of the foregoing, it is proposed that 49 CFR Part 531 be amended by revising § 531.5(b)(1) to read as follows:

§ 531.5 Fuel economy standards.

* * * * *

(b) The following manufacturers shall comply with the standards indicated below for the specified model years:

(1) Avanti Motor Corporation

Average Fuel Economy Standard	
Model year	Miles per gallon
1978	16.1
1979	14.5
1980	15.8

* * * * *

Interested persons are invited to submit comments on this proposal. It is requested but not required that 10 copies be submitted. All comments must be limited so as not to exceed 15 pages in length. Necessary attachments may be appended without regard to the 15 page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including the purportedly confidential information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. Any claim of confidentiality must be supported by a statement demonstrating that the information falls within 5 U.S.C. section 552(b)(4), and that a disclosure of the information would result in significant competitive damage; specifying the period during which the information must be withheld to avoid that damage; and showing that earlier disclosure would result in that damage. In addition, the commenter, or, in the case of a corporation, a responsible corporate official authorized to speak for the corporation, must certify in writing that each item for which confidential treatment is requested is, in fact, confidential within the meaning of section 552(b)(4) and that diligent search has been conducted by the commenter or its employees to assure that none of the specified items has previously been disclosed or otherwise become available to the public.

All comments received before the close of business on the comment closing date indicated above will be considered, and will be available for examination and copying in the docket at the above address both before and after that date. To the extent possible, comments filed after the comment closing date will also be considered. However, the rulemaking action may proceed at any time after that date, and comments received after the comment closing date and too late for consideration in this action will be treated as suggestions for future

rulemaking. NHTSA will continue to file relevant material in the docket as it becomes available after the comment closing date, and interested persons are advised to continue to check the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose, in the envelope with their comments, a self-addressed, stamped postcard. When the comments are received, the docket supervisor will return the postcard by mail.

Note.—NHTSA has reviewed the impacts of this proposal and determined that they are minimal and that the proposal is not a significant regulation within the meaning of Executive Order 12044. This proposal would not affect the product or level of expenditures by the manufacturer subject to it. Consequently, a draft regulatory evaluation has not been prepared.

The program official and attorney principally responsible for the development of this proposed regulation are Robert Mercure and Stephen Kratzke, respectively.

(Sec. 9, Pub. L. 89-670, 80 Stat. 931 (49 U.S.C. 1657); sec. 301, Pub. L. 94-163, 89 Stat. 901 (15 U.S.C. 2002); delegations of authority at 49 CFR 1.50 and 49 CFR 501.8.)

Issued on January 9, 1981.

Michael M. Finkelstein,

Associate Administrator for Rulemaking.

[FR Doc. 81-1713 Filed 1-16-81; 8:45 am]

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AGENCY PUBLICATION ON ASSIGNED DAYS OF THE WEEK

The following agencies have agreed to publish all documents on two-assigned days of the week (Monday/Thursday or Tuesday/Friday).

This is a voluntary program. (See OFR NOTICE 41 FR 32914, August 6, 1976.)

Monday	Tuesday	Wednesday	Thursday	Friday
DOT/SECRETARY	USDA/ASCS		DOT/SECRETARY	USDA/ASCS
DOT/COAST GUARD	USDA/FNS		DOT/COAST GUARD	USDA/FNS
DOT/FAA	USDA/FSQS		DOT/FAA	USDA/FSQS
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DOT/FRA	MSPB/OPM		DOT/FRA	MSPB/OPM
DOT/NHTSA	LABOR		DOT/NHTSA	LABOR
DOT/RSPA	HHS/FDA		DOT/RSPA	HHS/FDA
DOT/SLSDC			DOT/SLSDC	
DOT/UMTA			DOT/UMTA	
CSA			CSA	

Documents normally scheduled for publication on a day that will be a Federal holiday will be published the next work day following the holiday.
Comments on this program are still invited.
Comments should be submitted to the Day-of-the-Week Program Coordinator, Office of the Federal Register, National Archives and Records Service, General Services Administration, Washington, D.C. 20408

NOTE: As of September 2, 1980, documents from the Animal and Plant Health Inspection Service, Department of Agriculture, will no longer be assigned to the Tuesday/Friday publication schedule.

REMINDERS

The "reminders" below identify documents that appeared in issues of the Federal Register 15 days or more ago. Inclusion or exclusion from this list has no legal significance.

Rules Going Into Effect Today

DEFENSE DEPARTMENT

Army Department—

83214 12-16-80 / Personal privacy and rights of individuals regarding personal records; exemptions

ENVIRONMENTAL PROTECTION AGENCY

42195 7-19-79 / National Secondary Drinking Water Regulations; specification of secondary maximum contaminant levels (SMCL's)

83227 12-16-80 / Revision to the State Implementation Plan (SIP); State of New Jersey

JUSTICE DEPARTMENT

Prisons Bureau—

83020 12-19-80 / Inmate control, custody, care, treatment, and instruction; central inmate monitoring system

LABOR DEPARTMENT

Employment and Training Administration—

83026 12-19-80 / Alien permanent employment in U.S.; labor certification process

Occupational Safety and Health Administration—

85736 12-30-80 / Respirator-use enforcement policy for occupational exposure to cotton dust

SECURITIES AND EXCHANGE COMMISSION

83478 12-19-80 / Increase in filing fee for associated persons of non-member broker-dealers

TRANSPORTATION DEPARTMENT

81547 12-11-80 / Airworthiness directives; Rockwell International Model NA 265—40 and —60 Series Aircraft

Rules Going Into Effect Tuesday, January 20, 1981

INTERIOR DEPARTMENT

Land Management Bureau—

85023 12-24-80 / California; Partial revocation of reclamation withdrawal

List of Public Laws

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's List of Public Laws.

A complete listing for the second session of the 96th Congress is published in the Reader Aid section of the issue of January 7, 1981

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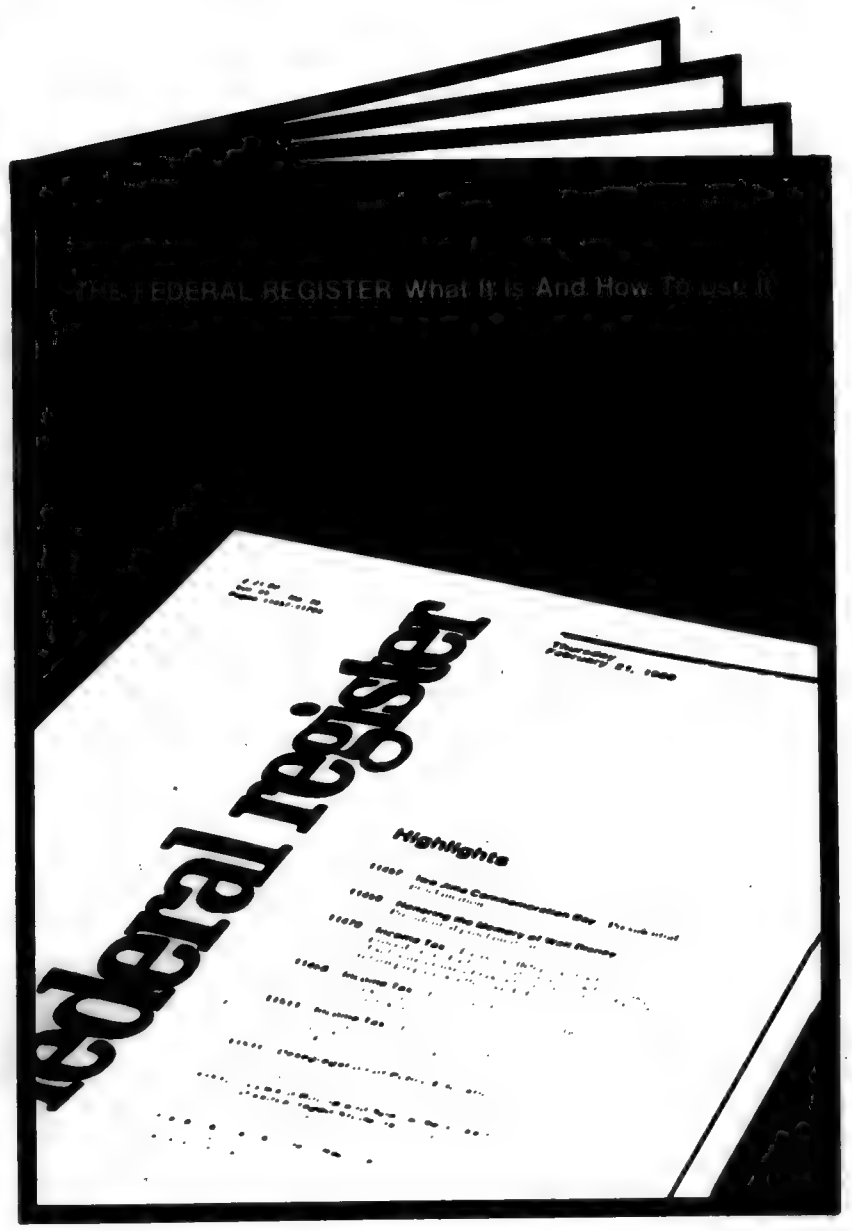

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5238 Part III—ED:
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5334 Part VI—EPA:
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5372 Part VII—ED:
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5394 Part VIII—DOT/UMTA:
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Monday, January 19, 1981

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Allegheny National Forest Land and Resource Management Plan: Elk, Forest, McKean, and Warren Counties, Pennsylvania; Intent to Prepare an Environmental Impact Statement

Pursuant to the National Environmental Policy Act of 1969, the Forest Service, Department of Agriculture will prepare an environmental impact statement on the proposed Land and Resource Management Plan for the Allegheny National Forest in Pennsylvania.

The plan is being prepared in accordance with requirements of the Secretary's regulations developed pursuant to the National Forest Management Act of 1976. It will propose management direction for the natural and human resources within the proclamation boundaries of the Allegheny National Forest.

The planning process will begin with identification of public issues, management concerns, and resource use and development opportunities. Planning criteria will be developed, and data will be collected and analyzed to determine how the identified issues and concerns can be best resolved. An assessment of the capability of the land to produce resource outputs, and a determination of the public's future demands for these outputs will be made. Methods for resolving the identified public issues will be developed from this information, and will be used to formulate alternatives.

Alternatives will display a range of resource outputs at several expenditure levels. Each alternative will represent a cost-effective combination of management practices which can best meet the objectives of the alternative. In addition, each identified major public issue will be addressed; each alternative will specify methods to maintain or enhance renewable resources, and a no-change alternative will be included.

A preferred alternative will be selected by ranking the alternatives according to their physical, biological, social, and economic effects. It will include the best combination of resource uses on the Forest and will also provide for a continuous monitoring and evaluation process.

A draft environmental impact statement will be released around April 1983. The final land and resource management plan and environmental impact statement will be released approximately 6 months later.

Public participation will be an integral part of the planning process. A response form, meeting, and other public involvement tools will be used to identify issues early in the planning process. Each public involvement activity will be announced through the news media and mailings to interested agencies, organizations, and individuals.

Steve Yurich, Regional Forester of the Eastern Region, is responsible for approval of the Forest Plan, and John P. Butt, Forest Supervisor of the Allegheny National Forest is the responsible official in charge of preparation and implementation of the plan.

Further information about the planning process can be obtained by calling Larry Brown, Planning Staff Officer on the Allegheny National Forest at 814–723–5150. Written comments on this Notice of Intent should be directed to: Forest Supervisor, Allegheny National Forest, P.O. Box 847, 222 Liberty Street, Warren, PA 16365.

James H. Freeman,
Director of Planning, Programming and Budgeting.
January 8, 1981.
[FR Doc. 81-1089 Filed 1-16-81; 8:45 am]
BILLING CODE 3410-11-M

Environmental Impact Statements; Guidelines; Correction

The Forest Service published a notice in the Federal Register, Volume 45, No. 247, Monday, December 22, 1980, at page 84113 providing guidelines for the format to be used for environmental impact statements (EIS's). The notice is hereby corrected as follows.

Pending revision of Forest Service Manual Chapter 1950—The Forest Service NEPA Process, environmental impact statements prepared for Regional plans developed under the National Forest Management Act of 1976 shall follow the format set forth in the Council on Environmental Quality (CEQ) NEPA regulations, 40 CFR 1502.10–1502.18. This format shall also be used for land and resource management plans for units of the National Forest System unless an exception is approved by the responsible official.

All other EIS's for which a notice of intent is published subsequent to the date of this notice should generally follow this format. However, the format may be modified in the interest of clarity and brevity. Those EIS's for which a notice of intent was published prior to this notice may be prepared in accordance with the format as published in the Federal Register, Vol. 44, No. 147, Part IV, July 30, 1979, and contained in Forest Service Manual 1952.3

Dated: January 13, 1981.
J. Lamar Beasley,
Acting Chief.
[FR Doc. 81-1290 Filed 1-16-81; 8:45 am]
BILLING CODE 3410-11-M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket No. 2-81]

Foreign-Trade Zone—North Las Vegas, Nev.; Application and Public Hearing

Notice is hereby given that an application has been submitted to the Foreign-Trade Zones Board (the Board) by the State of Nevada, through its Department of Economic Development, requesting authority to establish a general-purpose foreign-trade zone in North Las Vegas, within the Las Vegas Customs port of entry. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act of 1934, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on January 12, 1981. The applicant is authorized to make this proposal under Nevada Revised Statutes 273A.010–273A.050.

The applicant proposes to establish a 70-acre foreign-trade zone near the North Las Vegas Airport. The zone will be located on Cheyenne Avenue between Highland and Revere Streets,

North Las Vegas, within the 175-acre Frontier West Industrial Park. The proposed zone operator, Las Vegas Opportunities Industrialization Center (OIC), initially plans to construct three 20,000-square foot buildings on 30 acres, reserving the remaining 40 acres for future development.

The proposed zone/industrial park project is a cooperative effort by the State, the Las Vegas Latin Chamber of Commerce, and the Las Vegas OIC to improve the economy of the Las Vegas Special Impact Area, the westside community of Las Vegas and North Las Vegas designated as economically distressed by Commerce's Economic Development Administration (EDA). In addition, the project is part of the State's development strategy of diversifying the state-wide and local economies, reducing dependence on the gaming and service sectors.

The application contains evidence concerning the need for and possible uses of zone services in the Las Vegas area. A variety of businesses have indicated an interest in using the zone for processing, light manufacture, packing, storage, cold storage and distribution of produce, meat products, coin-operated machines, computers and office furniture.

In accordance with the Board's regulations, an examiners committee has been appointed to investigate the application and report thereon to the Board. The committee consists of: Stuart S. Keitz (Chairman), Program Manager, Import Administration, U.S. Department of Commerce, Washington, D.C. 20230; John E. Brady, Los Angeles District Director, U.S. Customs Service, Region VII, 300 South Ferry Street, San Pedro, California 90731; and Colonel Gwynn A. Teague, District Engineer, U.S. Army Engineer District Los Angeles, P.O. Box 2711, Los Angeles, California 90053.

As part of its investigation, the Examiners Committee will hold a public hearing on February 4, 1981, beginning at 9 a.m., in the Board Room of the Las Vegas Convention Center, 3150 Paradise Road, Las Vegas, Nevada. The purpose of the hearing is to help inform interested persons about the proposal, to provide an opportunity for their expression of views, and to obtain information useful to the examiners.

Interested parties are invited to present their views at the hearing. They should notify the Board's Executive Secretary of their desire to be heard in writing at the address below or by phone (202/377-2862) by February 2, 1981. Instead of an oral presentation, written statements may be submitted in accordance with the Board's regulations to the examiners committee, care of the Executive Secretary at any time from the date of this notice through March 4, 1981. Evidence submitted during the post-hearing period is not desired unless it is clearly shown that the matter is new and material and that there are good reasons why it could not be presented at the hearing. A copy of the application and accompanying exhibits will be available during this time for public inspection at each of the following locations:

Port Director's Office, U.S. Customs Service, International Arrivals Building, McCarran Airport, Las Vegas, Nevada 89111.

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 2006, 14th and E Streets, NW., Washington, D.C. 20230.

Dated: January 12, 1981.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 81-1787 Filed 1-16-81; 8:45 am]

BILLING CODE 3510-25-M

International Trade Administration

Plastic Animal Identification Tags From New Zealand; Final Affirmative Countervailing Duty Determination

AGENCY: International Trade Administration, Commerce.

ACTION: Final affirmative countervailing duty determination.

SUMMARY: The U.S. Department of Commerce ("the Department") determines that the government of New Zealand makes available incentive programs that constitute bounties or grants within the meaning of the countervailing duty law; that the manufacturer, producer, and exporter of plastic animal identification tags utilize these programs and receive tax deductions, exemptions, and credits; and that critical circumstances do not exist in this case. Therefore the Department refers this case to the International Trade Commission for a determination regarding injury.

EFFECTIVE DATE: January 19, 1981.

FOR FURTHER INFORMATION CONTACT: Roland L. MacDonald, Jr., Import Administration Specialist, Office of Investigations, International Trade Administration, Department of Commerce, Washington, D.C. 20230, (202) 377-4087.

SUPPLEMENTARY INFORMATION:

Procedural Background

On August 1, 1980, the Department received a petition in proper form from the Y-Tex Corporation in Cody, Wyoming. On behalf of U.S. producers of plastic animal identification tags, the petitioner alleged that the government of New Zealand provides to manufacturers, producers, and exporters of such tags certain benefits that are bounties or grants ("subsidies") within the meaning of section 303 of the Tariff Act of 1930 (19 U.S.C. 1303) ("the Act").

In response, on August 25, 1980, the Department published a notice (45 FR 56380) stating that it was initiating a countervailing duty investigation of these imports. It added that because New Zealand is not a country under the Agreement within the meaning of section 701(b) of the Act (19 U.S.C. 1671(b)), section 303 of the Act applies to this investigation.

Although a determination of injury to a domestic industry usually is not required in investigations under section 303, it is required in investigations concerning nondutiable merchandise. Therefore, because animal identification tags are nondutiable, the International Trade Commission (ITC) also conducted an investigation. On September 25, 1980, the ITC issued a preliminary determination that there is a reasonable indication that imports of these tags from New Zealand are materially injuring, or are threatening to materially injure, a U.S. industry (45 FR 63573).

On November 3, 1980, the Department published a notice of "Preliminary Affirmative Countervailing Duty Determination" (45 FR 72727), finding that critical circumstances do not exist in this case; that the "tax credit" amount is $436,619 (all monetary references are in New Zealand dollars); that the "tax credit" was received under the Increased Export Taxation Incentive program, which is a subsidy within the meaning of the countervailing duty law; and that the amount of the subsidy on exports to the United States is 6.7 percent ad valorem.

Imports Investigated

Plastic animal identification tags are used for the temporary or permanent identification of animals, such as cattle, hogs, sheep, and goats. The tags vary between 1.75 and 7.5 square inches of surface area. Numbers stamped into the plastic tags are used for identification or information. All these tags are currently classifiable under the provision for "other" agricultural and horticultural machinery and implements, in item 666.00 of the Tariff Schedules of the United States.

Foreign Producer

In 1964, Delta Plastics, Ltd., was founded to market products to the

agricultural sector. In December 1979, Allflex Holdings, Ltd., was established in New Zealand as a publicly owned company, with Delta Plastics, Ltd., as a subsidiary operating company.

Delta's most successful product is the Allflex animal identification tags, where sales increased from $181,000 in 1971 to $5.1 million in 1979. As New Zealand's only exporter of these tags, Delta saw its tag exports grow from 29 percent of total sales in 1973 to 87 percent in 1979.

Delta is New Zealand's only exporter of animal identification tags. Approximately 80 percent of Delta's tag exports go to the United States. The four U.S. companies importing these tags are: Allflex Tag Co., in Culver City, California; G.C. Hanford Manufacturing Co., in Syracuse, New York; Vet Brand, Inc., in Torrance, California; and Diamond Shamrock Corp., in Cleveland, Ohio.

The Allflex Tag Co., a wholly owned subsidiary of Delta, acts as Delta's U.S. agent by conducting a retail mail order business for Allflex tags; helps Delta's two master agents, Vet Brand and G.C. Hanford, with various problems; and maintains a complete stamping operation for numbering and personalizing tags. In another U.S. operation, Delta and G.C. Hanford Manufacturing Co. began a joint venture in early 1980 called the Allflex Manufacturing Co., Inc., which is expected to supplement, rather than replace the imported tags.

U.S. Producers

Seven U.S. companies produce animal identification tags. Of those, three manufacture both one and two-piece tags, one manufactures two-piece tags only, and three manufacture one-piece tags only. In 1969 and 1970 the petitioner introduced a flexible two-piece tag but found no market for it at that time; in 1978 Y-Tex reintroduced the two-piece tag. The largest producer is Temple Tag Co., in Temple, Texas.

Programs Used by Delta and Found To Be Subsidies

Of the programs identified in the New Zealand's Income Tax Act 1976, we have determined that some are used by Delta and are subsidies within the meaning of the countervailing duty law. These programs appear in the form of special tax deductions, credits, and exemptions and are listed (except for Machinery for Export Production; Exemption from Sales Tax) in Part IV, Income Tax Act 1976, Deductions in Calculating Assessable or Nonassessable Income.

The programs providing a tax deduction are listed on the government of New Zealand's tax form as deductions from net profit and they are: Investment Allowance; Increased Exports of Goods; and Export of Goods to New Markets. Each program has its own methodology of converting expenditures, sales, and allowances into tax deductions. The deductions from each program are added together for a total deduction amount which is subtracted from Delta's taxable income after normal deductions are taken. Delta used the special deductions provided in part IV of the Income Tax Act of 1976 to offset net taxable income and eliminate its 1980 income tax liability. As a result Delta did not pay taxes on its 1980 net profit.

In addition, since special deductions exceeded net income after normal tax deductions, Delta established a prescribed (paper) loss for which it received tax credits. Added to the Income Tax Act 1976 by section 17 of the 1978 Income Tax Amendment, the program Credit in Relation to Export of Goods (section 157A) provides the methodology for converting the prescribed loss into a tax credit. A "tax credit" is a cash payment from the government of New Zealand to the taxpayer . The "tax credit" (cash payment) amount is obtained by multiplying the prescribed loss by 45 percent.

Therefore, these programs provided Delta with two separate benefits: (1) The deductions completely offset net taxable income, thereby eliminating its income tax liability; and (2) the conversion of the prescribed loss to tax credits provides a cash payment from the government of New Zealand to Delta. Since all these programs provide special benefits to ear tag exporters and most (except for one regional aid program) are direct incentives to and benefits on exports, they are all subsidies, and most are export subsidies, within the meaning of the countervailing duty law.

Delta used the following programs to offset net income and to obtain a prescribed loss: (We have identified the net effect each program has on the total subsidy amount).

1. Investment Allowances. Sections 118 through 123 of th Income Tax Act 1976 cover investment allowances. Section 118, a general provision relating to investment allowances, defines an investment allowance as a deduction permitted under sections 119 to 123 of the Act. Allowable for new manufacturing plants and machinery purchased on or before July 30, 1976, the deduction is taken from net profit and is over and above the existing allowance for depreciation. The total investment allowance deduction is calculated by adding all the allowances used.

Delta used the following investment allowances during the investigation period.

A. Regional investment allowance on certain new plants an machinery (section 119, Income Tax Act 1976). The new manufacturing plant or machinery must be used in New Zealand in the production of assessable income. Delta's deduction is calculated by multiplying the percentage specified in the Sixth Schedule of the Act (5 percent) by the cost of the new plant or machinery. The percentage listed in the Sixth Schedule is based on the regional location of the new plant or machinery. Because this allowance is available in some, but not all regions, it is regarded as a domestic subsidy in its entirety.

Since this program is related to both domestic and export sales, we allocated the allowance over total sales of animal identification tags. On this basis we found a subsidy of 0.24 percent.

b. Investment allowance on new manufacturing plants and machinery used for export (section 120). The new manufacturing plant or machinery must be used in New Zealand in the production of assessable income. Delta had to develop an export performance plan or an export development plan to be eligible for this program. To calculate the allowance, Delta selected a method that provided an allowance of 20 percent of the expenditure. The allowance was allocated over total export sales of animal identification tags for a subsidy of 1.03 percent.

c. Investment allowances on new plants and machinery used in high-priority activity (section 121A). High-priority activity means any activity that is periodically recognized by the Minister of Finance and the Minister of Trade and Industry as having high priority. Although to qualify a corporation must meet certain domestic and export standards, the program is basically related to exports. Delta's allowance under this program was 15 percent of the expenditure. This allowance was allocated over total export sales of animal identification tags for a subsidy of 0.60 percent.

2. Increased Export of Goods (section 150). This program permits Delta a deduction when (a) there is an increase of export sales for the income tax year or (b) there are export sales for the income tax year and an increase in export sales for the preceding income tax year. For futher explanation of this program, refer to the "Preliminary Affirmative Countervailing Duty Determination" (45 FR 72727). For this

deduction we computed a subsidy of 10.84 percent.

3. Export of Goods to New Markets (section 157). "New market export goods" are export goods that the taxpayer has sold to a new market. Designed to encourage export sales to new markets, this program defines such markets as either existing markets to which a new product is exported or new markets for existing products. This deduction from net profit is based on the value of export sales to the approved new market (the Secretary of Trade and Industry determines whether the market is separate and distinct). For this deduction we computed a subsidy of .03 percent.

Machinery for Export Production: Exemption from Sales Tax. In this program, machinery and appliances used in the production of goods for export may be granted an exemption from sales tax. Delta obtained a subsidy amount of 0.44 percent from this program.

Program Not in Effect Or Not Currently Used by Delta

Listed in the Income Tax Amendment Act 1979, and the Income Tax Act 1976, Part IV Grants and Suspensory Loans, the following programs, were not in effect for the 1980 tax year or were in effect but not used by Delta. They appear in the form of tax deductions, grants, suspensory loans, and special import licensing provisions. A more detailed description of these programs is available in our public file of this case.

1. *Export Incentives* (Programs listed are amendments or alternatives to existing programs cited above under Programs Used by Delta and Found to be Subsidies. These programs apply to tax on income from April 1, 1980).

a. Export performance incentive for qualifying goods (section 156A).

b. Export performance incentive for qualifying services (section 156B).

c. Export performance incentive for qualifying overseas projects (section 156D).

d. Export market development and tourist promotion incentive (section 156F).

2. *Grants and Suspensory Loans* (These programs are in effect but not used by Delta).

a. Forestry encouragement grants (section 168).

b. Export market development grants (section 170).

c. Development grants for new markets (section 171).

(d) Export suspensory loans and rural exports suspensory loans (section 172).

e. Regional development suspensory loans (section 173).

f. Export programs grants scheme (EPGS).

3. Export Market Development and Tourist Promotion Expenditure (Section 154). This applies to expenditures (i.e. market research, advertising, and travel expenses) incurred primarily for the purpose of seeking opportunities for the export of goods that have been manufactured in New Zealand. Delta deducted 50 percent of its total promotion expenditures.

For the 1980 tax year, Delta has not yet received a benefit through this program as the New Zealand's Inland Revenue Department is reviewing its claims for sales and travel expenses. Therefore we have not calculated a subsidy amount under this program.

4. *Export Incentive Licensing.*

Verification

We verified the information used in reaching this determination by examining the government tax laws, corporate records, and tax returns; and by meeting with and consulting officials from Delta and the New Zealand and U.S. governments, who are familiar with specific programs at issue in this case.

Critical Circumstance Determination

We noted in our preliminary determination that the rate of increase at which imports were penetrating the U.S. market had been leveling off during the 18 months before June 1980. Further information shows that the trend has continued through September 1980. Therefore, pursuant to section 705(a)(2), I affirm the finding that there have not been massive imports of animal identification tags from New Zealand over a relatively short period. Accordingly, liquidations will not be suspended retroactively, as provided in section 703(e)(2).

Final Determination

I hereby determine that the government of New Zealand provides bounties or grants (subsidies) within the meaning of section 303 of the Tariff Act with respect to the manufacture, production, or exportation of animal identification tags. The aggregate net amount of these benefits equals 13.18 percent ad valorem on exports to the United States, consisting of the following subsidy amounts:

	Percent
Regional investment allowance on certain new plants and machinery	0.24
Investment allowance on new manufacturing plants and machinery used for export	1.00
Investment allowances on new plant and machinery used in high priority activity	0.60
Increased export taxation	10.84
Export of goods to new markets	0.03
Machinery for export production: Exemption from sales tax	0.44
Total	13.18

Although the Department offered Y-Tex and Delta an opportunity to present oral views in accordance with § 355.35 of the Commerce Department Regulations (19 CFR 355.35), neither party requested a hearing.

Customs officers are directed to continue until further notice the suspension of liquidation ordered in the preliminary determination. Effective January 1981, and until further notice, a cash deposit, bond or other security in the new amount of 13.18 percent ad valorem must be posted on all such tags entering the United States, or being withdrawn from warehouses, for consumption.

If the International Trade Commission makes an affirmative final determination concerning material injury to an industry in the United States, the Department will issue a Countervailing Duty Order.

This notice is published in accordance with sections 303 and 706 of the Act (19 U.S.C. 1303, 1671e), and § 355.36 of the Department of Commerce Regulations (19 CFR 355.36).

Robert E. Herzstein,

Under Secretary for International Trade.

January 12, 1981.

[FR Doc. 81-1725 Filed 1-16-81; 8:45 am]

BILLING CODE 3510-25-M

National Oceanic and Atmospheric Administration

Intent To Conduct Scoping Meeting and Prepare Environmental Impact Statement on Proposed Estuarine Sanctuary, Mullica River, New Jersey

SUMMARY: The Office of Coastal Zone Management (OCZM), National Oceanic and Atmospheric Administration (NOAA), intends to conduct a scoping meeting on February 9, 1981, and prepare a draft environmental impact statement (DEIS) on a proposed estuarine sanctuary at Mullica River in the Great Bay area off the coast of New Jersey. In accordance with the provisions of the National Environmental Policy Act (NEPA) and Section 315 of the Coastal Zone Management Act (CZMA). Designation of the sanctuary would protect and manage approximately 3,300 acres of important estuarine habitat in Atlantic and Burlington counties, located

approximately 12 miles north of Atlantic City.

DISCUSSION: This estuarine sanctuary proposal is currently being developed in consultation with the State of New Jersey, Federal agencies and affected public groups. The proposal, as a Federally-assisted action, has been reviewed by the New Jersey Department of Community Affairs, in accordance with OMB Circular A-95.

The Office of Coastal Zone Management will hold a scoping meeting on February 9, 1981, at 10:00 a.m. in the Navy Conference Room at Page Building #1, Office of Coastal Zone Management, 2001 Wisconsin Ave. NW., Washington, D.C. 20235. Interested parties who wish to submit suggestions, comments, or substantive information concerning the scope or content of this proposed environmental impact statement are invited to attend. Parties who wish to respond in writing should do so by February 19, 1981. The DEIS will be prepared in compliance with the Council on Environmental Quality (CEQ) regulations (FR, Vol. 43 November 29, 1978).

Comments may be submitted in writing or by telephone to: Mr. Jim MacFarland, Estuarine Sanctuary Program Manager, Estuarine Sanctuary Program Office (202/653-7301), Office of Coastal Zone Management, NOAA, 3300 Whitehaven Street NW., Washington, D.C. 20235.

For further information contact: Mr. Milt Martin, Estuarine Sanctuary Project Officer, Estuarine Sanctuary Program Office (202/653-7301), Office of Coastal Zone Management, 3300 Whitehaven Street NW., Washington, D.C. 20235.

(Federal Domestic Assistance Catalog No. 11.420 Coastal Zone Management Estuarine Sanctuaries)

Dated: January 13, 1981.

Donald W. Fowler,

Deputy Assistant Administrator for Coastal Zone Management.

[FR Doc. 81-1602 Filed 1-16-81; 8:45 am]
BILLING CODE 3510-08-M

Gulf of Mexico Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA.

SUMMARY: The Gulf of Mexico Fishery Management Council, established by Section 302 of the Fishery Conservation and Management Act of 1976 (Pub. L. 94-265), will meet to review status reports on development of fishery management plans; consider foreign fishing applications, if any; and conduct other fishery management business.

DATES: The meeting, which is open to the public, will convene on March 3, 1981, at approximately 1:30 p.m., and adjourn at approximately 5 p.m., and on March 4, 1981, convene at 8:30 a.m., and adjourn at approximately noon.

ADDRESS: The meeting will take place at the Cavalier Room, St. Anthony Hotel, 300 East Travis, San Antonio, Texas.

FOR FURTHER INFORMATION CONTACT: Gulf of Mexico Fishery Management Council, Lincoln Center, Suite 881, 5401 West Kennedy Boulevard, Tampa, Florida 33609, Telephone: (813) 228-2815.

Dated: January 14, 1981.

Robert K. Crowell,

Deputy Executive Director, National Marine Fisheries Service.

[FR Doc. 81-1602 Filed 1-16-81; 8:45 am]
BILLING CODE 3510-22-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Import Controls on Certain Wool Sweaters From the People's Republic of China

AGENCY: Committee for the Implementation of Textile Agreements.

ACTION: Establishing a level of restraint of 183,706 dozen for wool sweaters in Category 445/446, produced or manufactured in the People's Republic of China and exported during the period which began on October 19, 1980 and extends through January 16, 1982.

(A detailed description of the textile categories in terms of T.S.U.S.A. numbers was published in the Federal Register on February 28, 1980 (45 FR 13172), as amended on April 23, 1980 (45 FR 27463), August 12, 1980 (45 FR 53506), and December 24, 1980 (45 FR 85142))

SUMMARY: Pursuant to the terms of the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of September 17, 1980, between the Governments of the United States and the People's Republic of China, consultations have been held concerning imports into the United States of wool sweaters in Category 445/446 from the People's Republic of China. Notice of the intention to hold these consultations was published in the Federal Register on October 27, 1980 (45 FR 70960). Under the terms of the bilateral agreement, the People's Republic of China has been obligated to limit its exports to the United States of these products during the ninety-day consultation period which began on October 19, 1980 to 70,343 dozen. In the event a mutually satisfactory resolution is not reached, the Government of the People's Republic of China is further obligated to limit its exports of these products to the United States for the twelve-month period beginning on January 17, 1981 to 113,363 dozen.

Inasmuch as a mutually satisfactory solution has not yet been reached between the two governments, the United States Government has decided, in carrying out its responsibilities in implementing these provisions of the bilateral agreement, to prohibit entry of imports in Category 445/446 in excess of 183,706 dozen, the combined levels of the two periods defined in the agreement, during the period which began on October 19, 1980 and extends through January 16, 1982.

EFFECTIVE DATE: January 19, 1981.

FOR FURTHER INFORMATION CONTACT: Carl J. Ruths, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, Washington, D.C. 20230 (202/377-4212).

SUPPLEMENTARY INFORMATION: On December 4, 1980, there was published in the Federal Register (45 FR 80324) a letter dated November 28, 1980 to the Commissioner of Customs from the Chairman of the Committee for the Implementation of Textile Agreements which established levels of restraint for certain categories of cotton and man-made fiber textile products, produced or manufactured in the People's Republic of China and exported during the twelve-month period which began on January 1, 1981. The notice document which preceded this letter described the consultation mechanism which applies to categories of textile products under the bilateral agreement, like Category 445/446, which are not subject to specific ceilings and for which levels may be established during the year. In the letter published below, pursuant to the bilateral agreement, the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs to prohibit entry into the United States for consumption, or withdrawal from warehouse for consumption, of wool sweaters in Category 445/446, produced or manufactured in the People's Republic of China and exported during the period which began on October 19, 1980 and extends through January 16, 1982, in excess of 183,706 dozen. In the event that a different and mutually satisfactory solution is reached with the People's Republic of China, an

appropriate notice will be published in the Federal Register.

Paul T. O'Day,

Chairman, Committee for the Implementation of Textile Agreements.

United States Department of Commerce

International Trade Administration

January 14, 1981.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,

Department of the Treasury, Washington, D.C.

Dear Mr. Commissioner: Under the terms of the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of September 17, 1980, between the Governments of the United States and the People's Republic of China, and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended by Executive Order 11951 of January 6, 1977, you are directed to prohibit, effective on January 19, 1981 and for the period which began on October 19, 1980 and extends through January 18, 1982, entry into the United States for consumption and withdrawal from warehouse for consumption of wool textile products in Category 445/446, produced or manufactured in the People's Republic of China and exported on and after October 19, 1980, in excess of 183,706 dozen.[1]

Textile products in Category 445/446 which have been exported to the United States prior to October 19, 1980 shall not be subject to this directive.

Textile products in Category 445/446 which have been released from the custody of the U.S. Customs Service under the provisions of 19 U.S.C. 1448(b) or 1484(a)(1)(A) prior to the effective date of this directive shall not be denied entry under this directive.

A detailed description of the textile categories in terms of T.S.U.S.A. numbers was published in the Federal Register on February 28, 1980 (45 FR 13172), as amended on April 23, 1980 (45 FR 27463), August 12, 1980 (45 FR 53506), and December 24, 1980 (45 FR 85142).

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The actions taken with respect to the Government of the People's Republic of China and with respect to imports of wool textile products from China have been determined by the Committee for the Implementation of Textile Agreements to involve foreign affairs functions of the United States. Therefore, these directions to the Commissioner of Customs, which are necessary for the implementation of such actions, fall within the foreign affairs exception to the rule-making provisions of 5 U.S.C. 553. This letter will be published in the Federal Register.

[1] The level of restraint has not been adjusted to reflect any entries after October 18, 1980.

Sincerely,

Paul T. O'Day,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 81-1818 Filed 1-16-81; 8:45 am]

BILLING CODE 3510-25-M

COMMUNITY SERVICES ADMINISTRATION

Decision To Fund the National Congress of Neighborhood Women, Brooklyn, New York and To Conduct a National Clearinghouse and Outreach Center for Low-Income Women

AGENCY: Community Services Administration.

ACTION: Notice to all Boards of Directors of CAA(s) or local governing officials.

SUMMARY: The Community Services Administration is notifying all Boards of Directors of Community Action Agencies (CAAs) or if there is no such agency, to the local governing officials in accordance with Section 232 of the Economic Opportunity Act of 1964, as amended, that a decision has been made to fund the National Congress of Neighborhood Women Brooklyn, New York to provide a national resource clearinghouse which focuses on low-income women. CAA's or local governing officials have 30 days from the date of this notice to express approval or disapproval. Comments should be sent to the CSA: c/o Mary Ann MacKenzie (address below). The plan of the project is to strengthen the capabilities of low-income women in the efforts to identify and attain resources to improve the quality of life for their families and communities. There will be a special effort to broaden the representation of low-income women on policy making bodies which subsequently affect their social and economic well-being; and to assure improvement in the employment status of women. A copy of the funding plan is available at the Community Services Administration c/o Mary Ann MacKenzie, 1200 19th Street, N.W., Washington, D.C. 20506.

This funding will support NCNW's capacity to assist community groups to enable women to improve their economic conditions through job skills training, education resources and adjunctive support services. This project is the result of a planning effort jointly funded by the Community Services Administration, the Department of Labor Women's Bureau, the Department of Education and Housing and Urban Development.

DATE: This notice becomes effective January 19, 1981.

FOR FURTHER INFORMATION CONTACT: Mary Ann MacKenzie, Community Services Administration, 1200 19th Street, N.W., Washington, D.C. 20506. Telephone (202) 254-6390. Teletypewriter (202) 254-6218.

(Sec. 602, 78 Stat. 508; 42 U.S.C. 2942)

Richard J. Rios,

Director.

[FR Doc. 81-1808 Filed 1-16-81; 8:45 am]

BILLING CODE 6315-01-M

DEPARTMENT OF DEFENSE

Department of the Army

Boards for the Correction of Military Records Form of Index to the Decisions of the Boards for the Correction of Military Records (Nondischarge Cases)

AGENCY: Department of the Army, DOD.

ACTION: The public comment period announced in the Federal Register of October 30, 1980, [45 FR 71630] to allow users of the Index to the Decisions of the Boards for the Correction of Military Records and other interested members of the public to suggest to the Department of Defense any specific changes to the form of the present index used for nondischarge cases that they believe would increase its convenience to users is hereby extended to February 27, 1981.

Dated: January 6, 1981.

Francis X. Plant,

Director, Army Military Review Boards Agency.

[FR Doc. 81-1858 Filed 1-16-81; 8:45 am]

BILLING CODE 3710-08-M

DEPARTMENT OF EDUCATION

Office for Civil Rights

Annual Operating Plan for Fiscal Year 1981

AGENCY: Department of Education.

ACTION: Notice of Final Annual Operating Plan for Fiscal Year 1981.

SUMMARY: The Office for Civil Rights (OCR) issues its Annual Operating Plan (AOP) for Fiscal Year 1981. The AOP sets forth the compliance and enforcement, technical assistance, and program management activities that OCR plans to conduct in FY 1981.

FOR FURTHER INFORMATION CONTACT: Kristine M. Marcy, Deputy Assistant Secretary for Civil Rights, Office of Planning and Compliance Operations.

Office for Civil Rights, Department of Education, (RM. 5074, Switzer Bldg.), 400 Maryland Avenue, S.W., Washington, D.C. 20202, (202) 245-0301.

SUPPLEMENTARY INFORMATION: The Office for Civil Rights (OCR) issued its proposed Annual Operating Plan (AOP) for FY 1981 for public comment in the **Federal Register** on August 13, 1980, (45 FR 53858-53860). The comments received on the proposed AOP are summarized below, each being followed by OCR's response. Each comment was carefully considered. However, OCR was unable to accommodate every change requested. Several of the comments were based on misunderstandings or misinterpretations of the data or narrative contained in the proposed plan and required no substantive revisions to the plan. In other instances, OCR has revised the final FY 1981 AOP to incorporate requested changes. Where the final plan has been revised due to updated workload statistics or projections, these changes are noted in the plan itself.

Comments and Responses

COMMENT: The projection of complaint closures and investigative years assigned to complaints would require an annual productivity rate of approximately 17 case closures per investigator. In the past, discrepancies between projected and actual complaint investigator productivity rates resulted in reallocation of staff from reviews to handle incoming complaints. If steps have been taken to assure the necessary productivity rate, these should be cited.

RESPONSE: The number of FY 1981 complaint closures cited in the proposed plan was the total number of closures expected, both investigated and uninvestigated (closed because of the lack of OCR jurisdiction or for various administrative reasons). Uninvestigated closures are usually secured by administrative support staff located in the OCR regional offices. Accordingly, such closures do not require the expenditure of investigative time. During FY 1980, approximately half of all closures were investigated. In FY 1981, 2,485 of the expected 4,507 complaint closures will be closed by investigative staff. Therefore, it is projected that each of the 296 investigative staff years assigned to complaint investigation activities will produce 8.39 closures.

COMMENT: More investigative time should be assigned to Title IX enforcement. More discretionary time should be assigned to Title IX to compensate for the lack of complaints. One-third of the resources not devoted to the Age Discrimination Act of 1975 should be assigned to each of the other three statutes (Title VI, Title IX and Section 504).

RESPONSE: OCR regrets that it is unable to accommodate this request. Much of OCR's FY 1981 investigative staff time is committed, either by law, regulation or court order, to complaint investigation, pre-grant review and monitoring review activities, as well as to the completion of compliance reviews in progress. Most of this nondiscretionary time is allotted to complaint investigations and, based on recent trends, 43 percent of that time will be slated for the enforcement of Section 504. OCR's FY 1981 discretionary time (34 investigative years) is limited, and an attempt to balance the heavy complaint time devoted to Section 504 or the pre-grant and monitoring review time devoted to Title VI with a relatively heavy investment of discretionary time for Title IX would leave virtually no time for initiating new compliance reviews under Section 504 or Title VI. It should be noted that 35 percent of OCR's FY 1981 discretionary time has been allocated to the enforcement of Title IX.

COMMENT: More investigative time should be assigned to the area of vocational education, particularly under Title IX.

RESPONSE: Due to the limited amount of FY 1981 discretionary investigative time (discussed above), OCR is reluctant to increase the staff time allotment for any given issue. Such action would only serve to reduce or entirely consume the time allocated to another issue.

COMMENT: Multijurisdictional review sites are selected on the basis of probable Section 504 or Title VI violations. At least one-third of the reviews in each category should be selected primarily because of anticipated Title IX problems.

RESPONSE: Most compliance review site selections are made, at least in part, on the basis of survey data showing probable compliance problems. There are five multijurisdictional review issues identified in this plan: within school discrimination, school discipline, vocational education, special purpose schools and vocational rehabilitation services. OCR has and uses survey data for site selections for all of these issues, except vocational rehabilitation services. In each case, this data includes information on the sex of the beneficiaries and potential discrimination on that basis. Usually, multijurisdictional review selections are made on the basis of expected compliance problems, shown by survey data and other sources of information, under several or all jurisdictions. However, sometimes selections are made on the basis of expected compliance problems under Title IX alone.

COMMENT: Greater diversity in postsecondary reviews is needed, both in issues and in academic level (graduate versus undergraduate). For example, issues such as health services and student health insurance, housing equality, counseling, student employment, placement services and general support services should also be addressed.

RESPONSE: Due to the amount of discretionary investigative time available in FY 1981, OCR is not able to conduct reviews of other issues without reducing the limited amount of time already allocated to those issues identified in this plan. Vocational education was added as a postsecondary issue, but the time was reallocated from elementary and secondary education issues. Furthermore, given the amount of resources devoted to desegregation of higher education systems and Title IX intercollegiate athletics, OCR is not in a position to undertake any new major issue areas at the postsecondary level. For example, considerable policy development is needed in the area of counseling as it is subject to Title IX. OCR is initiating a policy development effort in the area of career interest inventories and may be able to proceed with compliance reviews in the counseling area in FY 1982.

COMMENT: The scope of reviews concerning graduate and professional school admissions should be expanded to include discrimination on the basis of race, national origin and handicap in addition to sex.

RESPONSE: It is believed that access of minorities and handicapped persons to graduate and professional schools is limited primarily because of the use of standarized admissions tests. Considerable policy development is needed in the area of testing as it applies to Title VI and Section 504 before OCR conducts reviews in these areas. The underenrollment of women in graduate and professional schools is not believed to result from the use of standarized tests, but rather from other factors. Therefore, OCR will pursue this issue only under Title IX during FY 1981.

COMMENT: If the AOP does not specify the number of compliance reviews projected, it should include criteria by which the number of compliance reviews will be determined (e.g., the ratio of investigative years to size of institution, complexity of issue,

or the amount of data required to make a finding).

RESPONSE: Although the amount of investigative time allotted for a specific review is contingent on the size of the institution, data requirements and issue complexity, it is difficult to establish a standard rule for staff time allotment, even for a specific issue. However, for illustrative purposes, the average amount of staff time being allotted per review under each FY 1981 review issue has been added to the final plan under Table 2.

COMMENT: OCR should allot enough investigative time to ensure that recipients have complied with conciliation agreements and plans for voluntary compliance (i.e., monitoring reviews).

RESPONSE: Because compliance reviews, and the staff effort required to do them, can be concentrated on those recipients believed to be in serious noncompliance with major civil rights requirements, discretionary staff time can be best used this way. Due to the limited amount of such time available in FY 1981, it was impossible to schedule any significant amount of time for a self-initiated monitoring review program. OCR will, of course, continue to monitor compliance plans and conciliation agreements when the need arises (e.g., when survey data, communications from complainants, media publicity, or other sources indicate the need for renewed OCR involvement).

COMMENT: Technical assistance activities should be focused on Title VI and Title IX in addition to Section 504.

Response: OCR's FY 1981 technical assistance contract strategy has been revised and this change has been reflected in the final FY 1981 AOP. In FY 1980, 100 percent of OCR's technical assistance contract expenditures dealt with Section 504. In FY 1981, OCR plans to significantly broaden the scope of its technical assistance contract strategy to include Title VI and Title IX.

Comment: Plans to issue major policy statements critical to the implementation of an enforcement program should be specified in the AOP.

Response: It is difficult, if not impossible, to project even an approximate date for the release of a significant policy statement. Such major statements are sometimes provided in draft form to the public for comment before they are finalized and adopted. The setting of an arbitrary date might tend to reduce the time allowed for the public to respond or the time for OCR to review and incorporate such input into a final policy document. Furthermore, the timing of a major policy statement can be delayed pending the outcome of an OCR investigation, court litigation or action in another forum which will have a direct impact on OCR's final policy stance. Finally, it is not possible to predict what unforeseen, critical issues might arise during the year requiring immediate attention and thus delaying other planned work. Because of these highly variable factors, OCR is reluctant to set dates for the issuance of major policy statements.

FY 1981 Annual Operating Plan

The basic purpose of the Office for Civil Rights (OCR) is to ensure that no person is unlawfully discriminated against by Federal education fund recipients in the delivery of services or the provision of benefits on the basis of race, national origin, sex, handicap or age. The jurisdictional authorities under which OCR operates include Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, Section 504 of the Rehabilitation Act of 1973, and the Age Discrimination Act of 1975. Covered under these authorities are 50 State education agencies, 16,000 local education agencies, 3,200 institutions of higher education, 50 State rehabilitation agencies and their subrecipients, as well as other institutions such as libraries and museums which receive financial assistance from the Department of Education. The job of protecting the Federal civil rights of 12 million minority group members, 4 million handicapped persons and 28 million women who attend public schools or postsecondary institutions rests almost exclusively with OCR, as does the responsibility for guaranteeing these rights for potential students.

OCR's strategy to ensure compliance with Federal civil rights statutes involves two basic types of activities: compliance activities and technical assistance activities. Many of OCR's compliance activities are required by various statutes, regulations and court orders (complaint investigations, ESAA pre-grant reviews, *Lau* plan monitoring, and monitoring of State higher education system desegregation). OCR engages in two types of discretionary (non-required) compliance activities: compliance reviews and remedial plan monitoring. OCR concentrates its discretionary investigative activities on those recipients which are believed to be in serious noncompliance with a major civil rights requirement.

Through the transfer of information, material and skills, OCR encourages recipients to comply voluntarily with, and beneficiaries to understand their rights under, Federal civil rights statutes. OCR staff, including headquarters staff and the Regional Technical Assistance Staff, Department of Education (ED) program offices and contracted personnel are major vehicles used by OCR to deliver technical assistance.

During FY 1980, OCR (in the Department of Health, Education and Welfare) developed a policy on the enforcement of Title IX as it relates to intercollegiate athletics (December 11, 1979, 44 FR 71413–71423). During FY 1981, OCR will investigate all complaints it has received alleging violations of Title IX in the area of intercollegiate athletics. Approximately 144 such complaints, involving more than 100 institutions and filed with OCR (in HEW and ED) during the last several years, are currently pending. The investigations will cover not only the specific allegations cited in the complaints but will be expanded in scope so that thorough reviews of the entire intercollegiate athletics programs of the affected institutions can be made.

The following narrative and tables describe the activities that OCR plans for FY 1981.

I. Regional Investigatory Activities

A total of 415 investigative staff years will be assigned to compliance and enforcement work in FY 1981 as follows:

	Investigator time	
	Staff years	Percent
Complaint investigations	296	71
Compliance reviews	71	17
ESAA pregrant reviews	30	7
Lau monitoring	10	3
Adams monitoring	8	2
Total	415	100

A. Complaint Investigations

Table 1, below, shows projected complaint receipts, closures, and opening and ending inventories by jurisdiction. In order to determine the level of investigative staff resources required to process these complaints, the following determinations and projections were made.

—OCR had a pending caseload of 1,942 complaints as of October 1, 1980.

—During FY 1981, OCR will receive 4,090 complaints.

—During FY 1981, OCR will close 4,507 complaints, of which 2,465 will be investigated.

—OCR will have a pending caseload of 1,525 complaints as of October 1, 1981.

Based on these projections, 296 investigative years will be allocated to complaints.

This plan anticipates fewer pending complaints as of October 1981 than did the proposed plan. This revised expectation results primarily from a lower number of pending complaints as of October 1980 than was expected and a revised projection showing a lower number of FY 1981 complaint receipts than was anticipated earlier. However, a small number of additional investigative staff years are being reallocated to complaint investigation activities in order to close the number of complaints necessary to reach the October 1981 projected number of pending complaints. This is because OCR's investigator productivity rate for complaint processing was lower at the end of FY 1980 than expected and, as a result, it is now anticipated that the average productivity rate for FY 1981 will be lower than originally projected.

B. Compliance Reviews

A total of 71 investigator years will be available to conduct compliance reviews in FY 1981. This activity will include completing reviews started in previous years, monitoring remedial action plans resulting from reviews conducted in previous years, and initiating new reviews. The total number of investigator years slated for compliance reviews in this plan is lower than the number in the proposed plan. This revision is a result of new lower estimates of staff time necessary to complete reviews already in progress.

The issues to be covered in the reviews conducted during FY 1981 are presented in Table 2, below. These issues were identified on the basis of survey results, findings from previous complaint investigations and compliance reviews, and related research findings. Table 2 also indicates the amount of investigative years to be assigned to each issue. Shortly after the beginning of each quarter of FY 1981, OCR will make available to the public, upon request, information on the specific types of compliance reviews it will initiate during that quarter.

C. ESAA Pre-Grant Reviews

OCR is responsible for reviewing applications for funding under the Emergency School Aid Act (ESAA). ESAA funds are used to encourage the voluntary elimination, reduction, or prevention of minority group isolation, and to aid school children in overcoming educational disadvantages. ESAA pre-grant reviews ensure that the practices of grant applicants conform to certain civil rights requirements prior to the awarding of Federal funds. In FY 1981, 30 investigator years will be allocated to conduct 665 ESAA pregrant reviews. An analysis of workload data has indicated that the level of staff resources assigned to this activity in the proposed plan was high. Therefore, the staff allocation for this activity has been revised downward, but still reflects an increase over the FY 1980 allocation of 15 years.

D. Mandated Monitoring Activities

During FY 1981, OCR will review recipients to determine whether they are complying with the terms of compliance agreements. These activities will include *Adams* higher education desegregation and *Lau* plan monitoring.

1. *Adams* Higher Education Desegregation Plan Monitoring—OCR is currently monitoring higher education desegregation plans of six States. In FY 1981, eight investigator years will be allocated to monitoring the desegregation activities of these States. Additional reviews will be completed during this period, and it is expected that monitoring of additional plans will commence in FY 1981.

2. *Lau* Plan Monitoring—OCR is required to monitor the implementation of *Lau* plans by recipients. In FY 1981, 10 investigator years will be allocated to monitoring 25 such plans. The level of effort for this activity has been revised downward from that shown in the proposed plan, but the total staff allocation still represents an increase over the FY 1980 allocation of eight years.

E. Summary

Table 3 summarizes the allocation of investigative years by recipient groups. Table 4 summarizes the allocation by jurisdiction.

II. Technical Assistance Activities

Over 20,000 education institutions which receive Federal funds must comply with a number of comlex rights requirements. Because of the numbers involved, OCR is unable to investigate the policies or practices of each recipient. In order to encourage these institutions to voluntarily comply with the law, OCR, either through headquarters or regional staff, provides technical assistance to recipients and works with ED program staff to help recipients understand their civil rights obligations. These assistance activities complement OCR's compliance activities by extending the range of OCR's impact beyond those recipients who are directly covered by an OCR investigation and by enabling OCR to accomplish its mission more efficiently and effectively. By combining a forceful compliance reveiw program with an effective assistance program, OCR will be able to make subetantial progress toward achieving broad compliance with civil rights guarantees.

During FY 1981, OCR will plan and coordinate Department-wide initiatives to incorporate civil rights activities into Department of Education program operations. It will assist in the development of, and coordinate, civil rights and equal education program technical assistance strategies for implementation by other Departmental components; reveiw Departmental programs providing financial and technical assistance to assure that they support civil rights compliance; and serve as liaison to other Federal agencies on civil rights technical assistance program efforts. OCR will also solicit the support of other Departmental programs and components in strengthening civil rights and equal educational opportunity; provide technical assistance directly; and design, manage and evaluate OCR's own program of technical assistance contracts.

A total of 80 technical assistance staff years will be available in FY 1981 to provide consultation, conduct on-site visits, participate in workshops and respond to telephone and written requests for information and materials. This effort will be provided by OCR staff, including both head-quarters staff and Regional Technical Assistance Staff, as well as contracted personnel. In FY 1980, 100 percent of OCR's technical assistance contract expenditures dealt with Section 504. In FY 1981, OCR plans to significantly broaden the scope of its technical assistance contract strategy to include Title VI and Title IX.

III. Program Management Activities

In order to effectively carry out its compliance, enforcement and technical assistance activities, OCR conducts a comprehensive legal, management and evaluation program that includes:

—Formulating regulations, policies, and investigations manuals;

—Providing technical guidance on cases and reviews referred from regional offices;

—Conducting hearings before Administrative Law Judges on the compliance of Federal fund recipients with civil rights requirements;

—Monitoring State higher education desegragation and *Lau* plans;

—Meeting with school district representatives, college and university officials, compliants, and civil rights groups to discuss OCR activities;

—Conducting OCR national surveys and data collection projects to obtain

information on recipients and beneficiary populations;

—Operating a data base management system to assure that complaint processing times are met;

—Providing basic training to new investigators as well as training on policy initiatives for experienced investigators and legal staff; and

—Conducting systematic on-site reviews of techincal assistance contractors' activities.

Table 1.*Fiscal year 1981 Annual Operating Plan*

[Projected fiscal year 1981 complaint workload]

	Title VI race/ national origin	Title IX	Section 504	Age	Total
Pending Oct. 1, 1980	395/75	883	669	19	1,942
Fiscal year projected new complaints	1923/204	696	2096	82	4,000
Fiscal year 1981 closures (total)	1172/270	1062	1038	45	4,507
Projected complaints pending Oct. 1, 1981	320/12	196	1041	56	1,525

Note.—Projected fiscal year 1981 new complaints were distributed according to the proportions each jurisdiction represented in the complaints received from Oct. 1, 1979 to Sept. 30, 1980. Similarly, the projected fiscal year 1981 closures were distributed according to the proportions each jurisdiction represented in the closures occurring between Oct. 1, 1979 and Sept. 30, 1980.

Table 2.—*Fiscal year 1981 Annual Operating Plan*

[Compliance reviews scheduled]

Issue	Description of violation	Investigator years planned	Average Number of staff years per review
ELEMENTARY AND SECONDARY EDUCATION			
Identification of and Services to Limited-English Proficient (LEP) Children.	Discrimination against non-English speaking (NES) or limited-English proficient (LEP) children.	6	.50
Within School Discrimination: Classroom Assignments, Tracking and Ability Grouping, Special and Physical Education, and Secondary School Athletics.	Discriminatory assignment of students on the basis of race, national origin, sex and/or handicap to courses (including industrial arts and home economics), classrooms, special programs, ability groups, and physical education programs. (Special programs would include those for the educable mentally retarded as well as those for the gifted and talented, e.g., advanced mathematics or science.) This issue would also cover biased counseling and appraisals of students as well as unequal opportunities involving athletics.	9	.54
School Discipline: Expulsions and Suspensions.	Discriminatory disciplinary treatment of students on the basis of race, national origin, sex and/or handicap.	5	.51
Vocational Education: Access, Admissions and Job Placement.	Discrimination on the basis of race, national origin, sex and/or handicap in vocational education programs and courses.	10	.42
Special Purpose Schools: Program Availability and Least Restrictive Environment.	Discrimination in admissions, accessibility, treatment or employment in State administered special purpose schools on the basis of race, national origin, sex, and/or handicap.	5	.34
Unserved Special Education	Discrimination on the basis of handicap in the provision of a free and appropriate education. These efforts will include several joint reviews of State education agencies with the Office of Special Education and Rehabilitative Services.	4	.81
School Segregation	Discriminatory assignment of students to schools on the basis of race or national origin.	5	.81
POSTSECONDARY EDUCATION			
Program Accessibility for the Handicapped.	Lack of program accessibility and accommodations for handicapped students in postsecondary school programs.	8	.23
Graduate and Professional Schools: Admissions.	Discrimination on the basis of sex in admissions to graduate and professional schools.	8	.24
Intercollegiate Athletics: Overall Program Equality [1].	Lack of comparable intercollegiate athletic facilities and programs for women based on their interests and abilities.	2	.50
Vocational Rehabilitation Services.	Discrimination in the provision of services and benefits to severely mentally and physically handicapped individuals, and/or discrimination on the basis of race, national origin and/or sex in the provision of educational services and benefits.	3	.81
Higher Education Desegregation	Completion of compliance reviews of State higher education systems to determine whether they continue to bear the vestiges of their former segregated status.	3.	.50
Vocational Education: Access, Admissions and Job Placement.	Discrimination on the basis of race, national origin, sex and/or handicap in vocational education programs and courses.	3	.21

[1] Two investigator staff years are being devoted to compliance reviews in addition to the investigation of complaints in this area.

Table 2.—*Fiscal year 1981 Annual Operating Plan—Continued*

[Compliance reviews scheduled]

Issue	Description of violation	Investigator years planned	Average Number of staff years per review

Table 3.—*Fiscal year 1981 Annual Operating Plan*

[Investigative years allocated to each type of recipient]

Type of recipient	Complaints	Compliance reviews	ESAA pregrant reviews	Monitoring			
				Adams	Lau	Total	Percent
Elementary and secondary schools.	207	46	30	0	10	293	71
Post-secondary education institutions.	89	25	0	8	0	122	29
Total	296	71	30	8	10	415	100

Table 4.—*Fiscal year 1981 Annual Operating Plan*

[Investigative Years Allocated to Each Jurisdiction]

Jurisdiction	Complaints	Compliance reviews	ESAA pregrant previews	Monitoring			
				Adams	Lau	Total	Percent
TITLE VI							
Race	77	15	20	8	0	120	29
National Origin	16	11	10	0	10	46	12
Title IX	71	22	0	0	0	93	22
Section 504	127	23	0	0	0	150	36
Age	3	0	0	0	0	3	1
Total	296	71	30	8	10	415	100

Dated: January 13, 1981.

Shirley M. Hufstedler,

Secretary of Education.

[FR Doc. 81-1782 Filed 1-16-81; 8:45 am]

BILLING CODE 4000-01-M

Office of Elementary and Secondary Education

Desegregation of Public Education; Closing Date for Transmittal of Applications

AGENCY: Department of Education.

ACTION: Notice of Closing Date for the Transmittal of Applications for Fiscal Year 1981 Grants.

Applications are invited for new projects under the following Desegregation of Public Education programs:

(1) State Educational Agency (SEA) programs for race, sex and national origin desegregation assistance under section 403 of the Civil Rights Act of 1964.

(2) Desegregation Assistance Center (DAC) programs for race, sex, and national origin desegregation assistance under section 403 of the Act.

(3) Training Institute (TI) programs for race and sex desegregation assistance under section 404 of the Act.

(4) School Board Grants for sex desegregation assistance under section 405 of the Act.

The Secretary does not, by this notice, invite applications for the Special Grants to School Boards for Race and National Origin Desegregation. Applicants for these grants may apply at any time, but should first review the eligibility requirements contained in 34 CFR 270.04 and 270.71 (a) and (b) (formerly 45 CFR 180.04 and 180.71 (a) and (b)).

Authority for these programs is contained in Title IV of the Civil Rights Act of 1964 (42 U.S.C. 2000c–2000c–5).

The purpose of these programs is to help solve problems related to the race, sex, and national origin desegregation of public elementary and secondary schools.

Closing Date for Transmittal of Applications: An application for a grant must be mailed or hand delivered by March 12, 1981.

Applications Delivered by Mail: An application sent by mail must be addressed to the U.S. Department of Education, Application Control Center, Washington, D.C. 20202, Attention: 84.004A.

An applicant must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the U.S. Secretary of Education.

If an application is sent through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing: (1) a private metered postmark, or (2) a mail receipt that is not dated by the U.S. Postal Service.

An applicant should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

An applicant is encouraged to use registered or at least first class mail. Each late applicant will be notified that its application will not be considered.

Applications Delivered by Hand: An application that is hand delivered must be taken to the U.S. Department of Education, Application Control Center, Room 5673, Regional Office Building 3, 7th and D Streets, S.W., Washington, D.C.

The Application Control Center will accept a hand delivered application between 8:00 a.m. and 4:30 p.m.

(Washington, D.C. time) daily, except Saturdays, Sundays, and Federal holidays.

An application that is hand delivered will not be accepted after 4:30 p.m. on the closing date.

Program Information: An applicant for a race, sex or national origin desegregation assistance center may apply to provide assistance in one of the following service areas.

(a) *Service areas for race desegregation assistance:*

(i) Maine, New Hampshire, Vermont, Massachusetts, Connecticut, Rhode Island.

(ii) New York, New Jersey, Puerto Rico, Virgin Islands.

(iii) Pennsylvania, Delaware

(iv) Maryland, Virginia, West Virginia, District of Columbia.

(v) Kentucky, Tennessee, North Carolina, South Carolina.

(vi) Mississippi, Alabama, Georgia, Florida.

(vii) Minnesota, Wisconsin, Michigan.

(viii) Illinois, Indiana.

(ix) Ohio.

(x) Iowa, Nebraska, Kansas, Missouri.

(xi) Arkansas, Louisiana, Oklahoma.

(xii) New Mexico, Texas.

(xiii) North Dakota, South Dakota, Montana, Colorado, Wyoming, Utah.

(xiv) California, Arizona, Nevada.

(xv) Hawaii, Guam, American Samoa, Trust Territory of the Pacific Islands, Commonwealth of the Northern Mariana Islands.

(xvi) Oregon, Washington, Idaho.

(xvii) Alaska.

(b) *Service areas for sex desegregation assistance:*

(i) Maine, New Hampshire, Vermont, Massachusetts, Connecticut, Rhode Island.

(ii) New York, New Jersey, Puerto Rico, Virgin Islands.

(iii) Pennsylvania, Delaware, Maryland, Virginia, West Virginia, District of Columbia.

(iv) North Carolina, South Carolina, Georgia, Florida, Alabama, Mississippi, Kentucky, Tennessee.

(v) Ohio, Indiana, Illinois, Michigan, Wisconsin, Minnesota.

(vi) Texas, Louisiana, Oklahoma, Arkansas, New Mexico.

(vii) Iowa, Nebraska, Kansas, Missouri.

(viii) North Dakota, South Dakota, Montana, Colorado, Wyoming, Utah.

(ix) California, Nevada, Arizona.

(x) Hawaii, Guam, American Samoa, Trust Territory of the Pacific Islands, Commonwealth of the Northern Mariana Islands.

(xi) Oregon, Washington, Idaho.

(xii) Alaska.

(c) *Service areas for national origin desegregation assistance:*

(i) Maine, New Hampshire, Vermont, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Puerto Rico, Virgin Islands.

(ii) Pennsylvania, Delaware, Maryland, District of Columbia, Virginia, West Virginia, North Carolina, South Carolina, Kentucky, Tennessee, Georgia, Alabama, Mississippi, Florida.

(iii) Ohio, Indiana, Illinois, Michigan, Minnesota, Wisconsin, Missouri, Kansas, Iowa, Nebraska.

(iv) Texas, Louisiana, Arkansas.

(v) Montana, North Dakota, South Dakota, Wyoming, Colorado, Utah, Oklahoma.

(vi) New Mexico, Arizona, Nevada.

(vii) Southern California (that part of California south of the northern boundaries of San Luis Obispo, Kern, and San Bernardino Counties).

(viii) Northern California (that part of California not included in Area (vii)).

(ix) Washington, Oregon, Idaho.

(x) Hawaii, Guam, Trust Territory of the Pacific Islands, American Samoa, Commonwealth of the Northern Mariana Islands.

It should be noted that two additional service areas have been established for this year in each of the three categories—race, sex, and national origin. These areas are Alaska, Hawaii, Guam, American Samoa, Trust Territory of the Pacific Islands, Commonwealth of the Northern Mariana Islands. Because of the geographic isolation of these areas, it is more effective to establish separate service areas.

Applicants must submit a separate application for each desegregation assistance center award as required in 34 CFR 270.38(a) (formerly 45 CFR 180.38(a)). Applicants wishing to apply in more than one category are invited to do so.

In those instances where an applicant submits more than one proposal, a section must be included in each proposal to indicate the proposed plan for coordination of the projects and the cost benefits which would be realized if the applicant receives more than one award.

Available Funds: The fiscal year 1981 appropriation for assistance under Title IV is $45,675,000. It is anticipated that, of that amount, approximately 107 awards will be made for race desegregation assistance, approximately 102 awards will be made for sex desegregation assistance, and approximately 96 awards will be made for national origin desegregation assistance. The approximate distribution of funds by program is as follows:

Program	Number of awards
(1) State Educational Agencies	96
(2) Desegregation Assistance Centers	40
(3) Training Institutes	22
(4) School Boards: Sex	46
(5) School Boards: Race/National Origin	109

This distribution of awards is only an estimate and does not bind the Department of Education.

Application Forms: Application forms and program information packages are expected to be ready for mailing by January 26, 1981. They may be by writing to Dr. Shirley D. McCune, Deputy Assistant Secretary for Equal Educational Opportunity Programs, U.S. Department of Education, Room 2001A, 400 Maryland Avenue, S.W., Washington, D.C. 20202.

Applications must be prepared and submitted in accordance with the regulations, instructions, and forms included in the program information package. The Secretary strongly urges that the narrative portion of the applicaton not exceed 40 pages in length. The Secretary further urges that applicants not submit information that is not requested.

Applicable Regulations: Regulations applicable to these programs include the following:

(a) Regulations governing the Desegregation of Public Education programs, 34 CFR Part 270 (formerly 45 CFR Part 180).

These regulations were published in the Federal Register on July 26, 1978 (45 FR 32372).

(b) The Education Division General Administrative Regulations (EDGAR), 34 CFR Parts 75 and 77 (formerly 45 CFR Parts 100a and 100c).

These regulations were published in the Federal Register on April 3, 1980 (45 FR 22494).

Further Information: For further information contract Ms. M. Patricia Goins, Director, Division of Equity Training and Technical Assistance, Equal Educational Opportunity Programs, U.S. Department of Education, 400 Maryland Avenue, S.W., Room 2031, FOB-6, Washington, D.C. 20202. Telephone (202) 245-8840.

(42 U.S.C. 2000c—2000c-5)

(Catalog of Federal Domestic Assistance No. 84.004A, Desegregation of Public Education Program)

Dated: January 13, 1981.

Thomas K. Minter,

Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 81-1708 Filed 1-16-81; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Economic Regulatory Administration

Application for Presidential Permit PP-74; Power Authority of the State of New York

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of application by the Power Authority of the State of New York (PASNY) for a Presidential permit for a 345 kilovolt international transmission line.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) has received an application from the Power Authority of the State of New York to construct a 345 kV transmission line from the United States to Canada crossing the Niagara River at a point several miles north of Niagara Falls, New York.

FOR FURTHER INFORMATION CONTACT:

James M. Brown, Jr., System Reliability and Emergency Response Branch, Department of Energy, Room 4110, 2000 M Street NW., Washington, D.C. 20461, (202) 653-3825

Lise Courtney Howe, Office of General Counsel, Department of Energy, Room 5E-064, Forrestal Building, 1000 Independence Avenue SW., Washington, D.C. 20585, (202) 252-2900

SUPPLEMENTARY INFORMATION: On December 17, 1980, ERA received an application from PASNY for authority to construct a 345 kV transmission line from the United States to Canada crossing the Niagara River near Niagara Falls, New York. The transmission line will be used to deliver approximately 2000 megawatts of surplus capacity from the Sir Adam Beck switchyard of Ontario Hydro in the Province of Ontario to the PASNY Niagara Power Plant switchyard in the State of New York.

PASNY proposes to install two 345 kV circuits in an existing underground power tunnel which extends from the area of the 345 kV Niagara Power Plant switchyard to the headworks of the Niagara powerdam, where the tunnel terminates. The Niagara River will be spanned by a double circuit 345 kV overhead crossing from the headworks of the powerdam to a new tower owned by Ontario Hydro on the Canadian side of the river. The new tower will be located in an existing transmission line right-of-way. The total length of the 345 kV transmission facilities on the New York side of the river is less than one mile, of which only 700 feet consists of the overhead crossing from the headworks of the dam to the International Border; the remainder will be placed in the existing PASNY tunnel.

According to PASNY the principal benefits of the proposed interconnection are: (1) Increased capability for transferring power between Canada and New York, thereby permitting purchases of surplus power from Ontario; (2) displacement of oil-fired generation in New York by less costly imported electricity; (3) increased capabilities for emergency transfers between Canada and New York; and (4) increased ability to transfer to Ontario Hydro power generated at the Niagara Project using, when available, Ontario Hydro's unused Niagara River water allocation.

Under section 201(f) of the Federal Power Act, any State or any agency, authority, or instrumentality of a State is exempted from the provisions of Part II of the Act. Accordingly, PASNY is not required to request from ERA authority to export electric energy pursuant to section 202(e) of the Federal Power Act, and ERA review of this proposed project will be limited to the issuance of a Presidential Permit pursuant to Executive Order 10485, as amended.

Any person desiring to be heard or to protest said application should file a petition to intervene or protest with the System Reliability and Emergency Response Branch, Economic Regulatory Administration, Room 4110, 2000 M Street NW., Washington, D.C. 20461, in accordance with §§ 1.8 or 1.10 of the Rules of Practice and Procedure (18 CFR 1.8, 1.10).

Any such petitions and protest should be filed on or before February 18, 1981. Protests will be considered by ERA in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this application are on file with ERA and will, upon request, be made available for public inspection and copying at the ERA Docket Room, Room B-210, 2000 M Street NW., Washington, D.C., and at the Systems Reliability and Emergency Response Branch, Room 4110, 2000 M Street NW., Washington, D.C.

Dated: January 12, 1981.

Howard F. Perry,

Acting Assistant Administrator for Utility Systems, Economic Regulatory Administration.

[FR Doc. 81-1709 Filed 1-16-81; 8:45 am]

BILLING CODE 6450-01-M

[ERA Docket No. 81-04-NG]

Boundary Gas, Inc.; Application for Authorization To Import Natural Gas From Canada

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of application for authorization to import natural gas from Canada.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy gives notice of receipt of the application of Boundary Gas, Inc. (Boundary) to import natural gas from Canada. Boundary proposes to import and resell up to 185,000 Mcf per day of natural gas for a contract term of ten years to its stockholders, which are 13 natural gas distribution companies and an interstate pipeline serving the Northeastern United States. TransCanada Pipelines Ltd. (TransCanada) is the Canadian exporter. Tennessee Gas Pipline Company, a Division of Tenneco, Inc. (Tennessee), will provide transportation for the gas in the United States. The application is filed with ERA pursuant to Section 3 of the Natural Gas Act and the Secretary of Energy's Delegation Order No. 0204-54. Protests or petitions to intervene are invited.

DATES: Protests or petitions to intervene are to be filed on or before February 18, 1981.

FOR FURTHER INFORMATION CONTACT:

Leonard B. Levine (Division of Natural Gas), Economic Regulatory Administration, 2000 M Street NW., Room 7108, RG-55, Washington, D.C. 20461, (202) 653-3286.

James K. White (Assistant General Counsel for Natural Gas and Mineral Leasing), Department of Energy, 1000 Independence Ave. SW., Room 5E-074, GC-15, Washington, D.C. 20585, (202) 252-2900.

SUPPLEMENTARY INFORMATION: Under its contract with TransCanada, Boundary will be entitled to purchase a daily contract quantity of 185,000 Mcf of natural gas for resale to its fourteen stockholders. Boundary's stockholders (repurchasers) are all located in the Northeastern United States and include Bay State Gas Company (Massachusetts/New Hampshire/

Maine), Berkshire Gas Company (Massachusetts), Boston Gas Company (Massachusetts), The Brooklyn Union Gas Company (New York), Connecticut Gas Company (Connecticut), Consolidated Edison Company of New York, Inc. (New York), Fitchburg Gas and Electric Light Company (Massachusetts), Gas Service, Inc. (New Hampshire), Haverhill Gas Company (Massachusetts), Long Island Lighting Company (New York), Manchester Gas Company (New Hampshire), National Fuel Gas Supply Corporation (New York/Pennsylvania), New Jersey Natural Gas Company (New Jersey), and Valley Gas Company (Rhode Island). All of the repurchasers except National Fuel Gas Supply Corporation are natural gas distribution companies. National Fuel Gas Supply Corporation is an interstate pipeline company principally serving its affiliated distribution companies.

The primary term of the natural gas purchase contract is ten years, with one additional year for the delivery of contract quantities of gas not delivered during the primary contract term. The primary contract term is to commence with first delivery, but not later than November 1, 1982. The price is to be the price as determined by the Canadian government for natural gas exported to the United States, currently U.S. $4.47 per MMBtu.

Boundary states that it has a take-or-pay obligation to TransCanada, which requires it to take and pay for, or nevertheless pay for, an annual quantity of gas equal to 75 percent of the daily contract quantity (185,000 Mcf) times the number of days in the contract year. The repurchasers will share any take-or-pay obligation incurred. Each repurchaser is assigned a minimum annual quantity according to its percentage entitlement to buy gas from Boundary. To the extent that a repurchaser releases gas which is taken by other repurchasers, its minimum annual quantity is reduced accordingly.

Boundary does not intend to own or operate any facilities necessary for the transportation of the gas. Tennessee will own and operate all facilities needed to provide transportation services for Boundary. Boundary states that Tennessee will apply for regulatory approval to construct any facilities necessary to transport the gas.

Boundary has submitted market analysis data which it believes indicate a need for this gas. Boundary states in its application that the Canadian gas it proposes to import will account for about 9 percent of the repurchasers' collective gas supplies.

Other Information

The ERA invites protests or petitions for intervention in the proceeding. Such protests or petitions are to be filed with the Division of Natural Gas, Economic Regulatory Administration, Room 7108, RG–55, 2000 M Street NW., Washington, D.C. 20461, in accordance with the requirements of the rules of practice and procedure (18 CFR 1.8 and 1.10). Such protests or petitions for intervention will be accepted for consideration if filed no later than 4:30 p.m., on February 2, 1981.

Any person wishing to become a party to the proceeding or to participate as a party in any hearing which may be convened herein must file a petition to intervene. Any person desiring to make any protest with reference to the petition and application for certificate should file a protest with the ERA in the same manner as indicated above for petitions to intervene. All protests filed with ERA will be considered by it in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding.

A hearing will not be held unless a motion for a hearing is made by any party or persons seeking intervention and is granted by ERA, or if the ERA on its own motion believes that a hearing is required. If a hearing is required, due notice will be given.

A copy of Boundary's petition is available for public inspection and copying in Division of Natural Gas Docket Room, Room 7108, 2000 M Street NW., Washington, D.C. 20461 between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, D.C. on January 12, 1981.

F. Scott Bush,

Assistant Administrator, Office of Regulatory Policy, Economic Regulatory Administration.

[FR Doc. 81–1703 Filed 1–16–81; 8:45 am]

BILLING CODE 6450–01–M

[ERA Case No. 63011–9162–01–24; Docket No. ERA–FC–80–017]

Great Western Malting Co.; Availability of Tentative Staff Analysis

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of availability of tentative staff analysis.

SUMMARY: On March 4, 1980, Great Western Malting Company. (Great Western) petitioned the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) for a permanent cogeneration exemption from the provisions of the Powerplant and Industrial Fuel Use Act of 1978, 42 U.S.C. 8301 *et seq.* (FUA or the Act), which prohibit the use of petroleum or natural gas in new powerplants..

Great Western proposes to install a 20,100 KW gas-fired combustion turbine to produce electricity and hot water heat for the company's production process.

On April 22, 1980, after a prepetition conference held in Washington, D.C., Great Western submitted a revised petition to ERA. ERA accepted the petition on June 13, 1980, and published notice of its acceptance in the Federal Register on June 20, 1980 (45 FR 41693). Publication of the Notice of Acceptance commenced a 45-day public comment period pursuant to section 701 of FUA. During this period, interested persons also were afforded an opportunity to request a public hearing. The comment period ended August 4, 1980. Comments were received from Region X of the Environmental Protection Agency (Seattle, Washington). No hearing was requested.

ERA's staff has reviewed the information presently contained in the record of the proceeding. A tentative Staff Analysis has been prepared which recommends that ERA issue an order granting a permanent cogeneration exemption to permit Great Western to use natural gas as a primary energy source in the cogeneration facility.

ERA will issue a final order granting or denying the petition for a permanent exemption from the prohibitions of the Act within six months, unless extended by ERA, after the public comment period provided for in this notice has expired. Notice of, and a statement of reasons for, any extension will be published in the Federal Register.

DATES: Written comments on the Tentative Staff Analysis and requests for a public hearing are due on or before February 2, 1981.

ADDRESS: Fifteen copies of written comments, and any request for a public hearing shall be submitted to: Department of Energy, Case Control Unit, Box 4629, Room 3214, 2000 M Street NW., Washington, D.C., 20461. Docket Number ERA–FC–80–017 should be printed clearly on the outside of the envelope and on the document contained therein.

FOR FURTHER INFORMATION CONTACT:

Jack C. Vandenberg, Office of Public Information, Economic Regulatory Administration, Department of Energy, 2000 M Street NW., Room, B–110, Washington, D.C. 20461, Phone (202) 653–4055.

Louis T. Krezanosky, Economic Regulatory Administration, Department of Energy, Room 3012B,

2000 M Street NW., Washington, D.C. 20461, Phone (202) 653–4206.
Douglas F. Mitchell, Office of General Counsel, Department of Energy, 1000 Independence Avenue SW., Room 6B–178, Washington, D.C. 20585, Phone (202) 252–2967.

The public file containing a copy of the Tentative Staff Analysis and other documents and supporting material on this proceeding is available for inspection upon request at ERA, Room B–110, 2000 M Street NW., Washington, D.C., Monday through Friday, 8:00 a.m.–4:30 p.m.

SUPPLEMENTARY INFORMATION: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE), on May 15, 1979, and May 17, 1979, published in the Federal Register (44 FR 28530, 28950), an interim rule to implement provisions of Title II of the Powerplant and Industrial Fuel Use Act of 1978, 42 U.S.C. 8301 et seq. (FUA or the Act). A final rule published on June 6, 1980 (45 FR 38278), became effective August 5, 1980, but those sections of the interim rule relating to the cogeneration exemption (44 FR 28994) were continued. FUA prohibits the use of natural gas or petroleum in certain new major fuel burning installations and powerplants unless an exemption for such use has been granted by ERA.

Great Western Malting Company (Great Western) plans to install a 20.1 MW gas-fired cogeneration powerplant to produce electricity and hot water heat for its malting process at its Vancouver, Washington facility. The cogeneration facility will consist of a General Electric LM 2500 gas turbine generator connected to a Johnston waste heat recovery boiler, and three oil-fired stand-by boilers. The gas turbine has a design heat input rate of 183 MM BTU's per hour and each stand-by boiler has a design heat input rate of 55.8 MM BTU's per hour. The waste heat boiler will receive no supplemental firing. All of the electricity produced by the gas turbine will be sold to local utilities, while heat exhaust from the turbine will be utilized by the waste heat boiler to produce hot water used to provide indirect heat for Great Western's production activities. The stand-by boilers will furnish additional process heat on very cold days and serve as a backup system when the gas turbine is down for repairs or maintenance. In either case, the stand-by boilers will not be used in the production of electricity. Pursuant to FUA section 103(a)(7)(B)(ii), the cogeneration facility will be treated as a powerplant because more than half of its annual electric power generation will be sold. Great Western estimates that the cogeneration facility will consume approximately 1,626 to 1,992 MM cu. ft. of natural gas per year (4.5 to 5.5. MM cu. ft. per day), and expects that it will begin commercial operation in November 1981. In accordance with 10 CFR 503.37, Great Western petitioned ERA for a permanent cogeneration exemption from the provisions of FUA to enable it to burn natural gas as a primary energy source in the facility.

Tentative Staff Analysis

On the basis of an analysis of information presented in Great Western's petition, review of the comments received from EPA, and discussions with interested parties, the Staff has concluded that ERA should grant the requested permanent cogeneration exemption.

Based upon the information provided by Great Western, ERA conducted an analysis which was reviewed by the DOE's Office of Environment, in consultation with the Office of the General Counsel, and DOE has concluded that the granting of this exemption is not a major Federal action significantly affecting the quality of the human environment, within the meaning of the National Environmental Policy Act of 1969. Accordingly, neither an environmental impact statement nor an environmental assessment is required.

Terms and Conditions

Section 214(a) of the Act gives ERA the authority to attach terms and conditions to any order granting an exemption. The staff of ERA has tentatively determined and recommends that any order granting the requested permanent cogeneration exemption should pursuant to section 214(a) of the Act, be subject to the following terms and conditions:

A. Great Western will operate its natural gas- or oil-fired boilers instead of its cogeneration powerplant whenever the generation of electricity by its cogeneration powerplant would result in less than full utilization of alternate fuel capacity available to the West Group of the Northwest Power Pool.

B. This order shall not take effect until the 60th calendar day after its publication in the Federal Register.

The Tentative Staff Analysis does not constitute a decision by ERA to grant the requested exemption. Such a decision shall, in accordance with 10 CFR 501.68, be based on the entire record of this proceeding, including any comments received on the Tentative Staff Analysis.

Issued in Washington, D.C., on January 12, 1981.

Robert L. Davies,
Assistant Administrator, Office of Fuels Conversion, Economic Regulatory Administration.

[FR Doc. 81-1704 Filed 1-16-81; 8:45 am]
BILLING CODE 6450-01-M

[ERA Case No. 51882-3003-23-22; Docket No. ERA-FC-80-039]

Missouri Public Service Co.; Acceptance of Petition for Exemption to the Powerplant and Industrial Fuel Use Act of 1978

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of acceptance of petition for exemption pursuant to the Powerplant and Industrial Fuel Use Act of 1978.

SUMMARY: On November 7, 1980, Missouri Public Service Company (MPS) petitioned the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) for a permanent peakload powerplant exemption from the prohibitions of the Powerplant and Industrial Fuel Use Act of 1978 42 U.S.C. 8301 et seq. (FUA or the Act), which prohibit the use of petroleum or natural gas as a primary energy source in new powerplants. A final rule setting forth the procedure for petitioning and the criteria for an exemption was published in the Federal Register on June 6, 1980 (45 FR 38370 and 45 FR 38302), 10 CFR Part 500. This rule became effective August 5, 1980.

The peakload powerplant for which the petition was filed is a natural gas-fired 77,885 kilowatt combustion turbine unit to be installed at MPS' generating plant at Pleasant Hill, Missouri. MPS certifies the unit will be operated solely as a peakload powerplant and will be operated only to meet peakload demand for the life of the plant. Under 10 CFR 503.41, MPS has requested a permanent exemption to construct the unit. ERA's decision in this matter will determine whether the proposed powerplant qualifies for the requested exemption.

ERA has accepted this petition pursuant to 10 CFR 501.3 and 501.63. In accordance with section 701(c) and section 701(d) of FUA, and 10 CFR 501.31 and 501.33 of the regulations, interested persons are invited to submit written comments in regard to this matter, and any interested person may submit a written request that ERA convene a public hearing.

DATES: Written comments are due on or before March 5, 1981. A request for public hearing must be made by any

interested person within this same 45 day period.

ADDRESSES: Fifteen copies of written comments shall be submitted to: Department of Energy, Economic Regulatory Administration Case Control Unit (FUA), Box 4629, Room 3214, 2000 M Street NW., Washington, D.C. 20461.

Docket No. ERA-FC-80-039 should be printed clearly on the outside of the envelope and the document contained therein.

FOR FURTHER INFORMATION CONTACT:

Jack C. Vandenberg, Office of Public Information, Economic Regulatory Administration, Department of Energy, 2000 M Street NW., Room B-110, Washington, D.C. 20461, Phone (202) 653-4055.

Louis T. Krezanosky, New Powerplants Branch, Economic Regulatory Administration, Department of Energy, 2000 M Street NW., Room 3012B, Washington, D.C. 20461, Phone (202) 653-4208.

CHRISTINA SIMMONS, OFFICE OF GENERAL COUNSEL, DEPARTMENT OF ENERGY, GE-178 FORRESTAL BLDG., 1000 INDEPENDENCE AVENUE NW., WASHINGTON, D.C. 20585, PHONE (202) 252-2567.

SUPPLEMENTARY INFORMATION: FUA prohibits the use of natural gas or petroleum in certain new powerplants unless an exemption to do so has been granted by ERA. MPS has filed a petition for a permanent peakload powerplant exemption to use natural gas as a primary energy source in its proposed Ralph Green Unit No. 3 combustion turbine. The unit will have a fuel heat input rate of 867.6 MM Btu per hour at peak capacity.

To qualify for a peakload powerplant exemption under 10 CFR 503.41, a petitioner must certify to ERA that the powerplant will be operated solely as a peakload powerplant and to meet peakload demand for the life of the powerplant.

MPS submitted a certified statement by a duly authorized officer, Mr. Richard Green, President of MPS, to the effect that the proposed gas-fired combustion turbine will be operated solely as a peakload powerplant and will be operated only to meet peakload demand for the life of the plant.

Mr. Green also certifies that the maximum design capacity of the powerplant is 77,885 kilowatts and that the maximum generation that will be allowed during any 12-month period is the design capacity times 1,500 hours or 116,827,500 Kwh.

On August 11, 1980, DOE published in the Federal Register (45 FR 53199) a notice of proposed amendments to guidelines for compliance with the National Environmental Policy Act of 1969 (NEPA). The grant or denial of certain FUA permanent exemptions, including the permanent exemption for peakload powerplants, is among the classes of actions that DOE, pursuant to the guidelines, has proposed be categorically excluded from the requirement to prepare an Environmental Impact Statement pursuant to NEPA. This classification raises a rebuttable presumption that the grant or denial of the exemption will not significantly affect the quality of the human environment. MPS has certified that it will secure all applicable permits and approvals prior to commencement of operation of the new unit under exemption. DOE's Office of Environment, in consultation with the Office of the General Counsel, will review the completed Environmental checklist submitted by MPS pursuant to 10 CFR 503.15(b)(2) together with other relevant information. Unless it appears during the proceeding on MPS' exemption that the grant or denial of the exemption will significantly affect the quality of the human environment, it is expected that no additional environmental review will be required.

ERA hereby accepts the filing of the petition for a permanent peakload exemption as adequate for filing. ERA retains the right to request additional relevant information from MPS at any time during the pendency of this proceeding. As set forth in 10 CFR 501.3(d), the acceptance of the petition by ERA does not constitute a determination that MPS is entitled to the exemption requested.

The public file containing documents on these proceedings and supporting material is available for inspection upon request at: ERA, Room B-110, 2000 M Street NW., Washington, D.C. 20461, Monday-Friday, 8:00 a.m.-4:30 p.m.

Issued in Washington, D.C., on January 11, 1981.

Robert L. Davies,

Assistant Administrator, Office of Fuels Conversion, Economic Regulatory Administration.

[FR Doc. 81-1705 Filed 1-16-81; 8:45 am]

BILLING CODE 6450-01-M

Moyle Petroleum Co.; Action Taken on Consent Order

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of action taken and opportunity for comment on consent order.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) announces action taken to execute a Consent Order and on potential claims against the refunds deposited in an escrow account established pursuant to the Consent Order.

DATES: Effective date: December 31, 1980. Comments by February 18, 1981.

ADDRESS: Send comments to: Kenneth E. Merica, District Manager of Enforcement, Economic Regulatory Administration, P.O. Box 26247, Belmar Branch, Lakewood, Colorado, 80226.

FOR FURTHER INFORMATION CONTACT:

Kenneth E. Merica, District Manager of Enforcement, Economic Regulatory Administration, P.O. Box 26247, Belmar Branch, Lakewood, Colorado, 80226, (303) 234-3195.

SUPPLEMENTARY INFORMATION: On December 31, 1980, the Office of Enforcement executed a Consent Order with Moyle Petroleum Company (Moyle) of Rapid City, South Dakota. Under 10 CFR 205.199J(b), a Consent Order which involves a sum of less than $500,000 in the aggregate, excluding penalties and interest, becomes effective upon its execution.

I. The Consent Order

Moyle, with its home office located in Rapid City, South Dakota, is a firm engaged in the business of purchasing covered products and reselling them to wholesale purchasers and ultimate consumers, without substantially changing their form and is subject to the Mandatory Petroleum Price and Allocation Regulations at 10 CFR Parts 210, 211 and 212. To resolve certain civil actions which could be brought by the Office of Enforcement of the Economic Regulatory Administration as a result of its audit of Moyle, the Office of Enforcement of ERA and Moyle entered into a Consent Order, the significant terms of which are as follows:

1. ERA alleges that Moyle violated the gasoline price regulations contained in 10 CFR 212.93 of the Mandatory Petroleum Price Regulations by exceeding its "maximum legal selling price" for the covered gasoline products sold to Moyle's wholesale and retail customers, during the period March 1, 1979, through June 30, 1979 (audit period).

2. Moyle has agreed to pay $12,173.48 into a special fund administered by ERA in settlement of the alleged overcharges to its customers during that period.

3. Moyle has agreed to pay a civil penalty of $1,000.00.

4. The provisions of 10 CFR 205.199J are applicable to the Consent Order.

II. Disposition of Refunded Overcharges

In this Consent Order, Moyle agrees to refund, in full settlement of any civil liability with respect to actions which might be brought by the Office of Enforcement, ERA, arising out of Moyle's sales to its customers during the audit period, the sum of $12,173.48, within 10 business days of Moyle's receipt of the executed Order. Refund of those overcharges will be in the form of a certified check made payable to the United States Department of Energy and will be delivered to the Assistant Administrator for Enforcement, ERA. These funds will remain in a suitable account pending the determination of their proper disposition.

The DOE intends to distribute the refund amounts in a just and equitable manner in accordance with applicable laws and regulations. Accordingly, distribution of such refunded overcharges requires that only those "persons" (as defined at 10 CFR 205.2) who actually suffered a loss as a result of the transactions described in the Consent Order receive appropriate refunds. Because of the petroleum industry's complex marketing system, it is likely that overcharges have been passed through as higher prices to subsequent purchasers. In fact, the adverse effects of the overcharges may have become so diffused that it is a practical impossibility to identify specific, adversely affected persons, in which case disposition of the refunds will be made in the general public interest by an appropriate means such as payment to the Treasury of the United States pursuant to 10 CFR 205.199I[a].

III. Submissions of Written Comments

A. *Potential Claimant:* Interested persons who believe that they have a claim to all or a portion of the settlement amount specified in I.2., above, should provide written notification of the claim to the ERA at this time. Proof of claims is not now being required. Written notification to the ERA at this time is requested primarily for the purpose of identifying valid potential claims to the refund amount. After potential claims are identified, procedures for the making of proof of claims may be established. Failure by a person to provide written notification of a potential claim within the comment period for this Notice may result in the DOE irrevocably disbursing the funds to other claimants or to the general public interest.

B. *Other Comments:* The ERA invites interested persons to comment on the terms, conditions, or procedural aspects of this Consent Order.

You should send your comments or written notifications of a claim to Kenneth E. Merica, District Manager of Enforcement Economic Regulatory Administration, P.O. Box 26247, Belmar Branch, Lakewood, Colorado, 80226. You may obtain a free copy of this Consent Order, with proprietary information deleted, by writing to the same address or by calling (303) 234-3195.

You should identify your comments or written notification of a claim on the outside of your envelope and on the documents you submit with the designation, "Comments on Moyle Petroleum Company Consent Order." We will consider all comments we receive by 4:30 p.m., local time, on February 18, 1981. You should identify any information or data which, in your opinion, is confidential and submit it in accordance with the procedures in 10 CFR 205.9(f), and 10 CFR 1004.11.

Issued in Lakewood, Colorado, on the 7th day of January 1981.

Kenneth E. Merica,

District Manager, Rocky Mountain District, Economic Regulatory Administration.

Concurrence by:

Stephen G. Plichta,

Acting Regional Counsel.

[FR Doc. 81-1708 Filed 1-19-81; 8:45 am]

BILLING CODE 6450-01-M

[ERA Case No. 65016-9152-27-22; Docket No. ERA-FC-80-025]

Owatonna Public Utilities; Availability of Staff Analysis

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of availability of tentative staff analysis.

SUMMARY: On April 21, 1980, Owatonna Public Utilities (Owatonna) petitioned the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) for a permanent peakload powerplant exemption from the provisions of the Powerplant and Industrial Fuel Use Act of 1978, 42 U.S.C. 8301 *et seq.* (FUA or the Act), which prohibit the use of petroleum or natural gas in new powerplants.

Owatonna plans to install a 25,000 KW natural gas/oil-fired combustion turbine unit to be known as Unit No. 7 in Owatonna, Minnesota. Owatonna certifies that the unit will be operated solely as a peakload powerplant and will be operated only to meet peakload demand for the life of the plant.

ERA accepted the petition on July 10, 1980, and published notice of its acceptance in the **Federal Register**, on August 25, 1980, (45 FR 56383). Publication of the notice of acceptance commenced a 45-day public comment period pursuant to section 701 of FUA. Interested persons were also afforded an opportunity to request a public hearing. The comment period ended October 9, 1980.

Comments were received from Region V of the Environmental Protection Agency (EPA). EPA comments indicate that additional information should be developed which includes a Prevention of Significant Deterioration applicability determination for Owatonna's boiler and an emissions inventory if No. 2 fuel oils with 0.3 percent and 0.5 percent sulfur content are used. No hearing was requested.

ERA's staff has reviewed the information contained in the record of this proceeding. A Tentative Staff Analysis has been prepared which recommends that ERA issue an order granting the permanent peakload powerplant exemption to Owatonna. ERA will issue a final order granting or denying the petition for a permanent peakload powerplant exemption within six months, unless extended by ERA, after the public comment period provided for in this notice has expired. Notice of, and a statement of reasons for any extension will be published in the **Federal Register.**

DATES: Written comments on the Tentative Staff Analysis and requests for a public hearing are due February 2, 1981.

ADDRESSES: Fifteen copies of any written comments, or requests for a public hearing should be submitted to: Department of Energy, Case Control Unit, Box 4629, Room 3214, 2000 M Street N.W., Washington, D.C. 20461. Docket Number ERA-FC-80-025 should be printed clearly on the outside of the envelope and on the document contained therein.

FOR FURTHER INFORMATION CONTACT:

Jack C. Vandenberg, Office of Public Information, Economic Regulatory Administration, Department of Energy, 2000 M Street, N.W., Room B-110, Washington, D.C. 20461, Phone (202) 653-4055

Louis T. Krezanosky, Economic Regulatory Administration, Department of Energy, Room 3012B, 2000 M Street, N.W., Washington, D.C. 20461, Phone (202) 653-4206

Douglas F. Mitchell, Office of General Counsel, Department of Energy, 1000 Independence Avenue, S.W., Room 6B-178, Washington, D.C. 20585, Phone (202) 252-2907

The public file containing a copy of the Tentative Staff Analysis and other documents and supporting materials on

this proceeding is available for inspection upon request at: ERA, Room B-110, 2000 M St. N.W., Washington, D.C., 20461, Monday through Friday, 8:00 a.m. to 4:30 p.m.

SUPPLEMENTARY INFORMATION: The Economic Regulatory Administration (ERA) published an interim rule on May 15 and 17, 1979 (44 FR 28530, 28950) to implement provisions of Title II of the Powerplant and Industrial Fuel Use Act of 1978, 42 U.S.C. 8310 *et seq.* (FUA or the Act). A final rule, published on June 6, 1980 (45 FR 38276), became effective August 5, 1980.

FUA prohibits the use of natural gas or petroleum in certain new major fuel burning installations and powerplants unless an exemption for such use has been granted by ERA.

Owatonna Public Utilities (Owatonna) plans to install a 25,000 KW natural gas/oil-fired combustion turbine unit to be called Unit No. 7 on the western edge of the City of Owatonna, approximately two miles from Owatonna's present plant site. Based upon estimates by Owatonna, the proposed unit is expected to consume approximately 54,000 barrels of No. 2 fuel oil per year (118 bbl/day). Unit No. 7 is scheduled for commercial operation in May 1982.

Owatonna submitted a sworn statement with the petition signed by Mr. David M. Martin, General Manager of Owatonna, as required by 10 CFR 503.41(b)(1). In his statement, Mr. Martin certifies that Unit No. 7 will be operated solely as a peakload powerplant only to meet peakload demand for the life of the plant. He also certified that the maximum design capacity of the unit is 25,000 KW and that the maximum generation that the unit will be allowed during any 12-month period is the design capacity times 1,500 hours or 37,500,000 Kwh.

Under the requirements of 10 CFR 503.41(b)(1)(ii), if a petitioner proposes to use natural gas or to construct a powerplant to use natural gas in lieu of an alternative fuel as a primary energy source, it must obtain an air quality certification from the Administrator of the Environmental Protection Agency or the Director of the appropriate state air pollution control agency. This certification must state that the use by the powerplant of any available alternate fuel as a primary energy source will cause or contribute to a concentration, in an air control region or any area within the region, of a pollutant for which any national air quality standard is or would be exceeded. However, since ERA has determined that there are no presently available alternate fuels which may be used in the proposed powerplant, no such certification can be made. The certification requirement is therefore waived with respect to this petition.

Tentative Staff Analysis

On the basis of Owatonna's sworn statements and information provided, the staff recommends that ERA grant the requested peakload powerplant exemption. Based upon the information provided by Owatonna, ERA conducted an analysis which was reviewed by DOE's Office of Environment, in consultation with the Office of General Counsel, and DOE has concluded that the granting of this exemption is not a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1969. Accordingly, neither an environmental impact statement nor an environmental assessment is required.

Terms and Conditions

Section 214(a) of the Act gives ERA the authority to include terms and conditions in any order granting an exemption. Based upon the information submitted by Owatonna and upon the results of the staff analysis, the staff of ERA has tentatively determined and recommends that any order granting the requested peakload powerplant exemption should, pursuant to Section 214(a) of the Act, be subject to the following terms and conditions:

A. Owatonna shall not produce more than 37,500,000 Kwh during any 12-month period with Unit No. 7. Owatonna shall provide annual estimates of the expected periods (hours during specific months) of operation of Unit No. 7 for peakload purposes (e.g., 8:00–10:00 am and 3:00–6:00 pm during the June–September period, etc.). Estimates of the hours in which Owatonna expects to operate Unit No. 7 during the first 12-month period shall be furnished within 30 days from the date of this order.

B. Owatonna shall comply with the reporting requirements set forth at 10 CFR 503.41(d).

C. The quality of any petroleum to be burned in the unit will be the lowest grade available which is technically feasible and capable of being burned consistent with applicable environmental requirements.

D. Owatonna shall comply with the terms and conditions which may be imposed pursuant to the environmental requirements set forth at 10 CFR 503.15(b).

Issued in Washington, D.C. on January 11, 1981.

Robert L. Davies,

Assistant Administrator, Office of Fuels Conversion, Economic Regulatory Administration.

[FR Doc. 81-1707 Filed 1-16-81; 8:45 am]

BILLING CODE 6450-01-M

Proposed Analysis of Electric Power System Blackout Impacting the States of Utah, Wyoming and Idaho

AGENCY: Department of Energy, Economic Regulatory Administration.

ACTION: Notice of intent to initiate a detailed analysis of the causative factors of an electric power system blackout that affected customers in Utah, and parts of Wyoming and Idaho on January 8, 1981. The restoration procedures employed also will be reviewed.

SUMMARY: The Division of Power Supply and Reliability of the Economic Regulatory Administration plans to perform a technical analysis of the electric power system conditions and the initiating event(s) that led to a wide scale electric power blackout on January 8, 1981, which affected more than 1.5 million people. This analysis will be conducted under the authority of Section 311 of the Federal Power Act. Data will be requested from the involved electric utilities; on-site inspections of certain electric utility facilities and briefings/interviews with electric utility personnel also will be conducted. In addition to the technical analysis, the socio-economic impacts of this outage will be quantified in a general way and the restoration procedures employed will be reviewed. A formal report of this analysis will be published upon completion of the study.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard E. Wiener, Director, Division of Power Supply and Reliability, Department of Energy, Room 4103, 2000 M Street, N.W., Washington, D.C. 20461, 202–653–3899

Mr. James M. Brown, Jr., Chief, System Reliability and Emergency Response Branch, Department of Energy, Room 4110, 2000 M Street, N.W., Washington, D.C. 20461, 202–653–3825.

SUPPLEMENTARY INFORMATION: A major electric power system blackout affecting all of the State of Utah and portions of the States of Idaho and Wyoming occurred on January 8, 1981. This blackout affected over 1.5 million people.

Preliminary information has indicated that the system outage was initiated by the failure of a 345 kV transmission line

between the Utah Power and Light Company's Camp Williams and I90 South Substations. Since individual transmission lines are subject to failure from many different causes, electric utility systems normally are planned and operated to allow the unexpected outage of a facility with only minimal impact on the electric power system. In this situation, it is apparent that there were other causative factors involved. The overall purpose of this analysis is to ascertain those factors.

In particular, information will be gathered to determine the electric utility operating conditions prior to the blackout and the events leading to the blackout. Possible equipment malfunction or failure, human operator actions and the established operating procedures of the electric utilities involved will be reviewed. Special emphasis will be given to those changes in procedures, equipment installation, maintenance and operator training techniques that could be employed by the involved electric utilities to minimize the probability of a recurrence. The major impact of this outage was on the Utah Power and Light System and therefore this analysis will focus on that system. The impacts on neighboring utilities as well as the overall regional impacts also will be ascertained, and regional operating procedures reviewed as an element of this analysis.

Any person desiring to submit information or to obtain additional information concerning this analysis should contact the Director, Division of Power Supply and Reliability, Economic Regulatory Administration, Room 4103, 2000 M St., N.W., Washington, D.C. 20461 on or before February 9, 1981.

Dated: January 9, 1981.

Hazel R. Rollins,

Administrator, Economic Regulatory Administration.

January 9, 1981.

[FR Doc. 81-1782 Filed 1-16-81; 8:45 am]

BILLING CODE 6450-01-M

Robert E. Park; Action Taken on Consent Order

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of action taken and opportunity for comment on consent order.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) announces action taken to execute a Consent Order and on potential claims against the refunds deposited in an escrow account established pursuant to the Consent Order.

DATES: Effective date: December 31, 1980. Comments by February 18, 1981.

ADDRESS: Send comments to: Kenneth E. Merica, District Manager of Enforcement, Economic Regulatory Administration, P.O. Box 26247, Belmar Branch, Lakewood, Colorado, 80226.

FOR FURTHER INFORMATION CONTACT: Kenneth E. Merica, District Manager of Enforcement, Economic Regulatory Administration, P.O. Box 26247, Belmar Branch, Lakewood, Colorado, 80226, (303) 234-3195.

SUPPLEMENTARY INFORMATION: On December 31, 1980, the Office of Enforcement executed a Consent Order with Robert E. Park (Park) of Casper, Wyoming. Under 10 CFR 20 5.199J(b), a Consent Order which involves a sum of less than $500,000 in the aggregate, excluding penalties and interest, becomes effective upon its execution.

I. The Consent Order

Park, with its home office located in Casper, Wyoming, is a crude oil producer as defined in 10 CFR 212.31 and is subject to the Mandatory Petroleum Price and Allocation Regulations at 10 CFR Parts 210, 211 and 212. To resolve certain civil actions which could be brought by the Office of Enforcement of the Economic Regulatory Administration as a result of its audit of Park, the Office of Enforcement of ERA and Park entered into a Consent Order, the significant terms of which are as follows:

1. The ERA alleges that during the audit period certain volumes of crude oil produced and sold from the Boyd Miller No. 1 Lease were improperly characterized as "stripper well" crude oil exempt from the "old" oil or "lower tier" ceiling price rule contained in 10 CFR 212.73. The ERA further alleged that during the December 1, 1973 through April 30, 1976 (audit period) certain sales of crude oil were made by Park at prices in excess of the maximum allowable prices in violation of 10 CFR Part 212, Subpart D.

2. Park has agreed to pay $100,000 into a special fund administered by ERA in settlement of the alleged overcharges to its customers during that period.

3. Park has agreed to pay a civil penalty of $10,000.00.

4. The provisions of 10 CFR 205.199J are applicable to the Consent Order.

II. Disposition of Refunded Overcharges

In this Consent Order, Park agrees to refund, in full settlement of any civil liability with respect to actions which might be brought by the Office of Enforcement, ERA, arising out of Park's sales to its customers during the audit period, the sum of $100,000, on or before January 15, 1981. Refund of those overcharges will be in the form of a certified check made payable to the United States Department of Energy and will be delivered to the Assistant Administrator for Enforcement, ERA. These funds will remain in a suitable account pending the determination of their proper disposition.

The DOE intends to distribute the refund amounts in a just and equitable manner in accordance with applicable laws and regulations. Accordingly, distribution of such refunded overcharges requires that only those "persons" (as defined at 10 CFR 205.2) who actually suffered a loss as a result of the transactions described in the Consent Order receive appropriate refunds. Because of the petroleum industry's complex marketing system, it is likely that overcharges have been passed through as higher prices to subsequent purchasers. In fact, the adverse effects of the overcharges may have become so diffused that it is a practical impossibility to identify specific, adversely affected persons, in which case disposition of the refunds will be made in the general public interest by an appropriate means such as payment to the Treasury of the United States pursuant to CFR 205.199I[a].

III. Submissions of Written Comments

A. *Potential Claimant:* Interested persons who believe that they have a claim to all or a portion of the settlement amount specified in I.2., above, should provide written notification of the claim to the ERA at this time. Proof of claims is not now being required. Written notification to the ERA at this time is requested primarily for the purpose of identifying valid potential claims to the refund amount. After potential claims are identified, procedures for the making of proof of claims may be established. Failure by a person to provide written notification of a potential claim within the comment period for this Notice may result in the DOE irrevocably disbursing the funds to other claimants or to the general public interest.

B. *Other Comments:* The ERA invites interested persons to comment on the terms, conditions, or procedural aspects of this Consent Order.

You should send your comments or written notifications of a claim to Kenneth E. Merica, District Manager of Enforcement Economic Regulatory Administration, P.O. Box 26247, Belmar Branch, Lakewood, Colorado, 80226. You may obtain a free copy of this Consent

Order, with proprietary information deleted, by writing to the same address or by calling (303) 234–3195.

You should identify your comments on written notification of a claim on the outside of your envelope and on the documents you submit with the designation, "Comments on Robert E. Park Consent Order." We will consider all comments we receive by 4:30 p.m., local time, on February 18, 1981. You should identify any information or data which, in your opinion, is confidential and submit it in accordance with the procedures in 10 CFR 205.9(f) and 10 CFR 1004.11.

Issued in Lakewood, Colorado, on the 7th day of January 1981.

Kenneth E. Merica,

District Manager, Rocky Mountain District, Economic Regulatory Administration.

Concurrence By:

Stephen G. Pilchta,

Acting Regional Counsel.

[FR Doc. 81-1708 Filed 1-16-81; 8:45 am]

BILLING CODE 6450-01-M

[ERA Docket No. 81-02-NG]

Transcontinental Gas Pipe Line Corp. and Algonquin Gas Transmission Co.; Joint Application for an Order Authorizing Importation of Natural Gas From Canada

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of application for an order authorizing the importation of natural gas from Canada into the United States.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy gives notice of receipt of the joint application of Transcontinental Gas Pipe Line Corporation (Transco) and Algonquin Gas Transmission Company (Algonquin Gas) for ERA authorization to import up to 305,882 Mcf of natural gas per day from Canada for a period of approximately 20 years. The gas allegedly will be used to supply primarily high priority consumers in the Southeastern and mid-Atlantic regions and in New England. The import will require construction of a new pipeline system, the New England States Pipeline Company (NESP) system, which will cross the U.S. border near Calais, Maine, and extend to Burrillville, Rhode Island. The application is filed with ERA pursuant to Section 3 of the Natural Gas Act and the Secretary of Energy's Delegation Order No. 0204–54. Protests or petitions to intervene are invited.

DATES: Protests or petitions to intervene are to be filed on February 18, 1981.

FOR FURTHER INFORMATION CONTACT:

Stephen J. Gary (Division of Natural Gas), Economic Regulatory Administration, 2000 M Street, N.W., Room 7108, Washington, D.C. 20461, (202) 653–3286

James K. White (Assistant General Counsel for Natural Gas and Mineral Leasing), Office of General Counsel, Department of Energy, 1000 Independence Ave., N.W., Forrestal Building, Room 5E064, Washington, D.C. 20585, (202) 252–2900

SUPPLEMENTARY INFORMATION: Transco and Algonquin Gas have requested authority to import from Canada up to 305,882 Mcf of natural gas per day, to be divided equally between them, with deliveries contemplated to commence on November 1, 1983. The supplier of the gas is Pan-Alberta Gas Ltd. (Pan-Alberta). The term of the Gas Sales Contracts with Pan-Alberta is for 15 years, with a possible extension for an additional 5 years. Pan-Alberta will charge the applicants the price established by the Canadian National Energy Board for natural gas exports, currently U.S. $4.47 per MMBtu.

The applicants' contracts with Pan-Alberta require that they each take-or-pay for 85 percent of their maximum daily volume of 152,941 Mcf, calculated on an annual basis, or 47,450,000 Mcf per year for each purchaser. There is provision for make up in the subsequent contract year of any volumes that were unable to be taken in any contract year. The contract provides for refund of amounts paid for gas not taken at the expiration of the contract term.

The applicants state that the gas will be imported at a point on the international border near Calais, Maine, and transported through a new pipeline, the NESP system, jointly owned and operated by Transco and Algonquin Gas, to Burrillville, Rhode Island, where it will connect with existing Algonquin Gas facilities.

Transco serves 89 distribution company customers serving primarily high priority markets from Atlanta, Georgia, to the New York metropolitan area. Transco states in the application that there is a "demonstrated need" for the proposed importation and cites curtailments to its customers beginning in the early 1970's. Transco further states that it "expects deliveries to decline at a rapid rate" in the future. Transco supports these conclusions by reference to data submitted previously by Transco in other ERA dockets. Transco has included no new data or analysis in this application.

Algonquin Gas serves distribution company customers in New England, who in turn serve approximately half of the retail customers. Algonquin Gas indicates that over 92 percent of New England's retail gas customers are residential. Algonquin Gas states that the proposed importation "will provide an incremental gas supply in place of costly imported oil" and will make available new gas to offset "potential" declines in gas purchased by Algonquin Gas from its only existing pipeline gas supplier, Texas Eastern Transmission Corporation (Texas Eastern). Texas Eastern has informed Algonquin Gas that due to the absence of an adequate gas supply it does not intend to replace its existing firm gas contracts with long-term agreements but rather will allow them to remain effective only on a year-to-year basis after 1989. Algonquin Gas has not submitted any market analysis data with the application.

Other Information

The ERA invites protests or petitions for intervention in the proceeding. Such protests or petitions are to be filed with the Division of Natural Gas, Economic Regulatory Administration, Room 7108, RG–55, 2000 M Street, N.W., Washington, D.C. 20461, in accordance with the requirements of the rules of practice and procedure (18 CFR 1.8 and 1.10). Such protests or petitions for intervention will be accepted for consideration if filed no later than 4:30 p.m., on February 2, 1981.

Any person wishing to become a party to the proceeding or to participate as a party in any hearing which may be convened herein must file a petition to intervene. Any person desiring to make any protest with reference to the petition and application for certificate should file a protest with the ERA in the same manner as indicated above for petitions to intervene. All protests filed with ERA will be considered by it in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding.

A hearing will not be held unless a motion for a hearing is made by any party or persons seeking intervention and is granted by ERA, or if the ERA on its own motion believes that a hearing is required. If a hearing is required, due notice will be given.

A copy of the Transco/Algonquin Gas application is available for public inspection and copying in Room 7108, 2000 M Street, N.W., Washington, D.C. 20461 between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, D.C. on January 12, 1981.

F. Scott Bush,

Assistant Administrator, Office of Regulatory Policy, Economic Regulatory Administration.

[FR Doc. 81-1710 Filed 1-16-81; 8:45 am]

BILLING CODE 6450-01-M

Order Authorizing Transmission of Electric Energy to Mexico, Amending Prior Authorization

On October 2, 1980, San Diego Gas and Electric (SDG&E) filed an application with the Economic Regulatory Administration (ERA), pursuant to Section 202(e) of the Federal Power Act, for an amendment to its existing authorization to export electric energy to Mexico. SDG&E requests that its authority to export electricity which previously was granted on January 21, 1980 (45 FR 6643), be extended to February 28, 1981. No other changes were requested in the terms of that authorization.

By Federal Power Commission Order issued December 29, 1970, in Docket E-7545, SDG&E was authorized to transmit electric energy from the United States to Mexico at a rate not to exceed 80 megawatts over facilities specified in Docket No. E-7544. On January 21, 1980, this authority was amended to allow SDG&E to export approximately 40-50 megawatts of electric energy to Commission Federal de Electricidad (CFE) on an emergency basis and to receive up to 32 MW from CFE during an emergency on the SDG&E system.

Notice of this application has not been given previously in the Federal Register. If any person desires to make any protest with reference to this Order, he should on or before January 30, 1981, file with the ERA, Washington, D.C. 20461, petitions to intervene or protest in accordance with the Rules of Practice and Procedure. ERA will consider all such petitions filed.

ERA Finds: (1) The proposed extension of the authority to transmit electric energy from the United States to Mexico as originally granted on January 21, 1980, will not impair the sufficiency of electric supply within the United States and will not impede or tend to impede the coordination in the public interest of facilities subject to the jurisdiction of ERA.

(2) The method of public notice given in this matter is reasonable.

ERA Orders: (A) SDG&E is hereby authorized to transmit electric energy from the United States to Mexico until February 21, 1981, in accordance with the terms and conditions set forth in the application and subject to the provisions of the Order of January 21, 1980, as amended by this Order.

(B) The electric energy which SDG&E is hereby authorized to transmit from the United States to Mexico shall be transmitted over the facilities specified in the aforementioned Presidential Permit issued by the Federal Power Commission on December 29, 1970, Docket No. E-7544.

(C) The authorization herein granted may be modified from time to time or terminated by further order of ERA but in no event shall such authorization extend beyond the date of termination or expiration of the Presidential Permit, as amended, referred to in Paragraph (B) above.

(D) SDG&E shall conduct all operations pursuant to the authorization herein granted in accordance with the provisions of the Federal Power Act and pertinent rules, regulations or orders issued or adopted by ERA.

(E) SDG&E shall provide for the installation and maintenance of adequate metering equipment to measure the flow of all electric energy transmitted from the United States to Mexico pursuant to the authority herein granted; shall make, keep and preserve full and complete records with respect to the movement of such energy; and shall furnish, in triplicate to the ERA with respect to such transmission of energy, reports annually on or before February 15, showing the kilowatts per hour delivered, the maximum kw rate of transmission, and the consideration received therefore during each month of the preceding calendar year.

(F) This authorization to tranmit electric energy from the United States to Mexico shall not be transferable or assignable, but in the event of the involuntary transfer of the facilities used for such transmission by operation of law (including such transfers to receivers, trustees, or purchasers under foreclosure or judicial sale) said authorization shall continue in effect temporarily pending the making of an application for permanent authorization and decision thereon, provided notice is given in writing within 30 days following such event to ERA accompanied by a statement that the physical facts relating to sufficiency of supply, rates, and nature of use remain substantially the same as before the transfer.

(G) The aforementioned order of the ERA issued January 21, 1980, in ERA Docket No. PP-49, is hereby amended by extending that authorization until February 28, 1981.

Dated: January 13, 1981.

Howard F. Perry,

Acting Assistant Administrator, Economic Regulatory Administration.

[FR Doc. 81-1618 Filed 1-16-81; 8:45 am]

BILLING CODE 6450-01-M

Union Texas Petroleum Corp.; Action Taken on Consent Order

Pursuant 10 CFR 205.199(J), the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) hereby gives notice of final action taken on a Consent Order. Under the terms of 10 CFR 205.199(c), no Consent Order involving sums in excess of $500,000 shall become effective until ERA publishes notice of its execution and solicits public comments with respect to its terms.

On December 5, 1980, ERA published a notice of a Proposed Consent Order which was executed between Union Texas Petroleum Corporation and the DOE (45 FR 80501, December 5, 1980). With that notice, and in accordance with 10 CFR 205.199(J), ERA invited interested persons to comment on the proposed Consent Order. Also, in that notice, and in accordance with 10 CFR 205.283, interested parties who believe that they have a claim to all or a portion of the refund were instructed to provide notification to ERA.

Three parties submitted written notification of claims and two of these parties submitted comments on the terms and conditions of the Consent Order. ERA has concluded that the Consent Order as executed between the DOE and Union Texas Petroleum Corporation is an appropriate resolution of the compliance proceedings described in the Notice published December 5, 1980, and hereby gives notice that the Consent Order shall become effective as proposed, without modification, on January 19, 1981.

Issued in Dallas, Texas, this 7th day of January, 1981.

Wayne I. Tucker,

Southwest District Manager, Economic Regulatory Administration.

[FR Doc. 81-1619 Filed 1-16-81; 8:45 am]

BILLING CODE 6450-01-M

Crystal Oil Co.; Proposed Consent Order

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Notice of Proposed Consent Order and opportunity for Comments.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) announces a proposed

Consent Order and provides an opportunity for public comment on the proposed Consent Order and on potential claims against the refunds deposited in an escrow account established pursuant to the Consent Order.

DATE: December 22, 1980.

COMMENTS BY: February 18, 1981.

ADDRESS: Send comments to: Wayne I. Tucker, District Manager of Enforcement, Southwest District Office, Department of Energy, P.O. Box 35228, Dallas, Texas 75235 [Phone] (214) 767–7745.

SUPPLEMENTARY INFORMATION: On December 22, 1980, the Office of Enforcement of the ERA executed a proposed Consent Order with Crystal Oil Company, located in Shreveport, Louisiana. Under 10 CFR Section 205.199J(b), a proposed Consent Order which involves a sum of $500,000 or more in the aggregate, excluding penalties and interest, becomes effective only after the DOE has received comments with respect to the proposed Consent Order. Although the ERA has signed and tentatively accepted the proposed Consent Order, the ERA may, after consideration of the comments it receives, withdraw its acceptance and, if appropriate, attempt to negotiate an alternative Consent Order.

I. Consent Order

Crystal Oil Company is, through its subsidiary companys, a firm engaged in the refining of crude oil and the marketing of diesel, motor gasoline and other refined petroleum products, and is subject to the Mandatory Petroleum Price and Allocation Regulations at 10 CFR Parts 210, 211, and 212. To resolve certain civil actions which could be brought by the Office of Enforcement of the Economic Regulatory Administration as a result of its audit of sales of diesel, motor gasoline and other refined petroleum products, the Office of Enforcement, ERA, and Crystal Oil Company entered into a Consent Order, the significant terms of which are as follows:

1. The period covered by the Consent Order was August 1973 through December 1975, and included all sales of diesel, motor gasoline, and other refined petroleum products which were made during that period.

2. Crystal Oil Company, did not apply in a manner acceptable to the DOE the provisions of 6 CFR Part 150, Subpart L, and 10 CFR Part 212, Subpart E, when determining the amount of increased costs available to be charged for its sales of covered products; and, as a consequence, charged prices in excess of the maximum lawful sales prices resulting in overcharges to its customers.

3. In order to expedite resolution of the disputes involved, the Department of Energy and Crystal Oil Company, have agreed to a settlement in the amount of $6,025,000. Crystal Oil Company has agreed to reduce its unrecovered increased costs available for recovery in sales of gasoline by $5,000,000. This reduction to unrecovered increased costs of motor gasoline will be reflected by Crystal submitting a revision to the last month's Refiners' Monthly Cost Allocation Report filed prior to the signature date of this Consent Order. Crystal Oil Company has agreed to a cash refund $1,000,000 and this money has been deposited into a interest bearing escrow account. The Department of Energy will receive this refund plus any accumulated interest following the effective date of the Consent Order. The remaining $25,000, representing a compromise of a civil penalty, was paid by Crystal Oil Company. The negotiated settlement was determined to be in the public interest as well as the best interests of the Department of Energy and Crystal Oil Company.

4. The provisions of 10 CFR Section 205.199J, including the publication of this Notice, are applicable to the Consent Order.

II. Disposition of Refunded Overcharges

In the Consent Order, Crystal Oil Company agrees to refund, in full settlement of any civil liability with respect to actions which might be brought by the Economic Regulatory Administration, arising out of the transactions specified in I.1, the sum of $6,025,000 in the manner specified in I.3 above. Refunded overcharges plus any interest will be in the form of a certified check made payable to the United States Department of Energy and will be delivered to the Assistant Administrator for Enforcement, Economic Regulatory Administration. These funds will remain in a suitable account pending the determination of their proper disposition.

The Department of Energy intends to distribute the refund amounts in a just and equitable manner in accordance with applicable laws and regulations. Accordingly, distribution of such refunded overcharges requires that only those "persons" (as defined at 10 CFR 205.2) who actually suffered a loss as a result of the transactions described in the Consent Order receive appropriate refunds. Because of the petroleum industry's complex marketing system, it is likely that overcharges have either been passed through as higher prices to subsequent purchasers or offset through devices such as the Old Oil Allocation (Entitlements) Program, 10 CFR 211.67. In fact, the adverse effects of the overcharges may have become so diffused that it is a practical impossibility to identify specific, adversely affected persons, in which case disposition of the refunds will be made in the general public interest by an appropriate means such as payment to the Treasury of the United States pursuant to 10 CFR 205.199I(a).

III. Submission of Written Comments

A. *Potential Claimants:* Interested persons who believe that they have a claim to all or a portion of the refund amount should provide written notification of the claim to the Economic Regulatory Administration at this time. Proof of claims is not being required. Written notification to the Economic Regulatory Administration at this time is requested primarily for the purpose of identifying valid potential claims to the refund amount. After potential claims are identified, procedures for the making of proof of claims may be established. Failure by a person to provide written notification of a potential claim within the comment period for this Notice may result in the Department of Energy irrevocably disbursing the funds to other claimants or to the general public interest.

B. *Other Comments:* The Economic Regulatory Administration invites interested persons to comment on the terms, conditions, or procedural aspects of this Consent Order.

You should send your comments or written notification of a claim to Wayne I. Tucker, District Manager of Enforcement, Southwest District Office, Department of Energy, P.O. Box 35228, Dallas TX 75235. You may obtain a free copy of this Consent Order by writing to the same address or by calling (214) 767–7745.

You should identify your comments or written notification of a claim on the outside of your envelope and on the documents you submit with the designation, "Comments on Crystal Oil Company, Consent Order." We will consider all comemnts we receive by 4:30 pm, local time, on February 18, 1981. You should identify any information or data which, in your opinion, is confidential and submit it in accordance with the procedures in 10 CFR 205.9(f).

Issued in Dallas, Texas on the 6th day of January, 1981.

Wayne I. Tucker,

Southwest District Manager, Economic Regulatory Administration.

[FR Doc. 81-1817 Filed 1-16-81; 8:45 am]

BILLING CODE 6450-01-M

230 kV International Transmission Line, San Diego County, California to Tijuana, Mexico; Record of Decision

Pursuant to Regulations of the Council on Environmental Quality (40 CFR Part 1505), Implementing Procedures of U.S. Department of Energy (45 F.R. 20694):

Decision

The U.S. Department of Energy (DOE) has decided to issue a Presidential Permit to San Diego Gas & Electric Company (SDG&E) to construct, connect, operate and maintain electric transmission facilities at the international border between the United States and Mexico. This permit is being issued pursuant to the authority of Executive Order 10485, as amended by Executive Order 12038.

Project Description

SDG&E proposes to construct and operate approximately 14 kilometers (9 miles) of 230 kV electrical transmission line from their Miguel Substation, located in the southern part of San Diego County, California, to the United States/Mexican border at a point located at longitude 116 degrees, 53 minutes, 48.6 seconds. From the border the line will extend to the Tijuana Substation in Mexico, located approximaely 5 kilometers (3 miles) south of the border. The project will provide for the economic exchange of electricity between SDG&E's transmission system and the Commission Federal de Electricidad de Mexico's Baja California Norte (CFE-BCN) system. A second purpose of the proposed interconnection is to improve the reliability of both the SDG&E and CFE systems.

Further details concerning this project can be found in the "Final Environmental Impact Statement, Environmental Impact Report, 230 kV International Transmission Line, San Diego County, California to Tijuana, Mexico, San Diego Gas & Electric Company (DOE/EIS-0067)." This statement was jointly issued by the U.S. Department of Energy and the California Public Utilities Commission and was noticed on November 17, 1980, by the Environmental Protection Ageny (45 FR 75749).

Description of Alternatives

The following alternatives were considered by DOE in reaching its decision:

1. Deny SDG&E's application for a Presidential Permit (no Federal action);
2. Conservation of electricity;
3. Purchase of power from other U.S. sources;
4. Additional generating capacity; and
5. Alternate transmission line routing.

Alternatives 4 and 5 contain options within each alternative. Under alternative 4, both geothermal power production and the installation of gas turbine generators to provide peaking power were considered. Both alternate new transmission corridors and upgrading existing transmission lines were considered under alternative 5.

Basis for Decision

Executive Order 10485, as amended by Executive Order 12038, provides for the Economic Regulatory Administration (ERA) of the DOE granting a Presidential Permit to construct, connect, operate and maintain a transmission line crossing an international border. Prior to issuing such a permit, ERA must determine that it is in the public interest to do so. ERA has been delegated related responsibility under the Federal Power Act for promoting the voluntary interconnection and coordination of facilities for the generation, transmission and sale of electric energy in order to assure an aboundant supply of electricity throughout the United States.

An intertie between SDG&E and CFE-BCN will result in both economic and reliability gains for both systems. Economic exchanges will occur when electricity that is supplied from one utility system replaces power that is being produced by more expensive sources in the other system. Increased reliability is afforded by excess capacity available during off-peak hours and also by diversity of peak load. The diversity of peak load exists due to SDG&E and CFE-BCN experiencing their system peaks at different times of the day. In addition, interconnecting the two systems would allow power exchanges to meet emergency situations without power outages.

The ERA staff conducted several production cost studies to determine the electricity exchanges and other benefits that may result from this project. These studies were conducted assuming three oil cost scenarios: equal oil costs for SDG&E and CFE-BCN, CFE-BCN paying 10 percent less for oil than SDG&E, and CFE-BCN paying 20 percent less for oil than SDG&E. Economic savings to the combined systems were $20.2 million, $22.1 million and $26.6 million respectively for these senarios in the period 1982-1990. Further, oil savings on the SDG&E system ranged from 480,000 to 1,800,000 barrels per year, which furthers national energy policy goals.

The output of these studies also indicated that the bulk power supply reliability of both systems would be improved by this interconnection due primarily to the availability of excess capacity during off-peak hours and on-peak load diversity. SDG&E will benefit from this increase in reliability since the capacity of several of SDG&E's generating units is large in comparison to their peak demand. Therefore, the outage of a single unit can significantly reduce the total generating capacity operating at any time. Further, interconnections with other United States utilities are minimal, providing a power import capability of less than 10 percent of the peak system demand.

Discussion of Environmentally Preferred Alternatives

Of the five alternatives, alternatives 1, 2 and 3 along with one option of alternative 5 were judged to be environmentally preferred. Alternative 4 and the alternate line routing option of alternative 5 would have environmental impacts of at least the magnitude of the proposed project. The construction of geothermal generation in the Imperial Valley (alternative 4 option) has possible adverse environmental impacts including land subsidence; air quality degradation from hydrogen sulfide emission; induced seismicity; increased salinity of the Salton Sea; accidental releases of geothermal fluids onto irrigated lands; and disposal of solid wastes derived primarily from the pretreatment of spent geothermal fluids before they are injected into a reservoir. A gas turbine peaking unit (the other option of alternative 4) may or may not be possible to construct under the provisions of the Powerplant and Industrial Fuel Use Act (Pub. L. 95-620, 92 Stat. 3289). If an exemption could be obtained for a gas trubine unit, the environmental consequences of constructing and operating it include generation of air pollution emissions; consumption of gas, a nonrenewable resource; and various land use impacts associated with the use of 25 to 50 acres for the plant site. In addition, both options of alternative 4 would require the construction of transmission facilities to deliver their output to the load centers. Alternate line routing would require more land than the proposed route and would have higher

visual impacts. Since these alternatives offered no substantive advantages over the proposed project, they were rejected.

DOE's denial of SDG&E's application for a Presidential Permit (alternative 1) would eliminate construction of the transmission line and any concurrent visual impacts, as well as potential impacts to cultural resources and rare and endangered plant species. This alternative, however, would eliminate an opportunity to reduce fuel consumption by SDG&E's oil-and gas-fired generators. If the SDG&E and CFE–BCN systems are interconnected, economy interchanges will provide an opportunity to reduce consumption of these scarce fuels. This, in turn, would have the net effect of reducing air pollution emissions. This alternative would contradict national energy policy to minimize the use of oil and gas for electric power generation. Therefore, this alternative was rejected.

Alternative 2 consists of reducing use of electrical power through various conservation measures. These conservation measures include installing insulation, weather stripping, conservation lighting, water heater insulation, attic ventilation, solar shade screens, and energy efficient appliances; setting back thermostats; and cogeneration. This conservation would have to be implemented in addition to existing and future conservation measures that are already being pursued by SDG&E.

The conservation alternative is not known to have any direct adverse environmental consequences, although the manufacturing of many conservation devices such as insulation, weather stripping, and solar shade screens utilizes petroleum products and nonrenewable resources.

This alternative does not allow enhancement of reliability of the economic exchange of energy. It is also uncertain how much effect this alternative could have since SDG&E is already aggressively pursuing conservation goals. Therefore, any reduction in SDG&E's use of oil and gas is uncertain with this alternative. In view of these considerations, this alternative was rejected.

Purchasing additional power from other sources within the United States (alternative 3) can have a wide range of environmental consequences depending on the location and type of source supplying the power. SDG&E currently purchases power from other utilities through its transmission facilities from the San Onofre nuclear power plant. These facilities are also used to transfer SDG&E's share of the output from this plant. Upon completion of the additional units planned for this site, the existing transmission line will be fully loaded. Therefore, additional power transfers would necessitate the building of additional transmission lines. The most likely source for these additional transfers would be Arizona and New Mexico utilities. In both cases, the necessary transmission lines would be of similar construction to the proposed project but of much greater length. It appeared that relying on purchases from other sources in the United States would eventually lead to more transmission line construction than the proposed project.

This alternative could have the advantage of reducing the U.S. balance of payments deficit by not purchasing power from Mexico. However, since there is no contract for firm exchanges, sales to Mexico could equal or exceed purchases in any time period. It was felt that the likely impacts of this alternative outweighed the possible benefits and it was rejected.

The option of upgrading an existing transmission line under alternative 5 could result in less land use impacts than the proposed project. There is presently a transmission line between SDG&E and CFE–BCN consisting of a 138 kV segment between Miguel Substation and Otay Substation and San Ysidro Substation. One of these 69kV lines extends south into Mexico terminating at the Frontera Substation, located just east of the international border crossing. Upgrading this line would consist of constructing a 230kV line along the existing route.

The Frontera Substation does not have capability for 230kV nor is 230kV capability planned for this substation. Rather, CFE–BCN plans to eliminate the Frontera Substation. Providing 230kV capability to Frontera would require construction of a 230kV transmission line from the Tijuana Substation across the urbanized sector of Tijuana. Construction of such a transmission line on the United States side of the international border is restricted by safety hazard and height limitations surrounding Brown Field and the Tijuana Airport.

Construction of a 230kV transmission line along the existing route between Miguel Substation and Frontera Substation would impact the urbanized portions of Chula Vista and the San Ysidro section of the City of San Diego. These impacts include visual intrusion and television and radio interference in those areas immediately adjacent to the transmission line. Rights-of-way acquisition through this urbanized area would necessitate displacement of residents. The existing rights-of-way width varies from 0 to 250 feet.

Based on the foregoing, it was concluded that alternative 5 was not feasible. DOE, therefore, rejected this option.

Considerations in Implementation of the Decision

All practicable means to minimize environmental harm from the selected alternative have been adopted and made a part of the Presidential Permit. SDG&E will be required to place and maintain suitable structures to reduce to a reasonable degree the possibility of contact or inductive interference between the line and any other facilities. Precautions will be taken to minimize radio and television interference with SDG&E being responsible for taking appropriate corrective action where warranted. Transmission structures will be located so as to minimize damage to vernal pools and open water crossings and no structures will be placed in any 100-year floodplain. Construction methods will be restricted to those least damaging to the environment with appropriate restorative actions being required after the project is completed. Archeological and historic sites will be preserved. Oil and fuel storage will not be permitted within 200 feet of an open body of water or used or disposed of in any manner that would permit drainage into a stream or river or entrance into the groundwater. Use of herbicides will be restricted to only those absolutely necessary and least harmful. These herbicides will be applied in a safe, controlled manner to avoid contamination of any water source. Appropriate lights and markers will be placed on certain facilities to prevent their posing a hazard to aircraft used by the United States Border Patrol. SDG&E will be required to minimize the impact on vegetation and wildlife during construction, operation and maintenance of the transmission line. DOE will monitor the mitigation activities to assure conformance with the Presidential Permit and final EIS.

Dated: January 12, 1981.

Hazel R. Rollins,

Administrator, Economic Regulatory Administration.

[FR Doc. 81-1520 Filed 1-16-81; 8:45 am]

BILLING CODE 6450-01-M

Office of the Secretary

Voluntary Agreement and Plan of Action To Implement the International Energy Program, International Energy Agency, Meetings

In accordance with section 252(c)(1)(A)(i) of th Energy Policy and Conservation Act (42 U.S.C. 6272), notice is hereby provided of the following meetings:

A meeting of Subcommittees A and C of the Industry Advisory Board (IAB) to the International Energy Agency (IEA) will be held on January 27, 1981, at the offices of British Petroleum Co. Ltd., Britannic House, London, England, beginning at 9:30 a.m. The agenda for the Subcommittee A meeting is as follows:

1. Proposed inclusion of synfuels in Emergency Sharing System.
2. Proposed Emergency Management Manual changes arising from AST–3.
3. Three week lead time to reduce demand in a crisis.
4. Proposed inclusion of naphtha and bunkers in emergency reserves.
5. AST–3 Appraisal Report and related items (continued from January 6 meeting).
6. Relationship between national and international allocations systems pursuant to IEP.
7. Quantification of emergency reserves to provide 90 days at all times.
8. Data questions, including:

—Report on December 17, 1980 SEQ *ad hoc group meeting.*

—Extension of stocks at sea reporting.

—Possibile amendments and alternatives to QA and QB.

9. Product allocation to countries with insufficient refining capacity.

The agenda for the Subcommittee C meeting is as follows:

1. IEA Dispute Settlement Centre Procedures for Arbitration.
2. Legal clearances for AST–3.
3. IEA Secretariat's energy legislation summary.
4. Implementation of any amendment to the IEP.
5. Legal clearances for a real emergency:

A. Under Treaty of Rome;

B. Under U.S. and any other national legislation.

6. Legal clearances relating to Governing Board's December 9, 1980, decision for correcting imblances:

A. Under Treaty of Rome;

B. Under U.S. and any other national legislation.

7. March 15, 1981 expiry of U.S. legislative antitrust defense for IEA activities.
8. Future work program.

As provided in section 252(c)(1)(A)(ii) of the Energy Policy and Conservation Act, these meetings will not be open to the public.

Pursuant to section 252(c)(3) of the Energy Policy and Conservation act, a verbatim transcript of this meeting will be made; the transcript, with such deletions as are determined to be necessary or appropriate pursuant to E.O. 12065 (43 FR 28949, July 3, 1978), E.O. 11932 (41 FR 32691, August 5, 1976) and 22 CFR 9a.1-9a.8, will be available in the Reading Room of the Department of Energy, Room 1E–190, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585, between the hours of 8:00 a.m. and 4:00 p.m. weekdays except Federal holidays.

Issued in Washington, D.C., January 12, 1981.

Craig S. Bamberger,

Assistant General Counsel, International Trade and Emergency Preparedness.

[FR Doc. 81-1711 Filed 1-16-81; 8:45 am]

BILLING CODE 6450-01-M

Davis (West Virginia) Pumped Storage Project Alternatives Study; Public Meeting

AGENCY: Department of Energy (DOE).

ACTION: Notice of public meeting.

SUMMARY: Participation is invited in a meeting to discuss comments received on the draft report of a study of alternatives to the Davis (West Virginia) Pumped Storage Project.

DATE: 1–4 p.m., Thursday, February 5, 1981.

ADDRESS: Room 5E–069, Forrestal Building, 1000 Independence Avenue SW., Washington, D.C. DOE published a 3-volume contractor's draft report entitled "A Study of Alternatives to the Davis (West Virginia) Pumped Storage Project," DOE/RA/50280–1, on December 22, 1980 for thirty (30) days of public comment ending January 21, 1981. The Davis project is a 1000 megawatt hydroelectric pumped storage facility proposed by the subsidiary utility companies of Allegheny Power System, a holding company. The proposed site of the Davis Project is in the Canaan Valley of Tucker County, West Virginia, near Davis. In response to a June 21, 1979 directive from the President of the United States, DOE sponsored a contract study to examine the energy, economic, and environmental merits of various energy supply and conservation alternatives and to compare them with the Davis Project.

DOE will conduct the public meeting in accordance with the following agenda:

I. Schedule for production and distribution of final study report (DOE Project Manager)

II. Comments received and proposed changes to draft study report (ICF, Inc.)

III. Other business

Organizations are requested to limit their attendance to key participants as space is severely limited.

After consideration of public comments and the discussion at the public meeting, DOE will have the study contractor prepare a final study report for publication. Those who have already received the draft report will automatically receive the same number of copies of the final report without making an additional request. All new requests should be directed as noted below.

FOR FURTHER INFORMATION CONTACT: Virginia Ballengee, U.S. Department of Energy, RA–72, Mail Stop 3344 Federal Building, Washington, D.C. 20461. (Telephone 202/633–8963.)

Issued in Washington, D.C. on January 12, 1981.

Ruth M. Davis,

Assistant Secretary for Resource Application, Department of Energy.

[FR Doc. 81-1823 Filed 1-16-81; 8:45 am]

BILLING CODE 6450-01-M

Price Support Loans for Municipal Waste Energy Projects

AGENCY: Office of Energy From Municipal Waste, Office of Conservation and Solar Energy Department of Energy.

ACTION: Solicitation Announcement for Loan Applications and Notice of Presubmission Conference.

SUMMARY: Title II of the Energy Security Act, Pub. L. 96–294, 94 Stat. 611, authorizes the Department of Energy (DOE) to establish a program to provide price support loans to municipal waste energy projects to reduce the dependence of the United States on imported petroleum and natural gas.

On October 29, 1980, DOE published a proposed rule in the Federal Register, 45 FR 71748, to implement the authority provided to DOE to issue price support loans for new or existing facilities producing biomass energy from municipal waste. The proposed rule also provided for the submission of applications for price support loans on a voluntary basis during the rulemaking period in an initial competition cycle which will end 10 days after the rule becomes effective, but in no event before January 15, 1981.

This Solicitation Announcement is issued pursuant to sections 485.30(c) and

485.31 of the proposed rule to provide additional information to prospective applicants desiring to immediately file applications for price support loans during the initial competitive cycle.

The information contained in this Announcement is applicable only to the initial competition cycle which began with the publication of the proposed rule (Oct. 29) and ends at 4:30 p.m. (local time) on the tenth calendar day following the effective date of the final rule. A new solicitation Announcement will be issued after the closing of this competition cycle to provide information for the next competitive cycle.

Presubmission Conference

A presubmission conference will be held on February 3, 1981, at 9 a.m. in Room 2105, 2000 M Street, N.W., Washington, D.C. The purpose of the conference is to provide an opportunity for prospective applicants to ask any questions they may have regarding the preparation and submission of an application for a price support loan in the initial competition cycle. Questions regarding applications for price support loans should be submitted in writing prior to the conference to the Contracting Officer at the address below. An edited record of the conference, including questions and answers given, will be made available to any party requesting it. Requests for the presubmission conference record should be sent to Public Hearings Division, Department of Energy, Room B210 Box XW, 2000 M Street, N.W., Washington, D.C. 20461.

Eligible Projects

Applications are being solicited for price support loans to stimulate energy production from municipal waste, including industrial waste to the extent specified in the October 29, 1980 proposed rule, as specifically described hereinafter. All applications must comply with the provisions of the proposed rule published on October 29 in the Federal Register (45 FR 71746). To the extent that the final rule differs from the proposed rule, applications submitted now may require amendments to insure compliance with the final regulation. Therefore, applicants undertake some risk that they may be required to incur expenses for modifications of applications submitted during this initial competitive cycle. DOE reserves the right to make awards to only those projects, if any, which in the exercise of the selection official's sole discretion, best accomplish the programmatic objectives of DOE. No portion of the applicant's preparation costs or incidental costs will be paid by DOE, whether or not any award is made.

The Application Approving Official may, in his discretion, issue conditional commitments to make a price support loan subject to compliance with the provisions of the final rule.

Applications for price support loans for existing projects, as defined in Section 485.2(t), (aa) and (bb) of the proposed rule published on October 29 in the Federal Register are eligible during the first solicitation cycle. Applications for new projects which are realistically estimated to be, at the time of application, within nine months of completion of project financing, or some reasonable time period close thereto, as determined by DOE may be submitted during this initial solicitation.

Information Requirements

To assist project sponsors and potential applicants in the preparation of applications, the following information is provided:

a. *Existing projects:* Proponents should include input and output data, sales records, project financial statements including the prior years operating statement and at least 5 years of future expected cash flow.

b. *New Projects:* DOE desires to select and support projects that are reasonably assured of construction and successful operation. Evidence of such assurance include the following:

(1) Selection of a viable technology and a competent vendor or vendors;

(2) A commitment from an energy buyer by either a letter of intent or a purchase contract;

(3) A commitment of adequate waste supply to the project in the form of letters of intent or contracts. This commitment must provide evidence that the committed waste supply is available. Weights of waste committed are the principal appropriate evidence;

(4) Lists and schedules for or actual construction and operating permits required for the facility; and

(5) A financing plan including bond resolutions, bond indenture statements and similar instruments or evidence of completion of financing for the project.

In addition to the above, all applicants must submit the following:

a. Assurances that the project will not substantially inhibit the competitive access of the waste recycling business to waste paper supplies and other source separated materials.

b. Two copies of the most recent feasibility study for the project or if the study is not available, a summary of the feasibility study.

c. Two copies of the most recent environmental report on the project if available.

A project sponsor which has not substantially accomplished the items and actions listed in this section, and which cannot realistically expect to do so within nine months, or some reasonable time period close thereto, is advised not to apply at this time and is encouraged to consider applying in a future solicitation cycle.

Evaluation and Ranking of Applications

DOE will consider the following (listed in order of priority) in comparatively ranking and evaluating applications:

1. The project's technical feasibility;
2. The project's market potential and economic feasibility;
3. The project's financial structure;
4. The management plan; and
5. The environmental, health, safety, and socioeconomic impacts of the proposed project.

Items 1., 2., and 3., will be given equal weight. Items 4., and 5. will be given significantly lesser weight.

Other Information

a. DOE will publish as soon as practicable, a list of all proposals received under this solicitation. The list will identify the applicant, and the size and location by city of the facility.

b. All proposers are reminded that these proposals are subject to OMB Circular A-95 which requires that State and local clearing houses be notified prior to or concurrent with the submission of the proposal.

c. The payments received by any successful applicant under this solicitation may only be applied to the allowable Operating and Maintenance costs of the project.

d. DOE presently intends to issue another solicitation announcement for municipal waste energy projects in March, 1981, which will include both price support loans and loan guarantees. The amount of funds available will be determined at that time.

Projects

The Department of Energy may award up to $75,000,000 in price support loans for the initial competition cycle. Price support loans for municipal waste energy projects involving industrial waste will be available only for wood processing waste, paper processing waste, and waste from food processing (including waste from fruit and vegetable processing, nut packing, grain milling, sugar refining, and similar materials, but excluding waste from meat processing and dairy products

industries) which do not constitute the wastes or residues of agricultural activities, wood harvesting activities of production of forest products.

In evaluating applications in this competition cycle, priority will be given to existing projects and new projects that a) have a high probability of commercial success; b) are near to commencement of construction, and c) that produce or conserve the most energy at the earliest date. All critical components of the facility proposed must have been tested at or near full-scale under commercial conditions and for a period sufficient to assess the operating and maintenance requirements of the proposed system.

Application Submission

Price support loan applications should be submitted with an original and seven legible copies and must be received by the proper location no later than 4:30 p.m. on the 10th day following the day of publication of the final rule. The estimated publication date of the final rule is scheduled to be published in February 1981. Applications should be submitted as follows: Ms. Jan L. Atkinson, Contracting Officer, Procurement and Assistance Management Directorate, Room J–009, 1000 Independence Ave., S.W., Washington, D.C. 20585.

Issued in Washington, D.C., on January 13, 1981.

Robert L. Van Ness,

Director, Office of Financial Incentives, Procurement and Assistance Management Directorate.

Public Notice of Proposed Floodplain/Wetlands Action; Louisiana

AGENCY: Department of Energy.

ACTION: Drilling and Flow Testing a Geopressured Geothermal Well at the Gladys McCall Well Site in Cameron Parish, Louisiana; opportunity for comment.

SUMMARY: The Department of Energy invites interested parties to comment on a proposed floodplain/wetlands action consisting of drilling, flow testing, and reinjecting fluids produced from a well drilled into the geopressured Frio Formation in Cameron Parish, Louisiana. Flow testing will be performed over a period of three years. Tests will be performed to determine physical and chemical properties of the produced fluid, including temperature, pressure, dissolved solids and gas content, and to determine the economic feasibility of exploiting the geopressured resource.

The proposed test well facilities will be located within the Louisiana coastal floodplain/wetland zone which is subject to storm surges and subsequent flooding. The proposed testing facilities will utilize an existing well pad and dike system prepared for a well previously drilled and abandoned by the petroleum industry. An existing road will provide access to the site, so that surrounding wetlands will not be disturbed.

The 100-year flood level is above the existing dike and road systems, so the proposed action is on a floodplain as defined in 10 CFR 1022. An environmental assessment is being prepared for this action which will include the floodplain/wetlands assessment required by 10 CFR Part 1022.

SUPPLEMENTARY INFORMATION: Originally the Gladys McCall well test was to have been conducted using the existing abandoned well which had been drilled through the Frio Formation geopressured zone in an attempt to find a producible natual gas reservoir. Subsequent Department of Energy attempts to reenter and redrill the well in order to produce geopressured geothermal fluids were unsuccessful, so the well was replugged and abandoned.

The currently proposed project involves drilling a new test well at the site of the existing abandoned well. Produced fluids, after passing through the test facility, will be injected into formations overlying the producing formation. An existing disposal well will be reopened and deepened to a depth of about 3,500 feet. That well, and up to three additional new wells, will be used for disposing of the spent geothermal fluids by reinjection.

During the first year of the project, intermittent 15-day flow tests will be conducted at flow rates between 20,000 and 40,000 barrels per day. During the next two years, long term tests will be conducted at a flow rate of 40,000 barrels per day.

Total fluid production over the three year project period is expected to be about 50 million barrels. The depth of the producing formation is about 17,000 feet, and spent fluids will be reinjected at depths of about 3,500 feet.

After the tests have been completed, the wells will be plugged and abandoned, all surface facilities will be removed from the site, and the site will be restored, to the extent possible, to its original contours. All wastes which cannot be injected underground will be collected and disposed of at a landfill operated in compliance with applicable local, state, and Federal regulations.

Identification of Issues

The following issues will be addressed in the assessment of the effects of the proposed action on the floodplain:

- Effects on lives and property.
- Effects on natural and beneficial floodplain/wetland values.
- Alternatives to the proposed action.

Comments

All interested parties are invited to submit comments regarding these issues by February 3, 1981 to: Mr. Robert E. Oliver, RA–242, Division of Geothermal Energy, M.S. 3344, Federal Building, 12th and Pennsylvania Avenue, NW., Washington, D.C. 20461, (202) 633–8814.

Comments received after that date will be considered to the extent practicable.

For general information on the assessment process, contact: NEPA Affairs Division, Office of Environmental Compliance and Overview, Office of the Assistant Secretary for Environment, Attn: Mr. Raymond Pelletier, Room 4G–064, Forrestal Building, Washington, D.C. 20585, (202) 252–4910.

Dated at Washington, D.C., this 9th day of January 1981 for the United States Department of Energy.

Ruth C. Clusen,

Assistant Secretary for Environment.

[FR Doc. 81–1621 Filed 1–19–81; 8:45 am]

BILLING CODE 6450–01–M

Inquiry and Request for Comments on Development of the Naval Oil Shale Reserves

AGENCY: Department of Energy.

ACTION: Notice of inquiry and request for comments.

SUMMARY: Pursuant to 10 U.S.C. Chapter 641, the Department of Energy (DOE) has the authority to prescribe regulations and take any proper action to accomplish its responsibilities regarding the Naval Oil Shale Reserves (NOSRs). To date, no regulations concerning the development of the NOSRs have been proposed because the decision to develop the NOSRs has not yet been made. Before any such decision would be effective, production of shale oil must be approved by the President and authorized by a Joint Resolution of Congress. In addition, the required Environmental Impact Statement must be completed. DOE is in the process of considering the various alternatives which exist regarding the development of the NOSRs. If the decision to develop the NOSRs is made, implementing regulations may be necessary. By this

Notice, DOE is requesting comments on the issues relating to the development of the NOSRs by lease or other appropriate contractual or financial vehicle.

It should be noted that DOE is not soliciting proposals for the development of the NOSRs. In view of the fact that the decision to develop has not been made and that production of shale oil is not authorized, DOE does not intend to award a contract on the basis of this Notice, or otherwise pay for the preparation of the comments submitted.

DATE: Written comments are due by 4:30 p.m., March 16, 1981.

ADDRESS: All comments should be sent to: Office of Naval Petroleum and Oil Shale Reserves, U.S. Department of Energy, Federal Building, Mail Code RA–3344, 12th Street and Pennsylvania Avenue, N.W., Washington, D.C. 20461, Attention: Dr. C. M. Wong, (202) 633–8641.

FOR FURTHER INFORMATION CONTACT:

Peter M. Frank, Office of General Counsel, U.S. Department of Energy, Forrestal Building, Mail Code GC–11, Washington, D.C. 20585, (202) 252–1202.

Mary H. Egger, Office of General Counsel, U.S. Department of Energy, Forrestal Building, Mail Code GC–11, Washington, D.C. 20585, (202) 252–2900.

Robert Lawton, Director, Office of Leasing, Policy Development, Office of Naval Petroleum and Oil Shale Reserves, U.S. Department of Energy, Federal Building, Mail Code RA–3344, 12th Street and Pennsylvania Avenue, N.W., Washington, D.C. 20461, (202) 633–9320.

SUPPLEMENTARY INFORMATION:

I. Background
II. Issues for Comment
III. Comment Procedures

I. Background

There are three Naval Oil Shale Reserves (NOSRs). NOSRs 1 and 3 are located in Colorado and NOSR 2 is located in Utah.

A map at the end of this Notice shows the locations of NOSRs 1 and 3. These reserves are adjacent to each other and are easily accessible from the nearest town, Rifle, Colorado, located about seven miles SE on the reserves.

NOSR 1 consists of 40,780 acres and was established by an Executive Order issued by President Wilson in 1916. It is located in the rugged highland country, north of the Colorado River in Garfield County, Colorado. It occupies the southeast corner of the Piceance Creek structural basin where the surface rocks are of the Green River formation. NOSR 1 cover approximately 40,000 acres and is now known to contain approximately 2.5 billion barrels of oil recoverable from shale mineable by conventional surface and underground mining systems.

Naval Oil Shale Reserve Number 3 was established by an Executive Order issued by President Coolidge in 1924. This reserve borders NOSR 1 on the east and on the south, and consists of approximately 14,000 acres. It is located on the lower ground which slopes downward to the south toward the Colorado River, from the base of the Roan Cliffs. NOSR 3 contains essentially no oil shale. Its withdrawal was considered necessary to afford working space and areas for spent shale disposal during the anticipated development of NOSR 1.

An Act of June 4, 1920 (41 Stat. 813) placed the Naval Petroleum Reserves in the possession and under the authority of the Secretary of the Navy. Until 1962, the Secretary of the Navy had no authority for the development or operation of the oil shale reserves. Public Law 87–796, October 11, 1962, empowered the Secretary to take possession of all properties inside the NOSRs and gave him essentially the same powers over the oil shale reserves as he had over the petroleum reserves. In 1977, jurisdiction over the 140,000 acre NOSRs (which includes NOSR 2, located in Utah) was transferred to the Secretary of Energy by virtue of the Department of Energy Organization Act (Public Law 95–91).

Under auspices of the Department of the Interior, a comprehensive research program was conducted on NOSR 1 during the period 1944–1955, resulting in the development of the Room-and-Pillar system of mining oil shale and the Gas Combustion system of retorting oil shale. The experimental mine, retorting plant and an associated housing project were (and still are) located on NOSRs 1 and 3 at a site named Anvil Points.

Production on the NOSRs has been limited to that associated with oil shale research at the Anvil Points Facility on NOSRs 1 and 3. This work has been accomplished by a private contractor, Development Engineering, Inc., which has a lease from DOE. This lease will expire in 1982. The lessee completed a major shale oil production program for the Department of Defense in 1978, during which approximately 100,000 barrels of shale oil was produced using the Paraho direct heating process. This shale oil has been refined and tested by the Department of Defense.

Coreholes were drilled on NOSRs 1 and 2 by the Department of Interior during this period, and samples of the cores were analyzed. A complete resource assessment of NOSR 1 was recently completed by the Government's management support system engineering contractor.

Market, technology, and environmental impact uncertainties, as well as the necessarily large investment capital, have caused some delay in the private development of oil shale. DOE policy is to promote private development, principally through such financial incentives as tax credits, loan guarantees, and guaranteed markets. Current law provides that the Secretary of Energy shall re-examine from time-to-time the need for the production of shale oil from the NOSRs.

DOE has legislative authority to explore, develop, and/or lease all the NOSRs. Before full-scale production of shale oil from the NOSRs can be initiated, however, such production must be approved by the President and authorized by a joint resolution of Congress. In addition, the Committees on Armed Services of the Senate and the House of Representatives must be consulted and the President's approval must be obtained prior to the lease of any part of the NOSRs. These approvals have not been sought or obtained to date.

There are several NOSR 1 development options having different financial impacts, despite the relatively similar environmental impacts foreseen in commercial-scale development. These options include, among others, leasing, joint government-industry ventures, and entirely government-owned contractor operated (GOCO) facilities. Any development option selected must satisfy the Department's statutory responsibility to use the reserves for national defense purposes, as defined by 10 U.S.C. 7420(a)(1). (*See* also 10 U.S.C. 7421, 7422, 7423.)

II. Issues for Comment

To assist in the consideration and development of the various alternatives available for the development of the Naval Oil Shale Reserves (NOSRs), DOE seeks the views of all interested persons. Respondents are invited to offer comments on any topic germane to this matter. DOE is especially interested in public comment on the issues below.

DOE does not have the requisite Congressional or Presidential authority to initiate development of the NOSRs at this time and, therefore, *does not intend to award a contract on the basis of this request for comments, or otherwise pay for the comments or any preparation expenses.* No decision has been made as to what future course of action will be taken regarding the development of the NOSRs. Comments on the following specific matters are requested:

1. Is it timely and necessary to develop the NOSRs for additional domestic production for national defense purposes? Or, is there an adequate amount of federal and non-federal shale lands available so that DOE can postpone its decision on the development of the NOSRs?

2. What contraints (*e.g.*, technological limitations, water availability, adverse socioeconomic effects, financing without Government assistance) exist which would hamper the early development of the NOSRs? Assuming the effects of these constraints can be mitigated, what is the optimum mechanism (*e.g.*, leasing, GOCO, joint venture) which would accomplish early development and production of the NOSRs?

3. One of the options for the development of NOSR 1 is leasing:

(a) Is leasing a viable alternative for the timely development of NOSR 1?

(b) Would leasing create any unique environmental effects which could not be mitigated?

(c) What would be an appropriate basis for the awarding of leases—*e.g.*, noncompetitive, competitive, small business set asides?

(d) Should bonus bidding, work commitment, sliding scale royalty, net profit sharing procedures be considered?

(e) What is an appropriate lease term? Should adjustment provisions be utilized?

(f) What is an appropriate range of tract sizes? Should these tracts be leased at one time or at specified intervals?

(g) What kind of due diligence requirements regarding development and continuous operations should be utilized?

(h) Should the suspension or deferment of royalty and bonus payments be considered as a means for achieving production guarantees? If so, what is suggested as an appropriate measure for providing socioeconomic impact assistance to areas affected by NOSR development?

(i) Would the leasing of NOSR 1 be viable without Government financial assistance?

(j) What effect will the leasing of NOSR 1 have on (1) current development efforts on federal and non-federal oil shale lands, (2) oil shale development technology, and (3) reaching the goal of 400,000 barrels per day of shale oil production by 1990?

(k) Would retention of an option to purchase any shale oil produced from NOSR 1 be acceptable?

4. Are there other financial or contractual mechanisms (*e.g.*, licensing) better suited for developing NOSR 1 and insuring the Government of a guaranteed production?

III. Comment Procedures

You are invited to participate in this inquiry by mailing or by hand-delivering written data, views, or arguments with respect to the issues set forth in this notice and other relevant matters to the Office of Naval Petroleum and Oil Shale Reserves, at the address listed at the beginning of this Notice. You should submit ten copies of your comments and clearly indicate that they are in response to this NOI by marking both the envelope and the comments with: "NOI—Development Policy Options, Naval Oil Shale Reserves, Docket No. NPR 8001". We will consider all comments received by 4:30 p.m., March 16, 1981.

Any information considered to be confidential must be clearly identified, and submitted separately, one copy only. DOE reserves the right to determine the confidential status of the information and to treat the information according to this determination.

Public hearings are not required at this preliminary stage in the process.

Issued in Washington, D.C. on January 14, 1981.

Ruth M. Davis,

Assistant Secretary, Resource Applications.

Location of Reserves

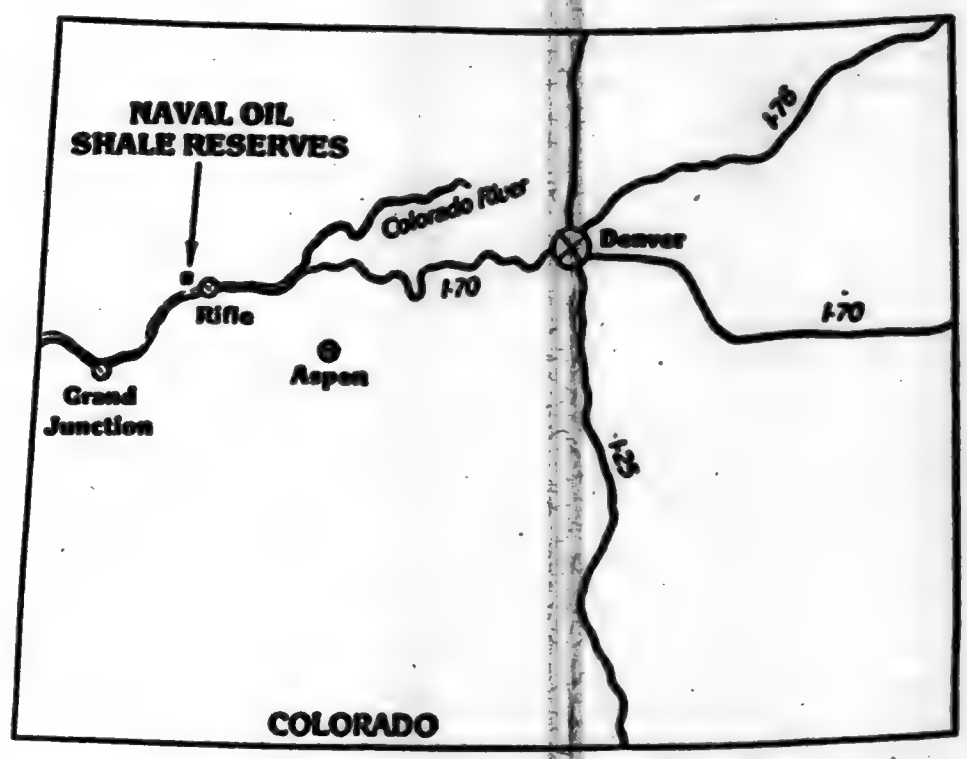

[FR Doc. 81-1902 Filed 1-16-81; 8:45 am]

BILLING CODE 6450-01-M

Office of Conservation and Solar Energy

Energy Conservation Program for Consumer Products; Petition for Waiver of Consumer Product Test Procedures From Norris Industries (Case No. D-001)

Correction

In FR Doc. 80-40692, published at page 86527, on Wednesday, December 31, 1980, on page 86528, in the third column, under *"4. calculation of derived results from test measurements.—4.1 per-cycle water energy consumption using electrically heated water.", in the equation, the definition of "K", the temperature now reading ".0240" should have read ".00240".*

BILLING CODE 1505-01-M

ENVIRONMENTAL PROTECTION AGENCY

[RD-FRL 1726-2]

Review of the Department of Energy's Conservation and Solar Energy Program; Section 11 Report

Note.—This document originally appeared in the Federal Register for Thursday, January 15, 1981. It is reprinted in this issue at the request of the agency.

AGENCY: Environmental Protection Agency.

ACTION: Request for public comment on final report.

SUMMARY: The Environmental Protection Agency (EPA) announces the release of the Section 11 Report to the President and Congress under the direction of the Federal Nonnuclear Energy Research and Development Act of 1974 (Pub. L. 93-577). The Report is the product of a year long analysis of the Department of Energy's (DOE) Conservation and Solar Energy Program. Public comments on the document are solicited.

DATES: Comments should be received by February 15, 1981.

ADDRESSES: Copies of the Report may be obtained from the Center for Environmental Research Information, US E.P.A. Office of Research and Development Publications, Cincinnati, OH 45268. Comments on the Report should be addressed to: Section 11 Coordinator (RD-681), Office of Environmental Engineering and Technology, EPA, 401 M Street, SW, Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Gregory Ondich, at the EPA, Washington DC address above, or by telephone at (202) 426-9434.

SUPPLEMENTARY INFORMATION: Section 11 of the Federal Nonnuclear Energy Research and Development Act of 1974 (Pub. L. 93-577) directs the responsible agency (formerly the Council on Environmental Quality, currently EPA) to carry out a continuing analysis of the Federal nonnuclear research and development program to evaluate "(1) the adequacy of attention to energy conservation methods and (2) the adequacy of attention to environmental protection and the environmental consequences of the application of energy technologies."

The 1980 Section 11 Report focuses on these concerns within the context of DOE'S Conservation and Solar Energy Program. Findings and Recommendations are based upon analysis conducted by EPA as well as upon public commentary. Through a series of five regional workshops held during June and July, and a public national hearing held on September 24 and 25, 1980, EPA received useful comments which have been given careful consideration. Attendees represented state and local governments, public interest groups, public utility commissions, environmentalists, businesses, labor, Congressional committee staff, the Department of Energy, the Office of Management and Budget, and universities.

The 1979 Section 11 Report found several aspects of DOE's planning and management systems that appeared to give inadequate attention to Conservation and Solar programs. These issues, plus several issues which relate specifically to energy conservation and renewable energy resources, formed the basis of the 1980 analysis. The 1980 Report examined DOE adequacy of attention to energy conservation from three perspectives: the resource allocation process, the implementation and management process, and evaluation information on program effectiveness.

Exploration of the resource allocation process generated the recommendation that DOE utilize several decision-making tools—including an end-use sector framework, a least-cost energy criterion, and an oil-import premium—in balancing resources among various energy supply enhancement and demand reduction technologies.

The section on implementation and management discusses specific issues on a program by program basis within DOE's Conservation and Solar Energy Programs. These include better integration of existing DOE Solar and Conservation Programs, closer coordination of current information dissemination programs, appropriate management of DOE administered state and local programs, (including the Weatherization Assistance Program, the Institutional Buildings Conservation Program, the Residential Conservation Service and others) and appropriate management of research and development activities (such as innovation programs, procurement/financial assistance, and others.)

The section on program evaluation discusses the need for increased use of evaluation within DOE and outlines the institutional and methodological barriers to its use. The need for a department-wide evaluation policy and the need for data on actual program effectiveness are both examined.

The 1981 Section 11 review process will again be directed toward energy conservation and renewable energy resources. Attention will be given to DOE's response to the findings and recommendations of EPA's 1980 Section 11 Report.

Written public comments concerning the substance of the 1980 Section 11 Report or the proposed 1981 activities are requested.

Steven R. Reznek,

Deputy Assistant Administrator, Office of Environmental Engineering and Technology.

January 6, 1981.

[FR Doc. 81-1252 Filed 1-14-81; 8:45 am]

BILLING CODE 6560-26-M

[OPTS-51200; TSH-FRL 1729-4]

Certain Chemicals; Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Section 5(d)(2) requires EPA to publish in the Federal Register certain information about each PMN within 5 working days after receipt. This Notice announces receipt of five PMN's and provides a summary of each.

DATES: Written comments by:
PMN 80-345—February 6, 1981
PMN's 80-348, 349, and 350—February 6, 1981
PMN 80-365—February 13, 1981

ADDRESS: Written comments to: Document Control Officer (TS-793), Management Support Division, Office of Pesticides and Toxic Substances, Environmental Protection Agency, Rm. E-447, 401 M St., SW., Washington, DC 20460, (202-755-8050).

FOR FURTHER INFORMATION CONTACT: Rachel Diamond, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Rm. E-221, 401 M St., SW., Washington, DC 20460, (202-426-3980).

SUPPLEMENTARY INFORMATION: Section 5(a)(1) of TSCA [90 Stat. 2012 (15 U.S.C. 2604)], requires any person who intends to manufacture or import a new chemical substance to submit a PMN to EPA at least 90 days before manufacture or import commences. A "new" chemical substance is any substance

that is not on the Inventory of existing substances compiled by EPA under section 8(b) of TSCA. EPA first published the Initial Inventory on June 1, 1979. Notices of availability of the Inventory were published in the Federal Register of May 15, 1979 (44 FR 28558-Initial) and July 29, 1980 (45 FR 505444-Revised). The requirement to submit a PMN for new chemical substances manufactured or imported for commerical purposes became effective on July 1, 1979.

EPA has proposed premanufacture notification rules and forms in the Federal Register issues of January 10, 1979 (44 FR 2242) and October 16, 1979 (44 FR 59764). These regulations, however, are not yet in effect. Interested persons should consult the Agency's Interim Policy published in the Federal Register of May 15, 1979 (44 FR 28564) for guidance concerning premanufacture notification requirements prior to the effective date of these rules and forms. In particular, see page 28567 of the Interim Policy.

A PMN must include the information listed in section 5(d)(1) of TSCA. Under section 5(d)(2) EPA must publish in the Federal Register nonconfidential information on the identity and use(s) of the substance, as well as a description of any test data submitted under section 5(b). In addition, EPA has decided to publish a description of any test data submitted with the PMN and EPA will publish the identity of the submitter unless this information is claimed confidential.

Publication of the section 5(d)(2) notice is subject to section 14 concerning disclosure of confidential information. A company can claim confidentiality for any information submitted as part of a PMN. If the company claims confidentiality for the specific chemical identity or use(s) of the chemical, EPA encourages the submitter to provide a generic use description, a nonconfidential description of the potential exposures from use, and a generic name for the chemical. EPA will publish the generic name, the generic use(s), and the potential exposure descriptions in the Federal Register.

If no generic use description or generic name is provided, EPA will develop one and after providing due notice to the submitter, will publish an amended Federal Register notice. EPA immediately will review confidentiality claims for chemical identity, chemical use, the identity of the submitter, and for health and safety studies. IF EPA determines that portions of this information are not entitled to confidential treatment, the Agency will publish an amended notice and will place the information in the public file, after notifying the submitter and complying with other applicable procedures.

After receipt, EPA has 90 days to review a PMN under section 5(a)(1). The section 5(d)(2) Federal Register notice indicates the date when the review period ends for each PMN. Under section 5(c), EPA may, for good cause, extend the review period for up to an additional 90 days. IF EPA determines that an extension is necessary, it will publish a notice in the Federal Register.

Once the review period ends, the submitter may manufacture the substance unless EPA has imposed restrictions. When the submitter begins to manufacture the substance, he must report to EPA, and the Agency will add the substance to the Inventory. After the substance is added to the Inventory, any company may manufacture it without providing EPA notice under section 5(a)(1)(A).

Therefore, under the Toxic Substances Control Act, summaries of the data taken from the PMN's are published herein.

Interested persons may, on or before the dates shown under "Dates", submit to the Document Control Officer (TS-793), Management Support Division, Office of Pesticides and Toxic Substances, Environmental Protection Agency, Rm. E-447, 401 M St. SW., Washington, D.C. 20460, written comments regarding these notices. Three copies of all comments shall be submitted, except that individuals may submit single copies of comments. The comments are to be identified with the document control number "[OPTS-51200]" and the specific PMN number. Comments received may be seen in the above office between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays.

(Sec. 5, 90 Stat. 2012 (15 U.S.C. 2604))

Dated: January 13, 1981.

Edward A. Klein,

Director, Chemical Control Division.

PMN 80-345

The following information is taken from data submitted by the manufacturer in the PMN.

Close of Review Period. March 2, 1981.

Manufacturer's Identity. Phillips Petroleum Company, Seneca Building, Bartlesville, OK 74004.

Specific Chemical Identity. Claimed confidential business information. Generic name provided: Dialkyl trithiocarbonate.

Use. Claimed confidential business information.

Production Estimates. Claimed confidential business information.

Physical/Chemical Properties.

Flash point—152°C (305°F)
Pour point—C −29°C (−20°F)
Viscosity—at 0°C—0.40 CFT; at 20°C—3.70 CFT; at 40°C—2.42 CFT; at 70°C—1.51 CFT
Vapor density in air—6.17
Vapor pressure at 25°C—5 Torr (5mm)
Evaporation rate—1 compared to butyl acetate
Percent volatile by volume—1.35 percent in 24 hours

Toxicity Data.

Acute oral LD_{50} (rats)—1.563 g/kg.
Percutaneous LD_{50} (rabbits)—13.4 g/kg.
Primary skin irritation (rabbits)—Index 0.8; minimally irritating.
Eye irritation, unwashed eyes (rabbit)—Mildly irritating.
Acute inhalation saturated vapor 0.686 mg/l (rats)—No mortality.

Exposure.

Activity	Exposure route	Maximum number exposed	Maximum duration		Concentration (ppm)	
			Hours/day	Days/year	Average	Peak
Manufacture	Skin	1/shift	8	20		
	Inhalation					

Manufacturer states that this chemical is produced in a closed system and that any exposure would be from non-routine operations.

Environmental Release/Disposal. Manufacturer states that no disposal or release of the PMN substance into the environments is expected from routine operations at the manufacturing site.

PMN 80-348.

The following information is taken from data submitted by the manufacturer in the PMN.

Close of Review Period. March 8, 1981.

Manufacturer's Identity. Mobil Chemical Company, P.O. Box M–1, Short Hills, NJ 07078.

Specific Chemical Identity. Sunflower oil, polymer with pentaerythritol phthalic anhydride, soybean oil, and trimethylolethane.

Use. Polymer used in paint products.

Production Estimates.

	Kilogram per year	
	Minimum	Maximum
First year	110,000	120,000
Second year	115,000	125,000
Third year	120,000	130,000

Physical/Chemical Properties.

Solvent—Mineral spirits and toluene.
Percent Nonvolatile by wt.—50.0.
Percent Nonvolatile by vol.—40.0.
Specific gravity—0.91.
Specific gravity (NV)—0.99.
Viscosity at 25°C—3,500–4,500 cps.
Acid value—10 max.
Boiling point—308°F.
Vapor pressure—1.97 mm Hg at 20°C.
Vapor density—4.7.
Solubility in H_2O—Negligible.
Flash point—103°F PMCC.
Flammability limits—1.0%–6.0%.
Appearance—Dark amber liquid with mild hydrocarbon odor.

Toxicity Data. The manufacturer states that toxicological tests indicated that the subatance is practically non-toxic through oral, dermal, and inhalation routes and for skin and eye irrigation.

Exposure. The manufacturer states that there is no risk of occupational exposure.

Environmental Release/Disposal. (Two sites). The manufacturer states that less than 10 kg of the substance will be released to the air at a rate of 1 hr/da, 34 da/yr. The manufacturer estimates that between 10 and 100 kg of the substance will be released to land annually. No emissions to waterways are expected.

PMN 80–348

The following information is taken from data submitted by the manufacturer in the PMN.

Close of Review Period. March 8, 1981.

Manufacturer's Identity. Mobil Chemical Company, P.O. Box M–1, Short Hills, NJ 07078.

Specific Chemical Identity. Sunflower oil, polymer with benzoic acid, isophthalic acid, and pentaerythritol.

Use. Polymer used in paint products.

Production Estimates.

	Minimum (kg/yr)	Maximum (kg/yr)
First year	80,000	90,000
Second year	90,000	100,000
Third year	110,000	110,000

Physical/Chemical Properties.
Solvent—Mineral spirits, toluene, cellosolve acetate.
Percent nonvolatile by wt—55.0.
Percent nonvolatile by vol—54.0.
Specific gravity—0.93.
Specific gravity (NV)—0.99.
Viscosity at 25°C (cps)—1,300–2,300.
Acid value—7–10.
Boiling point—304°F.
Vapor pressure—2.42 mm Hg at 20°C.
Vapor density—4.7.
Solubility in H_2O—Negligible.
Flash point—101°F PMCC.
Flammability limits (percent)—1.0–6.7.
Appearance—Amber liquid, with mild hydrocarbon odor.

Toxicity Data. The manufacturer states that toxicological tests indicated that the product is practically non-toxic through oral, dermal, and inhalation routes and for skin and eye irritation.

Exposure. The manufacturer states that there is no risk of occupational exposure.

Environmental Release/Disposal. (Two sites). The manufacturer states that less than 10 kg of the product will be released to the air for 1 hr/da, 12 da/yr. Between 100 and 1,000 kg of the product may be deposited on land annually.

PMN 80–350.

The following information is taken from data submitted by the manufacturer in the PMN.

Close of Review Period. March 8, 1981.

Manufacturer's Identity. Mobil Chemical Company, P.O. Box M–1, Short Hills, NJ 07078.

Specific Chemical Identity. Rosin, polymers, with glycerol, phthalic anhydride, and sunflower oil.

Use. Polymer used in paint products.

Production Estimates.

	Minimum (kg/yr)	Maximum(kg/yr)
First year	35,000	40,000
Second year	40,000	45,000
Third year	45,000	50,000

Physical/Chemical Properties.
Solvent—Xylene.
Percent nonvolatile by wt—50.0.
Percent nonvolatile by vol—46.0.
Specific gravity—1.00.
Specific gravity (NV)—1.00.
Viscosity at 25°C (cps)—3,500–4,500.
Acid value—7–10.
Boiling point—304°F.
Vapor pressure—4.94 mm Hg at 20°C.
Vapor density—3.7.
Solubility in H_2O—Negligible.
Flash point—80°F PMCC.
Flammability limits (percent)—1.0–7.0.
Appearance—Amber liquid, with hydrocarbon odor.

Toxicity Data. The manufacturer states that toxicological tests indicated that the substance is practically non-toxic through oral, dermal, and inhalation routes and for skin and eye irritation.

Exposure. The manufacturer states that there is no risk of occupational exposure.

Environmental Release/Disposal. The manufacturer states that less than 10 kg of the product will be released to the air for 1 hr/da, 11 da/yr. Between 100 and 1,000 kg of the product will be deposited on land annually.

PMN 80–365.

The following information is taken from data submitted by the manufacturer in the PMN.

Close of Review Period. March 15, 1981.

Manufacturer's Identity. Monsanto Company, 800 N. Lindbergh Blvd., St. Louis, MO 63166.

Specific Chemical Identity. Calcium sodium ethylenediamine tetrakis (methylenephosphonate).

Use. Claimed confidential business information. The manufacturer states that 30% of total production may be used as sequestrant and scale control agent.

Production Estimates. Claimed confidential business information.

Physical Properties.

Product form—Pale yellow powder.
Heat stability—Stable to > 200°C.
Aqueous solubility—1%.
pH 1% solution at 25°C—11–12.

Toxicity Data.

	Solid form	Slurry (40% solid)
Oral LD_{50} (rats, both sexes).	5,000 mg/kg	>5 ml/kg.
Dermal LD_{50} (rats, both sexes).	> 5,000 mg/kg.	> ml/kg.
Primary dermal irritation (rabbits, both sexes).	Slight irritant	Slight irritant.
Primary eye irritation (rabbits), both sexes).	Mild irritant	Severe irritant.
4-Hour acute inhalation, LC_{50}.	> 4.2 mg/l	

The manufacturer also states that test data on related substances showed to be non-toxic or slightly toxic to mammals and a variety of freshwater and marine algae, invertebrates, and fish.

Exposure.

[19] 3132

Activity	Exposure Route	Maximum number exposed	Maximum duration		Concentration (ppm)	
			Hours/day	Days/year	Average	Peak
Manufacture	Dermal	3-4	8	60-80		
Processors	Dermal	2-3	8	60-80		
	Inhalation					
Potential Users	Dermal	1-2	2	30-60		
	Inhalation					

Environmental Release/Disposal. The manufacturer states that no waste or byproducts will be generated in the manufacture or use of the PMN substance.

[FR Doc. 81-1991 Filed 1-16-81; 8:45 am]

BILLING CODE 6560-31-M

[ER-FRL-1729-7]

Agency Comments on Environmental Impact Statements and Other Actions Impacting the Environment

PURPOSE: Pursuant to the requirements of section 102(2)(c) of the National Environmental Policy Act of 1969, and section 309 of the Clean Air Act, as amended, the Environmental Protection Agency (EPA) has reviewed and commented in writing on Federal agency actions impacting the environment during the period of November 1, 1980 and November 30, 1980.

SUMMARY OF NOTICE: The information presented below describes the Federal agency responsible for the action, the type of document reviewed by EPA, the EPA review control number, and the title of the document reviewed. The classification of the nature of EPA's comments is listed for each draft EIS.

AVAILABILITY OF INFORMATION CONTAINED IN THIS NOTICE: Documents reviewed by EPA: The documents identified below are prepared by the Federal agency identified in the listing. Copies may be obtained by requesting the document from the Federal agency responsible for its preparation. EPA does not maintain copies fo distribution.

EPA comments: Copies of EPA's comments identified below are available upon request from the appropriate EPA Regional Library or you may contact the Office of Environmental Review (A-104), Environmental Protection Agency, Room 2119, Waterside Mall, SW, Washington, DC 20460.

EPA's procedures for commenting: Copies for the EPA manual setting forth policies and procedures for EPA's review of agency actions may be obtained by writing the contact identified below for further information.

FOR FURTHER INFORMATION CONTACT: Ms. Kathi L. Wilson, Office of Environmental Review (A-104), U.S. Environmental Protection Agency, Washington, D.C. 20460, Telephone: (202) 245-3006.

PERIOD COVERED: November 1, 1980 and November 30, 1980.

Corps of Engineers

Control No.: D-COE-D36086-PA. EPA Rating: ER2. Copies of Comments: EPA, Philadelphia — Swatara Creek, Local Flood Protection, Pine Grove, Schuylkill County, Pennsylvania.
Control No.: D-COE-F36071-IL. EPA Rating: LO1. Copies of Comments: EPA, Chicago — Big Five Flood Control Study, Union and Alexander Counties, Illinois.
Control No.: D-COE-K34004-HI. EPA Rating: ER2. Copies of Comments: EPA, San Francisco — Permit Application for Channel and Mamalahi Sewer Projects, Kawainui Marsh, Oahu, Hawaii.
Control No.: D-COE-K30008-CA. EPA Rating: LO2. Copies of Comments: EPA, San Francisco — Oceanside Vicinity, Beach Erosion Control, San Diego County, California.
Control No.: FB-COE-A34130-TX. Copies of Comments: EPA, Dallas — Big Pine Lake, Red River County, Texas.
Control No.: F-COE-E36012-SC. Copies of Comments: EPA, Atlanta — Folly Beach Erosion Control and Hurricane Protection, Charleston County, South Carolina.
Control No.: FB-COE-E36022-NC. Copies of Comments: EPA, Atlanta — Manteo Shallowbag Bay Project, Dare County, North Carolina.
Control No.: F-COE-E80001-TN. Copies of Comments: EPA, Atlanta — Cordell Hull Dam Disposal of Lands for Public Port, Jackson County, Tennessee.
Control No.: F-COE-L62003-AK. Copies of Comments: EPA, Seattle — Prudhoe Bay Oil Field Waterflood Project, Prudhoe Bay, North Slope Borough, Alaska.
Control No.: F-COE-L36068-OR. Copies of Comments: EPA, Seattle — Rehabilitation of the North and South Jetties, Nehalem Bay, Oregon.

Department of Agriculture

Control No.: D-AFS-K61051-AZ. EPA Rating: LO1. Copies of Comments: EPA, San Francisco — Verde River Wild and Scenic Study, Yavapai and Gila Counties, Arizona.
Control No.: D-AFS-L61139-WA. EPA Rating: LO2. Copies of Comments: EPA, Seattle — Alpine Lakes Area Management Plan, Washington.
Control No.: D-REA-H08005-IA. EPA Rating: ER2. Copies of Comments: EPA, Kansas City — Guthrie County Generation Station and Associated Transmission Facilities, Guthrie and Dallas Counties, Iowa (USDA-REA-(ADM) 69-S-D).
Control No.: D-SCS-E36020-MA. EPA Rating: ER3. Copies of Comments: EPA, Boston — Washington Mountain Brook Watershed, Berkshire County, Massachusetts.
Control No.: D-SCS-E36021-MA. EPA Rating: LO2. Copies of Comments: EPA, Boston — Salling Brook Watershed, Framingham, Middlesex County, Massachusetts.
Control No.: F-AFS-L61139-OR. Copies of Comments: EPA, Seattle — Mount Howard Expansion, Wing Ridge Development, Wallowa County, Oregon.
Control No.: F-AFS-L67004-ID. Copies of Comments: EPA, Seattle — Thompson Creek Molybdenum Project, Cyprus Mines Corporation, Challis National Forest, Custer County, Idaho.
Control No.: FS-REA-A06102-SC. Copies of Comments: EPA, Atlanta — Catawba Nuclear Station Units 1, York County, South Carolina (Adopted).
Control No.: FS-AFS-A61163-MT. Copies of Comments: EPA, Denver — Flathead Wild and Scenic River Designation, Montana.
Control No.: F-AFS-A65121-OO. Copies of Comments: EPA, Washington, DC — Forest and Rangeland Renewable Resources Planning Act: 1980 Report To Congress, Recommended Renewable Resources Program—1980 Update and an Assessment of the Forest and Range Land Situation in the United States.
Control No.: F-SCS-E36029-KY. Copies of Comments: EPA, Atlanta — Big Muddy Creek Watershed, Sutter and Logan Counties, Kentucky.
Control No.: F-SCS-G36060-LA. Copies of Comments: EPA, Dallas — Walnut Roundway Watershed, Madison and East Carroll Parishes, Louisiana.
Control No.: A-AFS-A36449-OO. Copies of Comments: EPA, Washington, DC — Direction For Floodplain Management and Wetland Protection, Proposed Policy (45 FR 87477).

Department of Commerce

Control No.: D-EDA-E36035-TN. EPA Rating: LO2. Copies of Comments: EPA, Atlanta — Gallatin Intercity Water Supply Plan, Sevier County, Tennessee.
Control No.: D-EDA-F36009-OH. EPA Rating: EPA, Chicago. Copies of Comments: EPA, Chicago — Proposed Industrial and Commercial Area, Trumbull County, Ohio.
Control No.: D-EDA-K28007-CA. EPA Rating: ER2. Copies of Comments: EPA, San Francisco — Eastern Industrial Trunk Sewer Project, City of Oxnard, Ventura County, California.
Control No.: D-NOA-K91004-OO. EPA Rating: LO1. Copies of Comments: EPA, San Francisco — Fishery Management Plan (FMP), For Spiny Lobster of Guam, Samoa, and Northwest Hawaiian Isles.
Control No.: D-NOA-L84015-AK. EPA Rating: LO2. Copies of Comments: EPA, Seattle — Groundfish of the Bering Sea and Aleutian Islands Area, Fishery Management Plan, (FMP) Alaska.
Control No.: RF-NOA-A60046-GA. Copies of Comments: EPA, Washington, DC — Gray's Reef Marine Sanctuary, 24.2 km (175.5 NMI) East of Sapelo Island, Georgia, South Atlantic Continental Shelf.
Control No.: RF-NOA-A60047-CA. Copies of Comments: EPA, Washington, DC — Point Reyes-Farallon Islands Marine Sanctuary, off the California Coast, Pacific Ocean.

Department of Defense

Control No.: F-USA-K11018-HI. Copies of Comments: EPA, San Francisco — Tripler Army Medical Center, Hospital Addition and Alteration, Oahu, Hawaii.

Department of Energy

Control No.: DS-DOE-B06000-00. EPA Rating: ER2. Copies of Comments: EPA, Boston — Dickey-Lincoln School Lakes Transmission Project, Maine, New Hampshire, and Vermont.

Control No.: A-ERA-A07017-CO. Copies of Comments: EPA, Washington, DC — Notice, Docket No. ERA-FI-80-32, Powerplant and Industrial Fuel Use Act of 1978; Guidelines on the Use of Alternate Fuels and Technologies (45 FR 62525).

Department of Interior

Control No.: DS-BIA-G07003-NM. EPA Rating: LO1. Copies of Comments: EPA, Dallas[1] — Four Corners Power Plant and Navajo Mine, Modifications, New Mexico.
Control No.: D-BIA-G07020-NM. EPA Rating: LO2. Copies of Comments: EPA, Dallas — Ute Mountain, Proposed Strip Coal Mine, San Juan County, New Mexico.
Control No.: D-BLM-I07019-TX. EPA Rating: ER2. Copies of Comments: EPA, Dallas — Camp Swift Reservation Leasing, Bastrop County, Texas.
Control No.: D-BLM-K65041-CA. EPA Rating: LO2. Copies of Comments: EPA, San Francisco — Ukiah District Sustained Yield Unit 13 Timber Management, California.
Control No.: D-HCR-C61002-NJ. EPA Rating: ER2. Copies of Comments: EPA, New York — Pinelands National Reserve, Proposed Management Plan, New Jersey.
Control No.: D-OSM-J01034-WY. EPA Rating: LO1. Copies of Comments: EPA, Denver — Rojo Caballos Mine Reclamation, Campbell County, Wyoming.
Control No.: D-SFW-G64003-TX. EPA Rating: LO1. Copies of Comments: EPA, Dallas — Proposed Acquisition of Big Boggy Marsh, Matagorda County, Texas.
Control No.: D-SFW-K64007-AZ. EPA Rating: LO1. Copies of Comments: EPA, San Francisco — Proposal to Eliminate Cattle Grazing and Wild Burro Population from Kofa National Wildlife Refuge, Arizona.
Control No.: F-BLM-K09002-CA. Copies of Comments: EPA, San Francisco — Coso Known Geothermal Resource Area, Lease, Inyo County, California.
Control No.: F-BLM-K61039-CA. Copies of Comments: EPA, San Francisco — California Desert Conservation Area, California.
Control No.: F-BLM-K65034-CO. Copies of Comments: EPA, San Francisco — Cowhead and Massacre Planning Unit, Susanville District, Lassen and Modoc County, California and Washoe County, Nevada.
Control No.: F-NPS-G61011-OK. Copies of Comments: EPA, Dallas[1] — Chickasaw National Recreation Area, Murray County, Oklahoma.
Control No.: F-NPA-K61029-CA. Copies of Comments: EPA, San Francisco — Yosemite National Park General Management Plan, California.
Control No.: F-NPS-K61035-CA. Copies of Comments: EPA, San Francisco — Redwood National Park, General Management Plan, Del Norte and Humboldt Counties, California.
Control No.: A-BLM-A02161-CO. Copies of Comments: EPA, Washington, DC — Proposed 1983 OCS Sales 72 and 74 for Gulf of Mexico; Resource Reports and Scoping.
Control No.: A-BLM-A02164-AK. Copies of Comments: EPA, Washington, DC — Notice, Kodiak, Outer Continental Shelf (OCS), Tentative Sale No. 81, Call for Nominations of and Comments on Areas for Oil and Gas Leasing (45 FR 62909).

Department of Transportation

Control No.: DR-FAA-AS1626-CT. EPA Rating: LO1. Copies of Comments: EPA, Boston — Medium Intensity Approach Light System, Sequenced Flashing Lights Runway 2, Tweed-New Haven Airport, New Haven, Connecticut.
Control No.: D-FHW-D40105-VA. EPA Rating: ER2. Copies of Comments: EPA, Philadelphia — VA-460, Upgrading and Relocation, Buchanan and Dickenson Counties, Virginia.
Control No.: D-FHW-D40106-WV. EPA Rating: ER2. Copies of Comments: EPA, Philadelphia — Charlestown Bypass, U.S. 340 and WV-9, Jefferson County, West Virginia.
Control No.: D-FHW-E40195-GA. EPA Rating: ER2. Copies of Comments: EPA, Atlanta — Torras Causeway Improvement, St. Simons Islands, Glynn County, Georgia.
Control No.: D-FHW-H40096-NE. EPA Rating: ER2. Copies of Comments: EPA, Kansas City — Northeast Diagonal, 16th at P and Q to 27th and Fair Street, Lincoln, Lancaster County, Nebraska (FHWA-NEBR-EIS-80-02-D).
Control No.: D-FHW-K40095-AZ. EPA Rating: LO2. Copies of Comments: EPA, San Francisco — Palo Verde Corridor Highway Improvements, Tucson, Pima County, Arizona.
Control No.: D-FHW-K54027-CA. EPA Rating: LO1. Copies of Comments: EPA, San Francisco — Santa Ana Transportation Terminal, Orange County, California.
Control No.: D-FHW-L40100-AK. EPA Rating: ER2. Copies of Comments: EPA, Seattle — A-C Couplet, A Street South from Sixth to Forty-Fourth Avenue, Anchorage, Alaska.
Control No.: D-FRA-B53007-CT. EPA Rating: LO2. Copies of Comments: EPA, Boston — Replacement of Shaw's Cove Bridge and Approaches, New London, New London County, Connecticut (FRA-RNC-EIS-80-02-D).
Control No.: D-UMT-D62005-MD. EPA Rating: ER2. Copies of Comments: EPA, Philadelphia — Washington Metrorail System, Green and Yellow Line (E Route, West Hyattsville Segment), Prince Georges County, Maryland.
Control No.: F-FHW-L40069-WA. Copies of Comments: EPA, Seattle — Port Orchard Bypass, WA-160 to WA-16, City of Port Orchard, Kitsap County, Washington.
Control No.: F-FHW-D40032-PA. Copies of Comments: EPA, Philadelphia — L.R. 1010, Sections A, B, and C, Mid County Expressway I-476, I-95 to I-76, Delaware and Montgomery Counties, Pennsylvania.
Control No.: F-FHW-H40098-IA. Copies of Comments: EPA, Kansas City — IA-100 to U.S. 30, U.S. 30 to I-380 at Collins Road, Collins Road, Cedar Rapids, Linn County, Iowa.
Control No.: H-FAA-FB1035-WI. Copies of Comments: EPA, Chicago — Forest Improvements at Eau Claire County Airport, Eau Claire County, Wisconsin.
Control No.: RR-FHW-A59003-00. Copies of Comments: EPA, Washington, DC — 23 CFR Part 777, Mitigation of Environmental Impacts to Privately Owned Wetlands (FHWA-Docket No. 80-15) (45 FR 50728).

Federal Energy Regulatory Commission

Control No.: D-FRC-K05015-CA. EPA Rating: LO2. Copies of Comments: EPA, San Francisco — South Fork American River Development, Upper Mountain Project, California (FERC No. 2781).
Control No.: F-FRC-J03001-CO. Copies of Comments: EPA, Washington, DC — Trailblazer Pipeline System, Wyoming, Colorado and Nebraska.

General Services Administration

Control No.: F-GSA-D11013-PA. Copies of Comments: EPA, Philadelphia — Disposal of Surplus Federal Real Property of Frankford Arsenal, Philadelphia, Pennsylvania.

Department of Housing and Urban Development

Control No.: RS-HUD-A60022-CO. EPA Rating: LO1. Copies of Comments: EPA, Washington, DC — HUD MPS 4900.1 Minimum Property Standards for One- and Two-Family Dwellings.
Control No.: RD-HUD-A60174-00. EPA Rating: LO2. Copies of Comments: EPA, Washington, DC — Pursuant to Title I of the Housing and Community Development Act of 1974 Siting of HUD-Assisted Projects Near Hazardous Operations Handling Conventional Fuels or Chemicals of an Explosive or Flammable Nature.
Control No.: D-HUD-G65152-TX. EPA Rating: ER2. Copies of Comments: EPA, Dallas — Rancho Isabella Subdivision, Angleton, Brazoria County, Texas.
Control No.: D-HUD-G65153-TX. EPA Rating: LO2. Copies of Comments: EPA, Dallas — Proposed Subdivision, Berrington Place, Fort Bend County, Texas.
Control No.: D-HUD-K65032-CA. EPA Rating: ER2. Copies of Comments: EPA, San Francisco — Gilbert Lindsay Village Green Development, Los Angeles County, California.
Control No.: D-HUD-K65033-AZ. EPA Rating: ER2. Copies of Comments: EPA, San Francisco — Midvale Park Development, Pima County, Arizona.
Control No.: F-HUD-J65037-MT. Copies of Comments: EPA, Denver — Olympic Park and Harvest Housing Developments, Billings, Montana.

Control No.: F-HUD-G34008-NM. Copies of Comments: EPA, Dallas[1]	Water Sewer and Access facilities, South University Industrial Park, Albuquerque, Bernalillo County, New Mexico.
Control No.: F-HUD-G95145-TX. Copies of Comments: EPA, Dallas	Wheatstone Subdivision, Mortgage Insurance, Harris County, Texas.
Control No.: F-HUD-G95149-TX. Copies of Comments: EPA, Dallas	Creekside Village and River Hills Village Subdivision, Montgomery County, Texas.
Control No.: F-HUD-G95149-TX. Copies of Comments: EPA, Dallas	Copperfield Subdivision, Harris County, Texas.
Control No.: F-HUD-K80011-CA. Copies of Comments: EPA, San Francisco	San Buenaventura Downtown Redevelopment Plan and Mission Plaza Shopping Center, San Buenaventura, Ventura County, California.
Control No.: A-HUD-G95139-TX. Copies of Comments: EPA, Dallas	Additional Information, Impacted Oaks Subdivision, Montgomery County, Texas.
Interstate Commerce Commission	
Control No.: D-ICC-C53002-NY. EPA Rating: 3. Copies of Comments: EPA, New York	Somerset Railroad, Construction and Operation, Niagara County, New York.
Missouri River Basin Commission	
Control No.: D-MRB-J39012-MT. EPA Rating: ER1. Copies of Comments: EPA, Denver	Upper Missouri River Basin Level B Study, Montana.
Nuclear regulatory Commission	
Control No.: D-NRC-A06140-PA. EPA Rating: ER2. Copies of Comments: FPA, Washington, DC	Related to Decontamination and Disposal of Radioactive Wastes Resulting from March 28, 1979, Accident Three Mile Island Nuclear Station, Unit 2, (NUREG-0683 Docket No. 50-320).
Control No.: F-NRC-A22077-IL. Copies of Comments: EPA, Washington, DC	Primary Cooling System Chemical Decontamination at Dresden Nuclear Power Station, Unit No. 1, Grundy County, Illinois (Docket No. 50-10).
Control No.: RR-NRC-A01055-OO. Copies of Comments: EPA, Washington, DC	10 CFR Parts, 30, 40, 70, and 190, Uranium Mill Licensing Requirements (45 FR 65521).
Ohio River Basin Commission	
Control No.: F-ORB-E34016-OO. Copies of Comments: EPA, Atlanta	Kentucky and Licking River Basins, Regional Water and Land Resources Plan, Kentucky.
Control No.: F-ORB-E34017-OO. Copies of Comments: EPA, Atlanta	Big Sandy and Guyandotte River Basin, Regional Water and Land Resources Plan, Kentucky and West Virginia.

[1] These projects were omitted from the reports of March 1-31, 1980 published in September 12, 1980 FEDERAL REGISTER, and August 1-31, 1980 published in November 4, 1980 FEDERAL REGISTER, respectively.

William N. Hedeman, Jr.,
Director, Office of Environmental Review.
January 12, 1981.

[FR Doc. 81-1894-Filed 1-16-81; 8:45 am]
BILLING CODE 6560-37-M

[EN-FRL 1729-3]

Applications for Waiver of Effective Date of Carbon Monoxide Emission Standards for Light-Duty Motor Vehicles; Request for Comments and Opportunity for Hearing

AGENCY: Environmental Protection Agency (EPA).

ACTION: Request for public comments and notice of opportunity for hearing.

SUMMARY: This notice requests public comment and announces opportunity for a public hearing on new requests for reconsideration EPA has received from General Motors Corporation (GM), Volkswagen of America, Inc. (VW), and Ford Motor Company (Ford) for waiver of the carbon monoxide (CO) emission standards for one engine family each for certain model years.

DATES AND ADDRESSES: Interested parties may submit a *bona fide* written request for a public hearing by January 22, 1981. If EPA receives such a hearing request the Agency will hold a public hearing on February 2, 1981, beginning at 9:00 a.m., at Room 3906, Waterside Mall, Environmental Protection Agency, 401 M Street, SW, Washington, D.C. 20460. Otherwise, EPA will publish a notice in the Federal Register prior to January 28, 1981, announcing the cancellation of this public hearing. Regardless of whether a hearing is requested, EPA will consider written comments received by February 5, 1981. Requests for a hearing or comments should be sent to the Director, Manufacturers Operations Division (EN-340), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, D.C. 20460. Information submitted by the petitioners, as well as any comments received from interested parties, will be available for public inspection and copying in EPA Public Docket EN-80-16, located in EPA's Central Docket Section (A-130), Gallery I, 401 M Street, SW, Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: Mr. Alex Varela, Waivers Section, Manufacturers Operations Division (EN-340), 401 M Street, SW, Washington, D.C. 20460, telephone number, (202) 472-9421.

SUPPLEMENTARY INFORMATION: Section 202(b)(5) of the Clean Air Act, as amended (Act), 42 U.S.C. 7521(b), authorizes EPA to waive application of the 1981 and 1982 model year statutory CO emission standard applicable to light-duty motor vehicles and engines upon the request of a manufacturer for a specific vehicle model if the Administrator makes certain findings specified under section 202(b)(5)(C) of the Act.

After holding previously announced public hearings, EPA denied earlier waiver requests from GM for its 1982 model year 1.6 liter (L) engine family on July 25, 1980 (45 FR 49677); from Ford, for its 1982 model year 2.3 L/ turbocharged family on August 11, 1980 (45 FR 53400); and from VW for its 1981 model year 1.46L engine family on September 9, 1980 (45 FR 59393).

However, since EPA issued those decisions, economic circumstances under which many automobile

manufacturers are operating have deteriorated significantly. In the eleventh CO waiver decision (45 FR 1590, January 8, 1981) EPA recognized the importance of these current economic circumstances by granting waivers to GM, Ford, AMC, and Chrysler for certain 1982 model year fuel-efficient engine families which had never been marketed under the statutory CO standard.

GM, VW, and Ford each have filed requests for reconsideration of earlier waiver denials and in those requests have raised the possibility that the engine families under consideration here (the GM 1.6L, VW 1.6L, and Ford 2.3L/turbocharged) may qualify for waivers under the same rationale used to grant other similar fuel efficient engine families in EPA's eleventh decision. These manufacturers have contended that the requests for reconsideration, in conjunction with information already in the public record, establish factual circumstances for these three engine families similar to those which the Administrator found to be associated with engine families considered in the eleventh decision and that applications covering these three engine families meet the statutory criteria for receiving a waiver. The concerns which these petitioners identify are the type of considerations which the Court in *International Harvester v. Ruckelshaus* (478 F.2d 615 (D.C. Cir. 1973)) indicated EPA should take into account in weighing the risks of erroneously denying a waiver request.

Since EPA has already held public hearings regarding these three engine families for the model years in question, I will reconsider my previous waiver denials for these engine families on the basis of written information submitted to the record in lieu of holding another public hearing,* unless EPA receives a *bona fide* written request for a public hearing by January 22, 1981. If EPA receives such a request, it will hold a hearing on February 2, 1981, at the time and place specified in the "Dates and Addresses" section of this notice. The procedures for this hearing will be the same as those which EPA has employed for previous CO waiver hearings (see, e.g., 45 FR 45666 (July 8, 1980)). If EPA does not receive a hearing request, it will publish a Federal Register notice cancelling the February 2 hearing.

The primary purposes of this simplified procedure are (1) to allow interested parties to submit relevant information, absent a hearing, for the public record to allow me to determine if I should grant waivers covering these engine families, in light of the rationale used in my eleventh CO waiver decision to grant waivers for other fuel-efficient engine families of manufacturers with severe economic and marketing problems and (2) to enable the Administrator to make a decision as soon as possible to provide these manufacturers with sufficient lead time to implement production plans based upon decisions on these engine families.

As a result, I am requesting public comment on the concerns that these requests have raised for the purpose of reevaluating my original waiver decisions. I recognize the need to reconsider these decisions quickly, in light of the sixty-day statutory deadline which section 202(b)(5) of the Act establishes for responding to CO waiver requests and in light of these manufacturers need to finalize plans to begin production of these vehicles. Thus, I am requiring that all comments be submitted to EPA by February 5, 1981 to ensure that the Administrator will consider them in deciding on these requests for reconsideration.

EPA will place all information which it receives by that date in public docket EN-80-16. I will rely solely on the information contained in that docket in deciding whether or not to reverse my original denial of waiver requests for these three engine families.

Dated: January 14, 1981.

Jeffrey Miller,

Acting Assistant Administrator for Enforcement.

[FR Doc. 81-1880 Filed 1-16-81; 8:45 am]

BILLING CODE 6560-26-M

[RD-FRL 1729-6]

Ambient Air Monitoring Reference and Equivalent Methods; Receipt of Application for an Equivalent Method Determination

Notice is hereby given that on December 12, 1980, the Environmental Protection Agency received an application from the California Department of Health Services, Air and Industrial Hygiene Laboratory to determine if their atomic absorption and X-ray fluorescence spectrometry methods for the determination of lead in suspended particulate matter should be designated by the Administrator of the EPA as equivalent methods under 40 CFR Part 53 (40 FR 7044, 41 FR 11255, 44 FR 37916). If, after appropriate technical study, the Administrator determines that this method should be so designated, notice thereof will be given in a subsequent issue of the Federal Register.

January 12, 1981.

Richard W. Dowd,

Assistant Administrator for Research and Development.

[FR Doc. 81-1880 Filed 1-16-81; 8:45 am]

BILLING CODE 6560-26-M

[OPP-50512; PH-FRL 1720-3]

Elanco Products Co., et al.; Extension of Experimental Use Permits

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency has issued extensions of experimental use permits to the following applicants. Such permits are in accordance with, and subject to, the provisions of 40 CFR Part 172, which defines EPA procedures with respect to the use of pesticides for experimental purposes.

FOR FURTHER INFORMATION CONTACT: Robert J. Taylor, Product Manager (PM) 25, Registration Division (TS-767), Office of Pesticide Programs, Environmental Protection Agency, Rm. E-359, 401 M St. SW., Washington, D.C. 20460, (202-755-2196).

SUPPLEMENTARY INFORMATION: EPA has extended the following experimental use permits:

1471-EUP-66. Elanco Products Co., P.O. Box 1750, Indianapolis, Indiana, 46206. This experimental use permit allows the use of 1,627 pounds of each of the herbicides oryzalin and trifluralin on cotton and soybeans to evaluate control of weeds. A total of 2,614 acres are involved. The program is authorized only in the States of Alabama, Arizona, Arkansas, California, Georgia, Florida, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maryland, Michigan, Minnesota, Mississippi, Missouri, Nebraska, New Jersey, New York, North Carolina, North Dakota, Ohio, Oklahoma, Pennsylvania, South Carolina, South Dakota, Tennessee, Texas, Virginia, and Wisconsin. The experimental use permit is effective from March 30, 1981 to March 30, 1982. Permanent tolerances for residues of the active ingredients in or on cottonseed and soybeans have been established (40 CFR 180.304 and 180.207).

400-EUP-59. Uniroyal, Inc., 74 Amity Road, Bethany, CT 06525. This experimental use permit allows the use of 903 pounds of the herbicide 2[[1-[2,5-dimethylphenyl]ethyl]sulfonyl]pyridine 1-oxide on cotton, peanuts, potatoes, soybeans, sugar beets, and sunflowers

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*See EPA Request for Public Comment, 45 FR 78116 (November 28, 1980).

to evaluate control of weeds. A total of 602 acres are involved. The program is authorized only in the States of Alabama, Arizona, Arkansas, California, Colorado, Florida, Georgia, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Michigan, Minnesota, Mississippi, Missouri, Nebraska, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, South Carolina, South Dakota, Tennessee, Texas, Virginia, Washington, and Wisconsin. The experimental use permit is effective from February 1, 1981 to February 1, 1982. The permit is being issued with the limitation that all treated crops be destroyed or used for research purposes only.

Persons wishing to review the experimental use permits are referred to the Product Manager. Inquiries regarding these permits should be directed to the contact person given above. It is suggested that interested persons call before visiting the EPA Headquarters office so that the appropriate file may be made available for inspection purposes from 8:00 a.m. to 4:00 p.m., Monday through Friday, except legal holidays.

(Sec. 5, 92 Stat. 819, as amended, (7 U.S.C. 136))

Dated: January 12, 1981.

Douglas D. Campt

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 81-1886 Filed 1-16-81; 8:45 am]

BILLING CODE 6560-32-M

[OPP-505171; PH-FRL 1730-1]

Monsanto Co. and Rohm and Haas Co.; Extension of Experimental Use Permits

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The EPA issued extensions of experimental use permits to the following applicants. Such permits are in accordance with and subject to the provisions of 40 CFR Part 172, which defines EPA procedures with respect to the use of pesticides for experimental purposes.

FOR FURTHER INFORMATION CONTACT: The designated product manager given in each permit at the address below: Registration Division (TS-767), Office of Pesticide Programs, Environmental Protection Agency, 401 M St. SW., Washington, D.C. 20460.

SUPPLEMENTARY INFORMATION: EPA has extended the following experimental use permits:

524-EUP-51. Monsanto Co., 1101 17th St., NW., Washington, D.C. 20036. This experimental use permit allows the use of 1297.9 pounds of the herbicide alachlor in or on grain sorghum to evaluate control of weeds. A total of 445 acres are involved. The program is authorized only in the States of Arizona, Arkansas, California, Colorado, Florida, Illinois, Iowa, Kansas, Missouri, Nebraska, Oklahoma, South Dakota, and Texas. This experimental use permit is effective from March 4, 1981 to March 4, 1982. This experimental use permit is being extended with the limitation that all treated crops will be destroyed or used for research purposes only. (PM 25, Robert J. Taylor, Rm. E-359, 202-755-2196).

707-EUP-94. Rohm and Haas Co., Independence Mall West, Philadelphia, PA 19105. This experimental use permit allows the use of 660 pounds of the herbicide acifluorofen, sodium salt (sodium 5-[2-chloro-4-(trifluoromethyl)-phenoxy]-2-nitrobenzoate) on peanuts to evaluate control of weeds. A total of 220 acres are involved. The program is authorized only in the States of Alabama, Florida, Georgia, North Carolina, Oklahoma, South Carolina, Texas, and Virginia. The experimental use permit is effective from March 15, 1981 to March 15, 1982. Temporary tolerances have been established for the residues of the herbicide in or on peanuts and peanut hulls. (PM 23, Richard F. Mountfort, Rm. E-351, 202-755-1397).

Persons wishing to review the experimental use permits are referred to the product manager. Inquiries regarding these permits should be directed to the contact person given above. It is suggested that interested persons call before visiting the EPA headquarters office so that the appropriate file may be made available for inspection purposes from 8:00 a.m. to 4:00 p.m., Monday through Friday, except legal holidays.

(Sec. 5, 92 Stat. 819, as amended (7 U.S.C. 136))

Dated: January 12, 1981.

Douglas D. Campt,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 81-1888 Filed 1-16-81; 8:45 am]

BILLING CODE 6560-32-M

[OPP-50500A; PH-FRL 1730-4]

Rohm and Haas Co., Extension of Experimental Use Permit; Amendment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice amends experimental use permit 707-EUP-85 for use of the hybridizing agent potassium (1-(p-chlorophenyl)-1,4-dihydro-6-methyl-4-oxopyridazine-3-carboxylic acid on wheat to evaluate hybridizing.)

FOR FURTHER INFORMATION CONTACT: Robert J. Taylor, Product Manager (PM) 25, Registration Division (TS-767), Office of Pesticide Programs, Environmental Protection Agency, Rm. E-359, 401 M St. SW., Washington, D.C. 20460, (202-755-2196).

SUPPLEMENTARY INFORMATION: EPA issued a notice that was published in the Federal Register of September 11, 1980 (45 FR 60002) that Rohm and Haas Co., Independence Mall West, Philadelphia, PA 19105 had been issued an experimental use permit for use of the hybridizing agent potassium (1-(p-chlorophenyl)-1,4-dihydro-6-methyl-4-oxopyridazine-3-carboxylate) on wheat to evaluate control of hybridizing. No tolerance was established for wheat at that time. The permit specified that all treated crops must be destroyed or used for research purposes only.

This amendment to 707-EUP-85 establishes a temporary tolerance for potassium. The crop no longer has to be destroyed. A tolerance of 1 ppm on wheat (second generation; grown-out wheat of the hybrid seed) appears elsewhere in this issue of the Federal Register.

Interested persons wishing to review the experimental use permit are referred to the product manager. Inquiries regarding this permit should be directed to the person given above. It is suggested that interested persons call before visiting the EPA headquarters office so that the appropriate file may be made available for inspection purposes from 8:00 a.m. to 4:00 p.m., Monday through Friday, except legal holidays.

(Sec. 5, 92 Stat. 819 as amended (7 U.S.C. 136)).

Dated: January 12, 1981.

Douglas D. Campt,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 81-1889 Filed 1-16-81; 8:45 am]

BILLING CODE 6560-32-M

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 1265]

Petitions for Reconsideration of Actions in Rule Making Proceedings

The following listings of petitions for reconsideration filed in Commission rulemaking proceedings is published pursuant to 47 CFR 1.429(e).

Oppositions to such petitions for reconsideration must be filed within 15 days after publication of this Public Notice in the Federal Register. Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Amendment of Part 76 of the Commission's Rules and Regulations Concerning the Cable Television Channel Capacity and Access Channel Requirements of Section 76.251 (Docket No. 20508).

Filed by: Michael Botein & David M. Rice, Attorneys for The American Civil Liberties Union on 12-12-80.

Subject: Policy and Rules Concerning Rates For Competitive Common Carrier Services and Facilities Authorizations Therefore. (CC Docket No. 79-252).

Filed by:

Alan Auckenthaler, Attorney for American Satellite Company on 12-18-80.

Dennis F. Begley, Attorney for Garryowen Corporation, [KTVQ-TV, KXLF-TV, KPAX-TV & KRTV] on 12-22-80.

Carl J. Cangelosi, Attorney for RCA American Communications, Inc. on 12-23-80.

Arthur H. Simms, Attorney for The Western Union Telegraph Company on 12-24-80.

Henry Geller, Assistant Secretary for Communications and Information & Gregg P. Skall, Attorney for National Telecommunications and Information Administration on 12-24-80.

Robert L. James, Attorney for Transponder Corporation of Denver on 12-29-80.

Robert L. James, Attorney for Andrews Tower Rental, Inc., East Texas Transmission Company, Hi-Desert Microwave, Inc. & Pilot Butte Transmission Company, Inc. on 12-29-80.

Robert L. James, Attorney for United Video, Inc. on 12-29-80.

Thomas J. O'Reilly, Attorney for The United States Independent Telephone Association on 12-29-80.

Leo I. George, Donald J. Evans & John A. Borsari, Attorneys for U.S. Telephone Communications, Inc. on 12-29-80.

Rosel H. Hyde, Herbert E. Marks & Laurel R. Bergold, Attorneys for The State of Hawaii on 12-29-80.

Burton K. Katkin & Alfred Winchell Whittaker, Attorneys for American Telephone and Telegraph Company on 12-29-80.

Robert F. Corazzini, Attorney for Southern Satellite Systems, Inc. on 12-29-80.

Richard M. Cahill & Richard McKenna, Attorneys for GTE Service Corporation on 12-29-80.

Richard H. Strodel, Attorneys for Western Tele-Communications, Inc. on 12-29-80.

William D. English, F. Thomas Tuttle, Donald J. Elardo, Robert N. Beury, W. Theodore Pierson, Jr., William S. D'Amico, Benjamin J. Griffin & Trudy J. White, Attorneys for Satellite Business Systems on 12-29-80.

Norman P. Leventhal & James M. DeGraffenreidt, Jr., Attorneys for ISA Communications Services, Inc. on 12-29-80.

Robert W. Healy, Attorney for Certain Video Relay Common Carrier Clients ("MCC's") on 12-29-80.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 81-1887 Filed 1-16-81; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL HOME LOAN MORTGAGE CORPORATION

[No. MC 80-31]

Privacy Act of 1974; Systems of Records, Annual Publication

AGENCY: Federal Home Loan Mortgage Corporation.

ACTION: System of records—republication.

SUMMARY: This notice complies with the Privacy Act of 1974 (5 U.S.C. 552a).

EFFECTIVE DATE: January 19, 1981.

FOR FURTHER INFORMATION CONTACT: Garrett C. Burke, Counsel, Federal Home Loan Mortgage Corporation, 1776 "G" Street, P.O. Box 57248, Washington, D.C. 20013, (202) 789-4542.

SUPPLEMENTARY INFORMATION: The Privacy Act of 1974 (5 U.S.C. 552a(e)(4)) requires agencies to publish annually in the Federal Register a notice of the existence and character of their systems of records. The Federal Home Loan Mortgage Corporation (the "Corporation") last published the full text of its systems of records at 44 FR 218 (November 8, 1979). Except as modified, the previous publication remains effective and is incorporated by reference herein.

One record system, FHLMC-V, Net Yield Debt System, has been changed by the addition of a sentence to its "Routine Uses" section. That sentence indicates that an additional routine use of the system is the release of the names and addresses of previous owners of a mortgage Participation Certificate to subsequent holders, in order to assure the proper allocation of principal and interest payments among subsequent and previous owners.

FHLMC-VII, Discrimination Complaint Files, has been transferred from the General Counsel to the Director, Equal Employment Opportunity.

In addition, certain technical amendments to all other systems of records involving address corrections have been made. The address of the principal office of the Federal Home Loan Mortgage Corporation is now 1776 G Street NW., P.O. Box 37248, Washington, D.C. 20013. The system FHLMC-I, Corporate Employee Files, also contains an amendment with respect to the address of the Newport Beach Underwriting Office, which is now located at 4000 MacArthur Boulevard, Suite 4700, Newport Beach, California 92660. Those elements of the systems that are changed are printed below.

The correction of an error has been made with respect to the System Manager of Record System IV, Corporate Employee Conflict of Interest Files.

The full text of the Federal Home Loan Mortgage Corporation systems of records also appears in Privacy Act Issuances, 1979 Compilation, Volume IV, page 2740. This volume may be ordered through the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402. The price of this volume is $10.

Comments

Public Comment on the changes and additions to the systems of records will be accepted on or before February 18, 1981. The changes and additions will become effective on February 18, 1981, unless the Corporation publishes notice to the contrary. Comments should be addressed to: Garrett C. Burke, Counsel, Federal Home Loan Mortgage Corporation, 1776 "G" Street NW., P.O. Box 37248, Washington, D.C. 20013.

FHLMC-I

SYSTEM NAME:

Corporate Employee Files.

SYSTEM LOCATION:

Department of Human Resources, Federal Home Loan Mortgage Corporation, 1776 "G" Street NW., P.O. Box 37248, Washington, D.C. 20013; Office of Regional Vice President-Administration, Northeast Regional Office, 2001 Jefferson Davis Highway, Arlington, Virginia 22202; Office of Regional Vice President-Administration, Atlanta Regional Office, Peachtree Center-Cain Tower Building, 229 Peachtree Street NE., Suite 2600, Atlanta, Georgia 30303; Office of Regional Vice President-Administration, Chicago Regional Office, 111 East Wacker Drive, Suite 1515, Chicago, Illinois 60601; Office of Regional Vice President-Administration, Dallas Regional Office, 12700 Park Central Place, Suite 1800, Dallas, Texas 75251; Office of Regional Vice President-Administration, Los Angeles Regional Office, 3435 Wilshire Blvd., Suite 1000, Los Angeles, California 90010; Office of Underwriting Office Manager, Denver Underwriting Office, 8000 East Prentice, Creek Side Office Complex, Building B-7, Englewood, Colorado 80111; Office of Underwriting Office Manager, Seattle

Underwriting Office, 600 Stewart Street, Suite 1315, Seattle, Washington 98101; Office of Underwriting Office Manager, San Francisco Underwriting Office, 600 California Street, San Francisco, California 94108; Office of Underwriting Office Manager, Newport Beach Underwriting Office, 4000 MacArthur Blvd., Suite 4700, Newport Beach, California 92660.

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Director of Personnel Administration, Federal Home Loan Mortgage Corporation, 1776 "G" Street NW., P.O. Box 37248, Washington, D.C., 20013; Office of the Regional Vice President-Administration in each Regional Office (see address above); Office of the Underwriting Office Manager in each Underwriting Office (see address above).

* * * * *

FHLMC–II

SYSTEM NAME:

Corporate Employee Current Salary Cards.

SYSTEM LOCATION:

Finance Department, Federal Home Loan Mortgage Corporation, 1776 "G" Street NW., P.O. Box 37248, Washington, D.C. 20013.

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SYSTEM MANAGER(S) AND ADDRESS:

Supervisor of Accounts Payable, Federal Home Loan Mortgage Corporation, 1776 "G" Street NW., P.O. Box 37248, Washington, D.C. 20013.

* * * * *

FHLMC–III

SYSTEM NAME:

Potential Candidates for Employment.

SYSTEM LOCATION:

Department of Human Resources, Federal Home Loan Mortgage Corporation, 1776 "G" Street NW., P.O. Box 37248, Washington, D.C. 20013. Office of Regional Vice President-Administration in each Regional Office (see addresses above): Office of Underwriting Office Manager in each Underwriting Office (see addresses above).

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Director of Personnel Administration, Federal Home Loan Mortgage Corporation, 1776 "G" Street NW., P.O. Box 37248, Washington, D.C. 20013; Office of Regional Vice President-Administration in each Regional Office (see address above); Office of Underwriting Office Manager in each Underwriting Office (see address above).

* * * * *

CONTESTING RECORD PROCEDURES:

To contest the content of a record, notify the Legal Department in writing that a record is being contested, and identify the record system, include the name, address and social security number and the office of employment, of the individual contesting the records and specify the information which is contested and the reason for the contest.

* * * * *

FHLMC–IV

SYSTEM NAME:

Corporate Employee Conflict-of-Interest Files.

SYSTEM LOCATION:

Legal Department, Federal Home Loan Mortgage Corporation, 1776 "G" Street NW., P.O. Box 37248, Washington, D.C. 20013.

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

General Counsel, Federal Home Loan Mortgage Corporation, 1776 "G" Street NW., P.O. Box 37248, Washington, D.C. 20013.

* * * * *

FHLMC–V

SYSTEM NAME:

Net Yield Debt System.

SYSTEM LOCATION:

Department of Marketing, Department of Accounting, and Department of Systems, Federal Home Loan Mortgage Corporation, 1776 "G" Street NW., P.O. Box 37248, Washington, D.C. 20013.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All present and former holders of Federal Home Loan Mortgage Corporation Participation Certificates.

CATEGORIES OF RECORDS IN THE SYSTEM:

The list of registered holders of Participation Certificates, the monthly payment record, and copies of remittance checks.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

12 U.S.C. section 1452(b).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Used to make monthly remittances to investors, to make reports to the Internal Revenue Service, and to derive a Registered Holder Profile, which is used for statistical purposes by the Marketing Department and which has, in the past, been provided to the Federal Reserve. (While the list of holders is used to derive the Registered Holder Profile, the profile itself identifies holders by category only, and not by name, and therefore does not constitute a part of a record system.) A copy of the list of holders is provided each month to Loan Accounting, which is responsible for determining the dollar amounts of the checks to the holders, and to Accounts Payable, which is responsible for mailing the checks. Users are the Marketing, Accounting, and Systems Departments. These records may also be revised by the Internal Auditor and his staff. Upon request of a subsequent holder of Mortgage Participation Certificate, the Corporation may release the names and addresses of previous owners of that security in order to assure the proper allocation of principal and interest payments among holders.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Investor lists and monthly payment records are hard copy. Copies of remittance checks are on microfilm.

RETRIEVABILITY:

By investor name.

SAFEGUARDS:

Only members of the Loan Accounting and Accounts Payable Departments and those members of the Marketing Department who work in processing have access to the investor lists and monthly payment records. Access to remittance checks records may be obtained only through a request to the Director of Processing, Marketing Division.

RETENTION AND DISPOSAL:

Records are retained indefinitely.

SYSTEM MANAGER(S) AND ADDRESS:

Director of Processing, Director of Sales Accounting, Supervisor of Accounts Payable, and Director of Systems Department, Federal Home Loan Mortgage Corporation, 1776 "G" Street NW., P.O. Box 37248, Washington, D.C. 20013.

NOTIFICATION PROCEDURE:

Inquiries whether a system of records contains a record pertaining to an individual shall be addressed to the system manager, in writing, and must include the name, address, and social security number of the individual

making the inquiry, and the name of the record system.

RECORD ACCESS PROCEDURES:

Requests for access to records shall be directed to the system manager, in writing and must include the name, address, and social security number of the individual requesting access and the name of the record system. The request should also reasonably specify the record contents being sought.

CONTESTING RECORD PROCEDURES:

To contest the content of a record, notify the system manager in writing that a record is being contested, and identify the record system. Include the name, address, and social security number of the individual contesting the records, and specify the information that is contested and the reason for the contest.

RECORD SOURCE CATEGORIES:

The individual from whom the information is obtained.

FHLMC-VI

SYSTEM NAME:

Corporate Employee Garnishments.

SYSTEM LOCATION:

Legal Department and Department of Accounting, Federal Home Loan Mortgage Corporation, 1776 "G" Street NW., P.O. Box 37248, Washington, D.C. 20013.

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

General Counsel and Supervisor of Accounts Payable, Federal Home Loan Mortgage Corporation, 1776 "G" Street NW., P.O. Box 37248, Washington, D.C. 20013.

* * * * *

FHLMC-VII

SYSTEM NAME:

Discrimination Complaint Files.

System location:

Legal Department, Federal Home Loan Mortgage Corporation, 1776 "G" Street NW., P.O. Box 37248, Washington, D.C. 20013.

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SYSTEM MANAGER(S) AND ADDRESS:

Director, Equal Employment Opportunity, Federal Home Loan Mortgage Corporation, 1776 "G" Street NW., P.O. Box 37248, Washington, D.C. 20013.

* * * * *

By The Board of Directors.
Robert D. Lindsey,
Acting Secretary.

[FR Doc. 81-1207 Filed 1-16-81; 8:45 am]
BILLING CODE 6720-01-M

FEDERAL RESERVE SYSTEM

Bank Holding Companies; Proposed "De Novo" Nonbank Activities

The bank holding companies listed in this notice have applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.4(b)(1) of the Board's Regulation Y (12 CFR 225.4(b)(1)), for permission to engage *de novo* (or continue to engage in an activity earlier commenced *de novo*), directly or indirectly, solely in the activities indicated, which have been determined by the Board of Governors to be closely related to banking.

With respect to each application, interested persons may express their views on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interest, or unsound banking practices." Any comment on an application that requests a hearing must include a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of that proposal.

Each application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank indicated for that application. Comments and requests for hearings should identify clearly the specific application to which they relate, and should be submitted in writing and, except as noted, received by the appropriate Federal Reserve Bank not later than February 12, 1981.

A. *Federal Reserve Bank of New York* (A. Marshall Puckett, Vice President), 33 Liberty Street, New York, New York 10045:

Chemical New York Corporation, New York, New York (real and personal property leasing, finance company, and factoring activities; New York, New Jersey, and Connecticut): to engage through a *de novo* office of its subsidiary Chemical Business Credit Corp., in leasing real and personal property and equipment on a nonoperating, full pay-out basis, and acting as agent, broker and advisor with respect to such leases; financing real and personal property and equipment such as would be done by a commercial finance company; and purchasing and financing of accounts receivable, loans and extensions of credit (including guaranteeing letters of credit and accepting drafts) such as would be done by a factoring company. These activities will be conducted from an office in New York, New York, serving the metropolitan New York City area, including New York City, Long Island, and Westchester County; Northern New Jersey, including Bergen, Hunterdon, Mercer, Passaic, Essex, Sussex, and Middlesex Counties; and Southwestern Connecticut, including Fairfield County.

B. *Federal Reserve Bank of Atlanta* (Robert E. Heck, Vice President), 104 Marietta Street, N.W., Atlanta, Georgia 30303:

Southern Banks of Florida, Inc., High Springs, Florida (insurance activities; Florida): to act as agent or broker for the sale of life, accident, and health insurance directly related to extensions of credit by its subsidiary banks, and acting as agent or broker in the sale of any insurance for its banks. These activities would be conducted from the offices of Applicant's subsidiary bank in High Springs, Gainesville, and Archer, Florida, serving all of Alachua County, Florida. Comments on this application must be received by February 11, 1981.

C. *Other Federal Reserve Banks:* None.

Board of Governors of the Federal Reserve System, January 13, 1981.
Jefferson A. Walker,
Assistant Secretary of the Board.

[FR Doc. 81-1812 Filed 1-16-81; 8:45 am]
BILLING CODE 6210-01-M

GENERAL ACCOUNTING OFFICE

Regulatory Reports Review; Receipt of Report Proposals (NRC)

The following requests for clearance of reports intended for use in collecting information from the public were received by the Regulatory Reports Review Staff, GAO, on January 8, 1981. See 44 U.S.C. 3512 (c) and (d). The purpose of publishing this notice in the Federal Register is to inform the public of such receipts.

The notice includes the title of each request received; the name of the agency sponsoring the proposed collection of information; the agency form number, if applicable; and the frequency with which the information is proposed to be collected.

Written comments on the proposed NRC requests are invited from all interested persons, organizations, public interest groups, and affected businesses. Because of the limited amount of time GAO has to review the proposed requests, comments (in triplicate) must be received on or before February 6, 1981, and should be addressed to Mr. John M. Lovelady, Senior Group Director, Regulatory Reports Review, United States General Accounting Office, Room 5106, 441 G Street NW., Washington, D.C. 20548.

Further information may be obtained from Patsy J. Stuart of the Regulatory Reports Review Staff, 202-275-3532.

Nuclear Regulatory Commission

The NRC requests clearance for reporting requirements deemed necessary to enable the staff to determine compliance with a new U.S. Environmental Protection Agency standard—40 CFR 190, which the Commission is adopting. It became effective for uranium milling facilities on December 1, 1980. Fourteen licensees will be affected by this requirement. Each will be required to submit four quarterly reports of the sampling and analysis results of their environmental monitoring program. NRC estimates that each of these reports will take an average of 20 hours for a total of 80 hours per respondent annually. In addition, a single report detailing their Quality Assurance Program and other pertinent information will be required which NRC estimates will take 80 hours per respondent to complete. The Commission claims that these new reporting requirements are necessary to obtain the most recent environmental monitoring data in order to determine compliance for this new EPA radiation protection standard. After this initial one-year period for which the four quarterly reports are required, the existing semiannual reporting requirements of 10 CFR 40.65 will be sufficient to show compliance to appropriate radiation protection standards.

The NRC requests clearance of a letter containing reporting requirements for one unresolved safety issue—Failure of BWR Control Rods to Fully Insert on Scram. This failure has occurred at several plants and NRC is in the process of investigating the extent of this problem and its potential safety significance. The letter will be sent to approximately 15 licensees (25 plants) and will request that the respondents report within 30 days of receipt of the letter that either no such events occurred at the facility(s) during calendar year 1980 or that within 90 days of receipt of the letter respondents will provide a summary tabulation of the events. For each such event, respondents will be asked to identify the number of rods not fully inserted, the position of the rods, the cause for failure to fully insert and any related maintenance activities. References to reports that already describe such events will be acceptable. NRC is also requesting clearance of recordkeeping requirements which will be for respondents to the letter to keep an ongoing tabulation of any additional such events that may occur during the calendar year 1981. NRC estimates respondents will be 15 licensees and that reporting burden will average 16 hours per plant and recordkeeping burden will average 4 hours per plant.

Norman F. Heyl,

Regulatory Reports Review Officer.

[FR Doc. 81-1886 Filed 1-16-81; 8:45 am]

BILLING CODE 1610-01-M

Regulatory Reports Review; Violation of Federal Reports Act

Notice is hereby given that the Interstate Commerce Commission has promulgated the following revised information collection requirement without first obtaining a clearance from the General Accounting Office as required by the Federal Reports Act, 44 U.S.C. 3512 (1976):

ICC distributed a new, voluntary Small Community Service Study Questionnaire. The questionnaire is not the one that was approved by the Comptroller General on January 8, 1981, B-180230 (R0700). ICC added question 6, Service Choices, to the questionnaire after approval was granted. This addition constitutes a revision of the questionnaire which requires another clearance under 44 U.S.C. 3512.

Section 3512(c) of title 44, United States Code, provides in part:

* * * an independent regulatory agency shall not conduct or sponsor the collection of information upon an identical item from ten or more persons, other than Federal employees, unless, in advance of adoption or revision of any plans or forms to be used in the collection—

(1) the agency submitted to the Comptroller General the plans or forms, together with the copies of pertinent regulations and of other related materials as the Comptroller General has specified, and

(2) the Comptroller General has advised that the information is not presently available to the independent agency from another source within the Federal Government and has determined that the proposed plans or forms are consistent with the provision of this section. * * *

The clearance granted by GAO on January 8, 1981, is hereby null and void. Accordingly, the Commission has no effective clearance of the Small Community Service Study Questionnaire distributed as required by the Federal Reports Act.

Norman F. Heyl,

Regulatory Reports Review Officer.

[FR Doc. 81-1887 Filed 1-16-81; 8:45 am]

BILLING CODE 1610-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Alcohol, Drug Abuse, and Mental Health Administration

Meetings

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. Appendix I), announcement is made of the following national advisory bodies scheduled to assemble during the month of Febrary 1981.

Alcohol Human Resource Development Review Committee: February 12-13; 9:00 a.m., Conference Room J, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857. Open—February 12; 9:00 to 10:30 a.m. Closed—Otherwise. Contact: Doris L. Banks, Room 14C-17, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443-4640.

Purpose: The Committee is charged with the initial review of grant applications for Federal assistance in the program areas administered by the National Institute on Alcohol Abuse and Alcoholism (NIAAA), Alcohol, Drug Abuse, and Mental Health Administration (ADAMHA), relating to manpower and training activities and makes recommendations to the National Advisory Council on Alcohol Abuse and Alcoholism for final review.

Agenda: From 9:00 to 10:30 a.m. on February 12, the meeting will be open for discussion of administrative announcements, and program developments. Otherwise, the Committee will be performing initial review of grant applications for Federal assistance and will not be open to the public in accordance with the determination by the Acting Administrator, ADAMHA, pursuant to the provisions of Section 552b(c)(6), Title 5 U.S. Code and Section 10(d) of Pub. L. 92-463 [5 U.S.C. Appendix I].

Community Processes and Social Policy Review Committee: February 13-14; 9:00 a.m., Westview Room 209, Gramercy Inn, 1616 Rhode Island Avenue, N.W., Washington, D.C. 20036. Open—February 13; 9:00 to 10:00 a.m. Closed—Otherwise. Contact: Rachel Driver, Room 9C-08, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443-1177.

Purpose: The Committee is charged with the initial review, based on the scientific and technical merit of applications submitted to the National Institute of Mental Health (NIMH) for Federal assistance of activities

in the field of institutional and organizational environments, and community social relationships and processes, as these relate to social problems, social policy, individual and family mental health, and work in mental health, and makes recommendations to the National Advisory Mental Health Council for final review.

Agenda: From 9:00 to 10:00 a.m. on February 12, the meeting will be open for discussion of administrative announcements and program developments. Otherwise, the Committee will be performing initial review of grant applications for Federal assistance and will not be open to the public in accordance with the determination by the Acting Administrator, ADAMHA, pursuant to the provisions of Section 552b(c)(6), Title 5 U.S. Code and Section 10(d) of Pub. L. 92-463 (5 U.S.C. Appendix I).

Psychiatric Nursing Education Review Committee: February 17-19; 9:00 a.m., Conference Room G, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857. Open—February 17; 9:00 to 10:00 a.m. Closed—Otherwise. Contact: Emilie A Embrey, Room 9-105, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443-1737.

Purpose: The Committee is charged with the initial review, based on the scientific and technical merit of applications submitted to the NIMH for Federal assistance of activities charcteristically innovative in educational design methodology, to increase the number of Master prepared nurses for practice in public mental health facilities, i.e., State mental health hospitals, community mental health/health centers, State mental health departments, long-term care facilities, located in underserved or unserved geographic areas, and makes recommendations to the National Advisory Mental Health Council for final review.

Agenda: From 9:00 to 10:00 a.m. on February 17, the meeting will be open for discussion of administrative announcements and program developments. Otherwise, the Committee will be performing initial review of grant applications for Federal assistance and will not be open to the public in accordance with the determination by the Acting Administrator, ADAMHA, pursuant to the provisions of Section 552b(c)(6), Title 5 U.S. Code and Section 10(d) of Pub. L. 92-463 (5 U.S.C. Appendix I).

Social Work Education Review Committee: February 17-20; 9:00 a.m., Washington Hotel, 15th & Pennsylvania Avenue, N.W., Washington, D.C. 20004. Open—February 17; 9:00 to 10:00 a.m. Closed—Otherwise. Contact: Judith Ann Lynch, Room 9C-15, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443-1220.

Purpose: The Committee is charged with the initial review, based on the scientific and technical merit of applications submitted to the NIMH for Federal assistance of activities for education and manpower development support in the field of social work, including those which strongly reflect the recommendations of the President's Commission on Mental Health, and in accord to the degree to which these address one or more of the NIMH priority areas on behalf of social work education, i.e., categories of basic mental health education, continuing education, short-term mental health training, and special projects, and makes recommendations to the National Advisory Mental Health Council for final review.

Agenda: From 9:00 to 10:00 a.m. on February 17, the meeting will be open for discussion of administrative announcements and program developments. Otherwise, the Committee will be performing initial review of grant applications for Federal assistance and will not be open to the public in accordance with the determination by the Acting Administrator, ADAMHA, pursuant to the provisions of Section 552b(c)(6), Title 5 U.S. Code and Section 10(d) of Pub. L. 92-463 (5 U.S.C. Appendix I).

Criminal and Violent Behavior Review Committee: February 18-20; 9:15 a.m., Gramercy Inn, 1616 Rhode Island Avenue, N.W., Washington, D.C. 20036. Open—February 18; 9:15 to 10:30 a.m. Closed—Otherwise. Contact: Phyllis Pinzow, Room 9C-14, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443-4808.

Purpose: The Committee is charged with the initial review, based on the scientific and technical merit of applications submitted to the NIMH for Federal assistance of activities in the fields of crime and delinquency, related law and mental health interactions, individual violent behavior, and sexual assault, and makes recommendations to the National Advisory Mental Health Council for final review.

Agenda: From 9:15 to 10:30 a.m. on February 18, the meeting will be open for discussion of administrative announcements and program developments. Otherwise, the Committee will be performing initial review of grant applications for Federal assistance and will not be open to the public in accordance with the determination by the Acting Administrator, ADAMHA, pursuant to the provisions of Section 552b(c)(6), Title 5 U.S. Code and Section 10(d) of Pub. L. 92-463 (5 U.S.C. Appendix I).

Psychology Education Review Committee: February 18-21; 9:00 a.m., Silver North Room, Holiday Inn, 8777 Georgia Avenue, Silver Spring, Maryland 20910. Open—February 18; 9:00 to 10:00 a.m. Closed—Otherwise. Contact: Joanne L. Kieffer, Room 9C-08, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443-1220.

Purpose: The Committee is charged with the initial review, based on the scientific and technical merit of applications submitted to the NIMH for Federal assistance of activities for psychology education/training personnel to provide mental health services to unserved or underserved geographic areas, populations, and/or public mental health facilities; for increasing the supply of minority mental health manpower; for developing strategies of primary prevention; and for increasing mental health skills and knowledge of general health care personnel, and makes recommendations to the National Advisory Mental Health Council for final review.

Agenda: From 9:00 to 10:00 a.m. on February 18, the meeting will be open for discussion of administrative announcements and program developments. Otherwise, the Committee will be performing initial review of grant applications for Federal assistance and will not be open to the public in accordance with the determination by the Acting Administrator, ADAMHA, pursuant to the provisions of Section 552b(c)(6), Title 5 U.S. Code and Section 10(d) of Pub. L. 92-463 (5 U.S.C. Appendix I).

Community Alcoholism Services Review Committee: February 18-22; 7:00 p.m., Bethesda Marriott Hotel, 2 Pooks Hill Road, Bethesda, Maryland 20014. Open—February 18; 7:00 to 9:30 p.m. Closed—Otherwise. Contact: Phillip Dawes, Room 16C-35, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443-2473.

Purpose: The Committee is charged with the initial review of grant applications for Federal assistance in the program areas administered by the NIAAA relating to alcoholism service activities and makes recommendations to the National Advisory Council on Alcohol Abuse and Alcoholism for final review.

Agenda: From 7:00 to 9:30 p.m. on February 18, the meeting will be open for reports on and discussion of administrative and program developments. Otherwise, the Committee will be performing initial review of grant applications for Federal assistance and will not be open to the public in accordance with the determination by the Acting Administrator, ADAMHA, pursuant to the provisions of Section 552b(c)(6), Title 5 U.S. Code and Section 10(d) of Pub. L. 92-463 (5 U.S.C. Appendix I).

Paraprofessional Education Review Committee: February 19-21; 9:00 a.m., Spring East Room, Holiday Inn, 8777 Georgia Avenue, Silver Spring, Maryland 20910. Open—February 19; 9:00 to 10:00 a.m. Closed—Otherwise. Contact: Carolyn N. Snowden, Room 9C-15, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443-1737.

Purpose: The Committee is charged with the initial review, based on the scientific and technical merit of applications submitted to the NIMH for Federal assistance of activities for paraprofessional education, the primary focus of which is on the development, production, and integration of paraprofessional mental health workers into service systems to meet NIMH service priorities such as providing services to unserved and underserved populations, increasing the supply of trained minority mental health service manpower, and providing mental illness prevention services, and makes recommendations to the National Advisory Mental Health Council for final review.

Agenda: From 9:00 to 10:00 a.m. on February 19, the meeting will be open for discussion of administrative announcements and program developments. Otherwise, the Committee will be performing initial review of grant applications for Federal assistance and will not be open to the public in accordance with the determination by the Acting Administrator, ADAMHA pursuant to the provisions of Section 552b(c)(6), Title 5 U.S. Code and Section 10(d) of Pub. L. 92-463 (5 U.S.C. Appendix I).

Alcohol Abuse Prevention Review Committee: February 23–24; 9:00 a.m., Bethesda Marriott Hotel, 2 Pooks Hill Road, Bethesda, Maryland 20014. Open—February 24; 9:00 a.m. to Adjournment. Closed—February 23; 9:00 a.m. to 5:00 p.m. Contract: Robert E. Davis, Room 16C–26, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–2860.

Purpose: The Committee is charged with the initial review of grant applications for Federal assistance in the program areas administered by the NIAAA, relating to prevention activities and makes recommendations to the National Advisory Council on Alcohol Abuse and Alcoholism for final review.

Agenda: From 9:00 a.m. to 5:00 p.m. on February 23, the Committee will be performing initial review of grant applications for Federal assistance and will not be open to the public in accordance with the determination by the Acting Administrator, ADAMHA, pursuant to the provisions of Section 552b(c)(6), Title 5 U.S. Code and Section 10(d) of Pub. L. 92–463 (5 U.S.C. Appendix I). From 9:00 a.m. to adjournment on February 24, the meeting will be open for discussion of administrative reports, announcements, and program developments.

Drug Abuse Biomedical Research Review Committee: February 23–27; 9:00 a.m., Club Room B, The Shoreham Americana Hotel, 2500 Calvert Street, N.W., Washington, D.C. 20008. Open—February 23, 9:00 to 10:00 a.m. Closed—Otherwise. Contact: Alan Schreier, PH.D., Room 10–42, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–2620.

Purpose: The Committee is charged with the initial review of grant applications for Federal assistance in the program areas administered by the National Institute on Drug Abuse (NIDA) relating to research and research training activities and makes recommendations to the National Advisory Council on Drug Abuse for final review.

Agenda: From 9:00 to 10:00 a.m. on February 23, the meeting will be open for discussion of general research topics, administrative announcements and program developments. Otherwise, the Committee will be performing initial review of grant applications for Federal assistance and will not be open to the public, in accordance with the determination by the Acting Administrator, ADAMHA pursuant to the provisions of Section 552b(c)(6), Title 5 U.S. Code and Section 10(d) of Pub. L. 92–463 (5 U.S.C. Appendix I).

Drug Abuse Clincial, Behavioral, and Psychosocial Research Review Committee: February 23–27; 9:00 a.m., Conference Rooms K and L, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857. Open—February 23; 9:00 to 10:00 a.m. Closed—Otherwise. Contact: Daniel L. Mintz, Room 10–42, Parklawn Building, 5600 Fishers Lane, Rockvill, Maryland 20857, (301) 443–2620.

Purpose: The Committee is charged with the initial review of grant applications for Federal assistance in the program areas administered by the NIDA relating to research and research training activities and make recommendations to the National Advisory Council on Drug Abuse for final review.

Agenda: From 9:00 to 10:00 a.m. on February 23, the meeting will be open for discussion of administrative announcements and program developments. Otherwise, the Committee will be performing initial review of grant applications for Federal assistance and will not be open to the public, in accordance with the determination by the Acting Administrator, ADAMHA, pursuant to the provisions of Section 552b(c)(6), Title 5 U.S. Code and Section 10(d) of Pub. L. 92–463 (5 U.S.C. Appendix I).

Drug Abuse Resource Development Review Committee: February 23–27; 9:00 a.m., Conference Room 17–09B, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857. Open—February 23; 9:00 to 10:00 a.m. Closed—Otherwise. Contact: Mary C. Knipmeyer, Room 10–42, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–6004.

Purpose: The Committee is charged with the initial review of grant applications for Federal assistance in the program areas administered by the NIDA relating to research and research training activities and makes recommendations to the National Advisory Council on Drug Abuse for final review.

Agenda: From 9:00 to 10:00 a.m. on February 23, the meeting will be open for discussion of administrative announcements and program developments. Other-wise, the Committee will be performing initial review of grant applications for Federal assistance and will not be open to the public, in accordance with the determination by the Acting Administrator, ADAMHA, pursuant to the provisions of Section 552b(c)(6), Title 5 U.S. Code and Section 10(d) of Pub. L. 92–463 (5 U.S.C. Appendix I).

Alcohol Biomedical Research Review Committee: February 25–17; 9:00 a.m., Gramercy Inn, 1616 Rhode Island Avenue, N.W., Washington, D.C. 20036. Open—February 25; 9:00 to 11:00 a.m. Closed—Otherwise. Contact: Harvey P. Stein, Ph.D., Room 16C–26, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–6106.

Purpose: The Committee is charged with the initial review of grant applications for Federal assistance in the program areas administered by the NIAAA, ADAMHA, relating to research activities and makes recommendations to the National Advisory Council on Alcohol Abuse and Alcoholism for final review.

Agenda: From 9:00 to 11:00 a.m. on February 25, the meeting will be open for discussion of administrative reports, announcements, and program developments. Otherwise, the Committee will be performing initial review of grant applications for Federal assistance and will not be open to the public in accordance with the determination by the Acting Administrator, ADAMHA, pursuant to the provisions of Section 552b(c)(6), Title 5 U.S. Code and Section 10(d) of Pub. L. 92–463 (5 U.S.C. Appendix I).

Alcohol Biomedical Research Review Committee: February 25–27, 9:00 a.m., Holiday Inn, 8120 Wisconsin Avenue, Bethesda, Maryland 20014. Open—February 25; 9:00 to 11:00 a.m. Closed—Otherwise. Contact: James C. Teegarden, Ph.D., Room 16C–26, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–6106.

Purpose: The Committee is charged with the initial review of grant applications for Federal assistance in the program areas administered by the NIAAA, ADAMHA, relating to research activities and makes recommendations to the National Advisory Council on Alcohol Abuse and Alcoholism for final review.

Agenda: From 9:00 to 11:00 a.m. on February 25, the meeting will be open for discussion of administrative reports, announcements, and program developments. Otherwise, the Committee will be performing initial review of grant applications for Federal assistance and will not be open to the public in accordance with the determination by the Acting Administrator, ADAMHA, pursuant to the provisions of Section 552b(c)(6), Title 5 U.S. Code and Section 10(d) of Pub. L. 92–463 (5 U.S.C. Appendix I).

Minority Group Mental Health Review Committee: February 25–27; 9:00 a.m., The Shoreham Americana Hotel, 2500 Calvert Street, N.W., Washington, D.C. 20008. Open—February 25; 9:00 to 10:30 a.m. Closed—Otherwise. Contact: Edna M. Hardy Hill, Room 9C–06, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–1177.

Purpose: The Committee is charged with the initial review, based on the scientific and technical merit of applications submitted to the NIMH for Federal assistance of activities in the fields of minority mental health, and makes recommendations to the National Advisory Mental Health Council for final review.

Agenda: From 9:00 to 10:30 a.m. on February 25, the meeting will be open for discussion of administrative announcements and program developments. Otherwise, the Committee will be performing initial review of grant applications for Federal assistance and will not be open to the public in accordance with the determination by the Acting Administrator, ADAMHA, pursuant to the provisions of Section 552b(c)(6), Title 5 U.S. Code and Section 10(d) of Pub. L. 92–463 (5 U.S.C. Appendix I).

Basic Psychopharmacology and Neuropsychology Research Review Committee: February 26–27; 9:00 a.m., Bethesda Marriott Hotel, 2 Pooks Hill Road, Bethesda, Maryland 20014. Open—February 26; 9:00 to 10:00 a.m. Closed—Otherwise. Contact: Jean Pierce, Room 9C–26, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–3936.

Purpose: The Committee is charged with the initial review, based on the scientific and technical merit of applications submitted to the NIMH for Federal assistance of activities in the fields of basic psychopharmacology and neuropsychology, and makes recommendations to the National Advisory Mental Health Council for final review.

Agenda: From 9:00 to 10:00 a.m. on February 26, the meeting will be open for discussion of administrative announcements and

program developments. Otherwise, the Committee will be performing initial review of grant applications for Federal assistance and will not be open to the public in accordance with the determination by the Acting Administrator, ADAMHA, pursuant to the provisions of Section 552b(c)(6), Title 5 U.S. Code and Section 10(d) of Pub. L. 92-463 (5 U.S.C. Appendix I).

Basic Sociocultural Research Review Committee: February 26–28; 9:00 a.m., Dupont-Plaza Hotel, Connecticut & Massachusetts Avenues NW., Washington, D.C. 20036. Open—February 26; 9:00 to 9:30 a.m. Closed—Otherwise. Contact: Marilyn Andersen, Room 9C-26, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443-3936.

Purpose: The Committee is charged with the initial review, based on the scientific and technical merit of applications submitted to the NIMH for Federal assistance of activities in the fields of social psychology, sociology, anthropology, and other social sciences focusing on social and cultural behaviors, processes, and institutions, and makes recommendations to the National Advisory Mental Health Council for final review.

Agenda: From 9:00 to 9:30 a.m. on February 26, the meeting will be open for discussion of administrative announcements and program developments. Otherwise, the Committee will be performing initial review of grant applications for Federal assistance and will not be open to the public in accordance with the determination by the Acting Administrator, ADAMHA, pursuant to the provisions of Section 552(c)(6), Title 5 U.S. Code and Section 10(d) of Pub. L. 92-463 (5 U.S.C. Appendix I).

Life Course Review Committee: February 26–28; 9:00 a.m., Capital and Executive Rooms, Dupont-Plaza Hotel, Connecticut & Massachusetts Avenues NW., Washington, D.C. 20036. Open—February 26; 9:00 to 10:00 a.m. Closed—Otherwise. Contact: Dee Herman, Room 9C-18, Parklawn Building, 5600 Fishers Land, Rockville, Maryland 20857, (301) 443-1367.

Purpose: The Committee is charged with the initial review, based on the scientific and technical merit of applications submitted to the NIMH for Federal assistance of activities in the fields of child, family, and aging, and makes recommendations to the National Advisory Mental Health Council for final review.

Agenda: From 9:00 to 10:00 a.m. on February 26, the meeting will be open for discussion of administrative announcements and program developments. Otherwise, the Committee will be performing initial review of grant applications for Federal assistance and will not be open to the public in accordance with the determination by the Acting Administrator, ADAMHA, pursuant to the provisions of Section 552b(c)(6), Title 5 U.S. Code and Section 10(d) of Pub. L. 92-463 (5 U.S.C. Appendix I).

Mental Health Services Manpower Development Review Committee: February 26–28; 8:30 a.m., Conference Rooms B and C, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857. Open—February 27; 8:30 to 9:30 a.m. Closed—Otherwise. Contact: Barbara McCracken, Room 9C-02, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443-1220.

Purpose: The Committee is charged with the initial review, based on the scientific and technical merit of applications submitted to the NIMH for Federal assistance of activities for State mental health manpower development projects, and research and demonstration projects concerning mental health services manpower, and makes recommendations to the National Advisory Mental Health Council for final review.

Agenda: From 8:30 to 9:30 a.m. on February 27, the meeting will be open for discussion of administrative announcements and program developments. Otherwise, the Committee will be performing initial review of grant applications for Federal assistance and will not be open to the public in accordance with the determination by the Acting Administrator, ADAMHA, pursuant to the provisions of Section 552b(c)(6), Title 5 U.S. Code and Section 10(d) of Pub. L. 92-463 (5 U.S.C. Appendix I).

Psychopathology and Clinical Biology Research Review Committee: February 26–28; 9:00 a.m., Silver Spring Convention Center, Holiday Inn, 8777 Georgia Avenue, Silver Spring, Maryland 20910. Open—February 26; 9:00 to 10:00 a.m. Closed—Otherwise. Contact: Mary M. Martin, Room 9C-24, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443-6470.

Purpose: The Committee is charged with the initial review, based on the scientific and technical merit of applications submitted to the NIMH for Federal assistance of activities in the fields of clinical psychopathology and clinical biology, and makes recommendations to the National Advisory Mental Health Council for final review.

Agenda: From 9:00 to 10:00 a.m. on February 26, the meeting will be open for discussion of administrative announcements and program developments. Otherwise, the Committee will be performing initial review of grant applications for Federal assistance and will not be open to the public in accordance with the determination by the Acting Administrator, ADAMHA, pursuant to the provisions of Section 552b(c)(6), Title 5 U.S. Code and Section 10(d) of Pub. L. 92-463 (5 U.S.C. Appendix I).

Basic Behavioral Processes Research Review Committee: February 27–28; 9:00 a.m., The Shoreham Americana Hotel, 2500 Calvert Street NW., Washington, D.C. 20008. Open—February 27; 9:00 to 10:00 a.m. Closed—Otherwise. Contact: Anita Lipkin, Room 9C-26, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443-3936.

Purpose: The Committee is charged with the initial review, based on the scientific and technical merit of applications submitted to the NIMH for Federal assistance of activities in the fields of experimental and physiological psychology and comparative behavior, and makes recommendations to the National Advisory Mental Health Council for final review.

Agenda: From 9:00 to 10:00 a.m. on February 27, the meeting will be open for discussion of administrative announcements and program developments. Otherwise, the Committee will be performing initial review of grant applications for Federal assistance and will not be open to the public in accordance with the determination by the Acting Administrator, ADAMHA, pursuant to the provisions of Section 552b(c)(6), Title 5 U.S. Code and Section 10(d) of Pub. L. 92-463 (5 U.S.C. Appendix I).

Substantive information may be obtained from the contact persons listed above. Summaries of the meetings and rosters of committee members for NIMH will be furnished by the Committee Management Office, Room 9-05, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, telephone: (301) 443-4333. For NIAAA: Ms. Helen Garrett, Committee Management Officer, Room 16C-21, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, telephone: (301) 443-2860. For NIDA: Ms. Mary Carol Kelly, Program Information Officer for Drug Abuse, Room 10A-56, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, telephone: (301) 443-2620.

Dated: January 13, 1981.

Elizabeth A. Connolly,

Committee Management Officer, Alcohol, Drug Abuse, and Mental Health Administration.

[FR Doc. 81-1788 Filed 1-16-81; 8:45 am]

BILLING CODE 4110-88-M

Office of Human Development Services

[Program Announcement No. 13638-811]

Multidisciplinary Centers of Gerontology Program: Long Term Care Gerontology Centers

AGENCY: Office of Human Development Services, DHSS.

SUBJECT: Announcement of Availability of Financial Assistance for the Long Term Care Gerontology Centers Program.

SUMMARY: The Administration on Aging (AoA) announces that applications are being accepted for the Multidisciplinary Centers of Gerontology Program authorized by Title IV, Part E of the Older Americans Act of 1965, as amended (42 U.S.C., sec. 3036) to support Stage II, Operational Long Term Care Gerontology Centers only. Eligibility for these awards is limited to institutions which have received a planning award from the Administration on Aging for the development of Long Term Care Gerontology Centers.

DATES: Closing dates for receipt of applications are June 30, 1981 for applicants who received a Stage I, 01 planning award on September 30, 1979, and December 30, 1981 for applicants who received a Stage I, 01 new planning award on September 30, 1980.

Scope of This Announcement

This program announcement describes the purpose and overall goals and objectives of the Long Term Care Gerontology Centers Program announced in this issue of the Federal Register. Information describing specific project activities and application requirements for Stage II Operational Grants which are covered by this announcement and other special requirements of the program are contained in *Guidelines for Preparation of Grant Applications-Long Term Care Gerontology Centers Title IV-E of the Older Americans Act—Fiscal Years 1981 and 1982.*

Program Purpose

The purpose of the Long Term Care Gerontology Centers Program is to provide core support for multidisciplinary gerontology centers oriented around the continuum of community-based health and social services to the chronically ill and functionally impaired aging person.

Program Goal and Objectives

The goal of the Administration on Aging's Long Term Care Gerontology Centers program is to foster the capability to develop the knowledge base and methods required for improving the health care and social services needed by functionally impaired older people. The objectives of these centers will be to promote an interdisciplinary approach to career and continuing education and training, the development of models of service delivery oriented around the health and social services needs of the functionally impaired elderly, and research. An essential condition for achieving these program objectives is the development of a viable organizational center structure. The program objectives will be achieved through a collaborative effort to join the interests of the Federal government and educational institutions to assist states and communities to improve planning, management, and service priorities for the functionally impaired elderly. Such an effort is expected to produce knowledge about the long term care needs of older people and develop a cadre of professionals from a multiplicity of disciplines who can meet these needs. Centers will have applied settings and carry out their mission through colloboration with health, social service, and aging agencies.

Long term Care Gerontology Centers will combine the functions of a university based or affiliated medical school, other health and social services professional schools, and, if appropriate, a public or private non-profit health or social service organization to achieve the goals and objectives of the program. Centers will accomplish the following programmatic objectives:

- Develop the health and social services personnel required to meet the needs of functionally impaired older persons through interdisciplinary career and continuing education and training
- Develop and evaluate models of health care and social services provided through interdisciplinary teams on a continum of care in order to enable functionally impaired older persons to remain in the least restrictive settings consonant with their needs
- Develop a knowledge base for long term care through the conduct of interdisciplinary clinical, applied, and policy research
- Provide technical assistance to public and voluntary health care and social service agencies, academic institutions, and professional organizations; and
- Disseminate information concerning long term care to policy makers and program managers, service providers and consumers, educators and researchers.

It is expected that centers have established the appropriate governance and structure in order to develop the organizational capability required to achieve the programmatic objectives. Therefore, Long Term Care Gerontology Centers will have accomplished the following objectives.

- Have institutional support and commitment to the center at the highest levels of the larger organization and hold a relatively high position in the institutional hierarchy
- Have their own charter, goals and objectives, and responsibility for a range of administrative functions including budgetary control, faculty appointment, and space allocation
- Have their own center director, core faculty, and facilities in order to carry out center programmatic, administrative, and data collection activities
- Have the ability to generate their own funding, keep such funds to utilize within the center, especially for various discretionary programmatic activities
- Utilize in a full participatory way their own advisory or steering committee and develop and use its own internal peer review system for the allocation of discretionary funds.

There are three (3) stages of center development, these are:

- Stage I—Planning.
- Stage II—Operational.
- Stage III—Comprehensive.

1. Planning Stage of Center Development. At the planning stage grantees specify their programmatic and organizational goals and objectives, organize their resources, establish university commitments, and create and or expand community linkages. The Administration on Aging provides centers from one to two years of support for planning. Such centers have the potential, through the competitive process, to obtain multiyear awards for the operational stage.

2. Operational Stage of Center Development. At the operational stage centers will be implementing activities relative to their organizational structure and in the program areas of education, development of service and practice models, and research. The Administration on Aging will give operational stage centers up to five years of core support.

3. Comprehensive Stage of Center Development. It is the Administration on Aging's intent to eventually designate a select number of Comprehensive Centers. Comprehensive designation will be a recognition that these select centers have achieved programmatic excellence and strong organizational development within the institution.

A center may apply for comprehensive designation at the end of any budget period in the operational stage at which time a full review will be held to determine the center's readiness for comprehensive status. A complete review will take place at the end of the fifth operational year to determine if a center can be designated as comprehensive.

Coordination With Appropriate Office on Aging

Activities conducted under Title IV-E Long Term Care Gerontology Center grants are expected to be coordinated with the appropriate DHHS Regional Office and with State and Area Agencies on Aging. This coordination will facilitate information exchange on policy and program developments in long term care, provide a basis for informed transfer and dissemination of findings from research and model demonstrations, and facilitate program and policy technical assistance to State and local governmental officials.

Coordination will facilitate educational placement opportunities for students, explore opportunities for

collaborative training, research and demonstrations in social services, mental health, rehabilitation and health services as related to the purposes and programs of the Centers. Centers will regularly provide information to the appropriate offices on aging and collaborate with the agencies regarding education and training, research, and service activities and seek advice and counsel with respect to these activities.

Eligible Applicants

Only public or non-profit organizations or institutions are eligible under the provisions of Title IV–E, Multidisciplinary Centers of Gerontology.

Eligible applicants for State II, Operational Multiyear Awards to be funded as of September 30, 1981 are limited to those applicants who received on September 30, 1979 a one year planning grant for Long Term Care Gerontology Centers funded by the Administration on Aging. Only grantees who received New Planning Awards (Stage I, 01) on September 30, 1980 are eligible to apply for State II, Operational Multiyear awards to be funded as of March 30, 1982.

Available Funds

It is anticipated that the Administration on Aging will award $2.125 million dollars for core support of up to five (5) new operational centers in Fiscal Year 1981 and $850,000 dollars for core support of up to two (2) new operational centers in Fiscal Year 1982 for this program pursuant to this announcement. All awards will be made on a competitive basis.

The project period for operational awards is one to five years. The amounts of the grant on an *annual* basis, including indirect costs, can range from $200,000 to $300,000 for the first year and $300,000 to $400,000 for the second year.

The initial grant sustains the Federal share of the budget for the first budget period of the project. Support for any additional time remaining in the project period depends upon the availability of funds, and the grantee's satisfactory performance of the scope of work for which the grant was awarded.

Grantee Share of the Project

Cost sharing is considered to be an important means of demonstrating an applicant's commitment to the objectives of this program. Grantees are expected to provide at least five (5) percent of the total allowable project costs. The grantee share may be cash or in-kind, and must be project related and allowable under the Department's applicable regulations published in 45 CFR Part 74, subparts G and Q (see 43 FR 34076, August 2, 1978).

The Application Process

Availability of Forms

Application for a grant under the Long Term Care Gerontology Centers Program must be submitted on Standard Form 424, Application for Federal Assistance, and other forms provided for this purpose. Application kits and appropriate instructions are included in *Guidelines for Preparation of Grant Applications-Long Term Care Gerontology Centers, Title IV–E of the Older Americans Act, Fiscal Years 1981 and 1982.* Copies may be obtained by writing to: Long Term Care Unit, Administration on Aging, Room 4740, DHHS North Building, 330 Independence Avenue SW., Washington, D.C. 20201. Telephone: (202) 426–8403.

Application Submission

One (1) signed original and four (4) copies of the grant application, including all attachments, must be prepared. The original and two (2) copies must be submitted to:
Department of Health and Human Services, Office of Human Development Services, Grants and Contracts Management Division, Room 1740, HHS North Building, 330 Independence Avenue SW., Washington, D.C. 20201.

One (1) copy is to be submitted to the appropriate State Agency on Aging and one (1) copy is to be submitted to the Regional Program Director of the DHHS Regional Office of Aging. Addresses for State Agencies on Aging and DHHS Regional Offices of Aging are included in the application instructions.

A–95 Notification Process

Applications for Long Term Care Gerontology Centers must follow the provisions of OMB Circular A–95. Applicants for grants must, prior to the submission of an application, notify *both* the State and Areawide A–95 Clearinghouse of their interest to apply for Federal assistance for this program. Applicants should contact the appropriate State Clearinghouse (listed in 42 FR 2210, January 10, 1977), or DHHS Regional Offices of Aging for information on how they can meet the A–95 requirements. Addresses of the DHHS Regional Offices of Aging are included in the application instructions.

Application Consideration

The Commissioner on Aging will make the final decision on each grant application under this announcement. Applications which are complete and conform to the requirements of the program guidelines will be subjected to a competitive review and evalution by qualified persons outside the Administration on Aging. Applications considered as approved by the review committees will be reviewed by AoA staff for consistency with AoA policy and priorities and appropriateness of the funding which is requested. Subject to the availability of funds, site visits will be made to selected applicants in order to develop informed recommendations concerning funding. In making a decision on awards the Commissioner on Aging will consider results of the review, AoA staff recommendations, and comments by the appropriate State Agency on Aging. Successful applicants will be notified through the issuance of Notice of Financial Assistance Awarded. This notice sets forth the amount of funds awarded, the terms and conditions of the grant, the budget period for which support is given, the total grantee share expected, and the total period for which project support is intended.

Special Consideration for Funding

In determining the order of funding of applications which have been recommended for approval, priority will be given to applications which:

1. Propose to establish a center where currently an AoA award has not been made to establish a Long Term Care Gerontology Center.
2. Propose to establish a center responsive to the special needs of underserved populations including minority and rural elderly.

Criteria for Review and Evaluation of Applications

Each application will be generally reviewed to determine that it meets the objectives of the program; elements for a complete review are included; and all applicable Federal statutes and regulations are met.

Review Criteria for Stage II,01 Operational Grants:

Criterion 1. The application proposes a project consistent with the programmatic and organizational objectives for a Long Term Care Gerontology Center as set forth in the guidelines. 10 points

Criterion 2. The proposal documents the extent to which objectives of the planning period have been satisfactorily accomplished. Specifically:

a. The extent to which the programmatic goals and objectives of the planning period were approximately achieved. 15 points

b. The extent to which organizational goals and objectives of the planning

period were appropriately achieved. 15 points

Criterion 3. The implementation plan is capable, if properly executed, of assuring the accomplishment of the proposed project's programmatic and organizational objectives. Specifically:

a. The proposal appropriately identifies the tasks to be accomplished over the proposed project period in the following areas:

(1) The programmatic objectives.

(2) The organizational objectives. 10 points

b. The proposal presents an appropriate and feasible method of approach to task accomplishment over the proposed project period in the following areas:

(1) The programmatic objectives.

(2) The organizational objectives. 10 points

c. The proposal documents the extent to which the necessary commitments from within and outside the applicant institution have been secured to assure task accomplishment relative to:

(1) The programmatic objectives.

(2) The organizational objectives. 10 points

d. The proposal provides time-lines for task accomplishment over the proposed project period that are appropriate and reasonable relative to:

(1) The programmatic objectives.

(2) The organizational objectives. 5 points

e. The proposal indicates staff loadings by tasks that are appropriate and reasonable relative to:

(1) The programmatic objectives.

(2) The organizational objectives. 5 points

f. The proposal specifies how task accomplishment will be evaluated relative to:

(1) The programmatic objectives.

(2) The organizational objectives. 5 points

Criterion 4. The proposed resources are appropriate and sufficient to assure the accomplishment of both of the project's programmatic and organizational goals. Specifically:

a. The proposed project staff are well qualified and sufficient time of senior staff is allocated to assure adequate and appropriate management of the project tasks relative to:

(1) The programmatic objectives.

(2) The organizational objectives. 5 points

b. Other facilities and resources are appropriate and adequate to assure task accomplishment relative to:

(1) The programmatic objectives.

(2) The operational objectives. 5 points

Criterion 5. The proposed budget is appropriate, justifiable, and reasonable in relation to support needed for project activities. 5 points

Closing Dates for Receipt of Applications

The closing dates for receipt of applications under this program announcement are June 30, 1981 for applicants eligible for funding as of September 30, 1981 and December 30, 1981 for applicants eligible for funding as of March 30, 1982. All applications must be received by no later than 5:30 p.m. on the applicable closing date. Applications sent by mail will be considered to be received on time if:

- The application was sent by registered or certified mail and mailed no later than June 27, 1981 for the June 30, 1981 closing date and December 28, 1981 for the December 30, 1981 closing date as evidenced by the U.S. Postal Service postmark on the wrapper or the original receipt from the U.S. Postal Service, unless the application arrives too late to be considered by the review panal;
- The application is received on or before close of business on June 30, 1981; and December 30, 1981 (whichever is the applicable closing date for the application) in the DHHS mailroom in Washington, D.C.; or
- The application is hand-delivered to the address included under "application submission" in this announcement by close of business June 30, 1981; and December 30, 1981 (whichever is the applicable closing date for that application).

Hand-delivered applications will be accepted daily from 9 a.m. to 5:30 p.m. except Saturdays, Sundays and Federal holidays. In establishing the date of receipt, consideration will be given to the time date stamps of the mailroom or other documentary evidence of receipt maintained by the Department of Health and Human Services.

Applications received after the deadline because they were postmarked or hand-delivered too late or addressed incorrectly will not be accepted and will be returned to the applicant without consideration.

(Catalog of Federal Domestic Assistance Program Number 13.638, Multidisciplinary Centers of Gerontology Program)

Dated: January 7, 1981.

Robert Benedict,

Commissioner on Aging.

Approved: January 13, 1981.

Cesar A. Perales,

Assistant Secretary for Human Development Services.

[FR Doc. 81-1529 Filed 1-16-81; 8:45 am]

BILLING CODE 4110-92-M

Office of Human Development Services

[Program Announcement No. 13628-812]

Child Abuse and Neglect Program; Demonstration and Service Improvement Projects

AGENCY: Office of Human Development Services, Department of Health and Human Services.

SUBJECT: Announcement of Availability of Grant Funds for Demonstration and Service Improvement Projects for the Child Abuse and Neglect Program.

SUMMARY: The Administration for Children, Youth and Families (ACYF) announces that applications are being accepted for demonstration and service improvement grants for Fiscal Year 1981 under The Child Abuse Prevention and Treatment Act of 1974, as amended. Regulations governing this program are published in the *Code of Federal Regulations* in 45 CFR Part 1340.

DATES: Closing date for receipt of applications is April 9, 1981.

Scope of This Announcement

This Program Announcement is one of two for the Child Abuse and Neglect Research, Demonstration and Service Improvement Grants Program in Fiscal Year 1981. It relates specifically to *demonstration and service improvement projects* authorized under Section 4(b)(1) of the Child Abuse Prevention and Treatment Act of 1974, as amended, which provides for research, demonstration and service projects related to the prevention and treatment of child abuse and neglect. A separate Program Announcement addresses the availability of funds for research projects. (See Program Announcment No. 13628-811.) A description of this program was published for public comment in the Federal Register on October 7, 1980, and this Program Announcement reflects changes resulting from comments received.

Program Purpose

The purpose of this demonstration and service improvement program is to support States and communities in their efforts to substantially improve the delivery of services to families

endangered by child abuse and neglect through: (1) Upgrading the quality of child protective services in public agencies; (2) providing services for children in shelters for battered women; (3) diagnosis and referral of developmentally disabled abused and neglected children; (4) screening and tracking for abused and neglected children taken into protective custody; (5) improvement of child protective services through cultural and ethnic group involvement; (6) improvement of child protective services through provision of guardians *ad litem* in child protective cases; (7) improvement of health-based services to prevent child abuse and neglect; and (8) improvement of mental health services for the diagnosis and treatment of abused and neglected children and adolescents.

Program Objectives

OHDS solicits applications for projects which reflect the following program objectives:

For Demonstrations on Upgrading the Quality of Child Protective Services in Public Agencies

1. To demonstrate methods of increasing the level of knowledge and skills of child protective services workers in intervention, decision-making and treatment of abused and neglected children and their families.

2. To demonstrate methods of assisting supervisors to conduct inservice training programs and evaluate case management function of line staff in child protective services agencies.

3. To demonstrate, through improved staff career development, inservice training and case management techniques, that staff turn-over and worker burnout can be reduced.

4. To demonstrate that such improved services can reduce the treatment period of child abuse and neglect cases and that there can be a reduction in the rate of recidivism.

For Demonstrations of Services for Children in Shelters for Battered Women

1. To demonstrate ways of remediating the effects of violence on children by developing specialized services for children of battered women who come to shelters for assistance.

2. To identify existing community services which are or could be available to children from violent homes, and to provide referral and advocacy on their behalf for obtaining those services.

3. To generate additional knowledge about the children of battered women, including their physical and psychological needs, the effects of violence received or observed and the treatment services necessary to remediate those effects.

4. To develop techniques whereby the parents of children from violent homes can improve parental skills, provide nurture and support for the specialized needs of their children, and be involved in the provision of any therapeutic services aimed at helping their children.

5. To demonstrate ways in which shelters for battered women in public child protective services agencies can work cooperatively to meet the requirements of child abuse and neglect reporting laws, to further protect children at risk and to coordinate services that each has to offer.

For Demonstration of Diagnosis and referral of Developmentally Disabled Abused and Neglected Children

1. To develop new or refine existing service techniques for dealing with the unique needs of abused or neglected children suffering from apparent or chronic developmental disabilities.

2. To meet the needs of abused or neglected children who have physical problems or emotional disturbances or both for detection and remedial services.

3. To identify resource needs associated with the detection of developmental disabilities of abused and neglected children and their referral for necessary remedial services.

For Demonstration of Screening and Tracking for Abused and Neglected Children Taken into Protective Custody

1. To prevent harm or threatened harm to abused and neglected children by developing and implementing written guidelines for use by all who have authority to remove children from their parents or guardians because of imminent danger to their health or safety.

2. To protect children's rights, reduce the trauma of separation, and facilitate permanent planning by developing and implementing a tracking system that fosters more expeditious handling and processing of abused and neglected children from the moment they are taken into protective custody until a court disposition is made.

For Improvement of Child Protective Services Through Cultural and Ethnic Minority Group Involvement

1. To strengthen helping networks through the improvement of information and referral sources in minority communities.

2. To facilitate coordination on individual child abuse and neglect cases involved with child protective service agencies.

3. To increase public awareness and understanding of the role of child protective services among minorities.

4. To provide "ombudsman" services for minority clients in terms of accessing, using and coping with public child protective services.

For Improvement of Child Protective Services Through Provision of Guardians Ad Litem in Child Protective Cases

1. To improve the methods of providing guardians *ad litem* for abused and neglected children in child protective proceedings.

2. To provide for the early appointment of guardians *ad litem* for abused and neglected children entering the justice system.

3. To facilitate the movement of children through the judicial system by the use of guardians *ad litem* in all stages of the court process.

For Improvement of Health-Based Services to Prevent Child Abuse and Neglect

1. To improve preventive services to families at-risk of child abuse and neglect and families in the community at-large, through the development of improved and expanded prenatal and perinatal programs and program components.

2. To improve the delivery of health-related child abuse and neglect preventive services by increasing and supporting information and referral and coordinating efforts among health-related agencies and other organizations which provide family supportive services.

3. To reduce the need for long-term, intensive medical, social and legal involvement with ameliorative child abuse and neglect services by facilitating infant-family bonding and by increasing the self-sufficiency resulting from improved infant and maternal health.

4. To increase knowledge and understanding about cost-effective methods which health-related child abuse and neglect prevention programs can employ to develop service capabilities which improve the quality of services to at-risk families and the community-at-large.

5. To enhance the overall child protection system through providing supports which augment families' self-sufficiency in adequately caring for their children.

For Improvement of Mental Health Services for the Diagnosis and Treatment of Abused and Neglected Children and Adolescents

1. To provide mental health services for purposes of diagnosis/evaluation and treatment for children and adolescents who have been identified by child protective service agencies as being abused or neglected.
2. To develop and implement effective means of linking these mental health services with child protective services.
3. To teach mental health principles to child protective services workers and child welfare principles to mental health services workers.
4. To increase the level of involvement of mental health professionals in the case management of child abuse and neglect cases.

Eligible Applicants

For Demonstrations on upgrading the Quality of Child Protective Services in Public Agencies, eligible applicants are public child protective service agencies at State, regional and local levels.

For Demonstration of Services for Children in Shelters for Battered Women, eligible applicants are public and private nonprofit organizations which currently sponsor and/or provide shelters for battered women and their children.

For Demonstration of Diagnosis and Referral of Developmentally Disabled Abused and Neglected Children, eligible applicants are public child protective service agencies and University Affiliated Programs for the Developmentally Disabled which have the capability to carry out the proposed demonstration.

For Demonstration of Screening and Tracking for Abused and Neglected Children Taken into Protective Custody, eligible applicants are public child protective service agencies and courts with jurisdiction over child protective proceedings.

For Improvement of Child Protective Services Through Cultural and Ethnic Minority Group Involvement, eligible applicants are public or private nonprofit minority organizations (defined to include organizations with at least 50 percent representation of Blacks, Hispanics, Indians and other Native Americans, migrant farmworkers or Asians on Boards of Directors and staffs) with the capability of carrying out the proposed service improvement project.

For Improvement of Child Protective Services Through Provision of Guardians Ad Litem in Child Protective Cases, eligible applicants are public or private nonprofit agencies and courts with jurisdiction over child protective proceedings, with the capability of carrying out the proposed service improvement project.

For Improvement of Health-Based Services to Prevent Child Abuse and Neglect, eligible applicants are public or private nonprofit organizations whose principal purpose is provision of health services *or* public or private nonprofit interagency or interdisciplinary organizations whose principal purpose is the prevention and treatment of child abuse and neglect and which are capable of carrying out the objectives of the proposed project.

For Improvement of Mental Health Services for Diagnosis and Treatment of Abused and Neglected Children and Adolescents, eligible applicants are public and private nonprofit organizations whose purpose is the provision of mental health services, which have an identifiable children's program and which meet the minimal guidelines for specialized children's services set forth for Community Mental Health Centers under the Mental Health Systems Act, Pub. L. 96-398, Section 301.

Available Funds

The Administration for Children, Youth and Families expects to award approximately $3,350,000 in Fiscal Year 1981 (of the $22,928,000 appropriated by Congress) for new grants in this demonstration and service improvement program.

Approximately eight grants will be awarded for *Demonstration of Upgrading the Quality of Child Protective Services in Public Agencies* for amounts of approximately $75,000 each for the initial year. These projects will be supported for three years, depending upon the availability of funds.

Approximately five grants will be awarded for *Demonstration of Services for Children in Shelters for Battered Women* for amounts of approximately $80,000 each for the initial year. In addition, one additional grant will be awarded for a project which will implement the demonstration and also provide assistance to the other projects in handling program start-up and evaluation problems. This additional grant will be in the amount of approximately $75,000 for the initial year. All of these grants will be supported for three years, depending upon the availability of funds.

Approximately two grants will be awarded for *Demonstration of Diagnosis and Referral of Developmentally Disabled Abused and Neglected Children* for amounts of approximately $75,000 each for the initial year. These projects will be supported for three years, depending upon the availability of funds.

Approximately three grants will be awarded for *Demonstration of Screening and Tracking for Abused and Neglected Children Taken into Protective Custody* for amounts of approximately $80,000 each for the initial year. These projects will be supported for three years, depending upon the availability of funds.

Approximately seven grants will be awarded for *Improvement of Child Protective Services Through Cultural and Ethnic Minority Group Involvement* for amounts of approximately $80,000 each for the initial year. These grants will be supported for three years, depending upon the availability of funds.

Approximately six grants will be awarded for *Improvement of Child Protective Services Through Provision of Guardians Ad Litem in Child Protective Cases* for amounts of approximately $80,000 each for the initial year. These grants will be supported for three years, depending upon the availability of funds.

Approximately six grants will be awarded for *Improvement of Health-Based Services to Prevent Child Abuse and Neglect* for amounts of approximately $80,000 each for the initial year. These projects will be supported for three years, depending upon the availability of funds.

Approximately six grants will be awarded for *Improvement of Mental Health Services for the Diagnosis and Treatment of Abused and Neglected Children and Adolescents* for amounts of approximately $80,000 each for the initial year. These grants will be supported for three years, depending upon the availability of funds.

In all of these grants, the initial grant sustains the Federal share of the budget for the first 12 months of the project. Support for the additional 12-month budget periods depends upon the availability of funds and the grantees' satisfactory performance of the projects for which the grants were awarded.

Grantee Share of the Project

Grantees are not required to provide a share of the budget for these grants programs.

The Application Process

Availability of Forms

Applications for grants under the Demonstration and Service Improvement Projects for Child Abuse

and Neglect Program must be submitted on standard forms provided for this purpose. Application kits which include the forms and specific Program Guidance materials for use in preparing the program narrative sections of applications may be obtained by writing to: National Center on Child Abuse and Neglect, Attn: Grants Administration Specialist, Children's Bureau/ACYF, P.O. Box 1182, Washington, D.C. 20013, Telephone: (202) 755–0567.

Application Submission

One signed and two copies of the grant application, including all attachments, must be submitted to the address provided below under the section, "Closing Dates for Receipt of Applications."

A–95 Notification Process

The Demonstration and Service Improvement Projects for Child Abuse and Neglect Program is covered under the provisions of OMB Circular A–95. Applicants for grants must, prior to submission of applications, notify the appropriate State A–95 Clearinghouse of their intent to apply for Federal assistance for this program. Applicants should contact the appropriate State Clearinghouse (listed in 42 FR 2210, January 10, 1977) for information on how they can meet the A–95 requirements.

Application Consideration

The Commissioner for Children, Youth and Families determines the final action to be taken with respect to each grant application for this program. Applications which are complete and conform to the requirements of this Program Announcement are subjected to a competitive review and evaluation by qualified persons independent of the Administration for Children, Youth and Families.

The results of the review assist the Commissioner in considering competing applications. The Commissioner's consideration may also take into account comments from HHS Regional and Headquarters program office staff. Comments also may be required from appropriate specialists and constituents inside and outside the Federal government. To the extent possible, the Commissioner's final decisions reflect the mandate of the Child Abuse Prevention and Treatment Act of 1974, as amended, "to achieve equitable distribution of assistance * * * among the States, among geographical areas of the Nation, and among rural and urban areas" (Section 4(d)).

Criteria for Review and Evaluation of Applications

Competing grant research applications under this program will be reviewed and evaluated against the following criteria:

1. The applicant organization is capable of carrying out the proposed project in terms of availability of adequate resources and facilities and previous knowledge and/or experience in this or a related program area. (10 points)

2. The applicant's presentation of the project's objectives and results or benefits expected demonstrate a clear understanding of the purpose and objectives of the demonstration or service improvement program. (10 points)

3. The applicant demonstrates the need for the proposed project, with appropriate descriptions of recipients of proposed project services and community factors which relate to the need for the project. (20 points)

4. The applicant's program narrative describes a work plan which is clear, comprehensive and feasible and has the potential for attaining the project's objectives. (This criterion relates to the application's work plan, scheduling or activities and dissemination and utilization plan.) (25 points)

5. The applicant's proposed staff have or will have the knowledge, expertise and experience in work related to the proposed project and are well qualified to carry out the proposed work plan. (20 points)

6. The applicant's proposed budget contains estimated costs to the Government which are reasonable considering the anticipated benefits and scope of the project. (15 points).

Conditions for Funding

The following conditions *must* be met in order for an application to be approved for funding:

1. The applicant organization has included a letter of support from the public child protective services agency within its community which has responsibility for receiving and investigating reports of child abuse and neglect. (This criterion is not applicable to applicants which are the public child protective service agency.)

2. The applicant has included in its budget provisions for one two-day meeting to be held in Washington, D.C., for the purposes of planning, review and collaboration with other projects.

3. The applicant has certified that it will cooperate with the National Center on Child Abuse and Neglect for purposes of program monitoring, evaluation and information sharing.

4. The applicant has agreed to provide quarterly reports on a schedule to be established after grant award.

Closing Date for Receipt of Applications

The closing date for receipt of applications under this Program Announcement is April 9, 1981.

Applications may be mailed or hand-delivered. OHDS will accept hand-delivered applications during regular working hours of 9:00 a.m. to 5:00 p.m., Monday through Fridays, except Federal holidays. Hand-delivered applications must be taken to Room 1740, HHS Building, 330 Independence Avenue, S.W., Washington, D.C.

Mailed applications will be considered to be received on time if: (1) the application is *received on or before the closing date* by the DHHS mail room in Washington, D.C., or (2) the application is *mailed by registered or certified mail not later than five days before the closing date*, as evidenced by the U.S. Postal Service postmark on the wrapper or envelope or on the original receipt from the U.S. Postal Service, unless the mailed application arrives too late to be considered by the independent review panel. Mailed applications must be addressed to: Department of Health and Human Services, Office of Human Development Services, Grants Management Branch/HHS Building, Room 1740, 330 Independence Avenue, S.W., Washington, D.C. 20201 Attn: 13628–812.

Applications may be submitted at any time prior to the closing date, and applications received after the closing date will be returned to the senders without being reviewed.

(Catalog of Federal Domestic Assistance Program Number: 13.628, Child Development—Child Abuse and Neglect Prevention and Treatment)

Dated: January 2, 1981.

Joyce Strom,

Acting Commissioner for Children, Youth Families.

Approved: January 14, 1981.

Kathryn Morrison,

Acting Assistant Secretary for Human Development Services.

[FR Doc. 81–1929 Filed 1–16–81; 8:45 am]

BILLING CODE 4110–92–M

[Program Announcement No. 13628–811]

Child Abuse and Neglect Program; Research Projects

AGENCY: Office of Human Development Services, Department of Health and Human Services.

SUBJECT: Announcement of Availability of Grant Funds for Research Projects for the Child Abuse and Neglect Program.

SUMMARY: The Administration for Children, Youth and Families (ACYF) announces that applications are being accepted for research grants for Fiscal Year 1981 under The Child Abuse Prevention and Treatment Act of 1974, as amended. Regulations governing this program are published in the *Code of Federal Regulations* in 45 CFR Part 1340.

DATES: Closing date for receipt of applications is March 25, 1981.

Scope of This Announcement

This Program Announcement is one of two for the Child Abuse and Neglect Research, Demonstration and Service Improvement Grants Program in Fiscal Year 1981. It relates specifically to *research* authorized under Section 4(b)(1) of The Child Abuse Prevention and Treatment Act of 1974, as amended, which provides for research, demonstration and service projects related to the prevention and treatment of child abuse and neglect. A separate Program Announcement addresses the availability of funds for demonstration and service improvement projects. (See Program Announcement No. 13628–812.) A description of this program was published for public comment in the **Federal Register** on October 7, 1980, and this Program Announcement reflects changes resulting from comments received.

Program Purpose

The purpose of this research program is to support social scientists working in the field of the prevention and treatment of child abuse and neglect in undertaking studies which address: (1) child neglect; (2) adolescent maltreatment; and (3) secondary analysis of data collected in the National Study of the Incidence and Severity of Child Abuse and Neglect.

Program Objectives

OHDS solicits applications for projects which reflect the following program objectives:

For Field-Initiated Research on Child Neglect—

1. To examine various aspects of child neglect, such as definitions, identification, case assessment, treatment and prevention.
2. To generate additional knowledge about child neglect that will advance understanding of this form of maltreatment and, ultimately, improve the field's capability to prevent and treat child neglect.

For Field-Initiated Research on Adolescent Maltreatment—

1. To examine various aspects of adolescent maltreatment, such as definitions, identification, case assessment, treatment and prevention.
2. To generate additional knowledge about adolescent maltreatment that will advance understanding of this special category of child abuse and neglect and, ultimately, improve the field's capability to prevent and treat adolescent maltreatment.

For Secondary Analysis of Data Collected in the National Study of the Incidence and Severity of Child Abuse and Neglect—to use the data collected in the study as a resource for exploring research, practice and program issues in the field of child abuse and neglect.

Eligible Applicants

Eligible applicants for these research projects are public and private nonprofit organizations with the capability of carrying out the proposed research projects.

Available Funds

The Administration for Children, Youth and Families (in OHDS) expects to award approximately $550,000 in Fiscal Year 1981 (of the $22,928,000 appropriated by the Congress) for new grants in this research program.

Two or more grants will be awarded for *Field-Initiated Research on Child Neglect* in amounts not to exceed $100,000 each and with the total amount for this category not to exceed $200,000 for the initial year. Each project will be supported for a period of up to three years. The initial grant sustains the Federal share of the budget for the first 12 months of the project. Support for the additional 12-month budget periods in amounts equal to the first award depends upon the availability of funds and the grantee's satisfactory performance of the project for which the grant was awarded.

Two or more grants will be awarded for *Field-Initiated Research on Adolescent Maltreatment* in amounts not to exceed $100,000 each and with the total amount for this category not to exceed $200,000 for the initial year. Each project will be supported for a period of up to three years. The initial grant sustains the Federal share of the budget for the first 12 months of the project. Support for the additional 12-month budget periods in amounts equal to the first award depends upon the availability of funds and the grantee's satisfactory performance of the project for which the grant was awarded.

Five or more grants will be awarded for *Secondary Analysis of Data Collected in the National Study of the Incidence and Severity of Child Abuse and Neglect* in amounts not to exceed $30,000 each and with the total amount for this category not to exceed $150,000 for the total project period. Each project will be supported for a period of 17 months. The grant sustains the Federal share of the budget for the 17-month project period.

Grantee Share of the Project

Each grantee is required to provide a share of the budget for this grants program. The grantee's share must be at least five percent of the total cost of the proposed project. Grantee incurred cost or third-party in-kind contributions may be used as the grantee's share of the cost of the project.

The Application Process

Availability of Forms

Applications for grants under the Research Projects for Child Abuse and Neglect Program must be submitted on standard forms provided for this purpose. Application kits which include the forms and specific Program Guidance materials for use in preparing the program narrative sections of applications may be obtained by writing to: National Center on Child Abuse and Neglect, Attn: Grants Administration Specialist, Children's Bureau/ACYF, P.O. Box 1182, Washington, D.C. 20013, Telephone (202) 755–0567.

Application Submission

One signed and two copies of the grant application, including all attachments, must be submitted to the address provided below under the section, "Closing Dates for Receipt of Applications."

Application Consideration

The Commissioner for Children, Youth and Families determines the final action to be taken with respect to each grant application for this program. Applications which are complete and conform to the requirements of this Program Announcement are subjected to a competitive review and evaluation by qualified persons independent of the Administration for Children, Youth and Families.

The results of the review assist the Commissioner in considering competing applications. The Commissioner's consideration may also take into account comments from HHS Regional and Headquarters program office staff. Comments also may be requested from appropriate specialists and constituents

inside and outside the Federal government. To the extent possible, the Commissioner's final decisions reflect the mandate of the Child Abuse Prevention and Treatment Act of 1974, as amended, "to achieve equitable distribution of assistance * * * among the States, among geographical areas of the Nation, and among rural and urban areas" (Section 4(d)).

Criteria for Review and Evaluation of Applications

Competing grant research applications under this program will be reviewed and evaluated against the following criteria:

For Field-Initiated Research on Child Neglect and Field-Initiated Research on Adolescent Maltreatment—

1. The applicant organization is capable of carrying out the proposed project, including provision of adequate resources and facilities. (5 points)

2. The applicant has defined one or two important issues for study, which, if the proposed project is implemented well, will make an important contribution to the understanding of child neglect or adolescent maltreatment. (30 points)

3. The applicant's general methodological approach is appropriate for addressing the issues defined, is feasible within the available resources and capable of achieving the program objectives. (30 points)

4. The applicant's detailed approach and methodology for carrying out the proposed project are logical and scientifically sound. This criterion is indicated by such elements of the work plan as testable hypotheses, a sound data collection plan and a sound data analysis plan. (10 points)

5. The applicant's proposed staff has sufficient knowledge and expertise in (a) the conduct of similar research projects and (b) the field of child abuse and neglect to enable it to carry out the proposed research project. (20 points)

6. The applicant's proposed budget contains estimated costs to the Government which are reasonable considering the anticipated benefits and scope of the project. (5 points)

For Secondary Analysis of Data Collected the National Study of the Incidence and Severity of Child Abuse and Neglect—

1. The applicant organization is capable of carrying out the proposed project, including provision of adequate resources and facilities. (5 points)

2. The applicant has defined one or more issues to be examined which, if the proposed project is implemented well, will make an important contribution to the field of child abuse and neglect. (30 points)

3. The applicant's general methodological approach is appropriate for addressing the issues defined, is feasible within the available resources and capable of achieving the program objectives. (25 points)

4. The applicant's detailed approach and methodology for carrying out the proposed project are logical and scientifically sound. This criterion is indicated by such elements of the work plan as a sound data analysis plan and a sound output interpretation process. (15 points)

5. The applicant's proposed staff has sufficient knowledge and expertise in the conduct of similar research projects to enable it to carry out the proposed research project. (20 points)

6. The applicant's proposed budget contains estimated costs to the Government which are reasonable considering the anticipated benefits and scope of the project. (5 points)

Conditions for Funding

For all research projects under this program announcement, the following conditions must be met before an application can be approved for funding:

1. A clear statement assures that the project director (or principal investigator) has written the program narrative portion of the application.

2. The application, if it depends upon the accessibility of certain data sources (other than data from the National Incidence Study) for its implementation, includes letters of agreement from any organizations providing such data; such letters must assure necessary access to the data under conditions which safeguard individual rights of privacy and confidentiality.

3. The applicant has certified that it will collaborate/cooperate with the National Center on Child Abuse and Neglect/Children's Bureau/ Administration for Children, Youth and Families for purposes of monitoring and information sharing.

4. The applicant has agreed to provide regular quarterly reports on a schedule to be established after grant award.

For Field-Initiated Research on Child Neglect and Adolescent Maltreatment

5. The applicant has proposed to conduct an in-depth examination of only one or two key issues and will examine the broad populations of neglected children or maltreated adolescents.

For Secondary Analysis of Data Collected in the National Study of the Incidence and Severity of Child Abuse and Neglect

6. The applicant plans either to use only the National Study's data base or, if a second data base is to be used, the National Study's data base will clearly be equal to or of greater importance than the second data base in the conduct of the research.

Closing Date for Receipt of Applications

The closing date for receipt of applications under this Program Announcement is March 25, 1981.

Applications may be mailed or hand-delivered. OHDS will accept hand-delivered applications during regular working hours of 8:00 a.m. to 5:00 p.m., Monday through Friday, except Federal holidays. Hand-delivered applications must be taken to Room 1740, HHS Building, 330 Independence Avenue, S.W., Washington, D.C.

Mailed applications will be considered to be received on time if: (1) the application is *received on or before the closing date* by the DHHS mail room in Washington, D.C., or (2) the application is *mailed by registered or certified mail not later than five days before the closing date,* as evidenced by the U.S. Postal Service postmark on the wrapper or envelope or on the original receipt from the U.S. Postal Service, unless the mailed application arrives too late to be considered by the independent review panel. Mailed applications must be addressed to: Department of Health and Human Services, Office of Human Development Services, Grants Management Branch/HHS Building, Room 1740, 330 Independence Avenue, S.W., Washington, D.C. 20201, 13628–811.

Applications may be submitted at any time prior to the closing date, and applications received after the closing date will be returned to the senders without being reviewed.

(Catalog of Federal Domestic Assistance Program Number: 13.628, Child Development—Child Abuse and Neglect Prevention and Treatment)

Dated: January 2, 1981.

Joyce Strom,

Acting Commissioner for Children, Youth Families.

Approved: January 14, 1981.

Kathryn Morrison,

Acting Assistant Secretary for Human Development Services.

[FR Doc. 81-1930 Filed 1-16-81; 8:45 am]
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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Assistant Secretary for Neighborhoods, Voluntary Associations and Consumer Protection

[Docket No. D-80-633]

Delegations of Authority; Revision and Update

AGENCY: Department of Housing and Urban Development (HUD), Office of the Assistant Secretary for Neighborhoods, Voluntary Associations and Consumer Protection.

ACTION: Notice of consolidated delegation of authority.

SUMMARY: HUD is consolidating certain delegations of authority issued at various times to the Assistant Secretary for Neighborhoods, Voluntary Associations and Consumer Protection and the General Deputy to the Assistant Secretary. The consolidated delegation of authority will remove certain ambiguities and correct certain technical errors and omissions in the delegations to be superseded by this instrument.

EFFECTIVE DATE: January 19, 1981.

FOR FURTHER INFORMATION CONTACT: Robert M. Ratcliffe, Jr., Director, Office of Management and Field Support, Office of Assistant Secretary for Neighborhoods, Voluntary Associations and Consumer Protection, Department of Housing and Urban Development, Washington, D.C. 20410, (202) 755-6207. [This is not a toll-free number].

SUPPLEMENTARY INFORMATION: The currently effective delegations of authority from the HUD Secretary to the HUD Assistant Secretary for Neighborhoods, Voluntary Associations and Consumer Protection and the General Deputy to the Assistant Secretary are set forth in a number of documents issued over a period of four years. In addition to being difficult to work with, the current delegations contain a number of outdated position titles, refer to some functions which are no longer assigned to the Office of the Assistant Secretary and are particularly confusing in regard to the rulemaking authority of the General Deputy to the Assistant Secretary. This document will eliminate the deficiencies of, and supersede, the existing delegations of authority.

Accordingly, a delegation of authority to the Assistant Secretary for Neighborhoods, Voluntary Associations and Consumer Protection and to the General Deputy to the Assistant Secretary, is issued as follows:

Section A. Authority Delegated. The Assistant Secretary for Neighborhoods, Voluntary Associations and Consumer Protection and the General Deputy to the Assistant Secretary are authorized, individually, to exercise the power and authority of the Secretary of Housing and Urban Development with respect to the programs and matters listed below, except as indicated in Section B.

1. Consumer matters within the Department of Housing and Urban Development including responsibility for reviewing and commenting upon all currently effective and proposed Departmental regulations to identify and represent the consumer interest involved, acting as liaison between the Department and public and private organizations concerned with consumer matters, developing an effective means by which consumers can gain access to the Department and communicate their concerns, assure that the interests of consumers are adequately considered in the decision-making processes of the Department, developing effective remedies for consumers with respect to the programs of the Department, and developing long term policy initiatives with respect to consumer matters.

2. The Interstate Land Sales Full Disclosure Act, Title XIV of the Housing and Urban Development Act of 1968, Pub. L. 90-448, as amended.

3. The National Manufactured Home Construction and Safety Standards Act of 1974, Title VI of the Housing and Community Development Act of 1974, Pub. L. 93-383, as amended.

4. The Real Estate Settlement Procedures Act of 1974, Pub. L. 93-533, as amended by the Real Estate Settlement Procedures Act Amendments of 1975, Pub. L. 94-205.

5. The Lead Based Paint Poisoning Prevention Act, as amended, 42 U.S.C. 4801 et seq.

6. The Neighborhood Self-Help Development Act under Title VII of the Housing and Community Development Amendments of 1978, Pub. L. 95-557.

7. The Livable Cities Act under Title VIII of the Housing and Community Development Amendments of 1978, Pub. L. 95-557.

8. Primary coordination for activities within the Department affecting the elderly or handicapped, representing the Department in meetings with other public or private organizations concerning the elderly or handicapped, determining what types of reports are necessary to evaluate Departmental actions with respect to the elderly and handicapped, and otherise assuring that the interests of the elderly and handicapped are represented in the decision-making processes of the Department.

9. Implementation and administration of a program of performance standards for new residential and commercial buildings under Title III of the Energy Conservation and Production Act of 1976, 42 U.S.C. 6831, et seq.

10. The power and authority of the Secretary of Housing and Urban Development under Sections 101(e) and 106(a) of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701w and 1701x(a)) and Section 237(e) of the National Housing Act (12 U.S.C. 1715z-2(e)), with respect to the provision of counseling and advice to tenants and homeowners in reference to property maintenance, financial management, and such other matters as may be appropriate to assist them in improving their housing conditions and meeting the responsibilities of tenancy and homeownership.

Section B. Authority Excepted. There is excepted from the authority delegated under Section A the power:

1. To sue or be sued.

2. Under the Interstate Land Sales Full Disclosure Act:

a. To conduct hearings in accordance with 5 U.S.C. 556 and 557.

b. To issue orders of determinations after such hearings.

c. To issue rules and regulations under Section 1416(a) of the Interstate Land Sales Full Disclosure Act, prescribing rights of appeal from the decisions of hearing examiners, and

d. To transmit evidence of apparent violations of the Act to the Attorney General of the United States for the institution of any appropriate criminal proceedings under Section 1415(a) of the Interstate Land Sales Full Disclosure Act.

3. Under the Lead Based Paint Poisoning Prevention Act:

To exercise the Secretary's authority under Section 301(a) of the Act, 42 U.S.C. 4821(a), which authority is to be exercised by the Assistant Secretary for Policy Development and Research in consultation with the Assistant Secretary for Neighborhoods, Voluntary Associations and Consumer Protection and the General Deputy to the latter Assistant Secretary.

Section C. Authority to Redelegate. The Assistant Secretary for Neighborhoods, Voluntary Associations and Consumer Protection, and the General Deputy to the Assistant Secretary, are authorized, individually, to redelegate to employees of the Department and to agents of the Department any of the power and authority delegated under Section A of

this delegation except the power and authority to issue rules and regulations.

Section D. Delegations revoked and Superseded. This delegation revokes and supersedes the following:

1. Delegation of authority from the Secretary to the Assistant Secretary for Consumer Affairs and Regulatory Functions at 41 FR 19365, May 12, 1976.

2. Amendments to said Delegation of Authority at 42 FR 7176, February 7, 1977 and at 42 FR 37603, July 22, 1977.

3. Delegation of authority from the Secretary to the Assistant Secretary for Neighborhoods, Voluntary Associations and Consumer Protection at 43 FR 36117, August 25, 1978.

4. Delegation of authority from the Secretary to the Assistant Secretary for Neighborhoods, Voluntary Associations and Consumer Protection at 43 FR 42045, September 19, 1978.

5. Delegation of authority from the Secretary to the Assistant Secretary for Neighborhoods, Voluntary Associations and Consumer Protection at 44 FR 19543, April 3, 1979.

Provide, That all regulations issued and actions taken under these delegations remain valid as if issued or taken under this delegation.

(Sec. 7(d), Department of HUD Act, 42 U.S.C. 3535(d))

Issued at Washington, D.C. January 12, 1981.

Moon Landrieu,

Secretary, Department of Housing and Urban Development.

[FR Doc. 81-1901 Filed 1-16-81; 8:45 am]

BILLING CODE 4210-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Status of Current Planning Documents and Projected New Planning Starts, Including Wilderness Study and Reporting Schedules

AGENCY: Bureau of Land Management, Interior.

ACTION: Plan status and major planning actions in Fiscal Year 1981 and call for comments on the projected new Resource Management Plan starts for the next 3 fiscal years and the overall wilderness study and reporting schedule.

SUMMARY: Regulations governing resource management planning for Bureau of Land Management administered public lands were published in the Federal Register on Tuesday, August 7, 1979. Section 1601.3 of those regulations required that

"The Director shall, early in each fiscal year, publish a planning schedule which shall advise the public of the status of each plan in process or to be started during that fiscal year, the major action on each plan during that fiscal year and projected new planning starts for the three succeeding fiscal years. The notice shall call for comments on planning priorities for those three fiscal years so that such comments can be considered in refining priorities for those fiscal years."

Section A below complies with this requirement of the planning regulations.

The management framework plans mentioned below were in progress when the Planning regulations were published. The Federal Register notice of December 3, 1979 (page 69374) describes the use of planning regulation provisions in management framework plans in progress. Section B of this notice fulfills the provision of the Bureau of Land Management's *Interim Management Policy and Guidelines For Lands Under Wilderness Review* dated December 12, 1979, Chapter 2, B.2.b., which states in regard to the reclamation of temporary impacts within wilderness study areas that

"Any temporary impacts caused by the activity must, at a minimum, be capable of being reclaimed to a condition of being substantially unnoticeable in the wilderness study area or inventory unit as a whole by the time the Secretary of the Interior is scheduled to send his recommendations on that area to the President, and the operator will be required to reclaim the impacts to that standard by that date. If the wilderness study is accelerated, the reclamation deadline will not be changed. *A full schedule of wilderness studies will be developed by the Department upon completion of the intensive wilderness inventory."* (emphasis added.)

DATES: Comments on either the projected new resource management plan starts or the wilderness study and reporting schedule will be accepted until March 2, 1981.

ADDRESS: Comments or suggestions should be sent to: Director (202), Bureau of Land Management, 1800 C Street, NW., Washington, D.C. 20240, Gordon A. Knight, (202) 343-5682.

Projected New Planning Starts

Comments from the public, local and State government, and other Federal agencies are invited on the priorities reflected in both the projected new planning starts and wilderness study schedule. Comments will be received until March 2, 1981, and should be sent to the Director, Mail Code 202, Bureau of Land Management, U.S. Department of the Interior, Washington, D.C. 20240. Questions may be addressed to the Branch of Planning in Washington (202) 343-5682. All of the new starts will fully comply with the Bureau planning regulations. Exceptions will be granted, where necessary, to deviate from Resource Areas as the planning base. Preplanning activities in connection with Fiscal Years 1982, 1983, and 1984 new starts will take place in the year preceding each new start. This activity may involve review of existing inventories, baseline data gathering, and, in some instances, public meetings.

The wilderness study and reporting schedule reflects both the Secretary of the Interior's and the Bureau of Land Management's goal of reporting to the President by September 30, 1987. Furthermore, the highest priority has been given by the Bureau of Land Management to reporting as many wilderness study areas which contain energy related resource conflicts as possible to the President by September 30, 1985. The reporting dates listed below have been projected based upon the best information available. Considerations in these projections have included:

1. The time frame for the completion of the multiple use plan which will develop the tentative wilderness recommendations for each area.

2. The time required for the United States Geological Survey and the Bureau of Mines to complete mineral surveys on any area recommended for designation as wilderness prior to the submission by the Secretary of his recommendation to the President; and

3. The time in which a wilderness recommendation by the Bureau of Land Management must be subjected to administrative review within the Executive Branch.

To insure that the wilderness study and reporting schedules are responsive to changing national priorities, the Bureau of Land Management will periodically review the schedules and amend them as necessary to meet those priorities. All amendments to either the wilderness study or reporting schedules will be published for public review and comment early on in each successive fiscal year until such time as all wilderness study areas have been reported to the Secretary of the Interior.

Section A—*Plan Status and Projected New Starts*

State and district	Resource area	Plan name	Major resource issues	Plan status major/action—fiscal year 1981	New resource management plan starts—fiscal years 1982	1983	1984
Alaska:							
Anchorage	McGrath	Southwest	Multiple programs.	MFP (step 1)			
	Peninsula	Bristol Bay, Aleutians	do		Start plan		
	Glennallen	Denali	do				Start plan.
Fairbanks	Arctic Kobuk	Northwest	do	MFP (step 2)			
		Arctic Koyukuk	Oil/gas	RMP (1st year inv.).			
	Yukon	White Mountain, NRA	Multiple programs.		Start plan		
		Steese NCA	do		do		
		Yukon-Tanna	do				Start plan.
Arizona strip	Shivwits	Shivwits	Vegetation allocation.	MFP (step 3)			
Phoenix	Vermillion	Vermillion	Multiple programs.		Start plan		
	Kingman	Hualapai-Aquarius	Vegetation allocation.	Program EIS (publish final).			
	Lower Gila	Lower Gila-South	do	MFP (step 2)			
		Lower Gila-South	do	RMP (1st year inv.).			
	Phoenix	Phoenix	do			Start plan	
Safford	Gila	Winkleman	do	MFP (step 3)			
		Gila	Multiple programs.		Start plan		
Yuma	Havasu	Havasu	Vegetation allocation.		do		
	Yuma	Yuma	do				Start plan.
Calif.:							
Bakersfield	Caliente	S. Sierra foothills	do	MFP (complete inv.).			
		Coast-Valley	do		Start plan		
	Hollister	Coast	do		do		
	Bishop	Benton-Owens Valley	do	Program EIS (publish final).			
		Bodie-Colville	do	MFP (step 2)			
	Folsom	Sierra	do				
Susanville	Surprise	Cowhead-Massacre	do	Program EIS (publish final.			
	Alturas	Pit River	do	RMP (2d year inv.).			
	Eagleiake	Cal-Neva	do	Program EIS (publish final).			
		Willow Creek	do	MFP (step 2)			
Susanville	Eagle Lake	Honey-Lake Beckworth	do		Start plan		
Redding	Siskiyou	Mount Dome	do	Program EIS, (publish final).			
	Siskiyou; Four Rivers; Ishi	Redding	do	MFP (complete inv.).			
			do	do			
			do	do			
Ukiah	Clearlake	Yolcayo	do	do			
Riverside	El Centro	McCain Valley	do	Program EIS (publish final).			
Colorado:							
Grand Junction	Glenwood Springs	Glenwood Springs	Vegetation allocation, coal, wilderness.	RMP (alternative formulation).			
	Grand Junction	Grand Junction	Coal/wilderness		Start plan		
Craig	Kremmling	Kremmling	Vegetation allocation, coal.	RMP (management situation analysis).			
	Little Snake	Little Snake	do	RMP (1st year inv.).			
Montrose	San Juan	San Juan	Vegetation allocation, energy, cultural resources.	do			
	Uncompahgre	Uncompahgre	Coal/wilderness		Start plan		
Canon City	Northeast	Northeast	Coal, recreation, energy.	RMP (1st year inv.).			
Idaho:							
Boise	Bruneau	Bruneau-Kuna	Vegetation allocation.	MFP (step 2)			
	Jarbridge	Jarbridge	do	RMP (1st year inv.).			
	Cascade	Cascade	Vegetation allocation, recreation, timber.				Start plan.
Burley	Magic	Twin Falls	Vegetation allocation.	MFP (step 2)			
	Raft River	Cassia	do	RMP (1st year inv.).			
Idaho Falls	Big Butte	Big Desert	do	Program EIS (publish final).			
	Medicine Lodge	Medicine Lodge	Vegetation allocation, recreation.		Start plan		
	Soda Springs	Caribou-Bear Lake	Vegetation allocation, minerals.				Start plan.

Section A—*Plan Status and Projected New Starts*—Continued

State and district	Resource area	Plan name	Major resource issues	Plan status major/action—fiscal year 1981	New resource management plan starts—fiscal years 1982	1983	1984
Salmon	Lemhi	Lemhi	Vegetation allocation, timber, lands.		Start plan		
	Pahsimerol	Elks/Pahsimerol	Vegetation allocation.	MFP (step 2)			
Shoshone	Monument/Bennett Hills	Monument	Vegetation allocation, recreation, lands.		Start plan		
	Monument/Bennett Hills	Sun Valley	Vegetation allocation.	Program EIS (publish final).			
Coeur d' Alene	Emerald, Empire and Cottonwood.	North Idaho	Vegetation allocation timber.	do			
Montana: Miles City	Big Dry	Jordan-North Rosebud	Vegetation allocation.	MFP (step 2)			
		New Prairie	do	do			
		Redwater	Vegetation allocation, coal.	Program EIS (initiate EIS).			
	Powder River	Powder River	do	RMP (1st year inv.).			
	South Dakota	South Dakota	Vegetation allocation.			Start plan	
Lewistown	Valley	Valley	Vegetation allocation wilderness.			do	
	Billings	Billings	Vegetation allocation.	RMP (1st year inv.).			
Butte	Headwaters	Headwaters	Vegetation allocation oil/gas.	RMP (2d yr. inv.)			
	Garnet	Garnet	Vegetation allocation.		Start plan		
Dickinson	W. River	Southwest	Coal	MFP (Complete inv.).			
	W. River/E. River	Williams/McKenzie	do	do			
Nevada: Las Vegas	Caliente-Virgin Valley/State-line, Esmeralda.	Clark	Lands	MFP (step 2) initiate program EIS.			
	Stateline-Esmeralda	Esmeralda	Vegetation allocation.		Start plan		
Battle Mtn.	Tonopah	Tonopah	do	MFP (step 3)			
	Shoshone-Eureka	Shoshone-Eureka	do	RMP (1st year inv.).			
Winnemucca	Paradise-Denio	Paradise-Denio	do	Program EIS (publish final).			
Elko	Wells	Wells	Vegetation allocation, lands.	RMP (planning criteria developed).			
	Elko	Elko	Vegetation allocation, lands, minerals.		Start plan		
Carson City	Lahontan/Walker-Mine	Reno	Vegetation allocation, lands.	MFP (step 2) initiate program EIS.			
	Lahontan	Lahontan	Vegetation allocation.	RMP (1st year inv.).			
	Walker-Mine	Walker	do				Start plan
Ely	Schell	Schell	do	MFP (step 2) initiate program EIS.			
	Egan	Egan	do	RMP (1st year inv.).			
New Mexico: Albuquerque	Farmington	Chaco/San Juan	Coal/wilderness	MFP (step 3)			
	Taos	Taos	Vegetation allocation, wilderness.		Start plan		
	Rio Puerco	Rio Puerco	do			Start plan	
Albuquerque	Oklahoma	Southeast Oklahoma	Coal	Program EIS (initiate).			
Socorro	San Augustine	Divide	Vegetation allocation, wilderness.	MFP (step 2)			
	Jornada	Jornada	do			Start plan	
Las Cruces	White Sands and Las Cruces/Lordsburg.	South Rio Grande	Vegetation allocation.	Program EIS (publish final).			
	Las Cruces/Lordsburg	Las Cruces/Lordsburg	Vegetation allocation, wilderness.	RMP (1st yr. inv.)			
	White Sands	White Sands	do			Start plan	
Roswell	Roswell	Roswell	do		Start plan		
	Carlsbad	Carlsbad	do				Start plan.
Oregon: Lakeview	High Desert, Lost River and Warner Lakes.	Lakeview	Vegetation allocation.	Program EIS (publish draft and final EIS).			

Section A—*Plan Status and Projected New Starts*—Continued

State and district	Resource area	Plan name	Major resource issues	Plan status major/action—fiscal year 1981	New resource management plan starts—fiscal years 1982	1983	1984
Burns	Riley/Andrews	Harney	do	MFP (step 2)			
	John Day	John Day	Vegetation allocation, wilderness.	RMP (1st yr. inv.)			
Vale	Northern Malheur and Southern Malheur.	Southern Malheur	do	MFP (2d yr. inv.)			
Prineville	Deschutes/Central Oregon	Brothers	Vegetation allocation.	do			
		Two Rivers	do		Start plan		
Baker	Grande Ronde	Grand Ronde	do			Start plan	
Salem	Alsea, Yamhill Tillamook	Westside Salem	Timber	Program EIS (publish draft).			
	Clackamas/Santiam	Eastside Salem	do	MFP (step 2), program EIS (publish draft).			
Eugene	Noti, Lorane, Mohawk and Dorena.	Eugene	do	MFP (step 2)			
Roseburg	Drain, Dillard, North Umpqua and South Umpqua.	Roseburg	do	do			
Medford	Butte Falls Klamath, Grants Pass and Rogue River.	Medford	Vegetation allocation.	MFP (complete inv.).			
Coos Bay	Smith-Umpqua Loon Lake, Coos River, Burnt Mtn. and Myrtle Wood.	Southcoast Curry	Timber	Program EIS (publish final).			
Washington: Spokane	Border and Basin	Spokane	Vegetation allocation.		Start plan		
Utah:							
Salt Lake	Pony Express	Tooele	Vegetation allocation wilderness.	MFP (complete inv.).			
	Bear River	Box Elder	Vegetation allocation.		Start plan		
	Pony Express/Bear River	Wasatch	do			Start plan	
Cedar City	Beaver River	Pinyon	do	MFP (step 2)			
	Beaver River/Kanab	Cedar	Vegetation allocation, coal.	RMP (1st yr. inv.)			
Richfield	Henry Mountain	Henry Mountain	Vegetation allocation, coal, wilderness.	MFP (step 2)			
	House Range	House Range	Vegetation allocation.	MFP (1st yr. inv.)			
	Warm Springs	Warm Springs	do				Start plan.
Moab	Price River	Price River	Vegetation allocation, coal.	MFP (step 2)			
	Grand	Grand	do	RMP (2d yr. inv.)			
	San Juan	San Juan	Vegetation allocation, wilderness.			Start plan	
Vernal	Diamond Mountain	Ashley Creek/Duchesne	Vegetation allocation.	MFP (step 2) / program EIS (publish draft).			
	Book Cliffs	Book Cliffs	do	RMP (1st yr. inv.)			
Wyoming:							
Worland	Grass Creek	Grass Creek	Vegetation allocation, wilderness, coal.	Program EIS (publish final).			
	Washakie	Washakie	Vegetation allocation, wilderness.			Start plan	
Rawlins	Divide	Divide/Basin	do	MFP (complete inv.).			
	Overland	Overland	do	do			
	Medicine Bow	Medicine Bow	do				Start plan.
	Lander	Green Mountain	Vegetation allocation.	Program EIS (publish final).			
		Lander	do		Start plan		
Rock Springs	Big Sandy	Big Sandy	Vegetation allocation, coal, wilderness trans.	Program EIS (publish final).			
	Salt Wells	Salt Wells	do	do			
	Kemmerer	Kemmerer	Vegetation allocation.		Start plan		
	Pinedale	Pinedale	do				Start plan
Casper	Buffalo	Buffalo	Vegetation allocation, wilderness.			Start plan	
	Platte River	Platte River	Vegetation allocation, coal.	RMP (1st yr. inv.)			
	Newcastle	Newcastle	Vegetation allocation.				Start plan
EBO:							
Lake States	Minnesota	Minnesota	Lands	MFP (step 3)			
	Wisconsin	Wisconsin	do	RMP (management situation analysis).			
	Michigan	Michigan	do		Start plan		

Start plan

Start plan.

Section A—*Plan Status and Projected New Starts*—Continued

State and district	Resource area	Plan name	Major resource issues	Plan status major/action—fiscal year 1981	New resource management plan starts—fiscal years 1982	1983	1984
Tuscaloosa	Florida	Pine Island Sound	do	RMP (alternative development.			
	Alabama	Alabama	Coal	RMP (3d yr. Inv.)			
	Florida	Florida	Lands		Start plan		

NOTE.—Fiscal year 1981 plan status and major actions refer to a sequence of planning actions relating to MFP and RMP development.

SECTION B.—*Wilderness Study and Reporting Schedule* [1]

State and district	Resource area	Plan name	Type	Plan start	Plan completion	Reporting year to the Secretary of the Interior
Arizona:						
Arizona Strip District	Shivwits	Shivwits	MFP-A	1982	1985	1984.
Arizona Strip District	Vermillion	Vermillion	RMP	1982	1985	1987.
Phoenix District	Kingman	Cerbat Black	MFP-A	1982	1983	1985.
Phoenix District	Kingman	Haulapais	MFP-T	1978	1980	1985.
Phoenix District	Kingman	Lower Gila North	MFP-T	1979	1982	1985.
Phoenix District	Kingman	Lower Gila South	RMP	1981	1984	1987.
Phoenix District	Phoenix	Black Canyon	MFP-A	1984	1985	1987.
Phoenix District	Phoenix	Middle Gila	MFP-A	1982	1983	1985.
Safford District	Gila	Gila	RMP	1982	1985	1987.
Safford District	San Simon	San Simon	MFP-A	1984	1985	1985.
Safford District	San Simon	Black Hills	MFP-A	1982	1983	1985.
Yuma District	Yuma	La Paz	MFP-A	1982	1983	1985.
Yuma District	Havasu	Havasu	RMP	1982	1985	1987.
California:						
Bakersfield District	Bishop	Benton Valley	MFP-A	1983	1984	1987.
Bakersfield District	Bishop	USFS (Inyo)	Forest Plan	1981	1983	1987.
Bakersfield District	Bishop	Bodie-Coleville	MFP-T	1980	1982	1985.
Bakersfield District	Bishop	USFS (Inyo-Tolyabe)	Forest Plan	1981	1983	1984.
Susanville District	Pit River	Alturas	RMP	1980	1983	1987.
Susanville District	Eagle Lake/Surprise	Eagle Lake/Surprise	MFP-A	1984	1985	1987.
Susanville District	Eagle Lake	Buffalo Hills	MFP-A [2]	1982	1983	1987.
Redding District	Four River/Iahi	Redding	MFP-T	1981	1983	1987.
Bakersfield District	Caliente	South Sierra	MFP-T	1981	1983	1987.
Bakersfield District	Bay Sierra/North Mother Lode	USFS (Tahoe/Stanislaus)	Forest Plan	1981	1983	1987.
Bakersfield District	Bay-Sierra	Sierra	MFP-A	1983	1984	1987.
Bakersfield District	Caliente	USFS (Sequoia)	Forest Plan	1981	1983	1987.
Folsom/Bakersfield Districts	Diablo/Caliente	Coast	RMP	1982	1985	1987.
Bakersfield/Folsom Districts	Caliente/Diablo	USFS (Los Padres)	Forest Plan	1981	1985	1986.
Ukiah District	North Coast	King Range	MFP-A	1982	1983	1985.
Ukiah District	North Coast	North Coast	MFP-A	1983	1984	1987.
Ukiah District	Mendocino	Mendocino	MFP-A	1981 [3]	1983	1984.
Ukiah District	Mendocino	Special Study (Thatcher Ridge)	MFP-A	1984	1985	1986.
Ukiah District	Clear Lake	Clear Lake	MFP-A	1981	1982	1987.
Riverside District	El Centro	Western Counties	MFP-A	1982	1983	1987.
Riverside District	El Centro	E. San Diego County	MFP-T	1978	1981	1987.
Riverside District	California Desert					
Bakersfield District	Conservation Area	California Desert	Special	1978	1980	1984.
Colorado:						
Craig District	White River	White River	MFP-A	1981	1982	1984.
Craig District	Kremmling	Kremmling	RMP	1980	1983	1984.
Craig District	Little Snake	Little Snake	RMP	1983	1985 [4]	1986.
Montrose District	Gunnison Basin	Gunnison Basin	MFP-A	1981	1982	1984.
Montrose District	American Flats	American Flats	MFP-A	1981	1982	1984.
Montrose District	Uncompahgre	Uncompahgre	RMP	1984	1986 [5]	1987.
Montrose District	San Juan	San Juan	RMP	1981	1984	1986.
Canon City District	Royal Gorge	Royal Gorge	MFP-A	1982	1983	1985.
Canon City District	San Luis	San Luis	MFP-A	1982	1983	1984.
Canon City District	San Luis	Saguach	MFP-A	1982	1983	1984.
Grand Junction District	Glenwood Springs	Glenwood Springs	RMP	1980	1983	1984.
Grand Junction District	Grand Junction	Grand Junction	RMP	1984	1986 [6]	1987.
Idaho:						
Salmon District	Challis	Challis	MFP-A	1981	1982	1985.
Coeur D' Alene District	Emerald Empire Cottonwood	North Idaho	MFP-A	1981	1982	1986.
Shoshone District	Bennett Hills	Shoshone	MFP-A	1981	1982	1985.
Shoshone District	Monument	Sun Valley	MFP-A	1982	1983	1986.
Idaho Falls District	Big Butte	Little Lost Birch Creek-Big Desert	MFP-A	1981	1982	1986.
Idaho Falls District	Soda Springs	Bear Lake	MFP-A	1982	1983	1985.
Burley District	Magic	Twin Falls	MFP-T	1981	1983	1985.
Burley District	Bannock-Oneida	Bannock Oneida	MFP-A	1982	1983	1984.
Boise District	Owyhee	Owyhee [7]	MFP-A	1981	1984	1985.
Boise District	Bruneau	Bruneau-Kuna	MFP-T	1981	1984	1985.
Idaho Falls District	Big Butte	Big Lost-Mackay	MFP-T	1981	1984	1986.
Salmon District	Pahsimeroi	Ellis	MFP-T	1981	1984	1986.
Idaho Falls District	Medicine Lodge	Medicine Lodge	RMP	1982	1985	1987.
Boise District	Jarbidge	Jarbidge	RMP	1981	1984	1987.
Shoshone District	Monument	Monument	RMP	1982	1985	1987.
Salmon District	Lemhi	Lemhi	RMP	1982	1985	1987.
Boise District	Cascade	Cascade	MFP-A	1985	1986	1987.
Montana:						
Butte District	Headwaters	Headwaters	RMP	1980	1983	1985.
Butte District	Mountain Foothills	Dillon	MFP-A	1982	1983	1986.
Butte District	Garnet	Garnet	RMP	1982	1985	1987.
Lewistown District	Hilwa	South Bearpaw	MFP-A [8]	1981	1982	1985.

SECTION B.—*Wilderness Study and Reporting Schedule* [1]—Continued

State and district	Resource area	Plan name	Type	Plan start	Plan completion	Reporting year to the Secretary of the Interior
Lewistown District	Judith	Fergus	MFP-A [8]	1981	1982	1986.
Lewistown District	Phillips	Phillips	MFP-A [8]	1981	1982	1986.
Lewistown District	Valley	Valley	RMP	1983	1986	1987.
Lewistown District	Billings	Billings	RMP	1981	1984	1987.
Miles City District	Big Dry	New Prairie	MFP-T	1980	1982	1986.
Miles City District	Powder River	Powder River	RMP	1981	1984	1987.
Miles City District	Big Dry	Musselshell	MFP-A	1985	1986	1987.
Nevada:						
Las Vegas District	Caliente	Caliente	MFP-A	1981	1983 [7]	1985.
Las Vegas District	Clark	Clark	MFP-A	1983	1984	1985.
Ely District	Egan	Egan	RMP	1981	1984	1985.
Elko District	Elko	Elko	RMP	1982	1985 [7]	1987.
Stateline-Esmeralda District	Esmeralda	Esmeralda	RMP	1982	1985 [7]	1987.
Carson City District	Lahontan	Lahontan	RMP	1981	1985 [7]	1987.
Winnemucca District	Paradise Denio	Paradise Denio	MFP-A	1981	1983 [7]	1986.
Ely District	Schell	Schell	MFP-A	1983	1984	1987.
Battle Mtn. District	Shoshone-Eureka	Shoshone-Eureka	RMP	1981	1984	1986.
Winnemucca District	Sonoma-Gerlach	Sonoma-Gerlach	MFP-A	1982	1983	1986.
Battle Mtn. District	Tonopah	Tonopah	MFP-A	1981	1982	1986.
Carson City District	Walker	Walker	RMP	1982	1985 [7]	1987.
Elko District	Wells	Wells	RMP	1980	1983	1987.
New Mexico:						
Las Cruces District	Las Cruces/Lordsburg	Las Cruces/Lordsburg	RMP	1981	1984	1986.
Las Cruces District	White Sands	White Sands	RMP	1983	1986	1987.
Las Cruces District	White Sands	Sacramento Escarpment	Forest Plan	1981	1981	1985.
Las Cruces District	White Sands	Guadalupe Escarpment	Forest Plan	1981	1981	1985.
Albuquerque District	Farmington	Chaco	MFP-T	1980	1983 [10]	1984.
Albuquerque District	Rio Puerco	Rio Puerco	RMP	1983	1986	1987.
Albuquerque District	Taos	Taos	RMP	1982	1985	1986.
Roswell District	Carlsbad	Carlsbad	MFP-A	1985	1986	1987.
Roswell District	Roswell	Roswell	RMP	1982	1985	1986.
Socorro District	San Augustine	Divide	MFP-T	1980	1982	1985.
Socorro District	Jornada	Jornada	MFP-A	1985	1986	1987.
Socorro District	Jornada	Sierra Ladrones	MFP-A	1981	1982	1986.
Oregon:						
Prineville District	Central Oregon/Deschutes	Brothers	MFP-T	1979	1981	1985.
Burns District	Andrews [13]	Andrews	MFP-T	1979	1981	1985.
Vale District	Southern Malheur	Southern Malheur	MFP-T	1980	1982	1986.
Vale District	Northern Malheur	Northern Malheur	MFP-A [14]	Planning—fiscal year 1980; EIS—fiscal year 1983.	Planning—fiscal year 1982; EIS—fiscal year 1984.	1987.
Medford District	Klamath	Medford	MFP-A [8]	Fiscal year: 1981	Fiscal year: 1984	1987.
Coos Bay District	Myrtle Wood	South Coast	MFP-A [15]	1981	1984	1987.
Lakeview District	High Desert	High Desert	MFP-A	1983	1984	1987.
Lakeview District	Warner Lakes	Warner Lakes	MFP-A	1983	1984	1987.
Burns District	Riley/Drewsey	Drewsey	MFP-A [15]	1981	1984	1986.
Baker District	Baker	Baker	MFP-A	1985	1986	1987.
Baker District	Grande Ronde	Grande Ronde	RMP	1983	1986	1987.
Burns District	John Day	John Day	RMP	1981	1984	1987.
Prineville District	Central Oregon/Deschutes	Two Rivers	RMP	1982	1985	1987.
Spokane District	Border	Border	RMP	1982	1986	1987.
Utah:						
Salt Lake District	Toole	Pony Express	MFP-T	1981	1983	1985.
Cedar City District	Kanab-Escalante	Escalante/Kanab	MFP-A	1981	1982	1984.
Cedar City District	Dixie	Dixie	MFP-A	1981	1982	1985.
Richfield District	House Range	House Range	RMP	1981	1984	1987.
Richfield District	Warm Springs	Warm Springs	MFP-A	1985	1986	1987.
Richfield District	Henry Mtns.	Henry Mtns.	MFP-T	1980	1982	1985.
Moab District	San Rafael	San Rafael	MFP-A	1984	1985	1986.
Moab District	Price River	Price River	MFP-A	1985	1986	1987.
Moab District	Grand	Grand	RMP	1982	1983	1987.
Moab District	San Juan	San Juan	RMP	1983	1986	1987.
Vernal District	Three Corners	Diamond Mountain	MFP-A	1983	1984	1985.
Vernal District	Book Cliffs	Book Cliffs	RMP	1981	1984	1987.
Richfield District	Henry Mountains	Henry Mountains	MFP-A	1981	1982	1983.
Wyoming:						
Rock Springs District	Kemmerer	Pioneer Trails	MFP-A	1981	1982	1984.
Worland District	Grass Creek	Grass Creek	MFP-T	1979	1981	1985.
Rock Springs District	Salt Wells	Salt Wells	MFP-T	1979	1981	1985.
Rock Springs District	Big Sandy	Pilot Butte	MFP-T	1979	1981	1985.
Rawlins District	Overland	Overland	MFP-T	1980	1982	1986.
Rawlins District	Divide	Divide/Ferris	MFP-T	1980	1982	1986.
Casper District	Buffalo	Buffalo	RMP	1983	1986	1987.
Rawlins District	Lander	Gas Hills	RMP	1982	1985	1987.
Worland District	Washakie	Washakie	RMP	1983	1986	1987.
Worland District	Cody	Cody	MFP-A	1985	1986	1987.
Rawlins District	Medicine Bow	Medicine Bow	RMP	1983	1986	1987.
Rock Springs District	Pinedale	Pinedale	MFP-A	1982	1985	1987.

SECTION B.—*Wilderness Study and Reporting Schedule* [1]—*Continued*

[1] All wilderness *management framework plan amendments* (MFP–A) are, unless otherwise noted, 2-year efforts which include the concurrent development of a wilderness environmental impact statement (EIS). *Transition management framework plans* (MFP–T) are 3-year efforts. Many of these are ongoing and wilderness considerations are being incorporated during the process. Unless otherwise noted, a wilderness EIS will be developed at the conclusion of the MFP–T. *Resource management plans* (RMP) are, unless otherwise noted, 4-year efforts which include the concurrent development of an environmental impact statement addressing all the proposed actions within the RMP. A separate final wilderness legislative EIS will be developed following publication of the proposed resource management plan.

[2] Joint study with BLM-Nevada lead agency.

[3] Joint study USFS—fiscal year 1981—USFS Lead; fiscal year 1982–83—BLM development of EIS, MFP–A.

[4] Two-year resource inventory will precede the RMP effort.

[5] Concurrent effort with Bruneau-Kuna MFP–T effort so that all wilderness study areas in the same geographic region can be examined simultaneously. Wilderness EIS for both is developed concurrently.

[6] Consolidated into one amendment, "Missouri Breaks."

[7] One additional year is required to incorporate the results of a pilot mineral resources inventory conducted on a cost sharing basis by the Nevada Bureau of Mines and Geology.

[8] These RMPs will require one additional year to complete an extensive inventory of all existing resources excluding wilderness.

[9] One additional year is required to incorporate the results of a pilot mineral resources inventory conducted on a cost sharing basis by the Nevada Bureau of Mines and Geology.

[10] Includes concurrent wilderness EIS development.

[11] Wilderness studies and EIS are scheduled for concurrent development with the Southern Malheur MFP–T effort so that all the WSAs in the same geographic region can be examined simultaneously. The wilderness EIS for both areas will be developed concurrently with the Southern Malheur Grazing EIS.

[12] Wilderness studies for both plans are integrated with a grazing plan amendment and EIS for the Medford Plan.

[13] Wilderness studies for both plans are integrated together.

Dated: January 13, 1981.

Ed Hastey,

Associate Director

[FR Doc. 81-1828 Filed 1-16-81; 8:45 am]

BILLING CODE 4310-84-M

Status of Wilderness Review of Public Lands

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Status of Wilderness Review of Public Lands.

SUMMARY: This notice summarizes the present status of the wilderness review of roadless public lands and islands required by the Federal Land Policy and Management Act (FLPMA), section 603(a). The purpose of this notice and calendar of events are to provide (1) one source of information summarizing current wilderness review activities, and (2) advance notice of upcoming decisions and public review periods.

DATE: All information in this notice is current through January 13, 1981.

FOR FURTHER INFORMATION CONTACT: Gary G. Marsh, Bureau of Land Management, Division of Wilderness and Environmental Areas, 18th and C Street, N.W., Washington, D.C. 20240, Telephone: (202) 343–6064.

SUPPLEMENTARY INFORMATION: This calendar of events is the twelfth in a series whose last notice appeared in the Federal Register December 17, 1980, (p. 83028). The calendar of events focuses only on the current status of all ongoing wilderness review activities. Those inventories whose final decisions are in effect, as well as studies or reports not yet initiated, are not reported in this notice. For detailed information regarding each specific activity, reference is made either to the appropriate notice previously appearing in the Federal Register, or to notices which are anticipated to be published in the upcoming 30 days. It must be noted that "anticipated" dates are projected only, and thus are subject to change.

The Bureau of Land Management wilderness review includes (1) an inventory of public lands to identify roadless lands and islands having wilderness characteristics; (2) a study of those areas found to have wilderness characteristics (wilderness study areas or "WSA's"); and (3) a report from the Secretary of the Interior to the President as to whether each WSA is more suitable for wilderness or other resource uses. The President will send his recommendations to Congress. Only Congress has authority to designate an area as wilderness.

The inventory process has two stages: (1) an initial inventory designed to quickly identify and release from wilderness review those lands which clearly and obviously lack wilderness characteristics; and (2) an intensive inventory for those lands which may possess wilderness characteristics. The initial inventory process was completed in the contiguous Western States by November, 1979. In certain instances where important resource use decisions were pending, the criteria used in the intensive inventory process were applied ahead of the regular inventory schedule in order to reach final decisions as quickly as possible. Such inventories are referred to as "special project inventories" or "accelerated intensive inventories."

The wilderness intensive inventory for 14 contiguous Western States was completed for the majority of those lands and was announced in the Federal Register on November 14, 1980 (p. 75574). The statistical summary table reflects both proposed and final intensive inventory decisions in the contiguous Western States, Minnesota, and a special Nonwilderness Assessment in Alaska related to the Alaska Natural Gas Transportation System route. All acreages are presented by State political boundaries and not BLM administrative boundaries. Some final decisions listed under the "inventory completed" column may be under protest or appeal. In those instances, decisions are not yet in effect and are subject to interim management requirements are required by FLPMA, section 603(c). Any appeals of the State Directors' wilderness inventory decisions will be subject to the administrative procedures as outlined in Title 43 *Code of Federal Regulations*, Part 4. This regulation identifies the Interior Board of Land Appeals as the office to evaluate and act on such appeals.

The FLPMA also directed the Secretary of the Interior to make recommendations to the President on 55 natural and primitive areas which were formally identified prior to November 1, 1975. They are referred to as "instant study areas" (ISA's). To date BLM has reviewed these areas and submitted final suitability recommendations on 19 areas to the President. These recommendations are under administrative review. The President also has received status reports for the remaining 36 areas which outlined the progress in the development of final recommendations concerning their suitability for designation as wilderness.

The Notice of Availability of the draft Wilderness Study Policy and public comment period was announced in the Federal Register December 19, 1980 (p 83779). Two additional documents concerning the BLMN wilderness review program was anticipated to be announced in the Federal Register in mid-January, 1981, in which public review and comment will be requested: (1) a proposed wilderness study schedule, (2) a draft document containing management policies and guidelines for BLM administered wilderness areas. Any person wishing to receive these future documents for review should request copies from BLM State Directors or the Division of Wilderness and Environmental Areas,

Bureau of Land Management (430), 18th and C Street, N.W., Washington, D.C. 20240.

Dated: January 14, 1981.

Alden Sievers,

Acting Assistant Director, Recreation and Environmental Areas.

Calendar of Events

Arizona

Statewide Intensive Inventory:
—Final decision announced in Federal Register November 14, 1980, (p. 75577); protest period was extended and ended December 30, 1980, as announced in Federal Register December 10, 1980, (p. 81264) with protests. Decision on protests anticipated to be announced on or prior to February 13, 1981.

Accelerated Intensive Inventory:
—Hualapai-Aquarius Planning Area final decision announced in Federal Register October 14, 1980, (p. 67780); 30-day protest period ended November 14, 1980, with protest. Affects units 020–059, 062. Protest decision anticipated late January, 1981.
—State Director's decision on protests for the Overthrust Belt anticipated late January 1981. Affects units: 1–105 to 1–109, 1–112 to 1–115, 1–119 to 1–124, 1–127 to 1–130, 1–134, 1–135.

Study/Reporting:
—Aravaipa Canyon Instant Study Area final environmental impact statement and suitability report complete; under administrative review.
—Paulte, Paria, and Vermillion Cliffs ISA's draft suitability report and draft environmental impact statement availability announced in Federal Register April 22, 1980, (p. 27022); U.S. Geological Survey and Bureau of Mines mineral reports availability announced in Federal Register September 25, 1980, (p. 63558); public comment period ended December 22, 1980.

California

Statewide Intensive Inventory:
—Final decision for California-Oregon and California-Nevada interstate units announced in Federal Register November 14, 1980, (p. 75583) initiating a 30-day protest period ending on December 15, 1980. Protest extended and ended December 29, 1980 with protests. Decision on protests anticipated to be issued on or prior to February 13, 1981.

IBLA decision:
—December 11, 1980, IBLA dismissed certain CDCA units: 137A, 271, 305, 343, and 376 due to appellant's failure to file a statement of reasons and voluntary withdrawal.

Colorado

Statewide Intensive Inventory:
—Final decision announced in Federal Register November 14, 1980, (p. 75584); 30-day protest period ended December 15, 1980, with protests as announced in Federal Register January 5, 1981 (p. 1033). Decision on protests will be issued on or prior to February 13, 1981.

Study/Reporting:
—Powderhorn ISA draft environmental impact statement and draft suitability report availability announced in Federal Register May 7, 1980, (p. 30141); public comment period ended July 1, 1980.

Idaho

Statewide Intensive Inventory:
—State Director's proposed intensive inventory decision on Jim Sage unit 23–1 announced in Federal Register June 4, 1980, (p. 37738) initiating a 90-day comment period, which ended September 2, 1980; (p. 75586); 30-day protest period ended December 15, 1980, without protest.

Statewide Intensive Inventory:
—Final decision announced in Federal Register November 14, 1980, (p. 75586); 30-day protest period ended December 15, 1980 with protests as announced in Federal Register January 5, 1981, (p. 1038). Decision on protests anticipated to be issued on or prior to February 13, 1981.
—IBLA issued decision on November 26, 1980, directing the BLM State Director to release the intensive inventory decision for Stateline initial inventory units 16–48A (contiguous with OR–3–194A), 16–48B (contiguous with OR–3–195), 16–48C, 16–53 (contiguous with NV–010–103 and 103A), 16–58A (contiguous with NV–010–102), 16–59, 16–70E (contiguous with NV–020–811 and OR–3–159), 17–19, 17–21, 17–26, (contiguous with NV–010–179), 22–1 (contiguous with NV–010–164 and UT 020–001). Proposed decision anticipated to be announced late February initiating a 90-day public comment period.

Study/Report:
—Great Rift ISA draft environmental impact statement availability announced in Federal Register March 5, 1980, (p. 14251); public comment period ended May 27, 1980; under administrative review.

Montana

Statewide Intensive Inventory:
—Final decision announced in Federal Register November 14, 1980, (p. 75589) protest period ended December 31, 1980 with protests. Decision on protests anticipated to be issued on or prior to February 13, 1981.

Study/Reporting:
—Humbug Spires and Bear Trap Canyon ISA's draft environmental impact statements and draft suitability reports availability announced in Federal Register April 18, 1980. (p. 26477) and April 30, 1980, (p. 28823); public comment period ended June 17, 1980. U.S. Geological Survey and Bureau of Mines mineral reports were available for 30-day public review during the month of October as announced in Federal Register September 26, 1980, (p. 64937).

Nevada

Statewide Intensive Inventory:
—Final decision announced in Federal Register November 14, 1980, (p. 75594), 30-day protest period ended December 15, 1980, with protests. Decision on protests anticipated to be issued on or prior to February 13, 1981.

New Mexico

Statewide Intensive Inventory:
—Final decision announced in Federal Register November 14, 1980, (p. 75590); correction published in Federal Register December 19, 1980 (p. 83679); 30-day protest period ended on December 15, 1980 with protests. Decision on protests anticipated to be issued on or prior to February 13, 1981.

Oregon

Statewide Intensive Inventory (includes Washington):
—Final decision announced in Federal Register November 14, 1980, (p. 75597); 30-day protest period ended on December 15, 1980, with protests. Decision on protests anticipated to be issued on or prior to March, 1981.

Utah

Statewide Intensive Inventory:
—Final decision announced in Federal Register November 14, 1980, (p. 75602); 30-day protest period ended December 15, 1980, with protests as announced in Federal Register December 31, 1980, (p. 86556). Decision on protests anticipated to be issued on or prior to February 13, 1981.

Study/Reporting:

—Correction on Devil's Garden ISA published in Federal Register December 31, 1980, (p. 86558).

Wyoming

Statewide Intensive Inventory:

—Final decision announced in Federal Register November 14, 1980, (p. 75606); 30-day protest period ended December 15, 1980, with protests as announced in Federal Register December 29, 1980, (p. 85526). Decision on protests anticipated to be issued on or prior to February 13, 1981.

Study/Reporting:

—Scab Creek ISA draft environmental impact statement and draft suitability report notice of availability, along with scheduled hearings announced in Federal Register December 9, 1980, (p. 81127).

Inventory Units Under Appeal to ISLA

State	Initial (non-CDCA)	Special project/ accelerated intensive	Intensive	
			CDCA	Non-CDCA
CA	010-031		117	010-040
	-033		131	-060
	-047		136	-063
	-069			-065
	-087 *		143	-068
	-101		150	020-211
	620-761		156	-609
	-901		158	-1013
	-1001		172	030-054
	030-300		217	050-191
	-400		221	-134
	-500		222	-135
			227	-211
			242	
			263	
			264	
			265	
			290	
			321	
			355	
			364	
			348	

Inventory Units

State	Initial	Special project/ accelerated intensive	Intensive
CO	070-031		
ID	26-3	16-26	46-11
	-4	-28	-13
	-5	-36	-14
		-40	-14A
		-41	
		-42	
		-44	
		-45	
		-47	
		-48A	
		-49B	
		-49E	
		-52	
MT		084-308	
		075-183	
		076-031	
		-032	
		-036	
		-037	
		-011	
MT		-022	
		-025	
		-026	
		-028	
		-034	
		-039	
		-068	
NV	010-102/ID-1[illegible]-58A		
	-103/ID-1[illegible]-53	020-642/ IDOR—3-81	
	-103A/ID-[illegible]-53		

Inventory Units—Continued

State	Initial	Special project/ accelerated intensive	Intensive
	-179/ID-27-1/ UT-020-001.		
	020-611/ID-16-70E/ OR-3-159.		
OR	3-159/ID-16-70E/ NV-020-611.	2-81L/ NV—020-542	
		2-82H	
	3-194A/ID-16-48A		
	3-195/ID-16-48B		
	11-6		

Inventory Units—Continued

State	Initial	Special project/ accelerated intensive	Intensive
UT	020-611/ID-22-1/ NV-010-164.	060-223	
		-226	
		060-007	
UT		-011	
		-012	
WY		040-110	
		-221	
		-222	
		-223	

Statistical Summary Table.—*BLM Wilderness Inventory Results (Shown in Acres) as of Jan. 1, 1981*

Contiguous Western States	Public lands subject to wilderness inventory	Proposed intensive inventory decisions: Not yet announced	Announced-subject to public review: Lacking wilderness characteristics	Announced-subject to public review: With wilderness characteristics	Inventory completed final decisions announced: Lacking wilderness characteristics	Inventory completed final decisions announced: Wilderness study areas
AZ	12,586,000	822,000	0	0	8,116,000	2,858,000
CA	18,595,000	0	0	0	10,239,000	8,246,000
CO	7,996,000	3,000	0	0	7,189,000	804,000
ID	11,949,000	252,000	0	0	10,105,000	1,592,000
MT	8,140,000	46,000	0	0	7,664,000	430,000
NV	49,118,000	103,000	0	0	43,895,000	5,120,000
NM	12,847,000	9,000	0	0	11,814,000	1,024,000
ND	68,000	0	0	0	68,000	0
OK	7,000	0	0	0	7,000	0
OR	13,985,000	280,000	0	0	11,194,000	2,491,000
SD	277,000	0	0	0	277,000	0
UT	22,076,000	0	0	0	19,499,000	2,577,000
WA	310,000	0	0	0	304,000	6,000
WY	17,793,000	0	0	0	17,212,000	581,000
Subtotal	173,727,000	[1] 1,515,000	0	0	148,883,000	23,529,000
Eastern States: MN	45,000	0	0	0	45,000	0

[1] Includes initial inventory units under protest or appeal and where additional time is needed for interagency coordination.

Alaska—Nonwilderness Assessment of the Alaska Natural Gas Transportation System route reviewed 2,482,000 acres of public land, of which 1,474,000 acres were removed from wilderness review and interim management policy (IMP) constraints and 1,008,000 acres are subject to the IMP and further inventory at a later date. Final decision in Federal Register, June 2, 1980 (p. 37304).

[FR Doc. 81-1642 Filed 1-16-81; 8:45 am]

BILLING CODE 4310-84-M

Heritage Conservation and Recreation Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the Heritage Conservation and Recreation Service before January 9, 1981. Pursuant to § 1202.13 of 36 CFR Part 1202, written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, Heritage Conservation and Recreation Service, U.S. Department of the Interior, Washington, D.C. 20243. Written comments should be submitted by February 3, 1981.

Carol Shull,

Acting Chief, Registration Branch.

CALIFORNIA

Los Angeles County

Pacific Palisades vicinity, *Josepho Barn*, 1000 Rustic Rd.

Pacific Palisades vicinity, *Murphy Ranch Powerhouse*, 1000 Rustic Rd.

FLORIDA

Hillsborough County

Plant City, *Plant City High School*, N. Collins St.

NEBRASKA

Franklin County

Naponee, *First Congregational Church, U.C.C.*, Off NE 31C

OKLAHOMA

Payne County

Stillwater, *Citizens Bank Building*, 107 E. 9th St.

SOUTH DAKOTA

Brookings County

Brookings, *Horticulture Building*, South Dakota State University

Minnehaha County

Hartford, *Mundt, John, Building*, 103 N. Main Ave.

Pennington County

Keystone, *Keystone School*, 3rd St.

Rapid City, *Rapid City Carnegie Library*, 604 Kansas City St.

UTAH

Cache County

Smithfield, *Smithfield Public Library*, 25 N. Main St.

WYOMING

Park County

Cody vicinity, *Mummy Cave*, W of Cody

[FR Doc. 81-1610 Filed 1-16-81; 8:45 am]

BILLING CODE 4310-03-M

Approval of the Lower Little Miami River as a State-Administered Component of the National Wild and Scenic River System

Correction

In FR Doc. 81-925, published on page 2725, on Monday, January 12, 1981, in the second column, "Dated: January 11, 1981." should be corrected to read "Dated: January 11, 1980."

BILLING CODE 1505-01-M

INTERSTATE COMMERCE COMMISSION

[Notice No. 205]

Assignment of Hearings

January 12, 1981.

Cases assigned for hearing, postponement, cancellation or oral argument appear below and will be published only once. This list contains prospective assignments only and does not include cases previously assigned hearing dates. The hearings will be held on the issues as presently reflected in the Official Docket of the Commission. An attempt will be made to publish notices of cancellation of hearings as promptly as possible, but interested parties should take appropriate steps to insure that they are notified of cancellation or postponements of hearings in which they are interested.

MC-C-10641, Capitol Bus Company v. Newhurst, Inc., now assigned for hearing on January 7, 1981 (3 days), at Harrisburg, PA will be held at the Liquior Control Board, 1st Floor Hearing Room, Northwest Office Building, Capitol Forester Street.

MC 59856 (Sub-89F), Salt Creek Freightways, now assigned for hearing on January 5, 1981, is postponed to February 23, 1981 (2 weeks), Salt Lake City, UT, in a hearing room to be later designated.

MC 104149 (Sub-206M1F), Osborne Truck Line, Inc., now assigned for hearing on January 8, 1981, at St. Louis, MO, is canceled and re-assigned to January 8, 1981 (2 days), at the Interstate Commerce Commission, Washington, D.C.

MC 125433 (Sub-302F), F-B Truck Line Company, now assigned fro hearing on Januray 20, 1981, at Chicago, IL is canceled and application is dismissed.

MC 147568F, Sam Broussard Trucking Co., Inc., now assigned for hearing on December 1, 1980 (3 days), at New Orleans, LA will be held in Room No. 648, F. Edward Hebert Federal Building 600 South Street.

MC 142264 (Sub-2F), P.P.C., Inc., is transferred to Modified Procedure.

MC 42487 (Sub-628F), Consolidated Freightways Corporation, now assigned for continued hearing on January 19, 1981 (2 days), at Minneapolis, MN, in a hearing room to be later designated.

MC-F-14162F, Mccarty Truck Line, Inc.—Purchase (Portion)—Western Transportation Company, MC-F-14196, Mccarty Truck Line, Inc.—Purchase—De Wayne Marlay DBA Pike Truck Line, No. MC-F-14221F, Mccarty Truck Line, Inc.—Purchase (Portion)—Nebraska Iowa Missouri Express, Inc. And Kruse Transportation Co., Inc. MC 1263 (Sub-33F), MC 1263 (Sub-34 & 35F), Mccarty Truck Lines, Inc., MC-F-14332, Mccarty Truck Line, Inc.—Purchase (Portion)—Kruse Transportation Co., Inc., now assigned for hearing on December 2, 1980 (9 days), at Chicago, IL will be held in Room 1221, Everette Mckinley Dirksen Building, 219 South Dearborn Street.

MC 107496 (Sub-1244F), Ruan Transport Corporation, now assigned for hearing on December 2, 1980 (4 days), at Des Moines, IA will be held at the Hotel Savery, 4th & Locust.

MC 115826 (Sub-511F), W. J. Digby, Inc., now assigned for hearing on December 5, 1980 (1 day), at Denver, CO will be held in Suite 700, Securities and Exchange Commission, 410-17th Street.

MC 106194 (Sub-39F), Horn Transportation, Inc., now assigned for hearing on December 8, 1980 (1 week), at Denver, CO will be held in Suite 700, Securities and Exchange Commission, 410-17th Street.

MC 113651 (Sub-321F), Indiana Refrigerator Lines, Inc., now assigned for hearing on March 3, 1981 (1 day), at Chicago, IL, in a hearing room to be later designated.

MC 148966F, Universal Deliveries, Inc., now assigned for hearing on March 4, 1981 (3 days), at Chicago, IL, location of hearing room will be later designated.

MC 8515 (Sub-40F), Tobler Transfer, Inc., now assigned for hearing on March 9, 1981 (2 days), at Chicago, IL, in a hearing room to be later designated.

MC 115113 (Sub-36F), Iowa Packers Xpress, Inc., now assigned for hearing on March 11, 1981, (3 days), at Chicago, IL, in a hearing room to be later designated.

MC 73165 (Sub-513F), Eagle Motor Lines, Inc., now assigned for hearing on March 9, 1981, (5 days), at New Orleans, LA in a hearing room to be later designated and continued to April 7, 1981 at the Offices of the Interstate Commerce Commission, Washington, D.C.

MC 109462 (Sub-29F), Lumber Transport, Inc., now assigned for hearing on March 16, 1981, (5 days), at Kansas City, MO in a hearing room to be later designated.

MC 135524 (Sub-114F), G. F. Trucking Co., now assigned for hearing on March 12, 1981, (2 days), at Kansas City, MO in a hearing room to be later designated.

MC 121566 (Sub-43F), Humboldt Express, Inc., now assigned for hearing on January 13, 1981, at Memphis, TN is canceled and applications dismissed.

MC 113974 (Sub-72F), Pittsburgh and New England Trucking Co., now assigned for hearing on February 10, 1981, at the Offices of the Interstate Commerce Commission, Washington, D.C.

MC 96324 (Sub-43F), General Delivery, Inc., now assigned for hearing on February 10, 1981, at the Offices of the Interstate Commerce Commission, Washington, D.C.

MC 124174 (Sub-177F), Monsen Trucking Co., now assigned for hearing on February 11, 1981, at the Offices of the Interstate Commerce Commission, Washington, D.C.

MC 135684 (Sub-103F), Bass Transportation Co., Inc., now assigned for hearing on February 12, 1981, at the Offices of the Interstate Commerce Commission, Washington, D.C.

MC 60014 (Sub-191F), Aero Trucking, Inc., now assigned for hearing on February 26, 1981, at the Offices of the Interstate Commerce Commission, Washington, D.C.

MC-C-10714, Carolina Coach Company v. Capital Cities Coach Company now assigned for hearing on February 24, 1981, at the Offices of the Interstate Commerce Commission, Washington, D.C.

MC 143799 (Sub-4F), Specialty Transport, Inc., now assigned for hearing on February 24, 1981 (5 days), at Philadelphia, PA, in a hearing room to be later designated.

MC 148392 (Sub-3F), Service Transport, Inc., now assigned for hearing on February 24, 1981, (9 days), at Cookeville, TN, location of hearing room will be by subsequent notice.

MC 59017 (Sub-7F), Wares' Van Storage, Inc., now assigned for hearing on February 3, 1981 (3 days) at the Offices of the Interstate Commerce Commission, Washington, D.C.

MC-C-10717, Salem Transportation Co., Inc. v. Yellow Limousine Service, Inc., et al, now assigned for hearing on February 4, 1981 (3 days) at Philadelphia, PA in a hearing room to be later designated.

MC 59856 (Sub-90F), Salt Creek Freightways, now assigned for hearing on February 23, 1981 (2 weeks) at Salt Lake City, UT in a hearing room to be later designated.

MC 148648F, Great Plains Transports, Inc., now assigned for hearing on January 26, 1981 at Oklahoma City, OK will be held in room 911, Alfred P. Murrah Building, 200 North West Fifth Street.

MC 76266 (Sub-132F), Admiral-Merchants Motor Freight, Inc., now assigned for hearing on March 9, 1981 (2 weeks) at Milwaukee, WI in a hearing room to be later designated.

MC 119774 (Sub-109F), Eagel Trucking Company, now assigned for hearing on March 24, 1981 (4 days) at Houston, TX and continued to March 30, 1981 (5 days) at Dallas, TX and continued to May 5, 1981 (4 days) at Dallas, TX in a hearing room to be later designated.

MC 144678 (Sub-9F), American Freight System, Inc., now assigned for further Prehearing Conference on March 16, 1981 at the Offices of the Interstate Commerce Commission, Washington, D.C.

MC 73165 (Sub-519F), Eagle Motor Lines, Inc., now assigned for hearing on May 4, 1981 (5 days) at Tampa, FL in a hearing room to be later designated.

MC 73165 (Sub-519F), Eagle Motor Lines, Inc., now assigned for hearing on May 4, 1981 (5 days) at Tampa, FL in a hearing room to be later designated.

MC 73165 (Sub-519F), Eagle Motor Lines, Inc., now assigned for hearing on May 20, 1981 (1 day) at the Offices of the Interstate Commerce Commission, Washington, D.C.

MC 119988 (Sub-246F), Great Western Trucking Co., Inc., now assigned for hearing on January 14, 1981 at Dallas, TX is postponed indefinitely.

MC 129908 (Sub-36F), American Farm Lines, Inc., now assigned for hearing on January 15, 1981 at Dallas, TX is canceled and reassigned to January 15, 1981 at the Offices of the Interstate Commerce Commission, Washington, D.C.

MC 94201 (Sub-178F), Bowman Transportation, Inc., No. MC-94201 (Sub-No. 181F), Bowman Transportation, Inc., now assigned for hearing on January 6, 1981 at Dallas, TX is postponed to January

19, 1981 (5 days) at Dallas, TX will be held at the Holiday Inn Downtown, 1015 Elm Street and continued to February 24, 1981 (4 days) at Dallas, TX in a hearing room to be later designated.
MC 105006 (Sub-11F), L. L. Smith Trucking, now assigned for hearing on January 12, 1981 at Casper, WY is canceled and application is dismissed.
MC 119493 (Sub-386F), Monkem Company, Inc., now assigned for hearing on January 12, 1981 at St. Paul, MN is transferred to Modified Procedure.
MC 118315 (Sub-44F), Ida-Cal Freight Lines, Inc., now assigned for hearing on January 8, 1981 at Boise, ID is transferred to Modified Procedure.
MC 136008 (Sub-114F), Joe Brown Company, Inc., now assigned for hearing on January 22, 1981 (2 days) at Oklahoma City, OK will be held in room 910, Alfred P. Murrah Building, 200 North West Fifth Street.
MC 136012 (Sub-6F), United States Transportation, Inc., now assigned for hearing on January 12, 1981 at Cincinnati, OH is cancelled and application is dismissed.
MC 147470F, Ray Cobb Transportation Co., Common Carrier Application, now assigned for hearing on January 13, 1981 at San Francisco, CA is transferred to Modified Procedure.
MC 145129 (Sub-4F), Whitaker Transportation Company, Inc., now assigned for hearing on January 20, 1981 at Chattanooga, TN is canceled and application is dismissed.
MC 145673 (Sub-6F), Road Rail Services, Inc., now assigned for hearing on January 7, 1981 at Chicago, IL is transferred to Modified Procedure.
MC 121566 (Sub-43F), Humboldt Express, Inc., now assigned for hearing on January 13, 1981 (4 days) at Memphis, TN will be held in Room 936—C. Davis Federal Building, 167 North Main Street.
MC 138875 (Sub-25F), Shoemaker Trucking Company, now assigned for hearing on January 6, 1981 at Boise, ID is canceled and application is dismissed.
MC 145579 (Sub-6F), D. D. Irvin Transport, Limited, now assigned for hearing on January 7, 1981 at Seattle, WA is transferred to Modified Procedure.
MC 107912 (Sub-29F), Rebel Motor Freight, Inc., now assigned for hearing on January 6, 1981 at Memphis, TN is transferred to Modified Procedure.
MC 109736 (Sub-48F), Capitol Bus Company, now assigned for hearing on January 26, 1981 (1 week) at Philadelphia, PA in a hearing room to be later designated.
FF 528F, United Van Lines, Inc., now assigned for hearing on January 27, 1981 at Washington, D.C. is postponed to February 10, 1981 at the Offices of the Interstate Commerce Commission, Washington, D.C.
MC 23618 (Sub-63F), Mcallister Trucking Company DBA Matco, now assigned for hearing on February 9, 1981 at Dallas, TX and continued to March 16, 1981 at Dallas, TX is postponed and reassigned to February 17, 1981 at Houston, TX in a hearing room to be later designated.
MC 23618 (Sub-62F), Mcallister Trucking Company DBA Matco, now assigned for hearing on February 17, 1981 at Houston, TX is advanced and reassigned to February 9, 1981 (5 days) at Dallas, TX will be held at the Executive Inn, 3232 Mockingbird Lane, and continued to March 16, 1981 (5 days) at Dallas, TX will be held at the Executive Inn, 3232 Mockingbird Lane.
MC 111307 (Sub-11F), Overland Western Limited, now assigned for hearing on January 20, 1981 at Detroit, MI is canceled and application is dismissed.
MC 142941 (Sub-35F), Scarborough Truck Lines, Inc., now assigned for hearing on January 12, 1981 at Salt Lake City, UT is canceled and application is dismissed.
MC 115523 (Sub-166F), Clark Tank Lines, Inc., now assigned for hearing on January 13, 1981 at Salt Lake City, UT is postponed to February 24, 1981 (9 days) at Salt Lake City, UT in a hearing room to be later designated.
MC 11722 (Sub-62F), Brader Hauling Service, Inc., now assigned for hearing on January 12, 1981 at Seattle, WA is transferred to Modified Procedure.
MC 148752 (Sub-2F), H & H Services, Inc., now assigned for hearing on January 12, 1981 at Casper, WY is transferred to Modified Procedure.
MC 146962F, Mulder Trucking Company, now assigned for hearing on January 14, 1981 (3 days) at St. Paul, MN will be held in the Ramsey County Courthouse, County Board Meeting Room 356, Waubausha and Kellogg Boulevard.
MC 61264 (Sub-36F), Pilot Freight Carriers, Inc., now assigned for Prehearing Conference on January 9, 1981 at Washington, D.C., is transferred to Modified Procedure.
FF-523, Henry Ortiz, now assigned January 12, 1981, at Cleveland, OH, is cancelled and application dismissed.
MC 148078 (Sub-1F), Beau Parrish Express Co., Inc., now assigned for hearing January 27, 1981 (3 days), at Baton Rouge, LA, will be held in room No. 348, Ceta Plex Bldg. (Office Government Bldg.), 222 St. Louis Street.
MC 730 (Sub-507F), Pacific Intermountain Express Co., a Nevada corporation, now assigned hearing January 26, 1981 (1 day), at New Orleans, LA, will be held in room No. 646, F. Edward Hebert Fed. Bldg., 600 South Street.
MC 56679 (Sub-164F), Brown Transport Corp., now assigned hearing January 22, 1981 (1 day), at Memphis, TN, will be held in room No. 936, C. Davis Federal Building, 167 North Main Street.
MC 142743 (Sub-13F), Fast Freight Systems, Inc., now assigned hearing January 23, 1981 (1 day), at Memphis, TN, will be held in room No. 936, C. Davis Federal Bldg., 167 North Main Street.
MC 140094 (Sub-1F), Latin Express Service, Inc., MC 140094 (Sub-3F), Latin Express Service, Inc., now assigned for hearing on January 21, 1981 (3 days) at Miami, FL will be held at the Sheraton River House, Galeria No. 4, 3900 Northwest 21st Street.
MC 144606 (Sub-9F), Duncan Sales & Leasing Co., Inc., now assigned for hearing on January 19, 1981 at Phoenix, AZ is transferred to Modified Procedure.
MC 13651 (Sub-21F), Peoples Transfer, Inc., now assigned for hearing on January 19, 1981 at Sacramento, CA is canceled and application is dismissed.
MC 108223 (Sub-31F), Century-Mercury Motor Freight, now assigned for hearing on January 12, 1981 at St. Paul, MN is transferred to Modified Procedure.
MC 149331F, City Car Releasing Co., Inc., now assigned for hearing on February 26, 1981 (2 days) at Detroit, MI in a hearing room to be later designated.
37510, Menasha Corporation v. Louisville and Nashville Railroad Company, now assigned for hearing on January 24, 1981 (2 days) at Detroit, MI in a hearing room to be later designated.
MC 123389 (Sub-48F), Crouse Cartage Company, now assigned for hearing on January 15, 1981 at Omaha, NE is transferred to Modified Procedure.

Agatha L. Mergenovich,
Secretary.

[FR Doc. 81-1830 Filed 1-16-81; 8:45 am]
BILLING CODE 7035-01-M

[Docket No. AB-43 (Sub-No. 43)]

Illinois Central Gulf Railroad Co.—Abandonment—Between Herscher and Barnes in Kankakee, Ford, Livingston, and McLean Counties, Ill.; Findings

Notice is hereby given pursuant to 49 U.S.C. 10903 that by a decision October 4, 1979, as modified by the decision decided December 2, 1980, which is administratively final, was made by the Commission stating that, the public convenience and necessity permit the abandonment by the Illinois Central Gulf Railroad Company of the line of railroad extending from milepost 72 near Herscher, IL, to milepost 135 near Barnes, IL, a distance of 63 miles in Kankakee, Ford, Livingston, and McLean Counties, IL, subject to the conditions for the protection of employees discussed in *Oregon Short Line R. Co.—Abandonment Goshen*, 360 I.C.C. 91 (1979). A certificate of abandonment will be issued to the Illinois Central Gulf Railroad Company based on the above-described finding of abandonment, February 18, 1981, unless on or before February 3, 1981, the Commission further finds that:

(1) A financially responsible person (including a government entity) has offered financial assistance (in the form of a rail service continuation payment) to enable the rail service involved to be continued. The offer must be filed with the Commission and served concurrently on the applicant, with copies to Ms. Ellen Hanson, Room 5417, Interstate Commerce Commission, Washington, D.C. 20423, no later than 10 days from publication of this Notice; and

(2) It is likely that such proffered assistance would:

(a) Cover the difference between the revenues which are attributable to such

line of railroad and the avoidable cost of providing rail freight service on such line, together with a reasonable return on the value of such line, or

(b) Cover the acquisition cost of all or any portion of such line of railroad.

If the Commission so finds, the issuance of a certificate of abandonment will be postponed. An offer may request that Commission to set conditions and amount of compensation within 30 days after an offer is made. If no agreement is reached within 30 days of an offer, and no request is made on the Commission to set conditions or amount of compensation, a certificate of abandonment will be issued no later than 50 days after this notice is published. Upon notification to the Commission of the execution of an assistance or acquisition and operating agreement, the Commission shall postpone the issuance of such a certificate for such period of time as such an agreement (including any extensions or modifications) is in effect. Information and procedures regarding the financial assistance for continued rail service or the acquisition of the involved rail line are contained in 49 U.S.C. 10905 (as amended by the Staggers Rail Act of 1980, Pub. L. 96-448, effective October 1, 1980). All interested persons are advised to follow the instructions contained therein as well as the instructions contained in the above-referenced decision.

Agatha L. Mergenovich,
Secretary.

[FR Doc. 81-1888 Filed 1-16-81; 8:45 am]
BILLING CODE 7035-01-M

[Ex Parte No. 311]

Expedited Procedures for Recovery of Fuel Costs

Decided: January 13, 1981.

In our decision of January 6, 1980, a 15-percent surcharge was authorized on all owner-operator traffic, and on all truckload traffic whether or not owner-operators were employed. We ordered that all owner-operators were to receive compensation at this level.

The weekly figure set forth in the appendix for transportation performed by owner-operators and for truckload traffic is 15.7 percent. Accordingly, we are authorizing that the surcharge for this traffic be increased to 15.5-percent. All owner-operators are to receive compensation at this level.

In addition, the surcharge on less-than-truckload (LTL) traffic performed by carriers not utilizing owner-operators is increased to 2.7-percent, that for the bus carriers to 5.9-percent, and that for United Parcel Service to 1.7-percent.

Notice shall be given to the general public by mailing a copy of this decision to the Governor of each State and to the Public Utilities Commission or Boards of each State having jurisdiction over transportation, by depositing a copy in the Office of the Secretary, Interstate Commerce Commission, Washington, D.C., for public inspection and by delivering a copy to the Director, Office of the Federal Register for publication therein.

It is ordered: This decision shall become effective Friday 12:01 a.m., January 16, 1981.

By the Commission, Chairman Gaskins, Vice Chairman Alexis, Commissioners Gresham, Clapp, Trantum, and Gilliam.

Agatha L. Mergenovich,
Secretary.

January 12, 1981.

Appendix.—*Fuel Surcharge*

Base date and price per gallon (including tax)
January 1, 1979 ..... 63.0¢

Date of current price measurement and price per gallon (including tax)
January 12, 1981 ..... 122.5¢

	Transportation performed by—			
	Owner operator [1]	Other [2]	Bus carrier	UPS
	(1)	(2)	(3)	(4)
Average percent fuel expenses (including taxes) of total revenue	16.9	2.9	6.8	3.3
Percent surcharge developed	15.7	2.7	5.9	[3] 2.5
Percent surcharge allowed	15.5	2.7	5.9	[4] 1.7

[1] Apply to all truckload rated traffic.
[2] Including less-than-truckload traffic.
[3] The percentage surcharge developed for UPS is calculated by applying 81 percent of the percentage increase in the current price per gallon over the base price per gallon to UPS average percent of fuel expense to revenue figure as of January 1, 1979 (3.3 percent).
[4] The developed surcharge is reduced 0.8 percent to reflect fuel-related increases already included in UPS rates.

[FR Doc. 81-1830 Filed 1-16-81; 8:45 am]
BILLING CODE 7035-01-M

[AB 160 (SDM)]

Montour Railroad Co.; Amended System Diagram Map

Notice is hereby given that, pursuant to the requirements contained in Title 49 of the Code of Federal Regulations, Part 1121.23, that the MONTOUR RAILROAD COMPANY has filed with the Commission its amended color-coded system diagram map in docket No. AB 160 (SDM). The Commission on December 29, 1980, received a certificate of publication as required by said regulation which is considered the effective date on which the system diagram map was filed.

Color-coded copies of the map have been served on the Governor of each State in which the railroad operates and the Public Service Comission or similar agency and the State designated agency. Copies of the map may also be requested from the railroad at a nominal charge. The maps also may be examined at the office of the Commission, Section of Dockets, by requesting docket No. AB 160 (SDM).

Agatha L. Mergenovich,
Secretary.

[FR Doc. 81-1829 Filed 1-16-81; 8:45 am]
BILLING CODE 7035-01-M

[Volume No. 3]

Motor Carrier Permanent Authority Decisions; Restriction Removals; Decision-Notice

Decided: January 14, 1981.

The following restriction removal applications, filed after December 18, 1980, are governed by 49 CFR 1137. Part 1137 was published in the Federal Register of December 31, 1980, at 45 FR 86747.

Persons wishing to file a comment to an application must follow the rules under 49 CFR 1137.12. A copy of any application can be obtained from any applicant upon request and payment to applicant of $10.00

Amendments to the restriction removal applications are not allowed.

Some of the applications may have been modified prior to publication to conform to the special provisions applicable to restriction removal.

Findings

We find, preliminarily, that each applicant has demonstrated that its requested removal of restrictions or broadening of unduly narrow authority is consistent with 49 U.S.C. 10922(h).

In the absence of comments filed on or before February 13, 1981, appropriate reformed authority will be issued to each applicant. Prior to beginning operations under the newly issued authority, compliance must be made with the normal statutory and regulatory requirements for common and contract carriers.

By the Commission, Restriction Removal Board, Members Spom, Alspaugh, and Shaffer.

Agatha L. Mergenovich,
Secretary.

MC 105755 (Sub-17X), filed January 12, 1981. Applicant: M.J.K. TRUCKING

CORP., 1040 John Allen Lane, Schenectady, NY 12306. Representative: John L. Alfano, Alfano & Alfano, 550 Mamaroneck Avenue, Harrison, NY 10528. Applicant seeks to reform its Sub-15 Certificate by (1) removing the commodity restriction "except mashed bananas", and (2) expanding its territoral authority to provide a round trip movement between Albany, NY, on the one hand, and, on the other, points in CT, MA, ME, NH, NJ, NY, RI and VT.

MC 114457 (Sub-503X), filed January 9, 1981. Applicant: DART TRANSIT COMPANY, 2102 University Avenue, St. Paul, MN 55114. Representative: James H. Wills (same as above). Applicant seeks to broaden the commodity description in its Sub-479F from automotive parts and materials and supplies used in the manufacture of automotive parts (except commodities in bulk) to such commodities as are dealt in by manufacturers of motor vehicles, and to remove restrictions against the transportation of specified commodities in its Sub-512F, parts 1 and 2, which authorizes the transportation of such commodities as are dealt in by home improvement centers.

MC 133917 (Sub-11X), filed January 12, 1981. Applicant: CARTHAGE FREIGHT LINE, INC., P.O. Box 315, Carthage, TN 37030. Representative: Henry E. Seaton, 929 Pennsylvania Bldg., 425 13th St., NW., Washington, D.C. 20004. Applicant seeks removal of restrictions in its Sub-3 certificate in order to (1) broaden the commodity description from general commodities (except those of unusual value, Classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment) to general commodities (except Classes A and B explosives), and (2) authorize service at all intermediate points on the described regular-route, between South Carthage, TN, and Union Springs, AL.

MC 146199 (Sub-2X), filed January 12, 1981. Applicant: S.A.M. TRUCKING CO., INC., 1210 North Avenue, Plainfield, NJ 07062. Representative: Harold L. Reckon, 33-28 Halsey Road, Fair Lawn, NJ. Applicant seeks to remove restrictions in its Sub-1F permit to broaden the commodity description from aluminum chlorylhydrate (except in bulk) to chemicals and related products, and to broaden the territorial scope to include all points in the US.

[FR Doc. 81-1529 Filed 1-16-81; 8:45 am]
BILLING CODE 7035-01-M

[Volume No. 2]

Motor Carrier Permanent Authority Decisions; Restriction Removals; Decision-Notice

Decided: January 13, 1981.

The following restriction removal applications, filed after December 28, 1980, are governed by 49 CFR 1137. Part 1137 was published in the Federal Register of December 31, 1980, at 45 FR 86747.

Persons wishing to file a comment to an application must follow the rules under 49 CFR 1137. 12. A copy of any application can be obtained from any applicant upon request and payment to applicant of $10.00.

Amendments to the restriction removal applications are not allowed.

Some of the applications may have been modified prior to publication to conform to the special provisions applicable to restriction removal.

Findings

We find, preliminarily, that each applicant has demonstrated that its requested removal of restrictions or broadening of unduly narrow authority is consistent with 49 U.S.C. 10922(h).

In the absence of comments filed on or before February 13, 1981, appropriate reformed authority will be issued to each applicant. Prior to beginning operations under the newly issued authority, compliance must be made with the normal statutory and regulatory requirements for common and contract carriers.

By the Commission, Restriction Removal Board, Members Sporn, Alspaugh, and Shaffer.

Agatha L. Mergenovich,
Secretary.

MC 61440 (Sub-205X), filed January 8, 1981. Applicant: LEE WAY MOTOR FREIGHT, INC., 3401 Northwest 63rd Street, Oklahoma City, OK 73116. Representative: Richard H. Champlin, P.O. Box 12750, Oklh Oklahoma City, OK 73157. Applicant holds authority in Sub-160 to operate over regular routes transporting general commodities (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), between points in AR, TN, and OK. It seeks to remove restrictions which prohibit the transportation of traffic originating at or destined to (1) points in AR, on the one hand, and, on the other, those points in the U.S. east of MT, WY, CO, and NM, (2) Texarkana, TX, and (3) Memphis, TN, and points in AR.

MC 99149 (Sub-18X), filed January 5, 1981. Applicant: MIDWAY MOTOR FREIGHT LINES, INC., 8400 New Benton Highway, Little Rock, AR 72219. Representative: Charles J. Lincoln, 1550 Tower Building, Little Rock, AR 72201. Applicant holds authority in Sub-6, 9, and 11 to operate over regular routes transporting general commodities (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), between points in AR, TN, and LA. It seeks to remove restrictions in the authorities in order to serve all intermediate points on its routes between (1) Little Rock, Ar and Texarkana, TX, (2) Texarkana, AR and Shreveport, LA, (3) Hope, AR and Shreveport, LA, and (4) Hot Springs, AR and Memphis, TN.

MC 148553 (Sub-1X), filed January 5, 1981. Applicant: B. J. EXPRESS, INC., 4928 Assisi Lane, Cincinnati, OH 45238. Representative: Bobby Ray Johnson (same as applicant). Applicant seeks to remove restrictions in its lead certificate in order to (1) broaden the drug and toilet preparations commodity description to chemicals and elated products and to authorize round-trip authority radially between points in Hamilton County, OH, and points in Los Angeles County, CA, Tarrant County, TX, and Storey County, NV in place of its limited authority from Cincinnati, OH, to named facilities at Vernon, CA, Arlington, TX, and Sparks, NV; (2) broaden the commodity description from such commodities as are manufactured or dealt in by manufacturers of glass and glass products to such commodities as are manufactured or dealt in by manufacturers of clay, concrete, glass or stone products, and (3) broaden the commodity description from household products and foodstuffs to household products and food and related products and to authorize servcie (a) radially between Davidson County, TN, and Montgomery County, OH, on the one hand, and, on the other, Los Angeles County, CA, Mutnomah County, OR, AND Salt Lake County, UT, in place of its present authority between a city in each of the counties, and (b) to authorize round-trip authority between Los Angeles County, CA, and Washoe County, NV, in place of its present authority from La Miranda, CA, to Sparks, NV, and to remove a restriction to traffic originating at or destined to named facilities.

[FR Doc. 81-1528 Filed 1-16-81; 8:45 am]
BILLING CODE 7035-01-M

[Volume No. 2]

Petitions, Applications, Alternate Route Deviations, Intrastate Applications, Gateways, and Pack & Crate

Motor Carrier Alternate Route Deviations

Notice

The following letter-notices to operate over deviation routes for operating convenience only have been filed with the Commission under the Deviation Rules—Motor Carrier of Passengers (49 CFR 1042.2(c)(9)).

Protests against the use of any proposed deviation route herein described may be filed with the Commission in the manner and form provided in such rules at any time, but will not operate to stay commencement of the proposed operations unless filed on or before February 18, 1981.

Each applicant states that there will be no significant effect on either the quality of the human environment or energy policy and conservation.

Motor Carriers of Passengers

No. MC-74761 (Deviation No. 19), TRAILWAYS TAMIAMI, INC., 315 Continental Ave., Dallas, TX 75207, filed December 11, 1980. Carrier proposes to operate as a *common carrier*, by motor vehicle, of *passengers and their baggage*, and *express* and *newspapers* in the same vehicle with passengers, over deviation routes as follows: From Lake City, FL over FL Hwy 27 to junction Interstate Hwy 75, then over Interstate Hwy 75 to junction US Hwy 441 near Alachua, FL, then over US Hwy 441 to Ocala, FL, with the following access route: From Gainesville, FL, over FL Hwy 26 to junction Interstate Hwy 75, and return over the same routes for operating convenience only. The notice indicates that the carrier is presently authorized to transport passengers and the same property over a pertinent service route as follows: From Lake City, FL over FL Hwy 47 to junction Interstate Hwy 75, then over Interstate Hwy 75 to junction FL Hwy 26, then over FL Hwy 26 to Gainesville, FL, then over US Hwy 441 to junction FL Hwy 331, then over FL Hwy 331 to junction FL Hwy 121 then over FL Hwy 121 to junction Interstate Hwy 75, then over Interstate Hwy 75 to junction US Hwy 27 near Ocala, FL, thc over US Hwy 27 to Ocala, FL and return over the same route.

Motor Carrier Intrastate Application(s)

Notice

The following application(s) for motor common carrier authority to operate in intrastate commerce seek concurrent motor carrier authorization in interstate of foreign commerce within the limits of the intrastate authority sought, pursuant to Section 10931 (formerly Section 206(a)(6)) of the Interstate Commerce Act. These applications are governed by Special Rule 245 of the Commission's *General Rules of Practice* (49 CFR 1100.245), which provides, among other things, that protests and requests for information concerning the time and place of State Commission hearings or other proceedings, any subsequent changes therein, and any other related matters shall be directed to the State Commission with which the application is filed and shall *not* be addressed to or filed with the Interstate Commerce Commission.

New York Docket No. T-9610 (Correction), filed October 27, 1980. Applicant: GRAND ISLAND SALES & SERVICE, INC., 2024 Grand Island Blvd., Grand Island, NY 14072. Certificate of Public Convenience and Necessity sought to operate a freight service, as follows: Transportation of: Petroleum products between all points in Erie and Niagara Counties Intrastate, interstate and foreign commerce authority sought. Hearing: Date, time and place not yet fixed. Request for procedural information should be addressed to Department of Transportation, 1220 Washington Avenue, State Campus, Albany, NY 12232, and should not be directed to the Interstate Commerce Commission.

Noted.—The purpose of this correction is to indicate the correct commodity description as "petroleum products".

South Carolina Docket No. 80-331-T, Filed November 12, 1980. Applicant: R & D TRUCKING, INC., P.O. Box 2466, Greenville, SC 29603. Representative: Rex L. Carter, Esquire, 123 Broadus Avenue, P.O. Box 10304, Greenville, SC 29603. Certificate of Public Convenience and Necessity sought to operate a freight service, as follows: Transportation of: Commodities in General (Usual exceptions): Between points and places in Greenville County, and between points and places in Abbeville, Anderson, Cherokee, Chester, Fairfield, Greenwood, Kershaw, Laurens, Lexington, Newberry, Oconee, Pickens, Richland, Spartanburg, and Union Counties. Intrastate, interstate and foreign commerce authority sought. Hearing: Date, time and place not yet fixed. Requests for procedural information should be addressed to the State of South Carolina, The Public Service Commission, P.O. Drawer 11649, Columbia, SC 29211, and should not be directed to the Interstate Commerce Commission.

By the Commission.

Agatha L. Mergenovich,
Secretary.

[FR Doc. 81-1831 Filed 1-16-81; 8:45 am]
BILLING CODE 7035-01-M

[AB 9 (SDM)]

St. Louis-San Francisco Railway Co.; Amended System Diagram Map

Notice is hereby given that, pursuant to the requirements contained in Title 49 of the Code of Federal Regulations, Part 1121.23, that the St. Louis-San Francisco Railway Company has filed with the Commission its amended color-coded system diagram map in docket No. AB.9 (SDM). The Commission on December 31, 1980, received a certificate of publication as required by said regulation which is considered the effective date on which the system diagram map was filed.

Color-coded copies of the map have been served on the Governor of each State in which the railroad operates and the Public Service Commission or similar agency and the State designated agency. Copies of the map may also be requested from the railroad at a nominal charge. The maps also may be examined at the office of the Commission, Section of Dockets, by requesting docket No. AB 9 (SDM).

Agatha L. Mergenovich,
Secretary.

[FR Doc. 81-1834 Filed 1-16-81; 8:45 am]
BILLING CODE 7035-01-M

Motor Carrier Permanent Authority Decisions; Decision-Notice

The following applications, filed on or after July 3, 1980, are governed by Special Rule 247 of the Commission's Rules of Practice, see 49 CFR 1100.247. Special Rule 247 was published in the Federal Register of July 3, 1980, at 45 FR 45539. For compliance procedures, refer to the Federal Register issue of December 3, 1980, at 45 FR 80109.

Persons wishing to oppose an application must follow the rules under 49 CFR 1100.247(B). A copy of any application, together with applicant's supporting evidence, can be obtained from any applicant upon request and payment to applicant of $10.00.

Amendments to the request for authority are not allowed. Some of the applications may have been modified prior to publication to conform to the Commission's policy of simplifying grants of operating authority.

Findings

With the exception of those applications involving duly noted problems (e.g., unresolved common control, fitness, water carrier dual operations, or jurisdictional questions) we find, preliminarily, that each applicant has demonstrated its proposed service warrants a grant of the application under the governing section of the Interstate Commerce Act. Each applicant is fit, willing, and able to perform the service proposed, and to conform to the requirements of Title 49, Subtitle IV, United States Code, and the Commission's regulations. Except where noted, this decision is neither a major Federal action significantly affecting the quality of the human environment nor a major regulatory action under the Energy Policy and Conservation Act of 1975.

In the absence of legally sufficient interest in the form of verified statements filed on or before March 5, 1981, (or, if the application later becomes unopposed) appropriate authorizing documents will be issued to applicants with regulated operations (except those with duly noted problems) and will remain in full effect only as long as the applicant maintains appropriate compliance. The unopposed applications involving new entrants will be subject to the issuance of an effective notice setting forth the compliance requirements which must be satisfied before the authority will be issued. Once this compliance is met, the authority will be issued.

On or before March 20, 1981, an applicant may file a verified statement in rebuttal to any statement in opposition.

To the extent that any of the authority granted may duplicate an applicant's other authority, the duplication shall be construed as conferring only a single operating right.

Note.—All applications are for authority to operate as a motor common carrier in interstate or foreign commerce over irregular routes, unless noted otherwise. Applications for motor contract carrier authority are those where service is for a named shipper "under contract".

Vol. No. OP2–151

Decided: January 7, 1981.

By the Commission, Review Board No. 3, Members Parker, Fortier, and Hill.

MC 146402 (Sub-2F), filed November 28, 1980. Applicant: CONALCO CONTRACT CARRIER, INC., P.O. Box 969, Jackson, TN 38301. Representative: Charles W. Teske (same as applicant). Transporting (1)(a) *printed matter,* as described in Item 27 of the Standard Transportation Commodity Code Tariff, (b) *primary metal products,* as described in Item 33 of the Standard Transportation Commodity Code Tariff, (c) *fabricated metal products* (except ordinance), as described in Item 34 of the Standard Transportation Commodity Code Tariff, and (d) *waste or scrap materials,* as described in Item 40 of the Standard Transportation Commodity Code Tariff, and (2) *equipment, materials, and supplies* used in the production and distribution of the commodities in (1) between Chicago, IL on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 147382 (Sub-3F), filed December 8, 1980. Applicant: E.A.D. ENTERPRISES, INC., d.b.a. GARDEN STATE MOTOR FREIGHT, P.O. Box 709, Bordentown, NJ 08505. Representative: William J. Augello, Esq., 120 Main St., P.O. Box Z, Huntington, NY 11743. Transporting (1) *building materials, and non-carbonated fruit drinks and chilled juices,* and (2) *materials, equipment and supplies,* used in the manufacture and distribution of the commodities in (1) between points in the U.S., under continuing contract(s) with Coca-Cola Co., Foods Division, of Hightstown, NJ, and Church Brick Company, of Bordentown, NJ 08505.

MC 147942 (Sub-4F), filed December 29, 1980. Applicant: M & L TRUCK LINE, INC., P.O. Box 358, Memphis, TN 38101. Representative: John Paul Jones P.O. Box 3140, Front Street Station, 189 Jefferson Avenue, Memphis, TN 38103. Transporting (1) *food or kindred products* (except in bulk), as described in Item 20 of the Standard Transportaton Commodity Code Tariff between points in New Castle County, DE, Cobb County, GA, St. Louis, Greene, Jackson, Clay and Platte Counties, MO, and Douglas County, KS, on the one hand, and, on the other, points in DeSoto County, MS, and (2) *fibreboard drums* between points in Cook County, IL, St. Louis County, MO, and Van Wert County, OH, on the one hand, and, on the other, DeSoto County, MS.

MC 148082 (Sub-1F), filed December 18, 1980. Applicant: KEITH ASMUSSEN, d.b.a. ASMUSSEN RACING STABLES, P.O. Box 1861, Laredo, TX 78041. Representative: William E. Collier, 8618 Tesoro Drive, Suite 515, San Antonio, TX 78217. Transporting *race and show horses, stable equipment and supplies, and personal effects of attendants,* for the described horses, between points in the U.S. (except AK and HI).

MC 149412 (Sub-2F), filed December 18, 1980. Applicant: MILK TANK LINES, INC., P.O. Box 788, Frazer, PA 19355. Representative: Wilmer B. Hill, 805 McLachlen Bank Bldg., 666 Eleventh Street, NW, Washington, DC 20001. Transporting *vegetable oils, vegetable oil products, and foodstuffs,* in bulk, between Columbus, OH, West New York, Kearny, and Bayonne, NJ, on the one hand, and, on the other, points in CO and those points in the U.S. in and east of MN, IA, MO, AR, and TX.

MC 151393 (Sub-2F), filed December 16, 1980. Applicant: MILLERS BEND CARRIERS, INC., 1135 Hwy. 231 North, P.O. Box 197, Wetumpka, AL 36092. Representative: Ronald L. Stichweh, 727 Frank Nelson Bldg., Birmingham, AL 35203. Transporting (1) *general commodities* (except household goods as defined by the Commission and classes A and B explosives), between points in AL, CA, CO, FL, GA, IL, IN, KY, LA, MA, MN, MS, MO, NC, NY, OR, SC, TN, TX, and WA, and (2) *athletic apparel,* from points in Clarke County, AL, to points in the U.S.

Vol. No. OP2–153

Decided: January 8, 1981.

By the Commission, Review Board No. 3, Members Parker, Fortier, and Hill.

MC 3753 (Sub-30F), filed December 19, 1980. Applicant: AAA TRUCKING CORP., 3620 Quaker Bridge Rd., P.O. Box 8042, Trenton, NJ 08650. Representative: Zoe Ann Pace, Suite 2373, One World Trade Center, New York, NY 10048. Over regular routes transporting *general commmodites* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk and those requiring special equipment), between Scranton and Williamsport, PA: from Scranton, over Interstate Hwy 81 to junction Interstate Hwy 80, then over Interstate Hwy 80 to junction U.S. Hwy 15, then over U.S. Hwy 15 to Williamsport, and return over the same route, serving all intermediate points and the off route points in Bradford, Columbia, Lackawanna, Luzerne, Lycoming, Montour, Sullivan, Susquehanna and Wyoming Counties, PA.

MC 36473 (Sub-80F), filed December 16, 1980. Applicant: CENTRAL TRUCK LINES, INC., 3825 Henderson Blvd., Tampa, FL 33679. Representative: John C. Bradley, Suite 1301, 1600 Wilson Blvd., Arlington, VA 22209. Over regular routes transporting *commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk and those requiring special equipment) the following regular routes: (1) Between Atlanta, GA, and Akron, OH: from Atlanta over U.S. Hwy 41 to Chattanooga, then over U.S. Hwy 11 to Knoxville, then over U.S. Hwy 25W to

junction U.S. Hwy 25, then over Hwy 25 to Cincinnati, OH, then over U.S. Hwy 42 to junction U.S. Hwy 224, and then over U.S. Hwy 224 to Akron, and return over the same route, serving all intermediate points; (2) Between Lexington, KY, and Akron, OH: from Lexington over U.S. Hwy 68 to junction U.S. Hwy 62, then over U.S. Hwy 62 to Columbus, OH, then over Ohio Hwy 3 to junction Ohio Hwy 5, then over Ohio Hwy 5 to Akron, and return over the same route, serving all intermediate points.

MC 107012 (Sub-631F) filed December 18, 1980. Applicant: NORTH AMERICAN VAN LINES, INC., 5001 U.S. Highway 30 West, P.O. Box 988, Fort Wayne, IN 46801. Representative: David D. Bishop (same address as applicant). Transporting (1) *paper and paper products*, (2) *plastic articles and containers*, and (3) *materials, equipment and supplies* used in the manufacture and distribution of the commodities in (1) and (2) (except commodities in bulk), between points in the U.S. (except AK and HI), restricted to traffic originating at or destined to the facilities of Container Corporation of America.

MC 121642 (Sub-2F), filed December 17, 1980. Applicant: BEAMER BROTHERS TRUCKING COMPANY, 8241 Camargo Road, Cincinnati, OH 45243. Representative: Jack B. Josselson, 700 Atlas Bank Bldg., 524 Walnut St., Cincinnati, OH 45202. Transporting *building materials* between points in AL, AR, GA, IL, IN, KS, KY, MO, OH, PA, NC, SC, TN, WV, and VA.

MC 140312 (Sub-4F), filed December 17, 1980. Applicant: SARGENT TRANSPORT, INC., Obi Road, RD No. 1, Portfille, NY 14770. Representative: Raymond A. Richards, 35 Curtice Pk, Webster, NY 14580. Transporting (1) *such commodities* as are dealt in by grocery and food business houses, *alcoholic beverages*, and (2) *equipment, materials and supplies* used in the manufacture and distribution of the commodities in (1) above, between points in the U.S., under continuing contract(s) with Leprino Foods, Inc., of Denver, CO.

MC 146793 (Sub-4F), filed December 15, 1980. Applicant: M & L MESSENGER SERVICE, INC., Jewel Lane, New Fairfield, CT 06810. Representative: James M. Burns, 1383 Main St., Suite 413, Springfield, MA 01103. Transporting *general commodities* (except those of unusual value, classes A and B explosives, household good as defined by the Commission commodities in bulk, and those requiring special equipment) between points in CT, MA, NJ, NY, and PA.

MC 150432 (Sub-13F), filed December 17, 1980. Applicant: H & M TRANSPORTATION, INC., U.S. 42 & 70, London, OH 43140. Representative: Owen B. Katzman, 1828 L St., NW, Suite 1111, Washington, DC 20036. Transporting (1) *paper and paper products, lumber, forest products, janitorial equipment and supplies, packaging materials and equipment, and printing equipment and supplies*, and (2) *materials, equipment, and supplies* used in the manufacture, conversion, and distribution of the commodities in (1) above, between points in the U.S., under continuing contract(s) with Hammermill Paper Company, of Erie, PA.

Vol. No. OP4-198

Decided: January 13, 1981.

By the Commission, Review Board No. 2, Members Chandler, Eaton, and Liberman. (Member Liberman not participating.)

MC 26396 (Sub-384F), filed December 30, 1980. Applicant: THE WAGGONERS TRUCKING, P.O. Box 31357, Billings, MT 59107. Representative: Bradford E. Kistler, P.O. Box 82028, Lincoln, NE 68501. Transporting (1) *feed, feed ingredients, mineral mixtures, pesticides and feeding equipment*, and (2) *materials, equipment* and supplies used in the manufacture and distribution of the commodities in (1), between points in Adams County, IL, on the one hand, and, on the other, points in CA, ID, OR, and WA.

MC 26396 (Sub-385F), filed December 30, 1980. Applicant: THE WAGGONERS TRUCKING, a corporation, P.O. Box 31357, Billings, MT 59107. Representative: Bradford E. Kistler, P.O. Box 82028, Lincoln, NE 68501. Transporting *general commodities* (except classes A and B explosives, and household goods as defined by the Commission), between the facilities of Velsicol Chemical Corporation, on the one hand, and, on the other, points in the U.S.

MC 61396 (Sub-387F), filed December 31, 1980. Applicant: HERMAN BROS., INC., P.O. Box 189, Omaha, NE 68101. Representative: Scott E. Daniel, 800 Nebraska Savings Bldg., 1623 Farnam, Omaha, NE 68102. Transporting *kiln dust*, in bulk, between points in TX, LA, OK, MS and AR.

MC 99896 (Sub-7F), filed December 22, 1980. Applicant: ATKINSON TRANSFER, INC., 1475 W. River Rd., Dayton, OH 45418. Representative: James M. Burtch, 100 E. Broad St., Columbus, OH 43215. Transporting *general commodities* (except classes A and B explosives, and household goods as defined by the Commission), between points in Hamilton and Montgomery Counties, OH, on the one hand, and, on the other, points in AL, GA, IL, IN, IA, KY, MD, MI, MO, NY, NC, PA, SC, TN, VA, WV, and WI, restricted to traffic originating at or destined to the facilities of General Motors Corporation.

MC 117686 (Sub-285F), filed December 24, 1980. Applicant: HIRSCHBACH MOTOR LINES, INC., 920 West 21st Street, P.O. Box 155, South Sioux City, NE 68776. Representative: George L. Hirschbach (same address as applicant). Transporting *dairy products*, between points in Dallas and Tarrant Counties, TX, to points in OK, KS, MO and AR.

MC 117686 (Sub-282F), filed December 24, 1980. Applicant: RILEY WHITTLE, INC., P.O. Box 19038, Phoenix, AZ 85005. Representative: Baldo J. Lutich, 1441 E. Thomas Road, Phoenix, AZ 85014. Transporting *general commodities* (except commodities in bulk, classes A and B explosives, and used household goods), between the facilities of Ambassador International, a Division of Amba Marketing Systems, Inc., on the one hand, and, on the other, points in the U.S.

MC 140546 (Sub-3F), filed December 30, 1980. Applicant: D & T TRUCKING CO., INC., 498 First Street, NW., New Brighton, MN 55112. Representative: Samuel Rubenstein, P.O. Box 5, Minneapolis, MN 55440. Transporting *general commodities* (except classes A and B explosives, and household goods as defined by the Commission), (1) between points in Monroe County, NY, on the one hand, and, on the other, Chicago, IL; and (2) between Chicago, IL, on the one hand, and, on the other, points in MN and WI.

MC 147786 (Sub-3F), filed December 22, 1980. Applicant: COLORADO-DENVER/WAREHOUSE-DELIVERY, INC., 4902 Smith Road, Denver, CO 80216. Representative: Edward C. Hastings, 653 Grant Street, Denver, CO 80203. Over regular routes, transporting *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), Between Denver and Gunnison, CO: From Denver over Interstate Hwy 70 (and also over U.S. Hwy 6) to junction CO Hwy 91, then over CO Hwy 91 to junction U.S. Hwy 24, then over U.S. Hwy 24 to junction U.S. Hwy 285, then over U.S. Hwy 285 to junction CO Hwy 291, then over CO Hwy 291 to junction U.S. Hwy 50, then over U.S. Hwy 50 to Gunnison, and return over the same routes, serving the intermediate points of Leadville, Buena Vista, and Salida, CO.

MC 153406F, filed December 23, 1980. Applicant: GWR TRANSPORTATION, 649 Realitos Drive, La Verne, CA 91750. Representative: Gale W. Roach (same address as applicant). Transporting *foodstuffs* (1) from points in Ventura County, CA, to points in OR and WA, and (2) between points in Ventura and Los Angeles Counties, CA.

Agatha L. Mergenovich,
Secretary.

[FR Doc. 81-1997 Filed 1-16-81; 8:45 am]
BILLING CODE 7035-01-M

[Finance Docket No. 29549]

Louisiana & Arkansas Railway Co.; Exemption

AGENCY: Interstate Commerce Commission.

ACTION: Notice of Exemption.

SUMMARY: The Interstate Commerce Commission exempts Louisiana & Arkansas Railway Company (L&A) from the requirement that it receive approval under 49 U.S.C. § 10901(a) and 49 U.S.C. § 11343(a) prior to performing operations over a segment of the Atchison, Topeka and Santa Fe Railway Company (Santa Fe) track in Dallas, TX.

DATES: The exemption is effective on December 31, 1980, and remains effective for 60 days thereafter, or, if an application for permanent authority is filed within this 60-day period, the exemption shall remain effective until the Commission issues its decision on the application. Petitions for reconsideration of this decision must be filed no later than 20 days following this publication.

ADDRESSES: Send petitions for reconsideration to:

(1) Section of Finance, Room 5414, Interstate Commerce Commission, 12th Street & Constitution Ave., NW, Washington, DC 20423.

(2) Petitioner's representative: Robert K. Dreiling, Attorney for Louisiana & Arkansas Railway Company, 114 West 11th Street, Kansas City, MO 64105.

Pleadings should refer to Finance Docket No. 29549.

FOR FURTHER INFORMATION CONTACT: Ellen Hanson, (202) 275-7245.

SUPPLEMENTARY INFORMATION:

Background

The Louisiana and Arkansas Railway Company (L&A), a subsidiary of the Kansas City Southern Lines, extends from Dallas, TX, through Shreveport, LA, to the Gulf Port of New Orleans, LA. Since June 6, 1977, L&A has been using the Chicago, Rock Island and Pacific Railroad Company (Rock Island) track and terminal facilities in its Cadiz Yard at Dallas, TX, in providing rail service to, from, and through the Dallas terminal.

To reach the Rock Island yard, which is situated beyond the Santa Fe yard, it is necessary that L&A operate over a portion of Santa Fe track, between mile post 53 plus 1802.2 feet and mile post 50 plus 4,100 feet, in Dallas, Santa Fe granted L&A use of such track by an agreement dated May 12, 1977. L&A began operating over the Santa Fe track under authority from this Commission in Service Order No. 1267, *Louisiana & Arkansas Railway Company Authorized to Operate Over Tracks of the Atchison, Topeka & Santa Fe Railway Company*, which became effective on May 19, 1977. This Service Order was issued on May 19, 1977, and extended through 6 amendments. The last amendment extended Service Order No. 1267 until November 30, 1980. In response to an urgent request by L&A for continuation of Service Order No. 1267, the Commission, on December 1, 1980, issued Service Order No. 1491, *Louisiana & Arkansas Railway Company Authorized to Operate Over Tracks of the Atchison, Topeka and Santa Fe Railway Company*. Service Order No. 1491 became effective on December 1, 1980, and is scheduled to expire at 11:59 p.m., December 30, 1980.

On December 9, 1980, L&A filed a statement requesting a continuance of Service Order No. 1491 beyond the December 30, 1980, expiration date. In 1979, L&A moved 20,077 carloads of freight from, to, or through the Dallas terminal. Expiration of authority provided under Service Order No. 1491 will eliminate L&A's ability to handle this traffic.

L&A has entered into agreements with both Rock Island and Santa Fe for permanent authority to use the involved facilities and trackage. L&A is in the process of preparing, and will file with the Commission, applications for approval of those agreements and for permanent authority to operate over the Santa Fe line.[1] L&A requested that it be allowed to continue operating over the Santa Fe track until such applications can be filed and acted upon by the Commission.

The Staggers Rail Act of 1980 (Pub. L. No. 96-448) substantially limits the Commission's authority to issue service orders under 49 U.S.C. 11123(a) to emergency situations of such magnitude as to have substantial adverse effects on rail service in the United States or a substantial region of the United States. In a separate decision we have denied L&A's requested extension of Service Order No. 1491 because it fails to meet the new criteria established by the Staggers Act. Consequently, Service Order No. 1491 will expire as scheduled on December 30, 1980.

Discussion and Conclusions

A rail carrier can operate over the line of another railroad only if it has a service order to do so or has been granted a certificate under 49 U.S.C. 10901. Moreover, acquisition by a rail carrier of trackage rights over a rail line owned or operated by another rail carrier can be carried out only with the approval and authorization of the Commission under 49 U.S.C. 11343. We have already determined that L&A has not made a sufficient showing under amended section 11123(a) for issuance of a service order. Although L&A plans to file appropriate applications for permanent authority to operate over the Santa Fe track, it will be some time before such applications can be filed and acted upon. Therefore, we cannot order or affirmatively authorize L&A to perform uninterrupted operations over the Santa Fe track.

However, Congress has given us authority under 49 U.S.C. 10505 to exempt certain rail matters as a means of eliminating burdensome regulation of rail carriers. That section provides that the Commission "shall" exempt a transaction from the application of any provision of the Interstate Commerce Act when it finds that (1) continued regulation is not necessary to carry out the Rail Transportation Policy in 49 U.S.C. 10101a; and (2) either (A) the transaction of limited scope, or (B) regulation is not necessary to protect shippers from the abuse of market power.[2] Moreover, we can issue the exemption on our own initiative. 49 U.S.C. 10505(b).

[1] The acquisition, operation, and construction of a line of railroad requires the approval of the Commission under 49 U.S.C. 10901. To obtain such approval, an application must be filed in compliance with the procedures established in the Commission's regulations outlined in *Construction Extension, Acquisition, or Operation of Railroad Lines*, 49 CFR Part 1120 (1979). The acquisition by a rail carrier of trackage rights over another rail line requires the prior approval of the Commission under 49 U.S.C. 11343 in accordance with regulations established in *Railroad Acquisition, Control, Merger, Consolidation, Coordination Project, Trackage Rights and Lease Procedures*, 49 CFR 1111 (1979) (*Consolidation Procedures*). See also *Railroad Consolidation Procedures*, 363 I.C.C. 200 (1980).

[2] The Section creates two additional limitations on our broad exemption power. We may not exercise this exemption authority "(1) to authorize intermodal authority that is otherwise prohibited by this title, or (2) to relieve a carrier of its obligation to protect the interests of employees as required by this subtitle". 49 U.S.C. 10505(g).

We believe the instant operation satisfies the criteria of Section 10505. Exempting L&A from the filing requirement of 49 U.S.C. 10901 for a short time period will merely maintain the status quo until L&A can file and the Commission can consider appropriate applications for permanent authority to provide such service. The Commission's prior approval of L&A's operation over the small segment of Santa Fe's track is not necessary to carry out any of the 15 factors listed in the rail tranportation policy of section 10101a.

The transaction is of limited scope because (1) it involves only a very short segment of track, (2) it is of limited duration, and (3) it should have no impact on any railroad employees or the operations of any other rail carrier.

Having concluded that the transaction is of limited scope, we need not determine whether prior approval of rail operations is necessary to protect shippers from the abuse of market power. We note, however, that since the temporary exemption granted here will merely allow a continuation of operations which have been in effect for over 3 years, it is unlikely that it would have any impact whatsoever on shippers. On the other hand, our failure to grant the exemption would result in a forced cessation of rail service upon which shippers have come to rely and could be detrimental to their business operations.

In light of these findings we are able to exempt this transaction. Our exemption authority provides us with the power to limit the duration of our exemptions. 49 U.S.C. 10505(c). Accordingly, this exemption is effective for 2 months only, subject to extension if and when L&A files applications for permanent authority.

To avoid any disruption in service, this exemption will become effective on December 31, 1980. Section 10505 enables us to revoke an exemption if we find the exempted provision necessary to carry out the rail transportation policy. We have found otherwise on the facts currently available to us. However, we will permit interested parties to file petitions for reconsideration alleging that grant of the exemption harms our ability to carry out the rail transportation policy. Petitions for reconsideration must be filed within 20 days after this decision's publication in this Federal Register.

Labor protection. In granting this exemption we may not relieve a carrier of its obligation to protect the interests of employees. Amended section 10901(e) indicates that the imposition of labor protective conditions is discretionary when authority is sought, as here, to operate a line. However, approval of a trackage rights agreement under § 11343 must include the employee protective conditions set forth in *Norfolk and Western Ry. Co.-Trackage Rights-BN*, 354 I.C.C. 605 (1978), as modified by *Mendocino Coast Ry., Inc.-Lease and Operate*, 360 I.C.C. 653 (1980). These conditions are here imposed as a condition to L&A's exercise of this exemption.

We find:

(1) Application of the requirements of 49 U.S.C. 10901 and 49 U.S.C. 11343(a) that L&A receive prior authority to operate over the Santa Fe rail line between milepost 50 plus 4,100 feet and milepost 53 plus 1802.2 feet is not necessary to carry out the transportation policy of 49 U.S.C. 1010a.

(2) This transaction is of limited scope.

(3) This decision will not operate to relieve L&A from an obligation either (a) to provide contractural terms for liability and claims which are consistent with 49 U.S.C. 11707, or (b) to protect the interest of its employees; and does not authorize intermodal ownership that is otherwise prohibited.

(4) This decision is not a major Federal action significantly affecting energy consumption or the quality of the human environment.

It is ordered:

(1) Pursuant to 49 U.S.C. § 10505 we exempt the operation by L&A over the Santa Fe rail line from 49 U.S.C. 10901(a) and 49 U.S.C. § 11343(a), subject to the employee protective conditions imposed in *Norfolk & Western Ry. Co.-Trackage Rights-BN*, 354 I.C.C. 650 (1978), as modified by *Mendocino Coast Ry., Inc.-Lease and Operate*, 360 I.C.C. 653 (1980).

(2) Notice of our action shall be given to the general public by delivery of the copy of this decision to the Director, Federal Register, for publication.

(3) This exemption will continue in effect for 2 months, unless revoked, or extended by further action of the Commission.

(4) This decision shall be effective at 12:01 a.m., December 31, 1980.

(5) Petitions to reopen this proceeding for reconsideration must be filed no later than 20 days after the date of publication.

Decided: December 30, 1980.

By the Commission, Chairman Gaskins, Vice Chairman Gresham, Commissioners Clapp, Trantum, Alexis and Gilliam. Commissioners Alexis and Gilliam were absent and did not participate in the disposition of this proceeding.

Agatha L. Mergenovich,
Secretary.

[FR Doc. 81-1910 Filed 1-16-81; 8:45 am]
BILLING CODE 7035-01-M

[Volume No. OP2-152]

Motor Carriers; Permanent Authority Decisions

Decided: January 8, 1981.

The following applications, filed on or after July 3, 1980, are governed by Special rule 247 of the Commission's Rules of Practice, see 49 CFR 1100.247. Special rule 247 was published in the Federal Register on July 3, 1980, at 45 FR 45539. For compliance procedures, refer to the Federal Register issue of December 3, 1980, at 45 FR 80109.

Persons wishing to oppose an application must follow the rules under 49 CFR 1100.247(B). Applications may be protested *only* on the grounds that applicant is not fit, willing, and able to provide the transportation service and to comply with the appropriate statutes and Commission regulations. A copy of any application, together with applicant's supporting evidence, can be obtained from any applicant upon request and payment to applicant of $10.00.

Amendments to the request for authority are not allowed. Some of the applications may have been modified prior to publication to conform to the Commission's policy of simplifying grants of operating authority.

Findings:

With the exception of those applications involving duly noted problems (e.g.s., unresolved common control, fitness, water carrier dual operations, or jurisdictional questions) we find, preliminarily, that each applicant has demonstrated its proposed service warrants a grant of the application under the governing section of the Interstate Commerce Act. Each applicant is fit, willing, and able to perform the service proposed, and to conform to the requirements of Title 49, Subtitle IV, United States Code, and the Commission's regulations. Except where noted, this decision is neither a major Federal action significantly affecting the quality of the human environment nor a major regulatory action under the Energy Policy and Conservation Act of 1975.

In the absence of legally sufficient interest in the form of verified statements filed on or before March 5, 1981 (or, if the application later becomes unopposed) appropriate authorizing

documents will be issued to applicants with regulated operations (except those with duly noted problems) and will remain in full effect only as long as the applicant maintains appropriate compliance. The unopposed applications involving new entrants will be subject to the issuance of an effective notice setting forth the compliance requirements which must be satisfied before the authority will be issued. Once this compliance is met, the authority will be issued.

Within 60 days after publication an applicant may file a verified statement in rebuttal to any statement in opposition.

To the extent that any of the authority granted may duplicate an applicant's other authority, the duplication shall be construed as conferring only a single operating right.

By the Commission, Review Board Number 3, Members Parker, Fortier and Hill.

Agatha L. Mergenovich,
Secretary.

Note: All applications are for authority to operate as a motor common carrier in interstate or foreign commerce over irregular routes, unless noted otherwise. Applications for motor contract carrier authority are those where service is for a named shipper "under contract".

MC 150482 (Sub-1F), filed December 17, 1980. Applicant: McCAULEY AIR FREIGHT, R.D. No. 4, Box 314A, Punxsutawney, PA 15767. Representative: John Smith (same address as applicant). Transporting (1) *general commodities*, between Belfast, Black Creek, Rockville, and Shongo, NY, Bridgetown, Chevior, Covedale, Dent, Miami, and Wileys, OH, Alum Rock, Brightwood, Blairs, Coverdale, Dudley, Jefferson, Jewell, Library, Library Junction, McMurray, Ritts, St. Petersburg, Turkey, and Worthington, PA, on the one hand, and, on the other, points in the U.S.; and (2) *shipments weighing 100 pounds or less* if transported in a vehicle in which no one package exceeds 100 pounds, between points in the U.S.

[FR Doc. 81-1913 Filed 1-19-81; 8:45 am]
BILLING CODE 7035-01-M

INTERNATIONAL COMMUNICATION AGENCY

Culturally Significant Objects Imported for Exhibition; Determination

Notice is hereby given of the following determination: Pursuant to the authority vested in me by the act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459) and Executive Order 12047 of March 27, 1978 (43 FR 13359, March 29, 1978), I hereby determine that certain objects to be included in the exhibit, "Kandinsky: The Improvisations" (designated in the list [1] filed as part of this determination); imported from abroad for the temporary exhibition without profit within the United States are of cultural significance. These objects are imported pursuant to loan agreements between foreign lenders and the National Gallery of Art, Washington, D.C. I also determine that the temporary exhibition or display of the designated exhibit objects at the National Gallery of Art, Washington, D.C., beginning on or about April 28, 1981, to on or about August 2, 1981, is in the national interest.

Public notice of this determination is ordered to be published in the Federal Register.

Dated: January 13, 1981.

John E. Reinhardt,
Director.

[FR Doc. 81-1911 Filed 1-16-81; 12:24 pm]
BILLING CODE 8230-01-M

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development

Privacy Act of 1974; Annual Publication of Systems of Records

The Privacy Act of 1974 [5 U.S.C. 552a (e)(4)] requires agencies to publish annually in the Federal Register a notice of the existence and character of their systems of records. The Agency for International Development last published the full text of its systems of records at 42 FR 47371, September 20, 1977. No further changes have occurred; therefore, the systems of records remain in effect as published.

The full text of the Agency for International Development systems of records also appears in Privacy Act Issuances, 1979 Compilation, Volume III, page 2475. This volume may be ordered through the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402. The price of this volume is $9.50.

Norman Sherman,
Director, Office of Public Affairs.

January 9, 1981.

[FR Doc. 81-1727 Filed 1-16-81; 8:45 am]
BILLING CODE 4710-02-M

[1] An itemized list of objects included in the exhibit is filed as part of the original document.

Appointment to the Performance Review Board

The following individuals have been selected to serve on AID's Performance Review Board:

Chairperson: D.G. MacDonald
Vice Chairperson: Edward W. Coy
Members: Richard F. Weber, Peter Kimm, Kelly C. Kammerer, William T. White, Richard W. Parsons, Bradshaw Langmaid, Jr., Phyllis A. Drohat
Advisors: Pauline G. Johnson, Jan M. Barrow

If you have further inquiries, please address them to Mrs. Jan Barrow, International Development Cooperation Agency, A.I.D., Office of Personnel Management (PM/PO/W), Rm. 412, SA-2, Washington, D.C. 20523.

Dated: December 30, 1980.

Jan Barrow,
Technical Advisor, Performance Review Board.

[FR Doc. 81-1891 Filed 1-16-81; 8:45 am]
BILLING CODE 4710-02-M

DEPARTMENT OF JUSTICE

National Institute of Justice

Proposals To Study Various Aspects of the Local Jail and Its Use; Competitive Research Grant Solicitation

The National Institute of Justice announces a competitive research grant solicitation for proposals to study various aspects of the local jail and its use. The overall goal is to begin a systematic, long-term program of jail research which will yield more empirically-derived knowledge about its role and impact as a social control institution.

The solicitation requests submission of proposals which will then be considered by a peer review panel. In order to be considered, proposals must be postmarked to the National Institute no later than April 20, 1981. This announcement envisions two grant awards (up to a total of $245,000) with a maximum of $125,000 per award and an expected duration of 24 months.

Additional information and copies of the solicitation may be obtained by contacting: Lawrence A. Greenfield, Corrections Division, Office of Research Programs, National Institute of Justice, 633 Indiana Avenue, NW., Washington, D.C. 20531, (301) 492-9118.

Dated: January 9, 1981.

Harry M. Bratt,
Acting Director, National Institute of Justice.

[FR Doc. 81-1889 Filed 1-16-81; 8:45 am]
BILLING CODE 4410-18-M

METRIC BOARD

Final Consumer Program

AGENCY: United States Metric Board.

ACTION: Final Consumer Program.

SUMMARY: On September 29, 1979, the President issued Executive Order 12160 which was designed to improve the management, coordination and effectiveness of agency consumer programs. Although the United States Metric Board is an independent agency not subject to that Executive Order, it has determined to voluntarily comply with it. This Final Consumer Program describes a plan for assuring that consumer needs and interests are adequately considered in decisionmaking processes. It contains revisions resulting from comments received on this agency's previously published Draft Consumer Program.

EFFECTIVE DATE: February 18, 1981.

FOR FURTHER INFORMATION CONTACT: Consumer Specialist, Office of the Executive Director, U.S. Metric Board, 1600 Wilson Boulevard, Suite 400, Arlington, Virginia 22209, 703-235-1933.

SUPPLEMENTARY INFORMATION: On August 28, 1980, the United States Metric Board (USMB) published for comment its Draft Consumer Program (45 FR 56954). During the comment period, comments were received from 3 individuals, 2 associations, and 1 government office. They were reviewed by the USMB staff and incorporated in this program when deemed appropriate. On December 11, 1980, the USMB formally approved the Final Consumer Program (Program).

The following paragraphs summarize the comments received and explain the USMB responses thereto.

One commenter suggested that the position of Consumer Specialist be established at senior staff level. The Board considers the Executive Director and the head of each of the four staff divisions as senior staff. Accordingly, the Consumer Specialist can not be recognized as a member of the senior staff. However, the Consumer Specialist has many of the prerogatives of senior staff in that the incumbent will report directly to the Executive Director and will have a variety of other duties and responsibilities that will be independently accomplished as outlined in Section I of the Program.

Three respondents suggested that consideration be given to assigning staff to the Consumer Specialist to assist in carrying out assigned duties. The Consumer Specialist will be provided adequate clerical and other assistance to accomplish assigned tasks from existing resources. However, in an agency composed of only 36 full-time permanent employees, no additional personnel are available to be dedicated to this Program at this time. This determination will be reviewed annually during development of the budget.

Another commenter thought the Program was written in general, future terms and two commenters said it had no overall target date for implementation. However, the Program sets forth clearly in several sections minimum periods of time for the accomplishment of various tasks (see Sections I, III and V). The complete program is effective 30 days after publication in the **Federal Register.** Accordingly, no changes based on these comments are deemed appropriate.

A suggestion was received that Section I.A. be changed by removing the words "rules" and "legislation" and by putting the "and" between "policies" and "programs." The portion of the section affected would then read ". . . inclusion of a consumer perspective in the development of policies and programs." As the suggested changes more accurately reflect the Consumer Specialist's responsibilities, they have been adopted.

In response to one commenter, it should be noted that Section I.C. already contemplates the contacting of private consumer groups and consumer groups outside of the Washington, D.C. area. Accordingly, no additions are deemed necessary. Also, as the Board has in existence a program to receive the consumer perspective and this Program provides further extensive opportunities for consumer participation in Board activities, no further mention thereof is deemed necessary.

Two respondents thought that Section II.A should be changed by replacing the word "observation" with "participation." As this change accurately reflects the policy of the Board as expressed in Section 504.30(2) of the USMB Private Section Metric Conversion Planning Guidelines, it has been incorporated in the Program.

A respondent suggested that the Program include a requirement for an annual report to the Consumer Affairs Council created by Executive Order 12160. However, as the Executive Order requires only that agencies respond to requests for reports from the Council, a provision similar to that has been added to the Program.

One respondent suggested that the Consumer Specialist be specifically required to develop criteria for analyzing the adequacy of consumer participation needs and perspectives during review of private sector metric conversion plans and research calls. This suggestion has been adopted and a paragraph reflecting it was added to Section II.

A comment was received that the Consumer Specialist should be more directly involved in the shaping of educational programs of the Board. Changes to the Program have been made to accommodate this suggestion.

Two commenters also suggested that Section III be changed to more clearly authorize the Consumer Specialist to recommend changes to informational materials when thought appropriate. This has been accomplished.

One commenter thought that a specific requirement for dissemination of provisions of the Metric Conversion Act of 1975 should be included in the Program. Since this is a principal responsibility of all divisions of the staff, and more especially of the Office of Public Awareness and Education, no further mention of it seems necessary.

A comment was received suggesting that the Program be more specific as to the kind of technical assistance that may be available to consumers. This topic is addressed in Section IV in purposefully general terms. The Board, being a comparatively new agency with little experience in this area, has adopted an open attitude towards technical assistance. As more hands-on experience is gained, and if resources permit, the issue of more specificity as to the availability of technical assistance will be addressed.

There were also several comments expressing general approval or disapproval of the Program and several comments suggesting additions and changes that were clearly already incorporated in the Program. These comments are not addressed. Also, several administrative corrections were made.

Final Consumer Program

Introduction

The United States Metric Board (USMB) is an independent agency of the Federal Government created by the Metric Conversion Act of 1975 (Pub. L. 94-168) to coordinate and plan the increasing voluntary use of the metric system in the United States. The Board consists of a Chairman and sixteen Members appointed by the President with the advice and consent of the Senate. Members are representatives of all walks of American life: labor, small business, industry, retailing, science, engineering, education, state and local government, and four at-large members to represent consumers and other interests.

I. Consumer Affairs Perspective

The USMB supports the direction contained in Executive Order 12160 that agencies have an identifiable, accessible person with responsibility for coordination and oversight of the agency's consumer activities and has established within the Office of the Executive Director the position of Consumer Specialist. The Consumer Specialist shall report directly to the Executive Director of the USMB and be a professional consumer affairs person with experience working with people on consumer issues. The major duties of the Consumer Specialist shall include, but not be limited to:

A. Assessing consumer concerns and needs relative to metrication and, through participation at senior staff meetings and other means, assuring the inclusion of a consumer perspective in the development of policies and programs.

B. Working closely with the operational offices of the Board: assist in the review of metric conversion plans; suggest the direction for consumer oriented research projects; assist in the planning of consumer projects; work on consumer outreach at Board meetings and public forums; conduct consumer forums; review complaint data and provide recommendations on kinds and amounts of informational material needed to serve consumers; and carry out other related activities, as required.

C. Utilizing existing consumer advisory mechanisms, such as the U.S. Office of Consumer Affairs; the proposed committee of the National Council on State Metrication that will deal with consumer affairs; the Consumer Affairs Subcommittee of the Metrication Operating Committee, Interagency Committee on Metric Policy; the Consumer Advisory Group of the American National Metric Council; and the consumer affairs offices of individual Federal agencies, as well as contacting national and local consumer groups and activists to insure that the consumer perspective is fully understood and considered by the Board and staff. Within one year of appointment, the Consumer Specialist will assess the effectiveness of these mechanisms and contacts, and make recommendations as to the necessity for creating a Consumer Advisory Committee.

D. Preparing any reports that the Consumer Affairs Council may request.

II. Consumer Participation

The Consumer Program of the Board shall be the responsibility of the Consumer Specialist with assistance from the other divisions of the Board. Every major consumer organization in the United States has been contacted by letter and advised of the existence and functions of the USMB and requested to designate a metric coordinator as a point of continuing contact.

The predominant specifications which define consumer participation in conversion planning activities established under the auspices of the USMB are those which flow from the requirements of Section 6(2) of the Metric Conversion Act of 1975 which directs the USMB to provide for appropriate procedures or guidelines under which metric conversion plans may be developed for review by the USMB.

The USMB has developed Private Sector Metric Conversion Planning Guidelines and published them (45 FR 61550). Those guidelines address the necessity of consumer participation as well as representation of all interested parties in metric conversion planning activities and organized committees. The guidelines provide an open conversion planning process that the consumer may have access to in the following ways:

A. Direct attendance and participation in conversion planning committee meetings.

B. Requests made directly to conversion planning committees for agendas, minutes and other meeting records.

C. Request made to the USMB for relevant materials transmitted to USMB by conversion planning committees.

As private sector metric conversion plans are submitted for review, the Consumer Specialist will analyse them to determine if meaningful consumer participation is needed and is reflected. Where consumer participation is deemed necessary and is not reflected, that sector will be asked to formulate appropriate consumer participation programs before the plan will be considered for approval. The sector plan must demonstrate how consumer concerns will be analyzed and considered within the context of the proposed metric conversion.

The USMB Research Program is updated each Federal Planning Cycle by solicitation of interested parties for suggested research projects and objectives. This research call will be reviewed by the Consumer Specialist to insure that adequate consumer contact is made so that consumer concerns and issues can be defined independently or as salient research tasks within other more technical research issues.

The Consumer Specialist will recommend to appropriate Board committees the criteria for analyzing consumer participation needs and perspectives when reviewing private sector metric conversion plans and USMB research calls.

The Board conducts Public Forums in selected cities throughout the United States which provide opportuntity for comment to the USMB on metric matters by all citizens. Announcements of the time and place of these Forums is made through paid newspaper advertisements; multilingual public service radio and TV announcements distributed to local media; press releases; and written notification to consumer organizations and other groups in the immediate and surrounding areas.

Assistance is also provided by the U.S. Office of Consumer Affairs in contracting interested consumer programs. Notice of all public meetings is also provided in the Federal Register. Additionally, follow-up letters are sent to all members of the public who attend forums and Board meetings inviting them to write or call us with any questions.

In the case of public hearings on a specific metric issue, the Consumer Specialist, coordinating with the Office of Research, Coordination and Planning and the Office of Public Awareness and Education, will identify and solicit effective consumer presentations.

III. Informational Materials

The Office of Public Awareness and Education prepares and publicly disseminates a wide variety of educational and informational materials. Press releases are distributed free of charge to everyone on the USMB mailing list including approximately 400 consumer organizations. Radio public service announcements are produced and distributed to educate consumers about increased use of the metric system in the marketplace. Newspaper articles will be produced to advise the general public of research activities and other USMB programs.

USMB produces and distributes a publication describing the agency's responsibilities and the services it offers. USMB's annual reports will be distributed to all major consumer organizations with a cover letter soliciting questions or comments from consumers. Informational materials are displayed and made available to consumers who attend USMB meetings and public forums. A bibliography of reference material on the metric system will be compiled as an information source for the public.

Additionally, within 90 days of the effective date of this Consumer Program, the Consumer Specialist and the Office

of Public Awareness and Education will assess education programs and informational material for adequacy to inform consumers in the following areas:

A. The Board's functions, services and responsibilities as well as explanation of the Metric Conversion Act of 1975.

B. The impact of metric conversion on the consumer in the marketplace.

C. The method of consumer participation in USMB activities.

D. Materials that make the board meetings more understandable to consumers who attend these meetings. The meeting materials shall include appropriate information covering USMB responsibilities and the Metric Conversion Act of 1975, the meeting agendas with summaries of discussion topics, opportunities for specific consumer participation at the meetings, opportunities for consumer response after the meeting and the name of the USMB Consumer Specialist.

Within 30 days of this assessment, and whenever deemed necessary thereafter, the Consumer Specialist will recommend to the Public Awareness and Education Committee changes to existing and proposed educational programs and informational materials in the deficient areas and will recommend new programs and materials, when needed. The production of such programs and informational materials is normally the responsibility of the Office of Public Awareness and Education.

IV. Education and Training

The Consumer Specialist shall be responsible for educating the staff about the requirements of the Executive Order and the elements of the USMB response to the Order. Regular briefings shall be conducted by the Consumer Specialist for the Senior Staff. A summary of each briefing, along with the Executive Order and USMB Program, shall be circulated to each staff member.

Upon request of a particular office director, the Consumer Specialist shall conduct a briefing for the staff of that office.

Should a significant change be made by the Board in the Consumer Program, the Consumer Specialist shall by written memorandum inform the Staff of the substance and nature of the change.

The Consumer Specialist shall assist the senior staff to define operating plan initiatives to address specifically the question of technical assistance programs within USMB. The Consumer Specialist shall, at least semiannually, address the question of technical assistance programs within the USMB and make recommendations to the Board.

V. Complaint Handling

Under the direction of the Executive Director and the Board, the Consumer Specialist will have responsibility for handling consumer complaints and will receive all incoming mail from consumers. Within 90 days after the effective date of this plan, the Consumer Specialist will devise a system to log complaints and monitor requests for information as to category, source and content. All such complaints and requests will be routed by the Consumer Specialist to appropriate offices for handling.

The Office of Public Awareness and Education will have overall responsibility for responding to requests for information from the general public. The Office of Research, Coordination and Planning will respond to requests for technical information, technical assistance, and complaints that cannot be routinely handled by the Office of Public Awareness and Education. All complaints and requests for information shall be responded to within 30 days. Consumers will be notified by USMB of referral of their letters to another agency. Response letters to consumers must outline proposed USMB action, identify agency contact for further information and specify expected resolution date, all when appropriate.

Public awareness of the agency will be heightened through USMB publications, radio and TV spots and involvement in a variety of public appearances and events. Announcements will give USMB address and a special post office box number to facilitate communications. These announcements will encourage consumers to contact the agency if they have questions or concerns about metric usage. USMB consumer informational materials will explain complaint handling procedures, response times, and authority in handling complaints.

The Consumer Specialist shall organize and compile monthly, quarterly and yearly complaint statistics by source, subject, nature, state and other categories. The Consumer Specialist will analyze Office of Public Awareness and Education reports. Discussion of this complaint study will be regularly included on the agenda of Senior Staff meetings. Presentations to Senior Staff and the Board shall be made by the Consumer Specialist. The Consumer Specialist has the responsibility to suggest policy, program, or other changes to address the findings of the complaint data.

VI. Oversight

The Consumer Specialist shall report directly to the Executive Director and shall apprise the Executive Director of the potential impact on consumers of particular policy initiatives under development for review within the agency.

Malcolm E. O'Hagan,

Executive Director.

The White House,
Washington, January 6, 1981.

Mr. Theodore Farfaglia,
General Counsel, United States Metric Board, 1815 North Lynn Street, Arlington, Virginia 22209.

Dear Mr. Farfaglia: As Chairperson of the Consumer Affairs Council, I wish to express my pleasure at the development of a final consumer program by the United States Metric Board. I realize that as an independent agency, the Board is under no obligation to publish a program, so that it is especially notable that the Board has decided to institute a program that closely parallels the provisions of Executive Order 12160 establishing consumer program standards for Cabinet departments and executive agencies.

Under its new consumer program, the Metric Board will take a number of important measures that should ease the impact of voluntary metrication on the nation's consumers. These include establishing a consumer specialist position that will report directly to the Executive Director of the Metric Board; working with representatives of major consumer organizations; reviewing private sector metric conversion plans to assure that meaningful consumer participation activities are included; conducting public forums on metric issues; and other educational measures to assist consumers as well. Implementation of this program will help to assure that metric conversion can only be conducted in a specific economic sector if the effect of the program on consumers is known and understood in advance.

With the publication of a final consumer program by the Board and several other independent agencies, President Carter's effort to improve the consumer programs of the federal government will be substantially complete. This represents the culmination of the work of many competent and dedicated people throughout the last five Presidential administrations. I am pleased that the Metric Board has done its part in this effort. I am confident that implementing the program will make an important contribution to consumer welfare in the United States.

Sincerely,

Esther Peterson,

Special Assistant to the President for Consumer Affairs.

[FR Doc. 81-1815 Filed 1-16-81; 8:45 am]
BILLING CODE 6820-84-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[81-6]

NASA Advisory Council; Informal Ad Hoc Solar System Exploration Committee; Meeting

ACTION: Notice of Meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, as amended, the National Aeronautics and Space Administration announces the following meeting:

Name of Committee: NASA Advisory Council, Informal Ad Hoc Solar System Exploration Committee.

Date and Time: January 26, 1981, 8:30 a.m.–4:30 p.m., January 27, 1981, 8:30 a.m.–4:30 p.m., January 28, 1981, 8:30 a.m.–3:00 p.m.

Address: Conference Room, Building 167, Jet Propulsion Laboratory, Pasadena, California 91103.

Type of Meeting: Open.

Agenda:

January 26, 1981

8:30 a.m.–12:30 p.m.—Program Status and Introduction.

1:30 p.m.–4:30 p.m.—Focussed versus Broad Programs.

January 27, 1981

8:30 a.m.–12:30 p.m.—Technology Presentation.

1:30 p.m.–4:30 p.m.—Technology Presentation Continued.

January 28, 1981

8:30 p.m.–12:00 noon—Technology Presentation Continued.

1:00 p.m.–3:00 p.m.—Round Table Discussion.

FOR FURTHER INFORMATION CONTACT: Mrs. Diane M. Mangel, National Aeronautics and Space Administration, Washington, D.C. 20546, (202/755-3728).

SUPPLEMENTARY INFORMATION: The Informal Ad Hoc Solar System Exploration Committee was established under the NASA Advisory Council to translate the scientific strategy developed by the Committee on Planetary Exploratory (COMPLEX) into a realistic, technically sound sequence of missions consistent with that strategy and with resources expected to be available for solar system exploration. The committee will report its findings to the Council and to NASA. The committee is chaired by Dr. John E. Naugle and is composed of four other members of the Council and its standing committees, who will meet with about 9 other invited participants and certain NASA personnel.

The meeting of the subcommittee is necessary at this time in order to conduct preliminary discussions and provide sufficient preparation time before the subcommittee's principal study period. The meeting will be open to the public up to the seating capacity of the room (approximately 90 persons, including committee members and invited meeting participants). Visitors will be requested to sign a visitor's register.

Gerald D. Griffin,

Associate Administrator for External Relations.

January 13, 1981.

[FR Doc. 81-1894 Filed 1-16-81; 8:45 am]

BILLING CODE 7510-01-M

[81-7]

NASA Advisory Council (NAC); Space and Terrestrial Applications Advisory Committee; Ad Hoc Informal Advisory Subcommittee on Geodynamics and Geology: Meeting

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, as amended, the National Aeronautics and Space Administration announces the following meeting:

Name of Committee: NAC Space and Terrestrial Applications Advisory Committee, Ad Hoc Informal Advisory Subcommittee on Geodynamics and Geology.

Date and Time: February 9–11, 1981; 9.m.–5 p.m.

Address: National Aeronautics and Space Administration, Room 226A, Federal Building 10B, 600 Independence Avenue SW, Washington, DC 20546.

Type of Meeting: Open.

Agenda:

February 9, 1981

9:00 a.m. Chairperson's Remarks.
9:30 a.m. Objectives and Plans for Non-Renewable Resources Program.
1:30 p.m. Objectives and Plans for Geodynamics Program.
5:00 p.m. Adjourn.

February 10, 1981

9:00 a.m. NASA Response to Subcommittee Recommendations.
9:30 a.m. Non-Renewable Resources and Geodynamics Budget Plans.
11:00 a.m. Landsat-D Program Status.
11:30 a.m. Operational Land Remote Sensing.
1:30 p.m. Caribbean Plate Project.
2:00 p.m. Shuttle Imaging Radar Plans.
3:00 p.m. Report on Luminescence Workshop.
3:30 p.m. Summary of Findings and Recommendations for the Non-Renewable Resources Program.
5:00 p.m. Adjourn.

February 11, 1981

9:00 a.m. Expected Accomplishments of the Crustal Dynamics Measurements.
10:00 a.m. Laser/Very Long Baseline Interferometry Intercomparison Experiments.
11:00 a.m. Satellite Emmission Radio Interferometric Earth Surveying Development and Test Plans.
11:30 a.m. Airborne Laser Ranging Development Plan.
1:30 p.m. National Geodetic Survey Geodynamics Program.
2:30 p.m. U.S. Geological Survey Geodynamics Program.
3:30 p.m. Summary of Findings and Recommendations for the Geodynamics Program.
5:00 p.m. Adjourn.

FOR FURTHER INFORMATION CONTACT: James P. Murphy, National Aeronautics and Space Administration, Code ERG-2, Washington, DC 20546 (202/755-3848).

SUPPLEMENTARY INFORMATION: This Subcommittee, comprised of thirteen members of the NAC-STAAC, including the Chairperson, Dr. Michael A. Chinnery, reviews status and plans of the NASA Geodynamics and Non-Renewable Resources Programs. Members of the public will be admitted to the meeting on a first-come, first-served basis and will be required to sign a visitor's register. The seating capacity of the room is 35 persons.

Gerald D. Griffin,

Acting Associate Administrator for External Relations.

January 13, 1981.

[FR Doc. 81-1895 Filed 1-16-81; 8:45 am]

BILLING CODE 7510-01-M

[81-5]

Space and Terrestrial Applications Steering Committee (STASC); Proposal Evaluation Advisory Subcommittee; Meeting

The Materials Processing in Space (MPS) Panel of the STASC, Proposal Evaluation Advisory Subcommittee will meet on February 4, 1981 from 8:30 a.m. to 5:00 p.m. at NASA Headquarters, Room 226A, Federal Building 10B, 600 Independence Avenue SW, Washington, DC 20546. The Subcommittee will discuss, evaluate, and categorize the proposals submitted to NASA in response to the Announcement of Opportunity for data use investigations for the Fluids Experiment System (FES).

Public discussion of the professinal qualifications of the proposers and their potential scientific contributions to the FES Program would invade the privacy of the proposers and the other individuals involved. Since the Subcommittee sessions will be concerned throughout with matters

listed in 5 U.S.C. 552b(c), (6), as described above, it has been determined that the sessions should be closed to the public.

For further information, please contact Dr. John C. Carruthers, Director, Materials Processing in Space Division, NASA Headquarters, Washington, DC 20546, telephone number 202/755-2070.

Gerald D. Griffin,

Acting Associate Administrator for External Affairs.

January 14, 1981.

[FR Doc. 81-1883 Filed 1-16-81; 8:45 am]

BILLING CODE 7510-01-M

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Physics Notice of Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, the National Science Foundation announces the following meeting:

Name: Advisory Committee for Physics.
Date and time: February 5-7, 1981; 9:00 a.m.-5:00 p.m. each day.
Place: National Science Foundation, 1800 G Street, N.W., Washington, D.C. 20550. Room 540 each day.
Type of meeting: Open.
Contact person: Dr. Laura P. Bautz, Deputy Director, Division of Physics, National Science Foundation, Washington, D.C. 20550. Telephone: (202) 357-7611.
Summary of minutes: May be obtained from Dr. Laura P. Bautz, Division of Physics, National Science Foundation, Washington, D.C. 20550.
Purpose of committee: To provide advice and recommendations concerning support for research in physics.
Agenda:
February 5, 1981, 9:00 a.m.-5:00 p.m. Oversight review of NSF support of theoretical physics, including the report of the Subcommittee for the Review of the NSF Theoretical Physics Program. FY 1982 Budget. Support of Physics.
February 6, 1981, 9:00 a.m.-5:00 p.m. Report of the Subcommittee on Computational Facilities for Theoretical Research. Discussion of Accelerator-Based Atomic Physics. Continuation of previous day's discussions.
February 7, 1981, 9:00 a.m.-5:00 p.m. Continuation of discussions from previous two days.

M. Rebecca Winkler,

Committee Management Coordinator.

January 14, 1981.

[FR Doc. 81-1885 Filed 1-16-81; 8:45 am]

BILLING CODE 7555-01-M

Subcommittee on Memory and Cognitive Processes; Meeting

In accordance with the Federal Advisory Committee Act Pub. L. 92-463 the National Science Foundation announces the following meeting.

Name: Subcommittee of Memory and Cognitive Processes of the Advisory Committee for Behavioral and Neural Sciences.
Date and time: February 9 and 10, 9:00 a.m., 5:00 p.m., each day.
Place: National Science Foundation, 1800 G Street, NW., room 421, Washington, D.C. 20550.
Type of meeting: Closed.
Contract person: Dr. Joseph L. Young, Program Director, Memory and Cognitive Processes Program, Room 320, National Science Foundation, Washington, D.C. 20550, telephone (202) 357-9898.
Purpose of subcommittee: To provide advice and recommendations concerning support for research in Memory and Cognitive Process.
Agenda: To review and evaluate research proposals as part of the selection process for awards.
Reason for closing: The proposals being reviewed include information of a proprietary or confidential nature including technical information; financial data such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b (c) Government in the Sunshine Act.
Authority to close meeting: This determination was made by the Committee Management Officer pursuant to provisions of Section 10 (d) of Pub. L. 92-463. The Committee Management Officer was delgated the authority to make such determinations by the Director NSF on July 6, 1979.

January 14, 1981.

M. Rebecca Winkler,

Committee Management Coordinator.

[FR Doc. 81-1881 Filed 1-16-81; 8:45 am]

BILLING CODE 7555-01-M

Subcommittee on Regulatory Biology of the Advisory Committee for Physiology, Cellular and Molecular Biology; Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, as amended, the National Science Foundation announces the following meeting:

Name: Subcommittee on Regulatory Biology of the Advisory Committee for Physiology, Cellular and Molecular Biology.
Date and time: February 4, 5, 6, 1981 (8:30 a.m. to 5:00 p.m.).
Place: Conference Room 338, National Science Foundation; 1800 G Street, NW; Washington, DC 20550.
Type of meeting: Closed.
Contact person: Dr. Bruce L. Umminger, Program Director, Regulatory Biology, Room 332, National Science Foundation, Washington, DC 20550, Telephone 202/357-7975.
Purpose of subcommittee: To provide advice and recommendations concerning support for research in regulatory biology.
Agenda: To review and evaluate research proposals and projects as part of the selection process for awards.
Reason for closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. The matters are within the Sunshine Act.
Authority to close meeting: This determination was made by the Committee Management Officer pursuant to provisions of Section 10(d) of P.L. 92-463. The Committee Management Officer delegated the authority to make such determinations by the Director, NSF, on July 6, 1979.

M. R. Winkler,

Committee Management Coordinator.

January 14, 1981.

[FR Doc. 81-1882 Filed 1-16-81; 8:45 am]

BILLING CODE 7555-01-M

Subcommittee on Neurobiology; Meeting

In accordance with the Federal Advisory Committee Act, as amended, Pub. L. 92-463, the National Science Foundation announces the following meeting:

Name: Subcommittee on Neurobiology of the Advisory Committee for Behavioral and Neural Sciences.
Date and time: February 9, 10, and 12, 13, 1981: 9:00 a.m. to 5:00 p.m. each day.
Place: Room 543, National Science Foundation, 1800 G Street, N.W., Washington, D.C.
Type of meeting: Closed.
Contact person: Dr. A. O. Dennis Willows, Program Director, Neurobiology Program, Room 320, National Science Foundation, Washington, D.C. 20550, telephone 202/357-7471.
Purpose of subcommittee: To provide advice and recommendations concerning support for research in Neurobiology.
Agenda: To review and evaluate research proposals as part of the selection process for awards.
Reason for closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.
Authority to close meeting: This determination was made by the Committee Management Officer pursuant to provisions of Section 10(d) of Pub. L. 92-463. The Committee Management Officer was delegated the authority to make such

determinations by the Director, NSF, on July 6, 1979.

M. Rebecca Winkler,

Committee Management Coordinator.

January 14, 1981.

[FR Doc. 81-1889 Filed 1-19-81; 8:45 am]

BILLING CODE 7555-01-M

Subcommittee for Sensory Physiology and Perception; Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, the National Science Foundation announces the following meeting:

Name: Advisory Committee for Behavioral and Neural Sciences Subcommittee for Sensory Physiology and Perception.

Date and time: February 5 and 6, 1981: 9:00 a.m. to 5:00 p.m.

Place: Room 642, National Science Foundation, 1800 "G" Street, N.W., Washington, D.C. 20550.

Type of meeting: Closed.

Contact person: Dr. Terrence R. Dolan, Program Director, Sensory Physiology and Perception, Room 320, National Science Foundation, Washington, D.C. 20550.

Purpose of subcommittee: To provide advice and recommendations concerning support for research in sensory physiology and perception.

Agenda: To review and evaluate research proposals as part of the selection process for awards.

Reason for closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(C), Government in the Sunshine Act.

Authority to close meeting: This determination was made by the Committee Management Officer pursuant to provisions of Section 10(d) of Pub. L. 92-463. The Committee Management Officer was delegated the authority to make such determinations by the Director, NSF, on July 6, 1979.

M. Rebecca Winkler,

Committee Management Coordinator.

January 14, 1981.

[FR Doc. 81-1888 Filed 1-19-81; 8:45 am]

BILLING CODE 7555-01-M

Subcommittee for the Linguistics Program; Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, as amended, the National Science Foundation announces the following meeting:

Name: Advisory Committee for Behavioral and Neural Sciences Subcommittee on Linguistics.

Date and time: February 5 and 6, 1981, 9:00 a.m.-5:00 p.m.

Place: National Science Foundation, 1800 G Street, N.W., Room 628, Washington, D.C. 20550.

Type of meeting: Closed.

Contact person: Dr. Paul G. Chapin, Program Director, Linguistics, Room 320, National Science Foundation, Washington, D.C. (202) 357-7898.

Purpose of subcommittee: To provide advice and recommendations concerning support for research in Linguistics.

Agenda: To review and evaluate research proposals as part of the selection process for awards.

Reason for closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within the exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

Authority to close meeting: This determination was made by the Committee Management Officer pursuant to provisions of Section 10(d) of Pub. L. 92-463. The Committee Management Officer was delegated the authority to make such determinations by the Director, NSF, on July 6, 1979.

January 14, 1981.

M. Rebecca Winkler,

Committee Management Coordinator.

[FR Doc. 1804 Filed 1-16-81; 8:45 am]

BILLING CODE 7555-01-M

Subcommittee on Facilities of the Materials Research Advisory Committee; Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, as amended, the National Science Foundation announces the following meeting:

Name: Subcommittee on Facilities of the Materials Research Advisory Committee.

Date: February 9, and 10, 1981.

Time: 9:00 a.m.-5:00 p.m. each day.

Place: National Science Foundation, 1800 G Street, N.W., Washington, D.C. 20550, Room 540.

Type of meeting: February 9, Closed, February 10, Open.

Contact person: Dr. William T. Oosterhuis, Materials Research Laboratory Section, Room 408, National Science Foundation, Washington, D.C. 20550, Telephone (202) 357-9791.

Summary minutes: May be obtained from the Contact Person, Dr. William T. Oosterhuis, at the the above stated address.

Purpose of subcommittee: To provide advice and recommendations concerning the user facilities supported by the Division of Materials Research.

Agenda: General discussion of the current status and future plans of the user facilities supported by the Division of Materials Research.

Reason for closing: The first days' meeting is closed since the proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within the exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

Authority to close meeting: This determination was made by the Committee Management Officer pursuant to provisions of Section 10(d) of Pub. L. 92-463. The Committee Management Officer was delegated the authority to make such determinations by the Director, NSF on July 6, 1979.

M. Rebecca Winkler,

Committee Management Coordinator.

January 14, 1981.

[FR Doc. 81-1887 Filed 1-16-81; 8:45 am]

BILLING CODE 7555-01-M

Subcommittee on Molecular Biology, Group A, of the Advisory for Physiology, Cellular, and Molecular Biology; Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, as amended, the National Science Foundation announces the following meeting:

Name: Subcommittee on Molecular Biology, Group A, of the Advisory Committee for Physiology, Cellular and Molecular Biology.

Date and Time: February 9 & 10, 1981; 9:00 a.m. to 5:00 p.m. each day.

Place: Room 338, National Science Foundation, 1800 G Street, N.W., Washington, DC 20550.

Type of Meeting: Closed.

Contact person: Dr. Arthur Kowalsky, Program Director, Biophysics Program, Room 329, National Science Foundation, Washington, DC 20550, Telephone: 202/357-7777.

Purpose of subcommittee: To provide advice and recommendations concerning support for research in Molecular Biology.

Agenda: To review and evaluate research proposals as part of the selection process for awards.

Reason for closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information, financial data, such as salaries, and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

Authority to close meeting: This determination was made by the Committee Management Office pursuant to provisions of Section 10(d) of Pub. L. 92-463. The Committee Management Officer was delegated the authority to make such

determinations by the Director, NSF, on July 6, 1979.

January 14, 1981.

M. R. Winkler,

Committee Management Coordinator.

[FR Doc. 81-1869 Filed 1-16-81; 8:45 am]

BILLING CODE 7555-01-M

Task Group No. 14 of the NSF Advisory Council; Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, the National Science Foundation announces the following meeting:

Name: Task Group No. 14 of the NSF Advisory Council.

Place: Room 536, National Science Foundation, 1800 G Street, N.W., Washington, D.C. 20550.

Date: Tuesday, February 10, 1981.

Time: 9:00 a.m. till 5:00 p.m.

Type of meeting: Open.

Contact person: Ms. Jeanne Huson, Executive Secretary of the NSF Advisory Council, National Science Foundation, Room 518, 1800 G Street, N.W., Washington, D.C. 20550. Telephone: 202/357-9433.

Purpose of task group: The purpose of the Task Group, composed of members of the NSF Advisory Council, is to provide the full Advisory Council with a mechanism to consider numerous issues of interest to the Council that have been assigned by the National Science Foundation.

Summary minutes: May be obtained from the contact person at above stated address.

Agenda: The Task Group is asked to study the question of continuing education of engineers and computer professionals in universities and/or industry. The Task Group will focus on university and/or industrial programs to foster continuing engineering education for industrial employees, the possible impact of such programs within the university structure, and will address the question of whether there will be a developing shortage of engineering faculty with degrees from U.S. universities.

January 14, 1981.

M. Rebecca Winkler,

Committee Management Coordinator.

[FR Doc. 81-1868 Filed 1-16-81; 8:45 am]

BILLING CODE 7555-01-M

Advisory Committee for PCM, Subcommittee on Genetic Biology; Meeting

In accordance with the Federal Advisory Committee Act, as amended, Pub. L. 92-463, the National Science Foundation announces the following meeting:

Name: Subcommittee on Genetic Biology of the Advisory Committee for Physiology, Cellular and Molecular Biology.

Date and Time: February 12 thru 14, 1981, 9:00 a.m.

Place: Room 336, National Science Foundation, 1800 G Street, N.W., Washington, D.C. 20550.

Type of Meeting: Closed.

Contact person: Dr. DeLill S. Nasser, Program Director, Genetic Biology Program, Room 329, National Science Foundation, Washington, D.C. 20550, Telephone: (202) 357-9687.

Purpose of subcommittee: To provide advice and recommendations concerning support for research in genetic biology.

Agenda: To review and evaluate research proposals as part of the selection process for awards.

Reason for closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries, and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

Authority to close meeting: This determination was made by the Committee Management Officer pursuant to provisions of Section 10(d) of Pub. L. 92-463. The Committee Management Officer was delegated the authority to make such determinations by the Director, NSF, on July 6, 1979.

January 14, 1981.

M. Rebecca Winkler,

Committee Management Coordinator.

[FR Doc. 81-1870 Filed 1-16-81; 8:45 am]

BILLING CODE 7555-01-M

Subcommittee on Social and Developmental Psychology; Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, the National Science Foundation announces the following meeting:

Name: Subcommittee on Social and Developmental Psychology of the Advisory Committee for Behavioral and Neural Sciences.

Date and time: February 12-13, 1981: 9:00 a.m. to 5:00 p.m. each day.

Place: Room 643, National Science Foundation, 1800 G Street, N.W., Washington, D.C. 20550.

Type of meeting: Closed.

Contact person: Dr. Robert A. Baron, Program Director, Social and Developmental Psychology, Room 320, National Science Foundation, Washington, D.C. 20550, telephone 202/357-9485.

Purpose of subcommittee: To provide advice and recommendations concerning support for research in Social and Developmental Psychology.

Agenda: To review and evaluate research proposals as part of the selection process for awards.

Reason for closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

Authority to close meeting: This determination was made by the Committee Management Officer pursuant to provisions of Section 10(d) of Pub. L. 92-463. The Committee Management Officer was delegated the authority to make such determinations by the Director, NSF, on July 6, 1979.

January 14, 1981.

M. Rebecca Winkler,

Committee Management Coordinator.

[FR Doc. 81-1871 Filed 1-16-81; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards, Subcommittee on NRC Safety Research Program; Meeting

The ACRS Subcommittee on the NRC Safety Research Program will hold a meeting on February 4, 1981 in Room 1046, 1717 H Street, N.W., Washington, DC to discuss NRC's Draft Long-Range Research Plan (NUREG-0740) and ACRS comments on RES response to ACRS Recommendations listed in NUREG-0630. Notice of this meeting was published December 22, 1980.

In accordance with the procedures outlined in the Federal Register on October 7, 1980. (45 FR 66535), oral or written statements may be presented by members of the public, recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the Designated Federal Employee as far in advance as practicable so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements.

The entire meeting will be open to public attendance.

The agenda for subject meeting shall be as follows:

Wednesday, February 4, 1981 8:30 a.m. until 3:00 p.m.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, will exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC Staff, their consultants, and other interested persons regarding pertinent portions of

the NRC Draft Long-Range Research Plan.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant Designated Federal Employee, Mr. Sam Duraiswamy (telephone 202/634-3267) between 8:15 a.m. and 5:00 p.m., EST.

Dated: January 14, 1981.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 81-1959 Filed 1-19-81; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards, Subcommittee on Plant Features Important to Safety; Meeting

The ACRS Subcommittee on Plant Features Important to Safety will hold a meeting at 1:00 p.m. on February 3, 1981 in Room 1167, 1717 H Street, N.W., Washington, DC to begin discussion of the NRC definitions of plant features important to safety and related criteria for such systems developed by the NRC Staff in connection with the TMI-1 restart review.

In accordance with the procedures outlined in the Federal Register on October 7, 1980 (45 FR 66535), oral or written statements may be presented by members of the public, recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the Designated Federal Employee as far in advance as practicable so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements.

The entire meeting will be open to public attendance.

The agenda for subject meeting shall be as follows:

Tuesday, February 3, 1981

1:00 p.m. until the conclusion of business

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, will exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC Staff, their consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant Designated Federal Employee, Mr. Paul Boehnert (telephone 202/634-3267) between 8:15 a.m. and 5:00 p.m., EST.

Dated: January 14, 1981.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 81-1960 Filed 1-19-81; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards, Subcommittee on Regulatory Activities; Meeting

The ACRS Subcommittee on Regulatory Activities will hold a meeting on February 3, 1981 in Room 1046, 1717 H Street, N.W., Washington, DC. Notice of this meeting was published December 22, 1980.

In accordance with the procedures outlined in the Federal Register on October 7, 1980 (45 FR 66535), oral or written statements may be presented by members of the public, recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify te Designated Federal Employee as far in advance as practicable so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements.

The entire meeting will be open to public attendance.

The agenda for subject meeting shall be as follows:

Tuesday, February 3, 1981

The meeting will commence at 8:45 a.m.

The Subcommittee will hear presentations from the NRC Staff and will hold discussions with this group pertinent to the following:

(1) Regulatory Guide (Task No. RS 705-4), "Lightning Protection for Nuclear Power Plants" (Post comment).

(2) Regulatory Guide 1.136, Revision 2, "Materials, Construction and Testing of Concrete Containments" (Post comment).

(3) Regulatory Guide (Task No. SC 705-4), "Ultrasonic Testing of Reactor Vessel Welds During Pre-Service and Inservice Examination" (Post comment).

Other matters which may be of a predecisional nature relevant to reactor operation or licensing activities may be discussed following this session.

Persons wishing to submit written statements regarding Regulatory Guides with Task numbers RS 705-4, SC 705-4, and Regulatory Guide 1.136, Revision 2, may do so by providing a readily reproducible copy to the Subcommittee at the beginning of the meeting. However, to insure that adequate time is available for full consideration of these comments at the meeting, it is desirable to send a readily reproducible copy of the comments as far in advance of the meeting as practicable to Mr. Sam Duraiswamy, the Designated Federal Employee for the meeting in care of ACRS, Nuclear Regulatory Commission, Washington, DC 20555 or telecopy them to the Designated Federal Employee (202/634-3319) as far in advance of the meeting as practicable. Such comments shall be based upon documents on file and available for public inspection at the NRC Public Document Room, 1717 H Street, N.W., Washington, DC 20555.

Further information about topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant Designated Federal Employee, Mr. Sam Duraiswamy, (telephone 202/634-3267) between 8:15 a.m. and 5:00 p.m., EST.

Dated: January 14, 1981.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 81-1965 Filed 1-19-81; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards, Subcommittee on Safety Philosophy, Technology and Criteria; Meeting

The ACRS Subcommittee on Safety Philosophy, Technology and Criteria will hold a meeting at 3:00 p.m. on February 4, 1981 in Room 1046, 1717 H Street, N.W., Washington, DC to discuss requirements for new Near-Term Construction Permit reactor plants.

In accordance with the procedures outlined in the Federal Register on October 7, 1980 (45 FR 66535), oral or written statements may be presented by members of the public, recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the Designated Federal Employee as far in advance as practicable so that

appropriate arrangements can be made to allow the necessary time during the meeting for such statements.

The entire meeting will be open to public attendance.

The agenda for subject meeting shall be as follows:

Wednesday, February 4, 1981, 3:00 p.m. Until the Conclusion of Business.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, will exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC Staff, their consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant Designated Federal Employee, Mr. Richard Savio (telephone 202/634-3267) between 8:15 a.m. and 5:00 p.m., EST.

Dated: January 14, 1981.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 81-2006 Filed 1-16-81; 8:45 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

Boston Stock Exchange, Inc.; Applications for Unlisted Trading Privileges and of Opportunity for Hearing

January 12, 1981.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to Section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following stocks:

Advanced Micro-Devices, Inc., Common Stock, $.0.1 Par Value (File No. 7-5822)
Commodore International, U.S. Capital Shares, $1 Par Value (File No. 7-5823)
Computervison Corp., Common Stock, $.05 Par Value (File No. 7-5824)
Dorchester Gas Corp., Common Stock, $.10 Par Value (File No. 7-5824)
Federal Express Corp., Par Value (File No. 7-5825)
Flowers Industries Inc., Class A Common Stock, $.62 ½ Par Value (File No. 7-5826)
GCA Corp., Common Stock, $.60 Par Value (File No. 7-5827)
Global Marine, Inc., Common Stock, $.25 Par Value (File No. 7-5828)
Mesa Royalty Trust Units of Beneficial Interest, No Par Value (File No. 7-5829)
Oak Industries, Inc. Common Stock, $1 Par Value (File No. 7-5830)
Ocean Drilling & Exploration Co., Common Stock, $.50 Par Value (File No. 7-5831)
Patrick Petroleum Co., Common Stock, $.10 Par Value (File No. 7-5832)
Pneumo Corp., Common Stock, $1 Par Value (File No. 7-5833)
Southland Royalty Co., Common Stock, $.12 ½ Par Value (File No. 7-5834)
Southwest Airlines, Common Stock, $1 Par Value (File No. 7-5835)

These securities are listed and registered on one or more other national securities exchanges and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before February 3, 1981 written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, D.C. 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 81-1798 Filed 1-16-81; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 11547; (811-3018)]

Federated Cash Reserve Trust; Filing of Application Pursuant to Section 8(f) of the Act for an Order Declaring that Applicant has Ceased to be an Investment Company

January 13, 1981.

Notice is hereby given that Federated Cash Reserve Trust ("Applicant"), 421 Seventh Avenue, Pittsburgh, PA 15219, which is registered under the Investment Company Act of 1940 ("Act") as an open-end diversified, management investment company, filed an application on October 21, 1980, requesting an order of the Commission, pursuant to Section 8(f) of the Act, declaring that Applicant has ceased to be an investment company as defined by the Act. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below.

Applicant states that it registered under the Act on March 24, 1980, and that it simultaneously registered an indefinite number of its shares of beneficial interest of common stock under the Securities Act of 1933. According to the application, the registration of those shares became effective on April 2, 1980, at which time an initial public offering of those shares commended. Applicant further states that it was dissolved pursuant to its Declaration of Trust and applicable state law on August 18, 1980.

According to the application, on August 18, 1980, Applicant's Trustees recommended to its shareholders that Applicant's affairs be wound up and terminated and that unanimous consent of shareholders approving such termination was obtained on August 18, 1980. Applicant states that it voluntarily redeemed all of its 10,523,121 outstanding shares at their $1 net asset value per share and that such redemptions were completed on August 18, 1980. Applicant further states that all its portfolio securities either matured or were sold to Money Market Management, Inc. (a money market fund registered under the Act) pursuant to Rule 6C-8(T) under the Act. According to the application, that liquidation resulted in transfer agent and administrative fees of $24,801.75, which were assumed by Federated Income Research Corp., Applicant's investment adviser.

Applicant states that as of the date of the filing of the application it had no assets or liabilities and was not a party to any litigation or administrative proceeding. Applicant further states that it is not engaged and does not propose to engage in any business activities other than those necessary for the winding up of its affairs and that there are no shareholders of Applicant to whom distribution in complete liquidation of their interests has not been made. According to the application, Applicant intends to file Articles of Dissolution with the Secretary of State of the Commonwealth of Massachusetts.

Section 8(f) of that Act provides, in pertinent part, that when the Commission, upon application, finds that a registered investment company has ceased to be an investment company as defined by the Act, it shall so declare by order and, upon taking effect of such order, the registration of such company under the Act shall cease to be in effect.

Notice is further given that any interested person may, not later than February 9, 1980, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the application accompanied by a statement as to the nature of his interest, the reason for such request, and the issues, if any, of fact or law proposed to controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicant at the address stated above. Proof of such service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0-5 of the Rules and Regulations promulgated under the Act, an order disposing of the application will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons,
Secretary.

[FR Doc. 1980 Filed 1-16-81; 8:45 am]
BILLING CODE 8010-01-M

Midwest Stock Exchange, Inc.; Applications for Unlisted Trading Privileges and of Opportunity for Hearing

January 12, 1981.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to Section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following stocks:

The Parsons Corp./RMP International Ltd. Common Stock, $1 Par Value (File No. 7-5837)

General Nutrition, Inc. Common Stock, No Par Value (File No. 7-5838)

Hydraulic Company Common Stock, No Par Value (File No. 7-5839)

Towle Manufacturing Company Common Stock, No Par Value (File No. 7-5840)

Cenvill Communities, Inc. Common Stock, $.01 Par Value (File No. 7-5841)

Wackenhut Corporation Common Stock, $.10 Par Value (File No. 7-5842)

These securities are listed and registered on one or more other national securities exchanges and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before February 3, 1981 written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, D.C. 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons,
Secretary.

[FR Doc. 81-1794 Filed 1-16-81; 8:45 am]
BILLING CODE 8010-01-M

[File No. 1-5269]

New Hampshire Ball Bearings, Inc., Common stock, $2 Par Value; Application To Withdraw From Listing and Registration

January 12, 1981.

The above named issuer has filed an application with the Securities and Exchange Commission pursuant to Section 12(d) of the Securities Exchange Act of 1934 (the "Act") and Rule 12d2-2(d) promulgated thereunder, to withdraw the specified security from listing and registration on the Boston Stock Exchange, Incorporated ("BSE").

The reasons alleged in the application for withdrawing this security from listing and registration include the following:

1. The common stock of New Hampshire Ball Bearings, Inc. (the "Company") is listed and registered on the BSE and the American Stock Exchange, Inc. ("Amex"). Over the past two years, only 33 shares of the Company's stock were traded on the BSE. The Company has determined that the volume of trading on the BSE is insufficient to warrant continued listing, registration, and the related fees connected therewith.

2. This application relates solely to withdrawal of the common stock from listing and registration on the BSE and shall have no effect upon the continued listing of such stock on the Amex.

Any interested person may, on or before February 3, 1981, submit by letter to the Secretary of the Securities and Exchange Commission, Washington, D.C. 20549, facts bearing upon whether the application has been made in accordance with the rules of the Exchange and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons,
Secretary.

[FR Doc. 81-1795 Filed 1-16-81; 8:45 am]
BILLING CODE 8010-01-M

[Release No. 21880; 70-6465]

Northeast Utilities, et al.; Proposal to Increase Amounts of Short-Term Borrowing Authorization

January 9, 1981.

In the matter of Northeast Utilities, Western Massachusetts Electric Company, 174 Brush Hill Avenue, West Springfield, Massachusetts 01089, The Connecticut Light & Power Company, The Hartford Electric Light Company, and Northeast Nuclear Energy Company, Selden Street, Berlin, Connecticut 06037 and Holyoke Water Power Company, One Canal Street, Holyoke, Massachusetts 01040 (70-6465).

Notice is hereby given that Northeast Utilities ("NU"), a registered holding company, and five of its wholly-owned subsidiary companies, The Connecticut Light & Power Company ("CL&P"), The Hartford Electric Light Company ("HELCO"), Western Massachusetts Electric Company ("WMECO"), Holyoke Water Power Company ("HWP") and Northeast Nuclear Energy Company ("NNECO"), have filed a post-effective amendment to an application-declaration previously filed with this Commission pursuant to the Public Utility Holding Company Act of 1935 ("Act"), designating Sections 6, 7 and 12(b) of the Act and Rules 45 and 50 promulgated thereunder regarding the proposed transaction.

By orders dated July 1, 1980 (HCAR No. 21647) and August 21, 1980 (HCAR No. 21684) in this matter the applicants-declarants were authorized to issue notes to banks and, with the exception

of HWP and NNECO, commercial paper to a dealer in commercial paper from time to time through June 30, 1981. In addition, CL&P, HELCO and WMECO were authorized to enter into a multibank revolving credit and term loan agreement under the terms of which the three companies can borrow up to an aggregate of $140,000,000. The aggregate amount of all such notes at any time outstanding, whether issued to banks ("Bank Notes") or to a dealer in commercial paper ("Commercial Paper") or to banks under the revolving credit/term loan agreement ("Revolving Credit/Term Notes") may not exceed $55,000,000 in the case of NU, $185,000,000 in the case of CL&P, $100,000,000 in the case of HELCO, $55,000,000 in the case of WMECO, $8,000,000 in the case of HWP and $30,000,000 in the case of NNECO.

It is now proposed that the maximum borrowing limits of CL&P and NNECO be changed to $210,000,000 and $40,000,000, respectively. It is stated that CL&P and NNECO will have to rely more heavily on short-term financing than previously anticipated because, during 1980, particularly in the second half of the year, the nuclear generating units owned by the Northeast Utilities System companies, or in which they have ownership interests, have been out of operation for refueling, modifications and repairs for longer periods than had been anticipated. As a result, the System companies have experienced unbudgeted increases in fossil fuel, purchased power and exchange power expenses. The retail rates for CL&P and HELCO include a Generation Utilization Adjustment Clause ("GUAC") under which CL&P and HELCO receive revenues from, or return revenues to, customers based on nuclear performance during the twelve-month period ending July 31 in each year. Low nuclear performance in the current GUAC year through October, 1980 has led to a $15,500,000 balance which would be payable to CL&P and HELCO beginning August 1, 1980 by customers if nuclear performance is at the 70% capacity factor between November 1, 1980 and July 31, 1980. Until cost recovery begins through GUAC, CL&P and HELCO finance expenses associated with below-par nuclear performance through short-term debts; the operating and maintenance expenses associated with repairs and improvements are financed by short-term debt by NNECO.

It is stated that no special or separable fees, commissions or expenses will be incurred in connection with the proposed transaction. No state or federal regulatory authority, other than this Commission, has jurisdiction over the proposed transaction.

Notice is further given that any interested person may, not later than February 2, 1981, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by the filing which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon the applicants-declarants at the above-stated addresses, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the application-declaration, as amended or as it may be further amended, may be granted and permitted to become effective as provided in Rule 23 of the General Rules and Regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices or orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 81-1786 Filed 1-16-81; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 17428; SR-Amex-80-26]

American Stock Exchange, Inc.; Order Approving Proposed Rule Change

January 9, 1981.

In the matter of American Stock Exchange, Inc., 86 Trinity Place, New York, New York (SR-Amex-80-26).

On October 27, 1980, the American Stock Exchange, Inc. ("Amex") filed with the Commission, pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78(s)(b)(1) ("Act") and Rule 19b-4 thereunder, copies of a proposed rule change which would adopt as Amex Rule 620 a simplified small claim arbitration procedure for resolving disputes between Amex members or member organizations where the amount in dispute is $5000 or less. The proposed rule is similar to Amex Rule 619 which currently governs small claim disputes between public customers and Amex members or member organizations.

Notice of the proposed rule change together with the terms of substance of the proposed rule change was given by publication of a Commission Release (Securities Exchange Act Release No. 34-17288, November 3, 1980) and by publication in the Federal Register (45 FR 74136, November 7, 1980). No comments were received with respect to the proposed rule filing.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to national securities exchanges, and in particular, the requirements of Section 6 and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 81-1791 Filed 1-16-81; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 17430; SR-Amex-80-27]

American Stock Exchange, Inc.; Order Approving Proposed Rule Change

January 9, 1981.

In the matter of American Stock Exchange, Inc., 86 Trinity Place, New York, New York (SR-Amex-80-27).

On October 17, 1980, the American Stock Exchange, Inc. ("Amex") filed with the Commission, pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78(s)(b)(1) ("Act") and Rule 19b-4 thereunder, copies of a proposed rule change which would incorporate Securites Exchange Act Rules 19c-1 and 19c-3 [1] as Amex Rule 5(c) Rule 19c-3,[2] which is required to be incorporated within the rules of each national securites exchange, provides that an exchange may not prohibit its members, member organizations, or affiliated persons from effecting over-the-counter transactions in any equity security that, subject to certain exceptions, is not a

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[1] 17 CFR 240.19c-1, 240.19c-3.

[2] Rule 19c-3 recently was adopted by the Commission in Securities Exchange Act Release No. 16983 (July 11, 1980), 45 FR 41125 (June 18, 1980), 20 SEC Docket (June 24, 1980).

"covered security" as that term is defined in Rule 19c–3.[3]

The proposal also would rescind Amex Rule 189, which prohibits off-floor purchases by a specialist, and Amex Rule 550, which prohibits participation by Amex members and member organizations in off-floor secondary distributions of securities traded on the Amex, would be modified to permit such participation when the distribution is made on an agency basis or does not involve a "covered security" as defined in Rule 19c–3.

Notice of the proposed rule change together with the terms of substance of the proposed rule change was given by publication of a Commission Release (Securities Exchange Act Release No. 34–17207, November 3, 1980) and by publication in the Federal Register (45 FR 74136, November 7, 1980). No comments were received with respect to the proposed rule filing.

The Commission finds that the proposed rule change is consistent with the Requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and in particular, the requirements of Section 6 and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and it hereby is, approved.

For the Commission by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 81–1792 Filed 1–16–81; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 17437; SR–OCC–80–2]

Options Clearing Corporation; Order Approving Proposed Rule Change

January 9, 1981.

In the matter of the Options Clearing Corporation ("OCC"), 5950 Sears Tower, 233 South Wacker Drive, Chicago, Illinois 60606 (SR–OCC–80–2).

On January 15, 1980, OCC filed with the Commission, pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78(s)(b)(1) (the "Act") and Rule 19b–4 thereunder, copies of a proposed rule change that would permit OCC to offset the value of certain exercised long positions carried by clearing members in customer and firm non-lien accounts against the value of assigned short positions in the same account for the purpose of calculating the margin to be required by OCC.

Notice of the proposed rule change together with the terms of substance of the proposed rule change was given by publication of a Commission Release (Securities Exchange Act Release No. 34–16532, January 25, 1980) and by publication in the Federal Register (45 FR 7660, February 4, 1980). No written comments were received by the Commission.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to clearing agencies and, in particular, the requirements of Section 17A and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the above mentioned rule change be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 81–1787 Filed 1–16–81; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 17436; SR–PSE–80–24]

Pacific Stock Exchange; Order Approving Proposed Rule Change

January 9, 1981.

In the matter of Pacific Stock Exchange, 301 Pine Street, San Francisco, CA 94104 (SR–PSE–80–24).

On December 5, 1980, the Pacific Stock Exchange, Incorporated ("PSE") filed with the Commission, pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78(s)(b)(1) ("Act") and Rule 19b–4 thereunder, copies of a proposed rule change which would increase the PSE's listing fees with respect to the initial listing of bonds, the initial listing of additional shares of stock or warrants, and the annual listing maintenance fees for all PSE securities.

Notice of the proposed rule change together with the terms of substance of the proposed rule change was given by publication of a Commission Release (Securities Exchange Act Release No. 17375, December 15, 1980) and by pubication in the Federal Register (45 FR 83728, December 19, 1980). No comments were received with respect to the proposed rule filing.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, the requirements of Section 6 and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 81–1790 Filed 1–16–81; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 17432; SR–PSE–80–21]

Pacific Stock Exchange; Order Approving Proposed Rule Change

January 9, 1981.

In the matter of Pacific Stock Exchange, 301 Pine Street, San Francisco, CA 94104 (SR–PSE–80–21).

On November 17, 1980, the Pacific Stock Exchange, Incorporated ("PSE") filed with the Commission, pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78(s)(b)(1) ("Act") and Rule 19b–4 thereunder, copies of a proposed rule change which requires that each PSE specialist have a registered specialist assistant, with full authority to transact business on behalf of the specialist, in order to provide enhanced coverage of every specialist post.[1]

Notice of the proposed rule change together with the terms of substance of the proposed rule change was given by publication of a Commission Release (Securities Exchange Act Release No. 17330, November 24, 1980) and by publication in the Federal Register (45 FR 79620, December 1

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 81-1709 Filed 1-16-81; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 11546; (812-5095)]

Security Bond Fund, Inc., et al.; Filing of Application for an Order Amending a Previous Order Granting Exemption From the Provisions of Section 22(d) of the Act and Rules 22d-1 and 22d-2 Thereunder Pursuant to Section 6(c) of the Act and Permitting Offers of Exchange Pursuant to Section 11(a) of the Act

January 13, 1981.

In the Matter of Security Bond Fund, Inc., Security Equity Fund, Inc., Security Investment Fund, Inc., Security Ultra Fund, Inc., Life Insurance Investors, Inc. and Security Distributors, Inc., Security Benefit Life Building, 700 Harrison Street, Topeka, Kansas 66636.

Notice is hereby given that Security Bond Fund, Inc. ("Bond"), Security Equity Fund, Inc. ("Equity"), Security Investment Fund, Inc. ("Investment"), Security Ultra Fund, Inc. ("Ultra"), and Life Insurance Investors, Inc. ("Investors") (collectively referred to as the "Funds"), open-end, diversified management investment companies registered under the Investment Company Act of 1940 ("Act"), and Security Distributors, Inc. ("Distributors") (collectively referred to with the Funds as "Applicants"), filed an application on November 10, 1980, and an amendment thereto on December 15, 1980, requesting an order of the Commission amending in the manner described below an earlier order of the Commission dated December 19, 1974 (Investment Company Act Release No. 8021). This earlier order, pursuant to Section 11(a) of the Act, permitted all the Funds, except Investors, to exchange their shares for shares of Bond on a basis other than their relative net asset value per share at the time of the exchange, and, pursuant to Section 6(c) of the Act, exempted such exchanges from the provisions of Section 22(d) of the Act and Rules 22d-1 and 22d-2 thereunder. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below.

According to the application, Security Cash Fund, Inc. ("Cash"), is a "money market" fund which is registered under the Act as an open-end, diversified managment investment company. There is no sales charge on the sale of shares of Cash.

Distributors, as principal underwriter for each of the Funds, maintains a continuous public offering of Fund shares at their respective net asset values plus a sales charge. At present, the sale charges on sales of Bond shares are 2.75% of the offering price in transactions of less than $100,000, 1.75% of the offering price in transactions $100,000 and over but less than $1,000,000 and 0.75% of the offering price in transactions of $1,000,000 and over. The applicable sale charge for shares of Equity, Ultra, Investment and Investors varies with the quantity purchased in the transaction, as follows:

Size of transaction at offering price	Sales load (as percentage of offering price)
Less than $10,000	8.50
$10,000 but less than $25,000	7.75
$25,000 but less than $50,000	6.25
$50,000 but less than $100,000	4.75
$100,000 but less than $250,000	3.75
$250,000 but less than $1,000,000	2.75
$1,000,000 and over	1.75

Applicants state that shares of each of the Funds, other than Bond, which have been owned thirty days or more, may be exchanged for shares of any of the other Funds, including Bond, on the basis of the relative net asset value per share at the time of exchange, without the payment of any sales charge. Applicants further represent that, pursuant to the order of the Commission dated December 19, 1974, stockholders of Bond are permitted to exchange shares of Bond for shares of any of the other Funds, except Investors, on the basis of their relative net asset value per share at the time of exchange, plus the sales charge described in the prospectus of the Fund whose shares are being acquired, less the sales charge that was initially paid on such bond shares being exchanged. Since the sales charge on the sale of Bond shares is generally less than the applicable sales charge for the other Funds, an investor acquiring shares of one of the Funds through an exchange of Bond shares initially purchased at the reduced sales charge pays approximately the same overall sales charge that would have been paid had the same number of shares of one of the Funds been purchased directly.

Cash now proposes to permit the stockholders of any of the Funds to exchange their shares of such other Fund for shares of Cash at their relative net asset value per share at the time of exchange, without a sales charge, which is the same basis on which shares of Cash are offered to the general public by its prospectus.

Each of the Funds and the Distributor propose to permit stockholders of Cash who acquired their shares through direct purchase for cash, to exchange such shares for shares of the Funds upon the basis of their relative net asset values per share at the time of exchange, plus the sales charge described in the prospectus of the Fund issuing the new shares. Since there is no sales charge on the purchase of Cash shares, Applicants state that the sales charge on shares of the Fund acquired in the exchange would be the same as the sales charge on shares of the Fund offered to the general public by its prospectus.

Each of the Funds and the Distributor further propose to permit holders of shares of Cash which have been acquired upon the exchange of shares of one of the Funds for shares of Cash, to exchange such Cash shares for shares of the Fund on the basis of their relative net asset value per share. There will be no sales charge upon the issue of shares of the new Fund in exchange for such shares of Cash in those cases in which the sales charge of the original Fund was the same as the sales charge described in the prospectus of the Fund issuing shares in the exchange. In cases in which shares of Bond have been exchanged for shares of Cash, such shares of Cash will be exchanged for shares of the new Fund on the basis of their relative net asset value per share at the time of the exchange, plus a sales charge described in the prospectus of the Fund being acquired, less the charge paid on Bond shares at the time they were originally acquired.

Each of the Funds and the Distributor proposes to permit stockholders of Cash who acquired Cash shares through the reinvestment of dividends to convert those Cash shares into shares of the Funds on the basis of the relative net asset value of shares involved at the time of the exchange, without a sales charge.

Investors and the Distributor propose to permit stockholders of the Funds, other than Bond, to transfer their shares into shares of Investors at relative net asset value at the time of the exchange, without payment of a sales charge. Investors and the Distributor further propose to permit the stockholders of Bond to exchange their Bond shares for shares of Investors on the basis of their relative net asset values per share at the time of the exchange, plus the sales charge described in the prospectus of

Investors, less the sales charge paid on the Bond shares at the time they were originally acquired. Investors and the Distributor propose, however, that no additional sales charge will be imposed upon the exchange of shares of Bond which were acquired as a result of an exchange of shares of the Funds, or as a result of the reinvestment of dividends or captal gain distributions.

In addition, Investors and the Distributor propose to permit stockholders of Bond who redeem their shares of Bond to have a one-time privilege for 30 days after redemption, to the extent the redeemed Bond shares were eligible for the exchange privilege, to purchase shares of Investors up to the dollar amount of the redemption proceeds at a sales charge equal to the additional sales charge which would have been paid had the redeemed Bond shares been exchanged for shares of Investors.

Section 11(a) of the Act provides that it shall be unlawful for any registered open-end company or any principal underwriter for such company to make or cause to be made an offer to the shareholder of a security of such a company or of any other open-end investment company to exchange his security for a security in the same or another such company on any basis other than the relative net asset values of the respective securities to be exchanged unless the terms of the offer have first been submitted to and approved by the Commission.

Section 22(d) of the Act provides, in pertinent part, that no registered investment company or principal underwriter thereof shall sell any redeemable security issued by such company to any person except at a current offering price described in the prospectus. Rule 22d-1 provides for exemption from Section 22(d) to the extent necessary to permit the sale of securities of a registered investment company at prices which reflect reductions in or eliminations of the sales load under certain stated circumstances. Rule 22d-2 provides for a further exemption from the provisions of Section 22(d) to the extent necessary to permit, without sales charge, reinvestment of the proceeds of a redemption made during the prior 30 days or the purchase with such proceeds of shares of another investment company which offers to exchange its shares for shares of the fund whose shares had been redeemed without any sales charge.

Applicants state that the overall purpose of the exchange offers and arrangements is to permit a stockholder of any one of the investment companies in the Security group of funds, who wishes to change his investment objectives, to convert his investment to another fund in the group, without paying the full sales charge which would otherwise be applicable. Applicants further state, however, that if exchange offers to stockholders of Bond and to stockholders of Cash were made solely at relative net asset values, the exchanging stockholder would pay substantially less in sales charges on his investment in the Fund to be acquired than would other investors who purchased shares directly from that Fund for cash. According to the application, the terms of the exchange of Cash shares or Bond shares for shares of the other Funds (upon the basis of net asset values per share at the time of the exchange, plus the sales charge described in the prospectus of the investment company whose shares are being acquired, less the sales charge previously paid on the purchase of the prior investment company's shares) are designed to discourage attempts to circumvent the higher sales charges paid by investors purchasing directly for cash from the Fund whose shares are being acquired. Applicants further represent that the exchange terms are gauged so that an investor acquiring shares of one of the other funds in the group through an exchange of Bond shares or Cash shares would pay approximately the same overall sales charge that he would have paid had he purchased the same number of shares of one of the other Funds directly. Applicants further assert that the terms of the exchange privilege appear to be consistent and compatible with the intent and spirit of Section 22(d) of the Act and the Rules promulgated thereunder since they would prevent an investor from purchasing shares of one of the Funds at a sales charge other than that described in the prospectus through the device of purchasing shares of Bond or of Cash and subsequently exchanging those shares at net asset value for shares of one of the other Funds.

Section 6(c) provides, in part, that the Commission, by order upon application, may conditionally or unconditionally exempt any person, security, or transaction or any class or classes of persons, securities, or transactions from any provision or provisions of the Act or any rule or regulation promulgated thereunder, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

On the basis of the foregoing, Applicants submit that the proposed exemption is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Notice is further given that any interested person may, not later than February 9, 1981, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the application accompanied by a statement as to the nature of his interest, the reason for such request, and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicants at the address stated above. Proof of such service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0-5 of the Rules and Regulations promulated under the Act, an order disposing of the application will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 81-1687 Filed 1-16-81; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

Optional Peg Rate

The Small Business Administration publishes on a quarterly basis an interest rate called the optional "peg" rate (13 CFR 120.3(b)(2)(iii)). This rate is a weighted average cost of money to the government for maturities similar to the average SBA loan. This rate may be used as a base rate for guaranteed fluctuating interest rate SBA loans.

For the January–March quarter of 1981, this rate will be twelve (12) percent.

Dated: January 12, 1981.
William H. Mauk, Jr.,
Acting Administrator.
[FR Doc. 81-1789 Filed 1-16-81; 8:45 am]
BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area #1969]

Territory of Guam; Declaration of Disaster Loan Area

The Territory of Guam constitutes a disaster area as a result of physical damage caused by Typhoon Betty which occurred on October 31, 1980. Eligible persons, firms and organizations for loans for physical damage until the close of business on March 13, 1981 and for economic injury until the close of business on October 13, 1981 at: Small Business Administration, Branch Office, Pacific Daily News Building, Room 508, Martyr & O'Hara, Agana, Guam 96910 or other locally announced locations.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: January 12, 1981.
William H. Mauk, Jr.,
Acting Administrator.
[FR Doc. 81-1790 Filed 1-16-81; 8:45 am]
BILLING CODE 8025-01-M

(License No. 06/06-5240)

Southern Orient Capital Corp.; Issuance of a Small Business Investment Company License

On October 23, 1980, a notice was published in the Federal Register (45 FR 70365) stating that an application has been filed by Southern Orient Capital Corporation, 2419 Fannin, Suite 200, Houston, Texas 77002, with the Small Business Administration (SBA) pursuant to Section 107.102 of the Regulations governing small business investment companies (13 CFR 107.102 (1980)) for a license as a small business investment company.

Interested parties were given until close of business November 7, 1980, to submit their comments to SBA. No comments were received.

Notice is hereby given that, pursuant to Section 301(d) of the Small Business Investment Act of 1958, as amended, after having considered the application and all other pertinent information, SBA issued License No. 06/06-5240 on December 29, 1980, to Southern Orient Capital Corporation, to operate as a small business investment company.

(Catalog of Federal Domestic Assistance Program No. 59-011, Small Business Investment Companies)

Dated: January 12, 1981
Michael K. Casey,
Associate Administrator for Investment.
[FR Doc. 81-1815 Filed 1-16-81; 8:45 am]
BILLING CODE 8025-01-M

[License No. 02/02-0350]

Quidnet Capital Corp.; Filing of Application for Approval of Conflict of Interest Transaction Between Associates

Notice is hereby given that Quidnet Capital Corporation (Quidnet), 900 State Street, Princeton, New Jersey 08540, a Federal Licensee under the Small Business Investment Act of 1958, as amended, has filed an application pursuant to § 107.1004 of the Regulations governing small business investment companies (13 CFR 107.1004 (1980)), for approval of a conflict of interest transaction.

On June 8, 1979, the Small Business Administration granted an exemption under § 107.1004(b)(1) of its Regulations, to enable Quidnet to provide financing in the amount of $28,875 to J. P. Industries, Inc. (JPI), 3001 South State Street, Ann Arbor, Michigan 48104. Quidnet additionally committed through June 4, 1982, to provide up to $271,125 of additional funds to JPI. Quidnet now proposes to make an investment in JPI through the purchase of up to $250,000 of a subordinated debenture offering.

An officer, director and stockholder of Quidnet is also a director of JPI. The holder of Quidnet's Preferred Stock is also a shareholder of JPI. As the result of these affiliations, JPI is deemed an Associate of Quidnet as defined under Section 107.3 of the SBA's Regulations. Consequently, the proposed transaction falls within the purview of Section 107.1004 of the Regulations and requires a written exemption granted by the SBA.

Notice is hereby given that any person may, not later than 15 days from date of publication of this notice submit written comments on the proposed transaction. Any such comments should be addressed to the Associate Administrator for Investment, Small Business Administration, 1441 L Street, NW., Washington, D.C. 20416.

A copy of this notice shall be published in a newspaper of general circulation in Princeton, New Jersey and Ann Arbor, Michigan.

(Catalog of Federal Domestic Assistance Programs No. 59.011, Small Business Investment Companies)

Dated: January 12, 1981.
Michael K. Casey,
Associate Administrator for Investment.
[FR Doc. 81-1814 Filed 1-16-81; 8:45 am]
BILLING CODE 8025-01-M

DEPARTMENT OF STATE

Office of the Secretary

[Public Notice 736]

Intent To Prepare Environmental Impact Statement and Conduct a Scoping Meeting for Intelsat Headquarters and Expansion of International Center, Washington, D.C.

In accordance with the requirements of the National Environmental Policy Act (Public Law 91-190), this is a Notice of Intent to prepare an Environmental Impact Statement (EIS) and initiate the scoping process for the proposed agency action specified below:

AGENCY: The U.S. Department of State has been authorized by Public Law 90-553 to develop a Federal International Center in Washington, D.C., and has initiated work for that purpose.

Cooperating Agencies:

The General Services Administration and the National Capital Planning Commission will be requested to participate as cooperating Federal agencies.

ACTION: The purpose of the study is to ascertain the environmental impacts that may result from the changes in the proposed Federal International Center as follows:

1. Change the prime lessor of the approximate 6 acres previously identified for the Organization of American States (OAS) to the International Telecommunications Satellite Organization (INTELSAT).

2. Expand the chancery sites to include an additional 11 acres more or less of the "northwest quadrant" of the old National Bureau of Standards site to accommodate up to 9 additional foreign missions.

Study Area:

The study area will concentrate on the site and its immediate environs, located within the northwest quadrant of the District of Columbia. The site is bounded on the east by Connecticut Avenue, N.W. and the University of the District of Columbia, on the south by Tilden Street, on the west by Reno Road and 30th Street, and on the north by Van Ness Street and the residential lots fronting on Yuma Street.

The Proposed Project:

The proposed project consists of long-term leases of Federal land to INTELSAT and foreign governments for the purposes of constructing the INTELSAT Headquarters building, chanceries, and chancery enclaves in the "northwest quadrant". Phase 1 of the INTELSAT Headquarters building will consist of approximately 375,000 sq. ft. Ultimately, the building may be expanded to 700,000 sq. ft. The chanceries may be developed with a FAR of 1.0 for the exterior lots and a FAR of 1.5 in the interior lots.

Public Participation:

Public comment is a very important element of the decision making process which has been sustained throughout the International Center project's progress to date. Because of the significant interest shown by the public, and the number of recent studies that have been completed, there will be a scoping meeting at: Date and Time: Wednesday, Feb. 4, 1981 at 7:00 p.m. Place: National Capital Planning Commission, 1325 G Street, NW., Washington, D.C., 10th Floor Commission Meeting Room.

The Department of State and their consultants will present the proposed scope of analysis and will receive public comments at the scoping meeting. Written comments will be received by the Director of the International Center Project until close of business on Wednesday, February 11, 1981. For further information, please address your requests to Mr. James A. Edgins, Director, A/ICP, Room 1800, Department of State, 2201 C Street, NW., Washington, D.C. 20520 or call 632-9540.

James A. Edgins,

Director, International Center Project.

[FR Doc. 81-1008 Filed 1-16-81; 8:45 am]

BILLING CODE 4710-05-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Advisory Circular on Design Considerations Concerning the Use of Titanium in Aircraft Turbine Engines

AGENCY: Federal Aviation Administration.

ACTION: Notice of availability of draft advisory circular and request for comments.

SUMMARY: The draft Advisory Circular is intended to provide guidance for demonstrating compliance with the design requirements of Part 33 to minimize the probability of the occurrence of internal fire when titanium is used in aircraft turbine engines.

DATES: Commenters must identify file number AC 33.17-X and comments must be received on or before March 20, 1981.

ADDRESS: Send all comments in duplicate on the draft to Federal Aviation Administration, Office of Airworthiness, Attention: Propulsion Branch (AWS-140), 800 Independence Ave., SW., Washington, DC 20591, or delivered in duplicate to Room 331B, 800 Independence Ave., SW., Washington, DC 20591. Comments delivered must be marked file number AC 33.17-X. Comments may be inspected at Room 331B between 8:30 a.m. and 5:00 p.m.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas G. Horeff, Chief, Propulsion Branch (AWS-140), Aircraft Engineering Division, Office of Airworthiness, Federal Aviation Administration, 800 Independence Ave., SW., Washington, DC 20591 (Telephone (202) 426-8200).

SUPPLEMENTARY INFORMATION:

Comments Invited

Comments are solicited on all aspects of the draft Advisory Circular. A copy of the draft Advisory Circular may be obtained by contacting the person identified under "For Further Information Contact."

Issued in Washington, DC, on January 12, 1981.

M. C. Beard,

Director of Airworthiness.

Subject: Design Considerations Concerning the use of Titanium in Aircraft Turbine Engines

1. *Purpose.* This circular provides guidance and acceptable means, not the sole means, by which compliance may be shown with the design requirements of Part 33 to minimize the probability of the occurrence of an internal fire when titanium is used in aircraft turbine engines.

2. *Applicable regulations.* Part 33, Sections 33.17(f) and 33.19.

3. *References.*

a. Report No. FAA-RD-79-51, "Titanium Combustion in Turbine Engines," July 1979. (NTIS Accession Number AD A075 657.)

b. British Civil Airworthiness Requirements, Appendix to Chapter C3-2, Paragraph 3, Titanium Fires.

4. *Background.* Titanium is used in aircraft engines because of its low density, high specific strength, and corrosion resistance. While these are significant benefits, titanium has some unique properties that make it unsuited for some applications within turbine engines. Particularly, titanium has two properties that can combine to make it vulnerable to combustion; (1) unlike most other structural metals, titanium ignites at a lower temperature than it melts, and (2) it has a lower conductivity of heat. Thus, heat may not be readily conducted away from its source, thereby permitting the titanium to more rapidly reach its ignition temperature. Hard rubs are the most common source of heat. Rubs may result from foreign object damage (FOD), secondary damage, stall, bearing failure, unbalance and/or case deflection. During a rub, the low thermal conductivity titanium component may rapidly rise to the ignition temperature.

There have been over 140 known instances of titanium fires in aircraft turbine engines in flight and during ground tests. Few of these instances have been serious from a flight safety point of view. A fair proportion have, however, resulted in significant damage to the engine and could under some circumstances be hazardous. In almost all these instances, the titanium fire was a secondary event where something else failed first and resulted in a situation which caused some titanium part to be heated to its ignition temperature. Usually this failure was a titanium compressor blade that failed from foreign object ingestion, vibration, a heavy rub, or some other occurrence. For example, a broken blade when lodged in a location where it is rubbed by a rotating component can be heated by friction to its ignition temperature. Once ignited, titanium combustion continues until either the titanium is depleted, the air pressure falls below some critical value, the combustion progresses to a heavy section or the ignition energy source is removed. Titanium fires are fast burning, i.e., 20 seconds or less, and are extremely intense. The molten particles in titanium fires generate highly erosive hot sprays which have burned through compressor casings with resulting radial expulsion of molten or incandescent metal.

Theoretical studies and experiments have been conducted to define the conditions for ignition and self-sustained combustion of titanium. The results of these studies and experiments are shown in Figures 17 and 18 of Reference a. These results illustrate the following aspects of self-sustained combustion:

a. Increase in size of a titanium blade (increase in Reynolds No.) helps to promote sustained combustion because of less area for heat dissipation by convection and radiation relative to heat of reaction compared with a small blade.

b. Reduction in pressure and air density (decrease in Reynolds No.)

reduces the likelihood of sustained combustion because of the lack of oxygen.

c. Large blades in low pressure stages probably do not cause titanium fires because they do not readily ignite due to low pressure and temperature conditions and, if ignited, the low air density and low supply of oxygen prevent sustained combustion.

d. Intermediate size blades in medium pressure stages probably do not cause titanium fires because there is less likelihood of sustained combustion due to the smaller size of blade although they may more readily ignite locally as a result of an external heat source from rubbing contact.

e. Small blades in high pressure stages will result in titanium fires because heat input due to rubbing contact will produce a temperature high enough for ignition and the high air density and high air velocity over the blades results in a high Reynolds No. conducive to sustained combustion.

Based on arbitrary values chosen from actual experience, the British Civil Aviation Authority has specified in Reference b that it will normally be assumed a titanium fire is possible if stationary titanium material exists in areas where:

a. Pressure will exceed 200 kN/m² (29.4 lbf/in²); and

b. Relative air velocities are in excess of approximately 50 m/sec (150 ft/sec); and

c. The geometry is such that relatively thin titanium sections exist which can be rubbed, directly or after shedding, by rotating parts. Stator blades of conventional design, of up to 15 cm (6 in.) of airfoil height are regarded as falling into this category.

The National Aeronautics and Space Administration and U.S. Air Force are sponsoring contractual, university, and in-house research programs to allow titanium to be used in engines such that only unsustained combustion would occur under abnormal operating conditions. These programs pertain to titanium combustion fundamentals, rub energetics, blades coatings, and new alloys. While considerable attention is being given to develop engineering/material solutions to the titanium fire problem, it should be emphasized that recent experience has demonstrated near complete freedom from case penetration on engines which have been designed using acceptable titanium usage criteria.

5. *Design considerations.* Section 33.17(f) of the Federal Aviation Regulations requires that: "The design and construction of turbine engines must minimize the probability of the occurrence of an internal fire that could result in structural failure, overheating, or other hazardous conditions." To comply with this requirement ideally, there should be no titanium in the gas path of turbine engines. However, the properties of titanium are such that to prohibit its use in certain rotating parts of the engine would significantly increase engine weight. Fortunately, experience indicates this extreme position is not necessary. The application of titanium in the engine design should be directed primarily to minimizing the probability of uncontained titanium fires, i.e., fires that penetrate the engine casing. Design features that minimize the possibility of ignition and propagation of combustion will aid in achieving the primary objective and overall engine reliability.

Reference a has a section on the precautions and preventative measures that can be used to assist in the design of aircraft turbine engines when titanium is to be used. The following considerations are based on proven design experience and should be followed in evaluating the use of titanium in engines, however they are not necessarily the only means available to the designer.

a. *Path of combustion products.* When titanium materials are used in an engine design, an analysis should be made of the paths the products of combustion will take to verify that a titanium fire will be contained within the engine. If these molten products can result in failures that are uncontained or other hazardous conditions, the design should be changed to prevent these possibilities.

b. *Compressor casing.* The design, construction, and materials used for the compressor casing must provide for the containment of fire and consequential damage in compliance with FAR §§ 33.17(f) and 33.19. The compressor casing should not be of titanium unless it is suitably protected to prevent an uncontained fire and its consequential damage.

c. *Compressor stator vanes.* The design, construction, and materials used for compressor stator vanes must conform to the containment requirements as specified in FAR Part 33.17(f). The compressor stator vanes should not be of titanium if ignition can result in uncontained fire. Experience shows that forward stages can be excepted if the vanes are large enough and/or shrouded to avoid breaking during foreign object ingestion.

d. *Seals.* The design, construction, and materials used for seals must conform to the requirements of FAR § 33.17(f). The use of titanium for either the rotating or stationary part of seals should have design features that inhibit ignition and minimize the possibility of propagating combustion.

[FR Doc. 81-1703 Filed 1-16-81; 8:45 am]
BILLING CODE 4910-13-M

Federal Highway Administration

Formula Grant Program for Areas Other Than Urbanized Areas

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice.

SUMMARY: Public transportation providers located in the new or expanded urbanized areas identified by the 1980 Census will no longer be eligible for assistance under Section 18 of the Urban Mass Transportation Act of 1964. This notice describes transition guidance for authorizing Section 18 projects within areas affected by the census during the transition.

FOR FURTHER INFORMATION CONTACT: Mr. Don Glasco, Office of Highway Planning, 202-426-0153, or Mr. Lee J. Burstyn, Office of the Chief Counsel, 202-426-0754, Federal Highway Administration, 400 Seventh Street SW., Washington, D.C. 20590. Office hours are from 7:45 a.m. to 4:15 p.m. ET, Monday through Friday.

Section 313 of the Surface Transportation Assistance Act of 1978, Pub. L. 95-599, amended the Urban Mass Transportation Act of 1964 by adding a new Section 18. This program provides Federal assistance for public transportation in nonurbanized areas by way of a formula grant program that is administered by each State.

As a result of the 1980 Census, new urbanized areas will be established and the boundaries of existing areas will be expanded. Public transportation providers in these new urbanized areas will no longer be eligible for assistance under the Section 18 program. Instead, formula assistance for transit in urbanized areas is provided under the Urban Mass Transportation Administration's (UMTA) Section 5 program of the Urban Mass Transportation Act of 1964, as amended. The procedures below describe guidance for the authorization of Section 18 projects within these affected areas during their transition from nonurbanized to urbanized status.

1. The Bureau of the Census should make available the names and boundaries of all urbanized areas during the Spring of 1981. No exact publication date has been set.

2. Section 18 projects within newly designated or expanded areas may

continue to be authorized, with discretion, through September 30, 1981.

3. Section 18 projects should not be authorized within these areas after September 30, 1981.

The FHWA objective is transit service continuity. Transitional projects should not be faced with a funding assistance gap. Conversely, the FHWA has limited the eligible expense period for these projects so that scarce Section 18 resources will not be used once UMTA's Section 5 transit assistance funding mechanism is in place. The Section 18 program of projects should begin to identify those operations which are known or expected to exist in new or expanded urbanized areas. Review of these projects will be accomplished through coordination between the UMTA and FHWA field offices.

Furthermore, for those rural areas being absorbed by expanding urbanized areas, the State and local officials should establish an early dialogue with the existing Metropolitan Planning Organizations to discuss the distribution of the UMTA Section 5 funds.

(Catalog of Federal Domestic Assistance Program Number 20.509, Public Transportation for Nonurbanized Areas. The provisions of OMB Circular No. A-95 regarding State and local clearinghouse review of Federal and federally assisted programs and projects apply to this program)

Issued on: January 9, 1981.

John S. Hassell, Jr.,

Federal Highway Administrator.

[FR Doc. 81-1625 Filed 1-16-81; 8:45 am]

BILLING CODE 4910-22-M

National Advisory Committee on Outdoor Advertising and Motorist Information; Public Meeting

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of public meetings.

SUMMARY: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463, 5 U.S.C. App. I), notice is hereby given of two meetings of the National Advisory Committee on Outdoor Advertising and Motorist Information.

DATES: Meetings to be held February 5 and 6, 1981, and March 5 and 6, 1981.

TIME: Meetings will be held from 8:30 a.m. to 5:30 p.m. on February 5 and March 5, and from 8:30 a.m. to 3:30 p.m. on February 6 and March 6.

ADDRESS: The meetings will be held at Room 4200, Nassif Building, 400 Seventh Street, SW., Washington, D.C.

Attendance

The public is invited to attend. Any member of the public will be permitted to file a written statement with the Committee. Interested persons may be permitted to speak at the meeting in accordance with the bylaws established by the Committee.

Agenda

February Meeting

1. Subcommittees on Legislative Changes and Administrative Changes, which were established by the committee at its December 4 and 5, 1980 meeting, will meet to formulate recommendations and proposed resolution for full committee consideration. The Subcommittees will meet as indicated:

Subcommittee on Legislative Changes

February 5, 8:30 a.m. to 12:30 p.m.
February 6, 8:30 a.m. to 11:30 a.m.

Subcommittee on Administrative Changes

February 5, 1:30 p.m. to 5:30 p.m.
February 6, 12:30 p.m. to 3:30 p.m.

2. Based on the actions of the subcommittees during the above meetings, the Chairperson of the full committee may, at his/her discretion, alter the remaining February 1981 agenda to include a meeting of the full committee.

March meeting

The full committee will meet to:

1. Review and approve minutes,
2. Consider subcommittees' recommendations,
3. Vote on resolutions, and
4. Consider other matters as may be specified by the Chairman or Acting Executive Director.

FOR FURTHER INFORMATION CONTACT: Mr. Michael J. Laska, Acting Executive Director of the National Advisory Committee, Room 4223, HCC-10, (202) 426-0761, or Mr. Edward V. A. Kussy, Deputy Assistant Chief Counsel, Room 4230, HCC-40, (202) 426-0791, Federal Highway Administration, 400 Seventh Street, SW., Washington, D.C. 20590.

(Catalog of Federal Domestic Assistance Program Number 20.214, Highway Beautification—Control of Outdoor Advertising, and Control of Junkyards. The provisions of OMB Circular No. A-95 regarding State and local clearinghouse review of Federal and federally assisted programs and projects apply to this program)

Issued on: January 12, 1981.

John S. Hassell, Jr.,

Federal Highway Administrator.

[FR Doc. 81-1579 Filed 1-16-81; 8:45 am]

BILLING CODE 4910-22-M

Research and Special Programs Administration

Applications for Renewal or Modification of Exemptions or Applications to Become a Party to an Exemption

AGENCY: Materials Transportation Bureau, D.O.T.

ACTION: List of Applications for Renewal or Modification of Exemptions or Application to Become a Party to an Exemption.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR Part 107, Subpart B), notice is hereby given that the Office of Hazardous Materials Regulation of the Materials Transportation Bureau has received the applications described herein. This notice is abbreviated to expedite docketing and public notice. Because the sections affected, modes of transportation, and the nature of application have been shown in earlier Federal Register publications, they are not repeated here. Except as otherwise noted, renewal applications are for extension of the exemption terms only. Where changes are requested (e.g. to provide for additional hazardous materials, packaging design changes, additional mode of transportation, etc.) they are described in footnotes to the application number. Application numbers with the suffix "X" denote renewal; application numbers with the suffix "P" denote party to. These applications have been separated from the new applications for exemptions to facilitate processing.

DATES: Comment period closes February 3, 1981.

ADDRESS COMMENTS TO: Dockets Branch, Information Services Division, Materials Transportation Bureau, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate.

FOR FURTHER INFORMATION: Copies of the applications are available for inspection in the Dockets Branch, Room 8426, Nassif Building, 400 7th Street, S.W., Washington, DC.

Application No. and applicant	Renewal of exemption
3085-X—Dow Chemical Co., Midland, MI [1]	3085
3330-X—General Electric Co., Schenectady, NY	3330
4483-X—Maynes Explosives Co., Lee's Summit, MO	4483
4084-X—Honeywell, Inc., Minneapolis, MN	4084
4098-X—American Bosch, Springfield, MA	4098
5849-X—Great Lakes Chemical Corp., Adrian, MI	5849
6016-X—Southern Welding Supply Co., Inc., Bowling Green, KY	6016
6403-X—Ethyl Corp., Baton Rouge, LA	6403
6500-X—Blue Star Line, Ltd., London, England	6500
6600-X—East Asiatic Co., Inc., Copenhagen, Denmark	6600
6545-X—San Diego Gas & Electric Co., San Diego, CA	6545
6602-X—Great Lakes Chemical Corp., El Dorado, AR [2]	6602
6618-X—Monsanto Co., St. Louis, MO	6618
6626-X—Airco Welding Products, Springfield, NJ	6626
6646-X—Badger Welding Supplies, Inc., Madison, WI	6646
7078-X—Carroll Air Service, Inc., Kingston, NY	7078
7286-X—Liquid Carbonic Corp., Chicago, IL	7286
7491-X—Process Engineering, Inc., Plaistow, NH [3]	7491
7610-X—W. R. Grace & Co. (Dewey & Almy Chem. Div.), San Leandro, CA	7610
7700-X—U.S. Department of Agriculture, Washington, DC	7700
7725-X—Economics Laboratory, Inc., St. Paul, MN [4]	7725
7834-X—Magnaflux Corp., Chicago, IL	7834
7862-X—General Electric Co., Milwaukee, WI	7862
7883-X—Rilli Co., Ashtabula, OH	7883
8030-X—Halliburton Co., Duncan, OK	8030
8047-X—Compagnie des Containers Reservoirs, Paris, France	8047
8096-X—Pressure Pak Container Co., East Hampton, CT	8096
8136-X—Eastman Kodak Co., Rochester, NY	8136
8144-X—Hercules, Inc., Wilmington, DE	8144
8159-X—Transport International Containers, S.A., Paris, France	8159
8159-X—Faurot-Ginet, Paris, France	8159
8196-X—ANF Industries, Paris, France [5]	8196
8237-X—Sanders Associates, Inc., Nashua, NH	8237
8308-X—Sky Cab, Inc., East Brunswick, NJ	8308
8401-X—ERA Helicopters, Inc., Anchorage, AK	8401

[1] To authorize additional carrier under terms of exemption.
[2] To authorize use of stainless steel valves in place of the bronze valves for shipment of bromine chloride in DOT Specification 106A500X.
[3] To authorize liquefied methane as an additional commodity.
[4] To renew and provide for coded bill of lading update.
[5] To authorize an additional refrigerant gas (R-500) classed as a nonflammable compressed gas.

Application No. and applicant	Parties to exemption
6205-P—Chicago Bridge and Iron Co., Oak Brook, IL	6205
6571-P—Chicago Bridge and Iron Co., Oak Brook, IL	6571
6765-P—U.S. Department of Interior, Amarillo, TX	6765
7052-P—Magnavox Government & Industrial Electronics Corp., Fort Wayne, IN	7052
7423-P—Amax Specialty Metals Corp., Salt Lake City, UT	7423
7834-P—Department of the Army, Washington, DC	7834
8009-P—FBA Leasing Co., Inc., Westboro, MA	8009
8020-P—Bowsco, Inc. Amarillo, TX	8020
8127-P—Hercules Inc., Wilmington, DE	8127
8159-P—SLEMI, Paris, France	8159
8390-P—Ashland Chemical Co., Dublin, OH	8390
8408-P—Environmental Pollution Control Service, Akron, OH	8408

Application No. and applicant	Parties to exemption
8441-P—Electrochem Industries, Inc., Clarence, NY	8441

This notice of receipt of applications for renewal of exemptions and for party to an exemption is published in accordance with Section 107 of the Hazardous Materials Transportation Act (49 CFR U.S.C. 1806; 49 CFR 1.53(e)).

Issued in Washington, DC, on January 9, 1981.

J. R. Grothe,

Chief, Exemptions Branch, Office of Hazardous Materials Regulation, Materials Transportation Bureau.

[FR Doc. 81-1747 Filed 1-16-81; 8:45 am]

BILLING CODE 4910-60-M

Urban Mass Transportation Administration

Innovation in Operating Procedures

AGENCY: Urban Mass Transportation Administration.

ACTION: Notice of Pilot Program.

SUMMARY: The Urban Mass Transportation Administration (UMTA) has established a Pilot Program to Test Innovation in UMTA Operating Procedures. This is one element of UMTA's ongoing effort to streamline operating procedures. The Pilot Program will test procedures which, UMTA believes, will reduce the paperwork required of grantees and will expedite the obligation of grant funds.

FOR FURTHER INFORMATION CONTACT: William Hannan, Office of Transit Assistance, Urban Mass Transportation Administration, Washington, D.C. 20590, 202-472-6997.

SUPPLEMENTARY INFORMATION:

Background

The Urban Mass Transportation Administration is currently examining its internal and external operating procedures in an effort to determine where revisions can be made that would expedite the grantmaking process. A principal element of this effort has been the establishment of a Steering Committee, which was assigned the task of developing and implementing a Pilot Program to Test Innovation in UMTA Operating Procedures. As an initial effort, the Steering Committee addressed approval procedures for routing grants made pursuant to Section 5 of the Urban Mass Transportation Act of 1964, as amended. The Steering Committee has developed a process which offers potential for reducing the amount of time needed to satisfy procedural requirements and actually to obligate funds. The process would also reduce paperwork requirements for UMTA grantees. As experience is gained in this initial effort, additional innovative procedures, designed to reduce paperwork and streamline processes, will be tested for implementation.

Procedural Changes

The procedural changes to be tested in this Pilot Program involve UMTA's review of the annual element of each urbanized area's transportation improvement program (TIP/AE) to allow UMTA to declare its "willingness to fund" routine Section 5 projects included therein. Declaration of "willingness to fund" will imply that the proposed project is fully justified and that it will be approved provided sufficient funds are available and program requirements are met. Participating Metropolitan Planning Organizations (MPO's) will be encouraged to work with transit authorities in their areas to identify a subset of proposed projects as candidates for the declaration of "willingness to fund."

Accordingly, the contents of the TIP/AE will have to be augmented so as to permit UMTA to determine its "willingness to fund" routine projects. Information contained in two Exhibits, which are currently submitted with a capital project application, will—under the Pilot Program—be submitted with the TIP/AE. They are Exhibit A, "Project Description," including budgetary information, and Exhibit C, "Project Justification." In cases where a project justification has been previously submitted to UMTA, that justification need only be referenced in the TIP/AE, with an indication of which previously submitted document wherein the justification can be found.

Once the TIP/AE has been submitted to UMTA for review and approval, the entire program of projects will be forwarded to the Department of Labor (DOL) for review and certification of routing projects contained therein, pursuant to Section 13(c) of the UMT Act. DOL will review each project individually for certification purposes. Concurrently, public hearings can be held, if appropriate, on the entire program of projects.

UMTA will still not obligate funds for a specific project until an application is received and approved. The application will not require a project justification, however, since that will have been submitted with the TIP/AE.

Consequently, only the following exhibits will accompany applications for routine capital grants:

—Exhibit A, Project Description (for identification purposes);
—Exhibit D, Revenue Financing;
—Exhibit H, Use of Project Facilities;
—Exhibit J, Public Hearing;
—Exhibit L, Protection of the Environment;
—Exhibit O, Evaluation of Flood Hazards;
—Opinion of Counsel; and
—Resolution.

In addition, the following Exhibits must be on file with UMTA at the time of project approval:

—Exhibit B, Public Transportation System;
—Exhibit I, Labor; and
—Charter and School Bus.

Anticipated benefits from these Pilot Program procedures will accrue primarily from the revised staging of procedural elements. With Department of Labor review and public hearings being held concurrently with UMTA's project review efforts, considerable time should be saved in the project approval process. Under current procedures, DOL does not receive a project description, and cannot begin its certification review, until a project application is submitted. An ancillary benefit is the reduction in paperwork that will be experienced by grantees, DOL, and UMTA, as multiple routine projects advance through the approval process collectively, rather than individually.

Eligible Projects

The new procedures will apply, for a two-year experimental period, to "routine" Section 5 projects for select Metropolitan Planning Organizations served by Regional offices in Philadelphia (Region III), Chicago (Region V), Kansas City (Region VIII), and San Francisco (Region IX). Participation will be voluntary. For the purpose of this Pilot Program, eligible routine projects are general purpose operating grants (not paratransit), routine bus replacement, and small support equipment and shelters.

Evaluation

Pilot Program procedures will be tested through September 30, 1982. At that time, the program will be evaluated to determine the feasibility and desirability of implementing the procedures nationally.

Dated: January 14, 1981.

Theodore C. Lutz,
Administrator.

[FR Doc. 81-1790 Filed 1-16-81; 8:45 am]

BILLING CODE 4910-57-M

DEPARTMENT OF THE TREASURY

Customs Service

Decision Denying American Manufacturer's Petition Requesting Reclassification of Radio Remote Control Apparatus; Petitioner's Desire To Contest This Decision

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of (1) decision on American manufacturer's petition, and (2) receipt of notice of petitioner's desire to contest the decision.

SUMMARY: In response to an American manufacturer's petition requesting that radio remote control apparatus designed to be used with toy and model airplanes, boats, tanks, and similar articles, be reclassified under the provision for toys, and parts of toys, not specially provided for, other, in item 737.95, Tariff Schedules of the United States (TSUS), (19 U.S.C. 1202), Customs advised the petitioner that such radio remote control apparatus would continue to be classified under the provision for radio remote control apparatus in item 685.60, TSUS. Upon being informed that its petition had been denied, the petitioner filed notice of its desire to contest the decision.

FOR FURTHER INFORMATION CONTACT: Donald F. Cahill, Classification and Value Division, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229 (202 566-8181).

SUPPLEMENTARY INFORMATION:

Background

A petition was filed under section 516, Tariff Act of 1930, as amended (19 U.S.C. 1516), by Kraft Systems, Inc., of Vista, California, an American manufacturer, requesting that imported radio remote control apparatus, designed to be used with toy and model airplanes, boats, tanks, and similar articles, be reclassifed under the provision for toys, and parts of toys, not specially provided for, other, in item 737.95, Tariff Schedules of the United States (TSUS), (19 U.S.C. 1202). Radio remote control apparatus is specifically provided for, and uniformly classified by Customs, under item 685.60, TSUS. Notice of the petition was published in the Federal Register on May 10, 1979 (44 FR 27528).

In support of its contention that the radio remote control apparatus involved is properly classifiable as a toy under item 737.95, TSUS, the petitioner made the following arguments:

(1) The intent of Congress was to include only extremely sophisticated military and scientific radio remote control apparatus in the provision for radio remote control apparatus in item 685.60, TSUS; and

(2) Radio remote control apparatus which is used with toys and model airplanes, boats, tanks, and similar articles, is classifiable according to its chief use, i.e., toys for the amusement of children or adults.

Customs is of the position that the legislative history to item 685.60, TSUS, does not support the petitioner's contention that only sophisticated military and scientific radio remote control apparatus were intended by the Congress to be included under this item of the tariff schedules.

Further, Customs does not believe that the radio remote control apparatus involved can be classified as a toy under item 737.95, TSUS, because it does not provide amusement in and of itself. It amuses only in connection with model airplanes, boats, tanks, and similar articles. See *Mattel Inc.* v. *United States*, 61 Cust. Ct. 75, C.D. 3531 (1968).

Decision on Petition and Receipt of Petitioner's Notice of Desire to Contest

By letter dated October 2, 1980, file No. 521469, the petitioner was advised that his petition was denied and that Customs would adhere to its practice of classifying radio remote control apparatus designed to be used with toy and model airplanes, boats, tanks, and similar articles under the provision for radio remote control apparatus in item 685.60, TSUS.

In response, by letter dated October 30, 1980, the petitioner filed notice of its desire to contest this decision in accordance with section 516(c), Tariff Act of 1930, as amended (19 U.S.C. 1516(c)), and section 175.23, Customs Regulations (19 CFR 175.23). However, under section 516(d), Tariff Act of 1930, as amended (19 U.S.C. 1516(d)), the current Customs practice of classifying this type of radio remote control apparatus under item 685.60, TSUS, will continue so long as no decision of the United States Court of International Trade or the United States Court of Customs and Patent Appeals not in harmony with this practice is published.

Authority

This notice is being published in accordance with section 516(c), Tariff Act of 1930, as amended (19 U.S.C.

1516(c)), and § 175.24, Customs Regulations (19 CFR 175.24).

Drafting Information

The principal author of this document was Barbara E. Whiting, Regulations and Information Division, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other Customs offices participated in its development.

Dated: January 8, 1981.

William T. Archey,

Acting Commissioner of Customs.

[FR Doc. 81-1687 Filed 1-16-81; 8:45 am]

BILLING CODE 4810-22-M

Fiscal Service

[Dept. Circ. 570, 1980 Rev., Supp. No. 17]

Surety Companies Acceptable on Federal Bonds

A certificate of authority as an acceptable surety on Federal bonds is hereby issued to the following company under Sections 6 to 13 of Title 6 of the United States Code. An underwriting limitation of $234,000 has been established for the company.

Name of Company: New South Insurance Company

Business Address: P.O. Box 3199 Winston-Salem, North Carolina 27102

State of Incorporation: North Carolina

Certificates of authority expire on June 30 each year, unless renewed prior to that date or sooner revoked. The certificates are subject to subsequent annual renewal so long as the companies remain qualified (31 CFR, Part 223). A list of qualified companies is published annually as of July 1 in Department Circular 570, with details as to underwriting limitations, areas in which licensed to transact surety business and other information. Federal bond-approving officers should annotate their reference copies of the Treasury Circular 570, 1980 Revision, at page 44509 to reflect this addition. Copies of the circular, when issued, may be obtained from the Audit Staff, Bureau of Government Financial Operations, Department of the Treasury, Washington, D.C. 20226.

Dated: January 13, 1981.

W. E. Douglas,

Commissioner, Bureau of Government Financial Operations.

[FR Doc. 81-1684 Filed 1-16-81; 8:45 am]

BILLING CODE 4810-35-M

VETERANS ADMINISTRATION

Station Committee on Educational Allowances; Meeting

Notice is hereby given pursuant to Section V, Review Procedure and Hearing Rules, Station Commission on Educational Allowances that on February 10, 1981, at 1:00 p.m., the Veterans Administration Regional Office Station Committee on Educational Allowances shall at Estes Kefauver Federal Building—U.S. Courthouse, Room A–220, 110 Ninth Avenue, South, Nashville, Tennessee, conduct a hearing to determine whether Veterans Administration benefits to all eligible persons enrolled in Manchester Police Department, City Hall, Manchester, Tennessee, should be discontinued, as provided in 38 CFR 21.4134, because a requirement of law is not being met or a provision of the law has been violated. All interested persons shall be permitted to attend, appear before, or file statements with the Committee at the time and place.

Dated: January 8, 1981.

R. S. Bialak,

Director.

[FR Doc. 81-1672 Filed 1-16-81; 8:45 am]

BILLING CODE 8320-01-M

WATER RESOURCES COUNCIL

Yadkin-Pee Dee Level B Study; Intent To Prepare an Environmental Impact Statement

Pursuant to Section 102(2)(c) of the National Environmental Policy Act of 1969, and the Water Resources Council Rules for Compliance with NEPA (18 CFR Part 707), the Water Resources Council as a joint lead agency with the States of North and South Carolina will prepare an environmental impact statement on the Yadkin-Pee Dee River Basin Level B Plan. The final recommended plan for development, conservation and management of water and related land resources in the Yadkin-Pee Dee River Basin will be submitted to the Water Resources Council for its review under Section 104 of Pub. L. 89–80. Council recommendations for Federal implementation actions along with the plan will be sent to the President and to the Congress. The plan, if adopted by the participating States as an approved regional plan, will be subject to application of the Water Resources Council's Consistency Policy.

The Yadkin-Pee Dee Basin covers an 18,000 square mile area in central North Carolina and northeastern South Carolina. The Plan will make recommendations for solving water resource problems expected in the Basin through the year 2010. Focal problems concern water supply, water quality, flood damage reduction, water management and legal issues. Plan recommendations will apply to Federal and State agencies and local governments. In order for Federal agencies to implement of fund some of the recommendations, project-specific Environmental Impact Statements may be required.

The Preliminary Draft Recommended Plan has been completed. Public meetings to discuss this plan are scheduled for late January and early February 1981. For copies of the Preliminary Draft Recommended Plan and specific meeting times and locations please contact: North Carolina—Reba Gettys Hill, Office of Water Resources, North Carolina Department of Natural Resources and Community Development, P.O. Box 27687 Raleigh, NC 27611, telephone (919) 733–7856 or South Carolina—Thomas Cullinan, South Carolina Department of Health and Environmental Control, 2600 Bull Street, Columbia, SC 29201, telephone (803) 758–7921.

The draft environmental impact statement is tentatively scheduled to be transmitted to the Environmental Protection Agency in April 1981. A 90-day period for public review and comment will follow. The final environmental impact statement is tentatively scheduled to be transmitted to the EPA in August 1981. Further notice of meetings or publications available will be made only through the regional media.

For further information please contact either: Thomas W. Nelson, Study Manager, 6001 Silas Creek Parkway Extension, Winston-Salem, NC 27016, telephone (919) 761–2222 or Joel Frisch, Acting Director of Regional Programs Division, Water Resources Council, Washington, DC 20037, telephone (202) 254–6442.

Dated: January 13, 1981.

Gerald D. Seinwill,

Acting Director.

[FR Doc. 81-1629 Filed 1-16-81; 8:45 am]

BILLING CODE 6410-01-M

Sunshine Act Meetings

Federal Register
Vol. 46, No. 12
Monday, January 19, 1981

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

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CHRYSLER CORPORATION LOAN GUARANTEE BOARD.

The Chrysler Corporation Loan Guarantee Board will hold a meeting closed to the public on Janaury 16, 1981 at 2:30 p.m., in Room 4426, Main Treasury Building, 15th Street and Pennsylvania Avenue, N.W., Washington, D.C.

The Board will continue its discussion of Chrysler Corporation's new Operating and Financing Plans and related documents and its request for additional guarantees. On Wednesday, January 14, the Board approved a summary of the terms on which it is expected to be able to grant formal approval later in the week. At the January 16 meeting the Board expects to take formal action on Chrysler's application for up to an additional $400 million of guarantees.

Discussions of the above matters are closed to the public pursuant to applicable exemptions under the Government in the Sunshine Act. The discussions at this meeting will involve significant amounts of non-public financial and commercial information received from Chrysler Corporation, relating to anticipated profitability, market positions, capital expenditures and cost reduction actions.

An open meeting is likely to disclose (1) confidential commerical and financial information, which is exempt under 5 U.S.C. § 552b(c)(4); and (2) information the premature disclosure of which would be likely to significantly frustrate implementation of Board action, which is exempt under 5 U.S.C. § 552b(c)(9)(B).

The meeting was closed pursuant to a unanimous vote of the Board taken on December 17, 1980 to close all Board meetings held during the thirty days after the Board's December 16, 1980 meeting, at which the same matters are discussed.

Those persons expected to attend the meeting, or portions thereof, include the Board members, the Executive Director, General Counsel, and Secretary of the Board, and members of the respective staffs of each Board member.

Those persons desiring further information should contact Bruce D. Bolander, Secretary of the Board, at (202) 566-2276.

This notice is given as a result of a court order. The position the Board is that it is not subject to the Government in the Sunshine Act.

Dated: January 15, 1981.

Bruce D. Bolander,

Secretary of the Board.

[S-76-81 Filed 1-16-81; 11:51 am]

BILLING CODE 4810-67-M

2

CHRYSLER CORPORATION LOAN GUARANTEE BOARD.

TIME AND DATE: January 16, 1981 at 2:30 p.m.

PACE: Room 4426, Main Treasury Building, 15th Street and Pennsylvania Avenue NW., Washington, D.C.

STATUS: Closed to the public.

MATTERS TO BE DISCUSSED: The Board will continue its discussion of Chrysler's new Operating and Financing Plans and related documents and its request for additional guarantees. On Wednesday, January 14, the Board approved a summary of the terms on which it is expected to be able to grant formal approval later in the week. At the January 16 meeting the Board expects to take formal action on Chrysler's application for up to an additional $400 million of guarantees.

CONTACT PERSON FOR MORE INFORMATION: Bruce D. Bolander, Secretary of the Board (202) 566-2278.

This notice is given as a result of a court order. The position of the Board is that it is not subject to the Government in the Sunshine Act.

Dated: January 15, 1981.

Bruce D. Bolander,

Secretary of the Board.

[S-75-81 Filed 1-16-81; 11:51 am]

BILLING CODE 4810-67-M

3

NATIONAL COUNCIL ON EDUCATION RESEARCH.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: December 19, 1980

DATE AND TIME: 9:30 a.m.-3:30 p.m., January 22, 1981.

PLACE: Room 823, National Institute of Education, 1200 19th Street NW., Washington, D.C.

STATUS: Certification is being sought from the Department of Education Office of General Counsel, that in the opinion of that office, the NCER "would be authorized to close portions of its meeting on January 22, 1981, under 5 U.S.C. 522b(c)(9)(B) and 45 CFR 1440.2(a)(9) for the purposes of reviewing and discussing with the Director of NIE, the executive branch budget for fiscal year 1982, in particular, the sections dealing with the budget and funding priorities of NIE." The certification approval date will be published in the Federal Register at a later date. Agenda item *No. 8* will be closed, the rest of the agenda will be open to the public. The public should call to verify the *closing* of this portion of the meeting.

MATTERS TO BE CONSIDERED:

1. Swearing-in Ceremony (9:30 a.m.-9:45 a.m.)
2. Director's Report (9:45 a.m.-10:15 a.m.)
3. Dissemination Policy Implementation (10:15 a.m.-11:15 a.m.)
4. International Education (11:15 a.m.-11:45 a.m.)
5. Early Adolescents (11:45 a.m.-12:15 p.m.)
6. Vocational Education (1:15 p.m.-1:45 p.m.)
7. Teaching (1:45 p.m.-2:30 p.m.)
8. Fiscal year 1982 Budget (closed session-2:30 p.m.-3:30 p.m.)

CONTACT PERSON FOR MORE INFORMATION:
Ella L. Jones, Administrative Coordinator/NCER; telephone: 202/254–7900.

Peter H. Gerber,
Chief, Policy and Administrative Coordination, National Council on Educational Research.

[S–75–81 Filed 1–15–81; 11:40 am]
BILLING CODE 4000–00–M

4

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION.

TIME AND DATE: 9:30 a.m. (eastern time), Wednesday, January 21, 1981.

PLACE: Commission Conference Room No. 5240, fifth floor, Columbia Plaza Office Building, 2401 E Street NW., Washington, D.C. 20506.

STATUS: Part will be open to the public and part will be closed to the public.

MATTERS TO BE DISCUSSED: Open to the public:

1. Combined 12th and 13th EEOC Annual Reports.
2. Final Regulations on Attorney Fees in the Federal Sector.
3. A report on Commission Operations by the Executive Director.

Closed to the Public:

1. Litigation Authorization; General Counsel Recommendations.

Note.—Any matter not discussed or concluded may be carried over to a later meeting.

CONTACT PERSON FOR MORE INFORMATION: Treva I. McCall, Acting Executive Officer, Executive Secretariat, at (202) 634–6748.

This Notice Issued January 14, 1981.

[S–76–81 Filed 1–15–81; 1:14 pm]
BILLING CODE 6570–06–M

5

FEDERAL DEPOSIT INSURANCE CORPORATION.

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 12:05 p.m. on Wednesday, January 14, 1981, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session, by telephone conference call, to consider the following matter:

Suspension of trading in the securities of an insured State nonmember bank, pursuant to sections 12(i) and 12(k) of the Securities Exchange Act of 1934.

In calling the meeting, the Board of Directors determined, on motion of Chairman Irvine H. Sprague, seconded by Director William M. Isaac (Appointive), concurred in by Director John G. Heimann (Comptroller of the Currency), that Corporation business required its consideration of the matter on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matter in a meeting open to public observation; and that the meeting was exempt from the open meeting requirements of the "Government in the Sunshine Act" by authority of subsections (c)(8), (c)(9)(A)(i), and (c)(9)(A)(ii) thereof (5 U.S.C. 552b(c)(8), (c)(9)(A)(i), and (c)(9)(A)(ii)).

Dated: January 14, 1981.

Federal Deposit Insurance Corporation.
Hoyle L. Robinson,
Executive Secretary.

[S–77–81 Filed 1–15–81; 1:07 pm]
BILLING CODE 6714–01–M

6

FEDERAL ELECTION COMMISSION.

DATE AND TIME: Thursday, January 22, 1981 at 10 a.m.

PLACE: 1325 K Street NW., Washington, D.C., fifth floor.

STATUS: This meeting will be open to the public.

MATTERS TO BE CONSIDERED:

Setting of dates for future meetings
Correction and approval of minutes
Certification
Advisory opinion 1980–143; Ray Mark, Courter for Congress Committee
Appropriations and budget
Pending legislation
Classification actions
Routine administrative matters

* * * * *

DATE AND TIME: Thursday, January 22, 1981 (immediately following the conclusion of the regular open meeting).

PLACE: 1325 K Street, NW., Washington, D.C.

STATUS: This meeting will be closed to the public.

MATTERS TO BE CONSIDERED: Personnel. Compliance. Litigation. Audits.

* * * * *

DATE AND TIME: Tuesday, January 27, 1981 at 10 a.m.

PLACE: 1325 K Street NW., Washington, D.C.

STATUS: This meeting will be closed to the public.

MATTERS TO BE CONSIDERED: Personnel. Compliance. Litigation. Audits.

* * * * *

PERSON TO CONTACT FOR INFORMATION: Mr. Fred Eiland, Public Information Officer; telephone: 202–523–4065.

Marjorie W. Emmons,
Secretary of the Commission.

[S–79–81 Filed 1–15–81; 3:28 pm]
BILLING CODE 6715–01–M

7

NATIONAL CREDIT UNION ADMINISTRATION.

TIME AND DATE: 9:30 a.m., Thursday, January 22, 1981.

PLACE: Seventh floor board room, 1776 G Street NW., Washington, D.C.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Review of Central Liquidity Facility Lending Rate.
2. Central Liquidity Facility Dividend: First Quarter fiscal year 1981.
3. Consideration of Staff Study on the Feasibility of a Floating or Indexed Loan Interest Rate Ceiling.
4. Merit Pay.
5. Preliminary review of existing Section 701.20, Surety Bond and Insurance Coverage for Federal Credit Unions, of the NCUA Rules and Regulations.
6. Amendment of Part 748, Minimum Security Devices and Procedures, of the NCUA Rules and Regulations.
7. Report of actions taken under delegations of authority.
8. Applications for charters, amendments to charters, bylaw amendments, mergers as may be pending at that time.

RECESS: 10:15 a.m.

TIME AND DATE: 10:30 a.m., Thursday, January 22, 1981.

PLACE: Seventh floor board room, 1776 G Street NW., Washington, D.C.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Proposed Mergers. Closed pursuant to exemptions (8) and (9)(A)(ii).
2. Proposed Conversions. Closed pursuant to exemptions (8) and (9)(A)(ii).
3. Requests from federally insured credit unions for special assistance under Section 208 of the Federal Credit Union Act. Closed pursuant to exemptions (8) and (9)(A)(ii).
4. Administrative Action under Section 206 of the Federal Credit Union Act. Closed pursuant to exemptions (8), (9)(A)(ii) and (10).
5. Administrative Adjudication. Closed pursuant to exemptions (8), (9)(A)(ii) and (10).
6. Proposed changes in the NCUA Regional Office Organization and Operations. Closed pursuant to exemption (2).
7. Proposed Decentralization of Administrative Costs. Closed pursuant to exemption (2).

FOR MORE INFORMATION CONTACT: Joan O'Neill, Program Assistant; telephone (202) 357–1100.

[S–78–81 Filed 1–15–81; 1:03 pm]
BILLING CODE 7535–01–M

8

[1P0401]

PAROLE COMMISSION.

TIME AND PLACE: 9:30 a.m., Wednesday, January 21, 1981.

PLACE: Room 724, 320 First Street, N.W., Washington, D.C. 20537.

STATUS: Closed pursuant to a vote to be taken at the beginning of the meeting.

MATTERS TO BE CONSIDERED: Referrals from Regional Commissioners of approximately 10 cases in which inmates of federal prisons have applied for parole or are contesting revocation of parole or mandatory release.

CONTACT PERSON FOR MORE INFORMATION: Linda Wines Marble, Case Analyst, National Appeals Board, U.S. Parole Commission (202) 724–3094.

[S-01-81 Filed 1-15-81; 3:41 pm]

BILLING CODE 4410-01-M

9

[OP0401]

PAROLE COMMISSION

TIME AND DATE:

9 a.m.–5:30 p.m., Monday, February 2, 1981.
9 a.m.–1:30 p.m., Tuesday, February 3, 1981.

PLACE: Room 500, 320 First Street NW., Washington, D.C. 20537.

STATUS: Closed pursuant to a vote to be taken at the beginning of the meeting.

MATTERS TO BE CONSIDERED: Appeals to the Commission of approximately 10 cases decided by the National Commissioners pursuant to a reference under 28 CFR § 2.17 and appealed pursuant to 28 CFR § 2.27. These are all cases originally heard by examiner panels wherein inmates of Federal Prisons have applied for parole or are contesting revocation of parole or mandatory release.

CONTACT PERSONS FOR MORE INFORMATION: Linda Wines Marble, Chief Case Analyst (202) 724–3094.

[S-01-81 Filed 1-15-81; 3:42 pm]

BILLING CODE 4410-01-M

10

[1P0401]

PAROLE COMMISSION.

TIME AND DATE:

2:30–5:30 p.m., Tuesday, February 3, 1981.
9–5:30 p.m., Wednesday, February 4, 1981.

PLACE: Room 500, 320 First Street NW., Washington, D.C. 20537.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Approval of minutes of prior meetings.
2. Reports from Chairman and Commissioners.
3. Early termination of supervision: Evaluation of public comment on interim rule.
4. Proposed Guideline Revision:
a. Reclassifying very large scale heroin offenses.
b. Subdividing Greatest II and setting ranges for Greatest IIa.
5. Proposed pre-hearing record review procedures.
6. Revised initial hearing summary format.
7. Proposals for reduction of work load:
a. Granting parole on the record at pre-hearing record reviews.
b. Use of probation officers as second hearing examiner for state cases.
c. Revised F–3 Form.
8. Correcting factual errors under § 2.24(b)(1).
9. Dispositional revocation hearing procedures:
a. Reevalutaion of 18 month concurrency policy.
b. Discussion of procedural problems.
10. Commission recommendations for CTC placement.
11. Issuance of Policy and Procedures Memoranda by the Chairman: Legal certification of IDC hearings.
12. Declassification of Original Jurisdiction cases.
13. *Consent Agenda:* The following Consent Agenda items only if specifically requested to be opened for discussion at the meeting.
Policy and Procedure Memoranda Issued Since Last Meeting:
(a) 80/24: Has been placed on the agenda by request;
(b) 80/26: Concerning ancient prior record implements the discussion at the last meeting and requires no further vote.
(c) 80/23: Correcting Mistaken Executions of Warrants.
(d) 80/25: Clarification of Drug Severity Rating and Additions to Drug Conversion Chart.
14. Research Reports: The following reports are submitted for adoption.
a. Report 24: Work load and Decision Trends (Fiscal Years 1977–1979).
b. Report 25: Reliabaility in Guideline Application.
c. Report 27: The Effective of Presumptive dates on Institutional Behavior.
15. OPM Opinion re: Confirmation of Examiners.

CONTACT PERSON FOR MORE INFORMATION:
Barbara Meierhoefer, Acting Director of Research (202) 724–3095.

[S-02-81 Filed 1-15-81; 3:41 pm]

BILLING CODE 4410-01-M

federal register

Monday
January 19, 1981

Part II

Department of Education

Office of Elementary and Secondary Education

Financial Assistance to Local and State Agencies To Meet Special Educational Needs, and Financial Assistance to Local Educational Agencies for Children With Special Educational Needs; Regulations

DEPARTMENT OF EDUCATION

Office of Elementary and Secondary Education

34 CFR Parts 200 and 201

Financial Assistance to Local and State Agencies To Meet Special Educational Needs; and Financial Assistance to Local Educational Agencies for Children With Special Educational Needs

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary issues final regulations for Title I of the Elementary and Secondary Education Act of 1965, (Title I). These final regulations implement all changes required by the Title I statute as re-enacted by the Education Amendments of 1978 (Pub. L. 95-561). The regulations set forth the Title I requirements and provide State and local agencies with guidance regarding the procedures, criteria and standards for meeting those requirements.

These requirements include financial assistance to local and state agencies to meet special educational needs; and financial assistance to local educational agencies for children with special educational needs.

DATES:

Effective Date: These regulations are expected to take effect 45 days after they are transmitted to Congress. Regulations are usually transmitted to Congress several days before they are published in the Federal Register. The effective date is changed by statute if Congress takes certain adjournments. If you want to know the effective date of these regulations, call or write the Department of Education contact person.

Comments on the requirements concerning "Excess Costs" (§§ 200.93–200.95) and "Supplement, not Supplant" (§§ 201.130–201.143) must be received on or before March 20, 1981.

ADDRESS: Comments should be addressed to Dr. John F. Staehle, Office of Compensatory Education, Department of Education, 400 Maryland Avenue, S.W., (Room 3642, ROB–3) Washington, D.C. 20202.

FOR FURTHER INFORMATION CONTACT: Dr. John F. Staehle, Office of Compensatory Education, Department of Education, 400 Maryland Avenue, S.W., (Room 3642, ROB–3) Washington, D.C. 20202 Telephone (202) 245–2722.

SUPPLEMENTARY INFORMATION:

A. Background

The Education Amendments of 1978 (Pub. L. 95–561) reenacted Title I of the Elementary and Secondary Education Act of 1965. The U.S. Office of Education published proposed Title I regulations in the Federal Register on June 29, 1979 (44 Fed. Reg. 38400–38413). Because many of the provisions in the new statute were not included in those proposed regulations and many commenters indicated that more guidance was desirable with respect to many provisions, the U.S. Department of Education published revised proposed Title I regulations on June 11, 1980 (45 Fed. Reg. 39712–39764). The preamble to those revised proposed regulations identified changes from the June 29, 1979 version.

Overview of These Final Regulations

These final regulations consist of two parts: Part 200 contains requirements that apply to all Title I grantees—local educational agencies (LEAs), State agencies operating projects for handicapped children or projects for neglected or delinquent children, and state educational agencies (SEAs) operating projects for migrant children. The provisions of Part 200 also apply to State and Federal administration of Title I programs. Part 201 contains requirements that apply only to those Title I projects operated by LEAs to provide supplemental educational services for educationally deprived children in eligible low-income areas and for children in local institutions for neglected or delinquent children.

C. Other Applicable Regulations

Other Title I Regulations

As previously indicated, the regulations in Part 200 apply to all programs authorized under the Title I statute. The regulations in Part 200 are supplemented by the regulations in 34 CFR Parts 201, 203, 204 and 302 which contain additional requirements relating to each of the categories of Title I programs.

The regulations for Part 201 apply to Title I projects that are operated by LEAs for educationally deprived children in eligible low-income areas and for children in local institutions for neglected or delinquent children. The regulations in 34 CFR Parts 203, 204 and 302 were published separately and are now in effect as final regulations. Part 203 governs Title I grants to State agencies operating projects for neglected or delinquent children. Part 204 governs Title I grants to SEAs operating projects for migratory children. Part 302 governs Title I grants to State agencies operating projects for handicapped children.

Education Department General Administrative Regulations (EDGAR)

These Title I regulations do not contain certain types of general administrative requirements that apply to all State-administered programs under which the Department provides assistance. Those requirements are covered in the Education Department General Administrative Regulations (EDGAR) 34 CFR Parts 76 and 77, which replace the General Provisions for the Office of Education Programs Regulations. EDGAR was published as final regulations in the Federal Register on April 3, 1980 (45 Fed. Reg. 22494–22531).

D. Public Participation

Over 150 persons, agencies, and organizations submitted more than 1300 written comments on the June 11, 1980 version of the proposed regulations. In preparing these final regulations, the Department of Education considered comments and suggestions it received on both the June 29, 1979 and June 11, 1980 versions of the proposed regulations. A discussion of these public comments and the Department's responses to them is contained in the Appendix to these final regulations.

E. Summary of the Major Changes From the June 11, 1980 Proposed Regulations

The following discussion briefly explains some of the major changes that have been made in Parts 200 and 201 since publication of the June 11, 1980 proposed regulations:

Part 200.

Maintenance of effort (§ 200.90)

The proposed regulations permitted a reduction of up to 2 percent in an agency's current level of expenditures and provided that the Secretary may, in limited circumstances make a finding of "substantial compliance." In response to a number of comments, both of these provisions have been deleted from the final regulations which instead conform to the strict language of the Title I statute.

Excess costs: instructional services (§ 200.94)

The excess cost requirements have been expanded to provide more detailed guidance. In response to comments and the legislative history to this and the related "supplement, not supplant" provisions, § 200.94 as revised, explains how the excess cost requirement applies to the following types of Title I projects: (a) in class projects; (b) limited pull out

projects; (c) extended pull out projects; (d) add on projects; and (e) replacement projects.

State audits (§ 200.190)

In response to comments, § 200.190(b) has been revised to permit SEAs to determine—on the basis of specified factors—that an agency or agencies may be audited less frequently than once every three years.

State compliance agreements (§§ 200.210–200.214)

In response to comments, the maximum duration of a State compliance agreement has been extended from 60 days to 90 days after the date on which the agreement is entered into.

Part 201

Allocation of Title I funds among project areas and project schools (§ 201.15)

This provision, which is based on Section 124(e) of the Title I statute, was inadvertently omitted from the proposed regulations. Briefly stated, an LEA satisfies this requirement if it allocates Title I funds on the basis of the number and needs of the children to be served.

Special incentive grants (§§ 201.20–201.24)

The proposed regulations required that—in order to be eligible for an incentive grant—only 95 percent of the LEAs in a State must spend 50 percent or more of the State compensatory education funds in school attendance areas that are eligible for Title I funds. In response to comments, § 201.20 has been revised to conform to the strict statutory language. As revised, § 201.20 requires that not less than 50 percent of the funds spent in any LEA under the State program must be spent in school attendance areas that have high concentrations of children from low-income families.

Selecting a limited number of lower ranked eligible school attendance areas; and *Selecting a limited number of project areas through the use of alternative rankings.* (§ 201.63 and § 201.66) Section 201.63 has been separated from § 201.66 in order to address separately, the requirements of Sections 122(d) and 122(a)(2) of Title I. In accordance with Section 122(a)(2) of the Title I statute, § 201.66 permits use of the alternative ranking with the prior consent of the district advisory council and if the SEA determines that the LEAs use of the alternative ranking procedures will not substantially impair the delivery of services to educationally deprived children from low-income families.

Continuation of eligibility for certain school attendance areas or schools (§ 201.64)

In response to comments, this section has been revised to provide, with certain exceptions, that an LEA may select a school attendance area or a school to receive Title I services—even though that area or school does not qualify under the procedures in §§ 201.61–201.63—if the area or school qualified and was selected as a Title I project area or school in either of the two fiscal years preceding the fiscal year for which the funds will be granted.

Submission of comparability reports (§ 201.113)

This section has been revised to state that an LEA that is currently relieved of the obligation to file a comparability report because it qualifies for an exemption must still maintain records that demonstrate that the LEA is in compliance with those comparability requirements.

Maintaining comparability (§ 201.120)

This section has been revised in two respects. First, an LEA that has met the comparability requirements is required to make only one comparability determination between January 1, and April 30. Second, the LEA does not have to make any adjustments in enrollments or staffing for any of its schools unless the LEA has a school with a staff ratio in excess of 110 percent or instructional service expenditures per child of less than 90 percent of the corresponding staff ratios or instructional service expenditures for the comparison group of schools.

Supplement, not supplant (§§ 201.30–43)

These sections retain the same basic substantive provisions that were included in the proposed regulations. However, in response to public comments, and in reconsideration of the legislative history, further clarification and additional examples, have been included in §§ 201.30–43.

The Secretary recognizes that the regulations for supplement, not supplant are extensive and somewhat complex, however the regulations deal comprehensively with extremely difficult statutory provisions. The additional guidance was requested by commenters, and consistent with the legislative history included in the reports on the Education Amendments of 1978 (Pub. L. 95–561) issued by the House of Representatives and the Senate (See H. Rep. No. 95–1137, 95th Cong. 2d. Sess., 28–30 (1978); S. Rep. No. 95–856, 95th Cong. 2d. Sess., 15–16 (1978)). The reports concluded that previous regulations were not "sufficiently comprehensive," and that new regulations "must contain legal non-supplanting models and include examples, explaining how the general principles apply to day-to-day situations." (H. Rep. No. 95–1137, p. 29; S. Rep. No. 95.1137, pp. 15–16).

The regulations give grantees necessary guidance and considerable flexibility in areas such as designing projects which include handicapped children, or children whose primary or home language is other than English.

F. Invitation to Comment

Although these regulations are issued in final form, the Department invites further comments on the problems faced in administering the requirements concerning "Excess Costs" (§§ 200.93–200.96) and "Supplement, not Supplant" (§§ 201.130–201.143), and suggestions for changes in these provisions in future Title I regulations and legislation. These comments and suggestions are being invited because of the additional material included in those sections. To be considered, comments on these sections must be received on or before (60 days after publication).

G. Address

Comments should be addressed to Dr. John F. Staehle, Office of Compensatory Education, Department of Education, 400 Maryland Avenue, S.W., (Room 3642, ROB–3) Washington, D.C. 20202.

H. Regulatory Flexibility Act Analysis

The Regulatory Flexibility Act (Pub. L. 96–354, enacted Sept. 19, 1980) requires each Federal agency to prepare an initial regulatory flexibility analysis and a final regulatory flexibility analysis for each regulation that—

(1) Is published as a notice of proposed rulemaking after January 1, 1981, and

(2) Has a significant economic impact on a substantial number of small entities (small businesses, small organizations, or small governmental jurisdictions).

Because the Department has not yet established its own definitions of "small organization" and "small governmental jurisdiction", as contemplated by the Act, it is not possible to prepare a full initial regulatory flexibility analysis at this time for the regulations on "Excess Cost" (§§ 200.93–200.95) and "Supplement, not Supplant (§§ 201.130–201.143). Further, it is impracticable to delay publication while the necessary definitions are being developed. In these circumstances, the Regulatory Flexibility Act permits a waiver or delay of the initial regulatory flexibility

analysis. If it is determined that these regulations are subject to that Act, the Secretary will prepare the necessary analyses at a later date.

As an interim measure, this document, to the maximum extent possible, includes information of the kind contemplated by the Regulatory Flexibility Act, including the reasons for the regulations, the objectives and legal basis for the regulations, and any significant issues and alternatives for consideration by the public. To assist the Department in determining whether the Regulatory Flexibility Act applies to these regulations, and in complying with the Act's requirements, public comment is especially invited on the following matters:

(1) The number and kind of small entities (small businesses, small organizations, or small governmental jurisdictions) affected by the regulations;

(2) The reporting, recordkeeping, and compliance burdens imposed by the regulations on small entities;

(3) The type of professional skills necessary for preparation of any reports or records required by the regulations;

(4) Any Federal rules that may duplicate, overlap, or conflict with the regulations;

(5) Any significant alternatives that would accomplish the purposes of the applicable statute but would minimize any significant economic impact of the regulations on small entities. The Secretary is particularly interested in suggestions on alternatives such as the following:

- The establishment of differing reporting or compliance requirements or timetables that take into account the resources available to small entities.
- The clarification, consolidation, or simplification of compliance and reporting requirements for small entities.
- The use of performance rather than design standards.
- An exemption for small entities from coverage of part or all of the regulations.

I. Citations of Authority

Both the statutory and United States Code citations and, in some cases, other legal authority are included in parenthesis on the line following each provision in these proposed regulations. References to Sec. in these citations of authority relate to sections of the Elementary and Secondary Education Act of 1965, as amended by the Education Amendments of 1978, Pub. L. 95-561.

Dated: January 8, 1981.

Shirley M. Hufstedler,
Secretary of Education.

(Catalog of Federal Domestic Assistance, No. 13.428, Educationally Deprived Children-Local Educational Agencies and No. 13.430, Educationally Deprived Children-State Administration)

The Secretary revises Part 200 of Title 34 of the Code of Federal Regulations to read as follows:

PART 200—FINANCIAL ASSISTANCE TO LOCAL AND STATE AGENCIES TO MEET SPECIAL EDUCATIONAL NEEDS

Subpart A—General

Sec.
200.1 Purpose.
200.2 Applicability of regulations in this part.
200.3 Applicability of other Title I regulations.
200.4 Applicability of other statutes and regulations.
200.5 Definitions.
200.6 Acronyms that are frequently used.
200.7–200.9 [Reserved]

Subpart B—Allocation of Title I Funds

200.10 Amount of funds available for Title I grants.
200.11–200.19 [Reserved]

Subpart C—Documents a State Must Submit Before Receiving Title I Funds

200.20 State application.
200.21 State monitoring and enforcement plan (MEP).
200.22–200.29 [Reserved]

Subpart D—Program Requirements That Apply to All Agencies That Receive Title I Funds

Participation
200.30 Teacher and school board participation.
200.31 Parental participation.
200.32–200.39 [Reserved]
Consultation and Coordination
200.40 Coordination with other programs.
200.41 Coordination of health, nutrition, or social services.
200.42 Simultaneous use of Title I funds and other funds.
200.43 Jointly operated projects.
200.44–200.49 [Reserved]
Project Design
200.50 Use of evaluations in planning.
200.51 Sufficient size, scope, and quality of projects.
200.52 Prohibition against using Title I funds to provide general aid.
200.53 Minimum expenditure for a Title I project.
200.54 Sustaining educational gains.
200.55 Individualized educational plan.
200.56–200.59 [Reserved]
Personnel
200.60 Training education aides and volunteers.
Sec.
200.61 Noninstructional duties.
200.62–200.69 [Reserved]
Allowable Costs
200.70 Allowable costs under EDGAR.
200.71 Specific requirements concerning allowable costs under Title I.
200.72 Use of Title I funds for planning.
200.73 Use of Title I funds for State administration.
200.74 Use of Title I funds for health, nutrition, or social services.
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Authority: Sec. 101–198 of the Elementary and Secondary Education Act of 1965, as amended by Pub. L. 95–561 (20 U.S.C. 2701–2854), unless otherwise noted.

Subpart A—General

§ 200.1 Purpose.

The programs authorized by Title I of the Elementary and Secondary Education Act of 1965, as amended, provide financial assistance to—

(a) Local educational agencies (LEAs) to expand and improve their educational programs through projects designed to meet the special educational needs of—

(1) Educationally deprived children in areas with concentrations of children from low-income families; and

(2) Children in local institutions for neglected or delinquent children;

(b) State agencies for projects designed to meet the special educational needs of—

(1) Handicapped children; and

(2) Children in institutions for neglected or delinquent children, or in adult correctional institutions;

(c) State educational agencies (SEAs) for projects designed to meet the special educational needs of migratory children of migratory agricultural workers or fishers; and

(d) The Secretary of the Interior to meet the special educational needs of Indian children.

(Sec. 101, 20 U.S.C. 2701)

§ 200.2 Applicability of regulations in this part.

The regulations in this part apply to all programs authorized under Title I of the Elementary and Secondary Education Act of 1965, as amended.

(Sec. 101–198, 20 U.S.C. 2701–2854)

§ 200.3 Applicability of other Title I regulations.

The regulations in this part are supplemented by the regulations in 34 CFR Parts 201, 302, 203, and 204, which contain additional requirements relating to each of the categories of Title I programs:

(a) 34 CFR Part 201 applies to projects—

(1) Designed to meet the special educational needs of—

(i) Educationally deprived children in areas with concentrations of children from low-income families; and

(ii) Children in local institutions for neglected or delinquent children; and

(2) Operated by LEAs.

(b) 34 CFR Part 302 applies to projects—

(1) Designed to meet the special educational needs of handicapped children; and

(2) Operated by the State agencies directly responsible for providing free public education for those children.

(c) 34 CFR Part 203 applies to projects—

(1) Designed to meet the special educational needs of children in institutions for neglected or delinquent children, or in adult correctional institutions; and

(2) Operated by the State agencies directly responsible for providing free public education for those children.

(d) 34 CFR Part 204 applies to projects—

(1) Designed to meet the special educational needs of migratory children of migratory agricultural workers or fishers; and

(2) Operated by SEAs.

(Sec. 101-198, 20 U.S.C. 2701-2854)

§ 200.4 Applicability of other statutes and regulations.

In addition to the regulations in this part and in 34 CFR Parts 201, 302, 203, and 204, the following statutes and regulations apply to financial assistance provided under Title I of the Elementary and Secondary Education Act of 1965, as amended:

(a) General Education Provisions Act (GEPA) in 20 U.S.C. 1221 *et seq.*

(b) Education Department General Administrative Regulations (EDGAR) in 34 CFR Part 76 (State-administered programs), 34 CFR Part 77 (General), and 34 CFR Part 78 (Education Appeal Board).

(Sec. 101-198, 20 U.S.C. 2701-2854; 20 U.S.C. 1221 *et seq.*; 34 CFR Parts 76, 77, and 78)

§ 200.5 Definitions.

The following definitions apply to this part and to 34 CFR Parts 201, 302, 203, and 204:

"Applicant" means a party requesting a grant or subgrant under a program administered by the Department.

"Application" means a request for a grant or subgrant under a program administered by the Department.

"Assistant Secretary" means the Assistant Secretary for Elementary and Secondary Education within the Department.

"Average daily attendance" (ADA) means the average number of children in attendance in the schools of an LEA as determined under State law. However, if the LEA in which any child resides makes or contracts to make a tuition payment for the free public education of that child in a school situated in another LEA, that child shall be considered—

(1) To be in attendance at a school of the LEA that makes or contracts to make the tuition payment; and

(2) Not to be in attendance at a school of the LEA receiving the tuition payment or entitled to receive the tuition payment under the contract.

"Average daily membership" (ADM) means the average number of children enrolled in the schools of an LEA as determined under State law. However, if the LEA in which any child resides makes or contracts to make a tuition payment for the free public education of that child in a school situated in another LEA, that child shall be considered—

(1) To be enrolled in a school of the LEA that makes or contracts to make the tuition payment; and

(2) Not to be enrolled in a school of the LEA receiving the tuition payment or entitled to receive the tuition payment under the contract.

"Average per pupil expenditure"—

(1) In the case of a State or the United States, this term means the sum of (i) the aggregate current expenditures of all LEAs in the State or in the United States, as the case may be, and (ii) any direct current expenditures by the State or all of the States, as the case may be, for the operation of these LEAs; divided by (iii) the aggregate number of children in ADA to whom these LEAs provided free public education during the year preceding the one for which the computation is made.

(2) For purposes of this definition, aggregate current expenditures are—

(i) Aggregate expenditures during the third fiscal year preceding the fiscal year for which the computation is made; or

(ii) If satisfactory data for the third preceding fiscal year in paragraph (1)(i) of this section are not available at the time of computation, aggregate expenditures during the most recent preceding fiscal year of which satisfactory data are available.

(3) Direct current expenditures shall be computed without regard to the source of funds from which these expenditures are made.

(4) For purposes of this definition, the United States means the 50 States plus the District of Columbia.

"Cease and desist" means to discontinue a prohibited practice or to initiate a required practice.

"Children" means persons—

(1) Not above age 21 who are entitled to a free public education not above grade 12; or

(2) Who are of preschool age.

"Construction" includes any work needed for—

(1) The preparing of drawings and specifications for school facilities;

(2) The erection, building, acquiring, altering, remodeling, improving, or extending of school facilities; or

(3) The inspection and supervision of the construction of school facilities.

"County" means those divisions of a State that are used by the Secretary of Commerce in compiling and reporting data regarding counties.

"Current expenditures" means expenditures for free public education. The term—

(1) Includes expenditures for administration, instruction, attendance, health services, pupil transportation, plant operation and maintenance, fixed charges, and net expenditures to cover deficits for food services and student activities; and

(2) Does not include expenditures for community services, capital outlay, and debt service, or any expenditures made from funds granted under Title I or Part B (Instructional materials and school library resources) and Part C (Improvement in local educational practices) of Title IV of the Elementary and Secondary Education Act of 1965, as amended.

"Department" means the United States Department of Education.

"Elementary school" means a day or residential school that provides elementary education, as determined by State law.

"Equipment" means—

(1) Machinery, utilities, and building equipment;

(2) Any enclosures or structures necessary to house the items in paragraph (1) of this definition; and

(3) All other items necessary for the functioning of a facility that is used to provide educational services, including items like—

(i) Instructional equipment and necessary furniture;

(ii) Printed, published, and audio-visual instructional materials; and

(iii) Books, periodicals, documents, and other related materials.

"Fiscal year" means the Federal fiscal year—a period beginning on October 1 and ending on the following September 30—or another twelve-month period normally used by the State educational agency for recordkeeping.

"Free public education"—

(1) Means education that is provided—

(i) At public expense, under public supervision and direction, and without tuition charge; and

(ii) As elementary or secondary school education in the applicable State; and

(2) Does not include any education provided beyond grade 12.

"Grant period" means the period for which grant funds have been awarded.

"Local educational agency" (LEA)—

(1) Means a public board of education or other public authority legally constituted within a State for either administrative control or direction of—or to perform a service function for—public elementary or secondary schools in a city, county, township, school district, or other political subdivision of a State, or a combination of school districts or counties recognized in a State as an administrative agency for

public elementary or secondary schools; and

(2) Includes any public institution or agency—other than those specified in paragraph (1) of this definition—having administrative control and direction of a public elementary or secondary school.

"Parent" means natural parent, step-parent, parent through adoption, legal guardian, or other persons acting in the place of a parent.

"Participating children" means children selected to receive Title I services during the current fiscal year.

"Preschool children" means children who are—

(1) Below the age and grade level at which the applicant agency provides free public education; and

(2) Of the age or grade level at which they can benefit from an organized instructional program provided in a school or instructional setting.

"Project" means the activity described in an application.

"Project period" means the period for which the SEA or the Secretary approves a project.

"Public," as applied to an agency, organization, or institution, means that the agency, organization, or institution is under the administrative supervision or control of a government other than the Federal Government.

"School facilities"—

(1) Means classrooms and related facilities, including initial equipment, for free public education, or interests in land, including site, grading, and improvements, on which the facilities are constructed; and

(2) Does not include those gymnasiums and similar facilities intended primarily for exhibitions for which admission is to be charged to the general public.

"Secondary school"—

(1) Means a day or residential school that provides secondary education, as determined by State law; and

(2) Does not include any education provided beyond grade 12.

"Secretary" means the United States Secretary of Education.

"State" means—

(1) A State of the United States; or

(2) Puerto Rico, Guam, the District of Columbia, American Samoa, the Virgin Islands, the Northern Mariana Islands, or the Trust Territory of the Pacific Islands.

"State agency" means—

(1) A State-operated agency directly responsible for providing free public education for handicapped children, as that term is defined in section 602(1) of the Education of the Handicapped Act (20 U.S.C. 1401(1));

(2) A State-operated agency directly responsible for providing free public education for children in institutions for neglected or delinquent children, or in adult correctional institutions; or

(3) A State educational agency in its capacity as an agency operating a program for migratory children of migratory agricultural workers or fishers. The term "State agency" does not include a State educational agency in its capacity as the agency carrying out State administrative responsibilities under Subpart F of this part.

"State educational agency" (SEA) means the State Board of Education or other agency or officer primarily responsible for the supervision of public elementary and secondary schools in the State. In the absence of this officer or agency, it is an officer or agency designated by the Governor or by State law.

"Suspension" means temporarily stopping payment of Federal funds to an agency receiving Title I assistance and stopping that agency's authority to charge costs to a Title I project, pending the outcome of a withholding hearing.

"Title I" means Title I of the Elementary and Secondary Education Act of 1965, as amended, dealing with financial assistance to meet the special educational needs of children.

"Title IV" means Title IV of the Elementary and Secondary Education Act of 1965, as amended, dealing with educational improvement, resources, and support.

"Title V" means Title V of the Elementary and Secondary Education Act of 1965, as amended, dealing with State leadership.

"Withholding" means stopping payment of Federal funds to an agency receiving Title I assistance and stopping that agency's authority to charge costs to a Title I project for the period of time the agency is in violation of a requirement.

(Sec. 101–198, 20 U.S.C. 2701–2854; Sec. 408(a)(1) of GEPA, 20 U.S.C. 1221e-3(a)(1))

§ 200.6 Acronyms that are frequently used.

The following acronyms are used frequently in this part and 34 CFR Parts 201, 302, 203, and 204:

"ADA" stands for average daily attendance.

"ADM" stands for average daily membership.

"EDGAR" stands for the Education Department General Administrative Regulations.

"ESEA" stands for the Elementary and Secondary Education Act of 1965, as amended.

"GEPA" stands for the General Education Provisions Act.

"LEA" stands for local educational agency.

"MEP" stands for monitoring and enforcement plan.

"SEA" stands for State educational agency.

(Sec. 101–198, 20 U.S.C. 2701–2854; Sec. 408(a)(1) of GEPA, 20 U.S.C. 1221e-3(a)(1))

§§ 200.7–200.9 [Reserved]

Subpart B—Allocation of Title I Funds

§ 200.10 Amount of funds available for Title I grants.

(a) *Grants to SEAs.* The Secretary annually notifies an SEA of the amount of funds the SEA is eligible to receive for the next fiscal year for—

(1) Allocation to State agencies under paragraph (b) of this section and to LEAs under paragraph (c) of this section;

(2) State administration of Title I programs; and

(3) If applicable, projects under 34 CFR Part 204 for migratory children of migratory agricultural workers or fishers.

(b) *Grants to State agencies.* The SEA shall annually notify each eligible State agency of the amount of Title I funds that the Secretary has determined the State agency is eligible to receive under 34 CFR Parts 302 or 203 for the next fiscal year.

(c) *Grants to LEAs.* The SEA, on the basis of State and county allocations provided the Secretary or, if necessary, on the basis of other data, shall annually—

(1) Determine the amount of Title I funds that each LEA is eligible to receive under 34 CFR Part 201 for the next fiscal year; and

(2) Notify each LEA of the amount determined under paragraph (c)(1) of this section.

(d) *Payments to the Department of the Interior.* The Secretary annually determines the amount of Title I funds allotted for payments to the Secretary of the Interior to meet the special educational needs of educationally deprived Indian children.

(Sec. 111, 20 U.S.C. 2711)

§§ 200.11–200.19 [Reserved]

Subpart C—Documents a State Must Submit Before Receiving Title I Funds

§ 200.20 State application.

(a) *Submission of the State application.* A State that wishes to receive Title I funds, except funds for a project for migratory children covered

by 34 CFR Part 204, shall have on file with the Secretary an application that—

(1) Has been properly submitted to the Secretary by the SEA of that State; and

(2) Meets the requirements in paragraph (b) of this section.

(b) *Contents of the State application.* The application required by paragraph (a) of this section must include—

(1) Satisfactory assurances that the SEA will comply with all applicable requirements of—

(i) The Title I statute and regulations;

(ii) EDGAR; and

(iii) GEPA (Section 435 of GEPA specifically requires that an application contain certain assurances); and

(2) Any additional information that the Secretary considers necessary to make the findings required under section 182 of Title I pertaining to approval of applications.

(Sec. 182, 20 U.S.C. 2902; Sec. 182, 20 U.S.C. 2832; Sec. 435 of GEPA, 20 U.S.C. 1232d)

§ 200.21 State monitoring and enforcement plan (MEP).

(a) *Submission of the MEP.* An SEA that receives Title I assistance shall submit to the Secretary—

(1) A single MEP that covers all Title I programs; or

(2) A separate MEP for each of the four categories of Title I programs described in § 200.3.

(b) *Frequency of submission.* (1) The SEA shall submit the MEP, or MEPs, required under paragraph (a) of this section at the times the Secretary prescribes.

(2) In any case, this shall be at least once every three years.

(c) *Contents of the MEP.* The MEP must include—

(1) A report of the Title I monitoring and enforcement activities that the SEA has conducted since submitting its previous MEP;

(2) A program of regular visits by SEA personnel to Title I projects that meets the requirements in § 200.151;

(3) A statement of the matters to be reviewed during the site visits that meets the requirements in § 200.151;

(4) A description of the SEA's procedures for verifying information provided by LEAs and State agencies, including the use of other sources available to the SEA to verify that information;

(5) A description of—

(i) The State's procedures required by § 200.190 for conducting regular audits of Title I expenditures made by LEAs and State agencies; and

(ii) The SEA's procedures for resolving audit findings and recommendations under §§ 200.191–200.196;

(6) A description of the SEA's procedures for resolving direct complaints and appeals under §§ 200.180–200.186; and

(7) A description of the SEA's methods for determining that LEAs are in compliance with the requirements in 34 CFR 201.80–201.82 and 34 CFR 201.90–201.97 concerning the equitable provision of services to children enrolled in private schools.

(d) *Amendments.* An SEA shall submit to the Secretary amendments to an MEP whenever the SEA has substantially changed a policy or procedure that is described in that MEP.

(e) *Copies of MEP.* Upon request, an SEA shall provide, without charge, a copy of its current MEP to any Title I advisory council or LEA.

(Sec. 171, 20 U.S.C. 2821)

§§ 200.22–200.29 [Reserved]

Subpart D—Program Requirements That Apply to All Agencies That Receive Title I Funds

Participation

§ 200.30 Teacher and school board participation.

An agency that receives Title I assistance shall—

(a) Involve the following persons in both planning for Title I projects and evaluating their effectiveness:

(1) Teachers in schools participating in the Title I project.

(2) School boards, or comparable authorities, that have jurisdiction over the schools participating in the Title I project and are responsible to the public; and

(b) Make available to the persons described in paragraph (a) of this section a copy of the Title I project evaluation required by § 200.130 so that those persons can use the evaluation in planning and improving projects to be carried out in subsequent years.

(Sec. 124(i), 20 U.S.C. 2743(i))

§ 200.31 Parental participation.

(a) *Required parental participation.* An agency that receives Title I assistance shall give the parents of children participating in Title I projects an opportunity to—

(1) Participate in establishing Title I projects;

(2) Make recommendations concerning the instructional goals of Title I projects; and

(3) Assist their children in achieving the instructional goals.

(b) *Information for parents.* In order to facilitate the parental participation described in paragraph (a) of this section, the agency that receives Title I assistance shall inform the parents of children participating in its Title I projects of—

(1) The instructional goals of the current Title I projects; and

(2) The progress that their children are making toward achieving the instructional goals.

(c) *Other applicable regulations on parental involvement.* Title 34 CFR Parts 201 and 204 contain additional requirements for parental involvement in the Title I projects covered by those parts.

(Sec. 124(j), 20 U.S.C. 2734(j))

§§ 200.32–200.39 [Reserved]

Consultation and Coordination

§ 200.40 Coordination with other programs.

(a) An agency that receives Title I assistance shall demonstrate in its Title I project application that—

(1) In developing its Title I project, it has taken into consideration the benefits and services that are or may be available, during the period covered by the application, through other public and private agencies, organizations, or individuals; and

(2) In order to avoid duplication of effort and to ensure that all projects complement each other, it has considered suggestions and offers of assistance made by other agencies that may aid in carrying out or making more effective the Title I project.

(b) The Secretary strongly encourages the agency to coordinate Title I instructional services with services provided under other programs, including the regular instructional program provided by the LEA.

(Sec. 124(f)(1), 20 U.S.C. 2734(f)(1))

§ 200.41 Coordination of health, nutrition, or social services.

(a) *Requests for assistance.* (1) Before an agency that receives Title I assistance may use Title I funds for health, nutrition, or social services, it must ask the SEA for assistance in locating and using other Federal and State programs that provide these services.

(2) In its request for the assistance described in paragraph (a)(1) of this section, the agency shall ask the SEA for information concerning—

(i) Other programs that provide the types of health, nutrition, or social services that the agency wishes to provide with Title I funds;

(ii) The types of services provided by these programs; and

(iii) The conditions and procedures for obtaining the services under these other programs, including where the services are available.

(b) *Approval by the SEA.* The SEA may approve the use of Title I funds for health, nutrition, or social services only if—

(1) The services are designed to address an identified need of the children who have been selected to participate in the Title I project; and

(2)(i) The funds and services available from other programs are being fully used and are inadequate to meet the identified needs of the children who have been selected to participate in the Title I project;

(ii) The services are not available at all; or

(iii) The conditions for receipt of the services cannot be met.

(Sec. 124(f)(2), 20 U.S.C. 2734(f)(2))

§ 200.42 Simultaneous use of Title I funds and other funds.

An agency that receives Title I assistance may simultaneously use Title I funds and funds from other sources to finance portions of a particular service or project if the agency—

(a)(1) Clearly and separately identifies the portion of the service or project supported with Title I funds, and the portion or portions supported by each other source of funds; and

(2) Maintains records that are adequate to document that all Title I funds are spent in compliance with all applicable Title I requirements; or

(b) Qualifies for an exception under § 200.140(c).

(Sec. 124(f), 20 U.S.C. 2734(f); Sec. 127(a), 20 U.S.C. 2737(a))

§ 200.43 Jointly operated projects

Two or more agencies may apply to operate a Title I project jointly if—

(a) The agencies have entered into an agreement for carrying out the jointly operated project; and

(b) The terms of the agreement are specified in a joint Title I project application.

(Sec. 124(o), 20 U.S.C. 2734(o))

§§ 200.44–200.49 [Reserved]

Project Design

§ 200.50 Use of evaluations in planning.

An agency that receives Title I assistance shall use the results of the evaluations required under § 200.130 in planning for and improving Title I projects.

(Sec. 124(g), 20 U.S.C. 2734(g))

§ 200.51 Sufficient size, scope and quality of projects.

An agency that receives Title I assistance may use Title I funds for a project only if—

(a) The educational objectives of the project are directly related to one or more of the special educational needs of the children participating in the project;

(b) The resources to be used in the project and the plans for their use are consistent with and show reasonable promise of substantial progress toward meeting the special educational needs of the children being served; and

(c) The project is concentrated on a sufficiently limited number of services and a sufficiently limited number of children to show reasonable promise of substantial progress toward meeting the special educational needs of the children being served.

(Sec. 124(d), 20 U.S.C. 2734(d))

§ 200.52 Prohibition against using Title I funds to provide general aid.

Except as provided in 34 CFR 201.71(d) and 34 CFR 201.72–201.74, an agency that receives Title I assistance—

(a) Shall use Title I funds only for projects that are designed to meet the special educational needs of the eligible children that are selected to participate in the project; and

(b) May not use Title I funds for a project that has been designed to meet, or will have the effect of meeting, the general needs of—

(1) A school;

(2) The agency;

(3) An entire grade; or

(4) The student body at large in a school.

(Sec. 124(a), 20 U.S.C. 2734(a))

§ 200.53 Minimum expenditure for a Title I project.

(a) Except as provided in paragraph (b) of this section, a Title I project must involve expenditures of at least $2,500 of Title I funds.

(b) An SEA may reduce the minimum expenditure requirement in paragraph (a) of this section if the SEA determines that it is impossible for the agency that is receiving Title I assistance to—

(1) Meet the requirement on its own; or

(2) Join with another agency or agencies for the purpose of meeting the requirement, for reasons such as—

(i) The distance between the agencies; or

(ii) The difficulty of travel between the agencies.

(Sec. 124(d), 20 U.S.C. 2734(d))

§ 200.54 Sustaining educational gains.

(a) In developing a project to be assisted with Title I funds, an agency shall consider including components designed to sustain the educational gains of children participating in the project beyond the school year during which the agency conducts the project.

(b) Examples of components the agency may consider in meeting the requirement in paragraph (a) of this section include, but are not limited to—

(1) Summer school projects;

(2) Projects at the intermediate level—for example, junior high or middle school projects; and

(3) Projects at the secondary school level.

(Sec. 124(k), 20 U.S.C. 2734(k))

§ 200.55 Individualized educational plan.

The Secretary encourages an agency that receives Title I assistance to develop, if feasible, an individualized educational plan for each child that participates in the Title I project. The plan shall be—

(a) Agreed to by a representative of the agency, the child's Title I teacher, a parent of the child and, if appropriate, the child; and

(b) Evaluated periodically and revised accordingly.

(Sec. 129, 20 U.S.C. 2738)

§§ 200.56–200.59 [Reserved]

Personnel

§ 200.60 Training education aides and volunteers.

An agency operating a Title I project that includes education aides or volunteers shall, under a well-developed plan, provide those education aides and volunteers with training that—

(a) Is directly related to a Title I service;

(b) Is provided as needed to ensure that the education aides and volunteers are adequately trained;

(c) Includes the participation of the professional staff who are, or will be, assisted by the education aides and volunteers; and

(d) Is coordinated with other training programs being provided by the agency.

(Sec. 124(l), 20 U.S.C. 2734(l))

§ 200.61 Noninstructional duties.

(a) *Conditions for assigning Title I personnel.* An agency that receives Title I assistance may assign personnel paid entirely with Title I funds to certain duties that are not related to classroom instruction and that do not benefit only the children participating in the Title I project, if—

(1) These noninstructional duties are limited, rotating, and supervisory;

(2) Personnel with functions similar to those of the Title I personnel, but who are not paid with Title I funds, are assigned to these noninstructional duties at the same school site;

(3) These noninstructional duties do not include substitute teaching of a non-Title I class or regular supervision of a homeroom;

(4) The Title I personnel do not perform any duties for pay that non-Title I personnel perform without pay; and

(5) The proportion of total work time that Title I personnel at the same school site spend performing these noninstructional duties does not exceed the lesser of either—

(i) The proportion of total work time that non-Title I personnel spend performing these noninstructional duties; or

(ii) Ten percent of the Title I person's total work time.

(b) *Examples.* Examples of the types of noninstructional duties that might meet the conditions in paragraph (a) of this section include hall duty, lunchroom supervision, playground supervision, and other tasks commonly shared among the staff in a school.

(Sec. 124, 20 U.S.C. 2734)

§§ 200.62–200.69 [Reserved]

Allowable Costs

§ 200.70 Allowable costs under EDGAR.

Subject to the requirements in § 200.71, an agency that receives Title I assistance may, in accordance with the requirements in Subpart F of 34 CFR Part 76 of EDGAR, use those funds to meet the direct costs of project activities and certain indirect costs of project activities.

(Sec. 101–198, 20 U.S.C. 2701–2854; Sec. 408(a)(1) of GEPA, 20 U.S.C. 1221e–3(a)(1))

§ 200.71 Specific requirements concerning allowable costs under Title I.

In addition to meeting the requirements concerning allowable costs in Subpart F of 34 CFR Part 76 of EDGAR, an agency that receives Title I assistance shall use those funds in compliance with the requirements in the Title I statute and Title I regulations, including the requirements in §§ 200.72–200.83. In no event may an agency that receives Title I assistance use those funds for expenditures that are imprudent, extravagant, excessive, or wasteful.

(Sec. 101–198, 20 U.S.C. 2701–2854; Sec. 408(a)(1) of GEPA, 20 U.S.C. 1221e–3(a)(1))

§ 200.72 Use of Title I funds for planning.

(a) Subject to the limitation on amount in paragraph (b) of this section, an agency may use Title I funds for planning if—

(1) The planning directly relates to a Title I project and results, or is reasonably likely to result, in a Title I project; and

(2) The Title I funds are needed for planning because—

(i) Of the innovative nature of the project; or

(ii) The agency lacks the resources that are required to plan adequately for the project.

(b) During a fiscal year, the amount of Title I funds that an agency may use for the planning described in paragraph (a) of this section may not exceed the larger of—

(1) One percent of the total amount of Title I funds received by that agency for that fiscal year; or

(2) $2,000.

(Sec. 124(a), 20 U.S.C. 2734(a); Sec. 124(c), 20 U.S.C. 2734(c))

§ 200.73 Use of Title I funds for State administration.

An SEA shall comply with the specific requirements in § 200.101 concerning the use of Title I funds for State administration.

(Sec. 194, 20 U.S.C. 2844; Sec. 510 of Title V, 20 U.S.C. 3150)

§ 200.74 Use of Title I funds for health, nutrition, or social services.

An agency may use Title I funds for health, nutrition, or social services only if the requirements in § 200.41 are met.

(Sec. 124(f)(2), 20 U.S.C. 2734(f)(2))

§ 200.75 Use of Title I funds for training eligible persons.

(a) *Eligible persons.* An agency may use Title I funds to train—

(1) Staff members paid with Title I funds, advisory council members, and volunteers who will perform services in a Title I project;

(2) Regular classroom teachers paid with non-Federal funds or staff specialists paid with non-Federal funds if those persons provide instructional services to participating children or children who will participate in the next school year; and

(3) Principals of schools in which children who participate in a Title I project or who will participate in the next school year are enrolled.

(b) *Scope of the training.* The training referred to in paragraph (a) of this section must be—

(1) Directly related to the Title I services to be provided during the school year in which the training is being provided or in the next school year;

(2) Directly related to the functions that the persons receiving the training provide for the children participating in the Title I project; and

(3) Necessary to meet the needs of the participating children.

(c) *Other requirements.* (1) The training for education aides and volunteers must also meet the requirements of § 200.60.

(2) The training of advisory council members must also meet the requirements of 34 CFR 201.161.

(Sec. 124(a), 20 U.S.C. 2734(a); Sec. 124(l), 20 U.S.C. 2734(l); Sec. 125(d), 20 U.S.C. 2735(d))

§ 200.76 Use of Title I funds for bonus pay.

An agency may use Title I funds to pay teachers amounts in excess of regular salaries as a bonus for services in Title I project areas and project schools.

(Sec. 124(a), 20 U.S.C. 2734(a))

§ 200.77 Use of Title I funds for evaluation.

An agency that receives Title I assistance may use Title I funds for evaluations in accordance with the requirements in § 200.130.

(Sec. 124(g), 20 U.S.C. 2734(g))

§ 200.78 LEA's use of Title I funds for selecting children to receive Title I services.

An LEA that receives Title I assistance may, in accordance with 34 CFR 201.103, use Title I funds for the cost of selecting children to receive Title I services from among children that the LEA has already identified as educationally deprived.

(Sec. 124(a), 20 U.S.C. 2734(a))

§ 200.79 LEA's use of Title I funds for expenses related to advisory councils.

To the extent permitted under 34 CFR § 201.162, an LEA that receives Title I assistance may use Title I funds for expenses related to advisory councils.

(Sec. 125, 20 U.S.C. 2735)

§ 200.80 Use of Title I funds for construction.

An agency that receives Title I assistance may use Title I funds for construction of school facilities, as defined in § 200.5, only if—

(a) The agency meets the construction requirements in 34 CFR 76.600 of EDGAR;

(b) The agency demonstrates in its Title I application that—

(1) The proposed construction is essential to the success of the Title I project; and

(2) It has made every reasonable effort to find other funds to pay for the construction before applying to use Title I funds for that purpose;

(c) The proposed construction is consistent with the overall State plan for the construction of school facilities;

(d) The proposed construction meets the labor standards in section 433 of GEPA;

(e) The plans for the proposed school facility meet any standards that the Secretary prescribes to ensure that school facilities constructed with Title I funds are—to the extent appropriate in view of the uses to be made of the facilities—accessible to and usable by handicapped persons; and

(f) In developing plans for the proposed school facility, the agency has given adequate consideration to—

(1) Excellence of architecture and design; and

(2) The inclusion of works of art, which may represent up to one percent of the cost of the facility.

(Sec. 124(a), 20 U.S.C. 2734(a); Sec. 124(n), 20 U.S.C. 2734(n))

§ 200.81 Use of Title I funds for equipment.

An agency that receives Title I assistance may use Title I funds to purchase equipment only if the agency demonstrates in its Title I application that—

(a) The equipment is needed to operate effectively the Title I project;

(b) In meeting the needs of the Title I project, it has made every reasonable effort to use equipment that it already has; and

(c) It has made every reasonable effort to find other funds to pay for the equipment before applying to use Title I funds for that purpose.

(Sec. 124(a), 20 U.S.C. 2734(a))

§ 200.82 Use of Title I funds for reimbursement of volunteers.

(a) An agency that receives Title I assistance may use Title I funds to reimburse a volunteer for the following expenses, if the expenses are directly related to the performance of the duties and functions of the volunteers in the Title I project and approved in advance by the LEA:

(1) Transportation.

(2) Travel in connection with an approved project activity or training.

(3) Babysitting.

(4) Meals during the period of volunteer service.

(b) An agency may not use Title I funds to reimburse a volunteer for—

(1) Salary lost because of that volunteer's participation in any Title I related activity; or

(2) The cost of membership in any organization or group.

(Sec. 124(a), 20 U.S.C. 2734(a)1; Sec. 124 (1), 20 U.S.C. 2734 (1))

§ 200.83 Control of funds.

An agency may receive Title I funds only if—

(a) Control of the Title I funds and title to property purchased with those funds is in a public agency; and

(b) A public agency will administer the Title I funds and property purchased with those funds.

(Sec. 124(m), 20 U.S.C. 2734(m))

§§ 200.84-200.89 [Reserved]

Subpart E—Fiscal Requirements That Apply to All Agencies That Receive Title I Funds

§ 200.90 Maintenance of effort.

(a) *Basic standard.* (1) Except as provided in § 200.91, an SEA may approve a Title I application from an LEA or State agency only if that agency demonstrates the following in the application: Its expenditures of State and local funds for the free public education of children—on an aggregate or per pupil basis—are not less for (i) the first fiscal year preceding the fiscal year in which the agency is applying for Title I funds than for (ii) the second preceding fiscal year.

(2) Except if the LEA or State agency did not participate in Title I in the preceding fiscal year, the agency may not use as a second preceding fiscal year a fiscal year that the agency did not use as a first preceding fiscal year on a previous application.

(b) *Meaning of "per pupil basis".* As used in this section, "per pupil basis" means per child included in either ADA or ADM.

(c) *Expenditures to be considered.* The expenditures the SEA shall consider in determining the LEA's or State agency's compliance with the basic standard in paragraph (a) of this section are—

(1) State and local expenditures for free public education. These include expenditures for administration, instruction, attendance, health services, pupil transportation, plant operation and maintenance, fixed charges, and net expenditures to cover deficits for food services and student activities; and

(2) Expenditures of Federal funds for free public education for which the LEA or State agency is not accountable to the Federal Government, such as expenditures of funds under the School Assistance in Federally Affected Areas program.

(d) *Expenditures not to be considered.* The SEA may not consider the following expenditures in determining the LEA's or State agency's compliance with the basic standard in paragraph (a) of this section:

(1) Any expenditures for community services, capital outlay, or debt services.

(2) Any expenditures of Federal funds for which the agency is accountable to the Federal Government. These include expenditures made from funds provided under Title I or Part B (Instructional materials and school library resources) and Part C (Improvement in local educational practices) of Title IV.

(e) *Rounding off expenditures.* For purposes of determining compliance with the basic standard in paragraph (a) of this section, expenditures may be rounded off in the following manner:

(1) Per pupil expenditures for each of the fiscal years being compared may be rounded to the nearest ten dollars.

(2) The aggregate expenditures for each of the fiscal years being compared may be rounded to the nearest 100 dollars.

(Sec. 126(a), 20 U.S.C. 2736(a))

§ 200.91 Waiver of the maintenance of effort requirement.

(a) *Waiver authority.* Under section 126(a)(2) of Title I (Waiver of maintenance of effort), the Secretary may waive the maintenance of effort requirements in § 200.90 for a particular LEA or State agency for one fiscal year if the Secretary determines that the waiver is equitable because of exceptional and unforeseen circumstances.

(b) *Waiver request.* An LEA or State agency that has not maintained its fiscal effort as required in § 200.90 may ask the Secretary to grant a waiver of that requirement by submitting a waiver request that includes—

(1) A statement of the expenditures for the two fiscal years being compared;

(2) A statement of the difference between (i) the agency's level of fiscal effort in the preceding fiscal year and (ii) the agency's level of fiscal effort in the second preceding fiscal year; and

(3) A description of the circumstances that the agency considers to be "exceptional and unforeseen."

(c) *Secretary's criteria.* The Secretary considers granting a waiver under paragraph (a) of this section only if the Secretary determines that—

(1) The agency requesting the waiver used every opportunity available under State and local laws to maintain the necessary level of expenditures; and

(2) The failure to maintain effort was due to—

(i) A natural disaster;

(ii) a major and unforeseen decline in State or local financial resources, such

as a major loss of tax base not due to public or governmental actions;

(iii) A major and unforeseen decline in Federal funds for free public education and for which the agency is not accountable to the Federal Government; or

(iv) Other exceptional and unforeseen circumstances, which may not include referenda or acts of State legislatures, school boards, or other governmental bodies.

(d) *Actions resulting from a waiver.* If the Secretary grants a waiver under paragraph (a) of this section—

(1) The SEA shall reduce the affected agency's Title I allocation for the fiscal year covered by the waiver in exact proportion to that agency's failure to maintain 100 percent of its level of expenditures of State and local funds for the free public education of children during the second preceding fiscal year;

(2) If the affected agency is an LEA, the State shall reallocate the reduction to other LEAs in the State in accordance with 34 CFR 201.38; and

(3) For the fiscal year immediately following the fiscal year for which the waiver was granted, the SEA shall determine the affected agency's compliance with the basic standard in § 200.90 on the basis of the level of fiscal effort that would have been required if the affected agency had not been granted the waiver.

(Sec. 126(a), 20 U.S.C. 2736(a))

§ 200.92 Supplement, not supplant.

(a) *Basic requirement for all Title I projects.* An agency that receives Title I Assistance—

(1) Shall use Title I funds to supplement and—to the extent practical—increase the level of funds that would, in the absence of Title I funds, be made available for the education of children participating in Title I projects from non-Federal sources for—

(i) Regular programs; and

(ii) The State phase-in programs described in 34 CFR 201.118(c); and

(2) May not use Title I funds to supplant the non-Federal funds referred to in paragraph (a)(1) of this section.

(b) *Additional requirement for LEAs.* In addition to meeting the basic requirement in paragraph (a) of this section, an LEA that receives Title I assistance must comply with the supplement, not supplant requirements in 34 CFR 201.130–201.143.

(Sec. 126(c), 20 U.S.C. 2736(c); Sec. 126(d), 20 U.S.C. 2736(d))

§ 200.93 Excess costs: introduction.

(a) *Basic standard.* (1) Except for the exemptions in 34 CFR 201.118, an agency that receives Title I assistance shall use Title I funds only for the excess costs of a Title I project.

(2) An agency uses Title I funds for the excess costs of a Title I project if both of the following conditions are met:

(i) The agency provides Title I instruction in accordance with § 200.94 (Excess costs: instructional services).

(ii) The agency uses Title I funds to provide noninstructional services in accordance with § 200.95 (Excess costs: noninstructional services).

(b) *Meaning of "excess costs."* As used in §§ 200.93–200.95, "excess costs" means average per pupil costs directly attributable to a Title I project over and above the agency's average per pupil expenditure, in the most recent year for which satisfactory data are available for pupils in the grade level or levels included in the agency's Title I project.

(Sec. 126(b), 20 U.S.C. 2736(b); Sec. 131, 20 U.S.C. 2751)

§ 200.94 Excess costs: instructional services.

(a) *Introduction.* (1) An agency satisfies the requirements of § 200.93(a)(2)(i) if it provides instructional services in accordance with the provisions of any one of paragraphs (b) through (g) of this section.

(2) For purposes of this section, "instructional services" means services provided, as part of a program of instruction, by teachers, teacher aides or other similar persons.

(b) *In class project.* (1) For purposes of this section, an "in class project" means a Title I project in which instructional services are provided to participating children in the same classroom setting and at the same time in which they would receive instructional services if they were not participating in the Title I project.

(2) An agency uses Title I funds for the excess costs of an in class project if—

(i) The project is particularly designed to meet participants' special educational needs;

(ii) The classroom teacher who would be responsible for the provision of instructional services to participating children in the absence of Title I remains responsible for and continues to perform those duties which that teacher would be required to perform in the absence of Title I, including planning the instructional program of participating children, providing them with instructional services, and evaluating their progress; and

(iii) Instructional staff paid for using Title I funds work under the supervision of the classroom teacher, who would be responsible for the provision of instructional services to participating children in the absence of Title I, so as to provide services which are particularly designed to meet participants' special educational needs.

Example. An agency wishes to provide a special program of remedial instruction using a teacher aide to ten high school juniors assigned to one business math class, and to five high school sophomores in a separate compensatory math class which meets at the same time. The teacher aide spends half of each class period in each class, working individually with Title I participants to provide tutorial assistance on an as-needed basis. Such a project satisfies the excess costs requirements of § 200.93(a)(2)(i) if the classroom teacher, who would be responsible for providing instruction to the participating children in each case, continues to be responsible for tasks such as lesson planning and basic instruction, and meets with the teacher aide on a regular basis to ensure that the Title I participants are receiving a program of instruction which meets their individual needs.

(c) *Limited pull out project.* (1) For purposes of this section, a "limited pull out project" means a Title I project in which—

(i) Instructional services are provided to participating children in a different setting or at a different time than would be the case if those children were not participating in the Title I project; and

(ii) Services are provided for a period that does not exceed 25 percent of the time—computed on a per day, per month, or per year basis—that a participating child would, in the absence of Title I funds, spend receiving from a particular teacher of required or elective subjects who is paid with non-Title I funds.

(2) An agency uses Title I funds for the excess costs of a limited pull out project if—

(i) The project is particularly designed to meet participants' special educational needs;

(ii) The classroom teacher, who would be responsible for the provision of instructional services to participating children in the absence of Title I, remains responsible for and continues to perform those duties which that teacher would be required to perform in the absence of Title I, including planning the instructional program of the participating children, providing them with instructional services, and evaluating their progress; and

(iii) Instructional staff paid for using Title I funds work under the supervision of the classroom teacher, who would be responsible for the provision of instructional services to participating children in the absence of Title I, so as to provide services which are

particularly designed to meet participants' special educational needs.

Example. Fifty third graders participate in a Title I project designed to help them improve their reading skills. All the children receive instruction in reading from their classroom teacher as part of their regular program of instruction. Under the Title I project, a special resource center is staffed by personnel paid with Title I funds; Title I participants are pulled out of class for one-half hour, five days per week, to receive special assistance at the resource center. The time spent in the resource center totals 2.5 hours, or 12.5 percent of the 20 hours of instructional time the fifty participating children spend with their classroom teacher as part of their regular program of instruction. This project does not violate the excess costs requirements of § 200.93(a)(2)(i) so long as the classroom teacher whose instruction the Title I project is designed to supplement continues to remain responsible for the program of instruction which is provided to the participating children and performs regular planning, instructional, and evaluative duties associated with those children. The classroom teacher must also work closely with the resource center personnel to ensure that a coordinated program of instruction is provided so as to meet the special needs of Title I participants.

(d) *Extended pull out project.* (1) For purposes of this section, an "extended pull out project" means a Title I project in which—

(i) Title I services are provided to participating children in a different classroom setting or at a different time than would be the case if those children were not participating in the Title I project; and

(ii) Title I services are provided for a period that exceeds 25 percent of the time—computed on a per day, per month, or per year basis—that a participating child would, in the absence of Title I funds, spend receiving from a particular teacher of required or elective subjects who is paid with non-Title I funds.

(2) An agency uses Title I funds for the excess costs of an extended pull out project if either of the following conditions are met:

(i) The agency—

(A) Allocates to the Title I project the full-time equivalent number of non-Title I staff that—in the absence of the Title I service—would have been used to provide the non-Title I funded instructional service that is replaced with the Title I funded service; or

(B) At its discretion, provides the number of full-time equivalent staff referred to in paragraph (d)(2)(i)(A) rounded to the nearest whole number.

(ii) The agency allocates to the Title I project an amount of non-Title I funds required to provide the number of non-Title I funded staff referred to in paragraph (d)(2)(i)(A) of this section.

(3) For purposes of paragraph (d)(2)(i) of this section, the agency calculates the number of full-time equivalent staff required for each Title I project by taking the following steps:

(i) *Step 1.* The agency calculates the number of children served, on the average, by a full-time equivalent staff member;

(ii) *Step 2.* The agency calculates the number of children served by the Title I project (reduced to the same base used in measuring teacher load in Step 1);

(iii) *Step 3.* The agency divides the number in Step 2 by the number in Step 1. This is the number of full-time equivalent staff.

Example. An LEA decides to provide some third and fourth graders with an intensive program in basic skills, using Title I funds. The program is to meet every day for two hours. Third and fourth graders ordinarily receive 5 hours of instructional services per day. The average pupil-teacher ratio for third and fourth graders is 24 to 1.

The LEA must provide either the full-time equivalent number of staff that would have been used in the absence of the Title I service to provide reading and mathematics, or the amount of non-Title I funds required to provide that number of staff.

To determine the number of full-time equivalent staff required to be provided, the LEA—

Determines that the number of children served by a full-time equivalent teacher is 24 children on a full-time basis.

Calculates the number of children served by the Title I project (80 children are served at 40 percent time; thus the project could serve 32 children on a full-time basis);

Divides the number of full-time equivalent children by the number of such children served by a full-time equivalent staff member (32 divided by 24 equals 1.33).

The LEA provides the appropriate number of non-Title I funded staff (1.33 full-time teachers), or the number of such staff rounded to the nearest whole number (1 full-time teacher). Alternatively, the LEA provides an amount of funds required to provide the number of staff (1.33 times the average salary for third and fourth grade teachers) as its allocation to the program.

(e) *Add on project.* (1) For purposes of this section, an "add on project" is one which is provided at a time in which participants would not otherwise be receiving non-Title I funded instructional services, including periods such as vacations, weekends, before or after regular school hours, or during noninstructional time.

(2) An agency uses Title I funds for the excess costs of an add-on project so long as the project is particularly designed to meet participants' special educational needs.

(f) *Replacement projects.* (1) For purposes of this section, a "replacement project" means a Title I project in which—

(i) Title I services are provided to participating children in a different classroom setting or at a different time than would be the case if these children were not participating in the Title I project; and

(ii) The Title I project provides services which replace all or part of the course of instruction regularly provided to Title I participants with a distinct, self-contained Title I program which is particularly designed to meet participants' special educational needs.

(2) An agency uses Title I funds for the excess costs of a replacement project if the conditions in either paragraphs (d)(2)(i) or (d)(2)(ii) are met.

Example. An LEA decides to provide 200 9th graders attending two different junior high schools (100 in each school) with a special, intensive remedial reading program using a very low pupil to teacher ratio for one period per day (5 periods per week), out of the usual 30 period week, in place of those students' regular English class. On the average, 9th grade English teachers teach five classes of 25 children each. The classes each meet for 5 periods per week.

The LEA must provide either the full-time equivalent number of staff that would have been used in the absence of the Title I service to provide instruction in English, or the amount of non-Title I funds required to provide that number of staff.

To determine the number of full-time equivalent staff required to be provided, the LEA—

Calculates the number of children served, on the average, by a full-time equivalent staff member (25 children multiplied by 5 classes equals 125 children served per day);

Calculates the number of children served, by the Title I project (200 children served per day);

Divides the number of children served by the Title I project by the number of children served by a full-time equivalent staff member (200 divided by 125 equals 1.6).

The LEA provides the appropriate number of non-Title I funded staff (1.6 full-time teachers or the number of staff rounded to the nearest whole number (2 full-time teachers). Alternatively, the LEA provides an amount of funds required to provide that number of staff (1.6 times the average salary paid to high school English teachers) as its allocation to the project.

(g) *Other projects.* An agency uses Title I funds for the excess costs of a project other than one of a type described in paragraph (b), (c), (d), (e), or (f) of this section, so long as it maintains records demonstrating that the average per pupil costs directly attributable to its Title I project exceed the agency's per pupil expenditure, by grade level or levels, for all pupils in the grades included in the agency's Title I project.

(h) *Graduation credits.* Compliance with the requirements of the excess cost provisions of § 200.93(a)(2)(i) is the responsibility of agencies receiving Title I assistance, and in no way affects the award of credits, for purposes of graduation, to students participating in Title I projects.

(Sec. 120(b), 20 U.S.C. 2700(b); Sec. 131, 20 U.S.C. 2751)

§ 200.96 Excess costs: noninstructional services.

(a) An agency satisfies the requirements of § 200.93(a)(2)(ii) if it provides noninstructional services in accordance with paragraph (b) of this section.

(b) An agency uses Title I funds for the excess costs of noninstructional services so long as—

(1) It provides noninstructional services consistent with the provisions of this part and 34 CFR Part 201; and

(2) It provides noninstructional services which would not, in the absence of Title I, be available to children at the grade level or levels of children participating in its Title I project.

(c) For purposes of this section, "noninstructional services" includes supplies, equipment, or other services which are not instructional services as defined in § 200.94(a)(2).

Example. An LEA plans to use Title I funds to provide services of a community-home aide to high school students participating in its Title I project. Use of Title I funds for this purpose would not be appropriate if such an aide is currently otherwise providing services to non-participating students, in the same grade or grades, using non-Title I funds.

(Sec. 120(b), 20 U.S.C. 2700(b); Sec. 131, 20 U.S.C. 2751)

§§ 200.98–200.99 [Reserved]

Subpart F—State and Local Administrative Responsibilities

General

§ 200.100 Applicability of the regulations in Subpart F.

(a) The regulations in this subpart interpret—

(1) Part C (State administration of projects) of Title I; and

(2) Part A (Administration of educational programs and duties of the SEA) of Title V.

(b) In any fiscal year in which the conditions in paragraph (c)(2) of this section are not met, Part C of Title I applies.

(c)(1) In any fiscal year in which the conditions in paragraph (c)(2) of this section are met, Part A of Title V applies, together with sections 162 (State applications), 171 (State MEPs), 172 (Reporting requirements), 173 (Recordkeeping, fiscal control, and fund accounting), and 174 (Prohibition of consideration of Federal aid in determining State aid) of Title I.

(2) The provisions in paragraph (a)(1) of this section apply for any fiscal year in which the funds appropriated under section 510 (Authorization of payments) of Title V are—

(i) Sufficient to pay the full amount each State is eligible to receive for State administration under section 510(a) (Authorization of payments) of Title V; and

(ii) Included in an act making appropriations for the fiscal year prior to the fiscal year in which those funds will be obligated, and are made available for expenditure prior to the beginning of that fiscal year.

(Sec. 161, 20 U.S.C. 2801; Sec. 510 of Title V, 20 U.S.C. 3150)

§ 200.101 Payments for State administration.

(a) Except when the conditions in § 200.100(c)(2) are met, the Secretary pays each State an amount equal to the amount spent by it for the proper and efficient performance of its duties under Title I, provided that the amount paid by the Secretary for any fiscal year does not exceed the greater of—

(1) 1.5 percent of the amount of Title I funds allocated to the State for that year, including payments to LEAs and State agencies; or

(2)(i) $225,000; or

(ii) $50,000 in the case of Guam, American Samoa, the Virgin Islands, the Northern Mariana Islands, or the Trust Territory of the Pacific Islands.

(b)(1) Paragraph (b)(2) of this section applies if, under paragraph (a) of this section, a State receives an amount in excess of the greater of—

(i) One percent of the amount of Title I funds available to the State; or

(ii)(A) $150,000; or

(B) $25,000 in the case of Guam, American Samoa, the Virgin Islands, the Northern Mariana Islands, or the Trust Territory of the Pacific Islands.

(2) If a State receives an amount in excess of the amount specified in paragraph (b)(1) of this section, the State shall use that excess—

(i) Exclusively for monitoring, audit resolution, or similar compliance activities related to the enforcement of Title I; and

(ii) To supplement, not supplant State and local funds otherwise available for compliance activities.

(c)(1) If the conditions in § 200.100(c)(2) are met, the Secretary pays each State an amount equal to the amount spent by the State for the proper and efficient performance of its duties under Title I and Title IV.

(2) However, the Secretary does not pay for any fiscal year more than the greater of—

(i) 1.75 percent of the amount of Title I and Title IV funds allocated to the State for that year; or

(ii)(A) $650,000; or

(B) $87,000 in the case of Guam, American Samoa, the Virgin Islands, the Northern Mariana Islands, or the Trust Territory of the Pacific Islands.

(3) In any case, however, the Secretary's payment is not less than the amount each State received for administration of Title I and Title IV projects for fiscal year 1978.

(d) If the conditions in § 200.100(c)(2) are met, the Secretary pays, in addition to the amount authorized under paragraph (c) of this section, an amount not to exceed 25 percent of the amount authorized for each State under paragraph (c) of this section if the SEA—

(1) Uses these funds solely for monitoring, audit resolution, or similar compliance activities related to the enforcement of Title I and Title IV;

(2) Applies to receive these funds and specifically describes in its application the intended uses of the funds; and

(3) Uses these funds to supplement, not supplant State and local funds already being used for compliance activities.

(Sec. 194, 20 U.S.C. 2944; Sec. 510 of Title V, 20 U.S.C. 3150)

§ 200.102 Payments by SEAs.

Except for payments for State administration described in § 200.101, an SEA shall make payments from Title I funds only for projects that it has approved under § 200.110.

(Sec. 164(b), 20 U.S.C. 2811(b))

§§ 200.103–200.109 [Reserved]

Application Approval

§ 200.110 SEA approval of applications from LEAs and State agencies.

(a) *Standards for approval.* An SEA shall approve the Title I application of an LEA or State agency if the SEA determines, after considering the factors in paragraph (b) of this section, that the agency—

(1) Will use the Title I funds received under the application in compliance with the requirements of—

(i) The Title I statute;

(ii) The Title I regulations;

(iii) GEPA, including the assurances in section 436;

(iv) EDGAR; and

(v) Applicable State rules, regulations, procedures, guidelines, and criteria adopted in compliance with §§ 200.120–200.122;

(2) Will use the Title I funds in accordance with its approved Title I application; and

(3) Is not out of compliance with—

(i) A determination by the SEA or the Secretary that the agency repay misspent Title I funds; or

(ii) A compliance agreement under §§ 200.210–200.214 or §§ 200.270–200.275.

(b) *Factors to be considered.* An SEA may approve an application under paragraph (a) of this section only after the SEA has considered where pertinent—

(1) The results of Federal and State audits of the LEA or State agency submitting the application;

(2) The results of Federal and State monitoring reports of the LEA or State agency submitting the application;

(3) Complaints made by parents or other persons concerning the agency's compliance with Title I requirements; and

(4) Evaluations under section 124(g) of Title I.

(c) *Effective date of approved application.* An SEA shall consider a project approved under paragraph (a) of this section to be approved as of the date on which the application was submitted in approvable form. In no event shall this date be earlier than the first day on which the funds being applied for become available for obligation, or the effective date of the SEA's Title I application submitted and approved under § 200.20.

(d) *Effect of SEA approval.* SEA approval of an application under paragraph (a) of this section does not relieve the LEA or State agency of its responsibility to comply with all applicable requirements.

(Sec. 184(a), 20 U.S.C. 2811; Sec. 503(a) of Title V, 20 U.S.C. 3143(a))

§ 200.111 Opportunity for a hearing on application disapproval.

(a) An SEA shall provide reasonable notice and opportunity for a hearing to any LEA or State agency prior to disapproving, in whole or in part, that LEA's or State agency's application for Title I funds under 34 CFR Parts 201, 302, or 303.

(b) An LEA or State agency that is aggrieved by the SEA's intended disapproval of its application may, within 30 days of receiving notice of the SEA's intent to disapprove its application, request a hearing.

(c) Within 30 days after it receives a request for a hearing from an LEA or State agency, the SEA shall hold the hearing, on the record, to review its intended disapproval of the agency's application.

(d) Within 10 days after the hearing, the Sea shall issue a written ruling that includes—

(1) The reasons for the SEA's ruling; and

(2) Notice of the LEA's or State agency's right to appeal to the Secretary under § 200.112.

(Sec. 184(c), 20 U.S.C. 2811(c); Sec. 503(c) of Title V, 20 U.S.C. 3143(c); Sec. 435 of GEPA, 20 U.S.C. 1231b–2)

§ 200.112 Appeal to the Secretary.

An LEA or State agency that is aggrieved by the final action of an SEA under § 200.111 may appeal the SEA's action to the Secretary. In order to appeal, the LEA or State agency shall, within 20 days after the agency receives notice of the SEA's final action, file a notice of its intent to appeal with the Secretary.

(Sec. 184(c), 20 U.S.C. 2811(c); Sec. 503(c) of Title V, 20 U.S.C. 3143(c); Sec. 435(b) of GEPA, 20 U.S.C. 1231b–2(b))

§ 200.113 Amendments to the application.

(a) *Annual updating of information in Title I application.* An LEA or State agency shall annually update its Title I project application by submitting to its SEA—

(1) Data showing that the LEA or State agency has maintained its fiscal effort as required by § 200.90;

(2) A statement of the amount of Title I funds carried over from the preceding fiscal year, and the amount requested from the agency's current Title I application; and

(3) A budget for the expenditure of Title I funds.

(b) Other amendments to an application. An LEA or State agency shall submit to its SEA amendments to its Title I application and secure the SEA's approval whenever it seeks to make any significant changes (particularly changes resulting from Federal or State audits and monitoring) in activities to be conducted under the agency's application, including changes in—

(1) Services, construction, or purchases of equipment;

(2) Criteria for the selection of children to receive a Title I service;

(3) The number of public and private school children, identified by subject area and grade level, who will participate in the Title I project;

(4) The number and type of staff to be employed;

(5) The amounts of Title I funds to be spent for participating public school children and participating private school children;

(6) The agency's list of school attendance areas or schools designated for Title I projects; and

(7) The grade level or levels of children who will receive a previously approved service.

(Sec. 121–124, 20 U.S.C. 2731–2734)

§§ 200.114–200.119 [Reserved]

State Rulemaking

§ 200.120 Authority for State rulemaking.

Except as provided in § 200.121, an SEA may adopt reasonable rules, regulations, procedures, guidelines, criteria, or other requirements that apply to Title I projects.

(Sec. 165, 20 U.S.C. 2812; Sec. 504 of Title V, 20 U.S.C. 3144)

§ 200.121 Limitations on State rulemaking authority.

(a) All rules, regulations, procedures, guidelines, criteria, or other requirements that an SEA adopts under § 200.120 must conform to all applicable Federal laws, including all requirements in the Title I statute and regulations;

(b) Except as provided in 34 CFR 201.90(a)(2) (General standards for by-pass actions), the SEA may not, under the authority in § 200.120, prohibit any practice that is authorized under Title I.

(Sec. 165, U.S.C. 2812; Sec. 504 of Title V, 20 U.S.C. 3144)

§ 200.122 Examples of State rulemaking.

(a) An SEA may adopt reasonable rules concerning the size, scope, and quality of Title I projects.

(b) For example, the SEA may adopt reasonable rules concerning—

(1) The pupil-to-staff ratio to ensure that Title I services are sufficiently concentrated;

(2) The number of hours per day that a child may be removed from a regular class to receive a Title I service; or

(3) The number or categories of curriculum areas that may be included in a Title I project.

(c) LEAs, however, retain the authority to determine—

(1) The grade levels that will be included in their Title I projects; and

(2) The curriculum areas that will be included in their Title I projects, if those curriculum areas meet all Title I requirements.

(Sec. 165, 20 U.S.C. 2812; Sec. 504 of Title V, 20 U.S.C. 3144)

§§ 200.123–200.129 [Reserved]

Evaluation

§ 200.130 Evaluation procedures.

(a) *Other applicable requirements.* To evaluate the effectiveness of a Title I project, an agency that receives Title I assistance shall adopt and use effective procedures that meet the requirements in 34 CFR 201.170–201.177, and in 34 CFR Parts 202, 203, or 204, as applicable.

(b) *Required evaluations.* The agency that receives Title I assistance shall, at least once every three years, conduct an evaluation or series of evaluations that—

(1) Addresses the purposes of the Title I project;

(2) Includes collection and analysis of data concerning the degree to which the Title I project has achieved its goals, including the requirements in section 130 (Participation of children enrolled in private schools) of Title I; and

(3) Includes objective measurements of educational achievement in basic skills over at least a twelve-month period in order to determine whether the effects of programs conducted during the regular school year have been sustained over the summer.

(c) *Use of evaluation results.* The agency that receives Title I assistance shall use the results of its evaluations of its Title I project in planning for and improving Title I projects to be carried out in the following years.

(Sec. 124(g), 20 U.S.C. 2734(g))

§§ 200.131–200.139 [Reserved]

Recordkeeping

§ 200.140 Recordkeeping requirements.

(a) *General standards for SEAs.* An SEA that receives Title I assistance shall—

(1) Use fiscal control and fund accounting procedures that will ensure proper disbursement of and accounting for Title I funds;

(2) Keep records that show—

(i) The amount and disposition of all Title I funds;

(ii) The total cost of each Title I project; and

(iii) The share of the cost provided from non-Title I sources; and

(3) Keep other records that are needed to facilitate an effective audit of each Title I project.

(b) *General standards for agencies operating a Title I project.* An agency that receives Title I assistance shall keep all records that the SEA requires. These must include—

(1) Records of Title I funds that show—

(i) The amount of Title I funds received;

(ii) How the agency uses the funds;

(iii) The total cost of the project; and

(iv) The share of that cost provided from other sources;

(2) Other records that are needed to facilitate an effective audit of the Title I project;

(3) Records that show the agency's compliance with Title I requirements; and

(4) Records of significant project experiences and results.

(c) *Exception for certain projects.* The SEA need not require an LEA to account separately for Title I funds if the LEA—

(1) Conducts a single compensatory education project that—

(i) Meets all Title I requirements; and

(ii) Is paid for out of Title I funds, as well as out of State and local funds; and

(2) Excludes, under 34 CFR 201.116, State and local expenditures for that compensatory education project in determining compliance with the excess costs and comparability requirements.

(d) *Retention of Records.* All records required under this section must be retained—

(1) For five years after the close of the fiscal year in which the funds were spent;

(2) Until any pending audits concerning the Title I project have been completed; and

(3) Until all findings and recommendations arising out of any audits concerning the Title I project have been finally resolved.

(Sec. 127(a), 20 U.S.C. 2737(a); Sec. 173, 20 U.S.C. 2823; Sec. 437 of GEPA, 20 U.S.C. 1232f)

§ 200.141 Access to information.

(a) *Access provided by the SEA.* Except as provided in paragraph (d) of this section, an SEA shall provide any person with access to documents related to the Title I program in that State if that person has specifically requested information or documents in a written request.

(b) *Access provided by LEAs and State agencies.* Except as provided in paragraph (d) of this section, an LEA or State agency that applies for or receives Title I funds shall provide parents, teachers, or other persons with access to its Title I project application, amendments, prior applications, evaluations of the agency's Title I project, and other documents related to the agency's Title I project.

(c) *Definition of access.* As used in this section, "access" means—

(1) Inspection of the documents at a reasonable time and place; and

(2) (i) Reproduction, on request, of the documents free of charge or at reasonable costs; or

(ii) Provision of the documents for their reproduction by the person who requests them.

(d) *Limitations on access.* An agency may not provide access to documents or records that—

(1) Individually identify children and teachers without the permission of the person so identified; or

(2) The agency is prohibited from releasing under any applicable laws.

(Sec. 127(c), 20 U.S.C. 2737(c); Sec. 173, 20 U.S.C. 2823)

§ 200.142 Access by State and Federal auditors.

An agency that receives Title I assistance shall make all records, documents, and personnel that relate in any way to a Title I project available to State and Federal auditors at the request of those auditors.

(Sec. 127, 20 U.S.C. 2737; Sec. 173, 20 U.S.C. 2823)

§§ 200.143–200.149 [Reserved]

State Monitoring

§ 200.150 Obligation to adopt standards for monitoring.

An SEA shall adopt standards for monitoring the effectiveness of the Title I projects operated by LEAs and State agencies. These standards must meet the standards in § 200.151 and be consistent with the MEP that the SEA submitted under § 200.21.

(Sec. 167, 20 U.S.C. 2814; Sec. 171, 20 U.S.C. 2821; Sec. 506 of Title V, 20 U.S.C. 3146)

§ 200.151 Minimum standards for monitoring.

(a) *Purpose and scope of monitoring.* In monitoring the effectiveness of Title I projects in its State, an SEA shall—

(1) Determine whether the Title I projects comply with applicable Title I requirements;

(2) Determine whether the Title I projects are being implemented in accordance with approved project applications;

(3) Evaluate the LEA's or State agency's efforts to assess and improve the quality and effectiveness of the Title I services being provided; and

(4) Provide technical assistance, if appropriate.

(b) *Frequency of on-site visits.* Representatives of the SEA shall—

(1) Visit, at least once every three years, each LEA and State agency that operates a Title I project; and

(2) Visit, at least once every two years, those LEAs and State agencies that receive the largest amounts of Title

I funds or have a history of noncompliance with applicable Title I requirements.

(c) *Issuing monitoring reports.* Within 60 days of completing each visit that it conducts under paragraph (b) of this section, the SEA shall issue a written monitoring report to the agency that was visited. The SEA shall include in the report its findings and recommendations concerning—

(1) The agency's compliance with applicable Title I requirements;

(2) The LEA's or State agency's efforts to assess and improve the quality and effectiveness of the Title I project; and

(3) The need for corrective action, if any.

(d) *Responding to monitoring reports.* Within 45 days of receiving an SEA monitoring report that recommends improvements or requires corrective action, the monitored agency shall submit a written response to the SEA. The agency shall include in its response—

(1) A description of all steps that it has taken, or will take, in response to the SEA's recommendation for improvements or requirement for corrective action; and

(2) If appropriate, a statement of the agency's reasons for not making the improvements or taking all or a part of the corrective action that was required by the SEA.

(e) *Follow-up on recommendations or corrective action.* (1) Within 45 days of receiving the response required under paragraph (d) of this section, the SEA shall review that response to determine whether follow-up action is appropriate.]

(2) Follow-up action may include one or more of the following compliance procedures:

(i) A follow-up visit.

(ii) An audit under §§ 200.190–200.193.

(iii) A withholding action under §§ 200.200–200.201.

(iv) A compliance agreement under §§ 200.210–200.214.

(f) *Making monitoring reports available.* The SEA shall—

(1) Notify the monitored agency of any follow-up action that the SEA plans to take under paragraph (e) of this section;

(2) Send a copy of the monitoring report, any response by the LEA or State agency, and a statement of any follow-up action that the SEA plans to take to the following:

(i) The district advisory council that has been established for the agency that was monitored.

(ii) State and local auditors; and

(3) Provide access, under § 200.141, to the monitoring report, any response by the LEA or State agency, and a statement of any follow-up action that the SEA plans to take.

(Sec. 167, 20 U.S.C. 2814; Sec. 505 of Title V, 20 U.S.C. 3145)

§ 200.162–200.169 [Reserved]

Reporting

§ 200.160 Reporting to the Secretary.

An SEA shall submit to the Secretary—

(a) A written report (including the results of objective measurements required by section 124(g) (Evaluations of Title I)) evaluating the effectiveness of its Title I projects in improving the educational attainment of participating children. The SEA shall submit this report according to the following schedule:

(1) For projects covered by 34 CFR Part 201, this report is due on February 1, 1981, and February 1 of every second year thereafter.

(2) For projects covered by 34 CFR Parts 302, 203, or 204, this report is due on February 1 of each year;

(b) Any reports the Secretary may require—at such times as the secretary may require—to determine the amount of funds that the SEA is eligible to receive for any fiscal year; and

(c) All reports specifically required in 34 CFR Parts 201, 302, 203, and 204, as applicable.

(Sec. 172, 20 U.S.C. 2822)

§ 200.161 Reporting to the SEA

An LEA or State agency that receives Title I assistance shall submit to the SEA—

(a) An annual report that contains information reasonably necessary to enable the SEA to perform its Title I duties; and

(b) Any other reports that the SEA may require to carry out its Title I responsibilities, including information (which in the case of reports relating to performance must be based on specific performance criteria related to program objectives) relating to the educational achievement of students participating in Title I projects.

(Sec. 127(b), 20 U.S.C. 2737(b))

§§ 200.162–200.169 [Reserved]

Technical Assistance and Dissemination of Information

§ 200.170 Technical assistance provided by the SEA.

(a) An SEA shall develop and implement a comprehensive program to provide technical assistance to LEAs and State agencies concerning the use of Title I funds.

(b) The program required by paragraph (a) of this section must include—

(1) Technical assistance for—

(i) Preparation of applications;

(ii) Planning, development, implementation, and evaluation of programs; and

(iii) Management of projects; and

(2) Other forms of technical assistance needed by LEAs and State agencies.

(Sec. 168, 20 U.S.C. 2812; Sec. 505 of Title V, 20 U.S.C. 3145)

§ 200.171 Dissemination of information to LEAs and State agencies.

An SEA shall adopt effective procedures for disseminating to LEAs and State agencies—

(a) Significant information derived from educational research;

(b) Information about successful compensatory education projects;

(c) Information about other federally-funded and State-funded programs that may provide needed health, social, and nutrition services to eligible Title I children; and

(d) Any other information that will assist LEAs and State agencies in planning, developing, implementing, and evaluating Title I projects.

(Sec. 168, 20 U.S.C. 2812; Sec. 505 of Title V, 20 U.S.C. 3145)

§ 200.172 Dissemination of information to teachers and administrators.

(a) An agency that receives Title I assistance shall—

(1) Adopt effective procedures for acquiring and disseminating significant information concerning educational practices to teachers and administrators; and

(2) Develop methods for adopting, where appropriate, promising educational practices into its Title I project.

(b) Possible sources of the information referred to in paragraph (a) of this section may include, but are not limited to—

(1) Educational research;

(2) Demonstration projects;

(3) Other programs; and

(4) Evaluations of Title I projects.

(Sec. 124(h), 20 U.S.C. 2734(h))

§§ 200.173–200.179 [Reserved]

Complaint Review and Resolution

§ 200.180 Contents of a complaint.

For purposes of this part, a complaint is a signed statement that includes—

(a) An allegation that an agency has violated a Title I requirement that is found in the Title I statute, Title I regulations, Title I interpretive rules, GEPA, or EDGAR; and

(b) Information that supports the allegation.

(Sec. 128, 20 U.S.C. 2738; Sec. 185, 20 U.S.C. 2815; Sec. 507 of Title V, 20 U.S.C. 3147)

§ 200.181 Who may file a complaint.

Any parent, teacher, Title I advisory council, or other concerned individual or organization may file a complaint.

(Sec. 128, 20 U.S.C. 2738)

§ 200.182 Where to file a complaint.

Unless a complaint meets the standards for direct complaints in § 200.185(a)(2) or § 200.242(a), the complainant must comply with the following procedures:

(a) If the complaint relates to a Title I project operated by an LEA, the complaint must be filed, according to the procedures in § 200.183, with that LEA.

(b) If the complaint relates to a Title I project operated by a State agency for the benefit of handicapped children or neglected or delinquent children, the complaint must be filed, according to the procedures in § 200.183, with the State agency that receives Title I funds to operate that Title I project.

(c) If the complaint relates to a Title I project for the benefit of migratory children of migratory agricultural workers or fishers, or the SEA's administration of the Title I project, the complaint must be filed, according to the procedures in § 200.186, with the SEA that receives Title I funds to operate that Title I project.

(Sec. 128, 20 U.S.C. 2738)

§ 200.183 Required procedures for resolution of complaints that are filed with LEAs or State agencies.

(a) An LEA or State agency that receives Title I assistance shall develop and implement written procedures for resolving complaints.

(b) The procedures referred to in paragraph (a) of this section must provide—

(1) A specific time limit as provided by § 200.184 for investigating and resolving complaints;

(2) An opportunity for the complainant or the complainant's representative, or both, to present relevant evidence, including an opportunity to question the parties involved;

(3) The right to appeal the final resolution of the LEA or State agency to the SEA under § 200.185;

(4) For the dissemination of information about these procedures to interested persons, including all of the agency's Title I advisory councils; and

(5) For an on-site investigation, if necessary.

(Sec. 128, 20 U.S.C. 2738)

§ 200.184 Time limit for resolution of complaints that are filed with LEAs or State agencies.

(a) An LEA or State agency that receives Title I assistance shall resolve each complaint that it receives under § 200.183 within 30 days after it receives the complaint. However, on request of the LEA or State agency, the SEA may provide additional time for the resolution of a complaint because of exceptional circumstances.

(b) Examples of factors that the SEA may consider in determining the existence of exceptional circumstances include—

(1) The need for an extended investigation or audit to determine whether the allegation in the complaint is accurate; and

(2) The fact that complex issues are raised by the complaint.

(Sec. 128, 20 U.S.C. 2738)

§ 200.185 Appeals from resolutions by LEAs or State agencies.

(a) *Who may appeal.* Any person, agency, or organization that has filed a complaint and is dissatisfied with the resolution of the complaint by an LEA or State agency may appeal that resolution to the SEA.

(b) *When to file an appeal.* An appeal under this section must be postmarked within 30 days after the complainant receives a copy of the resolution of the complaint.

(Sec. 128, 20 U.S.C. 2738)

§ 200.186 Required procedures for resolution of appeals and complaints that are filed with SEAs.

(a) An SEA shall develop and implement written procedures for—

(1) Reviewing appeals from resolutions that have been made by LEAs or State agencies under § 200.183; and

(2) Investigating and resolving complaints filed directly with the SEA, including developing standards for what kind of direct complaints are acceptable.

(b) All procedures developed under paragraph (a) of this section must provide—

(1) A specific time limit, as provided by § 200.187, for resolving appeals or complaints;

(2) The right to appeal the final resolution of the SEA to the Assistant Secretary within 30 days after receiving the SEA's written decision; and

(3) For the dissemination of information, free of charge, about those procedures to interested persons, including all Title I advisory councils of the appropriate LEA or State agency.

(c) In addition to meeting the requirements in paragraph (b) of this section, the complaint resolution procedures developed under paragraph (a)(2) of this section must provide—

(1) That if a complaint filed with the SEA relates to a Title I project operated by an LEA or State agency, the SEA may either resolve the complaint or refer it to the appropriate LEA or State agency;

(2) For investigation of complaints that are accepted for resolution by the SEA, including an on-site investigation if the SEA determines that it is necessary; and

(3) An opportunity for the complainant or the complainant's representative, or both, and the agency that is operating the Title I project to present relevant evidence, including the opportunity to question parties and any of their witnesses.

(Sec. 185, 20 U.S.C. 2815; Sec. 507 of Title V, 20 U.S.C. 3147)

§ 200.187 Time limit for resolution of appeals and complaints that are filed with SEAs.

(a) Except as provided in paragraph (b) of this section, an SEA that receives an appeal or complaint under § 200.186(a) shall—

(1) Within 60 days of receiving the appeal or complaint, resolve it; or

(2) Within 30 days of receiving a complaint, refer it to the appropriate LEA or State agency for resolution. In that case, the LEA or State agency shall follow the time limit established under § 200.184.

(b)(1) The SEA may determine that the existence of exceptional circumstances justifies the SEA's taking additional time to resolve the complaint or appeal.

(2) Examples of factors that the SEA may consider in determining the existence of exceptional circumstances include—

(i) The need for an extended investigation or audit to determine whether the allegation in the complaint is accurate; and

(ii) The fact that complex issues are raised by the complaint.

(Sec. 185, 20 U.S.C. 2815; Sec. 507 of Title V, 20 U.S.C. 3147)

§ 200.188 Contents of the final resolution by an SEA.

An SEA shall include in its final resolution of an appeal or complaint under § 200.186(a)—

(a) A summary of the facts on which the appeal or complaint is based;

(b) A statement of the Title I requirements that the appeal or complaint alleges to have been violated;

(c) The SEA's findings of fact and a summary of the evidence that the SEA considered in making these findings;

(d) The SEA's conclusions regarding the merits of each allegation in the complaint, and a summary of its reasons for each conclusion;

(e) The SEA's directive for any corrective action that the LEA or State agency must take and when that action must be taken; and

(f) Notice of the procedures through which each dissatisfied party may exercise its right to appeal the SEA's final resolution to the Assistant Secretary under § 200.243.

(Sec. 108, 20 U.S.C. 2815; Sec. 507 of Title V, 20 U.S.C. 3147)

Note.—Additional procedures for complaint reviews and resolutions are contained in §§ 200.240–200.248 of Subpart G (Federal Administrative Responsibilities) of this part.

§ 200.189 [Reserved]

State Audits, Resolution, and Repayment

§ 200.190 State audits.

(a) Scope of State audits. A State shall provide for audits of each agency in that State that receives Title I assistance. At a minimum, these audits must determine—

(1) The fiscal integrity of the agency's financial transactions and reports that relate to the agency's use of Title I funds; and

(2) The agency's compliance with Title I requirements, including, if applicable, a review of—

(i) The selection of schools and school attendance areas for Title I projects;

(ii) The selection of children to receive Title I services;

(iii) Conformity with the approved project application;

(iv) The use of title I funds to supplement, not supplant, non-Federal funds that would have otherwise been available;

(v) The use of Title I funds for services to children for whom the project was designed and not for general aid;

(vi) The equitable provision of Title I services for children attending private schools;

(vii) The comparability of instructional services;

(viii) The maintenance of fiscal effort; and

(ix) The use of Title I funds for excess costs.

(b) *Frequency of audits.* (1) Except as provided in paragraph (b)(2) of this section, the SEA shall schedule, at least once every three years, an audit of each agency that receives Title I assistance. However, the SEA may determine, on the basis of one or more of the following factors, that an agency or agencies may be audited less frequently:

(i) A shortage of Title I funds available for State administration of the Title I program.

(ii) The existence of large, complex Title I projects.

(iii) The geographic isolation of the agencies to be audited.

(iv) A large number of agencies to be audited.

(2) If the conditions of section 510(b) (Authorization of payments) of Title V are met, the SEA shall schedule an annual audit of each agency that receives Title I assistance. However, the SEA may determine, on the basis of the factors in paragraph (b)(1) of this section, that any agency or agencies may be audited once every two years.

(c) *Independence of auditors.* The audits required by this section must be performed by auditors who are—

(1) Employed by the State but are independent of the organizational unit that administers Title I in that State; or

(2) Employed by a private audit firm under State supervision.

(Sec. 170(a), 20 U.S.C. 2817(a); Sec. 509(a) of Title V, 20 U.S.C. 3149(a); H. Rept. 1137, 95th Cong., 2d Sess. 62 (1978); S. Rept. 856, 95th Cong., 2d Sess. 46–47 (1978))

§ 200.191 Audit resolution.

(a) An SEA shall develop and implement written procedures for resolving all findings and recommendation resulting from the audits conducted under § 200.190.

(b) The procedures referred to in paragraph (a) of this section must provide that—

(1) Within 30 days of receiving or completing a final audit report, the SEA shall send a copy of the report to the agency that was audited and that agency's district advisory council;

(2) Within 60 days of receiving a copy of the final audit report, the agency that was audited shall send a written response to the SEA concerning any findings of violations or recommendations for corrective action;

(3) Within 60 days of receiving a written response under paragraph (b)(2) of this section, the SEA shall—

(i) Send the agency that was audited and that agency's district advisory council its final determination concerning the findings and recommendations in the final audit report; and

(ii) Notify the agency that was audited of its opportunity, within 30 days of receiving the final determination, to appeal an adverse final determination to the SEA for further review under the procedures required by § 200.192.

(Sec. 170(b), 20 U.S.C. 2817(b); Sec. 509(b) of Title V, 20 U.S.C. 3149(b))

§ 200.192 Audit appeals.

(a) An SEA shall develop and implement procedures for receiving and hearing appeals from final audit determinations that the SEA makes under § 200.191.

(b) The procedures referred to in paragraph (a) of this section must include procedures for—

(1) Informing the audited agency whether its appeal from the SEA's final determination meets reasonable filing requirements imposed by the SEA and, therefore, is accepted by the SEA for further review;

(2) Conducting hearings on the appeal;

(3) Receiving evidence and maintaining a complete record of the evidence and arguments that are presented during the appeal proceedings;

(4) Recording the SEA's final resolution of the appeal and the reason for that resolution;

(5) Notifying the agency that was audited of the SEA's final action on the appeal and any corrective action that the audited agency must take; and

(6) Notifying each agency that is ordered—as part of the SEA's final resolution of an audit appeal—to repay misspent Title I funds of its right, under section 425(b) of GEPA (relating to appeals of final SEA decisions), to appeal that order to the Secretary under § 200.193.

(c) The procedures referred to in paragraph (a) of this section must specify reasonable time limits for each step.

(Sec. 170(b), 20 U.S.C. 2817(b); Sec. 509(b) of Title V, 20 U.S.C. 3149(b))

§ 200.193 Appeal to the Secretary.

An agency that is aggrieved by the final action of an SEA under § 200.192 may appeal the SEA's action to the Secretary. In order to appeal, the agency shall, within 20 days after the agency receives notice of the SEA's final action, file notice of its intent to appeal with the Secretary.

(Sec. 170(d), 20 U.S.C. 2817(d); Sec. 509(d) of Title V, 20 U.S.C. 3149(d); Sec. 425(b) of GEPA, 20 U.S.C. 1231b–2(b))

§ 200.194 Repayment of misspent Title I funds.

(a) An LEA or State agency that is found under §§ 200.191–200.193 to have misspent Title I funds shall repay those funds to—

(1) The SEA, if the Title I funds are still available for obligation under the terms of section 412(b) of GEPA (relating to the availabilitiy of appropriations); or

(2) The Department, if the Title I funds are no longer available for obligation

under the terms of section 412(b) of GEPA.

(b) In determining the amount of Title I funds that were misspent by an LEA that, under § 200.140(c), was not required to account separately for its Title I funds, the amount of funds that are considered to be Title I funds is equal to the percentage of Title I funds used, or intended for use, for the project.

(c) The LEA or State agency shall repay the misspent funds from—

(1) Non-Federal sources; or

(2) Federal funds for which the Federal Government does not require accountability.

(d) The LEA or State agency shall repay the misspent funds in—

(1) A single payment; or

(2) Installments over a period not more than three years from the date on which—

(i) The SEA issues its final resolution under § 200.192; or

(ii) The Secretary issues the final resolution of an appeal, if the LEA or State agency files an appeal under § 200.193.

(e) The SEA shall promptly notify the Secretary of any LEA's or State agency's refusal to repay the misspent funds.

(Sec. 170(b), 20 U.S.C. 2817(b); Sec. 509(b) of Title V, 20 U.S.C. 3149(b); Sec. 412(b) of GEPA, 20 U.S.C. 1225(b))

§ 200.195 Use of misspent funds that are repaid to SEAs.

(a) If the SEA recovers funds under § 200.194 during the period in which the misspent Title I funds are still available for obligation under the terms of section 412(b) of GEPA (relating to the availability of appropriations), the SEA shall treat the recovered funds as Title I funds and—

(1) If the agency repaying is an LEA—

(i) Reallocate those funds to eligible LEAs—other than the agency that was found to have misspent the funds—under the procedures in 34 CFR 201.38; or

(ii) Return the funds for proper use to the LEA from which they were received; or

(2) If the agency repaying is a State agency—

(i) Return the funds for proper use to the agency from which they were recovered; or

(ii) Return the funds to the Department.

(b) If the Title I funds that an SEA recovers under § 200.194 are no longer available for obligation under the terms of section 412(b) of GEPA, the SEA shall return those funds to the Department.

(Sec. 170(b), 20 U.S.C. 2817(b); Sec. 183(b), 20 U.S.C. 2843(b); Sec. 509(b) of Title V, 20 U.S.C. 3149(b); Sec. 412(b) of GEPA, 20 U.S.C. 1225(b))

§ 200.196 Collection action by the Secretary.

(a) The Secretary initiates an action to compel repayment of funds that are found under §§ 200.191–200.193 to have been misspent if—

(1) The LEA or State agency refuses to repay misspent Title I funds under the procedures in § 200.194;

(2) The SEA has taken every reasonable action to compel repayment; and

(3) The SEA notifies the Secretary of the agency's refusal to repay.

(b) Any funds that the Secretary recovers under this section will, at the Secretary's option—

(1) Revert to the United States Treasury;

(2) Be returned to an SEA for distribution under § 200.195; or

(3) Be paid back, if appropriate, under section 456 of GEPA (Repayment to the agency of recovered funds).

(Sec. 170(e), 20 U.S.C. 2817(e); Sec. 509(e) of Title V, 20 U.S.C. 3149(e))

§§ 200.197–200.199 [Reserved]

State Withholding of Payments

§ 200.200 SEA withholding of Title I payments.

(a) *General Standard.* If an SEA determines that an LEA or State agency is not in substantial compliance with the requirements in this part or in 34 CFR Parts 201, 302, or 203, as applicable, the SEA shall—

(1) Withhold further Title I payments, in whole or in part, under the procedures outlined in paragraph (b) of this section; or

(2) Enter into a compliance agreement under §§ 200.210–200.214.

(b) *Procedures for withholding payment.* (1) Before initiating a proceeding to withhold Title I payments to an LEA or State agency, the SEA shall determine, on a case-by-case basis, that the agency is not in substantial compliance with the applicable Title I requirements.

(2) Before withholding funds, the SEA shall provide the LEA or State agency with—

(i) Reasonable notice of the reasons why the SEA believes that a withholding is appropriate; and

(ii) An opportunity for a hearing before an impartial decisionmaker who did not participate in the SEA's decision to initiate the withholding action.

(3) If the impartial decisionmaker finds that the LEA or State agency is not in substantial compliance with the requirements in this part or in 34 CFR Parts 201, 302, or 203, the SEA shall—

(i) Withhold all or merely a part of the LEA's or State agency's Title I payments. In deciding what amount to withhold, the SEA shall consider the following factors:

(A) The seriousness of the noncompliance.

(B) The amount of Title I funds involved.

(C) The effect of withholding on participating children:

(ii) Notify the agency that further Title I payments, in whole or in part, will be withheld; and

(iii) Specify a date on which the withheld funds will be reallocated under 34 CFR 201.38, unless the SEA determines that the agency is in substantial compliance.

(4) Unless the SEA enters into a compliance agreement with the LEA or State agency under §§ 200.210–200.214, the SEA shall continue to withhold Title I payments until it determines that the agency is in substantial compliance.

(c) *Suspension pending completion of withholding proceedings.* (1) If an SEA has reason to believe that an LEA or State agency is not in substantial compliance with the requirements in this part or in 34 CFR Parts 201, 302, or 203, the SEA may, after giving the LEA or State agency reasonable notice and an opportunity to show cause why suspension action should not be taken, suspend Title I payments—in whole or in part— to that agency pending completion of a withholding proceeding.

(2) In deciding whether to take suspension action, the SEA shall consider factors such as—

(i) The degree of certainty that the agency is not in substantial compliance;

(ii) The magnitude of the noncompliance;

(iii) The need to take suspension action to prevent the misuse of Title I funds; and

(iv) The harm that may result to Title I projects as a result of the suspension.

(d) *Use of withheld funds.* An SEA that withholds funds under this section shall—

(1) Pay the withheld funds to the agency from which they were withheld if that agency comes into substantial compliance within the period of time specified by the SEA; or

(2) Treat the withheld funds as excess funds for reallocation under the procedures in 34 CFR 201.38, if the agency from which they were withheld does not come into substantial compliance within the period of time specified by the SEA.

(Sec. 169(a), 20 U.S.C. 2816(a); Sec. 508(a) of Title V, 20 U.S.C 3148(a); Sec. 434(b) of GEPA, 20 U.S.C. 1232c(b))

§ 200.201 Notice of the public of SEA withholding.

If an SEA notifies an LEA or State agency that the SEA is withholding payments under § 200.200, the LEA shall, upon submission of a notice of withholding to the LEA under § 200.200(b)(2)(i), take appropriate action to inform—

(a) The district advisory council of the LEA against which the action was taken; and

(b) The general public.

(Sec. 169(b), 20 U.S.C. 2816(b); Sec. 508(b) of Title V, 20 U.S.C 3148(b))

§ 200.202 Appeal to the Secretary.

An LEA or State agency that is aggrieved by the final action of an SEA under § 200.200 may appeal the SEA's action to the Secretary. In order to appeal, the LEA or State agency shall, within 20 days after the agency receives notice of the SEA's final action, file notice of its intent to appeal with the Secretary.

(Sec. 169(b), 20 U.S.C. 2816(b); Sec. 508(b) of Title V, 20 U.S.C 3148(d); Sec. 425(b) of GEPA, 20 U.S.C. 1231b-2(b))

§§ 200.203-200.209 [Reserved]

State Compliance Agreements

§ 200.210 Use of a State compliance agreement.

(a) An SEA may enter into a compliance agreement with an LEA or State agency instead of initiating or continuing a withholding action under § 200.200.

(b) The SEA may enter into the compliance agreement—

(1) Before taking any action to begin a withholding action under § 200.200; or

(2) At any stage of a withholding action under § 200.200, including—

(i) Before providing the LEA or State agency with an opportunity for the hearing required under § 200.200(b);

(ii) During the hearing provided under § 200.200(b);

(iii) After a finding under § 200.200(b)(3) that the LEA or State agency is not in substantial compliance with the requirements of this part or of 34 CFR Parts 201, 302, or 203; or

(iv) During the course of withholding of Title I funds by the SEA.

(c) A compliance agreement entered into under this section—

(1) Applies only to current violations;

(2) Relieves the LEA or State agency that enters into the agreement of any liability for repayment of funds that are spent—

(i) In violation of a requirement that is covered by the agreement; and

(ii) During the period of time that is covered by the agreement; and

(3) May be used to specify—

(i) The amount of funds that has been misspent by an LEA or State agency; and

(ii) A schedule for repaying those misspent funds under § 200.194.

(d) However, a compliance agreement entered into under this section may not be used to reduce or forgive liability for repaying funds that were misspent prior to the date on which the agreement was entered into, including funds that were spent in violation of the maintenance of effort requirements in § 200.90.

(Sec. 169(c), 20 U.S.C. 2816(c); Sec. 508(c) of Title V, 20 U.S.C 3148(c))

§ 200.211 Contents of a State compliance agreement.

A compliance agreement entered into under § 200.210 must—

(a) Be a written agreement signed by authorized representatives of the SEA and authorized representatives of the LEA or State agency;

(b) Include a statement of each applicable requirement that the LEA or State agency is violating;

(c) Describe the activity that is in violation of each applicable requirement;

(d) Describe the steps that the LEA or State agency agrees to take in order to come into full compliance with each applicable requirement;

(e) Address all matters that formed the basis for the initiation of a withholding action under § 200.200, if the SEA has begun a withholding action under that section;

(f) Consist of a single agreement or a series of agreements that, taken together, will result in full compliance by the LEA or State agency; and

(g) Specify a time period of not more than 90 days during which the LEA or State agency shall take steps that will result in full compliance with the requirements involved.

(Sec. 169(c), 20 U.S.C. 2816(c); Sec. 508(c) of Title V, 20 U.S.C 3148(c))

§ 200.212 Duration of a State compliance agreement.

(a) Except as provided in paragraph (b) of this section, a compliance agreement entered into under § 200.210 remains in effect for the period of time that is specified in the agreement. In any case, however, that time may not exceed 90 days after the agreement is entered into.

(b) If the LEA or State agency that has entered into a compliance agreement under § 200.210 fails to comply with the terms of the agreement, the agreement expires immediately.

(Sec. 169(c), 20 U.S.C. 2816(c); Sec. 508(c) of Title V, 20 U.S.C. 3148(c))

§ 200.213 Effect of expiration of a State compliance agreement.

(a) If a compliance agreement has expired under § 200.212(b), an SEA may not enter into another compliance agreement with the same LEA or State agency for any violations that were addressed in the first compliance agreement.

(b) If a compliance agreement has expired under § 200.212(b) and the LEA or State agency continues to be out of compliance, the withholding procedures in § 200.200 apply. However, in taking any withholding action under § 200.200, the SEA shall take into account any partial compliance that was achieved by the LEA or State agency under the compliance agreement.

(Sec. 169(c), 20 U.S.C. 2816(c); Sec. 508(c) of Title V, 20 U.S.C. 3148(c))

§ 200.214 Notice of a State compliance agreement.

Within 15 days of entering into a compliance agreement under § 200.210, the SEA shall send a copy of the compliance agreement to—

(a) The Assistant Secretary;

(b) The district advisory council of the agency that entered into the compliance agreement with the SEA, if that agency has a district advisory council; and

(c) Each person, agency, or organization that filed a complaint with the LEA, State agency, or SEA concerning a violation covered by the compliance agreement.

(Sec. 169(c), 20 U.S.C. 2816(c); Sec. 508(c) of Title V, 20 U.S.C. 3148(c))

§§ 200.215-200.219 [Reserved]

Subpart G—Federal Administrative Responsibilities

Application Approval

§ 200.220 Approval of State applications and annual program plans.

(a) *Approval of State applications.* The Secretary approves the payment of Title I funds by an SEA to LEAs and State agencies if the Secretary has made specific findings, in writing, that—

(1) The application that the SEA has submitted under § 200.20 complies with—

(i) The requirements in § 200.20;

(ii) The Title I statute and regulations;

(iii) All applicable requirements in GEPA; and

(iv) All applicable requirements in EDGAR;

(2) The SEA will comply with the assurances in its application and those submitted by the SEA under section 435(b) of GEPA (containing specific assurances required in the SEA's application); and

(3) The SEA's monitoring and enforcement plan meets the requirements in § 200.21.

(b) *Approval of SEA annual program plans for programs serving migratory children.* The Secretary approves the payment of Title I funds to an SEA for a project for migratory children of migratory agricultural workers of fishers only if the Secretary has, under the procedures in 34 CFR 204.14, approved the SEA's annual program plan.

(Sec. 142, 20 U.S.C. 2782; Sec. 182, 20 U.S.C. 2832)

§ 200.221 Opportunity for a hearing on disapproval of a State application.

(a) If the Secretary determines that an SEA's application does not comply with the requirements in § 200.220(a), the Secretary—

(1) Notifies the SEA, in writing, of the facts on which the Secretary bases that determination; and

(2) Provides the SEA with the opportunity for a hearing to be held at least 30 days after the SEA receives notice.

(b) A hearing conducted under paragraph (a) of this section is held before the Education Appeal Board in accordance with—

(1) The requirements in section 451(e) of GEPA (relating to the Board's proceedings); and

(2) The Board's procedures in 34 CFR Part 78.

(c) The Education Appeal Board issues an initial decision that the Board Chairperson—

(1) Submits to the Secretary; and

(2) Sends to each party by certified mail with a return receipt requested.

(d) The decision by the Education Appeal Board becomes final unless, within 60 days after the SEA receives written notice of the decision—

(1) The Secretary, for good cause shown, modifies or sets aside the decision, in whole or in part. In that case, the modified decision becomes final 60 days after the Secretary's action; or

(2) The SEA files a petition for judicial review under section 455 of GEPA (judicial review provision).

(Sec. 182(b), 20 U.S.C. 2832(b); Sec. 453(b) of GEPA, 20 U.S.C. 1234b(b))

§§ 200.222–200.229 [Reserved]

Evaluation

§ 200.230 Secretary's evaluation procedures.

Under section 183 (Program evaluation) of Title I, the Secretary—

(a) Provides for independent evaluations of Title I projects;

(b) Develops evaluation standards and a schedule for conducting evaluations;

(c) Consults with LEAs and State agencies concerning jointly sponsored objective evaluation programs;

(d) Provides SEAs with models for the evaluation of Title I projects for use by LEAs and State agencies;

(e) Reports to the Congress concerning the results of evaluations of Title I projects;

(f) Provides technical assistance to SEAs to enable them to assist LEAs and State agencies in conducting evaluations of Title I projects; and

(g) Develops a system for—

(1) Gathering and disseminating the results of evaluations of Title I projects;

(2) Identifying exemplary Title I projects and particularly effective elements of Title I projects; and

(3) Disseminating information concerning the exemplary Title I projects and particularly effective elements of Title I projects to—

(i) LEAs and State agencies responsible for designing and operating Title I projects;

(ii) The education profession; and

(ii) The general public.

(Sec. 183, 20 U.S.C. 2833)

§§ 200.231–200.239 [Reserved]

Complaint Review and Resolution

§ 200.240 Contents of a complaint.

The required contents of a complaint are described in § 200.180.

(Sec. 128, 20 U.S.C. 2738; Sec. 168, 20 U.S.C. 2813; Sec. 507 of Title V, 20 U.S.C. 3147)

§ 200.241 Procedures for receiving direct complaints.

A direct complaint is a complaint that—

(a) Has not been resolved by an LEA, State agency, or SEA under the procedures in §§ 200.180–200.186; and

(b) Is filed with the Assistant Secretary for Elementary and Secondary Education.

(Sec. 184, 20 U.S.C. 2834)

§ 200.242 Procedures for handling direct complaints.

(a) *Standards for resolving direct complaints.* The Assistant Secretary designates an official of the Department to take action under paragraph (b) of this section to resolve a direct complaint. The designated official takes this action only if one or more of the following conditions exists:

(1) The information contained in the direct complaint shows that—

(i) Delayed resolution of the direct complaint will result in serious and immediate harm to the complainant or to the program beneficiaries; and

(ii) The complainant will probably succeed on the merits of the complaint.

(2) The direct complaint has previously been filed with an LEA, State agency, or SEA and that agency has failed to resolve the complaint within the time specified in § 200.184 or § 200.187.

(3) The SEA or LEA has implemented a policy or practice that violates a Title I requirement and the LEA, the SEA, or both has acknowledged this fact, but refuses or fails to correct the noncompliant practice.

(4) The designated official determines that Federal resolution of the complaint is appropriate for any other reason.

(b) *Procedures for resolving direct complaints.* If the designated official determines that the direct complaint meets the standards in paragraph (a) of this section, the designated official resolves the complaint under the procedures in §200.245.

(c) *Referral to an SEA.* If the designated official determines that the direct complaint does not meet the standards in paragraph (a) of this section, and the complaint has not already been filed with an LEA, State agency, or SEA, the designated official within 30 days after receiving the direct complaint, refers it to the appropriate SEA for resolution under the procedures in §§ 200.180–200.186.

(d) *Deferral pending resolution by another agency.* (1) If the designated official determines that the direct complaint does not meet the standards in paragraph (a) of this section, and if the complaint has been filed with and is pending before an LEA, State agency, or SEA, the designated official defers taking any action on the direct complaint pending resolution of the complaint by the LEA, State agency, or SEA.

(2) However, if the LEA, State agency, or SEA fails to resolve the complaint within the time specified in § 200.184 or § 200.187, the complainant may file with the designated official an amended direct complaint that specifically shows that failure.

(Sec. 184, 20 U.S.C. 2834)

§ 200.243 Appeals from final resolutions by SEAs.

(a) *Who may appeal.* Any person, agency, or organization that has filed an appeal or complaint with an SEA and is dissatisfied with the SEA's final resolution of that appeal or complaint under § 200.188 may appeal the SEA's final resolution to the Assistant Secretary for review.

(b) *When to file an appeal.* An appeal under this section must be postmarked within 30 days after the party that files the appeal receives a copy of the SEA's final resolution.

(c) *Where to file an appeal.* The appeal must be—

(1) Designated "Title I Appeal"; and

(2) Sent to the Assistant Secretary for Elementary and Secondary Education.

(d) *Contents of an appeal.* The appeal must—

(1) Be written and signed;

(2) Include a copy of the complaint, the resolution of the complaint, the appeal to the SEA, the SEA's final resolution, and any other documents that the appellant relies on in the appeal;

(3) Identify those parts of the SEA's final resolution with which the party that files the appeal disagrees and indicate why that party disagrees; and

(4) Indicate what remedy the party that files the appeal is seeking from the Assistant Secretary.

(Sec. 188, 20 U.S.C. 2815; Sec. 184, 20 U.S.C. 2834; Sec. 507 of Title V, 20 U.S.C. 3147)

§ 200.244 Preliminary review of appeals.

(a) *Review of appeals.* The Assistant Secretary designates an official of the Department to review an appeal filed under § 200.243 to determine whether the appeal meets the requirements in that section.

(b) *Dismissal of appeals.* (1) If the designated official determines that the appeal does not meet the requirements in § 200.243, the designated official notifies the appellant, the SEA, and any other agency or organization defending the appeal that the appeal is dismissed.

(2) Each notice of dismissal includes reasons why the designated official determined that the appeal did not meet the requirements in § 200.243.

(3) Dismissal does not preclude other efforts to investigate or resolve the concerns raised by the appeal, including submission of a revised appeal. However, if the appellant submits a revised appeal, the time limits in § 200.245 begin upon receipt of that revised appeal.

(c) Acceptance of appeals. If the designated official determines that the appeal meets the requirements of § 200.243, the designated official—

(1) Notifies the appellant, the SEA, and any other agency or organization defending the appeal that the appeal has been accepted for review; and

(2) Resolves the appeal under the procedures in § 200.245.

(Sec. 184, 20 U.S.C. 2834)

§ 200.245 The designated official's procedures for resolving direct complaints and appeals.

(a) *Gathering of information by the designated official.* If a direct complaint is accepted for review under § 200.242 or if an appeal is accepted for review under § 200.244, the designated official—

(1) Notifies the complainant or the appellant, the SEA, and any other agency or organization defending the complaint or appeal that each has 20 days from the date on which the notice is postmarked to submit any relevant written evidence or argument;

(2) Provides an opportunity for the complainant or the complainant's representative, or both, to present relevant oral evidence, including an opportunity to question the parties and their witnesses, if the designated official determines that this presentation is appropriate; and

(3) Conducts whatever research and investigations that the designated official considers to be appropriate. These may include an on-site investigation.

(b) *Resolution by the designated official.* (1) *Time period for resolution.* The designated offical issues a written resolution of each complaint or appeal within 60 days of receiving the complaint or appeal, unless there are exceptional circumstances that justify additional time. Examples of the types of factors that the designated official may consider in determining the existence of exceptional circumstances include—

(i) The need to conduct a major on-site investigation;

(ii) The need to conduct a comprehensive audit; or

(iii) The complexity of the issues raised by the complaint or appeal.

(2) *Contents of the resolution.* Each resolution that the designated official issues under this section includes—

(i) A statement of the resolution and the reasons for that resolution; and

(ii) Notice of the right of the complainant or appellant, the SEA, or any other agency or organization defending the complaint or appeal to appeal that resolution for review by the Assistant Secretary under §200.246.

(3) *Notice of the resolution.* Within 10 days of issuing a resolution to the complainant or appellant, the designated official sends a copy of the resolution to the complainant's or appellant's representative and, if appropriate, the LEA, the State agency, the SEA, the district advisory council, and project area and project school advisory councils.

(Sec. 184, 20 U.S.C. 2834)

§ 200.246 Administrative appeals from the designated official's resolution.

(a) *Who may file an administrative appeal.* Any complainant or appellant, or other party to a complaint or an appeal, who is dissatisfied with the designated official's resolution of that complaint or appeal under § 200.245 may file an administrative appeal with the Assistant Secretary.

(b) *When to file an administrative appeal.* The administrative appeal must be postmarked within 30 days after the party that files the appeal receives a copy of the designated official's resolution.

(c) *Where to file an administrative appeal.* The administrative appeal must be—

(1) Designated "Title I Administrative Appeal"; and

(2) Sent to the Assistant Secretary for Elementary and Secondary Education.

(d) *Contents of an administrative appeal.* The administrative appeal must—

(1) Be written and signed;

(2) Identify those parts of the designated official's resolution with which the party that files the appeal disagrees and indicate why that party disagrees; and

(3) Indicate what remedy the party who files the appeal is seeking from the Assistant Secretary.

(Sec. 184, 20 U.S.C 2834)

§ 200.247 Preliminary review of administrative appeals.

(a) *Review of administrative appeals.* The Assistant Secretary reviews an administrative appeal filed under § 200.246 to determine whether the appeal meets the requirements in that section.

(b) *Dismissal of administrative appeals.* (1) If the Assistant Secretary determines that the administrative appeal does not meet the requirements of § 200.246, the Assistant Secretary notifies the appellant, the SEA, and any other agency or organization defending the appeal that the administrative appeal is dismissed.

(2) Each notice of dismissal includes reasons by the Assistant Secretary determined that the administrative appeal did not meet the requirements of § 200.246.

(3) Dismissal does not preclude other efforts to investigate or resolve the concerns raised by the appeal, including submission of a revised appeal. However, if the appellant submits a revised appeal, the time limits in § 200.248 begin upon receipt of that revised appeal.

(c) *Acceptance of administrative appeals.* If the Assistant Secretary determines that the administrative appeal meets the requirements of § 200.246, the Assistant Secretary—

(1) Notifies the appellant, the SEA, and any other agency or organization defending the appeal that the administrative appeal has been accepted for review; and

(2) Resolves the administrative appeal under the procedures in § 200.246.

(Sec. 184, 20 U.S.C. 2834)

§ 200.248 The Assistant Secretary's procedures for resolving administrative appeals.

(a) *Procedures for considering the administrative appeal.* If an administrative appeal is accepted for review under § 200.247, the Assistant Secretary—

(1) Notifies the appellant, the SEA, and any other agency or organization defending the appeal that the appeal is accepted; and

(2) May provide the opportunity for additional arguments concerning the administrative appeal.

(b) *Resolution by the Assistant Secretary.* (1) *Time period for resolution.* (i) Unless exceptional circumstances exist, the Assistant Secretary issues a written resolution of an administrative appeal within 60 days.

(ii) Exceptional circumstances may include—

(A) The need to conduct a major on-site investigation;

(B) The need to conduct a comprehensive audit; or

(C) The need to gather additional information.

(2) *Contents of the resolution.* The resolution that the Assistant Secretary issues under this section includes a statement of the resolution and the reasons for the resolution.

(3) *Notice of the resolution.* Within 10 days of issuing a resolution to the appellant, the Assistant Secretary sends a copy of the resolution to the appellant's representative and, if appropriate, the LEA, the State agency, the SEA, the district advisory council, and project area and project school advisory councils.

(4) *Final action of the Department.* The Assistant Secretary's final resolution under paragraph (b) of this section is the Department's final action concerning the appeal.

(Sec. 184, 20 U.S.C. 2834)

§ 200.249 [Reserved]

Audits and Audit Resolution

§ 200.250 Audits by the Inspector General.

The Inspector General provides for audits of grants or subgrants made under Title I to determine, at a minimum—

(a) The fiscal integrity of the audited agency's financial transactions and reports; and

(b) The audited agency's compliance with applicable statutes, regulations, and terms and conditions of the grant or subgrant.

(Sec. 185(a), 20 U.S.C. 2835(a))

§ 200.251 Audit resolution procedures.

The Secretary's procedures for resolving findings and recommendations that result from audits conducted under § 200.250 provide for—

(a) Submission of a draft audit report by the auditors to the audited agency;

(b) Opportunity for the audited agency to comment to the auditors on the findings and recommendations in the draft audit report;

(c) Submission of the final audit report by the auditors to the audited agency;

(d) Opportunity for the Assistant Secretary, at his discretion, to request additional information from the audited agency;

(e) Issuance of final audit determinations by the Assistant Secretary to the audited agency in a final determination letter that—

(1) Identifies the improper expenditures;

(2) Indicates the reasons for the final audit determination in sufficient detail—for example, by referring to the relevant parts of a separate document such as the audit report—to allow the audited agency to respond in an appeal under paragraph (e)(3)(ii) of this section;

(3) Advises the audited agency that it shall—

(i) Repay the misspent funds to the department; or

(ii) Within 30 calendar days of receiving the final determination letter, file an appeal for review by the Education Appeal Board under the procedures in 34 CFR Part 78; and

(4) Is sent by certified mail with a return receipt requested; and

(f) Review by the Secretary of the Education Appeal Board's initial decision.

(Sec. 185(b), 20 U.S.C. 2835(b))

§ 200.252 Judicial review of audit resolutions.

If a State is dissatisfied with the Secretary's final action under § 200.251, the State may, within 60 days of receiving notice of that action, file a petition for review with the United States court of appeals for the circuit in which the State is located.

(Sec. 195, 20 U.S.C. 2951)

§§ 200.253–200.259 [Reserved]

Withholding of Payments

§ 200.260 Withholding of Title I payments.

(a) *General standard.* If the Secretary determines that an SEA is not in substantial compliance with the assurances it made in its application for Title I funds, the Secretary—

(1) Withholds further Title I payments, in whole or in part, under the procedures outlined in paragraph (b) of this section; or

(2) Enters into a compliance agreement with the SEA under §§ 200.270–200.275.

(b) *Secretary's procedures for withholding payments.* (1) Before initiating a proceeding to withhold Title I payments to an SEA, the Secretary determines, on a case-by-case basis, that the SEA is not in substantial compliance with the applicable Title I requirements.

(2) Before withholding Title I funds, the Secretary provides the SEA with—

(i) Written notice of the Secretary's intent to withhold funds. The written notice—

(A) States the reasons why the SEA is not in substantial compliance with the assurances in its application;

(B) Cites the Title I requirements that are the basis for the alleged failure to comply;

(C) Notifies the SEA of the opportunity for a hearing on the record; and

(D) Is sent by certified mail with a return receipt requested; and

(ii) The opportunity for a hearing on the record.

(3) (i) Following the hearing referred to in paragraph (b)(2)(ii) of this section, the hearing officer issues a decision that the hearing officer—

(A) Submits to the Secretary; and

(B) Sends to each party by certified mail with a return receipt requested;

(ii) Unless the Secretary, for good cause shown, modifies or sets aside that decision, in whole or in part, within 60 days after the SEA receives written notice of the decision, it becomes the final decision of the Department.

(iii) If the Secretary modifies or sets aside the hearing officer's decision, the

decision, as modified or set aside, becomes the final decision of the Department 60 days after the Secretary's action.

(4) If, under the procedures in this section or § 200.262, the SEA is not found to be in substantial compliance with the assurances in its application, the Secretary notifies the SEA that—

(i) Further Title I payments will not be made to the State;

(ii) The SEA shall limit Title I payments to those LEAs and State agencies that were not involved in the failure to comply; or

(iii) The SEA shall reduce Title I payments to particular LEAs or State agencies contributing to the SEA's noncompliance. In that case, the partial payments are subject to additional conditions that the Secretary considers appropriate in light of the noncompliance.

(5) If the Secretary does not enter into a compliance agreement with the SEA under §§ 200.270–200.275, the Secretary continues to withhold Title I payments until the Secretary determines that the SEA is in substantial compliance.

(Sec. 186(a), 20 U.S.C. 2836(a); Sec. 453(d) of GEPA, 20 U.S.C. 1234b(d))

§ 200.261 Suspension of Title I payments pending completion of withholding proceedings.

(a) The Secretary may suspend Title I payments to an SEA pending completion of a withholding action under § 200.260(b) if—

(1) The SEA is in substantial and continuing noncompliance with the assurances it made in its application for Title I funds; and

(2) The Secretary follows the procedures in paragraph (b) of this section.

(b) Before suspending Title I payments to an SEA, the Secretary provides the SEA with—

(1) Written notice of the intent to suspend payments during the course of the witholding proceedings. The notice—

(i) Indicates the reasons for the suspension;

(ii) Notifies the SEA that the suspension will be effective 10 days after the SEA receives the written notice, unless within those 10 days the SEA submits a written request to the Secretary for an opportunity to show cause why the suspension action should not be taken; and

(iii) Is sent by certified mail with a return receipt requested; and

(2) An opportunity to appear at a hearing to show cause why the proposed suspension action should not be taken, including an opportunity to present arguments concerning—

(i) The lack of necessity for the suspension of payments;

(ii) Possible factual errors in the Secretary's written notice of intent to withhold funds under § 200.260(b);

(iii) The nature of the violation charged in the written notice of intent to withhold; and

(iv) Hardship that may result from the proposed suspension.

(Sec. 186(a), 20 U.S.C. 2836(a); 34 CFR Part 78)

§ 200.262 Judicial review of withholding actions.

If an SEA is dissatisfied with the Secretary's final action under § 200.260(b), the SEA may, within 60 days after receiving notice of that action, file a petition for review with the United States court of appeals for the circuit in which the State is located.

(Sec. 195, 20 U.S.C. 2851)

§ 200.263 Notice to the public of the Secretary's withholding.

If the Secretary notifies an SEA that the Secretary is withholding Title I payments under § 200.260, the Secretary takes appropriate action to inform the public within that State of the withholding.

(Sec. 186(b), 20 U.S.C. 2836(b))

§§ 200.264–200.269 [Reserved]

Federal Compliance Agreements

§ 200.270 Use of a Federal compliance agreement.

(a) The Secretary may enter into a compliance agreement with an SEA instead of initiating or continuing a withholding action under § 200.260.

(b) The Secretary may enter into a compliance agreement—

(1) Before taking any action to begin a withholding action under § 200.260; or

(2) At any stage during a withholding action under § 200.260, including—

(i) Before providing the SEA with an opportunity for the hearing on the record that is required under § 200.260;

(ii) During the hearing on the record provided under § 200.260;

(iii) After a decision by the hearing officer or the Secretary under § 200.260 that the SEA is in substantial noncompliance with the assurances in its Title I application; or

(iv) During the course of a withholding of Title I funds by the Secretary.

(c) A compliance agreement entered into under this section—

(1) Applies only to current noncompliance;

(2) Relieves the SEA that enters into the agreement of any liability for repayment of funds that are spent by the SEA—

(i) In violation of a Title I requirement that is covered by the agreement; and

(ii) During the period of time that is covered by the agreement; and

(3) May be used to specify—

(i) The amount of funds that has been misspent by the SEA; and

(ii) A schedule for repaying those misspent funds.

(d) However, a compliance agreement entered into under this section may not be used to reduce or forgive liability for repaying funds that were misspent before the date on which the compliance agreement was entered into, including funds that were spent in violation of the maintenance of effort requirement in § 200.90.

(Sec. 186(c), 20 U.S.C. 2836(c))

§ 200.271 Contents of a Federal compliance agreement.

A compliance agreement that is entered into under § 200.270 must—

(a) Be a written agreement signed by an authorized representative of the SEA;

(b) Include a statement of each requirement that is covered by the agreement;

(c) Summarize the activity that is in violation of each requirement;

(d) Describe the steps that the SEA—and, if applicable, the LEA or State agency—agrees to take in order to come into full compliance with each requirement that is involved;

(e) Address all matters that formed the basis for the initiation of a withholding action under § 200.260, if the Secretary has begun a withholding action under that section;

(f) Consist of a single agreement or a series of agreements that, taken together, will result in full compliance with the Title I requirements involved; and

(g) Specify a time period, determined by the Secretary under § 200.272, during which the SEA—and, if applicable, the LEA or State agency—shall take steps that will result in full compliance.

(Sec. 186(c), 20 U.S.C. 2836(c))

§ 200.272 Time period for coming into compliance under a Federal compliance agreement.

(a) Except as provided in paragraphs (b) through (d) of this section, each compliance agreement entered into under § 200.270 must require steps that result in immediate full compliance with all Title I requirements. For purposes of this section, "immediate" means within 90 days after entering into the agreement.

(b) If an SEA that desires to enter into a compliance agreement under § 200.270

submits a written allegation that immediate full compliance is not feasible, the Secretary's designee holds a hearing concerning the feasibility of immediate full compliance and the time required to achieve full compliance.

(c) At each hearing conducted under paragraph (b) of this section—

(1) The SEA has the burden of showing that it is not feasible for the SEA to come into full compliance with all Title I requirements until a future date;

(2) Parents, their representatives, and other interested persons or organizations have an opportunity to participate.

(d) After a hearing has been conducted under paragraph (c) of this section, the Secretary may enter into a compliance agreement under § 200.270 that specifies a period of more than 90 days for the SEA to achieve full compliance with the Title I requirements involved if—

(1) Before entering into a compliance agreement that specifies a period of more than 90 days for the SEA's coming into compliance, the Secretary makes written findings that it is not genuinely feasible for the SEA to come into immediate compliance with the Title I requirements involved; and

(2) The compliance agreement specifies, for coming into full compliance with the Title I requirements involved, a period of time that the Secretary has determined to be reasonable.

(Sec. 186(c), 20 U.S.C. 2836(c))

§ 200.273 Duration of a Federal compliance agreement.

(a) Except as provided in paragraph (b) of this section, a compliance agreement entered into under § 200.270 remains in effect for the time period determined under § 200.272 and specified in the agreement for the SEA to come into full compliance.

(b) If the SEA that has entered into a compliance agreement under § 200.270 fails to comply with the terms of that agreement, the agreement expires immediately.

(Sec. 186(c), 20 U.S.C. 2836(c))

§ 200.274 Effect of expiration of a Federal compliance agreement.

(a) If a compliance agreement has expired under § 200.273, an SEA may not enter into another compliance agreement with the Secretary for any violations that were covered in the first compliance agreement.

(b) If a compliance agreement has expired under § 200.273(b) and the SEA continues to be out of compliance, the withholding procedures in § 200.260 apply. However, in taking any withholding action under § 200.260, the Secretary takes into account any partial compliance that was achieved by the SEA under the compliance agreement.

(Sec. 186(c), 20 U.S.C. 2836(c))

§ 200.275 Notice of a Federal compliance agreement.

(a) Within 15 days of entering into a compliance agreement under § 200.270, the Secretary sends a copy of the agreement to each organization or person that has filed a complaint with the Department concerning any noncompliance covered by that agreement.

(b) A compliance agreement that is entered into under § 200.270 is subject to disclosure under 5 U.S.C. 552.

(Sec. 186(c)(3), 20 U.S.C. 2836(c)(3))

§§ 200.276–200.279 [Reserved]

Cease and Desist Proceedings

§ 200.280 Procedures for issuing cease and desist orders.

(a) If the Secretary has reason to believe that a State or LEA is not in substantial compliance with any applicable Title I requirements, the Secretary may issue and serve upon the State or LEA a complaint that—

(1) States the charges indicating that the State or LEA is not in substantial compliance;

(2) Cites the requirements that are the basis for the alleged noncompliance; and

(3) Contains a notice of a hearing to be held before the Education Appeal Board at least 30 days after the agency receives the complaint.

(b) Each State or LEA that receives a complaint under paragraph (a) of this section has the right to appear before a Panel of the Education Appeal Board on the specified date to show cause why the Board should not, under the procedures in 34 CFR Part 78, issue an order that requires the State or LEA to cease and desist from the violation charged in the complaint.

(c) If, after the hearing referred to in paragraph (b) of this section, the Panel of the Education Appeal Board decides that the State or LEA has violated a legal requirement charged in the complaint, the Panel—

(1) Makes a written report stating its findings of fact; and

(2) Issues an order to cease and desist from the practice, policy or procedure that resulted in the violation.

(d) The report and order of the Education Appeal Board are final 60 days after the State or LEA receives copies of them unless the State or LEA files a petition for judicial review under § 200.281.

(Sec. 454 of GEPA, 20 U.S.C. 1234c; 34 CFR Part 78)

§ 200.281 Judicial review of cease and desist orders.

If a State or LEA is dissatisfied with the Education Appeal Board's final report and order under § 200.280, the State or LEA may, within 60 days after receiving copies of them, file a petition for review with the United States court of appeals for the circuit in which the State or LEA is located within that 60 day period.

(Sec. 455 of GEPA, 20 U.S.C. 1234d)

§ 200.282 Enforcement of cease and desist orders.

The Secretary may enforce the cease and desist order by—

(a) Withholding any portion of the Title I payments including payments for State administrative costs, to the State or LEA against which the final order has been issued; or

(b) Certifying the facts to the Attorney General who initiates appropriate proceedings to enforce the order.

(Sec. 454(e) of GEPA, 20 U.S.C. 1234(c)(e))

§§ 200.283–200.289 [Reserved]

The Secretary revises Part 201 of Title 34 of the Code of Federal Regulations to read as follows:

PART 201—FINANCIAL ASSISTANCE TO LOCAL EDUCATIONAL AGENCIES FOR CHILDREN WITH SPECIAL EDUCATIONAL NEEDS

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Authority: Sec. 101–198 of the Elementary and Secondary Education Act of 1965, as amended by Public Law 95–561 (20 U.S.C. 2701–2854), unless otherwise noted.

Subpart A—General

§ 201.1 Purpose of Title I grants to LEAs.

Under Title I of the Elementary and Secondary Education Act of 1965, as amended, the Secretary provides financial assistance to local educational agencies (LEAs) for projects designed to meet the special educational needs of—

(a) Educationally deprived children in areas with concentrations of children from low-income families; and

(b) Children in local institutions for neglected or delinquent children.

(Sec. 111, 20 U.S.C. 2711)

§ 201.2 Applicability of the regulations in Part 201.

The regulations in this part apply to projects for which the Secretary provides financial assistance to LEAs under Title I.

(Sec. 101–198, 20 U.S.C. 2701–2854)

201.3 Applicability of other statutes and regulations.

In addition to the regulations in this part, the following statutes and regulations apply to projects for which the Secretary provides financial assistance to LEAs under Title I:

(a) The Title I statute in 20 U.S.C. 2701 et seq.

(b) The Title I regulations in 34 CFR Part 200 that apply to all programs authorized under Title I.

(c) The General Education Provisions Act (GEPA) in 20 U.S.C. 1221 *et seq.*

(d) The Education Department General Administrative Regulations (EDGAR) in—

(1) 34 CFR Part 76 (State-Administered programs);

(2) 34 CFR Part 77 (General); and

(3) 34 CFR Part 78 (Education Appeal Board).

(Sec. 101–198, 20 U.S.C. 2701–2854; 20 U.S.C. 1221 *et seq.*; 34 CFR Parts 76, 77, 78)

201.4 Definitions.

(a) The following terms that are used in this part are defined in 45 CFR Part 200:

Applicant
Application
Assistant Secretary
Average daily attendance
Average daily membership
Average per pupil expenditure
Cease and desist
Children
Construction
County
Current expenditures
Department
Elementary school
Equipment
Fiscal Year
Free public education
Grant period
Local educational agency
Parent
Participating children
Preschool children
Project
Project period
Public
School facilities
Secondary school
Secretary
State
State agency
State educational agency
Suspension
Title I
Title IV
Title V
Withholding

(b) In addition to the definitions referred to in paragraph (a) of this section, the following definitions apply to this part:

"Educationally deprived children" means children whose educational attainment is below the level that is appropriate for children of their age.

"Eligible school" means a school in which a sufficiently high concentration of children from low-income families is enrolled so that, under the procedure in § 201.52, the school is eligible for services supported with Title I funds.

"Eligible school attendance area" means a school attendance area in which a sufficiently high concentration of children from low-income families resides so that, under the procedures in § 201.51, the school attendance area is eligible for services supported with Title I funds.

"Institution for delinquent children" means a public or private residential facility that is operated primarily for the care of at least 10 children who have been adjudicated delinquent or in need of supervision. The term also includes an adult correctional institution in which at least 10 children reside.

"Institution for neglected children" means a public or private residential facility—other than a foster home—that is operated primarily for the care of at least 10 children who have been committed to the institution—or voluntarily placed in the institution under applicable State law—because of the abandonment by, or neglect by, or death of, parents.

"Instructional staff"—

(1) Means staff members who provide instruction to children or who assist or supervise those staff members who provide instruction;

(2) Includes teachers, principals, consultants, supervisors of instruction, librarians, guidance, and psychological personnel; and

(3) Includes aides, clerical personnel, and other para-professionals who are employed to assist other instructional staff members providing instructional services.

"Participating school" means a "project school" as defined in this section.

"Project area" means a school attendance area in which a high concentration of children from low-income families resides, and that is selected by an LEA, under the procedures in § 201.61 and §§ 201.63–201.66, without regard to the locality of the project itself, as an area from which children are to be selected to participate in a Title I project.

"Project school" means an eligible school that is selected by an LEA, under the procedures in §§ 201.62–201.65, as a school in which children are to be selected to participate in a Title I project and to receive services supported with Title I funds.

"School attendance area" means, in relation to a particular public school, the geographical area in which the children who are normally served by that school reside. However, if a child's school attendance area cannot be determined on a geographical basis, the child is considered to be in the school attendance area of the school to which

the child is assigned or would be assigned if the child were not attending a private school or another public school on a voluntary basis.

(Sec. 101-198, 20 U.S.C. 2701-2854; Sec. 408(a)(1) of GEPA, 20 U.S.C. 1221e-3(a)(1))

§§ 201.5-201.9 [Reserved]

Subpart B—Allocation of Title I Funds for Grants to Local Educational Agencies

Basic Grants

§ 201.10 Eligibility of LEAs for basic grants.

(a) Each LEA in a State—other than Guam, American Samoa, the Virgin Islands, the Northern Mariana Islands, and the Trust Territory of the Pacific Islands—is eligible for a basic Title I grant for a fiscal year if—

(1) The Secretary determines, on the basis of satisfactory available data, that there are at least 10 children counted under section 111(c) (Children to be counted) of Title I in the school district of the LEA; or

(2) The Secretary does not have available satisfactory data on a school district basis, but the school district served by the LEA is located, in whole or in part, in a county in which the Secretary determines there are at least 10 children counted under section 111(c) of Title I.

(b) The Secretary allocates Title I funds appropriated under section 111(a)(1) (relating to authorized appropriations) of Title I among Guam, American Samoa, the Virgin Islands, the Northern Mariana Islands, and the Trust Territory of the Pacific Islands on the basis of their respective needs for Title I funds.

(Sec. 111(a), 20 U.S.C. 2711(a); Sec. 111(b), 20 U.S.C. 2711(b); Sec. 111(c), 20 U.S.C. 2711(c))

§ 201.11 Determination by the Secretary of basic grants.

(a) If satisfactory census data are available from the Department of Commerce, the Secretary determines the amount of the basic Title I grant that each LEA in a State—other than Guam, American Samoa, the Virgin Islands, the Northern Mariana Islands, and the Trust Territory of the Pacific Islands—is eligible to receive for a fiscal year under the method in sections 111(a)(2)(A) (relating to amounts when data are available) and 111(c) of Title I.

(b)(1) If satisfactory census data are not available from the Department of Commerce for LEAs, the Secretary determines the "county aggregate" amount of Title I basic grant funds that all LEAs in a county are eligible to receive under the method in sections 111(a)(2)(B) (relating to amounts when data are not available) and 111(c) of Title I.

(2) The "county aggregate" amount referred to in paragraph (b)(1) of this section includes an amount based on the number of children aged 5 through 17 who—under the criteria in section 111(c)(2)(B) (relating to determining numbers of children) of Title I—are living in institutions for neglected or delinquent children, or being supported in foster homes with public funds, but who are not counted under Subpart 3 of Part B (Programs for neglected or delinquent children operated by State agencies) of Title I for purposes of a grant to a State agency.

(c) If the funds appropriated by Congress for any fiscal year are not sufficient to pay the full amount that all LEAs are eligible to receive under Title I basic grants, the Secretary ratably reduces, using the procedures in section 193 (Adjustments where necessitated by appropriations) of Title I, the amount available to each LEA or county.

(Sec. 111, 20 U.S.C. 2711; Sec. 193, 20 U.S.C. 2843)

§ 201.12 Allocation of county aggregate amounts by SEAs.

Except as provided in § 201.13, an SEA shall allocate the county aggregate amounts, determined by the Secretary under § 201.11, by using the following procedures:

(a) *Allocations based on children in local institutions for neglected or delinquent children.* (1) Except as provided in paragraphs (a)(2) and (a)(4) of this section the SEA shall first allocate to a particular LEA that portion, if any, of the county aggregate amount that is based—

(i) On the number of children, aged 5 through 17, in the LEA's district who resided in a local institution for neglected or delinquent children—and were not counted under Subpart 3 of Part B (Programs for neglected or delinquent children operated by State agencies) of Title I—for at least 30 consecutive days, at least one of which was in the month of October of the preceding fiscal year; or

(ii) To the extent that the data referred to in paragraph (a)(1)(i) of this section are not available before January of the calendar year in which the Secretary's determination under § 201.11 is made, on the most recent reliable data available at the time of the determination.

(2) If the SEA determines that the LEA is unable or unwilling to provide for the special educational needs of the children referred to in paragraph (a)(1) of this section, the SEA shall—

(i) Reduce the LEA's allocation by the amount that is based on children in local institutions for neglected or delinquent children; and

(ii) Assign that portion of the LEA's grant to—

(A) The SEA if the SEA assumes educational responsibility for those children; or

(B) Another State or local public agency if that agency agrees to assume educational responsibility for those children.

(3) If no public agency is willing to assume educational responsibility for the children referred to in paragraph (a)(1) of this section, the SEA may not reallocate that portion of the LEA's grant that is based on children in local institutions for neglected or delinquent children to any other agency.

(4) If a local institution for neglected or delinquent children closes and the children are transferred to an institution in the school district of another LEA, the SEA shall adjust the allocations of the two LEAs to reflect that transfer.

(b) *Allocations based on the distribution of children from low-income families.* (1) *General rule.* After following the procedures in paragraph (a) of this section, the SEA shall allocate the remaining county aggregate amount to LEAs in the county on the basis of the best available data on the number of children from low-income families in the school districts of those LEAs.

(2) *Special circumstances.* The SEA shall adjust the allocations that it makes under paragraph (b)(1) of this section to reflect the following special circumstances:

(i) *LEAs in more than one county.* If a school district of an LEA overlaps a county boundary, the SEA shall make, on a proportionate basis, a separate allocation to that LEA from the county aggregate amount for each county in which that district is located provided the aggregate number of children in the LEA is 10 or more.

(ii) *LEAs serving children from another LEA.* If an LEA serves a substantial number of children from the school district of another LEA or serves different children within the same geographical area as another LEA, the SEA may adjust the allocations of those LEAs, among them, in a manner as it determines will best carry out the purposes of Title I.

(iii) *Changes in LEAs.* If an LEA's school district is merged or consolidated, or a portion of the district is transferred to another LEA, the SEA shall—

(A) Adjust the allocations of those LEAs to reflect the number of children from low-income families for whom

each surviving LEA is providing a free public education; or

(B) Permit an LEA that submitted a previously approved project application to carry out the approved project, by itself or in cooperation with another LEA, during the remainder of the fiscal year.

(iv) *Minimum allocation.* The SEA is not required to allocate to an LEA a basic grant of Title I funds generated by fewer than 10 children.

(Sec. 111, 20 U.S.C. 2711)

§ 201.13 Exceptions to county aggregate amounts.

(a) If a large number of LEAs overlap county boundaries, the SEA may apply to the Secretary for authority in any fiscal year to make, directly to LEAs without regard to the county aggregate amounts, the basic grant allocations under § 201.12 and the special incentive grant allocations under §§ 201.20–201.24.

(b) If the Secretary approves the SEA's request for a particular fiscal year under paragraph (a) of this section, the SEA shall provide assurances that it will—

(1) Make these allocations using the same factors as the Secretary uses in determining the amount of grants under section 111(a) (Grants—amount and eligibility) of Title I; and

(2) Establish procedures through which LEAs dissatisfied with the determinations made by the SEA may appeal directly to the Secretary for a final determination.

(Sec. 111(a)(3)(C), 20 U.S.C. 2711(a)(3)(C))

§ 201.14 Distribution of an additional amount based on the survey of income and education.

(a) If the amount appropriated for basic grants for any other fiscal year exceeds the amount appropriated for basic grants in fiscal year 1979, the Secretary—under section 111(a)(3)(D) (relating to allocating amounts over the amounts available for fiscal year 1979)—allocates one half of the excess amount to SEAs on the basis of data from the 1975 survey of income and education conducted by the Bureau of the Census.

(b) An SEA shall allocate to LEAs within the State any additional amounts available under paragraph (a) of this section in exact proportion to the amounts allocated to the LEAs for Title I basic grants.

(Sec. 111(a)(3)(D), 20 U.S.C. 2711(a)(3)(D))

§ 201.15 Allocation of Title I funds among project areas and project schools.

(a) Except as provided in paragraph (c) of this section, an LEA shall allocate Title I funds among project areas and project schools on the basis of the number and needs of the children to be served, as determined under §§ 201.100–201.105.

(b) In meeting the requirement in paragraph (a) of this section, the LEA shall use common criteria to—

(1) Determine the number and needs of the children to be served; and

(2) Allocate Title I funds to each project area or project school.

(c) An LEA may adjust the allocation for a project area or project school, if that adjustment is necessary to meet the fiscal requirements in § 201.51(d) concerning project areas or project schools for which the concentration of children from low-income families is at least 25 percent.

(Sec. 124(e), 20 U.S.C. 2734(e))

§§ 201.16–201.19 [Reserved]

Special Incentive Grants

§ 201.20 Eligibility for special incentive grants.

(a) An LEA that is eligible to receive a payment under section 111 (relating to basic grants) of Title I for any fiscal year shall be entitled to an additional grant under section 116 (relating to special incentive grants) of Title I if the LEA is located in a State that has in effect for that fiscal year a State program meeting the following requirements:

(1) The program is similar to Title I in the following characteristics:

(i) It provides financial assistance to meet the special educational needs of educationally deprived children.

(ii) All participating children are educationally deprived.

(iii) The SEA bases the program on performance objectives related to educational achievement and evaluates the program in a manner consistent with those performance objectives.

(iv) The program provides supplementary services designed to meet the special educational needs of participating children.

(v) The LEA keeps whatever records are necessary to ensure that the requirements in paragraphs (a)(1)(i) through (a)(1)(iv) of this section are met and provides access to those records for the purpose of verification.

(vi) The SEA monitors performance under the program to ensure that all requirements are met.

(2) Not less than 50 percent of the funds expended under the State program in any LEA in the State, in the fiscal year preceding the fiscal year in which the State is to receive a payment for an additional grant under section 116 of Title I, is expended in school attendance areas that have high concentrations of children from low-income families of such LEAs.

(b)(1) A State that desires to have its LEAs be eligible to receive an additional grant shall develop a system for determining—

(i) The data required by paragraph (a)(2) of this section; and

(ii) The amount of State funds expended under the State program referred to in § 201.20(a).

(2) The State shall submit to the Secretary information on the system developed in paragraph (b)(1) of this section.

(Sec. 116(a), 20 U.S.C. 2721(a); Sec. 116(b), 20 U.S.C. 2721(b))

§ 201.21 State entitlements.

(a) Except as provided in paragraph (c) of this section, the aggregate amount of special incentive grants to which the LEAs in a State are entitled for any fiscal year is 50 percent of the amount of State funds expended, in the most recent fiscal year for which data are available, under a State program meeting the requirements in § 201.20(a).

(b)(1) If the sums appropriated for a fiscal year are not sufficient to pay the total amounts to which all LEAs are entitled under this section, the SEA shall ratably reduce the amounts to be paid those agencies to the extent necessary to bring the payments within the limits of the amounts appropriated.

(2) If additional funds become available for making payments under this section for that year, the SEA shall increase the reduced amounts referred to in paragraph (b)(1) of this section on the same basis that they were reduced.

(c) The aggregate amount of special incentive grants that the LEAs in a State are eligible to receive for any fiscal year may not exceed 10 percent of the aggregate amount that LEAs in the State are eligible to receive for basic grants under section 111 of Title I for that fiscal year.

(d)(1) If, in any fiscal year, the expenditures made by a State under a program meeting the requirements of § 201.20(a) equal or exceed expenditures under that program in the preceding fiscal year, the amount paid to the State under this section is not less than the amount paid to the State under this section in the preceding fiscal year.

(2)(i) The total of any increases required under paragraph (d)(1) of this section is derived by proportionately reducing the amount paid to States that were not entitled to a payment under this section in the preceding fiscal year.

(ii) However, the amount paid to a State under this section for any fiscal year does not exceed the maximum amount to which the State is entitled for that fiscal year for basic grants under section 111 of Title I.

(Sec. 116(b), 20 U.S.C. 2721(b); Sec. 116(c), 20 U.S.C. 2721(c); Sec 116(d), 20 U.S.C. 2721(d))

§ 201.22 LEA entitlements.

For any fiscal year, (a) the amount of the additional grant for each LEA in a State under § 201.21 shall bear the same ratio to (b) the amount allocated to the State under § 201.21 as (c) the amount allocated to the LEA for that fiscal year under section 111 (referring to basic grants) of Title I bears to (d) the aggregate amount allocated to all LEAs in the State for that fiscal year under section 111.

(Sec. 116(b)(2), 20 U.S.C. 2721(b)(2))

§ 201.23 Method of making special incentive grants.

The Secretary includes that amount of special incentive grant funds that a State is entitled to receive during a particular fiscal year, as determined under § 201.21, in the amount paid to that State for that fiscal year under section 191 (Payment methods) of Title I.

(Sec. 116(c)(2), 20 U.S.C. 2721(c)(2))

§ 201.24 Use of special incentive grant funds.

An LEA that receives special incentive grant funds shall use those funds—

To carry out activities described in an approved project application for Title I funds that the LEA submits under section 121 (relating to the local program application for a basic grant) of Title I; and

(b) In accordance with the program requirements in Subpart 3 (Program requirements and applications) of Title I.

(Sec. 116(c)(4), 20 U.S.C. 2721(c)(4))

§§ 201.25–201.29 [Reserved]

Concentration Grants

§ 201.30 States entitled to receive concentration grant funds.

Section 117(b) (relating to eligibility for and amount of special concentration grants) of Title I provides that a State—other than Guam, American Samoa, the Virgin Islands, the Northern Mariana Islands, and the Trust Territory of the Pacific Islands—that is eligible for a grant under Title I for any fiscal year is entitled to concentration grants funds from the amount appropriated for that fiscal year under section 117(d) (relating to appropriations for concentration grants) of Title I.

(Sec. 117(b)(1), 20 U.S.C. 2722(b)(1))

§ 201.31 Amount of concentration grant funds that each State receives.

(a) The Secretary determines the amount of concentration grant funds a State receives under section 117 (relating to the amount of the concentration grant) of Title I.

(b) However, each State that is entitled to concentration grant funds receives at least one-quarter of one percent of the total funds appropriated for the fiscal year under section 117(d) of Title I.

(c) The Secretary determines the minimum amount of concentration grant funds that each State is entitled to receive before setting aside any amounts for State administrative costs and evaluation.

(Sec. 117(b)(1), 20 U.S.C. 2722(b)(1); Sec. 117(b)(2), 20 U.S.C. 2722(b)(2); Sec. 117(b)(3), 20 U.S.C. 2722(b)(3))

§ 201.32 Allocation of concentration grant funds to counties within a State in which at least one county meets the statutory eligibility criteria.

(a) *General rule.* (1) Except as provided in paragraph (b) of this section, concentration grant funds that are awarded to a State in which at least one county meets the eligibility criteria in section 117(b)(1) (relating to the eligibility for a concentration grant) of Title I are allocated to the eligible counties within the State by the Secretary in accordance with the formula in section 117(b)(3) of Title I.

(2) Under the formula referred to in paragraph (a)(1) of this section, a county that meets the statutory eligibility criteria and is located in a State that receives the minimum allocation of concentration grant funds is allocated the same proportion of the total concentration grant appropriation as an eligible county that is located in a State that receives more than the minimum allocation.

(b) *Exceptions.* (1) Except as provided in paragraph (b)(3) of this section, after all the eligible counties in a State that received the minimum grant have been allocated the amount of concentration grant funds to which they are entitled under the statutory formula, the Secretary, according to an approved allocation plan submitted by the SEA, allocates to counties within that State any concentration grant funds that remain unallocated.

(2) The allocation plan referred to in paragraph (b)(1) of this section must—

(i) Be submitted to the Secretary by the SEA according to the procedures described in § 201.34; and

(ii) Have the approval of the Secretary, using the standards described in § 201.35.

(3)(i) If the SEA does not submit an allocation plan, or the Secretary disapproves the plan that has been submitted and notifies the SEA of the reasons for disapproving the plan, the Secretary allocates the remaining concentration grant funds within the State to those counties that are receiving a basic grant under Part A of Title I.

(ii) The Secretary makes this allocation according to the basic grant allocation method in section 111(a) (relating to the amount of basic grants) of Title I.

(Sec. 117(a), 20 U.S.C. 2722(a); Sec. 117(b), 20 U.S.C. 2722(b))

§ 201.33 Allocation of concentration grant funds to counties within a State in which no county meets the statutory eligibility criteria.

(a) *General rule.* (1) Except as provided in paragraph (b) of this section, if no county in a State meets the eligibility criteria in section 117(b)(1) of Title I, the Secretary, according to an approved allocation plan submitted by the SEA, allocates to counties within the State concentration grant funds that are awarded to that State.

(2) The allocation plan referred to in paragraph (a)(1) of this section must—

(i) Be submitted to the Secretary by the SEA according to procedures described in § 201.34; and

(ii) Have the approval of the Secretary, using the standards described in § 201.35

(b) *Exception.* (1) If the SEA does not submit an allocation plan or if the Secretary disapproves the plan that has been submitted an notifies the SEA of the reasons for disapproving the plan, the Secretary allocates the concentration grant funds within the State to those counties that are receiving a basic grant under Part A of Title I.

(2) The Secretary makes this allocation on the basis of the basic grant allocation method in section 111(a) of Title I.

(Sec. 117(a), 20 U.S.C. 2722(a); Sec. 117(b), 20 U.S.C. 2722(b))

§ 201.34 Submission of allocation plans.

(a) *States that may submit an allocation plan.* (1) If a State's concentration grant funds remain unallocated after all the eligible counties in that State have been allocated the amount of concentration grant funds to which they are entitled under the statutory formula, the State may submit, for the Secretary's consideration, a plan for allocation of these unallocated funds to eligible counties within the State.

(2) Only counties that are eligible to receive basic grants under Part A of Title I may receive concentration grant funds.

(b) *Submission through SEA.* A State that chooses to submit an allocation plan shall submit the plan through its SEA.

(c) *Elements of an allocation plan.* In order to be assured of consideration by the Secretary, an allocation plan must include—

(1)(i) A list of all counties in the State that meet the eligibility criteria in section 117(b)(1) of Title I; and

(ii) The amount of concentration grant funds that each of those counties receives under the formula in section 117(b)(3) of Title I;

(2)(i) A list of all counties in the State; and

(ii) The amount of concentration grant funds, if any, that each county would receive under the proposed allocation plan; and

(3) A description of the proposed method for allocating the concentration grant funds to the counties in the State. This description must include—

(i) The reasons why this method is being proposed;

(ii) How this method meets the statutory purpose of providing concentration grant funds to those counties with especially high concentrations of children from low-income families; and

(iii) The reasons why this method is reasonable in terms of local circumstances including the distribution of children from low-income families within counties.

(Sec. 117(a), 20 U.S.C. 2722(a); Sec. 117(b), 20 U.S.C. 2722(b))

§ 201.36 Secretary's standards for approval of allocation plans.

In deciding whether to approve a proposed allocation plan, the Secretary considers the extent to which the proposed plan—

(a) Meets the requirements in § 201.34;

(b) Would result in an allocation of concentration grant funds that meets the statutory purpose of providing concentration grant funds to those counties with especially high concentrations of children from low-income families; and

(c) Is reasonable in terms of local circumstances, including the distribution of children from low-income families within counties.

(Sec. 117(a), 20 U.S.C. 2722(a); Sec. 117(b), 20 U.S.C. 2722(b))

§ 201.35 Method of awarding concentration grant funds.

(a) The Secretary includes the amount of concentration grant funds that a State is entitled to receive during a particular fiscal year, as determined under § 201.31, in the amount paid to that State for that fiscal year under section 191 (Payment methods) of Title I.

(b) Under § 201.32 or § 201.33, the Secretary allocates those concentration grant funds to eligible counties within a State that receives concentration grant funds.

(c)(1) The SEA shall distribute concentration grant funds—

(i) Among the LEAs in each county that is entitled to receive those funds; and

(ii) On the basis of the current distribution within each of those counties of children aged 5 through 17.

(2) In making this distribution, the State shall use either of the following procedures, as applicable:

(i) Each LEA in which 20 percent or more of the children are counted as being from low-income families under the Title I basic grant formula receives a portion of the county's concentration grant allocation based on the number of children counted under that basic grant formula.

(ii) Each LEA in which less than 20 percent of the children are counted as being from low-income families under the basic grant formula receives a portion of the county's concentration grant allocation based on (A) the number of children counted under the Title I basic grant formula multiplied by (B) a fraction in which the numerator is the percentage of children in the LEA that are counted under the basic grant formula and the denominator is 20.

(Sec. 117(b)(5), 20 U.S.C. 2722(b)(5); Sec. 117(c)(1), 20 U.S.C. 2722(c)(1))

§ 201.37 Used of concentration grant funds.

An LEA that receives concentration grant funds under section 117 of Title I shall use those funds—

(a) To carry out activities that are described in an approved project application for Title I funds that the LEA submits under section 121 (relating to the local project application for a basic grant) of Title I; and

(b) In accordance with the Title I program requirements in Subpart 3 of Part A of Title I.

(Sec. 117(c)(2), 20 U.S.C. 2722(c)(2))

Reallocation

§201.38 Reallocation of Title I funds by SEAs.

(a) By February 1 of each fiscal year, an SEA shall—

(1) Determine which, if any, LEAs have received allocations of Title I funds that exceed the amount required to—

(i) Operate their Title I projects effectively during the current fiscal year; and

(ii) Provide a prudent and justifiable reserve of Title I funds for operating their Title I projects effectively during the next fiscal year.

(2) Consider, in making the determination required in paragraph (a)(1) of this section, factors such as:

(i) The number of children being served;

(ii) The special educational needs of the children being served;

(iii) The rate of inflation;

(iv) Increases in the salaries of Title I staff; and

(v) The future availability of Title I funds.

(3) Notify each LEA identified under paragraph (a)(1) of this section and the district advisory council established for the LEA of—

(i) The amount of that LEA's Title I funds that the SEA is considering reallocating to other LEAs under paragraph (b) of this section; and

(ii) The opportunity for that LEA to amend its Title I application to include approvable proposals for use of the excess funds.

(b)(1) If the LEA fails to properly amend its Title I application in response to the opportunity provided under paragraph (a) of this section, the SEA shall, by March 31 of the current fiscal year, reallocate the excess Title I funds to LEAs that have the greatest need for the purpose of, where appropriate, redressing inequities inherent in, or mitigating hardships caused by, the application of the allocation provisions in section 111(a) of Title I as a result of factors like population shifts and changing economic circumstances.

(2) The SEA shall notify the Secretary of those reallocations.

(Sec. 111, 20 U.S.C. 2711; Sec. 193, 20 U.S.C. 2843)

§ 201.39 Reallocation of Title I funds by the Secretary.

If excess amounts of Title I funds remain after an SEA has completed the process in § 201.38, the Secretary distributes those excess funds among other States on the basis of need.

(Sec. 111, 20 U.S.C. 2711; Sec. 193, 20 U.S.C. 2843)

Subpart C—Applying to the State for Title I Funds

§ 201.40 LEAs that may receive Title I assistance.

An LEA that is allocated Title I funds for a fiscal year under Subpart B of this part may receive those funds through a grant from the SEA, if the LEA has on file with the SEA a current Title I project application that—

(a) Describes the projects to be conducted with the Title I funds; and

(b) Has been approved by the SEA.

(Sec. 121; 20 U.S.C. 2731)

§ 201.41 Submission of Title I project applications to the SEA.

(a) *Frequency of submission.* An LEA shall submit a Title I project application to the SEA for a period of not more than three fiscal years, including the first fiscal year for which a grant is made under that application.

(b) *Contents of the application.* The Title I project application that is submitted under this subpart by the LEA must include—

(1) The information requested in the application forms and instructions provided by the SEA; and

(2) Any other information the SEA needs in order to determine whether the application meets the standards for approval in 34 CFR 200.110.

(c) *Amendments to the application.* The LEA shall update and amend its Title I project application as required by 34 CFR 200.113.

(Sec. 121, 20 U.S.C. 2731)

§§ 201.42-201.49 [Reserved]

Subpart D—Designating Schools and School Attendance Areas for Title I Projects

Identifying Eligible Schools and School Attendance Areas

§ 201.50 Overview of the regulations in this subpart.

(a) Sections 122 and 123 of Title I require an LEA to concentrate the services funded under Title I on the educationally deprived children residing in school attendance areas with high concentrations of children from low-income families.

(b) The regulations in this subpart contain requirements for—

(1) Identifying school attendance areas and schools as being eligible to receive Title I assistance; and

(2) Selecting those eligible school attendance areas and schools that are to be project areas and project schools to receive Title I assistance.

(Sec. 122, 20 U.S.C. 2732; Sec. 123, 20 U.S.C. 2733)

§ 201.51 Identifying eligible school attendance areas.

(a) *General rule.* Except as provided in §§ 201.53–201.56, and LEA may use Title I funds only in school attendance areas that the LEA has identified—using the procedures in this section—as having sufficiently high concentrations of children from low-income families to be eligible for Title I services.

(b) *Measures of low-income status.* (1) For purposes of making the eligibility determinations discussed in this subpart, the LEA shall select and use the best available measure—which may be a composite of several indicators—for determining what is a low-income family.

(2) Examples of the best available measures of low-income status may include—

(i) Data on children from families receiving Aid to Families with Dependent Children (AFDC); or

(ii) Data on families whose children are eligible to receive benefits under the National School Lunch Program.

(3) Regardless of the measure of low-income status that the LEA selects, the LEA shall use that same measure for purposes of determining the eligibility of all its school attendance areas and schools under this subpart.

(c) *Use of grade span groupings.* (1) The LEA may identify its eligible school attendance areas and eligible schools by—

(i) Applying the methods in paragraph (d) of this section to each school attendance area and school; or

(ii) Groupings its school attendance areas and schools according to the grade spans by those schools and applying the methods described in paragraph (d) of this section to each attendance area and school within each grouping.

(2) If an LEA uses grade span groupings for purposes of this subpart, the groupings must be consistent with the grade spans served by the LEA's schools. For example, common groupings include grades K–6, 7–9, and 10–12.

(3) The LEA may not use more grade span groupings for purposes of this subpart than the number of groupings permitted for the purpose of determining comparability under § 201.117.

(d) *Methods for identifying eligible school attendance areas.* (1) *Percentage method.* (i) *General rule.* A school attendance area is eligible to receive Title I assistance if the percentage of children from low-income families in that school attendance area is at least equal to the percentage of children from low-income families in the LEA as a whole.

(ii) *25 percent rule.* (A) Even if the percentage of children from low-income families in the LEA as a whole exceeds 25 percent, the LEA may—subject to the conditions in paragraph (d)(1)(ii)(B) of this section—identify as eligible each school attendance area in which at least 25 percent of the children are from low-income families.

(B) An LEA may use the 25 percent rule in paragraph (d)(1)(ii)(A) of this section only if the aggregate per pupil amount of Title I funds and funds from a State program that meets the requirements in section 131(c) (State and local compensatory education programs similar to Title I programs) of Title I that are spent during the current fiscal year—in each school attendance area of the LEA in which Title I projects were carried out during the preceding fiscal year—equal or exceed the aggregate per pupil amounts spent from those sources in each of those areas in the preceding fiscal year.

(C) *Calculation of 25 percent rule.* In order to determine whether it has met the requirements for using the 25 percent rule in paragraph (d)(1)(ii)(B) of this section, the LEA may take the following steps:

(*1*) *Step 1.* For each school attendance area of the LEA in which Title I projects were carried out during the preceding fiscal year, the LEA lists—

(*i*) The aggregate amount of funds the LEA is spending in the attendance area during the current fiscal year for both Title I and for a State compensatory education program meeting the requirements of section 131(c) (State and local compensatory education programs similar to Title I programs) of Title I; and

(*ii*) The total number of children receiving services under either Title I or the State compensatory education program during the current fiscal year. (For purposes of this section, if a child receives services under more than one program, the child shall be counted as receiving services under each program.)

(*2*) *Step 2.* The LEA divides the number of children listed under (b) of Step 1 into the aggregate amount of funds listed under (a) of Step 1.

(*3*) *Step 3.* For each school attendance area referred to in Step 1, the LEA lists—

(*i*) The aggregate amount of funds the LEA spent during the preceding fiscal year for both Title I and for a State compensatory education program meeting the requirements of section 131(c) of Title I; and

(*ii*) The total number of children who received services during the preceding fiscal year from either Title I or the State compensatory education program.

(*4*) *Step 4.* The LEA divides the number of children listed under (b) of Step 3 into the aggregate amount of funds listed under (a) of Step 3.

(*5*) *Step 5.* The LEA compares the amount calculated in Step 2 with the amount calculated in Step 4. If the amount calculated in Step 2 equals or exceeds the amount calculated in Step 4, the LEA meets the requirements in paragraph (d)(1)(ii)(B) of this section for using the 25 percent rule.

(iii) *Special requirement if grade span groupings are used.* If the LEA groups its

school attendance areas by grade spans under § 201.51(c), the LEA shall determine the percentage of children from low-income families in the LEA as a whole for each grade span grouping. The LEA may use the 25 percent rule in paragraph (d)(1)(ii)(A) of this section for any or all of those groupings.

(2) *Numerical method.* (i) *General rule.* A school attendance area is eligible to receive Title I assistance if the number of children from low-income families in that school attendance area is at least equal to the average number of children from low-income families per school attendance area in the LEA as a whole.

(ii) *Special requirement if grade span groupings are used.* If the LEA groups its school attendance areas by grade spans under § 201.51(c), the LEA shall determine an average number of children from low-income families per school attendance area in the LEA as a whole for each grade span grouping.

(3) *Combination of percentage and numerical method.* (i) Subject to the requirement in paragraph (d)(3)(ii) of this section, the LEA may identify some school attendance areas as eligible by using the percentage method and some by using the numerical method.

(ii) The total number of school attendance areas that the LEA indentifies as eligible by using the combination method may not be more than the maximum number of school attendance areas, or school attendance areas plus schools, that the LEA would have identified if it has used one of the methods in paragraph (d)(1) or (d)(2) of this section.

(4) *Special rule if there is no wide variance in percentages of children from low-income families.* An LEA may identify all of the school attendance areas in the district or in a grade span grouping as eligible to receive Title I assistance if the variation between (i) the percentage of children from low-income families in the school attendance area with the highest concentration of children from low-income families and (ii) the percentage of children from low-income families in the school attendance area with the lowest concentration of children from low-income families is not more than the greater of—

(A) Five percent; or

(B) One-third of the percentage of children from low-income families in the LEA's district as a whole.

(Sec. 122(a)(1), 20 U.S.C. 2732(a)(1))

§ 201.52 Identifying eligible schools.

(a) *Method for identifying eligible schools.* An LEA may identify a school as an eligible school if that school meets one or more of the conditions in paragraph (b) of this section and—

(1) Is located in an ineligible school attendance area; or

(2) Serves children from more than one school attendance area.

(b) *Conditions.* The LEA may identify a school as eligible under paragraph (a) of this section if the school meets one or more of the following conditions:

(1) The percentage of children from low-income families in ADA at the school is at least substantially the same as the percentage of children from low-income families in the LEA as a whole.

(2) The percentage of children from low-income families in ADA at the school is at least equal to 25 percent of the total number of children in ADA at the school and—

(i) The LEA has identified one or more school attendance areas as eligible under § 201.51(d)(1)(ii); and

(ii) The schools identified as eligible schools under the procedures in this paragraph meet the requirements in § 201.51(d)(1)(ii).

(3) The number of children from low-income families in ADA at the school is at least substantially the same as the average number of children from low-income families per school attendance area in the LEA as a whole.

(c) *Grade span groupings.* The LEA may use grade span groupings to identify eligible schools, if those groupings comply with the requirements in § 201.51(c).

(Sec. 122(b), 20 U.S.C. 2732(b))

§§ 201.53–201.59 [Reserved]

Selecting Schools and School Attendance Areas for Title I Projects

§ 201.60 Overview of the process of selecting school attendance areas and schools for Title I projects.

(a) After an LEA determines which school attendance areas and schools are eligible under the procedures in §§ 201.51–201.52, the LEA determines how many eligible areas and schools it will select as Title I project areas and project schools to receive Title I services during a fiscal year. The LEA makes this determination on the basis of—

(1) The amount of Title I funds available; and

(2) The amount of Title I funds required to—

(i) Operate a Title I project that is of sufficient size, scope, and quality to give reasonable promise of substantial progress toward meeting the special educational needs of the children to be served, as required by 34 CFR 200.51; and

(ii) Provide Title I services to all children who satisfy the criteria developed under §§ 201.70–201.71 for selecting children to be served.

(b) In selecting school attendance areas and schools for Title I project areas and project schools under the procedures in §§ 201.60–201.66, the LEA shall use the same measure of low-income status as it used in identifying eligible school attendance areas and eligible schools under the procedures in §§ 201.50–201.52.

(c) If Title I funds are not sufficient to serve all educationally deprived children in all eligible school attendance areas and schools, the LEA—using the methods in §§ 201.60–201.66—shall select which of the eligible school attendance areas and schools will receive Title I services.

(Sec. 122, 20 U.S.C. 2732)

§ 201.61 Selecting project areas by ranking the eligible school attendance areas according to their concentration of children from low-income families.

(a) If the LEA does not select all eligible school attendance areas as Title I project areas, the LEA shall—

(1) Annually rank its eligible attendance areas from highest to lowest, according to their relative degree of concentration of children from low-income families; and

(2) Except as provided in §§ 201.63–201.66, select eligible school attendance areas as Title I project areas, in rank order, beginning with the highest ranking eligible school attendance area, until the LEA lacks sufficient Title I funds to serve any additional school attendance areas.

(b) If an LEA used grade span groupings that complied with § 201.51(c) for purposes of identifying eligible school attendance areas and schools, it may continue to use those groupings for purposes of ranking and selecting school attendance areas and schools.

(Sec. 122(a)(1), 20 U.S.C. 2732(a)(1))

§ 201.62 Selecting project schools from among the schools that the LEA identified as eligible schools.

(a) If an LEA identifies a school or schools as eligible under the procedure in § 201.52, the LEA may use the methods in § 201.61 to rank its eligible schools.

(b) After ranking its eligible schools using the methods in § 201.61, the LEA shall—

(1) Consolidate into a single ranking its rankings of eligible schools with its rankings of eligible school attendance areas; and

(2) Except as provided in §§ 201.63–201.66, select eligible schools and school attendance areas to receive Title I services, in rank order, beginning with

the highest ranking eligible school or school attendance area until the LEA lacks sufficient funds to serve any additional schools or school attendance areas.

(Sec. 122, 20 U.S.C. 2732)

§ 201.63 Selecting a limited number of lower ranked eligible school attendance areas or eligible schools having substantially greater incidences of educational deprivation than higher ranked eligible school attendance areas or eligible schools.

After ranking its eligible school attendance areas and eligible schools, according to the procedures in §§ 201.61–201.62, an LEA may select—as a project area or project school—a lower ranked eligible school attendance area or eligible school, instead of a higher ranked eligible school attendance area or eligible school, if—

(a) The lower ranked eligible school attendance area or eligible school has an incidence of educationally deprived children—as determined under § 201.66(a)(2)—that is 1.2 times the percentage or number of educationally deprived children in the higher ranked eligible school attendance area or eligible school; and

(b) The LEA that uses the alternative selection procedures in this section does not provide Title I services in more eligible school attendance areas or eligible schools than the number that would have received Title I services under the ranking and selection procedures in §§ 201.61–201.62.

(Sec. 122(d), 20 U.S.C. 2732(d))

§ 201.64 Continuation of eligibility for certain school attendance areas or schools.

(a) Except as provided in paragraphs (c) and (d) of this section, an LEA may select a school attendance area or a school to receive Title I services—even though that area or school does not qualify under the procedures in §§ 201.61–201.63—if the area or school qualified and was selected as a Title I project area or project school in either of the two fiscal years preceding the fiscal year for which the funds will be granted.

(b) The eligibility conferred by paragraph (a) of this section is valid for not more than two fiscal years.

(c) If a school attendance area or school that was selected as a project area or project school in either of the two preceding years is substantially different from what it was during those years, the LEA may not select that school attendance area or school as a project area or project school on the basis of this section.

(d) If the LEA changes its method of ranking eligible school attendance areas and schools from the method it used during the preceding fiscal year, the LEA may not use the provisions in this section to provide Title I services in more school attendance areas or schools than the number that could have received Title I services under the method of ranking used by the LEA during the current fiscal year.

(Sec. 122(c), 20 U.S.C. 2732(c))

§ 201.65 Skipping higher-ranked school attendance areas and schools receiving services of the same nature and scope from non-Federal sources.

(a) Subject to the requirements in this section, an LEA may skip an eligible school attendance area or school that ranks higher under the procedures in §§ 201.61–201.62 and select a lower-ranked eligible attendance area or school to be a project area or project school to receive Title I services. The LEA may do this if the higher-ranked school attendance area or school is already receiving, from non-Federal funds, services of the same nature and scope as the services that would otherwise be provided with Title I funds.

(b) As used in paragraph (a) of this section, the term "services of the same nature and scope" means non-federally funded services that—

(1) Meet the requirements in 34 CFR 200.51 concerning size, scope, and quality;

(2) Are provided under a special program that meets the requirements in section 131(c) (State and local compensatory education programs similar to Title I programs) of Title I; and

(3) When measured on a per pupil basis by an objective measure such as per pupil expenditures, are provided at a level that is at least equal to the level of services that would otherwise be provided with Title I funds.

(c) If an LEA skips an eligible attendance area under this section, the LEA shall—

(1) Ensure that the eligible attendance area that is skipped receives State and locally funded services comparable to the State and locally funded services provided to ineligible school attendance areas in the LEA, as required by §§ 201.112–201.123; and

(2) Comply with section 122(e) of Title I which contains requirements concerning services that must be provided to children attending private schools.

(Sec. 122(e), 20 U.S.C. 2732(e))

§ 201.66 Selecting a limited number of project areas through the use of alternative rankings of school attendance areas according to their concentration of children from low-income families and the incidence of educational deprivation.

(a) Subject to the conditions in paragraph (d) of this section, an LEA may rank all its school attendance areas according to both—

(1) Their relative degree of concentration of children from low-income families, as required by §§ 201.61–201.62; and

(2) Their relative incidence of educational deprivation. The incidence of educational deprivation is determined by the percentage or number of children in each school attendance area or school that are identified as educationally deprived through the use of objective measures of educational deprivation—such as standardized achievement tests or other objective tests—that the LEA uniformly applies in all of the school attendance areas.

(b) Except as provided in paragraph (c) of this section, the LEA shall select school attendance areas to be project areas, in rank order according to their relative degree of concentration of children from low-income families, as required by §§ 201.61–201.62.

(c) The LEA may select, as a Title I project area, a school attendance area that ranks lower than another school attendance area on the basis of its relative concentration of children from low-income families if—

(1) The lower-ranking school attendance area has an incidence of educationally deprived children, as determined under paragraph (a)(2) of this section, that is 1.2 times the percentage or number of educationally deprived children in the higher-ranked school attendance area; and

(2) The LEA that uses this alternative ranking and selection procedure does not provide Title I services in more school attendance areas than the number that would have received Title I services under the procedures in §§ 201.61–201.62.

(d) (1) An LEA that desires to use the alternative ranking procedures in this section for selecting school attendance areas shall, with the prior consent of the Title I district advisory council, apply to the SEA for permission to use the alternative ranking procedures.

(2) The SEA shall approve an application that is filed under paragraph (d)(1) of this section only if the SEA determines that the LEA's use of the alternative ranking procedures will not substantially impair the delivery of compensatory education to educationally deprived children from

low-income families in the school attendance areas and schools that were selected to receive Title I services under the procedures in §§ 201.61–201.62.

(3) For the purpose of making the determination referred to in paragraph (d)(2) of this section, the following terms are defined:

(i) The term "not substantially impair the delivery"—

(A) Means that the total number of children from low-income families in the school attendance areas selected for Title I services under the alternative ranking procedures in this section is not less than 90 percent of the number of children from low-income families in the school attendance areas and schools that otherwise would be selected to receive Title I services under the procedures in §§ 201.61–201.62; or

(B) Is determined by an alternative standard developed by the SEA and approved by the Secretary as a more accurate measure.

(ii) The term "compensatory education" means Title I services and services provided under State compensatory education programs that meet the requirements of section 131(c) (State and local compensatory education programs similar to Title I programs) of Title I.

(e) If an LEA uses the alternative ranking procedure in this section, and provides Title I services in one or more school attendance areas that would not have been eligible under the ranking procedures in § 201.61, none of the school attendance areas that are designated as eligible under the alternative ranking—but not served—may be considered to be eligible school attendance areas under 34 CFR Parts 200 or 201.

(Sec. 122(a)(2), 20 U.S.C. 2732(a)(2))

§§ 201.67–201.69 [Reserved]

Subpart E—Identifying and Selecting Children To Be Served

§ 201.70 General rules for identifying eligible children and selecting children to be served.

Except as provided in §§ 201.71–201.72, an LEA shall use Title I funds to serve children who—

(a) Reside in school attendance areas that the LEA selected as project areas or attend schools that the LEA selected as project schools;

(b) Are identified by the current annual assessment of educational needs, conducted by the LEA under §§ 201.100–201.105, as educationally deprived children; and

(c) Are identified and selected by the LEA, under the procedures in §§ 201.101–201.103, as currently having the greatest need of special assistance.

(Sec. 123(a), 20 U.S.C. 2733(a))

§ 201.71 Special rules for identifying and selecting children to be served.

(a) *Continuation of eligibility for educationally deprived children who are no longer in greatest need of special assistance.* An LEA may use Title I funds, during the current fiscal year, to serve children not currently in greatest need of special assistance, as required in § 201.70(c), if those children—

(1) Were in greatest need of special assistance in any previous fiscal year under the criteria that were used by the LEA for that year;

(2) Are currently in a school attendance area that the LEA selected as a project area or attending a school that the LEA selected as a project school under §§ 201.60–201.66; and

(3) Are identified, by the current annual assessment of educational need conducted by the LEA under §§ 201.100–201.105, as educationally deprived children.

(b) *Continuation of eligibility for educationally deprived children who are transferred to school attendance areas or schools that are not selected as project areas or project schools.* (1) If it meets the conditions in paragraph (b)(2) of this section, an LEA may use Title I funds during the current fiscal year to continue to serve children—

(i) Whom the LEA identified as eligible children under § 201.101 and selected to serve under § 201.103; and

(ii) Who begin to participate in the LEA's Title I project; but

(iii) Who, during the same school year, are transferred—either voluntarily or involuntarily—to a school attendance area or school that is not receiving Title I services under §§ 201.60–201.66.

(2) At the LEA's discretion, the children referred to in paragraph (b)(1) of this section may continue to participate in the LEA's Title I project for the duration of the current school year, which may include a summer school program.

(c) *Skipping children determined to be in greatest need of special assistance but who are receiving services of the same nature and scope paid from non-Federal sources.* (1) If the educationally deprived children in greatest need of special assistance—as determined by an LEA under § 201.103—are already receiving, from non-Federal funds, services of the same nature and scope as the services that would otherwise be provided with Title I funds, the LEA—

(i) May decide not to provide Title I services to those children; and

(ii) May select other educationally deprived children in the project areas or project schools to receive the Title I services.

(2) As used in paragraph (c)(1) of this section, the term "services of the same nature and scope" means non-federally funded services that—

(i) Meet the requirements in 34 CFR 200.51 concerning size, scope and quality;

(ii) Are provided under a special program that meets the requirements in section 131(c) (State and local compensatory education programs similar to Title I programs) of Title I; and

(iii) When measured on a per pupil basis by an objective measure such as per pupil expenditures, are provided at a level that is at least equal to the level of services that would otherwise be provided with Title I funds.

(Sec. 123(b), 20 U.S.C. 2733(b); Sec. 123(c), 20 U.S.C. 2733(c); Sec. 123(d), 20 U.S.C. 2733(d))

(d) *Infrequent participation by a limited number of children who are not in greatest need of assistance or who have not been identified as educationally deprived.* An LEA may provide, on an incidental basis, a particular Title I service to children who have not been selected to participate in the LEA's Title I project under §§ 201.70–201.71 and §§ 201.101–201.103, if—

(1) The Title I service is designed to meet the special educational needs of children who have been selected under §§ 201.70–201.71 and § 201.103 and is focused on those children;

(2) It is impractical to exclude the children who have not been selected to participate in the LEA's Title I project from the particular Title I service, at the time that the service is provided;

(3) The children who have not been selected are in the same grade level as the children who have been selected;

(4) The inclusion in the group being served of the children who have not been selected does not—

(i) Decrease the effectiveness or quality of the Title I service received by the children who have been selected;

(ii) Increase the cost of providing the service; or

(iii) Result in the exclusion of children who have been selected and would otherwise receive the Title I service;

(5) The LEA indicates in its project application—

(i) The estimated number of children who have not been selected who may receive a particular Title I service;

(ii) The reasons why the inclusion of these children who have not been selected would not decrease the quality

of Title I services received by the children who have been selected; and

(iii) The reasons why the inclusion of these children who have not been selected would not increase the cost of providing the service; and

(6) The number of children in each school of the LEA who have not been selected but who will receive a Title I service does not constitute more than 5 percent of the total number of children who are receiving that particular Title I service in that school.

(Sec. 101–198, 20 U.S.C. 2701–2854; Sec. 403(a)(1) of GEPA, 20 U.S.C. 1221e–3(a)(1))

§ 201.72 Use of Title I funds for a schoolwide project.

(a) *Eligibility of a school for a schoolwide project.* In order to upgrade the entire educational program in a school, an LEA may select that school for a schoolwide project during a fiscal year if—

(1) The school serves a school attendance area that the LEA has identified under § 201.51 as eligible to receive Title I services during that fiscal year;

(2) At least 75 percent of the children in ADA at the school are from low-income families, as determined by using the measure of low income that the LEA uses during the fiscal year to identify eligible school attendance areas under § 201.51;

(3) The LEA develops for the school a plan that meets the requirements in § 201.73 and is approved by the SEA; and

(4) The LEA meets the financial requirements in § 201.74.

(b) *Effect of selection of a school for a schoolwide project.* For each school that is selected for a schoolwide project in compliance with the requirements in paragraph (a) of this section, the LEA is not required to—

(1) Comply with the requirements in section 124(f) (Coordination with other programs) and 173 (Recordkeeping, fiscal control, and fund accounting) of Title I and 34 CFR 200.42 and 200.140, concerning the commingling of Title I funds with funds available for regular programs;

(2) Comply with the requirements in sections 123 (Children to be served) and 124(b) (Assessment of educational need) of Title I and §§ 201.70–201.71 and §§ 201.101–201.103, concerning the identification and selection of particular children to participate in Title I projects; and

(3) Demonstrate that the particular *services* paid for with Title I funds supplement the *services* regularly provided in that school. (However, *see* § 201.74(d), which requires that Title I *funds supplement the amount of non-Federal funds* that are provided to the school).

(Sec. 133, 20 U.S.C. 2753)

§ 201.73 Required plan for each school selected for a schoolwide project.

(a) *Development and approval of the plan.* (1) An LEA may select a school for a schoolwide project only if the LEA develops for that school a plan that meets the requirements in paragraph (b) of this section and has been approved by the SEA.

(2) The SEA shall approve the plan referred to in paragraph (a)(1) of this section if the plan meets the requirements in paragraph (b) of this section.

(b) *Required plans.* The plan referred to in paragraph (a) of this section must—

(1) Provide for a comprehensive assessment of the educational needs of all students in the school—in particular the special needs of educationally deprived children;

(2) Provide for an instructional program designed to meet the special needs of all students in the school;

(3) Be developed with the involvement of those individuals who will be involved in carrying out the plan, including parents, teachers, teacher aides, administrators, and secondary students if the plan relates to a secondary school;

(4) Provide for periodic consultation among the individuals referred to in paragraph (b)(3) of this section concerning the educational progress of all students in the school;

(5) Be approved by the project area advisory council that was established under §§ 201.155–201.157 for the school attendance area served by the school;

(6) Provide for appropriate training to enable teachers and teacher aides to carry out the plan effectively;

(7) Include procedures that the LEA will use to evaluate the effectiveness of the schoolwide project and that will involve in the evaluation the participation of the individuals referred to in paragraph (b)(3) of this section; and

(8) Include opportunities for periodic improvements in the plan based on the results of the evaluations referred to in paragraph (b)(7) of this section.

(Sec. 133(b), 20 U.S.C. 2753(b); Sec. 133(c), 20 U.S.C. 2753(c))

§ 201.74 Financial requirements for a schoolwide project.

An LEA that selects a school for a schoolwide project under §§ 201.72–201.73 shall meet the following financial requirements:

(a) *Equitable distribution of Title I funds for educationally deprived children.* In each school selected for a schoolwide project, the LEA shall provide, per educationally deprived child served in that school, an amount of Title I funds that is at least equal to the amount of title I funds that the LEA provides per educationally deprived child served in schools, if any, that serve project areas.

(b) *Special supplemental State and local funds required.* In each school selected for a schoolwide project, the LEA shall provide, per child served by the schoolwide project in that school who is not educationally deprived, an amount of special supplementary State and local funds that is at least equal to the amount of Title I funds that the LEA provides per educationally deprived child served in that school.

(c) *Maintenance of State and local effort.* During the fiscal year in which the plan approved under § 201.73 is carried out, the LEA shall, in each school selected for a schoolwide project, spend per child an amount of State and local funds—excluding amounts spent under a State compensatory education program—that is at least equal to the amount of State and local funds that the LEA spent per child in that school during the preceding fiscal year.

(d) *Title I funds must supplement non-Federal funds that would otherwise be provided to the school.* In order to meet the requirements in section 128(c) (Federal funds to supplement, not supplant regular non-Federal funds) of Title I, 34 CFR 200.92, and §§ 201.130–201.143, each school that is selected for a schoolwide project must receive all non-Federal funds that it would have received had it not been selected for a schoolwide project.

(Sec. 133(b), 20 U.S.C. 2753(b))

§ 201.75 Serving children in local institutions for neglected or delinquent children.

(a) An LEA whose allocation under § 201.12 is based in part on the number of children residing within the LEA in local institutions for neglected or delinquent children—as defined in § 201.4(b)—shall provide Title I services to meet the special educational needs of children currently residing in those institutions.

(b) In providing the services referred to in paragraph (a) of this section, the LEA shall comply with all requirements in the Title I statute and 34 CFR Parts 200 and 201, except for the requirements contained in the following subparts of Part 201 and the statutory provisions on which they are based:

(1) Subpart D—Designating Schools and School Attendance Areas for Title I Projects.

(2) Subpart E—Identifying and Selecting Children To Be Served (except for the requirements in this section).

(3) Subpart F—Participation of Children Enrolled in Private Schools (except for the prohibition concerning noninstructional duties in § 201.82).

(4) Subpart G—Needs Assessment.

(5) Subpart I—Parental Involvement.

(6) Subpart J—Evaluations by Local Educational Agencies.

(c) The LEA may provide the services referred to in paragraph (a) of this section at the local institution or at any location under the LEA's administration and control.

(d) The LEA that is required to provide the services referred to in paragraph (a) of this section shall include the following information in its application for Title I funds:

(1) The number of children to be served.

(2) A description of its methods for assessing the special educational needs of institutionalized children.

(3) A description of the special educational needs of those children.

(4) A description of the services that will be provided to meet those special educational needs.

(5) A description of its performance objectives and plans for evaluating the effectiveness of the project.

(e) The LEA shall, in reports required by the SEA under 34 CFR 200.161, include specific information on the services provided and the effectiveness of those services in meeting the special educational needs of the institutionalized children.

(Sec. 111, 20 U.S.C. 2711)

§§ 201.76–201.79 [Reserved]

Subpart F—Participation of Children Enrolled in Private Schools

General Requirements

§ 201.80 Required opportunity for participation of private school children in Title I projects.

(a) An LEA shall meet the requirements for participation of students enrolled in private schools contained in Subpart F of 34 CFR Part 76, and the additional requirements contained in §§ 201.81–201.82 and §§ 201.90–201.97.

(b) In fulfilling the requirements referred to in paragraph (a) of this section, the LEA shall comply with—

(1) Section 122 (Designating school attendance areas) of Title I and §§ 201.60–201.66, concerning the selection of school attendance areas and schools for Title I projects.

(2) Section 123 (Children to be served) of Title I and §§ 201.70–201.71, concerning the selection of children to be served by Title I projects;

(3) Section 124(a) (Purpose of program) of Title I, describing the purpose of Title I projects;

(4) Section 124(b) (Assessment of educational need) of Title I and §§ 201.100–201.105, containing requirements for the assessment of educational needs;

(5) Section 124(d) (Sufficient size, scope, and quality) of Title I and 34 CFR 200.51, containing requirements concerning the size, scope, and quality of Title I projects;

(6) Section 124(l) (Training of educational aides) of Title I and 34 CFR 200.60, containing requirements for the training of education aides; and

(7) Section 128(c) (Federal funds to supplement, not supplant regular non-Federal funds) of Title I and §§ 201.130–201.135 requiring the use of Title I funds to supplement, not supplant non-Federal funds that would otherwise be available.

(Sec. 130(a), 20 U.S.C. 2740(a))

§ 201.81 Determining the eligibility of private school children.

(a) Title 34 CFR Part 76.651(a)(2) covers the responsibility of SEAs and LEAs to provide services to eligible private school children. Eligible students under Part 201 include educationally deprived children who reside in a project area selected under §§ 201.60–201.61 or §§ 201.63–201.66.

(b) An LEA shall adopt procedures for identifying and selecting for participation in a Title I project those private school children who satisfy criteria identical or comparable to those adopted by the LEA for public school children under §§ 201.101–201.103.

(c) If it is impractical for an LEA to conduct Title I projects for educationally deprived children from the project area who are enrolled in private schools located in other LEAs, the LEA may arrange with the other LEAs to provide Title I services for those children.

(Sec. 130(a), 20 U.S.C. 2740(a))

§ 201.82 Prohibition concerning noninstructional duties.

Limitations on the use of personnel paid with program funds are contained in 34 CFR 76.650–76.660. In addition, Title I personnel who provide services in private schools may not perform the noninstructional duties permitted under 34 CFR 200.61.

(Sec. 130(a), 20 U.S.C. 2740(a); Sec. 1004 of ESEA, 20 U.S.C. 3384)

§§ 201.83–201.89 [Reserved]

By-Pass Provisions

Note.—These by-pass provisions refer to "equitable services" which means the same as "comparable benefits" in 34 CFR 76.654.

§ 201.90 General standard for by-pass actions.

(a) Except as provided in paragraph (b) of this section, the Secretary by-passes an LEA responsible for providing Title I services to educationally deprived children in private schools if—

(1) The Secretary determines that the LEA has substantially failed to provide for the participation of these private school children on an equitable basis; or

(2) The LEA is prohibited by law from providing for this participation.

(b) The Secretary may decide not to implement a by-pass if—

(1) The number of private school children in the LEA who would participate is fewer than 10; and

(2) The by-pass would result in the wasteful and extravagant expenditure of Title I funds.

(Sec. 130(b), 20 U.S.C. 2740(b))

§ 201.91 Secretary's procedures for by-pass actions.

Before taking any final by-pass action under § 201.95, the Secretary provides the LEA and SEA with—

(a) Written notice of the Secretary's intent to by-pass the LEA. This notice—

(1) Indicates the reasons for the by-pass;

(2) Advises the LEA and SEA that, within 45 days, they may—

(i) Submit written objections to the proposed by-pass; and

(ii) Request in writing the opportunity for a hearing to show cause why the by-pass should not be implemented; and

(3) Is sent by certified mail with a return receipt requested; and

(b) An opportunity to appear at a hearing before the Secretary or the Secretary's designee to show cause why the by-pass should not be implemented.

(Sec. 130(b)(4)(A), 20 U.S.C. 2740(b)(4)(A))

Note.—Sections 201.92–201.93 governing show cause hearings for by-pass actions will be published separately as proposed regulations.

§ 201.94 Judicial review of by-pass actions.

If an LEA or SEA is dissatisfied with the Secretary's final action after a proceeding under §§ 201.91–201.93, it may, within 60 days after receiving notice of that action, file a petition for review with the United States court of appeals for the circuit in which the State is located.

(Sec. 130(b)(4)(B), 20 U.S.C. 2740(b)(4)(B))

§ 201.96 Effect of a by-pass action.

If, under the procedures in §§ 201.90–201.94, an LEA is found to have substantially failed to provide or is prohibited from providing for the participation of private school children on an equitable basis, the Secretary—

(a) Waives the LEA's responsibility for providing the Title I services required under §§ 201.80–201.82;

(b) Arranges for Title I services that meet the requirements in §§ 201.80–201.82; and

(c) Deducts the cost of these services, including the administrative cost of arranging for these services, from the Title I allocation of the LEAs in which the private school children reside or from the SEA, if the Secretary decides this deduction is appropriate.

(Sec. 130(b), 20 U.S.C. 2740(b))

§ 201.98 Withholding funds pending final resolution of a by-pass action.

Pending the final resolution of an investigation or complaint that could result in a by-pass action, the Secretary may withhold from the allocation of the affected SEA or LEA the amount the Secretary estimates is necessary to pay the cost of the services referred to in § 201.95.

(Sec. 130(b)(3)(B), 20 U.S.C. 2740(b)(3)(B))

§ 201.97 Continuation of the by-pass until the LEA complies.

Any by-pass action by the Secretary continues until the Secretary determines that there will no longer by any failure or inability on the part of the LEA that is being by-passed to meet the requirements of §§ 201.80–201.82.

(Sec. 130(b)(3)(C), 20 U.S.C. 2740(b)(3)(C))

§§ 201.98–201.99 [Reserved]

Subpart G—Needs Assessment

§ 201.100 Purpose of the required assessment of educational need.

An LEA may receive Title I assistance only if it conducts an annual assessment of educational need, consistent with §§ 201.101–201.103, that generates data from which the LEA shall—

(a) Identify educationally deprived children in all eligible attendance areas and eligible schools;

(b) Identify the general instructional areas on which the project will focus;

(c) Identify educationally deprived children in the greatest need of special assistance in the instructional areas selected by the LEA; and

(d) Determine, with sufficient specificity to result in the development of highly effective projects, the special educational needs of children who are selected to participate.

(Sec. 124(b), 20 U.S.C. 2734(b); H. Rept. 1137, 95th Cong., 2d Sess. 23 (1978))

§ 201.101 Identification of educationally deprived children.

Using existing and—to the extent possible—objective data, an LEA shall identify educationally deprived children in—

(a) All school attendance areas that are eligible to receive Title I assistance under § 201.51; and

(b) All schools that are eligible to be project schools under § 201.52.

(Sec. 124(b), 20 U.S.C. 2734(b))

§ 201.102 Identification of general instructional areas and needs.

An LEA shall identify the general instructional areas on which the project will focus, including—

(a) The grade levels to be served; and

(b) The types of educational needs to be addressed.

(Sec. 124(b), 20 U.S.C. 2734(b); H. Rept. 1137, 95th Cong., 2d Sess. 23 (1978))

§ 201.103 Selection of children to participate in a project.

(a) After completing the procedures in §§ 201.101–201.102 an LEA shall use specified criteria and—to the extent possible—objective data to select first for participation in a project—

(1) Those educationally deprived children who are in the greatest need of assistance in the instructional areas identified under § 201.102; or

(2) Those children who were in greatest need of assistance in a previous year and are still educationally deprived.

(b) In selecting children, an LEA must also meet the supplement, not supplant requirements in §§ 201.130–201.143.

(c) The LEA may use Title I funds to obtain the objective data referred to in paragraph (a) of this section, but it may not use Title I funds for the cost of identifying children under § 201.101.

(Sec. 124(b), 20 U.S.C. 2734(b); H. Rept. 1137, 95th Cong., 2d Sess. 24 (1978))

§ 201.104 Determination of the special educational needs of participating children.

After selecting children for participation in a Title I project, according to the provisions in § 201.103, an LEA shall use specified criteria and—to the extent possible—objective data to—

(a) Identify in detail the precise educational needs of the children selected to participate in the project;

(b) Determine whether certain special educational needs are best addressed through noninstructional support services; and

(c) Identify, to the extent possible, factors that have contributed to the educational deprivation of the children selected to participate.

(Sec. 124(b), 20 U.S.C. 2734(b))

§ 201.105 Establishment of educational objectives and instructional strategies.

(a) Based on the results of the procedures in §§ 201.101–201.104, an LEA shall develop specific—

(1) Educational objectives for its Title I project; and

(2) Types of services and instructional strategies to achieve those objectives.

(b) An LEA is not required to use any particular instructional strategy in its Title I project.

(Sec. 124(b), 20 U.S.C. 2734(b))

§§ 201.106–201.109 [Reserved]

Subpart H—Fiscal Requirements

Maintenance of Effort

§ 201.110 Maintenance of effort requirement.

An LEA must maintain fiscal effort as required by section 126(a) (Maintenance of effort) of Title I and 34 CFR 200.90, unless the LEA receives a waiver from the Secretary under 34 CFR 200.91.

(Sec. 126(a), 20 U.S.C. 2736(a))

Excess Costs

§ 201.111 Excess costs requirement.

An LEA shall use Title I funds only for excess costs, as required by section 126(b) (Excess costs) of Title I and 34 CFR 200.93–200.95.

(Sec. 126(b), 20 U.S.C. 2736(b))

Comparability

§ 201.112 Basic standards for determining comparability of services.

(a) Except as provided in paragraph (b) of this section and in the exclusions in § 201.116, an LEA may receive Title I funds only if it uses State and local funds in schools serving project areas and in school attendance areas that have been skipped under § 201.65 to provide services that, taken as a whole, are at least comparable to services being provided in school attendance areas in the LEA that are not receiving Title I assistance.

(b) If the LEA selects all its school attendance areas as project areas, the LEA may receive Title I funds only if it uses State and local funds—except those excluded under § 201.116—to provide services that, taken as a whole, are substantially comparable in each school serving a project area.

(Sec. 126(c), 20 U.S.C. 2736(c); (Sec. 122(c), 20 U.S.C. 2732(c)))

§ 201.113 Submission of comparability reports.

(a) An LEA, except one described in paragraph (b) of this section, shall submit to its SEA on or before December 1 of each fiscal year a report concerning its compliance with the criteria for determining comparability in § 201.118.

(b) Except as provided in paragraph (c) of this section, the following types of LEAs are not required to submit the report referred to in paragraph (a) of this section:

(1) An LEA that receives at least 95 percent of its educational funds from Federal sources.

(2) An LEA that operates only one school serving children in the grade levels at which Title I services are provided.

(3) An LEA that—

(i) Was not required, as of November 1, 1978, to file a report concerning comparability; and

(ii) Does not have any grade span groupings or size groupings under § 201.51 that include both project areas and nonproject areas.

(c) The Secretary may require an LEA that qualifies for an exemption under paragraph (b)(3) of this section to submit the report referred to in paragraph (a) of this section, if the Secretary has reason to question whether the LEA is in compliance with the comparability requirements in §§ 201.112–201.122.

(d) An LEA that is currently relieved of the obligation to file a comparability report because it qualifies for an exemption under paragraph (b)(3) of this section must still—

(1) Comply with the comparability requirements in §§ 201.112–201.122; and

(2) Maintain records that demonstrate that the LEA is in compliance with those comparability requirements.

(Sec. 125(e), 20 U.S.C. 2736(e))

§ 201.114 Data to be included in a comparability report.

(a) An LEA that is required to submit a comparability report under § 201.113 shall submit a report that—

(1) Is in the form prescribed by the SEA;

(2) Contains the information that the SEA needs to make the comparability determinations required under § 201.116; and

(3) Includes the data required under paragraph (b) and (c) of this section.

(b)(1) If the LEA has both project area schools and nonproject area schools, the LEA's comparability report must include the data described in paragraph (c) of this section—

(i) For each school serving a project area or school attendance area that has been skipped under § 201.65, unless the school is exempt under paragraph (d) of this section, and

(ii) On a combined basis for all other schools—that is, nonproject area schools—serving corresponding grades.

(2) If all schools in the LEA serve project areas, the LEA's comparability report must include the data described in paragraph (c) of this section—

(i) For each school serving a project area, unless the school is exempt under paragraph (d) of this section; and

(ii) On a combined basis for those schools serving project areas with the lowest percentages or numbers of children from low-income families as determined under § 201.116(b).

(c) Except as provided in § 201.116, the LEA shall include the following data for each school and combination of schools as required by paragraph (b)(1) or (b)(2) of this section:

(1)(i) The number of children actually enrolled (less than full-time students must be counted on a full-time equivalency basis); or

(ii) If State or local law specifies that different levels of State or local support be provided to certain categories of children, age groupings, or grade levels and if the SEA approves, the number of children enrolled weighted by multiplying (A) the actual number of children enrolled by (B) the rate specified for each category of children, age grouping or grade level.

(2) The number of instructional staff (determined on a full-time equivalency basis), as defined in § 201.4 who are regularly assigned to the school or schools and paid with State and local funds.

(3)(i) The total amount of the annual salaries of the instructional staff (determined on a full-time equivalency basis) minus (ii) the amount of those salaries based on length of service.

(4)(i) The number of children enrolled, as reported under paragraph (c)(1) of this section, divided by (ii) the number of instructional staff, as reported under paragraph (c)(2) of this section.

(5)(i) The amount of the annual salaries for instructional staff, as reported under paragraph (c)(3) of this section, divided by (ii) the number of children enrolled, as reported under paragraph (c)(1) of this section.

(d) LEA is not required to include in its comparability report a school with an enrollment of 100 or fewer children, if the LEA submits an assurance to the SEA that it will allocate its staff to that school without regard to the availability of Title I funds.

(Sec. 125(e), 20 U.S.C. 2736(e))

§ 201.115 The date on which the data included in the comparability report must be collected.

The LEA shall collect the data required under § 201.114 as of the date specified by the SEA. In any case, that date may not be later than November 1 of each year.

(Sec. 125(e), 20 U.S.C. 2736(e))

§ 201.116 Criteria for determining comparability of services.

(a) *Criteria that apply if some schools serve project areas and other schools serve school attendance areas that do not receive Title I assistance.* An LEA meets the comparability requirements in § 201.112(a) if the SEA properly determines, for schools serving corresponding grade levels as provided under § 201.117, that—

(1) The average number of children enrolled per instructional staff member for each school serving a project area or school attendance area that has been skipped under § 201.65 is not more than 105 percent of the average number of children enrolled per instructional staff member in schools serving school attendance areas in the LEA that are not receiving Title I assistance and were not skipped under § 201.65; and

(2) The average per child expenditure of State and local funds for instructional staff in each school serving a project area or school attendance area that has been skipped under § 201.65 is not less than 95 percent of the average per child expenditure of State and local funds for instructional staff in schools serving school attendance areas in the LEA that are not receiving Title I assistance and were not skipped under § 201.65.

(b) *Criteria that apply if all schools serve project areas.* The LEA meets the comparability requirement in § 201.112(b) if, for corresponding grade levels as provided under § 201.117, both of the following conditions prevail:

(1) In each school serving a project area, the average number of children enrolled per instructional staff member is not more than 105 percent of the average number of children enrolled per instructional staff member in the group of schools serving those project areas with the lowest percentages or numbers of children from low-income families. This group of schools may not include more than one-half of all schools serving project areas.

(2) In each school serving a project area, the average per child expenditure of State and local funds for instructional staff is not less than 95 percent of the average per child expenditure of State and local funds for instructional staff in the group of schools serving those project areas with the lowest

percentages or numbers of children from low-income families. This group of schools may not include more than one-half of all schools serving project areas.

(Sec. 128(e), 20 U.S.C. 2736(e))

§ 201.117 Grouping schools by corresponding grade levels.

(a) For the purpose of demonstrating compliance with the comparability requirements in §§ 201.112–201.116, an LEA shall—subject to paragraphs (b), (c), and (d) of this section—group all of its schools by corresponding grade levels in up to three groups.

(b) If the LEA has schools that serve eight or more grades above kindergarten, the LEA may consider those schools to be a separate group in addition to the groups determined under paragraph (a) of this section.

(c)(1) Except as provided in paragraphs (c)(2) and (c)(3) of this section, if one school has an enrollment for a particular grade span that is at least two times that of another school, the LEA may divide—providing it can justify its division under paragraph (c)(4) of this section—the schools in that span into two groups:

(i) One group for the schools with the larger enrollments.

(ii) One group for the schools with the smaller enrollments.

(2) An LEA that has schools with enrollments of 100 or fewer students shall exclude those schools in making a determination of the size of the smallest school.

(3) An LEA may not use the procedure in paragraph (c)(1) of this section to divide a school into two groups if that division would have the effect of exempting any school from compliance with the comparability requirements. However, if this restriction requires an LEA to compare a school with an enrollment for a particular grade span of at least two times that of the school with which it is being compared, the LEA may, with approval of the SEA, weight the enrollments in one or both schools to provide for a more equitable comparison as long as such weighting is consistent with State standards and practices.

(4) In justifying the division permitted in paragraph (c)(1) of this section, the LEA or SEA shall indicate why the different sizes of the schools require different expenditures or pupil-teacher ratios.

(d) Except as provided in paragraphs (b) and (c) of this section, in grouping its schools as required by paragraph (a) of this section, an LEA shall meet the following requirements:

(1) An LEA serving seven or fewer grade levels above kindergarten is limited to one group.

(2) An LEA serving eight or nine grade levels above kindergarten is limited to two groups.

(3) An LEA serving any levels from grades 6 through 12, but only those levels, is limited to two groups if the LEA serves five or more grade levels, and to one group if the LEA serves four or fewer grade levels.

(4) If a school serves grades in more than one group, the LEA shall include that school—

(i) In the group with which the school has the most grade levels in common; or

(ii) In the group that includes the lower grade levels, if the school has the same number of grade levels in common with two or more groups.

(Sec. 128(e), 20 U.S.C. 2736(e))

§ 201.118 Exclusions from the excess costs and comparability requirements.

(a) *General standard.* Subject to the requirements in this paragraph and advance determinations under paragraph (e) or (f) of this section, an LEA may exclude, for the purpose of determining compliance with the comparability requirements in §§ 201.112–201.117 and the excess costs requirements in 34 CFR 200.93–200.95—

(1) State and local funds spent in carrying out a special program, as defined in paragraph (b) of this section, or a State phase-in program, as defined in paragraph (c) of this section; and

(2) The FTE number of children and staff in those programs.

(b) *Special program defined.* For purposes of this section, a special program is—

(1) A State compensatory education program that—

(i) The Secretary has determined in advance, under paragraph (e) of this section, meets the requirements of paragraph (d) of this section; and

(ii) The SEA determines is being implemented by the LEA in accordance with paragraph (d) of this section;

(2) A State compensatory education program that—

(i) The Secretary has determined in advance, under paragraph (e) of this section, does not satisfy the requirements of paragraph (d) of this section; but

(ii) The Secretary has determined permits the LEA to use the special State funds in accordance with paragraph (d) of this section, provided that—

(A) The LEA designs a program that the SEA determines in advance, under paragraph (f) of this section, meets the requirements of paragraph (d) of this section; and

(B) The SEA determines that the LEA will implement the program in accordance with paragraph (d) of this section;

(3) A local compensatory education program that—

(i) The SEA has determined in advance, under paragraph (f) of this section, meets the requirements of paragraph (d) of this section; and

(ii) The SEA determines is being implemented in accordance with paragraph (d) of this section; or

(4)(i) A bilingual program for children of limited proficiency in the English language; or

(ii) A special education program for handicapped children or children with specific learning disabilities.

(c) *State phase-in program defined.* (1) For purposes of this section, a State phase-in program is a program that—

(i) The Secretary has determined in advance, under paragraph (e) of this section, meets the requirements in paragraph (c)(2) of this section; and

(ii) The SEA determines will be implemented by the LEA in accordance with paragraph (c)(2) of this section.

(2) A State education program that is being phased into full operation meets the requirements of this section if—

(i) The program is authorized and governed specifically by State law;

(ii) The purpose of the program is to provide for the comprehensive and systematic restructuring of the total educational environment at the level of the individual school;

(iii) The program is based on objectives, including performance objectives, related to educational achievement and is evaluated in a manner consistent with those objectives;

(iv) Parents and school staff are involved in comprehensive planning, implementation, and evaluation of the program;

(v) The program will benefit all children in a particular school or grade span within a school;

(vi) Schools participating in a program describe, in an individual school plan, program strategies for meeting the special education needs of educationally deprived children;

(vii) At all times during the phase-in period, at least 50 percent of the schools participating in the program are the schools serving project areas that have the greatest number or percentage of educationally deprived children or children from low-income families;

(viii) State funds made available for the phase-in program will supplement, not supplant State and local funds that would, in the absence of the phase-in program, have been provided for schools participating in this program;

(ix) For purposes of complying with the preceding requirements in

paragraphs (c)(2)(i) through (viii) of this section, the LEA is separately accountable to the SEA for any funds spent for the program;

(x) The LEAs carrying out the program are complying with the preceding requirements in paragraphs (c)(2)(i) through (ix) of this section; and

(xi) The phase-in period of the program is not more than six school years. However, if the phase-in period for a program began before November 1, 1978, the phase-in period is considered to have begun on November 1, 1978.

(d) *State and local compensatory education program that is similar to Title I.* A State or local educational program meets the requirements of this paragraph and is considered to be similar to the Title I program if—

(1) All children participating in the program are educationally deprived;

(2) The program is based on performance objectives related to educational achievement and is evaluated in a way that is consistent with those objectives;

(3) The program provides supplementary services designed to meet the special educational needs of the children who are participating;

(4) The LEA keeps and affords access to whatever records are necessary to verify compliance with the preceding requirements in paragraphs (d)(1) through (3) of this section;

(5) The SEA monitors performance under the program to ensure that the LEA meets the preceding requirements in paragraphs (d)(1) through (4) of this section.

(e) *Advance determination by the Secretary. (1)* If requested by an SEA, the Secretary makes an advance determination of whether—

(i) A State program described in paragraph (b)(1) or (b)(2) of this section meets the requirements in paragraph (d) of this section; or

(ii) A State phase-in program described in paragraph (c)(1) of this section meets the requirements in paragraph (c)(2) of this section.

(2) Before making an advance determination, the Secretary requires the SEA to submit copies of the applicable provisions of State law, together with all relevant rules, orders, guidelines, interpretations, and other information that the Secretary may need in order to make the determination.

(3) If there is a significant change in the applicable State law or implementation of the State program for which an advance determination is being sought or has been made, the SEA shall promptly submit those changes to the Secretary.

(4) The Secretary makes an advance determination in writing and includes a statement of the reasons for the determination.

(f) *Advance determination by an SEA.* (1) If requested by an LEA, its SEA shall make an advance determination of whether—

(i) An LEA program described in paragraph (b)(2) of this section meets the requirements in paragraph (d) of this section; or

(ii) An LEA program described in paragraph (b)(3) of this section meets the requirements in paragraph (d) of this section.

(2) Before making an advance determination, the SEA shall require the LEA to submit copies of the applicable provisions of local law, together with all relevant rules, orders, guidelines, interpretations, and other information the SEA may need in order to make the determination.

If there is a significant change in the applicable local law or implementation of the program for which an advance determination is being sought or has been made, the LEA shall promptly submit those changes to the SEA.

(4) Each advance determination that the SEA makes must be in writing and must include a statement of the reasons for the determination.

(Sec. 131, 20 U.S.C. 2751)

§ 201.119 Required annual assurance.

On or before July 1 of each year covered by a project application, an LEA shall submit to its SEA as part of the application an assurance that the LEA will maintain comparability of State and local services in schools serving attendance areas that were served by the LEA's Title I project during the preceding fiscal year.

(Sec. 126(e), 20 U.S.C. 2736(e))

§ 201.120 Maintaining comparability.

(a) At least once during the period January 1 through April 30, an LEA shall determine whether it is maintaining the comparability required by §§ 201.112–201.119.

(b) Except as provided in paragraph (c) of this section, an LEA shall make whatever adjustments are necessary to maintain the comparability required by §§ 201.112–201.119.

(c) With prior approval of the SEA, an LEA experiencing high student mobility need not make the adjustments required by paragraph (b) of this section unless—

(1) The average number of children enrolled per instructional staff member in any school is more than 110 percent of the LEA's comparability average as determined under § 201.116 (a)(1) or (b)(1); or

(2) The average per child expenditure of State and local funds for instructional staff in any school is less than 90 percent of the LEA's comparability average as determined under § 201.116 (a)(2) or (b)(2).

(Sec. 126(e), 20 U.S.C. 2736(e))

§ 201.121 Comparability data must be for the same date.

All data that an LEA uses in a given comparability report must reflect conditions as of the same date on which the LEA bases the comparability.

(Sec. 126(e), 20 U.S.C. 2736(e))

§ 201.122 Retention of records concerning comparability.

An LEA that is required to file a comparability report under § 201.113 shall—

(a) Keep all records, worksheets, and documents from which it derived that data included in each comparability report, determination regarding maintenance of comparability, and request for advance determination for the period specified in 34 CFR 200.140;

(b) File, index, and maintain the records required under paragraph (a) of this section so that they may be reviewed easily by local, State, and Federal officials; and

(c) Make the records and documents referred to in paragraph (a) of this section available to parents, teachers, and other persons in accordance with 34 CFR 200.141 and to State and Federal auditors in accordance with 34 CFR 200.142.

(Sec. 126(e), 20 U.S.C. 2736(e))

§ 201.123 Actions to be taken by an SEA if an LEA violates the comparability requirements.

(a) Except as provided in paragraph (b) of this section, an SEA shall, within 30 days of discovering that any school serving a project area is in violation of the comparability requirements in section 126(e) of Title I and §§ 201.112–201.117, but not later than January 1 of the fiscal year involved—

(1) Initiate a withholding proceeding under 34 CFR 200.200 and suspend all further Title I payments to the LEA under 34 CFR 200.200(c); or

(2) Enter into a compliance agreement with the LEA under 34 CFR 200.210–200.214.

(b) The SEA may not take any compliance action against the LEA under paragraph (a) of this section if—

(1) The LEA files with the SEA a report as of December 1 of the fiscal year involved that shows that one or more schools are in violation of the comparability requirements; and

(2) The LEA files a revised comparability report with the SEA showing that, as of a date no later than December 1 of that fiscal year, the violation has been corrected.

(c)(1) Except as provided in paragraph (c)(2) of this section, if the LEA does not achieve comparability by December 1, the SEA shall ensure that none of the obligations incurred by that LEA during the period when the LEA was not in compliance with the comparability requirements is charged to Title I.

(2) If the LEA enters into a compliance agreement with the SEA before December 1 and fully complies with the terms of that agreement—

(i) The deadline for achieving comparability may be extended until the date specified in the agreement; and

(ii) The LEA is not liable for the Title I obligations it incurred in noncomparable schools during the fiscal year involved and prior to the date specified in the compliance agreement.

(d) If an LEA determined to be in violation of the comparability requirements fails to submit to its SEA by March 1 of the fical year involved a revised comparability report that demonstrates full compliance with the comparability requirements, the SEA shall, under the procedures in § 201.38, reallocate the balance of the LEA's unobligated Title I funds to other LEAs in the State that are in full compliance.

(e) Within 30 days of discovering that an LEA has failed to maintain comparability as required by § 201.120, an SEA shall—

(1) Initiate a withholding proceeding under 34 CFR 200.200 and spend all further Title I payments to the LEA under 34 CFR 200.200(c); or

(2) Enter into a compliance agreement with the LEA under 34 CFR 200.210–200.214.

(Sec. 126(e), 20 U.S.C. 2736(e))

§ 201.124 Amount of funds that an SEA shall refund for a violation of the comparability requirement.

(a) Except as provided in paragraph (e) of this section, if the Secretary or an SEA finds, on the basis of an audit, that an LEA failed to comply with the comparability requirements in section 126(e) of Title I and §§ 201.112–201.123, the SEA shall refund to the Department the total amount of Title I funds spent to operate a project in each noncomparable school of the LEA during the period of noncomparability. These funds must include—

(1) All of the Title I expenditures directly attributable to the project in each noncomparable school—that is, direct costs, including salaries, fringe benefits, materials and supplies, equipment, and transportation;

(2) The prorated share, as computed under paragraph (b) of this section, of all the Title I expenditures that are made on a shared basis with other schools serving project areas;

(3) The prorated share, as computed under paragraph (b) of this section, of all the LEA's districtwide Title I costs—that is, costs not directly attributable to any particular school, including expenditures for supervision of instructional and support staff, monitoring, evaluation, and training; and

(4) The prorated share of all the indirect costs attributable to the project, as computed under paragraph (c) of this section.

(b)(1) The SEA shall base the amount of shared costs under paragraph (a)(2) of this section that is charged to each noncomparable school on the ratio of (i) the direct costs charged to Title I for that school—as determined under paragraph (a)(1) of this section—to (ii) the total amount of direct costs for all the schools involved in the shared aspect of the project.

(2) For example, if noncomparable school A with direct costs of $30,000 and noncomparable school B with direct costs of $20,000 shared in a Title I service costing $10,000, school A would be charged with $6,000 (that is, $30,000/$50,000 or 60 percent of $10,000) and school B would be charged with $4,000 (that is, $20,000/$50,000 or 40 percent of $10,000). School A would be charged with a total of $36,000 for expenditures under paragraphs (a)(1) and (a)(2) of this section ($30,000 for direct costs plus $6,000 in shared costs). School B would be charged with a total of $24,000 under those paragraphs ($20,000 for direct costs plus $4,000 in shared costs).

(c)(1) For each noncomparable school, the SEA shall base the sum of the prorated share of the LEA's districtwide Title I costs under paragraph (a)(3) of this section and the prorated share of the indirect costs under paragraph (a)(4) of this section on the ratio of (i) the total of the direct and shared costs under paragraphs (a)(1) and (a)(2) of this section for each noncomparable school to (ii) the total of the direct and shared costs for all project locations.

(2) For example, if noncomparable school A had a total of $36,000 in direct and shared costs, and if the total of the direct and shared costs for all project locations in the LEA was $500,000, school A would be charged with 7.2 percent ($36,000/$500,000) of the LEA's total districtwide expenditures under paragraph (a)(3) of this section, and 7.2 percent of the total indirect costs under paragraph (a)(4) of this section. Thus, if the LEA had districtwide Title I indirect costs of $50,000, school A would be charged $47,200 (7.2 percent of $100,000) for districtwide expenditures under paragraph (a)(3) of this section and $3,600 (7.2 percent of $50,000) for indirect costs under paragraph (a)(4) of this section.

(d) Thus, under the examples in paragraphs (b)(2) and (c)(2) of this section, the total amount of Title I funds that must be refunded because school A did not meet the comparability requirement would be $46,800 ($30,000 in direct costs, $6,000 in shared costs, $7,200 in districtwide expenditures, and $3,600 in indirect costs).

(e) The SEA is not required to refund any amounts that the LEA spent to operate a project in any noncomparable school of the LEA during the period of noncomparability if—

(1) The comparability violation was revealed in a comparability report that the LEA filed with the SEA before December 1 of that fiscal year involved; and

(2) The LEA filed a revised comparability report with the SEA showing that, as of a date no later than December 1 of the fiscal year, the violation has been corrected.

(Sec. 126(e), 20 U.S.C. 2736(e); Sec. 185(b), 20 U.S.C. 2835(b); Sec. 452 of GEPA, 20 U.S.C. 1234a)

§ 201.125 SEA reports to the Secretary.

On or before May 1 of each year, an SEA shall report to the Secretary on—

(a) The number of LEAs that—

(1) Are operating Title I projects in the State;

(2) Submitted comparability reports under § 201.113; and

(3) Were required to submit revised comparability reports;

(b) Any actions that the SEA has taken under § 201.123(a);

(c) Any reallocations that the SEA has made under § 201.123(d); and

(d) Any refunds that the SEA has made, or will make, under § 201.124.

(Sec. 126(e), 20 U.S.C. 2736(e); Sec. 172, 20 U.S.C. 3822)

§§ 201.126–201.129 [Reserved]

Supplement, Not Supplant: General

§ 201.130 Introduction.

An LEA that receives Title I funds shall meet the requirements in each of the following:

(a) Section 201.132 (Assurance of equal opportunity);

(b) Sections 201.133–201.135 (Supplement, not supplant: regular State and local funds and State and local funds for State phase-in programs); and

(c) Sections 201.136–201.143 (Supplement, not supplant: special State and local programs).

(Sec. 126(c), 20 U.S.C. 2736(c); Sec. 126(d), 20 U.S.C. 2736(d); 42 U.S.C. 2000d–2000d–4; 20 U.S.C. 1681–1683; 29 U.S.C. 749)

§ 201.131 Definitions.

(a) "Educational setting" refers to the time and location in which educational services are provided.

(b) "Handicapped children" includes learning disabled and other

handicapped children who meet the definition in 34 CFR 104.3(j) or the definition in 34 CFR 300.5.

(c) "Intensity of instruction" refers to the following two elements in the provision of Title I instruction to a child in a particular class:

(1) The amount of time during which the child receives Title I instruction.

(2) The pupil-teacher ratio used in providing that instruction.

(d) "Limited proficiency in the English language" refers to children—

(1) Whose primary or home language is other than English; and

(2) Who lack sufficient proficiency in the English language to allow them the opportunity to participate effectively in school if the language of instruction is English.

(e) "Primary or home language other than English" means a language, other than English, to which any of the following applies:

(1) It is the first language of the child.

(2) It is the language normally used by the child.

(3) It is a language normally used in the child's home.

(f) "Regular funds" means those State and local funds that an LEA provides for the support of any educational program except the following—

(1) State phase-in programs; or

(2) Special program defined in § 201.118(b).

(g) "State phase-in program" means a program that satisfies the definition in § 201.118(c).

(h) "Special programs".

(1) Are programs defined in § 201.118(b), including programs of the following types:

(A) State or local compensatory education programs.

(B) Bilingual programs for children with limited proficiency in the English language.

(C) Special education programs for handicapped children; and

(2) For purposes of §§ 201.130–201.143 (relating to supplementing and not supplanting of State or local funds), include programs which are supported by—

(A) State or local funds specifically appropriated to support special programs;

(B) State or local funds earmarked by the LEA to support special programs; or

(C) State or local funds available for the support of any educational programs which are used for purposes of providing programs of the types described in paragraph (h)(1) of this section.

(Sec. 126(c), 20 U.S.C. 2736(c); Sec. 126(d), 20 U.S.C. 2736(d); Sec. 131(b), 20 U.S.C. 2751(b); Sec. 132, 20 U.S.C. 2752)

§ 201.132 Assurance of equal opportunity.

(a) *General.* (1) An LEA may not, on the basis of race, sex, national origin, or handicap, exclude a child from participation in services provided with Title I funds.

(2) An LEA shall ensure that all children participating in a Title I project—including handicapped children and children with limited proficiency in the English language—are provided an equal opportunity to benefit from that project.

(b) *Services for handicapped children.* (1) Except as provided in paragraph (b)(2) of this section, the LEA shall use Title I funds, as necessary, to provide assistance and materials needed to ensure handicapped children an equal opportunity to participate in and benefit from Title I services.

Example. The LEA may use Title I funds to provide to a visually impaired participant large-print books used in a Title I reading class.

(2) However, the assistance provided by the LEA for handicapped children from Title I funds must be in addition to the assistance the LEA would otherwise be required to provide to accommodate the participation of handicapped children in non-Title I activities.

Example. If the LEA is required to provide a deaf child—under the child's individualized education program—with a sign language interpreter whose only job is to assist that one child's participation in the school's program, the LEA may not use Title I funds to pay for the services of an interpreter during the child's participation in a remedial class funded under Title I.

(c) *Services for children with limited proficiency in the English language.* (1) In providing Title I services, the LEA shall use Title I funds, as necessary, to provide assistance and materials needed to ensure participants with limited proficiency in the English language an equal opportunity to participate in and benefit from Title I services.

Example 1. An LEA designs a Title I project which provides special tutorial assistance for educationally deprived first through fourth graders through a resource center. Among the participating students are several who have Vietnamese as their primary or home language and who are limited in their proficiency in the English language. In order to provide these children with equal access to the Title I project, the LEA includes on the resource center staff a bilingual education teacher paid for using Title I funds. The LEA also provides bilingual instructional materials, comparable to those used for English speaking children, to assist the limited English proficiency children to learn to read in English. These materials are paid for using Title I funds. The LEA has acted in compliance with paragraph (c) of this section.

Example 2. An LEA designs a Title I project to provide an intensive program of training in reading as a replacement for the regular program of reading instruction provided to first and second graders. Among those children selected to participate in the Title I project are a number of children whose primary language is French and who are limited in their proficiency in the English language. These children ordinarily receive reading instruction from a second grade teacher who is assisted by a bilingual teacher aide. The intensive program of reading instruction may be provided to these children using a bilingual teacher and bilingual aide paid for using Title I funds. However, the LEA is also obliged to allocate to the Title I project an appropriate amount of non-Title I funds (including a proportionate share of the salary of both the teacher and bilingual aide) or an appropriate number of staff as required by 34 CFR 200.94.

(42 U.S.C. 2000d–2000d–4, 20 U.S.C. 1681–1683; 29 U.S.C. 794)

Supplement, Not Supplant: Regular State and Local Funds and State and Local Funds for State Phase-In Programs

§ 201.133 Introduction

(a) An LEA may use Title I funds only to supplement and, to the extent practical, increase the level of funds that would, in the absence of Title I funds, be made available from the following State and local sources for the education of children who participate in Title I projects:

(1) Regular funds; and

(2) Funds for State phase-in programs.

(b) In no case may the LEA use Title I funds to supplant the State and local funds referred to in paragraph (a) of this section.

(c) The LEA supplants State and local funds in violation of paragraph (b) of this section if it fails to comply with the requirements of either—

(1) Section 201.134 (Equitable distribution: regular funds and State phase-in programs); and

(2) Section 201.135 (Provisions of services required by law: regular funds and State phase-in programs).

(Sec. 126(c), 20 U.S.C. 2736(c))

§ 201.134 Equitable distribution: Regular funds and funds for State phase-in programs.

(a) An LEA shall distribute regular State and local funds and State and local funds for State phase-in programs in a way that does not discriminate against children who participate in Title I projects.

(b) *Presumption of violation.* An LEA is presumed to have violated the requirements of paragraph (a) of this section if it does any of the following:

(1) Uses Title I funds, in violation of 34 CFR 200.93–200.95 (related to excess costs), to pay more than the excess cost

of a Title I service that the LEA is providing as a substitute for a non-Title I service that participating children would otherwise receive.

(2) Systematically assigns a greater number of pupils per teacher in classes that include children who are receiving Title I services.

(3) Denies children who receive Title I services opportunities to receive State and locally funded regular programs or State phase-in services on the same basis as other children.

(Sec. 126(c), 20 U.S.C. 2736(c))

§ 201.135 Provision of services required by law: Regular funds and funds for State phase-in programs.

(a) *General rule.* (1) An LEA may not use Title I funds to provide services that the LEA is required to make available under—

(i) Federal, State, or local law;

(ii) A court order; or

(iii) A voluntary plan for compliance approved by the Office for Civil Rights, United States Department of Education.

(b) *Presumption of violation.* (1) The LEA is presumed to have violated the requirements in paragraph (a) of this section if the LEA—

(1) Has been subject to a court order or an approved voluntary plan for compliance specifying its obligations under Federal, State, or local law; and

(2) Uses Title I funds to provide services that it is required to provide, using State or local funds, under that court order or voluntary plan for compliance.

Example. An LEA that has been ordered by a court to provide specific remedial assistance to remedy the effects of past segregation is presumed to have violated the requirements of paragraph (a) of this section if it uses Title I funds for that purpose.

(Sec. 126(c), 20 U.S.C. 2736(c))

Supplement, Not Supplant: Special State and Local Programs

§ 201.136 Introduction.

(a) An LEA may use Title I funds only to supplement and, to the extent practical, increase the level of funds that would, in the absence of Title I funds, be made available from State and local sources for special programs for the education of educationally deprived children in the aggregate in Title I eligible school attendance areas and schools.

(b) In no case may an LEA use Title I funds to supplant the State and local funds referred to in paragraph (a) of this section.

(c) An LEA supplants special State and local funds in violation of paragraph (b) of this section if it fails to comply with the requirements of either—

(1) Section 201.137 (Equitable distribution: special State and local programs); or

(2) Section 201.139 (Provision of services required by law: special State and local programs (general)).

(Sec. 126(d), 20 U.S.C. 2736(d))

§ 201.137 Equitable distribution: Special State and local programs.

(a) *General rule.* Except as provided in paragraph (c) of this section, an LEA shall distribute State and local funds for special programs in a way that does not discriminate against educationally deprived children in the aggregate in Title I eligible school attendance areas or attending Title I eligible schools.

(b) *Demonstration of compliance.* In order to demonstrate that it has met the requirement of paragraph (a) of this section, the LEA shall—

(1) Provide the SEA with satisfactory assurances that it equitably distributes State and local funds for each special program of an appropriate level so as—

(i) To meet the special needs of educationally deprived children in Title I eligible school attendance areas and schools; and

(ii) To avoid discrimination against educationally deprived children in Title I eligible school attendance areas and schools; and

(2) Make available to its SEA and to others, on request—

(i) Evidence that it distributes a proportionate share of State and local funds available under each type of special program, as applicable, for the education of educationally deprived children in Title I eligible school attendance areas and schools;

Note.—The method for calculating proportionate share is contained in § 201.138, or

(ii) Evidence of the extent to which it distributes a proportionate share of State and local funds referred to in paragraph (b)(2)(i) of this section and evidence that its failure to provide a full proportionate share results from—

(A) A disproportionate distribution, within the LEA, of children whose handicaps require particularly high expenditures;

(B) A disproportionate distribution, within the LEA, of children whose instruction related to their lack of proficiency in the English language requires particularly high expenditures; or

(C) Distribution of State and local funds in compliance with the limited exemption described in paragraph (c) of this section.

(c)(1) *Limited exemption.* The LEA may use additional State and local funds for special programs and projects that are solely for educationally deprived children residing in non-project areas or attending non-project schools, including school attendance areas and schools ineligible for assistance under Title I, so long as the requirements of paragraph (c)(2) of this section are met.

(2) The LEA qualifies for the exemption described in paragraph (c)(1) of this section if all of the following conditions are satisfied:

(i) The LEA uses special State and local funds to provide a special program, as defined in § 201.118(b) (1) through (3), that qualifies under § 201.118 or exclusion from the comparability and excess cost requirements of §§ 201.111–201.123.

(ii) The amount of State and local funds provided by the LEA during a particular fiscal year in eligible school attendance areas and schools for purposes of the special program referred to in paragraph (c)(2)(i) of this section, when added to the amount of funds provided for the LEA's Title I project during that year, equals or exceeds the amount the LEA is eligible to receive for that fiscal year under section 111(a)(2) of Title I (referring to how the amount of a grant is determined), without regard to adjustments under section 103 of Title I (Adjustments where necessitated by appropriations).

(3) The amount of limited exemption provided in paragraph (c)(1) of this section is calculated as follows:

(i) *Step 1.* The LEA adds the following:

(A) Title I funds provided to project areas in the LEA; and

(B) State and local funds provided to project areas in the LEA for the special program referred to in paragraph (c)(2)(i) of this section.

(ii) *Step 2.* The LEA determines the number of children, in project areas, who participate in either—

(A) Title I projects; or

(B) The special program referred to in paragraph (c)(2)(i) of this section.

(iii) *Step 3.* The LEA divides the sum of the amounts in Step 1 by the number of children in Step 2.

(iv) *Step 4.* The LEA determines the number of children in non-project areas who are eligible to participate in the special program referred to in paragraph (c)(2)(i) of this section.

(v) *Step 5.* The LEA multiplies the amount in Step 3 by the number in Step 4. This is the amount of the limited exemption.

(Sec. 126(c), 20 U.S.C. 2736(c); Sec. 126(d), 20 U.S.C. 2736(d); Sec. 131(b), 20 U.S.C. 2751(b); Sec. 132, 20 U.S.C. 2752)

§ 201.138 Procedures for determining proportionate share.

(a) In order to calculate proportionate share for purposes of § 201.137(b)(2)(i) (related to equitable distribution), and LEA takes the following steps:

(1) *Step 1.* The LEA uses objective criteria, described in § 201.143(b)(2)(iii) to identify the total number of children in all of its school attendance areas who are eligible for each of the following types of special programs, if applicable:

(i) State compensatory education programs.

(ii) Local compensatory education programs.

(iii) Bilingual programs for children with limited proficiency in the English language.

(iv) Special education programs for handicapped children.

(2) *Step 2.* The LEA then identifies, in all of its title I eligible school attendance areas and schools, the total number of children who are eligible for each type of special program referred to in Step 1.

(3) *Step 3.* For each type of special program, the LEA divides the number of children identified in Step 2 by the number of children identified in Step 1. The result may be expressed as either a fraction or a percentage.

(4) *Step 4.* For each type of special program, the LEA lists the amount of funds that it proposes to distribute during the current fiscal year in all its school attendance areas.

(5) *Step 5.* For each type of special program, the LEA multiplies—

(i) The fraction or percentage calculated in Step 3; by

(ii) The amount of funds for that program listed in Step 4.

(iii) The result of this multiplication for each type of special program is the amount of funds that the LEA is obligated to provide, under that type of program, in Title I eligible school attendance areas and schools. This is the proportionate share.

(b) The LEA will be presumed to have provided a proportionate share of special funds for each type of special program so long as it expends, in Title I eligible school attendance areas, no less than an amount equal to 98 percent of the amount calculated in Step 5 for that special program.

Example 1. There are 200 children in an LEA who fail to achieve a passing score on a State minimum competency test. Of these children, 150 (75 percent) are in Title I eligible school attendance areas. $40,000 in State funds are available to the LEA to provide compensatory education to children who fail to pass the State minimum competency test. The LEA must expend a proportionate share—at least $30,000 (that is, 75 percent of $40,000)—for the benefit of eligible children in title I eligible school attendance areas.

Example 2. There are 1,000 handicapped children in an LEA. Of these children, 600 (60 percent) are in title I eligible school attendance areas and schools. The LEA expends $500,000 in State and local funds on special education programs for handicapped children. The LEA must spend a proportionate share—at least $300,000 (that is, 60 percent of $500,000)—for the benefit of handicapped children in title I eligible school attendance areas and schools, unless the LEA can demonstrate that its failure to do so results from a disproportionate distribution, within the LEA, of children whose handicaps require particularly high expenditures.

Example 3. There are 600 children with limited proficiency in the English language in an LEA. Of these children, 450 (75 percent) are in title I eligible school attendance areas and schools and have Spanish as their primary or home language. Of the 200 children who are not in Title I eligible school attendance areas or schools, 150 have Vietnamese as their primary or home language, and 50, who have just arrived in the United States, have Korean as their primary language. State and local funds for bilingual programs total $160,000. The LEA must spend a proportionate share—at least $120,000 (that is, 75 percent of $160,000)—for the benefit of children with limited proficiency in the English language in Title I eligible school attendance areas and schools, unless the LEA can demonstrate that the costs of providing services to the Vietnamese and Korean children, for example, are disproportionately high.

(Sec. 126(c), 20 U.S.C. 2736(c); Sec. 126(d), 20 U.S.C. 2736(d); Sec. 131(b), 20 U.S.C. 2751(b); Sec. 132, 20 U.S.C. 2752)

§ 201.139 Provision of services required by law: Special State and local funds (General).

(a) An LEA may not use Title I funds to provide special services—

(1) That the LEA is otherwise required to make available under Federal, State, or local law; and

(2) For which the LEA is required to pay using State or local funds.

(b) The LEA shall comply with the requirements of §§ 201.140–201.142, as applicable.

(Sec. 126(c), 20 U.S.C. 2736(c); Sec. 126(d), 20 U.S.C. 2736(d); Sec. 131(b), 20 U.S.C. 2751(b); Sec. 132, 20 U.S.C. 2752)

§ 201.140 Provision of services required by law: Special State and local programs (Handicapped children).

(a) *General rule.* An LEA may not use Title I funds to provide services that the LEA is required to make available under—

(1) Part B of the Education of the Handicapped Act, as amended by Pub. L. 94–142 (20 U.S.C. 1401 *et seq.*);

(2) Section 504 of the Rehabilitation Act of 1973 (Pub. L. 93–112, 29 U.S.C. 706), as amended;

(3) The regulations governing the administration of either of those statutes; or

(4) A court order.

(b) *Models for compliance.* The SEA determines that the LEA does not violate the requirements in paragraph (a) of this section if the LEA satisfies the requirements described in paragraphs (c), (d), and (e) of this section, as applicable.

(c) *Common services and setting.* (1) The LEA provides Title I services with all of the following characteristics:

(i) The LEA designs its Title I project to address special needs resulting from educational deprivation, not needs relating to a child's handicapping condition.

(ii) The LEA sets overall project objectives that do not distinguish between handicapped and non-handicapped participants.

(iii) The LEA—

(A) Through the use of uniform criteria, selects children for participation on the basis of educational deprivation, not on the basis of handicap; and

(B) Selects as participating handicapped children only those who can reasonably be expected to make substantial progress toward accomplishing project objectives without the LEA's substantially modifying the educational level of the subject matter or the intensity of instruction.

(iv) The LEA provides Title I services in a common educational setting that includes significant numbers of non-handicapped children, as well as handicapped children, if any.

(v) The LEA provides Title I services at intensities taking into account the needs and abilities of individual participants but without distinguishing generally between handicapped and non-handicapped participants with respect to the intensity of instruction provided.

(2) Upon request, the LEA makes available—

(i) Information demonstrating that the Title I project is designed to address special needs resulting from educational deprivation, not needs relating to a child's handicapping condition;

(ii) Information demonstrating that overall project objectives do not distinguish between handicapped and non-handicapped participants;

(iii) Where the proportion of handicapped children participating in the LEA's Title I project is more than 15 percent greater than the proportion of handicapped children in the LEA's Title I eligible school attendance areas, information demonstrating that the LEA's method of selection has not resulted in the selection of children for

participation on the basis of handicap; and

(iv) Information explaining its basis for concluding that handicapped children participating in its Title I project can reasonably be expected to make substantial progress toward accomplishing project objectives without the LEA's substantially modifying the educational level of the subject matter or the intensity of instruction.

Example. An LEA plans a Title I project to increase children's reading proficiency by two grade levels. The LEA plans to accomplish this goal through intensified instruction in the form of tutorial assistance given several times a week in hour-long sessions using additional personnel. Children's eligibility for inclusion in the project is based on their classroom performance and reading achievement test scores.

Of the 100 children selected for participation in the project using these criteria, 10 (10 percent, a proportion approximately comparable to the percentage of handicapped children in the LEA's Title I eligible school attendance areas) are handicapped children with learning disabilities who receive special education in a resource room for portions of the school day. The LEA does not select for participation any child who would require substantial modification in the educational level of the subject matter or the intensity of instruction in order to make substantial progress toward accomplishing project objectives.

None of the small groups in which instruction is provided consists solely of learning disabled children, since it is possible to group these children (by age and instructional needs) with non-handicapped participants. Although individual handicapped and non-handicapped children receive additional time and attention to assist them to meet project objectives, handicapped children do not generally receive more intensified instruction than non-handicapped children as part of their tutorial sessions.

In this case, the LEA has designed its project to address special needs resulting from educational deprivation, not a handicapping condition, and has established project objectives that do not distinguish between handicapped and non-handicapped children. It has selected children using uniform criteria, and has not selected on the basis of handicap. The Title I services are provided in a common educational setting, which includes non-handicapped as well as handicapped children, using intensities of instruction that vary from child to child, but that are not substantially different for handicapped and non-handicapped children.

The SEA in this case determines that the LEA has complied with the requirements of paragraph (a) of this section.

(d) *Common services and separate setting.* (1) The LEA provides Title I services with all of the following characteristics:

(i) The services have those characteristics described in paragraphs (c)(1) (i) through (iii) of this section.

(ii) The services are provided to handicapped participants in a separate educational setting that does not include non-handicapped children so long as the requirements of paragraph (d)(3) of this section are met.

(iii) The LEA—

(A) Provides instruction in the separate setting at an intensity comparable to that provided to other participants in a common educational setting which includes significant numbers of non-handicapped children, as well as handicapped children, if any; or

(B) Demonstrates that its use of a different intensity of instruction is attributable to the limited number of participants for whom service in a separate educational setting is justified in accordance with paragraph (d)(3) of this section.

(2) Upon request, the LEA makes available—

(i) Information demonstrating that the Title I project is designed to address special needs resulting from educational deprivation, not needs relating to a child's handicapping condition;

(ii) Information demonstrating that overall project objectives do not distinguish between handicapped and non-handicapped participants, including information demonstrating that comparable Title I services or comparable per pupil expenditures for Title I services are afforded children who receive Title I services in a common educational setting which includes significant numbers of non-handicapped children, as well as handicapped children, if any;

(iii) Where the proportion of handicapped children participating in the LEA's Title I project is more than 15 percent greater than the proportion of handicapped children in LEA's Title eligible school attendance areas, information demonstrating that the LEA's method of selection has not resulted in selection of children for participation on the basis of handicap;

(iv) Information explaining its basis for concluding that handicapped children participating in its Title I project can reasonably be expected to make substantial progress toward accomplishing project objectives without the LEA's substantially modifying the educational level of the subject matter or the intensity of instruction; and

(v) Information demonstrating that LEA—

(A) Provides instruction in the separate setting at an intensity comparable to that provided to other participants; or

(B) Uses a different intensity of instruction attributable to the limited number of participants for whom service in a separate educational setting is justified in accordance with paragraph (d)(3) of this section.

(3) In its project application, the LEA justifies use of a separate educational setting by demonstrating that—

(i) Use of a separate educational setting is required because irreconcilable scheduling requirements preclude provision of Title I services—

(A) At the same time; or

(B) In the same location as Title I services are provided to other Title I participants;

(ii)(A) Participating handicapped children can reasonably be expected to make substantial progress toward accomplishing project objectives without substantial modification of the educational level of the subject matter or the intensity of instruction, but that

(B) The nature of the children's handicapping condition precludes participation in a Title I program including non-handicapped children; or

(iii) Use of a separate setting is—

(A) Necessary to meet project objectives effectively; and

(B) Approved in advance by the Department.

Example. An LEA designs a Title I project to teach remedial math skills to children in grades 4 through 6 in order to increase their performance by two grade levels. As a criterion for selection, the LEA uses children's performance on a math achievement test. Of the 100 children selected to participate—in this case, those who scored between the 5th and the 10th percentile on a math achievement test—10 are emotionally disturbed.

In its project application, the LEA demonstrates that, based on assessments prepared in connection with development of the handicapped children's individualized educational programs, including a review of their past performance, these children can reasonably be expected to make substantial progress toward accomplishing project objectives without substantially modifying the educational level of the subject matter or the intensity of instruction. The LEA also demonstrates that, in order to effectively meet project goals, the emotionally disturbed children, whose condition precludes instruction in a classroom with non-handicapped children at the usual 15-to-1 ratio, must receive instruction in a different location or at a different time.

The LEA has provided an adequate justification for serving the emotionally disturbed children in a separate educational setting and has demonstrated compliance with the requirements of paragraph (e)(3)(ii) of this section.

(e) *Intensified services and common setting.* (1) The LEA provides services

with all of the following characteristics—

(i) The services have those characteristics described in paragraphs (c)(1)(i) through (c)(1)(iv) of this section;

(ii) The services are provided using different intensities of instruction for handicapped and non-handicapped participants so long as the requirements of paragraph (e)(3) of this section are met.

(2) Upon request, the LEA makes available—

(i) Information demonstrating that the Title I project is designed to address special needs resulting from educational deprivation, not needs relating to a child's handicapping condition;

(ii) Information demonstrating that overall project objectives do not distinguish between handicapped and non-handicapped participants;

(iii) Where the proportion of handicapped children participating in the LEA's Title I project is more than 15 percent greater than the proportion of handicapped children in the LEA's Title I eligible school attendance areas, information demonstrating that the LEA's method of selection has not resulted in selection of children for participation on the basis of handicap;

(iv) Information explaining its basis for concluding that handicapped children participating in its Title I project can reasonably be expected to make substantial progress toward accomplishing project objectives without the LEA's substantially modifying the educational level of the subject matter or the intensity of instruction.

(3) In its project application, the LEA justifies use of different intensities of instruction by demonstrating that—

(i)(A) It has a substantial basis for concluding that the handicapped children participating in the Title I project can reasonably be expected to make substantial progress toward accomplishing project objectives without the LEA's substantially modifying the educational level of the subject matter or the intensity of instruction; and

(B) The services are provided as part of a replacement project involving handicapped children which satisfies the requirements of 34 CFR 200.94(f); or

(ii) Use of a separate setting is—

(A) Necessary to meet project objectives effectively; and

(B) Approved in advance by the Department.

Example. The LEA proposes to establish a replacement project in basic skills for third and fourth graders. The project is to run for two hours per day. The LEA proposes to include in its project 5 mildly mentally retarded children who ordinarily participate in regular classroom activities for 2 hours per day, but who would otherwise receive instruction in basic skills from a special education teacher during the other four hours of the day. The Title I project will replace two of the four hours of instruction by the special education teacher for these children.

The LEA provides information demonstrating that the five mildly mentally retarded children can reasonably be expected to make substantial progress toward meeting project objectives without the LEA's substantially modifying the educational level of the subject matter or the intensity of instruction.

A full-time teaching load for a teacher of special education is 15 students for 6 hours per day. Instruction of five students for 2 hours per day equals 1/9 FTE (5 students divided by 15 students per FTE times 2 hours divided by 6 hours per day teaching load). The LEA agrees to allocate 1/9 times the average salary for special education teachers in the district to be paid from non-Title I funds, to provide a part-time teacher aide who works exclusively with the handicapped children by giving them tutorial assistance two days a week during one of the two hours in which they participate in the Title I project.

The SEA approves the LEA's proposal as satisfying the requirements of paragraph (e)(3) of this section.

(Sec. 126(a), 20 U.S.C. 2736(c); Sec. 126(d), 20 U.S.C. 2736(d); Sec. 131(b), 20 U.S.C. 2751(b); Sec. 132, 20 U.S.C. 2752; 20 U.S.C. 1401; 20 U.S.C. 706)

§ 201.141 Provision of services required by law: Special state and local programs (children whose primary or home language is other than English)

(a) *General rule.* (1) An LEA may not use Title I funds to provide services that the LEA is required to make available under—

(i) Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d–2000d–4).

(ii) The regulations governing the administration of that statute; or

(iii) A court order.

(2)(i) The provisions of this section shall apply to LEAs whose primary language of instruction is not English.

(ii) In the case of LEAs of this type, the language the LEA ordinarily uses to provide instruction shall be deemed substituted for "English" wherever this word is used in this section.

(b) *Models for compliance.* The SEA determines that the LEA does not violate the requirements of paragraph (a) of this section if the LEA satisfies the requirements described in paragraphs (c), (d), (e), and (f) of this section, as applicable.

(c) *Court order, voluntary plan for compliance, or compliance review.* (1) The LEA satisfies the requirements of paragraph (a) if it has the characteristics described in paragraph (c)(2) or (c)(3) of this section.

(2) The LEA—

(i) Has been subject to a court order, or has entered into a voluntary plan for compliance specifying its obligations under Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d–2000d–4); and

(ii) Uses Title I funds to provide only services other than those it is required to provide under this court order or voluntary plan for compliance.

(3) The LEA—

(i) Has, within the previous five years, been the subject of a review for compliance and has been found in compliance with Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d–2000d–4); and

(ii) Includes in its project application information demonstrating that it continues to use non-Title I funds to provide services provided at the time of the compliance review.

(d) *Common services and setting.* (1) The LEA provides Title I services with all of the following characteristics:

(i) The LEA designs its Title I project to address special needs resulting from educational deprivation, not needs relating solely to a child's having a particular primary or home language.

(ii) The LEA sets overall project objectives that do not distinguish between participants whose primary or home language is other than English and participants whose primary or home language is English.

(iii) Through the use of uniform criteria, the LEA selects children for participation on the basis of educational deprivation, not on the basis of their primary or home language.

(iv) The LEA provides Title I services in a common educational setting that includes significant numbers of children whose primary or home language is English, as well as children, if any, whose primary or home language is other than English.

(v) The LEA provides Title I services taking into account the needs and abilities of individual participants but without distinguishing generally between children whose primary or home language is other than English and children whose primary or home language is English, with respect to the intensity of instruction provided.

(2) Upon request, the LEA makes available—

(i) Information demonstrating that the Title I project is designed to address special needs resulting from educational deprivation, not needs relating solely to a child's having a particular primary or home language;

(ii) Information demonstrating that overall project objectives do not distinguish between participants whose primary or home language is other than

English and participants whose primary or home language is English;

(iii) Where the proportion of children whose primary or home language is other than English is more than 15 percent greater than the proportion of such children in the LEA's Title I eligible school attendance areas, information demonstrating that the LEA's method of selection has not resulted in selection of children for participation on the basis of their primary or home language; and

(iv) Information demonstrating that the LEA satisfies its obligations to provide Title I participants whose primary or home language is other than English with special instruction as required under Title VI of the Civil Rights Act of 1964, applicable regulations, or court order by—

(A) Using non-Title I funds to provide special instruction comparable to that provided to non-participating children; or

(B) Otherwise uses non-Title I funds to satisfy its obligations to provide participants whose primary or home language is other than English with special instruction.

Example. An LEA designs a project to increase by two grade levels the reading proficiency of children in grades 3 and 4 who score below the 25th percentile on reading achievement tests. It selects 200 participants, 120 of whom have Spanish as their primary or home language and who have varying degrees of proficiency in English, and 80 of whom have English as their primary or home language. The LEA provides instruction in a common educational setting as part of a program which includes children of both language backgrounds by using a bilingual aide to provide an in-class program of special assistance. All of the children receive individualized attention, as needed, to assist them to benefit from the instruction.

The LEA provides, upon request, information demonstrating that the proportion within the participant group of children with a Spanish-language background is approximately comparable to the proportion of similar children in the LEA's Title I eligible school attendance areas. It also provides information that all children who require special instruction under Title VI, regulations, or court order receive such instruction during part of the regular school day that is unaffected by the Title I program.

Since the LEA has designed its project, set common objectives, selected participants and provided instruction at a comparable intensity in a common educational setting including children with Spanish and English language backgrounds, the SEA determines that the LEA has complied with the requirements of paragraph (a) of this section.

(e) *Common services and separate setting.* (1) The LEA provides services with all of the following characteristics:

(i) The services have those characteristics described in paragraphs (d)(1) (i) through (iii) of this section.

(ii) The services are provided to participants whose primary or home language is other than English in a separate educational setting that does not include participants whose primary or home language is English so long as the requirements of paragraph (e)(3) of this section are met.

(iii) The LEA—

(A) Provides instruction in the separate setting at an intensity comparable to that provided to other participants in a common educational setting which includes significant numbers of children whose primary or home language is English, as well as children, if any, whose primary or home language is other than English; or

(B) Demonstrates that its use of a different intensity of instruction is attributable to the limited number of participants for whom service in a separate educational setting is justified in accordance with paragraph (e)(3) of this section.

(2) Upon request, the LEA makes available—

(i) Information demonstrating that the Title I project is designed to address special needs resulting from educational deprivation, not needs relating solely to a child's having a particular primary or home language;

(ii) Information demonstrating that overall project objectives do not distinguish between participants whose primary or home language is other than English and participants whose primary or home language is English, including information demonstrating that comparable Title I services or comparable per pupil expenditures for Title I services are afforded children who receive Title I services in a common educational setting which includes significant numbers of children whose primary or home language is English, as well as children, if any, whose primary or home language is other than English;

(iii) Where the proportion of children whose primary or home language is other than English is more than 15 percent greater that the proportion of such children in the LEA's Title I eligible school attendance areas, information demonstrating that the LEA's method of selection has not resulted in selection of children for participation on the basis of their primary or home language;

(iv) Information demonstrating that the LEA satisfies its obligations to provide Title I participants whose primary or home language is other than English with special instruction as required under Title VI of the Civil Rights Act of 1964, applicable regulations, or court order by—

(A) Using non-Title I funds to provide special instruction comparable to that provided to non-participating children; or

(B) Otherwise uses non-Title I funds to satisfy its obligations to provide participants whose primary or home language is other than English with special instruction; and

(v) Information demonstrating that—

(A) The LEA provides instruction in the separate setting at an intensity comparable to that provided to other participants; or

(B) The LEA's use of a different intensity of instruction is attributable to the limited number of participants for whom service in a separate educational setting is justified in accordance with paragraph (e)(3) of this section.

(3) In its project application, the LEA justifies use of a separate educational setting by demonstrating that—

(i) Use of a separate educational setting is required because irreconcilable scheduling requirements preclude provision of Title I services—

(A) At the same time; or

(B) In the same location as Title I services provided to other Title I participants;

(ii)(A) The program is a replacement program satisfying the requirements of 34 CFR 200.94(f); and

(B) The LEA provides assurances that comparable services or comparable per pupil expenditures for Title I services are afforded children who receive Title I services in a common educational setting which includes significant numbers of children whose primary or home language is English as well as children, if any, whose primary or home language is other than English; or

(iii) Use of a separate setting is—

(A) Necessary to meet project objectives effectively; and

(B) Approved in advance by the Department.

Example. The LEA selects 90 second graders to participate in a Title I basic skills program which will provide intensive instruction for three hours of the normal six hour school day. Thirty of the children have Vietnamese as their primary or home language, and lack proficiency in the English language. All of the children are drawn from second grade classes taught by regular teachers, assisted by teacher aides qualified in bilingual education. Both the teachers and the aides are assigned at a 25-to-1 pupil-instructor ratio. The aides assist both the Vietnamese- and English-speaking children on an as-needed basis.

The LEA proposes to divide the children into six classes of 15 students each. The Vietnamese-speaking children will be assigned to two of the classes, to allow them to receive instruction, where necessary, in Vietnamese so as to assist them in improving

their English-language skills as quickly as possible. These children will be instructed by a qualified bilingual education teacher, who will be assisted by a teacher aide. The other four classes will also be instructed by a teacher and a teacher aide.

In its project application, the LEA agrees to allocate to the title I project 1.8 times the average salary of a second grade teacher (90 students divided by 25 students per FTE instructor times .5 since the program is half-time only). It also assigns four teacher aides on a half-time basis to assist in the Title I project, since, as described in 34 CFR 200.94, it may allocate either funds or instructional staff. It also demonstrates that comparable services are provided to children receiving Title I services in a common educational setting, since those children also receive instruction from a teacher and teacher aide at a comparable pupil-teacher ratio.

The SEA concludes that the LEA has satisfied the requirements of paragraph (e)(3) of this section.

(f) *Intensified services and common setting.* (1) The LEA provides services with all of the following characteristics:

(i) the services have those characteristics described in paragraphs (d)(i) through (iv) of this section;

(ii) The services are provided using different intensities of instruction for children whose primary or home language is other than English and children whose primary or home language is English, so long as the requirements of paragraph (f)(3) of this section are met.

(2) Upon request, the LEA makes available—

(i) Information demonstrating that the Title I project is designed to address special needs resulting from educational deprivation, not needs relating solely to a child's having a particular primary or home language;

(ii) Information demonstrating that overall project objectives do not distinguish between participants whose primary or home language is other than English and participants whose primary or home language is English;

(iii) Where the proportion of children whose primary or home language is other than English is more than 15 percent greater than the proportion of such children in the LEA's Title I eligible school attendance areas, information demonstrating that the LEA's method of selection has not resulted in selection of children for participation on the basis of their primary or home language; and

(iv) Information demonstrating that the LEA satisfies its obligations to provide Title I participants whose primary or home language is other than English with special instruction as required under Title VI of the Civil Rights Act of 1964, applicable regulations or court order by—

(A) Using non-Title I funds to provide special instruction comparable to that provided to non-participating children; or

(B) Otherwise uses non-Title I funds to satisfy its obligations to provide participants whose primary or home language is other than English with special instruction.

(3) In its project application, the LEA justifies use of different intensities of instruction by—

(i)(A) Demonstrating that the services are part of a replacement program, involving children whose primary or home language is other than English, which satisfies the requirements of 34 CFR 200.94(f); and

(B) Including satisfactory assurances that it provides comparable special instructional services using non-Title I funds or expends a comparable per capital amount of non-Title I funds to provide participating children with special instruction as it does to provide such instruction to non-participating children whose primary or home language is other than English; or

(ii) Demonstrating that use of different intensities of instruction is—

(A) Necessary to meet project objectives effectively; and

(B) Approved in advance by the Department.

Example. An LEA selects 90 third and fourth graders to participate in a half-time basic skills program. Sixty of the children have English as their primary or home language. They are drawn from regular third and fourth grade classrooms having a 25 to 1 pupil teacher ratio. Teachers in these classrooms are unassisted by teacher aides. The other thirty children have Spanish as their primary or home language, and are very limited in their English proficiency. They are drawn from two classrooms in which the regular teacher is assisted by a bilingual teacher aide who is assigned to assist limited English proficient children at a 20 to 1 pupil-teacher ratio.

Under its Title I project, the LEA proposes to divide the 90 children into six classes of 15 children each. Five Spanish-speaking children who have limited proficiency in the English language are to be assigned to each of the six classes. Bilingual teacher aides will provide assistance to all the children, but will give particularly intensive tutorial assistance to the children whose primary language is Spanish.

In its project application, the LEA Provides assurances that its per capita expenditures for providing participating children whose primary or home language is other than English with special instruction as required under Title VI of the Civil Rights Act are comparable to expenditures for similar non-participating children (all would be assigned to a classroom with a bilingual teacher aide assigned to provide instruction at a 20 to 1 pupil-teacher ratio). The LEA also agrees to allocate to the Title I project 1.8 times the average salary for third and fourth grade teachers (90 students divided by 25 students per FTE teacher times .5 since the program is half-time only). In addition, it agrees to allocate .75 times the average salary of a bilingual teacher aide (30 students requiring bilingual instruction divided by 20 students per FTE bilingual teacher aide times .5 since the program is half-time only).

The SEA concludes that the LEA has satisfied the requirements of paragraph (f)(3) of this section.

(Sec. 126(c), 20 U.S.C. 2736(c); Sec. 126(d), 20 U.S.C. 2736(d); Sec. 131(b), 20 U.S.C. 2751(b); Sec. 132, 20 U.S.C. 2752; 42 U.S.C. 2000d–2000d–4; *Lau v. Nichols*, 414 U.S. 563 (1974)).

§ 201.142 Provision of services required by law: Special State and local programs (Compensatory education or other services required by State or local law).

(a) An LEA may not use Title I funds to provide compensatory education or other services that the LEA is required to make available under State or local law.

(b) However, the LEA may use Title I funds to supplement its expenditures for compensatory education or other required services if the LEA can demonstrate that—without the use of Title I funds—it is fully meeting its obligations under State or local law.

(c) The LEA can demonstrate that it is fully meeting its obligations under State law if—

(1) Appropriate State and local officials certify to the SEA that the LEA is meeting those obligations; and

(2) The LEA has supporting documentation available for review.

(d) The LEA can demonstrate that it is fully meeting its obligations under local law if—

(1) An appropriate local official certifies to the SEA that the LEA is meeting those obligations; and

(2) The LEA has supporting documentation available for review.

Example. An LEA's Title I project provides intensive reading instruction to children who have failed to pass a State minimum competency test. State law requires that special compensatory instruction be provided to those children as part of a program meeting the definition of special program in § 201.118(b). However, the law does not specify the level or intensity of instruction. The SEA, on the advice of the State Attorney General, certifies that LEAs within the State may satisfy the requirements of State law by providing children with a one-semester course in remedial English if that course meets at least three times per week and has a pupil-teacher ratio comparable to the LEA's normal pupil-teacher ratio. The LEA certifies that this type of special course is being provided for eligible children. The LEA may therefore use Title I funds to provide educationally deprived children in Title I eligible school attendance areas with additional class periods or remedial reading

or to provide—to children selected for participation in the Title I project—instruction using a reduced pupil-teacher ratio.

(Sec. 126(c), 20 U.S.C. 2736(c); Sec. 126(d), 20 U.S.C. 2736(d); Sec. 131(b), 20 U.S.C. 2751(b); Sec. 132, 20 U.S.C. 2752)

§ 201.143 Coordination.

An LEA may take into account and may coordinate State and local special programs, as defined in § 201.118(b), with projects funded under Title I if the LEA meets all of the following conditions:

(a) The LEA satisfies the requirements of—

(1) This part, including, but not limited to—

(i) §§ 201.132–201.143 (requirements that Title I funds be used to supplement, not supplant funds from State and local sources); and

(ii) §§ 201.65 and 201.71 (requirements related to the skipping of higher-ranked school attendance areas and schools and the skipping of children determined to be in greatest need of special assistance but receiving services of the same nature and scope from non-Federal sources); and

(2) Other applicable Federal requirements, such as the requirements of Part B of the Education of the Handicapped Act, 20 U.S.C. 1401, *et seq.*

(b)(1) The LEA satisfies the requirements of paragraph (b)(2) so as to ensure that educationally deprived children, in the aggregate, in eligible school attendance areas or attending eligible schools, receive at least the same level of special State and local funds that would have been available to such children in the absence of Title I.

(2)(i) The LEA develops a plan for distribution of special funds, based on objective criteria, as defined in paragraph (b)(2)(iii) of this section.

(ii) The LEA uses objective criteria to determine, in each of the following:

(A) Children.

(B) Schools.

(C) Grade spans.

(D) School attendance areas.

(iii) Objective criteria include any one or combination of the following:

(A) Direct indicators of educational need.

(B) A reasonable proxy for educational need; or

(C) Level of poverty.

(c) The LEA ensures that educationally deprived children who satisfy the objective criteria described in paragraph (b) of this section receive assistance under either Title I or under the special State or local program before any child who does not satisfy those objective criteria receives that type of assistance.

Example. An LEA has four school attendance areas, two of which are eligible for Title I assistance and two of which are not. The LEA designs a Title I project to provide special assistance in reading to children in the first quartile in reading achievement. It selects children for participation as required under Title I. One hundred children are selected in each of the two Title I eligible school attendance areas.

Under State law special funds are provided for the compensatory education of children from kindergarten through grade 6 who rank in the first and second quartile in reading achievement, through programs which meet criteria contained in § 201.118(b). The LEA desires to provide children eligible for assistance under this program with special reading instruction that costs $300 per participant.

The LEA develops a plan for distribution using the objective criteria specified by State law (reading achievement in the first and second quartile). The LEA determines that 200 children in each of the areas eligible for Title I and 50 children in each of the areas not eligible for Title I are eligible for services under the special State program. The LEA is allocated $75,000 in State funds under the special State compensatory education program. Since 80 percent of the children eligible for services under the special State program (400 of the 500 total) are in areas that are eligible for Title I and 20 percent (100 of the 500 total) are in areas that are not eligible for Title I, the LEA distributes $60,000 (that is, 80 percent of $75,000) for use in areas that are eligible for Title I. The $60,000 in State funds allocated to provide compensatory education services to children in the Title I eligible school attendance areas under the special State program is sufficient to allow 200 of the 400 eligible children to participate. These State funds may be distributed in several ways to ensure that educationally deprived children, in the aggregate, in eligible school attendance areas or attending eligible schools, receive at least the same level of special State and local funds as would have been available in the absence of Title I:

(1) For example, they may be used to provide services to 100 children in each Title I eligible school attendance area, with Title I funds used to provide comparable services to the additional 100 children in each area.

(2) Alternately, for example, they may be used to provide services to the 200 eligible children in one of the Title I eligible school attendance areas, with Title I funds used to provide comparable services to the 200 eligible children in the other Title I eligible area.

(3) In each case, the children in the school attendance area served using State funds must receive services of the same nature and scope as the services provided under Title I.

(4) In no case, however, may the LEA use Title I funds to pay for this special program of reading instruction for children in school attendance areas not eligible for Title I.

(Sec. 126(d), 20 U.S.C. 2736(d))

Subpart I—Parental Involvement

§ 201.150 Purpose of advisory councils.

The purpose of the advisory councils that LEAs are required to establish under this subpart is to encourage the involvement of parents in the planning, implementation, and evaluation of projects operated by the LEAs as an important means of increasing the effectiveness of Title I projects.

(Sec. 125, 20 U.S.C. 2735)

§ 201.151 Advisory councils that LEA's shall establish.

An LEA that receives Title I assistance—

(2) Shall establish, under the requirements in §§ 201.152–201.154, a district advisory council for the entire school district of the LEA; and

(b) Except as provided in § 201.155(c), shall establish, under the requirements of §§ 201.155–201.158—

(1) A project area advisory council for each school attendance area that is selected as a project area under § 201.61 and §§ 201.63–201.66; and

(2) A project school advisory council for each school that is selected as a project school under §§ 201.62–201.65.

(Sec. 125, 20 U.S.C. 2735)

§ 201.152 Composition of membership on district advisory councils.

A district advisory council must—

(a) Have a majority of members who are parents of children (including parents of private school children) to be served by the project. These parents include—

(1) Parents of children who have been selected, under §§ 201.70–201.71 and § 201.103, to participate in the Title I project during the current project year; and

(2) Parents of children who were not selected to participate in the Title I project during the current year, but who have been selected to participate in the Title I project during the next project year;

(b) Include at least two members—who may be any individuals that meet the requirements in paragraph (c) of this section—who represent—

(1) Children who, under §§ 201.70–201.71 and § 201.101, are eligible to receive Title I services during the current project year, but who were not selected, under §§ 201.70–201.71 and § 201.103, to participate in the current Title I project; and

(2) Children in school attendance areas and schools that, under §§ 201.51–201.52, would be eligible to receive Title I assistance during the current project year, but that were not selected, under

§§ 201.60–201.65, to receive that assistance; and

(c) Include additional members, if any, elected under the procedures in §§ 201.153–201.156, who are—

(1) Residents of the LEA; or

(2) Teachers in the LEA's project schools or schools serving project areas, but not necessarily residing in the LEA's district.

(Sec. 125(a), 20 U.S.C. 2735(a))

§ 201.153 Models for nominating and electing district advisory councils.

(a) After consulting with the current district advisory council, an LEA shall adopt a procedure for nominating persons for election as members of the district advisory council.

(b) After consulting with the current district advisory council, an LEA shall select one of the following models for electing members of the district advisory council:

(1) Election by parents of children in project areas and project schools, including—

(i) Parents of children in project areas who attend private schools; and

(ii) Parents of preschool children, if the project provides preschool services.

(2) Election by members of the project area advisory councils and project school advisory councils elected under § 201.157.

(c)(1) In addition to the members elected under one of the methods in paragraph (a) of this section, the LEA shall provide for the election of at least two representatives of the children referred to in § 201.152(b).

(2) The representatives referred to in paragraph (c)(1) of this section must be elected by parents of children in school attendance areas and schools that were identified as eligible to receive Title I assistance, but that were not selected to receive that assistance.

Sec. 125(a), 20 U.S.C. 2735(a))

§ 201.154 Procedures for electing district advisory councils.

(a) *Notice of procedures.* The LEA shall—

(1) Establish nomination and election procedures in consultation with the district advisory council; and

(2) Provide appropriate and timely notice of these procedures to—

(i) Members of all of the LEA's advisory councils;

(ii) Parents of children in project areas and project schools;

(iii) Parents of eligible-but-not-participating children and of children in eligible-but-not-participating school attendance areas and schools; and

(iv) The general public.

(b) *List of candidates.* (1) Except for the provisions in paragraph (b)(2) of this section, the LEA shall provide the electorate—those persons who will elect the members of the district advisory council according to one of the models in § 201.153(a)—with a list of candidates that identifies each candidate as—

(i) A parent of a child to be served by the project, if the parent has consented in writing to be identified in that manner;

(ii) A teacher in a project school or a school serving a project area; or

(iii) A resident of the school district of the LEA who is seeking membership on the district advisory council, but who does not qualify under paragraphs (b)(1)(i) or (b)(1)(ii) of this section.

(2) The LEA shall provide the parents referred to in § 201.153 (c)(2) with a list of candidates who are seeking election as representatives of the children referred to in § 201.152(b).

(c) *Procedures to ensure required membership on the district advisory council.* The LEA shall, in consultation with the district advisory council, establish procedures to ensure annually that—

(1) A majority of the members referred to in § 201.152 who are serving on the district advisory council are parents of children to be served; and

(2) At least two representatives of the children referred to in § 201.152 (b)(1)-(2) are serving on the district advisory council.

(d) *Election of district advisory council members in a district with a single school attendance area.* An LEA with only one school attendance area may, without regard to the number of schools serving that area, have one project area advisory council that is also its district advisory council.

(Sec. 125(a), 20 U.S.C. 2735(a))

§ 201.155 Required project area advisory councils and project school advisory councils.

(a) *General rule.* An LEA that receives Title I assistance shall establish project area advisory councils and projects school advisory councils as required in § 201.151(b).

(b) *Special application to private school children.* An LEA that has skipped an eligible school attendance area under § 201.65, because that area is receiving services of the same nature and scope from non-Federal sources as would otherwise be provided with Title I funds, shall establish a project area advisory council for that school attendance area if there are private school children residing in the area who are receiving Title I services.

(c) *Exception.* An LEA is not required to establish an advisory council for any project area or project school in which—

(1) Not more than one full-time equivalent staff member is paid with Title I funds; and

(2) Not more than 40 students receive Title I services.

(Sec. 125(a), 20 U.S.C. 2735(a), Sec. 122(e), 20 U.S.C. 2732(e))

§ 201.156 Membership of project area advisory councils and project school advisory councils.

(a) *Composition.* Each project area advisory council and project school advisory council must—

(1) Have a majority of members who are parents of children to be served, as described in § 201.152(a) and who are elected under the procedures in § 201.157; and

(2) Include any additional members elected by the parents of children in the project area or project school under the procedures in § 201.157.

(b) *Eligibility.* (1) Except as provided in paragraph (b)(2) of this section, a person must be a resident of the school district of the LEA in order to be elected to serve as a member of a project area advisory council or project school advisory council.

(2) Any teacher in a project school or school serving a project area in the LEA's district may, without regard to place of residence, be elected to serve as a member of a project area advisory council or project school advisory council for that area or school.

(c) *Requirements if 75 or more children are served.* If a project serves 75 or more children in a project area or project school, the advisory council for that area or school must be composed of at least eight members who shall—

(1) Serve for two-year terms, after which they may be reelected;

(2) Elect officers from among their membership after the council has been fully constituted;

(3) Determine a meeting schedule that provides for a sufficient number of meetings per year to enable the council to be involved effectively in planning, implementing, and evaluating the project; and

(4) Determine the locations for council meetings.

(d) *Procedures to ensure required membership on project area advisory councils and project school advisory councils.* The LEA, in consultation with its district advisory council, shall establish procedures to ensure annually that—

(1) A majority of the members referred to in paragraph (a) of this section are parents of children to be served; and

(2) Advisory councils for project areas and project schools serving 75 or more children have at least 8 members as required in paragraph (c) of this section.

(Sec. 125(a), 20 U.S.C. 2735(a))

§ 201.157 Procedures for electing project area advisory councils and project school advisory councils.

In consultation with its district advisory council, an LEA shall establish procedures for the election of project area advisory councils and project school advisory councils, including procedures for—

(a)(1) Identifying the parents of—

(i) Children attending a project school;

(ii) Children attending a school serving a project area; and

(iii) Children who would attend a school described in paragraph (a)(1)(i) or (ii) of this section if they were not attending a private school; and

(2) Notifying these parents of—

(i) Their opportunity to participate in the election;

(ii) The date, time, and place of the election; and

(iii) The purpose of the election and the election procedures.

(b) Notifying the general public in each project area of the date, time, method, and place of the election;

(c) Providing the parents identified in paragraph (a) of this section with the names of the persons who desire to be candidates, and indentifying each candidate as—

(1) A parent of a child to be served by the project, if the parent has consented in writing to be identified in that manner;

(2) A teacher in a project school or a school serving a project area; or

(3) A resident of the school district of the LEA who does not qualify under paragraph (c) (1) or (2) of of this section; and

(d) Making the names of all members of the project area advisory councils and project school advisory councils available to the general public on request and through appropriate notices.

(e) The LEA shall take appropriate measures, such as publishing the election procedures in a language other than English, to ensure that adequate notice is provided to parents in areas where the dominant language in not English.

(Sec. 125(a), 20 U.S.C. 2735(a))

§ 201.158 An LEA may not impose additional restrictions on the rights of parents to elect advisory council members.

(a)(1) The responsibility of an LEA to establish advisory councils does not authorize it to limit the freedom of eligible parents to elect advisory council members, except to ensure that the requirements in §§ 201.150–201.157 are met.

(2) The LEA may not impose any other restrictions on the rights of eligible parents to elect members of advisory councils.

(b) For example, the LEA is not authorized to—

(1) Restrict the number of terms individual parents may serve;

(2) Prevent a husband and wife from serving at the same time on the same advisory council; or

(3) Prevent school employees who are otherwise qualified from being elected.

(c) The LEA may not restrict advisory council members in their choice of individuals to serve as officers of their councils.

(Sec. 125, 20 U.S.C. 2735)

§ 201.159 Participation by advisory councils.

(a) *General.* An LEA shall give each of the advisory councils established under § 201.151 responsibility for advising the LEA in planning, implementing, and evaluating the project.

(b) *Comments on project application.* An LEA shall—

(1) Give its district advisory council an adequate opportunity to submit comments and recommendations on the LEA's project application;

(2) Consider the district advisory council's comments and recommendations; and

(3) Inform the district advisory council in writing of its reasons for adopting or rejecting the district advisory council's comments and recommendations.

(c) *Alternative ranking based on educational deprivation.* If the LEA desires to use the alternative ranking procedures in § 201.66, it must obtain the prior consent of its district advisory council.

(d) *Schoolwide projects.* If the LEA desires to seek SEA approval of a plan for a schoolwide project under §201.73, the project area advisory council for the school attendance area served by the school must first approve the plan.

(Sec. 122, 20 U.S.C. 2732; Sec. 125(b), 20 U.S.C. 2735(b); Sec. 133, 20 U.S.C. 2753)

§ 201.160 Information that an LEA shall provide to advisory councils.

(a) *Basic requirement.* An LEA shall provide, without charge, to each advisory council and to each member of an advisory council who requests a copy—

(1) The Title I statute;

(2) Any Title I regulations, interpretive rules, and guidelines;

(3) Any State regulations and guidelines that apply to Title I projects; and

(4) The LEA's current project application.

(b) *Auditing, monitoring, and evaluation reports.* The SEA shall provide to each LEA's district advisory council, a copy of any report resulting from State or Federal auditing, monitoring, or evaluation activities concerning the Title I project in that LEA.

(c) *Auditing, monitoring, and evaluation information.* Upon request, the SEA shall provide to each LEA's district advisory council—

(1) Notice of the SEA's final action on audit appeals resolved under 34 CFR 200.192 and any corrective action that the audited agency must take;

(2) Dissemination of information concerning exemplary Title I projects and particularly effective elements of Title I projects identified in 34 CFR 200.230(g).

(Sec. 125(c), 20 U.S.C. 2735(c))

§ 201.161 Training for members of advisory councils.

(a) *Basic requirement.* An LEA shall develop a program for training members of each advisory council to carry out their responsibilities under the Title I project. This program—

(1) Must be planned in full consultation with the members of the advisory councils;

(2) Must provide each member of the advisory councils with appropriate training materials; and

(3) May permit the use of Title I funds for expenses of the training program.

(b) *Training that involves travel.* The LEA shall provide training for advisory council members at convenient locations within the LEA. However, if it is cost effective, one or more LEAs may provide training at a location outside those LEAs in conjunction with another LEA that is receiving Title I assistance.

(c) *Regional or national conferences.* (1) The LEA may not include attendance at a regional or national conference as part of its training program for advisory council members, unless—

(i) The Secretary determines in advance that attendance at the conference will provide unique and valuable experiences; and

(ii) The SEA determines in advance that the conference is relevant to the LEA's project and to the functions of each advisory council member who will attend the conference.

(2) The LEA shall limit the number of advisory council members attending a regional or national conference at Title I expense to the minimum number of

council members required to communicate effectively to other members the information presented at the conference.

(d) *Workshops on parental involvement.* (1) For each fiscal year for which Title I payments are made to the SEA and funds are appropriated under section 125(g) (Authorization of appropriations) of Title I, the Secretary sponsors, in the several regions of the United States, workshops that are designed to—

(i) Assist LEA's to work with and provide training to advisory councils; and

(ii) Promote parental involvement in the Title I projects.

(2) These workshops are planned and conducted in consultation with members of advisory councils in the region served by each workshop.

(Sec. 125, 20 U.S.C. 2735)

§ 201.162 Allowable expenditures for advisory councils.

(a) The general standards governing the allowability of expenditures under Title I projects are contained in 34 CFR 200.70–200.83.

(b) In addition to meeting the standards in 34 CFR 200.70–200.83, an LEA may not pay or reimburse any expenditures relating to advisory councils unless those expenditures are—

(1) Authorized in advance by the LEA;

(2) Within the scope of the LEA's approved Title I project application; and

(3) In compliance with the specific standards in paragraph (c) of this section.

(c) The LEA shall comply with the following specific standards that apply to the use of Title I funds for expenditures related to advisory councils:

(1) *Advisory council elections.* The LEA may use Title I funds to pay for costs directly associated with advisory council elections.

(2) *Memberships in organizations.* The LEA may not use Title I funds to pay for the individual membership of an advisory council member in any organization or group.

(3) *Registration fees.* The LEA may use Title I funds to pay registration fees for advisory council members at approved training conferences.

(4) *Travel.* The LEA may use Title I funds to pay the actual cost of travel—that is, transportation, food, lodging, and related expenses—incurred by advisory council members in connection with an approved Title I activity that is within the scope of the LEA's approved project. However, the LEA may not use Title I funds for additional payments on a per diem basis.

(5) *Salary for time away from job.* The LEA may not use Title I funds to reimburse an advisory council member for salary lost because that member misses work to attend meetings, training sessions, or any other Title I related activity.

(6) *Expenses related to attendance at meetings.* The LEA may use Title I funds to pay expenses related to attendance by advisory council members at advisory council meetings. Examples of these expenses include babysitting, transportation, and copying of minutes.

(Sec. 125, 20 U.S.C. 2735; Sec. 408(a)(1) of GEPA, 20 U.S.C. 1221e–3(a)(1))

§§ 201.163–201.169 [Reserved]

Subpart J—Evaluations by Local Educational Agencies

§ 201.170 General evaluation requirements.

To meet its Title I evaluation responsibilities, an LEA shall comply with—

(a) The evaluation provisions in 34 CFR 200.130; and

(b) The requirements in §§ 201.171–201.177.

(Sec. 124(g), 20 U.S.C. 2734(g); Sec. 183, 20 U.S.C. 2833)

§ 201.171 Standards for evaluation by an LEA.

An LEA shall explain in its application how its Title I evaluation procedures are consistent with the following technical standards. The SEA shall use these same standards to determine the adequacy of the LEA's procedures.

(a) *Representativeness of evaluation findings.* The evaluation results are computed so that the conclusions apply to the persons or schools served by the Title I project. This may be accomplished by including in the evaluation either all or a representative sample of the persons or schools served by the project.

(b) *Reliability and validity of evaluation instruments and procedures.* The proposed evaluation instruments—

(1) Consistently and accurately measure the objectives of the project; and

(2) Are appropriate, considering factors such as the age or background of the persons served by the project.

(c) *Evaluation procedures that minimize error.* The proposed evaluation procedures minimize error by including—

(1) Proper administration of the evaluation instruments;

(2) Accurate scoring and transcription of data; and

(3) Use of analysis procedures whose assumptions are appropriate for the data.

(d) *Valid assessment of achievement gains in reading, language arts and mathematics.* In assessing the effectiveness of regular school year Title I reading, language arts, and mathematics projects in grades 2 through 12, the proposed evaluation procedures yield a valid measure of (1) the Title I children's performance after receiving Title I services compared to (2) an estimate of what their performance would have been in the absence of Title I services.

(e) As used in §§ 201.172–201.174 and § 201.176, a language arts project does not include a project designed to teach English to non-English-speaking children.

(Sec. 124(g), 20 U.S.C. 2734(g); Sec. 183, 20 U.S.C. 2833)

§ 201.172 Use of models by an LEA.

An LEA shall use one of the models in § 201.173—or an approved alternative (*see* § 201.174)—in the evaluation of each regular school year Title I project that provides instructional services in reading, language arts, or mathematics in grades 2 through 12.

(a) The models require that the LEA administer a test—

(1) Before or at the beginning of services for the project period (pre-test); and

(2) After or at the end of the project period (post-test).

(b) The models compare the post-test scores of Title I children to an estimate of what their post-test scores would have been if they had not received Title I services ("expected performance").

(c) Each model provides a different method for estimating expected performance using the scores of children not receiving Title I services who are tested at the same time of year.

(d) With any of the three models, the LEA may use a test with or without national norms.

(Sec. 124(g), 20 U.S.C. 2734(g); Sec. 183, 20 U.S.C. 2833)

§ 201.173 Model requirements.

(a) *Norm-Referenced Model.* An LEA using the Norm-Referenced Model shall—

(1) Administer a pre- and post-test to Title I children; and

(2) Estimate expected performance using the performance of children in a norm sample developed—

(i) Locally;

(ii) By the SEA; or

(iii) By a test publisher.

(b) *Comparison Group Model.* An LEA using the Comparison Group Model shall—

(1) Identify a comparison group of educationally deprived children who—

(i) Are similar to Title I children with respect to educationally relevant factors (such as age, socio-economic status, and previous achievement); and

(ii) Are not receiving Title I or similar compensatory education services;

(2) Administer a pre- and post-test to both the Title I children and the children in the comparison group; and

(3) Estimate expected performance for the Title I children by using the test scores of the children in the comparison group.

(c) *Regression Model.* An LEA using the Regression Model shall—

(1) Administer a pre-test to a group of children in Title I eligible schools at grade levels to be served by Title I. In the Regression Model only, the pre-test may consist of a test, teacher judgment of student performance, or a composite of these;

(2) Establish a cutoff score and provide Title I services to those children scoring below the cutoff. Children scoring above the cutoff are the comparison group for the evaluation; and

(3) Administer a post-test to both groups and estimate expected performance using the pre- post-test scores for the comparison group.

(Sec. 124(g), 20 U.S.C. 2734(g); Sec. 183, 20 U.S.C. 2833)

§ 201.174 Alternative models.

(a) An LEA may use an alternative to one of the three models in § 201.173 for the evaluation of regular school year reading, language arts, or mathematics projects in grades 2 through 12. An alternative model would provide a method for estimating expected performance that differs from methods provided by the three models.

(b) The use of an alternative model must be approved first by the SEA and then by the Secretary.

(c) To be approved, an alternative model must yield a valid measure of—

(1) The Title I children's performance in reading, language arts, or mathematics;

(2) Their expected performance; and

(3) The results of the Title I project expressed in the common reporting scale established by the Secretary for SEA reporting.

(d) The request for using an alternative model may be submitted to the Secretary by the LEA or the SEA acting at the request of one or more LEAs.

(e) The request must indicate how the alternative model meets the three requirements in paragraph (c) of this section.

(f) The Secretary responds to the request in writing within 30 days.

(Sec. 124(g), 20 U.S.C. 2734(g); Sec. 183, 20 U.S.C. 2833)

§ 201.175 Frequency of LEA evaluations.

(a)(1) An LEA shall evaluate the effectiveness of its Title I projects at least once every three years in accordance with a schedule established by the Secretary.

(2) This evaluation must include an assessment of achievement gains of Title I children compared to an estimate of their expected performance in the absence of Title I services.

(3) The LEA shall measure the achievement gains over a period of approximately either nine or twelve months. (Examples of appropriate testing intervals include fall-to-fall testing, fall-to-spring testing, and spring-to-spring testing.)

(b) At least once during the three-year period, the LEA shall collect additional information needed to determine whether the achievement gains measured over nine to twelve months are sustained over a longer period of time. (Examples of appropriate testing cycles for this long-term evaluation include fall-spring-fall testing, fall-fall-fall testing, and spring-spring-spring testing.)

(Sec. 124(g), 20 U.S.C. 2734(g))

§ 201.176 Reports of evaluation results.

(a) *LEA reporting.* (1)(i) An LEA shall report to its SEA the results of its evaluations conducted in accordance with the schedule established by the Secretary.

(ii)(A) In reporting the results of measurements of educational achievement in regular school year projects in reading, language arts, or mathematics in grades 2 through 12, the LEA shall use the common reporting scale established by the Secretary unless the SEA approves some other form of local reporting.

(B) If the SEA approves another form of reporting, the LEA shall include sufficient information to enable the SEA to convert the achievement results to the common scale.

(2) Unless requested by the SEA, the LEA is not required to include in its evaluation report the results of the long-term evaluations required by § 201.175(b).

(3)(i) The LEA shall retain all of the data used to develop its report to the SEA for a period of five years from the date of the report or until any pending Federal audit has been resolved.

(ii) The data to be retained must include—

(A) A record of all individual scores, with an identifying code so that pre- and post-test scores can be matched, in regular school year projects in reading, language arts, or mathematics in grades 2 through 12; and

(B) The name, form, level, and date of publication of any tests administered.

(b) *SEA reporting.* (1) *Sampling plan.* An SEA shall submit, for the approval of the Secretary, a proposed sampling plan designed to ensure that evaluations are conducted in a representative sample of its LEAs in any school year. The proposed plan shall be developed according to the schedule and criteria specified by the Secretary.

(2) *Annual performance report.* To provide nationwide information about the recipients of Title I services and the types of services delivered, the SEA shall provide in its annual performance report—for all or a representative sample of LEAs—the following information for all regular and summer projects of those LEAs included in the report:

(i) the number of participants, by type of services received.

(ii) the number of participants, by grade, who attend public schools.

(iii) the number of participants, by grade, who attend nonpublic schools.

(iv) Other information requested by the Secretary. This may include, for example, information about advisory councils and teacher training.

(3) *Biennial evaluation report.* The SEA biennial evaluation report (required by 34 CFR 200.160(a)) shall contain information about projects conducted since the last report. To provide nationwide information about the effectiveness of regular school year projects offering instructional services in reading, language arts, or mathematics in grades 2 through 12, the SEA shall include the following information for all or a representative sample of LEAs:

(i) A statewide average, by grade level, of achievement gains resulting from Title I participation expressed in the common reporting scale established by the Secretary.

(ii) For a sample of grade levels, information by grade level relating levels of achievement gain to—

(A) The number of hours of project exposure;

(B) The pupil-instructor ratio; and

(C) Project enrollment.

(iii) If applicable, the number of projects excluded because of erroneous or missing data and the reasons for their exclusion.

(iv) The SEA shall retain all the data used to develop its report for a period of five years from the date of the report or until any pending Federal audit has been resolved.

(Sec. 124(g), 20 U.S.C. 2734(g); Sec. 183, 20 U.S.C. 2833)

§ 201.177 Allowable costs for evaluation.

(a) Title I funds may be used for evaluation activities to—

(1) Identify specific strengths and weaknesses of a project;

(2) Determine the results of a project; and

(3) Disseminate the results of Title I evaluations.

(b) In addition to the requirements concerning the supplementary nature of Title I funds (§§ 201.130–201.143) and other rules governing the allowability of Title I expenditures, the following rules apply to the use of Title I funds to support the purchase, administration, scoring, and analysis of evaluation instruments. Except for cases in which data meeting these needs are already available, Title I funds may be used—

(1) To test Title I participants for evaluation purposes;

(2) In the Comparison Group Model, to test an appropriate number of educationally disadvantaged children who are at the same grade level(s) as Title I participants, but who are not receiving Title I services;

(3) In the Regression Model, to test an appropriate number of children in Title I eligible schools who are at the grade level(s) served by Title I;

(4) To administer a nationally normed test to all, or a representative sample of, the Title I participants when a test without national norms has been used for evaluation purposes. This will permit the LEA or SEA to convert its evaluation reults to the common scale; and

(5) To test an appropriate number of children no longer receiving Title I services to determine whether achievement gains measured over nine or twelve months are sustained over a longer period of time (as required by § 201.175(b)).

(c) Title I funds may not be used for—

(1) General districtwide or statewide testing programs;

(2) Establishing local or State norms; or

(3) Research and development activities, such as the development and field testing of new instruments.

(Sec. 124(g), 20 U.S.C. 2734(g); Sec. 183, 20 U.S.C. 2833)

§§ 201.178–201.179 [Reserved]

Appendix—Comments and Responses for 34 CFR Parts 200 and 201.

Note.—This Appendix will not be codified in the Code of Federal Regulations.

Subpart A—General

§ 200.1 *Purpose.* One commenter recommended that this section specifically require applicant agencies which serve special populations to provide special Title I services to children of limited English proficiency.

Response. No change has been made. Section 200.1 is a statement of purpose and as such includes no specific requirements of any kind. Various sections throughout parts 200 and 201 do, however, address the issue of provision Title I services to children of limited English proficiency.

Comment. One commenter asked why this section did not repeat certain phrases in Section 101 of Title I.

Response. A change has been made. Section 200.1 is intended to identify the grantees and, in a general way, the type of children to be served. Thus, § 200.1(d) was added to show that Title I funds are provided to the Secretary of the Interior to meet the special educational needs of Indian children.

Comment. One commenter questioned why this section omitted the provision in Section 101 of Title I that Title I funds are intended to go to those LEAs serving areas with concentrations of children from low-income families to expand and improve their educational programs.

Response. A change has been made. Section 200.1(a) has been revised to include the statutory language "to expand and improve their educational programs. . ."

§ 200.3 *Applicability of other Title I regulations.*

Comment. One commenter recommended revising paragraph (a)(1)(i) to indicate that the educationally deprived children are in public school attendance areas with high concentrations of children from low-income families, rather than simply in low-income areas.

Response. A change has been made. Section 200.3(a)(1)(i) now uses the language of Section 101 of Title I: "areas with concentrations of children from low-income families."

§ 200.5 *Definitions.*

Comment. One commenter asked why a definition of "Assistant Secretary" was included.

Response. No change has been made. The Secretary may delegate certain responsibilities. Accordingly, the Secretary has delegated to the Assistant Secretary for Elementary and Secondary Education the responsibility of handling direct complaints and appeals at the Federal level. Thus, a definition is needed to designate to which Assistant Secretary this responsibility was delegated.

Comment. One commenter questioned the omission of a reference to "data available at the time of computation" in the definition of "average per pupil expenditure" in paragraph (b)(2).

Response. A change has been made. The definition has been revised to conform to the definition in Section 198 of Title I.

Comment. One commenter questioned why the phrase "or all of the States" was included in clause (a)(2) in the definition of average per pupil expenditure.

Response. No change has been made. That phrase is necessary to complete the definition of average per pupil expenditure for the United States as a whole.

Comment. One commenter questioned the definition of "cease and desist" because it includes the initiation of a required practice.

Response. No change has been made. As used in Section 454 of the General Education Provisions Act (GEPA), "cease and desist" orders may include a requirement to initiate a practice in order to eliminate a continuing violation.

Comment. One commenter questioned why the definition of "construction" used the term "means" when the statute uses "includes."

Response. A change has been made. The definition has been revised by replacing "means" with "includes."

Comment. One commenter requested that the term "current expenditures," as used in computing maintenance of effort, be made consistent with the definition in this section.

Response. No change has been made. The expenditures to be included in determining maintenance of effort under § 200.90 are consistent with the definition of "current expenditures" in § 200.5.

Comment. One commenter questioned the substitution of "means" for the statutory "includes" in the definition of "equipment."

Response. A change has been made. The definition has been changed to incorporate the statutory language "includes."

Comment. Several commenters recommended excluding items (c)(2) and (c)(3) under the definition of equipment in this section.

Response. No change has been made. The term "equipment" for purposes of

Title I is defined in Section 198(a)(6) of Title I. That definition has been restated in § 200.5 only as a convenience to persons using these regulations.

Comment. One commenter expressed concern over the provision in the definition of "fiscal year" which allows States to use whichever 12 month period they normally use as the fiscal year for purposes of complying with Title I requirements.

Response. No change has been made. Allowing agencies to use the same fiscal year that the State uses for recordkeeping eases the paperwork burden on both SEAs and applicant agencies without jeopardizing the effectiveness of any Title I requirement.

Comment. One commenter recommended clarification of the term "grant period" as defined in this section.

Response. No change has been made. The grant award specifies the grant period.

Comment. One commenter questioned why the definition of "parent" in the NPRM is different than the statutory definition.

Response. A change has been made. The definition of "parent" has been revised to be consistent with the statutory definition.

Comment. One commenter questioned the necessity of including the last sentence under subsection (c) in the definition of "State agency."

Response. No change has been made. When the term "State agency" is used in these regulations, it includes any State educational agency that operates a program for migrant children. The term "State agency," however, is not intended to cover State educational agencies when they act in their capacity as the agency carrying out State administrative responsibilities.

Comment. One commenter recommended revising the definitions of "suspension" and "withholding" to provide that neither would result in loss of services to children.

Response. No change has been made. Sections 189(a) and 186(a) of Title I do not permit the discretion to avoid withholding if it would result in the loss of services to children. However, the effect of withholding on the participating children is a factor in deciding what amount to withhold under § 200.200(b)(3)(i)(C) or in deciding whether to suspend under § 200.200(c)(2)(iv).

Comment. One commenter recommended defining the term "program" in this section.

Response. No change has been made. The term "program" is occasionally used to refer to broad categories of Title I activities—e.g., Migrant Program. In all other instances, the term "project," as defined in § 200.5, is consistently used to refer to specific activities funded under Title I. Therefore, it is not useful to attempt to describe all categories covered by the occasional use of the term "program."

Comment. One commenter pointed out that terms such as, Title I, Title V, etc. are abbreviations and therefore belong in § 200.6 rather than § 200.5.

Response. No change has been made. These terms are defined in that the subjects with which they deal are explained; therefore, they appear in § 200.5.

Subpart B—Allocation of Title I Funds

§ 200.10 *Amount of funds available for Title I grants.*

Comment. One commenter recommended requiring SEAs to notify applicant agencies of the amount of Title I funds they are eligible to receive within 30 days after making a determination of that amount.

Response. No change has been made. SEAs are responsible for notifying LEAs and State agencies as soon as the necessary determinations are made. Because some SEAs need considerably more time than others to compute allocations, these regulations cannot fairly impose a 30-day deadline on all SEAs.

Comment. One commenter recommended including a specific date by which the Department of Education would annually distribute Title I funds.

Response. No change has been made. The availability of funds for distribution by the Department depends upon the receipt of the data required to compute allocations and upon congressional appropriation of funds. Both of these factors are beyond the control of the department. Therefore, inclusion of a specific date in these regulations is not feasible.

Comment. One commenter expressed concern over the phrase "on the basis of other data" in paragraph (c) as possibly implying that all States will use other data.

Response. A change has been made. Section 200.10(c) now provides that States may use other data only if necessary to determine the amount of Title I funds that each LEA is eligible to receive.

Subpart C—Documents a State Must Submit Before Receiving Title I Funds

§ 200.20 *State application.*

Comment. One commenter requested that SEAs be required top solicit input from LEAs, parents, and other interested parties in developing State applications under this section.

Response. No change has been made. Although it may be desirable for SEAs to do so, the statute does not require SEAs to disseminate State applications for review prior to submission to the Department.

Comment. One commenter recommended clarifying the relationship between the general application SEAs must submit under Section 435 of GEPA and the Title I application, and further questioned why SEAs must provide assurances related to GEPA and EDGAR in their Title I application if they have already done so in their general application under Section 435 of GEPA.

Reponse. No change has been made. This section is designed to assist the Secretary in implementing Section 182 of Title I which requires that the Secretary be "satisfied that the assurances in [the Title I] application and the assurances contained in its general application under Section 435 of [GEPA] will be carried out" before the Secretary may approve the Title I application.

§ 200.21 *State monitoring and enforcement plan (MEP).*

Comment. One commenter requested that specific guidance be provided concerning the contents of an MEP.

Response. No change has been made. The list in § 200.21(c) prescribing the contents of an MEP is as specific as possible. Due to the variation in operating procedures among States, no more specific guidance can be given without infringing upon an SEA's prerogative to adopt monitoring and enforcement procedures that reflect its unique needs.

Comment. One commenter recommended that SEAs be required to disseminate MEPs within the State within 30 days after Departmental approval.

Response. No change has been made. LEAs and district advisory councils may request to receive copies of MEPs under § 200.21(e). A requirement that all applicant agencies and advisory councils automatically receive them would be overly burdensome for the SEA.

Comment. One commenter recommended using the word "program" rather than "schedule" in subsection (c)(2).

Response. A change has been made. The statutory word "program" is now used in § 200.21(c)(2).

Comment. One commenter questioned why the statutory requirement in Section 171(a)(4) of Title I was interpreted broadly in paragraph (c)(5)

to require SEAs to establish audit resolution procedures in accordance with §§ 200.191–200.196.

Response. No change has been made. Section 171(a)(4) requires SEAs to establish procedures for audits of applicant agencies and for the recovery of funds determined to be unallowable under Title I. The audit resolution procedures in §§ 200.191–200.196 simply establish guidelines for SEAs to follow in determining whether unallowable expenditures were in fact made and in recovering funds that are determined to have been misspent.

Comment. One commenter pointed out that the statute does not require amendments to the monitoring and enforcement plan (MEP) and questioned why amendments are required by paragraph (d).

Response. No change has been made. Allowing SEAs to make unlimited and substantial changes in their MEPs after they are approved, without submitting the amendments to the Secretary, would effectively relieve SEAs of the responsibility of following the procedures in the MEPs.

Comment. One commenter, noting that H. Rept. No. 95–1137 directed the Secretary to develop and disseminate a model reporting form for MEPs, questioned when and how the Secretary would do so.

Response. The Office of Education developed a model form for States to follow in preparing their MEPs and disseminate it in a Title I program directive INST A20–8 on April 3, 1979.

Comment. One commenter questioned why § 200.21(a)(2) authorizes the submission of multiple MEPs when the statute refers only to one single MEP.

Response. No change has been made. In most SEAs, the different categories of Title I programs are administered by different organizational units. Therefore, the opportunity to submit separate MEPs would allow each program office to formulate a plan that would enable it to administer its program most effectively. No SEA is obligated, however, to submit separate MEPS.

Subpart D—Program Requirements That Apply to All Agencies That Receive Title I Funds

§ 200.30 *Teacher and school board participation.*

Comment. One commenter objected to the requirement that teachers and school boards be afforded access to prior project evaluations.

Response. No change has been made. The persons referred to in § 200.30(a) need documents such as prior evaluation reports in order to be involved effectively in planning of future projects.

Comment. One commenter recommended revising paragraph (a) to require the involvement of representatives of teachers in participating schools rather than the teachers themselves.

Response. No change has been made. Section 124(l) of Title I requires the involvement of the teachers, not their representatives.

§200.31 *Parental participation.*

Comment. One commenter requested that agencies be required to make the information referred to in paragraph (b) of this section available in the native language of parents whose principal language is other than English.

Response. No change has been made. However, individual LEAs may decide that parental participation will be more meaningful and effective if the information referred to in §200.31(b) is provided in a language other than English.

Comment. One commenter requested clarification on whether Title I funds must be used to provide parent training in order to provide parents with an opportunity to assist their children effectively in achieving the instructional goals as required by §200.31(a)(3).

Response. No change has been made. Agencies may, but are not required, to provide training to parents of participating children to assist them in helping their children achieve the instructional goals. Expenditures for this type of training would need SEA approval.

§200.40 *Coordination with other programs.*

Comment. One commenter recommended listing specific programs, such as Title I migrant services, under paragraph (b).

Response. No change has been made. The intent of §200.40 is to encourage coordination between Title I and all other programs. Unless the regulations contained an exhaustive list of specific programs, one could infer that coordination was not required with any program not included in the list.

Comment. One commenter objected to the Secretary's strong encouragement for coordination between Title I and other programs.

Response. No change has been made. Section 124(f) of Title I requires that agencies "ensure that all programs and projects complement each other . . ."

Comment. One commenter questioned why this section did not follow the statute in requiring agencies to consider only those offers which may aid in carrying out or making more effective the Title I programs.

Response. A change has been made. Section 200.40(a)(2) has been revised to reflect the statutory language exactly.

Comment. One commenter questioned the rationale for encouraging coordination between the Title I program and the LEA's regular instructional program.

Response. No change has been made. Section 124(f) of Title I requires that LEAs ensure that all programs and projects complement each other.

§ 200.41 *Coordination of health, nutrition, or social services.*

Comment. One commenter recommended specifying what types of social services were referred to in paragraph (a).

Response. No change has been made. Because the regulations do not define permissible types of social services, an LEA or State agency has the maximum flexibility to choose services appropriate to fit its needs. If specific types of social services were listed, applicant agencies could be restricted from applying to use Title I funds for services other than the ones listed.

Comment. Several commenters requested that school breakfast programs be identified as one type of program that may be provided with Title I funds.

Response. No change has been made. Section 200.41 restates the statutory provision. The federally-assisted School Breakfast Program is clearly a "nutrition program" and, like other nutrition programs, could be provided with Title I funds if the conditions in § 200.41(b) are met.

Comment. Several commenters objected to this section because it requires SEAs to provde information on other programs that the SEA knows little or nothing about.

Response. No change has been made. Although SEAs may not have detailed information about programs which provide support services, they may not approve requests for Title I assistance for support services which would or could be funded from another source. The Department will maintain and provide to SEAs, upon request, information on Federal assistance programs which may fund activities such as those listed under § 200.41(a).

Comment. Several commenters recommended that paragraph (b)(2) be revised to eliminate the implication that Title I may provide support services to all children who are eligible to participate in the project.

Response. A change has been made to clarify § 200.41(b)(2) by stating that

support services under Title I may be provided only to children who have been selected to participate in the Title I project.

Comment. One commenter recommended including in subsection (a)(2) the requirement that applicant agencies request information about where support services are available.

Response. A change has been made. The requirement that an agency shall ask the SEA for information concerning where services are available has been added to § 200.41(a)(2)(iii).

Comment. One commenter questioned the rationale behind paragraph (b)(1) which provides that SEAs shall not approve support services unless those services are designed to address an identified need of the Title I participants.

Response. No change has been made. Section 101 of Title I indicates that financial assistance under Title I shall be used for programs and projects which contribute particularly towards meeting the special educational needs of educationally deprived children. Therefore, support services, if they are to be funded with Title I funds, must be designed to address special, identified educational needs.

Comment. One commenter questioned the omission of any reference in this section to the language in the House report that Title I funds may be used for support services if the services are otherwise not available or the LEA cannot meet the conditions to the receipt of the services.

Response. A change has been made. This provision has been added to paragraph (b)(2).

Comment. One commenter expressed concern over the provision in paragraph (b)(2) which requires that funds and services from other programs be fully utilized before use of Title I funds to provide support services may be approved.

Response. No change has been made. Use of Title I funds to provide a service for which other funds were available but not used would not "increase the level of funds . . . for the education of children participating in programs and projects assisted under [Title I]" as required by Section 126(c) of Title I.

§ 200.42. *Simultaneous use of Title I funds and other funds.*

Comment. One commenter recommended revising the language in this section to provide that agencies which do meet the requirements of § 200.140(c) may simultaneously use Title I funds and funds from other sources.

Response. A change has been made. Section 200.42 has been revised to provide for this possibility.

Comment. One commenter recommended adding the requirement that if Title I funds are used to support more than 51 percent of a project, dissemination procedures and evaluation results be reported in accordance with Title I requirements.

Response. No change has been made. This section requires agencies to maintain records showing that they use Title I funds in compliance with all Title I requirements, regardless of the percentage of support that is provided with Title I funds. Therefore, there is no reason to add a specific provision concerning compliance with the Title I dissemination and evaluation requirements.

Comment. One commenter questioned the authority for this section noting that Section 173 of Title I refers to SEA, not applicant agency records.

Response. A change has been made. The statutory reference is Section 127(a) of Title I.

§ 200.43. *Jointly operated projects.*

Comment. Several commenters requested more guidance in the implementation of a joint project.

Response. No change has been made. This section is intended only to authorize joint Title I project applications, rather than list specific requirements which must be met in implementing projects under these applications. In general, projects operated by more than one agency under a joint application are subject to the same requirements as projects operated under an application submitted by a single applicant agency.

§ 200.50. *Use of evaluations in planning.*

Comment. One commenter recommended revising this section to provide that an SEA may not approve applications unless evaluations demonstrate that the project is of sufficient size, scope, and quality to meet the children's needs.

Response. No change has been made. Section 200.110(b)(4) requires SEAs to consider evaluations in reviewing applications for approval.

Comment. One commenter recommended deletion of the section since the requirement is covered in § 200.130(c).

Response. No change has been made. The section is included under project design to emphasize the role of evaluations in the design of Title I projects.

Comment. One commenter pointed out that Section 124(g) of Title I requires evaluation results to be used to improve projects rather than simply to plan effective projects.

Response. No change has been made in this section. However, § 200.130(c) requires agencies that receive Title I funds to use evaluation results in planning for and improving Title I projects to be carried out in the following years.

§ 200.51. *Sufficient size, scope, and quality of projects.*

Comment. One commenter requested specific reference to the use of bilingual materials for children of limited English proficiency as an example of a possible way to meet the size, scope and quality requirement.

Response. No change has been made. This point is made under 34 CFR 201.132 (Assurance of Equal Opportunity).

Comment. Several commenters recommended that paragraphs (a) and (b) retain the statutory language that projects have reasonable promise of meeting . . . the special educational needs of the children being served, rather than the project objectives.

Response. A change has been made. Sections 200.51 (b) and (c) now reflect the statutory language. However, appropriate project objectives are essential to the design of a project with sufficient size, scope, and quality to show reasonable promise of meeting the needs of the participating children.

Comment. One commenter requested that the prohibition in section 116a.22(b)(4)(ii) of the previous final regulations against expenditures of Title I funds which are impudent, extravagant, excessive, or wasteful be included in this section.

Response. A change has been made. Section 200.71 has been revised to include this requirement.

Comment. One commenter objected to the use of the term "reasonable promise" as vague and ambiguous.

Response. No change has been made. That term is used in Section 124(b) of Title I. Note that § 200.122(a) specifically authorizes SEAs to adopt rules concerning the size, scope, and quality requirement.

§ 200.52 *Prohibition against using Title I funds to provide general aid.*

Comment. One commenter questioned the necessity of the phrase, "and have the effect of meeting" in paragraph (a), noting that it could be interpreted so as to deny funding to an agency which, though acting in good faith, operated an unsuccessful project.

Response. A change has been made. The phrase "and have the effect of meeting" has been deleted from § 200.52(a).

§ 200.53 *Minimum expenditure for a Title I project.*

Comment. One commenter questioned the inclusion of paragraph (b) (1) which provides that an SEA may reduce the minimum expenditure requirement if any agency cannot meet that requirement on its own.

Response. No change has been made. The first determination is whether an agency can support a $2500 project on its own. If it cannot, the next determination is whether the agency can reasonably be expected to support a $2500 project by joining with other agencies.

§ 200.54 *Sustaining educational gains.*

Comment. One commenter requested that the regulations clarify whether there is a maximum percentage of participants who could be served under this provision, when these students are not among those in greatest need.

Response. No change has been made. The selection of educationally deprived children who are no longer among those in greatest need is acceptable under Section 123(b) of Title I. Section 200.54 requires agencies to consider components designed to operate during a year subsequent to the year during which children received services and made gains. It does not authorize the selection of children who are not currently in greatest need to participate in the Title I project except as part of a discrete component designed to sustain educational gains.

§ 200.55 *Individualized educational plan.*

Comment. One commenter recommended deletion of this section as the cost of developing an individualized educational plan for each child would be so great it would outweigh the benefits.

Response. No change has been made. The section essentially restates Section 129 of Title I which itself only encourages development of IEPs, leaving the choice of whether to do so to the individual applicant agencies.

Comment. One commenter recommended replacing the term "individualized educational plan" (IEP) with the term "personalized educational plan" (PEP) to give uniqueness to Title I individualized plans.

Response. No change has been made. The term "individualized educational plan" is used in the law and, therefore, is used in the regulations.

§ 200.60 *Training education aides and volunteers.*

Comment. Several commenters interpreted this section as requiring agencies to provide joint training every year. They objected to this requirement and recommended that training be required when needed, the need to be determined by the agency operating the project.

Response. A change has been made. Section 200.60(b) now requires that training be provided as needed.

Comment. One commenter recommended that the section be revised to emphasize that teachers, aides, and volunteers should be trained together.

Response. No change has been made. Section 200.60(c) does require that training of aides and volunteers include the professional staff whom the aides and/or volunteers will assist.

Comment. One commenter questioned why the statutory provisions requiring agencies to have well developed plans for coordinated programs of training were omitted.

Response. A change has been made. Section 200.60(d) reflects the statutory provisions in Section 124(l) of Title I that require agencies to have well developed plans for coordinated programs of training.

Comment. One commenter recommended revising the language in this section to specifically provide that while agencies must have a joint training program for aides and professional staff, some training may be provided to aides without professional staff present.

Response. No change has been made. The language in this section does not preclude such training.

Comment. One commenter recommended requiring new aides and volunteers to be trained as they enter the project.

Response. A change has been made. Section 200.60(b) now requires training to be provided as needed, thereby covering the training of new aides and volunteers as they enter the project.

Comment. One commenter questioned the inclusion of paragraph (a) which requires that training of Title I volunteers and aides be directly related to Title I services to be provided.

Response. No change has been made. Title I funds must be used to provide services which contribute particularly toward meeting the special educational needs of educationally deprived children. Accordingly, Title I training must relate directly to the services to be provided under the Title I project.

§ 200.61 *Noninstructional duties.*

Comment. Several commenters questioned allowing regular supervision of any homeroom as an acceptable noninstructional duty for Title I personnel.

Response. A change has been made. Section 200.61(a)(3) specifically prohibits assigning Title I personnel to homeroom supervision. Since regular supervision of a homeroom does not meet the statutory criterion that any noninstructional duty be rotating, it may not be performed at Title I expense.

Comment. One commenter objected to allowing Title I staff to perform any noninstructional duties.

Response. No change has been made. Section 134 of Title I authorizes the use of not more than 10 percent of Title I staff members' time to carry out certain noninstructional duties.

Comment. One commenter objected to the language in paragraph (a)(3) as requiring LEAs to discriminate between different classes of personnel (Title I and non-Title I) within a single school.

Response. No change has been made. Section 134 of the Title I statute authorizes only certain limited noninstructional duties for staff paid with Title I funds; thus the distinction is necessary.

Comment. Several commenters recommended including a provision limiting the proportion of Title I staff who perform noninstructional duties to the proportion of non-Title I staff who perform such duties.

Response. No change has been made. The proportion referred to in § 200.61(a)(5) is the proportion of total staff time spent performing noninstructional duties. Therefore, the proportion of staff members who perform a certain duty is included already.

Comment. One commenter questioned why the statutory term "personnel paid entirely with Title I funds" was interpreted as "instructional personnel paid with Title I funds."

Response. A change has been made. Section 200.61(a) uses the statutory term "personnel paid entirely with Title I funds."

Comment. One commenter recommended revising the example in § 200.61(a)(3) dealing with substitute teaching to specify that only substitute teaching of a non-Title I class is prohibited.

Response. A change has been made. The phrase "of a non-Title I class" was added in § 200.61(a)(3) to clarify that substitute teaching of a Title I class is not prohibited.

Comment. One commenter recommended that paragraph (a)(5) be revised to specify that the proportion of time Title I staff members spend performing noninstructional duties may not exceed the proportion of time similarly situated personnel at the same school site spend performing the same duties.

Response. A change has been made. The phrase "at the same school site" was added to § 200.61(a)(5).

Comment. One commenter noted that the statutory citation for this section was incorrect.

Response. A change has been made. The authority is now correctly cited as Section 134 of Title I.

Comment. One commenter recommended deletion of the requirement that noninstructional duties performed by Title I instructional staff be on a rotating basis.

Response. No change has been made. Section 134 of Title I requires that noninstructional duties be limited, rotating, and supervisory.

Comment. One commenter recommended that the meaning of the term "supervisory" be clarified.

Response. No change has been made. The term "supervisory" refers to duties which involve a staff member who is in charge of a number of students during some portion of the day when the students are not in a classroom or under the supervision of their regular classroom teacher.

Comment. One commenter recommended including a definition of "similarly situated personnel" that specifies that these personnel are persons not paid with Title I funds who perform the same functions and are considered to be in the same category (such as teachers or aides) as Title I personnel who perform noninstructional duties.

Response. No change has been made. It is intended that this term be interpreted in the manner suggested by the commenter. However, it is felt that whether a person is similarly situated should be determined on a case-by-case basis.

Comment. One commenter questioned the omission of the phrase "for which such similarly situated personnel are paid."

Response. No change has been made. Section 200.61 refers to duties to which both Title I and State and locally paid staff are assigned. Staff members are not assigned to duties for which they are not paid.

§ 200.70 *Allowable costs under EDGAR.*

Comment. One commenter felt the term "certain indirect costs" should be clarified.

Response. No change has been made. Rules governing indirect cost rates are contained in 34 CFR Part 76 (EDGAR) and appendices B through D to 34 CFR Part 74.

Comment. One commenter recommended revising this section to provide that Title I funds may be used to meet certain restricted indirect costs, rather than just certain indirect costs.

Response. No change has been made. The actual indirect costs themselves are not restricted. The amount of Title I funds which can be used to meet those costs is restricted.

§ 200.71 *Specific requirements concerning allowable costs under Title I.*

Comment. One commenter questioned whether volunteers may be reimbursed with Title I funds.

Response. A change has been made. Section 200.82 authorizes the reimbursement of volunteers with Title I funds for certain expenses directly related to the performance of their duties as volunteers in a Title I project.

§ 200.74 *Use of Title I funds for health, nutrition, or social services.*

Comment. One commenter recommended deletion of this section as redundant, stating that the provision is covered in § 200.41.

Response. No change has been made. This section authorizes use of funds for support services; § 200.41 contains the requirements which must be met in order actually to provide support services.

§ 200.75 *Use of Title I funds for training eligible persons.*

Comment. One commenter recommended including parents under persons for whom training may be provided using Title I funds.

Response. No change has been made. Section 200.79 and 34 CFR 201.161–201.162 specifically deal with training and allowable costs for parents.

Comment. One commenter recommended specifically mentioning teacher centers as acceptable ways of providing inservice training.

Response. No change has been made. Methods of providing inservice training are chosen at the discretion of the applicant agency with SEA approval.

Comment. One commenter recommended deletion of the requirement in paragraph (a)(2) that, in order to receive training under Title I, staff paid with non-Federal funds must provide services to children participating in the Title I project. The commenter also recommended requiring SEA approval for any Title I funded training of non-federally paid staff.

Response. No change has been made. Since no benefit would accrue to Title I participants from training instructional staff which do not provide the Title I participants any services, such training is not authorized under Title I. Application approval by SEAs and State rulemaking authority give SEAs considerable opportunity to regulate Title I funded training of non-Title I staff.

Comment. One commenter recommended clarifying exactly which staff members may be trained using Title I funds.

Response. No change has been made. The present language sets out adequate criteria for determining whether a given staff member may be provided training at Title I expense.

Comment. One commenter questioned why the regulations provide for training of principals, staff specialists, and other staff members at Title I expense.

Response. No change has been made. In many Title I projects, locally paid curriculum specialists provide extensive supervisory assistance to Title I instructional personnel. Principals in Title I schools may also need training since they must understand the Title I projects thoroughly in order to administer them effectively at the school level.

Comment. One commenter recommended referring to education aides in paragraph (a)(1) as persons eligible for training at Title I expense.

Response. No change has been made. Education aides are already included in § 200.75(a)(1) as staff paid with Title I funds.

Comment. One commenter questioned the inclusion of the requirements of paragraph (b) concerning the scope of the training provided with Title I funds.

Response. No change has been made. The requirements in § 200.75(b) are necessary to ensure that Title I funds are expended to provide services which contribute particularly to meeting the special educational needs of educationally deprived children.

§ 200.76 *Use of Title I funds for bonus pay.*

Comment. Several commenters requested more guidance as to whom and under what conditions bonus pay may be paid.

Response. No change has been made. The regulations are designed to provide

flexibility for LEAs and State agencies to decide who should receive bonus pay.

§ 200.77 *Use of Title I funds for evaluation.*

Comment. One commenter pointed out that neither this section nor § 200.130 which it references addresses the issue of use of Title I funds.

Response. A change has been made. Section 200.77 now specifies that evaluation is one category of costs that may be paid from Title I funds. The evaluation itself must be appropriate and reasonable.

§ 200.78 *LEA's use of Title I funds for selecting children to receive Title I services.*

Comment. One commenter recommended that an LEA be permitted to select children to receive Title I services based on economic as well as educational criteria.

Response. No change has been made. Section 123(a) of Title I requires that children be selected for Title I services based on educational criteria only.

Comment. One commenter requested that this section be clarified and examples provided.

Response. No change has been made. 34 CFR 201.103 contains detailed requirements concerning selection of participants. 34 CFR Parts 202, 302, and 204 also contain provisions concerning the selection of participants.

Comment. One commenter questioned both the necessity and the legal authority for this section.

Response. A change has been made. The authority, Section 124(a) of Title I, has been added. The provision is necessary to clarify widespread confusion concerning which steps in the needs assessment/student selection process may be paid for using Title I funds.

§ 200.79 *LEA's use of Title I funds for expenses related to advisory councils.*

Comment. One commenter requested that this section include a provision requiring Title I funds which are used for project area and project school advisory council activities be used in accordance with LEA policies for advisory council activities.

Response. No change has been made. LEA's may require this under their authority in 34 CFR 201.162(b)(1).

Comment. One commenter recommended deletion of this section as the provisions are contained in 34 CFR 201.162.

Response. No change has been made. This section authorizes use of Title I funds for expenses related to advisory councils. 34 CFR 201.162 contains the requirements which must be met in order actually to use funds for that purpose.

§ 200.80 *Use of Title I funds for construction.*

Comment. One commenter questioned the inclusion of the special restrictions in paragraph (b)(2) requiring agencies to make every reasonable effort to pay for construction before using Title I funds.

Response. No change has been made. The requirement is necessary to ensure that Title I funds are not used for construction which would have been paid for from other sources in the absence of Title I.

§ 200.81 *Use of Title I funds for equipment.*

Comment. One commenter recommended including supplies under this section.

Response. No change has been made. Section 200.81 is intended only to authorize the purchase of equipment with Title I funds and to outline the criteria of need which must be met in order to purchase it. Since these restrictions apply specifically to equipment, supplies were not included in the section.

Comment. One commenter recommended requiring applications to include justifications for equipment purchases.

Response. No change has been made. Section 200.113(a) requires applicant agencies to include budgets in their annual updates, and § 200.113(b) requires SEA approval of amendments to the application whenever an agency wishes to purchase equipment. These requirements are sufficient to ensure that justification is provided for equipment purchases.

Comment. One commenter recommended deletion of paragraphs (b) and (c) of this section on the grounds that the requirements in those sections are subjective, ambiguous, and provide no practical standard.

Response. No change has been made. Although these standards do require agencies to interpret the term "every reasonable effort," the substance of the standards is necessary to ensure that Title I is fully a supplemental program.

Comment. One commenter recommended deletion of this section.

Response. No change has been made. Section 200.81 is necessary to ensure that equipment is purchased with Title I funds only when necessary.

Subpart E—Fiscal Requirements That Apply to All Agencies That Receive Title I Funds

§ 200.90 *Maintenance of effort.*

Comment. Several commenters recommended increasing the two percent tolerance to three, four, or five percent. Another commenter recommended that no tolerance be provided, and that the statutory language be observed.

Response. A change has been made. The legislative history of Pub. L. 95–561 clearly indicates that the five percent tolerance previously permitted is not acceptable. In conformance with the statutory language, all tolerance has been eliminated, and agencies must maintain 100 percent of their fiscal effort.

Comment. One commenter requested that agencies be allowed to compute maintenance of effort on the basis of average daily membership (ADM) or enrollment, rather than on average daily attendance (ADA).

Response. A change has been made. In § 200.90(b), agencies have the option of using either ADA or ADM in computing maintenance of effort.

Comment. Several commenters recommended that maintenance of effort determinations be based on some measure of services other than level of expenditures.

Response. No change has been made. Section 126(a) of Title I, upon which the requirements in § 200.90 are based, requires that agencies maintain "combined fiscal effort" in order to qualify to receive Title I funds. Therefore, there is no statutory basis for determining compliance with maintenance of effort on the basis of anything other than level of expenditures.

Comment. One commenter objected to the prohibition in paragraph (a)(2) against using, as a second preceding year, a year which was not previously used as a first preceding year.

Response. No change has been made. This provision in § 200.90(a)(2) is necessary to prevent an agency from significantly reducing fiscal effort in a given year and yet not reflecting that reduction on its maintenance of effort determination, thereby circumventing the requirement of Section 126(a) of Title I.

Comment. One commenter recommended that, in making determinations of substantial compliance, such factors as efficiency and the effort of withheld Title I funds on the educational deprivation within a school district be considered.

Other commenters, however, questioned whether a substantial compliance standard was authorized, and whether this standard was unduly vague.

Response. A change has been made. This provision was included to cover a limited class of situations—for example, when the retirement of a senior level teacher in a small district measurably affects the level of expenditures maintained. However, since questions have been raised suggesting that this provision might be abused, and since the exercise of discretion to accept substantial compliance in such circumstances is not expressly authorized by the Title I statute, this provision has been deleted.

Comment. One commenter objected that paragraph (a)(2) of this section was inconsistent with previous Departmental guidance interpreting the "preceding fiscal year" provision (ESEA Title I Program Directive INST. A101-8). The commenter recommended that the section be revised to conform to that guidance.

Response. No change has been made. The program directive provided agencies a one-time-only option of comparing either one of two sets of fiscal years in making maintenance of effort determinations. The prohibition in § 200.90(a)(2) is necessary to prevent agencies from completely circumventing the maintenance of effort requirement.

Comment. One commenter questioned whether the term "community services" as used in paragraph (d)(1) includes locally funded community education programs. It was recommended that community services be deleted as an expenditure that cannot be considered if it does include such programs.

Response. No change has been made. The definition of "current expenditures" in Section 198 of Title I excludes community services.

Comment. One commenter questioned the necessity of paragraph (a)(2), since the Department sets a closing date for applications each year.

Response. No change has been made. The Department sets no closing date for applications to the SEA from agencies operating projects.

Comment. One commenter questioned why rounding off of expenditures was felt to be necessary.

Response. No change has been made. Rounding off of figures to an even dollar amount has been an accepted practice designed to ensure that expenditures are maintained at the same basic level as the year before, without penalizing agencies for relatively minor changes in expenditure levels that may be attributable to mere statistical variations. The levels at which agencies are permitted to round off are not believed to allow a significant decrease in fiscal effort.

Comment. One commenter recommended including a statement in this section explaining what happens when an agency fails either to maintain effort or receive a waiver.

Response. No change has been made. If an agency has failed either to maintain effort or to receive a waiver, the SEA may not approve the agency's Title I application. The agency may not expend funds unless its application has been approved.

Comment. One commenter requested clarification as to whether an agency may expend Title I funds pending decisions on requests for maintenance of effort waivers.

Response. No change has been made. Section 200.90 states that an SEA may not approve an agency's application unless the agency has either maintained effort or secured a waiver, and funds may not be expended unless the application is approved. In situations where agencies are in the second and third year of a three-year application, the SEA must suspend approval each year pending maintenance of effort determinations.

Comment. One commenter requested a revision providing relief for LEAs which must reduce staff due to reduced enrollment.

Response. No change has been made. Section 200.90(a) authorizes agencies to compute maintenance of effort on a per pupil basis, thereby eliminating staff reductions which are commensurate with enrollment decreases as a problem in maintaining fiscal effort.

§ 200.91 *Waiver of the maintenance of effort requirement.*

Comment. One commenter recommended including time limits for the Secretary's action on requests for waivers of maintenance of effort.

Response. No change has been made. The Secretary will process all requests for maintenance of effort waivers in an expeditious manner.

Comment. One commenter recommended considering the adverse effect of withholding Title I funds when making waiver determinations.

Response. No change has been made. The statute does not provide for consideration of the effect of withholding Title I funds in making waiver determinations.

Comment. Several commenters objected to the exclusion of referenda, or acts of State legislatures, school boards, or other governmental bodies as circumstances which qualify for a waiver of maintenance of effort.

Response. No change has been made. Section 126(a) of Title I authorizes the Secretary to waive the maintenance of effort requirement only in the event that an agency fails to maintain effort due to exceptional and unforeseen circumstances. Since the voluntary action of a governmental body, be it an electorate or a legislature, cannot be unforeseen, reductions in fiscal effort due to those actions do not meet the statutory criteria for a waiver by the Secretary.

Comment. One commenter requested that greater flexibility be provided in granting waivers.

Response. No change has been made. The language in this section provides the Secretary the maximum flexibility authorized by Section 126(a)(2) of the Title I statute.

Comment. One commenter suggested requiring the approval of the district advisory council before an LEA requests a waiver.

Response. No change has been made. There is no statutory authority for requiring district advisory council approval of a request for a waiver of the maintenance of effort requirement.

Comment. One commenter requested that the term "exceptional and unforeseen circumstances" be defined and that examples be provided.

Response. No change has been made. Examples of exceptional and unforeseen circumstances are provided. Including a more specific definition of the term could limit the Secretary's flexibility in granting waivers, as needed, in appropriate circumstances.

Comment. One commenter recommended that this section provide for more direct involvement of the SEA in requests for waivers of maintenance of effort.

Response. No change has been made. Under Section 126(a)(2) of the Title I statute, only the Secretary is authorized to waive the maintenance of effort requirement; therefore, there is no need for direct SEA involvement in waiver requests.

Comment. One commenter asked why paragraph (d)(3) does not specify that, for all years subsequent to the year in which a waiver is granted, agencies must determine compliance with the basic maintenance of effort requirement on the basis of the level of effort that would have been required had the waiver not been granted.

Response. No change has been made. Section 200.91(d)(3) requires that "for the fiscal year immediately following the fiscal year for which the waiver was granted, the SEA shall determine the

affected agency's compliance with the basic standard required if the affected agency had not been granted the waiver." However, if the affected agency's level of fiscal effort increases in subsequent years, that agency's compliance with the basic standard will be based on those higher levels, not the level which would have been required had a waiver not been granted.

Comment. One commenter questioned the inclusion of an extended strike as grounds for a waiver of the maintenance of effort requirement.

Response. A change has been made. An extended strike has been deleted as a specific basis for a waiver since it is not in all cases exceptional and unforeseen. However, an extended strike may qualify an agency for a waiver under the general criteria in § 200.91(c)(2)(iv) if the strike is exceptional and unforeseen.

Comment. One commenter asked what situations the provision in paragraph (c)(2)(iii) was intended to address.

Response. No change has been made. A loss of impact aid money is one type of situation which this provision would cover.

Comment. One commenter questioned why a double levy failure was not included as grounds for a waiver.

Response. No change has been made. A double levy failure is essentially a voluntary act and as such is not grounds for a waiver.

Comment. One commenter questioned why paragraph (d) transferred to an SEA the Secretary's responsibility for reducing the allocation of an agency to whom a waiver has been granted.

Response. No change has been made. Since the SEA makes the allocations to applicant agencies, the responsibility for reducing those allocations would fall naturally with the SEA.

§ 200.92 *Supplement, not supplant.*

Comment. One commenter objected to the use of the phrase "to the extent practical increase the level of funds" as unclear.

Response. No change has been made. That phrase comes directly from Section 126(c) of Title I. This basic requirement is discussed at greater length in 34 CFR 201.130–201.143.

§ 200.93 *Excess Costs.*

Comment. One commenter questioned the use of instructional time rather than simply expenditures as a means of implementing the excess costs requirement.

Response. A change has been made. Section 126(b) of Title I requires that Title I funds only be used to meet "excess costs" of Title I instruction—that is, costs over and above an agency's average per pupil expenditures, by grade level or levels, for all pupils in the grades included in the agency's Title I project. Records are not routinely kept of such expenditures on a grade level basis. Moreover, the provision of Title I services itself introduces an element of uncertainty into this calculation. This is because, at least in theory, except where Title I services are provided outside of regular school hours, use of Title I instructional staff to provide instruction to Title I participants reduces the instructional load of the regular instructional staff. It may therefore result in incremental inceases in per pupil expenditures for non-Title I participants. Non-Title I funds would then have to be used to provide comparable incremental increases to Title I participants in conformance with the statutory standard.

The Department has long recognized, however, that the excess costs provisions were not intended to require shifting of State and local expenditures to cover incidental shifts in instructional costs, within limits, where regular teachers remained responsible for the instruction of Title I participants.

It has also concluded that the most satisfactory way to identify situations in which such continuing responsibility can be maintained is to look to instructional time. Since instructional time serves as a proxy for instructional costs, it will also, in time, approximate per pupil expenditures. The regulations have been substantially revised, in this final revision, to provide several models of compliance with these requirements.

Comment. A number of commenters objected to the restriction of 20 percent on the amount of regular program instruction by a particular teacher that a Title I program may displace before allocation of some State and local funds to the Title I project is required.

Response. A change has been made. Models are provided, under the revised regulations, for observing the excess costs requirement without allocating State and local funds to the Title I project. These models identify cases in which, because the instructional time away from a regular teacher is limited, the Secretary believes that teachers can continue effectively to be responsible for a Title I participant's instruction in coordination with Title I instructional staff. In such cases, there is no substantial shift in teaching load, and therefore expenditures, in violation of the excess costs requirement.

Where, however, a substantial amount of instructional time is spent away from the regular instructor, the Secretary believes that the regular instructor can no longer effectively oversee a child's program or provide supplemental instruction during the remaining instructional time together to compensate for that which has been missed. Moreover, some limitation is necessary to preclude large-scale alteration of staffing patterns which might result, for example, if including a significant number of children in a Title I project allowed a school as a matter of practice to significantly reduce pupil-teacher ratios in non-Title I classes or to reduce the number of such classes it would otherwise be required to staff.

Models for replacement projects and extended pull-out projects have been included to provide appropriate guidance in order to prevent these violations. The standard of 25 percent, rather that 20 percent, of instructional time has been used in the final regulations to provide as much flexibility as possible for schools using various methods of dividing instructional time, including provision of instruction in certain basic subjects only four, rather than five, times per week.

Comment. One commenter requested clarification of the term "the time . . . spent receiving instruction from a particular teacher . . . "

Response. No change has been made in the regulatory language. Additional models and examples have been added to assist in the application of this standard.

Comment. One commenter recommended deletion of paragraph (d)(1) which requires that records be kept which demonstrate that Title I pays for only the excess costs of projects.

Response. A change has been made. The revised excess costs provisions describe five different project designs which, if implemented as described, can be designed and implemented so as to satisfy the excess costs requirement without the need for excessive recordkeeping. Agencies which operate projects that do not correspond to any of the five project designs described in § 200.94(b)–(f) must still comply with the excess costs requirement in Section 126(b) of Title I. Such agencies must maintain records to demonstrate their compliance, as required by 34 CFR 76.731 of EDGAR.

Comment. Several commenters recommended deletion of the provision which allows agencies to round down to a whole number the number of State and locally paid staff required under an excess costs program.

Response. A change has been made. Agencies may now round to the nearest whole number if they provide staff to the Title I project.

Comment. Several commenters recommended including examples or illustrations of how the standard is actually applied to programs.

Response. A change has been made. The revised excess costs provisions include examples of four of the five different project designs described. The only design for which an example is not included is the "add on project" which involves providing Title I services during times when students normally receive no regular instruction.

Comment. One commenter recommended that this section state the Department's position with respect to awarding high school graduation credit for instruction provided under Title I.

Response. A change has been made. Section 200.94(h) states the Department's position with respect to the award of credits, for purposes of graduation, to students participating in Title I projects. The awarding of credits for participation in a Title I project is entirely a State and local matter.

Comment. Several commenters recommended that this section specifically explain how the standard applies to in-class and pull-out program designs.

Response. A change has been made. The revised excess costs provisions describe and provide examples for four types of pull-out and in-class project designs.

Comment. One commenter recommended specifically stating the relationship between the excess costs requirement and the requirement that Tile I funds supplement, not supplant State and local funds.

Response. No change has been made in the regulatory language. However, the detailed provisions on supplementing and not supplanting in 34 CFR 201.130–201.143 have been revised to include references and examples relating to the excess costs requirement.

Comment. Several commenters objected to the percent of instructional time standard as allowing widespread supplanting.

Response. A change has been made. As described in an earlier response, the Secretary believes that use of an instructional time standard is fully justified. However, the regulations have been revised to clarify the range of options available for compliance, and to explain the context in which the instructional time standard applies.

Comment. One commenter recommended that handicapped Title I participants be exempted from the 20 percent restriction.

Response. No change has been made. One of the fundamental principles underlying the provisions in these regulations with respect to the participation of handicapped students in Title I programs is equality of treatment. To the extent possible, handicapped and non-handicapped students are to be treated equally—that is, selected on the same basis and provided the same services as other children. No compelling justification exists for deviating from this principle in the area of maximum allowable displacement of non-Title I program instruction.

Comment. One commenter questioned why the reference to the most recent year for which satisfactory data is available was omitted from paragraph (b).

Response. A change has been made. The requirement that agencies use the most recent satisfactory data available in computing excess costs has been added in § 200.93(b).

Comment. One commenter requested clarification of the provision allowing the maximum regular program instruction displacement to be determined per day, per week, or per month.

Response. A change has been made. Examples have been added to assist in the implementaton of this requirement.

Comment. One commenter questioned what was meant by the term, "by grade level or levels" in paragraph (b).

Response. No change has been made. This term has the same meaning as "grade or grades" in Section 128(b) of Title I.

Subpart F—State and Local Administrative Responsibilities

§ 200.100 *Applicability of the regulations in Subpart F.*

Comment. One commenter questioned the omission of the requirement that the funds referred to in paragraph (c)(2)(ii) are to be made available for expenditure prior to the beginning of the fiscal year.

Response. A change has been made. That requirement has been added to § 200.100(c)(2)(ii).

§ 200.101 *Payments for State administration.*

Comment. One commenter recommended adding the phrase "proper and efficient" before the word "performance" in paragraph (a).

Response. A change has been made. Under § 200.101(a) the Secretary pays each State an amount equal to the amount spend by it in the proper and efficient performance of its duties under Title I.

Comment. One commenter recommended that the language in paragraph (a)(1) be clarified by stating that the amount referred to in that paragraph includes amounts allocated to the State for payments to LEA's and State agencies.

Response. A change has been made. Section 200.101(a)(1) has been revised specifically to include amounts for payments to LEAs and State agencies.

Comment. One commenter recommended revising paragraph (b)(2)(ii) by using the statutory term "otherwise available" rather than "already being used" since funds could be available but not being used.

Response. A change has been made. Section 200.101(b)(2)(ii) has been revised to use the statutory term "funds otherwise available."

Comment. One commenter recommended using the term "is authorized to pay" rather than "may pay" in paragraph (d) to avoid the implication that the Secretary could withhold funds even if a State fulfills all the requirements.

Response. A change has been made. The word "may" has been deleted from § 200.101(d).

Comment. One commenter questioned the omission of the statutory requirement that activities under paragraph (d)(1) be directly and exclusively related to the enforcement of Titles I and IV.

Response. A change has been made. That requirement has been added to § 200.101(d)(1).

§ 200.110 *SEA approval of applications from LEAs and State agencies.*

Comment. One commenter recommended adding the provision that SEAs must consider the factors in paragraphs (b)(1)–(3) where pertinent.

Response. A change has been made. The phrase "where pertinent" has been added to § 200.110(b).

Comment. One commenter recommended specifying that the evaluations referred to in subsection (b)(4) are evaluations under Section 124(g) of Title I.

Response. A change has been made. Section 200.110(b)(4) now specifies evaluations under Section 124(g) of Title I.

Comment. One commenter recommended including a provision in this section stating that the effective date of approval of an application is the date that the application is received by the SEA in substantially approvable form.

Response. A change has been made. Under § 200.110(c), applications are considered approved as of the date on which they are received by the SEA in substantially approvable form.

Comment. One commenter recommended inserting a paragraph in

this section stating that SEA approval of an application does not relieve agencies of the responsibility of complying with all applicable requirements.

Response. A change has been made. Section 200.110(d) has been added to include that proviso.

Comment. One commenter recommended requiring SEAs to withhold approval of applications if any complaints against the agency of significant nature are unresolved while approval of the application is pending.

Response. No change has been made. The statute requires only that SEAs consider complaints when reviewing applications for approval. Thus, there is no statutory basis for requiring an SEA to withhold approval merely because a complaint is unresolved.

Comment. One commenter questioned the requirement that SEAs "consider" various factors, objecting that the term is too ambiguous to be useful.

Response. No change has been made. The requirement that SEAs "consider" the factors in § 200.110(b)(1)–(4) is in Section 164(a) of Title I.

§ 200.111 *Opportunity for a hearing on application disapproval*

Comment. One commenter recommended revising paragraph (b) to provide that an SEA shall afford opportunity for a hearing before disapproving an application.

Response. A change has been made. Section 200.111 has been revised to provide that applicant agencies will be afforded an opportunity for a hearing before the SEA disapproves an application in whole or in part.

§ 200.112 *Appeal to the Secretary*

Comment. One commenter recommended revising this section to provide that agencies must file notices of intent to appeal, rather than the appeals themselves, within 20 days of receiving the SEA's final action disapproving the agency's application.

Response. A change has been made. Section 200.112 was revised to provide that only the notice of intent to appeal need be filed within 20 days. Upon receiving a notice of intent to appeal, the Secretary will contact the appellant regarding handling of the appeal.

§ 200.113 *Amendments to the application.*

Comment. One commenter recommended deleting the phrase "three-year" from before "application" to cover situations where applications cover periods of less than three years.

Response. A change has been made. The term "three-year" modifying application has been deleted from § 200.113(a).

Comment. One commenter questioned the necessity of requiring a budget in annual updates of Title I applications since the original application will contain a budget for all the years of a multi-year application. The commenter also questioned the necessity of including a statement of the amount of Title I funds carried over from the previous year and the amount requested from the agency's current application.

Response. No change has been made. Because it is not possible to predict with certainty the amount that Congress will appropriate each year for Title I programs or the exact amount that each grantee will receive, it is necessary to require annual submission of budgets. It is necessary that the SEA know the amount of funds the agency plans to expend in order to effectively evaluate the appropriateness of the agency's expenditures.

Comment. One commenter questioned the inclusion of the items listed under paragraph (b)(1)–(7) as changes which must be included in amendments to the application unless they are the result of monitoring or auditing activities.

Response. No change has been made. It is necessary that SEAs remain informed regarding changes of the types described in § 200.113(b)(1)–(7) in order to administer effectively the projects in their respective states.

Comment. One commenter recommended revising this section to clarify that agencies may submit applications for less than three years and may submit amendments to applications at any time.

Response. A change has been made. Section 200.113(b) now specifies that agencies shall submit amendments whenever they seek to make changes in their projects. Section 200.113(a) has been revised by deleting the word "three-year" before "application."

§ 200.120 *Authority for State rulemaking.*

Comment. One commenter questioned the omission from this section of the statutory requirement that State rules not conflict with the law and regulations.

Response. No change has been made. That provision is included in § 200.121(b).

§ 200.121 *Limitations on State rulemaking authority.*

Comment. One commenter questioned the authority for the limitations imposed in this section.

Response. No change has been made. Both GEPA and Title I prohibit SEAs from adopting rules which conflict with requirements under applicable Federal laws.

Comment. One commenter recommended revising this section to allow SEAs to prohibit practices authorized under Title I if the practices are in violation of State statutory requirements or State board of education policy.

Response. No change has been made. The purpose of the provision is to prevent LEAs and State agencies from being prohibited by the SEA from designing whatever type of project they select as long as all Title I requirements are met.

§ 200.122 *Examples of State rulemaking.*

Comment. A number of commenters objected to the prohibition against SEAs prohibiting the use of Title I funds for services in particular curriculum areas.

Response. A change has been made. Section 200.122(c) has been revised to refer to the authority retained by LEAs, under the Title I statutory scheme, to decide what curriculum areas are to be included in Title I projects so long as all applicable requirements are met.

Comment. One commenter recommended including, as an example of a rule which an SEA may not adopt, prohibiting LEAs from using Title I funds to serve students whose primary language is other than English.

Response. No change has been made. 34 CFR 201.132 and 201.141 both contain prohibitions against any automatic elimination from consideration of students whose primary or home language is other than English.

Comment. One commenter recommended that a definition of curriculum area be provided.

Response. No change has been made. For the purpose of § 200.122, the term "curriculum area" is synonymous with instructional area, such as language arts, or mathematics.

Comment. One commenter recommended deletion of the prohibition against SEAs prescribing grade levels to be included in Title I projects.

Response. No substantive change has been made. Section 200.122(c)(1) provides that LEAs retain the authority to determine the grade levels that will be included in their Title I projects. To permit SEAs to prescribe the grade levels to be included would undermine the integrity of the needs assessment process and would deprive LEAs of their responsibility for designing local projects.

Comments. Several commenters recommended deletion of paragraph (b)(3), objecting to any SEA control over

selection by application agencies of curriculum areas.

Response. No change has been made. Although § 200.122(b) does not authorize an SEA to require the inclusion of a particular curriculum area in a Title I project, it does permit the SEA to limit the number or categories of curriculum areas to be included in Title I projects. This enables an SEA to limit the range of curriculum areas as a way of preventing the dilution of Title I services.

Comment. One commenter recommended revising paragraph (c)(2) to provide that SEAs may prohibit agencies from including curriculum areas in its Title I project which are not supported by the needs assessment.

Response. No change has been made. SEAs already have such authority under § 200.110, which provides that the SEA shall not approve applications unless it is satisfied that Title I funds will be used in accordance with all applicable requirements, including those relating to the needs assessment.

§ 200.130 *Evaluation procedures.*

Comment. One commenter recommended reviewing this section to ensure that it is consistent with the requirements in § 200.160.

Response. No change has been made. The two sections do not conflict with one another. Specific LEA evaluation reporting requirements are contained in 34 CFR 201.176.

Comment. One commenter recommended revising paragraph (b)(3) to provide that agencies may measure achievement gains over a period of 9 to 12 months.

Response. No change has been made. Section 200.130(b)(3) implements the requirement in Section 124(g)(2) of Title I which requires measurement of achievement over a period of at least 12 months in order to determine the extent to which regular school year programs have sustained effects over the summer. Data for an agency's regular evaluation (as opposed to the special sustaining effects evaluation) may be collected at 9 to 12 month intervals in accordance with 34 CFR 201.175(a)(3).

Comment. One commenter questioned why this section omitted the requirement that agencies collect data for evaluation purposes.

Response. A change has been made. Section 200.130(b)(2) has been revised to require agencies to collect data, as needed, for evaluation purposes.

§ 200.140 *Recordkeeping requirements.*

Comment. One commenter questioned why the regulations omitted any reference to the determination of the amount of Title I funds to be paid in cases where those funds have not been accounted for separately.

Response. A change has been made. Section 200.194(b) now specifies how that amount shall be determined.

Comment. One commenter questioned the omission of the requirement that SEAs use fiscal control and funds accounting procedures for Title I funds.

Response. A change has been made. That requirement has been added to § 200.140(a).

Comment. One commenter questioned the rationale for the five year period for retention of records. Another commenter requested clarification on whether records must be kept for five years after the end of the fiscal year in which a project is operated or for five years after the end of the three-year period for which an application is approved.

Response. No change has been made. Section 437(a) of GEPA requires agencies to maintain the records described in § 200.140(b)(1) and (2) for five years after the completion of the activities for which the Title I funds are used. That language has been interpreted in § 200.140(d) as requiring records to be retained for five years after the close of the fiscal year in which the funds were spent.

Comment. One commenter questioned why paragraphs (a) and (b) require records to be kept at the project level rather than program level.

Response. No change has been made. Both Title I and GEPA require records at the project level based on the definition of project in § 200.5.

Comment. One commenter questioned the authority for including paragraphs (b)(3) and (4) concerning records showing compliance and significant project experiences and results.

Response. No change has been made. Section 127(a) of Title I requires agencies to keep records which will facilitate an effective audit; such records would include those showing compliance. The requirement for records showing significant project experiences and results is based on the need for records with respect to evaluations.

§ 200.141 *Access to information.*

Comment. Several commenters requested that a definition of "documents related to a Title I project" be included in this section.

Response. No change has been made. A definition of this term would have to be either so general that it would not be helpful, or so specific that it might restrict access to documents which may be indirectly related to a Title I project.

Comment. Several commenters objected to the requirement that documents be specifically identified in order to gain access to them.

Response. A change has been made. Section 200.141(a) was amended to require persons to identify the type of information or documents they seek, rather than the actual documents.

Comment. One commenter recommended that persons be granted an opportunity to inspect and copy documents, rather than inspect or copy them.

Response. A change has been made in § 200.141(c) to clarify that the section does not preclude an individual from both inspecting and either copying or requesting the agency to copy documents.

Comment. One commenter requested that LEAs be required to distribute to all advisory council members, documents related to the Title I project without the members having to ask for them.

Response. No change has been made. This kind of requirement would place a costly if not impossible burden on some LEAs, particularly large ones. The distribution of documents to LEAs' Title I advisory councils is covered in 34 CFR 201.160.

Comment. Several commenters questioned the reference in paragraph (a) to "its Title I project" since most Title I projects are not operated by SEAs directly.

Response. A change has been made. Section 200.141(a) now provides that the SEA shall provide access to any of the records related to the Title I program in the State.

Comment. One commenter recommended revising this section to require that all correspondence relative to Title I going from the SEA to the LEA also be sent to the district advisory council.

Response. No change has been made in this section. However, 34 CFR 201.160 implements all statutory requirements concerning the provision of information to advisory councils.

Comment. Several commenters requested clarification of the term "reasonable cost" as used in paragraph (c)(2).

Response. No change has been made. The term "reasonable cost" is intended to authorize agencies to charge an amount approximately equal to the agency's cost of making the copies.

§ 200.142 *Access by State and Federal auditors.*

Comment. One commenter recommended deletion of the reference to personnel in this section since Section 170 of Title I relates only to records.

Response. No change has been made. The reference to personnel is reasonable

and necessary to ensure that effective audits may be conducted.

Comment. One commenter recommended revising the section to provide that private auditors conducting State audits under contract are to be afforded the same access as State and Federal auditors.

Response. No change has been made. The term "State auditors" as used in § 200.142 refers to any person conducting an audit under Section 170(a) of Title I.

§ 200.151 *Minimum standards for monitoring.*

Comment. One commenter recommended that SEAs only be required to make monitoring reports available to district advisory councils, rather than sending the reports to them.

Response. No change has been made. Section 125(c) of Title I requires SEAs to provide district advisory councils with copies of SEA monitoring reports.

Comment. One commenter recommended that this section include a reference to the technical assistance aspect of SEA monitoring.

Response. A change has been made. Section 200.151(a)(4) now includes a reference to the obligation of SEAs to provide technical assistance, where appropriate, in monitoring projects.

Comment. One commenter objected to the requirement that SEAs monitor for both compliance and program effectiveness.

Response. A change has been made. Section 200.151(a)(3) has been revised to require SEAs to evaluate applicant agencies' efforts to assess and improve the quality and program effectiveness of the Title I services being provided.

Comment. Several commenters objected to the requirement that SEA monitoring reports be sent to all project area and project school advisory councils which have been established for the agency which was monitored. The commenters argued that this requirement was overly burdensome.

Response. A change has been made. Section 200.151(f)(2)(i) requires the SEA to send the report to the district advisory council of the monitored agency, but not the other councils.

Comment. One commenter recommended making the LEA responsible for distributing monitoring reports to its district advisory council.

Response. No change has been made. Section 125(c) of Title I requires SEAs to provide copies of monitoring reports to district advisory councils.

Comment. One commenter recommended requiring SEAs to provide notification to LEAs concerning any follow-up action the SEA plans to take prior to notifying its district advisory council.

Response. A change has been made. Under § 200.151(f)(1), SEAs must notify the monitored agency of any planned follow-up action by the SEA.

Comment. One commenter recommended requiring an SEA to hold an exit conference with LEA staff prior to the SEAs issuing any written monitoring report.

Response. No change has been made. The Title I statute provides no authority for the Department to require an exit conference. An SEA may, however, adopt this procedure if it wishes.

Comment. Several commenters felt that the time limits for issuing and responding to monitoring reports were too long and should be decreased.

Response. A change has been made. The time limit for issuing reports by the SEA has been reduced from 90 days to 60 days and the time limit for agency response to monitoring reports has been reduced from 60 days to 45 days.

Comment. One commenter recommended changing the title of paragraph (a) to "Purpose and scope of monitoring" since the statute requires the Secretary's criteria to include the purpose of monitoring.

Response. A change has been made. Paragraph (a) has been retitled "Purpose and scope of monitoring."

Comment. One commenter questioned the omission of follow-up visits as one method of ensuring that corrective action is taken by applicant agencies.

Response. A change has been made. Follow-up visits have been added to the list of compliance procedures under § 200.151(e)(2).

Comment. Several commenters recommended requiring SEAs to involve advisory council members in monitoring activities.

Response. No change has been made. Nothing in either the statute or the legislative history indicates that SEAs should be required to involve advisory council members in State monitoring activities.

Comment. Several commenters recommended specifically requiring SEAs to interview parents of Title I participants as part of its required monitoring activities.

Response. No change has been made. Section 167 of Title I requires SEAs to monitor for program compliance and effectiveness. If an SEA determines that it cannot do this without interviewing parents, then parents should be interviewed. However, there is no authority for requiring these interviews as part of all monitoring visits.

Comment. One commenter recommended revising paragraph (d) to clarify that SEAs recommend improvements and require corrective actions.

Response. A change has been made. Section 200.151(d) now reads that SEAs require corrective actions rather than recommend them.

§ 200.160 *Reporting to the Secretary.*

Comment. One commenter questioned the omission from paragraph (a) of the requirement that the report referred to in that paragraph include the results of objective measurements required by Section 124(g) of Title I.

Response. A change has been made. That requirement has been added to § 200.160(a).

Comment. One commenter questioned why paragraph (a) interprets the statutory language "improving the educational attainment" as "meeting the special educational needs."

Response. A change has been made. The statutory language "improving the educational attainment" is now used in § 200.160(a).

§ 200.161 *Reporting to the SEA.*

Comment. One commenter recommended revising paragraph (a) to provide that LEAs will submit reports containing information reasonably necessary to enable the SEA to perform its Title I duties.

Response. A change has been made. The word "reasonably" has been added before the word "necessary" in § 200.161(a).

Comment. One commenter recommended including in paragraph (b) the statutory language of Section 127(b) of Title I which requires that, in the case of reports related to performance, the information must be in accordance with specific performance objectives.

Response. A change has been made. That proviso has been added to § 200.161(b).

§ 200.170 *Technical assistance provided by the SEA.*

Comment. One commenter recommended requiring LEA input into SEAs' development of technical assistance programs.

Response. No change has been made. The Title I statute provides no authority for the Department to require SEAs to consult LEAs in the development of their technical assistance programs. However, since the technical assistance will be provided to LEAs and State agencies, SEAs are encouraged to consult with officials of these agencies in order to provide effective assistance in the areas where it is most needed.

Comment. One commenter recommended specifically requiring

SEAs to provide technical assistance to LEAs and parents in the area of parent involvement.

Response. No change has been made. Parental involvement is one aspect of an LEA's Title I program and as such is covered under the present language of this section. While SEAs are encouraged to provide whatever assistance to parents that is appropriate, the Title I statute requires nothing specific as far as provision of technical assistance to parents.

§ 200.171 *Dissemination of information to LEAs and State agencies.*

Comment. One commenter recommended including a provision in this section requiring SEAs to adopt procedures to ensure that LEAs disseminate information to parents in a language they can understand.

Response. No change has been made. This section is intended to address only dissemination by SEAs to LEAs and State agencies. Provision of information by LEAs to advisory councils is covered in 34 CFR 200.160.

Comment. One commenter questioned why State policies with respect to noninstructional duties were singled out in this section.

Response. A change has been made. The paragraph in § 200.171 dealing with noninstructional duties has been deleted.

§ 200.172 *Dissemination of information to LEAs and State agencies.*

Comment. One commenter questioned the use in the NPRM of the term "incorporate" when the statute uses the term "adopt, where appropriate."

Response. A change has been made. The term "adopting, where appropriate" is now used in § 200.172(a)(2).

§ 200.180 *Contents of a complaint.*

Comment. One commenter recommended including "failure to operate a program in accordance with the approval application" as grounds for a complaint.

Response. No change has been made. The failure to operate a program in accordance with the approved application is a violation of Section 121 of Title I and as such is covered under this section without the specific reference requested.

Comment. Several commenters pointed out that this section could be interpreted as requiring complainants to refer to specific sections in the laws or regulations, and recommended clarification that such reference is not necessary.

Response. A change has been made to allow a complaint to be heard if it contains sufficient information to indicate that, if the information is found to be true, a specific applicable statute or regulation was violated.

Comment. One commenter objected to the requirement that complaints include a specific request for relief.

Response. A change has been made. A complaint need not include a specific request for relief. Paragraph (c) was therefore deleted.

Comment. One commenter complained that the provisions concerning contents of a complaint were too restrictive to enable relatively unsophisticated complainants to file acceptable complaints.

Response. A change has been made. Complaints need not specify a request for relief, and may include any data which supports the allegation of violation.

§ 200.183 *Required procedures for resolution of complaints that are filed with LEAs for State agencies.*

Comment. One commenter recommended providing complainants with the right to subpoena records which have bearing on the complaint.

Response. No change has been made. Section 200.141 governs the right of access to information. The Secretary lacks the statutory authority to confer the right to subpoena records.

Comment. Several commenters questioned why the SEA is to determine whether an investigation is necessary for local level resolution of a complaint.

Response. A change has been made. According to § 200.183(b)(5), the LEA or State agency, rather than the SEA, now determines whether an on-site investigation is necessary.

Comment. One commenter questioned the omission of any reference to investigations of complaints when the law requires applicant agencies to adopt procedures for the investigation as well as the resolution of complaints within 30 days.

Response. A change has been made. Section 200.183(b)(1) has been revised to provide that applicant agency complaint resolution procedures shall include time limits for the investigation *and* resolution of complaints. In addition, § 200.183(b)(5) provides for on-site investigations, when necessary.

Comment. One commenter recommended adding a provision allowing applicant agencies to dismiss complaints which are not filed in accordance with that agency's complaint procedures and allowing appeals to be filed with the SEA only on the issue of whether the applicant agency followed its own procedures.

Response. No change has been made. The procedures required by Section 128 of Title I are for applicant agency review and resolution of complaints as defined in § 200.180. Any statement meeting the requirements of § 200.180 must be handled in accordance with the agency's procedures. Any final action by an applicant agency on a complaint may be appealed to the SEA. If an individual submits a statement which does not qualify as a complaint, the agency should notify the individual who may then either resubmit a revised statement to the applicant agency or go directly to the SEA. The SEA may either dismiss, resolve, or refer the statement to the applicant agency.

Comment. One commenter recommended requiring applicant agencies to forward complaint resolutions to the SEA within five days of resolution.

Response. No change has been made. Applicant agency resolution of a complaint is considered final action unless that resolution is appealed. Nothing in the statute indicates that SEAs need be notified of all applicant agency complaint resolutions.

§ 200.184 *Time limit for resolution of complaints that are filed with LEAs or State agencies.*

Comment. One commenter requested extending the time limit for applicant agency complaint resolution to 60 days.

Response. No change has been made. Section 128 of Title I requires applicant agencies to investigate and resolve complaints within 30 days.

Comment. One commenter recommended allowing 30 working days for applicant agency complaint resolution.

Response. No change has been made. Nothing in the Title I statute or legislative history indicates that the 30 days referred to in Section 128 of Title I were intended to be working days.

Comment. Several commenters objected to the inclusion of "the need for an investigation" and "the fact that complex issues are raised" as factors which could result in delayed resolution of a complaint.

Response. A change has been made. Section 200.184(b)(1) now authorizes SEAs to extend the time limit for resolution of the complaint due to the need for an *extended* investigation. However, § 200.184(b)(2) retains the complex issues factor since resolution of complex legal and policy issues may frequently require more than 30 days.

§ 200.185 *Appeals from resolutions by LEAs and State agencies.*

Comment. One commenter stated that the law specifies that applicant agency resolutions must be appealed within 30 days, not just postmarked within that period.

Response. No change has been made. An appellant is considered to have appealed an agency's resolution by preparing the appeal and delivering it to the postal service for delivery to the appropriate agency for review.

§ 200.186 *Required procedures for resolution of appeals and complaints that are filed with SEAs.*

Comment. Several commenters suggested that SEAs be required to refer direct complaints back to the applicant agency involved.

Response. No change has been made. Under normal circumstances, SEAs will refer direct complaints back to the applicant agency. The standards for accepting direct complaints must be included in the SEAs' written complaint resolution procedures.

Comment. One commenter recommended that SEAs be required to resolve complaints directly instead of referring them back to the applicant agency.

Response. No change has been made. The legislative history of Title I clearly states that in most cases, complaints should first be lodged with the applicant agency, and the SEA should act as the first level appellate agency.

Comment. One commenter questioned the omission of any reference to SEA procedures, including time limits, for conducting on-site investigations as required by Section 168(1) of Title I.

Response. A change has been made. Section 200.186(a)(2) and (c)(2) has been revised to require SEAs to develop and implement written procedures for conducting on-site investigations and resolving complaints.

Comment. One commenter recommended requiring SEAs to disseminate copies of the complaint procedures rather than just information about them.

Response. No change has been made. The requirement in § 200.186(b)(3) parallels the statute. Information about the procedures would normally include, if not simply consist of, the procedures themselves.

Comment. One commenter questioned whether the reference in paragraph (c) to paragraph (a)(2) (relating to complaints) rather than paragraph (a)(1) (relating to appeals) would deny complainants the right to present evidence and question parties during SEA hearings on appeals of applicant agency resolutions.

Response. No change has been made. Although Section 128 of Title I affords complainants the opportunity to present evidence and questions parties during the initial stages of the complaint process, Section 168 of Title I does not require that a similar opportunity be afforded during the appeal process.

Comment. One commenter recommended requiring SEAs to provide information on their complaint procedures to district advisory councils.

Response. No change has been made. Such information is already available pursuant to § 200.186(b)(3).

Comment. One commenter recommended prohibiting SEAs from dismissing complaints because the complaint lacks certain information or is not in the proper form.

Response. No change has been made. If an SEA receives a statement that does not meet the criteria in § 200.186 for complaints, it should be returned to the sender with an explanation of why it does not meet the criteria. The complainant may then submit a revised complaint.

Comment. One commenter recommended specifying in paragraph (a)(1) that the appeals referred to are only appeals of complaints.

Response. No change has been made. Section 200.186(a)(1) requires SEAs to develop procedures for reviewing appeals of resolutions made under § 200.183. Section 200.183 deals only with resolution of complaints.

Comment. One commenter questioned whether paragraph (a)(2) (relating to SEA complaint resolution procedures) should include standards for SEA acceptance of direct complaints.

Response. No change has been made. Section 168 of Title I requires SEAs to adopt procedures for receiving complaints. Nothing in that section indicates that the Department should specify what the procedures should contain.

§ 200.187 *Time limit for resolution of appeals and complaints that are filed with SEAs.*

Comment. One commenter objected to the inclusion of "the need for an investigation" and "the fact that issues are complex" as factors which could result in delayed resolution.

Response. A change has been made. SEAs may now only exceed the 60-day limit due to the need for an *extended* investigation or due to the fact that the issues raised in the complaint are complex. However, § 200.187(b)(2)(ii) retains the complex issues factor since resolution of complex legal and policy issues may frequently require more than 60 days.

Comment. One commenter recommended reducing the time limit for SEA referral of complaints to applicant agencies from 60 to 10 days.

Response. A change has been made. The time limit for SEA referral has been reduced from 60 to 30 days in § 200.187(a)(2).

Comment. One commenter questioned why this section does not provide for completing both the investigation and the resolution within 60 days.

Response. A change has been made. Section 200.187(a)(1) imposes a 60-day time limit for SEA investigation and resolution of direct complaints and appeals.

§ 200.190 *State audits.*

Comment. One commenter recommended clarifying that the items listed in paragraph (a) are the minimum components of an audit.

Response. A change has been made. Section 200.190(a) has been revised to state that audits conducted under this section should cover, at a minimum, the items listed in § 200.190(a)(1) and (2).

Comment. One commenter recommended revising the language referring to the independence of auditors to prohibit auditors from being within the organizational unit that directly administers a State's Title I program.

Response. No change has been made. The regulation meets the desired end in requiring auditors to be "independent of the unit that administers Title I."

Comment. One commenter recommended that the regulations clearly state the relationship between OMB Circular A–102 and §§ 200.190–200.196.

Response. No change has been made. However, the Department plans to send SEAs information concerning the application of OMB Circular A–102 to audits under these regulations, particularly the recently issued Attachment P.

Comment. One commenter requested clarification of the term "under State supervision" in paragraph (c).

Response. No change has been made. The term means that the State agency must be responsible for the quality of any Title I audit performed by a private audit firm.

Comment. One commenter recommended including a provision allowing State audits to replace Federal audits.

Response. No change has been made. The Title I statute requires audits by SEAs and by the Inspector General.

Comment. One commenter recommended including, in this section,

major classes of financial information to be reviewed during State audits. Another commenter recommended including maintenance of effort, comparability, and excess costs as areas to be reviewed.

Response. A change has been made. The areas listed under § 200.190(a) (relating to the purpose of State audits) should provide sufficient guidance to allow SEAs and auditors to decide the specific nature and scope of the audits to be conducted in their States. Three new areas (comparability, maintenance of effort, and excess costs) have been added to this list.

Comment. One commenter recommended allowing the use of sample audits to satisfy the audit requirements of Section 170 of Title I.

Response. No change has been made. While sampling of particular types of records (*e.g.*, comparability) would be permitted under this section, sampling of individual LEAs rather than periodic auditing of all LEAs would be inconsistent with the Title I statute.

Comment. One commenter questioned the authority for the independence of auditor requirement in paragraph (c).

Response. No change has been made. The requirement for independence of auditors is consistent with both GAO auditing standards and the provisions in OMB Circular A-102, Attachment P.

Comment. Several commenters questioned the legal authority for requiring audits every three years when the Title I statute specifies only that audits shall be conducted with reasonable frequency.

Response. A change has been made. Although § 200.190(b) still indicates that normally each agency must be audited once every three years, the SEA, rather than the Secretary, may determine that an agency or agencies will be audited less frequently based on the factors listed in § 200.190(b)(1)(i) through (iv).

Comment. One commenter questioned the inclusion of the items in paragraphs (b)(1)(i), (ii), and (iv) as factors which may prevent an SEA from auditing all agencies in a State every three years.

Response. No change has been made. The factors listed in paragraphs 200.190(b)(1)(i), (ii), and (iv) are included because they relate to the size and complexity of the auditing activity and may prevent SEAs from completing an audit of every agency every three years.

§ 200.191 *Audit resolution.*

Comment. One commenter recommended increasing the time limit for agency responses to final audit reports from 60 to 90 days.

Response. No change has been made. The 60-day limit is felt to allow sufficient time for the agency to respond without causing the resolution process to become unduly protracted.

Comment. One commenter recommended including in this section the requirement that SEAs provide audit reports to district advisory councils.

Response. No change has been made. The provision of audit reports to district advisory councils is included in 34 CFR 201.160(b).

Comment. One commenter recommend revising the language in paragraph (b)(1) to provide for those instances where the SEA itself conducts the audit.

Response. A change has been made. The provision in § 200.191(b)(1) has been revised to cover situations where either an independent auditor or the SEA conducts the audit.

§ 200.192 *Audit appeals.*

Comment. Several commenters objected to the fact that there were no time limits on SEA resolution of audit appeals.

Response. A change has been made. According to § 200.192(c), SEAs must include, in their audit appeal resolution procedures, reasonable time limits for each step in those procedures.

Comment. One commenter recommended rewriting this section using standard legal language to afford due process.

Response. No change has been made. The current language affords due process without interfering with a State's development of audit resolution procedures.

§ 200.193 *Appeal to the Secretary.*

Comment. Several commenters recommended extending the time limit for appeal of SEA final audit resolutions to the Secretary beyond 20 days.

Response. A change has been made. Section 200.193 conforms with Section 425(b) of GEPA and provides that agencies need only file a notice of intent to appeal within 20 days of receiving SEA final action. Upon receiving a notice of intent to appeal, the Secretary will contact the appellant regarding handling of the appeal.

Comment. One commenter recommended revising this section to provide that an agency must file a notice of intent to appeal within 20 days of receiving the SEA's final action on an audit appeal, rather than filing the appeal itself.

Response. A change has been made. Section 200.193 was revised to provide that only a notice of intent to appeal need be filed within 20 days of receiving SEA final action. Upon receiving a notice of intent to appeal, the Secretary will contact the appellant regarding handling of the appeal.

§ 200.194 *Repayment of misspent Title I funds.*

Comment. Several commenters requested that the Secretary's grant back authority conferred by Section 456 of GEPA be regulated in this section.

Response. No change has been made. Section 456 of GEPA is regulated, with respect to funds recovered as a result of an audit of a Title I program, in the debt collection regulations contained in an amendment to EDGAR.

Comment. One commenter recommended including a requirement that SEAs repay audit exceptions against applicant agencies as a result of activities which were approved by the SEA and later determined to be illegal in a final audit resolution.

Response. No change has been made. As stated in § 200.110(d), approval of an application does not relieve an agency of the responsibility of complying with all applicable requirements.

Comment. One commenter requested an example of Federal funds which an agency could use to repay an audit exception.

Response. No change has been made. One type of funds currently available is general revenue sharing funds.

§ 200.195 *Use of misspent funds that are repaid to SEAs.*

Comment. One commenter questioned why SEAs are not given the option of reallocating funds to State agencies.

Response. No change has been made. State agencies are fully funded and as such are not eligible to receive any additional funds.

§ 200.200 *SEA withholding of Title I payments.*

Comment. One commenter recommended that this section be revised to provide, in the case of comparability violations, for withholding of funds only from those schools which are noncomparable.

Response. No change has been made. The SEA's actions in the event an LEA violates the comparability requirements are covered in 34 CFR 201.123–201.124. In particular, 34 CFR 201.124(a) requires an SEA to repay the total amount of Title I funds spent in each noncomparable school in the LEA during the period of noncomparability.

Comment. Several commenters objected to the inclusion of "the effect of the withholding on the participating children" and "the harm that may result to Title I projects" as factors an SEA should take into account in deciding whether to withhold funds.

Response. No change has been made. The factors listed above are to be considered in relation to the other factors listed in the section. In deciding whether to withhold funds, an SEA will weigh the seriousness of the noncompliance against the effect the withholding will have on the participating children, and the need for suspension in order to prevent further misuse of Title I funds against the harm that might result from this suspension. For example, an SEA would likely not withhold all funds from a large LEA due to a minor violation in only one project area school.

Comment. One commenter recommended that LEAs be required to notify the public when funds are about to be withheld.

Response. No change has been made. Section 169(b) of Title I requires public notification of withholding by the SEA. This requirement is restated in § 200.201 of these regulations.

Comment. One commenter recommended requiring district advisory council involvement in withholding negotiations and proceedings between LEAs and SEAs.

Response. No change has been made. The Title I statute does not require this involvement, although notice of withholding must be provided to district advisory councils.

Comment. One commenter recommended providing a definition of the term "impartial decisionmaker."

Response. No change has been made. Section 200.200(b)(2)(ii) provides additional guidance when it states: "before an impartial decisionmaker *who did not participate in the SEA's decision to initiate the withholding action.*" With this limitation, SEAs are free to exercise their own judgment in selecting the decisionmaker.

Comment. One commenter questioned the omission of the requirement that agencies be given reasonable notice and opportunity to show cause why suspension action should not be taken before that action is taken by the SEA.

Response. A change has been made. The requirement that agencies be given reasonable notice and opportunity to show cause has been inserted in § 200.200(c)(1).

§ 200.201 *Notice to the public of SEA withholding.*

Comment. One commenter recommended revising the language in this section to provide that the LEAs district advisory council will be notified when an SEA submits a notice of withholding to the LEA.

Response. A change has been made. Section 200.201(a) requires an SEA to provide notice to the LEAs district advisory council when the SEA submits a notice of withholding to the LEA.

§ 200.202 *Appeal to the Secretary.*

Comment. One commenter recommended revising this section to provide that an agency must file a notice of intent to appeal within 20 days of receiving the SEAs final action on a withholding action, rather than filing the appeal itself within that period.

Response. A change has been made. Section 200.202 was revised to provide that only a notice of intent to appeal need be filed within 20 days of receiving SEA final action. Upon receiving a notice of intent to appeal, the Secretary will contact the appellant regarding handling of the appeal.

§ 200.210 *Use of a State compliance agreement.*

Comment. One commenter questioned whether this section meant that an applicant agency could misspend Title I funds while under a compliance agreement.

Response. No change has been made. State compliance agreements may be used to permit an applicant agency to receive and spend Title I funds even though it is not in full compliance with all Title I requirements. However, the compliance agreement must describe the steps that the LEA or State agency will take to achieve full compliance during the period specified by the agreement. In no event may this period exceed 90 days.

Comment. One commenter recommended allowing compliance agreements to cover violations which occurred before the agreement was signed.

Response. No change has been made. The language of the Title I statute and its legislative history both clearly indicate that compliance agreements may not be retroactive.

Comment. One commenter recommended revising the language of this section to emphasize the importance of the applicant agency coming into compliance as soon as possible.

Response. No change has been made. Section 200.211(g) indicates that State compliance agreements may be in effect *no longer than* 90 days, indicating that, if feasible, a shorter time could be required.

Comment. One commenter recommended including examples in this section.

Response. No change has been made. It is difficult to speculate about the variety of situations in which an SEA may use State compliance agreements.

Comment. One commenter questioned the special emphasis on the maintenance of effort requirement in paragraph (d).

Response. No change was made. The maintenance of effort requirement is specifically mentioned because it applies to expenditures that were made by the agency during the preceding fiscal year. Thus, noncompliance with the maintenance of effort requirement cannot be resolved through a compliance of agreement.

§ 200.211 *Contents of a State compliance agreement.*

Comment. One commenter recommended extending the time limit on SEA compliance agreements from 60 days to 180 days or the beginning of the next school year.

Response. A change has been made. In § 200.212(a), the time limit has been extended to 90 days. The option of entering into a compliance agreement for up to 90 days is intended to provide SEAs an opportunity to avoid withholding funds in cases where the applicant agency needs a little time to correct the violation or the seriousness of the violation does not warrant withholding of funds. State compliance agreements are not intended to exempt applicant agencies from full compliance with Title I requirements for extended periods of time. In the rare cases where more than 90 days may be required to remedy the noncompliance, the SEA should request a Federal compliance agreement with the Department.

§ 200.213 *Effect of expiration of a State compliance agreement.*

Comment. One commenter recommended that the relationship between compliance agreements and hearings under § 200.200(b)(2) be clarified in this section.

Response. No change has been made. This issue is covered in § 200.213(b) as well as in §§ 200.200(b)(4) and 200.210(b).

§ 200.220 *Approval of State applications and annual program plans.*

Comment. One commenter recommended specifically mentioning confirmation of actions taken by SEAs to correct compliance problems as a written finding the Secretary must make prior to approving State applications.

Response. No change has been made. This section references § 200.20. In so doing, § 200.220 incorporates the requirement in question.

§ 200.221 *Opportunity for a hearing on disapproval of a State application.*

Comment. One commenter recommended revising paragraph (a)(2) to provide that SEAs shall have at least 30 days from the time that notice of a hearing is sent before the hearing is actually held.

Response. No change has been made. The 30-day time period must be calculated from the date of receipt in order to ensure that the SEA has a full opportunity to prepare for the hearing.

Comment. One commenter objected to relying on the Education Appeal Board regulations in 34 CFR 78 because they have been disapproved by Congress. This commenter concluded that they are therefore not binding on hearing procedures under Title I.

Response. No change has been made. A formal opinion from the Attorney General of the United States advised the Secretary that Congress cannot constitutionally disapprove regulations by means of a concurrent resolution. Therefore, the Secretary has instructed the Education Appeal Board to consider its regulations final and binding.

§ 200.230 *Secretary's evaluation procedures.*

Comment. One commenter questioned why the Secretary's role in providing technical assistance had been omitted from this section.

Response. A change has been made. Technical assistance has been added to the list of responsibilities of the Secretary in § 200.230(f).

§ 200.240 *Contents of a complaint.*

Comment. One commenter requested that this section include an address to which direct complaints and appeals to the Department should be mailed.

Response. No change has been made. An address might well become obsolete, thereby causing extended delays. Appeals, direct complaints, and related correspondence, therefore, should be sent to the Assistant Secretary for Elementary and Secondary Education at whatever address is then appropriate.

§ 200.241 *Procedures for receiving direct complaints.*

Comment. One commenter questioned the omission of procedures for disseminating information about the Secretary's complaint procedures.

Response. No change has been made. The publication of these final regulations constitutes dissemination of the Secretary's complaint procedures.

Comment. Several commenters felt that the language in this section may be interpreted to require complainants to exhaust administrative remedies at the local and State level before filing a complaint with the Department.

Response. No change has been made. The definition of a direct complaint in this section does not include the requirement that a complainant exhaust administrative remedies at the local and State levels before complaining to the Department. To the contrary, paragraphs (a) (1) and (3) of § 200.242 specifically describe situations in which neither the LEA nor the SEA have been involved in complaint resolution.

§ 200.242 *Procedures for handling direct complaints.*

Comment. One commenter objected to the provision that allows the Department to resolve complaints without referring them to SEAs for lower level resolution.

Response. No change has been made. The special circumstances under which the Department will resolve a complaint directly are specified in § 200.242(a). These circumstances are limited to those instances where it would be in the best interest of the complainant or program beneficiaries for resolution to be undertaken directly by the Department.

Comment. Several commenters requested that the language "appropriate for any other reason" in former paragraph (a)(3) be clarified.

Response. No change has been made. This provision is intended to authorize the Assistant Secretary to resolve complaints directly whenever the particular circumstances surrounding the complaint make Federal level direct resolution appropriate. A restrictive definition would limit the situations under which a direct complaint would be accepted, thereby weakening the provision.

Comment. Several commenters felt that the term "serious and immediate harm" in paragraph (a)(1)(i) should be clarified.

Response. A change has been made. Because the term "serious and immediate harm" is intended to cover a wide range of situations, it cannot be inclusively defined. However, the provision in § 200.242(a)(1)(i) has been broadened to include harm to program beneficiaries as a criterion for accepting a direct complaint.

Comment. One commenter recommended deletion of the criterion "probability of success on the merits of the complaint" in paragraph (a)(1)(ii).

Response. No change has been made. A complaint must meet both the "serious and immediate harm" and the "probable success on the merits" criteria to be accepted as a direct complaint under § 200.242(a)(1). The purpose of these requirements is to limit review of complaints at the Federal level. This is consistent with the Department's view that most complaints should be resolved at the State and local level.

Comment. One commenter recommended that the Department monitor the resolution of all complaints referred to SEAs under § 200.242(c).

Response. No change has been made. There is no statutory authority for requiring this type of monitoring. The requirements in §§ 200.180–200.188 provide for timely resolution at the local and State level and an opportunity to appeal an SEA's resolution to the Department.

Comment. One commenter requested that direct complaints be accepted for resolution by the Department if they include adequate allegations that either the SEA has ignored the problem, or that relief from the SEA is unlikely.

Response. A change has been made. Section 200.242(a)(3) now provides for direct resolution of a complaint by the Department if an applicant agency or SEA has implemented a policy or practice that violates a Title I requirement, and the agency acknowledges that fact but refuses to correct the practice or policy.

Comment. One commenter recommended including a time limit of less than 60 days for Departmental referral of a direct complaint to an SEA.

Response. A change has been made. Under § 200.242(c), the Department must now refer complaints to the SEA for resolution within 30 days.

Comment. One commenter recommended including, as acceptable direct complaints, complaints which allege that a policy violates Title I, and complaints for which no material facts are in dispute.

Response. A change has been made. Section 200.242(a)(3) permits the Department to accept a direct complaint showing that an agency has implemented a policy that violates Title I and that the agency has acknowledged this fact but refuses or fails to correct the noncomplaint practice. Complaints alleging violations that involve no dispute as to material facts are not accepted by the Department as direct complaints unless the complainant shows that delayed resolution would "result in serious and immediate harm to the complainant or to the program beneficiaries" and that the complainant "will probably succeed on the merits of the complaint." If these conditions are met, such complaints would be covered under paragraph (a)(1) of this section. This approach is consistent with the Department's view that most complaints should be resolved at the State and local level.

Comment. One commenter objected that this section does not specify that any time taken by the Department to decide whether to refer or resolve a complaint must be counted against the 60-day limit for the Department's resolution of the complaint.

Response. No change has been made. Section 200.245(b)(1) states that the Department's designated official issues a written resolution within 60 days of receiving a complaint. This time frame necessarily includes the time spent by the official in deciding whether to retain jurisdiction.

§ 200.243 *Appeals from final resolutions by SEAs.*

Comment. Several commenters objected to the requirement that appeals of SEA final complaint resolutions contain the exact words "Title I Appeal."

Response. No change has been made. The designation of an appeal as a "Title I appeal" is necessary for identification purposes to distinguish it from a direct complaint.

Comment. One commenter recommended deletion of paragraph (d)(4) which requires that appellants indicate what relief they seek from the Department.

Response. A change has been made. The term "relief" has been replaced with the more commonly used term "remedy." Appellants should be able to state the remedy they seek from the Assistant Secretary.

Comment. One commenter recommended requiring Departmental action on an appeal within five days.

Response. No change has been made. Section 184 of Title I provides the Secretary 60 days to investigate and resolve complaints and appeals.

§ 200.244 *Preliminary review of appeals.*

Comment. One commenter requested clarification of paragraph (b)(3), which states that dismissal of a complaint does not necessarily preclude further investigation of the issues raised in the appeal. Another commenter recommended that the Department inform complainants of their options if a complaint is dismissed under this section.

Response. A change has been made. Section 200.244(b)(3) has been revised to include the provision that resubmission of an amended appeal by the appellant is not precluded by dismissal of the appeal.

Comment. One commenter recommended adding a provision prohibiting the Department from dismissing an appeal solely because it is incomplete.

Response. A change has been made. Section 200.244(b)(3) indicates that an appellant may submit a revised appeal if the Department finds that a current appeal does not meet the requirements of § 200.243.

§ 200.245 *The designated official's procedures for resolving direct complaints and appeals.*

Comment. Several commenters felt that the 20-day limit for submission of evidence should be extended.

Response. No change has been made. Section 184 of Title I requires, in the absence of exceptional circumstances, that the Department resolve compaints and appeals within 60 days. If the Department received and reviewed an appeal, determined that submission of evidence was appropriate, requested the evidence, and provided 30 days for it to be submitted, 60 days would not be sufficient for the necessary review and resolution.

Comment. One commenter recommended revising this section to require the Department to hear testimony which the appellant, the SEA, or the applicant agency's representative wishes to present.

Response. No change has been made. Although the Title I statute requires a hearing at the State and local level, it does not require one at the Federal level. However, the language in § 200.245(a)(2) provides the opportunity for a hearing if the designated official determines that this presentation is appropriate.

Comment. One commenter requested that the term "research and investigations" as used in this section be clarified.

Response. No change has been made. The term "research and investigations" in § 200.245(a)(3) is intended to provide the designated official with the flexibility to acquire whatever additional information the official feels is necessary to resolve the complaint. A more restrictive definition of the term would take away some of the flexibility that the provision is intended to provide.

Comment. Several commenters objected to the inclusion of the term "if appropriate" in paragraph (b)(3) of this section.

Response. No change has been made. Inclusion of the phrase "if appropriate" in § 200.245(b)(3) is not intended to give discretion to the designated official to decide which, if any, of the named entities should be given notice of the resolution. Rather, it has been included in recognition of the fact that all of these entities may not be involved in a given complaint. Only those entities which have an interest must receive notice. For example, a complaint against the SEA may not involve a particular LEA or district advisory council.

Comment. Several commenters recommended adding a provision requiring the Department to consult with SEA personnel during the Department's resolution of complaints.

Response. No change has been made. Section 200.245(a)(1) provides that the SEA will be notified if a complaint is accepted for resolution by the Department. The SEA then has 20 days to submit any relevant written evidence or argument.

Comment. One commenter recommended adding a provision that complainants' and appellants' allegations shall be assumed to be true if the agency against which they are made does not respond to the Department's request for information under § 200.245(a)(1) within 30 days.

Response. No change has been made. The Department's designated official will issue a resolution under § 200.245(b) based on the information the official has gathered under § 200.245(a), which provides complainants, appellants, and agencies 20 days to submit written evidence or argument. Certainly, the agency's case will be impaired if it submits no evidence in its defense.

Comment. One commenter recommended requiring the Department to keep a public file of all complaints appealed to and filed directly at the Federal level.

Response. No change has been made. Such information is considered public information and is available for inspection on request with the Assistant Secretary.

Comment. One commenter questioned the omission from this section of the requirement that LEAs be given an opportunity to present evidence to the Department's designated official for complaint resolution.

Response. No change has been made. The LEA may present written evidence to the designated official under § 200.245(a)(1). In addition, § 200.245(a)(2) permits the presentation of oral evidence if the designated official determines that this presentation is appropriate.

Comment. One commenter recommended adding a provision in this section requiring the designated official's resolution to include notification of the parties right to administrative appeal.

Response. A change has been made. That provision has been added to § 200.245(b)(2)(ii).

§ 200.246 *Administrative appeals from the designated official's resolution.*

Comment. Several commenters objected to the requirement that parties specify the specific relief requested in appeals to the Assistant Secretary.

Response. A change has been made. The term "relief" has been replaced with the more commonly used term "remedy." Appellants should be able to state the remedy they seek from the Assistant Secretary.

Comment. One commenter questioned the rationale for the 30-day deadline for administrative appeals to the Assistant Secretary.

Response. No change has been made. The 30-day limit in § 200.246(b) is a reasonable one which is consistent with the time limits set by Sections 128 and 168 of Title I for appeals of applicant agency and SEA complaint resolutions.

§ 200.248 *The Assistant Secretary's procedures for resolving administrative appeals.*

Comment. Several commenters objected to the provision in this section which allows the Assistant Secretary to remand the appeal to the designated official for further factfinding when that official has already had 60 days to investigate and resolve the complaint.

Response. A change has been made. According to § 200.248(b), for further factfinding. Rather, if additional information is needed, the Assistant Secretary gathers it himself.

Comment. One commenter recommended allowing parties to the complaint to present any evidence they feel is necessary, rather than leaving the decision of whether to provide additional arguments to the Assistant Secretary.

Response. No change has been made. Under § 200.245(a), parties have the opportunity to present additional evidence at the Federal level to the designated official. This opportunity satisfies the requirement in Section 184(2) of Title I. If the Assistant Secretary needs further information, he may request it.

Comment. One commenter recommended either specifying that the Assistant Secretary's resolution is the final agency action, or provide for an appeal to the Secretary.

Response. A change has been made. Section 200.248(b)(4) provides that the Assistant Secretary's final resolution is the Department's final action concerning the appeal.

Comment. Several commenters objected to the phrase "if appropriate" in paragraph (b)(3).

Response. No change has been made. Inclusion of the phrase "if appropriate" in § 200.248(b)(3) is not intended to give discretion to the Assistant Secretary to decide which, if any, of the named entities should be given notice of the resolution. Rather, it has been included in recognition of the fact that all of these entities may not be involved in a given complaint. Only those entities which have an interest must receive notice. For example, a complaint against the SEA may not involve a particular LEA or district advisory council.

§ 200.250 *Audits by the Secretary.*

Comment. One commenter questioned why the NPRM charged the Secretary, rather than the Inspector General, with conducting audits under Section 185 of Title I.

Response. A change has been made. Section 200.250 has been revised and all references to the Secretary have been replaced with references to the Inspector General.

§ 200.251 *Audit resolution procedures.*

Comment. Several commenters recommended including time limits for Federal audit resolution.

Response. No change has been made. Significant variations in the scope and complexity of issues raised by audits make it extremely difficult to establish uniform time limits for each stage of the audit resolution process.

Comment. One commenter questioned why the regulations did not reflect the language in the House Report that these regulations explain the relationship between the various Federal administrative units involved in the conduct and resolution of audits.

Response. No change has been made. As revealed by the division of responsibilities that are described in §§ 200.250–200.251, the Inspector General has the responsibility for conducting audits and the Secretary is responsible for resolving the findings and recommendations resulting from those audits.

§ 200.252 *Judicial review of audit resolutions.*

Comment. One commenter recommended stating in this section that all Education Appeal Board decisions (including those related to audits) may be appealed to the United States Court of Appeals.

Response. No change has been made. Section 195 of Title I, the authority for this section, only affords the opportunity for judicial review from final actions concerning audit resolutions, withholdings, and application approvals. It is Section 455 of GEPA that affords judicial review of all Education Appeal Board decisions.

Comment. One commenter recommended providing LEAs and State agencies the right to appeal the Secretary's final action under § 200.215 to the court of appeals.

Response. No change has been made. Section 195 of Title I only authorizes appeals by the State.

§§ 200.253–200.254 *Repayment of funds.*

Special note: These sections are no longer included in the Title I regulations. Rather, they have been moved to the Debt Collection Regulations which will be published as an appendix to EDGAR. Comments on these provisions, therefore, have been considered when revising the Debt Collection Regulations.

§ 200.260 *Withholding of Title I payments.*

Comment. One commenter questioned why a 60-day time period is provided in paragraphs (b)(3)(ii) and (b)(3)(iii) before final decisions on withholding can become effective.

Response. No change has been made. Section 200.260(b)(3)(ii) implements Section 453(d) of GEPA, which provides that the Secretary has 60 days in which to modify or set aside a recommendation of the hearing officer. Section 200.260(b)(3)(iii) implements Section 453(d)(1) of GEPA, which provides that the decision as modified shall become final 60 days after modification by the Secretary.

Comment. One commenter recommended adding a provision including standards which give meaning to the term "failure to comply substantially with any assurances set forth in the application."

Response. No change has been made. Although the Secretary recognizes the desirability of uniform standards in making determinations of this type, it is impossible to anticipate every type and pattern of violation which may occur. Therefore, the phrase has been left to be interpreted on a case by case basis.

§ 200.261 *Suspension of Title I payments pending completion of withholding proceedings.*

Comment. Several commenters objected to the inclusion of "possible factual errors" and "hardship" as factors the Secretary considers in deciding whether to withhold funds.

Response. No change has been made. Each of the four factors listed in § 200.261(b)(2) are to be considered by the Secretary in relation to one another. Thus, "lack of necessity for the suspension" and "the nature of the

violation" must be weighed along with questions of hardship and possible factual errors to determine whether an SEA has shown cause why the proposed suspension action should not be taken.

Comment. One commenter questioned why the term "reasonable notice" in Section 186(a) of Title I has been interpreted to mean that 10 days notice should be provided under paragraph (b)(1)(ii).

Response. No change has been made. Because show cause hearings prior to suspension of funds are conducted by the Education Appeal Board, the Board's regulations governing such proceedings have been incorporated into the Title I regulations. Section 100d.25(b)(2) of the Board's regulations provides that suspensions become effective 10 days after the date on which the recipient receives written notice unless the recipient requests an opportunity to show cause.

§ 200.262 *Judicial review of withholding actions.*

Comment. One commenter questioned why this section did not contain the provision in Section 195 (b) and (c) of Title I regarding the court's options and the Secretary's response during judicial review of a final agency action.

Response. No change has been made. The regulations in this part are intended to apply only through the final action of the Department. Section 195 (b) and (c) govern the actions of the court of appeals. Therefore, they are beyond the scope of these regulations.

§ 200.263 *Notice to the public of the Secretary's withholding.*

Comment. One commenter requested clarification of the term "appropriate action" as used in this section.

Response. No change has been made. The term is intended to ensure that notice of the withholding is provided, but not to prescribe the manner in which it is provided.

§ 200.270 *Use of a Federal compliance agreement.*

Comment. Several commenters recommended including language in this section emphasizing the importance of agencies achieving compliance as soon as possible.

Response. No change has been made. The Department recognizes the importance of quickly achieving compliance. However, the Department also recognizes that, in some instances, additional time may be needed to make the compliance agreement workable and most likely to achieve meaningful results. Therefore, § 200.272(d)(2) provides the Secretary with discretion to establish a reasonable period for achieving full compliance.

Comment. One commenter requested clarification of the relationship between this section and 34 CFR 76.900 which prohibits Department officials from waiving any regulations which apply to a Departmental program.

Response. No change has been made. Paragraph (a) of 34 CFR 76.900 provides that Department officials may waive program regulations as long as the waiver is specifically provided for in the regulations. Section 186(c) of Title I and § 200.270 do authorize the Secretary to enter into compliance agreements.

Comment. One commenter recommended including a provision in this section stating that during the time that an agency is in compliance with an agreement, the agency is not subject to any other legal action for the violation covered in the agreement.

Response. No change has been made. Section 200.270(c)(2) relieves agencies of liability for repaying funds spent in violation of a Title I requirement that is covered by a compliance agreement during the time the agreement is in effect. It is beyond the authority of the Department to prohibit, by regulation, legal action by private individuals and organizations.

Comment. One commenter questioned the necessity of the particular reference in paragraph (d) to maintenance of effort.

Response. A change has been made. The reference to maintenance of effort has been deleted.

§ 200.272 *Time period for coming into compliance under a Federal compliance agreement.*

Comment. Several commenters recommended extending the maximum time period for a Federal compliance agreement from 60 days to 180 days.

Response. A change has been made. The 60-day limit for "immediate full compliance" has been changed to 90 days in § 200.272(a).

Comment. One commenter questioned the rationale for the 60-day time period allowed for SEAs to come into full, immediate compliance.

Response. A change has been made. Section 186(c) of Title I provides for two types of compliance agreements. One type must result in immediate compliance. Since compliance agreements cannot apply retroactively, the Secretary interprets the term "immediate" to mean within a limited period of time—that is, up to 90 days. It is anticipated that this period of time should be sufficient to permit agencies to remedy all but the most serious violations. The other type of compliance agreement—used to remedy these serious violations—permits the Secretary to defer full compliance until a future date. In order to enter into this type of agreement, the Secretary must—after a hearing—issue written findings that immediate compliance with the requirements is not feasible. In such an agreement, the Secretary would afford the affected agency a reasonable period of time for achieving full compliance.

§ 200.274 *Effect of expiration of a Federal compliance agreement.*

Comment. One commenter recommended specifically stating that agencies are entitled to hearings upon expiration of a compliance agreement.

Response. No change has been made. The provisions of § 200.280 apply upon the expiration of a compliance agreement. That section provides a right to a hearing prior to taking action to withhold funds.

Comment. One commenter recommended providing for extensions of Federal compliance agreements in the event that unforeseen circumstances occur.

Response. No change has been made. The provisions in § 200.272(d)(2) authorize the Secretary to establish a reasonable period of time for the SEA to come into compliance under a Federal compliance agreement. Although we do not anticipate that extensions of the original deadline will be granted frequently, the Secretary may consider granting an extension in circumstances where it is reasonable.

§ 200.280 *Procedures for issuing cease and desist orders.*

Comment. One commenter recommended initiating cease and desist orders whenever complaints to the designated official under § 200.243 indicate that an agency is not in substantial compliance with Title I requirements.

Response. No change has been made. If a complaint to the designated official indicated substantial noncompliance, the Department would require appropriate corrective action in its resolution of the complaint. The Department anticipates that affected agencies will comply with any corrective action required by a complaint resolution. However, if further enforcement action is necessary, cease and desist proceedings are but one of several alternatives available to Departmental officials.

Comment. One commenter recommended replacing the term "facts" with the term "charges" in this section.

Response. A change has been made. The word "facts" has been replaced

with "charges" in § 200.280(a)(1) and "stated" has been replaced with "charged" in § 200.280(c).

Comment. One commenter recommended revising the language in paragraph (a) to agree with the statutory language "causes to be served* * *a cease and desist order* * *."

Response. A change has been made. The statutory language has been added to § 200.280(a).

Comment. One commenter recommended providing the Secretary with the authority to initiate immediately a cease and desist order when a violation is found as part of the agency's final action under § 200.248 (Assistant Secretary's procedures for resolving administrative appeals of complaints).

Response. No change has been made. Although the Secretary recognizes the importance of quickly remedying any noncompliance that is discovered as a result of complaint resolution, she believes that, in most instances, grantees will voluntarily take the required corrective action without the need for formal enforcement proceedings. In those instances when formal enforcement action is required, the Secretary must determine which of the enforcement procedures is most appropriate.

Comment. Several commenters recommended clarifying that the petition for review referred to in paragraph (d) must be filed within 60 days of the Education Appeal Board's decision.

Response. No change has been made. Section 200.281 states that these reports and orders must be appealed, by petitioning for judicial review, within 60 days of the time copies are received.

Comment. One commenter expressed concern that this section specifies that appeals will be heard by panels of the Education Appeal Board, rather than the full Board.

Response. No change has been made. 34 CFR 78 indicates that panels of the Board hold hearings. This provision is necessary since it would be unworkable for the full 30 member Board to hold hearings.

§ 200.282 *Enforcement of cease and desist orders.*

Comment. One commenter recommended specifically stating that an SEA need not be granted a hearing before withholding is commenced if the SEA failed to comply with a cease and desist order.

Response. No change has been made. The Title I statute and regulations afford SEAs an opportunity for a hearing on the record before any withholding action is taken. A show cause hearing which may have been held under § 200.280 prior to issuance of a cease and desist order does not relieve the Department of its obligation to afford a hearing on the record before withholding funds. In addition to being legally required, we believe the issues raised by an action to withhold funds may differ from issues presented at a show cause hearing.

Comment. One commenter recommended specifically mentioning administrative costs in paragraph (a) as part of the Title I payment which can be withheld.

Response. A change has been made. Section 200.282(n) specifically authorizes the Secretary to withhold funds for State administration.

Subpart A—General

§ 201.4 *Definitions.*

Comment. One commenter requested that the number of children that institutions for neglected or delinquent children are designed to serve be reduced from 10 to 5.

Response. No change has been made. Institutions which are designed for the care of fewer than 10 children are so small that, in many cases, it is difficult for the resident children to be efficiently and effectively served under Title I. Moreover, many of these institutions closely resemble foster homes, which are not eligible institutions under § 201.4. Therefore, the current policy which limits the inclusion of these institutions as eligible institutions for the purpose of computing county aggregate grants under § 201.12(a) has been retained.

Comment. One commenter recommended including a definition of the term "magnet school" in this section.

Response. No change has been made. The term "magnet school" is used to refer to schools with any of a variety of enrollment patterns. A definition which includes only one or perhaps a few of those patterns would be unduly restrictive.

Comment. One commenter recommended revising the definition of "eligible school attendance area" to address the situations where students attend a public school other than the one to which they normally have been assigned.

Response. A change has been made. The definition of "school attendance area" is 34 CFR 200.5 has been revised to provide that children are considered to be in the attendance area of the school to which they would be assigned were they not attending a private school or another public school. In light of this change, the definition of "eligible school attendance area" has been retained without modification.

Comment. One commenter questioned to what situations the second sentence in the defintion of "eligible school attendance area" is intended to apply.

Response. A change has been made. That provision has been moved to the definition of "school attendance area" and revised specifically to include other public schools which children may be voluntarily attending, such as magnet schools.

Comment. One commenter recommended including a definition of "State and local funds" for the purpose of making comparability determinations.

Response. No change has been made. Section 201.114 specifies what expenditures are to be used in making comparability determinations.

Comment. One commenter questioned the inclusion of central office staff who assist instructional staff by performing strictly clerical and administrative functions within the definition of instructional staff.

Response. No change has been made. Staff members who perform clerical and administrative duties as direct assistance to staff members who provide instructional services are considered instructional staff because the functions they perform relate directly to the provision of instructional services.

Comment. One commenter questioned why the definition of "project area" omitted the provision that the area is designated without regard to the location of the project.

Response. A change has been made. The definition of "project area" was revised to include this statutory language.

Subpart B—Allocation of Title I Funds for Grants to Local Educational Agencies

Comment. A number of commenters recommended including a section to regulate Section 124(e) of Title I which requires Title I funds to be allocated among project areas and schools on the basis of the number and needs of the children to be served.

Response. A change has been made. This requirement is covered in § 201.15 of these regulations.

Basic Grants

§ 201.11 *Determination by the Secretary of basic grants.*

Comment. One commenter asked why children in institutions and foster homes were specifically mentioned in paragraph (b)(2) since these children are

included by the cross-reference to Section 111 of Title I in subsection (b)(1).

Response. No change has been made. Section 201.11(b)(2) is intended to remove any doubt that these children are included under the statutory reference in paragraph (b)(1) to Section 111(c) of Title I.

§ 201.12 *Allocation of county aggregate amounts by SEAs.*

Comment. One commenter stated that the regulations should set a minimum number of children to trigger the provisions of paragraph (b)(2)(i) (relating to school districts which overlap county boundaries).

Response. A change has been made. Section 201.12(b)(2)(i) has been revised to provide that SEAs shall make the separate allocation referred to in that section only if there are 10 or more children in the LEA.

Comment. One commenter recommended allowing a jail to submit counts based on the mean number of 17 year olds in that institution for the previous 12 months.

Response. No change has been made. The method of determining institutional counts in § 201.12(a) is designed to provide a count that corresponds to the average number of institutionalized children who reside in the institution long enough to benefit from services. Consistent with this intent, the 30-day requirement has been retained.

Comment. One commenter asked whether the option offered in paragraph (b)(2)(iii)(B) (relating to merger of school districts) would be available for three years if the district's application is in effect for the three years.

Response. A change has been made. Section 201.12(b)(2)(iii)(B) has been revised to permit an LEA that has been merged and has submitted a previously approved project application to carry out the approved project by itself or in cooperation with another LEA during the remainder of the fiscal year.

Comment. One commenter asked whether the term "local institution" refers only to institutions funded from local sources rather than State or private sources.

Response. No change has been made. This term is used so that local institutions, whatever their source of support, may be distinguished from State-operated institutions.

Comment. One commenter asked whether consideration had been given to providing more detailed guidance on subcounty allocation procedures, taking into account legislative history directing that such procedures should generally be consistent with the Federal formula requirements.

Response. No change has been made. The regulatory provisions dealing with subcounty allocation procedures incorporate applicable statutory language, and take into account legislative history, as well as practical problems.

Comment. One commenter questioned the rationale for first allocating funds generated by children in institutions, under paragraph (a), and then distributing funds based on the number of children from low-income families, under paragrpah (b).

Response. No change has been made. Section 111(a)(3) of Title I indicates that funds generated by children in institutions for neglected or delinquent children may, in certain cases, be tranferred, according to § 201.12(a)(2), to agencies other than the LEA in which the institution is located. In order to make such a transfer or funds, it is necessary first to determine what portion of the LEA's allocation is based on the number of neglected or delinquent children in institutions.

Comment. One commenter asked why paragraph (a)(2) failed to provide more specific guidance concerning handling of funds generated by children in local institutions when no public agency will accept responsibility for providing them with Title I services.

Response. A change has been made. A new paragrpah (a)(3) was added to § 201.12.

Comment. One commenter asked why paragrpah (b)(2)(ii) describes a procedure which SEAs may follow in allocating funds to LEAs which serve children from other districts. The commenter stated that the Title I statute affords the SEA the authority to allocate such funds in whatever manner it feels will best carry out the purposes of Title I.

Response. A change has been made. Section 201.12(b)(2)(ii) has been revised to follow the language in Section 111(a)(2)(B) of Title I.

Comment. One commenter questioned the omission in § 201.12(a) of the statutory language that permits use of the most recent satisfactory data if data on the number of children residing in institutions for neglected or delinquent are unavailable.

Response. A change has been made. This statutory language has been added in § 201.12(a)(1)(ii).

Comment. One commenter questioned why the term "fiscal year" in Section 111(c)(2)(B) of Title I was changed to calender year" in § 201.12(a)(1)(i).

Response. A change has been made. The statutory term "fiscal year" is now used.

Comment. One commenter questioned why this section interpreted the term "the caseload data for October" used in Section 111(c)(2)(B) of Title I as 30 consectutive days, one of which is in October.

Response. A change has been made. This interpretation is consistent with the statutory language. As a continuation of current policy, it will enable the Secretary to make determinations for the purpose of making FY 1982 grants without having to ask applicants for additional information beyond what has already been submitted.

§ 201.13 *Exceptions to county aggregate amounts.*

Comment. One commenter recommended that SEA requests to allocate without regard to county aggregate amounts only be approved for a given fiscal year.

Response. A change has been made. The words "for a particular fiscal year" have been added to paragraph (b) after the language "the Secretary approves the SEA's request" in § 201.13(b).

Special Incentive Grants

§ 201.20 *Eligibility for special incentive grants.*

Comment. One commenter recommended that this section be revised to make clear that only those districts which participate in both Title I and in a State compensatory education (SCE) program must expend at least 50 percent of the SCE funds in areas eligible for Title I assistance.

Response. No change has been made. The statutory requirement that at least 50 percent of the SCE funds be spent in areas eligible for Title I assistance, applies to any LEA in the State, and not just those receiving both Title I and SCE funds.

Comment. One commenter recommended revising the language in this section to clarify that SCE funds expended in areas serving grade spans other than those served by the Title I program may nevertheless be counted towards the 50 percent requirement as long as those areas are eligible to receive services.

Response. A change has been made. Section 201.20(a)(2) uses the statutory language "school attendance areas of such agencies having high concentrations of children from low-income families."

Comment. Several commenters recommended stating that, when SCE funds are appropriated as part of a larger aggregate of funds, only those funds that are actually used to fund SCE programs may be counted as providing

matching funds as required under paragraph (a)(2) and Section 116 of Title I.

Response. No change has been made. Section 201.21 provides that entitlements are based on the amount of funds actually "expended for" programs meeting the requirements of § 201.20(a)(1), not for a broader class of programs. No change was, therefore, necessary.

Comment. One commenter questioned why this section omitted statutory language stating that, in order to be eligible, State programs must meet the requirements described in paragraph (a)(1) and (a)(2) "under State law."

Response. No change has been made. The phrase "under State law" is somewhat ambiguous. State laws may have the effect of meeting the requirements in Section 116 of Title I without having specific statutory language referring to those requirements. Therefore the regulations make it clear that compliance is determined on the basis of the manner in which the SCE is operated.

Comment. One commenter questioned why paragraph (a)(2) requires only 95 percent of the LEAs in a State to expend 50 percent or more of the SCE funds in school attendance areas eligible for Title I.

Response. A change has been made. The provisions has been revised to conform to the strict statutory language under which not less than 50 percent of the funds spent under the State program must be spent in school attendance areas that have high concentrations of children from low-income families.

§ 201.38 *Reallocation of Title I funds by SEAs.*

Comment. A number of commenters objected to the general authority of SEAs to reallocate applicant agency funds. These commenters cited a variety of reasons for their objections, including possible conflict with the Tydings amendments.

Response. No change has been made. SEAs are vested with authority to reallocate funds under Section 193(b) of Title I, and such action is not precluded by the Tydings amendment. This section of the regulations merely sets out dates and criteria to guide SEAs in their exercise of the applicable statutory authority.

Comment. One commenter requested clarification of the term "current projects" as used in paragraph (a)(1).

Response. A change has been made. Section 201.38(a)(1) has been revised and expanded.

Comment. One commenter felt that SEAs should be free to reallocate funds after February 1.

Response. No change has been made. Reallocation of funds on a date later than February 1 can be expected to interfere with agencies' planning, during the spring months, of programs for the next school year.

Comment. One commenter recommended that only carryover funds be considered available for reallocation.

Response. No change has been made. Restricting the reallocation authority would encourage excessive carrying over of funds.

Comment. One commenter recommended requiring SEAs to notify district advisory councils when the SEA is considering reallocating some of the LEA's funds to other agencies.

Response. A change has been made. According to § 201.38(a)(3), an LEA's district advisory council must be notified along with the LEA.

Comment. One commenter recommended adding to the list of factors SEAs may take into account when considering reallocation, the number of children from low-income families in the district who are not adequately reflected in current eligibility counts.

Response. A change has been made. Section 201.38(b)(1) has been revised to address this issue.

Comment. One commenter questioned the appropriateness of including the availability of funds from non-Title I sources as a factor to be considered in SEA reallocation.

Response. A change has been made. That factor has been deleted from § 201.38(a)(2).

Comment. One commenter requested clarification of the provision "the future availability of Title I funds" in § 201.38(a)(2)(v).

Response. No change has been made. This clause was included to permit the SEA to consider decreases in funding levels for the upcoming year as one factor that may warrant a reduction in the amount of funds that are considered "excess" under § 201.38(a)(1). In a situation where the amount of Title I funds is substantially reduced, it may be appropriate for an SEA to permit an increase in carryover funds to minimize the disruption to Title I services caused by a decrease in the level of funding.

Comment. One commenter questioned why the statutory language "to redress inequities or mitigate hardships" was omitted from paragraph (b)(1).

Response. A change has been made. Section 201.38(b)(1) has been revised to include this statutory language.

Comment. One commenter expressed concern that paragraph (a)(1)(vii) could be used to penalize LEAs for carrying over funds for reasons beyond their control (e.g., late appropriations).

Response. A change has been made. That factor has been deleted from § 201.38(a)(2).

§ 201.39. *Reallocation of Title I funds by the Secretary.*

Comment. One commenter recommended including specific criteria by which the Secretary will determine need as a basis for reallocation of Title I funds among States.

Response. No change has been made. Although the Secretary is granted reallocation authority, it is expected that this authority will be rarely exercised. Where the reallocation is exercised, however, it is anticipated that the Secretary would use the criteria in Section 193(b) (relating to reallocation of Title I funds by SEAs).

Subpart D—Designating Schools and School Attendance Areas for Title I Projects

Identifying Eligible Schools and School Attendance Areas

§ 201.50. *Overview of the regulations in this subpart.*

Comment. Several commenters recommended citing Section 123 as well as Section 122 in paragraph (a) of this section.

Response. A change has been made. Both sections are now cited in § 201.50(a).

Comment. One commenter asked why paragraph (a)(1) (relating to the selection of children) is included in Subpart D (relating to the selection of schools and areas).

Response. A change has been made. Section 201.50(a)(1) has been deleted. However, the reference to educationally deprived children in paragraph (a) has been retained since, in some cases, educational deprivation may be a factor in the selection of project areas and project schools.

Comment. One commenter questioned the use of the term "highest concentration" in paragraph (a)(2). The commenter stated that this term might be interpreted as meaning that all eligible areas cannot be served.

Response. A change has been made. The term "high concentration" has been adopted in § 201.50(a)(2).

§ 201.51 *Identifying eligible school attendance areas.*

Comment. One commenter recommended including a specific statement that an attendance area with

more than one building is considered a single attendance area.

Response. No change has been made. The number of school buildings does not control whether an area is a single attendance area for purposes of Title I.

Comment. One commenter recommended that the regulations explain how eligibility based on residency is determined for children who attend kindergarten, pre-kindergarten, or special education centers which serve the entire district.

Response. No change has been made. The eligibility of such centers may be determined on a school basis (see §§ 201.4 and 201.52). Alternatively, children attending such centers may be considered to be in the attendance areas of the schools they will attend in a following year or of the schools they would have attended if they were not attending the special centers.

Comment. One commenter recommended that this section address the issue of selection of project areas when attendance areas have no defined boundaries.

Response. No change has been made. The definitions of school attendance area and eligible school attendance area in § 201.4 address this issue.

Comment. One commenter recommended allowing LEAs to target Title I funds to school attendance areas and schools based on educational criteria only.

Response. No change has been made. Section 122 of Title I requires, with certain exceptions, that LEAs first serve areas with high concentrations of children from low-income families. The exceptions to this requirement included in Section 122(a)(2) and (d) of Title I are restated in §§ 201.51–201.52 and 201.60–201.66.

Comment. One commenter recommended permitting children who reside in non-project areas but who attend schools serving project areas to participate in Title I projects so long as services are not diluted for children who reside in the project area.

Response. No change has been made. Children assigned to schools serving project areas are considered as being in the attendance areas of those schools.

Comment. One commenter recommended that measures of low-income status be used consistently throughout an LEA's district.

Response. No change has been made. This requirement is already included in § 201.51(b)(3).

Comment. One commenter recommended clarifying whether this section authorized the use of three or four grade span groupings for selecting project areas.

Response. No change has been made. This issue is addressed in § 201.117.

Comment. One commenter recommended that, in determining whether an LEA has maintained Title I expenditures so as to fall within the 25 percent rule in paragraph (d)(ii), expenditures be measured for the district as a whole, rather than in previously served project areas and schools.

Response. No change has been made. The requirement that LEAs maintain Title I and State compensatory education (SCE) program expenditures in previously served project areas and schools is required in Section 122(a)(1) of Title I.

Comment. One commenter recommended deletion of paragraph (d)(3)(ii) which prohibits an LEA's use of percentages and numbers to identify more school attendance than would have been the case if eligibility were determined using either the percentage or number method alone.

Response. No change has been made. Section 201.51(d)(3)(ii) is consistent with pertinent legislative history. It is also designed to ensure that only areas with a high concentration of children from low-income families will be served. Paragraph (d)(3)(ii) adds flexibility, while maintaining the basic concept that LEAs serve a limited number of areas or schools.

Comment. Several commenters recommended expanding the no wide variance latitude in § 201.51(d)(4) from five percent to ten percent. Another commenter recommended that the Secretary be empowered to approve use of the no wide variance option even where the requirements in paragraph (d)(4) are not met.

Response. No change has been made. The five percent provision was included so that LEAs that have very low percentages of children from low-income families in each of their school attendance areas need not be constrained, in their selection of project areas, by economic criteria which are not statistically significant. Increasing this variance to ten percent would unduly dilute the concentration of Title I services.

Comment. One commenter recommended adding an additional section covering actual selection of areas, as well as identification of eligible areas.

Response. No change has been made. Sections 201.60–201.61 and 201.63–201.66 address selection of project areas.

Comment. One commenter recommended including guidance on how LEAs may serve students from local institutions for neglected or delinquent children when those children reside in a non-project area.

Response. No change has been made. Under § 201.75, children who have generated Title I funds as a result of their residence in such institutions must be served regardless of whether the institution is in a project area.

Comment. One commenter questioned the use of the term "aggregate per pupil amount" in paragraph (d)(1)(ii)(B).

Response. No change has been made. The level of expenditures which must be maintained is the aggregate of Title I and SCE funds. This level is determined on a per pupil basis because, where there may be shifts in school populations, the only meaningful comparison is based on expenditures per child.

Comment. One commenter questioned the justification for the options offered in paragraphs (d)(1)(iii) and (d)(2)(ii) concerning the use of grade span groupings.

Response. No change has been made. The option of using grade span groupings gives LEAs more flexibility in providing Title I assistance in those schools and areas which the LEA has determined should be served.

Comment. One commenter asked whether additional paperwork is required by paragraphs (d)(1)(iii) and (d)(2)(ii).

Response. No change has been made. No additional paperwork is required; these sections only apply if the LEA selects the option under § 201.51(c) of grouping areas and schools by grade span. The provisions are necessary to ensure that the grade span grouping option is not used to contravene the statutory intent of the requirements for the selection of schools and areas for Title I services.

Comment. One commenter asked why the no wide variance option applies only to the percentage method and not to the numerical method.

Response. No change has been made. The purpose of the no wide variance option is to relieve agencies of the requirement that they target funds based on relative economic status when the difference between areas, based on incidence of children from low-income families, is insignificant. This is the case when the percentage of children from low-income families in each area is approximately equal. This may not be the case when only the numbers of these children are equal. For instance, two areas may each have 175 children from low-income families, where the total number of children in each area is 500 and 200, respectively. In this case, the two areas are significantly different with respect to economic status.

Comment. One commenter asked how the one-third and five percent figures in paragraph (d)(4) (relating to the no wide variance rule) were derived.

Response. No change has been made. The one-third figure is based upon current policy. This figure is sufficiently restrictive to assure that funds will be targeted consistent with statutory intent. The five percent figure is intended to address the situation in districts where the average proportion of children from low-income families is very low and the one-third standard becomes overly restrictive (*e.g.*, in an LEA with a districtwide average of three percent and attendance areas with averages of two, three, and four percent).

§ 201.52 *Identifying eligible schools*

Comment. One commenter recommended determining eligibility of a school based on enrollment, or average daily membership (ADM), rather than average daily attendance (ADA).

Response. No change has been made. The provision for the use of ADA is statutorily required by Section 122(b) of Title I.

Comment. One commenter recommended requiring LEAs which use the 25 percent rule as a basis for identifying eligible school attendance areas to use this rule as a means of identifying eligible schools.

Response. A change has been made. Section 201.52 has been revised consistent with § 201.51(d)(1).

Comment. One commenter recommended requiring LEAs which qualify schools using the 25 percent rule to adhere to the maintenance of Title I effort requirement in § 201.51(d)(1)(ii).

Response. A change has been made. Section 201.52(b)(2)(ii) now specifically requires LEAs to meet the requirements of § 201.51(d)(1)(ii) in order for schools to qualify under the 25 percent rule.

Comment. One commenter recommended clarifying how the use of grade span groupings affects the selection of schools for Title I projects.

Response. A change has been made. Section 201.52(c) has been added specifically to permit the use of grade span groupings in designating schools as well as areas for Title I services.

Comment. One commenter asked why paragraph (a)(2) permits the use of ADA data in identifying eligible schools which serve children from more than one school attendance area. Another commenter asked why schools could be found eligible using the 25 percent rule and numerical method.

Response. No change has been made. These provisions are included to ensure that the eligibility of schools is determined on the same basis as school attendance areas so as not to discriminate against children attending such schools.

Comment. One commenter asked why the statutory language "substantially the same" was interpreted as "at least equal" in paragraphs (b)(1) and (b)(3).

Response. A change has been made. Sections 201.52(b) (1) and (3) have been revised to include the statutory language "substantially the same."

Selecting Schools and School Attendance Areas for Title I Projects

§ 201.60 *Overview of the process of selecting school attendance areas and schools for Title I projects.*

Comment. One commenter recommended allowing LEAs to select attendance areas and schools based on the number and percentage of children with the greatest educational need in each area and school.

Response. No change has been made. Procedures for ranking on the basis of educational deprivation and selection of attendance areas and schools are dictated by Sections 122(a)(2) and 122(d) of the Title I statute. Sections 201.63 and 201.66 of these regulations implement those statutory provisions.

Comment. One commenter asked why the phrase "for a particular grade span" is included in paragraph (a) where LEAs do not have to use grade span grouping when selecting project areas and schools.

Response. A change has been made. The reference to "a particular grade span" has been deleted from § 201.60(a).

Comment. One commenter asked why the language in this section implies that LEAs will normally select all eligible areas for projects.

Response. A change has been made. The language in § 201.60(a) has been revised to avoid that implication.

Comment. One commenter recommended revising paragraph (b) to clarify that an LEA's decision on how many eligible areas it will serve is based solely on the availability of Title I funds.

Response. A change has been made. Section 201.60(c) has been added to provide that LEA's shall select project areas and schools from those which are eligible if Title I funds are insufficient to serve all educationally deprived children in all eligible areas and schools.

§ 201.61 *Selecting project areas by ranking the eligible school attendance areas according to their concentration of children from low-income families.*

Comment. One commenter recommended clarifying that this section applies only when Title I funds are insufficient to serve all eligible areas and schools.

Response. A change has been made. Section 201.61(a) has been revised to provide that an LEA shall rank and select from eligible areas only if it does not select all eligible school attendance areas for project areas.

§ 201.62 *Selecting project schools from among the schools that the LEA identified as eligible schools.*

Comment. One commenter recommended clarifying how the rankings of schools and areas should be consolidated.

Response. No change has been made. The consolidation of eligible areas and schools into a single ranking is done by identifying the area or school with the highest concentration of children from low-income families, and then, in turn, identifying each area or school with the next lowest concentration until all eligible areas and schools have been listed.

Comment. One commenter questioned the necessity of the provisions in this section.

Response. No change has been made. The section is included to clarify the requirement that eligible schools and areas be treated consistently.

§ 201.63 *Selecting a limited number of lower ranked eligible school attendance areas or eligible schools having substantially greater incidences of educational deprivation than higher ranked eligible school attendance areas or eligible schools.*

Comment. One commenter recommended revising this section to more clearly implement the distinct requirements of Sections 122(a)(2) and 122(d) of the Title I statute.

Response. A change has been made. Regulations implementing Section 122(a)(2) are included in § 201.66. Regulations implementing Section 122(d) are retained in § 201.63.

Comment. One commenter recommended deletion of the requirement that the substitution of a lower ranked eligible area not substantially impair the delivery of compensatory education services to children from low-income families.

Response. A change has been made. The options provided under Sections 122(a)(2) and 122(d) of Title I are now treated separately. District advisory council approval and the restrictions against substantial impairment as set forth in § 201.66 apply only to the substitution of an ineligible area or school for an eligible one as required by Section 122(a)(2) and not to the

substitution under Section 122(d) of a lower ranking eligible area or school for a higher ranking eligible area or school, as set forth in § 201.63.

Comment. One commenter recommended including the provision that areas and schools ranked according to educational deprivation but not served are not considered eligible.

Response. A change has been made. That provision has been added as § 201.66(e).

Comment. One commenter asked why this section does not state that an LEA employing this option specifically assure compliance with all statutory and regulatory provisions governing its use of the option consistent with language in the House Report.

Response. No change has been made. Since applicant agencies must comply with all applicable statutory and regulatory requirements, this special assurance is unnecessary.

Comment. One commenter asked why the standard 1.2 times the percentage or number of educationally deprived children is used as a proxy for the statutory language "substantially greater educational deprivation."

Response. No change has been made. The term, "substantially greater educational deprivation" must be translated into some objective standard in order to provide guidance to State and local administrators. The 1.2 figure is believed to provide a fair benchmark for this purpose.

§ 201.64 *Continuation of eligibility for certain school attendance areas of schools.*

Comment. A number of commenters recommended that Section 122(c) of Title I be interpreted as conferring not one, but two, additional years of eligibility for areas and schools which were previously eligible and served.

Response. A change has been made. Section 201.64(b) now permits services to be continued for two additional years in areas and schools which were previously eligible and served.

Comment. A number of commenters objected to paragraph (d) limiting the number of areas and schools which can qualify under this section.

Response. A change has been made. Paragraph (d) was revised to provide that, as long as an LEA does not change its method of determining eligibility of areas and schools (e.g., percentages or numbers, or grade spans), there is no restriction on the number of additional areas or schools which may be served under the grandfather clause. However, if the method is different than that used in the previous year, the restriction applies and a district may qualify, with the grandfather clause, no more areas than its current method of identifying eligible areas and schools would permit.

Comment. One commenter requested inclusion of an operational definition of "substantially different" as used in paragraph (c) of this section.

Response. No change has been made. An example of an area which has substantially changed is one which serves a different geographical area than before. An example of a school that has substantially changed is one which is serving a different population than it was in the previous year due, perhaps, to changes in grade levels, the reassignment of children under a desegregation plan, or a change from service as a general to a special purpose school.

Comment. One commenter asked why this section permitted the provision of Title I services in ineligible areas and schools.

Response. No change has been made. Section 122(c) of Title I is entitled "Continuation of eligibility for certain school attendance areas or schools." This title clearly indicates that the section is intended to continue the eligibility of areas and schools which, but for this provision, would be ineligible. This interpretation is further bolstered by the section's references to Sections 122(a) and 122(b) of Title I, suggesting that its provisions were intended to render eligible, areas and schools that would not otherwise be eligible.

§ 201.65 *Skipping higher ranked school attendance areas and schools receiving services of the same nature and scope from non-Federal sources.*

Comment. A number of commenters recommended permitting areas to be skipped which are served by other Federal programs.

Response. No change has been made. While coordination of services and avoidance of duplication of services are encouraged, no statutory authority exists for skipping an area which receives services under another Federal program. However, Section 124(f) of Title I and 34 CFR 200.40 require that applicants consider services available from other publicly and privately funded programs in order to avoid duplication of effort.

Comment. One commenter recommended including in the definition of "same nature and scope" language indicating that the program must meet the requirements in Section 131(c) of Title I.

Response. A change has been made. That requirement has been added to the standard for same nature and scope in § 201.65(b)(2).

Comment. One commenter recommended requiring the approval of the district advisory council if any area is skipped under this section.

Response. No change has been made. The statute provides no authority for requiring district advisory council approval before an LEA may exercise the option provided in this section.

Comment. One commenter recommended revising the language in this section to clarify its application where public school children are skipped because they receive services of the same nature and scope from non-Federal sources, while children who reside in such an area but attend private schools are not skipped.

Response. No change has been made. Under this section and Section 122(c) of Title I, school children in an area or school that is skipped must still be identified and served.

Comment. One commenter asked why this section does not more clearly specify requirements regarding services to be provided private school children in skipped areas, where the need for specific guidance is noted in the House Report.

Response. No change has been made. The language in the House Report does not preclude the use of cross-referencing to explain the requirements.

Comment. One commenter inquired as to the basis of paragraph (c)(1) concerning comparability requirements for attendance areas skipped because they receive services of the same nature and scope from non-Federal sources.

Response. No change has been made. This provision is based on very clear direction in the House Report on Pub. L. 95-561 (H.R. Rep. 95-1137 at 22).

§ 201.66 *Selecting a limited number of project areas through the use of alternative rankings of school attendance areas according to their concentration of children from low-income families and the incidence of educational deprivation.*

Comment. One commenter asked why a standard of 90 percent was used in the definition of "substantial impairment" included in paragraph (d)(3)(i).

Response. No change has been made. The Department considered simply repeating the statutory provision that the delivery of compensatory education services to children from low-income families not be substantially impaired, but decided that for purposes of consistency, an objective standard should be introduced. The 90 percent figure is considered to be an appropriate interpretation of the statutory language.

Subpart E—Identifying and Selecting Children To Be Served

§ 201.70 *General rules for identifying eligible children and selecting children to be served.*

Comment. One commenter suggested cross referencing § 201.140 in this section concerning the participation of handicapped children.

Response. No change has been made. The purpose of this section is to present general rules for identifying and selecting children to be served. There is no need to duplicate the language in § 201.140 at this point in the regulations.

Comment. One commenter recommended including more prescriptive rules to ensure that all children who are eligible for services and are among those in greatest need are served.

Response. No change has been made. The current language is consistent with the law and legislative history which indicate that while certain rules must be followed in selecting participants for Title I programs, local officials should have some discretion in determining the instruments and the specific criteria by which participants are selected.

Comment. One commenter recommended deleting the words "and selected" from § 201.70(c). This commenter also suggested clarifying the term "greatest need."

Response. No change has been made. The words "and selected" have been retained because the process referred to in § 201.70(c) has two steps: once the population of eligible children is identified, the LEA must select those children as currently having the greatest need of special assistance. Likewise, the regulations permit LEAs to exercise their discretion in determining which children are in greatest need so long as the method they choose is reasonable.

§ 201.71 *Special rules for identifying and selecting children to be served.*

Comment. One commenter objected to the language in paragraph (b)(2)(ii) and recommended using the statutory language in Section 123(c) of Title I instead. This statutory language, the commenter asserted, implies that children may not be dropped from a Title I project in mid-year.

Response. No substantive change has been made. Section 123(c) of Title I provides that the LEA may, at its discretion, continue Title I services to children who were transferred from a project area school during mid-year. The language in § 201.71(b)(2) was revised to parallel the Title I statute.

Comment. One commenter recommended that paragraph (a) be amended to include a maximum percentage of participants who could be served, even though they are not among those in greatest need, under the provision in Section 124(k) of Title I (requiring LEAs to give due consideration to components designed to sustain the gains of students beyond the school year in which a project was conducted).

Response. No change has been made. The number of children in a project component designed to sustain the gains they have already made must be determined by the LEA. The statute does not authorize the imposition of limits on the number of those children.

Comment. One commenter recommended deletion of the infrequent participation provision in this section as causing problems in monitoring which outweigh benefits to the program.

Response. No change has been made. The provision in § 201.71(d) is sufficiently restrictive and limited so as not to impose severe monitoring responsibilities. Moreover, it is limited by Section 124(a) of Title I which requires that projects be designed to meet the special educational needs of educationally deprived children. This provision is needed, however, to avoid counter-productive exclusion of non-project children in situations where their inclusion would not reduce benefits to participating children.

Comment. Several commenters objected to the five percent limit on the proportion of students who may participate in the project on an incidental basis.

Response. No change has been made. This provision was intended to provide some flexibility for situations where LEAs do find that the inclusion of non-project children does not detract from the effectiveness of the project and their exclusion could be counter-productive. Although Section 123(a) of Title I requires Title I funds to be used for educationally deprived children in greatest need of special assistance, it does not preclude the inclusion of a limited number of non-project children. The five percent limit is necessary to prevent abuse of this option.

Comment. One commenter recommended deletion of the requirement in § 201.71(d)(5)(i) that LEAs include an estimated number of non-project children who may be expected to participate in Title I services.

Response. No change has been made. An LEA should be able to determine from its plans for each project activity whether and to what extent it is likely to include non-project children as participants.

Comment. One commenter stated that paragraph (b) should be revised to permit children whose eligibility is based on selection prior to transfer to a non-project area or school to continue to be eligible for one year only.

Response. No change has been made. Section 123(c) of Title I clearly specifies that educationally deprived children who have begun to participate in a Title I project but are transferred to an ineligible area or school may, at the LEA's discretion, continue to participate in the LEA's Title I project for the duration of the current school year.

Comment. Several commenters recommended permitting LEAs to skip children who are receiving services of the same nature and scope from other Federal sources.

Response. No change has been made. The statute does not authorize the skipping of these children, although coordination of services and the avoidance of duplication of services must be considered under 34 CFR 200.40 and Section 124(f) of Title I.

Comment. One commenter recommended including an example of how a project could be structured to serve childern who began participating in a project but were transferred in mid-year to an ineligible area or school.

Response. No change has been made. An LEA should refer, in such cases, to the modal it was using and in many cases is continuing to use at the schools from which the children are transferred.

Comment. One commenter recommended revision of paragraph (b) to provide that LEAs may "continue to serve" children, rather than simply "serve" them.

Response. A change has been made. The words "continue to" have been added before "serve children" in §201.71(b)(1).

Comment. One commenter recommended revising paragraph (b)(1) to provide that children must begin participation in a Title I project in order to retain their eligibility under this section.

Response. A change has been made. Section 201.71(b)(1)(ii) states that a child must actually begin to participate in a Title I project in order to be eligible under §201.71(b).

Comment. One commenter recommended that paragraph (b)(1)(ii) be revised to provide that the children be transferred to a school or area that "is not receiving services," rather than one that "was not receiving services."

Response. A change has been made. Paragraph (b)(1)(iii) now refers to children who are transferred to an area

or school that "is not receiving services."

Comment. One commenter asked how often the Department expects LEAs to take advantage of the participation authorized by paragraph (d).

Response. No change has been made. The Department has no specific data on which to make an accurate estimate of how often LEAs will actually use this option. Based on past experience, it appears that this option will be used primarily for such purposes as allowing non-Title I students to participate in a limited number of field trips or other similar activities. The Department expects to review use of this authority on an ongoing basis to ensure that it is not abused.

Comment. One commenter inquired whether the reference in paragraph (c)(1) (relating to children determined to be in greatest need under §201.103) included only participants, or educationally deprived children generally.

Response. A change has been made. Paragraph (c)(1) has been amended to refer to educationally deprived children in general.

§ 201.72 *Use of Title I funds for a schoolwide project.*

Comment. Several commenters recommended revising the exemption in paragraph (b)(3) to avoid exempting LEAs which operate schoolwide projects from the requirement that special State and local funds be equitably distributed between schools that operate schoolwide projects and those that do not.

Response. A change has been made. Section 201.72(b)(3) exempts LEAs from demonstrating that the particular *services* paid for with Title I funds supplement the *services* regularly provided in schools that operate schoolwide projects. However, that section also specifically refers to § 201.74(d), which requires that Title I *funds* supplement the amount of non-Federal *funds* that are provided to such schools. Therefore, each school that is selected for a schoolwide project must receive all non-Federal funds that it would have received had it not been selected for a schoolwide project.

Comment. One commenter asked why paragraph (a) omitted the statutory language indicating that the purpose of schoolwide projects is to up-grade the entire educational program in a school.

Response. A change has been made. That statement has been added to § 201.72(a).

§ 201.73 *Required plan for each school selected for a schoolwide project.*

Comment. One commenter recommended adding parents to the list of persons who are to be trained in order to carry out a schoolwide project.

Response. No change has been made. The requirement that teachers and aides be trained in order to carry out schoolwide projects is contained in Section 133(b)(5) of Title I. The statute does not require that parents be specially trained to aid in carrying out such projects. Parents must, however, be provided training to the extent required by § 201.161.

§ 201.74 *Financial requirements for a schoolwide project.*

Comment. One commenter recommended including a definition of special supplementary State and local funds as used in § 201.74(b).

Response. No change has been made. The required special supplementary State and local funds must be above and beyond the amount of funds the school would receive if it not operate a Title I schoolwide project.

Comment. One commenter asked whether amounts spent under local compensatory education programs should be exempted from the provision in § 201.74(c) requiring maintenance of State and local effort in schools that operate schoolwide projects.

Response. No change has been made. Amounts spent under local compensatory education programs are not exempt under Section 133(b)(7)(C) of Title I which only authorizes the exclusion of funds expended under State compensatory education programs.

Comment. One commenter questioned why § 201.74(c) requires that fiscal effort be maintained in *each* school when the law merely refers to expenditures in *schools.*

Response. Section 201.74(c) requires that maintenance of effort be determined on a school-by-school basis to ensure that the level of expenditures in a schoolwide project is maintained. To permit LEAs to determine maintenance of effort on an aggregate basis could undermine the intent of the maintenance of effort provision in a specific school by permitting increased expenditures in one school to balance decreased expenditures in another school.

Comment. One commenter recommended revising this provision to clarify that paragraph (a) only applies to LEAs which both operate schoolwide projects and provide Title I funds to other schools that serve project areas.

Response. No change has been made. The use of the term "if any" in paragraph (a) makes it clear that the equitable distribution requirement applies only if the LEA provides Title I services in both a school selected for a schoolwide project and at least one other school serving a project area.

§ 201.75 *Serving children in local institutions for neglected or delinquent children.*

Comment. One commenter asked why LEAs were excused from the requirements in Subpart E concerning selection of children.

Response. No change has been made. Although LEAs remain exempt from the requirements of Subpart E, program requirements relating to needs assessment have been added in paragraph (d).

Comment. One commenter asked who would monitor the projects operated for children in local institutions for neglected or delinquent children.

Response. No change has been made. The LEA operates and monitors the project itself, but the SEA is also responsible for monitoring the LEA's implementation of the project.

Subpart F—Participation of Children Enrolled in Private Schools

General Requirements

§ 201.80 *Required opportunity for participation of private school children in Title I projects.*

Comment. One commenter requested clarification on how LEAs are to collect economic and educational data on students attending private schools if private school officials do not cooperate.

Response. No change has been made. Each LEA must use the best data that are available for determining eligible areas and for assessing the needs of public and private school children in eligible areas that have been designated for projects.

Comment. One commenter requested clarification on how an LEA would provide assurances that it has provided private school students an adequate opportunity to participate in the program.

Response. No change has been made. 34 CFR 76.660–76.662 provide detailed guidance concerning how private school officials and students are to be involved in Title I projects, as well as other federally assisted education programs. Compliance with these requirements constitutes provision of adequate opportunity to participate.

Comment. One commenter recommended either defining size, scope, and quality of programs for

students attending private schools, or authorizing SEAs to make this determination.

Response. No change has been made. In general, the same standards for size, scope, and quality apply to projects for private school students. 34 CFR 76.653–76.655 provide detailed guidance on the levels of services to be provided for private school children.

§ 201.81 *Determining the eligibility of private school children.*

Comment. One commenter objected to the inclusion of the option that LEAs select private school children for participation in a Title I project on a basis identical to, rather than simply comparable to, the basis on which public school students are selected.

Response. No change has been made. Selection of private and public school children on the basis of identical criteria is an acceptable method of ensuring that private school children receive equal consideration with public school children in the selection of participants for the Title I program.

Comment. One commenter inquired as to the necessity for paragraph (c), which provides that an LEA may arrange with another LEA to provide Title I services for private school children who reside in project areas in one district and attend school in the other.

Response. No change has been made. Such factors as the distance between the private school and the district and number of children involved may justify this type of arrangement.

§ 201.82 *Prohibition concerning noninstructional duties.*

Comment. One commenter recommended clarifying the prohibition contained in this section.

Response. No change has been made. The section simply prohibits personnel paid with Title I funds from performing the limited, rotating, supervisory duties that Section 134 of Title I and 34 CFR 200.61 of these regulations otherwise authorize. This provision is needed since Title I funds may not be used to provide non-Title I services in private schools.

Comment. One commenter questioned the rationale for this section (prohibition of any noninstructional duties by Title I personnel in private schools).

Response. No change has been made. Allowing Title I staff to perform non-Title I duties would create a situation where Federal funds were being used to benefit a private school in contravention of 34 CFR 76.658.

Comment. One commenter objected that the reference to 34 CFR 76.650–76.660 of EDGAR was not in keeping with the aim of making the Title I regulations a self-contained document.

Response. No change has been made. Since EDGAR includes specific requirements respecting the provision of services to private school children under a program of Federal assistance, it is not considered necessary to repeat those requirements in the Title I regulations.

Bypass Provisions

§ 201.90 *General standards for by-pass actions.*

Comment. One commenter recommended that SEAs be authorized to make direct grants to private schools where private school staff would provide services directly.

Response. No change has been made. Only the Secretary is authorized to initiate by-pass actions. In arranging for provision of services under a by-pass, the Secretary normally awards a contract using competitive bidding, and does not make a direct grant to a private school. Contract procedures are necessary to maintain public control in the provision of Title I services to private school children.

Comment. One commenter recommended that the regulatory sections dealing with by-pass actions simply repeat the statutory language.

Response. No change has been made in these final regulations. However, in a separate notice of proposed rulemaking, the Secretary is publishing regulations governing show cause hearings for by-pass actions.

Comment. One commenter objected to paragraph (a)(1) which interprets the statutory standard "participation on an equitable basis" to require the provision of "equitable services."

Response. A change has been made. Section 201.90(a)(1) has been revised to conform more closely to the statutory language.

Comment. One commenter recommended revising paragraph (a)(2) to refer to situations where the LEA is prohibited by law from providing for the "equitable participation" of private school students, rather than from providing "equitable services."

Response. A change has been made. Section 201.90(a)(2) has been revised to refer to equitable participation rather than equitable services.

Comment. Several commenters objected to paragraph (b) as providing overly broad discretion which could be employed in contravention of the statutory intent.

Response. A change has been made. Section 201.90(b) was revised to provide that the Secretary may decide not to implement a by-pass only if the number of private school children in the LEA who would participate is fewer than 10 and the by-pass would result in the wasteful and extravagant expenditure of Title I funds. Therefore, both of these criteria must be present before the Secretary may decide not to implement a by-pass.

§ 201.94. *Judicial review of by-pass actions.*

Comment. One commenter questioned the omission from this section of any reference to the Secretary's and court's duties as outlined in Section 130(b)(4)(B) through (D) of Title I.

Response. No change has been made. These regulations are intended to apply only through the Secretary's final determination regarding by-pass actions.

§ 201.95. *Effect of a by-pass action.*

Comment. One commenter recommended including the phrase "and arrangements" in paragraph (c) (relating to costs which may be deducted in connection with a by-pass).

Response. No change has been made. Paragraph (c) already refers to "administrative costs of arranging" for by-pass services.

Comment. Several commenters objected to the use of the phrase "equitable provision of services" in lieu of the statutory language "participation on an equitable basis."

Response. A change has been made. Section 201.95 now uses the term "participation . . . on an equitable basis."

Comment. One commenter objected to the use of the term "alternative services" as implying that the by-pass services will be different in nature from other Title I services.

Response. A change has been made. The word "alternative" has been deleted in § 201.95(b).

Comment. One commenter questioned the authority for deducting the cost of services under a by-pass from the LEA or State allocation.

Response. No change has been made. Section 130(b)(3)(B) of Title I authorizes the Secretary to withhold from the affected State or LEA the amount of funds required to pay the cost of services under a by-pass.

§ 201.96 *Withholding funds pending resolution of a by-pass action.*

Comment. One commenter questioned why this section did not provide that funds may also be withheld when a complaint or investigation is pending, rather than only when a resolution under the by-pass procedures is pending.

Response. A change has been made. Section 201.98 has been revised to adhere more closely to the statutory language.

Comment. One commenter objected to the use of the word "alternative" to describe services under a by-pass.

Response. A change has been made. The word "alternative" has been deleted from § 201.98.

Subpart G—Needs Assessment

§ 201.100 *Purpose of the required needs assessment.*

Comment. Several commenters pointed out that LEAs need only identify educationally deprived children who have the greatest need for assistance in project areas and project schools, not in all areas.

Response. A change has been made. Section 201.100(c) now requires identification of educationally deprived children who have the greatest need for assistance only in the instructional areas selected by the LEA. Section 201.100(a) requires an LEA to identify educationally deprived children in all eligible school attendance areas and eligible schools.

Comment. One commenter questioned why this section did not specifically state that the LEA must conduct an educational needs assessment, rather than simply a needs assessment.

Response. A change has been made. The section has been revised to more closely conform to the statutory language requiring an assessment of educational need.

§ 201.101 *Identification of educationally deprived children.*

Comment. Several commenters recommended that former §§ 116a.101 and 116a.102 be reversed to clarify that LEAs should first identify all educationally deprived children in all eligible areas and schools, and then identify general instructional areas, grade levels, and types of needs to be addressed.

Response. A change has been made. The order of the two sections has been reversed.

Comment. One commenter recommended deletion of the reference to age levels in former § 116a.101(a).

Response. A change has been made. The term age levels has been deleted from § 201.102(a).

Comment. One commenter recommended specifically requiring project area and project school advisory council consultation when deciding on the general instructional areas on which the project will focus.

Response. No change has been made. However, § 201.169 requires that the project area and project school advisory councils be given responsibility for advising the LEA on the planning of its project.

§ 201.102 *Identification of general instructional areas and needs.*

Comment. One commenter suggested specifically mentioning standardized tests and language achievement tests as examples of the objective data referred to in this section.

Response. No change has been made. LEAs are free to use whatever measures of educational deprivation that are felt to best identify the needs of students. The Department does not wish either to persuade or dissuade LEAs from selecting any particular type of data by mentioning only one or two specific types.

Comment. One commenter asked why a reference to objective data is included in § 201.101 when that term is not used in the Title I statute.

Response. No change has been made. Title I funds may be used to select participants from among the children identified as educationally deprived under this section. It is therefore important that the designation of these children as educationally deprived have a substantial basis in fact, to the extent possible.

§ 201.103 *Selection of children to participate in a project.*

Comment. Several commenters recommended that this section be amended to include a definition of children in greatest need.

Response. No change has been made. The term "educationally deprived children" is defined in § 201.4. Children in greatest need are those educationally deprived children who rank lowest based on whatever educational criteria an LEA uses under this section to identify and select Title I participants.

Comment. One commenter recommended including a specific statement that, once grade levels have been determined, LEAs need not document differences in individual need between children in grades being served and children in other grades.

Response. No change has been made. This section refers to instructional areas determined under § 201.102 (including identification of grade levels). There is therefore no requirement, at this point, that LEAs continue to consider children at grade levels other than the ones at which a project will operate.

Comment. Two commenters recommended including a reference to educationally deprived children who were, during a previous year, among those in greatest need.

Response. A change has been made. Section 201.103(a)(2) has been added indicating that LEAs should consider such children when selecting project participants.

Comment. Two commenters recommended stating in paragraph (a) that educationally deprived children in greatest need are to be selected first, and then if there are sufficient funds, other less severely educationally deprived children may be selected.

Response. A change has been made. Section 201.103(a) has been revised to clarify that the most severely educationally deprived children must be selected prior to selecting less severely educationally deprived children.

Comment. One commenter objected to the reference to objective data which does not appear in the Title I statute.

Response. Section 123(a) of Title I requires that Title I services be provided educationally deprived children in greatest need. A reference to objective data is included in § 201.103 to ensure compliance with this requirement by eliminating reliance on subjective considerations which cannot be justified.

Comment. One commenter asked why it was necessary to cross-reference §§ 201.130–210.143 in paragraph (b).

Response. No change has been made. Cross-referencing of these provisions is believed desirable so as to ensure that selection of participants will be done correctly, thereby avoiding unlawful supplanting of State and local funds.

Comment. One commenter questioned the authority for paragraph (c), which permits the use of Title I funds to select participants from among educationally deprived children.

Response. No change has been made. This provision is supported by the legislative history of the Education Amendments of 1978 (H. Rept. 95–1137 at 24).

§ 201.104 *Determination of the special educational needs of participating children.*

Comment. One commenter objected to the omission of the qualifier "special" before the term "educational needs" in paragraph (c) of this section.

Response. A change has been made. Section 201.104(b) now requires LEAs to identify certain special educational needs that are best addressed through noninstructional support services.

Comment. One commenter objected to the reference to "objective data" in this section.

Response. No change has been made. The legislative history for Title I

indicates that in this step in the needs assessment the LEA discovers the precise needs of project participants. Use of objective data is recommended to guide the LEA in its efforts accurately to diagnose and assess these needs.

Comment. One commenter recommended moving the provision in paragrah (b) to § 201.105.

Response. A change has been made. That provision is now found in § 201.105.

§ 201.105 *Establishment of eductional objectives and instructional strategies.*

Comment. One commenter recommended adding a statement that no Federal Title I requirement is intended to favor any particular instructional strategy.

Response. A change has been made. Section 201.105(b) was added which states that "an LEA is not required to use any particular instructional strategy in its Title I project."

Subpart H—Fiscal Requirements

Comparability

§ 201.112 *Basic standards for determining comparability of services.*

Comment. One commenter objected to the requirement that each Title I school serving a project area be compared to the average of all non-Title I schools.

Response. No change has been made. This approach was recognized and approved by the Congress in Section 102 of Pub. L. 95–561 and the accompanying legislative history.

Comment. One commenter questioned why the term "project areas" rather than "schools serving project areas" was used in paragraph (a) of this section.

Response. A change has been made. The term "schools serving project areas" is used rather than "project areas."

§ 201.113 *Submission of comparability reports.*

Comment. One commenter objected to the requirement that comparability reports be filed annually.

Response. No change has been made. Section 126(e) of Title I requires, with some specific exceptions which are incorporated in these regulations, that LEAs file comparability reports annually.

Comment. Several commenters recommended extending the date by which LEAs must demonstrate comparability in order to avoid a penalty from December 1 to February 1 in districts that experience high mobility or are undergoing major court ordered desegregation.

Response. No change has been made. In unusual cases where LEAs need additional time beyond December 1 to achieve and demonstrate comparability, a compliance agreement would provide a possible basis for relief from this requirement.

Comment. One commenter asked why the statutory requirement that LEAs report on or before July 1 was not reflected in this section.

Response. No change has been made. Section 126(e) of Title I requires an LEA to report *on or before* July 1 of each year regarding its compliance with the comparability requirements. That section also permits the Secretary to "otherwise provide by regulation." In light of this statutory authority, therefore, Section 201.113 requires an LEA to submit its comparability report on or before December 1 of each fiscal year. A December date was selected in order to permit the SEA to determine which LEAs are out of compliance in time to achieve compliance before the end of the school year. In order to permit SEAs to make the necessary determinations in reviewing project applications from LEAs, § 201.119 requires LEAs to submit comparability assurances to the SEA on or before July 1.

Comment. One commenter questioned why paragraph (b)(3) refers to December 1, 1978 when the Title I statute refers to November 1, 1978.

Response. A change has been made. Section 201.113(b)(3)(i) now exempts LEAs that were not required, as of November 1, 1978, to file a comparability report.

Comment. One commenter asked whether the use of the phrase "because at that time, all of its school attendance areas were Title I project areas" in paragraph (b)(3) excludes any LEA which would otherwise be covered by the exemption in that paragraph.

Response. A change has been made. That phrase has been deleted and replaced with new language which conforms more closely to the statute.

Comment. One commenter questioned the necessity of the second sentence in paragraph (b)(3).

Response. A change has been made. This paragraph has been restructured for greater clarity. However, the provision in question has been retained to ensure that LEAs are aware that, although they have never previously complied with comparability requirements, they are now required to do so by Section 126(e) of Title I.

Comment. One commenter asked whether the Department had considered including provisions concerning the Secretary's authority to waive the comparability reporting exemption for certain types of LEAs.

Response. A change has been made. Section 201.113(c) has been added to include a provision whereby the Secretary may require an LEA to report even though it is otherwise exempted from that requirement.

Comment. Several commenters objected to the requirement that certain LEAs must maintain, but not report on, comparability.

Response. No change has been made. Section 126(e) of Title I exempts certain LEAs from the requirement that they report on comparability but it does not relieve them of the responsibility for maintaining comparability. Accordingly, the regulations implement the statutory authorization exempting certain LEAs from reporting to the SEA, but do not exempt them from the requirement that comparability be maintained.

Comment. One commenter recommended revising this section to require that LEAs, which would have had to submit comparability reports pursuant to requirements which were in effect on December 1, 1978, continue to submit such reports.

Response. A change has been made. Paragraph (b)(3) of this section has been revised to require comparability reports from these districts.

Comment. One commenter recommended adding a provision requiring comparability reports from LEAs which have modified their policies to circumvent the comparability requirement.

Response. No change has been made. Such a provision would require a determination of intent underlying policy changes that would be impractical, if not impossible, to make. In any event, under the 1978 statutory amendments, every LEA is now required to determine the comparability of all schools serving project areas.

§ 201.114 *Data to be included in a comparability report.*

Comment. Several commenters recommended including schools skipped under § 201.65 in paragraph (b)(1)(i).

Response. A change has been made. These schools have been included as schools for which comparability must be demonstrated.

Comment. One commenter recommended including an explanation of how LEAs are to count children and staff who spend less than a full day at a given school.

Response. A change has been made. Under paragraph (c)(1)(i), children and staff are to be counted on a full-time equivalent basis—that is, on the basis of the percentage of time they are assigned to a particular school.

Comment. One commenter recommended excluding staff members who provide services under special State and local programs.

Response. No change has been made. Section 201.118 provides for the exclusion of certain State and local program data from comparability determinations, as authorized by the statute.

Comment. Several commenters recommended that the Secretary rather than the SEA prescribe the format of the report referred to in paragraph (a) of this section.

Response. No change has been made. The information required for comparability determinations is clearly defined in the regulations. Each SEA's form for comparability, as well as project applications and reports, is subject to review by departmental staff.

Comment. Several commenters recommended including in § 201.114(b)(2) the requirement that LEAs with no non-project areas submit data on a combined basis for the school or schools serving areas with the lowest concentrations of children from low-income families.

Response. A change has been made. That requirement has been added to paragraph (b)(2).

Comment. One commenter recommended revising the language in paragraph (c) to cover the situation where districts have no non-project areas.

Response. A change has been made. Section 201.114(c) has been revised to cover both districts with and districts without non-project areas.

Comment. Several commenters recommended revising paragraph (d) of this section to provide that LEAs need file an assurance only if they operate schools in both project and non-project areas.

Response. No change has been made. Section 126(e) of Title I requires that, in LEAs where all school attendance areas are designated for projects, each area must receive State and locally funded services that are comparable. Therefore, the assurance is as important as a tool for ensuring comparability in such LEAs as it is in LEAs that have both project and non-project areas.

Comment. One commenter asked why paragraph (d) required LEAs to submit an assurance that it will allocate staff without regard to the availability of Title I funds.

Response. No change has been made. Allocation without consideration of the availability of Title I funds is consistent with both Sections 126(e) and 174 of Title I.

Comment. One commenter questioned why paragraph (c)(1)(ii) authorized weighing comparability data based on requirements that different amounts of funds be spent on different categories of children, age groupings, or grade levels but not based on requirements for different levels of non-financialresources, e.g., staff.

Response. A change has been made. Section 201.114(c)(1)(ii) has been revised to provide that agencies may weigh data when State or local law specifies that different levels of support are required for different categories of children, age groupings, or grade levels.

§ 201.115 *The date on which the data included in the comparability report must be collected.*

Comment. One commenter recommended adding a requirement that LEAs collect the data required by § 201.114 on a date as close as possible to October 1, or when other similar data are required by the SEA to be collected.

Response. No change has been made. SEAs are free to use the date as of which other similar data is collected.

Comment. One commenter questioned the rationale for selection of a November 1 date for collection of comparability data.

Response. No change has been made. November 1 was selected because it is late enough in the school year for enrollemtn and staffing patterns to have stabilized, but not so late that little time remains in the school year to attain comparability, if necessary.

§ 202.116 *Criteria for determining comparability of services.*

Comment. Several commenters recommended that the permissible variation from the criteria by which project area schools' comparability is measured be increased from five percent to ten percent.

Response. No change has been made in this section. However, a change has been made in § 201.120 to provide for an increase in the variation permitted once comparability has been demonstrated at the five percent level.

Comment. One commenter objected to the requirement that small LESs must maintain and report comparability.

Response. No change has been made. There is no statutory authority for exempting an LEA from the comparability requirement solely on the basis of its size.

Comment. Several commenters objected to the requirement that LEAs with no non-project areas must report comparability.

Response. No change has been made. Section 126(e) of Title I requires that, in LEAs where all school attendance areas are designated for Title I projects, each area must receive State and locally funded services that are substantially comparable.

Comment. One commenter recommended that some measure of level of services other than staff/student ratios and per pupil expenditures for instructional services be used to measure comparability.

Response. No change has been made. Section 102 of Pub. L. 95-561 requires the Department to conduct a study of alternative methods of determining comparability. The study is being conducted during the 1980-1981 school year. Until the results of the study are known, changing the basis for determining the comparability of schools serving project areas would be inappropriate.

Comment. Several commenters recommended including a specific reference to schools skipped under § 201.65 in this section.

Response. A change has been made. These schools are specifically included in § 201.116(a) as schools for which comparability must be demonstrated.

Comment. One commenter questioned the adoption of the 105 percent and 95 percent standards in this section.

Response. No change has been made. Section 102 of Pub. L. 95-561 authorizes a study of alternatives for demonstrating comparability. Section 102(c)(3) indicates that, whatever criteria are used, the maximum variance must be no more than five percent. Consistent with this provision, the five percent tolerances previously used have been retained.

§ 201.117 *Grouping schools by corresponding grade levels.*

Comment. One commenter objected to the restriction on grade span groupings that prevents LEAs with schools serving many different grade spans from comparing only those schools which serve exactly the same grade spans.

Response. No change has been made. Allowing LEAs to employ and compare only those grade spans that are actually served by different schools could have the effect of exempting many schools from demonstrating comparability.

Comment. Several commenters recommended deletion of the requirement that LEAs justify the size split grouping for comparability purposes.

Response. No change has been made. The option of splitting grade spans into two size groups is intended to provide relief for districts which actually experience differences in costs in providing comparable services in larger

and smaller schools. Where this is the case, a justification can easily be provided. Submission of such a justification is necessary to ensure that this option is not abused.

Comment. One commenter objected to inclusion of a provision for grouping on the basis of size. The commenter expressed concern that this provision could be used to exempt any project area schools from demonstrating comparability.

Response. A change has been made. Paragraph (c)(3) now prohibits LEAs from using the size grouping option to exempt a school from the comparability requirement.

Comment. One commenter questioned the justification for requiring LEAs to use grade span groupings.

Response. No change has been made. Direct comparisons between areas which serve widely different grade levels do not accurately indicate whether particular areas are being discriminated against in the allocation of State and local resources. This is because different amounts are often spent per student at different grade levels.

Comment. One commenter inquired as to the rationale for the particular grade span groupings contained in paragraph (d).

Response. No change has been made. The particular grade span divisions in § 201.117(d) are based on common patterns of organization of schools within districts.

§ 201.118 *Exclusions from the excess costs and comparability requirements.*

Comment. One commenter recommended revising the language in paragraphs (e) and (f) to make it clear that an advance determination by either the Secretary or the SEA is required in order to exclude expenditures under programs described in subsections (b)(1) through (b)(3), and (c)(1) of this section.

Response. No change has been made. Paragraphs (b) and (c) of this section clearly state that advance determinations must be made in order to exclude expenditures made under these programs from excess costs and comparability determinations.

Comment. One commenter questioned the authority for the Secretary or the SEA to request other information under paragraph (e)(2) or (f)(2).

Response. No change has been made. Section 131 (e) and (f) of Title I implicitly authorizes the Secretary or the SEA to request whatever information may be needed to make the determinations contemplated by the statute.

Comment. One commenter asked why paragraph (c)(2)(iii) omitted the requirement that the program be based on objectives, including, but not limited to, performance objectives related to educational achievement.

Response. A change has been made. Section 201.118(c)(2)(iii) was revised to provide that programs be based on objectives, including performance objectives.

Comment. One commenter recommended revising paragraph (c)(2)(ix) to clarify that this requirement applies to SEAs, rather than the LEAs.

Response. No change has been made. The requirement that LEAs be separately accountable to the SEA for funds spent for the SCE program applies to both LEAs and SEAs.

Comment. One commenter questioned why paragraph (d) specified that a State or LEA program is considered to be similar to the Title I program for an LEA when the phrase "for an LEA" is not found in the law.

Response. A change has been made. The phrase "for an LEA" has been deleted from § 201.118(d).

Comment. One commenter recommended revising paragraphs (e) and (f) to provide that the Secretary or the SEA shall make an advance determination whether or not a request is made.

Response. No change has been made. Until a request for a determination is made, the Secretary or SEA may not even be aware that the agency wants a determination and, therefore, cannot be expected to make any determination concerning the program's similarity to Title I. Moreover, such a provision would be unduly burdensome for the Secretary and SEAs.

Comment. One commenter objected to the provisions in paragraphs (e)(3) and (f)(3) which provide that significant changes in implementation of a State law must be submitted to the Secretary or the SEA.

Response. No change has been made. Any change in implementation of a program, which may affect its continued similarity to Title I, must be reported to the Secretary or SEA to ensure that the requirements of Section 131 of Title I continue to be met.

§ 201.119 *Required annual assurance.*

Comment. One commenter questioned why the regulations require two annual comparability submissions; one by July 1 and one by December 1.

Response. No change has been made. The statute requires a July report. Such a report is not useful in assessing current comparability compliance, however, since most schools are not operating before July 1. Thus, a fall determination provides comparability data at a time in the year when corrections can be made which will help ensure continued compliance throughout the school year.

§ 201.120 *Maintaining comparability.*

Comment. Several commenters recommended adopting a ten percent rule—that is, allowing a variation of ten percent before adjustments must be made, once an LEA has achieved and demonstrated compliance with the five percent standard under § 201.116.

Response. A change has been made. This section has been revised to provide that once an LEA has achieved comparability on the basis of the standards in § 201.116, it need not make adjustments to maintain comparability unless the data for a school serving a project area show that it does not meet the comparability criteria with a ten percent allowable variation. If in one school serving a project area, the expenditures ratio is less than 90 percent or the pupil/teacher ratio is more than 110 percent of the prescribed criteria, adjustments must be made to bring that school to the levels required under § 201.116. This change in policy ensures that comparability will be maintained within basic parameters, yet allows some variation where changes in teacher or student assignments may be disruptive (*e.g.*, in areas of high student mobility).

Comment. Several commenters requested clarification as to the frequency with which they must check to determine whether they are maintaining comparability.

Response. A change has been made. Section 201.120(a) now requires that LEAs determine whether they are maintaining comparability at least once during the period between January 1 and April 30.

§ 201.121 *Comparability data must be for the same date.*

Comment. One commenter recommended revising the language for added clarity.

Response. A change has been made. Clarifying language has been added to ensure that, for example, enrollment may not be determined as of one date, while the number of staff is determined on another date.

§ 201.122 *Retention of records concerning comparability.*

Comment. One commenter requested clarification regarding records which must be kept, and applicable access requirements. Another commenter stated that work sheets should be

retained, as has been the practice in the past.

Response. A change has been made. Work sheets have been listed in paragraph (a). In other respects, the language of the section is sufficiently specific to require LEAs to keep whatever records that may be necessary to demonstrate compliance. The issue of access is specifically addressed in 34 CFR 200.141–200.142.

Comment. One commenter recommended specifically requiring records to be kept in usable form.

Response. No change has been made. The requirement that the records be sufficient to demonstrate compliance with the comparability requirements implies that they be in usable form.

§ 201.123 *Actions to be taken by an SEA if an LEA violates the comparability requirements.*

Comment. One commenter recommended including a statement of the action an SEA should take if an LEA is found not to be maintaining comparability.

Response. No change has been made. The LEA is subject to the same compliance actions as an LEA that fails to demonstrate comparability by December 1.

Comment. One commenter recommended including language clarifying how State compliance agreements may be applied to comparability violations.

Response. A change has been made. A new paragraph (c)(2) has been added which indicates that compliance agreements signed before December 1 may be used to extend the deadlines for achieving comparability until the date specified in the agreement. If the LEA fully complies with the terms of the compliance agreement, the LEA is not liable for funds expended in non-comparable schools for the period of time from the beginning of the fiscal year until the date specified in the compliance agreement for the LEA to achieve comparability.

Comment. Several commenters recommended revising this section to specify that upon finding an LEA non-comparable, an SEA will withhold funds only from the non-comparable school or schools.

Response. No change has been made. The Title I statute requires that services in all project schools must meet the comparability requirements as a condition to receiving Title I funds. The statute does not provide for the withholding of Title I payments only from non-comparable schools. To do so would only penalize those schools that have already been deprived of comparable State and local services.

Comment. One commenter questioned the rationale for the 30-day limit in paragraph (a) for SEA action upon discovering a comparability violation.

Response. No change has been made. The 30-day limit by which compliance action must be taken is intended to ensure prompt compliance action and yet allow the LEA and SEA time to negotiate a compliance agreement if that is appropriate.

Comment. One commenter asked why a January 1 date is included in paragraph (a).

Response. No change has been made. Since December 1 is the deadline for demonstrating compliance with the comparability requirements and § 201.123 requires SEA enforcement action within 30 days of discovering a violation of a comparability requirement, January 1 is the latest date on which such enforcement action must be taken.

Comment. One commenter asked for clarification concerning the relationship between paragraph (a)(2) which indicates that an LEA and SEA may enter into a compliance agreement for a comparability violation and paragraph (c) which requires reallocation of unobligated funds by the SEA if an LEA fails to demonstrate full compliance by March 1.

Response. No change has been made. A State compliance agreement could extend the deadline for achieving comparability for ninety days. Since that agreement must be entered into on or before December 1, the deadline for achieving comparability cannot be extended beyond March 1. If comparability cannot be achieved by that date, the LEA's Title I funds must be reallocated.

Comment. One commenter asked why a March 1 date is included in paragraph (d).

Response. No change has been made. The March 1 deadline for achieving comparability is intended to provide incentive to LEAs with comparability problems to achieve full compliance. It is also intended to provide an opportunity for the SEA, before the end of the school year, to reallocate funds for use by LEAs which are in compliance with the comparability requirements.

Comment. One commenter asked why it was necessary to spell out actions to be taken for violations of the comparability requirement.

Response. No change has been made. This section is needed to ensure that LEAs are aware of the action which will be taken if even one project area is found to be non-comparable.

§ 201.124 *Amount of funds that an SEA shall refund for a violation of the comparability requirement.*

Comment. One commenter objected to the provision requiring SEAs, rather than LEAs, to refund Title I funds which an audit reveals were expended for project area schools during a period when such schools were non-comparable.

Response. No change has been made. The SEA is responsible for the recovery. It is not, however, precluded from seeking reimbursement from the LEA that was found to have violated a requirement.

Comment. One commenter questioned the necessity for including in the regulations the procedures for repaying funds expended while in violation of the comparability requirement.

Response. No change has been made. The actions to be taken upon discovering a comparability violation differ depending upon whether the violation is discovered during the school year in question or at a later date, during a post-expenditure audit. Procedures applicable in both these situations are therefore included in the regulations.

Comment. One commenter asked how the procedures in this section are related to the repayment procedures in 34 CFR 200.195.

Response. No change has been made. The funds referred in 34 CFR 200.195 are those which are repaid during the period for which they are still available for obligation. For purposes of 34 CFR 200.195, funds misspent due to comparability violations are treated no differently than those misspent in violation of any other requirement. Section 201.124 refers only to funds which are recovered after the period during which they were available for obligation.

§ 201.125 *SEA reports to the Secretary.*

Comment. One commenter questioned the authority for requiring the report referred to in this section.

Response. No change has been made. Section 172 of Title I authorizes the Secretary to require whatever reports are reasonably necessary to enable the Secretary to perform the duties imposed by Title I. Section 172 has therefore been cited as authority for this requirement, along with Section 126(e).

Supplement, Not Supplant: General

§ 201.131 *Definitions.*

Comment. One commenter questioned why the definition of "limited proficiency in the English language" in paragraph (d) differs from the definition included in the Bilingual Education Act.

Response. No change has been made. The definition included in this section is designed to reference requirements under Title VI of the Civil Rights Act of 1964, as interpreted in *Lau v. Nichols,* 414 U.S. 563 (1974).

The Bilingual Education Act describes a discretionary program of Federal assistance to provide bilingual education. Since services are not required to be provided under that Act, as they are under Title VI, the Title VI definition is the appropriate reference point for describing services that would be available, from non-Federal sources, in the absence of Title I.

Comment. One commenter recommended that students who speak substandard English be included under the definition of "limited proficiency in the English language."

Response. No change has been made. The definition of limited proficiency in the English language is based on Title VI of the Civil Rights Act of 1964, as interpreted in *Lau v. Nichols,* 414 U.S. 563 (1974). Use of a broader definition is not warranted under that Act as a measurement of an LEA's obligation to avoid discrimination on the basis of race or national origin.

Comment. One commenter recommended that definitions of a number of terms be included. Definitions were requested for "handicap," "equal opportunity," "limited proficiency," "reasonably," "substantial progress," and "project objectives."

Response. No change has been made. The definition section includes definitions of "handicapped children" and "limited proficiency in the English language." The other terms mentioned by the commenter are very basic ones which have, in most cases, been defined by past practice. Accordingly, the Secretary has determined that providing definitions of these terms is unnecessary.

§ 201.132 *Assurance of equal opportunity.*

Comment. One commenter recommended specifying in paragraph (c) that Title I funds may only be used to provide assistance that the LEA would not otherwise provide.

Response. No change has been made. The purpose of this section is to require LEAs to provide an equal opportunity for all children to participate in and benefit from Title I services, and to provide examples of what may be required to ensure that handicapped and limited English proficient children have this equal opportunity. Section 201.141(a) specifically prohibits LEAs from using Title I funds to provide services that they are otherwise required to provide using State and local funds. Additional guidance has been provided in § 201.141 in response to the commenter's concern.

Comment. One commenter recommended that § 201.132(a) be revised to state that LEAs may not, on the basis of handicap, exclude a child from participation in Title I services, except as provided in § 201.140(c)(1)(iii).

Response. No change has been made. The Secretary believes that § 201.140(c)(1)(iii) clearly establishes that handicapped children may be selected for participation in Title I programs only if they can reasonably be expected to make substantial progress toward accomplishing project objectives without the LEAs substantially modifying the educational level of the subject matter or the intensity of instruction. Incorporation of this standard into § 201.132 would be duplicative and is therefore unnecessary.

Comment. One commenter recommended that the relationship between § 201.132(a)(2) and the prohibition in § 201.141(d)(1)(v) (former § 116a.141(c)(2)(v)) (relating to the intensity of services provided children whose primary or home language is other than English, and children whose primary or home language is English) be clarified.

Response. No change has been made. Section 201.141(d) provides one model of compliance. Children with limited proficiency in the English language may be ensured equal access to Title I services in cases where this model is used by, for example, providing bilingual assistance to the extent necessary to benefit from Title I services. Other models are included, as described in § 201.141 to assist LEAs in designing Title I projects which complement special instructional services they provide, using non-Title I funds, to meet obligations under Title VI of the Civil Rights Act of 1964.

Comment. One commenter recommended that § 201.132 provide for teaching non-Spanish speaking children Spanish.

Response. No change has been made. While the proposed instruction might be seen by some LEAs as desirable, it is not required under the civil rights laws, in cases where the normal language of instruction is English.

Comment. One commenter recommended that § 201.132(c) be revised so as to parallel the provisions of § 201.132(b)(2) (relating to special assistance under Title I in addition to that required to be provided to accommodate the participation of handicapped children in non-Title I activities).

Response. No change has been made in the regulatory language. The distinction between paragraph (b)(2) and paragraph (c) is based on the difference in services provided by a sign-language interpreter and a bilingual teacher. If required for an individual child to benefit from instruction, a sign-language interpreter may, in many cases, go with that child from class to class throughout the school day. The interpreter should therefore accompany the child to a Title I class which substitutes for another part of the child's regular program, and continue to serve the handicapped child on the same basis as he or she would during any other part of the school day. A bilingual teacher or aide who provides instruction as part of a child's regular program is not similarly free to follow the child to the Title I class. Accordingly, the excess costs of making a Title I class available in accessible form to children with limited proficiency in the English language may be borne by Title I.

However, the previous example has been modified and a new example added to clarify the application of the excess cost requirements in 34 CFR 200.94 in this context. As the second example now illustrates, there are certain cases in which an LEA is obliged to allocate non-Title I resources toward provision of Title I services in bilingual form. Under 34 CFR 200.94, an LEA is required to allocate to a Title I project incremental savings in instructional costs resulting from substantial reductions in ordinary teaching loads. If, in these cases, there are cost savings which result from limiting the teaching load of personnel used to meet obligations under Title VI, allocation of non-Title I funds or staff to Title I programs would be required just as where cost savings are solely attributable to a reduced teaching load for other members of the LEA's instructional staff. Additional related examples are provided in § 201.141(e) and (f).

Supplement, Not Supplant: Regular State and Local Funds and State and Local Funds for State Phase-in Programs

§ 201.133 *Introduction (regular State and local funds and State and local funds for State phase-in programs).*

Comment. One commenter recommended defining "regular funds," as used in this section.

Response. Section 201.131(f) includes a definition of "regular funds." Section 201.131(h) has been revised to clarify the relationship between regular funds and funds for special State and local programs.

§ 201.135 *Provision of services required by law: Regular funds funds and funds for State phase-in programs.*

Comment. One commenter recommended eliminating the distinction between regular and phase-in funds, and funds for special programs for purposes of determining compliance with the services required by law test.

Response. A change has been made in § 201.131(h) to clarify the application of the provisions relating to use of regular funds and those relating to use of State and local funds for special programs. This change emphasizes that the provisions relating to supplementing funds for special programs apply wherever State or local funds are appropriated for or otherwise specifically earmarked for special programs, and where other funds, including funds which may be available for other educational purposes, are used for this purpose.

This approach was adopted, and the distinction preserved between regular and phase-in funds and funds for special programs, to ensure that the regulations parallel as closely as possible the Title I statute, with its discrete provisions governing use of each of these types of funds.

Comment. One commenter objected to the example in paragraph (b)(2) which indicates that it is inappropriate to use Title I funds to provide remedial assistance required as part of a judicial desegregation order. Another commenter stated that the example did not go far enough to precluded use of Title I funds to meet court-imposed obligations.

Response. No change has been made. Section 126(c) of Title I prohibits the use of Title I funds to supplant funds which would, in the absence of Title I funds, be made available from regular, non-Federal sources. If the LEA has been ordered to provide the remedial services indicated in the example in § 201.135(b)(2), then clearly they would be provided in the absence of Title I funds. To provide those services with Title I funds would amount to supplanting the regular, non-Federal funds the agency would have made available were Title I funds not available.

The Secretary believes that inclusion of more detailed guidance at this time is inadvisable since the use of Title I in each case, will depend on the facts of individual cases and the wording of individual court orders.

Comment. One commenter recommended that this section refer to expenditures required to be made under an approved voluntary plan of compliance, as well as to expenditures required under court orders.

Response. A change has been made. This section now refers both to approved voluntary plans of compliance and court orders.

Supplement, Not Supplant: Special State and Local Programs

§ 201.136 *Introduction.*

Comment. One commenter objected that this section, which requires agencies to comply with §§ 201.137–201.139, is overly cumbersome and complicated.

Response. No change has been made. The function of this section is to call attention to the requirement for compliance with both, §§ 201.137 and 201.139.

Comment. One commenter recommended revising paragraph (c) to provide that agencies must comply with the requirements of either § 201.137 or 201.139 rather than both of them.

Response. No change was made. Section 126(d) of the Title I statute requires that Title I funds be used to supplement non-Federal funds which would, in the absence of Title I be available for special programs. Failure to distribute available funds equitably would violate this requirement. So, too, would failure to allocate funds which are legally required to be made available. The Secretary has therefore concluded that the requirements of §§ 201.137 and 201.139 must both apply, and that compliance with, for example, § 201.137 alone, would not satisfy statutory requirements.

Comment. One commenter suggested that § 201.136 is too restrictive, and that services to students in special programs may be unduly limited as a result.

Response. No change has been made. The regulations implementing the anti-supplanting requirements have been structured to allow LEAs flexibility in providing services to students also entitled to services under other programs, without undermining Title I as a program of categorical aid to educationally deprived children. Several alternative approaches to implementing the statutory requirements were considered, but each seemed more imprecise or more difficult to implement than that adopted in these regulations. The Secretary intends carefully to evaluate the effectiveness with which the new regulations are implemented to ensure that children are not denied services as a result of discrimination, and that the anti-supplanting prohibitions are not violated.

Comment. One commenter recommended that the relationship between the required by law standard and the excess cost concept be clarified.

Response. A change has been made. 34 CFR 200.94 has been substantially expanded to provide additional guidance regarding the implementation of the excess cost requirements which prohibit intra-school supplanting. Examples have also been added in §§ 201.140–201.141 to illustrate situations in which both the excess cost requirements and the anti-supplanting requirements might be implicated.

§ 201.137 *Equitable distribution: special State and local programs.*

Comment. One commenter pointed out that paragraph (c)(2)(ii) incorrectly interprets the statutory requirement that special State and local funds, when added to Title I funds, equals or exceeds the amount the agency is eligible to receive under Section 111 of Title I.

Response. A change has been made. The words "does not exceed" have been replaced with "equals or exceeds."

Comment. One commenter recommended reviewing the formula in paragraph (c)(3) for consistancy with the standard stated in paragraphs (c)(1) and (2).

Response. A change has been made. The formula has been revised to restate statutory requirements more clearly.

Comment. One commenter questioned why the computation in paragraph (c)(3) must be done on a per pupil, rather than aggregate, basis.

Response. A change has been made. Section 132 of the Title I statute refers to amounts "per child" in ineligible areas and amounts "per child participating in programs in project areas." However, the formula, as included in NPRM was confusing, and has been revised.

Comment. One commenter recommended qualifying paragraph (a) by adding the provision that the requirement in that paragraph is subject to the exemption in paragraph (c).

Response. A change has been made. Section 201.137(a) has been revised to

mention specifically the exemption in § 201.137 (c).

Comment. One commenter recommended adding the word "additional" before "State and local funds" in paragraph (c)(1) in order to conform to the statutory language. Another commenter suggested clarifying this section by referring to "a portion of State and local funds."

Response. A change has been made. Section 201.137(c)(1) now provides that LEAs may use "additional State and local funds . . . if the conditions of § 201.137(c)(2) are met."

Comment. One commenter objected to the inclusion of requirements concerning an LEA's distribution of bilingual and special education funds.

(i) The deadline for achieving comparability may be extended until the date specified in the agreement; and

(ii) The LEA is not liable for the Title I obligations it incurred in noncomparable schools during the fiscal year involved and prior to the date specified in the compliance agreement.

(d) If an LEA determined to be in violation of the comparability requirements fails to submit to its SEA by March 1 of the fiscal year involved a revised comparability report that demonstrates full compliance with the comparability requirements, the SEA shall, under the procedures in § 201.38, reallocate the balance of the LEA's unobligated Title I funds to other LEAs in the State that are in full compliance.

(e) Within 30 days of discovering that an LEA has failed to maintain comparability as required by § 201.120, an SEA shall—

(1) Initiate a withholding proceeding under 34 CFR 200.200 and spend all further Title I payments to the LEA under 34 CFR 200.200(c); or

(2) Enter into a compliance agreement with the LEA under 34 CFR 200.210–200.214.

(Sec. 126(e), 20 U.S.C. 2736(e))

§ 201.124 *Amount of funds that an SEA shall refund for a violation of the comparability requirement.*

(a) Except as provided in paragraph (e) of this section, if the Secretary or an SEA finds, on the basis of an audit, that an LEA failed to comply with the comparability requirements in section 126(e) of Title I and §§ 201.112–201.123, the SEA shall refund to the Department the total amount of Title I funds spent to operate a project in each noncomparable school of the LEA during the period of noncomparability. These funds must include—

§ 201.139 *Provision of services required by law: special State and local programs (general).*

Comment. One commenter questioned the meaning of the word "otherwise" in paragraph (a)(1).

Response. A change has been made. The word "otherwise" has been deleted.

§ 201.140 *Provision of services required by law: special State and local programs (Handicapped children).*

Comment. One commenter objected to the selection exemption whereby handicapped students may be selected for participation in Title I projects only if they can reasonably be expected to make substantial progress toward meeting Title I project objectives without substantially modifying the level or intensity of the instruction. The commenter also expressed concern that examples limiting selection of children at the very lowest levels of achievement would ensure selection of children other than those in greatest need. Another commenter stated that rather than applying only to handicapped students, this exemption should apply to either both handicapped and limited English proficient students, or to neither of these groups. Another commenter recommended clarifying the relationship between the requirements governing selection of children in greatest need and the limitation on selection of certain handicapped children.

Response. No change has been made. The limitation on selection of certain handicapped children is included to ensure that Title I funds will continue to be used for educationally deprived children, generally, and that these funds will not be diverted for use primarily to provide severely handicapped children with basic special education services which are required to be provided under Section 504 of the Rehabilitation Act, Pub. L. 94–142, and other laws. Substantial modification of Title I programs to meet the needs of the most severely handicapped children who could not otherwise benefit from participation, is therefore neither required nor permitted.

No similar restriction on selection of children with limited proficiency in the English language is included for two reasons. First, English poficiency can be expected to increase, on an ongoing basis, and not constitute a permanent impediment to the ability of children to benefit from Title I instruction comparable to certain severe and permanent handicap conditions which preclude effective participation. In addition, Title I instruction may be provided, through bilingual teachers or aides, so as to require no modification in the level or intensity of instruction.

In some cases, examples which illustrate selection of only children above the 5th percentile of achievement have been included as a means of illustrating the requirement that handicapped children may be selected only if they can reasonably be expected to make substantial progress toward meeting project objectives without modifying the level or intensity of instruction. These examples are in no way intended to sanction "creaming," the practice of selecting as Title I participants only those children who can be expected to make substantial progress in a relatively short period of time. Instead, LEAs must continue to select children with the greatest need, taking care, however, not to select children who, because of their handicap, cannot be expected to make progress comparable to their non-handicapped peers without substantial modification of the instruction otherwise available through the Title I project.

Comment. One commenter recommended including examples of how the distinction in paragraph (c)(1) between programs designed to address needs resulting from educational deprivation and programs designed to address needs related to mental retardation or learning disability would be applied. The commenter also recommended that project objectives be tested against their appropriateness for non-handicapped children alone.

Response. No change has been made. In many cases, children diagnosed as mildly mentally retarded or learning disabled may have needs similar to those of educationally deprived children who have not been similarly diagnosed. This may be because the handicapped children, as a result of their handicap, need similar special services. It may also be because the handicapped children have been subject to the same influences of poverty and limited educational opportunities which have affected their non-handicapped peers. Under paragraph (c)(1), similar services could be provided to both handicapped and non-handicapped children to meet their common needs, so long as the limitations on selection of handicapped children who can benefit from Title I services without substantial modification are observed. Focusing on the common needs of all participating children ensures that objectives are related to characteristics other than handicapping conditions. There is, therefore, no need, as has been proposed, to limit objectives to those which are appropriate for non-

handicapped children. The Secretary believes this approach is particularly appropriate in light of recent findings that diagnosis of children as mentally retarded has often been mistaken and has resulted in disproportionate classification so as to discriminate on the basis of race.

While LEAs may, therefore, design Title I projects to meet the needs of educationally deprived children, irrespective of handicap, paragraph (c)(1) precludes their design of projects to provide services peculiarly needed by handicapped children. An example of this type of a project would be one which adopts a curriculum which is generally used only to provide handicapped children with special education.

Comment. Several commenters questioned whether § 201.135, which prohibits the use of Title I funds for services an LEA is required to make available under Federal, State, or local law, contradicts § 201.140 which authorizes the use of Title I funds to provide services to handicapped children.

Response. No change has been made. Both § 201.135 and § 201.140 specifically prohibit the use of Title I funds to provide services that an LEA is required to provide under statute or court order. However, neither section prohibits the use of Title I funds to provide handicapped children with additional services to meet needs that are similar to those of non-handicapped children.

Comment. One commenter recommended revising paragraph (c)(1)(ii) (former paragraph (c)(2)) to emphasize its importance as a test of supplanting.

Response. A change has been made. Paragraph (c)(1)(ii) is retained since the examination of program design components, including objectives, selection criteria, and others, has always been a means of determining compliance with the supplanting prohibition. To ensure that compliance with this new requirement can be verified, however, paragraph (c)(2)(ii) has been added to put LEAs on notice that, upon request, they may be required to provide information demonstrating that project objectives do not distinguish between handicapped and non-handicapped children.

Comment. Several commenters recommended revising the regulations so that Title I funds may be used to meet needs that are not met by the LEA's regular program of instruction and whatever special services handicapped children received other than Title I.

Response. As previously discussed, the Secretary has concluded that Section 129(d) of the Title I statute mandates that Title I funds only be used to supplement those non-Federal funds that would be available in the absence of Title I, including funds that are, as a matter of law, required to be provided. The use of Title I funds to provide special education services that are required to be provided but that would not be available, due to limitations on State and local funding, would be inconsistent with this requirement.

Before adopting the approach included in these regulations, the Secretary carefully considered possible alternative means of implementing the statutory standard. Among those alternatives was the use of handicapped children's individualized education programs (IEPs) as a benchmark against which to test whether required services were being provided. This approach was seen to be flawed, both because some LEAs may fail to include required services in IEPs in the absence of funds to provide those services (or may include all available services in any IEP, whether or not "required"), and because it is often difficult to determine whether services included in an IEP are the same as those available as part of a Title I project.

The Secretary has accordingly concluded that the approach adopted in these regulations is both legally supportable, and preferrable to available alternatives.

Comment. One commenter requested clarification as to whether services listed in a handicapped child's IEP can be provided through Title I.

Response. No change has been made. The regulations clearly state that services can be provided, without regard to the contents of a handicapped child's IEP, if all applicable requirements are met (including compliance with the equitable distribution test, and conformance with the models described in paragraphs (c), (d), or (e)). The Secretary believes that, consistent with these requirements, limited services included in a child's IEP may be provided through a Title I project without violating the antisupplanting requirements.

Comment. One commenter stated that the provisions of this section are ambiguous, and that they fail clearly to establish when services requried by law cannot be provided using Title I funds.

Response. As previously discussed, the Secretary carefully considered alternatives for implementing the required-by-law test, including using handicapped children's IEPs as a benchmark. These alternatives were found to be imprecise or impossible to monitor effectively. The Secretary believes that the final regulations provide a reasonable framework which is legally justified, possible to monitor, and flexible enough to ensure sound policy results. The Department will give special attention to evaluating the effectiveness with which these provisions are implemented so as to ensure that any uncertainties resulting from the regulatory framework are identified and clarified.

Comment. One commenter recommended deletion of the example in former paragraph (f) because it did not clarify the provisions in the rest of the section. Another commenter stated that this example contradicted the requirements of former § 116a.140(e)(1)(iii).

Response. A change has been made. More explicit guidance is provided, in paragraph (d)(3), concerning situations in which provision of services to handicapped children in separate settings is appropriate. In addition, the example in paragraph (f) has been replaced with three different examples to clarify the requirements in this section.

Comment. One commenter questioned the justification for allowing services to handicapped children to be provided in a separate setting.

Response. No change was made. However, an example has been added following § 201.140(d)(3)(iii) to illustrate more clearly the nature of the justification required if services are to be provided in a separate setting.

Comment. One commenter objected that the section contained no provision assuring that LEAs do not discriminate against handicapped children in selection of project participants.

Response. No change has been made. Section 123(a) of Title I and § 201.103 require LEAs to select those children in greatest need for participation in Title I projects. Also, § 201.132(a) prohibits the exclusion of a child from a Title I project on the basis of a handicap. These provisions provide the assurance the commenter said should be in § 201.140.

Comment. One commenter recommended providing clarification of the relationship between the presumption and demonstration of compliance.

Response. A change has been made. Presumption and demonstration of compliance have been replaced by alternative models for compliance.

Comment. One commenter expressed concern that too much Title I money would be funneled to handicapped children.

Response. The regulations prohibiting supplanting are carefully structured to ensure that LEAs continue to distribute

an equitable proportion of special education funds to handicapped children in Title I areas. Section 201.140 limits selection of the most severely handicapped children who would be unable to benefit from Title I services without substantial modification. It also includes safeguards to ensure that handicapped children receive only services comparable to those provided to their non-handicapped peers. The Secretary believes that allowing handicapped children to participate in these services is required, by virtue of Section 504 of the Rehabilitation Act, and that this participation will not result in a substantial diversion of funds from non-handicapped children who also need Title I services.

Comment. One commenter questioned whether there were any circumstances other than those described in former paragraph (e)(1) and (e)(2) under which an LEA could justify deviation from the standards in paragraph (c)(2).

Response. A change has been made. Section 201.140 has been revised to contain models of compliance identifying project design characteristics which indicate compliance with § 201.140(a).

Comment. One commenter questioned how and to whom LEAs are to make the justification required in former paragraph (e)(1) and (e)(2).

Response. A change has been made. Section 201.140 indicates that LEAs must justify to the SEA in their project applications that either intensified services or services in a separate setting is necessary.

Comment. One commenter questioned why no reference was made in paragraph (a) to the requirements of State and local law.

Response. No change has been made. Special programs mandated by State and local law are discussed in § 201.142.

Comment. One commenter suggested that reference to percentages of handicapped children in former paragraph (d) is inappropriate, rendering monitoring difficult. A second commenter asked that "substantially disproportionately greater number" be defined.

Response. A change has been made. Provisions have been added to paragraphs (c), (d), and (e), requiring LEAs to make available information justifying their selection process if a substantially disproportionate number of handicapped participants have been selected. A specific percentage figure is included to provide clear guidance as to when this requirement would apply.

§ 201.141 *Provision of services required by law: special State and local programs (children whose primary or home language is other than English).*

Comment. One commenter recommended revising the requirement in § 201.141(d)(1) (former § 116a.141(c)(2)(i)) to provide that LEAs may design programs to address special needs resulting from educational deprivation, including limited English proficiency.

Response. No change has been made. The Title I statute requires that Title I projects be designed to meet the special educational needs of educationally deprived children. To the extent that limited English proficiency contributes to educational deprivation, children with limited English proficiency are eligible, on the basis of the resultant educational deprivation, and may be served under Title I.

Comment. One commenter recommended allowing LEAs to select Title I participants on the basis of limited English proficiency as well as educational deprivation.

Response. No change has been made. Limited English proficiency may, in many cases, correspond to educational deprivation.

However, nothing in the Title I statute or legislative history authorizes selection of participants on a basis other than educational deprivation.

Comment. One commenter objected to the requirement that uniform selection criteria apply to both children with limited proficiency in the English language and children whose primary language is English.

Response. No change has been made. Several statutory requirements, including Sections 123(a), 124(b), and 124(e) indicate that participants are to be selected on the same general basis of educational need.

Comment. One commenter objected to the examples as confusing, and lacking in clarity.

Response. A change has been made. Three examples have been included in the section to clarify ways services can be provided to children with limited proficiency in the English language.

Comment. One commenter recommended revising the requirements in this section to allow Title I projects to fill the gaps between services provided as part of the regular program and special services for children with limited proficiency in the English language.

Response. No change has been made. The purpose of this section is to ensure that LEA's do not use Title I funds to provide limited English proficient children with services that they are entitled to receive from other sources. Children with limited proficiency in the English language are to be selected for participation in Title I projects on the same basis as all other children are selected; once selected, the services provided may, in appropriate cases, be made available in bilingual form.

Comment. One commenter objected to the provisions allowing services to children with limited proficiency in the English language to be provided in separate settings and at different levels and intensities as an invitation to LEAs to use Title I funds to provide services required by other laws.

Response. No change has been made. The restrictions on project design governing provision of services in separate settings or at different intensities are considered to be sufficient to ensure that these projects are supplemental.

Comment. One commenter recommended requiring agencies to meet the requirements of both paragraphs (c) and (d) (former paragraphs (c)(1) and (c)(2)) in order to satisfy the "required by law" test.

Response. No change has been made. Where a court order describes in detail an LEA's obligations under Title VI of the Civil Rights Act of 1964 and where non-Title I funds are used to meet an LEA's obligations under this type of an order, an LEA's Title I project cannot, by definition, be supplanting funds required to be made available for this purpose. There is no need, therefore, to demonstrate compliance with paragraphs (d), (e), or (f) as well.

Comment. Several commenters recommended revision to indicate that Title I services may be provided by bilingual teachers and with bilingual materials to ensure children with limited proficiency in the English language an adequate opportunity to benefit from the services.

Response. No change has been made. A provision similar to that proposed is already included in § 201.132(c).

Comment. One commenter stated that Title I services for children with limited proficiency in the English language would probably be provided in separate settings as a general rule.

Response. No change has been made. A variety of models of compliance are included to allow LEAs the flexibility to design Title I projects to meet the particular needs of children in their districts. While instruction in separate settings may be appropriate in some cases, use of that approach must be justified as described in paragraph (e)(3).

Comment. One commenter inquired about the precise functions of bilingual

teachers described in examples under this section.

Response. Changes have been made by providing additional examples which describe in greater detail the circumstances in which Title I services may be provided, using bilingual instructors, to supplement an LEA's efforts to meet responsibilities under Title VI of the Civil Rights Act of 1964.

Comment. One commenter inquired why provisions and examples in this section only relate to discrimination on the basis of national origin and not on the basis of race.

Response. This section implements the provisions of Section 126(d) of the Title I statute relating to special programs of bilingual education. Provisions relating to requirements imposed by court order or compliance agreements, as a result of alleged discrimination on the basis of race, are included in § 201.135, relating to use of regular State and local funds.

Comment. One commenter inquired why a five-year period had been selected under paragraph (c)(2) for demonstrating compliance with the requirements of paragraph (a) by continuing to provide services with non-Title I funds consistent with practices of a recent compliance review. The commenter also asked how this requirement would be implemented.

Response. A change has been made. A five-year period was selected as a reasonable period during which it might be expected that local circumstances had not appreciably changed. If an LEA has not been monitored, it will not be penalized, but will simply be required to use the models of compliance described in paragraphs (d), (e), and (f). Specific guidance is not included, stating that this provision only applies to compliance reviews conducted by the Office of Civil Rights, and specifying that the demonstration of continued compliance must be included in the LEA's project application.

Comment. A number of commenters indicated that the use of presumptions and demonstration requirements in the NPRM was confusing. Commenters also requested further guidance with regard to acceptable justifications for purposes of paragraph (e).

Response. A change has been made. The section has been revised to refer to models of compliance. Information which must be available to demonstrate compliance with each model is specifically described. More detailed guidance is given as to common, acceptable justifications for use of separate settings or greater intensities of instruction for limited English proficient children. A mechanism is also created allowing the Department to give further guidance with regard to other proposed justifications, upon request.

§ 201.142 *Provision of services required by law: (Special State and local programs) Compensatory education or other services required by State or local law.*

Comment. One commenter inquired how this section relates to § 201.137 (equitable distribution: special State and local programs), and wondered whether this section is intended to address compensatory education required to be provided under Federal court order. The commenter also asked whether there are any States or LEAs which have laws requiring compensatory education that are not related to minimum competency programs and whether the example provided relates only to minimum competency programs.

Response. A change has been made. The caption of this section has been changed to refer specifically to "special State and local programs." As explained in an earlier response, the Secretary has concluded that both the "equitably provided" test and the "required by law" test applies with respect to use of non-Title I funds for each type of special program, including programs mandated by State and local law. Since this section applies only to special programs mandated by State and local law, it does not include compensatory programs required by a Federal court, under Federal law, as part of a desegregation plan. It does, however, apply not only to State and local compensatory education programs, but also to other "special programs" including bilingual and special education programs mandated by State and local law in a number of States and localities. The inclusion of one example, relating to minimum competency law, is not intended to narrow this section to this type of State law alone. The inclusion of State and local requirements in a separate section has resulted from the Secretary's view that interpretation of State and local legal requirements is peculiarly a matter for State and local officials involving a more limited Federal role than is the case where Federal legal requirements are invovled.

Comment. One commenter asked who would be "appropriate" State and local officials for purposes of paragraphs (c)(1) and (d)(1) of this section.

Response. An "appropriate official" is one who, under State law, is authorized to interpret applicable law and to assess agency compliance. These officials might include the State Attorney General or his or her staff, and other objective officials, whether or not within the SEA, who are responsible for monitoring LEA compliance and who furnish the SEA with objective evaluations.

Comment. One commenter asked that the example be clarified to indicate how children are selected for participation and whether all children who failed a State competency examination could be designated as eligible for Title I.

Response. A change has been made. The example has been clarified.

§ 201.143 *Coordination.*

Comment. One commenter requested that an example be provided to clarify the meaning of "indirect indicators of educational need" in paragraph (b)(2)(iii) (former paragraph (a)(2)(iii)(B)). Another commenter recommended adopting the statutory language "reasonable proxy" for educational need.

Response. A change has been made. The statutory language "reasonable proxy" has been included in paragraph (b)(2)(ii). This term could include any indicator which reasonably correlates with eductional need.

Comment. One commenter criticized the example as failing to emphasize that special program criteria do not negate or override criteria for selection under Title I. The commentor also recommended that clearer reference be made to the requirements for special State and local programs found in § 201.118.

Response. A change has been made. The example has been changed to meet the commenter's concerns.

Comment. One commenter stated that this provision should include applicable statutory language from Section 126(d) of the Title I statute (referring to children "in the aggregate," residing in "eligible school attendance areas or attending eligible schools," and development of a "plan" for distribution of special funds).

Response. A change has been made. Instead of simply referencing the statutory concepts in the example, this section has been revised so that paragraph (b) specifically includes the statutory language in question. The example has also been modified explicitly to refer to funds available to children "in the aggregate."

§ 201.144 *Prohibition against considering Title I funds in determining State aid.*

Comment. One commenter recommended that this section (former § 116.90) be moved to 34 CFR Part 201 since it relates only to LEAs.

Response. A change has been made. The section was moved to § 201.144.

Comment. One commenter questioned the langugе in paragraphs (a) and (b) which, taken literally, appear to contradict each other.

Response. No change has been made. Although the section has been moved to § 201.144, the language remains unchanged. The section is included to provide that a State may not consider Title I funds so as to discriminate against LEAs in determining the level of State aid it provides to them. However, the state may provide additional funds to an LEA on the basis of the LEA's eligibility for, or receipt of, Title I funds.

Subpart I—Parental Involvement

§ 201.150 *Purpose of advisory councils.*

Comment. One commenter recommended including an explanation of the roles of and interrelationships between project school councils, project area councils, individual parents and district advisory councils.

Response. No change has been made. The responsibilities of Title I advisory councils, as specified by Section 125(b) of Title I, are included in § 201.159. The opportunity for involvement of individual parents, as required by Section 124(j) of Title I, is covered in 34 CFR 200.31.

Comment. One commenter recommended including a statement encouraging SEAs to organize State level Title I advisory councils.

Response. No change has been made. The statute contains no authority on which the Secretary could rely to regulate regarding the formation of State Title I advisory councils.

Comment. One commenter objected to the statement that councils are established to "encourage," rather than "require," parental involvement.

Response. No change has been made. Section 125(b) of Title I and § 201.159 accomplish the desired result by directing each LEA to give its advisory councils the responsibility of advising on the planning, implementation, and evaluation of its Title I projects.

Comment. One commenter states that it would be difficult to comply with parent advisory council requirements in small or rural districts.

Response. No change has been made. The Title I statute requires participating LEAs to establish parent advisory councils. Although certain exemptions are authorized by Section 125(a)(2) of Title I and included in §§ 201.154(d) and 201.155(c) of these regulations, the statute contains no other authority for relieving an LEA of the requirement that councils be established for all project areas or project schools and for the LEA's district as a whole.

Comment. One commenter urged that the relationship between Subpart I of these regulations and Section 124(j) of Title I (relating to parental involvement) be clarified.

Response. No change has been made. There is no special relationship between these provisions.

§ 201.151 *Advisory councils that LEAs shall establish.*

Comment. One commenter recommended permitting elected boards other than Title I advisory councils to serve as Title I advisory councils.

Response. No change has been made. Section 125 of Title I requires that project school and project area advisory councils be elected by parents and that district level councils be selected by parents, or by the members of project school and project area advisory councils and certain parents. In addition, §§ 201.152 and 201.156 prescribe the composition of the membership of these councils. However, if a Board elected for other purposes can meet these requirements, it could serve as a Title I advisory council.

Comment. One commenter felt that for small rural LEAs, one district advisory council should be the only council required.

Response. No change was made. If a district consists of only one attendance area, it may elect a single council to serve as both its project area and district advisory council. All other districts are required by Section 125 of the statute to establish both district and project area or project school Title I parent advisory councils.

Comment. One commenter recommended exempting schools that operate schoolwide projects from the requirement that a project school advisory council be established, since, in this situation, Title I children and their parents cannot be identified for the purpose of ensuring that the council has a majority of parents of children to be served.

Response. No change has been made. All children in a school wide project are considered Title I participants, and hence, any of their parents may be elected as majority members. The electing parents, however, may also choose other district residents and teachers in project schools or schools serving project areas as members of the council.

Comment. One commenter recommended specifically stating that advisory councils for both Title I Part A and Title I migrant programs may be coordinated.

Response. No change has been made. LEA's may develop procedures for coordinating these two advisory councils, but they are not required to do so.

Comment. One commenter requested that more clarification be provided concerning the distinction between project area councils and project school councils.

Response. No change has been made. Section 201.52 indicates that a project school is either a school which is located in an ineligible attendance area, or a school which serves children from more than one area. A project area school is a school which serves an eligible attendance area which has been designated for Title I services. A given school cannot, therefore, be both a project area school and a project school.

All of these schools, except those referred to in § 201.155(c), must establish one building level council, called a "project area advisory council" in the case of a project area school, or a "project school advisory council" in the case of a project school.

§ 201.152 *Composition of membership on district advisory councils.*

Comment. One commenter asked why parents of children who are eligible but not selected for services may be elected to the district area advisory council.

Response. No change has been made. Although the majority of members must be parents of children to be served by the project, any resident of the LEA is eligible for membership on the district advisory council. In addition, Section 125(a)(1)(C), as amended by Pub. L. 96-46, requires that parents in eligible-but-not-participating areas elect representatives of eligible-but-not-participating children.

Comment. One commenter recommended allowing individual district advisory council members to be considered parents of children to be served as long as they have children who have participated in the project at some time during the three years for which applications are approved.

Response. No change has been made. Section 125(a) of Title I requires that the majority of members be parents of children to be served by the project. To implement this requirement, § 201.154(c) has been revised to require each LEA to establish procedures for annually ensuring that a majority of members are parents of children to be served. Members who are no longer parents of children to be served may not be counted as part of this majority.

Comment. One commenter recommended including principals of project schools as individuals who may be elected to district advisory councils

even though they reside outside the district.

Response. No change was made. Teachers in project schools and schools serving project areas are the only persons authorized by the statute to be eligible to be elected to the district advisory council even though they reside outside the district.

Comment. One commenter recommended revising paragraph (c) of this section to clarify that parents do not have to elect any teachers to the district advisory council.

Response. A change has been made. Section 201.152(c) was revised to indicate more clearly that the election of the additional members from the categories referred to in § 201.151(c) is not required.

Comment. One commenter recommended requiring advisory council representation to be proportionate to the ethnic makeup of project participants.

Response. No change has been made. The statute does not authorize this requirement.

Comment. One commenter recommended requiring representation on the district advisory councils of children in grade levels other than those served by the Title I program.

Response. No change has been made. The statute does not require such representation; however, representatives from the eligible-but-not-participating areas in many cases will be representing children at grade levels not included in the project.

Comment. One commenter specifically recommended that this section refer to parents of private school children as eligible for membership on district advisory councils and project area and project school advisory councils.

Response. A change has been made. In § 201.152(a) parents of private school children participating in a Title I project are specifically included as parents eligible for membership in the majority of a district or school advisory council.

Comment. One commenter objected to the provision that allows school employees to be elected to district advisory councils.

Response. No change has been made. The statute specifically mentions teachers at schools where projects operate as eligible to serve on advisory councils. Furthermore, the exclusion of otherwise eligible school employees from serving on advisory councils would be contrary to the requirement that parents be free to elect the members of the councils within the constraints imposed by the statute itself. The statute does not exclude school employees.

Comment. One commenter questioned the inclusion of paragraph (a)(2) which provides that parents of children to be served during the next project year may be elected as part of the majority required by Section 125(a)(1)(A) of Title I.

Response. No change has been made. The provision is intended to provide an option for LEAs which hold district advisory council elections in the spring.

Comment. One commenter expressed concern that the reference to § 201.51 in paragraph (b) would effectively exclude representation on the district advisory council of parents of children in eligible but unserved areas in grade spans other than those served by the Title I project.

Response. No change has been made. While § 201.51 offers the option of grouping attendance areas by grade span, selection of that option is not required. Even if the option is employed, this provision does not preclude the election of parents of children in grade spans other than those served.

§ 201.153 *Models for nominating and electing district advisory councils.*

Comment. One commenter expressed concern that the LEA alone would determine the number of members that will serve on the district advisory council.

Response. No change has been made. Consultation with the district advisory council is required in establishing both nomination and election procedures, which will necessarily include consultation with regard to the numbers of persons to be elected to the council.

Comment. One commenter objected to the requirement that LEAs identify the parents of children who are eligible but not served in order to elect the representatives required by § 201.152(b). Another commenter recommended that in LEAs where there are no eligible—but not—participating areas, the representatives required by § 201.152(b) be elected by parents of school level council members in project areas or schools.

Response. A change has been made. LEAs are no longer required to identify parents of children who are eligible but not served in order to elect the representatives required by § 201.152(b). These representatives must be elected by parents in areas which are eligible but not served. If no such areas exist, the LEA has no responsibility to identify representatives of children who are eligible but not participating in the project.

Comment. Several commenters recommended requiring that the current district advisory council be involved in the nomination and election process for the establishment of the next district advisory council.

Response. A change has been made. In § 201.153, LEAs are now required to establish nomination and election procedures in consultation with the district advisory council.

Comment. One commenter recommended establishing categories of parent advisory council members consisting of parents of private school children and parents of children receiving special education services.

Response. No change has been made. Parents of children in private schools and of children receiving special education services are eligible to be elected to district advisory councils on the same basis as other parents.

Comment. One commenter suggested that former paragraph (a) (current paragraph (b)) be clarified to indicate that its provisions apply only to the selection of parents of children to be served and additional members, not to members required to be selected under § 201.152(b).

Response. No change has been made. Section 201.153(c)(1), which contains procedures for the election of the members required by § 201.152(b), clearly states that these members will be elected in addition to those elected under § 201.153(b).

§ 201.154 *Procedures for electing district advisory councils.*

Comment. One commenter recommended requiring LEAs to maintain on file parents' written consent to be identified as parents of children to be served.

Response. A change has been made. A parent's written consent to be identified as a parent of a child in the program is now required. The LEA may, at its option, keep signed consent forms on file.

Comment. One commenter asked why LEAs should be required to identify candidates in specific categories when an LEA may use another method of ensuring the election of a legally constituted district advisory council.

Response. No change has been made. The requirements in § 201.154 are necessary in order to ensure the election of the required membership on the district advisory council.

Comment. One commenter questioned the justification for paragraph (d) which allows for the election of a single council in districts with only a single attendance area.

Response. No change has been made. This provision is appropriate because, in such districts, the district advisory council and the project area advisory council would be identical in

composition, and would be chosen by the same electorate. There is, therefore, no need for two separate councils.

Comment. One commenter questioned why this section did not include a provision reflecting the statute's legislative history which indicates that the requirement for selection of project area or project school advisory councils may be waived in certain circumstances.

Response. No change has been made. The legislative history in question deals with project area and project school advisory councils, while § 201.154 deals with district advisory councils.

§ 201.155 *Required project area advisory councils and project school advisory councils.*

Comment. One commenter recommended deletion of paragraph (b) which requires that project area advisory councils be established for areas in which eligible and participating private school children reside, but where the public school is skipped because its students receive services of the same nature and scope from non-Federal sources.

Response. No change has been made. Section 122(e) of Title I requires that private school children who cannot participate in the non-Federally supported compensatory education program be provided with Title I services. In such cases the area in question would have a Title I program and must, therefore, have a project area advisory council.

Comment. One commenter recommended clarifying the responsibilities of project area advisory councils for areas where the public school students have been skipped under § 201.65 or § 201.71.

Response. No change has been made. The responsibilities of such a council would be the same as for any other project area advisory council. These responsibilities are outlined in § 201.159 of these regulations.

§ 201.156 *Membership of project area advisory councils and project school advisory councils.*

Comment. One commenter recommended revising the language in paragraph (c) to provide that councils with fewer than eight members may be operated for the areas and schools described in that paragraph if the LEA has made an effort to obtain eight members.

Response. No change has been made. The requirement that councils for schools serving 75 or more Title I students include eight or more members is statutory and cannot be set aside by regulations.

Comment. One commenter questioned why terms of office were not specified for district advisory council members but are specified for certain project area or project school advisory council members.

Response. No change has been made. The term of office specified in § 201.156(c)(1) is included because it is specified in Section 125(a)(2)(C) of Title I. The law does not specify a term of office for members of a district advisory council.

Comment. One commenter recommended deletion of the word "design" in paragraph (c)(3) since that word does not appear in the authorizing statutory section.

Response. A change has been made. Section 201.156(c)(3) now contains the statutory language "planning, implementing, and evaluating."

Comment. One commenter recommended specifically stating that any resident of the district is eligible to be elected to a school level advisory council.

Response. A change has been made. Section 201.156(b)(1) has been revised to state that any resident of the LEA is eligible for membership on a project area or project school advisory council.

Comment. Two commenters recommended revising the language in paragraph (a) to clarify that all members of project school and project area advisory council, not just the additional members, must be elected.

Response. A change has been made. Section 201.156(a)(1) has been revised to clarify that all council members must be elected.

Comment. Two commenters recommended adding, to paragraph (c)(3), the provision that election of council officers will take place after the council is fully constituted.

Response. A change has been made. This provision has been added to § 201.156(c)(2).

§ 201.157 *Procedures for electing project area advisory councils and project school advisory councils.*

Comment. One commenter recommended amending this section to provide that a reasonable good faith effort on the part of the LEA to recruit parents to serve on advisory councils would constitute compliance with the applicable requirements, even if not all the councils required by § 201.151 had been formed.

Response. No change has been made. The statute contains no authority for exempting an LEA under such circumstances from any of the requirements of this subpart.

Comment. One commenter suggested that paragraph (a) requiring the identification and notification of parents in various catagories for the purpose of electing project area and project school advisory councils is unnecessary.

Response. No change has been made. The requirements included in paragraph (a) are necessary to ensure that the electorate is notified of the election and that they elect a properly constituted council.

Comment. One commenter questioned the necessity for mandatory identification procedures under paragraph (c). The commenter stated an LEA may prefer some other method for ensuring the election of a properly constituted council.

Response. No change has been made. The procedures in § 201.157 are necessary in order to ensure the election of the required membership on the project school and project area advisory councils.

Comment. One commenter questioned the inclusion of paragraph (d) which requires the names of advisory council members be made available to the general public.

Response. No change has been made. It is important for the public to be informed of the representatives who have been elected to serve on the advisory councils.

§ 201.1587 *An LEA may not impose additional restrictions on the rights of parents to elect advisory council members.*

Comment. One commenter recommended revising this section simply to state that LEAs may not impose restrictions that thwart the intent of the statute.

Response. No change has been made. Section 125 of the statute requires that parent advisory councils be elected by parents. Since the only statutory restrictions are those concerning the composition of councils, the regulations prohibit an LEA from imposing other restrictions.

Comment. One commenter questioned the authority for this section.

Response. No change has been made. Section 201.158 is rooted in Section 125 of Title I, which the Department has interpreted to mean that parents are authorized freely to elect the councils of their choice, except to the extent that authority is limited by paragraph (a) of that section.

§ 201.159 *Participation by advisory councils.*

Comment. One commenter recommended adding a requirement that councils not be allowed to conduct

business unless a majority of the members present are parents of children to be served.

Response. No change has been made. While such a rule may be considered by individual councils for inclusion in their bylaws, there is no basis for including such a requirement in these regulations.

Comment. One commenter recommended clarifying the terms "planning, implementing, and evaluating" in paragraph (a).

Response. A change has been made. Section 201.159(b) expands on the role of the district advisory council in planning, specifying that the LEA shall provide the district advisory council with an opportunity to provide advice in the development of the LEA's project application.

Comment. One commenter recommended that LEAs demonstrate in their project applications the involvement of each advisory council in the application development process.

Response. A change has been made. Although documentation is not required in the application itself, each LEA is required by § 201.159(b) to involve its district advisory council in the development of its application. The LEA and the district advisory council should, in addition, consider the views of any project area or project school advisory council that may wish to provide advice on the LEA's application.

Comment. One commenter proposed that a requirement be included in this section that councils meet no later than the second month of the school year.

Response. No change has been made. The timing of council meetings is a matter that is appropriately determined at the local level.

§ 201.160 *Information that an LEA shall provide to advisory councils.*

Comment. Several commenters recommended adding "SEA notice of final action on audit appeals" to the list of reports to be sent to the district advisory council.

Response. A change has been made. Section 201.160(c)(1), following Section 125(c)(2) of Title I, requires the SEA to send this information to the district advisory council for the LEA that was audited.

Comment. Several commenters recommended requiring that advisory councils be provided with the LEA's current application and previous evaluation reports.

Response. A change has been made. Section 201.160(a)(4) now requires advisory councils to be provided with copies of the LEA's current application. In addition, councils may under 34 CFR 200.141, request access to evaluations of prior projects.

Comment. One commenter recommended adding "information concerning Title I exemplary projects" to the list of documents which are to be provided to parent advisory councils.

Response. A change has been made. Section 201.160(c)(2) requires SEAs to disseminate information on exemplary projects to advisory councils upon request.

§ 201.161 *Training for members of advisory councils.*

Comment. One commenter recommended that paragraph (a) of this section be revised to read "An LEA and DAC shall develop . . .", rather than, "An LEA shall develop . . ."

Response. No change was made. Section 201.161(a)(1) requires that the training be planned in full consultation with the district advisory council.

Comment. One commenter recommended including a requirement that training be provided in the native language of parent advisory council members.

Response. No change has been made. However, the LEA must plan its training program in consultation with its district advisory council and must provide appropriate training materials. In order to be appropriate, the LEA may have to provide these materials in the native language(s) of parent advisory council members.

Comment. One commenter recommended requiring SEAs to develop uniform policies concerning attendance by parent advisory council members at regional or national conferences.

Response. No change has been made. Due to the wide range of activities which are carried out at different conferences and due to the variation among LEAs and their parent advisory councils with respect to types of projects and training needs, it is not possible to develop more specific policies with respect to advisory council members' attendance at these conferences, other than the basic rule that the SEA shall determine whether a conference to which an LEA would send advisory council members is relevant to their functions.

Comment. One commenter recommended deletion of the requirement in paragraph (b) that LEAs conducting joint training each be participating in Title I.

Response. No change has been made. An LEA may not use Title I funds to provide services not related to Title I programs.

Comment. One commenter recommended that paragraph (c)(2) be revised to provide that the LEA, in conjunction with the parent advisory council members, determine the number of council members that will attend national or regional conferences.

Response. No change has been made. However, the district advisory council may advise the LEA on the number of council members the LEA should send to such conferences.

Comment. One commenter recommended that advisory councils themselves be allowed to select the individual members who will attend regional and national conferences.

Response. No change has been made. Nothing in this section precludes such selection. Section 201.161(c)(2) simply indicates that the LEA shall limit the number of advisory council members who may attend a conference.

Comment. One commenter recommended revising paragraph (a)(3) to provide that LEAs may permit the use of Title I funds for expenses of the training program.

Response. A change has been made. Section 201.161(a)(3) has been revised to follow more closely the language in Section 125(d) of Title I.

Comment. One commenter proposed that guidance concerning use of Title I funds for advisory council members' travel be included in this section.

Response. No change has been made. This section is intended to cover training of advisory council members. In so doing, it repeats the provisions in Section 125(c) of Title I. Allowable costs for advisory councils including travel costs, are covered in 34 CFR 200.79 and § 201.162.

Comment. One commenter asked why the regulations require the LEA to provide training at convenient locations.

Response. No change has been made. The requirement in § 201.161(b) is reasonable, and moreover, is consistent with legislative intent.

Comment. One commenter asked why the issue of LEAs joining together to provide joint training at a central location was not addressed.

Response. No change has been made. This issue is covered in § 201.161(b).

Comment. One commenter asked why paragraph (b) allows LEAs to operate joint training programs.

Response. No change has been made. The provision is based on the language of the conference report accompanying Pub. L. 95–561.

Comment. One commenter questioned the prohibition in paragraph (a) against including travel to regional or national conferences in advisory council training programs.

Response. No change has been made. Section 201.161(c) does not prohibit

regional or national conferences. It simply restricts attendance at them by advisory council members at Title I expense.

Comment. One commenter questioned why paragraph (d) linked the Secretary's sponsorship of workshops under Section 125(e) of Title I to the availability of funds appropriated under Section 125(g) of Title I.

Response. No change has been made. Section 125(g) specifically provides authorization to appropriate funds necessary to carry out the provisions of Section 125(e) of the law.

§ 201.162 *Allowable expenditures for advisory councils.*

Comment. One commenter recommended that expenditures for translation of materials into the native language of advisory council members be listed as an allowable cost.

Response. No change has been made. Each LEA should decide whether translations are needed to provide "appropriate materials" as required by Section 125(d) of Title I.

Comment. One commenter recommended exempting migrant parents from the prohibition against reimbursement with Title I funds for time lost from work.

Response. No change has been made. The recommended change for only one type of employment would not be appropriate. The requirements concerning advisory councils for migrant education projects are contained in 34 CFR 204.55.

Comment. One commenter inquired as to the authority for the restrictions in paragraphs (b) and (c).

Response. No change has been made. Under the basic guidelines in Part I of Appendix C to 34 CFR 74 (which is Appendix B to EDGAR), costs under a grant program must "be necessary and reasonable for proper and efficient administration of the grant program." The requirements in § 201.162 (b) and (c) are issued under the Secretary's general rulemaking authority in section 408(a) of GEPA as a means of ensuring that expenditures for advisory councils conform with that basic cost principle. While these specific restrictions are designed to prevent excessive expenditures, they do not prevent an LEA from using Title I funds to pay for costs that are reasonably related to the functioning of advisory councils.

Miscellaneous.

Comment. One commenter pointed out that Section 124(m), relating to control of Title I funds, was not addressed in the regulations.

Response. A change has been made. 34 CFR 200.83 has been added to implement this statutory requirement.

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DEPARTMENT OF EDUCATION

Office of Elementary and Secondary Education

34 CFR Parts 200 and 201

Financial Assistance to Local and State Agencies To Meet Special Educational Needs; and Financial Assistance to Local Educational Agencies for Children With Special Educational Needs

AGENCY: Department of Education.

ACTION: Notice of Proposed Rulemaking: Cross-reference.

SUMMARY: The Secretary proposes regulations in 34 CFR 200.93–200.95 (Excess costs) and 34 CFR 201.130–201.143 (Supplement, not supplant) for Title I of the Elementary and Secondary Education Act of 1965, as amended (Title I). These regulations implement changes required by the Title I statute as re-enacted by the Education Amendments of 1978 (Pub. L. 95–561). The regulations set forth the Title I requirements concerning Excess Costs and Supplement, not Supplant and provide State and local agencies with guidance regarding the procedures, criteria and standards for meeting those requirements.

The Secretary invites comments on these proposed regulations.

the text of these regulations on which the Secretary invites comments is published in the Rules and Regulations section of this issue of the Federal Register. The regulations have been adopted as final regulations and will govern this program until the Secretary issues new regulations based on public comment.

DATE: All comments, suggestions, or objections must be received on or before March 20, 1981.

ADDRESS: Comments should be addressed to Dr. John F. Staehle, Office of Compensatory Education, Department of Education, 400 Maryland Avenue, SW., (Room 3642 ROB–3), Washington, D.C. 20202.

FOR FURTHER INFORMATION CONTACT: Dr. John F. Staehle. Telephone: (202) 245–2722.

Invitation to comment: For additional details on how to comment, see the preamble of the final regulations for these programs published in this issue of the Federal Register.

Date: January 8, 1981.

(Catalog of Federal Domestic Assistance, No. 13,428, Educationally Deprived Children-Local Educational Agencies and No. 13,430, Educationally Deprived Children-State Administration)

Shirley M. Hufstedler,

Secretary of Education.

[FR Doc. 81-1287 Filed 1-16-81; 8:45 am]

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federal register

Monday
January 19, 1981

Part III

Department of Education

National Direct Student Loan Program; College Work-Study Program; and Supplemental Educational Opportunity Grant Program; Final Regulations and Proposed Rulemaking

DEPARTMENT OF EDUCATION

34 CFR Parts 673, 675 and 676

National Direct Student Loan Program, College Work-Study Program, and Supplemental Educational Opportunity Grant Program

AGENCY: Department of Education.

ACTION: Final Regulations with Comments Invited.

SUMMARY: The Secretary is issuing regulations for the National Direct Student Loan (NDSL), College Work-Study (CWS), and Supplemental Educational Opportunity Grant (SEOG) Programs, commonly known as the campus based programs. These regulations have been amended to implement statutory changes contained in the Education Amendments of 1980, Pub. L. 96–374. These regulations also include changes in the funding procedures for each of these programs (Sections 3 through 7 of each regulation) to conform those procedures to the statutory amendments.

DATES: Comments must be received on or before March 20, 1981. These regulations are expected to take effect 45 days after they are transmitted to the Congress. Regulations are usually transmitted to the Congress several days before they are published in the Federal Register. The effective date is changed if the Congress takes certain adjournments. If you want to know the effective date of these regulations, call or write the Department of Education contact person.

ADDRESS: Comments should be addressed to Lynn Laverentz, Office of Student Financial Assistance (Room 4018, ROB–3), 400 Maryland Avenue, S.W., Washington, D.C. 20202.

FOR FURTHER INFORMATION CONTACT: Lynn Laverentz, Telephone (202) 245–9720.

SUPPLEMENTARY INFORMATION:

Introduction

The Education Amendments of 1980, enacted on October 3, 1980, amended the NDSL, CWS and SEOG programs in several respects. In general most of the changes were effective on October 1, 1980. However with regard to the increase in the interest rate for the NDSL program from three to four percent, the Congress in December acted to postpone the effective date from October 1, 1980 to July 1, 1981.

Several of the statutory changes affect the administration and operation of the three programs. To facilitate the administration of these newly amended programs, regulations implementing these changes are being issued in final form. Other changes of a minor or technical nature have also been made. However, as noted below, the Secretary is requesting public comment on particular provisions of the regulations.

The Education Amendments of 1980 made other changes that were more sweeping in nature. Rules to carry out these changes will be published separately as notices of proposed rulemaking so that the public can be involved in the implementation of these provisions. For example, the Act requires the establishment of a common need analysis system applicable to the Pell Grant and campus-based programs. The Act also requires a common definition of "cost of attendance" that is applicable not only to the campus-based programs but also to the Pell Grant, the Guaranteed Student Loan, and Parent Loans for Undergraduate Students programs which will be published as separate regulations.

The Education Amendments also authorized an alternative source of funding for the NDSL Program under which, to the extent provided in appropriations acts, the Secretary would borrow from the Federal Financing Bank to obtain NDSL capital. If NDSL capital is provided through this new method of funding in a particular year, several significant program changes would result in that year. For example, no institutional capital contribution would be required, and institutions could choose to assign collection responsibility to the Education Department on all loans made from funds obtained in the new way. Numerous changes in the regulations will be required to implement policies and procedures related to these new provisions. A notice of proposed rulemaking with regard to this area will be published to allow for public comment.

Summary of Major Changes.

A summary of major changes follows:

1. Changes in the procedures for distributing funds to institutions.

a. *Conditional guarantee.* The Education Amendments of 1980 amended the SEOG and CWS statutes to provide that institutions are to receive each year no less than their expenditures under each program in the 1979–80 award year. Under the CWS program, however, the statute provides that an institution may receive less than its 1979–80 expenditures if it undergoes a substantial reduction in enrollment. Accordingly, the conditional guarantee provisions of the CWS and SEOG regulations (§§ 675.6(b) and 676.6(b)) have been revised to reflect that change. The provisions dealing with institutions that did not receive funds in either program for the 1979–80 award year, i.e. first and second time participants, were not changed.

b. *Need of institutions for SEOG and self-help funds.* Institutions that are awarded funds in excess of their conditional guarantees receive those funds on the basis of a formula that was premised on the view that 70 percent of a student's financial need should be provided in the form of grants and that the remaining 30 percent should be provided in the form of work and loans (self-help). The Education Amendments of 1980 changed this premise by providing that 75 percent of a student's financial aid package be provided in the form of grants. The Amendments also specified a formula for determining the need of an institution for SEOG funds which incorporated this view.

The SEOG formula, before the enactment of Pub. L. 96–374, provided that an institution's SEOG need equaled 70 percent of the cost of education of the institution's eligible undergraduate students minus the sum of (1) the expected family contribution of those students, (2) Pell Grants (formerly called the Basic Grants) received by those students, (3) State Grants the students received in award year 1977–78, and (4) 50 percent of institutional grants they received in award year 1977–78.

The new statutory formula for determining an institution's need for SEOG funds for each award year provides that the institution's SEOG need equals 75 percent of the cost of education of the institution's eligible undergraduate students minus the sum of (1) the expected family contribution of these students, (2) the Pell Grants received by these students, (3) the State Student Incentive Grants (SSIG) these students received and (4) 25 percent of institutional grants they received.

The Secretary has devised the following formula in these regulations for determining the SSIG figure:

$$\text{SSIG} = \frac{\text{State's total SSIG (Federal plus match)}}{\text{Total undergraduate State grants}} \times \text{Institution's total undergraduate State grants}$$

The new statutory provisions also prohibit the Secretary from penalizing an institution that is required by State law to provide student grants from its own funds if the institution is not free under State law in effect on January 1,

1979 to select the recipients or adjust the criteria by which the recipients are selected. In addition, because some institutions contribute to the State's share of its SSIG awards, the funds these institutions contribute are not included in determining the amount of institutional grants. These provisions are reflected in § 676.6 (c) and (d).

The new statutory formula for determining an institution's need for SEOG funds also required a change in the formulas used in the NDSL and CWS programs to measure an institution's need for work and loans (self-help) for its undergraduate students. Accordingly, §§ 674.6(e) and 675.6(e) were revised to reflect the view that self-help should be 25 percent rather than 30 percent of an undergraduate student's financial aid package.

c. *Eligible students.* The Secretary is clarifying the definition of eligible students (§ 6(c)(3)(ii) in each program) used in determining the self-help and SEOG need of an institution.

d. *Calculation of Federal capital contribution—NDSL default rate.* The Secretary is liberalizing § 674.6a to permit an institution to exclude, when calculating its default rate, notes that it assigns to the Secretary during the base year. The current regulation permits the institution to exclude from its default rate only those notes assigned or referred on or before September 15, 1979.

Student living expenses and Expected Family Contribution (EFC)

The student living expense figure used in the funding formulas is updated annually. For the 1980–81 award year, the national average was $2,600. For the 1981–82 award year, the national average is $2,800. The EFCs are also updated annually and are disseminated in *The Bulletin* and other appropriate publications.

2. *NDSL.*

Except for the increase in the interest rate, changes in the NDSL program are effective for loans made on or after October 1, 1980.

a. The interest rate for the NDSL program is increased to four percent from three percent effective July 1, 1981. (§§ 674.32 and 674.33)

b. The first grace period is reduced from nine months to six months. (§§ 674.2 and 674.32). However a borrower is now entitled to additional six month grace periods. (See paragraph h below).

c. Three new deferments are authorized for periods up to a maximum of three years. The deferments are for full-time volunteer service, comparable to Peace Corps or VISTA volunteer service, in a tax-exempt organization; for temporary total disability of the borrower or of his or her spouse if the disability of the spouse prevents the borrower from working; and for service as an officer in the Commissioned Corps of the U.S. Public Health Service. (§ 674.34a)

d. There is an additional deferment for a period of up to a maximum of two years for an internship required for professional practice or service. (§ 674.34a)

e. A provision has been added permitting the extension of a borrower's repayment period for up to 10 additional years if the borrower becomes a "low-income individual" during the repayment period. (§ 674.32)

f. The definition of "handicapped children" for purposes of cancelling NDSL loans for teaching handicapped children is expanded to include children with specific learning disabilities and orthopedically handicapped children. This new definition is the one contained in section 602(1) of the Education of the Handicapped Act. (§ 674.51)

g. Aggregate loan limits are increased to $12,000 from $10,000 for a graduate student, to $6,000 from $5,000 for a student who has completed two academic years of study towards a bachelor's degree, and to $3,000 from $2,500 for a student who has not completed two academic years of study toward a bachelor's degree. (§ 674.31)

h. Borrowers now are entitled to a six-month grace period after each deferment for study, service or disability. (§§ 674.32 and 674.34a)

i. Institutions are required to provide NDSL borrowers with specific information about these loans (§ 674.16)

j. The Secretary is authorized to enter into agreements with credit bureau organizations to provide for an exchange of information on borrowers whose loans are in default and have been referred to the Secretary for collection. (§ 674.32)

k. The portion of NDSL loans that are cancelled are not considered income for purposes of paying Federal income taxes. (§ 674.58)

3. *CWS.*

a. The minimum wage rate under the CWS program is the minimum wage required under the Fair Labor Standards Act. Subminimum wage rates are no longer permissible. The minimum wage rate through December 31, 1980, was $3.10 per hour. Effective January 1, 1981, the minimum wage rate is $3.35 per hour. This provision was effective on October 1, 1980. (§ 675.24)

b. An institution may carry forward up to 10 percent of its CWS allocation for one award year to the next award year. In addition, the institution may spend an amount determined by the Secretary that may be up to 10 percent of its allocation for one award year in and for expenses incurred in the preceding award year. Thus, an institution may carry forward into 1981–82, up to 10 percent of its 1980–81 award year allocation, or may use up to 10 percent of its 1981–82 allocation in award year 1980–81. (§ 675.18)

c. Where possible, institutions are to provide employment under the CWS program that complements and reinforces the educational or vocational goals of student recipients. (§ 675.8)

d. The amount of funds an institution may use for its Job Location and Development Program is increased to $25,000 from $15,000 as long as that amount does not exceed 10 percent of its CWS allocation. (§ 675.32)

e. An institution may provide employment to students in a Community Service Learning program. However, the rules governing the employment of students under this program are the same as those that govern the CWS program. (§ 675.28)

4. *CWS and SEOG.*

In both the CWS and SEOG programs, an institution may use up to 10 percent of its allocation to pay eligible students who are enrolled as less than half-time students. (§§ 675.9 and 676.9)

5. *SEOG.*

a. A student no longer needs to have exceptional financial need to be eligible to receive a grant.

b. The limitations regarding the maximum aggregate amount of grants a student may receive and the maximum number of years of SEOG eligibility have been eliminated. The only restriction that remains is that a student's eligibility to receive SEOG funds expires when the student earns his or her first undergraduate baccalaureate degree. (§ 676.22)

c. The annual maximum grant permitted per academic year is raised to $2,000 from $1,500. (§ 676.24)

d. The SEOG provision limiting the amount of a grant to one-half of the sum of the total of financial aid made available to the student through the institution has been deleted. This limitation was formerly contained in § 176.16.

e. An institution may shift funds between SEOG Initial year and Continuing year funds as it determines best suits the needs of its students. (§ 676.18)

6. *Administrative cost allowance—NDSL, CWS & SEOG.*

a. The method of calculating the administrative cost allowance has been changed. It is now based on an institution's total expenditures for all of the campus based programs except for expenditures for the CWS Community Service Learning Program. Moreover, the amount of the allowance has been increased. The requirement that the allowance be used first to pay the costs of providing consumer information services has been deleted. The institution still retains the responsibility to provide this information to its enrolled and prospective students. However, the cost of meeting this requirement is considered a cost of administration. (§§ 674.18(c), 675.18(b), and 676.16(b))

b. Under the CWS program, if an institution provides employment to its students under a Community Service Learning program, it is entitled to 10 percent of its CWS expenditures for that purpose for administrative expenses.

7. *Statement of educational purpose.*

The Education Amendments of 1980 deleted the requirement that a student sign an affidavit of educational purpose. In its stead is a statement of educational purpose. The regulations for each program have been simplified (§ .16 for each program) to reflect this change.

Miscellaneous

Other changes of a minor technical nature have been made to facilitate the proper administration of these programs. In addition, several provisions have been deleted. Some have been deleted because changes in the law make them unnecessary. An example of this type of deletion is, the definition of "good standing". Others have been deleted because they have been codified in the Student Assistance General Provisions, 34 CFR Part 668. These include, for example, the definitions of an "institution of higher education" and "recognized equivalent of a high school diploma."

Waiver of Proposed Rulemaking Procedures

In accordance with Section 431(b)(2)(A) of the General Education Provisions Act (20 U.S.C. 1232(b)(2)(A)), it has been the practice of the Secretary to offer interested parties the opportunity to comment on proposed regulations. The Secretary then reviews these comments and makes appropriate changes before republishing the regulations in final form.

For the reasons described in the following paragraph, the use of that practice in connection with the provisions of these regulations is unnecessary and contrary to the public interest under 5 U.S.C. 553(b). However, the Secretary invites the public to comment on these regulations and will consider appropriate comments before publishing the regulations again.

The Secretary has waived proposed rulemaking procedures because the regulatory changes mainly reflect the statutory changes made by the Education Amendments of 1980 and the other changes are of a minor or technical nature. In addition, the Secretary wishes to give the higher education community an explanation of the changes as early as possible. Accordingly, in this instance, the Secretary is publishing these rules as final regulations.

Comments requested

While the Secretary is publishing these rules as final regulations, the Secretary is requesting public comments on provisions dealing with certain new deferment (§ 674.34a) and repayment (§ 674.32) provisions in the NDSL program and with the Community Service Learning program in the CWS program (§ 675.28). The Secretary is also requesting comments on the definitions of half-time student and on whether common definitions and provisions should be deleted from each program part and consolidated in one comprehensive part which would govern all the Title IV student assistance programs. With regard to the latter issue, the current practice for the campus based program regulations is to indicate with an asterisk the provisions that are common to all three programs.

The Secretary is also requesting comments concerning the SSIG formula used for determining an institution's SEOG need (§ 676.6) and the funding procedures (§§ 3 through 7) for the 1982–83 award year.

Section 464(c) of the Higher Education Act (HEA) was amended by the Education Amendments of 1980 to include deferments for up to three years for service comparable to the service provided in the Peace Corps or ACTION programs if such service was provided by borrowers who were full-time volunteers in an agency exempt from taxes under section 501(c)(3) of the Internal Revenue Code.

The Secretary specifically requests comments concerning the meaning of this provision. For example, should the deferment be limited to borrowers who serve only the type of population that Peace Corps and ACTION Agency volunteers serve; should the deferment be limited to volunteers who do not earn more than Peace Corps and ACTION Agency volunteers earn; and should the deferment be limited to borrowers who provide direct service to the target populations or should it include support staff of the volunteer agency?

Section 464(c) also provides for a deferment of up to two years for a borrower who is serving an internship that is required in order to receive professional recognition required to begin professional practice or service. A medical residency is an example of this type of internship since medical school graduates are required to complete a residency before they can be licensed to practice medicine in most States. The Secretary requests comments on this provision including information regarding the types of required internships.

Section 464(c) was also amended by the Education Amendments of 1980 to provide for an extended repayment period for a "low-income individual". The Community Service Learning Program of the CWS program authorized by section 448 of the HEA specifically authorizes CWS students to provide services to "low-income individuals" under a Community Service Learning Program.

The NDSL and CWS programs are both authorized by Title IV of the HEA as are the Special Services for Disadvantaged Students Programs (TRIO) (Title IV–A–4). The TRIO programs are designed to assist low-income individuals and the statute authorizing these programs includes a definition of a low-income individual. The Secretary has adopted that definition—"An individual from a family whose taxable income for the preceding year did not exceed 150 per centum of an amount equal to the poverty level determined by using criteria of poverty established by the Bureau of the Census "—for both the NDSL and CWS programs.

The Secretary requests comments on whether this definition is appropriate for either of these programs, whether another definition would be more appropriate for either or both the NDSL and the CWS programs, and whether the definition selected for one program should be used for the other program.

The regulations for the Community Service Learning program set forth in § 675.28 are basically a restatement of section 448 of the Higher Education Act which authorizes the activities listed. The Secretary requests comments regarding the scope and meaning of these provisions. In commenting, readers are reminded that the rules regarding the employment of students in this activity are the same as those that apply to all CWS employment.

All comments submitted in response to these proposed regulations will be available for public inspection, during and after the comment period, in Room 4018, ROB-3, 7th and D Streets S.W., Washington, D.C., between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday of each week except Federal holidays.

Regulatory Flexibility Act Analysis

The Regulatory Flexibility Act (Pub. L. 96-354, enacted Sept. 19, 1980) requires each Federal agency to prepare an initial regulatory flexibility analysis and a final regulatory flexibility analysis for each regulation that—

(1) Is published as a notice of proposed rulemaking after January 1, 1981, and

(2) Has a significant economic impact on a substantial number of small businesses, small organizations, or small governmental jurisdictions.

Because the Department has not yet established its own definitions of "small organization" and "small governmental jurisdiction", as contemplated by the Act, it is not possible to prepare a full initial regulatory flexibility analysis at this time. Further, since these regulations were required by statute to be published in final no later than May 31, 1981, it is impracticable to delay publication while the necessary definitions are being developed. In these circumstances, the Regulatory Flexibility Act permits a waiver or delay of the initial regulatory flexibility analysis. If it is later determined that these regulations are subject to that Act, the Secretary will prepare the necessary analyses in conjunction with the issuance of later regulations.

As an interim measure, this preamble, to the maximum extent possible, includes information of the kind contemplated by the Regulatory Flexibility Act, including the reasons for the regulations, the objectives and legal basis for the regulations, and any significant issues and alternatives for consideration by the public. To assist the Department in determining whether the Regulatory Flexibility Act applies to these regulations and in complying with the Act's requirements, public comment is especially invited on the following matters:

(1) The number and kind of small businesses, small organizations, and small governmental jurisdictions affected by the campus based program regulations;

(2) The reporting, recordkeeping, and compliance burdens imposed by these regulations;

(3) The type of professional skills necessary for preparation of any reports or records required by these regulations;

(4) Any Federal rules that may duplicate, overlap, or conflict with these regulations;

(5) Any significant alternatives that would accomplish the purposes of the applicable statute but would minimize any significant economic impact of these regulations on small entities (small businesses, small organizations, and small governmental jurisdictions). The Secretary is particularly interested in suggestions for alternatives such as the following:

- The establishment of differing reporting or compliance requirements or timetables that take into account the resources available to small entities.
- The clarification, consolidation, or simplification of compliance and reporting requirements for small entities.
- The use of performance rather than design standards.
- An exemption for small entities from coverage of part or all of the regulations.

Citation of Legal Authority

A citation of statutory or other legal authority is placed in parentheses on the line following each substantive provision of these regulations.

Assessment of Educational Impact

The Department particularly requests comments on whether the regulations in this document would require transmission of information that is already being gathered by or is available from any other agency or authority of the United States.

(Catalog of Federal Domestic Assistance Numbers 84.038 National Direct Student Loan Program; 84.033 College Work-Study Program; and 84.007 Supplemental Educational Opportunity Grant Program)

Dated: January 8, 1981.

Shirley M. Hufstedler,
Secretary of Education.

1. Part 674 of Title 34 of the Code of Federal Regulations is revised to read as follows:

PART 674—NATIONAL DIRECT STUDENT LOAN PROGRAM

Note.—An asterisk (*) indicates provisions that are common to Part 674, 675, and 676. The use of asterisks will assure participating institutions that a provision of one regulation is identical to the corresponding provisions in the other two.

Subpart A—General Provisions

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*674.14 Coordination of student financial aid programs, loan amount, and overaward.
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*674.17 Federal interest in allocated funds—Transfer of loan fund.
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Sec.
Appendix A—Allotment of funds to States for fiscal year 1972.
Appendix B—Sample promissory note.
Appendix C—Examples for computing penalty charges.
Appendix D—[Reserved]
Appendix E—Affidavit of Educational Purpose.

Authority: Title IV, Part E of the Higher Education Act of 1965, as amended (20 U.S.C. 1087aa–1087ll), and Title II of the National Defense Education Act of 1958, as amended, (20 U.S.C. 421–429), unless otherwise noted.

Subpart A—General Provisions

§ 674.1 Purpose and identification of common provisions.

(a) The National Direct Student Loan Program (NDSL) provides low-interest loans to institutions of higher education to help financially needy students pay their educational costs.

(b)(1) The National Direct Student Loan Program authorized by Title IV–E of the Higher Education Act of 1965 is a continuation of the National Defense Student Loan Program authorized by Title II of the National Defense Education Act of 1958. All rights, privileges, duties, functions, and obligations existing under Title II before the enactment of Title IV–E continue to exist.

(2) The Secretary considers any student loan fund established under Title II to have been established under Title IV–E. The assets of an institution's student loan fund established under Title II are assets of the institution's student loan fund established under Title IV–E.

*(c) Provisions in these regulations that are common to all campus-based regulations are identified with an asterisk.

(20 U.S.C. 1087aa–1087ll, Pub. L. 92–318, section 137(d)(1))

§ 674.2 Definitions.

The following definitions are set forth in Subpart A of the Student Assistance General Provisions, 34 CFR Part 668, Subpart A:

Ability to Benefit;

Institution of higher education (including Public or Private nonprofit institution of higher education, proprietary institution of higher education, and postsecondary vocational institution);

One-year training program;

Recognized equivalent of a high school diploma; and

Six-month training program.

Other definitions used in this part are:

**Academic year:* A period of time in which a full-time student is expected to complete—

(a) The equivalent of at least 2 semesters, 2 trimesters, or 3 quarters at an institution using credit hours; or

(b) At least 900 clock hours of training for each program at an institution using clock hours.

Act: Title IV–E of the Higher Education Act of 1965 (HEA).

**Award year:* The period of time between July 1 of one year and June 30 of the following year.

**Campus Based Programs:* (a) The National Direct Student Loan Program (NDSL–34 CFR Part 674);

(b) The College Work-Study Program (CWS–34 CFR Part 675); and

(c) The Supplemental Educational Opportunity Grant Program (SEOG–34 CFR Part 676).

**Clock Hour:* The equivalent of—

(a) A 50 to 60 minute class, lecture, or recitation; or

(b) A 50 to 60 minute faculty supervised laboratory, shop training, or internship.

College Work-Study Program (CWS): The part-time employment program for students authorized by Title IV–C of the HEA.

(42 U.S.C. 2751–2756b)

(20 U.S.C. 1141(f))

Default or in default: (a) The failure of a borrower to—

(1) Make an installment payment when due; or

(2) Comply with other terms of the promissory note.

(b) Notwithstanding paragraph (a), if the institution reasonably concludes from written contacts with the borrower that he or she intends to repay the loan, the borrower is not considered in default.

(c) Except as provided in § 674.9, the Secretary considers a loan discharged in bankruptcy not to be in default.

Default rate: Represented as a fraction:

$$\frac{\text{Defaulted principal amount outstanding}}{\text{Matured loans}}$$

Defaulted principal amount outstanding: The total amount borrowed that has reached the repayment stage minus any principal amount repaid or canceled on loans—

(a) Repayable monthly and in default at least 120 days; and

(b) Repayable less frequently and in default at least 180 days.

Defense loan: A loan made before July 1, 1972, under Title II of the National Defense Education Act (20 U.S.C. 421–429).

**Dependent student:* A student who does not qualify as an independent student (see independent student).

Direct loan: A loan made after June 30, 1972, under the Act.

Eligible Program:

A program of eduction or training that—

*(a) Admits as regular students only persons who—

(1) Have a high school diploma;

(2) Have a General Education Development Certificate (GED) or a State certificate received after passing a State authorized examination which the State recognizes as the equivalent of a high school diploma; or

(3) Are beyond the age of compulsory school attendance in the State in which the institution is located, and have the ability to benefit from the education or training offered; and

(b)(1) Leads to a bachelor, associate, graduate, or professional degree;

(2) Is at least a 2 year program that is acceptable for full credit toward a bachelor degree;

(3) Is at least a 1 year program leading to a certificate or degree that prepares a student for gainful employment in a recognized occupation; or

(4) Is, for a proprietary institution or a postsecondary vocational institution, at least a six-month program leading to a certificate or degree which prepares students for gainful employment in a recognized occupation.

**Expected family contribution:* The amount a student and his or her spouse and family are expected to pay toward his or her cost of attendance.

Federal capital contribution: The portion of a Fund allocated to an institution under § 674.4.

**Financial need:* The difference between a student's cost of attendance and his or her expected family contribution.

Fund (National Direct Student Loan Fund): A fund established and maintained according to § 674.8.

Grace period:

(a) For loans made before October 1, 1980, the grace period is a period of nine consecutive months starting from the date the borrower ceases to be at least a half-time student at an institution of higher education;

(b) For loans made on or after October 1, 1980, the grace period is a period of six consecutive months starting from—

(1) The date the borrower ceases to be at least a half-time student at an institution of higher education; or

(2) The date the borrower's deferment period ends if the deferment is one described in § 674.34a (a), (b), or (d).

(c) A borrower does not have to pay interest or principal during a grace period.

Graduate or professional student: A student enrolled in an academic program of study above the baccalaureate level at an institution of higher education, including—

(a) A program leading to a first professional degree if the institution requires at least 3 years of study at the college level for entrance into the program; and

(b) The fifth and later years of any program requiring more than 4 years of study at the college level.

**Guaranteed Student Loan Program (GSL):* The student loan program authorized by Title IV–B of the HEA.

(20 U.S.C. 1071 et seq.)

Half-time graduate or professional student: An enrolled graduate or professional student who is carrying a half-time academic work load as determined by the institution according to its own standards and practices.

**Half-time undergraduate student:* An enrolled undergraduate student who is carrying a half-time academic work load as determined by the institution according to its own standards and practices. However, the institution's half-time standards must equal or exceed the equivalent of the following minimum requirements:

(a) 6 semester hours or 6 quarter hours per academic term in an institution using standard semester, trimester, or quarter systems.

(b) 12 semester hours or 18 quarter hours per academic year for an institution using credit hours to measure progress, but not using a standard semester, trimester, or quarter system; or the prorated equivalent for a program of less than 1 year.

(c) 12 clock hours per week for an institution using clock hours.

(d) 12 hours of preparation per week for a student enrolled in a program of study by correspondence.

Independent student (effective through June 30, 1981):

(a) A student who for 1979 and 1980—

(1) Has not been claimed and will not be claimed as an exemption for Federal income tax purposes by his or her parent(s);

(2) Has not received and will not receive financial assistance of more than $750 in each year from his or her parent(s); and

(3) Has not lived and will not live for more than six weeks in each year in the home of his or her parent(s).

(b) If a student's mother and father are divorced or separated, only one parent will be considered to be the parent of the student for purposes of applying the criteria in paragraph (a)(2) of this section. To determine that parent—

(1) Choose the parent with whom the student resided for the greater portion of the 12 month period preceding the date of application to have an expected family contribution determined under an approved need analysis system.

(2) If the preceding criterion does not apply, choose the parent who provided the greater portion of the student's support for the 12 month period preceding the date of application to have an expected family contribution determined under an approved need analysis system.

(3) If neither of the preceding criteria apply, choose the parent who provided the greater support for the period commencing January 1 of the calendar year which immediately precedes the first calendar year of the award period and ending 12 months prior to the date of application to have an expected family contribution determined under an approved need analysis system.

(c) If either of the parents have died, the institution shall consider only the surviving parent as the parent for purposes of applying the criteria in paragraph (a)(2) of this section. If both parents have died, the institution shall not consider either parent.

(20 U.S.C. 1087 aa–ff; 20 U.S.C. 1087dd(e).)

Institutional capital contribution: The portion of a Fund contributed by the institution under § 674.8(a)(2).

**Legal guardian:* An individual appointed by a court to be a legal guardian of a person and who is specifically required by the court to use his or her financial resources to support that person.

Matured loans: The total principal amount of all loans made minus the principal amount of loans to students who are—

(a) Enrolled as at least half-time students in institutions of higher education; or

(b) Still in their first grace period.

**National of the United States:* A citizen of the United States or a noncitizen who owes permanent allegiance to the United States.

(8 U.S.C. 1101(a)(22))

**Parent:* Parent means the student's mother, father, or legal guardian. An adoptive parent is considered to be the student's mother or father.

(20 U.S.C. 1141(c))

**Parent Loans for Undergraduate Students Program (PLUS):* The Parent Loan Program authorized by Title IV–B of the HEA.

**Payment period:* A semester, trimester, or quarter. For an institution not using those academic periods, it is the period between the beginning and the midpoint or between the midpoint and the end of an academic year.

**Pell Grant Program:* The grant program, formerly known as the Basic Educational Opportunity Grant Program, authorized by Title IV–A–1 of the HEA.

**Regular student:* A person who is enrolled or accepted for enrollment enrolls in an eligible program at an institution of higher education for the purpose of obtaining a degree or certificate.

**Secretary:* The Secretary of the Department of Education or an official or employee of the Department acting for the Secretary under a delegation of authority.

**State:* The States of the Union, American Samoa, the Commonwealth of Puerto Rico, the District of Columbia, Guam, the Trust Territory of the Pacific Islands, the Virgin Islands, and the Northern Mariana Islands.

(20 U.S.C. 1141(b); 20 U.S.C. 1088(a))

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* *Independent student (effective July 1, 1981 through June 30, 1982):*

(a) A student who for 1980 and 1981—

(1) Has not been claimed and will not be claimed as an exemption for Federal income tax purposes by his or her parent(s);

(2) Has not received and will not receive financial assistance of more than $1,000 in each year from his or her parent(s); and

(3) Has not lived and will not live for more than six weeks in each year in the home of his or her parent(s).

(b) If a student's mother and father are divorced or separated, only one parent will be considered to be the parent of the student for purposes of applying the criteria in paragraph (a) of this section. To determine that parent—

(1) Choose the parent with whom the student resided for the greater portion of the 12-month period preceding the date of application to have an expected family contribution determined under an approved need analysis system.

(2) If the preceding criterion does not apply, choose the parent who provided the greater portion of the student's support for the 12-month period preceding the date of application to have an expected family contribution determined under an approved need analysis system.

(3) If neither of the preceding criteria apply, choose the parent who provided the greater support for the period commencing January 1 of the calendar year which immediately precedes the first calendar year of the award period and ending 12 months prior to the date of application to have an expected family contribution determined under an approved need analysis system.

(c) If either of the parents have died, the institution shall consider only the surviving parent as the parent of the student. If both parents have died, the institution shall not consider either parent.

"State Student Incentive Grant Program (SSIG): The program authorized by Title IV–A–3 of the HEA.

(20 U.S.C. 1070c-et seq.)

Supplemental Educational Opportunity Grant Program (SEOG): The grant program authorized by Title IV–A–2 of the HEA.

(20 U.S.C. 1070b et seq.)

(20 U.S.C. 1087aa–1087ii unless otherwise noted)

§ 674.3 Apportionment and reapportionment of Federal capital contributions to States.

(a) *Apportionment.* (1) The Secretary apportions 90% of appropriated funds for Federal capital contributions according to section 462(a)(1) of the Act. (This section requires the Secretary to apportion additional amounts to each State to make that State's apportionment equal to its allotment for fiscal year 1972. The 1972 allotments are shown in Appendix A.)

(2) The Secretary apportions the remaining funds so that each institution in each State receives the Federal capital contribution computed under §§ 674.6, 674.6a or 674.7.

(b) *Reapportionment.* (1) The Secretary reapportions the amount of a State's apportionment that exceeds the amount of approved requests of institutions in that State.

(2) The Secretary reapportions those funds among the remaining States according to institutional need for Federal capital contributions as computed under §§ 674.6, 674.6a or 674.7.

(20 U.S.C. 1087bb)

§ 674.4 Allocation, reallocation, and payment to institutions.

(a) *Allocation.* (1) The Secretary distributes Federal capital contributions authorized by section 461 of the Act according to §§ 674.6, 674.6a, and 674.7.

(b) *Reallocation.* (1)(i) If an institution anticipates not lending all its allocated funds by the end of an award year, it must specify the anticipated unused amount to the Secretary, who reduces the institution's allocation accordingly.

(ii) Other institutions may apply for those funds on the form and at the time specified by the Secretary.

(iii) The Secretary distributes those funds to applicant institutions in accordance with paragraph (b)(2) of this section.

(2)(i) If the funds that become available under paragraph (b)(1) of this section come from the State's initial allotment under § 674.3(a)(1), the Secretary reallocates those funds proportionately to other institutions in that State. The Secretary reapportions those funds that are not needed to maintain the State's initial allotment, and any funds that do not come from that initial allotment, in accordance with paragraphs (b)(2) (ii), (iii) and (iv) of this section.

(ii) The Secretary increases awards to institutions whose students have suffered financial hardships as a result of natural disasters within the preceding 12 months.

(iii) If any funds remain, the Secretary then increases the Federal capital contribution to institutions whose current level of expenditure (LOE) is less than their national fair shares determined under § 674.6. The Secretary calculates each applicant's increase as follows:

Institution's remaining LOE shortfall/ remaining LOE shortfall of all applicants for reallocation × remaining FCC available for reallocation

(An institution's remaining level of expenditure shortfall is the difference between its national fair share (see § 674.6(g)(4)) and its approved level of expenditure calculated in § 674.6 and this section through paragraph (b)(2)(ii).)

(iv) If any funds still remain, the Secretary reallocates the funds in a manner that best carries out the purposes of this part.

(c) *Payments to institutions.* The Secretary allocates new Federal capital contributions for a specific period of time. The Secretary pays funds to an institution in advance or by reimbursement. The Secretary bases the amount to be paid on periodic fiscal reports.

(20 U.S.C. 1087bb.)

§ 674.5 Application.

(a) To participate in the NDSL program, an institution must file an application with the Secretary for an approved level of expenditure before an annually established closing date. In the application the institution may request—

(1) A Federal capital contribution;

(2) Authority to spend the income of its Fund (that income includes repayments made by borrowers and interest earned on Fund cash); or

(3) Both (1) and (2).

(b) The application must be on a form approved by the Secretary and contain information needed to determine the institution's—

(1) Level of expenditure; and

(2) Federal capital contribution.

(20 U.S.C. 1087bb.)

§ 674.6 Funding procedure.

(a) *General.* (1) Each institution applying for NDSL funds receives an approved level of expenditure in the following three stages—

(i) A "conditional guarantee";

(ii) A State increase based on its "fair share" of the State apportionment; and

(iii) A national increase based on its "fair share" of the national appropriation.

(2) The terms "conditional guarantee" and "fair share" refer only to the level of expenditure. The Secretary computes the Federal capital contribution (FCC) according to § 674.6a.

(3) Definitions—As used in this section—

(i) "Base year" means the 12-month period ending on the June 30 preceding the closing date for filing an NDSL application for a level of expenditure;

(ii) "Base year level of expenditure" means the amount of loans made in the base year plus the amount the institution claimed for administrative expenses in that year.

(iii) "Current year" means the 12-month period ending on the June 30 immediately following the closing date for filing the application; and

(iv) "Utilization rate" means:

an institution's base year level of expenditure/its NDSL funds available in the base year

NDSL funds available in the base year include—

(A) FCC awards in the base year;

(B) The matching institutional capital contribution;

(C) Loan repayments received in the base year;

(D) Reimbursements for Direct loan cancellations; and

(E) Cash on hand as of June 30 of the year preceding the base year.

(b) *Conditional guarantee.* The Secretary computes a conditional guarantee of the level of expenditure in the following way:

(1) An institution that participated in the NDSL program in the base year receives a conditional guarantee equal to the greater of 90 percent of its—

(i) Base year level of expenditure; or

(ii) Current year funding level multiplied by its utilization rate.

(2) An institution's "current year funding level" includes—

(i) The FCC awarded for the current year;

(ii) The matching institutional capital contributions;

(iii) 110 percent of base year loan repayments;

(iv) Reimbursements for Direct loan cancellations; and

(v) Cash on hand as of June 30 of the base year.

(3) An institution applying to participate in the NDSL program for the

first time receives a conditional guarantee equal to the greater of—

(i) $5,000; or

(ii) 90 percent of the average NDSL base year expenditure per student in eligible institutions offering comparable programs of instruction, multiplied by the applicant institution's base year enrollment.

(4) An institution applying to participate in the NDSL program for the second time receives a conditional guarantee equal to the greatest of—

(i) $5,000;

(ii) 90 percent of the average NDSL base year expenditure per student in eligible institutions offering comparable programs of instruction, multiplied by the applicant institution's base year enrollment; or

(iii) 90 percent of its current year funding level.

(c) *Self-help need of an institution.* (1) The Secretary allocates additional funds to an institution on the basis of calculations made under paragraph (f) (State increase) and paragraph (g) (National increase). These calculations are based in part on the institution's self-help need. Self-help need is the need for funds from work and loan sources. The institution's self-help need is the sum of the self-help need of its eligible graduate students and the self-help need of its eligible undergraduate students.

(2) The Secretary calculates the self-help need of an institution's eligible graduate students in accordance with paragraph (d) and the self-help need of its eligible undergraduate students in accordance with paragraph (e).

(3) As used in paragraphs (d) and (e):

(i) *Average cost of attendance* means the attendance costs for undergraduate and graduate students. These costs include tuition, fees, standard living expenses, books, and supplies. (The institution reports its total tuition and fee revenues, and the Secretary uses this amount to determine the average cost of attendance.)

(ii) *Eligible students* means for award year 1981–82 students who—

(A) Were enrolled as regular students in good standing on at least a half-time basis in an eligible program during the base year;

(B) Met program regulation requirements for citizenship or residency in the United States for the base year; and

(C) Applied for financial assistance for the base year, and for whom the institution has on file taxable and non-taxable income data and all the other information necessary to perform a needs analysis using a methodology approved by the Secretary.

(d) *Self-help need of eligible graduate students.* To determine the self-help need of an institution's eligible graduate students, the Secretary—

(1) Establishes various income categories for dependent and independent graduate students;

(2) Establishes an expected family contribution (EFC) for each income category of dependent and independent graduate students, using a need analysis method approved under § 674.13;

(3) Determines the average cost of attendance for all graduate students;

(4) Subtracts from the average cost of attendance for all graduate students, the computed EFC for each income category of dependent students and each income category of independent students. However, the average cost of attendance minus the EFC for any income category may not be less than zero;

(5) Multiplies those amounts by the number of eligible students in each category;

(6) Adds the amounts obtained for each income category of dependent students and each income category of independent students; and

(7) Totals those two amounts.

(e) *Self-help need of eligible undergraduate students.* To determine the self-help need of an institution's eligible undergraduate students, the Secretary—

(1) Establishes various income categories for dependent and independent undergraduate students;

(2) Establishes an EFC for each income category of dependent and independent undergraduate students, using a need analysis method approved under § 674.13;

(3) Computes 25 percent of the average cost of attendance for all undergraduate students;

(4) Multiplies the number of eligible dependent students in each income category by the lesser of—

(i) 25 percent of the average cost of education for all undergraduate students; or

(ii) The average cost of attendance for all undergraduate students minus the EFC determined under paragraph (e)(2) of this section for that income category. However, the average cost of attendance minus the EFC may not be less than zero;

(5) Adds the amounts obtained for each income category of dependent students;

(6) Multiplies the number of eligible independent students in each income category by the lesser of—

(i) 25 percent of the average cost of attendance of all undergraduate students; or

(ii) The average cost of attendance for all undergraduate students minus the EFC determined under paragraph (e)(2) of this section for that income category. However, the average cost of attendance minus the EFC may not be less than zero;

(7) Adds the amounts obtained for each income category of independent students; and

(8) Adds the amounts obtained under paragraphs (e)(5) and (7) of this section.

(f) *State increase.* (1) In any year the Secretary increases the level of expenditure of institutions in a State ("State increase"), thereby increasing the FCC going to those institutions, if the combined FCC's resulting from conditional guarantees of all institutions in that State are less than the State apportionment under § 674.3(a)(1). However, no institution receives a State increase if it does not qualify for FCC under § 674.8a.

(2) The Secretary calculates an institution's State increase according to the following formula:

Institution's State increase = Its State shortfall/State shortfalls of all institutions in the State × FCC available for State shortfall × 1.11

(3) As used in the formula in subparagraph (2)—

(i) "FCC available for State shortfall" means the State apportionment minus the FCC used for conditional guarantees.

(ii) "Institution's State shortfall" means the difference between an institution's conditional guarantee and its State fair share determined in paragraph (f)(4) of this section.

(4) The Secretary determines an institution's State fair share according to the following formula:

Institution's State fair share = its self-help need/self-help need of all institutions in the State applying for NDSL funds × total State NDSL funds

(5) As used in the formula in paragraph (f)(4) of this section "total State NDSL funds" means the sum of—

(i) The State apportionment of FCC and the matching institutional capital contribution;

(ii) 121 percent of loan repayments in the base year received by institutions in the State; and

(iii) Reimbursement for Direct loan cancellations in the base year received by institutions in the State.

(g) *National increase.* (1) For any year the Secretary will further increase the level of expenditure of institutions ("national increase"), thereby increasing the FCC going to those institutions, if the sum of the conditional guarantees and State increases awarded to institutions is less than the total NDSL funds for that

year (see paragraph (g)(5) of this section). However, no institution receives a national increase if it does not qualify for FCC under § 674.8a.

(2) The Secretary calculates an institution's national increase according to the following formula—

Institution's national increase = its national shortfall/national shortfall of all institutions × NDSL funds available for national shortfall

(3) As used in the formula in paragraph (g)(2) of this section—

(i) "NDSL funds available for national shortfall" is calculated by—

(A) Adding the conditional guarantees and State increases for all institutions; and

(B) Subtracting that sum from total NDSL funds; and

(ii) An institution's "national shortfall" is calculated by subtracting from its "national fair share" its conditional guarantee and State increase.

(4) The Secretary calculates an institution's "national fair share" according to the following formula—

Institution's national fair share = its self-help need/self-help need of all institutions applying for NDSL funds × total NDSL funds

(5) As used in paragraphs (g) (1), (3), and (4) of this section "total NDSL funds" is calculated by adding—

(i) The appropriation for FCC plus the matching institutional capital contribution;

(ii) 121 percent of loan repayments in the base year; and

(iii) Reimbursements for Direct loan cancellations in the base year.

(h) No institution may receive a higher level of expenditure than it requests.

(20 U.S.C. 1087bb)

The following charts show the income categories and calculations for eligible graduate students and for eligible undergraduate students:

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DETERMINATION OF SELF-HELP NEED FOR ELIGIBLE DEPENDENT GRADUATE STUDENTS

1	2	3	4	5	6
		AVERAGE	AVG COST	NUMBER OF	SELF HELP NEED

DETERMINATION OF SELF-HELP NEED FOR ELIGIBLE DEPENDENT GRADUATE STUDENTS

1 INCOME	2 EFC	3 AVERAGE COST	4 AVG COST LESS EFC	5 NUMBER OF ELIGIBLE STUDENTS	6 SELF HELP NEED COL. 4 x COL. 5
$ 0 - $ 2,999					
$ 3,000 - $ 5,999					
$ 6,000 - $ 8,999					
$ 9,000 - $11,999					
$12,000 - $14,999					
$15,000 - $17,999					
$18,000 - $20,999					
$21,000 - $ 23,999					
$24,000 - $26,999					
$27,000 - $29,999					
$30,000 - $32,999					
$33,000 - $35,999					
$36,000 - $38,999					
$39,000 - $41,999					
$42,000 - $44,999					
$45,000 - Over					
7 TOTAL SELF-HELP NEED FOR DEPENDENT GRADUATE STUDENTS					$ _____

DETERMINATION OF SELF-HELP NEED FOR ELIGIBLE DEPENDENT UNDERGRADUATE STUDENTS

1	2	3	4	5	6
INCOME	EFC	25% x AVERAGE COST	AVG COST LESS EFC	NUMBER OF ELIGIBLE STUDENTS	NEED: LESSER OF COL. 3 x COL. 5 or COL. 4 x COL. 5
$ 0 - $ 2,999					
$ 3,000 - $ 5,999					
$ 6,000 - $ 8,999					
$ 9,000 - $11, 999					
$12,000 - $14,999					
$15,000 - $17,999					
$18,000 - $20,999					
$21,000 - $23,999					
$24,000 - $26,999					
$27,000 - $29,999					
$30,000 - $32,999					
$33,000 - $35,999					
$36,000 - $38,999					
$39,000 - $41,999					
$42,000 - $44,999					
$45,000 - Over					

7 TOTAL SELF-HELP NEED FOR DEPENDENT UNDERGRADUATE STUDENTS $ _____

DETERMINATION OF SELF-HELP NEED FOR ELIGIBLE INDEPENDENT GRADUATE STUDENTS

1	2	3	4	5	6
		AVERAGE			

DETERMINATION OF SELF-HELP NEED FOR ELIGIBLE INDEPENDENT GRADUATE STUDENTS

1 INCOME	2 EFC	3 AVERAGE COST	4 AVG COST LESS EFC	5 NUMBER OF ELIGIBLE STUDENTS	6 SELF HELP NEED COL. 4 x COL. 5
$ 0 - $ 999					
$ 1,000 - $ 1, 999					
$ 2,000 - $ 2,999					
$ 3,000 - $ 3,999					
$ 4,000 - $ 4,999					
$ 5,000 - $ 5,999					
$ 6,000 - $ 6,999					
$ 7,000 - $ 7,999					
$ 8,000 - $ 8,999					
$ 9,000 - $ 9,999					
$10,000 - $10,999					
$11,000 - $11,999					
$12,000 - $12,999					
$13,000 - $13,999					
$14,000 - $14,999					
$15,000 - Over					
7 TOTAL SELF-HELP NEED FOR INDEPENDENT GRADUATE STUDENTS					$

SUMMARY

1 TOTAL SELF-HELP NEED FOR DEPENDENT GRADUATE STUDENTS	$
2 TOTAL SELF-HELP NEED FOR INDEPENDENT GRADUATE STUDENTS	$
3 TOTAL SELF-HELP NEED FOR ALL GRADUATE STUDENTS (1 + 2)	$

DETERMINATION OF SELF-HELP NEED FOR ELIGIBLE INDEPENDENT UNDERGRADUATE STUDENTS

1	2	3	4	5	6
INCOME	EFC	25% x AVERAGE COST	AVG COST LESS EFC	NUMBER OF ELIGIBLE STUDENTS	NEED: LESSER OF COL. 3 x COL. 5 or COL. 4 x COL. 5
$ 0 - $ 999					
$1,000 - $1,999					
$ 2,000 - $ 2,999					
$ 3,000 - $ 3,999					
$ 4,000 - $ 4,999					
$ 5,000 - $ 5,999					
$ 6,000 - $ 6,999					
$ 7,000 - $ 7,999					
$ 8,000 - $ 8,999					
$ 9,000 - $ 9,999					
$10,000 - $10,999					
$11,000 - $11,999					
$12,000 - $12,999					
$13,000 - $13,999					
$14,000 - $14,999					
$15,000 - Over					

7 TOTAL SELF-HELP NEED FOR INDEPENDENT UNDERGRADUATE STUDENTS $_____

SUMMARY

1 TOTAL SELF-HELP NEED FOR DEPENDENT UNDERGRADUATE STUDENTS	$_____
2 TOTAL SELF-HELP NEED FOR INDEPENDENT UNDERGRADUATE STUDENTS	$_____
3 TOTAL SELF-HELP NEED FOR ALL UNDERGRADUATE STUDENTS (1 + 2)	$_____

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§ 674.8a Fe
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§ 674.6a Funding procedure—Federal capital contributions (FCC).

(a) For any year, an institution receives Federal capital contribution if its default rate—

(1) Is 10 percent or less;

(2) Is more than 10 percent, but has declined by at least 25 percent during the base year; or

(3) Is more than 10 percent but the institution demonstrates that it exercised due diligence according to the provisions of Subpart C during the base year and is currently exercising due diligence.

(b) To determine an institution's FCC the Secretary—

(1) Adds the institution's conditional guarantee, State increase, and national increase;

(2) Subtracts from the sum obtained in paragraph (b)(1) of this section, loan repayments and reimbursements for Direct loan cancellations received in the base year; and

(3) Multiplies the remainder obtained in paragraph (b)(2) of this section by 90 percent.

(c) For purposes of paragraph (b)(2) of this section, loan repayments equal 121 percent of the amount collected in the base year.

(d) The definition of default rate is set forth in § 674.2. However, for purposes of this section, the Secretary excludes—

(1) Notes referred or assigned to the Commissioner on or before September 15, 1979 if the institution received either a notification of acceptance or a receipt from the Office of Education;

(2) Notes assigned to the United States in the base year and accepted by the United States; and

(3) Notes that have been in default but on which borrowers have made satisfactory arrangements to resume payment.

(e) No institution may receive more Federal capital contribution than it requested.

(20 U.S.C. 1087bb.)

§ 674.7 Application review—approval of request.

(a) An institution may request a review of its computed level of expenditure or its Federal capital contribution.

(b) A National Review Panel appointed by the Secretary reviews each institution's request. The panel consists of student financial aid administrators and Education Department personnel.

(c) In establishing an institution's level of expenditure and Federal capital contribution, the Secretary considers the panel's recommendations and its reasons for the recommendations.

(d) The Secretary establishes an approved level of expenditure and Federal capital contribution based on procedures in § 674.6 and the review panel's recommendations.

(20 U.S.C. 1087bb.)

§ 674.8 Institutional agreement.

To participate in the NDSL program, an institution must enter into an agreement with the Secretary. The agreement provides that the institution will use the funds it receives solely for the purposes specified in this part and will administer the program in accordance with the Act, this part and the Student Assistance General Provisions, 34 CFR Part 668. The agreement further provides that—

(a) The institution will establish and maintain a Student Loan Fund (Fund).

It must deposit into the Fund—

(1) Federal capital contributions appropriated under section 461 of the Act;

(2) Institutional capital contributions equal to at least one-ninth of the Federal contributions described in paragraph (a)(1) of this section;

(3) Funds provided by the Secretary under section 466 of the Act;

(4) Principal and interest collected on student loans made from the Fund, except those amounts collected on loans made with funds described in paragraph (a)(3) of this section;

(5) Payments to the institution as the result of direct loan cancellations under section 465(b) of the Act;

(6) Penalty charges collected under § 674.32(f);

(7) Any other Fund earnings including interest earned on those funds; and

(8) Any short term, no interest loans it makes to the fund in anticipation of collections.

(b) The institution must use the money in the Fund only for—

(1) Making National Direct Student Loans to students;

(2) Administrative expenses as provided for in § 674.18(b)

(3) Capital distributions provided for in section 466 of the Act;

(4) Capital distributions provided for in section 469 of the Act;

(5) Litigation costs;

(6) Other collection costs, agreed to by the Secretary in connection with the collection of principal, interest, and penalty charges on a loan made from the Fund (see "Other collection costs" § 674.47); and

(7) Repayment of the short term, no interest loans made to the Fund by the institution in anticipation of collections;

(c)(1) If the institution services and collects loans made to students from funds provided under section 466 of the Act, it shall turn over to the Secretary any repayments of principal and interest it receives along with the penalty charges it collects.

(2) The institution may subtract from the amount it turns over to the Secretary any litigation costs and any "other collection costs" permitted under § 674.47.

(d) If the institution does not service and collect loans made with the funds provided for in section 466 of the Act, the institution will assign the loans made with such funds to the Secretary.

(e) Where a promissory note has been in default at least 2 years despite due diligence, the institution may assign its rights to the United States without recompense, and any amount collected on the loan will be deposited in the general fund of the Treasury;

(f) The institution must submit a report to the Secretary at least twice a year that shows the total number of loans made from its Fund that are in default—

(1) 120 days for loans repayable in monthly installments; or

(2) 180 days for loans repayable in less frequent installments; and

(g) The Secretary will provide to the institution any information with respect to the names and addresses of borrowers or other relevant information which is available to the Secretary.

(20 U.S.C. 1087cc, 1087dd, 1094)

§ 674.9 Student eligibility.

(a) *Eligibility.* A student is eligible to receive an NDSL at an institution of higher education if the student—

*(1) Is a regular student;

(2) Is enrolled or accepted for enrollment in an eligible program as an undergraduate, graduate or professional student at that institution;

*(3) (i) Is a U.S. citizen or National;

(ii) Is a permanent resident of the U.S.;

(iii) Provides evidence from the Immigration and Naturalization Service that he or she is in the United States for other than a temporary purpose with the intention of becoming a citizen or permanent resident; or

(iv) Is a permanent resident of the Trust Territory of the Pacific Islands or the Northern Mariana Islands;

*(4) Has financial need;

*(5) Is maintaining satisfactory progress in the course of study he or she is pursuing according to the standards and practices of that institution;

(6) Does not owe a refund on a Pell Grant, Supplemental Grant, or State Student Incentive Grant received to

meet the cost of attending that institution; and

*(7) Is not in default on any National Defense/Direct Student Loan, Guaranteed Student Loan, or Parent Loans for Undergraduate Students (PLUS), received to meet the cost of attending that institution.

*(b) *Member of a religious order—financial need.* The Secretary considers that a member of a religious order (an order, community, society, agency, or organization) who is pursuing a course of study at an institution of higher education has no financial need if that religious order—

(1) Has as its primary objective the promotion of ideals and beliefs regarding a Supreme Being;

(2) Requires its members to forego monetary or other support substantially beyond the support it provides; and

(3) (i) Directs the member to pursue the course of study; or

(ii) Provides subsistence support to its members.

(c) *Selection.* (1) An institution must make NDSLs reasonably available (to the extent of available funds) to all eligible students who demonstrate financial need.

(2) The institution's selection procedures must be—

(i) Uniformly applied;

(ii) In writing; and

(iii) Maintained in the files of the student financial assistance office.

(3) The institution must maintain on file all NDSL applications for the period specified in § 674.19(c)(2).

(4) The institution may not make a loan under NDSL to a student who is unwilling to repay that loan. Default on a previous loan is evidence of that unwillingness.

*(d) *Determination of satisfactory progress.* (1) If an institution determines at the beginning of a payment period that a student is not maintaining satisfactory progress, but reverses itself BEFORE the end of the payment period, the institution may make an NDSL advance to the student for the entire payment period.

(2) If an institution determines at the beginning of a payment period that a student is not maintaining satisfactory progress, but reverses itself AFTER the end of the payment period, the institution may NOT advance any funds to the student for that payment period OR make adjustments in subsequent financial aid payments to compensate for the loss of aid for that period.

*(e) *Overpayment of grants.* Conditions under which an institution may make an NDSL payment to a student who is overpaid a grant:

(1) *Overpayment of a Pell Grant.* If an institution makes an overpayment of a Pell Grant to a student, it may continue to disburse an NDSL to that student if—

(i) The student is otherwise eligible; and

(ii) It can eliminate the overpayment in the award year in which it occurred by adjusting the subsequent Pell Grant payments for that award year.

(2) *Overpayment of a Pell Grant due to institutional error.* If the institution makes an overpayment of a Pell Grant as a result of its own error and can not correct it as specified in subparagraph (1), it may continue to make payments to that student if the student—

(i) Is otherwise eligible; and

(ii) Acknowledges in writing the amount of overpayment and agrees to repay it in a reasonable period of time.

(3) *Overpayment of an SEOG.* An institution may continue to disburse an NDSL to a student who receives an overpayment on an SEOG if—

(i) The student is otherwise eligible; and

(ii) It can eliminate the overpayment by adjusting financial aid payments (other than Pell Grants) in the same award year in which the overpayment occurred.

(4) *Definition.* Overpayment of a grant means that a student's grant payments are greater than the amount he or she is entitled to receive.

*(f) *Default on loans.* Conditions under which an institution may make an NDSL to a student who is in default on loans made for attendance at that institution:

(1) *Guaranteed loan and Parent Loans for Undergraduate Students (PLUS).* An institution may make an NDSL or continue to advance NDSL funds to a student who is in default on a Guaranteed Student Loan or a PLUS if the Secretary (for a Federally insured loan) or a guarantee agency (for a loan insured by that guarantee agency) determines that the student has made satisfactory arrangements to repay the defaulted loan.

(2) *National Defense/Direct Student Loan.* An institution may make an NDSL or continue to advance NDSL funds to a student who is in default on a National Defense/Direct Student Loan made at that institution if the student has made arrangements, satisfactory to the institution, to repay the loan.

*(g) *Bankruptcy.* The Secretary considers a National Defense Student Loan, a National Direct Student Loan, a Guaranteed Student Loan, or a PLUS that is discharged in bankruptcy to be in default for purposes of this section.

*(h) *GSL/PLUS—Reliance on student's statement.* An institution, in determining whether a student is in default on a loan made under the Guaranteed Student Loan Program or the PLUS program, may rely upon the student's written statement that he or she is not in default unless the institution has information to the contrary.

(20 U.S.C. 1087dd; and 1091f)

§ 674.10 Special sessions.

A student enrolled at an institution in a special session (e.g., summer school) is eligible for an NDSL if he or she—

(a) Is otherwise eligible (see § 674.9);

(b) (1) Is registered as at least a half-time student at that institution for that session; or

(2) Is taking all of the courses required to complete his or her certificate or degree; and

(c) (1) Was attending that institution as at least a half-time student during the preceding term; or

(2) Has been accepted as at least a half-time student for the subsequent term.

(20 U.S.C. 1087aa-ii)

*§ 674.11 Cost of attendance.

(a) A student's cost of attendance includes—

(1) Tuition and fees normally assessed a full-time student at the institution at which the student is in attendance;

(2) An allowance for books, supplies, transportation, and miscellaneous personal expenses;

(3) An allowance for room and board costs incurred by the student which—

(i) Beginning in academic year 1981–82 shall be an allowance of not less than $1,100 for a student without dependents residing at home with parents;

(ii) For students without dependents residing in institutionally owned or operated housing, shall be a standard allowance determined by the institution based on the amount normally assessed most of its residents for room and board;

(iii) For all other students without dependents, shall be a standard allowance determined by the institution based on the expenses reasonably incurred by such students for room and board; and

(iv) For students with dependents, shall be an allowance based on the expenses reasonably incurred by such students for room and board;

(4) For a student engaged in a program of study by correspondence, only tuition and fees and, if required, books and supplies, and travel and room and board costs incurred specifically in fulfilling a required period of residential training;

(5) For a student enrolled in an academic program which normally

includes a formal program of study abroad, reasonable costs associated with such study;

(6) For a student with dependent children, an allowance based on the expenses reasonably incurred for child care; and

(7) For a handicapped student, an allowance for those expenses related to his handicap, including special services, transportation, equipment, and supplies that are reasonably incurred and not provided for by other assisting agencies.

(b) *Adjustments.* The institution, in individual cases, may adjust the cost of attendance if—

(1) The financial aid administrator believes the cost of attendance determined in accordance with paragraph (a) does not accurately reflect the student's actual cost of attendance; and

(2) The institution documents all adjustments in writing with an accompanying explanation and makes them part of the institution's records.

(20 U.S.C. 1088(d))

§ 674.12 Expected family contribution.

(a) *Dependent students.* In determining the amount a dependent student and his or her spouse and parents are expected to contribute to the student's cost of attendance the financial aid administrator must consider—

(1) Any serious illness in the family. (Family members include the student, the student's parents and spouse, and any other persons the parents may claim as exemptions under the Internal Revenue Code);

(2) The number of the parents' dependent children;

(3) The number of the parents' dependent children attending institutions of higher education;

(4) Tuition costs of dependent children attending elementary and secondary schools; and

(5) Any other circumstances that could affect the ability of the student, the student's spouse, and the student's parents to contribute to his or her cost of attendance.

(b) *Independent students.* In determining the amount an independent student and spouse are expected to contribute to the student's cost of attendance, the financial aid administrator must consider—

(1) Any serious illness in the family. (Family members include the student, his or her spouse, and any other persons the student or spouse may claim as exemptions under the Internal Revenue Code);

(2) The number of the student's dependent children;

(3) The number of the student's dependent children attending institutions of higher education;

(4) Tuition costs of dependent children attending elementary and secondary schools; and

(5) Any other circumstances that could affect the ability of the student or spouse to contribute to the student's cost of attendance.

(c) *Special determination of dependent student-parent relationship.* (1) The student financial aid administrator must determine whether the relationship between a student and his or her parents makes it unreasonable to expect the parents to contribute to the student's cost of attendance, regardless of their ability to do so, if requested by a student who does not—

(i) Live with his or her parents;

(ii) Visit his or her parents for periods longer than typical for other adult family members; or

(iii) Receive gifts from his or her parents more valuable than those typically given to other adult nondependent offspring.

(2) Before determining that it is unreasonable for a parent of a dependent student to contribute to the student's attendance costs, the financial aid administrator must determine whether the student's parents are, in fact, willing to contribute toward those costs.

(3) The student financial aid administrator must make that determination part of the institution's written record.

(d) *Native American students.* To determine a Native American's expected family contribution, an institution may not consider the following as income or assets of the student or his or her family:

(1) Awards made under the Distribution of Judgment Funds Act (25 U.S.C. 1401 et seq.) or the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.).

(2) Property that may not be sold or encumbered without the consent of the Secretary of the Interior.

(3) Any other property held in trust for the student or his or her family by the U.S. Government.

(e) *Annual determinations.* An institution must determine a student's need at least annually.

(20 U.S.C. 1087ll(d))

§ 674.13 Approved need analysis systems.

(a) An institution must use a Secretary approved need analysis system or calculation method in complying with the requirements in § 674.12 (expected family contribution).

(b) *Preapproved systems for dependent students.* The Secretary has approved the following systems for dependent students:

(1) The method of computing an expected family contribution used in the Pell Grant program (34 CFR Part 690).

(2) The income tax system if adjusted to reflect the number of the parents' dependent children who are attending institutions of higher education. The expected family contribution produced under this system is the sum of—

(i) The money the student is reasonably able to contribute;

(ii) The amount of Federal income tax paid by the student's parents;

(iii) 5% of the parents' net assets in excess of $17,000 if there are no farm or business assets; or

(iv) 5% of the parents' net assets in excess of $50,000 if there are farm and business assets. However, no more than $17,000 may be deducted for assets other than farm and business assets.

(c) *Criteria for other systems for dependent students.* (1) The Secretary approves other need analysis systems for dependent students that are properly submitted (see paragraph (e)), if the system produces expected family contribution figures that—

(i) Increase incrementally as the parents' financial strength, measured in constant dollars, increases;

(ii) Are equal for families of equal financial strength; and

(iii) Are within $50 of the expected family contribution figures in 75% of the sample cases supplied by the Secretary.

(2) The Secretary computes the sample cases by:

(i) Deducting from the sum of the parents' adjusted gross income and nontaxable income—

(A) The amount of Federal income taxes and social security taxes;

(B) An 8% allowance on total income for State and local taxes; and

(C) A family maintenance allowance (excluding the student during the academic year) using Department of Labor estimates at a low standard of living;

(ii) Adding to this remainder, 12% of the net market value of the parents' assets, after deducting a standard asset reserve; and

(iii) Applying a rate schedule that the Secretary will publish annually with the sample cases.

(3) (i) In developing sample cases, the Secretary selects cases where the main wage earner is 45 years of age.

(ii) The Secretary does not select cases that involve medical and dental expenses, casualty and theft loss, housekeeping allowances, farm or business assets, more than one family

member attending a postsecondary institution as an undergraduate, social security or veteran's benefits, or any unusual circumstances.

(4) In comparing figures from systems submitted for approval with figures from sample cases, the Secretary treats an expected parental contribution of less than zero as zero.

(5) In order to insure measurement in constant dollars, the Secretary revises sample case figures for inflation annually by adjusting—

(i) Deductions for family maintenance;

(ii) The standard deduction from assets; and

(iii) The rate of contribution from income and assets.

(d) *Systems for independent students.* The Secretary approves the following systems for independent students:

(1) The method of computing an expected family contribution used in the Pell Grant program (34 CFR Part 690).

(2) The systems of need analysis for independent students published by those organizations approved for dependent students under paragraph (c).

(e) *Application procedures for system approval.* (1) An organization or individual wishing to have a system for dependent students approved must also submit a system for independent students. Both systems must be submitted to the Secretary by June 30.

(2) The Secretary lists approved systems in the Federal Register by the following September 1.

(3) Applications for approval must include—

(i) Information the Secretary needs to determine whether or not the system meets the requirements of paragraph (c); and

(ii) The expected family contribution amounts produced by that system for sample cases.

(f) *Duration of approval.* (1) There is no specified expiration date for need analysis systems for dependent students approved under paragraph (b).

(2) An institution may use the need analysis systems for dependent and independent students approved under paragraphs (c) and (d) to determine student eligibility and amount of assistance under Campus Based Programs for an academic year that begins—

(i) No earlier than the following June 1; or

(ii) No later than 12 months after that June 1 date.

(g) *Adjustments.* The institution, in individual cases, may further adjust expected family contributions computed according to one of the approved systems if—

(1) The student financial aid administrator believes the expected family contribution does not accurately reflect the student's (or parents') ability to contribute; and

(2) The institution documents all adjustments in writing with an accompanying explanation and makes them part of the institution's records.

(20 U.S.C. 1087dd)

***§ 674.14 Coordination of student financial aid programs, loan amount, and overaward.**

(a) *Coordinating official.* An institution must appoint a coordinating official for its NDSL and other Federal and non-Federal student financial aid programs.

(b) *Overaward prohibited, general rule.* (1) An institution may not award an NDSL to a student if the NDSL, when combined with all other resources, exceeds the student's financial need. The institution, however, does NOT violate this rule if—

(i) The student receives additional funds after the institution awards aid, and total resources exceed his or her financial need by $200 or less by the end of the academic year; or

(ii) The student earns more money from employment than the institution anticipated when it awarded the NDSL, and it treats the earnings in accordance with paragraph (c) (prevention of overaward).

(2) A student's financial need may not exceed his or her cost of attendance.

(3) If a student's resources exceed his or her need by more than $200, and the excess is not from employment, the overaward is the amount that exceeds the $200.

(c) *Prevention of overaward by treatment of earnings.* An institution must take the following steps when it learns that a borrower has earned, or will earn, more than $200 over his or her financial need:

(1) It must decide whether the student needs the money to pay for necessary additional educational costs, unanticipated when it awarded financial aid to the student. If the student does, no further action is necessary.

(2) If the student's earnings still exceed need by $200 or more after the institution subtracts any additional costs, it must cancel any unpaid loan or grant (other than Pell Grants) to avoid exceeding need by more than $200.

(3) If the student's earnings still exceed his or her need by more than $200 after the institution takes the steps required in the two preceding subparagraphs, and the student is enrolled for the next academic year, the institution must use the amount that exceeds $200 as—

(i) A resource to help pay the student's cost of attendance in the following year; or

(ii) A substitute for the student's expected family contribution for the current year unless a GSL or PLUS is used for that purpose.

(4) If the student's earnings still exceed his or her need by more than $200 after the institution takes the steps required in subparagraphs (1) and (2) of this paragraph, and the student is NOT enrolled for the next academic year, no further action is necessary.

(d) *Resources.* The Secretary considers that "resources" include, but are not limited to, any—

(1) Funds the student is entitled to receive from a Pell Grant, regardless of whether the student applies for it;

(2) Waiver of tuition and fees;

(3) Scholarship or grant, including an SEOG or athletic scholarship;

(4) Fellowship or assistantship;

(5) Insurance programs for the student's education, including any social security educational benefits not included in computing EFC;

(6) GSL, or PLUS as indicated under paragraph (e);

(7) Long-term loans, excluding GSL and PLUS, made by the institution;

(8) Net earnings from employment, including any part of an independent student's net earnings not included as part of the student's EFC. ("Net earnings" means gross earnings minus taxes and job related costs); and

(9) Veterans benefits (except that part included as part of the student's EFC).

(e) *Treatment of Guaranteed Student Loans (GSL) and Parent Loans for Undergraduate Students (PLUS).* (1) A student may use a GSL or a PLUS as a subetitute for his or her expected family contribution.

(2) However, if the loan amounts under one or both of these programs exceeds the student's expected family contribution, the Secretary considers the excess to be a resource.

(f) *Administrative responsibility.* (1) An institution is responsible ONLY for the resources it—

(i) Makes available to its students;

(ii) Knows about; or

(iii) Can reasonably anticipate at the time it awards NDSL funds to the student.

(2) An institution must take reasonable steps to stay informed about the earnings of a student employed outside the institution.

(g) The provisions of paragraph (b) of this section are retroactive to October 12, 1976.

(20 U.S.C. 1087dd)

§ 674.15 Coordination with BIA grants.

*(a) To determine the amount of an NDSL for a student who is also eligible for a Bureau of Indian Affairs (BIA) education grant, an institution must prepare a package of student aid—

(1) From resources other than the BIA education grant the student has received or is expected to receive; and

(2) That is consistent in type and amount with packages prepared for students in similar circumstances who are not eligible for a BIA education grant.

*(b)(1) The BIA education grant, whether received by the student before or after the preparation of the student aid package, supplements that package.

(2) No adjustment may be made to the student aid package as long as the total of the package and the BIA education grant is less than the institution's determination of that student's financial need.

*(c)(1) If the BIA education grant, when combined with other aid in the package, exceeds the student's need, the excess must be deducted and may be deducted only from the other assistance, not the BIA education grant.

(2) The institution must deduct the excess in the following sequence: loans, work-study awards, and grants other than Pell Grants. However, the institution may change the sequence if requested by a student and the institution believes the change benefits the student.

*(d) To determine the financial need of a BIA-eligible student, a financial aid administrator is encouraged to consult with area officials in charge of BIA postsecondary financial aid.

(20 U.S.C. 1087dd)

§ 674.16 Making and disbursing loans.

(a) Before an institution makes its first advance to a student, it must—

(1) Inform the borrower of his or her obligations to—

(i) Repay the loan; and

(ii) Apply the proceeds only to educational expenses.

(2) Provide the borrower with the following information—

(i) The yearly and cumulative maximum loan amounts that may be borrowed;

(ii) The repayment terms;

(iii) The maximum number of years in which the loan must be repaid;

(iv) The interest rate and the minimum monthly payment;

(v) Other entitlements the borrower may have for deferral, cancellation, repayment, consolidation or other refinancing of the loan;

(vi) A definition of default and the consequences to the borrower if he or she defaults, including a description of any arrangements made with credit bureau organizations.

(vii) The effects of accepting the loan on the eligibility of the borrower for other forms of student assistance.

(b) An institution may satisfy the requirements of paragraph (a) of this section by mailing the information to the student.

(c)(1) An institution using a semester, trimester, or quarter system must advance each payment period a portion of a loan awarded for a full academic year.

(2) The institution determines the amount advanced each payment period by the following fraction:

$$\frac{\text{NDSL}}{\text{N}}$$

Where NDSL = total NDSL award and N = the number of semesters, trimesters, or quarters in that year.

(3) If the total NDSL award is to a student attending less than a full academic year, the institution determines the amount of each advance by the following fraction:

$$\frac{\text{NDSL}}{\text{R}}$$

Where NDSL = total NDSL award and R = the number of semesters, trimesters, or quarters remaining in the academic year.

(d) Notwithstanding paragraph (c), if a student incurs uneven costs during an academic year and needs additional funds in a particular payment period, the institution may advance NDSL funds to the student for that purpose.

(e)(1) An institution NOT using a semester, trimester, or quarter system must advance funds to the student at least twice during an academic year.

(2) The institution must make one advance at the beginning and another at the midpoint of the academic year.

(3) The institution may not advance more than half the loan before the midpoint.

(f)(1) Within each payment period, an institution may advance funds to the student at such time and in such amounts as it determines best meets the student's needs.

(2) It may pay the borrower directly by check or by crediting his or her account with the institution.

(3) However, if it credits the account, the institution must give the borrower a receipt.

(4) In either case, the borrower must sign for the funds in the Schedule of Advances part of the note.

(g) Only one advance is necessary if the total amount the institution awards a student under the Campus Based Programs is less than $201.

(h) A 9 month training program that prepares students for gainful employment in a recognized occupation equals a full academic year for purposes of disbursement.

(i) A correspondence student must submit his or her first completed lesson before receiving an advance.

(j)(1) An institution may not disburse loan funds to a student unless the student files a statement of educational purpose in which the student declares that he or she will use the loan solely for educational expenses in connection with attendance at the institution.

(2) The Secretary considers the following as satisfying this requirement: Statement of Educational Purpose I declare that I will use any funds I receive under the NDSL program for expenses connected with attendance at (Name of institution)_____ (Date)_____ (Signature)_____.

(k) If an institution computes a student's need using estimated data submitted before January 1 of the previous award year, the institution may not pay the student unless it verifies that information.

(20 U.S.C. 424, 1087cc, 1087cc-1 and 1094)

§ 674.17 Federal interest in allocated funds—Transfer of loan fund.

*(a) Except for funds received for the administrative cost allowance (see § 674.18(b)), funds received by an institution under the NDSL program are held in trust for the intended student beneficiaries. Funds may not be used or hypothecated (i.e., serve as collateral) for any other purpose.

(b) (1) If an institution responsible for an NDSL Fund closes or no longer wants to participate in the program, the Secretary will take the following steps to protect the outstanding loans and the Federal interest in that Fund:

(i) The undertaking of a capital distribution of the liquid assets of the Fund according to § 466(c) of the Act;

(ii) The transfer of the outstanding loans to another institution in the same State; or

(iii) The transfer of the outstanding loans to the Department of Education if no institution in that State wishes to receive them.

(2) The Secretary considers the cost of collecting the transfered outstanding loans to be equal to the institutional share of those loans.

(3) If the Secretary transfers the outstanding loans to a second institution, the second institution may deposit the collections on those loans in its own Fund. The Secretary considers the first institution's share of those

collections to be the second institution's institutional capital contribution.

(4) If the Secretary transfers the outstanding loans to the Department of Education, the Secretary may use the institutional share of those collections to pay collection costs.

(c) If more than one institution in the State offers to collect the outstanding loans, the Secretary will transfer the loans to one or more of the competing institutions on the basis of—

(1) Primarily, the institution's demonstrated loan collection capability; and

(2) Secondarily, the number of students of the first institution expected to enroll in the second institution.

(d) No audit exception will be taken against the second institution on account of actions or omissions of the first institution in the administration of its Fund. The second institution must segregate the transferred Fund account until an audit satisfactory to the Secretary is performed on the operation of the first institution's program.

(20 U.S.C. 1087aa–1087ii; 1087cc)

§ 674.18 Use of funds.

(a) *General.* An institution must deposit the funds it receives under the NDSL program into its Student Loan Fund. It may use these funds only for making loans and the other activities specified in § 674.8(b).

(b) *Administrative cost allowance.* An institution participating in the NDSL program is entitled to an administrative cost allowance.

(1) The amount of the allowance equals—

(i) Five (5) percent of the first $2,750,000 of the institution's expenditures in an award year under CWS, SEOG and NDSL programs; plus

(ii) Four (4) percent of its expenditures which are greater than $2,750,000 but less than $5,500,000; plus

(iii) Three (3) percent of its expenditures in excess of $5,500,000.

(2) However, for the purpose of calculating the allowance in paragraph (b)(1) of this section, CWS expenditures made under the Community Service Learning Program (§ 675.28) or NDSL loans that are assigned to the Secretary under Section 463(a)(6)(B) of the Higher Education Act are not included.

(3) An institution must use its administrative cost allowance to offset its costs of administering the Pell Grant, CWS, SEOG and NDSL programs. Administrative costs also include the expenses incurred for carrying out the student consumer information services requirements of Subpart C of the Student Assistance General Provisions, 34 CFR Part 668.

(4) An institution may not charge any administrative expenses against its NDSL Fund for an award year unless it advances funds to students for that year.

(20 U.S.C. 1087cc, 1087dd, and 1099)

§ 674.19 Fiscal procedures and records.

*(a) *Fiscal procedures.* (1) In administering its NDSL program, an institution must establish and maintain an internal control system of checks and balances that insures that no office can both authorize payments and disburse funds to students.

(2) A separate bank account for Federal funds is not required, except as provided in paragraph (b). However, an institution must notify any bank in which it deposits Federal funds of all accounts in that bank in which it deposits Federal funds. The institution may give this notice by either—

(i) Including in the name of the account the fact that Federal funds are deposited; or

(ii) Notifying the bank in writing of the accounts in which it deposits Federal funds. The institution must retain a copy of this notice in its files.

(b) *Account for NDSL Fund.* (1) An institution must maintain all the cash of its NDSL Fund in a separate bank account that contains no other funds if the Secretary determines that the institution's accounting system and internal controls do not—

(i) Meet the requirements of paragraph (c), paragraph (d), or both;

(ii) Identify the cash balance of the NDSL Fund as readily as if the Fund were maintained in a separate bank account; or

(iii) Adequately identify the earnings of the Fund.

(2) The Secretary makes that determination on the basis of an audit examination or as a result of a program review.

(3) That separate bank account must be identified as the institution's NDSL Fund account and must contain all the cash of the institution's NDSL Fund. That cash includes Federal capital contributions, institutional capital contributions, repayments made by borrowers, Direct loan cancellation payments, and any earnings of the Fund including interest.

(c) *Records and reporting.* (1) An institution must establish and maintain on a current basis financial records that reflect all program transactions. The institution must establish and maintain general ledger control accounts and related subsidiary accounts that identify each program transaction and separate those transactions from all other institutional financial activity.

(2) The institution must also establish and maintain program and fiscal records that—

(i) Are reconciled at least monthly;

(ii) Identify each student's account and status;

(iii) Show the eligibility of each student aided under the program;

(iv) Show the amount of need and how the need was met for each student; and

(v) Identify the administrator who determined the need.

(3) Each year an institution must submit a Fiscal-Operations Report plus other information the Secretary requires. The institution must comply with requirements to insure the information reported is accurate and must submit it on the form and at the time specified by the Secretary.

(d) *Retention of records.* (1) *Records.* Each institution must keep intact and accessible records of the receipt and expenditure of Federal funds, including all accounting records and original and supporting documents necessary to document how the funds are spent.

*(2) *Period of retention.* Except for loan records and audit questions, an institution must keep records for an award year for five years after it submits its Fiscal-Operations Report for that year.

(3) *Loan records.* (i) An institution must maintain a repayment history for each borrower. This repayment history must show the date and amount of each repayment over the life of the loan. It must also indicate the amount of each repayment credited to principal and interest respectively.

(ii) This history must also show the date, nature, and result of each contact with the borrower or proper endorser in the collection of an overdue loan. The institution must include in the repayment history copies of all correspondence to or from the borrower and endorser, except routine bills, routine overdue notices, and routine form letters.

(iii) An institution must retain repayment records, including cancellation and deferment requests, for at least 5 years from the date of the loan's assignment or final repayment or cancellation.

*(4) *Microfilm copies.* An institution may substitute microfilm copies for original records in meeting the requirements of this section.

*(5) *Audit questions.* An institution must keep records in any claim or expenditure questioned by Federal audit until resolution of any audit questions. However, the institution does not have to retain records beyond 5 years if the actions taken by the United States to

recover funds are barred by the Federal statute of limitation in 28 U.S.C. 2415(b).

(e) *Audits-Federal.* An institution must give the Secretary, the Comptroller General of the United States, or their duly authorized representatives access to the records specified in paragraphs (d) (1), (2), and (3) and to any other pertinent books, documents, papers, and records.

(f) *Separate records.* An institution need not maintain separate records for National Defense Student Loans and National Direct Student Loans except for loan cancellation records.

*(g) *Audits—Non-Federal.* (1) An institution must audit, or have audited under its direction, NDSL transactions to determine at a minimum—

(i) The fiscal integrity of financial transactions and reports; and

(ii) If those transactions are in compliance with the applicable laws and regulations.

(2) The audits must be performed in accordance with the Education Department's "Audit Guide" for student financial aid programs.

(3) The institution must have an audit performed at least once every two years unless the Secretary approves a longer interval.

(4) Each audit must cover the entire period of time since the last audit.

*(h) *Audit reports.* The institution must submit audit reports to its local regional office of the Education Department's Office of Inspector General Audit Agency. It must give the Secretary and the Inspector General access to records or other documents necessary to the audit's review.

(i) *Safekeeping.* An institution must keep promissory notes and student loan ledgers in good order in a locked, fire proof container. Only authorized personnel may have access to these documents.

(20 U.S.C. 424, 1087cc, 1232c.)

§ 674.20 Compliance with truth in lending and equal credit opportunity requirements.

In making an NDSL, an institution must comply with the truth in lending requirements of Regulation Z (12 CFR 226) and with the equal credit opportunity requirements of Regulation B (12 CFR 202). With regard to Regulation B, the Secretary considers the NDSL program to be a credit assistance program authorized by Federal law for the benefit of an economically disadvantaged class of persons within the meaning of 12 CFR 202.6(a)(1). Therefore the institution may request a loan applicant to disclose his or her marital status, income from alimony, child support, and spouse's income and signature. (12 CFR 202.6(d)).

(20 U.S.C. 1087aa–1087ii.)

§ 674.21 Deposit of institutional capital contributions into Fund.

When an institution deposits any Federal capital contribution to its Fund it must deposit its institutional capital contribution at the same time.

(20 U.S.C. 1087cc.)

Subpart B—Terms of Loans

§ 674.31 Defense and direct loan maximums for students.

(a) The maximum amount of Defense and Direct loans an eligible student may borrow is—

(1) $3,000 for a student who has not completed 2 academic years of study toward a bachelor's degree. The $3,000 includes Defense and Direct loans.

(2) $6,000 for a student who has completed 2 academic years of study toward a bachelor's degree and has achieved third-year status but has NOT received the degree. The $6,000 includes Defense and Direct loans the student borrowed before completing the 2 years of study toward a bachelor's degree; and

(3) $12,000 for study toward professional or graduate degrees. The $12,000 includes Defense and Direct loans a student borrowed for undergraduate study.

(20 U.S.C. 1087dd.)

§ 674.32 Promissory note—loan repayment.

(a) *Promissory note.* (1) To receive a loan a student must sign a promissory note before the institution makes any advance.

(2) The Secretary must approve the promissory note used by the lending institution.

(3) The note in appendix B is acceptable. The institution must not change the meaning of this note without the Secretary's approval.

(4) The lending institution must give a copy of the signed note to the borrower at or before the exit interview.

(b) *Interest rate.* The promissory note must state that—

(1)(i) For loans made before July 1, 1981, the rate of interest on the loan is 3 percent per annum on the unpaid balance; and

(ii) For loans made on or after July 1, 1981, the rate of interest on the loans is 4 percent per annum on the unpaid balance; and

(2) No interest may be charged before the repayment period begins or during a deferment period authorized under § 674.34a (a), (b), and (d).

(3) No repayment of principal or interest will be required until six months after the completion of any deferment period as set forth in § 674.34 (a), (b), and (d).

(c) *Repayment.* (1) The promissory note must state that the repayment period—

(i) Begins 6 months after the borrower ceases to be a least a half-time student at an institution of higher education or a comparable institution outside the U.S. approved for this purpose by the Secretary, and normally ends 10 years later;

(ii) May begin earlier if the borrower requests it; and

(iii) May vary because of minimum monthly repayments (see § 674.33) or deferments (see §§ 674.34 and 674.34a).

(iv) May be extended for up to ten years if, during the repayment period, the institution determines that the borrower is or will be a low-income individual (as defined in § 674.34a(b)(8)) during the repayment period; and

(v) May be adjusted to reflect the income of the borrower if the institution determines the borrower to be a low-income individual.

(2) The promissory note must state that the borrower must repay the loan—

(i) In equal quarterly, bimonthly, or monthly amounts, as the institution chooses; or

(ii) In graduated installments if the borrower requests a graduated repayment schedule, the institution submits the schedule to the Secretary for approval, and the Secretary approves it.

(3) A repayment plan must be established before the student ceases to be at least a half-time student.

(4) The institution must give the borrower a copy of the promissory note with a copy of the repayment plan attached.

(5) If the last repayment is $10 or less the institution may add it the next-to-last repayment.

(6) A loan repayment must first be applied to interest due on the loan, with the remainder applied to principal.

(d) *Minimum rates of repayment—deferments.* (1) The promissory note may, at the option of the institution, state that the monthly repayments may vary according to the minimum monthly repayment provision (see § 674.33).

(2) The promissory note must include the deferment provisions set forth in § 674.34a.

(e) *Prepayment.* (1) The promissory note must state that the borrower may prepay all or part of the loan at any time without penalty.

(2) Amounts repaid during the academic year in which the loan was made will be used to reduce the original loan amount and will not be considered prepayments.

(3) If a borrower repays more than the amount due for any repayment period, the excess must be used to prepay the principal unless the borrower designates it as an advance payment of the next regular installment.

(f) *Penalty charge.* (1) An institution may state in the promissory note that a penalty will be charged if the borrower does not—

(i) Repay all or part of a scheduled repayment when due;

(ii) File a timely request for cancellation or deferment with the institution. This request must include sufficient evidence to enable the institution to determine whether the borrower is entitled to a cancellation or deferment.

(2) The institution may include the following penalty charges in the promissory note. If the loan is repayable—

(i) Monthly, the maximum monthly charge is $1 for the first month and $2 for each additional month, for each overdue payment;

(ii) Bimonthly, the maximum bimonthly charge is $3 for each overdue payment; and

(iii) Quarterly, the maximum charge per quarter is $6 for each overdue payment.

(3) *Applying penalty charges.* The institution may—

(i) Add the penalty charge to the principal the day after the scheduled repayment was due; or

(ii) Include it with the next scheduled repayment after the borrower receives notice of the penalty charge.

(g) *Security and endorsement.* The promissory note must state that the loan must be made without security and endorsement unless—

(1) The borrower is a minor; and

(2) Under applicable State law, a note signed by a minor would not create a binding obligation.

(h) *Assignment.* The promissory note must state that a note may only be assigned to—

(1) The United States or an institution approved by the Secretary; or

(2) An institution the borrower has transferred to, if that institution—

(i) Is participating in the NDSL program; or

(ii) Is not participating, but has been approved by the Secretary; to receive the notes.

(i) *Acceleration.* The promissory note must state that an institution may demand immediate repayment of the entire loan, including any penalty charges and accrued interest, if the borrower does not—

(1) Make a scheduled repayment on time; or

(2) File cancellation or deferment form(s) with the institution on time.

(j) *Cost of collection.* The promissory note may state that the borrower must pay all attorney's fees and other loan collection costs and charges.

(k) *Disclosure of information.* The promissory note shall state that if the borrower defaults on the loan and the loan is referred to the Secretary, the Secretary may disclose to a credit bureau organization—

(1) That the borrower has defaulted on the loan; and

(2) Any other relevant information.

(20 U.S.C. 425 and 1087dd.)

§ 674.33 Minimum repayment rates.

In this section monthly repayment amounts also apply to bimonthly or quarterly equivalents.

(a)(1) *Defense loan.* An institution may require a borrower to pay a $15 minimum monthly repayment if—

(i) The monthly repayment of principal and interest for a 10 year repayment period is less than $15 a month; and

(ii) The promissory note includes a $15 minimum monthly repayment provision.

(2) *Direct loan.* The institution may require a borrower to pay a $30 minimum monthly repayment if—

(i) The monthly repayment of principal and interest for a 10 year repayment period is less than $30 a month; and

(ii) The promissory note includes a $30 minimum monthly repayment provision.

(b) *Minimum repayment of loans from more than one institution.* (1) *Defense loan.* If a borrower has received loans from more than one institution and—

(i) Only one institution exercises the $15 option when the repayment is less than $15, that institution will receive the difference between $15 and the repayment owed to the other institution; or

(ii) Each institution exercises the $15 minimum option, the minimum repayment must be divided among the institutions in proportion to the amount of principal advanced by each institution.

(2) *Direct loan.* If a borrower has received loans from more than one institution and—

(i) Only one institution exercises the $30 option when the repayment is less than $30, that institution will receive the difference between $30 and the repayment owed to the other institution; or

(ii) Each institution exercises the $30 minimum option, the minimum repayment must be divided among the institutions in proportion to the amount of principal advanced by each institution.

(c) *Minimum repayment of both Direct and Defense loans from one or more institutions.* If a borrower has received both a Direct and a Defense loan, the following rules apply. In all cases the repayment includes principal and interest.

(1) If the total monthly repayment is at least $30 for both a Defense and a Direct loan, no institution may exercise a minimum repayment option, even if the Defense loan repayment is less than $15 or the Direct loan repayment is less than $30.

(2) If the total monthly repayment is less than $30 for both the Defense and Direct loans, an institution may exercise either minimum repayment option. The maximum monthly repayment, however, may not exceed $30 a month.

(3) If—

(i) The total monthly repayment is less than $30; and

(ii) The amount owed on a Defense loan is less than $15, the amount attributed to the Defense loan may not exceed $15 a month. However, $15 may be attributed to the Defense loan ONLY if the institution exercises the minimum option on the Defense loan.

(d) *Minimum repayment of Direct loans with different interest rates, or with different provisions, from one or more institutions.*

(1) If a borrower has received a Direct loan at 3 percent and a Direct loan at 4 percent from the same institution, and the total monthly repayment is at least $30 for both the Direct loan at 3 percent and the Direct loan at 4 percent, the institution may not exercise the minimum monthly payment on either loan.

(2) If the borrower has received a Direct loan at 3 percent and a Direct loan at 4 percent at the same institution and the total monthly repayment is less than $30, the institution may exercise the $30 minimum payment option, providing it is in the promissory notes, and the institution divides the repayment between the accounts in proportion to the amount of principal advanced under each loan.

(3) If a borrower has received a Direct loan at 3 percent from one institution and a Direct loan at 4 percent from another institution, each institution shall follow the procedures outlined in paragraph (b)(2) of this section.

(4) If a borrower has received Direct loans prior to October 1, 1980 and a Direct loan between October 1, 1980 and June 30, 1981 the institution shall follow the procedures outlined in paragraphs (d)(1) and (b)(2) of this section.

(20 U.S.C. 425 and 1087dd; section 137d of Pub. L. 92-318.)

§ 674.34 Defense or Direct loans made on or before September 30, 1980.

(a) Principal need not be repaid and interest will not accrue during a period when a borrower is at least a half-time student at an institution of higher education or a comparable institution outside the U.S. approved by the Secretary for this purpose.

(b) Principal need not be repaid and interest will not accrue for a period of up to 3 years during which time the borrower is—

(1) A member of the U.S. Armed Forces (see § 674.56);

(2) A Peace Corps volunteer; or

(3) A volunteer under the Domestic Volunteer Service Act of 1973.

(c) The institution must not include the deferment periods described in paragraphs (a) and (b) when determining the 10 year repayment period.

(d)(1) The institution may defer repayments under extraordinary circumstances. Interest, however, (unlike in paragraphs (a) and (b)) continues to accrue during this deferment period.

(2) If a borrower is unable to make a scheduled repayment due to extraordinary circumstances such as a prolonged illness or unemployment, he or she may ask the institution to change the repayment schedule within the 10 year repayment period.

(3)(i) If a change in the repayment schedule of a Defense loan would extend the repayment period beyond 10 years, the institution must notify the Secretary of the change.

(ii) If a change in the repayment schedule of a Direct loan would extend the repayment period beyond 10 years, the institution must notify the Secretary of the change and receive the Secretary's approval before making it.

(e)(1) The institution may defer a borrower's Direct loan repayments or revise his or her repayment schedule for up to 1 year if—

(i) The institution exercised the minimum monthly repayment rate;

(ii) The borrower is unable, due to extraordinary circumstances, to make repayment when due; and

(iii) The borrower has applied for deferment or a revised repayment schedule.

(2) If, at the end of the 1 year period, the borrower is still unable to repay at the minimum monthly rate because of extraordinary circumstances, the institution may defer repayment or revise repayments for up to another year.

(3) If the institution defers repayment on a loan or revises a repayment schedule under paragraph (e) of this section, (4), or (5) of this paragraph, interest continues to accrue.

(4) The institution may not defer a loan or revise a repayment schedule under paragraphs (e) (1) and (2) of this section if the revision or deferment results in a repayment period of more than 10 years.

(f) (1) The institution may defer Defense loan repayments up to 3 years for a less than half-time student borrower taking courses that are creditable toward a degree.

(2) Interest accrues during this deferment period.

(3) The institution may exclude these deferment periods in computing the 10 year repayment period.

(20 U.S.C. 425 and 1087dd.)

§ 674.34a Deferment of repayment. Direct loans made on or after October 1, 1980.

(a) Principal need not be repaid and interest will not accrue during a period when a borrower is at least a half-time student at an institution of higher education or a comparable institution outside the U.S. approved by the Secretary for this purpose.

(b) Principal need not be repaid and interest will not accrue for a period of up to 3 years during which time the borrower is—

(1) A member of the U.S. Armed Forces or an officer in the Commissioned Corps of the U.S. Public Health Service; (see § 674.56);

(2) A Peace Corps volunteer; or

(3) A volunteer under the Domestic Volunteer Service Act of 1973;

(4) A full-time volunteer in service which the Secretary has determined is comparable to service in the Peace Corps or under the Domestic Volunteer Service Act of 1973 (ACTION programs). The Secretary considers that a borrower is providing comparable service if he or she satisfies the following five criteria:

(i) The borrower serves in an organization which is exempt from taxation under Section 501(c)(3) of the Internal Revenue Code of 1954;

(ii) The borrower provides service to low-income persons and their communities to assist them in eliminating poverty and poverty-related human, social, and environmental conditions;

(iii) The borrower's compensation does not exceed the compensation received by a full-time volunteer in the Peace Corps or in a program administered by the ACTION agency. Compensation includes an allowance for subsistence, necessary travel expenses, and stipends;

(iv) The borrower, as part of his or her duties, does not give religious instruction, conduct worship service, engage in religious proselytizing, or engage in fundraising to support religious activities.

(v) The borrower has agreed to serve on a full-time basis for a term of at least one year.

(5) Temporarily totally disabled, as established by an affidavit of a qualified physician, or unable to secure employment because the borrower is providing care such as continuous nursing or other similar services required by a spouse who is so disabled.

(c)(1) "Temporarily totally disabled" for purposes of paragraph (b) of this section with regard to the borrower means an injury or illness which prevents an individual from attending an eligible institution or to be gainfully employed for an extended period of time.

(2) "Temporarily totally disabled" with regard to the borrower's spouse means an injury or illness, established by an affidavit of a qualified physician, that requires the borrower to provide care such as continuous nursing or other similar services thus preventing the borrower from obtaining gainful employment.

(d)(1) Principal need not be paid and interest will not accrue for a period not to exceed two years during which time the borrower is serving an eligible internship after obtaining a bachelor's or professional degree.

(2) An eligible internship is an internship which a person is required to undergo to receive professional recognition required to begin professional practice or service. Medical residency is an example of such an internship.

(e) The institution must not include the deferment periods described in paragraphs (a), (b), (d) and the grace period described in paragraph (f) when determining the 10-year repayment period.

(f) No repayment of principal or interest will be required to begin until six months after the completion of any period during which the borrower is in deferment under paragraph (a), (b), and (d).

(g)(1) The institution may defer repayments under extraordinary circumstances.

(2) If a borrower is unable to make a scheduled repayment due to extraordinary circumstances such as a prolonged illness or unemployment, he or she may ask the institution to change the repayment schedule within the 10 year repayment period.

(3) If a change in the repayment schedule of a Defense loan would extend the repayment period beyond 10 years, the institution must notify the Secretary of the change. If a change in the repayment schedule of a Direct loan would extend the repayment period beyond 10 years, the institution must notify the Secretary of the change and receive the Secretary's approval before making it.

(h)(1) The institution may defer a borrower's Direct loan repayments or revise his or her repayment schedule for up to 1 year if—

(i) The institution exercised the minimum monthly repayment rate;

(ii) The borrower is unable, due to extraordinary circumstances, to make repayment when due; and

(iii) The borrower has applied for deferment or a revised repayment schedule.

(2) If, at the end of the 1 year period, the borrower is still unable to repay at the minimum monthly rate because of extraordinary circumstances, the institution may defer repayment or revise repayments for up to another year.

(3) If the institution defers repayment on a loan or revises a repayment schedule under paragraph (g) of this section, interest continues to accrue.

(4) The institution may not defer a loan or revise a repayment schedule under paragraphs (g) (1) and (2) of this section if the revision or deferment results in a repayment period of more than 10 years.

(i) The institution may—

(1) Extend the repayment period up to ten years for any student borrower who during the repayment period is a low-income individual if that individual is expected to remain a low-income individual during that repayment period. The term "low-income individual" means an individual from a family whose taxable income for the preceding year did not exceed 150 percent of an amount equal to the poverty level determined by using criteria of poverty established by the Bureau of the Census.

(2) Adjust the repayment schedule to reflect the income of that individual.

(20 U.S.C. 425 and 1087dd.)

§ 674.35 Postponement of loan repayments in anticipation of cancellation.

(a) An institution must postpone loan repayments for a 12 month period if the borrower—

(1) Teaches or provides other services eligible for loan cancellation; and

(2) Submits a statement signed by a responsible official in the military, agency, or school employing the borrower, specifying that the borrower is so employed. The statement must describe the borrower's job, list the period of employment, and state whether the job is full- or part-time.

(b) If a borrower has received both Defense and Direct loans and is eligible for cancellation benefits on only one, the institution may postpone only repayments on the loan for which cancellation is available.

(20 U.S.C. 425 and 1087dd–ee.)

§ 674.36 Treatment of loan repayments where cancellation, loan repayments, and minimum monthly repayments apply.

(a) An institution may not exercise the minimum monthly repayment provisions on a note when the borrower has received a partial cancellation for the period covered by a postponement.

(b) If a borrower has received both Defense and Direct loans and only one can be cancelled, the amount due on the uncancelled loan is the amount established in § 674.32(c), loan repayment terms or § 674.33(a), minimum repayment rates.

(20 U.S.C. 425 and 1087dd–ee.)

Subpart C—Due Diligence

§ 674.41 [Reserved]

§ 674.42 Due diligence.

Each institution must be diligent and forceful in collecting loans. In exercising this responsibility it must—

(a) Inform each borrower before he or she signs the note that he or she must repay the loan and apply the proceeds only to educational expenses;

(b) Conduct an exit interview with each borrower (described in § 674.43) before he or she leaves the institution and, again, explain his or her obligation to repay the loan;

(c) In or before the exit interview—

(1) Give a copy of the signed promissory note and the repayment schedule to the borrower; and

(2) Have the borrower sign the schedule. A repayment schedule shows the borrower the total amount of his or her loan and states the repayment amount and the date each repayment is due;

(d) Keep a signed copy of the repayment schedule in the institution's files;

(e) Mail a copy of the note and two copies of the repayment schedule to a borrower who leaves the institution without notice, requesting that the borrower sign and return one of the schedules to the institution;

(f) Keep the borrower informed, on a timely basis, of all changes in the program that affect his or her rights or responsibilities; and

(g) Respond promptly to all inquiries from the borrower or any endorser.

(20 U.S.C. 1087cc.)

§ 674.43 Contact with the borrower prior to repayment period.

(a) *Information coordination.* An institution must coordinate information among its offices, e.g. the registrar, student financial aid, business and alumni offices. Doing so will enable it to determine—

(1) When a borrower will graduate so an exit interview may be scheduled; or

(2) Whether a borrower has left the institution without notice so that required information may be mailed to him or her.

(b) *Exit interview.* An institution must, if possible, conduct an exit interview with each borrower before he or she leaves the institution. If an individual interview is not feasible, a group interview is permitted. During the interview the institution must tell the borrower again, as it did when the loan was made, that the borrower received a loan and the loan must be repaid in accordance with the repayment schedule. Furthermore, the institution must explain, in detail, the borrower's rights and obligations under the loan including the following:

(1) The borrower must inform the institution immediately of any address change.

(2) The full amount of the loan and the interest rate.

(3) The first repayment amount and when it is due.

(4) The borrower must contact the institution before the due date of any repayment he or she cannot make.

(5) His or her deferment, cancellation or postponement rights and the procedures for filing for these benefits.

(6) The right to prepay without penalty.

(7) The loan note's optional features such as minimum monthly repayment, penalty and collection charges.

(c) *The institution's contact with the borrower.* (1) For loans made on or before September 30, 1980, an institution must contact a borrower at least 3 times before the first repayment is due as follows:

(i) 90 days into the grace period, the institution must send to the borrower the information in paragraph (b) plus other information necessary to satisfy Truth in Lending Act regulations.

(ii) 180 days into the grace period, the institution must notify the borrower of the date his or her grace period ends.

(iii) Approximately 30 days before the first repayment is due, the institution must notify the borrower of that

repayment date and the amount due. (see § 674.44(a)(1).)

(2) For loans made on or after October 1, 1980, an institution must contact a borrower at least 2 times before the first repayment is due as follows:

(i) 90 days into the grace period, the institution must send to the borrower the information in paragraph (b) plus other information necessary to satisfy Truth in Lending Act regulations.

(ii) Approximately 30 days before the first repayment is due, the institution must notify the borrower of that repayment date and the amount due. (see § 674.44(a)(1).)

(d) *Address search.* If an institution discovers that a borrower's address has changed, it must conduct the search required under § 674.44(a)(6) to find the correct address.

(20 U.S.C. 425 and 1087cc.)

§ 674.44 Billing procedures.

(a) An institution must establish and maintain the following billing and follow-up procedures until all loans are repaid:

(1) Unless a coupon system is established, the institution must send to each borrower—

(i) A letter of notice and a statement of account at least 30 days before the first payment is due; and

(ii) A statement of account 10 days before the due date of each repayment after the first.

(2) An institution must contact a borrower and demand repayment if it has not received from the borrower within 15 days of a due date—

(i) A repayment;

(ii) A request for a deferment; or

(iii) A cancellation request form.

(3) An institution must demand repayment as follows:

(i) Within 15 days of a missed due date, the institution must contact the borrower by telephone or in writing to demand repayment (first overdue notice).

(ii) Within 30 days of the first overdue notice, it must contact the borrower again, by telephone or in writing, if there is no satisfactory response to the first notice (second overdue notice).

(iii) Within 15 days of the second overdue notice, if there is no satisfactory response, it must contact the borrower again—

(A) By telephone; or

(B) By mailgram or similar written communication that demonstrates a response rate higher than that for routine mail (third overdue notice).

(iv) Within 15 days of the third overdue notice, it must send the borrower the final demand letter if there is no satisfactory response to the third overdue notice. In this letter the institution must inform the borrower that the loan will be referred for collection or litigation if repayment, or a proper form, is not received within 30 days of the letter's date.

(v) If an institution accelerates a loan (makes the entire unpaid amount, including accrued interest and penalty charges, payable immediately), it must give the borrower advance, written notice. The notice may be given separately or in the final demand letter.

(4) An institution may omit any or all the overdue notices before the final demand letter if—

(i) The borrower's repayment history has been unsatisfactory, e.g., the borrower has often failed to repay or file proper forms on time or has previously received a final demand letter; or

(ii) The institution believes the borrower does not intend to repay the loan or file the proper form.

(5) The institution must maintain a list of borrowers with overdue payments, updated monthly.

(6) If mail is returned, an institution must conduct a thorough search to locate the borrower's address, including—

(i) Checking records in all appropriate institutional offices;

(ii) Checking telephone directories or information operators in the location of the borrower's last known address;

(iii) Telephoning the borrower if a number is found; and

(iv) Using the Department of Education's free skip-tracing service.

(b)(1) The Secretary considers billing and follow-up collection procedure costs (as required in paragraph (a)) to be routine administrative expenses that are NOT chargeable to the Fund.

(2) However, the costs of phone calls to the borrower are considered other collection costs that MAY be charged to the Fund.

(20 U.S.C. 424 and 1087cc)

§ 674.45 Address searches.

(a) An institution, unable to locate a borrower in spite of its efforts under § 674.44(a)(6), must either—

(1) Hire a commercial skip-tracing organization; or

(2) Attempt to locate the borrower with its own personnel.

(b) If the institution locates the borrower, it must first try to collect the overdue amount before referring the loan for collection or litigation.

(20 U.S.C. 424 and 1087cc)

§ 674.46 Collection and litigation procedures.

(a) If an institution is still unable to collect a payment after following the procedures under §§ 674.44 and 674.45, it must telephone or personally contact the borrower to determine why the borrower has not paid. If this final contact fails to obtain payment, the institution must—

(1) Hire a collection agency;

(2) Sue the borrower; or

(3) Use its own personnel to collect the amount due.

(b) If the institution uses a collection agency, the agency must—

(1) Be bonded in an amount covering the part of the Fund under its control at any particular time; or

(2) Deposit the collection funds, immediately upon receipt, in a bank account in the institution's name—a "lock-box" deposit.

(c) If the institution is unable to collect a payment after following the procedures in sections 674.42–674.45 and paragraphs (a) and (b) of this section, it may refer the NDSL to the Secretary for collection.

(d) (1) An institution must sue a borrower or any proper endorser if collection efforts have failed and it determines that the borrower or endorser—

(i) Has assets that may cover all or most of the outstanding debts;

(ii) Has no known defense;

(iii) Can be located and easily served; and

(iv) Owes more than $500.

(2) The institution may sue the borrower even if the conditions of subparagraph (c)(1) are not met.

(e) If the principal and interest outstanding on a loan are $10 or less, an institution may write it off.

(20 U.S.C. 424, 1087cc and 1087gg)

§ 674.47 Other collection and litigation costs.

(a) The Secretary considers the reasonable costs of carrying out §§ 674.45(a) and 674.46 and telephone costs in §§ 674.44(a), 674.45(b), and 674.46(b) to be "other collection costs" chargeable to the Fund. Collection costs paid by the borrower are NOT chargeable to the Fund.

(b)(1) For audit purposes, an institution must support "other collection costs" with financial statements, e.g., phone and collection agency bills.

(2) A collection agency's statement must list specific amounts collected and the amount it retains.

(c)(1) If an institution performs its own collections, the Secretary considers the institution's actual collection costs, including salaries of its personnel, to be "other collection costs".

(2) However, these costs may not exceed the costs that would be

permitted if the institution used a collection agency.

(d) An institution's reasonable litigation costs, incurred in carrying out this subpart, may be charged to the Fund.

(20 U.S.C. 424 and 1087cc)

§ 674.48 Use of fiscal agent.

(a)(1) An institution is responsible for all decisions in administering an NDSL program, e.g., decisions about collecting, cancelling, or deferring loans.

(2) A fiscal agent may perform only ministerial acts.

(b) A billing service used by an institution to carry out billing procedures under § 674.44—

(1) May not deduct its fees from the amount it receives from borrowers;

(2) May telephone and perform skip-tracing activities to prevent a borrower from defaulting on a loan; and

(3) Must provide the institution with at least a monthly documentation of its charges for skip-tracing activities and telephone calls.

(20 U.S.C. 424 and 1087cc)

§ 674.49 Commonly owned billing service and collection agency.

If an institution uses a billing service to carry out § 674.44 (billing procedures), it may not use a collection agency that—

(a) Owns or controls the billing service;

(b) Is owned or controlled by the billing service; or

(c) Is owned or controlled by the same corporation, partnership, association, or individual that owns or controls the billing service.

(20 U.S.C. 1087cc)

§ 674.50 Bankruptcy of borrower.

(a) An institution must refrain from carrying out this subpart on a loan which has been discharged in bankruptcy.

(b) An institution may not write off a loan until it has received an official notice of the bankruptcy discharge and must keep the notice in the borrower's file to support its writeoff entry.

(c) If an institution receives a repayment from a borrower after a loan has been discharged, it must deposit that payment in its Fund.

(20 U.S.C. 424 and 1087cc)

Subpart D—Loan Cancellation

§ 674.51 Special definitions.

(a) *Academic year or its equivalent for elementary and secondary schools and special education:* One complete school year or two half years from different school years excluding summer sessions that are complete and consecutive and that generally fall within a 12-month period.

(b) *Academic year or its equivalent for institutions of higher education:* A period of time in which a full-time student is expected to complete—

(1) The equivalent of 2 semesters, 2 trimesters; or 3 quarters at an institution using credit hours; or

(2) At least 900 clock hours of training for each program at an institution using clock hours.

(c) *Elementary school:* A school that provides elementary education, including education below grade 1, as determined by—

(1) State law; or

(2) The Secretary, if the school is not in a State.

(d) *Handicapped children:* Children who require special education and related services because they are—

(1) Mentally retarded;

(2) Hard of hearing;

(3) Deaf;

(4) Speech impaired;

(5) Visually handicapped;

(6) Seriously emotionally disturbed;

(7) Orthopedically impaired;

(8) Specific learning disabled; or

(9) Otherwise health impaired.

(e) *Local educational agency:* An agency defined in section 1201(g) of the Act.

(f) *Secondary school:* (1) A school that provides secondary education, as determined by—

(i) State law; or

(ii) The Secretary, if the school is not in a State.

(2) However, State laws notwithstanding, secondary education does not include any education beyond grade 12.

(g) *State education agency:* (1) The State board of education; or

(2) An agency or official designated by the Governor or by State law as being primarily responsible for the State supervision of public elementary and secondary schools.

(h) *Teacher:* (1) A professional who provides direct and personal services to students for their educational development through—

(i) Direct classroom teaching; or

(ii) Non-teaching positions of an educational nature such as a librarian and a guidance counselor.

(2) A supervisor, administrator, researcher, or curriculum specialist is not a teacher unless he or she primarily provides direct and personal services to students.

(3) A teacher in an institution of higher education does not include a person teaching elementary or secondary education unless that person teaches a remedial education program specifically designed to prepare high school graduates for postsecondary education.

(i) *Title I children:* Persons of age 5 through 17 counted under section 111(c) of the Elementary and Secondary Education Act of 1965.

(20 U.S.C. 425, 1087ee, and 1141)

§ 674.52 Cancellation procedures.

(a) *Application for cancellation:* (1) To apply for cancellation, a borrower must complete and file a form, obtained from the lending institution, by the date the institution establishes.

(2) If a borrower fails to file the form on time, the institution must follow the billing procedures in § 674.44 for contacting the borrower.

(3) If the borrower still fails to file the form, the institution may determine that the loan is in default and require immediate repayment of the unpaid balance, accrued interest, and penalty charges.

(b) The institution that makes the loan decides whether a borrower is entitled to cancellation.

(c)(1) An institution may refuse cancellation for simultaneous teaching in two or more schools or institutions if it cannot easily determine that the teaching was full-time.

(2) However, cancellation must be granted if one school official certifies that a teacher worked full-time for a full academic year under his or her supervision.

(20 U.S.C. 425, 1087cc)

§ 674.53 Teacher cancellation—Defense loan.

The following rules apply to Defense loan borrowers:

(a) *Cancellation. Ten percent rate.* (1) An institution must cancel up to 50 percent of a borrower's Defense loan, plus the interest on the unpaid balance, for full-time teaching in—

(i) A public or other nonprofit elementary or secondary school;

(ii) An institution of higher education; or

(iii) An overseas Department of Defense elementary or secondary school.

(2) The cancellation rate is 10 percent of the original loan principal, plus the interest on the unpaid balance, for each complete year, or its equivalent, of teaching.

(b) *Cancellation for full-time teaching in an elementary or secondary school serving low-income students.* (1) The institution must cancel the borrower's entire Defense loan, plus interest on the unpaid balance, for full-time teaching in a public or other nonprofit elementary or secondary school that—

(i) Is in a school district that qualifies for funds in that year under Title I of the Elementary and Secondary Education Act of 1965; and

(ii) The Secretary selects, after determining it to be a school with a high concentration of students from low-income families.

(2) (i) The Secretary will not select more than 25% of the eligible schools in a State for any year unless at least 50% of the enrollment of each school selected is made up of Title I children.

(ii) However, in making this calculation for Defense loans, the Secretary will use a low-income factor of $3,000.

(3) (i) The Secretary selects schools under subparagraph (1) based on a ranking by the State Education Agency.

(ii) The State Education Agency must base its ranking of the schools on objective standards and methods approved by the Secretary. These standards take into account the numbers and percentages of Title I children attending those schools.

(iii) For each academic year, the Secretary will notify participating institutions of the schools selected under this paragraph.

(4) The cancellation rate is 15 percent of the original loan principal, plus the interest on the unpaid balance, for each complete academic year, or its equivalent, of full-time teaching.

(5) Cancellation for full-time teaching under this paragraph is available only for teaching beginning with academic year 1966–67.

(c) *Cancellation for full-time teaching of the handicapped.* (1) The institution must cancel the borrower's entire Defense loan, plus interest, for full-time teaching of handicapped children in a public or other nonprofit elementary or secondary school system.

(2) The cancellation rate is 15 percent of the original loan principal, plus the interest on the unpaid balance, for each complete academic year, or its equivalent, of full-time teaching.

(3) Cancellation for full-time teaching under this paragraph is available only for teaching beginning with the academic year 1967–68.

(20 U.S.C. 425(b)(3))

§ 674.54 Teacher cancellation—Direct loan.

The following rules apply to Direct loan borrowers:

(a) *Cancellation for full-time teaching in an elementary or secondary school serving low-income students.* (1) The institution must cancel the borrower's entire Direct loan, plus the interest on the loan, for full-time teaching in a public or other nonprofit elementary or secondary school that—

(i) Is in a school district that qualifies for funds, in that year, under Title I of the Elementary and Secondary Education Act of 1965; and

(ii) The Secretary selects after determining it to be a school in which at least 30 percent of the school's total enrollment is made up of Title I children.

(2) However, the Secretary will not select more than 50 percent of the schools in that State receiving Title I assistance.

(3) (i) The Secretary selects schools under subparagraph (1) based on a ranking by the State Education Agency.

(ii) The State Education Agency must base its ranking of the schools on objective standards and methods approved by the Secretary. These standards take into account the numbers and percentages of Title I children attending those schools.

(iii) For each academic year, the Secretary will notify participating institutions of the schools selected under this paragraph.

(b) *Cancellation for full-time teaching of the handicapped.* (1) The institution must cancel the borrower's entire Direct loan, plus the interest on the loan, for full-time teaching of handicapped children in a public or other nonprofit elementary or secondary school system.

(c) *Cancellation rates.* (1) To qualify for cancellation under paragraph (a) or (b) (low-income or handicapped), a borrower must teach full-time for a complete academic year, or its equivalent.

(2) Cancellation rates are—

(i) 15 percent of the original loan principal, plus the interest on the unpaid balance, for the first and second years of full-time teaching;

(ii) 20 percent of the original loan principal, plus the interest on the unpaid balance, for the third and fourth years of full-time teaching; and

(iii) 30 percent of the original loan principal, plus the interest on the unpaid balance, for the fifth year of full-time teaching.

(20 U.S.C. 1087ee)

§ 674.55 Cancellation for service in a Head Start program.

(a) An institution must cancel a borrower's entire Direct loan, plus the interest on the unpaid balance, for service as a full-time staff member in a "Head Start" program if—

(1) The program operates for a complete academic year, or its equivalent; and

(2) The borrower's salary does not exceed the salary of a comparable employee working in the local school district.

(b) The cancellation rate is 15 percent of the original loan principal, plus the interest on the unpaid balance, for each complete academic year, or its equivalent, of full-time teaching service.

(c) (1) "Head Start" is a preschool program carried out under section 222(a)(1) of the Economic Opportunity Act of 1964.

(2) "Full-time staff member" is a person regularly employed in a full-time professional capacity to carry out the educational part of a Head Start program.

(20 U.S.C. 1087ee)

§ 674.56 Cancellation for military service.

(a) *Cancellation on a Defense loan.* (1) An institution must cancel up to 30 percent of a Defense loan made after April 13, 1970, for the borrower's full-time active service starting after June 30, 1970, in the U.S. Army, Navy, Air Force, Marine Corps, or Coast Guard.

(2) The cancellation rate is 12½ percent of the original loan principal, plus the interest on the unpaid balance, for each complete year of consecutive service.

(b) *Cancellation on a Direct loan.* (1) An institution must cancel up to 50 percent of a Direct loan for service as a member of the U.S. Army, Navy, Air Force, Marine Corps, or Coast Guard in an area that qualifies for special pay under section 310 of Title 37 of the U.S. Code.

(2) The cancellation rate is 12½ percent of the original loan principal, plus the interest on the unpaid balance, for each complete year of qualifying service.

(c) The Secretary considers a borrower's loan deferment under § 674.34 to run concurrently with any period for which a cancellation for military service is granted.

(20 U.S.C. 425(b)(3) and 1087ee)

§ 674.57 Cancellation for death or disability.

(a) *Death.* An institution must cancel the unpaid balance of a borrower's Defense or Direct loan, including interest, if the borrower dies. The lending institution cancels the loan on the basis of a death certificate or other evidence of death that is conclusive under State law.

(b) *Permanent and total disability.* (1) An institution must cancel the unpaid balance of a Defense or Direct loan, including interest, if the borrower becomes permanently and totally disabled after receiving the loan. The lending institution decides whether to cancel the loan based on medical

evidence supplied by the borrower or his or her representative.

(2) Permanent and total disability is the inability to work and earn money because of an impairment that is expected to continue indefinitely or result in death.

(c) *No Federal reimbursement.* No Federal reimbursement will be made to an institution for cancellation of loans due to death or disability.

(d) *Retroactive.* Cancellation for death or disability applies retroactively to all Defense and Direct loans whenever made.

(20 U.S.C. 425 and 1087dd and section 130(g)(2) of the Educational Amendments of 1976, Pub. L. 94-482)

§ 674.58 No cancellation for prior service—No repayment refunded—Cancellations not considered taxable income.

(a) No portion of a loan may be cancelled for teaching, Head Start, or military service if the borrower's service is performed before the date he or she signs the promissory note.

(b) No repayment may be refunded unless it was made because of institutional error.

(c) The amount of a loan and interest on a loan which is cancelled under Subpart D shall not be considered taxable income for purposes of the Internal Revenue Code of 1954.

(20 U.S.C. 425 and 1087ee; Pub. L. 95-374, Section 448(e), 94 Stat 1443)

§ 674.59 Reimbursement to institutions for loan cancellation.

(a) *Reimbursement for Defense loan cancellation.* (1) The Secretary pays an institution each award year its share of the principal and interest cancelled under § 674.53 or § 674.56(a).

(2) The institution's share of cancelled principal and interest is computed by the following ratio:

$$\frac{I}{I+F}$$

Where I is the institution's capital contribution to the Fund, and F is the Federal capital contribution to the Fund.

(b) *Reimbursement for Direct loan cancellation.* The Secretary pays an institution each award year the principal and interest cancelled from its student loan fund under §§ 674.54, 674.55, and 674.56(b). The institution must deposit this amount in its Fund.

(20 U.S.C. 428 and 1087ee)

Appendix A—Allotment of Funds to States for Fiscal Year 1972

Alabama	$4,329,698
Alaska	145,019
Arizona	3,025,951
Arkansas	2,457,919

Appendix A—Allotment of Funds to States for Fiscal Year 1972—Continued

California	20,988,291
Colorado	4,163,216
Connecticut	3,780,557
Delaware	683,498
District of Columbia	2,167,576
Florida	7,872,888
Georgia	4,819,589
Hawaii	1,137,948
Idaho	1,229,847
Illinois	14,284,302
Indiana	7,488,071
Iowa	5,075,588
Kansas	4,125,949
Kentucky	4,117,819
Louisiana	4,068,504
Maine	1,175,267
Maryland	4,483,198
Massachusetts	10,510,277
Michigan	12,734,267
Minnesota	5,540,128
Mississippi	3,282,109
Missouri	6,666,416
Montana	1,233,094
Nebraska	2,719,537
Nevada	443,641
New Hampshire	1,228,222
New Jersey	8,038,088
New Mexico	1,670,500
New York	23,795,497
North Carolina	6,796,494
North Dakota	1,239,610
Ohio	13,899,998
Oklahoma	4,499,551
Oregon	3,844,044
Pennsylvania	14,223,576
Rhode Island	1,501,212
South Carolina	2,831,065
South Dakota	1,322,457
Tennessee	5,230,199
Texas	15,398,640
Utah	2,576,511
Vermont	901,213
Virginia	4,989,248
Washington	5,811,999
West Virginia	2,665,236
Wisconsin	7,200,662
Wyoming	578,575
Canal Zone	18,533
Guam	80,288
Puerto Rico	2,114,939
Virgin Islands	18,082
Total	298,000,000

Appendix B—Promissory Note

National Direct Student Loan Program

(Bracketed clause may be included at option of institution)

I, _____

promise to pay to _____, (hereinafter called the Lending Institution) located at _____, the sum of the amounts that are advanced to me and endorsed in the Schedule of Advances set forth below [together with all attorney's fees and other costs and charges necessary for the collection of any amount not paid when due].

I further understand and agree that:

General

I. All sums advanced under this note are drawn from a fund created under Part E of Title IV of the Higher Education Act of 1965, hereinafter called the Act and are subject to the Act and the Federal Regulations issued under the Act. The terms of this note must be interpreted in accordance with the Act and Federal Regulations, copies of which are to be kept by the Lending Institution.

Repayment

II. (1) Interest shall accrue from the beginning of the repayment period and shall be at the ANNUAL PERCENTAGE RATE OF THREE PERCENT (3%)* on the unpaid balance except that no interest shall accrue during any period described in paragraph III (3). (A). (B) and (C).

(Bracketed clause must be included if the institution uses paragraph II(4))

(2) [Except as provided in paragraph II (4)] I promise to repay the principal, and the interest which accrues on it, over a period beginning 6 months after the date I cease to be at least a half-time student at an institution of higher education or at a comparable institution outside the United States approved for this purpose by the United States Secretary of Education (hereinafter called the Secretary), and ending, unless paragraph II(3) or III (3) (deferment) applies, 10 years later.

I may, however, request that the repayment period start on an earlier date.

I promise to repay the principal and interest over the course of the repayment period in EQUAL monthly, bimonthly or quarterly installments, as determined by the Lending Institution. However, if I request, repayments may be made in GRADUATED INSTALLMENTS determined in accordance with schedules approved by the Lending Institution and the Secretary. In either case, a schedule of repayment shall be attached to and made part of this note.

(3) Notwithstanding paragraph II(2), if I qualify as a low-income individual during the repayment period, the lending institution may, at my request, extend the repayment period for up to an additional 10 years or adjust any repayment schedule to reflect my income, or both.

[Bracketed paragraphs may be included at option of institution]

[(4) If the repayment schedule established under paragraph II(2) provides for repayment of principal and interest at a rate of less than $30 per month, I shall repay the total amount of this loan plus the interest thereon at the rate of $30 per month, which shall include repayment of principal and interest.

If I receive or have received National Direct or Defense Student Loans from other lending institutions, I shall repay this note at a monthly rate equal to not less than the amount by which $30 exceeds the total monthly rate of principal and interest repaid on the other loans.

A schedule of repayment will be attached to and made part of this note.

The Lending Institution may permit me to pay less than the rate of $30 per month for a period of not more than one year where necessary to avoid hardship to me unless that action would extend the repayment period in paragraph 2 of this article.]

III. This note is also subject to the following conditions:

Prepayment

(1) I may at my option and without penalty prepay all or any part of the principal, plus the accrued interest thereon, at any time. Amounts I repay in the academic year in which the loan was made will be used to reduce the amount of the loan and will not be considered a prepayment. If I repay more

*For loans made after June 30, 1981, the annual percentage rate increases to four percent (4%).

then the amount due for any repayment period, the excess will be used to prepay principal unless I designate it as an advance payment of the next regular installment.

Default

(2)(A) If I fail to meet a scheduled repayment of any installment, the entire unpaid indebtedness including interest due and accrued thereon, plus any applicable penalty charges, will, at the option of the Lending Institution, become immediately due and payable.

(B) Further, I understand that if I default on my loan repayments and the loan is referred to the Secretary for collection, the Secretary may disclose that I have defaulted, along with other relevant information, to credit bureau organizations.

Deferment

(3) Interest will not accrue, and installments need not be paid—

(A) while I am enrolled and in attendance as at least a half-time student at an institution of higher education or at a comparable institution outside the United States approved for this purpose by the Secretary or

(B) for a period not in excess of 3 years during which time I am—

(i) on full-time active duty as a member of the Armed Forces of the United States (Army, Navy, Air Force, Marine Corps, or Coast Guard),

(ii) in service as a Volunteer under the Peace Corps Act, or

(iii) a VISTA volunteer under Title I—Part A of the Domestic Volunteer Service Act,

(iv) a full-time volunteer in a tax-exempt organization performing service comparable to the service performed by Peace Corps or ACTION agency volunteers,

(v) temporarily totally disabled as established by an affidavit of a qualified physician,

(vi) unable to secure employment because I am providing care required by my spouse who is so disabled, or

(vii) an officer on full-time active duty in the Commissioned Corps of the U.S. Public Health Service.

(C) for a period not in excess of two years during which time I am serving in an internship which is required in order that I may receive professional recognition required to begin my professional practice or service.

(D) The Lending Institution may, upon my application, defer or reduce any scheduled repayments if, in its opinion, extraordinary circumstances, such as prolonged illness or unemployment, prevent me from making such repayments. However, interest will continue to accrue.

Cancellation for Teaching

(4) I am entitled to have the entire amount of this loan plus the interest thereon cancelled if I undertake service.

(A) as a full-time teacher in a public or other non-profit elementary or secondary school which is in a school district of a local educational agency which is eligible for funds under Title I of the Elementary and Secondary Education Act of 1965 and which has been designated by the Secretary in accordance with the provisions of Section 466(a)(2) of the Higher Education Act as a school with a high enrollment of students from low-income families, or

(B) as a full-time teacher of handicapped children (including mentally retarded, hard of hearing, deaf, speech impaired, visually handicapped, seriously emotionally disturbed, orthopedically impaired, children with specific learning disabilities, or other health impaired children who by reason thereof require special education and related services) in public or other nonprofit elementary or secondary school system.

This loan will be cancelled at the following rates: 15 percent of the total principal amount of the loan plus interest on the unpaid balance will be cancelled for the first and second complete academic years of that teaching service; 20 percent of the total principal amount plus interest on the unpaid balance for the third and fourth complete academic years of that teaching service; and 30 percent of the total principal amount plus interest on the unpaid balance for the fifth complete academic year of that teaching service.

Head Start Cancellation

(5) I am entitled to have the entire amount of this loan plus the interest thereon cancelled if I undertake service as a full-time staff member in a Head Start program if

(A) that Head Start program is operated for a period which is comparable to a full school year in the locality, and

(B) my salary is not more than the salary of a comparable employee of the local educational agency.

Cancellation will be at the rate of 15 percent of the total principal amount plus the interest on the unpaid balance for each complete school year or the equivalent of service in a Head Start program.

Head Start is a preschool program carried out under section 222(a)(1) of the Economic Opportunity Act of 1964.

Military Cancellation

(6) If I serve as a member of the Armed Forces of the United States, up to 50 percent of the principal amount of this loan plus the interest thereon will be cancelled at the rate of 12½ percent of the total principal amount plus interest on the unpaid balance for each complete year of service in an area of hostilities that qualifies for special pay under section 310 of title 37 of the United States Code.

Death and Disability Cancellation

(7) If I should die or become permanently and totally disabled, the entire amount of this loan plus the interest thereon shall be cancelled.

Address Change

(8) I am responsible for informing the Lending Institution of any change or changes in my address.

Penalty Charge

(Bracketed paragraphs may be included at option of institution)

[(9) If I fail to make timely payment of all or any part of a scheduled installment, or if I am eligible for deferment or cancellation under paragraphs III (3), (4), (5), or (6), but fail to submit the appropriate request on time, I promise to pay the charge assessed against me by the Lending Institution.

No charge may exceed (1) where the loan is repayable in monthly installments, $1 for the first month or part of a month by which the installment or evidence is late, and $2 for each month or part of a month thereafter; or (2) in the case of a loan which is repayable in bimonthly or quarterly installments, $3 and $6, respectively, for each installment interval or part thereof by which the installment or evidence is late.

If the Lending Institution elects to add the assessed charge to the outstanding principal of the loan, it must so inform me before the due date of the next installment.]

Assignment

IV. This note may be assigned by the Lending Institution only (A) to another institution upon my transfer to that institution if that institution is participating in this program (or, if not so participating, is eligible to do so and is approved by the Secretary for that purpose) or (B) to the United States or to an institution approved by the Secretary. The provisions of this note that relate to the Lending Institution shall, where appropriate, relate to an assignee.

Prior Loans

V. I hereby certify that I have listed below all of the National Direct Student Loans (or National Defense Student Loans) I have obtained at other institutions. (If no prior loans have been received, state "None.")

Schedule of National Direct Student Loans and National Defense Student Loans at other institutions

	Amount	Date	Institution
1	$		
2	$		
3	$		
4	$		

VI. Schedule of Advances

	Amount	Date	Signature of maker
1	$		
2	$		
3	$		
4	$		

Signature _____

Date _____, 19__

Permanent address _____

(Street or Box Number, City, State, and Zip Code)

Caveat—This note is to be executed without security and without endorsement, except that if I am a minor and this note would not, under the law of the State in which the Lending Institution is located, create a binding obligation, either security or endorsement may be required. The Lending Institution shall supply a copy of this note to me.

Signature of endorser _____

Date _____, 19__

Permanent Address _____

(Street or Box Number, City, State, and Zip Code)

Appendix C.—Example for Computing Penalty Charges—6 mo

	Jan. 2	Feb. 2	Mar. 2	Apr. 2	May 2	June 2	Total per payment
Monthly:							
1st past due	$1	$1+$2	$3+$2	$5+$2	$7+$2	$9+$2	$11
2d past due		1	1+2	3+2	5+2	7+2	9
3d past due			1	1+2	3+2	5+2	7
4th past due				1	1+2	3+2	5
5th past due					1	1+2	3
6th past due						1	1
Total, all payments							36
Bimonthly:							
1st past due	3		3+3		6+3		9
2d past due			3		3+3		6
3d past due					3		3
Total, all payments							18
Quarterly:							
1st past due	6			6+6			12
2d past due				6			6
Total, all payments							18

Appendix D [Reserved]

2. Part 675 of Title 34 of the Code of Federal Regulations is revised to read as follows:

PART 675—COLLEGE WORK-STUDY AND JOB LOCATION AND DEVELOPMENT PROGRAM

Subpart A—College Work-Study Program

Note: An asterisk (*) indicates provisions that are common to Part 674, 675 and 676. The use of asterisks will assure participating institutions that a provision of one regulation is identical to the corresponding provisions in the other two.

Sec.

675.1 Purpose and identification of common provisions.
675.2 Definitions.
675.3 Allotment and reallotment.
675.4 Allocation, reallocation, and payment to institutions.
675.5 Application.
675.6 Funding procedures.
675.7 Application review—approval of request.
675.8 Institutional agreement.
675.9 Student eligibility.
675.10 Special sessions.
**675.11 Cost of education attendance.
**675.12 Expected family contribution.
*675.13 Approved need analysis systems.
*675.14 Coordination of student financial aid programs, award amount, and overaward.
675.15 Coordination with BIA grants.
675.16 Payments to students.
*675.17 Federal interest in allocated funds.
675.18 Use of funds.
675.19 Fiscal procedures and records.
675.20 Maintenance of effort.
675.21 Transfer of funds.
675.22 Project eligibility.
675.23 Eligible jobs.
675.24 Establishment of wage rates under CWS.
675.25 Earnings applied to cost of attendance.
675.26 CWS Federal share limitations.
675.27 Nature and source of institutional share.
675.28 Community service learning program.

Subpart B—Job Location and Development Program

675.31 Purpose.
675.32 Federal contribution allowed.
675.33 Allowable costs.
675.34 Federal share of allowable costs.
675.35 Institutional share.
675.36 Multi-institutional job location and development project; arrangements with nonprofit organizations.
675.37 Restrictions.
675.38 Agreement.
675.39 Maintenance of effort.
675.40 Procedures and records.
675.41 Termination and suspension.
Appendix A—Allotment of funds to States for fiscal year 1972.
Appendix B—Model off-campus agreement.

Authority: Sec. 441–448 of Pub. L. 89–329, Title IV, 79 Stat. 1219, as amended (42 U.S.C. 2751–2756b), unless otherwise noted.

Subpart A—College Work-Study Program

§ 675.1 Purpose and identification of common provisions.

(a) The College Work-Study Program (CWS) provides part-time employment to students attending institutions of higher education who need the earnings to help meet their costs of postsecondary education.

(b) Provisions in these regulations that are common to all campus-based regulations are identified with an asterisk.

(42 U.S.C. 2751–2756b unless otherwise noted)

§ 675.2 Definitions.

The following definitions are contained in Subpart A of the Student Assistance General Provisions, 34 CFR Part 668:

Ability to benefit;

Institution of higher education (including public or private nonprofit institution of higher education, proprietary institution of higher education, and postsecondary vocational institution);

One-year training program;

Recognized equivalent of a high school diploma; and

Six-month training program.

Other definitions used in this part are:

**Academic year:* A period of time in which a full-time student is expected to complete—

(a) The equivalent of at least 2 semesters, 2 trimesters, or 3 quarters at an institution using credit hours; or

(b) At least 900 clock hours of training for each program at an institution using clock hours.

Act: Title IV–C of the Higher Education Act of 1965 (HEA).

**Award year:* The period of time between July 1 of one year and June 30 of the following year.

**Campus Based Programs:* (a) The National Direct Student Loan Program (NDSL–34 CFR Part 674);

(b) The College Work-Study Program (CWS–34 CFR Part 675); and

(c) The Supplemental Educational Opportunity Grant Program (SEOG–34 CFR Part 676).

**Clock Hour:* The equivalent of—

(a) A 50 to 60 minute class, lecture, or recitation; or

(b) A 50 to 60 minute faculty supervised laboratory, shop training, or internship.

Cooperative Education Program: A program authorized by Title VIII of the Higher Education Act.

**Dependent student:* A student who does not qualify as an independent student (see independent student).

Eligible program: A program of education or training that—

*(a) Admits as regular students only persons who—

(1) Have a high school diploma;

(2) Have a General Education Certificate (GED) or a State certificate received after passing a State authorized examination which the State recognizes as the equivalent of a high school diploma; or

(3) Are beyond the age of compulsory school attendance in the State in which the institution is located, and have the ability to benefit from the education or training offered.

(b)(1) Leads to a bachelor, associate, undergraduate, graduate or professional degree;

(2) Is at least a 2 year program that is acceptable for full credit toward a bachelor degree;

(3) Is at least a 1 year program leading to a certificate or degree that prepares a student for gainful employment in a recognized occupation; or

(4) Is, for a proprietary institution or a postsecondary vocational institution, at least a six-month program leading to a certificate or degree which prepares students for gainful employment in a recognized occupation.

**Expected family contribution:* The amount a student and his or her spouse and family are expected to pay toward his or her cost of attendance.

**Financial need:* The difference between a student's cost of attendance and his or her expected family contribution.

Graduate or professional student: A student enrolled in an academic program of study above the baccalaureate level at an institution of higher education, including—

(a) A program leading to a first professional degree if the institution requires at least 3 years of study at the college level for entrance into the program; and

(b) The fifth and later years of any program requiring more than 4 years of study at the college level.

**Guaranteed Student Loan Program (GSL):* The student loan program authorized by Title IV–B of the HEA.

(20 U.S.C. 1071 et seq.)

Half-time graduate or professional student: An enrolled graduate or professional student who is carrying a half-time academic work load as determined by the institution according to its own standards and practices.

**Half-time undergraduate student:* An enrolled undergraduate student who is carrying a half-time academic work load as determined by the institution according to its own standards and practices. However, the institution's half-time standards must equal or exceed the equivalent of the following minimum requirements:

(a) 6 semester hours or quarter hours per academic term in an institution using standard semester, trimester, or quarter systems.

(b) 12 semester hours or 18 quarter hours per academic year for an institution using credit hours to measure progress, but not using a standard semester, trimester, or quarter system, or the prorated equivalent for a program of less than 1 year.

(c) 12 clock hours per week for an institution using clock hours.

(d) 12 clock hours of preparation per week for a student enrolled in a program of study by correspondence.

Independent student (effective through June 30, 1981):

(a) A student who for 1979 and 1980—

(1) Has not been claimed and will not be claimed as an exemption for Federal income tax purposes by his or her parent(s);

(2) Has not received and will not receive financial assistance of more than $750 in each year from his or her parent(s); and

(3) Has not lived and will not live for more than six weeks in each year in the home of his or her parent(s).

(b) If a student's mother and father are divorced or separated, only one parent will be considered to be the parent of the student for purposes of applying the criteria in paragraph (a) of this section.

To determine that parent—

(1) Choose the parent with whom the student resided for the greater portion of the 12 month period preceding the date of application to have an expected family contribution determined under an approved need analysis system.

(2) If the preceding criterion does not apply, choose the parent who provided the greater portion of the student's support for the 12 month period preceding the date of application to have an expected family contribution determined under an approved need analysis system.

(3) If neither of the preceding criteria apply, choose the parent who provided the greater support for the period commencing January 1 of the calendar year which immediately precedes the first calendar year of the award period and ending 12 months prior to the date of application to have an expected family contribution determined under an approved need analysis system.

(c) If either of the parents have died, the institution shall consider only the surviving parent as the parent for purposes of applying the criteria in paragraph (a) of this definition. If both parents have died, the institution shall not consider either parent.

**Independent student* (effective July 1, 1981 through June 30, 1982):

(a) A student who for 1980 and 1981—

(1) Has not been claimed and will not be claimed as an exemption for Federal income tax purposes by his or her parent(s);

(2) Has not received and will not receive financial assistance or more than $1,000 in each year from his or her parent(s); and

(3) Has not lived and will not live for more than six weeks in each year in the home of his or her parent(s).

(b) If a student's mother and father are divorced or separated, only one parent will be considered to be the parent of the student for purposes of applying the criteria in paragraph (a) of this section. To determine that parent—

(1) Choose the parent with whom the student resided for the greater portion of the 12 month period preceding the date of application to have an expected family contribution determined under an approved need analysis system.

(2) If the preceding criterion does not apply, choose the parent who provided the greater portion of the student's support for the 12 month period preceding the date of application to

have an expected family contribution determined under an approved need analysis system.

(3) If neither of the preceding criteria apply, choose the parent who provided the greater support for the period commencing January 1 of the calendar year which immediately precedes the first calendar year of the award period and ending 12 months prior to the date of application to have an expected family contribution determined under an approved need analysis system.

(c) If either of the parents have died, the institution shall consider only the surviving parent as the parent of the student. If both parents have died, the institution shall not consider either parent.

**Legal guardian:* An individual appointed by a court to be a legal guardian of a person and who is specifically required by the court to use his or her financial resources to support that person.

National Direct Student Loan Program (NDSL): The student loan program authorized by Title IV–E of the HEA.

(20 U.S.C. 1087aa–1087ii)

**National of the United States:* A citizen of the United States or a noncitizen who owes permanent allegiance to the United States.

(8 U.S.C. 1101(a)(22))

**Nonprofit institution:* An institution owned and operated by one or more nonprofit corporations or associations where no part of the net earnings of the institution benefits any private shareholder or individual.

(20 U.S.C. 1141(c))

**Parent:* Parent means the student's mother, father, or legal guardian. An adoptive parent is considered to be the student's mother or father.

**Parent Loans for Undergraduate Students Program (PLUS):* The parent loan program authorized by Title IV–B of the HEA.

**Payment period:* A semester, trimester, or quarter. For an institution not using those academic periods, it is the period between the beginning and the midpoint or between the midpoint and the end of an academic year. A payment period is not the payroll period discussed in § 675.13.

**Pell Grant Program:* The grant program, formerly known as the Basic Educational Opportunity Grant Program, authorized by Title IV A–1 of the HEA.

**Regular student:* A person who is enrolled or accepted for enrollment, in an eligible program at an institution of higher education for the purpose of obtaining a degree or certificate.

**Secretary:* The Secretary of the Department of Education, or an official or employee of the Department acting for the Secretary under a delegation of authority.

**State:* The States of the Union, American Samoa, the Commonwealth of Puerto Rico, the District of Columbia, Guam, the Trust Territory of the Pacific Islands, the Virgin Islands, and the Northern Mariana Islands.

(20 U.S.C. 1141(b))

**State Student Incentive Grant Program (SSIG):* The program authorized by Title IV–A–3 of the HEA.

(20 U.S.C. 1070c et seq.)

Supplemental Educational Opportunity Grant Program (SEOG): The grant program authorized by Title IV–A–2 of the HEA.

(20 U.S.C. 1070b *et. seq.)*

(42 U.S.C. 2751–2756b, unless otherwise noted)

§ 675.3 Allotment and reallotment.

(a) *Initial allotment.* The Secretary allots one percent of the CWS appropriation according to section 442(a) of the Act. The Secretary allots an additional amount according to section 442(f) of the Act.

(b) *Initial allotment to States.* (1) The Secretary allots 90% of the amount remaining according to the Act, 442(b). (If necessary the Secretary allots additional amounts to each State to make that State's allotment equal to its allotment for fiscal year 1972. The 1972 allotments are shown in Appendix A.)

(2) The Secretary allots the remaining amount so that each institution in each State receives the CWS funds computed under §§ 675.6 or 675.7.

(c) *Reallotment.* (1) The Secretary reallots the amount of a State's allotment that exceeds the approved requests of institutions in that State.

(2) The Secretary reallots those funds among the remaining States according to institutional need for CWS funds as computed under §§ 675.6 or 675.7.

(42 U.S.C. 2752)

§ 675.4 Allocation, reallocation, and payment to institutions.

(a) *Definition.* As used in this section and in section 675.6, "current year" means the 12-month period ending on the June 30 immediately following the closing date for filing a CWS application.

(b) *Allocation.* The Secretary distributes CWS funds according to §§ 675.6 and 675.7.

(c) *Reallocation.* (1)(i) If an institution anticipates not using all its allocated funds by the end of an award year and if it does not wish to carry those funds forward into the next award year, it must specify the anticipated unused amount to the Secretary, who reduces the institution's allocation accordingly.

(ii) Other institutions may apply for those funds on the form and at the time specified by the Secretary.

(iii) The Secretary distributes those funds to applicant institutions in accordance with paragraph (c)(2) of this section.

(2)(i) If the funds that become available under paragraph (c)(1) of this section come from the State's initial allotment under § 675.3(b)(1), the Secretary reallocates those funds equitably to other institutions in that State. The Secretary reallots those funds that are not needed to maintain the State's initial allotment, and any funds that do not come from that initial allotment, in accordance with paragraphs (c)(2) (ii), (iii), (iv), and (v) of this section.

(ii) The Secretary reallocates fifty (50) percent of any remaining funds to eligible applicant institutions to initiate, improve, or expand cooperative education programs conducted in accordance with title VIII of the HEA.

The Secretary distributes these funds to eligible applicant institutions according to the following formula:

An eligible applicant institution's share = The number of students assisted under the cooperative education program authorized by title VIII for the fiscal year enrolled in the eligible institution which applied for reallocated funds./The number of such students for such year enrolled in all eligible institutions which applied for reallocated funds. × Funds available for distribution.

(iii) The Secretary reallocates the remaining fifty (50) percent to institutions whose students have suffered financial hardships as a result of natural disasters within the preceding 12 months.

(iv) If any funds remain, the Secretary then increases awards to institutions whose awards are less than their national fair share determined under § 675.6. The Secretary calculates each applicant's increase as follows:

Institution's remaining shortfall/remaining shortfall of all applicants for reallocation × remaining amount available for reallocation

(An institution's remaining shortfall is the difference between its national fair share (see § 675.6(g)(4)) and its award calculated in § 675.6 and this section through paragraph (c)(2)(iii).)

(v) If any funds still remain, the Secretary reallocates the funds in a manner that best carries out the purposes of this part.

(d) *Payments to institutions.* The Secretary allocates funds for a specific period of time. The Secretary pays funds to an institution in advance or by reimbursement. The Secretary bases the amount to be paid on periodic fiscal reports.

(42 U.S.C. 2752 and 2756.)

§ 675.5 Application.

(a) To participate in the CWS program, an institution must file an application with the Secretary before an annually established closing date.

(b) The application must be on a form approved by the Secretary and contain information needed to determine the institution's allocation under § 675.6 and 675.7.

(c) The application must contain the information needed to determine whether the institution is complying with the maintenance of effort requirements under § 675.20.

(42 U.S.C. 2756)

§ 675.6 Funding procedure.

(a) *General.* (1) Each institution applying for CWS funds receives an amount computed in the following three stages:

(i) A "conditional guarantee";

(ii) A State increase based on its "fair share" of the State apportionment; and

(iii) A national increase based on its "fair share" of the national appropriation.

(2) Definitions—As used in this section—

(i) "Base year" means the 12-month period ending on the June 30 preceding the closing date for filing a CWS application;

(ii) "Current year" is defined in § 675.4.

(b) *Conditional guarantee.* The Secretary computes a conditional guarantee in the following way:

(1) An institution that participated in the CWS program in the base year receives a conditional guarantee equal to its 1979–80 award year expenditures unless it suffers a substantial decline in enrollment.

(2) An institution applying to participate in the CWS program for the first time receives a conditional guarantee equal to the greater of—

(i) $5,000; or

(ii) 90 percent of the average CWS base year expenditure per student in eligible institutions offering comparable programs of instruction, multiplied by the applicant institution's base year enrollment.

(3) An institution applying to participate in the CWS program for the second time receives a conditional guarantee equal to the greatest of—

(i) $5,000;

(ii) 90 percent of the average CWS base year expenditure per student in eligible institutions offering comparable programs of instruction, multiplied by the applicant institution's base year enrollment; or

(iii) 90 percent of its current year allocation.

(c) *Self-help need of an institution.* (1) The Secretary allocates additional funds to an institution under paragraph (f) (State increase) and paragraph (g) (National increase) based in part on the institution's self-help need. Self-help need is the need for funds from work and loan sources. The institution's self-help need is the sum of the self-help need of its eligible graduate students and the self-help need of its eligible undergraduate students.

(2) The Secretary calculates the self-help need of an institution's eligible graduate students in accordance with paragraph (d) of this section and the self-help need of its eligible undergraduate students in accordance with paragraph (e) of this section.

(3) As used in paragraphs (d) and (e) of this section:

(i) *Average cost of attendance* means the attendance costs for undergraduate and graduate students. These costs include tuition, fees, standard living expenses, books, and supplies. (The institution reports its total tuition and fee revenues, and the Secretary uses this amount to determine the average cost of attendance.)

(ii) *Eligible students* means for award year 1981–82 students who—

(A) Were enrolled as regular students in good standing on at least a half-time basis in an eligible program during the base year;

(B) Met program regulation requirements for citizenship or residency in the United States for the base year; and

(C) Applied for financial assistance for the base year, and for whom the institution has on file taxable and non-taxable income data and all the other information necessary to perform a needs analysis using a methodology approved by the Secretary.

(d) *Self-help need of eligible graduate students.* To determine the self-help need of an institution's eligible graduate students, the Secretary—

(1) Establishes various income categories for dependent and independent graduate students;

(2) Establishes an expected family contribution (EFC) for each income category of dependent and independent graduate students, using a need analysis method approved under § 675.12;

(3) Determines the average cost of attendance for all graduate students;

(4) Subtracts from the average cost of attendance for all graduate students, the computed EFC for each income category of dependent students and each income category of independent students. However, the average cost of attendance minus the EFC for any income category may not be less than zero;

(5) Multiplies those amounts by the number of eligible students in each category;

(6) Adds the amounts obtained for each income category of dependent students and each income category of independent students; and

(7) Totals those two amounts.

(e) *Self-help need of eligible undergraduate students.* To determine the self-help need of an institution's eligible undergraduate students, the Secretary—

(1) Establishes various income categories for dependent and independent undergraduate students;

(2) Establishes an EFC for each income category of dependent and independent undergraduate students, using a need analysis method approved under § 675.13;

(3) Computes 25 percent of the average cost of attendance for all undergraduate students;

(4) Multiplies the number of eligible dependent students in each income category by the lesser of—

(i) 25 percent of the average cost of attendance for all undergraduate students; or

(ii) The average cost of attendance for all undergraduate students minus the EFC determined under paragraph (e)(2) of this section for that income category. However, the average cost of attendance minus the EFC may not be less than zero;

(5) Adds the amounts obtained for each income category of dependent students;

(6) Multiplies the number of eligible independent students in each income category by the lesser of—

(i) 25 percent of the average cost of attendance of all undergraduate students; or

(ii) The average cost of attendance for all undergraduate students minus the EFC determined under paragraph (e)(2) of this section for that income category. However, the average cost of attendance minus the EFC may not be less than zero;

(7) Adds the amounts obtained for each income category of independent students; and

(8) Adds the amounts obtained under paragraphs (e) (5) and (7) of this section.

(f) *State increase.* (1) For any year the Secretary increases awards to institutions in a State ("State increase") if the combined conditional guarantees of all institutions in that State are less than the State's allotment under § 675.3.

(2) The Secretary calculates an institution's State increase according to the following formula—

Institution's State increase = its State shortfall/State shortfalls of all institutions in State × CWS funds available for State shortfall

(3) As used in the formula in paragraph (f)(2) of this section—

(i) "CWS funds available for State shortfall" is calculated by subtracting from the State allotment, the conditional guarantees of all institutions in the State.

(ii) An institution's "State shortfall" is calculated by subtracting from an institution's State fair share its conditional guarantee.

(iii) An institution's "State fair share" is calculated as follows—

Institution's State fair share = its self-help need/self-help need of all institutions in the State applying for CWS funds × State allotment for CWS

(g) *National increase.* (1) For any year the Secretary will further increase awards to institutions ("national increase") if the sum of the conditional guarantees and State increases awarded to institutions is less than the CWS appropriation for that year.

(2) The Secretary calculates an institution's national increase according to the following formula—

Institution's national increase = its national shortfall/national shortfall of all institutions × CWS funds available for national shortfall

(3) As used in the formula in paragraph (g)(2) of this section—

(i) "CWS funds available for national shortfall" is calculated by subtracting from the CWS appropriation the conditional guarantees and State increases of all institutions.

(ii) An institution's national shortfall is calculated by subtracting from its "national fair share", its conditional guarantee and State increase.

(4) An institution's "national fair share" is calculated as follows—

Institution's national fair share = its self-help need/self-help need of all institutions applying for CWS × CWS appropriation

(h) No institution may receive more CWS funds than it requests.

(42 U.S.C. 2756)

The following charts show the income categories and calculations for eligible graduate students and for eligible undergraduate students:

Determination of Self-Help Need for Eligible Dependent Graduate Students

1 Income	2 Expected family contribution	3 Average cost	4 Average cost less expected family contribution	5 Number of eligible students	6 Self-help need, col. 4 × col. 5

Determination of Self-Help Need for Eligible Dependent Graduate Students

0 to $2,999					
$3,000 to $5,999					
$6,000 to $8,999					
$9,000 to $11,999					
$12,000 to $14,999					
$15,000 to $17,999					
$18,000 to $20,999					
$21,000 to $23,999					
$24,000 to $26,999					
$27,000 to $29,999					
$30,000 to $32,999					
$33,000 to $35,999					
$36,000 to $38,999					
$39,000 to $41,999					
$42,000 to $44,999					
$45,000 and over					
7 Total self-help need for dependent graduate students					$

Determination of Self-Help Need for Eligible Independent Graduate Students

0 to $999					
$1,000 to $1,999					
$2,000 to $2,999					
$3,000 to $3,999					
$4,000 to $4,999					
$5,000 to $5,999					
$6,000 to $6,999					
$7,000 to $7,999					
$8,000 to $8,999					
$9,000 to $9,999					
$10,000 to $10,999					
$11,000 to $11,999					
$12,000 to $12,999					
$13,000 to $13,999					
$14,000 to $14,999					
$15,000 and over					
7 Total self-help need for independent graduate students					$

Summary

1 Total self-help need for dependent graduate students	$
2 Total self-help need for independent graduate students	$
3 Total self-help need for all graduate students (1 + 2)	$

Determination of Self-Help Need for Eligible Dependent Undergraduate Students

1 Income	2 Expected family contribution	3 25 pct × average cost	4 Average cost less expected family contribution	5 Number of eligible students	6 Need: Lesser of col. 3 × col. 5 or col. 4 × col. 5
0 to $2,999					
$3,000 to $5,999					
$6,000 to $8,999					
$9,000 to $11,999					
$12,000 to $14,999					
$15,000 to $17,999					
$18,000 to $20,999					
$21,000 to $23,999					
$24,000 to $26,999					
$27,000 to $29,999					
$30,000 to $32,999					
$33,000 to $35,999					
$36,000 to $38,999					
$39,000 to $41,999					
$42,000 to $44,999					
$45,000 and over					
7 Total self-help need for dependent undergraduate students					$

Determination of Self-Help Need for Eligible Independent Undergraduate Students

0 to $999					
$1,000 to $1,999					
$2,000 to $2,999					
$3,000 to $3,999					
$4,000 to $4,999					
$5,000 to $5,999					
$6,000 to $6,999					
$7,000 to $7,999					
$8,000 to $8,999					
$9,000 to $9,999					
$10,000 to $10,999					
$11,000 to $11,999					
$12,000 to $12,999					
$13,000 to $13,999					
$14,000 to $14,999					
$15,000 and over					
7 Total self-help need for independent undergraduate students					$

Summary

1 Total self-help need for dependent undergraduate students	$
2 Total self-help need for independent undergraduate students	$
3 Total self-help need for all undergraduate students (1 + 2)	$

§ 675.7 Application review—approval of request.

(a) An institution may request a review of the amount it is scheduled to receive under § 675.6.

(b) A National Review Panel appointed by the Secretary reviews each institution's request. The panel consists of student financial aid administrators and Education Department personnel.

(c) In setting an award amount, the Secretary considers the panel's recommendations and its reasons for the recommendations.

(d) The Secretary sets an award amount based on procedures in § 675.6 and the review panel's recommendations.

(42 U.S.C. 2756)

§ 675.8 Institutional agreement.

To participate in the CWS program, an institution of higher education must enter into an agreement with the Secretary. The agreement provides that the institution will—

(a) Use the funds it receives solely for the purposes specified in this part;

(b) Administer the CWS program in accordance with The Act, the provisions of this part and the Student Assistance General Provisions, 34 CFR Part 668;

(c) Make non-CWS institutional jobs reasonably available to the extent of available funds to all students in the institution who want to work; and

(d) Award CWS employment, to the maximum extent practicable, which will complement and reinforce each recipient's educational program or career goals.

(42 U.S.C. 2753 and 20 U.S.C. 1094)

§ 675.9 Student eligibility.

(a) *Eligibility.* A student at an institution of higher education is eligible for part-time employment under CWS if the student—

*(1) Is a regular student;

(2) Is enrolled or accepted for enrollment in an eligible program as a graduate or undergraduate student at that institution;

*(3) (i) Is a U.S. citizen or National;

(ii) Is a permanent resident of the U.S.;

(iii) Provides evidence from the Immigration and Naturalization Service that he or she is in the United States for other than a temporary purpose with the intention of becoming a citizen or permanent resident; or

(iv) Is a permanent resident of the Trust Territory of the Pacific Islands or the Northern Mariana Islands;

*(4) Has financial need;

*(5) Is maintaining satisfactory progress in the course of study he or she is pursuing according to the standards and practices of that institution;

*(6) Does not owe a refund on a Pell Grant, Supplemental Grant, or State Student Incentive Grant received to meet the cost of attending that institution; and

*(7) Is not in default on any National Defense/Direct Student Loan, Guaranteed Student Loan, or Parent Loans for Undergraduate Students received to meet the cost of attending that institution.

*(b) *Member of a religious order—financial need.* The Secretary considers that a member of a religious order (an order, community, society, agency, or organization) who is pursuing a course of study at an institution of higher education has no financial need if that religious order—

(1) Has as its primary objective the promotion of ideals and beliefs regarding a Supreme Being;

(2) Requires its members to forego monetary or other support substantially beyond the support it provides; and

(3) (i) Directs the member to pursue the course of study; or

(ii) Provides subsistence support to its members.

(c) *Institutional responsibility for determining eligibility.* The institution is responsible for determining the eligibility of the students participating in its program whether the students work on- or off-campus.

(d) *Selection.* (1) An institution may use not more than 10 percent of its allocation to pay the compensation of

eligible students who are enrolled as less than half-time students.

(2) An institution must make employment under CWS reasonably available (to the extent of available funds) to all eligible students who demonstrate need.

(3) The institution's selection procedures must be—

(i) Uniformly applied;

(ii) In writing; and

(iii) Maintained in the files of the student financial assistance office.

(4) The institution must maintain on file all CWS employment applications for the period specified in § 675.19(c)(2).

(e) *Determination of satisfactory progress.* (1) If an institution determines at the beginning of a payment period that a student is not maintaining satisfactory progress, but reverses itself BEFORE the end of the payment period, the institution may give a CWS job to the student for the entire period.

(2) If an institution determines at the beginning of a payment period that a student is not maintaining satisfactory progress, but reverses itself AFTER the end of the payment period, the institution may NOT provide the student employment for that period OR make adjustments in subsequent financial aid payments to compensate for the loss of aid for that period.

(f) *Overpayment of grants.* Conditions under which an institution may allow a student who is overpaid a grant to continue his or her CWS job:

(1) *Overpayment of a Pell Grant.* If an institution makes an overpayment of a Pell Grant to a student, it may continue to employ that student if—

(i) The student is otherwise eligible; and

(ii) It can eliminate the overpayment in the award year in which it occurred by adjusting the subsequent Pell Grant payments for that award year.

(2) *Overpayment of a Pell Grant due to institutional error.* If the institution makes an overpayment of a Pell Grant as a result of its own error and cannot correct it as specified in subparagraph (1), it may continue to make payments to that student if the student—

(i) Is otherwise eligible; and

(ii) Acknowledges in writing the amount of overpayment and agrees to repay it in a reasonable period of time.

(3) *Overpayment of an SEOG.* An institution may continue to employ a student who receives an overpayment on an SEOG if—

(i) The student is otherwise eligible; and

(ii) It can eliminate the overpayment by adjusting financial aid payments (other than Pell Grants) in the same award year in which the overpayment occurred.

(4) *Definition.* Overpayment of a grant means that a student's grant payments are greater than the amount he or she is entitled to receive.

(g) *Default on loans.* Conditions under which an institution may provide CWS employment to a student who is in default on loans made for attendance at that institution:

(1) *Guaranteed loan and Parent Loans for Undergraduate Students (PLUS).* An institution may provide CWS employment to a student who is in default on a Guaranteed Student Loan or a PLUS if the Secretary (for a Federally insured loan) or a guarantee agency (for a loan insured by that guarantee agency) determines that the student has made satisfactory arrangements to repay the defaulted loan.

(2) *National Defense/Direct Student Loan.* An institution may provide CWS employment to a student who is in default on a National Defense/Direct Student Loan made at that institution if the student has made arrangements, satisfactory to the institution, to repay the loan.

(h) *Bankruptcy.* The Secretary considers a National Defense Student Loan, a National Direct Student Loan, a Guaranteed Student loan, or a PLUS that is discharged in bankruptcy to be in default for purposes of this section.

(i) *GSL/PLUS—Reliance on student's statement.* An institution, in determining whether a student is in default on a loan made under the Guaranteed Student Loan Program, or the PLUS Program, may rely upon the student's written statement that he or she is not in default unless the institution has information to the contrary.

(42 U.S.C. 2753; 20 U.S.C. 1091)

§ 675.10 Special sessions.

(a) During a special session (e.g., summer school) or during a full-time work period of a cooperative education program, a student is eligible for employment under CWS if he or she—

(1) Is otherwise eligible (see § 675.9); and

(2)(i) Was enrolled at that institution during the preceding term and will complete his or her course of study during the special session; or

(ii) Has been accepted for the subsequent term.

(b) The Secretary considers a student to be accepted for the subsequent term if the student will be studying in an eligible program of study abroad.

(c)(1) If an institution provides CWS employment to a student during a special session when the student was not enrolled during the preceding term, it must maintain a written record demonstrating—

(i) That it accepts the student for the subsequent term; and

(ii) That the student accepts its offer.

(2) The institution may not provide CWS employment to a student if it believes the student does not intend to enroll in the subsequent term.

(3) The institution must immediately terminate a student's employment if it becomes aware after employment begins that the student does not intend to enroll in the subsequent term.

(42 U.S.C. 2753)

***§ 675.11 Cost of attendance.**

(a) A student's cost of attendance includes—

(1) Tuition and fees normally assessed a full-time student at the institution at which the student is in attendance;

(2) An allowance for books, supplies, transportation, and miscellaneous personal expenses;

(3) An allowance for room and board costs incurred by the student which—

(i) Beginning in academic year 1981–82 shall be an allowance of not less than $1,100 for a student without dependents residing at home with parents;

(ii) For students without dependents residing in institutionally owned or operated housing, shall be a standard allowance determined by the institution based on the amount normally assessed most of its residents for room and board;

(iii) For all other students without dependents shall be a standard allowance determined by the institution based on the expenses reasonably incurred by the students for room and board; and

(iv) For students with dependents, shall be an allowance based on the expenses reasonably incurred by the students for room and board;

(4) For a student engaged in a program of study by correspondence, only tutition and fees and, if required, books and supplies, and travel and room and board costs incurred specifically in fulfilling a required period of residential training;

(5) For a student enrolled in an academic program which normally includes a formal program of study abroad, reasonable costs associated with that study;

(6) For a student with dependent children, an allowance based on the expenses reasonably incurred for child care; and

(7) For a handicapped student, an allowance for those expenses related to his or her handicap, including special services, transportation, equipment and supplies that are reasonably incurred

and not provided for by other assisting agencies.

(b) *Adjustments.* The institution, in individual cases, may adjust the cost of attendance if—

(1) The financial aid administrator believes the cost of attendance determined in accordance with paragraph (a) does not accurately reflect the student's actual cost of attendance; and

(2) The institution documents all adjustments in writing with an accompanying explanation and makes them part of the institution's records.

(20 U.S.C. 1089(d))

***§ 675.12 Expected family contribution.**

(a) *Dependent students.* In determining the amount a dependent student and his or her spouse and parents are expected to contribute to the student's cost of attendance, the financial aid administrator must consider—

(1) Any serious illness in the family. (Family members include the student, the student's parents and spouse, and any other persons the parents may claim as exemptions under the Internal Revenue Code);

(2) The number of the parents' dependent children;

(3) The number of the parents' dependent children attending institutions of higher education;

(4) Tuition costs of dependent children attending elementary and secondary schools; and

(5) Any other circumstances that could affect the ability of the student, the student's spouse, and the student's parents to contribute to his or her cost of attendance.

(b) *Independent students.* In determining the amount an independent student and spouse are expected to contribute to the student's cost of attendance, the financial aid administrator must consider—

(1) Any serious illness in the family. (Family members include the student, his or her spouse, and any other persons the student or spouse may claim as exemptions under the Internal Revenue Code);

(2) The number of the student's dependent children;

(3) The number of the student's dependent children attending institutions of higher education;

(4) Tuition costs of dependent children attending elementary and secondary schools; and

(5) Any other circumstances that could affect the ability of the student or spouse to contribute to the student's cost of attendance.

(c) *Special determination of dependent student-parent relationship.* (1) The student financial aid administrator must determine whether the relationship between a student and his or her parents makes it unreasonable to expect the parents to contribute to the student's cost of attendance, regardless of their ability to do so, if requested by a student who does not—

(i) Live with his or her parents;

(ii) Visit his or her parents for periods longer than typical for other adult family members; or

(iii) Receive gifts from his or her parents more valuable than those typically given to other adult nondependent offspring.

(2) Before determining that it is unreasonable for a parent of a dependent student to contribute to the student's attendance costs, the financial aid administrator must determine whether the student's parents are, in fact, willing to contribute toward those costs.

(3) The student financial aid administrator must make that determination part of the institution's written record.

(d) *Native American students.* To determine a Native American's expected family contribution, an institution may not consider the following as income or assets of the student or his or her family:

(1) Awards made under the Distribution of Judgment Funds Act (25 U.S.C. 1401 et seq.) or the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.).

(2) Property that may not be sold or encumbered without the consent of the Secretary of the Interior.

(3) Any other property held in trust for the student or his or her family by the U.S. Government.

(e) *Annual determinations.* An institution must determine a student's need at least annually.

(42 U.S.C. 2753)

***§ 675.13 Approved need analysis systems.**

(a) An institution must use a Secretary approved need analysis system or calculation method in complying with the requirements in § 675.12 (expected family contribution).

(b) *Preapproved systems for dependent students.* The Secretary has approved the following systems for dependent students:

(1) The method of computing an expected family contribution used in the Pell Grant program (34 CFR Part 690).

(2) The income tax system if adjusted to reflect the number of the parents' dependent children who are attending institutions of higher education. The expected family contribution produced under this system is the sum of—

(i) The money the student is reasonably able to contribute;

(ii) The amount of Federal income tax paid by the student's parents;

(iii) 5% of the parents' net assets in excess of $17,000 if there are no farm or business assets; or

(iv) 5% of the parents' net assets in excess of $50,000 if there are farm and business assets. However, no more than $17,000 may be deducted for assets other than farm and business assets.

(c) *Criteria for other systems for dependent students.* (1) The Secretary approves other need analysis systems for dependent students that are properly submitted (see paragraph (c)), if the system produces expected family contribution figures that—

(i) Increase incrementally as the parents' financial strength, measured in constant dollars, increases;

(ii) Are equal for families of equal financial strength; and

(iii) Are within $50 of the expected family contribution figures in 75% of the sample cases supplied by the Secretary.

(2) The Secretary computes the sample cases by:

(i) Deducting from the sum of the parents' adjusted gross income and nontaxable income—

(A) The amount of Federal income taxes and social security taxes;

(B) An 8% allowance on total income for State and local taxes; and

(C) A family maintenance allowance (excluding the student during the academic year) using Department of Labor estimates at a low standard of living;

(ii) Adding to this remainder, 12% of the net market value of the parents' assets, after deducting a standard asset reserve; and

(iii) Applying a rate schedule that the Secretary will publish annually with the sample cases.

(3)(i) In developing sample cases, the Secretary selects cases where the main wage earner is 45 years of age.

(ii) The Secretary does not select cases that involve medical and dental expenses, casualty and theft losses, housekeeping allowances, farm or business assets, more than one family member attending a postsecondary institution as an undergraduate, social security or veteran's benefits, or any unusual circumstances.

(4) In comparing figures from systems submitted for approval with figures from sample cases, the Secretary treats an expected parental contribution of less than zero as zero.

(5) In order to insure measurement in constant dollars, the Secretary revises

sample case figures for inflation annually by adjusting—

(i) Deductions for family maintenance;

(ii) The standard deduction from assets; and

(iii) The rate of contribution from income and assets;

(d) *Systems for independent students.* The Secretary approves the following systems for independent students:

(1) The method of computing an expected family contribution used in the Pell Grant program (34 CFR Part 690).

(2) The systems of need analysis for independent students published by those organizations approved for dependent students under paragraph (c).

(e) *Application procedures for system approval.* (1) An organization or individual wishing to have a system for dependent students approved must also submit a system for independent students. Both systems must be submitted to the Secretary by June 30.

(2) The Secretary lists approved systems in the Federal Register by the following September 1.

(3) Applications for approval must include—

(i) Information the Secretary needs to determine whether or not the system meets the requirements of paragraph (c); and

(ii) The expected family contribution amounts produced by that system for the sample cases.

(f) *Duration of approval.* (1) There is no specified expiration date for need analysis systems for dependent students approved under paragraph (b).

(2) An institution may use the need analysis systems for dependent and independent students approved under paragraphs (c) and (d) to determine student eligibility and amount of assistance under Campus Based Programs for an academic year that begins—

(i) No earlier than the following June 1; or

(ii) No later than 12 months after that June 1 date.

(g) *Adjustments.* The institution, in individual cases, may further adjust expected family contributions computed according to one of the approved systems if—

(1) The student financial aid administrator believes the expected family contribution does not accurately reflect the student's (or parent's) ability to contribute; and

(2) The institution documents all adjustments in writing with an accompanying explanation and makes them part of the institution's records.

(42 U.S.C. 2753)

***§ 675.14 Coordination of student financial aid programs, award amount, and overaward.**

(a) *Coordinating official.* An institution must appoint a coordinating official for its CWS and other Federal and non-Federal student financial aid programs.

(b) *Overaward prohibited, general rule.* (1) An institution may not award CWS assistance to a student if the CWS, when combined with all other resources, exceeds the student's financial need. The institution, however, does NOT violate this rule if—

(i) The student receives additional funds after the institution awards aid, and total resources exceed his or her financial need by $200 or less by the end of the academic year; or

(ii) The student earns more money from employment than the institution anticipated when it awarded the CWS, and it treats the earnings in accordance with paragraph (c) (prevention of overaward).

(2) A student's financial need may not exceed his or her cost of education.

(3) If a student's resources exceed his or her need by more than $200, and the excess is not from employment, the overaward is the amount that exceeds the $200.

(c) *Prevention of overaward by treatment of earnings.* An institution must take the following steps when it learns that a CWS recipient has earned, or will earn, more than $200 over his or her financial need:

(1) It must decide whether the student needs the money to pay for necessary additional attendance costs, unanticipated when it awarded financial aid to the student. If the student does, no further action is necessary.

(2) If the student's earnings still exceed need by $200 or more after the institution subtracts any additional costs, it must cancel any unpaid loan or grant (other than Pell Grants) to avoid exceeding need by more than $200.

(3) If the student's earnings still exceed his or her need by more than $200 after the institution takes the steps required in the two preceding subparagraphs, and the student is enrolled for the next academic year, the institution must use the amount that exceeds $200 as—

(i) A resource to help pay the student's cost of attendance in the following year; or

(ii) A substitute for the student's expected family contribution for the current year unless a GSL or PLUS is used for that purpose.

(4) If the student's earnings still exceed his or her need by more than $200 after the institution takes the steps required in subparagraphs (1) and (2), and the student is NOT enrolled for the next academic year, no further action is necessary.

(d) *Resources.* The Secretary considers that "resources" include, but are not limited to, any—

(1) Funds the student is entitled to receive from a Pell Grant, regardless of whether the student applies for it;

(2) Waiver of tuition and fees;

(3) Scholarship or grant, including a SEOG or athletic scholarship;

(4) Fellowship or assistantship;

(5) Insurance programs for the student's education, including any social security educational benefits not included in computing EFC;

(6) GSL or PLUS as indicated under paragraph (e);

(7) Long-term loans, including NDSL but excluding GSL, and PLUS, made by the institution;

(8) Net earnings from employment, including any part of an independent student's net earnings not included as part of the student's EFC. ("Net earnings" means gross earnings minus taxes and job related costs); and

(9) Veterans benefits (except that part included as part of the student's EFC).

(e) *Treatment of Guaranteed Student Loans (GSL) and Parent Loans for Undergraduate Students (PLUS).* (1) A student may use a GSL or a PLUS as a substitute for his or her expected family contribution.

(2) However, if the loan amounts under one or both of these programs exceeds the student's expected family contribution, the Secretary considers the excess to be a resource.

(f) *Administrative responsibility.* (1) An institution is responsible ONLY for the resources it—

(i) Makes available to its students;

(ii) Knows about; or

(iii) Can reasonably anticipate at the time it awards CWS assistance to the student.

(2) An institution must take reasonable steps to stay informed about the earnings of a student employed outside the institution.

(g) The provisions of paragraph (b) of this section are retroactive to October 12, 1976.

(42 U.S.C. 2753)

§ 675.15 Coordination with BIA grants.

*(a) To determine the amount of CWS compensation for a student who is also eligible for a Bureau of Indian Affairs (BIA) education grant, an institution must prepare a package of student aid—

(1) From resources other than the BIA education grant the student has received or is expected to receive; and

(2) That is consistent in type and amount with packages prepared for students in similar circumstances who are not eligible for a BIA education grant.

*(b)(1) The BIA education grant, whether received by the student before or after the preparation of the student aid package, supplements that package.

(2) No adjustment may be made to the student aid package as long as the total of the package and the BIA education grant is less than the institution's determination of that student's financial need.

*(c)(1) If the BIA education grant, when combined with other aid in the package, exceeds the student's need, the excess must be deducted and may be deducted only from the other assistance, not the BIA education grant.

(2) The institution must deduct the excess in the following sequence: loans, work-study awards, and grants other than Pell Grants. However, the institution may change the sequence if requested by a student and the institution believes the change benefits the student.

*(d) To determine the financial need of a BIA-eligible student, a financial aid administrator is encouraged to consult with area officials in charge of BIA postsecondary financial aid.

(42 U.S.C. 2753)

§ 675.16 Payment to students.

(a)(1)(i) An institution must pay a student at least once a month. The Federal share of each payment must be paid to the student by check, or similar instrument, that the student can cash on his or her own endorsement.

(ii) The institution may not directly transfer the Federal share of any payment to the student's account at the institution or elsewhere to pay expenses or bills.

(2) Regardless of who employs the student, the institution is responsible for ensuring that the student is paid for work performed during the previous payroll period.

(3) A student's CWS wages are obligated when the student performs the work.

(b)(1) If an institution pays a student its share of his of her CWS wages by check, it must pay the student at the same time it pays the Federal share.

(2) If an institution pays a student its CWS share for an award period in the form of tuition, fees, services, or equipment, it must pay that share before the student's final payroll period.

(3) If an institution pays its CWS share in the form of prepaid tuition, fees, services, or equipment for a forthcoming academic period, it must give the student a statement before the close of his or her final payroll period listing the amount of tuition, fees, services, or equipment earned.

(c) Before an institution employs a student under CWS, it must—

(1) Get a written employment acceptance statement from the student; and

(2) Give the student a statement listing—

(i) The amount of the student's CWS award;

(ii) All other student financial aid it made available to the student; and

(iii) The condition that continued CWS employment depends upon the student's maintaining satisfactory academic progress as an eligible student during the academic year.

(d)(1) An institution may not pay a student College Work-Study wages unless the student files a statement of educational purpose with the institution in which the student declares that he or she will use those wages solely for educational expenses in connection with attendance at the institution.

(2) The Secretary considers the following statement as satisfying this requirement.

Statement of Educational Purpose

I declare that I will use the wages or salary I receive under the College Work-Study program solely for expenses connected with attendance at ———— (name of institution).

———— (Date)

———— (Signature)

* * * * *

(20 U.S.C. 1088g; 28 U.S.C. 1748)

(e) *Correspondence study.* A correspondence student must submit his or her first completed lesson before receiving a payment.

(f) If an institution computes a student's need using estimated data submitted before January 1 of the previous award year, the institution may not pay the student unless it verifies that information.

(42 U.S.C. 2753; 20 U.S.C. 1091)

***§ 675.17 Federal interest in allocated funds.**

Except for funds received for the administrative cost allowance (see § 675.18(b)), funds received by an institution under the CWS program are held in trust for the intended student beneficiaries. Funds may not be used or hypothecated (i.e., serve as collateral) for any other purpose.

(42 U.S.C. 2751–56)

§ 675.18 Use of funds.

(a) *General.* Funds allocated to an institution under the CWS program may only be used to—

(1) Pay the Federal share of CWS wages;

(2) Transfer to the institution's SEOG program (see § 675.21);

(3) Carry out the activities described in paragraph (b); and

(4) Meet the cost of a job location and development program under Subpart B.

(b) *Administrative cost allowance.* An institution participating in the CWS program is entitled to an administrative cost allowance.

(1) The amount of the allowance equals—

(i) Five (5) percent of the first $2,750,000 of the institution's expenditures in an award year under the CWS, SEOG, and NDSL programs; plus

(ii) Four (4) percent of its expenditures which are greater than $2,750,000 but less than $5,500,000; plus

(iii) Three (3) percent of its expenditures in excess of $5,500,000.

(2) However, for the purpose of calculating the allowance in paragraph (b)(1) this section, CWS expenditures made under the Community Service Learning program (§ 675.28) or NDSL loans that are assigned to the Secretary under section 463(a)(6)(B) of the Higher Education Act are not included.

(3) An institution must use its administrative cost allowance to offset its costs of administering the Pell Grant, CWS, SEOG, and NDSL programs. Administrative costs also include the expenses incurred for carrying out the student consumer information services requirements of Subpart C of the Student Assistance General Provisions, 34 CFR Part 668.

(4)(i) In addition to the amount calculated in paragraph (b)(1) of this section, an institution's administrative cost allowance includes ten (10) percent of its expenditures under the Community Service Learning program set forth in § 675.28.

(ii) This portion of its administrative cost allowance must be taken from the institution's CWS allocation.

(iii) The institution may use this portion of its administrative cost allowance to offset the costs of administering the Pell Grant, CWS, SEOG, and NDSL programs and to pay the administrative costs of conducting its Community Service Learning program. These latter costs may include the costs of—

(A) Developing mechanisms to assure the academic quality of the student experience;

(B) Assuring student access to educational resources, expertise, and supervision necessary to achieve community service objectives; and

(C) Collaborating with public and private nonprofit agencies in the

planning and administering of these programs.

(c) An institution may carry forward and expend in the next award year up to ten (10) percent of its current award year CWS allocation.

(d) An institution may spend up to ten (10) percent of its current award year CWS allocation in and for expenses incurred in the previous award year. However, the Secretary must approve the amount of funds that may be spent in this manner.

(e) An institution may not charge any administrative expenses against its CWS allocation for an award year unless it provides CWS employment to its students for that year.

(20 U.S.C. 1090; 42 U.S.C. 2753, 2756, and 2756b.)

§ 675.19 Fiscal procedures and records.

*(a) *Fiscal procedures.* (1) In administering its CWS program, an institution must establish and maintain an internal control system of checks and balances that insures that no office can both authorize payments and disburse funds to students.

(2) If an institution uses a fiscal agent, that agent may perform only ministerial acts.

(3) A separate bank account for CWS funds is not required. However an institution must notify any bank in which it deposits CWS funds of all accounts in that bank in which it deposits Federal funds. The institution may give this notice by either—

(i) Including in the name of the account the fact that Federal funds are deposited; or

(ii) Notifying the bank in writing of the accounts in which it deposits Federal funds. The institution must retain a copy of this notice in its files.

(b) *Records and reporting.* (1) An institution must establish and maintain on a current basis financial records that reflect all program transactions. The institution must establish and maintain general ledger control accounts and related subsidiary accounts that identify each program transaction and separate those transactions from all other institutional financial activity.

(2) The institution must also establish and maintain program and fiscal records that—

(i) Include a certification that each student has worked and earned the amount being paid. The student's supervisor, an official of the institution or off-campus agency, must sign the certification. The certification must include—

(A) For students paid on an hourly basis, a time record showing the hours each student worked; and

(B) For all students, a statement of whether the work was performed in a satisfactory manner.

(ii) Include a payroll voucher containing sufficient information to support all payroll disbursements;

(iii) Include a noncash contribution record to document any payment of the institution's share of the student's earnings in the form of services and equipment (see § 675.27(a));

(iv) Identify each student's account and status;

(v) Show the eligibility of each student aided under the program;

(vi) Show the amount of need and how the need was met for each student;

(vii) Identify the administrator who determined the need; and

(viii) Are reconciled at least monthly.

(3) Each year an institution must submit a Fiscal-Operations Report plus other information the Secretary requires. The institution must comply with requirements to insure the information reported is accurate and must submit it on the form and at the time specified by the Secretary.

(c) *Retention of records.* (1) *Records.* Each institution must keep intact and accessible records of the receipt and expenditure of Federal funds, including all accounting records and original and supporting documents necessary to document how the funds are spent.

*(2) *Period of retention.* Except for audit questions, an institution must keep records for an award year for five years after it submits its Fiscal-Operations Reports for that year.

*(3) *Microfilm copies.* An institution may substitute microfilm copies for original records in meeting the requirements of this section.

*(4) *Audit questions.* An institution must keep records in any claim or expenditure questioned by Federal audit until resolution of any audit questions. However, the institution does not have to retain records beyond 5 years if the actions taken by the United States to recover funds are barred by the Federal statute of limitation in 28 U.S.C. 2415(b).

*(d) *Audits-Federal.* An institution must give the Secretary, the Comptroller General of the United States, or their duly authorized representatives access to the records specified in paragraphs (c) (1) and (2) and to any other pertinent books, documents, papers, and records.

*(e) *Audits—Non-Federal.* (1) An institution must audit, or have audited under its direction, CWS transactions to determine at a minimum—

(i) The fiscal integrity of financial transactions and reports; and

(ii) If those transactions are in compliance with the applicable laws and regulations.

(2) The audits must be performed in accordance with the Education Department's "Audit Guide" for student financial aid programs.

(3) The institution must have an audit performed at least once every two years unless the Secretary approves a longer interval.

(4) Each audit must cover the entire period of time since the last audit.

*(f) *Audit reports.* The institution must submit audit reports to its local regional office of the Education Department's Office of Inspector General Audit Agency. It must give the Secretary and the Inspector General access to records or other documents necessary to the audit's review.

(42 U.S.C. 2753; 20 U.S.C. 1232c)

§ 675.20 Maintenance of effort.

(a) For each award year it receives a CWS allocation, an institution must spend from its own scholarship and student financial aid program at least one-third its aid program expenditures for the 3 award years preceding the latest of the following:

(1) The effective date of any agreement required by section 443 of the College Work-Study Program (42 U.S.C. 2753) or section 407 of the Educational Opportunity Grants Program (20 U.S.C. 1067) that was in effect on June 30, 1973.

(2) The award year the institution received its first CWS allocation.

(3) The award year the institution received its first Educational Opportunity Grant Program allocation (20 U.S.C. 1061–1067, 1069).

(4) The award year the institution received its first SEOG allocation (20 U.S.C. 1070b–1070b–3) if it did not participate in the Educational Opportunity Grant Program during the 1972–1973 award year.

(b) The Secretary may waive the maintenance of effort requirements for an award year because of the following special circumstances:

(1) Fund withdrawals from outside sources (Public appropriations are not considered outside sources for public institutions).

(2) An enrollment decline if the institution continues to spend from its own scholarship and student financial aid program the average amount it spent per student during the 3-year base period.

(3) Voluntary withdrawal as a GSL lender. The Secretary waives that portion of the failure that equals one-third the amount of loans the institution made as a lender during the 3-year base period. However, to have this portion waived, the institution must arrange alternate sources of financing for its

students at least equal to the amount the Secretary waives.

(4) Termination as a GSL lender by the Secretary.

(i) The Secretary waives, for the year the institution is terminated as a lender, the portion of the failure that equals one-third the amount of loans the institution made as a lender during the 3-year base period.

(ii) The Secretary also waives, for succeeding years, the portion of the failure that equals one-third of the amount of loans the institution made as a lender during the 3-year base period if the institution arranges alternate sources of assistance for its students at least equal to the amount the Secretary waives.

(5) The Secretary considers that an institution has provided alternate sources of assistance for its students if it provides the assistance under a written agreement between the funding source and the institution.

(c) An institution, to obtain a waiver, must submit to the Secretary—

(1) A request for a waiver; and

(2) A description of circumstances justifying the waiver.

(d) An institution's "own scholarship and student financial aid program" includes—

(1) Any expenditures of its own funds for scholarships, grants, loans, tuition waivers, fee waivers, and fee remissions;

(2) The institution's employment of its graduate and undergraduate students, whether or not they are eligible for the SEOG or CWS programs; and

(3) Any funds donated to the institution for student financial aid if the institution chooses the recipients and the award amounts. However, the institution may not claim funds from Federal sources as part of its "own scholarship and student financial aid program."

(e) (1) According to an institution's stated practices, scholarships and other student financial aid given to faculty members' dependents or to institution employees may be considered as either—

(i) Student financial aid; or

(ii) Employee benefits.

(2) Fellowships and assistantships count as financial aid unless it is the institution's stated practice to consider the holders faculty members.

(3) Alternatives in subparagraphs (1) and (2) apply to both the base year period and current expenditures. Any change must have the Secretary's written approval.

(20 U.S.C. 1094)

§ 675.21 Transfer of funds.

(a) An institution may transfer up to 10% of its allocation for an award year from its CWS program to its SEOG program and vice versa. The institution must use the funds, when transferred, according to the requirements of the program to which they were transferred.

(b) An institution may use CWS funds transferred to the SEOG program for initial or continuing grants, as the institution sees fit.

(c) An institution must report any funds transferred on the Fiscal-Operations Report required under § 675.19(b).

(d) An institution shall transfer back to the SEOG program any funds unexpended at the end of the award year that it transferred to the CWS program from the SEOG program.

(20 U.S.C. 1095)

§ 675.22 Project eligibility.

(a)(1) College Work-Study employment, except for students attending a proprietary institution, may involve work—

(i) For the institution itself, i.e., the institution is the employer; or

(ii) In the public interest for a Federal, State, or local public agency or a private nonprofit organization.

(2) *Proprietary institution eligibility.* (i) CWS employment for students attending a proprietary institution may involve only work in the public interest for a Federal, State, or local public agency or for a private nonprofit organization.

(ii) A proprietary institution of higher education, for the purposes of this paragraph, also includes any nonprofit organization owned or controlled by the proprietary institution or by a corporation, association, partnership, or individual that owns or controls the proprietary institution.

(b) Work for the institution itself also includes work in those operations the institution typically performs directly for its students but sometimes contracts for if—

(1) The work contracted for is in food service, cleaning, maintenance, or security; and

(2) The contract specifies—

(i) The number of students to be employed; and

(ii) That the institution selects the students to be employed and determines each student's pay rate.

(c) *CWS employment in the public interest.* The Secretary considers work in the public interest to be work performed for the national or community welfare rather than work performed to benefit a particular interest or group. Work is NOT in the public interest if—

(1) It primarily benefits the members of a limited membership organization such as a credit union, a fraternal or religious order, or a cooperative;

(2) A student works for an elected official outside the regular administration of Federal, State, or local government; or

(3) A student's political support or party affiliation is taken into account in hiring him or her.

(d) *Non-related profitmaking activities of institutions.* (1) Employment connected with an institution's non-related profitmaking activities does not qualify as "work for the institution" or "work in the public interest." Activities conducted as part of the institution's own educational, cultural, or athletic programs are not considered "non-related."

(2) Non-related profitmaking activities include the operation or rental of athletic fields, auditoriums, theaters, and parking lots.

(3) This restriction also applies to administrative functions at the institution connected with the non-related profitmaking activities.

(e) *CWS employment limitations and conditions.* (1) CWS employment must be governed by employment conditions, including pay, that are appropriate and reasonable in terms of—

(i) Type of work;

(ii) Geographical region;

(iii) Employee proficiency; and

(iv) Any applicable Federal, State, or local law.

(2) CWS employment may not—

(i) Impair existing service contracts;

(ii) Displace employees;

(iii) Fill jobs that are vacant because the employer's regular employees are on strike;

(iv) Involve the construction, operation, or maintenance of any part of a facility used or to be used for religious worship or sectarian instruction;

(v) Involve any partisan or nonpartisan political activity associated with a faction in an election for public or party office;

(vi) Involve lobbying on the Federal level; or

(vii) Include employment for the Department of Education.

(f) *Agreement between an institution and an organization.* (1) The institution must enter into a written agreement with a Federal, State, or local public agency or with a nonprofit organization that employs its students. The agreement must set forth the CWS work conditions (see Appendix B for a sample agreement).

(2) The institution may enter into an agreement ONLY with a reliable agency

or organization that has professional direction and staff.

(3) The institution is responsible for insuring that—

(i) Payment for work performed under each agreement is properly documented; and

(ii) Each student's work is properly supervised in accordance with CWS requirements.

(42 U.S.C. 2753)

§ 675.23 Eligible jobs.

(a) *General.* (1) A CWS eligible job is a job that an employer normally has paid other persons to do outside the CWS program.

(2) If no other person has held that job for that employer, it must be a job for which other employers would normally pay.

(b) *Work for academic credit.* Work that is otherwise eligible is not ineligible because it satisfies a requirement for a degree or certificate.

(42 U.S.C. 2753)

§ 675.24 Establishment of wage rates under CWS.

(a) *Wage rate.* (1) Except as provided in subparagraph (2) of this paragraph, CWS compensation must be computed on an hourly wage basis for actual time on the job. Fringe benefits may not be counted as part of the wage rate. An institution may not pay a student a salary, commission, or fee.

(2) An institution may pay a graduate student it employs a salary or on an hourly wage basis, in accordance with its usual practices.

(b) *Minimum wage rate.* The minimum wage rate for a student employee under the CWS program is the current minimum wage rate required under section 6(a) of the Fair Labor Standards Act of 1938.

(42 U.S.C. 2753)

§ 675.25 Earnings applied to cost of attendance.

(a) *Attribution.* (1) The institution determines the amount of earnings from a CWS job to be applied to a student's cost of attendance (attributed earnings) by subtracting taxes and job related costs from the student's gross earnings.

(2) If a student is employed under CWS during a vacation or other period when he or she is not attending classes, the institution applies the attributed earnings to the cost of attendance for the next period of enrollment except as specified in paragraph (c).

(b) *Job related costs.* (1) Job related costs are costs the student incurs because of his or her job. Examples are uniforms and transportation to and from work. Another example is room and board during vacation periods, except as provided in paragraph (c).

(2) If a student is on an academic year budget, job related costs, including room and board during a vacation period, are the lesser of—

(i) $300; or

(ii) 20% of net earnings.

(3) If all reasonably available jobs during the vacation period require the student to exceed the job related limits in subparagraph (2), the institution may allow a higher limit up to the lesser of—

(i) $600; or

(ii) 40% of net earnings.

(c) *12-month budget.* An institution may compute a student's budget for an academic year or for 12 months. If the institution uses a 12 month budget—

(1) The student's room and board costs for the entire 12 months are a cost of attendance rather than job related costs; and

(2) The institution must compute the student's expected family contribution on a 12-month basis.

(42 U.S.C. 2753)

§ 675.26 CWS Federal share limitations.

(a)(1) The Federal share of CWS compensation paid to a student may not exceed 80%, unless the Secretary approves a higher share (see paragraph (e)).

(2) An institution may not use CWS funds to pay a student after he or she has earned $200 over his or her financial need.

(b) The institution may NOT include the following when determining the Federal share:

(1) Fringe benefits such as paid sick days, paid vacations, or paid holidays.

(2) The employer's share of social security, workmen's compensation, retirement, or any other welfare or insurance program that the employer must pay on account of the student employee.

(c) Either the institution or the student's employer may pay a student employed off-campus. The employment agreement between the institution and the employing agency or organization may require the employer to pay—

(1) The non-Federal share of the student earnings;

(2) Required employer costs such as the employer's share of social security or workmen's compensation; and

(3) The institution's administrative costs not already paid from the institution's administrative cost allowance.

(d) If an institution receives more money under an employment agreement from an off-campus employer than required employer costs, its non-Federal share, and its CWS administrative costs, excess funds must be—

(1) Used to reduce the Federal share on a dollar-for-dollar basis;

(2) Held in trust for off-campus student employment next year; or

(3) Refunded to the off-campus employer.

(e)(1) The Secretary may approve a Federal share greater than 80% of CWS compensation if the institution—

(i) Is designated a "developing institution of higher education" under 34 CFR Part 624; or

(ii) Proves that at least 50% of its students who are at least half-time students have parents whose annual adjusted gross income is less than $7,500 a year.

(2) The Secretary pays a 100% Federal share for that part of CWS compensation that exceeds—

(i) The amount of CWS compensation paid to students during the 1975–1976 award years; or

(ii) An amount the Secretary specifies for institutions not participating in the CWS program during the 1975–1976 award year.

(3) An institution, in order to receive a Federal share of more than 80% for an award year, must indicate its intent to request the additional funds as part of its regular funding application for that year.

(42 U.S.C. 2753 and 20 U.S.C. 1066)

§ 675.27 Nature and source of institutional share.

(a)(1) An institution may use any resource available to it, except funds allocated under the CWS program, to pay the institutional share of CWS compensation to its students. The institutional share may be paid in the form of services and equipment, e.g., tuition, room, board, and books.

(2) The institution must document all amounts claimed as non-cash contributions.

(3) Non-cash compensation may not include forgiveness of a charge assessed solely because of a student's employment under the CWS program.

(b) A school may not solicit or accept fees, commissions, contributions, or gifts as a condition for CWS employment, nor permit any organization with which it has an employment agreement to do so.

(42 U.S.C. 2753.)

§ 675.28 Community Service Learning Program.

(a)(1) From its allocation under the CWS program, an institution may employ its students in a Community Service Learning Program designed to develop, improve or expand services for low-income individuals and families, or

to solve particular problems related to the needs of low-income individuals.

(2) All the provisions of this part governing the employment of students are applicable to the Community Service Learning Program.

(b) A Community Service Learning Program is a program of student work that—

(1) Provides tangible community services for or on behalf of low-income individuals; and

(2) Provides students with work-learning opportunities related to their educational or vocational programs or goals.

(c) As used in this section—

(1) Low-income individual means an individual from a family whose taxable income for the preceding year did not exceed 150 percent of an amount equal to the poverty level determined by using criteria of poverty established by the Bureau of the Census.

(2) Community services means direct service, or planning or applied research activities, designed to—

(i) improve the quality of life for community residents, particularly low-income individuals, or

(ii) solve particular problems relating to the needs of low-income individuals.

(3) Community services may include activities related to such fields as health care, education, welfare, social services, public safety, crime prevention and control, transportation, recreation, housing and neighborhood improvement, rural development and community improvement.

(42 U.S.C. 2756b)

Subpart B—Job Location and Development Program

§ 675.31 Purpose.

The purpose of the job location and development program is to expand off-campus job opportunities for students enrolled in eligible institutions of higher education who want jobs, regardless of their financial need.

(42 U.S.C. 2756a.)

§ 675.32 Federal contribution allowed.

To create a job location and development project or expand an existing one, an institution may use, from its CWS allocation for each award year, the lesser of—

(a) 10%; or

(b) $25,000.

(42 U.S.C. 2756a.)

§ 675.33 Allowable costs.

(a) Costs reasonably related to carrying out a CWS job location and development project are allowable.

(b) Costs related to the purchase, construction, or alteration of physical facilities or indirect administrative costs are NOT allowable.

(42 U.S.C. 2756a.)

§ 675.34 Federal share of allowable costs.

An institution may use Federal funds allowed it under § 675.32 for a job location and development project to pay up to 80% of allowable costs.

(42 U.S.C. 2756a.)

§ 675.35 Institutional share.

An institution's share of allowable costs may be in cash or in the form of services. However, the institution may not use Federal funds as the institution's share of its job location and development project. The institution must keep records documenting the amount and source of its share.

(42 U.S.C. 2756a.)

§ 675.36 Multi-institutional job location and development project; arrangements with nonprofit organizations.

(a) Institutions participating in CWS may enter into a cooperative arrangement to establish and operate a job location and development project for their students.

(b) An institution participating in CWS may, separately or in combination with other participating institutions, arrange for a nonprofit organization to establish and operate a job location and development project for the institution's students. The nonprofit organization, however, must have professional direction and staff.

(c) Each institution must sign a written agreement with all other institutions in the cooperative arrangement or with the nonprofit organization acting on its behalf. The agreement must—

(1) Designate the administrator of the job location and development project;

(2) Specify the terms, conditions, and performance standards of the project; and

(3) Provide for an audit, as required in paragraph (d) of this section.

(d) The administrator of a cooperative arrangement or the nonprofit organization operating a project on an institution's behalf, must provide—

(1) For an audit, as required in § 675.19(d); and

(2) One copy of the audit report to each participating institution.

(e) Each institution retains responsibility for the proper disbursement of its Federal funds administered through a cooperative arrangement or by a nonprofit organization.

(42 U.S.C. 2756a)

§ 675.37 Restrictions.

A job location and development project may not—

(a) Locate or develop jobs for any institution;

(b) Locate or develop jobs for students upon graduation;

(c) Displace employees; or

(d) Impair existing contracts for services.

(42 U.S.C. 2756a)

§ 675.38 Agreement.

(a) A CWS-participating institution, to establish or expand a job location and development project, must enter into an agreement with the Secretary.

(b) The agreement must provide—

(1) That the Federal share of the project's cost not exceed 80%;

(2) That the institution submit to the Secretary an annual report on the use of the funds and an evaluation of the project's effectiveness in benefiting the institution's students; and

(3) Satisfactory assurances that—

(i) The institution will not use project funds to develop jobs at the institution;

(ii) The institution will continue to spend in its own job location and development project (from sources other than CWS funds) in each award year at least ⅓ of its expenditures for locating jobs for its students during the 3 most recent fiscal years preceding the date of the agreement;

(iii) The institution will use project funds to locate and develop jobs for students during and between periods of attendance at the institution, NOT upon graduation;

(iv) The project will not displace employees or impair existing service contracts;

(v) Project funds can realistically be expected to generate total student wages exceeding the total amount of the Federal funds spent under this subpart; and

(vi) If the institution uses Federal funds to contract with another organization, suitable performance standards will be part of that contract.

(42 U.S.C. 2756a)

§ 675.39 Maintenance of effort.

(a) An institution must continue to spend in each award year on its own job location and development project (from sources other than CWS funds) at least ⅓ of its expenditures for locating jobs for its students during the 3 most recent fiscal years preceding the date of its agreement with the Secretary.

(b) An institution's "own job location and development project" includes any expenditures of institutional funds to

create off-campus jobs for enrolled students. This includes costs for staff salaries, travel, printing and mailing, telephone calls, and project equipment furnished by the institution.

(42 U.S.C. 2756a)

§ 675.40 Procedures and records.

Procedures and records concerning the administration of a job location and development project established and operated under this subpart are governed by applicable provisions of § 675.19.

(42 U.S.C. 2756a)

§ 675.41 Termination and suspension.

(a) If the Secretary terminates or suspends an institution's CWS project, the action also applies to the institution's job location and development project.

(b) The Secretary pays an institution's financial obligations incurred and allowable before the termination but not incurred—

(1) During a suspension; or

(2) In anticipation of a suspension.

(c) However, the institution must cancel as many outstanding obligations as possible.

(42 U.S.C. 2756a)

Appendix A.—Allotments of Funds to States for Fiscal Year 1972

Alabama	$6,802,378
Alaska	222,401
Arizona	2,165,160
Arkansas	3,357,896
California	19,625,911
Colorado	2,643,202
Connecticut	2,537,476
Delaware	529,542
District of Columbia	1,110,472
Florida	6,850,771
Georgia	6,390,328
Hawaii	796,589
Idaho	899,577
Illinois	10,371,329
Indiana	5,366,666
Iowa	3,825,939
Kansas	2,844,022
Kentucky	4,770,515
Louisiana	5,799,805
Maine	1,156,396
Maryland	3,648,625
Massachusetts	5,983,364
Michigan	9,157,777
Minnesota	4,773,195
Mississippi	4,895,174
Missouri	5,420,253
Montana	933,670
Nebraska	2,015,807
Nevada	336,527
New Hampshire	767,114
New Jersey	5,111,287
New Mexico	1,946,112
New York	16,823,121
North Carolina	6,161,440
North Dakota	1,067,806
Ohio	10,424,770
Oklahoma	3,522,127
Oregon	2,401,564
Pennsylvania	12,087,462
Rhode Island	995,991
South Carolina	4,483,023
South Dakota	1,185,126
Tennessee	5,994,544
Texas	14,171,730
Utah	1,532,910
Vermont	812,709
Virginia	5,805,988
Washington	3,641,590
West Virginia	2,594,188
Wisconsin	5,012,671
Wyoming	618,889
Outlying areas [1]	4,748,000
Total	237,400,000

[1] Outlying areas include Puerto Rico, Virgin Islands, Guam, American Samoa, and Trust Territory of the Pacific Islands.

Appendix B.—Model Off-Campus Agreement

(The paragraphs below are suggested as models for the development of a written agreement between an institution of higher education and a Federal, State, or local public agency or private nonprofit organization which employs students participating in the college work-study program. Institutions and agencies or organizations may devise additional or substitute paragraphs which are not inconsistent with the statute or regulations.)

This agreement is entered into between ——————, hereinafter known as the "Institution," and ——————, hereinafter known as the "Organization," a (Federal, State, or local public agency), (private nonprofit organization), (strike one), for the purpose of providing work to students eligible for the College Work-Study Program (CWS).

Schedules to be attached to this agreement from time to time must be signed by an authorized official of the institution and the organization and must set forth—

(1) brief descriptions of the work to be performed by students under this agreement;

(2) the total number of students to be employed;

(3) the hourly rates of pay; and

(4) the average number of hours per week each student will be used.

These schedules will also state the total length of time the project is expected to run, the total percent, if any, of student compensation that the organization will pay to the institution, and the total percent, if any, of the cost of employers' payroll contribution to be borne by the organization. The institution will inform the organization of the maximum number of hours per week a student may work.

Students will be made available to the organization by the institution to perform specific work assignments. Students may be removed from work on a particular assignment or from the organization by the institution, either on its own initiative or at the request of the organization. The organization agrees that no student will be denied work or subjected to different treatment under this agreement on the grounds of race, color, national origin, or sex. It further agrees that it will comply with the provisions of the Civil Rights Act of 1964 (Pub. L. 88–352; 78 Stat. 252) and Title IX of the Education Amendments of 1972 (Pub. L. 92–318) and the Regulations of the Department of Education which implement those Acts.

(Where appropriate any of the following 3 paragraphs or other provisions may be included.)

(1) Transportation for students to and from their work assignments will be provided by the organization at its own expense and in a manner acceptable to the institution.

(2) Transportation for students to and from their work assignments will be provided by the institution at its own expense.

(3) Transportation for students to and from their work assignments will not be provided by either the institution or the organization.

(Whether the institution or the organization will be considered the employer of the students covered under the agreement depends upon the specific arrangement as to the type of supervision exercised by the organization. It is advisable to include some provision to indicate the intent of the parties as to who is considered the employer. As appropriate, one of the following two paragraphs may be included.)[1]

(1) The institution is considered the employer for purposes of this agreement. It has the ultimate right to control and direct the services of the student for the organization. It also has the responsibility to determine that the students meet the eligibility requirements for employment under the college work-study program, to assign students to work for the organization, and to determine that the students do perform their work in fact. The organization's right is limited to direction of the details and means by which the result is to be accomplished.

(2) The organization is considered the employer for purposes of this agreement. It has the right to control and direct the services of the student, not only as to the result to be accomplished, but also as to the means by which the result is to be accomplished. The institution is limited to determining that the students meet the eligibility requirements for employment under the college work-study program, to assigning students to work for the organization, and to determining that the students do perform their work in fact.

(Wording of the following nature may be included, as appropriate, to locate responsibility for payroll disbursements and payment of employers' payroll contributions.)

Compensation of students for work performed on a project under this agreement will be disbursed—and all payments due as an employer's contribution under State or local workmen's compensation laws, under Federal or State social security laws, or under other applicable laws, will be made—by the (organization) (institution) (strike one).

(Where appropriate any of the following paragraphs may be included.)

(1) At times agreed upon in writing, the organization will pay to the institution an amount calculated to cover the organization's share of the compensation of students employed under this agreement.

[1] It should be noted that although the following paragraphs attempt to fix the identity of the employer, they will not necessarily be determinative if the actual facts indicate otherwise. Additional wording which specifies the employer's responsibility in case of injury on the job may also be advisable, since Federal funds are not available to pay for hospital expenses or claims in case of injury on the job. In this connection it may be of interest that one or more insurance firms in at least one State have in the past been willing to write a workmen's compensation insurance policy which covers a student's injury on the job regardless of whether it is the institution or the organization which is ultimately determined to have been the student's employer when he or she was injured.

(2) In addition to the payment specified in paragraph (1) above, at times agreed upon in writing, the organization will pay, by way of reimbursement to the institution, or in advance, an amount equal to any and all payments required to be made by the institution under State or local workmen's compensation laws, or under Federal or State social security laws, or under any other applicable laws, on account of students participating in projects under this agreement.

(3) At times agreed upon in writing, the institution will pay to the organization an amount calculated to cover the Federal share of the compensation of students employed under this agreement and paid by the organization. Under this arrangement the organization will furnish to the institution for each payroll period the following records for review and retention:

(a) Time reports indicating the total hours worked each week and containing the supervisor's certification as to the accuracy of the hours reported and of satisfactory performance on the part of the students;

(b) A payroll form identifying the period of work, the name of each student, each student's hourly wage rate, the number of hours each student worked, each student's gross pay, all deductions and net earnings, and the total Federal share applicable to each payroll; [2] and

(c) Documentary evidence that students received payment for their work, such as photographic copies of cancelled checks.

3. Part 676 of Title 34 of the Code of Federal Regulations is revised to read as follows:

PART 676—SUPPLEMENTAL EDUCATIONAL OPPORTUNITY GRANT PROGRAM

Note.—An asterisk (*) indicates provisions that are common to Parts 674, 675, and 676. The use of asterisks will assure participating institutions that a provision of one regulation is identical to the corresponding provisions in the other two.

Sec.

676.1 Purpose and identification of common provisions.
676.2 Definitions.
676.3 Apportionment and reapportionment.
676.4 Allocation, reallocation, and payment to institutions.
676.5 Application.
676.6 Funding procedures.
676.7 Application review—approval of request.
676.8 Institutional agreement.
676.9 Student eligibility.
676.10 Special sessions.
*676.11 Cost of attendance.
*676.12 Expected family contribution.
*676.13 Approved need analysis systems.
*676.14 Coordination of student financial aid programs, award amount, and overaward.
676.15 Coordination with BIA grants.
676.16 Payment of grant.
*676.17 Federal interest in allocated funds.
676.18 Use of funds.
676.19 Fiscal procedures and records.
676.20 Maintenance of effort.
676.21 Transfer of funds.
676.22 Duration of student eligibility.
676.23 Types of grant awards.
676.24 Amount of grant.
Appendix A—Allotment of funds to States for fiscal year 1972.

Authority: Sec. 413A–413D of Title IV–A–2 of HEA, Pub. L. 89–329.

(20 U.S.C. 1070b–1070b–3), unless otherwise noted.

§ 676.1 Purpose, and identification of common provisions.

(a) The Supplemental Educational Opportunity Grant Program (SEOG) awards grants to students with financial need attending institutions of higher education to help meet their costs of postsecondary education.

*(b) Provisions in these regulations that are common to all campus-based regulations are identified with an asterisk.

§ 676.2 Definitions.

The following definitions are set forth in Subpart A of the Student Assistance General Provisions, 34 CFR Part 668, Subpart A:

Ability to Benefit;

Institution of higher education (including Public or Private nonprofit institution of higher education, proprietary institution of higher education, and postsecondary vocational institution);

One-year training program;

Recognized equivalent of a high school diploma; and

Six-month training program.

Other definitions used in this part are:

**Academic year:* A period of time in which a full-time student is expected to complete—

(a) The equivalent of at least 2 semesters, 2 trimesters, or 3 quarters at an institution using credit hours; or

(b) At least 900 clock hours of training for each program at an institution using clock hours.

Act: Title IV–A–2 of the Higher Education Act of 1965 (HEA).

**Award year:* The period of time between July 1 of one year and June 30 of the following year.

**Campus Based Programs:* (a) The National Direct Student Loan Program (NDSL–34 CFR Part 674);

(b) The College Work-Study Program (CWS–34 CFR Part 675); and

(c) The Supplemental Educational Opportunity Grant Program (SEOG–34 CFR Part 676).

**Clock Hour:* The equivalent of —

(a) A 50 to 60 minute class, lecture, or recitation; or

(b) A 50 to 60 minute faculty supervised laboratory, shop training, or internship.

College Work-Study Program (CWS): The part-time employment program for students authorized by Title IV–C of the HEA.

(42 U.S.C. 2751–2756b)

Continuing grant: A Supplemental Grant that follows and continues an initial grant (see initial grant).

**Dependent student:* A student who does not qualify as an independent student (see independent student).

Eligible Program: An undergraduate program of education or training that—

*(a) Admits as regular students only persons who—

(1) Have a high school diploma;

(2) Have a General Education Certificate (GED) or a state certificate received after passing a State authorized examination which the State recognizes as the equivalent of a high school diploma; or

(3) Are beyond the age of compulsory school attendance in the State in which the institution is located, and have the ability to benefit from the education or training offered.

(b)(1) Leads to a bachelor, associate, or undergraduate professional degree;

(2) Is at least a 2 year program that is acceptable for full credit toward a bachelor degree;

(3) Is at least a 1 year program leading to a certificate or degree that prepares a student for gainful employment in a recognized occupation; or

(4) Is, for a proprietary institution or a postsecondary vocational institution, at least a six-month program leading to a certificate or degree which prepares students for gainful employment in a recognized occupation.

**Expected family contribution:* The amount a student and his or her spouse and family are expected to pay toward his or her cost of attendance.

**Financial need:* The difference between a student's cost of attendance and his or her expected family contribution.

**Guaranteed Student Loan Program (GSL):* The student loan program authorized by Title IV–B of the HEA.

(20 U.S.C. 1071 et seq.)

**Half-time student:* An enrolled student who is carrying a half-time academic work load as determined by the institution according to its own standards and practices. However, the institution's half-time standards must equal or exceed the equivalent of the following minimum requirements:

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[2] These forms, when accepted, must be countersigned by the institution as to hours worked and satisfactory performance, as well as to the accuracy of the total Federal share which is to be reimbursed to the off-campus organization.

(a) 6 semester hours or 8 quarter hours per academic term in an institution using standard semester, trimester, or quarter systems.

(b) 12 semester hours or 18 quarter hours per academic year for an institution using standard credit hours to measure progress, but not using a standard semester, trimester, or quarter system, or the prorated equivalent for a program of less than 1 year.

(c) 12 clock hours per week for an institution using clock hours.

(d) 12 hours of preparation per week for a student enrolled in a program of study by correspondence.

Independent student (effective through June 30, 1981):

(a) A student who for 1979 and 1980—

(1) Has not been claimed and will not be claimed as an exemption for Federal income tax purposes by his or her parent(s);

(2) Has not received and will not recieve financial assistance of more than $750 in each year from his or her parent(s); and

(3) Has not lived and will not live for more than six weeks in each year in the home of his or her parent(s).

(b) If a student's mother and father are divorced or seperated, only one parent will be considered to be the parent of the student for purposes of applying the criteria in paragraph (a) of this section. To determine that parent—

(1) Choose the parent with whom the student resided for the greater portion of the 12 month period preceding the date of application to have an expected family contribution determined under an approved need analysis system.

(2) If the preceding criterion does not apply, choose the parent who provided the greater portion of the student's support for the 12 month period preceding the date of application to have an expected family contribution determined under an approved need analysis system.

(3) If neither of the preceding criteria apply, choose the parent who provided the greater support for the period commencing January 1 of the calendar year which immediately precedes the first calendar year of the award period and ending 12 months prior to the date of application to have an expected family contribution determined under an approved need analysis system.

(c) If either of the parents have died, the institution shall consider only the surviving parent as the parent of the student for purposes of applying the criteria in paragraph (a) of this definition. If both parents have died, the institution shall not consider either parent.

**Independent student (effective July 1, 1981 through June 30, 1982):*

(a) A student who for 1980 and 1981—

(1) Has not been claimed and will not be claimed as an exemption for Federal income tax purposes by his or her parent(s);

(2) Has not received and will not receive financial assistance of more than $1,000 in each year from his or her parent(s); and

(3) Has not lived and will not live for more than six weeks in each year in the home of his or her parent(s).

(b) If a student's mother and father are divorced or separated, only one parent will be considered to be the parent of the student for purposes of applying the the criteria in paragraph (a) of this section. To determine that parent—

(1) Choose the parent with whom the student resided for the greater portion of the 12-month period preceding the date of application to have an expected family contribution determined under an approved need analysis system.

(2) If the preceding criterion does not apply, choose the parent who provided the greater portion of the student's support for the 12-month period preceding the date of application to have an expected family contribution determined under an approved need analysis system.

(3) If neither of the preceding criteria apply, choose the parent who provided the greater support for the period commencing January 1 of the calendar year which immediately precedes the first calendar year of the award period and ending 12 months prior to the date of application to have an expected family contribution determine under an approved need analysis system.

(c) If either of the parents have died, the institution shall consider only the surviving parent as the parent of the student. If both parents have died, the institution shall not consider either parent.

Initial grant: The first SEOG awarded and paid to a student by any institution for either—

(a) An academic year; or

(b) A portion of an academic year if the student was not enrolled for the entire year.

**Legal guardian:* An individual appointed by a court to be a legal guardian of a person and who is specifically required by the court to use his or her own financial resources to support that person.

National Direct Student Loan Program (NDSL): The student loan program authorized by Title IV–E of the HEA.

(20 U.S.C. 1087aa–1087ii)

**National of the United States:* A citizen of the United States or a noncitizen who owes permanent allegiance to the United States.

(8 U.S.C. 1101(a)(22))

**Nonprofit institution:* An institution owned and operated by one or more nonprofit corporations or associations where no part of the net earnings of the institution benefits any private shareholder or individual.

(20 U.S.C. 1141(c))

**Parent:* Parent means the student's mother, father, or legal guardian. An adoptive parent is considered to be the student's mother or father.

**Parent Loans for Undergraduate Students Program (PLUS):* The parent loan program authorized by Title IV–B of the HEA.

**Payment period:* A semester, trimester, or quarter. For an institution not using those academic periods, it is the period between the beginning and the midpoint or between the midpoint and the end of an academic year.

**Pell Grant Program:* The grant program, formerly known as the Basic Educational Opportunity Grant Program, authorized by Title IV–A–1 of the HEA.

**Regular student:* A person who is enrolled or accepted for enrollment in an eligible program in an institution of higher education for the purpose of obtaining a degree or certificate.

**Secretary:* The Secretary of the Department of Education or an official or employee of the Department acting for the Secretary under a delegation of authority.

**State:* The States of the Union, American Samoa, the Commonwealth of Puerto Rico, the District of Columbia, Guam, the Trust Territory of the Pacific Islands, the Virgin Islands, and the Northern Mariana Islands.

(20 U.S.C. 1141(b); 20 U.S.C. 1088(a))

**State Student Incentive Grant Program (SSIG):* The program authorized by Title IV–A–3 of the HEA.

(20 U.S.C. 1070c et seq.)

Undergraduate student: A student enrolled in an undergraduate course of study at an institution of higher education who—

(a) Has not been awarded a bachelor or first professional degree; and

(b) Is in an undergraduate course of study that usually does not exceed 4 academic years, or is enrolled in a 5 academic year program designed to lead to a first degree. A student enrolled in any other length program is considered an undergraduate student for only the first 4 academic years.

(20 U.S.C. 1070b–1070b–3 unless otherwise noted)

§ 676.3 Apportionment and reapportionment.

(a) *Apportionment—Initial grants.* The Secretary apportions—

(1) 90% of appropriated funds for initial grants according to 413D(a) of the Act. If necessary, the Secretary apportions additional amounts to each State to make that State's apportionment equal to its allotment for fiscal year 1972. The 1972 allotments are shown in Appendix A; and

(2) The remaining funds so that each institution in each State receives the amount for initial grants computed under § 676.6 or § 676.7.

(b) *Apportionment—Continuing grants.* The Secretary apportions funds appropriated for continuing grants so that each institution receives the amount computed under § 676.6 or § 676.7.

(c) *Reapportionment—Initial grants.* (1) The Secretary reapportions the amount of a State's apportionment that exceeds the approved requests for initial grants of institutions in the State.

(2) The Secretary reapportions those funds among the remaining States according to institutional need for initial year funds as computed under § 676.6 or § 676.7.

(20 U.S.C. 1070b–3)

§ 676.4 Allocation, reallocation, and payment to institutions.

(a) *Definition.* As used in this section and in section 676.6, "current year" means the 12-month period ending on the June 30 immediately following the closing date for filing a SEOG application.

(b) *Allocation.* The Secretary distributes SEOG funds according to §§ 676.6 or 676.7

(c) *Reallocation.* (1)(i) If an institution anticipates not using all its allocation for initial and continuing grants by the end of an award period, it must specify the anticipated unused amount to the Secretary, who reduces the institution's allocation accordingly.

(ii) Other institutions may apply for those funds on the form and at the time specified by the Secretary.

(iii) The Secretary distributes those funds to applicant institutions in accordance with paragraph (c)(2) of this section.

(2)(i) If the funds that become available under paragraph (c)(1) of this section come from the State's initial allotment under § 676.3(a)(1), the Secretary reallocates those funds equitably to other institutions in that State. The Secretary reapportions those funds that are not needed to maintain the State's initial allotment, and any funds that do not come from that initial allotment, in accordance with paragraphs (c)(2) (ii), (iii), and (iv) of this section.

(ii) The Secretary increases awards to institutions whose students have suffered financial hardships as a result of natural disasters within the preceding 12 months.

(iii) If any funds remain, the Secretary then increases awards to institutions whose awards are less than their national fair shares determined under § 676.6. The Secretary calculates each applicant's increase as follows:

Institution's remaining shortfall/remaining shortfall of all applicants for reallocation × remaining amount available for reallocation

(An institution's remaining shortfall is the difference between its national fair share (see § 676.6 (f)(4) and (g)(4) and its award calculated in § 676.6 and this section through paragraph (c)(2)(ii))).

(iv) If any funds still remain, the Secretary reallocates the funds in a manner that best carries out the purposes of this part.

(d) *Payment to institutions.* The Secretary allocates funds for initial and continuing year grants for a specific period of time. The Secretary pays funds to an institution in advance or by reimbursement. The Secretary bases the amount to be paid on periodic fiscal reports.

(20 U.S.C. 1070b–3)

§ 676.5 Application.

(a) To participate in the SEOG program, an institution must file an application with the Secretary before an annually established closing date.

(b) The application must be on a form approved by the Secretary and contain information needed to determine the institution's allocation under §§ 676.6 and 676.7.

(c) The application must contain the information needed to determine whether the institution is complying with maintenance of effort requirements under § 676.20.

(20 U.S.C. 1070b–3)

§ 676.6 Funding procedure.

(a) *General.* (1) Each institution applying for SEOG initial year (IY) or continuing year (CY) funds receives an amount computed in the following stages:

(i) A "conditional guarantee";

(ii) An IY State increase based on its "fair share" of the State's IY apportionment;

(iii) An IY national increase based on its "fair share" of the national IY portion of the SEOG appropriation; and

(iv) A CY national increase based on its "fair share" of the national CY portion of the SEOG appropriation.

(2) Definition—As used in this section—

(i) "Base year" means the 12-month period ending on the June 30 preceding the closing date for filing an SEOG application;

(ii) "Current year" is defined in section 676.4.

(b) *Conditional guarantee.* The Secretary provides each institution a conditional guarantee computed in the following way:

(1) An institution that participated in the SEOG program in the base year receives an SEOG conditional guarantee equal to the sum of its award year 1979–80 IY and CY expenditures.

(2) An institution applying to participate in the SEOG program for the first time receives a conditional guarantee equal to the greater of—

(i) $5,000; or

(ii) (A) 90 percent of the average IY base year expenditure per student in eligible institutions offering comparable programs of instructions, multiplied by the applicant institution's base year enrollment; and

(B) The average CY base year expenditure per student in eligible institutions offering comparable programs of instruction, multiplied by the applicant institution's base year enrollment.

(3) An institution applying to participate in the SEOG program for the second time receives a conditional guarantee equal to the greatest of—

(i) $5,000;

(ii) (A) 90 percent of the average IY base year expenditure per student in eligible institutions offering comparable programs of instruction, multiplied by the applicant institution's base year enrollment; and

(B) The average CY base year expenditure per student in eligible institutions offering comparable programs of instructions, multiplied by the applicant institution's base year enrollment; or

(iii) 90 percent of its current year IY allocation and 100 percent of its current year CY allocation.

(4) The Secretary divides each institution's conditional guarantee between IY and CY funds based on the percentage that the institution's request for each type of grant bears to its total request.

(c) *SEOG need of an institution.* (1) The Secretary allocates additional funds to an institution under paragraph (e) (IY

State increase), paragraph (f) (IY national increase), and paragraph (g) (CY national increase) based in part on the institution's need for SEOG funds.

(2) The Secretary computes an institution's need for IY and CY SEOG funds by the following formula: SEOG need = 75% of cost of attendance − (Total expected family contribution + Pell Grants − State Student Incentive Grants − 25% of institutional grants for undergraduate students).

(3) As used in paragraph (d) of this section:

(i) *Average cost of attendance* means the attendance costs for undergraduate students. These costs include tuition, fees, standard living expenses, books, and supplies. (The institution reports its total tuition and fee revenues, and the Secretary uses this amount to determine the average cost of attendance.)

(ii) *Eligible students* means for award year 1981–82 students who—

(A) Were enrolled as regular students in good standing on at least a half-time basis in an eligible program during the base year;

(B) Met program regulation requirements for citizenship or residency in the United States for the base year; and

(C) Applied for financial assistance for the base year, and for whom the institution has on file taxable and non-taxable income data and all the other information necessary to perform a needs analysis using a methodology approved by the Secretary.

(iii) State Student Incentive Grants (SSIG) means:

State's total SSIG for the 1977–78 award year (Federal plus match) / Total undergraduate State grants for the 1977–78 award year (including the Federal SSIG allotment)

× Institution's total undergraduate State grants for the 1977–78 award year

(For purposes of this formula, "State" means the State in which the institution is located.)

(iv) *Institutional grants* means the sum of undergraduate gift aid included in determining the maintenance of effort amount under § 676.20 during the award year 1977–78. Institutional grants shall not include student financial assistance that an institution is required by State law to provide from its own funds and is not free under any law in effect on January 1, 1979 to select the recipients or adjust the criteria by which the recipients are selected. Institutional grants shall also not include any student financial assistance that an institution contributed on behalf of the State for the SSIG Program.

(d) *SEOG need of eligible undergraduate students.* To determine the need for SEOG funds of an institution's eligible undergraduate students, the Secretary—

(1) Establishes various income categories for dependent and independent undergraduate students;

(2) Establishes an EFC for each income category of dependent and independent undergraduate students, using a need analysis method approved under § 676.13;

(3) Determines 75 percent of the average cost of attendance;

(4) Subtracts from 75 percent of the average cost of attendance the computed EFC for each income category; (Seventy-five percent of the average cost of attendance minus EFC may not be less than zero.)

(5) Multiplies the remainder by the number of eligible students in that income category;

(6) Adds the amounts obtained in all categories;

(7) Subtracts from that sum Pell Grants received by students at that institution in the base year, State Student Incentive Grants, and 25 percent of institutional grants; and

(8) Divides the institution's total SEOG need between IY and CY based on the percentage that the institution's request for each type of grant bears to its total request.

The following charts show the income categories and calculations.

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DE

IN
$ 0
$ 3,000
$ 6,000
$ 9,000
$12,000
$15,000
$18,000
$21,000
$24,000
$27,000
$30,000
$33,000
$36,000
$39,000
$42,000
$45,000
7 TO

DETERMINATION OF SEOG NEED FOR ELIGIBLE DEPENDENT UNDERGRADUATE STUDENTS

1 INCOME	2 EFC	3 70% x COST	4 NEED COL. 3 LESS COL. 2	5 NUMBER OF ELIGIBLE STUDENTS	6 COL. 4 x COL. 5
$ 0 - $ 2,999					
$ 3,000 - $ 5,999					
$ 6,000 - $ 8,999					
$ 9,000 - $11, 999					
$12,000 - $14,999					
$15,000 - $17,999					
$18,000 - $20,999					
$21,000 - $23,999					
$24,000 - $26,999					
$27,000 - $29,999					
$30,000 - $32,999					
$33,000 - $35,999					
$36,000 - $38,999					
$39,000 - $41,999					
$42,000 - $44,999					
$45,000 - Over					
7 TOTAL FOR DEPENDENT UNDERGRADUATE STUDENTS					$_____

DETERMINATION OF SEOG NEED FOR ELIGIBLE INDEPENDENT UNDERGRADUATE STUDENTS

1 INCOME	2 EFC	3 70% x COST	4 NEED COL. 3 LESS COL. 2	5 NUMBER OF ELIGIBLE STUDENTS	6 COL. 4 x COL. 5
$ 0 - $ 999					
$ 1,000 - $ 1,999					
$ 2,000 - $ 2,999					
$ 3,000 - $ 3,999					
$ 4,000 - $ 4,999					
$ 5,000 - $ 5,999					
$ 6,000 - $ 6,999					
$ 7,000 - $ 7,999					
$ 8,000 - $ 8,999					
$ 9,000 - $ 9,999					
$10,000 - $10,999					
$11,000 - $11,999					
$12,000 - $12,999					
$13,000 - $13,999					
$14,000 - $14,999					
$15,000 - Over					
7 TOTAL FOR INDEPENDENT UNDERGRADUATE STUDENTS					$

SUMMARY AND CALCULATION OF SEOG NEED

1 TOTAL FOR DEPENDENT UNDERGRADUATE STUDENTS	$
2 TOTAL FOR INDEPENDENT UNDERGRADUATE STUDENTS	$
3 TOTAL FOR ALL UNDERGRADUATE STUDENTS (1 + 2)	$
4 ALL BEOG	$
5 ALL STATE GRANT AID	$
6 50% OF ALL INSTITUTIONAL GRANT AID	$
7 TOTAL OF ITEMS 4, 5, and 6	$
8 ITEM 3 (TOTAL ALL UNDERGRADUATE STUDENTS) LESS ITEM 7	
EQUALS TOTAL SEOG NEED	$

BILLING CODE 4110-02-C

(e) *IY State increase.*

(1) For any year the Secretary increases IY awards to institutions in a State ("IY State increase") if the combined IY conditional guarantees of all institutions in that State are less than the State's IY apportionment under § 676.3(a).

(2) The Secretary calculates an institution's IY State increase according to the following formula—

Institution's IY State increase = its IY State shortfall/IY State shortfalls of all institutions in the State × SEOG IY funds available for shortfall

(3) As used in the formula in paragraph (e) of this section—

(i) "SEOG IY funds available for State shortfall" is calculated by subtracting from the State IY apportionment, the IY conditional guarantees of all institutions in the State.

(ii) An institution's "IY State shortfall" is calculated by subtracting from an institution's IY State fair share its IY conditional guarantee.

(iii) An institution's "IY State fair share" is calculated as follows—

Institution's IY State fair share = its SEOG IY need/SEOG IY need of all institutions in the State applying for SEOG funds × State apportionment for SEOG IY

(f) *IY national increase.* (1) For any year the Secretary will further increase IY awards to institutions ("IY national increase") if the sum of the IY conditional guarantees and IY State increases awarded to institutions is less than the SEOG IY appropriation for that year.

(2) The Secretary calculates an institution's IY national increase according to the following formula—

Institution's IY national increase = its IY national shortfall IY national shortfall of all institutions × SEOG IY funds available for national shortfall

(3) As used in the formula in paragraph (f)(2) of this section—

(i) "SEOG IY funds available for national shortfall" is calculated by subtracting from the SEOG appropriation the IY conditional guarantees and State increases of all institutions.

(ii) An institution's "IY national shortfall" is calculated by subtracting from its "IY national fair share", its IY conditional guarantee and State increase.

(4) An institution's "IY national fair share" is calculated as follows:

Institution's IY national fair share = its SEOG IY need/SEOG IY need of all institutions applying for SEOG funds × SEOG IY appropriation

(g) *CY national increase.* (1) For any year the Secretary will further increase awards to institutions ("CY national increase") if the sum of the CY conditional guarantees awarded to institutions is less than the SEOG CY appropriation for that year.

(2) The Secretary calculates an institution's CY national increase according to the following formula—

Institution's CY national increase = its CY national shortfall CY national shortfall of all institutions × SEOG CY funds available for national shortfall

(3) As used in the formula in paragraph (g)(2) of this section—

(i) "SEOG CY funds available for national shortfall" is calculated by subtracting from the SEOG CY appropriation the CY conditional guarantees of all institutions.

(ii) An institution's "CY national shortfall" is calculated by subtracting from its "CY national fair share", its CY conditional guarantee.

(4) An institution's "CY national fair share" is calculated as follows:

Institution's CY national fair share = its SEOG CY need/SEOG CY need of all institutions applying for SEOG funds × SEOG CY appropriation

(h) No institution may receive more IY or CY SEOG funds than it requests.

(20 U.S.C. 1070b–3)

The following charts show the income categories and calculations for eligible undergraduate students:

1 Income	2 Expected family contribution	3 75 pct × cost	4 (need) Col. 3 less col. 2	5 Number of eligible students	6 Col. 4 × col. 5
Determination of SEOG Need for Eligible Dependent Undergraduate Students					
0 to $2,999					
$3,000 to $5,999					
$6,000 to $8,999					
$9,000 to $11,999					
$12,000 to $14,999					
$15,000 to $17,999					
$18,000 to $20,999					
$21,000 to $23,999					
$24,000 to $26,999					
$27,000 to $29,999					
$30,000 to $32,999					
$33,000 to $35,999					
$36,000 to $38,999					
$39,000 to $41,999					
$42,000 to $44,999					
$45,000 and over					
7 Total for dependent undergraduate students					$
Determination of SEOG Need for Eligible Independent Undergraduate Students					
0 to $999					
$1,000 to $1,999					
$2,000 to $2,999					
$3,000 to $3,999					
$4,000 to $4,999					
$5,000 to $5,999					
$6,000 to $6,999					
$7,000 to $7,999					
$8,000 to $8,999					
$9,000 to $9,999					
$10,000 to $10,999					
$11,000 to $11,999					
$12,000 to $12,999					
$13,000 to $13,999					
$14,000 to $14,999					
$15,000 and over					
7 Total for independent undergraduate students					$

Summary and Calculation of SEOG Need

1	Total for dependent undergraduate students	$
2	Total for independent undergraduate students	$
3	Total for all undergraduate students (1 + 2)	$
4	All Pell grants	$
5	State student incentive grants	$
6	25 pct of institutional grants	$
7	Total of items 4, 5, and 6	$
8	Item 3 (total all undergraduate students) less item 7 equals total SEOG need	$

§ 676.7 Application review—Approval of request.

(a) An institution may request a review of the amount it is scheduled to receive under § 676.6.

(b) A National Review Panel appointed by the Secretary reviews each institution's request. The panel consists of student financial aid administrators and Education Department personnel.

(c) In setting an award amount, the Secretary considers the panel's recommendations and its reasons for the recommendations.

(d) The Secretary sets an award amount based on procedures in § 676.6 and the review panel's recommendations.

(20 U.S.C. 1070b–3)

§ 676.8 Institutional agreement.

To participate in the SEOG program, an institution of higher education must enter into an agreement with the Secretary. The agreement provides that the institution will—

(a) Use the funds it receives solely for the purposes specified in this part; and

(b) Administer the SEOG program in accordance with the Act, the provisions of this part, and the Student Assistance General Provisions, 34 CFR Part 668.

(20 U.S.C. 1070b et seq. and 1094.)

§ 676.9 Student eligibility.

(a) *Eligibility.* A student is eligible to receive an SEOG at an institution of higher education if the student—

*(1) Is a regular student;

(2) Is enrolled or accepted for enrollment in an eligible program as an undergraduate student at that institution;

*(3)(i) Is a U.S. citizen or National;

(ii) Is a permanent resident of the U.S.;

(iii) Provides evidence from the Immigration and Naturalization Service that he or she is in the United States for other than a temporary purpose with the intention of becoming a citizen or permanent resident; or

(iv) Is a permanent resident of the Trust Territory of the Pacific Islands or the Northern Mariana Islands;

*(4) Has financial need;

*(5) Is maintaining satisfactory progress in the course of study he or she is pursuing according to the standards and practices of that institution;

*(6) Does not owe a refund on a Pell Grant, Supplemental Grant or State Student Incentive Grant received to meet the cost of attending that institution; and

*(7) Is not in default on any National Defense/Direct Student Loan, Guaranteed Student Loan, or Parent Loans for Undergraduate Students (PLUS) received to meet the cost of attending that institution.

*(b) *Member of a religious order—financial need.* The Secretary considers that a member of a religious order (an order, community, society, agency, or organization) who is pursuing a course of study at an institution of higher education has no financial need if that religious order—

(1) Has as its primary objective the promotion of ideals and beliefs regarding a Supreme Being;

(2) Requires its members to forego monetary or other support substantially beyond the support it provides; and

(3)(i) Directs the member to pursue the course of study; or

(ii) Provides subsistence support to its members.

(c) *Selection.* (1) An institution may use not more than 10 percent of its allocation to award SEOGs to eligible students who are enrolled as less than half-time students.

(2) An institution must make SEOG funds reasonably available (to the extent of available funds) to all eligible students who demonstrate financial need.

(3) The institution's selection procedures must be—

(i) Uniformly applied;

(ii) In writing; and

(iii) Maintained in the files of the student financial assistance office.

(4) The institution must maintain on file all SEOG applications for the period specified in § 676.19(c)(2).

*(d) *Determination of satisfactory progress.*

(1) If an institution determines at the beginning of a payment period that a student is not maintaining satisfactory progress, but reverses itself BEFORE the end of the payment period, the institution may pay an SEOG to the student for the entire payment period.

(2) If an institution determines at the beginning of a payment period that a student is not maintaining satisfactory progress, but reverses itself AFTER the end of the payment period, the institution may NOT pay the student an SEOG for that payment period OR make adjustments in subsequent financial aid payments to compensate for the loss of aid for that period.

*(e) *Overpayment of grants.* Conditions under which an institution may pay an SEOG to a student who is overpaid a grant:

(1) *Overpayment of a Pell Grant.* If an institution makes an overpayment of a Pell Grant to a student, it may continue to make SEOG payments to that student if—

(i) The student is otherwise eligible; and

(ii) It can eliminate the overpayment in the award period in which it occurred by adjusting the subsequent Pell Grant payments for that award year.

(2) *Overpayment of a Pell Grant due to institutional error.* If the institution makes an overpayment of a Pell Grant as a result of its own error and can not correct it as specified in subparagraph (1) of this paragraph, it may continue to make payments to a student if the student—

(i) Is otherwise eligible; and

(ii) Acknowledges in writing the amount of overpayment and agrees to repay it in a reasonable period of time.

(3) *Overpayment of an SEOG.* An institution may continue to make SEOG payments to a student who receives an overpayment on an SEOG if—

(i) The student is otherwise eligible; and

(ii) It can eliminate the overpayment by adjusting financial aid payments (other than Pell Grants) in the same award period in which the overpayment occurred.

(4) *Definition.* Overpayment of a grant means that a student's grant payments are greater than the amount he or she is entitled to receive.

*(f) *Default on loans.* Conditions under which an institution may pay an SEOG to a student who is in default on loans made for attendance at that institution:

(1) *Guaranteed loan and Parent Loans for Undergraduate Students.* An institution may pay an SEOG to a student who is in default on a Guaranteed Student Loan or a PLUS if the Secretary (for a Federally insured loan) or a guarantee agency (for a loan insured by that guarantee agency) determines that the student has made satisfactory arrangements to repay the defaulted loan.

(2) *National Defense/Direct Student Loan.* An institution may pay an SEOG to a student who is in default on a National Defense/Direct Student Loan made at that institution if the student has made arrangements, satisfactory to the institution, to repay the loan.

*(g) *Bankruptcy.* The Secretary considers a National Defense Student Loan, a National Direct Student Loan, a Guaranteed Student Loan, or a PLUS that is discharged in bankruptcy to be in default for purposes of this section.

*(h) *GSL/PLUS—Reliance on student's statement.* An institution, in determining whether a student is in default on a loan made under the Guaranteed Student Loan Program or the PLUS program, may rely upon the student's written statement that he or she is not in default unless the institution has information to the contrary.

(20 U.S.C. 1070b–2 and 1091f)

§ 675.10 Special sessions.

(a) A student enrolled at an institution in a special session (e.g., summer school) is eligible for an SEOG if he or she—

(1) Is otherwise eligible (see § 676.9);

(2)(i) Is registered at that institution for that session; or

(ii) Is taking all of the courses required to complete his or her certificate or degree; and

(3)(i) Was attending that institution during the preceding term; or

(ii) Has been accepted for the subsequent term.

(20 U.S.C. 1070b–1)

§ 676.11 Cost of attendance.

(a) A student's costs of attendance includes—

(1) Tuition and fees normally assessed a full-time student at the institution at which the student is in attendance;

(2) An allowance for books, supplies, transportation, and miscellaneous personal expenses;

(3) An allowance for room and board costs incurred by the student which—

(i) Beginning in academic year 1981–1982 shall be an allowance of not less than $1,100 for a student without dependents residing at home with parents;

(ii) For students without dependents residing in institutionally owned or operated housing, shall be a standard allowance determined by the institution based on the amount normally assessed most of its residents for room and board;

(iii) For all other students without dependents, shall be a standard allowance determined by the institution based on the expenses reasonably incurred by the students for room and board; and

(iv) For students with dependents, shall be an allowance based on the expenses reasonably incurred by the students for room and board;

(4) For a student engaged in a program of study by correspondence, only tuition and fees and, if required, books and supplies, and travel and room and board costs incurred specifically in fulfilling a required period of residential training;

(5) For a student enrolled in an academic program which normally includes a formal program of study abroad, reasonable costs associated with that study;

(6) For a student with dependent children, an allowance based on the expenses reasonably incurred for child care; and

(7) For a handicapped student, an allowance for those expenses related to his or her handicap, including special services, transportation, equipment, and supplies that are reasonably incurred and not provided for by other assisting agencies.

(b) *Adjustments.* The institution, in individual cases, may adjust the cost of attendance if—

(1) The financial aid administrator believes the cost of attendance determined in accordance with paragraph (a) does not accurately reflect the student's actual cost of attendance; and

(2) The institution documents all adjustments in writing with an accompanying explanation and makes them part of the institution's records.

(20 U.S.C. 1088 (d))

***§ 676.12 Expected family contribution.**

(a) *Dependent students.* In determining the amount a dependent student and his or her spouse and parents are expected to contribute to the student's cost of attendance, the financial aid administrator must consider—

(1) Any serious illness in the family. (Family members include the student, the student's parents and spouse, and any other persons the parents may claim as exemptions under the Internal Revenue Code);

(2) The number of the parents' dependent children;

(3) The number of the parents' dependent children attending institutions of higher education;

(4) Tuition costs of dependent children attending elementary and secondary schools; and

(5) Any other circumstances that could affect the ability of the student, the student's spouse, and the student's parents to contribute to his or her cost of attendance.

(b) *Independent students.* In determining the amount an independent student and spouse are expected to contribute to the student's cost of attendance, the financial aid administrator must consider—

(1) Any serious illness in the family. (Family members include the student, his or her spouse, and any other persons the student or spouse may claim as exemptions under the Internal Revenue Code);

(2) The number of the student's dependent children;

(3) The number of the student's dependent children attending institutions of higher education;

(4) Tuition costs of dependent children attending elementary and secondary schools; and

(5) Any other circumstances that could affect the ability of the student or spouse to contribute to the student's cost of attendance.

(c) *Special determination of dependent student-parent relationship.* (1) The student financial aid administrator must determine whether the relationship between a student and his or her parents makes it unreasonable to expect the parents to contribute to the student's cost of attendance, regardless of their ability to do so, if requested by a student who does not—

(i) Live with his or her parents;

(ii) Visit his or her parents for periods longer than typical for other adult family members; or

(iii) Receive gifts from his or her parents more valuable than those typically given to other adult nondependent offspring.

(2) Before determining that it is unreasonable for a parent of a dependent student to contribute to the student's attendance costs, the financial aid administrator must determine whether the student's parents are, in fact, willing to contribute toward those costs.

(3) The student financial aid administrator must make that determination part of the institution's written record.

(d) *Native American students.* To determine a Native American's expected family contribution, an institution may not consider the following as income or assets of the student or his or her family:

(1) Awards made under the Distribution of Judgment Funds Act (25 U.S.C. 1401 et seq.) or the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.).

(2) Property that may not be sold or encumbered without the consent of the Secretary of the Interior.

(3) Any other property held in trust for the student or his or her family by the U.S. Government.

(e) *Annual determinations.* An institution must determine a student's need at least annually.

(20 U.S.C. 1070b–2.)

***§ 676.13 Approved need analysis systems.**

(a) An institution must use a Secretary approved need analysis system or calculation method in complying with the requirements in § 676.12 (expected family contribution).

(b) *Preapproved systems for dependent students.* The Secretary has approved the following systems for dependent students:

(1) The method of computing an expected family contribution used in the Pell Grant Program (34 CFR Part 690).

(2) The income tax system if adjusted to reflect the number of the parents' dependent children who are attending institutions of higher education. The expected family contribution produced under this system is the sum of—

(i) The money the student is reasonably able to contribute;

(ii) The amount of Federal income tax paid by the student's parents;

(iii) 5% of the parents' net assets in excess of $17,000 if there are no farm or business assets; or

(iv) 5% of the parents' net assets in excess of $50,000 if there are farm and business assets. However, no more than $17,000 may be deducted for assets other than farm and business assets.

(c) *Criteria for other systems for dependent students.* (1) The Secretary approves other need analysis systems for dependent students that are properly submitted (see paragraph (e)), if the system produces expected family contribution figures that—

(i) Increase incrementally as the parents' financial strength, measured in constant dollars, increases;

(ii) Are equal for families of equal financial strength; and

(iii) Are within $50 of the expected family contribution figures in 75% of the sample cases supplied by the Secretary.

(2) The Secretary computes the sample cases by:

(i) Deducting from the sum of the parents' adjusted gross income and nontaxable income—

(A) The amount of Federal income taxes and social security taxes;

(B) An 8% allowance on total income for State and local taxes; and

(C) A family maintenance allowance (excluding the student during the academic year) using Department of Labor estimates at a low standard of living;

(ii) Adding to this remainder, 12% of the net market value of the parents' assets, after deducting a standard asset reserve; and

(iii) Applying a rate schedule that the Secretary will publish annually with the sample cases.

(3) (i) In developing sample cases, the Secretary selects cases where the main wage earner is 45 years of age.

(ii) The Secretary does not select cases that involve medical and dental expenses, casualty and theft losses, housekeeping allowances, farm or business assets, more than one family member attending a postsecondary institution as an undergraduate, social security or veteran's benefits, or any unusual circumstances.

(4) In comparing figures from systems submitted for approval with figures from sample cases, the Secretary treats an expected parental contribution of less than zero as zero.

(5) In order to insure measurement in constant dollars, the Secretary revises sample case figures for inflation annually by adjusting—

(i) Deductions for family maintenance;

(ii) The standard deduction from assets; and

(iii) The rate of contribution from income and assets.

(d) *Systems for independent students.* The Secretary approves the following systems for independent students:

(1) The method of computing an expected family contribution used in the Pell Grant program (34 CFR Part 690).

(2) The systems of need analysis for independent students published by those organizations approved for dependent students under paragraph (c).

(e) *Application procedures for system approval.* (1) An organization or individual wishing to have a system for dependent students approved must also submit a system for independent students. Both systems must be submitted to the Secretary by June 30.

(2) The Secretary lists approved systems in the Federal Register by the following September 1.

(3) Applications for approval must include—

(i) Information the Secretary needs to determine whether or not the system meets the requirements of paragraph (c); and

(ii) The expected family contribution amounts produced by that system for sample cases.

(f) *Duration of approval.* (1) There is no specified expiration date for need analysis systems for dependent students approved under paragraph (b).

(2) An institution may use the need analysis systems for dependent and independent students approved under paragraphs (c) and (d) to determine student eligibility and amount of assistance under Campus Based Programs for an academic year that begins—

(i) No earlier than the following June 1; or

(ii) No later than 12 months after that June 1 date.

(g) *Adjustments.* The institution, in individual cases, may further adjust expected family contributions computed according to one of the approved systems if—

(1) The student financial aid administrator believes the expected family contribution does not accurately reflect the student's (or parent's) ability to contribute; and

(2) The institution documents all adjustments in writing with an accompanying explanation and makes them part of the institution's records.

(42 U.S.C. 2754)

§ 676.14 Coordination of student financial aid programs, award amount, and overaward.

(a) *Coordinating official.* An institution must appoint a coordinating official for its SEOG and other Federal and non-Federal student financial aid programs.

(b) *Overaward prohibited, general award.* (1) An institution may not award an SEOG to a student if the SEOG, when combined with all other resources, exceeds the student's financial need.

The institution, however, does NOT violate this rule if—

(i) The student receives additional funds after the institution awards aid, and total resources exceed his or her financial need by $200 or less by the end of the academic year; or

(ii) The student earns more money from employment than the institution anticipated when it awarded the SEOG, and it treats the earnings in accordance with paragraph (c) (prevention of overaward).

(2) A student's financial need may not exceed his or her cost of attendance.

(3) If a student's resources exceed his or her need by more than $200, and the excess is not from employment, the overaward is the amount that exceeds the $200.

(c) *Prevention of overaward by treatment of earnings.* An institution must take the following steps when it learns that an SEOG recipient has earned, or will earn, more than $200 over his or her financial need:

(1) It must decide whether the student needs the money to pay for necessary additional educational costs, unanticipated when it awarded financial aid to the student. If the student does, no further action is necessary.

(2) If the student's earnings still exceed need by $200 or more after the institution subtracts any additional costs, it must cancel any unpaid loan or grant (other than Pell Grants) to avoid exceeding need by more than $200.

(3) If the student's earnings still exceed his or her need by more than $200 after the institution takes the steps required in the two preceding subparagraphs, and the student is enrolled for the next academic year, the institution must use the amount that exceeds $200 as—

(i) A resource to help pay the student's cost of attendance in the following year; or

(ii) A substitute for the student's expected family contribution ("EFC") for the current year unless a GSL of PLUS is used for that purpose.

(4) If the student's earnings still exceed his or her need by more than $200 after the institution takes the steps required in subparagraphs (1) and (2), and the student is NOT enrolled for the next academic year, no further action is necessary.

(d) *Resources.* The Secretary considers that "resources" include, but are not limited to, any—

(1) Funds the student is entitled to receive from a Pell Grant, regardless of whether the student applies for it;

(2) Waiver of tuition and fees;

(3) Scholarship or grant, including an SEOG or athletic scholarship;

(4) Fellowship or assistantship;

(5) Insurance programs for the student's education, including any social security educational benefits not included in computing EFC;

(6) GSL or PLUS as indicated under paragraph (e);

(7) Long-term loans, including NDSL but excluding GSL and PLUS, made by the institution;

(8) Net earnings from employment including any part of an independent student's net earnings not included as part of the student's EFC. ("Net earnings" means gross earnings minus taxes and job related costs); and

(9) Veterans benefits (except that part included as part of the student's EFC).

(e) *Treatment of Guaranteed Student Loans (GSL) and Parent Loans for Undergraduate Students (PLUS).* (1) A student may use a GSL or a PLUS as a substitute for his or her expected family contribution.

(2) However, if the loan amounts under one or both of these programs exceeds the student's expected family contribution, the Secretary considers the excess to be a resource.

(f) *Administrative responsibility.* (1) An institution is responsible ONLY for the resources it—

(i) Makes available to its students;

(ii) Knows about; or

(iii) Can reasonably anticipate at the time it awards SEOG funds to the student.

(2) An institution must take reasonable steps to stay informed about the earnings of a student employed outside the institution.

(g) The provisions of paragraph (b) of this section are retroactive to October 12, 1976.

(20 U.S.C. 1070b—1070b-3.)

§ 676.15 Coordination with BIA grants.

*(a) To determine the amount of a Supplemental Grant for a student who is also eligible for a Bureau of Indian Affairs (BIA) education grant, an institution must prepare a package of student aid—

(1) From resources other than the BIA education grant the student has received or is expected to receive; and

(2) That is consistent in type and amount with packages prepared for students in similar circumstances who are not eligible for a BIA education grant.

*(b)(1) The BIA education grant, whether received by the student before or after the preparation of the student aid package, supplements that package.

(2) No adjustment may be made to the student aid package as long as the total of the package and the BIA education grant is less than the institution's determination of that student's financial need.

*(c)(1) If the BIA education grant, when combined with other aid in the package, exceeds the student's need, the excess must be deducted and may be deducted only from the other assistance, not the BIA education grant.

(2) The institution must deduct the excess in the following sequence: loans, work-study awards, and grants other than Pell Grants. However, the institution may change the sequence if requested by a student and the institution believes the change benefits the student.

*(d) To determine the financial need of a BIA-eligible student, a financial aid administrator is encouraged to consult with area officials in charge of BIA postsecondary financial aid.

(20 U.S.C. 1070b-1)

§ 676.16 Payment of grant.

(a)(1) An institution using a semester, trimester, or quarter system must pay each term a portion of a Supplemental Grant awarded for a full academic year.

(2) The institution determines the amount paid each term by the following fraction:

$$\frac{\text{SEOG}}{N}$$

Where SEOG = total SEOG award and
N = the number of semesters, trimesters, or quarters in that year.

(3) If the total SEOG award is to a student attending less than a full academic year, the institution determines the amount of each payment by the following fraction:

$$\frac{\text{SEOG}}{R}$$

Where SEOG = total SEOG award and R = the number of semesters, trimesters, or quarters remaining in the academic year.

(b)(1) An institution NOT using a semester, trimester, or quarter system must pay a Supplemental Grant at least twice during an academic year.

(2) The institution must make one payment at the beginning and another at the midpoint of the academic year.

(3) The institution may not pay more than half the award before the midpoint payment.

(c)(1) Within each payment period, an institution may pay the student at such time and in such amounts as it determines best meets the student's needs.

(2) It may pay the student directly by check or by crediting his or her account with the institution. However, if it credits the account, the institution must give the student a receipt.

(d) Only one payment is necessary if the total amount the institution awards a student under the Campus Based Programs is less than $301.

(e) A 6 month training program that prepares students for gainful employment in a recognized occupation equals a full academic year for purposes of disbursement.

(f) Before making the first SEOG payment for any year, an institution must get written acceptance of the grant amount from the student and give the student a statement explaining—

(1) The nature and sources of other financial aid made available through the institution; and

(2) That payment of the SEOG depends upon the student's—

(i) Maintaining satisfactory progress in his or her course of study, according to the institution's prescribed standards; and

(ii) Remaining an eligible student.

(g) A correspondence student must submit his or her first completed lesson before receiving an SEOG payment.

(h)(1) An institution may not pay a Supplemental Educational Opportunity Grant unless the student files a statement of educational purpose in which the student declares that he or she will use the grant solely for educational expenses in connection with attendance at the institution.

(2) The Secretary considers the following statement as satisfying this requirement.

Statement of Educational Purpose.

I declare that I will use any funds I receive under the Supplemental Grant Program for expenses connected with attendance at

(Name of institution) _____

(Dated) _____

(Signature) _____

(i) If an institution computes a student's need using estimated data submitted before January 1 of the previous award year, the institution may not pay the student an SEOG unless it verifies that information.

(U.S.C. 1070b, 1091)

*§ 676.17 Federal interest in allocated funds.

Except for funds received for the administrative cost allowance (see § 676.18(b)), funds received by an institution under the SEOG program are held in trust for the intended student beneficiaries. Funds may not be used or hypothecated (i.e., serve as collateral) for any other purpose.

(20 U.S.C. 1070b—1070b-3)

§ 676.18 Use of funds.

(a) *General.* Funds allocated to an institution under the SEOG program may be used only to—

(1) Make grants to eligible students;

(2) Transfer to the institution's CWS program (see § 676.21); and

(3) Carry out the activities described in paragraph (b).

(b) *Administrative cost allowance.* An institution participating in the SEOG program is entitled to an administrative cost allowance.

(1) The amount of the allowance equals—

(i) Five (5) percent of the first $2,750,000 of the institution's expenditures in an award year under the CWS, SEOG, and NDSL programs; plus

(ii) Four (4) percent of its expenditures which are greater than $2,750,000 but less than $5,500,000; plus

(iii) Three (3) percent of its expenditures in excess of $5,500,000.

(2) However, for the purpose of calculating the allowance in paragraph (b)(1) of this section, CWS expenditures made under the Community Service Learning program (§ 675.28) or NDSL loans that are assigned to the Secretary under section 463(a)(6)(B) of the Higher Education Act are not included.

(3) An institution must use its administrative cost allowance to offset its costs of administering the Pell Grant, CWS, SEOG, and NDSL programs. Administrative cost also include the expenses incurred for carrying out the student consumer information services requirements of Subpart C of the Student Assistance General Provisions, 34 CFR Part 668.

(4) An institution may not charge any administrative expenses against its SEOG IY allocation for an award year unless it awards initial grants to students for that year. Similarly it may not charge any administrative expenses against its CY allocation for an award year unless it awards continuing grants to students for that year.

(c)(1) An institution may use funds allocated to it for initial and continuing year awards in any manner the institution determines best suits the purposes of the program.

(2) An institution must report initial year expenditures and continuing year expenditures separately on the Fiscal Operations Report required under § 676.19(b).

(d) An institution may use up to 10 percent of its SEOG allocation to make awards to less than half-time eligible students.

(20 U.S.C. 1096; 20 U.S.C. 1070b et seq.)

§ 676.19 Fiscal procedures and records.

*(a) *Fiscal procedures.* (1) In administering its SEOG program, an institution must establish and maintain an internal control system of checks and balances that insures that no office can both authorize payments and disburse funds to students.

(2) A separate bank account for SEOG funds is not required. However an institution must notify any bank in which it deposits SEOG funds of all accounts in that bank in which it deposits Federal funds. The institution may give this notice by either—

(i) Including in the name of the account the fact that Federal funds are deposited; or

(ii) Notifying the bank in writing of the accounts in which it deposits Federal funds. The institution must retain a copy of this notice in its files.

(20 U.S.C. 1070b; 20 U.S.C. 1232c)

(b) *Records and reporting.* (1) An institution must establish and maintain on a current basis financial records that reflect all program transactions. The institution must establish and maintain general ledger control accounts and related subsidiary accounts that identify each program transaction and separate those transactions from all other institutional financial activity.

(2) The institution must also establish and maintain program and fiscal records that—

(i) Identify each student's account and status including separation of initial and continuing grant amounts;

(ii) Show the eligibility of each student aided under the program;

(iii) Show the amount of need and how the need was met for each student; and

(iv) Identify the administrator who determined the need.

(3) Each year an institution must submit a Fiscal-Operations Report plus other information the Secretary requires. The institution must comply with requirements to insure the information reported is accurate and must submit it on the form and at the time specified by the Secretary.

(c) *Retention of records.* (1) *Records.* Each institution must keep intact and accessible records of the receipt and expenditure of Federal funds, including all accounting records and original and supporting documents necessary to document how the funds are spent.

*(2) *Period of retention.* Except for audit questions, an institution must keep records for an award year for five years after it submits its Fiscal-Operations Reports for that year.

*(3) *Microfilm copies.* An institution may substitute microfilm copies for

original records in meeting the requirements of this section.

*(4) *Audit questions.* An institution must keep records in any claim or expenditure questioned by Federal audit until resolution of any audit questions. However, the institution does not have to retain records beyond 5 years if the actions taken by the United States to recover funds are barred by the Federal statute of limitation in 28 U.S.C. 2415(b).

*(d) *Audits—Federal.* An institution must give the Secretary, the Comptroller General of the United States, or their duly authorized representatives access to the records specified in paragraphs (c) (1) and (2) and to any other pertinent books, documents, papers, and records.

*(e) *Audits—Non-Federal.* (1) An institution must audit, or have audited under its direction, SEOG transactions to determine at a minimum—

(i) The fiscal integrity of financial transactions and reports; and

(ii) If those transactions are in compliance with the applicable laws and regulations.

(2) The audits must be performed in accordance with the Education Department's "Audit Guide" for student financial aid programs.

(3) The institution must have an audit performed at least once every two years unless the Secretary approves a longer interval.

(4) Each audit must cover the entire period of time since the last audit.

*(f) *Audit reports.* The institution must submit audit reports to its local regional office of the Education Department's Office of Inspector General. It must give the Secretary and the Inspector General access to records or other documents necessary to the audit's review.

(42 U.S.C. 1070b; 1232c)

§ 676.20 Maintenance of effort.

(a) For each award year it receives an SEOG allocation, an institution must spend from its own scholarship and student financial aid program at least one-third its aid program expenditures for the three award years preceding the latest of the following:

(1) The effective date of any agreement required by section 443 of the College Work-Study Program (42 U.S.C. 2753) or section 407 of the Educational Opportunity Grants Program (20 U.S.C. 1067) that was in effect on June 30, 1973.

(2) The award year the institution received its first CWS allocation.

(3) The award year the institution received its first Educational Opportunity Grant Program allocation (20 U.S.C. 1061–1067, 1069).

(4) The award year the institution received its first SEOG allocation if it did not participate in the Educational Opportunity Grant Program during the 1972–1973 award year.

(b) The Secretary may waive the maintenance of effort requirements for an award year because of the following special circumstances:

(1) Fund withdrawals from outside sources (Public appropriations are not considered outside sources for public institutions).

(2) An enrollment decline if the institution continues to spend from its own scholarship and student financial aid program the average amount it spent per student during the three-year base period.

(3) Voluntary withdrawal as a GSL lender. The Secretary waives that portion of the failure that equals one-third the amount of loans the institution made as a lender during the three-year base period. However, to have this portion waived, the institution must arrange alternate sources of financing for its students at least equal to the amount the Secretary waives.

(4) Termination as a GSL lender by the Secretary.

(i) The Secretary waives, for the year the institution is terminated as a lender, the portion of the failure that equals one-third the amount of loans the institution made as a lender during the three-year base period.

(ii) The Secretary also waives, for succeeding years, the portion of the failure that equals one-third of the amount of loans the institution made as a lender during the three-year base period if the institution arranges alternate sources of assistance for its students at least equal to the amount the Secretary waives.

(5) The Secretary considers that an institution has provided alternate sources of assistance for its students if it provides the assistance under a written agreement between the funding source and the institution.

(c) An institution, to obtain a waiver, must submit to the Secretary—

(1) A request for a waiver; and

(2) A description of circumstances justifying the waiver.

(d) An institution's "own scholarship and student financial aid program" includes—

(1) Any expenditures of its own funds for scholarships, grants, loans, tuition waivers, fee waivers, and fee remissions;

(2) The institution's employment of its graduate and undergraduate students, whether or not they are eligible for the SEOG or CWS programs; and

(3) Any funds donated to the institution for student financial aid if the institution chooses the recipients and the award amounts. However, the institution may not claim funds from Federal sources as part of its "own scholarship and student financial aid program."

(e) (1) According to an institution's stated practices, scholarships and other student financial aid given to faculty members' dependents or to institution employees may be considered as either—

(i) Student financial aid; or

(ii) Employee benefits.

(2) Fellowships and assistantships count as financial aid unless it is the institution's stated practice to consider the holders faculty members.

(3) Alternatives in subparagraphs (e) (1) and (2) of this section apply to both the base year period and current expenditures. Any change must have the Secretary's written approval.

(20 U.S.C. 1094)

§ 676.21 Transfer of funds.

(a) An institution may transfer up to 10% of its allocation for an award year from its SEOG program to its CWS program and vice versa. The institution must use the funds, when transferred, according to the requirements of the program to which they are transferred.

(b) An institution may transfer SEOG funds without regard to whether they were allocated for initial or continuing grants.

(c) An institution may use CWS funds transferred to the SEOG program for initial or continuing grants, as the institution sees fit.

(d) An institution must report any funds transferred on the Fiscal Operations Report required under §676.19(b).

(e) An institution shall transfer back to the CWS program any funds unexpended at the end of the award year that it transferred to the SEOG program from the CWS program.

(20 U.S.C. 1095)

§ 676.22 Duration of student eligibility.

(a) A student is eligible to receive a Supplemental Grant for the period of time needed to complete the first undergraduate baccalaureate course of study being pursued by that student.

(20 U.S.C. 1070b-1)

§ 676.23 Types of grant awards.

(a) An institution may award only one initial grant to a student. The maximum duration of an initial grant is one academic year.

(b) However, if a student receives an initial grant from one institution and transfers to another, the Secretary considers any Supplemental Grant awarded by the second institution to be a continuing grant.

(20 U.S.C. 1070b)

§ 676.24 Amount of grant.

(a) As a general rule, a Supplemental Grant awarded for an academic year equals the amount the institution determines necessary for a student to continue his or her studies. However, no grant may be awarded for a full academic year that is—

(1) Less than $200; nor

(2) More than $2,000.

(b) If a student is enrolled for less than a full academic year, the institution reduces the grant awarded for that period in proportion to the length of the period of attendance compared to the length of the full academic year.

Appendix A—Allotment of Funds to States for Fiscal Year 1972

Alabama	$1,196,286
Alaska	57,592
Arizona	794,102
Arkansas	646,053
California	8,125,711
Colorado	1,092,595
Connecticut	994,782
Delaware	174,114
District of Columbia	698,694
Florida	2,696,092
Georgia	1,291,155
Hawaii	296,506
Idaho	330,393
Illinois	3,743,389
Indiana	1,967,196
Iowa	1,231,999
Kansas	1,092,749
Kentucky	1,060,841
Louisiana	1,278,332
Maine	398,431
Maryland	1,169,052
Massachusetts	2,758,217
Michigan	3,339,257
Minnesota	1,883,842
Mississippi	883,948
Missouri	1,754,719
Montana	323,598
Nebraska	713,699
Nevada	118,425
New Hampshire	322,322
New Jersey	1,921,749
New Mexico	412,228
New York	8,234,186
North Carolina	1,789,807
North Dakota	351,506
Ohio	3,588,791
Oklahoma	1,178,300
Oregon	1,095,037
Pennsylvania	3,751,149
Rhode Island	362,980
South Carolina	680,479
South Dakota	347,088
Tennessee	1,268,807
Texas	4,099,448
Utah	761,127
Vermont	236,506
Virginia	1,289,349
Washington	1,525,136
West Virginia	707,398
Wisconsin	1,916,009
Wyoming	151,836
Guam	13,218
Puerto Rico	895,030
Virgin Islands	4,745
Total	75,000,000

[FR Doc. 81-399 Filed 1-16-81; 8:45 am]

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34 CFR Parts 674, 675, and 676

National Direct Student Loan Program, College-Work Study Program, and Supplemental Educational Opportunity Grant Program

AGENCY: Department of Education.

ACTION: Notice of Proposed Rulemaking: Cross-reference.

SUMMARY: In this issue of the Federal Register the Secretary of Education has promulgated final regulations for the campus-based student financial assistance programs. These programs are the National Direct Student Loan (NDSL) program, 34 CFR Part 674, the College Work Study (CWS) program, 34 CFR Part 675, and the Supplemental Educational Opportunity Grant (SEOG) program, 34 CFR Part 676. The Secretary has however requested comments on specific provisions of those regulations. These provisions include the new deferment provisions for the NDSL program, 34 CFR 174.34a, and the new CWS Community Service Learning program, 34 CFR 175.28. In addition, the Secretary requests comments concerning the definition of a half-time student in each of the program regulations as well as on whether provisions and definitions common to all three program regulations should be deleted from each program regulation and consolidated in one comprehensive regulation that would govern all the Title IV student financial assistance programs.

The texts of the regulations on which the Secretary invites comments are published in the Rules and Regulations section of this issue of the Federal Register. They have been adopted as final regulations and will govern these programs until the Secretary issues new regulations based on public comment.

DATES: All comments, suggestions, or objections must be received on or before March 20, 1981.

ADDRESSES: Comments should be addressed to: Lynn Laverentz, Office of Student Financial Assistance, U.S. Department of Education, 400 Maryland Avenue, SW., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Lynn Laverentz, Telephone: (202) 245-9720.

INVITATION TO COMMENT: For additional details on how to comment, see the Preamble of the final regulations for these programs published in this issue of the Federal Register.

(Catalog of Federal Domestic Assistance Numbers 84.038, National Direct Student Loan Program; 84.033, College Work-Study Program; and 84.007, Supplemental Educational Opportunity Grant Program)

Dated: January 8, 1981.

Shirley M. Hufstedler,

Secretary of Education.

[FR Doc. 81-1400 Filed 1-16-81; 8:45 am]

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federal register

Monday
January 19, 1981

Part IV

Department of Transportation

Research and Special Programs Administration and Federal Highway Administration

Radioactive Materials; Routing and Driver Training and Routing Exemptions

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 171, 172, 173, 177

[Docket No. HM-164, Amdt. Nos. 171-89, 172-64, 173-143, 177-52]

Radioactive Materials; Routing and Driver Training Requirements

AGENCY: Materials Transportation Bureau (MTB), Research and Special Programs Administration, DOT.

ACTION: Final rule.

SUMMARY: These amendments establish routing and driver training requirements for highway carriers of large quantity packages of radioactive materials. Such carriers are required to follow highway routes designated by appropriate State agencies. In the absence of State action, carriers are required to use Interstate System highways subject to the specific conditions set forth in the rules. In addition, carriers are required to prepare written route plans for eventual submission to the Department of Transportation. Irradiated reactor fuel must be shipped under a comprehensive physical security program approved by the Department to be equivalent to that established by the Nuclear Regulatory Commission.

Motor vehicles carrying any radioactive material for which placarding is required, other than those containing large quantity packages as identified in the regulations, must comply with a general routing rule to minimize radiological risk. Also contained in this document is a Departmental policy statement which addresses the appropriate role of Federal, State and local governments in the regulation of radioactive material transportation.

EFFECTIVE DATE: February 1, 1982.

ADDRESS: Copies of public comments and supporting documents (Final Regulatory Evaluation and Environmental Assessment; Supplement to Docket HM-164: Summary and Analysis of Public Comments) are available for inspection and reproduction at the following address: Dockets Branch/DOT/RSPA/MTB, Room 8426, 400 7th Street, S.W., Washington, D.C. 20590, (202) 426-3148.

FOR FURTHER INFORMATION CONTACT: John C. Allen, Office of Hazardous Materials Regulation, (202-472-2720) or Douglas A. Crockett, Office of the Chief Counsel, Research and Special Programs Administration (202-755-4972), 400 7th Street, SW., Washington, D.C. 20590.

SUPPLEMENTARY INFORMATION:

I. Background

The history of these amendments is summarized in the Notice of Proposed Rulemaking (NPRM) of January 31, 1980 (45 FR 7140). Individuals interested in this docket should review that publication as well as the Advance Notice of Proposed Rulemaking (ANPRM) of August 17, 1978 (43 FR 36492) since references are made to both documents. To set the context for the present discussion, however, the most important background items relating to these amendments are briefly summarized here.

In 1976, truck shipments of irradiated reactor fuel (spent fuel) from Brookhaven National Laboratories' Long Island facility were interrupted by an amendment to the New York City Health Code. The Health Code amendment had the practical effect of banning most commercial shipments of radioactive materials in or through the City. Associated Universities, Inc., which operates Brookhaven National Laboratories, asked DOT whether that ordinance was preempted by Federal transportation safety requirements issued under the Hazardous Materials Transportation Act (HMTA) (49 U.S.C. 1801 *et seq.*). On April 20, 1978, DOT published an Inconsistency Ruling (43 FR 16954) in which it viewed the City's Health Code amendment as an extreme routing requirement intended to protect the very dense urban population found inside the City. DOT concluded that the HMTA could preempt local requirements such as New York City had implemented, but because highway routing authority had not yet been exercised under the HMTA, the City's Health Code was not preempted by HMTA requirements. Since this ruling a number of other State and local governments have either passed, or proposed, legislation that severely restricts transportation of certain radioactive materials through their jurisdictions.

The Department of Transportation subsequently published the ANPRM entitled "Highway Routing of Radioactive Materials; Inquiry" in August, 1978. The public was invited to comment on the need and possible methods for establishing routing requirements pertaining to highway carriers of radioactive materials under the HMTA. A public hearing was held in conjunction with the ANPRM on November 29, 1978 in Washington, D.C. The Department received over 550 comments from a broad cross-section of the public including representatives from State and local governments, public interest and environmental organizations, the motor carrier industry, the shipping industry, bridge and turnpike authorities, Federal agencies, and Congressional officials, in addition to the many individual citizen comments. Based upon these comments and the Department's own judgment an NPRM was published on January 31, 1980.

The NPRM set out specific proposals for routing certain types of radioactive materials shipped by highway, and driver training requirements. The stated purpose of those proposals was to reduce the possibility of exposure and inadvertent releases in normal and accident situations in transportation, and to clarify the scope of permissible State and local actions. The four month public comment period scheduled in the NPRM was subsequently extended to five months. The Materials Transportation Bureau (MTB) conducted seven public hearings from late March to early June of 1980. The seven hearings were held in Philadelphia, Atlanta, Chicago, Denver, Seattle, Boston and New York. In addition, MTB conducted public meetings in Akron, Ohio, Eugene, Oregon and Union City, California. The Department has recieved and reviewed over 1,000 public comments on the January 31 notice. In addition, over 1,600 pages of transcripts from the seven public hearings have been reviewed as well as statements made at the three public meetings.

Because of the great interest generated by these routing proposals and because of the many and varied issues involved, DOT has decided to include an extended discussion of public comments as a supplement to the final rules document. Although principal comments are discussed in this preamble, inclusion in the docket of a supplementary discussion of public comments allows the Department to provide more detailed responses than would be practical in the preamble. For those readers interested in public comments on the Advance Notice, a summary is provided on pages 7141 and 7142 of the January 31 NPRM. In addition to the supplement of public comments, all individual public comments and all public hearing transcripts are available for inspection at the address previously listed.

Other essential background information covered by the NPRM includes an analysis of the existing DOT safety program for the transportation of radioactive materials, DOT accident experience with nuclear material transportation, a technical discussion of projected public risk from the transport

of radioactive materials in the United States, the Nuclear Regulatory Commission (NRC) physical security program for shipments of spent nuclear fuel by its licensees, DOT's interrelationship with NRC's transport requirements, and an extensive discussion of the proposed routing and training requirements. The present document will reference some of this information. However, those discussions will not be restated here except as they relate to substantive public comments.

II. General Discussion

The Department of Transportation has examined the transportation of radioactive materials exhaustively since issuing the ANPRM nearly two and a half years ago. This process has included the review of over 1600 public comments and 2000 pages of transcripts from public hearings in addition to a number of risk assessment studies on the subject. On the basis of these comments, documented risk studies and past accident experience for radioactive material transport, the Department has concluded that the public risks in transporting these materials by highway are too low to justify the unilateral imposition by local governments of bans and other severe restrictions on the highway mode of transportation. Other modes of transport generally do not appear to offer alternatives which clearly lower public risks to the extent that use of the highway mode should be substantially restricted. DOT also believes, however, that these currently low risks will be further minimized by the adoption of driver training requirements and provisions of a method for selecting the safest available highway routes for carriers of large quantity radioactive materials, as accomplished in this rule.

The estimated low risks in transporting radioactive materials also support the belief that the present packaging requirements are adequate to protect the public. A detailed discussion of DOT's packaging requirements was presented in the NPRM. As was clearly pointed out in the proposed rules, this rulemaking is not an examination of packaging requirements, the adequacy of which is assessed by DOT and NRC on a continuing basis. There has been no new documented evidence presented during the public comment process to show that the current packaging requirements result in unacceptable risks to the public.

Many commenters question the need for these routing rules and some view them as nothing more than a method of accommodating the transportation requirements of the nuclear power industry. Some maintain that State and local restrictions have been applied mostly to nuclear fuel cycle shipments such as spent fuel and have not frustrated shipments of radiopharmaceuticals or other "necessary" small quantity radioisotopes. They suggest that DOT's stated intention of providing uniformity and consistency, at least in part, to ensure shipments of needed nuclear medical materials is based on an invalid perspective.

The Department has examined many of the local restrictions for radioactive material transportation and continues to believe that many result in unnecessary restrictions on the transportation of all types of radioactive materials, including non-fuel cycle materials. Some public comments support this. For example, the Society of Nuclear Medicine presented the following comments at the Chicago hearing on April 3, 1980.

> The Society has great concern for the proliferation of State and local statutes and ordinances enacted to control the transportation of radioactive materials into, through, and out of these jurisdictions. It can be stated that this non-uniformity of controls in the transportation of these medical necessities constitutes one of the most rapidly increasing and serious impediments to nuclear medicine health care delivery with which we are faced. Thus, the Society views with favor those portions of this docket which will provide for uniformity of regulation, on a national basis, while still providing for adequate state and local input in the implementation of the final rule.
>
> The Society points out that over 3,300 medical centers, hospitals and clinics in the U.S. are engaged in nuclear medicine, and it estimates that one out of every two patients admitted to hospitals require some type of "nuclear medicine procedure."

The Petroleum Equipment Suppliers Association, a trade association representing 251 companies that supply goods and services to over 10,000 companies engaged in petroleum drilling and production, point out that the relatively small quantities of industrial isotopes which its members ship are often covered by State and local restrictions:

> Increasingly, state and municipal governments are enacting routing restrictions and prohibitions and requirements for prenotification and escorts. The rising tide of these regulations and ordinances threaten not only to burden interstate commerce involving the use of radioactive sources by (oil and gas well) service companies, but to actually destroy the ability of these companies to provide these services. Without these services the exploration and production of oil and gas in this country will effectively cease.

DOT remains firm in its belief that the impact of piecemeal State and local restrictions on the transportation of all radioactive materials, including non-fuel cycle materials, signifies a need for nationally consistent routing rules.

It is also the Department's determination that public safety can be improved through a nationally uniform rule that ensures the use of available highway routes that are known to be safe for large quantity radioactive materials. In developing this rule, three basic conclusions underlie the approach taken:

(1) Route selection should be based on some valid measure of reduced risk to the public,

(2) Uniform and consistent rules for route selection are needed from both a practical and safety standpoint, and

(3) Local views should be carefully considered in routing decisions since routing is a site-specific activity unlike other transport controls such as marking and packing.

With respect to the first conclusion, DOT is of the opinion that an assessment of risk to the public should include a consideration of both normal radiological exposure which is inherent in the transportation of radioactive materials as well as a consideration of potential accidents which could result in additional radiological exposure. Further, an assessment of risk to the public from accidents involving large quantity radioactive materials should include a balanced consideration of factors which affect both the likelihood of an accident as well as the consequences.

Many commenters seem to be concerned only with consequence—particularly high consequence accidents involving large quantity radioactive materials in a heavily populated urban center. Local authorities, for example, are concerned with postulated "worst-case" accidents because of a fear that their emergency response capabilities are insufficient for such hypothetical catastrophes. The Department, also, is concerned with such events and is mindful of the large economic consequences estimated for such hypothetical events by a recent draft environmental assessment completed for the NRC by Sandia National Laboratories (Transportation of Radionuclides in Urban Environs: Draft Environmental Assessment", July, 1980). These estimates relate to a scenario which assumes the worst credible accident for certain truck shipments of spent fuel and polonium in densely populated urban areas. One could conclude from the study that a way to lower the possibility of such high

consequences is to reroute the shipments away from urban areas entirely. However, the study also indicates that this may not be the best alternative if one considers overall risks to the public, since routes that avoid the urban areas may have much higher accident rates which increase the chance of a severe accident occurring in the first place. It is DOT's opinion that public policy for the routing of radioactive materials should be based not only upon a concern for worst-case accident consequences, but also upon all other factors which contribute to the overall risk involved in transporting large quantity radioactive materials. This policy is embodied in this rulemaking by requiring use of Interstate highways which generally have much lower accident rates than other roadways, while at the same time requiring that cities be avoided where possible by using either Interstate beltways or State-designated bypass routes to minimize the possibility of worst-case accidents.

With respect to the second conclusion, DOT recognizes the need to balance local and national interests in providing for uniformity and consistency in routing. DOT is providing a national framework for highway routing of radioactive materials within which State and local concerns can be addressed. This framework is needed because of the current patchwork of conflicting State and local routing requirements. It is recognized that there may be local situations which are so unusual that they cannot be adequately accommodated within this framework. These situations can be called to the attention of the Department through existing administrative channels that may involve either special or general rulemaking. However, because of the role of the State governments in designating routes and the nature of the routing guidelines being provided to the States which stress the participation of local governments, DOT does not expect such situations to be numerous.

The third conclusion, which concerns the need for local input in routing decisions, also serves as a basis for the routing rules developed under this rulemaking. Routing as a safety control for the transport of any hazardous material is different from the more traditional safety controls such as packaging, package marking, vehicle placarding and loading. Routing is largely a site-specific activity which cannot be entirely accommodated at the Federal level. Therefore, DOT is encouraging a decentralized decision-making process in this area within a Federally-provided regulatory framework. The Department believes that in the interest of uniformity and safety, it is both appropriate and practical for many routing decisions to be made at the State level. The fifty State governments are in a better position than the Federal government to respond to local concerns and likewise are in a better position than the 23,000 or so local jurisdictions to consider overall safety impacts from routing decisions. To ensure adequate consideration of local viewpoints, DOT believes an advisory group primarily composed of local officials should be established in each State to periodically review the effectiveness of the State/local consultation (discussed in more detail elsewhere in this document).

III. Federal/State/Local Role in Routing Radioactive Materials

The Hazardous Materials Transportation Act grants DOT the authority to regulate the transportation of hazardous materials. Among other things, section 105(a) of the HMTA specifically identifies routing as one form of regulation that the Secretary may deem necessary and appropriate for the safe transportation of hazardous materials. Before the issuance of the ANPRM for Docket HM-164, the Department had not implemented routing regulations for any hazardous material under this clear authority granted by the HMTA. A general routing provision does exist at 49 CFR 397.9 providing guidance to carriers and drivers of placarded motor vehicles. That provision predates the issuance of the HMTA and has not yet been adopted in regulations issued under the authority of that Act.

However, a number of actions by State and local governments relating to a specific hazardous material (radioactive material) and a specific mode of transportation (highway) have raised the question of whether more specific Federal routing requirements should be issued. The DOT must consider the overall safety impact of piecemeal, uncoordinated local actions on hazardous material transportation. The ANPRM and the NPRM made clear the Department's intention to consider only routing requirements for radioactive materials shipped by highway, the focus of most State and local actions, rather than undertake a comprehensive regulatory proceeding to consider all classes of hazardous materials and all modes of transportation. The fact that this proceeding considers only one hazard class and one mode does not rule out future Federal actions for other hazardous materials and other modes of transportation.

By issuing these regulations the Department has made the determination that routing requirements can improve safety—not only by providing for the use of the safest highway routes, but also by addressing the safety impacts of narrowly conceived local actions. In order to fulfill the mandate on hazardous material routing, it is DOT's responsibility to set out a national framework within which legitimate local concerns can be addressed. To establish this framework the DOT has the authority to make the basic decision as to what radioactive materials pose a significantly serious risk such that routing controls are necessary, and how these materials should be routed. The Department has made these decisions in this rulemaking and a brief synopsis now follows.

First, a general routing rule is established for all radioactive material shipments by highway which require a warning placard. These include many of the thousands of shipments of radiopharmaceuticals, industrial isotopes, and low-level wastes that are made annually. The general rule emphasizes that the carrier choose routes which minimize radiological risk by considering such factors as population, accident rates, and transit time.

Second, special requirements apply to motor vehicles transporting large quantity packages of radioactive materials. These requirements include preferred routing, written route plans and driver training certification. Preferred routes are identified as Interstate highways and State-designated routes.

The Interstate highway system lays the basic Federal framework for providing safe and efficient routes for large quantity radioactive materials. Accident rates along these roadways are sharply lower than on any other type of roadway. Several studies also support the safety and efficiency of the Interstate highway system for the carriage of hazardous materials. In comments to Docket HM-164, the NRC developed a hypothetical case study of routing alternatives using information generated by NUREG 0170 ("Final Environmental Statement on the Transportation of Radioactive Materials by Air and Other Modes", December, 1977). Both the NRC case study and NUREG 0170 are discussed extensively in the NPRM and in the Final Regulatory Evaluation and Environmental Assessment prepared in support of this document. The case study clearly shows that use of Interstate highways generally

result in lower radiological risks from the transportation of radioactive materials. Also, pilot tests were conducted for the Federal Highway Administration to apply routing criteria developed for all hazardous materials ("Development of Criteria to Designate Routes for Transportating Hazardous Materials by Highway", July, 1980). These tests were performed with the help of local officials in Nashville, Tennessee and Seattle, Washington and the results clearly demonstrate the advantages of the Interstate highways as compared to other roadways in minimizing risks associated with hazardous material transportation.

Carriers of large quantity radioactive materials are required to use Interstate beltways when possible to avoid city centers. Carriers are allowed off the Interstate system only to follow a State-designated route; in a documented case of emergency; to obtain necessary fuel or vehicle repairs; or to travel to and from a pick-up or delivery site not located on an Interstate System highway.

The Department believes that use of Interstate highways ensures a safe route of travel for large quantity radioactive materials. However, the Department recognizes the limitations of relying solely on the Interstate System and, as already mentioned, the inherent site-specific nature of routing. There is a clear need for a mechanism to accommodate these factors. Several examples serve to point this out:

1. Most points of origin and destination for large quantity radioactive materials shipments are not located on interstate highways. Additional safety benefits may be realized if access routes between the Interstates and these points are designated by the State.

2. The low accident rate associated with interstate highways is based on a national average. DOT recognizes there are situations where accident rates will be higher for a particular segment of an Interstate than for a nearby alternate route.

3. The accident rate is not the only important element to consider in assessing risk to the public—one must also consider the consequences of a serious accident, even though the probability of that accident may be small. Therefore, the population along the route of travel should also be considered. Since Interstate highways serve to connect population centers, the benefits of using an Interstate highway with its lower accident rate going through a city should be carefully examined and compared with the benefits of using a more circuitous, secondary road around the city.

4. Use of the Interstate highway system may necessitate circuitous travel resulting in some increase in normal radiological exposure and, in some cases, higher accident risks. More direct non-Interstate routes may exist which could provide greater safety to the public.

The task which confronted DOT in this rulemaking was to provide for a more site-specific analysis to resolve these situations while at the same time maintaining national uniformity and a safe, viable transport system for nuclear materials.

Many commenters feel that local governments should be responsible for routing within their jurisdictions. First, they argue that local governments have the primary responsibility for protecting the health and safety of their citizens and therefore should determine if routes through their jurisdictions are acceptable. It is the town, city or county which provides initial emergency response to protect health and property in the event of an accident. Secondly, they argue that route selection is a site-specific process and that local officials are the most knowledgeable of local roads and local conditions. However, DOT sees serious problems from both a practical and safety standpoint associated with placing ultimate routing authority with each of the 23,000 local jurisdictions in the country.

Local jurisdictions are inherently limited in perspective with respect to establishing routing requirements. While the Department recognizes that local governments are accountable only to their own citizens, such a limited accountability has some undesirable effects. For example, a routing restriction in one community may have adverse safety impacts on surrounding jurisdictions. Also, some communities in determining that they do not have the appropriate expertise or manpower to perform a routing analysis, may find attractive the option of completely prohibiting the transport of radioactive materials through their jurisdictions. This has already happened in some cases. Uncoordinated and unilateral local routing restrictions placed on carriers of radioactive materials would simply not be conducive to safe transportation. There is a clear need for national uniformity and consistency.

DOT believes that the role of State governments is the key for ensuring that the safest highway routes are used by carriers of large quantity radioactive materials. A State government has a much broader perspective than local governments since it is charged with providing for the safety and welfare of all its communities. The safety impacts of a routing decision on all communities within the State can be assessed.

There are a number of other advantages to the exercise of route designation authority at the State level. States have the capability to incorporate local input directly into their routing analyses through existing State administrative and lawmaking procedures. At the same time States have the capability of working with the Federal government and are familiar with implementing regulations under a variety of Federal programs. States often have the greater manpower and technical training necessary to perform a routing analysis which adequately considers all factors related to public risk. For example, many States exercise authority under the NRC's Agreement State Program to regulate possession and use of certain source and by-product nuclear materials. Many States have radiation safety officials as well as knowledgeable transportation officials available to collaborate on a routing analysis.

States not only have the capability to consider local viewpoints on route selection, but also can address concerns of tunnel, turnpike and bridge authorities. The Department does not seek to force the use of all such facilities for nuclear material transportation. Rather this rulemaking establishes a system by which the State can consider the use of these facilities on the basis of overall risk to the public. A State government, after a careful evaluation of the total risks to the public, may conclude that a safer route is available and that certain facilities should be avoided.

Many commenters have reservations about the role of the States and the efficacy of the State route designation process. Probably the greatest reservation is shown by local officials who are concerned that the States may not actively pursue local interests before routes are designated. The State Planning Council on Radioactive Waste Management submitted comments supporting the concept of State-designating routing. However, the Council, composed of State and local officials, strongly encouraged DOT to "develop appropriate mechanisms and procedures to enable local participation in routing decisions."

The Department also wants to ensure that local communities have input into the State route selection process. DOT believes that the key to incorporation of local viewpoint into routing decisions is the cooperation between State and local governments before designation of

routes. The Department has considered establishing specific guidelines for States to follow to ensure a formalized procedure for local consultation. However, there is great difficulty associated with this approach given the variations in organizational structure and administrative processes from State to State.

Instead, the Department is taking two steps to ensure that consideration is given to local viewpoints. First, the final rules contain a general requirement that the States consult with affected local jurisdictions before establishing a preferred route. DOT believes that the States must adequately consider local input, especially in light of the routing guidelines which necessitate the accumulation of local data relating to accident rates, population characteristics and other information that would require local cooperation.

However, the Department also understands that reasonable differences of opinion may exist in this sensitive area. As a result, DOT believes that each State should establish an advisory group composed largely of city and county officials. The purpose of the group would be to meet periodically, recommend to the State appropriate methods of consulting with local jurisdictions, and review the effectiveness of those measures in actual practice. Such State advisory groups would provide a valuable oversight function that should help to continually improve the State routing program.

State officials commented that the preferred routing system places a large burden on State governments and requested clear guidance from DOT on routing decisions. The Department also believes this to be extremely important in the interests of both national uniformity and safety. As a result, DOT is preparing a publication entitled "Guidelines for Selecting Preferred Highway Routes for Large Quantity Shipments of Radioactive Materials" ["DOT Guidelines"], which is discussed in more detail elsewhere in this preamble.

IV. Prenotification and Time-of-Day Restrictions

An extremely large number of commenters favored some type of requirements relating to prenotification and time-of-day controls. The Department notes that most State officials strongly endorsed these measures. In light of these public comments the Department has carefully reconsidered both types of controls.

Prenotification

A number of reasonable arguments have been made in support of prenotification: To aid the State in its route designation activity; to ensure better enforcement by utilizing State and local enforcement personnel in addition to Federal inspectors; and to more rapidly facilitate emergency response capability in case of vehicular accident. Prenotification on a case-by-case basis for all shipments of radioactive materials would result in a severe burden not only on shippers and carriers but also on the governmental units receiving this voluminous information with a doubtful increase in safety. Many commenters agreed with DOT, except for shipments of certain high-level radioactive materials. In most cases, the desire for prenotification by State and local officials centers around spent fuel and certain other nuclear waste materials.

On June 30, 1980, Congress enacted legislation (section 301 of the NRC Authorization Act, Pub. L. 96–295) directing the NRC to develop regulations which will require its licensees to provide State governments with advance notification for certain shipments of nuclear wastes. The NRC issued an NPRM on this matter on December 9, 1980 (45 FR 81058), proposing to require prenotification for licensee shipments of all wastes required to be shipped in Type B packaging, which include spent fuel. The NRC has asked for the public to comment on the NPRM before March 9, 1981. Since these proposals would apply to a substantial number of shippers and carriers regulated by DOT, a discussion of the proposed requirements bears on the issue of prenotification raised in comment on the proposals for highway routing made in this docket by DOT.

In its NPRM, NRC proposed two sets of prenotification requirements. One set of proposed requirements concerns shipments of spent fuel in quantities greater than 100 grams mass. Such shipments are large quantity shipments subject to the routing requirements established by DOT in this docket when transported by highway. This treatment of spent fuel separately from other nuclear wastes is necessary because spent fuel shipments are also subject to physical security requirements which the NRC has imposed to guard against theft and sabotage. Information concerning exact schedules used in spent fuel shipments therefore must be considered sensitive. In the NPRM, the NRC proposes to require licensees to notify the governor of each State through which a shipment will pass at least four days before arrival at the State boundary. The notification would identify the shipper, carrier, receiver, the material to be transported, and the times of departure from origin and arrival at the State boundary. The licensee would have to immediately notify the State governor if the transportation schedule changes by more than six hours.

The confidentiality of information concerning the exact schedule of such sensitive shipments (i.e. dates and times of shipments) would have to be protected by the governor's office as if it were national security information (see proposed 10 CFR 73.21 in the NRC NPRM). Although treated as confidential, the information could be passed on to local officials as long as it is tranferred under the security conditions described by NRC in its proposal. Other shipment information would not be considered confidential. Confidential information could be declassified ten days following the departure of the shipment (or the last shipment in a series) from the State.

The second set of prenotification requirements proposed by NRC in its NPRM would apply to any other nuclear wastes that are required to be shipped in Type B packaging. This category of materials includes large quantity radioactive waste shipments which also are subject to the routing system established in this docket. The NRC would require advance notice of shipment to the governor at least four days before the beginning of an estimated seven-day period of departure from the shipment origin. Information to be supplied would include the point of origin, the estimated seven-day period or periods of arrival both at the State boundary and at the shipment destination, and a point of contact for schedule changes. Prenotification information for nuclear wastes, other than spent fuel as described previously, would not be considered sensitive information and the State governor would not have to protect its confidentiality. The NRC estimates that over 24,000 waste shipments, including spent fuel, will be subject to these advance notice requirements annually, although only a small portion will be large quantity shipments.

The NRC prenotification proposals would not apply to two particular groups of large quantity radioactive materials shipments. First, nonlicensee shipments of nuclear waste, primarily those in support of DOE research and development activities, are not covered by the NRC prenotification proposals. Second, radioactive materials that are not waste products (primarily large

source teletherapy shipments and possibly some other large source medical and industrial isotopes) also are not covered by the NRC prenotification proposals.

Further, there remain some unanswered questions concerning the nature of a prenotification system—what specific materials should be covered, how early the advance notice should be given, how the State or local governments would handle what may be voluminous paperwork, and what information is necessary. Congress has provided an indication of what is appropriate in this controversial area and the NRC is considering proposals which will not be made final for some time.

Another recent development also may prove useful to DOT in determining the efficacy of a prenotification system. The Puget Sound Council of Governments (PSCOG) is conducting a study in prenotification for certain materials as part of a comprehensive regional study of hazardous materials transportation under contract to DOT. PSCOG will present its findings on the effectiveness and practicality of advance notice to DOT in early 1981.

Two other facts also should be noted. First, the NRC intends to publish an atlas of all highway routes that have been approved for shipment of spent fuel. This information therefore will be publicly available to all State and local governments and other interested parties. Second, the existing NRC physical security program for spent fuel requires confidential notification and coordination with affected local officials (local law enforcement agencies) concerning approved routes.

In light of these considerations, DOT has decided not to take final action at this time concerning prenotification. In order to prevent a possibly severe inconsistency between NRC and DOT transportation requirements, the DOT will have to wait at least until final rules are issued for NRC licensees before undertaking a rulemaking proceeding to consider specific prenotification requirements for other types of large quantity shipments. In its further consideration of prenotification, DOT will also consider the role of escort vehicles provided by State or local governments. This subject is addressed later in this document in the general discussion of the preemptive effects of Docket HM–164.

Time-of-day restrictions

Many commenters are also strongly in favor of some kind of time-of-day restriction for nuclear material transportation. Again, most commenters are concerned with high-level nuclear wastes and spend fuel. There are practical as well as safety problems associated with uncoordinated time restrictions. For example, it has been estimated that the average shipment distance for a large quantity package of radioactive materials is approximately 2,200 kilometers. This implies travel through a large number of State, county and municipal jurisdictions. Even if the various time restrictions for these jurisdictions were known in advance by the carrier, delays enroute could be numerous. Some commenters argue that the delays caused by certain time restrictions are justified on the basis of the increased accident risks which exist during rush hour traffic in an urban area. However, the Department must also consider the added risks of normal radiological exposure accruing to the vehicle driver and bystanders at any temporary delay site. This may be a more important consideration from the standpoint of overall public risk, especially when one considers that several temporary delays could occur for each shipment. Also, there may be additional security problems related to the temporary delay of spent fuel shipments.

The Department does see some need for a coordinated effort to carefully examine the transportation of large quantity materials during periods of heavy rush hour travel in large urban areas. DOT believes that the States can address this situation as part of their route designation program by providing for suitable alternative routes to avoid certain heavily traveled highways during peak travel times. This would amount to a time of day restriction on certain highways, but would not require the hazardous material be unnecessarily delayed in one area.

V. Other Transportation Controls Realted to Routing

The notice of proposed rulemaking also addressed a number of other State and local actions generally related to the routing of radioactive materials. This included not only prenotification and time-of-day restrictions, but also escort requirements, restrictions pertaining to special personnel or equipment and any other action which would have the effect of unnecessarily limiting the transportation of radioactive materials through a jurisdiction. For the most part, DOT views these transport controls differently from the site specific nature of routing in one important aspect. These requirements are not directly related to characteristics that are peculiar to a specific geographical location. With the possible exception of the previously mentioned prenotification and time-of-day restrictions, the Department does not believe that public safety concerning the transportation of radioactive materials can be measurably improved by such State and local actions.

The Department has noted that the rationale supporting the need for various State and local actions often involves concerns in three areas: the adequacy of the emergency response system for hazardous material transportation; questions over liability for nuclear materials involved in highway accidents; and doubts over the effectiveness of the Federal enforcement of regulations. As a result, many citizens, as well as some State and local officials, believe that additional controls at the State and local level are justified, no matter how fragmented they may be. The Department does not subscribe to this philosophy. Even in cases where criticism may be justified, piecemeal State and local action instituted because of a concern over these issues and limiting the carriers' ability to function would not solve the problems. In fact, steps are now being taken by DOT and other Federal agencies to improve Federal, State and local capabilities in these critical areas.

With respect to emergency response, the Department of Transportation has prepared a comprehensive training program for responding to radioactive material transportation accidents. This training program "Handling Radioactive Materials Transportation Emergencies" is directed to "first-on-the-scene" emergency service personnal such as local fire, police and ambulance organizations. The comprehensive training package consists of slides, tapes, student workbooks and instructor guides. It is a simple and straight-forward instruction kit to provide local and State personnel with a basic understanding of the subjects of radiation and associated hazards, packaging required for nuclear material, transportation regulations, protective measures and procedures, and planning and preparedness for transportation accidents. DOT has been coordinating the development of this training program for the past two years with emergency service personnel as well as State and local officials. This 6 to 8 hour training package supplements the 20 hour training program already available to emergency response personnel responding to other hazardous material transportation emergencies. The entire training program will be distributed to governors of each State upon request.

A booklet entitled "Response to Radioactive Materials Transportation Accidents" is also nearing completion. It was distributed as an interim edition in the spring of 1980 and the response from State radiation control program directors and emergency management authorities has been very favorable. It is intended to provide local emergency response authorities with basic information on the first steps to take at the scene of an accident until the arrival of State or other radiological response teams.

The Federal Emergency Management Agency (FEMA) is the agency primarily responsible for coordinating Federal assistance to State and local governments that are developing plans for responding to radiological accidents at both fixed nuclear facilities and at the scene of transportation accidents. FEMA has taken a number of steps toward this end. Recently proposed rules (45 FR 42341) were published on procedures and criteria for reviewing and approving the adequacy of State and local plans and preparedness. FEMA has also established the Federal Radiological Preparedness Coordinating Committee (FRPCC) consisting of a number of separate Federal agencies including DOT. This committee is coordinating all Federal assistance and guidance to various State and local agencies for developing and testing emergency response plans. The FRPCC responsibilities in this area include the following:

—Establish policy and guidance to other Federal agencies

—Develop preparedness criteria.

—Provide direct assistance to State and local governments

—Review and approve State radiological emergency plans and preparedness

—Implement a program of public education

—Develop and manage an emergency response training program including field test exercise materials

—Issue guidance for radiation instrumentation systems.

The Department of Transportation is providing assistance to FEMA in the preparation of Federal guidance to State and local governments for use in developing the transportation portions of radiological emergency response plans. DOT will also assist FEMA in its review and approval of State and local plans and in the evaluation of exercises to test those plans.

In support of this effort, a Federal interagency task force was recently organized. The task force, with participation by State and local authorities, is preparing an important planning document "Guidance for Developing State and Local Radiological Emergency Response Plans for Transportation Accidents." Federal agencies including DOT, NRC, FEMA, DOE and the Environmental Protection Agency have collaborated on this effort to provide State and local authorities with guidelines to develop effective response plans. A preliminary guidance document will be published in the Federal Register for public review and comment during the first quarter of 1981.

A committee composed only of State and local officials has been organized to provide direct input into activities conducted by this task force. The Interorganizational Advisory Committee, composed of State civil defense and radiation control authorities and local emergency management officials, should prove to be an effective sounding board for planning and guidance documents developed by the task force.

It should also be noted that the routing scheme established by this docket will enhance State and local emergency response planning. The International Association of Fire Chiefs, in its comments to Docket HM-164, states:

> • • • we fully support Docket HM-164, Highway Routing of Radioactive Materials, for the following reasons:
>
> 1. Some nation-wide method for the routing of radioactive truck shipments is necessary. For each local jurisdiction to impose specific routing requirements would present an untenable situation. However, under the proposed regulations, each state would establish the routing after reviewing local input. The key here is to require local jurisdiction input.
>
> 2. The requirements that the carrier file a route plan with MTB is very important. In this way MTB will be able to provide data on routes, amounts, and shipment frequencies. This data will then be used by the local fire departments for their emergency response planning guides.

Questions over the adequate availability of funds to reimburse local jurisdictions and individuals affected by nuclear transportation accidents seem to be another impetus to various State and local actions. Final responsibility for nuclear transportation accidents really depends upon accident specific factors and will usually be settled in the courts. Some of the factors affecting financial responsibility include the nature of the accident itself, the shipper or carrier involved, the type of radioactive material involved and the geographic location of the accident. For most types of radioactive materials the extent of financial liability and the types of costs to be reimbursed would be determined by the applicable State tort law.

If the origin or destination of the radioactive material is an indemnified facility such as a nuclear power plant, the provisions of the Price-Anderson Act (42 U.S.C. 2210) assure a source of funds to cover certain personal injury and property damage claims. The law extends to persons other than the licensee, such as the carrier, who may be liable for an accident. Insurance coverage up to $560 million per accident is provided by a combination of licensee private insurance policies and indemnity agreements between the licensees and the NRC.

The Federal Highway Administration (FHWA) is now in the process of determining appropriate levels of financial responsibility for motor carriers of hazardous materials. On July 1, 1980, the President signed the Motor Carrier Act of 1980 (Pub. L. 96-296) into law. Section 30 of the Act, among other things, establishes minimum levels of financial responsibility for motor carriers transporting hazardous materials in interstate or intrastate commerce (applicable to vehicles with a gross weight rating of 10,000 pounds or more). The purpose of section 30 is to assure the public that a motor carrier maintains an adequate level of financial responsibility sufficient to satisfy most claims covering public liability, property damage and environmental restoration.

The minimum levels set in the Act include $5 million for each vehicle operated by carriers of large quantity radioactive materials and certain other hazardous materials. DOT has unlimited authority to adjust this level upward and may also adjust downward to not less than $1 million for each vehicle for an initial two-year period.

The FHWA's Bureau of Motor Carrier Safety (BMCS) issued an ANPRM (Docket No. MC-94, 45 FR 57676) entitled "Minimum Levels of Financial Responsibility for Motor Carriers" on August 28, 1980. The purpose of the notice is to obtain public comments and data and to eventually make any necessary adjustments to the minimum levels scheduled by Congress to go into effect on July 1, 1981.

Many commenters have also suggested that doubts about Federal enforcement efforts have resulted in increased State and local regulatory activities. The major criticism of commenters to this docket is that the preemptive effect of DOT's routing rules will eliminate or frustrate enforcement efforts at the State and local level. It is contended that State and local enforcement is needed to supplement the Federal inspection effort.

Although it is clear that this rulemaking will preempt certain State

and local actions, DOT does not believe this will reduce enforcement efforts at any level. States have been increasingly active in the enforcement of Federal highway safety and hazardous material transport regulations. Many States have adopted the Federal Motor Carrier Safety Regulations and the Federal Hazardous Materials Regulations as strongly encouraged by DOT. Most States already have enforcement systems in place to carry out the provisions of these regulations. A number of States have initiated substantial hazardous material training programs for law enforcement and other personnel. DOT has provided training to State and local personnel at its Transportation Safety Institute in Oklahoma City. Such State-level enforcement activities will not be hampered by these final rules. In fact, it is DOT's contention that enforcement, particularly at the State level, will be enhanced by the States routing function provided by this rulemaking.

At the Federal level, the Department's BMCS has the primary responsibility for ensuring compliance with the Hazardous Materials Regulations by motor carriers. BMCS is now authorized 210 hazardous material or safety specialists in the field and expects additional positions next fiscal year. BMCS is now administering a four-State demonstration program which funds approximately 100 additional State inspectors. Also, pending before Congress is the Commercial Motor Vehicle Safety Act which, if enacted, would authorize a 50-State grant program that could result in a total of 2,200 State inspectors for motor carrier safety. Moreover, the NRC's enforcement staff of over 100 inspectors is directing its inspection efforts increasingly toward the transportation activities of their licensees. This will enhance the overall enforcement program particularly for transporters of nuclear fuel-cycle materials.

A number of commenters note that penalties were not mentioned in the January 31 NPRM and suggest the need for such. Penalties for violation of radioactive materials transportation requirements under the HMTA are the same as prescribed for other hazardous materials. Civil penalties may include a maximum fine of $10,000 for the occurrence of each violation for each day. Criminal penalties may include a fine and imprisonment up to $25,000 and five years. Civil and criminal penalty actions can be take against container manufacturers as well as shippers and carriers of radioactive materials. In addition, the States provide for civil and criminal penalties under their own legislation and the levels vary from State to State.

The Department believes that much is being done in the areas of emergency response planning and training, carrier financial responsibility, and regulatory enforcement. Furthermore, both local and State expertise have been solicited to help in the process of strengthening various programs. DOT certainly recognizes the legitimate concern and acknowledges the expertise of State and local officials in these areas. However, independently applied restrictions which frustrate the ability of a motor carrier to safely and expeditiously move nuclear materials are not the proper approach to enhance over-all public safety. It is DOT's opinion that State and local concerns can be more adequately satisfied under programs coordinated at the Federal level which incorporate State and local viewpoints.

VI. Preemptive Effect of Docket HM-164

Because of the extensive nature of the Part 177 amendments, the relationship among the levels of regulation of the different categories of radioactive materials, and the need for an understandable interface between Federal and State regulation of radioactive materials transportation, DOT believes that certain regulatory actions by State and local governments should not be taken. To explain this view, DOT sets out its policy on the relation of State and local regulation to the Federal requirements in Part 177 in a new appendix to that part. An appendix appears to be a more appropriate method of stating this policy than the regulatory text used in the January 1980 notice of proposed rulemaking, and an appendix permits a more extensive discussion of the policy. The section-by-section analysis appearing later in this preamble details the specific reasons for the policy. Some general issues will be discussed here.

The structure of the amendments to Part 177 accommodates State regulation of carriers' routes in defined circumstances, as well as some limited local regulation. Briefly, an appropriate State-wide agency may designate routes for motor vehicles transporting large quantity radioactive materials. Local governments, if permitted by State law, may exclude such motor vehicles from locations from which they are excluded by Part 177 or by State action consistent with Part 177. For placarded vehicles carrying lesser quantities of radioactive materials, both State and local governments may adopt § 177.825(a) verbatim. Section 177.825(a), established in this rulemaking, requires a carrier to consider certain information in route selection and to provide general guidance to the motor vehicle operator as to routes used. While State regulation is circumscribed as regards routes used by such carriers, adoption of § 177.825(a) will permit a State to directly enforce that provision without necessary recourse to Federal enforcement personnel. The same purpose is served by the limited local regulation permitted for placarded carriers of both large quantity and less than large quantity shipments. Routing restrictions for unplacarded motor vehicles are not necessary. The preemptive effects of the final rules in this docket are intended to occur at the effective date of the rules.

The basic justification for publishing a statement concerning the preemptive effects of Docket HM-164 was questioned by many commenters. The HMTA expressly preempts State and local requirements that are "inconsistent" with HMTA requirements, both the law itself and regulations issued under it. DOT has previously established procedures to permit it to interpret the HMTA's preemptive effects when so requested by State or local governments, or by other interested persons. These procedures, codified in Part 107 of 49 CFR, offer a less expensive alternative for resolving preemptive issues than litigation although such issues are ultimately judicial in nature. It is apparent that new rules which deal extensively with matters of regulatory concern to State and local governments, such as those published in this Docket, will necessitate guidance from DOT as to the preemptive effects on State and local authority. DOT believes that this guidance will be considerably more useful if provided, as far as possible, before the rules become effective. The Part 177 appendix is intended to serve this purpose.

Underlying the appendix are several conclusions about the Federal-State relationship in the area of radioactive materials transportation. First, as expressed in the Part 107 preemption procedures, DOT believes that "inconsistent", as used in the HMTA, refers to State and local rules that directly conflict with HMTA requirements, and also to those that are "an obstacle to the accomplishment and execution" of the HMTA (§ 107.209(c)(2)). Therefore, the policy statement in the appendix concerns characteristics of State and local regulatory activity that are necessary to effect, or to avoid hindering, accomplishment of the goals and

purposes of the Part 177 amendments. Those amendments balance complementary national, State and local interests in regulating motor carriers to ensure that public health and safety are served by Federal, State and local rules that are widely applied and understood and that are based on a comprehensive examination of factors affecting radioactive materials transportation safety.

This rulemaking does not delegate Federal authority to regulate motor carriers, a fact that has been misunderstood by many commenters. The rules published in Docket HM-164 define and make Federally enforceable the use of Interstate System highways for carriers of large quantity radioactive materials. They also make Federally enforceable those routes designated by appropriate State agencies, based on DOT's own determination that such routes, if derived from an adequate safety analysis like the "DOT Guidelines" are likely to result in a further reduction of radiological risk that is reliable and reasonably related to the costs of evaluating, enforcing and using selected routes. Further, DOT has concluded that route designations that do not meet the conditions outlined in the Part 177 appendix are unreliable tools for minimizing radiological risk, may result in unconsidered safety impacts, may unnecessarily burden commerce, and generally result in a confused patchwork of safety regulation that is not conducive to compliance.

In the appendix, DOT has not attempted to specify in detail the process to be used by a State agency in route designation except in two respects. A safety analysis as described must be performed to ensure reliable results, and the designating State agency must consult with affected local or neighboring State jurisdictions. State consultation with affected local jurisdictions is necessary to ensure that the information used to perform a safety analysis is the best available. It is important, for this reason, that the consultative process between the State routing agency and local governments be both substantive and thorough.

In considering this need, DOT has concluded that an appropriate method for effecting the consultative process should include public notice and opportunity for comment, public hearing when appropriate, and direct notice to affected local jurisdictions. To ensure that these processes are adequate, DOT also believes that a standing advisory body consisting largely of local officials who are concerned with routing issues should be established in each State to recommend to the State appropriate consultative methods and to evaluate the effectiveness of those methods in actual use. This is particularly important in States that are likely to impose frequent routing decisions or to deal with particularly controversial issues. An *ad hoc* advisory body may suffice in States that are unlikely to take frequent routing action. For example, a State that expects only limited traffic in large quantity shipments on an acceptable Interstate route may wish to conduct an initial review of the routes of travel using an advisory body convened for that specific purpose. Another consideration related to the State-local consultative process concerns routing actions which local governments believe should be taken within their jurisdictions. A local jurisdiction which requests State action, for example to shift traffic from an urban segment of Interstate highway, should identify potential alternate routes to the appropriate State routing agency and state why those other routes may be a better choice for routing large quantity shipments. A State advisory body might be able to provide a useful preliminary evaluation of local requests of this kind and to identify any need and possible methods for further State-local consultation.

Commenters also raised questions about the effect of this rulemaking on the local authority of Indian tribes. DOT believes that, where an Indian tribe has effective routing authority similar to that exercised by a counterpart State agency, it should be exercised as described in the Part 177 appendix. Tribal regulatory authority over motor carriers must exist separately from the Part 177 amendments, since those amendments do not delegate any such authority. The source of tribal authority may differ from that of State authority, in that tribal authority is recognized by treaty or Acts of Congress. Consequently, it is possible that limits on tribal authority may occur as a result of Federal law other than the HMTA. Rather than a question of HMTA preemption, tribal routing authority may involve a question of the proper relationship between the HMTA and other Federal law. In specific situations, it may be necessary to examine other Federal law to determine the practical limits on tribal authority to impose routing controls on motor vehicles carrying radioactive materials. In the Part 177 amendments, DOT is treating Indian tribes as it treats States. DOT recognizes, however, that specific factual and legal circumstances may differ from those that affect State authority and is prepared to examine these circumstances on an individual basis, as the need is shown.

DOT's decision against required use of escort vehicles is discussed in the section-by-section discussion of the new appendix to Part 177. However, an obvious relationship exists between prenotification and the voluntary provision of escort vehicles by jurisdictions through which a large quantity shipment may pass. DOT intends to examine situations where an escort might be provided voluntarily by a local jurisdiction, under circumstances in which the presence of an escort is not a precondition to passage through the jurisdiction, and in which the transport vehicle is not delayed at the jurisdictional boundary. Escort vehicles in some cases may also be provided by shippers of spent fuel under the existing NRC physical security program for transit through some heavily populated local jurisdictions. In view of this, DOT intends to examine the possible impact of such voluntary, locally provided escort services on the DOT routing rules, existing NRC physical security rules and proposed NRC prenotification rules.

VII. Section-by-Section Discussion of Final Rules

Summary of Changes from NPRM

There are several important changes from the proposals issued in the NPRM based upon the Department's review of the public comments. First, new provisions are added to Part 172 to aid shippers, carriers and enforcement personnel in the identification of radioactive materials shipments which are subject to the preferred routing system. These provisions include a new shipping paper entry and a white placard background applying only to shipments involving a large quantity package of radioactive materials.

Secondly, new definitions for "State routing agency," "preferred route", and "State-designated route" are added to the regulations. These definitions are added to answer questions concerning the appropriate routing agency designated by the States and the manner by which States exercise their authority to designate preferred routes.

The wording of both the general routing rule (proposed § 177.825(a)) and the preferred routing rule (proposed § 177.825(b)) have been modified somewhat. Although the effect of the general routing rule remains the same, the criteria for the carriers to use in selecting a route has been revised to make the rule more manageable and enforceable. Several points concerning the preferred routing rule may not have

been clear in the NPRM and should be emphasized.

It is important to emphasize that the final rule establishes the Interstate highway system as a self-functioning Federally prescribed routing network capable of providing for the safe movement of nuclear materials even if the States choose not to designate routes. However, because the level of safety provided through use of Interstate highways may be improved by site-specific evaluations, DOT believes that the States should be extended as much flexibility as possible in their route designation process. For example, the final rule does not require a carrier to use Interstate beltways or bypass routes when other routes have been designated by the States as substitutes. The States can consider the need for circumferential routes to avoid urban areas on a more site-specific basis in their own routing analyses. The beltway provision still applies to carriers using Interstate System preferred routes when the States have not designated another route. This flexibility is consistent with the routing guidelines being developed for the States.

Another change to the preferred routing rule is the reference to the DOT Routing Guidelines as criteria for States to use in designating preferred routes. As will be covered in more detail in the next section, the guidelines will provide the States with a clear, step-by-step procedure for performing a routing analysis that is both more understandable and flexible than the criteria presented in the January 31 NPRM.

The last major change between the proposed and final rule involves inconsistency between Federal and State/local transportation requirements. Proposed paragraph (d) of § 177.825 has been deleted. Instead of addressing this topic in the routing rule itself, DOT has chosen to include an expanded discussion of DOT policy in a separate appendix to Part 177 as mentioned previously.

The remainder of the final rules are basically unchanged from the NPRM, except for redesignation of certain paragraphs. The following section-by-section discussion provides a synopsis of DOT's rationale for each section including reference to substantive public comments. A more detailed discussion of public comments is provided in the previously mentioned docket supplement.

§ 171.7 Incorporation of State routing guidelines by reference

The publication "Guidelines for Selecting Preferred Highway Routes for Large Quantity Shipments of Radioactive Materials" (DOT Guidelines) is incorporated by reference in § 171.7. Repeated reference has been made to the need for State and local involvement in routing decisions on the one hand, and the need for uniformity and consistency of those decisions on the other. Many commenters, particularly State officials, support the preferred routing system for large quantity nuclear material to accommodate this goal, but only if DOT provides clear and practical guidelines for use by State authorities. The DOT Guidelines are intended to fulfill this function.

In developing the guidelines, the Department has drawn upon two recent research projects. The first is a study completed for the FHWA entitled "Development of Criteria to Designate Routes for Transporting Hazardous Materials by Highway". This research project involved a study of all factors which contribute to the selection of highway routes for all hazardous materials classes. The most important factors related to the lowering of public risk are then selected as the basic criteria upon which an agency should base its highway routing decisions. Although the Department does not consider this generic research to be final, the study does establish a methodology which can be useful after further refinements are made relating to the particular class of hazardous materials for which routing is to be evaluated.

With this in mind, the Department initiated another research project to develop routing criteria oriented specifically to the peculiar characteristics of radioactive materials transportation. This study is being conducted for the Materials Transportation Bureau and is titled "Guidelines for Selecting Routes for Highway Shipments of Large Quantity Radioactive Materials". The routing guidelines developed thus far provide flexibility to the appropriate State and tribal routing authorities, either to de-designate the use of an Interstate highway and provide an alternative, or to identify other appropriate routes. Further refinements in the guidelines are expected after the completion of pilot tests to be conducted with the help of two State governments in January 1981. It is expected that the guidelines will be published and made available to State agencies shortly thereafter.

Another important element of the guidelines relates to recommendations for the soliciting of local input into routing decisions. It should be noted that the routing guidelines provide for substantial local input in themselves. Much of the data necessary to perform the routing analysis will be generated from local sources: accident rates, population statistics, conditions of roadways, emergency response capabilities, property values, evacuation capabilities, and location of facilities such as schools and hospitals which require special consideration. Nevertheless, the Department believes it essential that the State specifically provide for a process of consultation with appropriate local authorities.

§ 171.8 Definitions

A number of commenters suggested that DOT specifically identify the agency in each State that would have the authority to designate preferred routes. As stated previously, the Department has no authority to do so. The designation of routes for large quantity radioactive materials is an authority which only the States can exercise for themselves. Each State has legal and organizational peculiarities relatings to the regulation of radioactive material transportation. Often, authority is divided among various agencies within the same State. Consequently, each State should determine for itself the appropriate routing agency within the general definition established by § 171.8.

The definition of "State routing agency" includes interstate compacts and appropriate Indian tribal authorities (see the discussion of § 177.825(b) relating to Indian lands). As specifically mentioned in the NPRM, this definition excludes a bridge/tunnel/turnpike authority unless that authority also is empowered to impose such rules concerning radioactive materials transportation on State highways generally. Routes designated by a State routing agency may be enforced by that agency, or by any other appropriate State agency. This definition may apply to more than one agency in a single State sharing responsibility for designating preferred highways.

Two other definitions are added. The first is the definition of a "preferred route". A preferred route includes "State-designated routes" which is also defined in § 171.8. A definition for State-designated routes is necessary to clearly show the criteria the State must follow in establishing preferred routes: application of DOT routing guidelines or an equivalent routing analysis, prior consultation with affected local agencies, and coordination with adjoining States to ensure continuity of routes.

§ 172.203(d)(1)(iii) Shipping papers

For identification and enforcement, a requirement is added to § 172.203 to require the shipper to enter "Large quantity" as part of the hazardous material description on the shipping paper. This will alert the carrier that he has received a package of radioactive materials for which routing controls are required and that a route plan must be prepared.

§ 172.507 and § 172.527 Placarding

Vehicle identification requirements are added to Part 172 to require a white background for the RADIOACTIVE warning placard. The white background will aid enforcement personnel to distinguish between large quantity shipments and other placarded shipments for which preferred routing is not required.

Public comments strongly favored some method of distinguishing between vehicles which contain large quantity packages and vehicles which do not contain large quantity packages but which still require the RADIOACTIVE warning placard. DOT considered several methods of accomplishing this. The white placard background is determined to be the most passive system considering effectiveness and cost of implementation. The white background system has been used for some time to distinguish certain hazardous materials shipped by rail for the purpose of car handling.

§ 173.22 (b) and (c) Shipper's responsibility for physical security, and filing of route plans

Without change from the proposals in the NPRM, the Department is adding provisions to § 173.22(b) to require shippers of irradiated reactor fuel (spent fuel) to provide physical protection under either a plan now required by the NRC (see "Physical Protection of Irradiated Reactor Fuel in Transit", 45 FR 37398, June 3, 1980, and 10 CFR Part 73) or a plan approved by MTB. Also, a provision is added to § 173.22(c) to require shippers of a large quantity package of radioactive materials to file a copy of the route plan prepared for that shipment within 90 days following the shipment with DOT. The Department intends to consolidate the information contained in the route plans and supply it to interested parties. For further discussion of route plans and physical security see the discussion of § 177.825(c) and § 177.825(e), respectively.

§ 177.810 Tunnels

Section 177.810 is revised to except radioactive materials from requirements that restrict their transportation through urban vehicular tunnels used for mass transportation. An informative sentence is also added which directs carriers to § 177.825. This action is being taken to facilitate achievement of the basic objective of the general routing rule to minimize radiological risk and to allow the States flexibility to designate preferred routes for large quantity shipments. The States, in exercising their routing prerogative under this rule, may determine through their routing analysis that a safer route exists which does not require the use of tunnels and other such facilities. In that case, the States may reimpose restrictions for large quantity radioactive materials.

Many commenters questioned the rationale behind the exception for radioactive materials in § 177.810 as opposed to restrictions for other hazardous materials. The State of California, which retains control over the shipment of hazardous materials through its tunnels, held that it is imperative that the State maintain the flexibility to prohibit such transportation. The Maryland Department of Transportation objected to the proposed revision of § 177.810 and took the position that any vehicle required to display the RADIOACTIVE placard should not be permitted to traverse an urban vehicular tunnel used for mass transit. DOT does not believe that this is necessarily the case from a health and safety standpoint. Traditional locally imposed restrictions on tunnel traffic frequently focus on explosives and flammable gases, for which the confinement provided by a tunnel may act to exacerbate the risk. In cases involving radioactive materials, the fact of confinement does not operate to increase overall risk.

For large quantity shipments, it is DOT's position that tunnel restrictions should not be based merely on the nature of the facility but on the overall risks between available routes, and that such restrictions should be imposed only by an agency with State-wide responsibilities that permit adequate consideration of other alternative routes. Thus, use restrictions on tunnels and similar facilities should not be determined solely by facility operators, but rather their use should be available for consideration as possible alternatives in the State procedures leading to route selection. The amendment to § 177.810 is necessary for States to be able to evaluate the site-specific risks involved over various routes without being hampered by locally imposed constraints which may be counterproductive. One proper factor that a State agency would consider in route designation is the potential property damage to the tunnel itself in the event of an accident.

In the absence of a State routing agency's action to review the status of tunnels and similar facilities located within its jurisdiction, a large quantity carrier will generally be limited to such facilities that are part of an Interstate System highway. Other placarded carriers could use such facilities only after considering the safety factors specified in new § 177.825(a)

§ 177.825(a) General routing rule

Paragraph (a) of this section is adopted with some change in wording from that proposed. The basic objective of the general routing rule remains the same: the carrier must examine all available highway routes and choose a route that minimizes radiological risk to the public. In making this determination, the carrier must consider available information on the most important factors which contribute to the minimization of radiological risk. These factors are identified in the final rule as population, accident rates of available highways, transit time, and the time of day and day of week during which the shipment occurs.

The NPRM also included such factors as terrain, physical features, weather conditions, and effectiveness of local emergency planning. These factors have been deleted from § 177.825(a) of the final rule for various reasons. The influence of terrain and physical features on public risk from transportation is largely accounted for by considering accident rates of the alternative roadways. It is not believed that these factors should be singled out for special consideration by the carrier since they are only two factors which contribute to overall highway accident rates. Weather condition is a factor over which the carrier has no control, has little advance knowledge of, and could often change during actual transportation. Determining the effectiveness of local emergency planning would be a difficult burden to place on the carrier in light of the subjective judgement that would be necessary and the lack of available information to the carrier. It is the Department's belief that effective emergency response planning is an activity that all communities should be involved with. As already discussed, DOT and FEMA are collaborating to provide an emergency response training and preparedness program to achieve

this end. Economic factors such as property values have not been included because they generally follow population density and are not otherwise readily available to carriers.

The last major change to the general routing rule involves the replacement of the term "risk radiological exposure to the fewest persons" with "minimize radiological risk." Risk minimization is the basic goal to be achieved. Certainly limiting exposure to the fewest people possible is one element of reducing overall radiological risk, but it is not the only consideration.

Many commenters reviewing this section took exception to what they called the non-specific, unquantifiable criteria carriers and drivers must evaluate in choosing a route which will minimize radiological risk. There was general agreement that placarded vehicles carrying other than large quantity packages of radioactive materials should not be forced to comply with the very specific routing rules established for those shipments. However, no one offered a more acceptable rule to govern general routing requirements. While most of those persons commenting on this section considered the lack of precise, measurable factors to be an advantage which carriers could use to operate vehicles at their own discretion, the American Trucking Association (ATA) expressed its concern over the rule's implication that only one possible route could qualify. The ATA went on to state that, given the dynamic state of affairs of the prescribed criteria, the optimum route could vary even during the course of actual transportation, and carriers would find themselves subject to the whim and fancy of respective State and local governments in issuing citations for unacceptable route selection.

DOT does not expect that any of the suggested actions of carriers or compliance personnel will occur with such frequency that the value of the rule as a general statement of meaning or intent will be diminished, especially in light of the improved wording of the rule. For clarification purposes DOT does acknowledge that more than one route could qualify as an acceptable alternative and it is not incumbent on the carrier or driver to make detailed calculations in selecting the most appropriate route.

The public interest group Rural America was alarmed by DOT's emphasis on routing vehicles carrying such materials in a manner that might affect the health and safety of small towns and rural people. Such a policy, they said, reflects the Department's failure to recognize the needs and rights of populations residing in rural areas, and they see in the rule a discriminatory stance regarding sparsely populated areas. In directing carriers to select routes which minimize radiological risk DOT does not agree that it is merely shifting a burden from one group of persons to another, although it is true that population density is one factor the carrier must consider. Rather, DOT expects to see a decrease in the amount of exposure to all persons in the general population.

The Department once again would like to point out that this general routing rule applies to thousands of shipments involving relatively low-hazard radiopharmaceuticals, and other medical and industrial isotopes. These shipments often involve multiple pickups and deliveries, interchanges with other modes of transportation, and the comingling of radioactive materials with non-hazardous materials on the same vehicle. A general requirement to accommodate a great number of shipments in such a complex transportation environment will necessarily involve some vagueness. The rule is intended to guide motor carriers by specifying important factors to consider in evaluating a number of available routes.

§ 177.825(b) Preferred Routes for Large Quantity Radioactive Materials

In the notice of proposed rulemaking DOT discussed its reliance on the Interstate System of highways as being the primary roadways over which radioactive materials shipped under a route plan are to be carried. The general designation as preferred highways is, therefore, granted to these highways based upon an overall performance rating with respect to lower accident rates and their capacity for reducing transit times. For the most part, public comment expressed support for this proposal as well as the related provision which allows States the prerogative to modify the preferred status of Interstate highways and designate other roads as acceptable alternatives.

Some commenters argued that specific segments of the Interstate System are not as safe as statistics indicate for the system as a whole and that DOT should not make such widespread designations without performing a mile by mile review of the roadway. The NPRM recognized that each mile of the entire 42,500 miles of Interstate highway is not so consistent in design engineering or accident history that there would be an even correlation of the system's parts equal to that of the whole. That is one of the reasons why an option is extended to the States which enables them to modify the preferred status of those segments for which there is a more acceptable alternative. As a basic system, however, even in the absence of State action, the Interstate System highways are well-suited for the use required by the rule. It also serves as a measure for use by the States in their designation of some additional highways which provide an essentially equivalent or greater level of safety. This basic system of highways as primary routes also supports emergency response planning by increasing the confidence of planners in their knowledge of routes of travel.

The requirement that carriers of large quantity radioactive material packages use an Interstate circumferential or bypass route around a city was generally recognized by commenters as a reasonable precaution. This requirement did not, however, receive unanimous approval.

One commenter suggested that the use of beltways would not automatically result in the avoidance of all heavily populated areas. The City of Baltimore expressed its opinion that during peak-hour traffic patterns, it may be less hazardous to direct shipments over an Interstate through route rather than over a beltway and wanted this option left open to the States in their modification of Interstate highways and designation of other preferred routes. Comments from the State of Massachusetts pointed to situations where some metropolitan areas have multiple beltways and they feared that the rule as proposed might allow for routing over the shorter circumferential route, even though a second route, with superior design standards and lower population density, is available.

In response to these comments, DOT must reaffirm its belief that packages of large quantity radioactive materials can be transported over any Interstate highway, and most other comparable routes, with a confident level of safety. However, this does not imply that reasonable routing rules should not be imposed by State governments which increase this level of confidence. Consequently, in applying a rule which addresses the broad national interest DOT has chosen to direct carriers to use urban Interstate circumferential beltways in the belief that, when considering both normal and accident conditions of radioactive materials transportation, an aggregate benefit will be realized. States are encouraged to exercise their option to designate other streets and highways as preferred routes and to modify the status of Interstate highways. Such action, if justified, could

include the direction of traffic onto Interstate through routes or onto a specific Interstate bypass. Each of the above referenced comments regarding beltways, then, would seem to be satisfied through a responsible exercising of the State's prerogative to designate routes and modify the status of Interstate highways. The guidelines developed by DOT to assist the States in their selection of preferred highways, and for similar use by local units of government in their consultation with the States, is also an effective means by which comprehensive, safety related routing decisions can be made.

In commenting on which radioactive materials should be restricted to preferred highways few persons took exception to the choice of large quantity packages. As a matter of fact there was widespread agreement, among those persons acknowledging the need to transport radioactive materials, that the Interstate System of highways and equivalent roads are the most appropriate routes for large quantity packages. As pointed out in the NPRM, Docket HM-169 will probably eliminate the term "Large Quantity". For routing purposes, some multiple of A_2 values (see the discussion on package curie limits in Docket HM-169, 44 FR 1852, January 8, 1979) will very likely be used to identify radioactive material packages now described as large quantity packages in § 173.389.

Several Indian organizations expressed a concern that the NPRM failed to recognize "the unique legal status of Indian tribal governments and tribally-owned lands." Specifically they contended that Indian tribes are, in effect, quasi-sovereign governments possessing rights of self-government under the terms of various treaties with the Federal government. As such, organizations such as the Council of Energy Resource Tribes (CERT) maintain that Indian tribes have the same prerogative as State governments to designate preferred routes for large quantity radioactive materials across tribal lands.

Commenters from Indian organizations support their arguments from the legal standpoint that DOT's preemptive authority may be limited by tribal ownership rights. CERT contends that:

> • • • Indian tribes do not lose title to the land on which State or interstate highway rights-of-way are obtained through negotiated agreements between the tribes and the State government. Thus, a tribe may not have relinquished its right to restrict the use of the easement for a purpose that the tribe feels endangers the health and safety of its people. The DOT may not have the authority to preempt such tribal restrictions because the Hazardous Materials Transportation Act does not expressly apply to Indian lands.

Indian commenters did not voice an objection to the transportation of radioactive material across their lands per se. The comments were oriented toward allowing the route-designation option with the Indian tribes the same as for the States. It is pointed out that many Indian reservations are located near mining or milling activities associated with nuclear materials as well as Federal disposal sites for radioactive waste materials. Further, many Indian lands are crossed or are in proximity to highways used for transportation of all types of nuclear materials.

The applicability of the HMTA to Indian tribal lands will depend on the specific facts and laws involved. Generally, however, DOT does recognize the special status of Indian tribal governments in the Federal system. Accordingly, the final rules allow Indian tribal governments to exercise routing authority in a similar manner as provided for the State governments. This is accomplished by including appropriate Indian tribal authorities in the definition of "State routing agency" in § 171.8.

While the Interstate System of preferred highways will permit the transport of radioactive materials between any two points, DOT recognizes that in some instances this may involve an excessive amount of time and mileage thereby reducing the overall effectiveness of the safety objectives intended by this rulemaking. However, rather than prescribing an arbitrary numerical percentage increase against which carriers would have a blanket approval to use non-Interstate System highways, DOT believes that the States are fully competent to deal with such actual cases as they arise and will respond to them in an appropriate fashion. It is anticipated that particular situations which involve a regular flow of materials will come before the State in the form of requests or petitions from carriers seeking the designation of preferred highway for a certain non-Interstate highway. Considering the key role played by the States in designating routes, it is believed that this approach is the most reasonable method to address circuitous travel that may result occasionally from use of the Interstate System. Also, this will likely result in the selection of a route based on a documented measure of public risk rather than one based on an arbitrary percentage figure. It is expected that the States, in considering the approval or denial of the carrier request or petition, will perform a routing analysis similar to that prescribed by the DOT Routing Guidelines. DOT will reevaluate the final rules in the first year after they become effective and will consider whether or not they need to be modified to provide other methods of dealing with circuitous travel.

One final point on the State designation of routes should be made. Commenters have questioned whether such a State-designate route would be established on a shipment by shipment basis or be a generic route established to handle shipments on a continuing basis. DOT is of the opinion that the application of the DOT routing guidelines or some other equivalent routing analysis by a State routing agency would be sufficient to establish preferred routes for routine use by carriers of large quantity radioactive material packages. State-designated routes are not considered to be shipment specific routes except under unusual, one-time-only shipment situations (see Section VI.D. of Appendix A to Part 177).

§ 177.825(c) Route Plans

An essential component of the final rule is the route plan prepared by the carrier or its designated representative. This document must be prepared by carriers of large quantity packages in compliance with the preferred routing system established in § 177.825(b). A similar requirement already exists for carriers transporting packages of Class A or Class B explosives. Admittedly, there are a great number of variables to be considered in route planning when one looks at the aggregate of total packages, multiple shipping locations, and widespread destinations. However, for any particular shipment the routing possibilities are somewhat limited by the safety criteria established by DOT and the practical alternatives such as available roadways. Accordingly, DOT does not forsee any severe administrative burdens being required of carriers beyond their capacity to perform, nor does it expect that carriers will be indiscriminate in their selection of routes. Certainly DOT recognizes the interest of shippers in routing decisions and expects that they will be very influential in the final selection. However, carriers remain the party with ultimate responsibility for compliance with § 177.825(c) and they are cautioned to carefully evaluate any route plan submitted for their adoption by other parties.

The proposal to require the preparation and filing of route plans for large quantity radioactive materials

packages drew a considerable amount of public comment. For the most part, persons who would be the beneficiaries of the information contained therein supported the proposed requirement while shippers who would be responsible for the administrative filing of the route plans seriously questioned the need for this information by DOT or any other unit of government. The objections can be synopsized as follows: that the States have not expressed any interest in such data; that DOT seems to want the data only for purposes of passing it on to the States; and that the filing of such information could lead to serious problems related to proprietary information as well as security.

In answer to these comments, DOT fails to agree that the States are not interested in the data which can be extracted from written route plans, that proprietary information would not be protected, or that the potential for sabotage would increase by any noticeable degree. Quite to the contrary, DOT is of the opinion that the States and other units of government extending all the way to cities and towns have expressed a very affirmative desire to share completely in the accessibility of detailed information contained in the route plan. Their motives in obtaining such data appear to be in fulfilling their role in compliance and emergency response preparedness activities related to protection of the local public health and safety. Many of these jurisdictions suggest a requirement for duplicative filing of route plans with all interested units of government. Such a burdensome filing requirement has not been adopted, and DOT believes it can meet the needs of local government through its periodic reports and answers to specific inquiries regarding any of the reportable information.

With respect to proprietary information and security, information which DOT can be expected to release on these shipments will deal with statistical accounting of package contents, routes used, identification of origins and destinations and the like. Effectively this is no more information than is currently available to those who wish to monitor the shipping activities of the relatively few facilities at which large quantity radioactive materials packages are handled. Also, any information for which confidential treatment is requested and justified may be protected from disclosure under 49 CFR 107.5. DOT remains firm in its belief that the requirements for preparation and filing of written route plans are reasonable and necessary.

There was an almost unanimous call from State and local officials, as well as interested persons, seeking information contained in the route plan prior to the actual transfer of the radioactive materials. These requests will be satisfied in part by the previously mentioned NRC rulemaking which will necessitate the prenotification of any interested State in which spent fuel or a Type B waste shipment is to be transported.

Other commenters interested in the specific form and substance of DOT's reports to the States requested clarification and updating as to how this information will be provided and to what agency. The agencies of primary interest in these reports is expected to be those organizations in the various States which are empowered to designate preferred highways. Consequently, they will be the principal addressees. In addition, copies will be furnished to the Office of the Governor of each State, to the tribal governments, and to the extent possible any other organization or interested party specifically identified by any of the aforementioned. All other persons would be free to inspect these reports in the Offices of MTB, or may acquire copies of them.

§ 177.825(d) Driver training

DOT has added one provision to the route plan requirement that requires the carrier to submit a supplement to an original route plan when the carrier is forced to deviate from the route plan for emergency or other reasons. The supplement must be submitted to the shipper within 30 days following the deviation and must document the reason for the deviation and the route actually used. This supplement is required when the carrier must leave the preferred route temporarily even in cases to access rest, fuel or vehicle repair stops unless the facility used is actually located along the preferred route.

Requirements pertaining to driver training and certification are incorporated in these final rules with only minor changes from that proposed. These requirements are redesignated as § 177.825(d) (see § 177.825(b)(3) and § 177.825(c) in the MPRM). The large majority of commenters favored some type of driver training requirements for operators of vehicles carrying large quantity radioactive materials. Most of the criticism of the driving training requirements involves the extent of training to be required and the method of ensuring that adequate training is provided.

Many commenters maintain that training should not be left to the discretion of the carrier and that the carrier training program should be inspected and certified by DOT. Others commented that the proposed training was not specific enough. Some commenters also expressed their belief that DOT should be responsible for establishing the entire training program, addressing the minimum number of hours required and details on the actual content of training materials.

On the other hand, some shippers and carriers criticized the proposed training requirements as unnecessary and, in some cases, duplicative of existing training requirements. Also, it was maintained that truck drivers should not be expected to become experts on hazardous materials regulations or on the properties and hazards of radioactive materials. There was a feeling that the additional cost of providing driver training just for the transportation of one particular type of hazardous material could result in the loss of some transportation service for these materials.

In response to these criticisms it should first be mentioned that the driver training requirements are based on similar proposed requirements for drivers transporting another hazardous material. Docket HM-115 (44 FR 12826, March 8, 1979) proposed training for drivers of certain tank trucks carrying flammable cryogenic liquids. The Department's intention in Docket HM-164 has been to develop an effective driver training program that is consistent with that for cryogenic liquids and possibly for other types of hazardous materials in the future.

The current DOT stance on hazardous materials driver training, as established by HM-115, is to require that training be provided for the material involved and that the training program be implemented within the general guidelines provided by the Department. Any driver training requirement must be able to accommodate the many variables involved in hazardous materials transportation such as: the different materials and different associated hazards; the varying level of knowledge and experience of truck drivers; and the wide difference in the effectiveness of various methods of training. For this reason, it is believed that the driver training requirement must be of a general nature and that it is the Department's role to set out the major requirements which allow the flexibility to develop an individualized training program that will accomplish the safety objectives desired. It is not believed that DOT certification of the individual driver training program is needed at this

time. Compliance with the driver training requirement for large quantity radioactive materials, just as for any other hazardous materials requirement under the HMTA, will be the subject of safety inspections conducted by MTB, BMCS and various State enforcement personnel. The enforcement of the driver training program will also be aided by the requirement that the driver be furnished with a certificate stating that such training has been provided.

In response to comments from carriers and shippers, DOT believes that driver training for radioactive materials is necessary as a reasonable precaution for large quantity shipments and that truck drivers would not have to become regulation specialists in order to comply with the training objectives. Further, costs necessary to establish a training program should not be high or result in scarcity of service. To some extent, DOT agrees with the contention that some of the proposed requirements duplicate existing training requirements in the Hazardous Materials Regulations. This is true of the requirements proposed in the NPRM (§ 177.825(c)(1) (ii) and (iv)) relating to the motor carrier safety regulations and the operating and handling characteristics of the vehicle. Existing §§ 177.804 and 397.1 now require that drivers be familiar with motor carrier safety regulations, including those in Part 397 for hazardous materials. Minimum requirements for all truck drivers, including provisions relating to the operation of the motor vehicle, are addressed in Part 391 "Qualifications of Drivers". Consequently, the proposed training requirements relating to these areas have not been included in the final amendments.

§ 177.825(e) Physical security requirements for spent fuel

Paragraph (e) is added to this new section to incorporate the requirements proposed in § 177.825(b)(4). The effect of this paragraph is to require motor carriers to transport shipments of irradiated reactor fuel in compliance with a physical protection plan established by the shipper. These plans, approved by DOT or NRC, may sometimes involve transportation requirements different from those specified in § 177.825 but designed to assure at least an equal measure of protection to public safety, and take precedence over the other rules published in § 177.825. Shipments affected by this paragraph include those made by any NRC licensee, and consignments from the DOD and DOE transported by for-hire carriers (except defense-related shipments accompanied by personnel specifically designated by or under the authority of those agencies to preserve national security). A number of commenters expressed their disapproval with the provisions of this regulation which effectively designates NRC as the lead agency for matters involving transportation security for spent fuel.

While the responsibility for prescribing physical protection requirements applicable to special nuclear materials and highly irradiated spent fuel offered for transportation by NRC licensees has been relegated to the NRC, through the memorandum of understanding (MOU) currently in effect between DOT and NRC (44 FR 38690, July 2, 1979), DOT believes that the Hazardous Materials Regulations should contain a specific rule which requires those shippers not otherwise licensed by NRC to comply with safeguards designed to ensure physical security of spent fuel.

DOT recognizes that a considerable amount of "for hire" transportation of spent fuel is performed under security arrangements in support of operations conducted by the DOD and DOE. In the case of shipments escorted by personnel specifically designated by or under the authority of those agencies, for the purpose of national security, a broad exception is granted in §§ 173.7(b) and 177.806(b) which frees common and contract carriers from compliance with the Hazardous Materials Regulations.

This exception was issued with the understanding that it could be revised at some subsequent date if time and experience demonstrated the need. In the more than 30 years that this exception has been in force the DOT is not aware of any instance where the public health and safety have been jeopardized because of shipper or carrier noncompliance with the specific requirements of the Hazardous Materials Regulations. The DOT, therefore, is not inclined to remove the exception at this time since the original conditions of issuance still remain.

The proposal that DOT more closely regulate packages of large quantity radioactive materials shipped by or under the direction of the DOD and DOE attracted a great deal of interest and comment. Some commenters were surprised to learn that, in addition to the exceptions for national security in §§ 173.7(b) and 177.806(b), shipments transported by the military and other government agencies, using their own personnel and transport vehicles, are not subject to the Hazardous Materials Regulations and urged the inclusion of such agencies as regulated carriers. Others followed this topic by indicating that military shipments can and do have accidents, and could pose a grave threat to the communities through which they travel.

The question of DOT jurisdiction and authority over such governmental transportation activities was most recently discussed by MTB in its Docket HM-145A, Notice No. 78-6 (43 FR 22628, May 25, 1978), Transportation of Hazardous Waste Materials. In that document DOT restated its determination not to exercise its authority over Federal, State or local government agencies that carry hazardous materials as a part of a governmental function, using government employees and vehicles. The Department believes that such transportation continues to be conducted in a responsible manner. Also, no new information has come to the attention of DOT regarding the actual occurrence of serious incidents involving hazardous materials transported by this class of carriers. Therefore, it is the opinion of DOT that an extension of its regulations to the degree sought by these commenters is unnecessary at this time.

A matter closely related to the above involves shipments made by governmental agencies through common or contract carriers without escorts provided by such agencies. Essentially, these shipments must be in general compliance with DOT's requirements for safe transportation. Certain exceptions, however, do permit DOD and the Bureau of Alcohol, Tobacco and Firearms (ATF) to make shipments of hazardous materials in packagings not otherwise prescribed by the regulations. Of particular concern to the matter at hand is the treatment of physical security controls applicable to unescorted shipments of spent fuel made by or on behalf of the DOD or DOE. Highly irradiated spent fuel elements pose identical biological and radiological risks regardless of their origins; be it the reactor vessel of an electrical power plant, nuclear submarine or research facility. Other factors also remain relatively constant. For instance, highways retain their same characteristics regardless of who uses them, spent fuel casks are of the same basic designs, and in many cases it is quite conceivable that the carrier, vehicle and driver used to transport shipments for an NRC licensee one week would subsequently be employed by a DOD or DOE contractor to perform a similar service. The same conclusions that justify requiring a licensee to provide physical protection in compliance with a plan established

under regulations prescribed by the NRC apply to others who ship spent fuel.

Consequently, the final rule is adopted in the same form as proposed, thereby requiring the respective departments (unless they perform the transportation with their own vehicles) to either submit copies of their physical protection plans to MTB for approval, or, when necessary to preserve the national security, provide an escort of personnel specifically designated by or under their authority. Shipments of irradiated reactor fuel by DOE in support of its research and development activities are not generally considered by DOT to be carried out to preserve national security (as opposed to defense-related shipments made by both DOD and DOE) and are therefore subject to this Department's regulations.

A number of commenters criticized the exception for physical security of spent fuel shipments and some even expressed their belief that it merely allows spent fuel to be shipped under the cloak of secrecy and security thereby avoiding DOT safety rules. It is difficult for DOT to follow the logic of this contention when one considers that the NRC security rules are much more stringent than the DOT safety rules proposed for large quantity radioactive materials. (The NRC physical security program is discussed on page 7144 of the HM-164 NPRM). Nevertheless, this may be a moot point in the near future. DOT has been notified by NRC that NRC licensees shipping spent fuel may be required to follow DOT's preferred routing system, including the use of State-designated routes. The licensees would be relieved of the requirement to obtain prior route approval from the NRC as long as they use preferred routes. In addition, the licensees would have to continue to adhere to all other requirements in the NRC security program including continuous monitoring of shipment, communication with local law enforcement agencies, vehicle immobilization features, escorts, and prenotification to both the NRC and possibly to State governors.

Part 177 Appendix

A new appendix is added to Part 177. It sets out DOT policy and advice on how State and local governments can exercise their own authority over motor carriers in a manner that will be consistent with rules in Part 177 concerning radioactive materials. Sections I and II are introductory. Sections III, IV and V discuss the three categories of radioactive materials shipments, previously addressed in the preamble, which depend on whether or not the motor vehicle transporting the material is required by Part 172 to be placarded, and if so, whether the material is a large quantity radioactive material. Section VI concerns radioactive materials generally.

Sections I and II—Section I states the purpose of the appendix. Section II defines "routing rule" for purposes of the appendix. Emergency action by State or local authorities to deal with immediate threats to public health and safety, as where a highway is impassable, is not a routing rule. Also, the definition excludes rules of the road that apply to vehicles without regard to the hazardous nature of their cargo. "Routing rule" does refer to governmental action that so affects or burdens commerce as to selectively redirect hazardous materials traffic.

Section III—discusses State and local rules that affect motor vehicles transporting large quantity radioactive materials.

State rules. A State cannot make transportation between two points impossible by highway. The radiological risks in transporting large quantity radioactive materials by highway are small and total preclusion of shipments cannot be justified on that basis. A prohibition on use of Interstate System highways is justified only where an equivalent alternate route is specified that offers risk minimization at least equal to the forbidden Interstate segment. Because of their average accident rate and usual design features, Part 177 requires use of Interstate System highways unless a safer route is designated by an appropriate State routing agency after consulting with local jurisdictions and evaluating the actual routes involved.

The fact that a route may be designated for use on a temporary basis for a limited time does not invalidate a demonstrated safety benefit and is encouraged. For example, if justified by safety analysis, a State agency can designate alternate routes in support of time-of-day restrictions in congested areas. A State agency might specify a safer route to be used instead of an Interstate System highway segment or instead of a State-designated route during periods of peak local traffic.

Criteria in Section III.A.2. of the appendix describe necessary features of preferred highways designated by States. One criterion is that preferred routes are designated by a State agency with authority under State law to impose its routing rules anywhere in the State. The rules must be similarly enforceable by State authority anywhere in the State although not necessarily by the same agency. One State agency, for example, could impose routing rules that are enforced by the State police. The State agency must be able to exercise this authority on all public roads in the State regardless of the boundaries of local jurisdictions such as cities and counties, or special authorities such as operate toll roads. This broad authority is necessary for two reasons. First, neither the appendix nor Part 177 delegates regulatory authority over motor carriers. State law must provide that basic regulatory authority. Second, the State agency must be able to consider *any* public highway in its route selection process with knowledge that the lowest risk route may be selected and its use enforced.

A local jurisdiction is not likely to consider all the routing options that affect it and is not normally responsible for considering the impacts of its own rules on other jurisdictions. Similar problems can occur at the State level. The total number of State agencies concerned with transportation of radioactive materials, however, is considerably more limited than the number of local jurisdictions that conceivably might exercise routing authority, a factor which reduces the potential for confusion and enhances compliance.

A closely related criterion in Section III.A.2. specifies that route selection by a State agency be preceded by consultation with affected jurisdictions. Impacts of routing decisions must be considered regardless of the jurisdiction in which they may occur. Affected jurisdictions will include such entities as cities and counties, and may also include neighboring States. Where neighboring States are affected, the impacted local jurisdictions there must be consulted, preferably through a similar State-wide agency. Local jurisdictions know local conditions that affect, or may be affected by traffic in hazardous materials. Without consideration of local views on such matters as accident rates, risk minimization efforts are hampered.

The criterion does not specify the consultation process, although some local governments in commenting asked that the process be spelled out. DOT believes that the rulemaking process used, like the basic rulemaking authority of a State agency, is largely a matter of State law. To ensure reliable results, however, it would be appropriate to provide public notice, opportunity to comment, and a hearing if justified (as in informal Federal rulemaking) and to individually notify and request comments from those local jurisdictions which can be identified as likely to be

affected by the routing decisions under consideration.

DOT also believes that each State should establish an advisory group composed largely of city and county officials. The purpose of the group would be to meet periodically, recommend to the State appropriate methods for consulting with local jurisdictions, and review the effectiveness of those measures in actual practice. Such State advisory groups would provide a valuable oversight function that should help to continually improve the State routing program. DOT views adequate, substantive local consultation as essential to State route designations. State routing rules that are not preceded by adequate local consultation are unreliable and inconsistent with the Part 177 amendments established in this docket. A failure in local consultation will jeopardize the enforceability of State route designations for large quantity carriers.

Another criterion in Section III.A.2. specifies that the State designation is preceded by a comparative risk analysis of possible routes. A comparative analysis is essential to ensure that risk is indeed being minimized. The "DOT Guidelines" provide a basic analytical technique that may be used to minimize radiological risk. A more sensitive analysis based on that technique also is acceptable.

Local rules. Local governments may regulate the routes of carriers of large quantity radioactive materials, but only in support of State and Federally designated preferred highways. Local prohibition of motor vehicles transporting large quantity radioactive materials is consistent with Part 177 only so far as the vehicles' presence is forbidden by Part 177 (or by State route designations consistent with Part 177). On the other hand, Part 177 presumes that no local routing rules will apply to motor vehicles on preferred highways where Federal and State route designation is exclusive, or to vehicles at locations off the preferred highways under circumstances permitted by Part 177 (*e.g.* a fuel or repair stop).

Sections IV and V.—Section IV concerns rules that apply to placarded motor vehicles which do not contain a large quantity of radioactive material. Section V concerns rules that apply to unplacarded vehicles.

A State or local routing rule that attempts to regulate placarded vehicles not transporting large quantity radioactive materials is consistent with Part 177 only if the rule is identical to § 177.825(a). The language of that section is by necessity general. Since uniform application is intended (in part to aid compliance), § 177.825(a) should not be subject to interpretations that vary between jurisdictions. Local variations in the language of § 177.825(a) would invite varying interpretation and application of the rule. Section 177.825(a) is intended to be nationally uniform. More stringent regulation of placarded motor vehicles is not necessary given the hazard level involved, and will impose unnecessary burdens on commerce that do not provide a reasonable safety benefit.

A State or local routing rule that attempts to regulate radioactive materials that are permitted by Part 177 to be carried in an unplacarded vehicle is not consistent with that part. Such rules are unnecessary, given the very limited hazard involved.

Section VI.—Section VI concerns a variety of other State and local rules that are associated with routing rules.

State and local rules cannot conflict with physical security requirements imposed by the NRC. Part 177 permits a carrier to vary from its requirements if necessary to comply with the NRC physical security program. By making NRC physical security rules enforceable under the HMTA, DOT intends that State and local rules also permit necessary variances.

State or local rules that require special personnel, equipment or escort are not consistent with Part 177. Precautions of this nature are taken under NRC rules to ensure the physical security of spent fuel shipments, with which local or State rules may conflict. Their imposition for transportation safety alone serves little purpose and poses serious difficulties for carriers. The existence of State and local requirements for special equipment may effectively dictate the continuous use of the equipment in all jurisdictions. Varying requirements between jurisdictions pose additional problems that may necessitate equipment changes and delays *en route,* or avoidance of an otherwise desirable route. Containment and packaging equipment are themselves exclusively set by Federal regulations. Special personnel and escort requirements pose similar problems. State and local escort requirements in particular are a source of delay in transportation if the escort is not required for the entire journey. Whether an escort vehicle is provided by the carrier or by a local jurisdiction, if presence of an escort vehicle is a condition of entering the jurisdiction, the transport vehicle is likely to have to stop at jurisdictional boundaries to establish communication with the escort vehicle. It also is likely that delay will result from the early arrival of a transport vehicle or the late arrival of an escort vehicle.

Earlier in this document, DOT stated its intention to further consider requirements for prenotification to State governments of large quantity shipments, following completion of an NRC rulemaking on prenotification for shipments of nuclear waste. Because the voluntary provision of escort vehicles by local governments is closely related to prenotification issues, such voluntary escort servcies will also be reconsidered at that time.

Shipping paper entries and other hazard warning devices bear little special relationship to local safety problems. In fact, the utility of such measures heavily depends on their universal recognition. Variations in hazard warning devices dilute the effectiveness of those required by Parts 172 and 177, which are understood nationally and internationally, and may hamper emergency response.

State and local requirements for filing route plans or other documents containing shipment specific information pose a potential for unnecessarily delaying motor vehicles. In many cases such requirements are redundant with Federal requirements concerning safety and security. They are not likely to measurably enhance local emergency response capabilities. When applied at a State or local level, they are likely to result in an inefficient use of emergency preparedness resources.

Accident reports imposed by State or local governments that are necessary to ensure immediate emergency assistance are consistent with Part 177. Accident reports required at a later time are duplicative of requirements of Part 177 (which references §§ 171.15 and 171.16). Reports submitted to DOT are publicly available, and States may make prior arrangements for DOT to provide them with copies of incident reports as they become available. The appendix does not concern general accident report requirements, such as a State requirement that any motor vehicle accident involving injury or substantial property damage be reported to the State police during a stated period following the accident.

Prenotification was discussed previously in the preamble. Prenotification requirements by State and local governments, if found necessary, will be established in a nationally uniform manner. Unless DOT reaches and acts on a conclusion that prenotification rules are necessary, beyond those Congress has directed NRC to impose on certain radioactive wastes, independent State and local

prenotification requirements are not consistent with Part 177.

Lastly, because of the importance of expediting radioactive materials shipments, due to the risk and added normal dose attendant to delay, other forms of State and local regulation that affect motor carriers of radioactive materials should not result in unnecessary delay (see § 177.853(a)). A delay is unnecessary unless it is required by an exercise of State or local regulatory authority over a motor vehicle that so clearly supports public health and safety as to justify the safety detriment and burden on commerce caused by the delay (such as in an emergency).

§ 397.9 Routing for hazardous materials

The Bureau of Motor Carrier Safety is revising 49 CFR 397.9 of the Federal Motor Carrier Safety Regulations in amendments published elsewhere in this Federal Register issue. This will direct the motor carrier's attention to the new routing requirements for radioactive materials in § 177.825. The amendment is needed to prevent an inconsistency between routing provisions required for radioactive materials in § 177.825 and those required for other hazardous materials in § 397.9(a).

VIII. Environmental and Economic Impact

DOT has prepared a Final Regulatory Evaluation and Environmental Assessment (DOT Assessment) in support of these final rules (copies may be obtained from the Dockets Branch previously cited). It is clear from the available technical information referenced in the Assessment that radiological risks in transporting radioactive materials resulting from both normal exposure and accidents are very low. Even if one allows that the risk estimates developed by these technical risk studies are underestimated by an order-of-magnitude, the projected overall risks from the transportation of radioactive materials would still be extremely low. Furthermore, one cannot ignore historical accident experience which is shown to be quite good for radioactive material transportation when compared to other hazard classes by MTB's incident reporting system (1971–1980). Although historical experience by itself may not necessarily be the best method of projecting future events, the low historical accident rates do tend to support the research conclusions that the risks in transporting nuclear material by highway are low.

The primary operational effect of these rules is to require or encourage use of the Interstate System by carriers of radioactive materials. Although carriers transporting packages containing a large quantity of radioactive materials are generally required to use either the Interstate System or State-designated preferred highways, carriers transporting packages containing lesser quantities are likely also to tend to use the Interstate and preferred highways especially in areas of heavy population.

Adoption of the preferred routing system which utilizes Interstate System highways and State-designated highways for large quantity radioactive materials is determined to be the appropriate course of action for routing. This alternative has the potential for the greatest safety impact and is feasible and cost effective considering the marginal safety benefits involved.

DOT agrees that "high consequence" accidents in densely populated urban areas should be of great concern, but not to the extent that public policy on hazardous material routing should be formulated solely on the basis of avoiding such "worst case" accidents. For example, the high consequence estimates of the 1980 Urban Environs Study referenced earlier may be reduced substantially by avoiding the city but overall public risk may actually increase if the carrier is forced to use poor, secondary and circuitous rural roads. Nevertheless, it is clearly a reasonable precaution to minimize the possibility of "worst case" accidents by requiring use of a circumferential Interstate highway if it is available. If one is not available, a State may conduct a routing analysis to examine availability of other routes for comparison with the Interstate through route.

Overall radiological effects of this rule include a reduction in total latent cancer fatalities attributable to normal dose and a lesser reduction in the annual latent cancer fatality accident risk (based on NUREG 0170 projections). Some additional reduction in radiological consequences should result from State designation of preferred highways. A slight increase in nonradiological consequences may result from routing on preferred urban bypasses or circumferentials. Overall, environmental impacts should be negligible.

Economic costs are expected not to exceed $330,000 annually under 1985 levels of shipping activity and mostly would consist of costs for driver training and route plan preparation and filing. Some additional cost may result from the new placard background and shipping paper requirements for large quantity shipments. Also, this estimate does not include possible additional insurance costs to State and local bridge and tunnel authorities. MTB requested, but did not receive, any quantitative data on this subject.

Because of the level of costs anticipated and the limited potential for environmental impact, MTB does not consider the preparation of an environmental impact statement or a regulatory analysis necessary for these amendments. As mentioned, a more detailed examination of costs and environmental impact is available in the Final Regulatory Evaluation and Environmental Assessment.

DOT intends to conduct an evaluation of the final rule a year following its effective date. This evaluation will consider the rule's efficacy as regards public health and safety, and its actual effects on carriers, and State and local jurisdictions, with particular attention to any difficulties that have appeared during the rule's implementation. As part of that evaluation, notice will be published to solicit public comment, and a direct solicitation of comments will be made to the States and to interested groups such as the National Governors Association and the National League of Cities. As previously indicated, DOT also will be reexamining prenotification as well as its relation to escort vehicles voluntarily provided by State or local governments sometime following publication (in early 1981) of final NRC prenotification rules for nuclear waste shipments. An advance schedule for both proceedings will appear in a future Federal Register publication of the DOT Regulations Agenda.

Work on the DOT Guidelines, referenced herein, will be continued and the document is expected to be released in the first half of 1981, following pilot tests early in the year.

In consideration with the foregoing, 49 CFR Parts 171, 172, 173, and 177 are amended as follows:

PART 171—GENERAL INFORMATION, REGULATIONS, AND DEFINITIONS

1. In § 171.7 paragraph (d)(23) is added to read as follows:

§ 171.7 Matter incorporated by reference.

* * * * *

(d) * * *

(23) USDOT, "Guidelines for Selecting Preferred Highway Routes for Large Quantity Shipments of Radioactive Materials"

2. In § 171.8 the following definitions are added in the appropriate alphabetical sequence:

§ 171.8 Definitions and abbreviations.

* * * * *

"Preferred route" or "Preferred highway" is a highway for shipment of large quantity radioactive materials so designated by a State routing agency, and any Interstate System highway for which an alternate highway has not been designated by such State agency as provided by § 177.825(b) of this subchapter.

* * * * *

"State-designated route" means a preferred route selected in accordance with U.S. DOT "Guidelines for Selecting Preferred Highway Routes for Large Quantity Shipments of Radioactive Materials" or an equivalent routing analysis which adequately considers overall risk to the public. Designation must have been preceded by substantive consultation with affected local jurisdictions and with any other affected States to ensure consideration of all impacts and continuity of designated routes.

* * * * *

"State routing agency" means an entity (including a common agency of more than one State such as one established by Interstate compact) which is authorized to use State legal process pursuant to § 177.825 of this subchapter to impose routing requirements, enforceable by State agencies, on carriers of radioactive materials without regard to intrastate jurisdictional boundaries. This term also includes Indian tribal authorities which have police powers to regulate and enforce highway routing requirements within their lands.

* * * * *

PART 172—HAZARDOUS MATERIALS TABLE AND HAZARDOUS MATERIALS COMMUNICATIONS REGULATIONS

3. In § 172.203 paragraph (d)(1)(iii) is amended by adding the following sentence at the end of the paragraph:

§ 172.203 Additional description requirements.

* * * * *

(d) * * *

(1) * * *

(iii) * * * For the shipment of packages containing large quantity radioactive materials (see § 173.389(b) of this subchapter), the words "Large quantity" must be entered in association with the basic description.

* * * * *

4. Section 172.507 is added to read as follows:

§ 172.507 Special placarding provisions: Highway.

Each motor vehicle used to transport a package of large quantity radioactive materials (see § 173.389(b) of this subchapter) must have the required RADIOACTIVE warning placard placed on a square background as described in § 172.527.

5. In § 172.527 the section heading and paragraph (a) are revised to read as follows:

§ 172.527 Background requirements for certain placards.

(a) Except for size and color, the square background required by § 172.510(a) for certain placards on rail cars, and § 172.507 for placards on motor vehicles containing a package of large quantity radioactive materials, must be as follows:

* * * * *

PART 173—SHIPPERS—GENERAL REQUIREMENTS FOR SHIPMENTS AND PACKAGINGS

6. In § 173.22 paragraph (b) is revised and paragraph (c) is added to read as follows:

§ 173.22 Shipper's responsibility.

* * * * *

(b) Prior to each shipment of fissile radioactive materials, and Type B or large quantity packages of radioactive material (see § 173.389 of this subchapter), the shipper shall notify the consignee of the dates of shipment and expected arrival. The shipper shall also notify each consignee of any special loading/unloading instructions prior to his first shipment. For any shipment of irradiated reactor fuel, the shipper shall provide physical protection in compliance with a plan established under—

(1) Requirements prescribed by the U.S. Nuclear Regulatory Commission, or

(2) Equivalent requirements approved by the Associate Director for Hazardous Materials Regulation, MTB.

(c) Within 90 days following acceptance by a carrier of any package containing a large quantity radioactive material (see § 173.389(b)) for transportation by public highway, the shipper shall file the following information with the Associate Director for Hazardous Materials Regulation, MTB (this paragraph does not apply to packages shipped in compliance with physical security requirements of the U.S. Nuclear Regulatory Commission in 10 CFR Part 73):

(1) The route plan required under § 177.825(c) of this subchapter (any supplement to the route plan prepared in accordance with § 177.825(c) of this subchapter shall be filed within 90 days of receipt from the carrier);

(2) A statement identifying the name and address of the shipper, carrier and consignee; and

(3) A copy of the shipping paper or the description of the radioactive material required by §§ 172.202 and 172.203 of this subchapter.

PART 177—CARRIAGE BY PUBLIC HIGHWAY

7. Section 177.810 is revised as follows:

§ 177.810 Vehicular tunnels.

Except as regards radioactive materials, nothing contained in Parts 170–189 of this subchapter shall be so construed as to nullify or supersede regulations established and published under authority of State statute or municipal ordinance regarding the kind, character, or quantity of any hazardous material permitted by such regulations to be transported through any urban vehicular tunnel used for mass transportation. For radioactive materials, see § 177.825 of this part.

8. Section 177.825 is added in Subpart A, to read as follows:

§ 177.825 Routing and training requirements for radioactive materials.

(a) The carrier shall ensure that any motor vehicle which contains a radioactive material for which placarding is required is operated on routes that minimize radiological risk. The carrier shall consider available information on accident rates, transit time, population density and activities, time of day and day of week during which transportation will occur. In performance of this requirement the carrier shall tell the driver that the motor vehicle contains radioactive materials and shall indicate the general route to be taken. This requirement does not apply when—

(1) There is only one practicable highway route available, considering operating necessity and safety, or

(2) The motor vehicle is operated on a preferred highway under conditions described in paragraph (b) of this section.

(b) Unless otherwise permitted by this section, a carrier and any person who operates a motor vehicle containing a package of large quantity radioactive material as defined in § 173.389(b) of this subchapter shall ensure that the vehicle operates over preferred routes selected to reduce time in transit, except that an Interstate System bypass or beltway around a city shall be used when available.

(1) A preferred route consists of—

(i) An Interstate System highway for which an alternative route is not designated by a State routing agency as provided in this section, and

(ii) A State-designated route selected by a State routing agency (see § 171.8 of this subchapter) in accordance with the DOT "Guidelines for Selecting Preferred Highway Routes for Shipments of Large Quantity Radioactive Materials".

(2) When a deviation from a preferred route is necessary (including emergency deviation, to the extent time permits), routes shall be selected in accordance with paragraph (a) of this section. A motor vehicle may deviate from a preferred route under any of the following circumstances:

(i) Emergency conditions that would make continued use of the preferred route unsafe.

(ii) To make necessary rest, fuel and vehicle repair stops.

(iii) To the extent necessary to pick up, deliver or transfer a large quantity package of radioactive materials.

(c) A carrier (or his agent) who operates a motor vehicle which contains a package of large quantity radioactive material as defined in § 173.389(b) of this subchapter shall prepare a written route plan and supply a copy before departure to the motor vehicle driver and a copy to the shipper (before departure for exclusive use shipments, or otherwise within fifteen working days following departure). Any variation between the route plan and routes actually used, and the reason for it, shall be reported in an amendment to the route plan delivered to the shippper as soon as practicable but within 30 days following the deviation. The route plan shall contain—

(1) A statement of the origin and destination points, a route selected in compliance with this section, all planned stops, and estimated departure and arrival times; and

(2) Telephone numbers which will access emergency assistance in each State to be entered.

(d) No person may transport a package of large quantity radioactive material, as defined in § 173.389(b) of this subchapter, on a public highway unless—

(1) The driver has received within the two preceding years, written training on—

(i) Requirements in Parts 172, 173, and 177 of this subchapter pertaining to the radioactive materials transported;

(ii) The properties and hazards of the radioactive materials being transported; and

(iii) Procedures to be followed in case of an accident or other emergency.

(2) The driver has in his immediate possession a certificate of training as evidence of training required by this section, and a copy is placed in his qualification file (see § 391.51 of this title), showing—

(i) The driver's name and operator's license number;

(ii) The dates training was provided;

(iii) The name and address of the person providing the training;

(iv) That the driver has been trained in the hazards and characteristics of large quantity radioactive materials; and

(v) A statement by the person providing the training that information on the certificate is accurate.

(3) The driver has in his immediate possession the route plan required by paragraph (c) of this section and operates the motor vehicle in accordance with the route plan.

(e) A person may transport irradiated reactor fuel only in compliance with a plan if required under § 173.22(b) of this subchapter that will ensure the physical security of the material. Variation for security purposes from the requirements of this section is permitted so far as necessary to meet the requirements imposed under such a plan, or otherwise imposed by the U.S. Nuclear Regulatory Commission in 10 CFR Part 73.

9. In Part 177 Appendix A is added after § 177.870 to read as follows:

Appendix A to Part 177—Relationship Between Routing Requirements in Part 177 with State and Local Requirements.

I. *Purpose.* This appendix is a statement of the Department of Transportation policy regarding the relationship of State and local rules with Federal rules in Part 177 of this subchapter for routing motor carriers transporting radioactive materials. The purpose of this appendix is to advise a State or local government how it can exercise authority over motor carriers under its own laws in a manner that the Department of Transportation considers to be consistent with rules in Part 177 (see 49 U.S.C. 1811(a)). This appendix and Part 177 do not delegate Federal authority to regulate motor carriers.

II. *Definition.* "Routing rule" means any action which effectively redirects or otherwise significantly restricts or delays the movement by public highway of motor vehicles containing hazardous materials, and which applies because of the hazardous nature of the cargo. Permits, fees and similar requirements are included if they have such effects. Traffic controls are not included if they are not based on the nature of the cargo, such as truck routes based on vehicles weight or size, nor are emergency measures.

III. *Large quantity radioactive materials.* A. *State routing rules.* A State routing rule which applies to large quantity radioactive materials is inconsistent with Part 177 if—

1. It prohibits transportation of large quantity radioactive materials by highway between any two points without providing an alternate route for the duration of the prohibition; or

2. It does not meet all of the following criteria:

(a) The rule is established by a State routing agency as defined in § 171.8 of this subchapter;

(b) The rule is based on a comparative radiological risk assessment process at least as sensitive as that outlined in the "DOT Guidelines";

(c) The rule is based on evaluation of radiological risk wherever it may occur, and on a solicitation and substantive consideration of views from each affected jurisdiction, including local jurisdictions and other States; and

(d) The rule ensures reasonable continuity of routes between jurisdictions.

B. *Local routing rules.* A local routing rule that applies to large quantity radioactive materials is inconsistent with this Part if it prohibits or otherwise affects transportation on routes or at locations either—

1. Authorized by Part 177, or

2. Authorized by a State routing agency in a manner consistent with Part 177.

IV. *Quantities of radioactive materials required to be placarded.* A State or local routing rule that applies to a radioactive material (other than a large quantity radioactive material), for which Part 177 requires placarding, is inconsistent with Part 177 unless it is identical to § 177.823(a) of this part.

V. *Radioactive materials for which placarding is not required.* A State or local routing rule that applies to a radioactive material for which Part 172 does not require placarding is inconsistent with this part.

VI. *Other related State and local rules.* A State or local transportation rule is inconsistent with Part 177 if it—

A. Conflicts with physical security requirements which the Nuclear Regulatory Commission has established in 10 CFR Part 73 or requirements approved by the Department of Transportation under § 173.22(b) of this subchapter;

B. Requires additional or special personnel, equipment, or escort;

C. Requires additional or different shipping paper entries, placards, or other hazard warning devices;

D. Requires filing route plans or other documents containing information that is specific to individual shipments;

E. Requires prenotification;

F. Requires accident or incident reporting other than as immediately necessary for emergency assistance; or

G. Unnecessarily delays transportation.

(49 U.S.C. 1803, 1804, 1808, 49 CFR 1.53 and App. A to Part 1)

Note.—The Materials Transportation Bureau has determined that this document will not result in a major economic impact under the terms of Executive Order 12221 and DOT implementing procedures (44 FR 11034), nor require an environmental impact statement under the National Environmental Policy Act (49 U.S.C. 4321 et seq.). A regulatory evaluation and environmental assessment is available for review in the docket. Review of recordkeeping requirements under the Federal Reports Act

is required by the Office of Management and Budget prior to the effective date of this document.

Issued in Washington, D.C. on January 13, 1981.

L. D. Seaman,

Director, Materials Transportation Bureau.

[FR Doc. 81-1681 Filed 1-16-81; 8:45 am]

BILLING CODE 4910-60-M

Federal Highway Administration

49 CFR Part 397

[BMCS Amdt. No. 60-1]

Radioactive Materials; Routing Exemption

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Final rule.

SUMMARY: The FHWA is amending the Federal Motor Carrier Safety Regulations to exempt radioactive materials from the routing provisions contained in 49 CFR 397.9. This action is necessary in order to remove the possibility of duplicative rules. The authority to establish routing requirements under the Hazardous Materials Transportation Act is delegated to the Director, Materials Transportation Bureau, Research and Special Programs Administration, DOT. A final rule contained in Docket HM-164 published elsewhere in this issue is issued by MTB which addresses this routing. Removal of any implied reference to radioactive materials routing from § 397.9 will avoid duplicative Departmental regulations on the same subject.

EFFECTIVE DATE: This rule becomes effective February 1, 1982.

FOR FURTHER INFORMATION CONTACT: Mr. Joseph J. Fulnecky, Bureau of Motor Carrier Safety, (202) 426-1700; or Mr. Gerald M. Tierney, Office of Chief Counsel (202) 426-0346; Federal Highway Administration, Department of Transportation, 400 Seventh Street, SW., Washington, D.C. 20590.

§ 397.9 [Amended]

For the reasons set out in the summary, 49 CFR 397.9 Routes, is amended by adding at the end of paragraph (a) the following sentence:

(a) * * * This paragraph does not apply to radioactive materials [See § 177.825 of this title].

* * * * *

Note.—The FHWA has determined that this document does not contain a significant regulation according to the criteria established by the Department of Transportation pursuant to Executive Order 12044. Due to the fact that this amendment is of nonsubstantive nature and intended to simply clarify existing provisions, a full regulatory evaluation is not considered necessary. For the same reasons, publication of this amendment for notice and comment could not reasonably be anticipated to result in the receipt of useful information.

(49 U.S.C. 304; 49 CFR 1.48(b) and 301.60)

(Catalog of Federal Domestic Assistance Program Number 20.217, Motor Carrier Safety)

Issued on: January 13, 1981.

Kenneth L. Pierson,

Director, Bureau of Motor Carrier Safety.

[FR Doc. 81-1680 Filed 1-16-81; 8:45 am]

BILLING CODE 4910-22-M

federal register

Monday
January 19, 1981

Part V

Department of Education

Pell Grant Program; Family Contribution Schedules

DEPARTMENT OF EDUCATION

34 CFR Part 690

Pell Grant Program, Family Contribution Schedules

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: These final regulations establish the 1981–82 award year Family Contribution Schedules—the formulas used in determining student eligibility on the basis of financial need for the Pell Grant (formerly Basic Educational Opportunity Grant) Program. They include a number of revisions to the 1980–81 award year Family Contribution Schedules. These revisions are intended to accomplish a number of objectives. First, some changes were needed to update requirements of these regulations since—as annual regulations—they are written with respect to a given award period. Second, some changes were necessary to address concerns and possible inequities that have been identified by members of the financial aid community and Congress regarding the treatment of the income of dependent students. Additionally, these regulatios also revise the definition of an "independent student" for the Pell Grant Program. An identical change in this definition for the three campus-based programs (the National Direct Student Loan, Supplemental Educational Opportunity Grant, and College Work-Study) has been recently published in the Federal Register as part of the new regulations for those programs.

EFFECTIVE DATE: These regulations are expected to take effect 45 days after they are transmitted to Congress. Regulations are usually transmitted to Congress several days before they are published in the Federal Register. The effective date is changed by statute if the Congress disapproves the regulations or takes certain adjournments. It should be noted, however, that these regulations apply only to Pell Grants made for the period of July 1, 1981 through June 30, 1982. If you want to know the effective date of these regulations, call or write the Department of Education contact person.

FOR FURTHER INFORMATION CONTACT: William L. Moran, Chief, Basic Grant Policy Section, or David Morgan, Basic Grant Program Specialist, Division of Policy and Program Development, ROB-3, Room 4318, 400 Maryland Avenue, S.W., Washington, D.C. 20202. (202) 472-4300.

SUPPLEMENTARY INFORMATION:

General Background

The proposed Family Contribution Schedules for award year 1981–82 were published in the Federal Register as a notice of proposed rulemaking (NPRM) on August 1, 1980. Copies of the NPRM were mailed to participating postsecondary institutions and to various educational organizations, and public comment was solicited.

The public comments that were received on the NPRM and the Department of Education's responses to those comments are summarized in the appendix to this Federal Register document.

The Education Amendments of 1980 do not apply to the 1981–82 Family Contribution Schedules.

The provisions in the Education Amendments of 1980 which affect the Family Contribution Schedules for the Pell Grant and campus-based student assistance programs, National Direct Student Loan, College Work-Study and Supplemental Educational Opportunity Grant are effective starting with the 1982–83 award year. Thus they do not apply to the 1981–82 award year.

I. *Summary of Major Changes.*

1. The family size offsets included in the Family Contribution Schedules represent amounts needed to provide for basic family expenses which must be met before any contribution toward a student's educational costs can be expected. In order to establish a standard for determining the amount of these expenses, the Pell Grant program adopted during its initial year of operation the "Weighted Average Thresholds of Low Income Level" developed by the Social Security Administration and published by the Bureau of the Census. These expenses are based on the food costs of families of given sizes, and on certain assumptions about additional expenses for shelter and other family needs. These baseline data have been updated annually to accommodate the increases in the Consumer Price Index published by the Bureau of Labor Statistics of the Department of Labor.

In applying for Pell Grants for the 1981–82 award year, applicants will report actual financial data for the calendar year 1980, i.e., the "base year" for the 1981–82 award year. To derive the family size offsets for the 1980 base year, those used for 1979 have been adjusted to correspond to the 12.6 percent increase in the Consumer Price Index published by the Bureau of Labor Statistics at the end of the year.

2. The dependent student offset is (a) an offset from the effective income of a dependent student and his or her spouse to meet the basic needs of the student and spouse, plus (b) the portion of negative parental discretionary income that will not be used to offset the contribution from parental assets. For a single dependent student, the part of the offset described in clause (a) is derived by subtracting from the family size offset for a single independent student the average parental share for maintenance expenses for the student which is already a part of the parent's family size offset. The average parental share is the average increase in the family size offset for each family member above one. For a married dependent student, the part of the offset described in clause (a) equals the family size offset for a single independent student.

The part of the dependent student offset described in clause (a) has also been increased to reflect the rise in the Consumer Price Index in the same fashion that the family size offsets were increased.

3. One other figure that has been updated is the dollar support figure that is used in one of the criteria for determining the independent status of the student. For the 1980–81 award year, the determination of the student's independent status was based on negative answers to all of the following questions:

	In 1979		In 1980	
	Yes	No	Yes	No
Did or will the student live with the parents for more than six weeks				
Did or will the parents claim the student as an income tax exemption				
Did or will the student receive more than $750 worth of support from the parents				

For 1981–82, of course, the years in question are 1980 and 1981.

Of these three criteria for the determination of a student's independent status, the criterion that has been changed is the question of whether or not the student's parents have provided him or her with more than a certain amount of support. The amount in the question has been raised from $750 to $1,000. The reason for this change is that the support amount has generally been tied to the Internal Revenue Service's personal exemption amount which has been increased to $1,000. In other words—with respect to this criterion—where previously a student would be dependent if his or her parents contributed more than $750 in

support to him or her, for the 1981–82 award year, the student would be dependent only if the parents provided more than $1,000 in support.

II. *Changes Related to the Assessment of Dependent Student Income.*

1. Expansion of the definition of "Dependent of the student's parents."

For the 1980–81 award year, a person met the criteria of that definition if he or she was—

(a) The student,

(b) Any of the student's siblings who qualified as dependent students (with respect to the same parent(s) as the student was dependent on) and was attending an institution of higher education on at least a half-time basis, and

(c) Any of the following persons for whom the parents provided more than one-half support during the 1980–81 award year:

(1) Other children of the student's parents, or

(2) Other persons (except the student's spouse) living with the parents.

For 1981–82 another category of persons has been added. If a dependent student has any dependent children, they will also be considered to be dependents of the student's parents.

This expansion is being made in response to concerns expressed about the treatment of the earnings of dependent students who have their own incomes, but who also have dependents of their own. For the 1980–81 award year, the income of the dependent student was assessed. However, while there was an offset against that income for both the student and his or her spouse, there were no additional offsets for additional dependents. Thus, in some cases, for those dependent students with dependents of their own, the 1980–81 formula produced an inequitable determination of their need.

Although we were aware that the occurrence of this inequity was a possibility when the 1980–81 rule was drafted, we anticipated that it would occur only rarely. Thus, since the program is formula based, and not expected to accommodate all possible situations, the decision was made not to provide additional offsets for dependents of the dependent student.

However, based upon correspondence that we have received since the publication of the original 1980–81 final Family Contribution Schedules on April 30, 1980, we have become aware that dependent students with dependents exist in somewhat greater numbers than we expected.

The Pell (Basic) Grant application form does not collect data on the number of dependents that a dependent student has. While the number of dependent students having dependents of their own appears to be large enough to warrant action on the part of the Department of Education to help alleviate potential inequities in the determination of need, that number is not large enough to warrant a change in the Pell (Basic) Grant application. The major thrust in the design and development of the application is to shorten and simplify it as much as possible. Thus, because of the relatively few dependent students who have dependent children, the Secretary has decided not to add an additional question on the application requesting that information. Rather, dependents of the dependent student will automatically be included in the family size of the parents of the dependent student. By including these extra dependents in the category of the student's parent's dependents, additional offsets will be allowed against the parental income.

In addition, the definition of the dependent of the student's parents was clarified in the final regulations to indicate that the spouse of the dependent student should not be included in the family size of the parents. An additional offset for a spouse is already provided against the resources of the student and spouse.

2. Increase in the dependent student offset for those students whose parents have a negative income.

Actually, this does not represent a change from the 1980–81 schedule, since the same concept was published as a revision to the 1980–81 schedule. However, since it is a change from what was originally published as the 1980–81 formula, the following information is provided. For the 1981–82 award year, the dependent student's offset is $3,000 for a single student and $4,350 for a married student.

The appropriate dependent student offsets will be increased in those instances where parental income is so low that it produces negative discretionary income. "Negative discretionary income," under the Pell Grant Family Contribution Schedule, is produced when the sum of the offsets against income provided in § 690.34 plus the Federal taxes paid by the parents exceeds the parents' income. In the current regulation the parents' negative discretionary income is used as an offset against any contribution from parental assets. (See § 690.35(d).) Under this revision the amount of negative discretionary income that will not be used as an offset against assets will be added to the normal dependent student offset.

For example, if the parental effective family income is $10,000 (adjusted gross income of $11,000 and Federal income tax paid of $1,000) and the sum of the family size offset and other offsets equals $12,000, the parents would have a negative discretionary income of $2,000 ($10,000 of income minus $12,000 of offsets).

If the parents have less than $25,000 in net assets, there would be no contribution from parental assets. Thus, none of the negative $2,000 would be used to offset the normal contribution from parental assets (§ 690.35). Therefore, the entire $2,000 amount of negative discretionary income would be added to the normal dependent student offset (either $3,000 or $4,350). This would make the dependent student offsets for a married dependent student in this example $6,350, ($4,350 + $2,000 = $6,350). That $6,350 figure would be subtracted from the dependent student income figure before the 25 percent assessment step is performed. For a single dependent student in this example, a $5,000 offset would be subtracted from dependent student income before the 75 percent assessment step is performed ($3,000 + $2,000 = $5,000.)

This revision is intended to address the situation where a dependent student with a fairly substantial income of his or her own is a member of an impoverished family and, consequently, uses a portion of his or her own income to help support that family. The additional offset for that dependent student takes into consideration the contribution by the student of a portion of his or her income to help support the family.

3. Assessment of dependent student income when there is a substantial decline in this income for the 1981–82 school year (June 1, 1981–May 31, 1982).

A criterion for the use of estimated income was proposed in the Notice of Proposed Rulemaking (August 1, 1980). This criterion applied to dependent students who were employed full-time for at least 30 weeks in 1980, and were no longer employed full-time in 1981 or 1982.

As a result of many comments we received concerning students employed part-time and students employed for less than 30 weeks, a different procedure has been developed to account for drastic changes in dependent student income. If a student enters on the original 1981 application form an income amount for the 1981–82 school year (June 1, 1981–May 31, 1982) which falls below the income he or she received in 1980 by at least 40 percent, the Secretary will use the estimated 1981–82 school year income rather than base year income to

determine the amount of that student's effective student income.

IV. *Change in the Name of the Program.*

The Pell Grant Program is the new name for the Basic Educational Opportunity Grant Program. The Department of Education plans to implement the change in the name of the program from Basic Grants to Pell Grants as soon as possible. In making the transition, however, we want to make every effort to avoid confusion among the more than five million students who apply for these grants every year, and also to avoid imposing additional costs on postsecondary educational institutions, need analysis services, and other agencies by requiring the reprinting of applications and informational materials. The need analysis services participating in Multiple Data Entry and many postsecondary educational institutions have already printed their materials for the 1981–82 academic year in order to meet deadlines for institutional admissions calendars.

Since many agency and institutional forms and materials for the 1981–82 award year have already printed using the term "Basic Grants," we will continue to use that term for 1981–82 on the Federal materials sent to students. This will avoid the confusion of having the program referred to by two different names in the same year. During 1981–82 we will publish a series of announcements about the name change. These announcements will be directed to current and potential applicants, to members of the financial aid community, and to the general public. The training programs began in November 1980, which are directed toward the 1981–82, award year will emphasize the new name. Beginning with the 1982–83 award year, all materials concerning the program must refer to "Pell Grants.

(Catalog of Federal Domestic Assistance No. 84.063, Pell (Basic) Grant Program.)

Dated: January 13, 1981.

Shirley M. Hufstedler,

Secretary of Education.

PART 690—PELL GRANT PROGRAM

Subparts C and D of Part 690 of Title 34 of the Code of Federal Regulations are revised to read as follows:

Subpart C—Expected Family Contribution for a Dependent Student

Sec.

690.31 Indicators of financial strength.
690.32 Special definitions.
690.33 Effective family income.
690.33a Effective student income.
690.34 Computation of the expected family contribution for a dependent student from the effective family income.
690.34a Computation of the expected family contribution for a dependent student from the effective student income.
690.35 Computation of the expected contribution from parental assets.
690.36 Computation of the expected contribution from effective family income and parental assets, adjusted for the number of family members enrolled in programs of postsecondary education.
690.37 Computation of the expected contribution from the assets of the dependent student (and spouse).
690.38 Computation of the total expected family contribution.
690.39 Extraordinary circumstances affecting the expected family contribution determination for a dependent student.

Subpart D—Expected Family Contribution for an Independent Student

690.41 Indicators of financial strength.
690.42 Special definitions.
690.43 Effective family income.
690.44 Computation of the expected family contribution for an independent student from the effective family income.
690.45 Computation of the expected contribution from the assets of the independent student (and spouse).
690.46 Computation of the total expected contribution from the income and assets of the independent student (and spouse), adjusted for the number of family members enrolled in programs of postsecondary education.
690.47 [Reserved]
690.48 Extraordinary circumstances affecting the expected family contribution determination for an independent student.

Subpart C—Expected Family Contribution for a Dependent Student

§ 690.31 Indicators of financial strength.

"Expected family contribution" for a dependent student means the amount that the student and his or her family may reasonably be expected to contribute toward the cost of his or her education for an award period. Each of the following elements of financial strength will be considered in determining the family contribution for a dependent student;

(a) The effective incomes of (1) the student and his or her spouse, and (2) the student's parent(s).

(b) The number of family members in the household of the student's parent(s).

(c) The number of family members in the household of the student's parent(s) who are enrolled in, on at least a half-time basis, a program of postsecondary education.

(d) The assets of (1) the student and his or her spouse, and (2) the student's parent(s).

(e) The marital status of the student.

(f) The unusual medical expenses of the student's parents.

(g) The additional expenses incurred when both parents of the student are employed or when a family is headed by a single parent who is employed.

(h) The tuition paid by the student's parents for dependent children, other than the student, who are enrolled in an elementary or secondary school.

(20 U.S.C. 1070a(a)(3)(B)(i))

§ 690.32 Special definitions.

For purposes of this subpart:

"Assets" means cash on hand, including amounts in checking and savings accounts, trusts, stocks, bonds, other securities, real estate, home (if owned), income producing property, business equipment, and business inventory.

However, for Native American students, the following shall not be considered as an asset of the student or his or her family in determining the expected family contribution:

(a) Any property received under the Distribution of Judgment Funds Act (25 U.S.C. 1401, et seq.) or the Alaska Native Claims Settlement Act (43 U.S.C. 1601, et seq.).

(b) Any property that may not be sold or encumbered without the consent of the Secretary of Interior, or

(c) Any other property held in trust for the student or his family by the United States Government.

"Business assets" means property that is used in the operation of a trade or business, including real estate, inventories, buildings, machinery and other equipment, patents, franchise rights, and copyrights.

"Dependent of the student's parents" means:

(a) The student,

(b) Any of the student's dependent children,

(c) Dependent children of the student's parents including those children who have been determined as to be "dependent students" when applying for Title IV student assistance, and

(d) Other persons (except the student's spouse) who live with and receive more than one-half of their support from the parents and will continue to receive more than half of their support from the parents.

"Dependent student" means any student who does not qualify as an independent student as defined in § 690.42(a).

"Dependent student offset" means (a) an offset from the effective income of a dependent student and his or her spouse to meet the basic needs of the student and spouse, plus (b) the portion of

negative parental discretionary income that will not be used to offset the normal contribution from parental assets.

"Effective family income" and "effective income of the student and spouse" are described in §§ 690.33 and 690.33a respectively.

(20 U.S.C. 1070a(a)(3)(B)(iii))

"Employment expense offset" means an allowance to meet expenses relating to employment when both parents are employed or when one parent qualifies as a surviving spouse or as head of a household under section 2 of the Internal Revenue Code.

(20 U.S.C. 1070a(a)(3)(B)(ii)(V))

"Family size offset" means an allowance to meet the subsistence expenses of a family, including food, shelter, clothing, and other basic needs. This offset is derived from the "Weighted Average Thresholds at the Low Income Level," as developed by the Social Security Administration.

"Farm assets" means any property owned and used in the operation of a farm for profit, including real estate, livestock, livestock products, crops, farm machinery, and other equipment inventories. A farm is not considered to be operated for profit if crops or livestock are raised mainly for the use of the family, even if some income is derived from incidental sales.

"Federal income tax" means (a) the tax on income paid to the U.S. Government under chapter 2 of the Internal Revenue Code, or (b) the tax on income paid to the Governments of Puerto Rico, Guam, American Samoa, the Virgin Islands, the Northern Mariana Islands, or the Trust Territory of the Pacific Islands under the laws applicable to those jurisdictions, or (c) the comparable taxes paid to the central government of a foreign country.

"Legal guardian" means an individual who has been appointed by a court to be a legal guardian of a person and who is specifically required by the court to use his or her own financial resources to support that person.

(20 U.S.C. 1070a(a)(3)(B)(iii))

"Medical expenses" means unreimbursed medical and dental expenses, except premiums for medical insurance, that may be deducted under section 213 of the Internal Revenue Code that were paid in 1980, unless the student files an application with the Secretary under the provisions of § 690.39. In that case the expenses reported are those paid in 1981.

"Net assets" means the current market value at the time of application of the assets included in the definition of "assets" minus the outstanding liabilities (indebtedness) against those assets.

"Parent" means the student's mother, father or legal guardian. An adoptive parent is considered to be the student's mother or father.

(20 U.S.C. 1070a(a)(3)(B) unless otherwise noted)

§ 690.33 Effective family income.

(a) Effective family income is the annual adjusted family income minus the Federal income tax paid or payable for the year that adjusted gross income is used in the calculation of the student's Pell Grant.

(b) "Annual adjusted family income" means, except as provided in paragraphs (c), (d), (e), (f), and (g) of this section, and § 690.39—

(1) The sum received in 1980 by the student's parents from—

(i) Adjusted gross income, as defined in section 62 of the Internal Revenue Code;

(ii) Investment income upon which no Federal income tax need be paid. An example of such income is the interest on municipal bonds; and

(iii) Other income upon which no Federal income tax is paid. Examples of such income include child support payments, income from income maintenance programs such as welfare benefits, and Social Security benefits;

(2) Any Social Security benefits paid to the student in 1980; and

(3) One-half of any veteran's benefits to be paid to the student under chapters 34 and 35 of the United States Code for the 1981–82 award period.

(c) For a Native American student, the annual adjusted family income does not include the income received by the student's parents under the Distribution of Judgment Funds Act (25 U.S.C. 1401, et seq.) or the Alaska Native Claims Settlement Act (43 U.S.C. 1601, et seq.).

(d) For a student whose parents are divorced or separated, the following procedures apply for reporting a parent's income to determine the annual adjusted family income—

(1) Report only the income, as described in paragraph (b) of this section, of the parent with whom the student resided for the greater portion of the 12 month period preceding the date of the application.

(2) If the preceding criterion does not apply, report only the income of the parent who provided the greater portion of the student's support for the 12 month period preceding the date of application.

(3) If neither of the preceding criteria apply, report only the income of the parent who provided the greater support for the period commencing January 1, 1980 and ending 12 months prior to the date of application.

(e) If either of the parents have died, the student shall report only the income of the surviving parent. If both parents have died, the student shall not report any parental income.

(f) The following rule applies if either a parent whose income is taken into account under paragraph (d) of this section, or a parent who is a widow or widower and whose income is taken into account under paragraph (e) of this section, has remarried. The income of that parent's spouse shall be included in determining the student's annual adjusted family income if, in either 1980 or 1981, the student—

(1) Has received or will receive financial assistance of more than $1,000 in either of those years from that spouse, or

(2) Has lived or will live for more than six weeks in either of those years in the home of the parent and that spouse.

(g) The annual adjusted family income does not include any student financial assistance except those veteran's benefits cited in paragraph (b)(3) of this section.

(20 U.S.C. 1070a(a)(3)(B))

§ 690.33a Effective student income.

(a) Effective student income is the annual adjusted income of the student (and spouse for a married student) minus the Federal income tax paid or payable for the year that adjusted gross income is used in the calculation of the student's Pell Grant. However, if estimated income is used, as provided by subparagraph (f) of this section, estimated Federal income taxes will not be subtracted in determining the effective student income.

(b) "Annual adjusted income of the student and spouse" means, except as provided in paragraphs (c), (d), (e) and (f) of this section, and § 690.39—

(1) The sum received in 1980 by the student and spouse from—

(i) Adjusted gross income, as defined in section 62 of the Internal Revenue Code;

(ii) Investment income upon which no income tax need be paid. An example of such income is the interest on municipal bonds; and

(iii) With the exception of Social Security benefits for the student, other income upon which no Federal income tax is paid. Examples of such income include child support payments, and income from income maintenance programs such as welfare benefits.

(c) For a Native American student, the annual adjusted income of the student and spouse does not include the income received by the student or spouse under

the Distribution of Judgment Funds Act (25 U.S.C. 1401, et seq.) or the Alaska Native Claims Settlement Act (43 U.S.C. 1601, et seq).

(d) If a student who is divorced or separated, or if his or her spouse has died, the spouse's income shall not be considered in determining the "annual adjusted income of the student and spouse".

(e) The annual adjusted income of the student and spouse does not include any student financial assistance.

(f) If a student estimates that his or her income plus the income of his or her spouse, in the period of June 1, 1981 through May 31, 1982, will not exceed 60 percent of effective student income for 1980, effective student income will be the income estimated for that period. Estimated income includes only the income categories listed in paragraph (b).

(20 U.S.C. 1070a(a)(3)(B))

§ 690.34 Computation of the expected family contribution for a dependent student from the effective family income.

The expected family contribution for a dependent student from effective family income is calculated as follows:

(a) Determine the parents' discretionary income by deducting the following offsets from the effective family income:

(1) A family size offset in the amount specified in the following table:

Family Size Offsets

	Amount
Family members:	
2	$5,650
3	6,800
4	8,650
5	10,200
6	11,550
7	12,600
8	14,150
9	15,550
10	16,700

Plus $1,300 for each additional family member over 10.

In determining the family size, the following rules apply—

(i) If the parents are not divorced or separated, family members include the student's parents and the dependents of the student's parents.

(ii) If the parents are divorced or separated and not remarried, family members include the parent whose income is included in computing the effective family income and that parent's dependents.

(iii) If the parents are divorced and the parent whose income is included in computing the effective family income has remarried, or if the parent was a widow or widower who has remarried, family members also include, in addition to those people referenced in paragraph (a)(1)(ii) of this section, the new spouse and any dependents of the new spouse if that spouse's income is included in determining the effective family income.

(2) An unusual expense offset equal to the amount by which the sum of unreimbursed medical and dental expenses exceeds 20 percent of the effective income of the parents. The expenses that may be reported are those expenses paid by the student's parents during 1980, unless the student files an application with the Secretary under the provisions of § 60.39. In that case, the expenses reported will be those paid in 1981. The expenses of both parents are included only if the incomes of both are subject to inclusion in determining the effective family income. Similarly, a stepparent's expenses are included only if his or her income was subject to inclusion.

(3) An employment expense offset in the amount specified as follows—

(i) If both parents were employed in the year for which their income is reported and both have their incomes reported in determining the expected family contribution, use the lesser of $1500 or 50 percent of the earned income (income earned by work) of the parent with the lesser earned income.

(ii) If a parent qualifies as a head of household as defined in section 2 of the Internal Revenue Code, use the lesser of $1500 or 50 percent of his or her earned income. The earned income figure to be used in all cases is that figure for 1980 unless the student files an application with the Secretary under the provisions of § 60.39. In that case, the figure to be used is the one for 1981.

(4) An educational expense offset equal to the tuition paid by the student's parents for dependent children, other than the student, enrolled in elementary or secondary school. The tuition which may be reported is the tuition paid in 1980 unless the student files an application with the Secretary under the provisions of § 60.39. In that case, the tuition reported will be that paid in 1981.

(b) If the parents' discretionary income is a positive amount, multiply it by 10.5 percent to determine the expected contribution from the effective family income. If the parent's discretionary income is negative, there is no expected contribution from the effective family income.

(20 U.S.C. 1070a(a)(3)(B))

§ 690.34a Computation of the expected family contribution for a dependent student from the effective student income.

The expected family contribution for a dependent student from effective student income is calculated as follows:

(a) Determine the student's discretionary income by deducting from the effective student income the relevant dependent student offset.

(1) If the parental discretionary income is positive, the offset is as follows:

Dependent Student Offset

Single student	$3,000
Married student	4,950

(2) If the parental discretionary income is negative, the relevant offset in paragraph (1) is increased by the amount of that negative parental discretionary income minus any amount of the negative parental discretionary income that will be used as an offset against the contribution from parental assets in § 690.35(d).

(b) If the student's discretionary income is a positive amount, multiply it by one of the following figures to determine the expected contribution from effective student income:

(1) 75 percent for the single dependent student, or

(2) 25 percent for the married dependent student.

(c) If the student's discretionary income is negative, there is no expected contribution from the effective student income.

(20 U.S.C. 1070a(a)(3)(B))

§ 690.35 Computation of the expected contribution from parental assets.

The expected contribution from parental assets is determined in the following manner:

(a) If the net assets do not include farm or business assets, deduct an asset reserve of $25,000 from the net assets.

(b) If the net assets include farm or business assets as defined in § 690.32, deduct an asset reserve from the net assets as follows—

(1) If farm or business assets are less than farm or business debts, deduct an asset reserve of $25,000 from the net value of all assets.

(2) If farm or business assets exceed farm or business debts, and the net value of non-farm and non-business assets is *$25,000 or more*, deduct an asset reserve of,

(i) $25,000 from non-farm and non-business assets, and

(ii) $25,000 from farm and business assets.

(3) If farm or business assets exceed farm or business debts and the net value

of non-farm and non-business assets is *less than $25,000*, deduct an asset reserve of $50,000 from the net value of all assets.

(4) If the result obtained in paragraphs (b)(1), (2)(ii), or (3) is a negative amount, it shall be changed to zero.

(c) Normally the expected contribution from parental assets equals five percent of the remainder obtained in paragraph (a) or (b).

(d) However, if the calculation of discretionary income required by § 690.34(a) produces a negative number, the expected contribution from parental assets, calculated under paragraph (c) of this section, shall be reduced by the amount of that negative discretionary income, or by the amount obtained in paragraph (c) of this section, whichever is less.

(e)(1) If the student's parents are separated, or divorced and not remarried, only the assets of the parent whose income is included in computing annual adjusted family income shall be considered.

(2) However, if that parent has remarried, or if the parent was a widow or widower who has remarried, and the parent's spouse's income is also included under § 690.33, the assets of that parent's spouse shall also be included.

(20 U.S.C. 1070a(a)(3)(B))

§ 690.36 Computation of the expected contribution from effective family income and parental assets, adjusted for the number of family members enrolled in programs of postsecondary education.

(a) For each grant, the amount expected from effective family income as determined in § 690.34(b) is added to the amount expected from parental assets as determined in § 690.35.

(b)(1) For each grant, the combined expectation determined in paragraph (a) of this section is adjusted in the following manner for the number of family members who will be attending, on at least a half-time basis, a program of postsecondary education during the award period for which Pell Grant assistance is requested:

Number of family members enrolled in programs of postsecondary education	Expected contribution per student from combined contributions
1	100 percent of the contribution determined in paragraph (a).
2	70 percent of the contribution determined in paragraph (a).
3	50 percent of the contribution determined in paragraph (a).
4	40 percent of the contribution determined in paragraph (a).

(2) Family members are those persons referenced in § 690.34(a)(1).

(20 U.S.C. 1070a(a)(3)(B))

§ 690.37 Computation of the expected contribution from the assets of the dependent student (and spouse).

(a) The expected contribution from the net assets of a single dependent student equals 33 percent of the amount of those assets.

(b) The expected contribution from the net assets of the married dependent student and spouse is determined in the following matter.

(1) Deduct an asset reserve of $25,000 from the net assets. If the result is negative, it shall be changed to zero.

(2) The expected contribution from the net assets of the dependent student and spouse equals five percent of the remainder obtained in paragraph (1) of this section.

(3) If the married dependent student is separated, only his or her assets shall be considered.

(20 U.S.C. 1070a(a)(3)(B))

§ 690.38 Computation of the total expected family contribution.

For each grant the total expected family contribution is the sum of—

(a) The expected contribution from the effective family income and parental assets as determined in § 690.36,

(b) The expected contribution from effective student income as determined in § 690.34a, and

(c) The expected contribution from the student's (and spouse's) assets as determined in § 690.37.

(20 U.S.C. 1070a(a)(3)(B))

§ 690.39 Extraordinary circumstances affecting the expected family contribution determination for a dependent student.

(a) A student may submit an application to the Secretary for determination of his or her expected family contribution using income data from 1981 for effective family income, if—

(1) A parent or stepparent whose 1980 income from work must be reported under § 690.33 has lost his or her job for at least 10 weeks during 1981,

(2) A parent or stepparent whose 1980 income from work must be reported under § 690.33 has been unable to pursue normal income-producing activities for at least 10 weeks during 1981 because of the occurrence—in 1980 or 1981—of (i) a disability, or (ii) a natural disaster,

(3) A parent or stepparent whose income must be reported under § 690.33 received unemployment compensation or nontaxable income in 1980 and had a complete loss for at least 10 weeks in 1981 of one of those benefits. A nontaxable benefit, for purposes of this paragraph, must be paid by a public or private agency, a company, or a person because of a court order. Types of nontaxable benefits would include Social Security benefits, welfare, court ordered child support, etc.

(4) The parent(s) of the student have become separated or divorced after the student submitted his or her application. If such a separation or divorce is between a parent and a stepparent, the stepparent's income must have been reportable on the previous application under § 690.33 for this condition to apply, or

(5) A parent or stepparent whose 1980 income must be reported under § 690.33 has died after the submission of an earlier application for 1981–82. However, if the parent referred to in this paragraph is the last surviving parent with whom the student has or will have a dependency relationship according to § 690.42, the student must file an application under § 690.48(a)(7) if he or she wishes to use income data from 1981.

(b) For an application submitted under paragraph (a) of this section, the student (and parent) shall include the income already received for 1981 and an estimate of the income to be received for the remainder of that year.

(c) A student may submit a revised application to reflect changes in asset amounts reported on the previously submitted application if the student or his or her family has suffered a loss of or damage to assets resulting from a natural disaster in an area that has been declared a national disaster area by the President of the United States.

(20 U.S.C. 1070a(a)(3)(B)(i)(V))

Subpart D—Expected Family Contribution for an Independent Student

§ 690.41 Indicators of financial strength.

"Expected family contribution" for an independent student means the amount that the student and his or her spouse may reasonably be expected to contribute toward the cost of his or her education for an award period. Each of the following elements of financial strength will be considered in determining the family contribution for an independent student:

(a) The effective family income of the independent student and spouse.

(b) The number of family members in the household of the student and spouse.

(c) The number of family members in the household of the student and spouse who are enrolled in, on at least a half-

time basis, a program of postsecondary education.

(d) The assets of the student and spouse.

(e) The unusual medical expenses of the student and spouse.

(f) The additional expenses incurred when both the student and spouse are employed or when the employed student qualifies as a surviving spouse or as head of a household under section 2 of the Internal Revenue Code.

(g) The tuition paid by the student or spouse for dependent children who are enrolled in an elementary or secondary school.

(20 U.S.C. 1070a(a)(3)(C))

§ 690.42 Special definitions.

The definitions of "assets", "business assets", "farm assets", "family size offset", "Federal income tax", "legal guardian", "medical expense", "net assets", and "parent" are set forth in § 690.32.

"Dependent" means (a) the student's spouse (unless separated or divorced from the student), (b) any of the student's or spouse's children who qualify as dependent students (with respect to the student or spouse) and are attending an institution of higher education on at least a half-time basis, (c) other dependent children of the student or spouse, and (d) other persons who live with and receive more than one-half of their support from the student or spouse and will continue to receive more than one-half of their support from the student or spouse during the 1981–82 award period.

"Effective family income" is described in § 690.43.

"Employment expense offset" means an allowance to meet expenses relating to employment when both the independent student and his or her spouse are employed or when the independent student qualifies as a surviving spouse or as head of a household under section 2 of the Internal Revenue Code.

"Independent student" means:

(a) A student who for 1980 and 1981—

(1) Has not been claimed and will not be claimed as an exemption for Federal income tax purposes by the parent(s) for whom income must be reported according to § 690.33;

(2) Has not received and will not receive financial assistance of more than $1,000 in each year from the parent(s) for whom income must be reported according to § 690.33; and

(3) Has not lived and will not live for more than six weeks in each year in the home of the parent(s) for whom income must be reported according to § 690.33.

(20 U.S.C. 1070a(a)(2)(B)(iii))

§ 690.43 Effective family income.

(a) Effective family income is the annual adjusted family income minus the Federal income tax paid or payable for the year that adjusted gross income is used in the calculation of the student's Pell Grant.

(b) "Annual adjusted family income" means, except as provided in paragraphs (c), (d), and (e) of this section and § 690.46—

(1) The sum received in 1980 by the student and spouse from—

(i) Adjusted gross income, as defined in section 62 of the Internal Revenue Code;

(ii) Investment income upon which no Federal income tax is paid. An example of such income is the interest on municipal bonds; and

(iii) Other income upon which no Federal income tax need be paid. Examples of such income include child support payments, and income from income maintenance programs such as welfare benefits and Social Security benefits.

(2) One-half of any veteran's benefits to be paid to a student under Chapters 34 and 35 of the United States code for the 1981–82 award period.

(c) For a Native American student, the annual adjusted family income does not include the income received by the student or spouse under the Distribution of Judgment Funds Act (25 U.S.C. 1401, et seq.) or the Alaska Native Claims Settlement Act (43 U.S.C. 1601, et seq.).

(d) In the case of a student who is divorced or separated, or whose spouse has died, the spouse's income shall not be considered in determining the annual adjusted family income.

(e) The annual adjusted family income does not include any student financial assistance except those veteran's benefits cited in subparagraph (b)(2).

(20 U.S.C. 1070a(a)(3) (B) and (C))

§ 690.44 Computation of the expected family contribution for an independent student from the effective family income.

The expected family contribution for the independent student from effective family income is calculated as follows:

(a) Determine discretionary income by deducting the following offsets from the effective family income.

(1) A family size offset in the amount specified in the following table.

Family Size Offsets

	Amount
Family members:	
1	$4,350
2	5,650
3	6,800
4	8,050
5	10,200
6	11,500
7	12,600
8	14,150
9	15,800
10	16,700

Plus $1,300 for each additional family member over 10.

In determining the family size, the following rules apply—

(i) Family members normally include the student and spouse and their dependents.

(ii) However, if the student is divorced or separated, the spouse (ex-spouse) and his or her dependents are not counted in the family size.

(2) An unusual expense offset equal to the amount by which the sum of unreimbursed medical and dental expenses exceeds 20 percent of effective family income. The expenses that may be reported are those expenses paid by the student and spouse in 1980, unless the student files an application with the Secretary under the provisions of § 690.46. In that case, the expenses reported will be those paid in 1981. The expenses of both the student and spouse are included only if the incomes of both are subject to inclusion in determining the effective family income.

(3) An employment expense offset in the amount specified as follows—

(i) If both the student and spouse were employed in the year for which their income is reported and both have their incomes reported in determining the expected family contribution, use the lesser of $1500 or 50 percent of the earned income (income earned by work) of the person with the lesser earned income.

(ii) If a student qualifies as a head of household as defined in section 2 of the Internal Revenue Code, use the lesser of $1500 or 50 percent of his or her earned income.

The earned income figure to be used in all cases is that figure for 1980, unless the student files an application with the Secretary under the provisions of § 690.46. In that case the figure to be used is the one for 1981.

(4) An educational expense offset equal to the tuition paid by the student and spouse for dependent children enrolled in elementary or secondary school. The tuition that may be reported is the tuition paid in 1980, unless the student files an application with the Secretary under the provisions of § 690.46. In that case the tuition reported will be that paid in 1981.

(20 U.S.C. 1070a(a)(3)(B))

(b) If the discretionary income is a positive amount, multiply it by one of the following figures to determine the expected family contribution from the effective family income of the student and spouse:

(1) 75 percent for the single independent student with no dependents; or

(2) 25 percent for the independent student with one or more dependents (including a spouse).

If the discretionary income is negative, there is no expected family contribution from effective family income.

(20 U.S.C. 1070a(a)(3)(C))

§ 690.45 Computation of the expected contribution from the assets of the independent student (and spouse).

(a)(1) Normally, the expected contribution from the net assets of the single independent student with no dependents equals 33 percent of the amount of those assets.

(2) However, if the calculation of discretionary income required by § 690.44(a) produces a negative number, the expected contribution from the student's assets calculated under paragraph (a)(1) of this section shall be reduced by the amount of that negative discretionary income, or the amount obtained in paragraph (a)(1) of this section, whichever is less.

(b) For an independent student with dependents, the expected contribution from the assets of the student (and spouse) is determined in the following manner:

(1) If the net assets do not include farm or business assets, deduct an asset reserve of $25,000 from the net assets.

(2) If the net assets include farm or business assets as defined in § 690.32, deduct an asset reserve from the net assets as follows—

(i) If farm or business assets are less than farm or business debts, deduct an asset reserve of $25,000 from the net value of all assets.

(ii) If farm or business assets exceed farm or business debts, and the net value of non-farm and non-business assets is *$25,000 or more,* deduct an asset reserve of,

(A) $25,000 from non-farm and non-business assets, and

(B) $25,000 from farm and business assets.

(iii) If farm or business assets exceed farm or business debts and the net value of non-farm and non-business assets is *less than $25,000,* deduct an asset reserve of $50,000 from the net value of all assets.

(iv) If the result obtained in paragraphs (b)(2)(i), (2)(ii)(B), or (2)(iii) of this section is a negative amount, it shall be changed to zero.

(3) Normally, the expected contribution from the net assets of the independent student with dependents equals five percent of the remainder obtained in paragraph (b)(1) or (2) of this section.

(4) However, if the calculation of discretionary income required by § 690.44(a) produces a negative number, the expected contribution from the student's (and spouse's) assets calculated under paragraph (b)(3) of this section shall be reduced by the amount of that negative discretionary income, or the amount obtained in paragraph (b)(3) of this section, whichever is less.

(5) If the married independent student with dependents is separated, only his or her assets shall be considered.

(20 U.S.C. 1070a(a)(3) (B) and (C))

§ 690.46 Computation of the total expected contribution from the income and assets of the independent student (and spouse), adjusted for the number of family members enrolled in programs of postsecondary education.

(a) For each grant, the amount expected from family income as determined in § 690.44 is added to the amount expected from assets as determined in § 690.45.

(b) For each grant, the combined expectation determined in paragraph (a) of this section is adjusted in the following manner for the number of family members who will be attending, on at least a half-time basis, a program of postsecondary education during the award period for which Pell Grant assistance is requested:

Number of family members enrolled in programs of postsecondary education	Expected contribution per student from combined contributions
1	100 percent of the contribution determined in paragraph (a).
2	70 percent of the contribution determined in paragraph (a).
3	50 percent of the contribution determined in paragraph (a).
4 or more	40 percent of the contribution determined in paragraph (a).

Family members are those persons referenced in § 690.44(a)(1).

(20 U.S.C. 1070a(a)(3)(C))

§ 690.47 [Reserved]

§ 690.48 Extraordinary circumstances affecting the expected family contribution determination for an independent student.

(a) A student may submit an application to the Secretary for determination of his or her expected family contribution using income data from 1981 for effective family income if—

(1) The student was employed full-time in 1980 (at least 35 hours per week for a minimum of 30 weeks during 1980) and is no longer employed full-time,

(2) A spouse whose 1980 income from work must be reported under § 690.43 has lost his or her job for at least 10 weeks during 1981,

(3) The student or spouse whose 1980 income from work must be reported under § 690.43 has been unable to pursue normal income-producing activities for at least 10 weeks during 1981 because of the occurrence—in 1980 or 1981—of (i) a disability or (ii) a natural disaster,

(4) The student or spouse whose income must be reported under § 690.43 received unemployment compensation or nontaxable income in 1980 and had a complete loss for at least 10 weeks in 1981 of one of those benefits. A nontaxable benefit, for purposes of this paragraph, must be paid by a public or private agency, a company, or a person because of a court order. Types of nontaxable benefits would include Social Security benefits, welfare, court ordered child support, etc. They would not, however, include veterans educational benefits under chapters 34 and 35 of the United States Code,

(5) The student has become separated or divorced after he or she submitted his or her application,

(6) A spouse whose 1980 income must be reported under § 690.43 has died after the submission of an earlier application for 1981 or 1982, or

(7) The student's last surviving parent with whom the student has or will have a dependency relationship according to § 690.42 has died.

(b) For an application submitted under paragraph (a), the student shall include the effective family income already received for 1981 and an estimate of the effective family income to be received for the remainder of that year.

(c) A student may submit a revised application to reflect changes in asset amounts reported on the previously submitted application if the student or his or her spouse has suffered a loss of or damage to assets resulting from a natural disaster in an area that has been declared a national disaster area by the President of the United States.

(20 U.S.C. 1070a(a)(3)(B)(i)(V) and (a)(3)(C))

Appendix—Summary of Comments and Responses

[Editorial Note. This appendix will not appear in the Code of Federal Regulations.]

A summary of the public comments on the proposed Family Contribution Schedules (FCS) published on August 1, 1980, and the Department of Education's responses to those comments appear below. Generally, the comments and responses to the specific sections of the regulations appear in the same sequence as the regulations themselves. However, it should be noted that the changes made in §§ 690.33a and 690.34a concerning the treatment of dependent student income were made in response to the comments on the criterion for the use of estimated income for dependent students which appear in § 690.39.

Comment

While two commenters supported the inclusion of the dependent student's children in the family size offset of the student's parents, three commenters expressed a concern that dependent students who did not live with their parents would not be able to include their children in the parent's household size. The commenters suggested that the children of dependent students who maintain a separate household should also be included.

Response

The dependent student's children are automatically considered to be dependents of the student's parents. The language of the final regulation has been modified to make it clear that children of dependent students who maintain a separate household should be included in the household size of the student's parents. Clause (b) of that definition now reads "any of the student's children."

Comment

One commenter recommended that the dependent student's spouse should be included in the parent's household size.

Response

The suggestion was not adopted. An offset is provided for the student's spouse in determining the contribution from the income of the student and spouse. Additional protection is also provided in determining the contribution from assets, i.e., there is a $25,000 asset protection allowance, and an assessment rate of five percent.

Comment

One commenter remarked that married parents of a student who is ineligible to receive a Pell Grant may resent the fact that a student with divorced parents who earn a higher income may be eligible. Frequently the divorced parent with the lower income is the parent who supports the child, while the income of the other parent is not considered. A second commenter expressed a belief that parents have a responsibility to support the higher education of their sons or daughters to the extent they are able, regardless of their current marital status.

Response

Eligibility is based upon the amount of financial support available to the student. If the parents of a dependent student are married, and both parents receive incomes, both incomes must be considered in determining eligibility. However, if the parents of a dependent student are divorced, financial support from both parents cannot always be expected. Since it is not reasonable always to expect a financial contribution from both parents when the parents are divorced, the regulation provides that the income to be reported will be that for the "responsible parent" as set forth in § 690.33.

Comment

Two commenters expressed their approval of the method used to update the family size offset, but one commenter thought the use of the Consumer Price Index artificially increased financial need. This commenter reasoned that the increase in mortgage interest rates, which is included in the Consumer Price Index does not apply to the majority of parents with college-age dependents, because they are normally home owners of some years standing. Another commenter questioned the variances in the amounts for each additional family member. For example, the amount for the difference between six and seven family members is smaller than the amount between seven and eight family members.

Response

The Secretary believes that the Consumer Price Index is a satisfactory means for calculating inflation. While not all components that make up any measurement of inflation are applicable to all families, the use of the Consumer Price Index does serve to provide the average effects of inflation on a family.

In the preamble to the NPRM the Secretary explained that the standard for determining basic family expenses has been the "Weighted Average Thresholds at the Low Income Level" developed by the Social Security Administration and published by the Bureau of the Census. When the average thresholds are weighted by the number of children, there will be variances in the incremented amounts for each additional family member. A more detailed explanation can be found in "Characteristics of the Low Income Population" published by the Bureau of the Census in December 1973. The income figures from this pamphlet have been updated to account for inflation.

Comment

One commenter suggested that tuition for early education programs such as pre-school and kindergarten costs should be included in the educational expense offset, along with elementary and secondary tuition costs.

Response

The legislative provision that lists educational expenses as a criterion in calculating the expected family contributions has been interpreted by the Secretary to mean the tuition costs for elementary and secondary education only. If kindergarten is considered to be elementary education by the State, kindergarten tuition costs may be included.

Comment

One commenter believed that more consideration should be given to individual circumstances in determining the expected family contribution, citing as an example the additional expenses of supporting handicapped children.

Response

In a formula-based program, it is not usually possible to have the formula apply to each individual in such a way that the formula will result in a completely fair determination for all individual situations that will be encountered. In recognizing this, the Department of Education has allowed for more discretionary judgment in the campus-based programs (the National Direct Student Loan, College Work-Study Program, and Supplemental Educational Opportunity Grant). These other sources of financial aid are available for these students whose circumstances are not fully taken into account by the Pell Grant formula, but who nevertheless have need. Concerning the specific example of additional expenses incurred by handicapped students, however, the Education Amendments of 1980 have defined cost of attendance in a way that will increase such costs for handicapped students. Thus, beginning with the 1981–82 award year—the period for which this formula will be used to determine Pell Grant eligibility—the program will consider additional expenses incurred by handicapped students in determining the amount of a Pell Grant that such students are eligible for.

Comment

Numerous comments were received concerning the use of a dependent student's income in the calculation of eligibility for a Pell Grant. Two commenters recommended that dependent student income should be deleted, while twelve other commenters suggested modifications in the method of assessing this income. Two commenters who wanted this section deleted questioned the legality of assessing dependent student income.

Among those suggesting modifications, five commenters felt the 75 percent assessment rate was too high. One commenter suggested an assessment rate of 33 percent, and another preferred a rate of 50 percent. The other three commenters did not suggest an alternative rate.

Two commenters reasoned that a lower assessment rate would counteract what they considered to be double counting a dependent student's income (both the base year income and the currently available cash saved from that income is counted in certain circumstances).

Three commenters suggested that the entire treatment of the dependent student's income should be intertwined with the treatment of the parent's income. That is, the incomes should be added together and assessed at the parental rate. Another commenter suggested that the income above the dependent student offset should be added to discretionary parental income and assessed at the parental rate.

And, while one commenter supported the increase in the dependent student offset, a second commenter thought the offset created a disincentive to work, and a third commenter recommended that the amount of the offset should be increased by an additional $2,000 as an "initiative offset" so that dependent students would have a greater initiative to work.

Finally, two commenters supported the increase in the dependent student offset when parental discretionary income is negative, but another commenter questioned whether a dependent student from an impoverished family with a fairly substantial income of his or her own will contribute that income to the family. This commenter cited a survey of parents whose children receive Social Security which indicated that in only 9.2 percent of the cases surveyed did parents keep the student's share of Social Security. The commenter believed this survey refuted the premise that a student will contribute his or her income to the family to pay for basic living expenses.

Response

Neither the suggested deletion nor the suggested modifications were adopted. Although many commenters offered some viable alternatives to the proposed method of assessing dependent student income, the Secretary does not believe they represent an improvement to the procedure in the NPRM. In many cases there were conflicting suggestions for modifying the same provision.

With regard to the question of the legality of assessing dependent student income, we have been advised by the Office of the General Counsel that the Secretary is authorized to assess a portion of a dependent student's income when calculating that student's effective family contribution.

The Secretary believes the differences between the suggested changes and the current regulations relating to (1) an assessment of the dependent student's income and (2) the size of the offset, are simply the result of a different perception as to the amount of income that a dependent student should have available for education. Similarly, the question of whether to include the dependent student's income with the parent's income or to treat it separately, as is currently done, represents another example of a different opinion concerning the contribution that should be made by a dependent student. The Secretary feels that the current approach is the most equitable for the majority of the students involved.

The concept of double counting is based on the assumption that the income a student has earned in the previous year has been saved and will be counted as an asset. Thus, in the proposed rule it appears that the same funds are counted twice—once for income and again for assets. However, the income from the previous year is only used as a basis for determining the income the student will earn during the year that student will be receiving a Pell Grant. The assets (savings) that the student and his or her parents report are those which they have at the time of application. The savings represent an additional resource to the student which should be considered in determining the ability to pay for a student's education, regardless of whether those savings come from the previous year's income, or some other source.

Finally, in the past year, many members of the financial aid community have cited situations where a student from an impoverished family with a fairly substantial income of his or her own has contributed a portion of his or her own income to help support that family. A survey of students who receive Social Security is not an analogous situation. Students who receive Social Security are not necessarily from impoverished families, nor do they necessarily receive a fairly substantial income. Also, the survey cited by the commenter included only the number of students who gave their entire incomes to their families. The purpose of increasing the dependent student offset, when parental discretionary income is negative, is to account for income that is being used to pay for a family's basic living expenses and therefore, not available for educational expenses. The situation of a student who gives a portion of his or her income to a low income family is not the same as a student who gives his or her entire Social Security income to the parents.

Comment

One commenter suggested that all cooperative education earnings should be excluded from the assessment of dependent student income.

Response

The suggestion was not adopted. However, if a student in a cooperative education program has a cooperative education job that is considered to be financial aid, § 690.33a(e) of these regulations provides that the income from that job should not be reported. Under some circumstances taxable income can be considered financial aid. For example, earnings from College Work-Study are taxable, but these earnings should not be reported. Similarly, co-op earnings should not be reported on the application if these earnings are considered by the financial aid office to be part of the student's financial aid package.

Comment

One commenter noted that the family size offset was adjusted to correspond to the increase in the Consumer Price Index but the asset protection allowances have remained the same for three years. Another commenter contended that home values have increased by 10 percent each year during the previous three years.

Response

The asset reserve of $25,000 reflects the Secretary's belief that that figure results in an adequate and fair treatment of the assets that a family might have at this time.

Comment

Two commenters suggested that the adjustment in the parental contribution for the number of family members enrolled in programs of postsecondary education should be consistent with the principles of uniform methodology. That is, the expected parental contribution should be divided by the number of family members enrolled at least half-time in postsecondary education. One of these commenters also stated that the employment expense offset in § 690.34 should also be consistent with the procedures in the Uniform Methodology.

Response

The suggestion to change the multiple student adjustment was not adopted. In determining the appropriate percentages, the contributions expected from different family sizes were compared. These investigations indicated that 140 percent of the contribution for one student would be a reasonable assessment against the family with two students. Thus, each student would receive 70 percent of the contribution which the family would make if there were only one student in the family. Similarly, 150 percent of the single student contribution seemed adequate for the family with three children in postsecondary education. Thus, each student could expect 50 percent of the single student contribution for each child in postsecondary education. The Secretary considers a maximum of $1,500 to be a reasonable employment expense offset for the Family Contribution Schedules.

Comment

One commenter suggested that a dependent student with dependents should have the same asset protection allowance as a married student.

Response

The suggestion was not adopted. The total number of dependent students with dependents represents a small percentage of the Pell Grant applicants. There are two reasons for not adopting this suggestion on the basis of numbers. First, the program is formula based, and therefore not designed to accommodate all possible situations. Second, a major effort is being made to shorten and simplify the application as much as possible, and the number of dependent students with dependents of their own is not large enough to warrant the additional questions that would be needed on the Pell (Basic) Grant application.

Comment

There were many comments on the proposed criterion to be used by the Pell Grant Program to allow the use of estimated income for dependent students in determining eligibility. (Last year, the student's actual income from the previous year was always used.) The proposed criterion for 1981–82 provided that dependent students who were employed full-time for at least 30 weeks in 1980, and were not longer employed full-time in 1981 or 1982 could have their eligibility determined using estimated income for 1981. Five commenters expressed their unqualified support for this proposal. However, ten commenters suggested modifications.

One commenter suggested that the number of weeks of full-time employment should be reduced from 30 to 25. This commenter believed that the 30 week requirement discriminated against students who begin their enrollment in July. Seven commenters recommended that students who worked less than full-time should also be able to estimate current year income. These commenters pointed out that many students earn substantial incomes during the summer and work part-time in the base year.

One commenter recommended that a dependent student who worked part-time during the base year should only be able to file for a grant using estimated income after September 1, 1981, and another commenter suggested that students file after January 1, 1982 if current year income is lower than base year income.

While one commenter believed that the use of a criterion allowing the use of estimated income would be an invitation to fraud and abuse when students discovered what the commenter believed to be a loophole in the base year filing requirements, another commenter suggested that—for dependent student income—only estimates of current year income should be used.

Finally, a commenter suggested that estimated income for a dependent student should be used only when a comparison of that dependent student's income from the previous year and the estimate for the income from the current year indicates that the estimated current year income will be lower than the previous year's income by a certain percentage.

Response

The suggestion to assess the current year income of a dependent student when that income declines by a certain percentage was adopted in a modified form. The Secretary has decided that the dependent student's base year income should not be used when that student estimates an income in the 1981–82 school year (June 1, 1981–May 31, 1982) that falls 40 percent below the income he or she earned in calendar year 1980. Such a significant decline in income should be taken into account in determining the dependent student's contribution. Therefore, appropriate changes have been made in § 690.33a to reflect this change.

This change should resolve many of the problems that were described by most of the commenters who suggested modifications in the proposed rule concerning the use of estimated income for dependent students. For example, many dependent students who will not work full-time for at least 30 weeks in 1980, but who will have significant declines in income during the school year will still have contributions based on the 1981–82 school year income.

Comment

There were two suggestions for additional conditions that would allow the use of estimated income. One commenter suggested that the loss of Social Security benefits to the family (for example, when a child becomes 18 the family loses their entitlement to those Social Security funds) should be included as such a condition. Two other commenters suggested that a condition should be added for the parent who has a significant decrease in income, but is not unemployed. For example, many factory workers and commissioned sales personnel may have their work weeks reduced or have substantial declines in income for other reasons.

Response

Since the use of estimated income is restricted to extraordinary circumstances, the Secretary does not feel that a partial loss of Social Security income should be considered a sufficient reason for estimating income. For the same reason, a loss of earned income that is not a result of unemployment has not been accepted as a sufficient reason. The Secretary has limited the use of estimated income to the most severe circumstances that are likely to significantly affect eligibility.

Comment

One commenter suggested that the expenses incurred for child care should be considered in determining the family contribution for an independent student. The commenter felt this provision would conform to Section 482(d) of the Higher Education Act, as amended by the Education Amendments of 1980.

Response

The suggestion was not adopted. This section of the law refers to the cost of attendence, it does not relate child care costs to the expected family contribution. The Pell Grant regulations will be changed to include a child care allowance in the cost of attendance for students with dependent children beginning with the 1981–82 award year.

Comment

There were several comments on the dollar support figure that is used in one of the critieria for determining the independent status of a student. Two commenters supported the raise from $750 to $1,000. Two commenters felt the support figure should not be raised because it permits some students to qualify for aid without regard to the parents' ability to support these students. Another comment wanted to drop this criterion because the commenter felt that many applicants do not seriously consider this question and it is not as relevant to dependency as the residence or tax exemption criteria.

Response

No change was made in this section of the final regulations. The increase was made because the support amount has generally been tied to the Internal Revenue Service's personal exemption amount which has been increased to $1,000. This corresponds with another criterion of dependency—claiming the student as a tax exemption. The increase also takes into account the effects of inflation. Finally, this criterion was not deleted because the Secretary believes there must be a maximum set on the amount of income a student can receive from his or her parents while still claiming to be independent.

Comment

One commenter suggested the phrase "or guardian," should be included along with the parent in the definition of an independent student, since the law refers to parents or guardians in the provision concerning independent students.

Response

The suggestion was adopted and incorporated in the final regulation. The definition of "legal guardian" is included in Section 690.32.

Comment

A commenter stated that the discretionary income of an independent student with one or more dependents should be assessed at the same rate as the parental discretionary income. This observation was based on a provision in the Education Amendments of 1980.

Response

As explained in the preamble to these regulations, changes in the Family Contribution Schedules made by the Education Amendments of 1980 will not become effective until the 1982–83 academic year, and the Secretary does not plan to implement these changes a year early by regulation.

Comment

A commenter suggested that the employment expense offset should also apply to dependent married couples when one spouse works, and the other is a full-time student. The commenter believed this was analogous to a household in which both student and spouse work.

Response

The Secretary does not agree. The additional expenses of employment (such as clothing and transportation) are usually not comparable to the expenses of a student.

Comment

A commenter stated that the discretionary income of an independent student with one or more dependents should be assessed at the same rate as the parental discretionary income. This observation was based on a provision in the Education Amendments of 1980.

Response

As explained in the preamble to these regulations, changes in the Family Contribution Schedules made by the Education Amendments of 1980 will not become effective until the 1982–83 academic year, and the Secretary does not plan to implement these changes a year early by regulation.

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Part VI

Environmental Protection Agency

Pesticide Products Containing Dimethoate; Rebuttable Presumption Against Registration and Continued Registration, and Intent to Cancel Registration and Deny Applications for Registration

ENVIRONMENTAL PROTECTION AGENCY

[OPP 30000/18D; FRL 1627-5]

Pesticide Products Containing Dimethoate; Final Notice of Determination Concluding Rebuttable Presumption Against Registration and Continued Registration

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This Notice provides the Dimethoate Position Document 4 supporting the Notice of Intent to Cancel Registration for Pesticide Products Containing Dimethoate, which is published elsewhere in this issue of the Federal Register. Position Document 4 represents the final stage of the Agency's review of this chemical under the Rebuttable Presumption Against Registration Process. The Notice of Intent to Cancel Registrations and Deny Applications for Registration of Pesticide Products Containing Dimethoate describes the procedures for challenging the regulatory actions taken by the Agency concering dimethoate.

FOR FURTHER INFORMATION CONTACT: Harvey Warnick, Environmental Protection Agency, Special Pesticide Review Division (TS-791), Office of Pesticide Programs, Room 728D, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, Virginia 22202. (703) 557-8195.

SUPPLEMENTARY INFORMATION:

I. Introduction

Under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended (7 U.S.C. 136 et seq.), the Environmental Protection Agency (EPA or "the Agency") regulates all pesticide products. Section 6(b) of FIFRA authorizes the Administrator of EPA to issue a notice of intent (1) to cancel the registration or (2) to change the classification of a pesticide product, if in his judgment either the pesticide or its labeling "does not comply with the provisions of (FIFRA) or, when used in accordance with widespread and commonly recognized practice, generally causes unreasonable adverse effects on the environment. . . ." FIFRA, section 3(c)(6), authorizes the Administrator to deny any application for pesticide registration which does not meet the statutory standards for registration.

To implement its authorized functions, the Agency has designed the Rebuttable Presumption Against Registration (RPAR) process (described in 40 CFR 162.11), which involves gathering data on the risks and benefits associated with the use of suspect pesticides. By allowing all interested parties to participate by submitting information, the process enables EPA to make balanced decisions concerining problem pesticides.

The Agency published an RPAR notice in the Federal Register of September 12, 1977 (42 FR 45096) for all pesticide products containing dimethoate, an organophosphate insecticide and acaricide, thereby initiating the Agency' public review of the risks and benefits of dimethoate. The RPAR notice cited three risk criteria which dimethoate had met or exceeded. These three risk criteria were oncogenic effects in test animals (40 CFR 162.11(a)(3)(ii)(A)), mutagenic effects (multi-test evidence) (40 CFR 162.11(a)(3)(ii)(A)), and reproductive and fetotoxic effects in test animals (40 CFR 162.11(a)(3)(ii)(B)). A detailed Position Document 1 accompanied the September 12, 1977 notice.

The Agency issued a Preliminary Notice of Determination concluding the Rebuttable Presumption Against Registration of Pesticide Products containing Dimethoate and announced the availability of Position Document 2/3 in the Federal Register of November 19, 1979 (44 FR 66558). In Position Document 2/3, the Agency analyzed the rebuttals it received in response to the original RPAR notice, presented its analysis of both risks and benefits associated with the uses of dimethoate, and proposed a decision to conclude the RPAR process.

The Agency determined, in PD 2/3, that the information submitted to rebut the risk criteria for oncogenicity, mutagenicity, and reproductive and fetotoxic effects was insufficient to overcome the presumption against dimethoate for these effects. In addition the Agency received new teratogenic data, unavailable when PD 1 was issued, indicating that dimethoate posed a potential teratogenic hazard. This new information was presented and evaluated in PD 2/3 and the Agency concluded in PD 2/3 that teratogenicity was an additional risk of concern for dimethoate.

In the Preliminary Notice of Determination, the Agency determined that the risks arising from certain uses of dimethoate are greater than the benefits of those uses, unless risks are reduced by modifying certain terms and conditions of registration. The Agency determined that these modifications would significantly reduce risk without significantly impacting on the benefits of the uses.

The modifications to the terms and conditions of registration of dimethoate products proposed by the Agency in the Preliminary Notice of Determination included:

(1) Cancellation of dust formulations.

(2) Label changes to require the use of protective clothing and respirators.

(3) Label changes to require automatic flagging for aerial application.

(4) Label changes to prohibit air blast application on citrus, pome fruits, and pecans.

(5) Label changes to include a warning to female workers, using air blast equipment, of the potential teratogenic effects of dimethoate.

In addition, the Agency determined that registrants must submit data in the areas of oncogenicity, mutagenicity, delayed neurotoxicity, and applicator exposure pursuant to FIFRA sections 3(c)(2)(B).

FIFRA requires the Agency to submit notices issued pursuant to section 6 to the Secretary of Agriculture for comment and to provide the Secretary of Agriculture with an analysis of the impact of the proposed action on the agricultural economy under section 6(b). The statute also requires the Administrator to submit notices issued pursuant to section 6 to a Scientific Advisory Panel (SAP) for comment on the impact of the proposed action on health and the environment, at the same time and under the same procedures as those described for review by the Secretary of Agriculture under section 25(d).

Although not required to do so under the statute, the Agency decided that it is consistent with the general theme of the RPAR process and the Agency's overall policy of open decision-making to afford registrants and other interested persons an opportunity to comment on the bases for the proposed action during the time that the proposed action is under review by the Secretary of Agriculture and the SAP. Accordingly, the Preliminary Notice and PD 2/3 were made available to registrants and other interested persons at the time the decision documents were transmitted for formal external review. The Preliminary Notice was published in the Federal Register; interested persons were notified that PD 2/3 was available through publication of a Notice of Availability in the Federal Register. Registrants and other interested persons were allowed the same period of time to comment, 30 days, that the statute provides for receipt of comments from the Secretary of Agriculture and the SAP.

The Agency received comments from thirteen (13) parties, including the USDA and the SAP, in response to the notice of

November 19, 1979. The comments are addressed and analyzed in Chapter II of this document. Chapter III summarizes the Agency's final determination concerning pesticide products containing dimethoate. SAP and USDA's responses are reproduced in their entirety at the end of this chapter. All comments are available for review in the public file located in the Document Control Office, Rm. E-447, 401 M St. SW., Washington, D.C. 20460.

FIFRA Scientific Advisory Panel—Review of Preliminary Notice of Determination Concluding the Rebuttable Presumption Against Registration (RPAR) of Products Containing Dimethoate

The Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) Scientific Advisory Panel has completed review of plans by the Environmental Protection Agency (EPA) for initiation of regulatory action on dimethoate pesticide products pursuant to section 6(b)(1) of FIFRA, as amended. The review was conducted during open meetings held in Arlington, Virginia, during the periods November 29, 1979, and January 17–18, 1980.

Maximum public participation was encouraged for the review. Federal Register notices of Panel meetings concerned with the review of dimethoate were published on November 14, 1979 and November 27, 1979. In addition, telephonic calls and special mailings were sent to members of the general public who had previously expressed an interest in activities of the Panel. Written and oral statements were received from EPA technical staff and from representatives of the American Cyanamid Company. In addition, oral comments were received from Mr. Harold Alfred of the Pesticide Impact Assessment Program, University of California. Informal comments were also received from Mr. Harold M. Collings of the National Agricultural Aviation Association.

The Panel wishes to recognize the excellent support provided by the Agency during review of dimethoate. The superb presentation of the Agency position on dimethoate by Ms. Marcia Williams, Mr. William Waugh, and other EPA technical staff enable the Panel to concentrate on central issues and avoid lost time from problems of communication. Additionally, the Panel wishes to commend the Agency for exhibiting an excellent spirit of cooperation in making available relevant references and background data on dimethoate in advance of the meeting.

In consideration of all matters brought out during the meeting and careful review of all documents submitted by the Agency and other parties, the Panel unanimously submits the following report.

Panel Position on Dimethoate

Question 1. What is the significance of wavy ribs in teratology studies such as those conducted by Khera (unpublished)? It has been noted that these effects (wavy ribs) are often observed when the embroyotoxic or fetotoxic dose is approached. Are wavy ribs a true teratogenic effect?

Answer. The Panel is unable to confirm that wavy ribs are a true teratogenic effect. Additionally, the Panel is unable to assess the significance of wavy ribs in studies conducted by Khera. Appropriate scientific data was not presented to the Panel for proper assessment of the topics outlined in number 1.

Question 2. What is the significance of polydactyly observed by Khera (unpublished)?

Answer. The significance of polydactyly cannot be properly assessed. The Panel is unaware of data which clearly relates the phenomenon of polydactyly as a dose-related toxicological manifestation which is well documented in the literature. In Khera's study it is impossible to determine whether polydactyly was an effect attributable to the agent or whether it was a background effect.

Question 3. In calculating the dietary exposure for the general population, the Agency assumed dimethoate residues to be present at tolerance levels. Tolerance levels were used because actual residue data were not available. The Agency then added this dietary exposure to anticipated occupational exposure to arrive at total applicator exposure. The Agency noted, however, that the oral exposure component, based on residues at tolerance levels, was in many cases greater than the occupational component and that the exposure figures for occupational exposure (without the dietary component) most closely approximated actual exposure. Was the Agency correct in its conclusion that applicator exposure, without oral exposure, most closely approximates actual applicator exposure? Given the available data, can the SAP propose another method of estimating applicator exposure for dimethoate?

Answer. The Panel could not adequately respond to all the facets of this question because of time constraints during the meeting. However, several possible approaches for better definition of human exposure were suggested. In general, the Panel agrees with the approach utilized by the Agency, but wishes to point out that in view of the biodegradability of dimethoate it is unlikely that the dietary level for this compound will approach tolerance levels. Additionally, the Panel recommends that appropriate field human monitoring studies be conduted to determine applicator exposure levels. Such studies are technically feasible and should be considered as the best means to characterize potential hazards in humans.

Question 4. Does the SAP agree with the Agency's conclusion concerning the mutagenic risk from dimethoate?

Answer. Yes! The Panel concurs with the Agency that the mutagenic risk is low and that strong regulatory action is not warranted.

Question 5. Does the SAP agree that an additional oncogenicity study is required to answer the question concerning the oncogenic potential of dimethoate?

Answer. No! The Agency's proposal to require an additional oncogenicity study because of a study done abroad which is not interpretable does not seem to be a valid undertaking. The Panel is of the opinion that the NCI bioassay study was a valid test for the oncogenic potential of dimethoate. This is reinforced by the fact that dimethoate is an organophosphorus compound and that this class of pesticides are not known to be carcinogenic. Although the NCI study had flaws, the problem is that there is no such thing as a completely satisfactory test. Every test is flawed. It is a question of degree. The Panel does not believe that the NCI study was flawed to the point where it is of no value in regulatory action. This position was also taken by the Carcinogen Assessment Group (CAG) of the Agency.

Proposed Regulatory Action

The Panel concurs with the Agency's proposed regulatory action on dimethoate except as specifically noted below.

Exception 1. Prohibition of the conventional use of human flaggers to mark swaths in aerial spraying and associated requirement for use of automatic flagging devices.

Panel comment. The Panel rejects this proposal on the basis that insufficient research has been accomplished to illustrate that the technique would be an effective regulatory procedure to reduce risks to man and the environment. To institute such a requirement across the board without determining the limitations of the procedure in various agricultural situations would appear to be inadvisable. The Panel recognizes the potential usefulness of such devices, but recommends that the Agency not make their use an absolute requirement until appropriate research has been completed to ensure that such devices are practical tools for reducing risks in spray applications. Additionally, the Panel encourages the Agency to promote research on flagging devices to expedite their development and availability to farmers.

Exception 2. Agency proposal to preclude use of air-blast equipment on citrus, pecans, and some fruits.

Panel comment. The Panel does not support this proposal on the basis that appropriate data is lacking to adequately compare applicator exposure from use of air-blast equipment with exposure resulting from use of oscillating boom type sprayers. Additionally, the Panel is aware that a high number of farmers prefer the use of air-blast equipment and if dimethoate is not available then it is likely that substitute pesticides which may be more hazardous may be selected for use in air-blast equipment. Testimony was given by a representative from the State of California relative to planned research with dimethoate in the near future to assess applicator exposure from air-blast equipment in comparison with oscillating boom type sprayers. The Panel requested that his research plans to be expanded to ensure examination of urine samples to gain insight on possible absorption of pesticides by applicators. This will provide data not only on the agent, but also the mechanism of application.

It is important to emphasize that dimethoate is a valuable pesticide component of integrated pest management (IPM) programs for citrus insect pests and that such programs are almost totally based around the use of air-blast equipment to apply reduced dosages and selective coverage.

Additional Testing Requirements

The Panel concurs with the Agency's position relative to additional testing requirements with the following specific exceptions and comments.

Exception 1. Oncogenicity testing—The panel considers the National Cancer Institute study on dimethoate to be a valid assessment of the oncogenic potential of dimethoate. Additional studies are not considered essential.

Exception 2. Mutagenicity testing—The Panel concurs that additional mutagenicity testing is needed to properly assess the mutagenic potential of dimethoate. However, to ensure appropriate assessment the Panel recommends that mutagenic assays be conducted in accordance with recommendations previously submitted by the Panel to the Agency (May 31, 1978: Review of Proposed Rulemaking on Subpart F, Guidelines for Registering Pesticides in the United States). Additionally, the Panel suggests that the Agency follow the recommendation previously submitted by the Panel on tests to assess the potential for spindle effect (November 30, 1979—Review of FIFRA section 6(b)(1) action on Benomyl and Thiophonate-methyl). The Panel also recommends consideration of the use of bone marrow derived cells in assays for spindle effects.

Exception 3. Delayed Neurotoxicity Studies—The Panel requests the Agency reevaluate the need for additional delayed neurotoxicity studies in view of research reported by T. B. Gaines 1969, entitled "Acute Toxicity of Pesticides" (Toxicology and Applied Pharmacology Vol. 14, 515–534). No paralysis was observed by Dr. Gaines in tests conducted with dimethoate.

Exception 4. Reproductive Tests—The Panel recommends that the Agency require additional reproductive tests on dimethoate. The Panel notes positive effects in two studies on reproduction implying the possibility of effects on males. Therefore, we suggest that the Agency require a reproductive test to determine dose-response effects on females (e.g., prevalence of pregnancy, pre and post implantation loss, survival and growth of young, etc.) and on males (e.g., spermatogenesis, seminal vesicle size, etc.)

Dated: February 7, 1980.

For the chairman:

H. Wade Fowler, Jr., Ph. D.,

Executive Secretary, FIFRA Scientific Advisory Panel.

U.S. Department of Agriculture Comments

U.S. Department of Agriculture, Office of Environmental Quality,

Washington, D.C., December 12, 1979

Mr. Edwin L. Johnson,

Deputy Assistant Administrator for Pesticide Programs, U.S. Environmental Protection Agency, Washington, D.C.

Dear Mr. Johnson: This is in response to your letter of November 8, forwarding the U.S. Environmental Protection Agency's (EPA) preliminary notice of determination concluding the rebuttable presumption against registration (RPAR) and the proposed notice of intent to cancel and/or modify the terms and conditions of registration of pesticide products containing dimethoate.

After interacting with EPA in the development of the biological, economic, and exposure information on dimethoate, we are pleased to review and comment on the preliminary notice of determination and the accompanying position document.

We concur with the decision to continue registration of dimethoate on field crops, grains, grapes, certain minor and/or specialty crops, livestock premises, forest seed orchards, nurseries, ornamentals, vegetables, and for fly control. We also agree with the decision to cancel registrations for use in dust formulations.

The USDA supports the proposed modification of labeling to include statements requiring protective clothing and equipment for application. This action is in concert with the USDA/EPA joint publication, "Apply Pesticides Correctly, a Guide for Commercial Applicators."

With regards to the proposed requirement for automatic flagging when dimethoate is aerially applied, we encourage EPA to maintain the full range of options to minimize exposure. This could continue the registrations and might involve label statements requiring protective clothing and equipment to minimize exposure flaggers may experience. We feel that studies should be done to indicate actual exposure to dimethoate by all workers in the aerial application process.

We also have reservations regarding the cancellation of dimethoate use on citrus, pome fruits and pecans when it is applied by air blast equipment. Growers have indicated that equipment of this nature is essential for adequate application to these commodities. Otherwise, more frequent, less effective applications would be required. The general term, "air blast equipment", needs a more precise definition in fully interpreting this regulatory option. We are prepared to coöperate with EPA to develop directions to provide for minimal exposure in these situations.

Regarding the warning to female workers, we believe that all persons including, and perhaps especially, those who are pregnant should always endeavor to avoid or reduce exposure to all pesticides. If EPA wishes to alert female workers using air blast equipment of possible hazards resulting from exposure to dimethoate during pregnancy, we suggest that a more direct warning such as "Pregnant women should a void exposure" would be more effective.

We are dedicated to the mutual resolution of issues concerning the health of farm workers and the general public as well as issues affecting crop production and the environment.

Sincerely,

Barry R. Flamm,

Director.

II Analysis of Comments

In response to the issuance of the Preliminary Notice of Determination and Position Document 2/3 on November 10, 1979, and the publication in the Federal Register of November 13, 1979 (44 FR 65558) of a Notice of Availability for Position Document 2/3, the Agency received comments from the Secretary of Agriculture, the SAP, and 11 other concerned individuals and organizations. These comments are organized by topic and discussed in this section. Except as discussed, the Agency has not changed any other aspect of its analysis presented in Position Document 2/3.

A. Comments Relating to Risk

1. *Summary of the Agency's Risk Position in PD 2/3.* The Agency's qualitative and quantitative risk assessment is based on its evaluation of the hazard of dimethoate in conjunction with a best estimate of the potential for human and environmental exposure.

The potential for human and environmental exposure to dimethoate was derived from available data and assumptions about work place practices, current agricultural practices, dietary habits, body weight, breathing rates, dermal exposure, similarity of application techniques, etc. The exposure figures obtained represent the Agency's best estimate of the exposure potential of dimethoate. Although there are uncertainties in these estimates, they permit a rough calculation of risk to the population at large and population subgroups, such as applicators or flaggers, with specific exposure potential. They also permit comparison of risk from dimethoate with that posed by other pesticides which are used as alternatives to dimethoate.

The dimethoate RPAR was based on information indicating that dimethoate posed the following risks to humans: (1) oncogneicity, (2) mutagenicity, and (3) reproductive and fetotoxic effects.

In Position Document 2/3 the Agency determined that the information submitted to rebut the risk criteria for oncogenicity was insufficient to overcome the presumption against dimethoate for this effect. However, the Agency concluded, based on a re-analysis of the studies involved and the rebuttal comments, that the weight of evidence for dimethoate's carcinogenicity is only suggestive, and that the evidence warrants further studies.

The Agency also determined that the rebuttal submissions were insufficient to remove the Agency's concern that dimethoate poses that risks of reproductive and fetotoxic effects to humans. In addition, new teratogenic data (Khera, undated), unavailable when the RPAR was issued, were submitted. These data indicate the

potential of dimethoate to produce teratogenic effects.

The Agency further determined that the rebuttals and additional information submitted did not invalidate the mutagenicity risk presumption. However, the Agency concluded that the risk appears to be low and that additional test data are necessary to evaluate the quantitative mutagenic risk of this compound.

The Agency received comments concerning delayed neurotoxicity and the synergism of dimethoate with other pesticides, and concluded that there is insufficient evidence to indicate that dimethoate meets or exceeds the risk criteria enumerated in 40 CFR 162.11 for these effects, but that additional information concerning dimethoate's ability to induce delayed neurotoxicity must be generated.

The Agency determined that the principal risks of oncogenicity, mutagenicity, and reproductive and fetotoxic, and teratogenic effects are posed to applicators, who may be exposed to dimethoate before or during application through both inhalation of and dermal contact with the pesticide. The greatest risk to applicators is incurred by (1) the ground application of dust formulations on grapes, and (2) air blast spraying of citrus, pecans, and pome fruits.

TABLE 1 - Incidence of tumors in rats treated with dimethoate

Dose milligrams per kilogram	Route	Average survival (days)	Benign Tumors	Malignant Tumors	p values
0	oral	473	3/36	0/36	-
5	oral	518	7/26	2/26	-
15	oral	511	5/25	3/25	-
30	oral	627	2/25	4/25[a/]	0.0132
0	Intra-muscular	711	4/35	0/35	-
15	Intra-muscular	570	5/30	6/30[b/]	0.0072

a/ 1 liver sarcoma, 1 malignant reticulosis, and 2 sarcomas of the spleen.

b/ 1 sarcoma of the spleen, 1 soft tissue sarcoma, 1 ovarian sarcoma, 1 reticulum cell sarcoma, 1 spleen sarcoma, and 1 liver sarcoma.

2. *Oncogenicity Risk—a. Summary of Laboratory Animal Studies Cited in PH 1–i. Gibel et al., 1973.* Gibel et al. (1973) studied the effects of dimethoate on 10-week-old Wistar rats of both sexes. Forty animals per group were employed in the study. Fresh solutions of dimethoate were made at the time of administration to limit hydrolysis. The compound was given twice weekly by gavage at 5, 15, and 30 mg/kg dose levels. One other group of animals was given 15 mg/kg intra-muscularly.

Animals were weighed at regular intervals. Only the animals that lived 3 months in the study and showed no post mortem changes were examined histologically. Blood and bone marrow were also examined.

Treated animals showed strong hyperplasia of the blood forming parenchyma of the bone marrow involving erythropoesis, granulopesis, and megakaryopoesis. Nonbony myeloid metaplasia was seen primarily in the liver and spleen in 59 percent of the treated animals. In addition, granulocytosis was found in 22 percent of the animals.

There was a significant increase in the incidence of benign and malignant tumors among treated animals at the 30 mg/kg dose level for oral administration and at the 15 mg/kg dose level for intra-muscular administration. In addition, there was a significant linear trend (p0.01) for the oral route. (See Table 1).

Gibel et al. (1973) also studied the effects of dimethoate on mice. Percutaneous application of fresh solutions of dimethoate was given twice a week for six weeks on shaved back skin of AB mice of both sexes; the animals survived for only 270 days. Five animals out of 19 showed malignant tumors, of which there were four leukoses and one breast carcinoma. The spleen showed considerable metaplasia with often complete atrophy of white pulp. The follicles of the white pulp showed a loose narrow lymphocytic mantle around the central arteries. The trabecular framework of the spleen was generally narrowed and reduced. The red pulp showed a partially localized and diffuse myeloid proliferation with numerous immature cell forms which made it difficult to recognize the basic structure. The authors felt that mice also developed the myeloproliferative syndrome similar to that observed in rats.

The benign tumors observed in the control animals were exclusively fibroadenoma of the breast. The authors did not mention the incidence of malignant tumors in controls but implied that they did not find any malignant tumors in the control animals.

ii. *The National Cancer Institute, 1977.* In 1977 the National Cancer Institute (NCI) completed a feeding study with dimethoate (NCI, 1977). Osborne-Mendel rats of both sexes, 35 days old, were administered 250 and 125 parts per million (ppm) dimethoate in the diet. After 19 days the doses were reduced to half and the treatment was continued for an additional 61 weeks. The animals were observed for 115 weeks. The treatment groups consisted of 50 animals of each sex, and the matched controls consisted of 10 animals. Matched controls for aldrin, chlordane, dichlorvos, dieldrin, and heptachlor were used for evaluation because these studies were carried out concurrently with the dimethoate feeding study. Complete histopathology was carried out on all the animals. Statistical analysis of tumor incidence by site and type showed neither an excess incidence of any specific tumor type nor any increase in total tumors. The pathological evaluation of this study was done at Gulf South Research Institute. A summary of the survival data and number of tumor-bearing animals is shown in Table 2.

TABLE 2 - Dimethoate chronic feeding study - number and survival of tumor-bearing rats

Sex	Dosage Group	Effective Number[a/]	Number TBA[b/]	Percent	Percent surviving (weeks) 52	78	115[c/]
Male	Pooled Control	58	36	62	92	87	47
Male	Matched Control	10	7	70	100	80	30
Male	Low	50	23	46	98	96	72
Male	High	49	24	49	92	82	56
Female	Pooled Control	60	43	72	97	95	73
Female	Matched Control	10	7	70	100	100	90
Female	Low	47	30	64	98	92	74
Female	High	45	21	47	88	67	51

a/ Total number of rats initially placed on test minus the number missing or autolyzed.

b/ Number of tumor-bearing rats.

c/ Denominator for survival percentages was the original number of animals minus those killed for diagnostic purposes. No animals were accidentally killed, and none were missing. Study terminated at 115 weeks.

NCI (1977) also studied the effects of dimethoate on B6C3F hybrid mice which were 35 days old. The compound was administered in the diet at 250 and 500 ppm dose levels, and the feeding was continued for 89 and 90 weeks, respectively. Animals were observed for an additional 24 and 34 weeks respectively, before sacrifice. All of the animals were necropsied and examined histopathologically. The data were statistically analyzed for each organ and tumor type. No dose-related increase in tumor incidence by site or total in either sex was found. The pathological evaluation of this study was carried out at Gulf South Research Institute. The data for total-tumor bearing animals are summarized in Table 3.

TABLE 3 - Dimethoate chronic feeding study - number and survival of tumor-bearing mice

Sex	Dosage Group	Effective Number[a/]	Number TBA[b/]	Percent	Percent surviving (weeks) 52	78	90[c/]
Male	Pooled Control	96	31	32	94	92	85
Male	Matched Control	7	6	86	100	100	86
Male	Low	50	11	22	98	84	82
Male	High	50	11	22	96	96	92
Female	Pooled Control	80	14	18	96	90	83
Female	Matched Control	10	3	30	90	90	70
Female	Low	50	15	30	96	96	90
Female	High	49	12	24	94	94	90

a/ Total number of mice initially placed on test minus the number missing or autolyzed.

b/ Number of tumor-bearing mice.

c/ Denominator for survival percentages was the original number of animals minus those killed for diagnostic purposes. No animals were accidentally killed, and none were missing. Study terminated at 90 weeks.

iii. *Steiglitz et al. 1974.* Seiglitz et al. (1974) studied the hematotoxic effects of dimethoate in rats. Dimethoate was administered to 10-week-old Wistar rats in doses of 5, 10, and 15 mg/kg body weight by oral intubation. Another group was given an intra-muscular dose of 15 mg/kg. Each test group consisted of 40 animals with two control groups of 40 animals each. The most important hematological results included pronounced hyperplasia of the hematopoietic parenchyma in the bone marrow, and sometimes strong, extraosseous myeloid metaplasia. Hyperplasia in the bone marrow occurred at different levels in all three hematopoietic cell systems with preferential involvement of granulocytopoiesis. Leukocytosis of varying intensity in the peripheral blood was also found but mainly affected granulocytes. The highest value exceeded 50,000/ul. The Agency did not base it RPAR on this third study because the study lacked sufficient detail. However, the Agency requested registrants and other interested parties to submit to the Agency information on these, or similar, effects of dimethoate.

b. *The Agency's Conclusion in PD 2/3 Regarding the Requirement of an Additional Oncogenicity Study.* In Position Document 2/3, the Agency concluded that the rebuttals did not invalidate the oncogenic risk criterion cited in the RPAR notice. However, based on re-analysis of the studies involved and the rebuttal comments as a whole, the Agency concluded in Position Document 2/3 that the weight of evidence for carcinogenicity of dimethoate is only suggestive, warranting futher studies, but not adequate to justify a quantitative assessment of cancer risk.

c. *Comments on Requiring an Additional Oncogenicity Study.* The Scientific Advisory Panel (SAP), in its formal comments, disagreed with the Agency position to require an additional oncogenicity study. The SAP stated that the National Cancer Institute bioassay study (NCI, 1977) was a valid test for the oncogenic potential of dimethoate. Although the test was flawed, the SAP did not believe that the NCI study was flawed to the point where it is of no value in regulatory action. The SAP claimed that this position was also taken by the Agency's Carcinogen Assessment Group (CAG). For a discussion of flaws in the NCI (1977) study, see pages 64–66 of the Agency's Position Document 2/3 for Dimethoate and also pages 40 and 41 of the "Transcript of Proceedings" FIFRA

Scientific Advisory Panel, Arlington, Virginia, November 29, 1979.

American Cyanamid [7(30000/16c)] argued that supportive evidence is lacking for determining that dimethoate is an oncogen. American Cyanamid further argued that conclusions made in the Gibel et al, 1973 study were based on inappropriately grouped data and that the National Cancer Institute study (NCI, 1977) is an adequate assessment of the oncogenic potential of dimethoate. American Cyanamid urged the Agency to accept the position taken by the Scientific Advisory Panel.

d. *The Agency's PD 4 Response.* The Agency's CAG (Albert, R.E., 1980) provided an additional response to the comments from SAP and American Cyanamid on the oncogenicity position in Position Document 2/3, wherein the Agency disagreed with the SAP position that further testing of dimethoate is not needed. The CAG indicated that if there were no other relevant considerations, then the negative NCI bioassay, flawed though it is, in conjunction with a lack of carcinogenicity of organic phosphate pesticides in general, might make further testing of dimethoate unnecessary. However, in the case of dimethoate there is substantial evidence for mutagenicity of dimethoate, coupled with suggestive evidence for carcinogenicity in the Gibel et al. (1973) study which was done on Wistar rats. The NCI bioassay (NCI, 1977) involved a different strain of rats, namely, the Osborne-Mendel rat. Furthermore, in these two studies there was clear evidence of hematopoietic toxicity in the Wistar rat but not in the Osborne-Mendel rat, thus indicating the possibility of a different metabolic handling of dimethoate or a difference in target-organ susceptibility in the two strains. In its response to the SAP recommendations the CAG emphasized (Albert, R.E., 1980), that it is not comfortable with the SAP position that no further oncogenicity testing of dimethoate be required.

Therefore, the Agency rejects the positions of SAP and American Cyanamid that there is sufficient evidence to determine that dimethoate is not an oncogen. Moreover, in order to more fully ascertain whether or not dimethoate poses a risk of oncogenicity, the Agency will require that a limited bioassay be conducted on the Wistar rat at the highest dose level used in the Gibel study (30 mg/kg by stomach gavage twice a week).

3. *Teratogenic, Reproductive and Fetotoxic Effects Risk—a. Summary of Laboratory Animal Studies Cited in PD 1—i. Budreau and Singh, 1973.* Budreau and Singh (1973) studied the effect of dimethoate on the reproduction of Charles River CD–1 mice. The insecticide was added to drinking water at the rate of 60 ppm (1/6 the LD_{50}) for five generations. Reproductive performance was evaluated by mating success and reproduction time. Mating success was calculated as the proportion of the females mated that had litters, expressed in percentages. Reproduction time was the number of elapsed days from the first day when the females were presented to the male to the day of delivery. The authors stated that dimethoate treatment significantly reduced mating success and increased reproduction time.

Second litter mating success ranged from 33 to 61% ($p<0.01$) and treated females required significantly longer periods than controls ($p<0.01$) to produce first litters in all generations. Survival rate of total pups and litters was significantly reduced ($p<0.01$) in generations I, III, IV, and V. Histologic examination of the mammary glands of treated females with high newborn mortality showed the glands were well developed and contained milk. The growth rate of dimethoate-treated pups usually fell behind that of controls, from day 12 after birth. On day 28, average weight was not always significantly different from controls, mainly because low-weight pups died.

ii. *Scheufler, 1975.* Scheufler (1975) administered a single 40 mg/kg dose of dimethoate, intraperitoneally, to female AB Jena/Halle mice on the day of conception. On the ninth day of pregnancy the author observed a significant increase in the number of dead embryos ($p<0.01$). When dimethoate was injected daily, at 40 mg/kg during the first 14 days of pregnancy, four times as many implanted embryos died in comparison to controls. When 40 mg/kg of dimethoate was administered to female C57BL mice, the number of nonpregnant females was increased to 70% as compared to 20 to 30% for controls. When dimethoate was applied to DBA-mice, 50% of the mated females showed no embryos. The author suggested that dimethoate appears to hinder strongly the development of embryos prior to implantation.

iii. *The American Cyanamid Co., 1965.* The American Cyanamid Co. (1965(a)) conducted a three generation feeding study to determine whether dimethoate would interfere with reproduction or lactation. Albino mice of the CF1 strain were fed diets containing 5, 15, 50, and 0 (control) ppm of dimethoate. Animals were approximately one month old at the start of the test. Weaned pups were fed the same diets as their parents.

For mating purposes one male and two females were housed together. Females were housed alone while they cast and weaned their litters, after which parent animals were mated again. There were two mating periods. The report concluded that "reproduction and lactation performance was good for all groups".

b. *Summary of Additional Laboratory Animal Study Cited in PD 2/3: Khera (undated).* New data (Khera undated) showing a dimethoate formulation to be a mild teratogenic agent was received by the Agency after the RPAR was issued.

Khera (undated) administered Cygon 4E containing 47.3% dimethoate to pregnant cats (in gelatin capsules) on days 14 to 22 of gestation. The doses were 0, 3, 6, or 12 mg/kg per day of Cygon 4E which corresponds to 0, 1.4, 2.8, or 5.7 mg/kg per day of dimethoate. On day 43 of gestation, the fetuses were removed, weighed, and examined.

There were no signs of maternal toxicity in any cats treated. Dimethoate, at all doses tested, caused no effect on the number of live fetuses, resorption, dead fetuses, or mean fetal weight. Both the total number of anomalous fetuses and the number of litters having anomalous fetuses were increased at the high dose when compared to controls, but this increase was not statistically significant ($p=0.05$, Student's t Test). When the incidence of one abnormality (polydactyly, or increase in the number of digits on the paws) at the high dose was compared to the controls, the results were statistically significant.

There were no anomalies noted at 3 or 6 mg/kg and hence a no-observed effect level for all parameters can be set at 6 mg/kg per day of Cygon 4E. The author (Khera) indicated that the teratogenic effect observed in this study should be verified through additional testing. This additional testing would determine if the effect were due to dimethoate itself, the pesticidally inert ingredients, or the combination of these.

The same dimethoate formulation, Cygon 4E, was tested at doses of 0, 3, 6, 12, or 24 mg/kg per day (corresponding to 0, 1.4, 2.8, 5.7, or 11.3 mg/kg per day dimethoate) in pregnant Wistar rats by oral intubation. There were 20 female rats started in each group, and the number of pregnant dams was 17, 17, 15, 16, and 16 respectively. One dam at the highest dose died from Cygon-induced cholinergic signs of toxicity, and another seven showed similar signs of toxicity but recovered. Decreased maternal weight gain was seen at the high dose, but no adverse maternal effects were noted at the lower doses.

There were no effects of treatment on the number of live fetuses per dam, number of dead or resorbed fetuses, or fetal weight. At doses of 12 and 24 mg/kg per day Cygon 4E, there were significant increases in number of anomalous fetuses/number fetuses examined and the number of litters having at least one anomalous fetus/number of litters examined, when compared to controls.

When individual variations were examined, the two high doses had a significant ($p = 0.05$) increase in fetuses with wavy ribs. The author (Khera) characterized these anomalies as being "of minor types and of unkown significance". It should be noted that these effects (wavy ribs), which are often considered indicators that the embryotoxic or fetotoxic dose is approached, occurred at either the maternal toxic dose or one-half of that dose.

In both studies by Khera, the no observed effect level was 6 mg/kg per day for Cygon 4E (2.8 mg/kg per day dimethoate). The occurrence of minor teratogenic effects at higher doses indicates that Cygon 4E has the potential to interfere with fetal development. Additional studies are required to fully determine the significance of these findings.

c. *The Agency's Conclusion in PD 2/3 Regarding General Reproduction and Fetotoxic Effects and Teratogenic Effects.* In Position Document 2/3, the Agency reviewed the rebuttals and additional information submitted (Courtney, K. D., 1978, and Khera, undated). Based on that evaluation, the Agency concluded that the rebuttals did not invalidate the Agency's original presumption of risk on general reproductive effects or on fetotoxic effects based on the three studies (Budreau and Singh, 1973; Scheufler, 1975(a); and American Cyanamid Co., 1965a) cited in the RPAR notice. In addition, the new study (Khera, undated) showed Cygon 4E, a dimethoate formulation containing 47.3% dimethoate, to be a mild teratogenic agent.

d. *Comments on No Observed Effect Level (NOEL).* American Cyanamid [7(30000/16c)] commented that the Budreau and Singh (1973) study established an effect level and that for a study to be useful in a risk assessment process a no observable effect level (NOEL) must be established. American Cyanamid then recommended that the NOEL of 50 ppm in the diet obtained in their own study (American Cyanamid, 1965a) be used for risk assessment.

e. *The Agency's PD 4 Response.* The Agency agrees that the Budreau and Singh (1973) study is unacceptable for risk assessment, but rejects the recommendation that the NOEL of 50 ppm obtained in the American Cyanamid Study (1965a) be used for risk assessment of dimethoate. Budreau and Singh (1973) observed effect on reproduction at 60 ppm, the only dose level tested. A no observed effect level was not be established. American Cyanamid (1965a) observed no effects in their reproduction study in which three dose levels (5 ppm, 15 ppm, and 50 ppm) were used. Although this study used more than one dose level, none of the doses produced a significant reproductive effect and thus a no observed effect level could not be established.

In the absence of a no-effect level for reproductive effects per se, the Agency will use the NOEL of 2.8 mg/kg per day from the Khera study for the risk assessment of all reproductive effects, including fetotoxic and teratogenic effects, as well as fertility related reproductive effects.

The Agency believes this approach is justifiable because its concern extends to all adverse reproductive effect (including teratogenicity, fetotoxic, and reproductive effects such as reduced fertility) that may result from exposure to dimethoate. Since the effects in Khera's (undated) teratogenicity study were observed at lower levels than effects in the reproductive studies, the use of the no-effect level from the teratogenicity study will provide ample protection for reproductive as well as teratogenic fetotoxic effects.

f. *Comments on the Need for Additional Reproductive Studies.* The SAP, in its formal comments, indicated that additional reproductive studies are necessary to assess the effect of dimethoate on male reproduction. The Panel noted positive effects in two studies on reproduction, implying the possibility of effects on males.

g. *The Agency's PD 4 Response.* The Agency believes that American Cyanamid's multi-generation reproduction study which showed no adverse effects in males is sufficient to establish that dimethoate does not have a significant potential to adversely effect male reproduction. However, the Agency will require additional teratology studies on the technical dimethoate in 2 species of laboratory animals as specified in the proposed guidelines (FR 43, No. 163, Tuesday, August 22, 1978).

h. *Comments on the Khera (undated) Study.* American Cyanamid [7(30000/16c)] indicated that:

(1) No dose-response effect was noted in either the cat or rat teratology study by Khera.

(2) The only response noted was in the high dose group and consisted of an increase in a common anomaly; i.e., wavy ribs in rats and polydactyly in cats.

(3) Dr. Khera, himself, concluded "from the data available, it cannot be definately ascertained whether treatment with 12 mg Cygon 4E per kg has in any way contributed to the expression of polydactyly."

i. *The Agency's PD 4 Response.* In response to the first point, the Agency noted that, in the rat study, there was a definite dose-response relationship in terms of a statistically significant increase in the number of litters with anomalous fetuses. Looking at each particular anomaly, there was a significant increase in the number of fetuses having wavy ribs and a non-significant increase in fetuses having extra ribs at a dose level of 12 mg/kg Cygon 4E.

In response to American Cyanamid's second point, the Agency has concluded that its concern is not alleviated because the adverse effect noted was merely an increase in the background rate of normally occurring anomalies. The occurence of minor teratogenic effects at higher doses indicates that Cygon 4E has the potential to interfere with fetal development. The increase in minor anomalies indicates that dimethoate may pose a potential to produce adverse fetotoxic or teratogenic effects in humans.

On third point, the Agency notes that, in the Khera study, a statistically significant increase in anomalies occurred at 12 mg/kg Cygon 4E when compared to the controls. Although the data from the Khera study is limited and does not assess the potential for dimethoate to produce fetotoxic/teratogenic effects at a range of dose levels, this data does suggest that dimethoate may have the potential to interfere with normal fetal development.

j. *Comments on Wavy Ribs.* The SAP, in its formal comments, commented on the teratogenic studies and was unable to confirm that wavy ribs are a true teratogenic effect.

k. *The Agency's PD 4 Response.* The Agency has concluded that the difference between a "true" teratogenic effect and an increase in minor anomalies which occur at a normal background rate should not be relevant for regulatory purposes. The increased incidence of minor teratogenic effects indicates that dimethoate may have the potential to interfere with fetal development. Hence, the Agency's

concern about possible adverse effects to the population at risk is not diminished. Until such time as the Agency is able to establish that the adverse effects noted in the Khera study do not indicate a potential risk for humans, the Agency will treat these effects as warranting regulatory concern.

4. *Mutagenicity Risk—a. Summary of Studies Cited in PD 1 on Dimethoate-Induced Mutations in Submammalian Test Systems—i. Fahrig, 1973.* Fahrig (1973) treated cultures of *Saccharomyces cerevisiae* with dimethoate at seven dosage levels (ranging from 40 mM to 100 mM). The author(s) did not indicate whether a metabolic activation system had been included in the test procedures. An induction of mitotic gene conversions, demonstrating a positive mutagenic effect was observed.

ii. *Hanna and Dyer, 1975.* Hanna and Dyer (1975) tested dimethoate in two bacterial systems by adding 5 to 10 ul of dimethoate to a layer of the bacterial strain. Positive results were observed in two strains of *Escherichia coli* (*E. coli* WP2 uvrA and *E. coli* WP 67). Negative results were seen in several *E. coli* and *Salmonella typhimurium* strains.

iii. *Mohn, 1973.* Mohn (1973) studied the effect of dimethoate in *E. coli* K-12/galRs18. Dimethoate was shown to have mutagenic activity. A significant dose-response relationship was obtained using five dosage levels (from 1 to 6×10^{-2}M). The author(s) did not indicate whether a metabolic activation system had been included in the test procedures.

iv. *American Cyanamid Co., 1977.* American Cyanamid Co. (1977) investigated the mutagenic potential of dimethoate using several strains of *S. typhimurium* and one strain of *E. coli.* Rat livermicrosomal enzymes (S-9) were used for metabolic activation. No mutagenic effects were observed. Doses ranging from 20 to 100 ug/plate.

v. *Shirasu et al., 1976.* Shirasu et al. (1976) studied the mutagenic effect of dimethoate in the H17 Rec^+ and R45$^-$ strains of *Bacillus subtilis.* No mutagenic activity was observed under the conditions of the study. The dose of dimethoate used was not given.

vi. *Agarwal et al., 1973.* Agarwal et al. (1973) studied the effect of dimethoate on seed setting and germination in the bean (*Phaseolus vulgaris*). Dimethoate in concentrations of 0.1 and 0.5% by volume were used as foliar sprays on bean plants in four observation plots. The spraying was done at the time of bud initiation. Seeds were then collected and soaked up to 48 hours at room temperature. Dimethoate reduced germination 23 to 38% below controls. Chromosomal abnormalities including fragments, stickness, and anaphase bridge formation were seen in 12.8 to 27.5% of the treated series. No abnormalities were seen in the controls.

vii. *Amer and Farah, 1974.* Amer and Farah (1974) studied the cytological effects of dimethoate on cotton (*Gossypium barbadense*) and beans (*Vicia faba*). Bean seeds were treated at concentrations of 0.25, 0.125, and 0.0625% using both pure and formulated (solution containing 40% active ingredient) dimethoate. Cotton seeds were treated with the formulated product at concentrations of 0.5, 0.25, 0.125, and 0.0625% dimethoate. Both pure and formulated dimethoate greatly inhibited cell division in beans. The mitotic index for bean seeds treated with pure dimethoate ranged from 18.4 (0.5% dimethoate) to 62.6 (0.625% dimethoate) compared with a mitotic index of 94.1 for controls. The mitotic index for beans treated with formulated dimethoate ranged from 8.0 (0.25% dimethoate) to 42.0 (0.0625% dimethoate) compared with 56.4 for controls. Chromosomal abnormalities were also observed for all treated seeds. The percentage of abnormal mitoses in beans induced by formulated dimethoate was much higher than that induced by pure dimethoate.

b. *Summary of Studies Cited in PD 1 on Dimethoate-Induced Mutations in Mammalian Test Systems—i. Gerstengarbe, 1975.* Gerstengarbe (1975) investigated the ability of dimethoate to induce dominant-lethal mutations in the mouse (*Mus mucculus*). Dimethoate was administered intraperitoneally to male mice of an inbred, AB JenaλHalle strain. One set of mice received a one-time dose of 80 mgλkg,while another group received 0.66 mgλkg daily for 30 days. The treated males were then paired with untreated females. The number of implantations, resorptions, and living and dead fetuses on the eighteenth day of gestation was determined. The living fetuses were weighed and separated according to sex. A significant increase in the resorption rate was detected, indicating damage during spermiogenesis. A significant increase was observed in the mutation index indicating that dimethoate, in the case of AB JenaλHalle mice, induces dominant-lethal mutations and is capable of reaching germinal tissue.

ii. *Bhunya and Behera, 1975.* Bhunya and Behere (1975) injected adults of both sexes of the mouse (*Mus musculus*) with 1 ccλ100 g body weight of dimethoate (0.5 and 1.0% solutions). Control animals were injected with distilled water. Standard cytological slides were prepared from bone marrow cells of animals sacrificed at 24, 48, and 72 hours after treatment. The authors stated that in the treated animals, in addition to other aberrations, centromeric fission and stretching were predominant. The number of chromosomes with breakage at the centromere ranged from 1 to 38 per cell. The frequency of aberrations was highest at 24 hours, moderate at 48 hours, and least after 72 hours for both doses tested. Aberration rates in control animals were not reported.

c. *The Agency's Conclusion in PD 2λ3 Regarding Additional Mutagenicity Studies.* After reviewing the comments and rebuttals on the mutagenicity risk presumption, the Agency concluded in PD 2λ3 that the risk had not been rebutted. Section II c(2) of Position Document 2λ3 presented an analysis of the mutagenicity studies on dimethoate and attempted to draw conclusions relative to human risk from dimethoate's ability to induce mutagenic effects. The Agency concluded that since insufficient data exist upon which to base a mutagenicity risk assessment, additional studies are required to estimate the magnitude of the risk.

d. *Comment Contending that Dimethoate is not Mutagenic in the Ames System.* In response to the Agency's RPAR Notice (PD 1) for dimethoate, American Cyanamid Co. submitted a bacterial assay as their rebuttal (Rebuttal Comment 30000λ16:#5A). American Cyanamid Co. used *E. coli* WP-2 uvrA$^-$ in their assay and found that "Dimethoate was not mutagenic" even at "extremely high doses". Based on their study, American Cyanamid Co. stated that dimethoate is a non-mutagen because of its "potency" of less than 0.01 revertantsλnanomole.

In its Preliminary Notice of Determination Concluding the PRAR for Dimethoate (PD 2λ3), the Agency rejected the American Cyanamid Co. rebuttal attempt. In their comments [7(30000λ16c)] in response to PD 2λ3, American Cyanamid Co. reaffirmed their contention that dimethoate is not mutagenic in the Ames System and that, based on McCann et al., 1975, Cyanamid made a determination that chemicals having mutagenic potencies of less than 0.01 revertantsλnanomole can be classified as non-mutagens in the bacterial reverse mutation assay.

e. *The Agency's PD 4 Response.* American Cyanamid's statement that dimethoate is a non-mutagen is not correct by the criterion that it has a "potency" of less than 0.01 revertantsλnanomole. The registrant was attempting to use a cut-off point

derived from an Ames test with a *Salmonella* organism (McCann et al., 1975) to describe the potency for an *E. coli* test system in which a clear dose-response was observed. Clearly, the level of revertants viewed as indicating a positive response in one test species has little relevance to the potency determination in a different test system. The usually accepted criteria for a positive in an Ames test is a doubling of the background rate and a dose-response effect. The important aspect of the *E. coli* test in question here is the dose-response observed. The potency level from the *Salmonella* sp. study is irrelevant.

Furthermore, this particular method of defining a cut-off point, cited by American Cyanamid, was arbitrarily chosen by McCann et al. (1975) in order to relate mutagenicity to carcinogenicity and it appears only in the McCann et al. (1975) paper. Other more recent methods of defining a positive mutagenic response do not include any cutoff point (DeSerres et al., 1979). DeSerres et al. (1979) is currently considered to be the most valid protocol recommendation for using the Salmonella/Microsome Mutagenicity Assay.

f. *Comments on the Agency's Requirement of a Dominant Lethal Test.* American Cyanamid [7(30000λ16c)] in their comments on PD 2λ3 stated that they have no comment on the requirement for a dominant lethal test except to point out that a recently published negative report using this procedure to evaluate dimethoate in the mouse is available as an abstract (Degraeve et al., 1979).

g. *The Agency's PD 4 Response.* The Agency has been unable to obtain a copy of the Degraeve study and, therefore, cannot evaluate this study solely on the basis of an abstract. The Agency will welcome any additional information on the Degraeve et al. (1979) study, or any other dominant lethal test using dimethoate, and will evaluate such information upon its receipt.

5. *Delayed Neurotoxicity—a. Summary of Laboratory Animal Studies Cited in PD 1: American Cyanamid Co., 1965.* American Cyanamid Co. (1965b) performed demyelination studies for dimethoate and its oxygen analog, dimethoxon, in white leghorn hens estimated to be 1 to 2 years of age. Although the results appear to show that these chemicals did not cause myelin degeneration, a closer examination of these reports indicates that the tests were inconclusive for the following reasons:

(1) An LD_{50} for 24 hours, instead of 7 days, should have been used in the tests.

(2) Since hens were given the chemicals in their feed, the dose received by each hen was not accurately known. Administration of the test substance should have been by intubation or gelatin capsule.

(3) Since maximum doses of only one-eighth LD_{50} were administered, delayed neurotoxic effects may not have developed.

The regimen of the study was such that the study would not detect delayed neurotoxicity for some compounds that have a known potential to cause this effect. Either much higher does, i.e., the maximally tolerated dose using atropine, or sub-acute studies for longer periods of time should have been used.

The Agency did not presume against dimethoate on the basis of this study, but instead requested registrants or other interested parties possessing information relevant to dimethoate associated delayed neurotoxicity effects to submit such data to the Agency.

b. *The Agency's Conclusion in PD 2/3 Regarding Delayed Neurotoxicity Testing.* The Agency concluded in Position Document 2/3, after reviewing comments submitted in response to PD 1, that insufficient evidence exists to determine whether dimethoate can induce delayed neurotoxicity and that the submission of new evidence concerning dimethoate's ability to induce delayed neurotoxic effects is warranted.

c. *Comments on the Agency's Requirement for Another Delayed Neurotoxicity Study.* The SAP, in its formal comments, requested the Agency to reevaluate the need for additional delayed neurotoxicity studies in view of research reported by T. B. Gaines (1969) entitled "Acute Toxicity of Pesticides" in which no paralysis was observed in tests conducted with dimethoate.

d. *The Agency's PD 4 Response.* In response to the SAP comment concerning the requirement for additional delayed neurotoxicity studies, the Agency has reevaluated the American Cyanamid delayed neurotoxicity studies (1965b) and has reviewed the T. B. Gaines study (1969) entitled "Acute Toxicity of Pesticides".

In the American Cyanamid Studies (1965b), the chemical was administered in feed and the dosage received by each hen was not accurately known. Since maximum doses of only one-eighth the LD_{50} were administered, delayed neurotoxicity effects may not have developed. These studies were inconclusive with regard to dimethoate's delayed neurotoxic potential.

The T. B. Gaines (1969) study entitled "Acute Toxicity of Pesticides" is primarily a report on the determination of LD_{50} values for 98 pesticides and 2 metabolites of DDT using adult Sherman strain rats treated with a single dose of the test substance by the oral or dermal route. The author only briefly reports on the screening tests for paralytic effects in chicken hens treated with carbamate and organic phosphorus pesticides.

The author stated that "The method for conducting the screening tests for the paralytic effects of carbamate and organic phosphorus pesticides in chickens was the same as that described by Durham et al. (1956), with the exception that many of the compounds reported in that paper were tested in White Leghorn chickens because of the unavailability of the Rhode Island Red breed". The Gaines study indicates that each test chicken was administered atropine sulfate in water solution orally at a dosage level of 15 mg/kg to protect them against the acute effects of the test substances. 9 carbamate and 30 organic phosphorus compounds, including dimethoate, were tested for paralytic effects. Fifteen minutes after administration of the atropine sulfate the chickens were administered the test substance in peanut oil solution or in suspension by subcutaneous injection under the right wing. The chickens were checked daily for signs of paralysis by placing them on the ground and observing their ability to walk. The author reported that no paralysis was observed in chickens dosed with dimethoate.

Several important details, such as the number of animals used, the dosage level for the test substance, and whether or not histopathology on nervous tissue was carried out, were not given in the study.

After reevaluating both the American Cyanamid studies (1965b) and the

Gaines (1969) study the Agency concludes that not enough data are available in these studies to make a hazard determination. Therefore, the Agency will require additional delayed neurotoxicity studies in order to allow the Agency to make a hazard determination for delayed neurotoxic effects due to exposure to dimethoate.

6. *Exposure Analysis—Dietary Exposure—a. The Agency's Exposure Calculation in PD 2/3.* The Agency, in calculating a worst case estimate of the dietary exposure of the general population to dimethoate in Position Document 2/3, assumed dimethoate residues to be present on food at the tolerance levels. However, not all crops for which dimethoate is registered are actually treated with dimethoate. Therefore, in its calculation of a probable case estimate of oral exposure, the Agency factored in the percentage of crops actually treated with dimethoate.

b. *Comment on the Agency's Calculation of Dietary Exposure.* The SAP, in its formal comments, agreed, in general, with the approach used by the Agency in calculating dietary exposure, but added that in view of the biodegradability of dimethoate it is unlikely that the dietary level for this compound would approach tolerance levels.

c. *The Agency's PD 4 Response.* The Agency agrees with the SAP. In Position Document 2/3 the Agency stated that "it is generally recognized that organophosphate pesticides, such as dimethoate, degrade rather rapidly and that several weeks may elapse between application and consumption of the treated crop. Therefore, it is likely that the Margin of Safety (MOS) for general population risk is several orders of magnitude highjer than the 875 calculated as a probable case. However, a lack of data concerning dimethoate residues at harvest precludes estimates of the actual MOS", Risk from dietary exposure was not viewed by the Agency as a problem in PD 2/3. A calculation of the dietary exposure resulting from a single serving of selected food items confirms that dietary exposure is not a problem. The SAP has confirmed the Agency's belief that risk from dietary exposure is not an issue of concern. See Table 4 below for a comparison of MOS (including dietary exposure) and the MOs (excluding dietary exposure) for various users of dimethoate.)

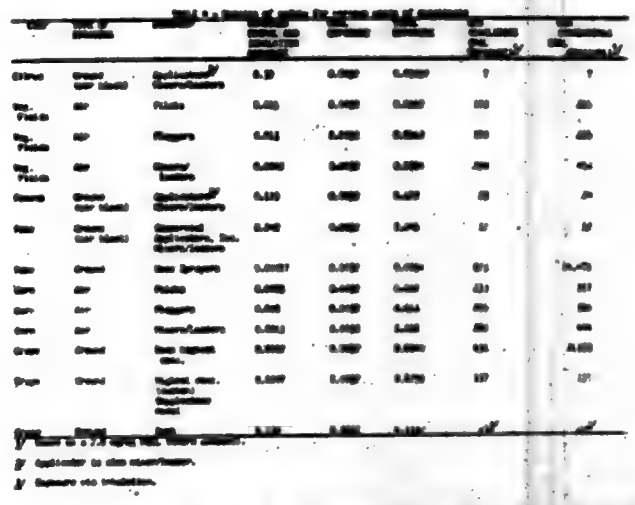

7. *Exposure Analysis—Occupational Exposure—a. The Agency's Occupational Exposure Calculations in PD 2/3.* In Position Document 2/3 the Agency revised and expanded the exposure analysis presented in Position Document 1. The exposure analysis in PD 2/3 was developed for smaller subpopulations engaged in the application of dimethoate, who subpopulations engaged in the application of dimethoate, who would experience greater exposure than that identified for the general population. For example, before application, mixers and loaders may be exposed both dermally and via inhalation as the result of splashing, vaporization, or accidental spills; during application, pilots and flaggers involved in aerial application, as well ground application, may be exposed both dermally and via inhalation. Estimates of exposure to these subpopulations and the MOS for each are presented in Table 5.

TABLE 1 – Estimates of exposure and margins of safety for various users of dimethoate[1/]

Crop	Type of Spraying	Who Per Application	Combined Dermal and Inhalation MAXIMUM EXPOSURE (mg/kg/day)	MOS Per Application	MOS Per Season	MOS For Season-Long Exposure[2/]
corn	air	pilots	0.0004	0.0032	0.012	230
corn	air	flaggers	0.008	0.0032	0.011	200
corn	air	mixers/loaders	0.0008	0.0032	0.010	200
ornamentals	ground	commercial high concentration compressed air	0.00042	0.0032	0.0030	043
ornamentals	ground	home garden high concentration	0.000132	0.0032	0.00325	036
grape	ground	home highest conc.	0.0011	0.0032	0.0096	036
grape	ground	highest conc. (custom) Hyplostome model	0.0007	0.0032	0.0230	117
grape	ground	dust	0.130	0.0032	0.1333	31
cotton	air	pilots	0.0017	0.0032	0.003	200
cotton	air	mixers/loaders	0.00008	0.0032	0.0060	067
cotton	ground	applicators	0.0070	0.0032	0.0051	255
cotton	ground	mixers/loaders	0.00033	0.0032	0.006	200
citrus	air	pilots, ground crews, mixers/loaders	same as corn			
citrus	ground (air blast)	applicators mixers/loaders	0.20	0.0032	0.2222	7
soybean	air	same as corn				
veg. fields (tomato, broccoli)	air	pilots flaggers mixers/loaders	0.013 0.013 0.0042	0.0032 0.0032 0.0032	0.0162 0.0162 0.0094	170 170 200
veg. (Pis)	ground	applicators	0.00005	0.0032	0.0033	040
vector control (house fly)	ground	applicators	0.0010	0.0032	0.0031	040
Forest pine (seed orchard)	ground	applicators	0.0008	0.0032	0.0040	700
pecan high conc.	ground	applicators mixers/loaders	0.00044 0.00022	0.0032 0.0032	0.0076 0.0036	770 010
pecan	ground (air blast) model	applicators mixers/loaders	0.199	0.0032	0.111	23
safflower	air	same as corn				
pome	ground (air blast)	commercial applicators including mixers/loaders	0.341	0.0032	0.205	12
pome	ground	home aprayers	0.00017	0.0032	0.0026	

1/ From PD 2/3.

2/ Based on 2.0 MOS. (Where noted).

The exposure analyses in PD 2/3 considered rebuttal comments received in reponse to the RPAR notice, data from the USDA concerning use and use practices, published studies concerning worker exposure to dimethoate and related pesticides, and certain assumptions made by the Agency in the absence of specific data on dimethoate.

There were no published data available to the Agency showing the amount of dimethoate an applicator would be exposed to during aerial application. However, exposure data were available for another organophoshate, parathion. Therefore, the Agency used exposure values reported for parathion aerial application (Gordon et al., 1978) as a model for estimating human exposure to dimethoate during aerial application. The following rationale was given for using parathion values to estimate dimethoate exposure:

(1) The vapor pressure of parathion and dimethoate are comparable. It is generally recognized that the residues of pesticides with relatively low volatility in the air during or immediately after application are predominantly present in the form of droplets and particles.

(2) The formulation most often used for both parathion and dimethoate is an emulsifiable concentrate (E.C.).

(3) The rates of aerial application of parathion and of dimethoate are similar.

Since exposure during aerial application can occur via the respiratory and/or dermal route, the Agency made calculations of applicator exposure via each of these routes.

In calculating inhalation exposure, the Agency made the following assumptions:

(1) The ambient air concentrations observed for parathion (Gordon et al., 1978) are the same as dimethoate at each of the various sampling sites (e.g., airplane cockpits).

(2) The applicator's breathing rate will be 1.8 m^3 per hour.

(3) 100% of all dimethoate inhaled will be absorbed.

(4) The applicator will weight 60 kg (adult female).

(5) The applicator will wear no special protective devices (e.g., respirator).

The Agency used the following equation in calculating the respiratory exposure for dimethoate:

$$\text{Respiratory Exposure (ug/kg/day)} = \frac{\text{Ambient air concentration of dimethoate (ug/m}^3\text{) at the site in question} \times \text{1.8 m}^3\text{/hr (breathing rate)} \times \text{Number of hours of exposure/day}}{\text{60 kg person}}$$

For the dermal exposure calculations the Agency made the following assumptions:

(1) Dermal exposure observed for parathion skin patch tests (Gordon et al., 1978) are the same for dimethoate.

(2) 15% of the applicator's total skin surface will be exposed.

(3) 10% of the dimethoate coming into contact with the uncovered skin will be absorbed.

(4) The applicator will weigh 60 kg (adult female).

The following equation was used by the Agency in calculating the dermal exposure to dimethoate:

$$\text{Dermal Exposure (mg/kg/day)} = \frac{\text{Concentration of dimethoate on the skin (ug/cm}^2\text{)} \times \text{3000 cm}^2 \times \text{10\% absorbed} \times \text{Number of hours exposed per day}}{\text{60 kg person}}$$

Specific data concerning applicator exposure to dimethoate applied by boom type equipment in large agricultural situations and by compressed air equipment (hand pump sprayers) in home garden application situations in the United States was not available to the Agency. However, information concerning applicator exposure to dimethoate in the Sudan was available (Copplestone et al., 1976). Therefore, in PD 2/3 the Agency used the dermal and respiratory exposure of spraymen to dimethoate reported by Copplestone et al. (1976) as the basis for its calculations of applicator exposure to dimethoate when boom and compressed air equipment is used.

The Agency used the following equations to calculate the respiratory and dermal exposure resulting from the ground application of dimethoate:

$$\text{Respiratory Exposure} = \frac{\text{Respiratory exposure observed in Sudan (mg/hr)} \times \frac{\text{concentratin of dimethoate used in the U.S.}}{\text{concentration of dimethoate used in the Sudan}} \times \text{Number of hours spraying. (USDA/states/EPA Assessment Team on Dimethoate)}}{\text{60 kg person}}$$

$$\text{Dermal Exposure} = \frac{\text{dermal exposure observed in the Sudan (mg/cm/hr}^2\text{)} \times \frac{\text{concentration of dimethoate used in the U.S.}}{\text{concentration of dimethoate used in the Sudan}} \times \text{10\% absorption}}{\text{60 kg person}}$$

Specific data concerning applicator exposure to dimethoate applied by high volume air blast equipment (greater than 300 gal./A), such as that commonly used in citrus, pecans, and pome fruit orchards, were not available to the Agency. However, Wolfe et al. (1967) reported the dermal and respiratory exposure of workers to several selected pesticides, one of which was parathion, using air blast equipment. In the absence of specific dimethoate data, the Agency, in Position Document 2/3, assumed the exposure values of workers applying 0.05% parathion emulsifiable concentration (E.C.) with air blast equipment to be the same as that for workers applying dimethoate. The Agency felt this assumption to be reasonable since both dimethoate and parathion are organophosphates and both are emulsifiable concentrates applied at similar concentrations.

The Agency concluded, in Position Document 2/3, that potential occupational exposure was greatest for ground applications of dust formulations on grapes and for ground applications utilizing air blast equipment on citrus, pome fruits, and pecans.

b. *Comments on the Inadequacy of the Data Used to Estimate the Potential Exposure of Air Blast Applicators.* A number of commenters concluded that the data on which the Agency relied in estimating the potential exposure of air blast applicators were inadequate. American Cyanamid [7(30000/16c)] and the University of California [8(30000/16c)] stated that the Copplestone (1976) study referred to in Position Document 2/3 was an inappropriate model for air blast exposure, since in that study dimethoate was applied with a knapsack mist blower. The University of Arizona [5(30000/16c)] commented that they are concerned about the small amount of data on which the Agency relied, i.e. "an old study in Washington State by Dr. Homer Wolfe, and an incident in Sudan" (Wolfe, 1967 and Copplestone, 1976).

c. *The Agency's PD 4 Response.* The Agency responds to these comments regarding the inadequacy of the data relied upon in PD 2/3 for estimating potential exposure of air blast applicators by pointing out, first of all, that the data used in the air blast calculations were that of Wolfe et al. (1967) and not that of Copplestone et al. (1976). Wolfe et al. reported dermal and respiratory exposure of workers to several selected pesticides, one of which was parathion, using air blast equipment. Secondly, the Agency did not have specific data on dimethoate exposure from air blast application for calculating exposure in PD 2/3. Therefore, in the absence of better information, the Agency extrapolated Wolfe's results with parathion to dimethoate. It is the Agency's opinion that the data were adequate for such an extrapolation and that such an extrapolation was reasonable since both dimethoate and parathion are organophosphates and both are emulsifiable concentrates applied at similar concentrations.

d. *Comments on a University of California at Riverside Field Monitoring Study of Applicator Exposure to Organophosphate Pesticides Resulting from Use of Oscillating Boom Sprayers and Air Blast Equipment.* The University of Arizona [5(30000/16c)], in their comments on PD 2/3, stated that a study on air blast sprayer driver exposure is underway at Riverside, California. This commentor recommended that a decision on air blast application be delayed until data from this study are available for scientific review. Additionally, the University of Arizona stated that it was their understanding that the study would be completed by August 1980.

The Scientific Advisory Panel, in its formal comments, mentioned testimony by a representative from the State of California relative to planned research in the near future, with dimethoate, to assess applicator exposure from air blast equipment in comparison with oscillating boom type sprayers.

The Unversity of California at Davis [8(30000/16c)] stated, in their comments on PD 2/3, that "the Western Region Pesticide Impact Assessment Program is funding a study by Professors Gunther and Carman (University of California, Riverside) to quantify the extent of occupational exposure of pesticide applicators during actual spraying of an organic phosphate insecticide on citrus trees. Those studies will involve measurements of pesticide vapors and aerosols in the cab of the spray rig as a result of having the windows opened, opened and closed on operator judgment basis, and closed with and without air-conditioning. This will determine whether operator judgment is sufficient to limit pesticide exposure or whether a static cab or a more sophisticated system involving charcoal filters and air-conditioning units should be required. The principal investigators are willing to expand the experimental design to permit exposure comparisons between air blast and oscillating boom applications, providing adequate funding is available."

The California Citrus Quality Council [9(30000/16c)] stated that "The citrus industry of California is supportive of exposure studies now being undertaken at The Citrus Research Center of the University of California in Riverside to quantify applicator exposures associated with oscillating boom equipment and would fully endorse an extension of these studies to include evaluations with air blast equipped with various provisions for applicator protection and operated under variant field conditions."

e. *The Agency's PD4 Response.* The Agency agrees that actual data on applicator exposure to dimethoate would be more useful than estimates derived from an evaluation of other organophosphate pesticides. The Agency understands that the monitoring phase and the analysis of the data of the current study at the University of California are likely to be completed in early 1981. The Agency welcomes any additional information resulting from the current study at the University of California at Riverside.

8. *Risk of Alternatives to Dimethoate—a. Summary of the Agency's Toxicology Review of Alternatives to Dimethoate.* The Agency's purpose for reviewing alternatives for a particular pesticide is not to make an in-depth review of an alternative but to indicate whether or not suitable alternatives exist at each use site for the pesticide in question. In its toxicology review of the alternatives to dimethoate the Agency reviewed available toxicity data from published and unpublished Substitute Chemical Program reports, proprietary data from pesticide petitions, and published literature. The basic conclusion of the Agency's review was that for the sites in which dimethoate is used, there are many alternatives.

In PD 2/3 the Agency proposed the cancellation of air blast application of dimethoate on citrus, pome fruit, and pecans. When cancellation of a use is considered by the Agency, a review of possible alternatives for the uses in question is conducted. A summary of the Agency's toxicological review of the alternatives for air blast application of dimethoate in citrus, pome fruit, and pecans is given below.

1. *Alternatives to Dimethoate use on Citrus.* The Agency considered malathion, phosphamidon, formetanate, rotenone, demeton, mevinphos and parathion as the major alternatives to dimethoate use on citrus.

1. *Malathion.* Malathion is low in toxicity and has not been shown to cause adverse reproductive effects when tested in a teratology test. Recent National Cancer Institute studies have indicated no significant carcinogenic

potential from malathion. Malathion was registered many years ago, but adequate multi-generation studies have not been performed.

2. *Phosphamidon.* Phosphamidon is more acutely toxic than dimethoate. A recent National Cancer Institute study indicated that phosphamidon was not carcinogenic in B6C3F1 mice but the data were insufficient to allow interpretation in the rat. Data on reproductive effects are either lacking or carried out at Industrial Bio-Test. Validation of the Industrial Bio-Test studies has not been done. Phosphamidon, like malathion, was registered a number of years ago.

3. *Formetanate.* Formetanate is a much more acutely toxic compound than dimethoate with an oral LD_{50} around 20 mg/kg. Although available data indicate no significant adverse effects, the presence of Industrial Bio-Test data limits the usefulness of these studies.

4. *Rotenone.* Minimal data are available on rotenone's reproductive effects. Preliminary data suggested that rotenone was carcinogenic but evaluation of all of the carcinogenicity data does not indicate an oncogenicity hazard. Although there are some studies that indicate potential teratogenic problems, these studies are seriously flawed and need to be re-done before we can determine if there is a teratogenicity problem.

5. *Demeton.* Demeton is a highly toxic organophosphate (acute oral LC_{50} below 20 mg/kg). There appears to be no multi-generation study and the only teratogenic study seems inadequate to assess teratogenic or fetotoxic hazard. No chronic or carcinogenic studies have been reported.

6. *Mevinphos.* Mevinphos, like demeton, is a highly toxic organophosphate. Available teratogenic, reproduction, and chronic studies indicate no adverse effects.

7. *Parathion.* Parathion is a highly toxic organophosphate by all routes of exposure. A recent oncogenic study by NCI indicated positive findings. A preliminary risk assessment on the oncogenic effects is being carried out.

ii. *Alternatives to Dimethoate Use on Pome Fruit (apples).* The Agency considered cyhexatin (plictran), guthion (azinphosmethyl), propargite, and demeton as alternatives to dimethoate use on pome fruits.

1. *Cyhexatin.* This compound has not demonstrated any adverse effects in laboratory animals in chronic feeding studies and reproduction and teratology studies.

2. *Azinphosmethyl (Guthion).* Both guthion and demeton are highly toxic organophosphates with acute oral LD_{50}s below 20 mg/kg. Guthion was not teratogenic or fetotoxic in doses up to 5 mg/kg/day (the maternal toxic dose) in rats or mice. A recent National Cancer Institute study concluded that "under the conditions of this bioassay, neoplasms of the thyroid and pancreatic islets suggest but do not provide sufficient evidence for the carcinogenicity of azinphosmethyl in male Osborne-Mendel rats. Azinphosmethyl was not shown to be carcinogenic in female Osborne-Mendel rats or in B6C3F1 mice of either sex". The Agency is reviewing this study and a risk assessment may be carried out based on the positive oncogenic response.

3. *Propargite.* This compound has not demonstrated any adverse effects in laboratory animals in chronic feeding studies and reproduction and teratology studies.

4. *Demeton.* See write up under *Citrus* above.

iii. *Alternatives to Dimethoate Use on Pecans.* The Agency considered phosalone and dialifor as alternatives to dimethoate use on pecans.

1. *Phosalone.* Phosalone is slightly more acutely toxic than dimethoate. The available data do not indicate that this compound produces adverse reproduction or teratogenic effects.

2. *Dialifor.* Dialifor caused no malformations in a teratology test, but the systemic NOEL was 1.0 mg/kg. The vast majority of toxicity data supporting dialifor was carried out at Industrial Bio-Test and is still unvalidated. Conclusions about the reliability of these data cannot be made at this time.

b. *Comments on the Risks of Alternatives to Dimethoate.* The SAP, in their formal comments, stated that it is likely that substitute pesticides which may be more hazardous than dimethoate may be selected for use in air blast equipment if dimethoate is not available.

The Cooperative Extension Service of the University of Georgia [1A(30000/16c)], in their comments on PD 2/3, stated that "while there are alternative materials (FR, P. 66560), most effective alternatives have a much higher acute toxicity than dimethoate. This particularly will effect small pecan growers and homeowners who have trees in areas where materials of high acute toxicity should not be used".

The Extension Service of Oregon State University [4(3000/16c)] and the Hood River Grower-Shipper Association, Hood River, Oregon [6(30000/16c)] stated, in their comments on PD 2/3, "Dimethoate is one of only three systemic insecticides registered for use on bearing apple trees. Of the three, dimethoate has the lowest mammalian LD_{50} toxicity at 215 mg/kg, compared to 6.2 mg/kg for demeton (Systox) and 24 mg/kg for phosphamidon. This makes dimethoate the least toxic systemic presently registered for use on apples".

American Cyanamid Co., [7(30000/16c)] commented that "should the Agency cancel air blast application of dimethoate, applications would most probably be made using parathion. This alternative would be an unacceptably high risk situaton".

The Cooperative Extension of the University of California at Davis [8(30000/16c)] commented that California's treatment guide for citrus crops lists six alternatives to dimethoate for thrips control. The listed alternative materials are sabadilla, parathion, dioxathion, azinphosmethyl, phosphamidon, and ryania. This commentor stated that dimethoate, with its 4-day reentry interval, is the material of choice because a relatively safe, short-lived material is necessary for thrips control since the chemical is applied over ripe fruit.

c. *The Agency's PD 4 Response.* The Agency agrees that cancellation of the air blast use of dimethoate on citrus, pome fruits, and pecans may result in the air blast application of alternative pesticides registered for these same uses. The Agency is also aware that cancellation of this application method will probably not lead to the use of dimethoate on these crops by another method of application, e.g., oscillating boom sprayer. In addition, the Agency is aware that there is a high probability that, at least in some cases, the alternative pesticide may be an organophosphate of higher acute toxicity. The following key lists definitions of abbreviations used in Tables 6 and 7:

CAR—Carcinogenic effects.

CNS—Central nervous system effects—includes effects such as headaches, tremor, drowsiness, convulsions, hypnosis, anesthesia.

IHL (Inhalation)—Inhalation in chamber, by cannulation, or through mask.

IMS (Intramuscular)—Administration into the muscle by hypodermic needle.

INV (Intravenous)—Administration directly into the vein by hypodermic needle.

IRP (Intraperitoneal)—Administration into the peritoneal cavity.

LCLo (Lethal Concentration Low)—the lowest concentration of a substance in air, other than LC50, which has been reported to have caused death in humans or animals.

LC50 (Lethal Concentration Fifty)—a calculated concentration of a substance

in air, exposure to which for a specified length of time is expected to cause the death of 50% of an entire defined experimental animal population.

LDLo (Lethal Dose Low)—the lowest dose (other than LD50) of a substance introduced by any route, other than inhalation, over any given period of time in one or more divided portions and reported to have caused death in humans or animals.

LD50 (Lethal Dose Fifty)—a calculated dose of a substance which is expected to cause the death of 50% of entire defined experimental animal population. It is determined from the exposure to the substance by any route other than inhalation of a significant number from that population.

NEO—Neoplastic effects.

ORAL—Per os; intragastric, feeding, or introduction with drinking water.

PNS—Peripheral nervous system effects.

SCU (Subcutaneous)—Administration under the skin.

SKIN—Application directly onto the skin, either intact or abraded. Used both for systemic and primary irritant effects.

TCLo (Toxic Concentration Low)—the lowest concentration of a substance in air to which humans or animals have been exposed for any given period of time that has produced any toxic effect in humans or produced a carcinogenic, neoplastic, teratogenic, or mutagenic toxic effect in animals or humans.

TDLo (Toxic Dose Low)—the lowest dose of a substance introduced by any route, other than inhalation, over any given period of time and reported to produce any toxic effect in humans or to produce carcinogenic, neoplastigenic, teratogenic, or mutagenic, or mutagenic effects in humans or animals.

TER—Teratogenic effects—nontransmissible changes produced in the offspring.

TFX—Toxic effects—used to introduce the pathology or the principal organ system affected.

UNK (Unreported)—Dose, but not route, is specified in the reference.

Table 6 summarizes the toxicological information for dimethoate and chemical alternatives to dimethoate. The information in Table 6 was derived from the "NIOSH 1978 Registry of Toxic Effects of Chemical Substances".

TABLE 6 - Summarization of toxicological information for dimethoate and chemical alternatives to dimethoate

CHEMICAL	Irritant Effects (Eye)	TOXIC DOSE																
		ORAL			SKIN		IMP		SCU			IMV			IPR			IPC	
		LD50	TDLo	LDLo	LD50	LD50	TDLo	LD50	LDLo	LD50	LDLo	LD50	LDLo	TDLo	LD50	LCLo	LD50
DIMETHOATE		Human 30 mg/kg																
		Rat 152 mg/kg	Rat 50 mg/kg TFX-CAR		Rat 353 mg/kg	Rat 100 mg/kg		Rat 350 mg/kg		Rat 450 mg/kg				Rat 376 mg/kg TFX-CAR				Rat 25 mg/kg
Aquatic Toxicity Rating TLm 96:10-Under 1ppm		Mouse 60 mg/kg				Mouse 45 mg/kg		Mouse 60 mg/kg										
		Dog 400 mg/kg																
		Rabbit 300 mg/kg																
		Guinea Pig 350 mg/kg			Guinea Pig 650 mg/kg													
NCI Bioassay Results Negative		Hamster 200 mg/kg						Hamster 60 mg/kg										
		Chicken 37 mg/kg																
		Mammal 15 mg/kg																
		Bird 22 mg/kg																
		Wild Bird 7 mg/kg																
			Cat 300 mg/kg															
MALATHION		Rat 895 mg/kg			Rat 4444 mg/kg	Rat 390 mg/kg		Rat 1000 mg/kg		Rat 50 mg/kg								
		Mouse 775 mg/kg				Mouse 193 mg/kg				Mouse 184 mg/kg								
		Guinea Pig 570 mg/kg				Guinea Pig 550 mg/kg												
Aquatic Toxicity Rating TLm 96:10-under 1ppm		Domestic Animal 500 mg/kg																
			Human 50 mg/kg															
NCI Bioassay Results Negative			Man 857 mg/kg															
			Rabbit 120 mg/kg	Rabbit 4100 mg/kg														
																		Mammal 500 mg/kg
PHOSPHAMIDON		Rat 17 mg/kg			Rat 125 mg/kg			Rat 26 mg/kg										

CHEMICAL

PHOSPHAMIDON (cont.)

NCI Bioassay Completed 9/78

FORMETANATE

ROTENONE

Selected by NCI for Carcinogenesis Bioassay 9/78

DEMETON

TABLE 6 - Summarization of toxicological information for dimethoate and chemical alternatives to dimethoate (cont.)

CHEMICAL	Irritant Effects (Eye)	TOXIC DOSE ORAL LD50	ORAL TDLo	ORAL LDLo	SKIN LD50	IMP LD50	IMP TDLo	SCU LD50	SCU LDLo	IVN LD50	IVN LDLo	INS LD50	INS TDLo	INH LC50	INH LCLo	UNK LD50
PHOSPHAMIDON (cont.)																
NCI Bioassay Completed 9/78		Mouse 6 mg/kg								Mouse 6 mg/kg						
		Chicken 9940 ug/kg														
		Wild Bird 2 mg/kg														
				Human 5 mg/kg												
					Rabbit 267 mg/kg											
FORMETANATE		Rat 20 mg/kg												Rat 160 mg/m3/ 4H		
		Mouse 18 mg/kg														
		Dog 19 mg/kg														
		Chicken 21500 ug/kg														
		Bird 13 mg/kg														
					Rabbit 10200 ug/kg											
ROTENONE		Rat 132 mg/kg				Rat 2800 ug/kg	Rat 91 mg/kg TFX-MEG									
Selected by NCI for Carcinogenesis Bioassay 9/78		Mouse 350 mg/kg				Mouse 2800 ug/kg										
		Mammal 50 mg/kg														
				Human 50 mg/kg												
DEMETON		Rat 1700 ug/kg			Rat 8100 ug/kg	Rat 3 mg/kg				Rat 1750 ug/kg				Rat 3 mg/kg		
		Mouse 7800 ug/kg				Mouse 4 mg/kg	Mouse 16 mg/kg TFX-TER			Mouse 3400 ug/kg						
		Guinea Pig 9 mg/kg														
		Quail 9 mg/kg														
		Duck 7 mg/kg														
		Wild Bird 7 mg/kg			Wild Bird 1800 ug/kg											
				Human 240 ug/kg												

TABLE 6 - Summarization of toxicological information for dimethoate and chemical alternatives to dimethoate (cont.)

CHEMICAL	Irritant effects (Eye)	TOXIC DOSE															
		ORAL			SKIN		INF		SCU		INV			IPR		INH		UNK
		LD50	TDLo	LDLo	LD50	LD50	TDLo	LD50	LDLo	LD50	LDLo	LD50	LDLo	TDLo	LD50	LCLo	LD50
DEMETON (cont.)					Rabbit 24 mg/kg	Rabbit 3250 ug/kg											
												Dog 3650 ug/kg					
												Cat 3900 ug/kg					
MEVINPHOS		Rat 4 mg/kg			Rat 4200 ug/kg	Rat 690 ug/kg		Rat 1211 ug/kg							Rat 14 PPM/1H		
		Mouse 4 mg/kg			Mouse 4000 ug/kg	Mouse 3 mg/kg		Mouse 1180 ug/kg		Mouse 680 ug/kg							
		Chicken 7520 ug/kg															
		Wild Bird 3 mg/kg															
			Mammal 690 ug/kg TFX-PWS														
				Human 5 mg/kg													
					Rabbit 4700 ug/kg												
						Gerbil 450 ug/kg											
CYHEXATIN (Plictran)		Rat 190 mg/kg				Rat 13 mg/kg											
		Rabbit 500 mg/kg															
		Guinea Pig 780 mg/kg															
		Chicken 654 mg/kg															
			Domestic Animal 150 mg/kg														
AZINPHOSMETHYL (Guthion)		Rat 16 mg/kg			Rat 220 mg/kg					Rat 7500 ug/kg					Rat 69 mg/m3/1H		Rat 15 mg/kg
		Guinea Pig 80 mg/kg															
Aquatic Toxicity Rating Tlm 96:under 1ppm		Chicken 277 mg/kg															
		Wild Bird 8 mg/kg															
			Human 5 mg/kg														
NCI Bioassay Results Indefinite			House 5 mg/kg	House 65000 ug/kg	House 5 mg/kg						House 8 mg/kg						

CHEMICAL
PROPARGITE
PHOSALONE (mixed with Kelthane (1:2))
DIALIFOR
PARATHION
PARATHION (cont.)

TABLE 6 - Summarization of toxicological information for dinotbeate and chemical alternatives to dinotbeate (cont.)

CHEMICAL	Pertinent Effects (Eye)	TOXIC DOSE															
		ORAL			SKIN		IVP		SCU			IMP			IVN		
		LD50	TDLo	LDLo	LD50	LDLo	TDLo	LD50	LDLo	LD50	LDLo	LD50	LDLo	TDLo	LCLo	LC50	
PROPARGITE		Rat 1480 mg/kg			Rat 250 mg/kg												
PROSALONE (mixed with Kelthane (1:2))		Rat 600 mg/kg															
		Mouse 175 mg/kg															
DIALIFOR		Rat 5 mg/kg															
		Mouse 39 mg/kg															
		Dog 94 mg/kg															
		Rabbit 35 mg/kg			Rabbit 145 mg/kg												
			Hamster 100 mg/kg TFX-TER														
PARATHION		Rat 2 mg/kg			Rat 6800 ug/kg	Rat 1500 ug/kg						Rat 3 mg/kg		Rat 6 mg/kg	Rat 10 mg/m^3/ 2H		
		Mouse 6 mg/kg				Rat 3950 ug/kg	Mouse 3500 mg/kg TFX-TER		Mouse 30 mg/kg	Mouse 17400 ug/kg				Mouse 7200 ug/kg			
		Dog 2 mg/kg								Dog 12 mg/kg							
PARATHION (cont.)		Rabbit 10 mg/kg			Rabbit 40 mg/kg										Rabbit 50 mg/m^3/ 2H		
		Guinea Pig 8 mg/kg			Guinea Pig 600 mg/kg	Guinea Pig 12 mg/kg									Guinea Pig 14 mg/m^3/ 2H		
		Pigeon 3 mg/kg															
		Quail 6 mg/kg															
		Duck 2340 ug/kg															
		Domestic Animal 6g/kg								Cat 3 mg/kg							Human 6 mg/kg
		Wild Bird 2 mg/kg			Wild Bird 1800 ug/kg												
			Human 290 ug/kg														
			Woman 5670 ug/kg TFX-ONS														

TABLE 6 - Summarization of toxicological information for dimethoate and chemical alternatives to dimethoate (cont.)

CHEMICAL	Irritant Effects (Eye)	TOXIC DOSE ORAL LD50	ORAL TDLo	ORAL LDLo	SKIN LD50	IRP LD50	IRP TDLo	SCU LD50	SCU LDLo	INV LD50	INV LDLo	IMS LD50	IMS LDLo	IML TDLo	IML LC50	IML LCLo	UNK LD50
SABADILLA		Rat 4000 mg/kg															
				Human 50 mg/kg													
						Mouse 7500 ug/kg											
DIOXATHION		Rat 20 mg/kg			Rat 63 mg/kg	Rat 30 mg/kg									Rat 1398 mg/m3/1H		
		Mouse 50 mg/kg				Mouse 33 mg/kg									Mouse 340 mg/m3/1H		
		Dog 10 mg/kg															
NCI Bioassay Results Negative		Guinea Pig 40 mg/kg															
		Chicken 170 mg/kg															
				Human 50 mg/kg													
	Rabbit 25 mg mild				Rabbit 85 mg/kg												
RYANIA		Rat 750 mg/kg			Rat 750 mg/kg												
		Mouse 650 mg/kg															
		Dog 150 mg/kg															
		Rabbit 650 mg/kg															
		Guinea Pig 25000 mg/kg															
				Human 143 mg/kg													

CHEMICAL
Propargite
Phosalone
Dialifor
Parathion
Subadilla
Dioxathion
Ryania
Dimethoate
Malathion
Phosphamidon
Fenvalerate
Rotenone
Demeton
Mevinphos
Cyhexatin
Azinphosmethyl

TABLE 7 - Summarization of the ranges of the toxic doses of dimethoate and chemical alternatives to dimethoate (cont.)

CHEMICAL	Irritant Effects (Eye)	TOXIC DOSE ORAL LD50	ORAL TDLo	ORAL LDLo	SKIN LD50	IMP LD50	IMP TDLo	SCU LD50	SCU LDLo	INV LD50	INV LDLo	INS LD50	INS LDLo	INS TDLo	INH LCLo	INH LCLo	UNK LD50
Propargite		1480 mg/kg			250 mg/kg												
Phosalone		175-600 mg/kg															
Dialifor		5-94 mg/kg		100 mg/kg TER	185 mg/kg												
Parathion		2-10 mg/kg	5.6 mg/kg CNS	.24 mg/kg	1.8-600 mg/kg	1.5-12 mg/kg	3500 mg/kg TER		30 mg/kg	3-17.4 mg/kg		3 mg/kg		6-7.2 mg/kg		10-14 mg/m³/2H	6 mg/kg
Subadilla		4000 mg/kg		50 mg/kg		7.5 mg/kg											
Dioxathion	25 mg mild	10-170 mg/kg		50 mg/kg	63-85 mg/kg	30-33 mg/kg									390-1398 mg/m³/1H		
Ryania		150-2500 mg/kg		143 mg/kg	750 mg/kg												
Dimethoate		7-400 mg/kg	50 mg/kg CAR	300 mg/kg	353-650 mg/kg	45-100 mg/kg		60-350 mg/kg		450 mg/kg				176 mg/kg CAR			250 mg/kg
Malathion		500-885 mg/kg		50-857 mg/kg	4100-4444 mg/kg	193-550 mg/kg		1000 mg/kg		50-184 mg/kg							500 mg/kg
Phosphamidon		9-17 mg/kg		5 mg/kg	125-267 mg/kg			26 mg/kg		6 mg/kg							
Formetanate		13-21.5 mg/kg			10.2 mg/kg												
Rotenone		50-350 mg/kg		50 mg/kg		2.8 mg/kg	91 mg/kg NEO										
Demeton		1.7-9 mg/kg		.24 mg/kg	1.8-24 mg/kg	3-4 mg/kg	10 mg/kg TER			1.7-3.9 mg/kg		3.6-3.9 mg/kg	3 mg/kg				
Nevinphos		3-7.5 mg/kg	.69 mg/kg PNS	5 mg/kg	4-4.7 mg/kg	.45-3 mg/kg		1.18-1.28		.68 mg/kg					14 PPM/1H		
Cyhexatin		190-780 mg/kg		150 mg/kg		13 mg/kg											
Azinphosmethyl		8-277 mg/kg		5 mg/kg	65-220 mg/kg	4 mg/kg				7.5 mg/kg	8 mg/kg				69 mg/m³/1H		15 mg/kg

The potential for exposure to the alternatives to dimethoate is an important factor in evaluating the risk from the alternatives relative to the risk from dimethoate. The Agency concludes, in a similar fashion to the conclusion in Appendix C of the Chlorobenzilate Position Document 2/3 on alternatives to chlorobenzilate's air blast use on critus, that: (1) regardless of the pesticide used in the citrus air blast equipment, the dermal and inhalation exposure would be assumed to be similar and (2) unless the Agency had dermal penetration data to indicate otherwise, the dermal dose of these alternatives would be assumed to be similar.

The major alternatives to dimethoate use on citrus, pome fruits, and pecans are:

(1) *Citrus.* formetanate, malathion, phosphamidon, demeton, and mevinphos. None of these pesticides have identifiable adverse chronic or delayed toxic effects, although a complete data base is lacking for many of these compounds.

(2) *Pome fruit.* azinphosmethyl, cyhexatin, propargite, and demeton. Available data indicates that, with the exception of azinphosmethyl which is under review, these pesticides do not appear more hazardous than dimethoate.

Azinphosmethyl is more acutely toxic than dimethoate and, based on a recent National Cancer Institute study, may pose a carcinogenic risk. Moreover, azinphosmethyl is a restricted use pesticide and can only be used by trained pesticide applicators.

(3) *Pecans.* Phosalone and dialifor. Phosalone is slightly more acutely toxic than dimethoate. Agency records indicate that phosalone has been tested for oncogenicity, delayed neurotoxicity, reproductive and teratogenic effects with negative results.

Dialifor is more acutely toxic than dimethoate and has under gone the same tests as phosalone with negative results. The vast majority of toxicity data supporting dialifor, however, was carried out at Industrial Bio-Test and these data have not been validated. Therefore, conclusions concerning the reliability of these data cannot be made at this time.

Although the validity of the data concerning dialifor is in question, available data indicate that these major alternatives to dimethoate for use on citrus, pome fruit, and pecans pose at least as great a hazard as dimethoate.

Since a complete data base is lacking for many of the alternative compounds and test data for others has not been validated, the Agency cannot determine whether the risk posed by alternative chemicals will be greater than that posed by dimethoate. However, one of the factors which has led the Agency to reconsider its PD 2/3 decision to cancel the air blast use is the possibility that farmers who own air blast equipment may switch to alternative compounds which are at least as hazardous as dimethoate.

B. Comments Relating to Benefits

1. *Summary of the Agency's Benefit Analysis in PD 2/3.* In assessing the benefits of the continued use of dimethoate, the Agency evaluated the economic, social, and environmental effects which would result should any or all uses of the pesticide be cancelled. The benefits of continued use were weighed against the attendant risks.

The PD 2/3 benefit analysis included a quantitative assessment of the impact of a variety of possible EPA regulatory actions on the cost of production, and the potential loss in farm income. Consumer impacts were evaluated qualitatively. The data which provided the basis for the benefit analysis were derived from information supplied by American Cyanamid, the U.S. Department of Agriculture, and other interested parties.

In Position Document 2/3, the Agency estimated annual dimethoate use at 2.8 million pounds A.I. (active ingredient) applied to about 4.7 million agricultural acres. The benefit analysis provided estimates of annual use and economic impacts of a potential cancellation action for the following classes of use sites: grains, field crops, fruits and nuts, vegetables, and other use sites.

Since comments received on the benefit analysis in Position Document 2/3 only addressed the use and benefits of dimethoate on fruits and nuts, this document will only summarize the Agency's benefit analysis for those use sites.

Dimethoate use on fruit and nut crops (apples, pears, citrus, grapes, and pecans) accounted for about 839,000 pounds AI applied to about 533,000 acres. The percent of total U.S. acreages treated with dimethoate were 2.6 percent for apples, <1.0 percent for pears, 12.0 percent for citrus, and 17.0 percent for pecans. About 58 percent of the California grape acreage was treated with dimethoate.

For apples, pears, and pecans several effective alternatives for dimethoate are available; the efficacy and performance of alternatives for grapes and citrus are limited. If dimethoate were cancelled total estimated production cost increases for these crops are $89,700 for apples, at least $551,000 for citrus, $3.9–$10.7 million for grapes, and $745,800 for pecans. Since only minor amounts of dimethoate are used on pears, the cancellation of dimethoate for this use would have negligible effects upon total production costs.

Changes in the value of production would either be negligible or not expected for apples, pears, and pecans. Annual grape production losses in California, of $40,800 are expected from vine losses due to insects commonly referred to as sharp shooters. Significant adverse effects on the quantity and quality of citrus production are possible; however, data were not available to evaluate the economic magnitude of such effects.

Estimated decreased from incomes for apples and pecans are, respectively, about $90,000 and $745,800 (or $7.00 and $14.34 per impacted acre). For citrus, the farm loss could exceed $551,000, or at least $3.58 per impacted acre (significantly quality losses due to thrips damage could not be assessed with available data). The decreased farm income for impacted grape producers would be $3.94–$10.74 million, or $12.55–$34.22 per acre; total insecticide use would increase. Farm income effects for all pear producers would be negligible; income effects on an impacted acre basis could not be estimated.

Even though significant economic impacts would be experienced by some U.S. fruit and nut producers (e.g., $3.94–$10.74 million for grape growers, $745,800 for pecan growers, etc.), consumer impacts are not expected for pears and apples due to the small proportion of the total U.S. production affected. Price increases may occur for pecan, citrus and grape products; but these increases are qualitatively not expected to be of major significance. Consumer impacts could not be quantitatively estimated due to the lack of data.

2. *Summary and Analysis of Comments Received in PD 2/3—a. Air Blast Application of Dimethoate for Citrus, Pome Fruit, and Pecans—i. Comments on the Need for and Extent of Air Blast Application for Citrus, Pome Fruit, and Pecans.* Several commenters addressed the use and benefits of air blast application of dimethoate on citrus, pome fruit, and pecans as follows:

The College of Agriculture of the University of Arizona [5(30000/16c)] commented that most (90%) of the applications of dimethoate on citrus are by air blast ground spraying and many new sprayers were purchased in 1978 and 1979. Aerial application, continued the commenter, does not provide

adequate canopy penetration, requiring a second aerial application a few days later, thus doubling costs and the amount of insecticide used as well as increasing exposure.

The California Citrus Quality Council [9(30000/16c)] indicated that air blast application of dimethoate is the predominant application method in California for control of aphids and citrus thrips.

The University of California Extension Service at Davis [8(30000/16c)] submitted extensive comments on the need for and extent of use of dimethoate and of air blast equipment for citrus. They estimated that in the San Joaquin Valley, 70% of first applications for trip control on citrus are dimethoate applied with air blast equipment. This commentor further stated that air blast equipment is used almost exclusively in the treatment of apples, pears, and other fruit and nut crops in California. Note was made that the pear and apple crops use much less dimethoate than the citrus crops.

The University of California at Davis also stated that air blast equipment in many cases is preferred over aerial application and is steadily replacing fixed and even oscillating boom sprayers for fruit and nut tree crops. The reasons for preferring air blast equipment include speedier application times which enables better timing of applications, lower volumes while maintaining efficacy, lesser amounts of active ingredient, lower application costs, and better coverage.

The Cooperative Extension Service of the University of Georgia [1(30000/16c)] indicated that "virtually all pesticide applications to [pome fruit in Georgia] are made with air blast sprayers." The Georgia Extension Service in Tifton, Georgia [1A(30000/16c)], also emphasized that the prohibition of dimethoate air blast applications would be the same as cancellation of the chemical for pome fruits and pecans in Georgia.

William R. Gale [3(30000/16c)] indicated that 98% of the commercial use of dimethoate on pome fruits is by air blast equipment.

Oregon State University Extension Service [4(30000/16c)] commented that "practically all commercial applications of pesticides in apple orchards, including dimethoate, are made by air blast sprayer." Prohibiting the use of dimethoate by air blast equipment would virtually eliminate its commercial use in this area.

The Hood River Grower-Shipper Association [6(30000/16c)] repeated the concerns of the Oregon State Extension Service.

The College of Agriculture of the University of Idaho [10(30000/16c)] indicated that "a relatively small percentage of Idaho apple and pear acreage is treated with dimethoate, since insecticides which do not reduce predator mite populations are usually preferred." However, they stated that virtually all pesticide application in Idaho commercial orchards is by air blast equipment. They also discussed alternate application methods, including aerial, hand gun spraying, oscillating boom sprayers, and overhead sprinklers, and concluded that "air blast application has definite advantages in efficacy, economy, and, in some instances, safety."

The Cooperative Extension Service of Washington State University [11(30000/16c)] commented that virtually all applications of dimethoate on apples in central Washington is by air blast equipment. Prohibiting the use of dimethoate in air blast equipment would virtually eliminate the use of the chemical on apples in central Washington.

ii. *The Agency's PD 4 Response.* None of the comments provided specific new information that causes the Agency to revise its original estimates on the economic benefits of dimethoate or the economic impact of cancelling dimethoate use on citrus, pome fruit, and pecans. The Agency was unable to estimate the quality or yield losses due to a lack of necessary data. The $551,000 economic impact on citrus growers, estimated in PD 2/3, is an increase in costs. Output effects could not be measured. Therefore the Agency's original estimate of the economic benefits of dimethoate use on citrus, pome fruit, and pecans remains unchanged. The comments do emphasize, however, the extensive use of air blast application on these crops, and the Agency agrees with the commenters that air blast appears to be the predominant mode of application of dimethoate for the control of certain insect pests on these crops.

The University of Arizona argued that aerial application to citrus requires a second application compared to air blast. From this argument one would presume that air blast only requires a single application. The University of California however, estimated "that in the San Joaquin Valley, 70% of the first applications of dimethoate for thrips control on citrus are applied with air blast equipment." This statement would lead one to believe that a second application is required, at least in the San Joaquin Valley. The Agency re-reviewed the information in the USDA/EPA Assessment Team Report on Dimethoate. A summary of the number of applications of dimethoate to citrus by aerial and ground application indicates that on an average 1 to 2 applications of the pesticide, whether applied by ground equipment or by aerial application, are made to citrus crops.

b. *Citrus—i. Comments on Air Blast Application of Dimethoate for Control of Aphids and Citrus Thrips.* The College of Agriculture of the University of Arizona [5(3000/16c)] commented that dimethoate use in Arizona is almost exclusively confined to citrus, some for the control of aphids, but most for citrus thrips. The commenter stated that 90% of the applications of dimethoate are by air blast ground spraying. Aerial application, continued the commenter, does not provide adequate canopy penetration, requiring a second aerial application a few days later, thus doubling cost and the amount of insecticide used as well as increasing exposure.

ii. *The Agency's PD 4 Response.* The Agency agrees with the commenter that ground application of dimethoate, whether it be boom sprayer or air blast sprayer, does tend to give better pentration of the canopy of citrus trees than does aerial application. The Agency also agrees that for stem feeding pests, such as mites and scale insects, applications that penetrate the canopy are more effective. However, where the pest is a peripheral feeder, such as terminal feeding aphids or thrips, aerial applications can be used and are used when conditions do not permit utilizing air blast equipment.

Thus, this comment provides no specific new information that causes the Agency to revise its original estimates on the economic benefits of dimethoate use on citrus.

c. *Pome Fruits—i. Comments on the Use of Dimethoate for Control of Rosy Apple Aphids.* William R. Gale [3(30000/16c)] commnted that the states of Oregon and Washington need dimethoate for control of rosy apple aphids for occasions when other insecticides will not work.

Oregon State University Extension Service [4(30000/16c)] commented that:

> Insecticides for rosy apple aphid control in the spring are often mixed with fungicides for disease control. Tank mixing of water-dispersible powders with emulsifiable concentrates containing petroleum solvents often causes phytotoxicity to fruit and foliage. Dimethoate is the only systemic aphicide in a water-dispersible formulation which may be more safely applied as a tank mix with water-dispersible fungicides. Control of rosy apple aphid and woolly apple

aphid is often difficult due to the difficulty of contacting the insects. Rosy apple aphids distort and roll leaves and are protected from wetting in the rolled leaves, while woolly aphid aerial colonies secrete a cottony wax over their bodies which repels water sprays. In controlling these species, is is often necessary to use a systemic insecticide such as dimethoate applied thoroughly to the foliage by ground dispersal equipment. Dimethoate is needed as a necessary alternative in control of these pests in commercial apple orchards.

ii. *The Agency's PD 4 Response.* The Agency agrees with these commenters on the usefulness of dimethoate in controlling the rosy apple aphids. The Agency is not proposing to cancel the use of dimethoate on apples. Moreover, the Agency has decided not to pursue cancellation of air blast application at this time. The Agency will re-assess its decision on the air blast use when the results of exposure studies are received and evaluated.

iii. *Comments Regarding the Registration of Phosphamidon Having Been Withdrawn.* The Cooperative Extension Service of Washington State University [11(30000/16c)] forwarded comments from its Tree Fruit Research Center indicating the increased need for dimethoate on apples, since the registration of phosphamidon, a widely-used insecticide for aphids and white apple leafhopper, has been withdrawn.

iv. *The Agency's PD 4 Response.* The Agency does not have any information indicating that the registration of phosphamidon has been withdrawn. A check of the records indicates that phosphamidon is still registered with the Agency and would therefore be allowed for use.

d. *Pecans—i. Comments on the Impact of A Motor Increase in the Cost of Pecan Production.* The Cooperative Research Service of the University of Georgia at Athens [1(30000/16c)] and at Tifton [1A(30000/16c)] commented that "While the effects of cancellation might be negligible or slight on a nationwide basis (FR, p. 66560), a minor increase in the cost of production might mean the differences in whether or not some small pecan growers can economically manage their arthropod pests".

ii. *The Agency's PD 4 Response.* In PD 2/3 the Agency had estimated decreased farm income for pecans would be $14.34 per impacted acre if dimethoate were cancelled for use on pecans. However, the Agency's proposal was not to cancel the use of dimethoate but rather to prohibit one particular application method. Dimethoate would have still been available for use on pecans but by a mode of application other than air blast. In addition, phoselone and dialifor are available as alternatives to dimethoate. The use of dimethoate with an alternative mode of application or the substitution of the alternative compound would only result in a minor increase in the cost of production. Although this slight cost increase might have an impact on some small pecan growers, the Agency does not believe in general such an impact would be substantial at the user level.

C. Comments Relating to Regulatory Options

1. *Summary of the Agency's Regulatory Options in PD 2/3.* The development of the regulatory options designed to reduce the risks accompanying the use of dimethoate focused on means to reduce the level of human exposure to dimethoate. In addition to dietary exposure, individuals may be exposed to dimethoate before or during application. Before application, mixers and loaders may be exposed both dermally and via inhalation as the result of splashing, vaporization, or accidental spills; during application, pilots and flaggers involved in aerial application as well as ground applicators, may all be exposed both dermally and via inhalation.

The Agency considered each of these exposure situations, and identified several categories of regulatory options which include various methods of risk reduction. Those regulatory options considered were as follows:

(1) Continue registration of all uses without restriction.

(2) Continue registration of all uses without restriction but require additional oncogenicity, mutagenicity, and delayed neurotoxicity studies.

(3) Continue registration of all uses but (a) require additional oncogenicity, mutagenicity, and delayed neurotoxicity studies, and (b) amend the terms and conditions of certain registrations.

(4) Continue registration of all uses but (a) require additional oncogenicity, mutagenicity, and delayed neurotoxicity studies, (b) amend the terms and conditions of certain registrations, and (c) require comprehensive studies to determine the amount of exposure incurred during all air blast application situations.

(5) Continue the registration of most uses but (a) require additional oncogenicity, mutagenicity, and delayed neurotoxicity studies, (b) amend the terms and conditions of certain registrations, (c) require comprehensive studies to determine the amount of exposure incurred during all air blast situations, and (d) cancel the use of all dust formulations.

(6) Continue registration of most uses by (a) require additional oncogenicity, mutagenicity, and delayed neurotoxicity studies, (b) amend the terms and conditions of certain registrations, (c) specifically prohibit the use of air blast equipment when treating citrus, pecans, and pome fruit, (d) require comprehensive studies to determine the amount of exposure incurred during all air blast situations not covered in (c) above, (e) specifically warn female workers involved in air blast application practices of the potential teratogenic effects of dimethoate, and (f) cancel the use of all dust formulations.

(7) Cancel all uses.

In PD 2/3 the Agency propose adoption and implementation of regulatory option number 6 above. This option was selected because it represented the best available course of action for reducing or eliminating applicator exposure and concurrent risk while maintaining a generally high level of benefits and for gathering additional toxicological data needed to better evaluate risk. In adopting this option the Agency proposed to take regulatory action in three general areas: 1) generation of additional data; 2) modifying the terms and conditions of registration for the uses of dimethoate; and 3) cancellation of selected high risk application practices and high risk formulations.

2. *Summary and Analysis of Comments Received in PD 2/3— a. Cancel Dust Formulations—i. Summary of the Agency's Conclusions in PD 2/3.* In Position Document 2/3 of the Agency concluded that the risk resulting from the use of dust formulations of dimethoate outweighed the benefits derived from the use of the dust formulations. Dimethoate in the form of a wettable powder is the choice alternative to the dust formulation. Because the wettable powder formulation results in lower applicator exposure, the total risk for the wettable powder formulation would be less than that of the dust formulation. The Agency, therefore, proposed eliminating the use of all dust formulations of dimethoate. The dust formulations are intra-state labels for which applications for Federal Registration are pending. Intra-state applicants who have previously submitted a Notice of Application for Federal Registration are permitted to sell and distribute affected pesticide products solely in intra-state commerce, pending a final decision concerning Federal Registration.

ii. *Comments on the Elimination of Dust Formulations.* The U.S. Department of Agriculture and the Scientific Advisory Panel agreed, in their comments, with the Agency's decision to eliminate the registration for dust

formulations of dimethoate in order to reduce applicator risk.

iii. *The Agency's PD 4 Response.* The Agency will proceed with its proposed elimination of the use of all dust formulations of dimethoate.

b. *Require Protective Clothing and Equipment—i. Summary of the Agency's Conclusion in PD 2/3.* In Position Document 2/3, the Agency concluded that potential mutagenic and reproductive/teratogenic risks are too high relative to the benefits associated with the use of dimethoate. However, the Agency also concluded that the benefits of dimethoate use would outweigh the risks, if specific changes in application practices were implemented to reduce dermal and respiratory exposure. The Agency, therefore, proposed the requirement of protective clothing for applicators of all dimethoate products and for all uses of dimethoate, and the requirement of respirators for pilots and mixer/loaders.

ii. *Comments on Requiring Protective Clothing for Applicators of All Dimethoate Products and All Uses.* The Agency received several comments relating to the recommendation to require protective clothing for all products and all uses.

The Department of Agriculture, in their comments supports the modification of labeling to include protective clothing and equipment for applicators.

American Cyanamid [7(30000/16c)] commented that a significant benefit in reducing exposure can be achieved through the use of protective clothing and for certain uses is preferred. For certain uses, however, American Cyanamid contended that this requirement is an extra precaution that will not significantly increase the margin of safety. The commenter cites CYGON* 2E systemic insecticide formulations for fly vector control and insect control on ornamental plants as an example. American Cyanamid stated that the margin of safety as calculated by the EPA, for the fly vector control use is 1,474 and that this is achieved without discomforting the applicator with rubber gloves, boots, etc. Protective clothing for this use raises the margin of safety to 3,111. American Cyanamid stated that although protective clothing is advisable, its requirement in this case is arbitrary.

American Cyanamid also stated that for other uses simple devices such as a canvas covering for the applicator area on the rig may be preferable to protective clothing and that in excessively hot temperatures applicators would more likely exercise this safety precaution than they would the use of protective clothing.

The Nebraska Aviation Trades Association [2(30000/16c)] stated that the required protective clothing would hinder the pilots in flying the aircraft, and that the use of closed mixing and loading equipment would make this requirement unnecessary for applicators.

The California Citrus Quality Council [9(30000/16c)] also stated that the use of closed mixing and loading equipment would obviate the need for protective clothing, and that drivers are exposed only to the diluted spray material and are, in addition, protected by cab enclosures or other protective provisions.

iii. *The Agency's PD 4 Response.* In Position Document 2/3 the Agency calculated the MOS for the various uses of dimethoate from the estimated exposure for those uses. The assumptions which were made in order to arrive at the exposure estimates, and thus, to calculate the MOS are stated in Position Document 2/3. Table 8 shows the Agency's calculations of applicator exposure and margins of safety for various uses of dimethoate under current practices (no protective clothing and equipment) and with protective clothing and equipment.

TABLE 8 - Applicator exposure and margins of safety for various users of dimethoate excluding dietary (oral) exposure[1/]

CROP	TYPE OF SPRAYING	SUBGROUP	COMBINED DERMAL AND INHALATION EXPOSURE	MOS UNDER CURRENT PRACTICES[2/]	EXPOSURE (DERMAL AND INHALATION WHEN PROTECTIVE CLOTHING IS REQUIRED)	MOS WHEN PROTECTIVE CLOTHING IS REQUIRED	TOTAL EXPOSURE WHEN PROTECTIVE CLOTHING AND RESPIRATORS ARE REQUIRED	MOS WHEN PROTECTIVE CLOTHING AND RESPIRATORS ARE REQUIRED
corn	air	pilots	0.0083	337	0.00806	347	0.00086	3,256
corn	air	flaggers	0.008	350				
corn	air	mixers/loaders	0.0063	444	0.0043	651	0.00088	3,182
ornamental	ground	commerical high concentraction compressed air	0.00012	23,333	0.000037	75,676	0.00002	140,000
ornamental	ground	home garden high concentration	0.000152	18,421	0.000045	62,222	0.00003	93,330
grape	ground	Boom highest conc.	0.0012	2,333	0.0004	7,000	0.00023	12,174
grape	ground	Highest conc. (custom) Copplestone model	0.0207	135	0.006	467	0.0038	737
grape	ground	dust	0.130	22[3/]	0.130	22	0.013	215
cotton	air	pilots	0.0017	1,647	0.0016	1,759	0.00017	16,471
cotton	air	mixers/loaders	0.0095	295	0.00065	4,308	0.00014	20,000
cotton	ground	applicators	0.0078	359	0.0024	1,167	0.00145	1,931
cotton	ground	mixers/loaders	0.00033	8,485	0.00011	25,454	0.00007	40,000
citrus	air	pilots, ground crews, mixers/loaders	same as corn					
citrus	ground (air blast model)	applicators[4/] mixers/loaders	0.39	7	0.078	36	0.071	39
sorghum	air	same as corn						
veg. fields (tomato, broccoli)	air	pilots	0.013	215	0.0128	219	0.014	2,000
		flaggers	0.013	215				
		mixers/loaders	0.0062	452	0.0043	651	0.00088	3,182
veg. (Fla)	ground	applicators	0.00005	56,000	0.00001	280,000	0.000007	400,000
vector control (house fly)	ground	applicators	0.0019	1,474	0.0009	3,111	0.00032	8,750
forest pine (seed orchard)	ground	applicators	0.0008	3,500	0.00025	11,200	0.00014	20,000
pecan	ground (air blast)	applicators mixers/loaders	0.119	24	0.0252	111	0.0232	121
safflower	air	same as corn						
pome	ground (air blast model	commercial applicators including mixers/ loaders	0.242	12	0.0527	53	0.0485	58
pome	ground	hose sprayers	0.00017	16,471	0.00005	56,000	0.000032	87,500
soybean	air	same as corn						
wheat	air	same as corn						
tobacco high conc.	ground	applicators including mixers/ loaders	0.00042	6,667	0.00013	21,538	0.00008	35,000
alfalfa High conc.	ground	applicators including mixers/loaders	0.00052	538	0.00163	1,718	0.00097	2,887
veg. fields (lettuce)	ground	applicators	0.0002	14,000	0.00007	40,000	0.000043	65,116
		mixers/loaders	0.00026	10,769	0.00009	31,111	0.000054	51,852

1/ This table was Table VII in Position Document 2/3.

2/ Based on a 2.8 mg/kg NOEL (Ebers unpublished).

3/ Exposure is via inhalation.

4/ Applicator is also mixer/loader.

	MOS WHEN PROTECTIVE CLOTHING AND RESPIRATORS ARE REQUIRED
	3,234
	3,182
	140,000
	93,320
	12,174
	737
	215
	16,471
	20,000
	1,931
	40,000
	39
	2,000
	3,182
	400,000
	8,750
	20,000
	121
	58
	87,500
	35,000
	2,887
	65,116
	51,852

From Table 8 we can see that there are certain use situations where, based on these exposure estimates, protective clothing would not significantly increase the estimated margin of safety. The Agency would therefore tend to agree, to a certain extent, with American Cyanamid's comments that for certain uses the MOS would not substantially increase with protective clothing. However, it would not only be impractical but nearly impossible to develop labeling to show all the various use areas and/or conditions where protective clothing would and would not significantly increase the margin of safety for the applicator.

With regard to American Cyanamid's contention that simple devices such as canvas coverings for the applicator area on the rig are preferred by applicators in excessively hot weather, the Agency would also tend to agree with American Cyanamid. However, in the absence of field data measuring the efficacy of such devices in reducing exposure to applicators, the Agency will proceed with requiring protective clothing, but encourages the development of field data for such devices. The Agency would be receptive to modifying labeling if data showing the risk reducing potential of this method are provided.

Therefore, while it agrees to some extent with American Cyanamid, the Agency will require the use of protective clothing for all uses. However, pilots will not be required to wear protective clothing while engaging in flying the aircraft. The Agency has re-evaluated the requirements for protective equipment and clothing for aircraft pilots and has decided that protective clothing and equipment would in itself be a hazard to pilots engaged in flying the aircraft. Pilots will not therefore be required to wear protective clothing and equipment while flying the aircraft, however the Agency encourages the use of aircraft equipped with positive ventilation equipment. Pilots involved in the mixing-loading operation will be required to wear protective clothing and equipment during that operation.

With regard to the comments of the California Citrus Quality Council on mixer/loader exposure and protective clothing, the Agency does not feel that the efficacy of closed mixing and loading systems have thus far demonstrated that they would obviate the need for protective clothing. Recent industry submissions on closed systems suggest that protective clothing may not be necessary, however, field monitoring studies need to be carried out to determine the level of exposure to applicators using this type of equipment. In the meantime the Agency will require protective clothing even for closed mixed and loading systems.

c. *Require Automatic Flagging—i. Summary of the Agency's Conclusion in PD 2/3.* In Position Document 2/3., the Agency determined that the potential risks to human flaggers are too high relative to the benefits associated with the use of dimethoate. Therefore, the Agency proposed to eliminate the risk by requiring the use of automatic flagging equipment for all aerial applications situations.

ii. *Comments Opposing the Use of Automatic Flagging Devices.* The Scientific Advisory Panel (SAP), in their comments, objected to the proposed prohibition of the conventional use of human flaggers to mark swaths in aerial spraying and the associated requirements for use of automatic flagging devices. The Panel stated that insufficient research has been accomplished to indicate that the technique would be effective regulatory procedure to reduce risks to man and the environment. The Panel recommended that the Agency determine the limitations of automatic flagging in various agricultural situations before making the use of these devices an absolute requirement. The Panel also encouraged the Agency to promote research on flagging devices to expedite their development and availability to farmers.

The Department of Agriculture suggested, in their formal comments, that the Agency not prohibit the use of human flaggers, but require protective clothing and equipment to minimize any exposure the flaggers may experience. The Department of Agriculture also recommended additional studies of actual exposure of all workers during the aerial application.

American Cyanamid [7(30000/16c)] suggested alternative labeling requiring human flaggers to use "proper flagging techniques to avoid exposure from drift." Cyanamid added that the use of automatic flag paper dispensers must be discontinued after the plants reached a height that makes it difficult to see the paper. They further urged the Agency to accept the analysis and comments presented by the National Agricultural Aviation Association at the SAP meeting regarding automatic flagging.

Mr. Harold Collins, Director of the National Agricultural Aviation Association made a presentation before the Scientific Advisory Panel on November 29, 1979, in which he addressed the recommendation that automatic flagging equipment be used to the exclusion of ground flaggers.

Mr. Collins stated that automatic flagging equipment is expensive, and that some types can cost as much as $50,000 per aircraft. There are less expensive flagging devices than the $50,000 device, but many of these become impractical or unusable later in a spray season. Mr. Collins further commented that the "ag" aircraft industry would find it inappropriate to even continue spraying dimethoate in some situations if they were required to go to equipment that is as expensive as $50,000.

Mr. Collins questioned the necessity to eliminate the possibility of flagging since there are methods of human flagging which are acceptable which should minimize the potential exposure.

Mr. Collins stated that there are circumstances that make automatic flagging systems impractical. For example, a system which uses paper is designed to mark the last or the edge of the last spray run (or the end of a spray run midfield) becomes impractical as the crop matures and obscures the paper from view. Automatic flagging is not necessarily adequate until you get into equipment like the electronic equipment which is accurate to about five meters at the current time. However, these electronic devices are a new and innovative aid, and they are very expensive.

Mr. Collins commented that if it was found that protective clothing was required with dimethoate use, he did not believe that the National Agricultural Aviation Association would object to it.

The University of California (8(30000/16c)) commented that the technology for efficient mechanical flagging or marking is not well-advanced. They stated that proper protective clothing and equipment might reduce the exposure to persons serving as flaggers for aerial application.

The California Citrus Quality Council (9(30000/16c)) commented that "practical procedures for automatic flagging have not been adequately developed and have not been generally adopted by licensed pilots and their organizations. . . . (P)rovision should be made for the continued use of workers as flaggers, since, properly positioned and protected, they are not at untenable risk in this occupational exposure."

iii. *The Agency's PD 4 Response.* The Agency has decided not to prohibit the use of human flaggers during aerial application of dimethoate, but to encourage the use of automatic devices, when feasible. When human flaggers are used, precautions, such as the wearing of protective clothing, will be required to minimize the exposure of applicators to dimethoate.

d. *Prohibit Air Blast Application on Citrus, Pome Fruits, and Pecans—i. Summary of the Agency's Conclusions in PD 2/3.* In Position Document 2/3, the Agency concluded, in the case of the citrus, pome fruits, and pecan uses of dimethoate, that the use of available protective clothing and equipment will not reduce the risk experienced by applicators using air blast equipment to an acceptable level. The Agency, therefore, proposed the prohibition of air blast application equipment when treating citrus, pome fruits, and pecans with dimethoate.

In Position Document 2/3, the Agency projected that if air blast application of dimethoate on citrus were cancelled, some dimethoate users would use aerial application, a few might switch to other ground application techniques, and some would use alternate pesticide. Because of a lack of data it was not possible to determine the relative adoption ratios of these three strategies and their associated economic impacts. Thus, the impact of restricting air blast application was estimated to range from zero impact to the same impact as cancellation (more than $551,000/year). Yield and quality losses were not considered in the $551,000 impact.

ii. *Comments on Exposure with of Air Blast Application for Citus, Pome Fruit, and Pecans Compared to Alternative Application Techniques Compared to Alternative Application Techniques.* The Agency received comments on this proposed regulatory action from the Scientific Advisory Panel, U.S. Department of Agriculture, University of Georgia [1(30000/16c)], William R. Gale of Oregon [3(30000/16c)], Oregon State University [4(30000/16c)], University of Arizona [5(30000/16c)], Hood River Grower-Shipper Association [6(30000/16c)], American Cyanamid [7(30000/16c)], University of California [8(30000/16c)], California Citrus Quality Council [9(30000/16c)], University of Idaho [10(30000/16c)], and Washington State University [11(30000/16c)].

The California Citrus Quality Council [9(30000/16c)] commented that the definition of air blast equipment, provided in the Federal Register, is not adequate or useful, since the exposure of the applicator is central to the issue, not the operating pressure and spray volume. A functional definition proposed by the Council characterizes air blast equipment for tree crops as that application method which uses a directionalized air stream with velocities of 50 miles per hour (m.p.h.) or greater to move entrained spray droplets towards a target area.

The University of California at Davis [8(30000/16c)] also proposed a definition of air blast equipment based on velocity of the air stream, not on pressure or volume.

The California Citrus Quality Council [9(30000/16c)] further commented that air blast applicators with a variety of conditions of pressure, velocity, and volume do not invariably provide greater applicator exposure than application with manual equipment or with stationary or oscillating booms. Variations in exposure relate more to ground speeds, the direction, magnitude, and constancy of natural air movement of the equipment, humidity/temperature factors, etc., than to the type of equipment. The Council predicted, in fact, that the greatest potential for exposure was in manual ground spraying and that oscillating booms with their recurrent forward sweep of the spray pattern, slower ground speeds, and broader range of droplet size have greater potential for exposure than air blast units which involve faster ground speeds and more forcibly project the spray into the target area at a set angle of 90 degrees in relation to the movement of the equipment. Applicator exposure could be minimized, according to the Council, by using simple canopies or cab enclosures.

Finally, the California Citrus Quality Council supported applicator exposure studies underway in California and indicated that, unless such exposure studies show the exposure to be substantial and not reducible by simple canopies or cab enclosures, that the citrus growers would protest the prohibition of air blast application of dimethoate.

iii. *The Agency's PD 4 Response.* All of the comments received by the Agency on this issue disagreed with the recommended option to cancel the air blast use of dimethoate for citrus, pome fruits, and pecans. However, none of these comments contained any new information regarding application exposure resulting from this use of dimethoate. Many of the comments recommended that field monitoring studies be carried out in order to refine the Agency's exposure estimates.

The Agency agrees that additional data is necessary to refine the Agency's exposure estimates for the air blast uses of dimethoate. In the absence of appropriate data to adequately compare applicator exposure from the use of air blast equipment with the exposure resulting from other application methods, such as the oscillating boom sprayers, the Agency believes that the cancellation of the air blast use is premature. Hence, the Agency has reconsidered its position and will not cancel the airblast use of dimethoate at this time.

This conclusion is supported by information indicating that a large number of farmers prefer the use of air blast equipment, and own such equipment. Hence, they are likely to use substitute pesticides which may be at least as hazardous as dimethoate with this air blast equipment if dimethoate is not available. The Agency also recognized that dimethoate is a valuable pesticide component of integrated pest management (IPM) programs for citrus insect pests and that such programs are almost totally based around the use of air blast equipment to apply reduced dosages and selective coverage. In view of these considerations, the Agency will retain the air blast use at this time. The Agency will, however, require the submission of exposure information in accordance with the protocols and timetables set forth in Chapter III of this document, and will use this data, in conjunction with any other available information, to re-assess the exposure potential of the air blast method and the attendant risks posed to humans.

e. *Warning Statement for Female Applicators—i. Summary of the Agency's Conclusion in PD 2/3.* In Position Document 2/3, the Agency stated its concern for women applicators applying dimethoate via air blast equipment during pregnancy. The Agency proposed to require that all products containing dimethoate which can be or are intended to be used with air blast equipment must bear a statement on the label warning female workers that dimethoate causes birth defects in laboratory animals. The label warning proposed by the Agency reads as follows:

Warning to Female Workers (in 16 pt. Red lettering)

The United States Environmental Protection Agency has determined that dimethoate, an active chemical ingredient in this product, causes birth defects in laboratory animals. Exposure to this product during pregnancy should be avoided.

ii. *Comments on Requiring a More Direct Warning.* The Department of Agriculture suggested that a more direct warning such as "Pregnant women should avoid exposure", be used to alert female workers using air blast equipment of possible hazards resulting from exposure to dimethoate during pregnancy.

iii. *The Agency's PD 4 Response.* The label warning statement proposed by the Agency in PD 2/3 concludes with the statement: "Exposure to this product during pregnancy should be avoided". The Agency believes this statement is a

sufficiently direct warning, however the Agency has decided not to require this label modification.

iv. *Comments Urging the Agency to Withdraw the Requirement for a Warning Statement to Female Applicators.* American Cyanamid [7(30000/16c)] recommended that the Agency withdraw the requirement for a warning statement to female applicators. In the opinion of American Cyanamid, the requirement is not supported by the facts in Dr. Khera's paper and a warning statement describing other than acute hazards would represent a change in the Agency's policy. American Cyanamid also stated that the Science Advisory Panel rejected the teratology warning statements on labels.

v. *The Agency's PD 4 Response.* The Agency has decided to drop the requirement for a warning statement to female applicators. This decision was based on the Agency's conclusion that the available data on teratogenicity does not indicate that dimethoate poses a significant teratogenic risk. Therefore, because of the limited extent of our data at this time the Agency will not require a warning to female applicators.

D. *Comments Relating to Testing Requirements*

1. *Summary of the Agency's PD 2/3 Position.* In Position Document 2/3 the Agency identified several areas requiring additional testing and directed registrants to submit the data discussed below.

a. *Oncogenicity.* The Agency determined that available evidence for oncogenicity is suggestive and warrants further study. Therefore, the Agency directed registrants to conduct an oncogenicity bioassay using dimethoate in the same strain of mice and rats as that of the Gibel study. The Agency stated that this study shall be completed and submitted within three years of the Agency's final determination (Position Document 4) for dimethoate. The Agency further stated that protocols for this oncogenicity bioassay shall be submitted to the Agency within 90 days of receipt of the Agency's final Notice of Determination (PD 4) for dimethoate.

b. *Mutagenicity.* The Agency also determined that insufficient data exists upon which to base a mutagenicity risk assessment. The Agency concluded that additional testing is required. Therefore, the Agency directed registrants to provide adequate test data concerning dimethoate's ability to cause gene mutation in animal cells. The Agency stated that registrants shall also conduct a dominant lethal study in mice as well as studies designed to detect spindle effects which may result in numerical chromosomal aberrations. Protocols for these studies shall be submitted to the Agency within 90 days of receipt of the Agency's final Notice of Determination for dimethoate. Tests shall be completed and submitted within eighteen (18) months of receipt of the Agency's final Notice of Determination for dimethoate. The Agency also stated that further testing may be required based on the results of the studies discussed above in order to properly evaluate mutagenic potential and/or risk.

c. *Delayed Neurotoxicity.* The Agency determined that insufficient data are available to determine whether dimethoate can induce delayed neurotoxic effects. Therefore, the Agency directed registrants to conduct appropriate neurotoxicity testing in accordance with the final registration guidelines. Protocols for these studies shall be submitted to the Agency within 90 days of receipt of the Agency's final Notice of Deermination for dimethoate. These tests shall be completed and submitted within eighteen (18) months of receipt of the Agency's final Notice of Determination for dimethoate.

d. *Applicator Exposure Data.* The Agency determined that there is insufficient applicator exposure data concerning air blast application situations to determine whether there are sufficient margins of safety for reproductive/teratogenic effects. The Agency directed registrants to conduct appropriate field studies to determine worker exposure (dermal and inhalation) during application of dimethoate using air blast type application equipment. Registrants shall gather such data for each crop where air blast equipment is used or on crops deemed representative of such applicator exposure situations. Registrants shall submit proposed test protocols for gathering applicator exposure data to the Agency within 90 days of receipt of the Agency's final Notice of Determination for dimethoate and shall complete all such tests and submit all exposure data to the Agency within 18 months of receipt of the Agency's final Notice of Determination for dimethoate.

2. *Summary and Analysis of Comments Received on PD 2/3—a. Oncogenicity Testing—i. The Agency's Position on PD 2/3.* In Position Document 2/3, the Agency concluded that additional data were required concerning the oncogenic potential of dimethoate.

ii. *Comments Objecting to Additional Oncogenicity Testing.* The Scientific Advisory Panel (SAP), in its formal comments, objected to this additional testing requirement, stating that the negative NCI bioassay, flawed though it is, in conjunction with a lack of carcinogenicity of organic phosphate pesticides in general, makes further testing of dimethoate unnecessary.

American Cyanamid [7(30000/16c)] supported the SAP position against further oncogenicity testing.

iii. *The Agency's PD 4 Response.* The Agency's Cancer Assessment Group (CAG), in a recent review (Albert, R.E., 1980) of the SAP position, concluded that there is substantial evidence for the mutagenicity of dimethoate, coupled with suggestive evidence for carcinogenicity in the 1973 Gibel study done on Wistar rats. The NCI bioassay involved a different strain of rats, namely, the Osborne-Mendel rat. In addition, the evidence of hematopietic toxicity in the Wistar rat but not in the Osbourne-Mendel rat indicates the possibility of a different metabolic handling of dimethoate or target organ susceptability in the two strains.

Therefore, the Agency has decided to retain the requirement for an oncogenic study on the Wistar rat at the highest dose level used in the Gibel study of 30 mg/kg given by stomach gavage twice a week.

b. *Reproduction Testing—i. The Agency's Position of PD 2/3.* The Agency did not propose any additional testing for reproductive effects in Position Document 2/3.

ii. *Comments Indicating the Need for Additional Reproductive Studies.* The Scientific Advisory Panel, in its formal comments, indicated that additional reproduction studies are necessary to assess the effect of dimethoate on male reproduction. The Panel stated that it noted positive effects in two studies on reproduction implying the possibility of effects on males. Therefore, the SAP suggested that the Agency require a reproductive test to determine dose-response effects on females (e.g. prevalence of pregnancy, pre and post implantation loss, survival and growth of young, etc.) and on males (e.g. spermatogenesis, seminal vesicle size, etc.).

iii. *The Agency's PD 4 Response.* The Agency rejects the Scientific Advisory Panel's recommendation since American Cyanamid's multigeneration reproduction study has shown no adverse effects in males. The Agency will not require additional reproduction testing but will require an additional teratogenicity study on technical dimethoate using 2 species of laboratory animals in accordance with proposed guidelines (FR 43, No. 163, Tuesday, August 22, 1978).

c. *Mutagenicity Testing—i. The Agency's Position in PD 2/3.* In Position

Document 2/3, the Agency concluded that additional data were required concerning the mutagenic potential of dimethoate. The data required included data concerning dimethoate's ability to cause gene mutation in animal cells; a dominant lethal study in mice; and spindle effects studies.

ii. *Comments Requesting that the Spindle Effects Testing Requirement be Delected.* American Cyanamid [7(30000/16c)] requested that the spindle effects testing requirment be deleted in the absence of guidelines.

iii. *The Agency's PD 4 Response.* The Agency rejects American Cyanamid's request to delete the requirement for spindle effects testing and will require these tests. The Agency is currently developing a policy for spindle effects and until that policy is available will provide device and evaluate testing procedures for spindle effects.

iv. *Comments Urging the Use of Mutagenicity Tests Presently Proposed in the Pesticide Registration Guidelines.* American Cyanamid suggested that dimethoate be evaluated using mutagenicity tests presently proposed in the pesticide registration guidelines.

v. *The Agency's PD 4 Response.* The following studies represent only the minimum requirements for data on the potential heritable effects of Dimethoate. This is a subset of the studies proposed in the pesticide registration guidelines.

(1) A mammalian *in vitro* point mutation test.

(2) A sensitive sub-mammalian point mutation test. (Bacteria, fungi, insect).

(3) A primary DNA damage test (i.e., sister chromatid exchange or unscheduled DNA synthesis).

(4) A mammalian *in vitro* cytogenics test. If this suggests a positive result, a dominant lethal or heritable translocation test may be required.

After results from these test systems and other toxicology disciplines have been considered, additional testing may be required to further characterize or quantify the potential genetic risks.

Although the Agency's mutagenic testing requirements are not final, the standards for these tests should be based on the principles set forth therein (FR 43, NO. 163, Tuesday, August 22, 1978). Protocols and choices of test systems should be accompanied by a scientific rationale. Substitutions of test systems for those listed above will be considered after discussion with the Agency.

The requirements should be considered an interim guide and not final Agency policy. However, the Agency does considered the above testing scheme to be a reasonable minimum requirement.

The Agency has established the mutagenic potential of dimethoate by means of the screening studies listed above and is now requiring additional testing to quantify risk to humans. The studies being required at this time are: 1) gene mutation study in mammalian system; 2) a dominant lethal study in mice; and 3) studies designed to detect spinde effects, i.e., an *in vivo* bone marrow cytogenetic study.

vi. *Comments Recommending that Mutagenic Assays be Conducted in Accordance with the SAP Recommendation on the Gudielines.* The Scientific Advisory Panel (SAP), in its formal comments, recommended that mutagenic assays be conducted in accordance with their recommendations on the guidelines, previously submitted to the Agency (May 31, 1978; Review of proposed Rule Making on Subpart F, Guidelines for Registering Pesticides in the United States).

vii. *The Agency's PD 4 Response.* The Agency recognizes the fact that the final form of the guidelines has not been established yet. The Agency feels that, since the published reports on dimethoate, while not completely validated, have pointed up areas in which dimethoate could be a more potent mutagen than now indicated, the testing can be directed at specific aspects of mutagenicity.

The Agency is currently reviewing the SAP's recommendations on the Guidelines. Until the completion of this review, the mutagenic assays should be conducted in accordance with the Agency's proposed testing Guidelines where appropriate or by procedures recommended by consultation with the Agency.

viii. *Comments Suggesting that the SAP Recommendations on Spindle Effects be Followed.* The SAP suggested that the Agency follow their previously submitted recommendations on spindle effects (November 30, 1979; Review of FIFRA Section 6(6)(7) action on Benomyl and Thiophanate-methyl).

ix. *The Agency's PD 4 Response.* The Agency has recently completed guidelines on mutagenicity risk assessment. Those guidelines were published in the **Federal Register** on November 13, 1980 (45 FR 74984). This document has considered earlier SAP comments in reaching a position on mutagenicity risk assessment (including spindle effects).

x. *Comments on Using Bone Marrow Derived Cells in Spindle Effect Assays.* The SAP recommended using bone marrow derived cells in spindle effect assays.

xi. *The Agency's PD 4 Response.* The Agency agrees that an *in vivo* bone marrow cytogenetic analysis may be of assistance, particularly since one of the unvalidated papers (Bhunya and Behera, 1975) indicated that dimethoate may affect chromosomes in bone marrow cells.

d. *Delayed-Neurotoxicity Testing—i. The Agency's Position in PD 2/3.* In Position Document 2/3, the Agency concluded that additional data were required concerning the potential of dimethoate to produce delayed neurotoxic effects.

ii. *Comments Urging Re-evalutation of the Requirement for Another Delayed Neurotoxicity Study.* The Scientific Advisory Panel (SAP), in its formal comments, recommended that the Agency re-evaluate the requirement for another delayed neurotoxicity study in light of a study by T.B. Gaines (1969).

iii. *The Agency's PD 4 Response.* The Agency has re-evaluated the American Cyanamid acute neurotoxicity study and the Gaines study. Since the dose in the American Cyanamid study was administered in feed instead of by gavage, the dose may not have been sufficiently large to determine dimethoate's neurotoxic potential.

The Gaines study, while indicating no neurotoxic effects of dimethoate, did not give important details, such as dosage used, number of animals used, and whether or not histopathology on the nerves was carried out. After reevaluating both the American Cyanamid (1965b) studies and the Gaines (1969) study the Agency concludes that not enough data is available in these studies to make a hazard determination.

Therefore, the Agency has decided to retain the requirement that a delayed neurotoxicity study be performed in accordance with EPA's proposed pesticide registration guidelines (FR 43, No. 163, Tuesday, August 22, 1978).

e. *Applicator Exposure Studies—i. The Agency's Position in PD 2/3.* In Position Document 2/3, the Agency concluded that additional exposure studies were needed to determine worker dermal and inhalation exposure during the application of dimethoate with air blast equipment.

ii. *Comments on Additional Applicator Exposure Studies.* No comments were received which objected to additional exposure studies of air blast applications. In fact several commenters, including SAP, Arizona [5(30000/16c)], California [8(30000/16c)], California Citrus Quality Council [9(30000/16c)], and Idaho [10(30000/16c)], recommended that the Agency support and consider research planned

by the University of California on applicator exposure during air blast use on citrus.

iii. *The Agency PD 4 Response.* Additional field monitoring studies will be required to determine the exposure to applicators during application of dimethoate with air blast equipment and to determine the exposure to flaggers wearing protective clothing during aerial application.

Registrants are directed to conduct appropriate field studies to determine worker exposure (dermal and inhalation) during application of dimethoate using air blast type application equipment and flagger exposure (dermal and inhalation) during aerial application. Registrants shall gather such data for each crop where air blast equipment is used or on crops deemed representative of such applicator exposure situations, and also for aerial application. Registrants shall submit proposed test protocols for gathering applicator exposure data to the Agency within 90 days of receipt of the Agency 3(c)(2)(B) letter concerning dimethoate and shall complete all such tests and submit all exposure data to the Agency within eighteen (18) months of receipt of the Agency's 3(c)(2)(B) letter for dimethoate. The Agency's 3(c)(2)(B) letter setting forth additional testing requirements for dimethoate will be issued shortly after publication of the Agency's final Notice of Determination for dimethoate.

The exposure study currently underway at the University of California (Riverside) may satisfy part of this requirement for air blast equipment. Therefore, data from that study should be submitted to the Agency as soon as possible following the conclusions of the study.

III. Conclusions

After reviewing comments from the Secretary of Agriculture, the Scientific Advisory Panel, and others who commented on EPA's findings and recommendations concerning dimethoate as set forth in PD 2/3, the Agency has decided to implement the Proposed Regulatory Option as put forward in PD 2/3 and restated in Chapter I of this document with the following modifications:

(1) The Agency will not cancel the air blast application of dimethoate on citrus, pome fruits, and pecans. However, the Agency will require an exposure study of dimethoate applicators using contemporary air blast equipment to allow a better assessment, than is currently available, of the applicators' potential risk for dimethoate in air blast use situations. After the results from the exposure studies become available, the Agency will reevaluate air blast application of dimethoate.

(2) The Agency will not require a label change to require automatic flagging. Instead the following label statement will be required on all products intended for aerial application:

Automatic flagging devices should be used whenever feasible.

If Human Flaggers are employed they must wear the protective clothing and respirator specified on this label.

In addition, the Agency will review an exposure study of flaggers wearing protective clothing during the aerial application of dimethoate to allow a better assessment of the flaggers' potential risk from dimethoate in the aerial use situation.

(3) The Agency will exempt pilots from the protective clothing and equipment requirement when flying the aircraft.

(4) The Agency will not require the label warning statement for female applicators. However, the Agency will require an additional teratology study on technical dimethoate.

The Agency's final determination for dimethoate is as follows.

A. Regulatory Actions

1. Unconditional denial of all applications for registration of dimethoate products for use in dust formulations.

2. Cancellation and denial of registrations of dimethoate products for all uses, unless the registrants or applicants for registration modify the labeling of dimethoate products to include the following:

Required Clothing and Equipment for Application. All applicators, including homeowners and flaggers, and personnel involved with the mixing, loading, and transferring operations, must wear the protective clothing and equipment enumerated below. Pilots are exempt from this requirement. The protective clothing and equipment to be worn is as follows:

a. Impermeable gloves (for example, rubber or plastic covered gloves).

b. Rubber or synthetic rubber boots or boot covers.

c. Long-sleeved shirt and long pants made of closely woven fabric.

d. Wide-brimmed hat.

e. Respirators must be worn by flaggers and mixer/loaders.

3. Cancellation and denial of registration of dimethoate products labeled for aerial application unless the registrants or applicants for registration modify the terms and conditions of registration to include the following statements:

AUTOMATIC FLAGGING DEVICES SHOULD BE USED WHENEVER FEASIBLE

IF HUMAN FLAGGERS ARE EMPLOYED THEY MUST WEAR THE PROTECTIVE CLOTHING AND RESPIRATOR SPECIFIED ON THIS LABEL.

In addition to these actions, the Agency has determined, under the authority of section 3(c)(2)(B), that additional data are required to maintain the registrations of dimethoate products in effect. The request for this data is independent of the Agency's determinations regarding the termination of this RPAR. Hence, the 3(c)(2)(B) data requirements cannot be contested in an administrative hearing challenging the terms of a cancellation notice. The additional studies which the Agency is requiring are summarized below.

B. Testing Requirements

1. A dimethoate oncogenicity study using the same strains of mice and rats used by Gibel et al. (1973). The proposed protocol for this study must be submitted within 90 days of receipt of the Agency's 3(c)(2)(B) letter concerning dimethoate. This study must be completed within three years of receipt of the Agency's 3(c)(2)(B) letter concerning dimethoate (PD4).

2. Mutagenicity tests, including gene mutation studies in mammalian systems, a dominant lethal sutdy in mice, and studies designed to detect spindle effects i.e., an *in vivo* bone Narrow cytogenetic study. The protocol for these studies must be submitted within 90 days of receipt of the Agency's 32(c)(2)(B) letter concerning dimethoate. These tests must be completed and submitted within eighteen months of receipt of the Agency's 3(c)(2)(B) letter concerning dimethoate.

3. Delayed neurotoxicity tests which must be conducted, in accordance with EPA's proposed pesticide registration guidelines. The protocol for these tests must be submitted within 90 days of receipt of the Agency's 3(c)(2)(B) letter concerning dimethoate. These tests must be completed within eighteen months of receipt of the Agency's 3(c)(2)(B) letter concerning dimethoate.

4. Teratology tests on the technical dimethoate using 2 species of laboratory animals in accordance with the proposed registration guideline published in the Federal Register of August 22, 1978 (43 FR 37336). The protocol for these tests must be submitted within 90 days of receipt of the Agency's 3(c)(2)(B) letter concerning dimethoate. These tests must be completed within eighteen months of receipt of the Agency's 3(c)(2)(B) letter concerning dimethoate.

5. Exposure studies to determine worker dermal and inhalation exposure during the application of dimethoate with air blast equipment and dermal and inhalation exposure for flaggers during aerial application of dimethoate. Exposure data must be gathered for each crop where air blast equipment is used or on crops deemed representative of such applicator exposure situations. Registrants and applicants must submit proposed test protocols for gathering applicator exposure data within 90 days of receipt of the Agency's 3(c)(2)(B) letter and must complete all such tests and submit all exposure data within eighteen months of receipt of the Agency's 3(c)(2)(B) letter concerning dimethoate. The Agency will reevaluate air blast application of dimethoate after the results of the exposure studies become available.

The Agency's 3(c)(2)(B) letter for dimethoate will be issued shortly after publication of the Agency's final Notice of Determination for dimethoate.

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The documents cited in this bibliography, as well as other documents which make up the Administrative Record for the Agency's actions on dimethoate, are available for inspection on normal working days between the hours of 8 a.m. to 4:30 p.m. in the offices of the Special Pesticide Review Division, 1921 Jefferson Davis Highway, Crystal Mall Building No. 2, Room 720, Arlington, Virginia 22202.

Dated: January 6, 1981.

Steven D. Jellinek,

Assistant Administrator for Pesticides and Toxic Substances.

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[OPP-66010; PH-FRL 1627-4]

Pesticide Products Containing Dimethoate; Intent to Cancel Registration and Deny Applications for Registration

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency issued a preliminary notice of determination concluding the rebuttable presumption against registration and continued registration (RPAR) of pesticide products containing dimethoate which was published in the Federal Register of November 19, 1979 (44 FR 66558). This Notice constitutes the Agency's final determination on the dimethoate RPAR and initiates actions to (1) deny applications for registration of dimethoate products for use in dust formulations and (2) to cancel registrations and deny applications for all uses of dimethoate unless the terms and conditions of registration are modified, as described in this Notice, to include required clothing and equipment and to recommend automatic flagging devices in connection with aerial application.

DATE: Requests for a hearing must be received on or before February 18, 1981 or within thirty (30) days from receipt of this Notice, whichever occurs later.

ADDRESS: Requests for a hearing must be submitted to: Hearing Clerk (A-110), U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: Harvey Warnick, Special Pesticide Review Division (TS–791), Office of Pesticide Programs, Environmental Protection Agency, Room 728D, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, Virginia 22202, (703–557–8195).

SUPPLEMENTARY INFORMATION:

I. Introduction

The Environmental Protection Agency issued a notice of rebuttable presumption against registration and continued registration of pesticide products containing dimethoate an organophosphate insecticide and acaricide which was published in the Federal Register of September 12, 1977 (42 FR 45000). The rebuttable presumption was issued on the basis of (1) oncogenicity, (2) mutagenicity, and (3) reproductive and fetotoxic effects. Registrants and other interested persons were provided the opportunity to submit data and information to rebut the presumption. The Agency also requested registrants and other interested parties to submit data on delayed neurotoxicity and the synergism of dimethoate with other pesticides. After reviewing all available information, the Agency determined that the three risk presumptions announced in the dimethoate RPAR had not been rebutted, and that new teratogenic data unavailable when the RPAR was issued indicated that dimethoate may have the potential to produce teratogenic effects. The risks posed by the use of dimethoate were of sufficient concern to require the Agency to consider whether there were offsetting economic, social, or environmental benefits.

After reviewing the information relating to the benefits of the uses of dimethoate and considering risks in relation to benefits, the Agency reached a preliminary decision that the risks of all currently registered uses of dimethoate products are greater than the social, economic and environmental benefits of such uses, unless risk reductions are accomplished by modifications in the terms and conditions of registration. These preliminary decisions were announced in the Preliminary Notice of Determination Concluding the Rebuttable Presumption Against Registration of Pesticide Products Containing Dimethoate, published in the Federal Register of November 19, 1979 (44 FR 66558). The Preliminary Notice was accompanied by a Position Document (PD 2/3) which set forth in detail the Agency's analysis of comments received during the rebuttal phase of the dimethoate RPAR, and the Agency's reasons and factual bases for the regulatory actions which it proposed to initiate. In the Preliminary Notice and accompanying Position Document, the Agency determined to deny all applications for registration of dust formulations of dimethoate and to require certain modifications to the terms and conditions of registration for all the uses of dimethoate. These modifications included label changes (1) to require the use of protective clothing for all applicators, (2) to require the use of respirators for pilots and mixer/loaders, (3) to require automatic flagging for aerial application, (4) to prohibit air blast application on citrus, pome fruits and pecans and (5) to include a warning to female workers of the potential teratogenic hazard of dimethoate.

These preliminary determinations were submitted to the FIFRA Scientific Advisory Panel and the U.S. Department of Agriculture for review pursuant to sections 6(b) and 25(d) of FIFRA; comments were also solicited from the registrants and any other interested parties. After reviewing the comments which were received from the SAP, the Department of Agriculture and other interested parites, the Agency has made certain modifications to the decision announced in the Preliminary Notice of Determination. These modifications include a decision (1) to retain the air blast use of dimethoate, (2) to eliminate the requirement for the use of automatic flagging devices for aerial application, (3) to eliminate the label warning for female applicators to avoid exposure to dimethoate during pregnancy and (4) to eliminate the protective clothing and equipment requirement for pilots. The reasons which form the basis for these modifications to the proposed decision are set forth in Position Document 4 (PD 4), which is published elsewhere in this issue of the Federal Register.

This final Notice of Determination announces the denial of all applications for registration of dimethoate products in dust formulations. this Notice also initiates actions to cancel or deny registration for all uses of dimethoate products unless the terms and conditons of registration are modified: (1) to require the use of protective clothing for all applicators, (2) to require the use of respirators for flaggers and mixer/loaders and (3) to recommend the use of automatic flagging devices on the dimethoate products labeled for aerial application. In addition to these actions, the Agency has determined that it will request additional data, under the authority of 3(c)(2)(B), to maintain the registrations of dimethoate products in effect. These data requirements include the submission of studies on oncogenicity, mutagenicity, teratogenicity, delayed neurotoxicity, and exposure.

The Notice is organized into four units. Unit I is this introduction. Unit II, entitled "Legal Background", sets forth a general discussion of the regulatory framework within which these actions are taken. Unit III and the accompanying Position Document set forth the regulatory actions which the Agency is implementing concerning dimethoate and the bases for these determinations. Unit IV titled "Procedural Matters", provides a brief discussion of the procedures which will be followed in implementing the regulatory actions which the Agency is announcing in this Notice. The accompanying Position Document 4, published elsewhere in this issue of the Federal Register, sets forth in detail the Agency's analysis of comments submitted by the Secretary of Agriculture, the FIFRA Scientific Advisory Panel (SAP), and other interested parties regarding the regulatory actions announced in the Preliminary Notice. The comments of the FIFRA Scientific Advisory Panel and the Secretary of Agriculture are included in their entirety in Position Document 4.

II. Legal Background

In order to obtain a registration for a pesticide under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. 136 *et seq.*, a manufacturer must demonstrate that the pesticide satisfies the statutory standard for registration. That standard requires (among other things) that the pesticide perform its intended function without causing "unreasonable adverse effects on the environment." FIFRA Section 3(c)(5). The term "unreasonable adverse effects on the environment" is defined as "any unreasonable risk to man or the environment, taking into account the economic, social, and environmental costs and benefits of the use of any pesticide." FIFRA Section 2(bb). In effect, this standard requires a finding that the benefits of each use of the pesticide exceed the risks of use, when the pesticide is used in accordance with the terms and conditions of registration, or in accordance with widespread and commonly recognized practices. The burden of proving that a pesticide satisfies the registration standard is on the proponents of registration and continues as long as the registration remains in effect. Under section 6 of FIFRA, the Administrator is rquired to cancel the registration of a pesticide or to modify the terms and conditions of registration whenever he determines that the pesticide no longer satisfies the statutory standard for registration.

The Agency created the RPAR process to facilitate the identification of pesticide uses which may not satisfy the statutory standard for registration and to provide a public, informal procedure for the gathering and evaluation of

information about the risks and benefits of these uses. The regulations governing the RPAR process are set forth at 40 CFR 162.11. This section provides that a rebuttable presumption shall arise if a pesticide meets or exceeds any of the risk criteria set out in the regulations.

The Agency generally announces that an RPAR has arisen by publishing a notice in the Federal Register. After an RPAR is issued, registrants and other interested persons are invited to review the data upon which the presumption is based and to submit data and information to rebut the presumption. Respondents may rebut the presumption of risk by showing that the Agency's initial determination of risk was in error, or by showing that exposure of man or other sensitive species likely to be associated with use of the pesticide will not involve a significant risk of adverse effects of the type in question. See 40 CFR 162.11(a)(4). Further, in addition to submitting evidence to rebut the risk presumption, respondents may submit evidence as to whether the economic, social, and environmental benefits of the use of the pesticide subject to the presumption outweigh the risks of use.

The regulations require the Agency to conclude an RPAR by issuing a Notice of Determination in which the Agency states and explains its position on the question of whether the risk presumptions have been rebutted. If the Agency determines that a presumption has not been rebutted, it then considers available information relating to the social, economic, and environmental costs and benefits of use of the pesticide, including information which registrants, the Department of Agriculture, and other interested persons have submitted to the Agency.

If the risks of a particular pesticide use appear to outweigh its benefits, the Administrator may elect to conclude the RPAR process by issuing a notice of intent to cancel, deny, or reclassify the registration of the pesticide for the use in question, pursuant to FIFRA sections 6(b)(1) and 3(c)(6), or by issuing a notice of intent to hold a hearing to determine whether or not registrations for the use should be cancelled, denied, or reclassified, pursuant to FIFRA section 6(b)(2).

In determining whether the use of a pesticide poses risks which are greater than benefits, the Agency considers modifications to the terms and conditions of registration which can reduce risks, and the impacts of such modifications on the benefits of the use. Among the risk reduction measures short of cancellation which are available to the Agency are changes in the directions for use on the pesticide's labeling and classification of the pesticide for "restricted use" pursuant to FIFRA section 3(d).

FIFRA requires the Agency to submit notices issued pursuant to section 6 to the Secretary of Agriculture for comment, along with an analysis of the impact of the proposed action on the agricultural economy. FIFRA section 6(b). The Agency is required to submit these documents to the Secretary at least 60 days before issuing the notice in final form. If the Secretary of Agriculture comments in writing within 30 days after receiving the notice, the Agency is required to publish the Secretary's comments and the Administrator's response to them in the Federal Register. FIFRA also requires the Administrator to submit section 6 notices to the Scientific Advisory Panel for comment on the impact of the proposed action on health and the environment, at the same time and under the same procedures as those described above for review by the Secretary of Agriculture. FIFRA section 25(d).

Although not required to do so under the statute, the Agency has decided that it is consistent with the general theme of the RPAR process and the Agency's overall policy of open decision making to afford registrants and other interested persons an opportunity to comment on the bases for the proposed action during the time that the proposed action is under review by the Secretary of Agriculture and the Scientific Advisory Panel. Accordingly, the Preliminary Notice and the Position Document 2/3 were made available to registrants and other interested persons at the time the decision douments were transmitted for formal external review, through publication of a notice of availability in the Federal Register or by other means. Registrants and other interested persons were allowed the same 30 day period of time to comment that the statute provides for receipt of comments from the Secretary of Agriculture and the Scientific Advisory Panel. The Agency considered comments received after this date, to the extent it was possible to do so, consistent with orderely decision-making.

III. Determination and Announcement of Regulatory Actions

As detailed in the Preliminary Notice and PD 2/3, the Agency considered information on the risks associated with the uses of dimethoate, including information submitted by registrants and other interested persons in rebuttal to the Dimethoate RPAR. The Agency also considered information on the social, economic, and environmental benefits of the uses of dimethoate subject to the RPAR, including benefits information submitted by registrants and other interested persons in conjunction with their rebuttal submissions, and information submitted by the United States Department of Agriculture. The Agency's assessment of the risks and benefits of the uses of dimethoate subject to this RPAR, its conclusions and determinations on whether any uses of dimethoate pose unreasonable adverse effects on the environment, and its determinations on whether modifications in the terms or conditions of registration reduce risks sufficiently to eliminate any unreasonable adverse effects, were summarized in the Preliminary Notice and set forth in detail in PD 2/3. PD 2/3 was adopted by the Agency as its Statement of Reasons for the determinations and actions announced in the Preliminary Notice and as its analysis of the impacts of the proposed regulatory actions on the agricultural economy.

This Notice constitutes the Agency's Final Notice of Determination Concluding the Dimethoate RPAR, and announces the regulatory actions which the Agency is implementing concerning dimethoate. The Agency hereby incorporates PD 2/3 and PD 4 as its Statement of Reasons for these actions. The determinations announced in this Notice reflect modifications in the Agency's initial determinations on the risks, benefits, and unreasonable adverse effects of the use of dimethoate, as well as modifications in the regulatory actions announced in the Preliminary Notice. The Agency has concluded that these modifications are appropriate after review of the comments and other information received, in response to PD 2/3 and the Preliminary Notice, from the Secretary of Agriculture, the Scientific Advisory Panel, and other interested parties. The comments received from the SAP and the Secretary of Agriculture are included in Position Document 4. Position Document 4, which is published elsewhere in this issue of the Federal Register, discusses in detail the comments and information which were received, and the Agency's reasons for retaining or modifying its initial determinations and the regulatory actions announced in the Preliminary Notice.

A. Determinations on Risks

The dimethoate RPAR was based on information indicating that dimethoate posed the following risks to humans: (1) oncogenicity, (2) mutagenicity, and (3) reproductive and fetotoxic effects. As developed fully in the Position

Document 2/3, the Agency determined that the information submitted to rebut the risk criterion for oncogenicity was insufficient to overcome the presumption against dimethoate for this effect. However, the Agency concluded, based on a re-analysis of the studies involved and the rebuttal comments, that the weight of evidence for dimethoate's oncogenicity is only suggestive, and that the evidence warrants further studies.

The Agency also determined that the rebuttal submissions were insufficient to remove the Agency's concern that dimethoate poses the risks of reproductive and fetotoxic effects to humans. In addition, new teratogenic data unavailable when the RPAR was issued indicated that dimethoate may have the potential to produce teratogenic effects. Finally, the Agency concluded that the rebuttals and additional information submitted did not invalidate the presumption of mutagenic risk, although the risk appeared to be low.

The Agency also received comments concerning delayed neurotoxicity and the synergism of dimethoate with other pesticides, and concluded that there was insufficient evidence to indicate that dimethoate meets or exceeds the risk criteria enumerated in 40 CFR 162.11 for these effects, but that additional information concerning dimethoate's ability to induce delayed neurotoxicity must be generated.

As detailed in PD 2/3, the principal risks of oncogenicity, mutagenicity, and reproductive and fetotoxic/teratogenic effects are posed to applicators, who may be exposed to dimethoate before or during application both dermally and via inhalation. The greatest risk to applicators is incurred by (1) the use of dust formulations for grapes and potatoes and (2) airblast spraying on citrus, pecans and pome fruits. These risks are of sufficient magnitude to require the Agency to determine whether the uses of dimethoate offer offsetting social, economic, or environmental benefits.

B. Determinations on Benefits

The uses of dimethoate which are subject to this Notice include the following classes of use sites: (1) grains, (2) field crops, (3) fruits and nuts, (4) vegetables, and (5) other use sites (including livestock premises, forest seed orchards and nurseries, and ornamentals.)

1. *Grains.* Dimethoate is used on 7.8 percent of the sorghum acreage; less than one percent of U.S. wheat and corn acreage is treated with dimethoate. Several effective alternatives are available for all of the grain use sites. Cancellation of dimethoate use on grain would result in a total annual loss of $6.03 million per year for corn producers and an increase of $606,000 in income for sorghum producers. A qualitative evaluation of the impact of cancellation on wheat producers indicated a minor impact.

2. *Field Crops.* Dimethoate is used on less than one percent of U.S. acreage of soybeans, tobacco, and alfalfa; on 14.6 percent of U.S. cotton acreage; and on 26.0 percent of California and Arizona safflower acreage. For most of the field crops, several alternative controls are available, with the exception of spider mite control on soybeans, which represents a minor and sporadic problem. Cancellation of dimethoate use on field crops would result in an increase in costs of production of $1.73 million annually for cotton and would have a negligible effect on production costs for other field crops.

3. *Fruits and Nuts.* The percent of total U.S. acreage treated with dimethoate was 2.6 percent for apples, <1.0 percent for pears, 12.0 percent for citrus, and 17.0 percent for pecans; 50.5 percent of the California grape acreage was treated with dimethoate. Several effective alternatives are available for apples, pears, and pecans; the alternatives for grapes and citrus are less effective. The cancellation of dimethoate would result in an estimated decrease in farm income of $90,000 for apples, $745,800 for pecans, $551,000 for citrus, and $9.99 million for grapes, and a negligible loss on pears. The effect of cancellation on production for apples, pears, pecans, and grapes would be negligible or slight. Significant adverse effects on the quantity and quality of citrus production would be expected; for grapes, total insecticide use would increase and the IPM program in the Central Valley of California would be ruined. Minor price increases may occur for pecan products, and significant consumer impacts are possible for citrus and grape products.

4. *Vegetables.* Dimethoate use on vegetable crops ranges from 7.1 percent of total U.S. acres treated for lettuce to 66.2 percent for fresh tomatoes. Effective alternatives are generally available except for use on broccoli, fresh snap beans, and fresh tomatoes. The cancellation of dimethoate use on vegetables would result in an estimated reduction in annual farm income of $1.27 million for broccoli, $1.8 million for dry snap beans, $3.6 million for fresh snap beans, and $130,800 for processing snap beans. For fresh tomatoes, the total farm income loss was estimated at $3.9 million. An increase in farm income of $371,000 was projected for processing tomatoes due to less expensive alternative controls. The available data were insufficient to allow an estimation of the overall farm income changes for lettuce and other vegetable crops.

5. *Other Use Sites.* Dimethoate is used for adult fly and maggot control in livestock facilities (50,800 pounds active ingredient in 1978); several effective alternatives are available at near comparable cost. Dimethoate use for forest seed orchards and nurseries is believed to be limited to 150 acres in the South; several effective alternatives are available. For ornamental use, 90% of the dimethoate pesticide products are applied commercially and 10% by homeowners, with use approaching 50,000 pounds active incredient per year. A few site/pest combinations may have pest control problems if dimethoate is unavailable due to a lack of cost-effective alternatives.

C. Determinations of Unreasonable Adverse Effects

For the reasons set forth in detail in the Position Documents (PD 2/3 and PD 4), the Agency has made the following unreasonable adverse effect determinations about the uses of dimethoate.

The Agency has determined that the risks arising from the use of dimethoate dust formulation products are greater than the social, economic and environmental benefits of such use. Accordingly, the Agency has determined that the use of dimethoate in dust formulations will generally cause unreasonable adverse effects in the environment, when used in accordance with widespread and commonly recognized practice.

The Agency has also determined that risks of use of dimethoate products in all non-dust formulations (e.g., wettable powders, emulsifiable concentrates, and granules) are greater than the social, economic, and environmental benefits for all uses, unless risk reductions are accomplished by modifications in the terms and conditions of registration, as described in Section III E. The Agency has determined that these modifications in the terms and conditions of registration accomplish significant risk reductions, without significant impacts on the benefits of use. Accordingly, the Agency has determined that unless these changes in the terms and conditions of registration are accomplished, the use of dimethoate will generally cause unreasonable adverse effects on the environment, when used in accordance with widespread and commonly recognized practice, and the labeling of these dimethoate products

will not comply with the provisions of FIFRA.

D. Other Determination

The Agency has determined that it will request additional data, under the authority of section 3(c)(2)(B), to maintain the registrations of dimethoate products in effect. The request for these data will be independent of the Agency's RPAR determination, as set forth in this Notice, to cancel or to impose more stringent terms and conditions for registration. These data requests will be formally communicated to the registrants in the near future.

The additional studies which the Agency will required are summarized below.

1. A dimethoate oncogenicity study using the same strains of mice and rats used by Gibel. The protocol for this study must be submitted within 90 days of receipt of the Agency's section 3(c)(2)(B) notification letter. This study must be completed within three years of receipt of the section 3(c)(2)(B) notification letter.

2. Mutagenicity tests, including gene mutation studies in mammalian systems, a dominant lethal study in mice and studies designed to detect spindle effects, i.e. and *in vivo* bone marrow cytogenic study. The protocol for these studies must be submitted within 90 days of receipt of the Agency's section 3(c)(2)(B) notification letter. These tests must be completed and submitted within eighteen months of receipt of the section 3(c)(2)(B) notification letter.

3. Delayed neurotoxicity tests in accordance with EPA's proposed pesticide registration guidelines. The protocol for these tests must be submitted within 90 days of receipt of the Agency's section 3(c)(2)(B) letter. These tests must be completed within eighteen months of receipt of the section 3(c)(2)(B) letter.

4. Teratology tests on the technical dimethoate using two species of laboratory animals in accordance with the proposed registration guidelines published in the Federal Register of August 22, 1978 (43 FR 37336). The protocol for these tests must be submitted within 90 days of receipt of the Agency's section 3(c)(2)(B) notification letter. These tests must be completed within eighteen months of receipt of the section 3(c)(2)(B) notification letter.

5. Exposure studies to determine worker dermal and inhalation exposure during the application of dimethoate with air blast equipment and dermal and inhalation exposure for flaggers during the aerial application of dimethoate. Exposure data must be gathered for each crop where air blast equipment is used or on crops deemed representative of such applicator exposure situations. Registrants and applicants must submit proposed test protocols for gathering applicator exposure data within 90 days of receipt of the Agency's section 3(c)(2)(B) notification letter and must complete all such tests and submit all exposure data within eighteen months of receipt of the section 3(c)(2)(B) notification letter. The Agency will reevaluate the air blast application of dimethoate after the results of these exposure studies become available.

E. Initiation of Regulatory Actions

Based upon the determinations summarized above in Unit III C and set out in detail in the Position Document 4, published elsewhere in this issue of the Federal Register, the Agency is initiating the following regulatory actions:

1. Unconditional denial of all applications for registration of dimethoate products for use in dust formulations.

2. Cancellation and denial of registration of dimethoate products for all uses unless the registrants or applicants for registration modify the labeling of dimethoate products to include the following:

Required Clothing and Equipment for Application

All applicators, including homeowners, flaggers and all personnel involved with the mixing, loading, and transferring operations, must wear the protective clothing and equipment enumerated below. Pilots are exempt from this requirement. The protective clothing and equipment to be worn is as follows:

a. Impermeable gloves (for example, rubber or plastic covered reinforced gloves.)

b. Boots or boot covers.

c. Long-sleeved shirt and long pants.

d. Wide-brimmed hat.

e. Respirators must be worn by flaggers and mixer/loaders.

3. Cancellation and denial of registration for all uses of dimethoate products labeled for aerial application unless the registrants or applicants for registration modify the labeling of these products to include the following statement:

AUTOMATIC FLAGGING DEVICES SHOULD BE USED WHENEVER FEASIBLE

IF HUMAN FLAGGERS ARE EMPLOYED THEY MUST WEAR THE PROTECTIVE CLOTHING AND RESPIRATOR SPECIFIED ON THIS LABEL.

IV. Procedural Matters

This Notice initiates actions to cancel registrations and deny applications for registration of dimethoate products for all uses unless the registrants or applicants correct the terms and conditions of registration as described in this Notice ("conditional" cancellation or denial). This Notice also notifies all applicants for Federal registration of dimethoate products in dust formulations that their applications for registration have been denied unconditionally.

Under sections 6(b)(1) and 3(c)(6) of FIFRA, applicants, registrants and certain other interested or affected parties may request a hearing on the cancellation and denial actions that this Notice initiates. This unit of the Notice explains how such persons may request a hearing and the consequences of requesting or failing to request a hearing in accordance with the procedures specified in this Notice.

A. Procedure for Requesting a Hearing

Registrants affected by the cancellation actions described above may request a hearing on such actions within thirty (30) days of receipt of this notice, or within thirty (30) days from publication of this Notice, whichever occurs later. Any other person adversely affected by the cancellation actions described above may request a hearing within thirty (30) days of publication of this Notice in the Federal Register.

Applicants for registration affected by the denial actions described above may request a hearing on such actions within thirty (30) days of receipt of this Notice, or within thirty (30) days of publication of this Notice in the Federal Register, whichever occurs later. Other interested persons may, with the concurrence of the applicant, request a hearing during the time period available to the applicant.

All registrants, applicants, and other interested or affected parties who request a hearing must file the request in accordance with the procedures established by FIFRA and the Agency's Rules of Practice Governing Hearings (40 FR Part 164). These procedures require among other things that: (1) all requests must identify the specific registration(s) or application(s) and the specific use(s) for which a hearing is requested, (2) all requests must be accompanied by objections that are specific for each use of the identified pesticide products for which a hearing is requested, and (3) all requests must be received by the hearing clerk within the applicable thirty (30) day period. Failure to comply with these requirements will

automatically result in denial of the request for a hearing.

Request for hearings must be submitted to: Hearing Clerk (A-110), U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460.

It should be emphasized that the cancellation and denial actions initiated by this Notice will be implemented both on a use-by-use basis and a registration-by-registration or application-by-application basis. In other words, if a hearing request is not reviewed for a particular use specified on a particular registration or application, the actions proposed in this Notice regarding that pesticide use will become effective at the end of the thirty day period, even though a hearing might have been requested with respect to the other pesticide uses for the same registration or application, or with respect to the same pesticide use for other registrations or applications.

B. Consequence of Filing or Failing to File a Hearing Request

1. *Consequences of Filing a Timely and Effective Hearing Request.* If a hearing on any action initiated by this Notice is requested in a timely and effective manner, the hearing will be governed by the Agency's Rules of Practice for hearings under FIFRA section 6 (40 CFR Part 164). In the event of a hearing, each cancellation and denial action subject to the hearing will not become effective except pursuant to an order of the Administrator at the conclusion of the hearing.

2. *Consequences of Failure to File in a Timely and Effective Manner.* No hearing will be available concerning denial of any particular application for Federal registration of a dimethoate dust formulation product unless the affected applicant itself either files or concurs in a timely request for a hearing. Denial of any application for Federal registration of a dimethoate product in a dust formulation for which a hearing has not been specifically requested will become final and effective at the end of the applicable thirty day period.

If no hearing concerning the conditional cancellation or denial of registration of a specific use of a specific pesticide product contining dimethoate has been requested by the end of the applicable thirty day period, registration of that use of that dimethoate product will be subject to cancellation or denial unless the registrant or applicant amends its application for registration to include the modifications in the terms and conditions of registration specified in this Notice. Immediately following expiration of the applicable thirty day period, the Agency will notify all affected registrants of the procedures to be followed in amending their applications for registration. That notification will (1) establish the date(s) on which the cancellations and denials will become effective unless the registrants and applicants have applied to amend their registrations or correct their applications to include the terms and conditions of registration specified in this Notice, and (2) will provide other necessary instructions and information.

Dated: January 8, 1981.

Steven D. Jellinek,

Assistant Administrator for Pesticides and Toxic Substances.

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Monday
January 19, 1981

Part VII

Department of Education

Selection Criteria for Fiscal Year 1981; Program Regulations

DEPARTMENT OF EDUCATION

Office of Management

34 CFR Parts 211, 215, 305, 307, 309, 315, 316, 324, 350, 406, 525, 526, 527, 624, 643, 644, 645, 646, 725, and 740.

Selection Criteria for Fiscal Year 1981

AGENCY: Department of Education.

ACTION: Final Regulations.

SUMMARY: The Department of Education amends the selection criteria for programs administered under the parts listed in the heading to this document.

The Education Department General Administrative Regulations (EDGAR) were published in the Federal Register on April 3, 1980 (45 FR 22494). EDGAR establishes general criteria that are used with specific program criteria to select applications for funding under direct grant programs of the Department of Education. These amendments are made to incorporate the EDGAR criteria in the program regulations specified in the heading above, thereby making the program regulations conform to EDGAR requirements. These conforming amendments also delete program selection criteria that duplicate the EDGAR criteria. The general effect of these changes is to establish a uniform set of selection criteria in five topic areas: plan of operation, quality of key personnel, budget and cost effectiveness, evaluation plan, and adequacy of resources.

EFFECTIVE DATE: These conforming amendments are expected to take effect 45 days after they are transmitted to Congress. Regulations usually are transmitted to Congress several days before they are published in the Federal Register. The effective date is changed if the Congress takes certain adjournments. If you want to know the effective date of these regulations call or write the Department of Education contact person.

FOR FURTHER INFORMATION CONTACT: F. H. Hundemer, Jr., Director, Policy Division, Office of Procurement and Assistance Management, U.S. Department of Education, 400 Maryland Avenue, S.W. (Room 5660, ROB-3), Washington, D.C. 20202. Telephone (202) 245-1706. For general information on Education Division programs, telephone the appropriate Regional Office listed below:

Region I—Boston, Massachusetts, (617) 223-6614.
Region II—New York, New York, (212) 264-8145.
Region III—Philadelphia, Pennsylvania, (215) 596-1044.
Region IV—Atlanta, Georgia, (404) 221-2243.
Region V—Chicago, Illinois, (312) 353-6679.
Region VI—Dallas, Texas, (314) 767-3711.
Region VII—Kansas City, Missouri, (816) 374-5800.
Region VIII—Denver, Colorado, (303) 837-4295.
Region IX—San Francisco, California, (415) 556-4570.
Region X—Seattle, Washington, (206) 442-0450.

SUPPLEMENTARY INFORMATION:

Background

The Education Department General Administrative Regulations (EDGAR) were published as final regulations on April 3, 1980 (45 FR 22494). Part 75 (originally published as Part 100a of 45 CFR). EDGAR describes the application and award procedures for a direct grant made by the Department of Education. Part 75 of EDGAR also covers other issues relating to the administration of Department of Education direct grant programs. For a full understanding of the scope of EDGAR, please review the EDGAR final regulations.

Discretionary Grant Programs and Selection Criteria

The majority of the direct grant programs administered by the Department of Education are discretionary grant programs. Section 75.200 of EDGAR describes what a discretionary grant program is and how selection criteria is used in this kind of program.

The Department of Education published a notice of proposed rulemaking (NPRM) on April 3, 1980 (45 FR 22806) to incorporate the EDGAR selection criteria in certain program regulations and invited public comment on the proposed conforming amendments. The NPRM proposed conforming amendments to 29 parts of Title 45 of the Code of Federal Regulations.

On November 21, 1980, the Department of Education published at 45 FR 77368 a notice transferring certain regulations from Title 45 of the Code of Federal Regulations (45 CFR) to Title 34 of the Code of Federal Regulations (34 CFR) and assigning new designation numbers to the transferred parts. The revisions published in this document carry the new designations. The new designations also are used in all references.

The transferred parts of 45 CFR included all of those for which conforming amendments were proposed in the NPRM published April 3, 1980.

The conforming amendments made final by this document affect 20 parts of 34 CFR. The affected parts are listed in the heading to this document. The conforming amendments proposed on April 3 for several parts affecting programs authorized under the Higher Education Act are not made final by this document. The conforming amendments to those parts will be published separately with other revisions of those parts.

Two public comments were received on the proposed regulations. One of these comments applied to proposed amendments to the Teacher Center Program (34 CFR Part 240). Part 240 was published in final December 8, 1980, at 45 FR 80966, and those regulations are not included in this document.

The second public comment received applied to the proposed amendments to four parts for which final regulations revisions are published in this document (34 CFR Parts 643, 644, 645, and 646). A summary of this second comment, the Department of Education response to it, and of technical changes in proposed amendments to two other parts follow:

§ 406.211 Selection criteria. (Formerly § 105.211)

Changes. Proposed amendments to section 406.211 have been deleted because the EDGAR selection criteria do not apply to this vocational education program, which operates solely under contracts with Indian and tribal organizations.

§ 643.6 Selection criteria

§ 644.8 Selection criteria

§ 645.6 Selection criteria

§ 646.7 Selection criteria

Comment. A commenter suggested several changes in the selection criteria under Part 644—Educational Opportunity Centers, Part 645—Upward Bound Program, Part 646—Special Services for Disadvantaged Students Programs; and Part 634—Talent Search Program. The commenter suggested that a criterion on "past performance" be added and be assigned 30 percent of the total possible points. The commenter also suggested changes in the distribution of points among the other selection criteria. As proposed by the commenter, the selection criteria and point distribution would be identical in all programs as follows.

	Part 644	Part 645	Part 646	Part 643
Past Performance	30	30	30	30
Operating Plan/Design	15	15	15	15
Quality of Personnel	16	16	16	16

	Part 644	Part 645	Part 646	Part 643
Resources and Organization	10	10	10	10
Budget and Cost Effectiveness	5	5	5	5
Evaluation	4	4	4	4
Need	20	20	20	20

Response. No change has been made. A recently enacted amendment to the authorizing legislation for these programs revises the applicable statutory language to require that past performance be made a factor in selecting grantees under these programs. The amendment does not become effective for these programs until fiscal year 1982. The suggested changes in point distribution will be given further consideration when revised regulations are developed for these programs to implement the recent legislative amendments.

Changes. Many of the numerical and alphabetical designations of paragraphs have been revised in these four sections. The changes were necessary to put geographic and area considerations in correct relationships with other elements of the selection criteria. A typographical error incorrectly proposing 18 points for § 644(a)(2) (*Quality of key personnel*) has been corrected to 10 points.

§ 624.5 Selection criteria

Changes. The number of points assigned to § 624.52(a)(1) (*Plan of operation.*) has been increased from 17 to 20 and § 624.52(a)(5) (*Adequacy of resources.*) has been deleted because it is inappropriate to the nature and purpose of the program for strengthening developing institutions.

For a table that shows the old 45 CFR Part numbers and the new 34 CFR Part numbers as redesignated, see the document published November 21, 1980 in the **Federal Register** at 45 FR 77368.

Applicability

On their effective date, these regulations become applicable to competition for new grants made from appropriations for fiscal year 1981 and future fiscal years.

Citation of Legal Authority

A citation of statutory or other legal authority appears in parentheses on the line following each substantive provision of these regulations.

Dated: January 13, 1981.

Shirley M. Hufstedler,

Secretary of Education.

The Secretary amends Title 34 of the Code of Federal Regulations to read as follows:

PART 211—GUIDANCE AND COUNSELING

1. Section 211.33 is revised to read as follows:

§ 211.33 Selection criteria.

The Secretary uses the criteria in this section to evaluate applications for new grants under this subpart. The maximum score for all of the criteria is 100 points.

(a) *Plan of operation.* (Maximum 10 points)

(1) The Secretary reviews each application for information that shows the quality of the plan of operation for the project.

(2) The Secretary looks for information that shows—

(i) High quality in the design of the project;

(ii) An effective plan of management that insures proper and efficient administration of the project;

(iii) A clear description of how the objectives of the project relate to the purpose of the program;

(iv) The way the applicant plans to use its resources and personnel to achieve each objective; and

(v) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(b) *Quality of key personnel.* (Maximum 10 points)

(1) The Secretary reviews each application for information that shows the quality of the key personnel the applicant plans to use on the project.

(2) The Secretary looks for information that shows—

(i) The qualifications of the project director (if one is to be used);

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (b)(2) (i) and (ii) of this section plans to commit to the project; and

(iv) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(3) To determine the qualifications of a person, the Secretary considers evidence of past experience and training, in fields related to the objectives of the project, as well as other information that the applicant provides.

(c) *Budget and cost effectiveness.* (Maximum 10 points)

(1) The Secretary reviews each application for information that shows that the project has an adequate budget and is cost effective.

(2) The Secretary looks for information that shows—

(i) The budget for the project is adequate to support the project activities; and

(ii) Costs are reasonable in relation to the objectives of the project.

(d) *Evaluation plan.* (Maxium 10 points)

(1) The Secretary reviews each application for information that shows the quality of the evaluation plan for the project. Cross-reference.—34 CFR 75.590 Evaluation by the grantee.

(2) The Secretary looks for information that shows methods of evaluation that are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable.

(e) *Adequacy of resources.* (Maximum 3 points)

(1) The Secretary reviews each application that shows that the applicant plans to devote adequate resources to the project.

(2) The Secretary looks for information that shows—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies that the applicant plans to use are adequate.

(f) *Need.* (Maximum 9 points) The application clearly describes the need, through documented evidence for training and/or improved supervisory services, and the procedures used in determining the need. The need should be based on the guidance needs of students in the location where trainees are employed.

(g) *Activities.* (Maximum 19 points) The application—

(1) Describes training or supervisory objectives and activities which respond effectively to the needs of students documented in the needs assessment;

(2) Describes project activities which are designed to serve as a resource for improving guidance and counseling services within schools which receive supervisory services, or which are served by teacher and counselor trainees;

(3) Gives evidence, in those applications proposing to provide training, of commitments from outside organizations, groups, or individuals to cooperate in the implementation of proposed activities or in those applications proposing to improve supervisory services, of plans for working with other appropriate units; and

(4) Clearly describes the criteria and processes for selecting participants in training activities and clearly describes criteria and processes for developing comprehensive and coordinated guidance programs in activities to improve supervisory services.

(h) *Distribution of projects.* (Maximum 9 points) The extent to which approval of the project will contribute to—

(1) An equitable geographic distribution of programs funded under this subpart throughout the United States in both urban and rural areas; and

(2) The funding of a wide variety of projects which collectively can demonstrate diverse approaches to meet effectively the purposes of this subpart.

(i) *Models.* (Maximum 10 points) The extent to which approval of the project will contribute to the establishment of a model or models which can be replicated by other agencies or institutions with similar educational needs. In applying this criterion, the Secretary shall consider—

(1) The extent to which similar needs to those addressed by the proposed project exists in other agencies or institutions; and

(2) The design of the proposed project.

(j) *Alleviation of unemployment among youth.* (Maximum 5 points) The extent to which approval of the project has potential for contributing to the alleviation of unemployment among youth through inter-relationships with business and industry, the professions, and other occupational pursuits.

(k) *World of work.* (Maximum 5 points) The project involves inservice training to—

(1) Increase the understanding of teachers and counselors of the world of business, industry, professions, and other occupational pursuits through exposure to these areas; and

(2) To provide for increased use of persons employed in business, industry, the professions and other occupational pursuits in the guidance and counseling programs by—

(i) Bringing these persons into the schools to assist teachers and counselors; and

(ii) Bringing students into the workplace for observation and participation in order to acquaint them with the nature of the work.

(20 U.S.C. 2534(a))

2. Section 211.45 is revised to read as follows:

§ 211.45 Selection criteria.

The Secretary uses the criteria in this section to evaluate applications for new grants under this subpart. The maximum score for all of the criteria is 100 points.

(a) *Plan of operation.* (Maximum 47 points)

(1) The Secretary reviews each application for information that shows the quality of the plan of operation for the project.

(2) The Secretary looks for information that shows—

(i) High quality in the design of the project;

(ii) An effective plan of management that insures proper and efficient administration of the project;

(iii) A clear description of how the objectives of the project relate to the purpose of the program;

(iv) The way the applicant plans to use its resources and personnel to achieve each objective; and

(v) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(b) *Quality of key personnel.* (Maximum 10 points)

(1) The Secretary reviews each application for information that shows the quality of the key personnel the applicant plans to use on the project.

(2) The Secretary looks for information that shows—

(i) The qualifications of the project director (if one is to be used);

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (b)(2) (i) and (ii) of this section plans to commit to the project; and

(iv) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(3) To determine the qualifications of a person, the Secretary considers evidence of past experience and training, in fields related to the objectives of the project, as well as other information that the applicant provides.

(c) *Budget and cost effectiveness.* (Maximum 5 points)

(1) The Secretary reviews each application for information that shows that the project has an adequate budget and is cost effective.

(2) The Secretary looks for information that shows—

(i) The budget for the project is adequate to support the project activities; and

(ii) Costs are reasonable in relation to the objectives of the project.

(d) *Evaluation plan.* (Maximum 10 points)

(1) The Secretary reviews each application for information that shows the quality of the evaluation plan for the project.

Cross-reference.—34 CFR 75.590 Evaluation by the grantee.

(2) The Secretary looks for information that shows methods of evaluation that are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable.

(e) *Adequacy of resources.* (Maximum 3 points)

(1) The Secretary reviews each application for information that shows that the applicant plans to devote adequate resources to the project.

(2) The Secretary looks for information that shows—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies that the applicant plans to use are adequate.

(f) *Need.* (Maximum 10 points) The need for the proposed plan is clearly established.

(g) *Cooperative arrangements.* (Maximum 10 points) The strength and quality of arrangements made by the applicant to work with other appropriate institutions and agencies.

(20 U.S.C. 2534(b))

3. Section 211.40 is revised to read as follows:

§ 211.40 Capacity to carry out the project.

Notwithstanding the specific selection criteria in § 211.45, the Secretary will not fund an application under this subpart unless the Secretary is satisfied that the applicant has the capacity successfully to carry out the project.

(a) In making this judgment, the Secretary will consider such factors as—

(1) Both the programmatic and financial management capacities of the applicant organization and its staff;

(2) Past performance by the applicant—

(i) In carrying out any prior grant under this subpart; or

(ii) In carrying out similar projects—with respect to those matters as achievement of objectives, adherence to the project conditions, programmatic and financial management, and the governing board's assumption of responsibility; and/or

(3) Consideration of local community factors which may prevent the successful operation of the grant.

(b) If the Secretary decides not to fund an application based upon this section, the Secretary will do so only after providing reasonable notice and an opportunity to the applicant to rebut, in writing or in an informal meeting with the responsible officials of U.S. Department of Education, the basis for the decision.

(20 U.S.C. 2534(b))

PART 215—FOLLOW THROUGH PROGRAM

4. Section 215.15 is revised to read as follows:

§ 215.15 Selection criteria for refunding of projects.

The Secretary uses the criteria in this section to determine whether an applicant has satisfactorily operated a project funded in the previous year under the Follow Through program. Each of the criteria is rated on the following scale: unsatisfactory, satisfactory, above average, outstanding.

(a) *Plan of operation.* (1) The Secretary reviews each application for information that shows the quality of the plan of operation for the project.

(2) The Secretary looks for information that shows—

(i) High quality in the design of the project;

(ii) An effective plan of management that insures proper and efficient administration of the project;

(iii) A clear description of how the objectives of the project relate to the purpose of the program;

(iv) The way the applicant plans to use its resources and personnel to achieve each objective; and

(v) A clear description of how the application will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(b) *Quality of key personnel.* (1) The Secretary reviews each application for information that shows the quality of the key personnel the applicant plans to use on the project.

(2) The Secretary looks for information that shows—

(i) The qualifications of the project director (if one is to be used);

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraph (b)(2) (i) and (ii) of this section plans to commit to the project; and

(iv) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(3) To determine the qualifications of a person, the Secretary considers evidence of past experience and training, in fields related to the objectives of the project, as well as other information that the applicant provides.

(c) *Budget and cost effectiveness.* (1) The Secretary reviews each application for information that shows that the project has an adequate budget and is cost effective.

(2) The Secretary looks for information that shows—

(i) The budget for the project is adequate to support the project activities; and

(ii) Costs are reasonable in relation to the objectives of the project.

(d) *Evaluation plan.* (1) The Secretary reviews each application for information that shows the quality of the evaluation plan for the project.

Cross-reference.—34 CFR 75.590 Evaluation by the grantee.

(2) The Secretary looks for information that shows methods of evaluation that are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable.

(e) *Adequacy of resources.* (1) The Secretary reviews each application for information that shows that the applicant plans to devote adequate resources to the project.

(2) The Secretary looks for information that shows—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies that the applicant plans to use are adequate.

(f) The proportion of children enrolled in the schools of the project who are low-income according to the official poverty line as defined by the Office of Management and Budget.

(g) The proportion of children enrolled in the schools of the project who are graduates of Head Start or similar preschool programs as required by § 215.12(a).

(h) The provision for parental and community involvement as required by § 215.20(b).

(i) The participation of Follow Through parents in the development and operation of the project as required by § 215.19(a) and (d).

(j) The role of the Policy Advisory Committee in recommending the filling of staff positions as required by § 215.19(d)(3) and (4);

(k) The extent to which the membership of the Policy Advisory Committee is composed of low-income parents elected by these parents as required by § 215.19(b);

(l) The extent to which the Policy Advisory Committee participates in the decision-making process in respect to important aspects of the project in accordance with § 215.19(d);

(m) The extent to which priority is given to low-income parents in the employment of nonprofessionals and paraprofessionals as required by § 215.20;

(n) If appropriate, the extent to which the supplementary training program is serving nonprofessional and paraprofessinal staff of the project in accordance with § 215.25(h)(3).

(o) The role of the Career Development Committee as required by § 215.19(d)(9).

(p) The provision for staff training as required by § 215.25(g);

(q) The extent to which the instructional component is implemented as required by § 215.25(a).

(r) The provision and coordination of comprehensive services as required by § 215.25 and 215.25(b):

(1) Nutrition.

(2) Medical and dental services.

(3) Social services.

(4) Psychological services.

(5) Career development.

(s) The use or the coordination, or both, or other resources and programs with the project in accordance with § 215.25(b).

(i) The extent to which the evaluations conducted to date indicate program effectiveness according to criteria such as those defined by § 215.24(b).

(Economic Opportunity Act, Title V, Secs. 551(a)(1), (3) 554(a) [Pub. L. 93-644 Sec. 8(a)])

5. The title and paragraph (b) of § 215.42 are revised to read as follows:

§ 215.42 Funding and selection criteria for grants or contracts.

* * * * * *

(b) *Selection criteria.* The Secretary uses the criteria in this paragraph (b) to evaluate applications for grants and proposals for contracts under this subpart. The criteria are not weighted, but are each rated on the following scale: unsatisfactory, satisfactory, above average, outstanding.

(1) *Plan of operation.* (i) The Secretary reviews each application for information that shows the quality of the plan of operation for the project.

(ii) The Secretary looks for information that shows—

(A) High quality in the design of the project;

(B) An effective plan of management that insures proper and efficient administration of the project;

(C) A clear description of how the objectives of the project relate to the purpose of the program;

(D) The way the applicant plans to use its resources and personnel to achieve each objective; and

(E) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented, such as—

(*1*) Members of racial or ethnic minority groups;

(*2*) Women;

(*3*) Handicapped persons; and

(*4*) The elderly.

(2) *Quality of key personnel.* (i) The Secretary reviews each application for information that shows the quality of the key personnel the applicant plans to use on the project.

(ii) The Secretary looks for information that shows—

(A) The qualifications of the project director (if one is to be used);

(B) The qualifications of each of the other key personnel to be used in the project;

(C) The time that each person referred to in paragraphs (b)(2)(ii) (A) and (B) of this section plans to commit to the project; and

(D) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as—

(*1*) Members of racial or ethnic minority groups;

(*2*) Women;

(*3*) Handicapped persons; and

(*4*) The elderly.

(iii) To determine the qualifications of a person, the Secretary considers evidence of past experience and training, in fields related to the objectives of the project, as well as other information that the applicant provides.

(3) *Budget and cost effectiveness.* (i) The Secretary reviews each application for information that shows that the project has an adequate budget and is cost effective.

(ii) The Secretary looks for information that shows—

(A) The budget for the project is adequate to support the project activities; and

(B) Costs are reasonable in relation to the objectives of the project.

(4) *Evaluation plan.* (i) The Secretary reviews each application for information that shows the quality of the evaluation plan for the project.

Cross-reference.—34 CFR 75.590 Evaluation by the grantee.

(ii) The Secretary looks for information that shows methods of evaluation that are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable.

(5) *Adequacy of resources.* (i) The Secretary reviews each application for information that shows that the applicant plans to devote adequate resources to the project.

(ii) The Secretary looks for information that shows—

(A) The facilities that the applicant plans to use are adequate; and

(B) The equipment and supplies that the applicant plans to use are adequate.

(6) *Programmatic.* (i) The extent to which the applicant has shown or will show familiarity with the Follow Through program and the projects in its State through site visits and other means;

(ii) The extent to which the applicant will promote coordination of Follow Through with other State and local programs having similar objectives;

(iii) The extent to which the applicant will assist local projects in identifying and making the maximum use of available public and private resources which can contribute to the development of comprehensive projects;

(iv) The extent to which the applicant will assist local projects in improving parent-school-community relationships;

(v) The extent to which the applicant will assist local projects in evaluating project activities and disseminating information regarding project activities and their evaluation; and

(vi) The extent to which the applicant will assist local projects with staff training and development programs.

(7) *Management.* The extent to which the applicant will seek information from the local project sites to meet their project needs for technical assistance.

(Economic Opportunity Act, Title V, Sec. 553(a)(3) Pub. L. 93-644 Sec. 8(a))

6. Section 215.52 is revised to read as follows:

§ 215.52 Selection criteria.

The Secretary provides financial assistance under this subpart only to those applicants who sponsor educational approaches currently being implemented in the Follow Through program. The Secretary uses the criteria in this section to determine whether an applicant has satisfactorily operated a project funded in the previous year under the Follow Through program. Each of the criteria is rated on the following scale: unsatisfactory, satisfactory, above average, outstanding:

(a) *Plan of operation.* (1) The Secretary reviews each application for information that shows the quality of the plan of operation for the project.

(2) The Secretary looks for information that shows—

(i) High quality in the design of the project;

(ii) An effective plan of management that insures proper and efficient administration of the project;

(iii) A clear description of how the objectives of the project relate to the purpose of the program;

(iv) The way the applicant plans to use its resources and personnel to achieve each objective; and

(v) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(b) *Quality of key personnel.* (1) The Secretary reviews each application for information that shows the quality of the key personnel the applicant plans to use on the project.

(2) The Secretary looks for information that shows—

(i) The qualifications of the project director (if one is to be used);

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (b)(2) (i) and (ii) of this section plans to commit to the project; and

(iv) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(3) To determine the qualifications of a person, the Secretary considers evidence of past experience and training, in fields related to the objectives of the project, as well as other information that the applicant provides.

(c) *Budget and cost effectiveness.* (1) The Secretary reviews each application for information that shows that the project has an adequate budget and is cost effective.

(2) The Secretary looks for information that shows—

(i) The budget for the project is adequate to support the project activities; and

(ii) Costs are reasonable in relation to the objectives of the project.

(d) *Evaluation plan.* (1) The Secretary reviews each application for information that shows the quality of the evaluation plan for the project.

Cross-reference.—34 CFR 75.590 Evaluation by the grantee.

(2) The Secretary looks for information that shows methods of evaluation that are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable.

(e) *Adequacy of resources.* (1) The Secretary reviews each application for information that shows that the applicant plans to devote adequate resources to the project.

(2) The Secretary looks for information that shows—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies that the applicant plans to use are adequate;

(f) The extent to which the evaluations conducted to date indicate program effectiveness according to criteria in § 215.24(b).

(g) The extent to which parents have been and will be involved in sponsor activities.

(h) The extent to which the sponsor has provided and will provide for the training of—

(1) Administrators;

(2) Teachers;

(3) Teacher aides and other paraprofessionals;

(4) Parents; and

(5) Others.

(Economic Opportunity Act, Title V, Sec. 553(a)(1) (Pub. L. 93-644 Sec. 8(a)))

PART 305—REGIONAL RESOURCE CENTERS

7. A new § 305.17 is added to part 305, to read as follows:

§ 305.17 Additional criteria.

(a) In addition to any other criteria for selection under this part, the Secretary uses the criteria in this section to evaluate applications for new grants.

(b)(1) *Plan of operation.* (i) The Secretary reviews each application for information that shows the quality of the plan of operation for the project.

(ii) The Secretary looks for information that shows—

(A) High quality in the design of the project;

(B) An effective plan of management that insures proper and efficient administration of the project;

(C) A clear description of how the objectives of the project relate to the purpose of the program;

(D) The way the applicant plans to use its resources and personnel to achieve each objective; and

(E) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented, such as—

(*1*) Members of racial or ethnic minority groups;

(*2*) Women;

(*3*) Handicapped persons; and

(*4*) The elderly.

(2) *Quality of key personnel.* (i) The Secretary reviews each application for information that shows the quality of the key personnel the applicant plans to use on the project.

(ii) The Secretary looks for information that shows—

(A) The qualifications of the project director (if one is to be used);

(B) The qualifications of each of the other key personnel to be used in the project;

(C) The time that each person referred to in paragraphs (d)(2)(ii) (A) and (B) of this section plans to commit to the project; and

(D) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as—

(*1*) Members of racial or ethnic minority groups;

(*2*) Women;

(*3*) Handicapped persons; and

(*4*) The elderly.

(iii) To determine the qualifications of a person, the Secretary considers evidence of past experience and training, in fields related to the objectives of the project, as well as other information that the applicant provides.

(3) *Budget and cost effectiveness.* (i) The Secretary reviews each application for information that shows that the project has an adequate budget and is cost effective.

(ii) The Secretary looks for information that shows—

(A) The budget for the project is adequate to support the project activities; and

(B) Costs are reasonable in relation to the objectives of the project.

(4) *Evaluation Plan.* (i) The Secretary reviews each application for information that shows the quality of the evaluation plan for the project.

Cross-reference.—34 CFR 75.590. Evaluation by the grantee.

(ii) The Secretary looks for information that shows methods of evaluation that are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable.

(5) *Adequacy of resources.* (i) The Secretary reviews each application for information that shows that the applicant plans to devote adequate resources to the project.

(ii) The Secretary looks for information that shows—

(A) The facilities that the applicant plans to use are adequate; and

(B) The equipment and supplies that the applicant plans to use are adequate.

(20 U.S.C. 1421)

PART 307—CENTERS AND SERVICES FOR DEAF-BLIND CHILDREN

8. A new § 307.41 is added to part 307, to read as follows:

§ 307.41 Additional criteria.

(a) In addition to any other criteria for selection under this part, the Secretary uses the criteria in this section to evaluate applications for new grants.

(b)(1) *Plan of operation.* (i) The Secretary reviews each application for information that shows the quality of the plan of operation for the project.

(ii) The Secretary looks for information that shows—

(A) High quality in the design of the project;

(B) An effective plan of management that insures proper and efficient administration of the project;

(C) A clear description of how the objectives of the project relate to the purpose of the program;

(D) The way the applicant plans to use its resources and personnel to achieve each objective; and

(E) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented, such as—Members of racial or ethnic minority groups.

(2) *Quality of key personnel.* (i) The Secretary reviews each application for information that shows the quality of the key personnel the applicant plans to use on the project.

(ii) The Secretary looks for information that shows—

(A) The qualifications of the project director (if one is to be used);

(B) The qualifications of each of the other key personnel to be used in the project;

(C) The time that each person referred to in paragraphs (b)(2)(ii) (A) and (B) of this section plans to commit to the project; and

(D) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as—

(1) Members of racial or ethnic minority groups;

(4) The elderly.

(iii) To determine the qualifications of a person, the Secretary considers evidence of past experience and training, in fields related to the objectives of the project, as well as other information that the applicant provides.

(3) *Budget and cost effectiveness.* (i) The Secretary reviews each application for information that shows that the project has an adequate budget and is cost effective.

(ii) The Secretary looks for information that shows—

(A) The budget for the project is adequate to support the project activities; and

(B) Costs are reasonable in relation to the objectives of the project.

(4) *Evaluation plan.* (i) The Secretary reviews each application for information that shows the quality of the evaluation plan for the project.

Cross-reference.—34 CFR 75.590 Evaluation by the grantee.

(ii) The Secretary looks for information that shows methods of evaluation that are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable.

(5) *Adequacy of resources.* (i) The Secretary reviews each application for information that shows that the applicant plans to devote adequate resources to the project.

(ii) The Secretary looks for information that shows—

(A) The facilities that the applicant plans to use are adequate; and

(B) The equipment and supplies that the applicant plans to use are adequate.

(20 U.S.C. 1422)

PART 309—EARLY EDUCATION FOR HANDICAPPED CHILDREN

7. Part 309 is amended by adding a new § 309.61 as follows:

§ 309.61 Selection criteria.

The Secretary uses the criteria in this section to evaluate applications for new grants under Subparts A, B, and C of this part. The criteria are not weighted.

(a) *Plan of operation.* (1) The Secretary reviews each application for information the quality of shows that the plan of operation for the project.

(2) The Secretary looks for information that shows—

(i) High quality in the design of the project;

(ii) An effective plan of management that insures proper and efficient administration of the project;

(iii) A clear description of how the objectives of the project relate to the purpose of the program;

(iv) The way the applicant plans to use its resources and personnel to achieve each objective; and

(v) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Handicapped persons; and

(C) The elderly.

(b) *Quality of key personnel.* (1) The Secretary reviews each application for information that shows the quality of the key personnel the applicant plans to use on the project.

(2) The Secretary looks for information that shows—

(i) The qualifications of the project director (if one is to be used);

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (b)(2) (i) and (ii) of this section plans to commit to the project; and

(iv) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(3) To determine the qualifications of a person, the Secretary considers evidence of past experience and training, in fields related to the objectives of the project, as well as other information that the applicant provides.

(c) *Budget and cost effectiveness.* (1) The Secretary reviews each application for information that shows that the project has an adequate budget and is cost effective.

(2) The Secretary looks for information that shows—

(i) The budget for the project is adequate to support the project activities; and

(ii) Costs are reasonable in relation to the objectives of the project.

(d) *Evaluation plan.* (1) The Secretary reviews each application for information that shows the quality of the evaluation plan for the project.

Cross-reference.—34 CFR 75.590 Evaluation by the grantee.

(2) The Secretary looks for information that shows methods of evaluation that are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable.

(e) *Adequacy of resources.* (1) The Secretary reviews each application for information that shows that the applicant plans to devote adequate resources to the project.

(2) The Secretary looks for information that shows—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies that the applicant plans to use are adequate.

(20 U.S.C. 1423)

PART 315—AUXILIARY ACTIVITIES

10. Section 315.4 is revised to read as follows:

§ 315.4 Selection criteria.

The Secretary uses the criteria in this section to evaluate applications for new grants. The criteria are not weighted.

(a) *Enhance effectiveness.* The Secretary reviews each application for information that shows the activities under the proposed project will serve to enhance the effectiveness of the center or program to which they will be related.

(b) *Complement basic functions.* The Secretary reviews each application for information that shows the activities under the proposed project will serve to complement rather than displace the basic functions of the center or program to which they will be related.

(c) *Additional criteria*—(1) *Plan of operation.* (i) The Secretary reviews each application for information that shows the quality of the plan of operation for the project.

(ii) The Secretary looks for information that shows—

(A) High quality in the design of the project;

(B) An effective plan of management that insures proper and efficient administration of the project;

(C) A clear description of how the objectives of the project relate to the purpose of the program;

(D) The way the applicant plans to use its resources and personnel to achieve each objective; and

(E) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented, such as—

(*1*) Members of racial or ethnic minority groups;

(*2*) Women;

(*3*) Handicapped persons; and

(*4*) The elderly.

(2) *Quality of key personnel.* (i) The Secretary reviews each application for information that shows the quality of the key personnel the applicant plans to use on the project.

(ii) The Secretary looks for information that shows—

(A) The qualifications of the project director (if one is to be used);

(B) The qualifications of each of the other key personnel to be used in the project;

(C) The time that each person referred to in paragraphs (d)(2)(ii) (A) and (B) of this section plans to commit to the project; and

(D) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as—

(1) Members of racial or ethnic minority groups;

(2) Women;

(3) Handicapped persons; and

(4) The elderly.

(iii) To determine the qualifications of a person, the Secretary considers evidence of past experience and training, in fields related to the objectives of the project, as well as other information that the applicant provides.

(3) *Budget and cost effectiveness.* (i) The Secretary reviews each application for information that shows that the project has an adequate budget and is cost effective.

(ii) The Secretary looks for information that shows—

(A) The budget for the project is adequate to support the project activities; and

(B) Costs are reasonable in relation to the objectives of the project.

(4) *Evaluation plan.* (i) The Secretary reviews each application for information that shows the quality of the evaluation plan for the project.

Cross-reference.—34 CFR 75.590 Evaluation by the grantee.

(ii) The Secretary looks for information that shows methods of evaluation that are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable.

(5) *Adequacy of resources.* (i) The Secretary reviews each application for information that shows that the applicant plans to devote adequate resources to the project.

(ii) The Secretary looks for information that shows—

(A) The facilities that the applicant plans to use are adequate; and

(B) The equipment and supplies that the applicant plans to use are adequate.

(20 U.S.C. 1424)

PART 318—TRAINING PERSONNEL FOR THE EDUCATION OF THE HANDICAPPED

11. Section 318.20 is revised to read as follows:

§ 318.20 Selection criteria.

The Secretary uses the criteria in this section to evaluate applications for new awards. The criteria are not weighted.

(a) *Plan of operation.* (1) The Secretary reviews each application for information that shows the quality of the plan of operation for the project.

(2) The Secretary looks for information that shows—

(i) High quality in the design of the project;

(ii) An effective plan of management that insures proper and efficient administration of the project;

(iii) A clear description of how the objectives of the project relate to the purpose of the program;

(iv) The way the applicant plans to use its resources and personnel to achieve each objective; and

(v) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(b) *Quality of key personnel.* (1) The Secretary reviews each application for information that shows the quality of the key personnel the applicant plans to use on the project.

(2) The Secretary looks for information that shows—

(i) The qualifications of the project director (if one is to be used);

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (b)(2)(i) and (ii) of this section plans to commit to the project; and

(iv) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(3) To determine the qualifications of a person, the Secretary considers evidence of past experience and training, in fields related to the objectives of the project, as well as other information that the applicant provides.

(c) *Budget and cost effectiveness.* (1) The Secretary reviews each application for information that shows that the project has an adequate budget and is cost effective.

(2) The Secretary looks for information that shows—

(i) The budget for the project is adequate to support the project activities; and

(ii) Costs are reasonable in relation to the objectives of the project.

(d) *Evaluation plan.* (1) The Secretary reviews each application for information that shows the quality of the evaluation plan for the project.

Cross-reference.—34 CFR 75.590 Evaluation by the grantee.

(2) The Secretary looks for information that shows methods of evaluation that are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable.

(e) *Adequacy of resources.* (1) The Secretary reviews each application for information that shows that the applicant plans to devote adequate resources to the project.

(2) The Secretary looks for information that shows—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies that the applicant plans to use are adequate.

(f) The extent to which the applicant specifically provides evidence that program graduates are meeting the educational needs of handicapped children at the local, State, or national level.

(g) The extent to which program philosophy, program objectives, and activities implemented to attain program objectives are related to the educational needs of handicapped children.

(h) The extent to which—

(1) Present and former students;

(2) Employing agencies (school districts, State agencies, etc.); and

(3) Individuals (parents, practicing teachers, etc.), are involved in program planning, implementation, and evaluation.

(i) The extent to which the evaluation design and procedures—

(1) Provide for assessment of the effectiveness and efficiency of the use of program resources in the attainment of program objectives; and

(2) Provide for the collection of quantifiable program performance information including—

(i) The numbers of personnel prepared and placed in positions relevant to the education of handicapped children;

(ii) The type and location of positions accepted by program graduates;

(iii) The number of handicapped children served by program graduates;

(iv) The length of time that program graduates serve handicapped children;

(v) Employers evaluation of program graduates' proficiency; and

(vi) The effectiveness of program graduates in facilitating the educational progress of handicapped children.

(j) The extent to which the application describes procedures for assessing the impact, and in case of an application for continuation support, provides evidence of impact of the program upon other related programs within the institution, community programs for the education of handicapped children, and improvement of services for handicapped children at the local, State, and/or national level.

(k) The extent to which the application describes and specifies the various roles or positions for which students are prepared, the tasks associated with these roles, and the competencies that must be acquired to complete each task successfully.

(l) The extent to which the application includes a delineation of competencies that each program graduate will acquire and will subsequently exhibit and how the competencies will be evaluated.

(m) The extent to which substantive content and organization of the program—

(1) Are appropriate for the student's attainment of professional knowledge and competencies that are necessary for the provision of quality educational services for handicapped children; and

(2) Demonstrate an awareness of relevant methods, procedures, techniques, and instructional media or materials that can be used in the preparation of qualified educators of handicapped children.

(n) The extent to which approprate practicum facilities are—

(1) Utilized for observation, participation, practice teaching, laboratory or clinical experience, internship, and other supervised experiences of adequate scope, combination, and length; and

(2) Accessible to the applicant and students.

(o) The amount of fiscal and other effort the applicant will contribute to the program, and a delineation of the procedures that will be implemented for the increase of this effort over a specified time period in relationship to the amout of Federal funds awarded for support of the program.

(20 U.S.C. 1432, 1434)

PART 324—RESEARCH IN EDUCATION OF THE HANDICAPPED

12. Section 324.7 is revised to read as follows:

§ 324.7 Selection criteria for research projects.

The Secretary uses the criteria in this section to evaluate applications for new grants. The maxmium score for all of the criteria is 100 points.

(a) *Plan of operation.* (10 points)

(1) The Secretary reviews each application for information that shows the quality of the plan of operation for the project.

(2) The Secretary looks for information that shows—

(i) High quality in the design of the project;

(ii) An effective plan of management that insures proper and efficient administration of the project;

(iii) A clear description of how the objectives of the project relate to the purpose of the program;

(iv) The way the applicant plans to use its resources and personnel to achieve each objective; and

(v) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(b) *Quality of key personnel.* (10 points)

(1) The Secretary reviews each application for information that shows the quality of the key personnel the applicant plans to use on the project.

(2) The Secretary looks for information that shows—

(i) The qualifications of the project director (if one is to be used);

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (b)(2) (i) and (ii) of this section plans to commit to the project; and

(iv) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(3) To determine the qualifications of a person, the Secretary considers evidence of past experience and training, in fields related to the objectives of the project, as well as other information that the applicant provides.

(c) *Budget and cost effectiveness.* (10 points)

(1) The Secretary reviews each application for information that shows

that the project has an adequate budget and is cost effective.

(2) The Secretary looks for information that shows—

(i) The budget for the project is adequate to support the project activities; and

(ii) Costs are reasonable in relation to the objectives of the project.

(d) *Evaluation plan.* (5 points)

(1) The Secretary reviews each application for information that shows the quality of the evaluation plan for the project.

Cross-reference.—34 CFR 75.590 Evaluation by the grantee.

(2) The Secretary looks for information that shows methods of evaluation that are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable.

(e) *Adequacy of resources* (5 points)

(1) The Secretary reviews each application for information that shows that the applicant plans to devote adequate resources to the project.

(2) The Secretary looks for information that shows—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies that the applicant plans to use are adequate.

(f) The potential importance of the project to the education of the handicapped. (15 points)

(g) The probable impact of proposed research and development products and the extent to which products can be expected to have a direct influence on the handicaped or personnel responsible for the education of the handicapped. (15 points)

(h) Technical soundness of the research and development plan and adequacy of specification of procedures. (30 points)

(20 U.S.C. 1441, 1442)

13. Section 324.8 is revised to read as follows:

§ 324.8 Selection criteria for model programs.

The Secretary uses the criteria in this section to evaluate applications for new awards. The maximum score for all of the criteria is 100 points.

(a) *Plan of operation.* (10 points)

(1) The Secretary reviews each application for information that shows the quality of the plan of operation for the project.

(2) The Secretary looks for information that shows—

(i) High quality in the design of the project;

(ii) An effective plan of management that insures proper and efficient administration of the project;

(iii) A clear description of how the objectives of the project relate to the purpose of the program;

(iv) The way the applicant plans to use its resources and personnel to achieve each objective; and

(v) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(b) *Quality of key personnel.* (7 points)

(1) The Secretary reviews each application for information that shows the quality of the key personnel the applicant plans to use on the project.

(2) The Secretary looks for information that shows—

(i) The qualifications of the project director (if one is to be used);

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (b)(2) (i) and (ii) of this section plans to commit to the project; and

(iv) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(3) To determine the qualifications of a person, the Secretary considers evidence of past experience and training, in fields related to the objectives of the project, as well as other information that the applicant provides.

(c) *Budget and cost effectiveness.* (10 points)

(1) The Secretary reviews each application for information that shows that the project has an adequate budget and is cost effective.

(2) The Secretary looks for information that shows—

(i) The budget for the project is adequate to support the project activities; and

(ii) Costs are reasonable in relation to the objectives of the project.

(d) *Evaluation plan.* (10 points)

(1) The Secretary reviews each application for information that shows the quality of the evaluation plan for the project.

Cross-reference.—34 CFR 75.590 Evaluation by the grantee.

(2) The Secretary looks for information that shows methods of evaluation that are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable.

(e) *Adequacy of resources.* (5 points)

(1) The Secretary reviews each application for information that shows that the applicant plans to devote adequate resources to the project.

(2) The Secretary looks for information that shows—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies that the applicant plans to use are adequate.

(f) The importance and relevance of the program to the education of handicapped children. (10 points)

(g) The probable impact of proposed and products. (10 points)

(h) The extent to which the program is eligible for consideration as a "model." (See § 324.5.) (15 points)

(i) Technical soundness of the proposal as judged by plans for assessment of a child's progress and appropriateness of program approach. (13 points)

(j) The extent to which the program plans for the development and implementation of individualized education programs. (See 34 CFR 300.340.) (5 points)

(k) The extent of coordination with other appropriate agencies. (5 points)

(20 U.S.C. 1441, 1442)

PART 338—REGIONAL EDUCATION PROGRAMS FOR HANDICAPPED PERSONS

14. Section 338.18 is revised to read as follows:

§ 338.18 Selection criteria.

The Secretary uses the criteria in this section to evaluate applications for new awards. The criteria are not weighted.

(a) *Plan of operation.* (1) The Secretary reviews each application for information that shows the quality of the plan of operation for the project.

(2) The Secretary looks for information that shows—

(i) High quality in the design of the project;

(ii) An effective plan of management that insures proper and efficient administration of the project;

(iii) A clear description of how the objectives of the project relate to the purpose of the program;

(iv) The way the applicant plans to use its resources and personnel to achieve each objective; and

(v) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(1) The Secretary reviews each application for information that shows the quality of key personnel the applicant plans to use on the project.

(2) The Secretary looks for information that shows—

(i) The qualifications of the project director (if one is to be used);

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (b)(2) (i) and (ii) of this section plans to commit to the project; and

(iv) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(3) To determine the qualifications of a person, the Secretary considers evidence of past experience and training, in fields related to the objectives of the project, as well as other information that the applicant provides.

(c) *Budget and cost effectiveness.* (1) The Secretary reviews each application for information that shows that the project has an adequate budget and is cost effective.

(2) The Secretary looks for information that shows—

(i) The budget for the project is adequate to support the project activities; and

(ii) Costs are reasonable in relation to the objectives of the project.

(d) *Evaluation plan.* (1) The Secretary reviews each application for information that shows the quality of the evaluation plan for the project.

Cross-reference.—34 CFR 75.590 Evaluation by the grantee.

(2) The Secretary looks for information that shows methods of evaluation that are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable.

(e) *Adequacy of resources.* (1) The Secretary reviews each application for information that shows that the applicant plans to devote adequate resources to the project.

(2) The Secretary looks for information that shows—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies that the applicant plans to use are adequate.

(f) Whether the program will be carried out in facilities easily accessible to physically handicapped persons.

(g) Whether the program will be located in an area in which public transportation is readily available, or transportation will be provided at reasonable cost to handicapped persons participating in the program.

(h) Whether the program will serve handicapped persons for whom other appropriate education programs are not readily available.

(i) The likelihood that the services provided under the proposed program will be continued by the applicant following the expiration of Federal funding as measured by evidence of financial and other commitment of the applicant to the program and other funds available to the program.

(20 U.S.C. 1424a)

PART 408—COMMISSIONER'S DISCRETIONARY PROGRAMS OF VOCATIONAL EDUCATION

15. Section 408.110 is revised to read as follows:

§ 408.110 Selection criteria.

The Secretary uses the criteria in this section to evaluate applications for new awards. The maximum score for all of the criteria is 100 points.

(a) *Plan of operation.* (Maximum 34 points)

(1) The Secretary reviews each application for information that shows the quality of the plan of operation for the project.

(2) The Secretary looks for information that shows—

(i) High quality in the design of the project;

(ii) An effective plan of management that insures proper and efficient administration of the project;

(iii) A clear description of how the objectives of the project relate to the purpose of the program;

(iv) The way the applicant plans to use its resources and personnel to achieve each objective; and

(v) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(b) *Quality of key personnel.* (Maximum 8 points)

(1) The Secretary reviews each application for information that shows the quality of the key personnel the applicant plans to use on the project.

(2) The Secretary looks for information that shows—

(i) The qualifications of the project director (if one is to be used);

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (b)(2) (i) and (ii) of this section plans to commit to the project; and

(iv) The extent to which the applicant, as part of is nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(3) To determine the qualifications of a person, the Secretary considers evidence of past experience and training, in fields related to the objectives of the project, as well as other information that the applicant provides.

(c) *Budget and cost effectiveness.* (Maximum 7 points)

(1) The Secretary reviews each application for information that shows that the project has an adequate budget and is cost effective.

(2) The Secretary looks for information that shows—

(i) The budget for the project is adequate to support the project activities; and

(ii) Costs are reasonable in relation to the objectives of the project.

(d) *Evaluation plan.* (Maximum 7 points)

(1) The Secretary reviews each application for information that shows the quality of the evaluation plan for the project.

Cross-reference.—34 CFR 75.590 Evaluation by the grantee.

(2) The Secretary looks for information that shows methods of evaluation that are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable.

(e) *Adequacy of resources.* (Maximum 3 points)

(1) The Secretary reviews each application for information that shows that the applicant plans to devote adequate resources to the project.

(2) The Secretary looks for information that shows—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies that the applicant plans to use are adequate.

(f) *National need.* (Maximum 15 points). The need section clearly—

(1) Describes the national need in vocational education for the proposed project;

(2) Indicates specifically who or what will be helped; and

(3) Describes the problem rather than symptoms of the problem.

(g) *Literature review.* (Maximum 5 points). The literature review is sufficiently comprehensive to—

(1) Establish the basis for the problem;

(2) Describe the problem in contrast to the symptoms of the problem;

(3) Provide a strong conceptual framework for the proposed objectives and proposed plan, including the general design and specific procedures of the proposed plan, along with the management, evaluation, dissemination, and training procedures, when appropriate; and

(4) Describe what has been done previously to alleviate the problem and point out the gaps that will be alleviated by this specific proposed work.

(h) *Results, and products, outcomes, and dissemination.* (Maximum 9 points). The application clearly describes:

(1) What will be delivered to the government.

(2) The format in which the results, products, or outcomes will be delivered to the government.

(i) *Institutional capability and commitment.* (Maximum 4 points). The application provides adequate evidence of—

(1) Institutional or individual's experience and commitment to the proposed work; and

(2) Assurance of support from cooperating agencies, local educational agencies, postsecondary institutions, business, industry, and labor, where applicable for successful implementation of the project.

(j) *Sex bias and stereotyping.* (Maximum 8 points). The application provides appropriate plans to eliminate sex bias and stereotyping in the proposed results, and products, and outcomes, and the proposed dissemination plans.

(20 U.S.C. 2401)

PART 525—BILINGUAL VOCATIONAL TRAINING PROGRAM

18. Section 525.606 is revised to read as follows:

§ 525.606 Selection criteria.

The Secretary uses the criteria in this section to evaluate applications for new awards. The maximum score for all of the criteria is 100 points.

(a) *Plan of operation.* (Maximum 33 points).

(1) The Secretary reviews each application for information that shows the quality of the plan of operation for the project.

(2) The Secretary looks for information that shows—

(i) High quality in the design of the project;

(ii) An effective plan of management that insures proper and efficient administration of the project;

(iii) A clear description of how the objectives of the project relate to the purpose of the program;

(iv) The way the applicant plans to use its resources and personnel to achieve each objective; and

(v) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(b) *Quality of key personnel.* (Maximum 25 points).

(1) The Secretary reviews each application for information that shows the quality of the key personnel the applicant plans to use on the project.

(2) The Secretary looks for information that shows—

(i) The qualifications of the project director (if one is to be used);

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (b)(2) (i) and (ii) of this section plans to commit to the project; and

(iv) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(3) To determine the qualifications of a person, the Secretary considers evidence of past experience and training, in fields related to the objectives of the project, as well as other information that the applicant provides.

(c) *Budget and cost effectiveness.* (Maximum 10 points)

(1) The Secretary reviews each application for information that shows that the project has an adequate budget and is cost effective.

(2) The Secretary looks for information that shows—

(i) The budget for the project is adequate to support the project activities; and

(ii) Costs are reasonable in relation to the objectives of the project.

(d) *Evaluation plan.* (Maximum 12 points).

(1) The Secretary reviews each application for information that shows the quality of the evaluation plan for the project.

Cross-reference.—34 CFR 75.590 Evaluation by the grantee.

(2) The Secretary looks for information that shows methods of evaluation that are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable.

(e) *Adequacy of resources.* (Maximum 3 points).

(1) The Secretary reviews each application for information that shows that the applicant plans to devote adequate resources to the project.

(2) The Secretary looks for information that shows—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies that the applicant plans to use are adequate.

(f) *Need.* (Maximum 10 points).

(1) Describes the need for the proposed bilingual vocational training;

(2) Provides specific evidence of the need;

(3) Indicates specifically how the need will be met; and

(4) Describes, where appropriate, ongoing and planned activities in the community relative to the need.

(g) *Institutional capability and commitment.* (Maximum 7 points). The

application provides adequate evidence of—

(1) Institutional experience and commitment to the proposed work;

(2) Documented assurance of support from cooperating agencies, institutions, or community groups where applicable for successful implementation of the project.

(20 U.S.C. 2420)

PART 526—BILINGUAL VOCATIONAL INSTRUCTOR TRAINING PROGRAM

17. Section 526.616 is revised to read as follows:

§ 526.616 Selection criteria.

The Secretary uses the criteria in this section to evaluate applications for new awards. The maximum score for all of the criteria is 100 points.

(a) *Plan of operation.* (Maximum 25 points).

(1) The Secretary reviews each application for information that shows the quality of the plan of operation for the project.

(2) The Secretary looks for information that shows—

(i) High quality in the design of the project;

(ii) An effective plan of management that insures proper and efficient administration of the project;

(iii) A clear description of how the objectives of the project relate to the purpose of the program;

(iv) The way the applicant plans to use its resources and personnel to achieve each objective; and

(v) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(b) *Quality of key personnel.* (Maximum 25 points).

(1) The Secretary reviews each application for information that shows the quality of the key personnel the applicant plans to use on the project.

(2) The Secretary looks for information that shows—

(i) The qualifications of the project director (if one is to be used);

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (b)(2)(i) and (ii) of this section plans to commit to the project; and

(iv) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(3) To determine the qualifications of a person, the Secretary considers evidence of past experience and training, in fields related to the objectives of the project, as well as other information that the applicant provides.

(c) *Budget and cost effectiveness.* (Maximum 10 points).

(1) The Secretary reviews each application for information that shows that the project has an adequate budget and is cost effective.

(2) The Secretary looks for information that shows—

(i) The budget for the project is adequate to support the project activities; and

(ii) Costs are reasonable in relation to the objectives of the project.

(d) *Evaluation plan.* (Maximum 12 points).

(1) The Secretary reviews each application for information that shows the quality of the evaluation plan for the project.

Cross-reference.—34 CFR 75.590 Evaluation by the grantee.

(2) The Secretary looks for information that shows methods of evaluation that are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable.

(e) *Adequacy of resources.* (Maximum 3 points).

(1) The Secretary reviews each application for information that shows that the applicant plans to devote adequate resources to the project.

(2) The Secretary looks for information that shows—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies that the applicant plans to use are adequate.

(f) *Need.* (Maximum 10 points). The need section clearly—

(1) Describes the need for the proposed instructor training;

(2) Provides specific evidence of the need;

(3) Indicates specifically how the need will be met; and

(4) Describes, where appropriate, ongoing and planned activities in the community relative to the need.

(g) *Institutional capability and commitment.* (Maximum 7 points). The application provides adequate evidence of—

(1) Appropriate accreditation of the applicant institution by regional or national associations and approval by appropriate State agencies of the courses offered; and

(2) Documented assurance of support from cooperating agencies, institutions, or community groups where applicable for successful implementation of the project.

(h) *Ongoing vocational training.* (Maximum 4 points). The extent to which the applicant actually has an ongoing vocational training or vocational education program in the field for which persons are to be trained. Include a listing of the vocational courses offered by the applicant.

(i) *Language capabilities.* (Maximum 4 points). The extent to which the applicant institution can provide instructors with adequate language capabilities in the language other than English to be used in the bilingual job training program for which the instructors are being trained.

(20 U.S.C. 2420)

PART 527—BILINGUAL VOCATIONAL INSTRUCTIONAL MATERIALS, METHODS, AND TECHNIQUES PROGRAM

18. Section 527.626 is revised to read as follows:

§ 527.626 Selection criteria.

The Secretary uses the criteria in this section to evaluate applications for new grants. The maximum score for all of the criteria is 100 points.

(a) *Plan of operation.* (Maximum 35 points).

(1) The Secretary reviews each application for information that shows the quality of the plan of operation for the project.

(2) The Secretary looks for information that shows—

(i) High quality in the design of the project;

(ii) An effective plan of management that insures proper and efficient administration of the project;

(iii) A clear description of how the objectives of the project relate to the purpose of the program;

(iv) The way the applicant plans to use its resources and personnel to achieve each objective; and

(v) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups

that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(b) *Quality of key personnel.* (Maximum 10 points).

(1) The Secretary reviews each application for information that shows the quality of key personnel the applicant plans to use on the project.

(2) The Secretary looks for information that shows—

(i) The qualifications of the project director (if one is to be used);

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (b)(2) (i) and (ii) of this section plans to commit to the project; and

(iv) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(3) To determine the qualifications of a person, the Secretary considers evidence of past experience and training, in fields related to the objectives of the project, as well as other information that the applicant provides.

(c) *Budget and cost effectiveness.* (Maximum 5 points).

(1) The Secretary reviews each application for information that shows that the project has an adequate budget and is cost effective.

(2) The Secretary looks for information that shows—

(i) The budget for the project is adequate to support the project activities; and

(ii) Costs are reasonable in relation to the objectives of the project.

(d) *Evaluation plan.* (Maximum 10 points).

(1) The Secretary reviews each application for information that shows the quality of the evaluation plan for the project.

Cross-reference.—34 CFR 75.590 Evaluation by the grantee.

(2) The Secretary looks for information that shows methods of evaluation that are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable.

(e) *Adequacy of resources.* (Maximum 3 points).

(1) The Secretary reviews each application for information that shows that the applicant plans to devote adequate resources to the project.

(2) The Secretary looks for information that shows—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies that the applicant plans to use are adequate.

(f) *Need.* (Maximum 20 points). The need section clearly—

(1) Describes the national significance and the need in bilingual vocational training for the proposed project;

(2) Provides specific evidence of the need;

(3) Indicates specifically who or what will be helped; and

(4) Describes the problem rather than the symptoms of the problem.

(g) *Literature review.* (Maximum 5 points). The literature review is sufficiently comprehensive to—

(1) Establish the basis for the problem;

(2) Describe the problem in contrast to the symptoms of the problem;

(3) Provide a strong conceptual framework for the proposed objectives and proposed plan, including the general design and specific procedures of the proposed plan, along with the management, evaluation, dissemination, and training procedures (when appropriate); and

(4) Describe what has been done previously to alleviate the problem and point out the gaps that will be alleviated by this specific proposed work.

(g) *Results, end products, outcomes, and dissemination.* (Maximum 8 points). The application clearly describes—

(1) What will be delivered to the Government; and

(2) The format in which the results, products, or outcomes will be delivered to the Government.

(i) *Applicant's capability and commitment.* (Maximum 4 points). Documented assurance of support from cooperating agencies, local educational agencies or postsecondary institutions, business, industry, and labor, where applicable for successful implementation of the project.

(20 U.S.C. 2420)

PART 624—STRENGTHENING DEVELOPING INSTITUTIONS PROGRAM

19. Section 624.52 is revised to read as follows:

§ 624.52 Selection criteria.

The Secretary uses the following criteria to select applications for new grants:

(a) *General criteria.* An applicant may receive up to 80 points for the general selection criteria in this paragraph:

(1) *Plan of operation.* (20 points)

(i) The Secretary reviews each application for information that shows the quality of the plan of operation for the project.

(ii) The Secretary looks for information that shows—

(A) High quality in the design of the project;

(B) An effective plan of management that insures proper and efficient administration of the project;

(C) A clear description of how the objectives of the project relate to the purpose of the program;

(D) The way the applicant plans to use its resources and personnel to achieve each objective; and

(E) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented, such as—

(*1*) Members of racial or ethnic minority groups;

(*2*) Women;

(*3*) Handicapped persons; and

(*4*) The elderly.

(2) *Quality of key personnel.* (7 points)

(i) The Secretary reviews each application for information that shows the quality of the key personnel the applicant plans to use on the project.

(ii) The Secretary looks for information that shows—

(A) The qualifications of the project director (if one is to be used);

(B) The qualifications of each of the other key personnel to be used in the project;

(C) The time that each person referred to in paragraphs (a)(2)(ii) (A) and (B) of this section plans to commit to the project; and

(D) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as—

(*1*) Members of racial or ethnic minority groups;

(*2*) Women;

(*3*) Handicapped persons; and

(*4*) The elderly.

(iii) To determine the qualifications of a person, the Secretary considers evidence of past experience and training, in fields related to the objectives of the project, as well as

other information that the applicant provides.

(3) *Budget and cost effectiveness.* (14 points)

(i) The Secretary reviews each application for information that shows that the project has an adequate budget and is cost effective.

(ii) The Secretary looks for information that shows—

(A) The budget for the project is adequate to support the project activities; and

(B) Costs are reasonable in relation to the objectives of the project.

(4) *Evaluation plan.* (9 points)

(i) The Secretary reviews each application for information that shows the quality of the evaluation plan for the project.

Cross-reference.—34 CFR 75.590 Evaluation by the grantee.

(ii) The Secretary looks for information that shows methods of evaluation that are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable.

(b) *Program criteria.* An applicant may receive up to 50 points under the following criteria:

(1) The extent to which the applicant's mission and goals statement reflects the needs of its constituents. (14 points)

(2) The extent to which the size, scope, and duration of the proposed activities will contribute to the stated goals. (22 points)

(3) The extent to which any proposed cooperative arrangements will help achieve project objectives. (9 points)

(4) The extent to which a plan has been developed to ensure continuation of the proposed activities after the grant ends. (5 points)

(c) The Secretary considers for selection only those applications that receive a rating of 50 or more points.

(20 U.S.C. 1051, 1054)

PART 643—TALENT SEARCH PROGRAM

20. Section 643.7 is revised to read as follows:

§ 643.7 Selection criteria.

(a) The Secretary uses the criteria in this paragraph to evaluate applications for new grants. The maximum score for all of the criteria is 100 points.

(1) *Plan of operation.* (10 points)

(i) The Secretary reviews each application for information that shows the quality of the plan of operation for the project.

(ii) The Secretary looks for information that shows—

(A) High quality in the design of the project;

(B) An effective plan of management that insures proper and efficient administration of the project;

(C) A clear description of how the objectives of the project relate to the purpose of the program;

(D) The way the applicant plans to use its resources and personnel to achieve each objective; and

(E) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented, such as—

(*1*) Members of racial or ethnic minority groups;

(*2*) Women;

(*3*) Handicapped persons; and

(*4*) The elderly.

(2) *Quality of key personnel.* (7 points)

(i) The Secretary reviews each application for information that shows the quality of the key personnel the applicant plans to use on the project.

(ii) The Secretary looks for information that shows—

(A) The qualifications of the project director (if one is to be used);

(B) The qualifications of each of the other key personnel to be used in the project;

(C) The time that each person referred to in paragraphs (a)(2)(ii) (A) and (B) of this section plans to commit to the project; and

(D) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as—

(*1*) Members of racial or ethnic minority groups;

(*2*) Women;

(*3*) Handicapped persons; and

(*4*) The elderly.

(iii) To determine the qualifications of a person, the Secretary considers evidence of past experience and training, in fields related to the objectives of the project, as well as other information that the applicant provides.

(3) *Budget and cost effectiveness.* (5 points)

(i) The Secretary reviews each application for information that shows that the project has an adequate budget and is cost effective.

(ii) The Secretary looks for information that shows—

(A) The budget for the project is adequate to support the project activities; and

(B) Cost are reasonable in relation to the objectives of the project.

(4) *Evaluation plan.* (5 points)

(i) The Secretary reviews each application for information that shows the quality of the evaluation plan for the project.

Cross-reference.—34 CFR 75.590 Evaluation by the grantee.

(ii) The Secretary looks for information that shows methods of evaluation that are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable.

(5) *Adequacy of resources.* (3 points)

(i) The Secretary reviews each application for information that shows that the applicant plans to devote adequate resources to the project.

(ii) The Secretary looks for information that shows—

(A) The facilities that the applicant plans to use are adequate; and

(B) The equipment and supplies that the applicant plans to use are adequate.

(6) *Need.* (33 points) (i) The extent to which the target area of the project is characterized by having a percent of youths from low-income families, residing or attending school in the area, that exceeds the minimally acceptable 25 percent, or exceeds 15 percent for those proposing to serve sparsely populated or geographically isolated areas; and

(ii) The number of youths who are eligible to be served by a project who reside or attend schools in the target area.

(7) *Design.* (16 points) (i) The extent to which the project will, in the target area, increase the rate of secondary school completion and postsecondary admissions, decrease the rate of secondary schools dropouts, and increase the number of secondary and postsecondary dropouts who reenter secondary and postsecondary educational programs; and

(ii) The comprehensiveness of the applicant's plan for—

(A) Identifying and selecting eligible participants and assessing and documenting their potential for postsecondary education;

(B) Providing career and academic guidance and counseling;

(C) Disseminating information on student financial aid to the target population;

(D) Assisting youths in gaining admission or readmission to secondary schools and a variety of postsecondary institutions which have adequate supportive services, if needed by the participants;

(E) Assisti
postseconda
student finan

(F) Determi
participants
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institutions re
aid.

(8) *Resourc*
points)

(a) The exte
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by community
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(b) *Populati*
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(c) *National*
The Secretary
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Talent Search
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(1) Whether
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youths.

(4) Whether
provide servic
on a local regi

(5) Whether
provide disadv
variety of educ
options for pos

(20 U.S.C. 1070d-

PART 644—EX
OPPORTUNIT

21. Section 6
follows:

(E) Assisting youths enrolling in postsecondary institutions in obtaining student financial aid; and

(F) Determining whether the participants actually enrolled in secondary programs or postsecondary institutions received adequate financial aid.

(8) *Resources and organization.* (21 points)

(a) The extent to which the applicant has provided for the orientation of secondary and postsecondary schools in the target area to the goals and objectives of the Talent Search Program and has received written commitments by community and other relevant organizations for the utilization of community and other resources to supplement authorized activities.

(b) *Population to be served.* In selecting applications for funding, the Secretary will consider the need for the project in the area the applicant proposes to serve as compared to the need of the total target population to be served.

(c) *National demonstration projects.* The Secretary will select a limited number of applications to be funded as Talent Search national demonstration projects on the basis of the criteria in paragraph (a) of this section and the following additional criteria:

(1) Whether the proposed project is national or inter-regional in scope or presents a clearly new or experimental technique or design for the provision of Talent Search services to eligible participants.

(2) Whether the proposed project duplicates or competes with existing regional or national programs, or consolidates existing regional or inter-regional educational activities under the aegis of a single agency or institution.

(3) Whether, with regard to proposed projects presenting a new or experimental technique or design, the proposed activities and results can be readily replicated and utilized by other educational programs concerned with the provision of services to similar youths.

(4) Whether the proposed project will provide services not readily available on a local regional basis to such youths.

(5) Whether the proposed project will provide disadvantaged students a variety of educational opportunities and options for postsecondary education.

(20 U.S.C. 1070d-1)

PART 644—EDUCATIONAL OPPORTUNITY CENTERS

21. Section 644.6 is revised to read as follows:

§ 644.6 Selection criteria.

(a) The Secretary uses the criteria in this paragraph to evaluate applications. The criteria are not weighted.

(1) *Plan of operation.* (i) The Secretary reviews each application for information that shows the quality of the plan of operation of the project.

(ii) The Secretary looks for information that shows—

(A) High quality in the design of the project;

(B) An effective plan of management that insures proper and efficient administration of the project;

(C) A clear description of how the objectives of the project relate to the purposes of the program;

(D) The way the applicant plans to use its resources and personnel to achieve each objective; and

(E) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented, such as—

(*1*) Members of racial or ethnic minority groups;

(*2*) Women;

(*3*) Handicapped persons; and

(*4*) The elderly.

(2) *Quality of key personnel.* (i) The Secretary reviews each application for information that shows the quality of key personnel the applicant plans to use on the project.

(ii) The Secretary looks for information that shows—

(A) The qualifications of the project director (if one is to be used);

(B) The qualifications of each of the other key personnel to be used in the project;

(C) The time that each person referred to in paragraphs (a)(2)(ii) (A) and (B) of this section plans to commit to the project; and

(D) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as—

(*1*) Members of racial or ethnic minority groups;

(*2*) Women;

(*3*) Handicapped persons; and

(*4*) The elderly.

(iii) To determine the qualifications of a person, the Secretary considers evidence of past experience and training, in fields related to the objectives of the project, as well as other information that the applicant provides.

(3) *Budget and cost effectiveness.* (i) The Secretary reviews each application for information that shows that the project has an adequate budget and is cost effective.

(ii) The Secretary looks for information that shows—

(A) The budget for the project is adequate to support the project activities; and

(B) Costs are reasonable in relation to the objectives of the project.

(4) *Evaluation plan.* (i) The Secretary reviews each application for information that shows the quality of the evaluation plan for the project.

Cross-reference.—34 CFR 75.590 Evaluation by the grantee.

(ii) The Secretary looks for information that shows methods of evaluation that are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable.

(5) *Adequacy of resources.* (i) The Secretary reviews each application for information that shows that the applicant plans to devote adequate resources to the project.

(ii) The Secretary looks for information that shows—

(A) The facilities that the applicant plans to use to serve the low-income families in the target area;

(B) The equipment and supplies that the applicant plans to use are adequate.

(6) *Need.* The degree to which services are needed to enhance access to postsecondary education, as indicated by—

(i) The number of secondary and postsecondary students and other students and other persons residing in the area;

(ii) The number of low-income families in the target area;

(iii) The historical rate of participation in postsecondary education by residents in the area; and

(iv) The number of persons to be served by the Center;

(7)(i) The extent to which the applicant has successfully operated a Center comparable or identical to those authorized under this part.

(ii) If that Center was not funded under the Educational Opportunity Centers Program, the applicant shall—

(A) Provide a description of that Center, including the number of low-income persons served and the kinds of services offered;

(B) The number of persons enrolled in and graduated from postsecondary institutions as a result of services offered; and

(C) The percentage of increase in postsecondary enrollment and graduation by residents of the area served.

(8)(i) The comprehensiveness of the applicant's plan for carrying out the activities under § 644.7; and

(ii) The extent to which these activities will result in increased enrollment and retention in and graduation of low-income, educationally disadvantaged persons from postsecondary institutions.

(9) The extent to which representatives from the community, secondary schools, and postsecondary schools have participated in the formulation of the proposal and will participate in the operation of the Center;

(10) The extent to which all members of a consortia will make resources available and participate in the activities of the Center to reach the goals and objectives of the proposed work program;

(11) The extent of the Center's relationship to Talent Search, Upward Bound, and Special Services for Disadvantaged Students projects in the area and to any other similar programs and services, including those for the physically handicapped, in terms of—

(i) Coordinating services to individuals who participate in more than one of these programs;

(ii) Providing services not otherwise available from Talent Search, Upward Bound, and Special Services projects and other similar programs; and

(iii) Avoiding duplication of services.

(12) The degree to which the Center will draw upon and coordinate the resources and staff efforts of institutions of higher education and postsecondary education in admitting low-income, educationally disadvantaged persons.

(b) *Geographic considerations.* The Secretary will award grants or contracts to insure the major concentrations of low-income persons, in both urban and rural areas, will be represented among the areas served by Centers.

(20 U.S.C. 1070d-1)

PART 645—UPWARD BOUND PROGRAM

22. Section 645.8 is revised to read as follows:

§ 645.8 Selection criteria.

(a) The Secretary uses the criteria in this paragraph to evaluate applications for new awards. The maximum score for all of the criteria is 100 points.

(1) *Plan of operation.* (10 points)

(i) The Secretary reviews each application for information that shows the quality of the plan of operation for the project.

(ii) The Secretary looks for information that shows—

(A) High quality in the design of the project;

(B) An effective plan of management that insures proper and efficient administration of the project;

(C) A clear description of how the objectives of the project relate to the purpose of the program;

(D) The way the applicant plans to use its resources and personnel to achieve each objective; and

(E) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented, such as—

(*1*) Members of racial or ethnic minority groups;

(*2*) Women;

(*3*) Handicapped persons; and

(*4*) The elderly.

(2) *Quality of key personnel.* (18 points)

(i) The Secretary reviews each application for information that shows the quality of the key personnel the applicant plans to use on the project.

(ii) The Secretary looks for information that shows—

(A) The qualifications of the project director (if one is to be used);

(B) The qualifications of each of the other key personnel to be used in the project;

(C) The time that each person referred to in paragraphs (a)(2)(ii) (A) and (B) of this section plans to commit to the project; and

(D) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as—

(*1*) Members of racial or ethnic minority groups;

(*2*) Women;

(*3*) Handicapped persons; and

(*4*) The elderly.

(iii) To determine the qualifications of a person, the Secretary considers evidence of past experience and training, in fields related to the objectives of the project, as well as other information that the applicant provides.

(3) *Budget and cost effectiveness.* (5 points)

(i) The Secretary reviews each applicant for information that shows that the project has an adequate budget and is cost effective.

(ii) The Secretary looks for information that shows—

(A) The budget for the project is adequate to support the project activities; and

(B) Costs are reasonable in relation to the objectives of the project.

(4) *Evaluation plan.* (5 points)

(i) The Secretary reviews each application for information that shows the quality of the evaluation plan for the project.

Cross-reference.—34 CFR 75.590 Evaluation by the grantee.

(ii) The Secretary looks for information that shows methods of evaluation that are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable.

(5) *Adequacy of resources.* (9 points)

(i) The Secretary reviews each application for information that shows that the applicant plans to devote adequate resources to the project.

(ii) The Secretary looks for information that shows—

(A) The facilities that the applicant plans to use are adequate; and

(B) The equipment and supplies that the applicant plans to use are adequate.

(6) *Need.* (33 points) The number of youths who would be eligible to participate under this part who will be enrolled in the target schools or reside in the area to be served during the project period.

(7) *Design.* (20 points) (i) The comprehensiveness of the applicant's plan for identifying and selecting eligible participants, assessing and documenting their educational need and potential for postsecondary education through the use of standardized measurement instruments, and any other evaluative methods the applicant may choose to use, providing career and academic guidance and counseling, preparing and motivating project participants for admission to postsecondary institutions, and assisting participants in applying for admission to postsecondary institutions which are appropriate for these participants' abilities and ambitions; and

(ii) The extent to which the project will generate academic skills and motivation that will enable the participants to gain admission to postsecondary institutions and assist participants to attain a minimum of one year's growth, as measured by standardized measurement instruments stipulated in the application, in those academic skills such as reading, writing, mathematics and science which are essential for postsecondary education and in which participants are deficient.

(8) *Resources and Organization.* (8 points) (i) The extent to which the applicant has provided for the orientation of target school and applicant staff to the goals and

objectives of the Upward Bound Program and has provided for the utilization of community and other resources to supplement authorized activities;

(b) *Population to be served.* In selecting applications for funding, the Secretary will consider the need for a project in the area that the applicant proposes to serve as compared to the need of the total target population to be served.

(c) Except for veterans projects, preference will be given to those applicants for new awards that propose to carry out a summer residential component.

(d) Special consideration will be given to those applicants for new awards that propose to serve veterans if the applicant will serve an area in which the needs of eligible veterans for the services provided under this part cannot adequately be met without the project.

(e) *National demonstration awards.* The Secretary will select a limited number of applications to be funded as Upward Bound national demonstration projects on the basis of the criteria contained in paragraph (a) of this section and the following additional criteria:

(1) Whether the proposed project is national or inter-regional in scope, or presents a clearly new or experimental technique or design for the provision of Upward Bound services to eligible participants.

(2) Whether the proposed project duplicates or competes with existing regional or national programs, or consolidates existing regional or inter-regional educational activities under the aegis of a single agency or institution.

(3) Whether, with regard to proposed projects presenting a new or experimental technique or design, the proposed activities and results can be readily replicated and utilized by other educational programs concerned with the provision of services for similar youths.

(4) Whether the proposed project will provide services not readily available on a local or regional basis for these youths.

(5) Whether the proposed project will provide disadvantaged students a variety of educational opportunities and options for postsecondary education.

(20 U.S.C. 1070d–1)

PART 646—SPECIAL SERVICES FOR DISADVANTAGED STUDENTS PROGRAM

23. Section 646.6 is revised to read as follows:

§ 646.6 Selection criteria.

(a) The Secretary uses the criteria in this section to evaluate applications for new awards. The maximum score for all of the criteria is 100 points.

(1) *Plan of operation.* (10 points)

(i) The Secretary reviews each application for information that shows the quality of the plan of operation for this project.

(ii) The Secretary looks for information that shows—

(A) High quality in the design of the project;

(B) An effective plan of management that insures proper and efficient administration of the project;

(C) A clear description of how the objectives of the project relate to the purposes of the program;

(D) The way the applicant plans to use its resources and personnel to achieve each objective; and

(E) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented, such as—

(*1*) Members of racial or ethnic minority groups;

(*2*) Women;

(*3*) Handicapped persons; and

(*4*) The elderly.

(2) *Quality of key personnel.* (7 points).

(i) The Secretary reviews each application for information that shows the quality of the key personnel the applicant plans to use on the project.

(ii) The Secretary looks for information that shows—

(A) The qualifications of the project director (if one is to be used);

(B) The qualifications of each of the other key personnel to be used in the project;

(C) The time that each person referred to in paragraphs (a)(2)(ii) (A) and (B) of this section plans to commit to the project; and

(D) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as—

(*1*) Members of racial or ethnic minority groups;

(*2*) Women;

(*3*) Handicapped persons; and

(*4*) The elderly.

(iii) To determine the qualifications of a person, the Secretary considers evidence of past experience and training, in fields related to the objectives of the project, as well as other information that the applicant provides.

(3) *Budget and cost effectiveness.* (5 points).

(i) The Secretary reviews each application for information that shows that the project has an adequate budget and is cost effective.

(ii) The Secretary looks for information that shows—

(A) The budget for the project is adequate to support the project activities; and

(B) Costs are reasonable in relation to the objectives of the project.

(4) *Evaluation plan.* (9 points).

(i) The Secretary reviews each application for information that shows the quality of the evaluation plan for the project.

Cross-reference.—34 CFR 75.590 Evaluation by the grantee.

(ii) The Secretary looks for information that shows methods of evaluation that are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable.

(5) *Adequacy of resources.* (3 points).

(i) The Secretary reviews each application for information that shows that the applicant plans to devote adequate resources to the project.

(ii) The Secretary looks for information that shows—

(A) The facilities that the applicant plans to use are adequate; and

(B) The equipment and supplies that the applicant plans to use are adequate.

(6) *Need.* (33 points). The extent to which the institution has made available educational opportunities to students of deprived educational, cultural, or economic backgrounds, and to students of limited English-speaking ability, or with physical handicaps, or who are disadvantaged because of severe rural isolation.

(7) *Project plan.* (12 points). The comprehensiveness of the applicant's plan for selecting students to be served by the project, conducting an assessment of supportive services needed by the students, and providing the services.

(8) *Resources and organization.* (21 points).

(i) The degree to which student financial assistance at the applicant institution will be used to meet the needs of the students who will be participating in the project;

(ii) The degree to which administrative and academic policies have as their purpose the maximization of a student's chances for graduating from the host institution;

(iii) The extent to which the project director will be consulted on those administrative and academic policies that affect the participant's chances of completing an educational program at the institution; and

(iv) The extent to which the applicant proposes to orient the faculty and staff of the institution to the goals and objectives of the Special Services Program and to utilize institutional resources available to the project.

(b) *Population to be served.* In selecting applications for funding, the Secretary will consider the need for the project in the area the applicant proposes to serve as compared to the need of the total target population to be served.

(c) *National demonstration awards.* The Secretary will select a limited number of applications to be funded as Special Services national demonstration projects on the basis of the criteria contained in paragraph (a) of this section and the following additional criteria:

(1) Whether the proposed project is national or inter-regional in scope, or presents a clearly new or experimental technique or design for the provision of special services for students from deprived educational, cultural, or economic backgrounds, or for students with physical handicaps or for students of limited English-speaking ability enrolled at the institution which is the beneficiary of the award.

(2) Whether the proposed project duplicates or competes with existing regional or national programs or consolidates existing regional or inter-regional educational activities under the aegis of a single agency or institution.

(3) Whether, with regard to proposed projects presenting a new or experimental technique or design, the applicant's proposed activities and expected results can be readily replicated and utilized by other educational programs concerned with the provision of special supportive services for similar students.

(4) Whether the proposed project will provide services not readily available on a local or regional basis for participants.

(5) Whether the proposed project will provide disadvantaged students a variety of educational opportunities and career options.

(20 U.S.C. 1070d-1)

PART 728—CAPACITY-BUILDING FOR STATISTICAL ACTIVITIES IN STATE EDUCATIONAL AGENCIES

24. Section 728.10 is revised to read as follows:

§ 728.10 Selection criteria.

The Secretary uses the criteria in this section to evaluate applications for new grants. The maximum score for all of the criteria is 100 points.

(a) *Plan of operation.* (18 points)

(1) The Secretary reviews each application for information that shows the quality of the plan of operation for the project.

(2) The Secretary looks for information that shows—

(i) High quality in the design of the project;

(ii) An effective plan of management that insures proper and efficient administration of the project;

(iii) A clear description of how the objectives of the project relate to the purpose of the program;

(iv) The way the applicant plans to use its resources and personnel to achieve each objective; and

(v) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(b) *Quality of key personnel.* (14 points)

(1) The Secretary reviews each application for information that shows the quality of the key personnel the applicant plans to use on the project.

(2) The Secretary looks for information that shows—

(i) The qualifications of the project director (if one is to be used);

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (b)(2) (i) and (ii) of this section plans to commit to the project; and

(iv) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(3) To determine the qualifications of a person, the Secretary considers evidence of past experience and training, in fields related to the objectives of the project, as well as other information that the applicant provides.

(c) *Budget and cost effectiveness.* (9 points)

(1) The Secretary reviews each application for information that shows that the project has an adequate budget and is cost effective.

(2) The Secretary looks for information that shows—

(i) The budget for the project is adequate to support the project activities; and

(ii) Costs are reasonable in relation to the objectives of the project.

(d) *Evaluation plan.* (5 points)

(1) The Secretary reviews each application for information that shows the quality of the evaluation plan for the project.

Cross-reference.—34 CFR 75.590 Evaluation by the grantee.

(2) The Secretary looks for information that shows methods of evaluation that are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable.

(e) *Adequacy of resources.* (3 points)

(1) The Secretary reviews each application for information that shows that the applicant plans to devote adequate resources to the project.

(2) The Secretary looks for information that shows—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies that the applicant plans to use are adequate.

(f) *Significance of project.* (37 points).

The significance of the project in improving the long-term statistical capability of the State agency, as measured by a reduction of data burden; improvement in the timeliness of data reporting; improvement in the quality, comparability, or utility of data; increase in educational agencies, institutions of higher education, or other agencies of the State; or similar statistical objectives.

(g) *Commitment.* (14 points) The adequacy of the educational agency's commitment and arrangements made to ensure the long-term effect of the proposed activities after the expiration of Federal funds.

(20 U.S.C. 1221-1(b)(3)(e))

PART 740—NATIONAL ALCOHOL AND DRUG ABUSE PREVENTION PROGRAM

25. Section 740.14 is revised to read as follows:

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§ 740.14 Selection criteria.

(a) The Secretary uses this criteria in this section to evaluate applications for new awards under this subpart. The criteria are not weighted.

(1) *Plan of operation.* (i) The Secretary reviews each application for information that shows the quality of the plan of operation for the project.

(ii) The Secretary looks for information that shows—

(A) High quality in the design of the project;

(B) An effective plan of management that insures proper and efficient administration of the project;

(C) A clear description of how the objectives of the project relate to the purpose of the program;

(D) The way the applicant plans to use its resources and personnel to achieve each objective; and

(E) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented, such as—

(*1*) Members of racial or ethnic minority groups;

(*2*) Women;

(*3*) Handicapped persons; and

(*4*) The elderly.

(2) *Quality of key personnel.* (i) The Secretary reviews each application for information that shows the quality of the key personnel the applicant plans to use on the project.

(ii) The Secretary looks for information that shows—

(A) The qualifications of the project director (if one is to be used);

(B) The qualifications of each of the other key personnel to be used in the project;

(C) The time that each person referred to in paragraphs (a)(2)(ii) (A) and (B) of this section plans to commit to the project; and

(D) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as—

(*1*) Members of racial or ethnic minority groups;

(*2*) Women;

(*3*) Handicapped persons; and

(*4*) The elderly.

(iii) To determine the qualifications of a person, the Secretary considers evidence of past experience and training, in fields related to the objectives of the project, as well as other information that the applicant provides.

(3) *Budget and cost effectiveness.* (i) The Secretary reviews each application for information that shows that the project has an adequate budget and is cost effective.

(ii) The Secretary looks for information that shows—

(A) The budget for the project is adequate to support the project activities; and

(B) Costs are reasonable in relation to the objectives of the project.

(4) *Evaluation plan.* (i) The Secretary reviews each application for information that shows the quality of the evaluation plan for the project.

Cross-reference.—34 CFR 75.590 Evaluation by the grantee.

(ii) The Secretary looks for information that shows methods of evaluation that are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable.

(5) *Adequacy of resources.* (i) The Secretary reviews each application for information that shows that the applicant plans to devote adequate resources to the project.

(ii) The Secretary looks for information that shows—

(A) The facilities that the applicant plans to use are adequate; and

(B) The equipment and supplies that the applicant plans to use are adequate.

(6) The extent of the alcohol and drug abuse problem in the schools and local community to be served.

(7) The extent to which team membership includes persons who have demonstrated leadership capabilities.

(8) The extent to which the proposed alcohol and drug abuse prevention and early intervention program activities of the applicant are addressing or will address unmet alcohol and drug abuse problems in the schools and local communities to be served.

(9) The extent to which alcohol and drug abuse prevention and early intervention efforts by the applicant will be coordinated with related efforts in the schools and communities served by the applicant.

(10) The degree of the applicant's commitment to support and facilitate the alcohol and drug abuse education activities of the team after training is completed as demonstrated by the applicant's stated intent to support these activities administratively and financially.

(11) The extent and manner in which the team will be utilized after training in the development and administration of alcohol and drug abuse prevention and early intervention programs in the schools of the applicant educational agency.

(b) In the awarding of funds under this subpart, the Secretary will take into consideration the extent to which the funds will be distributed throughout the Nation among school systems of varying characteristics such as geographic size, ethnic composition, concentration of persons with limited English-speaking ability, and socioeconomic levels in urban, suburban, and rural areas.

(20 U.S.C. 1002).

26. Section 740.25 is revised to read as follows:

§ 740.25 Selection criteria.

The Secretary uses the criteria in this section to evaluate applications for new awards under this subpart. The criteria are not weighted.

(a) *Plan of operation.* (1) The Secretary reviews each application for information that shows the quality of the plan of operation for the project.

(2) The Secretary looks for information that shows—

(i) High quality in the design of the project;

(ii) An effective plan of management that insures proper and efficient administration of the project;

(iii) A clear description of how the objectives of the project relate to the purpose of the program;

(iv) The way the applicant plans to use its resources and personnel to achieve each objective; and

(v) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(b) *Quality of key personnel.* (1) The Secretary reviews each application for information that shows the quality of the key personnel the applicant plans to use on the project.

(2) The Secretary looks for information that shows—

(i) The qualifications of the project director (if one is to be used);

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (b)(2) (i) and (ii) of this section plans to commit to the project; and

(iv) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages

applications for employment from persons who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(3) To determine the qualifications of a person, the Secretary considers evidence of past experience and training, in fields related to the objectives of the project, as well as other information that the applicant provides.

(c) *Budget and cost effectiveness.* (1) The Secretary reviews each application for information that shows that the project has an adequate budget and is cost effective.

(2) The Secretary looks for information that shows—

(i) The budget for the project is adequate to support the project activities; and

(ii) Costs are reasonable in relation to the objectives of the project.

(d) *Evaluation plan.* (1) The Secretary reviews each application for information that shows the quality of the evaluation plan for the project.

Cross-reference.—34 CFR 75.590 Evaluation by the grantee.

(2) The Secretary looks for information that shows methods of evaluation that are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable.

(e) *Adequacy of resources.* (1) The Secretary reviews each application for information that shows that the applicant plans to devote adequate resources to the project.

(2) The Secretary looks for information that shows—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies that the applicant plans to use are adequate.

(f) The extent of the alcohol and drug abuse problem in the local community to be served.

(g) The extent to which team membership includes persons who have demonstrated leadership capabilities.

(h) The extent to which the proposed program activities address unmet alcohol and drug abuse prevention needs in the local community to be served.

(i) The extent to which alcohol and drug abuse prevention efforts by the applicant will be coordinated with related efforts in the schools and communities served by the applicant.

(j) The degree of the applicant's commitment to support and facilitate the alcohol and drug abuse education activities of the team after training is completed as demonstrated by the applicant's stated intent to support these activities administratively and financially.

(k) The extent and manner in which the team will be utilized after training in the development and administration of drug abuse prevention programs in the community.

(20 U.S.C. 1002)

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Part VIII

Department of Transportation

Urban Mass Transportation Administration

Charter Bus Operations

DEPARTMENT OF TRANSPORTATION

Urban Mass Transportation Administration

49 CFR Part 604

[Docket No. 80-U]

Charter Bus Operations

AGENCY: Urban Mass Transportation Administration, DOT.

ACTION: Advance Notice of Proposed Rulemaking (ANPRM).

SUMMARY: The Urban Mass Transportation Administration (UMTA) is proposing a revision of, and inviting comment on, its existing charter bus regulations. UMTA seeks to clarify the duties of those recipients who engage in charter bus operations only within their urban area, and the additional duties of those recipients who engage in charter bus operations outside their urban area. It also seeks to provide more reliable protection to private operators in the intercity charter bus industry while reducing paperwork burdens on recipients. This revision does not include in its coverage operations of recipients assisted by funds provided under authority of Section 18 of the Urban Mass Transportation Act of 1964, as amended, 49 U.S.C. § 1614. Those operations will be covered by a separate rulemaking action to be issued by the Federal Highway Administration.

DATE: Comments must be received on or before March 5, 1981.

ADDRESS: Comments must be submitted to UMTA Docket No. 80-U, 400 7th Street SW., Washington, D.C. 20590. All comments and suggestions received will be available for examination in room 9320 at the above address between 8:30 a.m. and 5:00 p.m., Monday through Friday. Receipt of comments will be acknowledged by UMTA if a self-addressed, stamped postcard is included with the comment.

FOR FURTHER INFORMATION CONTACT: Theodore Munter, Office of the Chief Counsel, (202) 426-1936; or Ernesto Fuentes, Office of the Chief Counsel, (202) 426-1906.

SUPPLEMENTARY INFORMATION: All comments received before the expiration of the comment period will be considered before further action is taken. Comments received after the expiration of the comment period will be considered to the extent feasible.

The Administrator has determined that this rulemaking is not significant under the criteria in the DOT Order for Improving Government Regulations (44 FR 11042, February 26, 1979).

Under the DOT Order, a full evaluation is not warranted at this stage since the expected economic impact cannot be evaluated until comment is received on the proposed revisions to the existing regulations.

The provisions of OMB Circular A-95 apply to this Advance Notice of Proposed Rulemaking. It covers the following programs as listed in the Catalog of Federal Domestic Assistance (CFDA):

20.205—Highway Research, Planning, and Construction
20.500—Urban Mass Transportation Capital Grants
20.507—Urban Mass Transportation Capital and Operating Assistance Formula Grants

UMTA has prepared a side-by-side comparison of the existing charter bus regulation with the proposed revision. Requests for copies should be sent to the address listed above, or to the individuals listed in the contact section.

Discussion

Background

UMTA's current charter bus regulations, 49 CFR Part 604, were published in 1976. An Advance Notice of Proposed Rulemaking (ANPRM) was issued simultaneously with amendments to the regulation, 41 FR 56690 (Dec. 29, 1976), and a public hearing was held on January 18, 1977. The comments and testimony about the regulations were collected in Docket 76-10, which together with Docket 75-02 on which the existing regulations are based, and three years of administration of the regulation and adjudication of complaints thereunder, represents UMTA's basis for evaluating the regulations. The term "commenters" used herein refers to those who filed comments in either docket or subsequently.

UMTA has decided to issue an Advance Notice of Proposed Rulemaking at this time because of the length of time since the last issuance and because of the complexity of the issues involved.

Authority

UMTA's charter bus regulations are designed to implement two provisions of its enabling statute, the Urban Mass Transportation Act of 1964, as amended (UMT Act, or the Act), 49 U.S.C. 1601 et seq. First, Section 12(c)(6), states that the "mass transportation" for which UMTA provides funds and equipment shall "not include * * * charter * * * service." 49 U.S.C. 1608(c)(6). The Comptroller General interpreted this provision to disallow the use of assistance provided under the UMT Act for the purchase of buses or other equipment intended for charter service. The Comptroller General's opinion, however, allowed, even encouraged, the "incidental" use for charter of vehicles purchased for mass transit so long as such chartering "does not detract from or interfere with urban mass transportation service for which the equipment is needed." Opinion of the Comp. Gen., B-180204 (Dec. 7, 1988). UMTA implements this incidental use restriction in its existing regulations primarily by the use of three presumptions as to what types of charter bus operations will be presumed not to be incidental. 49 CFR 604.11(b). The proposed revision retains these presumptions. Proposed § 604.11. The incidental use restriction applies to all UMTA recipients operating charter service with vehicles purchased with UMTA assistance, whether inside or outside their urban areas.

The second provisions of the statute, section 3(f), is a special provision enacted to protect private operators in the "intercity charter bus industry" from being foreclosed from doing business by competing UMTA recipients and operators for them using Federal subsidies to compete. 49 U.S.C. 1602(f); Pub. L. 93-650 (1974); Pub. L. 93-383, § 613(a) (1974). Under this provision, each recipient of federal funds under the UMT Act or parts of the Federal Aid Highway Act (23 U.S.C. 103(e)(4) and section 142(a) and (c) (hereinafter the "Acts") for the purchase or operation of buses must, as a condition of assistance, enter into a special charter bus agreement with the Secretary of Transportation. Each such recipient must agree that it will not engage in charter bus operations outside the urban area within which it provides regularly scheduled mass transportation service, except as provided in its charter bus agreement. Terms of that charter bus agreement become operative if the recipient or an operator for it engages in charter bus operations outside its urban area. The statute does not specify what the protective terms of the section 3(f) agreement shall be, but states that they shall be "fair and equitable arrangements, . . . appropriate in the judgment of the Secretary to assure that financial assistance granted under the Act will not enable recipients to foreclose private operators from the intercity charter bus industry." 49 U.S.C. 1602(f). The Senate Committee which drafted the statutory language in its present form stated that "the bill * * * is designed to give the

Secretary of Transportation the authority to tailor arrangements to provide equitable solutions," and noted that even though the purpose of the bill was "to prevent public subsidies from driving private enterprise out of the charter bus industry" that "grantees of Federal assistance ought not to be prohibited from offering the public needed charter service." Comm. on Banking, Housing, and Urban Affairs, "Federal Financing of Urban Mass Transit Equipment to Protect Private Bus Operators Engaged in Intercity Charter Service", S. Rep. No. 93-547, 93d Cong., 1st Sess. 2 (1973).

Under the existing regulations, the special charter bus agreement which recipients have been required to sign has sought to assure these fair and equitable arrangements by requiring each recipient, should it engage in charter bus operations outside its urban area, to allocate to its charter operations a portion of its actual costs and certain as-if-private costs and then certify that its charter revenues equal or exceed those costs. 49 CFR 604.3, 604.13, 604.15, and Appendix B. The proposed revision allows a recipient, should it engage in charter bus operations outside its urban area, to continue to use this arrangement for compliance, if it chooses, or if it does not choose to do so, to be subject to what UMTA anticipates will be a less burdensome and more effective rate-comparability approach. *See* proposed § 604.20 and Appendix A. These two approaches are discussed in detail *infra*. Under the proposal, the simple form agreement, which is set forth as Proposed Appendix A, incorporates both of these options. Under the proposal, recipients are also free to employ other means for assuring these fair and equitable arrangements, if an agreement containing the alternative is approved by the Administrator. Proposed § 604.21. The proposal is thus designed to permit recipients maximum flexibility consistent with ensuring that fair and equitable arrangements exist "to assure that financial assistance granted under this Act will not enable recipients to foreclose private operators from the intercity charter bus industry." 49 U.S.C. 1602(f).

Scope and Coverage

(a) *All Recipients.* All recipients who receive assistance under the Acts for the purchase or operation of buses, whether they engage in charter bus operations or not, are required by statute to enter into a charter bus agreement with UMTA. 49 U.S.C. 1602(f); *see* 49 CFR 1.51 (delegation of authority). The proposed standard terms of this agreement are set forth in Proposed Appendix A.

All recipients who engage in any charter bus operations, either inside or outside their urban areas, must comply with the requirement that any UMTA-assisted buses, facilities or equipment be used only incidentally in charter operations so as not to detract from or interfere with mass transportation service. No recipient may reimburse the cost of providing charter service with any financial operating assistance under the Acts. The regulation incorporates this requirement since charter bus operations are a class of transportation service that is ineligible for support under the UMT Act. 49 U.S.C. 1608(c)(6). See also, proposed UMTA Section 5 Operating Assistance Regulations, 45 FR 56742 *et seq.* (Aug. 25, 1980). In reviewing any complaints concerning the incidental use of buses in charter operations, UMTA intends to use the three presumptions as to what is not incidental use contained in UMTA's existing regulation (49 CFR 604.11(b)). These presumptions, discussed in greater detail in the portion of this preamble entitled "Incidental Use Presumptions", are retained in the proposed regulation (Proposed § 604.11) together with an explicit statement of the means by which a recipient may overcome these presumptions (Proposed § 604.12).

A recipient who can show that it derived $15,000 or less in gross annual revenues from charter bus operations during its most recently completed fiscal year will have a complete defense under the proposal to any complaint to UMTA concerning any aspect of its charter bus operations.

(b) *Recipients with Charter Bus Operations only within the Urban Area.* A recipient whose charter bus operations are entirely inside its urban area may publish and mail to private operators a one-time notice to that effect and file with UMTA appropriate documentation including a precise description showing the boundaries of its urban area. Proposed § 604.2(e). The recipient may then only be subject to the incidental use restriction and to the statutory requirement to enter into an agreement. Such recipients may be exempted from the hearing and annual notice requirements. Proposed §§ 604.4 and 604.23(b). In addition, paragraph (b) of its charter bus agreement, imposing arrangements pursuant to section 3(f), will not be operative. Proposed §§ 604.20 and 604.23(b).

A private operator who disagrees with the area determined by UMTA to be the recipient's urban area is free to file a complaint at any time (Proposed § 604.30), but is encouraged to object at the time provided to submit written comments under Proposed § 604.23, or to submit oral comments at a hearing. Proposed § 604.4. If at any time the recipient begins charter bus operations outside its urban area, or is found to engage in such operations as a result of a complaint or otherwise, it must immediately mail and publish notice and thereafter comply with the hearing and notice requirements of Proposed §§ 604.2, 604.4, 604.22 and 604.23. Such recipient will also be held responsible for compliance with the fair and equitable arrangements set forth in paragraph (b) of its charter bus agreement as of the date any of its charter operations go outside its urban area. Proposed § 604.2(e).

A recipient who once engaged in charter bus operations outside its urban area, but who decides to operate charter buses only within its urban area in the future, may obtain the exemption from the hearing and notice requirements and from compliance with paragraph (b) of its charter bus agreement in the manner provided by proposed § 604.2(e) and § 604.23(b). A recipient who does not file for this exemption will be presumed to engage in at least some charter bus operations outside its urban area. Proposed § 604.23(c).

(c) *Recipients with Charter Bus Operations Outside the Urban Area.* A recipient who engages in charter bus operations outside its urban area will be held responsible for compliance with the notice requirements (Purposed § 604.23(c)) and all terms of its charter bus agreement in addition to the incidental use restriction (Proposed § 604.10). For such recipient, paragraph (b) of its charter bus agreement containing the rate-comparability or certification-of-cost requirements will be operative. Proposed Appendix A.

Under the proposal, as under the existing charter bus regulation, the requirements for fair and equitable arrangements would be imposed on *all* charter bus operations, whether the charter operations were conducted inside or outside the urban area. Proposed § 604.20 and Appendix A, section (b).

UMTA has considered the alternative of allowing recipients to defend against a complaint alleging a violation of either cost certification or rate-comparability approaches by a showing that the particular challenged bus run did not travel beyond the boundaries of its urban area. However, UMTA has tentatively concluded that such a defense would be unworkable under a certification-of-costs approach since such an approach would require close attention to a precise boundary line and

would result in the separate accounting for charter bus runs and in the maintenance of separate tariffs. This would result in overly complex certifications of costs and thus be confusing to the public: Under rate-comparability, the defense concerning the points of travel of a particular bus run would be reliable concerning a given complaint, but could lead to a two-tiered rate system which could be administratively burdensome and also confusing to the public. It would give rise to controversy since most private operators would have no comparable rate system. UMTA specifically invites comments on this matter, i.e. whether it is appropriate to include the intracity portion of a recipient's charter business as a means of achieving the Congressional purpose of protecting the intercity charter bus industry or to establish a two-tiered system for intercity and intracity charter service.

Definitions

Applicants, Grantees, Recipients and Subrecipients

These terms have all been consolidated into one definition to facilitate usage in the regulation. The term "recipient" is used to cover all of them. UMTA recognizes that distinctions do exist (e.g., applicants may not already be receiving funds under a prior approved grant); however, the subcategories are obvious and easily distinguishable.

Charter Bus Operations

The proposed revision retains UMTA's current definition of "charter bus operations." Proposed § 604.3(e); *compare* 49 CFR § 604.3. This definition emphasizes the essential element of "exclusive" use along with other distinguishing characteristics of charter such as a group under a single contract, charge-per-vehicle, and passenger-determined itinerary.

Though commenters sought to have the regulation identify various types of services as charter or noncharter, UMTA believes that a generally applicable definition avoids the technicalities of further subclassifications of service. The following discussion is offered as a guide to interpretation in response to the questions of commenters.

a. School bus service: Under the definition of charter bus operations the transportation of students in incidental charter operations is permissible; however this must be distinguished from the more regular or daily school bus service that is prohibited under section 3(g) of the UMT Act and the school bus regulations issued pursuant to that section. 49 U.S.C. 1602(g); 49 CFR Part 605; *see Chicago Transit Authority* v. *Adams*, 607 F.2d 1284 (7th Cir. 1979), *cert. denied*, —— U.S. ——, 100 S. Ct. 2175 (1980).

b. Sightseeing service: Section 12(c)(6) of the UMT Act, 49 U.S.C. 1608(c)(6) specifically excludes sightseeing service from the definition of mass transportation. Thus it is ineligible for support with funds provided under the Acts. Although this type of service is not regulated by UMTA's charter regulation, by inference from the Comptroller General's decision on charters, any use of mass transportation buses or other equipment by a recipient for sightseeing must be "incidental" to regularly scheduled mass transportation service. *See* Opinion of the Comp. Gen. B-180204 (Dec. 7, 1960); *see also* UMTA Complaint Decision, *San Antonio Sightseeing, Inc.* v. *San Antonio Metropolitan Transit Authority*, July 7, 1980. However, regularly scheduled cultural loop buses without a guide are normally considered eligible mass transportation. In determining whether these types of service are mass transportation, charter, or sightseeing, UMTA will consider whether the trip is exclusive or open to the public, whether fares are charged on a group or individual basis, whether the itinerary is determined by the passengers or not, and other factors that pertain to bus service that meets the definition of charters.

c. Special mass transportation and certain paratransit services: Special mass transportation service, such as vanpooling, subscription bus service, paratransit for elderly and handicapped, or demand responsive service such as dial-a-ride, can create questions because particular vehicle runs under such services are often offered "exclusively" to a defined group of people who set the itinerary and may pay for the service on a per-vehicle rather than on a per-person basis. As discussed below, however, each of these forms has characteristics making it part of the statutory definition of mass transportation, thus eligible for UMTA funding, and exempt from the charter restrictions of this part.

"Special" mass transportation service is that which is targeted to serve only a specific portion of the general public, 49 U.S.C. 1608(c)(6). The Congressional committee which expanded the definition of mass transportation to include this type of service provided two examples of the types of service that might be involved, i.e., special service from ghettos to specific places of employment, limited to those riders who work there and coordinated to shift changes, or special service from elderly housing developments to hospitals and clinics. These services might require additional buses which the transit system involved could not afford to provide without Federal aid. House Committee on Banking and Currency, Report on H.R. 17989, Housing and Urban Development Act of 1968, 90th Cong., 2nd Sess., H.R. Rep. No. 1585, at 66 (1968). Dial-a-ride or demand-responsive service has been called into question by some commenters. Dial-a-ride is not charter because it is open to passengers other than the first requester, because fares are usually charged for individuals rather than for the vehicle, and because it is part of a regular, continuing, coordinated and comprehensive mass transportation system.

Vanpools are also not charter. For instance, corporations that institute vanpools for their employees might receive UMTA assistance through a local recipient as one of many agents of such recipient. This makes the service a regular and continuing transportation service, unlike charter service which is provided on an ad hoc basis. In addition, this type of vanpool-service is broadly available to the public as part of a publicly available, nonexclusive program. This is consistent with the definition of "mass transportation." 49 U.S.C. 1608(c)(6). This is unlike a charter operation that is exclusive and operates on an itinerary that is alterable at the will of the users.

Subscription bus service, like that purchased by some suburban communities to transport their residents to urban centers, may be either mass transportation or charter depending on the degree of the service's exclusivity and its regular and continuing nature. If the service is only occasional it is likely to be charter. If it is regular and continuing it may also be charter if the group of potential subscribers is artificially restricted by residence status or membership criteria. It will be mass transportation if subscriptions are available to anybody willing to pay for the service and if it is coordinated with the area's other mass transportation service.

UMTA acknowledges that some of these special mass transportation services may encroach on certain services provided by private operators, but notes that in regard to mass transportation, private operators are protected not by the charter bus agreements of section 3(f), 49 U.S.C. 1602(f), but by the requirement to provide for the "maximum participation

of private enterprise" in sections 3(e) and 8(e) of the UMT Act, 49 U.S.C. 1602(e) and 1607(e).

d. Sudden or Emergency Demands: Many public authorities asked for an exemption from the charter regulations for large-scale sudden demands for charter bus service that might occur during airport fog-ups, rail stoppages, transit strikes, or major sports events or conventions. The basis for such an exception might be that private operators cannot provide the number of buses required. Private operators reply that they are willing and able to, and in some areas actually do, provide at least a portion of such services. By examining the various types of emergency demands one can distinguish those cases which are "mass transportation" and therefore eligible for funding and not subject to this regulation. For example, the provision of back-up service to mass transportation operators, such as for a subway breakdown, for feeder line service, or to cover for a transit strike in those areas where more than one operator provides mass transportation, is considered "mass transportation." UMTA will look beyond the immediate transaction to determine whether the service being compensated for is mass transportation.

However a particular kind of emergency service might be classified, UMTA encourages recipients, under the combined policies of sections 3(e), 3(f) and 8(e) of the UMT Act, 49 U.S.C. 1602 (e) and (f), and 1607(e), to include to the maximum extent feasible the participation of private enterprise.

In contrast to back-up service for a subway breakdown, UMTA believes that the provision of emergency service to an airport or to an intercity common carrier would be considered charter where the service was an emergency substitute for a service which is not regularly scheduled mass transit service under the Act. Some have stated that the sudden, emergency nature of needs for service such as an unexpected need for a shuttle from one airport to another should exempt recipients from compliance with the charter regulation. UMTA believes this argument is not persuasive. A service that was not mass transportation before the emergency is not converted to eligible mass transportation by the occurrence of the emergency. As a consequence, UMTA believes that a recipient who chooses to compete for or to offer such service, should be subject to the charter regulation.

e. Contract service, social service, and agency service, such as may be provided by a public authority to a nursing home to take elderly patients to religious services or to a court system to take juries to the scene of a crime, are generally considered charters under the definition of charter bus operations. They will be subject at least to the incidental use restriction.

Urban Area

The definition of "urban area" serves a critical triggering function under section 3(f). Once a recipient engages in charter operations outside the "urban area within which it provides regularly scheduled mass transportation service" its charter operations become subject to agreed upon "arrangements, appropriate in the judgment of the Secretary, to assure that the financial assistance granted under [the] Act will not enable public bodies and publicly and privately owned operators for public bodies to foreclose private operators from the intercity charter bus industry * * *" 49 U.S.C. 1602(f). So long as a recipient keeps its charter bus operations within its "urban area" it need not comply with the "fair and equitable arrangements" for the protection of private operators imposed by its section 3(f) agreement with UMTA although it must comply with incidental use presumptions pursuant to UMTA's and the Comptroller General's interpretations of the definition of mass transportation in section 12(c)(6) of the UMT Act. Presently, the charter regulation makes all of a recipient's charter bus operations, both within and without its urban area, subject to the arrangements of a recipient's section 3(f) agreement when a recipient engages in charter bus operations outside its urban area, and the proposed revisions continue this policy. For a discussion of alternatives and an invitation for comments, see the *Scope* section above. UMTA also uses the concept of "urban area" in the incidental use presumptions and proposes to continue to do so as a mechanism for implementing the Comptroller General's incidental use interpretations of the definition of mass transportation. 49 CFR 604.11(b); *compare* Proposed § 604.11.

The definition of "urban area" for purposes of the UMT Act is left to the Secretary's discretion. "[T]he term 'urban area' means any area * * * which is appropriate, in the judgment of the Secretary, for a public transportation system to serve commuters or others * * *" 49 U.S.C. 1609(c)(10). UMTA's definition of urban area under its existing charter regulations consists of three parts: the "authorized" area, the "urbanized" area defined by the Census, and other areas as determined by the Secretary. 49 CFR 604.3.

The proposed revisions set forth only slight modifications to correct the citations, to clarify the original meaning of the definition, and to clarify that administrative discretion exists under the statute to either add to or subtract from what would otherwise be the "urban area." Proposed § 604.3(i). UMTA acknowledges the difficulties in applying a general definition of urban area throughout the country so that the boundaries of each urban area are sufficiently defined to resolve any questions. This is compounded by the fact that the definition of urban area is tied to the concept of the area authorized to be served by the recipient which may change over time. The appropriateness of any definition to a local area's charter market may vary according to the relation between population centers, boundary lines, points of interest or other charter service generators. Comment is requested on whether recipients should be required to submit a map or some other similarly precise form of description of their urban areas for purposes of the charter regulation.

Many commenters addressed the question of the definition of urban area and suggested numerous variations tailored to the needs and interests of the particular commentors. Restrictive suggestions proposed that the urban area be limited to the area *actually* served by the recipient's mass transportation. These were accompanied by various proposals for means of dealing with the areas between, or in the immediate vicinity of, route lines and terminals, including suggestions that UMTA adopt Interstate Commerce Commission and public utility commission definitions of incidental service or feeder areas or that UMTA simply connect the end points of actual routes. Numerous other commenters made suggestions, either restrictive or expansive in a given case, that urban areas be defined by the boundaries of states, or political subdivisions, or the Bureau of Census designed "urbanized" areas.

UMTA believes that the current definition of urban area, adding together the authorized area and the urbanized area in which a recipient operates, accurately reflects the area for which recipients can provide charter operations without foreclosing the intercity charter bus industry. In the interest of fairness to recipients and private operators UMTA intends to use its discretion to add to an urban area for charter bus operations only in those cases where a recipient is actually providing regularly scheduled mass

transportation service outside its "urbanized" area and authorized area and is not prohibited from doing so.

UMTA intends to subtract from what would otherwise be part of a recipient's urban area where it is improbable that a recipient would actually provide mass transportation service to such areas. When and if such adjustments are made, UMTA also intends, in the interest of clarity, to include the entire area of a major political subdivision served at least in part by the recipient's mass transportation, unless such would be inequitable in the particular case.

A recipient who intends to confine its charter operations to within its urban area so as to obtain the exemption under Proposed § 604.2(e) must submit an accurate description of its urban area and must give the notice prescribed by § 604.23(b). *See* Scope.

Operator for a Recipient

Section 3(f) expressly applies to "operator[s] of mass transportation for . . . [recipient] public bod[ies]" and to "Publicly and privately owned operators for public bodies." 49 U.S.C. 1602(f). UMTA has traditionally interpreted both of these phrases to apply to the same class of operators. Some commenters suggested that the only class of operators for recipients subject to these provisions were those who were legally agents of a recipient so that lessees of Federally-assisted equipment were not bound by the regulation. Such a narrow interpretation would exclude many who might benefit from subsidies. The proposed revisions present a definition that includes all who engage in charter bus operations and who are directly or indirectly assisted by Federal financial assistance. It would exclude from its scope those contract operators who provide service as a result of arms-length economic transactions. Comment is specifically invited on this issue.

Public Hearings and Public Comments

The requirements concerning public hearings are being revised. Charter operations may be commented upon in hearings held pursuant to §§ 3(d) and 5(i) of the UMT Act, 49 U.S.C. 1602(d) and 1604(i). The notices for these hearings would be issued under the procedure of proposed § 604.22 and would contain the information required by proposed § 604.23.

It should be noted that UMTA recently proposed regulations for § 5 operating assitance grants. 45 FR 56743 (August 25, 1980). One proposed change modifies the current requirement that a public hearing be held on all operating asistance grant applications. The proposed regulations require a public hearing on applications for an operating assistance grant only when a written request for a hearing is submitted. Thus, if a private charter operator wanted to make its views or objections known, it would have to request a public hearing on a § 5 operating assitance grant.

The current guidelines for § 3 and § 5 capital assistance grants require a public hearing for all capital assistance applications.

Private operators can submit written comments based on the notices required by proposed §§ 604.22 and 604.23. If a public hearing is held, private operators will be given an opportunity to present their views and comments. A transcript on any public hearing held must be made. The transcript along with written comments made by private operators must be submitted to UMTA along with each grant application.

UMTA will require the recipient to consider the written and oral comments of the private charter operators before a grant application is submitted to UMTA. Proposed § 604.4.

If a recipient which operates charter service pursuant to the rate-comparability approach changes to a cost certification approach or revises its outstanding cost certification, it must give notice of such changes to private charter operators, under the procedures in proposed § 604.22. The notice must contain the information required by proposed § 604.23. The recipient must consider any comments received as result of this notice. The comments must be submitted to UMTA along with the request for approval of the certification of costs. If UMTA determines that a basis exists to question the cost allocation or certification of costs, UMTA may, at its discretion, hold a fact-finding hearing before approving such submission. Proposed § 604.26.

Incidental Use of Presumptions

The portion of the present regulation implementing the Comptroller General's "incidental use" interpretations of the exclusion of charters from mass transportation includes three rebuttable presumptions of what is not incidental use. Although some commenters objected to the presumptions, the proposed revision retains them to give guidance to recipients as to the kinds of charters are considered acceptable under the incidental use provision. Proposed § 604.11. The presumptions also give private operators and objective standard by which to identify and complain about violations.

Although the opportunity to rebut the presumptions has always existed, the proposed revision makes explicit that there is the opportunity of rebuttal. The presumptions may be rebutted by an affirmative showing by the recipient or operator for it that any charter which occurs during a daily peak period occurred at a time when the recipient had no less than 110 percent of the buses needed to meet that daily peak demand available for mass transportation service, and that any challenge charter activity did not otherwise detract from or interfere with mass transportation service. UMTA acknowledges seasonal and holiday variations in peak and allows the variations as part of the defense against a complaint. Proposed § 604.12. Buses stockpiled for emergency use may not be used for charters and may not be considered in rebutting presumptions as to incidental use. *See* 45 FR 13694–5 (Mar. 3, 1980) *to be codified* in 49 CFR Part 641 relating to bus stockpiling. It is not UMTA's policy to discourage or encourage charter bus operations by recipients but only to insure that their charters do not unduly interfere with private operators or with mass transportation. In establishing the incidental use standard, the Comptroller General encouraged the chartering of otherwise idle equipment by public authorities because "such [chartering] service contributes to the success of * * * mass transportation * * * by bringing in additional revenues and providing full employment to drivers and other employees. It may * * * even reduce the need for Federal * * * grant assistance." Opinion of the Comp. Gen., B–160204 (1976).

Requirements for Recipients who Engage in Charters Outside Their Urban Areas

While all recipients must enter into a charter bus agreement as a condition of assistance, certain portions of that agreement will only apply if the recipient engages in charter bus operations outside of the urban area. The proposed standard language of the charter bus agreement is broken into three parts. Proposed Appendix A. The first part implements the incidental use restriction of the Comptroller General's Opinion on incidental use. The second part sets forth the "fair and equitable arrangements" to protect private operators pursuant to section 3(f). The third part specifies UMTA's enforcement powers. In accordance with the statute, the arrangements contained in the second part of the agreement do not restrict the recipient's operations unless the recipient, or an operator for it, engages in charter bus operations outside of the urban area. 49 U.S.C. 1602(f).

The following discussion describes the nature and interpretation of the arrangements in the second paragraph of the agreement which would, under the rule as proposed, apply to recipients who themselves, or through operators for them, engage in charter bus operations outside the urban area.

Rate-Comparability

The proposed revision adopts, as the basic term of the section 3(f) agreement, a requirement that no recipient who engages in charter bus operations outside its urban area, nor any operator for such recipient, will charge rates for charter bus operations that are lower than the lowest rate charged by the three largest private operators rendering the same or similar service in the area. Proposed Appendix A, section (b). The requirement would apply to all charters both within and without the urban area. UMTA's rationale for using rate-comparability as an arrangement of the section 3(f) agreement is to spare many recipients the burden of a relatively unproductive accounting exercise and to give private operators some degree of marketplace protection, thus better achieving the Congressionally intended result of protecting those operators. It is anticipated that the proposed approach will reduce staff time demand on UMTA, the recipients, and potential complainants. However, the proposed rate-comparability requirement is not intended to be a regulation of rates.

In decising to include this alternative, UMTA considered many approaches in addition to only continuing the present certification of costs scheme, including mandating referrals, rights of first refusal, or regulating a recipient's solicitations or advertisement of charter bus operations. While UMTA invites comment on innovative approaches, it presently considers the present cost certification an the rate-comparability approaches as the most appropriate.

Rate-comparability was suggested by the House Committee on Public Works which introduced the concept of the agreement in section 3(f) and which drafted the language substantially in its present form as a means of protecting private charter operators. That Committee suggested that "a local public transportation authority might agree with the Secretary of Transportation not to offer charter service to places outside an urbanized area at rates lower than the lowest rates of private operators in the area." H.R. Rep. No. 93-553, 93rd Cong., 1st Sess. 3 (1973). Certain local areas have adopted arrangements that are similar to the Committee's suggestion. A Colorado statute requires of public operators that "the schedule of charges for special charter service shall be equal to but not less than those charged by authorized common carriers rendering the same or similar service." Colo. Rev. Stat. 32-9-103(7)(b) (1973).

Section 12(d) prohibiting UMTA from regulating rates under its section 3 capital program, 49 U.S.C. 1608(d), does not prohibit the proposed rate-comparability approach. The approach is justified by section 3(f)'s direction that "fair and equitable arrangements" be in place and by legislative history suggesting the rate-comparability approach as a fair and equitable arrangement and by section 12(d) itself in light of the fact that a section 3(f) charter agreement is a "condition of assistance," 49 U.S.C. 1602(f), and thus necessary to require compliance by the recipient with its undertaking "furnished in connection with the application for the grant." 49 U.S.C. 1608(d).

Under the approach in the proposed revision, a private operator may complain if he learns of a recipient's charter being offered at lower than the lowest private rate of the three largest private operators in the area offering the same or similar service. UMTA's determination of whether a recipient's rate is "lower than the lowest" private rate would not depend on the means used to calculate the rate, such as miles or hours, but upon bottom-line cost to the passengers.

UMTA's determination of what constitutes "same or similar service" for purposes of such complaints could raise several issues. Differences in equipment, such as between a transit bus, a recliner seat bus, or a van, would not preclude all comparison, but might give rise to the need for adjustments. Adjustments might also be needed to compensate for differences in deadhead mileage costs. Classification of service by local public utility commissions (PUC) or the Federal Interstate Commerce Commission (ICC) cannot be adopted outright, but may provide useful analogies.

UMTA, consistent with its role as a grant-in-aid agency rather than a regulatory agency, favors the use of easily applied presumptions, such as one that a transit bus is the "same or similar" to a recliner seat bus for trips of one-hundred miles or less and must therefore have no lower rates, but that for longer distances rates may be lower. More detailed provisions if appropriate, should be the subject of local adjustment. Comments are specifically invited on this issue.

A recipient may charge lower rates but in conformity with a certification of costs formulated as prescribed by Proposed Subpart C (*see* esp. proposed § 604.23(c) and § 604.24). UMTA considered allowing those using the rate-comparability approach to defend against complaints that rates were being charged lower than that which the rate-comparability approach requires: (1) by submitting a certification of costs to show that the recipient has met all of its as-if-private costs from charter revenues, along with evidence that the challenged rate was not designed to foreclose private operators or (2) by submitting evidence that no private operator was willing and able to provide the challenged services. Proposed Appendix A, section (b). However, such defenses would then require the recipient instead simultaneously to follow the two approaches or to deal with charter on a charter run-by-charter run basis. This would take away the very strengths of the rate-comparability approach that recommends it, i.e., ease of application.

UMTA foresees potential difficulties in implementing this rate-comparability provision in areas in which only one, or at most two, private operators exist. UMTA recognizes that an automatic fall-back to a cost-certification approach for this situation may impose accounting burdens on those small recipients least able to deal with them. One alternative is to permit the use of rate-comparability where there are only one or two private operators if there is local assurance that the rates charged by the operator(s) are reasonable, and comment is requested on this approach. Another alternative, permissible under this proposal as written would be the local agreement tailored to local circumstances, permitted under proposed § 604.21.

Other Agreements

The current regulation allows UMTA and a recipient to enter into an agreement with terms other than those set forth in the standard agreement where UMTA finds that the requirements of the statute can be met by that alternate agreement. 49 CFR 604.14. Under this provision, UMTA has agreed to waive certain requirements of its regulation, such as cost certifications, for areas that have locally tailored agreements or provisions of state law deemed appropriate to meet the requirements of section 3(f).

UMTA proposes to retain the option to enter into locally tailored agreements, in special circumstances needed on a case-by-case basis to suit the local situation. Proposed 604.21. Such locally tailored agreements can account for local variations in geography, market conditions, and law, to a degree not possible under uniform standards contained in the regulation, and can

thereby give greater protection to private operators while avoiding unnecessary restrictions on recipients. It also balances the need for avoiding destructive competition with recipients yet not constructing artifical obstacles to private operators competing among themselves. Such agreements can satisfy the requirements of section 3(f) when entered into between UMTA and "the applicant or any public body * * * or any publicly owned operator receiving * * * assistance." 49 U.S.C. 1602(f). Such agreements may be entered into any time by petition of the parties to UMTA. Standard charter bus agreement provisions will apply to recipients until such time as a locally tailored agreement is approved by UMTA. UMTA will review the terms of any proposed agreement to insure its consistency with section 3(f) of the UMT Act before making it part of a grant agreement.

UMTA will only enter into those parts of an agreement that protect private operators from charter competition with a public body, pursuant to section 3(f). Nothing in agreements to which UMTA becomes a party may prevent competition among private operators or prevent other private operators from entering the local charter market. Nor may anything in such agreements restrict the recipients' mass transportation operations.

Certification of Costs

Many commenters objected to the cost certification approach as being an unreliable accounting exercise. Recipients objected to the paperwork burdens and private operators criticized the approach as providing them no easy to understand and evaluate means of judging or complaining about a recipient's compliance. The proposed revision seeks to answer these comments by making rate-comparability and alternative arrangement.

The certification of costs approach in the existing regulation has required a recipient to allocate to its charter operations both the actual costs of the charter operations and certain as-if-private costs, such as taxes and depreciation, and then to certify that its charter revenues equal or exceed those costs. Thus, the recipients show that they do not use UMTA assistance to support charter operations. 49 CFR 604.3, 604.13, and Appendix B.

The proposed revision allows recipients subject to rate-comparability requirements to do away with the cost certification approach. Proposed Appendix A, section (b)(2). However, as an alternative to rate-comparability, recipients may choose to retain the current cost certification approach as a means of complying with the regulations. Proposed Appendix A, section (b)(3).

Many recipients objected to the allocation of specific costs to charter, such as depreciation and state-imposed taxes, on the theory that tax exemption advantages enjoyed by public authorities are not the result of financial assistance under the Act, or, in the case of depreciation, that such a cost is never recognized in public accounting. UMTA has considered these objections and believes it inappropriate to attempt to determine chains of causation under each scheme of local law and accounting to decide which costs are avoidable because of subsidies and which are avoidable for other reasons. UMTA is further of the opinion that requiring public recipients to justify any lower-than-private operator rates by an accounting for the full range of as-if-private costs is fair and equitable in light of the fact that many recipient's charter runs become possible only as a result of the scale and visibility of recipient's operations resulting from federal subsidies.

If a recipient engages in charter operations outside its urban area and where a recipient decides to use certification of costs as its primary means of compliance under the proposed revision, such fact must be reflected in its charter agreement and in its annual notice to private operators. Proposed § 604.23(c). The recipient must also obtain prior approval of its cost certification and revise the certification upon a change in its charter operations. Proposed § 604.28. The triggering event for a revision of the certification of costs has been changed from a revenue change of 25 percent or more "from the average two preceeding fiscal quarters," 49 CFR § 604.30(b), to a revenue change for a year of 25 percent or more from the average of the two previous years. Proposed § 604.26(c).

This amendment is in response to comments about seasonal variations in the level of charter service. The averaging of the previous two years will ameliorate unusual circumstances that might occur if different or only one year were used as the reference point. The use of years is made instead of quarters to even out seasonal differences within each year.

Comment is invited on the content of the cost certification approach, on its benefits and flaws under the existing regulation, and on its use as an option under the proposed revision.

Notice to Private Operators

Although UMTA will continue to monitor bus needs of individual recipients, basic to enforcing the proposed charter regulations is inquiry and complaint by private operators who must be attentive to protection of their own interests. Adequate notice to private operators of the nature of a recipient's charter service and of the opportunities to comment on that service is therefore important to insure that these regulations are fair and equitable. The proposed revisions: (1) changes the time for providing notice to an annual basis which may coincide with the filing of notice for a grant, (2) changes the content of the notice to reflect rates consistent with the rate-comparability approach, (3) identifies more clearly the class of private operators entitled to receive such notice, and (4) provides certain exemptions where appropriate. Proposed §§ 604.2 (e) and (f), 604.22, and 604.23.

The proposed revision concerning annual notice preserves an exemption for the case where no private operators have requested notice and none are publicly listed as operating in the recipient's area. Proposed § 604.22(b); *compare* 49 CFR 604.16.

The frequency of notice has been changed to annual basis rather than publication and mailing with every grant application. This reduces the administrative burdens on recipients while providing private operators with predictable periodic information on a recipient's charter operations. A recipient's annual charter notice may coincide with its publication of notice for any grant or may be published and mailed separately. The right of private operators to comment either in writing (Proposed § 604.23) or at a public hearing held pursuant to the provisions of proposed § 604.4 is retained in this proposal. Recipients must forward private operators' comments to UMTA, and UMTA will consider those comments along with others before awarding grants. Proposed §§ 604.4, 604.22 and 604.23.

Many commenters addressed the question of the class of private operators that should receive direct notice. Some requested that the requirement of direct notice be eliminated entirely. Some objected to the means used to identify those who receive notice under the present regulation. Public authorities asserted that the class of private operator "operating" in the area, 49 CFR 604.15, was too difficult to identify; private operators asserted that notice to the class of private operators "originating"

in the area, 49 CFR 604.20(b), did not reach enough of the relevant group. The proposed revision has been amended to give notice whenever required: (1) to each private charter operator publicly listed as operating within the recipient's urban area, and (2) to each private charter operator or representative thereof who has requested in writing to be notified. Proposed § 604.22.

The recipients who are exempted from annual notice include those who will operate charters only within their urban area. To obtain this exemption recipients must give a one-time notice to any requester for such information and to private operators publicly listed as operating in the recipient's urban area and file the information published in its notice with UMTA. If a recipient who has obtained such an exemption later operates charters outside its urban area it immediately becomes subject to the requirements for those conducting charters outside their urban areas. Proposed § 604.2(e). Recipients who can certify that there are no private charter operators publicly listed as operating in their urban area and who have received no requests for annual notification will continue to be exempted from notice requirements after published notice of their intent to obtain this exemption. Proposed § 604.22(b); *Compare* 49 CFR 604.16. Recipients who derive less than $15,000 in annual revenues from charter bus operations will also be exempted from annual notice requirements. Proposed §§ 604.2(d) and 604.23(a).

Complaint Procedures

Several private operators requested that UMTA's administrative findings on charter bus complaints concerning a recipient be disseminated by the same means of publication and direct notice to the same mailing list of operators who receive notice of a recipient's operations. UMTA has considered this request and decided in the proposal to continue its practice of directly notifying only the respondent and complainant while making information on particular complaints and decisions available to others upon request.

UMTA takes this opportunity to reaffirm its policy of keeping the complaint procedure as informal as possible by proposing to amend the regulation's language to require that complaints simply "contain a statement of the specific grounds [for a] complaint," and by specifying that "no formal briefs or other technical forms of pleading or motion are required." Proposed § 604.30(e). This change of language is in response to private operators' comments on the seeming formality of the requirement that the initial charter complaint contain "evidence" sufficient to enable a determination of "probable cause" that a violation of the charter agreement exists. 49 CFR § 604.40. The language also makes it clear that an interested party is permitted to file a complaint without the necessity of retaining legal counsel. Proposed § 604.30(e) *compare* CFR 604.40.

A complainant's first recourse under the proposed regulation is to the recipient so that complaints may be resolved where possible by simple adjustments, conciliation, or exchange of information. Proposed § 604.30(a).

When a complaint if filed with UMTA, UMTA will give the recipient 30 days to prepare and submit a report. UMTA may ask a recipient to prepare such a report without having received a complaint. Proposed § 604.30(c). After receipt of the recipient's report, the complainant has 30 days in which to file a rebuttal. UMTA reserves the right to request additional information as needed and may hold an evidentiary hearing or call a conference on the matter at anytime during the processing period. In response to the commenters who criticized the fact that UMTA imposes time limits on both the complainants and respondents but then delays its own adjudication, UMTA will establish a goal of 30 days after the receipt of all materials for the processing of charter complaints. The entire process should thus take 90 days to complete.

Some commenters questioned UMTA's ability to be objective since it administers a program supporting the recipients and because its existing regulations call for prior approval of a recipient's cost certifications that are later challenged in complaints. UMTA has enforced section 3(f) and section 12(c)(6) of the Act without bias. UMTA feels it is appropriate for it to have the first opportunity to review the operations of its recipients. As a consequence, the proposed regulation retains substantially the same review process that is in the present regulations. Also, UMTA retains its option to submit any complaint to an evidentialy hearing including conducting it before a hearing examiner. Proposed § 604.32(c). UMTA invites comments on the efficacy of using an administrative law judge to decide complaints and on the apportionment of the cost of the hearing among the parties and the Government.

Reporting and Records

Other than the requirement of annual notice to private operators and the filing requirements needed to obtain certain exemptions, the proposed revision imposes no regular reporting requirements on recipients. UMTA does, however, reserve the right to request special reports as may be needed for the resolution of complaints or other purposes. Proposed § 604.6.

Each recipient remains under the obligation to maintain and preserve such records as are sufficient to demonstrate that it is in compliance with the terms of its charter bus agreement. It is anticipated that ordinary management records such as charter manifests, rate schedules, and books of account will be sufficient to show compliance with these regulations except where a recipient chooses to justify lower-than-private rates by a cost certification approach. Proposed § 604.5.

Note.—UMTA believes that the revisions proposed in this advanced notice of proposed rulemaking may have a significant economic effect on a substantial number of small businesses and governmental jurisdictions. We would be interested in comments that address this topic to assist UMTA in making the necessary economic assessment of our proposed action.

In consideration of the foregoing, it is proposed that Part 604 of Title 49 of the Code of Federal Regulations be revised to read as follows:

PART 604—CHARTER BUS OPERATIONS

Subpart A—General

Sec.
604.1 Purpose.
604.2 Scope and exemptions.
604.3 Definitions.
604.4 Public hearing requirements and public comments.
604.5 Records.
604.6 Reports.

Subpart B—Incidental Use: Requirements for Nonexempt Recipients

604.10 Use of mass transportation equipment for charters.
604.11 Incidental use presumptions.
604.12 Rebutting the presumptions.

Subpart C—Charter Bus Agreements: Additional Requirements for Recipients Who Engage in Charter Bus Operations Outside the Urban Area

604.20 Agreement.
604.21 Other agreements and arrangements.
604.22 Procedure for notice to private operators.
604.23 Contents of notice to private operators.
604.24 Contents of certification of costs.
604.25 Review of charter bus operations before awarding grants.
604.26 Revision of agreement.

Subpart D—Complaint Procedures and Remedies

604.30 Filing a complaint.
604.31 Recipient report; rebuttals.

604.32 Further investigation and hearing.
604.33 Decision; remedies.
604.34 Judicial review.
Appendix A—Standard Charter Bus Agreement
Appendix B—Comptroller General Opinion
Appendix C—Cost Certification Expenses List

Authority: Urban Mass Transportation Act, as amended, 49 U.S.C. 1601 *et seq.*, 1602(f), 1608(c)(6); Title 23 of the United States Code that authorizes the use of Federal aid highway funds for the purchase of buses, 23 U.S.C. 103(e)(4), and 142(a) and (c); and 49 CFR 1.51.

Subpart A—General

§ 604.1 Purpose.

The purpose of this Part is to govern the operation of charter bus service by recipients of Federal financial assistance under the Urban Mass Transportation Act of 1964, as amended, 49 U.S.C. 1602 *et seq.*, and those provisions of title 23 of the United States Code that authorize the use of Federal aid highway funds for the purchase of buses, 23 U.S.C. §§ 103(e)(4), and 142(a) and (c), pursuant to § 3(f) and § 12(c)(6) of the UMT Act, 49 U.S.C. §§ 1602(f) and 1608(c)(6).

§ 604.2 Scope and exemptions.

(a) This Part applies to all recipients, and to all operators for recipients, of assistance under the Acts for the purchase or operation of buses except those receiving federal financial assistance provided under § 18 of the UMT Act or unless specifically exempted herein.

(b) All recipients and operators for recipients must comply with incidental use requirements specified in § 604.10 through § 604.12.

(c) All recipients must enter into an agreement as specified in § 604.20 or § 604.21 as a condition of assistance under the Acts.

(d) A recipient who toghether with any operators for it derived fifteen thousand dollars ($15,000) or less in gross annual charter revenues, during its most recently completed fiscal year, from charter bus operations is exempt from administrative review for compliance with the incidental use requirement contained in this Part or for compliance with the terms of its charter bus agreement and need only comply with the one-time notice requirement of § 604.23(a).

(e) A recipient who does not intend to have itself or any operators for it engage in any charter bus operations outside its urban areas, as defined in § 604.3(i), may file an affidavit to that effect with UMTA and give the notice prescribed by § 604.22(a).

If the Administrator finds that an exemption to this paragraph is justified, (s)he may exempt the recipient from the terms of paragraph (b) of the recipient's charter bus agreement, the hearing requirement of § 604.4, and the continuing notice requirements of § 604.23(c). If the recipient or any operator for it conducts any charters outside its urban area after receipt of the exemption, the exemption shall be void and the recipient shall immediately comply with §§ 604.4, 604.22 and 604.23(c) and Appendix A, Section (b).

(f) Recipients may be exempted from annual notice requirements where they certify that there are no private charter bus operators publicly listed as operating in their urban area after it certifies that it has received no request for such a notice, and after publishing notice of their intent to so certify pursuant to § 604.22(b).

(g) Recipients may enter into locally tailored agreements pursuant to § 604.21. The terms of a locally tailored agreement may be substituted for those of the standard charter bus agreement.

§ 604.3 Definitions.

(a) Except as otherwise provided, terms defined in the Urban Mass Transportation Act of 1964, as amended, 49 U.S.C. § 1601 *et seq., esp.* §§ 1604 and 1608, are used in this part as so defined.

(b) "The Acts" means the Urban Mass Transportation Act of 1964, as amended, 49 U.S.C. § 1601 *et seq.*, and those parts of title 23 of the United States Code, 23 U.S.C. §§ 103(e)(4), and 142(a) and (c), providing funds for assistance to public bodies purchasing buses.

(c) "Administrator" means the Administrator of the Urban Mass Transportation Administration.

(d) "Certification of costs" means a statement about a recipient's costs using generally accepted accounting principles, consistent with a recipient's regular accounting method, containing the elements of cost that are attributable to a recipient's charter bus operations and certified to be true and accurate by a recipient's chief financial officer in conformity with Appendix C.

(e) "Charter bus operations" means transportation by bus of a group of persons who, pursuant to a common purpose, and under a single contract, at a fixed charged for the vehicle or service, in accordance with the carrier's tariff, have acquired the exclusive use of a bus to travel together under an itinerary either speed on in advance or modified after having left the place of origin. This definition includes the incidental use of buses for the exclusive transportation of school students, personnel, and equipment.

(f) "Interested party" means an individual, partnership, corporation, association, or public or private organization that has a financial interest which is adversely affected by the act or acts of a recipient or operator for a recipient regarding charter bus operations.

(g) "Operator for a recipient" means one who conducts mass transportation service for a recipient and who is directly or indirectly assisted by Federal financial assistance. Such operators may be publicly or privately owned and may include lessees of Federally-assisted buses and other equipment.

(h) "Recipient" means one who has received or is receiving Federal financial assistance under the Acts; the term also includes applicants of Federal financial assistance provided under the Acts, whether they are already recipients of such assistance or first-time applicants, and includes sub-recipients of a recipient and public bodies applying for assistance that will be passed on to another public or quasi-public body or operator for them.

(i) "Urban area" means the entire area in which a recipient is authorized by appropriate local, State, and Federal law to provide regularly scheduled mass transportation service and those portions of a recipient's "urbanized area," as defined in the Urban Mass Transportation Act of 1964, as amended, 49 U.S.C. §§ 1608(c)(11), if any, which are outside of its authorized area. In exceptional cases, the boundaries of such an area may be adjusted pursuant to the Secretary's discretion under section 12(c)(10) of the Urban Mass Transportation Act of 1964, as amended, 49 U.S.C. § 1608(c)(10).

§ 604.4 Public hearing requirements and public comments.

(a) An interested party may present oral comment on the charter bus operations of a recipient during any hearings that are held pursuant to the hearing requirements for application for federal financial assistance provided under sections 3(d) and 5(i) of the UMT Act, 49 U.S.C. 1602(d) and 1604(i), and any regulations issued pursuant thereto and have the comments considered as provided under § 604.4 and § 604.25(b).

(b) If oral comments are made about the recipient's charter bus operations during a public hearing, a transcript of the hearing shall be provided to the Administrator for consideration along with the recipient's application for financial assistance.

(c) Private charter bus operators may file written comments on a recipient's proposed or existing charter bus operations pursuant to a notice issued

under § 604.23. The recipient shall submit the written comments of private charter bus operators to the Administrator together with a transcript of that portion of any public hearings that are held that relates to the recipient's charter bus operations.

(d) Written comments submitted pursuant to § 604.23 or oral comments made at a hearing shall be considered by the recipient prior to submission of its application to the Administrator for financial assistance.

(e) The Administrator will consider the comments filed by private charter bus operators prior to making any findings regarding proposed charter bus operations.

§ 604.5 Records.

(a) Each recipient shall maintain such records as are sufficient to demonstrate that its charter operations are in compliance with the terms of its agreement.

(b) Upon the request of an officer or employee of the Government, the recipient shall make the records maintained pursuant to paragraph (a) available for audit and inspection.

(c) Each recipient required to maintain any record under paragraph (a) shall preserve that record for three years after the last day of the calendar year in which the record was made or events recorded in that record occurred, whichever is later.

§ 604.6 Reports.

The Administrator may order any recipient or an operator for a recipient to file special or separate reports setting forth information relating to any transportation service rendered by such recipient, in addition to any other reports required by this Part.

Subpart B—Incidental Use: Requirements for Nonexempt Recipients

§ 604.10 Use of mass transportation equipment for charters.

(a) No recipient or operator for a recipient not exempted by § 604.2(d) shall engage in charter bus operations using buses, facilities, or equipment funded under the Acts except on an incidental basis so as not to interfere with or detract from mass transportation service in compliance with the Opinion of the Comptroller General of the United States, B–160204 (Dec. 7, 1966) reprinted in Appendix B to this Part.

(b) Recipients or operators for recipients shall not use Federal operating assistance provided under the Act to reimburse the costs of engaging in charter bus operations.

§ 604.11 Incidental use presumptions.

Any of the following uses in charter bus operations of buses, equipment, or facilities assisted under the Acts will be presumed by UMTA not to be incidental:

(a) Weekday charters which occur during peak morning and evening rush hours.

(b) Weekday charters which require buses to travel more than fifty miles beyond the recipient's urban area.

(c) Weekday charters which require the use of a particular bus for more than a total of six hours in any one day.

§ 604.12 Rebuttal of the presumptions.

A recipient or operator for a recipient who engages in charter bus operations that are presumed not to be incidental under § 604.11 may overcome such presumption by an affirmative showing that such operations do not detract from or interfere with mass transportation services. Where a recipient shows that 110% of the number of buses needed for any given daily peak period are available for mass transportation service during that period, charter bus operations occurring during that period may be considered incidental. UMTA's evaluation of peak demand will be based on estimates filed in application and planning materials and will take into account seasonal and other regular variations in peak demand.

Subpart C—Charter Bus Agreements: Additional Requirements for Recipients Who Engage in Charter Bus Operations Outside the Urban Area

§ 604.20 Agreement.

(a) In accordance with section 3(f) of the UMT Act, 49 U.S.C. 1602(f), every recipient shall, as a condition of assistance, become a party to a written agreement with UMTA as specified in this subpart. The agreement in effect at the time of grant approval is applicable to and incorporated by reference into all grant agreements between the Government and the recipient.

(b) Except as provided in § 604.21 the agreement must contain the terms and arrangements set forth in the agreement in Appendix A of this Part.

§ 604.21 Other agreements and arrangements.

Where the Administrator determines that the requirements of section 3(f) of the UMT Act can be met by fair and equitable arrangements other than those set forth in paragraph (b) of the agreement set forth in Appendix A of this Part, the Administrator may approve the use of such alternative arrangements in the agreement with a recipient, as appropriate, so long as the alternative arrangements do not interfere with free and open competition among the private operators.

§ 604.22 Procedure for notice to private operators.

(a) Whenever notice is required to be given by the recipient under § 604.23, the notice must be—

(1) Published in a newspaper of general circulation in the recipient's urban area; and

(2) Provided directly to—

(i) Each private charter bus operator publicly listed as operating within the recipient's urban area.

(ii) Each private charter bus operator or legal representative thereof who has requested in writing to receive the notice as provided under § 604.23.

(b) The obligation to provide direct notice to private operators under § 604.23 is satisfied if a recipient who has received no request for such notice publishes a one-time notice in a newspaper of general circulation in its urban area stating that it has applied for assistance under the Acts and that it has certified that there are no private charter bus operators publicly listed as operating in its urban area.

§ 604.23 Contents of notice to private operators.

(a) A recipient who, together with operators for it, derived $15,000 or less in gross annual charter revenues from charter bus operations during its most recently completed fiscal year so as to receive the exemption specified in § 604.2(d) must only state in a notice under § 604.22 that it derives less than $15,000 in gross annual charter revenues and that it will be exempt from administrative enforcement of the requirements of this Part.

(b) A recipient who does not intend to engage in or have any operator for it engage in charter bus operations outside its urban area, and who seeks the exemption specified in § 604.2(e) from annual notice and other requirements shall provide the following one-time notice by the means specified in § 604.22:

(1) A description, including citations to relevant authority, of the areas in which the recipient is authorized by local, State, and Federal law to conduct mass transportation service, and charter bus operations. Where there are disputes pending that would affect charter bus operations, this information must be included in that notice.

(2) Separate descriptions of the areas in which the recipient actually is conducting mass transportation service and charter bus operations.

(3) A statement that the recipient and any operators for it do not conduct charters outside the urban area as defined in 49 CFR § 604.3, and that documentation establishing this fact is on file with UMTA and with the recipient and is available for inspection at reasonable times at the offices of the recipient.

(4) A statement that Federal financial operating assistance will not be used to reimburse the costs of charter bus operations and that any use of Federally-assisted buses, facilities or equipment for charter bus operations will be incidental to and will not interfere with or detract from regularly scheduled mass transportation service.

(5) The address to which comments on the recipient's operations must be sent.

(c) A recipient not exempted from the notice requirements of this section by paragraphs §§ 604.22(b), and 604.23(a) and (b), shall be presumed to be engaging in charter operations outside its urban area and must *before* entering into the agreement specified in § 604.20 of this Part, before revising an agreement as specified in § 604.29, and at least once each year, provide the notice by the means specified in § 604.22 which shall include the following information:

(1) A description including citations to relevant authority of the areas in which the recipient is authorized by local, State, and Federal law to conduct mass transportation and charter operations. Where there are disputes pending that would affect charter bus operations, this information must be included in that notice.

(2) Separate descriptions of the areas in which the recipient actually is conducting mass transportation service and charter bus operations.

(3) An estimation of the number of each type of bus which the recipient employs in its existing and proposed charter bus operations, and the number of weekdays or weekends those buses will be available for charter bus operations.

(4) An abstract of rates to be charged for charter bus operations.

(5) A statement that no charter rate will be charged that is lower than the lowest of the three largest private operators providing the same or similar service in the recipient's urban area.

(6) If the recipient chooses to use a certification of costs in lieu of the statement in paragraph (c)(5): (i) a statement that revenues generated by its charter bus operations are consistent with its certification of costs as prescribed by § 604.3(d), § 604.24 and Appendix C; and (ii) a copy of its certification of costs.

(7) A statement that Federal financial operating assistance will not be used to reimburse the cost of charter bus operations and that any use of Federally-assisted buses, facilities or equipment for charter bus operations will be incidental to and will not interfere with or detract from regularly scheduled mass transportation service.

(8) The address to which comments on the recipient's operations must be sent.

§ 604.24 Contents of certification of costs.

(a) A certification of costs as may be required by this Part must include depreciation expense on Federally-assisted buses, facilities and equipment as an element of cost, and State and Federal taxes, whether or not the recipient is required to pay such taxes. This certification must give assurance that the revenues generated by charter bus operations are, and shall remain, equal to or greater than the cost of providing the service. The period covered by a recipient's statement must not be less than two or greater than four of its most recently completed fiscal quarters. All costs which are subject to certification are listed in Appendix C of this Part.

(b) The certification of costs shall also contain the appropriate documentation that identifies the costs of charter operations, the methods of cost allocation used and shows the distribution of costs attributable to the recipient's charter bus operations.

§ 604.25 Review of charter bus operations before awarding grants.

(a) If the Administrator finds that a recipient has not complied with the notice requirements of § 604.22 and § 604.23, the hearing provisions of § 604.4 or otherwise finds that the recipient's proposed charter bus operations are unacceptable, (s)he will notify the recipient in writing stating the reasons for his/her findings and may withhold approval of any pending application for a grant or impose other sanctions as specified in § 604.30 through § 604.35 of this Part.

(b) If the recipient chooses to comply with this Part by use of a certification of costs the Administrator may approve and accept the recipient's certification of costs after review of the certification, review of the public comments, if any, and after a showing by the recipient that it has complied with the notice and hearing requirements of this Part. Such acceptance and approval is subject to audit and inspection which may be conducted at any time by the Government under § 604.5(b).

(c) Submission of the certification of costs to the Administrator for approval need not be made again for approval under paragraph (b) unless required to under § 604.25 or § 604.33.

§ 604.26 Revision of agreement.

(a) Any recipient which prior to (effective date part adopted) entered into an agreement with the Administrator concerning charter bus operations shall modify the agreement to conform to the requirements of this Part according to the procedures for entering into a new agreement under this Part.

(b) The Administrator may require the recipient to reissue the notice required by this subpart and to modify any existing agreement to conform to the requirements of this Part where there is a change from the conditions through which the recipient obtained an exemption under § 604.2, § 604.22, § 604.23 or an alternative agreement under § 604.21.

(c) A certification of costs filed under this subpart shall be revised by a recipient by filing properly certified revisions with the Administrator. The recipient shall send notice of the revisions to private charter bus operators in the recipient's urban area under the procedures of § 604.22 and containing the information required by § 604.23. The private operators may file comments on the charter operations with the Administrator within 15 days after receipt of notice. The proposed revisions will become effective 30 days after the end of the period allowed for private operators to file comments with the Administrator unless within that period the Administrator finds the proposed revisions to be unacceptable and notifies the party filing the certification of costs.

(d) The Administrator may require that the certification of costs be revised using the procedures in this subpart where a year of a recipient's charter operations has a gross revenue change of 25 percent or more from the average of the two preceding years.

(e) If revision of a certification of costs is necessary and after review of the proposed revision and any public comments received by the recipient or the Administrator, the Administrator may, in his/her discretion, hold a fact-finding hearing on the proposed revision to the certification.

Subpart D—Complaint Procedures and Remedies

§ 604.30 Filing a complaint.

(a) An interested party [hereinafter the complainant] wishing to file a complaint alleging a violation or violations of terms of an agreement entered into pursuant to this Part or of

the requirements of this Part shall submit the complaint for resolution to the recipient or operator for it [hereinafter the respondent] whose actions have given rise to the complaint. The complainant shall give the respondent a reasonable opportunity to resolve the alleged violation.

(b) If resolution is not obtained from the respondent, the complainant may file a complaint with the Administrator setting forth the alleged violation or violations of terms of an agreement entered into pursuant to this Part or of the requirements of this Part that were submitted to the respondent. The complainant shall send a copy of this complaint to the respondent.

(c) If, at any time, the Administrator has reason to believe that a violation may have occurred, the Administrator will provide written notification to the respondent of the conduct which constitutes an alleged violation of the agreement.

(d) The complaint must be in writing and must:

(1) Include the name and address of the complainant;

(2) Identify the recipient and any operator for the recipient whose actions have given rise to the complaint;

(3) Include a copy of the complaint filed with the respondent under subparagraph (a); and

(4) Contain a statement of the specific grounds of the complaint and be fully supported to the greatest extent feasible.

(e) No formal briefs or other technical forms of pleading or motion are required, but a complaint and other submissions must be concise, logically arranged, and clear. Complainants need not be represented by legal counsel in complaint proceedings.

§ 604.31 Respondent report and rebuttals.

(a) The Administrator will allow the respondent not more than 30 days to eliminate the cause of a complaint or to respond in a written report with supporting evidence or documentation. The respondent shall send this report to UMTA and simultaneously send a copy of the report to the complainant.

(b) The complainant is allowed 30 days after receipt of the recipient's report to submit a rebuttal to the Administrator.

(c) The late submission of any report or rebuttal may result in disposition of the complaint without consideration of that material.

§ 604.32 Further investigation and hearing.

(a) The Administrator may call a conference on the complaint. If such conference is called, the Administrator may invite the complainant, respondent and such other parties as the Administrator deems appropriate. The conference normally will be held prior to the expiration of the period for filing rebuttals to the respondent's report. Ordinarily, not more than one conference will be held on a complaint.

(b) The Administrator may undertake such further investigation as (s)he deems necessary.

(c) The Administrator may in his/her discretion direct that an evidentiary hearing be held including before an administrative law judge.

§ 604.33 Decision and remedies.

(a) After review of all materials, the Administrator will make a written determination as to whether the respondent has engaged in charter bus operations in violation of its agreement or of this Part.

(b) The Administrator will order such remedial action as (s)he deems appropriate. If the Administrator determines there has been a continuing pattern of violations (s)he may bar a respondent from further financial assistance under the Acts until such violations are corrected.

(c) The Administrator's determination will be sent to the respondent, to any operator whose actions have given rise to the complaint, and to the complainant.

§ 604.34 Judicial review.

The determination of the Administrator pursuant to this subpart will be final and conclusive on all parties, but is subject to judicial review pursuant to 5 U.S.C. 701–706.

Appendix A—Standard Charter Bus Agreement

(a) Pursuant to the definition of mass transportation in section 12(c)(6) of the Urban Mass Transportation Act of 1964, as amended, 49 U.S.C. 1608(c)(6), the recipient agrees that the project buses, facilities and equipment shall be used for the provision of mass transportation service within its urban area and that any use of project buses, facilities and equipment in charter service will be incidental to and shall not detract from or interfere with the use of such facilities and equipment in mass transportation services to the public.

(b) Pursuant to section 3(f) of the Urban Mass Transportation Act of 1964, as amended 49 U.S.C. 1602(f), this paragraph sets forth fair and equitable arrangements to assure that financial assistance granted by the Governor under the Urban Mass Transportation Act of 1964, as amended, 49 U.S.C. 1601 *et seq.*, or under those provisions of Title 23, United States Code, that authorize the use of Federal aid highway funds for mass transportation uses, 23 U.S.C. 103(e)(4), and § 142(a) and (c) ("the Acts"), will not be used by the recipient, or any publicly or privately owned operator from the recipient, to foreclose private operators from the intercity charter bus industry where such private operators are willing and able to provide such service.

(1) The recipient agrees that neither it, nor any operator for it, will engage in charter bus operations outside the urban area, as defined in 49 CFR 604.3(l), in which it provides regularly scheduled mass transportation service except as provided herein.

(2) The recipient agrees that neither it nor any operator for it will charge rates for charter bus operations that are less than the lowest rate charged by the three largest private operators providing the same or similar service in the area.

(3) The recipient agrees that if it chooses to use a certification of costs in lieu of the method of compliance set out in subparagraph (b)(2), above, that revenues from less-than-private charter rates will equal or exceed the cost of providing the charter bus operations consistent with a certification of costs formulated as prescribed by 49 CFR Part 604.

(4) The recipient, or any operator for the recipient of project buses, facilities and equipment, agrees that it will not establish any charter rate which is designed to foreclose competition by private charter bus operators.

(5) Such other arrangements as the recipient proposes in lieu of those of this agreement and as are specifically concurred in by the Administrator pursuant to 49 CFR 604.21 are incorporated by reference into this agreement.

(c) The recipient agrees that if the Administrator determines that there has been a violation of this agreement, (s)he may order such remedial measures as (s)he may deem appropriate, including cancellation of this agreement, and that the Administrator may prohibit disbursement of funds under any grant agreement to the recipient and if (h)he determines that there has been a continuing pattern of violations of the terms of this agreement may ban future Federal financial assistance to the recipient.

Appendix B—Comptroller General Opinion

Comptroller General of the United States,

Washington, D.C., December 7, 1968.

B-160204.

Dear Mr. Wilson: The enclosure with your letter of October 4, 1968, concerns the legality of providing a grant under the Urban Mass Transportation Act of 1964 to the City of San Diego, (City), California. The problem involved arises in connection with the definition in subsection 9(d)(5) of the act, 49 U.S.C. 1608(d)(5), excluding charter or sightseeing service from the term "mass transportation."

It appears from the enclosure with your letter that the City originally included in its grant application a request for funds to purchase 8 buses designed for charter service. Subsequently the City amended its application by deleting a request for a portion of the funds attributable to the charter bus coaches. However, in addition to the 8 specially designed charter buses initially applied for, the City allegedly uses about 40 of its transit type buses to a substantial extent for charter-type services. In light of

these factors surrounding the application by the City, the enclosure requests our opinion with regard to the legality of grants under the act as it applies to certain matters [in effect questions], which are numbered and quoted below and answered in the order presented.

Number one:

"The grant of funds to a City to purchase buses and equipment which are intended for substantial use in the general charter bus business as well as in the Mass Transportation type business."

The Urban Mass Transportation Act of 1964 does not authorize grants to assist in the purchase of buses or other equipment for any service other than urban mass transportation service. Section 3(a) of the act limits the range of eligible facilities and equipment to "* * * buses and other rolling stock, and other real or personal property needed for an efficient and coordinated mass transportation system." In turn, "mass transportation" is defined, in section 9(d)(5) of the act, specifically to exclude charter service. We are advised by the Department of Housing and Urban Development (HUD) that under these provisions, the Department has limited its grants to the purchase of buses of types suitable to meet the needs of the particular kind of urban mass transportation service proposed to be furnished by the applicant.

HUD further advises that:

"One of the basic facts of urban mass transportation operations is that the need for rolling stock is far greater during the morning and evening rush hours on weekdays than at any other time. For that reason, any system which has sufficient rolling stock to meet the weekday rush-hour needs of its customers must have a substantial amount of equipment standing idle at other times, as well as drivers and other personnel being paid when there is little for them to do. To relieve this inefficient and uneconomical situation, quite a number of cities have offered incidental charter service using this idle equipment and personnel during the hours when the same are not needed for regularly scheduled runs. Among the cities so doing are Cleveland, Pittsburgh, Alameda, Tacoma, Detroit and Dallas.

"Such service contributes to the success of urban mass transportation operations by bringing in additional revenues and providing full employment to drivers and other employees. It may in some cases even reduce the need for Federal capital grant assistance.

"We do not consider that there is any violation of either the letter or the spirit of the Act as a result of such incidental use of buses in charter service. To guard against abuses, every capital facilities grant contract made by this Department contains the following provisions:

" 'Sec. 4. *Use of Project Facilities and Equipment*—The Public Body agrees that the Project facilities and equipment will be used for the provision of mass transportation service within its urban area for the period of the useful life of such facilities and equipment. . . . The Public Body further agrees that during the useful life of the Project facilities and equipment it will submit to HUD such financial statements and other data as may be deemed necessary to assure compliance with this Section.' "

It is our view that grants may be made to a city under section 3(a) of the act to purchase buses needed by the city for an efficient and coordinated mass transportation system, even though the city may intend to use such buses for charter use when the buses are not needed on regularly scheduled runs (i.e. for mass transportation purposes) and would otherwise be idle.

Number two:

"Whether a grant of such funds is proper if charter bus use is incidental to mass public transportation operations. If so, what is the definition of 'incidental use.' "

We are advised by HUD that under its legislative authority, it cannot and does not take charter service requirements into consideration in any way in evaluating the needs of a local mass transportation system for buses or other equipment.

HUD further advises that:

"However, as indicated above, we are of the opinion that any lawful use of project equipment which does not detract from or interfere with the urban mass transportation service for which the equipment is needed would be deemed an incidental use of such equipment, and that such use of project equipment is entirely permissible under our legislation. What uses are in fact incidental, under this test, can be determined only on a case-by-case basis."

In view of what we stated above in answer to the first question, the first part of question two is answered in the affirmative.

As to the second part of the question, in *Security National Insurance Co.* v. *Secuoyah Marina*, 246 F.2d 830, "incident" is defined as meaning "that which appertains to something else which is primary." Thus, we cannot say HUD's definition of "incidental use" as set forth above is unreasonable. Under the act involved grants may be made to purchase buses only if the buses are needed for an efficient and coordinated mass transportation system. It would appear that if buses are purchased in order to meet this need, and are, in fact, used to meet such need, the use of such buses for charter service when not needed for mass transportation services would, in effect, be an "incidental use," insofar as pertinent here. In our opinion such incidental use would not violate the provisions of the 1964 act.

Number three:

"The grant of funds for mass public transportation purposes to a City which has expressed an intent to engage in the general charter bus business when such funds would in effect constitute a subsidy to the City of its intended charter bus operations; i.e. freeing Municipal funds with which to purchase charter bus equipment."

Section 4(a) of the 1964 Act (49 U.S.C. 1603(a)) provides, in part, as follows:

"* * * The Administrator (now Secretary), on the basis of engineering studies, studies of economic feasibility, and data showing the nature and extent of expected utilization of the facilities and equipment, shall estimate what portion of the cost of a project to be assisted under section 1602 of this title cannot be reasonably financed from revenues—which portion shall hereinafter be called 'net project cost'. The Federal grant for such a project shall not exceed two-thirds of the net project cost. The remainder of the net project cost shall be provided, in cash, from sources other than Federal funds * * *."

It is clear from the legislative history of the act involved that the "revenues" to be considered are mass transportation system revenues including any revenues from incidental charter operations. There is nothing in the language of the act which requires HUD to take into account the status of the general funds of an applicant city in determining how much capital grant assistance to extend to that city.

It should be noted that in a sense nearly every capital grant to a city constitutes a partial subsidy of every activity of the city which is supported by tax revenues, since it frees tax revenues for such other uses.

Number four:

"With specific reference to the application of the City of San Diego for funds under its application to the Department of Housing and Urban Development dated June 2, 1980, whether the Act permits a grant to purchase equipment wherein 25 per cent of such equipment will be used either exclusively or substantially in the operation of charter bus services."

As to the City of San Diego's grant application, we have been advised by HUD as follows:

"As explained above, the Act authorizes assistance only for facilities to be used in mass transportation service. We could not, therefore, assist San Diego in purchasing any equipment to be used 'exclusively' in the operation of charter bus service. Furthermore, as also explained above, assisted mass transportation equipment can be used only incidentally for such charter services.

"Whether equipment used 'substantially' in such service qualifies under this rule can be answered only in the light of the specifics of the San Diego situation. * * * we have already, during our preliminary review of the City's application, disallowed about $150,000 of the proposed project cost which was allocated to the purchase of eight charter-type buses.

"The final application of the City of San Diego is presently under active consideration by this Department. In particular, we have requested the City to furnish additional information as to the nature and extent of the proposed use, if any, of project facilities and equipment in charter service, so that we can further evaluate the application under the criteria above set forth. We have also requested similar information from Mr. Fredrick J. Ruane, who has filed a taxpayers' suit (Superior Court for San Diego County Civil #297329) against the City, contesting its authority to engage in charter bus operations."

As indicated above, it is clear that under the act in question grants may not legally be made to purchase buses to be used "exclusively" in the operation of charter bus service. However, in view of the purposes of the act involved it is our opinion that a city which has purchased with grant funds buses needed for an efficient mass transportation system, is not precluded by the act from using such buses for charter service during idle or

off-peak periods when the buses are not needed for regularly scheduled runs. As indicated above, such a use would appear to be an incidental use.

The fourth question is answered accordingly.

As requested, the correspondence enclosed with your letter is returned herewith.

Sincerely yours,

Frank H. Weitzel,

Assistant Comptroller General of the United States.

Enclosures.

The Honorable Bob Wilson, House of Representatives.

Appendix C—Cost Certification Expenses List

Expense Reporting—List of Expenses

Labor

1. Operators' Salaries and Wages
2. Other Salaries and Wages

Fringe Benefits

1. FICA or Railroad Retirement
2. Pension Plans (including long-term disability insurance)
3. Hospital, Medical and Surgical Plans
4. Dental Plans
5. Life Insurance Plans
6. Short-Term Disability Insurance Plans
7. Unemployment Insurance
8. Workmen's Compensation Insurance or Federal Employees Liability Act Contributions
9. Sick Leave
10. Holiday (including all premiums paid for on holidays)
11. Vacation
12. Other Paid Absence (bereavement pay, military pay, jury duty pay, etc.)
13. Uniform and Work Clothing Allowances
14. Other Fringe Benefits
15. Distribution of Fringe Benefits

Services

1. Management Service Fees
2. Advertising Fees
3. Professional and Technical Services
4. Temporary Help
5. Contract Maintenance Services
6. Custodial Services
7. Security Services
8. Propulsion Power
9. Utilities Other than Propulsion Power
10. Dues and Subscriptions
11. Travel and Meetings
12. Bridge, Tunnel and Highway Tolls
13. Other Services

Materials and Supplies Consumed

1. Fuel and Lubricants
2. Tires and Tubes
3. Other Materials and Supplies

Casualty and Liability Costs

1. Premiums for Physical Damage Insurance
2. Recoveries of Physical Damage Losses
3. Premiums for Public Liability and Property Damage Insurance
4. Payouts for Uninsured Public Liability and Property Damage Settlements
5. Provision for Uninsured Public Liability and Property Damage Settlements
6. Payouts for Insured Public Liability and Property Damage Settlements
7. Recoveries of Public Liability and Property Damage Settlements
8. Premiums for Other Corporate Insurances
9. Other Corporate Losses
10. Recoveries of Other Corporate Losses.

Leases and Rentals

1. Transit Way and Transit Way Structures and Equipment
2. Passenger Stations
3. Passenger Parking Facilities
4. Passenger Revenue Vehicles
5. Service Vehicles
6. Operating Yards or Stations
7. Engine Houses, Car Shops and Garages
8. Power Generation and Distribution Facilities
9. Revenue Vehicle Movement Control Facilities
10. Data Processing Facilities
11. Revenue Collection and Processing Facilities
12. Other General Administration Facilities

Depreciation and Amortization

1. Transit Way and Transit Way Structures and Equipment
2. Passenger Stations
3. Passenger Parking Facilities
4. Passenger Revenue Vehicles
5. Service Vehicles
6. Operating Yards or Stations
7. Engine Houses, Car Shops and Garages
8. Power Generation and Distribution Facilites
9. Revenue Vehicle Movement Control Facilities
10. Data Processing Facilities
11. Revenue Collection and Processing Facilities
12. Other General Administration Facilities

Property Retirement Write-Offs

1. Property Retirement Write-Offs

Interest Expense

1. Interest on Debt Obligations (net of interest capitalized)

Other Taxes

1. Federal Income Tax
2. State Income Tax
3. Property Tax
4. Vehicle Licensing and registration Fees
5. Fuel and Lubricant Taxes
6. Other Taxes

Expense Transfers

1. Function Reclassifications
2. Expense reclassifications
3. Capitalization of Nonoperating Costs

Subsidy Payments

1. Purchased Transportation Service

March 29, 1976.

Inflationary Impact Statement

Final Regulations

Charter Bus Operations. I certify that, in accordance with Executive Order 11821, dated November 27, 1974, and Departmental implementing instructions, and Inflationary Impact Statement is not required for the final regulations on Charter Bus Operations.

Robert E. Patricelli,

Urban Mass Transportation Administrator.

Dated: January 1, 1981.

Theodore C. Lutz,

Administrator.

[FR Doc. 81-1579 Filed 1-16-81; 8:45 am]
BILLING CODE 4910-57-M

federal register

Monday
January 19, 1981

Part IX

Department of Education

Centers for Independent Living

DEPARTMENT OF EDUCATION

34 CFR Part 366

Centers for Independent Living

AGENCY: Department of Education.

ACTION: Final regulations with invitation to comment.

SUMMARY: The Secretary adopts final regulations for the purpose of implementing the Centers for Independent Living Program authorized under Section 711 of the Rehabilitation Act of 1973, as amended by the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978 (Public Law 95-602).

EFFECTIVE DATE: These regulations are expected to be effective forty-five days after they are transmitted to Congress. Regulations are usually transmitted to Congress several days before they are published in the Federal Register. The effective date is changed if Congress takes certain adjournments. If you want to know the effective date of these regulations, call or write the Department of Education contact person.

Comment due date: March 20, 1981.

ADDRESSES: Comments should be addressed to: Mr. Harold F. Shay, Director, Division of Manpower Development, Rehabilitation Services Administration, Office of Special Education and Rehabilitative Services, Room 3321, Mary E. Switzer Building, 330 C Street, S.W., Washington, D.C. 20201.

FOR FURTHER INFORMATION CONTACT: Mr. Harold F. Shay, Telephone: (202) 245-0079.

SUPPLEMENTARY INFORMATION: *Waiver of Proposed Rulemaking Procedures Affecting Selection Criteria*

The Secretary of Health, Education, and Welfare published a Notice of Proposed Rulemaking in the Federal Register on November 28, 1979 that covered all new vocational rehabilitation and independent living rehabilitation authorities contained in the Rehabilitation, Comprehensive Services and Developmental Disabilities Amendments of 1978 (Pub. L. 95-602). Proposed regulations for the Centers for Independent Living Program were included in this Notice of Proposed Rulemaking.

On May 4, 1980, the Department of Education was established and the Rehabilitation Services Administration became part of the Office of Special Education and Rehabilitative Services within this new Department. As a result, the publication of regulations under the Rehabilitation Act of 1973, as amended, is now subject to the provisions of Section 431 of the General Education Provisions Act and other requirements in effect in the Department of Education. It has become necessary therefore to revise the proposed regulations for the Centers for Independent Living Program in order to make them conform with requirements affecting Department of Education programs, including selection criteria to be used in the evaluation of applications submitted for grant assistance. These selection criteria had not been in the previously published Notice of Proposed Rulemaking.

In accordance with Section 431(b)(2)(A) of the General Education Provisions Act (20 U.S.C. 1232(b)(2)(A)), it is the practice of the Department of Education of offer interested parties the opportunity to comment on all proposed regulations, including the selection criteria to be used in discretionary grant programs such as the Centers for Independent Living Program. The publication of an additional proposed rulemaking covering the selection criteria for this program would be impracticable and contrary to the public interest under 5 U.S.C. 553(b) if grants are to be made in a timely manner in Fiscal Year 1981, however, and the selection criteria are therefore being published as final regulations in this document.

Although the selection criteria for the Centers for Independent Living Program have been previously identified in the Office of Human Development Services Program Announcement No. 13653-801 published in the Federal Register on January 17, 1980, it is recognized that there has not been an opportunity for the public to comment specifically on their appropriateness for this program. Interested parties are therefore invited to submit comments and suggestions on the selection criteria to be used in the awarding of grants in future fiscal years. All comments and suggestions must be received no later than (the sixtieth day after publication of these regulations).

Summary of Changes

Some comments were received in response to the earlier published proposed regulations for the Centers for Independent Living Program and changes are also being made in these revised regulations in response to these comments. A Summary of Comments and Response to the proposed regulations is included in Appendix A.

References to EDGAR

Readers will note that references to the Education Department General Administrative Regulations (EDGAR) cite Title 34 of the Code of Federal Regulations. EDGAR was transferred to Title 34 through final regulations published in the Federal Register on November 21, 1980 (45 FR 77368).

However, EDGAR was initially published in the Federal Register on April 3, 1980 (45 FR 22494) under Title 45 of the Code of Federal Regulations (CFR). For readers wishing to refer to that EDGAR document, the following cross-references will be helpful:

—45 CFR Part 74 is now 34 CFR Part 74.

—45 CFR Part 100a is now 34 CFR Part 75.

—45 CFR Part 100b is now 34 CFR Part 78.

—45 CFR Part 100c is now 34 CFR Part 77.

Invitation to Comment

Interested persons are invited to submit comments and recommendations regarding these regulations. Written comments and recommendations may be sent to the address given at the beginning of this preamble. All comments received on or before the 60th day after publication of this document will be considered in any future revisions of the final regulations.

All comments submitted in response to these final regulations will be available for public inspection during and after the comment period in Room 3321, Mary E. Switzer Building, 330 C Street, S.W., Washington, D.C., between 8:30 a.m. and 4:00 p.m. Monday through Friday, except Federal holidays.

The Department also requests comments on whether the regulations in this document would require submission of information that is already being gathered by or is available from any other agency or authority of the United States.

Regulatory Flexibility Act Analysis

The Regulatory Flexibility Act (Pub. L. 96-354, enacted Sept. 19, 1980) requires each Federal agency to prepare an initial regulatory flexibility analysis and a final regulatory flexibility analysis for each regulation that—

(1) Is published as a notice of proposed rulemaking after January 1, 1981, and

(2) Has a significant economic impact on a substantial number of small entities (small businesses, small organizations, or small governmental jurisdictions).

Because the Department has not yet established its own definitions of "small organization" and "small governmental jurisdiction", as contemplated by the Act, it is not possible to prepare a full initial regulatory flexibility analysis at this time. Further, since the regulations

in this document are required by statute to be published in final no later than May 31, 1981, it is impracticable to delay publication while the necessary definitions are being developed. As noted elsewhere in this preamble, it was impracticable to take public comments before publishing these regulations as final. For the same reasons, it was impracticable to delay the regulation while an initial regulatory flexibility analysis was prepared. In these circumstances, the Regulatory Flexibility Act permits a waiver or delay of the initial regulatory flexibility analysis. If it is determined that these regulations are subject to that Act, the Secretary will prepare the necessary analyses at a later date.

As an interim measure, this document, to the maximum extent possible, includes information of the kind contemplated by the Regulatory Flexibility Act, including the reasons for the regulations, the objectives and legal basis for the regulations, and any significant issues and alternatives for consideration by the public. To assist the Department in determining whether the Regulatory Flexibility Act applies to these regulations, and in complying with the Act's requirements, public comment is especially invited on the following matters:

(1) The number and kind of small entities (small businesses, small organizations, or small governmental jurisdictions) affected by the regulations;

(2) The reporting, recordkeeping, and compliance burdens imposed by the regulations on small entities;

(3) The type of professional skills necessary for preparation of any reports or records required by the regulations;

(4) Any Federal rules that may duplicate, overlap, or conflict with the regulations;

(5) Any significant alternatives that would accomplish the purposes of the applicable statute but would minimize any significant economic impact of the regulations on small entities. The Secretary is particularly interested in suggestions on alternatives such as the following:

- The establishment of differing reporting or compliance requirements or timetables that take into account the resources available to small entities.
- The clarification, consolidation, or simplification of compliance and reporting requirements for small entities.
- The use of performance rather than design standards.
- An exemption for small entities from coverage of part or all of the regulations.

Citation of Legal Authority

A citation of statutory or other legal authority is placed in parentheses on the line following each substantive provision of these proposed regulations. The first citation is the appropriate section of the Rehabilitation Act of 1973 as amended.

This is followed by a citation to the same provision in the United States Code.

(Catalog of Federal Domestic Assistance Program Number 84.132, Centers for Independent Living)

Dated: January 12, 1981.

Shirley M. Hufstedler,

Secretary of Education.

Accordingly, the Secretary amends Title 34 of the Code of Federal Regulations by adding a new Part 366 as follows:

PART 366—CENTERS FOR INDEPENDENT LIVING

Subpart A—General

Sec.

366.1 What is the Centers for Independent Living Program?
366.2 Who is eligible for assistance under this program?
366.3 What regulations apply to this program?
366.4 What definitions apply to this program?

Subpart B—What Kinds of Projects Does the Department of Education Assist Under This Program?

366.10 What specific activities may be supported under this program?

Subpart C—[Reserved]

Subpart D—How Does the Secretary Make a Grant?

366.30 How does the Secretary evaluate an application?
366.31 What selection criteria does the Secretary use in this program?

Subpart E—What Conditions Must Be Met by a Grantee?

366.40 What are the matching requirements?
366.41 How are services to be administered under this program?
366.42 What the requirements pertaining to the protection, use, and release of personal information?

Authority: Sections 12(c) and 711 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 711(c) and 796(e)).

Subpart A—General

§ 366.1 What is the Centers for Independent Living Program?

This program is designed for planning, establishing and assisting in the continuing operation of centers for independent living.

(Section 711 of the Act; 29 U.S.C. 796e)

§ 366.2 Who is eligible for assistance under this program?

(a) Applications may be made by designated State vocational rehabilitation units.

(b) If a designated State unit has failed to submit an application within six months after the beginning of a fiscal year or if a State unit has advised the Secretary in writing at any time within six months after the beginning of a fiscal year of its decision not to submit an application, applications for Federal assistance may be made by local public agencies and by private nonprofit organizations within the State. The written statement of a designated State unit decision not to apply is binding for that fiscal year.

(Sections 711 (a) and (d) of the Act; 29 U.S.C. 796e(d))

§ 366.3 What regulations apply to this program?

The following regulations apply to this program:

(a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Part 75 (Direct grant programs);

(b) The regulations in EDGAR, 34 CFR Part 77 (General); and

(c) The regulations in this Part 366.

(Section 711 of the Act; 29 U.S.C. 796e)

§ 366.4 What definitions apply to this program?

(a) The following definitions in 34 CFR Part 77 apply to this program—

Applicant
Application
Award
Budget Period
Department
EDGAR
Nonprofit
Project
Project Period
Public
Secretary

(b) The following definitions also apply to the Centers for Independent Living Program—

"Center for independent living" means a program of services or a facility which offers a combination of independent living services for severely handicapped individuals or groups of severely handicapped individuals such as:

(1) Intake counseling to determine the severely handicapped individual's need for specific independent living services;

(2) Referrals and counseling services with respect to attendant care;

(3) Attendant care and the training of personnel to provide attendant care;

(4) Counseling and advocacy services with respect to legal and economic rights and benefits;

(5) Peer counseling;

(6) Independent living skills, counseling and training, including training in the maintenance of necessary equipment, training in job seeking skills, counseling on therapy needs and programs, and special independent living skill training for blind individuals or deaf individuals;

(7) Housing and transportation referral and assistance;

(8) Surveys, directories, and other activities to identify appropriate housing and accessible transportation and other support services;

(9) Health maintenance programs;

(10) Community group living arrangements;

(11) Education and training necessary for living in the community and participating in community activities;

(12) Individual and group social and recreational activities;

(13) Interpreter services for deaf or deaf-blind individuals and reading services for blind individuals; and

(14) Other programs and services necessary to provide resources, training, counseling, services or other assistance of substantial benefit in promoting the independence, productivity and quality of life for severely handicapped individuals.

(Section 711(c) of the Act; 29 U.S.C. 796e(c))

"Designated State unit" or "designated State vocational rehabilitation unit" means either:

(1) The State agency vocational rehabilitation bureau, division, or other organizational unit which is primarily concerned with vocational rehabilitation or vocational and other rehabilitation of handicapped individuals and which is responsible for the administration of the vocational rehabilitation program of the State agency; or

(2) The independent State commission, board, or other agency which has vocational rehabilitation, or vocational and other rehabilitation as its primary function.

(Section 7(3) of the Act; 29 U.S.C. 706(3))

"Severely handicapped individual" means an individual whose ability to function independently in family or community, or whose ability to engage or continue in employment is so limited by the severity of his or her physical or mental disability that independent living rehabilitation services are required in order to achieve a greater level of independence in functioning in family or community or engaging or continuing in employment. Independent living rehabilitation services needed by a severely handicapped individual are appreciably more costly and of appreciably greater duration than vocational rehabilitation services that might be provided under 34 CFR Part 361.

(Section 702(a) of the Act; 29 U.S.C. 796a(a))

Subpart B—What Kinds of Projects Does the Department of Education Assist Under This Program?

§ 366.10 What specific activities may be supported under this program?

(a) The Centers for Independent Living Program provides financial assistance for planning, establishing and operating centers for independent living. Grant funds under this program must be used only for establishing new centers for independent living or expanding or improving ongoing centers of independent living.

(b) Grant funds may not be used in whole or in part to supplant other existing funding support already being used by a center for independent living.

(Sections 12(c) and 711 of the Act; 29 U.S.C. 711(c) and 796e)

Subpart C—[Reserved]

Subpart D—How Does the Secretary Make a Grant?

§ 366.30 How does the Secretary evaluate an application?

(a) The Secretary evaluates each application under this program on the basis of the criteria specified in § 366.31. The maximum possible score for each complete criterion is stated in parentheses. The number of points awarded for each criterion depends on how well the applicant meets all the elements under that criterion.

(b) The Secretary awards up to 100 points for these criteria.

(Sections 12(c) and 711 of the Act; 29 U.S.C. 711(c) and 796e)

§ 366.31 What selection criteria does the Secretary use in this program?

(a) *Evidence of need* (5 points).

(1) The Secretary reviews each application for information that shows that the need for the project has been adequately justified;

(2) The Secretary looks for information that shows that need for the Center for Independent Living has been established in terms of existing programs and facilities and includes an assessment of the potential of the existing programs and facilities to meet service needs for independent living services of severely handicapped individuals in the geographical area to be served.

(b) *Plan of operation* (25 points).

(1) The Secretary reviews each application for information that shows the quality of the plan of operation for the project.

(2) The Secretary looks for information that shows—

(i) High quality in the design of the project;

(ii) An effective plan of management that insures proper and efficient administration of the project;

(iii) A clear description of how the objectives of the project relate to the purpose of the program;

(iv) The way the applicant plans to use its resources and personnel to achieve each objective;

(v) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(c) *Service comprehensiveness* (15 points).

(1) The secretary reviews each application for information that shows the comprehensiveness of the services to be available in each center.

(2) The Secretary looks for information that shows—

(i) Evidence that the center will utilize all presently available services;

(ii) Evidence that effort will be made to provide as many as possible of the services identified in the definition of "center for independent living" in § 366.4(b); and

(iii) Evidence that the project will service individuals with a broad range of disabilities including disabled persons who may have limited knowledge about the project such as the mentally retarded and the sensory impaired.

(d) *Quality of key personnel* (10 points).

(1) The Secretary reviews each application for information that shows the qualifications of the key personnel the applicant plans to use on the project.

(2) The Secretary looks for information that shows—

(i) The qualifications of the project director;

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (2) (i) and (ii) of this section will commit to the project; and

(iv) The extent to which the applicant, as part of its nondiscriminatory

employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(3) To determine personnel qualifications, the Secretary considers experience and training, in fields related to the objectives of the project, as well as other information that the applicant provides.

(e) *Involvement of severely handicapped persons* (20 points).

(1) The Secretary reviews each application for information that shows that severely handicapped persons are appropriately involved in conducting center activities.

(2) The Secretary looks for information that shows that severely handicapped persons or their parents, guardians or other representatives, as appropriate, will be substantially involved in planning, policy direction and management of the center and, to the greatest extent possible, will be employed by the center.

(f) *Budget and cost effectiveness* (10 points).

(1) The Secretary reviews each application for information that shows that the project has an adequate budget and is cost effective.

(2) The Secretary looks for information that shows—

(i) The budget for the project is adequate to support the project activities; and

(ii) Costs are reasonable in relation to the objectives of the project.

(g) *Evaluation plan* (5 points).

(1) The Secretary reviews each application for information that shows the quality of the evaluation plan for the project.

(2) The Secretary looks for information that shows methods of evaluation that are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable.

(h) *Adequacy of resources* (10 points).

(1) The Secretary reviews each application for information that shows that the applicant plans to devote adequate resources to the project.

(2) The Secretary looks for information that shows—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies that the applicant plans to use are adequate.

(Sections 12(c) and 711 of the Act; 29 U.S.C. 711(c) and 796e)

Subpart E—What Conditions Must Be Met By a Grantee?

§ 366.40 What are the matching requirements?

No minimum share is required of applicants but each applicant is encouraged to furnish as large a part of the total project costs as possible.

(Sections 12(c) and 711 of the Act; 29 U.S.C. 711(c) and 796e)

§ 366.41 How are services to be administered under this program?

The designated State unit may either directly operate a center for independent living or a group of centers or it may award one or more contracts to other public or nonprofit agencies or organizations in the State for the purpose of operating a center or a group of centers.

(Sections 12(c) and 711 of the Act; 29 U.S.C. 711(c) and 796e)

§ 366.42 What are the requirements pertaining to the protection, use, and release of personal information?

(a) All personal information about individuals served by any project under this part, including lists of names, addresses, photographs, and records of evaluation, must be held confidential.

(b) The use of information and records concerning individuals must be limited only to purposes directly connected with the project, including project evaluation activities. This information may not be disclosed, directly or indirectly, other than in the administration of the project unless the consent of the agency providing the information and the individual to whom the information applies, or his representative, has been obtained in writing. The Secretary and other Federal or State officials responsible for enforcing legal requirements have access to this information without written consent being obtained. The final product of the project may not reveal any personal identifying information without written consent of the individual or his or her representative.

Note.—The following appendix will not appear in the Code of Federal Regulations.

Appendix A—Summary of Comments and Responses to Notice of Proposed Rulemaking Published in the Federal Register of November 29, 1979.

§ 366.2 Who is eligible for assistance under this program? (Formerly § 1362.100(c))

Comment. A number of comments were received concerning the application eligibility requirements. Special concern was expressed about the timing of the process so that local public agencies and private nonprofit organizations would have adequate notice when a State unit has decided not to apply for Federal grant funds and would have sufficient time to prepare an application.

Response. A change has been made in this section. Paragraph (b) has been revised to specify that the six-month period in which only State units would be eligible applicants would start at the beginning of the fiscal year rather than after the application submittal deadline date established by the Secretary. In this way, other applicants will more easily be able to determine their eligibility status and will be better able to plan the preparation of their own applications.

The paragraph has also been revised to clarify that when a State unit's decision not to apply for grant funds is made in writing to the Secretary, it is binding for the fiscal year in which it is made. This change will also facilitate the application process for local agencies and organizations.

§ 366.4 What definitions apply to this program? (Formerly § 1362.100(b))

Comment. Question was raised about the definition of a "center for independent living" and whether the term "facility" in the proposed definition referred to a "rehabilitation facility," as defined in the Act and in the regulations for the State plan for vocational rehabilitation services in 34 CFR Part 361.

Response. No change has been made in this section in this regard. The term "facility" does not refer to a "rehabilitation facility," as defined under the Rehabilitation Act, but simply indicates a place where independent living services may be provided or coordinated. Since the proposed definition did not specify "rehabilitation facility," no additional change appeared to be necessary.

§ 366.4 What definitions apply to this program? (Formerly § 1362.100(a))

Comment. Question was asked whether independent living services under this program were to be limited to individuals only or whether these services might also be provided to groups of severely handicapped individuals.

Response. A change has been made in this section. The definition of "center for independent living" has been revised to clarify that services under this special grant program are not required to be individualized but may also be provided on a group basis.

Comment. It was suggested in some comments that special independent

living services for communicatively disabled individuals should appropriately be identified as available under a center for independent living program.

Response. A change has been made in this section. The list of services in the definition of "centers for independent living" has been revised to include interpreter services for deaf individuals, including tactile interpreting for deaf-blind individuals, and reading services for blind individuals.

§ 366.10 What specific activities may be supported under this program? (Formerly § 1362.10(a))

Comment. Question was asked by one commenter about whether grant funds under this program could be used to supplant other sources already being utilized to support ongoing centers for independent living. It was pointed out that securing funding for currently operating centers for independent living is generally done with great difficulty and the utilization of this new grant program resource would be of great benefit in maintaining these ongoing center programs.

Response. A change has been made in this section. It is noted that this section is a new grant authority which was added to the Rehabilitation Act in 1978 and funds became available for the first time in 1979. There is no indication that the Congress intended that these grant funds be used to supplant existing resources to provide basic continuing support to ongoing centers for independent living programs. This section has been revised, therefore, to clarify that grant funds may be used only to establish new center programs and center services or to expand or improve existing programs which meet all the requirements of this section. Grant funds under this section may not be used to maintain the current scope of service and level of operation of an ongoing center program being supported under other available funding sources.

§ 366.31(e) What selection criteria does the Secretary use in this program? (Formerly § 1362.10(e)).

Comment. It was suggested by some commenters that the concept of "substantial involvement in policy direction and management" of centers by severely handicapped individuals be defined to mean at least 51% of project staff and management. It was felt that anything less than this level would not reflect a meaningful participation by these severely handicapped persons.

Response. No change has been made in this section in this regard. Although more precise requirements in this area would be desirable, it does not appear that the establishment of an arbitrary percentage would be an effective device for achieving the objective of ensuring an appropriate level of project control by handicapped persons. An arbitrary percentage requirement would substantially reduce administrative flexibility in managing center programs.

The extent to which severely handicapped individuals are involved in project direction and management is an important factor considered in the competitive review of applications and it is felt that the competitive review process and the monitoring of ongoing projects are the best ways to ensure that the intent of the section is achieved in an effective way.

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Monday
January 19, 1981

Part X

Department of Education

Vocational Rehabilitation Service Projects; Final Regulations and Proposed Rulemaking

DEPARTMENT OF EDUCATION

34 CFR Parts 362, 366, 370, 371, 372, 373, 374, 375, 376, 378, and 395

Vocational Rehabilitation Service Projects; Final Regulations With Invitation To Comment

AGENCY: Department of Education.

ACTION: Final regulations with invitation to comment.

SUMMARY: The Secretary adopts regulations for the purpose of implementing different Vocational Rehabilitation Service Projects authorized under the Rehabilitation Act of 1973, as amended by the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978 (Pub. L. 95-602). These regulations include the requirements for Client Assistance Projects, Handicapped American Indian Vocational Rehabilitation Service Projects, Comprehensive Rehabilitation Centers, Special Projects and Demonstrations for Providing Vocational Rehabilitation Services to Severely Disabled Individuals, Special Projects and Demonstrations for Making Recreational Activities Accessible to Handicapped Individuals, Handicapped Migratory Agricultural Workers and Seasonal Farmworker Vocational Rehabilitation Service Projects, Projects for Initiating Special Recreation Programs for Handicapped Individuals, and Projects with Industry.

DATES: All comments, suggestions, or objections must be received on or before March 20, 1981.

Effective Date: These regulations are expected to be effective forty-five days after they are transmitted to Congress. Regulations are usually transmitted to Congress several days before they are published in the Federal Register. The effective date is changed if Congress takes certain adjournments. If you want to know the effective date of these regulations, call or write the Department of Education contact person.

ADDRESSES: Comments should be addressed to: Mr. Harold F. Shay, Director, Division of Manpower Development, Rehabilitation Services Administration, Office of Special Education and Rehabilitative Services, Room 3321, Mary E. Switzer Building, 330 C Street, SW., Washington, D.C. 20201.

FOR FURTHER INFORMATION CONTACT: Mr. Harold F. Shay, Telephone: (202) 245-0079.

SUPPLEMENTARY INFORMATION:

Waiver of Proposed Rulemaking Procedures Affecting Selection Criteria

The Secretary of Health, Education, and Welfare published a Notice of Proposed Rulemaking in the Federal Register on November 29, 1979 that covered all new vocational rehabilitation and independent living rehabilitation authorities contained in the Rehabilitation, Comprehensive Services and Developmental Disabilities Amendments of 1978 (Pub. L. 95-602). Proposed regulations for the different Vocational Rehabilitation Service Projects were included in this Notice of Proposed Rulemaking.

On May 4, 1980, the Department of Education was established and the Rehabilitation Services Administration became part of the Office of Special Education and Rehabilitative Services within this new Department. As a result, the publication of regulations under the Rehabilitation Act of 1973, as amended, is now subject to the provisions of Section 431 of the General Education Provisions Act and other requirements in effect in the Department of Education. It has become necessary therefore to revise the proposed regulations for each of the Vocational Rehabilitation Service Projects in order to make them conform with requirements affecting Department of Education programs, including selection criteria to be used in the evaluation of applications submitted for grant assistance. These selection criteria had not been included in the previously published Notice of Proposed Rulemaking.

In accordance with Section 431(b)(2)(A) of the General Education Provisions Act (20 U.S.C. 1343(b)(2)(A)), it is the practice of the Department of Education to offer interested parties the opportunity to comment on all proposed regulations, including the selection criteria to be used in the different discretionary grant programs. The publication of an additional proposed rulemaking covering the selection criteria for the different Vocational Rehabilitation Service Projects would be impracticable and contrary to the public interest under 5 U.S.C. 553(b) if grants are to be made in a timely manner in fiscal year 1981, however, and the selection criteria are therefore being published as final regulations in this document.

Although the selection criteria for many of the Vocational Rehabilitation Service Projects have been previously identified in Application Notices published in the Federal Register, it is recognized that there has not been an opportunity for the public to comment specifically on their appropriateness. Interested parties are invited therefore to submit comments and suggestions on the Selection Criteria to be used in the awarding of grants in future fiscal years. All comments and suggestions must be received no later than March 20, 1981.

Summary of Changes

Some comments were received in response to the Notice of Proposed Rulemaking provisions covering the Client Assistance Program and the Projects with Industry Program. Changes are also being made in these revised regulations in response to these comments. A Summary of Comments and Responses to the proposed regulations is included in Appendix A.

References to EDGAR

Readers will note that references to the Education Department General Administrative Regulations (EDGAR) cite Title 34 of the Code of Federal Regulations. EDGAR was transferred to Title 34 through final regulations published in the Federal Register on November 21, 1980 (45 FR 77368).

However, EDGAR was initially published in the Federal Register on April 3, 1980 (45 FR 22494) under Title 45 of the Code of Federal Regulations (CFR). For readers wishing to refer to that EDGAR document, the following cross-references will be helpful:

—45 CFR Part 74 is now 34 CFR Part 74.
—45 CFR Part 100a is now 34 CFR Part 75.
—45 CFR Part 100b is now 34 CFR Part 76.
—45 CFR Part 100c is now 34 CFR Part 77.

Invitation to Comment

Interested persons are invited to submit comments and recommendations regarding these regulations. Written comments and recommendations may be sent to the address given at the beginning of this preamble. All comments received on or before the 60th day after publication of this document will be considered in any future revisions of the final regulations.

All comments submitted in response to these final regulations will be available for public inspection during and after the comment period in Room 3321, Mary E. Switzer Building, 330 C Street, S.W., Washington, D.C. between 8:30 a.m. and 4:00 p.m. Monday through Friday, except Federal holidays.

The Department also requests comments on whether the regulations in this document would require submission of information that is already being gathered by or is available from any other agency or authority of the United States.

Regulatory Flexibility Act Analysis

The Regulatory Flexibility Act (Pub. L. 96-354, enacted Sept. 19, 1980) requires each Federal agency to prepare an initial regulatory flexibility analysis and a final regulatory flexibility analysis for each regulation that—

(1) Is published as a notice of proposed rulemaking after January 1, 1981, and

(2) Has a significant economic impact on a substantial number of small entities (small businesses, small organizations, or small governmental jurisdictions).

Because the Department has not yet established its own definitions of "small organization" and "small governmental jurisdiction", as contemplated by the Act, it is not possible to prepare a full initial regulatory flexibility analysis at this time. Further, since the regulations in this document are required by statute to be published in final no later than May 31, 1981, it is impracticable to delay publication while the necessary definitions are being developed. As noted elsewhere in this preamble, it was impracticable to take public comments before publishing these regulations as final. For the same reasons, it was impracticable to delay the regulations while an initial regulatory flexibility analysis was prepared. In these circumstances, the Regulatory Flexibility Act permits a waiver or delay of the initial regulatory flexibility analysis. If it is determined that these regulations are subject to that Act, the Secretary will prepare the necessary analyses at a later date.

As an interim measure, this document, to the maximum extent possible, includes information of the kind contemplated by the Regulatory Flexibility Act, including the reasons for the regulations, the objectives and legal basis for the regulations, and any significant issues and alternatives for consideration by the public. To assist the Department in determining whether the Regulatory Flexibility Act applies to these regulations, and in complying with the Act is requirements, public comment is especially invited on the following matters:

(1) The number and kind of small entities (small businesses, small organizations, or small governmental jurisdictions) affected by the regulations;

(2) The reporting, recordkeeping and compliance burdens imposed by the regulations on small entities;

(3) The type of professional skills necessary for preparation of any reports or records required by the regulations;

(4) Any Federal rules that may duplicate, overlap, or conflict with the regulations;

(5) Any significant alternatives that would accomplish the purposes of the applicable statute but would minimize any significant economic impact of the regulations on small entities. The Secretary is particularly interested in suggestions on alternatives such as the following:

- The establishment of differing reporting or compliance requirements or timetables that take into account the resources available to small entities.
- The clarification, consolidation, or simplification of compliance and reporting requirements for small entities.
- The use of performance rather than design standards.
- An exemption for small entities from coverage of part or all of the regulations.

Citation of Legal Authority

A citation of statutory authority is placed in parentheses on the line following each substantive provision of these regulations. The first citation is the appropriate section of the Rehabilitation Act of 1973, as amended. This is followed by a citation to the same provision in the United States Code.

(Catalog of Federal Domestic Assistance Program Number 84.128, Rehabilitation Services—Special Projects)

Dated: January 13, 1981.

Shirley M. Hufstedler,

Secretary of Education.

PART 369 [REDESIGNATED AS PART 395]

Accordingly, the Secretary amends Title 34 of the Code of Federal Regulations by redesignating Part 369 as Part 395 and by redesignating Subpart A of Part 362 as 34 CFR Part 369 and revises the regulations to read as follows:

PART 369—VOCATIONAL REHABILITATION SERVICE PROJECTS

Subpart A—General

Sec.

369.1 What are the Vocational Rehabilitation Service Projects?
369.2 Who is eligible for assistance under these programs?
369.3 What regulations apply to these programs?
369.4 What definitions apply to these programs?

Subpart B—[Reserved]

Subpart C—How Does One Apply For A Grant?

369.20 What are the application procedures for these programs?

Subpart D—How Does the Secretary Make A Grant?

369.30 How does the Secretary evaluate an application?
369.31 What general selection criteria does the Secretary use in reviewing an application?
369.32 What other factors does the Secretary consider in reviewing an application?

Subpart E—What Conditions Must Be Met By A Grantee?

369.40 [Reserved]
369.41 [Reserved]
369.42 What special requirements affect provision of services to handicapped individuals?
369.43 What are the affirmative action plan requirements affecting grantees?
369.44 What are the special requirements for projects that involve construction?
369.45 What wage and hour standards apply to workshops?
369.46 What are the special requirements pertaining to the membership of project advisory committees?
369.47 What are the special requirements pertaining to the protection, use, and release of personal information?
369.48 What are the special requirements affecting the collection of data from State agencies?

Authority: Sections 12(c), 112, 130, 305, 311(a)(1), 311(a)(3), 312, 316, and 621 of the Act; 29 U.S.C. 711(c), 732, 750, 775, 777(a)(1), 777a(a)(3), 777(b), 777f and 795g.

Subpart A—General

§ 369.1 What are the Vocational Rehabilitation Service Projects?

(a) These programs provide financial assistance for the support of special project activities for providing vocational rehabilitation services and related services to handicapped individuals and other persons.

(b) The Secretary awards financial assistance through the following programs—

(1) Client Assistance Projects (34 CFR Part 370).

(2) Handicapped American Indian Vocational Rehabilitation Service Projects (34 CFR Part 371).

(3) Comprehensive Rehabilitation Centers (34 CFR Part 372).

(4) Special Projects and Demonstrations for Providing Vocational Rehabilitation Services to Severely Disabled Individuals (34 CFR Part 373).

(5) Special Projects and Demonstrations for Making Recreational Activities Accessible to Handicapped Individuals (34 CFR Part 374).

(6) Handicapped Migratory Agricultural and Seasonal Farmworker Vocational Rehabilitation Service Projects (34 CFR Part 375).

(7) Projects for Initiating Special Recreation Programs for Handicapped Individuals (34 CFR Part 378).

(8) Projects with Industry (34 CFR Part 379).

(Secs. 112, 130, 305, 306, 311a, 311(a)(3), 312, 316, 621 of the Act; 29 U.S.C. 732, 750, 775, 776, 777a(a)(1), 777a(a)(3), 777(b), 777f and 795g)

§ 369.2 Who is eligible for assistance under these programs?

(a) *Client Assistance Projects.* State vocational rehabilitation agencies are eligible for assistance to support client assistance projects.

(Sec. 112 of the Act; 29 U.S.C. 732)

(b) *Handicapped American Indian Vocational Rehabilitation Service Projects.* Governing bodies of Indian tribes located on Federal and State reservations are eligible for expanding or otherwise improving vocational rehabilitation services to handicapped individuals.

(Section 311(a)(1) of the Act; 29 U.S.C. 777(a)(1))

(c) *Special Projects and Demonstrations for Making Recreational Activities Accessible to Handicapped Individuals.* States and public and other nonprofit agencies and organizations are eligible for assistance to support projects for providing vocational rehabilitation services to handicapped American Indians.

(Section 130 of the Act; 29 U.S.C. 750)

(c) *Comprehensive Rehabilitation Centers.* State vocational rehabilitation units are eligible for assistance to support comprehensive rehabilitation center projects.

(Section 306 of the Act; 29 U.S.C. 775)

(d) *Special Projects and Demonstrations for Providing Vocational Rehabilitation Services to Severely Disabled Individuals.* States and public and other nonprofit agencies and organizations are eligible for assistance to support special projects and demonstrations for making recreational activities accessible to handicapped individuals.

(Section 311(a)(3) of the Act; 29 U.S.C. 777(a)(3))

(f) *Handicapped Migratory Agricultural Worker and Seasonal Farmworker Vocational Rehabilitation Service Projects.* State vocational rehabilitation agencies or local agencies administering vocational rehabilitation programs under written agreements with State agencies are eligible for assistance to support projects for providing vocational rehabilitation services to handicapped migratory agricultural workers or seasonal farmworkers.

(Section 312 of the Act; 29 U.S.C. 777(b))

(g) *Projects for Initiating Special Recreation Programs for Handicapped Individuals.* State and public nonprofit agencies and organizations are eligible for assistance to support projects for initiating special recreation programs for handicapped individuals.

(Section 316 of the Act; 29 U.S.C. 777(f))

(h) *Projects with Industry.* Any industrial, business, or commercial enterprise; labor organization; employer; industrial, or community trade association; rehabilitation facility; or other agency or organization with the capacity to arrange, coordinate, or conduct training and other employment programs and provide supportive services and assistance for handicapped individuals in a realistic work setting is eligible for assistance to support a project with industry.

(Section 621 of the Act; 29 U.S.C. 795(g))

§ 369.3 What regulations apply to these programs?

The following regulations apply to the programs under Rehabilitation Services—

(a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Part 75 (Direct Grant Programs);

(b) The regulations in EDGAR 34 CFR Part 77 (General);

(c) The regulations in this Part 369; and

(d) The regulations in Parts 370, 371, 372, 373, 374, 375, 378 and 379, as appropriate.

(Section 12(c) of the Act; 29 U.S.C. 711(c))

§ 369.4 What definitions apply to these programs?

(a) The following definitions in 34 CFR Part 77 apply to the programs under Vocational Rehabilitation Service Projects—

Applicant	Nonprofit
Application	Profit
Award	Project Period
Budget Period	Public
Department	Secretary
EDGAR	Work of Art

(Section 12(c) of the Act; 29 U.S.C. 711(c))

(b) The following definitions also apply to programs under Vocational Rehabilitation Service Projects:

"Act" means the Rehabilitation Act of 1973 (29 U.S.C. 701 et seq.) as amended by the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978 (Pub. L. 95-602).

(Section 12(c) of the Act; 29 U.S.C. 711(c))

"Blind" or "blind individual" means a person who is blind within the meaning of the law relating to vocational rehabilitation in each State.

(Section 12(c) of the Act; 29 U.S.C. 711(c))

"Construction of a rehabilitation facility" means:

(1) The construction of new buildings, the acquisition of existing buildings, or the expansion, remodeling, alteration or renovation of existing buildings which are to be utilized for rehabilitation facility purposes; or

(2) The acquisition of initial equipment of such new, newly acquired, newly expanded, newly remodeled, newly altered or newly renovated buildings.

(Section 7(1) of the Act; 29 U.S.C. 706(1))

"Handicapped individual" means an individual:

(1) Who has a physical or mental disability which for that individual constitutes or results in a substantial handicap to employment; and

(2) Who can reasonably be expected to benefit in terms of employability from the provision of vocational rehabilitation services, or for whom an extended evaluation of vocational rehabilitation potential is necessary to determine whether he or she might reasonably be expected to benefit in terms of employability from the provision of vocational rehabilitation services;

(Section 7(7)(A) of the Act; 29 U.S.C. 706(7)(A))

"Physical and mental restoration services" means:

(1) Medical or corrective surgical treatment;

(2) Diagnosis and treatment for mental or emotional disorders by a physician skilled in the diagnosis and treatment of such disorders or by a psychologist licensed or certified in accordance with State laws and regulations;

(c) Dentistry;

(d) Nursing services;

(e) Necessary hospitalization (either inpatient or outpatient care) in connection with surgery or treatment and clinic services;

(f) Convalescent or nursing home care;

(g) Drugs and supplies;

(h) Prosthetic, orthotic or other assistive devices including hearing aids essential to obtaining or retaining employment;

(i) Eyeglasses and visual services, including visual training, and the

examination and services necessary for the prescription and provision of eyeglasses, contact lenses, microscopic lenses, telescopic lenses, and other special visual aids, prescribed by a physician skilled in diseases of the eye or by an optometrist, whichever the individual may select;

(j) Podiatry;

(k) Physical therapy;

(l) Occupational therapy;

(m) Speech and hearing therapy;

(n) Psychological services;

(o) Therapeutic recreation services;

(p) Medical or medically related social work services;

(q) Treatment of either acute or chronic medical complications and emergencies which are associated with or arise out of the provision of physical and mental restoration services; or which are inherent in the condition under treatment;

(r) Special services for the treatment of individuals suffering from end-stage renal disease, including transplantation, dialysis, artificial kidneys, and supplies; and

(s) Other medical or medically related rehabilitation services, including art therapy, dance therapy, music therapy and psychodrama.

(Section 103(a)(4) of the Act; 29 U.S.C. 723(a)(4))

"Physical or mental disability" means a physical or mental condition which materially limits, contributes to limiting or, if not corrected, will probably result in limiting an individual's employment activities or vocational functioning.

(Section 7(7) of the Act; 29 U.S.C. 706(7))

"Rehabilitation facility" means a facility which is operated for the primary purpose of providing vocational rehabilitation services to handicapped individuals, and which provides singly or in combination one or more of the following services for handicapped individuals:

(1) Vocational rehabilitation services, including under one management, medical, psychiatric, psychological, social, and vocational services;

(2) Testing, fitting, or training in the use of prosthetic and orthotic devices;

(3) Prevocational conditioning or recreational therapy;

(4) Physical and occupational therapy;

(5) Speech and hearing therapy;

(6) Psychological and social services;

(7) Evaluation of rehabilitation potential;

(8) Personal and work adjustment;

(9) Vocational training with a view toward career advancement (in combination with other rehabilitation services);

(10) Evaluation or control of specific disabilities;

(11) Orientation and mobility services and other adjustment services to blind individuals; and

(12) Transitional or extended employment for those handicapped individuals who cannot be readily absorbed in the competitive labor market.

(Section 7(11) of the Act; 29 U.S.C. 706(11))

"Reservation" means a Federal or State Indian reservation, public domain Indian allotment, former Indian reservation in Oklahoma, and land held by incorporated Native groups, regional corporations and village corporations under the provisions of the Alaska Native Claims Settlement Act.

(Section 130(e) of the Act; 29 U.S.C. 750(e))

"Severely handicapped individual" means a handicapped individual:

(1) Who has a severe physical or mental disability which seriously limits one or more functional capacities (mobility, communication, self-care, self-direction, work tolerance, or work skills) in terms of employability; and

(2) Whose vocational rehabilitation can be expected to require multiple vocational rehabilitation services over an extended period of time; and

(3) Who has one or more physical or mental disabilities resulting from amputation, arthritis, blindness, cancer, cerebral palsy, cystic fibrosis, deafness, heart disease, hemiplegia, hemophilia, respiratory or pulmonary dysfunction, mental retardation, mental illness, multiple sclerosis, muscular dystrophy, musculo-skeletal disorders, neurological disorders (including stroke and epilepsy), paraplegia, quadriplegia, and other spinal cord conditions, sickle cell anemia, specific learning disability, and end-stage renal disease, or another disability or combination of disabilities determined on the basis of an evaluation of rehabilitation potential to cause comparable substantial functional limitation.

(Section 7(13) of the Act; 29 U.S.C. 706(13))

"State agency" means the sole State agency designated to administer (or supervise local administration of) the State plan for vocational rehabilitation services. The term includes the State agency for the blind, if designated as the sole State agency with respect to that part of the plan relating to the vocational rehabilitation of blind individuals.

(Section 101(a)(1)(A) of the Act; 29 U.S.C. 721(a)(1)(A))

"State plan" means the State plan for vocational rehabilitation services. (34 CFR Part 361)

(Section 12(c) of the Act; 29 U.S.C. 711(c))

"State unit," "State vocational rehabilitation unit" or "designated State unit" means either:

(1) The State agency vocational rehabilitation bureau, division, or other organizational unit which is primarily concerned with vocational rehabilitation or vocational and other rehabilitation of handicapped individuals and which is responsible for the administration of the vocational rehabilitation program of the State agency; or

(2) The independent State commission, board, or other agency which has vocational rehabilitation, or vocational and other rehabilitation as its primary function.

(Section 7(3) of the Act 29; U.S.C. 706(3))

"Substantial handicap to employment" means that a physical or mental disability (in light of attendant medical, psychological, vocational, educational, and other related factors) impedes an individual's occupational performance by preventing his obtaining, retaining, or preparing for employment consistent with his capacities and abilities.

(Section 12(c) of the Act; 29 U.S.C. 711(c))

"Vocational rehabilitation services" when provided to an individual, means:

(i) Evaluation of vocational rehabilitation potential, including diagnostic and related services incidental to the determination of eligibility for, and the nature and scope of services to be provided;

(ii) Counseling and guidance, including personal adjustment counseling, to maintain a counseling relationship throughout a handicapped individual's program of services, and referral necessary to help handicapped individuals secure needed services from other agencies;

(iii) Physical and mental restoration services, necessary to correct or substantially modify a physical or mental condition which is stable or slowly progressive;

(iv) Vocational and other training services, including personal and vocational adjustment, books, tools, and other training materials;

(v) Maintenance;

(vi) Transportation;

(vii) Services to members of a handicapped individual's family when necessary to the vocational rehabilitation of the handicapped individual;

(viii) Interpreter services and note-taking services for the deaf, including

tactile interpreting for deaf-blind individuals;

(ix) Reader services, rehabilitation teaching services, note-taking services, and orientation and mobility services for the blind;

(x) Telecommunications, sensory and other technological aids and devices;

(xi) Recruitment and training services to provide new employment opportunities in the fields of rehabilitation, health, welfare, public safety, law enforcement and other appropriate public service employment;

(xii) Placement in suitable employment;

(xiii) Post-employment services necessary to maintain suitable employment;

(xiv) Occupational licenses, including any license, permit or other written authorization from any governmental unit to be obtained in order to enter an occupation or enter a small business, tools, equipment, initial stocks (including livestock) and supplies; and

(xv) Other goods and services which can reasonably be expected to benefit a handicapped individual in terms of employability.

(Section 103(a) of the Act; 29 U.S.C. 723(a))

"Vocational rehabilitation services" when provided for the benefit of groups of individuals, also means:

(1) In the case of any type of small business enterprise operated by severely handicapped individuals under the supervision of the State unit, management services, and supervision and acquisition of vending facilities or other equipment, and initial stocks and supplies;

(2) The establishment of a rehabilitation facility;

(3) The construction of a rehabilitation facility;

(4) The provision of other facilities and services, including services provided at rehabilitation facilities, which promise to contribute substantially to the rehabilitation of a group of individuals but which are not related directly to the individualized written rehabilitation program of any one handicapped individual;

(5) The use of existing telecommunications systems; and

(6) The use of services providing recorded material for blind persons and captioned films or video cassettes for deaf persons.

(Section 103(b) of the Act; 29 U.S.C. 723(b).)

"Workshop" means a rehabilitation facility, or that part of a rehabilitation facility, engaged in production or service operation for the primary purpose of providing gainful employment as an interim step in the rehabilitation process for those who cannot be readily absorbed in the competitive labor market or during such time as employment opportunities for them in the competitive labor market do not exist.

(Sections 7(11) and 12(c) of the Act; 29 U.S.C. 706(11) and 711(c))

Subpart B—[Reserved]

Subpart C—How Does One Apply for a Grant?

§ 369.20 What are the application procedures for these programs?

The Secretary gives the appropriate State vocational rehabilitation unit an opportunity to review and comment on applications submitted from within the State that it serves. The procedures to be followed by the applicant and the State are in EDGAR §§ 75.155–75.159.

(Section 12(c) of the Act; 29 U.S.C. 711(c))

Subpart D—How Does the Secretary Make a Grant?

§ 369.30 How does the Secretary evaluate an application?

(a) The Secretary evaluates each application on the basis of general selection criteria identified in § 369.31 and specific selection criteria identified in Parts 370, 371, 372, 373, 374, 375, 378 and 379. The maximum possible score for each complete criterion under each Vocational Rehabilitation Service Project category is stated in parentheses in § 370.30, § 371.30, § 372.30, § 373.30, § 374.30, § 375.30, § 378.30, and § 379.30. The number of points awarded each criterion depends on how well the application meets all the elements under that criterion.

(b) The Secretary awards up to 100 possible points for these selection criteria.

(Section 12(c) of the Act; 29 U.S.C. 711(c))

§ 369.31 What general selection criteria does the Secretary use in reviewing an application?

(a) *Plan of operation.* (1) The Secretary reviews each application for information that shows the quality of the plan of operation for the project.

(2) The Secretary looks for information that shows—

(i) High quality in the design of the project;

(ii) An effective plan of management that insures proper and efficient administration of the project;

(iii) A clear description of how the objectives of the project relate to the purpose of the program;

(iv) The way the applicant plans to use its resources and personnel to achieve each objective;

(v) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented, such as—

(A) Handicapped persons;

(B) The elderly;

(C) Women; and

(D) Members of racial or ethnic minority groups;

(b) *Quality of key personnel.* (1) The Secretary reviews each application for information that shows the quality of key personnel proposed for the project;

(2) The Secretary looks for information that shows—

(i) The qualifications of the project director;

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (b)(2) (i) and (ii) of this criterion will commit to the project; and

(iv) The extent to which the applicant, as part of its non-discriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as—

(A) Handicapped persons;

(B) The elderly;

(C) Women; and

(D) Members of racial or ethnic minority groups.

(3) To determine personnel qualifications, the Secretary considers experience and training, in fields related to the objectives of the project, as well as other information that the applicant provides.

(c) *Budget and cost effectiveness.* (1) The Secretary reviews each application for information that shows that the project has an adequate budget and is cost effective.

(2) The Secretary looks for information that shows—

(i) The budget for the project is adequate to support the project activities;

(ii) Costs are reasonable in relation to the objectives of the project.

(d) *Evaluation plan.* (1) The Secretary reviews each application for information that shows the quality of the evaluation plan for the project.

(2) The Secretary looks for information that shows methods of evaluation that are appropriate for the project, and to the extent possible, are objective, and produce data that are quantifiable.

(c) *Adequacy of resources.* (1) The Secretary reviews each application for information that shows that the applicant plans to devote adequate resources to the project.

(2) The Secretary looks for information that shows—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies that the applicant plans to use are adequate.

(Section 12(c) of the Act; 29 U.S.C. 711(c))

§ 369.32 What other factors does the Secretary consider in reviewing an application?

In addition to the selection criteria listed in § 369.31 and Parts 370, 371, 372, 373, 374, 375, 378, and 379, the Secretary, in making awards under these programs, considers such factors as—

(a) The geographical distribution of projects in each program category throughout the country; and

(b) The past performance of the applicant in carrying out similar activities under previously awarded grants, as indicated by such factors as compliance with grant conditions, soundness of programmatic and financial management practices and attainment of established project objectives.

(Section 12(c) of the Act; 29 U.S.C. 711(a)).

Subpart E—What Conditions Must Be Met by a Grantee?

§ 369.40 [Reserved]

§ 369.41 [Reserved]

§ 369.42 What special requirements affect provision of services to handicapped individuals?

Vocational rehabilitation services provided in projects assisted under these programs must be provided in the same manner as services provided under the State plan for vocational rehabilitation services under 34 CFR Part 361.

(Section 306(h) of the Act; 29 U.S.C. 776(h))

§ 369.43 What are the affirmative action plan requirements affecting grantees?

A recipient of Federal assistance must develop and implement an affirmative action plan to employ and advance in employment qualified handicapped individuals. This plan must provide for specific action steps, timetables, and complaint and enforcement procedures necessary to assure affirmative action.

(Section 12(c) of the Act; 29 U.S.C. 711(c))

§ 369.44 What are the special requirements for projects that involve construction?

(a) A project which involves construction (the construction of new buildings and the acquisition, expansion, remodeling, alteration, and renovation of existing buildings) under these programs must meet the following requirements in addition to those requirements specified in 34 CFR 75.600–75.615—

(1) Plans and specifications must be approved by the Architectural and Transportation Barriers Compliance Board.

(2) The grantee must ensure that the facility will be used as a public or nonprofit facility for at least 20 years after completion of the project;

(3) The grantee must assure that Federal funds are used only for the purposes for which the funds were provided; and

(4) The grantee must operate and maintain the facility in accordance with applicable Federal, State, and local requirements for the maintenance and operation of rehabilitation facilities.

(b) The construction of a rehabilitation facility which is primarily a workshop may include the construction of residential accommodations for use in connection with the rehabilitation of handicapped individuals if it is necessary to the effective operation of the facility.

(c) Federal financial participation is not available for the costs of offsite improvements or for the construction of any facility used for religious worship or sectarian activity.

(Sections 12(c) and 306 of the Act; 29 U.S.C. 711(c) and 776)

§ 369.45 What wage and hour standards apply to workshops?

All applicable Federal and State wage and hour standards must be observed in projects carried out in workshops.

(Section 12(c) of the Act; 29 U.S.C. 711(c))

§ 369.46 What are the special requirements pertaining to the membership of project advisory committees?

When an advisory committee is established under a project, its membership must include handicapped persons or other representatives of handicapped individuals and other individuals to be assisted within the project, providers of services, and other appropriate individuals.

(Section 12(c) of the Act; 29 U.S.C. 711(c))

§ 369.47 What are the special requirements pertaining to the protection, use, and release of personal information?

(a) All personal information about individuals served by any project under this part, including lists of names, addresses, photographs, and records of evaluation, must be held confidential.

(b) The use of information and records concerning individuals must be limited only to purposes directly connected with the project, including project evaluation activities. This information may not be disclosed, directly or indirectly, other than in the administration of the project unless the consent of the agency providing the information and the individual to whom the information applies, or his or her representative, have been obtained in writing. The Secretary or other Federal or State officials responsible for enforcing legal requirements have access to this information without written consent being obtained. The final product of the project may not reveal any personal identifying information without written consent of the individual or his or her representative.

(Section 12(c) of the Act; 29 U.S.C. 711(c))

§ 369.48 What are the special requirements affecting the collection of data from State agencies?

When the collection of data is necessary either from handicapped individuals being served by two or more State agencies or from employees of two or more of these agencies, the project director must submit requests for the data to appropriate representatives of the affected agencies, as determined by the Secretary. This requirement also applies to employed project staff and individuals enrolled in courses of study supported under this part.

(Section 12(c) of the Act; 29 U.S.C. 711(c))

§ 369.49 [Redesignated as 34 CFR Part 370]

The Secretary amends Title 34 of the Code of Federal Regulations by redesignating § 369.49 as 34 CFR Part 370 and revises the regulations to read as follows:

PART 370—CLIENT ASSISTANCE PROJECTS

Subpart A—General

Sec.

370.1 What is the Client Assistance Projects Program?
370.2 Who is eligible for assistance under this program?
370.3 What regulations apply to this program?
370.4 What definitions apply to this program?

Subpart B—What Kinds of Activities Does the Department of Education Assist Under This Program?

370.10 What types of projects are authorized under this program?
370.11 What are the responsibilities of counselors employed in these projects?

Subpart C—[Reserved]

Subpart D—How Does the Secretary Make a Grant?

370.30 What selection criteria does the Secretary use under this program?
370.31 What other factors does the Secretary consider when awarding grants under this program?

Subpart E—What Conditions Must Be Met by a Grantee?

370.40 What are the matching requirements?
370.41 What are allowable costs?
370.42 Must the State agency directly administer each project?
370.43 What are the special requirements affecting project staff?
370.44 What are the special requirements affecting accessibility to service?
370.45 What are the special requirements affecting coordination with related programs?

Authority: Sections 12(c) and 112 of the Act; 29 U.S.C. 711(c) and 732.

Subpart A—General

§ 370.1 What is the Client Assistance Projects Program?

This program is designed to provide counselors to inform and advise all clients and client applicants in the project area of all available benefits and their rights in seeking these benefits under the Act.

(Section 112(a) of the Act; 29 U.S.C. 732)

§ 370.2 Who is eligible for assistance under this program?

Applications may be submitted only by State agencies.

§ 370.3 What regulations apply to this program?

The following regulations apply to this program—

(a) 34 CFR Part 369.

(b) The regulations in this Part 370.

(Section 112 of the Act; 29 U.S.C. 732)

§ 370.4 What definitions apply to this program?

(a) The definitions in 34 CFR Part 369 apply to this program.

(b) The following definitions also apply specifically under this program—

(1) "Client or client applicant" means an individual who—

(i) Is seeking vocational rehabilitation services from the State agency; or

(ii) Has been receiving vocational rehabilitation services from the State agency, but the services have been terminated and he or she is seeking assistance in connection with the termination of the services.

(Sections 12(c) and 112 of the Act; 29 U.S.C. 711(c) and 732)

(2) "Counselor" means a client assistance worker who functions as an ombudsman.

(Sections 12(c) and 112 of the Act; 29 U.S.C. 711(c) and 732)

(3) "Project area" means the geographical or administrative area served by project counselors and designed in a manner to facilitate client or client applicant accessibility to the project. A project area may be a rehabilitation facility, a State agency district office, or a special unit for a specific disability, and in some cases, may be Statewide.

(Sections 12(c) and 112 of the Act; 29 U.S.C. 711(c) and 732)

Subpart B—What Kinds of Activities Does the Department of Education Assist Under This Program?

§ 370.10 What types of projects are authorized under this program?

The Client Assistance Projects Program provides financial assistance for projects that make available counselors to assist clients and client applicants in their relationships with the projects, programs, and facilities providing services to them under the Act and to help them pursue legal, administrative, and other appropriate remedies available to ensure the protection of their rights under the Act.

(Section 112(a) of the Act; 29 U.S.C. 732(a))

§ 370.11 What are the responsibilities of counselors employed in these projects?

Counselors employed within projects under this part are responsible for:

(a) Helping clients or client applicants to understand the vocational rehabilitation services program;

(b) Advising clients or client applicants of benefits available to them under the vocational rehabilitation program and related Federal and State assistance programs, and their rights and responsibilities in connection with these benefits;

(c) Otherwise assisting clients and client applicants in their relationships with projects, programs, and facilities providing vocational rehabilitation services under the Act;

(d) Helping clients or client applicants primarily by referring them for assistance in pursuing legal, administrative and other available remedies when necessary to ensure the protection of their rights under the Act; and

(e) Advising State agencies of identified problem areas in the delivery of vocational rehabilitation services to handicapped individuals and suggesting methods and means of improving State agency performance.

(Sections 12(c) and 112 of the Act; 29 U.S.C. 711(c) and 732)

Subpart C—[Reserved]

Subpart D—How Does the Secretary Make a Grant?

§ 370.30 What selection criteria does the Secretary use under this program?

(a) *Plan of operation* (25 Points). The Secretary reviews each application on the basis of the criterion in § 369.31(a).

(b) *Quality of key personnel* (15 Points). The Secretary reviews each application on the basis of the criterion in § 369.31(b).

(c) *Budget and cost effectiveness* (10 Points). The Secretary reviews each application on the basis of the criterion in § 369.31(c).

(d) *Evaluation plan* (5 Points). The Secretary reviews each application on the basis of the criterion in § 369.31(d).

(e) *Adequacy of resources* (10 Points). The Secretary reviews each application on the basis of the criterion in § 369.31(e).

(f) *Benefit to handicapped community* (35 points).

(1) The Secretary reviews each application for information that demonstrates that the project will be of substantial benefit to handicapped individuals in the project area.

(2) The Secretary looks for information that shows that—

(i) The project holds promise of increasing consumer satisfaction with vocational rehabilitation services within the project area; and

(ii) Handicapped persons or their representatives will be significantly involved in the planning and administration of the project.

(Sections 12(c) and 112 of the Act; 29 U.S.C. 711(c) and 732)

§ 370.31 What other factors does the Secretary consider when awarding grants under this program?

In awarding grants under this program, the Secretary also considers—

(a) Whether the applicant State agency has been awarded a Client Assistance Project in the past; and

(b) Whether the project will provide a Statewide network of service.

(Sections 12(c) and 112 of the Act; 29 U.S.C. 711(c) and 732)

Subpart E—What Conditions Must Be Met by a Grantee?

§ 370.40 What are the matching requirements?

The grantee must contribute to the cost of a project under this program in an amount satisfactory to the Secretary. The part of the costs to be borne by the grantee is determined by the Secretary at the time of the award.

(Sections 12(c) and 112 of the Act; 29 U.S.C. 711(c) and 732)

§ 370.41 What are allowable costs?

In addition to those allowable costs established in EDGAR §§ 75.530–75.534, the costs of client, client applicant, or attendant travel in connection with the provision of assistance is also allowable under this program.

(Sections 12(c) and 112 of the Act; 29 U.S.C. 711(c) and 732)

§ 370.42 Must the State agency directly administer each project?

The State agency may directly administer the project or it may administer the project through a public or nonprofit agency or organization.

(Sections 12(c) and 112(b) of the Act; 29 U.S.C. 711(c) and 732(b))

§ 370.43 What are the special requirements affecting project staff?

(a) No project employee may be a person who is concurrently serving as staff or consultant, or who is receiving benefits of any kind directly or indirectly for any rehabilitation project, program or facility assisted under the Act in the project area, except for individuals receiving traineeships under the Rehabilitation Training Program under Section 304 of the Act.

(b) The project director must have direct access to the director of the designated State unit of the State agency and shall report directly to the director of his designate if the project is administered directly by the State agency. The project director is expected to participate in all policy and program development activities affecting the conduct of the project and shall be assured of access to personnel in any field office affected by the project. The project director must also have access to policy making and administration personnel in other State and local rehabilitation programs, projects and facilities.

(c) A counselor must be able to participate in any administrative review of agency action, or any fair hearing conducted in connection with a client or client applicant being assisted under this program.

(d) Maximum effort must be made to enter into cooperative arrangements with institutions of higher education to secure the services of graduate students who are undergoing clinical training in rehabilitation related fields, and in fields related to the protection and advocacy of handicapped persons except that no compensation with funds appropriated under the Act will be provided to such students in connection with their participation in a project under this program.

(Sections 12(c) and 112(b) of the Act; 29 U.S.C. 711(c) and 732(b))

§ 370.44 What are the special requirements affecting accessibility to service?

All clients or client applicants within the project area must have the opportunity to receive client assistance services under the project.

(Section 112(b) of the Act; 29 U.S.C. 732(b))

§ 370.45 What are the special requirements affecting coordination with related programs?

Project activities must be fully coordinated with other programs and activities carried out under this Act and under the Developmental Disabilities Assistance and Bill of Rights Act in the project area which are related to the protection and advocacy of the rights of handicapped persons and there must be agreements with these other programs in order to define the extent of the coordinated effort.

(Sections 12(c) and 112(b) of the Act; 29 U.S.C. 711(c) and 732(b))

The Secretary amends Title 34 of the Code of Federal Regulations by adding Part 371 to read as follows:

PART 371—HANDICAPPED AMERICAN INDIAN VOCATIONAL REHABILITATION SERVICE PROJECTS

Subpart A—General

Sec.

371.1 What is the Handicapped American Indian Vocational Rehabilitation Service Projects Program?
371.2 Who is eligible for assistance under this program?
371.3 What regulations apply to this program?
371.4 What definitions apply to this program?

Subpart B—What Kinds of Activities Does the Department of Education Assist Under This Program?

371.10 What types of projects are authorized under this program?

Subpart C—How Does One Apply for a Grant?

371.20 What are the application procedures under this program?
371.21 What are the special application requirements related to the State plan Program?

Subpart D—How Does the Secretary Make a Grant?

371.30 What selection criteria does the Secretary use under this program?
371.31 How are grants awarded?

Subpart E—What Conditions Must Be Met by a Grantee?

371.40 What are the matching requirements?
371.41 What are allowable costs?
371.42 How are services to be administered under this program?
371.43 What other special conditions apply to this program?

Authority: Sections 12(c) and 130 of the Act; 29 U.S.C. 711(c) and 750.

Subpart A—General

§ 371.1 What is the Handicapped American Indian Vocational Rehabilitation Service Projects Program?

This program is designed to provide vocational rehabilitation services to handicapped American Indians who reside on Federal or State reservations in order to prepare them for suitable employment.

(Section 130(a) of the Act; 29 U.S.C. 750(a))

§ 371.2 Who is eligible for assistance under this program?

Applications may be made only by the governing bodies of Indian tribes located on Federal and State reservations.

(Section 130(a) of the Act; 29 U.S.C. 750(a))

§ 371.3 What regulations apply to this program?

The following regulations apply to this program—

(a) 34 CFR Part 369;

(b) The regulations in this Part 371.

(Section 130 of the Act; 29 U.S.C. 750)

§ 371.4 What definitions apply to this program?

(a) The definitions in 34 CFR Part 369 apply to this program;

(b) The following definitions also apply specifically to this program—

(1) "American Indian" means a person who is a member of an Indian tribe.

(Sections 12(c) and 130 of the Act; 29 U.S.C. 711(c) and 750)

(2) "Governing bodies of Indian tribes" means those duly elected or appointed representatives of an Indian tribe or of an Alaskan native village. These representatives must have the authority to enter into contracts,

agreements, and grants on behalf of their constituency.

(Sections 12(c) and 130 of the Act; 29 U.S.C. 711(c) and 750)

(3) "Indian tribe" means any Federal or State Indian band, rancheria, pueblo, colony, and community, including any Alaskan native village or regional village corporation (as defined in or established pursuant to the Alaska Native Claims Settlement Act).

(Sections 12(c) and 130 of the Act; 29 U.S.C. 711(c) and 750)

(4) "Reservation" means a Federal or State Indian reservation, public domain Indian allotment, former Indian reservation in Oklahoma, and land held by incorporated Native groups, regional corporations and village corporations under the provisions of the Alaska Native Claims Settlement Act.

(Sections 12(c) and 130(e) of the Act; 29 U.S.C. 711(c) and 750(e))

Subpart B—What Kinds of Activities Does the Department of Education Assist Under This Program?

§ 371.10 What types of projects are authorized under this program?

The Handicapped American Indian Vocational Rehabilitation Service Projects Program provides financial assistance for the establishment and operation of tribal vocational rehabilitation service programs for handicapped American Indians who reside on Federal or State reservations.

(Section 130(a) of the Act; 29 U.S.C. 750(a))

Subpart C—How Does One Apply for a Grant?

§ 371.20 What are the application procedures for this program?

In the development of an application, a governing body is required to consult with the designated State unit or the designated State units of the State or States in which vocational rehabilitation services are to be provided.

(Section 130(b) of the Act; 29 U.S.C. 750(b))

§ 371.21 What are the special application requirements related to the State plan program?

Each applicant under this program must provide evidence that—

(a) Effort will be made to provide a broad scope of vocational rehabilitation services in a manner and at a level of quality at least comparable to those services provided by the designated State unit under 34 CFR Part 361.

(Section 12(c) of the Act; 29 U.S.C. 711(c))

(b) All decisions effecting eligibility for and the nature and scope of vocational rehabilitation services to be provided, and the provision of these services, will be made by the tribal vocational rehabilitation program through its vocational rehabilitation unit and will not be delegated to another agency or individual.

(Sections 12(c) and 101(a) of the Act; 29 U.S.C. 711(c) and 721(a))

(c) Priority in the delivery of vocational rehabilitation service will be given to those handicapped American Indians who are the most severely handicapped.

(Sections 12(c) and 101(a)(5) of the Act; 29 U.S.C. 711(c) and 721(a)(5))

(d) An order of selection of handicapped individuals to be served under the program will be specified if services cannot be provided to all eligible handicapped American Indians who apply.

(Sections 12(c) and 101(a)(5) of the Act; 29 U.S.C. 711(c) and 721(a)(5))

(e) All vocational rehabilitation services will be provided according to an individualized written rehabilitation program which has been developed jointly by the representative of the service providing organization and each handicapped American Indian being served.

(Sections 12(c) and 101(a)(9) of the Act; 29 U.S.C. 711(c) and 721(a)(9))

(f) Handicapped American Indians living on Federal or State reservations where service programs are being carried out under this Part will have an opportunity to participate in matters of general policy development and implementation affecting vocational rehabilitation service delivery on the reservation.

(Sections 12(c) and 101(a)(18) of the Act; 29 U.S.C. 711(c) and 721(a)(18))

(g) Cooperative working arrangements will be developed with the designated State unit, or designated State units, as appropriate, which are providing vocational rehabilitation services to other handicapped individuals who reside in the State or States being served.

(Sections 12(c) and 101(a)(11) of the Act; 29 U.S.C. 711(c) and 721(a)(11))

(h) Any similar benefits available to handicapped American Indians under any other program which might meet in whole or in part the cost of any vocational rehabilitation service will be fully considered in the provision of vocational rehabilitation services in accordance with 34 CFR Part 361.

(Sections 12(c) and 101(a)(8) of the Act; 29 U.S.C. 711(c) and 721(a)(8))

(i) Any handicapped American Indian applicant or recipient of services who is dissatisfied with any action with regard to the provision or denial of a vocational rehabilitation service under this program may file a request for an administrative review of the action by a member of the supervisory staff of the organization administering the program. If the client is still dissatisfied, he or she may request a fair hearing before the project administrator, or the next higher level in the administrative structure of the tribal organization.

(Sections 12(c) and 102(d) of the Act; 29 U.S.C. 711(c) and 722(d))

(j) Minimum standards will be established for facilities and providers of service which will be comparable to the standards set by the designated State unit or designated State units in the State or States in which the program is to be provided; and

(Sections 12(c) and 101(a)(9) of the Act; 29 U.S.C. 711(c) and 721(a)(12))

(k) Maximum use will be made of public or other vocational or technical training facilities or other appropriate community resources.

(Sections 12(c) and 101(a)(12) of the Act; 29 U.S.C. 711(c) and 721(a)(12))

Subpart D—How Does the Secretary Make a Grant?

§ 371.30 What selection criteria does the Secretary use under this program?

(a) *Plan of operation* (30 Points). The Secretary reviews each application on the basis of the criterion in § 369.31(a).

(b) *Quality of key personnel* (20 Points). The Secretary reviews each application on the basis of the criterion in § 369.31(b).

(c) *Budget and cost effectiveness* (10 Points). The Secretary reviews each application on the basis of the criterion in § 369.31(c).

(d) *Evaluation plan* (5 Points). The Secretary reviews each application on the basis of the criterion in § 369.31(d).

(e) *Adequacy of resources* (10 Points) The Secretary reviews each application on the basis of the criterion in § 369.31(e).

(f) *Evidence of need for project* (25 Points).

(1) The Secretary reviews each application for information that shows that the need for the special project has been adequately justified.

(2) The Secretary looks for information that shows—

(i) The extent to which vocational rehabilitation services are provided by the State vocational rehabilitation unit to handicapped American Indians residing on reservations;

(ii) The extent to which the provision of vocational rehabilitation services through a tribal rehabilitation service program would expand or improve rehabilitation services for handicapped American Indians.

(Sections 12(c) and 130 of the Act; 29 U.S.C. 711(c) and 750)

§ 371.31 How are grants awarded?

To the extent that funds have been appropriated under this program, the Secretary approves all applications which meet acceptable standards of program quality. If any application is not approved because of deficiencies in proposed program standards, the Secretary provides technical assistance to the applicant Indian tribe with respect to any areas of the proposal which were judged to be deficient.

(Sections 12(c) and 130 of the Act; 29 U.S.C. 711(c) and 750)

Subpart E—What Conditions Apply to A Grantee Under This Program?

§ 371.40 What are the matching requirements?

The Federal share may not be more than 90 percent of the total cost of the project.

(Sections 12(c) and 130(a) of the Act; 29 U.S.C. 711(c) and 750(c))

§ 371.41 What are allowable costs?

(a) In addition to those allowable costs established in EDGAR §§ 75.530–75.534, the following items are allowable costs under this program—

(1) Expenditures for the provision of vocational rehabilitation services and for the administration, including staff development, of a program of vocational rehabilitation services.

(2) Expenditures for services reflecting the cultural background of the American Indians being served, including treatment provided by native healing practitioners who are recognized as such by the tribal vocational rehabilitation program when the services are necessary to assist the handicapped individual to achieve his or her vocational rehabilitation objective.

(b) Expenditures may not be made under this program to cover the costs of providing vocational rehabilitation services to handicapped individuals not residing on Federal or State reservations.

(Sections 12(c) and 130(a) of the Act; 29 U.S.C. 711(c) and 750(a))

§ 371.42 How are services to be administered under this program?

A governing body may provide the vocational rehabilitation services directly or it may contract or otherwise enter into an agreement with a designated State unit, a rehabilitation facility, or another agency to assist in the implementation of the vocational rehabilitation service program for handicapped American Indians. A governing body may also enter into an inter-tribal arrangement with governing bodies of other Indian tribes for carrying out a project which serves more than one Indian tribe. In any case, to the maximum extent feasible, the vocational rehabilitation service program must be comparable in type and quality to that provided by the State unit or units in the State or States in which the program is being carried out and each tribal program must be administered by a special tribal organizational unit for vocational rehabilitation.

(Sections 12(c) and 130 of the Act; 29 U.S.C. 711(c) and 750)

§ 371.43 What other special conditions apply to this program?

(a) Any handicapped American Indian who is eligible for service under this program but who wishes to be provided service by the designated State unit must be referred to the State unit for such services.

(b) Preference in employment in connection with the provision of vocational rehabilitation services under this section must be given to American Indians, with a special priority being given to handicapped American Indians.

(c) The provisions of Sections 5, 6, 7, and 102(a) of the Indian Self-Determination and Education Assistance Act also apply under this program. These provisions relate to grant reporting and audit requirements, maintenance of records, access to records, availability of required reports and information to Indian people served or represented, repayment of unexpended Federal funds, criminal activities involving grants, penalties, wage and labor standards, preference requirements for American Indians in the conduct and administration of the grant, and requirements affecting requests of tribal organizations to enter into contracts. For purposes of applying these requirements to this program, the Secretary carries out those responsibilities assigned to the Secretary of Interior.

(Sections 12(c) and 130 of the Act; 29 U.S.C. 711(c) and 750)

The Secretary amends Title 34 of the Code of Federal Regulations by adding 34 CFR Part 372 to read as follows:

PART 372—COMPREHENSIVE REHABILITATION CENTERS

Subpart A—General

Sec.
372.1 What is the Comprehensive Rehabilitation Centers Program?
372.2 Who is eligible for assistance under this program?
372.3 What regulations apply to this program?
372.4 What definitions apply to this program?

Subpart B—What Kinds of Activities Does the Department of Education Assist Under This Program?

372.10 What types of projects are authorized under this program?

Subpart C—How Does One Apply for a Grant?

372.20 What are the application procedures for this program?

Subpart D—How Does the Secretary Make a Grant?

372.30 What selection criteria does the Secretary use under this program?

Subpart E—What Conditions Must Be Met by a Grantee?

372.40 What are the matching requirements?
372.41 What are allowable costs?
372.42 How are services to be administered under this program?
372.43 What special conditions apply under this program to projects that involve construction?

Authority: Sections 12(c) and 305 of the Act; 29 U.S.C. 711(c) and 775)

Subpart A—General

§ 372.1 What is the Comprehensive Rehabilitation Center Program?

This program is designed to establish or operate comprehensive rehabilitation centers which serve primarily as centers for the development, delivery, and coordination of vocational rehabilitation services and other services needed by handicapped persons in the community.

(Section 305(a) of the Act; 29 U.S.C. 775(a))

§ 372.2 Who is eligible for assistance under this program?

(a) Applications may be made by State vocational rehabilitation units.

(b) A State vocational rehabilitation unit which has been awarded a grant under this program may award a subgrant to a unit of general purpose local government or to any other public or nonprofit private agency or organization or enter into a contract with agencies or organizations in the community.

(Sections 305(a), (c) of the Act; 29 U.S.C. 775(a), (c))

§ 372.3 What regulations apply to this program?

The following regulations apply to this program—

(a) 34 CFR Part 369.

(b) The regulations in this Part 372.

(Section 305 of the Act; 29 U.S.C. 775)

§ 372.4 What definitions apply to this program?

(a) The definitions in 34 CFR Part 369 apply to this program.

(b) The following definitions also apply specifically to this program—

(1) "Comprehensive rehabilitation center" means a facility or group of facilities which serves as a focal point within a community for the development and delivery of services for handicapped persons and other persons.

(Sections 12(c) and 305 of the Act; 29 U.S.C. 711(c) and 775)

(2) "Handicapped person" means an individual of any age who has a physical or mental disability.

(Sections 12(c) and 305 of the Act; 29 U.S.C. 711(c) and 775)

Subpart B—What Kinds of Activities Does the Department of Education Assist Under This Program?

§ 372.10 What types of projects are authorized under this program?

A comprehensive rehabilitation center established or operated under this program may function as a community information and referral resources center for handicapped persons and for other public and other nonprofit agencies in the community which serve handicapped persons. A comprehensive rehabilitation center may, in addition, directly provide a broad range of vocational rehabilitation, health, educational, social, and recreational services to handicapped persons.

(Section 305(a) of the Act; 29 U.S.C. 775)

Subpart C—How Does One Apply for a Grant?

§ 372.20 What are the special application requirements for this program?

The need for the establishment of a comprehensive rehabilitation center must be identified by the State unit in the State planning for rehabilitation facilities required under 34 CFR Part 361 before an application may be submitted under this program.

(Sections 12(c), 101(a)(15) and 305 of the Act; 29 U.S.C. 711(c), 721(a)(15) and 775)

Subpart D—How Does the Secretary Make a Grant?

§ 372.30 What selection criteria does the Secretary use?

(a) *Plan of operation* (35 Points). The Secretary reviews each application on the basis of the criterion in § 369.31(a).

(b) *Quality of key personnel* (10 Points). The Secretary reviews each application on the basis of the criterion in § 369.31(b).

(c) *Budget and cost effectiveness* (15 Points). The Secretary reviews each application on the basis of the criterion in § 369.31(c).

(d) *Evaluation plan* (5 Points). The Secretary reviews each application on the basis of the criterion in § 369.31(d).

(e) *Adequacy of resources* (10 Points). The Secretary reviews each application on the basis of the criterion in § 369.31(e).

(f) *Evidence of need* (25 Points).

(1) The Secretary reviews each application for information that shows that the need for the comprehensive rehabilitation center has been adequately justified.

(2) The Secretary looks for information that shows that the need for the comprehensive rehabilitation center has been established in terms of services already available in the community and includes an assessment of community information, referral and service delivery needs not being adequately met.

(Sections 12(c) and 305 of the Act; 29 U.S.C. 711(c) and 775)

§ 372.32 Is there a priority for the use of existing facilities?

The Secretary gives priority in awarding grants for establishing or operating comprehensive rehabilitation centers at facilities which are already in operation.

(Sections 12(c) and 305 of the Act; 29 U.S.C. 711(c) and 775).

Subpart E—What Conditions Must Be Met by a Grantee?

§ 372.40 What are the matching requirements?

(a) The Federal share of any grant awarded to a designated State unit may not be more than 80 percent of the total costs of the project.

(b) No subgrant or contract awarded by a State unit to a general purpose local government unit, a public or other nonprofit agency or organization, or other agencies or organizations may pay more than 80 percent of the total cost of establishing or operating a comprehensive rehabilitation center under this program.

(Sections 12(c) and 305 of the Act; 29 U.S.C. 711(c) and 775)

§ 372.41 What are allowable costs?

In addition to those allowable costs established in EDGAR §§ 75.530–75.534, the following items are allowable costs under this program—

(a) Salaries of additional professional and technical personnel required to operate a comprehensive rehabilitation center;

(b) Acquisition of equipment necessary for operating a center;

(c) Expansion, remodeling or alteration of an existing building when necessary to adapt it or increase its effectiveness for use as a comprehensive rehabilitation center;

(d) Leasing of a facility to serve as a comprehensive rehabilitation center; and

(e) Works of art in an amount not to exceed one percent of the total cost of the project when the expansion, remodeling or alteration of an existing building is involved.

(Sections 12(c), 305, and 306 of the Act; 29 U.S.C. 711(c), 775, and 776)

§ 372.42 How are services to be administered under this program?

(a) Services may be provided within the comprehensive rehabilitation center directly by the agency or organization or the group of agencies or organizations which is operating the center or they may be provided by other agencies or organizations using either their own facilities or the facilities of the center;

(b) The facilities of the center are expected to be made available for recreational activities for handicapped persons;

(c) To the maximum extent possible, the center must provide upon request to other public and other nonprofit agencies, organizations, facilities and other entities in the community information services and technical assistance necessary to assist them in complying with the requirements of this Act, with special reference to the requirements under Section 504 of the Act. Technical assistance includes both the maintenance of rosters of special support personnel available within the community such as interpreters for the deaf, readers for the blind, attendants, legal aid and advocacy personnel, and the coordination of referrals of these personnel;

(d) Any center established or operated under this program must be located in close proximity to the majority of the handicapped persons in the community to be served; and

(e) Information and referral services provided by a center must be fully

coordinated with information and referral services provided by the State unit under the State plan for vocational rehabilitation services under 34 CFR Part 361 or by any other public or other nonprofit agency or organization in the community.

(Sections 12(c) and 305 of the Act; 29 U.S.C. 711(c) and 775)

§ 372.43 What special conditions apply under this program to projects that involve construction?

New facilities are established through the expansion, remodeling, or alteration of an existing building only after it has been fully demonstrated that there are no existing facilities in the community with the potential for developing and delivering adequate services under this program. If the expansion, remodeling, or alteration of an existing building is involved, each facility must comply with the requirements specified under Part 369, and with any other requirements of the Department in effect concerning Federally assisted building design and construction activities.

(Sections 12(c), 305, and 306 of the Act; 29 U.S.C. 711(c), 775, and 776)

§ 362.40 [Redesignated as 34 CFR Part 373]

The Secretary amends Title 34 of the Code of Federal Regulations by redesignating § 362.40 as 34 CFR Part 373 and revises the regulations to read as follows:

PART 373—SPECIAL PROJECTS AND DEMONSTRATIONS FOR PROVIDING VOCATIONAL REHABILITATION SERVICES TO SEVERELY HANDICAPPED INDIVIDUALS

Subpart A—General

Sec.

373.1 What is the Program of Special Projects and Demonstrations for Providing Vocational Rehabilitation Services to Severely Handicapped Individuals?
373.2 Who is eligible for assistance under this program?
373.3 What regulations apply to this program?
373.4 What definitions apply to this program?

Subpart B—What Kinds of Activities Does the Department of Education Assist Under This Program?

373.10 What types of projects are authorized under this program?
373.11 What specific activities must be supported under this program to provide services to individuals with spinal cord injuries?
373.12 What specific activities must be supported under this program to provide services to blind individuals?
373.13 What specific activities must be supported under this program to provide services to deaf individuals?

Subpart C—[Reserved]

Subpart D—How Does the Secretary Make a Grant?

373.30 What selection criteria does the Secretary use under this program?

Subpart E—What conditions Must be Met by A Grantee?

373.40 What are the matching requirements?
373.41 What are allowable costs?
373.42 What special conditions apply under this program to projects that involve construction?

Authority: Sections 12(c) and 311(a)(1) of the Act; 29 U.S.C. 711(c) and 777(a)(1))

Subpart A—General

§ 373.1 What is the Program of Special Projects and Demonstrations for Providing Vocational Rehabilitation Services to Severely Handicapped Individuals?

This program is designed to provide financial assistance to projects for expanding or otherwise improving vocational rehabilitation services and other rehabilitation services for severely handicapped individuals.

(Section 311(a) of the Act; 29 U.S.C. 777(a).)

§ 373.2 Who is eligible for assistance under this program?

Applications may be made by States and public and other nonprofit agencies and organizations.

(Section 311(a) of the Act; 29 U.S.C. 777(a).)

§ 373.3 What regulations apply to the program?

The following regulations apply to this program—

(a) 34 CFR Part 369;

(b) The regulations in this Part 373.

(Section 311 of the Act; 29 U.S.C. 777(a))

§ 373.4 What definitions apply to this program?

The definitions in 34 CFR Part 369 apply to this program.

(Section 12(c) of the Act; 29 U.S.C. 711(c))

Subpart B—What Kinds of Activities Does the Department of Education Assist Under This Program?

§ 373.10 What types of projects are authorized under this program?

Authorized activities under this program include carrying out special projects concerned with establishing programs and constructing facilities for expanding or otherwise improving vocational rehabilitation services and other rehabilitation services to handicapped individuals, especially those who are the most severely handicapped. Handicapped individuals served under this program include individuals with spinal cord injuries, blind individuals, deaf individuals, and other groups of severely handicapped individuals, irrespective of age or vocational potential, identified each year by the Secretary.

§ 373.11 What specific activities must be supported under this program to provide services to individuals with spinal cord injuries?

Projects in which vocational and other rehabilitation services are provided to individuals with spinal cord injuries, whether administered separately or in coordination with a larger program supported in part under Title II of the Act, must—

(a) Establish a multi-disciplinary system of providing rehabilitation services specifically designed to meet the special needs of individuals with spinal cord injuries, include acute care, vocational and other rehabilitation services, community and job placement, and long-term community follow-up and health maintenance. The system must be established on an appropriate geographical basis which reflects patterns of patient flow and must be administered in close coordination with similar programs of the National Institute of Handicapped Research, the Veterans Administration, the National Institute of Health, and other public and private agencies and institutions;

(b) Demonstrate and evaluate both the service and cost benefits of a regional service system to those individuals with spinal cord injuries who might be served within it;

(c) Establish within the system a rehabilitation research environment for the achievement of new knowledge leading to the reduction and treatment of complications arising from spinal cord injury and the development of new techniques of medical management and rehabilitation;

(d) Demonstrate and evaluate the development and application of improved methods and equipment essential to the care, management and rehabilitation of individuals with spinal cord injury; and

(e) Demonstrate methods of community outreach and education for individuals with spinal cord injury in areas such as housing, transportation, recreation, employment, and other community activities.

(Section 311(b) of the Act; 29 U.S.C. 777a(b))

§ 373.12 What specific activities must be supported under this program to provide services to blind individuals?

Projects in which services are provided to blind individuals must—

(a) Demonstrate innovative methods of providing intensive rehabilitation services needed to rehabilitate blind individuals; or

(b) Provide mobility training services or comprehensive counseling services not otherwise available in the locality in which individuals served by the project reside; or

(c) Conduct coordinated rehabilitation service activities with other public or nonprofit agencies serving blind individuals in the same area.

(Section 311(a) of the Act; 29 U.S.C. 777(a))

§ 373.13 What specific activities must be supported under this program to provide services to deaf individuals?

Projects in which services are provided to deaf individuals must—

(a) Demonstrate innovative methods of providing the specialized services needed to rehabilitate and make maximum use of the vocational potential of deaf individuals; or

(b) Conduct coordinated activities with other public and nonprofit agencies administering programs for deaf persons in the same area in order to expand or improve rehabilitation services for deaf individuals.

(Section 311(a) of the Act; 29 U.S.C. 777a)

Subpart C—[Reserved]

Subpart D—How Does the Secretary Make a Grant?

§ 373.30 What selection criteria does the Secretary use under this program?

(a) *Plan of operation* (20 Points). The Secretary reviews each application in accordance with the criterion in § 369.31(a).

(b) *Quality of key personnel* (10 Points). The Secretary reviews each application in accordance with the criterion in § 369.31(b).

(c) *Budget and cost effectiveness* (10 Points). The Secretary reviews each application in accordance with the criterion in § 369.31(c).

(d) *Evaluation plan* (5 Points). The Secretary reviews each application in accordance with the criterion in § 369.31(d).

(e) *Adequacy of resources* (10 Points). The Secretary reviews each application in accordance with the criterion in § 369.31(e).

(f) *Service comprehensiveness* (20 Points).

(1) The Secretary reviews each application for information that shows that the services to be provided within the project are comprehensive in scope.

(2) The Secretary looks for information that shows that—

(i) A broad range of vocational rehabilitation services and other rehabilitation services will be available to severely handicapped individuals within the project;

(ii) Services will be coordinated with those services provided by other appropriate community resources;

(g) *Relevance to State-Federal rehabilitation service program* (10 Points).

(1) The Secretary reviews each application for information that shows that the proposed project appropriately relates to the mission of the State-Federal rehabilitation service program.

(2) The Secretary looks for information that shows that—

(i) The project will be designed primarily for severely handicapped individuals being provided vocational rehabilitation services by State vocational rehabilitation units;

(ii) The State vocational rehabilitation unit will be actively involved in the carrying out of project activities and project linkages will be adequate to ensure appropriate outreach and client referral;

(iii) Job development, placement, and achieving an optimal vocational adjustment will be primary project emphases;

(iv) All similar benefits for which project clients might be eligible will be utilized.

(h) *Innovativeness of approach* (5 Points).

(1) The Secretary reviews each application for information that shows the extent to which the project approach is innovative.

(2) The Secretary looks for information that shows that the approach to be used in providing vocational rehabilitation services and other rehabilitation services will be innovative and appropriate to the groups of severely handicapped individuals being served.

(i) *Utilization of project findings* (5 Points).

(1) The Secretary reviews each application for information that shows the extent to which project findings might be utilized within the State rehabilitation service system.

(2) The Secretary looks for information that shows—

(i) The potential for project findings to be effectively utilized within the State vocational rehabilitation service system; and

(ii) The likelihood of the project activities being successfully replicated in other locations;

(j) *Likelihood of sustaining program* (5 Points).

(1) The Secretary reviews each application for information that shows the likelihood of the service program being sustained after the termination of Federal grant support.

(2) The Secretary looks for information that shows that the applicant agency intends to continue to operate the service program after the termination of the project.

(Sections 12(c) and 311 of the Act; 29 U.S.C. 711(c) and 777(a))

Subpart E—What Conditions Must Be Met by a Grantee?

§ 373.40 What are the matching requirements?

Grants may be made for paying all or part of the costs of activities covered under this program. Where part of the costs is to be borne by the grantee, the amount of grantee participation is determined at the time of the grant award and is generally not less than 10 percent of the total cost of the project.

(Sections 12(c) and 311 of the Act; 29 U.S.C. 711(c) and 777(a))

§ 373.41 What are allowable costs?

In addition to those allowable costs established in EDGAR §§ 75.530–75.534, the costs of the construction of a rehabilitation facility are also allowed under this program.

(Sections 12(c) and 311 of the Act; 29 U.S.C. 711(c) and 777(a))

§ 373.42 What special conditions apply under this program to projects that involve construction?

(a) Any construction of a rehabilitation facility undertaken under this program is subject to the requirements affecting construction under 34 CFR Part 369 and to any other requirements of the Department in effect concerning Federally assisted building design and construction activities.

(b) The acquisition, expansion, remodeling, alteration or renovation of an existing building in connection with a special project or demonstration may not be undertaken unless it has been demonstrated to be essential to expanding or otherwise improving rehabilitation services to handicapped individuals within the related special project or demonstration.

(Sections 12(c) and 311 of the Act; 29 U.S.C. 711(c) and 777(a))

The Secretary amends Title 34 of the Code of Federal Regulations by adding 34 CFR Part 374 to read as follows:

PART 374—SPECIAL PROJECTS AND DEMONSTRATIONS FOR MAKING RECREATIONAL ACTIVITIES ACCESSIBLE TO HANDICAPPED INDIVIDUALS

Subpart A—General

Sec.

374.1 What is the Program of Special Projects and Demonstrations for Making Recreational Activities Accessible to Handicapped Individuals?
374.2 Who is eligible for assistance under this program?
374.3 What regulations apply to this program?
374.4 What definitions apply to this program?

Subpart B—What Kinds of Activities Does the Department of Education Assist Under This Program?

374.10 What types of projects are authorized under this program?

Subpart C—[Reserved]

Subpart D—How Does the Secretary Make a Grant?

374.20 What selection criteria does the Secretary use under this program?

Subpart E—What Conditions Must Be Met by a Grantee?

374.40 What are the matching requirements?
374.41 What are allowable costs?
374.42 What are the special requirements affecting the scheduling of recreational activities within a project?
374.43 What are the special requirements affecting the renovation or construction of facilities?

Authority: Sections 12(c) and 311(a)(3) of the Act; 29 U.S.C. 711(c) and 777a(a)(3).

Subpart A—General

§ 374.1 What is the program of special projects and demonstrations for making recreational activities accessible to handicapped individuals?

This program is designed to operate programs and, where appropriate, to renovate and construct facilities to demonstrate methods of making recreational activities fully accessible to handicapped individuals.

(Section 311(a)(3) of the Act; 29 U.S.C. 777a(a)(3))

§ 374.2 Who is eligible for assistance under this program?

State and public and other nonprofit agencies and organizations are eligible for assistance under this program.

(Section 311(a) of the Act; 29 U.S.C. 777a(a)(3))

§ 374.3 What regulations apply to this program?

The following regulations apply to this program—

(a) 34 CFR Part 369;

(b) The regulations in this Part 734.

(Section 311(a) of the Act; 29 U.S.C. 777a(a)(31))

§ 374.4 What definitions apply to this program?

The definitions in 34 CFR Part 369 apply to this program.

(Section 12(c) of the Act; 29 U.S.C. 771(c))

Subpart B—What Kinds of Activities Does the Department of Education Assist Under This Program?

§ 374.10 What types of projects are authorized under this program?

(a) This program provides financial assistance for the support of the special projects and demonstrations, and related research and evaluation concerned with operating programs to demonstrate methods of making recreation activities fully accessible to handicapped individuals, including the renovation and construction of facilities where appropriate.

(b) Activities carried out under this program must focus on as broad a range of recreation activities as is appropriate to the geographical area, including indoor and outdoor recreation activities; competitive, active, and quiet recreation activities; social activities; and recreation activities related to the fine arts. These activities may include but are not limited to, arts, camping, dance, drama, fitness, 4–H, scouting, sports, swimming, travel and other related recreation activities;

(c) Projects must demonstrate innovative ways in which recreation services and activities can be made fully accessible to handicapped individuals, with special emphasis on those who are the most severely handicapped;

(Section 311(a)(3) of the Act; 29 U.S.C. 777a(a)(3))

Subpart C—[Reserved]

Subpart D—How Does the Secretary Make a Grant?

§ 374.20 What selection criteria does the Secretary use under this program?

(a) *Plan of operation* (30 Points). The Secretary reviews each application on the basis of the criterion in § 369.31(a).

(b) *Quality of key personnel* (10 Points). The Secretary reviews each application on the basis of the criterion in § 369.31(b).

(c) *Budget and cost effectiveness* (15 Points). The Secretary reviews each application on the basis of the criterion in § 369.31(c).

(d) *Evaluation plan* (5 Points). The Secretary reviews each application on the basis of the criterion in § 369.31(d).

(e) *Adequacy of resources* (10 Points). The Secretary reviews each application on the basis of the criterion in § 369.31(e).

(f) *Relevance to State-Federal rehabilitation service program* (10 Points). The Secretary reviews each application for information that shows—

(1) The project will be designed primarily for handicapped individuals being provided vocational rehabilitation services by State vocational rehabilitation units; and

(2) Recreation services provided under this program will be provided in a manner consistent with the provision of similar services under the State vocational rehabilitation service program under Title I of the Act.

(g) *Impact of the project* (20 Points).

(1) The Secretary reviews each application for information that shows the expected impact of the project on improving the quality of life of the handicapped individuals to be served.

(2) The Secretary looks for information that shows—

(i) The numbers of handicapped individuals expected to be served;

(ii) The types of handicapped individuals expected to be served;

(iii) The types of recreation activities expected to be available;

(iv) The extent to which the full range of resources at the facility will be accessible and can be expected to be utilized by handicapped individuals in the service area; and

(v) The extent to which there is evidence of support for the project from community agencies with an interest in recreational activities for handicapped individuals.

(Sections 12(c) and 311(a)(3) of the Act; 29 U.S.C. 711(c) and 777a(a)(3))

Subpart E—What Conditions Must Be Met by a Grantee?

§ 374.40 What are the matching requirements?

Grants may be made for paying all or part of the costs of activities covered under this program. Where part of the costs is to be borne by the grantee, the amount of grantee participation is determined at the time of the grant award and is generally not less than 10 percent of the total cost of the project.

(Sections 12(c) and 311(a)(3) of the Act; 29 U.S.C. 711(c) and 777a(a)(3))

§ 374.41 What are allowable costs?

In addition to those allowable costs established in EDGAR §§ 75.530–75.534, the following costs are also allowable in the case of any project which involves the renovation or construction of a facility:

(a) Acquisition of land in connection with construction of a rehabilitation facility;
(b) Acquisition of existing buildings;
(c) Remodeling, alteration, renovation, or expansion of existing buildings;
(d) Construction of new buildings;
(e) Architect's services;
(f) Site survey and soil investigation;
(g) Fixed or movable equipment;
(h) Works of art in an amount not to exceed one percent of the total cost of the project; and
(i) Other activities specifically provided for in the application.

(Sections 12(c) and 312(a)(3) of the Act; 29 U.S.C. 711(c) and 777a(a)(3))

§ 374.42 What are the special requirements affecting the scheduling of recreational activities within a project?

The schedule of recreational activities must be arranged so as not to interfere with a handicapped individual's attendance at work or school.

(Sections 12(c) and 312(a)(3) of the Act; 29 U.S.C. 711(c) and 777a(a)(3))

§ 374.43 What are the special requirements affecting the renovation or construction of facilities?

(a) To the greatest extent possible, existing facilities for the provision of recreational activities are expected to be utilized so that the need for the renovation or construction of facilities can be avoided.

(b) When renovation or construction of a facility is demonstrated to be necessary under this program, it must conform with the requirements specified under Part 369 and with any other requirements of the Department in effect concerning Federally assisted building design and construction activities.

(Sections 12(c) and 312(a) of the Act; 29 U.S.C. 711(c) and 777a(a)(3))

§ 362.46 [Redesignated as 34 CFR Part 375]

The Secretary amends Title 34 of the Code of Federal Regulations by redesignating § 362.46 as 34 CFR Part 375 and revises the regulations to read as follows—

PART 375—HANDICAPPED MIGRATORY AGRICULTURAL AND SEASONAL FARMWORKER VOCATIONAL REHABILITATION SERVICE PROJECTS

Subpart A—General

Sec.
375.1 What is the Handicapped Migratory Agricultural and Seasonal Farmworker Vocational Rehabilitation Service Projects Program?
375.2 Who is eligible for assistance under this program?
375.3 What regulations apply to this program?
375.4 What definitions apply to this program?

Subpart B—What Kinds of Activities Does the Department of Education Assist Under This Program?

375.10 What activities are eligible for assistance?

Subpart C—[Reserved]

Subpart D—How Does the Secretary Make A Grant?

375.30 What selection criteria does the Secretary use under this program?

Subpart E—What Conditions Must Be Met by A Grantee?

375.40 What are the matching requirements?
375.41 What are allowable costs?
375.42 What are the special requirements affecting coordination with related programs?

Authority: Sections 12(c) and 312 of the Act; 29 U.S.C. 711(c) and 777b.

Subpart A—General

§ 375.1 What is the Handicapped Migratory Agricultural and Seasonal Farmworkers Service Projects Program?

This program is designed to provide financial assistance to projects for providing vocational rehabilitation services to handicapped migratory agricultural workers or handicapped seasonal farmworkers.

(Section 321 of the Act; 29 U.S.C. 777b)

§ 375.2 Who is eligible for assistance under this program?

(a) Applications may be made by State vocational rehabilitation agencies or local agencies administering a vocational rehabilitation program under written agreements with State agencies.

(b) A State agency may, if it chooses, enter into an agreement with the State vocational rehabilitation agencies of one or more other States to develop a cooperative program for the provision of vocational rehabilitation services under this program.

(Sections 12(c) and 312 of the Act; 29 U.S.C. 711(c) and 777b)

§ 375.3 What regulations apply to this program?

The following regulations apply to this program—

(a) 34 Part 369;

(b) The regulations in this Part 375.

(Section 312 of the Act; 29 U.S.C. 777b)

§ 375.4 What definitions apply to this program?

(a) The definitions in 34 CFR Part 369 apply to this program.

(b) The following definitions also apply to this program—

(1) "Family members" or "members of the family" means any relative by blood or marriage of a handicapped migratory agricultural worker or seasonal farmworker and other individuals living in the same household with whom the handicapped migratory agricultural worker or the seasonal farmworker has a close interpersonal relationship, and who are with the worker, or have accompanied the worker on his migratory tour to the point in time at which the State agency comes into contact with him.

(Secs. 12(c) and 312 of the Act; 29 U.S.C. 711(c) and 777b)

(2) "Migratory agricultural worker" means a person who occasionally or habitually leaves his place of residence on a seasonal or other temporary basis to engage in ordinary agricultural operations or in services incident to the preparation of farm commodities for the market in another locality in which he resides during the period of such employment.

(Secs. 12(c) and 312 of the Act; 29 U.S.C. 711(c) and 777b)

(3) "Seasonal farmworker" means a person who on a seasonal or other temporary basis engages in ordinary agricultural operations or in services incident to the preparation of farm commodities for the market within daily commuting distance from his place of normal residence.

(Secs. 12(c) and 312 of the Act; 29 U.S.C. 711(c) and 777b)

Subpart B—What Kinds of Activities Does the Department of Education Assist Under This Program?

§ 375.10 What activities are eligible for assistance?

Project activities include the development and implementation of special arrangements for providing vocational rehabilitation services to handicapped individuals who are migratory agricultural workers or seasonal farmworkers and to members of their families (whether or not handicapped) who are with them, where these services are necessary to the vocational rehabilitation of the handicapped migratory agricultural worker or seasonal farmworker.

(Sec. 312 of the Act; 29 U.S.C. 777b)

Subpart C—[Reserved]

Subpart D—How Does the Secretary Make A Grant?

§ 375.30 What selection criteria does the Secretary use under this program?

(a) *Plan of operation* (35 Points). The Secretary reviews each application on the basis of the criterion in § 369.31(a).

(b) *Quality of key personnel* (15 Points). The Secretary reviews each application on the basis of the criterion in § 369.31(b).

(c) *Budget and cost effectiveness* (15 Points). The Secretary reviews each application on the basis of the criterion in § 369.31(c).

(d) *Evaluation plan* (5 Points). The Secretary reviews each application on the basis of the criterion in § 369.31(d).

(e) *Adequacy of resources* (10 Points). The Secretary reviews each application on the basis of the criterion in § 369.31(e).

(f) *Liaison with the State vocational rehabilitation service program* (15 Points).

(1) The Secretary reviews each application for information that shows the adequacy of the liaison with the State vocational rehabilitation service program.

(2) The Secretary looks for information that shows project linkages with the State vocational rehabilitation agency and community agencies adequate to ensure client referrals, outreach and utilization of project results.

(g) *Likelihood of sustaining program* (5 Points).

(1) The Secretary reviews each application for information that shows the likelihood of the service program being sustained after the termination of Federal grant support.

(2) The Secretary looks for information that shows that the State or local agency intends to continue to operate the service program after the termination of the project.

(Sections 12(c) and 312 of the Act; 29 U.S.C. 711(c) and 777(b))

§ 375.40 What are the matching requirements?

The Federal share may not be more than 90 percent of the total cost of a project under this program.

(Sections 12(c) and 312 of the Act; 29 U.S.C. 711(c) and 777(b))

§ 375.41 What are allowable costs?

In addition to those allowable costs established in EDGAR §§ 75.530–75.534, the following items are allowable under this program—

(a) Staff training necessary to improve the capacity of the State or local agency to serve handicapped migratory agricultural workers or seasonal farmworkers and members of their families when the training is included within a program of services; and

(b) Maintenance payments which must be provided at rates consistent with rates paid to handicapped individuals under the State plan for vocational rehabilitation services under 34 CFR Part 361.

(Sections 12(c) and 312 of the Act; 29 U.S.C. 711(c) and 777(b))

§ 375.42 What are the special requirements affecting coordination with related programs?

Each project must be administered in close cooperation with other public and nonprofit agencies and organizations having special skills and experience in the provision of services to migratory agricultural workers, seasonal farmworkers, or their families, including programs authorized under Title I of the Elementary and Secondary Education Act of 1964, the Migrant Health Act and the Farm Labor Contractor Registration Act of 1963.

(Sections 12(c) and 312 of the Act; 29 U.S.C. 711(c) and 777(b))

§ 375.43 [Reserved]

The Secretary amends Title 34 of the Code of Federal Regulations by adding 34 CFR Part 378 to read as follows:

PART 378—PROJECTS FOR INITIATING SPECIAL RECREATION PROGRAMS FOR HANDICAPPED INDIVIDUALS

Subpart A—General

Sec.

378.1 What is the Program of Projects for Initiating Special Recreation Programs for Handicapped Individuals?
378.2 Who is eligible for assistance under this program?
378.3 What regulations apply to this program?
378.4 What definitions apply to this program?

Subpart B—What Kinds of Projects Does the Department of Education Assist Under This Program?

378.10 What types of projects are authorized under this program?

Subpart C—[Reserved]

Subpart D—How Does the Secretary Make a Grant?

378.30 [Reserved]
378.31 What selection criteria does the Secretary use under this program?

Subpart E—What Conditions Must Be Met by a Grantee?

378.40 What are the matching requirements?
378.41 [Reserved]
378.42 What are the special requirements affecting the scheduling of recreation activities within a project?
378.43 What are the special requirements affecting coordination with related programs?

Authority: Sections 12(c) and 316 of the Act; (29 U.S.C. 711(c) and 777(f))

Subpart A—General

§ 378.1 What is the program of projects for initiating special recreation programs for handicapped individuals?

This program is designed to initiate special programs to provide handicapped individuals with recreational activities which can be expected to aid in their mobility and socialization.

(Section 316 of the Act; 29 U.S.C. 711(c) and 777(f))

§ 378.2 Who is eligible for assistance under this program?

Applications may be made by State and public and other nonprofit agencies and organizations.

(Sections 12(c) and 316 of the Act; 29 U.S.C. 711(c) and 777(f))

§ 378.3 What regulations apply to this program?

The following regulations apply to this program—

(a) 34 CFR Part 369.

(b) The regulations in this Part 378.

(Section 316 of the Act; 29 U.S.C. 777(f))

§ 378.4 What definitions apply to this program?

The definitions in 34 CFR Part 369 apply to this program.

(Section 12(c) of the Act; 29 U.S.C. 777(c))

Subpart B—What Kinds of Activities Does the Department of Education Assist Under This Program?

§ 378.10 What types of projects are authorized under this program?

(a) This program supports projects which initiate programs of recreational services for handicapped individuals.

(b) Activities carried out under this program must include as broad a range of recreational activities as is appropriate to the geographical area, including indoor and outdoor recreational activities; competitive, active, and quiet recreational activities; social activities; and recreational activities related to the fine arts. These activities may include, but are not limited to, arts, camping, dance, drama, 4–H, fitness, scouting, sports, swimming,

travel and related recreational activities designed—

(1) To promote personal satisfaction;

(2) To provide equal recreational opportunity;

(3) To provide normalization experiences;

(4) To foster social interaction and physical and mental health; and

(5) To provide individualized rehabilitation and therapeutic activities to alleviate the effects of disabilities.

(Section 316 of the Act; 29 U.S.C. 777(f))

Subpart C—[Reserved]

Subpart D—How Does the Secretary Make a Grant?

§ 378.30 [Reserved]

§ 378.31 What selection criteria does the Secretary use under this program?

(a) *Plan of operation* (30 Points).

The Secretary reviews each application on the basis of the criterion in § 369.31(a).

(b) *Quality of key personnel* (10 Points).

The Secretary reviews each application on the basis of the criterion in § 369.31(b).

(c) *Budget and cost effectiveness* (10 Points).

The Secretary reviews each application on the basis of the criterion in § 369.31(c).

(d) *Evaluation plan* (5 Points). The Secretary reviews each application on the basis of the criterion in § 369.31(d).

(e) *Adequacy of resources* (10 Points). The Secretary reviews each application on the basis of the criterion in § 369.31(e).

(f) *Relevance to State-Federal rehabilitation services program* (10 Points).

(1) The Secretary reviews each application for information that shows that the proposed project appropriately relates to the mission of the State-Federal rehabilitation services program.

(2) The Secretary looks for information that shows—

(i) The project will be designed primarily for handicapped individuals being provided vocational rehabilitation services by State vocational rehabilitation units; and

(ii) Recreational services provided under this program will be provided in a manner consistent with the provision of similar services under the State vocational rehabilitation services program under Title I of the Act.

(g) *Impact of the project* (20 Points).

(1) The Secretary reviews each application for information that shows the expected impact of the project on improving the quality of life of the handicapped individuals to be served.

(2) The Secretary looks for information that shows—

(i) The number of handicapped individuals expected to be served;

(ii) The types of handicapped individuals expected to be served;

(iii) The types of recreational activities expected to be available; and

(iv) The extent to which the full range of resources can be expected to be utilized by the handicapped individuals in the service area.

(h) *Likelihood of sustaining the service program* (5 Points).

(1) The Secretary reviews each application for information that shows the likelihood of the service program being sustained after the termination of Federal grant support.

(2) The Secretary looks for information that shows that the applicant intends to continue to operate the recreational activities after the termination of the project.

(Sections 12(c) and 316 of the Act; 29 U.S.C. 711(c) and 777f)

Subpart E—What Conditions Must Be Met by a Grantee?

§ 378.40 What are the matching requirements?

Grants may be made for paying all or part of the costs of activities covered under this program. Where part of the costs is to be borne by the grantee, the amount of grantee participation is determined at the time of the grant award and is generally not less than 10 percent of the total project costs.

(Sections 12(c) and 316 of the Act; 29 U.S.C. 711(c))

§ 378.41 [Reserved]

§ 378.42 What are the special requirements affecting the scheduling of recreational activities within a project?

The schedule of recreational activities must be arranged so as not to interfere with a handicapped individual's attendance at work or school.

(Section 316 of the Act; 29 U.S.C. 777f)

§ 378.43 What are the special requirements affecting coordination with related programs?

To the greatest extent possible, existing facilities and resources must be used to provide the recreational activities. The grantee must also utilize existing community recreation programs or service resources available under any related programs in the geographical area which are supported or authorized under the Developmental Disabilities Assistance and Bill of Rights Act, The Education for All Handicapped Children Act, the National Endowment of the Arts and Humanities Act of 1965, Title XX of the Social Security Act, the Community Education Act, and the Historic Preservation Fund and Land and Water Conservation Fund.

(Sections 12(c) and 316 of the Act; 29 U.S.C. 711(c) and 777f)

§ 362.43 [Redesignated at 34 CFR Part 378]

The Secretary amends Title 34 of the Code of Federal Regulations by redesignating § 362.43 as 34 CFR Part 379 and revises the regulations to read as follows—

PART 379—PROJECTS WITH INDUSTRY

Subpart A—General

Sec.

379.1 What is the Projects with Industry program?

379.2 Who is eligible for assistance under this program?

379.3 What regulations apply to this program?

379.4 What definitions apply to this program?

Subpart B—What Kinds of Activities Does the Department of Education Assist Under This Program?

379.10 What types of projects are authorized under this program?

Subpart C—[Reserved]

Subpart D—How Does the Secretary Make a Grant?

379.30 What selection criteria does the Secretary use under this program?

379.31 How does the Secretary enter into an agreement?

Subpart E—What Conditions Must Be Met by A Grantee?

379.40 What are the matching requirements?

379.41 What are allowable costs?

379.42 What prior assurances are required for agreements?

379.43 What general provisions are required in agreements?

379.44 What wage rates are required under agreements?

379.45 What on-the-job training is required?

Authority: Sections 12(c) and 621 of the Act; 29 U.S.C. 711(c) and 759g.

Subpart A—General

§ 379.1 What is the projects with industry program?

This program is designed to provide handicapped individuals with training, employment, and supportive services and assistance within business, industry, or other realistic work settings in order to prepare them for competitive employment and permit them to maintain their employment.

(Section 621(a) of the Act; 29 U.S.C. 795g(a))

§ 379.2 Who is eligible for assistance under this program?

Employers and profit making and nonprofit organizations with whom the Secretary may enter into an agreement include any industrial, business or commercial enterprise; labor organization; employer, industrial, or community trade association; rehabilitation facility; or other agency or organization with the capacity to arrange, coordinate, or conduct training and other employment programs and provide supportive services and assistance for handicapped individuals in a realistic work setting.

§ 379.3 What regulations apply to this program?

The following regulations apply to this program:

(a) 34 CFR Part 369; and

(b) The regulations in this Part 379.

(Section 621 of the Act; 29 U.S.C. 795g)

§ 379.4 What definitions apply to this program?

The definitions in 34 CFR Part 369 apply to this program.

(Section 12(c) of the Act; 29 U.S.C. 711(c)).

Subpart B—What Kinds of Activities Does the Department of Education Assist Under This Program?

§ 379.10 What types of projects are authorized under this program?

The Projects with Industry program provides financial assistance for the following types of activities:

(a) Providing handicapped individuals with training and employment in a realistic work setting in order to prepare them for employment in the competitive market, including a planned and systematic sequence of training and instruction in occupational and employment skills, and providing reasonable assurance of gainful employment at the successful termination of the training and instruction;

(b) Providing handicapped individuals with supportive services that are necessary to permit them to continue to engage in the employment or a related type of employment for which they have received training under this program; and

(c) To the extent appropriate, expanding job opportunities for handicapped individuals by analyzing job demands and capabilities of the handicapped individuals and providing for:

(1) The development and modification of jobs to accommodate the special needs of the handicapped individuals being trained and employed under this program;

(2) The purchase and distribution of special aids, appliances, or equipment adapted to the needs of a handicapped individual for use at a job site;

(3) The modification of any facilities or equipment of the employer which are to be used by handicapped individuals under this program; and

(4) The establishment of appropriate job placement services.

(Section 621(a) of the Act; 29 U.S.C. 795g)

Subpart C—[Reserved]

Subpart D—How Does the Secretary Make a Grant?

§ 379.30 What selection criteria does the Secretary use under this program?

(a) *Plan of operation* (10 Points). The Secretary reviews each application on the basis of the criterion in § 369.31(a).

(b) *Quality of key personnel* (10 Points). The Secretary reviews each application on the basis of the criterion in § 369.31(b).

(c) *Budget and cost effectiveness* (5 Points). The Secretary reviews each application on the basis of the criterion in § 369.31(c).

(d) *Evaluation plan* (5 Points). The Secretary reviews each application on the basis of the criterion in § 369.31(d).

(e) *Adequacy of resources* (5 Points). The Secretary reviews each application on the basis of the criterion in § 369.31(e).

(f) *Achievement of competitive employment objectives* (35 Points). (1) The Secretary reviews each application for information that shows that competitive employment objectives will be achieved for handicapped individuals being served under a project.

(2) The Secretary looks for information that shows that—

(i) The project has the capacity for placing a substantial number of handicapped individuals in competitive employment on a cost-effective basis;

(ii) Handicapped individuals will be trained in occupations for which there is a realistic demand in the competitive labor market and, where appropriate, adequate consideration is given to labor union requirements in the development of training programs; and

(iii) The project has the capacity for creating jobs which offer career development and advancement opportunities for handicapped individuals.

(g) *Coordination with service agencies* (20 Points).

(1) The Secretary reviews each application for information that shows an adequate level of coordination with appropriate service agencies in the community.

(2) The Secretary looks for information that shows—

(i) Coordination of project activities with the State vocational rehabilitation unit and with other appropriate community resources in order to ensure an adequate number of referrals and a maximum use of similar benefits; and

(ii) Establishment of linkages with business, industry, trade associations, labor unions, and other concerned organizations, as demonstrated by the establishment of an advisory committee with representation from these groups to share in policy and decisionmaking functions.

(h) *Innovativeness of approach* (10 Points).

(1) The Secretary reviews each application for information that shows an innovativeness of approach in preparing handicapped individuals for competitive employment.

(2) The Secretary looks for information that shows creativity and an innovative approach in the methodology for achieving project objectives.

(Sections 12(c) and 621 of the Act; 29 U.S.C. 711(c) and 795g)

§ 379.31 How does the Secretary enter into an agreement?

The Secretary enters into an agreement in consultation with the Secretary of Labor and the Secretary of Commerce and with the State vocational rehabilitation unit in the State in which the project is to be carried out, except where the scope of the proposed project extends beyond a single State.

(Section 621 of the Act; 29 U.S.C. 795g)

Subpart E—What Conditions Must Be Met by a Grantee?

§ 379.40 What are the matching requirements?

The Federal share may not be more than 80% of the total cost of a project under this program.

(Section 621(c) of the Act; 29 U.S.C. 795g(c))

§ 379.41 What are allowable costs?

In addition to those allowable costs established in EDGAR §§ 75.530–75.534, the following items are allowable costs under this program:

(a) The costs of job training and related vocational rehabilitation services and supportive rehabilitation services;

(b) Instruction and supervision of trainees;

(c) Training materials and supplies, including consumable materials;

(d) Instructional aids;

(e) Bonding fees, liability and insurance premiums;

(f) The purchase or modification of equipment or facilities adapted for the use of handicapped individuals and special aids and appliances; and

(g) Alteration and renovation appropriate and necessary to ensure access to and utilization of buildings by handicapped persons.

(Sections 12(c) and 621 of the Act; 29 U.S.C. 711(c) and 795g)

§ 379.42 What prior assurances are required for agreements?

Before entering into an agreement under this program, the Secretary consults with the prospective employer or other entity sponsoring the project, and, to the extent possible, with the State vocational rehabilitation unit and the handicapped individuals to be trained and employed under the project. On the basis of this consultation, it must be determined that:

(a) The State vocational rehabilitation unit will, to the maximum extent practicable, maintain a continuing relationship with the handicapped individuals to be served in the project and will either provide necessary vocational rehabilitation services and related supportive services directly or will otherwise ensure their availability;

(b) The bargaining agent under any applicable collective bargaining agreement concurs with the project;

(c) The trainee wage rates will not tend to create unfair competitive labor cost advantages nor have the effect of impairing or depressing wage or working standards established for experienced workers for work of a comparable character; and

(d) No abnormal labor condition such as a strike, a lockout, or other similar condition exists with respect to the applicant.

§ 379.43 What general provisions are required in agreements?

Any agreement entered into must, in addition to standard provisions—

(a) Provide for adherence to the terms or conditions of employment prescribed by any applicable Federal, State, or local law;

(b) Provide that a determination by competent authority of failure to adhere to the terms or conditions required by paragraph (a) of this section will constitute cause for termination of the contract or agreement;

(c) Provide that the Federal share of the costs will cover only a part of the total costs of the project;

(d) Provide that the recruitment, examination, appointment, training, promotion, retention, or any other personnel action with respect to any handicapped individual receiving training or employment, will be without regard to race, sex, color, creed, age, or national origin, and that violation will constitute grounds for termination of the contract or arrangement and that the United States will have a right to seek judicial enforcement of this provision;

(e) Provide that trainees will be compensated for hours spent in production of any goods or services;

(f) Provide that those individuals to receive training or employment services under the contract or arrangement will be individuals determined by the appropriate State vocational rehabilitation unit to be handicapped individuals suitable for these services;

(g) Provide reasonable assurance that handicapped individuals successfully completing the training program will be employed by the employer or within a similar enterprise;

(h) Specify the duration of the project;

(i) Provide that when funds are given directly to an employer, the Secretary, together with the State vocational rehabilitation unit, has the right to review any termination of employment. In the event that that termination occurs less than three years after the handicapped individual began his or her employment, the Secretary is entitled to require the repayment of a portion of the funds made available to the employer, if the Secretary in consultation with the State unit determines that there was not a reasonable cause for the termination;

(j) Provide that any handicapped individual placed with an employer under this program will be given terms and benefits of employment equal to those which are given other employees of the employer;

(k) Provide that handicapped employees will not be unreasonably segregated from other employees; and

(l) Contain an agreement to make reports and to keep any records and accounts required by the Secretary and to make records and accounts available for audit purposes.

(Sections 12(c) and 621 of the Act; 29 U.S.C. 711(c) and 795g)

§ 379.44 What wage rates are required under agreements?

(a) The agreement must include the rate of compensation to be paid to trainees engaged in the production of any goods or services. The wage rate paid a trainee must be the higher of the following:

(1) the minimum entrance rate for inexperienced workers in the same occupation, or if the occupation is new to the establishment, the prevailing entrance rate for the occupation among other establishments in the community or area; or

(2) The minimum rate required under the Fair Labor Standards Act or the Walsh-Healy Public Contracts Act, to the extent that these Acts are applicable to the trainee.

(b) The agreement must further provide for an increasing rate of payment to trainees if the training program is of such duration that periodic increases are reasonable and if the proficiency of the trainee merits the increases.

(Sections 12(c) and 621b; 29 U.S.C. 711(c) and 795g)

§ 379.45 What on-the-job training is required?

The agreement must—

(a) Provide for methods of instruction, progression of trainees, and size of the training group, including individualized or group training, comparable in duration to other training programs for the particular occupation, and adequate in content to qualify trainees for employment;

(b) Provide adequate and safe facilities and equipment; and

(c) Require that suitable records of attendance, performance and progress of trainees be maintained and that these records be made available to the Secretary when requested.

(Section 621 of the Act; 29 U.S.C. 795g)

Editorial Note.—This appendix will not appear in the Code of Federal Regulations.

Appendix A—Summary of Comments and Responses to Notice of Proposed Rulemaking published in Federal Register of November 28, 1979—Part 370—Client Assistance Projects

§ 370.2 Who is eligible for assistance under this program? (Formerly § 1362.103(c)).

Comment. Additional comments related to the identification of the State agency as the only eligible applicant for grant funds. Two comments suggested that the "designated State unit" should be the only appropriate applicant while another comment suggested that the designation of the protection and advocacy agency under the Developmental Disabilities Assistance and Bill of Rights was a more efficient approach.

Response. No change has been made in this section in this regard. Section 112 of the Act requires that client assistance projects be "administered and operated" by the State agency and there does not appear to be latitude for designating any other applicants for grants under this program. It is furthermore noted that the Developmental Disabilities Assistance

and Bill of Rights Act requires that the protection and advocacy agency "be independent of any agency which provides * * * rehabilitation services" and this requirement would preclude a joint administration of these projects.

§ 370.11 What are the responsibilities of counselors employed in these projects? (Formerly § 1382.103(f)).

Comment. Concern was expressed about the apparent regulatory intent to limit the role of client assistance project staff to referring clients and client applicants to other agencies for more direct assistance with problems requiring legal, administrative and other remedies. It was pointed out that the section focused on the referral responsibility, but that the Act itself implied a more direct assistance by client assistance prject staff in pursuing legal and other remedies.It was further suggested that the proposed definition of "counselor" was not fully adequate because it did not appear to support the more active role of project personnel authorized under the Act.

Response. A change has been made in this section. It is noted that the proposed regulation did in fact appear more limiting than the statutory authority and the section has therefore been revised to reflect the broader scope of activity possible under this program. It is recognized that a number of different client assistance service models will be employed by projects throughout the country, but that project personnel will be functioning primarily in most projects as referral resources. The definition of "counselor" has not been revised to reflect this potentially more active role, however, since the definition, as proposed, is broad enough to cover all patterns of service which might be developed under the Act.

§ 370.45 What are the special requirements affecting coordination with related programs? (Formerly § 1382.103(g)).

Comment. Some objection was raised about the requirement that all client assistance projects maintain written agreements with related programs and activities carried out in the project area. It was suggested that the requirement that all such agreements be written would be placing an excessive burden on client assistance project staff.

Response. A change has been made in this section. It seems apparent that coordination of project activities is essential, but the requirement that all agreements be formal written agreements is in fact unnecessarily burdensome. This section has been revised therefore to eliminate the requirement that all agreements be written.

Part 379—Projects with Industry

§ 379.43 What general provisions are required in agreements? (Formerly § 1382.43(g)).

Comment. It was pointed out that the general provisions for agreements required under paragraph (g) contained some safeguards against discrimination, but did not include protection against discrimination on the basis of type of physical or mental disability.

Response. No change has been made in this section. No handicapped individual participating in a Project with Industry may be discriminated against on the basis of the type of physical or mental disability but it is possible to establish a Project with Industry activity which serves a single disability group.

Comment. A comment was received which objected to the requirement in paragraph (g)(9) imposing a role for both the Secretary and the designated State unit in the review of matters relating to the termination of employment of a handicapped individual within a project and the repayment of funds when it has been determined that there had not been reasonable cause for the termination of the handicapped employee. This role was believed to be an improper role for the designated State unit to be assuming and one which would interfere with its other responsibilities.

Response. No change has been made in this section in this regard. It is recognized that the role of the State unit in paragraph (g)(9) is somewhat different from its other responsibilities in the Projects with Industry program. The responsibility for participating in matters relating to the termination of a handicapped employee is required under Section 621(b)(2) of the Act, however, and this provision of the section therefore cannot be changed.

Comment. It was also suggested that the section be revised to require that the State unit maintain a continuing relationship with each of its clients for a period of not less than six months and either directly provide or ensure the availability of necessary vocational rehabilitation services.

Response. No change has been made in this section in this regard. Under the Projects with Industry program participants are expected to be "handicapped individuals" eligible for vocational rehabilitation services. Since participants within projects are already clients of State vocational rehabilitation units, those State vocational rehabilitation units maintain continuing relationships with them. It is also noted that the length of time which a handicapped individual spends in a Project with Industry varies greatly and a six-month service requirement limitation may be inadequate for many project participants. This suggestion has therefore also not been adopted. Projects with Industry are entered into by the Secretary only after consultation with the designated State unit and the scope of vocational rehabilitation services to be provided is an area of project activity to be covered in the agreements controlling project activity.

[FR Doc. 81-2077 Filed 1-16-81; 8:45 am]
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DEPARTMENT OF EDUCATION

34 CFR Parts 369, 370, 371, 372, 373, 374, 375, 378, and 379

Vocational Rehabilitation Service Projects

AGENCY: Department of Education.

ACTION: Notice of proposed rulemaking; Cross-reference.

SUMMARY: The Secretary proposes regulations for the Vocational Rehabilitation Service Projects in Title 34 of the Code of Federal Regulations:

(a) Vocational Rehabilitation Service Projects—General (Part 369).

(b) Client Assistance Projects (Part 370).

(c) Handicapped American Indian Vocational Rehabilitation Service Projects (Part 371).

(d) Comprehensive Rehabilitation Centers (Part 372).

(e) Special Projects and Demonstrations for Providing Vocational Rehabilitation Services to Severely Handicapped Individuals (Part 373).

(f) Special Projects and Demonstrations for Making Recreational Activities Accessible to Handicapped Individuals (Part 374).

(g) Handicapped Migratory Agricultural and Seasonal Farmworker Vocational Rehabilitation Service Projects (Part 378).

(h) Projects for Initiating Special Recreation Programs for Handicapped Individuals (Part 379).

(i) Projects with Industry (Part 379).

The Secretary invites comments on these proposed regulations.

The texts of the regulations on which the Secretary invites comments are published in the Rules and Regulations section of this issue of the Federal Register. They have been adopted as final regulations and will govern these programs until the Secretary issues new regulations based on public comment.

DATES: All comments, suggestions, or objections must be received on or before March 20, 1981.

ADDRESSES: Comments should be addressed to: Mr. Harold F. Shay, Director, Division of Manpower Development, Rehabilitation Services Administration, Office of Special Education and Rehabilitative Services, Room 3321, Mary E. Switzer Building, 330 C Street SW., Washington, D.C. 20201

FOR FURTHER INFORMATION CONTACT: Mr. Harold F. Shay, Telephone: (202) 245-0079.

Invitation to Comment

For additional details on how to comment, see the Preamble of the final regulations for these programs published in this issue of the Federal Register.

Dated: January 13, 1981.

(Catalog of Federal Domestic Assistance Number 84.126 Rehabilitation Services—Special Projects)

Shirley M. Hufstedler,

Secretary of Education.

[FR Doc. 81-1681 Filed 1-16-81; 8:45 am]

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federal register

Monday
January 19, 1981

Part XI

Department of Transportation

Office of the Secretary

Adoption of Guidelines on Citizen Participation in Local Transportation Planning

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Notice No. 81-1]

Adoption of Guidelines on Citizen Participation in Local Transportation Planning

AGENCY: Office of the Secretary, DOT.

ACTION: Notice of Final Guidelines.

SUMMARY: This notice contains DOT Guidelines on Citizen Participation in Local Transportation Planning. On October 30, 1980, DOT prepared these Guidelines for public review and comment and issued a Policy Statement on Citizen Participation as well (45 FR 71938). The Policy Statement is reprinted in Appendix A of this document. These Guidelines are issued in support of the Policy Statement and serve to identify and explain key elements of active citizen participation. The Policy and Guidelines apply to all DOT requirements for citizen participation in the local transportation planning process. A list of these requirements originally appeared in the Federal Register on October 30, 1980 and are reprinted here as Appendixes B and C. Appendix B lists Federal-aid programs which contain laws and regulations requiring State and local agencies using DOT funds to provide for public involvement in transportation planning and project development. Appendix B also includes brief explanations of how Federal-aid programs are administered by various DOT operating administrations. Appendix C lists other DOT requirements for citizen participation which are not specific to particular Federal-aid programs. Appendix D describes actions, also initially announced in the Federal Register on October 30, 1980, to be taken within DOT in support of the Policy Statement.

DATES: The Guidelines take effect on January 19, 1981; the Policy became effective on October 30, 1980.

FOR FURTHER INFORMATION CONTACT: Gail Boyle, Office of Consumer Liaison, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590; (202) 426-4520. For specific information about DOT operating administrations' requirements for citizen participation, refer to the operating administrations' contacts listed in Appendix B and Appendix C of this notice.

SUPPLEMENTARY INFORMATION: On August 9, 1979, DOT published an Advance Notice of Proposed Policy (ANPP) in the Federal Register (44 FR 46971). The ANPP announced that DOT planned to develop an overall policy statement on citizen participation in transportation planning and requested public comment. In the Fall of 1979, DOT conducted field interviews with 193 people across the country concerning the ANPP. DOT received 360 written comments on the ANPP. DOT closely considered concerns and experiences of those commenters and interviewees in developing its Policy Statement and proposed Guidelines (45 FR 71938). Comments received on and changes made to the proposed Guidelines are summarized in Section (2) below.

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(1) Background

The need to clarify DOT's position on citizen participation in local transportation planning became apparent at a DOT conference on Transportation and the Consumer held in Washington, D.C., in May 1979. During informal discussion sessions, citizen conferees drafted recommendations which centered on requests for DOT to expand and improve opportunities for citizens to participate in local transportation planning. While the Department's position was to encourage effective citizen participation in the planning process, DOT had never issued a comprehensive policy statement which applied to all operating administrations in the Department and addressed specific aspects of how citizens should be involved when communities make transportation decisions. The Department agreed that such a statement was necessary.

In June 1979, the Department set up the DOT Work Group on Citizen Participation, charged with developing recommendations to the Secretary concerning DOT policy on citizen participation in local transportation planning. All appropriate elements within DOT were represented on the Work Group. As a first step, the group developed an Advance Notice of Proposed Policy (ANPP), discussed above.

An extensive outreach plan was developed for stimulating comments on the ANPP. Working with the Department's Office of Consumer Liaison, the Work Group identified the affected segments of the public as the following: individual citizens and representatives of national, State, and local citizens' organizations concerned with transportation issues; groups dealing with environmental issues, with needs of the handicapped, and with minorities' concerns; officials and staffs of State transportation agencies, State and local government officials, regional and local planning agencies, transit operators; agencies serving minorities and low-income citizens; and officials and staffs of DOT headquarters and field offices. A total of 18,000 persons in these categories received a mailing about the ANPP. In addition, the Work Group organized field trips to 20 cities in order to interview people representing the concerned segments of the public already identified; 193 people were interviewed.

After analyzing the 360 written comments and the 193 interview reports, the Work Group identified the issues of concern to the affected publics; a summary of these comments and interviews was included in the October 30, 1980 Federal Register notice. The Work Group examined a broad gamut of options available to the Department on each issue; draft recommendations for Departmental review were developed and were discussed with officials throughout DOT. During this process of developing and discussing options and recommendations, an emphasis was placed on giving consideration to the concerns and opinions of the various publics that had commented and been interviewed during the ANPP process.

The Work Group's final recommendations to the Secretary represented a comprehensive position on citizen participation that all elements of the Department accept. This comprehensive position includes a DOT policy statement, DOT guidelines, and supportive actions by the Department and its operating administrations, originally announced in the October 30, 1980 Federal Register notice.

DOT Policy Statement

The DOT Policy Statement on Citizen Participation in Local Transportation Planning (Appendix A) clarifies and strengthens DOT's existing position of encouraging citizen participation. This Departmentwide Policy calls for active citizen involvement in all aspects of local transportation planning and reflects comments received from all affected publics that responded to the ANPP.

DOT Guidelines

The Guidelines (see Section (3), below) support and amplify the Policy Statement by identifying and explaining key elements of active citizen participation. The Department gave serious consideration to divergent options—the possibility of taking no action; the possibility of issuing regulations; the possibility of issuing guidelines. In examining these possibilities, DOT took note of certain issues that were apparent from the public comments. In many communities, citizens are dissatisfied with lack of opportunities to participate in transportation planning decisions. Further, various State, regional, and local transportation planning agencies are uncomfortable with existing requirements for citizen participation. Additional regulations would clearly place an undue burden on these agencies; there is, however, need for further guidance on how to provide improved opportunities for citizens to be involved. In view of these issues, DOT recognized the clear need to provide guidance within a flexible framework. The decision was made that guidelines, rather than regulations are called for. The proposed Guidelines published by the Department in the Federal Register on October 30, 1980 (45 FR 71938) addressed areas of citizen participation which elicited significant comments on the earlier ANPP: informing and involving the public; planning and holding public meetings; utilizing advisory committees; and incorporating public comments when decisions are made. After a 60-day comment period, DOT received 65 written comments on the proposed Guidelines. A summary of these comments is contained in Section (2) below. In revising the Guidelines, an effort was made to be as responsive as possible to the substantive concerns and suggestions raised in these comments.

Supportive Actions Taken by DOT and its Operating Administrations

Each operating administration in DOT is supporting the Policy Statement by: (1) Issuing its own guidelines on citizen participation; (2) revising its existing regulations, as needed to comply with the Policy Statement; and (3) designing its own development project on ways to provide technical and financial assistance to stimulate citizen participation. Further discussion of the rationale and scope of these supportive actions originally appeared in the Federal Register notice of October 30, 1980, and is reprinted here as Appendix D. Also included in Appendix D is a discussion of the role to be played by the Office of the Secretary, through its Office of Consumer Liaison (OCL) in overseeing the implementation of the Policy Statement and Guidelines, in coordinating the operating administrations' development projects, in providing technical assistance to affected segments of the public, and in coordinating Departmental training and outreach programs for citizen participation. This section on OCL's role also was contained in the October 30, 1980 notice.

(2) Summary of Public Comments on Proposed DOT Guidelines on Citizen Participation in Local Transportation Planning

DOT received 65 written comments on its proposed Guidelines on Citizen Participation in Local Transportation Planning. These comments reflected a broad range of interests and differing perspectives across 28 States, in addition to the District of Columbia, Guam, and Puerto Rico. The following list summarizes the sources of comments addressed to the Docket:

Individuals	13
State agencies	14
Regional or local planning agencies	20
Citizen/consumer/environmental groups	12
Organizations representing particular interests	3
Miscellaneous (e.g., engineer, business)	3
Total	65

In addition to the above comments, four written comments submitted to FHWA Docket 80-24 (Notice of Proposed Rulemaking on the Urban Transportation Process)[1] addressed, in part, the proposed Guidelines. Relevant portions of these comments have been considered and addressed in reviewing and revising the proposed Guidelines. The Department has made an effort to be as responsive as possible to the substantive concerns of those submitting comments on the proposed Guidelines.

[1] The sources of these comments were an MPO, a State DOT, a Federal agency, and a national special interest organization.

A. General Comments

Support For Guidelines

Comments: While a majority of commenters expressed general support for the DOT Guidelines, a few thought that such guidance leaves too much to the discretion of transportation planning agencies and encouraged DOT to require certain citizen participation activities. They mentioned the difficulty of achieving DOT's stated goals without more detailed requirements.

Several commenters mistakenly referred to DOT's Guidelines as regulations. Three commenters believed that the Guidelines were good as long as they remain as guidelines and do not become regulations. Three other commenters asked DOT to make it clear that not every element of the Guidelines is required in every planning situation.

Five commenters viewed the Guidelines as unnecessary and questioned whether they should be issued. They feared additional paperwork, had concerns over how the Guidelines might be interpreted and believed that citizen participation approaches should be decided locally.

One commenter asked DOT to issue performance standards rather than guidelines and urged DOT to delay publication of the Guidelines until the U.S. Office of Management and Budget issues its governmentwide study on standardizing citizen participation requirements applied to State and local governments by Federal agencies.

Response: DOT's Guidelines are *not* regulations. They do not prescribe specific actions to be taken in every planning situation; rather they suggest ways of ensuring effective citizen participation and provide planning agencies with guidance on how DOT will monitor the adequacy of citizen participation in local transportation planning activities.

DOT rejected a Departmentwide regulatory approach as being too cumbersome and not allowing enough flexibility to tailor programs to local needs. However, DOT disagrees with those who claim that no further guidance on citizen participation is necessary or warranted. Citizens have voiced serious and legitimate concerns over citizen participation processes in many areas, and some planning agencies have asked for clearer and more consistent guidance. It is DOT's responsibility to address such concerns when they involve the use of DOT funds. The Department has done this in the most flexible way possible, to the dismay of many concerned citizens who had asked for the stronger support that regulations provide.

Most effective citizen participation programs already employ most, if not all, of the techniques described in the Guidelines and some go even further. These Guidelines will cause no additional burdens on agencies which have effective citizen participation programs. However, some lead planning agencies clearly need to take additional steps to make their citizen participation programs more effective. The Guidelines suggest ways they can do that.

Obviously, local judgments need to be made concerning the Guidelines; not every activity described in the Guidelines is applicable to every local planning situation, and there are many other citizen participation techniques which have not been described in the Guidelines.

DOT believes that performance standards would be extremely difficult to develop and might be inappropriate if indeed they could be developed. Thus, the Department is convinced that the Guidelines are the best approach at this time.

DOT staff has been in contact with the Office of Management and Budget and understands that their citizen participation study has been postponed indefinitely. Consequently, DOT will proceed with the publication of its Guidelines at this time.

Funding

Comments: Seven Metropolitan Planning Organizations (MPOs) and State Department of Transportation (DOTs) expressed concern that the current level of DOT planning assistance funds is insufficient and may hamper agencies' efforts to stimulate citizen participation. In addition, one State DOT questioned whether resources devoted to citizen participation would be diverted from other highway development activities to the detriment of the whole transportation planning process.

Response: DOT is very much aware that planning assistance funds may not be adequate to support ambitious citizen participation efforts by planning agencies. In light of the many pressing national transportation needs and priorities, it is unclear at this time whether increased DOT funding for citizen participation activities will be forthcoming.

However, while the problem is formidable, it is not intractable. Although the Department appreciates agencies' concern with incorporating the Policy Statement and Guidelines in their planning efforts in the face of competing demands on the use of scarce resources, it does not view costs associated with citizen involvement efforts as necessarily prohibitive. The Guidelines suggest many effective and non-costly means for obtaining adequate citizen involvement. Indeed, one individual citizen providing comments recounted personal efforts to distribute notices of an upcoming public meeting quickly and at little expense after the agency had indicated that such notification would be too costly.

The Department is aware that not all citizen participation techniques suggested in the Guidelines involve little cost and/or agency staff time. However, a principal underlying both the Department's Policy Statement and Guidelines is that, in many instances, planners have been confronted with delays in the project development process or even abandonment of a project where citizens' concerns and involvement were not considered at an early stage. All too often, planners have come to recognize that early involvement of concerned citizens in the planning process would have avoided substantial added costs and delays while contributing to sensible and sound transportation investments. Thus, DOT remains convinced that planning agencies can meet the spirit of the Guidelines in a cost-effective manner.

Comments: One MPO and one county manager raised questions concerning the eligibility of highway planning funds and Urban Mass Transportation Act funds, respectively, for use by agencies in conducting citizen participation. In addition, eight commenters expressed differing opinions on the appropriateness of providing funds or reimbursing citizens for participation in the planning process.

Response: DOT permits the use of Federal planning funds, consistent with Federal and State requirements or limitations, for citizen participation activities. In addition, the Department recognizes that the issue of providing financial assistance for citizens participation in local planning is highly controversial. DOT has decided, therefore, to launch development projects to identify innovative approaches and to gather further data on ways to provide technical and financial assistance for activities that could stimulate effective and representative citizen participation at the local level. Despite the reluctance of many agencies to provide financial assistance to citizens, some agencies do contract with citizens and citizen and community organizations to conduct research and otherwise provide needed assistance in the planning process. The Department also encourages the use of funds for procuring the services of citizens and their organizations during the planning process.

Policy Statement

Comments: Three commenters expressed concern that the Department adopted its Policy Statement in Local Transportation Planning without affording an opportunity for public review and comment. This action, they claim, is inconsistent with the overall thrust of the Department's Guidelines.

Response: In light of DOT's extensive efforts to inform and obtain the views of all interested segments of the public, as described in Section (1) Background, above, the Department saw little added benefit in issuing a Notice of Proposed Policy (NPP) prior to publishing a final Policy Statement. In addition, any benefit that might result from issuing an NPP and obtaining additional public comment was clearly outweighed by the delay that would result in issuing this needed document.

The Department's widely-publicized and distributed Advance Notice of Proposed Policy and follow-up interviews across the country in 1979 stimulated a wealth of viewpoints, interests, and concerns about citizen involvement in local transportation planning in a variety of settings. Extensive use was made of these comments by DOT in developing the final Policy Statement, and it appeared unlikely that issuance of an NPP would provide the Department with additional points of view not already considered. While the Department did not specifically invite comment on the Policy Statement, it should be pointed out that a majority of commenters expressed support for this document.

Decisionmaking

Comments: A few commenters voiced concern that DOT's Policy Statement and Guidelines did not sufficiently stress the decisionmaking responsibilities of State and local officials. One commenter questioned whether the Federal Government could provide assurances that local public wishes would not be overruled in the Federal review of local transportation decisions.

Response: DOT agrees with the commenters that it is the responsibility of local officials to make local decisions and a sentence to that effect has been added to the Guidelines. However, it should be noted that what DOT has said in the Policy Statement and in the Guidelines is that citizens have a right to influence local decisions and that local officials have the responsibility to seriously consider and to respond to public comments on local planning

decisions. DOT does not accept the ballot box as the *only* means of citizen participation.

Just as local officials cannot guarantee that the public wishes on local transportation decisions will always be followed; neither can the U.S. Department of Transportation. There are times when national policy and priorities may require a second look at local transportation projects. DOT recognizes the importance of working with State and local officials in these situations.

B. Specific Comments on DOT Guidelines

Introduction (Section I)

Comments: Two commenters requested clarification of the term "lead planning agency". The transportation director of a local citizens' organization sought assurances that DOT intended for local and regional transit authorities to pay heed to the Guidelines. A transit authority indicated that in the case of urban transportation planning under FHWA and UMTA programs, more than one agency may be responsible for citizen participation activities during the planning process.

Response: The DOT Guidelines apply to a broad range of transportation planning agencies, including publicly-owned operators of mass transportation services. By way of illustration, the following types of agencies may also be considered as "lead planning agencies": State DOT's, State highway departments, MPO's, airport authorities, local planning offices, and bureaus of public works. DOT urges that a pragmatic approach be taken by planning agencies in assigning citizen participation responsibilities consistent with the urban transportation planning regulations.

Developing a Plan for Participation (Section IV)

Comments: Seven regional planning agencies feared that the guideline which calls for developing a plan for participation (Section IV of the Guidelines) implies the development of a separate plan which would impose additional paperwork burdens or be duplicative of other planning documents, such as Highway Action Plans or Urban Work Planning Programs. Two commenters believed that this should be changed to developing a process for participation because a process is less rigid and more flexible than a plan. One commenter believed that public participation plans should be submitted to DOT regional offices for approval and questioned how an agency could objectively evaluate its own citizen participation program.

Response: Based on these comments, DOT believes that it is necessary to clarify what is meant by this guideline and to change some of the wording of the guideline. The gist of the guideline is that agencies should plan for effective citizen participation and that citizen participation should be an integral part of all planning activities. This should include some type of outline (DOT is not suggesting voluminous paperwork) on the planning activity, the type of citizen participation effects which are planned and the approximate timing of such efforts. DOT views a citizen participation plan as a management tool as well as a tool for citizens who wish to be involved in particular planning activities.

In some cases the plan might cover only one planning activity, but in other cases, when individual planning activities are closely related, the citizen participation plan might cover a number of planning activities. This plan does not have to be a separate document nor is it meant to be cast in concrete. In fact, the guideline recommends that planning agencies periodically evaluate their citizen participation programs so that changes can be made as the need arises. Citizens can certainly be helpful to planning agencies in this review. This plan is really an extension of the processes that most communities have now in their State Action Plans and Unified Planning Work Programs. As a result, DOT does not contemplate a separate formal review of citizen participation plans at this time.

Identifying Public Participants (Section V)

Comments: The League of American Wheelmen (LAW) and one local bicycling group among the broad range of individuals and groups to be notified of transportation planning activities. The LAW asked DOT to include the notification of bicycling groups as an evaluation factor in DOT's monitoring efforts. LAW also offered to provide current addresses of its local affiliated groups to planning agencies who may not know of bicycling groups in their areas. (Requests should be addressed to Administrative Director, League of American Wheelmen, P.O. Box 988, Baltimore, MD 21203).

Response: DOT has added bicycling groups to the list of potential groups to be contacted regarding local planning activities. Identifying a broad range of public participants is certainly one of the elements to be considered in DOT's monitoring of citizen partipation efforts.

Comments: Two commenters questioned the value of the list of groups who might be consulted in local transportation planning activities stating that the process should be open to any member of the public.

Response: DOT certainly agrees with the commenters that the transportation planning process should be open to any member of the public. DOT suggested the potential list of participants only as a starting point in getting people involved.

Comment: One regional planning agency official did not agree that special efforts should be made to personally notify individuals living in potential transportation corridors when planning activities are proposed. Because he believed that such notification would be "unduly burdensome" when the entire regional system plan is being proposed, he stated that the appropriate place for personal notification is in the EIS phase of project planning.

Response: Some commenters on DOT's ANPP indicated that they had learned of planned transportation projects adjacent to their property only after a decision had been reached. The Guidelines address this problem by recommending early notification of individuals who might be affected by various transportation alternatives while there is still time to influence the choice of alternatives. The timing of such notification may vary according to local situations and the scope of the projects under consideration. In many situations, it may be highly advisable to notify potentially affected individuals before the environmental assessment process begins. Citizens can help planners to identify environmental and social effects of potential action which should be considered in the environmental assessment process and in the final decisions concerning the project. DOT believes that those who might be affected by a transportation planning project should have the opportunity to influence a decision.

Informing the Public (Section VI)

Comment: One commenter asked DOT to require publication of a road plan in the local paper early enough so that everyone would understand the implications of a proposed transportation project. This commenter also recommended that it be a serious offense for a local official to deliberately hide the implications of a planned project.

Response: Although DOT has not required a specific format for doing so, DOT's Guidelines do call for planning agencies to make the implications of various alternatives clear to the public.

DOT believes that early discussion of the implications of a potential project can lead to less confrontation and disagreement at the end of a planning project. In general, the implications of a planning proposal should be a matter of public record.

Comment: One commenter indicated that FHWA and the joint planning regulations do not require an annual report to the public and that methods of informing the public already exist in the Prospectus and Unified Planning Work Program. (These documents discuss policy and planning issues and activities.)

Response: DOT is not requiring an annual report; it is only asking agencies to consider it as one way of communicating with the community. As an alternative, agencies might want to create greater public awareness of the Prospectus or the Unified Work Planning Program.

Comment: One commenter indicated that his planning agency could be faced with significant delays or missed opportunities if citizens are obligated to receive information too far in advance.

Response: DOT believes that timely information to the public is very important and should be strived for. While there are sometimes limitations in the extent to which agencies can meet this goal, DOT asks planning agencies to be mindful that a brief delay in the planning process (to allow for full public consideration) can often lead to better information and avoid delays in the implementation phase (because the public disagrees with the chosen plan).

Comment: One commenter indicated a problem in learning about planned activities before an EIS is prepared and also in projects where no EIS is required.

Response: DOT has stressed throughout its Guidelines (and in its new urban planning regulations) the importance of early involvement. Interested citizens can also aid their own efforts by asking to be placed on the citizen mailing list maintained by State transportation agencies and metropolitan planning organizations.

Comment: One commenter asked DOT to develop standards for the length and layout of its fact sheets.

Response: This type of standard would be too restrictive, although the commenter's suggestion is worthwhile.

Comments: Two commenters expressed concern over the cost of paid advertisements as a method of reaching people.

Response: DOT is only asking planning agencies to consider paid advertisements as a way of reaching more people. In some cases, and in some localities, the cost will be worth the increased exposure; in others, it may not.

Comments: Three commenters stressed the need for citizen access to key technical documents developed by the agency and by independent consultants which concern planned projects. Two of these commenters emphasized that these documents should be available in area libraries for public review. Comments from two MPO technical committees argue that citizens have adequate access to technical documents and reports under the State open records law.

Response: The DOT Guidelines already address the issue of citizen access to technical documents and urge that opportunities for public inspection be provided at locations such as public libraries, city halls, neighborhood centers, project site field offices, and planning agency offices. With respect to State open record requirements, although in many instances these laws confer a right of access, citizens may be frustrated by procedures (and delays) for requesting documents. As the Guidelines indicate, planning agencies should make reasonable efforts to allow for public access to documents as a matter of policy.

Working with the Public (Section VII)

Comments: One State rehabilitation services agency criticized the proposed Guidelines for not containing more stringent requirements for ensuring participation by handicapped and sensory impaired individuals. The agency stressed that all locations chosen by planners for a public meeting conform with the American National Standards Institute, Inc. (ANSI) accessibility standards and that alternative media must be employed in notifying sensory impaired individuals of meeting dates and the availability of documents for public review. The agency also urged that the section of the Guidelines dealing with advisory groups be amended to require appointment of handicapped representatives. In addition, two MPO's stressed the need for agency flexibility in providing for special accommodations to meet handicapped participants' needs.

Response: The Department is committed to ensuring that handicapped individuals not be excluded from participation in, or be subjected to discrimination under, any program or activity receiving DOT financial assistance and questions whether effective project development to meet the transportation needs of handicapped users could occur without the involvement of such persons in the planning process.

Comment: One MPO questioned the proposed Guidelines' emphasis on evening meetings to facilitate a larger public turnout. The agency indicated that in its experience, many otherwise interested participants work during evening hours or are reluctant to attend evening meetings. The commenter proposed that daytime meetings or two meeting sessions (daytime/evening) might be more convenient.

Response: DOT agrees that, depending on local circumstances, daytime meetings may be conducive to a larger public attendance. In addition, several planning agencies have conducted both daytime and evening sessions to ensure maximum opportunities for participation at meetings. While the Guidelines already indicate that a public participation mechanism (such as a meeting) should occur "at times and places convenient to the public," it ultimately rests with the planning agency to determine local citizens' preferences and personal schedules in setting meeting particulars. However, an item has been added to the Guidelines which indicates that planners should consider scheduling both daytime and evening sessions for a meeting.

Comment: One commenter favored user panels as an additional mechanism for public involvement.

Response: DOT considers this suggestion worthwhile and has included this mechanism in the Guidelines as an additional example.

Advisory Groups (Section VIII)

Comments: Three commenters criticized the aspect of this guideline which calls for advisory groups to have a representative cross-section of citizens with a mix of people according to age, race, sex, and geographic distribution. One of these commenters claimed such wide representation does not necessarily mean that an individual will be representative of his/her group. One commenter objected to the recommendation that appointments be made on a staggered basis.

Two commenters objected to the recommendation that policy boards have an ex officio citizen member with one of these commenters stating that his agency does provide for an interrelationship between citizen advisory groups and policy boards. One commenter wanted a reference in the Guidelines to explain that State and local laws often determine the makeup of metropolitan planning organizations and transit boards. One commenter asked that citizen representatives with

voting powers be required on such boards. One commenter stated that representation of individuals with handicaps should be mandatory. Another commenter urged that advisory groups not be the only means of citizen participation.

Response: In its Guidelines, DOT is not attempting to apply rules to every situation, but it is suggesting that membership on advisory groups be balanced and not stacked so as to choose only those favorable to the agency. The degree to which a group can be balanced in the terms suggested by DOT might vary according to the size of the Group, the scope of the issues under consideration, and the geographic areas affected. The suggestion that appointments to long-term committees be on a staggered basis is to help ensure some type of continuity.

DOT acknowledges that some advisory group members may not always represent their segment of the community. This can happen on any advisory group whether it be a citizen advisory group, technical or policy group. This is why DOT recommends the use of several participation mechanisms, not just advisory groups.

Previous commenters to DOT's Advance Notice of Proposed Policy indicated that there has not been sufficient interrelationship between policy and transit bodies and citizen advisory groups; and many decisions have not reflected citizen or advisory group recommendations. DOT's guideline on advisory groups is intended to provide for a better working relationship between citizen advisory groups and policymaking bodies and to open the process to free it from many of the suspicions which now cast doubt on the integrity of the local transportation planning process. If planning agencies know of better ways to do this, DOT encourages them to take the necessary action. Naturally, all actions should be in accordance with State and local laws.

Comments: Two commenters were against giving any decision-making powers to advisory groups and did not believe that elected officials or planning agencies needed to justify their decisions to advisory group members.

Response: DOT's Guidelines do not confer decisionmaking powers to advisory groups, although planning agencies are free to do so if they wish. However, this guideline does ask that the lead planning agency clearly define the goal, role, and objectives of advisory groups to avoid any misunderstandings. Advisory group members often spend a good deal of time and effort analyzing issues and coming to meetings in hopes that their recommendations will be helpful and seriously considered. Without some type of response to advisory group members, they naturally doubt whether an agency has even considered their recommendations and questioned whether their efforts are worth their time and energy. This is not to imply that agencies always do need to consider the recommendations and let the advisory group know how their recommendations were used.

Comments: Three commenters expressed concern over the guideline calling for technical assistance to advisory groups. One of these commenters believed that such assistance would take the planning agency away from its primary mission and that providing technical assistance on any issue an advisory group wanted to pursue could perhaps be illegal. A number of commenters favored assistance to advisory groups. One commenter asked that agencies provide minutes of meetings soon after the meeting rather than waiting until the next meeting and that the chairperson of the advisory group verify minutes for accuracy.

Response: If a planning agency really takes a citizen advisory group seriously and wants the group's informed judgments to aid in the decisionmaking process, then the planning agency should provide the group with sufficient information and technical assistance. The types of information and technical assistance required will vary according to the issues. Naturally, all planning activities should be conducted in accordance with State and local laws.

While DOT agrees that minutes should be provided to advisory groups in a timely fashion and that the chairperson should review the minutes for accuracy, this level of detail should be left to local planning agencies and advisory group members.

Considering and Responding to Public Comment (Section IX)

Comments: Two commenters stated that sending summaries of public comments would be too expensive and time consuming. One of these commenters hoped that DOT did not mean that an agency would have to send an answer to a single question to all segments of the community. The commenters believed that having a summary available in a public place would meet the purpose of DOT's guideline. One commenter believed that planning agencies and local officials shouldn't have to explain their decisions.

One commenter believed that much of the public input which occurs early in the process cannot be documented since it involves informal sharing of ideas between citizens and planners and that this guideline seems to focus on public comments at the end of the process.

One commenter asked that DOT require that citizen comments have as much weight as that of businessmen and developers. One commenter asked that planning agencies be required to send DOT a copy of transcripts and tapes.

Response: DOT is not recommending that a planning agency send a response to a single question to all segments of the community. What this proposed guideline says is that decisionmakers should carefully consider public comments and that the public deserves a response to significant suggestions. How the responses are distributed and to whom they are distributed naturally depends on the importance and the nature of the issues and the degree of controversy. However, merely having summaries available in a public place would mean that most citizen participants will never know how these comments were used. The lack of response from planning agencies and the feeling that public comments were not even considered represented one of the most signficiant areas of public frustration in the citizen comments received on DOT's Advance Notice of Proposed Policy. DOT believes that this is an important area for all public agencies to address and that public understanding, and perhaps acceptance, of transportation decisions can be enhanced if citizen participants have evidence that their comments were seriously considered and why certain courses of action were deemed most advisable. If the public does not see the results of their involvement, even if those results are negative, they are likely to lose confidence in the local planning process.

While DOT agrees that informal participation is often difficult to document, it is important to summarize and let the public know how it was used. For example, when planners and citizens have worked together sharing ideas which resulted in certain courses of action or certain changes, this is important for the public to know because it demonstrates that the planning agency has been receptive and responsive to public participants.

In many instances, DOT rules do require transcripts of public meetings and hearings and that such transcripts or tapes be available to DOT. However, DOT does not wish to expand already existing requirements in this area because it would be expensive and burdensome for planning agencies, and DOT does not have the staff to read a transcript of every local meeting.

Miscellaneous Comments

Comment: One commenter requested that DOT prohibit local elected officials with a financial stake in a project's completion from participating in further decisions concerning the project.

Response: Situations involving alleged fraud and abuse in the decisionmaking process are beyond the purview of these Guidelines. However, the Department's Inspector General is authorized to conduct investigations and audits in order to detect and prevent fraud and abuse in all programs administered or financed by DOT. In addition, many States and localities have financial disclosure laws as well as codes of ethics for legislators which prohibit such practices.

Comments: Two commenters believed that the implementation of the Guidelines should be led by DOT's operating administrations, as in the past, and not by the Office of Consumer Liaison. One individual favored OCL's having the oversight responsibility.

Response: DOT's Office of Consumer Liaison is charged with overseeing the implementation of the Policy Statement and Guidelines. However, DOT's operating administrations will have responsibility for the day-to-day implementation of the Policy Statement and Guidelines and their own specific guidelines and regulations. By oversight, DOT means watching over the implementation, intervening when problems develop, and providing necessary Departmental coordination.

C. Comments on DOT Actions in Support of Policy Statement

Monitoring

Comments: Several commenters encouraged DOT to strengthen its monitoring efforts and one commenter asked that DOT's Office of Consumer Liaison play a greater role in monitoring efforts. One commenter asked that DOT make it clear where citizens can file complaints about alleged violation in local planning processes and problems regarding citizen participation.

Response: DOT believes that the issuance of its Guidelines will make it clear to planning agencies and to those monitoring State and local programs what is expected in the area of citizen participation. DOT recognizes that additional training of monitoring staff may be required to give them a better understanding of citizen participation problems and ways of avoiding them. DOT believes that the regional and field offices are the most logical places for monitoring responsibilities. However, the Office of Consumer Liaison may serve as a facilitator in this area when problems are brought to its attention. Appendix B, Part II, indicates where violations in citizen participation requirements in DOT financial assistance programs may be reported.

Operating Administrations' Guidelines

Comments: Eleven commenters focused attention on the guidelines to be developed by each DOT operating administration dealing with citizen participation in local transportation planning. While one MPO affirmed the need for such guidelines, another MPO, as a mayor of a Midwest city indicated, that separate guidelines would lead to increased local paperwork burdens, unnecessary complication, and greater confusion due to conflicting requirements. Three MPO's urged FHWA and UMTA to prepare joint guidelines to ensure consistency; similarly, a State DOT expressed concern that guidelines be consistent and avoid duplication. One State DOT and a national citizen's organization requested that the Department's operating administrations provide an opportunity for public review and comment on proposed guidelines prior to issuing final guidelines. One State DOT urged the various operating administrations to consult with State agencies prior to developing guidelines and proposed that DOT establish a coordinating committee to include State agencies that would assist in the guidelines development process.

Response: DOT's operating administrations are charged with the management of a broad array of programs affecting different modes of transportation and reflecting varying objectives, mandates, and approaches. Thus, in developing Departmental Guidelines, DOT was cognizant of the need to provide flexible, yet meaningful, guidance across the whole spectrum of transportation planning efforts. It was agreed that each operating administration, possessing detailed knowledge of programs it administers, would be in the best position to offer guidance for citizen participation in local transportation planning under these programs. This approach enables each operating administration to emphasize those citizen participation elements which are most effective given the particular program and mode of transportation.

It is important to reassure transportation planning entities that operating administrations' guidelines to be developed are not intended to create paperwork requirements or other compliance burdens. In addition, these guidelines will be developed with a view toward consistency with the Departmental Guidelines and, thus, it is highly unlikely that conflicting statements will be issued by the various operating administrations. The Office of Consumer Liaison, as part of its oversight responsibilities, will work closely with each operating administration to ensure the development of adequate, workable, and consistent guidelines. In addition, although DOT does not see the need for publication of proposed Guidelines for public review and comment in all cases, efforts will be taken to publish operating administrations' proposed guidelines where they differ significantly from the Departmental Guidelines. Similarly, a committment by DOT and its operating administrations to work with State agencies in the early stages of development of operating administrations' guidelines cannot be provided at this time.

As suggested by two commenters, consideration will be given to the joint issuance of FHWA–UMTA guidelines. However, while unification of guidelines may appear attractive at first blush, DOT will further consider whether those agencies affected by Federal programs administered by these two operating administrations—including MPOs, State DOTs, and transit authorities—will be better served by this approach.

Training and Technical Assistance

Comment: One commenter asked that DOT include all metropolitan planning organizations on its mailing list to receive DOT's transportation consumer newsletter.

Response: Approximately 150 State, local and regional transportation agencies now receive DOT's consumer newsletter, and DOT would be happy to add others to this list. However, the Office of Consumer Liaison only has authority to print 6,000 copies of each issue. If many metropolitan planning organizations are interested in receiving the newsletter, DOT will seek permission to print additional quantities. Free subscriptions can be obtained from Office of Consumer Liaison, I–50, DOT, Washington, DC 20590, 202/426–4518.

Comments: Two commenters urged DOT to play a greater role in providing technical assistance. One of these commenters discussed the need for informing local agency officials about various Federal programs and the availability of funds under these programs. The second commenter proposed that DOT's operating administrations provide technical assistance and consultations to citizens when needed.

Response: The U.S. Office of Management and Budget's *Catalog of*

Federal Domestic Assistance provides descriptions of Federal-aid programs of Federal departments and agencies in a single publication. The Catalog also provides information on applicant eligibility, grant application procedures and proposal writing, and administrative requirements of Federal circulars. The Office of Management and Budget distributes free copies of the *Catalog* to numerous State and local offices and agencies, including planning agencies. DOT's operating administrations can be contacted for more specific information concerning DOT financial assistance programs. Specific information concerning DOT-funded R&D programs and other technical assistance can be obtained from DOT's Office of Technology Sharing (I–40, DOT, Washington, DC 20590, 202/426–4208).

It is anticipated that the guidelines to be issued by each DOT operating administration will address the role of their regional and division offices in the citizen participation process. OCL, as part of its function to oversee and coordinate the development of operating administrations' guidelines, will also ask each agency to address the role of these offices in providing technical assistance to citizens.

Development Projects

Comments: A few commenters were against DOT's planned development projects; one of these commenters believed that such projects were unnecessary because other Federal agencies have already conducted demonstration projects on innovative citizen participation techniques. This commenter also did not want planning funds now available to metropolitan planning organizations to be used for the development projects. A few commenters supported the development projects.

Response: DOT appreciates the concerns expressed by metropolitan planning organizations on this issue. However, DOT cannot provide a conclusive answer on the source of funds until the Office of Consumer Liaison and DOT's operating administrations fully explore the possible range of development projects and the available sources of funding. However, funding for these projects is likely to come from a variety of sources and DOT does not envision the size or cost of its development projects to be so large as to dilute seriously the pool of planning organizations. The fact that other Federal agencies have conducted demonstration programs on citizen participation does not reduce the necessity for DOT to find ways to improve citizen participation in local transportation planning through the use of its planned development projects. DOT is looking at some of the things that have been done by other Federal agencies to make sure that mistakes are not repeated; however, DOT does not mind duplicating successful approaches.

Summary of Major Changes

In response to public comment on its proposed Guidelines, DOT has made the following major clarifications and changes (noted by brackets) in its final Guidelines.

Section I—Introduction

3rd paragraph

"These Guidelines are written to allow transportation planning agencies considerable flexibility, yet at the same time let these agencies know what is expected of them." (The Guidelines are not all-inclusive and they may not be applicable to every planning situation. However, they do illustrate the kind of planning and care that is necessary for effective citizen participation programs.)

"DOT's operating administrations * * *."

Section IV—Developing a Plan for Participation

1st paragraph

"* * * Citizen and community leaders can be helpful and should participate in developing a plan for citizen involvement and in identifying community transportation goals." (A plan need not be a separate document; and when issues are closely related, a plan may cover more than one planning activity. While such plans will vary according to the issues under consideration, a citizen participation plan for most activities should include:)

Section VII—Working with the Public

3rd paragraph

"Any public participation mechanisms should be used at times and places convenient to the public. (*Delete:* Whenever possible, public meetings should be held generally during non-work hours, such as evenings and weekends. *Add:* This could mean holding sessions both in the afternoon and evening or on weekends to facilitate greater public involvement. Whenever possible, meetings should be held) at locations which are accessible to public transportation before and after meeting times * * *."

Section IX—Considering and Responding to Public Comments

Beginning of 1st paragraph: *Add*

(Decisionmaking is the responsibility of State and local officials. However, this responsibility carries with it the duty to listen and carefully consider public views and recommendations.)

"People are apt to * * *"

(Department of Transportation Act, 49 U.S.C. 1651 *et seq.*)

In consideration of the foregoing, the following Guidelines are issued.

Issued in Washington, D.C. on January 12, 1981.

Neil Goldschmidt,

Secretary of Transportation.

(3) DOT Guidelines on Citizen Participation in Local Transportation Planning [1]

I. Introduction

When examining the best way to implement its policy on citizen participation, DOT balanced two important priorities:

(1) To ensure that citizens in every community have the opportunity to be involved actively in local transportation planning efforts in their area; and

(2) To allow the implementors of this policy—Federal, State, local, and regional transportation planning agencies—sufficient flexibility to tailor citizen participation programs to their communities and to the specific transportation plans being developed.

What evolved are Guidelines which identify and describe key elements which should be part of an active citizen participation effort. In the Guidelines, DOT describes certain citizen participation principles and provides suggestions on how these principles might be applied to specific citizen participation techniques.

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[1] DOT operating administrations which do not have mandated Federal-aid programs for local transportation planning have the following interests in these Guidelines.

For purposes of implementing by the National Highway Traffic Safety Administration and the Research and Special Programs Administration, the phrase "local transportation planning" shall be construed to mean "projects and programs which use Department of Transportation funds and which are planned with the involvement of local governments."

The Coast Guard has no programs that can be described specifically as local transportation planning projects, but does have rulemaking programs concerned with marine navigation and safety, and marine environmental protection, that can affect local communities or local marine transportation. Techniques and procedures to improve citizen participation in these programs will be provided for under the Coast Guard Final Consumer Affairs Plan. The Coast Guard also has ongoing procedures in the area of recreational boating, aids to navigation, and marine environment where citizen concerns will continue to be addressed consistent with the spirit and intent of these Guidelines.

In the case of the St. Lawrence Seaway Development Corporation, these Guidelines shall apply to any proposed major Federal action significantly affecting the environment.

These Guidelines are written to allow transportation planning agencies considerable flexibility, yet at the same time let these agencies know what is expected of them. They are not all-inclusive, and they may not be applicable to every planning situation. However, they do illustrate the kind of planning and care that is necessary for effective citizen participation programs.

DOT's operating administrations will issue more specific guidance relating to their own programs. DOT's operating administrations will also be responsible for ensuring that DOT's Policy Statement is followed and that the Guidelines are implemented to the fullest extent in their program areas.

These Guidelines apply to all transportation planning and development programs which involve the use of DOT funds (see Appendixes A and B). The term "lead planning agency" means the Federal, State, local, or regional body which has primary responsibility for a transportation planning activity.

II. Characteristics of Citizen Participation

Citizen participation is an open process which seeks out and encourages early and continuous public involvement throughtout the development of transportation plans and projects. It is not a single event or even a series of events, but part of a coordinated effort to develop a transportation plan which responds to community needs and has a wide degree of public acceptance. Citizen participation is an integral part of the overall transportation planning process and is most effective during the early planning stages before concepts/directions have been set and while the largest number of alternatives are under consideration. Citizen participation provides the mechanism whereby planning staff and citizen participants can freely exchange information, ideas, and values.

Citizen participation does not eliminate conflict, but it allows conflict to surface early enough in the process so that alternatives can be explored in a spirit of cooperation rather than confrontation. A transportation plan which is developed "with" the public is apt to have greater public support than one that is designed "for" the public.

III. Commitment

Agency commitment to the principles of citizen participation is at the heart of any successful citizen involvement program. Such commitment recognizes that a planning agency may not have all the answers, that the public has the right to participate in the planning process, and that the planning agency has the duty to inform and involve the public and to respond to public concerns on transportation planning issues.

Admittedly, commitment is not something which can be regulated because commitment to a large extent involves personal attitudes of planners and decisionmakers. However, commitment does have certain visible measuring sticks such as the openness of the process, the adequacy of information prepared for the public on the planning effort, the degree to which citizen participation is integrated into the overall transportation planning process, the level of staffing and funding devoted to citizen participation, and the extent to which an agency responds to public suggestions.

IV. Developing a Plan for Participation

Just as architects and engineers draw up blueprints and plans for the construction of a subway or roadway, so too should a lead planning agency, working with its community, develop a plan for how and when citizens will be involved in each transportation planning and project development activity. Withot such plans, agency citizen participation efforts can become too haphazard and can run the risk of allowing too little time for public understanding of the issues. Citizen and community leaders can be helpful and should participate in developing a plan for citizen involvement and in identifying community transportation goals. A plan need not be a separate document; and, when issues are closely related, a plan may cover more than one planning activity. While such plans will vary according to the issues under consideration, a citizen participation plan for most activities should:

Clearly define agency transportation goals and objectives;
Be integrated fully into the overall planning process;
Identify legal requirements and constraints which influence the scope of citizen participation;
Identify key issues and decision points and how they relate to citizen participation activities;
Describe citizen participation mechanisms to be used and the timing of such efforts; including efforts to notify the public and informational materials which will be prepared for the public;
Establish procedures for considering public comments and responding to those comments;
Commit adequate resources, including staff, money for printing, meeting rooms, transcripts and minutes, announcements, graphics and technical assistance, where needed;
Provide for periodic evaluation of effectiveness of the citizen participation program in order to identify weaknesses and modify participation efforts when necessary.

Identifying Public Participants

It is important to identify those groups and individuals who may be interested in and/or affected by transportation planning programs or projects. A list of people to be informed about a planning activity should be developed at the beginning of the planning process and expanded regularly during the process as new groups and individuals are identified and new alternatives considered. This list should also include people who have been involved in past transportation planning activities. Depending on the scope of the particular planning effort, the affected community may range from a neighborhood to a large region. Care should be taken to identify a broad range of participants representing different sectors of the community. Certainly, special efforts should be made to notify personally those who might be affected directly by specific transportation alternatives, such as people living in potential transportation corridors.

Depending on the nature of the transportation planning activity, planning agencies might want to consult with various groups and organizations including but not limited to the following:

Other government and public service agencies, including agencies serving the handicapped, elderly, low income, disadvantaged and minority communities;
Civic and neighborhood associations;
Consumer and public interest groups;
Bicycling groups;
Environmental groups;
Religious and ethnic groups;
Business groups;
Civil rights organizations;
Labor organizations;
Groups representing elderly and handicapped citizens;
Merchants and small business organizations.

VI. Informing the Public

The public can contribute most effectively in the local transporation planning process when they are provided with accurate, understandable, timely, and relevant information on transportation planning issues. Information efforts should be an on-going part of the citizen participation process from the exploration of transportation alternatives through the

implementation stage of a project. The lead agency should make sure that the information reaches the public early enough in the process to permit their active participation. The planning agency should make the implications of the various alternatives clear to the public so that they may make informed decisions on whether or not to participate.

Because many information activities take time to prepare and to arrange, lead planning agencies should build the necessary time requirements into the public participation plan. All public information documents or announcements should identify a person to contact for further information.

In addition to providing the public with information on specific planning activities, lead planning agencies might also consider providing the public with an overview of all transportation planning activities on a regular basis, perhaps once a year through an annual report.

Notifying the Public. The public should be notified well in advance of specific planning and citizen participation activities so that they may have enough time to respond to agency questions and proposals. Background information on planning issues should be made available and advertised well in advance of decision points and public participation activities. It is important to make announcements concerning planned activities relevant to the public and to avoid the use of technical jargon wherever possible. Agencies should use a variety of mechanisms for getting the word out to the public, for example:

Direct mailings
Public service announcements
Display ads in newspapers
Announcements on public transit vehicles and at transit stops
Community bulletin boards
Radio and TV talk shows
Agency and community newspapers
Flyers
Inserts in local papers

Keeping the Public Informed. One way to maintain the interest and involvement of the general public is to provide regular updates on planning activities and problems. This is especially important for long-term planning efforts in which the public may lose interest or confidence in the agency if they are not kept apprised of on-going activities. Planning agencies can do this with the various mechanism mentioned above.

Types of Information. Different public sectors have different information needs. For instance, residents who might be affected by a transportation proposal will want to know what the project will do to their neighborhood, or how it will affect their own transportation. A mere description of the proposal will not necessarily provide them with enough information to form opinions and judgments. Merchants will also have special needs. Those involved in environmental, social, and transportation issues may need more technical data and assistance to help them in exploring and assessing various transportation alternatives.

Agencies might consider a variety of mechanisms to meet these different information needs, such as simple fact sheets for a general audience and more detailed brochures and technical reports for individuals and businesses who might be affected by a proposed transportation alternative.

Background papers on how the planning process works, how the public can participate, a description of specific issues, key decision points and sources to contact for further information can be very helpful to citizen participants. Such papers might describe the social, economic, and environmental implications on each alternative. Any information which an agency produces should be written to solicit public input, not to sell a particular proposal.

Packaging Information. Agencies should be careful to prepare information with the general public in mind. Information should contain as little technical jargon as possible. When technical terms have to be used, they should be defined as clearly as possible. The use of maps and other graphics can aid considerably in public understanding of the alternatives.

Making Effective Use of the Media. Establishing working relationships with people both in print and broadcast media can be an invaluable resource for transmitting information to the public. In many ways, the press shares some of the same information needs as the general public. For example, planning agencies should be prepared to explain to editors and broadcasters in clear, concise language what impact certain proposals might have on the community.

Planning agencies can deal more easily with the press by learning their deadlines and procedures and working with them. A press briefing should not be planned for 3:00 when the paper's deadline is 3:30. Also be mindful of the deadlines for weekly and community papers.

Lead planning agencies can provide information to the press in a variety of ways—letters, informal telephone contact, press releases, press briefings. Planning agencies should keep press releases brief (no more than two double-spaced typed pages), but have additional background information available. Planning agencies should be open in their dealings with the press and be careful to avoid misunderstandings. Agencies should also be careful not to overcontact the media with insignificant items, or else the big issues may not receive the attention they deserve. Cover all aspects of the issues when they are controversial or could cause problems. Agencies might also work with editors in developing a calendar of public meetings and hearings.

Radio and TV talk shows can help to air the issues especially if an agency official can respond to questions on the air or to subsequent inquiries in the office. Public television is also opening new opportunities for getting information to the public. Planning agency officials might get involved in structured panels, single presentations, or even some type of polling situation via public TV. Public TV might also be interested in televising public meetings. Whenever possible, let the public know in advance when agency officials will discuss issues on radio or TV.

Paid Advertisements. Because the public often does not take note of legal notices in the classified section of the newspaper, agencies might consider paying for a display ad on important planning activities. Radio and TV stations sometimes provide public service announcements on planned meetings. Here, again, agencies should keep in mind copy deadlines.

Access. The planning process should be open. This means that citizens should have the opportunity to review appropriate technical documents, including technical memorandums/assumptions on the various alternatives while a project is still under consideration and before decisions have been made. To the extent possible, major documents such as draft environmental impact statements, technical memorandums, narrative reports, position papers, and alternative analysis documents should be open for public viewing at various locations in the community such as public libraries, city halls, neighborhood centers, project site field offices, planning agency offices, etc. Local agencies should make the public feel at ease in reviewing such documents and should provide staff assistance to answer technical questions. Citizens should be made aware of the availability of such materials.

Fees for Copying. Wherever possible, lead planning agencies should make copies of relevant documents available to the public free of charge. If charges

must be made, they should be set as low as possible.

Conferences. When the lead planning agency sponsors conferences/activities which impact the general citizenry of the area, it should invite the public and try to make provisions for waiving any conference fee.

VII. Working with the Public

Public information is a means of generating public understanding of the issues and notifying them of participation opportunities. Participation occurs when the agency starts working with the community to explore the issues, exchange views, and select alternatives.

While involvement efforts may include public hearings and advisory groups, they should not be limited to such formal mechanisms. In fact, public hearings, though often required by law, when used alone may not be the most effective means of influencing planning decisions. The agency should use mechanisms tailored to the existing community and which will involve the widest range of the interested public. These efforts may and should take several forms such as using existing community resources (neighborhood councils, meetings of local groups), town meetings, public meetings and workshops, surveys, user panels, telephone hotlines, speakers' bureaus, citizen advocates, and ombudsmen. Lead planning agencies should examine existing citizen participation literature to help them decide the best participation mechanisms for their communities.

Any public participation mechanism should be used at times and places convenient to the public. This could mean holding sessions both in the afternoon and evening or on weekends to facilitate greater public involvement. Whenever possible, meetings should be held at locations which are accessible to public transportation before and after the meeting times. Meeting places should be accessible to elderly and handicapped persons; special arrangements should also be made for those with hearing and sight impairments. Agencies should provide appropriate security arrangements and they might consider providing transportation and nursery services to make it easier for citizens to participate.

Effective involvement activities occur early enough in the process to ensure that the public's options are not limited and to permit agency response to the public before decisions are made. The public should be notified well in advance so they have time to study the issues.

Agencies should inform participants about special meeting procedures and tell the public how it intends to respond to public suggestions.

These activities should be conducted in a fashion which promotes the exchange of ideas and should specifically avoid a defensive posture on the part of the agency. Technical staff should be available to answer questions about specific proposals and to explore alternatives suggested by citizens.

When participation activities are announced, notices should identify matters to be discussed, the format of the discussion, what printed information is available, and how to obtain it. When an agency has reached tentative conclusions, they should be stated in the notice. The agency should identify any significant areas in which they are most desirous of public comment.

VIII. Advisory Groups

Planning agencies now use a variety of task forces, committees and boards to assist them in making planning decisions. When used effectively, such groups can be an important element of the citizen participation process. While the scope and purposes of these groups may vary, certain basic procedures should be followed. Care should be taken to achieve a balanced membership in terms of socio-economic, racial, sexual and geographic distribution. For permanent or long term committees, appointments to the advisory groups should be made on a staggered basis to provide for continuity. The goals, role, and limitations of such groups should be clearly defined to avoid confusion and frustration. If the life expectancy of the group is short, this should be clearly stated. Planning agencies should provide adequate staff support to enable advisory group members to analyze fully pending issues. Information should be presented to advisory groups early and throughout the process so that the agencies can have the benefit of group views in making decisions. Agencies should not expect advisory groups to approve automatically or "rubber stamp" agency recommendations; nor should advisory groups expect to make final decisions. However, agencies should seriously consider group recommendations and respond to advisory group suggestions and let members know why certain suggestions were or were not used. Meetings of advisory groups should be held at convenient times and places for group members, and these meetings should be advertised and open to the public.

In selecting advisory group members, lead planning agencies should consult with community leaders and advertise openings on the advisory group. General advisory groups should have a balanced representation including elected officials, business interests, public interest groups, technical advisors, and citizen representatives.

Citizen advisory groups should be composed of representative cross-section of citizens, with a mix of people according to age, race, sex, and geographic distribution. Low-income and handicapped people should be represented on such groups. In addition to advising the planning agency, citizen advisory groups might also be used for community outreach efforts. Planning agencies and transit boards might also consider using advisory groups members to serve as ex-officio members of policy committees and boards. Such formal groups could benefit from having the views of transit users and other representative citizens.

IX. Considering and Responding to Public Comments

Decisionmaking is the responsibility of State and local officials. However, this responsibility carries with it the duty to listen and carefully consider public views and recommendations.

People are apt to have different views on how to meet transportation needs and how to solve specific transportation problems. While planning agencies cannot always mesh conflicting views, they should demonstrate, in their decisions and in their actions, that they have fully understood and considered public concerns. Agencies should establish procedures for collecting, analyzing, considering, and responding to public comments.

Planning agencies receive public comments from various sources—including telephone conversations, letters, public meetings and workshops, informal contacts with citizens, surveys, and public hearings. Data from all these sources should be collated and analyzed so that public suggestions may be considered by transportation planning staff and decisionmakers. Such analysis should identify segments of the community which participated (e.g., affected residents, citizen groups, business, other government agencies), summarize meaningful public comments (both majority and minority points of view), and explain how they relate to the decisions to be made. Such a summary can serve as a valuable tool for decisionmakers in gauging possible public reaction and/or acceptance to pending decisions. Such summaries should be prepared during each major planning phase, and perhaps more often when the process extends over a long

period of time. Public comments and the analysis of the comments should be filed in a central location and be available for public inspection on request.

Agencies should also respond to those who participated in planning efforts and indicate how public suggestions were used or why their suggestions could not be accommodated. This can be done by personal letter when there are a small number of participants. However, when there are a large number of participants, agencies may find it easiest to send a summary of comments and responses to all those who participated. The key is letting participants see the results of their involvement. Citizens still may not agree with all planning decisions, but they may understand the decisions better if they know why certain options were or were not chosen. Citizens will also be more apt to participate in future planning activities if they know that their recommendations are given serious consideration. Such summaries may also be helpful to DOT in reviewing transportation planning efforts.

Appendix A: Policy Statement on Citizen Participation in Local Transportation Planning

U.S. Department of Transportation policy actively supports and strongly encourages citizen participation in the development of Federal, State, regional, and local transportation plans and programs.

Citizens' rights to know about public issues and to participate in the decisionmaking process are inherent in our system of government. To ensure that transportation systems and projects are in the best overall public interest, and that all concerns are adequately addressed, citizens' voices should be heard when a community makes its transportation plans.

This DOT policy, therefore, recognizes and reaffirms the right and the need for citizens to take an active part in transportation decisions affecting their lives and their communities.

DOT views citizen participation in local planning as:

- An essential element in the development of transportation programs and decisions;
- A resource that improves decisions by broadening the base of information which is considered by public officials;
- A tool for influencing agency decisions so that they respond to public needs and protect the rights of all to be heard.

Citizen participation is useful and effective when citizens are brought into the planning process during the earliest stages and when planners and officials continue to inform citizens and to ask for their views during all stages of the planning and development process.

It is through the combined and continuing efforts of officials, citizens, and planners that a community produces rational, workable, and satisfying transportation plans, thus assuring the fullest benefits from the use of public funds.

Goal of This Policy

The goal of this policy is to help communities plan transportation systems that are safe, efficient, cost-effective, energy-efficient, environmentally satisfactory, and responsive to the needs of the broadest range of citizens. DOT firmly believes that the people who use a transportation system, or are affected by it, should have a voice in deciding the "where," the "what," and the "when" of the modes that move in their community.

Roles in the Planning Process

In communities where transportation planning is most effective and satisfactory, active citizen participation is part of the planning process. Active citizen participation exists where officials, citizens, and agency staffs work together, with each group playing its specific role in the planning process.

The role of officials includes:

- Assuring that citizens will receive adequate opportunity to participate;
- Assuring that information presented to citizens is clear, complete, and timely;
- Listening attentively to citizens's views;
- Giving full consideration and response to citizens's concerns, comments, and recommendations.

The role of citizens includes:

- Devoting time and effort to participate;
- Learning about the planning process and the needs of all sectors in the community;
- Contributing from their special knowledge of the community;
- Identifying problems;
- Reviewing plans and proposing alternatives.

The role of agency staffs includes:

- Expending time and effort necessary to work with citizens;
- Keeping citizens informed;
- Providing adequate technical support;
- Involving citizens at all stages throughout the planning process;
- Making a conscientious effort to get needed information from citizens.

To achieve active citizen participation in local planning, these roles should be incorporated fully into the planning process by every Federal, State, regional, and local agency that used DOT funds in providing transportation facilities or services. (Key elements of an active citizen participation effort are identified and explained in the Proposed Guidelines which are being issued with this Policy Statement.)

Implementation of This Policy

In implementing this policy, DOT and its operating administrations will—

- Promote an atmosphere within government which encourages citizen participation in local planning by providing training, technical assistance, and technology sharing for officials and staff members of DOT and State, regional, and local transportation agencies;
- Assist citizens and their organizations by sponsoring outreach, information/education, technical assistance and, where appropriate, financial assistance to help citizens participate in local planning and project development;
- Support this Policy Statement by monitoring the progress of required citizen participation in State and local transportation planning and project development;
- Assure full compliance with citizen participation requirements.

Appendix B: Federal-Aid Requirements for Citizen Participation in Local Transportation Planning

Introduction

Part I of Appendix B [1] lists those DOT Federal-aid programs which have statutory and/or regulatory requirements for citizen participation. These programs are listed by DOT operating element and each program is designated by the title and number assigned to it in the "Catalog of Federal Domestic Assistance" (CFDA), a volume which includes all domestic programs involving Federal grants and financial assistance, published by the Office of Management and Budget. Part II of Appendix A gives brief explanations of how Federal-aid programs are administered in various DOT operating administrations.

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[1] This Appendix originally appeared in the Federal Register on October 30, 1980. Several revisions have been made to reflect changes in the FHWA–UMTA urban transportation planning regulations.

Appendix B.—Federal-Aid Requirements for Citizen Participation (CP) in Local Transportation Planning

Part I.—Office of the Secretary (OST)

Program, CFDA number, authorization	Statutory CP requirements	Monitoring/evaluation of statutory requirements	Regulatory CP requirements	Monitoring/evaluation of regulatory requirements	Funding
None	None	None	None	None	None.

Part I.—Federal Aviation Administration (FAA)

1. Airport Development Aid Program,* No. 20.102, Pub. L. 91-258, as amended, 49 U.S.C. 1701 *et seq.*	Public hearings or an opportunity for public hearings to consider economic, social, and environmental effects of an airport location, an airport runway, or a runway extension. 49 U.S.C. 1716(b)(1).	When requested, project sponsor shall submit a copy of hearing transcript to the Secretary. 49 U.S.C. 1716(d)(2).	a. Before submitting a request for aid, the sponsor must afford an opportunity for a public hearing. 14 CFR 152.117 (45 FR 34789, 5/22/80). See also Airport Environmental Handbook (FAA Order 5050.4, Chapters 2.18, 8.49 (45 FR 50927, 50940, 8/25/80. b. FAA Order 1050.1C, "Policies and Procedures for Considering Environmental Impacts," Appendix 8, incorporates requirements of 49 U.S.C. 1716(d)(1) (45 FR 2299, 1/10/80). Compliance with FAA Order 5050.4 above, assures compliance with FAA Order 1050.1C. (See Appendix B, under section for Federal Aviation Administration for a description of FAA Order 1050.1C).	If a hearing is held, sponsor must provide to the Administrator a summary of issues raised, alternatives considered, conclusions reached and stated reasons. Upon request, a verbatim transcript must be furnished to the Administrator. 49 CFR 152.117(e). If a hearing required by 49 U.S.C. 1716(d)(1) is not held the sponsor must certify that notice of opportunity for a hearing was provided but no request for a hearing was received (49 U.S.C. 416(l).	a. No specific provisions. b. No specific provisions.
2. Airport Planning Grant Program,* No. 20.103, Pub. L. 91-258, as amended, 49 U.S.C. 1713.	Projects grants to planning agencies to develop airport master plans and systems plans. Citizen participation not mandatory but strongly encouraged.	Citizen participation aspects of the plan are evaluated in the same context as other elements that were funded under the grant, engineering, traffic forecasting, financial planning, etc.			Funding is available as integral part of the planning process if proposed by the sponsor.

*Authorization expired 9/30/80.

Part I.—Federal Highway Administration (FHWA)

Federal-Aid Highway Planning, Research and Development, Pub. L. 85-767, as amended (Federal-Aid Highway Program), No. 20.205, 23 U.S.C. 101 *et seq.*	a. State highway department submitting plans for certain Federal-aid highway projects shall afford the opportunity for public hearings.	Copy of hearing transcript to be submitted to FHWA. 23 U.S.C. 128(b).	a. Planning process must include provisions to ensure public involvement. 23 CFR 450.120(a)(3); Appendix B, Advisory Information on Planning for Elderly and Handicapped Persons, emphasizes that elderly and handicapped persons are to be included in the planning process.	Each State highway agency has developed an "Action Plan" which outlines procedures and responsibilities for the involvement of other agencies and the public. FHWA reviews and monitors States' implementation of Action Plans at appropriate intervals. In addition, FHWA personnel attend as observers and sometimes participate in the meetings or public hearings.	Funds are authorized by 23 U.S.C. 104 and 307(c) as amended. Administrative limitation on project-related public participation expenses prohibits reimbursement with Federal-aid funds for personnel expenses of individuals and groups. 49 CFR 790.
	b. State highway department submitting plans for an Interstate system project shall afford the opportunity for hearings for affected rural area residents to object. 23 U.S.C. 128(a).		b. Regulations on Process Guidelines require public participation in the development of State environmental action plans and as part of those plans the establishment of public involvement procedures covering the entire highway development process. 23 CFR 795.10.	Several types of courses and workshops which have been conducted by FHWA throughout the country in order to improve highway agencies' public involvement activities.	
			c. Public notification and, in appropriate instances, opportunity instances, opportunity for public participation in the assessment of environmental impacts of highway projects. 23 CFR 771.	Evaluation of citizen participation in the transportation process is made through the certification reviews. Citizen participation is currently receiving major emphasis in these reviews.	
			d. Public hearings or an opportunity for public hearings required during the consideration of highway location and design proposals. 49 CFR 790. Corridor public hearings also required. (Applies to highway agencies which have not developed approved Actions Plans, pursuant to 49 CFR 795.10).		

Appendix B.—*Federal-Aid Requirements for Citizen Participation (CP) in Local Transportation Planning*—Continued

Part I.—*Federal Railroad Administration (FRA)*

Program, CFDA number authorization	Statutory CP requirements	Monitoring/evaluation of statutory requirements	Regulatory CP requirements	Monitoring/evaluation of regulatory requirements	Funding
1. Local Rail Service Assistance (National Rail Service Continuation Grants), No. 20.308, Pub. L. 89-700, as amended, 49 U.S.C. 1654.	a. State is eligible to receive rail service assistance if it has established an adequate plan for rail services as part of an overall planning process for all transportation services. 49 U.S.C. 1654(j)(1). b. To be eligible to receive assistance, State must maintain adequate programs of investigation/research, promotion and development with provisions for public participation. 49 U.S.C. 1654(j)(c).	No direct monitoring/evaluation; each recipient to keep records which disclose amounts spent. 49 U.S.C. 1654(m)(1).	a. State planning process shall provide for an opportunity for participation by persons interested in rail activity in the State and adjacent States, where appropriate. At a minimum, public hearings with adequate notice are required. 49 CFR 266.15(e). b. Each State rail plan shall describe its planning process which includes participation of the general public. 49 CFR 266.15(c)(10). c. States eligible for rail service continuation assistance under the Region Rail Reorganization Act of 1973.* Pub. L. 93-236, 45 U.S.C. 701 et seq., are required to afford interested persons, such as users of rail transportation, labor organizations, environmental groups, and the public generally timely opportunity to express their views in the development of the State Rail Plan. 49 CFR 266.9(a).	State Rail Plans submitted to FRA for review and approval. 49 CFR 266(a).	Rail planning funds may be used by citizen participation.
2. Railroad Rehabilitation and Improvement a. Guarantee of Obligations, No. 20.309, Pub. L. 94-210, § 511, 45 U.S.C. 821 *et seq.*			Applicants for assistance under § 511 must provide FRA with a discussion of problems and objections raised by other Federal, State, or local agencies, and citizens with respect to the impact of a proposed project on the environment. 49 CFR 269, Appendix, Part II, F.	No specific provision	No specific provision.
b. Redeemable Preference Shares, No. 20.310, Pub. L. 94-210, § 505, 45 U.S.C. 821 *et seq.*			Applicants for assistance under § 505 must provide FRA with a discussion of problems and objections raised by other Federal, State, or local agencies, and citizens with respect to the impact of a proposed project on the environment. 49 CFR 269, Subpart A, Appendix, Part II, F.	*No specific provision	No specific provision.

*Continued under the 4R Act of 1976, Pub. L. 94-210, Title VIII.

Part I.—*National Highway Traffic Safety Administration (NHTSA)*

None	None	None	None	None	None.

Part I.—*Research and Special Programs Administration (RSPA)*

None	None	None	None	None	None.

Part I.—*St. Lawrence Seaway Development Corporation (SLSDC)*

None	None	None	None	None	None.

Part I.—*U.S. Coast Guard (USCG)**

None	None	None	None	None	None.

*No current grant or loan programs involving citizen participation elements exist. The funding authority for Boating Safety Financial Assistance Program (CFDA No. 20.005) expired at the end of FY-80.

Part I.—*Urban Mass Transportation Administration*

1. Capital Improvement Grants, No. 20.500, Pub. L. 88-365, § 3, as amended, 49 U.S.C. 1602.	Certification by applicant of adequate public notice and opportunity for public hearings concerning projects which will substantially affect a community or its mass transportation services. 49 U.S.C. § 1602(a).	a. Hearing transcript to be submitted with application.	To receive Federal assistance, urbanized areas must have a transportation planning process which ensures public involvement, 23 CFR 450.120(a)(3), also incorporation in 49 CFR 613.100.	Annual review and evaluation of planning process, 23 CFR 450.122(a).	No specific provisions, administrative limitation requires all funds to be dispersed through duly elected or appointed body

Appendix B.—*Federal-Aid Requirements for Citizen Participation (CP) in Local Transportation Planning*—Continued

Part I.—*Urban Mass Transportation Administration*—Continued

Program, CFDA number authorization	Statutory CP requirements	Monitoring/evaluation of statutory requirements	Regulatory CP requirements	Monitoring/evaluation of regulatory requirements	Funding
		b. Administration shall determine that consideration has been given at public hearing to environmental effects of proposed project. 49 U.S.C. 1611 (b) and (c).			
2. Capital Improvement Loans, No. 20.501, Pub. L. 89-365, § 3 as amended, 49 U.S.C. 1602.	See 1, above	See 1, above	See 1, above	See 1, above	See 1, above.
3. Formula Grant Program, No. 20.507, Pub. L. 89-365, § 5 as amended, 49 U.S.C. 1604.	a. Certification by recipient of adequate public notice and opportunity for public hearing and submission of report.	a. A copy of transcript of hearings to be furnished upon Administrator's request.	a. See 1, above	a. See 1, above	See 1, above.
	b. Assurances to be provided to Secretary that any public mass transportation system will not change fares or substantially change any service except after holding a public hearing or providing an opportunity for such a hearing. 49 U.S.C. § 1604(j).	b. UMTA reviews on a case-by-case basis, as needed.	b. Implements statutory requirements that public hearings be held prior to fare change or substantial service change. 49 CFR 635 (45 FR 25301, 4/17/80).	b. UMTA Administrator may impose sanctions for noncompliance. 49 CFR 635.11 (45 FR 25301, 4/17/80).	

Part II.—How Federal-Aid Programs Are Administered in Operating Administrations of the Department of Transportation

Federal Aviation Administration

The objectives of the Federal Aviation Administration's (FAA) Planning Grant Program (PGP) are to improve airport planning, to promote the effective location and development of airports, and to develop an adequate National Airport System Plan (NASP). PGP grants are available to planning agencies and public agencies which act as sponsors for airport system planning and airport master planning studies, respectively.

PGP funds may be used by these sponsors for citizen participation activities in support of their airport planning. These citizen participation activities include public hearings, public information sessions, coordination meetings, and other communication conducted for the purpose of ensuring that the affected public (planning agencies, community organizations, interested individuals, affected local governments, and airport users) is informed about the planning study and have opportunities to be involved in its development. The responsible local FAA Airports field office or regional office will assist sponsors in incorporating appropriate participation activities, such as those described above, into the design of the study. In the event that an individual or community organization should feel that adequate coordination with the public has not been provided and that direct communications with the sponsor have not satisfactorily corrected the situation, the local FAA Airports field office or regional office monitoring the study should be contacted.

For more information, contact Robert B. Hixson, Community Planner, Division of Community and Environmental Needs, Office of Airport Planning and Programming, APP-600, Federal Aviation Administration, Washington, DC 20591; (202) 426-8434.

Federal Highway Administration

Under the Federal-aid highway program, the States and the Federal Government operate in a partnership. State highway agencies initiate, plan, design, build, and operate highway projects. The Federal Highway Administration (FHWA) in turn provides guidance and financial assistance, and is responsible for approvals at key stages of highway development.

Federal-aid procedures provide for public involvement during the planning and development of a project. Federal regulations require each State highway agency to spell out the steps it will follow to involve other agencies and the public in the planning, location, and design of a highway. These procedures are detailed in a State's Action Plan. A copy of a State's Action Plan may be viewed at the State highway agency in the State capitol, or at the FHWA Division Office, generally located in the State capitol (exceptions: Maryland's FHWA division office is in Baltimore; Iowa's FHWA division office is in Ames). Concerns about an alleged failure to provide for public involvement should be directed to the Division Administrator in the appropriate FHWA Division Office.

For further information, contact Stephen J. Kimlicko, Chief, Environmental Process Branch, HEV-12, Room 3232, Federal Highway Administration, 400 Seventh Street, SW, Washington, DC 20590; (202) 426-0303.

Federal Railroad Administration

The Local Rail Service Assistance Program has as its primary goal the strengthening of branchline rail services of importance to State and local economies. As administered by the Federal Railroad Administration's (FRA) Office of Federal Assistance, the program provides grants to State agencies designated by the governors of each State. These grants may be used for State rail planning and rail projects, i.e., branchline operating assistance, acquisition, rehabilitation, rail facility construction, or substitute service.

As a prerequisite for project funding, each State must develop a State Rail Plan, to be updated annually, which includes the procedures and mechanism used by the State to provide for public participation. At a minimum, this information must indicate: (1) the groups involved in the planning process, both at the level of broad goal setting and at community level where the impacts of branchline abandonment are most personally felt; (2) the involvement of these groups in the setting of goals and criteria for project selection, priority setting, and resource allocation; (3) those points in the planning process where the different groups have been involved; and (4) the mechanisms the State uses to involve and inform the public of its rail planning activities.

The public participation mechanism is reviewed annually by the FRA's Office of Federal Assistance, as part of the annual update of the State Rail Plan. Any questions or complaints concerning the public participation mechanism or its implementation should be addressed to the State agency designated by the governor of the State.

To identify the title and location of the State agency, contact the governor's office or write or call Garold Thomas, Acting Director of State Assistance, Federal Railroad Administration, Washington, DC 20590; (202) 426-1567. Mr. Thomas may also be contacted for other information about the program.

Urban Mass Transportation Administration

The objective of the Federal transit program is to improve public transportation by providing financial assistance to local governments for the purchase and operation of transit equipment and facilities and to assure that projects funded with Urban Mass Transportation Administration (UMTA) grants are developed in a manner consistent with national energy, environmental, social, and economic goals.

UMTA grants are available to public, non-profit agencies which meet eligibility criteria stated in the Urban Mass Transportation Act. Citizen participation required by UMTA regulations is monitored by UMTA regional offices at several stages of planning or project development, utilizing hearing transcripts, environmental impact comments, and public complaints and grievances. The enforcement mechanism for noncompliance with UMTA regulations is the withholding of financial assistance.

UMTA grant recipients are encouraged to employ whatever citizen participation activities are necessary and appropriate. Formal complaints about alleged failures to comply with UMTA regulations should be filed with the appropriate UMTA regional office. A complaint charging inadequate opportunity for citizen participation should be addressed to the civil rights officer in the appropriate UMTA regional office.

For further information, contact Irv Chor, Office of Public Affairs, Urban Mass Transportation Administration, Washington, DC 20590; (202) 426–4043.

Appendix C: General Requirements for Citizen Participation in Local Transportation Planning

Introduction

Appendix C lists those requirements which are not specific to particular Federal-aid programs. This Appendix, however, does not include opportunities for public involvement such as notice and comment and public hearing requirements under the Administrative Procedure Act, 5 U.S.C. 551 *et seq.*, petitions for the promulgation of a rule, private citizens' suits to compel agency compliance with a statutory requirements, and public representation on Federal advisory committees.

Appendix C.—General Requirements for Citizen Participation (CP) in Local Transportation Planning

Title	CP requirement	Monitoring/evaluation of CP requirement	Funding
Office of the Secretary (OST)			
1. "Procedures for Considering Environmental Impacts," DOT Order 5610.1C, 44 FR 56420 (10/1/79).	Encourages citizen participation at the earliest practical time and at each appropriate stage of development of the proposed action. Administrations are encouraged to develop lists of interested parties at the national, State, and local levels. DOT Order 5610.1C. Par. 14a, c.	A summary of citizen involvement shall be documented in the EIS DOT Order 5610.1C. Par. 14.	No specific provision.
2. U.S. Environmental Protection Agency—Department of Transportation Expanded Guidelines on Public Participation in the State Implementation Plan. 45 FR 42023 (6/23/80).	Joint Guidelines cover the essential elements and procedures of an effective public participation program in developing the transportation component of State Implementation Plans (SIP's) funded by EPA with grants authorized by Section 175 of the Clean Air Act in urban areas requiring an extension beyond 1982 for attainment of national ambient air quality standards.	EPA evaluates performance of planning agencies. Applicants for Section 175 funds must submit a work program for public information/involvement. Sections F and H.	EPA "encourages the passthrough of Section 175 (EPA) funds to a broad base of affected constituencies to achieve * * * effective participation in the planning process." Section E.7.
3. "Implementation of the Department of Transportation Title VI Program," DOT Order 1000.12.	a. Requires action to ensure that non-elected boards, advisory councils, or committees which are in integral part of planning the program or activity reasonably reflect the racial/ethnic composition of the affected community. DOT Order 1000.12. Chapter 1–4(b)(2)(a).	Enforced by Civil Rights Offices in DOT operating element, monitored by Departmental Office of Civil Rights.	No specific provision.
	b. Where the program or activity requires public hearings, appropriate action should be taken to ensure that notice of such hearings reaches all segments of the affected community. The Title VI program shall also require the direct contract will be made with racial/ethnic community organizations and/or leaders in communities affected by the program or activity. DOT Order 1000.12. Chapter 1–4(b)(2)(a).	———	
Federal Aviation Administration (FAA)			
"Policies and Procedures for Considering Environmental Impacts." FAA Order 1050.1C (45 FR 2244, 1/10/80).	a. Sets forth criteria in deciding whether a public hearing is appropriate, although not statutorily mandated, for a broad range of FAA programs and projects. FAA Order 1050.1C, Chapter 2, Section 2.213b.	a. Records of public hearing maintained in the docket of the General Counsel's office. FAA Order 1050.1C, Chapter 2, Section 2.213(g).	No specific provision.
	b. Encourages citizen participation at the earliest practical time and throughout the development of the proposed project. FAA Order 1050.1C, Chapter 2, Section 2.214.	b. A summary of citizen involvement shall be documented where practicable in the EIS or Finding of No Significant Impact (FONSI). FAA Order 1050.1C, Chapter 2, Section 2.214.	
Federal Highway Administration (FHWA)			
None	None	None	None.
Federal Railroad Administration (FRA)			
FRA Procedures for Considering Environmental Impacts, 45 FR 40855 (6/6/80).	Sets forth a policy which encourages citizen involvement at every stage of the environmental assessment of a proposed FRA action and requires appropriate FRA program office to develop, in cooperation with the FRA Public Affairs Office, a list of interested parties including environmental groups, individuals and business, public service, education, labor, and community organizations. The FRA program office, in coordination with the FRA Public Affairs Officer, shall publicize the availability of draft EIS's. FRA Procedures, Section 9(a), (b)(3), (4), 45 FR 40855 (6/6/80).	No specific provision	No specific provision.

Appendix C.—General Requirements for Citizen Participation (CP) in Local Transportation Planning—Continued

Title	CP requirement	Monitoring/evaluation of CP requirement	Funding
National Highway Traffic Safety Administration (NHTSA)			
NHTSA Procedures for Considering Environmental Impacts. 49 CFR 520.	a. The Office of Public Affairs and Consumer Participation shall maintain a list of interested groups to notify directly of the availability of Draft Environmental Impact Statements (DEIS's). 49 CFR 520.25(b)(4)(i)(3)(i).	No specific provision	No specific provision.
	b. In deciding whether a public hearing on a proposed or ongoing action covered by a DEIS is appropriate, the responsible official should consider, among other things, the extent to which public involvement has already been achieved through other means, such as earlier public hearings, meetings with citizen representatives, and/or written comments on the proposed action. 49 CFR 520.26(a)(4).		
	c. Final environmental statement shall include a discussion of problems and objections raised by other Federal agencies, State and local entities, and citizens in the review process, and the disposition of the issues involved and the reasons therefore: The draft and final environmental statements should document issues raised through consultations with Federal, State, and local agencies and with citizens, of actions taken in response to comments, public hearings, and other citizens involvement proceedings. 49 CFR 520, Attachment 1, § 3(i).		
Research and Special Programs Administration (RSPA)			
None	None	None	None.
SLSDC Procedures for Considering Environmental Impacts (Draft). 45 FR 49601 (7/10/80).	Chief Engineer shall solicit citizen comments where an Environmental Statement is to be prepared by any or all of the following means: conducting hearings, making personal contact with interested parties, issuing press releases, placing notices in newspapers, and publishing a notice of intent in the FEDERAL REGISTER. Chief Engineer shall develop lists of interested parties at the national, State, and local levels. Order SLS 10-5610.1C (Draft), Par. 10, 45 FR 49601 (7/10/80).	Citizen involvement and environmental issues raised in the public commenting process will be documented in the environmental statement.	No specific provision.
U.S. Coast Guard (USCG)*			
1. Ports and Waterways Safety act, 33 U.S.C. 1221 as amended by Port and Tanker Safety Act of 1978, Pub. L. 95-474, § 2.	a. Statement of Policy Congressional finding that advance planning is critical in determining proper and adequate protective measures for the Nation's ports and waterways and the marine environment, with continuing consultation with other agencies, affected users, and the general public in the development of such measures. 33 U.S.C. 1221(d).		
	b. In issuing operating requirements, the Coast Guard must consult with representatives of the maritime community, port and harbor associations, environmental groups and others who may be affected by the proposed action. 33 U.S.C. 1224(b).	No specific provision	No specific provision.
2. Tank Vessel Act, 46 U.S.C. 391a, as amended by Port and Tankers Safety Act of 1978, Pub. L. 95-474, § 5.	In exercising regulatory authority under the Act, the Coast Guard shall establish procedures for consulting with agencies, representatives of environmental groups or other interested parties with experience with problems involving vessel safety port and waterways safety, and protection of the marine environment. 46 U.S.C. 391a(5)(C) (v), (vi).	No specific provision	No specific provision.
3. Bridges	a. Upon a determination that a bridge obstructs navigation, a public hearing must be held. 33 U.S.C. 513, 33 CFR 116.20.	a. District Commander who holds public hearing must submit transcript and report to the Chief, Office of Navigation.	No specific provision
	b. Public hearing to be held where there are substantial issues relevant to the effect that a proposed bridge will have on the reasonable needs of navigation. 33 CFR 115.60.	b. See 3a. above	No specific provision.
Urban Mass Transportation Administration (UMTA)			
1. Accessibility of mass transportation to handicapped and elderly persons.	Agencies shall use "adequate citizen participation mechanisms or procedures." Public hearings with adequate notice to be held. 49 CFR 27.107.	Recipients required to file report on compliance with requirements of handicapped access regulation; Department investigations and enforcement procedures authorized. 49 CFR 27.121-27.129.	No specific provision.
2. Statement of Policy—Major Urban Mass Transportation Investments. 41 FR 41513 (9/22/76).	1. "Alternative analyses" studies shall include development of a "citizen involvement mechanism".	No specific provision	No specific provision
	2. After completion of a draft EIS, a formal public hearing shall be held, covering both the analysis of alternatives and the draft EIS. (See also 49 U.S.C. 1602(d)).		

*While the United States Coast Guard has no programs that can be described specifically as local transportation efforts, the programs listed in the Appendix concerning marine navigation and safety, and marine environmental protection, can affect local communities or local marine transportation. Techniques and procedures to improve citizen participation in these programs is provided for under the Coast Guard Final Consumer Affairs Plan (45 FR 79634, 12/1/80).

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Appendix D:
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For information about each DOT operating administration's general requirements for citizen participation in local transportation planning, contact:

Federal Aviation Administration: Robert B. Hixson, Community Planner, Division of Community and Environmental Needs, Office of Airport Planning and Programming, Federal Aviation Administration, Washington, D.C. 20591; (202) 426–8434.

Federal Highway Administration: Stephen J. Kimlico, Chief, Environmental Process Branch, Federal Highway Administration, Washington, D.C. 20590; (202) 426–0303.

Federal Railroad Administration: Eric Hanson, Consumer Affairs Officer, Office of Public Affairs, Federal Railroad Administration, Washington, D.C. 20590; (202) 426–0681.

National Highway Traffic Safety Administration: Ann Mitchell, Office of Consumer Participation, National Highway Traffic Safety Administration, Washington, D.C. 20590; (202) 426–0670.

Research and Special Programs Administration: Jacqueline S. Gillan, Director, Office of Consumer and Public Affairs, Research and Special Programs Administration, Washington, D.C. 20590; (202) 426–9676.

St. Lawrence Seaway Development Corporation: Dennis Deuschl, Director, Office of Communications and Consumer Affairs, St. Lawrence Seaway Development Corporation, Washington, D.C. 20591; (202) 426–3574.

United States Coast Guard: Cdr. Neal Mahan, Chief, Consumer Affairs and Administrative Staff, U.S. Coast Guard, Washington, D.C. 20593; (202) 426–1080.

Urban Mass Transportation Administration: Irv Chor, Office of Public Affairs, Urban Mass Transportation Administration, Washington, D.C. 20590; (202) 426–4043.

Appendix D: Actions Taken by DOT and Its Operating Administrations in Support of the Policy Statement

In addition to issuing a Policy Statement and DOT Guidelines on Citizen Participation in Local Transportation Planning, the Department has made the following decisions and is taking the following actions:

* *Each operating administration in DOT will be supporting the Policy Statement by: (1) Issuing its own guidelines on citizen participation in local planning; (2) revising its existing regulations, as needed to comply with the Policy Statement; and (3) designing and implementing its own development project on ways to provide technical and financial assistance to stimulate citizen participation in local planning.*

(1) *Operating Administrations' Guidelines:* In developing Departmental Guidelines, DOT was keenly aware of the need to provide effective guidance that is also flexible enough to apply to the citizen participation requirements in a broad range of programs with varying objectives, mandates, structures, and approaches. Examination of the requirements listed in the Appendixes B and C to this notice will show the extent of this variety. It was agreed, therefore, that once the Department issues final guidelines, each operating administration will issue its own guidelines, consistent with the Department's final guidelines, to provide guidance on citizen participation in local planning which is specific to its own programs.

(2) *Operating Administrations' Regulations:* Publication of the DOT Policy Statement on Citizen Participation in Local Transportation Planning may create the need for operating administrations to revise their existing regulations and internal procedures in order to comply with the Policy Statement. All DOT operating administrations will review their regulations in light of the Policy Statement, to determine whether a need for revision exists. If a need exists, the operating administration will draft revised regulations which will be published as proposals, with a request for public comment. The administrations' reviews of their regulations will be completed no later than April 1, 1981; and any needed revised regulations will be published as proposals no later than October 1, 1981.

(3) *Operating Administrations' Development Projects:* The major objective of the development projects is to identify innovative approaches for providing technical assistance and financial assistance for activities that stimulate effective and representative citizen participation at the local level. Each project selected will relate to a program mandated by that particular operating administration's laws and regulations, and will be carried out in cooperation with appropriate planning agencies. The goal of each project will be to explore, test, and evaluate the most effective ways to use the existing resources available for citizen participation in local planning, under each administration's particular programs.

Much discussion and analysis went into this decision to launch development projects. The issue of providing financial assistance for citizen participation in local planning was clearly the most controversial question facing the Department during the development of this policy. The options examined by DOT ran the gamut from the possibility of taking no action to the possibility of setting aside a Department fund for a comprehensive program under which the Department would disburse money to citizens' groups qualified to participate in local planning. The latter option was examined because it was specifically proposed to DOT by various citizens' groups. DOT has decided that it would be neither appropriate nor feasible for the Department to provide direct funding to citizens' groups participating in local planning. DOT did, however, examine and discuss other methods whereby financial and technical assistance might be provided to help citizens participate in local planning. Specific and challenging questions arose during these discussions.

A few of these questions: Is participation in local planning noticeably enhanced if a local or regional planning agency reimburses citizens for certain expenses, such as baby-sitting services, transportation to meetings, or clerical costs? Or is participation equally effective if the planning agency provides the needed services, which is usually a less costly approach? Could planning agencies and citizens' groups work together to circulate information to the community, combining the agency's resources for printing, mailing, and so on, with the citizens' access to the residents of the community? Could planning agencies effectively work through neighborhood boards and grassroots activits' groups to stimulate citizen participation in local planning? Would planning agencies be willing to provide serives and technical assistance to citizens' groups? Should planning agencies provide direct financial assistance to citizens' groups so that these groups can obtain professional and technical advice on key issues of importance to them? Would direct financial assistance enhance the quality of public participation in local transportation planning? Would direct financial assistance enhance the public acceptability of planning agencies' decisions? Is the effectiveness of a citizens' advisory group markedly increased if the members are provided with such specific resources as

advocacy training, staff assistance, and financial assistance?

Since there are no ready answers to these questions, the Department has decided to launch development projects to test innovative approaches and to gather needed data on ways to provide technical and financial assistance to stimulate citizen participation in local planning. The development projects will be lodged in the operating administrations because each administration must work within the limits of its own programs, procedures, mandates, and requirements for citizen participation in local planning. Each operating administration will fund its project through existing resources. In order to avoid costly duplication, coordination among the administrations' development projects will be the responsibility of the Office of Consumer Liaison (OCL), in the Office of the Secretary. Each operating administration's development project will be implemented no later than October 1, 1981.

** The Office of the Secretary, through its Office of Consumer Liaison, will be responsible for: (1) Overseeing the implementation of the Policy Statement and the final guidelines; (2) coordinating the operating administrations' development projects; (3) providing technical assistance and educational materials to affected segments of the public; and (4) coordinating Departmental training programs and outreach efforts for citizen participation.*

(1) *Overseeing implementation of the Policy Statement and the final guidelines:* The DOT Work Group on Citizen Participation has successfully completed its charge to develop a comprehensive DOT policy, as well as recommending implementation actions to support the policy. With the group's mission thus accomplished, the Department believes that good management practice requires that this ad hoc committee disband. It will, therefore, be the responsibility of the Office of Consumer Liaison (OCL) in the Office of the Secretary, to oversee implementation of the Policy Statement and the ensuing DOT Guidelines. In discharging this responsibility, OCL will utilize the resources of the ad hoc work group, as needed, to facilitie contacts with various offices having responsibilities for local transportation planning.

In dealing with overall Departmental issues bearing on citizen participation, OCL will utilize the permanent mechanism of the DOT Consumer Policy Coordinating Council, established in July 1980 under the DOT Consumer Program, in response to Executive Order 12160.

(2) *Coordinating the operating administrations' development projects:* In order to provide for efficient coordination among the operating administrations' projects, the Office of Consumer Liaison (OCL) will oversee the designs of the development projects and will monitor the progress of these projects. It will be OCL's responsibility to establish criteria assuring that the project designs are valid, that they address pertinent issues on which data are needed, and that they avoid costly duplication.

(3) *Providing technical assistance to affected segments of the public:* The Office of Consumer Liaison will oversee implementation of the Department's responsibility for providing technical assistance to various persons, groups, and agencies affected by the Policy Statement and the ensuing Departmental Guidelines. This responsibility will include such actions as preparing information for State, regional, and local transportation agencies, describing noteworthy examples of citizen participation in local transportation planning; and also preparing educational materials for citizens, with explanations of DOT's requirements for public involvement opportunities.

(4) *Coordinating Departmental training and outreach programs for citizen participation:* Several DOT operating administrations have already produced training projects to assist their headquarters and field staffs, as well as State and local transportation planners, in better utilization of citizen involvement techniques and outreach efforts. The Office of Consumer Liaison will be responsible for working with the operating administrations to coordinate and enhance these existing programs, with a view to making them available to more people in the Department and the transportation community.

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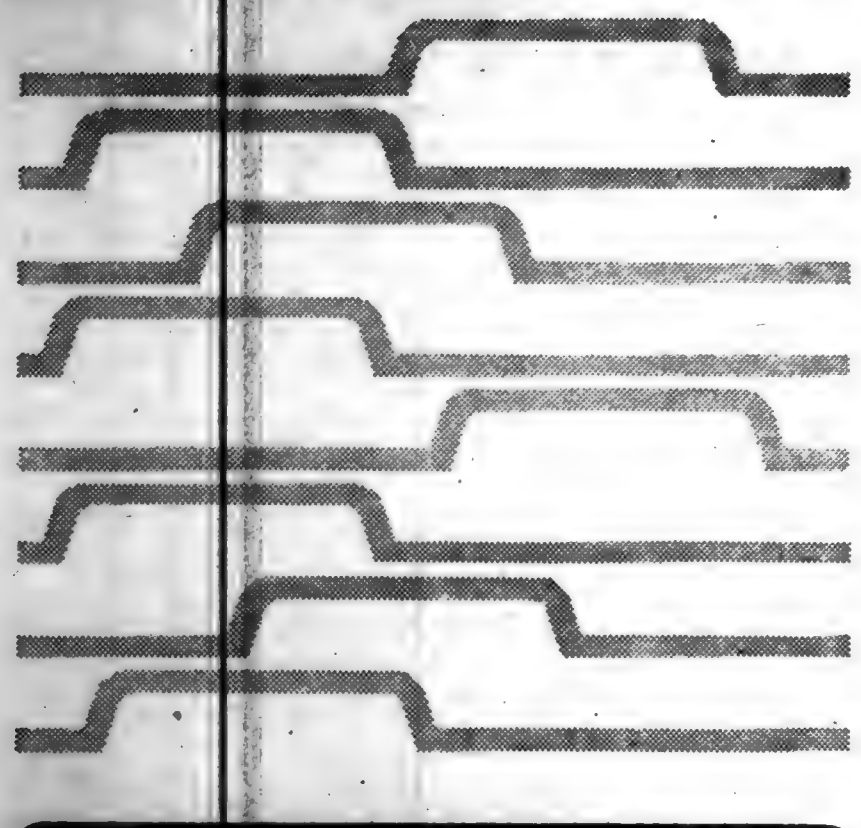

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federal register

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Part XII

Department of Education

Assistance to States for Education of Handicapped Children; Interpretation of the Individualized Education Program (IEP)

DEPARTMENT OF EDUCATION

Office of Special Education

34 CFR Part 300

Assistance to States for Education of Handicapped Children; Interpretation

AGENCY: Department of Education.

ACTION: Notice of interpretation.

SUMMARY: The Secretary of Education issues an interpretation of the individualized education program (IEP) requirements under Part B of the Education of the Handicapped Act, as amended by Pub. L. 94–142. This interpretation is issued in response to public inquiries requesting Department policy and guidance on this matter.

EFFECTIVE DATE: This interpretation is expected to take effect 45 days after it is transmitted to Congress. Interpretations are usually transmitted to Congress several days before they are published in the Federal Register. The effective date is changed by statute if Congress takes certain adjournments. If you want to know the effective date of this interpretation, call or write the Department of Education contact person.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas B. Irvin, Office of Special Education, Department of Education, Donohoe Building, Room 4048, 400 Maryland Avenue, SW., Washington, D.C. 20202, telephone: (202) 472–4825.

SUPPLEMENTARY INFORMATION:

A. Background

Under Part B of the Education of the Handicapped Act (EHA–B or "the Act") (20 U.S.C. 1411–1420), as amended by Pub. L. 94–142, the Department of Education makes Federal funds available to States to assist them in the provision of special education and related services to handicapped children. In order to receive assistance under this grant program, a State must demonstrate to the Secretary that various provisions of the Act are met, including the requirement that all handicapped children within the State have available a free appropriate public education. The Act defines a "free appropriate public education" as "special education and related services which * * * are provided in conformity with the individualized education program required" by the Act (20 U.S.C. 1401(18)(D)).

An "individualized education program" (IEP) is defined by the Act as

> a written statement for each handicapped child developed in any meeting by a representative of the local educational agency or an intermediate educational unit who shall be qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of handicapped children, the teacher, the parents or guardian of such child, and, whenever appropriate, such child, which statement shall include (A) a statement of the present levels of educational performance of such child, (B) a statement of annual goals, including short-term instructional objectives, (C) a statement of the specific educational services to be provided to such child, and the extent to which such child will be able to participate in regular educational programs, (D) the projected date for initiation and anticipated duration of such services, and (E) appropriate objective criteria and evaluation procedures and schedules for determining, on at least an annual basis, whether instructional objectives are being achieved. 20 U.S.C. 1401(19)

Section 614(a)(5) of the Act (20 U.S.C. 1414(a)(5)) provides that the IEP for each handicapped child must be reviewed and, if necessary, revised at least annually.

A detailed set of regulations was issued under EHA–B on August 23, 1977 (42 FR 42474), and codified in the Code of Federal Regulations (CFR) at 45 CFR Part 121a. Included in those regulations are several sections on IEPs, published as 45 CFR 121a.340–121a.349. (See also the summary of, and responses to, the public comments on the proposed version of those sections, 42 FR 42507–08 (August 23, 1977).) These regulations became effective on October 1, 1977.

B. Purpose of Document

Over the past three years, numerous questions have arisen concerning the meaning of the IEP provisions of the statute and regulations. Some of those provisions have been interpreted differently by various State and local agencies. Other questions have been raised concerning various IEP matters that are not explicitly addressed in the regulations. Finally, numerous inquiries have been received concerning how to most effectively carry out the IEP requirements.

For these reasons, the Secretary has determined that it would be appropriate to publish a comprehensive document that clarifies and interprets the IEP provisions, answers some of the most frequently asked questions about those provisions, and provides technical assistance to interested parties. This document is intended to serve those purposes.

C. Development of Document

This interpretation culminates a process which involved extensive public review and comment, including: (1) Comments from a series of public meetings conducted during the summer of 1979; (2) background papers submitted by an *ad hoc* task force on IEPs; and (3) more than one hundred written comments from reviewers of various drafts of the document. All written comments were reviewed, and the suggestions and concerns of the commenters were considered in preparing the document.

D. Effect of Document

The primary purpose of this document is to clarify and interpret the IEP provisions of the Act and regulations. Since those provisions have the force and effect of law, the Secretary regards the clarifications and interpretations in the document as legally binding, and the Department will follow them in providing advice and in determining whether affected agencies are in compliance with the Act and regulations. In addition, the document includes non-binding suggestions and guidance on how to carry out the various legally binding requirements.

The legally binding requirements in the interpretation are identified by such mandatory language as "must", "the IEP *would have to be* revised", or "labels *may not* be used". The non-binding suggestions and guidance are stated in such non-mandatory language as "the agency should" or "it is expected that."

E. Organization of Document

Part I of the document sets out the major purposes and functions of the IEP requirement. Part II clarifies and interprets the individual provisions of the IEP regulations (§§ 300.340–300.349).

F. Redesignation of Regulations

As a result of the creation of the Department of Education, the regulations under EHA–B were recently transferred to title 34 (Education) of the CFR (45 FR 77368, November 21, 1980). The EHA–B regulations were transferred and redesignated as 34 CFR Part 300. Individual section numbers, however, have not changed. For example, the sections on IEP's, previously 45 CFR 121a.340–121a.349, have been redesignated as 34 CFR 300.340–300.349.

Call for Public Comment

The Secretary is interested in receiving public comments on the extent to which the Department should provide further guidance on individualized education programs. These comments may be sent at any time to the Department contact person identified in the beginning of this document.

(Catalog of Federal Domestic Assistance No. 84.027, Education of Handicapped Children, Part B)

Dated: January 9, 1981.
Shirley M. Hufstedler,
Secretary of Education.

34 CFR Part 300 is amended by adding the following appendix:

Appendix—Notice of Interpretation

I. Purpose of the IEP
II. IEP Requirements

§ 300.340 Definition

§ 300.341 State educational agency responsibility

1. Who is responsible for ensuring the development of IEPs for handicapped children served by a public agency other than an LEA?

2. For a child placed out of State by a public agency, is the placing or receiving State responsible for the child's IEP?

§ 300.342 When individualized education programs must be in effect

3. In requiring that an IEP be in effect before special education and related services are provided, what does "be in effect" mean?

4. How much of a delay is permissible between the time a handicapped child's IEP is finalized and when special education is provided?

5. For a handicapped child receiving special education for the first time, when must an IEP be developed—before placement or after placement?

6. If a handicapped child has been receiving special education in one LEA and moves to another community, must the new LEA hold an IEP meeting before the child is placed in a special education program?

§ 300.343 Meetings

7. What is the purpose of the 30 day timeline in § 300.343(c)?

8. Must the agency hold a separate meeting to determine a child's eligibility for special education and related services, or can this step be combined with the IEP meeting?

9. Must IEPs be reviewed or revised at the beginning of each school year?

10. How frequently must IEP meetings be held and how long should they be?

11. Who can initiate IEP meetings?

12. May IEP meetings be tape-recorded?

§ 300.344 Participants in meetings

(Agency representative)

13. Who can serve as the "representative of the public agency" at an IEP meeting?

14. Who is the "representative of the public agency" if a handicapped child is served by a public agency other than the SEA or LEA?

(The child's teacher)

15. For a handicapped child being considered for initial placement in special education, which teacher should attend the IEP meeting?

16. If a handicapped child is enrolled in both regular and special education classes, which teacher should attend the IEP meeting?

17. If a handicapped child in high school attends several regular classes, must all of the child's regular teachers attend the IEP meeting?

18. If a child's primary handicap is a speech impairment, must the child's regular teacher attend the IEP meeting?

19. If a child is enrolled in a special education class because of a primary handicap and also receives speech-language pathology services, must both specialists attend the IEP meeting?

(The child, parents, other individuals)

20. When may representatives of teacher organizations attend IEP meetings?

21. When may a handicapped child attend an IEP meeting?

22. Do the parents of a handicapped student retain the right to attend the IEP meeting when the student reaches the age of majority?

23. Must related services personnel attend IEP meetings?

24. Are agencies required to use a case manager in the development of a handicapped child's IEP?

25. For a child with a suspected speech impairment, who must represent the evaluation team at the IEP meeting?

§ 300.345 Parent participation

26. What is the role of the parents at an IEP meeting?

27. What is the role of a surrogate parent at an IEP meeting?

28. Must the public agency let the parents know who will be at the IEP meeting?

29. Are parents required to sign IEPs?

30. If the parent signs the IEP, does the signature indicate consent for initial placement?

31. Do parents have the right to a copy of their child's IEP?

32. Must parents be informed at the IEP meeting of their right to appeal?

33. Does the IEP include ways for parents to check the progress of their children?

34. Must IEPs include specific "checkpoint intervals" for parents to confer with teachers and to revise or update their children's IEPs?

35. If the parents and agency are unable to reach agreement at an IEP meeting, what steps should be followed until agreement is reached?

§ 300.346 Content of the individualized education program

(Present levels of educational performance)

36. What should be included in the statement of the child's present levels of educational performance?

(Annual goals and short term objectives)

37. Why are goals and objectives required in the IEP?

38. What are "annual goals" in an IEP?

39. What are "short term instructional objectives" in an IEP?

40. Should the IEP goals and objectives focus only on special education and related services, or should they relate to the total education of the child?

41. Should there be a relationship between the goals and objectives in the IEP and those that are in instructional plans of special education personnel?

42. When must IEP objectives be written—before placement or after placement?

43. Can short term instructional objectives be changed without initiating another IEP meeting?

(Specific special education and related services)

44. Must the IEP include all special education and related services needed by the child or only those available from the public agency?

45. Is the IEP a commitment to provide services—i.e., must a public agency provide all of the services listed in the IEP?

46. Must the public agency itself directly provide the services set out in the IEP?

47. Does the IEP include only special education and related services or does it describe the total education of the child?

48. If modifications are necessary for a handicapped child to participate in a regular education program, must they be included in the IEP?

49. When must physical education (PE) be described or referred to in an IEP?

50. If a handicapped child is to receive vocational education, must it be described or referred to in the student's IEP?

51. Must the IEP specify the amount of services or may it simply list the services to be provided?

52. Must a handicapped child's IEP indicate the extent to which the child will be educated in the regular educational program?

(Projected dates/Evaluation)

53. Can the anticipated duration of services be for more than twelve months?

54. Must the evaluation procedures and schedules be included as a separate item in the IEP?

(Other IEP content questions)

55. Is it permissible for an agency to have the IEP completed when the IEP meeting begins?

56. Is there a prescribed format or length for an IEP?

57. Is it permissible to consolidate the IEP with the individualized service plan developed under another Federal program?

58. What provisions on confidentiality of information apply to IEPs?

§ 300.347 Private school placements

59. If placement decisions are made at the time the IEP is developed, how can a private school representative attend the meeting?

§ 300.348 Handicapped children in parochial or other private schools

§ 300.349 Individualized education programs—accountability

60. Is the IEP a performance contract?

Authority: Part B of the Education of the Handicapped Act, as amended (20 U.S.C. 1411–1420), unless otherwise noted.

Individualized Education Programs (IEPs)

Interpretation of Requirements Under Part B of the Education of the Handicapped Act, As Amended by Pub. L. 94–142

I. Purpose of the IEP

There are two main parts of the IEP requirement, as described in the Act and regulations: (1) The IEP meeting(s), at which parents and school personnel jointly make decisions about a handicapped child's educational program, and (2) the IEP document itself, which is a written record of the decisions reached at the meeting. The overall IEP requirement, comprised of these two parts, has a number of purposes and functions:

a. The IEP meeting serves as a communication vehicle between parents and school personnel, and enables them, as equal participants, to jointly decide what the child's needs are, what services will be provided to meet those needs, and what the anticipated outcomes may be.

b. The IEP process provides an opportunity for resolving any differences between the parents and the agency concerning a handicapped child's special education needs; first, through the IEP meeting, and second, if necessary, through the procedural protections that are available to the parents.

c. The IEP sets forth in writing a commitment of resources necessary to enable a handicapped child to receive needed special education and related services.

d. The IEP is a management tool that is used to ensure that each handicapped child is provided special education and related services appropriate to the child's special learning needs.

e. The IEP is a compliance/monitoring document which may be used by authorized monitoring personnel from each governmental level to determine whether a handicapped child is actually receiving the free appropriate public education agreed to by the parents and the school.

f. The IEP serves as an evaluation device for use in determining the extent of the child's progress toward meeting the projected outcomes.

Note.—The Act does not require that teachers or other school personnel be held accountable if a handicapped child does not achieve the goals and objectives set forth in the IEP. See § 300.349, *Individualized education program—accountability.*

II. IEP Requirements

This part (1) repeats the IEP requirements in §§ 300.340–300.349 of the regulations (boxed material), (2) provides additional clarification, as necessary, on sections or paragraphs of the regulations on which such clarification is needed, and (3) answers some questions regarding implementation of the IEP requirements that are not expressly addressed in the regulations. These questions and clarifying information are presented in a question and answer format immediately after the particular section of the regulations that is presented.

INDIVIDUALIZED EDUCATION PROGRAMS

§ 300.340 Definition.

As used in this part, the term "individualized education program" means a written statement for a handicapped child that is developed and implemented in accordance with §§ 300.341–300.349.

(20 U.S.C. 1401(19).)

§ 300.341 State educational agency responsibility.

(a) *Public agencies.* The State educational agency shall insure that each public agency develops and implements an individualized education program for each of its handicapped children.

(b) *Private schools and facilities.* The State educational agency shall insure that an individualized education program is developed and implemented for each handicapped child who:

(1) Is placed in or referred to a private school or facility by a public agency; or

(2) Is enrolled in a parochial or other private school and receives special education or related services from a public agency.

(20 U.S.C. 1412 (4), (6); 1413(a)(4).)

Comment: This section applies to all public agencies, including other State agencies (e.g., departments of mental health and welfare), which provide special education to a handicapped child either directly, by contract or through other arrangements. Thus, if a State welfare agency contracts with a private school or facility to provide special education to a handicapped child, that agency would be responsible for insuring that an individualized education program is developed for the child.

1. *Who is responsible for ensuring the development of IEPs for handicapped children served by a public agency other than an LEA?*

The answer will vary from State to State, depending upon State law, policy, or practice. In each State, however, the SEA is ultimately responsible for ensuring that each agency in the State is in compliance with the IEP requirements and the other provisions of the Act and regulations. (See § 300.600 regarding SEA responsibility for all education programs.)

The SEA must ensure that every handicapped child in the State has available a free appropriate public education (FAPE), regardless of which agency, State or local, is responsible for the child. While the SEA has flexibility in deciding the best means to meet this obligation (e.g., through interagency agreements), there can be no failure to provide FAPE due to jurisdictional disputes among agencies.

Note.—Section 300.2(b) states that the requirements of the Act and regulations apply to all political subdivisions of the State that are involved in the education of handicapped children, including (1) the SEA, (2) LEAs, (3) other State agencies (such as Departments of Mental Health and Welfare, and State schools for the deaf or blind), and (4) State correctional facilities.

The following paragraphs outline (1) some of the SEA's responsibilities for developing policies or agreements under a variety of interagency situations, and (2) some of the responsibilities of an LEA when it initiates the placement of a handicapped child in a school or program operated by another State agency:

a. *SEA POLICIES OR INTERAGENCY AGREEMENTS.* The SEA, through its written policies or agreements, must ensure that IEPs are properly written and implemented for all handicapped children in the State. This applies to each interagency situation that exists in the State, including any of the following: (1) When an LEA initiates the placement of a child in a school or program operated by another State agency (see "LEA-Initiated Placements" in paragraph "b", below); (2) when a State or local agency other than the SEA or LEA places a child in a residential facility or other program; (3) when parents initiate placements in public institutions; and (4) when the courts make placements in correctional facilities.

Note.—This is not an exhaustive list. The SEA's policies must cover any other interagency situation that is applicable in the State, including placements that are made for both educational and for non-educational purposes.

Frequently, more than one agency is involved in developing or implementing a handicapped child's IEP (e.g., when the LEA remains responsible for the child, even though another public agency provides the special education and related services, or when there are shared cost arrangements). It is important that SEA policies or agreements define the role of each agency involved in the situations described above, in order to resolve any jurisdictional problems that could delay the provision of a free appropriate public education to a handicapped child. For example, if a child is placed in a residential facility, any one or all of the following agencies might be involved in the development and/or implementation of the child's IEP: The child's LEA, the SEA, another State agency, an institution or school under that agency, and the LEA where the institution is located.

Note.—The SEA must also ensure that any agency involved in the education of a handicapped child is in compliance with the "least restrictive environment" provisions of the Act and regulations, and, specifically, with the requirement that each handicapped child's placement (1) be determined at least annually, (2) be based on the child's IEP, and (3) be as close as possible to the child's home (§ 300.552(a), *Placements.)*

b. *LEA-INITIATED PLACEMENTS.* When an LEA is responsible for the education of a handicapped child, the LEA is also responsible for developing the child's IEP. The LEA has this responsibility even if development of the IEP results in placement in a State-operated school or program.

Note.—The IEP must be developed before the child is placed. See Question 5, below.) When placement in a State-operated school is necessary, the affected State agency or agencies must be involved by the LEA in the development of the IEP. (See response to Question 28, below, regarding participation of a private school representative at the IEP meeting.)

After the child enters the State school, meetings to review or revise the child's IEP could be conducted by either the LEA or the State school, depending upon State law, policy, or practice. However, both agencies should be involved in any decisions made about the child's IEP (either by attending the IEP meetings, or through correspondence or telephone calls). There must be a clear decision, based on State law, as to whether responsibility for the child's education is transferred to the State school or remains with the LEA, since this decision determines which agency is responsible for reviewing or revising the child's IEP.

2. *For a child placed out of State by a public agency, is the placing or receiving State responsible for the child's IEP?*

The "placing" State is responsible for developing the child's IEP and ensuring that it is implemented. The determination of the specific agency in the placing State that is responsible for the child's IEP would be based on State law, policy, or practice. However, as indicated in Question 1, above, the SEA in the placing State is responsible for ensuring that the child has available a free appropriate public education.

Note.—The Department is considering the possibility of publishing a separate document on out-of-State placements. That paper would address the responsibilities of the placing and receiving States under both EHA-B and Section 504 of the Rehabilitation Act of 1973.

§ 300.342 When individualized education programs must be in effect.

(a) On October 1, 1977, and at the beginning of each school year thereafter, each public agency shall have in effect an individualized education program for every handicapped child who is receiving special education from that agency.

(b) An individualized education program must:

(1) Be in effect before special education and related services are provided to a child; and

(2) Be implemented as soon as possible following the meetings under § 300.343.

(20 U.S.C. 1412 (2)(B), (4), (6); 1414(a)(5); Pub. L. 94-142, Sec. 8(c) (1975).)

Comment. Under paragraph (b)(2), it is expected that a handicapped child's individualized education program (IEP) will be implemented immediately following the meetings under § 300.343. An exception to this would be (1) when the meetings occur during the summer or a vacation period, or (2) where there are circumstances which require a short delay (e.g., working out transportation arrangements). However, there can be no undue delay in providing special education and related services to the child.

3. *In requiring that an IEP be in effect before special education and related services are provided, what does "be in effect" mean?*

As used in the regulations, the term "be in effect" means that the IEP (1) has been developed properly (i.e., at a meeting(s) involving all of the participants specified in the Act (parent, teacher, agency representative, and, where appropriate, the child)); (2) is regarded by both the parents and agency as appropriate in terms of the child's needs, specified goals and objectives, and the services to be provided; and (3) will be implemented as written.

4. *How much of a delay is permissible between the time a handicapped child's IEP is finalized and when special education is provided?*

In general, no delay is permissible. It is expected that the special education and related services set out in a child's IEP will be provided by the agency beginning immediately after the IEP is finalized. The comment following Section 300.342 identifies some exceptions ((1) when the meetings occur during the summer or other vacation period, or (2) when there are circumstances which require a short delay, such as working out transportation arrangements). However, unless otherwise specified in the IEP, the IEP services must be provided as soon as possible following the meeting.

Note.—§ 300.343(d) requires that the IEP include the "projected dates for initiation of services."

5. *For a handicapped child receiving special education for the first time, when must an IEP be developed—before placement or after placement?*

An IEP must "be in effect *before* special education and related services are provided to a child." (§ 300.342(b)(1), emphasis added.) The appropriate placement for a given handicapped child cannot be determined until after decisions have been made about what the child's needs are and what will be provided. Since these decisions are made at the IEP meeting, it would not be permissible to first place the child and then develop the IEP. Therefore, the IEP must be developed before placement. The above requirement does not preclude temporarily placing an eligible handicapped child in a program as part of the evaluation process—before the IEP is finalized—to aid in determining the most appropriate placement for the child. It is essential that the temporary placement not become the final placement before the IEP is finalized. In order to ensure that this does not happen, the State might consider requiring LEAs to take the following actions:

a. Develop an "interim" IEP for the child, which sets out the specific conditions and timeliness for the trial placement. (See paragraph "c", below.)

b. Ensure that the parents agree to the interim placement before it is carried out, and that they are involved throughout the process of developing, reviewing, and revising the child's IEP.

c. Set a specific timeline (e.g., 30 days) for completing the evaluation and making judgments about the most appropriate placement for the child.

d. Conduct an IEP meeting at the end of the trial period in order to finalize the child's IEP.

Note.—Once a handicapped child's IEP is in effect and the child is placed in a special education program, the teacher might develop detailed lesson plans or objectives *based* on the IEP. However, these lesson plans and objectives are not required to be a part of the IEP itself. (See Questions 37–43, below, regarding IEP goals and objectives.)

6. *If a handicapped child has been receiving special education in one LEA and moves to another community, must the new LEA hold an IEP meeting before the child is placed in a special education program?*

It would not be necessary for the new LEA to conduct an IEP meeting if: (1) A copy of the child's current IEP is available; (2) the parents indicate that they are satisfied with the current IEP; and (3) the new LEA determines that the current IEP is appropriate and can be implemented as written.

If the child's current IEP is not available, or if either the LEA or the parent believes that it is not appropriate, an IEP meeting would have to be conducted. This meeting should take place within a short time after the child enrolls in the new LEA (normally, within one week).

Note.—The child must be placed in a special education program immediately after the IEP is finalized. See Question 4, above.

If the LEA or the parents believe that additional information is needed (e.g., the school records from the former LEA) or that a new evaluation is necessary before a final placement decision can be made, it would be permissible to temporarily place the child in an interim program before the IEP is finalized. (See Question 5, above.)

§ 300.343 Meetings.

(a) *General.* Each public agency is responsible for initiating and conducting meetings for the purpose of developing, reviewing, and revising a handicapped child's individualized education program.

(b) *Handicapped children currently served.* If the public agency has determined that a handicapped child will receive special education during school year 1977–1978, a meeting must be held early enough to insure that an individualized education program is developed by October 1, 1977.

(c) *Other handicapped children.* For a handicapped child who is not included under paragraph (b) of this action, a meeting must be held within thirty calendar days of a determination that the child needs special education and related services.

(d) *Review.* Each public agency shall initiate and conduct meetings to periodically review each child's individualized education program and if appropriate revise its provisions. A meeting must be held for this purpose at least once a year.

(20 U.S.C. 1412 (2) (B), (4), (6); 1414(a) (5).)

Comment. The dates on which agencies must have individualized education programs (IEPs) in effect are specified in § 300.342 (October 1, 1977, and the beginning of each school year thereafter). However, except for new handicapped children (i.e., those evaluated and determined to need special education after October 1, 1977), the timing of meetings to develop, review, and revise IEPs is left to the discretion of each agency.

In order to have IEPs in effect by the dates in § 300.342, agencies could hold meetings at the end of the school year or during the summer preceding those dates. In meeting the October 1, 1977 timeline, meetings could be conducted up through the October 1 date. Thereafter, meetings may be held any time throughout the year, as long as IEPs are in effect at the beginning of each school year.

The statute requires agencies to hold a meeting at least once each year in order to review, and if appropriate revise, each child's IEP. The timing of those meetings could be on the anniversary date of the last IEP meeting on the child, but this is left to the discretion of the agency.

7. What is the purpose of the 30 day timeline in Section 300.343(c)?

The 30 day timeline in § 300.343(c) ensures that there will not be a significant delay between the time a child is evaluated and when the child begins to receive special education. Once it is determined—through the evaluation—that a child is handicapped, the public agency has *up to* 30 days to hold an IEP meeting.

Note.—See Questions 4 and 5, above, regarding finalization of IEP and placement of the child.

8. Must the agency hold a separate meeting to determine a child's eligibility for special education and related services, or can this step be combined with the IEP meeting?

Paragraph (e) of § 300.532 *(Evaluation procedures)* provides that the evaluation of each handicapped child must be "made by a multidisciplinary team or group of persons * * *". The decisions regarding (1) whether the team members actually meet together, and (2) whether such meetings are separate from the IEP meeting, are matters that are left to the discretion of State or local agencies.

In practice, some agencies hold separate eligibility meetings with the multidisciplinary team before the IEP meeting.

Note.—When separate meetings are conducted, placement decisions would be made at the IEP meeting. However, placement options could be discussed at the eligibility meeting.

Other agencies combine the two steps into one. If a combined meeting is conducted, the public agency must include the parents as participants at the meeting. (See § 300.345 for requirements on parent participation.)

Note.—If, at a separate eligibility meeting, a decision is made that a child is *not* eligible for special education, the parents should be notified about the decision.

9. Must IEPs be reviewed or revised at the beginning of each school year?

No. The basic requirement in the regulations is that IEPs must *be in effect* at the beginning of each school year. Meetings must be conducted at least once each year to review and, if necessary, revise each handicapped child's IEP. However, the meetings may be held anytime during the year, including (1) at the end of the school year, (2) during the summer, before the new school year begins, or (3) on the anniversary date of the last IEP meeting on the child.

10. How frequently must IEP meetings be held and how long should they be?

Section 614(a)(5) of the Act provides that each public agency must hold meetings periodically, but not less than annually, to review each child's IEP and, if appropriate, revise its provisions. The legislative history of the Act makes it clear that there should be as many meetings a year as any one child may need. (121 Cong. Rec. S20428–29 (Nov. 19, 1975) (remarks of Senator Stafford))

There is no prescribed length for IEP meetings. In general, meetings (1) will be longer for initial placements and for children who require a variety of complex services, and (2) will be shorter for continuing placements and for children who require only a minimum amount of services. In any event, however, it is expected that agencies will allow sufficient time at the meetings to ensure meaningful parent participation.

11. Who can initiate IEP meetings?

IEP meetings are initiated and conducted at the descretion of the public agency. However, if the parents of a handicapped child believe that the child is not progressing satisfactorily or that there is a problem with the child's current IEP, it would be appropriate for the parents to request an IEP meeting. The public agency should grant any reasonable request for such a meeting.

Note.—Under § 300.506(a), the parents or agency may initiate a due process hearing at any time regarding any matter related to the child's IEP.

If a child's teacher(s) feels that the child's placement or IEP services are not appropriate to the child, the teacher(s) should follow agency procedures with respect to (1) calling or meeting with the parents and/or (2) requesting the agency to hold another meeting to review the child's IEP.

12. May IEP meetings be tape-recorded?

The use of tape recorders at IEP meetings is not addressed by either the Act or the regulations. Although taping is clearly not required, it is permissible at the option of either the parents or the agency. However, if the recording is maintained by the agency, it is an "education record", within the meaning of the Family Educational Rights and Privacy Act ("FERPA"; 20 U.S.C. 1232g), and would, therefore, be subject to the confidentiality requirements of the regulations under both FERPA (34 CFR Part 99) and EHA–B (34 CFR 300.560–.565).

§ 300.344 Participants in meetings.

(a) *General.* The public agency shall insure that each meeting includes the following participants:

(1) A representative of the public agency, other than the child's teacher, who is qualified to provide, or supervise the provision of, special education.

(2) The child's teacher.

(3) One or both of the child's parents, subject to § 300.345.

(4) The child, where appropriate.

(5) Other individuals at the discretion of the parent or agency.

(b) *Evaluation personnel.* For a handicapped child who has been evaluated for the first time, the public agency shall insure:

(1) That a member of the evaluation team participates in the meeting; or

(2) That the representative of the public agency, the child's teacher, or some other person is present at the meeting, who is knowledgeable about the evaluation procedures used with the child and is familiar with the results of the evaluation.

(20 U.S.C. 1401(19); 1412 (2)(B), (4), (6); 1414(a)(5).)

Comment. 1. In deciding which teacher will participate in meetings on a child's individualized education program, the agency may wish to consider the following possibilities:

(a) For a handicapped child who is receiving special education, the "teacher" could be the child's special education teacher. If the child's handicap is a speech impairment, the "teacher" could be the speech-language pathologist.

(b) For a handicapped child who is being considered for placement in special education, the "teacher" could be the child's regular teacher, or a teacher qualified to provide education in the type of program in which the child may be placed, or both.

(c) If the child is not in school or has more than one teacher, the agency may designate which teacher will participate in the meeting.

2. Either the teacher or the agency representative should be qualified in the area of the child's suspected disability.

3. For a child whose primary handicap is a speech impairment, the evaluation personnel participating under paragraph (b)(1) of this section would normally be the speech-language pathologist.

13. *Who can serve as the "representative of the public agency" at an IEP meeting?*

The "representative of the public agency" could be any member of the school staff, other than the child's teacher, who is "qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of handicapped children." (Section 602[19] of the Act.) Thus, the agency representative could be (1) a qualified special education administrator, supervisor, or teacher (including a speech-language pathologist), or (2) a school principal or other administrator—if the person is qualified to provide, or supervise the provision of, special education.

Each State or local agency may determine which specific staff member will serve as the agency representative. However, the representative should be able to ensure that whatever services are set out in the IEP will actually be provided and that the IEP will not be vetoed at a higher administrative level within the agency. Thus, the person selected should have the authority to commit agency resources (i.e., to make decisions about the specific special education and related services that the agency will provide to a particular child).

For a handicapped child who requires only a limited amount of special education, the agency representative able to commit appropriate resources could be a special education teacher, or a speech-language pathologist, other than the child's teacher. For a child who requires extensive special education and related services, the agency representative might need to be a key administrator in the agency.

Note.—IEP meetings for continuing placements could be more routine than those for initial placements, and, thus, might not require the participation of a key administrator.

14. *Who is the "representative of the public agency" if a handicapped child is served by a public agency other than the SEA or LEA?*

The answer depends on which agency is responsible, under State law, policy, or practice, for any one or all of the following: (1) The child's education, (2) placing the child, and (3) providing (or paying for the provision of) special education and related services to the child.

In general, the agency representative at the IEP meeting would be a member of the agency or institution that is responsible for the child's education. For example, if a State agency (1) places a child in an institution, (2) is responsible under State law for the child's education, and (3) has a qualified special education staff at the institution, then a member of the institution's staff would be the agency representative at the IEP meetings.

Sometimes there is no special education staff at the institution, and the children are served by special education personnel from the LEA where the institution is located. In this situation, a member of the LEA staff would usually serve as the agency representative.

Note.—In situations where the LEA places a child in an institution, paragraph "b" of the response to Question 1, above, would apply.

15. *For a handicapped child being considered for initial placement in special education, which teacher should attend the IEP meeting?*

The teacher could be either (1) a teacher qualified to provide special education in the child's area of suspected disability, or (2) the child's regular teacher. At the option of the agency, both teachers could attend. In any event, there should be at least one member of the school staff at the meeting (e.g., the agency representative or the teacher) who is qualified in the child's area of suspected disability.

Note.—Sometimes more than one meeting is necessary in order to finalize a child's IEP. If, in this process, the special education teacher who will be working with the child is identified, it would be useful to have that teacher participate in the meeting with the parents and other members of the IEP team in finalizing the IEP. When this is not possible, the agency should ensure that the teacher is given a copy of the child's IEP as soon as possible after the IEP is finalized and before the teacher begins working with the child.

16. *If a handicapped child is enrolled in both regular and special education classes, which teacher should attend the IEP meeting?*

In general, the teacher at the IEP meeting should be the child's special education teacher. At the option of the agency or the parent, the child's regular teacher also might attend. If the regular teacher does not attend, the agency should either provide the regular teacher with a copy of the IEP or inform the regular teacher of its contents. Moreover, the agency should ensure that the special education teacher, or other appropriate support person, is able, where necessary, to consult with and be a resource to the child's regular teacher.

17. *If a handicapped child in high school attends several regular classes, must all of the child's regular teachers attend the IEP meeting?*

No. Only one teacher must attend. However, at the option of the LEA, additional teachers of the child may attend. The following points should be considered in making this decision:

a. Generally, the number of participants at IEP meetings should be small. Small meetings have several advantages over large ones. For example, they (1) allow for more open, active parent involvement, (2) are less costly, (3) are easier to arrange and conduct, and (4) are usually more productive.

Note.—In an informal examination of IEPs from five States, Department staff found that, on the average, IEP meetings were attended by four persons.

b. While large meetings are generally inappropriate, there may be specific circumstances in which the participation of additional staff would be beneficial. When the participation of the regular teachers is considered by the agency or the parents to be beneficial to the child's success in school (e.g., in terms of the child's participation in the regular education program), it would be appropriate for them to attend the meeting.

c. Although the child's regular teachers would not routinely attend IEP meetings, they should either (1) be informed about the child's IEP by the special education teacher or agency representative, and/or (2) receive a copy of the IEP itself.

18. *If a child's primary handicap is a speech impairment, must the child's regular teacher attend the IEP meeting?*

No. A speech-language pathologist would usually serve as the child's "teacher" for purposes of the IEP meeting. The regular teacher could also attend at the option of the school.

19. *If a child is enrolled in a special education class because of a primary handicap, and also receives speech-language pathology services, must both specialists attend the IEP meeting?*

No. It is not required that both attend. The special education teacher would attend the meeting as the child's "teacher". The speech-language pathologist could either (1) participate in the meeting itself, or (2) provide a written recommendation concerning the nature, frequency, and amount of services to be provided to the child.

20. *When may representatives of teacher organizations attend IEP meetings?*

Under the Family Educational Rights and Privacy Act ("FERPA"; 20 U.S.C.

1232g) and implementing regulations (34 CFR Part 99), officials of teacher organizations may not attend IEP meetings at which personally identifiable information from the student's education records may be discussed—except with the prior written consent of the parents. (See 34 CFR 99.30(a)(1).)

In addition, EHA–B does not provide for the participation of representatives of teacher organizations at IEP meetings. The legislative history of the Act makes it clear that attendance at IEP meetings should be limited to th- who have an intense interest in the child. (121 Cong. Rec. S10974 (June 18, 1975) (remarks of Sen. Randolph).) Since a representative of a teacher organization would be concerned with the interests of the teacher rather than the interests of the child, it would be inappropriate for such an official to attend an IEP meeting.

21. *When may a handicapped child attend an IEP meeting?*

Generally, a handicapped child should attend the IEP meeting whenever the parent decides that it is appropriate for the child to do so. Whenever possible, the agency and parents should discuss the appropriateness of the child's participation before a decision is made, in order to help the parents determine whether or not the child's attendance will be (1) helpful in developing the IEP and/or (2) directly beneficial to the child. The agency should inform the parents before each IEP meeting—as part of the "notice of meeting" required under § 300.345(b)—that they may invite their child to participate.

Note.—The parents and agency should encourage older handicapped children (particular those at the secondary school level) to participate in their IEP meetings.

22. *Do the parents of a handicapped student retain the right to attend the IEP meeting when the student reaches the age of majority?*

The Act is silent concerning any modification of the rights of a handicapped student's parents when the student reaches the age of majority. The Department is considering providing further guidance on this issue in a separate document.

23. *Must related services personnel attend IEP meetings?*

No. It is not required that they attend. However, if a handicapped child has an identified need for related services, it would be appropriate for the related services personnel to attend the meeting or otherwise be involved in developing the IEP. For example, when the child's evaluation indicates the need for a specific related service (e.g., physical therapy, occupational therapy, or counseling), the agency should ensure that a qualified provider of that service either (1) attends the IEP meeting, or (2) provides a written recommendation concerning the nature, frequency, and amount of service to be provided to the child.

Note.—This written recommendation could be a part of the evaluation report.

24. *Are agencies required to use a case manager in the development of a handicapped child's IEP?*

No. However, some agencies have found it helpful to have a special educator or some other school staff member (e.g., a social worker, counselor, or psychologist) serve as coordinator or case manager of the IEP process for an individual child or for all handicapped children served by the agency. Examples of the kinds of activities which case managers might carry out are (1) coordinating the multidisciplinary evaluation; (2) collecting and synthesizing the evaluation reports and other relevant information about a child that might be needed at the IEP meeting; (3) communicating with the parents; and (4) participating in, or conducting, the IEP meeting itself.

25. *For a child with a suspected speech impairment, who must represent the evaluation team at the IEP meeting?*

No specific person must represent the evaluation team. However, a speech-language pathologist would normally be the most appropriate representative. For many children whose primary handicap is a speech impairment, there may be no other evaluation personnel involved. The comment following § 300.532 (*Evaluation procedures*) states:

> Children who have a speech impairment as their primary handicap may not need a complete battery of assessments (e.g., psychological, physical, or adaptive behavior). However, a qualified speech-language pathologist would (1) evaluate each speech impaired child using procedures that are appropriate for the diagnosis and appraisal of speech and language disorders, and (2) where necessary, make referrals for additional assessments needed to make an appropriate placement decision.

§ 300.345 Parent participation.

(a) Each public agency shall take steps to insure that one or both of the parents of the handicapped child are present at each meeting or are afforded the opportunity to participate, including:

(1) Notifying parents of the meeting early enough to insure that they will have an opportunity to attend; and

(2) Scheduling the meeting at a mutually agreed on time and place.

(b) The notice under paragraph (a)(1) of this section must indicate the purpose, time, and location of the meeting, and who will be in attendance.

(c) If neither parent can attend, the public agency shall use other methods to insure parent participation, including individual or conference telephone calls.

(d) A meeting may be conducted without a parent in attendance if the public agency is unable to convince the parents that they should attend. In this case the public agency must have a record of its attempts to arrange a mutually agreed on time and place such as:

(1) Detailed records of telephone calls made or attempted and the results of those calls.

(2) Copies of correspondence sent to the parents and any responses received, and

(3) Detailed records of visits made to the parent's home or place of employment and the results of those visits.

(e) The public agency shall take whatever action is necessary to insure that the parent understands the proceedings at a meeting, including arranging for an interpreter for parents who are deaf or whose native language is other than English.

(f) The public agency shall give the parent, on request, a copy of the individualized education program.

(20 U.S.C. 1401(19); 1412 (2)(B), (4), (6); 1414(a)(5).)

Comment. The notice in paragraph (a) could also inform parents that they may bring other people to the meeting. As indicated in paragraph (c), the procedure used to notify parents (whether oral or written or both) is left to the discretion of the agency, but the agency must keep a record of its efforts to contact parents.

28. *What is the role of the parents at an IEP meeting?*

The parents of a handicapped child are expected to be equal participants along with school personnel, in developing, reviewing, and revising the child's IEP. This is an active role in which the parents (1) participate in the

discussion about the child's need for special education and related services, and (2) join with the other participants in deciding what services the agency will provide to the child.

Note.—In some instances, parents might elect to bring another participant to the meeting, e.g., a friend or neighbor, someone outside of the agency who is familiar with applicable laws and with the child's needs, or a specialist who conducted an independent evaluation of the child.)

27. *What is the role of a surrogate parent at an IEP meeting?*

A surrogate parent is a person appointed to represent the interests of a handicapped child in the educational decision-making process when that child has no other parent representation. The surrogate has all of the rights and responsibilities of a parent under EHA-B. Thus, the surrogate parent is entitled to (1) participate in the child's IEP meeting, (2) see the child's education records, and (3) receive notice, grant consent, and invoke due process to resolve differences. (See § 300.514, *Surrogate parents.*)

28. *Must the public agency let the parents know who will be at the IEP meeting?*

Yes. In notifying parents about the meeting, the agency "must indicate the purpose, time, and location of the meeting, and *who will be in attendance.*" (§ 300.345(b), emphasis added.) Where possible, the agency should give the name and position of each person who will attend. In addition, the agency should inform the parents of their right to bring other participants to the meeting. (See Question 21, above, regarding participation of the child.) It is also appropriate for the agency to ask whether the parents intend to bring a participant to the meeting.

29. *Are parents required to sign IEPs?*

Parent signatures are not required by either the Act or regulations. However, having such signatures is considered by parents, advocates, and public agency personnel to be useful.

Note.—A national survey conducted under contract with the Department indicates that, in practice, most IEPs are signed by parents.)

The following are some of the ways in which IEPs signed by parents and/or agency personnel might be used:

a. A signed IEP is one way to document who attended the meeting.

Note.—This is useful for monitoring and compliance purposes.

If signatures are not used, the agency must document attendance in some other way.

b. An IEP signed by the parents is one way to indicate that the parents approved the child's special education program.

Note.—If, after signing, the parents feel that a change is needed in the IEP, it would be appropriate for them to request another meeting. See Question 11, above.

c. An IEP signed by an agency representative provides the parents a signed record of the services that the agency has agreed to provide.

Note.—Even if the school personnel do not sign, the agency still must provide, or ensure the provision of, the services called for in the IEP.

30. *If the parent signs the IEP, does the signature indicate consent for initial placement?*

The parent's signature on the IEP would satisfy the consent requirement concerning initial placement of the child (§ 300.504(b)(1)(ii)) only if the IEP includes a statement on initial placement which meets the definition of "consent" in § 300.500:

"Consent" means that: (a) the parent has been fully informed of all information relevant to the activity for which consent is sought * * *

(b) The parent understands and agrees in writing to the carrying out of the activity for which his or her consent is sought, and the consent describes that activity and lists the records (if any) which will be released and to whom; and

(c) The parent understands that the granting of consent is voluntary * * * and may be revoked at any time.

31. *Do parents have the right to a copy of their child's IEP?*

Yes. Section 300.345(f) states that "the public agency shall give the parent, on request, a copy of the individualized education program." In order that parents may know about this provision, it is recommended that they be informed about it at the IEP meeting and/or receive a copy of the IEP itself a reasonable time following the meeting.

Note.—The National Committee for Citizens in Education reports that in a 1979 survey of approximately 2,500 parents of handicapped children in 46 States, nearly 60% indicated that a completed copy of the IEP had been made available for them to keep.

32. *Must parents be informed at the IEP meeting of their right to appeal?*

If the agency has already informed the parents of their right to appeal, as it is required to do under the prior notice provisions of the regulations (§§ 300.504–300.505), it would not be necessary for the agency to do so again at the IEP meeting.

• Section 300.504(a) of the regulations states that "written notice which meets the requirements under § 300.505 must be given to parents a reasonable time" before the public agency proposes or refuses "to initiate or change the identification, evaluation, or educational placement of the child or the provision of a free appropriate public education to the child."

• Section 300.505(a) states that the notice must include "(1) A full explanation of all procedural safeguards available to parents" under the due process provisions of the regulations (§§ 300.500–300.569).

The IEP meeting serves as a communication vehicle between parents and school personnel, and enables them, as equal participants, to jointly decide upon what the child's needs are, what will be provided, and what the anticipated outcomes may be. If, during the IEP meeting, parents and school staff are unable to reach agreement, the agency should remind the parents that they may seek to resolve their differences though the due process procedures under the Act.

Note.—Section 300.506(a) states that "a parent or public educational agency may initiate a hearing on any matters described in § 300.504(a)(1) and (2)."

Every effort should be made to resolve differences between parents and school staff without resort to a due process hearing (i.e., through voluntary mediation or some other informal step). However, mediation or other informal procedures may not be used to deny or delay a parent's right to a due process hearing. (See § 300.506. *Impartial due process hearing.*)

33. *Does the IEP include ways for parents to check the progress of their children?*

In general, the answer is yes. The IEP document is a written record of decisions jointly made by parents and school personnel at the IEP meeting regarding a handicapped child's special education program. That record includes agreed upon items, such as goals and objectives, and the specific special education and related services to be provided to the child.

The goals and objectives in the IEP should be helpful to both parents and school personnel, in a general way, in checking on a child's progress in the special education program. (See Questions 37–43, below, regarding goals and objectives in the IEP.) However, since the IEP is not intended to include the specifics about a child's total educational program that are found in

daily, weekly, or monthly instructional plans, parents will often need to obtain more specific, on-going information about the child's progress—through parent-teacher conferences, report cards and other reporting procedures ordinarily used by the agency.

34. Must IEPs include specific "checkpoint intervals" for parents to confer with teachers and to revise or update their children's IEPs?

No. A handicapped child's IEP is not required to include specific "checkpoint intervals" (i.e., meeting dates) for reviewing the child's progress. However, in individual situations, specific meeting dates could be designated in the IEP, if the parents and school presonnel believe that it would be helpful to do so.

Although meeting dates are not required to be set out in the IEP itself, there are specific provisions in the regulations and in this document regarding agency responsibilities in initiating IEP meetings, including the following: (1) Public agencies must hold meetings periodically, but not less than annually, to review, and if appropriate, revise, each child's IEP (§ 300.343(d)); (2) there should be as many meetings a year as the child needs (see Question 10, above); and (3) agencies should grant any reasonable parental request for an IEP meeting (see Question 11, above).

In addition to the above provisions, it is expected that, through an agency's general reporting procedures for all children in school, there will be specific designated times for parents to review their children's progress (e.g., through periodic parent-teacher conferences, and/or the use of report cards, letters, or other reporting devices).

35. If the parents and agency are unable to reach agreement at an IEP meeting, what steps should be followed until agreement is reached?

As a general rule, the agency and parents would agree to an interim course of action for serving the child (i.e., in terms of placement and/or services) to be followed until the area of disagreement over the IEP is resolved. The manner in which this interim measure is developed and agreed to by both parties is left to the discretion of the individual State or local agency. However, if the parents and agency cannot agree on an interim measure, the child's last agreed upon IEP would remain in effect in the areas of disagreement until the disagreement is resolved. The following may be helpful to agencies when there are disagreements:

a. There may be instances where the parents and agency are in agreement about the basic IEP services (e.g., the child's placement and/or the special education services), but disagree about the provision of a particular related service (i.e., whether the service is needed and/or the amount to be provided). In such cases, it is recommended (1) that the IEP be implemented in all areas in which there is agreement, (2) that the document indicate the points of disagreement, and (3) that procedures be initiated to resolve the disagreement.

b. Sometimes the disagreement is with the placement or kind of special education to be provided (e.g., one party proposes a self-contained placement, and the other proposes resource room services). In such cases, the agency might, for example, carry out any one or all of the following steps: (1) Remind the parents that they may resolve their differences through the due process procedures under EHA–B; (2) work with the parents to develop an interim course of action (in terms of placement and/or services) which both parties can agree to until resolution is reached; and (3) recommend the use of mediation, or some other informal procedure for resolving the differences without going to a due process hearing. (See Question 32, above, regarding the right to appeal.)

c. If, because of the disagreement over the IEP, a hearing is initiated by either the parents or agency, the agency may not change the child's placement unless the parents and agency agree otherwise. (See § 300.513, *Child's status during proceedings.*) The following two examples are related to this requirement:

(1) A child in the regular fourth grade has been evaluated and found to be eligible for special education. The agency and parents agree that the child has a specific learning disability. However, one party proposes placement in a self-contained program, and the other proposes placement in a resource room. Agreement cannot be reached, and a due process hearing is initiated. Unless the parents and agency agree otherwise, the child would remain in the regular fourth grade until the issue is resolved.

On the other hand, since the child's need for special education is not in question, both parties might agree—as an interim measure—(1) to temporarily place the child in either one of the programs proposed at the meeting (self-contained program or resource room), or (2) to serve the child through some other temporary arrangement.

(2) A handicapped child is currently receiving special education under an existing IEP. A due process hearing has been initiated regarding an alternative special education placement for the child. Unless the parents and agency agree otherwise, the child would remain in the current placement. In this situation, the child's IEP could be revised, as necessary, and implemented in all of the areas agreed to by the parents and agency, while the area of disagreement (i.e., the child's placement) is being settled through due process.

Note.—If the due process hearing concerns whether or not a particular service should continue to be provided under the IEP (e.g., physical therapy), that service *would* continue to be provided to the child under the IEP that was in effect at the time the hearing was initiated, (1) unless the parents and agency agree to a change in the services, or (2) until the issue is resolved.

§ 300.346 Content of individualized education programs.

The individualized education program for each child must include:

(a) A statement of the child's present levels of educational performance;

(b) A statement of annual goals, including short term instructional objectives;

(c) A statement of the specific special education and related services to be provided to the child, and the extent to which the child will be able to participate in regular educational programs;

(d) The projected dates for initiation of services and the anticipated duration of the services; and

(e) Appropriate objective criteria and evaluation procedures and schedules for determining, on at least an annual basis, whether the short term instructional objectives are being achieved.

(20 U.S.C. 1401(19); 1412 (2)(B), (4), (6), 1414(a)(5); Senate Report No. 94-168, p. 11 (1975).)

36. What should be included in the statement of the child's present levels of educational performance?

The statement of present levels of educational performance will be different for each handicapped child. Thus, determinations about the content

of the statement for an individual child are matters that are left to the discretion of participants in the IEP meetings. However, the following are some points which should be taken into account in writing this part of the IEP.

a. The statement should accurately describe the effect of the child's handicap on the child's performance in any area of education that is affected, including (1) academic areas (reading, math, communication, etc.), and (2) non-academic areas (daily life activities, mobility, etc.).

Note.—Labels such as "mentally retarded" or "deaf" may not be used as a substitute for the description of present levels of educational performance.)

b. The statement should be written in objective measurable terms, to the extent possible. Data from the child's evaluation would be a good source of such information. Test scores that are pertinent to the child's diagnosis might be included, where appropriate. However, the scores should be (1) self-explanatory (i.e., they can be interpreted by all participants without the use of test manuals or other aids), or (2) an explanation should be included. Whatever test results are used should reflect the impact of the handicap on the child's performance. Thus, raw scores would not usually be sufficient.

c. There should be a direct relationship between the present levels of educational performance and the other components of the IEP. Thus, if the statement describes a problem with the child's reading level and points to a deficiency in a specific reading skill, this problem should be addressed under both (1) goals and objectives, and (2) specific special education and related services to be provided to the child.

37. *Why are goals and objectives required in the IEP?*

The statutory requirements for including annual goals and short term objectives (Section 602(19)(B)), and for having at least an annual review of a handicapped child's IEP (Section 614(a)(5)), provide a mechanism for determining (1) whether the anticipated outcomes for the child are being met (i.e., whether the child is progressing in the special education program) and (2) whether the placement and services are appropriate to the child's special learning needs. In effect, these requirements provide a way for the child's teacher(s) and parents to be able to track the child's progress in special education. However, the goals and objectives in the IEP are not intended to be as specific as the goals and objectives that are normally found in daily, weekly, or monthly instructional plans.

38. *What are "annual goals" in an IEP?*

The annual goals in the IEP are statements which describe what a handicapped child can reasonably be expected to accomplish within a twelve month period in the child's special education program. As indicated under Question 36, above, there should be a direct relationship between the annual goals and the present levels of educational performance.

39. *What are "short term instructional objectives" in an IEP?*

"Short term instructional objectives" (also called "IEP objectives") are measurable, intermediate steps between a handicapped child's present levels of educational performance and the annual goals that are established for the child. The objectives are developed based on a logical breakdown of the major components of the annual goals, and can serve as milestones for measuring progress toward meeting the goals.

In some respects, IEP objectives are similar to objectives used in daily classroom instructional plans. For example, both kinds of objectives are used (1) to describe what a given child is expected to accomplish in a particular area within some specified time period, and (2) to determine the extent to which the child is progressing toward those accomplishments.

In other respects, objectives in IEPs are different from those used in instructional plans, primarily in the amount of detail they provide. IEP objectives provide general benchmarks for determining progress toward meeting the annual goals. These objectives should be projected to be accomplished over an extended period of time (e.g., an entire school quarter or semester). On the other hand, the objectives in classroom instructional plans deal with more specific outcomes that are to be accomplished on a daily, weekly, or monthly basis. Classroom instructional plans generally include details not required in an IEP, such as the specific methods, activities, and materials (e.g., use of flash cards) that will be used in accomplishing the objectives.

40. *Should the IEP goals and objectives focus only on special education and related services, or should they relate to the total education of the child?*

IEP goals and objectives are concerned primarily with meeting a handicapped child's need for special education and related services, and are not required to cover other areas of the child's education. Stated another way, the goals and objectives in the IEP should focus on offsetting or reducing the problems resulting from the child's handicap which interfere with learning and educational performance in school. For example, if a learning disabled child is functioning several grades below the child's indicated ability in reading and has a specific problem with word recognition, the IEP goals and objectives would be directed toward (1) closing the gap between the child's indicated ability and current level of functioning, and (2) helping the child increase the ability to use word attack skills effectively (or to find some other approach to increase independence in reading).

For a child with a mild speech impairment, the IEP objectives would focus on improving the child's communication skills, by either (1) correcting the impairment, or (2) minimizing its effect on the child's ability to communicate. On the other hand, the goals and objectives for a severely retarded child would be more comprehensive and cover more of the child's school program than if the child has only a mild handicap.

41. *Should there be a relationship between the goals and objectives in the IEP and those that are in instructional plans of special education personnel?*

Yes. There should be a direct relationship between the IEP goals and objectives for a given handicapped child and the goals and objectives that are in the special education instructional plans for the child. However, the IEP is not intended to be detailed enough to be used as an instructional plan. The IEP, through its goals and objectives, (1) sets the general direction to be taken by those who will implement the IEP, and (2) serves as the basis for developing a detailed instructional plan for the child.

Note.—See Question 56, below, regarding the length of IEPs.

42. *When must IEP objectives be written—before placement or after placement?*

IEP objectives must be written before placement. Once a handicapped child is placed in a special education program, the teacher might develop lesson plans or more detailed objectives *based* on the IEP; however, such plans and objectives are not required to be a part of the IEP itself.

43. *Can short term instructional objectives be changed without initiating another IEP meeting?*

No. Section 300.343(a) provides that the agency "is responsible for initiating and conducting meetings for the purpose of developing, reviewing, and *revising* a handicapped child's individualized education program" (emphasis added). Since a change in short term

instructional objectives constitutes a revision of the child's IEP, the agency must (1) notify the parents of the proposed change (see § 300.504(a)(1)), and (2) initiate an IEP meeting. Note, however, that if the parents are unable or unwilling to attend such a meeting, their participation in the revision of the IEP objectives can be obtained through other means, including individual or conference telephone calls (see § 300.345(c)).

44. *Must the IEP include all special education and related services needed by the child or only those available from the public agency?*

Each public agency must provide a free appropriate public education to all handicapped children under its jurisdiction. Therefore, the IEP for a handicapped child must include all of the specific special education and related services needed by the child—as determined by the child's current evaluation. This means that the services must be listed in the IEP even if they are not directly available from the local agency, and must be provided by the agency through contract or other arrangements.

45. *Is the IEP a commitment to provide services—i.e., must a public agency provide all of the services listed in the IEP?*

Yes. Each handicapped child's IEP must include all services necessary to meet the child's identified special education and related services needs; and all services in the IEP must be provided in order for the agency to be in compliance with the Act.

46. *Must the public agency itself directly provide the services set out in the IEP?*

The public agency responsible for the education of a handicapped child could provide IEP services to the child (1) directly, through the agency's own staff resources, or (2) indirectly, by contracting with another public or private agency, or through other arrangements. In providing the services, the agency may use whatever State, local, Federal, and private sources of support are available for those purposes (see § 300.301(a)). However, the services must be at no cost to the parents, and responsibility for ensuring that the IEP services are provided remains with the public agency.

47. *Does the IEP include only special education and related services or does it describe the total education of the child?*

The IEP is required to include only those matters concerning the provision of special education and related services and the extent to which the child can participate in regular education programs. (NOTE: The regulations define "special education" as specially designed instruction to meet the unique needs of a handicapped child, and "related services" as those which are necessary to assist the child to benefit from special education.) (See §§ 300.14 and 300.13, respectively.)

For some handicapped children, the IEP will only address a very limited part of their education (e.g., for a speech impaired child, the IEP would generally be limited to the child's speech impairment). For other children (e.g., those who are profoundly retarded), the IEP might cover their total education. An IEP for a physically impaired child with no mental impairment might consist only of specially designed physical education. However, if the child also has a mental impairment, the IEP might cover most of the child's education

Note.—The IEP is not intended to be detailed enough to be used as an instructional plan. See Question 41, above.

48. *If modifications are necessary for a handicapped child to participate in a regular education program, must they be included in the IEP?*

Yes. If modifications (supplementary aids and services) to the regular education program are necessary to ensure the child's participation in that program, those modifications must be described in the child's IEP (e.g., for a hearing impaired child, special seating arrangements or the provision of assignments in writing). This applies to any regular education program in which the student may participate, including physical education, art, music, and vocational education.

49. *When must physical education (PE) be described or referred to in the IEP?*

Section 300.307(a) provides that "physical education services, specially designed if necessary, must be made available to every handicapped child receiving a free appropriate public education." The following paragraphs (1) set out some of the different PE program arrangements for handicapped students, and (2) indicate whether, and to what extent, PE must be described or referred to in an IEP:

a. *Regular PE with non-handicapped students.* If a handicapped student can participate fully in the regular PE program without any special modifications to compensate for the student's handicap, it would not be necessary to describe or refer to PE in the IEP. On the other hand, if some modifications to the regular PE program are necessary for the student to be able to participate in that program, those modifications must be described in the IEP.

b. *Specially designed PE.* If a handicapped student needs a specially designed PE program, that program must be addressed in all applicable areas of the IEP (e.g., present levels of educational performance, goals and objectives, and services to be provided). However, these statements would not have to be presented in any more detail than the other special education services included in the student's IEP.

c. *PE in separate facilities.* If a handicapped student is educated in a separate facility, the PE program for that student must be described or referred to in the IEP. However, the kind and amount of information to be included in the IEP would depend on the physical-motor needs of the student and the type of PE program that is to be provided.

Thus, if a student is in a separate facility that has a standard PE program (e.g., a residential school for the deaf), and if it is determined—on the basis of the student's most recent evaluation—that the student is able to participate in that program without any modifications, then the IEP need only note such participation. On the other hand, if special modifications to the PE program are needed for the student to participate, those modifications must be described in the IEP. Moreover, if the student needs an individually designed PE program, that program must be addressed under all applicable parts of the IEP. (See paragraph "b", above.)

Note.—The Department is considering the possibility of publishing a separate document on the PE requirement under the Act and regulations.

50. *If a handicapped student is to receive vocational education, must it be described or referred to in the student's IEP?*

The answer depends on the kind of vocational education program to be provided. If a handicapped student is able to participate in the regular vocational education program without any modifications to compensate for the student's handicap, it would not be necessary to include vocational education in the student's IEP. On the other hand, if modifications to the regular vocational education program are necessary in order for the student to participate in that program, those modifications must be included in the IEP. Moreover, if the student needs a specially designed vocational education program, then vocational education must be described in all applicable areas of the student's IEP (e.g., present levels of educational performance, goals and objectives, and specific services to be

provided). However, these statements would not have to be presented in any more detail than the other special education services included in the IEP.

Note.—Regulations under the Vocational Education Act provide that (1) certain funds available under that Act for vocational programs for handicapped persons must be used in a manner consistent with the State's plan under EHA–B, and (2) the five-year State Vocational Education Plan "shall describe how the program provided each handicapped child will be planned and coordinated in conformity with and as a part of the child's individualized education program as required by the Education of the Handicapped Act." See 34 CFR 400.141(f)(10), 400.182(f) (formerly 45 CFR 104.141(f)(10), 104.182(f)).

51. *Must the IEP specify the amount of services or may it simply list the services to be provided?*

The amount of services to be provided must be stated in the IEP, so that the level of the agency's commitment of resources will be clear to parents and other IEP team members. The amount of time to be committed to each of the various services to be provided must be (1) appropriate to that specific service, and (2) stated in the IEP in a manner that is clear to all who are involved in both the development and implementation of the IEP.

Changes in the amount of services listed in the IEP cannot be made without holding another IEP meeting. However, as long as there is no change in the overall amount, some adjustments in scheduling the services should be possible (based on the professional judgment of the service provider) without holding another IEP meeting.

Note.— The parents should be notified whenever this occurs.

52. *Must a handicapped child's IEP indicate the extent to which the child will be educated in the regular educational program?*

Yes. Section 300.346(c) provides that the IEP for each handicapped child must include a "statement of * * * the extent to which the child will be able to particpate in regular educational programs." One way of meeting this requirement is to indicate the percent of time the child will be spending in the regular education program with non-handicapped students. Another way is to list the specific regular education classes the child will be attending.

Note.—If a severely handicapped child, for example, is expected to be in a special classroom setting most of the time, it is recommended that, in meeting the above requirement, the IEP include any non-curricular activities in which the child will be participating with non-handicapped students (e.g., lunch, assembly periods, club activities, and other special events).

53. *Can the anticipated duration of services be for more than twelve months?*

In general, the anticipated duration of services would be up to twelve months. There is a direct relationship between the anticipated duration of services and the other parts of the IEP (e.g., annual goals and short term objectives), and each part of the IEP would be addressed whenever there is a review of the child's program. If it is anticipated that the child will need a particular service for more than one year, the duration of that service could be projected beyond that time in the IEP. However, the duration of each service must be reconsidered whenever the IEP is reviewed.

54. *Must the evaluation procedures and schedules be included as a separate item in the IEP?*

No. The evaluation procedures and schedules need not be included as a separate item in the IEP, but they must be presented in a recognizable form and be clearly linked to the short term objectives.

Note.—In many instances, these components are incorporated directly into the objectives.

Other Questions About the Content of an IEP

55. *Is it permissible for an agency to have the IEP completed when the IEP meeting begins?*

No. It is not permissible for an agency to present a completed IEP to parents for their approval before there has been a full discussion with the parents of (1) the child's need for special education and related services, and (2) what services the agency will provide to the child. Section 602(9) of the Act defines the IEP as a written statement *developed in any meeting* with the agency representative, the teacher, the parent, and, whenever appropriate, the child.

It would be appropriate for agency staff to come prepared with evaluation findings, statements of present levels of educational performance, and a recommendation regarding annual goals, short term instructional objectives, and the kind of special education and related services to be provided. However, the agency must make it clear to the parents at the outset of the meeting that the services proposed by the agency are only recommendations for review and discussion with the parents. The legislative history of Pub. L. 94–142 makes it clear that parents must be given the opportunity to be active participants in all major decisions affecting the education of their handicapped children. (See, e.g., S. Rep. No. 168, 94th Cong. 1st Sess. 13 (1975); S. Rep. No. 455 (Conference Report), 94th Cong. 1st Sess. 47–50 (1975).)

56. *Is there a prescribed format or length for an IEP?*

No. The format and length of an IEP are matters left to the discretion of State and local agencies. The IEP should be as long as necessary to adequately describe a child's program. However, as indicated in Question 41, above, the IEP is not intended to be a detailed instructional plan. The Federal IEP requirements can usually be met in a one to three page form.

Note.—In a national survey conducted under contract with the Department, it was found that 47% of the IEPs reviewed were 3 pages or less in length.

57. *Is it permissible to consolidate the IEP with an individualized service plan developed under another Federal program?*

Yes. In instances where a handicapped child must have both an IEP and an individualized service plan under another Federal program, it may be possible to develop a single, consolidated document: *Provided,* That (1) it contains all of the information required in an IEP, and (2) all of the necessary parties participate in its development.

Examples of individualized service plans which might be consolidated with the IEP are: (1) The Individualized Care Plan (Title XIX of the Social Security Act (Medicaid)), (2) the Individualized Program Plan (Title XX of the Social Security Act (Social Services)), (3) the Individualized Service Plan (Title XVI of the Social Security Act (Supplemental Security Income)), and (4) the

Individualized Written Rehabilitation Plan (Rehabilitation Act of 1973).

58. *What provisions on confidentiality of information apply to IEPs?*

IEPs are subject to the confidentiality provisions of both (1) EHA–B (Section 617(c) of the Act; §§ 300.560–300.576 of the regulations), and (2) the Family Educational Rights and Privacy Act ("FERPA", 20 U.S.C. 1232g). An IEP is an "education record" as that term is used in the FERPA and implementing regulations (34 CFR Part 99) and is, therefore, subject to the same protections as other education records relating to the student.

Note.—Under Section 99.31(a) of the FERPA regulations, an educational agency may disclose personally identifiable information from the education records of a student without the written consent of the parents "if the disclosure is—(1) To other school officials, including teachers, within the educational institution or local educational agency who have been determined by the agency or institution to have legitimate educational interests * * *" in that information.

§ 300.347 Private school placements.

(a) *Developing individualized education programs.* (1) Before a public agency places a handicapped child in, or refers a child to, a private school or facility, the agency shall initiate and conduct a meeting to develop an individualized education program for the child in accordance with § 300.343.

(2) The agency shall insure that a representative of the private school facility attends the meeting. If the representative cannot attend, the agency shall use other methods to insure participation by the private school or facility, including individual or conference telephone calls.

(3) The public agency shall also develop an individualized educational program for each handicapped child who was placed in a private school or facility by the agency before the effective date of these regulations.

(b) *Reviewing and revising individualized education programs.* (1) After a handicapped child enters a private school or facility, any meetings to review and revise the child's individualized education program may be initiated and conducted by the private school or facility at the discretion of the public agency.

(2) If the private school or facility initiates and conducts these meetings, the public agency shall insure that the parents and an agency representative:

(i) Are involved in any decision about the child's individualized education program; and

(ii) Agree to any proposed changes in the program before those changes are implemented.

(c) *Responsibility.* Even if a private school or facility implements a child's individualized education program, responsibility for compliance with this part remains with the public agency and the State educational agency.

(20 U.S.C. 1413(a)(4)(B).)

59. *If placement decisions are made at the time the IEP is developed, how can a private school representative attend the meeting?*

Generally, a child who requires placement in either a public or private residential school has already been receiving special education, and the parents and school personnel have often jointly been involved over a prolonged period of time in attempting to find the most appropriate placement for the child. At some point in this process (e.g., at a meeting where the child's current IEP is being reviewed), the possibility of residential school placement might be proposed—by either the parents or school personnel. It both agree, then the matter would be explored with the residential school. A subsequent meeting would then be conducted to finalize the IEP. At this meeting, the public agency must ensure that a representative of the residential school either (1) attends the meeting, or (2) participates through individual or conference telephone calls, or by other means.

§ 300.348 Handicapped children in parochial or other private schools.

If a handicapped child is enrolled in a parochial or other private school and receives special education or related services from a public agency, the public agency shall:

(a) Initiate and conduct meetings to develop, review, and revise an individualized education program for the child, in accordance with § 300.343; and

(b) Insure that a representative of the parochial or other private school attends each meeting. If the representative cannot attend, the agency shall use other methods to insure participation by the private school, including individual or conference telephone calls.

(20 U.S.C. 1413(a)(4)(A).)

Note.—The Department is considering publishing a separate document concerning the education of handicapped children placed in parochial or other private schools by their parents. Questions concerning IEPs for those children would be addressed in that document.

§ 300.349 Individualized education program—accountability.

Each public agency must provide special education and related services to a handicapped child in accordance with an individualized education program. However, Part B of the Act does not require that any agency, teacher, or other person be held accountable if a child does not achieve the growth projected in the annual goals and objectives.

(20 U.S.C. 1412(2)(B); 1414(a)(5), (6); Cong. Rec. at H 7152 (daily ed., July 21, 1976).)

Comment. This section is intended to relieve concerns that the individualized education program constitutes a guarantee by the public agency and the teacher that a child will progress at a specified rate. However, this section does not relieve agencies and teachers from making good faith efforts to assist the child in achieving the objectives and goals listed in the individualized education program. Further, the section does not limit a parent's right to complain and ask for revisions of the child's program, or to invoke due process procedures, if the parent feels that these efforts are not being made.

Q0. ***Is the IEP a performance contract?***

No. Section 300.349 makes it clear that the IEP is *not* a performance contract that imposes liability on a teacher or public agency if a handicapped child does not meet the IEP objectives. While the agency must provide special education and related services in accordance with each handicapped child's IEP, the Act does not require that the agency, the teacher, or other persons be held accountable if the child does not achieve the growth projected in the written statement.

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Part XIII

Department of Transportation

Urban Mass Transportation Administration

Service Changes and Fare Changes; Public Hearing Requirements

DEPARTMENT OF TRANSPORTATION

Urban Mass Transportation Administration

49 CFR Part 635

Public Hearing Requirements for Service Changes and Fare Changes

AGENCY: Urban Mass Transportation Administration, DOT.

ACTION: Final rule.

SUMMARY: The Urban Mass Transportation Administration (UMTA) is revising its regulations implementing section 5(i)(3) of the Urban Mass Transportation Act of 1964, as amended. This section of the Act requires recipients of section 5 funds to hold public hearings or to provide an opportunity for a public hearing prior to changes in fares and prior to substantial changes in service. The revisions address several issues raised during a recent comment period concerning when a hearing must be held.

DATE: These revisions are effective on February 18, 1981.

FOR FURTHER INFORMATION CONTACT: Charlotte Adams, Office of Program Analysis, (202) 472-6997.

SUPPLEMENTARY INFORMATION: On April 17, 1980, UMTA issued a final rule implementing section 5(i)(3) (45 FR 26298). UMTA provided for public comment on the percentage tests for when a public hearing is required. A total of fifty-two written comments were received. Although comments were specifically requested on § 635.7(a), comments were received concerning all of the provisions of § 635.7. All of the comments have been considered, and revisions are being made to most of the provisions of § 635.7.

The Administrator had determined that this regulation is not a significant regulation under the criteria in the DOT Order for Improving Government Regulations (44 FR 11042, February 26, 1979).

Under the DOT Order, a full evaluation is not warranted because the expected economic impact of the regulations is minimal. The final rule revises procedural standards implementing a statutory provision.

The provisions of OMB Circular A-95 apply to this Final Rule. It covers the following programs as listed in the Catalog of Federal Domestic Assistance (CFDA): 20.507 Urban Mass Transportation Capital and Operating Assistance Formula Grants.

Discussion of the Comments Received and of Changes to the Regulations.

Several comments were received concerning the existing § 635.7(a)(2) of the regulation objecting to the "25% test" on a route basis because it is perceived as having the effect of deterring routine service adjustments. It was also pointed out that changes in service, no matter how slight, could be interpreted as "directly affecting" 100% of ridership at all times.

Three changes have been made in the regulations to address these concerns. First, because it is not UMTA's intent to inhibit day-to-day service changes, exemptions for minimum headway adjustments have been provided for. In addressing the second concern, UMTA found that the confusion over the implication of the term "direct affect" upon ridership also could apply to the determination of route miles and revenue vehicle miles, a slight change "directly affecting" 100% of these calculations. To clarify the intent of the percentage tests and to accommodate the concern over the use of the "ridership test", UMTA has eliminated ridership as a gauge of substantial change in service, and eliminated the term "directly affects." It is felt that these changes will provide a clearer understanding of the conditions which warrant a public hearing and allow the flexibility to implement routine service adjustments.

One commentor requested increased exemptions for promotional fares and services. The current regulation provides for experimental service changes and UMTA feels this provision is sufficient. However, in further recognition of the significant and utility of promotional fare programs, and in response to the request for additional flexibility to implement such programs without a public hearing, UMTA has added a new provision concerning promotional fare changes. This Section exempts periodic or daily promotional fares from the public hearing requirements for up to 180 days. As applied in the regulation, UMTA defined promotional fares as a reduction in fare on an existing service intended to provide an incentive for increased transit ridership.

Several commentors questioned the provision concerning several changes in a fiscal year that add up to the percentages in § 635.7(a). The commentors were concerned with the recordkeeping burdens associated with the requirement. The deletion of "ridership" as a test should significantly lessen any recordkeeping burdens. UMTA does not specifically require any formal records to be maintained and it is felt that transit authorities will be able to adequately determine when hearings are required.

Several comments were received concerning the provision dealing with "emergency" service changes. The comments dealt with the requirement that the Regional Administrator be notified of all emergency changes, and with the requirement that a hearing be held within 60 days if the emergency change is to be in effect for 90 days or more.

Most commentors felt that the requirement to notify the Regional Administrator is excessive and could possibly inundate UMTA with useless information especially when only a one or two day emergency change is made. UMTA agrees with the thrust of the comments and has eliminated the requirement that the Regional Administrator be notified of "emergency" service changes.

In regard to the hearing requirement for emergency changes of over 90 days, the commentors were concerned that many emergencies last more than 90 days and that in many instances few, if any, alternatives are available, and a public hearing would serve no useful purpose.

Since the purpose of section 5(i)(3) is to give the public an opportunity to participate in a transit authority's decision regarding service changes, the provision regarding "emergencies" is being revised to allow emergency service changes of up to 180 days without a public hearing. This change will meet the needs of both the transit authorities and the public.

Even though UMTA will not require transit authorities to notify the public of emergency changes lasting less than 180 days, we do encourage the authorities to widely publish changes by using all media available, and by posting notices on transit vehicles and at transit stops.

The provision concerning experimental service changes is being revised to clarify that the tests in § 635.7(a) also are to be used when an experimental service change exceeding 180 days is being made and that a new route may be added as an experiment.

One commentor suggested that UMTA adopt an alternative to the procedures outlined in § 635.7. This recommended alternative would place responsibility at the local level for developing criteria for the determination of when a hearing should be required. Although UMTA recognizes the appeal of such flexibility, we feel that implementation of this Section of the Act necessitates the development of and adherence to uniform national criteria. In addition,

UMTA must ensure compliance with the requirements of the Act.

If individual transit operators developed local criteria as a gauge of "substantial change in service" requiring a public hearing, UMTA would be put into the position of assessing the reasonableness of each local determination. This would be impractical and undesirable from the perspective of national program administration.

Similarly, a request was made that transit operators with local regulatory authority be allowed to follow their own procedures for public involvement in the adjustment of service levels. UMTA has no reservation about the appropriateness of locally determined service levels. However, as stated above, we believe it necessary to implement the Act on a nationwise basis using uniform criteria for establishing a threshold for public awareness. A transit authority is free to supplement these requirements with any local procedures for additional public involvement in the decision-making process prior to fare and service changes.

Accordingly, Part 635 of Title 49 of the Code of Federal Regulations is amended by revising § 635.7 to read as follows:

§ 635.7 When hearing is required.

(a) Except as provided elsewhere in this section, a hearing required by section 5(i)(3) of the Act must be held when—

(1) There is a change in any fare;

(2) There is any change in service of—

(i) 25 percent or more of the number of transit route miles of a route; or

(ii) 25 percent or more of the number of transit revenue vehicle miles of a route computed on a daily basis for the day of the week for which the change is made; or

(3) A new transit route is established.

(b) Reduced or free promotional fares which are instituted on a daily basis or periodically within a period of 180 days are exempt from the public hearing requirement.

(c) If a number of changes on a route in an operator's fiscal year add up to the percentages in paragraph (a) of this section, a hearing must be held prior to the last change.

(d) Headway adjustments of up to 5 minutes during peak hour service, and up to 15 minutes during non-peak hour service are exempt from the public hearing requirements.

(e) Standard seasonal variations are exempt from the public hearing requirement unless the number, timing or type of standard seasonal variations change.

(f) In an emergency situation, a service change may be implemented immediately without a public hearing being held. A public hearing on the emergency change must be held if the emergency change is to be in effect for more than 180 days and if the change meets the test of paragraph (a) (2) or (3). Examples of emergency service changes include but are not limited to those made because of a power failure for a rail or fixed guideway system, the collapse of a bridge over which bus routes pass, major road or rail construction, or inadequate supplies of fuel.

(g) Experimental service changes may be instituted for 180 days or less without a public hearing being held. The public hearing on an experimental service change is required if the experimental service change remains in effect for more than 180 days and if the change meets the tests of paragraph (a) (2) or (3). The hearing may be held prior to the institution of, or during the period of the experimental service change and will satisfy the requirement for a final public hearing if the hearing notice required by § 635.9 states that the experiment may become permanent at the end of the experimental period. If a hearing is not held prior to or during the period of the experimental service change, the service that existed prior to the change must be reinstituted at the end of 180 days and a public hearing held in accordance with § 635.9 before the experimental service may be continued.

(49 U.S.C. 1604(i)(3); 49 CFR 1.51)

Dated: January 12, 1981.

Theodore C. Lutz,

Administrator.

[FR Doc. 81-1704 Filed 1-16-81; 8:45 am]

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federal register

Monday
January 19, 1981

Part XIV

Department of Transportation

Urban Mass Transportation Administration

Emergency Stockpiling of Buses

DEPARTMENT OF TRANSPORTATION

49 CFR Part 639

Emergency Stockpiling of Buses

AGENCY: Urban Mass Transportation Administration, DOT.

ACTION: Final rule.

SUMMARY: The Urban Mass Transportation Administration (UMTA) is issuing a policy that allows its grantees to stockpile buses for possible future emergency use. Prior UMTA policy required grantees to sell buses being replaced and use the proceeds to offset the cost of the new buses. The revised policy permits the retention of replaced buses as part of a stockpiled reserve fleet which would ensure the availability of a larger pool of buses nationwide to respond to substantial and unexpected sudden changes in demand for service during emergencies.

EFFECTIVE DATE: February 18, 1981.

FOR FURTHER INFORMATION CONTACT: Randy Best, Office of Program Analysis, (202) 472-6927.

SUPPLEMENTARY INFORMATION:

Classification

The Administrator has determined that this regulation is not a significant regulation under the criteria in the DOT Order for Improving Government Regulations (44 FR 11042, February 26, 1979). Under the DOT Order, a full evaluation is not warranted because the expected economic impact of the regulation is minimal. The regulation establishes policy and sets out requirements concerning the stockpiling of buses.

The provisions of OMB Circular A-95 apply to this Final Rule. It covers the following programs as listed in the Catalog of Federal Domestic Assistance (CFDA):

20.205—Highway Research, Planning, and Construction (Only Transit projects funded under 23 U.S.C. 103(e)(4) and 142 (a) and (c)).

20.507—Urban Mass Transportation Capital and Operating Assistance Formula Grants.

Discussion

UMTA encourages grantees to consider stockpiling as an opportunity for low cost preparedness for potential increased capacity needs. Buses stored under this policy may be used in times of energy emergencies, as a supplement to regular transit equipment if there are unexpected changes in local conditions, or for short term use as a substitute for buses being rehabilitated.

UMTA awards capital assistance grants for bus fleet expansion, bus rehabilitation and bus replacement. This regulation will not apply to bus fleet expansion and bus rehabilitation projects in which no buses are permanently removed from active service. Through this new policy, UMTA will approve stockpiling of buses that are being removed from active service and replaced by new buses. UMTA also will permit stockpiling of buses that are no longer needed for regular transit service because of service cutbacks.

UMTA is currently in the process of developing its policy guidelines for bus replacement, fleet expansion, and reserve fleets. These guidelines will establish a comprehensive UMTA bus policy.

Background

A Notice of Proposed Rulemaking on UMTA's bus stockpiling policy was published on March 3, 1980 (45 FR 13004). This notice was published as Part 641; however, for administrative reasons the Final Rule has been changed to Part 639. Comments on the Notice of Proposed Rulemaking were invited through April 16, 1980. A total of 47 written comments were received from individuals as well as transit operators and State and local governments. Most comments expressed basic agreement with the intent of UMTA's bus stockpiling policy. In developing the Final Rule, UMTA has given consideration to all comments received. Review of the comments received indicated the desirability of making changes in the rule as it was proposed. The sections of this Final Rule which have been revised or were the subject of major interest are discussed below.

Discussion of the Comments Received and of Changes to the Rule

In the Notice of Proposed Rulemaking UMTA specifically requested responses to four issues which relate to bus stockpiling: (1) The condition of buses to be stockpiled; (2) a stockpile maintenance program; (3) conditions justifying emergency return to service; and (4) lease or loan of stockpiled buses to other transit operators. Most of the comments received address one or more of these issues.

All of the comments on the condition of buses to be stockpiled stated that the buses must be operable; however, comments differed in response to establishing a maintenance program. Several comments suggested that UMTA establish maintenance requirements for stockpiled buses to ensure that the buses remain operable, but these comments differed on what the maintenance requirements should be. Most of the comments received on the maintenance issue stated that it was a local responsibility and each transit property should determine its own maintenance needs. UMTA agrees with this position and will not establish specific maintenance requirements for stockpiled buses. However, UMTA will continue to require that stockpiled buses be maintained in a condition that allows their return to service on short notice. If not so maintained, UMTA may require the grantee to sell the buses and use the proceeds to reduce the cost of subsequent capital grants.

Responses outlining conditions which justify the return of stockpiled buses to service generally agreed that any change in local conditions that greatly increases demand for transit vehicles, such as energy emergencies, natural disasters, fire in bus storage facilities, unanticipated increases in ridership, etc., are sufficient justification. More importantly, over half of the comments received specifically stated that the return of stockpiled buses to service should be solely a local decision. Respondents disagreed with the requirement of prior UMTA approval that was included in § 641.3(g) of the Notice of Proposed Rulemaking. Respondents want the flexibility to deploy stockpiled buses to meet increased transit demand regardless of the reason for the increase. Comments indicated that requiring prior concurrence from UMTA would increase red tape and cause substantial delays in deploying buses. UMTA agrees that prior concurrence is unnecessary and has revised the Final Rule, eliminating sections that require UMTA approval to deploy stockpiled buses. In the Final Rule, grantees must notify UMTA when stockpiled buses are returned to service for a period of more than 30 consecutive days or for 90 days or more during a calendar year.

UMTA does not agree that transit authorities should be able to deploy stockpiled buses to meet increases in transit demand regardless of the reason for the increase. Under the policy, buses that are stockpiled and replaced by new buses should not be used for conventional fleet expansion purposes. Stockpiled buses that have been replaced by new buses may be deployed only during local emergencies which create sudden substantial and unexpected increases in demand for service, as described in § 639.3(h).

Comments addressing the issue of temporary lease or loan of stockpiled buses to other transit operators for emergency service stated that there

should be no federally mandated lease or loan requirements. One comment suggested that States should have this authority, but all of the other responses indicated that lease or loan decisions should be made at the local level. UMTA agrees that the appropriate level for decisions on the temporary lease or loan of stockpiled buses for emergency service is the local level. However, revenues from lease operations must be used for transit purposes and grantees must seek UMTA approval for the permanent transfer or disposal of vehicles.

A few responses outlined problems with tire lease arrangements for stockpiled buses. Transit operators that lease tires expressed reluctance to lease tires for stockpiled vehicles. While UMTA recognizes this problem we do not feel that it can be satisfactorily resolved in this policy statement. Differences in lease arrangements and local statutory requirements make a single solution impossible; therefore, this problem will be handled on a case-by-case basis.

A few comments indicated that there was no need to issue a stockpiling policy statement because there are no existing provisions which require grantees to immediately dispose of replaced vehicles. These comments misinterpret UMTA's intent in issuing a bus stockpiling policy statement. The bus stockpiling policy statement does not alter existing administrative requirements; it publicizes the option of stockpiling buses as a method of preparing for sudden substantial future increases in demand for service due to local emergencies. Most comments indicated that transit operators were previously unaware of stockpiling as an alternative to the disposal of replaced vehicles.

Accordingly, Title 49 of the Code of Federal Regulations is amended by adding a new Part 639, to read as follows:

PART 639—STOCKPILING OF BUSES

Sec.
639.1 Policy.
639.3 Requirements.

Authority: 49 U.S.C. 1604; 23 U.S.C. 103 and 142; 49 CFR 1.51.

§ 639.1 Policy.

The Urban Mass Transportation Administration will permit the stockpiling of buses by its grantees for future emergency use.

§ 639.3 Requirements.

(a) This section sets out the requirements that the Urban Mass Transportation Administration and its grantees will follow in implementing the policy set out in § 639.1.

(b) "Stockpiling" means removing buses from service and placing them into storage for use during emergencies which increase the demand for transit service.

(c) UMTA will permit the stockpiling of buses that are being replaced because they have been proven to be uneconomical to operate under current conditions in regular transit service. In addition, buses that are no longer needed for regular transit service because of service reductions may be stockpiled.

(d) New bus replacement grants need not always include provisions which reduce the project's cost by applying revenue generated from the disposal of replaced vehicles as an element of the grant contract. Instead of disposing of replaced vehicles, grantees may retain the vehicles for future emergency use.

(e) In cases of bus replacement grants that contain provisions which reduce the project's cost through the disposal of replaced buses, but where the disposal has not yet taken place, UMTA may give the grantee permission to retain the vehicles. In these cases additional UMTA funds may be available to offset 80 percent of the increased project cost due to the elimination of these provisions.

(f) Revenue obtained from the ultimate disposal of stockpiled vehicles must be used to reduce the cost of subsequent capital grants.

(g) The number of buses stored, as well as the type and size of any storage facility, must be consistent with the requirements established in local energy contingency plans.

(h) Stockpiled buses may be used only in the following situations:

(1) A national petroleum shortfall which results in a sharp increase in demand for mass transit services.

(2) As a supplement to regular transit service if unexpected changes in local conditions warrant the immediate availability of increased mass transit capacity.

(3) For short term use as a substitute for buses being rehabilitated.

(i) Grantees must notify the UMTA Regional Administrator in writing when stockpiled buses are returned to service for a period of more than 30 consecutive days or for 90 days or more during a calendar year. This notification must include a description of the conditions which justify removing the bus from the stockpile.

(j) Normal operating costs incidental to the storage of buses, preparation for storage, and if necessary, return to active service are eligible expenses for operating assistance under section 5 of the Urban Mass Transportation Act of 1964, as amended (49 U.S.C. 1604).

(k) Under this regulation capital costs associated with the storage of stockpiled vehicles, such as purchase of land and its suitable preparation, are eligible expenses for capital assistance only under section 5 of the Urban Mass Transportation Act of 1964, as amended; section 103 of Title 23 of the United States Code (Interstate Transfer); and section 142 of Title 23 of the United States Code (Federal Aid Urban Systems).

(l) Stockpiled buses must be maintained in a condition that allows their return to service on short notice. If not so maintained, UMTA may require the grantee to sell the buses and use the proceeds to reduce the costs of subsequent capital grants. In order to maintain the service-ability of stockpiled buses, they may be used periodically as substitutes for buses in regular mass transit operations.

(m) Grantees may temporarily lease or loan stockpiled vehicles to other transit operators for emergency service. However, revenues from lease operations must be used for transit purposes. Grantees must seek UMTA approval for the permanent transfer or disposal of vehicles.

(n) Stockpiled buses may not be used for charter, school bus or other nontransit needs.

Dated: January 13, 1981.

Theodore C. Lutz,
Administrator.

[FR Doc. 81-1795 Filed 1-16-81; 8:45 am]
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federal register

Monday
January 19, 1981

Part XV

Department of Transportation

Federal Aviation Administration

Operations Review Program: Notice No. 11

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 121, 135, 145, and 147

[Docket No. 21269; Notice No. 81-1]

Operations Review Program: Notice No. 11

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice describes the FAA's disposition of certain proposals discussed at the Operations Review Conference. The FAA has determined that certain amendments to the rules applicable to aircraft and certificated operators should be proposed to expand, clarify, or simplify these rules and to provide a level of safety commensurate with the development and expansion of the aviation system. Proposals included would allow fuel jettisoning when determining landing weight for the alternate airport, would require replacement of three-pointer altimeters, would increase the number of megaphones for airplanes with more than 199 passengers, and would allow operators to reduce capacity in specified situations by blocking seats. Certain other proposals were withdrawn by their proponents. Other proposals are being removed from further consideration after review by the FAA. The proposals, withdrawals, and removals are contained in this notice.

DATES: Comments must be received on or before April 20, 1981.

ADDRESSES: Comments on this proposal may be mailed in duplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn.: Rules Docket (AGC-204), Docket No. 21269, 800 Independence Avenue, SW., Washington, D.C. 20591, or delivered in duplicate to: Room 916, 800 Independence Avenue, SW., Washington, D.C. 20591. Comments delivered must be marked: Docket No. 21269. Comments may be inspected at Room 916 between 8:30 a.m. and 5:00 p.m.

FOR FURTHER INFORMATION CONTACT:

Mr. Everett W. Pittman, Regulatory Review Branch (AVS-22), Safety Regulations Staff, Associate Administrator for Aviation Standards, Federal Aviation Administration, 800 Indpendence Avenue, SW., Washington, D.C. 20591, Telephone: (202) 755-8714.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Comments relating to the environmental, energy, or economic impact that might result from adoption of the proposals contained in this notice are invited. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the address above. All communications received on or before the date specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the rules docket for examination by interested persons. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket. For convenience, each proposal in this notice is numbered separately. The FAA requests that interested persons, when submitting comments, refer to proposals by these numbers and by the sections to which they relate.

Commenters wishing to have the FAA acknowledge receipt of their comments submitted in response to this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments on Docket No. 21269." The postcard will be dated, time stamped, and returned to the commenter.

Availability of This Notice

Any person may obtain a copy of this notice of proposed rule making (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA-430, 800 Independence Avenue, SW., Washington, D.C. 20591, or by calling (202) 426-8058. Communications must identify the notice number of this MPRM. Persons interested in being placed on a mailing list for future NPRMs should request a copy of Advisory Circular No. 11-2 which describes the application procedures.

Background

The aviation industry in the United States and abroad has grown substantially during the last 10 years. Paralleling its rapid growth and numerous technological advances are significant changes in the operating environment in which airmen, air agencies, and aircraft operators function.

To enhance the FAA's responsiveness to the needs of the general public and the aviation community in fulfilling the agency's aviation safety responsibilities, the FAA issues Notice 79-9 (40 FR 8685; February 28, 1975), inviting all interested persons to submit proposals for consideration during the Operations Review Program. The FAA received more than 5,000 individual comments contained in 123 submissions. Based on those comments and on the compilation of proposals, the FAA prepared a number of working documents for the Operations Review Conference held in Arlington, VA. The FAA distributed those documents to each person who participated in the Operations Review Conference and to all other interested persons who requested them.

The Operations Review Conference was attended by more than 600 persons. Various committees discussed all scheduled agenda items during the conference. Summaries were given by the FAA committee chairperson at the close of the discussion on each agenda item. Persons present were given the opportunity to correct those oral summaries. Those summaries were edited, combined with an attendee list and transcripts of certain plenary session speeches, and distributed to all attendees and to other interested persons.

The Proposals

This notice deals with selected proposals concerning Parts 121, 135, 145, and 147 contained in the following Operations Review Committee Workbooks.

Committee No.	Title
1	Aircraft Equipment and Requirements.
2	Aircraft Maintenance.
3	Aircraft Operating Rules.
4	Airmen Certification.
6	Certificated Operators and Agencies.
7	Flight Attendants.
10	Special Issues.

A number of proposals contained in both the compilation and the working documents are not included in this notice. The proposals listed in Appendices I and II fall into two categories as follows: Appendix I—Proposals withdrawn by proponent; Appendix II—Proposals removed from consideration.

The Proposed Amendments

Accordingly, the Federal Aviation Administration proposes to amend Parts

121, 135, 145, and 147 of the Federal Aviation Regulations (14 CFR Parts 121, 135, 145, and 147) as follows:

PART 121—CERTIFICATION AND OPERATIONS: DOMESTIC, FLAG, AND SUPPLEMENTAL AIR CARRIERS AND COMMERCIAL OPERATORS OF LARGE AIRCRAFT

11–1. By amending § 121.197 by adding a sentence at the end to read as follows:

§ 121.197 Transport category airplanes: Turbine engine powered: Landing limitations: Alternate airports.

* * * In the case of an alternate airport for departure, as provided in § 121.617, allowance may be made for fuel jettisoning in addition to normal consumption of fuel and oil when determining the weight anticipated at the time of arrival.

Explanation. An alternate airport for departure is an airport to which, in the event of an emergency condition during or shortly after takeoff, the airplane may proceed, instead of returning to a departure airport which is below landing minimums. Fuel jettisoning is allowed under §§ 121.191 and 121.193 if that airplane returns to the departure airport. Thus, allowance may be made for jettisoning fuel, in addition to the normal consumption of fuel and oil, when determining the anticipated landing weight at the alternate airport for departure.

Ref. Proposal 407; § 121.197; Committee 3; Agenda Item C–3.

11–2. By revising § 121.285 (b) and (c), and adding a new § 121.285(d) to read as follows:

§ 121.285 Carriage of cargo in passenger compartments.

* * * * *

(b) Cargo (including carry-on baggage) may be carried anywhere in the passenger compartment if it is carried in an approved cargo bin that meets the following requirements.

* * * * *

(c) Cargo (including carry-on baggage) may be carried forward or alongside of seated passenger compartment occupants if the cargo is restrained in accordance with the following:

* * * * *

(d) Cargo (including carry-on baggage) may be carried aft of seated passenger compartment occupants if the cargo is restrained in accordance with paragraph (c) of this section and a bulkhead or divider of sufficient strength to withstand the cargo-induced inertia forces specified in § 25.561(b)(3) is directly forward of the cargo.

Explanation. Present § 121.285 specifies minimum safety standards for the carriage of cargo (including carry-on baggage) in passenger compartments by specifying the location of that cargo relative to seated passengers. Since flight attendants are considered crewmembers and not passengers, the current language excludes them when establishing those locations. Flight attendants should be afforded the same level of safety as the passengers. Substitution of the words "passenger compartment occupants" for the word "passengers" in §§ 121.285 (b) and (c) would require consideration of all occupants when establishing cargo location. However, this change without other clarifying changes would eliminate the carriage of cargo in the passenger cabin other than in approved cargo bins, as a flight attendant is usually seated at the most forward bulkhead near the entrance door for emergency evacuation purposes.

The phrase "foremost seated passengers" in current § 121.285(b) is somewhat confusing and is unnecessary, since cargo can be carried forward, aft, or alongside of seated occupants if it is carried in an approved cargo bin. Accordingly, § 121.285(b) as proposed is rewritten to clarify that cargo may be carried anywhere in a passenger compartment if it is carried in an approved cargo bin.

Section 121.285(c) as proposed is rewritten to remove any mention of cargo bins because of the proposed revision to § 121.285(b). Also, new wording is proposed which states that cargo may be carried forward of or alongside of seated passenger compartment occupants if it is restrained in accordance with §§ 121.285 (c)(1) through (c)(5). Finally, proposed § 121.285(d) would permit the carriage of cargo aft of seated passenger compartment occupants if it is placed directly aft of a structural bulkhead or divider of sufficient strength to withstand crash inertia loads and is also restrained in accordance with § 121.285 (c)(1) through (c)(5).

Ref. Proposals 413 and 414; § 121.285; Committee 6A; Agenda Item E.

11–3. By amending § 121.291 by revising paragraphs (a) (1) and (2) and adding a new paragraph (a)(3), by redesignating paragraphs (b) and (c) as (d) and (f), respectively, and by adding new paragraphs (b), (c), and (e) to read as follows:

§ 121.291 Demonstration of emergency evacuation procedures.

(a) * * *

(1) Upon increasing the passenger seating capacity by more than 5 percent above the maximum number previously evacuated in a successful seating capacity demonstration, but not more than the maximum number certificated for the airplane;

(2) Following rebuilding or alteration that significantly changes the passenger cabin seating configuration or emergency exits; or

(3) Upon the initial introduction of a type and model of airplane into passenger-carrying operations.

(b) However, the demonstration required under paragraph (a) need not be repeated for any airplane type or model for which a successful full seating capacity demonstration has been performed by an aircraft manufacturer under Part 25 of this chapter or by a Part 121 certificate holder providing—

(1) The passenger seating capacity for which a successful full seating capacity demonstration has been conducted has not been increased by more than 5 percent, but not more than the maximum number certificated for the airplane;

(2) The passenger cabin interior configuration, including the location of flight attendants, has not been changed in a manner that will affect the emergency evacuation of passengers; and

(3) Evacuation procedures, number of flight attendants, emergency exits, aisle width, and seat pitch used by each certificate holder must be equal to or exceed those used in the successful full seating capacity demonstration.

(c) A certificate holder who, under paragraph (b), uses a full seating capacity demonstration performed by the aircraft manufacturer under Part 25 or by a Part 121 certificate holder must—

(1) Demonstrate the effectiveness of its crewmember emergency training and evacuation procedures by conducting a demonstration, not requiring passengers and observed by the Administrator, in which the flight attendants for that type aircraft open 50 percent of the floor-level exists and 50 percent of the non-floor-level exits whose opening by a flight attendant is defined as an emergency evacuation duty under § 121.397, and deploy 50 percent of the exit slides. The exits and slides must be ready for use within 15 seconds or within the same time used in the certification demonstration, whichever is less, and the Administrator selects the flight attendants at random to be used and the exists to be opened;

(2) Apply for and obtain approval from the Flight Standards District Office maintaining surveillance of its operations prior to conducting the demonstration;

(3) Use flight attendants in this demonstration who have completed the certificate holder's FAA-approved

training program for the type and model of aircraft and passed a written examination on the emergency equipment and procedures; and

(4) Apply and obtain approval from the FAA certificate-holding office having jurisdiction over its operations before commencing operations with this type and model of aircraft.

* * * * *

(e) For a type and model aircraft for which the simulated ditching specified in paragraph (d) has been conducted by a Part 121 certificate holder, the requirements of paragraphs (b)(2), (4) and (5) of Appendix D to this part are complied with if each life raft is removed from stowage, one life raft designated by the Administrator is inflated, and crewmembers assigned to the inflated life raft indicate the location of stowed emergency equipment and describe its use.

* * * * *

Explanation. This proposal would allow a Part 121 certificate holder to use the results of a successful full-scale demonstration conducted by a manufacturer under Part 25 or by another Part 121 certificate holder rather than conduct a full-scale demonstration of emergency evacuation procedures, provided certain additional conditions are met. For instance, the certificate holder must conduct a partial demonstration by opening 50 percent of the floor-level exits and 50 percent of the non-floor-level exits whose opening by a flight attendant is defined as an emergency evacuation duty under § 121.397, and deploying 50 percent of the exit slides within 15 seconds. It is the intent of this regulation that the flight attendants be selected at random and that they not be coached on the procedures just prior to the demonstration. This proposal reduces the number of emergency evacuation demonstrations that need be conducted. This in turn reduces the probability of injury caused by hundreds of passengers exiting an aircraft during a demonstration. The FAA has granted several exemptions from the current rule which allow these partial demonstrations and has experienced no derogation of safety. By incorporating the provisions of these exemptions into the regulations, the costs and time involved in submitting and revising petitions for exemption would be eliminated. A full-scale demonstration is still required if the conditions for the partial demonstration are not met.

In Airworthiness Review Amendment No. 7 (43 FR 50570; October 30, 1978), the emergency evacuation demonstration conditions of § 25.803(c) were upgraded to those required by Part 121 so that one demonstration may serve both airworthiness and operations requirements. Thus, the proposed change to § 121.291(b) allows the operators to take advantage of a condition that was envisaged when § 25.803(c) was revised.

Proposed § 121.291(a)(2) refers to significant changes to the passenger seating configuration or emergency exits, whereas the present rule requires an emergency evacuation upon a major change. The word "major" was changed to "significant" to preclude erroneously associating it with major and minor repairs and alterations as defined in Part 43. Some minor repairs or alterations could significantly change the passenger seating configuration and require an emergency evacuation.

This proposal also clarifies the requirements concerning successfully demonstrating ditching procedures for those certificate holders who are operating a type and model of aircraft for which successful ditching demonstrations have been previously conducted by other certificate holders. Additionally, the proposal provides for the inflation of one life raft since such a demonstration provides a sufficient test of safety procedures.

Ref. Proposal 415; § 121.291(a); Committee 6A; Agenda Item E.

11–4. By revising § 121.301 to read as follows:

§ 121.301 Applicability.

This subpart prescribes instrument and equipment requirements for all certificate holders, operators, and persons on board the airplane.

Explanation. Various sections within Subpart K pertain solely to persons on board an aircraft. For example, § 121.311(b) speaks to each person on board, § 121.317(c) speaks to each passenger or crewmember, and § 121.327(b)(3) speaks to flight crewmembers. Thus, the current language of the applicability statement in § 121.301 is somewhat misleading in referring only to certificate holders and would be revised to more fully spell out the applicability.

Ref. Proposal 418; § 121.301; Committee 1; Agenda item C–1.

11–5. By revising § 121.305(b) to read as follows:

§ 121.305 Flight and navigational equipment.

* * * * *

(b) An altimeter that meets the performance and environmental standards of the applicable Technical Standard Order, or the equivalent. However, after (a date two years after the effective date of this amendment), the altimeter for turbojet powered airplanes must not be a three-pointer type.

* * * * *

Explanation. Current § 121.305(b) requires the use of a sensitive altimeter for airplanes operating under Part 121 of this chapter. The term "sensitive" altimeter is not defined. This proposal requires the use of an altimeter that meets the standards of the applicable Technical Standard Order, or the equivalent.

A joint FAA–DOT study (Report FAA–RD–73–108, dated September 1973) found the three-pointer altimeters to be the least desirable type of altimeter since they are more easily misread than other types of altimeters. Further, the study indicated that the high ascent and descent rate characteristics of turbojet powered airplanes is a contributing factor in the misreading of these altimeters. Two Naval Research Laboratory Altitude Comparison Projects (Numbers 1822 and 1841, April 1964, and September 1966, respectively) yielded substantially the same results. These reports have been docketed for public examination.

The Special Air Safety Advisory Group (SASAG) also recommended that the use of three-pointer altimeters by prohibited in all large turbojet powered airplanes because such altimeters can easily be misread. The SASAG report cites the cases of a DC–8 descending to San Francisco on a clear moonless night and a 707 descending into Chicago in instrument weather conditions where near crashes were allegedly caused by the misreading of three-pointer altimeters.

Advance Notice of Proposed Rule Making (ANPRM) No. 77–18 (42 FR 43400; August 28, 1977) solicited comments and supporting data concerning alleged deficiencies in the three-pointer altimeter. A total of 44 comments were received in response to ANPRM 77–18. The FAA conducted a preliminary economic impact evaluation in 1978 to determine the cost of switching from three-pointer altimeters. That analysis used a per aircraft cost of $10,000 and estimated the total number requiring replacement to be 280 airplanes under Part 135 and 1,540 airplanes under Part 121. This results in a total cost impact of $18,200,000. The FAA recognizes that these figures are somewhat outdated. Inflation will undoubtedly have increased the per aircraft cost. Conversely the FAA is aware that a continuing program for conversion from three-pointer altimeters has been in effect and that the total still

requiring conversion could be made lower.

After careful consideration of the comments received, the SASAG report, and the moderate cost estimated in a preliminary economic impact evaluation, the FAA concludes that safety considerations justify proposing amendments to the regulations which will bring about the replacement of the three-pointer altimeters in certain turbojet powered airplanes within a reasonable period of time. Considering the number of airplanes in the fleet having three-pointer altimeters, the present availability of new altimeters, the probable redesign of instrument panels required, and the airline scheduled maintenance periods during which the altimeters could be more cost effectively installed, a two-year applicability date is believed to be appropriate. The FAA requests that specific comments and data supporting or opposing this time period and the economic impact of the conversion be submitted in response to this notice.

Ref. Proposal 421; § 121.306; Committee 1; Agenda Item C–1.

11–6. By amending §§ 121.309(f)(1) and (f)(2) by replacing the words "to a normal" with the words "from a required", by inserting in § 121.309(f)(2) the phrase "and less than 200" between "99" and "passengers", and by adding a new § 121.309(f)(3) to read as follows:

§ 121.309 Emergency equipment.

* * * * *

(f) * * *

(3) Three megaphones in the passenger cabin on each airplane with a seating capacity of more than 199 passengers, one installed at the forward end, one installed at the most rearward location, and one in the mid-section of the airplane. These megaphones must be readily accessible to a required flight attendant seat.

Explanation. This proposal increases the number of portable battery-powered megaphones accessible to flight attendants on passenger-carrying airplanes with a seating capacity of more than 199 passengers from two to three. The present rule requires one megaphone for airplanes with a seating capacity of 60–99 passengers and two for airplanes with a seating capacity of more the 99 passengers. When two megaphones re required, they must be located at the forward and rearward extremes of the airplane. With the increased size of modern passenger airplanes, emergency information transmitted over megaphones located at the two extremes of the airplane may not be audible to passengers near the middle. Thus, for airplanes with a seating capacity of more than 199 passengers, a third, mid-fuselage megaphone is proposed.

This proposal would also revise §§ 121.309(f)(1) and (f)(2) to require the megaphones to be readily accessible from a required flight attendant seat. Because "required" flight attendant seats are normally occupied during takeoff and landing, this will ensure that the megaphone is normally at an occupied seat for all passenger seating configurations. An other than required flight attendant seat may not be occupied on all flights.

Ref. Proposal 428; § 121.309; Committee 1; Agenda Item C–2.

11–7. By revising § 121.318(b)(4) and adding a new (b)(5) to read as follows:

§ 121.318 Public address system.

* * * * *

(b) * * *

(4) After (a date 2 years after the effective date of this amendment), transmission must be audible in each occupiable compartment, at each passenger and flight attendant seat, and in each lavatory.

(5) After (a date 2 years after the effective date of this amendment), it must be capable of operation from a power source independent of the main electrical generating system, without jeopardizing the inflight emergency electrical power system.

Explanation. The proposal to revise paragraph (b)(4) provides public address capability in all occupiable compartments, including lower lobe galleys when installed. This revision would ensure that flight attendants who may be in the lower lobe galley spaces receive information disseminated by way of the public address system to enable them to perform their safety functions more effectively. The FAA estimates that a 2-year compliance time is necessary for § 121.318(b)(4) since many operating airplanes do not have public address system speakers in each occupiable compartment or in each lavatory. This allows sufficient time for design, manufacture, and installation of the equipment. Specific comments on the appropriateness of the time period, including the number of airplanes affected and the costs involved, are requested when commenting on this proposal.

Proposed § 121.318(b)(5) requires power to be supplied to the public address system from a power source independent of the main electrical generating system. Currently, the only type of emergency evacuation communications equipment required is the portable megaphone required by § 121.309. The National Transportation Safety Board's Special Study, NTSB-AAS–74–3, "Safety Aspects of Emergency Evacuations from Air Carrier Aircraft", revealed that although the regulations do not require public address systems for emergency communications, these systems are often used to instruct the crew to initiate emergency evacuations. However, since the public address systems are not always connected to the emergency electrical supply, they are not always usable when the aircraft power is interrupted. There have been several incidents where the pilot aborted the takeoff and stopped. All switches were shut off and the flight crew could not readily order an emergency evacuation because no electrical power was available to the public address system. Also, there has been an accident caused by the failure in flight of all four engines due to fuel depletion. The flight crew's ability to give preimpact warning and instruction was hampered because the aircraft's public address system lost power when the engines stopped operating. Reliable communication is important to initiate and direct an evacuation or give preimpact instructions; thus, the power source for the public address system should be independent of the main supply.

The FAA anticipates that, to make the operation of the public address system independent of the main electrical generating system, system redesign and development is required, in addition to an airplane retrofit program. There are more than 3,250 airplanes operated under Part 121 which will likely require retrofit of the revised system. After careful consideration of the system redesign and development needed, the costs and time involved in retrofitting 3,250 airplanes, an other factors, the FAA concludes that two years is needed to comply with the requirement after it becomes effective. The FAA requests that specific comments and data supporting or opposing this time period, and the costs involved, be submitted in response to this notice.

Ref. Proposals 452 and 453; § 121.318; Committee 1; Agenda Item C–3.

11–8. By revising § 121.323(f) to read as follows:

§ 121.323 Instruments and equipment for operation at night.

* * * * *

(f) An altimeter that meets the performance and environmental standards of the applicable Technical Standard Order or the equivalent. However, after (a date two years after the effective date of this amendment) the altimeter for turbojet powered

airplanes must not be a three-pointer type.

Explanation. See the explanation for Proposal 11–5.

Ref. Proposal 458; § 121.323; Committee 1; Agenda Item C–4.

11–9. By revising § 121.325(b) to read as follows:

§ 121.325 Instruments and equipment for operations under IFR or over-the-top.

* * * * *

(b) An altimeter that meets the performance and environmental standards of the applicable Technical Standard Order or the equivalent. However, after (a date two years after the effective date of this amendment) the altimeter for turbojet powered airplanes must not be a three-pointer type.

* * * * *

Explanation. See the explanation for Proposal 11–5.

Ref. Proposal 459; § 121.325; Committee 1; Agenda Item C–4.

11–10. By revising § 121.329(b)(1) to read as follows:

§ 121.329 Supplemental oxygen for sustenance: Turbine engine powered airplanes.

* * * * *

(b) * * *

(1) At cabin pressure altitudes above 10,000 feet, up to and including 12,000 feet, oxygen must be provided for and used by each flight crewmember on flight deck duty, and must be provided for other crewmembers, for that part of the flight at those altitudes that is of more than 30 minutes duration.

* * * * *

Explanation. Inserting commas before and after the phrase "and must be provided for other crewmembers" would make it clear that the part of the rule that begins with "for that part of the flight" applies to the flight crew on flight deck duty as well as other crewmembers and removes any possible ambiguity.

The proposed amendment to substitute the word "occupant" for "passenger" and to add a new § 121.219(c)(4) has not been proposed for the reasons for removing Proposal 461 from consideration stated in Appendix II.

Ref. Proposals 462 and 463; § 121.329; Committee 10; Agenda Item F.

11–11. By amending § 121.333 by replacing the phrase "cabin attendant" with the phrase "flight attendant" at two places in paragraph (d), by replacing the phrase "cabin attendant" with the phrase "flight attendant" in the last sentence of paragraph (e)(3), and by revising paragraph (f) to read as follows:

§ 121.333 Supplemental oxygen for emergency descent and for first aid: Turbine engine powered airplanes with pressurized cabins.

* * * * *

(f) *Passenger briefing.* Before flight is conducted above flight level 250, a crewmember shall instruct the passengers on the necessity of using oxygen n the event of cabin depressurization, shall point out to them the location of such equipment, and shall demonstrate the proper means of activation and use of oxygen-dispensing equipment, including proper donning procedures. Demonstration masks shall be identical in external appearance to those used aboard the airplane on which the demonstration is given, and shall include an adjustable headstrap and the required length of tubing with safety pin and lanyard (where applicable) attached.

Explanation. This proposal provides specific requirements for the demonstration masks and a demonstration of proper donning for these masks. Current cabin announcements on the use of oxygen do not always include the complete information, nor do the demonstrations use equipment similar to that installed on the airplane. The proposal also replaces the phrase "cabin attendant" with the correct phrase "flight attendant."

During the Operations Review Program, the proponent stated that § 121.333(d) should be amended since misinterpretations exist as to the number of portable oxygen bottles that are to be abroad the aircraft for flight attendant use. Present § 121.333(d) clearly states that portable oxygen equipment is required for each attendant and the FAA sees no need for further clarification.

The proponent also recommended that § 121.333(d) be amended to include the statement "Such portable oxygen equipment shall be regularly inspected for any possible deficiencies by the airline and properly maintained." This statement has not been included since the certificate holder's continuous airworthiness maintenance program, approved in accordance with the requirements of Subpart L of Part 121, specifies inspection frequencies that provide for proper upkeep of the portable oxygen equipment.

Ref. Proposal 460; § 121.333; Committee 10; Agenda Item F.

11–12. By revising § 121.351(a) to read as follows:

§ 121.351 Radio equipment for extended overwater operations and for certain other operations.

(a) No person may conduct an extended overwater operation unless the airplane is equipped with the radio equipment necessary to comply with § 121.349 and an additional and independent radio system that complies with § 121.347(a)(1).

* * * * *

Explanation. This regulation has been erroneously interpreted to require only one means of en route radio communication. This proposal clarifies the fact that two independent radio communication systems are required.

Ref. Proposal 471; § 121.351; Committee 1; Agenda Item C–5.

11–13. By revising § 121.359(d) to read as follows:

§ 121.359 Cockpit voice recorders.

* * * * *

(d) In complying with this section, an approved cockpit voice recorder having an erasure feature may be used provided that the recorded information for the last 30 minutes of the current or most recent flight is not erased or otherwise obliterated. Except as provided in paragraph (e), when the recorder is removed from the airplane for maintenance, or the recording is removed for test or read-out, the recorded information may be erased or otherwise obliterated after maintenance, test, or read-out has been accomplished.

* * * * *

Explanation. This proposal would clairfy the current rule by requiring that the recorded information for the last 30 minutes of the current or most recent flight may not be erased or otherwise obliterated, except as specifically noted and subject to the exceptions provided in paragraph (e), which require a longer retention period in the event of an accident or occurrence requiring immediate notification of the National Transportation Safety Board.

Ref. Proposal 472; § 121.359; Committee 1; Agenda Item C.6.

11–14. By revising § 121.391(c) to read as follows:

§ 121.391 Flight attendants.

* * * * *

(c) The number of flight attendants approved under paragraphs (a) and (b) of this section must be set forth in the certificate holder's operations specifications. However, seats that have been blocked off do not have to be considered in determining the seating capacity of the airplane and the required number of flight attendants, provided the procedures authorizing the certificate holder's operations manual

are complied with, except that flights with blocked seats must have a minimum of two flight attendants.

(1) The blocking off of seats is authorized in the following situations—

(i) Specific flight or flights listed in the certificate holder's operations specifications which include the minimum number of flight attendants and maximum number of passengers permitted and which have been verified from operating experience as being consistently operated from origination to termination with passenger loads at or less than the reduced seating capacity proposed;

(ii) Specific flights which require substitution of aircraft due to mechanical irregularities or weather related delays, requiring additional crewmembers at locations where additional crewmembers cannot be obtained without more than a 2-hour delay or flight cancellation. Operations may not be conducted beyond the nearest station at which a replacement for the crewmember is available or can be made available without more than a 2-hour delay or flight cancellation; or

(iii) Specific flights on which a crewmember cannot continue due to illness and a replacement crewmember cannot be obtained at that location without more than a 2-hour delay or flight cancellation. Operations may not be conducted beyond the nearest station at which a replacement for the crewmember is available or can be made available without more than a 2-hour delay or flight cancellation.

(2) The procedures used to block off seats must be approved by the Administrator, set forth in the certificate holder's operations manual, and must contain at least the following—

(i) The location of and means to block the affected passenger seats;

(ii) Methods to notify the pilot in command and other crewmembers when the passenger seating capacity is reduced and the maximum seating capacity authorized;

(iii) Methods to designate a flight crewmember who will verify that the number of passengers on board is not more than the authorized reduced seating passenger capacity; and

(iv) Methods to provide each crewmember on the aircraft being operated in a reduced seating configuration with specific instructions on their emergency duties and seating locations appropriate to the modified seating configuration to ensure the optimum emergency evacuation capability.

(3) Except when seats are blocked in accordance with paragraph (c)(1)(i), the certificate holder shall deliver written notification to its FAA certificate-holding office within 72 hours after it blocks seats in accordance with this paragraph. The notification shall contain a detailed statement of the specific basis for the authorization.

* * * * *

Explanation. The number of flight attendants required on passenger-carrying aircraft is based upon the seating capacity of the aircraft. The actual number of passengers on a particular flight does not affect this requirement. The existing rule allows the number of required flight attendants to be reduced, but only if a sufficient number of passenger seats are physically removed from the cabin. This proposal would allow the operator to reduce the passenger-carrying capacity of its aircraft in specified situations by blocking passenger seats and thereby reduce the number of flight attendants required to be aboard the aircraft. Specific situations in which the FAA could provide authorization for the blocking off of seats, and corresponding reduction in required number of flight attendants, are: (1) Flights which experience has shown to operate with passenger loads at or less than the reduced seating capacity proposed, such as late night and early morning flights; (2) specific flights which require unplanned substitution of aircraft due to mechanical irregularities or weather related delays at locations where additional crewmembers cannot be obtained at that location without more than a 2-hour delay or flight cancellation; or (3) specific flights on which a crewmember cannot continue due to illness and a replacement crewmember cannot be obtained at that location without more than a 2-hour delay or flight cancellation. The proposed 2-hour time period for delay of flight is consistent with the 2-hour increase in flight crewmember flight and duty time proposed for rulemaking in Notice 78–3 (43 FR 8070; February 27, 1978).

The FAA has granted limited exemptions from § 121.391(a)(3), with conditions similar to those specified in proposed § 121.391(c)(1), to permit a reduction in the number of flight attendants required on particular flights by blocking off a number of seats, and no safety problems have been noted.

These exemptions have enabled the air carriers concerned to operate in a more efficient and less costly manner. If the need to change an aircraft at an intermediate stop during a flight requires substitution of a larger aircraft, another flight attendant might be required. An operator might be required to cancel or substantially delay the flight until the extra flight attendant could be transported to the location of the aircraft if extra flight attendants were not based at that stop. Elimination of such delays and cancellations is in the public interest. By limiting the circumstances under which seats can be blocked and by closely monitoring the use of this authority, safety will not be adversely affected.

The FAA has taken steps to ensure that the conditions under which seats can be blocked are strictly followed. The FAA will closely monitor all actions taken under this authority. The certificate holders would be required to develop procedures which must be submitted for approval to their certificate-holding office. The required procedures shall consider such factors as overall cabin size, number and location of exits, location of blocked seats, and number and location of flight attendants. For approval, the procedures must ensure the optimum emergency evacuation configuration. In most cases, this would require that the flight attendants be seated immediately adjacent to the passengers with at least one flight attendant forward and one aft of them. In other cases, the optimum configuration might be with the flight attendants all forward, all aft, or some other location. In any case, the certificate holder must designate an arrangement which ensures the optimum emergency evacuation configuration. These procedures must also assure that the capability for accomplishing an emergency evacuation within 90 seconds is not reduced. The FAA will not authorize an operator to reduce the flight attendant complement below the number required by § 121.391 for the number of seats not blocked. In addition, the certificate holder would be required to submit written notification to the certificate-holding office within 72 hours of its use of this authority under §§ 121.391(c)(1)(ii) and (iii). This notification shall include the basis for use of this authority and will enable the FAA to review all action taken in accordance with this authority.

This proposal also lists specific procedures which must be set forth in the certificate holder's operations manual and which must be followed when blocking seats. These procedures include such matters as the location of and means used to block the affected passenger seats, and methods to provide each crewmember on the aircraft being operated in a reduced seating configuration with specific instructions on their emergency duties.

Additionally, this proposal contains a provision that flights with blocked seats must have a minimum of two flight attendants.

This proposed regulation is not intended to provide for frequent reductions in the number of flight attendants. The strict limitations placed on its use provide a regulation which provides relief, on an occasional basis, only to certificate holders who need such relief. By limiting and controlling the situations during which this proposed regulation can be employed, safety will not be adversely affected.

This proposal only allows for the blocking of seats; the FAA has no intention of allowing, under this paragraph, the blocking or deactivation of exits. Although exits may be blocked or deactivated under certain approved circumstances, the proposed revisions to § 121.391 do not affect existing guidance used to evaluate the reduction of the number of emergency exits.

Ref. Proposals 491 and 495; § 121.391; Committee 7; Agenda Item C.

§ 121.417 [Amended]

11–15. By amending § 121.417(c) by substituting the word "for" for the word "on" in the first sentence.

Explanation. The present rule requires each crewmember to perform certain emergency drills and to actually operate certain equipment during initial training and once each 24-calendar months during recurrent training on each type aircraft. As indicated by § 121.417(c)(6)(vii), it was intended that this initial and recurrent training could be accomplished on an airplane or on a training device approved under the training program requirements of § 121.407. By changing the phrase "on each type aircraft" in § 121.417(c) to "for each type aircraft", the intent is clarified.

Ref. Amendment 121–148 (43 FR 46230; October 5, 1978).

11–16. Amending § 121.439 by adding a sentence at the end of paragraph (a) and by revising paragraphs (b), (c), and (d) and adding a new (e) to read as follows:

§ 121.439 Pilot qualification: Recent experience.

(a) * * * In addition, any person who fails to make the three required takeoffs and landings within any consecutive 90-day period must reestablish recency of experience as provided in paragraph (b) of this section.

(b) In addition to meeting all applicable training and checking requirements of this part, a required pilot flight crewmember who has not met the requirements of paragraph (a) of this section must reestablish recency of experience as follows:

(1) Under the supervision of a check airman, make at least three takeoffs and landings in the type airplane in which that person is to serve or in a visual simulator approved for the takeoff and landing maneuvers for the type of airplane in which that person is to serve.

(2) The takeoffs and landings required in paragraph (b)(1) of this section must include—

(i) At least one takeoff with a simulated failure of the most critical powerplant;

(ii) At least one landing from an ILS approach to the lowest ILS minimum authorized for the certificate holder; and

(iii) At least one landing to a full stop.

(c) The requirements of paragraph (b)(2) of this section may be accomplished in an approved visual simulator which has not been approved for the takeoff and landing maneuvers if the requirements of paragraph (b)(1) of this section are accomplished in the airplane. In this case, the first three landings accomplished in operations under this part will satisfy the landing requirement of paragraph (b)(1) of this section if the pilot has previously logged 100 hours in the same type airplane in which he is to serve and is observed by a check airman.

(d) When using a simulator to accomplish any of the requirements of paragraph (a) or (b) of this section, each required flight crewmember position must be occupied by an appropriately qualified person and the simulator must be operated as if in a normal in-flight environment without benefit of the slew or freeze features.

(e) A check airman who observes the takeoffs and landings prescribed in paragraphs (b)(1) and (c) of this section shall certify that the person being observed is proficient and qualified to perform flight duty in operations under this part and may require any additional maneuvers that are determined necessary to make this certifying statement.

Explanation. The objective of Amendment Number 121–144 (43 FR 22643; May 25, 1978) was to require three takeoffs and landings within any consecutive 90-day period to establish recency of experience and to require a pilot who has gone a period of 90 days without a takeoff and landing to reestablish recency of experience in accordance with § 121.439(b). The rule is not clear with regard to the second objective and proposed § 121.439(a) clarifies the intent. The NTSB, in recommendation A 74–104, identified two accidents in which they attributed lack of recent experience in type as a contributing factor. Pilots who have gone at least 90 days without three required takeoffs and landings should have to reestablish experience by meeting the more extensive requirements of § 121.439(b). Accomplishing three takeoffs and landing after an extended period of inactivity is not sufficient to reestablish experience to the necessary level of competency.

Section 121.439 as amended by Amendment 121–144 has caused considerable confusion regarding implementation of the requirements of paragraph (b) of that section. Clarifying instructions were issued by the FAA after the effective date of the amendment but there is still considerable variance in the procedures used for compliance. Therefore, in an effort to clarify the FAA's intent with regard to reestablishing recency of experience under present paragraph (b), those provisions have been revised. It was not the intent of the FAA to allow persons reestablishing recency of experience to obtain credit for those takeoffs and landings accomplished in a simulator which is not approved for the takeoff and landing maneuvers. Only those simulators approved for the takeoff and landing maneuver provide the capability of evaluating a pilot's ability to successfully land the airplane. When a simulator which has not been approved for the takeoff and landing maneuver is used toward satisfying the requirements for reestablishing recency of experience, the qualifying pilot should at least be required to meet the minimum landing requirement for pilots maintaining recency of experience. Therefore, in such cases, it is proposed to require a pilot to accomplish three landings in the airplane under the supervision of a check airman, either under line operations or in a training environment. To allow this flexibility for accomplishing the landings, this proposal changes the present requirement in § 121.439(c) for two landings on the line to three landings. The present requirement for 100 hours in airplane type remains. Proposed § 121.439(b) and (c) clarify the landing requirement. Also, it has been reported that in some instances simulators are not being employed in a proper manner when used to satisfy the requirements of § 121.439. Proposed paragraph (d) assures that the qualifying pilot is exposed to as realistic an "in-flight" environment as possible. The proposed requirements of this paragraph are in consonance with recently issued total simulation requirements (45 FR 44176; June 30, 1980).

Ref. Proposals 541 and 542; § 121.439; Committee 4; Agenda Item E.

11–17. By revising § 121.543(b)(3)(i) to read as follows:

§ 121.543 Flight crewmembers at controls.

* * * * *

(b) * * *

(3) * * *

(i) In the case of the assigned pilot in command, by a pilot who holds an airline transport pilot certificate and an appropriate type rating, is currently qualified as pilot in command or second in command and is qualified as pilot in command of that aircraft during the en route cruise portion of the flight. A second in command qualified to act as a pilot in command en route need not have completed the following pilot in command requirements: the 6-month recurrent flight training required by § 121.433(c)(1)(iii); the operating experience required by § 121.434; the takeoffs and landings required by § 121.439; the line check required by § 121.440; and the 6-month proficiency check or simulator training required by § 121.441(a)(1); and

* * * * *

Explanation. This proposal would change the current regulation by allowing the assigned pilot in command to be relieved for a rest period by a pilot who is currently qualified as a second in command and is also qualified as pilot in command of the aircraft during the en route cruise portion of the flight. In addition, this relief pilot must hold an airline transport pilot certificate and an appropriate type rating.

Operations Review Program Amendment No. 5 (43 FR 22643; May 25, 1978) provided procedures which allowed an assigned pilot in command to leave that pilot's assigned duty station for a rest period if relieved by a pilot qualified to act a pilot in command who holds an airline transport certificate and appropriate type rating. However, since this amendment became effective, exemptions have been issued which allow the pilot in command to be relieved, under certain conditions, by a pilot who is fully qualified as a second in command and fully qualified as a pilot in command during the en route cruise portion of the flight except for the 6-month recurrent flight training and the 6-month proficiency check or simulator training. The granting of the exemptions does not adversely effect safety since the airplane would be operated at all times during the en route phase by pilots adequately qualified for that phase of flight. If adopted, this proposal would eliminate the need for any further exemptions of this type, thereby reducing the paperwork burden on the public and FAA and satisfying the intent of Executive Order 12044.

Ref. Proposal 565; § 121.543; Committee 3; Agenda Item D.

11–18. By revising the first sentence of § 121.563 to read as follows:

§ 121.563 Reporting mechanical irregularities.

The pilot in command shall ensure that all mechanical irregularities occurring during flight time are entered in the maintenance log of the airplane at the end of that flight time. * * *

Explanation. It has brought to the attention of the FAA that a change made to § 121.563 in Operations Review Amendment No. 6 was not explained in the proposal and that the change has a significant impact on the requirement for reporting mechanical irregularities. In revising § 121.563, the word "time" was inadvertently omitted from the first sentence. Section 1.1 defines "flight time" as the time from the moment the aircraft first moves under its own power for the purpose of flight until the moment it comes to rest at the next point of landing ("Block-to-block" time). On the other hand, § 121.703(b) defines "during flight" as being the period from the moment the aircraft leaves the surface of the earth on takeoff until it touches down on landing. As it was never the intent of the FAA to change the period over which mechanical irregularities must be reported, this revision is proposed to correct this oversight. Additionally, the phrase "next place of landing" at the end of the sentence is changed to "end of that flight time" for clarity and for consistency with the definition of the term "flight time" appearing earlier in the sentence.

11–19. By revising § 121.589(a)(2) to read as follows:

§ 121.589 Carry-on baggage.

(a) * * *

(2) As provided in paragraphs (c) or (d) of § 121.285; or

* * * * *

Explanation: This proposal would add a reference to new paragraph (d) of § 121.285 concerning carriage of cargo in passenger compartments. See the explanation for proposal 11–2.

11–20. By amending § 121.703(a) by deleting the word "and" from the end of paragraph (a)(15), by replacing the period at the end of paragraph (a)(16) with a semicolon, and by adding new paragraphs (a)(17), (a)(18) and (a)(19) to read to follows:

§ 121.703 Mechanical reliability reports.

(a) * * *

(17) Doors and exits designated as emergency exits, including automatic or manual operating systems and components;

(18) Emergency escape slides and components and systems or hardware for manual or automatic deployment; and

(19) Galley or passenger service equipment and crewmember or passenger accommodations which could result in injury to a crewmember or passenger, restrict the emergency egress of either, or adversely affect the airworthiness of the aircraft.

* * * * *

Explanation. This proposal would require each certificate holder to report the occurrence or detection of each failure, malfunction or defect concerning the listed systems, components, and equipment in the mechanical reliability report. Emergency evacuation systems have increased in complexity in recent years. The absence of specific reporting requirements prevents adequate accumulation, coding and dissemination of technical information needed by the FAA and industry to take timely corrective measures regarding these highly safety oriented items.

The FAA has a duty to ensure that the environment to which the occupants of the airplane, both passengers and flight attendants, are exposed is as safe as practicable. Unreported failures of galley equipment or passenger service equipment, for example, could eventually lead to conditions that would pose a direct safety hazard to the occupants of the airplane under normal and emergency conditions. Thus, the reporting of such failures, malfunctions, or defects, as required by proposed § 121.703(a)(19), is considered necessary.

Ref. Proposal 643; § 121.703; Committee 2; Agenda Item P.

PART 135—AIR TAXI OPERATORS AND COMMERCIAL OPERATORS

11–21. By amending § 135.149(a) to read as follows:

§ 135.149 Equipment requirements: General.

* * * * *

(a) An altimeter that meets the performance and environmental standards of the applicable Technical Standard Order or the equivalent. However, after (a date two years after the effective date of this amendment), the altimeter for turbojet powered airplanes must not be a three-pointer type.

* * * * *

Explanation. See the explanation for Proposal 11–5. In addition to the changes discussed under Proposal 11–5, the phrase "and is adjustable for barometric pressure" is deleted since this aspect is covered under the applicable Technical Standard Order.

Ref. This proposal was not contained in the Operations Review but is a companion change to a proposal in Part 121 which was a part of the Operations Review.

11–22. By amending § 135.415(a) by deleting the word "and" from the end of paragraph (a)(15), by replacing the period at the end of paragraph (a)(16) with a semicolon, and by adding new paragraphs (a)(17), (a)(18) and (a)(19) to read as follows:

§ 135.415 Mechanical reliability reports.

(a) * * *

(17) Doors and exits designated as emergency exits, including automatic or manual operating systems and components;

(18) Emergency escape slides and components and systems or hardware for manual or automatic deployment; and

(19) Galley or passenger service equipment and crewmember or passenger accommodations which could result in injury to a crewmember or passenger, restrict the emergency egress of either, or adversely affect the airworthiness of the aircraft.

* * * * *

Explanation. See the explanation for Proposal 11–30 which adds the same requirements in § 121.703.

Ref. This proposal was not contained in the Operations Review but is a companion change to a proposal in Part 121 which was a part of the Operations Review.

PART 145—REPAIR STATIONS

11–23. By deleting § 145.11(a)(4); by deleting the word "and" and the semicolon at the end of § 145.11(a)(3) and replacing them with a period; by adding the word "and" at the end of § 145.11(a)(2); and by revising § 145.11(a)(1) to read as follows:

§ 145.11 Application and issue.

(a) * * *

(1) A list by type, make, or model, as appropriate, of the airframe, aircraft engine, propeller, appliance, or part thereof, for which the applicant seeks approval;

* * * * *

Explanation. This proposal provides the FAA with a listing of products for which repair station certificate and rating is sought. This list assists the FAA in identifying which initial or additional ratings are being applied for under § 145.31 and which limited ratings are being applied for under § 145.33. When applying for a rating under § 145.31, the application need only identify the type of rating desired (airframe, powerplant, propeller, radio, instrument, or accessory) and the class. When applying under § 145.33, more specific information is necessary on the make and model as specified in the appropriate paragraph of § 145.33. Placing this information on the application will assist the repair station applicant in properly preparing the application and the FAA inspector in evaluating the applicant's compliance with applicable requirements. Section 145.11(a)(4) is redundant because of proposed § 145.11(a)(1) would be deleted.

Ref. Proposal 880; § 145.11; Committee 6B; Agenda Item C–1.

11–24. By revising § 145.41 to read as follows:

§ 145.41 Recommendation of persons for certification as repairmen.

(a) When a person applies for a domestic repair station certificate and rating(s), or additional rating(s), that require a repairman, that person must—

(1) Recommend at least one person for certification as a repairman;

(2) Certify to the Administrator that the person recommended meets the requirements of § 65.101 of this chapter; and

(3) Certify that the person recommended is able to perform and supervise the assigned work.

(b) Each person recommended per paragraph (a)(1) of this section must be at or above the level of shop foreman or department head, or be responsible for supervising the work performed by the repair station. A qualified person so recommended may be certificated as a repairman.

Explanation. This proposal makes clear that the person to be certificated as a repairman must be certified as meeting the requirements of § 65.101 by the person making the recommendation. In addition, it establishes the positions and activities that must be assigned to the individual as part of the eligibility for certification.

Ref. Proposal 872; § 145.41; Committee 4; Agenda Item G.

11–25. By revising the second sentence of § 145.47(b) to read as follows:

§ 145.47 Equipment and materials: Ratings other than limited ratings.

* * * * *

(b) * * * The station shall test all inspection and test equipment at regular intervals to ensure correct calibration to a standard of the National Bureau of Standards, or a standard provided by the equipment manufacturer or, in the case of foreign equipment, to the standard of that foreign country if approved by the Administrator. * * *

* * * * * *

Explanation. This proposal provide specific standards to which test and inspection equipment must be calibrated in order to standardize tests and inspections and provide more uniformity.

Ref. Proposal 875; § 145.47(b); Committee 6B; Agenda Item C–3.

11–26. By amending Appendix A of Part 145 by adding an asterisk (*) after the words "Replacement of valve guides and seats" in paragraph (b)(1)(i); by adding an asterisk (*) after the words "Precision drilling, tapping, boring, milling and cutting operations" in paragraph (b)(1)(iii); and by revising paragraph (a)(3) to read as follows:

Appendix A

* * * * *

(a) * * *

(3) Alloy skin and structural components:

Repair and replace metal skin, using power tools and equipment.

Repair and replace alloy members and components such as tubes, channels, cowlings, fittings, attach angles, etc.,

Alignment of components, using jigs or fixtures as in the case of joining fuselage sections or other similar operations.

Make up wooden forming blocks or dies.

Fluorescent inspection of alloy components.*

Fabricate alloy members and components such as tubes, channels cowlings, fittings, attach angles, etc.*

* * * * *

Explanation. This proposal eliminates the current requirements in paragraph (a)(3) providing that repair stations must be able to fabricate alloy members and components. This is no longer necessary since fabrication of alloy components is rarely necessary in the process of sheet metal repair. The general practice is to order replacement parts. This proposal also relaxes certain requirements of paragraphs (b)(1)(i) and (b)(1)(iii) by providing that repair stations need not have the equipment and material on the premises for performing the job functions of replacing valve guides and seats, precision drilling, tapping, boring, milling, and cutting if they contract that particular type of work to an outside agency having such equipment and

material. This change recognizes an already accepted practice.

Ref. Proposal 899; Part 145; Appendix A; Committee 6B; Item C-4.

PART 147—AVIATION MAINTENANCE TECHNICIAN SCHOOLS

§ 147.35 [Amended]

11-27. By amending § 147.35(a) by inserting the words "and hours spent in each subject of instruction" after the word "grades" in the first sentence.

Explanation. This proposal would require that each transcript issued to a student who graduates from a school or who leaves before graduation contain the hours spent in each subject of instruction. Students transferring from one school to another have experienced difficulty because of a lack of this information. This has resulted in students not receiving proper credit for courses completed and being improperly placed within the curriculum of the new school. This proposal would make it easier for the new school to evaluate the student's prior curriculum and properly place that student within its curriculum. The original proposal discussed at the conference used the term "area of instruction" as opposed to the term "subject" as contained in this proposal. The term "subject" is more appropriate since it is used in other sections of Part 147.

Ref. Proposal 899; Part 147.35; Committee 6B: Agenda Item D.

Proposal 110. This proposal would have amended § 65.85 to add a provision that a mechanic may perform the inspections required by Part 91. This proposal was based on the assumption that annual and progressive inspections would be replaced by continuous inspections. Mechanics are now allowed to perform the continuous inspections of Subpart D of Part 91. The proposals, which would have established continuous inspections, were not adopted. Thus, there is no need to adopt this proposal since the mechanic is already authorized to perform those inspections required by Part 91.

Proposals 391 and 396. These proposals would have deleted the current requirements in §§ 121.177(a)(3) and 121.189(d) (1) and (2) concerning horizontal separation of 300 feet beyond the airport boundaries and added a requirement to clear all obstacles in the departure area as specified in the United States Standard for Terminal Instrument Procedures (TERPS). The current rules are satisfactory and TERPS should not be referenced in the rules since the information contained in TERPS is subject to change without public notice and procedure.

Appendix I.—Proposals Withdrawn by Proponent

The following proposals were withdrawn by the proponent during or after the conference. The withdrawal of the FAA proposals does not commit the FAA to any further course of action.

14 CFR (FAR)	Proposal No.	Committee No.	Agenda Item	Proponent
121.215	409	1	C-1	Air Transport Association.
121.215	411	1	C-1	Federal Aviation Administration.
121.306	419	1	C-1	Do.
121.306(i)	422	1	C-1	Do.
121.313, 121.564	446	1	C-3	Do.
121.315, 121.549	447	1	C-3	Do.
121.349(a)	458	1	C-3	Do.
121.371(d)	480	6A	F	Do.
121.375	482	6A	F	Do.
121.377	484	6A	F	Do.
121.379	485	6	A	Do.
121.391	491	7	C	Do.
145.31	667	6B	C-2	Do.
145.49	678	6B	C-3	Do.

Appendix II.—Proposals Removed From Further Consideration

Based on the FAA's review of the discussions at the Operations Review Conference and the information submitted by interested persons, the following proposals are removed from consideration for the reasons listed:

14 CFR (FAR)	Proposal No.	Committee No.	Agenda Item	Proponent
65.85	110	4	B-3	Sam Corse.
121.177(a)(3)	391	3	C-2	Air Line Pilots Association.
121.189(c)	393	3	C-2	Do.
121.189(c)(1)	394	3	C-2	Do.
121.189(d)(1)	395	3	C-2	Air Transport Association.
121.189(d) (1) and (2)	396	3	C-2	Air Line Pilots Association.
121.189(d)(2)	397	3	C-2	Air Transport Association.
121.189	398	3	C-2	Air Line Pilots Association.
121.191(b)(6)	402	3	C-1	Air Transport Association.
121.193	403	3	C-1	Do.
121.195(b)	404	3	C-3	The deHavilland Aircraft of Canada.
121.195(d)	405	3	C-3	Do.
121.195(f)	406	3	C-3	Air Line Pilots Association.
121.197(b)	408	3	C-3	Do.
121.215	410	1	C-1	Association of Flight Attendants.
121.219	412	1	C-1	Do.
121.291	417	6A	E	Air Transport Association.
121.305	420	1	C-1	Air Line Pilots Association.
121.307	423	1	C-1	Do.
121.309	424	1	C-2	Association of Flight Attendants.
121.309(f)	427	1	C-2	National Transportation Safety Board.
121.310	430	1	C-2	Do.
121.310(a)	431	1	C-2	Air Transport Association.
121.310	432	1	C-2	Association of Flight Attendants.
121.310(j)	435	6A	E	Air Transport Association.
121.310	436	6A	E	Air Line Pilots Association.
121.311	440	1	C-3	Association of Flight Attendants.
121.313(e)	443	1	C-3	Sun Chemical Corp.
121.317	448	1	C-2	Association of Flight Attendants.
121.319	454	1	C-4	Do.
121.319	455	1	C-4	Air Line Pilots Association.
121.320	460	1	C-4	Thomson-CSF and Sfena.
121.327	461	10	F	Association of Flight Attendants.
121.321	464	10	F	Do.
121.347 and 121.351	466	1	C-6	Air Transport Association.
121.349(c)	470	1	C-6	Aerospace Industries Association.
121.360(a)	474	1	C-6	Mr. Richard L. Nowyan.
121, Subpart L	475	2	G	Mr. Sam J. Corse.
121, Subpart L	476	2	G	Do.
121.361	477	2	O	International Association of Machinists and Aerospace Workers.
121.371(b)	479	6A	F	Association of European Airlines.
121.375	483	6A	F	International Association of Machinists and Aerospace Workers.
121.380(a)(2)(vii)	487	2	D	U.K. Civil Aviation Authority.
121.391(a)	493	7	C	Transport Workers Union of America.

Appendix II.—Proposals Removed From Further Consideration—Continued

Based on the FAA's review of the discussions at the Operations Review Conference and the information submitted by interested persons, the following proposals are removed from consideration for the reasons listed:

14 CFR (FAR)	Proposal No.	Committee No.	Agenda Item	Proponent
121.571	381	6A	H	National Transportation Safety Board.
121.571	382	7	D	Do.
145.2	859	6B	C-1	Mr. Sam J. Corso.
145.11(a)	861	6B	C-1	Sun Chemical Corp.
145.13	862	6B	C-2	S.G.A.C./France.
145.17	863	6B	C-2	Sun Chemical Corp.
145.31	865	6B	C-2	Mr. Sam J. Corso.
145.33	866	6B	C-2	Do.
145.39	871	4	G	Sun Chemical Corp.
145.47	874	6B	C-3	Mr. Sam J. Corso.
145.49	877	6B	C-3	Do.
145.51	878	6B	C-4	Do.
145.51	882	6B	C-4	Air Transport Corp.
145.53	883	6B	C-4	Sun Chemical Corp.
145.71	887	6B	C-4	S.G.A.C./France.
145, app. A	890	6B	C-4	Mr. Sam J. Corso.

Proposal 393. This proposal would have revised § 121.189(c) to require all thrust reversers to be operative before an airplane may take off on a wet, icy, snow-covered, or slush-covered runway. This proposal is considered overly restrictive in that the performance credit for the thrust reversers was not considered when certificating the airplane under the provisions of Part 25 of this chapter. Inoperative thrust reversers, like other equipment, should be handled in the Minimum Equipment List (MEL) including, where necessary, appropriate restrictions and limitations.

Proposal 394. This proposal would have amended § 121.189 to redefine accelerate-stop distance. Accelerate-stop distance was redefined in § 121.191(c)(1) by Airworthiness Review Program Amendment No. 6 (43 FR 2302; January 16, 1978).

Proposals 395 and 397. These proposals would have revised §§ 121.189(d) (1) and (2) to provide for a net takeoff flight path that clears all obstacles "* * * that penetrate a 1.2 percent gradient measured from the end of the runway as defined in Part 77 * * *." The current rules in this regard are satisfactory in that the certificate holder and the pilot in command are responsible for determining physical obstacle clearances and adjusting weights to obtain required clearances in accordance with procedures set forth in the Airplane Flight Manual.

Proposal 398. This proposal would have amended § 121.189(e) by adding a requirement for takeoffs from runways that have a friction coefficient less than that for a dry runway. Although the basic concept contained in this proposal has merit, the recommendation that 20 percent be added to the dry distance performance does not appear to be based on factural test data. Past efforts in this regard have not resulted in agreement within the technical community on the standards to be used in determining friction coefficient, the equipment to be used in making this determination, or the criteria to be used in the application of these standards on a day-to-day basis at airports served by Part 121 operators. The FAA plans to issue an ANPRM to solicit more information on this issue.

Proposals 402 and 403. These proposals would have amended §§ 121.191 and 121.193 to allow the consumption of more fuel and oil after engine failure than is allowed for in the en route net flight path data in the Airplane Flight Manual. The current rules define requirements for dispatch based upon the Flight Manual data and do not relate to pilot inflight techniques or judgement. The pilot is not prohibited from selecting any power setting considered necessary for the safety of flight once an engine has been rendered inoperative.

Proposal 404. This proposal would have amended § 121.195(b) by adding specific landing performance provisions for Short Takeoff and Landing aircraft (STOL). Insufficient justification was presented in this proposal to warrant a rule change to Part 121, since no specific performance data was presented on which to base an amendment to the rule. The FAA knows of no reason to amend § 121.195(b) for STOL operations.

Proposal 405. This proposal would have revised § 121.195(d) to restrict a turbine engine powered airplane from landing on a runway containing water, slush, snow or ice unless the runway provided the same margin of safety as a dry runway. Major differences of opinion exist within the national aviation community concerning such basic runway factors as: (1) An acceptable vehicle with which to measure runway friction; (2) a definition of a reference wet surface (i.e., damp versus depth of water, snow, or slush); and (3) factors to be used in establishing acceptable performance margins. All of these considerations will require resolution before rulemaking action can be initiated.

Proposals 406 and 408. These proposals would have amended §§ 121.195 and 121.197 to require consideration of missed approach climb gradients for the landing runway at destination and alternate airports. While climb gradient information is desirable, the proposal would require consideration of destination runways, as distinguished from airports, which would further complicate dispatch procedures. Insufficient justification was presented to warrant a rule change and service experience does not indicate a safety problem.

Proposals 410. This proposal would have amended § 121.215 to require receptacles for towels, paper or similar waste to be fireproof and to have means to contain or extinguish all possible fires. The subject matter of this proposal is contained in Airworthiness Review Amendment No. 6 (45 FR 7750; February 4, 1980).

Proposal 412. This proposal would have amended § 121.219 to require that each occupiable compartment be suitably ventilated. The proposal would have little effect since § 121.219 applies only to transport category airplanes that were types certificated under regulations in effect before October 31, 1946. We assume that the proponent intended to provide a parallel provision, in the operating rules, to certain proposed changes to the ventilation rules in § 25.831, which were also submitted by the proponent for the Airworthiness Review Program. Section 25.831 has been amended by Airworthiness Review Amendment No. 5 (42 FR 36960; August 18, 1977) to require that a means be provided to control the temperature and quantity of ventilating air supplied to the crewmember compartments or area is ventilated by air interchange with other compartments or areas under all operating conditions. Therefore, this proposal is redundant and unnecessary.

Proposal 417. This This proposal would have allowed means other than actual demonstration to be used to comply with the emergency evacuation performance requirements of § 121.291. The recommendation contained in this proposal was included in Airworthiness Review Program Amendment No. 7 (43 FR 50578; October 30, 1978) and was developed to serve both airworthiness and operational requirements relating to

demonstrations of emergency evacuations.

Proposal 420. This proposal would have revised § 121.305 to require that the pitot heat system be automatically energized whenever an engine is running and that an indicating system be provided. Amendments 25–43 and 91–148, effective April 12, 1978, amended §§ 25.1326 and 91.50 to require a pitot heat indication system in all transport category airplances equipped with flight instrument pitot heating systems. With regard to the portion of this proposal to require the automatic energizing of the pitot heat system when an engine is running, insufficient justification was presented to warrant such a change since the current manual procedures (checklist items) for energizing the system are adequate. These procedures provide protection against unwanted energizing of the system and possible damage (i.e., overheating and possible burnout of elements on the ground).

Proposal 423. This proposal would have expanded § 121.307 to make it consistent with the powerplant instrument requirements in § 25.1305. Section 121.157 requires all airplanes entering the air carrier fleet after June 30, 1942, to be certificated as a transport category airplane, whcih is more restrictive than § 121.307. It would be redundant to repeat the powerplant requirements in Part 121 when compliance has already been demonstrated to Part 25.

Proposal 424. This proposal would have amended § 121.309 to provide that access to emergency equipment is not restricted and that the emergency equipment is similar in type, location, and operation for each given type aircraft of each air carrier. It would have also required a CO_2 or dry-chemical fire extinguisher near each lavatory and galley area, a first-aid kit in the cabin of each aircraft, one megaphone for 21 to 99 passengers, and an additional megaphone for each additional 100 passenger seating capacity increment. The words "readily accessible" in the current rule require unrestricted access to emergency equipment. The use of dry-chemical fire extingushers can cause a problem with electrical and electronic components. First-aid kits are required and are normally located in the cabin of the aircraft. The present rule requires one megaphone for an airplane with a seating capacity of more than 60 and less than 100 passengers. Section 121.309 is being revised in Proposal 11–6 to require three megaphones on airplanes with a seating capacity of more than 199 passengers. This requirement has proven satisfactory in past operations and the proponent did not submit any justification to warrant changing the rule to include those aircraft with more than 20-passenger capacity as proposed.

Proposal 427. This proposal would have revised § 121.309(f) to require that the certificate holder designate the flight attendant responsible for use of the megaphone(s) during an emergency evacuation and relocate the megaphone(s) so that they are within easy reach of the flight attendant(s) while seated. The proposal would also require that consideration be given to the installation of new, light, and compact megaphones to facilitate stowage and use.

It is not practical for the certificate holder to designate the flight attendant who will be responsible for using the portable megaphones when the need exists, since all flight attendants are trained in the use of megaphones and their locations, and are expected to use them in case of an emergency. Further, it is inappropriate to require the certificate holder to consider using a specific type or model of megaphone, as long as they meet FAA standards. Proposal 11–6 requires that megaphones must be readily accessible from a required flight attendant seat.

Proposal 430. This proposal would have amended § 121.310(a) to require that emergency evacuation slides on all floor-level exits be automatically inflated upon deployment. The justification given was based on the National Transportation Safety Board's Special Study, NTSB–AAS–74–3, "Safety Aspects of Emergency Evacuations from Air Carrier Aircraft." That study revealed that evacuation slides which had to be manually inflated required more time to make an exit usable than fully automatic slides (that is, automatically deployed and automatically inflated). More rapid slide deployment and inflation would allow evacuation to begin sooner.

Present § 121.310(a) requires that assisting means for floor-level emergency exits meet the requirements of § 25.809(f)(1) in effect on April 30, 1972. Section 25.809(f)(1) in effect on April 30, 1972, requires that all such slides be automatically deployed and automatically erected except that the slide may be erected manually when installed at service doors and passenger doors. Present § 121.310(a) goes on to say that, if the Administrator finds that the design of the exit makes compliance impractical, he may grant a deviation from the requirement of automatic deployment, provided the slide automatically erects upon deployment.

This deviation would be just the opposite of the exception permitted in § 25.809(f)(1) discussed above. In fact, very few if any airplanes have obtained such a deviation; rather, most narrow-bodies airplane slides are automatically deployed and manually inflated.

All aircraft operating under § 121.310(a) have demonstrated an evacuation time of 90 seconds or less. This time included the opening of doors, deployment and erection of slides, and evacuation of occupants. If fully automatic slides were required on all airplanes, evacuation time could possibly be shortened by a few seconds. However, significant cost impacts would result and the minor saving in evacuation time would not justify the lost time and revenue that would be involved in retrofitting all large air carrier aircraft, except the newer wide-body aircraft, with automatic slides. Not only would new slides be required on a significant portion of the fleet, but also the exit opening system would have to be redesigned to comply with the current reuirements in § 25.809(f)(1). Amendment 25–32 (37 FR 3966; February 24, 1972) revised § 25.809(f)(1) to require that each passenger emergency exist which is also a passenger entrance door or a service door must be provided with means to prevent deployment of the assisting means when it is opened from either the inside or the outside under non-emergency conditions for normal use. This requirement is necessary when fully automatic slides are installed to prevent injury to ground personnel when opening the exit to deplane the passengers or for servicing.

The current regulations provide an acceptable level of safety and the recommended change does not justify the significant economic burden that would result.

Proposal 431. This proposal would have amended § 121.310 to require automatic assist means to be armed only during taxing in areas other than the parking or gate area. The justification given was that this would preclude inadvertent deployment at the gate by inadvertent opening of the door from the outside. Adequate safety justification was not provided for the change, since the slides should be armed at all times when passengers are on board, including that time the aircraft is parked at the boarding gate, to assure proper evacuation in the event of an emergency while at the gate.

Inadvertent slide deployment can best be minimized by providing additional training to flight attendants and other pertinent ground personnel and by incorporating procedural changes in the flight attendants' manual.

Proposal 432. The proposal would have amended § 121.310 to require the

application of self-illuminating material to the emergency exit placards, the aisles, and the emergency exit marking band, and would require 20-inch aisleways and a 26-inch seat pitch. The rules governing emergency exit location, illumination, and access are presently defined in §§ 25.803 through 25.813. Insufficient justification was provided for this proposal. The proposal was vague as to any problems to be expected and did not specify that any increase in safety would be achieved.

Proposal 435. This proposal would have amended § 121.310(j) to allow the deactivation of exits other than those required for the particular passenger seating configuration. All aspects of this proposal were considered when the affected regulations were last evaluated and revised in 1967. The proponent did not introduce any new factors that would justify lowering the level of safety by deactivating useable exits and the FAA is not aware of a need for a revision to the existing rule.

Proposal 436. This proposal would have amended § 121.310 to require the installation of an automatic type emergency locator transmitter (ELT) in all airplanes operating under Part 121. Airplanes operated under Part 121 are currently required to have a flight monitoring or flight following system covering their route systems and are normally under radar surveillance. Scheduled flights by scheduled air carriers certificated by the Civil Aeronautics Board (CAB) were specifically excluded from the requirement by Section 601(d)(2)(B) of the Federal Aviation Act of 1958 and are not subject to change through FAA rule making.

Proposal 440. This proposal would have amended § 121.311 by eliminating side-facing seats, placarding seats that will not remain upright, providing seat belt/shoulder harnesses for flight attendants, and standardizing seat belts on airplanes. Side-facing seats have been eliminated as discussed in Airworthiness Amendment No. 6 (45 FR 7750; February 4, 1980). The rule provides that each passenger seat back be in the upright position for takeoff and landing. Any malfunctioning seat shall be fixed prior to flight or, if it occurs in flight, at the next available location. If shoulder harnesses are provided, the current rule provides that they must be fastened during takeoff and landing unless the harness interferes with the crewmember duties. Rule making pertaining to the requirement for combined seat belt and shoulder harness for each flight attendant seat is contained in Airworthiness Amendment No. 8. Most seat belts are Technical Standard Order approved and as such are well standardized. In addition, the pretakeoff demonstration describes the proper operation of the seat belts installed on the airplane.

Proposal 442. This proposal would have amended § 121.313 to require a static port heater or equivalent to prevent malfunctioning due to icing. This proposal is already covered by §§ 23.1325(b)(3) and 25.1325(b) for new airplane designs. Existing airworthiness requirements are adequate and insufficient justification was presented to require retrofitting of all aircraft operating under Part 121.

Proposal 448. This proposal would have amended § 121.317 to clarify that passenger information signs be "clearly" visible to passengers and flight attendants and to change the words "cabin attendant" to "flight attendants." Operations Review Amendment No. 4 (43 FR 22636; May 25, 1978) amended § 121.417 to require that passenger information signs meet the requirements of § 25.791, which require all signs to be legible to each person under all probable conditions of cabin illumination, and also deleted the words "cabin attendants."

Proposal 454. This proposal would have amended § 121.319 to require: interphone availability or accessibility from all occupiable compartments; an oral and visual alerting system for flight attendants in all compartments including compartments separate from the main passenger compartment; and a means of two-way communication between a flight attendant and ground personnel. Airworthiness Review Program Amendment No. 7 (43 FR 50578; October 30, 1978) amended § 121.319 to provide a crewmember interphone system between the pilot compartment and each passenger compartment and the pilot compartment and each galley located on other than the main passenger deck level. The performance of the alerting system between the cockpit and flight attendants with oral or visual signals has been effective and no change is required. There is no requirement for communication between the flight attendant station and the ground as this is handled through the cockpit. The portion of this proposal to provide communications between all occupiable compartments and ground personnel could cause serious safety problems during emergency situations. The responsibility for communication with ground personnel should remain with the pilot in command and should not be delegated during an emergency to a flight attendant in the passenger compartment. For additional discussions see Notice 75-14 (40 FR 11736; March 13, 1975) and Amendment 121-121 (40 FR 42185; September 11, 1975).

Proposal 455. This proposal would have added a new § 121.319 to require approved autopilots for all turbojets and that they be fully operative, except for flights below flight level 240 or for less than 2 hours when specified modes must be operative. While there are advantages in having fully operative autopilots, it is incorrect to suggest that modern turbojet aircraft cannot be operated safely without an autopilot functioning in all modes (as heading or altitude hold modes).

Proposal 460. This proposal would have added a new § 121.326 to prohibit landing on runways without a radio or visual system providing information on deviation from a standard approach slope, unless the airplane is fitted with an instrument capable of providing instant information on speed vector direction and the balance between thrust, drag, lift, and mass. The FAA is presently evaluating equipment, such as heads-up display systems, that would provide a system in the cockpit with which the flight crew would have the capability of establishing a visual approach slope. Rule making would be premature before completion of the evaluation.

Proposals 461 and 464. These proposals would have amended §§ 121.327 and 121.331 respectively by replacing the word "passenger" with the word "occupant" to include flight attendants under the requirements of paragraph (c) to provide them an equal level of safety. Supplemental oxygen is provided for flight attendants under the crewmember requirements of §§ 121.327(b) and 121.331(b) and there would be a conflict if flight attendants were also included under the supplemental requirements for passengers under paragraph (c). Use of the word occupant in paragraph (c) creates this conflict.

The proposal would have also required in §§ 121.327 and 121.331 that oxygen dispensing units be immediately and readily available for use by all occupants in all occupiable compartments. Transport category airplanes that have as their certification basis CAR 4b effective September 1, 1958 (Amendment 4b-0) or later amendments, or Part 25 and are certificated for operation above 25,000 feet must have oxygen dispensing units that are immediately available to each occupant wherever seated. For airplanes certificated for operation above 30,000 feet, the oxygen dispensing units must be automatically presented to the

occupants. The inclusion of the supplemental oxygen requirements in CAR 4b, later recodified as Part 25, was necessitated by the advent of turbine powered airplanes with normal operating altitudes higher than the operating altitudes of reciprocating engine powered airplanes. Turbine powered airplanes certificated to CAR 4b prior to Amendment 4b-9 have the supplemental oxygen requirements of Amendment 4b-9 imposed as special conditions. Thus, all airplanes operating under Part 121 have supplemental oxygen requirements that meet the intent of the proposal.

Proposal 468. This proposal would have amended §§ 121.347 and 121.351 to require communication with appropriate ground stations along the route but not necessarily at each point along the route. This relaxes the current requirement that a flight must be able to communicate with at least one appropriate ground station from any point on an extended overwater route. Lack of communication capability during any polar or extended overwater operation could place the aircraft in a serious, if not dangerous, situation. The current regulations provide an acceptable level of safety and the changes recommended did not sufficiently justify a reduction in the level of safety.

Proposal 470. This proposal would have amended § 121.349 to allow substitution of certain area navigation computer systems (RNAV) for one very high frequency omnidirectional station (VOR) receiver or one distance measuring equipment (DME) system to provide independent navigation capability. Substituting an RNAV system for one VOR receiver would eliminate dual instrument landing system (ILS) capabilities. The current regulations provide an acceptable level of safety and no change is necessary.

Proposal 474. This proposal would have amended § 121.360 to require a ground proximity warning system on all turbine powered airplanes. The current rule requires the equipment only on large turbine powered airplanes. Separate rulemaking action amended Part 135 of this chapter to require a ground proximity warning system in all turbojet powered airplanes having a passenger seating capacity, excluding any pilot seat, of 10 seats or more. The extension of this requirement to all turbine powered airplanes is being addressed in a separate rulemaking action.

Proposals 475 and 476. These proposals are part of a group to move all maintenance rules from Parts 91, 121, 135, etc., and consolidate them in a new Subpart B of Part 43. These proposals comprise an extensive recodification process with no commensurate benefit to aviation safety since it would not streamline, reduce, or simplify the regulations, but would require a tremendous administrative workload and involve changing many advisory circulars and internal instructions.

Proposal 477. This proposal would have deleted § 121.361(b) and prohibited the use of parts returned to service by persons outside of the United States who do not hold U.S. airmen certificates, on the basis that it takes work away from U.S. certificated mechanics and repairmen. This rule change would have deleted the existing parts pool arrangements which have proven to be advantageous. The proposed change would not enhance safety and would impose an unnecessary inconvenience and an economic burden on Part 121 certificate holders.

Proposal 478. This proposal would have revised § 121.371 to allow an FAA-approved repair station to assume full responsibility for accomplishing required inspections. The current rules make certificate holders responsible for all work performed on their airplanes regardless of the certification status of persons or maintenance entities performing such maintenance. This proposed rule change would dilute this responsibility, with a possible detrimental effect on safety.

Proposal 483. This proposal would have revised § 121.375 to require each certificate holder to prepare and keep current a written training pogram curriculum for maintenance personnel for each type of airplane operated, and also require annual recurrent training. The current rules do not specify the type of training program or frequency of training, allowing certificate holders the opportunity to adjust their training program to their specific needs. These training programs are monitored by the FAA for their adequacy.

Proposal 487. This proposal would have amended §§ 121.380, 43.9, and 43.11 to require the current status of applicable service bulletins, including methods of compliance, to be recorded. The recommended rule change has not been sufficiently justified since these current recording requirements are adequate to provide a record of all maintenance and alterations performed and are subject to periodic review by the FAA.

Proposal 493. This proposal would have amended § 121.391 to change the passenger to flight attendant ratio from the current 50-to-1 to 30-to-1. Emergency evacuation demonstrations performed under current FAA requirements have safely and satisfactorily proved that the 50-to-1 ratio is more than adequate. Additionally, insufficient justification was presented to properly support a change in the passenger to flight attendant ratio.

Proposal 501. This proposal would have amended § 121.571 to require that all operators extract the regulations pertinent to passenger safety from the Federal Aviation Regulations and publish them as passenger information. The current dissemination of passenger information by passenger briefings and briefing cards is considered sufficient. Many regulations are "pertinent to passenger safety", yet their dissemination to passengers is not practical because many of the regulations are complex and would tend to confuse the passengers. They are adequately covered in crewmember training programs which instruct crewmembers in all aspects of passenger safety.

Proposal 502. This proposal would have amended § 121.571 to require that passengers be alerted, during pretakeoff briefings, of the need to familiarize themselves with the procedures involved in the operation of emergency exits. The current passenger briefings and the information contained on the printed briefing cards already convey this information on the operation of emergency exits. Dissemination of this information is being emphasized during crewmember training programs and during passenger briefings. In addition, this information is clearly posted at each emergency exit.

Proposal 859. This proposal would have deleted § 145.2 and, along with related proposals, would restructure the current repair station rating systems. The implementation of this proposal, and the accompanying changes which would be necessary in other parts of the regulations, directives, and supporting advisory circulars, are not justified on the basis of increased safety.

Proposal 861. This proposal would have added a new § 145.11(a)(5) which would require applicants for repair stations with any instrument rating (Class 1, 2, 3, or 4) to list, by type and make of instrument, those appliances for which approval is sought. Proposed § 145.11(a)(1) satisfies the intent of this proposal.

Proposal 862. This proposal would have amended § 145.13 to allow foreign countries who have developed requirements and procedures for repair station certification to provide certification and surveillance services for the FAA. The certification and surveillance authority, as related to foreign repair stations certificated by

the FAA, must remain with the FAA. Since foreign repair stations under the FAR are primarily for the purpose of maintaining U.S. registered aircraft operating outside the U.S., the FAA is not prepared to certificate a foreign repair station, or allow certification status to continue on the basis of an affidavit instead of an on-site inspection by the FAA.

Proposal 863. This proposal would have revised § 145.17(a) to impose a 2-year renewal requirement on FAA approved domestic repair stations. The FAA current surveillance activity ensures the continuing capability of these stations and the renewal requirement would place an economic burden on repair stations and the FAA with no commensurate gain in safety.

Proposal 865. This proposal would have revised § 145.31 by replacing the current class ratings, which include descriptive information about the services involved, with a categorical listing which would denote only the general area of services or products involved. The current rating structure should remain as it is since changing the names of the ratings would not enhance safety, be an economic burden on industry (because of having to recertificate the repair stations and additional requirements), and cause confusion to the public.

Proposal 866. This proposal would have revised § 145.33 by replacing the current limited ratings with a process specification that describes the procedure to be used. The current rating structure is adequate and changing it would not enhance safety, would require recertification of all repair stations to include the process specification procedure, and would be an economic burden on industry and FAA.

Proposal 871. This proposal would have amended § 145.39(d) to require that persons who supervise, perform the work without supervision, or inspect the work for which the repair station is rated, must be appropriately certificated and rated as a mechanic or repairman under Part 65. It would also allow a person working under the supervision of a holder of a mechanic or repairman certificate to perform the same functions that the supervisor is authorized to perform if the supervisor personally observes the work and is readily available, in person, for consultation. The current rules impose sufficient requirements. They provide that each person who is directly in charge of the maintenance function of a repair station must be appropriately certificated as a mechanic or repairman under Part 65. To add requirements for additional ratings for additional persons as proposed is unnecessary and creates an additional burden without a commensurate increase in safety.

Proposal 874. This proposal would have revised § 145.47 to eliminate the current requirement for periodic inspection and calibration of test equipment being used. Calibration of this equipment on a continuing basis is a necessary safety requirement and is required to be performed at regular intervals to ensure correct calibration.

Proposal 877. This proposal would have deleted § 145.49. It is based on Proposal 868 which would have eliminated limited ratings and is removed from consideration for the same reasons stated for Proposal 868.

Proposal 878. This proposal would have revised § 145.51 and was predicated on Proposal 865 which would have replaced the present repair stations class and limited ratings with a categorical system denoting only the general area of services or products involved. The current rating system should be retained and therefore this proposal is removed from consideration for the reasons stated for Proposal 865.

Proposal 882. This proposal would have amended § 145.51 to allow a certificate holder, which has an engineering organization acceptable to the Administrator, to approve the technical data for major repairs and major alterations. This proposal has been included in the provisions of Special Federal Aviation Regulations (SFAR) No. 36 (43 FR 3064; January 23, 1978).

Proposal 883. This proposal would have amended § 145.53 to restrict technical data, equipment or facilities to that recommended by the manufacturer. This proposal is unduly restrictive in that the manufacturers' instructions, while desirable, are not the only available source. Further, the prohibition sought in the proposal is already encompassed in the existing § 145.53.

Proposal 887. This proposal would have revised § 145.71 by deleting the requirement that a determination of need must be found by the Administrator before a certificate and rating(s) could be issued for a foreign repair station. The certification of foreign repair stations is based on a requirement for maintaining or altering U.S. registered aircraft operating outside the United States. Thus, this rule change would negate the basic purpose of FAA certification of foreign repair stations.

Proposal 890. This proposal would have deleted Appendix A of Part 145 and reissued the information in an advisory circular. The material in Appendix A is a regulatory requirement and is not appropriate for inclusion in an advisory circular.

(Secs. 313, 314, and 601 through 610 of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1354, 1355, and 1421 through 1430); sec. 6(c) of the Department of Transportation Act (49 U.S.C. 1655(c)); and 14 CFR 11.45)

Note.—The Federal Aviation Administration has determined that this document involves a regulation which is not significant under Executive Order 12044, as implemented by Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). A copy of the draft evaluation prepared for this document is contained in the docket. A copy of it may be obtained by writing to the individual named in the "FOR FURTHER INFORMATION CONTACT" paragraph.

Issued in Washington, D.C., on January 9, 1981.

Kenneth S. Hunt,

Director of Flight Operations.

[FR Doc. 81-1784 Filed 1-16-81; 8:45 am]

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Part XVI

Department of Transportation

Federal Aviation Administration

Elimination of Duties and Activities of Flight Crewmembers Not Required for the Safe Operation of Aircraft

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 121 and 135

[Docket No. 20539; Amdt. Nos. 121-186; and 135-11]

Elimination of Duties and Activities of Flight Crewmembers Not Required for the Safe Operation of Aircraft

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: These amendments prohibit performance of nonessential duties and activities by flight crewmembers which are not required for the safe operation of aircraft during critical phases of flight. Nonessential flight crewmember duties and activities can create distractions in the flight crew compartment. These amendments require aircraft operators and flight crewmembers to assure an environment in the flight crew compartment that is free from such potentially dangerous distractions.

EFFECTIVE DATE: May 18, 1981.

FOR FURTHER INFORMATION CONTACT: Marvin J. Walker, Regulatory Review Branch (AVS-22), Safety Regulations Staff, Associate Administrator, for Aviation Standards, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 755-8714.

SUPPLEMENTARY INFORMATION:

History

This final rule is based on Notice of Proposed Rule Making No. 80-12 published in the Federal Register on August 28, 1980, (45 FR 57684). All interested persons have been given an opportunity to participate in the making of the rule, and due consideration has been given to all matters presented.

Background

Notice 80-12 was issued as a result of the FAA's growing awareness that certain activities and nonessential duties assigned to flight crewmembers by the air carrier are not required for the safe operation of aircraft. These nonessential duties and activities are possible sources of dangerous distraction to flight crewmembers and can result in a compromise of safety, especially during critical phases of flight. A review of data derived from the Federal Aviation Administration/National Aeronautics and Space Administration (NASA), Aviation Safety Reporting System (ASRS), revealed many examples of flight crew errors, omissions, and noncompliance with air traffic control (ATC) clearances which reportedly resulted from distractions caused by the performance of nonessential duties and activities by flight crewmembers. A review of National Transportation Safety Board (NTSB) accident investigation reports further revealed that inadequate cockpit discipline in the flight crew compartment is a commonly cited cause of aviation accidents.

Notice 80-12 proposed adding new §§ 121.542 and 135.100 to the Federal Aviation Regulations (FAR) to eliminate nonsafety related duties and activities during critical phases of flight, thereby greatly reducing accident potential. Critical phases of flight were defined in the notice as all ground operations involving taxi, takeoff and landing, and other flight operations except cruise flight.

Discussion of Comments

Eighteen comments were received in response to Notice 80-12, representing the views of individuals, labor organizations, trade associations, airline companies, and other government agencies. The NTSB in its comment expressed unqualified approval of the proposals, as did one citizen's committee which responded to the notice. A majority of commenters expressed approval of the intent of the proposals. Several, however, suggested changes which would tailor the proposals to specific airline operations. Where practicable, these suggestions have been adopted.

Several commenters object that the definition of critical phases of flight as everything but cruise flight is too stringent, particularly for short-haul up and down operations where there is a minimum, if any, cruise portion of flight. They state that a sterile cockpit until cruise is simply not workable in the instance of these shorter flights and suggest that a hard altitude be specified instead. The FAA agrees. The definition of critical phases of flight is expanded in the flight operations area to allow nonessential duties and activities to be conducted during cruise flight at any altitude, and during climbout and descent above 10,000 feet.

One commenter specifically questions the practicality of prohibiting all extraneous conversation between a pilot and passengers on board small charter aircraft operating under Part 135 of the FAR. The FAA does not agree. The objective of the rule is to reduce distractions in the cockpit. Extraneous conversation in the cockpit during critical phases of flight causes flight crew distraction in small as well as large aircraft. Therefore, Part 135 operators carrying passengers in the same compartment occupied by flight crewmembers should ensure that those passengers are briefed concerning their responsibilities under the law. The FAA considers extraneous conversation, as it pertains to this rule, to be a dialogue not related to the safe operation of an aircraft, such as discussions concerning politics or the passing scenery.

A number of commenters object to the proposals as being ambiguous and lacking definition. They state that the proposals would place both operators and flight personnel in an untenable interpretation dilemma since the list of duties and activities prohibited in the proposals is noninclusive. These commenters suggest that the FAA not issue open-ended rules such as the ones proposed, but rather leave determinations as to which specific duties and activities are unnecessary for the safe operation of aircraft and when they are to be prohibited to the individual operators involved. They suggest that each operator submit a cockpit sterilization procedure to the FAA for approval by the Administrator. The FAA does not agree that the proposals are in any way ambiguous or vague. The rules are clear; they categorically state that airlines shall not require their flight crewmembers to perform nonsafety related duties during critical phases of flight and that flight crewmembers shall not conduct nonsafety related activities which could cause distractions in the flight crew compartment during critical phases of flight. They further state that the pilot-in-command shall not permit any activity during a critical phase of flight which would distract flight crewmembers from the performance of their duties. Critical phases of flight is an expression which is commonly used in discussions concerning flight crew workloads. These are the phases of a flight in which the flight crew is busiest, such as during takeoff and landing and instrument approaches. When many complex tasks are performed in a short time interval, distracting events could cause errors and significant reductions in the quality of work performed. The performance of a nonsafety related duty or activity when flight crew workload is heavy could be the critical event which precludes a flight crewmember from performing an essential function such as extending the landing gear prior to touchdown.

Several of these commenters further state that the proposals would be too difficult to enforce. They suggest that the intent of the proposals to achieve a sterile cockpit during critical phases of

flight could best be furthered by having each operator determine which duties and activities should be prohibited and incorporate them into its training program. The FAA does not agree that the rule is too difficult to enforce. Principal operation inspectors will assure air carrier compliance through review of manuals and procedures. Individual compliance will be assured through en route surveillance, as in the past. Violations of this rule will be pursued as vigorously as those of any other FAR. The FAA does not object to individual operators incorporating additional examples of nonessential duties and activities into their manuals and training programs, however the minimum provisions of these rules must be met.

Several commenters state their belief that individual airline sterile cockpit procedures already in existence have worked well, and that therefore the proposals are not necessary. They state that the adoption of sterile cockpit procedures on a voluntary basis is the most desirable alternative to the proposals in Notice 80-12. The FAA does not agree. A background history of events leading to the formulation of the proposals, including attempts by the FAA to promote voluntary compliance with practices which would prevent cockpit distractions during critical phases of flight, was given in Notice 80-12. Efforts by the FAA to encourage periods of voluntary cockpit sterilization have not been totally successful as evidenced by hundreds of recent ASRS reports detailing incidents of distractions in the flightcrew compartment, and by the continued occurrence of aircraft accidents such as the September 1978 PSA mid-air collision near San Diego in which such unnecessary activities as crewmembers engaging in extraneous conversation have been found to play a part.

Several commenters question the need for the proposed rules given the existence of Federal Aviation Regulations which concern flight safety and cockpit management. They point to regulations which vest the pilot-in-command with full control and responsibility as to the operation of an aircraft, and which prohibit persons from operating an aircraft in a careless or reckless manner. The existence of these regulations alone is insufficient. None of the current Federal Aviation Regulations specifically prohibits performance of nonsafety related duties and activities during critical phases of flight. The need for such a rule is made clear in Notice 80-12 where the Eastern Airlines crash in Charlotte, North Carolina, and the PSA collision near San Diego are discussed as examples of accidents in which a breakdown of cockpit discipline played a part.

One commenter questions the use of ASRS data to support the proposal. He inquires into the type and amount of data reviewed and whether the data was randomly picked. The FAA reviewed 475 ASRS examples of distractions in the cockpit. The period of review spanned from July 1976, when the ASRS program was first conceived, to March 1980. The following table lists the categories stored in the computer and the number of reports in each category for which distraction was judged to be the reason for the reported error:

Categories reviewed	Number of distractions
Altitude alert	209
Alerts and warnings	16
False alarms	20
Ground proximity warning system	39
Cockpit display	80
Aircraft equipment malfunction	91
Checklist	40
	475

ASRS reports of distractions in categories involving paperwork problems, public address systems, flight attendants, company radios, and extraneous conversations were also reviewed. A given ASRS report reviewed by the FAA may have spoken to a combination of the above categories.

This commenter objects to use of the NTSB report on the PSA midair collision in San Diego in support of the proposal, since the Air Line Pilots Association (ALPA) has petitioned the NTSB to reconsider the probable cause of that collision. The FAA does not agree that reference to the NTSB report was in any way inappropriate. ALPA's June 9, 1980, petition for reconsideration of the probable cause of the San Diego crash does not challenge the NTSB's statements concerning the extraneous conversation taking place in the PSA cockpit preceding the collision. In this regard, the NTSB in its accident report stated: "Although the conversation was not causal, it does point out the dangers inherent in this type of cockpit environment during descent and approach to landing." The FAA is in agreement with the NTSB's assessment of the dangers associated with extraneous conversation. The fact that ALPA has petitioned the NTSB has no bearing on these rules.

This commenter states further that if additional cockpit management regulations are needed, they should be dealt with in Part 91 of the regulations which are applicable to all pilots and not just to air carriers and air taxi operators. The FAA does not agree. The amendments apply to Parts 121 and 135 in order to assure the highest level of safety possible for those engaging in air transportation. Applying the same amendments to Part 91 would be impractical and unnecessary because of the many different types of operations conducted under that part and because Part 91 operations do not involve the traveling public.

One commenter who is in favor of the proposal suggests that the definition of critical phases of flight should not include taxi since accidents during taxi are extremely rare. The FAA does not agree. Serious accidents during taxi have occurred, several of which have involved fatalities. For example, on March 27, 1977, a K.L.M. Boeing 747 collided with a taxiing Pan American Boeing 747 at Los Rodeos (Tenerife) Airport killing 583 persons. On December 20, 1972, 10 persons lost their lives when a North Central Airlines DC-9 collided with a taxiing Delta Airlines Convair 880. This commenter is also concerned that certain passenger information announcements by flight crews during taxi will be prohibited by the proposal. Studies of ASRS reports show that cabin announcements made by flight crewmembers during critical phases of flight can be dangerously distracting. The rules are clear. Flight crewmembers shall not make cabin announcements during taxi, unless such announcements are in response to safety related situations such as announcements made to direct passengers to take their seats until the aircraft has arrived at the gate.

One commenter asks if a flight attendant may, for example, enter the cockpit to report an illness on board the aircraft or whether there could be a report made of malfunctioning galley equipment. A flight attendant's decision to enter the cockpit during critical phases of flight to make a report must be tempered by good judgment. Certainly, a flight attendant would not, for example, be prohibited from reporting an illness or disturbance which was of a serious nature. Proper flight attendant training will greatly aid in making the proper decision. Flight attendants shall not enter the cockpit during critical phases of flight to report cabin mechanical malfunctions that are not safety related, such as broken movie projectors or inoperative coffee makers.

One commenter is concerned that the sterile atmosphere generated by the

proposals could mask subtle incapacitation. The FAA does not agree. There are several other symptoms of subtle incapacitation other than the absence of verbal communications and flight crewmembers are trained to recognize them. Another commenter points out that extraneous conversation under certain circumstances enhances safety by assuring alertness of flight crewmembers. There is considerable merit to this comment and the FAA's decision to modify the definition of critical phases of flight is based in part upon this concern. However, in view of this modified definition of critical phases of flight, the FAA has determined that the prohibition against extraneous conversation will not adversely affect safety because of the relatively short period of time during a flight in which such conversation is prohibited.

Similarly the FAA disagrees with the views of another commenter who states that the working conditions which would result from the proposals would encourage an atmosphere of noncommunication and distrust between cockpit crew and cabin attendants. Again, extraneous conversation is to be prohibited for such a relatively short period of total flight time that overall communication between cockpit crew and cabin attendants will not be significantly affected.

One commenter states that good judgment cannot be legislated, and that it must be accomplished by establishment of sound company policy and procedures, and effective training. The FAA agrees that the institution by each operator of proper cockpit sterilization procedures in its manuals and training programs would further the intent of the rules. However, while the FAA supports the existence of such company policy, its existence alone is not sufficient since company policy does not have the effect of law and cannot be enforced by the FAA.

One commenter recommends that the rules address the conduct of nonfunctioning (jumpseat) crewmembers in the cockpit. The FAA agrees that the presence of such persons in the cockpit could be potentially distracting, and therefore the proposals are revised to require that the pilot in command prohibit activity which is distracting to flight crewmembers by any cockpit occupant during critical phases of flight. The FAA does not consider the mere presence of a duly authorized FAA inspector or nonfunctioning crewmember in the cockpit to be a distraction which is in violation of these rules.

Description of the Amendments

These amendments add two new sections to the Federal Aviation Regulations, §§ 121.542 and 135.100. Both sections use identical language in prohibiting the performance of nonessential duties and activities by flight crewmembers or other occupants of the cockpit during critical phases of flight. The following are some examples of flight crewmember duties which are unnecessary for the safe operation of an aircraft: company-required calls made for such nonsafety related purposes as ordering galley supplies and confirming passenger connections; PA announcements made to promote passenger entertainment including announcements pointing out sights of interest; and time spent in the flight crew compartment filling out company paycards and personnel records.

With respect to the prohibition against the performance of nonsafety related activities, the proposals have been revised to reflect that no flight crewmember shall engage in any activity during a critical phase of flight which would distract any flight crewmember from his or her duties or which would interfere in any way with the proper conduct of those duties. In addition, the pilot in command is now required to prohibit any activity by any cockpit occupant during a critical phase of flight which is distracting to a flight crewmember. Notice 80-12 addressed only the conduct of those persons who were required flight crewmembers. The proposals were revised to respond to commenters concerned with disruptive conduct by crewmembers deadheading on board a flight. In addition, the proposals have been revised by adding an example of a nonessential activity; i.e., reading publications not related to the proper conduct of a flight. Critical phases of flight is expanded in the final rules to allow nonessential duties and activities to be conducted above 10,000 feet, and during cruise flight at any altitude. The definition of critical phases of flight is modified in response to those commenters who state that the definition set forth in Notice 80-12 is too stringent for short haul operations.

The proposals have been further revised by adding the word "communications" to the list of those activities which are sometimes prohibited. Such communications may, for example, include interphone exchanges between cabin crew and flight deck crew, and the sounding of bells in the cockpit to summon the attention of flight deck crewmembers.

Adoption of the Amendments

Accordingly, Parts 121 and 135 of the Federal Aviation Regulations (14 CFR 121 and 135) are amended effective May 18, 1981, as follows:

PART 121—CERTIFICATION AND OPERATIONS: DOMESTIC, FLAG, AND SUPPLEMENTAL AIR CARRIERS AND COMMERCIAL OPERATORS OF LARGE AIRCRAFT

1. By adding a new § 121.542 to read as follows:

§ 121.542 Flight crewmember duties.

(a) No certificate holder shall require, nor may any flight crewmember perform, any duties during a critical phase of flight except those duties required for the safe operation of the aircraft. Duties such as company required calls made for such nonsafety related purposes as ordering galley supplies and confirming passenger connections, announcements made to passengers promoting the air carrier or pointing out sights of interest, and filling out company payroll and related records are not required for the safe operation of the aircraft.

(b) No flight crewmember may engage in, nor may any pilot in command permit, any activity during a critical phase of flight which could distract any flight crewmember from the performance of his or her duties or which could interfere in any way with the proper conduct of those duties. Activities such as eating meals, engaging in nonessential conversations within the cockpit and nonessential communications between the cabin and cockpit crews, and reading publications not related to the proper conduct of the flight are not required for the safe operation of the aircraft.

(c) For the purposes of this section, critical phases of flight includes all ground operations involving taxi, takeoff and landing, and all other flight operations conducted below 10,000 feet, except cruise flight.

Note.—Taxi is defined as "movement of an airplane under its own power on the surface of an airport."

PART 135—AIR TAXI OPERATORS AND COMMERCIAL OPERATORS

2. By adding a new § 135.100 to read as follows:

§ 135.100 Flight crewmember duties.

(a) No certificate holder shall require, nor may any flight crewmember perform, any duties during a critical phase of flight except those duties required for the safe operation of the aircraft. Duties such as company

required calls made for such nonsafety related purposes as ordering galley supplies and confirming passenger connections, announcements made to passengers promoting the air carrier or pointing out sights of interest, and filling out company payroll and related records are not required for the safe operation of the aircraft.

(b) No flight crewmember may engage in, nor may any pilot in command permit, any activity during a critical phase of flight which could distract any flight crewmember from the performance of his or her duties or which could interfere in any way with the proper conduct of those duties. Activities such as eating meals, engaging in nonessential conversations within the cockpit and nonessential communications between the cabin and cockpit crews, and reading publications not related to the proper conduct of the flight are not required for the safe operation of the aircraft.

(c) For the purposes of this section, critical phases of flight includes all ground operations involving taxi, takeoff and landing, and all other flight operations conducted below 10,000 feet, except cruise flight.

Note.—Taxi is defined as "movement of an airplane under its own power on the surface of an airport."

(Secs. 313(a) and 601 through 605 of the Federal Aviation Act of 1958 (49 U.S.C. 1354(a), 1421 through 1425); Sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)))

Note.—The Federal Aviation Administration has determined that this document involves regulations which are not significant under Executive Order 12044, as implemented by Department of Transportation Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). A copy of the regulatory evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained by contacting the person identified above under the caption "FOR FURTHER INFORMATION CONTACT."

This rule is a final order of the Administrator of the FAA under the Federal Aviation Act of 1958, as amended [49 U.S.C. 1485]. As such, it is subject to review only by the courts of appeals of the United States or the United States Court of Appeals for the District of Columbia.

Issued in Washington, DC, on January 14, 1981.

Langhorne Bond,

Administrator.

[FR Doc. 81-1824 Filed 1-14-81; 1:32 pm]

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federal register

Monday
January 19, 1981

Part XVII

Department of Transportation

Federal Aviation Administration

Access to Flight Data Recorder and Cockpit Voice Recorder Tapes

DEPARTMENT OF TRANSPORTATION

14 CFR Parts 121 and 135

[Docket No. 20661; Notice No. 80-14B]

FAA Access to Flight Data Recorder and Cockpit Voice Recorder Tapes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Supplemental Notice of Proposed Rulemaking.

SUMMARY: These proposals, if adopted, would establish the regulatory procedures necessary for the Administrator to obtain flight data recorder information and cockpit voice recorder information. The data are important to the furtherance of aviation safety. The information will be used to study the human factor elements associated with aircraft operation and design to determine what, if any, regulatory changes should be made to enhance aviation safety. The importance of this rulemaking should not be underestimated; the human element is the primary cause of aviation accidents. These proposals would not change the Administrator's policy regarding use of information derived from cockpit voice recorders, but would limit the Administrator's ability to use flight data recorder data in enforcement proceedings. More specifically, cockpit voice recorder data would not be used for enforcement purposes. Flight data recorder data would continue to be used for enforcement purposes but not when such data are removed for the purpose of studies discussed herein.

This supplementary notice discusses a number of comments received in response to Notice of Proposed Rulemaking No. 80-14 (45 FR 57694), and solicits additional comments.

DATE: Comments must be received on or before May 18, 1981.

ADDRESSES: Send comments on the proposals in duplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-204), Docket No., 800 Independence Avenue SW., Washington, D.C. 20591; or deliver comments in duplicate to: FAA Rules Docket, Room 916, 800 Independence Avenue SW., Washington, D.C.

Comments may be examined in the Rules Docket weekdays between the hours of 8:30 a.m. and 5 p.m.

FOR FURTHER INFORMATION CONTACT: Everett W. Pittman, Regulatory Review Branch (AVS-22), Safety Regulations Staff, Associate Administrator for Aviation Standards, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 755-8714.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rules by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 20661." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the closing date for comments will be considered by the Administrator before taking action on the proposed rules. The proposals contained in this notice may be changed in the light of comments received. All comments submitted will be available in the Rules Docket for examination both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

Any person may obtain a copy of this supplemental notice of proposed rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA-430, 800 Independence Avenue SW., Washington, D.C. 20591, or by calling (202) 426-8058. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11-2 which describes the application procedure.

Background

This supplemental notice of proposed rulemaking is based on Notice of Proposed Rulemaking No. 80-14, published in the Federal Register on August 28, 1980 (45 FR 57694). Notice 80-14A was published in the Federal Register on October 30, 1980, extending the initial comment period. In response to those notices, 52 comments were received. An analysis of those comments has pointed out several areas where clarification of the proposed rules is needed, and the rules proposed herein have been so modified. More importantly, though, is the misinterpretation of several aspects of the proposals contained in Notice 80-14. Since the FAA is convinced of the importance of industrywide cooperation in the study and analysis of human error, and such cooperation cannot be founded on a basis of misunderstanding, this supplemental notice has been issued. It is hoped that the discussion of intent presented herein, and the modifications to the rules presently proposed, will serve to clarify the original intent of the agency.

Notice 80-14 was issued in response to the FAA's need for more hard statistical data on day-to-day working conditions in the cockpit. Recent aircraft certification experience has revealed that more data exists regarding all factors affecting cockpit functions than the FAA has yet utilized. Data derived from the implementation of these proposals will be used in the FAA's Aviation Human Factors Program which includes a major emphasis on identification and reduction of factors causing crew errors. The FAA's Aviation Human Factors Program is a new initiative designed to improve the man-machine interface element of the aviation system. The program is being developed with the full participation of the world aviation community. A major aspect of the program is a series of open workshops at which the FAA, industry and consumers will meet to dicuss present and future human factors issues, priorities, and optimum courses of action. The inflight data collection set forth in these amendments is one small but essential part of the overall Aviation Human Factors Program. In addition, all other pertinent data sources will be analyzed in the study of the human factors affecting aviation safety.

A number of commenters criticized the proposals set forth in Notice 80-14 because the notice did not set forth a detailed plan for the use of data to be collected. Such criticism is misdirected. The purpose of the proposals in Notice 80-14 was to establish a basis for development of a detailed work plan for this aspect of the agency's human factors program. Development of such a work plan is expected to be time consuming, and involve a large number of representatives from all facets of the international aviation industry. It would have been inappropriate to invest the considerable effort required, on the part of all concerned, in the development of these specific plans if the data required for the analysis—i.e., the cockpit voice and flight data recorder tapes, cannot be made available. Thus, the proposed rule changes were set forth before the detailed plan was developed. In this

connection, it is the specific intent of FAA to involve the international aviation community in the planning of this, and other aspects of the human factors program, through participation in a series of workshops. The first was held in Cambridge, Massachusetts on November 24–25, 1980. The second is being held January 15–16, 1981, during the second FAA/Commuter Airline Symposium at Washington, D.C. The third will be held in March of 1981, on a date to be announced in the Federal Register.

The comment of one major airline union deserves specific discussion at this point. Notice 80–14 is criticized therein for stating that cockpit voice recorder data is expected to reveal more about the Air Traffic Control system and runway/taxi transgressions. The commenter claims that "* * * the FAA already has access to recorded data covering both situations * * *. In the case of runway/taxi transgressions, the FAA already has authority to review flight data recorders and cockpit voice recorders * * *." This comment indicates a serious misunderstanding of existing explicit FAA authority. It is exactly because the FAA does not have explicit access to cockpit voice recorder data for such analysis that Notice 80–14 was proposed. Flight data recorders and air traffic controller tapes do not tell the full story in a runway transgression. To perform a complete analysis of such situations in order to get at the underlying cause, the agency must have access to the cockpit voice recorders, which it does not have at present.

Flight data reorder and cockpit voice recorder data should prove invaluable in a variety of other human factors studies, including assessments of flight crew workload and the impact on workload of FAA-mandated systems. An inflight data base will, for example, provide essential information for the human engineering of new cockpit layouts and cockpit designs. Such data may also be used to address any continuing issues regarding the safety of two-member versus three-member crews. Study of the human factors issues in the cockpit environment through use of cockpit voice recorder and flight data recorder data may also shed light on pilot training effectiveness. These data might be used in evaluating or determining the workload impact and coordination effectiveness between pilot and air traffic controller. Furthermore, with the availability of this data, studies related to aircraft performance and pilot response may be implemented and furthered.

The need to study human factors in the cockpit environment is supported by findings of the National Transportation Safety Board (NTSB) that errors of judgment or management play a major role in airline accidents. Historically, pilot error is a factor in approximately 60 percent of air carrier and 88 percent of general aviation fatal accidents. Although the majority of fatal aviation accidents involve some element of crew error, categorization of accidents as to the nature of the crew error and the identification of underlying human problems has never been accomplished. Utilization of flight data recorder tapes and cockpit voice recorder tapes will enable the FAA to study and analyze the complex interactions in the man-machine environment.

A number of commenters implicitly or explicitly indicate that FAA enroute inspection should be able to provide first-hand data on cockpit workload. The FAA disagrees, principally for two reasons. First, pilots' unions themselves consistently claim that the "real-world" environment is different from that which the FAA believes to be representative. The Air Line Pilots Association (ALPA), in its comment, states that "The most significant data that would be obtainable would reveal how airplanes are flown under operational conditions. In this respect, the data would show how unrealistic many of the certification tests required by FAA really are." The FAA interprets this statement as one of the clearest possible reasons for having access to, and carefully analyzing, flight data and cockpit voice recorder data. Secondly, the FAA has reviewed its data on air carrier enroute inspections since the early 1960's. Nearly half a million inspections have been performed in revenue service, during a time when the number of air carrier flights approached 100 million. An analysis of these data indicates strongly that the operation of air carrier aircraft is conducted in a different manner when an FAA inspector is on-board, compared to when he or she is not. The proof of this claim lies in an examination of the accident rates experienced for the two types (inspector/no inspector) of revenue flights. The only practical way to determine what these differences are is to analyze flight data and cockpit voice recorder tapes. Taken together, these are two powerful arguments in favor of this proposed development in the Aviation Human Factors Program.

There were two major questions raised concerning this program—what is its scope and what is its cost? On November 24 and 25, 1980, the FAA held the opening workshop of its series on Aviation Human Factors. Determinations regarding the use and quantity of information derived from implementation of these proposals, as well as procedural matters involving data collection, processing, and analysis, will be made as the information from these workshops is further developed. Development of the program will, therefore, take place with the full participation and input of all segments of government and private industry. As a result, the number of cockpit voice recorder and flight data recorder tapes analyzed will vary with time. The cost will also vary. However, as the FAA stated in NPRM 80–14A, the FAA fully intends to reimburse the carriers for the direct costs associated with removal and replacement of the units. Thus, the direct cost impact on the public will be minimal, if any. To set the procedures for reimbursement, and to set forth the ministerial details as to actual collection of the data, the FAA will establish an agency order and an advisory circular. Both of these documents will be available to the public. This procedure will assist the agency in coordinating this data collection effort with the Aviation Human Factors Program. In summation, the FAA has fulfilled its obligation to assess the cost impact on the public, and has determined to bear this cost impact itself with funds approved by the Congress.

A final point worthy of discussion is the concern raised about invasion of privacy and self-incrimination. These are discussed more fully below. In summary, however, the FAA intends to ensure, to the fullest extent permitted by law, that personal data is not released to the public as a result of this program. Further, the FAA does not intend to use the flight data recorder and cockpit voice recorder tapes employed in this human factors effort in any civil penalty or certificate action involving any crewmember. Specific guarantees are provided to these ends in the amended rules proposed herein.

Discussion of Comments

The FAA received 52 comments in response to Notice 80–14. These comments represent the views of individuals, flight crewmembers, citizens committees, airline companies, airplane manufacturers, and other government agencies. One commenter states that the NPRM has the potential of becoming one of the most beneficial aids to future aircraft safety improvement in recent regulatory history and volunteers to assist in development of procedures. A citizens committee, in support of the Notice,

concurs with the FAA that the data obtained will be extremely valuable in enhancing the safety of aircraft operations, and an avionics organization, in its comment, wishes to go on record in full support of the proposals. Virtually all of the remaining 49 comments, the majority of which were received from individual flight crewmembers, oppose the proposals.

In general, the objections to the proposals show a remarkable lack of concern for advancing the cause of aviation safety. Commenters mainly object because they allege that the cockpit voice recorders were not installed for the purpose proposed here, and they allege an invasion of privacy. While these objections are dealt with in more detail below, it is important to focus on a central fact—all air carriers, commuters, air taxis and pilots are authorized to operate pursuant to a statute that demands strict adherence to aviation safety. The American public has entrusted this charge to the FAA and to those who operate by virtue of the FAAct. When it is possible to advance aviation safety, protests that the cockpit voice recorder was not intended for the purpose proposed herein have a hollow ring. The science of human factors has advanced, as has the FAA's ability to use this data to make aviation safer. Use of this tool in this scientific endeavor to advance aviation safety is consistent with the state-of-art in the study of human factors.

Turning more specifically to the individual objections, several commenters state that cockpit voice recorders and flight data recorders were intended to be used only as aids in accident investigations, and not as "tools of discipline" with information gathered from them used to aid in enforcement of Federal Aviation Regulations. The Federal Aviation Regulation requiring the installation of cockpit voice recorders contains no provision limiting the use of cockpit voice recorders to accident investigations. That rule only prohibits the use of cockpit voice recorder data in civil penalty or certificate actions. Flight recorder data, however, are no different form any other record or report required by the regulations, and may be reviewed and used in investigations and enforcement actions pursuant to § 13.7 of the FARs. These proposals will not in any way change the Administrator's policy regarding use of information derived from cockpit voice recorders in enforcement proceedings. However, in order to promote maximum cooperation in this aspect of its human factors effort, and in response to a number of comments received in response to Notice 80-14, the FAA has amended the proposed rules to include an immunity provision. As now phrased, the proposed rules provide that when, for the purposes of human factors research (and only in such cases), both the cockpit voice recorder and flight data recorder are ordered to be removed from an aircraft by the Administrator for human factors analysis, none of the data contained on the flight data recorder may be used by the Administrator in civil penalty or certificate actions. This does not dilute the agency's authority to continue to use flight data recorder records for enforcement purposes outside the human factors program. It does, however, guarantee that records removed for the purpose of human factors research will be used only for that purpose, and not for purposes of enforcement.

The NTSB, in its comment, states that in the case of *Administrator* v. *Rapattoni and Swanson* the FAA is on record that cockpit voice recorder tapes should only be used in connection with accident investigations. The NTSB is incorrect in its assessment of that brief. Any comments made therein must be considerd in light of the issue presented in the brief; that is, the use of cockpit voice recorder tapes in connection with enforcement proceedings. The FAA merely expressed disagreement with use by the NTSB examiner in that case of cockpit voice recorder information in an enforcement action, stating, "It is clear that the FAA, by the language of the disclaimer contained in the rule and by the language used in adopting the rule, did not envision that the recorded information could or would be used by anyone else in an enforcement action." By such statements the FAA did not establish precedent limiting the use of cockpit voice recorder data to accident investigations.

Several commenters object that to allow the FAA unlimited access to cockpit voice recorder data would result in an invasion of a pilot's privacy. One commenter is concerned that only those with a legitimate need to know should ever be aware of the identity of crewmembers who are involved in a particular occurrence. This concern is not justified. Although the FAA will have access to cockpit voice recorder tapes, the identity of those pilots whose voices are recorded will not be available from the tapes. It, therefore, would be unlikely for any invasion of privacy to result from use of the tapes. Furthermore, under our system of law a person's right of privacy must be weighted against the public interest in order to determine whether a valid invasion of privacy claim arises. If the public interest in the material is substantial, and the intrusion upon one's privacy is of a lesser degree, then the public's interest will prevail and no actionable violation of the affected person's right of privacy will result. The public's interest in promoting safety supersedes any slightly possible intrusion into a flight crewmember's privacy.

Two commenters raise questions concerning possible disclosure of the cockpit voice recorder tapes pursuant to the Freedom of Information Act (FOIA) (5 U.S.C. 552). The NTSB suggested that public availability of the tapes could "adversely affect verbal communication procedures and thus reduce the usefulness of the cockpit voice recorder in the investigation of accidents." Another commenter expresses fear that under the FOIA the tapes would be available to the news media with no assurance that the FAA could, or would, protect the anonymity of crewmembers; it is this aspect, says the commenter that "makes the program completely unacceptable to the airlines." The commenter further states that "this aspect of the program is also unacceptable to the crewmember associations."

These concerns are valid. In response, the FAA plans to extract all significant data from the tapes and then erase them as soon as they are accurately transcribed. If partial disclosure is compelled under the FOIA, at least three factors combine to assure that crew anonymity can and will be preserved. First, the crew will not be identifiable through the tape or transcript thereof; although the tapes invariably contain call signs that identify the airline and flight number, they do not contain a date which would be necessary to identify the crew. Second, the agency, in transcribing tapes reviewed under this rule, will not make a verbatim transcript of all statements made by individuals in the cockpit. If extraneous comments are made, a notation will appear on the transcript noting "extraneous comments." The exact words used will not appear. This is similar to notations that appear on accident transcripts. Third, should anonymity nevertheless not be assurable, the FAA will, to the extent necessary to protect the privacy of individual crewmembers, delete personal discussions from any released tape or transcript, under the authority of Exemption 6 of the FOIA (5 U.S.C. 552(b)(6)). That exemption authorizes withholding of information concerning

personal matters unless there is a public interest to be served by disclosure that would outweigh the invasion of privacy that could result from disclosures. It is the FAA's view that a public interest claim would have to be overwhelming to meet that standard since the protectability of the privacy interest is so obviously essential to the accomplishment of FAA's public purpose, i.e., it seems apparent the program cannot succeed if crewmembers must be concerned about disclosure of personal matters outside the FAA. The FAA, for this reason, hereby announces its intention to defend to the fullest extent permitted by law against disclosures from either tapes or transcripts that can be traced to identifiable individuals. In this connection, if it is possible to identify the crew whose conversation is recorded on a cockpit voice recorder tape sought under the FOIA, the FAA will consult the crew as to what should be withheld. Any disclosures resulting from this process are no more likely to result in invasions of privacy than the transcripts of germane matters from cockpit voice recorder tapes made public by the NTSB in its accident investigation reports.

The FAA is also aware that, from time to time, discussions of company or union confidential matters may appear on the tapes. The carrier or union concerned will be consulted, as appropriate, regarding possible withholding of such matters under the authority of Exemption 4 of the FOIA (5 U.S.C. 552(b)(4)).

A number of commenters, including the NTSB, express concern that by allowing an aircraft to fly up to 8 hours without a cockpit voice recorder, valuable information would be lost should an accident occur. The FAA is also concerned about the possibility of an accident occuring during the period when the tapes are removed from an aircraft, and every effort will be made to remove the cockpit voice recorder at an airport where a replacement is available. It should be noted that the FAA does not seek possession of unmanageable numbers of tapes but only of a very small sample as dictated by the statistical design developed under the Human Factors Program. This is likely to result in a review of a very small percentage of all tapes on board aircraft. In the event that immediate replacement of the cockpit voice recorder is not possible under unusual circumstances, the FAA has determined that the public interest in allowing FAA access to these tapes greatly outweighs the loss of information which may occur in the remote possibility of an accident.

One commenter states that the proposals would fit a scheduled service, where the airplane is in a maintenance base every 6 flight hours, but will not work for long-range overseas flights or where the aircraft is in charter service. Based on this comment, the FAA has reconsidered its position on allowing an aircraft operating under Part 121 of the FAR to fly only 8 hours with its tapes removed. To enable long range aircraft to fly the longest leg possible this 8-hour flight limitation is changed to 14 hours. Such a revision will enable long aircraft flights, such as westbound flights from New York to Tokyo, to reach a main base where tapes or recorders can be replaced. Again, the agency will make every reasonable attempt to minimize the time during which aircraft are flown without tapes. Data collection procedures will be based on the assumption that the primary removal location will be staffed with enough experienced personnel and spare parts so that recorders can be removed and replaced without interferring with scheduled airlines departures.

Several commenters believe that compliance with the proposals should be made strictly voluntary. One commenter suggests that a pilot who feels that the information compiled from a flight would be valuable for FAA study could call for removal of the tapes, with his or her company's approval, for dispatch to the FAA. The FAA would welcome any tapes removed on a voluntary basis for a human factors study but believes that tapes selected on an on demand basis will more accurately represent a crew's normal performance of its workload. Tapes voluntarily submitted to the FAA would tend to show flight crew behavior at its best since the crew involved knows that its conduct, as reflected in the tape, will be subject to scrutiny.

At least one commenter is concerned about the cost which must be borne by the operator for implementation of the rules. As stated in Notice 80–14A (45 Fr 72017) the FAA will assume the direct costs reasonably related to this program. The FAA will provide funds to reimburse air carriers for the direct costs involved in this data collection effort. Discussion of these costs will be included in an impending agency order and advisory circular.

Several commenters state that satisfactory data can only be obtained by direct observation of the crew at work, since many things are done in the cockpit without a word being spoken. The FAA does not agree. As discussed in Notice 80–14, when FAA inspectors are on board a flight, cockpit work follows standard procedures and workload patterns appear to duplicate those found during certification test flights. Flight crews have charged that workload distributions in actual line operations are higher than those experienced during FAA enroute inspections and line checks. Such charges can not be adequately evaluated without the review of flight data recorder and cockpit voice recorder tapes to confirm the existence and determine the causes of the stated problems. Other commenters suggest that a human factors study should be conducted instead in aircraft simulators operating under line oriented flying procedures since emergency procedures can be added to normal routine in a simulator. Simulators will be used in the study of human factors where appropriate. In addition, the collection of real world data will provide additional credibility and a validation baseline for human factors analysis. Therefore, there is a need to obtain data from aircraft in flight.

Several commenters suggest that there is an already existing body of human factors data which the FAA could analyze to satisfy the requirements of these proposals. They suggest that the FAA look to such things as studies undertaken by aircraft manufacturers and other civil aviation authorities, as well as data obtained by the United Kingdom in its studies. They suggest that parties such as active and retired airline personnel be utilized to establish the needed data base. The FAA agrees that there are many current sources of human factors information; however, this information is not of such magnitude that analysis of additional information should not be sought in the interest of aircraft accident prevention. In fact, the data base of the human factors information presently available has been used to determine that further data is needed. For example, NTSB study of cockpit voice recorder tapes following the Eastern Airlines crash at Charlotte, North Carolina, revealed that the probable cause of the accident was the flightcrew's lack of altitude awareness at critical points during the approach due to poor cockpit discipline. Through a study of the cockpit voice recorder tapes the NTSB found that company required callouts were not made. The NTSB stated that the extraneous conversation conducted by the flightcrew during the descent, as reflected in the tapes, was symptomatic of a lax atmosphere in the cockpit which continued throughout the approach. Similarly, NTSB study of cockpit voice

recorder tapes following the National Airlines crash in Pensacola, Florida, revealed that poor cockpit management and judgment contributed greatly to that accident. The tapes in that crash revealed that the probable cause of the accident was in part the flightcrew's unprofessionally conducted nonprecision instrument approach in that the captain and the crew failed to monitor the descent rate and altitude and the first officer failed to provide the captain with required altitude and approach performance callouts. Further study of inflight data is vital in understanding the nature of such crew errors and in identifying underlying human factors problems. With regard to those comments concerning data compiled by the United Kingdom, such data and other pertinent data surces will also be analyzed to identify human factor safety issues. These other sources may well include information derived from parties such as airline personnel.

At least one commenter points out that since most recorders contain only the last 30 minutes of the flight on tape, it is very doubtful if any departure or any enroute information would be obtainable for study. The FAA does not agree. If the Administrator determines that the cockpit voice recorder recordings of a specific segment of enroute flight are desired for human factors study, the aircraft pilot in command will be notified to disconnect the power source to the recorder. This notification to the pilot in command will include the time and place at which the power source is to be disconnected. For example, the disconnect may be requested immediately by the FAA Principal Operations Inspector or by the Administrator through the certificate holder, or it may be at some specified point in the future such as immediately after completion of the landing roll. At this time, the FAA is not proposing to extend the 30 minute duration of the tape.

Several commenters suggest that the FAA as an enforcement agency cannot be impartial in its study of cockpit voice recorder and flight data recorder tapes. They state that implementation of the proposed program could best be accomplished by an impartial nongovernment agency. The FAA does not agree that its function as a enforcement agency will in any way influence its study of the inflight data. A principal responsibility of the agency is development of effective regulations. Human factors is an important element in aviation safety, and is a regulatory area deserving of application of an improved state-of-the-art. The purpose of the proposed rules is to lay the groundwork for improved understanding of human factors in line operations of commuters and air carriers, so that regulations may be improved to reflect the latest state-of-the-art.

The Air Line Pilots Association (ALPA), in its comment, objects to use of NTSB reports on the Eastern Airlines DC-9 crash at Charlotte, North Carolina, and the National Airlines crash at Pensacola, Florida in support of the proposals, since it claims that it has petitioned the NTSB to reconsider the probable cause of those crashes. Diligent search of NTSB records and contact with NTSB personnel has failed to disclose any petition pending by ALPA for reconsideration of the probable cause of the Eastern Airlines DC-9 crash at Charlotte, North Carolina. In regard to the National Airline's crash at Pensacola, Florida, the FAA does not agree that reference to the NTSB report in that case was in any way inappropriate. Whether ALPA will be able to overturn the NTSB's report is speculative. However, the report referred to in support of Notice 80-14 is currently a proper and valid compilation of the NTSB's findings. Furthermore, the Pensacola crash, whether reconsidered by the NTSB or not, is at the very least an example of the type of unsafe activity which might take place in the cockpit. Study of inflight data will assist in the implementation of regulations and programs designed to prevent the occurrence of such breakdowns in cockpit discipline.

Several commenters are concerned that implementation of the proposals may degrade safety by inhibiting normal cockpit communication. They state that FAA access to every utterance in the cockpit is likely to inhibit normal crewmember behavior and to also destroy the working relationship between pilots and controllers. Cockpit voice recorder equipment has been required since 1966. Given this long period of time in which flight deck crewmembers have worked aware that their cockpit conversations are being recorded, implementation of these proposals will not likely inhibit normal crewmember behavior or in any way affect the routine cockpit work environment. Certainly crewmembers should not be apprehensive about making normal cockpit communications with other crewmembers or controllers.

Several commenters gave their views regarding the logistics of tape exchanges. They commented, for example, on the reasonableness of a cockpit voice recorder or cockpit voice recorder magazine change in a 15- to 30-minute time-frame using qualified personnel. The significance of these comments is appreciated since the FAA does not intend to impose any unreasonable costs or delays on any operator or to allow unqualified persons to remove or replace recorders. The removal and replacement of recorders will be accomplished by air carrier personnel. For the majority of aircraft 30 minutes is a more than sufficient period of time for qualified personnel to change the entire cockpit voice recorder. To prevent possible disruption of airline schedules and the unnecessary delaying of passengers, the FAA intends to remove the cockpit voice recorder at a base where a replacement is available. If under unusual circumstances a replacement recorder is not available, the FAA has increased the number of hours which a long range airplane may fly without a cockpit voice recorder from 8 hours to 14 hours so that airline schedules need not be disrupted.

One commenter states that the proposals could not produce any substantial amount of meaningful data given that the recorders are not designed for rapid acquisition and processing of data for study purposes. The FAA does not envision any rapid processing or quick analysis of the tape information. No attempt will be made to play back the cockpit voice recorder in the field. The cockpit voice recorder will be removed, replaced by a serviceable unit if available, and then carried to a designated readout facility. Qualified personnel will play back the recording. These individuals will take the time needed to accurately and thoroughly review the data.

Several commenters state that the FAA has neither the manpower nor the capability to use flight data recorder and cockpit voice recorder data for the purposes set forth in the Notice. The FAA does not agree. The FAA does indeed have adequate resources to implement the proposals. The FAA Office of Aviation Safety will coordinate development of a system to collect, reduce and analyze collected data. Through interagency agreements with other government agencies and contracts with industry, an effective system for data processing will be established.

Several comments were made regarding the limited number of parameters on the oscillographic flight data recorder which preserves its data by engraving traces on metal foil and which presently account for over 80 percent of the flight data recorders in use. The FAA is aware of the limitations in the older type recorders as compared

to the new and improved expanded parameter Digital Flight Data Recorders (DFDR). However, the FAA still considers the recorded value of dynamic or continually changing parameters such as time, altitude, airspeed, heading, and vertical acceleration, very useful data for the purpose of these proposals, and some commenters concur in this point.

At least one commenter states that the data provided through these proposals will not prove useful in assessing cockpit crew workload since the desired human factors information must be gained in part with the help of performance parameters and measurement instrumentation, including TV cameras, oculometers and head position transducers. The FAA disagrees that flight data recorder and cockpit voice recorder data alone will not be useful in providing a human factors data base. While this commenter's proposal may have some merit, the FAA must not reject every good approach merely because it is not the best possible one. In addition, it may not be compatible with aircraft operations under Parts 121 or 135 of the Federal Aviation Regulations to install and operate the type of equipment suggested, as it would likely be distracting an disruptive to flight deck crewmembers.

One commenter stresses the technical limitations and poor intelligibility of the cockpit voice recorders. The commenter states that these limitations are well known to the FAA since a recent FAA cockpit voice recorder maintenance improvement program revealed widespread problems in cockpit voice recorder maintenance procedures. Discovery of such widespread problems in the recorders by the FAA cockpit voice recorder maintenance improvement program has resulted in numerous corrective actions that have assured better recording performance and recovery intelligibility. In addition, the FAA has recently established a regulatory program to further improve the audio quality and intelligibility of cockpit voice recorders. There are still some technical limitations with the recording equipment, especially in regard to the different environments it is subjected to in different types of aircraft. However, despite such limitations, an invaluable amount of accident investigation information has been obtained by the NTSB from such equipment. The four channel unit that records, for a period of 30 minutes, all radio communications to and from the aircraft, as well as interphone communications, sounds from the flight deck, and signals identifying navigation and approach aids, will provide essential human factors information concerning numerous safety matters.

The NTSB and several other commenters state that it would be difficult to use cockpit voice recorder data to measure crew workload other than the communication workload itself. The FAA does not agree. This inflight data must first be compile and analyzed before such a judgment can be made. Furthermore, the FAA plans to use this inflight data base in a variety of studies, only one of which involves crew workload.

Several commenters support the basic idea behind the proposals; i.e., the gathering of inflight data for the purpose of studying human factors elements involved in daily airline operations, but object that the Notice makes no provision for how its objectives are to be achieved. They ask such questions as what hard data is to be gathered, who is to do the analysis, what role will the computer play, etc. As stated earlier, details regarding such matters as collection and analysis of the inflight data will be determined by the aviation community as a whole, in large part through their participation in the Human Factors workshop series initiated last November. The FAA Human Factors Task Force has been assigned the responsibility of coordinating the formulation of a program to organize and analyze the human factors data obtained through the implementation of these proposals. This group, with the help of interagency agreements with other government agencies and contracts with private industry, is in the process of developing a comprehensive Human Factors Program plan including the study of flight data recorder and cockpit voice recorder data. Furthermore, the inflight data, in addition to furthering studies currently underway, will provide useful information for possible future studies affecting many areas of aviation safety.

These same commenters believe that implementation of the rules as proposed should be re-evaluated annually. The FAA continually re-evaluates and revises regulations and programs. In addition, the public is invited to petition for rulemaking when they believe changes are necessary.

One commenter states that the cockpit voice recorder tape cycle times should be extended beyond the present 30 minutes so as to cover the entire flight. Adequate information will be available with the equipment currently in use given that the Administrator can obtain cockpit voice recorder tapes of any specific segment of a flight simply by notifying the pilot in command to pull a circuit breaker or disconnect the power source to the recorder. As stated earlier, the FAA does not deem that a retrofit of all cockpit voice recorder equipment is necessary at this time to acquire a sufficient human factors data base.

Description of the Proposed Amendments

Sections 121.343, 121.359 and 135.159 of the Federal Aviation Regulations would be amended to require that cockpit voice recorder and flight data recorder information be made available to the Administrator at such time and place as the Administrator may designate for study of the human factors affecting aviation safety. Since the flight data recorder may have many hours remaining on it, the certificate holder would be allowed to continue to use the recorder until reaching a point where it could be replaced. However, if the Administrator determines that the recorded data will be erased or otherwise obliterated, or will be needed before the aircraft reaches a point where the recorder can be replaced, he may request the information immediately.

Since the cockpit voice recorder contains only a 30-minute tape, the Administrator would request in most cases that the power to the recorder be disconnected at a time specified to the pilot in command. In Notice 80-14 the FAA proposed to allow the aircraft to continue to operate for up to 8 hours flight time with the tapes removed. Due to public response the FAA has reconsidered this limitation and the proposed rules would now permit aircraft operating under Part 121 of the FAR to operate up to 14 hours with the tapes removed. However, the proposed rules would also provide that the aircraft may not depart an airport where the tapes can be replaced.

The FAA is concerned that operation of an aircraft without a cockpit voice recorder may result in the loss of valuable data should an accident occur, and therefore will attempt to remove the cockpit voice recorder at an airport where a replacement is available. The proposals further provide that no person may erase or otherwise obliterate the information requested by the Administrator.

As a result of public response to Notice 80-14, an additional subsection was added to each of the proposed rules which states that the information obtained from the cockpit voice recorder will not be used by the Administrator in any civil penalty or certificate action. Flight data recorder data are no different from any other record or report required by the regulations, and information from these recorders may continue to be reviewed and used in

investigations and enforcement proceedings. However, in cases where the Administrator directs removal of a flight data recorder record in conjunction with a cockpit voice recorder record for purposes of analysis in the study of human factors, data contained on the flight data recorder may not be used in any civil penalty or certificate action against any crewmember.

The Proposed Amendments

Accordingly, the Federal Aviation Administration proposes to amend Parts 121 and 135 of the Federal Aviation Regulations (14 CFR 121 and 135) as follows:

PART 121—CERTIFICATION AND OPERATIONS: DOMESTIC, FLAG, AND SUPPLEMENTAL AIR CARRIERS AND COMMERCIAL OPERATORS OF LARGE AIRCRAFT

1. By revising § 121.343 by inserting the words "and (e)" after the words "paragraph (d)" in the first and last sentence of paragraph (c); by redesignating paragraphs (d), (e), (f), and (g) as (e), (f), (g), and (h) respectively, and adding a new paragraph (d) to read as follows:

§ 121.343 Flight recorders.

* * * * *

(d) The recorded data prescribed in paragraph (a) of this section shall be made available to the Administrator at such time and place as the Administrator may designate.

* * * * *

2. By revising § 121.359 by adding new paragraphs (f), (g), (h), (i), (j), and (k) to read as follows:

§ 121.359 Cockpit voice recorders.

* * * * *

(f) The recorded data prescribed by this section shall be made available to the Administrator at such time and place as the Administrator may designate.

(g) Notwithstanding paragraph (a) of this section, an airplane which has had its cockpit voice recorder or cockpit voice recorder magazine removed under paragraph (f) or disabled in compliance with paragraph (h) of this section, in order for the Administrator to obtain the recorded data, may be operated without an operative cockpit voice recorder for 14 flight hours following removal or disabling provided the airplane does not depart an airport where a replacement cockpit voice recorder or cockpit voice recorder magazine is available.

(h) The pilot-in-command shall ensure that—

(1) Upon notification by the Administrator or the certificate holder, the power source to the cockpit voice recorder is disconnected at the time and place designated, and

(2) The previously recorded information is not erased or otherwise obliterated.

(i) No person may erase or otherwise obliterate recorded data which the Administrator has requested.

(j) The Administrator will not use the information obtained from the cockpit voice recorder in any civil penalty or certificate action.

(k) If the Administrator orders the removal, for the purpose of analysis of the information in the study of human factors, of both the cockpit voice recorder or cockpit voice recorder magazine under § 121.343(d) and the flight data recorder under § 121.359(f), then the Administrator will not use the information obtained from the flight data recorder in any civil penalty or certificate action.

PART 135—AIR TAXI OPERATORS AND COMMERCIAL OPERATORS

3. By revising § 135.151 by adding new paragraphs (c), (d), (e), (f), and (g) to read as follows:

§ 135.151 Cockpit voice recorders.

* * * * *

(c) The recorded data prescribed by this section shall be made available to the Administrator at such time and place as the Administrator may designate.

(d) Notwithstanding paragraph (a) of this section, an airplane which has had its cockpit voice recorder or cockpit voice recorder magazine removed under paragraph (c) or disabled in compliance with (e) of this section in order for the Administrator to obtain the recorded data, may be oprated without an operative cockpit voice recorder for 8 flight hours following removal or disabling provided the airplane does not depart an airport where a replacement cockpit voice recorder or cockpit voice recorder magazine is available.

(e) The pilot-in-command shall ensure that—

(1) Upon notification by the Administrator or the certificate holder, the power source to the cockpit voice recorder is disconnected at the time and place designated, and

(2) The previously recorded information is not erased or otherwise obliterated.

(f) No person may erase or otherwise obliterate recorded data which the Administrator has requested.

(g) The Administrator will not use the information obtained from the cockpit voice recorder in any civil penalty or certificate action.

(Secs. 313(a) and 601 through 605 of the Federal Aviation Act of 1958, as amended (49 U.S.C. §§ 1354(a), 1421, and 1424); Sec. 6(c), Department of Transportation Act (49 U.S.C. § 1655(c)); and 14 CFR Part 11.45)

Note.—The Federal Aviation Administration has determined that this document involves proposed regulations which are not significant under Executive Order 12044, as implemented by Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). A copy of the draft regulatory evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained by contacting the person identified above under the caption "FOR FURTHER INFORMATION CONTACT."

Issued in Washington, D.C., on January 14, 1981.

Langhorne Bond,

Administrator.

[FR Doc. 81-1825 Filed 1-16-81; 1:23 pm]
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federal register

Monday
January 19, 1981

Part XVIII

Department of Energy

Office of Minority Economic Impact

Loans for Bid or Proposal Preparation by Minority Business Enterprises Seeking DOE Contracts and Assistance; Proposed Rulemaking

DEPARTMENT OF ENERGY

Office of Minority Economic Impact

10 CFR Part 800

Loans for Bid or Proposal Preparation by Minority Business Enterprises Seeking DOE Contracts and Assistance; Proposed Rulemaking and Request for Written Comments

AGENCY: Department of Energy.

ACTION: Proposed rule.

SUMMARY: The National Energy Conservation Act, Pub. L. 95-619 dated November 9, 1978, which amended the Department of Energy Organization Act (Pub. L. 95-91) of August 4, 1977 by adding Section 211 establishing the Office of Minority Economic Impact authorized the Department of Energy (DOE) to provide financial assistance in the form of loans to minority business enterprises to assist such enterprises in participating fully in research, development and demonstration efforts acquired or supported with financial assistance by the Department of Energy. This notice sets forth, as a proposal, rules under which DOE will provide loans for bid or proposal preparation by minority business enterprises seeking DOE contracts and assistance, and requests public comments on the proposed rule.

DATES: Written comments in response to this notice are requested on or before March 20, 1981.

ADDRESSES: Submit comments to: Juventino Rodriguez, Director, Assistance Programs Staff, Office of Minority Economic Impact, Mail Stop 5B-110, 1000 Independence Avenue, S.W., Washington, D.C. 20585, (202) 252-8383.

FOR FURTHER INFORMATION CONTACT:

James Hirahara, Office of Financial Incentives, Mail Stop 1J-009, 1000 Independence Avenue, S.W., Washington, D.C. 20582, (202) 252-1420.

George Samels, Office of General Counsel, Mail Stop 4A-139, 1000 Independence Avenue, S.W., Washington, D.C. 20585, (202) 252-0807.

SUPPLEMENTARY INFORMATION:

I. Background
II. Discussion of the Proposed Rule
A. General
B. Requirements
C. Qualification Process for Loans
D. Loan Application
E. Loan Administration
III. Period for Public Comment
IV. Comment Procedures

I. Background

The Act provides authority for DOE to provide direct loans to minority business enterprises for bid or proposal preparation under such rules as the Secretary of Energy, acting through the Office of Minority Economic Impact, may prescribe. Such loans to any recipient may not exceed 75 percent of bid or proposal costs. This proposal is the first rule promulgated by DOE to implement Section 211 of the Act and concerns direct loans only.

II. Discussion of the Proposed Rule

This proposal, which sets forth the guidelines and procedures to be used for the Office of Minority Economic Impact loan program, consists of five subparts as follows:

A. General

Subpart A of the proposed rule provides general information relative to the loan program and defines the parameters within which loan requests will be considered. Though comments are desired relative to any aspect of the proposed rules, comments are especially sought in the following areas of this subpart:

Subsection 800.006 attempts to illustrate eligible and ineligible costs. Comments are requested from prospective applicants concerning the list of eligible and ineligible costs and whether any such includable or excludable costs pose significant problems for the loan contemplated.

Subsection 800.007 identifies DOE or other Federal Agency as being responsible for loan servicing but reserves the right for DOE to contract out for such services. Comments are requested from prospective applicants concerning the desirability of contracting out for such services. In addition, comments are requested from prospective minority enterprises or other servicing agents who may be interested in providing loan servicing functions in connection with this program. DOE is considering such interested parties in an effort to foster working business relations betwen minority business enterprises and financial services firms, particularly commercial banks.

B. Requirements

Subpart B of the proposed rule contains the general guidelines for selection of loan applications, requirements and conditions of the loan agreement, and findings and determinations which will have to be made by DOE relative to any loan application.

Subsection 800.100, which contains the guidelines for Selection of Loan Applications, contemplates a two-step process. The first step will involve submission of an application to establish the applicant as a viable, qualified minority business enterprise. The second step will involve submission of an application for a specific loan request. The two-step process is introduced in recognition of the fact that a timely response to a loan request is essential relative to competitive solicitations because of firmly established submission dates. The two-step approach will permit a thorough evaluation during the first step. The second step, with reliance on the evaluation already completed in the first step, would focus on the specifics of a loan request and makes possible a timely decision by DOE.

Subsection 800.101, which contains requirements and conditions for loan agreements, is a particularly important section of the regulation for the public to review because it describes the proposed structure of the loan, including collateral, repayment, maturity, interest, and disbursement provisions. DOE intends to provide loans on favorable terms to assist minority business enterprises in participating fully in research, development and demonstration activities of the Department. Particular comments are requested from prospective applicants concerning the classification of different maturities depending on amounts of money borrowed, and whether the proposed schedule of maturities appears excessive in length.

C. Qualification Process for Loans

Subpart C provides detailed guidelines for the first step of the two-step process described in *Subpart B*. The qualification process includes (1) submission of an application containing information set forth in § *800.201*, (2) evaluation of applications in accordance with the criteria contained in § *800.202*, and (3) approval for qualification. Once an applicant is found to be qualified, such finding will be relied on by DOE in reviewing applications for direct loans. Though applicants are encouraged to follow the two-step qualification/loan application process, provisions are made for the simultaneous submission and review of qualification and loan applications.

D. Loan Application

Subpart D provides detailed guidelines for the second step of the two-step process described in *Subpart B*. In order to expedite closing of approved loans, DOE is developing a

"form of loan agreement" referenced in § *800.300*. It is planned that the form will serve a dual purpose of (1) an application submission form to be signed by the applicant and (2) a loan agreement when and if it is approved and signed by the Contracting Officer. At this time, a final form has not been developed and comments on the planned approach are requested.

E. Loan Administration

Subsections 800.400, Loan Servicing Agent, and § *800.401* Loan Servicing Responsibilities (of a designated loan servicing agent) will be applicable if DOE decides to use the loan servicing agent approach. Otherwise, the DOE or other Federal agency will service the loans. As noted in the earlier discussion of the proposed rule relating to § *800.007*, comments and expressions of interest from prospective loan servicing agents are requested.

III. Period for Public Comment

A 60-day period is being provided for public review and comment on this proposed rule-making.

IV. Procedures for Comment

Interested persons are invited to participate in this rulemaking by submitting data, views or arguments with respect to today's rule. Comments should be submitted by March 20, 1981, to the address indicated in the beginning of the preamble. Comments should be identified on the outside of the envelope and on documents submitted to DOE with the designation "OMEI Loan Program". Ten copies should be submitted. All comments received will be available for public inspection in the DOE Reading Room, Room 1E–190, Forrestal Building, 1000 Independence Avenue, S.W., between 8:00 a.m. and 4:00 p.m., Monday through Friday.

Pursuant to the provisions of 10 CFR 1004.11, any person submitting information which he or she believes to be confidential and exempt by law from public disclosure should submit one complete copy, and fifteen copies from which information claimed to be confidential has been deleted. In accordance with the procedures established in 10 CFR 1004.11, DOE shall make its own determination with regard to any claim that information submitted be exempt from public disclosure.

In consideration of the foregoing, DOE hereby proposes to amend Chapter II of Title 10, Code of Federal Regulations, by establishing Part 800 as set forth below.

Issued in Washington, D.C., January 12, 1981.

Louis F. Mezei,
Director, Office of Minority Economic Impact.

PART 800—LOANS FOR BID OR PROPOSAL PREPARATION BY MINORITY BUSINESS ENTERPRISE SEEKING DOE CONTRACTS AND ASSISTANCE

Subpart A—General

Sec.

800.001 Purpose.
800.002 Definitions.
800.003 Program management.
800.004 Financial assistance—general.
800.005 Eligibility.
800.006 Allowable costs.
800.007 Loan servicing.
800.008 Deviations and contract modification.

Subpart B—Requirements

800.100 Guidelines for selection of loan applications.
800.101 Loan agreement requirements and conditions.
800.102 Findings and determinations.

Subpart C—Qualification Process for Loans

800.200 General.
800.201 Applications for qualification.
800.202 Evaluation for qualification.
800.203 Approval for qualification.

Subpart D—Loan Application

800.300 Submission.
800.301 Applications for loans.
800.302 Evaluation.
800.303 Approval of loans.
800.304 Closing and award.

Subpart E—Loan Administration

800.400 Loan servicing agent.
800.401 Loan servicing responsibilities.
800.402 Reduction or withdrawal of loan.
800.403 Assignment or transfer of loan.
800.404 Appeal.
800.405 Default.

Authority: Section 211(e) of the Department of Energy (DOE) Organization Act, Pub. L. 95–91, Title II, as amended by Pub. L. 95–619, Title VI, Section 641, November 9, 1978, 92 Stat. 3284, Codified at 42 U.S.C.A. 7141.

Subpart A—General

§ 800.001 Purpose.

The purpose of this regulation is to set forth policies and procedures for the award and administration of financial assistance in the form of loans to minority business enterprises to assist such enterprises in participating fully in research, development, and demonstration activities of the Department of Energy, and demonstration activities of the Department of Energy. Issuance of direct loans under this regulation is limited to the extent funds are provided in advance in appropriation acts. This regulation implements the authority for providing such loans as contained in Section 211(e) of the Department of Energy (DOE) Organization Act, Pub. L. 95–91, Title II, as amended by Pub. L. 95–619, Title VI, § 641, November 9, 1978, 92 Stat. 3284, Codified at 42 U.S.C.A. 7141.

§ 800.001 Definitions.

For the purpose of this regulation:

"Act" means the National Energy Conservation Policy Act, Pub. L. 95–619, amending Title II of Pub. L. 95–91, the Department of Energy (DOE) Organization Act.

"Applicant" means an eligible minority business enterprise which is seeking a loan under this regulation.

"Application Approving Official" means the Director of the Office of Minority Economic Impact.

"Application Evaluation Panel") Also referred to as "the Panel") means a team of Federal employees appointed by the Application Approving Official to evaluate loan applications and make approval or disapproval recommendations regarding such applications.

"Bid or Proposal Costs" means the costs incurred in preparing, submitting and supporting bids or proposals, whether solicited or not, for DOE business.

"Borrower" means an applicant who enters into a loan agreement with DOE.

"Contracting Officer" means the DOE official warranted and authorized to contractually bind the Department of Energy and execute written agreements that are binding on the Department.

"Default" means the actual failure by the borrower to make payment of principal or interest in accordance with the terms and conditions of a loan issued under this regulation, or the failure of the borrower to meet other requirements specified as a default condition in the loan agreement.

"Director" means the Director of the Office of Minority Economic Impact (OMEI).

"Loan", in reference to a loan made pursuant to this regulation, means a transaction in which a contractual instrument ("loan agreement") is executed between the United States, as lender, acting through the Secretary of Energy, and a borrower. The instrument must obligate the United States to provide the borrower with a specified amount(s) of United States funds for a specified period and must obligate the borrower to use the moneys to bid for and attempt to obtain contracts and other agreements relating to DOE research, development, demonstration and contract activities, and to repay the moneys at a specified time(s) at a specified rate(s) of interest. The words

"loan", "loan agreement" and 'transaction' include (where the context does not require otherwise) the terms and conditions of related documents, such as the borrower's note or bond or other evidence of, or security for, the borrower's indebtedness.

"Minority Business Enterprise (MBE)" means a firm, corporation, association, or partnership which is at least 50 percent owned or controlled by a member of a minority or group of members of a minority. For the purpose of this definition, "control" means direct or indirect possession of the power to direct, or cause the direction of, management and policies, whether through the ownership of voting securities, by contract or otherwise.

"Minority": an individual who is a citizen of the United States and who is a Negro, Puerto Rican, American Indian, Eskimo, Oriental, or Aleut, or is a Spanish speaking individual of Spanish descent, is a member of a "minority" as used in this regulation.

"Operating Contractors" means contractors under DOE prime contracts:

(a) For the management of Government-owned laboratories, production plants, and research facilities located on Government-owned or leased sites, where the programs being conducted are considered of a long-term, continuing nature; or

(b) For the operation of Government-owned facilities located on contractor-owned or leased sites where the programs being conducted are of a long-term, continuing nature. An example of this category would be those contracts with universities for the operation of Government-owned laboratories and facilities, located on university-owned sites, for the purpose of conducting long-term basic research programs.

"Secretary" means the Secretary of the Department of Energy or his delegate.

§ 800.003 Program management.

Program management responsibility for financial assistance awarded under this regulation has been assigned to the office of Minority Economic Impact.

§ 800.004 Financial assistance—General.

Assistance under this regulation is available to eligible enterprises, as defined in § 800.005, in the form of direct loans. Assistance is limited to providing loans to cover allowable costs incurred by such enterprises to prepare bids or proposals for contracts or other agreements including subcontracts with DOE Operating Contractors in order to participate fully in research, development, demonstration, and contract activities of the Department of Energy. Loans will be repayable regardless of whether borrowers are successful or unsuccessful in receiving awards pursuant to the bids or proposals developed with loan proceeds. Additionally, the amount of financial assistance to any recipient is limited to not more than 75 percent of allowable bid or proposal preparation costs.

§ 800.005 Eligibility.

In order to be eligible for a loan, an applicant must:

(a) Be a minority business enterprise, as defined in § 800.002,

(b) Be a citizen or a national of the United States. A national includes a person who, though not a citizen of the United States, owes permanent allegiance to the United States.

§ 800.006 Allowable costs.

(a) Except as provided in paragraph (b), of this section, those reasonable and customary costs that have been incurred, or are expected to be incurred, and which are directly related to bid or proposal preparation necessary to obtain a DOE contract or agreement or subcontract with DOE Operating Contractors shall be allowable costs for purposes of this regulation. In determining whether costs are directly related to bid or proposal preparation, a strict standard will be applied since the purpose of this program is to encourage bid or proposal preparation rather than to finance engineering feasibility studies or like activity which have broader application than a particular bid or proposal. Examples of allowable costs may include, but are not limited to the following:

(1) Bid bond premiums,

(2) Financial, accounting and legal services costs,

(3) Professional services and fees associated with preparing an application or proposal,

(4) Printing and reproduction costs associated with preparing an application or proposal,

(5) Other necessary and reasonable costs as determined by the Secretary.

(b) Costs that are not considered as allowable costs include the following:

(1) Fees and commissions charged to the borrower, including finders fees, for obtaining Federal funds,

(2) Expenses not paid or incurred by the applicant, and

(3) Costs that are excessive or are not directly required to prepare a bid or proposal as determined by the Secretary.

(c) The Secretary shall have the right to audit any or all cost elements included in the estimated bid and proposal cost, or for which loan proceeds are used and reserves the right to exclude or reduce the amount of any cost which the Secretary determines to be unnecessary or excessive. The borrower will make available records and other data necessary to permit the Secretary to carry out such an audit. In carrying out this responsibility, the Secretary may utilize employees of other Federal agencies or may direct the borrower to submit to a review performed by an independent public accountant or other competent authority.

§ 800.007 Loan Servicing.

The servicing of loans awarded by DOE under these regulations will be performed by DOE or by another Federal agency. However, DOE reserves the right to contract for such services. If the DOE chooses to contract out for such services, the servicing entity will be designated by DOE. Preference will be given to minority enterprises or other servicing agents with established records of providing minority firms with financial services. Loan servicing, if contracted out, would include but not be limited to functions listed in § 800.401.

§ 800.008 Deviations and Contract Modifications.

(a) To the extent that such requirements are not specified by the Act, relevant Appropriations Acts, or in other applicable statutes, the Director, OMEI, may deviate on an individual application basis from the requirements of this regulation upon a finding endorsed by the Contracting Officer that a deviation is necessary and warranted in the individual case to the accomplishment of program objectives and unique circumstances in the loan application make a deviation clearly in the best interest of the Government.

(b) The Contracting Officer may, subject to approval or agreement by other necessary parties, modify or amend the terms and conditions in a loan agreement, collateral agreements, or other documents provided that such modifications will not deviate from provisions in this regulation.

Subpart B—Requirements

§ 800.100 Guidelines for Selection of Loan Applications.

(a) *General.* Interested applicants will be evaluated in a two-step process. The first step will involve submission of an application to establish the applicant as a viable, qualified minority business enterprise with an interest in seeking direct loans to become involved in DOE procurement or assistance activities as contemplated by this regulation. The

second step will involve submission of an application for a specific loan involving preparation costs for one or more known bids or proposals. The two-step process makes possible a timely decision by DOE on a loan request, which is essential relative to competitive solicitations because of firmly established submission dates. DOE prefers that an applicant comply with the two-step procedure. However, applicants may, at their option, submit qualification and loan applications simultaneously.

(b) *Application Process.* The application process will consist of the following:

(1) The continuing solicitation of applications as described in this regulation or otherwise as provided in paragraph (c) of this section;

(2) Submission of an application for qualification which complies with § 800.201 of this regulation;

(3) Preliminary review and screening of applications;

(4) Clarification discussions, as required;

(5) Evaluation;

(6) Selection of applications from applicants considered eligible and qualified for receiving loans under this program;

(7) Submission of a loan application which complies with §§ 800.300 and 800.301 of this regulation;

(8) Evaluation of loan application;

(9) Loan approval and award.

(c) *Solicitation Announcement.* The Secretary will periodically, normally once a year, issue a solicitation announcement which shall at a minimum be published in the Federal Register and synopsized in the Commerce Business Daily. A Solicitation Announcement will provide more detailed information as to funds availability, application instructions, and any applicable restrictions. The Solicitation Announcement will indicate some or all of (but will not be limited to) the following as applicable:

(1) Identification of statutory authority and relevant regulations;

(2) Any special requirements or constraints applicable;

(3) Location(s) to which application must be submitted;

(4) General qualification criteria;

(5) Interest rates, maturities, and other key loan terms;

(6) The extent to which appropriations are currently available for direct loans.

§ 800.101 Loan Agreement requirements and conditions.

A loan may be made pursuant to this regulation only if the loan agreement contains provisions satisfactory to the Secretary and which meet the following requirements:

(a) All financial and legal documentation necessary to close the lending transaction are satisfactory to the Secretary in both form and content;

(b) DOE may require the applicant to pledge collateral as security for the loan. Security or collateral agreements will be required if the value of a single loan is greater than $25,000, or if the value of loans outstanding will exceed $25,000 in the aggregate. DOE will require property insurance on tangible assets, including real property pledged to secure a loan, with DOE shown as the loss payee under such policies;

(c) The orderly repayment of the loan in accordance with loan size and maturity shall be a provision of the loan agreement.

(d) Repayment of principal and interest to begin within 90 days of loan approval. If a single loan is in excess of $25,000, DOE may defer principal payments for an additional 180 days. Repayment, after any permissible delay or deferment of principal, shall be in equal monthly installments, applied to interest first, then principal, over the period of the loan;

(e) After repayments begins a period of grace of 60 days from the date the principal or interest payment is due will be allowed;

(f) Maturity dates will vary depending on the loan value as follows:

Loan Value and Maximum Repayment Period

$0 to $5,000—3 Year
$5,000 to $25,000—5 Year
Excess of $25,000—8 Year

(g) The rate of interest charged for a loan will be established in consultation with the Secretary of the Treasury. The rates will be the current rates of outstanding government (U.S. Treasury) issues of the same maturity as a particular loan. The rates will be adjusted monthly consistent with Treasury rate fluctuation to reflect change in these costs of borrowing. However, once a loan is approved, the applicable interest rate at the time will be the rate charged over the life of the loan;

(h) For loans under $10,000, loan funds will be provided in a single disbursement. Over $10,000, loan funds will be disbursed in increments of not less than $5,000 in accordance with a schedule matching funds required;

(i) The borrower shall have an option to accelerate payment or to prepay the loan without prepayment penalties;

(j) The borrower shall have appropriate opportunities as determined by DOE to cure any default, failure, or breach of any of the covenants, conditions and obligations undertaken by the borrower pursuant to the provisions of the loan agreement and other documents relevant to the financing transaction;

(k) The Government shall have the right to accelerate and demand full payment of the entire indebtedness in the event of the occurrence of identifiable occasions of default on the part of the borrower;

(l) The borrower will be required to maintain its legal entity in good standing with applicable federal, state, and local laws and requirements regulating the conduct of its business, including the payment of all taxes, fees and other charges, and the maintenance of all requisite licenses and any other government authorization necessary for the continued operation of the project;

(m) The borrower will be required to return funds disbursed and not used to DOE immediately upon completion of proposal preparation or receipt of notices contemplated by subpart D, § 800.402;

(n) The borrower will be required to permit access to DOE and the Comptroller General or their duly authorized representatives, for the purpose of audit and examination, to any pertinent books, documents, papers, and records related to the loan; and

(o) Such other terms and conditions determined necessary by the Secretary for the protection of the interest of the United States.

§ 800.102 Findings and Determinations.

In addition to meeting the requirements set forth in other subparts of this regulations, a loan shall be issued only after the Secretary is satisfied that the following requirements have been met:

(a) The amount of the loan is sufficient to prepare the bid or proposal planned;

(b) There is reasonable assurance of replayment of principal and interest of the loan by the borrower, regardless of whether or not the borrower's bid or proposal is selected by DOE for award;

(c) The loan is for bid and proposal costs of eligible applicants which falls within the purposes and objectives of this regulation;

(d) For any single firm that has received an aggregate of $100,000 in loan awards in any one year, a specific finding that additional awards to such a firm is in the best interest of the government;

(e) The borrower has met such additional requirements as determined to be reasonable and necessary by the

Secretary for the protection of the interest of the United States;

(f) The borrower has provided evidence satisfactory to DOE that the borrower's share of bid or proposal costs is available.

Subpart C—Qualification Process for Loans

§ 800.200 General.

Applications for Qualification should be filed in accordance with the two-step process described in Subpart B, § 800.100 of this regulation. The application must contain most current data available and be adequate for the Secretary to properly evaluate the applicant's qualifications or loan requests. Applications must contain the information specified in § 800.201. Applications shall be filed with one original and four legible copies to:

Department of Energy
Washington, D.C. 20585
Attention: Announcement No. DE-PS60-MI

§ 800.201 Applications for Qualification.

(a) Each application must contain the following information submitted in a brief but precise manner:

(1) Applicant name and address (this name should be referred to in the application for loan);

(2) Statement of eligibility;

(3) Statement of capability, past experience, and nature of interest in Department of Energy contract or assistance activities;

(4) Financial statements for the past three years of the applicant, or such lesser period as the applicant has been in existence;

(5) A description of the applicant's organization;

(6) A listing of assets which may serve as collateral for the loan;

(7) Credit references;

(8) Such additional information which the applicant may consider pertinent.

(b) Information contained in applications will be received in confidence and will be used only for evaluation purposes except to the extent such information is generally available to the public.

§ 800.202 Evaluation for Qualification.

(a) Evaluation of applications under this section will be performed by an Application Evaluation Panel (hereinafter referred to as the Panel) which will consider applciations as they are received. The Panel will be appointed by the Application Approving Official and is responsible for preliminary review and screening, clarification discussions with applicants, evaluations, and presentation of its findings and recommendations to the Application Approving Official. The Panel membership will include, at a minimum, representation from the Office of Minority Economic Impact and the Contracting Officer.

(b) Preliminary review and screening of all applications received shall be conducted to determine which applications should be considered for further evaluations. The Panel shall review the applications to determine whether each application:

(1) Complies with eligibility requirements of the Act;

(2) Contains sufficient information to enable the Panel to perform an adequate evaluation; and

(3) Is signed by an authorized official of the applicant organization.

(c) After preliminary review and screening, remaining applications will be subjected to a more thorough evaluation by the Panel. The Panel shall consider the following in the evaluation of applications:

(1) Adequacy of Organization

(i) Corporate and personnel experience,

(ii) Management organization,

(iii) Key personnel,

(iv) Past experience;

(2) Financial Resources,

(i) Adequacy of capitalization, cash flow, working capital, and other financial capability,

(ii) Financial condition of applicant and other principals;

(3) Ability of applicant to comply with requirements of this regulation

The Panel may conduct further discussions with applicants regarding qualifications or make requests for additional information either orally or in writing in order to complete its evaluation.

(d) The Panel shall then present to the Application Approving Official its findings and recommendations in a written report which represents evaluations and judgments prior to final decision making.

§ 800.203 Approval for Qualification.

(a) The Application Approving Official will consider the findings and recommendations and such other information as the Application Approving Official determines to be relevant pursuant to the provisions of this regulation in selecting applicants considered to be qualified to apply for loans under this program.

(b) Upon a decision by the Application Approving Official, the Application Approving Official shall authorize a Contracting Officer to notify applicants of approval or disapproval. Applications which have been approved will be assigned a file number and retained by DOE for future reference.

(c) Annual updates will be required for each applicant found to be qualified. Review procedures will be the same as those followed for a new Application for Qualification. The Application Approving Official will have the right to cancel an applicant's qualification status due to adverse changes in data upon which prior qualification was determined.

Subpart D—Loan Application

§ 800.300 Submission.

(a) Applications for loans should be accompanied by all documentation necessary for closing including a form of loan agreement to be made available by DOE and collateral agreements if required. In order to expedite closing of approved loans, a loan will be closed by executing a form of loan agreement provided to the applicant by DOE which will also be used as an application submission form.

(b) Applications should be submitted to the address identified in § 800.200, with one original and four legible signed copies.

§ 800.301 Applications for Loans.

(a) Applications for loans must contain the information listed below. Applications must be submitted in prescribed forms:

(1) Applicant name and address

(2) Applicant File Number

(3) Summary of the award being sought through bid or proposal including:

(i) Title

(ii) Brief description of work

(iii) Sponsoring DOE office, including solicitation number, if any. If an unsolicited proposal is planned, an application should include sufficient information to indicate applicant has consulted with DOE program personnel, and the potential for the proposal to be supported exists.

(iv) Type of award (competitive, set-asides pursuant to Section 8(a) of the Small Business Act, unsolicited proposal) and schedule for proposal preparation and submission.

(4) Requested loan amount, not to exceed 75 percent total bid and proposal costs, requested loan maturity, detailed disbursement schedule (e.g. labor, reproduction costs, professional fees, etc.), deferrals.

(5) Loan servicing agent, if previously designated by DOE, in accordance with § 800.007.

(6) Notification of any changes to information provided in the Application for Qualification.

(7) List total outstanding debt and maturity of debt.

§ 800.302 Evaluation.

(a) The evaluation of applications for specific loans will be performed by an Application Evaluation Panel designated by the Application Approving Official and written findings and recommendations will be provided to the Application Approving Official or designee. The process of evaluating applications for specific loans is intended to be very brief, with acceptance of and reliance upon findings previously made during the Qualification Process in Subpart C of this regulation. Because of established submission dates which exist in competitive solicitations, priority will be given to considering applications for loans to prepare bids and proposals being submitted in response to competitive solicitations. In the case of a proposal to be prepared in response to a competitive solicitation, the Panel may defer action until five days after the solicitation has been announced in the Commerce Business Daily to provide all interested and qualified firms an opportunity to apply for loans.

(b) The factors to be considered in the evaluation of a loan application include the following:

(1) Compliance with the requirements set forth in § 800.102 of this regulation.

(2) Reasonableness of the estimated cost of preparing a bid or proposal relative to the goods or services to be supplied.

(3) Likelihood of being a successful offeror. Normally, *not more than three loans* for a single anticipated competitive award will be approved.

(4) Optimum utilization of remaining program funds available for loans.

(5) The need for the loan to permit the applicant to participate in research, development, demonstration, and contract activities of DOE.

(c) The Panel shall present to the Application Approving Official its findings and recommendations in a written report which represents evaluations and judgments prior to final decision making.

§ 800.303 Approval of Loans.

(a) The Application Approving Official will consider the findings and recommendations and such other information as the Application Approving Official determines to be relevant pursuant to the provisions of this regulation in selecting successful loan applicants.

(b) Upon a decision by the Application Approving Official, the Application Approving Official shall authorize a Contracting Officer to notify applicants of approval or disapproval. The Contracting Officer will be responsible for executing all instruments necessary for the loan.

(c) Non-written Representations. No representation or modifications thereof shall be binding on the Department of Energy unless made in writing and approved by a Contracting Officer.

§ 800.304 Closing and Award.

Loan closing will occur when a mutually acceptable loan agreement, supported by necessary documentation, has been executed by the parties.

Subpart E—Loan Administration

§ 800.400 Loan servicing agent.

In the event that DOE elects to contract out the loan servicing functions, applicants may be required to conduct loan transactions through a servicing agent designated by DOE to administer the loan. Servicing agents may include commercial banks, brokers, financial institutions, etc., qualified to exercise diligence in the disbursement, servicing and collection of the loan.

§ 800.401 Loan servicing responsibilities.

(a) The designated loan servicing agent will service the loan in accordance with these regulations, and the terms and conditions of the loan. In this regard, the servicing agent is generally expected to undertake those servicing responsibilities that a reasonable and prudent lender would undertake in a similar transaction under a commercial loan. It is anticipated that specific responsibilities relative to a loan, which would otherwise be performed by DOE, will include:

(1) Loan disbursements as set forth in the loan agreement.

(2) Collection of principal and interest payments on a monthly basis for forwarding to the Treasury Department as directed by DOE.

(3) Maintain records on loan accounts.

(4) Notification of the Secretary without delay:

(i) that the initial disbursement or loan draw-down is ready to be made, together with evidence from the borrower that the bid and proposal preparation has begun or is about to begin;

(ii) Of the date and amount of each subsequent disbursement under the loan;

(iii) Of any nonreceipt of payment within 10 days after the date specified for payment, together with evidence of appropriate notification to the borrower;

(iv) Of any known failure by the borrower to comply with the terms and conditions as set forth in the loan agreement;

(v) Of evidence that the borrower may fall within any of the default conditions set forth in the loan agreement or the borrower may not be able to meet any future scheduled payment of principal or interest; or

(5) Submit to the Secretary periodic (semi-annually or annually) financial reports on the status and conditions of the loan, including the financial ability of the borrower to assume more debt.

§ 800.402 Reduction or withdrawal of loan.

(a) The Secretary may withdraw the loan by written notice to the borrower if it is determined that initiation of bid and proposal preparation has not occurred within the period of time set forth in the loan application, and such failure has materially affected the purpose of the Government in issuing the loan.

(b) The Secretary may limit the loan by written notice to the borrower to those amounts already disbursed under the loan if it is determined that the borrower has failed to comply with material terms and conditions as set forth in the loan agreement. The Secretary will notify the borrower that the loan shall be limited only to the amount that has been received by the borrower to the date of the written notice.

§ 800.403 Assignment or transfer of loan.

Assignment or transfer by the borrower of a loan made by DOE under this program could only be allowed with the prior written consent of the Secretary.

§ 800.404 Appeals.

The loan agreement shall include a provision which specifies that any dispute concerning a question of fact arising under the agreement shall be decided in writing by the Contracting Officer. The borrower may request the Contracting Officer to reconsider any such decision. If not satisfied with the Contracting Officer's final decision, the borrower upon receipt of such written decision may appeal the decision within 30 days, in writing to the Chairman, Financial Assistance Appeal Board (FAAB), Department of Energy, Washington, D.C. 20585. The Board shall proceed in accordance with the Department of Energy's rules and regulations for such purpose. The decision of the Board with respect to such appeals shall be the final decision of the Secretary.

§ 900.405 Default.

(a) In the event that the borrower fails to perform the terms and conditions of the loan agreement or any related document, the borrower shall be in default and the Secretary shall have the right, at the Secretary's option, to accelerate the indebtedness and demand full payment of all principal and interest amounts outstanding under the loan;

(b) No failure on the part of the Secretary to make demand at any time shall constitute a waiver of the rights held by the Secretary;

(c) Upon demand by the Secretary, the borrower shall have a period of not more than 30 days from the date of receipt of the Secretary's demand to make payment in full;

(d) In the event that the failure on the part of the borrower to perform the terms and conditions of the loan agreement, or related document, does not constitute an intentional act, but is brought about as a result of circumstances largely beyond the control of the borrower, the Secretary may elect, at the Secretary's option, to defer such performance and/or restructure the repayment required by the loan agreement in any manner the Secretary determines. Circumstances beyond the control of the borrower may include, but are not restricted to, acts of God or of the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather, but in every case the failure to perform must be without the fault or negligence of the borrower;

(e) Should the borrower fail to pay after demand as provided in paragraph (c) of this section, the Secretary shall undertake collection in accordance with the terms of the loan agreement and the applicable law.

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Part XIX

Department of Education

State Vocational Rehabilitation and Independent Living Rehabilitation Programs; Final Regulations

DEPARTMENT OF EDUCATION

34 CFR Parts 361, 365, and 370

State Vocational Rehabilitation and Independent Living Rehabilitation Programs

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary adopts final regulations to implement Title I and Part A of Title VII of the Rehabilitation Act of 1973, as amended by the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978 (Pub. L. 95-602). These regulations cover the requirements for carrying out State vocational rehabilitation and independent living service programs under approved State plans.

EFFECTIVE DATE: These regulations are expected to be effective forty-five days after they are transmitted to Congress. Regulations are usually transmitted to Congress several days before they are published in the Federal Register. The effective date is changed if the Congress takes certain adjournments. If you want to know the effective date of these final regulations, call or write the Department of Education contact person.

FOR FURTHER INFORMATION CONTACT: Harold F. Shay, Director, Division of Manpower Development, Rehabilitation Services Administration, Room 3221, Mary E. Switzer Building, 330 C Street, SW., Washington, D.C. 20201. Telephone: (202) 245-0079 or TTY: (202) 245-0591.

SUPPLEMENTARY INFORMATION: The Secretary of Health, Education, and Welfare published a Notice of Proposed Rulemaking in the Federal Register on November 29, 1979 (44 FR 68564). The proposed regulations covered the new vocational rehabilitation and independent living rehabilitation authorities contained in the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978 (Pub. L. 95-602) and, in addition, revised certain existing regulations implementing the Rehabilitation Act of 1973 (Pub. L. 93-112), as amended by the Rehabilitation Act Amendments of 1974 (Pub. L. 93-516).

These final regulations make some revisions to the regulations as originally proposed, and adopt requirements of the Education Department General Administrative Regulations, now applicable to Rehabilitation Services Administration programs as a result of the Rehabilitation Services Administration becoming part of the Department of Education.

These regulations also include provision for the designation of a substitute agency to carry out a State's vocational rehabilitation service program when the Commissioner of the Rehabilitation Services Administration has withdrawn all funds from the previously designated State agency. This provision, which also is derived from a newly authorized provision under the Rehabilitation, Comprehensive Services and Developmental Disabilities Amendments of 1978, had been published in the Federal Register on September 29, 1979 as a final regulation with a comment period (44 FR 55878).

The Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978 significantly extended the scope of public and voluntary agency programming in providing rehabilitation services to handicapped individuals. These changes expanded the ongoing vocational rehabilitation service programs in each State, extended the range of special categories of project support and other assistance available directly from the Federal Government under the Rehabilitation Act of 1973, and authorized the establishment of new State independent living service programs for severely handicapped individuals.

Insofar as State vocational rehabilitation programming is concerned, the proposed regulations revised the State vocational rehabilitation service plan requirements in line with the 1978 Amendments to include provisions—

—To expand and improve the use of rehabilitation facilities in the delivery of vocational rehabilitation services;

—To ensure the availability of vocational rehabilitation personnel able to communicate in clients' native languages or able to communicate to clients who rely on special modes of communication;

—To ensure coordination with State special education agencies in the delivery of vocational rehabilitation services;

—To provide newly specified vocational rehabilitation services, including telecommunications systems, recorded material for blind individuals, and captioned materials for deaf individuals; and

—To establish and maintain information and referral programs.

Other proposed regulatory revisions to the State vocational rehabilitation service programs under the 1978 Amendments were:

—The identification of the "designated State unit" as the administering organizational unit responsible for directly carrying out the State vocational rehabilitation service program under the Rehabilitation Act;

—The conversion of the State plan for vocational rehabilitation services from an annual plan to a three-year plan;

—The establishment of a mechanism for selecting a substitute agency to carry out the vocational rehabilitation service program in a State when necessary because funds have been withheld; and

—The revision of procedures affecting individualized written rehabilitation programs to require both that the director of the designated State unit establish procedures for the review of any decision with which a client is dissatisfied and that the Secretary of Education make recommendations to the State unit director about the disposition of any case still unresolved after the director's review.

The 1978 Amendments also added an extensive new State/Federal formula grant program for providing independent living rehabilitation services to severely handicapped individuals in order to assist them to achieve a higher level of independence in their functioning within their communities and their families.

The proposed regulations not only covered all statutory changes required for the State plans under the 1978 Amendments but also included a number of revised regulations in other areas of program practice in order to update them and remove unnecessary regulatory burden.

After the proposed regulations were published, Rehabilitation Services Administration staff conducted 10 briefing meetings throughout the country to ensure that interested persons in the rehabilitation community had an opportunity to become thoroughly familiar with the content of the proposed regulations. Special emphasis in the briefing meetings was given to changes in the proposed regulations from the regulatory provisions in effect. These briefing meetings were held in Atlanta, Boston, Chicago, Dallas, Denver, Kansas City, New York, San Francisco, Seattle and Washington, D.C. and were attended by approximately 1,000 people. Participants represented State vocational rehabilitation agencies, voluntary rehabilitation agencies and organizations, rehabilitation facilities, self-advocacy support groups, consumers and other persons with an interest in the rehabilitation of severely physically and mentally disabled individuals.

Written comments and suggestions on the proposed regulations were invited from the public until February 27, 1980.

Approximately 600 letters were received in response to the proposed regulations and three letters were received concerning the earlier published provision concerning the designation of a subetitute State agency. The letters contained approximately 3,500 specific comments on individual items in the proposed regulations.

All comments were carefully reviewed and were fully considered. As a result of this review, a number of revisions were made to the regulations, as originally proposed.

The most significant areas of comment on the proposed regulations for the State rehabilitation programs and the conclusions reached after review of the individual comments are summarized in Appendix A to these regulations on a section by section basis.

On May 4, 1980, the Department of Education was established and the Rehabilitation Services Administration became part of the Office of Special Education and Rehabilitative Services within this new Department. These final regulations for the Rehabilitation Act do not yet fully conform with the format used in other Department of Education programs. These regulations are being published without making these format changes in order to ensure the orderly administration of ongoing State vocational rehabilitation and independent living rehabilitation program activities. An additional review of these regulations will also be undertaken, however, to bring about conformity with other Department of Education regulations. These State plan regulations in Parts 361 and 365 will therefore be reorganized and republished in the revised format at a later time.

The Notice of Proposed Rulemaking had also included new and revised requirements for the discretionary Federal grant programs and related assistance authorized under the Rehabilitation Act of 1973, as amended. Regulations for these programs are not being published at this time. These regulations will be published separately in the Federal Register in the near future.

Subpart D of Part 361, covering Payment of Costs of Vocational Rehabilitation Services for Disabled Beneficiaries from the Social Security Trust Funds, and Subpart E governing Vocational Rehabilitation Services for Supplemental Security Income Recipients are not being revised at this time. The administrative responsibility for these programs has been altered, however, by Section 201(a)(4)(A) of the Department of Education Organization Act (Pub. L. 96-88) which did not transfer to the Department of Education those administrative functions which had been assigned to the Secretary of Health, Education, and Welfare under Sections 222 and 1615 of the Social Security Act. The regulations for these programs will be revised after the specific operating arrangements have been defined in an interagency agreement currently being developed by the Department of Education and the Department of Health and Human Services.

It is also noted that these regulations remove from the Code of Federal Regulations Part 370 which had previously included the Secretary's General Standards for Evaluation. Although no longer required by statute to be published as regulations, the General Standards for Evaluation will be published in a slightly revised form as a Notice in the Federal Register and they will continue to be used as a general guidance in the evaluation of vocational rehabilitation programs and activities.

References to EDGAR

Readers will note that references to the Education Department General Administrative Regulations (EDGAR) cite Title 34 of the Code of Federal Regulations. EDGAR was transferred to Title 34 through final regulations published in the Federal Register on November 21, 1980 (45 FR 77368).

However, EDGAR was initially published in the Federal Register on April 3, 1980 (45 FR 22494) under Title 45 of the Code of Federal Regulations (CFR). For readers wishing to refer to that EDGAR document, the following cross-references will be helpful:

—45 CFR Part 74 is now 34 CFR Part 74.

—45 CFR Part 100a is now 34 CFR Part 75.

—45 CFR Part 100b is now 34 CFR Part 76.

—45 CFR Part 100c is now 34 CFR Part 77.

Citation of Legal Authority

A citation of statutory authority is placed in parentheses on the line following each substantive provision of the regulations. The first citation is the appropriate section of the Rehabilitation Act of 1973, as amended, and it is followed by a citation to the same provision in the United States Code.

(Catalog of Federal Domestic Assistance Program Numbers 84.128, 84.129, State Vocational Rehabilitation and Independent Living Rehabilitation Programs)

Dated: January 12, 1981.

Shirley M. Hufstedler,

Secretary of Education.

1. Accordingly, the Secretary amends Title 34 of the Code of Federal Regulations by revising Subparts A, B, C, F, and G of Part 361 to read as follows:

PART 361—THE STATE VOCATIONAL REHABILITATION SERVICES PROGRAM

Subpart A—General

Sec.

361.1 The State vocational rehabilitation services program.

Subpart B—State Plans for Vocational Rehabilitation Services

State Plan Content: Administration

361.2 The State plan: General requirements.
361.3 State plan approval.
361.4 Withholding of funds.
361.5 State agency for administration.
361.6 Organization of the State agency.
361.7 Designation of substitute State vocational rehabilitation agency.
361.8 State unit director.
361.9 Local administration.
361.10 Methods of administration.
361.11 Shared funding and administration of special joint projects or programs.
361.12 Waiver of Statewideness.
361.13 Cooperative programs involving funds from other public agencies.
361.14 Staffing of the State's vocational rehabilitation program.
361.15 Affirmative action plan for handicapped individuals.
361.16 Staff development.
361.17 State studies and evaluations.
361.18 Policy development consultation.
361.19 Cooperation with other public agencies.
361.20 Establishment and maintenance of information and referral resources.
361.21 State plan for rehabilitation facilities.
361.22 Utilization of rehabilitation facilities.
361.23 Reports.
361.24 General administrative and fiscal requirements.

State Plan Content: Provision and Scope of Service

361.30 Processing referrals and applications.
361.31 Eligibility for vocational rehabilitation services.
361.32 Evaluation of vocational rehabilitation potential: Preliminary diagnostic study.
361.33 Evaluation of vocational rehabilitation potential: Thorough diagnostic study.
361.34 Extended evaluation to determine vocational rehabilitation potential.
361.35 Certification: Eligibility, extended evaluation to determine vocational rehabilitation potential; ineligibility.
361.36 Order of selection for services.
361.37 Services to civil employees of the United States.

361.38 Services to handicapped American Indians.
361.39 The case record for the individual.
361.40 The individualized written rehabilitation program: Procedures.
361.41 The individualized written rehabilitation program: Content.
361.42 Scope of State unit program: Vocational rehabilitation services for individuals.
361.43 Individuals determined to be rehabilitated.
361.44 Authorization of services.
361.45 Standards for facilities and providers or services.
361.46 Rates of payment.
361.47 Participation by handicapped individuals in the costs of vocational rehabilitation services.
361.48 Administrative review of State unit action and fair hearing; review by Secretary.
361.49 Protection, use, and release of personal information.
361.50 Scope of State unit program: Management services and supervision for small business enterprises for severely handicapped individuals.
361.51 Scope of State unit program: Establishment of rehabilitation facilities.
361.52 Scope of State unit program: Construction of rehabilitation facilities.
361.53 Scope of State unit program: Facilities and services for groups of handicapped individuals.
361.54 Scope of State unit program: Telecommunications systems.
361.55 Scope of State unit program: Special materials for blind individuals and for deaf individuals.
361.56 Utilization of community resources.
361.57 Utilization of profitmaking organizations for on-the-job training in connection with selected projects.
361.58 Periodic review of extended employment in rehabilitation facilities.

Subpart C—Financing of State Vocational Rehabilitation Programs

Federal Financial Participation

361.70 Effects of State rules.
361.71 Vocational rehabilitation services to individuals.
361.72 Management services and supervision for small business enterprises for severely handicapped individuals.
361.73 Establishment of rehabilitation facilities.
361.74 Construction of rehabilitation facilities.
361.75 Other vocational rehabilitation services for the benefit of groups of handicapped individuals.
361.76 State and local funds.
361.77 Shared funding and administration of joint projects or programs.
361.78 Waiver of Statewideness.

Allotment and Payment

361.85 Allotment of Federal funds for vocational rehabilitation services.
361.86 Payments for allotments for vocational rehabilitation services.
361.87 Methods of computing and making payments.
361.88 Refunds.
361.89 Determining to which fiscal year expenditures are chargeable.
361.90 Audits.
361.91 Appeals procedures and expenditures settlement.

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Subpart F—Grants for Innovation and Expansion of Vocational Rehabilitation Services

361.150 Purpose.
361.151 Special project requirements.
361.152 Allotment of Federal funds.
361.153 Payments from allotments.
361.154 Methods of computing and making payments.
361.155 Reports.

Subpart G—Procedures for Hearings on State Plan Conformity and Compliance

361.170 General provisions.
361.171 How to request a hearing.
361.172 Hearing issues.
361.173 What the purpose of a hearing is.
361.174 Who presides.
361.175 How to be a party or an amicus curiae to a hearing.
361.176 What happens to a petition.
361.177 Rights of parties and amicus curiae.
361.178 Authority of presiding officer.
361.179 Discovery.
361.180 How evidence is handled.
361.181 What happens to unsponsored written material.
361.182 What the record is.
361.183 Posthearing briefs.
361.184 Decisions.
361.185 When a decision is effective.
361.186 How the State may appeal.

Authority: Section 12(c) of the Rehabilitation Act of 1973, (29 U.S.C. 711(c)).

Subpart A—General

§ 361.1 The State vocational rehabilitation services program.

(a) *General.* Part 361 includes all requirements relative to the conduct of State vocational rehabilitation service programs under State plans for vocational rehabilitation services authorized under Title I of the Rehabilitation Act of 1973, as amended. Part 361 covers procedures to be followed by a State vocational rehabilitation agency in submitting a State plan for approval by the Secretary and the required scope and content of an appropriate State plan. Part 361 also specifies those costs under State plans for which Federal financial participation is available.

(b) *Regulations which apply to the State vocational rehabilitation service program.* The following regulations apply to the State plan for vocational rehabilitation services program:

(1) The Education Division General Administrative Regulations (EDGAR) in 34 CFR Part 76 (State-administered programs) and 34 CFR Part 77 (Definitions); and

(2) The regulations in this Part 361.

(c) *Definitions which apply to the state vocational rehabilitation service program.*

(1) The following terms used in this Part 361 are defined in 34 CFR Part 77:

"EDGAR"
"Fiscal year"
"Nonprofit"
"Private"
"Public"
"Secretary"
"State"
"Work of Art"

(2) The following definitions also apply to this Part 361:

"Act" means the Rehabilitation Act of 1973 (29 U.S.C. 701 et seq.) as amended by the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978 (Pub. L. 95-602).

(Section 12(c) of the Act; 29 U.S.C. 711(c))

"American Indian" means a person who is a member of an Indian tribe.

(Section 12(c) of the Act; 29 U.S.C. 711(c))

"Blind" or "blind individual" means a person who is blind within the meaning of the law relating to vocational rehabilitation in each State.

(Section 12(c) of the Act; 29 U.S.C. 711(c))

"Commissioner" means the Commissioner of the Rehabilitation Services Administration.

(Section 12(c) of the Act; 29 U.S.C. 711(c))

"Construction of a rehabilitation facility" means:

(i) The construction of new buildings, the acquisition of existing buildings, or the expansion, remodeling, alteration or renovation of existing buildings which are to be utilized for rehabilitation facility purposes; or

(ii) The acquisition of initial equipment of such new, newly acquired, newly expanded, newly remodeled, newly altered or newly renovated buildings.

(Section 7(1) of the Act; 29 U.S.C. 706(1))

"Designated State unit" or "State unit" means either:

(i) The State agency vocational rehabilitation bureau, division, or other organizational unit which is primarily concerned with vocational rehabilitation or vocational and other rehabilitation of handicapped individuals and which is responsible for the administration of the vocational rehabilitation program of the State agency; or

(ii) The independent State commission, board, or other agency which has vocational rehabilitation, or vocational and other rehabilitation as its primary function.

(Section 7(3) of the Act; 29 U.S.C. 706(d))

"Eligible" or "eligibility," when used in relation to an individual's qualification for vocational rehabilitation services, refers to a certification that:

(i) An individual has a physical or mental disability which for that individual constitutes or results in a substantial handicap to employment, and

(ii) Vocational rehabilitation services may reasonably be expected to benefit the individual in terms of employability.

(Section 7(7) of the Act; 29 U.S.C. 706(7))

"Employability" refers to a determination that the provision of vocational rehabilitation services is likely to enable an individual to enter or retain employment consistent with his capacities and abilities in the competitive labor market; the practice of a profession; self-employment; homemaking; farm or family work (including work for which payment is in kind rather than in cash); sheltered employment; homebound employment; or other gainful work.

(Section 12(c) of the Act; 29 U.S.C. 711(c))

"Establishment of a rehabilitation facility" means:

(i) The acquisition, expansion, remodeling, or alteration of existing buildings, necessary to adapt them or increase their effectiveness for rehabilitation facility purposes;

(ii) The acquisition of initial or additional equipment for these buildings essential for providing vocational rehabilitation services; or

(iii) The initial or additional staffing of a rehabilitation facility for a period, in the case of any individual staff person, not longer than 4 years and 3 months.

(Section 7(4) of the Act; 29 U.S.C. 706(4))

"Evaluation of vocational rehabilitation potential" means, as appropriate, in each case:

(i) A preliminary diagnostic study to determine that an individual is eligible for vocational rehabilitation services;

(ii) A thorough diagnostic study consisting of a comprehensive evaluation of pertinent factors bearing on the individual's handicap to employment and vocational rehabilitation potential, in order to determine which vocational rehabilitation services may be of benefit to the individual in terms of employability;

(iii) Any other goods or services necessary to determine the nature of the handicap and whether it may reasonably be expected that the individual can benefit from vocational rehabilitation services in terms of employability;

(iv) Referral to other agencies or organizations, when appropriate; and

(v) The provision of vocational rehabilitation services to an individual during an extended evaluation of rehabilitation potential for the purpose of determining whether the individual is a handicapped individual for whom a vocational goal is feasible.

(Section 7(5) of the Act; 29 U.S.C. 706(5))

"Family member" or "member of the family" means any relative by blood or marriage of a handicapped individual and other individual living in the same household with whom the handicapped individual has a close interpersonal relationship.

(Section 103(a)(3) of the Act; 29 U.S.C. 723(a)(3))

"Handicapped individual" except in § 361.15(b), §361.51(e), and § 361.52(g) means an individual:

(i) Who has a physical or mental disability which for that individual constitutes or results in a substantial handicap to employment; and

(ii) Who can reasonably be expected to benefit in terms of employability from the provision of vocational rehabilitation services, or for whom an extended evaluation of vocational rehabilitation potential is necessary to determine whether he or she might reasonably be expected to benefit in terms of employability from the provision of vocational rehabilitation services;

(Section 7(7)(A) of the Act; 29 U.S.C. 706(7)(A))

"Handicapped individual," for purposes of § 361.15(b), § 361.51(e), and § 361.52(g), means an individual:

(i) Who has a physical or mental impairment which substantially limits one or more major life activities;

(ii) Who has a record of such an impairment; or

(iii) Who is regarded as having such an impairment.

(Section 7(7)(B) of the Act; 29 U.S.C. 706(7)(B))

"Local agency," unless the context clearly indicates differently, means an agency of a unit of general local government or of an Indian tribal organization (or combination of such units or organizations) which has the sole responsibility under an agreement with the State agency to conduct a vocational rehabilitation program in the locality under the supervision of the State agency in accordance with the State plan.

(Section 7(8) of the Act; 29 U.S.C. 706(8))

"Physical and mental restoration services" means:

(i) Medical or corrective surgical treatment;

(ii) Diagnosis and treatment for mental or emotional disorders by a physician skilled in the diagnosis and treatment of such disorders or by a psychologist licensed or certified in accordance with State laws and regulations;

(iii) Dentistry;

(iv) Nursing services;

(v) Necessary hospitalization (either inpatient or outpatient care) in connection with surgery or treatment and clinic services;

(vi) Convalescent or nursing home care;

(vii) Drugs and supplies;

(viii) Prosthetic, orthotic or other assistive devices including hearing aids, essential to obtaining or retaining employment;

(ix) Eyeglasses and visual services, including visual training, and the examination and services necessary for the prescription and provision of eyeglasses, contact lenses, microscopic lenses, telescopic lenses, and other special visual aids, prescribed by a physician skilled in diseases of the eye or by an optometrist, whichever the individual may select;

(x) Podiatry;

(xi) Physical therapy;

(xii) Occupational therapy;

(xiii) Speech or hearing therapy;

(xiv) Psychological services;

(xv) Therapeutic recreation services;

(xvi) Medical or medically related social work services;

(xvii) Treatment of either acute or chronic medical complications and emergencies which are associated with or arise out of the provision of physical and mental restoration services; or which are inherent in the condition under treatment;

(xviii) Special services for the treatment of individual suffering from end-stage renal disease, including transplantation, dialysis, artificial kidneys, and supplies; and

(xix) Other medical or medically related rehabilitation services including art therapy, dance therapy, music therapy and psychodrama.

(Section 103(a)(4) of the Act; 29 U.S.C. 723(a)(4))

"Physical or mental disability" means a physical or mental condition which materially limits, contributes to limiting or, if not corrected, will probably result in limiting an individual's employment activities or vocational functioning.

(Section 7(7)(A)(i) of the Act; 29 U.S.C. 706(7)(A)(i))

"Rehabilitation facility" means a facility which is operated for the primary purpose of providing vocational rehabilitation services to handicapped individuals, and which provides singly or in combination one or more of the following services for handicapped individuals:

(i) Vocational rehabilitation services, including under one management, medical, psychiatric, psychological, social, and vocational services;

(ii) Testing, fitting, or training in the use of prosthetic and orthotic devices;

(iii) Prevocational conditioning or recreational therapy;

(iv) Physical and occupational therapy;

(v) Speech and hearing therapy;

(vi) Psychological and social services;

(vii) Evaluation of rehabilitation potential;

(viii) Personal and work adjustment;

(ix) Vocational training with a view toward career advancement (in combination with other rehabilitation services);

(x) Evaluation or control of specific disabilities;

(xi) Orientation and mobility services and other adjustment services to blind individuals; and

(xii) Transitional or extended employment for those handicapped individuals who cannot be readily absorbed in the competitive labor market.

(Section 7(11) of the Act; 29 U.S.C. 706(11))

"Reservation" means a Federal or State Indian reservation, public domain Indian allotment, former Indian reservation in Oklahoma, and land held by incorporated Native groups, regional corporations and village corporations under the provisions of the Alaska Native Claims Settlement Act.

(Section 130(e) of the Act, 29 U.S.C. 760(e))

"Severely handicapped individual" means a handicapped individual:

(i) Who has a severe physical or mental disability which seriously limits one or more functional capacities (mobility, communication, self-care, self-direction, work tolerance, or work skills) in terms of employability; and

(ii) Whose vocational rehabilitation can be expected to require multiple vocational rehabilitation services over an extended period of time; and

(iii) Who has one or more physical or mental disabilities resulting from amputation, arthritis, blindness, cancer, cerebral palsy, cystic fibrosis, deafness, heart disease, hemiplegia, hemophilia, respiratory or pulmonary dysfunction, mental retardation, mental illness, multiple sclerosis, muscular dystrophy, musculo-skeletal disorders, neurological disorders (including stroke and epilepsy), paraplegia, quadriplegia, and other spinal cord conditions, sickle cell anemia, specific learning disability, and end-stage renal disease, or another disability or combination of disabilities determined on the basis of an evaluation of rehabilitation potential to cause comparable substantial functional limitation.

(Section 7(13) of the Act; 29 U.S.C. 706(13))

"State agency" means the sole State agency designated to administer (or supervise local administration of) the State plan for vocational rehabilitation services. The term includes the State agency for the blind, if designated as the sole State agency with respect to that part of the plan relating to the vocational rehabilitation of blind individuals.

(Section 101(a)(1)(A) of the Act; 29 U.S.C. 721(a)(1)(A))

"State plan" means the State plan for vocational rehabilitation services, or the vocational rehabilitation services part of a consolidated rehabilitation plan under § 361.2(d) of this part.

(Section 12(c) of the Act; 29 U.S.C. 711(c))

"Substantial handicap to employment" means that a physical or mental disability (in light of attendant medical, psychological, vocational, educational, and other related factors) impedes an individual's occupational performance, by preventing his obtaining, retaining, or preparing for employment consistent with his capacities and abilities.

(Sections 7(7)(A)(i) and 12(c) of the Act; 29 U.S.C. 706(7)(A)(i) and 711(c))

"Vocational rehabilitation services" when provided to an individual, means those services listed in § 361.42 of this part.

(Section 103(a) of the Act, 29 U.S.C. 723(a))

"Vocational rehabilitation services" when provided for the benefit of groups of individuals, also means:

(i) In the case of any type of small business enterprise operated by severely handicapped individuals under the supervision of the State unit, management services, and supervision and acquisition of vending facilities or other equipment, and initial stocks and supplies;

(ii) The establishment of a rehabilitation facility;

(iii) The construction of a rehabilitation facility;

(iv) The provision of other facilities and services, including services provided at rehabilitation facilities, which promise to contribute substantially to the rehabilitation of a group of individuals but which are not related directly to the individualized written rehabilitation program of any one handicapped individual;

(v) The use of existing telecommunications systems; and

(vi) The use of services providing recorded material for blind persons and captioned films or video cassettes for deaf persons.

(Section 103(b) of the Act; 29 U.S.C. 723(b))

"Workshop" means a rehabilitation facility, or that part of a rehabilitation facility, engaged in production or service operation for the primary purpose of providing gainful employment as an interim step in the rehabilition process for those who cannot be readily absorbed in the competitive labor market or during such time as employment opportunities for them in the competitive labor market do not exist.

(Sections 7(11) and 12(c) of the Act; 29 U.S.C. 706(11) and 711(c))

Subpart B—State Plans for Vocational Rehabilitation Services

State Plan Content: Administration

§ 361.2 The State plan: General requirements.

(a) *Purpose.* In order for a State to be eligible for grants from the allotment of funds under Title I of the Act, it must submit an approvable State plan covering a three-year period and meeting Federal requirements. The State plan must provide for financial participation by the State, or if the State chooses, by the State and local agencies jointly, and must provide that it will be in effect in all political subdivisions of the State, except as specifically provided in § 361.11 (Shared funding and administration of special joint projects or programs) and § 361.12 (Waiver of Statewideness).

(b) *Form and content.* The State plan must contain, in the form prescribed by the Secretary a description of the State's vocational rehabilitation program, the plans and policies to be followed in carrying out the program and other information requested by the Secretary. The State plan must consist of:

(1) A part providing detailed commitments specified by the Secretary which must be amended or reaffirmed every three years; and

(2) A part containing a fiscal year progammming description, based on the findings of the continuing Statewide studies (§ 361.17), the annual evaluation of the effectiveness of the State's program (§ 361.17) and other pertinent

reviews and studies. This annual programming description must include:

(i) Changes in policy resulting from the continuing Statewide studies and the annual evaluation of the effectiveness of the program;

(ii) Estimates of the number of handicapped individuals who will be served with funds provided under the Act;

(iii) A description of the methods used to expand and improve services to those individuals who are the most severely handicapped;

(iv) A description of the order of selection (§ 361.36) of groups of handicapped individuals to whom vocational rehabilitation services will be provided (unless the designated State unit assures that it is serving all eligible handicapped individuals who apply); and

(v) A statement of the general outcome and service goals to be achieved for handicapped individuals in each priority category within the order of selection in effect in the State and the time within which these goals may be achieved. These goals must include those objectives, established by the State unit and consistent with those set by the Secretary in instructions concerning the State plan, which are measurable in terms of service expansion or program improvement in specified program areas, and which the State unit plans to achieve during a specified period of time.

(c) *Separate part relating to rehabilitation of the blind.* If a separate State agency for the blind administers or supervises the administration of that part of the State plan relating to the rehabilitation of blind individuals, that part of the State plan must meet all requirements applicable to a separate State plan.

(d) *Consolidated rehabilitation plan.* The State may choose to submit a consolidated rehabilitation plan which includes the State plan for vocational rehabilitation services and either the State plan for independent living rehabilitation services or the State's plan for its program for persons with developmental disabilities, or both. If the State's plan for persons with developmental disabilities is included, the State planning and advisory council for developmental disbilities and the agency or agencies administering the State's program for persons with developmental disabilities must have concurred in the submission of the consolidated rehabilitation plan. A consolidated rehabilitation plan must comply, and be administered in accordance with, this Act and the Developmental Disabilities Assistance and Bill of Rights Act. The Secretary may approve the consolidated rehabilitation plan to serve as the subetitute for the separate plans which would otherwise be required.

(e) *Designation of a new State agency or a new State unit.* Before designating a new State agency or a new State unit, the chief administrative officer of the State agency must assure the Secretary in writing that the vocational rehabilitation program will continue to operate in conformity with the most recent approved State plan, until a new State plan is submitted. The State agency must submit a new State plan within 90 days following the designation of a new State agency or a new State unit.

(f) *Transition to new State agency or State unit.* When a new State agency or a new State unit is designated under paragraph (e) of this section, the State agency must turn over to that agency program and financial records and other pertinent information and resources necessary for the effective conduct of the vocational rehabilitation program.

(Sections 6 and 101(a) of the Act; 29 U.S.C. 705 and 721(a))

§ 361.3 State plan approval.

The State plan must be submitted for approval for each three-year period no later than July 1 of the year preceding the first fiscal year for which the State plan is submitted.

(Section 101(b) of the Act; 29 U.S.C. 721(b))

§ 361.4 Withholding of funds.

(a) *When withheld.* Payments under sections 111 or 121 of the Act may be withheld, suspended, or limited as provided by section 101(c) of the Act, when after a reasonable notice and opportunity for hearing has been given to the State agency, the Commissioner finds that:

(1) The State plan has been so changed that it no longer conforms with the requirements of section 101(a) of the Act, or

(2) In the administration of the State plan, there is a failure to comply substantially with any provision of such plan.

(b) *Notification to State agency.* The State agency is notified of the decision.

(c) *Judicial review.* The decision to withhold, suspend, or limit payments described in paragraph (a) of this section may be appealed to the U.S. Court of Appeals for the circuit in which the State is located, in accordance with section 101(d) of the Act.

(d) *Informal discussions.* Hearings described in paragraph (a) of this section are not called until after reasonable effort has been made to resolve the questions involved by conference and discussion with State officials.

(Sections 101(c)(1) and 101(d) of the Act; 29 U.S.C. 721(c)(1) and 721(d))

§ 361.5 State agency for administration.

(a) *Designation of sole State agency.* The State plan must designate a State agency as the sole State agency to administer the State plan, or to supervise its administration in a political subdivision of the State by a sole local agency. In the case of American Samoa, the State plan must designate the Governor; in the case of the Trust Territory of the Pacific Islands, the State plan must designate the High Commissioner.

(b) *Sole State agency.* The State plan must provide that the sole State agency, except for American Samoa, and the Trust Territory of the Pacific Islands, and except for a sole State agency for the blind as specified in paragraph (c) of this section, must be:

(1) A State agency primarily concerned with vocational rehabilitation, or vocational and other rehabilitation of handicapped individuals. This agency must be an independent State commission, board, or other agency, which has as its major function vocational rehabilitation, or vocational and other rehabilitation of handicapped individuals. The agency must have the authority, subject to the supervision of the Office of Governor, when appropriate, to define the scope of the vocational rehabilitation program within the provision of State and Federal law, and to direct its administration without external administrative controls; or

(2) The State agency administering or supervising the administration of education or vocational education in the State; or

(3) A State agency which includes at least two other major organizational units, each of which administers one or more of the State's major programs of public education, public health, public welfare, or labor.

(c) *Sole State agency for the blind.* Where the State commission for the blind or other agency which provides assistance or services to the blind is authorized under State law to provide vocational rehabilitation services to blind individuals, this agency may be designated as the sole State agency to administer the part of the plan under which vocational rehabilitation services are provided for the blind or to supervise its administration in a political subdivision of the State by a sole local agency.

(d) *Authority.* The State plan must set forth the legal basis for administration by sole local rehabilitation agencies, if applicable.

(e) *Responsibility for administration.* The State plan must assure that all decisions affecting eligibility for, the nature and scope of available vocational rehabilitation services, and the provision of these services are made by the State agency through its designated State unit, or by a designated vocational rehabilitation unit of a local agency under the supervision of the designated State unit. This responsibility may not be delegated to any other agency or individual.

(Sections 101(a)(1) and 101(a)(2) of the Act; 29 U.S.C. 721(a)(1) and 721(a)(2))

§ 361.5 Organization of the State agency.

(a) *Organization.* The State plan must describe the organizational structure of the State agency, including a description of organizational units, the programs and functions assigned to each, and the relationships among these units within the State agency. These descriptions must be accompanied by organizational charts reflecting:

(1) The relationship of the State agency to the Governor and his or her office and to other agencies administering major programs of public education, public health, public welfare, or labor of parallel stature within the State government; and

(2) The internal structure of the State agency and the designated State unit, if applicable. The organizational structure must provide for all the vocational rehabilitation functions for which the State agency is responsible, and for clear lines of administrative and supervisory authority.

(d) *Designated State unit.* Where the designated State agency is of the type specified in § 361.5(b) (2) or (3), or § 361.5(c), the State plan must assure that the agency (or each agency, where two agencies are designated), includes a vocational rehabilitation bureau, division or other organizational unit which:

(1) Is primarily concerned with vocational rehabilitation, or vocational and other rehabilitation of handicapped individuals, and is responsible for the administration of the State agency's vocational rehabilitation program, which includes the determination of eligibility for; the determination of the nature and scope of; and the provision of vocational rehabilitation services under the State plan;

(2) Has a full time director in accordance with § 361.8; and

(3) Has a staff, all or almost all of whom are employed full time on the rehabilitation work of the organizational unit.

(c) *Location of designated State unit.* (1) The State plan must assure that the designated State unit, specified in paragraph (b) of this section, is located at an organizational level and has an organizational status within the State agency comparable to that of other major organizational units of the agency, or in the case of an agency described in § 361.5(b)(2), the unit must be so located and have that status, or the director of the unit must be the executive officer of the State agency.

(2) In the case of a State which has not designated a separate State agency for the blind as provided for in § 361.5 the State may assign responsibility for the part of the plan under which vocational rehabilitation services are provided to blind individuals to one organizational unit of the State agency and may assign responsibility for the rest of the plan to another organizational unit of the agency, with the provisions of paragraphs (b) and (c)(1) of this section applying separately to each of these units.

(Section 101(a)(2) of the Act; 29 U.S.C. 721(a)(2))

§ 361.7 Designation of substitute State vocational rehabilitation agency.

(a) *General Provisions.* (1) If the Secretary has withheld all funding from a State under § 361.4, designate another agency to substitute for the State agency in carrying out the State's program of vocational rehabilitation services. Funds are considered to be withheld when a final administrative decision under § 361.4 is in effect and funds either are not granted to a State agency or are granted to the State agency to enable it to operate the program on a temporary basis pending the orderly transition of responsibility to a substitute agency.

(2) Any public agency or nonprofit organization or agency within the State or any political subdivision of the State may apply for designation as a substitute agency.

(3) To be eligible for designation as a substitute agency, the applicant must submit a proposal for a substitute State plan which meets the requirements of this part.

(4) The substitute State plan covers a three-year period or the remaining portion of the period covered by the previously approved State plan. The Secretary may not make a grant to a substitute agency until he approve its plan.

(b) *Proposal submittal.* a proposal for submitting a substitute State plan must be in the format required by the Secretary.

(c) *Factors considered in evaluating proposals.* In selecting a substitute agency, the Secretary considers the following factors:

(1) The program and financial capacity of the applicant agency for carrying out a program of vocational rehabilitation services, including the source of funds to be contributed in order to match Federal funds;

(2) The organizational structure of the applicant agency;

(3) The qualifications to be required of the applicant agency staff; and

(4) The extent to which the proposed State vocational rehabilitation service program is comparable to the program which had been carried out under the most recent previously approved State plan in the State.

(d) *Review of proposals.* In selecting a substitute agency, the Secretary evaluates the relative merit of all proposals which are submitted.

(e) *Substitute agency matching share.* The Secretary shall not make any payment to the substitute agency unless it has provided assurances that it will contribute the same proportion of the total amount of funds as the State would have been obligated to contribute if the State agency were carrying out the vocational rehabilitation service program.

(f) *State agency re-designation.* If the State agency changes its State plan or agrees to change its administration of the plan to comply with Federal requirements, the State agency is redesignated as the agency to operate the vocational rehabilitation program. The State agency resumes its operation of the program either at the end of the three-year period for which the substitute State plan has been approved or on any earlier date determined by the Secretary after agreement by the substitute agency and the State agency.

(Section 101(c)(2) of the Act; 29 U.S.C. 721(c)(2))

§ 361.8 State unit director.

The State plan must assure that there will be a full-time director who directs the State agency specified in § 361.5(b)(1) or the designated State unit specified in § 361.6(b).

(Sec. 101(a)(2)(A) of the Act; 29 U.S.C. 721(a)(2)(A))

§ 361.9 Local administration.

(a) *Scope of written agreement.* The State plan must assure that any local administration of the plan by a sole local agency is based on a written agreement between the local agency and

the designated State unit with the concurrence of the State agency which:

(1) Indicates that the local agency will conduct a vocational rehabilitation program through its designated unit under the supervision of the designated State unit in accordance with the State plan and in compliance with Statewide standards established by the designated State unit;

(2) Assures that the designated unit of the local agency will be responsible for carrying out the vocational rehabilitation program and will meet the requirements for this unit specified in § 361.6(b);

(3) Describes the methods to be followed by the designated State unit in its supervision of the local agency's vocational rehabilitation program;

(4) Indicates the basis on which the designated State unit participates financially in its locally administered vocational rehabilitation programs;

(5) Indicates whether the local unit will utilize another local public or nonprofit agency in providing vocational rehabilitation services to handicapped individuals, and the arrangements to be made; and

(6) Assures that the sole local agency will be responsible through its designated unit for the administration of the vocational rehabilitation program and will employ staff for carrying out the vocational rehabilitation program including a full-time director.

(b) *Responsibility of local agency.* If the State plan provides for local administration, it must assure that the sole local agency is responsible through its designated unit for the administration of the program within the political subdivision which it serves. A separate local agency serving the blind may administer that part of the plan relating to vocational rehabilitation of the blind, under the supervision of the designated State unit for the blind.

(Sec. 101(a)(1)(A) of the Act; 29 U.S.C. 721(A)(1)(A))

§ 361.10 Methods of administration.

The State plan must assure that the State agency and the designated State unit employ those methods found necessary by the Secretary for the proper and efficient administration of the plan, and for carrying out all functions for which the State is responsible under the plan and this part.

(Sec. 101(a)(6) of the Act; 29 U.S.C. 721(a)(6))

§ 361.11 Shared funding and administration of special joint projects or programs.

(a) *Procedural requirements.* In order to carry out a special joint project or program to provide services to handicapped individuals, the State unit with the concurrence of the State agency must request the Secretary to authorize it to share funding and administrative responsibility for a joint project or program with another agency or agencies of the State, or with a local agency. The Secretary approves a request for the shared funding and administration of a special joint project or program which he has determined will more effectively accomplish the purpose of the Act and may also waive the provisions of § 361.2(a) that the State plan must be in effect in all political subdivisions of the State.

(b) *Scope of written agreement.* The State plan must assure that each special joint project or program is based on a written agreement which:

(1) Describes the nature and scope of the joint project or program, the services to be provided, the respective roles of each participating agency in the provision of services and in their administration, and the share of the costs to be assumed by each;

(2) Specifies the period of the joint project or program, and plans for anticipated continuation;

(3) Provides a budget showing for each fiscal year the financial participation by the State unit and each participating agency;

(4) Provides written assurance that funds will be legally available for purposes of the joint project or program;

(5) Provides that the State unit shall annually evaluate the effectiveness of each project or program with special attention to its vocational rehabilitation objectives;

(6) Assures that the State unit and each participating agency will furnish information and reports required by the Secretary to determine whether the activities are achieving the purposes of the project or program and warrant continuation; and

(7) Assures that the State unit's portion of the joint project or program will comply with applicable requirements of the Act and this part.

(Section 101(a)(1)(A) of the Act; 29 U.S.C. 721(a)(1)(A))

§ 361.12 Waiver of Statewideness

(a) *Purpose of waiver.* If the State unit desires to carry out activities in one or more political subdivisions through local financing in order to promote the vocational rehabilitation of substantially larger numbers of handicapped individuals with particular types of disabilities, the State plan must identify the types of activities to be carried out in this manner.

(b) *Procedural requirements.* The State plan must assure in these cases that the State unit:

(1) Obtains a written description of any activity to be carried out in a particular political subdivision;

(2) Obtains written assurance from the political subdivision that the non-Federal share of funds is available to the State;

(3) Requires that its approval be given to each proposal before the proposal is put into effect in a political subdivision;

(4) Has sole responsibility for administration (or supervision of locally administered vocational rehabilitation programs if the vocational rehabilitation program is administered by local agencies) of the program in a particular local political subdivision in accordance with § 361.6, except to the extent that funding and administrative responsibility is shared with respect to a joint program under § 361.12.

(5) Assures that all requirements of the State plan apply to these activities, except the requirement that the program be in effect in all political subdivisions of the State, and except that the provisions of § 361.78 may be applicable for Federal financial participation in expenditures for carrying out these activities; and

(6) Furnishes other information and reports required by the Secretary.

(Section 101(a)(4) of the Act; 29 U.S.C. 721(a)(4))

§ 361.13 Cooperative programs involving funds from other public agencies.

(a) *Scope of written agreement.* The State plan must assure that, when the State's share of the cost of a cooperative program for providing or administering vocational rehabilitation services is made available in whole or in part by a State or local public agency other than the designated State unit, the cooperative program is based on a written agreement which:

(1) Describes program goals and the activities to be undertaken to achieve these goals;

(2) Assures only individuals eligible for vocational rehabilitation services will be served;

(3) Assures that the vocational rehabilitation services are not services of the cooperating agency to which the handicapped individual would be entitled if he were not an applicant or client of the designated State unit and represent new services or new patterns of services of the cooperating agency.

(4) Provides for an annual budget;

(5) Provides that expenditures for vocational rehabilitation services and the administration of these services will

be under the direct control and at the discretion of the designated State unit.

(8) Assures that the costs of administrative activities are not costs which are attributable to the general expense of the State or locality in carrying out the administrative functions of the State or local government;

(b) *Annual review.* The State unit must review each cooperative program annually to determine its effectiveness and to assure that it is being operated in compliance with the requirements of the written agreement.

(Section 101(a)(1)(A) of the Act; 29 U.S.C. 721(a)(1)(A))

§ 361.14 Staffing of the State's vocational rehabilitation program.

(a) *General staffing requirement.* The State plan must assure that staff in sufficient number and with appropriate qualifications is available to carry out all functions required under this part, including program planning and evaluation, staff development, rehabilitation facility development and utilization, medical consultation, and rehabilitation counseling services for severely handicapped individuals.

(b) *Special communication needs staffing.* The State plan must further assure that the designated State unit includes on its staff or makes available personnel able to communicate in the native languages of applicants for service and State unit clients with limited English-speaking ability from ethnic groups which represent substantial segments of the population of the State. The State plan must assure that the State unit includes on its staff or arranges to have available individuals able to communicate with applicants for service and State unit clients individuals who rely on special modes of communication such as manual communication, tactile, oral, and non-verbal communication devices.

(Section 101(a)(7) of the Act; 29 U.S.C. 721(a)(7))

§ 361.15 Affirmative action plan for handicapped individuals.

(a) [Reserved]

(b) The State plan must also assure that the State unit develops and implements a plan to take affirmative action to employ and advance in employment qualified handicapped individuals. This plan must provide for specific action steps, timetables, and complaint and enforcement procedures necessary to assure affirmative action.

(Sections 101(a)(6) and 101(a)(7) of the Act; 29 U.S.C. 721(a)(6) and 721(a)(7))

§ 361.16 Staff development.

The State plan must assure that there is a program of staff development for all classes of positions which are involved in the administration and operation of the State's vocational rehabilitation program. The staff development program must include, as a minimum:

(a) A systematic determination of training needs to improve staff effectiveness and a system for evaluating the effectiveness of the training activities provided;

(b) An orientation program for new staff; and

(c) An operating plan for providing training opportunities for all classes of positions consistent with the determination of training needs.

(Section 101(a)(7) of the Act; 29 U.S.C. 721(a)(7))

§ 361.17 State studies and evaluations.

(a) *General provisions.* The State plan must assure that the State unit conducts continuing Statewide studies of the needs of handicapped individuals within the State, including the State's need for rehabilitation facilitities, and the methods by which these needs may be most effectively met.

(b) *Scope of Statewide studies.* The continuing Statewide studies must:

(1) Determine the relative needs for vocational rehabilitation services of different significant segments of the population of handicapped individuals, with special reference to the need for expanding services to individuals with the most severe handicaps;

(2) Review a broad variety of means and methods to provide, expand, and improve vocational rehabilitation services in order to determine which means and methods are the most effective;

(3) Review the appropriateness of the criteria used by the designated State unit in determining individuals to be ineligible for vocational rehabilitation services;

(4) Determine the capacity and condition of rehabilitation facilities and rehabilitation facility services within the State and identify ways in which the overall effectiveness of rehabilitation facility services within the State might be improved; and

(5) Otherwise contribute to the orderly and effective development of vocational rehabilitation services and rehabilitation facilities within the State.

(c) *Annual evaluation.* The State plan must assure that the State conducts an evaluation of the effectiveness of the State's vocational rehabilitation program in achieving service goals and priorities, as established in the plan. This evaluation must measure the adequacy of State unit performance in providing vocational rehabilitation services especially to those individuals with the most severe handicaps and must be conducted according to the general standards for evaluation developed by the Secretary. Findings derived from the annual evaluation must be reflected in the State plan, its amendments and in the development of plans and policies for the provision of vocational rehabilitation services either directly by the State unit or within rehabilitation facilities.

(Sections 101(a)(15) and (a)(19) of the Act; 29 U.S.C. 721(a)(15) and (a)(19))

§ 361.18 Policy development consultation.

(a) *General provisions.* The State plan must assure that the designated State unit, or as appropriate, the State unit and any vocational rehabilitation unit of a local agency, seeks and takes into account, in connection with matters of general policy development and implementation arising in the administration of the State plan, the views of individuals and groups. Matters of general policy development and implementation include, but need not be limited to, program planning, development and evaluation; development of legislative and budgetary proposals; assessing research and service proposals; and affirmative action for employment of qualified handicapped individuals. The individuals and groups whose opinions are sought and considered are:

(1) Current or former recipients of vocational rehabilitation services, or as appropriate, their parents, guardians, or other representatives;

(2) Providers of vocational rehabilitation services; and

(3) Others active in vocational rehabilitation.

(b) *Public access.* The State plan must further assure that the State unit establishes and maintains a written description of the methods used to obtain and consider views on policy development and implementation. This description must be available to the public for review and inspection, as well as a report of activities which were actually undertaken in this regard during the previous fiscal year.

(Section 101(a)(18) of the Act; 29 U.S.C. 721(a)(18))

§ 361.19 Cooperation with other public agencies.

(a) *General provisions.* The State plan must assure that, where appropriate, the State unit enters into cooperative arrangements or cooperative agreements with, and utilizes the services and facilities of, the State and local agencies

administering the State's social services and financial assistance programs; other programs for handicapped individuals such as the State's developmental disabilities program, veterans' programs, health and mental health programs, education programs, including adult education, higher education, special education and vocational education programs, workers' compensation programs, manpower programs and public employment offices; the Social Security Administration; the Office of Workers' Compensation Programs of the Department of Labor, the Veterans' Administration; and other Federal, State and local public agencies providing services related to the rehabilitation of handicapped individuals.

(b) *Coordination with education programs.* The State plan must also assure that specific arrangements or agreements are made for the coordination of services for any individual who is eligible for vocational rehabilitation services and is also eligible for services under Part B of the Education of Handicapped Children Act or the Vocational Education Act.

(c) *Coordination with veterans' programs.* The State plan must also assure that there will be maximum coordination and consultation with programs relating to the rehabilitation of disabled veterans.

(d) *Reciprocal referral services with separate agency for the blind.* Where there is a separate State unit for the blind, the two State units must establish reciprocal referral services, utilize each other's services and facilities to the extent feasible, jointly plan activities to improve services to the handicapped individuals in the State, and otherwise cooperate to provide more effective services.

(Section 101(a)(11) of the Act; 29 U.S.C. 721(a)(11))

§ 361.20 Establishment and maintenance of information and referral resources.

(a) *General Provisions.* The State plan must assure the establishment and maintenance of information and referral programs adequate to ensure that handicapped individuals within the State are given accurate information about State vocational rehabilitation services and independent living services, vocational rehabilitation services available from other agencies, organizations, and rehabilitation facilities, and, to the extent possible, other Federal and State services and programs which assist handicapped individuals. The State plan must also assure that the State unit will refer handicapped individuals to other appropriate Federal and State programs which might be of benefit to them. The State plan must further assure that the State unit will utilize existing information and referral systems in the State to the greatest extent possible.

(b) *Special information and referral resources.* The State plan must further assure that, to the greatest extent possible, information and referral services utilize interpreters for the deaf, existing telecommunication systems, specialized media systems for handicapped persons and special materials for blind individuals, deaf individuals, and deaf-blind individuals, as needed.

(Section 101(a)(22) of the Act; 29 U.S.C. 721(a)(22))

§ 361.21 State plan for rehabilitation facilities.

The State plan must assure that the designated State unit maintains a State rehabilitation facilities plan which includes an inventory of rehabilitation facilities and rehabilitation facility services available within the State and a description of the utilization patterns of the facilities and their utilization potential. The inventory must also include a determination of needs for new, expanded or otherwise modified rehabilitation facilities or rehabilitation facility services and a prioritized list of facility projects necessary to achieve short-range State unit goals. The State plan must also assure that the inventory of facilities is developed with the active participation of a representative group of providers and recipients of vocational rehabilitation services and is available to the public for review and inspection.

(Section 101(a)(15) of the Act; 29 U.S.C. 721(a)(15))

§ 361.22 Utilization of rehabilitation facilities.

The State plan must assure that the designated State unit utilizes existing rehabilitation facilities to the maximum extent feasible to provide vocational rehabilitation services to handicapped individuals in accordance with the State plan for rehabilitation facilities under § 1361.21. The State plan must describe the methods used to ensure appropriate use of these facilities and must provide for appropriate means for entering into agreements with the operators of these facilities for the provision of vocational rehabilitation services.

(Sections 101(a)(12) and (a)(18) of the Act; 29 U.S.C. 721(a)(12) and (a)(15))

§ 361.23 Reports.

The State plan must assure that the State agency or the designated State unit, as appropriate, submits reports in the form and detail and at the time required by the Secretary, including reports required under special evaluation studies. The State agency or the designated State unit, as appropriate must also comply with any requirements necessary to assure the correctness and verification of reports.

(Section 101(a)(10) of the Act; 29 U.S.C. 721(a)(10))

§ 361.24 General administrative and fiscal requirements.

(a) *General provisions.* The State plan must assure that the State agency and the designated State unit adopt policies and methods pertinent to the fiscal administration and control of the vocational rehabilitation program, including sources of funds, incurrence and payment of obligations, disbursements, accounting, and auditing. The State plan must assure that the State agency and the designated State unit maintain accounts and supporting documents necessary for an accurate and expeditious determination at any time of the status of Federal grants, including the disposition of monies received and the nature and amount of charges claimed against these grants.

(b) *Awards made by State agency.* The State plan must assure that the State agency or the designated State unit, as appropriate adopt policies and methods necessary to assure sound administration and control of funds awarded by the State agency or the State unit to any public or other nonprofit agency or organization to carry out a program of vocational rehabilitation services.

(c) *Applicability of 34 CFR Part 74.* The provisions of 34 CFR Part 74 establishing uniform administrative requirements and cost principles, apply to all grants made under this part except for the requirement concerning in-kind contributions under Subpart C of 34 CFR Part 74.

(d) *Applicability of Department of Health and Human Services regulations.* Several Department of Health and Human Services regulations apply under this part. These include:

45 CFR Part 19—Limitations on Payment or Reimbursement for Drugs
45 CFR Part 46—Protection of human subjects
45 CFR Part 74—Informal grant appeals procedures (Indirect cost rates and other cost allocations)

(Sections 11 and 12(c) of the Act; 29 U.S.C. 710 and 711(c))

State Plan Content: Provision and Scope of Service

§ 361.30 Processing referrals and applications.

The State plan must assure that the State unit establishes and maintains

written standards and procedures to assure expeditious and equitable handling of referrals and applications for vocational rehabilitation services.

(Sections 101(a)(6) of the Act; 29 U.S.C. 721(a)(6))

§ 361.31 Eligibility for vocational rehabilitation services.

(a) *General provisions.* (1) The State plan must assure that eligibility requirements are applied by the designated State unit without regard to sex, race, age, creed, color, or national origin of the individual applying for service. The State plan must also assure that no group of individuals is excluded or found ineligible solely on the basis of type of disability. With respect to age, the State plan must assure that no upper or lower age limit is established which will, in and of itself, result in a finding of ineligibility for any handicapped individual who otherwise meets the basic eligibility requirements specified in paragraph (b) of this section.

(2) The State plan must assure that no residence requirement, durational or other, is imposed which excludes from services any individual who is present in the State.

(b) *Basic conditions.* The State plan must assure that eligibility is based only upon:

(1) The presence of a physical or mental disability which for the individual constitutes or results in a substantial handicap to employment; and

(2) A reasonable expectation that vocational rehabilitation services may benefit the individual in terms of employability.

(c) *Interim determination of eligibility.* The State plan may provide for vocational rehabilitation services to be initiated for an individual on the basis of an interim determination of eligibility. If the State chooses this approach, it must identify the criteria established for making an interim determination of eligibility, the procedures to be followed, the services which may be provided, and the period, not to exceed 90 days, during which services may be provided until a final determination of eligibility is made.

(Sections 7(7)(A), 12(c), 101(a)(6) and 101(a)(14) of the Act; 29 U.S.C. 706(7)(A), 711(c), 721(a)(6), and 721(a)(14))

§ 361.32 Evaluation of vocational rehabilitation potential: Preliminary diagnostic study.

(a) *Basic conditions.* The State plan must assure that, in order to determine whether any individual is eligible for vocational rehabilitation services, there is a preliminary diagnostic study to determine:

(1) Whether the individual has a physical or mental disability which for that individual constitutes or results in a substantial handicap to employment; and

(2) Whether vocational rehabilitation services may reasonably be expected to benefit the individual in terms of employability, or whether an extended evaluation of vocational rehabilitation potential is necessary to make this determination.

(b) *Scope of diagnostic study.* The State plan must assure that the preliminary diagnostic study includes examinations and diagnostic studies to make the determinations specified in paragraph (a) of this section. In all cases, the evaluation places primary emphasis upon determining the individual's potential for achieving a vocational goal.

(c) *Specific evaluations.* The State plan must also assure that the preliminary diagnostic study includes an appraisal of the current general health status of the individual based, to the maximum extent possible, on available medical information. The State plan must further assure that in all cases of mental or emotional disorder, an examination is provided by a physician skilled in the diagnosis and treatment of such disorders, or by a psychologist licensed or certified in accordance with State laws and regulations, in those States where laws and regulations pertaining to the practice of psychology have been established.

(Sections 7(5) and 103(a)(1) of the Act; 29 U.S.C. 706(5) and 723(a)(1))

§ 361.33 Evaluation of vocational rehabilitation potential: Thorough diagnostic study.

(a) *General provision.* The State plan must assure that, as appropriate in each case, when an individual's eligibility for vocational rehabilitation services has been determined, there is a thorough diagnostic study to determine the nature and scope of services needed by the individual. This study consists of a comprehensive evaluation of pertinent medical, psychological, vocational, educational, and other factors relating to the individual's handicap to employment and rehabilitation needs.

(b) *Scope of thorough diagnostic study.* The thorough diagnostic study includes in all cases to the degree needed, an appraisal of the individual's personality, intelligence level, educational achievement, work experience, personal, vocational, and social adjustment, employment opportunities, and other pertinent data helpful in determining the nature and scope of services needed. The study also includes, as appropriate for each individual, an appraisal of the individual's patterns of work behavior, ability to acquire occupational skill and capacity for successful job performance.

(Section 7(5) of the Act; 29 U.S.C. 706(5))

§ 361.34 Extended evaluation to determine vocational rehabilitation potential.

(a) *Basic conditions.* The State plan must assure that the furnishing of vocational rehabilitation services under an extended evaluation to determine vocational rehabilitation potential is based only upon:

(1) The presence of a physical or mental disability which for the individual constitutes or results in a substantial handicap to employment; and

(2) An inability to make a determination that vocational rehabilitation services might benefit the individual in terms of employability unless there is an extended evaluation to determine vocational rehabilitation potential.

(b) *Duration and scope of services.* Vocational rehabilitation services necessary for determination of rehabilitation potential, including those provided within a thorough diagnostic study, may be provided to a handicapped individual for a total period not longer than 18 months.

(c) *Other conditions.* (1) The extended evaluation period begins on the date of certification for extended evaluation to determine rehabilitation potential required in § 361.35(b). Only one 18-month maximum period is permitted during the time that the case is open. If a case has been closed because of a determination that the handicapped individual's needs have changed, the case may be re-opened and a subsequent evaluation of vocational rehabilitation potential may be carried out.

(2) Vocational rehabilitation services, authorized after the expiration of the extended evaluation period, are provided only if the certification of eligibility required in § 361.35(a) has been executed by an appropriate State unit staff member.

(d) *Review.* The State plan must assure a thorough assessment of the individual's progress as frequently as necessary but at least once every 90 days during the extended evaluation period. This assessment includes periodic reports from the facility, or person providing the services, to determine the results of the services and to determine whether the individual may

be determined to be eligible or ineligible.

(e) *Termination.* The State plan must assure that at any time before the end of an 18-month extended evaluation period, the extended evaluation must be terminated when:

(1) The individual is found eligible for vocational rehabilitation services since there is a reasonable assurance that he or she can be expected to benefit in terms of employability from vocational rehabilitation services; or

(2) The individual is found ineligible for any additional vocational rehabilitation services since it has been determined on the basis of clear evidence that he or she cannot be expected to benefit in terms of employability from vocational rehabilitation services. In this case, the procedures described in § 361.40(d) are to be followed and the individual is referred for services under the State's independent living rehabilitation program under Part 1363 of this chapter.

(Section 7(5) of the Act; 29 U.S.C. 706(5))

§ 361.35 Certification: Eligibility; extended evaluation to determine vocational rehabilitation potential; ineligibility.

(a) *Certification of eligibility.* The State plan must assure that, before or at the same time that the State unit accepts a handicapped individual for vocational rehabilitation services, there must be a certification that the individual has met the basic eligibility requirements specified in § 361.31(b). The State plan must further assure that the certification of eligibility is dated and signed by an appropriate State unit staff member.

(b) *Certification for extended evaluation to determine vocational rehabilitation potential.* The State plan must assure that before, and as a basis for providing an extended evaluation to determine vocational rehabilitation potential, there must be a certification that the individual has met the requirements in § 361.34(a). The State plan must further assure that the certification is dated and signed by an appropriate State unit staff member.

(c) *Certification of ineligibility.* (1) The State plan must assure that, whenever the State unit determines on the basis of clear evidence that an applicant or recipient of vocational rehabilitation is ineligible for services, there must be a certification dated and signed by an appropriate designated State unit staff member.

(2) The State plan must further assure that the certification indicates the reasons for the ineligibility determination and is made only after full consultation with the individual or, as appropriate, his or her parent, guardian, or other representative, or after giving a clear opportunity for this consultation. The designated State unit notifies the individual in writing of the action taken and informs the individual of his or her rights and the means by which he or she may express and seek remedy for any dissatisfaction, including the procedures for administrative review and fair hearings under § 361.48. When appropriate, the individual is provided a detailed explanation of the availability of the resources within a client assistance project established under Section 112 of the Act, and referral is made to other agencies and facilities, including when appropriate, the State's independent living rehabilitation program under Part 365.

(d) *Review of ineligibility determination.* The State plan must further assure that when an applicant for vocational rehabilitation services has been determined on the basis of the preliminary diagnostic study to be ineligible because of a finding that he or she cannot be expected to achieve a vocational goal, the ineligibility determination will be reviewed within 12 months. This review need not be conducted in situations where the individual has refused it, the individual is no longer present in the State, his or her whereabouts are unknown, or his or her medical condition is rapidly progressive or terminal.

(e) *Closure without eligibility determination.* The State plan must provide that the State unit may close a case without any determination of eligibility when an applicant is unavailable during an extended period of time to complete an evaluation of vocational rehabilitation potential and the State unit has made repeated effort to contact the individual and to encourage his or her participation.

(Sections 12(c) and 101(a)(6) of the Act; 29 U.S.C. 711(c) and 721(a)(6))

§ 361.36 Order of selection for services.

(a) *General provisions.* The State plan must show the order to be followed in selecting groups of handicapped individuals to be provided vocational rehabilitation services at any time when these services cannot be provided to all eligible individuals.

(b) *Priority for severely handicapped individuals.* The State plan must assure that those groups of individuals with the most severe handicaps are selected for service before any other groups of handicapped individuals.

(c) *Disabled public safety officers.* The State plan must also assure that special consideration will be given to those handicapped individuals whose handicapping condition arose from a disability sustained in the line of duty while performing as public safety officer and the immediate cause of such disability was a criminal act, apparent criminal act, or a hazardous condition resulting directly from the officer's performance of duties in direct connection with the enforcement, execution, and administration of law or fire prevention, firefighting, or related public safety activities.

(Section 101(a)(5)(A) of the Act; 29 U.S.C. 721(a)(5)(A))

§ 361.37 Services to civil employees of the United States.

The State plan must assure that vocational rehabilitation services are available to civil employees of the U.S. Government who are disabled in line of duty, under the same terms and conditions applied to other handicapped individuals.

(Section 101(a)(13)(A) of the Act; U.S.C. 721(a)(13)(A))

§ 361.38 Services to handicapped American Indians.

The State plan must assure that vocational rehabilitation services are provided to handicapped American Indians residing in the State to the same extent that these services are provided to other significant groups of the State's handicapped population. The State plan must further assure that the designated State unit continues to provide vocational rehabilitation services to handicapped American Indians on reservations served by a special tribal program under Section 130 of the Act, if the population estimates used for determining the State's allotment include the population of Indians residing on these reservations.

(Section 101(a)(20) of the Act; 29 U.S.C. 721(a)(20))

§ 361.39 The case record for the individual.

The State plan must assure that the designated State unit maintains for each applicant for, and recipient of, vocational rehabilitation services a case record which includes, to the extent pertinent, the following information:

(a) Documentation concerning the preliminary diagnostic study supporting the determination of eligibility, the need for an extended evaluation of vocational rehabilitation potential, and, as appropriate, documentation concerning the thorough diagnostic study supporting the nature and scope of vocational rehabilitation services to be provided;

(b) In the case of an individual who has applied for vocational rehabilitation services and has been determined to be ineligible, documentation specifying the

reasons for the ineligibility determination, and noting a review of the ineligibility determination carried out not later than twelve months after the determination was made;

(c) Documentation supporting any determination that the handicapped individual is a severly handicapped individual;

(d) Documentation as to periodic assessment of the individual during an extended evaluation of vocational rehabilitation potential;

(e) An individualized written rehabilitation program as developed under § 361.40 and § 361.41 and any amendments to the program;

(f) In the event that physical and mental restoration services are provided, documentation supporting the determination that the clinical status of the handicapped individual is stable or slowly progressive unless the individual is being provided an extended evaluation of rehabilitation potential;

(g) Documentation supporting any decision to provide services to family members;

(h) Documentation relating to the participation by the handicapped individual in the cost of any vocational rehabilitation services if the State unit elects to condition the provision of services on the financial need of the individual;

(i) Documentation relating to the eligibility of the individual for any similar benefits, and the use of any similar benefits;

(j) Documentation that the individual has been advised of the confidentiality of all information pertaining to his case, and documentation and other material concerning any information released about the handicapped individual with his or her written consent;

(k) Documentation as to the reason for closing the case including the individual's employment status and, if determined to be rehabilitated, the basis on which the employment was determined to be suitable;

(l) Documentation of any plans to provide post-employment services after the employment objective has been achieved, the basis on which these plans were developed, and a description of the services provided and the outcomes achieved;

(m) Documentation concerning any action and decision involving the handicapped individual's request for an administrative review of agency action or fair hearing under § 361.48; and

(n) In the case of an individual who has been provided vocational rehabilitation services under an individualized written program but who has been determined after the initiation of these services to be no longer capable of achieving a vocational goal, documentation of any reviews of this determination in accordance with § 361.40(d).

(Sections 101(a)(6) and 101(a)(9) of the Act; 29 U.S.C. 721(a)(6) and 721(a)(9))

§ 1361.40 The individualized written rehabilitation program: Procedures.

(a) *General Provisions.* The State plan must assure that an individualized written rehabilitation program is initiated and periodically updated for each eligible individual and for each individual being provided services under an extended evaluation to determine rehabilitation potential. The State plan must also assure that vocational rehabilitation services are provided in accordance with the written program. The individualized written rehabilitation program must be developed jointly by the designated State unit staff member and the handicapped individual or, as appropriate, his or her parent, guardian or other representative. The State unit must provide a copy of the written program, and any amendments, to the handicapped individual or, as appropriate, his or her parent, guardian, or other representative and must advise each handicapped individual, or his or her representative of all State unit procedures and requirements affecting the development and review of individualized written rehabilitation programs.

(b) *Initiation of program.* The individualized written rehabilitation program must be initiated after certification of eligibility under § 361.35(a)or certification for extended evaluation to determine rehabilitation potential under § 361.35(b).

(c) *Review.* The State must assure that the individualized written program will be reviewed as often as necessary but at least on an annual basis. Each handicapped individual, or, as appropriate, his or her parent, guardian on other representative must be given an opportunity to review the program and, if necessary, jointy redevelop and agree to its terms.

(d) *Review of ineligibility determination.* The State plan must assure that if services are to be terminated under a written program because of a determination that the handicapped individual is not capable of achieving a vocational goal and is therefore no longer eligibile, or if in the case of a handicapped individual who has been provided services under an extended evaluation of vocational rehabilitation potential, services are to be terminated because of a determination that the individual cannot be determined to be eligible , the following conditions and procedures will be met or carried out.

(1) This decision is made only with the full participation of the individual, or, as appropriate, his or her parent, guardian, or other representative, unless the individual has refused to participate, the individual is no longer present in the State or his or her whereabouts are unknown, or his or her medical condition is rapidly progressive or terminal. When the full participation of the individual or a representative of the individual has been secured in making the decision, the views of the individual are recorded in the individualized written rehabilitation program;

(2) The rationale for the ineligibility decision is recorded as an amendment to the individualized written rehabilitation program certifying that the provision of vocational rehabilitation services has demonstrated that the individual is not capable of achieving a vocational goal, and a certification of ineligibility under § 361.35(c) is then executed; and

(3) There will be a periodic review, at least annually, of the ineligibility decision in which the individual is given opportunity for full consultation in the reconsideration of the decision, except in situations where a periodic review would be precluded because the individual has refused services or has refused a periodic review, the individual is no longer present in the State, his or her whereabouts are unknown, or his or her medical condition is rapidly progressive or terminal. The first review of the ineligibility decision is initiated by the State unit. Any subsequent reviews, however, are undertaken at the request of the individual.

(Section 101(a)(9) of the Act; 29 U.S.C. 721(a)(9))

§ 361.41 The individualized written rehabilitation program: Content.

(a) *Scope of content.* The State plan must assure that the individualized written rehabilitation program places primary emphasis on the determination and achievement of a vocational goal, and as appropriate includes, but is not necessarily limited to, statements concerning:

(1) The basis on which the determination of eligibility has been made, or the basis on which a determination has been made that an extended evaluation of vocational rehabilitation potential is necessary to make a determination of eligibility;

(2) The long-range and intermediate rehabilitation objectives established for the individual;

(3) The determination of the specific vocational rehabilitation services to be provided in order to achieve the established rehabilitation objectives;

(4) The projected date for the initiation of each vocational rehabilitation service, and the anticipated duration of each service;

(5) A procedure and schedule for periodic review and evaluation of progress toward achieving rehabilitation objectives based upon objective criteria, and a record of these reviews and evaluations;

(6) The views of the handicapped individual, or, as appropriate, his or her parent, guardian, or other representative, concerning his or her goals and objectives and the vocational rehabilitation services being provided;

(7) The terms and conditions for the provision of vocational rehabilitation services including responsibilities of the handicapped individual in implementing the individualized written rehabilitation program, the extent of client participation in the cost of services if any, the extent to which the individual is eligible for similar benefits under any other programs; and the extent to which these similar benefits have been used;

(8) An assurance that the handicapped individual has been informed of his or her rights and the means by which he or she may express and seek remedy for any dissatisfaction, including the opportunity for an administrative review of State unit action, fair hearing or review by the Secretary under § 361.48;

(9) Where appropriate, assurance that the handicapped individual has been provided a detailed explanation of the availability of the resources within a client assistance project established under Section 112 of the Act;

(10) The basis on which the individual has been determined to be rehabilitated under § 361.43; and

(11) Any plans for the provision of post-employment services after a suitable employment goal has been achieved and the basis on which such plans are developed.

(b) *Coordination with education agencies.* When services are being provided to a handicapped individual who is also eligible for services under the Education for Handicapped Children Act, the individualized written rehabilitation program is prepared in coordination with the appropriate education agency and includes a summary of relevant elements of the individualized education program for that individual.

(Sections 101 (a)(9) and (a)(11) of the Act; 29 U.S.C. 721 (a)(9) and (a)(11))

§ 361.42 Scope of State unit program: Vocational rehabilitation services for individuals.

(a) *Scope of services.* The State plan must assure that, as appropriate to the vocational rehabilitation needs of each individual, the following vocational rehabilitation services are available:

(1) Evaluation of vocational rehabilitation potential, including diagnostic and related services incidental to the determination of eligibility for, and the nature and scope of services to be provided;

(2) Counseling and guidance, including personal adjustment counseling, to maintain a counseling relationship throughout a handicapped individual's program of services, and referral necessary to help handicapped individuals secure needed services from other agencies;

(3) Physical and mental restoration services, necessary to correct or substantially modify a physical or mental condition which is stable or slowly progressive;

(4) Vocational and other training services, including personal and vocational adjustment, books, tools, and other training materials except that no training or training services in institutions of higher education (universities, colleges, community/junior colleges, vocational schools, technical institutes, or hospital schools of nursing) may be paid for with funds under this part unless maximum efforts have been made by the State unit to secure grant assistance in whole or in part from other sources;

(5) Maintenance, including payments, not exceeding the estimated cost of subsistence and provided at any time after vocational rehabilitation services have begun through the time when postemployment services are being provided. Maintenance covers a handicapped individual's basic living expenses, such as food, shelter, clothing, and other subsistence expenses which are necessary to support and derive the full benefit of the other vocational rehabilitation services being provided;

(6) Transportation, including necessary travel and related expenses including subsistence during travel (or per diem payments in lieu of subsistence) in connection with transporting handicapped individuals and their attendants or escorts for the purpose of supporting and deriving the full benefit of the other vocational rehabilitation services being provided. Transportation may include relocation and moving expenses necessary for achieving a vocational rehabilitation objective;

(7) Services to members of a handicapped individual's family when necessary to the vocational rehabilitation of the handicapped individual;

(8) Interpreter services and note-taking services for the deaf, including tactile interpreting for deaf-blind individuals;

(9) Reader services, rehabilitation teaching services, note-taking services and orientation and mobility services for the blind;

(10) Telecommunications, sensory and other technological aids and devices;

(11) Recruitment and training services to provide new employment opportunities in the fields of rehabilitation, health, welfare, public safety, law enforcement and other appropriate public service employment;

(12) Placement in suitable employment;

(13) Post-employment services necessary to maintain suitable employment;

(14) Occupational licenses, including any license, permit or other written authority required by a State, city or other governmental unit to be obtained in order to enter an occupation or enter a small business, tools, equipment, initial stocks (including livestock) and supplies; and

(15) Other goods and services which can reasonably be expected to benefit a handicapped individual in terms of employability.

(b) *Written policies.* The State plan must also assure that the State unit establishes and maintains written policies covering the scope and nature of each of the vocational rehabilitation services specified in paragraph (a) of this section, and the conditions, criteria, and procedures under which each service is provided.

(c) *Special requirements.* In the case of telecommunications, sensory, and other technological aids and devices, the written policies must ensure that individualized prescriptions and fittings are performed only by individuals licensed in accordance with State licensure laws, or by appropriate certified professionals. Any hearing aid recommended on the basis of an evaluation of the auditory system must be fitted in accordance with the specifications of the findings obtained under § 361.33. Newly developed aids and devices not requiring individualized fittings must meet any engineering and safety standards recognized by the Secretary.

(Sections 101(a)(6) and 103(a) of the Act; 29 U.S.C. 721(a)(6) and 723(a))

§ 361.43 Individuals determined to be rehabilitated.

(a) *Minimum requirements.* The State plan must assure that an individual determined to be rehabilitated, must have been, as a minimum:

(1) Determined to be eligible under § 361.35(a);

(2) Provided an evaluation of vocational rehabilitation potential, and counseling and guidance as essential vocational rehabilitation services;

(3) Provided appropriate and substantial vocational rehabilitation services in accordance with the individualized written rehabilitation program developed under § 361.40 and § 361.41; and

(4) Determined to have achieved and maintained a suitable employment goal for at least 60 days.

(b) *Post-employment services.* The State plan must also assure that after an individual has been determined to be rehabilitated, the State unit will provide post-employment services when necessary to assist an individual to maintain suitable employment

(Sections 12(c) and 101(a)(6) of the Act; 29 U.S.C. 711(c) and 721(a)(6))

361.44 § Authorization of services.

The State plan must assure that written authorization is made, either before or at the same time as the purchase of services. Where a State unit employee is permitted to make oral authorization in an emergency situation, there must be prompt documentation and the authorization must be confirmed in writing and forwarded to the provider of the services.

(Sections 12(c) and 101(a)(6) of the Act; 29 U.S.C. 711(c) and 721(a)(6))

§ 361.45 Standards for facilities and providers of services.

(a) *General provisions.* The State plan must assure that the designated State unit adopts and maintains written minimum standards for the various types of facilities and providers of services utilized by the State unit in providing vocational rehabilitation services. The State unit must make these standards readily available to unit personnel and to the public.

(b) *Rehabilitation facility standards.* The State unit must establish written standards covering physical plant, equipment, and safety for rehabilitation facilities. For workshops, the State unit must also establish standards applicable to health conditions, wages, hours, working conditions, and worker's compensation or liability insurance for handicapped persons employed in the workshop. These standards must incorporate applicable standards established by the Secretary and must conform with regulations of the Secretary of Labor relating to occupational safety and health standards for rehabilitation facilities. These standards must also assure that all medical and related health services provided in a rehabilitation facility are prescribed by, or under the formal supervision of persons licensed to prescribe or supervise the provision of these services in the State. State unit standards must assure that any rehabilitation facility to be utilized in the provision of vocational rehabilitation services complies with the requirements of the Architectural Barriers Act of 1968 and, the "American Standards Specification for Making Buildings and Facilities Accessible to, and Usable by, the Physically Handicapped," No. A117.1–1961, as amended, and its implementing standards 41 CFR Part 101–19.6 et seq.

(c) *Rehabilitation facility personnel and providers of services.* The Secretary exercises no authority concerning the selection, method of selection, tenure of office, or compensation of any individual employed in any facility or personnel utilized in providing service.

(Sections 12(c) and 101(a)(7) of the Act; 29 U.S.C. 711(c) and 721(a)(7))

§ 361.46 Rates of payment.

The State plan must assure that the State unit establishes and maintains written policies to govern rates of payment for all purchased vocational rehabilitation services. Any vendor providing services authorized by the State unit must agree not to make any charge to or accept any payment from the handicapped individual or his or her family for the service unless the amount of the charge or payment is previously known and, where applicable, approved by the State unit.

(Sections 12(c) and 101(a)(6) of the Act; 29 U.S.C. 711(c) and 721(a)(6))

§ 361.47 Participation by handicapped individuals in the cost of vocational rehabilitation services.

(a) *Financial need.* (1) There is no Federal requirement that the financial need of a handicapped individual be considered in the provision of any vocational rehabilitation services.

(2) If the State unit chooses to consider the financial need of handicapped individuals for purposes of determining the extent of their participation in the costs of vocational rehabilitation services, the State unit must maintain written policies covering the determination of financial need, and the State plan must specify the types of vocational rehabilitation services for which the unit has established a financial needs test. These policies must be applied uniformly so that equitable treatment is accorded all handicapped individuals in similar circumstances.

(3) The State plan must assure that no financial needs test is applied as a condition for furnishing the following vocational rehabilitation services:

(i) Evaluation of rehabilitation potential, except for those vocational rehabilitation services other than of a diagnostic nature which are provided under an extended evaluation of rehabilitation potential under § 361.34;

(ii) Counseling, guidance, and referral services; and

(iii) Placement.

(b) *Consideration of similar benefits.* (1) The State plan must assure that, in all cases, the State unit gives full consideration to any similar benefits available to a handicapped individual, or to members of a handicapped individual's family, under any program to meet, in whole or in part, the cost of any vocational rehabilitation services except the following:

(i) Evaluation of vocational rehabilitation potential except as provided under paragraph (b)(4) of this section;

(ii) Counseling, guidance and referral;

(iii) Vocational and other training services, including personal and vocational adjustment training, books, tools, and other training materials, which are not provided in institutions of higher education (§ 361.42(a)(4));

(iv) Placement; and

(v) Post-employment services consisting of the services listed under paragraphs (b)(1) (i)–(iv) of this section.

(2) The State plan must assure that the designated State unit gives full consideration to any similar benefits available under any other program to a handicapped individual to meet, in whole or in part, the cost of physical and mental restoration services and maintenance unless it would significantly delay the provision of services to an individual;

(3) The State plan must also assure that when an individual is eligible for similar benefits, these benefits must be utilized insofar as they are adequate and do not interfere with achieving the rehabilitation objective of the individual.

(4) The State plan must also assure that the State unit gives full consideration to any similar benefits available to a handicapped individual being provided an extended evaluation of vocational rehabilitation potential in a manner consistent with paragraphs (b)(1) through (b)(3) of this section.

(Sections 12(c) and 101(a)(6) of the Act; 29 U.S.C. 711(c) and 721(a)(6))

§ 361.48 Appeal procedures.

(a) *Administrative review and fair hearing.* The State plan must assure that when an applicant for vocational rehabilitation services or an individual being provided vocational rehabilitation services is dissatisfied with any action concerning the furnishing or denial of these services, he or she may file a request for an administrative review and a redetermination of that action by the supervisory staff of the designated State unit. The State plan must also provide that an individual, who is dissatisfied with the finding of this administrative review, is given an opportunity for a fair hearing before the State unit director or his designee.

(b) *Additional requirements and procedures in connection with an individualized written rehabilitation program.* (1) When an administrative review and fair hearing have been completed with regard to any decision or determination made in connection with an individualized written rehabilitation program, the final decision made on the basis of the fair hearing must be made in writing by the State unit director. The procedures established by the State unit in this regard must provide that the responsibility for making the final decision may not be delegated to any other officer or employee of the State unit.

(2) When an individual being provided vocational rehabilitation services is dissatisfied with the final decision resulting from the fair hearing under paragraph (a) of this section, the individual may request the Secretary to review the decision. When this request is made, the Secretary or the Secretary's designee reviews the State unit director's decision and makes recommendations to the director concerning action to be taken to resolve the issue and dispose of the matter. Within 60 days of receiving these recommendations, the director advises the handicapped individual and the Secretary of the final disposition of the matter.

(c) *Informing affected individuals.* Each applicant or individual being provided vocational rehabilitation services must be informed of the opportunities available under this section, including the names and addresses of individuals with whom appeals may be filed.

(Sections 12(c), 101(a)(6), and 102(d) of the Act; 29 U.S.C. 711(c), 721(a)(6) and 722(d))

§ 361.49 Protection, use and release of personal information.

(a) *General provisions.* The State plan must assure that the State agency and the State unit will adopt and implement policies and procedures to safeguard the confidentiality of all personal information, including photographs and lists of names. These policies and procedures must assure that:

(1) Specific safeguards protect current and stored personal information;

(2) All applicants, clients, representatives of applicants or clients, and, as appropriate, service providers, cooperating agencies, and interested persons are informed of the confidentiality of personal information and the conditions for accessing and releasing this information;

(3) All applicants or their representatives are informed about the State unit need to collect personal information and the policies governing its use, including:

(i) Identification of the authority under which information is collected;

(ii) Explanation of the principal purposes for which the State unit intends to use or release the information;

(iii) Explanation of whether the individual's providing the information is mandatory or voluntary and the effects of not providing requested information to the State unit;

(iv) Identification of those situations where the State unit requires or does not require informed written consent of the individual before information may be released; and

(v) Identification of other agencies to which information is routinely released.

(4) Persons who are unable to communicate in English or who rely on special modes of communication must be provided explanations about State policies and procedures affecting personal information through methods that can be adequately understood by them;

(5) These policies and procedures must prevail over less stringent State laws and regulations; and

(6) The State agency or the State unit may establish reasonable fees to cover extraordinary costs of duplicating records or making extensive searches, and must establish policies and procedures governing access to records.

(b) *State program use.* All personal information in the possession of the State agency or the designated State unit must be used only for purposes directly connected with the administration of the vocational rehabilitation program. Information containing identifiable personal information may not be shared with advisory or other bodies which do not have official responsibility for administration of the program. In the administration of the program, the State unit may obtain personal information from service providers and cooperating agencies under assurances that the information may not be further divulged, except as provided under paragraphs (c), (d) and (e) of this section;

(c) *Release to involved individuals.* (1) When requested in writing by the involved individual or his or her representative, the State unit must make all information in the case record accessible to the individual or release it to him or her or a representative in a timely manner. Medical, psychological, or other information which the State unit believes may be harmful to the individual may not be released directly to the individual but must be provided through his or her representative, a physician or a licensed or certified psychologist;

(2) When personal information has been obtained from another agency, or organization, it may be released only by, or under the conditions established by, the other agency or organization.

(d) *Release for audit, evaluation, and research.* Personal information may be released to an organization, agency, or individual engaged in audit, evaluation, or research only for purposes directly connected with the administration of the vocational rehabilitation program, or for purposes which would significantly improve the quality of life for handicapped persons, and only if the organization, agency, or individual assures that:

(1) The information will be used only for the purposes for which it is being provided;

(2) The information will be released only to persons officially connected with the audit, evaluation or research;

(3) The information will not be released to the involved individual;

(4) The information will be managed in a manner to safeguard confidentiality; and

(5) The final product will not reveal any personal identifying information without the informed written consent of the involved individual, or his or her representative.

(e) *Release to other programs or authorities.* (1) Upon receiving the informed written consent of the individual, the State unit may release to another agency or organization for its program purposes only that personal information which may be released to the involved individual, and only to the extent that the other agency or organization demonstrates that the information requested is necessary for

its program. Medical or psychological information which the State unit believes may be harmful to the individual may be released when the other agency or organization assures the State unit that the information will be used only for the purpose for which it is being provided and will not be further released to the involved individual;

(2) The State unit must release personal information if required by Federal law;

(3) The State unit must release personal information in response to investigations in connection with law enforcement, fraud, or abuse, (except where expressly prohibited by Federal or State laws or regulations), and in response to judicial order; and

(4) The State unit may also release personal information in order to protect the individual or others when the individual poses a threat to his or her safety or to the safety of others (Sections 12(c) and 101(a)(6) of the Act; 29 U.S.C. 711(c) and 721(a)(6)).

(f) *Release to the Secretary or the Secretary's designee.* Where the individual or his or her representative has requested the Secretary to review the final decision of the State Unit Director under § 361.48, the State unit, upon request of the Secretary or the Secretary's designee, will provide to the Secretary or the Secretary's designee a complete and officially certified copy of the case record of the individual, including the record and transcripts of the Fair Hearing decision made by the State Unit Director.

§ 361.50 Scope of State unit program: Management services and supervision for small business enterprises for severely handicapped individuals.

(a) *General provisions.* The State plan may provide for establishing small business enterprises operated by severely handicapped individuals and may also provide for management services and supervision for these enterprises. "Management services and supervision" includes inspection, quality control, consultation, accounting, regulating, in-service training, and related services provided on a systematic basis to support and improve small business enterprises operated by severely handicapped individuals. "Managment services and supervision" does not include those services or costs which pertain to the ongoing operation of the individual business enterprise after the initial establishment period.

(b) *Special policies.* If the State plan provides for management services and supervision, it must assure that the State unit maintains:

(1) A description of the types of small business enterprises to be established;

(2) A description of the policies governing the acquisition of vending facilities or other equipment and initial stocks (including livestock) and supplies for business enterprises;

(3) A description of the policies governing the management and supervision of the program;

(4) A description of how management and supervision will be accomplished either by the State unit or by some other organization as the nominee of the unit subject to its control; and

(5) An assurance that only severely handicapped individuals will be selected to participate in this supervised program.

(c) *Set-aside funds.* If the State unit chooses to set aside funds from the proceeds of the operation of business enterprises, the State plan must also assure that the State unit maintains a description of the methods used in setting aside funds, and the purpose for which funds are set aside. Funds may be used only for small business enterprises program purposes and any benefits for operators must be provided on an equitable basis.

(Sections 101(a)(6) and 103(b) of the Act; 29 U.S.C. 721(a)(6) and 723(b))

§ 361.51 Scope of State unit program: Establishment of rehabilitation facilities.

If the State plan provides for the establishment of public or other nonprofit rehabilitation facilities, it must assure that:

(a) The State unit will determine that the need for the establishment of any rehabilitation facility assisted under this section has been demonstrated in the State's inventory of rehabilitation facilities under § 361.21;

(b) Any rehabilitation facility to be established will meet the State unit's standards for rehabilitation facilities maintained under § 361.45;

(c) The primary purpose of any rehabilitation facility to be established is to provide vocational rehabilitation services or transitional or extended employment to handicapped individuals;

(d) Initial or additional staffing assistance will be available only for personnel who are engaged in new or expanded program activities of the rehabilitation facility; and

(e) Any rehabilitation facility established under this part will develop and implement a plan to take affirmative action to employ and advance in employment qualified handicapped individuals which provides for specific action steps, timetables, and complaint and enforcement procedures.

(Sections 101(a)(6) and 103(b) of the Act; 29 U.S.C. 721(a)(6) and 723(b))

§ 361.52 Scope of State unit program: Construction of rehabilitation facilities.

If the State plan provides for the construction of public or other nonprofit rehabilitation facilities, it must assure that:

(a) The State unit will determine that the need for the construction of any rehabilitation facility assisted under this section has been demonstrated in the State's inventory of rehabilitation facilities under § 361.21;

(b) Any rehabilitation facility to be constructed will meet the State unit's standards for rehabilitation facilities maintained under § 361.45;

(c) The primary purpose of any rehabilitation facility to be constructed under this section is to provide vocational rehabilitation services or transitional or extended employment to handicapped individuals;

(d) The total Federal financial participation in the expenditures for the construction of rehabilitation facilities for a fiscal year will not exceed 10 percent of the State's allotment for that year under section 110 of the Act;

(e) For each fiscal year the amount of the State's share of expenditures for vocational rehabilitation services under the plan, other than for the construction of rehabilitation facilities and the establishment of rehabilitation facilities, will be at least equal to the average of its expenditures for the other vocational rehabilitation services for the preceding three fiscal years;

(f) In addition to any other requirement imposed by law, each proposal will be subject to the requirements for the construction of a rehabilitation facility under Title III of the Act and the condition that the applicant will furnish and comply with all assurances set forth in the application; and

(g) Any rehabilitation facility constructed under this part will develop and implement a plan to take affirmative action to employ and advance in employment qualified handicapped individuals which provides for specific action steps, timetables and complaint and enforcement procedures.

(Sections 101(a)(6) and 103(b) of the Act; 29 U.S.C. 721(a)(6) and 723(b))

§ 361.53 Scope of State unit program: Facilities and services for groups of handicapped individuals.

The State plan may provide for facilities and services, including services provided at rehabilitation facilities, which may be expected to contribute substantially to the

vocational rehabilitation of a group of individuals, but which are not related directly to the individualized rehabilitation program of any one handicapped individual. If the State plan includes these facilities and services, it must assure that the State unit establishes and maintains written policies covering their provision.

(Sections 101(a)(6) and 103(b) of the Act; 29 U.S.C. 721(a)(6) and 723(b))

§ 361.54 Scope of State unit program: Telecommunications systems.

The State plan may provide for the use of existing telecommunications systems which have the potential for substantially improving vocational rehabilitation service delivery methods and developing appropriate programming to meet the particular needs of handicapped individuals, especially those who are homebound, those who live in rural areas, and those who rely on special modes of communication. These telecommunications systems shall include telephone, television, satellite, tactile-vibratory devices, and similar systems, as appropriate. If the State plan includes these systems, it must assure that the State unit establishes and maintains written policies covering their use.

(Sections 101(a)(6) and 103(b) of the Act; 29 U.S.C. 721(a)(6) and 723(b))

§ 361.55 Scope of State unit program; special materials for blind individuals and for deaf individuals.

The State plan may provide for the use of special services available to provide recorded material for blind individuals, captioned television, films or video cassettes for deaf individuals, tactile materials for deaf-blind individuals, and other special materials providing tactile, vibratory, auditory, and visual readout. If the State plan includes these materials, it must assure that the State unit establishes and maintains written policies covering their provision. These policies must ensure that the special communication services are available in the native languages of handicapped individuals from ethnic groups which represent substantial segments of the population of the State.

(Sections 101(a)(6) and 103(b) of the Act; 29 U.S.C. 721 (a)(6) and 723(b))

§ 361.56 Utilization of community resources.

The State plan must assure that, in providing vocational rehabilitation services, maximum utilization is made of public or other vocational or technical training facilities or other appropriate community resources.

(Section 101(a)(12)(A) of the Act; 29 U.S.C. 721(a)(12)(A))

§ 361.57 Utilization of profitmaking organizations for on-the-job training in connection with selected projects.

The State plan must assure that the State unit has the authority to enter into contracts with profitmaking organizations for the purpose of providing on-the-job training and related programs for handicapped individuals under Section 621 of the Act (projects with industry) or Section 622 of the Act (business opportunities for handicapped individuals). The State plan must also assure that profitmaking organizations are utilized by the State unit when it has been determined that they are better qualified to provide needed services than nonprofit agencies, organizations, or facilities in the State.

(Section 101(a)(21) of the Act; 29 U.S.C. 721(a)(21))

§ 361.58 Periodic review of extended employment in rehabilitation facilities.

The State plan must assure periodic review and re-evaluation at least annually, of the status of those handicapped individuals who have been placed by the State unit in extended employment in rehabilitation facilities, to determine the feasibility of their employment or their training for future employment in the competitive labor market. The State plan must assure that maximum effort is made to place these individuals in competitive employment or training for competitive employment whenever feasible.

(Section 101(a)(16) of the Act; 29 U.S.C. 721(a)(16))

Subpart C—Financing of State Vocational Rehabilitation Programs

Federal Financial Participation

§ 361.70 Effect of State rules.

Subject to the provisions and limitations of the Act and this part, Federal financial participation is available in expenditures made under the State plan (including the administration thereof) in accordance with applicable State laws, rules, regulations, and standards governing expenditures by State and local agencies.

(Section 111(a) of the Act; 29 U.S.C. 731(a))

§ 361.71 Vocational rehabilitation services to individuals.

(a) Federal financial participation is available in expenditures made under the State plan for providing an evaluation of vocational rehabilitation potential, and for providing specifed vocational rehabilitation services to handicapped individuals as appropriate. Other goods and services not specified under this part and necessary to determine the vocational rehabilitation potential of a handicapped individual or to be of benefit in terms of his or her employability may also be provided. (This may include expenditures for short periods of medical care for acute conditions arising during the course of rehabilitation, which, if not cared for, would constitute a hazard to the evaluation of vocational rehabilitation potential or to the achievement of the rehabilitation objective.)

(b) Federal financial participation may also be available for costs necessary to determine an individual's eligibility to participate in the business opportunity program under Section 622 of the Act and the costs of native healing practitioners who are recognized as such by an Indian tribe when services are being provided to handicapped American Indians under the State plan and when the native healing practitioner services are necessary to achieve a handicapped individual's vocational rehabilitation objective.

(c) Federal financial participation is not available in any expenditure made, either directly or indirectly, for the purchase of any land, or for the purchase or erection of any building (except for a shelter under § 361.72) for any one handicapped individual or for a group of handicapped individuals under § 361.75.

(Sections 12(c) and 103(a) of the Act; 29 U.S.C. 711(c) and 723(a))

§ 361.72 Management services and supervision for small business enterprises for severely handicapped individuals.

(a) Federal financial participation is available in expenditures made under the State plan for the acquisition of equipment, and initial stocks (including livestock) and supplies for small business enterprises (including vending facilities) for severely handicapped individuals, and management services and supervision provided by the State unit to improve the operation of these small business enterprises (including vending facilities). "Equipment" includes shelters, which are those facilities for a business undertaking which are customarily furnished to the operator of a similar business occupying premises under a short-term lease. Federal financial participation is not available in any expenditure for the purchase of any land, nor for the purchase or erection of any building. This exclusion with respect to buildings does not apply to shelters as described in this paragraph.

(b) Federal financial participation is available for expenditures specified under paragraph (a) of this section, which are made from funds set-aside by the State unit from the proceeds of the operation of small business enterprises for the most severely handicapped individuals under its management and supervision.

(Sections 12(c) and 103(b) of the Act; 29 U.S.C. 711(c) and 723(b))

§ 361.73 Establishment of rehabilitation facilities.

(a) Federal financial participation is available in expenditures made under the State plan for the establishment of public and other nonprofit rehabilitation facilities for the following types of expenditures, except as limited in paragraph (b) of this section:

(1) Acquisition of existing buildings, and where necessary, the land in connection therewith;

(2) Remodeling and alteration of existing buildings;

(3) Expansion of existing buildings;

(4) Architect's fees;

(5) Site survey and soil investigation;

(6) Initial and additional fixed or movable equipment of existing building;

(7) Initial and additional staffing of rehabilitation facilities; and

(8) Such other direct expenditures as are appropriate to the establishment project.

(b) Federal financial participation is not available in any expenditure:

(1) For the acquisition of an existing building when the Federal share of the cost of acquisition of the building under this section is more than $300,000.

(2) For the rental of land, or rental of buildings in connection with the establishment of rehabilitation facilities;

(3) For the remodeling or alteration of an existing building when the estimated cost of remodeling or alteration exceeds the fair market value of the building prior to its remodeling or alteration;

(4) For the expansion of an existing building which has not been completed in all respects;

(5) For the expansion of an existing building to the extent that the total size of the resultant expanded building, determined in square footage of useable space, will be greater than twice the size of the original existing building; or

(6) For the expansion of an existing building if the method of joining the expanded portion of the existing building indicates that, in effect, a separate structure is involved.

(c) The amount of Federal financial participation in the establishment of a rehabilitation facility, including initial and additional equipment, and initial and additional staffing for a period not longer than 4 years and 3 months, shall be 50 per cent.

(d) Funds made available to a private nonprofit agency for the establishment of a rehabilitation facility must be expended by that agency in accordance with procedures and standards equivalent to those of the State unit in making direct expenditures for similar purposes.

(Sec. 7(4), 12 (c) and 103(b) of the Act; 29 U.S.C. 706(4), 711(c), and 723(b))

§ 361.74 Construction of rehabilitation facilities.

(a) Federal financial participation is available in expenditures made under the State plan for the construction of public or other nonprofit rehabilitation facilities for the following types of expenditures:

(1) Acquisition of land in connection with the construction of a rehabilitation facility;

(2) Acquisition of existing buildings;

(3) Remodeling, alteration or renovation of existing buildings;

(4) Construction of new buildings and expansion of existing buildings when the expansion is extensive enough to be tantamount to new construction;

(5) Architect's fees;

(6) Site survey and soil investigation;

(7) Initial fixed or movable equipment of such new, newly acquired, expanded, remodeled, altered or renovated buildings;

(8) Works of art in an amount not to exceed 1 per cent of the total cost of the project; and

(9) Other direct expenditures appropriate to the construction project, except that Federal financial participation is not available for costs of off-site improvements.

(b) The amount of Federal financial participation in the construction of a rehabilitation facility may not be more than 50 percent of the total cost of the project.

(c) Funds made available to a private nonprofit agency for the construction of a rehabilitation facility must be expended by that agency in accordance with procedures and standards equivalent to those of the State unit in making direct expenditures for similar purposes.

(Sections 7(1), 12(c), and 103(b) of the Act; 29 U.S.C. 706(1), 711(c) and 723(b))

§ 361.75 Other vocational rehabilitation services for the benefit of groups of handicapped individuals.

Federal financial participation is available in expenditures made under a State plan for the provision of other facilities and services including services provided at rehabilitation facilities which may be expected to contribute substantially to the vocational rehabilitation of a group of handicapped individuals but which are not related directly to the rehabilitation of any one handicapped individual. Federal financial participation is also available in expenditures for the use of existing telecommunications systems and for the use of special materials for blind individuals, deaf individuals and deaf-blind individuals.

(Sections 12(c) and 103(b) of the Act; 29 U.S.C. 711(c) and 723(b))

§ 361.76 State and local funds.

For purpose of this part, "State or local funds" means:

(a) Funds made available by appropriation directly to the State or local agency, funds made available by allotment or transfer from any other unit of State or local government, or expenditures made by any unit of State or local government under a cooperative program under § 361.13.

(b) Contributions by private organizations or individuals, which are deposited in the account of the State or local agency in accordance with State law, for expenditure by, and at the sole discretion of, the State or local agency. Contributions earmarked for meeting the State's share for providing particular services, for serving certain types of disabilities, for providing services for special groups identified on the basis of criteria which would be acceptable for the earmarking of public funds, or for carrying on types of administrative activities so identified may be considered to be State funds, if permissible under State law, except that Federal financial participation will not be available in expenditures that revert to the donor's use or facility;

(c) Funds set aside pursuant to § 361.72(b); or

(d) Contributions by private agencies, organizations or individuals deposited in the account of the State or local agency in accordance with State law, which are earmarked, under a condition imposed by the contributor, for meeting (in whole or in part) the State's share for establishing or constructing a particular rehabilitation facility, if permissible under State law. These funds may be used to earn Federal funds only with respect to expenditures for establishing or constructing the particular rehabilitation facility for which the contributions are earmarked.

(Section 12(c) of the Act; 29 U.S.C. 711(c))

§ 361.77 Shared funding and administration of joint projects or programs.

Where the Secretary approves a request by the State unit to participate in a joint project or program with another agency or agencies of the State, or with a local agency in accordance with § 361.11, Federal financial participation is available in the State unit share of costs for which there is Federal participation under the Act.

(Sections 12(c) and 101(a)(1)(A) of the Act; 29 U.S.C. 711(c) and 721(a)(1)(A))

§ 361.78 Waiver of Statewideness.

If the approved State plan provides for activities to be carried out in one or more political subdivisions through local financing (§ 361.12), Federal financial participation is available in expenditures made under the State plan for vocational rehabilitation services and administration in connection with these activities except that funds made available to the State unit by these political subdivisions of the State (including funds contributed to such a subdivision by a private agency, organization or individual) may be earmarked for use within a specific geographical area or for use within a specific facility or for the benefit of a group of individuals with a particular disability. Nothing in this paragraph, however, authorizes the further earmarking of funds for a particular individual or for members of a particular organization, and Federal financial participation is not available in expenditures that revert to the donor's use of facility where the donor is a private agency, organization or individual.

(Sections 12(c) and 101(a)(4) of the Act; 29 U.S.C. 711(c) and 721(a)(4))

Allotment and Payment

§ 361.85 Allotment of Federal funds for vocational rehabilitation services.

(a) The allotment of the Federal funds for vocational rehabilitation services for each State is computed in accordance with the requirements of section 110 of the Act.

(b) Where the State plan designates separate agencies to administer (or supervise the administration of) the part of the plan under which vocational rehabilitation services are provided for the blind, and the rest of the plan, respectively, the division of the State's allotment is a matter for State determination.

(c) The total Federal financial participation in the expenditures for construction for a fiscal year may not exceed 10 percent of the State's allotment for that year. The amount of the State's share of expenditures for vocational rehabilitation services other than for the establishment of rehabilitation facilities or the construction of rehabilitation facilities must be at least equal to the average of its expenditures for those other vocational rehabilitation services for the preceding 3 fiscal years.

(d) When a special project has been awarded for the provision of vocational rehabilitation services to handicapped American Indians residing on a reservation under Section 130 of the Act, and the State unit does not intend to continue to provide vocational rehabilitation services to these American Indians, the allotment for the State in which the reservation is located is computed by subtracting from the population under paragraph (a) of this section:

(1) 33 percent of the total number of American Indians residing on the reservation to be served in the first full fiscal year during which the special project is in operation;

(2) 66 percent of such American Indians in the second full fiscal year during which the special project is in operation; and

(3) 100 percent of such American Indians in the third full fiscal year during which the special project is in operation.

(Sections 12(c), 110, and 130(c) of the Act; 29 U.S.C. 711(c), 730 and 750(d))

§ 361.86 Payments from allotments for vocational rehabilitation services.

(a) Except as provided in § 361.85(c), the Secretary pays to each State an amount computed in accordance with the requirements of Section 111 of the Act. The Federal share for each State is 80 percent (except for the cost of construction of rehabilitation facilities).

(b) Amounts otherwise payable to a State under this section for any fiscal year are reduced by the amount (if any) by which expenditures from non-Federal sources, as specified in § 361.76 (except for expenditures with respect to which the State is entitled to payments under Subpart F of this part) for that fiscal year under the State's approved plan for vocational rehabilitation services are less than expenditures under the plan for the fiscal year ending June 30, 1972. If a reduction in payments for any fiscal year is required in the case of a State where separate agencies administer (or supervise the administration of) the part of the plan under which vocational rehabilitation services are provided for blind individuals, and the rest of the plan, respectively, the reduction is made in direct relation to the amount by which expenditures from non-Federal sources under each part of the plan are less than they were under that part of the plan during the fiscal year ending June 30, 1972.

(Sections 12(c) and 111 of the Act; 29 U.S.C. 711(c) and 731)

§ 361.87 Method of computing and making payments.

(a) *Estimates.* Before the beginning of each fiscal quarter or other prescribed period, the Secretary estimates the amount to be paid to each State from its allotment for vocational rehabilitation services under section 110 of the Act, and its allotment for innovation and expansion projects under section 120 of the Act. This estimate is based on records of the State and information furnished by it, and any other investigation found necessary by the Secretary.

(b) *Payments.* The Secretary pays, from the allotment available, the amount estimated for the determined period. In making any payment, additions and subtractions are made as necessary in balancing the Federal-State account for any prior period on the basis of the State's accounting. Payments are made prior to audit or settlement through a Letter of Credit system.

(Section 12(c) and 111 of the Act; 29 U.S.C. 711(c) and 731)

§ 361.88 Refunds.

Any amount refunded or repaid by the State is credited to the Federal account in proportion to the Federal participation in the expenditures by reason of which the refunds or repayments were made. These sums are considered as granted from the State's allotment.

(Section 12(c) of the Act; 29 U.S.C. 711(c))

§ 361.89 Determining to which fiscal year expenditures are chargeable.

In determining to which Federal fiscal year expenditures are chargeable, States are governed by the following:

(a) Expenditures are chargeable to a particular fiscal year in accordance with State laws or regulations. In the absence of applicable provisions of State laws or regulations, the actual date of the expenditure is controlling;

(b) In the event that a State's fiscal year does not coincide with the Federal fiscal year, appropriate State laws or regulations governing the recording of expenditures govern;

(c) In those States which appropriate funds for a biennium, the principles provided in State laws, regulations and practices for determining to which year of the biennium an expenditure is charged apply.

(Section 12(c) of the Act; 29 U.S.C. 711(c))

§ 361.90 Audits.

(a) Whenever considered necessary and appropriate, the operations of the State program are audited. These audits are made to determine whether the State program is being operated in a manner that:

(1) Encourages prudent use of program funds; and

(2) Provides a reasonable degree of assurance that funds are being properly expended for the purpose for which appropriated and provided under the Act and the State plan.

(b) Final determination as to action to be taken as a result of an audit is made by the Secretary.

(Section 12(c) of the Act; 29 U.S.C. 711(c))

§ 361.91 Appeals procedures and expenditures settlement.

The State agency has the right to appeal proposed audit exceptions in which it has not concurred. When expenditures have not been accepted by the Secretary and the State has not made proper restitution, the claim is deducted from subsequent grants made to the State agency.

(Section 12(c) of the Act; 29 U.S.C. 711(c))

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Subpart F—Grants for Innovation and Expansion of Vocational Rehabilitation Services

§ 361.150 Purpose.

Under section 121(a) of the Act, grants may be made for the purpose of paying a portion of the cost of planning, preparing for, and initiating special programs under the State plan in order to expand vocational rehabilitation services, including:

(a) Programs to initiate or expand services to individuals who are the most severely handicapped, or

(b) Special programs to initiate or expand services to classes of handicapped individuals who have unusual and difficult problems in connection with their rehabilitation, particulary handicapped individuals who are poor and the responsibility for whose treatment, education, and rehabilitation is shared by the designated State unit with other agencies,

(Section 121(a) of the Act; 29 U.S.C. 741(a))

§ 361.151 Special project requirements.

(a) All project activities to be performed under this subpart must either be included within the scope of the approved State plan, or the State plan must be amended to include them.

(b) Grants may be made to a State agency or at the option of the State agency to a public or nonprofit organization or agency.

(c) The approval of the appropriate State agency must be secured before funds may be granted to any organization or agency other than the State agency for the provision of direct services to handicapped individuals or for establishing or maintaining facilities which provide direct services to handicapped individuals.

(d) Written program descriptions of activities to be conducted under grants under this subpart, including a budget, must be submitted in detail and according to the procedures required by the Secretary.

(e) Federal financial participation in the cost of any project uder this subpart is not available for any period longer than 36 months.

(f) The construction of a rehabilitation facility may not be undertaken unless it has been demonstrated to be essential to carrying out a project for providing services under this subpart. In addition, the need for the facility must have been demonstrated in the State's inventory of rehabilitation facilities under § 361.23.

(g) Grants may not be made solely for the purpose of planning or determining the feasibility of initiating a vocational rehabilitation service program.

(h) In order to receive assistance, a public or other nonprofit organization or agency, including a public or other nonprofit rehabilitation facility, must develop and implement an affirmative action plan for equal employment opportunity and advancement opportunity for qualified handicapped individuals. The affirmative action plan must provide for specific action steps, time tables, and complaint and enforcement procedures.

(Sections 12(c), 121(a) and 121(b) of the Act; 29 U.S.C. 711(c), 741(a) and 741(b))

§ 361.152 Allotment of Federal funds.

(a) The allotment and any reallotment of Federal funds under this subpart is computed in accordance with the requirements of section 120 of the Act.

(b) If at any time after the start of any fiscal year, or after a review after May 1 of that fiscal year, the Secretary determines that any amount will not be utilized by a State in carrying out the purpose of this subpart, he makes that amount available to one or more other States which he determines will be able to use additional amounts during the fiscal year. Any amount made available to any State under this paragraph of this section is regarded as an increase in the State's allotment for the year.

(c) Where the State plan designates separate agencies to administer (or supervise the administration of) the part of the plan under which vocational rehabilitation services are provided for the blind, and the rest of the plan, respectively, the division of the State's allotment is a matter for State determination.

(d) Within each State's allotment, the Secretary may require that up to 50 percent of available funds must be expended in connection with projects which he has first approved. If the Secretary so requires, he notifies the States of any established program priorities at least 90 days prior to the beginning of each fiscal year.

(Sections 12(c), 120 and 121 of the Act; 29 U.S.C. 711(c), 740 and 741)

§ 361.153 Payments from allotments.

From the sums allotted under § 361.152, the Secretary pays to each State for any project approved under this subpart, an amount up to 90 percent of the costs of the project, (except for a project for construction of a rehabilitation facility where the amount is no more than 50 percent of the total cost of the project) consistent with annual instructions or program guidelines. The amount of Federal financial participation in the costs of construction of a rehabilitation facility is the same percentage specified in § 361.74(b).

(Sections 7(8) and 121(b) of the Act; 29 U.S.C. 706(8) and 741(b))

§ 361.154 Methods of computing and making payments.

Computing and making payments are done in accordance with § 361.87. The provisions of § 361.88 through § 361.91 also apply.

(Section 12(c) of the Act; 29 U.S.C. 711(c))

§ 361.155 Reports.

A grantee must submit reports required by the Secretary and must comply with any requirements necessary to assure the correctness and verification of these reports. These reports include an annual report of program accomplishments reflecting the extent to which programs of vocational rehabilitation services have been initiated or expanded for severely handicapped individuals or for other individuals who have unusual and difficult problems in connection with their rehabilitation.

(Section 12(c) of the Act; 29 U.S.C. 711(c))

Subpart G—Procedures for Hearings on State Plan Conformity and Compliance

§ 361.170 General provisions.

(a) *Scope.* These hearing procedures apply to notice and opportunity for a hearing on:

(1) Disapproval of a State plan or amendment; and

(2) Determination that the State agency has failed in the administration of its approved plan to comply substantially with the provisions of its plan.

(b) *Negotiations.* Nothing in this subpart limits negotiations between the Rehabilitation Services Administration and the State. Negotiations on hearing issues are not part of the hearing and are not subject to the rules in this subpart.

(c) *How to get records.* Papers filed in connection with a hearing may be inspected and copied in the office of the Rehabilitation Services Administration Hearing Clerk. Individuals may direct inquiries to the Rehabilitation Services Administration Hearing Clerk, Department of Education, 330 C Street SW., Washington, D.C. 20201.

(d) *How to file and serve papers.* (1) Anyone who wishes to submit papers for the docket shall file with the Rehabilitation Services Administration Hearing Clerk an original and two copies except that only originals of exhibits and testimony transcripts need be filed.

(2) Anyone who wishes papers to be part of the record shall also serve copies on the parties by personal delivery or by mail, and file proof of this service with the Rehabilitation Services Administration Hearing Clerk. Service on a party's designated attorney is the same as service on the party.

(e) *When rules are suspended.* After notifying the parties, the Secretary or the individual designated as presiding officer may modify or waive any rule in this subpart if it is decided that the action is equitable and will not unduly prejudice the rights of any party.

(Sections 12(c), 101(b) and 101(c) of the Act; 29 U.S.C. 711(c), 721(b) and 721(c))

§ 361.171 How to request a hearing.

(a) *Time limit.* A State agency has 60 days from receipt of the Secretary's written notice of proposed disapproval of a State plan or plan amendment, or intended compliance action to request a hearing. The agency shall make its request in writing to the Secretary.

(b) *What happens if a State agency does not request a hearing.* If the State agency does not request a hearing within the time allowed by paragraph (a) of this section, the Secretary makes a final determination and notifies the agency by letter of the decision to withhold either all further payments under the plan or only payments for those portions of the plan affected.

(c) *How request is acknowledged—(1) Notice of hearing.* Within 30 days of receiving a hearing request, the Secretary notifies the State agency in writing of the date, time, and place of the hearing and of the issues to be considered. The Secretary publishes the hearing notice in the Federal Register. The hearing will be held in a setting with accommodations necessary to make it free from architectural, communication and other barriers to the participation of handicapped persons.

(2) *When a hearing is held.* The date set for a hearing is 20 to 60 days from the date the State agency receives the hearing notice. However, the State agency and the presiding officer may agree in writing to a different date.

(Sections 12(c), 101(b) and 101(c) of the Act; 29 U.S.C. 711(c), 21(b) and 721(c))

§ 361.172 Hearing issues.

(a) *What the hearing issues are.* The issues at a hearing are those included in the Secretary's notice to the State agency.

(b) *How the Secretary may add issues.* At least 20 days before a hearing, the Secretary notifies the agency by letter of any additional issues to be considered. The Secretary publishes this notice in the Federal Register. If the agency does not receive its notice of additional issues in the required time, any party may request that the presiding officer postpone the hearing. If a request is made, the presiding officer sets a new hearing date that is 20 to 60 days from the date the agency received the notice of additional issues.

(c) *How actions by the State may cause the Secretary to add, modify, or remove issues.* The Secretary may add, modify, or remove issues if the State agency:

(1) Conforms its plan to Federal requirements; or

(2) Changes its practices or organization to comply with its approved State plan.

(d) *What happens if State action causes the Secretary to add, modify, or remove issues.* (1) If the Secretary specifies new or modified issues, the hearing proceeds on these issues.

(2)(i) If the Secretary removes an issue, the hearing proceeds on the remaining issues. If the Secretary removes all issues, the Secretary terminates the hearing proceedings. The Secretary may terminate hearing proceedings or remove issues before, during, or after the hearing.

(ii) Before removing an issue, the Commissioner notifies the parties other than the Rehabilitation Services Administration and the State agency of the issue and the reasons for removing the issue. Within 20 days of the date of this notice, the parties may submit comments in writing on the merits of the proposed removal. The Secretary considers these comments and they become part of the record.

(Sections 12(c), 101(b) and 101(c) of the Act; 29 U.S.C. 711(c), 721(b) and 721(c))

§ 361.173 What the purpose of a hearing is.

The purpose of the hearing is to receive factual evidence and testimony, including expert opinion testimony, related to the issues. The presiding officer may not allow argument as evidence.

(Sections 12(c), 101(b) and 101(c) of the Act; 29 U.S.C. 711(c), 721(b) and 721(c))

§ 361.174 Who presides.

The presiding officer at a hearing is the Commissioner or a person the Commissioner designates. If the Commissioner designates a presiding officer, the Commissioner sends copies of the designation notice to the parties.

(Sections 12(c), 101(b) and 101(c) of the Act; 29 U.S.C. 711(c), 721(b) and 721(c))

§ 361.175 How to be a party or an amicus curiae to a hearing.

(a) *Rehabilitation Services Administration and State agency.* The Rehabilitation Services Administration and the State agency are parties to a hearing without having to request participation.

(b) *Other parties or amicus curiae.* An individual or group wishing to be a party or amicus curiae to a hearing may file a petition with the Rehabilitation Services Administration Hearing Clerk no more than 15 days following publication of the hearing notice in the Federal Register. A petitioner who wishes to be a party must also provide a copy of the petition to each party of record at that time.

(c) *What must be in a petition.* A petition must state concisely: (1) Whether the petitioner wishes to be a party or an amicus curiae;

(2) The petitioner's interest in the proceedings;

(3) Who will appear for the petitioner;

(4) The issues on which the petitioner wishes to participate; and

(5) Whether the petitioner intends to present witnesses, if the petitioner wishes to be a party.

(Sections 12(c), 101(b) and 101(c) of the Act; 29 U.S.C. 711(c), 721(b) and 721(c))

§ 361.176 What happens to a petition.

(a) *Petitions to be a party.* (1) The presiding officer determines if the issues to be considered at the hearing have caused the petitioner injury and if the petitioner's interest is within the zone of interest protected by the governing Federal statute. The presiding officer permits or denies the petition accordingly and promptly sends the petitioner a written notice of the decision. If the presiding officer denies the petition, the officer states the reasons in the notice.

(2) Before making this determination, the presiding officer will allow any party to file comments on the petition to be a party. Any party who wishes to file comments must do so within 5 days of receiving the petition.

(3) If the presiding officer decides that parties by petition have common interest, the officer may require that they designate a single representative, or may recognize two or more of these parties to represent all of them.

(b) *Petitions to be amicus curiae.* The presiding officer determines if the petitioner has a legitimate interest in the proceedings and may contribute materially to the proper settlement of the issues. The officer also determines if the petitioners' participation would unduly delay the proceedings. The presiding officer permits or denies the petition accordingly and promptly sends the petitioner a written notice of the decision. If the presiding officer denies the petition, the officer states the reason in this notice.

(Sections 12(c), 101(b), and 101(c) of the Act; 29 U.S.C. 711(c), 721(b) and 721(c))

§ 361.177 Rights of parties and amicus curiae.

(a) *What rights parties have.* A party may:

(1) Appear by counsel or other authorized representative in all hearing proceedings;

(2) Participate in any prehearing conference held by the presiding officer;

(3) Stipulate facts that, if uncontested, become part of the record;

(4) Make opening statements;

(5) Present relevant evidence;

(6) Present witnesses who must be available for cross-examination;

(7) Present oral arguments at the hearing; and

(8) Submit written briefs, proposed findings of fact, and proposed conclusions of law, after the hearing.

(b) *What rights an amicus curiae has.* An amicus curiae may:

(1) Present an oral statement at the hearing at the time specified by the presiding officer;

(2) Submit a written statement of position to the presiding officer before the hearing begins; and

(3) Submit a brief or written statement at the same time the parties submit briefs

If the amicus curiae submits a written statement or brief, the amicus shall serve a copy on each party.

(Sections 12(c), 101(b), and 101(c) of the Act; 29 U.S.C. 711(c), 721(b), and 721(c))

§ 361.178 Authority of presiding officer.

(a) *General rule.* The presiding officer conducts a fair hearing, avoids delay, maintains order and makes a record of the proceedings. In so doing, he or she has authority that includes:

(1) Regulating the course of the hearing;

(2) Regulating the participation and conduct of parties, amici curiae, and others at the hearing;

(3) Ruling on procedural matters and, if necessary, issuing protective orders or other relief to a party against whom discovery is sought;

(4) Taking any action authorized by the rules in this subpart;

(5) Making a final decision, if the Secretary is the presiding officer;

(6) Administering oaths and affirmations;

(7) Examining witnesses;

(8) Receiving or excluding evidence; and

(9) Ruling on or limiting evidence or discovery.

(b) *What the presiding officer may not do.* The presiding officer may not compel by subpoena the production of witnesses, papers, or other evidence.

(c) *When the presiding officer's authority is limited.* If the presiding officer is not the Secretary, the officer certifies the entire record to the Secretary, including a recommended decision on each issue in the hearing, but may not make a final decision.

(Sections 12(c), 101(b), 101(c) of the Act; 29 U.S.C. 711(c), 721(b), and 721(c))

§ 361.179 Discovery.

A party has the right to conduct discovery against other parties. These discovery proceedings are subject to Rules 26–37, Federal Rules of Civil Procedure. The presiding officer promptly rules on any written objection to discovery and may restrict or control discovery to prevent undue delay in the hearing. If a party fails to respond to discovery procedures, the presiding officer may issue any order and impose any sanction (other than contempt orders) authorized by Rule 37 of the Federal Rules of Civil Procedure.

(Sections 12(c), 101(b), and 101(c) of the Act; 29 U.S.C. 711(c), 721(b) and 721(c))

§ 361.180 How evidence is handled.

(a) *Testimony.* Witnesses, under oath or affirmation, give oral testimony at a hearing. Witnesses must be available at a hearing for cross-examination by the parties.

(b) *Rules of evidence.* Technical rules of evidence do not apply to hearings described in this subpart. The presiding officer applies any rules or principles necessary to ensure disclosure of the most credible evidence available and to subject testimony to cross-examination. Cross-examination may be on any material matter, regardless of the scope of direct examination.

(Sections 12(c), 101(b), and 101(c) of the Act; 29 U.S.C. 711(c), 721(b), and 721(c))

§ 361.181 What happens to unsponsored written material.

Letters and other written material regarding matters at issue, if not submitted specifically on behalf of a party, become part of the correspondence section of the docket. This material is not part of the evidence or the record.

(Sections 12(c), 101(b), and 101(c) of the Act; 29 U.S.C. 711(c), 721(b), and 721(c))

§ 361.182 What the record is.

(a) *Official transcript.* The Rehabilitation Services Administration designates the official reporter for a hearing. The Rehabilitation Services Administration Hearing Clerk has the official transcript of testimony, and other material submitted with the official transcript. The parties and the public may obtain transcripts of testimony from the official reporter at rates that do not exceed the maximum fixed by contract between the reporter and the Rehabilitation Services Administration. Upon notice to the parties, the presiding officer may authorize transcript corrections that involve matters of substance.

(b) *Record.* The record for the hearing decision is the transcript of testimony, exhibits, and all other papers and requests filed in the proceedings except for the correspondence section of the docket. The record includes rulings and any recommended decision.

(Sections 12(c), 101(b), and 101(c) of the Act; 29 U.S.C. 711(c), 721(b), and 721(c))

§ 361.183 Posthearing briefs.

The presiding officer fixes the time for filing posthearing briefs. They may contain proposed findings of fact and conclusions of law. The presiding officer may permit filing of reply briefs.

(Sections 12(c), 101(b), and 101(c) of the Act; 29 U.S.C. 711(c), 721(b), and 721(c))

§ 361.184 Decisions.

(a) *If the Commissioner is the presiding officer.* If the Commission is the presiding officer, the Commissioner issues a final decision 60 days after the time allowed for filing posthearing or reply briefs ends. The Commissioner provides copies of the decision to all parties and any amici curiae.

(b) *If the Commissioner appoints a presiding officer.* (1) No later than 30 days after the time for filing posthearings or reply briefs ends, the presiding officer certifies the entire record, including his or her recommended decision, to the Commissioner.

(2) The Commissioner provides a copy of the recommended decision to the parties and any amici curiae. Within 20 days, a party may file with the Commissioner, exceptions to the recommended decision. The party must file a supporting brief or statement with the exception.

(3) The Commissioner reviews the record, and, within 60 days of the date of receipt of the presiding officer's recommended decision, the Commissioner issues a final decision. The Commissioner provides copies of the decision to all parties and any amici curiae.

(c) If the Commissioner decides, after a hearing, that the plan or plan amendment is not approvable, or substantial noncompliance exists, the final decision indicates whether RSA will withhold all further payments or only payments under portions of the plan affected.

(Sections 12(c), 101(b), and 101(c) of the Act; 29 U.S.C. 711(c), 721(b), and 721(c))

§ 361.185 When a decision is effective.

(a) The Commissioner's decision, which constitutes "final agency action" within the meaning of 5 U.S.C. 704 and a final determination under section 101(b) and (c)(1) of the Act, specifies the effective date for RSA's reduction or withholding of the State's grant. This effective date may not be earlier than the date of the Commissioner's decision or later than the first day of the next calendar quarter.

(b) The decision remains in effect unless reversed or stayed on judicial appeal, or until the plan or State agency administration of the plan meets all Federal requirements, except that the Commissioner may modify or set aside his or her decision before the record of the proceedings under this subpart is filed in court.

(Sections 12(c), 101(b), and 101(c) of the Act; 29 U.S.C. 711(c), 721(b), and 721(c))

§ 361.186 How the State may appeal.

A State may appeal to the U.S. Court of Appeals which has jurisdiction in the State, the final decision of the Commissioner disapproving the State plan or plan amendment or finding noncompliance. The State must file the appeal within 30 days after receiving the Commissioner's final decision.

(Sections 12(c), 101(b), and 101(c) of the Act; 29 U.S.C. 711(c), 721(b), and 721(c))

2. The Secretary amends Title 34 of the Code of Federal Regulations by adding Part 365 to read as follows:

PART 365—THE STATE INDEPENDENT LIVING REHABILITATION SERVICES PROGRAM

Subpart A—General

Sec.

365.1 The State independent living rehabilitation services program.

Subpart B—State Plans for Independent Living Rehabilitation Services

State Plan Content: Administration

365.2 The State plan: General requirements.
365.3 State plan approval.
365.4 Withholding of funds.
365.5 State unit for administration.
365.6 Staffing of designated State unit.
365.7 Staff development.
365.8 State unit studies and evaluations.
365.9 State plan and policy development consultation.
365.10 Provision of technical assistance in poverty areas.
365.11 Cooperation with other public agencies.
365.12 Utilization of local public and private non-profit agencies, organizations, and facilities.
365.13 Independent living services for older blind individuals.
365.14 Reports.
365.15 Other administrative and fiscal requirements.

State Plan Content: Provision and Scope of Service

365.30 Processing referrals and applications.
365.31 Eligibility.
365.32 Determination of eligibility for independent living rehabilitation services.
365.33 Certification of eligibility or ineligibility.
365.34 Order of selection for services.
365.35 The case record for the individual.
365.36 The individualized written rehabilitation program for independent living rehabilitation services.
365.37 Scope of State unit program; independent living rehabilitation services for individuals.
365.38 Case closure.
365.39 Duration.
365.40 Standard for facilities and providers of services.
365.41 Scope of State unit program: Establishment and construction of rehabilitation facilities.
365.42 Scope of State unit program: Facilities and services for groups of severely handicapped individuals.
365.43 Scope of State unit program: Telecommunications systems and special materials for blind individuals and deaf individuals.

Subpart C—Allotment and Payment

365.44 Allotment of Federal funds for independent living services.
365.45 Payments from allotments for independent living services.

Authority: Section 12(c) of the Rehabilitation Act of 1973, (29 U.S.C. 711(c)).

Subpart A—General

§ 365.1 The State independent living rehabilitation services program.

(a) General Part 365 includes all requirements relative to the conduct of State independent living rehabilitation service programs under State plans for independent living rehabilitation services authorized under Part A of Title VII of the Rehabilitation Act of 1973, as amended. Part 365 covers the procedures to be followed by a designated State unit in submitting a State plan for approval by the Secretary and the required scope and content of an approvable State plan.

(b) *Regulations which apply to the State independent living rehabilitation services program.* The following regulations apply to the State plan for independent living rehabilitation services program:

(1) The Education Division General Administrative Regulations (EDGAR) in 34 CFR Part 76 (State administered programs) and 34 CFR Part 77 (General); and

(2) The regulations in this Part 365.

(c) *Definitions which apply to the State independent living program.* (1) The following terms used in this Part 365 are defined in 34 CFR Part 77:

"EDGAR"
"Fiscal year"
"Nonprofit"
"Public"
"Secretary"
"State"

(2) The following terms used in this Part 365 are defined in 34 CFR 361.1: § 1361.1 of this Chapter:

"Act"
"Blind"
"Construction of a rehabilitation facility"
"Designated State unit"
"Establishment of a rehabilitation facility"
"Physical and mental restoration services"
"Physical or mental disability"

"Rehabilitation facility"
"State unit"
"Vocational rehabilitation services"

(3) The following definitions also apply to this Part 365:

"Attendant care" means the assistance provided to a severely handicapped individual in performing a variety of tasks required to meet essential personal needs in such areas as bathing, communicating, cooking, dressing, eating, homemaking, toileting and transportation.

(Section 12(c) of the Act; 29 U.S.C. 711(c))

"Health maintenance" means the provision of those health care services which are necessary for a severely handicapped individual to maintain or improve his or her functional capabilities and those services which might contribute to avoiding complications or reactivations of the severely handicapping impairment or the development of additional impairments.

(Section 12(c) of the Act; 29 U.S.C. 711(c))

"Independent living rehabilitation services," or "independent living services," when provided to a severely handicapped individual, means those services listed in § 365.37.

(Section 702(b) of the Act; 29 U.S.C. 796a(b))

"Independent living rehabilitation services," or "independent living services," when provided for the benefit of groups of severely handicapped individuals, includes:

(i) The establishment or construction of a rehabilitation facility which provides independent living services to individuals;

(ii) The provision of other facilities and services which promise to contribute substantially to the independent living rehabilitation of a group of severely handicapped individuals but which are not related directly to the individualized written rehabilitation program of any one severely handicapped individual;

(iii) The use of existing telecommunications systems; and

(iv) The use of services providing recorded materials for blind individuals and captioned films or videocassettes for deaf individuals.

(Section 702(b) of the Act; 29 U.S.C. 796a(b))

"Severely handicapped individual" means an individual whose ability to function independently in family or community, or whose ability to engage or continue in employment is so limited by the severity of his or her physical or mental disability that it has been determined that independent living rehabilitation services are required in order to enable achieving a greater level of independence in functioning in family or community or engaging or continuing in employment.

(Section 702(a) of the Act; 29 U.S.C. 796a(a))

"State plan" means the State plan for independent living rehabilitation services.

(Section 12(c) of the Act; 29 U.S.C. 711(c))

"Transportation" means necessary travel in connection with a severely handicapped individual's engaging in or maintaining employment or improving his or her ability to carry out independent living activities within family or community.

(Section 12(c) of the Act; 29 U.S.C. 711(c))

Subpart B—State Plans for Independent Living Rehabilitation Services

State Plan Content; Administration

§ 365.2 The State plan: General requirements.

(a) *Purpose.* In order for a State unit to be eligible for grants from the allotment of funds under Title VII of the Act, it must submit an approvable State plan for providing independent living rehabilitation services to severely handicapped individuals.

(b) *Form and content.* The State plan must contain, in the form prescribed by the Commissioner, a description of the State's independent living rehabilitation program, the plans and policies to be followed in carrying out the program, and other information requested by the Commissioner.

(c) *Consolidated rehabilitation plan.* The State may choose to submit a consolidated rehabilitation plan which includes both the State plan for vocational rehabilitation services and the State plan for independent living rehabilitation services. The State may also choose to submit a consolidated plan which includes either or both of the State's rehabilitation plans and the State's plan for services for persons with developmental disabilities developed under the Developmental Disabilities Assistance and Bill of Rights Act.

(d) *Duration.* The State plan must cover a three-year period and must be amended whenever necessary to reflect any material change in any applicable phase of State law, organization, policy or agency operations which affects the administration of the State plan

(Sections 12(c) and 705(a) of the Act; 29 U.S.C. 711(c) and 796d(a))

§ 365.3 State plan approval.

Except in the case of the first State plan submitted under Title VII, the State plan must be submitted for approval no later than July 1 of the year preceding the first fiscal year of the three-year period for which the State plan is submitted.

(Section 705(b) of the Act; 29 U.S.C. 796d(b))

§ 365.4 Withholding of funds.

(a) *When withheld.* Payments under section 704 of the Act may be withheld, suspended, or limited as provided by section 101(c) of the Act, when after a reasonable notice and opportunity for hearing has been given to the designated State unit, the Secretary finds that:

(1) The State plan has been so changed that it no longer conforms with the requirements of section 705 of the Act, or

(2) In the administration of the State plan, there is a failure to comply substantially with any provision of such plan.

(b) *Notification to State unit.* The designated State unit is notified of the decision.

(c) *Judicial review.* The decision to withhold, suspend, or limit payments described in paragraph (a) of this section may be appealed to the United States Court of Appeals for the circuit in which the State is located, in accordance with section 101(d)(1) of the Act.

(d) *Informal discussions.* Hearings meeting the requirements of § 361.5(a) of this chapter are not called until after reasonable effort has been made to resolve the questions involved by conference and discussion with State officials.

(Sections 12(c) and 101(c) and 705(b) of the Act; 29 U.S.C. 711(c), 721(c) and 796d(b))

§ 365.5 State unit for administration.

(a) *Designation of State unit.* The State plan must provide that the designated State unit administers the State's independent living rehabilitation service program conducted under this part.

(b) *Designation of State unit for the blind.* The State plan may designate a State commission for the blind or the organizational unit of another agency of the State which is authorized under State law to provide vocational rehabilitation services to blind individuals under a State plan for vocational rehabilitation services, as the State unit to administer that part of the plan under which independent living services are provided to blind individuals.

(c) *Responsibility for administration.* The State plan must assure that all decisions affecting eligibility for, the nature and scope of available independent living rehabilitation services, and the provision of these services are made by the designated State unit, and that this responsibility may not be delegated to any other agency, facility, or individual.

(Sections 12(c) and 705(a)(1) of the Act; 29 U.S.C. 711(c) and 796(a)(1))

§ 365.6 Staffing of designated State unit.

(a) *General staffing requirement.* The State plan must assure that the staff of the designated State unit includes specialist personnel skilled in the coordination and provision of independent living services to severely handicapped individuals.

(b) *Special communication needs staffing.* The State plan must also assure that the State unit makes available personnel able to communicate with applicants for service and with severely handicapped individuals who rely on special modes of communication, such as manual communication or nonverbal communication devices, and personnel able to communicate in the native languages of applicants for service and of severely handicapped individuals with limited English-speaking ability from ethnic groups which represent substantial segments of the population of the communities in which the services are being provided.

(Sections 12(c), 101(a)(7), and 705(a) of the Act; 29 U.S.C. 711(c), 721(a)(7), and 796d(a))

§ 365.7 Staff development.

The State plan must assure a program of staff development for all classes of positions involved in providing independent living services within the designated State unit. The staff development program must emphasize improving the skills of staff directly responsible for the provision of independent living services.

(Sections 12(c) and 705(a) of the Act: 29 U.S.C. 711(c) and 796d(a))

§ 365.8 State unit studies and evaluations.

(a) *Scope of studies.* The State plan must assure that the State unit conducts or has previously conducted studies of the independent living rehabilitation service needs of severely handicapped individuals within the State, including comparative studies of the different methods for providing these services, such as regional and community centers, centers for independent living, halfway houses, and patient-release programs. The State plan must also assure that the State unit conducts studies to determine effective alternatives to institutionalization. Any studies carried out under the plan must fully utilize findings from relevant studies which have been conducted in the past.

(b) *Evaluations.* The State plan must assure that the State unit conducts evaluations of the effectiveness of the State unit's independent living rehabilitation program in meeting the service needs of severely handicapped individuals in the State. These evaluations must measure the adequacy of State unit performance in providing independent living services to severely handicapped individuals, in the light of program and financial resources available in the State.

(c) *Use of findings.* The State plan must also assure that findings from the State's studies and evaluations are utilized in planning for and improving future independent living services.

(Section 705(a)(2) of the Act; 29 U.S.C. 796d(a)(2))

§ 365.9 State plan and policy development consultation.

(a) *Advisory committee.* The State plan must assure that the State unit organizes a committee of severely physically and mentally handicapped persons, which may include parents or guardians of severely handicapped persons as necessary, to consult on a continuing basis in the initial development and periodic revision of the State plan. The members of the advisory committee must serve on a rotating basis after severely handicapped persons in the State have been provided an opportunity to suggest those individuals considered by them to be best qualified to represent severely handicapped individuals in need of independent living services. The State plan must assure that this committee periodically consults with the State unit in matters of policy and program development and implementation which affect the overall administration of the State's independent living rehabilitation service program. The committee must also participate actively in the periodic evaluations of the State's independent living rehabilitation service program.

(b) *Other consultations.* The State plan must also assure that there is a procedure for taking into account the views of providers of independent living services and other individuals interested in services for severely handicapped individuals.

(Sections 12(c) and 705(a)(7) of the Act; 29 U.S.C. 711(c) and 796d(a))

§ 365.10 Provision of technical assistance in poverty areas.

The State plan must assure that the State unit undertakes special efforts to provide technical assistance to public and other nonprofit agencies and organizations located in areas of urban or rural poverty which are interested in developing capability for providing independent living services. The State unit must annually report those special efforts which have been undertaken in this regard.

(Section 705(a)(6) of the Act; 29 U.S.C. 796d(a)(6))

§ 365.11 Cooperation with other public agencies.

The State plan must assure that, to the greatest extent possible, the designated State unit enters into cooperative arrangements or cooperative agreements with, and utilizes the services and facilities of, other State and local public agencies which provide services to severely handicapped individuals, including those agencies administering the State's special education, vocational education, and developmental disabilities service programs, public health, mental health, and mental retardation programs, housing, and transportation programs, Veterans Administration programs, and the programs authorized under Title XIX and Title XX of the Social Security Act.

(Sections 12(c) and 705(a) of the Act; 29 U.S.C. 711(c) and 796d(a))

§ 365.12 Utilization of local, public and private nonprofit agencies, organizations, and facilities.

(a) *General provisions.* The State plan must assure that the State unit utilizes local public and private nonprofit agencies, organizations, and facilities, as appropriate, to provide independent living services. The State plan must describe the methods and criteria to be used to ensure the appropriate use by the State unit of these local agencies, organizations, and facilities, including entering into agreements with them or making direct grants to them for providing independent living services.

(b) *Special requirements for State unit grantees.* Any agency, organization, or facility awarded a grant by the State unit must assure that severely handicapped individuals are fully involved in policy and program development activities affecting the provision of independent living rehabilitation services. Any agency, organization, or facility awarded a grant by a State unit must also assure that any services provided under the grant are at least of the same quality as services provided directly by the State unit.

(c) *Grants from State units.* At least 20 percent of the funds received by a State under this part must be used to make grants to local public agencies and

private nonprofit organizations for the conduct of independent living service programs. The State plan must assure that the State unit makes the availability of funds known to potential applicants within the State and identifies that criteria against which applications for grant funds are evaluated. These criteria must provide priority in the awarding of funds to those agencies and organizations which are directed and managed to a substantial degree by qualified severely handicapped individuals.

(d) *Waiver of grants by State units.* The designated State unit may request from the Secretary a waiver of the requirement that grants in the amount required under paragraph (c) of this section be made for any fiscal year when there is sufficient evidence to determine that the local agencies and organizations cannot use the funds effectively. In waiving this requirement, the Secretary considers such factors as the number of agencies and organizations which have indicated an interest in applying for funds, the capability of these agencies and organizations, and the efforts which have been made by the State unit to improve the capacity of the agencies and organizations for conducting independent living rehabilitation service programs.

(e) *Priority for State unit clients.* When a program of independent living rehabilitation services is conducted by a local public agency or a private nonprofit organization, the program must be designed primarily to serve those severely handicapped individuals who are determined by the State unit to be eligible for independent living services under the State plan.

(f) *State unit plans under related funding programs.* The State plan must specify the State unit's goals and plans with respect to the distribution of any Federal funds received for the establishment and operation of independent living centers under Section 711 of the Act. The State plan must further indicate whether the State unit will directly apply for independent living center grants or whether local public agencies or private nonprofit organizations in the State will have the opportunity to apply for Federal funds under Section 711 of the Act.

(Sections 12(c), 705(a)(9) and 705(a)(3)(A) of the Act; 29 U.S.C. 711(c), 796d(a)(6), and 796(d)(a)(3)(A))

§ 365.13 Independent living services for older blind individuals.

The State plan must assure that the State unit seeks to incorporate within its program of services any new methods or approaches to the provision of independent living rehabilitation services to older blind individuals which have been demonstrated to be effective under a special project under Section 721 of the Act. (Grants for independent living services for older blind individuals). The Secretary advises the State unit when the results of a special project have been found to be effective and requires that they be integrated within the State program to the extent feasible.

(Sections 12(c) and 721(b) of the Act; 29 U.S.C. 711(c) and 796f(b))

§ 365.14 Reports.

The State plan must assure that the State unit submits reports in the form and detail and at the time required by the Secretary, and complies with any requirements necessary to assure the correctness and verification of these reports.

(Sections 12(c) and 705(a) of the Act; 29 U.S.C. 711(c) and 796d(a))

§ 365.15 Other administrative and fiscal requirements.

(a) *Applicability of vocational rehabilitation regulations.* Certain regulations covering the State plan for vocational rehabilitation services also apply under this part for purposes of the State plan for independent living rehabilitation services. These regulations include:

§ 361.7 Designation of substitute State vocational rehabilitation agency.
§ 361.10 Methods of administration.
§ 361.15 Affirmative action plan for handicapped individuals.
§ 361.24 General administrative and fiscal requirements (except as provided in paragraph (b) of this section relative to 34 CFR Part 74).
§ 361.44 Authorization of services.
§ 361.47 Participation by handicapped individuals in the costs of vocational rehabilitation services.
§ 361.48 Administrative review of agency action, and fair hearing; review by Secretary.
§ 361.49 Protection, use, and disclosure of personal information.
§ 361.76 State and local funds.
§§ 361.170–361.186 Procedures for Hearings on State Plan Conformity and Compliance.

(b) *Program administration.* Federal financial participation is available in expenditures under the State plan for the provision of services and for program planning, development, evaluation, and control; research; advocacy; interpretation of the program to the public; personnel administration, including the administration of affirmative action plans; use of advisory committees; the removal of architectural barriers in State unit offices and facilities; program accreditation; and training and staff development for State unit personnel. All expenditures in which Federal financial participation is claimed under the State plan must be subject to the administrative or supervisory control of the designated State unit.

(Sections 12(c) and 705(a) of the Act; 29 U.S.C. 711(c) and 796d(a))

State Plan Content: Provision and Scope of Service

§ 365.30 Processing referrals and applications.

The State plan must assure that the State unit establishes and maintains written standards and procedures to assure expeditious and equitable handling of referrals and applications from severely handicapped persons for independent living services.

(Sections 12(c) and 705(a) of the Act; 29 U.S.C. 711(c) and 796d(a))

§ 365.31 Eligibility.

(a) *General provisions.* (1) The State plan must assure that eligibility requirements are applied by the designated State unit without regard to sex, race, creed, color, or national origin of the individual applying for service. The State plan must specify that no group of individuals is excluded from service solely on the basis of the type of disability or on the basis of age.

(2) The State plan must assure that no residence requirement is imposed which excludes from services under the plan any individual who is present in the State.

(b) *Basic conditions.* The State plan must assure that eligibility is based only upon:

(1) The presence of a severe physical or mental disability;

(2) The presence of a severe limitation in ability to function independently in family or community or to engage or continue in employment; and

(3) A reasonable expectation that independent living rehabilitation services will significantly assist the individual to improve his or her ability to function independently in family or community or to engage or continue in employment. For purposes of determining an individual's eligibility for independent living services, improvement in ability to function independently in family or community refers to a demonstration in functional and behavioral terms of an individual's greater independence or maintenance of independence in such areas as self-care, activities of daily living, driving, using public transportation, shopping,

housekeeping, communicating, or living more independently.

(Sections 12(c), 702(a) and 705(a) of the Act: 29 U.S.C. 711(c), 796a(a) and 796d(a))

§ 365.32 Determination of eligibility for independent living rehabilitation services.

(a) *General provisions.* The State plan must assure that the State unit conducts an evaluation of each severely handicapped person who applies for independent living services. This evaluation is limited to that information necessary to determine whether the individual is eligible to be provided independent living services and to determine which independent living services are needed. The evaluation takes into consideration any relevant case record materials available from files of the designated State unit or from the files of other agencies. A special diagnostic study is conducted specifically for purposes of determining eligibility for independent living services only if already available information is not complete, relevant, or current.

(b) *Scope of evaluation.* The State plan must also assure that the evaluation is sufficient in scope to determine which services will best meet the current and future needs of the individual for functioning more independently in family or community or engaging or continuing in employment.

(Sections 12(c), 702(a) and 705(a) of the Act: 29 U.S.C. 711(c), 796a(a) and 796d(a))

§ 365.33 Certification of eligibility or ineligibility.

(a) *Certification of eligibility.* The State plan must assure that, before or at the same time as acceptance of a severely handicapped individual for independent living rehabilitation services, there must be a certification that the individual has met the basic requirements specified in § 365.31. The State plan must also assure that the certification is dated and signed by an appropriate staff member of the designated State unit.

(b) *Certification of ineligibility.*

(1) The State plan must assure that whenever it is determined that independent living services cannot be expected to assist an individual to engage or continue in employment or to function more independently in family or community, there must be a certification dated and signed by an appropriate staff member of the State unit.

(2) The State plan must also assure that the certification indicates the reasons for the ineligibility determination and is made only after full consultation with the individual or, as appropriate, his or her parent, guardian, or other representative, or after giving a clear opportunity for this consultation. In this case, the State unit notifies the individual in writing of the action taken and informs the individual of his or her rights and the means by which he or she may express and seek remedy for any dissatisfactions, including procedures for administrative review and fair hearings. When appropriate, the individual is provided a detailed explanation of the availability of the resources within a protection and advocacy project established within the State under section 731 of the Act, and referral is made to other agencies and facilities, including the State's vocational rehabilitation program under Part 361 of this chapter.

(3) The State plan must also assure that when an applicant for independent living services has been certified as ineligible because of a determination that these services cannot be expected to assist the individual to engage or continue in employment or to function more independently in family or community, the individual's current status will be reviewed no later than 12 months after the determination has been made. The review need not be conducted in situations where the individual has refused the review, the individual is no longer present in the State, or the individual's whereabouts are unknown.

(Sections 12(c), 702(a) and 705(a) of the Act: 29 U.S.C. 711(c), 796a(a) and 796d(a))

§ 365.34 Order of selection for services.

The State plan must show the order to be followed in selecting groups of severely handicapped individuals to be provided independent living rehabilitation services when services cannot be provided to all eligible persons who apply. The State plan must assure that first priority is given to those severely handicapped individuals, including homebound individuals, who are not presently receiving vocational rehabilitation services under the State vocational rehabilitation service program under Part 361 because of the severity of their physical or mental disability, and those severely handicapped individuals who are institutionalized, have been institutionalized in the past, or are at risk of becoming institutionalized.

(Sections 12(c), 702(a) and 705(a)(2) of the Act; 29 U.S.C. 711(c), 796a(a) and 796d(a)(20))

§ 365.35 The case record for the individual.

The State plan must assure that the State unit maintains for each applicant for independent living services and for each individual receiving these services, a case record which includes documentation concerning the individual's eligibility for service and the provision and payment for services.

(Sections 12(c) and 705(a) of the Act: 29 U.S.C. 711(c) and 796d(a))

§ 365.36 The individualized written rehabilitation program for independent living rehabilitation services.

(a) *General provision.* The State plan must assure that an individualized written rehabilitation program is initiated and periodically updated for each severely handicapped individual provided independent living rehabilitation services. The State plan must also assure that each independent living service is provided in accordance with the written program. The individualized written rehabilitation program must be developed jointly by the appropriate staff member of the State unit and the severely handicapped individual or, as appropriate his or her parent, guardian or other representative. A copy of the written program, and any amendments, must be provided to the severely handicapped individual or, as appropriate, his or her parent, guardian or other representative.

(b) *Initiation of program.* The individualized written rehabilitation program must be initiated after certification of eligibility under § 365.33 and must indicate the goals established for each individual, the services to be provided, and the anticipated duration of the service program and each component service.

(c) *Review.* The State plan must assure that the individualized written program will be reviewed as often as necessary but at least on an annual basis to determine whether services should be continued, modified, or discontinued, or whether the individual should be referred to a program of vocational rehabilitation services under Part 361 or to any other program of assistance. Each severely handicapped individual, or, as appropriate, his or her parent, guardian or other representative must be given an opportunity to review the program and, if necessary, jointly redevelop and agree by signature to its terms.

(d) *Review of ineligibility determination.* The State plan must assure that if services are to be terminated under a written program for any reason, the following conditions and procedures must be met or carried out:

(1) This decision is made only with the full participation of the individual, or, as appropriate, his or her parent, guardian, or other representative, unless the individual has refused to participate,

the individual is no longer present in the State, or his or her whereabouts are unknown. When the full participation of the individual or a representative of the individual has been secured in making this decision, the views of the individual are recorded in the individualized written rehabilitation program;

(2) The rationale for the ineligibility decision is recorded as an amendment to the individualized written rehabilitation program certifying that the provision of independent living services has demonstrated that the individual is not capable of functioning more independently in family or community or engaging or continuing in employment. A certification of ineligibility under § 365.33 is then executed; and

(3) There is a periodic review, at least annually of the ineligibility decision in which the individual is given opportunity for full consultation in the reconsideration of the decision, except in situations where a periodic review would be precluded because the individual has refused services or has refused a periodic review, the individual is no longer present in the State, or his or her whereabouts are unknown. The first review of the ineligibility decision is initiated by the State unit. Any subsequent reviews are undertaken at the request of the individual.

(c) *Coordination with vocational rehabilitation, developmental disabilities and education programs.* The development of the individualized written rehabilitation program for independent living services and the provision of these services must be coordinated to the maximum extent possible with the individualized written rehabilitation program for vocational rehabilitation services for that individual, if there is such a written program. This must also be coordinated with any individualized written habilitation program for the individual prepared under the Developmental Disabilities Assistance and Bill of Rights Act or with any individualized education program for the individual prepared under Part B of the Education for All Handicapped Children Act.

(Sections 12(c) and 706(a)(4) and 706(a)(5) of the Act; 29 U.S.C. 711(c) 796d(a)(4) and (5))

§ 365.37 Scope of State unit program; independent living rehabilitation services for individuals.

(a) *Scope of services.* The State plan must specify those independent living services available for meeting the independent living rehabilitation service needs of severely handicapped individuals in the State. The services which may be provided to any severely handicapped individual may be any of the following independent living rehabilitation services, as appropriate:

(1) Counseling services, including psychological counseling, psychotherapeutic counseling, peer counseling, advocacy services and related services;

(2) Housing incidental to the provision of any independent living rehabilitation service, and including appropriate accommodations to, and modifications of, any space utilized to serve severely handicapped individuals;

(3) Physical and mental restoration services, including:

(i) Physical and mental medical rehabilitation services;

(ii) Dentistry services;

(iii) Nursing services;

(iv) Therapeutic treatment, such as physical therapy, occupational therapy, speech, language and hearing therapy, therapeutic recreation, drama therapy, music therapy, dance therapy and art therapy;

(v) Health maintenance;

(vi) Eyeglasses and visual services; and

(vii) Prosthetic, orthotic and other assistive appliances and devices.

(4) Attendant care;

(5) Transportation;

(6) Interpreter services for deaf individuals, including tactile interpretation for deaf-blind individuals;

(7) Reading services, rehabilitation teaching services, and orientation and mobility services for blind individuals;

(8) Recreational activities;

(9) Services to members of a severely handicapped individual's family when necessary for improving the individual's ability to live and function more independently, or the individual's ability to engage or continue in employment;

(10) Vocational and other training services, including personal and vocational adjustment when necessary for improving a severely handicapped individual's ability to live and function more independently, or his or her ability to engage or continue in employment;

(11) Job placement services;

(12) Referral services;

(13) Telecommunications, sensory and other technological aids and devices;

(14) Services for children of pre-school age including physical therapy, development of language and communication skills, and child development services;

(15) Any other vocational rehabilitation services available under the State plan for vocational rehabilitation services under Part 1361 of this chapter, which are appropriate to the independent living rehabilitation needs of a severely handicapped individual; and

(16) Any appropriate preventive services necessary to decrease the future needs of a severely handicapped individual assisted under this program for similar services.

(b) *Written policies.* The State plan must also assure that the State unit establishes and maintains written policies covering the quality, scope, and extent of each of the independent living services listed in paragraph (a) of this section which is to be provided under the State program, and the conditions, criteria, and procedures under which the service is to be provided. These policies must assure that when services are being provided solely to assist a severely handicapped individual to secure or engage in employment, the services must be provided under Part 1361 if the individual is also eligible for vocational rehabilitation services.

(Sections 12(c) and 706(b) of the Act; 29 U.S.C. 711(c) and 796a(b))

§ 365.38 Case closure.

The State plan must assure that when all objectives identified for a severely handicapped individual under an individualized written rehabilitation program are achieved, the case is closed. When the case is closed, there must be a record describing the way in which the severely handicapped individual has benefited from independent living rehabilitation services and has significantly improved his or her ability to engage or continue in employment or to function independently in family or community.

(Sections 12(c) and 706(a) of the Act; 29 U.S.C. 711(c) and 796d(a))

§ 365.39 Duration.

The State plan must assure that no uniform durational requirement is imposed. The estmated duration of each service must be recorded for each individual under an individualized written rehabilitation program.

(Sections 12(c) and 706(a) of the Act; 29 U.S.C. 711(c) and 796d(a))

§ 365.40 Standards for facilities and providers of services.

The State plan must assure that the State unit maintains written standards for the various types of facilities and providers of services utilized by the State unit in providing independent living services to severely handicapped individuals. The designated State unit must assure that providers of service meet all licensure or certification requirements in the State. The State unit must also assure that any facilities used in connection with the delivery of

services under this program are free from communication and transportation barriers and meet the standards specified in the Architectural Barriers Act of 1968 and, the "American Standard Specification for Making Buildings and Facilities Accessible to, and Usable by the Physically Handicapped," No. A117.1–1961, as amended, and its implementation standards, 41 CFR Part 101–19.6 et seq.

(Sections 12(c), 101(a)(7) and 705(a)(3) of the Act; 29 U.S.C. 711(c), 721(a)(7) and 796d(a)(3))

§ 365.41 Scope of State unit program: Establishment and construction of rehabilitation facilities.

If the State plan provides for the establishment and construction of rehabilitation facilities which provide independent living services, it must further assure that the primary purpose of the establishment of construction of any facility is to provide independent living rehabilitation services to severely handicapped individuals under this part. The provisions of § 361.51 and § 361.52 concerning the establishment and construction of rehabilitation facilities under the State plan for vocational rehabilitation services also apply.

(Sections 12(c), 103(b) and 702(b) of the Act; 29 U.S.C. 711(c), 723(b), and 796e(b))

§ 365.42 Scope of State unit program: Facilities and services for groups of severely handicapped individuals.

The State plan may provide for facilities and services which may be expected to contribute substantially to the rehabilitation of a group of severely handicapped individuals but which are not related directly to the individualized rehabilitation program of any one individual. If the State plan includes these facilities and services, it must further assure that the State unit establishes and maintains written policies covering their provision.

(Sections 12(c), 103(b) and 702(b) of the Act; 29 U.S.C. 711(c), 723(b), and 796e(b))

§ 365.43 Scope of State unit program: Telecommunications systems and special materials for blind individuals and deaf individuals.

The State plan may provide for the use of existing telecommunications systems which have the potential for substantially improving independent living rehabilitation service delivery methods and the delivery of appropriate programming to meet the particular needs of severely handicapped individuals. The State plan may also provide for the use of special services available to provide recorded material for blind individuals and captioned television, films or video cassettes for deaf individuals. If the State plan includes these services, it must further assure that the State unit shall establish and maintain written policies covering their provision.

(Sections 12(c), 103(b) and 702(b) of the Act; 29 U.S.C. 711(c), 723(b) and 796e(b))

Subpart C—Allotment and Payment

§ 365.44 Allotment of Federal funds for independent living services.

(a) The allotment of Federal funds for independent living services for each State is computed in accordance with the requirements of section 703 of the Act.

(b) Where the State plan designates separate units to administer the part of the plan under which independent living rehabilitation services are provided for blind individuals, and the rest of the plan, respectively, the division of the State's allotment is a matter for State determination.

(Section 703 of the Act; 29 U.S.C. 796(b))

§ 365.45 Payments from allotments for independent living services.

The Secretary pays to each State an amount computed in accordance with the requirements of section 704 of the Act. The Federal share is 90 percent except for the cost of construction of rehabilitation facilities where the Federal share may be no more than 50 percent.

(Section 704 of the Act; 29 U.S.C. 796(c))

PART 370—[REMOVED]

3. The Secretary further amends Title 34 of the Code of Federal Regulations by removing Part 370.

Note.—The following appendix will not appear in the Code of Federal Regulations:

Appendix A—Summary of Comments and Responses

The most significant areas of comment on the proposed regulations and the responses to these comments are as follows:

PART 361—THE STATE VOCATIONAL REHABILITATION SERVICES PROGRAMS

§ 361.1 The State vocational rehabilitation services program.

Changes. This section has been revised to describe the coverage of the regulations under Part 361. This change is intended to bring about greater consistency with Department of Education regulatory format.

This section has also been revised to specify those regulations and those EDGAR definitions which apply to the State vocational rehabilitation service program. This change is similarly intended to bring about greater consistency with Department of Education regulatory format.

Definitions

A number of comments were received concerning the ways in which some terms were defined for purposes of administering the State plans for vocational rehabilitation services. Among those terms receiving special attention were the following—

"American Indian"

Comment. A commenter pointed out that the term "American Indian" had been defined for purposes of administering the new grant program for providing vocational rehabilitation services to handicapped Indians under Part 1362 of the proposed regulations, but that the term had not been defined in relation to the State vocational rehabilitation service program. Since there are new State plan requirements relative to the provision of vocational rehabilitation services to handicapped American Indians, this was noted to be a serious omission.

Response. A change has been made in this section and a definition of American Indian has been added. This definition had appeared in § 1362.45 of the proposed regulations and is now specifically applied to the State plan for vocational rehabilitation services.

"Physical and mental restoration services"

Comment. Comments were received from representatives of State units and recreation specialist practitioners concerning the specific inclusion of "therapeutic recreation services" under the definition of "physical and mental restoration services" of the proposed regulations. The comments were generally favorable and pointed out that therapeutic recreation services and activities not only can alleviate the effects of disabilities on handicapped individuals, but also can play a major role in fostering improved physical and mental health leading to the achievement of a vocational objective.

A few State unit commenters opposed the inclusion of therapeutic recreation services within the definition and questioned whether therapeutic recreation services do in fact directly contribute to a handicapped individual's ability to secure and maintain employment.

Response. No change has been made in this definition. The specific inclusion of "therapeutic recreation services" within the definition of "physical and

mental restoration services" had been proposed because of the increasing evidence of the importance of recreation and leisure time activities in assisting a handicapped individual to prepare for employment. The recognition of therapeutic recreation in the proposed definition also reflected the concern which the Congress had demonstrated for recreation and recreation activities in the 1978 Amendments to the Rehabilitation Act of 1973.

Therapeutic recreation services have long been regularly included within the scope of vocational rehabilitation services in a number of State unit programs. The inclusion of "therapeutic recreation services" in the definition of "physical and mental restoration services" does not require that these services be provided to each State unit client. This definition simply provides a more accurate definition of the scope of services which might be provided if prescribed by a physician to assist a handicapped individual in his or her vocational rehabilitation.

Comment. While the inclusion of "therapeutic recreation services" was generally favorably noted, other comments were received regretting the fact that certain other therapeutic services had been omitted from the list of "physical and mental restoration services." These comments requested that the definition be further extended to correct this omission by adding a reference to the creative arts therapies and by noting in this way the importance which these services might have for vocational rehabilitation service programs.

These commenters further noted that although art therapy, dance therapy, music therapy and psychodrama are modalities employed in vocational rehabilitation settings, especially in those settings serving psychiatrically disabled persons, relatively little attention has been called to their contribution to the vocational rehabilitation process.

The comments pointed out that the creative art therapies offer a unique alternative to verbal psychotherapies and drug control of psychiatrically disabled individuals through the common use of nonverbal communication. Art therapy can foster emotional growth and maturation, increase perceptual awareness, and provide an opportunity for improved social interaction through the use of artistic expression. Music therapy uses music to accomplish therapeutic aims including the restoration, maintenance, and improvement of mental and physical health by offering handicapped individuals an emotional outlet for expressing themselves, and a structured approach for dealing with reality. Dance therapy uses movement as a process to further emotional and physical integration of the individual. Psychodrama uses group psychotherapy, role theory, and social systems theory within the framework of action methodologies working toward the treatment of individuals and total groups.

These comments also pointed out that the creative arts therapies had been specially included in the definition of "independent living rehabilitation services" under Part 1363 of the proposed regulations and it was suggested that it would be fully consistent for the use of the creative arts therapies in the vocational rehabilitation process to be reflected in the vocational rehabilitation service definitions.

Response. A change has been made in this definition in this regard. It is recognized that the creative arts therapies are currently used in the vocational rehabilitation process especially where services are being provided in psychiatric rehabilitation. The change in the definition of "physicial and mental restorative services" does not mean that every State unit client must be provided creative arts therapies if they are available. This change means only that in those special cases where a physician might wish to prescribe creative arts intervention for a State unit client, the State unit will clearly be able to follow through on the request consistent with the service goals of the client's individualized written rehabilitation program.

Other changes. Paragraph (h) has been revised to clarify that the provision of hearing aids is included within the scope of "physical and mental restoration services."

"Severely Handicapped Individual"

Changes. Specific learning disability has been added to the list of physical and mental conditions which may be identified with an individual being identified as a "severely handicapped individual." An individual cannot be determined to be severely handicapped on the basis of specific learning disability only. For an individual to be determined severely handicapped, there must be evidence of serious functional limitations and evidence of a need for multiple vocational rehabilitation services over an extended period of time.

§ 361.2 The State plan: General requirements

Comment. A comment from the private rehabilitation facility sector indicated that the public has difficulty in gaining access to State plans for vocational rehabilitation services and suggested that a regulatory requirement be added in this regard.

Response. No change has been made in this section. However, § 75.106 of EDGAR requires that State plans and related official documents be made available to the public. The State plans for vocational rehabilitation services are subject to this section through the adoption of EDGAR in § 361.1(b).

Comment. Additional comments were received questioning the advisability of integrating the Program and Financial Plan within the State plan. It was suggested that the integration of these two plans might prove to be unmanageable and that overlap might occur with the newly required State inventory of rehabilitation facilities under § 361.2.

Response. A change has been made in this section to eliminate the requirement that the information previously included in the Program and Financial Plan be included within the annual State plan submittal. In this way the reporting burden being placed on State units is being reduced. The overall State unit reporting system is currently being revised and technical assistance will be provided to State units to assist in improving procedures in this area.

§ 361.5 State agency for administration

Comment. It was pointed out by some State unit commenters that this section of the vocational rehabilitation regulations has traditionally referred to "designated" State agency, but that this usage is confusing now that the 1978 Amendments have added the definition of "designated State unit." It was suggested that the regulations drop the reference to the "designated" State agency.

Response. A change has been made in this section. Where necessary, the "State agency" is now referred to as the "sole State agency." The use of the term "designated" is now reserved in vocational rehabilitation regulations for use in connection with the designated State unit.

Comment. It was further pointed out by some commenters that not all agencies are subject to the supervision of the office of the Governor, as was implied in paragraph (b) of the proposed section. Some agencies may be constitutionally created and report to

elected Boards rather than to the Office of the Governor.

Response. A change has been made in paragraph (b) of the section to reflect the possibility that the Office of the Governor will not necessarily directly supervise the sole State agency for vocational rehabilitation.

361.7 Designation of a substitute State vocational rehabilitation agency.

Changes. A final regulation with a formal comment period had been published in the Federal Register of September 28, 1979 concerning the procedures to be followed in designating a public agency or a nonprofit organization in the State, or any political subdivision of the State, as the agency to substitute for the sole State agency when funds have been totally withheld from the State agency. This withholding of funds would only occur because either: (1) The State plan has been found out of conformity with the Act; or (2) the State has not been complying with the requirements of the Act in its administration of the State plan. This section had previously been published as § 1361.24 but in these fully revised final regulations it is now being redesignated as § 361.8.

Comment. Comment was received relating to the redesignation of the sole State agency and its resumption of operation after a substitute State agency has begun its operation of the program. It was pointed out that few agencies would be interested in applying for designation as a substitute agency if the previously designated State agency can be redesignated and the substitute agency can be removed with such ease. It was similarly noted that the 1978 Amendments established a three-year State plan period and it was suggested that the three-year time period should appropriately also be applied to the State plan submitted under this section.

Response. A change has been made in this section to provide that the previously designated sole State agency may be redesignated at the end of the three-year period for which the substitute State plan has been approved or at an earlier date determined by the Secretary after discussion with all parties involved. For an earlier date to be determined, however, there must be agreement by the sole State agency, the substitute agency and the Secretary.

Comment. A suggestion was made that the section be revised so that a priority would be given to any nonprofit agency which may be created by the State for the purpose of administering the State's vocational rehabilitation program.

Response. No change has been made in this section in this regard since it is clear that the intent of Section 101(c)(2) of the Act is that a broad range of agencies and organizations have an opportunity to be considered for designation as the substitute State vocational rehabilitation agency. The suggested approach would not only substantially limit the statutory range of potential designees but would also limit the responsibilities assigned to the Secretary to make this determination under the Act.

Comment. Another suggestion was made that language be added to paragraph (a) of the section to ensure that funding would be continued at the same level as was in effect at the time that the State was found by the Secretary to be out of compliance or out of conformity. This suggestion was made to ensure that there would not be a disruption of services during the period of transition to a substitute State agency.

Response. No change has been made in this section in this regard because it was recognized that the designation of a substitute State agency would only follow a lengthy review of the compliance and conformity issues in the State. It is clear that sufficient notice would be provided to a State prior to the need for the designation of a substitute State agency for appropriate transition planning to have taken place. It does not seem likely that any disruption of service could occur under the approach reflected in the section, as proposed.

§ 361.9 Local administration.

Comment. Comment was received suggesting that reference to the "State agency" be revised to refer to the "designated State unit" and that the references to "local agency" be changed to "local unit."

Response. A change has been made in this section. Although the statutory authority for local administration in Section 101(a)(1)(A) of the Act specifically refers to the "State agency," it is the State unit which is responsible for providing vocational rehabilitation services and for making agreements for carrying out service programs. The section has been revised therefore to reflect the fact that the designated State unit has responsibilities under written agreements for local administration of service programs and that these agreements can only be effectively carried out with the concurrence of the State agency.

The Rehabilitation Act speaks to the local agency in a manner comparable to the State agency in terms of responsibility for the management of a local vocational rehabilitation program. It is apparent therefore that a local vocational rehabilitation unit would be directly responsible for the provision of vocational rehabilitation services and the section has also been revised to reflect this distinction.

§ 361.11 Shared funding and administration of special joint projects or programs.

Comment. A commenter pointed out that § 1361.77 of the proposed regulations had provided that requests to participate in special joint projects or programs were to be made by the designated State unit but this section, as proposed, had indicated that the State agency would be making such requests. It was suggested that the State unit was the appropriate organizational unit for participation in these special joint projects or programs.

Response. A change has been made in this section since this provision and § 1361.77 of the proposed regulations had clearly been inconsistent. The State unit is directly responsible for carrying out programs of service within special projects and programs but the conduct of these special activities has great significance for State plan conformity and compliance and therefore affect the State agency. The section has been revised therefore to provide that the State unit participates in a special project or program only with the concurrence of the State agency.

§ 361.12 Waiver of Statewideness.

Changes. The section has been revised to clarify the role of the designated State unit in carrying out a service activity in a particular political subdivision of the State.

§ 361.14 Staffing of the State's vocational rehabilitation program.

Comment. It was noted by a commenter that the section, as proposed, did not extend to applicants for service and therefore did not require the State unit to have available staff able to communicate with applicants for service who rely on special modes of communication or whose English-speaking ability is limited.

Response. A change has been made in this section. It is clear that the intent of this section is to make vocational rehabilitation services more broadly available to handicapped persons with communication difficulties throughout the State and the omission of a special reference to applicants for service is inconsistent with this overall intent. The section has been revised to ensure that applicants for services with special

communication needs will have an easier access to State unit services.

Comment. Representatives of certified interpreters for the deaf suggested that professional standards be required under this section to assure that only highly skilled and fully qualified personnel be utilized by the State unit in assisting handicapped individuals with special communication needs.

Response. No change has been made in this section in this regard. The personnel to be utilized by the State unit under this section will facilitate the delivery of services, but will not necessarily be the primary service providers themselves. These persons will help other rehabilitation workers to communicate with the communicatively disabled individuals being served. Since there are still relatively few highly skilled personnel available throughout the country to assist State units in working with handicapped individuals who rely on special modes of communication, it seems likely that setting a high qualifications standard by regulation might prevent the State unit from fulfilling its intended responsibility under this section.

Comment. Question was also raised concerning the definition of "substantial segment" of the population of the State when considering whether special interpreter personnel might be needed to work with handicapped individuals whose native language is not English and whose English-speaking ability is limited. It was suggested that a percentage be set within the section to identify when these personnel would in fact be necessary.

Response. No change has been made in this section in this regard. It is noted that the purpose of this section is to expand opportunities for making vocational rehabilitation services available to individuals with special communication assistance needs. State units are most familiar with the ethnic compositions of the communities of the State which they serve and are best able to determine whether ethnic minority groups comprise substantial segments of the population whose members should be expected to be frequently in contact with the State unit on the basis of population statistics. It does not seem necessary for an arbitrary percentage to be established by these regulations in this area nor does it seem likely that a uniform percentage could be determined which would be equitable in all the affected State units throughout the country. It is the responsiblity of the State to comply with the intent of this requirement in a reasonable manner and ensure that services are available when needed for handicapped persons in the State whose native language is not English and whose English-speaking ability is limited.

§ 361.15 Affirmative action plan for handicapped individuals.

Comment. Paragraph (a) of the proposed section reflected the fact that Section 602(a) of the Civil Service Reform Act (Pub. L. 95-454) had amended Section 206 of the Intergovernmental Personnel Act of 1970 to abolish all statutory personnel requirements established as a condition for the receipt of grants-in-aid by States and local governments. Since Section 101(a)(7)(A) of the Rehabilitation Act of 1973 requires personnel standards to be established but does not require adherence to the Federal merit system standards, the amendment provided an opportunity either to remove all personnel standards requirements in vocational rehabilitation or to apply the Federal merit system standards throughout the State/Federal vocational rehabilitation system. In line with the intent of the amendment to avoid inconsistent and conflicting approaches to State and local government personnel administration and to encourage uniform use of the Federal merit system standards, it had been proposed in paragraph (a) of this section that the Federal merit system standards be applied under the State plans for vocational rehabilitation services.

Comments received from State units on this matter were generally negative.

Response. Because of the possibility that the proposed section was not fully understood by all State unit commenters, a final decision is not being made at this time. The Federal merit system standards provide a strong basis on which State unit personnel administration could be established but the Department wishes to review the matter further in light of the State unit comments. Under these regulations, therefore, there are no Federal requirements covering personnel standards and policies. A final decision will be made on this matter after the completion of the Departmental review. It is expected, nonetheless, that State units will continue to operate in accordance with State standards and methods of personnel administration in such areas as pay, minimum qualifications for classes of positions, recruitment, selection, and tenure.

Other changes. This section, as proposed, had been titled "Standards of personnel administration." Since the reference to the Federal merit system standards of personnel administration has now been removed pending further study, the title of the section has been revised to reflect its more limited coverage.

§ 361.18 Policy development consultation.

Comment. It was suggested by representatives of consumer self-advocacy groups that "matters of general policy development and implementation" be defined clearly so that there would be a better understanding of the scope of public participation required under the State/Federal vocational rehabilitation program.

Response. A change has been made in this section to indicate some of the areas of policy development and implementation in which public participation may be expected to be undertaken. The revised section suggests certain areas of "policy development and implementation" in which the views of the public would be especially important such as program planning, development and evaluation; development of legislative and budgetary proposals; assessment of research and service proposals; and development of affirmative action plans for the employment of qualified handicapped individuals.

Comment. Concern was expressed by some consumer representatives about public access to information about State unit policy development activities. It was suggested that State units be required to maintain an annually updated list of disability-related groups with whom information should be routinely shared. It was further suggested that State units be required to utilize self-advocacy and parent advocacy group newsletters and annual "town meetings" as methods for increasing public access to information about State unit programs.

Response. No change has been made in this section in this regard. Specific suggestions concerning ways of sharing information with consumers within a State are best communicated to State units in guideline and manual materials rather than through Federal regulatory requirements.

Comment. It was suggested by some representatives of consumer groups that the State units be required to establish Advisory Committees formally constituted to review and comment on the State plan and otherwise consult with the State unit in the overall administration of the State vocational rehabilitation service program.

Response. No change has been made in this section. All State vocational rehabilitation units currently use Advisory Councils with consultative functions which vary from State to

State. Although State Advisory Councils are widely used throughout the country, their establishment has never been required under the Rehabilitation Act of 1973, as amended. There does not appear to be a basis in law therefore for a Federal regulatory requirement of this type.

§ 361.19 Cooperation with other public agencies.

Comment. A number of comments were received on this section in connection with the specific learning disability issue. It was suggested that the State unit be *required* to enter into cooperative agreements with "the State education agencies, including those agencies administering the Education of the Handicapped Act and the Vocational Education Act." Under this group of comments, cooperative arrangements with public agencies other than education agencies, however, could continue to be undertaken only to the extent that they are considered appropriate by the State unit.

Response. A change has been made in this section. Section 101(a)(11) of the Rehabilitation Act of 1973 does not provide any authority for *requiring* cooperative arrangements with any specific public agency. The Act does require, nonetheless, that special arrangements be made for coordinating services to handicapped young people eligible for special education or vocational education services, but these special coordinative arrangements had been already emphasized under paragraph (b) of the proposed section and no additional change in this regard seemed necessary.

In partial response to the concern reflected in these comments, however, paragraph (a) of the section has been revised to identify more clearly those education programs with which cooperative arrangements or agreements might be made by State units such as adult education, higher education, special education and vocational education. Paragraph (a) has also been revised to indicate that these cooperative arrangements or agreements may be made at either the State or local level, or both.

§ 361.20 Establishment and maintenance of information and referral resources.

Comment. Advocates for deaf-blind individuals pointed out that although special attention had been called to communicatively disabled individuals in paragraph (b) of the proposed section, deaf-blind individuals had not been specified. It was feared that the failure to specify deaf-blind individuals in this section might have indicated an intent that they not be include in the coverage of the State information and referral system.

Response. A change has been made in this section. It had not been overlooked that the special needs of deaf-blind individuals be ignored in State information and referral systems and the section has been revised to ensure that the special needs of these individuals are noted.

Comment. Concern was expressed by some State units about the possibility that a State unit would be required to establish a new information and referral program when adequate existing resources exist in the State. The establishment of a duplicative resource was considered to be unncessarily wasteful.

Response. A change has been made in this section. The proposed section required State units to use existing information and referral systems in the State and this requirement is given greater emphasis in the revised section. It is expected that existing resources will be used to the greatest extent possible and will not lead to duplication of already available information and referral resources.

§ 361.21 State plan for rehabilitation facilities.

Comment. It was requested by consumer self-advocacy groups that this section be revised to require specific methods for securing public participation in the development of the State's rehabilitation facilities inventory. Procedures were suggested for selecting persons to provide input into the development of the inventory with special attention to ensuring the participation of representatives peer support groups, individual disability groups, and parent advocacy groups.

Response. No change has been made in this section. The preparation of the rehabilitation facilities inventory required under the section is a State unit responsibility and it is to be prepared with the active participation of providers and recipients of service. The State units have had substantial experience in securing public participation over the years and specific Federal procedural requirements in this section seem neither appropriate nor necessary.

Comment. Representatives of private rehabilition facilities suggested that the rehabilitation facilities inventory be made a part of the basic State plan for vocational rehabilitation services and be approved for a three-year period.

Response. No change has been made in this section in this regard. The inventory of rehabilitation facilities is intended to be a listing of rehabilitation facilities and rehabilitation facility needs which are identified at any time in the State. The inventory is more of a working document than is the formal State Plan for vocational rehabilitation services and, in order to be effective, it must be updated continuously. The inventory could not be used in a meaningful manner if it were fixed at the same stage of development for a three-year period.

§ 361.22 Utilization of rehabilitation facilities.

Comment. It was suggest by a commenter that the requirements relating to the utilization of rehabilitation facilities should appropriately be directly related to the State inventory for rehabilitation facilities required under § 361.21.

Response. A change has been made in this section to link more directly the requirements affecting a State unit's utilization of rehabilitation facilities to the information gained under the State's inventory of rehabilitation facilities.

Comment. Consumer group representatives requested in their comments that the section be revised to clearly include "self-advocacy, self-help, and peer support counseling groups" within the definition of "rehabilitation facilities" required to be utilized by State units.

Response. No change has been made in this section in this regard. The term "rehabilitation facility" is defined in § 361.1 and refers to a facility where certain programs of vocational rehabilitation services are provided. To the extent that self-advocacy, self-help and peer support counseling groups maintain facilities which provide these services specified in the definition, these groups are covered by this section and their facilities are expected to be utilized by State units.

Comment. Representatives of private rehabilitation facilities requested that the section be revised to specify an "annual determination of individual and aggregate rehabilitation facility program capability relative to actual utilization" * * * including "a systematic procedure for reporting both the cost and effectiveness of services and programs provided by rehabilitation facilities."

Response. No change has been made in this section in this regard. The importance of establishing management information systems for rehabilitation facilities is recognized, but the state-of-the-art does not yet seem sophisticated enough to make possible the implementation of the suggested

requirements. The suggested revision will be again considered at a later date when management information systems for rehabilitation facilities have been more fully developed.

§ 361.31 Eligibility for vocational rehabilitation services.

The preamble to the proposed regulations included a special request for public comment on two areas of program development covered in this section. These areas were: (1) A proposed new procedure for providing an interim determination of eligibility for certain applicants for State vocational rehabilitation services and (2) a proposal for the addition of a special evaluative requirement for applicants with specific learning disabilities in order to determine whether they also have physical or mental disabilities. As a result of these requests for public comment, a large number of comments were received on these matters and changes were made in this section.

Interim Determination of Eligibility

Comment. The section, as proposed, provided for an opportunity for an interim determination of eligibility to be made by State units in the case of applicants who have records of physical or mental disability and a demonstrated difficulty in securing employment because of their disability. Under the proposed approach a State unit would have been able to initiate a program of vocational rehabilitation services to an individual immediately at the time of his or her application because of the strong likelihood on the basis of the presenting case records that the individual would be found eligible after a formal evaluation of eligibility is completed.

This approach was proposed as an option which a State unit might choose to adopt. It was not proposed that each State unit be required to adopt the interim eligibility approach and the proposal presented an opportunity for demonstrating the value of accelerated service delivery in these special cases. Public comment had specifically been invited concerning those factors which might be considered in developing criteria for making an interim determination of eligibility to assist in demonstrating the potential effectiveness of the approach. Public opinion was also invited on whether these criteria should be uniformly applied in all State unit programs. The overwhelming majority of the approximately 35 comments received on this proposed section were received from State units and these comments were generally unfavorable.

The State units in their comments did not always appear to have recognized the optional nature of the proposal, and indicated a fear that an interim determination of eligibility would violate sound casework procedures, could easily lend itself to abuse or misuse, and could lead to serious problems for both the State unit and the handicapped person, if on the basis of a more careful evaluation the individual were eventually found in fact not to be eligible. Special concern was directed to the possibility that an audit exception would be taken if an individual were determined to be ineligible after a program of services had been initiated. It was also suggested that the interim eligibility option was not necessary because the procedure for an extended evaluation of vocational rehabilitation potential already was available to a handicapped person of the type who might be assisted under the interim eligibility option.

Response. No change has been made in this section even though State unit comments were generally negative. The need for finding new ways to accelerate service delivery is so great that the effectiveness of the interim eligibility approach deserves to be demonstrated. It is important to remember this provision is optional and not mandatory. It is intended solely for use with those persons who are highly likely on the basis of presenting information to be found eligible. As such, these individuals are far different from those for whom the extended evaluation of rehabilitation potential is indicated, since in these latter cases it is the great difficulty in determining the likelihood of eligibility option will have done so consistent with all Federal regulatory requirements and will therefore not be liable to audit exceptions in relation to this practice.

Eligibility for individuals with specific learning disabilities

The proposed regulations also requested comment on the feasibility of adding a new procedural requirement under this section that would provide for any applicant with a specific learning disability to receive a special evaluation by the State unit under a preliminary diagnostic study to determine whether for that applicant a physical or mental disability also exists. It was noted in the proposed regulations that under the Rehabilitation Act of 1973 eligibility for services is limited to individuals with physical or mental disabilities and that a specific learning disability in and of itself could not be considered to be either a physical or mental disability for purposes of vocational rehabilitation eligibility. The special evaluation procedure was suggested as a means for determining whether the individual has a medically recognized physical or mental disability in association with the learning disability.

Comment. Approximately 300 letters were received concerning the specific learning disability issue but relatively few of the comments were directly related to the eligibility evaluation proposal under this section on which comment had been requested. The letters generally described problems encountered by persons with specific learning disabilities and requested that specific learning disability be covered as a disability category under the State/Federal vocational rehabilitation service program. It was apparent from these letters that the commenters assumed that problems related to serving individuals with specific learning disabilities under the State/Federal vocational rehabilitation service program were derived from prohibitions in the regulations rather than from limitations in the Rehabilitation Act of 1973, as amended, which the regulations interpret.

Advocates in the area of specific learning disability generally commented on the difficulties encountered in securing vocational services of any type. It was suggested that paragraph (b) of the section be revised to state clearly that the first eligibility criterion for vocational rehabilitation services is "the presence of a physical or mental disability, including any specially diagnosed specific learning disability * * *." The basis for the suggested changes in § 361.31 was a related suggestion that a new definition be added to § 361.1 of the regulations for "specifically learning disabled individuals." Under the proposed definition the term would refer to an individual "who has:

"(a) A physical disability such as an auditory, visual, or tactile perceptual problem; and/or

"(b) A mental disability such as difficulty in conceptualization, use of language, memory or control of attention."

The suggested definition further indicated that "these physical and mental disabilities can result in conditions such as dyslexia, dyscalculia, dysgraphia, agnosia, and dysphasia. Limitations caused by specific learning disabilities must result in a substantial handicap to employment to be considered vocationally handicapping.

In addition to the comments received from advocates for learning disabled individuals, approximately 40 letters

were received from State vocational rehabilitation units and these letters were in strong opposition to the imposition of requirements for special evaluations in the case of applicants with specific learning disabilities. It was pointed out in these comments that neither the Rehabilitation Act of 1973 nor the regulations implementing the Act prevent services from being provided to an individual with a specific learning disability provided that the individual can be determined to have a physical or mental disability and meet the other eligibility criteria for vocational rehabilitation services. The State units noted that any requirement for a special evaluation procedure would constitute unfair preferential treatment since such an evaluation is not mandatory for any other applicants for vocational rehabilitation service. It was also pointed out that a relatively limited proportion of the individuals covered by the requirement would probably be considered to be severely handicapped individuals as is necessary under the State's order of selection requirements and relatively few could therefore be expected to be served after so many diagnostic studies had been completed.

Response. A change has been made in this section. The number of comments received on the specific learning disability issue and the frustration experienced by learning disabled individuals, their parents, and others interested in specific learning disability in attempting to secure assistance demonstrate that there has been a serious problem in this area. A review of State unit programs indicates that many learning disabled individuals are currently being served by State vocational rehabilitation units throughout the country, but these individuals are not being served on the basis of their being learning disabled, but rather on the basis of their being determined to be otherwise physically or mentally disabled after a medical or a psychological evaluation has been carried out.

At the time that the proposed regulations were published, specific learning disability had not been recognized by the professional medical community as a physical or mental disability. Similarly, the Congress had not identified specific learning disability as a distinct disability category for the purposes of the State-Federal vocational rehabilitation service program. The proposed regulations therefore reflected the fact that persons with specific learning disabilities could be considered eligible for vocational rehabilitation services only when they were identified in terms of a more traditional medically recognized physical or mental disability.

After the publication of the proposed regulations, the situation affecting the medical recognition of specific learning disability changed dramatically. In 1980 the American Psychiatric Association published the Third Edition of the *Diagnostic and Statistical Manual of Mental Disorders* which included the specific learning disability category as a mental disability identified as "Specific Developmental Disorder." At approximately the same time, the World Health Organization published the 1980 Edition of the *International Classification of Diseases* which included the specific learning disability category as a mental disability identified as "Developmental Delay Disorders."

The 1980 publication of these materials by the medical community has created a totally new environment for establishing the vocational rehabilitation eligibility for persons with specific learning disabilities. On the basis of this new recognition of specific learning disability, individuals may now be considered to be disabled solely on the basis of their being diagnosed as specifically learning disabled. It will no longer be necessary for an individual seeking vocational rehabilitation eligibility to present himself or herself to the State vocational rehabilitation unit in terms of another physical or mental disability.

Vocational rehabilitation activities in the area of specific learning disability in the past have been hampered by the fact that there are so many divergent opinions about causative factors of specific learning disability which has made it difficult for diagnosticians to determine whether or not a more tradition physical or mental disability did, in fact, exist in all cases. As a result, learning disabilities have generally been identified in educational terms on the basis of functional limitations manifested by poor performance in the classroom and this type of diagnosis has not been considered an adequate substitution for the medical or psychological evaluations required of other disability groups served under the State/Federal vocational rehabilitation program.

The National Advisory Committee on Handicapped Children developed the basic Federal definition of "specific learning disability" which is specified in Section 620(b) (4) of the Education of the Handicapped Act, as amended, and in the regulations implementing the Act. According to this definition, a specific learning disability is "a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, which may manifest itself in an imperfect ability to listen, think, speak, read write, spell, or to do mathematical calculations. The term includes such conditions as perceptual handicaps, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia. The term does not include children who have learning problems which are primarily the result of visual, hearing, or motor handicaps, of mental retardation, or emotional disturbance, or of environmental, cultural, or economic disadvantage." (34 CFR Part 300 Assistance to States for Education of Handicapped Children, § 300.5 (formerly § 121a.5)).

Under this educational definition, learning disabled individuals are those individuals whose disabilities are reflected in a severe discrepancy between achievement and intellectual ability in such areas as oral expression, listening comprehension, and mathematics reasoning. Although there may be a more traditional physical or mental disability identified in association with the educationally identified specific learning disability, it is generally the specific learning disability itself which is the source of clinical concern to the individual, his or her parents, and the professions providing services.

Neither the American Psychiatric Association nor the World Health Organization has developed definitions of "specific learning disability" which are readily applicable to the State vocational rehabilitation service programs in operational terms. Both of these organizations have identified specific learning disorders as mental disabilities, however, and this recognition will be applied to the State vocational rehabilitation service programs. The eligibility for vocational rehabilitation services of an individual with a specific learning disability will be determined in the same manner as is carried out for any other handicapped individual with a mental disability. This means that a preliminary diagnostic study to determine the individual's eligibility must include an examination by a physician skilled in the diagnosis and treatment of mental or emotional disorders or by a licensed or certified psychologist, or both, as is required under Section 103 of the Rehabilitation Act of 1973, as amended.

When a learning disabled individual is found eligible for vocational rehabilitation services, he or she will be provided service in the same manner as other handicapped individuals and will

be directly covered by State policies and procedures including those affecting the order of selection for service. After establishing that a mental disability exists, for example, it will be necessary to establish that the learning disabled individual meets the other criteria for vocational rehabilitation eligibility regarding a substantial handicap to employment for the individual and the likelihood that providing vocational rehabilitation services will benefit him or her in terms of employability.

Although the interest in developing a special definition of specific learning disability for vocational rehabilitation purposes is recognized, a special definition is not being added to the regulations.

Vocational rehabilitation regulations do not include definitions of other groups of mentally disabled persons, and the recognition of specific learning disability by the American Psychiatric Association and the World Health Organization would appear to eliminate any need for a special definition in this area.

A special evaluation requirement for all applicants with specific learning disabilities is similarly not being added because of the fact that special evaluations are not required of any other applicants for vocational rehabilitation service and because of the great expense which such a requirement would impose on State units.

This challenge appears now to be primarily one of program management and implementation. The Commissioner of the Rehabilitation Services Administration is therefore undertaking a number of special activities to ensure that learning disabled individuals will be effectively served by State vocational rehabilitation programs. Among these special activities are the following:

—A Rehabilitation Services Administration Task Force has been established to develop a comprehensive action plan for serving learning disabled individuals with special attention to the problems of determining eligibility and evaluating the severity of the disability. This Task Force has a membership which includes State vocational rehabilitation unit personnel, representatives from other Federal agencies, and representatives of voluntary organizations concerned with individuals with specific learning disability.

—Rehabilitation Services Administration case reporting materials are being reviewed for revision necessary to identify learning disability as a disability on which eligibility for vocational rehabilitation services can properly be based.

—Guidance materials are being prepared for State vocational rehabilitation units to ensure that learning disabled persons who might be eligible for vocational rehabilitation services will be given the opportunity to receive those services and that those who are eligible will be served effectively.

—Finally, "The Rehabilitation of Individuals with Specific Learning Disabilities" was identified as special priority under the rehabilitation short-term training program in FY 1980 and a national workshop in this area of vocational rehabilitation program development will be conducted, in order to provide an opportunity to explore the problems relating to this issue more fully.

§ 361.32 Evaluation of vocational rehabilitation potential: Preliminary diagnostic study.

Comment. Some State units indicated confusion as to whether a generally medical examination was routinely required within a preliminary diagnostic study. Many State units commenters also requested that the term "current" be defined in paragraph (c) in relation to the reference to a handicapped individual's "current" health status.

Response. No change has been made in this section. A general medical examination is not routinely required of all applicants for State vocational rehabilitation services. Whether a general medical examination is in fact necessary will depend on a number of factors concerning each individual situation, such as the type of disability, the amount of previous documentation concerning the disability, the recency of the onset of the disability, the progressiveness or stability of the condition, and the severity of the disability. No arbitrary definition of "current" can be provided by these regulations since sound casework practice requires an individualized assessment of each individual. A key to ensuring an effective process for conducting an evaluation of rehabilitation potential would appear to be the quality of the medical consultation available to the State unit.

§ 361.33 Evaluation of vocational rehabilitation potential: Through diagnostic study.

Comment. A large number of comments concerned the specific procedures to be followed in carrying out a thorough diagnostic study. Some comments were concerned with the scope of the visual evaluation to be carried out under paragraph (d) for deaf individuals and whether the examination should be concerned with "visual system," "visual field," or "visual acuity." Still other comments were concerned with the coverage of the requirement for a visual evaluation and requested that the term "deaf" be defined so that a State unit would be able to know which of its clients required the evaluation. Other comments were concerned with specifically identifying the practitioner to be recognized as qualified to perform the necessary evaluation. Still other comments requested that the section be further revised to add specific procedural requirements covering certain categories of handicapped individuals not yet highlighted in the Section.

Response. Changes have been made in this section. In light of the large number of comments and the nature of the comments received on this section, the Secretary has carefully reviewed the special procedural requirements affecting deaf, blind, and mentally retarded individuals and considered whether these requirements needed to be included within these regulations. It was noted that the level of regulatory specificity in the area of casework procedures and the application of these procedures to single disability groups made this section substantially different from all other sections of the regulations implementing the Rehabilitaion Act of 1973. This section was also noted to be unique in its establishment of professional practice requirements and its identification of the types of professionals who might participate in the evaluation process.

Because of its level of specificity, the material in this section appeared to be inappropriate for retention in Federal regulations and more appropriate for inclusion within guideline material. It is being removed from these regulations, therefore, and will be integrated within Rehabilitation services Manual materials currently being developed.

Since the Rehabilitation Act of 1973 does not require special processes for individual with any specific disability, there does not appear to be a basis for these regulations to do so. Similarly, since the Act does not address practitioner professional qualifications, there is no clear basis for these regulations to impose national standards on practitioners. It similarly does not appear to be equitable to identify certain disabilities for special discussion in these regulations and not others. Since this regulatory material appears to be interpreted by many interest groups as reflecting a special vocational rehabilitation priority for individuals

with certain disabilities, it can be expected that each disability will eventually request a discussion in this section of its own special evaluation needs. The diagnostic procedures reflected in this section represent sound practice and State units can be expected to continue to carry them out in accordance with State licensure and certification laws.

§ 361.35 Certification: Eligibility; extended evaluation to determine vocational rehabilitation potential; ineligibility.

Comment. Some comments pointed out that previous vocational rehabilitation regulations had required that the State unit prepare a certification of ineligibility only when it was clear "beyond any reasonable doubt" that the individual was not eligible for vocational rehabilitation services. It was noted that the proposed regulation omitted the term "beyond any reasonable doubt" and it was requested that the term be restored in the final regulations as a standard against which State unit performance might be measured.

Response. A change has been made in this section. The term "beyond any reasonable doubt" had been omitted from the proposed section because of the great difficulty in objectively applying it as a standard. The need for a standard is recognized, however, and paragraph (c) has been revised by adding the term "on the basis of clear evidence" to indicate that time when a certification of ineligibility is to be prepared. It is hoped that this reliance on objective evidence will make it easier to apply the standard to State unit operations and will make reviews of State unit performance easier to conduct.

Comment. Some consumer representatives requested that paragraph (c) be revised to provide for an automatic referral to the State's independent living program of all persons found ineligible for vocational rehabilitation.

Response. No change has been made in the section. Persons are found ineligible for vocational rehabilitation services for a number of reasons and not all can be automatically considered eligible for independent living services. Referral to the State's independent living program is therefore best done on an individual basis only where appropriate to the needs of the person who has been found to be ineligible for vocational rehabilitation.

§ 361.38 Order of selection of services.

Changes. A change has been made in paragraph (a) of this section to limit coverage of the State's order of selection procedures to those handicapped individuals who have been determined to be eligible for vocational rehabilitation services. This change is in line with Section 101(a)(5)(A) of the Act which requires the order of selection to go into effect when vocational rehabilitation services cannot be provided to all "eligible handicapped individuals who apply for such services."

§ 361.40 The individualized written rehabilitation program: Procedures.

Comment. A number of comments from State units pointed out the inconsistency between the requirement in paragraph (c) that the handicapped individual or his representative sign a "redeveloped" individualized written rehabilitation program and the fact that there is no similar requirement for a signature at the time that the individualized written rehabilitation program is first developed. The State units were almost evenly split between those who wished signatures to be required at all stages of program development and those who did not think that it should properly be imposed as a Federal requirement at any time.

Response. A change has been made in this section. Paragraph (c) has been revised to eliminate the specific requirement for a signature at the time that an individualized written rehabilitation program is redeveloped. Each State unit is responsible nonetheless for developing and following procedures to assure that there is evidence that handicapped individuals have in fact agreed to the terms of any redeveloped individualized written rehabilitation program. Securing the signature of a client or his or her representative is an effective approach which may be adopted by State units but other approaches may also be used to document client agreement to the terms of an individualized written rehabilitation program.

Comments. Representatives of disabled persons suggested that the section be revised to require State units to routinely advise consumer self-help groups and other representatives of handicapped persons of all procedures and requirements affecting the developing and reviews of individuals written rehabilitation programs.

Response. A change has been made in this section. Paragraph (a) has been revised to ensure that handicapped individuals receiving services under individualized written rehabilitation programs are fully aware of the procedures in effect for developing and redeveloping their individualized service program. This requirement is specific to those handicapped individuals receiving vocational rehabilitation services and is not generalized to other handicapped persons in the State. The section of information about procedures affecting the individualized written rehabilitation program.

§ 361.41 The individualized written rehabilitation program: Content.

Comment. A number of commenters objected to paragraph (b), as proposed, which appeared to them to indicate that individualized education plans being developed for handicapped young people must be fully integrated within individualized written rehabilitation programs. This requirement, as interpreted by these commenters, seemed unnecessarily burdensome since individualized education plans are not only very detailed and complex but also are educational in focus and are therefore not fully relevant to the needs of the State vocational rehabilitation unit.

Response. A change has been made in this section. Paragraph (b) has been revised to more accurately reflect the intent that the preparation of the individualized vocational rehabilitation and special education plans be coordinated to the greatest extent possible. It is not expected that the content of an individualized education plan will be fully integrated within an individualized written rehabilitation program. It is only required that the relevant content of an individualized education program will be summarized within the individualized written rehabilitation program so that its findings can contribute meaningfully in the identification and achievement of vocational goals for the handicapped individual being served.

§ 361.42 Scope of State unit program: Vocational rehabilitation services for individuals.

Comment. A commenter pointed out that a very important service for many deaf and blind clients of State vocational rehabilitation units is note-taking but the list of vocational rehabilitation services in paragraph (a) did not specifically identify note-taking as a service. It was requested that the list be revised to include this assistance needed by so many sensory disabled persons.

Response. A change has been made in this section since note-taking services are, of course, frequently provided by

State vocational rehabilitation units. Because of the importance of these services, the list has been revised to specify clearly that note-taking services may be provided by State units.

Comment. A number of State units commented favorably about the fact that "maintenance" and "transportation" were identified in paragraph (a), as proposed, as supportive services provided only to assist the handicapped individual to derive the full benefits from the other vocational rehabilitation services being provided to achieve a vocational rehabilitation objective.

Response. The section has not been revised in relation to the supportive vocational rehabilitation services. It is noted that in addition to "maintenance" and "transportation" there are other vocational rehabilitation services which may be provided only to assist an applicant to determine his or her eligibility or a recipient of vocational rehabilitation services in achieving a vocational rehabilitation objective. These other supportive services are "services to members of a handicapped individual's family," "interpreter services for deaf and deaf-blind individuals" and "reader services, rehabilitation teaching services and orientation and mobility services for blind individuals." The note-taking services added to paragraph (a) are also supportive services which would not be provided to a handicapped individual independent of other vocational rehabilitation services.

361.45 Standards for facilities and providers of services.

Comment. Some commenters noted that paragraph (b) specifies areas for which the State unit must establish written standards relative to rehabilitation facilities. It was pointed out that this regulatory material had been located in the section covering the "establishment of rehabilitation facilities" in earlier vocational rehabilitation regulations and that the more general application of these standards because of their relocation under this section makes some of the identified areas inappropriate.

Response. A change has been made in this section. Paragraph (b) has been revised to eliminate "personnel administration and management" from the areas required to be covered by State unit standards for rehabilitation facilities. State units may nonetheless wish to establish and maintain standards covering the qualifications of personnel employed in rehabilitation facilities utilized in the State vocational rehabilitation service program.

Comment. Representatives of private rehabilitation facilities recommended that paragraph (b) be revised to recognize the Commission on Accreditation of Rehabilitation Facilities (CARF) standards and to establish CARF accreditation as evidence of the adequacy of facilities.

Response. No change has been made in this section in this regard. Under Section 101(a)(7) of the Rehabilitation Act of 1973, State units are required to establish and maintain within their State plans minimum standards governing the facilities utilized in the provision of vocational rehabilitation services. Since the authority for establishing these standards is assigned to the State units under the Act, it would not be appropriate for Federal regulations to specify any single set of nationally recognized standards currently applicable to rehabilitation facilities. A State unit may independently, of course, select the Commission on Accreditation of Rehabilitation Facilities standards to be applied as the State unit standards for facilities in the State.

361.46 Rates of payment.

Comment. Representatives of private rehabilitation facilities requested that this section be revised to require State unit payments to vendors at rates no less than the actual cost of services provided.

Response. No change has been made in this section. A Federal regulation uniformly requiring reimbursement of actual costs does not appear either appropriate or cost-effective.

The State units are responsible for administering State service programs as economically as possible and it is noted that many vendors elect to charge State units and other public agencies at rates less than the actual cost. A Federal regulatory requirement preventing this practice would therefore neither be economical nor in the best public interest.

§ 361.48 Administrative review of State unit action and fair hearing; review by Secretary.

Comment. Comments from both State units and advocates for handicapped persons indicated some confusion about whether the opportunity for the Secretary of Education to review a State unit decision was available to applicants for vocational rehabilitation services as well as to clients of the State units. The proposed section had described this recourse as one which only recipients of services might pursue. Some comments suggested that the provision should apply to both applicants for services and recipients while others found the provision to be costly, inefficient, and nonproductive and suggested that it be removed completely from the regulations.

Response. A change has been made in this section. The review by the Secretary of Education of a State unit director's decision is limited to dissatisfactions between a handicapped individual and the State unit in connection with decisions or determinations made under an individualized written rehabilitation program. Since the Act limits this option to those matters arising in connection with an individualized written rehabilitation program, it can only apply to recipients of service and cannot be exercised by an applicant. Similarly, since this option is specifically required under the Act, it cannot be removed from the regulations. Some editorial revisions have been made in the section however to attempt to eliminate confusion about those processes applicable to applicants and those available only to recipients.

361.49 Protection, use and release of personal information.

Comment. Some comments suggested that this section be revised to remove any possible conflict with specific State laws and regulations.

Response. No change has been made in this section in this regard. State laws and regulations vary so much that it is impossible for the Federal regulations to be in complete agreement with all of them. It is important that there is a national standard in effect relating to personal information even though there may be some inconsistencies with statutes and regulations in some States.

Comment. A number of commenters suggested sharing information with other public programs, especially education agencies, and with the affected individual without regard as to the source of the information.

Response. No change has been made. A considerable amount of information is received by State vocational rehabilitation units from other agencies operating under other laws and regulations many of which specifically restrict further release even to the individual. The section provides for the sharing of information generated by the State vocational rehabilitation unit with other agencies and with the individual in a reasonable manner but with important safeguards.

Comment. Some commenters suggested that an individual must have access to all information in his or her record, especially during an administrative review or a fair hearing.

in order to prevent any violations of civil rights.

Response. No change has been made in this regard. The section, as proposed, provided for information to be obtained by the individual or by his or her representative, when needed.

Comment. Some commenters were concerned about the vagueness of paragraph (e)(2) relative to the release of information to any legally constituted public investigative authority.

Response. A change has been made to restrict the release of information for investigative purposes to only those situations which arise in connection with law enforcement, fraud, or abuse. Release will be possible in these situations only if permitted by Federal or State law or by Federal or State regulations.

Other changes. The section has been revised in a number of places to make it easier to understand.

§ 361.55 Scope of State unit program; special materials for blind individuals and for deaf individuals.

Comment. Some comments were received from advocates of deaf persons requesting that the special materials for blind, deaf, and deaf-blind individuals under this section be identified as mandatory vocational rehabilitation services required to be provided by each State unit. The section, as proposed, identified the provision of these materials as a permissive service which a State unit may or may not choose to provide.

Response. No change has been made in this section. Section 103 of the Rehabilitation Act of 1973 distinguishes certain vocational rehabilitation services which *must* be made available to handicapped individuals in each State from those vocational rehabilitation services which *may* be made available at the discretion of the State unit. The special services for blind, deaf, and deaf-blind individuals covered under this section are not mandatory under the Act and cannot therefore be made mandatory by regulation.

§ 361.71 Vocational rehabilitation services to individuals.

Comment. A number of State units criticized the proposed policy in paragraph (b) allowing Federal financial participation in the costs of native healing practitioners when serving handicapped American Indians. The use of native healing practitioners was seen both as violating the commitment of the State/Federal vocational rehabilitation program to medical practice meeting established standards of professional excellence and as discriminating against religious and ethnic groups whose comparable modes of treatment were not specifically covered in the section. State units also indicated some confusion about identifying those individuals who might perform as native healing practitioners under this section.

Response. A change has been made in this section to clarify that a native healing practitioner qualified to participate in the State vocational rehabilitation service program must be an individual recognized as such by the Indian tribe. The authority for Federal financial participation in the costs of native healing practitioner services has been retained for those State units which wish to utilize these services, however.

It must be noted that native healing practitioner services are not considered medical services under the State/Federal vocational rehabilitation program and are not expected to be regulated in the same manner as more traditional medical and medically related health services. Native healing practitioner services are considered to be "other goods and services" under the State vocational rehabilitation reporting system.

American Indian culture enjoys unique protection under the Indian Self-Determination Act and the American Indian Religious Freedom Act of 1978 and because of this legislation, the special consideration given to native healing practitioners is important and does not discriminate against other cultural groups. The use of native healing practitioner services is, of course, at the discretion of the State unit. These services would only be used when necessary for assisting a handicapped American Indian to achieve a vocational rehabilitation goal.

§ 361.73 Establishment of rehabilitation facilities.

Comment. Concern was expressed by representatives of private rehabilitation facilities and State units about the $200,000 limit on the Federal share in the costs of projects for the establishment of rehabilitation facilities. It was pointed out that this ceiling had been in effect for a number of years, but that increases in costs of the establishment of rehabilitation facilities in recent years have made the $200,000 limit no longer feasible to maintain. It was requested that the limit be raised.

Response. A change has been made in this section. The $200,000 ceiling is clearly inadequate in light of current economic conditions and the ceiling has been raised to $300,000.

§ 361.87 Methods of computing and making payments.

Changes. Paragraph (b) has been revised to reflect the fact that payments are now made to States through a Letter of Credit system.

§ 361.91 Appeals procedures and expenditures settlement.

Changes. A change has been made in this section to remove the reference to the Department of Health, Education, and Welfare's grant appeals process.

§ 361.151 Special project requirements.

Changes. Paragraphs (b) and (c) have been revised to clarify that grants are made to the State agency and not to the designed State unit under the innovation and expansion grant program.

§ 361.171 How to request a hearing.

Changes. Paragraph (c) has been revised to require that any hearing is held in settings free from any barriers to the participation of handicapped persons.

PART 365—THE STATE INDEPENDENT LIVING REHABILITATION SERVICES PROGRAM.

§ 365.1 The State independent living rehabilitation program.

Changes. This section has been revised to describe the coverage of the regulations under Part 365. This change is intended to bring about greater consistency with Department of Education regulatory format. This section has also been revised to specify those regulations and those EDGAR definitions which apply to the State independent living rehabilitation service program. This change is similarly intended to bring about greater consistency with Department of Education regulatory format.

Definitions

Comment. Some criticism was received concerning the proposed definition of "severely handicapped individual" and its reliance on a comparison with an individual who might be receiving vocational rehabilitation services under Part 361. The definition was seen by both State units and advocates for handicapped persons as imprecise and difficult to apply because of this comparison.

Response. A change has been made and the definition was revised in order to remove any direct comparison with the vocational rehabilitation service program. A severly handicapped individual receiving State independent living rehabilitation services will nontheless be expected to be in greater

need of service than an individual receiving vocational rehabilitation services under Part 361 and requiring a program of service appreciably more costly and of greater duration than is generally necessary for a State vocational rehabilitation client.

§ 365.2 The State plan: General requirements.

Changes. A new paragraph (e) has been added to require that the State plan is always available to interested parties for review and inspection.

§ 365.8 State unit studies and evaluations.

Comment. One commenter requested clarification on whether a State unit which has already conducted comparative studies of different methods for providing independent living rehabilitation services in the past, will need to repeat these studies or conduct additional studies after the new State plan program goes into effect.

Response. The section has been revised to clarify that State units which conducted comparative studies of alternative methods of service delivery in the past and which developed independent living service programs prior to the enactment of the 1978 Amendments to the Rehabilitation Act of 1973 would not be required to repeat these studies. When the results of earlier studies are not longer considered timely, however, the State unit will wish to undertake additional comparative studies.

Comment. Additional comment on this section requested revisions to require that consumer self-advocacy groups and parent advocates be fully consulted in *all* aspects of the conduct of State studies and evaluations.

Response. The section has not been revised to require any additional consultation with representatives of handicapped persons in carrying out State studies and evaluations since § 365.10, as proposed, already provided for the establishment of an overall Advisory Committee which must, among other things, "participate actively in the periodic evaluations of the State's independent living rehabilitation service program". This requirement appears sufficient to ensure appropriate consultation. An additional required consultation would seem to be duplicative of the role of the Advisory Committee, the membership of which will consist of severely handicapped persons and their representatives.

§ 365.9 State plan and policy development consultation.

Comment. A number of comments from State units suggested that the requirement for the establishment of a formal Advisory Committee was an excessive administrative burden which exceeded the requirements of the Act and requested the the Advisory Committee requirements be deleted. These comments indicated that Advisory Committees of the type being required under this section frequently misrepresent the view of the general population of handicapped persons and represent a costly and cumbersome approach to policy development.

Response. No change has been made in this regard. The Advisory Committee approach appears to be the most effective way to ensure that the views of severely handicapped persons are fully considered by State units in their development of State programs. Section 705 of the Act requires that handicapped persons have a substantial role in developing the State plan and the Advisory Committee approach is the most economical way to meet this statutory requirement fully.

Comment. Comments from consumer self-advocacy groups requested that the functions of the Advisory Committee be more fully specified and its role strengthened.

Response. No change has been made. The specific responsibilities of the Advisory Committee will vary from State to State under arrangements worked out between the State units and the members of the Committees. Although the Commissioner will provide general guidance concerning the role and functions of Advisory Committees for independent living rehabilitation programs throughout the country, a rigid specification of their roles and functions cannot properly be established by Federal regulations.

§ 365.15 Other administrative and fiscal requirements.

Changes. A few changes have been made in paragraph (a) to complete the list of vocational rehabilitation regulations which apply to the State plan for independent living rehabilitation services. All references to Part 361 requirements affecting the State vocational rehabilitation agency are understood to apply to the State unit for purposes of Part 365.

§ 361.32 Determination of eligibility for independent living rehabilitation services.

Comment. Some comments indicated confusion about whether the purpose of the evaluation conducted for applicants for service under this section was to be limited to matters of eligibility determination or whether the evaluation would also be designed to determine which independent living rehabilitation services would be of most benefit to the individual. It was suggested that a distinction be made between the "preliminary diagnostic study" and the "thorough diagnostic study" aspects of the evaluation process, as is done under Part 361 for the State plan for vocational rehabilitation services.

Response. A change has been made in this section. Every effort is being made to keep the evaluations of applicants for independent living services as simple and efficient as possible since applicants for service under this program are expected to be persons who have been in frequent contact with a great many service-providing agencies, organizations and facilities. Emphasis has been given therefore to simplifying eligibility determination procedures to the greatest extent possible. The section has been revised, however, to clarify that the purpose of the evaluation for an applicant is both to determine his or her eligibility for service and to identify those services most necessary to assist in improving the capacity for independent living.

Comment. Questions were asked by representatives of consumer self-advocacy groups about the responsibility for payment for the evaluations of State unit clients. These groups were concerned that there might be an expectation that centers for independent living and other facilities cooperating in the State independent living service programs might be required to pay for evaluations for applicants for service under the State programs.

Response. No change has been made in this regard § 365.6 provides that the responsibility for all matters affecting the determination of eligibility for any severely handicapped individual rests with the State unit and may not be delegated to any other agency, facility, or individual. The payment for any evaluation necessary to make an eligibility determination is clearly included within the scope of this State unit responsibility. Under the State unit's independent living service program, it is expected that a large number of cooperative working arrangements will be developed with local agencies and facilities—especially since at least 20 percent of the funds available to the State must be granted to these local agencies and facilities under this program. It is possible that some of

the funding arrangements developed in relation to State unit subgrants will include special provision for the payment of evaluations for applicants for State services but these arrangements will all be completed with the full concurrence of the participating centers for independent living.

§ 365.34 Order of selection for services.

Comment. Substantial objection was received from many commenters about the proposed provision which enabled the Rehabilitation Services Administration to set special priorities at any time to identify "other groups of Severely handicapped individuals" to be served first within the State's order of selection. It was pointed out that this provision could be seriously disruptive of ongoing State service efforts and was an improper Federal regulatory imposition. To allow the Rehabilitation Services Administration to change priorities "from time to time" was considered especially inefficient during the early years of the program when funding could be expected to be limited.

Response. A change has been made in this section. The criticisms appear valid and the section has been revised to remove the potential for Federal priority setting beyond the scope of those State unit priorities identified within its established order of selection.

§ 365.35 The case record for the individual.

Comment. Some commenters pointed out an apparent duplication between the case record and the individualized written rehabilitation program requirements which relate to the periodic review of a client's progress.

Response. A change has been made in this section. Although the case record and the individualized written rehabilitation programs are separate documents with distinct purposes, the proposed recording requirements in both documents covering the periodic review of a client's progress seem to be unnecessary. This recording requirement has been removed from the case record section, therefore, and has been retained only in § 365.36 in relation to the preparation of the individualized written rehabilitation program.

§ 365.36 The individualized written rehabilitation program for independent living rehabilitation services.

Comment. As was discussed in connection with § 365.35, concern was expressed by commenters about some duplication in recording requirements under the case record and the individualized written rehabilitation program.

Response. Changes have been made in the section. As a result of these changes, the annual review of an individual's progress under the State's independent living service program is now covered in connection with the individualized written rehabilitation program only.

Other changes. Some clarification of the purpose of the annual review has also been added and the section has been revised to specify that the responsibility to initiate annual reviews of ineligibility decisions rests with the individual after the first review has been conducted.

Comment. Advocates for learning disabled persons requested that paragraph (e) be revised to require that an individualized written rehabilitation program for independent living services not only be coordinated with individualized service plans prepared under related programs, but also be coordinated "with the appropriate educational agency."

Response. No change has been made in this regard. Section 705(a)(4) of the Rehabilitation Act of 1973, as amended, requires that the individualized written rehabilitation program for independent living services be coordinated with individualized service planning for handicapped persons being undertaken under the related vocational rehabilitation, developmental disabilities, or special education programs. Paragraph (e) of the proposed section covered this coordination in the manner required under the Act.

It is also noted that § 1363.12 of the proposed regulations covers coordination with other public agencies and there is a requirement for cooperative agreements and arrangements with other public agencies, including educational agencies, under that section. Programming for independent living rehabilitation services affects a large number of related programs and extends far beyond those special aspects of joint programming relevant to education agencies.

§ 365.37 Scope of State unit program; independent living rehabilitation services for individuals.

Comment. Some State unit commenters indicated confusion about whether each independent living service listed in paragraph (a) of the proposed section was expected to be available to all clients. These commenters were not sure whether each service was mandatory under the Act or whether the State unit had discretion in selecting those services which are to be made available in the State.

Response. A change has been made in this section. Section 702 of the Act lists those independent living services which may be made available to severely handicapped clients of the State units. None of these services is required under the Act, however, and a State unit is not required to provide any one of the potentially available services. The State unit is required to list in its State plan those services which it does in fact choose to provide to its severely handicapped clients. Those services which are available under any State program will of course be provided to an individual State unit client only to the extent that they are appropriate and needed. Paragraph (a) of this section has been revised to clarify the discretionary role of the State unit in selecting those services to be made available in the State.

Comment. Additional comment under this section related to the proposed policy in paragraph (b) indicating that when a severely handicapped individual is eligible for services under both the State vocational rehabilitation service program and independent living service program, services should be provided only under vocational rehabilitation service funding authorized under Part 361. Although the policy was generally supported, it was suggested that in the case of attendant care services for an employed severely handicapped individual, concurrent assistance might be necessary under both the State's vocational rehabilitation and independent living rehabilitation programs.

Response. A change has been made in this section. The proposed policy limiting concurrent eligibility was considered necessary because the Act indicated that an appropriate purpose of providing independent living services would be to assist an individual to "continue or engage" in employment, as well as to assist him or her in functioning more independently in family or community. Since the vocational rehabilitation service program can expect to have far greater resources available to it in the immediate future, the use of independent living service funds for vocational rehabilitation clients does not appear to be an efficient way to administer the independent living service program. The section has been revised, however, to clarify that concurrent eligibility is prohibited only in those cases where the purpose of the independent living service program might be to assist the individual to

"secure or engage" in employment. Where the purpose of the independent living service program is to help an individual to "continue" in employment, such as in the case of a severely handicapped individual in need of attendant care services to retain his or her job, the provision of independent living services would be possible.

§ 365.38 Case closure.

Comment. State unit commenters indicated that the proposed section was somewhat unclear in that it appeared to cover recording requirements rather than requirements related to case closure.

Response. The section has been revised to clarify that a case is closed when those independent living service objectives identified for an individual have been achieved. It is recognized that intermediate objectives will be established, objectives will change, and new objectives will be identified for State unit clients during the time they receive services from the State units. The case closure requirement applies only when all independent living rehabilitation service objectives have been achieved for an individual being served under an individualized written rehabilitation program.

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Part XX

Department of Interior

Heritage Conservation and Recreation Service

Archaeological Resources Protection Act of 1979; Proposed Uniform Rulemaking and Notice of Public Hearings

DEPARTMENT OF THE INTERIOR

Heritage Conservation and Recreation Service

36 CFR Part 1215

Archaeological Resources Protection Act of 1979; Proposed Uniform Rulemaking and Notice of Public Hearings

AGENCY: Heritage Conservation and Recreation Service, Department of the Interior.

ACTION: Proposed Rulemaking and Notice of Public Hearings.

SUMMARY: This proposed uniform rulemaking, implementing the provisions of the Archaeological Resources Protection Act of October 31, 1979 (Public Law 96-95), is in response to Section 10(a) of the Act. This uniform rulemaking will serve as the foundation and basic policy standard for additional regulations which Departments and independent agencies may promulgate pursuant to Section 10(b) of the Act.

DATES: Written comments are invited and should be submitted on or before March 20, 1981. Participation is invited at public hearings to be held February 7, 1981; February 14, 1981; February 21, 1981; February 28, 1981; March 7, 1981; and March 14, 1981. See Supplementary Information below for details.

ADDRESSES: Written comments should be forwarded to the Director, Heritage Conservation and Recreation Service, CODE: W512, Department of the Interior, 440 G Street, N.W., Washington, D.C. 20243. Public hearings will be held in Albuquerque, New Mexico; Anchorage, Alaska; San Francisco, California; Denver, Colorado; Chicago, Illinois; and Atlanta, Georgia. See Supplementary Information below for details.

FOR FURTHER INFORMATION CONTACT: Charles M. McKinney, Manager, Federal Antiquities Program, Heritage Conservation and Recreation Service, Department of the Interior, Washington, D.C., 202-343-5264; Barbara Levin, Office of the Solicitor, Department of the Interior, Washington, D.C., 202-343-7957; Maxwell D. Ramsey, Tennessee Valley Authority, Norris, Tennessee, 615-632-6450; Janet Friedman, Department of Agriculture, Washington, D.C., 202-447-7711; or Garland P. Thompson, Department of Defense, Washington, D.C., 202-272-0517.

SUPPLEMENTARY INFORMATION: The public is invited to submit written comments on the proposed rulemaking. Comments should include the name and address of the person making the submission, should identify the specific section(s) and/or paragraph(s) commented on, should state reasons for the comments and, where appropriate, suggest an alternative approach.

Public Hearings

Public hearings were held during March and April 1980, in Denver, Colorado; Phoenix, Arizona; Portland, Oregon; and Knoxville, Tennessee, following publication of a notice of public hearings in the March 19, 1980, issue of the Federal Register (45 FR 17622). These public hearings were held to provide an opportunity for early public input into the rulemaking process and to initiate an early dialogue among various groups interested in the use and/or protection and conservation of archeological resources. Six additional hearings will be held during the comment period on the proposed rules according to the following schedule:

Chicago, Illinois—February 7, 1981. University of Illinois, Chicago, Circle Campus, Room 509-10, 750 South Halstead Street.

Host: National Park Service, Department of the Interior.

Atlanta, Georgia—February 14, 1981: Marriott Hotel, Courtland and International Blvd., N.E.

Host: Department of the Army, Department of Defense.

Albuquerque, New Mexico—February 21, 1981. Southwestern Indian Polytechnical Institute, 9169 Coors Road, N.W.

Host: Bureau of Indian Affairs, Department of the Interior.

San Francisco, California—February 28, 1981. Federal Courthouse, Room 2007, 450 Golden Gate Avenue.

Host: Department of the Army, Department of Defense.

Anchorage, Alaska—March 7, 1981. Main Auditorium, 1011 E. Tudor Road.

Host: Fish and Wildlife Service, Department of the Interior.

Denver, Colorado—March 14, 1981. Lecture Hall, Building No. 25, Denver Federal Center, West 6th and Kipling Streets.

Host: Water and Power Resources Service, Department of the Interior.

All six hearings are scheduled on Saturdays in order to provide ample opportunity for maximum public participation. All hearings are scheduled to begin at 10 a.m. and conclude by 4 p.m. Host agencies will provide local arrangements, including meeting space for a minimum of 100 persons and recording facilities, at each hearing. Charles M. McKinney, Manager, Federal Antiquities Program (Chairman, Interagency Rulemaking Task Force) will serve as the principal hearings officer, and a representative from the host agency or bureau will serve as co-hearing officer for each hearing.

Background

The Archaeological Resources Protection Act of 1979 ("the Act") has two fundamental purposes: to protect irreplaceable archeological resources on public lands and Indian lands which are subject to loss or destruction from the actions of persons who would excavate, remove, damage, alter, or deface them for commercial or personal reasons; and to increase communication and exchange of information among governmental authorities, the professional archeological community, Native Americans, collectors, and the general public toward the goal of protecting and conserving archeological resources nationwide.

Provisions of the Act which address the first purpose, protection, include requirements for a permit, issued by the appropriate Federal land manager, for any qualified person who would make use of archeological resources for the purpose of furthering archeological knowledge in the public interest. For any person who would make unpermitted (unauthorized) use of archeological resources, criminal and civil penalty and forfeiture provisions are prescribed in the Act. Basic governmentwide standards for the issuance of permits and for the implementation of penalty provisions are a principal focus of the proposed uniform regulations.

The Act directs that certain of its provisions are to be implemented through actions of the Secretary of the Interior. For this reason, a section of the proposed uniform regulations has been reserved to allow for future incorporation of regulations to provide guidance for cooperation with private individuals. These will be promulgated by the Secretary of the Interior and will be applicable to all Federal land managers.

Section 10(a) of the Act calls for uniform regulations to be written by the Secretaries of the Interior, Defense, Agriculture, and the Chairman of the Board of the Tennessee Valley Authority, as may be appropriate to carry out the purposes of the Act. Specific reference to uniform regulations is also included in section 3(l) (definition of "archaeological resource"), section 4(a) (permit appliation requirements), section 4(b) (standards for permit application evaluation, section 4(d) (permit terms and conditions), and section 10(b) (agency-specific regulations consistent with uniform regulations. The proposed rulemaking is

not limited to provisions of the Act where uniform regulations are specified. In order to meet the responsibility of carrying out the purposes of the Act and to insure the required governmentwide consistency, it is also necessary to provide a basic framework for those provisions of the Act which will be more fully implemented by separate rulemaking by individual agencies. In addition, it is important for the general public to be able to look to a single document for guidance regarding prohibited and permitted activities. Therefore, this proposed rulemaking provides general, and where appropriate, specific, procedures and guidelines covering all aspects of protecting archeological resources under the Act. Where guidelines are minimal or general, it is anticipated that agencies will establish their own agency-specific procedures through promulgation of further regulations and manuals within the scope and intent of these uniform regulations.

Major Issues

The Act and this proposed uniform rulemaking revolve around three major areas of concern: the definition of the term "archaeological resource"; the development of a permitting system to allow for the scientific excavation and removal of archeological resources from public lands and Indian lands; and the delineation of criminal and civil prohibitions and penalties.

1. *Scope of the term "archaeological resource".*

Public participation preparatory to the drafting of this proposed rulemaking revealed a high level of concern on the part of hobbyists who collect a variety of items which might be considered "archaeological resources." Concern is centered on section 3(l) of the Act which defines "archaeological resources," sections 6(g) and 7(a)(3) which exempt removal of arrowheads located on the surface of the ground from criminal and civil penalties under the Act, and section 12(b) which exempts collection of any rock, coin, bullet, or mineral which is not an archeological resource from all provisions of the Act.

Section 3(l) of the Act requires that uniform regulations expand the Act's definition of "archaeological resource" by determining what constitutes "archaeological interest," by including the examples of objects listed in the Act in a more comprehensive listing, and by excluding non-archeological paleontological specimens and items less than 100 years of age. The definition in § 1215.3(a) of the proposed rulemaking meets these requirements with an eye toward accommodating the extremely broad range of archeological resources that might be found on any of the various public lands and Indian lands as defined in the Act. The definition has to be able to account for archeological resources found throughout the coterminous United States, Alaska and Hawaii, and on islands of the Caribbean and the western Pacific. The proposed solution to this problem was found in a reasonably brief list of general classes of material remains which can be archeological resources. Where needed, the class is followed by a list of illustrative examples. It is intended that any archeological specimen will be found to fit clearly and without question somewhere among the classes of material remains. During the comment period, archeologists are encouraged to test this part of the definition against archeological resources known by them to occur in various parts of the large area covered by the Act.

Some early public suggestions were directed toward defining, for the benefit of collectors, what is not an archeological resource. Comments suggested that the definition should state that only Indian materials from the prehistoric period should be considered archeological resources, and items such as coins, bullets, bottles, rocks, mineral specimens, and surface arrowheads, should be given blanket exclusion from protection. These suggestions have been rejected on the basis that the field of archeology is not confined to the study of prehistoric Indian cultural remains and that items suggested for complete exclusion may be archeological resources which the Act was intended to protect.

It was determined that a preferable approach was to provide a flexible test for determining whether or not such items should be included. Thus, a key concept in defining archeological resources relates to whether or not the material remains in question are of "archeological interest".

Material remains are of "archeological interest" under the proposed rulemaking if, through their scientific study and analysis, information or knowledge can be obtained concerning past human life or activities. This definition is intended to incorporate the varied archeological techniques applicable to the study of material remains without resorting to a highly technical listing or description of such techniques. Whether or not an item is of archeological interest should, despite the intricacies of archeological scientific methods, be a matter of common understanding. Thus, for example, most objects of prehistoric periods are clearly of archeological interest since the application of archeological techniques to these remains may provide information pertaining to methods of manufacture, levels of technological sophistication or levels of subsistence. Moreover, the location and context of such items may be of great value to an archeologist in determining whether or not a scientific item is intrusive in the site.

Conversely, historic non-native products of industrial manufacture such as coins, bullets and bottles have little intrinsic archeological value and, if found in isolation, would generally not be of archeological interest under the definition. However, if found in the context of other material remains of archeological interest, such items may be of great value for establishing the minimum age of associated materials, for demonstrating cultural contact, for determining the function of a site now in ruin, for providing new data about historic cultures and people, or for other purposes of archeological inquiry. It is thus incumbent upon the potential collector of such items to determine whether or not a given item might be considered of archeological interest; if so, it should be left in place and, in the spirit of cooperation, reported to the Federal land manager.

With regard to arrowheads located on the surface of the ground, the Act and the legislative history (e.g., 125 CRS 14722 Oct. 17, 1979) make it clear that criminal and civil penalties under the Act are not to be imposed for their removal. However, arrowheads are archeological resources. Their removal without a permit is in violation of prohibitions in the Act and the proposed regulations; and they remain the property of the United States or the Indian individual or Indian tribe when found on public lands or Indian lands, respectively.

It should be noted that the definition of "archeological resource" in this proposal is not the sole criterion for whether or not items on public or Indian lands can be the object of personal collection. There are other statutes and regulations governing the use of public lands which may prohibit such collection notwithstanding the fact that the items are not archeological resources. For example, nothing in the Act or this proposal addresses the use of metal detectors on public lands and Indian lands. However, as stated in the legislative history (125 CRS 14722, Oct. 17, 1979), the Act does not change existing law, regulations, or policy with regard to metal detectors.

2. *Permitting system.*

Section 4 of the act provides for the permitted use of archeological resources on public lands and Indian lands. It provides for the Federal land to issue permits to qualified persons for the excavation and removal of archeological resources, and for related activities. The Act addresses several areas relating to the issuance of permits, including: minimal application content (section 4(a)); permit issuance (section 4(b)); consideration of Indian religious and cultural concerns prior to issuance of a permit (section 4(c)); specification of terms and conditions of permits (section 4(d)); suspension of permits (section 4)(f)); and others. This proposed uniform rulemaking addresses and expands on each of these areas. It attempts to provide a logical and comprehensive framework for Federal land managers to follow in providing, through the issuance of permits, for the scientific use of archeological resources on public lands and Indian lands. While this proposed uniform rulemaking provides the overall procedures and guidelines to be followed by Federal land managers and potential permittees, it is expected that, where appropriate, agencies will develop agency-specific procedures, guidelines, and administrative processes, through regulations and manuals, in order to effectively manage the permitted use of archeological resources under their immediate jurisdiction. For example, section 1215.9 of this proposed uniform rulemaking specifies certain terms and conditions which Federal land managers must include in any permit issued for the excavation or removal of archeological resources on public lands and Indian lands. In addition, paragraph (b) § 1215.9 allows the Federal land manager to define and attach to a permit such terms and conditions as may be necessary to protect other values and resources and for other purposes. This allows the Federal land manager to custom tailor the terms and conditions of a permit to meet particular requirements and circumstances of the area(s) under his/her jurisdiction, as long as they are consistent with the uniform rules and regulations.

Section 10(a) of the Act requires that this uniform rulemaking may be promulgated only after consideration of the provisions of the American Indian Religious Freedom Act (42 U.S.C. 1996). The Act further requires in Section 4(c) that if a permit issued by a Federal land manager may result in harm to, or destruction of, any religious or cultural site, as determined by the Federal land manager, then the Federal land manager shall notify any Indian tribe that may consider the site as having religious or cultural importance before issuing a permit. The purpose of Section 1215.6 of the proposed rulemaking then is to assist the Federal land manager in identifying sites that Indian tribes may consider to be of religious or cultural importance in order to facilitate the notification process under Section 4(c) of the Act and to insure that Federal agencies fulfill the policy of the American Indian Religious Freedom Act to protect and preserve for American Indians their right to freedom to believe, express, and exercise their traditional religions.

The proposed uniform rulemaking provides basic procedures and guidelines to be followed by Federal land managers when considering an application for a permit. In general, the process involves the notification of Indian tribes or groups who are in proximity to the area in question or who have expressed religious or cultural interest in the areas where archeological work is proposed to be conducted. For purposes of determining which groups constitute a bona fide tribe within the intended meaning of the Act, the regulations incorporate the Federal recognition and acknowledgement procedures adopted by the Department of the Interior. Any group that has pending a petition for acknowledgement is entitled to notice under the proposal.

It is incumbent upon the Federal land manager to give due consideration to the interests and concerns expressed by any tribe or group which responds to the notification, or any group which comes forward prior to permit issuance. Neither the Act nor this proposal require that religious or cultural concerns prevail over other interests. However, the Federal land manager should make efforts to accomomdate such concerns where appropriate. It should be noted that paragraph (h) of Section 1215.6 allows for the consideration of all present day or traditional religious practices, not merely the religious practices of Indian tribes or groups. This extension of the Act's mandate was incorporated to avoid constitutional questions arising from the consideration of only one set of religious beliefs.

As provided in the Act and this proposed uniform rulemaking, permits are required for the excavation and removal of archeological reources from public and Indian lands. The term "archaeological resources" in this statement refers to archeological resources as defined by the Act and the uniform regulations. Archeological activities on public and Indian lands not covered by the Act or the uniform regulations may require permitting under other authorities. For example, archeological activities involving resources less than 100 years of age, which includes a significant portion of the Euroamerican cultural heritage of this Nation, may require a permit under other authorities. Federal land managers should be aware that in addition to this Act, other existing secondary legislation and executive orders impose additional responsibilities for the protection of archeological resources on public lands and Indian lands.

3. *Civil Penalties.*

1215.18 Assessment of Civil Penalties

This section provides the structural framework for the procedures to be followed in assessing civil penalties. The procedures retain a great deal of flexibility in order to allow agencies to use the civil penalty in a variety of circumstances. Some agencies, for example, may be confronted with numerous violations of a minor nature, where the damage is minimal and the violations often committed unintentionally. Other agencies may be confronted with violations which involve significant resource damage, although there are fewer such occurrences. Civil penalties may be an appropriate enforcement tool in either of these situations. Individual agencies may seek to further refine the procedural outlines provided by these regulations if and when the use to which these penalties will be made becomes somewhat routinized.

If the Federal land manager has reason to believe that a person has violated the act, the regulations, or a term or condition of a permit, a notice of violation must be issued, even if assessment of a civil penalty is not contemplated. This can happen when minor, inadvertent violations occur in which imposition of a civil penalty could be viewed as overly harsh. However, issuing the notice of violation should be an effective means of educating the public about the need for diligent protection of archeological resources. The Federal land manager may also forego the civil penalty process when criminal prosecution for an offense is being undertaken. The notice of violation should be issued, nevertheless, for purposes of not foreclosing subsequent civil penalty proceedings.

If the Federal land manager determines that a civil penalty may be appropriate, a notice of assessment must be served upon the persons charged with a violation. Because the amount of a civil penalty is statutorily limited by the amount of "damage" done to the archeological resources involved, a

determination of such damage should be made by a trained archeologist. This will necessitate some delay between discovery of a violation and assessment of a civil penalty. The notice of assessment may, therefore, be served subsequent to the notice of violation or concurrently, as is appropriate.

The notice of assessment is the first of two required assessment notices, and must include a proposed penalty determined in accordance with § 1215.19(a). The notice may also contain an initial proposal for mitigation or compromise. The purpose of having two assessment notices is to build in an opportunity for informal resolution of contested violations. It is also a means whereby a proposed penalty may be reduced or forgiven, where appropriate, before engaging in a full evidentiary hearing. The person charged may simply accept the proposed penalty or compromise or may seek to contest the facts or the penalty amount by seeking informal discussions with the agency or by filing a written petition for the relief. An agency, under these regulations, is not required to set up conferences or otherwise respond to a request for informal discussions. However, agencies may find such procedures most expeditious for resolving disputes or achieving a fair mitigation process. Such agencies may subsequently formalize such procedures in their individual regulations. All agencies, however, must give full consideration to any information submitted in a written petition for relief.

The final notice issued by the agency will be the notice of penalty. Where the agency and person charged have been engaged in a dialogue, (either written or oral), the notice of penalty will state the agency's resultant determinations. The regulations require a written explanation of the basis upon which this determination was made. While such determinations will not have the precedential value of decisions reached after a full evidentiary hearing, it is hoped that written explanations will lead to greater uniformity in the informal processing of civil penalties and eventually form the basis of a body of general standards.

If the person charged wishes to contest the penalty assessed, that person must file a written request for a hearing. The Act requires that hearings be conducted in accordance with section 554 of title 5 of the United States Code. For those agencies which do not have such hearing procedures already established, they may, by regulation, refer such matters to another agency or adopt new procedures.

1215.19 Civil Penalty Amounts

Determination of civil penalty amounts has been set primarily in a variable format rather than a schedule of fixed penalty amounts or a fixed formula for arriving at the penalty amount. Because the amount of damage can vary extensively for similar violations, it was not deemed practical to predetermine fixed penalty amounts. However, should an agency find that it is confronted with numerous violations with minimal damage to archeological resources, it may wish to establish, by agency specific regulations, one or more small fixed penalty amounts. This would ease the administrative burden associated with individualized penalties. Section 1215.19 provides the framework for such a scheme.

The first step in determining the maximum penalty under § 1215.19(a). Under the Act, no civil penalty can exceed double the cost of restoration and repair of the archeological resources and archeological sites damaged, plus double the fair market value of resources destroyed or not recovered. This includes cases of second or subsequent violations, which may be double the penalty for a first violation. To simplify the distinction between first and subsequent offenses, the maximum penalty for a first violation under the regulations is simply the full cost of restoration and repair of resources damaged plus the fair market value of resources destroyed or not recovered. The maximum penalty for a subsequent violation is double that amount.

Where an agency wishes to establish fixed penalty amounts, such fixed penalty amounts would have to avoid exceeding the damage done. The premise underlying the selection of the amount would be that any violation to which this fixed penalty would be applicable would incur some minimum cost of restoration and repair due to disturbance of a site. The fixed penalty amount must stay within this minimum cost.

Once the maximum penalty amount has been determined, the agency may mitigate that amount based upon the factors enumerated in Section 1215.19(b). The mitigation process is discretionary and conceived as an individualized process. Should an agency find that there are sufficiently similar types of violations and/or violators to warrant a more standardized procedure, it may wish to set out with greater specificity the manner in which various factors should affect the mitigation process.

Although civil penalties can be imposed upon a person who unknowingly commits a violation, the legislative history of the Act indicates an intent by Congress that the civil penalty provisions not be used to harass citizens who are legally upon public lands, engaging in otherwise lawful activities, but who inadvertently damage archeological resources. For example, should a mining claimant, in the process of working his claim, inadvertently excavate archeological resources whose existence were heretofore unknown, the imposition of a civil penalty would be inappropriate, providing the claimant did not retain any objects and ceased to do further damage once it became clear to him that archeological resources were involved. However, where an individual is unlawfully upon the public land or engaged in otherwise prohibited activities, a civil penalty under the Act could be appropriate even when the violation of the Act itself was not intentional, if archeological resources were taken or damaged. In general, the Federal land managers should exercise their authority to mitigate or remit a civil penalty with a view toward fairness. It is also important, however, that the public be made aware of the fact that archeological resources are irreplaceable and that the public lands may no longer be a source for private collections.

It should be noted that arrowheads are defined as an archeological resource under the Act if they are at least 100 years of age. In recognition of the widespread popularity of collecting arrowheads, the Congress has determined that neither criminal nor civil penalties under the Act shall be imposed upon a person for the removal of arrowheads located on the surface of the ground. However, this should not be interpreted as sanctioning their removal from public lands, since they continue to be archeological resources and therefore public property under the authority of the Act. It should also be noted that in certain categories of reserved public lands (such as lands of the National Park and the National Forest Systems) the removal of arrowheads and other artifacts located within their legal boundaries may be prohibited by other statutes or by agency regulations. Violations of these other prohibitions can result in penalties as provided by those regulations or statutes.

Authorship

This proposed rulemaking document is the product of the Interagency Rulemaking Task Force for the Implementation of Pub. L. 96-95 formally convened by the Secretary of the Interior on March 24, 1980. The Task

Force is composed of representatives of the Department of Interior (Bureau of Land Management, Fish and Wildlife Service, National Park Service, Water and Power Resources Service, Bureau of Indian Affairs, Heritage Conservation and Recreation Service, and the Office of the Solicitor); Department of Defense (Departments of Navy, Air Force, and Army); the Department of Agriculture (Office of Environmental Quality and Forest Service); and the Tennessee Valley Authority. Lead Official: Charles M. McKinney, Task Force Chairman.

Statement of Significance

The Department of the Interior has determined that this rulemaking is a significant rulemaking but that it does not require preparation of a regulatory analysis under Executive Order 12044 and 43 CFR Part 14. An environmental assessment has been prepared in compliance with the provisions of the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*) and is available for public inspection in Room 234, 440 G Street, N.W., Washington, D.C.

Federal Register to this effect in the immediate future. The Chairman of the Board of the Tennessee Valley Authority fully concurs with the contents of this proposed rulemaking.

Under the authority of the Archaeological Resources Protection Act of 1979 (16 U.S.C. 470aa–11), it is proposed to revise Part 1215 of Chapter XII, Title 36 of the Code of Federal Regulations as set forth below:

PART 1215—PROTECTION OF ARCHEOLOGICAL RESOURCES: UNIFORM REGULATIONS

Sec.

1215.1 Purpose.
1215.2 Authorities.
1215.3 Definitions.
1215.4 Excavation or removal of archeological resources.
1215.5 Application for permits.
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1215.7 Issuance of permits.
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1215.11 Compliance with regulations of the Advisory Council on Historic Preservation (36 CFR Part 800).
1215.12 Appeals relating to permits.
1215.13 Custody of archeological resources.
1215.14 Prohibited acts.
1215.15 Criminal penalties.
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1215.17 Assessment of civil penalties.
1215.18 Civil penalty amounts.
1215.19 Forfeiture and rewards.
1215.20 Confidentiality of archeological resource information.
1215.21 [Reserved]
1215.22 Report.
1215.23 Interpretive rulings.

Authority: P.L. 96–95, 93 Stat. 721 (16 U.S.C. 470aa-11) (Sec. 10(a)). Related authority: P.L. 59–209, 34 Stat. 225 (16 U.S.C. 432, 433); P.L. 86–523, 74 Stat. 220, 221 (16 U.S.C. 469), as amended, 88 Stat. 174 (1974); P.L. 89–665, 80 Stat. 915 (16 U.S.C. 470a–t), as amended, 84 Stat. 204 (1970), 87 Stat. 139 (1973), 90 Stat. 1320 (1976), 92 Stat. 3467 (1978); P.L. 95–341, 92 Stat. 469 (42 U.S.C. 1996).

§ 1215.1 Purpose.

(a) The regulations in this part implement the Archaeological Resources Protection Act of 1979 (16 U.S.C. 470aa-11) and establish the uniform procedures and guidelines to be followed by Federal land managers in providing protection for archaeological resources located on public lands and Indian lands of the United States.

(b) It is not the purpose of the regulations in this part to impose additional restrictions on activities permitted under other laws, authorities, and regulations relating to mining, mineral leasing, reclamation, and other multiple uses of the public lands.

§ 1215.2 Authorities.

(a) The Archaeological Resources Protection Act of October 31, 1979 (16 U.S.C. 470ii) requires that the Secretaries of the Interior, Agriculture and Defense and the Chairman of the Board of the Tennessee Valley Authority develop uniform rules and regulations for carrying out the purposes of the Act.

(b) Section 10(b) of the Act (16 U.S.C. 470ii) provides that each Federal land manager shall promulgate such rules and regulations, consistent with these uniform rules and regulations, as may be necessary for carrying out the purposes of the Act.

(c) The following authorities also pertain to the protection of archaeological resources on public lands and Indian lands under this part:

(1) The Act of June 8, 1906 ("Antiquities Act of 1906"; 16 U.S.C. 432, 433; 43 CFR Part 3);

(2) The Act of June 27, 1960 ("Reservoir Salvage Act of 1960"; 16 U.S.C. 469) as amended by the Act of May 6, 1974 ("Archaeological and Historic Preservation Act of 1974; 16 U.S.C. 469);

(3) The Act of October 15, 1966, as amended ("National Historic Preservation Act of 1966"; 16 U.S.C. 470a–t; 36 CFR Part 800);

(4) American Indian Religious Freedom Act of 1978 (42 U.S.C. 1996).

§ 1215.3 Definitions.

As used in this part:

(a) "Archaeological resource" means any material remains of past human life or activities which are of archaeological interest and are at least 100 years of age and the physical site, location, or context in which they are found. An object, site, or other material remain is of archaeological interest if, through its scientific study and anaylsis, information or knowledge can be obtained concerning human life or activities.

(1) "Material remains of past human life or activities" means physical evidence of human habitation, occupation, use, or activity, including, but not limited to:

(i) Surface or subsurface structures, shelters, facilities, or features (including, but not limited to, domestic structures, storage structures, cooking structures, ceremonial structures, human-made mounds, earthworks, canals, reservoirs, horticultural/agricultural gardens or fields, rock alignments, cairns, trails, borrow pits, cooking pits, refuse pits, middens, graves, hearths, kilns, post molds);

(ii) Surface or subsurface artifact concentrations or scatters and the three-dimensional relationship of artifacts to each other in the ground;

(iii) Whole or fragmentary tools, implements, containers, weapons and weapon projectiles, clothing, and ornaments (including, but not limited to, pottery and other ceramics, basketry, cordage, weavings, coins, bullets, bottles and other glassware, flaked stone, ground stone, pecked stone, worked bone, metal, wood, hide, feathers, pigments);

(iv) By-products, waste products, or debris resulting from manufacture or use of human-made or natural materials;

(v) Organic waste (including, but not limited to, vegetal and animal remains, coprolites);

(vi) Human skeletal or mummified remains (including, but not limited to, bone, flesh, teeth, burials, graves, cremations);

(vii) Rock carvings, rock paintings, intaglios and other works of artistic or symbolic representation;

(viii) Rockshelters and caves or portions thereof containing any of the above material remains;

(ix) All portions of shipwrecks (including, but not limited to, armaments, apparel, tackle, cargo);

(x) Paleontological remains only when they are found in a direct physical relationship with archeological resources;

(xi) The physical site, location, or context in which any of the foregoing are situated;

(xii) Any portion or piece of any of the foregoing.

(b) "Arrowhead" means any metal or stone projectile point triangular in configuration specifically designed for and/or used for an arrow. Arrowhead does not mean any bone artifacts, ceremonial flint, ceremonial knives, spear points, drills, knives, darts, or other metal or stone projectile points not specifically designed and/or used for an arrow.

(c) "Federal land manager" means:

(1) With respect to any public lands, the secretary of the department, or the head of any other independent agency or instrumentality of the United States, having primary management authority over such lands;

(2) In the case of Indian lands, or any public lands with respect to which no department, independent agency, or instrumentality has primary management authority, such term means the Secretary of the Interior;

(3) The Secretary of the Interior, where, pursuant to paragraph (2) of § 3 of the act, the head of any other independent agency or instrumentality, has with the consent of the Secretary of the Interior, delegated to the Secretary of the Interior the responsibilities (in whole or in part) in this part.

(d) "Public lands" means:

(1) Lands which are owned and administered by the United States as part of the national park system, the national wildlife refuge system, or the national forest system; and

(2) All other lands the fee title to which is held by the United States, other than lands on the Outer Continental Shelf and lands which are under the jurisdiction of the Smithsonian Institution.

(e) "Indian lands" means lands of Indian tribes, or Indian individuals, which are either held in trust by the United States or subject to a restriction against alienation imposed by the United States, except for subsurface interests not owned or controlled by an Indian tribe or Indian individual.

(f) "Indian tribe" as defined in the Act means any Indian tribe, band nation, or other organized group or community, including any Alaska village or regional or village corporation as defined in, or established pursuant to, the Alaska Native Native Claims Settlement Act (85 Stat. 688). In order to clarify this statutory definition for purposes of this part, the term "Indian tribe" means:

(1) Any tribal entity which is included in the annual list of recognized tribes published in the Federal Register by the Secretary of the Interior pursuant to 25 CFR 54.6(b);

(2) Any other tribal entity acknowledged by the Secretary of the Interior pursuant to 25 CFR Part 54 since the most recent publication of the annual list; and

(3) Any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native claims Settlement Act (85 Stat. 688).

(g) "Person" means an individual, corporation, partnership, trust, institution, association, or any other private entity or any officer, employee, agent, department, or instrumentality of the United States, of any Indian tribe, or of any State or political subdivision thereof.

(h) "State" means any of the fifty States, the District of Columbia, Puerto Rico, Guam, and the Virgin Islands.

(i) "Act" means the Archeological Resources Protection Act of 1979 (16 U.S.C. 470aa–11).

§ 1215.4 Excavation or removal of archeological resources.

(a) Permits are required for persons wishing to conduct excavation and/or removal of archeological resources from public lands or Indian lands, and to carry out activities associated with such excavation and/or removal, and are issued by the Federal land manager to qualified persons, subject to appropriate terms and conditions.

(b) Exceptions:

(1) No permit shall be required under this part or under section 3 of the Act of June 8, 1906 (16 U.S.C. 432), for the excavation or removal by any Indian tribe or member thereof of any archeological resource located on Indian lands of such Indian tribe or members of such tribe, except that in the absence of tribal law regulating the excavation or removal of archeological resources on Indian lands, an individual tribal member shall be required to obtain a permit under this part;

(2) No permit shall be required under this part for the collection for private purposes of any rock, coin, bullet, or mineral which is not an archeological resource, providing there is no disturbance of any archeological resource.

(3) No permit shall be required under this part to carry out any archeological activity authorized by a permit issued under section 3 of the Act of June 8, 1906 (16 U.S.C. 432), before the enactment of the Act. Such permit shall remain in effect according to its terms and conditions until expiration.

(4) Employees and agents of the Federal government carrying out official duties associated with the management of archeological resources are deemed to be operating under a valid permit. However, each Federal land manager shall insure that all supervisory archeological personnel meet minimum qualifications as referenced in § 1215.7(a) of this part.

(5) No permit or other permission is required under section 3 of the Act of June 8, 1906 (16 U.S.C. 432) for any archeological work for which a permit is issued under this part.

(c) Archeological activities relating to archeological resources less than 100 years of age may require other permits as determined by the Federal land manager. Archeological activities involving no collection or disturbance of archeological resources may require only special use permits.

(d) Upon the written request of the Governor of any State, on behalf of the State or its educational institutions, the Federal land manager shall issue a permit, subject to the provisions of § 1215.7(a) (2), (3), (4), and (5) and §§ 1215.8, 1215.9, 1215.10 and 1215.11 of this part, to such Governor or to such designee as the Governor deems qualified to carry out the intent of the Act, for the purpose of conducting archeological research, excavation, and removal, and safeguarding and preserving materials and data collected.

§ 1215.5 Application for permits.

(a) Any person may file an application with the appropriate Federal land manager for a permit to excavate and/or remove archeological resources from public lands or Indian lands and to carry out activities associated with such excavation and/or removal.

(b) Each application for a permit shall include:

(1) The exact character of the work proposed, including how and why it is proposed to be conducted, proposed time of performance, locational maps, and proposed outlet for public written dissemination of the results.

(2) The name and address of the individual(s) proposed to be responsible for conducting the work, his/her institutional affiliation, if any, and evidence of his/her education, training, and experience in accord with the minimal qualifications referenced in § 1215.7(a) of this part.

(3) The name and address of the individual(s), if different from the individual(s) named in paragraph (b)(2) of this section, proposed to be responsible for carrying out the terms and conditions of the permit.

(4) Evidence of the applicant's capability to initiate, conduct, and complete the proposed work, including

evidence of logistical support and laboratory facilities.

(5) Where the application is for the excavation and/or removal of archeological resources on public lands, the name of the university, museum, or other scientific or educational institution in which the applicant proposes to store all collections, records, data, photographs, and other documents derived from the proposed work. Applicants shall submit written certification by an authorized official of the institution of its willingness to curate the collections, records, data, photographs and other documents and to safeguard and preserve these materials as property of the United States.

(6) Where the application is for the excavation and/or removal of archeological resources on Indian lands, the name of the university, museum, or other scientific or educational institution in which the applicant proposes to store all collections, records, data, photographs, and other documents derived from the proposed work in the event the Indian owners do not wish to take custody of or otherwise dispose of the archeological resources. Applicants shall submit written certification by an authorized official of the institution of its willingness to curate the collections, records, data, photographs, and other documents derived from the proposed work.

(c) Each Federal land manager may require additional information to be included in the application for permit and shall so inform the applicant.

§ 1215.6 Consideration of Indian tribal religious and cultural concerns.

(a) For any application received for a permit under this part which may result in harm to or destruction of an Indian tribal religious or cultural site, on public land, the Federal land manager shall provide written notification, as follows, to the official designated by the governing body of the tribe to receive such notification or, if no individual has been designated, to the chief executive officer of the tribal governing body. The Federal land manager shall:

(1) Notify any known Indian tribe having a reservation within 200 miles of the area in which the applicant proposes to conduct work. This requirement may be modified by agreement pursuant to section (f) of this section.

(2) Notify any other Indian tribe known or believed by the Federal land manager to have religious or cultural interest in the area of the proposed work.

(3) Notify any Indian group which has pending before the Secretary of the Interior a petition for acknowledgement pursuant to 25 CFR Part 54.

(4) Notify in writing the Bureau of Indian Affairs area office and any additional Indian tribes which the area office may identify as having religious or cultural interest in the area of the proposed work.

(5) Consult for notification purposes any central listing of interested Indian, Alaska Native or Native Hawaiian groups which may be established within the Department of Interior pursuant to the act, the American Indian Religious Freedom Act of 1978 (42 U.S.C. 1996, or other applicable authority.

(b) Prior to a decision to issue a permit, the Federal land manager shall consider written or verbal comments submitted by any tribe or group notified pursuant to paragraph (a) of this section, which responds to the notification within 45 days of receipt, or any other tribe or group entitled to receive notice under paragraph (a), which expresses a religious or cultural interest within the same period, in order to ascertain the character and nature of the concerns and the general location of the religious or cultural site(s) involved. Upon request during that period, the Federal Land Manager shall meet with any Indian tribe or group to discuss their concerns, including ways to avoid or mitigate adverse impacts. Information derived from such comments or received during any discussions regarding the nature and location of archeological resources and religious or cultural sites shall not be deemed, nor subject to, a disclosure to the public for purposes of section 9 of the Act and § 1215.20 of this part.

(c) Upon issuance of a permit under this part which may result in harm to, or destruction of, a site on public lands which has religious or cultural significance to any Indian tribe or group, pursuant to paragraph (b) of this section, the Federal land manager shall notify the chief executive officer of the governing body of such tribe or group in writing.

(d) Where a permit must be issued because of an imminent threat of loss or destruction of an archeological resource, the Federal land manager may omit compliance with subsections a–c or may shorten the time periods specified. However, the Federal land manager shall notify the Bureau of Indian Affairs area office and any Indian tribe known to or believed to consider the site as having religious or cultural importance of the permit application and the need for expedited procedures. Such notification shall precede issuance of the permit, where possible.

(e) In the case of any application for a permit for the excavation or removal of any archeological resources located on Indian lands, the Federal land manager may issue a permit only after obtaining the consent of the Indian landowner and the Indian tribe having jurisdiction over such lands.

(f) The Federal land manager may enter into agreements with Indian tribes to establish formal and regular procedures for notification and discussion consistent with this section.

(g) Indian tribes are encouraged to designate a tribal official to be the focal point for any notification and discussion between the Indian tribe and the Federal land manager. The tribal official may assist the Federal land manager in identifying sites located on public lands which are of religious or cultural importance to the Indian tribe.

(h) If the area for which an application has been submitted is the subject of present day religious practice or has been the subject of traditional religious practice, areas containing such sites may be excluded from the permit. If such areas are not excluded, the Federal land manager shall consider ways to avoid or mitigate the adverse impacts which may result.

§ 1215.7 Issuance of permits.

(a) The Federal land manager may issue a permit, upon determining that:

(1) The applicant is appropriately qualified, as evidenced by training, education, and/or experience, and possesses demonstrable competence in theoretical and methodological design, and in collecting, handling, analyzing, evaluating, and reporting archeological data, relative to the type and scope of the work proposed and also meets the following minimal qualifications:

(i) A graduate degree in anthropology/archeology, or equivalent training and experience;

(ii) The demonstrated ability to carry research to completion, as usually evidenced by timely completion of theses, research reports, or similar documents;

(iii) Completion of at least 16 months of professional experience and/or specialized training in archeological field, laboratory, or library research, administration, or management, including at least 4 months experience and/or specialized training in the kind of activity the individual proposes to conduct under permit authority; and

(iv) Historic sites archeologists should have had at least one year of experience in research concerning archeological resources of the historic period. Prehistoric archeologists should have had at least one year of experience in research concerning archeological resources of the prehistoric period.

(2) The proposed work is to be undertaken for the purpose of furthering archeological knowledge in the public interest;

(3) The proposed work, including time, scope, location, and purpose, is not inconsistent with any management plan applicable to the public lands;

(4) Written consent has been obtained, for work proposed on Indian lands, from the Indian landowner and the Indian tribe having jurisdiction over such lands;

(5) Evidence is submitted to the Federal land manager that the university, museum, or other scientific or educational institution proposed in the application as the repository possesses adequate curatorial capability for safeguarding and preserving the archeological resources and all associated records; and

(6) The applicant has certified that, not later than the date the final report is submitted to the Federal land manager, the following will be delivered to the appropriate official of the approved university, museum, or other scientific or educational institution, which shall be named in the permit:

(i) All artifacts, samples, collections, records, data, photographs, and other documents resulting from work conducted under the requested permit where the permit is for the excavation and/or removal of archeological resources from public lands.

(ii) All artifacts, samples and collections resulting from work under the requested permit where the permit is for the excavation and/or removal of archeological resources from Indian lands for which the custody or disposition is not undertaken by the Indian owners, and other documents resulting from work conducted under the requested permit.

(b) For permit applications involving lands under the jurisdiction of more than one Federal land manager, the Federal land managers shall coordinate the review and evaluation of the applications and the issuance of the permits.

§ 1215.6 Time limits of permits.

(a) The Federal land manager may issue a permit for a period appropriate to the work to be conducted, but not to exceed 3 consecutive years from the date of issuance.

(b) A permittee may submit a written request for permit extension when additional time less than 4 months is needed to complete work in progress.

(c) A permittee may apply for permit renewal by following procedures under § 1215.5 of this part.

(d) Subsequent to review of extension requests or renewal applications, and evaluation of past performance, the Federal land manager may extend a permit for up to 4 months or may renew a permit for periods up to 3 additional years.

(e) The Federal land manager may extend a permit only once, but may renew a permit any number of times.

(f) The Federal land manager shall review, at least annually, the permittee's performance under any permit issued for a period greater than 1 year.

§ 1215.9 Terms and conditions of permits.

(a) In all permits issued, the Federal land manager shall specify:

(1) The exact nature and extent of work allowed under the permit, including the time, duration, scope, location, and purpose of the work;

(2) The name of the individual(s) responsible for conducting the work and, if different, the name of the individual(s) responsible for carrying out the terms and conditions of the permit;

(3) The name of the university, museum, or other scientific or educational institutions in which any collected materials and data shall be deposited; and

(4) Reporting requirements.

(b) The Federal land manager may specify such terms and conditions as deemed necessary, consistent with this part, to protect public safety and other values and/or resources, to secure work areas, to safeguard other legitimate land uses, and to limit activities incidental to work authorized under a permit.

(c) The Federal land manager shall include in permits issued for archeological work on Indian lands such terms and conditions as may be requested by the Indian landowner and the Indian tribe having jurisdiction over the lands.

(d) The Federal land manager may require adequate security to ensure adherence to terms and conditions of the permit.

(e) Initiation of work or other activities by the permittee under the authority of a permit signifies the permittee's acceptance of the terms and conditions of the permit.

§ 1215.10 Suspension, revocation and termination of permits.

(a) *Suspension.* (1) The Federal land manager may suspend a permit issued pursuant to this part upon determining that the permittee has violated any prohibition of §1215.14 of this part.

(2) The Federal land manager may suspend a permit upon determining that the permittee has failed to meet the terms and conditions of the permit. The suspension shall remain in effect until such time as the permittee corrects the situation, as determined by the Federal land manager.

(b) *Revocation.* (1) The Federal land manager may revoke a permit upon assessment of a civil penalty against the permittee under § 1215.18 of this part, or upon the permittee's conviction under § 6 of the Act.

(2) The Federal land manager may revoke a permit if the permittee fails to correct the situation which led to suspension.

(c) The Federal land manager reserves the right to terminate a permit at any time for program purposes.

§ 1215.11 Compliance with regulations of the Advisory Council on Historic Preservation (36 CFR Part 800).

(a) The act of issuing of a permit under this part does not require compliance with Section 106 of the Act of October 15, 1966 (16 U.S.C. 470f). The Federal land manager may, however, seek the advice or assistance of the Advisory Council on Historic Preservation with respect to activities proposed to be conducted under this part. Such action by the Federal land manager shall not be deemed compliance with Section 106 nor create a requirement for compliance where not otherwise required.

(b) If the activities proposed under this part constitute an undertaking in which there is Federal involvement other than the granting of a permit under this part and such Federal involvement requires compliance with Section 106 of the act of October 15, 1966 (16 U.S.C. 470f), then the Federal land manager shall coordinate the issuance of a permit under this part consistently with compliance requirements.

§ 1215.12 Appeals relating to permits.

Any person may appeal permit issuance, denial of permit issuances, suspension, revocation, termination, and terms and conditions of permits through appeal procedures established by the Federal land manager.

§ 1215.13 Custody of archeological resources.

(a) Archeological resources excavated or removed from the public lands remain the property of the United States Government, unless otherwise provided for in law, regulations, or administrative policy.

(b) Archeological resources excavated or removed from Indian lands remain the property of the Indian or Indian tribe having rights of ownership over such resources.

(c) The Secretary of the Interior may promulgate regulations establishing procedures and guidelines for the exchange of archeological resources among suitable universities, museums, or other scientific or educational institutions, for the ultimate disposition of archeological resources, and for standards by which archeological resources shall be preserved and maintained, when such resources have been excavated or removed from public lands and Indian lands.

§ 1215.14 Prohibited acts.

(a) No person may excavate, remove, damage, or otherwise alter or deface any archeological resource located on public lands or Indian lands unless such activity is pursuant to a permit issued under § 1215.7 or exempted by § 1215.4(b) (1), (2), (3), (4) and (5).

(b) No person may sell, purchase, or exchange any archeological resource or offer to sell, purchase, or exchange any archeological resource if such resource was excavated or removed in violation of:

(1) The prohibitions contained in paragraph (a) of this section; or

(2) Any provision, rule, regulation, ordinance, or permit in effect under any other provision of Federal law.

(c) No person may sell, purchase, exchange, transport, receive, or offer to sell, purchase, or exchange, in interstate or foreign commerce, any archeological resource excavated, removed, sold, purchased, exchanged, transported, or received in violation of any provision, rule, regulation, ordinance, or permit in effect under State or local law.

§ 1215.15 Criminal penalties.

(a) Any person who knowingly violates, or counsels, procures, solicits, or employs any other person to violate, any prohibition contained in § 1215.15 of this part shall upon conviction be subject to:

(1) Fine of not more than $10,000, or imprisonment of not more than one year, or both, provided that the archeological or commercial value of the archeological resources involved and the cost of restoration and repair of such resources does not exceed the sum of $5,000, as determined under § 1215.17 of this part;

(2) Fine of not more than $20,000, or imprisonment of not more than two years, or both, provided that the archeological or commercial value of the resources involved and the cost of restoration and repair exceed the sum of $5,000, as determined under § 1215.17 of this part;

(3) Fine of not more than $100,000, or imprisonment of not more than five years, or both, in the case of conviction for a second or subsequent violation.

(b) Violations limited to the removal of arrowheads located on the surface of the ground shall not be subject to the penalties prescribed in this section.

§ 1215.16 Determination of archeological or commercial value and cost of restoration and repair.

(a) *Archeological value.* For purposes of this part, the archeological value of any archeological resource involved in a violation of prohibitions or conditions pursuant to this part shall be the value of the information associated with the archeological resource. This value shall be appraised in terms of the costs of the retrieval of the scientific information contained in the archeological resource which would have been obtainable if the archeological resource were found in its undisturbed state. These costs may include, but not be limited to, the cost of preparing a research design, conducting field work, carrying out laboratory analysis, and preparing reports as would be necessary to realize the information potential.

(b) *Commercial value.* For purposes of this part, the commercial value of any archeological resource, involved in a violation of prohibitions or conditions pursuant to this part, shall be the fair market value of its condition prior to removal or disturbance.

(c) *Cost of restoration and repair.* For purposes of this part, the cost of restoration and repair of archeological resources damaged as a result of violation of prohibitions or conditions pursuant to this part, shall be the sum of the costs already incurred for emergency restoration or repair work, plus those costs projected to be necessary to complete restoration and repair, which may include, but not be limited to, the costs of the following:

(1) Reconstruction of the archeological resource;

(2) Stabilization of the archeological resource;

(3) Ground contour reconstruction and surface stabilization;

(4) Research necessary to carry out reconstruction or stabilization;

(5) Physical barriers or other protective devices, necessitated by the disturbance of the archeological resource, to protect it from further disturbance;

(6) Examination and analysis of the archeological resource including recording remaining archeological information, where necessitated by disturbance, in order to salvage remaining values which cannot be otherwise conserved;

(7) Preparation of reports relating to the restoration and repair.

§ 1215.17 Assessment of civil penalties.

(a) *Application.* The civil penalty may be assessed against any person who has violated any prohibition contained in the Act or in this part, or who has violated a term or condition included in a permit issued pursuant to this part. Where criminal proceedings are being instituted against the person, the Federal land manager may elect not to assess a civil penalty but shall issue a notice of violation pursuant to this part. Where the violation is inadvertant and of a minor nature, the Federal land manager may likewise elect not to assess a civil penalty, but shall issue a notice of violation pursuant to this part.

(b) *Notice of violation.* Upon reasonable belief that a violation has occurred the Federal land manager shall notify any person believed to have committed the violation, either in person or by registered or certified mail (return receipt requested). The notice shall contain:

(1) A concise statement of the facts believed to show a violation;

(2) A specific reference to the provision(s) of the Act, of this part, or of a permit issued pursuant to this part, allegedly violated; and

(3) A statement that a civil penalty may be assessed the person or persons for each referenced violation in an amount to be determined in accordance with this part; or a statement that no civil penalty will be assessed, as appropriate.

(c) *Notice of assessment.* Upon making a determination to assess a civil penalty for a violation charged in a notice of violation under this section, the Federal land manager shall make a determination of the damages associated with the violation, determine the maximum penalty amount in accordance with § 1215.18 of this part, and serve a notice of assessment on the person charged with the violation. The notice of assessment may be served concurrently with the notice of violation or as soon thereafter as the maximum penalty amount can be determined. The notice of assessment will be served in person or by registered or certified mail (return receipt requested). The notice shall contain:

(1) A statement of the facts believed to show a violation;

(2) A specific reference to the provisions of the act, of this part, or of a permit issued pursuant to this part allegedly violated;

(3) The amount of penalty proposed to be assessed;

(4) The basis in § 1215.16 and § 1215.18(a) of this part from which the amount was derived; and

(5) Notification of the right of the person charged to file a petition for relief pursuant to paragraph (c) of this section, or to await the Federal land manager's notice of penalty.

The notice may also contain an initial proposal for compromise or mitigation of the proposed penalty.

(d) The person charged shall have 45 calendar days from the date of service of the notice of assessment in which to respond. During this time they may:

(1) Seek informal discussions with the Federal land manager;

(2) Accept in writing or by payment the proposed penalty or compromise, if any, offered in the notice;

(3) File a petition for relief in accordance with paragraph (e) of this section;

(4) Take no action and await the Federal land manager's notice of penalty pursuant to paragraph (f) of this section.

If the person charged accepts the proposed penalty or compromise, this shall be deemed a waiver of the notice of penalty required by paragraph (f) of this section, and of the right to request a hearing.

(e) *Petition for relief.* Upon receipt of a notice of assessment, the person charged may ask that no penalty be assessed or that the amount be reduced, and may admit or contest the legal sufficiency of the charge and the Federal land manager's allegations of facts, by filing a petition for relief with the Federal land manager within 45 calendar days of the date of service of the notice of assessment. The petition shall be in writing and signed by the person charged. If the person charged is a corporation, the petition must be signed by an officer authorized to sign such documents. The petition shall set forth in full the legal or factual basis for the requested relief.

(f) *Assessment of penalty.* (1) The Federal land manager shall proceed to final assessment of a civil penalty upon expiration of the period during which the person charged may file a petition for relief, or upon completion of review of any petition filed, or upon completion of informal mitigation discussions, whichever is latest.

(2) The Federal land manager shall take into consideration all available information, including information provided by the person charged pursuant to paragraphs (b) and (c) of this section, or upon further request by the Federal land manager.

(3) If the facts warrant a conclusion that no violation has occurred, the Federal land manager shall so notify the person charged, and no penalty shall be assessed.

(4) Where the facts warrant a conclusion that a violation has occurred, the Federal land manager shall determine a penalty amount in accordance with §§ 1215.16 and 1215.18 of this part.

(g) *Notice of penalty.* The Federal land manager shall notify the person charged of the penalty assessed under paragraph (f) of this section by serving a written notice of penalty on the person charged, either in person or by registered or certified mail (return receipt requested). The Federal land manager shall set forth in the notice of penalty the facts and conclusions from which it was determined whether or not a violation did occur and the appropriateness of the penalty assessed and shall notify the person charged of the right to request a hearing pursuant to paragraph (h) of this section.

(h) *Hearings.* (1) Except where a right to request a hearing is deemed to have been waived as provided in paragraph (d) of this section, the person charged may, within 45 calendar days from the date of service of the notice of penalty, file a written dated request for a hearing, with the appropriate adjudicatory body as specified in the notice of penalty. The person charged shall enclose with the request for hearing a copy of the notice of penalty. A copy of the request shall be served upon the person specified in the notice of penalty, personally, or by registered or certified mail (return receipt requested), at the address specified in the notice.

(2) Failure to file a timely request for a hearing shall be deemed a waiver of the right to a hearing.

(3) Any hearing conducted pursuant to this section shall be held in accordance with 5 U.S.C. 554 and regulations promulgated pursuant to 5 U.S.C. 554 or pursuant to section 10 (b) of the Act. In any such hearing, the amount of civil penalty assessed shall be determined in accordance with this part and shall not be limited by the amount assessed in a notice of penalty issued under paragraph (f) of this section or any compromise or mitigation offered by the Federal land manager.

(i) *Final administrative decision.* (1) Where the person charged has accepted the penalty pursuant to paragraph (c) of this section the notice of assessment shall constitute the final administrative decision;

(2) Where the person charged has not filed a timely request for hearing pursuant to paragraph (g)(1) of this section the notice of penalty shall constitute the final administrative decision;

(3) Where the person charged has filed a timely request for hearing pursuant to paragraph (g)(1) of this section the decision of the administrative law judge or any applicable administrative appeal therefrom shall constitute the final administrative decision.

(j) *Payment of final assessment.* (1) The person charged shall have 45 calendar days from the date of issuance of the final administrative decision in which to make full payment of the penalty assessed, unless a timely request for appeal with a United States District Court as provided in section 7(b)(1) of the Act has been filed.

(2) Upon failure by the person charged to pay the penalty, the Federal land manager may request the Attorney General to institute a civil action to collect the penalty in a United States District Court for any district in which the person charged is found, resides, or transacts business. Where the Federal land manager is not represented by the Attorney General, a civil action may be initiated directly.

(k) *Other remedies not waived.* Assessment of a civil penalty under this section shall not be deemed a waiver of the Federal land manager's right to pursue other available legal or administrative remedies.

§ 1215.18 Civil penalty amounts.

(a) *Maximum amount of penalty.* The Federal land manager shall, after establishing pursuant to § 1215.16 of this part the archeological or commercial value and the cost of restoration and repair of the archeological resource(s) involved in a violation, ascertain whether the person charged has committed any previous violation of any prohibition in § 1215.14 or violation of any term or condition included in a permit pursuant to § 1215.9 of this part.

(1) Where the person charged has not committed any previous violation the maximum amount of the penalty shall be:

(i) A fixed amount, determined by the Federal land manager under regulations pursuant to section 10(b) of the Act or by administrative action, where damage to the archeological resource is minimal and all archeological resources have been recovered; or

(ii) Full cost of restoration and repair of archeological resources damaged plus the commercial value of archeological resources destroyed or not recovered.

(2) Where the person charged has been adjudged to have committed any previous violation, the maximum penalty shall be double the cost of

restoration and repair plus double the commercial value of archeological resources destroyed or not recovered.

(3) Violations limited to the removal of arrowheads located on the surface of the ground shall not be subject to the penalties prescribed in this section.

(b) *Compromise, mitigation or remission of penalty.* The Federal land manager may propose a compromise or may mitigate or remit the penalty amount determined under paragraph (a) of this section based upon any of the following factors:

(1) Agreement by the person charged to return to the Federal land manager archeological resources removed from public lands or Indian lands;

(2) Agreement by the person charged to assist the Federal land manager in activity to preserve, restore, or otherwise contribute to the protection and study of archeological resources on public lands or Indian lands;

(3) Agreement by the person charged to provide information which will assist in the detection, prevention, or prosecution of violations of regulations in this part;

(4) Demonstration of hardship or inability to pay on the part of the person charged, provided that this factor shall only be considered when the person charged has not previously been found to have violated the regulations in this part;

(5) Determination that the person charged did not intentionally commit the violation.

(6) Determination of other mitigating circumstances appropriate to consideration in reaching a fair and expeditious assessment.

§ 1215.19 Forfeiture and rewards.

(a) All archeological resources removed, and all vehicles or equipment used, in connection with a violation of any prohibition in § 1215.14 of this part are subject to forfeiture to the United States upon conviction under section 6 of the Act, assessment of a civil penalty under § 1215.16–17 of this part, or determination by any court that the archeological resources, vehicles, or equipment were involved in the violation.

(b) A payment shall be made in an amount equal to one-half of any penalty or fine collected, but not to exceed $500, to any person who furnishes information which leads to conviction for a criminal violation or to assessment of a civil penalty. If several persons provided information, the amount shall be divided among all such persons.

(1) Officers and employees of the United States, State, or local government who furnish information or render service in the performance of their official duties shall not be eligible for payment of rewards under this section.

(c) In cases involving Indian lands, all civil penalty monies and any item forfeited under the provisions of this section shall be transferred to the appropriate Indian or Indian tribe.

§ 1215.20 Confidentiality of archeological resource information.

(a) The Federal land manager shall not make available to the public, under subchapter II of chapter 5 of title 5 of the United States Code or any other provision of law, information concerning the nature and location of any archeological resource.

(b) The Federal land manager may make an exception to this rule provided that:

(1) The disclosure will further the purposes of the act and this part without risking harm to the archeological resource or the area in which it is located; or

(2) The Governor of the State in which the archeological resource is located has submitted a written request for information to the Federal land manager, including:

(i) The specific archeological resource or area about which information is sought;

(ii) The purpose for which the information is sought; and

(iii) The Governor's written commitment to adequately protect the confidentiality of the information.

§ 1215.21 [Reserved]

§ 1215.22 Report.

Each Federal land manager, when requested by the Secretary of the Interior, shall submit such information as is necessary to enable the Secretary to comply with Section 13 of the Act.

§ 1215.23 Interpretive rulings.

Each Federal land manager may publish from time to time, as an appendix to this part, statements of policy and legal opinions relating to the interpretation, enforcement, and implementation of the Act and this part.

Dated: December 4, 1980.

Cecil D. Andrus,

Secretary of the Interior.

[FR Doc. 81–1884 Filed 1–16–81; 8:45 am]

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Monday
January 19, 1981

Part XXI

Advisory Council on Historic Preservation

Historic Preservation Requirement of the Urban Development Action Grant Program; Proposed Regulations

ADVISORY COUNCIL ON HISTORIC PRESERVATION

36 CFR Part 801

Historic Preservation Requirements of the Urban Development Action Grant Program

AGENCY: Advisory Council on Historic Preservation.

ACTION: Proposed Regulations.

SUMMARY: These proposed regulations implement the historic preservation review provisions of Section 110 of the Housing nad Community Development Act of 1980 (Pub. L. 96–399, 94 Stat. 1614) and Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470). Section 110(c) of Pub. L. 96–399 requires among other things, the Council to prescribe regulations for expeditious review and comment on Urban Development Action Grant projects which affect properties listed in or eligible for the National Register of Historic Places. The proposed regulations establish this required expedited Council commenting process.

DATE: Comments due: February 18, 1981.

ADDRESS: Comment address: Executive Director, Advisory Council on Historic Preservation, 1522 K Street NW., Washington, D.C. 20005.

FOR FURTHER INFORMATION CONTACT: Peter H. Smith, Special Assistant for Urban Affairs, Advisory Council on Historic Preservation, 1522 K Street NW., Washington, D.C. 20005; 202–254–3967.

SUPPLEMENTARY INFORMATION: The Council was established by the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), and consists of the Secretary of the Interior, the Secretary of Housing and Urban Development, the Secretary of Commerce, the Administrator of the General Services Administration, the Secretary of the Treasury, the Attorney General, the Secretary of Agriculture, the Secretary of Transportation, the Secretary of State, the Secretary of Defense, the Secretary of Health and Human Services, the Chairman of the Council on Environmental Quality, the Chairman of the Federal Council on the Arts and Humanities, the Architect of the Capitol, the Secretary of the Smithsonian Institution, the Chairman of the National Trust for Historic Preservation, the President of the National Conference of State Historic Preservation Officers, and twelve members appointed by the President from outside the Federal Government. The Act generally charges the Council with advising the President and the Congress on historic preservation matters. Section 106 of the Act is designed to protect properties listed in or eligible for inclusion in the National Register of Historic Places through review and comment by the Council on Federal undertakings that affect such properties.

As established by the Council's regulations (36 CFR Part 800), the Section 106 process is a public interest process in which the Federal agency sponsoring the project, the State Historic Preservation Officer, the Council, and interested organizations and individuals participate. For programs authorized by Title I of the Housing and Community Development Act of 1974, as amended (42 U.S.C. 5301), applicants legally assume the status of a responsible Federal official for the purposes of the National Historic Preservation Act. This delegation is authorized by Section 104(h) of the Housing and Community Development Act of 1974 (42 U.S.C. 5304(a)). The Section 106 process is designed to assure that alternatives to avoid or mitigate an adverse effect on a property listed in or eligible for inclusion in the National Register are adequately considered in the planning process.

These regulations are required by Section 110(c) of the Housing and Community Development Act of 1980, (42 U.S.C. 5320(c)) and apply only to projects proposed to be funded by the Urban Development Action Grant (UDAG) program of the Department of Housing and Urban Development. The purpose of these proposed regulations is to expedite the Council's commenting process for such applications. Under the provisions of Section 110 of the Housing and Community Development Act of 1980 the State Historic Preservation Officer has a 45-day period to comment on properties listed in the National Register of Historic Places or which meet the Criteria and which will be affected by the proposed UDAG project as determined by the applicant. The Secretary of the Interior, likewise, has a 45-day period in which to make a determination whether the affected properties are eligible for inclusion in the National Register. For the sake of clarity the comment period of the State Historic Preservation Officer is referred to as a "review period" in these proposed regulations. This has been done in order to avoid confusion between comments of the Council required by Section 106 of the National Historic Preservation Act and the comments of the State Historic Preservation Officer required by Section 110(c) of the Housing and Community Development Act of 1980.

The process established by the proposed regulations is basically similar to the existing Section 106 process set forth in 36 CFR Part 800, "Protection of Historic and Cultural Properties." However, the proposed regulations restructure the normal Section 106 process to better reflect the UDAG program and the legal responsibilities of the applicant and most importantly to expedite the Council's commenting role.

The major provisions of the proposed regulations are:

1. *Section 801.1 Purpose and Authorities.* This section reflects the changes in Council responsibilities as a result of the Housing and Community Development Act of 1980.

2. *Section 801.2 Definitions.* This section includes definitions that are additions to those contained in 36 CFR 800.2 and which reflect the special requirements of the UDAG program.

3. *Section 801.3 Applicant Responsibilities.* This is a new section that is not contained in 36 CFR Part 800 and reflects the delegation of historic preservation review requirements by HUD and UDAG applicants.

4. *Section 801.3(c) Evaluation of Effect.* This section reflects the provisions of 36 CFR 800.3 but is tailored specifically to the requirements of the UDAG program. In addition, § 801.3(a)(1)(C) describes a number of specific components or elements of a UDAG project which need not be referred to the Council if certain standards are met. The Council would appreciate comments on the scope of this section and additional examples which could be included.

5. *Section 801.4 Council Comments.* This section specifies how the Council will respond to an applicant's request for Council comments. While it is similar in process to that specified in 36 CFR 800.6, a number of substantive changes have been made. For example, there is a time limit of 45 days to prepare a Memorandum of Agreement in cases of adverse effect determinations.

If no agreement is reached by the close of that period, the Executive Director will have 15 days to refer the matter to the Chairman. Based upon the recommendation of the Executive Director, the Chairman will make a decision as to what action Council will take. If the matter is referred to the Council members, there will be a meeting of either the full Council or a panel of members within 30 days. If the matter is referred to a panel, the panel's comments will be considered the comments of the full Council for the purposes of commenting on a particular

UDAG project. This will considerably reduce the time that is required to obtain the comments of the Council and also provide a fixed time limit, no more than 90 days, in which the process will be completed.

This section also provides for the designation of a lead agency for a UDAG project if another Federal agency is involved and for the applicant to accept previous compliance by a Federal agency for the project.

6. *Section 801.5 State Historic Preservation Officer Responsibilities.* This section is basically similar to 36 CFR 800.5, but reflects the State Historic Preservation Officer participation required by other provisions of Section 110. This section reflects the statutory period of 45 days within which the State Historic Preservation Officer may formally comment on an applicant's determination of effect on properties which are listed in the National Register or which may meet the Criteria for listing in the National Register. The time limitation does not preclude the applicant from earlier obtaining information from the State Historic Preservation officer which will assist the applicant in reaching its conclusions.

7. *Section 801.6 Coordination with Requirements Under the National Environmental Policy Act.* This is similar to 36 CFR 800.9.

8. *Section 801.7 Reports to the Council.* This section specifies how an applicant may utilize relevant portions of a completed UDAG application to meet information needs of the Section 106 process. The remainder of the section sets forth report requirements for various stages of the process.

9. *Appendix.* An appendix has been added specifically to provide guidance for UDAG applicants in identifying properties listed in the National Register of Historic Places or which meet the Criteria. In addition, a section is included which deals with archeology in an urban context.

The Council has determined that an economic impact statement pursuant to Executive Orders 11821 and 11949 is not required since these proposed regulations are modifications of an existing process to meet the needs of a specific program and do not constitute a major regulatory proposal.

The Council has determined that these proposed regulations are not significant regulations within the meaning of Executive Order 12044 and consequently do not require a regulatory analysis. The purpose of these proposed regulations is to expedite and clarify the Council commenting process on a specific program.

Pursuant to 36 CFR Part 805, "National Environmental Policy Act Implementation Procedures," the Council has determined that an Environmental Impact Statement is not required.

Dated: January 13, 1981.

Robert R. Garvey, Jr.,

Executive Director.

36 CFR is amended by adding Part 801 to read as follows:

PART 801—HISTORIC PRESERVATION REQUIREMENTS OF THE URBAN DEVELOPMENT ACTION GRANT PROGRAM

Sec.

801.1 Purpose and authorities.
801.2 Definitions.
801.3 Applicant responsibilities.
801.4 Council comments.
801.5 State Historic Preservation Officer responsibilities.
801.6 Coordination with Requirements Under the National Environmental Policy Act.
801.7 Reports to the Council.
Appendix Identification of properties.

Authority: Pub. L. 89-665, 80 Stat. 915 (16 U.S.C. 470); Pub. L. 94-422, 90 Stat. 1320 (16 U.S.C. 470i); Pub. L. 96-399, 94 Stat. 1619 (42 U.S.C. 5320).

§ 801.1 Purpose and authorities.

(a) These regulations are required by Section 110(c) of the Housing and Community Development Act of 1980 (HCDA) (42 U.S.C. 5320) and apply only to projects proposed to be funded by the Department of Housing and Urban Development (HUD) under the Urban Development Action Grant Program (UDAG) authorized by Title I of the Housing and Community Development Act of 1974, as amended (42 U.S.C. 5301). These regulations establish an expedited process for obtaining the comments of the Council specifically for the UDAG program and, except as specifically provided, substitute for the Council's regulations for the "Protection of Historic and Cultural Properties" (36 CFR Part 800).

(b) Section 110(c) of the HCDA of 1980 requires UDAG applicants to (1): Identify all properties, which are included in the National Register of Historic Places and which will be affected by the project for which the application is made; (2) identify all other properties, which will be affected by such project and which, as determined by the applicant, may meet the Criteria established by the Secretary of the Interior for inclusion on the National Register (36 CFR 1202.6); and (3) provide a description of the effect, as determined by the applicant, of the project on properties identified pursuant to paragraphs (b), (1) and (2) of this section. Further, the Act requires that the information developed by the applicant must be forwarded to the appropriate State Historic Preservation Officer (SHPO) for review and to the Secretary of the Interior for a determination as to whether the affected properties are eligible for inclusion in the National Register.

(c) Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), requires the head of any Federal agency with jurisdiction over a Federal, federally assisted or federally licensed undertaking that affects a property included in or eligible for inclusion in the National Register of Historic Places to take into account the effect of the undertaking on such property and afford the Council a reasonable opportunity to comment. The Secretary of HUD has delegated this responsibility to applicants with respect to projects proposed to be funded by the UDAG program.

§ 801.2 Definitions.

The terms defined in 36 CFR 80.2 shall be used in conjunction with this regulation. Furthermore, as used in these regulations:

(a) "Urban Development Action Grant Program" (UDAG) means the program of the Department of Housing and Urban Development (HUD) authorized by Title I of the Housing and Community Development Act (HCDA) of 1977 (42 U.S.C. 5318) to assist revitalization efforts in distressed cities and urban counties which require increased public and private investment.

(b) "Applicant" means cities and urban counties or Pocket of Poverty Communities which meet the criteria at 24 CFR 570.453. Except as specifically provided below, applicants must comply with these regulations rather than the Secretary of HUD.

(c) "Project" means a commerical, industrial, and/or neighborhood project supported by the UDAG program of the Department of HUD, as defined in 24 CFR 570.451(g). A project includes the group of integrally related public and private activities described in the grant application which are to be carried out to meet the objective of the action grant program and consists of all action grant funded activities together with all non-action grant funded activities. A project is an "undertaking" as defined in 36 CFR 800.2(c).

(d) "State Historic Preservation Officer Review Period" is a 45 day period provided to the appropriate State Historic Preservation Officer by Section 110(c) of the Housing and Community

Development Act (HCDA) of 1980 for comment on properties listed in the National Register or which may meet the Criteria and which will be affected by the proposed UDAG project.

(e) "Secretary of the Interior Determination Period" is a 45-day period provided by Section 110(c) of the HCDA of 1980 for a determination as to whether the affected properties are eligible for inclusion in the National Register.

§ 801.3 Applicant responsibilities.

As early as possible before the applicant makes a final decision concerning a project and in any event prior to taking any action that would foreclose alternatives or the Council's ability to comment, the applicant should take the following steps to comply with the requirements of Section 106 of the National Historic Preservation Act and Section 110 of the HCDA of 1980. In order to facilitate the commenting process the applicant should forward to the Council information on the proposed project if it is determined that National Register properties or properties which meet the Criteria for inclusion will be affected at the earliest practicable time. This will allow the Council to assist the applicant in expeditiously meeting its historic preservation requirements and facilitate the development of the Council's comments.

(a) *Information Required.* It is the primary responsibility of the applicant requesting Council comments to conduct the appropriate studies and to provide the information necessary for a review of the effect a proposed project may have on a National Register property or a property which meets the Criteria, as well as the information necessary for adequate consideration of modifications or alterations to the proposed project that could avoid, mitigate, or minimize any adverse effects. It is the responsibility of the applicant to provide the information specified in § 801.7, to make an informed and reasonable evaluation of whether a property meets the National Register Criteria (36 CFR 1202.6) and to determine the effect of a proposed undertaking on a National Register or property which meets the Criteria.

(b) *Identification of Properties.* Section 110 of the HCDA of 1980 makes UDAG applicants responsible for the identification of National Register properties and properties which may meet the Criteria for listing in the National Register that may be affected by the project. An appendix to these regulations sets forth guidance to applicants in meeting their identification responsibilities but does not set a fixed or inflexible standard for such efforts. Meeting this responsibility requires the applicant to make an earnest effort to identify and evaluate historic properties that may be affected by:

(1) Consulting the National Register of Historic Places to determine whether the project's impact area includes such properties;

(2) Applying the Department of the Interior Criteria for Evaluation (36 CFR 1202.6) to properties within the project's impact area through a site examination by qualified personnel;

(3) Utilizing local plans, surveys, or inventories of historic properties prepared by the locality or a recognized State or local historic authority;

(4) Obtaining, prior to initiating the State Historic Preservation Officer Review Period, relevant information that the State Historic Preservation Officer may have available concerning historic properties, if any, in the project's impact area: *Provided,* That a request for such information shall not be considered the initiation of the State Historic Preservation Officer Review Period; and,

(5) Utilizing other sources of information or advice the applicant deems appropriate.

(c) *Evaluation of Effect.* Applicants are required by Section 110(a) of the HCDA of 1980 to include in their applications a description of the effect of a proposed UDAG project on any National Register property and or any property which may meet the Criteria.

(1) *Criteria of Effect and Adverse Effect.* The following criteria, similar to those set forth in 36 CFR 800.3, shall be used to determine whether a project has an effect or an adverse effect.

(i) *Criteria of Effect.* The effect of a project on a National Register or eligible property is evaluated in the context of the historical, architectural, archeological, or cultural significance possessed by the property. A project shall be considered to have an effect whenever any condition of the project causes or may cause any change, beneficial or adverse, in the quality of the historical, architectural, archeological, or cultural characteristics that qualify the property to meet the Criteria of the National Register. An effect occurs when a project changes the integrity of location, design, setting, materials, workmanship, feeling or association of the property that contributes to its significance in accordance with the National Register Criteria. An effect may be direct or indirect. Direct effects are caused by the project and occur at the same time and place. Indirect effects include those cause by the undertaking that are later in time or farther removed in distance, but are still reasonably foreseeable. Such effects involve development of the project site around historic properties so as to affect the access to, use of, or significance of those properties.

(ii) *Criteria of Adverse Effect.* Adverse effects on National Register properties or properties which meet the Criteria may occur under conditions which include but are not limited to:

(A) Destruction or alteration of all of part of a property;

(B) Isolation from or alteration of the property's surrounding environment;

(C) Introduction of visual, audible, or atmospheric elements that are out of character with the property or alter its setting;

(D) Neglect of a property resulting in its deterioration or destruction;

(iii) *Special Considerations.* If rehabilitation is a project activity, such components of the project may be considered to have no adverse effect and need not be referred to the Council if it is undertaken in accordance with the *Secretary of the Interior's Standards for Historic Preservation Projects.* (U.S. Department of the Interior, Heritage Conservation and Recreation Service, Washington, D.C., 1979) and the State Historic Preservation Officer concurs in the proposed activity. Additionally, the following types of project components or elements will be considered to not normally adversely affect properties listed in the National Register or which meet the Criteria.

(A) Insulation (except for the use of granular or liquid injected foam insultation in exterior walls or other vertical surfaces);

(B) Caulking;

(C) Weatherstripping;

(D) Replacement of Heating, Ventilating and Air Conditioning (HVAC) equipment: *Provided,* That such equipment is screened from public view and that the State Historic Preservation Officer and the applicant agree the equipment will not affect those qualities of the property which qualify it to meet the 36 CFR 1202.6 Criteria;

(E) In-kind refenestration (for example, replacement of deteriorated windows of a similar configuration, color and material);

(F) Lowering of ceilings: *Provided,* The ceilings will not be visible from outside of the building or from an interior public space and that the State Historic Preservation Officer and the applicant agree it will not affect a quality which qualified the building to meet the 36 CFR 1202.6 Criteria;

(G) Replacement in-kind of substantially deteriorated material, provided that the State Historic

Preservation Officer and the applicant agree;

(H) Installation of machinery, equipment, furnishings, fixtures, etc., in the interior of existing buildings: *Provided,* That the State Historic preservation Officer and the applicant agree such installations will have no effect on those qualities which qualified the building to meet the 36 CFR 1202.6 Criteria.

(I) Use of land containing known or possible archeological resources under specified conditions (See Appendix, Section D)

(2) *Determinations of Effect.* Prior to submitting an application to HUD, the applicant shall apply the Criteria of Effect and Adverse Effect to all properties which are listed in the National Register or which may meet the Criteria in the area of the project's environmental impact. In order to facilitate the process, information shall be requested from the State Historic Preservation Officer on applying the Criteria of Effect and Adverse Effect. Special attention should be paid to indirect effects, such as changes in land use, traffic patterns, street activity, population density and growth rate. While some aspects of a project may have little potential to adversely effect the significant qualities of a historic property, other project components may meet the Criteria of Effect and Adverse Effect. If any aspect of the project results in an effect determination, further evaluation of the effect shall be undertaken in accordance with these regulations. The resulting determination regarding the effect shall be included in the application.

(i) *No Effect.* If it is determined that the project will have no effect on any National Register property and property which meets the Criteria, the project requires no further review by the Council unless a timely objection is made by the Executive Director. An objection may be made by the Executive Director at any time during the UDAG application process prior to the expiration of the period for receiving objections to HUD's release of funds as specified in 24 CFR 58.31. The Executive Director may consider the views of the State Historic Preservation Officer and others, including members of the general public, in reaching a decision on whether the project has an effect, but the final determination as to effect shall be made solely by the Executive Director.

(ii) *Determinations of No Adverse Effect.* If the applicant finds there is an effect on the property but it is not adverse, the applicant after the close of the State Historic Preservation Officer Review Period shall forward adequate documentation (see § 801.7(a)) of the Determination, including the comments of the State Historic Preservation Officer, if available, to the Executive Director for review in accordance with § 801.4.

(iii) *Adverse Effect Determination.* If the applicant finds the effect to be adverse or if the Executive Director objects to an applicant's no adverse effect determination pursuant to § 801.4(a), the applicant shall proceed with the consultation process in accordance with § 801.4(b).

§ 801.4 Council Comments.

The following subsections specify how the Council will respond to an applicant's request for the Council's comments required to satisfy the applicant's responsibilities under Section 106 of the Act and Section 110 of the HCDA of 1980. When appropriate, an applicant may waive the time periods specified in these regulations.

(a) *Response to determinations of no adverse effect.* (1) Upon receipt of a Determination of No Adverse Effect from an applicant, the Executive Director will review the Determination and supporting documentation required by § 801.7(a). Failure to provide the required information at the time the applicant requests Council comments will delay the process. The Executive Director will respond to the applicant within 15 days after receipt of the information required in § 801.7(a). Unless the Executive Director objects to the Determination within 15 days after receipt, the applicant will be considered to have satisfied its responsibilities under Section 106 of the Act and these regulations and no further Council review is required.

(2) If the Executive Director objects to a Determination of No Adverse Effect, the consultation process pursuant to § 801.4(b) shall be initiated.

(b) *Consultation Process.* If any aspect of the project is found to be adverse, the applicant, the State Historic Preservation Officer and the Executive Director shall consult to consider feasible and prudent alternatives to the project that could avoid, mitigate, or minimize the adverse effect on the affected property.

(1) *Parties.* The applicant, the State Historic Preservation Officer and the Executive Director shall be the consulting parties. The Department of HUD, other representatives of national, State, or local units of government, other parties in interest, and public and private organizations, may be invited by the consulting parties to participate in the consultation process.

(2) *Timing.* The consulting parties shall have a total of 45 days from the receipt by the Executive Director of the information required in § 801.7(a) to agree upon feasible and prudent alternatives to avoid, mitigate, or minimize any adverse effects of the project. Failure of an applicant to provide the information required in § 801.7(b) will delay the beginning of the time period specified above.

(3) *Information Requirements.* The applicant shall provide copies of the information required in § 801.7(b) to the consulting parties at the initiation of the consultation process and make it readily available for public inspection.

(4) *Public Meeting.* An onsite inspection and a Public Information Meeting may be held in accordance with the provisions of 36 CFR 800.6(b). Public hearings or meetings conducted by the applicant in the preparation of the application may, as specified below, substitute for such Public Information Meetings. Upon request of the applicant, the Executive Director may find that such public meetings have been adequate to consider the effect of the project on National Register properties or properties which meet the Criteria, and no further Public Information Meeting is required.

(5) *Consideration of Alternatives.* During the consultation period, the consulting parties shall, in accordance with the policies set forth in 36 CFR 800.6(b) (4) and (5), review the proposed project to determine whether there are prudent and feasible alternatives to avoid or satisfactorily mitigate adverse effect. If they agree on such alternatives, they shall execute a Memorandum of Agreement in accordance with Section 801.4(c) specifying how the undertaking will proceed to avoid or mitigate the adverse effect.

(6) *Acceptance of Adverse Effect.* If the consulting parties determine that there are no feasible and prudent alternatives that could avoid or satisfactorily mitigate the adverse effects and agree that it is in the public interest to proceed with the proposed project they shall execute a Memorandum of Agreement in accordance with § 801.4(c) acknowledging this determination and specifying any recording, salvage, or other measures associated with acceptance of the adverse effects that shall be taken before the project proceeds.

(7) *Failure to Agree.* Upon the failure of the consulting parties to agree upon the terms for a Memorandum of Agreement within the specified time period, or upon notice of a failure to agree by any consulting party to the

Executive Director, the Executive Director within 15 days shall recommend to the Chairman whether the matter should be scheduled for consideration at a Council meeting. If the Executive Director recommends that the Council not consider the matter, he shall simultaneously notify all Council members. The applicant and the State Historic Preservation Officer shall be notified in writing of the Executive Director's recommendation.

(c) *Memorandum of Agreement*—(1) *Preparation of Memorandum of Agreement.* It shall be the responsibility of the Executive Director to prepare each Memorandum of Agreement required under this part. As appropriate, other parties may be invited by the consulting parties to be signatories to the Agreement or otherwise indicate their concurrence with the Agreement. In order to facilitate the process, the applicant may provide the Executive Director a draft for a Memorandum of Agreement. At the applicant's option, such draft may be prepared at the time the applicant makes its determinations that properties listed in the National Register or which may meet the Criteria for listing in the National Register may be adversely affected. The applicant must provide the State Historic Preservation Officer an opportunity to concur in or comment on its draft Agreement.

(2) *Review of Memorandum of Agreement.* Upon receipt of an executed Memorandum of Agreement, the Chairman shall institute a 15 day review period. Unless the Chairman notifies the applicant that the matter has been placed on the agenda for consideration at a Council meeting, the Agreement shall become final when ratified by the Chairman or upon the expiration of the 15 day review period with no action taken. Copies will be provided to signatories and notice of executed Memoranda of Agreement shall be published by the Council in the Federal Register. A copy of the Memorandum of Agreement should be included in any Environmental Assessment or Environmental Impact Statement prepared pursuant to the National Environmental Policy Act.

(3) *Effect of Memorandum of Agreement.* (i) Agreements duly executed in accordance with these regulations shall constitute the comments of the Council and shall evidence satisfaction of the applicant's responsibilities for the proposed project under Section 106 of the Act and these regulations.

(ii) If the Council has commented on an application that is not approved by HUD and a subsequent UDAG application is made for the same project, the project need not be referred to the Council again unless there is a significant amendment to the project which would alter the effect of the project on previously considered properties or result in effects on additional National Register properties or properties which meet the Criteria.

(iii) Failure to carry out the terms of a Memorandum of Agreement requires that the applicant again request the Council's comments in accordance with these regulations. In such instances, until the Council issues its comments under these regulations the applicant shall not take or sanction any action or make any irreversible or irretrievable commitment that could result in an adverse effect with respect to National Register properties or properties which are eligible for inclusion in the National Register covered by the Agreement or that would foreclose the Council's consideration of modifications or alternatives to the proposed project that could avoid or mitigate the adverse effect.

(4) Amendment of a Memorandum of Agreement. Amendments to the Agreement may be made as specified is 36 CFR 800.6(c)(4).

(5) *Report on Memorandum of Agreement.* Within 90 days after carrying out the terms of the Agreement, the applicant shall report to all signatories on the actions taken.

(d) *Council Meetings.* Council meetings to consider a project will be conducted in accordance with the policies set forth in 36 CFR 800.6(d).

(1) *Response to Recommendation for Consideration at Council Meeting.* (i) Upon receipt of a recommendation from the Executive Director concerning consideration of a proposed project at a Council meeting, the Chairman shall determine whether the project will be considered and shall notify the Executive Director, the applicant, HUD, and the State Historic Preservation Officer of his decision. In reaching a decision the Chairman shall consider any comments from Council members.

(ii) If the Chairman decides against consideration of the project at a Council meeting, a written summary of the project, any recommendations for action by the applicant and HUD, and the decision shall be sent to each member of the Council. The Chairman shall also notify the applicant, the Department of HUD, the State Historic Preservation Officer and other parties in interest of the decision. Such notice shall be evidence of satisfaction of the applicant's responsibilities for the proposed project under Section 106 of the Act and these regulations.

(2) *Decision to Consider the Project.* When the Council will consider a proposed project at a meeting, the Chairman shall either designate five members as a panel to hear the matter on behalf of the full Council or schedule the matter for consideration by the full Council. In either case, the meeting shall take place within 30 days of the Chairman's receipt of the recommendations of the Executive Director, unless the applicant agrees to a longer time.

(i) A panel shall consist of three non-Federal members, one as Chairman, and two Federal members. The Department of HUD may not be a member of such panel.

(ii) Prior to any panel or full Council consideration of a matter, the Chairman will notify the applicant and the State Historic Preservation Officer and other parties in interest of the date on which the project will be considered. The Executive Director, the applicant, the Department of HUD, and the State Historic Preservation Officer shall prepare reports in accordance with § 801.7(b). Reports from the applicant and the State Historic Preservation Officer must be received by the Executive Director at least 7 days before any meeting.

(3) *Meeting Notice.* At least 7 days notice of all meetings involving Council review of projects in accordance with these regulations shall be given by publication in the Federal Register. The Council shall provide a copy of the notice by mail to the applicant, the State Historic Preservation Officer, and the Department of Housing and Urban Development.

(4) *Statements to the Council.* An agenda shall provide for oral statements from the Executive Director; the applicant; the Department of HUD; parties in interest; the Secretary of the Interior; the State Historic Preservation Officer; representatives national, State, or local units of government, and interested public and private organizations and individuals. Parties wishing to make oral remarks should notify the Executive Director at least two days in advance of the meeting. Parties wishing to have their statements distributed to Council members prior to the meeting should send copies of the statements to the Executive Director at least 5 days in advance.

(5) *Comments of the Council.* The written comments of the Council will be issued within 7 days after a meeting. Comments by a panel shall be considered the comments of the full Council. Comments shall be made to the applicant requesting comment and to the Department of HUD in order to assist

the Department in taking final action on the application. Immediately after the comments are made to the applicant and the Department of HUD, the comments of the Council will be forwarded to the President and the Congress as a special report under authority of Section 202(b) of the Act and a notice of availability will be published in the Federal Register. The comments of the Council shall be available to the State Historic Preservation Officer, other parties in interest, and the public upon receipt of the comments by the applicant. The applicant should include the comments of the Council in any final Environmental Impact Statement prepared pursuant to the National Environmental Policy Act.

(6) *Action in Response to Council Comments.* Upon receipt of the Council's comments after a meeting, the applicant and the Department of HUD shall take these comments into account in reaching a final decision on the proposed project. When a final decision regarding the proposed project is reached by the applicant and the Department of HUD, they shall submit written reports to the Council describing the actions taken by them and other parties in response to the Council's comments and the impact that such actions will have on the affected National Register properties or properties eligible for inclusion in the National Register. Receipt of this report by the Chairman shall be evidence that the applicant has satisfied its responsibilities for the proposed project under Section 106 of the Act and these regulations. The Council may issue a final report to the President and the Congress under authority of Section 202(b) of the Act describing the actions taken in response to the Council's comments including recommendations for changes in Federal policy and programs, as appropriate.

(e) *Suspense of Action.* Until the Council issues its comments under these regulations and during the State Historic Preservation Officer review period and the determination period of the Secretary of the Interior, good faith consultation shall preclude the applicant from taking or sanctioning any action or making any irreversible or irretrievable commitment that could result in an adverse effect on a National Register or property which may meet the Criteria or that would foreclose the consideration of modifications or alternatives to the proposed project that could avoid, mitigate, or minimize such adverse effects. In no case shall UDAG funds be used for physical activities on the project site until the Council comments have been completed. Normal planning and processing of applications short of actual commitment of funds to the project may proceed.

(f) *Lead Agency.* If the project proposed by the applicant involves one or more Federal agencies, they may agree on a single lead agency to meet the requirements of Section 106 of the National Historic Preservation Act and Section 110 of the Housing and Community Development Act of 1980 and notify the Executive Director. If the applicant is the designated lead agency, these regulations shall be followed. If a Federal agency is designated lead agency, the process in 36 CFR Part 800 shall be used.

(g) *Compliance by a Federal Agency.* An applicant may make a finding that it proposes to accept a Federal agency's compliance with Section 106 of the Act and 36 CFR Part 800 where its review of the Federal agency's findings indicate that:

(1) The project is identical with an undertaking reviewed by the Council under 36 CFR Part 800; and

(2) The project and its impacts are included within the area of potential environmental impact described by the Federal agency;

The applicant shall notify the State Historic Preservation Officer and the Executive Director of its finding of compliance with Section 106 of the Act and 36 CFR Part 800 and provide a copy of the Federal agency's document where the finding occurs. Unless the Executive Director objects within 10 days of receipt of such notice the Council need not be afforded further opportunity for comment. If the Executive Director objects to the finding of the applicant, the applicant shall comply with § 801.4.

§ 801.5 State Historic Preservation Officer Responsibilities.

(a) The State Historic Preservation Officer shall participate in the review process established by Section 110(c) of the HCDA of 1980 whenever it concerns an undertaking located within the State Historic Preservation Officer's jurisdiction. The State Historic Preservation Officer shall have a maximum period of 45 days in which to formally comment on an applicant's determination that the project may affect a property that is lised in the National Register or which may meet the Criteria for listing in the National Register and whether such property is affected by the project.

(b) The failure of a State Historic Preservation Officer to participate in any required steps of the process set forth in this part shall not prohibit the Executive Director and the applicant from concluding the Section 106 process, including the execution of a Memorandum of Agreement.

§ 801.6 Coordination with Requirements Under the National Environmental Policy Act (42 U.S.C. 4321 et seq)

The National Historic Preservation Act and the National Environmental Policy Act create separate and distinct responsibilities. The National Historic Preservation Act applies to those aspects of a project which may affect National Register properties and those which are eligible for listing in the National Register. The requirements for the National Environmental Policy Act apply to the effect that the project will have on the human environment. To the extent that the applicant finds it practicable to do so, the requirements of these two statutes should be integrated. Some projects, for reasons other than the effects on historic properties, may require an Environmental Impact Statement (EIS) subject to the time requirements for a draft and final EIS, in which case the applicant may choose to separately relate to the State Historic Preservation Officer, the Department of the Interior, and the Council for purposes of Section 110(c) of the HCDA of 1980. In that event, information in the draft EIS should indicate that compliance with Section 106 and these regulations is underway and the final EIS should reflect the results of this process. Applicants are directed to 36 CFR 800.9, which describes in detail the manner in which the requirements of these two acts should be integrated and applies to all UDAG applicants under these regulations. In those instances in which an Environmental Impact Statement will be prepared for the project, the applicant should consider phasing compliance with these procedures and the preparation of the Statement. This may necessitate the applicant waiving the time requirements set forth in § 801.4.

§ 801.7 Reports to the Council.

In order to adequately assess the impact of a proposed project on National Register and eligible properties, it is necessary for the Council to be provided certain information. For the purposes of developing Council comments on UDAG projects the following information is required. Generally, to the extent that

relevant portions of a UDAG application meet the requirements set forth below it will be sufficient for the purposes of Council review and comment.

(a) *Information Requirements for Applicants*—(1) *Documentation for Determination of No Adverse Effect.* Adequate documentation of a Determination of No Adverse Effect pursuant to § 801.3(c)(1) should include the following:

(i) A general discussion and chronology of the proposed project;

(ii) A description of the proposed project including, as appropriate, photographs, maps, drawings, and specifications;

(iii) A list of National Register and eligible properties that will be affected by the project including a description of the property's physical appearance and significance;

(iv) A brief statement explaining why each of the Criteria of Adverse Effect (See § 801.3(c)(1)) was found inapplicable;

(v) Written views of the State Historic Preservation Officer concerning the Determination of No Advese Effect, if available; and,

(vi) An estimate of the cost of the project including the amount of the UDAG grant.

(2) *Preliminary Case Reports.* Preliminary Case Reports should be submitted with a request for comments pursuant to § 801.4(b) and should include the following information:

(i) A general discussion and chronology of the proposed project.

(ii) The status of the project in the HUD approval process.

(iii) The status of the project in the National Environmental Policy Act compliance process and the target date for completion of all the applicant's environmental responsibilities.

(iv) A description of the proposed project including as appropriate, photographs, maps, drawings and specifications.

(v) A list of National Register and eligible properties that will be affected by the project including a description of the property's physical appearance and significance.

(vi) A brief statement explaining why any of the Criteria of Adverse Effect (See § 801.3(c)(1)(b)) apply;

(vii) Written views of the State Historic Preservation Officer concerning the effect on the property, if available;

(viii) The views of Federal agencies, State and local governments, and other groups or individuals, when known as obtained through the OMB Circular A–95 process or the environmental review process, public hearings or other applicant processes;

(ix) A description and analysis of alternatives that would avoid the adverse effects;

(x) A description and analysis of alternatives that would mitigate the adverse effects; and,

(xi) An estimate of the cost of the project including the amount of the UDAG grant.

(b) *Reports for Council meetings.* Consideration of a proposed project by the full Council or a panel pursuant to § 801.4(b) is based upon reports from the Executive Director, the State Historic Preservation Officer and Secretary of the Interior. Requirements for these reports are specified in 36 CFR 800.13(c). Additionally, reports from the applicant and the Department of HUD are required by these regulations. The requirements for these reports consist of the following:

(1) *Report of the Applicant.* The report from the applicant requesting comments shall include a copy of the relevant portions of the UDAG application; a general discussion and chronology of the proposed project; an account of the steps taken to comply with the National Environmental Policy Act (NEPA); any relevant supporting documentation in studies that the applicant has completed; an evaluation of the effect of the project upon the property, with particular reference to the impact on the historical, architectural, archeological, and cultural values; steps taken or proposed by the applicant to avoid or mitigate adverse effects of the projects; a thorough discussion of alternate courses of action; and an analysis comparing the advantages resulting from the project with the disadvantages resulting from the adverse effects on National Register or eligible properties.

(2) *Report of the Secretary of Housing and Urban Development.* The report from the Secretary shall include the status of the application in the UDAG approval process, past involvement of the Department with the applicant and the proposed project or land area for the proposed project and information on how the applicant has met other requirements of the Department for the proposed project.

Appendix—Identification of Properties

A. Introduction

Because of the high probability of locating properties which are listed in the National Register or which meet the Criteria for listing in many older city downtowns, this appendix is designed to serve as guidance for UDAG applicants in identifying such properties. In addition, because archeological resources present problems in an urban context, guidance is also set forth regarding this class of resources.

B. Role of the State Historic Preservation Officer

In any identification effort to locate Historic Register properties or properties which meet the Criteria, the State Historic Preservation Officer is a key figure. The State Historic Preservation Officer will be of vital assistance to the applicant. The State Historic Preservation Officer can provide information on known properties as well as studies which have taken place in the project area. Early contact should be made with the State Historic Preservation Officer for recommendations and suggestions regarding efforts that should be undertaken to identify properties. For UDAG projects, identification of National Register properties which meet the Criteria is the responsibility of the applicant. The level of identification effort should be made in consultation with the State Historic Preservation Officer with due consideration to the nature of the project and its impacts, the likelihood of historic properties being affected and the state of existing knowledge regarding historic properties in the area of the project's potential environmental impact.

C. Levels of Identification

1. The area of the project's potential environmental impact consists of two distinct subareas: That which will be disturbed directly (generally the construction site and its immediate environs) and that which will experience indirect effects. Within the area of indirect impact, impacts will be induced as a result of carrying the project out. Historic and cultural properties subject to effect must be identified in both subareas, and the level of effort necessary in each may vary. The level of effort needed is also affected by the stage of planning and the quality of pre-existing information. Obviously, if the area of potential environmental impact has already been fully and intensively studied before project planning begins, there is no need to duplicate this effort. The State Historic Preservation Officer should be consulted for information on previous studies. Assuming the area has not been previously intensively studied, identification efforts generally fall into three levels:

a. *Overview Study:* This level of study is normally conducted as a part of general planning and is useful at an early stage in project formulation. It is designed to obtain a general

understanding of an area's historic and cultural properties, by:

(1) Assessing the extent to which the area has been previously subjected to study;

(2) Locating properties previously recorded;

(3) Assessing the probability that properties eligible for the National Register will be found if the area is closely inspected, and

(4) Determining the need, if any, for further investigation.

An overview study includes study of pertinent records (local histories, building inventories, architectural reports, archeological survey reports, etc.), and usually some minor on-the-ground inspection.

b. *Identification Study:* An identification study attempts to specifically identify, and record all properties in an area that may meet the Criteria for listing on the National Register. It is conducted in consultation with the State Historic Preservation Officer, and includes study of pertinent background data plus a thorough on-the-ground inspection of the subject area by qualified personnel. For very large areas, or areas with uncertain boundaries, such a study may focus on representative sample areas, from which generalizations may be made about the whole.

c. *Definition and Evaluation Study:* If an overview and/or an identification study have indicated the presence or probable presence of properties that may meet the National Register Criteria but has not documented them sufficiently to allow a determination to be made about their eligibility, a definition and evaluation study is necessary. Such a study is directed at specific potentially eligible properties or at areas known or suspected to contain eligible properties. It includes an intensive on-the-ground inspection and related studies as necessary, conducted by qualified personnel and provides sufficient information to apply the National Register's "Criteria for Evaluation" (36 CFR 1202.6).

2. An overview study will normally be needed to provide basic information for planning in the area of potential environmental impact. Unless this study indicates clearly that no further identification efforts are needed (e.g. by demonstrating that the entire area has already been intensively inspected with negative results, or by demonstrating that no potentially significant buildings have ever been built there, and there is virtually no potential for archeological resources), an identification study will probably be needed within the area of potential environmental impact. This study may show that there are no potentially eligible properties within the area, or may show that only a few such properties within the area, or may show that only a few such properties exist, and document them sufficiently to permit a determination of eligibility to be made in accordance with 36 CFR Part 1202. Alternatively, the study may indicate that potentially eligible properties exist in the area, but may not document them to the standards of 36 CFR Part 1202. Should this occur, a definition and evaluation study is necessary for those properties falling within the project's area of direct effect and for those properties subject to indirect effects. If a property falls within the general area of indirect effect, but no indirect effects are actually anticipated on the property in question, a definition and evaluation study will normally be superfluous.

D. Identification and Consideration of Archeological Properties in an Urban Context.

1. Archeological sites in urban contexts are often difficult to identify and evaluate in advance of construction, because they are sealed beneath modern buildings and structures. Prehistoric and historic sites within cities may be important both to science and to an understanding of each city's history, however, and should be considered in project planning. Special methods can be used to ensure effective and efficient consideration and treatment of archeological sites in UDAG projects.

a. If it is not feasible to physically determine the existence or nonexistence of archeological sites in the project area, the probability or improbability of their existence can be determined, in most cases, through study of:

(1) Information on the pre-urban natural environment, which would have had an effect on the location of prehistoric sites;

(2) Information from surrounding areas and general literature concerning the location of prehistoric sites;

(3) State and local historic property registers;

(4) Archeological survey reports;

(5) Historic maps, atlases, tax records, photographs, and other sources of information on the locations of earlier structures;

(6) Information on discoveries of prehistoric or historic material during previous construction, land levelling, or excavation.

b. Where review of such sources of information reveals no significant likelihood that archeological resources which meet the National Register Criteria exist on the project site, no further review is required with respect to archeology.

2. Where review of sources of information such as those listed in Section D(1)(a) above, reveals that archeological resources which meet the National Register Criteria are likely to exist on the project site, but these resources are so deeply buried that the project will not intrude upon them, or they are in a portion of the project site that will not be disturbed, a determination of "No Effect" is appropriate in accordance with § 801.3.

3. Where review of sources of information such as those listed in Section D(1)(a) above, reveals that archeological resources which meet the Criteria exist or are likely to exist on the project site, and that the project is likely to disturb them, a determination of "No Adverse Effect" may be made in accordance with § 801.3(a)(2)(B) if:

a. The applicant and/or developer is committed to fund a professionally supervised and planned pre-construction testing program, and to modification of the project in consultation with the State Historic Preservation Officer to protect or incorporate within the project the archeological resources discovered with a minimum of damage to them, or if:

b. The applicant and/or developer is committed to fund a professionally supervised and planned archeological salvage program, coordinated with site clearing and construction, following the standards of the Secretary of the Interior set forth at 36 CFR Part 1210, and the applicant finds that this program negates the adverse effect, in accordance with the standards set forth in Section X of the Council's "Supplementary Guidance for Review of Proposals for Treatement of Archeological Properties" (45 FR 78808).

4. When archeological sites included in the National Register or which meet the Criteria are found to exist on the project site or in the area of the project's environmental impact, and where the project is likely to disturb such resources, and where the adverse effect of such disturbance cannot be negated by archeological salvage, a determination of "Adverse Effect" is appropriate in accordance with § 801.3(a)(2)(C).

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Part XXII

Department of Transportation

Office of the Secretary

Nondiscrimination in Federally Assisted Programs of the Department of Transportation—Implementation of Title VI of the Civil Rights Act of 1964; Proposed Rulemaking

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 21

[OST Docket No. 18; Amdt. No. 21-4]

DOT Title VI Regulation—Nondiscrimination in Federally Assisted Programs of the Department of Transportation—Implementation of Title VI of the Civil Rights Act of 1964

AGENCY: Department of Transportation.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Department of Transportation proposes this regulation to revise and update the Department's rules implementing Title VI of the Civil Rights Act of 1964. Title VI provides that no person shall, on the ground of race, color or national origin, be excluded from, be denied the benefits of, or be discriminated against under any program or activity receiving Federal financial assistance.

The Department's existing Title VI regulation was published in June, 1970. Since that time, changes in administrative practice have occurred. The existing regulation no longer fully reflects the dimension and approach of the Department's Title VI program. Therefore, the Department has decided to publish a new Title VI regulation which reflects current practice and gathers into one document all Title VI requirements affecting the Department's financial assistance programs.

COMMENT CLOSING DATE: April 20, 1981.

ADDRESS FOR COMMENTS: Comments submitted should refer to OST Docket No. 18 and be sent (preferably in triplicate) to the U.S. Department of Transportation, Docket Clerk, Room 10424, 400 Seventh Street, S.W., Washington, D.C. 20590. All comments submitted will be available for public inspection both before and after the closing date at the above address. Office hours are from 9:00 a.m. to 5:30 p.m., E. T., Monday–Friday.

FOR FURTHER INFORMATION CONTACT: Robert J. Coates, Chief, Public Programs Division, or Dorsey R. Thomas, Public Programs Division, Room 9201. (Phone: 202 426–4754).

The address of these individuals is 400 Seventh Street, S.W., Washington, D.C. 20590. Normal business hours are 9:00 a.m. to 5:30 p.m., Monday through Friday. All times given are eastern time.

SUPPLEMENTARY INFORMATION: Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d *et seq.*) is the cornerstone of the Federal government's policy to ensure that Federal financial assistance is not used in programs which discriminate against persons because of their race, color, or national origin.

The statute provides that: No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

Applicants for or recipients of Federal financial assistance who fail to comply with this mandate are subject to the loss of their Federal assistance, following appropriate procedural safeguards. The Department of Transportation Regulation which carries out Title VI is 49 CFR Part 21. It was published on June 18, 1970.

Over the years, the Department's transportation assistance activities have changed and the DOT Title VI program has become more complex. In order to carry out its responsibilities, the Departmental Office of Civil Rights and the elements of the Department (e.g. the Federal Highway Administration, the Urban Mass Transportation Administration) have created administrative requirements and procedures to ensure that recipients of DOT financial assistance meet their Title VI responsibilities. For example, the Urban Mass Transportation Administration, Federal Highway Administration, Coast Guard and Federal Aviation Administration each have circulars, instructions, or guidelines setting forth the obligations of recipients and the administrative process enforcing these obligations. The Office of the Secretary, in January 1977, created an internal order which assigned Title VI responsibilities within the Department (DOT Order 1000.12). None of the details of these directives has been made part of the Code of Federal Regulations. Because the details of the directives vary somewhat, recipients who deal with more than one Departmental element may face differing or duplicative requirements.

The emphasis of much of the administrative guidance which has arisen since the publication is on application (pre-approval) reviews.

The application review approach is now required by Department of Justice regulations applicable to all Federal agencies (28 CFR Part 42, Subpart F). These Department of Justice regulations spell out requirements for Title VI programs, some of which do not appear in DOT's present Part 21.

The aims of this proposed revision of Part 21 are to make the DOT rules consistent with Department of Justice requirements, to gather all DOT Title VI guidance and requirements affecting recipients and the public into one place for easier reference, to reflect appropriately in a regulation the importance of application reviews in the Department's Title VI program, and to make the Department's requirements as clear and understandable as possible. To this end, the proposed rule is organized into three subparts and a number of appendices. The three subparts deal respectively with general requirements, means of determining whether applicants and recipients comply with the requirements (e.g. planning, application and compliance reviews and complaint investigations), and enforcement procedures (e.g. conciliation and sanctions). The appendices give examples of activities to which the regulation applies and programs in which employment practices are covered by Title VI; set forth a new standard, DOT Title VI assurance; internal procedures; a new pre-approval Title VI assessment form; and relate any specific requirements or procedures peculiar to a Departmental Element.

Title VI prohibits discrimination against minority businesses. A recent DOT rule (49 CFR Part 23) sets forth requirements for DOT recipients in the minority business program. Minority business matters are handled through Part 23 rather than through this rule. Enforcement procedures under Part 23 and this rule are identical.

Section-by-Section Analysis

This portion of the supplementary information concerning the proposed rule examines each section of the proposal, highlighting changes from the existing regulation and explaining the reasons for the proposed changes and additions to the rule.

Subpart A—General

Section 21.1 Purpose. This statement of the purpose of the entire regulation is substantively unchanged from the parallel section of the existing rule.

Section 21.3 Definitions. The definitions section of the rule has been expanded considerably from the present § 21.23. The section contains a number of new definitions, and some of the existing definitions have been clarified.

The definition of "applicant" is essentially unchanged from the present regulations, although the redundant definition of "application" has been dropped. The definition of "beneficiary," which is new, emphasizes that a beneficiary is not a recipient. An "ultimate beneficiary" is the last person in a chain of benefits flowing from a

covered program, such as the consumer of a transportation service.

The next several definitions (compliance, contractor, Department or DOT, Departmental Element, Director and discrimination) are not complicated concepts, but are placed in the definitions section to ensure a standard understanding of frequently used terms. The definition of "disparate negative effect", which applies only and benefits and services, is new and emphasizes that the provision of a lower level of services or more harmful effects of programs to some persons than to others may be discriminatory. The definition of "facility" and "financial assistance" are taken directly from the existing definitions except that licensees are now covered explicitly under the latter. Covered licenses include those to construct or operate a program or facility (e.g. a deepwater port) but not individual licenses (e.g. aircraft pilot licenses).

The definition of "noncompliance," which is new, points out that a violation of Title VI obligations can arise both by a failure to meet the direct requirements of Title VI or Part 21 and by a failure to carry out the provisions of the standard Title VI assurance which every recipient must sign. The definition of "Office" simply establishes standard usage for a term used repeatedly in the rule. The new definition of "participant" encompasses a class of persons and organizations who are neither direct recipients of DOT funds nor the ultimate consumer of DOT-funded services or facilities. Any party involved in the planning, construction, operation, or other phases of a program (e.g. contractors, concessionaires) is a participant, and may have obligations and may be protected against discrimination under the regulations. We are especially interested in receiving comments on this definition and its use in the text. The definition of "person" means any natural person, corporation, partnership, utility, unincorporated association and includes American Indian tribes, groups or nations. The definition of "positive steps" has been added. It emphasizes that necessary steps must be taken to assure that equitable services and benefits are provided to ensure nondiscrimination in all aspects of the planning and execution of programs. The definition of "program" (which includes the allied terms "project" and "activity," both of which are deemed to be aspects or expressions of programs) has been shortened and simplified from the version in the present Part 21. This editorial change is not intended to affect the substance of the definition, however. The definition of "recipient" has also been editorially simplified, and emphasizes that participants are considered to be recipients for purposes of Title VI responsibilities even though they do not directly receive DOT funds. The subdefinition of "primary recipient" is substantively unchanged from the present rule.

Because in many DOT program contexts, the relocation of persons displaced by the project is an important Title VI concern, a definition of "relocation assistance," which refers to the Uniform Relocation Assistance and Real Property Acquisition Policies Act, has been added. "Respondent" is defined to mean a party alleged or determined to be in noncompliance with the Act or the regulation. "Secretary," refers to the Secretary of Transportation. A concept new to the Title VI regulations, "transportation planning process," has been added. A transportation planning process means any planning process which is a prerequisite to the approval of a project or a grant under a DOT program. For example, the planning process of 23 U.S.C. 134 must be pursued by Metropolitan Planning Organizations (MPOs) before certain highway or mass transit projects may receive DOT approval and funding. The proposed regulation provides that planning processes will be reviewed to ensure that Title VI considerations are adequately taken into account in transportation planning. In addition to comments about the content of the various definitions, we are interested in receiving comments about whether other terms ought to be defined or whether terms in the definitions section are unnecessary and can be deleted.

Section 21.5 Applicability of this part. With minor editorial changes, this section's statement of the applicability of Part 21 is the same as that of § 21.3 of the present regulation. The list of programs covered by Title VI generally and covered by Title VI for purposes of employment, Appendices A and B, respectively—are not necessarily exhaustive. If Title VI in fact applies to a given program generally for employment purposes, the program is covered notwithstanding its absence from the appendices. Present or future programs may be added to either appendix from time to time by the Director of Civil Rights.

Section 21.7 Discrimination Prohibited. This section derives directly from § 21.5 of the present regulations. Subparagraphs (b)(2) and (3) have been reworded somewhat, though their substance has not been changed. Subparagraph (b)(4) of the present rule has been deleted on the ground that it states an obvious proposition—that benefits and services subject to Title VI requirements include those provided through a Federally funded facility.

Section 21.9 Consideration of Race, Color and National Origin. This section incorporates the language of § 21.5(b)(7) of the present rules. The subject is treated separately to emphasize the important point that it is permissible for a recipient to take the race, color, or national origin of beneficiaries, employees or others into account for beneficient purposes, such as positive steps to remedy the effects of past discrimination or to ensure nondiscriminatory treatment of all persons in the future.

Section 21.11 Employment Practices. Title VI covers the total employment practices of recipients under programs, a primary purpose of which is to provide employment. The first paragraph of this section (which derives from § 21.5(c)(1) of the present regulation with little change) sets forth this coverage. Programs, a primary purpose of which is to provide employment, are listed in Appendix B. This list was compiled by the departmental elements on the basis of their examination of the legislative history and operation of their programs. While these programs have other purposes in addition to creating jobs, it is the judgment of the Department that one of the primary purposes of each of them is to provide employment.

The other kind of employment coverage, even where a primary purpose of a program is not to provide employment, arises when discrimination in a certain kind of employment (e.g. public contact personnel, planners) could create discrimination in services to beneficiaries. Paragraph (b) of Appendix B explains this coverage of employment.

The last paragraph of this section points out that where employment may not be covered under Title VI, employment practices may be covered under DOT legislation such as Section 30 of the Airport and Airport and Airway Development Act of 1970, as amended, or Section 140 and 324 of the Federal-aid Highway Act of 1968, as amended.

Because the scope of coverage of employment under these proposed regulations may be somewhat wider than under the existing Part 21, the question arises whether this proposal could create equal employment opportunity requirements that overlap those of other Department of Transportation programs or programs of

other agencies (e.g. the EEOC). We invite comment on this issue, together with suggestions as to how best to deal with any overlap.

Section 21.13 Assurances Required. The DOT Title VI program has always required assurances—contractual documents setting forth a recipient's specific obligations under the Title VI program. This proposed rule incorporates a revised and expanded standard DOT assurance (found in Appendix C). The new assurance, considerably more inclusive than its predecessor, calls on recipients to agree to the detailed components of a Title VI program, in such areas as ensuring fair distribution of benefits and negative effects, providing for public information and citizen participation, complying with relevant requirements as to employment, minority business participation, and relocation assistance, and providing requested data to the Department for the purpose of monitoring compliance. Comments are specifically invited on the content of the new assurance.

This section provides for the phasing-in of the new assurances. Within 90 days from the effective date of the rule, all current recipients of DOT assistance will be required to sign a new assurance to replace their existing assurances. In addition, continuing recipients of DOT assistance (e.g. State highway departments) are required to submit a new signed assurance each year or certify compliance with the initial requirement in § 21.13(a). Failure to submit assurances is a form of noncompliance with Part 21.

Section 21.15 Title VI Assessment. This new section sets forth the requirement that each application for financial assistance contains a "Title VI Assessment" document, the basic form for which is found at Appendix E. This document requests information about all aspects of an applicant's Title VI posture necessary to allow the DOT element to make informed pre-approval compliance determinations. Pre-approval determinations are a key part of the Department's Title VI program. Comments are invited on the content and format of the Title VI Assessment, including modifications of the respective Departmental elements appendices. The Department is very concerned that this Assessment be as informative as possible without creating undue burdens on applicants.

Section 21.17 Intimidation and Retaliation Prohibited. This section, derived from § 21.11(e) of the present regulation, prohibits recipients and their employees from intimidating, coercing or retaliating against anyone for the purpose of interfering with a right or privilege granted by Title VI or Part 21 or in connection with any complaint or proceeding under this part. A sentence making explicit a long-standing administrative determination that violation of this prohibition constitutes noncompliance with the regulation is added. The present section's language relating to complainant confidentiality has been deleted and moved to Subpart B.

Section 21.19 Relationship to Other Laws, Regulations and Agencies. The requirements of Title VI are related to the requirements of other statutes and regulations and to the enforcement efforts of other Federal agencies. There are a number of Title VI-like statutes that prohibit discrimination in specific DOT grant programs, including Section 30 of the Airport and Airway Development Act, Section 19 of the Urban Mass Transportation Act, and 23 U.S.C. 324. In § 21.19(a), the Department proposes to be able to enforce these statutes through the mechanism of this Title VI regulation, in order to provide more uniform enforcement of all DOT civil rights requirements. This provision would not supersede existing regulations that implement Section 905 and Section 30, but simply would allow the Department to enforce its civil rights requirements according to a common scheme.

The program statutes cited all prohibit sex discrimination. Consequently, for the program each statute covers, the grounds on which discrimination is prohibited under this Title VI regulation would include sex as well as race, color, and national origin.

The Department recently published a final rule prohibiting discrimination against and requiring affirmative action to increase the participation of minority business enterprises in contracting opportunities under DOT financial assistance programs (49 CFR Part 23). To avoid duplication between this rule and the MBE regulation, discrimination against MBEs, though forbidden by Title VI, will be handled administratively only under the MBE rule and its enforcement procedures, which are identical to those of this Part.

Section 21.19(c) is taken, slightly modified, from § 21.21(c) of the existing Part 21. The purpose of the provision is to permit maximum coordination and flexibility within the Department and Federal government in Title VI enforcement.

Subpart B—Compliance Procedures

Section 21.21 General. This section summarizes the contents of the subpart and sets forth two important policies—that compliance procedures are handled by civil rights office personnel and that the Department provides financial assistance only to recipients who are in compliance with Title VI requirements.

Section 21.23 Planning, Application and Compliance Reviews. This section identifies the three types of reviews to be routinely conducted by the DOT element to ensure that applicants and recipients in fact comply with Title VI. The present Part 21 does not provide detailed information about these reviews, mentioning compliance reviews briefly and application and planning reviews not at all. Application reviews and periodic post-award compliance reviews are required by the Department of Justice as a part of all Federal agencies' Title VI programs (see 28 CFR 42.407).

Paragraph (a) concerns planning reviews. Transportation planning is a complex process involving State and local government agencies, transit operators, civic and neighborhood groups, Metropolitan Planning Organizations and other interested persons and groups in addition to the Department. The plans that emerge from the transportation planning process often affect services and the placement of facilities for an entire region over a significant period of time. The Department of Transportation's responsibility to ensure that transportation services and the impacts of providing transportation services and facilities are distributed in accordance with the requirements of Title VI cannot properly be carried out unless the planning process, as well as decisions on specific projects or services, adequately incorporates Title VI concerns.

Consequently, the Department proposes to examine two principal aspects of the process. First, the Department will inquire about the process and its consistency with Title VI. Do minority group members have adequate means of access to the planning process? Are they informed about the issues being considered, and are there mechanisms through which their views may be taken into account appropriately as plans are drawn? Is there reasonable representation of the minority community on the staffs, committees, advisory councils, and so forth of organizations responsible for planning? Second, the Department will examine the products of the process. Do the plans which emerge from the process call for equitable distribution of services, benefits, and adverse impacts among the population of the area,

regardless of race, color and national origin?

The aim of the Department's Title VI involvement in the planning process is to ensure that equitable distribution of services, benefits and negative effects, and adequate representation of minorities' views, becomes an integral part of the planning process. Through its experience with Title VI reviews of specific projects, the Department has become pursuaded that the goals of Title VI can be achieved far easier if these considerations are injected into transportation decision-making before the individual project stage. Consequently, this paragraph provides that each transportation planning process involving DOT-funded programs should be reviewed once a year.

Paragraph (b) concerns application (i.e. pre-approval) reviews. Before any grant, or any project, can be approved, the appropriate office of civil rights must determine that the applicant is in compliance with Title VI. Financial assistance cannot be provided for a project until this determination is made. The primary tool used in making application reviews is the Title VI Assessment. However, where it appears necessary, additional written information may be requested or an on-site inspection may be made so that the Department may make a fair and accurate determination.

Paragraph (c) deals with compliance reviews, which occur after a grant or project is approved. Compliance reviews include a "desk audit" (a review of documents) and, where appropriate, an on-site inspection. Compliance reviews normally are scheduled annually, although the scheduling may vary depending on the duration of the program or project being reviewed and other circumstances (e.g. following a conciliation agreement, a compliance review must be conducted within 9 months to make sure that the agreement is being carried out). Special compliance reviews may be scheduled at any time, at the Department's discretion.

In each case, following the review, the Department makes a determination of the applicant's or recipient's compliance with Title VI. The determination may be that the applicant or recipient is in compliance, in which case project or funding approval may proceed. Alternatively, the determination may be that there is reasonable cause to believe that the applicant or recipient is not in compliance, or that a program or planning process is not consistent with the goals and purposes of Title VI. Project or grant approval may not proceed until the problems identified by this determination are resolved.

The determinations respecting compliance are made by the concerned Departmental element office of civil rights. These determinations are submitted to the Director of the Departmental Office of Civil Rights for review, in order to ensure consistency throughout the Department's Title VI program.

Section 21.25 Complaints. The complaint process is basically unchanged from the process set forth in existing regulations (§ 21.11). However, the proposed regulation explains the procedure in greater detail. Among the points now stated explicitly by the regulation are the criteria for taking jurisdiction of a complaint, (the complaint must involve a DOT-assisted program and allege conduct prohibited by Title VI), the policy of referring complaints over which the Department lacks jurisidiction to other agencies and the kinds of cooperation required of respondents (e.g. providing all data requested by the investigator, providing records in the custody of a third party were possible). Following a complaint investigation, which is conducted by or under the direction of the Departmental Office of Civil Rights, the Director determines either that the respondent has not violated the Act or the regulation or that there is reasonable cause to believe that a violation has occurred.

Section 21.27 Report to the Department of Justice. In accordance with Department of Justice requirements, the Director must notify the Assistant Attorney General, Civil Rights Division, Department of Justice whenever he or she determines that there is reasonable cause to believe that an applicant or recipient is in noncompliance or has discriminated.

Subpart C—Enforcement Action and Sanctions.

Section 21.43 Conciliation Procedures. When it is determined that there is reasonable cause to believe that an applicant or recipient is in noncompliance or has discriminated, the Department initiates conciliation proceedings to resolve the problem. Conciliation is informal resolution through negotiation intended to produce an agreement between the Department and respondent that will result in compliance with Title VI. It should be emphasized strongly that conciliation is a most important part of the Department's enforcement program. Only when informal efforts to secure compliance are unsuccessful does the Department intend to seek administrative sanctions against an applicant or recipient.

The terms used in this proposed regulation are themselves intended to facilitate conciliation. In present practice, recipients or applicants are "determined" to be in noncompliance and sent a notice saying they have been determined to be in noncompliance. This usage is misleading. The determination made after a review or complaint investigation by an office of civil rights is analogous to a finding of probable cause, rather than to a final verdict. This fact is clarified by the use of the "reasonable cause to believe" language in connection with these determinations in the proposed rule. "Reasonable cause" means that there is enough evidence to lead a reasonable person to believe that noncompliance exists. Noncompliance does not have to be conclusively proven to meet this standard. This revised language should help to avoid leading respondents to think that a final judgment has been rendered before they have had a chance to negotiate with the Department. Toward the same end, the notice that a respondent receives after a "reasonable cause" finding emphasizes that a respondent has the opportunity to present its point of view on the matter during conciliation to the office of civil rights which made the determination.

Normally, conciliation is initially between the respondent and the civil rights office of the concerned Departmental element. However, if an agreement between these parties has not been made within 30 days of the notice, the matter is elevated to the Departmental Office of Civil Rights, which then takes responsibility for the negotiation. If the Director of the Departmental Office of Civil Rights concludes that a conciliation agreement is not likely to be made within 30 days of receipt of the case, administrative sanction proceedings must be initiated.

Section 21.45 Administrative Sanctions. Although rewritten for greater clarity, the administrative sanction provisions of the proposed rule do not differ significantly in substance from the provisions of the present rules. The same prerequisites to the termination of funds—a determination by the Director of Civil Rights that informal resolution will not succeed; a finding by the Secretary on the record, after opportunity for hearing, that the recipient or applicant is in noncompliance; and a report by the Secretary to the appropriate Congressional committees—are prescribed. A recipient which has had funds cut off may petition the Director for restoration of funds, upon a showing that it is now in compliance. If the

Director denies this request, the recipient has the right to a hearing, following which a decision is made by the Secretary.

Section 21.47 Hearings on Administrative Sanctions. With the exception of minor editorial changes (e.g. changing the term "hearing examiner" to "Administrative Law Judge" to conform to current practice), this section is identical to § 21.15 of the present Part 21 except for the addition of deferral procedures in (e). Deferral is an administrative procedure that halts future grants or project approval to a program when there is reasonable cause to believe that the program is in noncompliance with Title VI. Deferral is not the termination of or refusal to provide financial assistance, neither of which can happen without a hearing and an on-the-record finding of noncompliance. It is the delay of new approvals to maintain the *status quo* pending a resolution of apparent Title VI noncompliance by the recipient. To permit new funds to flow to a recipient for a program that may shortly be found in noncompliance would be to permit the circumvention of Title VI. Deferrals are authorized by Department of Justice rules (28 CFR 50.3(c)) and have been approved in numerous cases in the Federal courts. The Department of Transportation has always had, and sometimes exercised informally, the authority to defer. However, in the interest of formalizing this authority and informing the public about it, we decided that it would be useful to add this paragraph to the proposed rule.

One option which the Department considered in preparing this proposed rule was to include much more detailed hearing procedures, similar to those of the Department of Health, Education and Welfare (45 CFR Part 81). However, we decided not to do so, principally because of the relative infrequency of Title VI hearing in DOT. We invite comment on the desirability of more detailed procedures.

Section 21.49 Decisions and Notices. The Department proposes to revise this section (§ 21.17 in the present rules) in the interest of clarity and better administrative procedures. There are two principal changes. First, administrative due process is best served where enforcement and decision-making functions of an agency are clearly separated. Therefore, the Director's role is delineated as enforcement. The Director initiates administrative sanction proceeding and participates as a party in the proceedings. The authority to decide whether to find noncompliance and impose administrative sanctions is reserved solely to the Secretary. This reservation of authority prevents any possible confusion between the "prosecutor" and "judge" roles in an adjudicatory proceeding. Moreover, it is highly likely that any matters that are unable to be settled informally will be sufficiently important and controversial to merit direct decision by the Secretary.

Second, the present regulation permits alternative administrative procedures to be used. Once a hearing is convened an administrative law judge selected, the judge can make either what is called an "initial" decision (which becomes final upon approval by the Secretary unless a party raises exceptions to it) or make what is called a "proposed" or "recommended" decision (which is a non-binding recommendation to the Secretary upon which the parties may comment). The procedural details pertinent to each of these paths differed somewhat. To simplify this structure, we propose that the administrative law judge will, in every case make a recommended decision, upon which the Director and the respondent may comment, with the final administrative decision to be made by the Secretary. A similar procedure has been employed in the Department's regulations implementing section 504 of the Rehabilitation Act of 1973, as amended (49 CFR Part 27).

Section 21.51 Other Means of Enforcement Authorized by Law. This provision is essentially identical to the present § 21.13(d). Other means authorized by law include referral to the Department of Justice to enforce Title VI, an assurance or project agreement in Federal court or resort to State or local judicial or administrative proceedings. Referral of complaints or findings of noncompliance to other Federal agencies (e.g. EEOC, Office of Revenue Sharing of the Treasury Department) are not deemed to be among mechanisms covered by this section. The Department may refer matters to other Federal agencies for their own administrative action without observing the requirements of this section.

The Department has determined that this regulation is significant under the criteria of the Department's Regulatory Policies and Procedures that implement Executive Order 12044. A regulatory evaluation has been prepared, and is available for public inspection and comment in the rulemaking docket.

The Department has evaluated the process rule in accordance with the Regulatory Flexibility Act of 1980. The Department has determined that the proposed rule would not have a significant economic effect on small businesses, small organizations or small governments.

Issued at Washington, D.C., this 13th day of January 1981.

Neil Goldschmidt,

Secretary of Transportation.

Accordingly, it is proposed to revise 49 CFR Part 21 to read as follows:

PART 21—NONDISCRIMINATION IN FEDERALLY-ASSISTED PROGRAMS OF THE DEPARTMENT OF TRANSPORTATION—IMPLEMENTATION OF TITLE VI OF THE CIVIL RIGHTS ACT OF 1964

Subpart A—General

Sec.

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21.11 Employment practices.
21.13 Assurances required.
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Subpart B—Compliance Procedures

21.21 General.
21.23 Planning, application, and compliance reviews.
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Subpart C—Compliance Procedures

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Appendix B—Programs in Which Employment is Covered by This Part.
Appendix C—Standard DOT Title VI Assurance.
Appendix D—DOT Internal Procedures.
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Appendix F—Application of Title VI to Coast Guard Truman-Hobbs Program.
Appendix G—Additional Federal Aviation Administration Requirements.
Appendix H—Federal Highway Administration Compliance Oversight Program.
Appendix I—Examples of the Application of This Part to Recipients of DOT Assistance.

Authority: 42 U.S.C. 2000d et seq. unless otherwise noted; 28 CFR, Part 42.

Subpart A—General

§ 21.1 Purpose.

The purpose of this part is to implement the provisions of Title VI of

the Civil Rights Act of 1964, to the end that no person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program receiving financial assistance from the Department of Transportation.

§ 21.3 Definitions.

Unless the context requires otherwise, as used in this part: *"Act"* or *"Title VI"* means Title VI of the Civil Rights Act of 1964.

"Applicant" means any person who submits an application, request, or plan to the Department for approval.

"Beneficiary" means a person, other than a recipient or applicant, who receives or is eligible to receive any direct or indirect benefits from a program. An "ultimate beneficiary" is a person who is the final or latest beneficiary, such as a passenger on a transit vehicle or a consumer of a retail operation at an airport.

"Compliance" means conformity to all Title VI requirements.

"Contractor" means a person who participates, through contractual agreement, with a recipient or other contractor at any tier in any program.

"Department" or "DOT" means the Department of Transportation, including all Departmental elements.

"Departmental element" means the following parts of DOT:

(a) The Office of the Secretary (OST)

(b) The Federal Aviation Administration (FAA);

(c) The United States Coast Guard (USCG);

(d) The Federal Highway Administration (FHWA);

(e) The Federal Railroad Administration (FRA);

(f) The National Highway Traffic Safety Administration (NHTSA);

(g) The Urban Mass Transportation Administration (UMTA);

(h) The Research and Special Programs Administration (RSPA); and

(i) The St. Lawrence Seaway Development Corporation (SLSDC).

"Director" means the Director, Departmental Office of Civil Rights. The Director is the responsible Departmental official for civil rights matters.

"Discrimination" means an action or a failure to act which has the effect of excluding a person from participation in, denying a person benefits of, or subjecting a person to unequal treatment and/or to disparate negative effect under, any program receiving DOT financial assistance on the basis of race, color, or national origin.

"Disparate Negative Effect" means providing a lower level of services, benefits, or opportunities to participate to a person on the ground of race, color or national origin than is provided to others under a program, or implementing a program in a manner that subjects such person to more harmful effects than those imposed on others. This term applies only to benefits and services, and does not apply to employment.

"Facility" means any part of structures, equipment or other real or personal property or interests in property. The provision of facilities includes constructing, renovating, remodeling, altering, or acquiring facilities.

"Financial Assistance" means:

(a) Grants and loans of DOT funds;

(b) Grants or donations of Federal property and interests in property;

(c) The detail of DOT personnel;

(d) Sales and leases of, or permission to use (on other than casual or transient basis), Federal property or any interest in such property without more than nominal consideration, or at a consideration which is reduced to assist a recipient, or in recognition of the public interest to be served by such sale or lease to the recipient;

(e) Licenses required by statute or regulation to construct or operate a program or facility;

(f) Any DOT agreement, arrangement, or other contract which has as one of its purposes the provision of assistance; and

(g) Any other DOT aid to recipients.

"Noncompliance" means a failure to meet the requirements of the Act, this part, or the standard DOT assurance set forth in Appendix C of this part.

"Office" means the Departmental Office of Civil Rights.

"Participant" means any person (except a primary recipient) who is involved in planning, design, construction, property appraisal or acquisition, operation, or provision of benefits under a program, and includes contractors, lessees, and concessionaires.

"Person" means any natural person or group of natural persons, corporation, partnership, utility, unincorporated association, American Indian tribe, group or nation.

"Positive Steps" means all necessary steps to assure equitable services and benefits and to ensure nondiscriminatory results and practices in the future, in all aspects of the planning and execution or programs.

"Program" means the recipient's provision of financial assistance, services, projects, facilities, activities, and other benefits to persons through assistance from the Department of Transportation. Financial assistance, services, projects, facilities, activities and other benefits provided in whole or in part with non Federal funds, property or other resources which are part of a DOT-assisted program are included.

"Recipient" means any person, State or local government and agency, instrumentality, or subdivision of such a government, to which financial assistance is extended, directly or through another recipient, for any program, including participants, but not including ultimate beneficiaries. A *"primary recipient"* is an entity which receives financial assistance directly from the Department of Transportation and transfer any portion of this assistance to another recipient.

"Relocation Assistance" means the provision of replacement housing, moving expenses, and other assistance payments and associated services to persons and businesses displaced by programs, pursuant to the Uniform Relocation Assistance and Real Property Acquistion Policies Act of 1970 (Pub. L. 91-646), as amended.

"Respondent" means an applicant, recipient, participant or other person alleged or determined to be in noncompliance with the Act or this part or to have discriminated..

"Secretary" means the Secretary of Transportation.

"Transportation Planning Process" means any local, State, or Federal planning process which is a prerequisite to the approval of or granting of DOT financial assistance for a program of a recipient.

§ 21.5 Application of this part.

(a) This part applies to any program for which financial assistance is authorized under a law administered by the Department, including those listed in Appendix A to this part. It also applies to money paid, property transferred, or other financial assistance extended under any such program after the effective date of this part.

(b) This part does not apply to:

(1) Any financial assistance by way of insurance or guaranty contracts;

(2) Any assistance to any individual who is the ultimate beneficiary under any such program; or

(3) Any employment practice, employer, employment agency, or labor organization, except to the extent described in § 21.11. DOT assistance activities under which employment practices are covered by Title VI are included in, but not limited to, those which appear in Appendix B to this part.

(c) Whenever a program involves the acquistion of real property or an interest

in real property, to the extent that rights to space on, over, or under any such property are included as part of the program, the requirements of this part extend to any facility, project, or activity located wholly or in part in that space.

§ 21.7 Discrimination prohibited.

(a) *General.* No person in the United States shall on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program to which this part applies.

(b) *Specific discriminatory actions prohibited.* (1) A recipient under any program to which this part applies may not directly, or through contractual or other arrangements, on the grounds of race, color, or national origin—

(i) Deny a person any service, financial aid, or other benefit provided under the program;

(ii) Provide any service, financial aid, or other benefit to a person which is different or is provided in a different manner, from that provided to others under the program;

(iii) Subject a person to segregation or separate treatment in any matter related to the receipt of any service, financial aid, or other benefit under the program;

(iv) Restrict a person in any way in the enjoyment of any advantage or privilege enjoyed by others receiving any service, financial aid or other benefit under the program;

(v) Treat a person differently from others in determining whether a person satisfies any admission, enrollment, eligibility, or membership goal, requirement or condition which persons must meet in order to receive any service, financial aid or other benefit provided under the program, unless such different treatment is under a plan or program approved by DOT;

(vi) Deny a person an opportunity to participate in the program through the provision of services, or otherwise afford a person an opportunity to do so which is different from that afforded others under the program;

(vii) Deny a person the opportunity to participate as a member of planning, advisory or similar body which is an integral part of the program;

(viii) Propose or take any action which would have a negative effect on a person in the planning and operation of a program; or

(ix) Deny a person the opportunity to participate in a program through a contract, lease or other agreement with a person due to race, color, or national origin.

(2) A recipient may not, directly, or through contractual or other arrangements, utilize criteria or methods of administration which have the effect of subjecting persons to discrimination because of race, color, or national origin, or have the effect of defeating or substantially impairing the accomplishment of the objectives of the Act or this part. This prohibition includes, but is not limited to, determinations by a recipient which affect the quality or distribution of services, benefits, financial aid, or facility provided under a program; or which limit the class of persons which is afforded an opportunity to participate in any program.

(3) A recipient or applicant may not determine the site or location of projects or facilities as part of a program with the purpose or effect of excluding persons from participation in, denying them the benefits of, or subjecting them to discrimination on the grounds of race, color, or national origin, or with the purpose or effect of defeating or substantially impairing the accomplishment of the objectives of the Act or this part.

(4) The enumeration of specific forms of prohibited discrimination in this paragraph does not limit the scope of the general prohibition of this section. Examples demonstrating the application of this section to certain programs of the Department of Transportation are contained in Appendix I of this part.

§ 21.9 Consideration of race, color or national origin.

This part does not prohibit the consideration of race, color, or national origin as part of efforts to remedy the consequences of past discriminatory practices or impediments which have restricted the availability of, or participation in, the program receiving financial assistance, on the grounds of race, color, or national origin. In administering a program regarding which the recipient has previously discriminated against persons on the ground of race, color, or national origin, the recipient must take positive steps to overcome the effects of prior discrimination. Even in the absence of such prior discrimination, a recipient in administering a program may take positive steps to overcome the effects of conditions which resulted in limiting participation by persons on account of race, color, or national origin.

§ 21.11 Employment practices.

(a) Where a primary objective of a financial assistance program is to provide employment, a recipient shall not directly, or through contractual or other arrangements, subject a person to discrimination on the ground of race, color, or national origin in its employment practices. Employment practices include recruitment, recruitment advertising, hiring, firing, upgrading, promotion, temporary assignments, details, demotion, transfer, layoff, termination, rates of pay, other forms of compensation, benefits, training, apprenticeship, use of facilities, and treatment of employees. Recipients shall ensure that applicants are hired, and employees are treated, without discrimination because of race, color, or national origin. DOT assistance activities, a primary objective of which is to provide employment are found in Appendix B of this part.

(b) Regardless of the objectives of a financial assistance program, discrimination in recipient employment practices is prohibited where such practices cause a violation of this part with respect to services, opportunities, or benefits. For this reason, employment practices concerning employees, including but not limited to those, who engage in direct contact with beneficiaries, or who engage in the planning of a program, are involved in relocation actions, or conduct public hearings may be covered by this part.

(c) Even where Title VI does not cover employment under a program, employment practices may be covered under Section 30 of the Airport and Airway Development Act of 1970, as amended; Section 19 of the Urban Mass Transportation Act of 1964, as amended; Section 905 of the Railroad Revitalization and Regulatory Reform Act of 1976; 23 U.S.C. Sections 140 and 324 and other statutes prohibiting discrimination on the basis of race, color, national origin, sex or religion.

§ 21.13 Assurances required.

(a) Within 90 days of the effective date of this part, every recipient of financial assistance shall submit a signed standard DOT assurance as contained in Appendix C of this part.

(b) Each recipient of continuing financial assistance shall submit a new signed standard DOT assurance with respect to its total program no later than August 1 of each year or certify compliance with paragraph (a) of this section.

(c) Every application for financial assistance shall contain, as a condition of its approval, a signed standard DOT assurance or a certification of compliance with paragraph (a) of this section.

(d) An applicant or recipient that fails or refuses to submit a signed standard DOT assurance or a certification of compliance as required by this section is deemed to be in noncompliance.

§ 21.15 Title VI assessment.

Every application for financial assistance or project approval shall include a document entitled "Title VI Assessment" found in Appendix E. This document shall contain information sufficient to permit an initial determination by DOT of whether the applicant complies with Title VI requirements. The Title VI Assessment shall also contain the applicant's analysis of the effect of the proposed program upon Title VI concerns. The Title VI Assessment shall include, as a minimum, all information requested in the Title VI Assessment form and a copy of any environmental impact statement required to be submitted to DOT for approval. To the extent Appendix E permits, FAA, FHWA, USCG and NHTSA recipients and applicants provide different information or need not answer certain items in the Assessment form.

§ 21.17 Intimidation and retaliation prohibited.

No applicant or recipient or employee of an applicant or recipient shall intimidate, threaten, coerce or retaliate or discriminate against any individual for the purpose of interfering with any right or privilege secured by the Act or this part or because the individual has made a complaint, testified, or participated in any manner in a review, investigation, hearing or proceeding under this part or has opposed practices made unlawful by Title VI or prohibited under this part. Violation of this prohibition is deemed to be in noncompliance with this part.

§ 21.19 Relationship to other laws, regulations, and agencies.

(a) *Program Statutes.* In addition to Title VI, statutory provisions specific to certain Department of Transportation financial assistance programs, such as those cited in § 21.11, prohibit discrimination. The Department may enforce these statutes and regulations through the substantive and procedural provisions of this part. Where a program statute prohibits discrimination on the basis of sex or another ground, the prohibition of discrimination in this part, as applied to the program concerned, is deemed to extend to sex or the other ground in addition to race, color, and national origin.

(b) *Minority Business Enterprise.* Title VI prohibits the denial to any person of the opportunity to participate in a program through a contract, lease, or other business arrangement on the basis of race, color, or national origin. This prohibition is enforced under the provisions of the Department's regulation on Minority Business Enterprise (49 CFR Part 23), not through this part.

(c) *Delegation and Intercagency Cooperation.* From time to time, the Secretary may assign to officials of the Department, or to officials of other Government departments or agencies, responsibilities in connection with carrying out Title VI, program statutes that prohibit discrimination, and this part (except for the responsibility to make final decisions as provided in § 21.49). Any action taken, determination made or requirement imposed by an official of another department or agency acting under an assignment of responsibility under this paragraph shall have the same effect as though the action had been taken by the Secretary. The Secretary may accept such assignments of responsibility from other departments and agencies.

(d) *Additional FAA Requirements.* Special additional requirements applicable only to FAA applicants and recipients are found in Appendix G to this part.

Subpart B—Compliance Procedures

§ 21.21 General.

This subpart contains the requirements and procedures by which the Department of Transportation determines whether or not an applicant or recipient is in compliance with the Department's Title VI program, including planning reviews, application reviews, compliance reviews, and complaint investigations. Planning, application, and compliance reviews are conducted and determinations and findings made by civil rights personnel of the Departmental elements or the Office unless another delegation is made by the Director. The Director may also initiate and conduct special compliance reviews. Complaint investigations and determinations concerning complaints are made by the Office unless the Director designates another civil rights office to carry out these responsibilities. It is the policy of the Department of Transportation to award and to continue to provide financial assistance only to those applicants and recipients who comply with Title VI requirements.

§ 21.23 Planning, application, and compliance reviews.

(a) *Planning Reviews.* (1) Every transportation planning process under which the Department administers programs involving financial assistance is reviewed annually by the appropriate Departmental element office of civil rights for consistency with the goals and purposes of Title VI. This review includes, but is not limited to, the following:

(i) The degree to which plans or applications provide for the equitable distribution or availability of benefits and services to minority persons and communities, and an analysis to identify any disparate negative effects;

(ii) The extent of minority participation in advisory councils, boards and committees;

(iii) The manner and extent to which minority group views of planned actions were solicited including where necessary contracting out with such groups to ensure minority participation as part of the transportation planning process;

(iv) Whether sufficient advance notice was placed in minority and foreign language newspapers and other media of public hearings (to include, where necessary, translation services) conducted as part of the transportation planning process;

(v) The extent of minority representation on the staffs of local planning bodies;

(vi) The manner and extent to which local and State bodies which are part of the transportation planning process have taken positive steps to fulfill their Title VI obligations;

(vii) Whether equitable participation of minority contractors will be ensured in programs administered through the transportation planning process;

(viii) Whether program information is to be provided in languages other than English where a significant number of proportion of the expected service population does not speak English, or speaks English as a second language; and

(ix) Whether the past history of benefit distribution to minorities in programs subject to the transportation planning process evinces a need to take positive steps to remedy the consequences of past inequities.

(2) *Determination.* On the basis of the planning review, the Departmental element office of civil rights makes one of the following determinations:

(i) The transportation planning process is consistent with the goals and purposes of Title VI;

(ii) The transportation planning process is consistent with the goals and purpose of Title VI: *Provided,* That specific remedial actions agreed to by the Departmental element and local or State planning bodies are implemented; or

(iii) There is reasonable cause to believe that the transportation planning process is not consistent with the goals and purposes of Title VI.

(iv) Determinations under paragraph (a)(2) (ii) and (iii) of this section are submitted promptly to the Director. Determinations under paragraph (a)(2)(i) of this section are submitted to the Director monthly.

(3) *Effect of Determination of Noncompliance.* A determination under paragraph (a)(2)(iii) of this section that a transportation planning process is not consistent with the goals and purposes of Title VI results in conciliation or sanction procedures under Subpart C of this part. Sanctions may include denial of planning funds, rejection of applications for financial assistance to programs developed under the transportation planning process, and other administrative sanctions.

(b) *Application Review.* Before the Departmental element grants financial assistance for, or otherwise approves any program, the Departmental element's office of civil rights determines that the applicant is in compliance with Title VI. This determination is based on the applicant's Title VI assessment and any information concerning the applicant developed as part of a transportation planning process. No financial assistance may be approved for the applicant if either the Departmental element office of civil rights has not made a finding of compliance or the Director has determined that the applicant is not in compliance with Title VI.

(1) *Determination.* As a result of its review, the Departmental element office of civil rights makes one of the following written determinations:

(i) The applicant is in compliance with its Title VI obligations.

(ii) There is reasonable cause to believe that the applicant is not in compliance with its Title VI obligations in all respects. The determination specifies the respects in which the applicant appears not to be in compliance.

(iii) It cannot be determined whether or not the applicant is in compliance. When this determination is made the Departmental element office of civil rights takes the following steps:

(A) The applicant is requested to provide additional written material within 30 days. Failure by the applicant to provide such information shall result in the denial of the application for financial assistance by the Departmental element on the ground that the application is incomplete.

(B) If the additional written information does not permit a determination to be made, or in any case in which the concerned office of civil rights determines that an on-site inspection is necessary, that office promptly conducts an on-site inspection, following the procedures set forth in paragraph (c)(4) of this section.

(iv) Determinations under paragraph (b)(1)(ii) and (iii) of this section are submitted promptly to the Director. Determinations under paragraph (b)(1)(i) of this section are submitted to the Director monthly.

(2) *Effect of Determination of Noncompliance.* Departmental elements may defer the approval applications for financial assistance pursuant to the procedures of § 21.43(e) where there is a finding of reasonable cause to believe that the applicant is in noncompliance resulting from an application review. If the application would be approved but for the finding of noncompliance, the disapproval of the application is considered "a refusal to grant assistance", subject to the informal resolution and sanctions procedures set forth in Subpart C of this part.

(c) *Compliance Review*—(1) *General.* Compliance reviews evaluate all pertinent aspects of a recipient's policies and practices under a program. Compliance reviews include a desk audit and, where appropriate, an on-site inspection. At any time, the Director may order a special compliance review of any recipient. Ordinarily, special compliance reviews are conducted by the staff of the Office; however, the Director may request a Departmental element office of civil rights to conduct reviews.

(2) *Review Scheduling Requirements.* Compliance reviews of recipients are conducted:

(i) Within 1 year of the approval of an application for a program expected to take 2 or more years to complete, or at the estimated mid-point of a program expected to be completed in less than 2 years.

(ii) Annually of State agencies or other recipients which administer continuing programs. Such reviews comprehensively evaluate the recipient's total continuing program.

(iii) Within 9 months of the Director's approval of a conciliation agreement. The Director may limit such reviews to the consideration of deficiencies identified by previous reviews and the corrective measures to be taken pursuant to the conciliation agreement.

(3) *Desk Audit.* The desk audit is a review of all material and information concerning the recipient's Title VI performance. If the Departmental element office of civil rights or the Director finds that a determination of a recipient's compliance can be made without an on-site inspection, the compliance review may be concluded after the desk audit. Desk audits are completed within 60 days of initiation.

(4) *On-Site Inspection.* The on-site inspection is a continuation of the compliance review after a desk audit where no determination has been made. It includes interviews with persons in the recipient's organization and beneficiaries. It may also include interviews with persons who have dealt with the recipient as part of a transportation planning process, and other persons likely to have relevant information or views about the recipient's performance; visits to project or facility sites; and inspection of any statistical or documentary materials relevant to the recipient's performance. DOT completes on-site compliance reviews within 45 days after the conclusion of a desk audit.

(5) *Determination.* As a result of its review of the recipient, the Departmental element office of civil rights makes one of the following determinations:

(i) The recipient is in compliance in all aspects with its Title VI obligations;

(ii) There is reasonable cause to believe that the recipient is not in compliance with its Title VI obligations.

(iii) Determinations under paragraph (c)(5)(ii) of this section are submitted promptly to the Director. Determinations under paragraph (c)(5)(i) of this section are submitted to the Director monthly. If reasonable cause is found that a recipient is in noncompliance, efforts at conciliation and sanction procedures are initiated as prescribed in Subpart C of this part.

(d) The Federal Highway Administration and its recipients comply with the requirements of this section through the process set forth in Appendix H of this part.

§ 21.25. Complaints.

(a) *Filing of Complaints*—(1) *Persons Eligible to file.* Any person may file a complaint.

(2) *Time for Filing.* A complaint shall be filed no later than 180 days after:

(i) The date of an alleged act of discrimination; or

(ii) The date on which a continuing course of conduct was disclosed.

The Director may extend the time for filing or waive the time limit in the interest of justice, specifying in writing the reasons for so doing.

(3) *Officials Authorized to Receive Complaints.* Complainants may submit their complaints to the Director, heads of Departmental elements, directors of civil rights of Departmental elements, heads of DOT field offices and installations, or the designees of any of these officials. Any other DOT officer or

employee receiving a complaint immediately forwards it to the nearest such official. All complaints received by officials other than the Director are datestamped and forwarded to the Director immediately.

(4) *Form of Complaints.* Complaints shall be in writing and signed by the complainant or the complainant's representative. Complaints shall set forth as fully as possible the facts or circumstances surrounding the claimed discrimination.

If a person makes an oral complaint of discrimination to a DOT officer or employee, that person is interviewed by a DOT official authorized to receive complaints or the official's designee. If necessary, the official reduces the complaint to writing, submits the written version to the complainant for signature, and files the complaint.

(b) *Processing of Complaints*—(1) *Acknowledgement.* The Public Programs Division of the Office acknowledges the receipt of every complaint in writing within five days of receiving it.

(2) *Determination of Jurisdiction.* Based upon the information in the complaint and the information provided by the Departmental element, the Director determines whether the Department has jurisdiction to pursue the matter. This determination is made within 15 days of receipt by the Office of the information requested from the Departmental element. Upon a determination of jurisdiction, the Public Programs Division notifies the respondent (and the primary recipient, if the primary recipient is not the respondent) that a complaint has been filed.

(3) *Jurisdiction.* The Department has jurisdiction to investigate a complaint if:

(i) The complaint involves a program for which DOT furnishes assistance and;

(ii) The complaint alleges any conduct prohibited by the Act or this part.

(4) *Referral to Other Agencies.* When DOT lacks jurisdiction, the Director, when possible, refers the complaint within ten days of receipt to other Federal or State agencies, informing the parties of this action. The Director may also refer to another agency a complaint over which the Department has jurisdiction.

(5) *Request for Additional Information from Complainant.* If a determination of jurisdiction cannot be made on the basis of the complaint, the Office requests additional information. Such a request is made within 30 days of the receipt of the complaint by the Office and requires the complainant to furnish the information within 30 days.

(c) *Investigation of Complaints*—(1) *Scope.* Investigations concern the issues and facts relevant to the allegations of the complaint, and include an analysis of information submitted by the complainant, information in the possession of either the respondent or the Department, and information developed as part of a transportation planning process. If any information is discovered which indicates that the respondent engages in a continuing policy or practice of prohibited discrimination, such a policy or practice is deemed to be an issue relevant to the complaint. Investigators who are concurrently conducting a compliance review, gather all information relevant to both purposes. Investigations are completed within 120 days of initiation.

(2) *Confidentiality.* The complainant may request that his or her identity be kept confidential. Upon receipt of such request, the investigator determines if it is possible to proceed with the complaint investigation under this condition and notifies the complainant of the decision. The complainant may then decide whether to pursue the complaint further.

(3) *Cooperation of Respondents.* All respondents shall cooperate fully with investigations. Such cooperation includes, but is not limited to, the following:

(i) *Question Responses.* Officials and employees of the respondent shall answer fully all questions posed to them by the investigator.

(ii) *Compliance Data.* The respondent shall furnish, upon request of the investigator, all relevant compliance data required by the Act or this part.

(iii) *Access to Sources of Information.* The respondent shall allow access to such books, records, accounts, and other sources of information relevant to the investigation.

(iv) *Records in Possession of Third Party.* If any information requested of a respondent is in the exclusive possession of any other agency, institution, or person which refuses or fails to furnish this information, the respondent shall so certify in writing and set forth the efforts it made to obtain the information.

(v) *Interview with Respondent.* The investigator provides the respondent a complete summary of the allegations made in the complaint and an opportunity to rebut or refute information or allegations provided or made by the complainant.

(d) *Complaint Determinations.* After the investigation is completed and within 180 days of receipt of a complaint, the Director makes one of the following determinations:

(1) The respondent has not violated the Act or this part.

(2) There is reasonable cause to believe that the respondent has violated the Act or this part, and efforts at conciliation and sanction procedures are initiated as set forth in Subpart C of this part.

§ 21.27 Report to Department of Justice.

In every case in which it is determined that there is reasonable cause to believe that an applicant or recipient is in noncompliance or has discriminated, the Director shall notify promptly the Assistant Attorney General, Civil Rights Division, Department of Justice, in accordance with Department of Justice Title VI program requirements.

Subpart C—Enforcement Action and Sanctions

§ 21.41 Purpose.

This subpart details enforcement actions which are initiated if reasonable cause is found, as the result of any review or investigation, that an applicant or recipient has discriminated or is in noncompliance with the Act or this part.

§ 21.43 Conciliation procedures.

(a) *General.* If reasonable cause to believe that an applicant or recipient is in noncompliance or has discriminated is found, the office making the determination initiates efforts at conciliation to resolve the matter. The purpose of conciliation is to create a written plan to correct the noncompliance or discrimination and assure continued compliance. The Director approves or disapproves conciliation agreements.

(b) *Responsibilities and Time Limits.* A written notice is sent by certified return receipt mail to the respondent by the civil rights office or the Director, as appropriate, promptly after a determination of reasonable cause is made:

(1) *Notice Content.* Notices include:

(i) A summary of the findings upon which the determination of reasonable cause to believe that there is noncompliance or discrimination is based;

(ii) An opportunity for the respondent, within 30 days of receipt, to engage in conciliation, setting forth the date, time and place for an initial conciliation conference.

(iii) A summary of the steps to be followed in conciliation and notice to the respondent that it may submit a proposal for conciliation at or before the initial conciliation conference.

(2) *Departmental Element Conciliation*—(i) *Successful Conciliation.* When conciliation is initiated by the Departmental element office of civil rights, if the respondent and the civil rights office are able to arrive at a conciliation agreement, the civil rights office submits two copies of the conciliation agreement to the Director within 5 days of its signing by both parties. The Director approves or disapproves the agreement within 20 days of receiving it. If the Director disapproves the agreement, the reasons therefor are stated in writing. The Director may propose amendments to the agreement. Such amendments are forwarded to the respondent and shall be accepted or rejected within 20 days of receipt.

(ii) *Unsuccessful Conciliation.* If no agreement is signed within 50 days of the notice, negotiations by the Departmental element are terminated and the complete review or investigation report file, including a written report on attempts at conciliation along with copies of all correspondence and proposed conciliation agreements, is submitted to the Director within 5 days, whereupon the Office will initiate sanction proceedings.

(3) *Office Conciliation*—(i) *Successful Conciliation.* If the respondent and the Office staff are able to arrive at a conciliation agreement, the Office staff submits two copies of the conciliation agreement to the Director within 5 days of its signing by the respondent. The Director signs or disapproves the agreement within 20 days of receiving it. If the Director disapproves the agreement, the reasons therefore are stated in writing. The Director may propose amendments to the agreement. Such amendments are forwarded to the respondent and shall be accepted or rejected within 20 days of receipt.

(ii) *Unsuccessful Conciliation.* If no agreement is signed within 50 days of receipt by the Director, negotiations by the Office staff are terminated and the complete review or investigation report file, including a written report on attempts at conciliation along with copies of all correspondence and proposed conciliation agreements, is submitted to the Director within 5 days, and sanction proceedings shall be initiated.

(4) *Notification of Assistant Attorney General.* If negotiations continue beyond 60 days from the date of the notice, the Director promptly notifies the Assistant Attorney General, Civil Rights Division, Department of Justice and states the reasons for the length of the negotiations.

(c) *Effect of Conciliation Agreement.* If a conciliation agreement is approved, the existence of the determination of noncompliance or discrimination does not bar provision of financial assistance if the terms of the agreement are fulfilled within specified periods of time.

(d) *Failure to Effect and Agreement.* If the respondent fails to participate in conciliation efforts, if conciliation efforts fail to produce an approved agreement, or if terms of the conciliation agreement are not implemented satisfactorily, voluntary compliance has not been achieved and administrative sanction procedures are initiated.

(e) *Deferral of Action on Applications.* (1) At any time after the Director or Departmental element office of civil rights, as appropriate, informs a respondent under paragraph (b) of this section that there is reasonable cause to believe that it has failed to comply with this part, the Director or the Departmental element office of civil rights may, subject to subparagraphs (2), (3), and (4) of this paragraph, defer further action by the Department on any application by the respondent for financial assistance or project approval. The Director or the Departmental element office of civil rights shall inform the resondent of a deferral promptly in writing.

(2) Deferrals may be made only with respect to applications for noncontinuing assistance, initial or annual applications for programs of continuing assistance, and requests for approvals of specific projects. Deferrals may not be made where financial assistance is due and payable under a previously approved application for assistance or project approval.

(3) A deferral shall continue in effect until informal resolution is effected, or the respondent is found to be in compliance with this part as a result of a determination by the Secretary or as the result of judicial review of a decision by the Secretary.

(4) Deferrals shall not be used so as to cause an effective refusal to grant financial assistance or project approval. Efforts to secure informal resolution and a hearing and subsequent procedures, if found necessary, shall be made without delay and completed as soon as possible.

§ 21.45 Administrative sanctions.

(a) *Scope.* Administrative sanctions include the refusal to provide, and the termination or suspension of, financial assistance to a respondent. Administrative sanctions contain an order and provisions to ensure that no future financial assistance is provided to the sanctioned respondent in connection with the program found to be discriminatory or in noncompliance. Administrative sanctions are limited in their effect to the particular program in which discrimination or noncompliance is found.

(b) *Preconditions to the Imposition of Administrative Sanctions.* No order suspending, terminating or refusing to grant financial assistance is imposed unless:

(1) The Director determines that compliance cannot be secured through conciliation;

(2) There is an express finding on the record, after opportunity for hearing, that the respondent has failed to comply with the Act or this part;

(3) The Secretary personally approves the finding and administrative sanction; and

(4) The Secretary files a written report of the circumstances of and the grounds for the administrative sanction with the committees of the Senate and the House of Representatives having jurisdiction over the program involved, and 30 days have expired.

(c) *Withholding of Assistance Pending Finding.* After being provided an opportunity for a hearing and until the matter in question is resolved, respondents shall not be eligible for new DOT assistance.

(d) *Post-Termination Proceedings.* A respondent subject to an order terminating, suspending, or refusing to grant Federal financial assistance under this part may ask the Director to authorize payment, or permit resumption, of financial assistance, after six months from the date of such order, on the basis that the respondent has brought its program into compliance with the Act and this part.

(1) The request shall describe in detail the steps which the respondent has taken to achieve compliance and the results of those steps.

(2) If the Director denies the written request, the respondent may request a hearing. The request for hearing shall be in writing, addressed to the Secretary, and made within 30 days of the denial.

(3) The hearing procedures of § 21.47 apply to proceedings held under this paragraph. The sole issue at a post-termination hearing shall be whether the respondent has corrected the discrimination or noncompliance which existed at the time administrative sanctions were imposed.

(4) If the Secretary determines that the respondent's discrimination or noncompliance has not been corrected, the administrative sanctions shall continue in effect. Sanctions remain in effect while proceedings under this paragraph are pending.

(e) *Judicial Review.* Action taken pursuant to Section 602 of the Act is subject to judicial review as provided in Section 603 of the Act.

§ 21.47 Hearings on Administrative Sanctions.

(a) *Opportunity for Hearing.* Whenever an opportunity for a hearing is required by § 21.45(b) before administrative sanctions may be imposed, the Director shall give reasonable notice by registered or certified mail, return receipt requested, to the respondent. This notice shall advise the respondent of the action proposed to be taken, the specific provision under which the proposed action against it is to be taken, and the matters of fact or law asserted as the basis for this action, and either (1) fix a date not less than 20 days after the date of such notice within which the respondent may request of the Secretary that the matter be scheduled for hearing or (2) advise the respondent that the matter in question has been set down for hearing at a stated place and time. The time and place fixed shall be reasonable and shall be subject to change for cause. The complainant, if any, shall be advised of the time and place of the hearing. A respondent may waive a hearing and submit written information and argument for the record. The failure of a respondent to request a hearing under this paragraph or to appear at a hearing for which a date has been set shall be deemed to be a waiver of the right to a hearing under section 602 of the Act and § 21.45(b) and consent to the making of a decision on the basis of such information as is available.

(b) *Time and Place of Hearing.* Hearings shall be held at the offices of the Department in Washington, D.C., at a time fixed by the Secretary unless he or she determines that the convenience of the respondent or of the Department requires that another place be selected. Hearings shall be held before an Administrative Law Judge (ALJ) appointed by the Secretary in accordance with Section 3105 of Title 5, United States Code, or detailed under Section 3344 of Title 5, United States Code.

(c) *Right to Counsel.* In all proceedings under this section, the respondent and the Department shall have the right to be represented by counsel.

(d) *Procedures, Evidence, and Record.* (1) The hearing, decision, and any administrative review thereof shall be conducted in conformity with Sections 554 through 557 of Title 5, United States Code, and in accordance with such rules of procedure as are proper (and not inconsistent with this section) relating to the conduct of the hearing, giving of notices subsequent to those provided for in paragraph (a) of this section, taking of testimony, exhibits, arguments and briefs, requests for findings, and other related matters. Both the Department and the respondent shall be entitled to introduce all relevant evidence on the issues as stated in the notice for hearing or as determined by the ALJ conducting the hearing at the outset of or during the hearing.

(2) Technical rules of evidence do not apply to hearings conducted pursuant to this part, but rules or principles designed to assure production of the most credible evidence available and to subject testimony to test by cross-examination shall be applied, where reasonably necessary, by the ALJ. For the purposes of these proceedings the rules of evidence are relaxed and witnesses shall be presented as on cross-examination. The ALJ may exclude irrelevant, immaterial, or unduly repetitious evidence. All documents and other evidence offered or taken for the record shall be open to examination by the parties and opportunity shall be given to refute facts and arguments advanced on either side of the issues, except to the extent that matters are stipulated for the record. All decisions shall be based upon the hearing record and written findings shall be made.

(e) *Consolidated or Joint Hearings.* In cases in which the same or related facts are asserted to constitute noncompliance with this part with respect to two or more programs to which this part applies, or noncompliance with this part and the regulations of one or more other Federal departments or agencies issued under Title VI of the Act, the Secretary may, by agreement with such other departments or agencies, where applicable, provide for the conduct of consolidated or joint hearings, and for the application to such hearings or rules or procedures not inconsistent with this part. Final decisions in such cases, shall be made in accordance with § 21.49.

§ 21.49 Decisions and notices.

(a) *Procedure on Decisions by Administrative Law Judge.* After the hearing, the ALJ certifies the entire record including his/her recommended findings and proposed decision to the Secretary for a final decision, and a copy of certification shall be mailed to the respondent. The Director and the respondent may submit written arguments to the Secretary concerning the Administrative Law Judge's recommended findings and proposed decision.

(b) *Final Decision by the Secretary.* When the record is certified to the Secretary by the ALJ the Secretary reviews the record and accepts, rejects or modifies the Administrative Law Judge's recommended findings and proposed decision, stating the reasons therefor.

(c) *Decisions on Record Where a Hearing is Waived.* Whenever a hearing is waived pursuant to § 21.47(a) a decision shall be made by the Secretary on the record, stating the reasons therefor, and a written copy of such decision shall be sent to the respondent and to the complainant, if any.

(d) *Rulings Required.* Each decision of an ALJ or the Secretary shall set forth a ruling on each finding, conclusion, or exception presented, and shall identify the requirement or requirements imposed by or pursuant to this part with which it is found that the respondent has failed to comply.

(e) *Content of Orders.* The final decision may provide for suspension or termination of, or refusal to grant or continue Federal financial assistance, in whole or in part, under the program involved, and may contain such terms, conditions, and other provisions as are consistent with and will effectuate the purposes of the Act and this part, including provisions designed to assure that no Federal financial assistance will thereafter be extended under such programs to the respondent determined by such decision to be in default in its performance of an assurance given by it pursuant to this part, or to have otherwise failed to comply with this part, unless and until it corrects its noncompliance and satisfies the Secretary that it will fully comply with this part.

§ 21.51 Other means of enforcement authorized by law.

In addition to or in lieu of administrative sanctions, the Department of Transportation may effect compliance with Title VI and this part through any other means authorized by law. No action to effect compliance by such means shall be taken by the Department until—

(a) The Director has determined that compliance cannot be secured by voluntary means;

(b) The respondent has been notified of its discrimination or failure to comply and of the action to be taken to effect compliance; and

(c) The expiration of at least 10 days from the mailing of such notice to the respondent. During this period of at least 10 days, additional efforts shall be

made to persuade the respondent to comply and take such corrective action as may be appropriate.

Appendix A—Activities to Which This Part Applies

1. Use of grants made in connection with Federal-aid highway and related programs (23 U.S.C. 101 *et seq.*).
2. Use of grants made in connection with the Highway Safety Act of 1966 (23 U.S.C. 402, 403, *et seq.*).
3. Use of grants made in connection with uncodified Federal-Aid Highway Act provisions.
4. Lease of real property and grant of permits, licenses, easements, and rights-of-way covering real property under control of the Coast Guard (14 U.S.C. 93(n) and (o)).
5. Utilization of Coast Guard personnel and facilities by any State, territory, possession, or political subdivision thereof (14 U.S.C. 141(a)).
6. Use of Coast Guard personnel for duty in connection with maritime instruction and training by the States, territories and Puerto Rico (14 U.S.C. 148).
7. Use of obsolete and other Coast Guard material by sea scout service of Boy Scouts of America, any incorporated unit of the Coast Guard auxiliary, and public body or private organization not organized for profit (14 U.S.C. 641(a)).
8. U.S. Coast Guard Auxiliary Program (14 U.S.C. 821–832).
9. Use of grants for the support of basic scientific research by nonprofit institutions of higher education and nonprofit organizations whose primary purpose is conduct of scientific research (42 U.S.C. 1891).
10. Use of grants made in connection with the Federal-aid Airport Program (Sec. 1–15 and 17–20 of the Federal Airport Act, 49 U.S.C. 1101–1114, 1116–1120).
11. Use of U.S. land acquired for public airports under
a. Section 23 of the Airport and Airway Development Act of 1970 (49 U.S.C. 1723).
b. Surplus Property Act of the Surplus Airports and Equipment Act of 1947, as amended (Section 13(g) and Sections 2, 3, and 4; so use Appendix 1622(g) and 1622 a, b, c).
12. Activities carried out in connection with the Aviation Education Program of the Federal Aviation Administration under Sections 305, 311 and 313(a) of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1346, 1352 and 1354(a)).
13. Demonstration projects relating to ground transportation services to airports under the Airport and Airway Development Act Amendments of 1976, [Section 23(a)(i); 49 U.S.C. 1712 note).
14. Use of grants and loans made in connection with Urban Mass Transportation Discretionary Grant or Loan Program—Urban Mass Transportation Act of 1964, as amended. 49 U.S.C. 1602.
15. Use of grants and loans made in connection with Urban Mass Transit Program—Urban Mass Transportation Act of 1964, as amended. 49 U.S.C. 1604.
16. Use of grants made in connection with Urban Mass Transportation Research, Development & Demonstration Projects—Urban Mass Transportation Act of 1964, as amended. 49 U.S.C. 1605.
17. Use of grants made in connection with Urban Mass Transportation Planning and Technical Studies—Surface Transportation Assistance Act of 1978, as amended. 49 U.S.C. 1607.
18. Use of grants made in connection with Urban Mass Transportation Grants for Training Programs—Urban Mass Transportation Act of 1964, as amended. 49 U.S.C. 1607b.
19. Use of grants made in connection with Urban Mass Transportation's Grants for Research and Training in Urban Mass Transportation Problems—Urban Mass Transportation Act of 1964, as amended. 49 U.S.C. 1607c.
20. Use of grants and loans made in connection with Urban Mass Transportation's Planning and Design of Mass Transportation Facilities to meet special needs of the elderly and the handicapped—Urban Mass Transportation Act of 1964, 49 U.S.C. 1612.
21. Use of grants made in connection with Urban Mass Transportation's Formula Grant Program for areas other than urbanized areas——Surface Transportation Assistance Act of 1978. 49 U.S.C. 1614.
22. Use of grants made in connection with Urban Mass Transportation's Human Resource Programs—Surface Transportation Assistance Act of 1978. 49 U.S.C. 1616.
23. Use of grants made in connection with Urban Mass Transportation's Terminal Development Program—Urban Mass Transportation Act of 1964, 49 U.S.C. 1617.
24. Use of grants made in connection with Urban Mass Transportation's Intercity Bus Service—Urban Mass Transportation Act of 1964, as amended. 49 U.S.C. 1618.
25. Use of grants made in connection with the Railroad and Revitalization and Regulatory Reform Act of 1976 (45 U.S.C. 801).
26. Grants to Amtrak under section 601 of the Rail Passenger Service Act, 45 U.S.C. 601.
27. Purchase of redeemable preference shares or trustee certificates pursuant to section 505 of the Railroad revitalizations and Regulatory Reform act of 1976, 45 U.S.C. 825.
28. Grants for planning, preservation and conversion of rail passenger terminals of historical or architectural significance pursuant to section 4(i) of the Department of Transportation Act, 49 U.S.C. 1653.
29. Grants to States for rail freight assistance programs pursuant to section 5 of the Department of Transportation Act. 49 U.S.C. 1654.
30. Grants to States for participation in enforcement of FRA rail safety regulations pursuant to section 206 of the Federal Railroad Safety Act of 1970, 45 U.S.C. 435.
31. The construction and operation of a deepwater port or other facility through the grant of a license by the Secretary of Transportation.

Appendix B—Programs in Which Employment is Covered by This Part

The following Paragraph A is a listing of DOT-assisted programs, projects or activities which is not to be considered complete or all inclusive and programs not listed may be covered under provisions of Paragraph B of this Appendix.

A. Programs in which Employment is a Primary Purpose.

1. Use of grants made in connection with Federal-aid highway systems (23 U.S.C. 101 *et seq.*).
2. Use of grants made in connection with the Highway Safety Act of 1966 (23 U.S.C. 402, 403, *et seq.*).
3. Use of grants made in connection with the Federal-Aid Highway Act of 1970 (23 U.S.C. 324, Section 162(a)).
4. Use of grants and loans made in connection with Urban Mass Transportation Capital Facilities Grant and Loan Program—Urban Mass Transportation Act of 1964, as amended (49 U.S.C. 1602).
5. Use of grants made in connection with Urban Mass Transportation Research and Demonstration Grant Program—Urban Mass Transportation Act of 1964, as amended (49 U.S.C. 1605.).
6. Use of grants made in connection with Urban Mass Transportation Technical Studies Grant Program—Urban Mass Transportation Act of 1964, as amended (49 U.S.C. 1607a).
7. Use of grants made in connection with Urban Mass Transportation Managerial Training Grant Program—Urban Mass Transportation Act of 1964, as amended (49 U.S.C. 1607b).
8. Use of grants made in connection with Urban Mass Transportation Grants for Research and Training Programs in Institutions of Higher Learning—Urban Mass Transportation Act of 1964, as amended (49 U.S.C. 1607c).
9. Use of grants made in connection with the Railroad Revitalization and Regulatory Reform Act of 1976 (49 U.S.C. 801).

B. Employment Practices otherwise covered under Title VI.

Regardless of the objectives of a Federal financial assistance program, discrimination in employment practices by recipients is prohibited where such practices cause discrimination in services, opportunities or benefits to the participants or beneficiaries. In this regard, the Department will be particularly concerned with employees who engage in direct contact with beneficiaries, or who engage in the planning and implementation of a program, project, or activity, or who conduct public hearings which have direct impact on participants or beneficiaries would be covered under this Appendix.

Appendix C—Assurances

This Appendix includes the Standard DOT Title VI Assurances. Attachment 1 is to be included in every contract subject to the Act and these Regulations. Attachment 2 is to be included in any deed from the United States effecting a transfer of real property, structure or improvements thereon or interests therein. Attachment 3 is to be included in any future deeds, leases, permits, licenses, or similar agreements entered into by the recipient with other parties. Use of the reverter clause on page 2 of Attachment 2 is not, as a matter of policy, required to be used in all cases but only when necessary in order to implement the provisions of Title VI.

Standard DOT Title VI Assurances

(Name of Recipient) (the recipient) as a condition to receiving any Federal financial assistance from the Department of Transportation and in consideration for the assistance assures that it will comply with Title VI of the Civil Rights Act of 1964, 78 Stat. 252, 42 U.S.C. 2000d–42 U.S.C. 2000–4 (the Act), and all requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Part 21, (the regulations) the terms of this assurance and other pertinent directives. The recipient promises that no person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which the recipient receives Federal financial assistance from the Department of Transportation, including the (Name of Appropriate Administration). The recipient also promises it will promptly take any measures necessary to effectuate this agreement. This assurance is required by § 21.13 of the regulations, a copy of which is attached.

More specifically and without limiting the above general assurance, the recipient hereby gives the following specific assurances with respect to its (Name of Appropriate Program):

1. The recipient agrees that each "program" as defined in § 21.3 of the regulations, will be conducted or operated in compliance with all requirements imposed by, or pursuant to the regulations.

2. With respect to benefits (including but not limited to services, facilities, financial aid, equipment, opportunities for business, housing, employment, and education of programs, receiving Federal financial assistance from the Department of Transportation), the recipient agrees that:

(a) It will identify the beneficiaries, according to their race, color and national origin, and the benefits to be provided for each program, and take all necessary positive steps to ensure that beneficiaries are not excluded from, denied participation in, or denied the benefits of the program on the basis of race, color or national origin;

(b) It will distribute services and other benefits on an equitable basis among all beneficiaries without regard to race, color or national origin, taking all necessary positive steps to ensure such equitable distribution.

3. With respect to the negative effects of any program receiving Federal financial assistance from the Department of Transportation, the recipient agrees that:

(a) It will identify all negative effects and identify the persons affected by the negative effects by race, color, and national origin.

(b) It will take all necessary positive steps to ensure that negative effects do not disproportionately affect minority persons.

4. With respect to public information concerning any program receiving Federal financial assistance from the Department of Transportation, the recipient agrees that:

(a) It will prepare and cause to be distributed to the public handbooks, manuals, pamphlets and other materials, including posters displayed in conspicuous places, describing the DOT-assisted program, the requirements for participation by beneficiaries and other interested persons, and the rights of beneficiaries and other interested persons concerning the program. This paragraph does not apply to the RSPA Pipeline Safety Grant Program.

(b) It will include in these materials information on DOT Title VI requirements and complaint procedures and a statement that other Title VI information and assistance is available from the Department of Transportation.

(c) Where there is a significant number or proportion of persons likely to benefit from, use, or be adversely impacted by a program whose primary language is other than English, it will make these materials available in that language or languages as well as in English. The recipient further promises that materials in languages other than English will be provided in quantities and in ways that will afford persons whose primary language is not English an equal opportunity with English-speaking persons to learn about the program and applicable civil rights requirements.

5. With respect to citizen participation in the planning and execution of any program receiving Federal financial assistance from the Department of Transportation, the recipient agrees that:

(a) It will take all necessary positive steps to ensure that any boards and commissions formed or used in connection with the planning and execution of the program shall be representative in terms of race, color and national origin of the affected community or communities.

(b) It will provide the maximum possible opportunity for citizens to participate in planning and decision making in regard to DOT-assisted programs.

(c) Where there is a significant number or proportion of persons likely to benefit from, use, or be adversely affected by a DOT assisted program whose primary language is other the English, it will provide information about citizen planning and advisory bodies and notices of public hearings in the language or languages other than English. The recipient further agrees that it will conduct public hearings so that persons whose primary language is not English can participate fully (e.g., by the provision of translation services, bilingual handouts and transcripts, etc.).

(d) It will publicize all public hearings and other opportunities for citizen participation in minority and general media.

(e) If requested to do so by the Department of Transportation or one of its Departmental elements, it will contract for the services of minority civil rights or community organizations to help inform the affected community of the impact of the program. (The cost of such a contract will be an allowable program expense.)

(f) It will take all necessary positive steps to inform all community organizations in the affected community of the program and its impacts inviting these organizations to participate in the planning and decision-making processes.

6. With respect to employment covered by Title VI, the recipient agrees that:

(a) Its employment practices will not result in discrimination against any person on the ground of race, color, or national origin;

(b) It will ensure that its employment practices do not cause any person to be excluded from participation in or to be denied the benefits of, or otherwise to be discriminated against in connection with a DOT-assisted program on the basis of race, color, or national origin;

(c) It will analyze its employment practices to ensure the absence of discrimination and to identify any programs that may exist;

(d) It will ensure that its employment practices with regard to planning and public contact personnel are free from discrimination;

(e) It will monitor the job performance of its employees to ensure that they carry out their functions in accordance with Title VI.

7. With respect to the relocation of persons displaced by DOT-assisted programs, the recipient agrees that:

(a) It will inform each displacee of his or her rights to participate in and receive benefits from the Federal Relocation Assistance Program, providing such material in the primary language of displacees whose primary language is other than English;

(b) It will assist displacees in obtaining replacement housing, relocation payments, compensation and other relocation services, ensuring that such services and benefits are made without regard to the race, color, or national origin of the displacees;

(c) It will take all necessary action to ensure that displacees are relocated, within their financial means, in housing that meets their needs, in areas of their choice on a nondiscriminatory basis. The recipient further promises to avoid relocating persons in a fashion that tends to reinforce patterns of housing discrimination or segregation.

8. The recipient agrees to identify any problem that could result in noncompliance with title VI, the regulations, or this assurance. The recipient promises to cite any such problem in its application, or, with problems identified subsequent to the award of Federal financial assistance, by notice in writing to the director. the recipient further promises to take whatever action is necessary to correct the problem.

9. The recipient agrees to provide to the Department of Transportation all data required for application, the title VI Assessment, compliance reviews, complaint investigations, or any other purpose, upon request of DOT officials. The recipient also agrees to maintain sufficient data to allow DOT officials to make written determinations concerning compliance. The recipient further agrees to provide any information to DOT officials upon request, and is aware that the failure to provide data reasonably available or the falsification of data will place the recipient in noncompliance with title VI.

10. The recipient agrees to insert the clauses of Attachment 1 of this assurance in every contract subject to the Act and the Regulations.

11. The recipient agrees to insert the clauses of Attachment 2 of this assurance, as a covenant running with the land, in any deed from the United States effecting a transfer of real property, structures, or improvements thereon or interests therein.

12. Where the recipient receives Federal financial assistance to construct a facility, or

part of a facility, the recipient agrees that its assurances shall extend to the entire facility and facilities operated in connection with it.

13. Where the recipient receives Federal financial assistance in the form of real property, the recipient agrees that its assurances shall extend to rights to space on, over or under such property.

14. The recipient agrees to include the appropriate clauses set forth in Attachment 2 of this assurance, as a covenant running with the land, in any future deeds, leases, permits, licenses, and similar agreements entered into by the Recipient with other parties: (a) For the subsequent transfer of real property acquired or improved under (Name of Appropriate Program); and (b) for the construction or use of or access to space on, over or under real property acquired, or improved under (Name of Appropriate Program).

15. The recipient agrees to be bound by this assurance for the period during which Federal financial assistance is extended to the program, except where the Federal financial assistance is to provide, or is in the form of, personal property, or real property or interest therein or structures or improvements thereon, in which case the assurance obligates the recipient or any transferee or successor in interest for the longer of the following periods:

(a) the period during which the property is used for a purpose for which the Federal financial assistance is extended, for another purpose pursuant to OMB Circular A-102, dated August 24, 1977; or

(b) the period during which the recipient retains ownership, operation, management or possession of the property.

16. The recipient agrees to provide for such methods of administration for the program, as are found by the Secretary of Transportation or the official to whom he/she delegates specific authority, to give reasonable guaranties that it, other recipients, subgrantees, contractors, subcontractors, transferees, and successors in interest of Federal assistance under such program will comply with all requirements imposed or pursuant to the Act, the Regulations and this assurance.

17. The recipient agrees that the United States has a right to seek judicial enforcement with regard to any matter arising under the Act, the Regulations, and this assurance.

18. Failure to abide by any provision of this assurance on the part of the recipient may result in denial of funding and/or imposition of other appropriate administrative sanctions.

19. By signing this assurance, the recipient certifies that the conditions of this assurance can be met to his/her best knowledge and belief. Knowingly making a false or misleading representation by entering into this assurance may subject a recipient to civil and criminal sanctions.

This assurance is given in consideration of and for the purpose of obtaining any and all Federal grants, loans, contracts, property, discounts or other Federal financial assistance extended after the date hereof to the recipient by the Department of Transportation under the (Name of Appropriate Program), and is binding on recipients, other recipients, subgrantees, contractors, subcontractors, transferees, and successors in interest and in the (Name of Appropriate Program).

The person or persons whose signatures appear below are authorized to sign this assurance on behalf of the recipient.

Dated:_____

_____

(Recipient)

_____

(Signature of Authorized Official)

Attachments 1, 2 and 3.

Department of Transportation

U.S. Department of Transportation Assurance
Attachment 1

During the performance of this contract (the contractor), for itself, its assignees and successors in interest agrees as follows:

(1) *Compliance with Regulations:* The contractor shall comply with the regulations relative to nondiscrimination in federally assisted programs of the Department of Transportation (hereinafter, DOT), Title 49, Code of Federal Regulations, Part 21, as they may be amended from time-to-time (the regulations), which are incorporated by reference and made a part of this contract.

(2) *Nondiscrimination:* The contractor, with regard to the work performed by it during the contract, shall not discriminate on the grounds of race, color, or national origin, in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The contractor shall not participate either directly or indirectly in the discrimination prohibited by § 21.11 of the regulations, including employment practices when the contract is in connection with a program set forth in Attachment B of the regulations.

(3) *Information and Reports:* The contractor shall provide all information and reports required by the regulations or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the (recipient) or the (Name of Appropriate Administration) to be pertinent to ascertain compliance with such regulations, orders, and instructions. Where any information required by a contractor is in the exclusive possession of another who fails or refuses to furnish this information, the contractor shall so certify to the (recipient), or the (Name of Appropriate Administration), as appropriate, and shall set forth what efforts it has made to obtain the information.

(4) *Sanctions for Noncompliance:* In the event of the contractor's noncompliance with the nondiscrimination provisions of this contract, the (recipient) shall impose such contract sanctions as it or the (Name of Appropriate Administration) may determine to be appropriate, including, but not limited to:

(a) Withholding of payments to the contractor under the contract until the contractor complies; and/or

(b) Cancellation, termination or suspension of the contract, in whole or in part.

(5) *Incorporation of Provisions:* The contractor shall include the provisions of paragraphs (1) through (6) in every subcontract, including procurements of materials and leases of equipment, unless exempt by the regulations, or directives issued pursuant thereto. The contractor shall take such action with respect to any subcontract or procurement as the (recipient) or (Name of Appropriate Administration) may direct as a means of enforcing such provisions, including sanctions for noncompliance. Provided however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the contractor may request the (recipient) to enter into such litigation to protect the interests of the (recipient), and, in addition, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

U.S. Department of Transportation

Attachment 2

The following clauses shall be included in any and all deeds effecting or recording the transfer of real property, structures or improvements thereon, or interest therein from the United States.

(Granting Clause)

Now, Therefore, the Department of Transportation, as authorized by law, and upon the condition that the (Name of Recipient) will accept title to the lands and maintain the project constructed thereon, in accordance with (Name of Appropriate Legislative Authority), the regulations for the administration of (Name of Appropriate Administration) of the Department of Transportation and, also in accordance with and in compliance with all requirements imposed by or pursuant to Title 49, Code of Federal Regulations, (regulations), pertaining to and effectuating the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252; 42 U.S.C. 2000d–4), does hereby remise, release, quitclaim and convey unto the (Name of Recipient) all the rights, titles and interests of the Department of Transportation in and to said lands described in Exhibit "A" attached hereto and made a part thereof.

(Habendum Clause)

To have and to hold said lands and interests unto (Name of Recipient) and its successors in interest, heirs and assigns forever, subject, however, to the covenants, conditions, restrictions and reservations herein contained as follows, which will remain in effect for the period during which the real property or structures are used for a purpose for which Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits and shall be binding on the (Name of Recipient), its successors and assigns. The (Name of Recipient), in consideration of the conveyance of said lands does hereby convenant and agree as a convenant running with the land for itself, its successors and assigns, that (1) no person shall on the grounds of race, color, or national origin, be excluded from partication in, be denied the benefits of, or be otherwise subjected to discrimination with regard to any facility located wholly or in part on, over or under such lands hereby conveyed and (2) that the (Name of Recipient) shall use the lands and interests in lands so conveyed, in compliance

with all requirements imposed by or pursuant to the regulations may be amended and (3) that in the event of breach of any of the above-mentioned nondiscrimination conditions, the Department shall have a right to reenter said lands and facilities on said lands, and the above described lands and facilities shall thereon revert to and vest in and become the absolute property of the Department of Transportation and its assigns as such interest existed prior to this instruction or issued. (Include in licenses, leases, permits, etc.)

U.S. Department of Transportation

Attachment 3

The following clauses shall be included in all deeds, licenses, leases, permits, or similar instruments entered into by the (Name of Recipient) pursuant to the Provisions of Assurance 15(a).

The (grantee, licensee, lessee, permittee, etc., as appropriate) for him/herself, his/her heirs, personal representatives, successors in interests, and assigns, as a part of the consideration hereof, does hereby convenant and agree in the case of deeds and leases add "as a convenant running with the land" that in the event facilities are constructed, maintained, or otherwise operated on the said property described in this (deed, license, lease, permit, etc.) for a purpose for which Department of Transportation assistance is extended or for another purpose involving the provision of similar services or benefits, the (grantee, licensee, lessee, permittee etc.) shall maintain and operate such facilities and services in compliance with all other requirements of the regulations and as said regulations may be amended.

(Include in licenses, leases, permits, etc.)

That in the event of breach of any of the above nondiscrimination convenants, (Name of Recipient) shall have the right to terminate the license, permit, etc. and to re-enter and repossess said land and the facilities thereon, and hold the same as if said license, lease, permit, etc. had never been made or issued. (Include in deeds.)

That in the event of breach of any of the above nondiscrimination covenants, (Name of Recipient) shall have the right to terminate the license, lease, permit, etc. and to reenter and repossess said land and the facilities thereon, and hold the same as if said license, lease, permit, etc. had never been made or issued.

(Include in licenses, leases, permit, etc.)

That in the event of breach of any of the above nondiscrimination covenants, (Name of Recipient) shall have the right to re-enter said land and the facilities thereon, and the above described lands and facilities shall thereupon revert to and vest in and become the absolute property of (Name of Recipient) and its assignments.

(Include in deeds.)

With respect to the Coast Guard Auxiliary program, which does not fit the traditional model of DOT grant programs, applicants shall sign the following assurances instead of the standard DOT Assurance set forth in this Appendix.

United States Coast Guard (USCG)

Assurance of Compliance with Title VI of the Civil Rights Act of 1964

(By the U.S. Coast Guard Auxiliary)

I. (The Coast Guard District Auxiliary (add Region, if appropriate)) (Hereinafter called "Recipient") HEREBY AGREES THAT all divisions and flotillas under its jurisdiction will comply with Title VI of the Civil Rights Act of 1964 (Pub. L. 88-352) and all requirements imposed by or pursuant to 33 CFR Part 24 and instructions issued by the Commandant U.S. Coast Guard pursuant to that title, to the end that in accordance with Title VI of that Act and pertinent directives, no person in the United States shall, on the grounds of race, color, creed or national origin be excluded from participation in, be denied the benefits of, or otherwise subjected to discrimination under any program or activity of the Coast Guard Auxiliary for which the ————(Recipient) receives Federal financial assistance and other benefits from the U.S. Coast Guard and HEREBY GIVES ASSURANCE THAT it will immediately take any measures necessary to effectuate this agreement.

If any real property or structure thereon is provided or improved with the aid of Federal financial assistance extended to any unit of the ————(Recipient), this assurance shall obligate ————(Recipient) for the period during which the real property of structure is used for a purpose for which the Federal financial assistance is extended or for another purpose involving the provision of similar services of benefits. If any personal property is so provided, this assurance shall obligate the ————(Recipient) for the period during which the Federal financial assistance is extended to it. THIS ASSURANCE is binding on all units of the ————(Recipient) its successors, transferees, and assignees, and the persons whose signatures appear below are authorized to sign this assurance on behalf of the ————(Recipient).

(Date

(Recipient)

(Title)

(Mailing Address of Recipient)

Appendix D—DOT Internal Procedures and Standards

For the information of applicants, recipients, and the public, the Department of Transportation sets forth the following internal procedures and standards which it uses in processing and deciding matters under this part.

1. *Division of Responsibilities.* Title VI compliance responsibilities are divided among the Departmental Director of Civil Rights and head of each of the Departmental elements. These responsibilities are as follows:

a. *Departmental Director of Civil Rights.* The Director acts as the responsible Departmental official in matters relating to Title VI and assists the Secretary in carrying out the Title VI responsibilities of the Department. Specifically, the Director, in addition to the responsibilities elsewhere in this part, has the responsibility to:

(1) Recommend, develop, disseminate, monitor and pursue vigorously Departmental policies on the implementation of Title VI.

(2) Prepare uniform Departmental Title VI regulations and issue Title VI guidelines and program directives.

(3) Advise the Secretary concerning significant developments in the implementation of the Department's Title VI program.

(4) Review, evaluate and monitor vigorously Departmental elements' activities and programs relating to Title VI and make changes to assure consistency and program effectiveness.

(5) Monitor compliance with this part and take appropriate action to assure full and fair implementation.

(6) Provide leadership, guidance and technical assistance to the Departmental elements in the carrying out of their Title VI responsibilities.

(7) Ensure that all complaints of discrimination alleging noncompliance with Title VI are processed, investigated and resolved in a fair and timely manner.

(8) Take appropriate, fair and timely action with regard to all findings of noncompliance under Title VI, by initiating or participating *inter alia* in attempts at informal resolution, hearings, and reports to the Secretary for submission to Congress, ordering the suspension or termination of Federal financial assistance.

(9) Provide primary coordination and liaison with other agencies, offices, and public and private organizations outside the Department and with the Department of Justice, in conjunction with the Office of General Counsel, to achieve program objectives.

(10) Disseminate information to and provide continuous and meaningful consultation with the public concerning the Department's Title VI programs, including, in appropriate situations, the provision of material of languages other than English.

b. *Departmental Elements.* Each Departmental element, with respect to the programs it administers, has the responsibility to ensure that the objectives of Title VI and the regulations of the Department of Justice at 28 CFR Part 42, Subpart F, are achieved. The head of each Departmental element shall:

(1) Cause each application for Federal financial assistance:

(a) To be reviewed by its office of civil rights for a written determination as to whether the applicant is in compliance.

(b) To include the Standard DOT Title VI Assurances required by this part.

(2) Assign sufficient personnel to the Office of Civil Rights to implement fully and to ensure compliance with the Title VI program;

(3) Cause each environmental impact review made pursuant to DOT Order 5610.1B in connection with Federal financial assistance programs to be reviewed by its office of civil rights prior to approval in order

to ascertain whether the environmental determinations are consistent with its Title VI program requirements.

(4) Refer all complaints alleging discrimination prohibited by Title VI, and all matters which, based on a compliance review, report or other information, indicate a possible failure to comply with Title VI, to the Director for investigation and handling. Each Departmental element shall cooperate with the Director in handling all such compliance matters.

(5) Carry out the compliance program standards and procedures set forth in this part and cooperate with the Director in all phases of the DOT Title VI Program.

2. *Complaints.* In processing and investigating complaints, under § 21.25 of this part, the following procedure shall be used:

(a) *Information from Departmental Elements.* Immediately upon receiving a complaint, the Office shall request the following information from the Departmental element(s) concerned, which shall furnish the information within ten days of receiving the request:

(1) Program, project, or activity involved and file number(s);

(2) Location and brief description of program, project or activity;

(3) Status of funding for the program, project or activity;

(4) Copies of any compliance reviews of the recipient, contractor or participant with respect to the program, project or activity;

(5) Copies of the Title VI Assessment and nondiscrimination assurances signed with respect to the program, project, or activity;

(6) A statement of whether a compliance review with respect to the program, project or activity has been scheduled or is contemplated within the time allowed for processing of the complaint.

(b) *Information from Other Agencies.* The Office may contact the Equal Employment Opportunity Commission (EEOC), state or local civil rights offices, other Federal agencies providing financial assistance to the respondent, and community organizations to determine whether any other allegations of non-compliance against the respondent exist. The existence of a pattern of such allegations may be ground for the Director to initiate a special compliance review.

(c) *Referral to Other Agencies.* When DOT lacks jurisdiction, the Director shall, when possible, refer the complaint to other State or Federal agencies, informing the parties of this action. For example, the Director could refer complaints regarding noncovered employment to the EEOC or the State anti-discrimination agency.

(d) *Priority Complaint.* All incoming complaints shall be examined to determine whether the discrimination alleged would be irremediable if not dealt with promptly; e.g., complaint of a minority contractor when the contract is to be awarded in a short time. If such determination is made, the complaint shall be given priority status. The processing, investigation, and determination of such complaints shall be accelerated so as to advance significantly the normal completion.

(e) *Assignment of Complaints.* Ordinarily, all complaints are assigned to an investigator within the Office, except where the Director determines that because of workload in the Office, the matter would be expedited if handled by a Departmental element's office of civil rights and that such handling is appropriate in the case. The responsibilities of a Departmental element's office of civil rights to investigate the complaint may not be delegated to any regional field office.

(f) *Investigation Plan.* Prior to contacting the respondent to schedule the complaint investigation, the investigator shall prepare an investigation plan in order to focus on relevant issues; diminish the possibility of inadvertent gaps in the investigation, and note areas in which additional information will be required. Departmental elements conducting an investigation shall submit the investigation plan to the Office for review and approval.

3. *Compliance Standards.* The following material shall guide the Department in determining whether an applicant or recipient is in compliance with its Title VI requirements.

(a) *General.* Each Departmental element is responsible for reviewing each application and for monitoring the performance of each recipient to ensure that each applicant and recipient complies fully with the Act and this part. It is the policy of the Department to award and to continue to provide financial assistance only to those applicants and recipients who comply fully with all requirements. The requirements and compliance standards of this part may be applied to contractors and praticipants by the Department, by a Departmental element, or with the approval of the Director and under the direction of a Departmental element, by a recipient of its subrecipients.

(b) *Beneficiaries.* In order to be in compliance, applicants and recipients shall identify their beneficiaries and take affirmative action to assure that beneficiaries shall not be excluded from participation in or denied the benefits of any assisted program on the ground of race, color, or national origin. Applicants and recipients shall develop and utilize criteria, procedures and administrative methods that do not result in a disparate negative effect in the services or other benefits received or to be received by minorities. Problem identification and corrective action should be developed during the planning stages of the program.

Moreover, a recipient shall also take positive steps to assure that services and other benefits are equally distributed to all participants and beneficiaries irrespective or their race, color, or national origin.

(c) *Negative Effects.* To be in compliance, applicants and recipients must identify negative effects and take positive steps to ensure that such effects do not fall disproportionately upon minorities.

(d) *Citizen Participation.* To be in compliance, applicants and recipients shall make every reasonable effort to consider and resolve amicably those concerns of citizens relating to the program in question. Where there are boards, commissions, councils or committees formed relative to the program, concerted efforts shall be initiated by the recipient to involve persons in the affected community, to assure compliance with the civil rights requirements that no person shall be excluded from participation in, be denied the benefits of or otherwise be subjected to discrimination. Citizen participation shall include maximum feasible opportunity for participation in planning, programming and decision making. This right of participation shall exist for any resident or employee of the target area designated to receive assistance and for persons other than those within the target area when the object of the assistance negatively effects those persons. Where appropriate, bilingual notification shall include similar foreign language descriptions of citizen planning of advisory bodies that provide input to the administrative element.

The thrust of these materials shall be directed at securing participation of a program advisory nature from minorities.

Recipients shall be required to publish and announce notices of public hearings in the general new media and in the minority media, where available, in order to inform fully the community of the policy and procedure with regard to programs, projects, and activities. Recipients shall also make adequate provisions to ensure that the non-English speaking population groups be adequately informed and given an ample opportunity to participate. Such positive steps shall include as necessary and practicable, provisions of translation services, translated transcripts and/or hearings held in languages of the predominant non-English speaking racial/ ethnic group(s).

The recipient, where deemed appropriate by a Departmental element, may be required to contract the services of a minority civil rights organization to inform the affected community of the impact of programs. In such instances, it is proper to designate a local agency to review these applications and to inform the local citizenry of the program impact. The expense of reviewing the social impact of the program on the target area shall be an eligible program expense.

(e) *Public Dissemination of Information.* In order to be in compliance, each applicant or recipient shall include information on Title VI requirements, complaint procedures and the rights of beneficiaries in handbooks, manuals, pamphlets and other material which are distributed to the public to describe the recipients and beneficiaries. Recipients shall inform beneficiaries through prominently displayed posters as well as other forms of communications and publications, of their rights and the benefits under the program, the procedures for filing complaints pursuant to Title VI and the availability of Title VI information from the recipient and the Department of Transportation. Where a significant number or proportion of beneficiaries eligible to be served or likely to be directly affected by a program needs assistance in a language other than English in order to participate in or become beneficiaries of such programs, the recipient shall take reasonable steps, considering the scope of the program and the size and concentration of such population, to provide information in appropriate languages to such persons. This requirement applies with regard to written material of the type which is ordinarily distributed to the public as well as at public hearings.

(f) *Relocation.* With respect to persons and businesses displaced by a program, applicants and recipients, to be in compliance, must ensure that all displacees are fully informed of their rights to participate in, and receive benefits from the program. Recipients shall assist relocatees in obtaining relocation payments (replacement housing payments, last resort housing), compensation and personal property move payments. Prompt and equitable treatment shall include assisting relocatees to buy and/or rent in areas of their choice and within their financial means on a nondiscriminatory basis. It is the goal of this Department to administer its relocation assistance program in an affirmative manner which will further the purposes of the Nation's fair housing laws.

(g) *Provision of Data.* All applications must be supported with sufficient data to permit DOT compliance officials to make a written determination whether the applicant is in compliance with Title VI and whether the program, which is funded in whole or in part by such financial assistance, is consistent with the Title VI Program. Each recipient must maintain sufficient data to allow appropriate analysis and review of its programs.

4. *Record Keeping.* (a) The Director shall maintain a log of Title VI complaints identifying each complainant by race, color, or national origin; the recipient; the nature of the complaint; the dates the complaint was filed and the investigation completed; the disposition; the date of disposition; and other pertinent information.

(b) The Director shall maintain a record of application and compliance reviews identifying the recipient, contractor and other participants reviewed, who conducted the review, dates of the review, the determination made, and other pertinent information.

5. *Reports and Determination.* Following each planning review, application review, compliance review or complaint investigation, the office conducting the review or investigation shall prepare a report setting forth its determination.

(a) *Contents.* Each such report shall contain the following:

(1) A statement of the kind of review or investigation involved.

(2) A summary of the information obtained.

(3) Complete Civil Rights Information System (CRIS) data entry form, for reviews only.

(4) Specific findings of the review or investigation.

(5) The results of any efforts at informal resolution to correct noncompliance or discrimination, and signed copies of any resolution agreements reached.

(6) Recommendation or disposition.

(7) Attachments containing all background information relevant to the report, including applicable laws and regulations, written information and statements obtained during the review or investigation, an applicant's Title VI Assessment and relevant portions of an applicant's or recipient's Environmental Impact Statement.

Appendix E—Title VI Assessment Form

Except to the extent noted in this appendix, recipients and applicants are required to complete the following Title VI Assessment Form in order that Title VI compliance can be determined. Departmental elements are also responsible for distribution of the form to applicants and recipients whenever assessment is required.

The following definitions apply to this form:

Jurisdiction Area—the geographical area under the jurisdiction of the applicant/recipient, such as a State, county, airport, transportation district, etc.

Program/Project/Activity Area—the geographical area of the program, project or activity, such as a highway construction project (including right-of-way).

Black, Not of Hispanic Origin—a person having origins in any of the Black racial groups of Africa;

Hispanic—a person of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish culture or origin, regardless of race;

Asian or Pacific Islander—a person having originis in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent, or the Pacific Islands, including but not limited to, China, Japan, Korea, the Phillipine Islands, and Samoa; or

American Indian or Alaska Native—a person having origins in any of the original peoples of North America and who maintains cultural identification through tribal affiliation or community recognition.

White, Not of Hispanic Origin—a person having origins in any of the original peoples of Europe, North Africa, or the Middle East.

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Racial/Ethnic Data

	Program/Project/ Activity Area	Jurisdiction Area
1. Total Population		
2. Total Black Population (not of Hispanic Origin)		
3. Total Hispanic Population		
4. Total American Indian or Alaskan Native Population		
5. Total Asian or Pacific Islander Population		
6. White, not of Hispanic Origin		
7. Is there a signed and dated Title VI Assuance?	Yes _____ No _____	
- Has it been signed within the past 12 months?	Yes _____ No _	
8. Is a public hearing required?	Yes _____ No _	
If so, was it advertised in minority newspapers, or other minority oriented news media?	Yes _____ No _	
Is there a public hearing transcript?	Yes _____ No _	
9. Relocation		
- Will it be necessary?	Yes _____ No _	
- Is there a relocation plan?	Yes _____ No _	
- Does it conform to the requirements of the Uniform Relocation		

and Land Acquisition Act? Yes _____ No ___

Please enclose a copy of the relocation plan, if one has been prepared.

	White	Black	Hispanic	American Indian	Asian or Pacific Islander
10. Anticipated beneficiaries of the program, project, or activity.					
11. Estimated number of property owners:					
a. to be relocated					
b. to be negatively effected					
12. Estimated number of families:					
a. to be relocated					
b. to be negatively effected					
13. Estimated number of businesses:					
a. to be relocated					
b. to be negatively effected					
14. Users of services (numbers)					

15. If there is an Advisory Board, what is it composition?

16. If there is an impact on a minority community media (including those in languages other than English, where applicable) been used to inform the community about the project, program or activity and its impacts? Yes_____ No ____

	White	Black	Hispanic	American Indian	Asian or Pacific Islander

17. Is this project being carried out under the aegis of a State or regional planning organization (including a metropolitan planning organization)? Yes _____ No _____

18. Has the project been developed in accordance with the OMB A-95 Process, including referral to State or local planning agencies? Yes _____ No _____

19. Number of projected job opportunities and vacancies created by the program, project, or activity if employment is covered under Title VI?

V. 46 / 12 / JAN 19 81

20. EMPLOYMENT PRACTICES OVER THE PAST YEAR (for employment covered by Title VI).

	Total	White	Black	Hispanic	Indian	Asian
Applicants						
Hires						
Promotion						
Termination						
Lay offs						
Training						

21. Are there any lawsuits or complaints alleging discrimination on the basis of race, color, or national origin filed against the applicant or any of its subgrantees within the 5 years prior to the date of the application?

Yes _____ No _____

a. If so, please specify the name of the complainant.

b. Indicate the status or outcome of each complaint or lawsuit.

c. Have any of these lawsuits or complaints resulted in the termination of funds? Yes _____ No _____

22. Does the applicant or any of its proposed subgrantees have any pending application for Federal financial assistance with any other Federal agency or Federally assisted program, project, or activity?

Yes _____ No _____

If so, please list these Federal agencies, programs, projects, and activities, and current status.

23. Were there any civil rights compliance reviews conducted or are any being conducted on the applicant or any of its proposed subgrantees by any State, local or Federal agency within the 5 years prior to the date of the application?

Yes _____ No _____

Please indicate the status of such review(s), and identify the agency that undertook them.

24. Is there a detailed citizen participation plan?

Yes _____ No _____

(Explain and/or attach a copy)

25. Has there been substantial citizen participatin in planning for the project or program? Yes _____ No _____

Describe it.

26. Is t

If s

27. Desc

28. Addi

29. Dete

Adeq

Compli

Noncomp

Explai

Date: _

BILLING CODE 491

26. Is there a person assigned to provide Title VI compliance oversight?

Yes _____ No _____

If so, please give name and job title.

27. Describe all problems related to achieving compliance with Title VI.

28. Additional Comments

29. Determination (to be completed by DOT civil rights official)

Adequate information to assess compliance?

Yes _____ No _____

Compliance Yes _____ No _____

Noncompliance Yes _____ No _____

Explain:

Date: _____ Reviewer: _____

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Certain Departmental elements already collect some of the information required on this form or do not need certain items of information. The following information gathering requirements apply to these Departmental elements:

USCG—Coast Guard recipients need answer only items 20–29 on the Title VI Assessment Form.

FHWA—FHWA recipients need answer only items 21 and 23.

FAA—FAA recipients never need to answer items 1–6, 10 and 20. FAA recipients need not complete any items on the form if (1) there has been a finding by FAA, pursuant to an on-site compliance review, that the recipient is in compliance, and this finding has been made within 24 hours of the application date; or (2) there is no relocation caused by the project; or (3) there is no requirement for an Environmental Impact Statement on the project.

NHTSA—Because NHTSA grant programs differ significantly from other major DOT grant programs, NHTSA grantees do not use the DOT Title VI Assessment Form set forth in this Appendix. Rather, NHTSA recipients (State Highway Safety Officer) answer the following questionnaire:

I. Communications With State and Local Civil Rights Enforcement Agencies

A. Please provide a copy of the HSP to the State civil rights enforcement agency to enable it to review and comment on the civil rights aspects of the activities for which NHTSA assistance is sought. A report of the State/subgrantee(s) response to concerns raised shall be included in the Title VI report required in Volume 102—Highway Safety Plan, Chapter V, Paragraph 4.

B. Is the State highway safety agency or any known subgrantee currently the subject of a Federal agency civil rights enforcement action or lawsuit? If so, identify the agency and the NHTSA recipient involved.

II. State Highway Safety Agency/Sub-Grantee Involvement With Minority Citizens

A. List the minority group organizations and their respective contact persons with whom the State and local political subdivisions (LPSs) have made contacts while planning and developing the HSP.

B. To what extent have minority community and foreign language media been used to inform minority group persons about the aspects of the program?

C. To what extent have 402 monies been used to translate highway safety program materials (brochures, driver manuals, etc.) Describe the extent to which bilingual persons are used to facilitate the delivery of highway safety program-related services to the public.

D. Describe any other Public Information and Education measures to be taken to ensure that minorities will be adequately informed about the programs and activities contained in the HSP.

E. Have any organizations representing minorities, women, or the handicapped objected to any specific activities receiving NHTSA/assistance under the HSP? If so, what measures are

F. Identify the citizen/consumer and technical advisory committees that advise the State highway safety agency and denote the extent to which they have minorities, women, and the handicapped among their membership.

G. Describe the manner and extent to which racial/national data was used in the State and local problem identification processes.

III. EEO Impact of the Highway Safety Plan

A. Attach a completed State and Local Government Information Report (EEO–4) covering the employment profile of the State highway safety agency.

B. Identify all other NHTSA-assisted jobs (excluding III–A data) to be created or supported by 402 monies by employer, job title, and salary.

C. Attach a copy of the EEO affirmative action plan under which the State highway safety agency operates.

IV. State Highway Safety Agency's Oversight of Title VI Compliance

A. Describe the nature and extent to which the Governor's Highway Safety Representative will provide Title VI-related compliance oversight regarding HSP-assisted activities carried out by other State agencies and LPSs.

B. Explain the procedures used to respond to Title VI-related complaints or grievances. If such procedures involve referring complaints to a civil rights enforcement agency, please identify the agency and provide the name and address of its director.

C. Provide the name(s) and the job title(s) of the persons assigned as the State highway safety agency's agency's Title VI, EEO, and MBE coordinator(s).

Appendix F—Applicability of Title VI Regulations to the Act of June 21, 1940 "Truman-Hobbs Act"

Actions under the Act of June 1940 ("The Truman-Hobbs Act", 33 U.S.C. 511, et seq.) are subject to Title VI of the Civil Rights Act of 1964, as implemented by Executive Order 11764, as the Act provides for Federal financial assistance. Under the Act (33 U.S.C. 513), the Commandant of the Coast Guard, under authority delegated by the Secretary of Transportation, issues to a bridge owner an order to alter a bridge that the Commandant finds unreasonably obstructs the free navigation of a navigable water of the United States. Also under the Act (33 U.S.C. 516), the bridge owner receives Federal financial assistance for the alteration so ordered.

For the purposes of the Department of Transportation Title VI regulations, the bridge owner is a "recipient" of Federal financial assistance; however, the bridge owner receives the assistance because of a Federal order to alter the bridge and is therefore not an "applicant" for the purposes of those regulations. The "beneficiary" in a Truman-Hobbs Act action, for the purpose of these regulations, is primarily the navigation interests that benefit by the alteration.

Appendix G—Federal Aviation Administration (FAA)

Modification of Requirements as Applied to the Airport Sponsor

(1) *Additional Requirements.* The airport sponsor shall comply with the requirements listed below in addition to those applicable in the foregoing regulation.

(a) The airport sponsor shall comply with this part as made applicable, where appropriate, to nondiscrimination and affirmative action on the basis of sex or creed, as authorized by Section 30 of the Airport and Airway Development Act of 1970, as amended, and § 21.19(a) of this part.

(b) Each airport sponsor shall, within 15 days or receipt, forward to the Civil Rights Staff of the Federal Aviation Administration Region in which the airport is located, a copy of each written complaint received by the airport sponsor charging discrimination because of race, color, creed, sex, or national origin in violation of this part, together with a statement describing all actions taken to resolve the matter, and the results thereof.

(c) Each airport sponsor shall give written notice annually to each tenant, contractor, and concessionaire that is signatory to the nondiscrimination provisions required by this part, of its obligation to comply with such provisions.

(2) *Definition of Specific Requirements.* The airport sponsor will comply with specific provisions of this part by taking the action described in each case below.

(a) The airport sponsor will include the reverter clause (found in Attachments 2 and 3 of Appendix C) in deeds, licenses, leases, and permits only when the grant agreement specifically states that the FAA Office of Civil Rights has determined that its inclusion is necessary to implement the provisions of Title VI. In all other cases, the reverter clause will not be included.

(b) In cases where reversion or any other form of sanction is proposed by the airport sponsor, such reversion of land or facilities or other sanctions based on a violation of this part, may be effected only with the written concurrence of the FAA Office of Civil Rights.

(c) In order to comply with Sections 4 (a) and (b) of Appendix C, the airport sponsor shall take at least the following actions:

(i) Conspicuously display a sign or signs, furnished by the FAA, in the main public area or areas of the airport, stating that discrimination based on race, color, creed, national origin, or sex is prohibited on the airport;

(ii) Make a copy of this part available at the airport hours by any person asking for it; and

(iii) State in notices of opportunity for public hearing published in newspapers, as required by 14 CFR Part 152.73, Federal Aviation Regulations, that the proposed project is an equal opportunity program.

Appendix H—Federal Highway Administration

1. *Authority.* In addition to Title VI and this part, this appendix implements section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794); 49 CFR Part 27; 28 CFR 50.3;

23 U.S.C. 324; Executive Order 11764; Federal-Aid Highway Acts and related statutes; and assurances signed by each state under this part.

2. *Purpose.* The purpose of this appendix is to implement Title VI of the Civil Rights Act of 1964, this part, and related statutes and regulations to ensure that no person in the United States shall, on the grounds of race, color, religion, sex, age, handicap, or national origin, be excluded from participating in, be denied the benefits of, or be otherwise subjected to discrimination under any program receiving Federal financial assistance from the Federal Highway Administration (FHWA). This appendix also provides guidance to State Highway Agencies (SHA) in carrying out this purpose through the program procedures and regulations of the Federal-aid highway program.

3. *Policy.* (a) It is the policy of FHWA to follow a "Systematic Interdisciplinary Approach" (SIA) to implement Title VI and this part. The SIA is a managerial process in which civil rights and program officials of the SHA and the FHWA work jointly to implement their responsibilities under Title VI, this part and other authorities by carrying out program responsibilities, procedures, and operations in such a way that no person is excluded from participating in, denied the benefits of, or otherwise subjected to discrimination under any program or project receiving Federal-aid highway funding because of race, color, religion, sex, age, handicap, or national origin.

(b)(1) Under the SIA, FHWA and SHA officials must carry out their responsibilities, procedures, and operations in such a way that there will be equal treatment and opportunity for all persons participating in benefiting from, or being affected by any program, project, or activity receiving Federal-aid funding.

(b)(2) Where the results of a particular FHWA program office's standard procedures are not likely to be equal (e.g., compensation under acquisition and relocation procedures), the FHWA Office of Civil Rights (Washington Headquarters) (OCR) must concur in such standard procedures as being in compliance with Title VI. This approval does not relieve the program office from responsibility for seeing that the procedures are carried out in compliance with Title VI, nor does it relieve the FHWA Office of Civil Rights from responsibility in the instance of a discrimination complaint or any other reason to suspect the existence of discrimination.

(c) Through the SIA, SHA and FHWA program and Civil Rights officials are responsible for indentifying potential areas of discrimination and taking corrective action immediately in order to prevent discrimination from occurring. As part of the SIA, SHA and FHWA program and Civil Rights officials periodically review programs to determine the degree and adequacy of compliance with Title VI and related authorities. These reviews are conducted consistent with this part and the State's approved Title VI plan as set forth in paragraph 5 of this appendix.

(d) When requested to do so by the Department of Transportation Office of Civil Rights, the FHWA Office of Civil Rights investigates discrimination complaints. The FHWA Headquarters Office of Civil Rights may assign complaints to Regional Offices of Civil Rights for investigation to expedite the processing of appropriate cases. Program area personnel assist the Office of Civil Rights in providing background and resource material.

(e) Cooperation by FHWA and SHA program and civil rights staff of projects and program elements through the SIA is designed to ensure that these projects and programs elements comply with Title VI and other authorities. However, such joint participation and approval of basic procedures does not preclude a subsequent finding by the Department of Transportation or FHWA Office of Civil Rights that a project or program element is in noncompliance since the purpose of Title VI is to achieve a non-discriminatory result.

4. *Applicability.* (a) This appendix is applied by the FHWA Office of Civil Rights and the FHWA program offices with respect to all programs, projects, procedures, and responsibility that are part of the Federal-aid highway program. While SHA and FHWA civil rights and program officials carry out their responsibilities in coordination with each other, the FHWA Office of Civil Rights has the primary responsibility and lead role in carrying out all FHWA responsibilities for Title VI and related statutes, as required by the Department of Justice.

(b)(1) This applies to employment practices of states or contractors where the primary or sole objective of Federal-aid highway funding is to provide employment opportunities on Appalachian projects, including complaints related to age, sex, religion and handicap.

(b)(2) In addition, this appendix applies to employment pratices concerning which discrimination in employment has resulted in discrimination or an allegation of discrimination, or a reason to suspect discrimination by OCR, FHWA, against participants, beneficiaries or potential beneficiaries of the program. Discrimination in employment practices of the SHA which has not yet been suspected to have resulted in discriminationagainst participants or beneficiaries (e.g., affirmative action plans of the SHAs) are covered under Title VII.

(b)(3) Nothing in this appendix is intended to limit the scope of coverage of employment practices under 49 CFR Part 27 (i.e., non-Title VI).

(c) The Title VI requirements of this appendix are still to be applied regardless of a full or partial approval of State Certification Acceptance as described in 23 U.S.C. 117.

5. *Title VI Assessment.* (a) Interdisciplinary working and review groups made up of SHA and FHWA employees are responsible for ensuring the achievement of Title VI program responsibilities during highway and transportation planning and project development. Periodically, these groups conduct specific Title VI reviews in order to ensure Title VI compliance at various stages of program or project development. These reviews are conducted and assessed in the context of the SIA.

(b) Specific actions to be completed through the SIA include the following:

(1) The appropriate FHWA Washington Headquarters civil rights and program officials work jointly to ensure that program directives and implementing procedures are consistent with this part and this appendix. In addition, civil rights and program officials work jointly to ensure that nondiscrimination is an integral part of the annual and/or continuing monitoring and evaluation process of all program responsibilities, procedures, and operations.

(2) The appropriate FHWA field offices and SHA civil rights and program official work jointly to prevent and/or correct discrimination during the implementation of FHWA responsibilities, procedures, and operations for systems planning (e.g., urban transportation planning process), project development (e.g., location, environmental, relocation, right-of-way acquisition, and preliminary and final design, etc.), and construction and maintenance.

(c) In the area of contract administration, the appropriate FHWA (Washington Headquarters and field offices), and SHA civil rights and program officials will work jointly to ensure that all their responsibilities, procedures, and operations for the advertisement (in native language, when needed), review, and selection of contracts on programs and/or projects receiving Federal-aid highway funding comply with Title VI and related authorities. This includes contracts awarded for work involving systems planning, preliminary and final engineering, design, location studies, environmental studies, relocation assistance and right-of-ways acquisition, construction and maintenance operations, legal services, research, administrative service, etc.

(d) All activities and written approvals indicating Title VI compliance performed jointly by civil rights and program officials of the FHWA and SHAs are documented and maintained in the appropriate program or project file for review and reporting. However, the major concentration should be on maintaning documentation and records reflecting compliance with Title VI as part of the normal program or project file. In addition, statistical data relative to race, color, religion, sex, age, handicap or national origin should be (1) collected, maintained and evaluated as part of the ongoing program or project planning, development and decisionmaking, and (2) used as a source to ensure that no person is excluded from participation in, be denied the benefits of or be subjected to any form of discrimination on any Federal-aid highway funding activity.

6. *State Title VI Plan.* (a) Each SHA shall prepare or revise its Title VI plans to incorporate Title VI responsibilities, procedures, and operations consistent with this appendix in its program and/or operating manuals. The Title VI plan shall be reviewed, and amended if necessary, annually. The performance under the plan will be constantly reviewed for sufficiency. The Title VI plan shall include the following:

(1) A description of the SHA's Civil Rights unit with a Title VI Coordinator or Title VI designee with authority and responsibility to effectively implement this part and this appendix. This authority will include direct access to the head of the SHA.

(2) A procedure for prompt processing of Title VI complaints including immediate forwarding to FHWA who will forward to Director, Civil Rights DOT for investigations and resolution.

(3) A compilation of the Title VI responsibilities, procedures, and operations required by this appendix that shall be incorporated in the SHA's program and/or operating manuals.

(4) A statement of whether the applicant or any of its proposed subgrantees have any pending application for Federal financial assistance with any other Federal agency or Federally assisted program, project, or activity; plus a list of those Federal agencies, programs, projects, and activities, and current status.

(5) A statement whether there were any civil rights compliance reviews conducted or are any being conducted on the applicant or any of its proposed subgrantees by any State, local or Federal agency within the 5 years prior to the date of the plan or update plus the status of such reviews.

(b) The initial Title VI plan and the manuals as well as all subsequent updates shall be submitted to the FHWA Division Administrator for submission with recommendations to the Regional Administrator for review and approval. The plan must also be approved by the regional civil rights director. Civil rights and program officials will monitor the approved Title VI plan on a continuing basis under the direction of the Division Administrator.

(c) The Title VI plan, or affected portions of the Title VI plan, and the manuals must be resubmitted for FHWA approval when there has been a change in the SHA's capabilities to carry out the Title VI responsibilities, procedures, and operations outlined in this appendix. If the FHWA determines that the SHA's capabilities are insufficient for the SHA to properly carry out its Title VI responsibilities, FHWA will bring that determination to the attention of the SHA for corrective action. Subsequent failure to correct the insufficiency will result in a nonapproval of the State Title VI plan.

Appendix M—Application of This Part to Recipients of DOT Federal Financial Assistance

The following examples illustrates the application of the nondiscrimination provisions of this part to projects, programs, and activities receiving financial assistance from the Department Of Transportation.

(a) *Federal Aviation Administration* (1) The airport sponsor shall not differentiate between members of the public because of race, creed, color, national origin, or sex in furnishing, or admitting to, waiting rooms, passenger holding areas, aircraft tiedown areas, restrooms, or facilities operated under the compatible land use concept.

(2) The airport sponsor must offer to all members of the public the same degree and type of service without regard to race, creed, color, national origin, or sex.

(3) The airport sponsor shall not design, locate, construct, or operate an airport, a runway, or a runway extension so as to discriminate against any person because of race, creed, color, national origin, or sex.

(4) The airport sponsor shall not discriminate on the basis of race, creed, color, national origin, or sex against any property owner, family, or individual in providing benefits or assistance for relocation.

(5) Participation at public hearings held by the airport sponsor will be available without regard to race, creed, color, national origin, or sex.

(6) Airport plans shall be coordinated with local transportation authorities and the Urban Mass Transportation Administration to assure adequate public transportation, particularly to nearby disadvantaged communities so that minority employment opportunities will be enhanced.

(7) Airport sponsors shall inform local minority businesses of contract opportunities, solicit bids from qualified minority firms, and award contracts without regard for race, creed, color, national origin or sex.

(8) Opportunities for participation as a concessionaire or lessee shall be structured in a fashion which has the effect of including minority and women businesses.

(b) *Federal Highway Administration.* In connection with highway construction projects or other activities assisted by the Federal Highway Administration, no State shall:

(1) Locate or design a highway in a manner which requires the relocation of any person on the basis of race, color, or national origin.

(2) Locate, design, or construct a highway in a manner which denies individuals access or use or causes disparate negative effect on the basis of race, color, or national origin.

(3) Differentiate among individuals eligible for relocation payments or advisory assistance on the basis of race, color, or national origin.

(4) Discriminate on the basis of race, color, or national origin in its employment practices, or permit its contractors to engage in discriminatory employment practices.

(5) Discriminate against any user of a highway on the basis or race, color, or national origin in the provision of public accommodations. Public accommodations include eating, sleeping, rest, vehicle servicing and recreational facilities, constructed on, over, or under a highway right-of-way.

(6) Discrimination on the basis of race, color, or national origin in the selection and retention of contractors, or permit its contractors to discriminate in the selection and retention of subcontractors. This requirement applies to all contractors for construction, research, highway safety, or right-of-way acquisition.

(c) *Urban Mass Transportation Administration.* (1) No person shall be subjected to discrimination on the basis of race, color or national origin in the provision of transportation services furnished as part of a project receiving UMTA financial assistance.

(2) All passengers on vehicles operated as part of a project shall be seated without regard to race, color, or national origin.

(3) Routing, scheduling, age and quality of vehicles and station quality shall not be determined on the basis of patrons' race, color, or national origin.

(4) No person shall be denied transportation on a public vehicle operated as part of an UMTA-assisted program on the basis of race, color, or national origin.

(5) No sponsor, lessee, concessionaire, contractor, licensee, or organization furnishing public transportation as part of a project shall discriminate in its employment practices on the basis of race, color, or national origin.

(6) Site selections for facilities requiring land acquisition or the displacement of individuals shall be made without regard to race, color, or national origin in a manner which minimizes adverse effects.

(7) Relocation payments and advisory assistance shall be provided without regard to race, color, or national origin.

(d) *National Highway Traffic Safety Administration.* Title VI compliance requirements applicable to each State Highway Safety Agency and its recipients' State and local operating agencies within the NHTSA-assisted State and Community Highway Safety Program include, but are not limited to, the following:

(1) All advisory committees serving as an adjunct to the highway program planning process shall be constituted in a manner that ensures nondiscrimination because of race, color, or national origin;

(2) All highway safety program activities contracted out to organizations other than the State or local operating agencies shall be awarded with proper consideration given to furthering opportunities for minority business enterprise participation;

(3) Highway and safety-related public education and information messages designed to enhance awareness and support for traffic safety programs must include foreign language translations where a sizeable percentage of the audience is non-English speaking;

(4) The distribution of training stipends and opportunities to attend traffic safety conferences and workshops must be provided without regard to race, color, or national origin;

(5) Alcohol education and rehabilitation programs for drinking drivers must not result in disproportionate involuntary termination or dropout rates on account of race, color or national origin;

(6) Law enforcement activities directed at reducing accident producing traffic law violations must not improperly result in a minority community perception of disparate negative effect; such targeted enforcement must be properly based upon impartial problem identification and data base analysis;

(7) The distribution of traffic safety-related hardware such as ambulances, communications equipment, police cars, etc., must be implemented in a manner that does not subject minority communities to discrimination or result in inferior service when compared to nonminority communities;

(8) Driver education programs must be administered in a manner that results in racial and ethnic minorities being fairly represented within traffic safety education classes; and

(9) A program record keeping system incorporating racial/ethnic data elements is to be established; also, the State traffic record system shall incorporate racial and national origin data to the extent practicable.

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January 19, 1981

Part XXIII

Environmental Protection Agency

State Hazardous Waste Programs; Requirements for Public Participation in State Enforcement Process During Interim Authorization

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 123

[SWH-FRL 1627-2]

State Hazardous Waste Programs; Requirements for Public Participation in the State Enforcement Process During Interim Authorization

AGENCY: Environmental Protection Agency.

ACTION: Interim final rule and request for comments.

SUMMARY: This rule revises the provision for requirements for enforcement authority to clarify the Agency's State program requirements for public participation in the State enforcement process during interim authorization under Subtitle C of the Resource Conservation and Recovery Act and to define the types of enforcement actions to which such requirements apply. This amendment which takes effect immediately, is necessary to clarify requirements for Agency approval of State applications for interim authorization.

DATES: *Effective Date:* The provisions of this amendment are effective January 19, 1981.

Comment date: Comments are due March 20, 1981

ADDRESSES: Comments on this amendment should be sent to: Docket Clerk (Docket 123), Permits Division (EN-336), Office of Water Enforcement, U.S. Environmental Protection Agency 401 M Street, S.W., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: Joel G. Blumstin, Office of Water Enforcement (EN-336), U.S. Environmental Protection Agency, Washington, D.C. 20460, (202) 426-4793.

SUPPLEMENTARY INFORMATION:

I. Authority

This amendment is issued under the authority of Sections 1006, 2002(a), 3006 and 7004 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 (RCRA), as amended, 42 U.S.C. 6905, 6912(a), 6926 and 6974.

II. Introduction

On May 19, 1980, EPA published regulations (45 FR 33290) establishing minimum requirements for States seeking interim authorization for their hazardous waste programs under Section 3006(c) of the Resource Conservation and Recovery Act. These requirements are contained in 40 CFR Part 123, Subpart F. Among these is the requirement that a State program provide for public participation in its enforcement process. 40 CFR 123.128(f)(2).

Section 123.128(f)(2) requires States to satisfy one of two alternatives for ensuring public participation in the enforcement process. The first alternative requires States to allow intervention as of right in enforcement actions by any citizen having an interest which is or may be adversely affected. As opposed to "permissive intervention," "intervention as of right" cannot be denied by a court if minimium requirements are met. The second alternative requires that three assurances be given by the State: 1) that it will investigate and provide written responses to all citizen compliants; 2) that it will not oppose intervention where permissive intervention is authorized; and 3) that it will publish and provide the public thrity days to comment on any proposed settlement of a State enforcement action.

In the course of reviewing State hazardous waste programs for interim authorization, numerous questions have arisen regarding the meaning of the requirements for public participation in enforcement. These questions relate primarily to the types of enforcement actions to which the public participation requirements apply. In particular, States asked whether EPA has authority to extend the public participation requirements of §§ 123.128(f)(2)(i) and 123.128(f)(2)(ii)(C) to administrative enforcement actions or whether those requirements should be limited to civil actions. States also raised questions as to who in the State is responsible for satisfying these requirements and the types of approaches, other than the two specified, which would be acceptable.

This **Federal Register** publication announces an amendment to 40 CFR 123.128(f)(2) which clarifies the requirements for public participation in the State enforcement process and specifies the types of State enforcement actions to which such requirements are applicable. Amendments to §§ 123.128(f)(2)(i) and (ii) are discussed below with an explanation of why such changes are appropriate.

III. 40 CFR 123.128(f)(2)(i)—Intervention as of right

States which seek to satisfy 40 CFR 123.128(f)(2)(i), the first of the two options, as amended, must have:

> Authority which allows intervention as of right in any civil action to obtain the remedies specified in paragraph (f)(1)(ii) and (iii) of this section by any citizen having an interest which is or may be adversely affected;

Today's amendment incorporates two changes to § 123.128(f)(2)(i). The first change eliminates the requirement that States have authority which allows intervention as of right in "administrative" actions. Such authority is now required only in civil actions. This change has been made because, as correctly pointed out by some States, to require intervention as of right authority in administrative, as well as civil, actions would require States to have broader authority than that granted EPA under Section 7002 of RCRA. Section 7002 of RCRA allows that "any person may intervene as a matter of right" in an enforcement action brought in a court of the United States. RCRA does not extend this right to administrative actions (i.e., actions not in a court of the United States). Further, EPA's consolidated rules of practice, which govern administrative actions under RCRA, do not provide for an unconditional right to intervention (40 CFR 22.11). As amended, 40 CFR 123.128(f)(2)(i) will provide the public with intervention rights equal to those provided under RCRA.

The second change from the May 19, 1980, intervention as of right provision clarifies that States are not required to have authority to allow intervention as of right in a civil action which is designed to immediately restrain an action which is endangering or causing damage to public health or the environment. These actions are normally of an emergency nature in which the need to act quickly is paramount. As originally drafted, 40 CFR 123.128(f)(2)(i) was not intended to cover such actions. Any interpretation of this provision which implies such coverage would not be consistent with the Agency's intent. To clarify this, the amended provision refers specifically to civil actions to obtain remedies specified in § 123.128(f)(1) (ii) and (iii), actions to enjoin and actions to recover civil penalties for program violations.

IV. 40 CFR 123.128(f)(2)(ii)—Assurances

States which seek to satisfy 40 CFR 123.128(f)(2)(ii), as amended, must provide:

> (A) Assurance by the appropriate State agency that it will investigate and provide written responses to all citizen complaints submitted pursuant to the procedures specified in paragraph (g)(2)(iv) of this section;
>
> (B) Assurance by the appropriate State enforcement authority that it will not oppose intervention by any citizen when permissive intervention is authorized by statute, rule, or regulation; and

(C) Assurance by the appropriate State enforcement authority that it will publish notice of and provide at least 30 days for public comment on all proposed settlements of civil enforcement actions, except in cases where a settlement requires some immediate action (e.g., cleanup) which if otherwise delayed could result in substantial damage to either public health or the environment.

Numerous questions arose under the May 19, 1980, promulgation of this provision as to who in the State was required to provide the three assurances required by 40 CFR 123.128(f)(2)(ii). It was unclear to these questioners whether all three assurances could be provided by the same individual. The provision has been amended, therefore, to make clear from whom each assurance is required. The intent is that each assurance be provided by the responsible official of that State agency which can best carry out the aim of the required assurance (i.e., to allow citizens the opportunity to participate in the enforcement process). Thus, the assurance that citizen complaints be investigated and responded to in writing is charged to the lead State agency (i.e., the agency to whom citizen complaints would likely be sent and which is best situated to respond to them).

On the other hand, assurances that intervention in enforcement actions not be opposed and that notice of proposed settlements be published must be provided by the agency (agencies) in the State which is (are) charged with enforcement authority. The assurances of another agency would not effectively provide the public with the opportunities intended. Therefore, if the Attorney General's office represents the State in court on enforcement matters pertaining to the State program, the Attorney General, along with the head of the lead State agency, are the appropriate officials to provide the needed assurances regarding intervention and publishing notice of proposed settlements. The Attorney General's statement which must accompany the interim authorization application would be the proper place for the Attorney General to make the assurances. If the State agency acts as its own attorney of record in State enforcement actions, then it alone would be the appropriate State enforcement authority. The Memorandum of Agreement included in the interim authorization application would be the proper place for the State agency to make the required assurances.

Questions have arisen with regard to the scope of § 123.128(f)(2)(ii)(B). This provision is intended to ensure that States do not erect barriers to citizen intervention in enforcement actions. Where an existing statue, rule, or regulation authorizes permissive intervention and a citizen meets the requirements of the statute, rule, or regulation for intervention, the State enforcement authority must not oppose this intervention. The provision does not require the State to adopt a permissive intervention requirement.

Most questions concerning public participation focused on the assurance required by § 123.128(f)(2)(ii)(C). This provision requires the State agency to assure EPA that it will publish and provide at least 30 days for public comment on any proposed settlement of a State enforcement action. During the course of reviewing State applications for interim authorization, the following questions arose: (1) who must give this assurance, (2) must the settlement itself be published, (3) does the term "State enforcement action" mean both civil and administrative actions, and (4) can there be any exception to the 30 day requirement in emergency situations? Section 123.128(f)(2)(ii)(C) has been amended in response to these questions.

First, as discussed above, § 123.128(f)(2)(ii)(C) has been amended to make it clear that the required assurance must be provided by the appropriate enforcement authority.

Second, this section has been amended to include the word "notice" in the requirement that the appropriate State enforcement authority publish and provide at least 30 days for public comment on all proposed settlements. The addition of the word "notice" clarifies EPA's original intent that only notice of the settlement must be published; the proposed settlement itself need not be published. (See 45 FR 33383.)

The third change to § 123.128(f)(2)(ii)(C) clarifies that this requirement applies only to civil enforcement actions. This was EPA's original intent. The scope of this provision is in keeping with the practice of the Department of Justice, whose guidelines, published in 28 CFR 50.7, served as the model for EPA's provision. Of course, the appropriate State enforcement authority may always expand the scope of this provision by agreeing to publish notice and provide opportunity for public comment on proposed settlements of administrative enforcement actions as well.

The final change to this section allows for an exception to the 30 day notice and comment period. Public notice and opportunity for comment on all proposed settlements of civil enforcement actions may now be for less than 30 days, or, in some cases, may be completely eliminated where the 30 day period for notice and comment would itself cause substantial damage to either public health or the environment by preventing immediate action. Settlements involving cleanup are examples of such cases and are specifically referenced in the regulation itself.

V. Alternative Approaches

EPA has been asked, during the course of reviewing State applications for interim authorization, whether the two options specified in § 123.128(f)(2) are the only acceptable methods of satisfying the Agency's public participation in enforcement requirements. The answer to this question is no. The same public participation provisions were required elsewhere in the consolidated regulations, at 40 CFR 123.9. As stated in the preamble to this other section (45 FR 33382-3), these two options represent minimum guidelines to ensure that the public has an adequate opportunity to participate in the State enforcement process. EPA intended that the same meaning apply to § 123.128(f)(2). States are always free to impose more stringent requirements. In this case, the test for stringency is whether the State program provides greater opportunity for public participation in enforcement than does one of the two options set out in § 123.128(f)(2). A hybrid of the two options specified in § 123.128(f)(2) which provided a greater opportunity for public participation would be acceptable.

As an example, some States have the authority to allow intervention of right in a manner analogous to Rule 24(a)(2) of the Federal Rules of Civil Procedure. This rule allows intervention if the applicant can demonstrate to the satisfaction of the court that he or she "claims an interest relating to the property or transaction which is the subject of the action and is so situated that the disposition of the action may as a practical matter impair or impede his ability to protect that interest, unless the applicant's interest is adequately represented by existing parties." A State which allows intervention in a manner analogous to Federal Rule 24(a)(2), and which provides an assurance by the appropriate State enforcement authority that it will not oppose intervention under the State analogue to Rule 24(a)(2) on the ground that the applicant's interest is adequately represented by the State, is a hybrid public participation provision that would satisfy § 123.128(f)(2).

While this approach does not contain provisions relating to citizen complaints and notice of proposed settlements, intervention by right in civil actions of the nature provided by a Rule 24(a)(2)

does provide a significantly greater opportunity for the public to participate in the State enforcement process than do the assurances of § 123.128(f)(2)(ii). A State must have a lawfully adopted rule analogous to Federal Rule 24(a)(2) which allows citizen intervention as of right. As discussed above, § 123.128(f)(2)(ii) can be satisfied by a State absent a statute, rule, or regulation providing for permissive intervention in State enforcement actions. Furthermore, the required State assurance that it will not oppose intervention under its analogue to Federal Rule 24(a)(2) ensures for individuals that the opportunities for intervention in enforcement actions provided under the rule will not be subjugated by the State on the theory that the State adequately represents the public interest in all enforcement actions.

VI. Interim Final Promulgation

EPA believes that use of advance notice and comment procedures for clarification to § 123.128(f)(2) would be unnecessary and contrary to the public interest, and therefore finds that good cause exists for adopting this change in interim final form (see 5 U.S.C. 553(b)(B)). The changes made by this regulation are minor and, in large part, are clarifications to the May 19, 1980 promulgation of the public participation in enforcement requirements.

Many States are in the process of completing applications for interim authorization under Section 3006(c) of RCRA. Thus, the need to make the clarifications contained in this regulation effective immediately is pressing both for States who must know what requirements they must satisfy and for EPA when determining whether a State program is approvable. To delay approving State programs under this amended regulation would be contrary to the public interest and would result in a waste of public resources. There are compelling reasons for issuing this amendment in interim final form, effective immediately.

To afford the public an opportunity to comment on the changes, EPA will accept comments until March 20, 1981. These comments will be considered in developing a final regulation.

Dated: January 12, 1981.

Douglas M. Costle,
Administrator.

Authority: Secs. 1008, 2002(a), 3006 and 7004, Pub. L. 94-580, 90 Stat. 2632, 2804, 2809-2810, and 2820-2827 (42 U.S.C. 6905, 6912(a), 6925 and 6974).

§ 123.128 [Amended]

40 CFR 123.128(f)(2) is revised to read as follows:

* * * * *

(f) * * *

(2) Any State administering a program under this Subpart shall provide for public participation in the State enforcement process by providing either:

(i) Authority which allows intervention as of right in any civil action to obtain the remedies specified in paragraph (f)(1)(ii) and (iii) of this section by any citizen having an interest which is or may be adversely affected; or

(ii)(A) Assurance by the appropriate State agency that it will investigate and provide written responses to all citizen complaints submitted pursuant to the procedures specified in paragraph (g)(2)(iv) of this section;

(B) Assurance by the appropriate State enforcement authority that it will not oppose intervention by any citizen when permissive intervention is authorized by statute, rule, or regulation; and

(C) Assurance by the appropriate State enforcement authority that it will publish notice of and provide at least 30 days for public comment on all proposed settlements of civil enforcement actions, except in cases where a settlement requires some immediate action (e.g., cleanup) which if otherwise delayed could result in substantial damage to either public health or the environment.

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Part XXIV

Community Services Administration

Civil Rights Regulations; Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefitting From Financial Assistance Provided by CSA; Implementation of Section 504 of the Rehabilitation Act, as Amended, and Executive Order 12250

COMMUNITY SERVICES ADMINISTRATION

45 CFR Part 1012

Civil Rights Regulations; Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefitting From Financial Assistance Provided by CSA; Implementation of Section 504 of the Rehabilitation Act, as Amended, and Executive Order 12250

AGENCY: Community Services Administration.

ACTION: Final rule.

SUMMARY: This rule defines and prohibits discrimination against qualified handicapped persons by CSA grantees. The rule is needed to implement Section 504 of the Rehabilitation Act of 1973, as amended, and is required by Executive Order 12250.

DATES: The rule becomes effective February 18, 1981. Notification of nondiscriminatory policies must begin by May 18, 1981. Program access must be provided by April 20, 1981.

The Self-Evaluation and the Transition Plan must be submitted by August 18, 1981. Structural changes to achieve program access must be completed by February 18, 1983.

FOR FURTHER INFORMATION, CONTACT: Jill Robinson, Acting Director, Disability Unit, Office of Human Rights, Community Services Administration, 1200 19th Street, N.W., Washington, D.C. 20506, (202) 653-5875 (voice) or 254-5463 (TDD).

For Taped, Brailled or Spanish Copies: Call or write Jill Robinson at number or address above.

SUPPLEMENTARY INFORMATION:

A. Background—§ 504

In September of 1973, Section 504 of the Rehabilitation Act of 1973 was enacted. That section provides:

> No otherwise qualified handicapped individual in the United States . . . shall, solely by reason of his handicap, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.
>
> (29 USC 794)

By November of 1974 when Congress amended some of the other provisions of the Rehabilitation Act, implementation of Section 504 had not begun. The Senate Report (No. 93-1297, November 26, 1974) which accompanied those amendments indicated that the Congressional intent in the enactment of Section 504 was to enact for the benefit of handicapped persons a civil rights statute on the magnitude of those protecting racial minorities and women:

> Section 504 was patterned after, and is almost identical to, the antidiscrimination language of section 601 of the Civil Rights Act of 1964, 42 USC 2000d-1 (relating to race, color, or national origin), and section 901 of the Education Amendments of 1972, 42 USC 1683 (relating to sex) . . . It does not specifically require the issuance of regulations or expressly provide for enforcement procedures, but it is clearly mandatory in form, and such regulations and enforcement are intended.
>
> The language of section 504, in following the above-cited acts, further envisions the implementation of a compliance program which is similar to those acts . . .

In April of 1976, President Ford issued Executive Order 11914 (41 FR 17871, April 28, 1976). This Executive Order directed the Secretary of HEW to coordinate the Government-wide implementation of Section 504 and to define handicapped persons and discriminatory practices. Each grant-making agency was directed to issue regulations consistent with HEW's.

In May of 1977, HEW issued its final substantive Section 504 regulation (42 FR 22676, May 4, 1977) and in January of 1978 it issued a regulation to implement Executive Order 11914. (43 FR 2132, January 13, 1978.)

HEW's Executive Order regulation contains three subparts: The first deals with the responsibility each grant-making agency has to implement Section 504, the second contains standards for determining who are handicapped individuals, and the third establishes the minimum criteria for determining what are discriminatory practices.

CSA published its proposed Section 504 rule on Friday, June 30, 1978 (43 FR 28757). During the comment period, which was extended until October 13, 1978 (43 FR 36469, Thursday, August 17, 1978), about sixty comments were received. These comments were carefully weighed during the drafting of the final rule.

On November 2, 1980, President Carter signed Executive Order 12250, which assigns to the Department of Justice (DOJ) responsibility to coordinate Federal nondiscrimination provisions. The HEW agency-wide guidelines are deemed to have been issued by DOJ until DOJ issues its own guidelines.

B. CSA's Special Interest in Section 504

The mission of the Community Services Administration (CSA), and its predecessor, the Office of Economic Opportunity (OEO) is:

> . . . to eliminate the paradox of poverty in the midst of plenty in this Nation by opening to everyone the opportunity for education and training, the opportunity to work, and the opportunity to live in decency and dignity. (Economic Opportunity Act of 1964, as amended, 42 USC 2701).

Through its grantees, OEO/CSA has been working to achieve this goal with respect to much of the low-income population.

HEW figures indicate that 36 million Americans have handicapping conditions. Of these thirty-six million, over 7.5 million are low-income individuals.

CSA is committed to intensifying its efforts to serve low-income handicapped individuals. One of the first steps in this process is necessarily full and effective implementation of Section 504.

Frequently, handicapped persons, like other minorities, have incomes below poverty level only because of the discrimination they experience daily—in securing employment and in securing services designed to increase employability, for example.

C. The Problem of Discrimination

The problem of ending discrimination on the basis of handicap involves extremely complex issues. The diversity of types of handicaps, as well as the wide variety of programs and activities receiving financial assistance, makes the task of prescribing general rules of non-discriminatory treatment a difficult one. The goal throughout has been to draft a regulation that fully and effectively prohibits denial, exclusion and other forms of discrimination while avoiding the imposition of unnecessary or counterproductive administrative obligations on grantees.

In drafting the regulation, it became clear that different treatment of handicapped persons, because of their handicaps, may be necessary in a number of contexts in order to ensure equal opportunity. For example, an equal opportunity to participate in an advisory board meeting is not provided to a deaf person who understands only sign language if all the other participants speak English or Spanish and no interpreter is provided. Similarly, an equal opportunity to participate in a training program is not provided to a blind person unless the content of written material is communicated in some other way.

The provision of equal access and equal opportunity to handicapped persons will involve an administrative and financial burden on CSA grantees. This fact has been taken into consideration in establishing the regulatory schemes and timetables

under which the eliminations of the discriminatory barriers and practices will be required.

D. Overview of the Regulation

The final rule has been broken up into shorter Subparts. This should enhance the readability of the rule, and make finding particular provisions easier. There are now eleven Subparts.

Subpart A, General, contains definitions and general statements of purpose, policy, and applicability which apply throughout the entire regulation.

Subpart B, General Prohibitions Against Discrimination, states, in very general terms, the kinds of discriminatory practices which are prohibited by Section 504. These general prohibitions are the guiding principles of the regulation.

Other Subparts interpret these principles in particular contexts—for example, the employment context, or the communications context. The general prohibitions provide guidance on prohibited behavior for situations in which a more specific Subpart is not applicable, and they also provide a framework in which the other, more specific Subparts, can be interpreted.

Subpart C, Administrative Requirements, states the administrative action grantees must take in coming into compliance with the regulation.

Subpart D, Employment, bars discrimination by CSA grantees in recruitment, hiring, compensation, job assignments and classification, and fringe benefits. It also requires employers to make reasonable accommodation to qualified handicapped applicants and employees unless it can be demonstrated that the accommodation would impose an undue hardship on the employer.

Subpart E, Communications Access, requires that communications be presented in a way understandable to qualified handicapped individuals. Telecommunications devices; interpreters; readers, brailling or taping; and simplified language are required.

The next three Subparts deal with physical accessibility. Subpart F, Access to and Use of Newly Constructed Facilities, states the requirement that facilities or parts of facilities which are constructed or renovated by a CSA grantee after [February 18, 1981] must be constructed or renovated in conformity with the "American National Standard Specifications for Making Buildings and Facilities Accessible To, and Usable by the Physically Handicapped," ANSI A117.1–1961 (R1971).

Subpart G, Access to and Use of Newly Acquired Facilities, is published as a proposed rule. It proposes for public comment, a separate requirement for facilities which are leased, purchased or otherwise acquired by a grantee after the date the Subpart becomes effective. Those facilities would have to conform to the accessibility standards in "Appendix A—Performance Standards for Determining the Accessibility and Usability of Existing Facilities" before grantees could begin to use them. A renewal of a lease is considered a lease.

DOJ, in its role ensuring government wide consistency in the implementation of Section 504, considers this Subpart to be a deviation from the current government wide standard. However, DOJ is interested in considering comments on the Subpart and the Standards in the Appendix to help it determine whether to incorporate a similar requirement in the government wide standard it will soon prepare. CSA is anxious to receive comments on this Subpart and the standards in the Appendix from grantees, handicapped individuals and their organizations, barrier free designers, local, state and federal agencies, and other interested parties. Public comment will assist both CSA and DOJ to make an informed decision on the merits of the standard proposed.

Subpart H, Access to and Use of Existing Facilities, deals with those facilities which the grantee had already leased, purchased, begun to use or otherwise acquired on or before [February 18, 1981]. A program or activity conducted in those facilities must be operated so that the program or activity, when viewed in its entirety is readily accessible to handicapped individuals. Where structural changes are needed to acheive program access, a Transition Plan is required and two years are allowed before the structural changes must be completed.

Subpart I, Programs and Activities, prohibits discrimination by grantees in program eligibility requirements, in the administration of programs and activities, and in recruitment and outreach. Additionally, the Subpart requires grantees to make intensive efforts to undertake a program adapted to the needs of any segment of the low-income handicapped population which is, on account of handicap, unqualified to participate in an existing or planned program.

Subpart J, Transporation, requires a grantee that provides transportation services to provide comparably efficient transportation services to handicapped persons.

Subpart K, Procedures for Enforcement, references CSA's procedures for enforcing Title VI of the Civil Rights Act of 1964, 45 CFR Part 1010. The Title VI procedures will be used in the enforcement of Section 504.

E. Analysis of Comments Received on and Changes Made in the Rule

Most of the commentors addressed the issues raised by the proposed "facility access" standard. Some comments submitted by organizations of disabled persons and by grantees expressed their support for the standard, and indicated their agreement that full and equal access is necessary to the implementation of Section 504. Many grantee commentors concurred with this philosophy, while expressing frustration with the practical difficulties the standard presents them. Other grantee commentors and a few disabled commentors could not agree with the philosophy of equal access precisely because of the financial and administrative burden the standard imposes.

The physical access requirements have been changed in the final rule to continue the "facility access" requirement for newly constructed and newly acquired facilities, but to excuse existing facilities from that standard if program access can be provided without full facility access.

Communications Access

The proposed rule did not contain a Subpart specifically requiring that communications be made accessible to handicapped individuals. That accessibility was required by the application of the general principles of nondiscrimination to situations involving communications. The proposed rule also stated, in the Appendix containing the access requirements for existing buildings, a requirement that a teletypewriter (TDD) be provided. It became apparent that this approach to communications access would not be adequate. Consequently, a Subpart specifically stating the communications access requirements has been incorporated in the final rule.

Investigation showed that among grantees which were aware of the requirements of Section 504, there was at least a general awareness that architectural barriers had to be removed from buildings to make them accessible to mobility limited individuals. A similar awareness did not, for the most part, exist with respect to communications barriers. This may be due, at least in part, to the fact that the Section 504 regulations which had up to that time been published, did not include any specific provisions articulating the minimum requirements for communications access as they did for physical access.

A minimum level of communications access is a prerequisite to a communications impaired person's ability to participate in programs and activities just as a minimum level of physical access is to the mobility impaired person's ability to participate. For example, a grantee must have an established system for the provision of interpreters. Waiting until a deaf person shows up to determine how to find, schedule and reimburse an interpreter is quite like waiting until a wheelchair user shows up to install a ramp. The need could not be met until long after it has arisen. Deciding not to install a TDD until deaf people start to call on the phones is like deciding not to move from a second floor walk-up until wheelchair users start walking-up. The removal of basic communications barriers is as essential to the implementation of Section 504 as is the removal of physical barriers.

The Communications Subpart articulates a minimum level of communications accessibility which each grantee must maintain: (1) availability through TDD; (2) ability to provide appropriate and qualified interpreters; (3) ability to provide reader service, taping or brailling on request; and (4) use of simplified language.

The section requiring TDDs does not necessarily require a grantee to have a TDD at each office or site. If one TDD shared by all the grantee's offices and sites can effectively handle the volume of calls received by using a message relay system, one shared TDD is adequate. However, when that system can no longer handle the calls received, one or more additional TDD's must be installed.

The section also requires that the TDD be reliably answered. Like conventional telephones, TDDs do not answer themselves. The staff members who will be responsible for answering the TDD must know how to do so. People who are unaccustomed to the noise which indicates an incoming TDD call frequently hang up the phone, assuming the connection is bad or that someone is playing a trick. If a TDD is installed, but is not reliably answered, it does not satisfy the requirement of this section.

Amplifiers for telephones are available from the phone company for a slight charge. Not all telephones are compatible with hearing aids. The phone company knows which is which, and will provide compatible phones at no extra charge.

The interpreter section is rather more elaborate than the parallel reader section. This is because the process is more complex, not because it is more important. There is no one single language used by hearing-impaired people. Despite the fact that only approximately 30 to 50 percent of the English language is visible on the lips, some hearing-impaired people communicate through spoken English by reading lips and by talking. For others this is neither an effective nor a feasible method of communication, and frequently these individuals will use a form of manual communication. Again, there is no one manual language. American Sign Language (ASL), used by most people who grow up in deaf families, or go to schools for the deaf, is a language more different from English than is Russian or Chinese. Very well educated hearing-impaired people may use ASL as a native language, but may prefer to use Signed English (in which manual signs are substituted for spoken English) when communicating through an interpreter with English speaking persons. People less well educated may not know English, and in fact, in written communication their attempt to write ASL may strike the reader as very bad English. Additionally, interpreters may be needed for people with other disabilities. Speech impaired people, for example, may require an interpreter to convey communications to people unaccustomed to their speech.

The section requiring the establishment of a system to provide interpreters is designed to be flexible enough to meet the requirements of a large variety of handicapped individuals, but tight enough to clearly require that the interpreter service provided meet the needs of the individual for whom the service is provided.

Interpreters for hearing-impaired persons should be selected from the list of certified interpreters prepared periodically by the National Registry of Interpreters for the Deaf (RID), or state chapters of the RID, from lists of qualified interpreters compiled and used by the National Association of the Deaf, state associations of the deaf, state commissions or councils of the deaf, existing recognized state interpreter referral services, and post-secondary educational programs that provide training for interpreters or have interpreter referral services. If an appropriate and qualified interpreter from these lists is not available, or if the person for whom he or she is interpreting cannot communicate effectively through an interpreter selected from these lists, the grantee should locate an interpreter who is acceptable to the individual. Often, the individual may know of an interpreter through whom he or she can communicate effectively.

The provision of readers, taping and Brailling will not vary as much from individual to individual as the provision of interpreters. Nevertheless, a grantee must be sure to provide the appropriate service for each individual. For example, providing a copy of a Brailled pamphlet to someone who does not read Braille is obviously not appropriate, and would not satisfy the requirement of this section. Which method is appropriate will depend on the abilities and preferences of the handicapped person involved, and the nature of the communication.

Other Comments

General: The comments submitted by several organizations revealed a misunderstanding of the way the various sections and Subparts of the regulation interact. For example, several comments asserted that the "undue hardship" provision (which is a part of the reasonable accommodation standard in the Employment Subpart) would negate the impact of the access Subparts. The reasoning was that major access changes would constitute an undue hardship and would therefore not be required.

A more careful reading of the regulation is necessary. The "undue hardship" provision ONLY applies in the determination whether an accommodation to an employee or applicant is reasonable and whether it must be made. The provision does not create a waiver in any other Subpart of the regulation. The availability of a waiver of certain administrative requirements for certain grantees does not mean those grantees will be excused from other requirements.

Readers should be careful not to misinterpret the regulation by taking specific provisions out of their context.

Subpart A, § 1012.7: Many commentors pointed out the weakness of the physical access requirement which resulted from the faulty definition of "facility". Roads, walks, parking lots and other real property were inadvertently dropped from that definition. They have been reincorporated.

Subpart B, § 1012.25: Several commentors pointed out the confusion which arose from the absolute requirement of the proposed rule that handicapped persons be afforded an equal opportunity to obtain the same result, to gain the same benefit or to reach the same level of achievement, "in an integrated setting." In some cases, it was pointed out, handicapped persons can have this equal opportunity only in

a less than fully integrated setting. An example illustrates the point: wheelchair users should have an equal opportunity to engage in team sports and get vigorous, competitive exercise. Providing this opportunity through a participation on an able-bodied basketball team would not be appropriate to the wheelchair user's needs. A wheelchair basketball team, though not itself integrated, would provide the opportunity, and would be an appropriate way to provide the wheelchair users with an equal opportunity to compete. The language was changed by substituting "in the most integrated setting appropriate to the person's needs."

Subpart C, § 1012.41: Several commentors suggested eliminating the requirement that a grantee designate a § 504 officer because grantees could not afford to allocate a full-time position to that task. There is no requirement that the § 504 officer perform only that function. In some cases, it would be logical for the already-existing Equal Opportunity Officer to assume the role. However, since the bulk of the § 504 officer's work must be done within the first year of implementation—the self-evaluation and transition planning period—many grantees may want to add a temporary full-time employee to get implementation well underway.

Subpart C, § 1012.45: Several commentors expressed confusion over the necessity of using all five methods listed for providing notice of a grantee's nondiscrimination policy. The section does not use the word "shall", indicating an absolute requirement, nor does it use the word "may", indicating complete discretion; instead the word "should" is used. This indicates that although all five methods listed need not be used, enough of them must be used to provide the appropriate notification. Local conditions will dictate the number of methods needed to achieve that level of notification. If that level of notification has not been reached, failure to have used the listed methods may indicate that a less than good faith effort was made.

Subpart D: The comments of diverse organizations recommended dropping the proposed section on Fringe Benefits. The section proposed would have allowed for differences in benefits or contributions between handicapped and nonhandicapped persons when the difference could be justified on an actuarial basis. Actuarial data and experience do not now provide the basis for a regulation which determines that this disparate treatment is nondiscriminatory. Therefore, the section has been dropped from the final rule.

Subparts F, G, and H—General: Misunderstanding arose over the applicability of the physical access requirements to homes weatherized or repaired by grantees. The physical access provisions of the regulation apply only to grantee facilities. They do not apply to privately owned homes.

Subpart I: Several commentors expressed a serious concern that CSA backed away from its full accessibility standard in the transportation area. They pointed out that access to transportation is no less important than access to facilities; that it is no less discriminatory to be refused access to a transportation vehicle than to a facility; and that to be consistent with its own definition of nondiscrimination, CSA should requre full access in all vehicles. The position of these commentors however, was refuted by other commentors who pointed out that the limited transportation that grantees provide is usually individualized—from home to service and back. This kind of service can easily be made accessible on an individualized basis. If a mobility handicapped person is on a particular van route for example, the van used for that route can be the accessible one. The entire stock of vehicles need not be accessible unless that is necessary to provide integrated, efficient service.

CSA has determined not to require full accessibility to transportation vehicles. Factors which weighed heavily in this decision included: the practical/technical difficulties of retrofit, the expense of retrofit weighed against the frequently short-lived benefit gained by retrofitting already old worn-out vehicles, and the relatively low number of grantee employees whose duties require use of the vehicles.

CSA believes that the standard enunicated for transportation vehicles will ensure that handicapped persons are provided integrated, efficient transportation service, and that that standard is the highest that can be implemented at this time.

Regulatory Analysis

Executive Order 12044, 43 FR 12661 (March 24, 1978) requires that agencies prepare Regulatory Analyses for regulations that may have major economic consequences. The Order defines major economic consequences as (1) an annual effect on the economy of $100 million or more, or (2) major increases in costs or prices for individual industries, levels of government or geographic regions.

Most of the costs involved in the implementation of this regulation will be in (1) renovating or relocating for physical access, (2) providing communications access, and (3) making reasonable accommodations. These costs are not limited to individual industries, levels of government or geographic regions. CSA's one thousand grantees share its $650 million annual budget. The costs these few and small grantees will incur in compliance with this regulation, many of which are one time costs likely to result in a return to the economy in the form of the contributions of persons enabled by participation in CSA programs to become self-supporting, will not produce an annual $100 million effect on the economy.

It has, therefore, been determined that a Regulatory Analysis is not required.

Dated: January 14, 1981.

Richard Rice,

Director, Community Services Administration.

The following is added as 45 CFR Part 1012:

PART 1012—NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS AND ACTIVITIES RECEIVING OR BENEFITTING FROM FINANCIAL ASSISTANCE PROVIDED BY CSA; IMPLEMENTATION OF SECTION 504 OF THE REHABILITATION ACT, AS AMENDED, AND EXECUTIVE ORDER 12250

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Subpart K—Procedures for Enforcement

1012.178 Procedures.

[Remainder of Part 1012 is Reserved]

Authority: Section 504, Rehabilitation Act of 1973, Pub. L. 93–112, 87 Stat. 394 (29 U.S.C. 794); Section 111(a), Rehabilitation Act Amendments of 1974, Pub. L. 93–516, 88 Stat. 1619 (29 U.S.C. 706); Section 120(a), Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978, Pub. L. 95–602, 92 Stat. 2955 (1978); Executive Order 11914, April 28, 1976, and 45 CFR Part 85.

Subpart A—General

§ 1012.1 Purpose.

The purpose of this Part is to implement Section 504 of the Rehabilitation Act of 1973, which is designed to eliminate discrimination on the basis of handicap in any program or activity receiving Federal financial assistance.

§ 1012.2 Policy.

(a) CSA's mission is to enable low-income individuals to become self-sufficient, and to live decent, dignified lives. Conservative estimates indicate that well over 7.5 million low-income individuals are handicapped individuals. Handicapped individuals frequently have low incomes only because of the discrimination they experience daily. Many cannot get jobs because job sites are physically inaccessible to them, or because job vacancies are announced using methods of communication closed to them. For the same reasons, handicapped individuals are denied access to the services designed to help them achieve economic self-sufficiency.

(b) To the extent that CSA grantees exclude handicapped individuals from or segregate them in programs or employment, CSA grantees are part of the cause of rather than the cure for poverty among handicapped individuals.

(c) This Part is intended to prohibit all forms of discrimination against handicapped persons by CSA grantees.

§ 1012.3 Application.

This part applies to all grantees, and the delegate agencies of all grantees, receiving financial assistance from CSA, and to each program or activity that receives or benefits from such assistance.

§ 1012.4 Handicapped person defined.

(a) "Handicapped person" means any persons who—

(1) Has a physical or mental impairment which substantially limits one or more major life activities;

(2) Has a record of such an impairment; or

(3) Is regarded as having such an impairment.

(b) As used in the preceding paragraph, the phrase—

(1) "Physical or mental impairment" means—

(i) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genito-urinary; hemic and lymphatic; skin; and endocrine; or

(ii) Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

(2) "Physical or mental impairment" includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech, and hearing impairments, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, drug addiction and alcoholism.

(3) "Major life activities" means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

(4) "Has a record of such an impairment" means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.

(5) "Is regarded as having an impairment" means—

(i) Has a physical or mental impairment that does not substantially limit major life activities but that is treated by a grantee as constituting such a limitation;

(ii) Has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such impairment; or

(iii) Has none of the impairments listed above but is treated by a grantee as having such an impairment.

§ 1012.5 Qualified handicapped person defined.

"Qualified handicapped person" means—

(a) With respect to employment, a handicapped person who, with reasonable accommodation, can perform the essential functions of the job in question; and

(b) With respect to programs and activities, a handicapped person who meets the essential eligibility requirements.

§ 1012.6 Federal financial assistance defined.

"Federal financial assistance" means any grant, loan, contract (other than a procurement contract or a contract of insurance or guaranty), or any other arrangement by which CSA provides or otherwise makes available assistance in the form of—

(a) Funds;

(b) Services of Federal personnel; or

(c) Real and personal property or any interest in or use of such property, including:

(1) Transfers or leases of such property for less than fair market value or for reduced consideration; and

(2) Proceeds from a subsequent transfer or lease of such property if the Federal share of its fair market value is not returned to the Federal Government.

§ 1012.7 Facility defined.

"Facility" means all or any portion of buildings, structures, equipment, roads, walks, parking lots, or other real or personal property or interest in such property (excluding transportation vehicles).

§ 1012.8 Other definitions.

As used in this Part, the term: "The Act" means the Rehabilitation Act of 1973 (Pub. L. 93–112), as amended by the Rehabilitation Act Amendments of 1974 (Pub. L. 93–516).

"Applicant for assistance" means one who submits an application, request or plan required to be approved by a CSA official or by a grantee as a condition to becoming a grantee.

The "Associate Director for Human Rights" means the CSA official responsible for implementing and enforcing CSA's Civil Rights program, or his or her designee.

"CSA" means the Community Services Administration.

"Delegate agency" means any organization or entity to which a grantee delegates any part of its work program.

"Grantee" means any State or its political subdivision, any instrumentality of a State or its political subdivision, any public or private agency, institution, organization, or other entity, or any person to which Federal financial assistance is extended directly or through another grantee, including any delegate agency, but excluding the ultimate beneficiary of the assistance.

"Handicap" means any condition that renders a person a "handicapped person" as defined in § 1012.4.

"Section 503" means Section 503 of the Act.

"Section 504" means Section 504 of the Act.

§ 1012.9 Effect of conflicting State or local requirements.

The obligation to comply with this Part is not obviated or alleviated by the existence of any State or local law or other requirement that, on the basis of handicap, imposes prohibitions or limitations upon the eligibility of qualified handicapped persons to receive services or to practice any occupation or profession.

§ 1012.10 Effect of Federal law limiting programs.

The exclusion of nonhandicapped persons from the benefits of a program limited by Federal statute or executive order to handicapped persons or the exclusion of a specific class of handicapped persons from a program limited by Federal statute or executive order to a different class of handicapped persons is not prohibited by this part.

§ 1012.11 Effect of limited employment opportunities.

The obligation to comply with this part is not obviated or alleviated because employment opportunities in any occupation or profession are or may be more limited for handicapped persons than for nonhandicapped persons.

§§ 1012.12–1012.22 [Reserved]

Subpart B—General Prohibitions Against Discrimination

§ 1012.23 General prohibition.

No qualified handicapped person shall, on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity which receives or benefits from Federal financial assistance.

§ 1012.24 Provision of aid, benefits, services.

(a) Each grantee, in providing any aid, benefit, or service, may not directly or through contractual, licensing, or other arrangements, on the basis of handicap—

(1) Deny a qualified handicapped person the opportunity to participate in or benefit from the aid, benefit, or service;

(2) Afford a qualified handicapped person an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded others;

(3) Provide a qualified handicapped person with an aid, benefit, or service that is not as effective as that provided to others;

(4) Provide different or separate aid, benefits or services to handicapped persons or to any class of handicapped persons unless such action is necessary to provide qualified handicapped persons with aid, benefits, or services that are as effective as those provided to others;

(5) Aid or perpetuate discrimination against a qualified handicapped person by providing significant assistance to an agency, organization, or person that discriminates on the basis of handicap in providing any aid, benefit, or service to beneficiaries of the grantee's program;

(6) Deny a qualified handicapped person the opportunity to participate as a member of planning or advisory boards; or

(7) Otherwise limit a qualified handicapped person in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving an aid, benefit or service.

(b) As used in this Subpart, the aid, benefit, or service provided under a program or activity receiving or benefiting from Federal financial assistance includes any aid, benefit, or service provided in or through a facility that has been constructed, expanded, altered, leased, or rented, or otherwise, acquired in whole or in part, with Federal financial assistance.

§ 1012.25 Equally effective defined.

For purposes of this Part, aids, benefits, and services to be equally effective, are not required to produce the identical result or level of achievement for handicapped and nonhandicapped persons, but must afford handicapped persons equal opportunity to obtain the same result, to gain the same benefit or to reach the same level of achievement in the most integrated setting appropriate to the person's needs.

§ 1012.26 Criteria or methods of administration.

Each grantee may not, directly or through contractual or other arrangements, utilize criteria or methods of administration—

(a) That have the purpose or effect of defeating or substantially impairing accomplishment of the objectives of the grantee's program with respect to handicapped persons;

(b) That have the effect of subjecting qualified handicapped persons to discrimination on the basis of handicap; or

(c) That perpetuate the discrimination of another grantee if both grantees are subject to common administrative control or are agencies of the same State.

§ 1012.27 Site and facility selection.

In determining the site or location of a facility and in selecting a particular facility, an applicant for assistance or a grantee may not make selections—

(a) That have the effect of excluding handicapped persons from, denying them the benefits of, or otherwise subjecting them to discrimination under any program or activity that receives or benefits from Federal financial assistance; or

(b) That have the purpose or effect of defeating or substantially impairing the accomplishment of the objectives of the program or activity with respect to handicapped persons.

§ 1012.28 Participation in non-separate programs.

Despite the existence of separate or different programs or activities provided in accordance with this Part, a grantee may not deny a qualified handicapped person the opportunity to participate in such programs or activities that are not separate or different.

§§ 1012.29–1012.39 [Reserved]

Subpart C—Administrative Requirements

§ 1012.40 Self-evaluation.

(a) Each grantee and each applicant for assistance whose application is submitted on or before August 18, 1981, shall—

(1) By August 18, 1981; and

(2) After consultation with interested persons, including low-income handicapped persons or their representatives or organizations representing handicapped persons;

(i) Evaluate its current policies and practices and the effects thereof that do not or may not meet the requirements of this Part; and

(ii) Modify any policies and practices that do not meet the requirements of this Part; and

(iii) Take appropriate remedial steps to eliminate the effects of any discrimination that resulted from adherence to these policies and practices.

(b) Each applicant for assistance whose application is submitted after August 18, 1981, shall conduct the self-evaluation described in paragraph (a) of this section prior to submitting its application and shall submit with its application the written self-evaluation described in paragraph (c) of this section.

(c) Each grantee and applicant for assistance shall submit to CSA a copy of the results of the self-evaluation conducted in accordance with paragraph (a) of this section. For headquarters grants and applications for assistance, the self-evaluation shall be submitted to the Associate Director for Human Rights. For regionally administered grants, the self-evaluation shall be submitted to the Regional Director. In its self-evaluation, a grantee or applicant for assistance shall include—

(1) The name, address and telephone number of the interested persons consulted (subject to their consent);

(2) A description of areas examined and problems identified;

(3) The rationale for not adopting any recommendation of the interested persons consulted which was not adopted;

(4) A description of modifications made and of remedial steps taken;

(5) A copy of the transition plan if one is required by Subpart H; and

(6) The name and title of the Section 504 officer designated pursuant to § 1012.41.

(d) Each grantee shall—

(1) Maintain the written self-evaluation on file for three (3) years;

(2) Make it available for public inspection; and

(3) Deliver a copy of it to each of the interested persons consulted in accordance with sub-paragraph (a)(2) of this section.

§ 1012.41 504 officer.

Each grantee shall designate a Section 504 officer to coordinate its efforts to comply with this Part. This employee shall also be responsible for assisting handicapped applicants, employees and beneficiaries with special problems they encounter, on account of handicap, in their dealings with the grantee.

§ 1012.42 Remedial action.

(a) If the Associate Director for Human Rights or the Regional Director finds that a grantee has discriminated against persons on the basis of handicap in violation of Section 504 or this Part, the grantee shall take such remedial action as the Associate Director for Human Rights or Regional Director deems necessary to overcome the effects of the discrimination.

(b) Where a grantee is found to have discriminated against persons on the basis of handicap in violation of Section 504 or this part and where another grantee exercises control over the grantee that has discriminated, the Associate Director for Human Rights, or Regional Director, where appropriate, may require either or both grantees to take remedial action.

(c) The Associate Director for Human Rights or Regional Director may, where necessary to overcome the effects of discrimination in violation of Section 504 or this Part, require a grantee to take remedial action—

(1) With respect to handicapped persons who are no longer participants in the grantee's program but who were participants in the program when the discrimination occurred; or

(2) With respect to handicapped persons who would have been participants in the program had the discrimination not occurred.

§ 1012.43 Voluntary action.

Each grantee may take steps in addition to any action that is required by this Part, to overcome the effects of conditions that resulted in limited participation in the grantee's program or activity by qualified handicapped persons.

§ 1012.44 Grievance procedures.

Each grantee shall adopt grievance procedures that incorporate appropriate due process standards and that provide for the prompt and equitable resolution and complaints alleging any action prohibited by this Part. A beneficiary, employee or applicant shall allow a grantee twenty-one (21) days to resolve a complaint prior to filing a complaint with CSA; however, if a grantee has no grievance procedures or fails to act upon a complaint, a beneficiary, employee, or applicant may immediately file a complaint with CSA.

§ 1012.45 Notification of policy.

(a) Each grantee shall take appropriate and continuing steps to notify participants, beneficiaries, applicants and employees, including those with impaired vision or hearing.

and those with mental handicaps, and unions or professional organizations holding collective bargaining or professional agreements with the grantee that it does not discriminate on the basis of handicap in violation of Section 504 and this Part.

(b) The notification shall—

(1) Contain the information and be given in the modes of communication necessary to apprise interested persons, including those with impaired vision or hearing, and those with mental handicaps, of the protections against discrimination assured them by Section 504 and this Part;

(2) State that the requirement not to discriminate extends to admission, access, and employment; and

(3) State that inquiries concerning the application of Section 504 and this Part to the grantee may be referred to the Section 504 officer designated pursuant to § 1012.41 of this Subpart, to the Regional Director or to the Associate Director for Human Rights.

(c) Each grantee shall make the initial notification required by paragraph (a) of this section by May 18, 1981. Notification should include publication in—

(1) Newpapers and magazines operated by, for, or in connection with the grantee;

(2) Newpapers and magazines operated by, for, or in connection with local organizations representing handicapped individuals;

(3) Local newpapers of general circulation;

(4) Memoranda or other communications which the grantee makes available to participants, beneficiaries and employees; and

(5) Public service radio and television spots.

§ 1012.46 Publications.

If a grantee disseminates general information regarding its programs, activites or employment opportunities to participants, beneficiaries, applicants or employees, it shall make such information available to those with impaired vision or hearing, and those with mental handicaps, and it shall include with that information a statement of the policy described in § 1012.45.

§ 1012.47 Waiver of administrative requirements for small grantees.

If a grantee with fewer than fifteen employees can prove that compliance with § 1012.41, § 1012.44, or § 1012.46 will significantly impair the ability of the grantee to provide benefits or services, the grantee may apply to the Associate Director for Human Rights for a waiver of the requirements of one or more of those sections.

§ 1012.48 Assurances required.

(a) Assurances. Each grantee or an applicant for assistance to which this Part applies shall submit an assurance on a form specified by the Associate Director for Human Rights that the program will be operated in compliance with Section 504 and this Part. Each grantee shall prepare an assurance form which shall be submitted to the grantee by each of its delegate agencies, that the delegate agency's program will be operated in compliance with Section 504 and this Part.

(b) Duration of obligation.

(1) Real property. In the case of Federal assistance extended in the form of real property or to provide real property or structures on the property, the assurance will obligate the grantee, or, in the case of a subsequent transfer, the transferee, for the period during which the real property or structures are used or the purpose for which Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits.

(2) Personal property. In the case of Federal financial assistance extended to provide personal property, the assurance will obligate the grantee for the period during which it retains ownership or possession of the property.

(3) Other assistance. In all other cases the assurance will obligate the grantee for the period during which Federal financial assistance is extended.

(c) Real Property—Covenant with Assurance.

(1) Where Federal financial assistance is provided in the form of real property or interest in the property from CSA, the instrument effecting or recording this transfer shall contain a covenant running with the land to assure nondiscrimination for the period during which the real property is used for a purpose for which the Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits.

(2) Where no transfer of property is involved but property is purchased or improved with Federal financial assistance, the grantee shall agree to include the covenant described in subparagraph (c)(1) of this section in the instrument effecting or recording any subsequent transfer of the property.

(3) Where Federal financial assistance is provided in the form of real property or interest in the property from CSA, the covenant shall also include a condition coupled with a right to be reserved by CSA to revert title to the property in the event of a breach of the covenant. If a transferee of real property proposes to mortgage or otherwise encumber the real property as security for financing construction of new, or improvement of existing, facilities on the property for the purposes for which the property was transferred, the Associate Director for Human Rights may, upon request of the transferee and if necessary to accomplish such financing and upon such conditions as he or she deems appropriate, agree to forbear the exercise of such right to revert title for so long as the lien of such mortgage or other encumbrance remains effective.

§§ 1012.49–1012.59 [Reserved]

Subpart D—Employment

§ 1012.60 General employment policy.

No qualified handicapped person shall, on the basis of handicap, be subjected to discrimination in employment under any program or activity to which this Part applies.

§ 1012.61 Employment decisions.

Each grantee—

(a) Shall make all decisions concerning employment under any program or activity to which this Part applies in a manner which ensures that discrimination on the basis of handicap does not occur; and

(b) May not limit, segregate, or classify applicants or employees in anyway that adversely affects their opportunities or status because of handicap.

§ 1012.62 Contractual or other relationships.

(a) Each grantee may not participate in a contractual or other relationship that has the effect of subjecting qualified handicapped applicants or employees to discrimination prohibited by this Subpart. The relationships referred to in this paragraph include relationships with employment and referral agencies, with labor unions, with organizations providing or administering fringe benefits to employees of the grantee, and with organizations providing training and apprenticeship programs.

(b) A grantee's obligation to comply with this Subpart is not affected by any inconsistent term of any collective bargaining agreement to which it is a party.

§ 1012.63 Employment practices covered.

The provisions of this Subpart apply to—

(a) Recruitment, advertising and the processing of applications for employment;

(b) Hiring, upgrading, promotion, award of tenure, demotion, transfer, lay-

off, termination, right of return from lay-off and rehiring;

(c) Rates of pay or any other form of compensation and changes in compensation;

(d) Job assignments, job classifications, organizational structures, position descriptions, lines of progression and seniority lists;

(e) Leaves of absence, sick leave or any other leave;

(f) Fringe benefits available by virtue of employment, whether or not administered by the grantee;

(g) Selection and financial support for training, including apprenticeship, professional meetings, conferences and other related activities, and selection for leaves of absence to pursue training;

(h) Employer sponsored activities, including social or recreational programs; and

(i) Any other term, condition, or privilege of employment.

§ 1012.64 Reasonable accommodation—Requirement to make.

Each grantee shall make reasonable accommodation to known physical or mental limitations of an otherwise qualified handicapped applicant or employee unless the grantee can demonstrate that the accommodation would impose an undue hardship on the operation of its program.

§ 1012.65 Reasonable accommodation—Examples for employees.

Reasonable accommodation to an employee may include—

(a) Making facilities and communications used by employees more accessible to and usable by handicapped persons;

(b) Job restructuring, part-time or modified work schedules;

(c) Acquisition or modification of equipment or devices;

(d) The provision of readers, notetakers or interpreters; and

(e) Other similar actions.

§ 1012.66 Reasonable accommodation—Examples for applicants.

Reasonable accommodation to an applicant for employment may include—

(a) Making job announcements available in a form readily understandable by mentally handicapped persons and by persons with impaired vision or hearing;

(b) Providing readers, interpreters and other aides and assistance during application, testing and interviewing processes; and

(c) Other similar actions.

§ 1012.67 Reasonable accommodation—Undue hardship determination.

In determining pursuant to § 1012.64(a) of this Subpart whether an accommodation would impose an undue hardship on the operation of a grantee's program, factors to be considered include—

(a) The overall size of the grantee's program with respect to number of employees, number and type of facilities and size of budget; and

(b) The type of the grantee's operation, including the composition and structure of the grantee's workforce; and

(c) The nature and cost of the accommodation needed.

§ 1012.68 Reasonable accommodation—Denial based on, prohibited.

Each grantee may not deny an employment opportunity to a qualified handicapped employee or applicant if the basis for the denial is the need to make reasonable accommodation to the physical or mental limitations of the employee or applicant.

§ 1012.69 Employment selection criteria—Prohibited tests.

Each grantee may not make use of any employment test or other selection criteria that screens out or tends to screen out handicapped persons or any class of handicapped persons unless—

(a) The test score or other selection criteria, as used by the grantee, is shown to be job-related for the position in question; and

(b) Alternative job-related tests or criteria that do not screen out or tend to screen out as many handicapped persons are not shown by the Associate Director of Human Rights to be available.

§ 1012.70 Employment selection criteria—Administration of tests.

Each grantee shall select and administer tests concerning employment so as best to ensure that, when administered to an applicant or employee who has a handicap that impairs sensory, manual, reading, writing or speaking skills, the test results accurately reflect the applicant's or employee's job skills, aptitude or whatever other factor the test purports to measure rather than reflecting the applicant's or employee's impaired sensory, manual, reading, writing or speaking skills (except where those skills are the factors that the test purports to measure).

§ 1012.71 Handicapped status—Preemployment inquiry, prohibited.

Except as provided in § 1012.77 and § 1012.78, each grantee may not conduct a preemployment medical examination or make preemployment inquiry of an applicant as to whether the applicant is a handicapped person or as to the nature or severity of a handicap. A grantee may, however, make preemployment inquiry into an applicant's ability to perform job-related functions.

§ 1012.72 Handicapped status—Preemployment inquiry, permissible invitation.

(a) When allowed. A grantee may invite applicants for employment to indicate whether and to what extent they are handicapped only when the grantee is taking—

(1) Remedial action to correct the effects of past discrimination pursuant to § 1012.42;

(2) Voluntary action to overcome the effects of conditions that resulted in limited participation in its federally assisted program or activity pursuant to § 1012.43;

(3) Affirmative action pursuant to Section 503 of the Act.

(b) Requirements for Permissible Invitations. When a grantee invites applicants for employment to indicate whether and to what extent they are handicapped, the grantee shall state clearly on any written questionnaire used for this purpose or make clear orally if no written questionnaire is used—

(1) That the information requested is intended for use solely in connection with its remedial action obligations or its voluntary or affirmative action efforts;

(2) That the information is being requested on a voluntary basis;

(3) That it will be kept confidential as provided in § 1012.70;

(4) That refusal to provide it will not subject the applicant or employee to any adverse treatment; and

(5) That it will be used only in accordance with this Part.

§ 1012.73 Handicapped status—preemployment inquiry, medical exam.

This Subpart does not prohibit a grantee from conditioning an offer of employment on the results of a medical examination conducted prior to the employee's entrance on duty if—

(a) All entering employees are subjected to such an examination regardless of handicap; and

(b) The results of such an examination are used only in accordance with the requirements of this Part.

§ 1012.74 Handicapped status—confidentiality of information.

Information obtained in accordance with this Subpart as to the medical

condition or history of the applicant shall be collected and maintained on separate forms that shall be accorded confidentiality as medical records, except that—

(a) Supervisors and managers may be informed regarding restrictions on the work or duties of handicapped persons and regarding necessary accommodations;

(b) If a condition might require emergency treatment, first aid and safety personnel may be informed, where appropriate; and

(c) Government officials investigating compliance with the Act shall be provided relevant information upon request.

§§ 1012.75–1012.85 [Reserved]

Subpart E—Communications Access

§ 1012.86 General communications access policy.

No qualified handicapped person shall, because a grantee's communications are inaccessible to or unusable by handicapped persons, be denied the benefits of, be excluded from participation or employment in, or otherwise be subjected to discrimination under any program or activity to which this Part applies.

§ 1012.87 Telecommunications devices for the deaf—described.

A telecommunications device for the deaf (TDD) is a device which, coupled with a telephone, makes that telephone accessible to persons unable to hear voices or speak understandably. In the current state of the art, TDD's have a typewriter-like keyboard on which messages are typed and a digital display or paper printout on which the typed message appears. Both parties to the call must have a TDD.

§ 1012.88 Telecommunications device for the deaf—required.

(a) Availability through TDD. Each grantee which is available by telephone shall be equally available through TDD. Each grantee available by telephone shall maintain and reliably answer at least one TDD.

(b) Shared Systems May be Permissible. If each of a grantee's offices, programs and activities can be quickly, conveniently and reliably available through a TDD and message relay system, the grantee is not required to have a TDD in each of its offices, or the site of each program or activity. An office or site is required to have its own TDD when the number of TDD calls would be so great that a shared TDD and message relay system could not effectively handle the TDD calls.

(c) Presumption of Need for own TDD. A presumption that a grantee should install a TDD at an office or the site of a program or activity is created by either—

(1) A high frequency of calls on a shared TDD; or

(2) Written request for the installation of a TDD from potential users.

§ 1012.89 Telephones available to the public.

(a) Amplifiers. If a grantee makes one or more telephones available to the public, it shall equip at least one of these telephones with an amplifier in the handset.

(b) Compatability with Hearing Aids. All telephones available for public use shall be compatible with hearing aids.

§ 1012.90 Establishment of system to provide interpreters required.

(a) The System. Each grantee shall establish a permanent and reliable system for the provision of appropriate and qualified interpreters to qualified handicapped individuals. This provision does not require a grantee to have a full-time interpreter on staff, but does require a grantee to be able to provide appropriate and qualified interpreters on reasonable notice.

(b) "Appropriate." As used in paragraph (a) of this section, the term "appropriate" refers to the mode of communication used by the interpreter and the person for whom he or she interprets. Modes may include, but are not limited to, oral or manual interpreting. Modes of manual interpreting may include, but are not limited to, the use of Signed English, American Sign Language and fingerspelling. An "appropriate" interpreter shall use the mode preferred by the qualified handicapped individual.

(c) "Qualified." As used in paragraph (a) of this section, the term "qualified" refers to the interpreter's degree of skill. An interpreter may have a different level of skill in different modes. Within one mode, an interpreter may have one skill level for translating spoken language into that mode and another level of skill for translating from that mode into spoken language. An interpreter's level of skill may also vary due to fatigue caused by the speed, length or difficult nature of the communication. A "qualified" interpreter shall have the level of skill necessary to accurately and fluently interpret from or to the preferred mode in the case of one-way communications, or the level of skill necessary to accurately and fluently interpret both from and to the preferred mode, in the case of two-way communications.

(d) Notice. Each grantee shall effectively notify qualified handicapped persons of the availability of interpreter service, and may require qualified handicapped persons to provide reasonable notice of the need for an interpreter.

§ 1012.91 Provision of interpreters.

(a) Program Participation. Each grantee shall provide appropriate and qualified interpreters to program participants and applicants for program participation at their request.

(b) Employment. Each grantee shall provide appropriate and qualified interpreters to employees and applicants for employment as required as a reasonable accommodation without undue hardship under Subpart D.

§ 1012.92 Establishment of system to provide reader, taping and brailling service required.

Each grantee shall establish a permanent and reliable system to provide appropriate reader, taping and Brailling service to qualified handicapped persons. This provision does not require a grantee to have a full-time reader, taper or Brailler on staff, but does require a grantee to be able to provide appropriate reader, taping and Brailling service on reasonable notice. Each grantee shall effectively notify qualified handicapped persons of the availability of reader, taping and Brailling service, and may require qualified handicapped persons to provide reasonable notice of the need for reader, taping or Brailling service.

§ 1012.93 Provision of reader, taping and brailling service.

(a) Program Participation. Each grantee shall provide appropriate reader, taping and Brailling service to program participants and applicants for program participation at their request.

(b) Employment. Each grantee shall provide appropriate reader, taping and Brailling service to employees and applicants for employment as required as a reasonable accommodation without undue hardship under Subpart D.

§ 1012.94 Simplified language.

Whenever a grantee prepares a communication, it shall use the most simple language capable of carrying the meaning and intent of the communication.

§§ 1012.95–1012.105 [Reserved]

Subpart F—Access to and Use of Newly Constructed Facilities

§ 1012.106 General access and use policy.

No qualified handicapped person shall, because a grantee's facilities are

inaccessible to or unusable by handicapped persons, be denied the benefits of, be excluded from participation or employment in, or otherwise be subjected to discrimination under any program or activity to which this Part applies.

§ 1012.107 Defined.

A "newly constructed facility" means a facility or part thereof which is constructed or renovated by a grantee after February 18, 1981. If an existing facility is renovated, the renovated portion is a "newly constructed facility."

§ 1012.108 Requirement.

Each newly constructed facility shall be accessible to and usable by handicapped persons before a grantee begins to use the facility. Exterior access, accessible entrance, interior access, and usability shall be provided. Interior access shall be provided—

(a) Between an accessible entrance and each level and area within the facility which is open to the public;

(b) Between an accessible entrance and each level and area within the facility which is used by employees;

(c) Between an accessible entrance and each level and area within the facility in which people reside; and

(d) Between each accessible area and a fire-safe means of egress or a fire-safe place of refuge.

§ 1012.109 Standards.

(a) Each newly constructed facility shall be considered accessible and usable only if—

(1) It conforms to the "American National Standard Specifications for Making Buildings and Facilities Accessible To, and Usable by the Physically Handicapped," published by the American National Standards Institute, Inc. ANSI A117.1–1961 (R1971), which is incorporated by reference in this Part; or

(2) The grantee can demonstrate and make clearly evident that equivalent accessibility and usability is provided.

(b) ANSI A117.1–1961 (R. 1971), The "Specifications for Making Buildings and Facilities Accessible to, and Usable by, the Physically Handicapped," is available from the American National Standards Institute, Inc., 1430 Broadway, New York, New York, 10018 [212–354–3300]. As of July, 1980, single copies cost $2.75 each, but there is a minimum charge of $5.00. Added to this $5.00 is a $2.00 handling charge. This incorporation by reference was approved by the Director of the Office of the Federal Register by letter dated July 25, 1980.

§§ 1012.110–1012.1117 [Reserved]

Subpart G—[Reserved]

§§ 1012.118–1012.130 [Reserved]

Subpart H—Access to and Use of Existing Facilities

§ 1012.131 General access and use policy.

No qualified handicapped person shall, because a grantee's facilities are inaccessible to or unusable by handicapped persons, be denied the benefits of, be excluded from participation or employment in, or otherwise be subjected to discrimination under any program or activity to which this Part applies, except as provided in the remainder of this Subpart.

§ 1012.132 Defined.

An "existing facility" means a facility or part thereof constructed on or before February 18, 1981], which a grantee uses, leases, owns or otherwise acquires on or before [February 18, 1981[, or at the time the grantee becomes a grantee, whichever is later.

§ 1012.133 Requirement.

Each program or activity to which this part applies and which is conducted in an existing facility shall be operated so that the program or activity, when viewed in its entirety, is readily accessible to handicapped persons.

§ 1012.134 Methods.

(a) Options. A grantee may achieve program access through such methods as renovation of existing facilities in conformity with the requirements of Subpart F, relocation of meetings, home visits, making services provided in inaccessible areas available in accessible areas, or any other method which results in program access.

(b) Selection. While a grantee is not required to make structural changes in existing facilities where other methods are effective in achieving program access, a grantee shall give priority to those methods that offer programs and activities to handicapped persons in the most integrated setting appropriate to the handicapped person's needs and abilities.

§ 1012.135 Time for compliance.

Each grantee and each applicant which becomes a grantee on or before [April 20, 1981] shall provide program access by [April 20, 1981] except that where structural changes in existing facilities are necessary, those changes shall be made as expeditiously as possible, but in no event later than [February 18, 1983]. Each grantee which becomes a grantee after [April 20, 1981] shall provide program access on becoming a grantee, except that where structural changes in existing facilities are necessary, those changes shall be made as expeditiously as possible, but in no event later than two years from the date it becomes a grantee.

§ 1012.136 Transition plan.

(a) Who must submit. Each grantee that must make structural changes in order to provide program access shall submit a Transition Plan.

(b) When. If required by paragraph (a) of this section, a Transition Plan shall be submitted with the grantee's Self Evaluation (see § 1012.40).

(c) Consultation Requirement. The Transition Plan shall be developed in consultation with interested persons, particularly handicapped persons who will benefit from the structural changes.

(d) Contents of Transition Plan. The Transition Plan shall include at a minimum—

(1) An inventory of the grantee's existing facilities, indicating for each facility whether it was donated, leased, purchased or otherwise acquired. For each leased or donated facility, the duration of the lease or donation agreement shall be indicated in the Transition Plan, and a copy of the agreement shall be appended;

(2) Identification of the physical obstacles in each of the grantee's facilities which prevent program access;

(3) Detailed description of the methods which will be used to make the facility or part thereof accessible, and a specific timetable for making the contemplated changes;

(4) Priorities for making the changes, established on the basis of those facilities and parts thereof which are most essential to the grantee's beneficiaries and employees;

(5) The name, address and phone number of each of the interested persons consulted in the preparation of the plan (subject to their consent); and

(6) The name, address, phone number and title of the person(s) responsible for preparing and implementing the plan.

§ 1012.137 Notice of compliance required.

(a) Each grantee shall ensure that interested persons, particularly low-income handicapped persons, are able to obtain information about—

(1) Facilities or parts thereof that are accessible and usable;

(2) The provisions for program access; and

(3) The contents of the Transition Plan.

(b) Each grantee shall make this information available in a form which

provides effective notice to persons with impaired vision or hearing, and those with mental handicaps.

§§ 1012.139–1012.145 [Reserved]

Subpart I—Programs and Activities

§ 1012.146 General programs and activities policy.

No qualified handicapped person shall, because of the manner in which a grantee plans or operates its programs and activities, be denied the benefits of, be excluded from participation or employment in, or otherwise be subjected to discrimination under any program or activity to which this Part applies.

§ 1012.147 Program eligibility requirements.

Program eligibility requirements for each of a grantee's programs and activities shall be scrutinized and modified as necessary to ensure that the requirements are essential to achieving the purpose of the program or activity and that they do not exclude qualified handicapped persons on the basis of handicap.

§ 1012.148 Administration of programs and activities.

In the administration of its programs and activities, a grantee shall take whatever steps are necessary to ensure that qualified handicapped persons are afforded an equal opportunity to participate in or benefit from the grantee's programs and activities.

§ 1012.149 Recruitment and outreach.

If a grantee engages in recruitment or outreach efforts, it shall make equally effective recruitment and outreach efforts with respect to handicapped persons.

§ 1012.150 Program design.

(a) Adapted Program Required. If, in the planning or operation of a program or activity, a grantee discovers that a segment of the low-income handicapped population is, on account of handicap, unqualified to participate in that program or activity, and if the purpose of the program or activity is to fulfill a need shared by that segment of the population, then the grantee shall investigate the feasibility of and make intensive efforts to undertake a similar program or activity which is designed to achieve the same purpose with respect to that segment, taking physical or mental limitations into account.

(b) Feasibility Determination. In determining the feasibility of undertaking an adapted program or activity, a grantee shall consider—

(1) The size of the population to be served by the adapted program or activity;

(2) The severity of the need which it is the purpose of the program to fulfill; and

(3) If adapting an existing program, the extent of the modifications needed.

(c) Prohibition Against Limiting Participation. If a grantee does establish such an adapted program, it shall not require a handicapped person to participate in that program, nor shall it prohibit a qualified handicapped person from participating in programs which are not so adapted.

§§ 1012.151–1012.164 [Reserved]

Subpart J—Transportation

§ 1012.165 General transportation policy.

No qualified handicapped person shall, because a grantee's transportation vehicles are inaccessible to or unusable by handicapped persons, be denied the benefits of, be excluded from participation or employment in, or otherwise be subjected to discrimination under any program or activity to which this Part applies.

§ 1012.166 Adequate number of accessible vehicles required.

A grantee that provides transportation services shall make transportation services which they can effectively utilize available to handicapped persons. A grantee is not required to retrofit each of its transportation vehicles, but is required to have or to have access to the number of accessible transportation vehicles necessary to transport handicapped persons as efficiently as nonhandicapped persons are transported.

§§ 1012.167–1012.177 [Reserved]

Subpart K—Procedures for Enforcement

§ 1012.178 Procedures.

The procedural rules for enforcement of Section 504 and this Part are those which CSA uses for enforcement of Title VI of the Civil Rights Act of 1964. These procedures are found in 45 CFR Part 1010.

[The remainder of Part 1012 is reserved.]

[FR Doc. 81-1836 Filed 1-16-81; 8:45 am]
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COMMUNITY SERVICES ADMINISTRATION

45 CFR Part 1012

Civil Rights Regulations; Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefitting From Financial Assistance Provided by CSA; Implementation of Section 504 of the Rehabilitation Act, as Amended, and Executive Order 12250

AGENCY: Community Services Administration.

ACTION: Proposed rule.

SUMMARY: This rule proposes that facilities acquired by grantees after the date Subpart G becomes effective must be accessible to handicapped persons as defined by the standards in the appendix to this document. This proposed rule is needed to implement Section 504 of the Rehabilitation Act of 1973, as amended.

DATES: Comments received on or before March 20, 1981 will be considered in writing the final rule.

ADDRESS: Comments should be addressed to Jill Robinson, Acting Director, Disability Unit, Office of Human Rights, Community Services Administration, 1200 19th Street, NW., Washington, D.C. 20506.

FOR FURTHER INFORMATION CONTACT: Jill Robinson, (202) 653-5675 (Voice) or 254-5463 (TDD),

SUPPLEMENTARY INFORMATION: Please refer to the Preamble of CSA's Section 504 final regulation published in this Part of today's Federal Register for supplementary information.

Dated: January 14, 1981.

Richard Rios,

Director, Community Services Administration.

45 CFR Part 1012 is proposed to be amended by adding the following new Subpart G:

Subpart G—Access To and Use of Newly Acquired Facilities

1012.118 General access and use policy.
1012.119 Defined.
1012.120 Requirement.
1012.121 Standards.
1012.122—1012.130 [Reserved]
Appendix A: Performance Standards for Determining the Accessibility and Usability of Existing Facilities.

Authority: Section 504, Rehabilitation Act of 1973, Pub. L. 93-112, 87 Stat. 394 (29 U.S.C. 794); Section 111(a), Rehabilitation Act Amendments of 1974, Pub. L. 93-516, 88 Stat. 1619 (29 U.S.C. 706); Section 120(a), Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978, Pub. L. 95-602, 92 Stat. 2955 (1978); Executive Order 11914, April 28, 1976, and 45 CFR Part 85.

Subpart G—Access To and Use of Newly Acquired Facilities

§ 1012.118 General access and use policy.

No qualified handicapped person shall, because a grantee's facilities are inaccessible to or unusable by handicapped persons, be denied the benefits of, be excluded from participation or employment in, or otherwise be subjected to discrimination under any program or activity to which this Part applies.

§ 1012.119 Defined.

A "newly acquired facility" means an existing facility or part thereof which is leased, purchased or otherwise acquired by a grantee after [the effective date]. For the purpose of this Subpart, the term "leased" includes a renewal of a lease. A facility, the use of which is donated to a grantee after [the effective date], is a "newly acquired facility."

§ 1012.120 Requirement.

Each newly acquired facility shall be accessible to and usable by handicapped persons before a grantee begins to use the facility. Exterior access, accessible entrance, interior access, and usability shall be provided. Interior access shall be provided—

(a) Between an accessible entrance and each level and area within the facility which is open to the public;

(b) Between an accessible entrance and each level and area within the facility which is used by employees;

(c) Between an accessible entrance and each level and area within the facility in which people reside; and

(d) Between each accessible area and a fire-safe means of egress or a fire-safe place of refuge.

§ 1012.121 Standards.

Each newly acquired facility shall be considered accessible and usable only if it complies as a minimum with each standard of "Appendix A—Performance Standards for Determining the Accessibility and Usability of Existing Facilities."

§§ 1012.122—1012.30 [Reserved]

Subpart J—Procedures for Enforcement

§ 1012.178 Procedures.

The procedural rules for enforcement of Section 504 and this Part are those which CSA uses for enforcement of Title VI of the Civil Rights Act of 1964. These procedures are found in 45 CFR Part 1010.

(The remainder of Part 1012 is reserved.)

Appendix A—Performance Standards for Determining the Accessibility and Usability of Existing Facilities

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Part I: Introduction

2 Standards For New Facilities.

The standards and specifications generally available for making facilities accessible to and usable by handicapped persons are designed to be applicable to new construction and to renovation. Many of the features they require are absolutely necessary, that is, they must be provided if a handicapped person is to be able to make use of the facility (for example, an alternative to stairs *must* be provided if a wheelchair user is to gain access to a facility). Other features commonly required by access standards are intended to make use of a facility more convenient (for example, it is more convenient for a wheelchair user to go through a 32 inch door than a 30 inch door, although the majority of wheelchair users could squeeze through

a 30 inch door). A few features commonly required are somewhat redundant (for example, the nosing of stairs should be rounded for people who walk with crutches and braces, but if an elevator is also required, people will not have to use the stairs). At least one common feature is disclaimed by many of the handicapped persons it is intended to benefit (the two major national organizations of blind people do *not* advocate for knurled door knobs at potentially hazardous doorways).

Features which are not absolutely necessary, such as those provided for convenience, those which are somewhat redundant, or those upon which there is not complete agreement are included in standards applicable to new facilities because they provide a benefit (be it convenience or increased options in the use of the facility) and are easily and cheaply incorporated in the design of a new facility.

4 Standards For Existing Facilities.

There appears to be no generally accepted standard which can be used to determine whether an existing facility provides all of those features which are absolutely necessary to its use by handicapped persons and which is specifically designed to ensure that the resources used for renovations undertaken to provide access are allocated most effectively. Such a standard would mandate only features of a facility which are absolutely necessary to its use by handicapped persons.

6 Prescriptive vs. Performance Standards.

The accessibility standards generally available are prescriptive standards—that is, they prescribe the exact minimum measurements which are permissible. When the standards are applicable to new facilities, the prescribed measurements may be easily and economically incorporated during the design stage. Incorporating the prescribed measurements in an existing facility may be neither easy nor economical and, indeed, may be unnecessary. Frequently, the need which a particular set of measurements addresses may be met in several ways—the method prescribed by the standard being only one. If a method other than that rescribed by a standard is as effective, and if that method is easier and more economical, it should be used. A performance standard permits this flexibility—a prescriptive standard does not. A performance standard lists the ends that must be accomplished. The designer is free to choose the most practical and economical method of achieving the end, and indeed may discover a creative new solution to an old problem.

The danger involved in the use of a performance standard is that it may not give enough guidance, so that even well-intentioned designers may make mistakes.* CSA believes that the need for flexibility in a standard applicable to existing facilities outweighs the potental dangers of a flexible standard. It is recommended, however, that this standard be used in conjunction with the technical assistance of design professionals and of handicapped persons.

8 Purpose of This Standard

This standard is intented to be used to determine whether a facility has features which prevent its use by handicapped persons. The standard is intended to ensure that handicapped persons are not excluded by barriers from facilities or parts of facilities to which they are entitled to go, and thereby to ensure that handicapped persons are not segregated into separate facilities or parts of facilities.

10 Scope of This Standard

This standard addresses the architectural needs of only a portion of those handicpped persons entitled to the protection of Section 504. It is only the needs of persons who walk with difficulty or use standard wheelchair [2] persons who have impaired vision or hearing that this standard takes into account. If other handicapped persons have architectural needs, those needs are not addressed either because there is no general consensus as to the nature of the need or because there is no general consensus on an appropriate response to the need. The requirement of Section 504 that all handicapped persons be provided access to and use of each facility or part thereof is not alleviated by the failure of this standard to address a particular need.

The standard itself is divided into two parts (Part II and Part III). The second part lists design considerations, the third part identifies the features of a facility to which those considerations shall be applied. The two parts must be read together. For example, Part III requires that a door be wide enough to accommodate a wheelchair user. Part II indicates that an average person plus his/her wheelchair is commonly 28 inches wide. A doorway, then, must provide at least 30 inches clear open space for te wheelchair user and a little maneuvering room. (Clear open space is measured between the edge of the opened door and the opposite door jamb.)

14 Interpretation of This Standard

This standard shall be interpreted liberally to ensure that handicapped applicants, employees and beneficiaries have full access and use of each CSA funded facility or part thereof.

Part II: Reference Measurements and Concepts

16 Introduction

This part establishes the reference measurements and concepts which shall be applied to the performance requirements of Part III. Although this part lists only reference measurements and concepts relevant to wheelchair users and blind persons who use a long cane, the needs of all handicapped persons are to be accommodated in the application of the performance requirements of Part III.

18 Lengths, Widths and Heights of Average Adult Plus Wheelchair. (In Inches)

	Height at	range	Most common
A	Length	30.5 to 54	48
B	Overall width	18.5 to 32.5	28
C	Width at footplates	17 to 19	19

*A General Accounting Office Report to the Congress entitled "Further Action Needed to Make All Public Buildings Accessible to the Physically Handicapped" (FPCD–75–100; July 15, 1975) summarized the results of an ivestigation of compliance with the ANSI access standard. The report noted that 28% of the buildings studied had a ramp with a slope greater than the required 8.33%, 26% had doors with less than the required 32 inch clear opening, 64% had steps without the required 32 inch handrail, and 62% had restrooms with toilet stall doors of a width less than the required 32 inches. Since the ANSI standard is a prescriptive one, these results suggest that non-compliance may be caused by something other than a lack of guidance.

[2] Generally, the needs of persons who walk with difficulty, particularly those who use walking aids, are met if the needs of wheelchair users are met. Throughout the standard, the term "wheelchair user" appears alone where "person who walks with difficulty or wheelchair user" would be more appropriate. This is done for no reason other than a need which is different than that of wheelchair users, a separate requirement is stated.

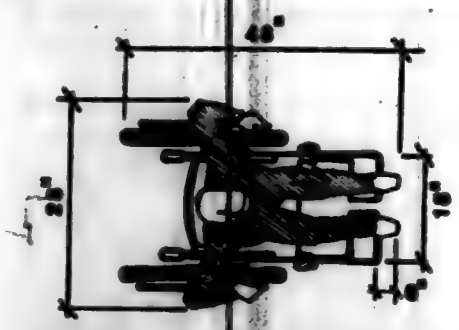

FIGURE 1: LENGTHS AND WIDTHS OF AVERAGE PERSON PLUS WHEELCHAIR

Height at	range	Most common
DEye level	43 to 51	43-51
ELap	23 to 30	27
FWheelchair seat	17 to 22	19
GWheelchair armrest	19.5 to 33.5	28

FIGURE 2: HEIGHTS OF AVERAGE PERSON PLUS WHEELCHAIR

20 Range of Reach of Acerage Adult Wheelchair User

A The reaching abilities of wheelchair users vary widely. The upward or vertical reach ranges from 44 inches to 72 inches above floor level.

Horizontal forward reach ranges from 28 inches to 52 inches.

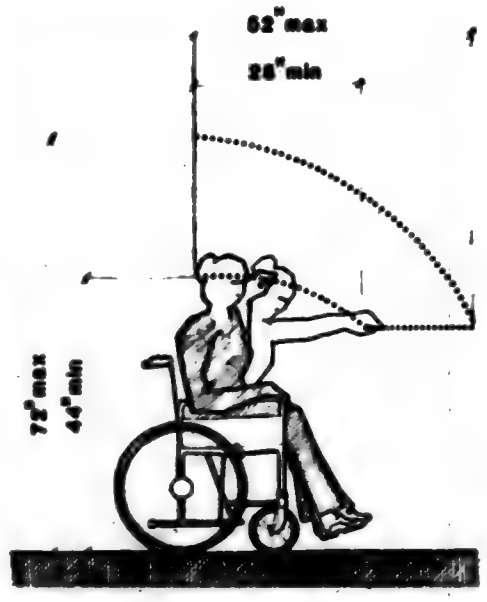

FIGURE 3: RANGE OF VERTICAL AND HORIZONTAL REACH

B The direction of approach and the height of the object influence the comfortable reaching limits acceptable to most people. At desk or counter height (from 30 to 36 inches above the floor) a forward reach of 24 inches is an acceptable design limit, while at shelf height (from 44 to 48 inches above the floor) a forward reach of 15 inches is comfortable and 20 inches is considered maximum.

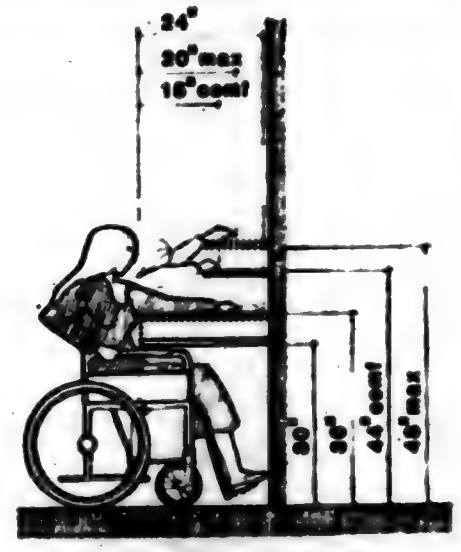

FIGURE 4: RANGE OF FORWARD REACH

C The limits of side reach measured horizontally from the plane of the pushrim of a wheelchair ranges from 15 inches to 24 inches in heights of from 26 inches (normal counter height) ot 48 inches above the floor. The limits of side reach measured vertically from the floor vary from a height 9 inches above the floor to a maximum of 62 inches; however, a vertical limit of 54 inches is comfortable for most wheelchair users and is the recommended maximum for design purposes.

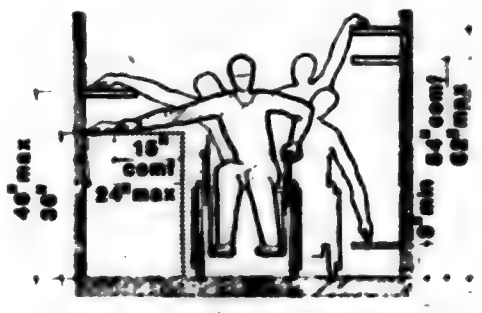

FIGURE 5: RANGE OF SIDE REACH

22 Operational Requirements for Average Adult Wheelchair User.

A Through Doors or Other Openings—32 inches clear open space. If the distance through an opening the directon of travel is more than 24 inches the opening is considered a cooridor. In such cases the minimum clear corridor clearance (36 inches) should apply.

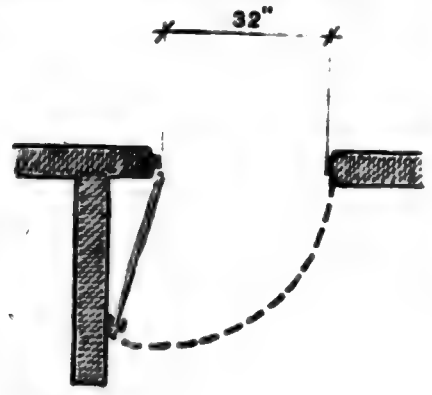

door opening

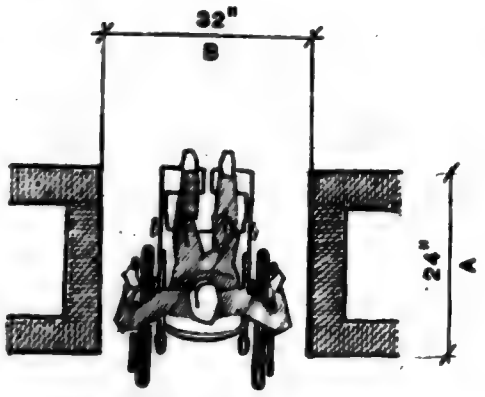

opening through wall

note: If A exceeds 24 inches, B should be at least 36 inches

FIGURE 6: CLEAR OPENINGS

B Corridors—36 inch width for one way wheelchair passage; 60 inch width for two way wheelchair passage.

C 180 Degree Turn—60 inch diameter space with one wheel moving forward and one wheel moving in reverse.

D L Turn—36 inch-wide right angle path.

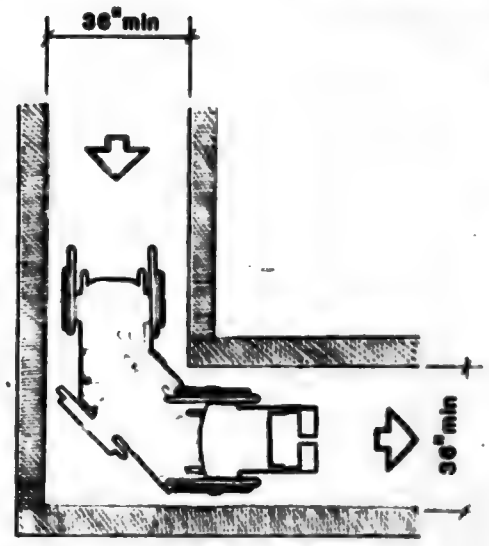

FIGURE 7: CLEARANCE L-TURN

E Maneuvering Clearances at Doors—Recommended clear area at either side of openings for manually operated hinged doors are as follows:

1 For direct frontal approach:

At the pull side of the door—54 inches in front of the door opening and 18 inches side clearance at the latch jamb

At the push side of the door—48 inches in front of the door opening and at least 36 inches wide

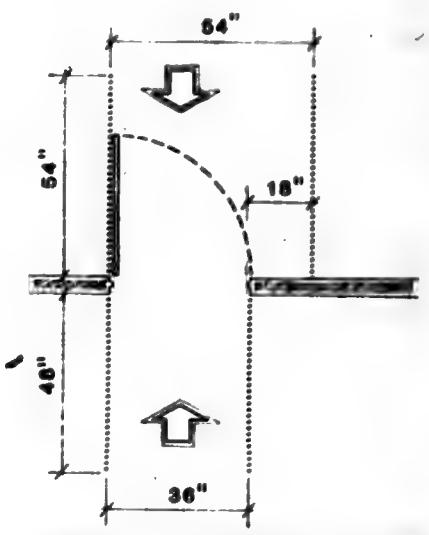

FIGURE 8: CLEARANCES FOR FRONTAL APPROACH TO DOOR

2 For side approach to the door opening:

a With door swinging away from the line of approach and with latch jamb at approach side—

At pull side of door—48 inches in front of door

At push side of door—42 inches in front of door

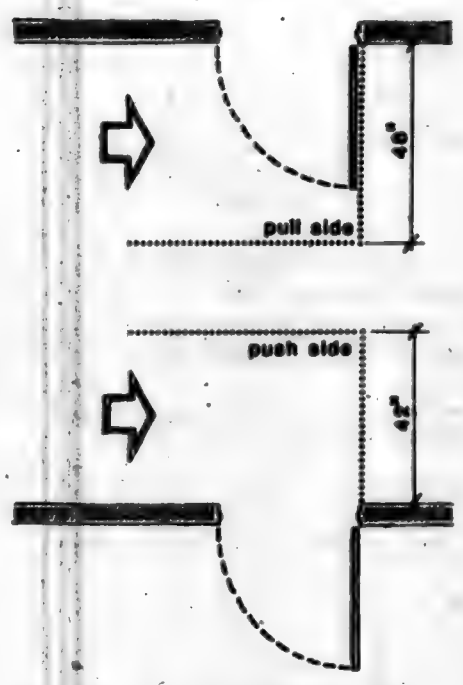

FIGURE 9: CLEARANCES FOR SIDE APPROACH TO DOOR—LATCH JAMB AT APPROACH SIDE

b With door swinging away from line of approach and with hinge jamb at approach side—

18 inch side clearance at latch jamb and

42 inches in front of the door for 32 inch clear openings, or

39 inches in front of the door for 34 inch clear openings, or

36 inches in front of the door for 36 inch opening.

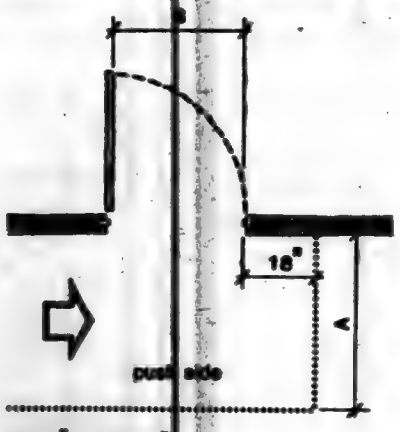

A=42" if B=32"
A=38" if B=34"
A=36" if B=36"

FIGURE 10: CLEARANCE FOR SIDE APPROACH TO DOOR – HINGE JAMB AT APPROACH SIDE

c With door swinging against the approach path—
60 inches in front of door opening and 18 inch clearance at latch jamb
or
54 inches in front of door opening with 24 inch clearance at latch jamb.

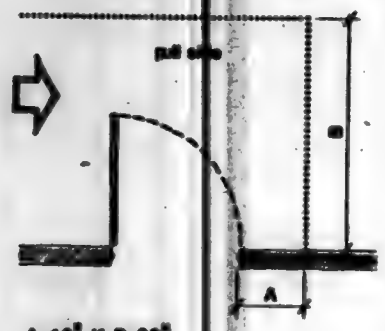

A=18" if B=60"
A=24" if B=54"

FIGURE 11: CLEARANCE FOR SIDE APPROACH – DOOR SWINGING AGAINST APPROACH PATH

d For hinged door openings in series as in a vestibule space: A minimum space 36 inches wide by 48 inches long not obstructed by door swings.

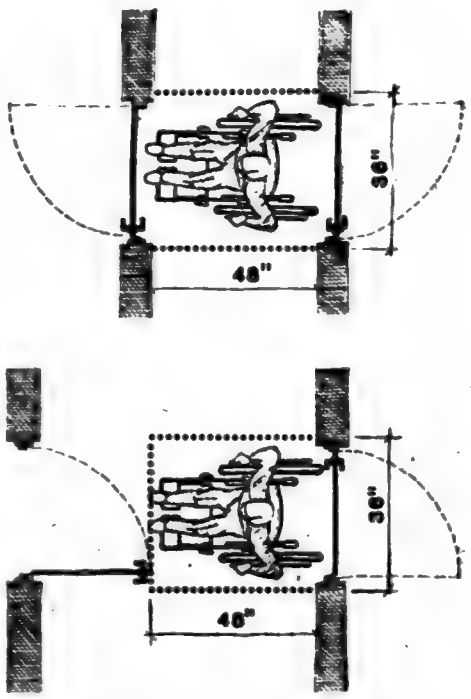

FIGURE 12: VESTIBULE CLEARANCES

24 Inclines.

A Any vertical rise exceeding one half (½) inch cannot be negotiated by the average adult wheelchair user unless it is inclined.

B Any inclined way having a slope greater than 1:20 (5%) is a ramp and shall conform to the requirements for ramps.

C The maximum slopes which can be negotiated by the average adult wheelchair user are:

Table 3

Maximum slope [1]	Maximum vertical	Maximum horizontal run (feet)
1:8	3	2
1:10	6¼	5
1:12	30	30
1:16	30	40
1:20	30	50

[1] Note: Ratio of Rise to Run.

D Several ramp runs with landings or rest stops between each run may be combined.

E A cross-slope exceeding 1:50 (2%) makes negotiation of level surfaces difficult and negotiation of inclined surfaces extremely difficult.

26 Long Cane Touch Technique.

Most people with severe visual impairments use a long cane as a mobility aid. A person moving forward and using a touch technique swings the cae rhythmically from side to side touching points at or near floor level in an area extending approximately 6 inches outside both shoulders. The movement of the cane defines an area in which hazards can be detected by touch. An object overhanging the path as much as 12 inches and encountered by direct approach can be detected if the lower surface of the object is not higher than 27 inches from the floor. Objects projecting or overhanging the path of travel at the side cannot be detected. However, since the cane technique keeps a person approximately 6 inches from the path edge, a very limited overhang is not hazardous.

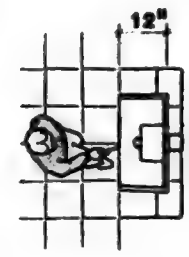

FIGURE 13: CLEA
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Part III: Basic Mi
Requirements

28 General

Barriers which
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Handicapped per
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enter the facility,
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Subpart A: Exter

30 Parking Area

If parking is pr
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shall—

A Be provide
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handicapped driv
but in no case les
each 50 spaces pr
of one space;

B Be located
accessible path, w

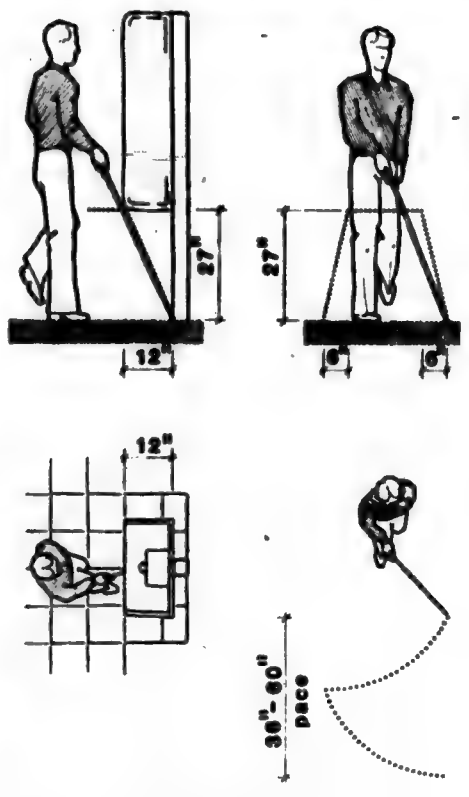

FIGURE 13: CLEARANCES FOR LONG CANE TOUCH TECHNIQUE

Part III: Basic Minimum Performance Requirements

28 General

Barriers which restrict the free and independent movement of handicapped persons to and through each facility or part thereof shall be removed. Handicapped persons shall be allowed access to and use of the exterior environment of each facility, allowed to enter the facility, and allowed access to and use of the interior of the facility.

Subpart A: Exterior Requirements

30 Parking Area.

If parking is provided, parking spaces reserved for handicapped persons shall—

A Be provided in a number sufficient to accommodate the number of handicapped drivers using the facility, but in no case less than one space for each 50 spaces provided or a minimum of one space;

B Be located so that there is an accessible path, with no curb, step or other adrupt grade change, leading to an accessible entrance to the building or facility;

C Be wide enough to accommodate a wheelchair user getting in or out of a full-sized care with one door fully open and;

D Be marked by a sign which effectively notifies potential users that the space is one reserved for use by handicapped persons only.

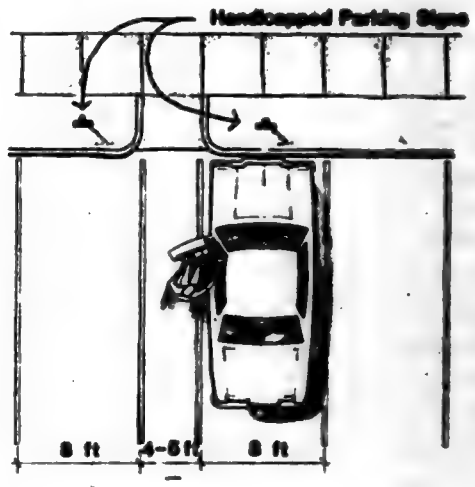

FIGURE 14: ACCEPTABLE PARKING SPACE DIMENSIONS

32 Accessible Path

If a path of travel is intended to be an accessible path, it shall—

A Be ramped wherever a curb, step or other abrupt change in grade is present (slopes listed in Part II are considered maximum);

B Be unobstructed by such barriers to wheelchair users as turnstiles, posts, overhanging growth, snow and ice;

C Be unobstructed by such hazards to blind persons as objects protruding into the path at a level or height undetectable by a long cane;

D Be wide enough to safely accommodate a wheelchair user; and

E Lead to an accessible entrance.

34 Ramps

Each ramp in an accessible path shall—

A Have the minimum slope practicable (slopes listed in Part II are considered as maximum);

B Be wide enough to safely accommodate a wheelchair user (a clear width of 36 inches is considered minimum);

C Have a handrail on each side if the slope is greater than 5% (1:20) and the length greater than 6 feet, except that handrails are not required for curb ramps; and

D Have a level landing at the top and bottom of each run which is as wide as the ramp and long enough to accommodate a wheelchair user.

36 Signage

If there is more than one path, but only one is accessible, the accessible one shall be marked at each entrance to the path by a sign which effectively notifies potential users that it is accessible.

Subpart B: Accessible Entrance

38 One Principal Entrance

At least one principal entrance to a facility shall be accessible.

40 Required Features

The accessible entrance shall:

A Be ramped if a curb, step, or other abrupt charge in grade is present;

B Have a clear level area in front of the door opening large enough and positioned to accommodate a wheelchair user pulling or pushing a hinged door fully open; and

C Have an accessible and usable door.

42 Doors

An accessible and usable door shall—

A Be operable by easy effort without fine hand control;

B Be with enough and positioned to accommodate a wheel-chair user (the average adult wheelchair plus user is 28 inches wide, so 30 inches is a practical minimum under average conditions);

C Be unobstructed by barriers such as turnstiles, post and thick or heavily textured door mats;

D Have a threshold, if at all, with a change in level or slope which does not impede the mobiliy of a wheichiar user; and

E Have clear area between doors i nseries (such as vetibule doors) sufficient to accommodate a wheelchair user maneuvering through both doors.

Subpart C: Accessible Routes of Circulation

44 Required Features

An accessible route of circulation shall—

A Use ramps or an elevator or a combination of both for vertical circulation, except that a platform life may be used if the change in floor elevation is less than one story;

B Be wide enough to safely accommodate a wheelchair user (36 inches is a generally accepted minimum);

C Be unobstructed by such barrier to wheelchiar users as turnstiles, posts, furniture or thick or unsecured carpet; and

D Be unobstructed by such hazards to blind persons as objects protruding into the path at a level or height undetectable by a long cane.

46 Doors

Each door in an accessible route of circulation shall comply with the requirements of section 42 regarding doors at an accessible entrance.

48 Ramps

Each ramp in an accessible route of circulation shall comply with the requirements of section 34 regarding ramps in an accessible path.

50 Elevators

If an elevator is used to provide vertical circulation in an accessible route of circulation, the elevator shall—

A Be fully accessible to an usable by handicapped persons;

B Have a cab large enough to allow a wheelchair user to enter, operate the controls, get out of the door closing line, and exit safety;

C Be equipped with a door reopening device which stops and reopens a cab door and the adjacent hoistway door when eithr door is obstructed; and

D Be equipped with controls and related devices arranged to permit independent operation of the elevator by a wheelchair user.

52 Platform Lifts

If a platform lift is used to provide vertical circulation in an accessible route of circulation, it shall—

A Be independently operable by a wheelchair user;

B Be spacious enough to safely accommodate a wheelchair user; and

C Respond to a call from each level which it serves.

Subpart D: Usability

54 Toilet Rooms

Accessible toilet rooms shall—

A Be provided in the number necessary to provide handicapped persons with convenience equivalent to that provided for all users of the facility;

B. Be located on an accessible path;

C. Have an accessible entrance with doors, vestibules, and privacy screens, if any, arranged to permit a wheelchair user to enter and leave the room;

D. Have sufficient clear floor space to permit a wheelchair user to maneuver in the room;

E. Be equipped with at least one fixture of each kind provided within the reach limits and maneuvering capabilities of, and easily operable by a wheelchair user;

F. Have at least one toilet stall, if a toilet stall is provided, which—

1. Has a door opening wide enough to accommodate a wheelchair user;

2. Is large enough and equipped with suitably placed grab bars to facilitate transfer from wheelchair to toilet seat by means of either direct, frontal approach or a side approach;

3. Has toilet paper dispenser, coat hook and other accessories at accessible locations; and

4. Has a hand-operated flush lever;

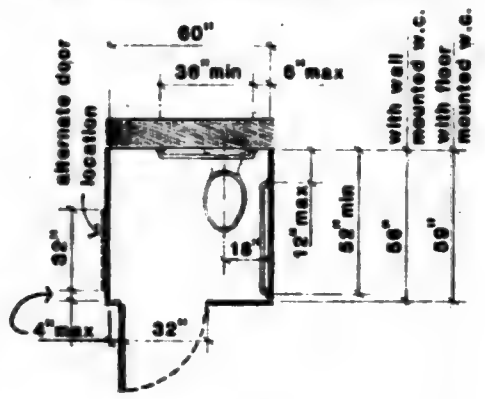

A. side approach

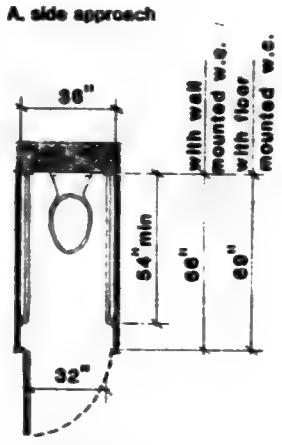

B. frontal approach

FIGURE 15: PREFERRED TOILET STALL DIMENSIONS

G. Have at least one accessible lavatory, if a lavatory is provided, which—

1. Has enough clear space both in front and underneath to accommodate a wheelchair user pulling up to the lavatory;

2. Has easily operable faucets; and

3. Has insulated or otherwise covered hot water pipes and drains so that surface temperatures do not exceed 120 degrees, or has water temperature controlled to 115 degrees.

H. Have at least one bathtub, if a bathtub is provided, which—

1. Is positioned so that a wheelchair user can pull up sideways along side the bathtub; and

2. Has grab bars at end wall and along the rear wall surrounding the tub;

I. Have at least one shower, if a shower is provided, which—

1. Has supportive grab bars; and

2. Either—

a. Is large enough to accommodate a wheelchair user, has a door wide enough to admit a wheelchair user, and has no curb, step or other abrupt change in level; or

b. Has a shower stall with a curb no higher than approximately 4 inches and has a permanently attached seat along the wall closest to the entry point; and

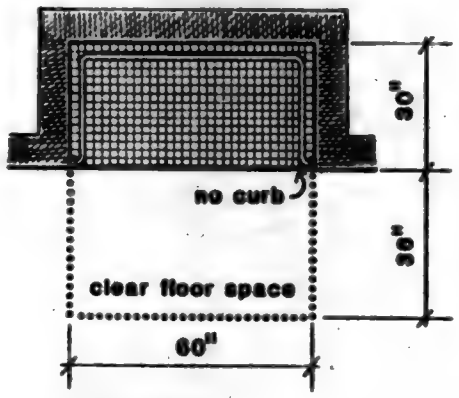

A. roll-in shower

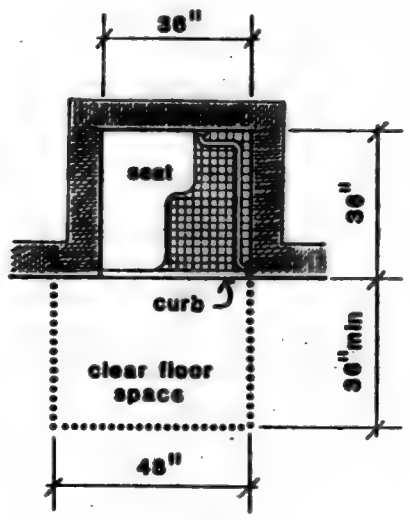

B.shower with seat

FIGURE 16: PREFERRED SHOWER DIMENSIONS

J. Have at least one mirror, if a mirror is provided, which can be effectively utilized by a wheelchair user.

58. Drink of Water

A convenient, obvious, and reliable method of getting a drink of water shall be provided wheelchair users.

59. Public Telephones

If public telephones are provided, at least one shall—

A. Be mounted so that all operable parts of the telephone are within the reach of limits of a wheelchair user;.

B. Not have any enclosure or other structure which impedes approach to or use of the telephone by wheelchair user;

C. Have a telephone book, if one is provided, within the reach and viewing limits of a wheelchair user; and

D. Be equipped with a volume control handset.

60. Counters, etc

If counters, cabinets, tables, shelves, chairs, stoves, refrigerators, work benches, and similar accommodations are provided, an adequate number of them shall be usable by handicapped persons.

62. Carpet

If used, carpet shall not impede the mobility of wheelchair users.

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federal register

Monday
January 19, 1981

Part XXV

Department of the Interior

National Park Service

National Park System Units in Alaska

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 13

National Park System Units in Alaska

AGENCY: National Park Service.

ACTION: Proposed rule.

SUMMARY: On December 2, 1980, President Carter signed into law the Alaska National Interest Lands Conservation Act (P.L. 96-487) which established or expanded units of the National Park System in Alaska, and provided management direction for these units. In today's publication, the National Park Service is proposing regulations to provide relief from existing regulations that govern public use and recreation (*e.g.*, camping, picnicking, gathering of renewable resources, transportation methods, and the carrying of firearms) on lands administered by the National Park Service in Alaska, and also to establish administrative procedures necessary to implement or clarify various provisions of the Alaska National Interest Lands Conservation Act (e.g., subsistence, use of cabins, access). The National Park Service deems these proposed regulations as the minimal necessary to provide proper management in park areas in Alaska. These proposed regulations are not intended, however, to result in final comprehensive regulations for these park areas. The National Park Service will undertake additional rulemaking as appropriate for issues not covered in this proposal. Public comments on these proposed regulations are solicited for 45 days.

DATES: Written comments should be submitted on or before March 5, 1981.

ADDRESS: Comments should be directed to: Alaska Regional Director, National Park Service, 540 West 5th Avenue, Anchorage, Alaska 99501.

FOR FURTHER INFORMATION CONTACT: John Cook, Alaska Regional Director, National Park Service, 540 West 5th Avenue, Anchorage, Alaska 99501, Telephone: (907) 271-4196.

SUPPLEMENTARY INFORMATION:

Background

On December 2, 1980, President Carter signed into law the Alaska National Interest Lands Conservation Act ("Alaska Lands Act" or "Act") as Public Law 96-487. The Alaska Lands Act addresses a broad range of land-related conservation issues in the State of Alaska. Most relevant here, the Act established new units and expanded existing units of the National Park System. It also established Federal policy concerning subsistence uses by rural Alaskan residents, access, fishing and hunting, mineral development, and cabin use within park areas in Alaska.

The Act specifically directs that 13 units of the National Park System be managed in accordance with the provisions of the Act and the provisions of the Act of August 25, 1916, as amended and supplemented (39 Stat. 535; 16 U.S.C. 1, 3, 4), under appropriate regulations. The Secretary delegated to the Director of the National Park Service administrative and regulatory authority over these units, and one wild and scenic river.

Under the Alaska Lands Act and secretarial delegations, the areas to be managed as units of the National Park System in Alaska are as follows: Aniakchak National Monument and Preserve, Bering Land Bridge National Preserve, Cape Krusenstern National Monument, Gates of the Arctic National Park and preserve, Kenai Fjords National Park, Kobuk Valley National Park, Lake Clark National Park and Preserve, Noatak National Preserve, Wrangell-St. Elias National Park and Preserve, Yukon-Charley National Preserve, Denali National Park and Preserve, Katmai National Park and Preserve, Glacier Bay National Park and Preserve, and Alagnak National Wild River. These proposed regulations, when finalized, will provide public guidance on the permissible uses in these 14 park areas, as well as Klondike Gold Rush and Sitka National Historical Parks, which were established prior to the Alaska Lands Act and are affected by this Act.

With the recent relinquishment of certain State of Alaska land selections pursuant to section 1322 of the Alaska Lands Act, the Alaska National Monuments established by President Carter on December 1, 1980, were rescinded as of December 2, 1980, and the regulations of 36 CFR 7.87 are no longer applicable. Until this proposed rulemaking is finalized, the existing regulations of 36 CFR Parts 1-9 shall apply to National Park System units in Alaska, except as modified by the provisions of the Alaska Lands Act.

Need for Expeditious Rulemaking

These proposed rules for public uses of park areas in Alaska would provide relief from existing National Park System regulations in 36 CFR Parts 1-9 which are inappropriate in the unique Alaska setting. These proposed rules would also establish administrative procedures necessary to implement several provisions of the Alaska Lands Act. For these reasons and as further developed below, the National Park Service has determined that there is a need for expeditious rulemaking. Accordingly, the Service has adopted a 45 day comment period (which is longer than required under 5 U.S.C. 553) for these proposed rules and plans to issue final regulations in March of 1981. The bases for this approach are summarized below.

First, many sections of these proposed regulations relieve restrictions on allowable public uses of park areas in Alaska that would otherwise be applicable under 36 CFR Parts 1-9. For example, opportunities for access, carrying of firearms for personal protection, camping, picnicking, and personal collection of natural resources are greatly enhanced under these proposed regulations. Since these proposed regulations would relieve restrictions and remove hardships on the Alaskan lifestyle that apply by virtue of 36 CFR Parts 1-9, NPS believes that there is a need for immediate public guidance.

Second, there is a need to establish administrative procedures for implementing the new directives of the Alaska Lands Act. The Act's provisions on subsistence, access, and cabins require administrative mechanisms for public guidance and necessary permits. These proposed regulations establish the administrative channels for obtaining these permits, and the public comment on these procedural rules is requested.

Third, with the new directives in the Alaska Lands Act, there is considerable confusion as to which public uses of park areas are authorized under 36 CFR Parts 1-9 and the Act. For instance, 36 CFR 2.2 and 2.34 generally prohibit aircraft and snowmobile use in parks subject to the penalties of 36 CFR 1.3, while section 1110(a) of the Alaska Lands Act authorizes aircraft and snowmobile use. Additionally, 36 CFR 2.32 prohibits hunting in parks, while Title II of the Alaska Lands Act authorizes sport hunting in preserves and subsistence hunting in certain park areas. In order to harmonize the statutory directives with existing regulations and to alleviate public fears of criminal prosecution, the Service desires to provide public guidance as soon as practicable.

Finally, as developed below in the "Previous Notice and Comment" section, the National Park Service has twice before solicited and received public comment on the identical issues addressed in these regulations. To the greatest extent possible consistent with the Alaska Lands Act, these proposed

regulations follow public desires on open access, carrying of firearms, subsistence and other issues. With this substantial prior public comment, the Service believes that a lengthy public comment period on identical issues is unwarranted.

The regulations proposed here constitute the bare minimum required for interim management of the Alaska park areas and implementation of the Alaska Lands Act. The proposed regulations either relieve regulatory restrictions which are inappropriate in the Alaska setting *(e.g.,* carrying of firearms, camping, picnicking, unattended property), or implement crucial provisions of the Alaska Lands Act *(e.g.,* subsistence, access, cabins, taking of fish and wildlife). The limited agenda of these proposed regulations in general covers only those topic areas which had been subject to prior public notice and comment in the Alaska National Monument rulemakings.

Additional topic areas not addressed in this proposed rulemaking may be the subject of future regulatory exercises. The National Park Service will strive for substantial public comment periods in any future rulemakings proposed by the Service or other parties.

Previous Notice and Comment

The proposed regulations presented here either repeat, or significantly relax, regulations which were published and subject to extensive public notice and comment during the administration of the Alaska National Monuments.

On December 1, 1978, President Carter signed proclamations establishing 15 new and enlarging two existing national monuments in Alaska. On December 26, 1978, the National Park Service promulgated interim rules to give short-term guidance on subsistence, access, firearms, hunting and fishing, and other uses of the new NPS-administered national monuments. Although these regulations were effective upon publication, the National Park Service invited comments and suggestions on this interim rule.

The National Park Service published an Advanced Notice of Proposed Rulemaking on February 28, 1979 (44 FR 11242). This notice identified the subject matter of the anticipated "final" rulemaking, including the subjects addressed here today, and posed questions for public consideration. The National Park Service received 248 letters from individuals, organized groups or associations, and State and local governments, as well as 1,731 form letters sponsored by the Alaska Outdoor Association in response to this Notice.

On June 28, 1979, the National Park Service published Proposed General Management Regulations for the Alaska National Monuments (44 FR 37732). Again, this proposed rulemaking included the subject matter addressed in today's interim rules. Informal public meetings were held in virtually every community affected by the proposed rules and formal public hearings were held in Anchorage and Fairbanks. A total of 245 letters from individuals, organized groups or associations, and State and local governments were received.

To the greatest extent possible, consistent with the Alaska National Interests Lands Conservation Act, today's proposed rulemaking responds positively to the public comments received on the two previous Federal Register publications on Alaska.

For example, today's proposed regulation on unattended and abandoned property responds to public comment by accommodating subsistence and recreational users who find it necessary to leave personal property unattended for reasonable periods of time. Almost all of the commentors on the above publication advocated the carrying of firearms for reasons of personal safety. These proposed regulations would permit the carrying of firearms within park areas in Alaska, except as restricted by the Superintendent in accordance with certain closure provisions. All of the public comments previously received were in support of the use of dead standing wood in Alaska. Today's proposed rules would provide for such use.

Section-by-Section Analysis: Subpart A—Public Use and Recreation

Applicability and Scope

The proposed regulations set forth herein would apply to all persons using, entering or visiting within the boundaries of park areas in Alaska. These regulations would supplement the regulations of Parts 1 through 9 of Title 36 of the *Code of Federal Regulations.* These Part 1–9 regulations would remain applicable except as they are modified by final regulations. The preamble material below attempts to identify the major provisions of 36 CFR Parts 1–9 which would be superseded or modified by these regulations. Anyone desiring more specific information on the applicability of 36 CFR Parts 1–9 in the interim period before final regulations may contact the NPS Alaska Regional Director for further clarification.

These proposed regulations are divided into three parts. Subpart A, Public Use and Recreation, contains regulations that would govern activities such as use of aircraft, snowmobiles, and motorboats, carrying of weapons, camping, cabin occupancy and other activities related to access or general public use and recreation. These proposed regulations would apply to all of the park areas in Alaska, except as indicated in the regulations. They would amend the provisions of the general regulations found in 36 CFR, Parts 2 through 9, and are necessary to implement or clarify various provisions of the Alaska Lands Act.

Subpart B contains proposed regulations that would govern subsistence activities within the park areas in Alaska. These regulations would apply to all park areas except Kenai Fjords National Park, Katmai National Park, Glacier Bay National Park, Klondike Gold Rush National Historical Park, Sitka National Historical Park, and parts of Denali National Park (the former Mt. McKinley National Park area). The proposed regulations in Subpart B would amend the regulations contained in Parts 2 through 9 of 36 CFR and Subpart A of Part 13.

Subpart C contains proposed regulations for individual park areas. These proposed regulations would apply to a specific area and may amend the provisions of the general regulations found in 36 CFR, Parts 2 through 9, or Subpart A or B of this Part.

Sections 103(c) and 906(o) of the Alaska Lands Act generally restrict the applicability of National Park Service regulations to federally owned lands within park area boundaries. Consistent with the statute and the explanatory legislative history appearing at 126 *Congressional Record* H11115 (November 21, 1980) and S15130–15131 (December 1, 1980), § 13.2(e) would restrict the applicability of these regulations to "federally owned" lands (defined to mean all land interests held by the Federal government including unconveyed Native selections) within park area boundaries. With the legislative conveyance of 96 million acres of State selections in section 906 of the Act, no unconveyed State selections remain within park areas. These proposed regulations would not apply to activities occurring on State lands. Similarly, these proposed regulations would not apply to activities occurring on Native or any other non-federally owned land interests located inside park area boundaries.

Access: Sections 13.10–13.15 of these regulations would implement sections 1110 and 1111 of the Alaska Lands Act, concerning access by the public across

park areas. *See, also,* §§ 13.45 and 13.46. These proposed regulations generally relax restrictions on access that are applicable to National Park System units outside of Alaska. They are necessary to meet the special needs in Alaska for reasonable access across largely undeveloped park lands. The proposed access regulations of §§ 13.10–13.15 would supersede the access-related provisions of 36 CFR 2.2, 2.34, 3.2, 4.19, 7.23(a), 7.44, 7.46, 7.87 and Part 9 insofar as these new sections would authorize additional access (N.B., the public safety, endangered species, and other aspects of these earlier regulations, such as 36 CFR 2.34(d), 7.23(b)–(f), 9.5, and 9.7, would not be superseded). These sections are designed to, and are presented in an order which will, funnel the vast majority of access needs away from a system of individual access permits. Sections 13.10–13.12 would initially open all park areas to access by snowmobile, aircraft and motorboat for any purpose. (Additional provisions for access for subsistence uses are set forth in §§ 13.45 and 13.46, explained below.) Section 13.13 would provide a mechanism for establishing common corridors and areas for off-road vehicle use. In the less common situation where §§ 13.10–13.13 do not accommodate a park "inholder's" need for access, § 13.14 would provide for individual permits that guarantee adequate and feasible access, while minimizing damage to park resources. Finally, where §§ 13.10–13.14 do not otherwise provide temporary access, § 13.15 would create another means for obtaining desired access.

Sections 13.10–13.12 of these proposed regulations initially open all park areas in Alaska to access by snowmobile (on areas with adequate snow cover or frozen rivers), motorboat, and aircraft, without the need for individual access permits. Access by these methods of transportation is authorized for any purpose (e.g. travel between villages, to a homesite, for mineral development, for recreation, or for traditional activities) except as is specifically provided for subsistence uses in §§ 13.45 and 13.46 discussed below under subsistence. Sections 13.10–13.12 implement section 1110(a) of the Alaska Lands Act which provides access for "traditional activities * * * and for travel to and from villages and homesites." This approach extends the statutory concept to access for all purposes, except the special provisions concerning access for subsistence uses and the special rules for Glacier Bay National Park and Preserve. As provided in § 13.11, the special regulations of 36 CFR 7.23(b)–(f) (*see* 45 FR 32228 (may 15, 1980) and 45 FR 85741 (December 30, 1980)) would continue to govern boating and fishing operations within Glacier Bay Park and Preserve, in order to protect the endangered humpback whale. Consistent with section 1110(a) of the Act, section 13.30 authorizes the closure of certain park areas to snowbobile, aircraft, and motorboats access only after notice and hearing. Even after closure, emergency landing of aircraft (e.g., because of severe weather or vehicle failure) would not be prosecuted. This general authorization of access by snowmobile, motorboat, and aircraft should greatly reduce the need for persons to obtain specific access permits under §§ 13.14 or 13.15, since, in most cases, reasonable access will already be granted under §§ 13.10–13.12.

Section 13.13 of these proposed regulations provides a procedure for supplementing access needs without the need for individual access permits.

While all park areas are initially closed to off-road vehicle use, § 13.13 authorizes the park Superintendent to designate off-road vehicle routes and areas. It is anticipated that this procedure will be used most often to designate common corridors for off-road vehicle travel between villages, and similar situations where a single route can satisfy the access needs of rural Alaskan groups. Section 13.13 implements the directive of section 1110(b) of the Alaska Lands Act to provide "adequate and feasible" access and does so through a methodology that will reduce the need for individual access permits. Furthermore, as in any situation involving rulemaking, persons may petition the Superintendent under the procedures of 43 CFR 14.6 to have a route or area designated as open for off-road vehicle use, should the Service fail to identify or propose that route or area as open.

If § 13.10–13.13 have not already provided "adequate and feasible" access for persons with valid property or occupancy interests which are surrounded or effectively surrounded by park area lands, proposed § 13.14 creates a procedure for obtaining this access. "Adequate and feasible" access is defined in § 13.1 in terms of an economically practicable method and route of access (but not necessarily the most economically feasible alternative), consistent with the legislative history appearing in *Senate Report 96–413,* 96th Congress, 2nd Session, 248–249 (November 14, 1979). Section 13.14 applies only when an area has been closed to snowmobile, aircraft or motorboat use, or when no designated off-road vehicle route exists that would satisfy the "adequate and feasible" access needs of the landowner. In such cases, the landowner applies to the park Superintendent for an access permit (additional information is required for mineral exploration or development, as discussed below).

The park Superintendent is directed to issue an access permit for the routes and methods desired by the applicant unless the Superintendent determines that such access would cause significant damage to park resources, or would jeopardize public health and safety (including concerns for subsistence uses and adjacent landowners), and in either case, that adequate and feasible access otherwise exists (e.g. a different route exists which would minimize park damage, snowmobile or airplane access already provides "adequate and feasible" access).

If the Superintendent makes one of these adverse determinations, then he/she must specify in a permit such other alternate methods and routes of access as will provide adequate and feasible access to the applicant, while minimizing damage to park resources. A landowner may appeal the Superintendent's decision to the Regional Director under § 13.31. Of course, the access routes and methods finally authorized may be used by guests and invitees of the permittee.

Thus, proposed § 13.14 implements section 1110(b) of the Alaska Lands Act by guaranteeing adequate and feasible access to park "inholders" through an individual permit process, which should be utilized only when the non-permit provisions of § 13.10–13.13 do not provide reasonable access.

Subsection 13.14(c) provides special information requirements for access inside park areas for mineral exploration or development. Consistent with the open access for other purposes, these special information requirements are not applicable when the inholder does not require access across park area lands (e.g. aircraft landings on non-federally owned lands) or when access has already been provided pursuant to §§ 13.10–13.13 of these regulations (*e.g.,* the information requirements of § 13.14(c) and 36 CFR Part 9 would not apply when access across park areas for mineral exploration or development is available by snowmobile, airplane, motorboat or off-road vehicle under §§ 13.10–13.13). This limits the special information requirements to situations where the potential for damage to park resources is the greatest (e.g. bulldozer and production equipment access). In the situations where § 13.14(c) is applicable, prospective mineral

developers must apply for an access permit and include information on planned access, mineral operations, and compliance with applicable laws. The more extensive information requirements of 36 CFR 9.9 and 9.36 would not be applicable.

This procedure will provide the Superintendent with necessary information on planned access and minerals operations, so that the adverse impacts on park resources of such access and operations can be reasonably assessed.

In accordance with section 1110(b) of the Alaska Lands Act, the Superintendent is directed to grant a mineral access permit providing adequate and feasible access, while minimizing park resource damage, in lieu of any other access standard contained in 36 CFR Part 9 or the Mining in the Parks Act (16 U.S.C. 1901 *et seq.*). Thus, § 13.14 is a new approach to access to mining claims within park areas in Alaska which would control over any inconsistent provision of 36 CFR Part 9.

Proposed § 13.15 completes the implementation of the Alaska Lands Act provisions for public use access by implementing section 1111 through a permitting mechanism for obtaining temporary access across a park area for purposes of survey, geophysical, exploratory, or other temporary uses of non-federal lands located outside park area boundaries. Section 13.15 requires an access permit only where §§ 13.10–13.13 do not provide the desired access, and where § 13.14 is not applicable (*e.g.*, if a park area "inholder" or a person effectively surrounded by Federal lands requires temporary access across park area, section 1110(b) of the Alaska Lands Act and § 13.14 of these regulations grant greater access privileges). Where temporary access is otherwise unavailable, the person applies to the park Superintendent for an access permit. The permit application must indicate the proposed route and method of access, what temporary use the applicant proposes to undertake, and, in the case of mineral exploration, the information on the planned mineral operations during the course of the permit. The Superintendent is directed to grant the desired temporary access if no permanent harm to park resources will result. If permanent harm would result, the Superintendent is directed to include such stipulations and conditions (*e.g.*, alternate methods and routes of access) on the temporary access as will ensure consistency with park purposes and no permanent harm to park resources.

In summary, §§ 13.10–13.15 of these proposed regulations would implement the array of access provisions contained in the Alaska Lands Act (except as specifically further provided for subsistence uses) through a series of sections designed to minimize the need for an individual access permit.

1872 Mining Law Claims

Sections 13.10–13.14 of these proposed regulations would amend 36 CFR Part 9 insofar as access to mining claims within park areas is concerned. As described in the "access" section, where access to a patented or unpatented mining claim is available under §§ 13.10–13.13, there would be no requirement for an access permit and, therefore, no requirement to submit the information required by 36 CFR 9.9 to gain access.

Where access is not available under §§ 13.10–13.13, the mining claimant would apply for an access permit under § 13.14(c) and provide the information specified in paragraph (c)(2) prior to conducting mineral operations. The Superintendent will review the proposed access and operations, and permit adequate and feasible access for economic purposes which minimizes damage to park resources. The access standard of § 13.14(c) would be controlling in Alaska park areas.

However, in order to minimize park resource damage, NPS desires to retain the 36 CFR 9.7 waiver of assessment work requirements on unpatented mining claims within a park area. In any case where an access permit is applied for under § 13.14(c) solely for the purpose of assessment work, the permit request would be denied pursuant to 36 CFR 9.7. The National Park Service believes that this policy does not deny adequate and feasible access for economic purposes, because the economic purpose of preserving the vailidity of a mining claim through assessment work is not prejudiced by denial of access (e.g. 36 CFR 9.7 waives the Secretary's right to contest a mining claim based on lack of assessment work created by access denial). However, mining claimants are reminded that maintenance of a claim requires compliance with annual filing requirements, as provided in 36 CFR 9.5(c).

Additionally, mining claimants within park areas are reminded that section 206 of the Alaska Lands Act closed all park areas to new mining locations and entries. NPS reserves the right to refuse access where it is found that a valid mining claim does not exist, pursuant to sections 206 and 1110(b) of the Alaska Lands Act.

Cabins and Other Structures: Section 13.16 provides proposed procedures and guidance for those occupying and using existing cabins and those wishing to construct new cabins within park areas in Alaska.

Over the years, cabins and other structures have been built on unpatented Federal lands. The builders or occupants of these cabins had no legal right to occupy the land on which the cabins were located. Extended long-term use is not in the best interest of the general public. However, the long, customary use of such property, the uncertain status of land during the late 1960's and early 1970's, and the substantial investment that many people have made in the structures suggested the need for an equitable and orderly termination of use.

Section 1303 of the Alaska Lands Act provides the National Park Service with the authority to permit the continued use of cabins in Alaska even though the occupants may not hold legal title to these cabins and the lands on which they are located. The intent of this legislation clearly is to allow temporary use.

The Service, in compliance with the Act, is proposing regulations which grant use and occupancy privileges to individuals occupying cabins or other structures pursuant to a permit. The degree of privilege afforded an occupant is determined by the status of the Federal land at the time or original occupancy by the individual. Land status is determined by the public land orders that were in effect at the time of occupancy.

The permit system recognizes two categories of occupants. The first category is comprised of those persons who built or occupied cabins or other structures on unpatented Federal lands prior to December 18, 1973. The occupants may apply for a five (5) year renewable permit pursuant to § 13.16(c)(1).

These permits shall be renewed every five (5) years until the death of the last immediate family member of the claimant residing in the cabin or structure under permit. Renewal will occur unless the Superintendent determines, after notice and hearing and on the basis of substantial evidence, that the use under the permit is causing or may cause significant detriment to the principal purposes for which the park area was established. The Superintendent's decision may be appealed to the Director of the National Park Service, and ultimately to the Director, Office of Hearings and Appeals in the Department of the Interior.

The second category consists of those persons who built or occupied cabins or other structures between December 18, 1973, and December 1, 1978. These occupants may apply for a nontransferable, nonrenewable permit. The permit would be issued for a maximum term of one year.

Permits issued under this provision may be extended by the Superintendent for a period not to exceed one year for reasonable cause where extraordinary circumstances prevent vacating the cabin or structure and removal of all personal property within he original term of the permit.

Section 13.16(d) authorizes the Superintendent to issue a permit for the construction, reconstruction, temporary use, occupancy, and maintenance of new cabins or other structures when it is determined that the use is necessary to reasonably accommodate subsistence uses, or is otherwise authorized by law. This determination will be based on factors such as other public uses, public health and safety, and environmental and resource protection. This provision would implement sections 1315(d) and 1316 of the Alaska Lands Act, as well as providing for the reconstruction of cabins permitted under section 1303 of the Act.

The final provision of this proposed regulation provides for the renewal or continuation of valid leases or permits in effect as of December 2, 1980, for cabins, homesites, or similar structures on federally owned lands. These permits or leases shall be renewed unless a direct threat or a significant impairment to park values will occur. Any such findings must be issued by the Superintendent, following notice and an opportunity for the leaseholder or permittee to respond.

Camping and Picnicking: Section 13.17 on camping is necessary to provide relief from the Service's general regulations which permit camping only in designated areas. Section 13.17 would supersede 36 CFR 2.5, except § 2.5 (d) and (e). Camping within park areas would be permitted except at those times or locations temporarily or permanently closed or otherwise restricted by the Superintendent. The National Park Service would close an area to camping when the Superintendent determines that use of the area has resulted in resource damage or that other management considerations require closure as set forth in § 13.30. The Service does not, at this time, anticipate closing any areas to camping.

Current Service regulations prohibit picnicking within National Park System areas in Alaska except in those areas designated by the posting of appropriate signs (36 CFR 2.18). This regulation was designed to protect the natural scenery and reduce damage in highly visited park areas with automobile access. The National Park Service has concluded that because of the type and pattern of visitation in the park areas in Alaska, existing restrictions on picnicking are unnecessary. Therefore, § 13.17 would allow picnicking in all park areas and would supersede 36 CFR 2.18 in Alaska. The Superintendent would retain the authority to close areas to picnicking for reasons of public health and safety or other management considerations.

Weapons, Traps and Nets: Existing regulations (36 CFR 2.11) prohibit the carrying of firearms within park areas, unless such firearms are unloaded and cased or otherwise deactivated. Section 13.18 would permit the carrying of firearms within park areas in Alaska (except Klondike Gold Rush National Historical Park and Sitka National Historical Park), except as restricted by the Superintendent pursuant to Section 13.30. The Superintendent would retain the authority to prohibit or restrict the carrying of firearms in those areas and at those times when the potential for injury or loss of life inflicted by dangerous animals is negligible or where necessary to insure public safety. For example, restrictions may prohibit the carrying of unloaded firearms in areas of concentrated public use.

The proposed regulations distinguish between the carrying of firearms for purposes of personal protection and the carrying of other weapons. Only firearms may be carried by recreational users in park areas. The carrying of nets, traps and other weapons such as spear guns, slingshots and other implements designed to discharge missiles would be prohibited. However, local rural residents authorized to engage in subsistence uses would be permitted to use, possess and carry weapons, traps and nets in accordance with applicable State and Federal law.

In order to provide transient relief for persons crossing park areas, the possession of weapons, traps and nets within or upon a device or animal used for transportation would be permitted provided such implements are unloaded and cased or otherwise packed in such a way as to prevent their ready use while in park areas.

Preservation of Natural Features: Existing regulations governing public use and recreation in units of the National Park System prohibit the cutting of standing dead trees and restrict the collection of rocks and minerals (36 CFR 2.20). The National Park Service has determined that the use of dead or downed wood in fires within park areas in Alaska would not result in significant adverse impact. The Service also believes that the surface collection, by hand, of rocks and minerals would not be damaging to park resources in Alaska. Accordingly, § 13.19 would amend 36 CFR 2.20 to authorize the taking by hand for personal use of certain renewable resources and certain rocks and minerals. It is not the intent of this provision to allow the collection of semi-precious minerals gathered for trade or personal possession, but rather to allow the collection of individual rocks of a non-gem nature that have some souvenir value.

Therefore, the Service would be providing relief from the general regulations governing the use of park resources and plant materials and issuing guidelines for the consumption and use of certain renewable resources.

The Superintendent retains the authority to close an area to gathering or collecting where it is found that significant adverse impact on park resources, wildlife populations, subsistence uses, or visitor enjoyment of resources will result. This will be done through public notice.

Taking of Fish and Wildlife: The desire to continue sport fishing and hunting on all public lands in Alaska has been a consistent and dominant theme of the public participation process during the development and final passage of the Alaska National Interest Lands Conservation Act.

This Act provides for the continuation of sport fishing on all public lands administered by the National Park Service and for the continuation of sport hunting within the National Preserves.

Consistent with the Act, proposed § 13.22 permits the taking of fish and wildlife in accordance with applicable State and Federal laws, including 36 CFR 2.13, 7.23, 7.44(c) and 7.46(a). (Additional provisions on subsistence hunting, trapping, and fishing are provided in §§ 13.47 and 13.48.) By assimilating State law the National Park Service applies the same approach towards enforcement of fish and game laws that it uses everywhere else in the National Park System where sport hunting is allowed.

Congress was specific in its concern that "The intent is to allow individual Alaskans to continue to operate their own traplines within the preserves * * * it is clearly not the intent of this Act that preserves would be a place where more extensive forms of commercial trapping would be allowed where, for example, the trapping itself becomes a business with employees paid to support the

trapping operation." 126 *Congressional Record* H10542 (November 12, 1980). This section would satisfy that intent by prohibiting trapping operations in which trappers are employees of a commercial trapping enterprise, while allowing individual Alaskans to continue to operate their traplines within National Preserves.

This regulation would also comply with Section 205 of the Alaska National Interest Lands Conservation Act which allows the continuation of valid commercial fishing rights and privileges within Cape Krusenstern National Monument, the Malaspina Glacier Forelands area of Wrangell-St. Elias National Preserve and the Dry Bay area of Glacier Bay National Preserve.

Unattended and abandoned property: The purpose of proposed § 13.21 is to modify 36 CFR 2.1 which prohibits leaving personal property unattended longer than 24 hours without the prior permission of the Superintendent. The National Park Service has determined that this regulation is too restrictive to accommodate adequately subsistence and recreational uses within park areas in Alaska. The proposed regulations will allow personal property to be left unattended up to 12 months before it would be deemed abandoned and subject to impoundment. In effect, this accords personal property within park areas a 12-month presumption that it is only temporarily unattended. Personal property may be left unattended for periods of time in excess of twelve months with the prior permission of the Superintendent.

The National Park Service is concerned that personal property not be located or maintained in such a manner as to constitute a threat to public safety or detract from the experience in the park area. In addition, this section is intended to allow the Superintendent to specify the conditions under which personal property is unattended to insure, for example, that food and equipment caches or other unattended personal property does not attract or is not accessible to animals.

The section provides that the Superintendent may establish limits on the amount and type of personal property that may be left unattended. In addition, the Superintendent is authorized to designate locations where personal property may be left unattended for periods of time to be designated by the posting of appropriate signs or by designating on a map which shall be available for public inspection at the office of the Superintendent.

Additionally, § 13.12 provides that aircraft downed after December 2, 1980, must be removed pursuant to the conditions of a permit issued by the Superintendent unless he/she specifically waives this requirement. This proposed regulation is necessary to provide relief from 36 CFR 2.1, which prohibits leaving any vehicle or other property unattended for longer than 24 hours, and to preserve the values and experience of the park areas.

The National Park Service intends that each instance of a downed aircraft be treated on a case-by-case basis. Where the removal operation would present a significant risk to human life, result in extensive resource damage, or is otherwise impractical or impossible (including any situation in which removal of the aircraft would cause such a severe and significant hardship to the owner as to be economically prohibitive), waiver of removal requirements is appropriate. Factors such as the condition and size of the downed aircraft as well as the relief, elevation and vegetation of the surrounding terrain will be controlling in this analysis. In determining the times and means of removal to be specified in a permit when removal is required, these factors will be equally controlling.

Finally, this section would prohibit any attempt to salvage, remove, or possess a downed aircraft without a permit from the Superintendent. The intent here is to protect the aircraft and, most importantly its valuable and easily removed component parts, from being appropriated without authorization by the owner.

Subsistence and land use decisions: Section 13.22 would apply to all discretionary determinations by the National Park Service concerning whether to lease or otherwise permit the use or occupancy of park area lands where authorized by law. Alaska Lands Act Section 810. For example, the Superintendent must comply with the procedures of this section in determining whether to open routes or areas to off-road vehicles use under the provisions of § 13.13 of these regulations. In any such determination, § 13.22 requires the Alaska Regional Director or his/her designee to evaluate the effect on subsistence uses and needs (see Subpart B regulations), the availability of other lands to achieve the desired purposes, and other alternatives which would reduce or eliminate the use or occupancy of park area lands needed for subsistence purposes. Prior to any lease, permit, use, or occupancy which would significantly restrict subsistence uses, the National Park Service official must give notice to the appropriate State agency and local committees and regional councils; give notice to local residents of the affected area and hold an informal public hearing in the area; and determine that such a significant restriction of subsistence uses is necessary and consistent with sound management principles for park areas, that the proposed activity will involve the minimal amount of park area lands necessary to accomplish the desired purposes, and that reasonable steps will be taken to minimize adverse impacts upon subsistence uses and resources. If the National Park Service is required to prepare an environmental impact statement (EIS) pursuant to the National Environmental Policy Act for the proposed use or occupancy, § 13.22 states that the required notice, hearing, and findings shall be provided in the EIS process.

Section 810 of the Alaska Lands Act makes clear that the above provisions are not to be construed as prohibiting or impairing the ability of the State or any Native Corporation to make land selections and receive land conveyances pursuant to the Alaska Statehood Act or the Alaska Native Claims Settlement Act.

It should be noted that the requirements of Section 810 of the Alaska Lands Act, and § 13.22 of the regulations implementing it, are procedural in nature. In other words, as explained in the section's legislative history:

> Until the requirements of the section have been satisfied the proposed action may not proceed, but once the requirements of the section are satisfied and incorporated into existing land use planning processes the proposed action may proceed even though its effect may be adverse to subsistence uses. S. Rep. No. 96-413, *supra*, 234.

Closure Procedures: Section 13.30 authorizes the Superintendent to close an area or restrict an activity on an emergency, temporary or permanent basis. A determination to close an area or restrict an activity will be based on factors such as public health and safety, resource protection, and subsistence uses.

No closures are provided for by this regulation. It provides for notice and hearing for temporary and permanent closure, and also includes a provision for notice and hearing prior to all closures for snowmobile, aircraft or motorboat use, consistent with section 1110(a) of the Act.

This proposed rulemaking establishes time limits for emergency closures (60 days) and temporary closures (12 months) which cannot be extended.

A final provision of this proposed regulation requires the Superintendent to provide public notice prior to determining whether to open an area to

a public use or activity. Upon request, a hearing in the affected vicinity will also be held.

Permits: Section 13.31 was developed to consolidate procedures regarding the issuance and denial of permits. The procedures specify to whom an application for a permit must be submitted. The Superintendent is directed to acknowledge the application promptly, and to approve the permit, deny the permit, or request additional information within a reasonable period of time. The proposed regulations further establish and set forth an administrative appeals system to the NPS Alaska Regional Director. The appeals system was established with a view toward minimizing the requirements imposed upon the applicant during the appeal process, yet establishing a procedure that would fairly meet the concerns of the applicant. Any person whose permit application has been denied by the Superintendent has a right to appeal that denial to the Regional Director. Whether the appeal will include an opportuntity for an oral hearing must be determined by the Regional Director. The Regional Director *shall* provide a hearing opportunity if it is clear that the applicant would present new relevant information at such a hearing; in addition, the Regional Director *may* provide a hearing opportunity if he or she determines, as a matter of discretion, that such a hearing would be useful.

Section-by-Section Analysis: Subpart B—Subsistence

Subpart B of these proposed regulations would implement the authorization for subsistence uses in specified park areas contained in Title II of the Alaska Lands Act and the policies and procedures governing subsistence uses Contained in Title VIII of the Act.

These proposed regulations for subsistence are necessary for several reasons. First, they would relieve restrictions in the otherwise applicable general park regulations for uses and activities integral to the subsistence lifestyle. In certain cases, the Alaska Lands Act does not specifically relieve these restrictions *(e.g.,* use of nets, seines, traps, and spears in subsistence fishing; cutting of live standing timber for firewood and house logs; carrying of firearms); in other cases, the Act allows the uses, but the Park Service's general regulations appear to prohibit them on pain of criminal penalty. Second, the proposed regulations would implement certain critical provisions of the Alaska Lands Act concerning subsistence *(e.g.,* the subsistence priority, the closure standards and procedures for subsistence uses of fish and wildlife, subsistence and land use decisions), and would extend the principle of certain of these provisions to subjects not specifically mentioned by the Act *(e.g.,* closure standards and procedures for subsistence use of plants). In several cases, these proposed regulations would set up the administrative mechanisms for implementing the statutory provisions *(e.g.,* notice provision for closures). Third, these proposed regulations are necessary in order to establish methods for identifying genuine subsistence users (known as "local rural residents" in the regulations) who are authorized to hunt and trap in specified national parks and monuments, and for separating them from sport users who are prohibited from hunting and trapping in all parks and monuments. The National Park Service Organic Act (16 U.S.C. 1 *et seq.*), as well as Section 816 of the Alaska Lands Act, prohibit the taking of wildlife in parks and monuments except as specifically authorized. In the Alaska Lands Act, the authorization is limited to local residents engaged in subsistence uses in certain park areas. The Act does not, by its terms, prescribe the methods that the Park Service is to use to distinguish subsistence from sport users, though the legislative history for Title II of the Act indicates Congress' intent that methods like those in today's proposed regulations be established. S. Rep. No. 96–413, *supra,* 168–171; 126 Cong. Rec. H10540–41 (daily ed. Nov. 12, 1980). As described in detail below, the National Park Service has proposed the following two methods suggested by Congress to ensure that only "local rural residents" engage in subsistence uses in parks and monuments: (1) a system of "resident zones" and "subsistence permits" to identify local rural residents, and (2) a general prohibition on aircraft use for subsistence hunting, trapping, and fishing to separate the sport user from the subsistence user.

For the most part, the Subpart B regulations proposed today were proposed for comment as regulations for the Alaska National Monuments. 44 FR 37,731 (June 28, 1979). The National Park Service received extensive comment and has accordingly revised the proposed monument regulations in several places; moreover, the Park Service welcomes additional comment on these proposed regulations in the next forty-five days. It should also be noted that today's proposed regulations differ from the proposed monument regulations in certain respects because of the now applicable mandates of the Alaska Lands Act.

The proposed regulations on subsistence are not comprehensive. They would not provide for implementing certain provisions of Title VIII of the Alaska Lands Act that, in the Park Service's judgment, do not lend themselves to expeditious promulgation since they have not previously been the subject of notice and comment. Notable among these statutory provisions are the State regulation opportunity of Section 805(d) and the Federal monitoring requirement of Section 808. It should be emphasized that all parties must comply with these statutory provisions as long as they remain in effect; however, the National Park Service will consider specific regulations and policies as appropriate for implementing these provisions in the future.

Purpose and Policy

Purpose: Section 13.40(a) would establish that, consistent with proper management of fish and wildlife and the purposes for which the park areas were established, the purpose of Subpart B of the regulations is to provide the opportunity for local rural residents engaged in a subsistence way of life to do so pursuant to applicable State and Federal law. Alaska Lands Act, Sections 101(c); 802(1). The proposed Subpart B regulations are designed to accommodate and protect the unique subsistence relationship of certain local rural people in Alaska with their natural environment. Alaska Native people have been living a subsistence way of life for thousands of years, and certain non-Native rural residents have developed a subsistence way of life in more recent times. Many of these local rural residents have customarily and traditionally taken the renewable resources which are now within the boundaries of park areas. The resources satisfy both the physical needs of these local rural residents for food, shelter, fuel, clothing, tools, and transportation and their societal needs for cultural identity through skills, lore, and traditions. In light of the cultural and societal importance of the subsistence lifestyle in rural Alaska and its dependence on the renewable resources, therefore, Subpart B would implement the Congressional directive to continue the opportunity for subsistence uses within all national preserves and certain national parks and monuments by local rural residents who have (or are a member of a family which has) an established or historical pattern of subsistence uses within such units. As noted in both the Senate and House of Representatives, "[L]ocal rural residents

who maintain their primary, permanent residence within such units should have the opportunity to decide for themselves the course, pace, and extent, if any, of their own lifestyle and community evolution." S. Rep. No. 96–413, 96th Congress, 1st Sess. 169 (1979); 126 Cong. Rec. H 10,541 (daily ed. November 12, 1980).

Least Adverse Impact Possible. Toward the end of fulfilling the aforementioned purpose of the subsistence regulations, proposed § 13.40(b)–(d) sets forth basic policies which the Alaska Lands Act adopted to guide the activities of the administering agencies. Alaska Lands Act, Sections 802 (1), (2); 804. First, consistent with sound management principles and the conservation of healthy populations of fish and wildlife, the utilization of park areas is to cause the least adverse impact possible on local rural residents who depend upon subsistence uses of the resources of the public lands in Alaska for their economic and physical well-being and cultural vitality. This statutory policy would be implemented throughout the proposed regulations, particularly in the procedures mandated by § 13.22, the subsistence priority established by § 13.40(c)–(d), and the limitations on closure of §§ 13.46, 13.49, and 13.50.

Subsistence Priority. The second policy, articulated in § 13.40(c), would establish nonwasteful subsistence uses of fish, wildlife, and other renewable resources by local rural residents as the priority consumptive uses over any other consumptive uses permitted within park areas. Alaska Lands Act, section 802(2). This statutory policy would be implemented primarily, with respect to fish and wildlife resources, through the subsistence priority of § 13.40(d). *Id.*, section 804. According to the subsistence priority, whenever a park area's fish and wildlife resources are not sufficiently plentiful for taking by all consumptive users, the resources must be allocated in accordance with the three criteria of the subsistence priority: customary and direct dependence upon the resource as the mainstay of one's livelihood, local residency, and availability of alternative resources. For example, if consumptive uses must be restricted to assure the continued viability of the resource populations (including the conservation of healthy populations in preserves, and healthy and natural populations in parks and monuments) or to assure local rural residents the continued opportunity to engage in subsistence uses, consumptive uses would first be restricted to local rural residents engaged in subsistence uses and then, if further restrictions were necessary, the resources would be allocated among the local rural residents. Ultimately, subsistence uses would have to be limited to local rural residents who have the most customary and direct dependence on the resources as the mainstay of their livelihoods and who have the least access to alternative resources.

For several reasons, today's proposed regulations merely repeat the three criteria of the subsistence priority set forth in section 804 of the Alaska Lands Act. The National Park Service deemed further interpretation of these three difficult and complex criteria inappropriate at this time without extensive prior notice, comment, and research. Furthermore, the National Park Service anticipates State regulation implementing the subsistence priority criteria and looks forward to local input on the criteria from the local advisory committees and regional advisory councils of section 805 of the Alaska Lands Act and the park and park monument commissions of section 808.

Limitations. In addition to establishing the purpose and policies of the Subpart B regulations, proposed § 13.40 also establishes the limitations of the purpose and policies. According to § 13.40(a), the subsistence opportunity may only be provided in a manner and degree consistent with the management of fish and wildlife in accordance with recognized scientific principles and with the purposes for which each park area was established, designated, or expanded by the Alaska Lands Act. According to § 13.40(b), the utilization of the public lands is to cause the least adverse impact possible on local rural residents, but this policy is limited by the requirement that it be consistent with sound management principles and the conservation of healthy populations of fish and wildlife. And § 13.40(c) establishes the basic limitation of all the provisions of the proposed Subpart B regulations: subsistence uses of fish and wildlife populations must be appropriately regulated so as to assure conservation of healthy populations within national preserves, and conservation of natural and healthy populations within national parks and monuments. Congress provided the following guidelines on the implementation of this concept:

> The Committee intends the phrase "the conservation of healthy populations of fish and wildlife" to mean the maintenance of fish and wildlife resources and their habitats in a condition which assures stable and continuing natural populations and species mix of plants and animals in relation to their ecosystems, including recognition that local rural residents engaged in subsistence uses may be a natural part of that ecosystem; minimizes the likelihood of irreversible or long-term adverse effects upon such populations and species; and ensures maximum practicable diversity of options for the future. The greater the ignorance of the resource parameters, particularly of the ability and capacity of a population or species to respond to changes in its ecosystem, the greater the safety factor must be. Thus, in order to insure that subsistence uses are compatible with the maintenance of healthy populations of fish and wildlife, it must be recognized that the likelihood of irreversible or long-term adverse effects to a population or species must be proportional to the magnitude of the risks caused by a proposed use of such population or species.
>
> The Committee recognizes that the management policies and legal authorities of the National Park System and the National Wildlife Refuge System may require different interpretations and application of the "healthy population" concept consistent with the management objectives of each system. Accordingly, the Committee recognizes that the policies and legal authorities of the managing agencies will determine the nature and degree of management programs affecting ecological relationships, population dynamics, and the manipulation of the components of the ecosystem.
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> The reference to "natural and healthy populations" with respect to national parks and monuments recognizes that the management policies of those units may entail methods of resource and habitat protection different from methods appropriate for other types of conservation system units. S. Rep. No. 96–413, *supra*, 233, 235.
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> In authorizing subsistence uses within National Parks, Monuments, Preserves, and National Recreational Areas, it is the intent of the Committee that certain traditional National Park Service management values be maintained. It is contrary to the National Park Service concept to manipulate habitat or populations to achieve maximum utilization of natural resources. Rather, the National Park System concept requires implementation of management policies which strive to maintain the natural abundance, behavior, diversity, and ecological integrity of native animals as part of their ecosystem, and the Committee intends that that concept be maintained. The National Park Service recognizes, and the Committee agrees, that subsistence uses by local rural residents have been, and are now, a natural part of the ecosystem serving as a primary consumer in the natural food chain. The Committee expects the National Park Service to take appropriate steps when necessary to insure that consumptive uses of fish and wildlife populations within National Park Service units not be allowed to adversely disrupt the natural balance which has been maintained for thousands of years. Accordingly, the Committee does not expect the National Park Service to engage in habitat manipulation or control of other species for the purpose of

maintaining subsistence uses within National Park System units. *Id.* at 171.

Applicability

The Alaska Lands Act mandates that subsistence uses by local rural residents be allowed in all national preserves in Alaska and, where specifically permitted by the Alaska Lands Act, in national parks and monuments in Alaska. Alaska Lands Act, section 203. Accordingly, proposed § 13.41, the applicability section, states that local rural residents may engage in subsistence uses pursuant to the regulations in Subpart B(1) in national preserves (Alaska Lands Act, section 203); (2) throughout Cape Krusenstern National Monument and Kobuk Valley National Park (*id.*, section 201 (3) and (6)), and (3) where such uses are traditional (as may be further designated for each park or monument in Subpart C) in Aniakchak National Monument, Gates of the Arctic National Park, Lake Clark National Park, Wrangell-St. Elias National Park, and the December 2, 1980, addition to the newly named Denali National Park (*id.*, sections 201 (1), (4), (7), (9); 202(3)).

With respect to the last category of park areas—Aniakchak, Gates of the Arctic, Lake Clark, Wrangell-St. Elias, and the Denali Addition—the statute offers no further specifics as to the geographical areas where subsistence uses are traditional. The legislative history offers some guidance. For Gates of the Arctic, for example, the Senate report states as follows:

> * * * [S]ubsistence uses of some areas of the park may be essential periodically or continuously for the continued survival of the local people. The Committee * * * feels * * * that the subsistence patterns of the park are well known and can be identified. The Committee noted that the following drainages within the park have apparently been used for subsistence hunting: Ettivluk River, Outwash Creek, Kurupa River, Oolamnagavik River, Killik River (and all its tributaries), Okpikruat River, Alapah Creek, Kayak Creek, Erratic Creek, Nanushuk River, Kubauman Creek, Anaktuvuk River, Ernie Creek and the Itkillik River. It is not the intent of the committee that these drainages be considered the only places where subsistence can occur.
>
> But it is the Committee's intent to restrict subsistence hunting in the park to traditional use areas . . . S. Rep. No. 96–413, *supra*, 147; *see also*, 126 Cong. Rec. H10535 (daily ed. Nov. 12, 1980).

For the other specified areas, the legislative history indicates, at most, that subsistence uses may occur "where such uses have been traditional," "to the extent they [sic] now take place," "where they now occur," "at their present level." 126 Cong. Rec. H 10533, 10538, 10540. Since the legislative guidance on where subsistence uses are traditional in the five specified areas is incomplete, the National Park Service has decided not to propose traditional "subsistence hunting zones" for these five areas at this time. Rather, the Park Service looks forward to developing additional information and to receiving public comment on this issue through research, further rulemaking endeavors, and advice form the local committees and regional councils of Section 805 of the Alaska Lands Act and particularly from the park and monument commissions of Section 808. In the meantime, the National Park Service believes that local rural residents should comply with the Congressional intent of § 13.41(c) of the proposed regulations by not hunting in any areas of Aniakchak National Monument, Gates of the Arctic National Park, Lake Clark National Park, Wrangell-St. Elias National Park, or the Denali Park addition where subsistence hunting has not, in recent history, occurred.

Definitions

Local rural resident and resident zones. Throughout the proposed regulations, the National Park Service identifies those people who may engage in subsistence uses where authorized in park areas as "local rural residents." This term derives from the term "local residents" in Title II of the Alaska Lands Act and the term "rural Alaska residents" in the definition of "subsistence uses" in Title VIII. Title II authorize the opportunity for continued "subsistence uses by *local residents* * * * in national preserves and, where specifically permitted by this Act, in national monuments and parks." Alaska Lands Act, section 203 (emphasis added); *see, also,* sections201(1), (3), (4), (6), (7), (9); 202(3). The relationship between this language in Title II and Title VIII was described as follows in the Congressinal Record:

> Since the definition of "subsistence uses" in section 803 limits such uses to "rural Alaska residents," a reading of Title VIII and Title II * * * together make it clear that the policy throughout is that only local rural residents are by statute provided the opportunity to engage in subsistence uses in areas of the National Park System * * *. 126 Congressional Record S15129 (daily ed. December 1, 1980).

Section 13.42(a) would define "local rural residents" as persons who either live in designated "resident zones" *(see* § 13.43 and its explanation, below) or hold a "subsistence permit" *(see* § 13.44 and its explanation, below). In brief, "resident zones" would be designated, and "subsistence permits" would be issued, on the basis of customary and traditional utilization of park area lands for subsistence uses without use of aircraft as a means of access. In the case of "resident zones," the National Park Service would apply this criterion to "preponderant concentrations" of people based on available information and research; in the case of "subsistence permits" for people who live outside resident zones, the Superintendent would apply this criterion to individual applicants.

The proposed definition of "local rural resident" makes clear that, for a person to qualify by virtue of residence in a resident zone, that person must have his or her primary, permanent home within the resident zone, and whenever absent from this home, have the intention of returning to it. The National Park Service would examine factors such as tax returns, hunting, fishing, and driver's licenses, voter registration, and any other evidence appropriate to establish the location of a person's primary, permanent home. In practice, this residence concept would not exclude a person from qualifying as a local rural resident merely because of a temporary absence for military duty or limited-term employment, for example. This concept would not impose a duration residency requirement.

Subsistence uses. The proposed definition of "subsistence uses" tracks the language of section 803 of the Alaska Lands Act with one modification: as explained below, today's proposed definition offers some guidance on the meaning of the term "customary trade," which the statute leaves undefined.

The term "subsistence uses" means the customary and traditional uses by rural Alaska residents of fish, wildlife, and other wild, renewable resources for direct personal or family consumption as food, shelter, fuel, clothing, tools, or transportation; for the making and selling of handicraft articles from the nonedible byproducts of fish and wildlife resources taken for personal or family consumption; for barter, or sharing for personal or family comumption; and for customary trade. This proposed definition uses several terms which require further explanation.

To begin with, the finition uses the phrase "customary and traditional" to modify the term "uses" in order to emphasize that Native and non-Native subsistence uses

> have played a long established and important role in the economy and culture of the community and * * * [that] such uses incorporate beliefs and customs which have been handed down by word of mouth or example from generation to generation. S.

Rep. No. 96-413, *supra*, 209; H. Rep. No. 96-97, 96th Congress, 1st Session 280 (1979).

Next, the definition limits subsistence uses to uses "by rural Alaska residents." Clearly, this limitation excludes residents of Ketchikan, Juneau, Anchorage, and Fairbanks from engaging in authorized "subsistence uses." *See* S. Rep. No. 96-413, *supra*, 233. On the other hand, if they are included within a "resident zone" or obtain a "subsistence permit," residents of "rural" Alaska—including communities such as Dillingham, Bethel, Nome, Kotzebue, Barrow, and other villages throughout the State (as long as such communities remain "rural")—may engage in "subsistence uses." *Id.* It is important to emphasize that, in park areas, only "local rural residents" who permanently reside in a resident zone or have a subsistence permit may engage in subsistence uses. *See* 126 Congressional Record S 15129 (daily ed. December 1, 1980).

The term "family" is defined to include any person living within a local rural resident's household on a permanent basis as well as those persons living outside the household who are related by blood, marriage, or adoption (legal or equitable). The definition of "family" recognizes extended family patterns common in the subsistence culture of Alaska. This definition of "family" is to be distinguished from the more limited definition used in § 13.44 on subsistence permits.

The definition of "subsistence uses" includes the making and selling of handicraft articles from the nonedible byproducts only of fish and wildlife resources taken for personal or family consumption. Accordingly, the definition covers such commercial activities only if the edible portions of the resource have been used for personal or family consumption. The "subsistence uses" definition also includes "barter" for personal or family consumption in recognition that a genuine subsistence lifestyle includes certain foodstuffs and other items which may be available through a non-cash exchange. Thus, barter of subsistence resources of a limited and noncommercial nature falls within the meaning of "subsistence uses."

Finally, the definition of "customary trade" proposed today recognizes that a genuine subsistence lifestyle may also include limited involvement in the cash economy through the exchange of furs. Trapping furbearers is an integral and longstanding part of the subsistence lifestyle in many regions of Alaska. While some of the furs are utilized for personal or family use, it is recognized that a portion of the furs ultimately become items for sale on the commercial market. The cash remuneration, in turn, helps to provide the basic tools and supplies associated with trapping and the subsistence lifestyle of which trapping is a part. For example, local rural residents may engage in trapping to obtain the cash required for necessary store-bought supplies such as gasoline and ammunition. The allowance of cash interchange related to trapping is intended to provide continuity to the traditional and customary harvest of furbearers by those who are authorized to engage in subsistence uses within parks and monuments.

It should be recognized, however, that the definition of "customary trade" was intended by Congress to be narrow:

> The Committee does not intend that "customary trade" be construed to permit the establishment of significant commercial enterprises under the guise of "subsistence uses." The Committee expects the Secretary and the State to closely monitor the "customary trade" component of the definition and promulgate regulations consistent with the intent of the subsistence title. S. Rep. No. 96-413, *supra*, 234.

Accordingly, this provision is not intended to allow trapping within parks and monuments to be or become a solely or predominantly commercial enterprise beyond its traditional role as part of the subsistence regimen.

Today's proposed definition of "customary trade" is the same as the definition proposed by the National Park Service in the regulations for the Alaska National Monuments (44 FR 37731 (June 28, 1979)). Most commentors on the definition supported it since, as one commentor wrote, "Nowhere in the Alaska bush today does anyone live without some items purchased from the 'outside,' and trapping is often the only way to earn the necessary cash." The Alaska Federation of Natives (AFN) suggested that the definition be expanded to include, in addition to the exchange of furs for cash, the exchange of other fish, wildlife, and plant resources for cash as may be specifically permitted for particular park areas by Subpart C regulations. AFN did not, however, propose any specific additions to the customary trade definition for particular park areas. Today's proposed interim regulations do not adopt AFN's suggested expansion. Information currently available to the National Park Service reveals no basis or need for such expansion, and the Alaska Lands Act does not invite new commercial enterprises under the guise of "subsistence uses." In fact, it should be emphasized that customary trade may only derive from "customary and traditional" uses of resources under the definition of "subsistence uses." If new information is developed which shows that the definition of "customary trade" should be expanded through specific additions in Subpart C, however, the Service can undertake those additions at that time.

Determination of Resident Zones: By definition, the "resident zone" for each park area would encompass the area and communities within the park area boundaries as well as certain areas and communities just outside the boundaries where, in the judgment of the National Park Service, a genuine subsistence lifestyle predominates. Section 13.43(a). The areas and communities outside the boundaries for each new park area, proposed in Subpart C of the regulations, are as follows:

(a) Aniachak National Monument and Preserve: Chignik, Chignik Lagoon (Section 13.60(a)(1));

(b) Bering Land Bridge National Preserve: Buckland, Deering, Shishmaref, Wales (Section 13.61(a)(1));

(c) Cape Krusenstern National Monument: Kivalina, Kotzebue, Noatak (Section 13.62(a)(1));

(d) Denali National Park and Preserve: Cantwell, Minchumina, Telida (Section 13.63(a)(1));

(e) Gates of the Arctic National Park and Preserve: Alatna, Allakaket, Ambler, Anaktuvuk, Bettles, Kobuk, Shungnak (Section 13.64(a)(1));

(f) Glacier Bay National Park and Preseve: none (Section 13.65);

(g) Katmai National Park and Preserve: Egigik, Igiuigig, Kakhonak, Levelock (Section 13.66(a)(1));

(h) Kenai Fjords National Park: subsistence uses prohibited (section 13.67(a));

(i) Kobuk Valley National Park: Ambler, Kiana, Kobuk, Noorvik Shungnak (Section 13.68(a)(1));

(j) Lake Clark National Park and Preserve: Nondalton, Port Alsworth (Section 13.69(a)(1));

(k) Noatak National Preserve: Kivalina, Kotzebue, Noatak (Section 13.60(a)(1));

(l) Wrangell-St. Elias National Park and Preserve: Chistochina, Chitina, Copper Center, Gakona, Gulkana, McCarthy, Mentasta Lake, Nabesna, Slana, Yakutat (Section 13.61(a)(1));

(m) Yukon Charley National Preserve: Circle, Eagle, Eagle Village (Section 13.72(a)(1));

Under the proposed regulations, anyone who permanently resides within the park area boundaries or in one of the communities listed above may engage in subsistence uses in the appropriate park area. In other words, persons who live in the resident zone for Kobuk Valley National Park, for example, may engage in subsistence uses only in that park area (unless such person's community is

also listed in the resident zone for another park area—e.g., Shungnak is listed for both Kobuk Valley National Park and Gates of the Artic National Park and Preserve).

In determing the proposed list of communities outside the boundaries for each park area, the National Park Service reviewed several documents, including the studies of subsistence communities prepared for the Park Service, the 1974 Environmental Impact Statement on the Alaska National Interest Lands, and the 1978 Environmental Supplement on Alternative Administrative Actions. The National Park Service also reviewed information from several of its employees who have studied the subsistence lifestyle throughout the State and, in some cases, have lived "in the bush" for years. The communities proposed in Subpart C derive primarily from the subsistence field research conducted by independent, qualified investigators on contract to the Park Service and from observations by NPS planning and field personnel. The resultant list is meant to include communities where most, and in some cases all, of the inhabitants qualify as local rural residents who, without using aircraft as a means of access for purposes of taking fish and wildlife for subsistence uses, have customarily and traditionally engaged in subsistence within the park area. It should be noted that a community or area may be added to a resident zone, or deleted from a resident zone, as circumstances change or information is developed that indicates that such community does or does not have the concentrations of local rural residents necessary for inclusion in the resident zone. Section 13.43(b).

The list of communities included in proposed Subpart C today is the same as the list proposed in the regulations for the Alaska National Monuments (44 FR 37731 (June 28, 1979)) with the addition of Cantwell to the resident zone for Denali National Park and Preserve. Although several commentors suggested additional communities, *e.g.*, Glenallen and King Salmon, the information available to the National Park Service at this time does not support the suggestion that these communities are predominantly composed of subsistence users who have hunted in the park areas without using an aircraft for access. The National Park Service thinks that it would be undesirable to add any other communities to the list at this time without further supporting information, but the Park Service recognizes that additional information may be developed through future research and through consultation with the State Department of Fish and Game Subsistence Division, local communities, regional councils, and park and monument commissions (Alaska Lands Act, Sections 805 and 808).

The National Park Service recognizes that certain communities outside the proposed resident zones contain persons who can qualify as local rural residents. Such communities include King Salmon, Naknek, and South Naknek for Katmai National Preserve; Glenallen for Wrangell-St. Elias National Park and Preserve; and Yakutat for Glacier Bay National Preserve (Yakutat is within the resident zone for Wrangell-St. Elias National Park and Preserve). For any communities or areas not included in a resident zone, the National Park Service encourages the residents who have customarily and traditionally used park area resources without using an aircraft for access to apply for a "subsistence permit."

Subsistence Permits and Application Procedures for Subsistence Permits: Under these proposed regulations, any person who permanently resides outside a resident zone must obtain a "subsistence permit" in order to engage in subsistence uses of park area resources. The availability of subsistence permits assures that subsistence users whose communities are not included in a resident zone for whatever reason may nevertheless have the opportunity to engage in subsistence uses in park areas. Section 13.44. The National Park Service has taken efforts to eliminate all unnecessary burdens from the application process while still providing procedural protections to assure fair and reasonable decisionmaking on the permit applications. Section 13.51.

Under the proposed regulations, the application process at the Superintendent's level is simple. The applicant must demonstrate to the Superintendent, preferably on a written form but otherwise by oral presentation, either of the following:

(1) he or she has (or is a member of a family which has) customarily and traditionally engaged in subsistence uses within a park area without using aircraft as a means of access for purposes of taking fish or wildlife (Section 13.44(a)(1)); or

(2) he or she qualifies as a "local rural resident" who may engage in subsistence uses in another park area, and his or her subsistence lifestyle—as supported by available research—involves a pattern of subsistence uses between the other park area and the park area for which the applicant now seeks a permit (Section 13.44(a)(2)).

Proposed Section 13.44(c) makes clear that, for purposes of § 13.44(a)(1), the term "family" is limited to persons whose primary, permanent residence is in rural Alaska near the park areas. Unlike the definition of "family" in § 13.42(c) ("subsistence uses" definition), family members who live in cities or far from the park area would not qualify for the benefits of § 13.44.

The National Park Service believes that the Superintendent will be able to issue subsistence permits quickly and routinely in cases of genuine subsistence users. Proposed § 13.51(a) requires the Superintendent to grant or deny the application in a timely manner not to exceed sixty days from receipt of the completed application unless, in extraordinary cases, the Superintendent can show good cause for failing to meet the time deadline. The Superintendent shall explain any denial in writing and promptly forward a copy to the applicant.

Should the Superintendent deny the permit, the applicant who wishes to have his or her application reconsidered must so inform the Alaska Regional Director by letter, telephone, or any other means of communication within 60 days (except for good cause shown) of the Superintendent's issuing the denial. The permit applicant shall present the Alaska Regional Director with (1) any additional information demonstrating that the applicant qualifies for a permit, (2) the basis for the applicant's disagreement with the Superintendent's decision, and (3) any request for an informal hearing accompanied by a description of the new information to be presented and a listing of any persons to be questioned at the hearing. The Alaska Regional Director shall grant a hearing if it is clear that the applicant would present relevent information which is substantially distinguishable from or supplementary to the information presented to the Superintendent.

To accommodate the permit applicants who would be inconvenienced by travelling to Anchorage for a hearing, the Alaska Regional Director will periodically "ride circuit," scheduling hearings throughout the State.

The Alaska Regional Director shall decide to affirm, reverse or modify the Superintendent's denial within a reasonable period of time, shall explain his decision in writing, and shall promptly forward a copy to the applicant. This decision shall constitute final action by the Department of the Interior. In accordance with applicable

law, the permit applicant may, of course, seek judicial review of a denial on reconsideration.

The proposed regulations published today recognize that it may take several months to initiate the subsistence permit system envisioned by §§ 13.44 and 13.51 of the regulations, and that subsistence users who do not live in resident zones but nevertheless depend on park area resources must be able to engage in subsistence uses in park areas in the meantime. Consequently, §13.44(b) would allow such persons who would otherwise qualify for a subsistence permit (*see* § 13.44(a)) to engage in subsistence uses in a park area without a permit until July 15, 1981. However, it should be emphasized that such persons should begin the application process for a subsistence permit as soon as possible after these proposed regulations are finalized since a subsistence permit will be required as of July 15, 1981.

Prohibition of Aircraft Use: Section 13.45 of the Subpart B regulations generally would prohibit the use of aircraft for access to or from lands and waters within a national park or monument for purposes of taking fish or wildlife for subsistence uses within the national park or monument.

The Subpart B regulations would not prohibit use of aircraft for subsistence uses in national preserves.

It is the National Park Service's determination, supported by numerous comments and by available research on the subsistence lifestyle, that local rural residents who have customarily and traditionally engaged in subsistence uses of park and monument resources do not, in the most cases, use aircraft for access for subsistence hunting, trapping, and fishing. What cash these local rural residents acquire is used to purchase necessities not otherwise supplied by subsistence uses. Certainly, as a general rule, the expense of aircraft use greatly exceeds the ability of the local rural resident to pay for it. On the other hand, aircraft is commonly used by sport hunters who are now prohibited from hunting in park and monument areas. In this respect, the prohibition of aircraft use for subsistence activities reinforces the ban on sport hunting in park and monument areas and assists the National Park Service in distinguishing sport from subsistence hunters.

The proposed Subpart C regulations for individual park areas, however, would afford the Park Service flexibility to make exceptions to the general prohibition. For any park or monument, the Park Service may designate "exempted communities" whose local rural residents may apply for a permit to use aircraft for subsistence hunting, trapping, and fishing (Section 13.45(b)). The Superintendent will grant the permit only in extraordinary cases where, in the Superintendent's determination, no reasonable alternative to aircraft use exists. At this time, the National Park Service is proposing to designate two communities as "exempted communities," *i.e.*, Anaktuvuk in Gates of the Arctic National Park and Yakutat in Wrangell-St. Elias National Park, whose local rural residents presently rely on aircraft for access to their customary and traditional areas of harvest in the park. The people of Anaktuvuk, isolated, remote, surrounded by difficult terrain, are far removed from the wildlife populations whose harvest sustains them; moreover, they do not have adequate and available alternative resources populations for sustenance. Similarly, residents of Yakutat have customarily used aircraft for access to the Malaspina Forelands in the Wrangell-St. Elias area for subsistence purposes, since traveling by boat, the only other possible means of transportation, can be extremely dangerous due to the violent storms that frequent the Gulf of Alaska, S. Rep. 96–413, *supra*, 169; 126 Cong. Rec. H10541 (daily ed. Nov. 12, 1980). As Congress noted:

> Although there may be similar situations in other areas of Alaska in which aircraft use for subsistence hunting may be appropriate and should be permitted to continue, the Committee believes that these types of situations are the exception rather than the rule and that only rarely should aircraft use for subsistence hunting purposes be permitted within national parks and monuments. It is not the intent of the Committee to invite additional aircraft use. S. Rep. No. 96–413, *supra*, 169; *see, also*, 126 Cong. Rec. H10541 ("It is not the intent to invite additional aircraft use, or new or expanded uses in parks and monuments where such uses have not traditionally and regularly occurred.")

In response to comments received on the proposed regulations for the Alaska National Monuments, moreover, the National Park Service has included in § 13.45(b)(2) of these proposed regulations the opportunity for any local rural resident aggrieved by the aircraft prohibition to seek an individual exception to the prohibition on aircraft pursuant to the procedures of § 13.51. It bears noting that this opportunity would be available only to local rural residents, *i.e.*, persons who live in a resident zone or have a subsistence permit. The Superintendent may grant the exception if he or she determines that the applicant has demonstrated an extraordinary situation where no reasonable alternative to aircraft use exists because of the location of the subsistence resources depended upon and the difficulty of surface transportation to these resources, or other emergency situation (*e.g.*, unusual and unforeseeable acts of nature).

The permits issued pursuant to proposed § 13.45(b)(1) and (2) may contain terms and conditions which may limit the aircraft use as to area, time of operation, type of aircraft, duration of the permit, and any other factor necessary to restrict the permit to the limited and exceptional purposes it is meant to fulfull.

Section 13.45(c) would make clear that the prohibition on aircraft use is limited. It does not extend to any legal activity other than access for purposes of subsistence hunting, trapping, and fishing. Thus, a local rule resident may, for example, use aircraft in parks and monuments to carry supplies to a cabin, to visit another village, or even to gather berries. Although the National Park Service believes that such use of aircraft in the subsistence culture is rare for the reasons stated above, the Park Service does not have the same enforcement concerns for these activities as it does for the taking of fish and wildlife.

Use of Snowmobiles, Motorboats, and Other Means of Surface Transportation: In furtherance of Section 811 of the Alaska Lands Act, § 13.46 would provide local rural residents engaged in subsistence uses reasonable access to the subsistance resources on which they depend. This proposed regulation liberalizes the provisions of Subpart A on snowmobiles, motorboats, and certain off-road vehicles in the case of local rural residents who are engaged in subsistence hunting, fishing, and gathering activities within the park areas. All routes and areas are open to subsistence use of these vehicles except as specifically restricted or closed. The Superintendent will implement such closures or restrictions on the basis of criteria which are more limited than the criteria for closure to general recreational use. Basically, in order to impose a restriction, the Superintendent must determine that the use in question is causing or may cause an adverse impact on public health or safety, resource protection, protection of historic or scientific values, subsistence uses, conservation of endangered or threatened species, or the purposes and values for which the park area was established. The Superintendent will arrange notice and public participation concerning closure proposals in order to involve those affected to the fullest extent possible in the decisionmaking.

It should be noted that the types of access vehicles covered by proposed § 13.46 include "other means of surface

transportation traditionally employed by local rural residents engaged in subsistence uses." The limitations of this phrase, if any, will be addressed as appropriate in future rulemaking efforts.

Under proposed § 13.46, any person operating motorboats, snowmobiles, and other means of surface transportation must comply with applicable State and Federal laws governing such operation and must avoid causing waste or damage to fish, wildlife, terrain, or other values of the park area. In addition, consistent with State law, the vehicle operator may not use a motorized vehicle so as to herd, harass, haze, or drive wildlife for hunting or any other purpose.

At all times when not engaged in subsistence uses, local rural residents would be able to use snowmobiles, motorboats, and other means of surface transporation in accordance with the appropriate Subpart A regulations. For example, local rural residents engaged in recreational uses of snowmobiles, motorboats, and other means of surface transportation would comply with the provisions of §§ 13.10, 13.11, and 13.13, respectively, and local rural residents seeking otherwise-closed access to inholdings or temporary access would comply with the provisions of §§ 13.14 and 13.15, respectively.

Subsistence Fishing: Local rural residents may, of course, engage in fishing in park areas in compliance with applicable State and Federal law. In addition, in § 13.47 of the regulations, the National Park Service proposes to relax its general public regulations in the case of local rural residents in order to allow the customary and traditional use in park areas of nets, seines, traps, or spears where permitted by State law. Section 13.50, explained below, would govern closures to fishing for subsistence purposes.

Subsistence Hunting and Trapping: Although all national parks and monuments in Alaska are closed to sport hunting and to trapping, many are open, in whole or part, to hunting and trapping by local rural residents engaged in subsistence uses. Alaska Lands Act, sections 816; 201(1), (3), (4), (6), (7), (9); 202(3); *see also,* § 13.41 (Applicability). Therefore, only local rural residents may engage in hunting and trapping where authorized in national parks and monuments. Of course, national preserves are open to both sport and subsistence hunting as well as trapping, unless the Superintendent has closed a preserve area to sport taking pursuant to proposed § 13.30 of Subpart A or to subsistence taking pursuant to proposed § 13.50 of Subpart B. As with sport users, local rural residents engaged in subsistence hunting or trapping must comply with applicable State law governing hunting and trapping, *e.g.,* bag limits, safety requirements, seasons and hours (proposed § 13.48). With respect to trapline cabins, § 13.16(d) would provide for their construction, reconstruction, temporary use, occupancy, and maintenance pursuant to a permit. In addition, § 13.16(c) and (e) would provide for existing cabin use and occupancy by persons with a possessory interest or right of occupancy in the cabin.

Subsistence Use of Timber and Plant Material: Section 13.49(a) would relax the general public use regulations by allowing local rural residents to obtain a permit to cut standing live timber for subsistence needs such as shelter or fuel. Before issuing a permit, the Superintendent must determine that the proposed cutting is compatible with the purposes for which the park area was established. Furthermore, the Superintendent will include in the permit any stipulations deemed necessary to protect the resources of the park area.

Section 13.49(b) would make clear that local rural residents do not need a permit to gather plant materials for subsistence uses, or to gather dead or downed timber for firewood for personal, not commercial, use.

Proposed § 13.49(c) sets forth the standards and procedures for closing a park area to the subsistence uses of a particular plant population. Although not required by the Alaska Lands Act, the National Park Service is proposing to apply similar closure provisions for subsistence uses of plants as the Act requires for subsistence uses of fish and wildlife.

As discussed below in the latter context, the closure standards are strict, and the closure procedures involve significant public participation in order to protect the affected local rural residents who depend on the resources.

Closure to Subsistence Uses of Fish and Wildlife: According to Section 816 of the Alaska Lands Act and § 13.50 of the proposed Subpart B regulations, the Superintendent of each park area has the power to close or restrict any part or all of a park area to subsistence uses of a particular fish or wildlife population only temporarily and only if necessary "for reasons of public safety, administration, or to assure the continued viability of such population," To implement Congress' intent, proposed § 13.50 provides protective standards, time limitations, and notice requirements for closures to subsistence taking of fish and wildlife.

With respect to the standards for closure, the Act lists only three: public safety, administration, and for assurance of the continued viability of a fish or wildlife population. No closure for purposes of administration, moreover, may be made prior to notice and hearing in the vicinity of the closure. The public safety standard clearly allows the Superintentent to act in situations which threaten public health and welfare. For example, the Superintendent may prohibit subsistence hunting and trapping for reasons of public safety in specified areas surrounding a public campground, roadway, or hiking trail. The fish or wildlife viability standard allows the Superintendent to act for purposes of maintaining resource populations upon which local rural residents rely at levels adequately above the threatened level. As Congress stated, "it is not the intent * * * that actual depletion of a population or an emergency exist before a closure under this section may be justified." S. Rep. 96-413, *supra,* 278; H. Rep. No. 96-97, *supra,* 289. Moreover, as stated in Section 815 of the Alaska Lands Act and Section 13.40(e) of the proposed regulations and explained previously, the subsistence provisions are not to be construed as permitting a level of subsistence use of fish and wildlife within national preserves to be inconsistent with the conservation of healthy populations, and within national parks and monuments to be inconsistent with the conservation of natural and healthy populations, of fish and wildlife. The administration standard is potentially the broadest of the three closure standards, though "recognition of the importance of subsistence activities to most [local] rural residents requires that this authority be utilized narrowly and with consistent restraint." *Id.* Guided by this intent, the Superintendent can invoke the administration standard to protect the purposes and values of the park areas and otherwise to manage the park areas prudently. The limitation of Section 815 of the Act and § 13.40(e) of the proposed regulations would also be relevant to this closure standard.

Closures shall last only so long as reasonably necessary to achieve the purposes of the closure. In the case of closing an area around a hiking trail for reasons of public safety, for example, the closure

should remain in effect only so long as reasonably necessary to provide for the public safety during normal periods of consistent public use, and only apply to the minimum portion of the public lands reasonably necessary to achieve this

purposes. S. Rep. No. 96-413, *supra*, 277-78; H. Rep. No. 96-97, *supra*, 269.

Thus, closures may be seasonal in nature, for example, if warranted by the situation.

In the normal case, a closure must be preceded by consultation with the State and adequate notice and informal public hearing in the vicinity of the closure. In an emergency situation, the Superintendent may immediately close the area for a period not to exceed sixty days. The Superintendent may extend an emergency closure only if he or she establishes, after notice and informal public hearing in the vicinity, that the extension is justified under the applicable closure standards.

Finally, proposed § 13.50(c) provides thorough notice procedures designed to inform as many local rural residents as possible about any closures which may affect them.

Drafting Information

The primary authors of these proposed regulations are Michael V. Finley, Division of Legislation, and Maureen Finnerty, Division of Ranger Activities and Protection, National Park Service, Washington, D.C.; William F. Paleck, Alaska Regional Office, National Park Service, Anchorage, Alaska; and Molly N. Ross and Thomas R. Lundquist, Office of the Solicitor, Department of the Interior, Washington, D.C.

Impact Analysis

The Department of the Interior has made a determination that these proposed regulations are not significant, as that term is defined under Executive Order No. 12044 and 43 CFR Part 14, nor do they require the preparation of a regulatory analysis pursuant to the provisions of those authorities.

As required by the Regulatory Flexibility Act (Pub. L. 96-354), the National Park Service has made an initial determination that these proposed regulations will not have a significant economic effect on a substantial number of small businesses, small organizations, or small governmental jurisdictions. However, public comment is invited on whether the consequences of the rule will require this analysis.

A 28-volume environmental impact statement was prepared in 1974 concerning the establishment, management and public use of Alaska National Interest Lands conservation system units in Alaska, including the areas now designated as units of the National Park System in the Alaska Lands Act. The 1974 EIS was supplemented in November 1978 with an analysis of the impacts of alternative Executive Branch actions designed to conserve the Alaska National Interest Lands.

In addition to those environmental documents which received extensive public comment, and the numerous studies included within their bibliographies upon which they were based, a wealth of other materials and analyses have been generated on the management of the Alaska National Interest Lands as a result of congressional action on the so called "d-2" legislation. As of the date of this proposed rulemaking, four separate committee reports, a background committee report, and extensive legislative history printed in the *Congressional Record* have been published by the House of Representatives. In the Senate, two extensive committee reports, a two-volume report concerning the results of a committee workshop in Alaska and extensive legislative history printed in the *Congressional Record* have been published.

All of these reports and histories concern the establishment, management, and public use of the new conservation system units in Alaska. This is in addition to more than 45 days of formal congressional committee hearings held throughout the United States on this matter. The joint Federal-State Land Use Planning Commission for Alaska also conducted more than a dozen public hearings throughout the country in its investigations concerning the proposed public use and classifications of the proposed conservation system units.

Public Participation

These proposed regulations would give interim, management guidance on subsistence, access, cabins, and public recreational uses of the park areas in Alaska. Public comment on these proposals is actively solicited and desired during the 45-day public review period. Following the consideration of public comment and appropriate revision of the regulations, it is anticipated that final regulations will be issued in March of 1981 to give the public interim management guidance on the permissible uses of parks areas in Alaska. This expedited schedule is necessary so that regulations will be in effect in time for the peak public use seasons.

With the substantial prior public comment and the emergency need for public guidance in advance of the peak public use seasons, the National Park Service believes that a 45-day public comment period is the maximum that can be afforded on this limited agenda rulemaking. Any longer public comment period would place the effective date of these regulations beyond the Spring "break up" of deep winter conditions, and would create public confusion on allowable uses of park areas during peak public use (e.g., recreation, access, subsistence, mining) seasons. Thus, the National Park Service believes that a 45-day public comment period (which is longer than required under 5 U.S.C. 553) strikes an appropriate balance between desires for advance public review of proposed regulations and the need for interim management and public guidance.

In addition to comments on these proposed regulations, the National Park Service is also inviting comments on any other issues, including the need for special regulations for individual park areas, that should be considered in any future rulemaking.

(Section 3 of the Act of August 25, 1916 (39 Stat. 535, as amended; 16 U.S.C. 3); Sections 1, 1c, 9a, 462 and 462 of Title 16 of the United States Code, and Pub. L. 96-487 (December 2, 1980))

Robert Herbst,

Assistance Secretary for Fish and Wildlife and Parks.

In consideration of the foregoing, title 36 of the *Code of Federal Regulations* is proposed to be amended by the establishment of a new Part 13 as follows:

PART 13—NATIONAL PARK SYSTEM UNITS IN ALASKA

Subpart A—Public Use and Recreation

Sec.
13.1 Definitions.
13.2 Applicability and scope.
13.3 Penalties.
13.10 Snowmobiles.
13.11 Motorboats.
13.12 Aircraft.
13.13 Off-road vehicles.
13.14 Access to inholdings.
13.15 Temporary access.
13.16 Cabins and other structures.
13.17 Camping and picnicking.
13.18 Weapons, traps and nets.
13.19 Preservation of natural features.
13.20 Taking of fish and wildlife.
13.21 Unattended or abandoned property.
13.22 Subsistence and land use decisions.
13.30 Closure procedures.
13.31 Permits.

Subpart B—Subsistence

13.40 Purpose and policy.
13.41 Applicability.
13.42 Definitions.
13.43 Determination of resident zones.
13.44 Subsistence permits for persons who permanently reside outside a resident zone.
13.45 Prohibition on aircraft use.
13.46 Use of snowmobiles, motorboats, and other means of surface transportation traditionally employed by local rural residents engaged in subsistence uses.

Sec.
13.47 Subsistence fishing.
13.48 Subsistence hunting and trapping.
13.49 Subsistence use of timber and plant material.
13.50 Closure to subsistence uses.
13.51 Application procedures for subsistence permits and aircraft exceptions.

Subpart C—Special Regulations—Specific Park Areas in Alaska

13.60 Aniakchak National Monument and Preserve.
13.61 Bering Land Bridge National Preserve.
13.62 Cape Krusenstern National Monument.
13.63 Denali National Park and Preserve.
13.64 Gates of the Arctic National Park and Preserve.
13.65 Glacier Bay National Park and Preserve. [Reserved]
13.66 Katmai National Park and Preserve.
13.67 Kenai Fjords National Park.
13.68 Kobuk Valley National Park.
13.69 Lake Clark National Park and Preserve.
13.70 Noatak National Preserve.
13.71 Wrangell-St. Elias National Park and Preserve.
13.72 Yukon-Charley Nationa Preserve.

Authority: Section 3 of the Act of August 25, 1916 (39 Stat. 535, as amended; 16 U.S.C. 3); Sections 1, 1c, 2a, 432 and 462 of Title 16 of the United States Code, and Public Law 96-487 (December 2, 1980).

§ 13.1 Definitions.

The following definitions shall apply to all regulations contained in this part:

(a) The term "adequate and feasible access" means a method and route of access which is economically practicable for achieving the reasonable use or development desired by an applicant of the applicant's non-federal land or occupancy interest, but does not necessarily mean the most economically feasible alternative.

(b) The term "aircraft" means a machine or device that is used or intended to be used to carry persons or objects in flight through the air, including, but not limited to airplanes, helicopters and gliders.

(c) The term "carry" means to wear, bear or carry on or about the person and additionally, in the case of firearms, within or upon a device or animal used for transportation.

(d) The term "downed aircraft" means an aircraft that as a result of mechanical failure or accident cannot take off.

(e) The term "firearm" means any loaded or unloaded pistol, revolver, rifle, shotgun or other weapon which will or is designed to or may readily be converted to expel a projectile by the action of expanded gases, except that it does not include a pistol or rifle powered by compressed gas.

(f) The term "fish and wildlife" means any member of the animal kingdom, including without limitation any mammal, fish, bird (including any migratory, nonmigratory or endangered bird for which protection is also afforded by treaty or other international agreement), amphibian, reptile, mollusk, crustacean, arthropod or other invertebrate, and includes any part, produce, egg, or offspring thereof, or the dead body or part thereof.

(g) The term "fossil" means any remains, impression, or trace of any animal or plant of past geological ages that has been preserved, by natural processes, in the earth's crust.

(h) The term "gemstone" means a silica or igneous mineral including, but not limited to (1) geodes, (2) petrified wood, and (3) jade, agate, opal, garnet, or other mineral that when cut and polished is customarily used as jewelry or other ornament.

(i) The term "National Preserve" shall include the following areas of the National Park System:

Alagnak National Wild and Scenic River, Aniakchak National Preserve, Bering Land Bridge National Preserve, Denali National Preserve, Gates of the Arctic National Preserve, Glacier Bay National Preserve, Katmai National Preserve, Lake Clark National Preserve, Noatak National Preserve, Wrangell-St. Elias National Preserve, and Yukon-Charley National Preserve.

(j) The term "net" means a snare, wire, net, fish trap, or other implement designed to entrap fish, except a landing net.

(k) The term "off-road vehicle" means any motor vehicle designed for or capable of crosscountry travel on or immediately over land, water, sand, snow, ice, marsh, wetland or other natural terrain, except snowmobiles as defined in this chapter.

(l) The term "park areas" means lands and waters administered by the National Park Service within the State of Alaska.

(m) The term "person" means any individual, firm, corporation, society, association or partnership.

(n) The term "possession" means exercising dominion or control, with or without ownership, over weapons, traps, nets or other property.

(o) The term "public lands" means lands situated in Alaska which are federally owned lands, except—

(1) land selections of the State of Alaska which have been tentatively approved or validly selected under the Alaska Statehood Act (72 Stat. 339) and lands which have been confirmed to, validly selected by, or granted to the Territory of Alaska or the State under any other provision of Federal law;

(2) land selections of a Native Corporation made under the Alaska Native Claims Settlement Act (85 Stat. 688) which have not been conveyed to a Native Corporation, unless any such selection is determined to be invalid or is relinquished; and

(3) lands referred to in section 19(b) of the Alaska Native Claims Settlement Act.

(p) The term "snowmobile" means a self-propelled vehicle intended for off-road travel primarily on snow having a curb weight of not more than 1,000 pounds (450 kg), driven by a track or tracks in contact with the snow and steered by a ski or skis on contact with the snow.

(q) The term "superintendent" means any National Park Service official in charge of a park area, the Alaska Regional Director of the National Park Service, or an authorized representative of either.

(r) The term "take" or "taking" as used with respect to fish and wildlife, means to pursue, hunt, shoot, trap, net, capture, collect, kill, harm, or attempt to engage in any such conduct.

(s) The term "temporary" means a continuous period of time not to exceed 12 months, except as specifically provided otherwise.

(t) The term "trap" means a snare, trap, mesh, or other implement designed to entrap animals other than fish.

(u) The term "unload" means there is no unexpended shell or cartridge in the chamber or magazine of a firearm; bows, crossbows and spearguns are unstrung; muzzle-loading weapons do not contain a powder charge; and any other implement capable of discharging a missile in the air or under the water does not contain a missile or similar device within the loading or discharging mechanism.

(v) The term "weapon" means a firearm, compressed gas or spring powered pistol or rifle, bow and arrow, crossbow, blow gun, speargun, hand thrown spear, slingshot, irritant gas device, explosive device, or any other implement designed to discharge missiles in the air or under the water.

§ 13.2 Applicability and scope.

(a) The regulations contained in Part 13 of this chapter are prescribed for the proper use and management of park areas in Alaska and supplement the general regulations of this chapter. The regulations contained in this chapter are applicable except as modified by Part 13.

(b) Subpart A of Part 13 contains regulations applicable to all park areas. Such regulations amend in part the general regulations contained in this chapter. The regulations in Subpart A govern use and management, including

subsistence activities, within the park areas, except as modified by Subparts B or C.

(c) Subpart B of Part 13 contains regulations applicable to subsistence activities. Such regulations apply to all park areas except Kenai Fjords National Park, Katmai National Park, Glacier Bay National Park, Klondike Gold Rush National Historical Park, Sitka National Historical Park, and parts of Denali National Park. The regulations in Subpart B amend in part the regulations contained in this chapter and Subpart A of Part 13.

(d) Subpart C of Part 13 contains special regulations for specific park areas. Such regulations amend in part the regulations contained in this chapter and Subparts A and B of Part 13.

(e) The regulations contained in Part 13 of this chapter are applicable only on federally owned lands within the boundaries of any park area. For purposes of this part, "federally owned lands" means land interests held or retained by the United States, but does not include those land interests: (1) tentatively approved, legislatively conveyed, or patented to the State of Alaska; or (2) interim conveyed or patented to a Native Corporation or person.

§ 13.3 Penalties.

Any person convicted of violating any provision of the regulations contained in Part 13, or as the same may be amended or supplemented, may be punished by a fine not exceeding $500 or by imprisonment not exceeding 6 months, or both, and shall be adjudged to pay all costs of the proceedings (16 U.S.C. 3).

§ 13.10 Snowmobiles.

The use of snowmobiles (during periods of adequate snow cover or frozen river conditions) is permitted within park areas, except where such use is prohibited or otherwise restricted by the Superintendent in accordance with the provisions of § 13.30, or as provided for in § 13.46.

§ 13.11 Motorboats.

Motorboats may be operated on all park area waters, except where such use is prohibited or otherwise restricted by the Superintendent in accordance with the provisions of § 13.30, or as provided for in § 13.46, or in 36 CFR 7.23(b)–(f).

§ 13.12 Aircraft.

(a) Aircraft may be landed and operated on lands and waters within park areas, except where such use is prohibited or otherwise restricted by the Superintendent in accordance with this section. The use of aircraft for access to or from lands and waters within a national park or monument for purposes of taking fish and wildlife for subsistence uses therein is prohibited as set forth in § 13.45.

(b) In imposing any prohibitions or restrictions on aircraft use the Superintendent shall: (1) comply with the procedures set forth in § 13.30; (2) publish notice of prohibitions or restrictions as "Notices to Airmen" issued by the Department of Transportation; and (3) publish permanent prohibitions or restrictions as a regulatory notice in the United States Government Flight Information Service "Supplement Alaska."

(c) Except as provided in paragraph (d) of this section, the owners of any aircraft downed after December 2, 1980, shall remove the aircraft and all component parts thereof in accordance with procedures established by the Superintendent. In establishing a removal procedure, the Superintendent is authorized to: (1) establish a reasonable date by which aircraft removal operations must be complete; and (2) determine times and means of access to and from the downed aircraft.

(d) The Superintendent may waive the requirements of § 13.12(c) when he/she determines that: (1) the removal of downed aircraft would constitute an unacceptable risk to human life; or (2) the removal of a downed aircraft would result in extensive resource damage; or (3) the removal of a downed aircraft is otherwise impracticable or impossible.

(e) Salvaging, removing, possessing, or attempting to salvage, remove or possess any downed aircraft or component parts thereof is prohibited, except in accordance with a removal procedure established under subsection (c); *provided, however,* that the owner or an authorized representative thereof may remove valuable component parts from a downed aircraft at the time of rescue without a permit.

§ 13.13 Off-road vehicles.

(a) The use of off-road vehicles in locations other than established roads and parking areas is prohibited, except on routes or in areas designated by the Superintendent or subject to a valid access permit as prescribed in §§ 13.14, 13.15, and 13.31. Such designations shall be made in accordance with procedures in this section.

(b)(1) In determining whether to designate a route or area for off-road travel, the Superintendent shall consider the criteria contained in Section 3 of Executive Order 11644, as amended (37 FR 2877), and such factors as other public uses, public health and safety, environmental and resource protection, research activities, protection of historic or scientific values, subsistence values, endangered or threatened species conservation and other management considerations necessary to ensure that off-road vehicle use is compatible with the purposes for which the park area was established.

(2) Route or area designations shall be published in the Federal Register.

(3) Notice of routes or areas on which off-road travel is permitted shall be in accordance with the provisions of § 13.30(f).

(4) The closure or restrictions on use of designated routes or areas to off-road vehicles use shall be in accordance with the provisions of § 13.30.

§ 13.14 Access to inholdings.

(a) *Purpose.* Where adequate and feasible access is otherwise restricted pursuant to the provisions of this part (e.g. §§ 13.10, 13.13, 13.30), it is the purpose of this section to ensure access across park areas for any person who has a valid property or occupancy interest in lands. These regulations are not intended to grant an interest in or otherwise alienate Federal property, but rather to provide specific relief from other regulatory provisions that may unreasonably restrict access to non-federal property.

(b) *Application and Administration.* (1) Applications for a permit designating methods and routes of access across park areas not affirmatively provided for in this part shall be submitted to the Superintendent having jurisdiction over the affected park area as specified under § 13.31.

(2) The access permit application shall contain the name and address of the applicant, documentation of the relevant property or occupancy interest held by the applicant, a map or physical description of the relevant property or occupancy interest, a map or physical description of the desired route of access, a description of the desired method of access, the purpose for which access is sought, and such other information deemed necessary by the Superintendent for consideration of the application.

(3) The Superintendent shall specify in a renewable permit, adequate and feasible routes and methods of access across park areas for any person who meets the criteria of paragraph (a) of this section. The Superintendent shall designate the routes and methods desired by the applicant unless it is determined that:

(i) The route or method of access would cause significant adverse impacts on natural or other values of the park

area, and adequate and feasible access otherwise exists; or

(ii) The route or method of access would jeopardize public health and safety, and adequate and feasible access otherwise exists.

(4) If the Superintendent makes one of the findings described in paragraph (b)(3) of this section, he/she shall specify such other alternate methods and routes of access as will provide adequate and feasible access to the applicant, while minimizing damage to natural and other values of the park area.

(5) Routes and methods of access permitted pursuant to this section shall be available for use by guests and invitees of the permittee.

(c) *Special Information Requirements for Access for Mineral Exploration or Development.*

(1) *Applicability.* This subsection is applicable only when a person requires a permit for access across (*e.g.* situations where §§ 13.10–13.13 do not already provide adequate and feasible access) a park area to non-federally owned lands or interests therein or valid unpatented mining claims located within the exterior boundaries of a park area, for mineral exploration or development purposes.

(2) *Access Permit Application.* Any person described in paragraph (c)(1) of this section shall apply to the Superintendent for an access permit and shall provide, in addition to the information specified in paragraph (b)(2), a description of the proposed mineral operations and all steps by the applicant necessary to comply with applicable Federal, State and local laws and regulations. The information requirements of 36 CFR 9.9 and 9.36 shall not be applicable.

(3) *Permit approval.* The Superintendent is directed to utilize the permit granting standards of paragraph (b) of this section to grant such adequate and feasible access for economic purposes, while minimizing damage to the natural and other values of the park area, in lieu of the access standards of 36 CFR Part 9.

(4) Whenever an unpatented mining claim is located within the exterior boundaries of a park area, the person shall also submit the Supplemental Claim Information Statement described in 36 CFR 9.9(a)(5) in an access permit application.

(d) The establishment or modification of a route or method of access which requires the construction of permanent improvements, including, but not limited to, the construction of concrete bridges or runways is prohibited unless authorized pursuant to the provisions of 36 CFR Part 14.

§ 13.15 Temporary access.

(a) *Applicability.* This section is applicable to State and private landowners who desire temporary access across a park area for the purposes of survey, geophysical, exploratory permits and other temporary uses of such nonfederal lands, and where such temporary access is not affirmatively provided for in §§ 13.10–13.14 of this part. State and private landowners meeting the criteria of § 13.14(a) are directed to utilize the procedures of § 13.14 to obtain temporary access.

(b) *Temporary Access for Mineral Exploration.* (1) *Application.* A landowner requiring temporary access across a park area for mineral survey, geophysical, exploratory or similar mineral activities shall apply to the Superintendent for an access permit and shall provide the relevant information contained in § 13.14(c)(2), concerning the planned access and mineral exploration activities.

(2) *Permit Standards, Stipulations and Conditions.* The Superintendent shall grant the desired temporary access whenever he/she determines that such access will not result in permanent harm to park area resources. The Superintendent shall include in any permit granted such stipulations and conditions on temporary access as are necessary to ensure that the access granted would not be inconsistent with the purposes for which the park area was reserved and to ensure that no permanent harm will result to park area resources.

(c) *Temporary Access for Other Purposes.* (1) *Application.* A landowner requiring access across a park area for survey, geophysical, exploratory or other temporary uses unrelated to mineral exploration shall apply to the Superintendent for an access permit. The applicant shall state the proposed method and route of access, and what temporary use the applicant proposes to undertake on his/her land.

(2) *Permit Standards, Stipulations and Conditions.* The permit granting standards, stipulations and conditions of subsection (b)(2) shall be applicable to permits granted under this subsection.

(d) *Definition.* For the purposes of this section, "temporary access" shall mean limited, short-term, non-successive access, which does not require permanent facilities for access, to undeveloped State or private lands.

§ 13.16 Cabins and other structures.

(a) *Purpose.* It is the purpose of this section to provide procedures and guidance for those occupying and using existing cabins and those wishing to construct new cabins within park areas.

(b) This section applies to all park areas in Alaska except Klondike Gold Rush National Historical Park and Sitka National Historical Park.

(c) *Existing Cabins or Other Structures.* (1) Cabins or other structures existing prior to December 18, 1973, may be occupied and used by the claimants to these structures pursuant to a nontransferable, renewable permit. This use and occupancy shall be for terms of five years; *provided, however,* that the claimant to the structure, by application:

(i) Reasonably demonstrates by affidavit, bill of sale or other documentation proof of possessory interest or right of occupancy in the cabin or structure;

(ii) Submits an acceptable photograph or sketch which accurately depicts the cabin or structure and a map showing its geographic location;

(iii) Agrees to vacate and remove all personal property from the cabin or structure upon expiration of the permit;

(iv) Acknowledges in the permit that he/she has no interest in the real property on which the cabin or structure is located; and

(v) Submits a listing of the names of all immediate family members residing in the cabin or structure.

Permits issued under the provisions of this paragraph shall be renewed every five years until the death of the last immediate family member of the claimant residing in the cabin or structure under permit. Renewal will occur unless the Superinendent determines after notice and hearing, and on the basis of substantial evidence in the administrative record as a whole, that the use under the permit is causing or may cause significant detriment to the principal purposes for which the park area was established. The Superintendent's decision may be appealed pursuant to the provisions of 43 CFR 4.700.

(2) Cabins or other structures, construction of which began between December 18, 1973, and December 1, 1978, may be used and occupied by the claimant to these structures pursuant to a nontransferable, nonrenewable permit. This use and occupancy shall be for a maximum term of 1 year; *provided, however,* that the claimant, by application, complies with § 13.16(c)(1)(i) through (iv) above. Permits issued under the provisions of this paragraph may be extended by the

Superintendent, subject to reasonable regulations, for a period not to exceed one year for good cause where extraordinary circumstances prevent vacating the cabin or structure and removing all personal property within the original term of the permit.

(3) Cabins or other structures, construction of which began after December 1, 1978, shall not be available for use and occupancy.

(4) Cabins or other structures, not under permit, shall be used only for official government business; *provided, however,* that during emergencies involving the safety of human life, or where designated for public use by the Superintendent through the posting of signs, these cabins may be used by the general public.

d. *New Cabins or Other Structures Necessary for Subsistence Uses or Otherwise Authorized by Law.* The Superintendent may issue a permit under such conditions as he/she may prescribe for the construction, reconstruction, temporary use, occupancy, and maintenance of new cabins or other structures when he/she determines that the use is necessary to accommodate reasonably subsistence uses or is otherwise authorized by law. In determining whether to permit the use, occupancy, construction, reconstruction or maintenance of cabins or other structures, the Superintendent shall be guided by factors such as other public uses, public health and safety, environmental and resource protection, research activities, protection of historic or scientific values, subsistence uses, endangered or threatened species conservation and other management considerations necessary to ensure that the activities authorized pursuant to this section are compatible with the purposes for which the park area was established.

(e) *Existing Cabin Leases or Permits.* Nothing in this section shall preclude the renewal or continuation of valid leases or permits in effect as of December 2, 1980, for cabins, homesites, or similar structures on federally owned lands. Unless the Superintendent issues specific findings, following notice and an opportunity for the leaseholder or permittee to respond, that renewal or continuation of such valid permit or lease constitutes a direct threat or a significant impairment to the values for which the park area was established, he/she shall renew such valid leases or permits upon their expiration in accordance with the provisions of the original lease or permit subject to such reasonable regulations as he/she prescribe in keeping with the management objectives of the park area. Subject to the provisions of the original lease or permit, nothing in this paragraph shall necessarily preclude the Superintendent from transferring such a lease or permit to another person at the election or death of the original permittee or leasee.

§ 13.17 Camping and picnicking.

(a) *Camping.* Camping is permitted in park areas except where such use is prohibited or otherwise restricted by the Superintendent in accordance with the provisions of § 13.30.

(b) *Picnicking.* Picnicking is permitted in park areas except where such activity is prohibited by the posting of appropriate signs.

§ 13.18 Weapons, traps and nets.

(a) This section applies to all park areas in Alaska except Klondike Gold Rush National Historical Park and Sitka National Historical Park.

(b) Firearms may be carried within park areas, except where such carrying is prohibited or otherwise restricted pursuant to § 13.30.

(c) Traps, bows and other implements authorized by State and Federal law for the taking of fish and wildlife may be carried within National Preserves only during those times when the taking of fish and wildlife is authorized by applicable law or regulation.

(d) In addition to the authorities provided in paragraphs (b) and (c) of this section, weapons (other than firearms) traps and nets may be possessed within park areas provided such weapons, traps or nets are within or upon a device or animal used for transportation and are unloaded and cased or otherwise packed in such a manner as to prevent their ready use while in a park area.

(e) Nothwithstanding the provisions of this section, local rural residents who are authorized to engage in subsistence uses, including the taking of wildlife pursuant to § 13.48 of this part, may use, possess, or carry traps, nets and other weapons in accordance with applicable State and Federal laws.

§ 13.19 Preservation of natural features.

(a) *Renewable Resources.* The gathering or collecting, by hand and for personal use only, of the following renewable resources is permitted:

(1) Natural plant food items, including fruits, berries and mushrooms, but not including threatened or endangered species;

(2) Driftwood and uninhabited seashells;

(3) Such plant materials and minerals as are essential to the conduct of traditional ceremonies by Native Americans; and

(4) Dead or downed wood for use in fires within park areas.

(b) *Rocks and Minerals.* Surface collection, by hand and for personal use only, of rocks and minerals is permitted; *provided, however,* that (1) collection of gold, silver, platinum, gemstones and fossils is prohibited, and (2) no collection method may result in disturbance of the ground surface.

(c) *Closure and Notice.* Under conditions where it is found that significant adverse impact on park resources, wildlife populations, subsistence uses, or visitor enjoyment of resources will result, the Superintendent shall prohibit the gathering or otherwise restrict the collecting of these items. Portions of a park area in which closures or restrictions apply shall be (1) published in at least one newspaper of general circulation in the State and designated on a map which shall be available for public inspection in the office of the Superintendent, or (2) designated by the posting of appropriate signs, or (3) both.

(d) *Subsistence.* Nothing in this section shall apply to the taking of renewable resources by subsistence users.

§ 13.20 Taking of fish and wildlife.

(a) *Subsistence.* Nothing in this section shall apply to the taking of fish and wildlife for subsistence uses.

(b) *Fishing.* Fishing is permitted in all park areas in accordance with applicable State and Federal law and such laws are hereby adopted and made a part of these regulations to the extent they are not inconsistent with § 2.13 of this chapter. With respect to the Cape Krusenstern National Monument, the Malaspina Glacier Forelands area of the Wrangell-St. Elias National Preserve, and the Dry Bay area of Glacier Bay National Preserve, the exercise of valid commercial fishing rights or privileges obtained pursuant to existing law—including any use of park area lands for campsites, cabins, motorized vehicles, and aircraft landings on existing airstrips which is directly incident to the exercise of such rights or privileges—may continue; *provided, however,* that the Superintendent may restrict the use of park area lands directly incident to the exercise of these rights or privileges if he/she determines, after conducting a public hearing in the affected locality, that such use of park area lands constitutes a significant expansion of the use of park area lands beyond the level of such use during 1979.

(c) *Hunting and Trapping.* Hunting and trapping are permitted in all

National Preserves in accordance with applicable State and Federal law, and such laws are hereby adopted and made a part of these regulations; *provided, however,* that engaging in trapping activities, as the employee or agent of another person is prohibited.

(d) *Closures and Restrictions.* The Superintendent may prohibit or restrict the taking of fish or wildlife in accordance with the provisions of § 13.30. Except in emergency conditions, such restrictions shall take effect only after consultation with the appropriate State agency having responsibility over fishing, hunting, or trapping and representatives of affected users.

§ 13.21 Unattended or abandoned property.

(a) This section applies to all park areas in Alaska except Klondike Gold Rush National Historical Park and Sitka National Historical Park.

(b) Leaving any snowmobile, vessel, off-road vehicle or other personal property unattended for longer than 12 months, without prior permission of the Superintendent is prohibited, and any property so left may be impounded by the Superintendent.

(c) The Superintendent may (1) designate areas where personal property may not be left unattended for any time period, (2) establish limits on the amount, and type of personal property that may be left unattended, (3) prescribe the manner in which personal property may be left unattended, or (4) establish limits on the length of time personal property may be left unattended. Such designations and restrictions shall be (1) published in at least one newspaper of general circulation within the State, posted at community post offices within the vicinity affected, made available for broadcast on local radio stations in a manner reasonably calculated to inform residents in the affected community and designated on a map which shall be available for public inspection at the office of the Superintendent, or (2) designated by the posting of appropriate signs or (3) both.

(d) In the event unattended property interferes with the safe and orderly management of a park area or is causing damage to the resources of the area, it may be impounded by the Superintendent at any time.

§ 13.22 Subsistence and land use decisions.

(a) In determining whether to lease or otherwise permit the use or occupancy of park area lands under any provision of the regulations of this part or other law authorizing such actions, the Alaska Regional Director or his/her designee shall evaluate the effect of such use or occupancy on subsistence uses and needs, the availability of other lands for the purposes sought to be achieved, and other alternatives which would reduce or eliminate the use or occupancy of park area lands needed for subsistence purposes. No such lease, permit, or other use or occupancy of such lands which would significantly restrict subsistence uses shall be effected until the Alaska Regional Director or his/her designee—

(1) Gives notice to the appropriate State agency and the appropriate local committees and regional councils established pursuant to section 805 of the Alaska National Interest Lands Conservation Act, Pub. L. 96–487,

(2) Gives notice of, and holds, a hearing in the vicinity of the area involved, and

(3) Determines that (i) such a significant restriction of subsistence uses is necessary, consistent with sound management principles for the utilization of park area lands, (ii) the proposed activity will involve the minimal amount of park area lands necessary to accomplish the purposes of such use or occupancy, and (iii) reasonable steps will be taken to minimize adverse impacts upon subsistence uses and resources resulting from such actions.

(b) If an environmental impact statement pursuant to section 102(2)(C) of the National Environmental Policy Act is required with respect to the proposed use or occupancy, the notice, hearing, and findings required by subsection (A) of this section shall be provided as part of such environmental impact statement process.

(c) After compliance with the procedural requirements of this section and other applicable law, the Alaska Regional Director or his/her designee may manage park area lands for any of those uses or purposes authorized by law.

§ 13.30 Closure procedures.

(a) *Authority.* The Superintendent may close an area or restrict an activity on an emergency, temporary, or permanent basis.

(b) *Criteria.* In determining whether to close an area or restrict an activity on an emergency basis, the Superintendent shall be guided by factors such as public health and safety, resource protection, protection of historic or scientific values, subsistence uses, endangered or threatened species conservation, and other management considerations necessary to ensure that the activity or area is being managed in a manner compatible with the purposes for which the park area was established.

(c) *Emergency Closures.* (1) Emergency closures or restrictions relating to the use of aircraft, snowmobiles or motorboats, shall be made after notice and hearing; (2) emergency closures or restrictions relating to the taking of fish and wildlife shall be accompanied by notice and hearing; (3) other emergency closures shall become effective upon notice as prescribed in § 13.30(f); and (4) no emergency closure or restriction shall extend for a period exceeding 60 days, nor may it be extended.

(d) *Temporary closures or restrictions.* (1) Temporary closures or restrictions relating to the use of aircraft, snowmobiles or motorboats, or to the taking of fish and wildlife, shall not be effective prior to notice and hearing in the vicinity of the area(s) directly affected by such closures or restrictions; (2) other temporary closures shall be effective upon notice as prescribed in § 13.30(f); (3) temporary closures or restrictions shall not extend for a period exceeding 12 months and may not be extended.

(e) *Permanent closures or restrictions.* Permanent closures or restrictions shall be published as rulemaking in the **Federal Register** with a minimum public comment period of 60 days.

(f) *Notice.* Emergency, temporary and permanent closures or restrictions shall be (1) published in at least one newspaper of general circulation in the State and in at least one local newspaper if appropriate, posted at community post offices within the vicinity affected, made available for broadcast on local radio stations in a manner reasonably calculated to inform residents in the affected vicinity, and designated on a map which shall be available for public inspection at the office of the Superintendent and other places convenient to the public; or (2) designated by the posting of appropriate signs; or (3) both.

(g) *Openings.* In determining whether to open an area to public use or activity otherwise prohibited, the Superintendent shall first provide notice as prescribed in paragraph (f) of this section, and shall, upon request, hold a hearing in the affected vicinity prior to making a final determination.

§ 13.31 Permits.

(a) *Application.* (1) Application for a permit required by any section of this part shall be submitted to the Superintendent having jurisdiction over the affected park area, or in the absence of the Superintendent, the Regional Director.

(2) The Superintendent shall promptly acknowledge, in writing, receipt of all requests for permits, access routes, or other requirements of this section.

(b) *Denial and appeal procedures.* (1) An applicant whose application for a permit, required pursuant to this part, has been denied by the Superintendent has the right to have the application reconsidered by the Regional Director by contacting him/her within sixty (60) days of the issuance of the denial. For purposes of reconsideration, the permit applicant shall present the following information:

(i) Any statement or documentation, in addition to that included in the initial application, which demonstrates that the applicant satisfies the criteria set forth in the section under which the permit application is made.

(ii) The basis for the permit applicant's disagreement with the Superintendent's findings and conclusions; and

(iii) Whether or not the permit applicant requests an informal hearing before the Regional Director, and if the permit applicant does request a hearing,

(A) A description of any information, in addition to that included in the initial application and any written materials presented to the Regional Director, which the permit applicant intends to present at the hearing;

(B) The name, addresses and brief description of the proposed presentation of any person which the applicant intends to present at the hearing on his behalf, and the name and addresses of any persons he/she would like to question at the hearing.

(2) If, after examining the information submitted by the applicant in support of a request for an oral hearing, it is clear that the applicant would present relevant information which is substantially distinguishable from or supplementary to the information presented to the Superintendent, the Regional Director shall grant the permit applicant's request for a hearing. After consideration of the written materials and oral hearing, if granted, and within a reasonable period of time, the Regional Director shall affirm, reverse, or modify the denial of the Superintendent and shall set forth in writing the basis for the decision. A copy of the decision shall be forwarded promptly to the applicant and shall constitute final agency action.

Subpart B—Subsistence

§ 13.40 Purpose and policy.

(a) Consistent with the management of fish and wildlife in accordance with recognized scientific principles and the purposes for which each park area was established, designated, or expanded by the Alaska National Interest Lands Conservation Act, Pub. L. 96–487, the purpose of this subpart is to provide the opportunity for local rural residents engaged in a subsistence way of life to do so pursuant to applicable State and Federal law.

(b) Consistent with sound management principles, and the conservation of healthy populations of fish and wildlife, the utilization of park areas is to cause the least adverse impact possible on local rural residents who depend upon subsistence uses of the resources of the public lands in Alaska.

(c) Nonwasteful subsistence uses of fish, wildlife and other renewable resources by local rural residents shall be the priority consumptive uses of such resources over any other consumptive uses permitted within park areas pursuant to applicable State and Federal law.

(d) Whenever it is necessary to restrict taking of populations of fish and wildlife in order to assure the continued viability of such populations or the continuation of subsistence uses of such populations, after consultation with the State and notice of public hearing in the affected local vicinity, such populations shall be allocated in accordance with a subsistence priority system based on the following criteria:

(1) Customary and direct dependence upon the resource as the mainstay of one's livelihood;

(2) Local residency; and

(3) Availability of alternative resources.

(e) Nothing in this Subpart shall be construed as permitting a level of subsistence use of fish and wildlife within park areas to be inconsistent with the conservation of healthy populations, and within a national park or monument to be inconsistent with the conservation of natural and healthy populations, of fish and wildlife.

§ 13.41 Applicability.

Subsistence uses by local rural residents are allowed pursuant to the regulations of this Subpart in the following park areas:

(a) In national preserves;

(b) In Cape Krusenstern National Monument and Kobuk Valley National Park;

(c) Where such uses are traditional (as may be further designated for each park or monument in Subpart C of this part) in Aniakchak National Monument, Gates of the Arctic National Park, Lake Clark National Park, Wrangell-St. Elias National Park, and the Denali National Park addition.

§ 13.42 Definitions.

(a) *Local rural resident:* (1) As used in this part, the term "local rural resident" shall mean either of the following:

(i) Any person who has his/her primary, permanent home within the resident zone as defined by this section, and whenever absent from this primary, permanent home, has the intention of returning to it. Factors demonstrating the location of a person's primary, permanent home may include, but are not limited to, the permanent address indicated on licenses issued by the State of Alaska Department of Fish and Game, driver's license, and tax returns, and the location of registration to vote.

(ii) Any person authorized to engage in subsistence uses in a park area by a subsistence permit issued pursuant to §§ 13.44 and 13.51 of this part.

(b) *Resident zone:* As used in this part, the term "resident zone" shall mean the area within, and the communities and areas near, a park area in which persons who have customarily and traditionally engaged in subsistence uses within the park area permanently reside. The communities and areas near a park area included as part of its resident zone shall be determined pursuant to § 13.43 of this part and listed for each park area in Subpart C of this part.

(c) *Subsistence uses:* As used in this part, the term "subsistence uses" shall mean the customary and traditional uses by rural Alaska residents of wild, renewable resources for direct personal or family consumption as food, shelter, fuel, clothing, tools or transportation; for the making and selling of handicraft articles out of nonedible by-products of fish and wildlife resources taken for personal or family consumption; for barter or sharing for personal or family consumption; and for customary trade. For the purposes of this paragraph, the term—

(1) "Family" shall mean all persons related by blood, marriage, or adoption, or any person living within the household on a permanent basis; and

(2) "Barter" shall mean the exchange of fish or wildlife or their parts taken for subsistence uses—

(i) for other fish or game or their parts; or

(ii) For other food or for nonedible items other than money if the exchange is of a limited and noncommercial nature; and

(3) "Customary trade" shall be limited to the exchange of furs for cash.

§ 13.43 Determination of resident zones.

(a) As determined by available information and research on subsistence uses in the area, a resident zone shall include—

(1) The area within a park area, and

(2) The communities and areas near a park which contain preponderant concentrations of local rural residents who, without using aircraft as a means of access for purposes of taking fish or wildlife for subsistence uses (except in extraordinary cases where no reasonable alternative existed), have customarily and traditionally engaged in subsistence uses within a park area.

(b) After notice and comment, including public hearing in the affected local vicinity, a community or area near a park area may be—

(1) Added to a resident zone, or

(2) Deleted from a resident zone, when available information and research demonstrates that such community or area does or does not meet the criteria set forth in paragraph (a) of this section, as appropriate.

§ 13.44 Subsistence permits for persons whose primary, permanent home is outside a resident zone.

(a) Any rural resident whose primary, permanent home is outside the boundaries of a resident zone of a park area may apply to the appropriate Superintendent pursuant to the procedures set forth in § 13.51 for a subsistence permit authorizing the permit applicant to engage in subsistence uses within the park area. The Superintendent shall not grant the permit unless the permit applicant demonstrates that,

(1) Without using aircraft as a means of access for purposes of taking fish and wildlife for subsistence uses, the applicant has (or is a member of a family which has) customarily and traditionally engaged in subsistence uses within a park area; or

(2) The applicant is a local rural resident within a resident zone for another park area, or meets the requirements of paragraph (a)(1) of this section for another park area, and available research shows a pattern of subsistence uses without use of an aircraft as a means of access for purposes of taking fish and wildlife for subsistence uses between the park area previously utilized by the permit applicant and the park area for which the permit applicant seeks a subsistence permit.

(b) In order to provide for subsistence uses pending application for and receipt of a subsistence permit, until July 15, 1981, any rural resident whose primary permanent home is outside the boundaries of a resident zone of a park area and who meets the criteria for a subsistence permit set forth in paragraph (a) of this section may engage in subsistence uses in the park area without a permit in accordance with applicable State and Federal law. Effective July 15, 1981, however, such rural resident must have a subsistence permit as required by paragraph (a) of this section in order to engage in subsistence uses in the park area.

(c) For purposes of this section, the term "family" shall mean all local rural residents related by blood, marriage, or adoption, or any person living within a local rural resident's household on a permanent basis.

§ 13.45 Prohibition of aircraft use.

(a) Notwithstanding the provisions of § 13.12 of this part, the use of aircraft for access to or from lands and waters within a national park or monument for purposes of taking fish or wildlife for subsistence uses within the national park or monument is prohibited except as provided in this section.

(b) *Exceptions.* (1) In extraordinary cases where no reasonable alternative exists, the Superintendent shall allow, pursuant to the terms and conditions of a permit, a local rural resident who permanently resides in an "exempted community" to use aircraft for access to or from lands and water within a national park or monument for purposes of taking fish or wildlife for subsistence uses therein.

(i) A community shall qualify as an "exempted community" if, because of the location of the subsistence resources upon which it depends and the extraordinary difficulty of surface access to these subsistence resources, the local rural residents who permanently reside in the community have no reasonable alternative to aircraft use for access to the subsistence resources.

(ii) A community which is determined, after notice and comment (including public hearing in the affected local vicinity), to meet the description of an "exempted community" set forth in paragraph (b)(1) of this section shall be included in the appropriate special regulations for each park and monument set forth in Subpart C of this part.

(iii) A community included as an "exempted community" in Subpart C of this part may be deleted therefrom upon a determination, after notice and comment (including public hearing in the affected local vicinity) that it does not meet the description of an "exempted community" set forth in paragraph (b)(1) of this section.

(2) Any local rural resident aggrieved by the prohibition on aircraft use set forth in this section may apply for an exception to the prohibition pursuant to the procedures set forth in § 13.51. In extraordinary cases where no reasonable alternative exists, the Superintendent may grant the exception upon a determination that the location of the subsistence resources depended upon and the difficulty of surface access to these resources, or other emergency situation, requires such relief.

(c) Nothing in this section shall prohibit the use of aircraft for access to lands and waters within a national park or monument for purposes of engaging in any activity allowed by law other than the taking of fish and wildlife. Such activities include, but are not limited to, transporting supplies.

§ 13.46 Use of snowmobiles, motorboats, and other means of surface transportation traditionally employed by local rural residents engaged in subsistence uses.

(a) Notwithstanding any other provision of this chapter, the use of snowmobiles, motorboats, and other means of surface transportation traditionally employed by local rural residents engaged in subsistence uses is permitted within park areas except at those times and in those areas restricted or closed by the Superintendent.

(b) The Superintendent may restrict or close a route or area to use of snowmobiles, motorboats, or other means of surface transportation traditionally employed by local rural residents engaged in subsistence uses if the Superintendent determines that such use is causing or may cause adverse impact on public health and safety, resource protection, protection of historic or scientific values, subsistence uses, conservation of endangered or threatened species, or the purposes and values for which the park area was established.

(c) No restrictions or closures shall be imposed without notice and a public hearing in the affected vicinity. In the case of emergency situations, restrictions or closures shall not exceed sixty (60) days and shall not be extended unless the Superintendent establishes, after notice and public hearing in the affected vicinity, that such extension is justified according to the factors set forth in paragraph (b) of this section. Notice of the proposed or emergency restrictions or closures and the reasons therefor shall be published in at least one newspaper of general circulation within the State and in at least one local newspaper if appropriate, and information about such proposed or emergency actions shall

also be made available for broadcast on local radio stations in a manner reasonably calculated to inform local rural residents in the affected vicinity. All restrictions and closures shall be designated on a map which shall be available for public inspection at the office of the Superintendent of the affected park area and the post office or postal authority of every affected community within or near the park area, or by the posting of signs in the vicinity of the restrictions or closures, or both.

(d) Motorboats, snowmobiles, and other means of surface transportation traditionally employed by local rural residents engaged in subsistence uses shall be operated (1) in compliance with applicable State and Federal law, (2) in such a manner as to prevent waste or damage to the park areas, and (3) in such a manner as to prevent the herding, harrassment, hazing or driving of wildlife for hunting or other purposes.

(e) At all times when not engaged in subsistence uses, local rural residents may use snowmobiles, motorboats, and other means of surface transportation in accordance with §§ 13.10, 13.11 and 13.13 of this chapter, respectively.

§ 13.47 Subsistence fishing.

Fish may be taken by local rural residents for subsistence uses in compliance with applicable State and Federal law, including the provisions of §§ 2.13 and 13.22 of this chapter, provided, however, that local rural residents in park areas may fish with a net, seine, trap, or spear where permitted by State law. To the extent consistent with the provisions of this chapter, applicable State laws and regulations governing the taking of fish which are now or will hereafter be in effect are hereby incorporated by reference as a part of these regulations.

§ 13.48 Subsistence hunting and trapping.

Local rural residents may hunt and trap wildlife for subsistence uses in compliance with applicable State and Federal law. To the extent consistent with the provisions of this chapter, applicable State laws and regulations governing the taking of wildlife which are now or will hereafter be in effect are hereby incorporated by reference as a part of these regulations.

§ 13.49 Subsistence use of timber and plant material.

(a) Notwithstanding any other provision of this part, the noncommercial cutting of live standing timber by local rural residents for appropriate subsistence uses, such as firewood or house logs, may be permitted in accordance with the specifications of a permit issued by the Superintendent of the affected park area if such cutting is determined to be compatible with the purposes for which the park area was established.

(b) The noncommercial gathering by local rural residents of fruits, berries, mushrooms, and other plant materials for subsistence uses, and the noncommercial gathering of dead or downed timber for firewood, shall be allowed without a permit.

(c)(1) Notwithstanding any other provision of this part, the Superintendent, after notice and public hearing in the affected vicinity, may temporarily close all or any portion of a park area to subsistence uses of a particular plant population only if necessary for reasons of public safety, administration, or to assure the continued viability of such population. For the purposes of this section, the term "temporarily" shall mean only so long as reasonably necessary to achieve the purposes of the closure.

(2) If the Superintendent determines that an emergency situation exists and that extraordinary measures must be taken for public safety or to assure the continued viability of a particular plant population, the Superintendent may immediately close all or any portion of a park area to the subsistence uses of such population. Such emergency closure shall be effective when made, shall be for a period not to exceed sixty (60) days, and may not subsequently be extended unless the Superintendent establishes, after notice and public hearing in the affected vicinity, that such closure should be extended.

(3) Notice of administrative actions taken pursuant to this section, and the reasons justifying such actions, shall be published in at least one newspaper of general circulation within the State and at least one local newspaper if appropriate, and information about such actions and reasons also shall be made available for broadcast on local radio stations in a manner reasonably calculated to inform local rural residents in the affected vicinity. All closures shall be designated on a map which shall be available for public inspection at the office of the Superintendent of the affected park area and the post office or postal authority of every affected community within or near the park area, or by the posting of signs in the vicinity of the restrictions, or both.

§ 13.50 Closure to subsistence uses of fish and wildlife.

(a) Notwithstanding any other provision of this part, the Superintendent, after consultation with the State and adequate notice and public hearing in the affected vicinity, may temporarily close all or any portion of a park area to subsistence uses of a particular fish or wildlife population only if necessary for reasons of public safety, administration, or to assure the continued viability of such population. For purposes of this section, the term "temporarily" shall mean only so long as reasonably necessary to achieve the purposes of the closure.

(b) If the Superintendent determines that an emergency situation exists and that extraordinary measures must be taken for public safety or to assure the continued viability of a particular fish or wildlife population, the Superintendent may immediately close all or any portion of a park area to the subsistence uses of such population. Such emergency closure shall be effective when made, shall be for a period not to exceed sixty (60) days, and may not subsequently be extended unless the Superintendent establishes, after notice and public hearing in the affected vicinity, that such closure should be extended.

(c) Notice of administrative actions taken pursuant to this section, and the reasons justifying such actions, shall be published in at least one newspaper of general circulation within the State and in at least one local newspaper if appropriate, and information about such actions and reasons also shall be made available for broadcast on local radio stations in a manner reasonably calculated to inform local rural residents in the affected vicinity. All closures shall be designated on a map which shall be available for public inspection at the office of the Superintendent of the affected park area and the post office or postal authority of every affected community within or near the park area, or by the posting of signs in the vicinity of the restrictions, or both.

§ 13.51 Application procedures for subsistence permits and aircraft exceptions.

(a) Any person applying for the subsistence permit required by § 13.44(a) of this Subpart, or the exception to the prohibition on aircraft use provided by § 13.45(b)(2) of this Subpart, shall submit his/her application to the Superintendent of the appropriate park area. If the applicant is unable or does not wish to submit the application in written form, the Superintendent shall provide the applicant an opportunity to present the application orally and shall keep a record of such oral application. Each application must include (1) a statement which acknowledges that providing false information in support of the application is a violation of Section

1001 of Title 18 of the United States Code, and (2) additional statements or documentation which demonstrates that the applicant satisfies the criteria set forth in § 13.44(a) for a subsistence permit or § 13.345(b)(2) for the aircraft exception, as appropriate. Except in extraordinary cases for good cause shown, the Superintendent shall decide whether to grant or deny the application in a timely manner not to exceed sixty (60) days following the receipt of the completed application. Should the Superintendent deny the application, he/she shall include in the decision a statement of the reasons for the denial and shall promptly forward a copy to the applicant.

(b) An applicant whose application has been denied by the Superintendent has the right to have his/her application reconsidered by the Alaska Regional Director by contacting the Regional Director within sixty (60) days of the issuance of the denial. The Regional Director may extend the sixty (60) day time limit to initiate a reconsideration for good cause shown by the applicant. For purposes of reconsideration, the applicant shall present the following information:

(1) Any statement or documentation, in addition to that included in the initial application, which demonstrates that the applicant satisfies the criteria set forth in paragraph (a) of this section;

(2) The basis for the applicant's disagreement with the Superintendent's findings and conclusions; and

(3) Whether or not the applicant requests an informal hearing before the Regional Director, and if the applicant does request a hearing.

(i) A description of any information, in addition to that included in the initial application and any written materials presented to the Regional Director, which the applicant intends to present at the hearing;

(ii) The names, addresses, and brief description of the proposed presentation of any person which the applicant intends to present at the hearing on his/her behalf, and the names and addresses of any persons he/she would like to question at the hearing.

(c) If, after examining the information submitted by the applicant in support of a request for an oral hearing, it is clear that the applicant would present relevant information which is substantially distinguishable from or supplementary to the information presented to the Superintendent, the Regional Director shall grant the applicant's request for a hearing. After consideration of the written materials and oral hearing, if granted, and within a reasonable period of time, the Regional Director shall affirm, reverse, or modify the denial of the Superintendent and shall set forth in writing the basis for the decision. A copy of the decision shall be forwarded promptly to the applicant and shall constitute final agency action.

Subpart C—Special Regulations—Specific Park Areas in Alaska

§ 13.60 Aniakchak National Monument and Preserve.

(a) *Subsistence.* (1) *Resident Zone.* The following communities and areas are included within the resident zone for Aniakchak National Monument and Preserve:

Chignik.
Chignik Lagoon.

§ 13.61 Bering Land Bridge National Preserve.

(a) *Subsistence.*

(1) *Resident Zone.* The following communities and areas are included within the resident zone for Bering Land Bridge National Preserve:

Buckland
Deering
Shishmaref
Wales

(b) *Off-Road Vehicles.* The use of off-road vehicles for purposes of reindeer grazing may be permitted in accordance with a permit issued by the Superintendent.

§ 13.62 Cape Krusenstern National Monument.

(a) *Subsistence.* (1) *Resident Zone.* The following communities and areas are included within the resident zone for Cape Krusenstern National Monument:

Kivalina
Kotzebue
Noatak

§ 13.63 Denali National Park and Preserve.

(a) *Subsistence.* (1) *Resident Zone.* The following communities and areas are included within the resident zone for Denali National Park and Preserve:

Cantwell
Minchumina
Telida

§ 13.64 Gates of the Arctic National Park and Preserve.

(a) *Subsistence.* (1) *Resident Zone.* The following communities and areas are included within the resident zone for Gates of the Arctic National Park and Preserve:

Alatna
Allakaket
Ambler
Anaktuvuk
Bettles
Kobuk
Shungnak

(2) *Aircraft Use.* In extraordinary cases where no reasonable alternative exists, local rural residents who permanently reside in the following exempted community(ies) may use aircraft for access to lands and waters within the park for subsistence purposes in accordance with a permit issued by the Superintendent:

Anaktuvuk

§ 13.65 Glacier Bay National Park and Preserve. [Reserved]

§ 13.66 Katmai National Park and Preserve.

(a) *Subsistence.* (1) *Resident Zone.* The following communities and areas are included within the resident zone for Katmai National Park and Preserve:

Egigik
Igiugig
Kakhonak
Levelock

§ 13.67 Kenai Fjords National Park.

(a) *Subsistence.* Subsistence uses are prohibited in, and the provisions of Subpart B of this part shall not apply to, Kenai Fjords National Park.

§ 13.68 Kobuk Valley National Park.

(a) *Subsistence.* (1) *Resident Zone.* The following communities and areas are included within the resident zone for Kobuk Valley National Park:

Ambler
Kiana
Kobuk
Noorvik
Shungnak

§ 13.69 Lake Clark National Park and Preserve.

(a) *Subsistence.* (1) *Resident Zone.* The following communities and areas are included within the resident zone for Lake Clark National Park and Preserve:

Nondalton
Port Alsworth

§ 13.70 Noatak National Preserve.

(a) *Subsistence.* (1) *Resident Zone.* The following communities and areas are included within the resident zone for Noatak National Preserve:

Kivalina
Kotzebue
Noatak

§ 13.71 Wrangell-St. Elias National Park and Preserve.

(a) *Subsistence.* (1) *Resident Zone.* The following communities and areas are included within the resident zone for Wrangell-St. Elias National Park and Preserve:

Chistochina
Chitina
Copper Center
Gakona
Gulkana
McCarthy
Mentasta Lake
Nabesna
Slana
Yakutat

(2) *Aircraft*
cases where n
exists local ru
permanently r
exempted com
aircraft for acc
within the par
in accordance
the Superinten
Yakutat

§ 13.72 Yukon
(a) *Subsiste*
The following
are included w
Yukon Charley

Circle
Eagle
Eagle Village

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Copper Center
Gakona
Gulkana
McCarthy
Mentasta Lake
Nabesna
Slana
Yakutat

(2) *Aircraft Use.* In extraordinary cases where no reasonale alternative exists local rural residents who permanently reside in the following exempted communities(ies) may use aircraft for access to lands and waters within the park for subsistence purposes in accordance with a permit issued by the Superintendent:

Yakutat

§ 13.72 Yukon Charley National Preserve.

(a) *Subsistence.* (1) *Resident Zone.* The following communities and areas are included within the resident zone for Yukon Charley National Preserve:

Circle
Eagle
Eagle Village

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Monday
January 19, 1981

Part XXVI

Department of the Interior

Fish and Wildlife Service

Alaska National Wildlife Refuges

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 36

Alaska National Wildlife Refuges

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: On December 2, 1980, President Carter signed into law the Alaska National Interest Lands Conservation Act (hereafter referred to as the "Alaska Lands Act"). The Alaska Lands Act contains a significant number of new and complex standards for management of the National Wildlife Refuge System in Alaska. Enactment of the Alaska Lands Act also resulted in the automatic application of the general National Wildlife Refuge System regulations to the 57 million acres of refuges designated in the Act.

These proposed regulations, when finalized, will perform two functions. Most importantly, they will relieve those restrictions imposed by the general National Wildlife Refuge System regulations that are inappropriate in Alaska, such as those placing restrictions on the carrying of firearms. The regulations will also implement and clarify on an interim basis a number of provisions of the Act that are of immediate importance to Alaskans, such as those relating to subsistence and cabins. The Fish and Wildlife Service deems these proposed regulations as the minimal necessary to provide proper management for Alaska National Wildlife Refuges. These proposed regulations are not intended, however, to result in final comprehensive regulations for these areas. The Service will undertake additional rulemaking as appropriate for issues not addressed in this proposal. Public comments on these proposed rules are solicited for 45 days.

DATES: Written comments should be submitted on or before March 5, 1981.

ADDRESS: Comments should be directed to: Alaska Regional Director, U.S. Fish and Wildlife Service, 1011 E. Tudor Road, Anchorage, Alaska 99507

FOR FURTHER INFORMATION CONTACT: Keith Schreiner, Alaska Regional Director, U.S. Fish and Wildlife Service, 1011 E. Tudor Road, Anchorage, Alaska 99507 (907–276–3800) or William C. Reffalt, Chief, Division of Refuge Management, U.S. Fish and Wildlife Service, Room 2349, U.S. Department of the Interior, Washington, D.C. 20240 (202–343–4791).

SUPPLEMENTARY INFORMATION:

Background

The Alaska Lands Act established, redesignated, or expanded sixteen National Wildlife Refuges in Alaska: Alaska Maritime, Alaska Peninsula, Arctic, Becharof, Innoko, Izembek, Kanuti, Kenai, Kodiak, Koyukuk, Nowitna, Selawik, Tetlin, Togiak, Yukon Delta, and Yukon Flats (see the Addendum at the end of this publication). Each of these areas is to be managed pursuant to applicable National Wildlife Refuge law, most notably the Refuge Administration Act, 16 U.S.C. 668dd *et seq.*, and the provisions of the Alaska Lands Act. Until these rules are finalized, the existing general National Wildlife Refuge System rules found at 50 CFR Chapter I, Subchapter C apply except as modified by the provisions of the Alaska Lands Act.

The vast majority of the areas encompassed by the sixteen Alaska National Wildlife Refuges were previously administered by the Fish and Wildlife Service under various legal authorities. The Becharof and Yukon Flats National Wildlife Monuments, established by the President on December 1, 1978, were generally managed under authority of the Antiquities Act, 16 U.S.C. 431 *et seq.*, and emergency interim regulations, 43 FR 60255 (Dec. 26, 1978). Twelve other areas, Alaska Marine Resources, Arctic, Innoko, Kanuti, Kenai, Koyukuk, Nowitna, Selawik, Tetlin, Togiak, Yukon Delta, and Yukon Flats, were withdrawn and established as wildlife refuges by the Secretary of the Interior on February 11, 1980, and were generally managed under authority of the Refuge Administration Act and emergency interim regulations, 45 FR 14192 (March 4, 1980). The withdrawals and reservations establishing these areas as monuments and refuges were rescinded by operation of law as of December 2, 1980, pursuant to section 1322(b) of the Alaska Lands Act when the State of Alaska recently relinquished their land selections made on November 14, 1978, within the boundaries of conservation system units, national conservation areas, national recreation areas, and forest additions. Accordingly, the emergency interim regulations for both the National Wildlife Monuments and the National Wildlife Refuges established February 11, 1980, are revoked by operation of law.

The Need For Expeditious Rulemaking

These proposed rules would provide relief from existing general National Wildlife Refuge System regulations found in 50 CFR Chapter I, Subchapter C. They would also establish administrative procedures necessary to implement and clarify several provisions of the Alaska Lands Act. For these reasons and as further developed below, the Fish and Wildlife Service has determined that there is a need for expeditious rulemaking. Accordingly, the Service has adopted a 45 day comment period (which is longer than that required under 5 U.S.C. 553) for these proposed rules and plans to issue final regulations in March 1981. The basis for this approach are summarized below:

First, many sections of the final regulations will relieve restrictions on public uses of refuge areas in Alaska that would otherwise be applicable under 50 CFR Chapter I, Subchapter C. Activities such as snowmobile use or the possession of firearms for hunting (which are generally considered recreational and nonessential in the lower 48 states) are vital to the maintenance of the present lifestyle of rural inhabitants of the communities in or near Alaska National Wildlife Refuges. Similarly, in most regions of Alaska the airplane is the only convenient or available means of transportation. To the extent that the current refuge system regulations generally prohibit the possession of firearms and the use of snowmobiles or airplanes within National Wildlife Refuges, literally thousands of otherwise law abiding citizens in rural Alaska have been placed in jeopardy of criminal prosecution as a result of the automatic application of the general refuge management regulations to the new conservation system units. These three examples are merely representative of the hardships created in Alaska by the automatic application of the general refuge system regulations. The Fish and Wildlife Service does not believe that Congress intended to create these hardships through the designation of the new Alaska National Wildlife Refuges and, therefore, feels that it is imperative that various public use restrictions be modified as quickly as possible. The Service believes it is contrary to the public interest to force inholders and users of the new refuges in Alaska to be in apparent contravention of certain provisions of the general refuge management regulations and therefore intends to promulgate in the near future final regulations to correct this conflict.

Second, there is a need to establish administrative procedures for implementing the new directives of the Alaska Lands Act. The Act's provisions on subsistence, access, and cabins

require administrative mechanisms for providing public guidance. Final regulations are needed to establish the administrative channels for implementing these provisions.

Third, with the new directives in the Alaska Lands Act, there is considerable confusion concerning public use of refuge areas in Alaska. For instance, the nonwasteful subsistence use of fish, wildlife and other renewable resources by local rural residents is formally recognized for the first time within Alaska National Wildlife Refuge areas. In order to harmonize the statutory directives with existing regulations and to alleviate public concern over potential criminal prosecution, the Fish and Wildlife Service believes that expeditious public guidance is necessary. The delay caused by a long rulemaking process would exacerbate confusion and uncertainty concerning which activities could be conducted in refuge areas without the threat of criminal prosecution.

Fourth, the Service believes expeditious rulemaking is warranted since the Service has already received extensive public comment concerning the management of fish and wildlife conservation areas in Alaska during earlier regulatory efforts and since these proposed regulations also provide a public comment period. To the greatest extent possible consistent with the Alaska Lands Act, these proposed regulations follow the public desires on open access, carrying of firearms, subsistence, and other issues that were articulated during earlier public involvement proceedings.

In February of 1979 the Fish and Wildlife Service published a "Notice of Intent to Publish Rules" for National Wildlife Monuments in Alaska. 44 FR 11247 (Feb. 28, 1979). The Notice of Intent solicited public comment on the same management issues addressed in these proposed regulations.

Furthermore, when it proposed permanent general management regulations for national wildlife monuments in June of 1979, 44 FR 37754 (June 28, 1979), the Fish and Wildlife Service received over 200 written public comments from private individuals, private or public interest groups, governmental agencies, and private business corporations or companies. In addition, formal public hearings on the proposed regulations were conducted in Anchorage and Fairbanks and written and oral testimony were received. Comments were received on such topics as general refuge purposes; inholdings; Native allotments; public access, including the use of aircraft, motorboats, snowmobiles and off-road vehicles; subsistence; commercial activities; recreational use; cabins; explosives and firearms; unattended or abandoned property; animal management and control; sport hunting and fishing; and commercial fishing.

Beginning in early April 1979, an intense program of public consultation was again initiated regarding potential Secretarial refuge withdrawals under section 204(c) of the Federal Land Policy and Management Act. This consultation process included press conferences, information packets, distribution of maps, and press releases explaining the proposed withdrawals and probable management controls on public activities. Public hearings regarding the proposed 204(c) withdrawals were conducted in six rural Alaska communities of key geographical location and in the urban centers of Anchorage and Fairbanks. Public hearings were also held in San Francisco, CA, Denver, CO, and Washington, D.C.

In addition to the formal hearings on the matter, numerous meetings were held in Alaska communities to explain section 204(c) proposals to local residents as well as leaders of local government, Native groups, and others. Special efforts were also made to explain the proposed withdrawals to individual local residents.

The regulations proposed here constitute the bare minimum required for interim management of the Alaska National Wildlife Refuges and implementation of the Alaska Lands Act. As noted above, the proposed regulations would either relieve regulatory restrictions which are inappropriate in the Alaska setting (*e.g.*, carrying of firearms and unattended property), or implement crucial provisions of the Alaska Lands Act (*e.g.*, subsistence, access, cabins, taking of fish and wildlife). The limited agenda of these proposed regulations covers only those topics areas which had been subject to prior public notice and comment in previous Fish and Wildlife rulemakings relating to Alaska.

Additional topic areas not addressed in this proposed rulemaking will be the subject of future regulatory exercises. The Fish and Wildlife Service will strive for substantial public comment periods in any future rulemakings proposed by the Service or other parties.

Description of the Proposed Rules

The following is a brief summary of the various regulatory provisions contained in these proposed rules.

Subpart A—Introduction and General Provisions

Section 36.1 This proposed section sets out the applicability and scope of these rules. Alaska National Wildlife Refuges are subject to all of the general National Wildlife Refuge System regulations (*see*, 50 CFR, Chapter I, Subchapter C), as supplemented and modified by these rules when finalized. Existing special regulations now in force and effect will also apply to applicable refuge lands in Alaska National Wildlife Refuges, except as inconsistent with the rules as finally promulgated.

Sections 103(c) and 906(o) of the Alaska Lands Act generally restrict the applicability of Fish and Wildlife Service regulations to federally owned lands within the boundaries of Alaska National Wildlife Refuges. Consistent with the statute and the explanatory legislative history [126 Cong. Rec. H11115 (daily ed. Nov. 21, 1980) and 126 Cong. Rec. S15150–31 (daily ed. Dec. 1, 1980)], § 36.1(b) restricts the applicability of these regulations to "federally owned" lands, which is defined to include all interest held by the Federal government. With the legislative conveyance of 96 million acres of State selections in section 906 of the Act, no unconveyed State selections remain within Alaska refuges. Therefore, no State selected and conveyed lands within the boundaries of the Alaska National Wildlife Refuges will be subject to the provisions of these regulations. Similiarly, land interests interimly conveyed or patented to Native corporations, where such interests are located within the boundaries of areas initially added to the National Wildlife Refuge System by the Alaska Lands Act, would not be affected by these regulations. Other private, patented inholdings within the Alaska National Wildlife Refuge would also not be subject to these regulations.

Section 36.2 This section sets out the definitions of key terms used in these emergency interim rules. The definitions generally follow the language of the Alaska Lands Act where available or adopt generally accepted definitions used in prior regulations promulgated by the Fish and Wildlife Service for fish and wildlife conservation areas. The term "fish and wildlife," for instance, tracks the language of the statute, although the Fish and Wildlife Service recognizes the clearly expressed Congressional intent that this term does not include those animals the Service determines to be exotic or domestic [126 Cong. Rec. H10543 (daily ed. Nov. 12, 1980)]. Other definitions, such as those for "adequate and feasible access" and

"subsistence uses," are discussed in connection with the substantive access and subsistence provisions and are not repeated here.

Subpart B—Subsistence Uses

Subpart B of these proposed regulations would implement the policies and procedures governing subsistence uses contained in Title VIII of the Alaska Lands Act.

The proposed regulations for subsistence are necessary for several reasons. First, they would relieve restrictions in the otherwise applicable general National Wildlife Refuge System regulations for uses and activities integral to the subsistence lifestyle. In certain cases, the Alaska Lands Act does not specifically relieve these restrictions; in other cases, the Act allows the uses, but the general refuge regulations appear to prohibit them under threat of criminal penalty. Second, proposed regulations would implement certain critical provisions of the Alaska Lands Act concerning subsistence (*e.g.*, the subsistence priority, the closure standards and procedures for subsistence uses of fish and wildlife, and subsistence and land use decisions), and would extend the approach of certain of these provisions to subjects not specifically mentioned by the Act (*e.g.*, closure standards and procedures for subsistence use of plants).

For the most part, the Subpart B regulations proposed today were proposed for comment as regulations for the Alaska National Monuments. 44 FR 37,754 (June 28, 1979). The Fish and Wildlife Service received extensive comment on those proposed regulations and has accordingly revised the proposed monument regulations in several places. Moreover, the Service welcomes additional comments on these proposed regulations in the next forty-five days. Today's proposed regulations differ from the proposed monument regulations in certain respects because of the now applicable mandates of the Alaska Lands Act.

The proposed regulations on subsistence are not comprehensive. They would not provide for implementing certain provisions of Title VIII of the Alaska Lands Act that, in the Service's judgment, do not limit themselves to expeditious promulgation since they have not previously been the subject of notice and comment. Notable among these statutory provisions are the State regulation opportunity of Section 805(d) and the Federal monitoring requirement of Section 806. It should be emphasized that all parties must comply with these statutory provisions as long as they remain in effect; however, the Fish and Wildlife Service will consider specific regulations and policies as appropriate for implementing these provisions in the future.

Section 36.11 Section 36.11(a) would establish that, consistent with proper management of fish and wildlife and the purposes for which the Alaska National Wildlife Refuges were established, the purpose of Subpart B of the regulations is to provide the opportunity for local rural residents engaged in a subsistence way of life to do so pursuant to applicable State law and Federal law Alaska Lands Act, sections 101(c) and 802(1). The proposed Subpart B regulations are designed to accommodate and protect the unique subsistence relationship of certain local rural people in Alaska with their natural environment. Alaska Native people have been living a subsistence way of life for thousands of years, and certain non-Native rural residents have developed a subsistence way of life in more recent times. Many of these local rural residents have customarily and traditionally taken the renewable resources which are now within the boundaries of refuges areas. The resources satisfy both the physical needs of these local rural residents for food, shelter, fuel, clothing, tools, and transportation and their societal needs for cultural identity through skills, lore, and traditions. In light of the cultural and societal importance of the subsistence lifestyle in rural Alaska and its dependence on the renewable resources, therefore, Subpart B would implement the Congressional directive to continue the opportunity for subsistence uses within Alaska National Wildlife Refuges by local rural residents.

Least Adverse Impact Possible. In fulfilling the aforementioned goal of the subsistence regulations, proposed § 36.11(b)–(c) sets forth basic policies which the Alaska Lands Act adopted to guide the activities of the administering agencies. Alaska Lands Act, sections 802 (1), (2) and 804. First, consistent with sound resource management principles and the conservation of healthy populations of fish and wildlife, the utilization of refuge areas is to cause the least adverse impact possible on local rural residents who depend upon subsistence uses of the resources of the public lands in Alaska for their economic and physical well-being and cultural vitality. This statutory policy is implemented throughout the proposed regulations, particularly in the procedures mandated by § 36.37, the subsistence priority established by § 36.11(c), and the limitations on closure, §§ 36.12, 36.15, and 36.16.

Subsistence Priority. The second policy, articulated in § 36.11(c), would establish nonwasteful subsistence uses of fish, wildlife, and other renewable resources by local rural residents as the priority consumptive use over any other consumptive uses permitted within refuge areas. The Fish and Wildlife Service anticipates State regulations implementing the subsistence priority.

Limitations. In addition to establishing the purpose and policies of the Subpart B regulations, proposed § 36.11 also establishes the limitations of the purpose and policies. According to § 36.11(a), the subsistence opportunity may only be provided in a manner and degree consistent with the management of fish and wildlife in accordance with recognized scientific principles and with the purposes for which each refuge area was established, designated, or expanded by the Alaska Lands Act. According to proposed § 36.11(b), the utilization of the public lands is to cause the least adverse impact possible on local rural residents, but this policy is limited by the requirement that it be consistent with sound management principles and the conservation of healthy populations of fish and wildlife. Furthermore, proposed § 36.11(c) establishes the basic limitations of all the provisions of the proposed Subpart B regulations: subsistence uses of fish and wildlife populations must be appropriately regulated so as to assure conservation of healthy populations within Alaska National Wildlife Refuges. Congress provided the following guidelines on the implementation of this concept:

> The Committee intends the phrase "the conservation of healthy populations of fish and wildlife" to mean the maintenance of fish and wildlife resources and their habitats in a condition which assures stable and continuing natural populations and species mix of plants and animals in relation to their ecosystems, including recognition that local rural residents engaged in subsistence uses may be a natural part of that ecosystem; minimizes the likelihood of irreversible or long-term adverse effects upon such populations and species; and ensures maximum practicable diversity of options for the future. The greater the ignorance of the resource parameters, particularly of the ability and capacity of a population or species to respond to changes in its ecosystem, the greater the safety factor must be. Thus, in order to insure that subsistence uses are compatible with the maintenance of

healthy populations of fish and wildlife, it must be recognized that the likelihood of irreversible or long-term adverse effects to a population or species must be proportional to the magnitude of the risks caused by a proposed use of such population or species.

The Committee recognizes that the management policies and legal authorities of the National Park System and the National Wildlife Refuge System may require different interpretations and application of the "healthy population" concept consistent with the management objectives of each system. Accordingly, the Committee recognizes that the policies and legal authorities of the managing agencies will determine the nature and degree of management programs affecting ecological relationships, population dynamics, and the manipulation of the components of the ecosystem. S. Rep. No. 96-413, *supra*, 233.

Local Rural Resident. Throughout the proposed regulations, the Fish and Wildlife Service categorizes those people who may engage in subsistence uses as "local rural residents." This term derives from the term "local residents" in Title III of the Alaska Lands Act and the term "rural Alaska residents" in the definition of "subsistence uses" in Title VIII. Title III authorizes the opportunity for continued subsistence uses by *local residents.* Alaska Lands Act, section 302 and 303. The definition of "subsistence uses" refers to "rural Alaska residents" Alaska Lands Act, Section 803. The relationship between this language in Title III and Title VIII was described as follows in the Congressional Record:

> Since the definition of "subsistence uses" in § 803 limit such uses to "rural Alaska residents," a reading of Title VIII and Title III * * * together make it clear that the policy throughout is that only local rural residents are by statute provided the opportunity to engage in subsistence uses in areas of the * * * National Wildlife Refuge System. 126 Cong. Rec. S15129 (daily ed. Dec. 1, 1980).

Subsistence Uses. The proposed definition of "subsistence uses" tracks the language of section 803 of the Alaska Lands Act with one modification: as explained below, today's proposed definition offers some guidance on the meaning of the term "customary trade," which the statute leaves undefined.

The term "subsistence uses" means the customary and traditional uses by rural Alaska residents of fish, wildlife, and other wild, renewable resources for direct personal or family consumption as food, shelter, fuel, clothing, tools, or transportation; for the making and selling of handicraft articles from the nonedible byproducts of fish and wildlife resources taken for personal or family consumption; for barter, or sharing for personal or family consumption; and for customary trade. This proposed definition uses several terms which require further explanation.

To begin with, the definition uses the phrase "customary and traditional" to modify the term "uses" in order to emphasize that Native and non-Native subsistence uses "have played a long established and important role in the economy and culture of the community and * * * [that] such uses incorporate beliefs and customs which have been handed down by word of mouth or example from generation to generation." S. Rep. No. 96-413, *supra*, 269; H. Rep. No. 96-97, 96th Congress, 1st Session 280 (1979).

Next, the definition limits subsistence uses to those "by rural Alaska residents." Clearly, this limitation excludes residents of Ketchikan, Juneau, Anchorage, and Fairbanks from engaging in authorized "subsistence uses." *See*, S. Rep. No. 96-413, *supra*, 233. Residents of "rural" Alaska—including communities such as Dillingham, Bethel, Nome, Kotzebue, Barrow, and other villages throughout the State (as long as such communities remain rural) may engage in "subsistence uses." It is important to emphasize, however, that in refuge areas, only *local* "rural residents" are accorded the subsistence priority. Thus, while the statutory definition of "subsistence uses" focuses more broadly on "*rural* Alaska residents" wherever they may live, the legislative history of Title III and VIII clearly shows that it is only for that category of rural resident who is also *local* to the vicinity of a particular wildlife refuge, that the subsistence priority is intended to apply. See 126 Con. Rec. S15129 (daily ed., Dec. 1, 1980).

The term "family" is defined to include any person living within a local rural resident's household on a permanent basis as well as those persons living outside the household who are related by blood, marriage, or adoption (legal or equitable). The definition of "family" recognizes extended family patterns common in the subsistence culture of Alaska.

The definition of "subsistence uses" includes the making and selling of handicraft articles from the nonedible byproducts only of fish and wildlife resources taken for personal or family consumption. Accordingly, the definition covers such commercial activities only if the edible portions of the resource have been used for personal or family consumption. The "subsistence uses" definition also includes "barter" for personal or family consumption in recognition that a genuine subsistence lifestyle includes certain foodstuffs and other items which may be available through a non-cash exchange. Thus, barter of subsistence resources of a limited and noncommercial nature falls within the meaning of "subsistence uses."

Finally, the definition of "customary trade" proposed today recognizes that a subsistence lifestyle may also include limited involvement in the cash economy through the exchange of furs. Trapping of furbearers is an integral and longstanding part of the subsistence lifestyle in many regions in Alaska. While some of the furs are utilized for personal or family use, it is recognized that a portion of the furs ultimately become items for sale on the commercial market. The cash remuneration, in turn, helps to provide the basic tools and supplies associated with trapping and the subsistence lifestyle of which trapping is a part. For example, local rural residents may engage in trapping to obtain the cash required for necessary store-bought supplies such as gasoline and ammunition. The allowance of cash interchange related to trapping is intended to provide continuity to the traditional and customary harvest of furbearers by those who engage in subsistence uses within refuge areas.

It should be recognized, however, that the definition of "customary trade" was intended by Congress to be narrow:

> The Committee does not intend that "customary trade" be construed to permit the establishment of significant commercial enterprises under the guise of "subsistence uses." The Committee expects the Secretary and the State to closely monitor the "customary trade" component of the definition and promulgate regulations consistent with the intent of the subsistence title. S. Rep. No. 96-413, *supra*, 234.

Accordingly, this provision is not intended to allow trapping within refuge areas to be or become a solely or predominantly commercial enterprise beyond its traditional role as part of the subsistence regulations.

Today's proposed definition of "customary trade" is the same as the definition proposed by the Fish and Wildlife Service in the regulations for the Alaska National Wildlife Monuments [44 FR 37,786 (June 29, 1979)]. Most commenters on the definition supported it since, as one commenter wrote, "Nowhere in the Alaska bush today does anyone live without some items purchased from the 'outside,' and trapping is often the only way to earn the necessary cash." The Alaska Federation of Natives (FAN)

suggested in its comments on the proposed monument regulations that the definition be expanded to include, in addition to the exchange of furs for cash, the exchange of other fish, wildlife, and plant resources for cash as may be specifically permitted for particular park areas by Subpart C regulations. AFN did not, however, propose any specific additions to the customary trade definition for particular refuge areas. Today's proposed interim regulations do not adopt AFN's earlier suggested expansion. Information currently available to the Department reveals no basis or need for such expansion, and the Alaska Lands Act does not invite new commercial enterprises under the guise of "subsistence uses." In fact, it should be emphasized that customary trade may only derive from "customary and traditional" uses of resources under the definition of "subsistence uses." If new information is developed which shows the definition of "customary trade" should be expanded, the Service will address the need through special regulations for the refuge in question.

Section 36.12 In furtherance of Section 811 of the Alaska Lands Act, this section would provide local rural residents engaged in subsistence uses reasonable access to the subsistence resources on which they depend. This proposed section liberalizes the provisions of subpart C on snowmobiles, motorboats, and certain off-road vehicles in the case of local rural residents who are engaged in subsistence hunting, fishing, and gathering activities within the refuge areas. All routes and areas are open to subsistence use of these vehicles except as specifically restricted or closed. The Refuge Manager will implement such closures or restrictions on the basis of criteria which are more limited than the criteria for closure to general recreation use. Basically, in order to impose a restriction, the Refuge Manager must determine that the use in question is causing or may cause an adverse impact on public health and safety, resource protection, protection of historic or scientific values, subsistence uses, conservation of endangered or threatened species, and other management considerations necessary to ensure that the use of snowmobiles, motorboats, as other purposes or values for which the refuge area was established. The Refuge Manager will arrange notice and public participation concerning closure proposals in order to involve those affected to the fullest extent possible in the decisionmaking.

It should be noted that the types of access vehicles covered by proposed § 36.12 include "other means of surface transportation traditionally employed by local rural residents engaged in subsistence uses." The limitations of this phrase, if any, will be addressed as appropriate in future rulemaking efforts.

Under the proposed regulations, any person operating motorboats, snowmobiles, and other means of surface transportation must comply with applicable State and Federal laws governing such operation and must avoid causing waste or damage to fish, wildlife, terrain, or other values of the refuge area. In addition, consistent with State law, the vehicle operator may not use a motorized vehicle so as to herd, harass, haze, or drive wildlife for hunting or any other purpose.

At all times when not engaged in subsistence uses, local rural residents would be able to use snowmobiles, motorboats, and other means of surface transportation in accordance with the appropriate subpart C regulations. For example, local rural residents engaged in recreational uses of snowmobiles, motorboats, and other means of surface transportation would comply with the provisions of §§ 36.21 and 36.22 and local rural residents seeking otherwise closed access to inholdings or temporary access would comply with the provisions of §§ 36.23 and 36.24 respectively.

Section 36.13 This section would authorize local rural residents to engage in fishing in Alaska National Wildlife Refuges in compliance with applicable State and Federal law. Section 36.16, explained below, would govern closures to fishing for subsistence purposes.

Section 36.14 This section would authorize local rural residents to hunt or trap wildlife for subsistence uses in compliance with applicable State and Federal law. Closure of areas to subsistence hunting and trapping is treated in § 36.16.

Section 36.15—This section addresses subsistence uses of timber and plant material. Section 36.15(a) authorizes the noncommercial cutting of live standing timber and the noncommercial gathering of fruits, berries, mushrooms, and other plant material by local rural residents for subsistence uses. Permits would not be required for such activities or for gathering dead or downed timber for firewood for personal, not commercial, use.

Section 36.15(b) sets forth the proposed standards and procedures for closing a refuge area to the subsistence uses of a particular plant population. Although not expressly required by the Alaska Lands Act, the Fish and Wildlife Service proposes to apply similar closure provisions for subsistence uses of plants as the Act requires for subsistence uses of fish and wildlife. As discussed below in the latter context, the closure standards are narrow, and the closure procedures involve significant public participation, in order to protect the affected local rural residents who depend on the resources.

Section 36.16 Pursuant to Section 816 of the Alaska Lands Act and this proposed section, the Refuge Manager has the authority to close or restrict any part or all of an Alaska National Wildlife Refuge to subsistence uses of a particular fish or wildlife population only temporarily and only if necessary "for reasons of public safety, administration, or to assure the continued viability of such population." To implement Congress' intent, proposed § 36.16 provides protection standards, time limitations, and notice requirements for closures to subsistence taking of fish and wildlife.

With respect to the standards for closure, the Act lists only three: public safety, administration, and for assurance of the continued viability of a fish or wildlife population. No closure for purposes of administration, moreover, may be made prior to notice and hearing in the vicinity of the closure. The public safety standard clearly allows the Refuge Manager to act in situations which threaten public health and welfare. For example, the Refuge Manager may prohibit subsistence hunting and trapping for reasons of public safety in specified areas surrounding a public campground, roadway, or hiking trail. The "fish or wildlife viability" standard allows the Refuge Manager to act for purposes of maintaining resource populations upon which local rural residents rely at levels adequately above the threatened level. As Congress stated, "it is not the intent that actual depletion of a population or an emergency exist before a closure under this section may be justified." S. Rep. No. 96-413, *supra*, 276; H. Rep. No. 96-97, *supra*, 289.

Moreover, as stated in Section 815 of the Alaska Lands Act and § 36.11(d) of these proposed regulations, and explained previously, the subsistence provisions are not to be construed as permitting a level of subsistence use of fish and wildlife within Alaska National Wildlife Refuges determined to be inconsistent with the conservation of healthy populations of fish and wildlife. The "administration" standard is potentially the broadest of the three closure standards, though "recognition of the importance of subsistence

activities to most [local] rural residents requires that this authority be utilized narrowly and with consistent restraint." S. Rep. No. 96-413, *supra*, 278; H. Rep. No. 96-97, *supra*, 289. Guided by this intent, the Refuge Manager can invoke the administration standard to protect the purposes and values of the refuge areas and to otherwise manage the refuge prudently. The limitation of Section 815 of the Act and § 36.11(d) of the proposed regulations would also be relevant to this closure standard.

Closures shall last only so long as reasonably necessary to achieve the purposes of the closure. In the case of closing an area around a hiking trail for reasons of public safety, for example, the closure "should remain in effect only so long as reasonably necessary to provide for the public safety during normal periods of consistent public use, and only apply to the minimum portion of the public lands reasonably necessary to achieve this purpose." S. Rep. No. 96-413, *supra*, 277-78; H. Rep. No. 96-97, *supra*, 289. Thus, closures may be seasonal in nature, for example, if warranted by the situation.

In the normal case, a closure would be preceded by consultation with the State and adequate notice and informal public hearing in the vicinity of the closure. In an emergency situation, the Refuge Manager would immediately close the area for a period not to exceed sixty days. As proposed, the Refuge Manager may extend an emergency closure only if he establishes, after notice and formal public hearing in the vicinity, that the extension is justified under the applicable closure standards.

Finally, § 36.16(c) proposes thorough notice procedures designed to inform as many local rural residents as possible about any closures which may affect them.

Subpart C—Use of Motorized Vehicles and Access

Proposed § 36.21–36.24 of these regulations implement sections 1110 and 1111 of the Alaska Lands Act concerning access by the public across Alaska National Wildlife Refuges for nonsubsistence purposes. These proposed regulations generally relax restrictions on access that are applicable to National Wildlife Refuge units outside of Alaska, consistent with the requirements of the Alaska Lands Act. These sections are designed to and are presented in an order which will funnel the vast majority of access needs away from a system of individual access permits. Section 36.21 initially opens all refuges to access by snowmobile, aircraft, and motorboat for any purpose. (Additional access for subsistence uses is set forth in § 36.12). Section 36.22 provides a mechanism for establishing common corridors and areas for off-road vehicle use. In the less common situation where §§ 36.11 and 36.22 do not accommodate a refuge "inholder's" need for access, § 36.23 provides for individual permits that insure adequate and feasible access while minimizing damage to refuge resources. Finally, where §§ 36.21–36.23 do not otherwise provide temporary access, § 36.24 creates another means for obtaining desired access.

Section 36.21 This section initially opens all Alaska National Wildlife Refuges to access by snowmobile (on areas with adequate snow cover or frozen areas), motorboat, and aircraft without the need for individual access permits. Access by these methods of transportation is authorized for any purpose (*e.g.*, travel between villages, to a homesite, for mineral development on valid existing claims or patented lands, for recreation, or for traditional activities), except as is specifically provided for subsistence uses in § 36.12.

Section 36.21 implements section 1110(a) of the Alaska Lands Act, which permits access for "traditional activities and for travel to and from villages and homesites." This approach extends the statutory concept to access for all purposes, except for subsistence uses which is addressed in independent statutory and regulatory sections. Consistent with section 1110(a) of the Act, section 13.42 authorizes the closure of refuges to snowmobile, motorboat, and aircraft access only after notice and hearing. Even after closure, emergency landing of aircraft (*e.g.*, because of severe weather or vehicle failure) will not be prosecuted. This general authorization of access by snowmobile, motorboat, and aircraft should greatly reduce the need to obtain specific access permits under §§ 36.23 and 36.24, since in most cases reasonable access will be granted under § 36.21.

This section also sets out procedures for removal of aircraft downed after December 2, 1980, on Alaska National Wildlife Refuges. The regulations would require that downed aircraft must be removed pursuant to the terms of a special use permit unless the Refuge Manager determines, on a case-by-case basis, that the removal of the aircraft would constitute an unacceptable risk to human life, would result in extensive resource damage, or would otherwise be impracticable or impossible. In evaluating this final criterion, the Service would not require removal of a downed aircraft in any situation when the removal of the aircraft would cause such a severe and significant hardship to the owner as to be economically prohibitive.

Section 36.22 This section provides a procedure for supplementary access needs without requiring individual access permits. While all Alaska refuges are initially closed to off-road vehicle use because of the heightened potential for habitat degradation arising from this uncontrolled use, § 36.22 authorizes the Refuge Manager to designate off-road vehicle routes and areas. The Service anticipates that this procedure will be used most often to designate common corridors for off-road vehicle travel between villages, and similar situations when a single route can satisfy the access needs of a group of individuals. Section 36.22 implements the directive of section 1110(b) of the Alaska Lands Act to provide "adequate and feasible" access and does so through a methodology that will reduce the need for individual access permits. Furthermore, as in any situtation involving rule-making, persons may petition the Refuge Manager under the procedures of 43 CFR 14.6 to have a route or area designated as open for off-road vehicle use, should the Service fail to identify or propose that area as open.

Section 36.23 If § 36.21 and 36.22 have not already provided "adequate and feasible" access for persons with valid property or occupancy interests which are surrounded or effectively surrounded by refuge lands, proposed § 36.23 creates a procedure for obtaining such access as required by section 1110(b) of the Alaska Lands Act. As proposed, "adequate and feasible access" is defined in § 36.2 in terms of an economically practicable method and route of access (but not necessarily the most economically feasible alternative), consistent with the legislative history appearing in S. Rep. No. 96-413, 96th Cong., 2nd., sess., 248-49 (Nov. 14, 1979). Section 36.23 would apply only when an area has been closed to snowmobile, aircraft, or motorboat use, or when no designated off-road vehicle route or areas exists. In such cases, the landowner would apply to the appropriate Refuge Manager for an access permit, stating the desired method and route of access, and whether this desired form of access has been traditionally used by the landowner in the past. (Additional information would be required for mineral exploration, assessment or development activities, as discussed below).

Under this section as proposed, the Refuge Manager is required to issue an access permit for the routes and

methods desired by the applicant unless he determines that such access would cause significant damage to refuge resources or would jeopardize public health and safety (including concerns for subsistence uses and adjacent landowners), and in either case, that adequate and feasible access otherwise exists (*e.g.*, a different route exists which would minimize refuge damage, snowmobile or aircraft access already provides "adequate and feasible access", etc.).

If the Refuge Manager makes one of these determinations, this section requires that he specify in a permit such other alternate methods and routes of access as will provide adequate and feasible access to the applicant, while minimizing damage to refuge resources. Of course, the access routes and methods finally authorized may be used by guests and invitees of the permittee.

Thus, proposed § 36.23 implements section 1110(b) of the Alaska Lands Act by insuring adequate and feasible access to refuge "inholders" through an individual permit process, which would be utilized only when the non-permit provisions of §§ 36.21 and 36.22 do not provide reasonable access.

Subsection 36.23(c) would provide special information requirements for access inside refuge areas for mineral exploration or development. These special information requirements are not applicable when the inholder does not require access across refuge lands (*e.g.*, aircraft landings on nonfederally owned lands) or when access is to be accomplished through the use of aircraft, motorboats or snowmobiles which has already been provided for pursuant to §§ 36.21 and 36.22 of these regulations. Thus, these proposed rules would establish no requirement to provide information when access across refuge areas for mineral exploration or development is available by snowmobile, aircraft, motorboat or designated off-road vehicle route under §§ 36.21 and 36.22.

This approach would limit the special mining information requirements to situations where the potential for damage to refuge resources is the greatest (*e.g.*, bulldozer and production equipment access). In situations where proposed § 36.23(c) is applicable, prospective mineral developers would be required to apply for an access permit and include the information called for by this section. This information, which is the same as that previously required in other Fish and Wildlife Service, regulations applicable to Alaska areas, has not proven to be burdensome in the past.

Mining claimants are also reminded that maintenance of a claim requires compliance with the annual filing and other requirements of section 314 of the Federal Land Policy and Management Act, 43 U.S.C. 1744. Furthermore, mining claimants within Alaska National Wildlife Refuges are reminded that section 304 of the Alaska Lands Act closed all refuges to new mining locations and entries. The Fish and Wildlife Service reserves the rights to refuse access when it is found that a valid mining claim does not exist, pursuant to sections 304 and 1110(b) of the Alaska Lands Act.

Section 36.24 This proposed section implements section 1111 of the Alaska Lands Act by establishing a permit mechanism for obtaining temporary access across an Alaska National Wildlife Refuge for purposes of survey, geophysical, exploratory, or other temporary uses of non-federal lands located outside refuge boundaries. Section 36.24 requires an access permit only where §§ 36.21 and 36.22 do not provide the desired access, and where § 36.23 is not applicable (*e.g.*, if a refuge "inholder" or a person effectively surrounded by Federal lands requires temporary access across a refuge, section 1110(b) of the Alaska Lands Act and § 36.23 of these regulations grant greater access privileges). Where temporary access is otherwise unavailable, the applicant would apply to the Refuge Manager for an access permit. The permit applicant must indicate the proposed route and method of access, the temporary use the applicant proposes to undertake, and, in the case of mineral survey or exploration, the same information on the planned mineral operations required in § 36.23. The Refuge Manager would be required to grant the desired temporary access if no permanent harm to refuge resources will result. The Refuge Manager is directed by this section to include such stipulations and conditions (*e.g.*, alternate methods and routes of access) on temporary access as will ensure consistency with refuge purposes and no permanent harm to refuge resources.

Subpart D—Other Refuge Uses

Section 36.31 This section authorizes public recreational activities such as boating, camping, hiking, and picnicking, within an Alaska National Wildlife Refuge as long as these activities are conducted in a manner compatible with the purposes of the particular refuge. After reviewing the various types of such activities which are ongoing within the Alaska National Wildlife Refuges, the Service presently believes that all such activities are practicable and compatible with the purposes for which the refuges where established, designated, or expanded. Recreational activities would be prohibited or restricted only in compliance with the public participation provisions of § 36.42.

Section 36.32 This section authorizes the taking of fish and wildlife on Alaska National Wildlife Refuges in accordance with applicable State and Federal law. (Additional provisions on subsistence hunting, trapping, and fishing are provided in §§ 36.13 and 36.14). As proposed, a permit for these activities need not be obtained from the Refuge Manager, except that the presently existing requirement to obtain a permit before trapping on the Kenai, Izaembek and Kodiak Refuges and the Aleutian Islands unit of Alaska Maritime Refuge is retained. The taking of fish and wildlife may be prohibited or restricted only in conjunction with notice and hearing pursuant to the requirements of § 36.42.

Section 36.33 This section implements section 1303 of the Alaska Lands Act by providing procedures and guidance for those occupying and using existing cabins and those desiring to construct new cabins within Alaska National Wildlife Refuges. It addresses construction of new cabins, use of existing cabins by occupants who may not have a legal interest in them, and use of existing cabins by those with valid existing rights in cabins as of December 2, 1980.

Under the Alaska Lands Act, new cabins are authorized in Alaska National Wildlife Refuges only pursuant to a non-transferable, five-year special use permit issued by the Refuge Manager. Section 36.33, tracking the language of the statute, authorizes issuance of such a permit only upon a determination that (1) the proposed use, construction, and maintenance of a cabin is compatible with the purposes for which the refuge was established and (2) that the use of the cabin is either directly related to the administration of the refuge or is necessary to provide for a continuation of an ongoing activity or use otherwise allowed within the refuge where the permit applicant has no reasonable alternative site for constructing a cabin outside the refuge. As prescribed by the Act, no special use permit may be issued to authorize the construction of a cabin for private recreational use.

Subsection (b)(1) addresses the use of existing cabins by occupants who may not have a legal right to the cabin. The traditional and customary use of these existing cabins within an Alaska

National Wildlife Refuge is authorized in accordance with a five-year, special use permit issued upon a determination by the Refuge Manager that the traditional and customary uses are compatible with the purposes of the refuge. As with new cabins, special use permits may not be issued to authorize the use of an existing cabin for private recreational uses.

Subsection (b)(2) addresses use of existing cabins by occupants who have a valid permit or lease in effect on December 2, 1980 for those structures. Such an occupant is entitled, as a matter of right, to continuation of such permit or lease unless the Refuge Manager determines, following notice and an opportunity for response, that such a continuation would directly threaten or significantly impair the purposes for which the refuge was established.

All permits authorized under this section must be renewed every five years until the death of the last immediate member of the claimant residing in the cabin. Permits need not be renewed, however, if the Refuge Manager determines, after a formal adjudicatory hearing, that the use of the cabin under the permit is causing or may cause significant detriment to the principal purposes for which the refuge was established.

Section 36.34 This section authorizes, in accordance with State and Federal law, the possession, use and transporting of firearms on Alaska National Wildlife Refuges for purposes of hunting or personal protection. Such uses may be prohibited or restricted only in accordance with the public participation provision of § 36.42.

Section 36.35 The general National Wildlife Refuge System regulations authorize the leaving of unattended personal property on a refuge for only short periods of time. Recognizing unique Alaska circumstances, such as the need to allow for trapping caches, this section generally extends the period to 12 months, except that no time limit applies to leaving personal property in a cache or cabin. The Service would retain the authority to impound unattended property that interfaces with the safe and orderly management of the refuge in case of damage to refuge resources.

Section 36.36 As proposed, this section relaxes the general trespass provisions of the general National Wildlife Refuge System regulations (50 CFR 26.11) for household pets and sled or pack dogs under the control of their owners or handlers.

Section 36.37 This proposed section applies to all discretionary determinations by the Fish and Wildlife Service concerning whether to lease or otherwise permit the use or occupancy of refuge lands where authorized by law. Alaska Lands Act, Section 810. For example, the Refuge Manager must comply with the procedures of this section in determining whether to open routes or areas to offroad vehicle use under the provisions of § 36.22 of these regulations. In any such determination, § 36.37 requires the Refuge Manager to evaluate the effect on subsistence uses and needs, the availability of other lands to achieve the desired purposes, and other alternatives which would reduce or eliminate the use or occupancy of refuge lands needed for subsistence purposes. Prior to any lease, permit, use, or occupancy which would significantly restrict subsistence uses, under Section 810 of the Act, the Fish and Wildlife Service official must give notice to the appropriate State agency and local committees and regional councils; give notice to local residents of the affected area and hold an informal public hearing in the area; determine that such a significant restriction of subsistence uses is necessary and consistent with sound management principles for refuge areas; that the proposed actions will involve the minimal amount of refuge lands necessary to accomplish the desired purpose; and that reasonable steps will be taken to minimize adverse impacts upon subsistence uses and resources. If the Fish and Wildlife Service is required to prepare an environmental impact statement (EIS) pursuant to the National Environmental Policy Act for the proposed use or occupancy, § 36.37 states that the required notice, hearing and findings would be provided in the EIS process.

Section 810 of the Alaska Lands Act makes clear that the above provisions are not to be construed as prohibiting or impairing the ability of the State or any Native Corporation to make land selections and receive land conveyances pursuant to the Alaska Statehood Act or the Alaska Native Claims Settlement Act. It should be noted that the requirements of section 810 of the Alaska Lands Act, and § 36.37, are procedural in nature. In other words, as explained in the section's legislative history, "until the requirements of the section have been satisfied the proposed action may not proceed, but once the requirements of the section are satisfied and incorporated into existing land use planning processes the proposed action may proceed even though its effect may be adverse to subsistence uses." S. Rep. No. 96-413, *Supra*, 234.

Subpart E—Permits and Public Participation

Section 36.41 This section would consolidate procedures regarding the issuance and denial of permits required by the general National Wildlife Refuge System regulations and these regulations. The procedures specify to whom an application for a permit must be submitted, and direct the Refuge Manager to promptly acknowledge in writing the receipt of all requests for permits, access routes, or other requirements of this section. This section also proposes an appeal procedure for applicants aggrieved by a decision of the Refuge Manager.

The appeals systems was established with a view toward minimizing the requirements imposed upon the applicant during the appeal process, yet establishing a procedure that would fairly meet the concerns of the applicant. Any person whose permit application has been denied by the Refuge Manager has a right to appeal that denial to the Regional Director. Whether the appeal will include an opportunity for an oral hearing must be determined by the Regional Director. The Regional Director *shall* provide an oral hearing if it is determined that the applicant would present new relevant information at such a hearing. In addition, the Regional Director *may* provide a hearing opportunity if he determines, as a matter of discretion, that such a hearing would be useful.

Section 36.42 As proposed, this section authorizes the Refuge Manager to close a refuge area or restrict an activity thereon either on an emergency or permanent basis. Emergency closures or restrictions may not exceed 60 days unless extended, after notice and hearing, for as long a period of time as necessary to respond to the circumstances or conditions originally justifying an emergency closure. Under this section, permanent closures or restrictions are effective for as long as necessary to achieve their intended purposes.

All closures or restrictions must be accompanied by extensive public notice. Under this section the Service would: publish such notices in at least one newspaper of general circulation in the State and in at least one local newspaper if appropriate, post the notice at community post offices within the vicinity affected, make the notice available for broadcast on local radio studios, and designate the affected area on a map at the office of the Refuge Manager or other places convenient to the public. Notice of the closures or

restrictions also could be carried out by the posting of appropriate signs.

In addition to these extensive notification procedures, section 36.42 requires public hearings in the affected vicinity in certain cases. For instance, as proposed, emergency or permanent closures or restrictions relating to the use of aircraft, snowmobile or motorboats requires *prior* notice and hearing. Furthermore, emergency closures or restrictions relating to the taking of fish and wildlife would be accompanied by simultaneous publication of a public notice with a subsequent public hearing, while a permanent closure involving the taking of fish and wildlife would require prior notice and public hearing.

Drafting Information

The primary authors of these proposed rules are William C. Reffalt and Ronald Fowler, Division of Refuge Management, U.S. Fish and Wildlife Service, Washington, D.C.

Impact Analysis

The Department of the Interior has made a determination that these proposed regulations are not significant, as that term is defined under Executive Order No. 12044 and 43 CFR Part 14, nor do they require the preparation of a regulatory analysis pursuant to the provisions of those authorities.

As required by the Regulatory Flexibility Act (Pub. L. 96-354), the Fish and Wildlife Service has made an initial determination that these interim regulations will not have a significant economic effect on a substantial number of small business, small organizations, or small governmental jurisdictions. However, public comment is invited on whether the consequences or the rule will require this analysis.

A 28-volume environmental impact statement was prepared in 1974 concerning the establishment, management, and public use of Alaska National Interest Lands conservation system units in Alaska, including the areas now designated as units of the National Wildlife Refuge System in the Alaska Lands Act. The 1974 EIS was supplemented in November, 1978 with an analysis of the impacts of alternative Executive Branch actions designed to conserve the Alaska National Interest Lands.

In addition to those environmental documents which received extensive public comment, and the numerous studies included within their bibliographies upon which they were based, a wealth of other materials and analyses have been generated on the management of the Alaska National Interest Lands as a result of congressional action on the so called "d-2" legislation. As of the date of this emergency rulemaking, four separate committee reports, a background committee report, and extensive legislative history printed in the *Congressional Record* have been published by the House of Representatives. In the Senate, two extensive committee reports, a two-volume report concerning the results of a committee workshop in Alaska and an extensive legislative history printed in the *Congressional Record* have been published.

All of these reports and histories concern the establishment, management, and public use of the new conservation system units in Alaska. This is in addition to more than 45 days of formal congressional committee hearings held throughout the United States on this matter. The joint Federal-State Land Use Planning Commission for Alaska also conducted more than a dozen public hearings throughout the country in its investigations concerning the proposed public use and classifications of the proposed conservation system units.

Public Participation

These proposed regulations would give interim management guidance on subsistance, access, cabins, and public recreational use of the refuge areas in Alaska. Public comment on these proposed rules is actively solicited and desired during the 45-day public review period. Following the consideration of public comment and appropriate changes, it is anticipated that final regulations will be issued in March of 1981 to give the public interim management guidance on the permissable uses of Alaska National Wildlife Refuges. This expedited schedule is so that regulations will be in effect in times for the peak public use season.

With the substantial prior public comment and the emergency need for public guidance in advance of the peak public use seasons, the Fish and Wildlife Service believes that a 45-day public comment period is the maximum that can be afforded on this limited agenda rulemaking. Any longer public comment period would place the effective data of these regulations beyond the spring "break up" of deep winter conditions, and would create public confusion on allowable uses of refuge areas during peak public use (*e.g.*, recreation, access, subsistence, mining) seasons. Thus, the Fish and Wildlife Service believes that a 45-day public comment period (which is longer than required under 5 U.S.C. 553) strikes an appropriate balance between desires for advance public review of proposed regulations and the needs for interim management and public guidance.

In addition to comments on these proposed regulations the Fish and Wildlife Service is also inviting comment on any other issues that should be considered in any future rulemaking.

Bob Herbst,
Assistant Secretary for Fish and Wildlife and Parks.
January 14, 1981.

In consideration of the foregoing, Title 50 of the Code of Federal Regulations is proposed to be amended by establishment of a new Part 36 in Chapter I, Subchapter C, as follows:

PART 36—ALASKA NATIONAL WILDLIFE REFUGES

Subpart A—Introduction and General Provisions

Sec.
36.1 Applicability and scope.
36.2 Definitions.

Subpart B—Subsistence Uses

36.11 Purpose and policy.
36.12 Use of snowmobiles, motorboats, and other means of surface transportation traditionally employed by local rural residents engaged in subsistence uses.
36.13 Subsistence fishing.
36.14 Subsistence hunting and trapping.
36.15 Subsistence uses of timber and plant material.
36.16 Closure to subsistence uses of fish and wildlife.

Subpart C—Use of Motorized Vehicles and Access

36.21 Use of snowmobiles, motorboats, and aircraft.
36.22 Use of off-road vehicles.
36.23 Access to inholdings.
36.24 Temporary access.

Subpart D—Other Refuge Uses

36.31 Recreational activities.
36.32 Taking of fish and wildlife.
36.33 Cabins and other structures.
36.34 Firearms.
36.35 Unattended property.
36.36 Sled dogs and household pets.
36.37 Subsistence and land use decisions.

Subpart E—Permits and Public Participation

36.41 Permits.
36.42 Public participation.

Table I—Summary Listing of the National Wildlife Refuges in Alaska as Established by the Alaska Lands Act

Authority: The Alaska National Interest Lands Conservation Act, Pub. L. No. 96-487 (December 2, 1980); the National Wildlife Refuge System Administration Act, as amended, 16 U.S.C. 668dd *et seq.*, Fish and Wildlife Act of 1956, 16 U.S.C. 742(a) *et seq.*; Refuge Recreation Act, 16 U.S.C. 460k *et seq.*

Subpart A—Introduction and General Provisions

§ 36.1 Applicability and scope.

(a) The regulations contained in this part are prescribed for the proper use and management of all Alaska National Wildlife Refuges and supplement the general National Wildlife Refuge System regulations found in Title 50, Code of Federal Regulations, Chapter I, Subchapter C. The general National Wildlife Refuge System regulations are automatically applicable in their entirety to the Alaska National Wildlife Refuges except as supplemented or modified by these regulations.

(b) The regulations contained in this part are applicable only on Federally owned lands within the boundaries of any Alaska National Wildlife Refuge. For purpose of this part "Federally owned lands" means land interests held or retained by the United States, but does not include those land interests: (1) tentatively approved, legislatively conveyed, or patented to the State of Alaska, or (2) interim conveyed or patented to a Native Corporation or person.

§ 36.2 Definitions.

The following definitions shall apply to the regulations contained in this part.

(a) "Adequate and feasible access" means a method and route of access which is economically practicable for achieving the reasonable use or development desired by the applicant of the applicant's nonfederal land or occupancy interest, but does not necessarily mean the most economically feasible alternative.

(b) The term "aircraft" means a machine or device that is used or intended to be used to carry persons or objects in flight through the air, including, but not limited to, airplanes, helicopters and gliders.

(c) "Alaska National Wildlife Refuges" means all lands, waters and interests therein administered by the United States Fish and Wildlife Service within the following National Wildlife Refuges in Alaska: Alaska Maritime, Arctic, Alaska Peninsula, Becharof, Innoko, Kanuti, Kenai, Kodiak, Koyukuk, Nowitna, Selawik, Tetlin, Izembek, Togiak, Yukon Delta and Yukon Flats.

(d) "Downed aircraft" means an aircraft that as a result of mechanical failure or accident cannot take off.

(e) "Fish and wildlife" means any member of the animal kingdom, including without limitation any mammal, fish, bird (including any migratory, non-migratory, or endangered bird for which protection is also afforded by treaty or other international agreement), amphibian, reptile, mollusk, crustacean, arthropod, or other invertebrate, and includes any part, product, egg, or offspring thereof, or dead body or part thereof.

(f) "Off-road vehicle" means any motor vehicle designed for or capable of cross-country travel on or immediately over land, water, sand, snow, ice, marsh, wetland, or other natural terrain, except snowmobiles as defined in this section.

(g) "Person" means any individual, firm, corporation, society, association or partnership.

(h) "Public lands" means lands situated in Alaska which are federally owned lands, except:

(1) land selections of the State of Alaska which have been tentatively approved or validly selected under the Alaska Statehood Act (72 Stat. 339) and lands which have been confirmed to, validly selected by, or granted to the Territory of Alaska or the State under any other provision of Federal law;

(2) land selections of a Native Corporation made under the Alaska Native Claims Settlement Act (85 Stat. 688) which have not been conveyed to a Native Corporation, unless any such selection is determined to be invalid or is relinquished; and

(3) lands referred to in section 19(b) of the Alaska Native Claims Settlement Act.

(i) "Refuge Manager" means any Fish and Wildlife Service official in charge of an Alaska National Wildlife Refuge, the Alaska Regional Director of the Fish and Wildlife Service, or an authorized representative of either.

(j) "Snowmobile" means a self-propelled vehicle intended for off-road travel primarily on snow having a curb weight of not more than 1,000 pounds (450 kg), driven by track or tracks in contact with the snow and steered by a ski or skis in contact with the snow.

(k) "Subsistence uses" means the customary and traditional uses by rural Alaska residents of wild, renewable resources for direct personal or family consumption as food, shelter, fuel, clothing, tools, or transportation; for the making and selling of handicraft articles out of nonedible byproducts of fish and wildlife resources taken for personal or family consumption; for barter or sharing for personal or family consumption; and, for customary trade. For purposes of this paragraph, the term—

(1) "Family" means all persons related by blood, marriage, or adoption, or any person living within the household on a permanent basis; and

(2) "Barter" means the exchange of fish or wildlife or their parts taken for subsistence uses—

(i) For other fish or game or their parts; or

(ii) For other food or for nonedible items other than money if the exchange is of a limited and noncommercial nature; and

(3) "Customary trade" shall be limited to the exchange of furs for cash.

(l) "Take" or "taking", as used with respect to fish and wildlife, means to pursue, hunt, shoot, trap, net, capture, collect, kill, harm or attempt to engage in any such conduct.

Subpart B—Subsistence Uses

§ 36.11 Purpose and policy.

(a) Consistent with the management of fish and wildlife in accordance with recognized scientific principles and the purposes for which each Alaska National Wildlife Refuge was established, designated, or expanded, the purpose of this subpart is to provide the opportunity for local rural residents engaged in a subsistence way of life to do so pursuant to applicable State and Federal law.

(b) Consistent with sound management principles and the conservation of healthy populations of fish and wildlife, the utilization of Alaska National Wildlife Refuge areas is to cause the least adverse impact possible on local rural residents who depend upon subsistence uses of the resources on the public lands in Alaska.

(c) Nonwasteful subsistence uses of fish, wildlife and other renewable resources by local rural residents shall be the priority consumptive uses of such resources over any other consumptive uses permitted within Alaska National Wildlife Refuge areas. Such nonwasteful subsistence uses shall be in accordance with applicable State and Federal law.

(d) Nothing in this subpart shall be construed as permitting a level of subsistence uses of fish and wildlife within Alaska National Wildlife Refuges which is inconsistent with the conservation of healthy populations of fish and wildlife.

§ 36.12 Use of snowmobiles, motorboats and other means of surface transportation traditionally employed by local rural residents engaged in subsistence uses.

(a) Notwithstanding any other provision of Subchapter C of Title 50, Code of Federal Regulations, the use of snowmobiles, motorboats and other means of surface transportation traditionally employed by local rural residents engaged in subsistence uses is permitted within Alaska National Wildlife Refuges except at those times and in those areas restricted or closed by the Refuge Manager.

(b) The Refuge Manager may restrict or close a route or area to the use of snowmobiles, motorboats, or other means of surface transportation traditionally employed by local rural residents engaged in subsistence uses if the Refuge Manager determines that such use is causing or may cause adverse impact on public health and safety, resource protection, protection of historic or scientific values, subsistence uses, protection of endangered or threatened species, or other purposes and values for which the refuge was established.

(c) No restrictions or closures shall be imposed without notice and a public hearing in the affected vicinity. In the case of emergency situations, restrictions or closures shall be for a period not to exceed sixty (60) days and shall not be extended unless the Refuge Manager establishes, after notice and public hearing in the affected vicinity, that such extension is justified according to the factors set forth in paragraph (b) of this section. Notice of the proposed or emergency restrictions or closures and the reasons therefor shall be published in at least one newspaper of general circulation within the State and in at least one local newspaper if appropriate, and information about such proposed or emergency actions shall also be made available for broadcast on local radio stations in a manner reasonably calculated to inform local rural residents in the affected vicinity. All restrictions and closures shall be designated on a map which shall be available for public inspection at the office of the Refuge Manager of the affected refuge and the post office or postal authority of every affected community within or near the refuge area, or by the posting of signs in the vicinity of the restrictions or closures, or both.

(d) Snowmobiles, motorboats and other mean of surface transportation traditionally employed by local rural residents engaged in subsistence uses shall be operated (1) in compliance with applicable State and Federal law, (2) in such a manner as to prevent waste or damage to the refuge or any parts or values thereof, and (3) in such a manner as to prevent the herding, harassment, hazing or driving of wildlife for hunting or other purposes.

(e) At all times when not engaged in subsistence uses, local rural residents may use snowmobiles, motorboats and other means of surface transportation in accordance with Subpart C of this part.

§ 36.13 Subsistence fishing.

Fish may be taken by local rural residents for subsistence uses in compliance with applicable State and Federal law. To the extent consistent with the provisions of this part and other Federal law, applicable State laws and regulations governing the taking of fish which are now or will hereafter be in effect are hereby incorporated by reference as a part of these regulations.

§ 36.14 Subsistence hunting and trapping.

Local rural residents may hunt and trap wildlife for subsistence uses in compliance with applicable State and Federal law. To the extent consistent with the provisions of this part and other Federal law, applicable State laws and regulations governing the taking of wildlife which are now or will hereafter be in effect are hereby incorporated by reference as a part of these regulations.

§ 36.15 Subsistence uses of timber and plant material.

(a) Notwithstanding any other provisions of this part or Subchapter C, the noncommercial cutting of live standing timber and the noncommercial gathering of fruits, berries, mushrooms and other plant material by local rural residents for subsistence uses shall be permitted in compliance with applicable Federal law.

(b)(1) Notwithstanding any other provision of this part, the Refuge Manager, after notice and public hearing in the affected vicinity, may temporarily close all or any portion of an Alaska National Wildlife Refuge to subsistence uses of a particular plant population only if necessary for reasons of public safety, administration, or to assure the continued viability of such population. For purposes of this section, the term "temporary" shall means only as long as reasonably necessary to achieve the purpose of the closure.

(2) If the Refuge Manager determines that an emergency situation exists and that extraordinary measures must be taken for public safety or to assure the continued viability of a particular plant population, the Refuge Manager may immediately close all or any portion of an Alaska National Wildlife Refuge to the subsistence uses of such population. Such emergency closure shall be effectve when made, shall be for a period not to exced sixty (60) days, and may not subsequently be extended unless the Refuge Manager establishes, after notice and public hearing in the affected vicinity, that such closure should be extended.

(3) Notice of administrative actions taken pursuant to this section, and the reasons justifying such actions, shall be published in at least one newspaper of general circulation within the State, and in at least one local newspaper if appropriate, and information about such actions and reasons therefor also shall be made available for broadcast on local radio stations in a manner reasonably calculated to inform local rural residents in the affected vicinity. All closures shall be designated on a map which shall be available for public inspection at the office of the Refuge Manager of the affected refuge and the post office or postal authority of every affected community within or near the refuge, or by the posting of signs in the vicinity of the restrictions, or both.

§ 36.16 Closure to subsistence uses of fish and wildlife.

(a) Notwithstanding any other provision of this part, the Refuge Manager, after consultation with the State and adequate notice and public hearing in the affected vicinity, may temporarily close all or a portion of an Alaska National Wildlife Refuge to subsistence uses of a particular fish or wildlife population only if necessary for reasons of public safety, administration, or to assure the continued viability of such population. For the purposes of this section, the term "temporarily" shall mean only so long as reasonably necessary to achieve the purpose of the closure.

(b) If the Refuge Manager determines that an emergency situation exists and that extraordinary measures must be taken for public safety or to assure the continued viability of a particular fish or wildlife population, he may immediately close all or any portion of a refuge to the subsistence uses of such population. Such emergency closure shall be effective when made, shall be for a period not to exceed sixty (60) days, and may not subsequently be extended unless the Refuge Manager establishes, after notice and public hearing in the affected vicinity, that such closure should be extended.

(c) Notice of administrative actions taken pursuant to this section and the reasons justifying such actions shall be published in at least one newspaper of general circulation within the State, and in at least one local newspaper if appropriate, and information about such actions and justifying reasons shall be made available for broadcast on local radio stations in a manner reasonably calculated to inform local rural residents in the affected vicinity. All closures shall be designated on a map which shall be available for public inspection at the office of the Refuge Manager of the affected refuge area and the post office or postal authority of every affected community within or near the refuge area, or by the posting of signs in the vicinity of the closures, or both.

Subpart C—Use of Motorized Vehicles and Access

§ 36.21 Use of snowmobiles, motorboats, and aircraft.

(a) The use of snowmobiles (during periods of adequate snowcover or frozen river conditions), motorboats and aircraft is permitted on Alaska National Wildlife Refuges, except where such use is prohibited or otherwise restricted by the Refuge Manager in accordance with the provisions of § 13.42, or as provided for in § 36.12.

(b) In imposing any prohibitions or restrictions on aircraft use, the Refuge Manager shall: (1) comply with the procedures set forth in § 36.42; (2) publish notice of prohibitions or restrictions as "Notices to Airmen" issued by the Department of Transportation; and (3) publish permanent prohibitions or restrictions as a regulatory notice in the United States Government Flight Information Service "Supplement Alaska".

(c) The operation of aircraft, at altitudes and in flight paths resulting in the herding, harassment, hazing, or driving of wildlife is prohibited.

(d) Except as provided in paragraph (f) of this section, the owners of any aircraft, downed after December 2, 1980, shall remove the aircraft and all component parts thereof in accordance with procedures established by the Refuge Manager. In establishing a removal procedure, the Refuge Manager is authorized to: (1) establish a reasonable date by which aircraft removal operations must be completed; and (2) determine times and means of access to and from the downed aircraft.

(e) The Refuge M nager may waive the requirements of § 36.21(d) when it is determined that: (1) the removal of downed aircraft would constitute an unacceptable risk to human life; or (2) the removal of a downed aircraft would result in extensive resource damage; or (3) the removal of a downed aircraft is otherwise impracticable or is impossible.

(f) Salvaging, removing, possessing or attempting to salvage, remove or possess any downed aircraft or component parts thereof is prohibited, except in accordance with a permit issued by the Refuge Manager, *provided, however,* that the owner or an authorized representative thereof may remove valuable component parts from a downed aircraft at the time of rescue without a permit.

§ 36.22 Use of off-road vehicles.

(a) The use of off-road vehicles on Alaska National Wildlife Refuges in locations other than established roads and parking areas is prohibited, except on routes or in areas designated by the Refuge Manager or subject to a valid access permit as prescribed in §§ 36.23, 36.24 and 36.41. Such designations shall be made in accordance with procedures in this section.

(b)(1) In determining whether to designate a route or area for off-road travel, the Refuge Manager shall consider the criteria contained in Section 3 of Executive Order 11644, as amended (37 FR 2877), and such factors as other public uses, public health and safety, environmental and resource protection, research activities, protection of historic or scientific values, subsistence uses, conservation of endangered or threatened species and other management considerations necessary to ensure that off-road vehicle use is compatible with the purposes for which the refuge was established.

(2) Route or area designations shall be designated on a map which shall be available for public inspection at the office of the Refuge Manager of the affected refuge and the post office or postal authority of every affected community within or near the refuge area, or by the posting of signs in the vicinity of the designated route or area, or both.

(3) Notice of routes or areas on which off-road travel is permitted shall be in accordance with the provisions of section 36.42(d).

(4) The closure or restrictions on use of designated routes or areas to off-road vehicles use shall be in accordance with the provisions of § 36.42.

§ 36.23 Access to inholdings.

(a) *Purpose.* Where adequate and feasible access is otherwise restricted pursuant to the provisions of this part (*e.g.* §§ 36.22 and 36.42), it is the purpose of this section to ensure access across Alaska National Wildlife Refuges for any person who has a valid property or occupancy interest in lands or structure which are located within a refuge area or are effectively surrounded by federally owned lands. These regulation are not intended to grant an interest in or otherwise alienate Federal property, but rather to provide specific relief from other regulatory provisions that may unreasonably restrict access to non-federal property.

(b) *Application and administration.*

(1) Applications for a permit designating methods and routes of access across any Alaska National Wildlife Refuge not affirmatively provided for in this part shall be submitted to the Refuge Manager as specified under § 36.41.

(2) The access permit application shall contain the name and address of the applicant, documentation of the relevant property or occupancy interest held by the applicant, a map or physical description of the relevant property or occupancy interest, a map or physical description of the desired route of access, a description of the desired method of access, and the purpose for which access is sought, and such other information deemed necessary by the Refuge Manager for consideration of the application.

(3) The Refuge Manager shall specify in a renewable permit, adequate and feasible routes and methods of access across refuge lands for any person who meets the criteria of paragraph (a) of this section. The Refuge Manager shall designate the routes and methods desired by the applicant unless it is determined that:

(i) The route or method of access would cause significant adverse impacts on natural or other values of the refuge, and adequate and feasible access otherwise exists; or

(ii) The method or route of access would jeopardize public health and safety, and adequate and feasible access otherwise exists; or

(4) If the Refuge Manager makes one of the findings described in paragraph (b)(3) of this section, he shall specify such other alternate methods and routes of access as will provide adequate and feasible access to the applicant, while minimizing damage to natural and other values of the refuge.

(5) Routes and methods of access permitted pursuant to this section shall be available for use by guests and invitees of the permittees.

(c) *Special Information Requirements for Access for Mineral Exploration, Assessment or Development.*

(1) Applicability. This subsection is applicable only when a person requires a permit for access (*e.g.* situations where § 36.21 does not already provide adequate and feasible access) across a refuge area to non-federally owned lands or interests therein or valid unpatented mining claims located within the exterior boundaries of a refuge, for mineral exploration, assessment or development purposes.

(2) Access Permit Application. Any person described in paragraph (c)(1) of this section shall apply to the Refuge Manager for an access permit and shall provide the following information:

(i) The name, mailing address and phone number of the permit applicant;

(ii) The claim(s) name; a description of type of claim(s) (*e.g.*, patented claim, mill site, unpatented claim, etc.); and a description of the kind of mine and

minerals produced (*e.g.*, placer, lode, copper, gold);

(iii) A map, preferably a topographic map with a scale of not less than one inch to a mile (1:63,360), or a sketch, showing the survey or projection grids on which there will be depicted the location of the claim(s). Contiguous claims and groups of claims in the same general area may be depicted on a single map so long as the individual claims are clearly identified;

(iv) The date(s) of location along with a copy of location notice(s); and the date and place of recordation and book and page number of recordation;

(v) A description of the proposed mining operations, the proposed routes and methods of access, period of intended occupancy and operation at the claim site; and major equipment to be used in the operations;

(vi) A brief environmental summary which: (A) discusses the anticipated environmental impacts of the proposed mining operations and routes and methods of access; and (B) describes those measures which will be incorporated into the proposed mining operations and the construction and use of access routes to minimize the anticipated adverse impacts upon the refuge and its related values.

(3) Whenever an unpatented mining claim is located within the exterior boundaries of a refuge area, the person shall also submit the following information:

(i) The last year in which there was production from this claim or claim group and the amount of production (*e.g.* pounds, tons, market value, etc.);

(ii) The person or company to whom the ore or concentrates were shipped;

(iii) The quantity of known reserves on the claim remaining to be mined (*e.g.* cubic yards, tons, etc.) plus a description of the tests conducted and documents which support this estimation of quantity; and

(iv) The grade or quality of the known reserves on the claim remaining to be mined (e.g. ounces per cubic yard, assay, etc.) plus a description of the tests conducted and documents which support this estimation of grade or quality.

(4) Permit Approval. The Refuge Manager shall utilize the permit granting standards of paragraph (b) of this section to grant such adequate and feasible access for economic purposes to nonfederally owned lands or interests therein or valid unpatented mining claims within the boundaries of a refuge, while minimizing damage to the natural and other values of the refuge area.

(d) *Construction of Permanent Improvements.* The establishment or modification of a route or method of access which requires the construction of permanent improvements, including, but not limited to, the construction of concrete bridges or runways is prohibited unless authorized pursuant to the provisions of 50 Code of Federal Regulations, Chapter 1, Subchapter C, Part 29, Subpart B.

§ 36.24 Temporary access.

(a) *Applicability.* This section is applicable to State and private landowners who desire temporary access across an Alaska National Wildlife Refuge for the purposes of survey, geophysical, exploratory and other temporary uses of such non-federal lands, and where such temporary access is not affirmatively provided for in §§ 36.22 or 36.23 of this part. State and private landowners meeting the criteria of § 36.23(a) are directed to utilize the procedures of § 36.23 to obtain temporary access.

(b) *Temporary Access for Mineral Exploration.*

(1) Application. A landowner requiring temporary access across a refuge area for mineral survey, geophysical, exploratory or similar mineral activities shall apply to the Refuge Manager for an access permit and shall provide the relevant information contained in § 36.23(c)(2) concerning the planned access and mineral exploration activities.

(2) Permit Standards, Stipulations and Conditions. The Refuge Manager shall grant the desired temporary access whenever he determines that such access will not result in permanent harm to refuge area resources. The Refuge Manager shall include in any permit granted such stipulations and conditions on temporary access as are necessary to ensure that the access granted would not be inconsistent with the purpose for which the refuge was established and to ensure that no permanent harm will result in refuge resources.

(c) *Temporary Access for Other Purposes.*

(1) Application. A landowner requiring access across a refuge area for survey, geophysical, exploratory or other temporary uses unrelated to mineral exploration shall apply to the Refuge Manager for an access permit. The applicant shall state the proposed method and route of access, and the temporary use the applicant proposes to undertake on his land.

(2) Permit Standards, Stipulations and Conditions. The permit granting standards, stipulations and conditions of paragraph (b)(2) of this section shall be applicable here.

(d) *Definition.* For the purposes of this section, "temporary access" shall mean limited, short-term, non-successive access, which does not require permanent facilities for access, to undeveloped State or private lands.

Subpart D—Other Refuge Uses

§ 36.31 Recreational activities.

(a) Public recreational activities within the Alaska National Wildlife Refuges are authorized as long as such activities are conducted in a manner compatible with the purposes for which the areas were established. Such recreational activities include, but are not limited to, sightseeing, nature observation and photography, sport hunting, sport fishing, boating, camping, hiking, picnicking and other related activities. Any existing special regulations now in force and effect shall continue to apply to the applicable refuge lands in Alaska National Wildlife Refuges.

(b) Recreational activities may be prohibited or otherwise restricted in accordance with the provisions of § 36.42.

§ 36.32 Taking of fish and wildlife.

(a) The taking of fish and wildlife for sport hunting, trapping and sport fishing is authorized in accordance with applicable State and Federal law and such laws are hereby adopted and made a part of these regulations; *provided however,* that for trapping, sport hunting and sport fishing the Refuge Manager, pursuant to § 36.42, may designate areas where, and establish periods when, no taking of a particular population of fish or wildlife shall be permitted.

(b) The exercise of valid commercial fishing rights or privileges obtained pursuant to existing law, including any use of refuge areas for campsites, cabins, motorized vehicles and aircraft landing directly incident to the exercise of such rights or privileges, is authorized; *provided, however,* that the Refuge Manager may restrict or prohibit the exercise of these rights or privileges or uses of federally owned lands directly incident to such exercise if he determines, after conducting a public hearing in the affected locality, that they are inconsistent with the purposes of the refuge and that they constitute a significant expansion of commercial fishing activities within such refuge beyond the level of such activities in 1979.

(c) The following provisions shall apply to any person while engaged in the taking of fish and wildlife within an Alaska National Wildlife Refuge:

(1) Trapping and Sport Hunting

(i) Each person shall secure and possess all required State licenses and shall comply with the applicable provisions of State law unless further restricted by Federal law;

(ii) Each person shall comply with the applicable provisions of Federal law;

(iii) In addition to the requirements of paragraphs (a) and (b) of this section, each person shall continue to secure a trapping permit from the appropriate Refuge Manager prior to trapping on the Kenai, Izembek and Kodiak Refuges and the Aleutian Islands Unit of the Alaska Maritime Rufuge.

(2) Sport and Commercial Fishing

(i) Each person shall secure and possess all reguired State licenses and shall comply with the applicable provisions of State law unless further restricted by Federal law;

(ii) Each person shall comply with the applicable provisions of Federal law.

(d) Nothing in these rules shall be interpreted as waiving the requirements of other fish and wildlife conservation statutess such as the Airborne Hunting Act or those provisions of Subchapter C of Title 50, Code of Federal Regulations, regarding the taking of depredating wildlife. Animal control programs shall only be conducted in accordance with a special use permit issued by the Refuge Manager.

§ 36.33 Cabins and other structures.

(a) *New Cabins.*

(1) The construction of new cabins on federally owned lands within an Alaska National Wildlife Refuge is prohibited except as may be authorized pursuant to a nontransferable, five-year special use permit issued by the Refuge Manager.

(2) Such special use permit shall only be issued upon a determination that the proposed use, construction, and maintenance of a cabin is compatible with the purposes for which the refuge was established and that the use of the cabin -is either directly related to the administration of the refuge or is necessary to provide for a continuation of an ongoing activity or use otherwise allowed within the refuge where the permit applicant has no reasonable alternative site for constructing a cabin outside of the Refuge. In determining whether to permit the use, occupancy, construction, reconstruction or maintenance of cabins or other structures, the Refuge Manager shall be guided by factors such as other public uses, public health and safety, environmental and resource protection, research activities, protection of historic or scientific values, subsistence uses, endangered or threatened species conservation and other management considerations necessary to ensure that the activities authorized pursuant to this section are compatible with the purpose for which the refuge was established. No special use permit shall be issued to authorize the construction of a cabin for private recreational use.

(b) *Existing Cabins.*

(1) Traditional and customary uses of existing cabins and related structures on federally owned lands within a refuge may be allowed to continue in accordance with a nontransferable, renewable five-year special use permit issued by the Refuge Manager. Such special use permit shall be issued only upon a determination that the traditional and customary uses are compatible with the purposes for which the refuge was established. No special use permits shall be issued to authorize the use of an existing cabin for private recreational use.

(2) Where a valid permit or lease was in effect on December 2, 1980, for cabins, homesites or similar structures on federally owned lands within a refuge, the Refuge Manager shall provide for the continuation of the permit or lease, unless a finding is made, following notice and an opportunity for the leaseholder or permittee to respond, that the continuation of the lease or permit will directly threaten of significantly impair the purposes for which the refuge was established.

(c) No special use permit shall be issued under paragraphs (a) or (b)(1) of this section unless the permit applicant:

(1) In the case of existing cabins or structures, reasonably demonstrates by affidavit, bill of sale or other documentation, proof of possessory interests or right of occupancy in the cabin or structure;

(2) Submits an accurate sketch or photograph of the existing or proposed cabin or structure and a map showing its geographic location;

(3) Agrees to vacate the cabin or structure and remove all personal property from it upon nonrenewal or revocation of the permit;

(4) Acknowledges in the permit application that the applicant has no interest in the real property on which the cabin or structure is located or will be constructed; and

(5) Submits a list of the names of all immediate family members residing in the cabin or structure.

(d) Permits authorized under the provisions of this section shall be renewed every five years until the death of the last immediate family member of the claimant residing in the cabin or structure under permit. Renewal will occur unless the Refuge Manager determines after notice of hearing, on the basis of substantial evidence in the administrative record as a whole, that the use under the permit has caused or may cause significant detriment to the principal purposes for which the refuge area was established. The Refuge Manager's decision may be appealed pursuant to the provisions of 43 CFR 4.700.

§ 36.34 Firearms.

The possession, use and transporting of firearms is authorized for hunting and personal protection in accordance with State and Federal laws unless prohibited or otherwise restricted by the Refuge Manager in accordance with the provisions of § 36.42.

§ 36.35 Unattended property.

(a) Leaving any snowmobile, vessel, off-road vehicle or other personal property unattended for longer than 12 months without the prior permission of the Refuge Manager is prohibited, and any property so left may be impounded by the Refuge Manager. This prohibition does not apply to personal property left unattended in a cache or cabin when used in conjunction with an authorized activity.

(b) In the event unattended property interferes with the safe and orderly management of part of the refuge or causes damage to refuge resources, it may be impounded by the Refuge Manager.

§ 36.36 Sled dogs and household pets.

The general trespass provisions of 50 CFR 26.21 shall not apply to household pets and sled or pack dogs under the control of their owners or handlers, but such activities may be prohibited or otherwise restricted pursuant to the provisions of § 36.42.

§ 36.37 Subsistence and land use decisions.

(a) In determining whether to lease or otherwise permit the use or occupancy of refuge lands under any provision of the regulations of this part or other law authorizing such actions, the Refuge Manager shall evaluate the effect of such use or occupancy on subsistence uses and needs, the availability of other lands for the purposes sought to be achieved, and other alternatives which reduce or eliminate the use or occupancy of refuge lands needed for subsistence purposes. No such lease, permit or other use or occupancy of such lands which would significantly restrict subsistence uses shall be effected until the Refuge Manager:

(1) Gives notice to the appropriate State agency and the appropriate local committees and regional councils established pursuant to Section 805 of

the Alaska National Interest Lands Conservation Act, Pub. L. 96-487 (December 2, 1980);

(2) Gives notice of and holds a hearing in the vicinity of the area involved; and

(3) Determines that (i) such a significant restriction of subsistence uses is necessary, consistent with sound management principles for the utilization of the refuge lands, (ii) the proposed activity will involve the minimal amount of refuge lands necessary to accomplish the purposes of such use or occupancy, and (iii) reasonable steps will be taken to minimize adverse impacts upon subsistence uses and resources resulting from such actions.

(b) If an environmental impact statement pursuant to section 102(2)(C) of the National Environmental Policy Act is required with respect to the proposed use or occupancy, the notice, hearing and findings required by paragraph (a) of this section shall be provided as part of such environmental impact statement process.

(c) After compliance with the procedural requirements of this section and other applicable laws, the Refuge Manager may manage refuge lands for any of those uses or purposes authorized by law.

Subpart E—Permits and Public Participation

§ 36.41 Permits.

(a) *Application.*

(1) Regulations generally applicable to the National Wildlife Refuge System and these regulations provide in several sections that permits may be obtained from the Refuge Manager. For activities on the Arctic and Yukon Flats Refuges, such permits are to be obtained from the Refuge Manager in Fairbanks, Alaska. For activities on the Becharof, Kodiak, Kenai, Izembek and Yukon Delta Refuges and for the Aleutian Islands Unit of the Alaska Maritime Refuge, such permits are to be obtained from the Refuge Manager, headquartered, respectively, in King Salmon, Kodiak, Soldotna, Cold Bay, Bethel and Adak, Alaska. For activities on all other Alaska Refuges, permits are to be obtained from the designated Refuge Manager in Anchorage, Alaska.

(2) The Refuge Manager shall promptly acknowledge in writing the receipt of all requests for permits, access routes, or other requirements of this section.

(b) *Denial and Appeal Procedures.* A person who has been denied a permit has the right to have the application reconsidered by the Regional Director by contacting him within sixty (60) days of the issuance of the denial. For purposes of reconsideration, the permit applicant shall present the following information:

(1) Any statement or documentation, in addition to that included in the initial application, which demonstrates that the applicant satisfies the criteria set forth in the section under which the permit application is made;

(2) The basis for the permit applicant's disagreement with the prior findings and conclusions; and

(3) Whether or not the permit applicant requests an informal hearing before the Regional Director, and if the permit applicant does request a hearing, the applicant shall provide also:

(i) A description of any information, in addition to that included in the initial application and any written materials presented to the Regional Director, which the permit applicant intends to present at the hearing;

(ii) The name, address and brief description of the proposed presentation of any person which the applicant intends to present at the hearing on his/her behalf, and the name and addresses of any person the applicant would like to question at the hearing;

(iii) If, after examining the information submitted by the applicant in support of a request for an oral hearing, it is clear that the applicant would present relevant information which is substantially distinguishable from or supplementary to the information presented to the Refuge Manager, the Regional Director shall grant the permit applicant's request for a hearing. After consideration of the written materials and oral hearings, if granted, the Regional Director shall affirm, reverse or modify the denial of the Refuge Manager and shall set forth in writing the basis for the decision. A copy of the decision shall be forwarded promptly to the applicant and shall constitute final agency action.

§ 36.42 Public participation.

(a) *Criteria.* In determining whether to close an area or restrict an activity otherwise allowed, the Refuge Manager shall be guided by factors such as public health and safety, resource protection, protection of historic or scientific values, subsistence uses, endangered or threatened species conservation, and other management considerations necessary to ensure that the activity or area is being managed in a manner compatible with the purposes for which the Alaska National Wildlife Refuge area was established.

(b) *Emergency closures or restrictions.* (1) Emergency closures or restrictions relating to the use of aircraft, snowmobiles or motorboats shall be made after notice and hearing; (2) emergency closures or restrictions relating to the taking of fish and wildlife shall be accompanied by notice with a subsequent hearing; (3) other emergency closures or restrictions shall become effective upon notice as prescribed in § 36.42(d); and (4) no emergency closure or restriction shall be for a period exceeding 60 days, unless, after notice and public hearing in the affected vicinity, such closure or restriction is extended by the Refuge Manager, upon a determination that such extension is justified according to the factors set forth in paragraph (a) of this section.

(c) *Permanent closures or restrictions.* (1) Permanent closures or restrictions relating to the use of aircraft, snowmobiles or motorboats, or the taking of fish or wildlife, shall not be effective prior to notice and hearing in the vicinity of the areas directly affected by such closures and restrictions; (2) other permanent closures or restrictions shall become effective upon notice as prescribed in § 36.42(d).

(d) *Notice.* Emergency or permanent closures or restrictions shall be (1) published in at least one newspaper of general circulation in the State and in at least one local newspaper if appropriate, posted at community post offices within the vicinity affected, made available for broadcast on local radio stations in a manner reasonably calculated to inform residents in the affected vicinity, and designated on a map which shall be available for public inspection at the office of the Refuge Manager and other places convenient to the public; or (2) designated by the posting of appropriate signs; or (3) both.

(e) *Openings.* In determining whether to open an area to a public use or activity otherwise prohibited, the Refuge Manager shall first provide notice as prescribed in paragraph (d) of this section, and shall, upon request, hold a hearing in the affected vicinity prior to making a final determination.

Table I—Summary Listing of The National Wildlife Refuges in Alaska as Established by The Alaska Lands Act

(Pub.L.96-487,December2,1980)

1. Alaska Maritime, including: Aleutian Islands,* Bering Sea,* Bogoslof,* Chamisso,* Forrester Island,* Hazy Islands,* Pribilof,* Saint Lazaria,* Semidi,* Simeonof,* Tuxedni.*
2. Alaska Peninsula.
3. Arctic, including: William O. Douglas.*

*These indicated units were previously existing refuges before the Alaska Lands Act of December 2, 1980, and are now part of the 16 National Wildlife Refuges established by the Alaska Lands Act.

4. Becharof.**
5. Innoko.
6. Izembek.
7. Kanuti.
8. Kenai.
9. Kodiak.
10. Koyukuk.
11. Nowitna.
12. Selawik.
13. Tetlin.
14. Togiak, including: Cape Newenham.*
15. Yukon Delta, including: Clarence Rhode,* Hazen Bay,* Nunivak.*
16. Yukon Flats.**

[FR Doc. 81-1529 Filed 1-16-81; 8:45 am]
BILLING CODE 4310-55-M

**Units proclaimed National Monuments on December 1, 1978, were redesignated as National Wildlife Refuges by the Alaska Lands Act.

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federal register

Monday
January 19, 1981

Part XXVII

Environmental Protection Agency

Intent To Issue Revised Minority Business Enterprise Policy for the Construction Grants Program, Technical Amendments to Women's Business Enterprise Policy for the Construction Grants Program, and Procedures for Implementation of Minority Business Enterprise and Women's Business Enterprise Policies

ENVIRONMENTAL PROTECTION AGENCY

[AS-FRL 1683-3]

Intent To Issue Revised Minority Business Enterprise Policy for the Construction Grants Program, Technical Amendments to the Women's Business Enterprise Policy for the Construction Grants Program, and Procedures for the Implementation of the Minority Business Enterprise and Women's Business Enterprise Policies

AGENCY: The Environmental Protection Agency.

ACTION: Proposed Policy Revisions and Proposed Program Requirements Memorandum.

SUMMARY: This Notice proposes revisions to the Policy for Increased use of Minority Consultants and Construction Contractors, 43 FR 60220 (December 26, 1978), technical amendments to the Women's Business Enterprise Policy, 45 FR 51490 (August 1, 1980), and proposes procedures for implementing both policies. EPA invites interested persons to review and comment on the policy revisions and procedures proposed below.

DATE: Comments must be submitted on or before March 20, 1981.

ADDRESSES: Comments (in duplicate, if possible) may be mailed to: Central Docket Section (A–130), ATTN: Docket No. G–80–5, U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460

FOR FURTHER INFORMATION CONTACT: Robert J. Knox, (Director, Office of Small and Disadvantaged Business Utilization), (202) 755–1127, Sylvia Horwitz (Office of General Counsel), (202) 426–4090, 401 M. Street, S.W. Washington, D.C. 20460.

SUPPLEMENTARY INFORMATION: .

Background

The purpose of this Notice is to propose revisions to EPA's Policy for Increased Use of Minority Consultants and Contractors (MBE policy), to propose technical amendments to the Women's Business Enterprise Policy (WBE policy), and to propose uniform procedures for the implementation of both policies.

EPA published the MBE policy on December 26, 1978, and it became effective on February 1, 1979. The MBE policy established a goal-oriented system to encourage increased MBE participation in EPA's sewage treatment works construction grants program, and required grantees, consultants, and prime construction contractors to make good faith positive efforts to utilize MBEs in EPA funded projects. This policy provided guidance for meeting the "positive efforts" requirement of Office of Management and Budget (OMB) Circular A–102, Attachment O, Section 3(c)(3), which was incorporated into EPA's construction grants regulations at 40 CFR 35.936–7. Each EPA Region was given the responsibility to set goals as targets for MBE participation, representing a percentage of the total dollar amount of contracts approved, and to develop procedures to implement the policy. The WBE policy was published on August 1, 1980, and will apply to projects funded after January 31, 1981.

EPA is proposing these revisions and procedures for two reasons. First, OMB revised Attachment O, requiring grantees and their contractors to take five "affirmative steps" to contract with MBEs. 44 FR 47874 (August 15, 1979). The policy revisions and new implementing procedures bring EPA's MBE policy into conformity with revised Attachment O. The second reason for revision is to make needed adjustments in the administration of the MBE policy, in both EPA headquarters and the Regions. These adjustments and uniform procedures are necessary for the efficient administration of both the MBE and WBE policies.

The MBE policy has now been in effect for nearly two years. During the past year, public meetings were held in each Region and in most States to review the Regional goals and to receive public comment on the MBE program. The public meetings were most useful in helping EPA assess the impact of the MBE program and in illuminating the specific aspects of the policy requiring revision.

The primary difficulty is the lack of uniform procedures for regional administration of the MBE policy. Because each Region was responsible for developing a program of policy implementation, a variety of procedures evolved. The development of the WBE policy reinforces the need for uniform procedures, because lack of national guidance will result in diverse regional WBE policy implementation as well. To insure consistent application of the policies, the Agency is proposing uniform procedural guidance to be followed in every Region in administering both the MBE and the WBE policies.

MBE Policy Revisions

The revisions of the MBE policy are primarily clarifications of the existing policy. It remains EPA's policy to encourage increased participation of businesses owned and controlled by minority architects, engineers, consultants, and contractors in work performed with EPA construction grant funds. The policy continues to focus on the efforts of grantees, and bidders and offerors seeking prime consultant and construction contracts with grantees, to utilize MBEs. Goals for MBE participation will also continue to be established by the Regions to serve as benchmarks for measuring MBE participation resulting from the affirmative efforts to contract with MBEs. Goals are not quotas and need not be met in order for contract award of grant funding, nor do they represent a percentage of the work that must be set aside for MBEs.

Thresholds are proposed for the applicability of the MBE policy. EPA proposes that contracts for architectural and engineering services in excess of $25,000 and prime construction contracts in excess of $250,000 be subject to the policy.

Definitions of "Minority Business Enterprise" and "Minority Group Member" have been modified to clarify existing definitions. Some additional definitions, as well as references to definitions in EPA's construction grants regulations are also included for clarification of the policy.

The responsibilities of EPA, grantees, contractors, consultants, and MBEs are abbreviated in the proposed policy. The proposed uniform procedures spell out the steps to be taken by each to implement the policy.

Proposed Procedures

The proposed procedures incorporate many of the existing methods of MBE policy implementation. Day-to-day management of EPA's responsibilities will remain in the Regions, and grantees continue to be responsible for implementing the MBE (and WBE) program through their procurement activities. The procedures will give guidance for carrying out these responsibilities in a number of areas previously unaddressed on a national level.

Because the program focuses on the procurement process, EPA proposes explicit requirements for contacting and negotiating with MBE/WBEs. The procedures state what steps must be taken, when those activities must occur, and how the fulfillment of those requirement must be demonstrated. The procedures address procurement through negotiation and through the competitive bidding process.

Procedures for certifying MBEs and WBEs and for challenging the

qualifications of businesses as MBEs and WBEs are included. In addition, the procedures provide for the development of source lists and require the collection of specific data in order to compile and update these lists.

Data collection is also essential for monitoring compliance with the policy requirements and success of the MBE and WBE programs. Related to that end, procedures for calculating MBE and WBE participation are also proposed.

The calculation procedures include a section concerning suppliers of materials and equipment. A definition of supplier is proposed to address the problem of fronts established as "suppliers" for the purpose of meeting the MBE policy requirements. Emphasis is placed on counting distributorships only when their participation is part of the custom and practice of the industry manufacturing the material or equipment supplied. Suppliers of products that are not generally distributed through suppliers will not be counted in calculating MBE participation. We understand, for example, that the manufacture of concrete pipe is such an industry. In addition, any supplier counted in MBE or WBE participation calculations must serve a useful business function.

This discussion highlights the major areas of change and clarification. EPA solicits the comments of interested persons on these areas, and on any other aspects of the proposed documents. Since EPA is not required by 5 U.S.C. § 553 or any other law to publish the proposed MBE policy revisions, technical amendments to the WBE policy, or procedures as a general notice of proposed rulemaking, no regulatory flexibility analysis is required to be provided under 5 U.S.C. §§ 603 or 604. Because a substantial number of small businesses in the construction industry may be significantly affected by the proposals, EPA invites small business owners to comment on the economic effect these proposals may have on their businesses and whether such economic effects are expected to be significant.

Dated: January 13, 1981.

Douglas M. Costle,

Administrator.

Minority Business Enterprise Policy

Introduction

The Environmental Protection Agency (EPA) published the Policy for Increased Use of Minority Consultants and Construction Contractors on December 28, 1978 at 43 Fed. Reg. 60220. (MBE policy). The following policy statement and implementing procedures (PRM#), supersedes the December 28, 1978 policy. The new policy does not impose any additional requirements. It is a clarification of existing policy and a consolidation of EPA Regional interpretation.

I. Authority

The December 28, 1978 policy was authorized by Attachment O to Office of Management and Budget Circular A–102, Section 3(c)(3), 42 Fed. Reg. 45690 (September 12, 1977). EPA implemented section 3(c)(3) of Attachment O, by promulgating in its construction grants regulations a provision identical in language to that in section 3(c)(3):

> Postive efforts shall be made by grantees to utilize small business and minority-owned business sources of supplies and services. Such efforts should allow these sources to maximum feasible opportunity to compete for subagreements and contracts to be performed using Federal grant funds. 40 C.F.R. § 35.936–7.

The MBE policy provided guidance to EPA Regions, grantees, consultants and contractors with respect to "positive efforts" to be made in the Construction Grants Program.

On August 15, 1979, OMB promulgated a revised Attachment O, expanding the requirements for MBE participation, 44 FR 47874. Section 9(a) of Attachment O provides:

> a. It is national policy to award a fair share of contracts to small and minority business firms. Accordingly, affirmative steps must be taken to assure that small and minority businesses are utilized when possible as sources of supplies, equipment, construction and services. Affirmative steps shall include the following:
>
> 1. Including qualified small and minority businesses on solicitation lists.
>
> 2. Assuring that small and minority businesses are solicited whenever they are potential sources.
>
> 3. When economically feasible, dividing total requirements into smaller tasks or quantities so as to permit maximum small and minority business participation.
>
> 4. Where the requirement permits, establishing delivery schedules which will encourage participation by small and minority business.
>
> 5. Using the services and assistance of the Small Business Administration, the Office of Minority Business Enterprise of the Department of Commerce and the Community Services Administration as required.
>
> 6. If any subcontracts are to be let, requiring the prime contractor to take the affirmative steps in 1 through 5 above.

EPA's revised MBE policy implements the affirmative steps required by section 9 of Attachment O and provides guidance for compliance with the EPA grant regulation at 40 CFR 35.936–7.

II. Policy

The policy of EPA is to encourage increased MBE participation in prime contracts and subcontracts in projects for construction of publicly-owned treatment works funded under Title II of the Clean Water Act. EPA encourages opportunities for immediate participation of MBEs of all sizes and promotes development of new minority-owned businesses. EPA's objective is to provide the opportunity for MBEs to compete in a free and open marketplace.

This policy conforms to Presidential direction as stated in President Carter's message to Congress on National Urban Policy dated March 27, 1978 and furthers the objectives of Title VI of the Civil Rights Act of 1964.

EPA will require, as a grant condition, that grantees carry out this policy. Grantees have the reponsibility to take affirmative steps to assure that MBEs have oppportunities to compete for prime contracts under Step 1, Step 2, Step 3 and Step 2 + 3 grants and that all prime contractors make good faith positive efforts to utilize MBEs. This policy and implementing procedures describe the affirmative steps and good faith positive efforts to be taken. The policy should not be misconstrued as a mandatory set-aside policy or one that requires a particular quota to be met.

III. Applicability

This policy applies to all prime contracts over $25,000 for architectural and engineering services and all prime contracts over $250,000 for construction. This policy applies separately to Step 1, Step 2, Step 3, and Step 2 + 3, and Step 3 segments. These steps include the following activities: Preliminary planning to determine the feasibility of treatment works, engineering, architectural, legal, fiscal or economic investigations or studies, surveys, designs, plans, working drawings, specifications, procedures or other necessary actions, or erection, building, acquisition, alteration, remodeling, improvement, or extension of treatment works, or inspection or supervision of any of the foregoing items.

IV. Definitions

(Unless specified below, the definitions provided in 40 CFR 30.135, 35.905 and 35.936–1 shall apply to this policy.)

A. *Minority Business Enterprise (MBE)*—An MBE is an independent business concern which is at least 51% owned and controlled by minority group members; is or has the potential to be an independent and continuing enterprise; and meets the following requirements:

1. The minority ownership's interest in the firm must be real, substantial and continuing. Such interest is characterized by:

a. risk of loss/share of profit commensurate with the proportional ownership; and

b. receipt of the customary incidents of ownership, such as salary and/or intangible benefits.

2. A minority owner must have and exercise the authority to independently control the business decisions of an MBE. The minority owner need not be continually present to be deemed in control. Characteristics of control include, but are not limited to:

a. authority to sign bids and contracts;
b. decisions in price negotiations;
c. incurring liabilities for the firm;
d. final staffing decisions;
e. policy-making; and
f. general company management decisions.

3. Only those firms performing a useful business function according to custom and practice in the industry are qualified as MBEs. Acting merely as a passive conduit of funds to some other, non-minority firm where such activity is unnecessary to accomplish the project does not constitute a "useful business function according to custom and practice in the industry".

4. Joint ventures of MBE firms with non MBE firms shall be credited towards the grantee's percentage of MBE participation by crediting the proportion of the dollar amount of the joint venture's subcontract equal to the proportion of the MBE's share in the profit. Share of profit should reflect the MBE's proportion of risk of loss and control/management responsibilities in the joint venture. Percentage of the joint venture's contract credited as MBE participation may be adjusted to reflect risk of loss and/or control and management where the MBE's share of profit is not commensurate with its overall contribition to performance of the joint venture's contract.

B. *Minority Group Member*—An individual who is a citizen or permanent resident alien (as defined by the Immigration and Naturalization Service) of the United States, and is at least one of the following:

1. *American Indian or Alaskan Native:* A person having origins in any of the original groups of North America including the Aleutian Islands, or who maintains cultural identification through tribal affiliation or community recognition, or who demonstrates at least one quarter descent from such groups;

2. *Asian or Pacific Islander:* A person having origins in any of the original groups of the Far East, Southeast Asia, the Indian subcontinent, or the Pacific Islands. For example, this area includes China, India, Japan, Korea, the Phillippine Islands and American Samoa;

3. *Black:* A person having origins in any of the black groups of Africa; or

4. *Hispanic:* A person of Spanish culture with origins from Mexico, Puerto Rico, Cuba, Central America, South America or Spain.

C. *Project*—The scope of work from which a grant or grant amendment is awared under Section 201(g) of the Clean Water Act. The scope of work is defined as Step 1, Step 2, or Step 3 or Step 2 + 3 of treatment works construction or segments (see definition of "treatment works segment" in 40 CFR 35.905 and 40 CFR 35.930–4).

D. *Contractor*—A party who enters into a written agreement with an EPA grantee for the furnishing of services, supplies, or equipment necessary to complete the project for which a grant under Section 201(g) of the Clean Water Act was awarded, including contracts for personal and professional services, agreements with consultants and purchase orders, but excluding employment agreements subject to state or local personnel systems.

E. *Subcontractor*—A party who enters into a written agreement with a contractor or subcontractor of an EPA grantee for the furnishing of services, supplies, or equipment necessary to complete the project funded under Section 201(g) of the Clean Water Act including contracts for personal and professional services, agreements with consultants and purchase orders, but excluding employment agreements.

F. *Affirmative Steps*—Affirmative steps as used in this policy and implementing procedures refer to those activities to be taken by the grantee to assure MBE participation in the EPA construction grants program.

G. *Good Faith Positive Efforts*—Good faith positive efforts as used in this policy and implementing procedures refer to those activities to be taken by bidders/offerors and contractors during bid and proposed preparation to assure MBE participation in the EPA construction grants program.

H. *Bidder*—A party seeking to obtain a contract with a grantee through a competitive advertised sealed bid process.

I. *Offeror*—A party seeking to obtain a contract with a grantee through a negotiated procurement process.

V. Goals for MBE Participation

A. The Administrator has delegated to each Regional Administrator the responsibility for establishing an appropriate Regional goal for MBE participation in that Region. Goals will not serve as quotas to be met by grantees or prime contractors, but will provide an estimate of the level of MBE participation that should result from good faith efforts to utilize MBEs.

B. Regional goals for MBE participation in EPA funded projects will be established to reflect both current MBE availability and market conditions, as well as anticipated growth in the number of new MBE firms and capacity of existing firms.

C. Each grantee shall establish a project goal for MBE participation in consultation with the EPA Regional Office.

D. Characteristics of individual projects will be taken into consideration in determining appropriate project goals.

VI. Responsibilities

A. *EPA Responsibilities*—1. Headquarters is responsible for providing uniform interpretation of this policy and basic implementing procedures, to oversee implementation, and to give guidance to the Regions.

2. Regions are responsible for carrying out the national policy in accordance with the implementing procedures.

3. Regions are responsible for setting Regional goals, approving project goals proposed by grantees, and insuring that grantees implement the policy.

4. Regions will review annually and revise when appropriate their MBE goals in accordance with 40 CFR Part 25. Public participation includes notice and opportunity for interested and affected persons and organizations to express their views. Public meetings or hearings are not required however; informed means of public consultation, in accordance with 40 CFR 25.4(d) may be appropriate.

5. Functions under the policy and implementing procedures may be delegated by the Regions to appropriate agencies. This includes, delegation pursuant to section 205(g) of the Clean Water Act. EPA has final responsibility which is nondelegable.

B. *Applicant/Grantee Responsibilities*—1. The applicant/grantee is responsible for proposing a project goal to the Regional Office for review and approval by the Regional Administrator. This responsibility extends to actions taken during the grant application process.

2. The grantee accepts, as a condition of its grant, responsibility to implement the policy.

3. The grantee shall take affirmative steps to insure adequate opportunity for MBE participation, as prime and sub-

contractors, in all procurement actions of each construction project, including engineering and consultant services in Step 1, Step 2, Step 3, and Step 2+3.

4. The grantee shall insert copies of this policy and procedural guidance in all solicitation documents, and review procurement documents to insure that no other provisions conflict or are inconsistent with this policy and implementing procedures.

C. *Bidders/Offerors/Contractor Responsibilities*—Bidders, offerors, and contractors under EPA grants are each responsible to the grantee to make positive efforts towards fulfillment of MBE requirements.

D. *MBE Responsibilities*—MBEs are encouraged to seek opportunities to participate in EPA funded projects, initiate contacts, and submit self-certification information to grantees and EPA Regional Office for review.

VII. Enforcement

A. EPA requires grantees and invites interested parties to bring to the attention of the EPA Regional Administrator any perceived non-complaince by a grantee, bidder/offeror, contractor, or MBE, or EPA with the requirements of the policy or implementing procedures.

B. A bidder/offeror or MBE with an adversely affected direct financial interest may file a bid protest with the grantee pursuant to 40 C.F.R. § 35.939. Bid protest procedures are not available to challenge the certification of an MBE.

C. Any interested person or organization may challenge the certification of a firm claiming MBE status by bringing a challenge before the grantee in the case of self-certification, through procedures established by a recognized certifying agency, or through EPA Regional procedures as appropriate and provided for in the EPA implementing procedures.

D. Upon a finding by EPA that any party has not complied with the requirements of this policy, including misrepresenting a firm as an MBE, EPA may:

1. Declare the grantee non-responsible under 40 CFR 30.340 *et seq.*

2. Declare the bidder/offeror non-responsible and therefore ineligible for contract award.

3. Declare grantee or contractor non-responsible for future grants under 40 CFR 35.935(e).

4. Disallow any grant or contract costs associated with the non-compliance.

5. Invoke any and all sanctions and remedies specified in EPA regulations, including terminating the grant and/or withholding funds under 40 CFR 30.900 *et seq.*

6. Refer any matter which may be fraudulent to the Inspector General.

7. Refer any matter which may lead to criminal prosecution or a claim for funds to the Department of Justice.

VIII. State and Local Law

Nothing in this policy prevents a grantee from imposing more stringent MBE requirements in work procured under EPA grants or procurement obligations which pertain to bid responsiveness or percentage of MBE participation, where provided for by State or local law or ordinances.

Women's Business Enterprise Policy: Technical Amendments

The following technical amendments to the Women's Business Enterprise Policy for the construction Grants Program (WBE policy) are proposed:

1. Section B.4. is amended by striking all of section B.4 and inserting in lieu thereof "Certification. Certification as WBE under this policy shall be accomplished in accordance with EPA's implementing procedures.".

2. Section C.4. is amended by striking "of $500,000 or more and all prime contracts for architectural engineering, and related services of $10,000 or more" and inserting in lieu thereof "over $250,000 and all prime contracts for architectual, engineering and related services over $250,000.".

3. Section H is amended by striking all of section H and inserting in lieu thereof the following:

"H. *Enforcement*—1. EPA requires grantees and invites interested parties to bring to the attention of the EPA Regional Administrator any perceived noncompliance by a grantee, bidder/offeror, contractor, or WBE, or EPA with the requirements of the policy or implementing procedures.

2. A bidder/offeror or WBE with an adversely affected direct financial interest may file a bid protest with the grantee pursuant to 40 CFR 35.939. Bid protest procedures are not available to challenge the certification of a WBE.

3. Any interested person or organization may challenge the certification of a firm claimining WBE status by bringing a challenge before the grantee in the case of self-certification, through procedures established by a recognized certifying agency, or through EPA Regional procedures as appropriate and provided for in the EPA implementing procedures.

4. Upon a finding by EPA that any party has not complied with the requirements of this policy, including misrepresenting a firm as a WBE, EPA may:

a. Declare the grantee non-responsible under 40 CFR 30.340 *et seq.*

b. Declare the bidder/offeror non-responsible and therefore ineligible for contract award.

c. Declare grantee or contractor non-responsible for future grants under 40 CFR 35.935(e).

d. Disallow any grant or contract costs associated with the non-compliance.

e. Invoke any and all sanctions and remedies specified in EPA regulations, including terminating the grant and/or withholding funds under 40 CFR 30.900 *et seq.*

f. Refer any matter which may be fraudulent to the Inspector General.

g. Refer any matter which may lead to criminal prosecution or a claim for funds to the Department of Justice.

4. Section J. is amended by striking all of section J. and inserting in lieu thereof the following.

"J. *State and Local Law*—Nothing in this policy prevents a grantee from imposing more stringent WBE requirements in work procured under EPA grants or procurement obligations which pertain to bid responsiveness or percentage of WBE participation, where provided for by State or local law or ordinances."

5. Section K.2. is amended by striking "October 1, 1983" and inserting in lieu thereof "October 1, 1984."

Construction Grants Program Requirements

[Memorandum PRM No. 81-3]

Effective Date:

To: Regional Administrators, Regions I-X. Attn: Water Division Directors, Office of Civil Rights Directors.

From: Barbara Blum, Deputy Administrator (A-100); Eckardt C. Beck, Assistant Administrator for Water and Waste Management (WH-556).

Subject: Procedures for the Implementation of the Minority Business Enterprise and Women's Business Enterprise Policies.

This proposed PRM sets forth the procedures to be followed in all projects to which the Minority Business Enterprise (MBE) and Women's Business Enterprise (WBE) policies apply. These procedures replace the procedures developed in each Region to implement the Policy for Increased Use of Minority Consultants and Construction Contractors, 43 Fed. Reg. 60220 (December 26, 1978).

Section Index

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III. Source Lists
IV. Calculation of MBE and WBE Participation
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VI. Grantee Responsibilities
VII. Bidder/Offeror Activities
VIII. Exception Provision
IX. Post Contract Award Compliance

X. MBE/WBE Responsibilities
XI. Data Collection

I. Regional Goals

A. The Regional Administrator shall establish regional goals for MBE and WBE participation. MBE and WBE goals shall be separate and not interchangeable. The goal for WBE participation must be at least as high as the national goal. In establishing MBE and WBE goals, the Regional Administrator shall:

1. relate the goals to the objectives of the MBE/WBE policies.

2. take into consideration in setting regional goals such factors as:

a. availability* of MBE/WBE's

b. the previous regional experience in implementing the Policy for Increased Use of Minority Consultants and Construction Contractors, 43 Federal Register 60220 (December 26, 1978).

c. input from public participation.

d. types of projects on State priority lists.

e. other appropriate data.

B. Regional goals shall take the form of a range.

1. In a range goal system the Region sets the numerical boundaries of the specific percentage to be established by grantees for MBE and WBE participation.

2. As part of its application, the grantee must propose, for approval by the Region, a fixed numerical goal within the Regional range to apply to the step or segment covered by the grant or grant amendment. Under unusual circumstances, the Regional Administrator may approve a proposed project goal outside the Regional goal range. Where the proposed goal is lower than the bottom of the Regional range. The grantee must establish that the deviation from the Regional goal is justified.

II. Certification of MBE/WBE

A. Means of Certification—Certification as MBE or WBE under EPA's policies shall be accomplished by self certification, by a state or federally-funded agency recognized and designated by the Regional Administrator, or by the Regional Office, as follows:

1. Self-certification. Self-certification shall be through submission of a statement signed by the minority/women owner(s). Standard EPA forms for this certification should be used. A signed statement by the minority/women owner(s) which provides at least the same information requested on the EPA form will also be accepted, although use of the EPA form is strongly encouraged and recommended. Self-certification shall be the method of certification only where no state or federally funded agency has been recognized by the Regional Administrator or no Regional certification procedure exists.

2. Certification by State or federally-funded agency. The Regional Administrator with the Director of OSDBU in Headquarters may recognize any state or federally-funded agency, as the certifying agency in its jurisdiction. Criteria for qualifying as MBE or WBE for any such recognized agency must be equivalent to EPA's criteria.

3. Certification by EPA Regional Office. The Regional Administrator may establish procedures for certifying MBEs and WBEs in the Regional Office.

B. Certification Review Procedures—1. Self-certification. The grantee shall review the certification form submitted by each MBE/WBE firm. If, on the basis of that review or other information brought to the grantee's attention, the grantee determines that the firm does not meet the defintion in the applicable EPA policy, the grantee shall notify the firm in writing of its initial determination, the basis of its decision, the firm's right to respond within 15 calendar days of receipt of the initial decision, and that failure to respond will result in the initial decision becoming the final grantee decision with no right of appeal. The firm will have 15 calendar days to respond in writing to the grantee's initial determination of its status and may request an informal hearing. The grantee shall review any written submissions and oral presentations as expeditiously as possible, and on the basis of its review, shall issue its final determination concerning the MBE/WBE status of the firm. The final determination shall be in writing, stating the reasons for the determination and the right to appeal an adverse determination to the Regional Administrator.

2. Certification by recognized State or federally funded agency. Where a state or federally funded agency is recognized by the Regional Administrator and the Director of OSDBU as the certifying agency for that jurisdiction, the procedures of that agency will be the exclusive means available for certification and review of MBE/WBE status of a firm in that jurisdiction. Final determinations of a recognized agency may be appealed to the Regional Administrator.

3. EPA Regional Certification. Regional Certification procedures must be developed in consultation with the Director of OSDBU. Such procedures must provide for initial review of MBE/WBE status to take place on a Regional staff office level, with appeal to the Regional Administrator.

C. Appeal to the Regional Administrator—1. Who may appeal. Only a firm claiming MBE/WBE status under EPA policies which received a final determination from the grantee, recognized agency, or EPA Regional staff office that it does not qualify as MBE/WBE under EPA policies may file an appeal with the Regional Administrator.

2. Time and manner of appeal. An appeal of an adverse grantee, recognized agency, or EPA Regional staff office determination must be filed with the Regional Administrator within 10 calendar days of the firm's receipt of the adverse determination. Notice of appeal must be provided to the grantee, recognized agency, or EPA Regional staff office in writing at the time of appeal to the Regional Administrator. The appeal shall consist of a written statement of the firm's qualifications as MBE/WBE under EPA policy and supporting documents, if any, together with a copy of the grantee's, recognized agency's or EPA Regional staff office's final determination.

3. Regional Administrator's Determination. On the basis of the grantee's, recognized agency's, or EPA Regional staff office's final determination and the written submission by the firm, the Regional Administrator shall issue a written determination as to the MBE/WBE status of the firm. The decision of the Regional Administrator shall constitute the final decision of the agency and may not be appealed further within the Agency.

III. Source Lists

A. EPA Regions shall maintain, supplement continually, and update annually lists of those firms which have certified themselves as MBE/WBEs. Such lists are for information purposes only, and shall carry a clear and prominent statement that the firms listed have certified themselves as MBE/WBEs and are neither endorsed nor guaranteed by EPA as bona fide MBE/WBEs. It is not necessary to be on any lists in order to qualify as a bona fide MBE/WBE.

B. Grantees should develop project source lists for MBE/WBEs.

1. The grantee may wish to use available list such as those of the EPA Regional Office, adjacent municipalities, appropriate minority/women associations and agencies, and available industry associations. Names of these agencies with address and phone number should also be included on the grantee's source list.

2. The grantee may also wish to engage an MBE/WBE liaison to compile the list. These services are grant eligible pursuant to PRM 80-7, but may not be credited toward meeting a project's MBE/WBE goals.

C. Bidders/Offerors must obtain the grantee's source lists, may obtain lists from appropriate MBE/WBE agencies and associations, and may seek additional names by advertising, for example in industry association publications, and MBE/WBE trade letters.

D. MBW/WBE should make efforts to be included on appropriate source lists by contacting EPA Regional Offices, potential grantees and appropriate agencies and associations.

IV. Calculation of MBE/WBE Participation

A. Credit for MBE/WBE participation under these policies shall be granted for MBE/WBEs performing a useful business function according to custom and practice in the industry. No credit will accrue for a MBE/WBE acting merely as a passive conduit of funds to some other, non-minority firm where such activity is unnecessary to accomplish the project.

B. Goals for MBE/WBE participation shall be calculated as a percentage of total eligible contract costs.

C. Credit for MBE/WBE project-related work that is not eligible for EPA assistance may be included in the calculation of MBE/WBE participation.

D. Joint Ventures. Joint ventures shall be credited towards the grantee's percentage of MBE/WBE participation by crediting the proportion of the dollar amount of the joint venture's subcontract equal to the proportion of the MBE/WBE's in the profit of the joint venture. Where the MBE/WBE's risk of loss, control or management responsibilities are not commensurate with the share of profit, the Regional Administrator may direct an adjustment in the percentage of the joint

*Availability includes those MBE/WBE's which find it to be in their interest to come into an area for a contract/subcontract.

venture's contract to be credited as MBE/WBE participation. In the case of a joint venture which includes a MBE and WBE, credit will be calculated towards their respective goals.

E. Suppliers—1. Suppliers are defined as follows: A supplier is a business which acts as a distributor of materials or equipment, and which provides a commercially useful function, when such activity is traditional in the industry manufacturing the material or equipment supplied.

Commercially useful function will normally include:

a. Providing technical assistance to the purchaser prior to the purchase, during installation and after the supplies or equipment are placed in service;

b. Charging and billing directly for all supplies and equipment not manufactured by the supplier;

c. Manufacturing or being first tier below manufacturer of the supplies or equipment supplied;

d. Providing functions other than just accepting and referring requests for supplies or equipment to another party for direct shipment to a contractor.

2. MBE/WBE suppliers shall be credited as follows:

a. One hundred percent for MBE/WBE suppliers who manufacture the goods supplied.

b. All MBE/WBE suppliers who are wholesalers warehousing the goods supplied or who are manufacturers' representatives will be credited with one hundred percent (100%) of the price of their subcontract; however, only 25% of the MBE/WBE goal may be attained with non-manufacturing supplier contract to MBE/WBEs.

3. In those contracts of which an extraordinarily large proportion of the contract price is for equipment or supplies, the grantee may propose a lower project goal than otherwise would be required, or request the Regional Administrator to increase the 25% limit for suppliers, or a combination of the two.

F. Total dollar value of a contract with an MBE owned and controlled by a minority woman or women may be credited as MBE participation or as WBE participation, or allocated, but may *not* be credited fully as both.

V. EPA Responsibilities

A. *Headquarters.* The Office of Small and Disadvantaged Business Utilization (OSDBU) and the Office of Water Program Operations (OWPO) shall be responsible, as follows:

1. OWPO and OSDBU shall review MBE and WBE national policies by October 1, 1984, and every three years thereafter, and modify them if appropriate. The WBE national goal shall be reviewed annually.

2. The Deputy Assistant Administrator for OWPO and the Director of OSDBU shall assure that regional goals for MBE and WBE participation are consistent with national policy.

3. OSDBU shall provide to OWPO an overview of the MBE and WBE policies and procedures to assure the objectives of these policies are achieved.

4. OWPO shall make available for distribution upon request State Project Priority Lists by January 1 of each year.

5. OSDBU shall establish and maintain a liaison relationship with other federal agencies involved in MBE and WBE activities to take advantage of other Federal programs and work toward Federal uniformity.

6. OWPO shall maintain records of MBE/WBE participation as supplied by or collected from the Regions.

7. Headquarters shall maintain computer MBE/WBE source lists from data supplied by the Regions and OSDBU.

B. *Regional Responsibilities—Each Regional Administrator shall:*

1. Establish separate Regional goals for MBE and WBE participation and provide them to OSDBU and OWPO for review.

2. Review MBE/WBE goals annually.

3. Approve grantee-proposed project goals.

4. Provide guidance and advice to grantees as requested.

5. Review grantee procurement documents (invitations for bids (IFB) and requests for proposals (RFP)) pertaining to MBE/WBE requirements.

6. Review grantees' proposed contract awards to insure that apparent low bidders and apparent successful offerors have either met the project goal or made good faith positive efforts.

7. Monitor grantees for compliance with MBE/WBE requirements after contract award, through the life of the project.

8. Maintain, supplement continually, and update annually separate source lists of MBEs and WBEs from data supplied by grantees and self-certifying MBE/WBEs, and provide such lists to grantees and headquarters. Lists should provide the following information:

(a) name;
(b) address;
(c) telephone number;
(d) type(s) of work capable of performing, and
(e) designation of category of firm by ethnic group.

VI. Grantee Responsibilities

A. The grantee shall take affirmative steps to contract with MBE/WBEs and ensure that its contractors make positive efforts to contract with MBE/WBEs during all phases of work funded or to be funded under an EPA grant. These affirmative steps are the following:

1. Include qualified MBE/WBEs on solicitation lists by drawing from the source lists of EPA Regional Offices, appropriate minority/women associations and agencies, and industry associations.

2. Assured that MBE/WBEs are solicited whenever they are potential sources by:

a. holding pre-bid conferences, with interested MBE/WBEs in attendance when possible, to highlight the requirements of the MBE/WBE policies and procedures to prospective bidders.

b. including MBE/WBE policies and procedures and project goals in requests for proposals (RFP) and invitations for bids (IFB).

c. publishing announcement(s) of MBE/WBE opportunities for work on EPA funded projects.

d. providing grantee's source list to prospective bidders/offerors.

e. providing liaison services between MBE/WBEs and prospective bidders/offerors. Such services are recognized by EPA to be an allowable cost. Liaison services should not be delegated to consultants where a potential or possibility for a conflict of interest exists.

3. When feasible divide the total contracted work into smaller tasks in the solicitation documents to permit maximum MBE/WBE participation.

4. When the project requirements permit, establish delivery schedules which encourage participation by MBE/WBE.

5. Used the services and assistance of the Small Business Administration (SBA), the Minority Business Development Administration (MBDA), the Community Service Administration (CSA) and other federal, state and local agencies whenever appropriate.

B. Consult with the Regional Office for guidance when necessary, and in its application for a grant for each project, proposed separate project goals for MBE and WBE participation. Where the grantee proposes a project goal for MBE and/or WBE participation below the low end of the regional goal range, the grantee must justify the need for a lower goal.

C. After bid opening or receipt of proposal(s), evaluate bids to determine whether they are responsive with respect to MBE/WBE requirements, determine whether offers contain the requisite MBE/WBE information, and determine whether apparent low responsive bidders are responsible and offerors are qualified under the policies.

D. Forward the MBE/WBE documentation submitted with the bid to EPA (or State agency, if delegation under section 205(g) has occurred) for review after bid opening.

E. Monitor work in progress to insure that:

1. prime contractors are utilizing MBE/WBEs for work as designated in bids and in any subsequent documentation of anticipated MBE/WBE participation.

2. MBE/WBE members of joint ventures for which MBE/WBE credit is allowed are actually participating in the performance of the joint venture's subcontract.

F. Maintain records of MBE/WBE participation and supply data upon request by the Region.

VII Bidder and Offeror Activities

A. Good Faith Positive Efforts: Activities during preparation of bids and offers. Bidders/offerors shall make positive efforts, prior to bid submission or closing date for receipt of initial offers, to encourage participation in projects by MBE/WBEs. These efforts to provide opportunities for, discover, solicit and negotiate with MBE/WBEs must occur during bid/proposal preparation. Such efforts shall include, but need not be limited to:

1. Segmenting total work requirements to provide sufficient opportunities for subcontracting so that, as a minimum, MBE/WBE goals specified in procurement documents can reasonably be expected to be met.

2. Sending letters to or making other personal contacts with MBEs and WBEs; e.g.,

those who appear on lists prepared by the grantee and other MBE/WBEs known to the bidder/offeror. Sending letters or making other personal contacts with local, state, federal and private agencies and MBE/WBE associations relevant to the project. Those letters or other contacts must communicate the following:

a. Specific description of the work to be subcontracted

b. How and where to obtain a copy of plans and specifications or other detailed information needed to prepare a detailed price quotation

c. Date the quotation is due to the bidder/offeror

d. Name, address, and phone number of the person in the bidder/offeror's firm whom the prospective MBE/WBE subcontractor should contact for additional information.

e. Letters should be sent or contacts made with potential MBE/WBE subcontractors at the time the bidder/offeror solicits quotations from non-MBE/WBE prospective subcontractors, but not later than 15 calendar days prior to submission of the bid or closing date for receipt of initial offer. MBE/WBEs contacted in this manner must be allowed at least ten calendar days to prepare a quotation.

3. Making available in a timely manner appropriate additional information for preparation of quotations to those MBE/WBEs that have submitted competitive quotations.

4. Up to the time of bid submission or throughout the negotiated procurement process, the bidder/offeror must make a reasonable effort to negotiate with all MBE/WBEs that have submitted reasonable quotations or offers. For competitive bidding, negotiations with all MBE/WBEs must be completed by bid submission.

B. Demonstration of Positive Efforts: Bid/Offer submission requirements. Bidders/offerors must demonstrate that the requisite positive efforts have been made adequately. In order to demonstrate the performance of positive efforts, the following is required:

1. Competitive Bidding (e.g. Step 2 Construction Contracts)—a. All bidders must submit the following in the bid in order for the bid to be responsive:

1. Names, addresses, and phone numbers of certified MBE/WBE(s) to perform work. MBE/WBE(s) included must either be previously certified under Section II of this PRM or must have submitted a certification to the proper party (i.e. grantee, state or federally funded agency or EPA Regional Office) prior to bid opening.

2. Work to be performed by the MBE/WBEs.

3. Aggregate dollar amount of work to be performed by MBE/WBEs, showing aggregate to MBEs and aggregate to WBEs separately.

4. Percentage amount of total bid represented by MBE/WBE participation showing percentages for MBE and WBE participation separately.

b. If the bidder has not met the project goal(s) for MBE and/or WBE participation, the following documentation of positive efforts to utilize MBEs and/or WBEs must also be submitted with the bid in order for the bid to be responsive:

1. Description of scope of subcontract work and the percentage of total bid representing the segmented work.

2. Names and addresses of all a) MBE/WBEs b) local, state, federal, and private agencies which service minority/women business organizations, and c) minority associations which were contacted by the bidder.

3. Dates on which letters were sent or other contacts were made by the bidder.

4. Names of WBE/MBEs who initiated contact with the bidder, requesting information, the bidder provided such information, and when the information was provided.

5. Names of MBE/WBEs who submitted quotations to bidder and the amount of their final quote.

6. Description of negotiations which occurred with non-selected MBE/WBEs who submitted quotes and why they were not selected. Merely rejecting a quotation as "too high" without further negotiations as to essential elements of the quotation shall not constitute reasonable or adequate efforts. The bidder shall accompany his bid with a justification for the rejection of each MBE/WBE quotation or offer which was rejected and the date of the final action in the negotiation process prior to the time the bid was submitted.

Failure to submit the documentation of positive efforts pursuant to the requirements of a. and b. above shall render the bid nonresponsive and shall cause rejection of the bid.

c. The low, responsive bidder will be deemed responsible with respect to MBE/WBE requirements and may be awarded the contract if:

1. The low, responsive bidder submits within 2 days (48 hours) of bid opening letters of intent signed by MBE/WBEs listed in the bid, stating the work to be performed, price of the work and intent of the bidder and MBE/WBE to enter into a contract under those terms if the bidder is awarded the prime contract by the grantee and:

2. The low responsive bidder who has not attained the project goal(s) at the time of bid submission has demonstrated in the documentation in the bid that adequate positive efforts had been made prior to bid submission.

d. Failure to make the requisite positive efforts prior to bid submission cannot be cured after bid opening, except as provided in section X, Exception Provision, of this PRM.

2. Negotiated Procurement (e.g. architect/engineer and consultant contracts)

a. The following documentation must be submitted to the grantee by the offeror, regarless of the method of negotiated procurement:

1. Names, addresses, and phone numbers of certified MBE/WBE(s) to perform work. MBE/WBE(s) included must either be previously certified under Section II of this PRM or must have submitted a certification to the proper party (i.e. grantee, state or federally funded agency or EPA Regional office) prior to proposal.

2. Work to be performed by the MBE/WBEs.

3. Aggregate dollar amount of work estimated to be performed by MBE/WBEs.

4. Percentage amounts of total offer estimated to be represented by MBE/WBE participation.

b. If the offeror does not meet the MBE and/or WBE goal, the following documentation must also be submitted at the same time:

a. Description of scope of subcontract work and the percentage of total offer representing the segmented work.

b. Names and addresses of all (a) MBE/WBEs (b) local, State, Federal, and private agencies which service minority/women business organizations, and (c) minority associations which were contacted by the offeror.

c. Dates on which letters were sent or other contacts were made by the offeror.

d. Names of WBE/MBEs who initiated contact with the offeror and to whom the offer provided information.

e. Names of MBE/WBEs who submitted quotations or offers to offeror and the amount of their final quote.

f. Description of negotiations which occurred with non-selected MBE/WBEs who submitted offers and why they were not selected. Merely rejecting an offer as "too high," where price is a factor without further negotiations shall not constitute reasonable or adequate efforts.

3. Documentation required under 2. above must be submitted at the following times:

a. At the deadline for receipt of initial offers in the case of competitive negotiated procurement, offerors must submit the documentation for the offers to be considered technically acceptable.

b. At the beginning of discussions held with not less than three of the most highly qualified architect-engineering firms in the case of negotiated procurements conducted in accordance with procedures based upon Pub. S. No. 92-582, 40 U.S.C. § 541-544 (1978) (commonly known as the "Brooks Bill"), architect-engineering firms must submit the documentation order to be considered qualified.

4. The offeror will be deemed responsible with respect to MBE/WBE requirements and may be awarded the contract if:

a. Letters of intent signed by MBE/WBEs proposed by the offeror are submitted to the grantee prior to contract award, and:

b. Postitive efforts made by the offeror and documented in the proposal are adequate.

VIII. Exception Provision

Under exceptional circumstances, the Regional Administrator may, either upon the written recommendation of the grantee, or following EPA's own review, authorize the award of the contract to an apparent low bidder who would otherwise be rejected as non-responsible owing to specific remediable deficiencies in the MBE positive efforts performed by it prior to the submission of its bid. "Remediable deficiencies" are those that may be cured by continuing negotiations begun prior to bid submission and do not include initiation of negotiations with known MBE/WBEs or a search for MBE/WBE firms. Authority to grant such exceptions shall be limited to situations where:

a. There would otherwise be serious hardship to the grantee owing to the rejection of the apparent low bid or all bids; and

b. The apparent low bidder has expeditiously remedied or will remedy all such deficiencies in the period immediately following bid opening.

IX. Post Contract Award Compliance

A. Within 15 days after the date of contract award, the contractor must submit executed subcontracts with MBE/WBE(s) identified in the letters of intent to the EPA Regional Office.

B. The contractor shall notify the grantee in writing if listed MBE/WBE's will not be performing work proposed. Notice shall include:

(1) Name of MBE/WBE not being utilized
(2) Work designated to have performed by MBE/WBE.
(3) Dollar value of that work
(4) Reason(s) for not utilizing MBE/WBE.
(5) Name of business to perform the work instead of the MBE/WBE.
(6) Unless a MBE/WBE is named to perform the work, the prime contractor must make reasonable positive efforts to find a MBE/WBE replacement. These positive efforts must be documented by providing in writing to the grantee:
(a) name, address, and contact person of MBE/WBE contacted;
(b) quotations provided by MBE/WBE(s) to perform work; and
(c) evidence of negotiation with MBE/WBE(s) (e.g., meetings, phone calls, counter offer)

X. MBE/WBE Activities

MBEs/WBEs interested in working on EPA funded construction projects are encouraged to take the following steps:

A. Submit information to the Region and grantees to identify status as a MBE/WBE.

B. Use the appropriate method under these procedures to become certified as MBE/WBE under EPA policy.

C. Enter into state and local planning processes.

D. Contact Federal, State and local MBE/WBE liaison offices to obtain information on potential jobs.

E. Provide capability statements to EPA, State agencies, grantees, consulting engineers, and contractors, stating type(s) of work performed by the firm, size of job that the firm could handle, bonding information, and any special skills.

F. Make every effort to establish contacts and relationships with contractors for potential future business.

G. Contact EPA Regional offices or appropriate state offices to obtain information on planned construction projects.

H. Respond promptly to solicitation requests.

XI. Data Collection

A. Regions are responsible for collecting data from grantees and reporting to Headquarters MBE/WBE information. This information will be needed for two separate existing computer files. These files will be modified to include the following information:

1. *MBE/WBE Source List File*—General Information
(a) name of firm
(b) name of contact
(c) address, city, state and zip code
(d) whether MBE or WBE firm
(e) telephone number
(f) type(s) of work capable of performing
(g) capacity of firm, e.g., size of project capable of performing or bond capacity
(h) ethnic breakout (Black, Spanish or other)
(i) percent (%) or MBE/WBE ownership

2. *Contract Management File*—Specific information on each prime contract showing level and details of MBE/WBE participation. Required information for each individual prime contract is as follows:
(a) total dollar amount of A/E or prime construction contract awarded
(b) total projected dollar level of MBE/WBE participation in contract at time of prime contract award
(c) planned/actual dollar level and type of participation for each MBE/WBE

B. Output Reports

The MBE/WBE Source List File and the Contract Management File will be linked together to provide the capability to manipulate and display MBE/WBE information in various formats. For example, information could be aggregated on:

(a) number of MBE/WBE firms in a particular State or Region;
(b) number of firms performing a particular type of work in a particular area; or
(c) dollar amount of contracts awarded to certain MBE/WBE firms.

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Part XXVIII

Environmental Protection Agency

Regulations for the Enforcement of the Federal Insecticide, Fungicide and Rodenticide Act; Classification of Uses of Active Ingredients for Restricted Use

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 162

[OPP-30029B; PH-FRL 1674-6]

Regulations for the Enforcement of the Federal Insecticide, Fungicide and Rodenticide Act; Classification of Uses of Active Ingredients for Restricted Use

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This final rule adds certain uses of eight active ingredients to the list of uses which the Agency has classified for restricted use. The current list is contained in 40 CFR 162.31 and this final rule will amend that section.

EFFECTIVE DATE: This rule will not take effect before the end of 60 calendar days of continuous session of Congress after the date of publication of this rule. EPA will publish a notice of the actual effective date of this rule. See Supplementary Information for further details.

FOR FURTHER INFORMATION CONTACT: Mr. Walter Waldrop (TS-767), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460, (202-426-2510).

SUPPLEMENTARY INFORMATION: EPA issued a notice which was published in the Federal Register of August 1, 1979, (44 FR 45219) and requested comment on its proposal to classify certain uses of 21 active ingredients for restricted use. EPA took this action pursuant to Section 3(d) of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), as amended, 7 U.S.C. 136a(d), and 40 CFR 162.30. 40 CFR 162.30 provides that a use shall be classified for restricted use if the Administrator determines that the incremental risk of unrestricted use, i.e., those over and above the risks of restricted use, outweigh the incremental benefits of unrestricted use, i.e., those over and above the benefits of restricted use. Applying that criterion, the Administrator preliminarily determined to classify for restricted use certain uses of the 21 active ingredients referred to above and accordingly published in the Federal Register notice proposing a regulation to that effect in 44 FR 45219.

Comments on the proposed regulation were received from interested parties. Of the comments received none contained objections to the action proposed by EPA with respect to eight of 21 active ingredients in question. However, comments were received which were adverse to the action proposed by EPA on the other 13 active ingredients. In this group the principal criticism was EPA's reliance on residue effects on avian species as a basis for proposing to classify certain granular formulations for restricted use. Another common criticism was submitted by a number of mosquito control districts which objected to EPA's proposed restricted use classification of temephos for mosquito control uses. These comments are currently under consideration by the agency.

Since the agency received no adverse comments on its proposal with respect to the eight active ingredients referred to, it has determined to classify those for restricted use by amending 40 CFR 162.31 at this time rather than unnecessarily delaying their classification while it considers the comments received on the other 13 active ingredients. Comments on the remaining 13 active ingredients will be addressed by the agency in a future Federal Register notice and a final regulation with respect to them will be promulgated at that time, if warranted.

Only one specific comment was received on any of the eight active ingredients which are the subject of this final rule. The comment related to the agency's proposed restricted use classification of certain uses of methidathion. The registrant was concerned that any future data developed to support a general use classification would be reviewed and acted upon by the Agency. The agency notes that it is prepared to review any new data developed by a registrant or other party for purposes of reclassifying a previously restricted product. See FIFRA section 3(d)(3), as amended, 7 U.S.C. 136a(d)(3). Further, all restricted use classification decisions made under these procedures will be reviewed at the time of reregistration.

The agency also notes that it has withdrawn from this final regulation the restricted use classification of EPN granular formulations 2 percent and greater based on residue effects on avian species. There were no comments submitted on the proposed restriction of these formulations, but the agency has decided to consider them with the other granular formulations still under review.

It is important to note that this regulation only classifies uses for restricted use. If a use is not classified for restricted use by this regulation, it does not mean that it is classified for general use under section 3(d) of FIFRA, as amended; it merely means that the use has not yet been classified for either general use or restricted use. However, as a practical matter, a use which remains unclassified will be generally available to all consumers since certification would not be required for purchase and use. The agency is not classifying uses for general use by regulation primarily because such a decision requires an evaluation of chronic data. Review of chronic data has not been a part of classification by regulation since much of that data has yet to be generated and submitted to the agency.

The agency has also indicated in this final rule that all uses of formulations containing 0.027 percent to 4 percent of cycloheximide are "under evaluation." This indicates that these uses are still under active review for purposes of classification by regulation. The practical effect of the "under evaluation" designation is the same as that of "unclassified," i.e., the use will be generally available to all consumers. Further, any use/formulation that is "under evaluation" would require no action on the part of any potentially affected registrant. A final classification determination of those uses/formulations which are "under evaluation" may be made through these optional classification-by-regulation procedures or may be deferred until the time of reregistration.

Any product use classified for restricted use under these regulations is limited to use by or under the direct supervision of a certified applicator. Registrants of pesticide products with uses classified for restricted use by this final rule must comply with the requirements of 40 CFR 162.30 within the deadlines specified in those regulations.

Further information on Effective Date of this rule. On December 17, 1980, President Carter signed the Federal Insecticide, Fungicide, and Rodenticide Act Extension Bill (Pub. L. 96-539). This bill amended several sections of FIFRA, including sec. 25 on rulemaking. Section 4 of the Extension Act adds a new paragraph, sec. 25(e), to FIFRA which requires EPA to submit final regulations to Congress for review before the regulation becomes effective. Copies of this rule have been transmitted to appropriate offices in both Houses of Congress.

Pursuant to sec. 4 of the 1980 FIFRA Extension Act, and in accordance with President Carter's statement on signing the bill (Weekly Compilation of Presidential Documents, p. 2814, December 22, 1980), this rule will not take effect before the end of 60 calendar days of continuous session of Congress after the date of publication of this rule. Since the actual length of this waiting period may be affected by Congressional action, it is not possible, at this time, to specify a date on which

this regulation will become effective. Therefore, EPA, at the appropriate time, will publish a notice in the Federal Register announcing the end of this "report and wait" period and notifying the public of the actual effective date of this regulation.

Regulatory Analysis

The agency has determined that this document does not contain a major proposal requiring preparation of a regulatory analysis under Executive Order 12044.

Evaluation Plan

Section 2(d)(8) of Executive Order 12044 requires that each new significant regulation have a plan for evaluating its effectiveness. All restricted use classification decisions promulgated under this final rulemaking will be reviewed by the agency at the time of reregistration as part of the overall risk-benefit analysis to be undertaken at that time. For a discussion of the difference between the overall risk-benefit analysis, and the incremental risk-benefit analysis performed under 40 CFR 162.30, see 42 FR 44170.

In connection with the agency's obligations under section 2(d)(8) of Executive Order 12044, one commenter questioned the agency's intent to review classification decisions at the time of reregistration, citing the anticipated length of time required to complete this process. Because of the projected length of time required, the commenter suggested that the agency include a statement about the anticipated time involved in completing the reregistration process.

While it is true that it will take at least 10–15 years to complete the reregistration of all active ingredients, the agency still believes that reregistration is the most appropriate time to review the effectiveness of these classification decisions. However, the agency will consider evaluating the effectiveness of the restricted use classification of any specific active ingredient(s) prior to reregistration if there is a demonstrated need to do so.

Statutory Review

The U.S. Department of Agriculture has reviewed the final regulation in accordance with Section 25(a) of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) as amended and concurs with its publication in the Federal Register. The FIFRA Scientific Advisory Panel has reviewed the final regulation in accordance with Section 25(d) of FIFRA and concurs with its publication in the Federal Register. The panel also offered an additional special comment which is discussed below.

The panel expressed concern about the potential serious threat to public health posed by the designation of formulations of nicotine and zinc phosphide as unclassified for domestic and non-domestic uses. The panel cited the history of accidental poisoning over a long period of time with such toxicants and indicated that in its opinion, making them available to the general public while certain field uses are restricted tends to give the public a false sense of security. The panel recommended that in the future all use patterns be appropriately addressed. The panel further suggested that the technical merits of the current classification procedure be reevaluated, if necessary, to ensure that the availability of highly toxic poisons in domestic situations for use by unskilled persons is not promoted.

With respect to the panel's concern that the agency's classification decisions on certain active ingredients tend to give the public a false sense of security and that the classification procedures themselves promote the use of highly toxic poisons in domestic situations for use by unskilled persons, the agency notes the following:

1. While it is true that in some classification decisions agricultural and non-domestic uses of certain active ingredients have been classified restricted while domestic uses have remained unclassified, products with domestic use patterns are generally much less concentrated than those with agricultural crop uses and consequently pose a lesser degree of risk. This is true for the formulations of zinc phosphide and nicotine (alkaloid) addressed in this regulation.

2. During the classification-by-regulation process, all of the use patterns and formulations of an active ingredient under review are evaluated (as recommended by the panel) and subjects to the classification criteria of 40 CFR 162.11(c)(20) which impose more rigid safety limits on domestic uses than non-domestic uses. In fact, the classification criteria provide for a safety factor ten times greater for pesticides used in domestic use situations than that for pesticides used in non-domestic use situations. For instance, pesticide products are considered to be candidates for restricted use in *non-domestic* use situations if the acute dermal LD_{50} is 200 mg/kg or less while such products are considered to be candidates for restricted use in *domestic* use situations if the acute dermal LD_{50} is 200 mg/kg or less.

3. With it is true that only a limited number of domestic uses have been classified for restricted use when compared to agricultural uses, most of the active ingredients reviewed in the classification-by-regulation process do not have any domestic uses.

While respect to the panel's recommendation that highly toxic pesticides such as zinc phosphide and nicotine not be allowed in the home environment for use by unskilled persons, the agency notes that those formulations of zinc phosphide (2% and less) and nicotine (alkaloid) (1.5% and less) identified in this rulemaking as unclassified did *not* meet the risk criteria for restricted use. An examination of the accident history of both active ingredients (which also can be grounds for classifying formulations or uses for restricted use under § 162.11(c)(4)), as shown by the agency's Pesticide Incident Monitoring System (PIMS) revealed a total of thirteen incidents for each active ingredient. Although there were two reported fatalities with nicotine (alkaloid) both were ruled to be suicide. (The PIMS data file represents slightly over 34,000 reported incidents covering the period 1966 to the present.) No other serious incidents with zinc phosphide or nicotine (alkaloid) were reported. Therefore, neither the risk criteria nor accident data gave the agency reason to believe there was sufficient reason to classify either of these two active ingredients (at the percentage concentration indicated) for restricted use.

The broader policy issue of whether or not zinc phosphide and nicotine (alkaloid) should be prohibited from domestic use regardless of formulation or concentration, is not one that can be addressed in the classification by regulation process. This process was designed to focus on the incremental risks and benefits of unrestricted use and was not meant to be a comprehensive evaluation of overall risks and benefits. This more comprehensive evaluation of risks and benefits for zinc phosphide and nicotine (alkaloid) will be accomplished during reregistration.

The provisions of 40 CFR 162.10, imposing a requirement for child-resistant packaging, also are pertinent. Products which meet certain acute toxicity criteria and are labeled to allow them to be used in residential settings must be packaged in a way which will lessen the ability of small children to obtain access to the product's contents.

One further point needs to be noted. Just as the agency is concerned about the health and safety of people who use and are exposed to pesticides, there is also concern that homeowners and domestic users have a selection of available pesticides that will provide

effective and affordable pest protection and still be within "acceptable" risk limits.

The Scientific Advisory Panel report is published in its entirety below.

Scientific Advisory Panel Review of Final Rulemaking

The Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) Scientific Advisory Panel completed review of final rulemaking for classification of certain uses of eight active ingredients as restricted uses during the thirty-third meeting of the Panel, held in Arlington, Virginia, during the period June 26–27, 1980.

Maximum public participation was encouraged for discussion of the document under review. During the meeting, public comments were received from representatives of EPA and the pesticide industry. Public notice of the meeting was published in the Federal Register on June 10, 1980. In addition, special mailings and telephonic notices were sent to persons who had previously indicated an interest in activities of the Panel.

In consideration of all matters brought out during the meeting and careful review of all documents submitted by the Agency, the Panel submits the following report:

The FIFRA Scientific Advisory Panel unanimously concurs with the document submitted on June 5, 1980, outlining final rulemaking for classification of pesticides.

Special comment: The Panel is alarmed by the potential serious threat to public health posed by designation of formulations of nicotine and zinc phosphide as unclassified for all domestic and non-domestic uses. The Panel is of the opinion that such highly toxic poisons should not be allowed in the home environment for use by unskilled persons. The history of accidental poisoning over a long period of time with such toxicants would indicate their hazard potential in a variety of situations and conditions.

Permitting such formulations to remain on the market in an unclassified status while field uses of the same toxicants are classified as restricted tends to give the public a false sense of security. The Panel recommends that this problem be avoided in the future by ensuring that whenever a highly toxic material is classified as restricted on the basis of toxicity that all use patterns be appropriately addressed (i.e., field, domestic, non-domestic, etc.). The Panel urges the Agency to make this a generalized viewpoint for rulemaking and if necessary reevaluate the technical merits of current classification procedures which tend to promote the availability of highly toxic poisons in domestic situations for use by unskilled persons.

For the Chairman:

Certified as an accurate Report of Findings:

H. Wade Fowler, Jr., Ph.D., Executive Secretary, FIFRA Scientific Advisory Panel.

Date: July 15, 1980.

Persons wishing to review the comments and other information relating to this rulemaking are referred to the Document Control Officer (TS-777), Office of Pesticides and Toxic Substances, Rm. E447, Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460. The material is available for reviewing from 8:00 a.m.to 4:00 p.m. daily, Monday through Friday, excluding holidays.

(Secs. 3(d), 25(a), 92 Stat. 826-7, 89 Stat. 751-2, 92 Stat. 826; (7 U.S.C. 136 et seq.))

Dated: January 12, 1981.

Douglas M. Costle,

Administrator.

Part 162, Subpart A, § 162.31 is amended by alphabetically inserting chloropicrin, cycloheximide, dicrotophos, EPN, methamidophos, methidathion, nicotine (alkaloid), and zinc phosphide in the table to read as follows:

§ 162.31 Pesticide use classification.

The following uses of pesticide products containing the active ingredients specified below have been classified for restricted use and are limited to use by or under the direct supervision of a certified applicator.

Active ingredient	Formulation	Use patterns	Classification	Criteria influencing restriction
Chloropicrin	All formulations greater than 2%	All uses	Restricted	Acute inhalation toxicity.
	All formulations	Rodent control	Restricted	Hazard to non-target organisms.
	All formulations 2% and less	Outdoor uses (other than rodent control)	Unclassified	
Cycloheximide	All formulations greater than 4%	All uses	Restricted	Acute dermal toxicity.
	All formulations 0.027% to 4%	All uses	Under evaluation.	
	All formulations 0.027% and less	Domestic uses	Unclassified	
Dicrotophos	All liquid formulations 8% and greater	All uses	Restricted	Acute dermal toxicity; residue effects on avian species (except for tree injections).
EPN	All liquid and dry formulations greater than 4%	All uses	Restricted	Acute dermal toxicity; acute inhalation toxicity; residue effects on avian species.
		Aquatic uses	Restricted	Effects on aquatic organisms.
Methamidophos	Liquid formulations 40% and greater	All uses	Restricted	Acute dermal toxicity; residue effects on avian species.
Methidathion	Dust formulations 2.5% and greater	All uses	Restricted	Residue effects on avian species.
	All formulations	All uses except nursery stock, safflower and sunflower.	Restricted	Residue effects on avian species.
	All formulations	Nursery stock, safflower and sunflower	Unclassified	

Active ingredient	Formulation	Use patterns	Classification	Criteria influencing restriction
Nicotine (alkaloid)	Liquid and dry formulations 14% and above	Indoor (greenhouse)	Restricted	Acute inhalation toxicity.
	All formulations	Applications to cranberries	Restricted	Effects on aquatic organisms.
	Liquid and dry formulations 1.5% and less	All uses (domestic and non-domestic)	Unclassified	
Zinc Phosphide	All formulations 2% and less	All domestic uses and non-domestic uses in and around buildings.	Unclassified	
	All dry formulations 60% and greater	All uses	Restricted	Acute inhalation toxicity.
	All bait formulations	Non-domestic outdoor uses (other than around buildings).	Restricted	Hazard to non-target organisms.
	All dry formulations 10% and greater	Domestic uses	Restricted	Acute oral toxicity.

[FR Doc. 81-1879 Filed 1-16-81; 8:45 am]

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Monday
January 19, 1981

Part XXIX

Department of Transportation

Federal Highway Administration

Urban Mass Transportation

Urban Mass Transportation Administration

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Urban Mass Transportation Administration

23 CFR Parts 450 and 630

49 CFR Part 613

[FHWA Docket No. 80-24, Notice 2]

Urban Transportation Planning

AGENCIES: Federal Highway Administration (FHWA) and Urban Mass Transportation Administration (UMTA), DOT.

ACTION: Final rule; request for public comments.

SUMMARY: The purpose of this document is to issue amendments to existing regulations governing urban transportation planning under FHWA and UMTA programs. The changes are intended to (1) integrate the FHWA/UMTA policy for decisions on major urban transportation investments with the ongoing urban planning process; (2) reflect changes in the planning process necessitated by recent environmental requirements and agreements between the Department of Transportation (DOT) and the Environmental Protection Agency (EPA) relative to air quality; (3) emphasize the importance of Transportation System Management (TSM) in conserving energy and improving the efficiency of our transportation resources; and (4) simplify the administration of the planning process, particularly for areas under 200,000 population. Public comments on these amendments are invited. The need for future revisions to these regulations will be considered on the basis of comments received and the experience gained by the FHWA and UMTA under these regulations.

DATES: These amendments are effective on or before February 18, 1981. Written comments must be received on or before January 19, 1982.

ADDRESS: Submit written comments to FHWA Docket No. 80-24, Notice 2, Federal Highway Administration, Room 4205, HCC-10, 400 Seventh Street, SW., Washington, D.C. 20590. All comments received will be available for examination at the above address between 7:45 a.m. and 4:15 p.m. ET, Monday through Friday. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard.

FOR FURTHER INFORMATION CONTACT: FHWA: Sam W. P. Rea, Jr., Urban Planning Division, (202) 426-2961, or Gary Maring, Public Transportation Management Division, (202) 426-0210, or Stanley Abramson, Office of the Chief Counsel, (202) 426-0762; or UMTA: Robert Kirkland, Office of Planning Assistance, (202) 426-4991, or James Ryan, Office of Planning Assistance, (202) 426-2360, or Anthony Anderson, Office of Chief Counsel, (202) 426-1906, all located at 400 Seventh Street, SW., Washington, D.C. 20590. FHWA office hours are from 7:45 a.m. to 4:15 p.m. ET; UMTA office hours are from 8:30 a.m. to 5 p.m. ET, Monday through Friday.

SUPPLEMENTARY INFORMATION: This document amends the FHWA/UMTA regulations for urban transportation planning (23 CFR 450 and 49 CFR 613) and the FHWA regulations for Federal-aid program approval and project authorization (23 CFR 630, Subpart A). These amendments are considered to be significant under the criteria established by the Department of Transportation pursuant to Executive Order 12044 because they involve important Departmental policy and major urban investments by FHWA and UMTA. A regulatory evaluation is available for inspection in the public docket (No. 80-24, Room 4205). Copies of the evaluation may be obtained by contacting Mr. Sam W. P. Rea, Jr., at the address provided above under the heading "For further information contact."

On September 17, 1975, FHWA and UMTA jointly issued final regulations (40 FR 42976) implementing the urban transportation planning process that is mandated under the Federal-Aid Highway Acts (23 U.S.C. 101 et seq.) and the Urban Mass Transportation Act of 1964, as amended (UMT Act) (49 U.S.C. 1601 et seq.).

Central to the joint planning regulations is the designation of a metropolitan planning organization (MPO) for each urbanized area. The MPO is the forum through which principal elected officials of general purpose local government cooperatively decide transportation issues. State and local responsibilities for cooperatively carrying out transportation planning and programming must be clearly identified.

The MPO in cooperation with the State and publicly owned operators of mass transportation services is responsible for carrying out the continuing, comprehensive and cooperative (3C) urban transportation planning process mandated by the Congress, and for developing the planning work programs, transportation plan and transportation improvement program required by the joint planning regulations. The transportation improvement program is a multiyear program of transportation improvements, including an annual element, and must be endorsed annually by the MPO. Federal assistance for mass transit or highway projects in an urbanized area is given only to those projects which appear in the TIP.

The UMTA and FHWA review and evaluate the transportation planning process in each urbanized area. Federal certification of the process does not constitute approval or rejection of any given transportation project, but simply constitutes the formal recognition that an acceptable 3C process exists. This certification is a prerequisite to subsequent Federal approvals of individual project proposals.

Although these regulations have been implemented effectively, the revisions issued today are intended to promote consistency between national and local objectives, to improve decisionmaking by providing for greater coordination between the planning and project development processes for major urban transportation investments, to implement various transportation-related legislative requirements, such as air quality and energy conservation, and to simplify the administration of the planning process, particularly for areas under 200,000 population. In many cases, these revisions simply formalize what has already taken place on an informal basis.

Disposition of Comments

A notice of proposed rulemaking (NPRM) for the urban transportation planning regulations was published in the Federal Register on October 30, 1980 (45 FR 71990). Over 119 comments were received, including 54 from metropolitan planning organizations, 39 from State and local governments, 12 from national organizations and groups, 9 from transit operators and authorities, 3 from other Federal agencies, and 3 from private citizens and other interested parties. Several commenters submitted more than one response to the docket.

The majority of commenters were very positive and supportive of the proposed revisions. Many suggested editorial and other relatively minor changes and clarifications. Some commenters criticized certain proposed revisions and questioned the basis for these actions, particularly with respect to major urban transportation investments.

In the preparation of the final regulations, set forth below, consideration was given to all comments received as of January 9, 1981, insofar as they relate to matters within the scope of the NPRM. Except for editorial changes, and except as specifically

discussed herein, these regulations and the reasons therefore, are the same as contained in the NPRM. The great majority of the changes are clarifications rather than substantive alterations; however, certain comments did result in substantive alterations to the regulations.

A number of requests were received for extensions of time to submit comments on the NPRM or for an opportunity to review and comment on a subsequent refinement of the regulations in proposed form. These requests were denied due to the overriding interest in the timely improvement of the urban transportation planning process. An additional consideration was the fact that the policies and procedures for major urban transportation investments were the subject of a previous NPRM (43 FR 57478, December 7, 1978), which was fully discussed in the Supplementary Information section of the urban transportation planning NPRM published on October 30, 1980. However, in partial response to these requests and in accordance with the regulatory policies and procedures established by DOT pursuant to Executive Order 12044, public comments on these final regulations are being invited and may be submitted to FHWA Docket No. 80-24, Notice 2 during the 12 months following publication of the regulations. The need for future revisions to these regulations will be considered on the basis of comments received and the experience gained by the FHWA and UMTA in operating under these regulations.

In view of the interest expressed in these regulations, each section of these regulations which has been revised or which was the subject of major commentary or concern is discussed below. The General heading provides a discussion of major topics which go beyond individual sections, including Major Urban Transportation Investments, Air Quality and Transportation System Management. Individual sections and appendices are then discussed under the headings of the parts or subparts in which they are found.

General

Major Urban Transportation Investments

The final rule includes a number of provisions that deal with planning activities for major urban transportation investments. These provisions accomplish three objectives. First, the revised regulation ensures involvement of local officials, acting through the MPO, in corridor planning studies. Second, the regulation establishes uniform FHWA and UMTA requirements for the analysis of major urban transportation investments. Finally, the regulation makes clear the role of major investment analyses in the transportation planning process.

In the past, projects proposed for funding by FHWA have been developed through the areawide planning effort, followed by highway location studies and preparation of environmental impact statements (EIS's). The location studies have in some instances been conducted by State highway agencies with only secondary involvement of local officials, usually acting through the Metropolitan Planning Organization (MPO). Projects proposed for UMTA funding have been assessed in the areawide analysis and then studied in more detail in corridor level alternatives analysis, documented in a draft EIS. Alternatives analyses have typically been conducted by the local transit operator, again in some instances without full MPO involvement.

The separate corridor level analyses by the implementing agencies have tended to constrain full consideration of various transportation "modes" (e.g., automobiles, mass transit). To address this problem, the requirements for the analysis of major investments are included within the cooperative planning process established in § 450.112. Section 450.112 defines responsibility for urban transportation planning as a cooperative effort among the MPO, the State, and local public transit operators. This section is modified in the final rule to include within the fully cooperative process all planning activities for major investments leading to the development of the draft EIS. The intent is to ensure cooperation without prescribing specific responsibilities or degrees of involvement for each agency. This flexibility permits local officials to decide the specific institutional arrangements and procedures to be used in the consideration of transportation alternatives. These procedures would be tailored to the range of alternatives being considered, their stage of advancement in the process, and other local considerations. It is anticipated that the degree of responsibility and involvement of the various agencies will vary with the status of development of implementation proposals. For example, the responsibility of MPOs would be heaviest at the areawide planning level, with appropriate input from implementing agencies. As proposals become more definitive, implementing agency responsibility would increase and become predominant as the project nears implementation.

Several commenters expressed concern about the role of the MPO in the development of corridor refinement studies and the lack of clarity in the proposed rules regarding the relationships between the Federal, State, and local governments. A number of commenters interpreted the revised regulation as assigning to the MPO lead responsibility for corridor refinement studies. As discussed above, the provisions of this regulation require the involvement of MPOs, in the development of proposed highway and transit projects, as well as in the urban transportation planning process itself. The Department's authority to ensure the involvement of local elected officials, acting through the MPO, beyond the areawide planning stage has been firmly established by the Congress under the provisions of the Federal-Aid Highway Acts (23 U.S.C. 101 et seq.), the Urban Mass Transportation Act of 1964, as amended (49 U.S.C. 1601 et seq.), and the Clean Air Act, as amended (42 U.S.C. 7401 et seq.). However, the Department has no intention of dictating the respective roles of the MPO, the State and the publicly owned operators of mass transportation services in such project-related activities. The regulation requires only that the MPO be involved. The nature and extent of that involvement has always been a matter of State and local discretion. This regulation does not alter the roles and responsibilities of the applicants for FHWA and UMTA funding, which are clearly established by law. Furthermore, with respect to the Federal-aid highway program, the involvement of the MPOs in the project development process is not intended to infringe upon the sovereign rights of the States to determine which projects are proposed for Federal-aid funding under the provisions of Title 23, U.S.C. The Federal-aid highway program remains a federally assisted State program.

Although this regulation specifically provides for MPO involvement at more stages than the previous rule, particularly with respect to major urban transportation investments, the basic premise for this involvement remains the same. The regulation seeks to foster cooperation and consensus among local elected officials as to the appropriate priorities among proposed highway and transit projects, and to harmonize the planning and programming of these projects, particularly where they affect the entire urbanized area.

To clarify the intention to provide complete flexibility in the conduct of

corridor refinement studies, § 450.112 is amended in the final rule to include a new paragraph (b) that specifically states that the MPO, the State, and public transit operators will determine their appropriate degree of responsibility for corridor refinement studies.

Requirements for major investment planning set forth in § 450.122 rely upon planning activities required by the regulations since 1975. While past planning efforts have included considerations of cost and effectiveness, the final rule ensures that a consistent approach will be employed in all analyses of major investments. Section 450.122 requires that the costs and effectiveness of major new transportation facilities be explicitly considered in the areawide assessment of transportation needs. This assessment will then be used to narrow the range of options to a number of reasonable and potentially cost-effective alternatives. The range of the remaining alternatives may be quite narrow or very broad. For example, a narrow range of alternatives would be expected if the investments only involve increasing the capacity of existing facilities. Where major widening of an existing freeway is proposed the capital intensive alternatives might differ only in the number of lanes to be added and the possible restriction of these lanes to high-occupancy vehicles. Similarly, where additional parallel tracks are proposed for an existing rail facility, the major capital alternatives might differ only in the number of miles of facility to which tracks are added. In other cases, however, the range of alternatives might be quite broad and could include such varied projects as a new freeway, a busway, a light rail line, and a heavy rail line.

Section 450.122 also requires that the narrowed range of alternatives be further evaluated in corridor refinement studies. These studies ensure that the selection of an alternative is based on more reliable cost and effectiveness information developed for all remaining alternatives in the corridor. For any freeway or busway project included within the range of alternatives, corridor refinement studies assess their location, degree of grade separation and access control, approximate right-of-way requirements, interchange locations, number of lanes, and general operating characteristics. For any heavy rail, light rail, or automated guideway projects among the alternatives, corridor studies examine the transit technology, degree of grade separation, station locations, operating characteristics, and general alignment of the facility. The same level of detail is employed for all alternatives, regardless of their nature. Corridor refinement studies are analogous to highway location studies. Corridor refinement studies are also analogous to transit alternatives analyses, with greater detail used in the specification and assessment of the alternatives. The greater level of detail yields more reliable estimates of costs and effectiveness than have been developed in past alternative analyses. This detail provides greater confidence in the selection of an alternative with which to proceed into preliminary engineering.

Section 450.122 makes clear that the draft EIS is the document in which the results of corridor refinement studies are to be presented. This procedure is consistent with current environmental requirements and with the joint environmental regulation published on October 30, 1980 (45 FR 71968). Some commentors expressed uncertainty about the relationship of the areawide analysis of alternatives and the corridor refinement study leading to the draft environmental impact statement. To express this relationship graphically a simple flow chart has been prepared and is included at the end of this discussion.

Section 450.122 also identifies the FHWA and UMTA funds that may be used for corridor refinement studies. In the past, highway location studies have been funded by FHWA construction funds while transit alternatives analyses have used UMTA Section 8 funds. In order to support the more detailed analysis undertaken in a corridor refinement study, UMTA recognizes that additional funding may be required. Consequently, this section implements the provision of the Surface Transportation Assistance Act of 1978 that UMTA Section 3 funds may be used to support detailed alternatives analyses. Specific funding arrangements will be established on a case-by-case basis by Federal, State, and local officials.

The final rule amends § 450.114 to require that the Unified Planning Work Program (UPWP) describe corridor planning activities, regardless of funding source and implementation responsibility. In the past, the UPWP has usually described areawide planning activities, as well as UMTA Section 8 funded alternatives analyses. Highway location studies proposed for FHWA funding were included in the Transportation Improvement Program (TIP) but were not described in the UPWP. Conversely, alternatives analyses proposed for UMTA Section 8 funding were described in the UPWP but not included in the TIP. The final rule will provide better coordination of corridor planning activities through comprehensive UPWP documentation.

Several commenters questioned the need for this requirement. They observed that corridor studies using FHWA construction funds would have to be documented in both the UPWP and the TIP. However, for the reasons noted above, full coordination of planning and project development activities would be enhanced by a closer tie between the UPWP and the TIP. The level of detail of UPWP documentation is not prescribed and should be determined by the participating parties. Therefore, to ensure full coordination of all planning and project development activities, the final rule retains the UPWP documentation requirement.

It is important to note that the certification review required by § 450.124 encompasses Subpart A of the regulations (23 CFR 450). Therefore, planning for major investments is explicitly subject to the certification review process, and the review is expected to assess the soundness of the entire process leading to preparation of a draft EIS for major investments.

A new appendix has been prepared to provide advisory information on FHWA and UMTA procedures in administration of corridor refinement studies. In the past, major investments have been subject to separate UMTA and FHWA administrative procedures. To support the uniform major investment planning revisions included in this document, FHWA and UMTA have developed a single set of procedures that is identified in Appendix C to 23 CFR 450, Subpart A.

Several commenters asked for clarification of the range of planning activities to which this appendix applies. Consequently, the title of the appendix has been changed to denote that the appendix deals with the administration of planning for major urban transportation investments. Other commenters expressed reservations on the nature of federal approvals of proposed methodologies for corridor refinement studies, as described in paragraph 2. The intent of this paragraph is to ensure consistency of FHWA and UMTA administration of corridor refinement studies. The paragraph does not prescribe how the federal reviews and approvals will be accomplished. Therefore, the introduction to the appendix has been revised to indicate that FHWA and/or UMTA will determine the appropriate nature of Federal reviews and approvals during refinement studies. Finally, paragraph 1(c) has been modified to

make clear that the information used to demonstrate the need for further study at the corridor level would usually be taken from the areawide assessment of transportation needs, rather than from a separate planning study.

In view of the changes to the joint planning regulations, UMTA has reevaluated its existing policy statements on major urban investments. Every effort has been made to streamline the relevant policy and procedure statements to minimize duplication with the proposed revisions to the joint planning regulations. As a result, the 1976 Major Urban Mass Transportation Investment Policy (41 FR 41512, September 22, 1976) and the 1978 Policy Toward Rail Transit (43 FR 9428, March 7, 1978) have been superseded. Section 613.204 now includes the requirement, formerly in the Major Investment Policy, that major urban mass transportation projects must be determined to be cost-effective before they are eligible for Federal support. Remaining elements of these policies and procedures that are unique UMTA requirements are incorporated in 49 CFR Part 613 as an appendix. The procedural

Planning Process for Major Urban Transportation Investments

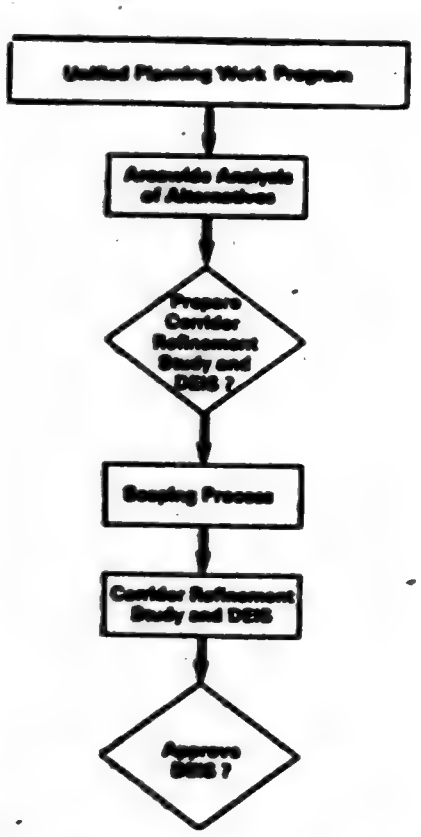

elements of this appendix are fully compatible with the procedures outlined in the joint FHWA/UMTA environmental regulation (23 CFR 771), and supersede the Notice of Revised Policy published by UMTA on October 30, 1980 (45 FR 71966).

Finally, FHWA and UMTA wish to ensure a smooth transition to these changes in the ongoing planning and project development efforts. Consequently, those corridors for which a draft EIS has been filed with EPA or will be filed within 90 days of the effective date of the final rule, will not be affected by the revised regulation. The revised regulations will apply, however, to corridors where the draft EIS is supplemented under the FHWA/UMTA environmental process, unless the Administrator of FHWA and/or UMTA determines that it is not necessary. In corridors where a draft EIS is under preparation, FHWA and/or UMTA will work with State and local officials to identify any appropriate actions on a case-by-case basis.

Air Quality

Sections 104, 108, 112, 114, 120, and 124 in Subpart A of Part 450 and Sections 304, 312, 316, and 320 in Subpart C of Part 450 contain revisions related to the transportation/air quality planning and programming roles and responsibilities of the MPO. The changes reflect modifications required by the Clean Air Act Amendments of 1977 (Pub. L. 95-95) as well as a series of agreements reached between DOT and EPA as they relate to the urban transportation planning process and Federal review and approval responsibilities. These revisions identify those actions necessary for the enhanced coordination of the air quality and transportation planning processes.

Several commenters questioned and noted confusion about a proposed revision to § 450.108 which specified that the MPO should, where feasible, be designated as the organization responsible for the transportation portion of the SIP. One commenter pointed out that such a requirement ignored several important State responsibilities in the SIP process. We agree that including this designation within this regulation is confusing and have eliminated it from the final rule. The specific SIP designation procedure is fully covered by EPA in its rulemaking (40 CFR, Part 51, Subpart M).

In response to concerns about EPA's role in the certification process, § 450.124 has been changed to refer to the DOT/EPA Memorandum of Understanding of June 14, 1978 which outlines EPA's role.

Commenters also questioned the proposed requirement in §§ 450.112(e) and 450.316(b) that prohibits an MPO from endorsing any project, program, or plan which does not conform with the SIP. This requirement is specifically stated in Section 176(c) of the Clean Air Act and is thus retained in the final rule.

One commenter requested that specific Federal air quality conformity requirements be included in this rulemaking. As noted in the preamble to the NPRM, FHWA and UMTA are revising 23 CFR 770, Air Quality Guidelines, in a separate action. This revision will provide the detailed procedures necessary to implement the conformity and priority requirements (Section 176(c) and (d)) of the Clean Air Act. Since there is significant linkage between planning, programming, and project conformity findings, we believe it is important that the entire conformity procedure be included as a single document. Thus, the revised urban transportation planning regulations incorporate this requirement by reference rather than separate planning requirements.

Transportation System Management (TSM)

Since the original joint regulations were published in 1975, a number of questions have arisen regarding the definition of TSM and the distinction between the TSM element and the long-range element. To clarify the definition and scope of TSM, revisions have been made to Part 450 and conventional terms for elements of the plan, i.e., short-and long-range elements, are not used. It should be noted that the importance of TSM is in no way diminished with the revisions; in fact, § 450.113(a) has been revised to include TSM as a key component of the transportation plan. In addition, since TSM pervades the whole process it is included as the first element required in § 450.120(a). The revisions particularly recognize the national concern for energy conservation in response to Executive Order 12185 on energy conservation (44 FR 75093, December 18, 1979).

The regulations have been revised to clarify the purpose of TSM as primarily addressing operational and service issues both short-and long-range. Changes to § 450.113(b) emphasize the synergistic effect possible with systematic applications of TSM actions and highlight the applicability of a

problem area-oriented approach to TSM. Section 450.118(c)(2) has been revised in order to emphasize that the long-range planning process should be just as sensitive to potential major regulatory policy changes or, in fact, long-term operational measures as is the short range element. This change is consistent with § 450.120(a)(8) which was recently changed in a similar manner in a rulemaking (45 FR 58022, August 28, 1980) connected with Executive Order 12185 on Energy Conservation.

The joint planning regulations specifically address urban goods movement issues, because it is clear that these issues directly affect the quality of transportation services in urban areas. A modification, consisting of an additional technical activity item, to § 450.120(a)(8) provides the framework for urban goods movement planning, emphasizing a problem identification, site-specific approach. The modification also specifically recognizes the need for involvement of the private sector in goods movement planning activities. In addition to the specific modification to § 450.120(a)(8), the new "TSM Appendix" presents the movement of goods as an integral part of the planning process. Also, the phrase "persons and goods" is used in the description of the short-range and long-range elements of the planning process.

Most of the comments related to the proposed TSM changes were favorable. However, one commenter suggested that the goal "to improve mobility" be included in § 450.120(a)(8)(ii). We agree and have changed to reflect this suggestion.

Also, one commenter expressed concern with § 450.120(a)(7) regarding the number of agencies involved in the planning process. These agencies do not have to participate in every issue; however, they must be involved where their interests are affected. We believe no change to the wording is necessary.

The new Appendix A replaces the 1975 version completely. Therefore, it is designed to stand alone as guidance on the intent, goals, scope and requirements of TSM. This appendix is organized into seven sections covering the goals of FHWA and UMTA in requiring TSM, the scope of what TSM includes, roles and responsibilities in addressing TSM requirements, necessary technical activities, documentation requirements, programming, and funding.

The section on goals clearly lays out the rationale for TSM and its emphasis on system operations and services. New issues are facing the planning process and an approach for recognizing these new issues is provided.

The scope of TSM is then discussed. The range of tactics available is described. This listing is arranged in a general way and replaces the list in the 1975 appendix. That list has been misinterpreted as a checklist of tactics which every area must assess, one-by-one, and accept or discard based on local conditions. The new list illustrates the kinds of actions that fall into the service and operational improvement categories represented in general by TSM. Also discussed are some issues regarding the definition of TSM, particularly the relationship of short-term/long-term and high-cost/low-cost distinctions to the intent of TSM. The concept of different operating environments (or problem areas) is also introduced.

The section on roles and responsibilities recognizes that the MPO has lead responsibility for coordinating all TSM activities. However, the need to include a broad range of actors in the planning process is now explicit. This is needed to reflect the range of public and private operating agencies and authorities responsible for implementing TSM actions and programs.

Technical activities to be included in the Unified Planning Work Programs are described more explicitly than in the 1975 appendix. However, the activities listed are intended to be illustrative, not a mandatory checklist.

The requirements for documentation of area TSM planning are clarified in the next section of the appendix. No new documentation is required for TSM, rather, TSM is to be documented in the normal products of the planning process. Much discretion is left to localities to decide how best to report on TSM activities.

Finally, a section on programming is added to better describe the kinds of results which would be expected of TSM planning. This section should help localities understand the types of projects which will be emphasized in reviewing implementation efforts in TSM.

Most of the comments received on the appendix A were very positive. However, there were some significant suggestions made and some points that need further clarification. There were several comments in support of the emphasis given to urban goods movement in appendix A. Some clarification on urban goods movement funding was desired. HPR and PL funds are available for planning studies and technical analyses of urban goods movement projects.

Many comments suggested that a number of the TSM items contained in the UPWP be eliminated, such as a description of goals and objectives as well as the planning process. We agree with this comment. The appendix now advises that "the UPWP should only describe TSM planning to be undertaken during the period it covers."

Several comments were made regarding the use of motorcycles as a transportation mode. We agree that it is a significant mode. As a result we have listed motorcycle and moped provisions along with bicycle provisions in the range of tactics presented in the appendix.

23 CFR Part 450, Subpart A

Section 450.100 Purpose

Section 450.100 describes the general purpose of the final regulation. The purpose of the regulation is to implement certain sections of 23 U.S.C. and the UMT Act of 1964, as amended, which require urbanized areas to have a continuing, cooperative, and comprehensive transportation planning process as a condition of receipt of Federal capital or operating assistance.

Section 450.102 Applicability

Section 450.102 provides that this subpart is applicable to the transportation planning process for urbanized areas, and that certification under this subpart is necessary prior to urbanized area program approvals.

Section 450.104 Definitions

Section 450.104 defines terms used in this subpart. Definitions of the terms, "cost-effectiveness analysis," and "major urban transportation investment" as well as several air quality-related terms have been added by this final rulemaking without change from the NPRM.

Section 450.106 Metropolitan planning organization: Designation

Section 450.106 is revised to conform to Sections 160(a) and 305(b) of the Surface Transportation Assistance Act of 1978 (Pub. L. 95-599) which provides that designations of metropolitan planning organizations (MPOs), after November 7, 1979, shall be made by agreement among the units of general purpose local government and the Governor. This section, however, is not intended to mandate new or reaffirmed designation action on the part of local governments or the Governor. To the extent possible, the MPO designated shall be established under specific State legislation, State enabling legislation or by Interstate compact. In addition, the principal elected officials of the general purpose local governments shall be adequately represented on the MPO.

Several commenters requested that we more clearly define what constitutes "agreement" between units of general purpose local government and the Governor in the designations or redesignations made after that point in time. We have used the precise language of the legislation. We expect State and local officials to develop mutually acceptable procedures for making MPO designations. We are not imposing a Federal mandate on the definition of "adequate representation" of principal elected officials on the MPO policy body. In the spirit of a cooperative planning process, we expect State and local officials to develop mutually acceptable organizational structure and representation.

Several commenters requested that the geographical scope of the transportation planning process as identified in § 450.110 and the geographical requirement relating to the representation on the MPO (§ 450.106(d)) be identical. We do not believe that such a requirement would be appropriate. The existing regulation requires that, as a minimum, the jurisdiction of the metropolitan planning organization encompass the urbanized area, as this boundary relates to the eligibility requirements of FHWA and UMTA capital and operating assistance programs. However, it is good planning practice to include areas likely to be urbanized when conducting long-range planning. To integrate transportation planning with other planning activities in the area, and to permit flexible institutional arrangements, we intend to retain the permissive language of the existing regulation.

Section 450.106 Metropolitan planning organization: Agreements

Section 450.106 requires that the responsibilities for the cooperative transportation planning and programming shall be identified in an agreement or memorandum of understanding between the State and the MPO. The responsibilities of the MPO and the publicly owned operators of mass transportation services shall also be specified by agreement. Where the MPO and the A–05 agency are different, there shall be an agreement which coordinates their activities. If the MPO is not designated for air quality planning under section 174 of the Clean Air Act, there shall be an agreement between the two organizations on their respective responsibilities. To the extent possible, these agreements must be contained in a single cooperative agreement. The requirement of an agreement between the MPO, the State, the publicly owned transit operators, and the air quality agency may be met if the parties agree to document their responsibilities in a unified planning work program. In order to minimize red tape, the requirement that agreements be sent to FHWA and UMTA (section 450.106(g)), proposed in the NPRM, is deleted in the final rule.

Section 450.110 Metropolitan planning organization: Geographic scope

Section 450.110 requires that the transportation planning process at least cover the urbanized area and the area likely to be urbanized in the period covered by the long-range element of the transportation plan.

Section 450.112 Metropolitan planning organization: Responsibilities

Section 450.112 provides that the MPO, in cooperation with the State and the local mass transit operators, be responsible for the urban transportation planning process specified in §§ 450.120 and 450.122. The MPO is also responsible for developing the unified planning work program (§ 450.114), the transportation plan (§ 450.116), and the transportation improvement program (TIP) (§ 450.118). In addition, the MPO is required to develop, or assist in developing, the transportation control measures of the State implementation plan (SIP) in nonattainment areas. In accordance with the Clean Air Act, the MPO is prohibited from endorsing any project, program or plan which does not conform to the SIP.

The MPO, the State, and publicly owned operators of mass transportation services determine the responsibility of each in the conduct of corridor refinement studies described in § 450.122. The discussion, including the response to comments, relating to the responsibilities for § 450.122 activities is contained under the heading, "Major Urban Transportation Investments."

Section 450.114 Urban transportation planning process: Planning work programs

Section 450.114 states that the urban transportation planning process must include a Unified Planning Work Program (UPWP). The UPWP includes: (1) a discussion of the area's important transportation issues; (2) a description of all transportation and transportation-related planning activities, including corridor planning activities (§ 450.122), regardless of funding sources; (3) a description of transportation-related air quality planning activities, regardless of funding sources or which agency conducts such activities; and (4) documentation of all work to be performed with planning assistance provided under Section 8 of the UMTA Act (49 U.S.C. 1607(a)) and 23 U.S.C. 104(f) and 307(c).

Several commenters expressed concern that elimination of the prospectus and the subsequent inclusion of some of its elements in the UPWP might result in an increase in paperwork and staff effort. Therefore, we have revised § 450.114 of the regulations to make the development of a prospectus optional.

One commenter noted that the revised section 450.114 no longer contains language which encourages combining UPWP requirements with those of other planning programs. We do want to continue this encouragement and are, therefore, reinstating the language of the previous section which is still applicable.

Section 450.116 Urban transportation planning process: Transportation plan

Section 450.116 provides that the urban transportation planning process include the development of a transportation plan consisting of both a short-range element and a long-range element. Transportation system management, which is described in Appendix A to Subpart A, is a key component of both the short-range and the long-range elements. The short-range must (1) provide for the near term transportation needs of persons and goods in the urbanized area; (2) identify TSM actions that present a systematic approach to solving urban transportation problems; and (3) be included in the transportation improvement program (TIP). The long-range element must (1) provide for the long-term transportation needs of persons and goods in the urbanized area through capital investments, strategies, and policy changes; (2) identify new transportation policies, strategies, facilities, or major changes in existing facilities, in sufficient detail to identify the location and mode to be implemented; and (3) fully explore TSM as a policy and investment strategy for long-range transportation and development plans in the particular area. The transportation plan must be consistent with the area's long-range land use plan; urban development objectives; and its social, civil rights, economic, environmental, system performance, and energy conservation objectives.

The majority of the commenters responded favorably to the change to the more conventional terms for the elements of the plan (i.e., long- and short-range elements). However, others were confused with the terminology. They contend that short-range element

as defined is limited only to TSM actions. This is not our intent. Therefore, § 450.116(b) has been changed to reflect the intent that the short-range element contain all investments and strategies to serve near-term transportation needs, including TSM actions. Likewise, § 450.116(c) has been changed to reflect the long-term focus of the long-range element.

Section 450.118 Urban transportation plan process: Transportation improvement program

Section 450.118 provides that the urban transportation planning process include development of a transportation improvement program (TIP), including an annual element prescribed in Subpart C—Transportation Improvement Program. The program is a staged multiyear program of transportation improvement projects consistent with the transportation plan developed under § 450.116.

Section 450.120 Urban transportation planning process: Elements

Section 450.120 requires that the urban transportation planning process include: (1) consideration of TSM strategies in all phases; (2) consideration of social, economic and environmental effects, including transportation-related air quality problems; (3) provisions to ensure meaningful citizen participation in local transportation planning; (4) participation of all persons regardless of race, color, sex, national origin, or physical handicap; (5) special efforts to plan public mass transportation facilities that can be utilized by elderly and handicapped persons; (6) consideration of energy conservation goals; (7) provisions for involvement of traffic, ridesharing, parking and enforcement agencies, airport and port authorities, and appropriate private transportation providers.

Section 450.120(a)(3) stresses the importance of citizen participation by clarifying the scope of the citizen participation which is desirable. This provision is necessary in order to comply with the Departmental Policy Statement on Citizen Participation in Local Transportation Planning. It does not address financial support for citizen participation in local planning and project development. Section 450.120(a)(3) was modified to emphasize the continuing and meaningful participation of the public, especially minorities, women and other interested persons, in the 3C planning process. It shoud be noted, therefore, that the certification review process is expected to assess citizen participation in the planning process in light of this increased emphasis on continuing and meaningful participation.

Section 450.120(a)(5) provides that the urban transportation planning process include the following activities as necessary and to the degree appropriate for the size of the metropolitan area and the complexity of its transportation problems: (1) analysis of conditions of travel, transportation facilities, vehicle fuel consumption and systems management; (2) evaluation of alternative TSM improvements and development of the short-range element of the transportation plan; (3) projections of the urban area economic, land use, and demographic activities, in order to project potential transportation demands; (4) examination of the distribution of the costs and impacts of transportation plans and programs; (5) analysis of alternative transportation investments or strategies to meet areawide needs and to aid in development of the long-range element of the transportation plan; (6) refinement of the transportation plan by conducting corridor, transit technology, staging, sub-area, feasibility, location, legislative, fiscal, functional, classification, institutional, air quality impact, and energy impact studies; (7) monitoring and reporting of urban development, transportation and energy consumption indicators; (8) programming which merges the plan refinements of the long-range element and the short-range element improvements to produce a TIP as specified in subpart C; and (9) analysis of goods and services movement problem areas.

Several commenters requested greater precision in the language for paragraph (a)(5)(iv) particularly, regarding the phrase "various segments of the population." Consequently, this section has been rewritten with the phrase deleted. This new section requires an examination of the distribution of costs and impacts. This examination should be tailored to the issues and problems encountered in each urban area. In some instances, this may be the distribution among various communities. In others, this may be the distribution among various population segments by income or ethnic origin. The term "transportation alternatives" has been changed to "transportation plans and programs" to better express the intent of this section.

Section 450.122 Urban transportation planning process: Major urban transportation investments

Section 450.122 requires that the analysis of alternatives, to meet areawide needs for new transportation facilities, shall include consideration of the cost and effectiveness of the proposed major urban investments. At the corridor refinement studies level, the analysis of alternatives will also include consideration of cost-effectiveness, in addition to evaluation of location, degree of grade separation, and the operating characteristics of the alternatives. The corridor refinement studies will serve as the basis for the draft environmental impact statement (DEIS) and will be eligible for funding under sections 3 and 8 of the UMT Act of 1964, as amended, and under the planning and construction funding sections of 23 U.S.C., as appropriate. The discussion, including the responses to comments relating to this section, is contained in the preamble under the heading "Major Urban Transportation Investments."

Section 450.124 Urban transportation planning process: Certification

Section 450.124 provides that the UMTA and the FHWA Administrators will jointly review the transportation planning process for each urbanized area to determine if it meets the requirements of subpart A. In nonattainment areas, the administrators will review to ensure conformance with the SIP and afford the U.S. Environmental Protection Agency the opportunity to review the adequacy of the planning process.

Several comments were concerned with the elimination of the requirement for an annual certification. We believe this change to be appropriate given the relatively slow rate of change occurring in the planning process on a yearly basis. We intend that while a formal certification review should not be needed annually, informal assessments of the need for a certification review would be a continuing function in the FHWA and UMTA administration of the planning process.

Appendix A

Appendix A is discussed under the heading, "Transportation System Management."

Appendix B

Appendix B to 23 CFR Part 450, Subpart A on transportation for elderly and handicapped persons will be revised. That revision will be published at a later date.

Appendix C

Appendix C is discussed under the heading, "Major Urban Transportation Investments."

Appendix D

As part of a joint FHWA/UMTA effort to reduce redtape and simplify administrative and technical requirement in small metropolitan areas, FHWA and UMTA issued guidance on August 1, 1980, related to meeting the minimum requirement of the joint planning and programming regulations for urbanized areas of less than 200,000 population. This guidance was published in the Federal Register on October 23, 1980 (45 FR 70240). The guidance has been revised to make it consistent with this rulemaking and is included as Appendix D. Many commenters reacted favorably to the guidance.

23 CFR Part 450, Subpart B

The revisions to Subpart B are of purely editorial nature. These revisions were not included in the NPRM as their publication is proposed form would have served no useful purpose.

23 CFR Part 450, Subpart C

As discussed in the NPRM, the provisions of 23 CFR Part 450, Subpart C are being revised in order to: (a) reflect recent amendments to this subpart which were issued in connection with amendments to the Interstate substitution and withdrawal regulations (23 CFR Part 476, Subpart D), published by FHWA and UMTA on October 20, 1980, (45 FR 69390); (b) make technical revisions to this subpart to make it consistent with the proposed modification in Subpart A; and (c) revise provisions relating to the transportation/air quality planning and programming roles and responsibilities of the MPO and Federal review and approval responsibilities.

23 CFR Part 630, Subpart A

Section 630.106 Policy

Section 630.106(b) is added to prescribe that Federal support is available only for those major urban transportation investment alternatives that meet local, State and national goals.

49 CFR Part 613, Subpart B

Section 613.204 Additional Criteria for Urban Mass Transportation Administrator's Approvals Under 23 CFR 450.320

Section 613.204 requires that the UMT Administrator will grant program approval only if the projects meet local, State, and national goals in a cost-effective manner.

(Catalog of Federal Domestic Assistance Program Numbers 20.205, Highway Research, Planning and Construction; 20.500, Urban Mass Transportation Capital Grants; 20.501, Urban Mass Transportation Capital Improvement Loans; and 20.507, Urban Mass Transportation Capital and Operating Assistance Formula Grants. The provisions of OMB Circular No. A-95 regarding State and local clearinghouse review of Federal and federally assisted programs and projects apply to these programs)

Issued on: January 14, 1981.

John S. Hassell, Jr.,
Federal Highway Administrator.

Theodore C. Lutz,
Urban Mass Transportation Administrator.

Title 23—Highways

In consideration of the foregoing, Chapter I of Title 23, Code of Federal Regulations, and Chapter VI of Title 49, Code of Federal Regulations, are amended as set forth below.

1. Part 450, Subpart A of 23 CFR is revised to read as follows:

PART 450—PLANNING ASSISTANCE AND STANDARDS

Subpart A—Urban Transportation Planning

Sec.

450.100 Purpose.
450.101 Applicability.
450.104 Definitions.
450.108 Metropolitan planning organization: Designations.
450.108 Metropolitan planning organization: Agreements.
450.110 Metropolitan planning organization: Geographic scope.
450.112 Metropolitan planning organization: Responsibilities.
450.114 Urban transportation planning process: Planning work programs.
450.116 Urban transportation planning process: Transportation plan.
450.118 Urban transportation planning process: Transportation improvement program.
450.120 Urban transportation planning process: Elements.
450.122 Urban transportation planning process: Major urban transportation investments.
450.124 Urban transportation planning process: Certifications.
Appendix A—Advisory information on transportation system management.
Appendix B—[Reserved]
Appendix C—Advisory information on the administration of corridor refinement studies for major urban transportation investments.
Appendix D—Advisory information on the simplification of administrative requirements for planning in metropolitan areas of less than 200,000 population.

* * * * *

Authority: 23 U.S.C. 104(f)(3), 134, and 315; Sections 3, 5, and 8 of the Urban Mass Transportation Act of 1964, as amended, (UMT Act) (49 U.S.C. 1602, 1604, and 1607); Sections 110, 172, 174, 176 of the Clean Air Act; and 49 CFR 1.48(b) and 1.51.

SUBPART A—URBAN TRANSPORTATION PLANNING

§ 450.100 Purpose.

The purpose of this subpart is to implement 23 U.S.C. 134, and Sections 5(f) and 8(a) and (c) of the Urban Mass Transportation Act of 1964, as amended (49 U.S.C. 1604(f) and 1607(a) and (c)), which require that each urbanized area, as a condition to the receipt of Federal capital or operating assistance, have a continuing, cooperative, and comprehensive transportation planning process that results in plans and programs consistent with the comprehensively planned development of the urbanized area.

§ 450.102 Applicability.

The provisions of this subpart are applicable to the transportation planning process in urbanized areas. Certification under this subpart shall be a prerequisite for program approvals in urbanized areas pursuant to 23 U.S.C. 105(d) and 134(a), Section 8(a) of the UMT Act (49 U.S.C. 1607(a)), and Subpart C of this part.

§ 450.104 Definitions.

(a) Except as otherwise provided, terms defined in 23 U.S.C. 101(a) are used in this subpart as so defined.

(b) As used in this subpart:

"Cost-effectiveness analysis" of major urban transportation investments means an analysis of the costs of several alternatives and their effectiveness in meeting local, State, and national goals and objectives. In the analysis: (1) costs are capital, operating, and maintenance expenditures estimated with sufficient detail to distinguish between alternatives; and (2) effectiveness measures assess the degree of attainment of local, State and national transportation, social, economic, and environmental goals. These include, but are not restricted to, mobility, safety, environment, energy, goals related to central city viability, neighborhood preservation, employment, housing and accessibility for minority, elderly and lower income residents, and land use and development.

"Governor" means the Governor of any one of the fifty States, or Puerto Rico, and includes the Mayor of the District of Columbia.

"Major urban transportation investment" means a project that involves new construction or extension of a freeway segment, busway, or fixed guideway transit facility; adding lanes to a freeway segment or busway; or adding tracks to a fixed guideway transit facility. It does not include: (1) lesser localized improvements to

existing freeway, busway, or fixed guideway transportation facilities; (2) safety improvements or resurfacing, restoration, or rehabilitation of existing facilities; (3) added lanes to short freeway and busway segments (normally less than 1 mile) to alleviate specific, localized traffic flow problems; (4) added segments to fixed guideway transit facilities to provide specific localized improvements to system operations; (5) projects that are part of a demonstration program; and (6) the emergency replacement of facilities damaged or destroyed as a result of a natural disaster or catastrophic failure.

"Metropolitan planning organization (MPO)" means that organization designated as being responsible, together with the State, for carrying out the provisions of 23 U.S.C. 134, as provided in 23 U.S.C. 104(f)(3), and capable of meeting the requirements of Sections 3(e)(1), 5(l), and 8(a) and (c) of the UMT Act (49 U.S.C. 1602(e)(1), 1604(l), and 1607(a) and (c)). This organization is the forum for cooperative decisionmaking by principal elected officials of general purpose local government.

"Nonattainment area" means a region as defined in Section 171 of the Clean Air Act.

"State implementation plan (SIP)" means a plan approved or promulgated under Section 110 of the Clean Air Act.

§ 450.106 Metropolitan planning organization: Designations.

(a) Designations of metropolitan planning organizations (MPO's) made after November 7, 1978, shall be made by agreement among the units of general purpose local governments and the Governor. To the extent possible, only one MPO shall be designated for each urbanized area or group of contiguous urbanized areas.

(b) Funds authorized by 23 U.S.C. 104(f) shall be made available by the State to the MPO, as required by 23 U.S.C. 104(f)(3). To the extent possible, the MPO shall be eligible to receive planning funds authorized by Section 8 of the UMT Act of 1964, as amended (49 U.S.C. 1607a).

(c) To the extent possible, the MPO designated shall be established under specific State legislation, State enabling legislation, or by Interstate compact, with authority to carry out metropolitan transportation planning, and should perform the functions required by the Office of Management and Budget (OMB) Circular A-95 "Evaluation, Review and Coordination of Federal and Federally Assisted Programs and Projects" (41 FR 2052, Jan. 13, 1976).

(d) Principal elected officials of general purpose local government within the jurisdiction of the MPO shall have adequate representation on the MPO.

(e) Nothing herein shall be deemed to prohibit the MPO from utilizing, through contractual agreements, the staff resources of other agencies to carry out selected elements of the planning process.

(f) An MPO designated under the provisions of this section shall remain designated until another MPO is designated under the provisions of this section.

§ 450.108 Metropolitan planning organization: Agreements.

(a) The responsibilities for cooperatively carrying out transportation planning and programming shall be clearly identified in an agreement or memorandum of understanding between the State and the MPO.

(b) Where the MPO is different from the A-95 agency, there shall be an agreement between the two organizations which prescribes the means by which their activities will be coordinated, as required by Part IV of OMB Circular A-95. This agreement shall specify how transportation planning and programming will be part of the comprehensively planned development of the urbanized area.

(c) There shall be an agreement between the MPO and publicly owned operators of mass transportation services which specifies cooperative procedures for carrying out transportation planning and programming as required by this subpart.

(d) If the MPO is not designated for air quality planning under Section 174 of the Clean Air Act, there shall be an agreement between the MPO and the designated agency describing their respective roles and responsibilities for air quality related transportation planning.

(e) To the extent possible, there shall be one cooperative agreement containing the understandings required by this section among the State, MPO, publicly owned operators of mass transportation services and, where necessary, the A-95 agency and the agency responsible for air quality planning.

(f) Where parties involved agree, the requirement for an agreement specified in paragraphs (a), (c) and (d) of this section may be satisfied by including the responsibilities and procedures for carrying out a cooperative process in the unified planning work program.

§ 450.110 Metropolitan planning organization: Geographic scope.

The transportation planning process shall, as a minimum, cover the urbanized area and the area likely to be urbanized in the period covered by the long-range element of the transportation plan described in § 450.116.

§ 450.112 Metropolitan planning organization: Responsibilities.

(a) The MPO in cooperation with the State, and in cooperation with publicly owned operators of mass transportation services, shall be responsible for carrying out the urban transportation planning process specified in § 450.120 and § 450.122 and shall develop the planning work programs, transportation plan, and transportation improvement program specified in §§ 450.114 through 450.118. The MPO shall be the forum for cooperative decisionmaking by principal elected officials of general purpose local government.

(b) The MPO, the State, and publicly owned operators of mass transportation services shall determine the responsibility of each in the conduct of the corridor refinement studies described in § 450.122.

(c) The MPO shall develop or assist in developing the transportation control measures of the SIP in nonattainment areas which require transportation control measures.

(d) The MPO shall annually endorse the plans and programs required by §§ 450.114 through 450.118.

(e) In nonattainment areas which require transportation control measures the MPO shall not endorse any project, program, or plan which does not conform with the SIP.

§ 450.114 Urban transportation planning process: Planning work programs.

(a) The urban transportation planning process shall include the development of a unified planning work program (UPWP) which:

(1) Discusses the important transportation issues facing the area;

(2) Describes all urban transportation and transportation-related planning activities, including the corridor refinement activities discussed in § 450.122, anticipated within the area during the next 1- or 2-year period regardless of funding sources;

(3) Describes the transportation-related air quality planning activities anticipated, regardless of funding sources or agencies conducting such activities; and

(4) Documents work to be performed with planning assistance provided under Section 8 of the UMT Act (49 U.S.C. 1607(a)) and 23 U.S.C. 104(f) and 307(c).

(b) Arrangements may be made to combine the unified planning work program requirements of other Federal sources of physical planning funds (e.g., Department of Housing and Urban Development and Department of the Interior).

(c) The urban transportation planning process may include the development of a prospectus. To the extent that the prospectus satisfies the requirements of § 450.108 and paragraph (a)(1) of this section, it may be included by reference in the UPWP.

§ 450.116 Urban transportation planning process: Transportation plan.

(a) The urban transportation planning process shall include the development of a transportation plan consisting of a short-range element and a long-range element. Transportation system management (TSM), as described in Appendix A to this subpart, shall be a key component of these elements. The transportation plan shall be reviewed annually to confirm its validity and its consistency with current transportation and land use conditions.

(b) The short-range element of the transportation plan shall:

(1) Provide for the near-term transportation needs of persons and goods in the urbanized area;

(2) Identify TSM actions such as traffic engineering, ridesharing, pedestrian and bicycle facilities, alternative work schedules, goods movement, high occupancy vehicle treatments, and public transportation improvements (including regulatory, pricing, management, and operational options), that present a systematic approach in addressing problem areas; and

(3) Be reflected in the transportation improvement program.

(c) The long-range element of the transportation plan shall:

(1) Provide for the long-term transportation needs of persons and goods in the urbanized area;

(2) Identify new transportation policies, strategies, or facilities or major changes in existing facilities and may be in sufficient detail to identify location and mode to be implemented; and

(3) Fully explore TSM as a policy and investment strategy for the long-range transportation and development plans for the area.

(d) The transportation plan shall be consistent with the area's comprehensive long-range land use plan and urban development objectives, with local, State, and national goals and objectives, and with the area's overall social, civil rights, economic, enviornmental, system performance, and energy conservation goals and objectives.

§ 450.118 Urban transportation planning process: Transportation improvement program.

(a) The urban transportation planning process shall include development of a transportation improvement program (TIP) including an annual element as prescribed in Subpart C of this part.

(b) The program shall be a staged multiyear program of transportation improvement projects consistent with the transportation plan developed under § 450.116.

§ 450.120 Urban transportation planning process: Elements.

(a) The urban transportation planning process shall:

(1) Provide for the consideration of TSM strategies or actions in all phases of the planning process;

(2) Provide for the consideration of social, economic, and environmental effects, with appropriate emphasis on consideration of transportation-related air quality problems and in support of the requirements of 23 U.S.C. 109(h), and Sections 5(h)(2) and 14 of the UMT Act (49 U.S.C. 1604(h)(2) and 1610), and Section 174(b) of the Clean Air Act;

(3) Include provisions to ensure early and continuing involvement of the public, as actively supported and strongly encouraged by the Departmental Policy Statement on Citizen Participation in Local Transportation Planning (45 FR 71930, October 30, 1980). Individuals and groups should have full access to all relevant information. Citizens should be provided such assistance as appropriate to assure meaningful participation in the process. Minorities, women and other interested persons should have an adequate opportunity for full participation in the process and representation on advisory committees;

(4) Be consistent with Title VI of the Civil Rights Act of 1964 and the Title VI assurance executed by each State under 23 U.S.C. 324 and 29 U.S.C. 794, which ensure that no person shall on the grounds of race, color, sex, national origin, or physical handicap be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination under any program receiving Federal assistance from the Department of Transportation;

(5) Include special efforts to plan public mass transportation facilities and services that can effectively be utilized by elderly and handicapped persons pursuant to Section 16 of the UMT Act (49 U.S.C. 1612), Section 165(b) of the Federal-Aid Highway Act of 1973, as amended, and 49 CFR 27;

(6) Provide for the consideration of energy conservation goals, objectives, and where established, energy conservation targets;

(7) Provide for the involvement of the traffic, ridesharing, parking, and enforcement agencies; airport and port authorities; and appropriate private transportation providers;

(8) Include the following activities as necessary and to the degree appropriate for the size of the metropolitan area and the complexity of its transportation problems:

(i) An analysis of existing conditions of travel, transportation facilities, vehicle fuel consumption, and systems management;

(ii) An evaluation of alternative TSM improvements in the development of the transportation plan to:

(A) Improve mobility;

(B) Make more efficient use of existing transportation resources;

(C) Assist in improving air quality;

(D) Reduce energy consumption for transportation overall; and

(E) Respond to short-term disruptions in the energy supply;

(iii) Projections of urban area economic, demographic, and land use activities consistent with urban development goals, and projections of potential transportation demands based on these levels of activity;

(iv) Examination of the distribution of costs and impacts of transportation plans and programs;

(v) Analysis of alternative transportation investments or strategies to meet area wide needs for transportation facilities and to aid in the development of the long-range element of the transportation plan, such analysis to include estimates of the air quality impacts, impacts on the economic vitality of existing commercial centers and the energy consumption of each alternative;

(vi) Refinement of the transportation plan through the conduct of corridor, transit technology, and staging studies; and sub-area, feasibility, location, legislative, fiscal, functional classification, institutional, air quality impact and energy impact studies;

(vii) Monitoring and reporting of urban development, transportation, and energy consumption indicators and a regular program of reappraisal of the transportation plan implementing programs;

(viii) Implementation programming which merges the results of plan refinement of the long-range element and the improvements recommended in the short-range element of the

transportation plan to produce a TIP as specified in Subpart C of this part; and

(ix) An analysis of goods and services movement problem areas, as determined in cooperation with appropriate private sector involvement, including, but not limited to, port access and traffic impacts of urban goods and services operations.

(b) The urban transportation planning process shall include preparation of technical reports to assure documentation of the development, refinement, and reappraisal of the transportation plan.

§ 450.122 Urban transportation planning process: Major urban transportation investments.

(a) The analysis of alternatives for transportation investments to meet areawide needs for new transportation facilities described by § 450.120(a)(6)(v) shall consider the cost and effectiveness of proposed major urban investments in attaining local, State, and national goals and objectives.

(b) In corridors where a major urban transportation investment is proposed in the long-range element of the urban transportation plan, the corridor studies described in § 450.120(a)(6)(vi) shall further refine the analysis of alternatives at the corridor scale. These studies shall include an evaluation of the cost-effectiveness, the location (i.e., general alignment), the degree of grade separation, and the operating characteristics of the alternatives under consideration. Studies involving transit alternatives shall also include an evaluation of transit technology.

(c) Corridor refinement studies shall serve as the basis for the draft environment impact statement which is prepared pursuant to 23 CFR 771.

(d) Corridor refinement studies are eligible to receive funds authorized under Sections 3 and 8 of the UMT Act of 1964, as amended, and planning and construction funds apportioned under 23 U.S.C., as appropriate.

§ 450.124 Urban transportation planning process: Certification.

(a) The Federal Highway and Urban Mass Transportation Administrators jointly will review and evaluate as appropriate the transportation planning process in each urbanized area to determine if the process meets the requirements of this subpart.

(b) In nonattainment areas requiring transportation control measures, the FHWA and UMTA Administrators will:

(1) Review and evaluate the transportation planning process to assure conformance with the SIP in accordance with procedures contained in 23 CFR 770, and

(2) Afford the Environmental Protection Agency (EPA) the opportunity to review the adequacy of the planning process in accordance with the Memorandum of Understanding of June 14, 1978, between DOT and EPA regarding the integration of transportation and air quality planning.*

(c) If, upon the review and evaluation conducted under paragraphs (a) and (b) of this section, the FHWA and UMTA Administrators jointly determine that the transportation planning process in an urbanized area meets or substantially meets the requirements of this subpart, they may take one of the following actions, as appropriate:

(1) Certify the transportation planning process; or

(2) Certify the transportation planning process subject to one of the following conditions:

(i) That certain specified corrective actions be taken; or

(ii) That the process is a basis for approval of only those categories of programs or projects that the Administrators may jointly determine and that certain specified corrective actions be taken.

(d) The State and the MPO shall be notified of the actions taken under paragraph (c) of this section.

(e) A certification under paragraph (c) of this section will remain in effect until a new certification determination is made.

Appendix A—Advisory Information on Transportation System Management Under UMTA and FHWA Joint Regulations, 23 CFR Part 450, Subparts A and C, and 49 CFR 613, Subparts A and B

1. *Purpose.* To implement the updated urbanized area planning requirements contained in Title 23 of the United States Code and the Urban Mass Transportation Act of 1964, as amended, UMTA and FHWA have jointly issued revised regulations (23 CFR Part 450 and 49 CFR Part 613). These regulations require that the transportation planning process in each urbanized area develop (1) a plan addressing Transportation System Management (TSM) in both the long- and short-range elements and (2) a Transportation Improvement Program (TIP).

This appendix provides additional guidance on the intent and scope of the requirement for Transportation System Management. Criteria that the U.S. Department of Transportation will use in reviewing the adequacy of the TSM activities in planning and programing are also included.

2. *Goals.* Transportation plans and programs are, to an increasing extent, being called upon to address a host of issues, such as energy conservation, air quality, environmental problems and urban revitalization. At the same time, increasing costs of transportation facilities and decreasing fiscal resources make funding major new investments extremely difficult. These factors have made it increasingly important that transportation resources—facilities, equipment and services—be operated in the most efficient manner possible. It is this need that led to the concept of TSM and its inclusion as a required feature of transportation plans for urbanized areas.

When originally introduced, the TSM concept represented a significant change in the direction of transportation planning and programing. TSM requires the planning process to expand its focus to include assessments of improved *service and operations*, as well as *facilities*, as a potential means to maximize mobility. TSM also requires the process to address both *supply* and *demand*. The TSM concept requires viewing the transportation system as a whole with all modes receiving attention. The philosophy calls for addressing the transportation of people and goods, not merely movement of vehicles.

TSM accounts more explicitly for new factors in transportation decisionmaking such as energy, environment, air quality, and fiscal limitations. These constraints on mobility must be dealt with if it is to be maintained or expanded. In addition, opportunities to enhance mobility exist in urban revitalization efforts that the process should be capable of stimulating.

TSM should be tied to planning required by the Clean Air Act and planning specified by a variety of other statutes covering energy conservation. Consistency in plans undertaken to meet these goals is best developed at the local level.

3. *Scope.* Transportation System Management is a philosophy about planning, programing, implementation and operations that calls for improving the efficiency and effectiveness of the transportation system by improving the operations and/or services provided. TSM aspects of the Transportation Plan address services and operations of the system and identify management and operational changes needed to improve efficiency and effectiveness.

A range of tactics (actions) is available to meet the goals outlined. Examples are:

Traffic operations improvements.

Ridesharing.

Incentives to use of high occupancy vehicles (such as buses, carpools and vanpools), including preferential parking, reserved lanes, exclusive ramps, etc.

Pedestrian provisions.

Bicycle, motorcycle, and moped provisions.

Parking management programs, including enforcement, pricing, supply management, zoning changes, permit systems, etc.

Work schedule changes, including flexitime, staggered hours, compressed work weeks.

Goods movement measures.

Pricing actions.

Paratransit services.

Transit route and schedule changes.

Transit management improvements.

Innovative transit services types.

In every case, these tactics address the operations or services provided by the

*Available for inspection and copying from FHWA and UMTA as prescribed in 49 CFR Part 7.

transportation system. In addition, some of these tactics can affect transportation demand, as opposed to only supply.

Transportation System Management is applicable to a number of operating environments and with a wide range of agencies and groups participating. For example, the central business district (CBD) is a likely site for high occupancy vehicle parking preferences, bus lanes, pedestrian facilities, auto restrictions, etc., while neighborhoods are appropriate for parking permit programs and traffic operational actions discouraging through travel. Further, a radial corridor is an appropriate place for high occupancy vehicle lanes, express bus services and park and ride lots. Each of these actions need the support and coordination of a broad range of agencies and interest groups.

Transportation System Management measures often have synergistic effects. In other words, several tactics applied together may often be more effective as a group than individual actions taken in an uncoordinated manner. Therefore, there should be a systematic approach to TSM planning rather than a piecemeal approach. For example, a package of measures to improve the efficiency of a corridor as a whole should be developed as opposed to only looking at individual problem areas in the corridor in an isolated manner.

Since Transportation System Management actions involve operations and services on existing facilities rather than development of major new facilities, they are generally *low cost*. Certain actions such as high occupancy vehicle incentives or development of a transit mall, may involve substantial sums, however.

TSM involves both short and long-term actions. Service and operation changes generally can be implemented more quickly than construction of new facilities and thus can have a short-range focus. However, TSM strategies may also involve *long-term* facility improvements (e.g., dedication of a new facility to high occupancy vehicle use) and have long-term impacts.

4. *Roles and Responsibilities.* A wide range of agencies is likely to participate in addressing TSM considerations in the planning process. While the MPO is primarily responsible for TSM coordination, other agencies, including State DOTs, city traffic departments, public transit operators and enforcement agencies, as well as the private sector, should also be involved. These agencies generally have better knowledge of the operations of specific system elements under their control and can be called on to implement improvements. Private sector involvement in programs such as ridesharing, work schedule changes, goods movement, auto restricted zones, etc., is vital to their success.

The metropolitan planning organization (MPO) has lead responsibility for the coordination of the TSM activities called for by the joint planning regulations. This does not mean, however, that the MPO must conduct all TSM work itself. Rather, local agencies, such as city traffic departments, the State DOT and the area's public transit operators should be involved. The decision on which agency should conduct needed analyses should be made locally and should be based on the scale and level of the particular project or problem under study. For example, it is probably most appropriate that operators conduct route and schedule studies and other similar transit management analyses and that local traffic departments undertake signalization studies. In order to support these efforts, MPOs are encouraged to pass Federal planning assistance funds through to such agencies.

Private sector involvement is also important. Employers should be involved in ridesharing or transit-use promotions or in work rescheduling to spread peaks. Also, private providers of mass transit services should be considered for new services, such as paratransit or special user operations. Studies of goods movement management issues, such as truck routes, port access, downtown delivery, etc., should involve the private sector and port authorities.

Ensuring that all likely participants have an appropriate role can be critical to the success of a specific strategy. For example, a downtown parking management program would require participation of a variety of city agencies such as planning and zoning, traffic, and administration. Police involvement early in the planning process would ensure that enforcement is given adequate attention. Downtown businessmen, whose operations might be affected, should be involved. Support from such a group could be critical. The transit operator could suggest key bottlenecks where parking changes could be beneficial. Finally, the MPO can analyze regional impacts and serve to coordinate the overall effort.

5. *Technical Activities.* To adequately address the goals of the requirement for TSM, a number of key technical activities should be undertaken in each urbanized area as part of the continuing planning process.

Each area's Unified Planning Work Program (UPWP) should reflect as necessary, and to the extent appropriate, the following critical activities:

System monitoring and data collection, including traffic and auto occupancy counts and transit ridership monitoring and surveys;

Regional scale problem identification, allowing for selection of areas for detailed study of person and goods movement problems;

Transit service planning, including reviews of service area, route, schedules, etc., on a continuing basis;

Transit management analyses, covering maintenance practices, organization, personnel policies, financial planning, training, labor relations, etc.;

Ridesharing and high occupancy vehicle analyses for HOB lanes, parking management, alternative work schedules, etc.;

Analysis of signal timing optimization and other traffic engineering measures;

Coordination of local agency activities to ensure that these will result in a plan that is internally consistent;

Selective post-project evaluations to determine the effectiveness of implemented projects and areas for modification;

Energy contingency planning.

UMTA and FHWA will review each area's UPWP closely to ensure that sufficient attention is given to these critical activities.

6. *Documentation.* No new documentation products are required to address TSM. The plans and programing implications of TSM will be documented in the normal products of the urbanized area planning process.

The Unified Planning Work Program (UPWP) should describe TSM planning to be undertaken during the period it covers, including treatment of the critical technical areas outlined above.

Individual technical reports, such as short-range transit plans or traffic engineering studies, should document the procedures that were used to develop, refine or reappraise TSM aspects of the plan; the evaluation of alternative strategies; and the strategies recommended for implementation.

The transportation plan report(s) should describe TSM aspects, incuding a brief description of system problem areas, goals and objectives, and recommended TSM improvements. This documentation should provide local officials with a clear understanding of what is being recommended, e.g., type of improvements, locations, financial aspects, etc.

The Transportation Improvement Program/Annual Element (TIP/AE) should identify implementation costs and schedules, funding sources, and agency responsibilities for TSM projects to be implemented.

The manner in which TSM is documented should not be confused with the need for project justification. Technical information that may be needed for justifying certain types of transit projects should be provided in technical reports on those projects and is not required in the document(s) describing TSM aspects of the transportation plan.

The joint planning regulations require that the plan be reviewed and endorsed periodically. Certification reviews will ensure that TSM is adequately addressed in the plan and that it is updated and endorsed properly.

7. *Programming.* Effective planning for Transportation Systems Management should result in the programing and implementation of TSM type projects. One measure of the adequacy of the TSM planning effort conducted in an urbanized area is the level of TSM activity found in the area's Transportation Improvement Program (other measures include past progress in TSM implementation, and most importantly, the overall efficiency of existing system service and operations). While FHWA and UMTA will not prescribe the number of types of projects that must appear in an area's TIP, an adequate level of effort in TSM planning will usually result in programs and projects in the following areas, regardless of the source of funds:

Ridesharing.
Traffic control signalization.
High occupancy vehicle incentives.
Pedestrian and bicycle facilities.

In addition, an adequate level of effort in TSM planning focused on the efficiency of existing services will generally result in the existence, on an ongoing basis, of programs covering transit service monitoring and assessment, transit service adjustments, transit maintenance programing, financial

management programs and management and organizational improvement programs. Progress in these activities will receive close attention from UMTA and FHWA.

8. *Funding.* A variety of funding sources are available to support planning and implementation for TSM. UMTA places priority on use of Section 6 technical studies funds for TSM planning as does FHWA on use of PL and HP&R funds. Implementation funds are available from UMTA through the Section 3 discretionary capital grant program, the Section 4(i) innovative techniques and methods program and the Section 5 urban mass transportation formula grant program. Federal-aid highway funds may also be used to implement a wide range of TSM-type projects. Federal Aid Urban System funds offer the greatest flexibility for use for TSM-type projects including traffic operations, ridesharing, pedestrian and bicycle facilities, high occupancy vehicle incentives, and transit. Traffic control signalization projects may be funded at the 100 percent Federal share level.

Appendix B—[Reserved]

Appendix C—Advisory Information on the Administration of Corridor Refinement Studies For Major Urban Transportation Investments

The following procedures will apply in FHWA and UMTA administration of corridor refinement studies for major urban transportation investments. The nature of the various Federal reviews and approvals will be determined by FHWA and/or UMTA, as appropriate.

1. When an applicant requests approval for a corridor refinement study, the request will be supported by:

(a) An identification of the corridor(s) in which major transportation investments may be warranted;

(b) A description of a number of reasonable alternative major investments for the corridor(s); and

(c) Information, summarized from the results of areawide planning activities, that demonstrates the need for further study of major urban transportation investments.

2. As part of the scoping process and as early as possible, FHWA and/or UMTA will reach agreement with the applicant on the following aspects of the study:

(a) The range of the alternatives to be studied including, at a minimum, a no action alternative and TSM alternatives;

(b) Procedures to be used to estimate the cost and effectiveness of each alternative;

(c) The evaluation methodology;

(d) The process for citizen involvement; and

(e) The administrative arrangements among the MPO, the State, and the public transit operator(s) for conduct of the study.

3. Federal administrative responsibility for the corridor refinement studies depends primarily upon the range of alternatives to be considered. The administration of the study may involve both FHWA and UMTA as joint lead agencies. A joint lead agency agreement will normally result when:

(a) The range of alternatives include a mix of highways and mass transportation investments;

(b) It is uncertain whether FHWA or UMTA will be requested to fund the investment; or

(c) The FHWA and UMTA Administrators decide to establish joint lead agency agreements.

4. During joint corridor refinement studies, FHWA and UMTA will review and monitor the progress of the studies and provide guidance as necessary. Preparation of the draft EIS will conform to the provisions of the FHWA/UMTA environmental regulations (23 CFR Part 771).

Appendix D—Advisory Information on the Simplification of Administrative Requirements For Planning in Metropolitan Areas Less Than 200,000 Population

Introduction

The simplification of Federal program requirements has been given a high priority by the Administrators of FHWA and UMTA and by the Office of the Secretary. The objective in developing the guidance was to: (1) reduce the burden of Federal planning requirements in all urbanized areas under 200,000 population; (2) reduce the administrative burden on FHWA and UMTA staffs; and (3) aid newly designated urbanized areas in developing a planning process which is adequate to address their unique needs while avoiding excessive detail and wasteful expenditures.

This appendix provides for an appropriate level of effort for smaller urbanized areas.

Advisory Guidance

There will be no need for a formal agreement except where the MPO and the A-95 agency are different. The requirements of other agreements may be satisfied through description of roles and responsibilities in the work program and/or TIP.

The Unified Planning Work Program (UPWP) may be a brief summary of the important transportation issues facing the area, and the work activities in the UPWP addressing these issues. The review of the UPWP need only be by the Federal funding agencies. Joint review and approval procedures should be worked out by these agencies.

In accordance with Section 134, Title 23, U.S.C., the transportation plan must be based on transportation needs and consider long-range land use plans, overall goals and objectives, and their impact on future development. In small urbanized areas the long-range plan may be a simple statement about land use policy and the location of major public facilities, and transportation improvements. The focus should be on the development of the short-range element and TSM improvements.

The level of technical effort should be commensurate with the problems being addressed. Maximum use should be made of simplified planning techniques, which are discussed in several planning manuals specifically developed for small areas.

The transportation improvement program/annual element of the plan should be scaled to the needs of the area. If only a few projects can be funded annually, the document may need only be a single page with the coming year's projects clearly identified.

The certification review of the small area planning process should be as simple as possible and should be based to the maximum extent on previously submitted data. In new areas (those added as a result of the 1980 Census), the determination of planning adequacy should recognize that extensive planning may not be ongoing in these areas. In most cases, we would expect new urbanized areas to be certified initially with appropriate conditions.

While the regulations under subpart C call for specific initiation procedures, the key to local involvement is the MPO endorsement. This should also be the focus of Federal review.

The only nonfederally funded TSM projects that need to be included in the TIP/AE are those which local officials determine will have a substantial impact on federally-funded projects in TIP/AE.

2. Part 450, Subpart B of 23 CFR is amended as follows:

§ 450.200 [Amended]

a. By amending § 450.200(b) to remove the phrase "by the Governor" in the third sentence.

§§ 450.202 450.204, and 450.206 [Amended]

b. By amending §§ 450.202, 450.204, and 450.206 to remove term "Pub. L." wherever it appears therein and to substitute in lieu thereof the term "PL"

§§ 450.202, and 450.206 [Amended].

c. By amending §§ 450.202(c) and 450.206(b) to remove the phrase "section 9" wherever it appears therein and to substitute in lieu thereof the phrase "section 5".

3. Part 450, Subpart C of 23 CFR is revised to read as follows:

* * * * *

Subpart C—Transportation Improvement Program

Sec.

450.300 Purpose.
450.302 Applicability.
450.304 Definitions.
450.306 Transportation improvement program: General.
450.308 Transportation improvement program: Content.
450.310 Annual element: Project initiation.
450.312 Annual element: Content.
450.314 Annual element: Modification.
450.316 Action required by metropolitan planning organization.
450.318 Selection of projects for implementation.
450.320 Program approval.

* * * * *

Authority: 23 U.S.C. 105, 134(a), and 135(b); Sections 3, 5, and 8(c) of the Urban Mass Transportation Act of 1964, as amended (49 U.S.C. 1602, 1604, and 1607(c)); Sections 110, 172, 176, and 178 of the Clean Air Act; and 49 CFR 1.48(b) and 1.51.

Subpart C—Transportation Improvement Program

§ 450.300 Purpose.

The purpose of this subpart is to establish guidelines for the development, content, and processing of a cooperatively developed transportation improvement program in urbanized areas and to prescribe guidelines for the selection by implementing agencies of annual programs of projects to be advanced in urbanized areas.

§ 450.302 Applicability.

(a) This subpart applies to projects in or serving urbanized areas with funds made available under:

(1) 23 U.S.C. 104(b)(6) (urban systems projects);

(2) 23 U.S.C. 103(e)(4) (Interstate substitution projects);

(3) Sections 3 and 5 of the Urban Mass Transportation Act of 1964, as amended (UMT Act) (49 U.S.C. 1602 and 1604—UMTA capital and operating assistance projects);

(4) 23 U.S.C. 104(b)(1) (projects on extensions of primary systems in urbanized areas), except as provided in this subpart;

(5) 23 U.S.C. 104(b)(5) (projects on the Interstate System), except as provided in this subpart.

(b) Projects under paragraphs (a)(4) and (5) of this section, which are included in the highway safety improvement program, may be excluded from the transportation improvement program at the option of the State.

§ 450.304 Definitions.

(a) Except as otherwise provided, terms defined in 23 U.S.C. 101(a) are used in this subpart as so defined.

(b) As used herein:

"Annual element" means a list of transportation improvement projects proposed for implementation during the first program year.

"Governor" means the Governor of any one of the fifty States, or Puerto Rico, and includes the Mayor of the District of Columbia.

"Highway safety improvement program" means a program prepared by the State pursuant to 23 CFR 924.

"Interstate substitution projects" means projects funded under 23 U.S.C. 103(e)(4) (Withdrawal of Interstate segments and substitution of either nonhighway public mass transit projects or highway projects, or both).

"Interstate System projects" means projects funded under 23 U.S.C. 104(b)(5).

"Metropolitan planning organization (MPO)" means that organization designated as being responsible, together with the State, for carrying out the provisions of 23 U.S.C. 134, as provided in 23 U.S.C. 104(f)(3), and capable of meeting the requirements of Sections 3(e)(1), 5(1), and 8(a) and (c) of the UMT Act (49 U.S.C. 1602(e)(1), 1604(l), and 1607(a) and (c)). This organization is the forum for cooperative decision-making by principal elected officials of general purpose local government.

"Nonattainment area" means a region as defined in Section 171 of the Clean Air Act.

"State implementation plan (SIP)" means a plan approved or promulgated under Section 110 of the Clean Air Act.

"Transportation improvement program (TIP)" means a staged multiyear program of transportation improvements including an annual element.

§ 450.306 Transportation improvement program: General.

(a) The transportation improvement program (TIP) shall be developed and updated annually under the direction of the metropolitan planning organization (MPO) in cooperation with:

(1) State and local officials;

(2) Regional and local transit operators;

(3) Recipients authorized under Section 5(b) (2) or (3) of the UMT Act (49 U.S.C. 1604(b) (2) or (3)); and

(4) Other affected transportation and regional planning and implementing agencies.

(b) The TIP shall consist of improvements recommended from the short-range and long-range elements of the transportation plan developed under § 450.116.

(c) The TIP shall cover a period of not less than 3 years, but may at local discretion cover up to 5 or more years.

§ 450.308 Transportation improvement program: Content.

The TIP shall:

(a) Identify transportation improvements recommended for advancement during the program period;

(b) Indicate the area's priorities;

(c) Group improvements of similar urgency and anticipated staging into appropriate staging periods;

(d) Include realistic estimates of total costs and revenues for the program period.

§ 450.310 Annual element: Project initiation.

Federally funded projects shall be initiated for inclusion in the annual element at all stages in the development of the transportation improvement for which program action is proposed. These projects shall be initiated as follows:

(a) Proposed urban system highway projects shall be initiated by local officials in whose jurisdiction the project is located.

(b) Proposed urban system nonhighway public mass transit projects and Interstate substitution nonhighway public mass transit projects shall be initiated by principal elected officials of general purpose local governments in consultation with local transit operating officials or by local transit operating officials.

(c) Proposed UMTA Section 3 projects (49 U.S.C. 1602) shall be initiated by recipients authorized under Section 5(b) (1) or (2) of the UMT Act (49 U.S.C. 1604(b) (1) or (2)), by local transit operating officials, or by principal elected officials of general purpose local governments in cooperation with local transit operating officials.

(d) Proposed UMTA Section 5 projects (49 U.S.C. 1604) shall be initiated by recipients authorized under Section 5(b) (1) or (2) of the UMT Act (49 U.S.C. 1604(b) (1) or (2)). Nothing in this paragraph is intended to prohibit or discourage the initiation by such recipients of projects recommended by local transit operating officials or by principal elected officials of general purpose local governments in cooperation with local transit operating officials.

(e) Proposed urban extension and Interstate System projects shall be initiated by the State highway agency.

(f) Proposed Interstate substitution highway projects shall be initiated according to the provisions of this section for the Federal-aid system of which they will be a part.

§ 450.312 Annual element: Content.

(a) Except as provided in § 450.302(b), the annual element shall contain:

(1) Projects initiated under § 450.310 and endorsed under § 450.310; and

(2) For informational purposes, all nonfederally funded transportation systems management projects.

(b) With respect to each project under paragraph (a) of this section the annual element shall include:

(1) Sufficient descriptive material (i.e., type of work, termini, length, etc.) to identify the project;

(2) Estimated total cost and the amount of Federal funds proposed to be obligated during the program year;

(3) Proposed source of Federal and non-Federal funds; and

(4) Identification of the recipient and State and local agencies responsible for carrying out the project.

(c) Projects proposed for Federal support that are not considered by the State and MPO to be of appropriate scale for individual inclusion in the annual element may be grouped by functional classification, geographic area, and work type.

(d) The annual element shall be reasonably consistent with the amount of Federal funds expected to be available to the area. Federal funds that have been allocated to the area pursuant to 23 U.S.C. 150 shall be identified.

(e) The total Federal share of projects included in the annual element and proposed for funding under Section 5 of the UMT Act (49 U.S.C. 1604) may not exceed apportioned Section 5 funds available to the urbanized area during the program year.

(f) In nonattainment areas which require transportation control measures, the annual element shall give priority to projects identified in the transportation control portion of the SIP in accordance with procedures contained in 23 CFR 770.

§ 450.314 Annual element: Modification.

The annual element may be modified at any time consistent with the procedures established in this subpart for its development.

§ 450.316 Action required by the metropolitan planning organization.

(a) The TIP, including the annual element, shall be endorsed annually by the MPO.

(b) In nonattainment areas which require transportation control measures, the MPO shall not endorse any project or program which does not conform to the SIP.

(c) The MPO shall submit the TIP including the annual element:

(1) To the Governor and the Urban Mass Transportation Administrator, and

(2) Through the State to the Federal Highway Administrator.

§ 450.318 Selection of projects for implementation.

(a) The projects proposed to be implemented with Federal assistance under Sections 3 and 5 of the UMT Act (49 U.S.C. 1602 and 1604) and nonhighway public mass transit projects under 23 U.S.C. 103(e)(4) shall be those contained in the annual element of TIP submitted by the MPO to the Urban Mass Transportation Administrator.

(b) Upon receipt of the TIP, the State shall include in the statewide program of projects required under 23 U.S.C. 105:

(1) Those projects drawn from the annual element and proposed to be implemented with Federal assistance under 23 U.S.C. 104(b)(6) (Federal-aid urban system) in which it concurs; provided, however, that in any case where the State does not concur in a nonhighway public mass transit project, a statement describing the reasons for the nonconcurrence shall accompany the statewide program of projects; and

(2) Those projects drawn from the annual element and proposed to be implemented with Federal assistance under 23 U.S.C. 104(b)(1) (Projects on urban extensions of the Federal-aid primary system) and 23 U.S.C. 104(b)(5) (Interstate System projects in urbanized areas); and

(3) Those projects not drawn from the annual element that are proposed to be implemented with Federal assistance under 23 U.S.C. 104(b)(1) (Projects on urban extensions of the Federal-aid primary system) and 23 U.S.C. 104(b)(5) (projects on the Interstate System) provided that:

(i) Such project or projects were initiated pursuant to § 450.310(e); and

(ii) Such project or projects are for highway transportation improvements for which there has been a Federal authorization to acquire right-of-way or Federal approval of physical construction or implementation where right-of-way acquisition was not previously federally funded.

(c) For each project under paragraph (b)(3) of this section a statement shall accompany the statewide program of projects which shall:

(1) Include the views of the MPO; and

(2) Indicate how the requirements of 23 U.S.C. 134(a) have been met.

(d) The preparation and endorsement of the TIP and the selection of projects in accordance with this subpart will meet the requirements of 23 U.S.C. 105(d), 23 U.S.C. 134(a), and Section 8(a) of the UMT Act (49 U.S.C. 1607(a)).

(e) The State shall notify the MPO of actions taken under paragraph (b) of this section.

§ 450.320 Program approval.

(a) Upon the determination of the Federal Highway Administrator and the Urban Mass Transportation Administrator that the TIP or portion thereof is in conformance with this subpart and that the area is under planning certification, programs of projects selected for implementation under § 450.318 will be considered for approval as follows:

(1) Federal-aid urban system projects included in the statewide program of projects under 23 U.S.C. 105 will be approved by:

(i) The Federal Highway Administrator with respect to highway projects;

(ii) The Urban Mass Transportation Administrator with respect to nonhighway public mass transit projects; and

(iii) The Federal Highway Administrator and the Urban Mass Transportation Administrator jointly in any case where the statewide program of projects submitted pursuant to 23 U.S.C. 105 does not include all Federal-aid urban system nonhighway public mass transit projects contained in the annual element.

(2) Interstate substitution nonhighway public mass transit projects included in the annual element of the TIP will be approved by the Urban Mass Transportation Administrator.

(3) Projects proposed to be implemented under Sections 3 and 5 of the UMT Act (49 U.S.C. 1602 and 1604) included in the annual element of the TIP will be approved by the Urban Mass Transportation Administrator after considering any comments received from the Governor within 30 days of the submittal required by § 450.310(b)(1).

(4) Federal-aid urban extension and Interstate projects included in the statewide program of projects under 23 U.S.C. 105 will be approved by the Federal Highway Administrator.

(b) Approvals by the Federal Highway Administrator or joint approvals by the Federal Highway Administrator and Urban Mass Transportation Administrator will be in accordance with the provisions of this subpart and with 23 CFR 630, Subpart A. Approvals granted under this section will constitute:

(1) The approval required under 23 U.S.C. 105; and

(2) A finding that the program is based on a continuing, comprehensive transportation planning process carried on cooperatively by the States and local communities in accordance with the provisions of 23 U.S.C. 134.

(3) In nonattainment areas which require transportation control measures, a finding that the program conforms with the SIP and that a priority has been given to transportation control measures contained in the SIP in accordance with procedures contained in 23 CFR 770.

(c) Approvals by the Urban Mass Transportation Administrator will be in accordance with the provisions of this subpart and with other applicable provisions of 49 CFR 613, Subpart B. These approvals will constitute:

(1) The approval required under Section 8(a) of the UMT Act (49 U.S.C. 1607(a));

(2) A finding that the projects are based on a continuing, cooperative and comprehensive transportation planning process carried on in accordance with

the provisions of Section 8 of the UMT Act (49 U.S.C. 1607), as applicable;

(3) A finding that the projects are needed to carry out a program for a unified or officially coordinated urban transportation system in accordance with the provisions of Sections 5(l) or 8(c) of the UMT Act (49 U.S.C. 1604(l) or 1607(c)), as applicable; and

(4) In nonattainment areas which require transportation control measures, a finding that the program conforms with the SIP and that a priority has been given to transportation control measures contained in the SIP in accordance with procedures in 23 CFR 770.

PART 630—FEDERAL-AID PROGRAMS APPROVAL AND PROJECT AUTHORIZATION [AMENDED]

4. In Part 630, Subpart A, § 630.106 is amended by redesignating paragraphs (b) and (c) as (c) and (d) respectively, and adding a new paragraph (b) to read as follows:

§ 630.106 Policy.

* * * * *

(b) Federal support is available only for those major urban transportation investment alternatives that meet local, State, and national goals and objectives in a cost-effective manner.

* * * * *

Title 49—Transportation

PART 613—PLANNING ASSISTANCE AND STANDARDS

5. Part 613, Subpart A of 49 CFR is amended by revising the authority statement to read as follows:

Authority: 23 U.S.C. 104(f)(3), 134, and 315; Sections 3, 5, and 8(c) of the Urban Mass Transportation Act of 1964, as amended (49 U.S.C. 1602, 1604, and 1607(c)); Sections 110, 172, 174, and 176 of the Clean Air Act; and 49 CFR 1.48(b) and 1.51.

6. Part 613, Subpart B of 49 CFR is revised to read as follows:

Subpart B—Transportation Improvement Program

Sec.

613.200 Transportation improvement program.
613.202 Additional criteria for Urban Mass Transportation Administrator's approvals under 23 CFR 450.320.
613.204 Additional criteria for Urban Mass Transportation Administrator's approvals under 23 CFR 450.320.

Appendix—Policy and procedures for major urban transportation investments.

Authority: 23 U.S.C. 105, 134(a), and 135(b); Sections 3, 5, and 8(c) of the Urban Mass Transportation Act of 1964, as amended (49 U.S.C. 1602, 1604, and 1607(c)); Sections 110, 172, 174, and 176 of the Clean Air Act; and 49 CFR 1.48(b) and 1.51.

Subpart B—Transportation Improvement Program

§ 613.200 Transportation improvement program.

The transportation improvement program regulations establishing guidelines for the development, content, and processing of a cooperatively developed transportation improvement program in urbanized areas and also prescribing guidelines for the selection, by implementing agencies, of annual programs of projects to be advanced in urbanized areas which are set forth in 23 CFR Part 450, Subpart C, are incorporated into this subpart.

§ 613.202 Additional criteria for Urban Mass Transportation Administrator's approvals under 23 CFR 450.320.

(a) This section establishes certain additional criteria to be considered by the Urban Mass Transportation Administrator in his/her program approval pursuant to 23 CFR 450.320(a)(3) for all projects proposed for implementation with Federal assistance under Sections 3 and 5 of the Urban Mass Transportation Act of 1964, as amended (49 U.S.C. 1602 and 1604), in urbanized areas having a population of 200,000 or more.

(b) The Urban Mass Transportation Administrator will grant program approval for projects under paragraph (a) of this section only after he/she has determined that:

(1) The transportation plan developed pursuant to 23 CFR 450.116 contains TSM strategies and actions which are reflected in the annual element of the transportation improvement program; and

(2) Reasonable progress has been demonstrated in implementing previously programmed projects.

§ 613.204 Additional criteria for Urban Mass Transportation Administrator's approvals under 23 CFR 450.320.

The Urban Mass Transportation Administrator will grant project approvals for major urban investments pursuant to 23 CFR 450.320(a)(3) only if he/she determines that the projects meet local, State, and national goals and objectives in a cost-effective manner.

Appendix—Policy and Procedures for Major Urban Mass Transportation Investments

Since the beginning of the 1970's, the Federal Government has provided an increasing share of the Nation's capital investment in urban mass transportation. In the years ahead, as more and more communities seek Federal financial aid to improve and expand their mass transportation systems, it is more essential than ever that Federal funds be effectively and efficiently utilized.

Since each metropolitan area has differing characteristics, Federal mass transportation assistance cannot be based on standardized prescriptions. Rather, Federal support should be flexible, relying heavily on local ability to assess present and anticipated transportation needs, identify and evaluate alternative opportunities for improvement, and initiate needed actions.

The Federal Government does, however, have a strong interest in ensuring that Federal funds available for mass transportation investments be used prudently and with maximum effectiveness. While there are no simple or standard procedures that will guarantee this outcome, a careful and systematic evaluation of the implications of alternative courses of action in advance of a Federal commitment should improve the quality of decisions. To this end, a completed corridor refinement study will be required as a condition of eligibility for Federal assistance for a major mass transportation investment.

A major mass transportation investment is any project which involves new construction or extension of a fixed guideway system (rapid rail, light rail, commuter rail, automated guideway transit) or a busway, except where such projects are part of a demonstration program. Rehabilitation and modernization projects are not included in the scope of this definition.

Rail transit means all forms of rail passenger transportation serving metropolitan areas. It includes "rail rapid transit", "light rail" and "commuter (or regional) rail" technology operating on surface, elevated or sub-surface rights-of-way. The definition excludes busways and "people movers" or other types of automated guideway technology (AGT), although similar rigorous standards are also applicable to those investments.

"Rail Lines" means both extensions to existing metropolitan rail systems and initial segments of new urban or metropolitan rail systems.

I. Increasing the Effectiveness of Rail Transit Investments

The Federal Government has a strong obligation to ensure that the Federal assistance dollars are spent prudently and with maximum effectiveness. To this end, UMTA will adhere to the following set of policies which will apply to all rail transit proposals:

1. Any approval for preliminary engineering of a rail transit proposal must be preceded by a federally approved corridor refinement study which considers a full range of modal alternatives such as rapid transit, light rail, busway, people mover and transportation system management (TSM) options, and service and alignment alternatives, as well as a no action alternative. Applicants will be required to show clearly and convincingly the need for partially or fully grade-separated transit service and to demonstrate that the proposed transit solution is, on balance, superior to other options, considering such factors as

ridership, capital and operating expenses, transportation service, and social environmental, urban revitalization, and energy conservation objectives.

2. Urban areas will have to demonstrate a compelling need for high-performance transit service in order to obtain Federal assistance for rail rapid transit. The use of partially or fully on surface rights-of-way, may offer a substantially less costly, less disruptive, and more flexible rail transit option, and should be seriously considered, especially in places where extensive underground or elevated construction would otherwise be required.

3. Where the long range element of an areawide plan calls for the construction of an area-wide network or rail lines, UMTA will require that the system be analyzed, approved and built in stages. Initial segments of the system should be proposed in corridors which can justify the need for fixed guideway service within 15 years of the date of the analysis. Each segment should be capable of justification on its own merits. This incremental approach to construction of urban rail transit is aimed at insuring that the burden of financing the system is spread out in time, that high volume corridors receive priority attention, that benefits of the public investment begin to accrue as soon as possible, that an appropriate balance is maintained between long and short range needs for transportation improvements, and that maximum flexibility is preserved to modify the system in response to advances in technology, changes in growth patterns, and other unforeseen circumstances.

This policy encourages the construction of the most effective segments first and discourages localities from relying on a continued flow of Federal funding to complete unworthy or marginally justified segments of a system.

Each successive segment will normally be subject to a corridor refinement study. Corridors which cannot justify fixed guideway transit service within 15 years of the analysis should be provided with levels and types of service appropriate to their needs, with the level of service being progressively upgraded as demand develops.

4. UMTA will give preference to initial rail segments serving densely populated central portions of metropolitan areas including central cities and close-in suburbs. This policy is designed to target Federal transit investment in areas with the greatest potential payoff, in terms of ridership, relief of congestion, help to transit dependents, energy conservation and air quality improvements.

5. Localities proposing to build rail transit with Federal assistance will be required to commit themselves to the development and implementation of a program of local supportive policies and actions designed to enhance the proposed system's cost-effectiveness, patronage and prospect for economic viability. The Department will require evidence of reasonable progress in carrying out this program of supportive policies as a condition of initial and subsequent construction funding approvals.

The supportive actions shall include the following:

Zoning policies and development incentives to stimulate high density private real estate development around selected transit stations;

Land use plans that support or reinforce the developmental impact and shaping influence of the rail transit system;

Station area improvements in the form of plazas, malls, walkways, open spaces and other pedestrian amenities that might help reverse the physical deterioration of the central business district or revitalize declining residential neighborhoods;

Coordinated bus and/or paratransit feeder services to the rail system especially in low density suburban areas;

Adequate parking and other mode transfer facilities at suburban transit stations;

Pricing, regulatory or traffic control measures aimed at managing the peak-period use of automobiles within rail corridors (e.g., traffic metering, tolls, higher parking fees, elimination of employer-subsidized parking).

6. UMTA will require localities to develop realistic estimates of future operating expenses and to identify and reach a local consensus on the specific means of funding these expenses. In particular, UMTA will require, as a condition of Federal capital assistance, the development of a stable and reliable source of local revenue to cover operating deficits.

7. Full funding contracts will be negotiated with a fixed ceiling on the Federal contribution, subject to a defined method of adjustment for inflation. Localities will be required to complete the project as defined and absorb any additional costs incurred, except under certain specific extraordinary circumstances.

8. UMTA will strengthen its role in monitoring projects in order to prevent over-design, the introduction of unnecessary embellishments, and the use of untested technologies, subsystems, and components which might adversely affect system performance and future operating and maintenance costs.

II. Procedures for Major Urban Mass Transportation Investments

This section outlines the procedures which UMTA will normally follow in reviewing corridor refinement studies, in implementing the Environmental Impact Statement (EIS) requirement of the National Environmental Policy Act of 1969, and in making funding commitments.

1. The procedures set forth in Appendix C of 23 CFR 450, Subpart A are used in the development of alternative major urban mass transportation investments in areawide and corridor refinement studies. They are supplemented by the following procedures.

2. After the end of the circulation period for the draft EIS, the applicant should designate, in a separate document, the locally preferred alternative and state a rationale for the choice. This document should clearly state that any recommendation is solely that of the applicant and that UMTA's judgment is reserved until the environmental process is complete.

3. Upon review of the locally preferred alternative report and the comments received on the draft EIS, UMTA will decide whether the corridor refinement study requirements have been satisfied and whether the locally preferred alternative warrants funds for preliminary engineering. This decision will be based upon an appraisal of the cost-effectiveness of the locally preferred alternative compared to the other alternatives examined in the analysis. The grant may be for preliminary engineering of the locally preferred alternative as well as other promising alternatives evaluated in the draft EIS. Approval of the preliminary engineering grant does not imply any commitment to finance construction of the project.

Preliminary engineering should develop system cost, effectiveness and impact information, with particular attention to alternative designs, operations, detailed location decisions and appropriate mitigation measures. The final EIS should be developed during preliminary engineering. The final EIS may consider a smaller set of alternatives but no action should be taken which would limit the choice of reasonable alternatives studied in the draft EIS until completion of the circulation of the final EIS.

UMTA may admit projects into preliminary engineering whose combined cost exceeds available Federal authorization levels. This will be done in anticipation of any of several possibilities: the withdrawal of projects as a result of changing local priorities; a local decision to use non-Federal resources to finance more than 20 percent of total cost; enactment of additional authorizations; or changing conditions such as the availability of detailed cost estimates which might lead to a later decision that a particular project should not be federally financed.

4. During the execution of preliminary engineering, the applicant will complete all the steps which must precede a Federal indication of intent to fund the project. These steps include providing evidence of firm commitment of the non-Federal capital share, providing evidence of State and/or local consensus regarding the financing of operating deficits, and planning for and gaining financing of operating deficits, and planning for and gaining financial commitment to necessary supportive actions to promote effective utilization of the proposed fixed guideway system.

A letter of intent may be issued for construction in a specific dollar amount only upon completion of the circulation of the final EIS and review of the capital grant application, the transcript of the public hearing, and the detailed cost estimates emerging from preliminary engineering. The decision to issue such a letter will be based upon a comparison of projects then pending.

5. If UMTA determines that the project warrants Federal support, UMTA will also develop with the locality a full funding contract which will (1) fix the total amount of the Federal contributions, subject to a defined method of adjusting for inflation; (2) include a mutually agreeable schedule for anticipating Federal contributions during the life of the project; and (3) require the locality to complete construction of the project as defined, and to absorb any additional cost incurred, except under certain specific "extraordinary" circumstances.

6. Specific annual contributions under the letter of intent and full funding contract will

be subject to the availability of appropriations and the ability of the grant recipient to use the funds effectively. UMTA will limit the sum total of letters of intent to the sum of the future Section 3 authorizations, less an amount which is necessary for those portions of the Section 3 program which are not covered by letters of intent.

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Part XXX

Department of Energy

Economic Regulatory Administration

Puerto Rican Naphtha Entitlements

DEPARTMENT OF ENERGY

Economic Regulatory Administration

10 CFR Part 211

[Docket No. ERA-R-80-31]

Puerto Rican Naphtha Entitlements

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Final rule.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) hereby adopts a final rule amending the Mandatory Petroleum Allocation Regulations to modify the entitlement benefit accorded naphtha imported into Puerto Rico and used as a petrochemical feedstock under the Entitlements Program regulations, 10 CFR 211.67. The amendment adopted today is intended to alleviate the naphtha feedstock cost disadvantage suffered by Puerto Rican petrochemical producers as a result of their reliance on high-priced imported naphtha, as compared with their U.S. mainland competitors that have access to lower cost domestically produced naphtha.

The naphtha entitlement benefit is determined by the differential between the average cost of naphtha imported into Puerto Rico and an imputed cost of domestic naphtha. The final rule adopted today retains the naphtha/crude oil price ratio methodology to impute the cost of domestic naphtha. However, the factor applied to the weighted average per barrel cost of crude oil for all domestic refiners to impute the cost of domestic naphtha is raised from 106 to 117 percent. Finally, the runs credit "cap" on the maximum value of the naphtha entitlement benefit is eliminated.

EFFECTIVE DATE: March 1, 1981. The final rule adopted today will be initially applicable to refiners' runs to stills for the month of January 1981, which are required to be reported by refiners to DOE by March 5, 1981, and will be reflected in the Entitlements Notice issued in March 1981.

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION:

I. Background.
II. Discussion of Comments:
A. Support for the Rulemaking.
B. Alternative Methodologies Proposed to Impute A Value for Domestically Produced Naphtha.
C. Retention of the 106 Percent Naphtha/Crude Oil Price Ratio Factor.
D. Cap on the Maximum Value of a Naphtha Entitlement.
E. Effective Date of a Final Rule.
III. Amendments Adopted.
IV. Procedural Requirements.

I. Background

By adoption of the Puerto Rican Naphtha Entitlements Program in 1976, the Federal Energy Administration (FEA), a predecessor agency to DOE, sought to alleviate a competitive disadvantage suffered by Puerto Rican petrochemical producers in relation to other domestic petrochemical producers located on the mainland. *See* preamble to the final rule, 41 FR 30321 (July 23, 1976). The competitive disadvantage resulted from the combined effects of rapidly increasing prices for imported crude oil and naptha on the world market and the imposition of price controls on the production and refining of domestic crude oil. Because the Puerto Rican petrochemical industry is reliant on high-priced imports, the feedstock costs of the Puerto Rican firms increased as prices on the world markets rose. In contrast, however, the feedstock costs of mainland petrochemical producers remained lower than those of the Puerto Rican firms due to the existence of price controls on domestic crude oil. To the extent that the cost of Naphtha feedstocks imported by Puerto Rican petrochemical producers exceeded the feedstock costs of mainland petrochemical producers, they were placed at a disadvantage with respect to the marketing of their products in competition with mainland petrochemical producers.

Under the regulations adopted in 1976 and currently in effect, Puerto Rican firms are eligible to receive an entitlement benefit for each barrel of naphtha imported for use as a petrochemical feedstock. The value of a naphtha entitlement is determined by the difference between the weighted average cost of naphtha imported into Puerto Rico for use as a petrochemical feedstock and an imputed cost of domestically produced naphtha. However, the maximum value of the per barrel naphtha entitlement for any month cannot exceed the value of a single crude oil runs credit.[1] When world naphtha prices are such that Puerto Rican firms are not eligible for a full crude oil runs credit, the value of the naphtha entitlement is calculated by applying the ratio of the difference between the weighted average cost per barrel of imported naphtha reported by Puerto Rican petrochemical firms and the imputed cost of domestically produced naphtha, divided by a modified crude oil runs credit (calculated by excluding the small refiner bias benefits under § 211.67(e) and the adjustment for residual fuel oil transported in foreign flag tankers for sale on the East Coast under § 211.67(d)(4)).

The imputed cost of domestic naphtha is calculated by applying a factor of 106 percent to the weighted average cost per barrel of crude oil for all domestic refiners in a month. The 106 percent factor was established based upon the relationship between uncontrolled world market prices for naphtha (based on Rotterdam postings) and crude oil costs (based on estimated delivered costs of a mix of crude oils to Rotterdam) during the first six months of 1977. The current 106 percent factor has been in effect since December 1977. *See* 42 FR 61853 (December 7, 1977).

As noted in the preamble to the Notice of Proposed Rulemaking (NOPR) that initiated this proceeding, however, beginning in mid-1978 the current program has failed to eliminate the naphtha feedstock cost differential incurred by Puerto Rican petrochemical firms. As a result, since the second quarter of 1978, the post-entitlements feedstock cost of Puerto Rican petrochemical producers has been significantly higher than the *imputed* cost of domestic naphtha feedstock to mainland petrochemical firms, calculated on the basis of the 106 percent factor used under the existing

[1] A "runs credit" for a month is that fraction of an entitlement derived by multiplying the National Domestic Crude Oil Supply Ratio (DOSR) for that month, see § 211.62, by the price of an entitlement for that month.

regulations to impute domestic naphtha costs. *See* preamble to the NOPR at 45 FR 59618, 59619–20 (September 10, 1980).

The cause of the apparent ineffectiveness of the existing program identified in the NOPR was the unanticipated and disproportionately rapid increases in prices for imported naphtha as compared with price increases for crude oil. The extreme volatility of naphtha prices on the world market was recognized in the NOPR, in which we noted that:

> * * * imported naphtha prices no longer track world market crude oil prices, which historically had been the case. Starting with the second quarter of 1978, imported naphtha prices have fluctuated disproportionately in comparison with crude oil prices. In this period, increases in the price for imported naphtha have been more rapid and steeper than crude oil price increases. These market conditions suggest that the underlying premise of the Puerto Rican Naphtha Entitlements Program that a *constant* relationship exists between naphtha prices and crude oil prices may no longer be valid. 45 FR at 59619 (emphasis added).

Several factors were identified in the NOPR as contributing to the disproportionately higher naphtha prices on the world market during the two year period beginning with the second quarter of 1978, including increased demand during that period for petrochemicals and light-end petroleum products produced from naphtha, and a relative scarcity of light crude oils during much of that period following the Iranian revolution.

In the NOPR, we also noted that the increase in imported naphtha prices had two countervailing impacts upon the operation of the existing Puerto Rican Naphtha Entitlements Program. On the one hand, we noted that the 106 percent naphtha/crude oil price ratio factor no longer provided a reasonable basis for imputing the cost of domestic naphtha because it did not reflect the increased value of naphtha compared with crude oil evidenced by the changed market conditions since the second quarter of 1978. To the extent that the imputed cost of domestic naphtha calculated by using the constant 106 percent factor was too low, the naphtha feedstock cost differential determined by comparing the weighted average cost of naphtha imported by the Puerto Rican petrochemical producers with this *imputed* value was overstated. In other words, if a more accurate method to impute the cost of domestic naphtha reflecting its higher value is used for the two year period beginning with the second quarter of 1978, the amount by which naphtha feedstocks imported into Puerto Rico were "under-equalized" (*i.e.*, the amount by which the naphtha cost differential exceeded the maximum naphtha entitlement benefit of a single crude oil runs credit) is reduced.

On the other hand, the disproportionate increases in imported naphtha prices had a second effect. To the extent that the increased prices for imported naphtha caused the naphtha cost differential to exceed by a significant amount the value of a single crude oil runs credit, the single runs credit "cap" on a naphtha entitlement value was no longer adequate to alleviate the competitive disadvantage suffered by the Puerto Rican petrochemical firms.[2]

In the NOPR, we observed that "* * * it appears that there is some movement back to a more normal naphtha/crude oil price relationship during the past few months. * * *." Notwithstanding that fact, we proposed alternative amendments to the existing program in order to make it more responsive to the changed market conditions and to alleviate any naphtha feedstock cost disadvantage suffered by the Puerto Rican petrochemical firms during the remaining life of the Entitlements Program, which will terminate when the President's authority to regulate crude oil pricing expires on September 30, 1981.

The first two alternative proposals proposed a change in the method of imputing the cost of domestic naphtha. The first alternative proposal provided that an imputed cost of domestic naphtha would be calculated on the basis of the value of naphtha used by domestic refiners in gasoline production, determined by a formula derived by DOE. The second alternative provided that the inputed cost of domestic naphtha would be calculated by subtracting a fixed adjustment from the wholesale price of unleaded regular gasoline. The adjustment was to be derived by comparing wholesale unleaded gasoline prices and imputed domestic naphtha costs (calculated according to the formula used in the first alternative proposal) during a recent reference period. Under both proposals, we proposed to increase the maximum naphtha entitlement benefit to two runs credits, rather than the single runs credit ceiling currently provided. The third alternative proposal retained the present methodology of calculating the imputed cost of domestic naphtha based on a naphtha/crude oil price ratio, but increased the maximum naphtha entitlement benefit to two runs credits.

DOE solicited comments on its alternative proposals, as well as other issues identified in the preamble to the NOPR.

[2] When the naphtha cost differential exceeded the runs credit "cap" by a significant amount, the Puerto Rican firms were still left at an actual post-entitlements feedstock cost disadvantage, notwithstanding the offsetting effect that use of a more accurate factor to impute the cost of domestic naphtha would have had upon the calculation of the naphtha cost differential.

II. Discussion of Comments

DOE held a public hearing on the proposed amendments in San Juan, Puerto Rico on September 25, 1980, at which eight interested parties testified. In addition, 21 written comments were received from interested parties, some of whom had testified at the public hearing. Testimony and written comments were received from representatives of Puerto Rican petrochemical firms, firms located in Puerto Rico that produce naphtha for sale on the island, mainland refiners, the Secretary of State of Puerto Rico, the Puerto Rican Office of Energy, the Department of Justice, and one concerned private citizen.

This section summarizes the major comments on the principal issues that are within the scope of this rulemaking. Our response to the public comments is set forth either in this section or in the next section of this preamble in which we discuss our reasons for adoption of the final rule promulgated as a result of this proceeding.

A. Support for the Rulemaking

Commenters were almost evenly split in their support for or their opposition to the rulemaking. Ten commenters, consisting of mainland refiners and the Peerless Petrochemical Company, a producer of naphtha located on Puerto Rico, opposed all of the alternative proposals to amend the naphtha entitlements program, and favored retention of the existing program. Some other mainland refiners, while submitting comments on the alternative proposals made in the NOPR, recommended that the naphtha entitlements program be terminated. Among the reasons cited by those opposed to the rulemaking and urging that no action be taken by DOE was the relatively short time left until decontrol, the view that the gasoline-based methodology proposals involved complicated formulas that could not be implemented without further refinement of the data to be used, and that retention of the existing program was the least complicated solution providing the greatest degree of certainty for participants in the entitlements program.

Twelve commenters supported the rulemaking by favoring one or more of the alternative proposals. The Puerto

Rican petrochemical firms supported the thrust of the rulemaking as providing at least some measure of relief to remedy their competitive problems resulting from their reliance on high priced imported naphtha feedstocks. The Puerto Rican government and certain mainland refiners also expressed support for the rulemaking. The Puerto Rican Sun Oil Company, a producer of naphtha on the island, supported the rulemaking if entitlements benefits were extended to Puerto Rican naphtha producers.

We disagree with those commenters opposed to the rulemaking that the relatively short time remaining before total decontrol should preclude us from proceeding to adopt a final rule that will correct certain deficiencies in the existing naphtha entitlements program. Having identified the problems, we believe it is appropriate to take action to amend the program, notwithstanding the limited time left before total decontrol. Furthermore, the final rule adopted today provides a simple solution to the problems with the program, can be implemented swiftly with a minimization of further agency involvement, and will provide a degree of certainty for Puerto Rican petrochemical firms for the remaining life of the program.

B. Alternative Methodologies to Impute A Value for Domestically Produced Naphtha

A great deal of comment was directed at the alternative methodologies proposed to impute a cost of domestically produced naphtha. The imputed cost domestic naphtha is a crucial issue because its value affects the naphtha feedstock cost differential of the Puerto Rican petrochemical firms in relation to their mainland competitors, which in turn determines the value of the naphtha entitlement benefit under the regulations.

Only seven commenters supported either (and in some cases, both) of the gasoline-based methodologies (identified as the first and second alternatives in the NOPR) to impute the cost of domestic naphtha. The reasons offered in support of the gasoline-based methodologies were that, in general, integrated refiners make decisions whether to use naphtha in motor gasoline or petrochemicals production in a manner similar to that assumed by the proposals; the value of domestic naphtha is closely tied to its value as a component in the motor gasoline pool; and either of the proposals would be responsive to changes in market conditions in the future. However, several of these commenters suggested modifications to the formula utilized in the gasoline-based methodologies to arrive at an imputed cost for domestic naphtha. For example, Exxon, Mobil and Shell, which all either recommended that the naphtha entitlements program be terminated or opposed all alternatives proposed in the rulemaking in the first instance, but proceeded to address the proposed amendments, criticized certain assumptions underlying the gasoline-based methodologies because they resulted in the imputed domestic naphtha value being *understated*.

On the other hand, the Puerto Rican petrochemical producers using naphtha feedstock opposed adoption of the gasoline-based methodologies and criticized certain inaccurate assumptions underlying the formula that they asserted resulted in the imputed domestic naphtha value being *overstated*. In general, their criticisms of the gasoline-based methodologies formula included: (1) the assertion that data proposed to be used that is reported to DOE on the Form P–302–M–1 is not an accurate indication of the refinery gate price for unleaded gasoline, because it includes data reflecting other than wholesale transactions; (2) the formula fails to take into account that lower quality naphtha feedstocks that cannot be blended into gasoline are used by the Puerto Rican firms, particularly Union Carbide Caribe, in the production of olefins; and (3) the formula did not reflect industry practice regarding the processing and blending of naphtha into motor gasoline which affected the capital recovery and operating expense cost factors contained in the formula. CORCO also opposed the gasoline-based methodologies because of their dependence on variables (such as the wholesale price of unleaded gasoline) that the firm claimed cannot be predicted with as much certainty as crude oil costs, thus introducing more unpredictability as to the naphtha entitlement value at the time naphtha purchases are made by the firm.

The Puerto Rican petrochemical producers using naphtha feedstocks *and* the mainland refiners that opposed the rulemaking favored retention of the existing naphtha/crude oil price ratio methodology to impute the cost of domestic naphtha, but for different reasons. The support of the mainland refiners for this proposal was based upon their recommendation that DOE take no action and retain the existing program in view of the short time remaining before decontrol and because continuation of the naphtha/crude oil price ratio is the simplest alternative. The Puerto Rican firms commented that it was appropriate to retain the existing methodology based on the *cost* of crude oil, because the methodology used should reflect the additional cost of obtaining naphtha from crude oil. Union Carbide Caribe pointed out that the value of naphtha used in unleaded gasoline production is not relevant to a non-integrated olefin producer such as itself, that utilizes lower quality naphtha feedstocks that cannot be used in gasoline production.

C. Retention of the 108 Percent Naphtha/Crude Oil Price Ratio Factor

In the preamble to the NOPR, we solicited comments concerning: (1) whether we should retain the naphtha/crude oil price ratio methodology for arriving at an imputed price for domestic naphtha, and (2) if we do, whether the current 108 percent factor should be revised in light of changed market conditions and, if so, what is the appropriate basis for revising the factor. (45 FR at 59622).

The Puerto Rican petrochemical firms urged the retention of the existing 108 percent factor notwithstanding the fact, as noted in the NOPR, that the relationship of Rotterdam naphtha to crude oil costs has fluctuated at levels generally well above 108 percent since the second quarter of 1978.[3] They argued, however, that the factor should not be based on Rotterdam prices that reflect distortions in foreign markets. They asserted that the 108 percent factor was justified as a reasonably accurate measure of the value of domestic naphtha on a cost basis. They also asserted that no change in the 108 percent factor should be made in the interest of simplicity, given the limited duration of the program.

Many of the commenters that favored retention of the existing 108 percent factor with a single runs credit cap did not address the issue of whether the factor should be revised. However, some commenters urged that if the Rotterdam naphtha/crude oil price ratio methodology were retained, the factor should be revised upward because use of the 108 percent factor *understates* the imputed value of domestic naphtha, thereby increasing the naphtha cost differential that affects the value of the naphtha entitlement benefit. Some commenters suggested that the factor be adjusted monthly, based on changes in market conditions.

[3] As noted previously, the ratio of Rotterdam naphtha to crude oil prices during the first six months of 1977 was the basis on which the 108 percent factor was established.

D. Cap on the Maximum Value of a Naphtha Entitlement

In the NOPR, we proposed to increase the "cap" on the maximum value of a naphtha entitlement to two crude oil runs credits under all three alternative proposals. Seven commenters, including all of the Puerto Rican petrochemical firms and the Puerto Rican government, urged that the "cap" be removed entirely. These commenters argued that elimination of the "cap" would not reduce their incentives to seek the lowest priced naphtha supplies, because the value of a naphtha entitlement is based on the weighted *average* cost per barrel of naphtha imported by all Puerto Rican firms. Thus, they contend that an adequate incentive currently exists for them to seek the lowest cost naphtha supplies, because a firm that purchases naphtha at a price above the average price will not be fully compensated under the program. The Puerto Rican firms also maintained that removal of the "cap" would not cause world naphtha prices to increase, because they do not constitute a large enough share of the market. CORCO also asserted that removal of the "cap" would enhance the competitiveness of the Puerto Rican petrochemical producers, by removing any future possibility they will be "under-equalized" if imported naphtha prices were to rise, thereby contributing to the development of the Puerto Rican economy.

Thirteen commenters favored the retention of a single crude oil runs credit cap on the maximum value of a naphtha entitlement. These commenters included those that opposed the rulemaking, and others that supported a gasoline-based methodology. With respect to the issue of incentives for the Puerto Rican firms to seek the lowest cost naphtha supplies, Exxon suggested that sufficient incentive to purchase low-priced naphtha might not exist if the "cap" were raised since there are only three firms that directly benefit from the rule, and if one firm paid a premium for naphtha supplies it would not suffer a significant penalty because it would drive the *average* cost up as well. Another firm, Puerto Rican Sun Oil Company, opposed raising the "cap" because the price of naphtha that *it* produces on the island would become uncompetitive.

E. Effective Date of Final Rule

While we did not solicit comments in the NOPR as to when a final rule adopted in this proceeding should be made effective, numerous comments were received on the subject. All of the Puerto Rican commenters asserted that retroactive relief, back to dates varying from April 1, 1979 to May 1, 1980, is appropriate. They suggested that they should be compensated for past months during which their naphtha feedstock costs were not equalized as a result of the effect of the single runs credit "cap" and asserted that retroactive relief is appropriate because DOE unreasonably delayed the initiation of this rulemaking proceeding.

Other commenters opposed making a final rule retroactive. Exxon pointed out that the magnitude of the past "under-equalization" of the Puerto Rican firms is illusory to some extent because it results, in part, from the *under-valuation* of the imputed cost of domestic naphtha using the 108 percent factor, which in turn overstates the naphtha cost differential. Both Exxon and Mobil also indicated that prices for petrochemical products have increased more rapidly than increases in cost for imported naphtha feedstocks, suggesting that the competitive difficulties encountered by Puerto Rican firms did not result solely from the failure of the naphtha entitlements program to equalize feedstock costs fully.

The question of whether a rule should be given retroactive effect involves equitable considerations. These considerations include the justifiable reliance on the former rule by those that will be aggrieved by the new rule, the burden imposed upon those that will be aggrieved by the new rule, and our obligation to adopt a rule that comports with the statutory objectives of the EPAA. In this instance, retroactive application of any of the proposals would provide the Puerto Rican petrochemical firms with additional entitlement benefits at the expense of all other mainland refiners, which have justifiably relied on the existing naphtha entitlements program and did not have notice of a pending change in the program until issuance of the NOPR in this proceeding. It is clear that retroactive application of a new rule would impose a significant burden by increasing the post-entitlements crude oil costs of all other participants in the entitlements program. Finally, the Puerto Rican petrochemical firms have benefited from use of the 108 percent factor in the past, which has understated the value of domestic naphtha and overstated the naphtha feedstock cost differential. While we acknowledge that this benefit has been more than offset in certain months by the much higher feedstock costs of the Puerto Rican firms and that the program has not functioned perfectly in the past in responding to rapidly changing market conditions, we do not believe that retroactive relief before January 1, 1981 is justified in this case.

The final rule adopted today will be effective March 1, 1981, initially applicable to refiners' runs to still for the month of January 1981. We are not making this final rule effective until March 1, 1981 to eliminate any misunderstanding as to the rule that will apply to the reporting of data by refiners in February (reflecting December runs to stills), which will be the current rule under the existing program. The changes made by the final rule adopted today will be initially applicable to refiners' January 1981 runs to stills, which are required to be reported by refiners to DOE by March 5, 1981, and will be reflected in the entitlements transactions specified by the Entitlements Notice issued in the latter part of March 1981.

The administration of the Entitlements Program involves a two month delay to allow for the reporting of data by refiners to DOE and the subsequent issuance of an Entitlements Notice on the basis of the reported data. Thus the final rule adopted today, while not effective until March 1, 1981, will be applied retroactively to refiners' runs to stills as of January 1, 1981. Relief retroactive to January 1, 1981 is justified for the following reasons. We do not believe that reliance by mainland refiners, or any other parties that will be aggrieved by adoption of the final rule, upon the continuation of the existing program was justified after October 1, 1980. In the NOPR, we indicated our tentative intention to make the amendments to be adopted effective commencing with refiners' runs to stills in October 1980 in the proposed regulatory language for each of the three alternative proposals. Thus, parties were on notice that the final rule might be applicable to refiners' runs to stills as early as October 1980.

The burden imposed upon mainland refiners is considerably mitigated as well. While the post-entitlements crude oil costs of mainland refiners will be increased for January 1981, those costs will not be reflected until issuance of the March 1981 Entitlement Notice, which specifies entitlement transactions based on January 1981 crude oil receipts and runs to stills. Under DOE price regulations, adjustments to crude oil costs to take into account entitlement transactions are not permitted to be reflected in product prices until the month after the entitlement transactions occur. Thus increased costs resulting from adoption of the final rule are not recoverable by mainland refiners in

prices for controlled products until April 1981 in any event. Further, we do not believe that mainland refiners' crude oil purchases for January 1981 would have been influenced significantly by this rule.

Finally, we believe that there is a compelling statutory interest that this final rule be made applicable to refiners' runs to stills in January 1981 to preserve the competitive viability of the Puerto Rican petrochemical industry, in accordance with the goal set forth in section 4(b)(1)(D) of the EPAA. We also believe that it is appropriate that this final rule, correcting deficiencies of the existing naphtha entitlements program, be made effective as soon as possible given the limited duration of the program.

III. Amendments Adopted

The final rule that we have decided to adopt retains the naphtha/crude oil price ratio methodology to impute the cost of domestic naphtha. However, we have decided to raise the factor applied to the monthly weighted average cost per barrel of crude oil for all domestic refiners to 117 percent. As proposed in the NOPR, the ratio used to calculate the value of a naphtha entitlement is revised so that it is based on the actual runs credit, rather than the modified runs credit used under the existing rule. Finally, the runs credit "cap" on the maximum value of the naphtha entitlement benefit will be eliminated.

The naphtha/crude oil price ratio methodology has been retained for several reasons. The majority of commenters, including the Puerto Rican petrochemical firms using naphtha feedstock and mainland refiners, opposed the gasoline-based methodologies and favored retention of the naphtha/crude oil price ratio methodology. The comments submitted by the Puerto Rican petrochemical firms and mainland refiners also identified difficulties with several assumptions underlying the formula that we proposed for imputing a cost of domestic naphtha based on the wholesale price of unleaded regular gasoline. The Puerto Rican petrochemical firms asserted that modifications to the formula were necessary so that the imputed value for domestic naphtha was not overstated, while the mainland refiners claimed that other adjustments to the formula were necessary so that the imputed value for domestic naphtha was not understated. We recognize that some adjustments to the formula might be necessary, and that the calculations pursuant to the formula would be more complicated, would involve more variables, and would be more difficult to administer. Therefore, we have decided not to adopt either gasoline-based methodology.

Retention of the naphtha/crude oil price ratio methodology will make it easier to implement the amendments adopted today, while minimizing agency involvement in the short time left before expiration of the program. It should also meet the concerns expressed by the Puerto Rican petrochemical firms regarding predictability, so that they can make naphtha purchases with a reasonable degree of certainty as to value of the naphtha entitlement benefit.

The naphtha/crude oil price ratio will continue to be based on Rotterdam prices for those products, as in the past. We believe that the relationship of the prices of naphtha crude oil in Rotterdam is a reasonably accurate measure of the value of those products in relation to one another, particularly in light of the fact that an adequate data base for sales of domestic naphtha, a decontrolled product, does not exist. The 117 percent factor is derived by taking the average of the Rotterdam naphtha/crude oil price relationships for the first ten months of 1980. We selected these ten months as a base period because they are the most recent months for which data is available and reflect the return of a relatively stable naphtha/crude oil price relationship that takes into account changed conditions in the markets for naphtha and crude oil since 1977, when the factor was last revised. *See* 42 FR 61853 (December 7, 1977). While this period reflects changed market conditions since 1977 that have affected the value of naphtha and crude oil in relation to one another, it is free of significant market disruptions such as occurred in 1979. We believe that this 117 percent factor based on more recent experience will remain valid for the nine months remaining in the program.

We have decided to eliminate the runs credit "cap" on the maximum value of a naphtha entitlement benefit that can be received by Puerto Rican petrochemical producers. While we proposed increasing the "cap" to a double runs credit, we did not specifically propose elimination of the cap because we did not want to reduce the incentives of Puerto Rican petrochemical producers to seek the lowest priced naphtha supplies.[4] Several factors, one of which was not evident at the time the NOPR was issued, have caused us to reconsider our proposal. First, we are persuaded by the comments of the Puerto Rican petrochemical firms that they will still have an incentive to seek the lowest priced naphtha supplies even in the absence of a "cap," because they are competitive with one another and to the extent a firm purchases naphtha above the average price of all naphtha feedstocks imported into Puerto Rico, it will not be fully compensated for *its* feedstock cost differential. Second, since issuance of the NOPR the value of a crude oil runs credit has been rapidly decreasing. This has been due to a number of factors, including the phased decontrol of crude oil prices, the sale of crude oil that was formerly price-controlled at market level prices as a result of the implementation of tertiary enhanced oil recovery projects, and the new entitlements treatment accorded crude oil used to fill the Strategic Petroleum Reserve. In light of the continually decreasing runs credit between now and the end of the entitlements program, imposition of a runs credit "cap" would very likely preclude meaningful relief for the Puerto Rican petrochemical firms in a period of rising naphtha prices.

We also believe that our decision to increase the naphtha/crude oil price ratio factor to 117 percent will insure that the Puerto Rican petrochemical firms are not overcompensated because of an understated imputed value for domestic naphtha.

IV. Procedural Requirements

A. Section 404 of the DOE Act

Pursuant to the requirements of Section 404(a) of the Department of Energy Organization Act, we have referred these amendments to the Federal Energy Regulatory Commission (FERC) for a determination whether they would significantly affect any matter within the Commission's jurisdiction. The Commission has advised us that it "has decided not to exercise its discretion to determine that the proposed rule significantly affects any function within the jurisdiction of the Commission."

B. National Environmental Policy Act

As indicated in the preamble to the NOPR, it has been determined that these amendments would not significantly affect the quality of the human environment within the meaning of the National Environmental Policy Act (NEPA, 42 U.S.C. 4321 *et seq.*), and therefore, neither an environmental assessment nor an environmental impact statement is required by NEPA and the applicable DOE regulations for compliance with NEPA.

[4] We believe that arguments that would be posed by mainland refiners in opposition to elimination of the "cap" would be similar to those posed in opposition to doubling the "cap" that were considered in this rulemaking.

C. Executive Order 12044

In accordance with Executive Order No. 12044 "Improving Government Regulations" (43 FR 12661, March 24, 1978) and DOE's implementing Order 2030.1, "Procedures for the Development and Analysis of Regulations, Standards, and Guidelines" (44 FR 1032, January 3, 1979), a Regulatory Analysis has been prepared which examines the impacts of the alternatives that were evaluated in this rulemaking. A summary of the Regulatory Analysis is attached as an appendix. The entire Regulatory Analysis is available for public inspection at Room B-110 of the Economic Regulatory Administration, 2000 M Street, NW, Washington, D.C.

(Emergency Petroleum Allocation Act of 1973, 15 U.S.C. 751 *et seq.*, Pub. L. 93-159, as amended, Pub. L. 93-511, Pub. L. 94-99, Pub. L. 94-133, Pub. L. 94-163, and Pub. L. 94-385; Federal Energy Administration Act of 1974, 15 U.S.C. 787 *et seq.*, Pub. L. 93-275, as amended, Pub. L. 94-332, Pub. L. 94-385, Pub. L. 95-70, and Pub. L. 95-91; Energy Policy and Conservation Act, 42 U.S.C. 6201 *et seq.*, Pub. L. 94-163, as amended, Pub. L. 94-385, and Pub. L. 95-70; Department of Energy Organization Act, 42 U.S.C. 7101 *et seq.*, Pub. L. 95-91; E.O. 11790, 39 FR 23185; E.O. 12009, 42 FR 46267)

In consideration of the foregoing, Part 211 of Chapter II, Title 10 of the Code of Federal Regulations, is amended as set forth below.

Issued in Washington, D.C., January 12, 1981.

Hazel R. Rollins,

Administrator, Economic Regulatory Administration.

PART 211—MANDATORY PETROLEUM ALLOCATION REGULATIONS

1. Subparagraph 211.67(d)(5) is amended by revising subparagraph (i), deleting former subparagraph (iii), revising and renumbering former subparagraph (iv), deleting former subparagraph (v), and renumbering former subparagraph (vi) to read as follows:

§ 211.67 Allocation of domestic crude oil.

* * * * *

(d) *Adjustments to volume of crude oil runs to stills.*

* * * * *

(5)(i) The volume of a refiner's crude oil runs to stills beginning with the month of January, 1981 in a particular month for purposes of the calculations in paragraph (a)(1) of this section and the calculations for the national domestic crude oil supply ratio shall include the number of barrels of naphthas which are imported into Puerto Rico (other than imports from the U.S. Virgin Islands and other than naphthas imported into Puerto Rico which are acquired pursuant to an exchange or similar matching purchase and sale transaction for naphthas produced by a refinery located in the the United States) and are utilized in that month as a petrochemical feedstock at a petrochemical plant owned or operated by that refiner in Puerto Rico, as reduced in paragraph (d)(5)(ii) of this section. The number of eligible barrels of naphthas for a particular month further shall be multiplied by a fraction the numerator of which is equal to the weighted average per barrel cost of all naphthas imported into Puerto Rico for that month as to which entitlement issuances are sought less the imputed per barrel cost of domestically produced naphthas for that month, and the denominator of which is the entitlement value for a barrel of crude oil included in the volume of a refiner's crude oil runs to stills for that month. For purposes of this subdivision (5)(i), the imputed per barrel cost of domestically produced naphthas for a particular month, commencing with January, 1981 shall be equal to 117 percent of the weighted average per barrel cost of all the crude oil receipts for all domestic refiners for that month.

(ii) The volume of naphthas eligible for inclusion in the volume of a refiner's crude oil runs to stills in a particular month under paragraph (d)(5)(i) of this section shall be reduced by the volume of export sales (under § 212.53 of Part 212 of this chapter, including sales to a purchaser which certifies it or an entity affiliated with that purchaser will export the product so purchased), for that month of products produced at the petrochemical plant that has processed the imported naphthas.

(iii) Notwithstanding any other provisions of this section, a firm other than a refiner that owns a petrochemical plant in Puerto Rico shall be eligible to receive entitlements with respect to naphthas processed at such a plant on the same basis as is provided for refiners in paragraphs (d)(5) (i) and (ii) of this section, except that such a firm shall not be eligible for any additional entitlements under the provisions of paragraph (e) of this section. Any such firm shall file reports under § 211.66 on the same basis as a refiner.

(iv) Any firm that is eligible for entitlement issuances under this subparagraph shall obtain appropriate certifications from any other firm to which it sells products produced at a petrochemical plant located in Puerto Rico. Such certification shall set forth whether or to what extent the products so purchased will be sold (whether directly by that other firm or indirectly through any firm affiliated with that other firm) in transactions that constitute export sales under § 212.53 of Part 212 of this chapter. Any firm purchasing products produced at a petrochemical plant located in Puerto Rico shall, upon the request of the owner or operator of that facility, certify to that owner or operator as to whether or what extent the further sale of those products by that firm (or any affiliate thereof) will constitute export sales under § 212.53.

* * * * *

Appendix—Summary of Final Regulatory Analysis Amendments to the Puerto Rico Naphtha Entitlements Program

The Final Regulatory Analysis confirms the findings of the Draft Regulatory Analysis in regard to the problems with the current program and the need to remedy them. The analysis discusses briefly the public testimony submitted in this rulemaking proceeding, the rationale for the determination of the final amendments adopted and their impact on the program.

This analysis reviews problems with the current program described in the Draft Regulatory Analysis, specifically that it frequently has not been able to equalize the cost of naphtha feedstocks between the Puerto Rican petrochemical manufacturers and their U.S. mainland competitors during the past two years. One of the principal reasons cited for the program's ineffectiveness is its continued use of a 105 percent naphtha/crude oil price ratio even though it no longer provides a reasonable basis for imputing the value of naphtha compared with crude oil as documented by market changes during the past two years. The other problem with the program is that the current limitation of a naphtha entitlement benefit to one crude oil runs credit frequently constrains the naphtha entitlement benefit; therefore, it is unable to offset the higher world naphtha prices that have occurred over the past two years.

The oral and written comments on the three alternative amendments proposed to equalize better the cost of naphtha feedstocks of the Puerto Rican petrochemical firms overwhelmingly supported the retention of the current naphtha/crude oil price ratio methodology. However, the respondents differed on whether the present factor of 105 percent should be revised upward and whether the maximum value of a naphtha entitlement should continue to be limited to one crude oil runs credit. The other two alternatives, both of which would have changed the method of calculating the cost of domestic naphtha by imputing a value based on its alternative use in gasoline production, received very little support. Although there was no substantial opposition to the gasoline-based opportunity cost approach on the basis of its validity as a method for determining a domestic naphtha value, there were a number of criticisms and suggestions concerning the derivation of several factors used in the calculations.

The amendments adopted will increase the naphtha/crude oil ratio factor from 108 percent to 117 percent and remove entirely the ceiling on a naphtha entitlement benefit. Although world naphtha prices have declined gradually during the past year, the overall trend of higher naphtha values tends to invalidate the continued use of the 108% ratio factor in calculating the value of domestic naphtha. The 117% ratio factor was derived by averaging the Rotterdam naphtha-to-crude oil price ratios for the first ten months of 1980 for which firm data is available. The analysis states that this period was chosen because it was characterized by the absence of any significant world petroleum supply disruption and a slight downturn in the world economy. As a consequence, it is a fairly accurate indicator of the present value of naphtha and it is likely that this representative value will prevail for the duration of the program.

The amendment to raise the price ratio factor from 108% to 117% will reduce the value of a naphtha entitlement. Use of a higher ratio factor will increase the imputed value for domestic naphtha which, in turn, reduces the cost differential between Puerto Rican petrochemical firms and their U.S. mainland competitors. Inasmuch as the cost differential determines the value of a naphtha entitlement, a lower value will result. Removal of the ceiling on the value of a naphtha entitlement will remove any constraints on size of benefits, but this should not have any impact unless world naphtha prices rise suddenly. Although ERA does not anticipate the kind of price volatility that was experienced in the naphtha market during 1979, this amendment is being adopted as a precautionary measure so that entitlement benefits will not be constrained in the event of unforeseen price increases in the world naphtha market.

The Analysis concludes that the amendments meet the principal objectives of the rulemaking, by providing the following:

- Fair compensation of the Puerto Rican petrochemical firms for their feedstock cost disparities.
- Insurance against a recurrence of the feedstock cost under-equalization that the Puerto Rican firms experienced earlier.
- Assurance that the Puerto Rican industry is neither competitively advantaged, nor disadvantaged.
- Adequate incentives for Puerto Rican naphtha purchasers to compete for favorable prices.
- Administrative simplicity and no additional reporting burden for the industry and DOE.

The analysis concludes that the only objective of this rulemaking that the adopted amendments do not achieve is enabling of the program to respond to wide price fluctuations in the world naphtha market. In view of the very short time remaining for the operation of the program, ERA no longer thinks that this objective is of critical importance.

The analysis states that the reasons for retaining the current methodology outweigh, on balance, those supporting the other Alternatives. Although the opportunity cost methodology offers the advantage of flexibility by automatically reflecting changes in naphtha values, this requirement is diminished in view of the anticipated stability in the naphtha/crude oil price relationship over the limited time remaining in the program. Furthermore, adoption of the opportunity cost methodology would require ERA's evaluation of requisite data to be used in the model, adjustments to ongoing programs, and increased administrative time. The analysis concludes that if the program were to continue beyond the current expiration date of September 30, 1981, it would be necessary to re-evaluate the possible use of the gasoline-based, opportunity cost methodology.

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Monday
January 19, 1981

Part XXXI

Department of the Interior

Fish and Wildlife Service

Endangered and Threatened Plants; Determination of Two New Mexico Plants, Eriogonum Gypsophilum (Gypsum Wild Buckwheat), and Hedeoma Todsenii (Todsens Pennyroyal), To Be Threatened and Endangered Species, With Critical Habitat

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Plants; Determination of Two New Mexico Plants To Be Endangered Species and Threatened Species, With Critical Habitat

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Service determines *Eriogonum gypsophilum* (gypsum wild buckwheat) to be a Threatened species and *Hedeoma todsenii* (Todsens pennyroyal) to be an Endangered species and determines their Critical Habitat under the authority contained in the Endangered Species Act. These plants occur in New Mexico on public lands administered by the Bureau of Land Management and the U.S. Army. The plants are threatened by a number of factors, including: possible habitat disturbance, grazing, off-road vehicle use, and the lack of protection planning. This rule will implement the protection provided by the Endangered Species Act of 1973, as amended for these two plants.

DATES: This rule becomes effective on February 18, 1981.

ADDRESSES: Questions concerning this action may be addressed to the Director (FWS/OES), U.S. Fish and Wildlife Service, Department of the Interior, Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT: Mr. John L. Spinks, Jr., Chief, Office of Endangered Species, U.S. Fish and Wildlife Service, Department of the Interior, Washington, D.C. 20240, (703/235-2771).

SUPPLEMENTARY INFORMATION: *Eriogonum gypsophilum* (gypsum wild buckwheat) was first collected by Wooten and Standley in 1909 on a hill southwest of Lakewood, New Mexico (Wooten and Standley, 1913). This member of the knotweed family is a small, erect, herbaceous perennial, which measures about 8 inches high, and is restricted to gypsum soils. This plant's entire range is limited to a 0.2 square mile area (130 acres) in the Seven Rivers Hills of Eddy County at elevations from 3,290 to 3,450 feet. The area occupied by *Eriogonum gypsophilum* and the Critical Habitat area is public land administered by the Bureau of Land Management. This area is semi-arid with an average annual precipitation of 14 inches. The continued existence of this plant and the fragile habitat in which it occurs are being threatened by off-road vehicles, grazing, and by the Brantley Dam Project, particularly if proper protection planning for the plant does not continue to occur.

Hedeoma todsenii was first discovered in August 1978, by Dr. Thomas K. Todsen, and was described in 1979 by Dr. Robert S. Irving (1979). *Hedeoma todsenii*, a member of the mint family, is a perennial herb which measures 4–8 inches in height and is somewhat woody at the base. Its leaves are opposite, small, and measure .3–.6 inches long, .1–.2 inches wide. Its flowers are solitary along the stem and measure about 2 inches long and are orange-red. *Hedeoma todsenii* occurs on steep, gravelly-gypsum limestones on the White Sands Missile Range, in Sierra County, New Mexico on public lands administered by the Department of the Army.

This rule will implement the protection provided by the Endangered Species Act of 1973 for both of these plants. The following paragraphs further discuss the actions to date involving these plants, the threats to their continued existence, and the effects of the action.

Background

Section 12 of the Endangered Species Act of 1973 directed the Secretary of the Smithsonian Institution to prepare a report on those plants considered to be Endangered, Threatened, or extinct. This report, designated as House Document No. 94–51, was presented to Congress on January 9, 1975. On July 1, 1975, the Director published a notice in the Federal Register (40 FR 27823) of his acceptance of the report of the Smithsonian Institution as a petition within the context of Section 4(c)(2) of the Act, and of his intention thereby to review the status of the plant taxa named within. On June 16, 1976, the Service published a proposal in the Federal Register (41 FR 24523) to determine approximately 1,700 vascular plant species to be Endangered species pursuant to Section 4 of the Act. This list of 1,700 plant taxa was assembled on the basis of comments and data received by the Smithsonian Institution and the Service in response to House Document No. 94–51 and the July 1, 1975, Federal Register publication. *Eriogonum gypsophilum* was included in the Smithsonian's report, the 1975 notice of review, and the 1976 proposal. General comments received in relation to the 1976 proposal were summarized in the April 26, 1978, Federal Register publication which also determined 13 plant species to be Endangered or Threatened species (43 FR 17909–17916). The Endangered Species Act Amendments of 1978 required that all proposals over two years old be withdrawn. A one year grace period was given to proposals already over two years old. On December 10, 1979, the Service published a notice (44 FR 70796) withdrawing the June 16, 1976, proposal along with four other proposals which had expired.

Based on sufficient new information the Service reproposed *Eriogonum gypsophilum* on July 25, 1980, and proposed its Critical Habitat for the first time (45 FR 49853). Additional field visits conducted by the Fish and Wildlife Service in the summer of 1980 provided additional economic data and biological evidence verifying the precarious status of the species. A public meeting was held on this proposal in Carlsbad, New Mexico, on August 27, 1980.

Hedeoma todsenii and its Critical Habitat were proposed on July 25, 1980, (45 FR 49857) for the first time. A public meeting was held on this proposal on August 28, 1980, in Alamogordo, New Mexico.

The regulations to protect Endangered and Threatened plants appear at 50 CFR 17 and establish the prohibitions and a permit procedure to grant exceptions, under certain circumstances, to the prohibitions.

The Department has determined that this is not a significant rule and does not require the preparation of a regulatory analysis under Executive Order 12044 and 43 CFR 14.

Summary of Comments and Recommendations

In the July 25, 1980, Federal Register proposed rules (45 FR 49857 and 45 FR 49853) and associated notifications and press releases, all interested parties were requested to submit factual reports or information which might contribute to the development of a final rule. Letters were sent to the Governor of New Mexico, the U.S. Army, the Bureau of Land Management, the Water and Power Resources Service, and local governments notifying them of the proposed action and soliciting their comments and suggestions. All comments received during the period from July 25, 1980, through November 3, 1980, were considered and are discussed below.

The Governor of New Mexico commented on the *Eriogonum gypsophilum* proposal and stated that the protection of *Eriogonum gypsophilum* appeared appropriate and warranted. No comment was received

from the New Mexico Governor on *Hedeoma todsenii*.

The U.S. Water and Power Resources Service provided both preliminary comments and further recommendations on the *Eriogonum gypsophilum* proposal. They noted that they would continue to include consideration of this plant in their planning process.

The U.S. Department of the Army also offered preliminary input and further comments on the *Hedeoma todsenii* proposal. Their comment on the proposal stated that they would work with the Service in an effort to protect *Hedeoma todsenii*.

A New Mexico botanist commented that he agreed with the *Hedeoma todsenii* as Endangered proposal and that the *Eriogonum gypsophilum* as Threatened proposal is reasonable. The Garden Clubs of America and the New Mexico Garden Club offered their support for both proposals.

A public meeting was held on the *Hedeoma todsenii* proposal on August 26, 1980, in Alamogordo, New Mexico. The Service made presentations on the proposal. Two individuals attended the meeting, asked questions about the plant, and offered their assistance in protecting *Hedeoma todsenii*.

A public meeting was held on the *Eriogonum gypsophilum* proposal on August 27, 1980. The Service made presentations on the *Eriogonum gypsophilum* proposal, as well as on *Hedeoma apiculatum* (another proposed plant). Three individuals attended the meeting—2 from the National Park Service and 1 from the Water and Power Resources Service. No comments or questions from the audience addressed *Eriogonum gypsophilum*.

Conclusion

After a thorough review and consideration of all information available, the Director has determined that *Eriogonum gypsophilum* Wooten and Standley (gypsum wild buckwheat) is likely to become an Endangered species within the foreseeable future throughout all or a significant portion of its range; and that *Hedeoma todsenii* Irving (Todsens pennyroyal) is in danger of extinction throughout all or a significant portion of its range due to one or more of the factors described in Section 4(a) of the Act.

These factors and their application to these two plants are as follows:

(1) *Present or threatened destruction, modification, or curtailment of their habitat or range.*

Eriogonum gypsophilum

Historically, *Eriogonum gypsophilum* has been known for nearly 70 years from only one locality in Eddy County, New Mexico. The eastern portion of this plant's range has been reduced in size due to the construction of a major highway (US 285). Present stocking rates of cattle seem to have little effect on the species, but long term records are not available. Increased grazing pressure could possibly prove detrimental to this species. Off-road vehicles such as motorcycles account for some mortality of the *Eriogonum gypsophilum* and this type of use should be restricted from the small area occupied by this species.

The proposed Brantley Dam Project which was authorized on October 20, 1972 (Public Law 92–514) is located in the same area as the *Eriogonum gypsophilum* population. A 1977 report contained the following comments on the effect of that dam on *Eriogonum gypsophilum*. The dam itself should have only a minor impact on the *Eriogonum gypsophilum*. The lowest elevation at which the plants occur is estimated to be at 3,200 feet. The 3,280 foot elevation level is the hypothetical project flood level of the impoundment. Thus, the rising water level probably will not affect the plants. If a flood should occur above this level, it should be of a very short duration and is predicted to be harmless unless plants are in flower, then reduced seed set would be expected (Spellenberg, 1977).

The stability of the gypsum may be affected very near the reservoir, as it has on the east side of Lake McMillan where slumping of gypsum bluffs has occurred. If this occurs, up to several hundred plants out of a total estimated population of 2,800 might be affected by new patterns of erosion and changes in microhabitat. Water and Power Resources Service personnel do not expect this to be a problem at the Brantley Dam project. A salt cedar fringe can be expected to develop around the new margin of the conservation pool. At Lake McMillan this salt cedar fringe extends up to as much as 10 vertical feet above the base of the levee. The development of a similar fringe around the Brantley Dam proposed pool might affect *Eriogonum gypsophilum* nearest the 3,280 foot level (Spellenberg, 1977).

Water and Power Resources personnel believe *Eriogonum gypsophilum* can probably exist with the Brantley Dam Project and they have noted that the plant's well being has been included in the project's planning process. They believe that the problems of slumping and the salt cedar fringe can be dealt with so as to insure the continued existence of the plant. The Water and Power Resources Service also notes that the Brantley Dam has been relocated downstream of its original location (which was addressed by Spellenberg) and is now 2 miles south-southeast of the closest *Eriogonum gypsophilum* population.

Hedeoma todsenii

Hedeoma todsenii is endemic to loose gravelly limestone slopes in the San Andres Mountains of New Mexico. The populations occur on public lands administered by the U.S. Army. The combined area of its two known populations is approximately 3000 m^2 and the number of surviving plants is estimated at 750. The reproductive potential, as measured by seed set, is low with an average seed yield of 0.22 seeds per flower (Irving, 1980).

The remoteness of *Hedeoma todsenii's* population and the restricted nature of the White Sands Missile Range affords *Hedeoma todsenii* considerable protection. Yet, its fragile habitat and the small number of known populations and individuals which comprise them combine to leave the species particularly vulnerable and in need of protection. While there is little likelihood of *Hedeoma todsenii* populations being hit by a missile, even minor changes in the usage of its protected canyon sites could threaten the continued existence of the species. Activities such as large scale troop movements or the construction of storage facilities, missile retrieval roads, or power and communication lines could jeopardize the habitat of *Hedeoma todsenii* without proper planning for its protection. No protection or management plan currently exist for this species.

(2) *Overutilization for commercial, sporting, scientific, or educational purposes.*

There is no evidence to suggest overutilization of either of these plants for any of the above purposes.

(3) *Disease and predation (including grazing).*

Some light grazing occurs mostly along cattle trails in the habitat of *Eriogonum gypsophilum*. An increase in the intensity of this grazing could be detrimental to *Eriogonum gypsophilum* due to trampling.

(4) *The inadequacy of existing regulatory mechanisms.*

New Mexico State Law, Chapter 45, Article 11, Section 1–4, affords limited protection within 400 yards of any highway to all plants (except noxious weeds). This protection includes limited prohibitions against destruction, mutilation, or removal of living plants (except seeds) on State or private land. For those *Eriogonum gypsophilum*

plants occurring close to US 285 this would apply. No other state law offers these plants any protection.

In the case of *Eriogonum gypsophilum* the Bureau of Land Management and the Water and Power Resources Service do not currently have any regulations dealing with Endangered and Threatened plants. In the case of *Hedeoma todsenii* the Army's regulations dealing with endangered species were published in 1977 (42 FR 16385). The Endangered Species Act will now offer additional needed protection for these species.

(5) *Other natural or man-mode factors affecting their continued existence.*

The small size and number of the populations cause these species, especially *Hedeoma todsenii*, to be in greater danger of extinction due to natural fluctuations.

Critical Habitat

The Act defines "Critical Habitat" as "(i) the specific areas within the geographical area occupied by the species, at the time it is listed in accordance with the provisions of Section 4 of this Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) which may require special management considerations or protection; and (ii) specific areas outside the geographical area occupied by the species at the time it is listed in accordance with the provisions of Section 4 of this Act, upon a determination by the Secretary that such areas are essential for the conservation of the species."

Critical Habitat for *Hedeoma todsenii* is being determined to include the entire area in New Mexico where the species is known to occur. This area encompasses 2 km^2 of the White Sands Missile Range which is administered by the Department of the Army. Critical Habitat for *Eriogonum gypsophilum* is being determined to include 130 acres in New Mexico where the species currently occurs. This area is public land administered by the Bureau of Land Management. In the future, adjacent suitable habitat may be included as essential to the conservation of these species, because it is necessary to provide areas for proper management, reintroduction, and natural expansion. Modifications of these Critical Habitat designations may be proposed in the future.

Section (f)(4) of the Act requires, to the maximum extent practicable, that any proposal to determine Critical Habitat be accompanied by a brief description and evaluation of those activities which, in the opinion of the Secretary, may adversely modify such habitat if undertaken, or may be impacted by such designation.

Any activities which would result in increased trampling or disturbance of the extremely fragile areas where *Hedeoma todsenii* occurs would probably adversely modify the Critical Habitat. The long-term solution on how to best protect *Hedeoma todsenii* may be to greatly reduce all traffic in the area where this plant occurs. In this respect, Critical Habitat designation may affect Federal activities within the 2 km^2 area of *Hedeoma todsenii's* Critical Habitat, which is administered by the Department of the Army.

Any activity which would result in disturbance of the area where *Eriogonum gypsophilum* occurs would probably adversely modify the Critical Habitat. The long-term solution on how to best protect *Eriogonum gypsophilum* may be to develop a protection plan for the species, which would address and remove present threats. In this respect, Critical Habitat designation may affect Federal activities. The Water and Power Resources Service should include in their planning process for the Brantley Dam Project ways to insure the continued existence of *Eriogonum gypsophilum*. These plans should address the problems of slumping of the gypsum soils and ways to protect the habitat of the *Eriogonum gypsophilum* so that it is not used for any activity which would not be compatible with the plant's continued existence. The Bureau of Land Management may need to limit future stocking rates of cattle and off-road vehicle use in the small area where the *Eriogonum gypsophilum* occurs. This increased planning and the steps required by these agencies should not constitute a large impact or hardship on either agency.

Section 4(b)(4) of the Act requires the Service to consider economic and other impacts of specifying a particular area as Critical Habitat. The Service has prepared an impact analysis and believes at this time that economic and other impacts of this action are not significant in the foreseeable future. The area proposed as Critical Habitat for *Hedeoma todsenii* encompasses 2 km^2 of a very lightly and not critically used portion of the White Sands Missile Range. If the Army diverted certain activities from the 2 km^2, it would not greatly affect their operations. The only impact would probably be that additional planning to ensure protection of this site would be required. As stated earlier, efforts to protect the *Eriogonum gypsophilum* would only require additional planning and only minimal input of resources and manpower.

The Service has notified and is working with these other agencies which have jurisdiction over the land and water under consideration. These agencies were requested to submit information on economic or other impacts of the proposed action and this information was utilized in completing this analysis. The Service's Economic Impact Analysis was used as part of the basis for the Service's decision whether to exclude any area from the Critical Habitats for *Eriogonum gypsophilum* and *Hedeoma todsenii*.

Effects of the Rule

In addition to the effects discussed above, the effects of this rule will include, but will not necessarily be limited to, those mentioned below.

The Act and implementing regulations published in the June 24, 1977, Federal Register (42 FR 32373) set forth a series of general prohibitions and exceptions which apply to all Endangered plant species. All of those prohibitions and exceptions also apply to any Threatened species, unless a special rule pertaining to that Threatened species has been published and indicates otherwise. The regulations referred to above, which pertain to Endangered and Threatened plants, are found at §§ 17.61 and 17.71, of 50 CFR and are summarized below.

With respect to *Eriogonum gypsophilum* and *Hedeoma todsenii* all prohibitions of Section 9(a)(2) of the Act, as implemented by § 17.71 would apply. These prohibitions, in part, would make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, or sell or offer for sale this species in interstate or foreign commerce. Certain exceptions would apply to agents of the Service and State conservation agencies. The Act and 50 CFR 17.71 also provide for the issuance of permits to carry out otherwise prohibited activities involving Endangered or Threatened species under certain circumstances. International and interstate commercial trade in these plants does not exist. It is anticipated that few permits involving plants of wild origin would ever be issued, since these plants are not common in the wild or in cultivation. Additional paperwork and permits required for the public would be minimal.

Section 7(a) of the Act requires Federal agencies to evaluate their actions with respect to any species which is listed as Endangered or Threatened. This protection will now

accure to these plants. Provisions for Interagency Cooperation implementing Section 7 are codified at 50 CFR Part 402. These require Federal agencies not only to insure that activities they authorize, fund, or carry out, are not likely to jeopardize the continued existence of these plants, but also to insure that their actions are not likely to result in the destruction or adverse modification of their Critical Habitat which has been determined by the Director. A discussion of the involved Federal agencies appears in the Critical Habitat section of this rule. No other Federal involvement is foreseeable at this time.

National Environmental Policy Act

An environmental assessment has been prepared in conjunction with this rule. It is on file in the Service's Office of Endangered Species, 1000 North Glebe Road, Arlington, Virginia, and may be examined during regular business hours, by appointment. This assessment forms the basis for a decision that this is not a major Federal action which would significantly affect the quality of the human environment within the meaning of Section 102(2)(C) of the National Environmental Policy Act of 1969.

Author

This rule is being published under the authority contained in the Endangered Species Act of 1973, as amended (16 U.S.C. 1531–1543; 87 Stat. 844). The primary author of this rule is Ms. E. LaVerne Smith, Washington Office of Endangered Species (703/235–1975).

Literature Cited

Irving, R. S. 1979. *Hedeoma todsenii* (Labiatae), a new and rare species from New Mexico, *Madroño* 26(4): 184–187.

Irving, R. S. 1980. *Hedeoma todsenii* Status Report. Submitted to the U.S. Fish and Wildlife Service, Albuquerque, New Mexico. February 1, 1980.

Spellenberg, R. 1977. A report on the investigation of *Eriogonum gypsophilum* and *Haplopappus spinulosus* ssp. *laevis* in the vicinity of the Brantley Reservoir, Eddy County, New Mexico. Report prepared for the Bureau of Reclamation, Amarillo, Texas. 140 pp.

Wooton, E. O. and P. C. Standley. 1913. Descriptions of new plants preliminary to a report upon the flora of New Mexico. *Contr. U.S. Nat. Herb.* 16: 109–196.

Regulations Promulgation

Accordingly, § 17.12 of Part 17 of chapter I of Title 50 of the U.S. Code of Federal Regulations is amended, as set forth below.

1. Section 17.12 is amended by adding, in alphabetical order, the following plants:

§ 17.12 Endangered and threatened plants.

Species			Historic range	Status	When listed	Critical habitat	Special rules
Scientific	Common name						
Lamiaceae—Mint family: *Hedeoma todsenii.*	Todsens pennyroyal.		USA(NM)	E		17.96(a)	NA
Polygonaceae—Knotweed family: *Eriogonum gypsophilum.*	Gypsum wild buckwheat.		USA(NM)	T		17.96(a)	N/A

2. Also the Service § 17.99(a) by adding the Critical Habitat of *Hedeoma todsenii* after that of the *Hudsonia Montana,* family Cistaceae and the Critical Habitat of *Eriogonum gypsophilum* after that of *Zizania Texana,* family Poaciea as follows:

Family Lamiaceae: Todsens pennyroyal (*Hedeoma todsenii*).

New Mexico; Sierra County; the Critical Habitat of *Hedeoma todsenii* is best defined by two one-square kilometer sections on the 1000 m^2 Universal Transverse Mercator Grid, Zone 13. The more northern critical habitat lies between 76 and 77,000 m N and 39 and 40,000 m E. The southern area lies between 74 and 75,000 m N and 40 and 41,000 m E. Gypsum limestone soils.

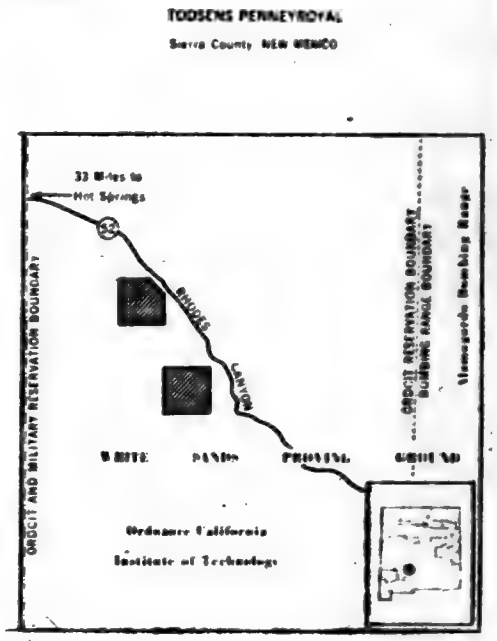

and,

Family Polygonaceae: gypsum wild buckwheat (*Eriogonum gypsophilum*) New Mexico; Eddy County; T20S, R25E, Section 19: N½, N½ NE¼ SE¼, N½ NW¼ SE¼; and T20S, R26E, Section 24: N½ NE¼, N½ S½ NE¼, NE¼ NW¼, N½ SE¼ NW¼; gypsum soils.

Gypsum Wild Buckwheat Eddy Co., N. Mex.

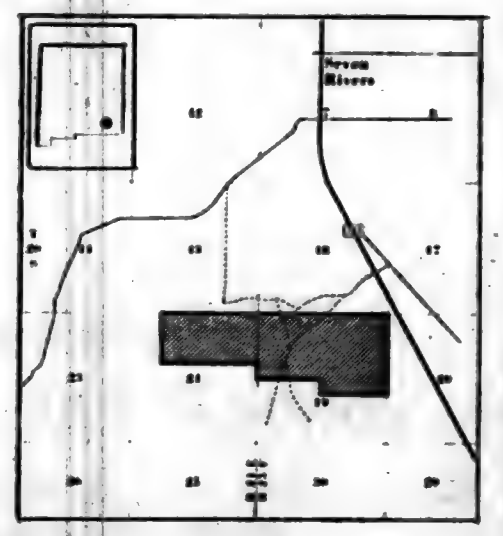

Dated: January 9, 1981.

Lynn A. Greenwalt,

Director, Fish and Wildlife Service.

[FR Doc. 81-1823 Filed 1-19-81; 8:45 am]

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January 19, 1981

Part XXXII

Environmental Protection Agency

Responsiveness Summary and Preamble on Public Participation Policy

ENVIRONMENTAL PROTECTION AGENCY

[AS-FRL-1688-6]

Responsiveness Summary and Preamble on Public Participation Policy

AGENCY: Environmental Protection Agency.

ACTION: Policy.

SUMMARY: This Policy is designed to provide guidance and direction to public officials who manage and conduct EPA programs on reasonable and effective means of involving the public in program decisions. The Policy applies to programs under the Clean Air Act (Pub. L. 95-95), Quiet Communities Act (Pub. L. 95-609), Resource Conservation and Recovery Act (Pub. L. 94-580), Toxic Substances Control Act (Pub. L. 94-469), Federal Insecticide, Fungicide and Rodenticide Act (Pub. L. 95-396), Safe Drinking Water Act (Pub. L. 95-190), and the Clean Water Act (Pub. L. 95-217).

The Policy establishes the objectives of public participation in EPA programs, outlines essential elements that must be incorporated in any public participation effort, discusses a number of public participation mechanisms with ground rules for their effective use, and assigns responsibility for planning, managing, funding, and carrying out public participation activities to EPA managers. The intent of the Policy is to ensure that managers plan in advance needed public involvement in their programs, that they consult with the public on issues where public comment can be truly helpful, that they use methods of consultation that will be effective both for program purposes and for the members of the public who take part, and finally that they are able to apply what they have learned from the public in their final program decisions.

The Policy provides a uniform set of guidelines and requirements applicable to all EPA programs, thus assuring a consistent base level of effort. The Policy applies to all EPA activities as well as to State and local activities funded or delegated by EPA. EPA will develop work plans as part of the annual budget development cycle, and amend program regulations as needed to incorporate the Policy. Affected programs are listed in the Appendix to the Policy.

DATES: The Policy is effective on January 19, 1981.

FOR FURTHER INFORMATION CONTACT: Sharon F. Francis, Special Assistant for Public Participation, Office of the Administrator (A-100), Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460, telephone 202/245-3066.

SUPPLEMENTARY INFORMATION: The Policy which takes effect with this publication is the result of long and careful consideration on the part of EPA, State and local agencies, and the diverse public that is actively concerned with EPA programs. EPA already enjoys a substantial amount of involvement from an active and interested public. Indeed, to that public goes substantial credit for progress made in cleaning up environmental pollution over the last ten years. There has been recognition, however, both inside and outside the Agency, that new steps need to be taken to ensure that members of the public affected by EPA programs are given an earlier and better opportunity to be heard in EPA decisionmaking.

EPA has received a significant volume of thoughtful criticism of its performance in implementing its legally mandated public participation activities and its more general responsibility to involve the public in governmental decisions. The desire of the public to have a stronger role in shaping government programs which affect their lives, businesses, and communities, and also the growing need for governmental units at all levels to participate in the programs of other governmental entities has stimulated this criticism. Government decision-makers have become increasingly aware of the capability of the public to make constructive use of opportunities for involvement. This new awareness has been accompanied by increased practical experience in using a variety of techniques to facilitate public involvement.

For these reasons, EPA has recognized the need to improve public involvement in governmental decisions by clarifying the rights and responsibilities of potential participants and those responsible for administering public participation programs. This will lead to better decisions, more satisfactory opportunities for the public to pursue their goals through government, and greater public confidence in government because decisions will be made with participation by interested and affected members of the public.

Both EPA and members of the public have more demands on their scarce time and resources than can be filled, and need to use them where the results can be most effective. This Policy's common objectives, procedures, and emphasis on results will benefit the entire Agency, and will give the public new confirmation that EPA intends to be as responsive as possible to public questions, concerns, and preferences.

This Policy is the result of analysis and reforms instituted at the Administrator's direction by the Agency Task Force on Public Participation. The Policy was initially proposed in the Federal Register on April 30, 1980. In order to ensure that the proposed Policy received attention from the various sectors of the public active in EPA's programs, the Agency mailed copies of the proposal to a nationwide mailing list that included business and industry, labor organizations, professional and trade associations, news media, consumer and women's organizations, environmental and public interest groups, Black, Hispanic, and Native American organizations, scientific, public health, legal and planning societies, and State agencies.

Additionally, each of EPA's ten regional offices received copies of the Policy for distribution to their constituent lists at the regional, State and local levels. A number of regional offices wrote and distributed summaries of the proposed Policy, as well as held meetings to give members of the public opportunity to raise questions and express their views. Public meetings were held in Boston, Chicago, Columbus, Minneapolis, Denver, Seattle, Portland, Boise, Anchorage, and Washington. As a result of these outreach efforts, close to 500 members of the public took part in discussions and offered comment on the proposal.

The following analysis of the comments received, in terms of the affiliation of the person commenting, provides insight on the expectations and needs of various sectors of the public.

Written comments were received from people in forty-two States, with the largest number of comments coming from States where EPA's regional offices had also stimulated public meetings, namely Massachusetts, Connecticut, Minnesota, Ohio and Washington. Written comments were in almost every case substantive and extensive, often running many pages in length. In almost all cases, the people who wrote had been involved with EPA programs either as public participants or program managers, and their comments reflected this reservoir of practical experience.

The largest section of the public who commented were public interest groups, including environmental, consumer, and local civic groups. They provided 30% of the comments received and were closely followed by economic interests, including industries, business, and trade associations with 27%. Additionally, 15% of comment came from State agencies, 10% from citizens-at-large, 10% from

local officials, 6% from other federal agencies, and 2% from academic institutions.

Over 420 issues were addressed, and of these, the ones that drew the greatest amount of discussion were the following: the composition of advisory groups; whether to provide financial assistance to the participating public, and under what criteria; whether to apply the Policy to State agencies carrying out EPA programs; and the content and use of Responsiveness Summaries.

Eighty-five percent of those who commented supported a final Policy as strong or stronger than the one the Agency proposed in late April, and this support came from all sectors of the public. In the case of State agencies, for example, only 7 of the 44 who commented were negative about EPA's emphasis on public participation or wanted to see it weakened. The other 37 agencies all wanted a Policy and wanted it even stronger than EPA proposed. Economic interests expressed opinions on both sides of the issue, but 20% wanted it stronger and 50% supported the Policy as proposed.

Those who opposed the proposed Policy said that EPA should not be in the business of stimulating participation. People who are really concerned, they said, will come forth and participate on their own. This assumes, however, that people on their own will know that environmental decisions are about to be made, that these decisions affect them, and that they will have enough background information to be able to contribute to what is usually a technical and complex discussion.

The Agency agrees that public participation must not be a contrived exercise, nor should it be undertaken with the purpose of manipulating the public into agreement with a governmental position. EPA recognized its responsibility to give affected sectors of the public a fair opportunity to know of forthcoming governmental decisions and to be heard when those decisions are made. Clear requirements will make public involvement more cost-effective, both for EPA management and for the various sectors of the public.

It is clear from widespread support for an effective Policy that EPA's emphasis on public participation struck a responsive chord in all sectors of the public. The public's thoughtfully reasoned statements for amplifying or strengthening aspects of the proposed Policy have convinced us of the merit of a number of changes. EPA recognizes the commitment it is now making to more open and effective consultation with the public. This Policy will provide a strong and practical framework to guide our interactions in the months and years ahead.

Summary of Response to Public Comment

The following sections respond to major points raised in comments made by the public.

1. *Objectives of EPA's Policy:* There was support from all sectors for the objectives stated in the proposed Policy, but a number of people called for additions as well. These include the role of the public in identifying and selecting among alternatives, the importance of early and continuing involvement, the significant opportunity that public participation affords for anticipating and reducing conflicts, and the need to create equal access to the regulatory process. Commentors also pointed out that objectives need to be comprehensive since they provide the yardstick for evaluation. All of these suggestions have merit, and EPA has added them to the final Policy.

2. *Application of the Policy to EPA Programs Under State Administration:* Most of the laws administered by EPA designate certain programs which can be administered by a State, instead of by EPA, if the State program meets statutory and regulatory criteria. The proposed Policy required EPA to provide for public participation in the process of deciding to approve such State programs. It also provided that, after approval, the State would assume responsibility for meeting the public participation requirements.

In the preamble to the proposed Policy, EPA drew attention to this matter, and specifically asked for comment on whether the Agency should apply the Policy to EPA programs when conducted by States. A major proportion of commenters from all categories preferred the option as proposed, on the grounds that participation is needed and beneficial to program decisions regardless of who administers the program. A much smaller number of commenters favored permitting States to achieve "substantially equivalent results" to EPA's Policy; however, none responded to EPA's request for "specific suggestions for wording and evaluation criteria" since "substantially equivalent provisions have a history of being easy to espouse but difficult to demonstrate." After reading all the comments, EPA concludes that the Policy, as proposed, has sufficient flexibility within a context of practical requirements that it will be beneficial to State program administration.

Two years ago, when EPA proposed its regulation for public participation in Clean Water, Drinking Water and Solid Waste programs (40 CFR Part 25), the question of applying the requirements to States was intensely controversial. Now, with more than a year of experience in these programs, the worst apprehensions have not materialized and public participation has begun to prove its constructive role. Most State agencies, therefore, were not troubled by the proposal. In view of the comments received and the discussion above, EPA finds no need to alter this aspect of the Policy.

3. *Consistency with Part 25 Regulations for Public Participation in Water and Waste Management Programs:* In proposing the Policy, EPA made a conscious effort to ensure compatibility between its provisions and those of the earlier Part 25 regulation for programs under the Clean Water Act, Safe Drinking Water Act, and Resource Conservation and Recovery Act. Two additions that EPA is now making to the Policy will further remove the differences between the two documents and bring the Policy into closer alignment with Part 25. One change is the requirement that EPA review and require further efforts as needed to achieve the balanced membership requirement for advisory groups. The other change is that EPA may require corrective action on the part of State program grantees to ensure compliance with the Policy. While differences in wording remain between the two documents, EPA holds that 40 CFR Part 25 fulfills the intent and requirements of the Policy in the procedural areas (Section D. of Policy) of common subject matter. If differences remain between Part 25 and the Policy, Part 25 will control. The sections of the Policy on work plans, assistance to the public, and authority and responsibility augment the requirements contained in 40 CFR Part 25, and apply to all programs of the Agency.

4. *How to Identify the Public Who Should Participate:* Many of those who commented on the Identification section of the Policy liked our emphasis on developing a contact list of interested or affected members of the public at the outset of a participation opportunity. Several pointed out, however, that contact lists need frequent updating, especially on lengthy projects. This change we are incorporating. A number of those who commented on this section requested that the Policy indicate the uses of a contact list, and we have revised the Policy to do so.

5. *Ways to Inform and Reach the Public:* The majority of comments asked for amplification of the Outreach

section. Commenters sent many valuable suggestions, many of which the final Policy incorporates. Some general areas of concern with which we agree, and have responded to in the final Policy, include the following: (1) public access to information is critical to successful public participation programs; (2) information must be translated from "technical" language into language understandable to the lay public; (3) outreach activities should be emphasized as ongoing activities so the public can be kept up to date on matters of concern; and (4) the uninterested but impacted publics' views need to be solicited in some manner.

Specific comments addressed each of the major sections of Outreach. Under *Methods*, commenters suggested further use of a variety of techniques, many of which we have added to the final version. Under *Content*, it was suggested that materials be prepared in clear, concise language to inform the public of triggering events which initiate a proposed action, and provide details on supporting research analysis and methodology. These suggestions, along with the availability of Environmental Impact Statements, were included in the final Policy. Under *Notification*, the major concerns were that notices should inform the public about the initiation of a decision-making process and that we should describe the type of media notice required. In the *Repositories* section, commenters suggested public and university libraries as appropriate locations, and that consideration ought to be given to accessibility, travel time, parking, and availability during off-work hours. We agreed with these suggestions and included them in the final Policy.

6. *Public Notification of Financial Assistance Awards:* We received complaints from the public that often they never hear about EPA funded projects that provide participation opportunities in programs of State, substate, and local governments. They suggested that we incorporate some type of requirement that notice be given either at the time EPA receives applications, or after award acceptance. After careful consideration, and with a conscious effort to keep the Policy consistent with 40 CFR Part 25 regulations, we have added a section under *Timing* that the recipient give public notice within 45 days of award acceptance.

7. *Methods to Improve Communication Between EPA and the Public:* Many commenters were dissatisfied with the *Dialogue and Hearing* section. They felt we placed too much emphasis on describing hearing requirements, and did not give enough attention to other methods of ensuring communication between EPA and the public. We responded to these concerns by amplifying the *Dialogue* section to include these suggestions and listing other methods of soliciting and using public input. These methods include review groups, workshops, conferences, personal correspondence and conversations, meetings, and citizen panels.

8. *Suggestions for Improvement of Hearing Format:* All sectors of the public responding felt that hearing procedures needed to move away from rigid rituals and be more attuned to listening and responding to the public's views. We agree that public hearings can be more successful if they are conducted in a non-intimidating manner, and if the public has been informed of the issues and has access to pertinent information prior to the hearing. Those who commented on the *Content of Notice* section stressed the importance of early and clear discussion of the issues and alternatives the public is asked to comment upon. Under *Conduct of Hearing*, many commenters asked for more informality and opportunity for questions and answers in the hearing. People also commented that hearings are often located too far from the affected area. We have revised the Policy to incorporate these ideas.

9. *45-Day Notice Prior to Hearings:* Although some commenters felt that a 45-day notice prior to the date of a hearing was a needless delay of time and would slow down the process, others felt that 45 days was much too short a time to expect individuals or groups to prepare adequately for hearings, and some said that a 60 or 90-day notice would be more appropriate for proper preparation. Approximately 30% of the respondents favored a 30-day or less notice period, with the remaining 70% favoring a 45-day or longer period. However, the bulk of the comments favored keeping the hearing notice requirement at 45 days. The major reasons for the 45-day notice period include: (1) there is little control over mail deliveries, and often the interested public receives information too late to prepare effectively for hearings; (2) many groups meet once a month and need time to meet and discuss the notice to decide on a course of action; (3) travel time over long distances is often involved to acquire and review material; and (4) the review material is often complex and requires time for research.

Additionally, we received comments concerning the discretion given to Assistant Administrators and Regional Administrators to waive the 45-day requirement to 30 days or less in emergency situations, or if the issues are not complex or controversial. Some commenters objected to the waiver saying it gives the Assistant Administrators and Regional Administrators too much discretionary power, and feared they may use the waiver more often than necessary. We feel some flexibility must be maintained here, and that the Assistant Administrators and Regional Administrators would be able to make exceptions they feel are warranted. However, we have stated that those objecting to a waiver may appeal to the Administrator of EPA.

10. *Composition of Advisory Groups:* One of the subjects most widely discussed in the proposed Policy has been the composition of advisory groups. Almost all who commented on this subject believed EPA was fair and used good judgment to prescribe a balance of backgrounds among advisory group members; however, a great many commenters believed certain categories sympathetic to their own viewpoints should be given added weight, or others of contrasting views should be prohibited.

Overall, commenters favored EPA's proposed balance of categories two-to-one, and we intend to retain this provision, with two important additions: tribal officials have been added as another category of public officials, and we have made clear that elected public officials should not be from the decision-making body the group is advising. Several people wanted "citizens with economic interests" and "organizations with economic interests" as two separate categories, but we do not agree with this proposal. We prefer to leave the citizen-at-large category unencumbered so appointing officials can have room to select a variety of individuals with potentially worthwhile contributions.

11. *Proof of Effort to Achieve Advisory Group Composition:* A number of those who commented were concerned that the balanced membership of advisory groups could be manipulated if there is not some degree of oversight by EPA. They also pointed out that the 40 CFR Part 25 regulation has a section calling for demonstration of "proof of effort," and this section has given valuable oversight to agencies with advisory groups. We agree that federal guidance may be valuable in this area and consequently have added a section that requires advice, assistance, review, and approval by EPA.

12. *Use of Advisory Group Recommendations:* A number of people

experienced with advisory groups reported their frustration with instances when the group felt their recommendations were being suppressed by the agencies they advised. Since a major purpose of this Policy is to improve openness on the part of governmental entities, we have added a short section to the Policy which makes it clear that advisory group recommendations should be publicly available.

13. *The Frequency and Use of Responsiveness Summaries:* The great majority of those who commented on the subject of Responsiveness Summaries supported EPA's requirement, and thought these summaries would provide an important addition to decision-making. A few people pointed out, however, that our emphasis should not be on documenting public views as much as it should be on using them. We agree with these comments and have added some language to reflect this emphasis. Additionally, there was a certain amount of misunderstanding that Responsiveness Summaries would be required after every hearing or meeting. This is not our intent, but rather it is that Responsiveness Summaries be prepared at "key decision points." These will be identified in public participation work plans; as well as in program regulations where they are being revised to incorporate provisions of this Policy.

14. *How Much Feedback Should Be Provided to the Public on the Results of its Participation?:* EPA's proposal that feedback be provided received strong support from all sectors of the public. A number of commenters wanted to see feedback provided within a time limit, such as 60 days, though others recognized the burden that such acknowledgements would place on the Agency's staff. Throughout the comments on this section was the desire on the part of participants to know substantively why their suggestions were or were not accepted. EPA does not have the staff resources to be able to commit itself to interim replies of a substantive nature, especially when the number of comments on many issues run into the thousands. We do, however, recognize a serious commitment to providing feedback and thus are revising the policy to state that all "participants in a particular activity (must) receive feedback," not just "have access" to it as stated in our earlier proposal.

15. *The Use of Work Plans:* In EPA's initial proposal, public participation work plans were contemplated for two reasons: first, good public participation needs to be carefully planned, and second, the resource outlays needed for public participation should be built into program operating budgets. Many members of the public, as well as State and substate officials who commented on the Policy, supported EPA's emphasis upon work plans. In fact, several said work plans should be discussed earlier in the Policy, a suggestion we have taken. Additionally, we have added some clarifying and strengthening language on the content of work plans and the timing of their preparation. Work plans will be developed at both the program and project levels, and EPA will provide guidance on the content of these documents.

16. *The Use of Public Funds to Assist the Participating Public:* To a large extent the debate over financial assistance to members of the public or public organizations focussed on the use of such funds in regulatory or adjudicatory proceedings. The debate was rendered moot by Congress in its action on EPA's 1981 appropriation which prohibited use of EPA funds for that purpose. The final Policy reflects the removal of this controversial aspect. Other types of public participation funding (e.g. travel expenses for witnesses at public hearings on hazardous waste disposal siting) proved uncontroversial and occasioned little comment. It is the Agency's intention to continue to fund such non-regulatory, non-adjudicatory participation.

17. *The Responsibility of EPA Officials for Implementing the Policy:* Many people who commented on the Policy liked the Agency's proposal which outlined the authority and responsibility of various Agency officials for ensuring the Policy's implementation. Several pointed out, however, that the language was confusing and duplicative. Therefore, we have rewritten that section with separate duties identified for Regional Administrators, Assistant Administrators, the Director of the Office of Public Awareness, and the Administrator. These sections should clarify the previous ambiguities.

18. *Ensuring Compliance with the Policy:* A large proportion of commenters wanted reassurance that this Policy is more than a collection of good intentions, and that EPA will stand behind its provisions and enforce them. They were particularly concerned with State and substate assistance recipients, and urged EPA to develop enforcement sanctions. While we hope that sanctions will not be necessary, we have amended the Policy with a section on sanctions that gives greater emphasis to Policy enforcement.

19. *Relationship Between Public Participation Policy and Environmental Impact Statement (EIS) Process:* Several people noted that the proposed Policy was silent on how the Policy fits with the Agency's EIS procedures. EIS's are undertaken primarily for grants for wastewater treatment plans, new source National Pollutant Discharge Elimination System (NPDES) permits, and certain major regulations. Many of the goals of this public participation Policy and EPA's EIS programs are similar. The requirements of the new Policy will serve to reinforce, and in some cases, supplement existing EIS procedures. In revising the Policy, we have added a number of references to EIS's to emphasize this relationship.

20. *Overall Evaluation of Effectiveness:* Several commenters from Federal or State government agencies, as well as several citizens with years of experience as active participants, drew attention to the importance of evaluating the Policy. They said this should be done both to oversee how well its provisions are being followed and to identify, where possible, the results of improved public involvement on Agency decisions and program implementation.

EPA is committed to evaluating this Policy within three years from the date of publication. This will be done under the direction of the Administrator's Special Assistant for Public Participation. This evaluation will include such matters as effectiveness of requirements, enforceability, resource expenditures, alternative public participation methods, public reaction, and reporting requirements.

Conclusion

EPA has made a number of additions and improvements to the proposed Policy on the basis of what it learned from the public during the comment period. Indeed, the revised Policy itself is a good example of how public involvement augments the Agency's work. The overwhelming proportion of statements came from people with long experience in public policy. All reflected a similar outlook: they, like EPA, want to make the system work better. Among many interesting statements, a few examples indicate the challenge of the public's expectations:

A planning board chairman from a small New England town spoke of the resentment that the public has come to feel toward the work of bureaucrats. From his experience in marshalling talent to address local problems, he suggested that EPA consider recruiting broad based citizen task forces or advisory groups to develop all the Agency's regulations and other major

policy items. They should be given a deadline, and only if they failed to produce, should EPA step in and do the work. "That would be real participation," he said.

A major national chemical manufacturer opened its statement by saying the Policy is not needed, since the company believes it duplicates existing procedures. The company continued, however, to urge substantial reform of EPA practices in order to give the public a much earlier opportunity for participation before the bureaucratic momentum becomes too great to accept any changes. They also advocated genuine responsiveness to the public, not just a "superficial consideration of comments."

A citizen group that has been working for years to reduce adverse environmental consequences from two oil refineries cited a series of disappointing interactions with EPA: delays in obtaining requested materials for review prior to hearings; difficulties in seeing pertinent materials even when they visited State offices; the high costs of reproducing documents; and a feeling that government agencies were giving substantial amounts of time and assistance to industrial applicants, but were not even willing to answer the questions of opponents, let alone assist them more substantially. The group also had the impression that EPA had its mind made up at the time of a public hearing, and the citizens felt their own efforts were wasted.

Statements such as these reveal the frustration that many members of the public have experienced when trying to work with the Agency, and they also point to the motivation and high hopes that the public continues to hold about participating in environmental protection issues. Public participation lies at the heart of the Agency's credibility with the public. It affords the best tested recipe for citizens to influence the governmental decisions that affect their lives and pocketbooks. This Policy takes an important step in defining when EPA will undertake public participation, and in saying that when we do it, we intend to do it right.

Members of the public who wish to obtain the background Compilation of Issues with their disposition and List of Commenters on this Policy may do so by contacting: Sharon F. Francis, Special Assistant for Public Participation, Office of the Administrator (A–100), Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460, telephone 202/245–3066.

Dated: January 13, 1981.

Douglas M. Costle,
Administrator.

Final E.P.A. Policy on Public Participation

This Policy addresses participation by the public in decision-making, rulemaking, and program implementation by the Environmental Protection Agency (EPA), and other governmental entities carrying out EPA programs. The term, "the public" as it is used here, means the people as a whole, the general population. There are a number of identifiable "segments of the public" who may have a particular interest or who may be affected one way or another by a given program or decision. In addition to private citizens, "the public" includes, among others, representatives of consumer, environmental, and minority groups; the business and industrial communities; trade, industrial, agricultural, and labor organizations; public health, scientific, and professional societies; civic associations; universities, educational, and governmental associations; and public officials, both elected and appointed.

"Public participation" is that part of the agency's decision-making process that provides opportunity and encouragement for the public to express their views to the agency, and assures that the agency will give due consideration to public concerns, values, and preferences when decisions are made.

A. Scope

The requirements and procedures contained in this Policy apply to the Environmental Protection Agency and other governmental entities carrying out EPA programs (referred to herein as "agency"). The activities covered by this Policy are:

EPA rulemaking, when regulations are classified as significant, (under terms of Executive Order 12044);

The administration of permit programs as delineated in applicable permit program regulations;

Program activites supported by EPA financial assistance (grants and cooperative agreements) to State and substate governments;

—The process leading to a determination of approval of State administration of a program in lieu of Federal administration;

—Major policy decisions, as determined by the Administrator, appropriate Assistant Administrator, Regional Administrator, or Deputy Assistant Administrator, in view of EPA's responsibility to involve the public in important decisions.

When covered activities are governed by EPA regulations or program guidance, the provisions of the Policy shall be included at appropriate points in these documents. Before those changes are made, the provisions of the existing regulations or program guidance shall govern.

B. Purpose

The purpose of this Policy is to strengthen EPA's commitment to public participation and establish uniform procedures for participation by the public in EPA's decision-making process. A strong policy and consistent procedures will make it easier for the public to become involved and affect the outcome of the agency's decisions.

This in turn will assist EPA in carrying out its mission, by giving a better understanding of the public's viewpoints, concerns, and preferences. It should also make the agency's decisions more acceptable to those who are most concerned and affected by them.

Agency officials will provide for, encourage, and assist participation by the public. Officials should strive to communicate with and listen to all sectors of the public. Where appropriate, this will require them to give extra encouragement and assistance to some sectors, such as minorities, that may have fewer opportunities or resources.

The Policy identifies those actions which are required and others that are discretionary, on the part of agency managers. The Policy assumes, however, that agency employees will strive to do more than the minimum required, and is not intended to create barriers to more substantial or more significant participation. The Policy recognizes the agency's need to set priorities for its use of resources, and emphasizes participation by the public in decisions where options are available and alternatives must be weighed, or where substantial agreement is needed from the public if a program is to be carried out.

Public participation must begin early in the decision-making process and continue throughout the process as necessary. The agency must set forth options and alternatives beforehand, and seek the public's opinion on them. Merely conferring with the public after a decision is made does not achieve this purpose.

Agency officials must avoid advocacy and precommitment to any particular alternative prior to decision-making. The role of agency officials is to plan and

conduct public participation activities that provide equal opportunity for all individuals and groups to be heard. Officials should actively seek to facilitate resolution of issues among disagreeing interests whenever possible.

Decision-makers are aware that issues which are not resolved to the satisfaction of the concerned public may ultimately face time-consuming review. If the objectives of EPA's public participation program are achieved, delays to accommodate litigation should be reduced.

C. Objectives

In establishing a policy on public participation, EPA has the following objectives:

—To use all feasible means to create early and continuing opportunity for public participation in agency decisions;

—To promote the public's involvement in implementing environmental protection laws;

—To make sure that the public understands official programs and the implications of potential alternative courses of action;

—To solicit assistance from the public in identifying alternatives to be studied, and in selecting among alternatives considered;

—To keep the public informed about significant issues and changes in proposed programs or projects, as they arise;

—To create an equal and open access for the interested and affected parties to the regulatory process;

—To make sure that the government understands public goals and concerns, and is responsive to them;

—To demonstrate that the agency consults with interested or affected segments of the public and takes public viewpoints into consideration when decisions are made;

—To anticipate conflicts and encourage early discussions of differences among affected parties;

—To foster a spirit of mutual trust, confidence, and openness between public agencies and the public.

D. General Procedures for All Programs

Each Assistant Administrator, Office Director, or Regional Administrator shall determine forthcoming decisions or activities to which this Policy should be applied, and take the steps needed to assure that adequate public participation measures are developed and implemented.

To ensure effective public participation in any decision or activity, the agency must carry out five basic functions: Identification, Outreach, Dialogue, Assimilation, and Feedback.

1. *Identification.* It is necessary to identify groups or members of the public who may be interested in, or affected by, a forthcoming action. This may be done by a variety of means: developing a contact list of persons and organizations who may have expressed an interest in, or may by the nature of their purposes or activities be affected by or have an interest in a forthcoming activity; requesting from others in the agency or from key public groups, the names of interested and affected inidividuals to include; using questionnaires or surveys to find out levels of awareness; or by other means. If EPA is required to file an Environmental Impact Statement (EIS), the scoping process can be used to identify interested parties.

The responsible official(s) shall develop a contact list for each program or project, and add to the list whenever members of the public request it. The list should be up-dated frequently, and it will be most useful if subdivided by category of interest or geographic area.

The contact list shall be used to send announcements of participation opportunities, notices of meetings, hearings, field trips and other events, notices of available reports and documents, and for identifying members of the public who may be considered for advisory group membership and other activities.

2. *Outreach.* The public can contribute effectively to agency programs only if it is provided with accurate, understandable, pertinent and timely information on issues and decisions. The agency shall make sure that adequate, timely information concerning a forthcoming action or decision reaches the public. The agency shall provide policy, program, and technical information at the earliest practical times, and at places easily accessible to interested and affected persons and organizations, so they can make informed and constructive contributions to decision-making. Information and educational programs shall be developed so that all levels of government and the public have an opportunity to become familiar with the issues and the technical data from which they emerge. Informational materials shall highlight significant issues that will be the subject of decision-making. Special efforts shall be made to summarize complex technical materials for the public.

a. *Methods.* The objective of the agency's public outreach program is to insure that the public understands the significance of the technical data so that rational public choices can be made. Outreach programs require the use of appropriate communication tools, and should be tailored to start at the public's level of familiarity with the subject.

The following, among other approaches, may be used for this purpose:

(1) publications, fact sheets, technical summaries, bibliographies;

(2) questionnaires, surveys, interviews;

(3) public service announcements, and news releases;

(4) educational activities carried out by public organizations.

b. *Content.* Outreach materials must include background information (e.g. statutory basis, rationale, or the triggering event of the action); a timetable of proposed actions; summaries of lengthy documents or technical material where relevant; a delineation of issues; alternative courses of action or tentative determinations which the agency may have made; whether an EIS is, or will be, available; specific encouragement to stimulate active participation by the public; and the name of an individual to contact for further information.

Whenever possible, the social, economic, and environmental consequences of proposed decisions and alternatives should be clearly stated in outreach material. Technical evidence and research methodoogy should be explained. Summaries of technical documents should be footnoted to refer to the original data. Fact sheets, news releases, summaries, and similar publications may be used to provide notice of availability of materials and to facilitate public understanding of more complex documents, but should not be a substitute for public access to the complete documents.

c. *Notification.* The agency must notify all parties on the contact list and the media of opportunities to participate and provide appropriate information, as described in the first paragraph of Section 2.b. above. Printed legal notices are often required by program regulations, but do not substitute for the broader notice of the media and contact list required by this section.

d. *Timing.* Notification (above) must take place well enough in advance of the agency's action to permit the public to respond. Generally, it should take place not less than 30 days before the proposed action, or 45 days in the case of public hearings (exceptions in the case of public hearings are discussed under Dialogue, below).

Where complex issues or lengthy documents are presented for public comment, the comment period should allow enough time for interested parties to conduct their review. This period

generally should be no less than 60 days. Where participation opportunities are to be provided in programs of State, substate, and local governments supported by EPA financial assistance, notice shall be given by the recipient to the public within 45 days after award acceptance.

e. *Fees for Copying.* Whenever possible, the agency should provide copies of relevant documents, free of charge. Free copies may be reserved for private citizens and public interest organizations with limited funds. Any charges must be consistent with requirements under the Freedom of Information Act as set forth in 40 CFR Part 2.

f. *Depositories.* The agency shall provide one or more central collections of documents, reports, studies, plans, etc. relating to controversial issues or significant decisions in a location or locations convenient to the public. Depository arrangements should be made when possible with public libraries and university libraries. Consideration must be given to accessibility, travel time, parking, transit, and to availability during off-work hours. Copying facilities, at reasonable charges, should be available at depositories.

3. *Dialogue.* There must be dialogue between officials responsible for the forthcoming action or decision and the interested and affected members of the public. This involves exchange of views and open exploration of issues, alternatives, and consequences.

Public consultation must be preceded by timely distribution of information and must occur sufficiently in advance of decision-making to make sure that the public's options are not foreclosed, and to permit response to public views prior to agency action. Opportunities for dialogue shall be provided at times and places which, to the maximum extent feasible, facilitate attendance or participation by the public. Whenever possible, public meetings should be held during non-work hours, such as evenings or weekends, and at locations accessible to public transportation.

Dialogue may take a variety of forms, depending upon the issues to be addressed and the public whose involvement is sought. Public hearings are the most familiar forum for dialogue and often are legally required, but their use should not serve as the only forum for citizen input. When used, hearings should be at the end of a process that has given the public earlier opportunity for becoming informed and involved. Often other techniques may serve a broader purpose:

- *Review groups* or *ad hoc committees* may confer on the development of a policy or written materials;
- *Workshops* may be used to discuss the consequences of various alternatives, or to negotiate differences among diverse parties;
- *Conferences* provide an important way to develop concensus for changing a program or the momentum to undertake new directions;
- *Task forces* can give concentrated and experienced attention to an issue;
- *Personal conversations* and *personal correspondence* give the individualized attention that some issues require;
- *Meetings* offer a good opportunity for diverse individuals and groups to express their questions or preferences;
- A *series of meetings* may be the best way to address a long and complex agenda of topics;
- *Toll-free lines* can aid dialogue, especially when many questions can be anticipated or time is short;
- A *hearing panel* composed of persons from representative public groups may be used in non-adjudicatory hearings to listen to presentations and review the hearing summary.

This list is not exhaustive, but it indicates the importance for program managers in being flexible and choosing the right techniques for the right occasions.

a. *Requirements for public hearings.* (1) Timing of Notice. Notices must be well publicized and mailed to all interested and affected parties on the contact list (see 1. above) and to the media at least 45 days prior to the date of the hearing. However, when the Assistant Administrator or Regional Administrator find that no review of substantial documents is necessary for effective participation and there are no complex or controversial matters to be addressed, the notice requirement may be reduced to no less than 30 days in advance of the hearing. Additionally, in permit programs, notice requirements will be governed by permit regulations and will be no less than 30 days. Notice for EIS's are covered by EIS regulation which calls for a 45-day review period, with an optional 15-day extension. Notice of the EIS hearing is generally contained in the Draft EIS. Hearings on EIS's are usually held before the end of the EIS review period, but no earlier than 30 days after the EIS notice. Assistant Administrators or Regional Administrators may further reduce or waive the requirement for advance notice of a hearing in emergency situations where there is imminent danger to public health and safety, or in situations where there is a legally mandated timetable. Assistant Administrators may also reduce this requirement if they determine that all affected parties would benefit from a shorter time period.

Members of the public who object to a waiver may appeal to the Administrator, stating their reasons in detail.

(2) Content of Notice. The notice must identify the matters to be discussed at the hearing and must include or be accompanied by: (a) a discussion of alternatives the public is being asked to comment upon and the agency's tentative conclusions on major issues (if any); (b) information on the availability of an EIS and bibliography of other relevant materials (if appropriate); (c) procedures and contacts for obtaining further information; and (d) information which the agency particularly solicits from the public.

(3) Provision of Information. All reports, EIS's, and other documents and data relevant to the discussions at public hearings must be available to the public on request after the notice, as soon as they become available to agency staff. Background information should be provided no later than 30 days prior to the hearing.

(4) Conduct of Hearing. The agency conducting the hearing must inform the audience of the issues involved in the decision to be made, the considerations the agency will take into account under law and regulations, the agency's tentative conclusions (if any), and the information which the agency particularly solicits from the public. Whenever possible, the hearing room should be set up informally. The agenda should allocate time for presentations, questions and answers, as well as formal commentary on the record. When needed, a pre-hearing meeting to discuss the issues should be held. Procedures must not inhibit free expression of views. When the subject of a hearing addresses conditions in a specific geographic area, the hearing itself should be held in that general area.

(5) Record of Hearing. The hearing record must be left open for at least ten days to receive additional comment, including any from those unable to attend in person, and may be kept open longer, at the discretion of the hearing officer. The agency must prepare a transcript or record of the hearing itself and add additional comments to the complete record of the proceeding. This must be available for public inspection and copying at cost at convenient locations. Alternatively, copies shall be provided free. If tapes are used, they should be available for use and copying on conventional equipment. When a

Responsiveness Summary (see Assimilation below) is prepared after a hearing, it must be provided to those who testified at or attended the hearing, as well as anyone who requests it.

b. *Requirements for advisory groups.* Formation of an advisory group is one of the methods that can be chosen to gain sustained advice from a representative group of citizens.

The primary function of an advisory group is to assist elected or appointed officials by making recommendations to them on issues which the decisionmaking body and the advisory group consider relevant. These issues may include policy development, project alternatives, financial assistance applications, work plans, major contracts, interagency agreements, budget submissions, among others. Advisory groups can provide a forum for addressing issues, promote constructive dialogue among the various interests represented on the group, and enhance community understanding of the agency's action.

(1) Requirements for Federal EPA Advisory Committees: When EPA establishes an advisory group, provisions of the Federal Advisory Committee Act (Pub. L. 92—463) and General Service Administration (GSA) Regulations on Federal Advisory Committee Management must be followed.

(2) Requirements for State and Substate and Local Advisory Committees: (Explanatory Note: The following guidelines do not apply to advisory committees, as defined by the Federal Advisory Committee Act, which are established or utilized by EPA.) In instances where regulations, program guidance, or the public participation work plans of State, substate, or local agencies, call for advisory groups, the following special requirements will apply:

(a) Composition of Advisory Groups. Agencies must try to constitute advisory groups so that the membership includes the major affected parties, reflects a balance of interests, and consists of substantially equivalent proportions of the following groups:

- Private citizens. This portion of the advisory group should not include anyone who is likely to incur a financial gain or loss greater than that of an average homeowner, taxpayer, or consumer as a result of any action that is likely to be taken by the managing agency;
- Individual citizens or representatives of organizations that have substantial economic interests in the plan or project;
- Federal, State, local, and tribal officials. These may be both elected and policy-level appointed officials, so long as the elected officials do not come from the decision-making body the group is advising;
- Representatives of public interest groups. A "public interest group" is an organization which has a general civic, social, recreational, environmental, or public health perspective in the area, and which does not directly reflect the economic interests of its membership.

Generally, where an activity has a particular geographic focus, the advisory group should be composed of persons from that geographic area, unless issues involved are of wider application.

Where problems in meeting the membership compostion arise, the agency should request advice and assistance from EPA or the State in the case of a delegated program. EPA shall review the agency's efforts to comply, and approve the advisory group composition, or, if the agency's efforts were inadequate, require additional actions.

(b) Resources for Advisory Groups. To the extent possible, agencies shall identify professional and clerical staff time which the advisory group may depend upon for assistance, and provide the advisory group with an operating budget which may be used for mailing, duplicating, technical assistance, and other purposes the advisory group and the agency have agreed upon. The agency should establish a system for reimbursing advisory group members for reasonable out-of-pocket expenses that relate to their participation on the advisory group.

(3) Advisory Group Recommendations: Recommendations, including minority reports and the minutes of all meetings of an advisory group, are matters of public information. As soon as these become available to agency staff, the agency must provide them to the public on request and distribute them to relevant public agencies. Advisory groups may communicate with EPA or the public as needed, or request EPA to perform an evaluation of the assisted agency's compliance with the requirements of this part.

4. *Assimilation.* The heart of public participation lies in the degree to which it informs and influences final agency decisions

Assimilating public viewpoints and preferences into final conclusions involves examining and analyzing public comments, considering how to incorporate them into final program decisions, and making or modifying decisions according to carefully considered public views. The agency must then demonstrate, in its decisions and actions, that it has understood and fully considered public concerns. Assimilation of public views must include the following three elements:

a. *Documentation.* The agency must briefly and clearly document consideration of the public's views in Responsiveness Summaries, regulatory preambles, EIS's or other appropriate forms. This should be done at key decision points specified in program guidance or in work for public participation.

b. *Content.* Each Responsiveness Summary (or similar document) must:

—explain briefly the type of public participation activity that was conducted;

—identify or summarize those who participated and their affiliation;

—describe the matters on which the public was consulted;

—summarize the public's views, important comments, criticisms and suggestions;

—disclose the agency's logic in developing decisions; and

—set forth the agency's specific responses, in terms of modifying the proposed action, or explaining why the agency rejected proposals made by the public.

c. *Use.* The agency must use Responsiveness Summaries in its decision-making.

In addition, final Responsiveness Summaries that are prepared by an agency receiving financial assistance from EPA must also include that agency's (and where applicable, its advisory group's) evaluation of its public participation program.

5. *Feedback.* The agency must provide feedback to participants and interested parties concerning the outcome of the public's involvement. Feedback may be in the form of personal letters or phone calls, if the number of participants is small. Alternatively, the agency may mail a Responsiveness Summary to those on the contact list, or may publish it.

a. *Content.* The feedback that the agency gives must include a statement of the action that was taken, and must indicate the effect the public's comments had on that action.

b. *Availability.* Agency officials must take the initiative in giving appropriate feedback, and must assure that all public participants in a particular activity are provided that feedback. As Responsiveness Summaries are prepared, their availability should be announced to the public. When regulations are developed, reprints of

preambles and final regulations must be provided to all who commented.

E. Work Plans

A work plan is a written document used for planning a public participation program. It may be an element of regulatory development plans or program plans. Each work plan should include the following elements: objectives, schedules, techniques, audiences and resources requirements. Work plans should be completed on both a program and project level or for each activity identified under Scope of the Policy.

Public participation work plans, undertaken by EPA or by applicants for EPA financial assistance, shall set forth, at a minimum:

1. Key decisions subject to public participation;
2. Staff contacts and budget resources to be allocated to public participation;
3. Segments of the public targeted for involvement;
4. Proposed schedule for public participation activities to impact program decisions;
5. Mechanism to apply the five basic functions—Identification, Outreach, Dialogue, Assimilation, and Feedback—outlined in Section D of this Policy.

Reasonable costs of public participation incurred by assisted agencies, including advisory group expenses, and identified in an approved public participation work plan, will be eligible for financial assistance, subject to statutory or regulatory limitations.

Assistant Administrators and Regional Administrators will ensure that program work plans are developed in a timely manner for use in the annual budget planning process. Work plans will be reviewed by the Special Assistant for Public Participation, who will work with program and regional managers to ensure that work plans adequately carry out this Policy. Work plans may be used as public information documents.

F. Assistance to the Public

EPA recognizes that responsible participation by the various elements of the public in some of the highly technical and complex issues addressed by the agency requires substantial commitments of time, study, research analysis, and discussion. While the Agency needs the perspectives and ideas that citizens bring, it cannot always expect the public to contribute its efforts on a voluntary basis.

Assistant Administrators, Office Directors, and Regional Administrators can provide funds to outside organizations and individuals for public participation activities which they, as EPA managers, deem appropriate and essential for achieving program goals, and which clearly do not involve rulemaking or adjudicative activities.

Participation Funding Criteria—Any financial assistance awarded by the Agency for non-regulatory or non-adjudicatory participation should be based on the following criteria:

(1) whether the activity proposed will further the objectives of this Policy;
(2) whether the activity proposed will result in the participation of interests not adequately represented;
(3) whether the applicant does not otherwise have adequate resources to participate; and
(4) whether the applicant is qualified to accomplish the work.

These are the primary tests for public participation financial assistance. From among those who meet these tests, the Agency will make special efforts to provide assistance to groups who may have had fewer opportunities or insufficient resources to participate.

G. Authority and Responsibility

Public participation has an integral part in the accomplishment of any program. It should routinely be included in decision-making and not be treated as an independent function. Managers shall assure that personnel are properly trained, and that funding needs are incorporated in their specific budgets.

Responsibility and accountability for the adequacy of public participation programs belongs primarily to the Regional Administrators and the Assistant Administrators, under the overall direction of the Administrator.

1. *The Administrator* maintains overall direction and responsibility for the Agency's public participation activities. Specifically, the Administrator, aided by the Special Assistant for Public Participation, will:

(a) establish policy direction and guidance for all EPA public participation programs;
(b) review public participation program work plans, including resource allocations;
(c) coordinate public participation funding to outside groups to ensure the most economical expenditures;
(d) provide technical advice and assistance as appropriate;
(e) develop guidance and training needed to ensure that program personnel are equipped to implement the Policy;
(f) provide incentives to agency personnel to ensure commitment and competence; and
(g) evaluate at least annually the adequacy of public participation activities conducted under this Policy, and the appropriateness and results of public participation expenditures.

2. *Assistant Administrators* have the following responsibilities:

(a) identify and address those activities where application of this Policy is required;
(b) identify and address those forthcoming major policy decisions where the Policy should be applied;
(c) ensure that program work plans are developed annually to provide for adequate public participation in the above decisions and activities;
(d) implement approved work plans for public information and public participation activities;
(e) ensure that, as regulations for the programs cited in the Appendix of the Policy are amended, they incorporate the Policy's provisions;
(f) evaluate the appropriateness of public participation expenditures and activities under their jurisdiction, revising and improving them as necessary;
(g) encourage coordination of public participation activities;
(h) provide guidance and assistance to support regional office activities;
(i) seek public participation in decisions to modify or develop major national policies, at their discretion;
(j) consider funding authorized pilot and/or innovative demonstration projects;
(k) consider measures to ensure Policy implementation in appropriate managers' performance standards;
(l) provide financial assistance, as appropriate and available, for authorized public participation activities at the national level.

3. *Regional Administrators* have the following responsibilities:

(a) identify and address those EPA and EPA-assisted activities where application of this Policy is required;
(b) identify and address those forthcoming EPA and EPA-assisted major policy decisions where the Policy should be applied;
(c) ensure that work plans are developed annually by their programs and recipients to provide for adaquate public participation in the above decisions and activities;
(d) implement approved work plans for public information and public participation activities;
(e) ensure that public participation is included by applicants in the development of program funding applications to EPA, and in other decisions as identified by this Policy;
(f) provide guidance and technical assistance to recipients on the conduct of public participation activities;

(g) evaluate annually public participation activities of State, substate, or local entities revising and improving them as necessary;

(h) encourage coordination of public participation activities;

(i) support and assist the public participation activities of Headquarters;

(j) ensure that Regional staff are trained, and resources allocated for public participation programs;

(k) incorporate measures to ensure Policy implementation in managers' performance standards;

(l) provide small grants to representative public groups for needed public participation work;

(m) evaluate the appropriateness of public participation expenditures and activities, revising and improving them as necessary.

4. *The Director, Office of Public Awareness* has an important role in the development and support of Agency public participation activities. The Director will:

(a) assist Headquarters and regional programs in identifying interested and affected members of the public in compiling project contact lists;

(b) support Headquarters and regional programs in development and distribution of outreach materials to inform and educate the public about environmental programs and issues, and participation opportunities;

(c) develop annual public awareness/participation support plans to complement public participation work plans and identify resource requirements.

H. Compliance

Assistant Administrators, Office Directors, and Regional Administrators are responsible for making certain that, for the activities under their jurisdiction, all those concerned comply with the public participation requirements set forth in this Policy.

Regional Administrators will evaluate compliance with public participation requirements in appropriate State and substate programs supported by EPA financial assistance. This will be done during the annual review of the States' program(s) which is required by grant provisions, and during any other program audit or review.

If the Regional Administrator is not satisfied that this Policy is being carried out, he or she should defer grant award until these conditions can be met where that course is legally permissable. A Regional Administrator may grant a waiver from specific requirements in this Policy upon a showing by the agency that proposed actions will result in substantially *greater* public participation than would be provided by the Policy.

The Administrator of EPA has final authority and responsibility for ensuring compliance. Citizens with information concerning apparent failures to comply with these public participation requirements should first notify the appropriate Regional Administrator or Assistant Administrator, and then if necessary, the Administrator. The Regional Administrator, Assistant Administrator, or Administrator will make certain that instances of alleged noncompliance are promptly investigated and that corrective action is taken where necessary.

Appendix—List of Citations Covering Program Grants, Delegations, or Permits to State and Substate Governments

The Public Participation Policy will be incorporated in program regulations that cover financial assistance or delegations of authority to State or substate governments or approval of State programs. Where consolidated awards exist under these provisions, they also will be covered. Programs under the Clean Water Act, Safe Drinking Water Act, and the Resource Conservation Recovery Act are already covered by this Policy insofar as they have been amended, or will be amended, to incorporate 40 CFR, Part, 25. Consolidated permit programs are covered by 40 CFR, Parts 122, 123, and 124. Regulations that refer to existing programs now covered by the Policy will have to be amended to incorporate its provisions. Where program regulations are not yet written, the Policy shall be incorporated.

Clean Air Act (Pub. L. 95-95)

Air Pollution Control Program Grants

Sec. 105—Grants to State and local air pollution control agencies for support of air pollution planning and control programs. (Catalogue of Federal Domestic Assistance No. 66.001.)

Sec. 106—Grants to interstate air quality agencies and commissions to develop implementation plans for interstate air quality control regions. [When funded].

Urban Mass Transportation Technical Studies Grants (DOT)

Sec. 175—Grants to organizations of local elected officials with transportation or air quality maintenance responsibilities for air quality maintenance planning. (CFDA No. 20.505.)

Sec. 210—Grants to State agencies for developing and maintaining effective vehicle emission devices and systems inspection and emission testing and control programs. [When funded].

Quiet Communities Act (Pub. L. 95-609)

Quiet Communities—State and Local Capacity Building Assistance

Sec. 14(c)—Grants to State and substate governments and regional planning agencies for planning, developing, evaluating, and demonstrating techniques for quiet communities. (CFDA No. 66.031.)

Toxic Substances Control Act (Pub. L. 94-469)

State Toxic Substances Control Projects

Sec. 28—Grants to State for establishing and operating programs to complete EPA efforts in preventing or eliminating risks to health or environment from chemicals. (CFDA No. 66.800.)

Federal Insecticide, Fungicide and Rodenticide Act (Pub. L. 95-396)

Pesticides Enforcement Program Grants

Sec. 23(a)—Funding to States/Indian tribes through cooperative agreements for enforcement and applicator training and certification. (CFDA No. 66.700.)

Resource Conservation and Recovery Act (Pub. L. 94-580)

Sec. 3005(a)—Issuance of permits for treatment, storage and disposal of hazardous waste.

Sec. 3006—Delegation of authority to administer and enforce hazardous waste program.

Sec. 4002—State Planning Guidelines.

Solid and Hazardous Waste Management Program Support Grants

Sec. 4007—Approval for State, local, and regional authorities to implement State or Regional Solid Waste Plans and be eligible for Federal assistance. (CFDA No. 66.451.)

Sec. 4008—Grants to State and substate agencies for solid waste management, resource recovery and conservation, and hazardous waste management. (CFDA No. 66.451.)

Sec. 4009—Grants to States for rural areas solid waste management facilities. (CFDA No. 66.451.)

Solid Waste Management Demonstration Grants

Sec. 8006—Grants to State, municipal, interstate or intermunicipal agency for resource recovery systems or improved solid waste disposal facilities. (CFDA No. 66.452.)

Solid Waste Management Training Grants

Sec. 7007—Grants or contracts for States, interstate agency, municipality and other organizations for training personnel in occupations related to solid waste management and resource recovery. (CFDA No. 66.453.)

Safe Drinking Water Act (Pub. L. 95-190)

Sec. 1421(b)—Issuance of permits for underground injection control programs.

State Public Water System Supervision Program Grants

Sec. 1443(a)—Grants to States for public water system supervison. (CFDA #66.432.)

State Underground Water Source Protection—Program Grants

Sec. 1443(b)—Grants to States for underground water source protection programs. (CFDA #66.433.)

Clean Water Act (Pub. L. 95-217)

Construction Grants for Wastewater Treatment Works

Sec. 201—Grants to State, municipality, or intermunicipal agencies for construction of

wastewater treatment works. (CFDA #66.418.)

Water Pollution Control—State and Interstate Program Grants

Sec. 106—Grants to State and interstate agencies for water pollution control administration. (CFDA #66.419.)

Water Pollution Control—State and Areawide Water Quality Management Planning Agency

Sec. 208(g)—Delegation of management of construction grants programs to State designated agency(ies). (CFDA #66.426.)

Sec. 209—Grants for State and areawide waste treatment management planning. (CFDA# 66.428.)

Water Pollution Control—Lake Restoration Demonstration Grants

Sec. 314—Clean Lakes Program.

Sec. 402(a)—Issuance of permits under National Pollutant Discharge Elimination System.

Sec. 404—Issuance of permits for disposal of dredge and fill materials.

Pub. L. 94-580, Sections 3005 & 3006;
Pub. L. 95-190, Sections 1421-1423;
Pub. L. 95-217, Section 402;
Pub. L. 95-217, Section 404;
Pub. L. 95-65, Section 105;
Proposed consolidated permit regulations, covering: Hazardous Waste Program under RCRA; UIC Program under SDWA, NPDES and Section 404 of the Clean Water Act, and the PSD Program under the Clean Air Act.

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Part XXXIII

Department of Transportation

Federal Aviation Administration

Energy Conservation in the National Aviation System

DEPARTMENT OF TRANSPORTATION

Aviation Energy Conservation Policy

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of final policy.

SUMMARY: The purose of this notice is to set forth the final policy of the Federal Aviation Administration with respect to energy conservation in the National Aviation System. The policy represents a comprehensive plan requiring the support of the Federal Government, aircraft owners and pilots, airport operators, and aeronautical manufacturers and suppliers. The policy consists of commitments on the part of the FAA to take specific actions while at the same time it addresses complementary actions needed by non-FAA groups to maximize aviation energy conservation.

DATE: This policy becomes effective January 19, 1981.

FOR FURTHER INFORMATION CONTACT: Ms. Cynthia T. Zook, Energy Division (AEE-200), Office of Environment and Energy, Federal Aviation Administration, 800 Independence Avenue, S.W., Washington, D.C. 20591; telephone (202) 426-8724.

SUPPLEMENTARY INFORMATION:

Background. The FAA issued a Notice of Proposed Policy in the September 22, 1980, Federal Register which made available for public comment a draft Aviation Energy Conservation Policy. The policy included a statement of the energy problem facing aviation, a brief discussion of authorities and responsibilities of the various "actors" in the National Aviation System, and a description of the Federal action plan which included 31 actions grouped into the following five program areas:

- Air Traffic Control (ATC)/Flight Operations Programs
- Upgraded ATC Systems and Procedures
- Airport Program
- Aircraft Technology Program
- Internal FAA Program

Several changes were made in the final policy as a result of further review and consideration of public comments. This section will outline the significant changes incorporated into the final policy, and the next section will address the major comments and FAA responses.

The policy document was reformatted to move the chapter entitled "Statement of the Energy Problem" to an appendix. This chapter primarily contains information about energy trends rather than policy responsibilities or actions.

The section entitled "Contribution of Air Transportation" in the appendix was modified to include the grounding of fuel-inefficient aircraft and airline purchase of more fuel-efficient aircraft as a major factor contributing to the overall increase in air carrier fuel efficiency. In the "Alternative Fuels Development" portion of the appendix, a sentence was added to mention that the Air Force could be using shale oil jet fuel in the net few years. Also, the discussion of the hydrogen process was revised to indicated that the manufacturing process now consumes twice (not three times) as much fuel as is produced in the form of fuel.

The chapter on "Authorities and Responsibilities" was expanded to include FAA authority under Executive Order 12185 which provides for energy conservation in the FAA's financial assistance programs. In addition, the section concerning aircraft operators was modified slightly to clarify that the responsibilities listed are for the purpose of conserving energy not to comply with FAA regulations.

The introduction of the chapter entitled "Federal Action Plan" was revised to delete item (a) under the second policy principle which had stated that "The FAA will act to insure aviation's equitable share of energy, by (a) Emphasizing to the public and responsible governmental agencies the importance of aviation to society and aviation's dependence on petroleum-based fuels,..." Item (a) could be construed as promoting aviation for its own sake and not in the public interest. The two remaining items will achieve the same objective by supporting both an efficient allocation of existing petroleum fuels and the development of future aviation fuels. A paragraph was added to the introduction of this chapter to emphasize that the policy commits the FAA to the improvement of the operating environment to "encourage and promote" the use of FAA programs by system users. The policy states that the FAA prefers voluntary cooperative action with industry rather than the regulatory approach to energy conservation. The policy now states that although many of the programs described in the final document have already been implemented to some degree, they are included for the sake of comprehensiveness.

The description of several programs under the Federal Action Plan were revised to emphasize the FAA's commitment to improve the ATC system rather than simply putting the full responsibility on users to accept FAA programs. Quantitative examples of fuel savings were included whenever available.

A program action entitled "Expand Local Flow Traffic Management (LFTM) Program" was added to the ATC/Flight Operations Program to state the FAA's commitment to this ongoing program which minimizes arrival fuel burn.

A paragraph was added to the section on "Effective Use of Airspace" to note the FAA's support of advanced navigation systems and flight management systems. In addition, the paragraph concerning airspace separation goals was modified to clarify that composite separation rules and reduced lateral separation criteria are for oceanic procedures, and reduced vertical separation above flight level (FL) 290 involves both domestic and international airspace.

The section on simulators was revised to clarify that although the existing rule applies only to Part 121 certificate holders, the FAA is considering ways to provide for increased utilization of approved simulators for Part 135 certificate holders and the general aviation community.

The sentence in the section on aircraft maintenance which stated that the FAA would propose alternative procedures to conserve energy was deleted. The aviation industry is taking the lead in this regard, and FAA actions will focus on educating and promoting the use of these procedures; FAA regulations would not provide any additional benefit.

A paragraph was added to the section on training programs for controllers/pilots to mention that in accordance with Executive Order 12185 information will be made available to Aircraft Loan Guarantee Program applicants to encourage them to operate their aircraft in the most fuel-efficient manner. The policy makes it clear, however, that the decision to purchase one aircraft versus another will remain the responsibility of the carrier.

The discussion of the National/Dulles ground operating plan was modified to clarify that the plan will serve as an illustration (not a model) to other airport proprietors of the benefits that may be achieved by similar planning efforts at their own airports.

The section concerning educational programs for airport operators was reworded to clarify that such programs will be developed in consonance with the overall energy conservation effort in the National Aviation System. The programs will emphasize energy-efficient operation of the Nation's airports.

A paragraph was added to the discussion of new technology aircraft

and engines to suppoort the development of avionics as an additional means of conserving fuel.

The section entitled "Develop Fuel-Efficiency Goals for New Aircraft and Engines" was deleted in the final policy. The FAA intended to promote not mandate these goals; however, after consideration of the comments received, we believe such goals would not contribute meaningfully to further increases in fuel efficiency. Further increases in fuel efficiency will require new technology, and the rising price of fuel is providing more then enough incentive for airlines and manufacturers to continue work in this area.

Finally, the summary chart of all the actions has been expanded to show the status of each action, i.e., whether the program is a new initiative, in the development stage, or an ongoing program.

Other minor editorial changes were made where appropriate.

Comments. Several comments were filed in response to the proposed aviation energy conservation policy. The comments indicated widespread support for the concept of energy conservation and the policy in general, but a few comments expressed concern about specific program actions. Following is a summary of the FAA's response to the significant comments filed.

FAA Role. One commenter stated that the FAA's role as the ATC system operator is not defined in the chapter on "Authorities and Responsibilities." On the contrary, the opening paragraph under "The Federal Government" section describes FAA responsibilities in this regard.

Aircraft Operator Responsibilities. One commenter questioned the wording of the section on aircraft operator's authorities and responsibilities as possibly meaning that the operators are responsible to the FAA for the items listed. There is no intention to require the operators to be responsible to the FAA for the items mentioned; the policy was modified to indicate that *for the purpose of conserving energy,* aircraft operators have responsibilities to do their part.

Policy Emphasis. One commenter suggested that the draft policy placed too much emphasis on industry initiatives and too little emphasis on FAA actions. Several modifications were made in the final policy to clarify that for the most part, the policy commits the FAA to the improvement of the operating environment to encourage and promote the use of fuel efficient procedures and programs by aviation system users.

Program Status. One commenter suggested that a definitive schedule for implementing FAA actions be included in the policy. The document is intended to be a policy statement rather than just an action plan. Because schedules are likely to change due to various factors, an implementation timetable is inappropriate for a policy document. However, the document has been modified to include the status of each action (i.e., whether the program is a new initiative, in the development stage, or an ongoing program). Furthermore, for those actions which are ongoing and which will result in a tangible product, an estimated time of completion was added. Another commenter noted that many of the industry initiatives have already been implemented. It is true that several of the policy actions have been implemented to some degree by the FAA or the industry as indicated by the "ongoing program" status in the summary table; they are included in the policy document for the purpose of restating in one comprehensive document the FAA's support of such efforts.

Safety. One commenter noted that energy conservation actions must be predicated on the constraints of safety and the airport geographic and geometric limitations. The FAA concurs, and with regard to the safety issue, the introduction of the Federal Action Plan chapter now states that safety and system efficiency are of primary importance.

Noise Abatement Procedures. To assure that the benefits derived from established and proposed noise abatement procedures are not sacrificed in the interest of fuel conservation, one commenter recommended that the FAA require an environmental impact analysis prior to altering noise abatement procedures. The FAA already requires an environmental assessment for new or revised air traffic control procedures which routinely route air traffic over noise sensitive areas at less than 3,000 feet above the surface.

Local Flow Traffic Management (LFTM) Program. One commenter recommended adding the LFTM program to the list of policy actions. The FAA concurs, and the policy was expanded accordingly.

Fuel-Efficient Altitudes/Speeds. One commenter recommended that the FAA make fuel-efficient altitudes more readily available and consider reduced altitude separation above flight level (FL) 290. The policy provides for both the assignment of fuel-efficient altitudes and the consideration of reduced vertical separation above FL 290. The commenter also noted that there are both safety and economic reasons why a flight may operate off its minimum fuel speed and/or altitude. The FAA recognizes this fact and encourages the use of fuel-efficient procedures, but will not mandate altitudes/speeds at this time.

Effective Use of the Airspace. One commenter correctly pointed out that composite separation and reduced lateral separation are options which are being employed in oceanic operations, and reduced vertical separation above FL 290 is a valid objective for both domestic and international airspace. The final policy clarifies these points.

Tankering. One commenter recommended that the section on tankering be eliminated because there is no role for the FAA in this area. Although air carriers have the primary responsibility in this regard, the FAA can and does emphasize to carriers the fuel inefficiencies which result from tankering. Once again this action is included for the sake of stating in one document FAA's position with regard to tankering.

Aircraft Maintenance. One commenter recommended deletion of the sentence that stated that the FAA would propose alternative maintenance procedures necessary for safety which would also conserve energy. The commenter argued that such action is unnecessary because operators are already motivated to adopt the most fuel-efficient alternatives. Furthermore, alternative procedures have a cost element influenced by factors known only to the operator. The FAA believes that there is no benefit to be derived from alternative FAA regulations, and the sentence in question was deleted from the final policy.

Energy Models. One commenter stated that aircraft manufacturers should have the opportunity to comment on and participate in the development of fuel optimization models and associated data bases. The FAA fully agrees with this statement and believes that industry input is essential to the development of its energy modeling efforts. The FAA continues to coordinate with the aviation community regarding both the development and utilization of its energy models.

Another commenter noted the redundancy of the sections concerning energy models for optimum flight planning and for FAA energy assessments. The policy was revised to delete the redundent section, however, references to energy models remain in two separate areas. The first concerns a model for use by general aviation pilots; the second model will be used by the

FAA for analysis of agency procedures, etc.

Aircraft Loan Guarantee Program (ALGP). Several commenters objected to using the FAA Aircraft Loan Guarantee Progam to dictate equipment choice based on fuel consumption. The commenters agreed that airline selection of new aircraft is a function of the overall economics, not just fuel efficiency. Executive Order 12185: Conservation of Petroleum and Natural Gas requires federal agencies which administer programs of financial assistance to take actions which maximize the efficient use of energy and conserve natural gas and petroleum in programs funded by those agencies. Accordingly, the FAA will provide information to ALGP applicants which encourages carriers to plan and operate their aircraft in a fuel-efficient manner. The FAA never intended to dictate the choice of aircraft which a carrier must purchase, and the final policy has been modified to state clearly that aircraft choice is and will remain the responsibility of each carrier.

Improved ATC System. Several commenters supported the FAA's actions to improve the efficiency of the ATC System. One commenter suggested that the FAA: (1) present sub-items 1, 2 and 3 under the Integrated Flow Management (IFM) program as objectives not accomplishments; (2) evaluate the fuel conservation potential of the six programs such as the Microwave Landing System (MLS) without endorsing them based solely on energy considerations; and (3) place greater emphasis on designing fuel-efficient departure and arrival routes and profiles. The FAA concurs with these points, and the policy was revised accordingly.

Severe Weather Avoidance System. One commenter recommended that the FAA develop a more accurate system to detect and disseminate information on severe weather. The FAA concurs as indicated by the statement in the policy supporting development of improved weather radar systems in the section on upgraded ATC systems.

Airport Ground Operating Plan. One commenter suggested that the FAA energy-efficient ground operating plan for Dulles and National should not be considered a "model" for other airports because there may be unique features at these two Federally-run airports which would not be applicable to other airports, and vice versa. The final policy was revised to clarify the FAA's intention that the operating plan will serve as an illustration to other airport proprietors of the benefits that may be achieved by similar planning efforts at their own airports.

Quotas and Slot Allocations. One commenter suggested that the FAA consider incentive programs, quotas, etc. only after FAA has taken all appropriate steps to improve the efficiency of the ATC system and reduce delays through other means. The policy already states the FAA's commitment to improving the ATC system and such allocation mechanisms will be evaluated as an additional means to reduce delay.

Another commenter suggested expanding FAR Part 93 to include a mechanism for enforcement of quotas and slot allocations at high-density airports for the purpose of assuring that the established quotas and allocations are not exceeding. FAR Part 93 states that specific quotas may be exceeded in accordance with FAR 93.129 (whenever additional aircraft may be accommodated without significant additional delay to the operations allocated for the airport) or as otherwise authorized by ATC. Controllers are concerned with the safe and expeditious handling of the aircraft operating within their areas of jurisdiction. They usually have little or no interest in the number of operations during the hour or whether or not a particular aircraft has an airport reservation. Decisions to hold or vector aircraft are based upon the air traffic or airport conditions at the moment. Any attempt to restrict hourly operations to a specific number would generate overwhelming administrative and procedural problems.

Aircraft Towing. One commenter recommended deletion of the actions regarding aircraft towing because of the unresolved problems and shortcomings. There may be substantial fuel savings from aircraft towing, and the FAA believes that further study is warranted before the option is discarded. Therefore, the final policy retains the option to continue evaluation of aircraft towing.

Energy Conservation Educational Programs for Airport Operators. One commenter objected to the sentence which discussed the airport operators' ability to use pricing policies to "smooth" peak demand periods and influence aircraft operators' fuel efficiency. The commenter argued that this would be a duplication of (or contrary to) ATC improvements or the slot allocations already mentioned. The commenter argued that educational programs should focus on energy efficient operation of airports. The FAA concurs with the last statement and the policy was revised to indicate that educational programs will emphasize energy-efficient operations and will be part of the overall energy conservation effort in the National Aviation System. However, the policy also states that the educational program may include treatment of the airport operator's ability to influence aircraft operators' fuel efficiency via pricing policies. Such policies would be in addition to ATC system improvements and supportive/consistent with slot allocations, etc.

Fuel Efficiency Goals. Several commenters objected to the establishment of fuel efficiency goals as being unnecessary, confusing, and possibly counterproductive. Rising fuel costs provide more than enough incentive to airlines and manufacturers to improve the fuel efficiency of aircraft and engines. One commenter noted that unlike the auto industry where fuel-efficiency goals may be met in large part with non-technical changes (e.g., downsizing the car and reducing capacity), further fuel efficency gains in the commercial aircraft industry will require technological improvements which cannot be mandated. Although the fuel efficiency goals were never intended to be mandatory targets, the FAA agrees that even voluntary goals are unnecessary. The section on fuel efficiency goals is deleted in the final policy.

Avionics. One commenter suggested that the Integrated Flow Management (IFM) program consider the airborne flight management system (FMS) as part of the total control system. In addition, the commenter recommended expanding the aircraft and engine technology section to include avionics. The FAA concurs, and the final policy specifically addresses avionics as a means of achieving further increases in fuel efficiency.

Air Carrier Fuel Efficiency. One commenter noted that while fuel efficiency of cargo operations is best expressed in ton-miles per gallon, available seat miles (ASM) per gallon would be better for passenger operations. The FAA believes that ASM is not as meaningful because simply flying more seats is not necessarily more efficient; ASM ignores load factors. Passenger miles per gallon would be useful because it accounts for load factors, however, it tracks very closely with ton-miles per gallon; ton-miles has the additional benefit of accounting for cargo as well as passengers.

Another commenter noted that the voluntary grounding of fuel-in-efficient aircraft and airline investment in more fuel-efficient aircraft contributed significantly to increases in air carrier fuel efficiency. The policy has been modified to include this point.

Aviation Fuel Supply Conditions. One commenter noted that the Department of Energy (DOE) fuel allocation system broke down more as a result of airline efforts to dismantle the system than as a result of the Airline Deregulation Act. Regardless of whether the airlines contributed to the breakdown of the DOE allocation system, airline deregulation became "the straw that broke the camel's back" by illuminating the problems with the existing system. The policy statement was not modified concerning this point.

The commenter also objected to the policy assertion that the impact of disclocations resulting in shortages of petroleum products is not more severe for users of aviation fuels than for any other sector of the economy. The commenter argued that ground transportation vehicles have more options than are available to aircraft operators. This reference in the policy concerns short-term supply disruptions. Historically, petroleum shortages have resulted in across-the-board decreases in consumption and except for the 1973–1974 oil embargo the grounding of flights has been rare. The policy clearly states, however, that unlike some other users, aviation is completely dependent on petroleum-based fuels. The FAA therefore supports the policy of insuring an equitable share of petroleum for aviation and other users who do not have any near-term alternatives.

Aviation's Share of Energy. Several commenters supported the FAA's policy to insure aviation's equitable share of energy. One commenter recommended that FAA work with DOE to insure "the highest standby petroleum product allocation for both air transportation and aircraft manufacturing." The final policy states that, ". . . the FAA has no authority to directly regulate the supply or allocation of aviation fuels. . . . Nevertheless, the FAA is routinely involved with the Department of Energy, the International Civil Aviation Organization and other domestic and international agencies regarding actions which impact the supply of aviation fuel . . . " The actions described in the policy are intended to insure a *fair* share of petroleum for aviation in line with national objectives.

Fuel Advisory Departure (FAD) Procedures. One commenter noted that FAD should be implemented at airports with severe delay. The policy states that FAD or similar procedures will be developed in cooperation with industry for other delay-prone airports as it becomes feasible and necessary.

Another commenter noted that FAD should be expanded only after full coordination and that the FAA should assess the performance of the system. The policy reflects both of these points.

Inflight Computers. One commenter suggested that this section be revised to indicate that the ATC system will be evaluated to find ways in which it can accommodate the improved flight operations desired by the operator equipped with the airborne computers. The FAA concurs, and the policy was modified accordingly.

Alternative Fuels Development. One commenter recommended that the discussion of hydrogen manufacturing processes be modified to reflect the potential of updated processes. The policy was revised to state that the hydrogen manufacturing process would consume about twice (instead of three times) as much energy as is delivered in the form of fuel.

Another commenter noted that the Air Force could be using shale oil jet fuel in limited quantities in about two years. The policy was revised to include this point.

Final Policy: In consideration of the foregoing, the following Aviation Energy Conservation Policy is adopted by the DOT/FAA.

DEPARTMENT OF TRANSPORTATION, UNITED STATES OF AMERICA

Aviation Energy Conservation Policy—Office of the Secretary, Federal Aviation Administration, January 19, 1981

Executive Summary

The October 1973 international oil embargo and ensuing events have highlighted the problem of a decreasing petroleum supply in the United States. Aviation is totally dependent upon petroleum, and the price and availability of petroleum products are primary concerns to the fuel-intensive aviation industry.

The Federal Aviation Administration (FAA), in conjunction with the aviation industry, has been actively engaged in developing and implementing programs to conserve aviation fuel since long before the 1973 oil embargo. As a result, aviation fuel efficiency has increased significantly since that time. Despite the improvements already achieved, the need for aviation energy conservation is as great, or greater, today than it was a few years ago. This is especially true because there are no economically viable alternatives to petroleum-based aviation fuels in the near term. As a result, the FAA will promote aviation energy conservation in both the present and future operation of the National Aviation System, and the FAA will act to insure aviation's equitable share of energy.

A comprehensive aviation energy policy will require concerted efforts by all of the "actors" in the National Aviation System including the Federal Government, aircraft operators, airport proprietors, and aeronautical manufacturers and suppliers.

The action plan spelled out in this document consists of 31 actions grouped into the following five program areas:

- Air Traffic Control (ATC)/Flight Operations Program
- Upgraded ATC Systems and Procedures
- Airport Program
- Aircraft Technology Program
- Internal FAA Program

The FAA is responsible for promoting and encouraging fuel conservation by aviation system users and providing a safe, efficient environment within which fuel conservation techniques may be practiced by those users. In this regard, actions in the first program area focus on improving the operating environment through cooperative efforts by ATC controllers and aircraft operators. These include providing/using fuel-efficient speeds, altitudes, maintenance, taxiing, training procedures, etc. to reduce fuel consumption.

The second program area contains research and development efforts and upgraded systems which increase the capacity of the airport and airway system, reduce delay, and improve airspace efficiency. Most of these systems will enhance safety, noise reduction and other FAA goals as well as promote energy efficiency.

The Airport Program includes actions which provide for energy conservation in the design, construction, and operation of airports as well as actions which increase system capacity and reduce airport delay. Airport proprietors benefit from the first kind of actions, and users of the airport and airway system benefit from the latter group.

The primary responsibility for the actions under the Aircraft Technology Program rests with the aeronautical manufacturers and Federal agencies other than the FAA. However, the FAA supports these developments and must insure that future ATC system designs are compatible with new technology aircraft and vice versa.

Finally, the Internal FAA Program includes actions to conserve energy in FAA operations, and to assess the energy impact of FAA programs and procedures on aviation system users.

Taken together these programs provide a meaningful blueprint through which energy savings may be achieved in the National Aviation System.

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I. Introduction

Over the past 25 years, U.S energy consumption has more than doubled. During this period, transportation has consistently accounted for about 25 percent of total U.S. energy consumption. Transportation presently uses 53 percent of the petroleum consumed in the United States.

Total civil aviation consumes about 8 percent of the transportation share of petroleum use or 4 percent of total U.S. petroleum. All aviation energy is supplied by petroleum fuels at the present time. Research is being done to develop alternative fuels, however, alternate fuels for aviation do not appear to be economically feasible or available in large quantities in the near term. During the past ten years, the energy consumption of commercial aviation increased 25 percent. In the next ten years, fuel requirements for air transportation are expected to rise another 25 percent.

The October 1973 oil embargo by the Organization of Petroleum Exporting Countries (OPEC) and ensuing events have highlighted the problem of a decreasing petroleum supply. The price and availability of petroleum products are primary concerns to the fuel-intensive aviation industry especially the commercial air carrier sector. Air carrier fuel consumption increased 4.7 percent between 1973 and 1979; fuel prices rose 331 percent during the same period. Fuel costs account for 30 percent of operating costs in the aviation industry. Thus, the continuing development of fuel-efficient aircraft and air traffic control operating techniques and technological improvements to aircraft and the air traffic control system are of paramount importance to the health of the industry.

The Federal Aviation Administration (FAA) has long recognized the need for energy conservation in aviation, and FAA energy conservation efforts predate the OPEC embargo. In March 1972, the need for energy efficient aircraft was stressed in the FAA's National Aviation System Policy Summary. The FAA Administrator followed up by calling a Consultative Planning Conference entitled "The Energy Outlook for Aviation" which convened in October 1973.

As a result of prior planning, the aviation community was able to respond immediately when the OPEC embargo was announced on October 19, 1973. The FAA implemented a seven-point jet fuel conservation plan on November 20, which was designed to save almost 4 percent of the total amount of jet fuel consumed by the domestic airlines. The FAA, working closely with the aviation industry, has continued to pursue a dedicated program to conserve fuel in the operation of the Nation's airport and airway system.

The Energy Policy and Conservation Act (EPCA), Pub. L. 94-163, signed by the President on December 22, 1975, was designed to promote energy conservation in all national sectors. One of the mandates of the *EPCA* was a 10 percent improvement in energy conservation over 1972 preembargo levels. As a result of the prior commitment of the FAA and the aviation community to energy conservation, domestic commercial aviation fuel efficiency, measured in Revenue Ton-Miles Per Gallon (RTM/G), had already improved 16 percent when the *EPCA* became law. This trend has continued as evidenced by the 35 percent increase in RTM/G from 1972 to 1979.

Despite the improvements already achieved, the need for aviation energy conservation is as great, or greater, today than it was a few years ago. The Department of Transportation is responsible for promoting the most efficient means of transporting people and goods be it by air, rail, ship, or highway. Consistent with the Departmental mission, the FAA is committed to the development of the most efficient aviation system possible, both to contribute to the national goal of saving energy and to provide efficient and competitive service. Therefore, the FAA has developed a comprehensive policy on aviation energy which includes a list of options which are directly within the purview of the Federal Government. Additionally, this document spells out specific actions which should be pursued by the aviation industry including the air carriers and general aviation, airport proprietors, and aeronautical manufacturers and suppliers. The full benefit of a Federal plan of action will be realized only when complementary action is taken by all participants.

The next section of this document, Chapter II, briefly outlines the authorites and responsibilities of the various "actors" in the National Aviation System. Chapter III describes the Federal action plan in detail ending with a summary table of all the programs. The Appendix provides in greater detail an understanding of the energy problem facing aviation including an overview of historical, current, and future trends of U.S. energy consumption with particular emphasis on the U.S. civil aviation industry. In addition, the importance of aviation to the national economy, the prospects for the aviation fuel supply, and the feasibility of using alternate fuels for aviation are discussed.

President Carter in his November 8, 1977, energy message to the Nation, stated, "This energy plan is a good insurance policy for the future, in which relatively small premiums that we pay today will protect us in the years ahead. But if we fail to act boldly today, then we will surely face a greater series of crises tomorrow—energy shortages, environmental damage, even more massive government bureaucracy and regulations, and ill-considered last-minute crash programs." The President was talking specifically about his energy plan for the Nation, however, his comments also pertain to energy conservation programs within the National Aviation System. This document is intended to be an insurance policy which will contribute to the health and viability of the U.S. air transportation system.

II. Authorities and Responsibilities

The Federal Government is responsible for promoting and encouraging fuel conservation by aviation system users and providing a safe, efficient environment within which fuel conservation techniques may be practiced by those users. This responsibility belongs primarily to the Federal Aviation Administration which installs, operates, and maintains the components of the National Airspace System and ensures the safe and expeditious flow of air traffic through the system. The FAA has the authority to regulate the safety of aircraft operating procedures, revise and expand the air traffic control system, provide

financial support through the Airprt and Airway Trust Fund to airport operators, and support the research, engineering, and development of new technology related to air traffic control systems and aircraft. In additon, the FAA operates two Federally-owned airports, Washington National and Dulles International. These reponsibilities provide a variety of opportunities for affecting aviation fuel conservation.

Existing legislation gives the Secretary of Transportation and the FAA Administator discretionary authority to issue certain kinds of rules and regulations in forms that may conserve fuel and other resources. However, the FAA has no specific authority to directly regulate the production, allocation or consumption of fuel at this time. For example, Section 103 of the Fedral Aviation Act of 1958 empowers and directs the Secretary and the Administrator to regulate civil and military operators in the interest of safety and efficiency, and Section 307(a) explicitly mandates the development of plans and the formation of policy to insure the efficient use of navigable airspace. In certain cases, the attainment of efficiency objectives may result in substential fuel savings.

The Department of Transportation Act in Section 2(a) describes the policy objective as the development of national transportation programs conducive to efficient and convenient transportation consistent with "the efficient utilization and conservation of the Nation's resources." Additionally, the National Environmental Policy Act in Sections 101(b)(5) and 105 authorizes every Federal agency to develop and improve its programs so as to "achieve a balance between population and resource use."

Executive Order 12185, Conservation of Petroleum and Natural Gas, which implements section 403(b) of the Powerplant and Industrial Fuel Use Act of 1979 requires Federal agencies which administer programs of financial assistance to take actions which maximize the efficient use of energy and conserve natural gas and petroleum in programs funded by those agencies. In this regard, DOT/FAA has the authority to encourage energy conservation in the Airport Development Aid Program (ADAP)[1] and the Aircraft Loan Guarantee Program, both administered by the FAA.

Beyond these legislative mandates, the President's energy message of June 20, 1979, directed all departments and agencies to work closely with the Energy Office to develop long-term conservation plans. The Secretary of Transportation was specifically directed to work with the FAA, the Nation's airlines, and the Civil Aeronautics Board to conserve fuel. Furthermore, the mandated role of the FAA in aviation energy conservation policymaking is consistent with the current Administration's emphasis on energy conservation, and it requires the FAA to provide leadership in a national effort to reduce aviation fuel consumption and improve aviation energy efficiency.

Other agencies which impact aviation system users include the Department of Energy (DOE), the Civil Aeronautics Board (CAB), the National Aeronautics and Space Administration (NASA), the Department of Defense (DOD), the Federal Highway Administration (FHWA), and the Urban Mass Transportation Administration (UMTA). The latter two agencies are interested in the promotion of energy-efficient landside access to airports.

Prior to the Airline Deregulation Act of 1978, the CAB regulated fares and route structures for the air carrier industry. Load factors and route structures can have a significant impact on an airline's energy efficiency. Although airline deregulation has granted the carriers greater flexibility in setting fares and selecting routes, the CAB still retains some regulatory authority in these areas. The evidence thus far seems to indicate that airline deregulation is conducive to air carrier fuel conservation since the 1979 level of fuel efficiency (RTM/G) has continued to rise under that system. Deregulation allows air carriers to rationalize their route structures and to employ their aircraft fleet more efficiently.

NASA, in cooperation with industry, is primarily responsible for Federally-funded research in the development of alternative aviation fuels and new technology aircraft, aircraft systems, and engines. Because of the significant progress already achieved from improved operating procedures, new technology aircraft engines will provide the greatest potential for further gains in aviation energy efficiency. DOD is also working in the area of alternative aviation fuels especially with regard to military jet aircraft.

Aircraft Operators, including the air carriers and general aviation, are the primary users of the airport and airway system. For purposes of conserving energy, their responsibilities include the efficient utilization of existing aircraft and fuel resources through effective scheduling, optimum flight planning, and use of safe fuel-conserving operating procedures. Furthermore, as soon as it becomes economically feasible, aircraft operators and management should replace older, fuel-inefficient aircraft with new technology aircraft which improve the overall fuel efficiency of their fleet. Rising fuel prices provide a strong incentive for all users of the system to reduce fuel consumption and to pursue self-initiated actions complementary to Federal actions in overall aviation energy conservation.

Airport Proprietors are responsible for the energy efficient design and operation of airport facilities. Airport delays result in excess fuel consumption by users of the system. Therefore, airport operators can also impact the fuel consumption of airport users by installing facilities which maintain or expand system capacity at otherwise congested airports.

Aeronautical Manufacturers and Suppliers are responsible for the research, development, and manufacture of more fuel-efficient engines, airframes, and avionics equipment. NASA studies estimate that future aircraft and aircraft engine designs could be as much as 50 percent more fuel-efficient than current high bypass ratio engines and will generate substantial fuel savings for the aviation industry when they are utilized.

III. Federal Action Plan

Department of Transportation/Federal Aviation Administration (DOT/FAA) policy supports the use of the most efficient means of transporting people and goods be it by air, rail, ship or highway. The improved efficiency of all those modes is a common objective.

Consistent with the need for an aviation energy policy and the FAA's responsibility to provide leadership in this area, this chapter describes FAA actions concerning aviation energy. The following two policy principles provide the basis for action in this regard.

1. The FAA will promote aviation energy conservation in both the present and future operation of the National Aviation System, by

(a) Supporting development and use of energy-efficient aircraft and aircraft operating techniques;

(b) Promoting the energy-efficient operation of the airport and airspace system; and

(c) Conserving energy in the design, installation and operation of FAA system facilities and aircraft.

2. The FAA will act to insure aviation's equitable share of energy, by

(a) Supporting the short-term development and use of alternative fuels in other areas whenever possible in an effort to free petroleum-based fuels for aviation, and other users, which are

[1] The authority to obligate funds under ADAP expired on September 30, 1980. However, for purposes of this policy document, it is assumed that some form of airports grant program will be enacted by the Congress in the future.

vital to the Nation and for which there are no economically viable alternatives in the near term; and

(b) Supporting longer-term R&D efforts for development of future alternative aviation energy fuels.

As stated in the previous chapter on authorities and responsibilities, the FAA has no authority to directly regulate the supply or allocation of aviation fuels. Instead, FAA actions primarily impact users of aviation fuels. As a result most of the actions discussed in this chapter implement the first policy principle which emphasizes conservation and improved efficiency rather than expanding the supply of aviation fuel. Nevertheless, the FAA is routinely involved with the Department of Energy, the International Civil Aviation Organization, and other domestic and international agencies regarding actions which impact the supply of aviation fuel consistent with the second policy principle.

The actions outlined below include a mix of voluntary, incentive, and mandatory programs to be pursued by the Federal Government as well as the aviation community. For the most part, the policy commits the FAA to the improvement of the operating environment to "encourage and promote" the use of energy conserving procedures and programs on the part of aviation system users. The FAA prefers voluntary, cooperative action with industry whenever possible rather than the regulatory approach to energy conservation. In addition, many of these actions have already been implemented to some extent by the FAA or the industry, but are included for the purpose of restating in one comprehensive document the FAA's support of such efforts.

The specific actions are grouped into the following five program areas which together result in a comprehensive energy conservation effort:

- Air Traffic Control (ATC)/Flight Operations Programs
- Upgraded ATC Systems and Procedures
- Airport Program
- Aircraft Technology Program
- Internal FAA Program

The programs do not fall neatly within the purview of any single participant. For example, the FAA can implement many or all of the options in the ATC/Flight Operations Program, however, the success of these options depends on the extent to which aircraft operators cooperate to conserve fuel. Futhermore, the Federal Government can support measures which fall into the Aircraft Tehnology Program, but the decision to purchase new aircraft will be made by the air carriers or other aircraft operators with possible influence from Federal action. One final caveat is that as mentioned earlier, the FAA is responsible for insuring the *safe, expeditious* flow of air traffic; the energy conservation programs outlined below will, of course, be implemented only after considering, as a minimum, their impact on safety and system efficiency.

A. ATC/Flight Operations Program

The FAA is responsible for promoting and encouraging fuel conservation by aviation system users and providing a safe, efficient environment within which fuel conservation techniques may be practiced by those users. Studies suggest that the greatest source of improved aviation fuel efficiency under the direct control of the FAA is in the optimization of the airport and airway system. The aviation fuel inefficiencies resulting from system delay alone can offset many of the benefits of improved scheduling, flight planning, operations, and fleet optimization achieved by system users. The FAA recognizes this fact, and many of the following program elements describe existing and planned FAA actions which are designed to improve the efficiency of the airport and airway system. To supplement these FAA actions this program also includes actions which require the cooperative efforts of ATC controllers and aircraft operators. In some instances, tradeoffs exist between fuel conservation and noise reduction. Accordingly, FAA noise abatement initiatives and flight procedures will be implemented only after consideration of their impact on aviation energy conservation goals. Specific program elements falling under the ATC/Flight Operations Program include the following:

Refine and Expand Fuel Advisory Departure (FAD) Procedures

FAD procedures are designed primarily as a fuel savings effort during extended periods of arrival delays. FAD transfers airborne delay to ground delay (thereby saving fuel) by altering actual aircraft departure times at the departure airports consistent with acceptance rates at the arrival airport. For example, a B727 uses 19 gallons per minute in cruise, 8.3 gallons per minute on the ground (idling), and 1.7 gallons per minute at the gate (with auxiliary power unit (APU)). FAD procedures are used at Chicago and Denver, and a similar program is scheduled for the New York metropolitan area.

Aircraft operators currently elect to accept FAD and gate hold procedures when there are excessive delays in the system, however, they are not required to do so. The FAA will continue to improve the accuracy of its delay estimates under FAD in an effort to promote greater use of the system. In addition, the FAA will develop a monitoring system to assess the performance of the system at both FAD and non-FAD airports to determine the efficiency of the procedures. Similar procedures will be developed in cooperation with industry for other delay-prone airports as it becomes feasible and necessary.

Promote Gate Hold Procedures

Similar to FAD procedures, the objective of gate hold procedures is to eliminate nonproductive fuel use by holding aircraft at the airport loading gate with engines off when departure delays exceed 5 minutes. Again, a B727, holding with engines on consumes 8.3 gallons per minute versus 1.7 gallons per minute with the APU. The FAA will continue to promote the use of gate hold procedures. Programs such as gate hold procedures, which conserve aviation fuel in groundside operations, may also reduce aircraft noise and pollutants around airports.

Expand Local Flow Traffic Management (LFTM) Program

With the assistance of representatives from pilot and industry groups, the LFTM program was introduced by the FAA to minimize arrival fuel burn. The success of the LFTM program lies in the metering of traffic into the terminal environment at a specific airport acceptance rate commensurate with capacity and the maximum application of fuel efficient descents and approach procedures from cruising altitude/flight level to the approach gate. The procedure is designed to absorb any necessary delays at or beyond the metering fixes using altitudes at flight level 200 and above rather than at low altitudes. These delays may be absorbed by vectoring, speed adjustments, or holding. Distribution of delays are more equitable as a result of these techniques. The LFTM program has been implemented at approximately 188 major airports throughout the United States. The LFTM program will be implemented to the maximum extent possible at all airports that serve turbojet or large turboprop aircraft.

Promote Fuel-Efficient Altitudes/Speeds

The fuel consumption of an aircraft depends on several factors including cruise altitude, speed and weight. FAA policy concerning assignment of aircraft altitudes presently states that whenever possible the requested altitudes will be

approved. Similar to the current situation with regard to altitude assignments, aircraft operators select their own cruise speeds. The following example illustrates the impact of speed on aircraft fuel burn. At 25,000 feet, a reduction in cruise speed of a medium weight B727 from .82 Mach to .8 Mach reduces fuel consumption by 1.3 percent; further reduction to .78 Mach decreases fuel consumption an additional 1.1 percent.

Each model of aircraft has its own fuel-efficient parameters of altitude and speed depending on several variables including weight, temperature, winds aloft, etc. It would be difficult to develop regulations that could cover all types of aircraft yet be specific enough to enforce. Also, all controllers would have to be aware of each airplane's fuel-efficient altitude/speed which would add to their current responsibilities. As a result, agency actions will emphasize to pilots the importance of fuel-efficient altitudes/speeds but will not propose regulations in this area. Furthermore, the FAA will emphasize to controllers the need whenever possible to assign the most fuel-efficient altitude when requested.

Promote Effective Use of the Airspace

The FAA supports the development and use of advanced navigation systems and flight management systems as a means of achieving significant fuel conservation. These systems allow users to fly optimal routes through, for example, area navigation (RNAV) and use more fuel-efficient climb and descent procedures.

In another area, users are often required to accept fuel use penalties to maintain separation minima in the interest of safety in the airspace. The penalties are incurred when the aircraft is assigned a non-Optimum track or altitude because of potential conflicting traffic. The adjustment of the configuration of routes or reduction of separation standards is a complex process involving detailed studies and extensive coordination. There is, however, evidence based on recent improvements in specific areas that beneficial changes can be realized. The FAA intends to continue work in this area within budgetary restrictions with specific goals to include:

(1) establishment of general rules for application of composite separation in accordance with International Civil Aviation Organization (ICAO) rules for oceanic procedures;

(2) development of reduced lateral separation criteria for operations where users show compliance with improved minimum navigation performance requirements for oceanic procedures; and,

(3) the reduction of vertical separation above flight level (FL) 290 to 1,000 feet for both domestic and international airspace.

Promote Reduced Tankering

Because of differing prices and availability of fuel at various airports, aircraft operators sometimes carry more fuel than that needed for a particular flight. "Tankering" is fuel-inefficient because more fuel is burned in flight due to the added weight of the tankered fuel. For example, for a specific set of values for speed, altitude, weight, etc., a B727 uses 3,400 gallons of fuel on a 824 mile trip. With other things being equal, that same aircraft would consume an additional 428 gallons of fuel (13 percent more) to tanker an additional 3,400 gallons of fuel. Accordingly, the FAA encourages air carriers to avoid carrying excessive quantities of fuel unless dictated by availability. In addition, the FAA will encourage all carriers to establish and maintain an airline fuel logistics program aimed at the elimination of the need for tankering.

Expand Use of Simulators

The increasing size, complexity, and operating costs of the modern turbojet transport in its operating environment emphasizes the need for greater use of the advanced technology now available in aircraft simulators. In response to this need, the FAA issued the rule, effective July 30, 1980, entitled "Advance Simulation." The rule, which amended Parts 61 and 121 of the Federal Aviation Regulations, provides guidelines and a means for achieving total flightcrew training, checking, and certification in advanced simulators. It is estimated that 32,000,000 gallons of fuel could be saved per year if air carriers use advanced flight training simulators in lieu of aircraft for transition and upgrade training. Over 73,000,000 gallons could be saved per year if the advanced simulation plan is fully implemented. Although the rule applies only to Part 121 certificate holders, the FAA is considering ways which would provide for increased utilization of approved simulators for Part 135 certificate holders and the general aviation community. The major considerations for the individual small operator or pilot school regarding the feasibility of incorporating an FAA-approved simulator in its training program would be the degree of simulator sophistication required for approval, the initial cost of the simulator, and the resultant economic benefits based on the reduced number of flight-hours derived from use of the simulator.

Promote Fuel-Efficient Taxi Procedures

In many instances, certain aircraft operating on the ground do not need to use all of the engines on the aircraft. Fuel can be saved by shutting down one or more engines for taxiing. This practice is currently used by all users to some extent. The FAA encourages greater use of fuel-efficient taxi procedures where these procedures are shown to increase system efficiency. In addition, the FAA will encourage airport proprietors to design their runways and taxiways in such a way as to provide for the greatest fuel conservation potential given the constraints of safety, etc.

Promote Maintenance of Aircraft for Optimum Fuel Efficiency

The way an aircraft is maintained can have an impact on its fuel efficiency. Many of the carriers are already taking advantage of maintenance programs to conserve fuel, and FAA actions will focus on educating all users to the benefits of such programs.

Promote Use of Inflight Computers

A computer on-board the aircraft optimizes fuel utilization by permitting optimum flight planning, monitoring aircraft health, and performing other functions which result in fuel-efficient performance of the aircraft. The FAA will evaluate the ATC system to determine how best to accommodate the improved flight operations desired by operators equipped with airborne computers.

Develop Energy Model for Optimum Flight Planning

The FAA is developing a fuel burn model suitable for application in a programmable, hand-held calculator for use by general aviation pilots. The calculator will enable pilots to plan their flights and make inflight revisions for minimum fuel consumption.

Expand/Promote Energy Training Programs for Controllers/Pilots

The FAA will revise its air traffic control training programs to include a greater emphasis on fuel conservation measures for system users which are impacted by ATC procedures and programs. In addition, the FAA will require that controllers implement specific energy conservation programs and procedures at particular locations and/or systemwide consistent with safety, efficiency and environmental considerations. This will ensure that the latest innovations in fuel-conserving

techniques are available to system users.

The FAA is developing a compendium of fuel burn curves based on information provided by aircraft and engine manufacturers that depict the fuel efficiencies of various aircraft at specific speed, altitude, and weight configurations. This information, which will show the most energy efficient set of operating curves by aircraft type, will be updated and expanded to include additional aircraft types as such information becomes available. These data will be made available to aircraft operators to assist them in their energy planning.

In this regard, Executive Order 12185, Conservation of Petroleum and Natural Gas, directs Federal agencies to conserve energy in the application of financial assistance programs. Accordingly, the FAA encourages applicants under the Aircraft Loan Guarantee Program to operate their aircraft in the most fuel efficient manner utilizing such information as the fuel efficient operating curves mentioned above. These data will be made available to carriers for their information; however, the decision to purchase one aircraft versus another will, of course, remain the responsibility of each carrier.

The FAA will continue to encourage the development of fuel conservation programs by air carriers and general aviation operators and pilots. A number of procedures and techniques developed in coordination between GAMA (General Aviation Manufacturers' Association) and the FAA are now being made available to the aviation consumer public by the various news media and through aviation education programs in connection with the FAA's Accident Prevention Program. FAA approved pilot training schools and certificated flight instructors are being encouraged to emphasize fuel conservation measures where such measures can be safely utilized. In this context, new ideas will be explored and acted upon where feasible and practicable.

By promoting energy conservation educational programs for air traffic controllers and aircraft operators, the FAA ensures that all "actors" in the National Airspace System are aware of the most fuel-efficient programs and procedures.

B. Upgraded ATC Systems and Procedures

The FAA has recently initiated the Integrated Flow Management (IFM) program whose function is to define requirements for, and assure functional integration of, engineering and development (E&D) activities impacting traffic flow. While the IFM program is primarily related to E&D activities, it takes cognizance of other on-going programs within the agency which can potentially impact traffic flow. The objectives of the IFM program are to assure that:

(1) Existing airport/airspace resources are best used under the physical constraints of aspects such as runway capacity, spacing restrictions and weather.

(2) Aircraft delays are mimimized and necessary delays are absorbed as fuel efficiently as possible.

(3) Best overall use is made by ATC system users of sophisticated avionics (such as Flight Managment Systems) on many air carrier, commuter and business aircraft.

The basic premises inherent in the IFM program are:

(1) Aircraft operators will increasingly urge the FAA to make optimum use of procedures and equipment which provide for aircraft fuel conservation.

(2) The ATC system will continuously be required to efficiently handle a wide mix of aircraft in terms of performance, size, weight, and speed.

(3) The introduction of sophisticated flight managment computers (FMC) will rapidly redefine the airbone environment in terms of what profiles aircraft operators desire, and will be able, to fly.

(4) Improved automation aids for planning and execution of ATC operations will significantly improve traffic flow management. Availablility of these aids will become increasingly more advantageous as more variables are introduced into the decisionmaking process, satellite airports are upgraded, and expanded use is made of special purpose runways at major hubs.

(5) Changes to procedures and airspace structures will best take place if the users, designers (including airframe manufacturers), and operators of the system are involved in the development process and if such changes are proven to have merit and be workable.

In addition to and in conjunction with the IFM program the FAA will evaluate the potential fuel conservation benefits of ATC facilities and systems such as:

Wake Vortex Advisory System (WVAS)

Tower Automated Ground Surveillance (TAGS)

Advanced Automation (Enroute Radar Automation)

Microwave Landing System (MLS)

Discrete Address Beacon System (DABS) and its data link

Redundant Critical NAS Elements

Most of these upgraded systems will enhance safety, noise reduction, and other FAA goals as well as promote energy efficiency.

Severe weather accounts for a significant amount of the delay at our Nation's airports. The FAA will support development of improved weather radar systems to define more accurately areas of hazardous weather. This will mimimize aircraft diversions and reduce weather-related delays thereby conserving fuel.

The FAA will ensure that departure and arrival routes and profiles in the terminal area are designed to mimimize fuel burn within the constraints of safety and noise abatement. Further capability in this area will be provided by development of state-of-the-art automation aids, procedures, and aircraft equipment. The design and development of these profiles will be carried out under the umbrella of the IFM program.

C. Airport program

The Airport Program includes actions which provide for energy conservation in the design, construction, and operation of airports as well as actions which increase system capacity and reduce airport delay. Airport proprietors benefit from the first kind of actions, and users of the airport and airway system benefit from the latter group. Specific program elements falling under the Airport Program include the following:

Require Energy Assessments for ADAP Projects

The Airport Development Aid Program (ADAP) is a Federal financial assistance program which provides a means for promoting energy efficiency and conservation. This opportunity to promote conservation was underscored by Executive Order 12185: Conservation of Petroleum and Natural Gas, dated December 17, 1979, which directed Federal agencies to institute rules designed to achieve energy conservation through the implementation of financial assistance programs. The FAA has adopted a rule which requires recipients of ADAP funds to perform an energy assessment for each Federally-assisted building construction or major building modification which exceeds $200,000 in construction cost. The rule also requires airport sponsors to utilize energy conservation practices in the operation and maintenance of the airport. The regulation allows for the consideration of energy factors during the planning process, i.e., an element of a systems plan or master plan covering energy

impacts would be eligible for Federal assistance when it is found to be a reasonable and necessary part of the plan. Such planning is not required under this regulation, but is encouraged by the FAA.

As a result of this rule, energy efficiency in the design, planning, and operation of airports is included as a criterion for ADAP funding. Airport operators/owners will benefit from the reduced energy consumption of the airport facilities. To promote further conservation the FAA is developing technical guidance which will be available in the spring of 1981 to help airport operators comply with the rule. In addition, the FAA encourages energy conservation in the design and operation of hangars and other airport facilities for which the air carriers or other users are responsibile.

Develop Energy-Efficient Ground Operating Plan for Washington National and Dulles International Airports

The Federal Government owns and operates Washington National and Dulles International Airports. The FAA has underway a study to evaluate the energy conservation potential at these two airports of actions that fall within the purview of the airport proprietor (e.g., airport access, operation of ground vehicles, location of facilities, etc.). Based on the findings of this study, the FAA intends to develop an energy efficient ground operating plan for these airports. Additionally, the operating plan will serve as an illustration to other airport proprietors of the benefits that may be achieved by similar planning efforts at their own airports. The agency will also establish a monitoring system to measure the fuel savings which result from specific techniques at National and Dulles.

Promote Snow/Ice Removal Systems

The time required to open runways after a snowfall is highly variable, depending upon the intensity of the snowfall and the availability of snow-ice removal equipment. In 1979, 22.6 percent of delays of 30 minutes or more was due to snow and ice problems. The FAA encourages airport operators to purchase snow/ice removal equipment and such equipment is eligible for Federal funding under ADAP.

Evaluate Incentive Programs, Quotes and Slot Allocation Mechanisms for Reducing Airport Delays

One of the primary causes of fuel inefficiency in the National Aviation System is delay. The FAA is committed to improving the ATC system, and many of the options already mentioned are designed to expand capacity and reduce delay. However, another way to minimize or eliminate delay problems is through incentive programs which reduce demand or better utilize existing capacity. For example, by improving its delay estimates, the FAA will encourage users to use FAD procedures. The FAA could also issue delay projections that are specific to a facility at a congested airport. For instance, there may be significant delays on one runway, but another shorter runway at the same airport may be available without any delay. Aircraft operators with the appropriate equipment may be able to land on the second runway without any adverse effect on the primary facility thus expanding system capacity. Facility-specific delay projections may encourage more aircraft operators to purchase equipment which can operate on secondary runways at congested airports. The FAA will evaluate the feasibility of using such incentive-type programs and procedures to reduce demand or expand capacity.

There are currently four airports at which the FAA has established a reservation system to relieve excessive congestion. The four airports are Washington National, J.F. Kennedy, LaGuardia, and Chicago O'Hare Airports. The agency has imposed an hourly limit on IFR operations (arrivals and departures) by class of users. The FAA will evaluate the potential for reducing system delay and conserving fuel by expanding hourly quotas to other congested airports.

The FAA is evaluating several potential slot allocation mechanisms for use at Washington National Airport. The results of this analysis may be used at other delay-prone airports which have substantial peak demand patterns.

Continue the Airport Improvement Program to Reduce Congestion and Delays

In 1977, the FAA established the Airport Improvement Program in an effort to reduce aircraft delays at the Nation's 25 busiest airports. This program was patterned after a comprehensive delay study conducted at Chicago O'Hare International Airport in the mid-1970's. Since 1977, Airport Improvement Working Groups have been established at nine other major airports. The Airport Improvement Program is structured to bring local expertise to bear on the problems at each airport, while at the same time coordinating these local efforts in a national program to reduce congestion and delays throughout the National Airspace System. The program is jointly sponsored by the FAA and the Air Transport Association, and has been publicly endorsed by the Administrator and Deputy Administrator.

Promote Satellite Airports and Separate General Aviation Facilities at Congested Airports

The FAA promotes the use of satellite airports and the construction and/or dedication of separate general aviation runways, where possible, at congested airports. Currently, the mix of aircraft in terminal areas requires complex separation standards to avoid the wake vortex problem. To the extent that traffic can be separated by aircraft type, aircraft spacing can be decreased and airport capacity increased. The resulting delay reduction may conserve significant amounts of fuel. On August 7, 1979, the FAA anounced a major new program to upgrade air safety in 58 metropolitan areas by improving airport facilities at 86 satellite fields. Eventually as many as 236 satellite airports in 75 metropolitan areas could be affected.

Evaluate Aircraft Towing

Another area which requires further analysis is the potential fuel conservation benefits and costs of extended towing of aircraft in the terminal area. The Department of Energy and the FAA are evaluating this option which involves technical and operation feasibility and safety questions that need to be solved. The FAA will continue to evaluate this alternative as well as promote other measures to decrease groundside fuel use such as taxiing on fewer engines whenever safety permits.

Develop Energy Conservation Educational Programs for Airport Operators

Educational programs for airport operators will be developed and distributed nationwide in consonance with the overall energy conservation effort in the National Aviation System. The programs will emphasize energy-efficient operation of the Nation's airports. The FAA will also publish, in conjunction with the ADAP requirement mentioned earlier, technical guidance concerning the energy-efficient design, construction and operation of airports.

In a different vein, the program may include treatment of the airport operator's ability to impact the fuel efficiency of airport system users through the use of pricing policies which "smooth" the otherwise peak demand for slots at congested airports.

Promote Energy-Efficient Airport Access Systems

The Federal Highway Administration and the Urban Mass Transportation Administration are involved in landside access to airports in conjunction with State or local governments. To support their efforts, the FAA encourages the use of mass transit and other energy efficient transportation modes for airport access, including access to Washington National and Dulles International Airports. This may include the use of vanpools by airport employees, etc.

D. Aircraft Technology Program

The primary responsibility for the actions under this program rests with the aeronautical manufacturers and Federal agencies other than the FAA. However, the FAA supports these developments and must insure that future ATC system designs are compatible with new technology aircraft and vice versa. Specific program elements falling under the Aircraft Technology Program include the following:

Promote Development of New Technology Aircraft, Engines, and Aircraft Systems

As a result of the 1973/1974 oil embargo and the rapidly rising price of aviation fuel, aircraft operators have taken advantage of capacity and operating changes which conserve fuel. Therefore, significant increases in fuel efficiency for the future will require technological improvements in aircraft, aircraft engines, avionics, and the ATC system. New technology aircraft and aircraft engines will, in fact, generate the greatest savings in fuel in the long term.

NASA has the primary responsibility for developing future airframe and engine designs. One response to this responsibility is NASA's Aircraft Energy Efficiency Program which focuses on developing basic improvements in technology to enhance the energy efficiency of existing and future aircraft. This program has several phases. The Engine Component Improvement Program is directed towards existing engines such as the JT9D, CF6, and JT8D. This program is geared towards detailed improvements to engine components and also includes a diagnostic effort aimed at identifying and eliminating the major causes of performance degradation over the engine lifetime. The purpose of the Energy Efficient Engine Program is to provide an advanced technology base for a generation of fuel-efficient turbofan engines for commercial transports. Additionally, NASA's advanced turboprop project is directed at establishing the feasibility of radically improved propellor propulsion systems. The propfan may be able to combine the fuel efficiency of a propellor with the speed capability of current turbofan-powered transports. In still another area, NASA is working on aerodynamic and structural technology improvements which have a direct application to future fuel-efficient aircraft. Finally, the FAA is working with NASA to reduce wake vortices at their source through aircraft modifications. This would permit reduced separation standards thereby increasing system capacity. The FAA will support these developments and insure that future ATC system designs are compatible with new technology aircraft, and vice versa.

Aircraft and avionics manufacturers and NASA are developing avionics such as the Flight Management System (FMS) for fuel-efficient flight operations in the ATC system. The FAA supports this research and the IFM program described in section B, above, includes defining an environment which allows users to take full advantage of sophisticated avionics.

Promote New Aircraft Designs with Extended Towing Capabilities

If studies concerning aircraft towing prove successful, the FAA will promote the design of new aircraft or modifications to existing aircraft to permit safe and efficient extended towing capabilities. As noted earlier, extended towing of aircraft in the terminal area could reduce groundside fuel consumption, but there are safety and operational issues which first need to be resolved.

Support Development of Alternative Fuels

The discussion of alternative fuels contained in the Appendix concludes that there are no economically viable alternatives to conventional petroleum-based aviation fuel in the near term. The stability of an aviation fuel supply will require the development of new fuels in the future. NASA, DOD, and DOE have the primary responsibility in this area. NASA's work is in the area of developing technology to accommodate alternative fuels for future commercial and general aviation aircraft. DOD is performing R&D on utilization and defining fuel specifications for use in military turbine aircraft. DOE's role with regard to alternative fuels is primarily oriented to R&D on extraction, upgrading, and refining, and commercialization of alternative fuels. The FAA will monitor the progress in alternative fuels development in the interest of maintaining an effective air transportation system. The FAA also has underway studies to determine the feasibility of using automotive gas in lieu of aviation gas for general aviation and, to a lesser extent, air carrier operations.

Consistent with one of the policy principles states at the beginning of this chapter, the FAA will promote the use of alternative fuels whenever possible in an effort to free petroleum-based fuels for aviation, and other users, which are vital to the Nation and for which there are no economically viable alternatives in the near term.

E. Internal FAA Program

Specific program elements falling under the Internal FAA Program include the following:

Promote Efficient Use of Energy in FAA Operations

The FAA will adopt standards, policies and internal operating procedures which accomplish the following:

- Improve the efficiency of "process" facility electrical use through solid-state equipment technology.
- Improve the efficiency of motor gasoline use in maintenance and other day-to-day operations.
- Improve the efficiency of jet fuel and aviation gas use in FAA aircraft fleet operations.
- Improve the efficiency of heating and cooling energy use in both manned and unmanned FAA facilities.

Develop Energy Contingency Plan

The FAA is developing an appendix to its agency Order 1900.1C, FAA Emergency Operations Plan. The appendix provides for energy contingency planning to ensure to the maximum extent possible a continuing support capability of FAA facilities and installations during periods of energy supply deficiencies or short-term outages.

The FAA will also work towards the development of a mechanism which provides for contingency planning for the aviation industry in the event of a serious fuel crisis. The FAA will support the national objective of maintaining an effective air transportation system to the extent necessary for national security.

Promote Energy Efficiency in ATC Facilities

The FAA will review its establishment criteria for en route and terminal facilities (funded under the facilities and equipment program) to

ensure that energy efficiency is given proper emphasis.

Require Energy Assessment for Agency Actions

On December 11, 1980, the FAA issued an order revising its internal regulatory procedures to require an energy assessment for those FAA actions which involve by design, construction, installation or operation the significant use of energy in their function or implementation. In general, energy assessments will be performed for the following areas: (1) establishment of buildings, including those used for navigation equipment, (2) changes to air traffic control regulations, policies, or procedures which would clearly cause a significant increase in aircraft fuel consumption, (3) airport layouts or changes to an airport layout, and (4) aircraft modifications. The FAA's operating regulations are included in (2) above, and as a result this requirement will ensure that the energy impact of FAA noise abatement procedures as well as other agency actions and decisions are considered before implementation. Energy conservation will not take precedence over the safety mandates of the FAA, but whenever possible, safety-oriented actions will be consistent with the agency's energy conservation activities.

Develop Energy Models for Use in Energy Assessments

The FAA is developing several analytical tools and data bases which will improve agency capabilities in performing energy assessments. One such tool is an aircraft fuel burn simulation model which assesses aircraft-specific fuel consumption characteristics of complex flight patterns en route and in terminal areas around airports. The model, which will be available in the summer of 1981, will facilitate the energy impact analysis of: (1) proposed changes to operating procedures, (2) airport delay effects. and (3) regulatory changes.

Furthermore, this model will be linked to the FAA's noise model to ensure that analyses of noise abatement programs consider the impact of those programs on aviation energy conservation goals.

Monitor ATC Energy Conservation Programs

The FAA will establish a monitoring program to measure the impacts of various ATC programs on energy use. This will provide information on the effectiveness of existing energy conservation programs and provide the basis for future planning in the area of energy. This is a complex issue since many FAA programs are interrelated and it is impossible to identify the actual energy savings which result from any single program. Also, there are many participants involved in the decisionmaking process—air traffic controllers, aircraft operators, airline managements, etc. For this reason, inplementation of a monitoring system will require the coordinated efforts of all participants to identify those programs which feasibly can be measured and to design the most appropriate monitoring mechanism for each program. For those programs where the resource commitment necessary to monitor agency programs is too large to justify a monitoring system, the FAA will use fuel savings estimates based on analytical models.

Summary

The FAA Aviation Energy Conservation Policy represents a comprehensive plan requiring the support of the Federal Government, aircraft owners and pilots, airport operators, and aeronautical manufactureres and suppliers. It consists of commitments on the part of the FAA to take specific actions while at the same time it addresses complementary actions needed by non-FAA groups to maximize aviation energy conservation.

The following chart lists all of the actions contained in this policy document. In addition, the chart identifies the various groups, Federal and private, which are responsible for the actions and the status of each.

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PROGRAM/ACTION	RESPONSIBLE GROUPS	New Initiatives	Development Stage	Ongoing Program
A. ATC/Flight Operations Program				
1. Expand and Refine Fuel Advisory Departure (FAD) Procedures	FAA, Aircraft Operators, Airport Operators			X
2. Promote Gate Hold Procedures	FAA, Aircraft Operators, Airport Operators			X
3. Expand Local Flow Traffic Management (LFTM) Program	FAA, Aircraft Operators, Airport Operators			X
4. Promote Fuel-Efficient Altitudes/Speeds	FAA, Aircraft Operators			X
5. Promote Effective Use of the Airspace	FAA, Aircraft Operators		X	X
6. Promote Reduced Tankering	FAA, Aircraft Operators			X
7. Expand Use of Simulators	FAA, Aircraft Operators		X	X
8. Promote Fuel-Efficient Taxi Procedures	FAA, Aircraft Operators, Airport Operators			X
9. Promote Maintenance of Aircraft for Optimum Fuel Efficiency	FAA, Aircraft Operators			X
10. Promote Use of Inflight Computers	FAA, Aircraft Operators			X
11. Develop Energy Model for Optimum Flight Planning	FAA, Aircraft Operators, Aeronautical Manufacturers		X	X
12. Expand/Promote Energy Training Programs for Controllers/Aircraft Operators	FAA, Aircraft Operators	X		

PROGRAM/ACTION	RESPONSIBLE GROUPS	New Initiatives	Development Stage	Ongoing Program
B. Upgraded ATC Systems and Procedures	FAA, Aircraft Operators, Airport Operators, Aeronautical Manufacturers		X	X
C. Airport Program				
1. Require Energy Assessments for ADAP Projects	FAA, Airport Operators	X		
2. Develop Energy-Efficient Ground Operating Plan for Washington National and Dulles International Airports	FAA	X		
3. Promote Snow/Ice Removal Systems	FAA, Airport Operators			X
4. Evaluate Incentive Programs, Quotas and Slot Allocation Mechanisms for Reducing Airport Delays	FAA, Airport Operators, Aircraft Operators		X	X
5. Continue the Airport Improvement Program to Reduce Congestion and Delays	FAA, Airport Operators, Aircraft Opeators			X
6. Promote Satellite Airports and Separate GA Facilities at Congested Airports	FAA, Airport Operators, Aircraft Operators			X
7. Evaluate Aircraft Towing	FAA, Airport Operators, Aircraft Operators, Aeronautical Manufacturers		X	X
8. Develop Energy Conservation Education Programs for Airport Operators	FAA, Airport Operators	X		
9. Promote Energy-Efficient Airport Access Systems	FAA, UMTA, FHWA, Airport Operators			X

PROGRAM/ACTION	RESPONSIBLE GROUPS	New Initiatives	Development Stage	Ongoing Program
D. Aircraft Technology Program				
1. Promote Development of New Technology Aircraft Engines, and Aircraft Systems	FAA, NASA, Aeronautical Manufacturers, Aircraft Operators		X	X
2. Promote New Aircraft Designs with Extended Towing Capabilities	FAA, Aeronautical Manufacturers, Aircraft Operators, Airport Operators		X	X
3. Support Development of Alternative Fuels	FAA, DOE, NASA, DOD		X	X
E. Internal FAA Program				
1. Promote Efficient Use of Energy in FAA Operations	FAA			X
2. Develop Energy Contingency Plan	FAA	X		
3. Promote Energy Efficiency in ATC Facilities	FAA			X
4. Require Energy Assessment for ATC Facilities and Procedures	FAA	X		
5. Develop Energy Models for Use in Energy Assessments	FAA, Aircraft Operators, Aeronautical Manufacturers		X	X
6. Monitor ATC Energy Conservation Programs	FAA	X		

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Appendix: Statement of the Energy Problem

In the United States, 87 percent of transportation energy is derived from petroleum. Aviation is totally dependent on petroleum which is becoming an increasingly scarce resource in the United States. As a result, the United States has become dependent on imported petroleum, and therefore, is more vulnerable to uncertainties in both the domestic and international marketplace.

This section provides an overview of historical, current, and future trends of U.S. energy consumption with particular emphasis on the U.S civil aviation community. In addition, the importance of aviation to the national economy, the prospects for the aviation fuel supply, and finally, the feasibility of using alternate fuels for aviation are discussed briefly. These facts will clarify the need for a comprehensive aviation energy conservation effort by the Federal Government and the aviation industry.

National Energy Perspective

Figure 1 illustrates the breakdown of U.S. energy consumption by type of energy. U.S. energy consumption has more than doubled over the past 25 years, and transportation has consistently accounted for approximately 25 percent of all energy consumed. Transportation presently uses 53 percent of the petroleum consumed in the United States.

Although domestic petroleum production is 8.7 million barrels per day or 23 percent of total energy use, it is far exceeded by the demand for petroleum products which is 17.6 million barrels per day. The result is an over-dependence on imported petroleum products. Focusing directly on petroleum, Figure 2 shows petroleum consumption by major sectors of the economy, and Figure 3 shows the transportation share by mode. As is evident from these statistics, transportation is very vulnerable to fluctuations in petroleum supplies.

Aviation Fuel Perspective

Total civil aviation consumes about 8 percent of the transportation share of petroleum use or 4 percent of total U.S. petroleum. The table below shows the estimated fuel consumption for domestic civil aviation for FY–1980.

FIGURE 1

Total U.S. Energy Consumption
By Type of Energy
1979 Percentages

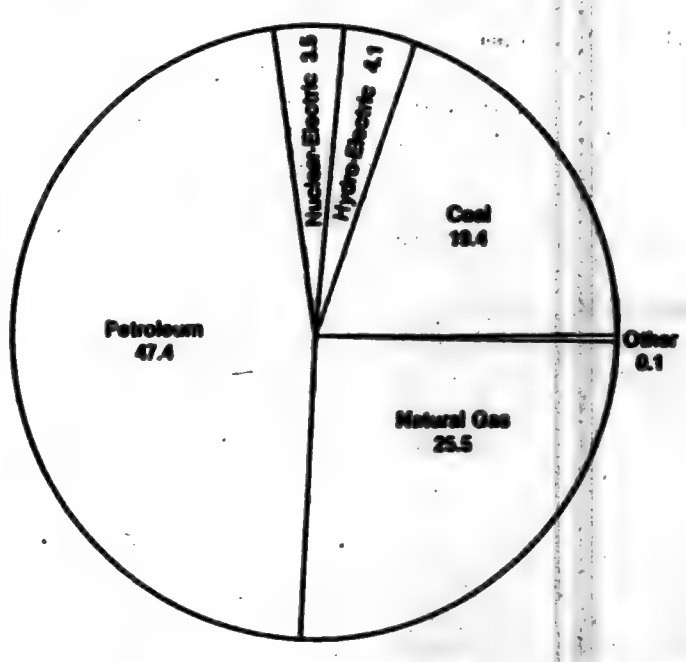

FIGURE 2

Use of Petroleum Products
By Major Sectors of the Economy
1979 Estimated Data by Percent

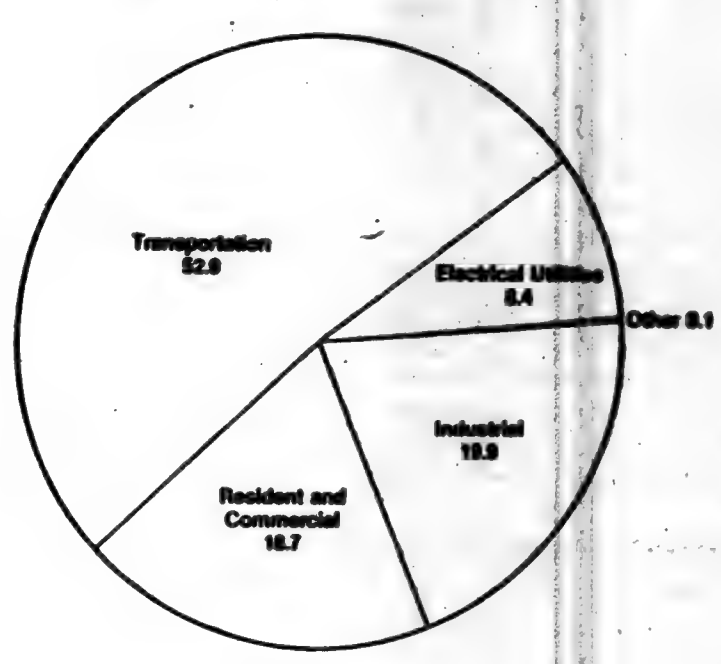

FIGURE 3

Transportation Petroleum Consumption By Mode

1980 Estimated Data by Percent

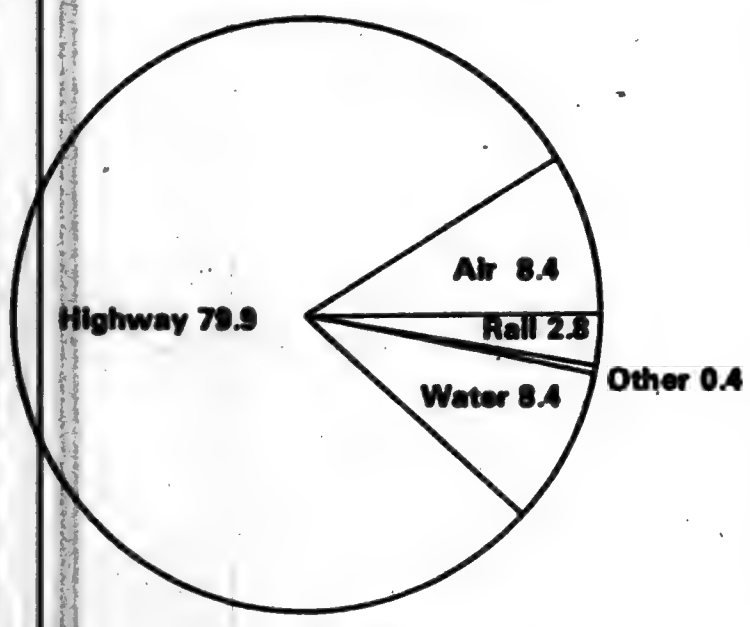

Estimated U.S. Domestic Civil Aviation Fuel Consumption—FY 1980

[Millions of Gallons]

	Air carriers	General aviation	Total
Jet fuel	10,370	909	11,279
Aviation gas	19	522	536
Total aviation fuel	10,389	1,431	11,814

Air carriers consume 88 percent and general aviation consumes 12 percent of domestic civil aviation fuel. At current levels of consumption, a one percent savings in commercial aviation fuel would yield a total annual savings to the Nation of about 100 million gallons. At an average price of $1.00 per gallon, this would translate into a savings of about $100M a year to the airlines. This indicates that effective fuel conservation programs can have a significant impact on national consumption and airline profitability.

Historical data (Figure 4) show that domestic air carrier fuel consumption dropped significantly after the oil embargo of 1973 which forced airlines to cut back their flight frequency to conserve fuel. Fewer gallons consumed coupled with an increasing level of revenue ton-miles resulted in improved fuel efficiency (see Figure 5). Current fuel consumption has risen in response to the significant growth in air carrier traffic (air carriers consumed 4.7 percent more gallons in 1979 than in 1973).

As shown below, air carrier fuel prices have risen about 546 percent since 1973 for domestic carriers and 654 percent for international carriers. A significant portion of the increase occurred in 1974 as a result of the oil embargo. Even though the air carriers have exhibited increasing fuel efficiency, the continued increases in fuel prices (which are beyond management control), have cause the proportion of total operating costs attributable to fuel costs to rise substantially.

Average Air Carrier Fuel Prices and Operating Costs

	1973	1974	1975	1976	1977	1978	1979	(1st half) 1980
Domestic operations:								
Price (cents per gallon)	13	22	27	30	35	36	50	84
Percent of total operating costs	11	15	16	18	20	20	24	30
International operations:								
Price (cents per gallon)	13	34	39	37	40	42	64	98
Percent of total operating costs	12	21	21	20	20	19	25	32

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FIGURE 4

Domestic Air Carrier Fuel Consumption

FIGURE 4

Domestic Air Carrier Fuel Consumption

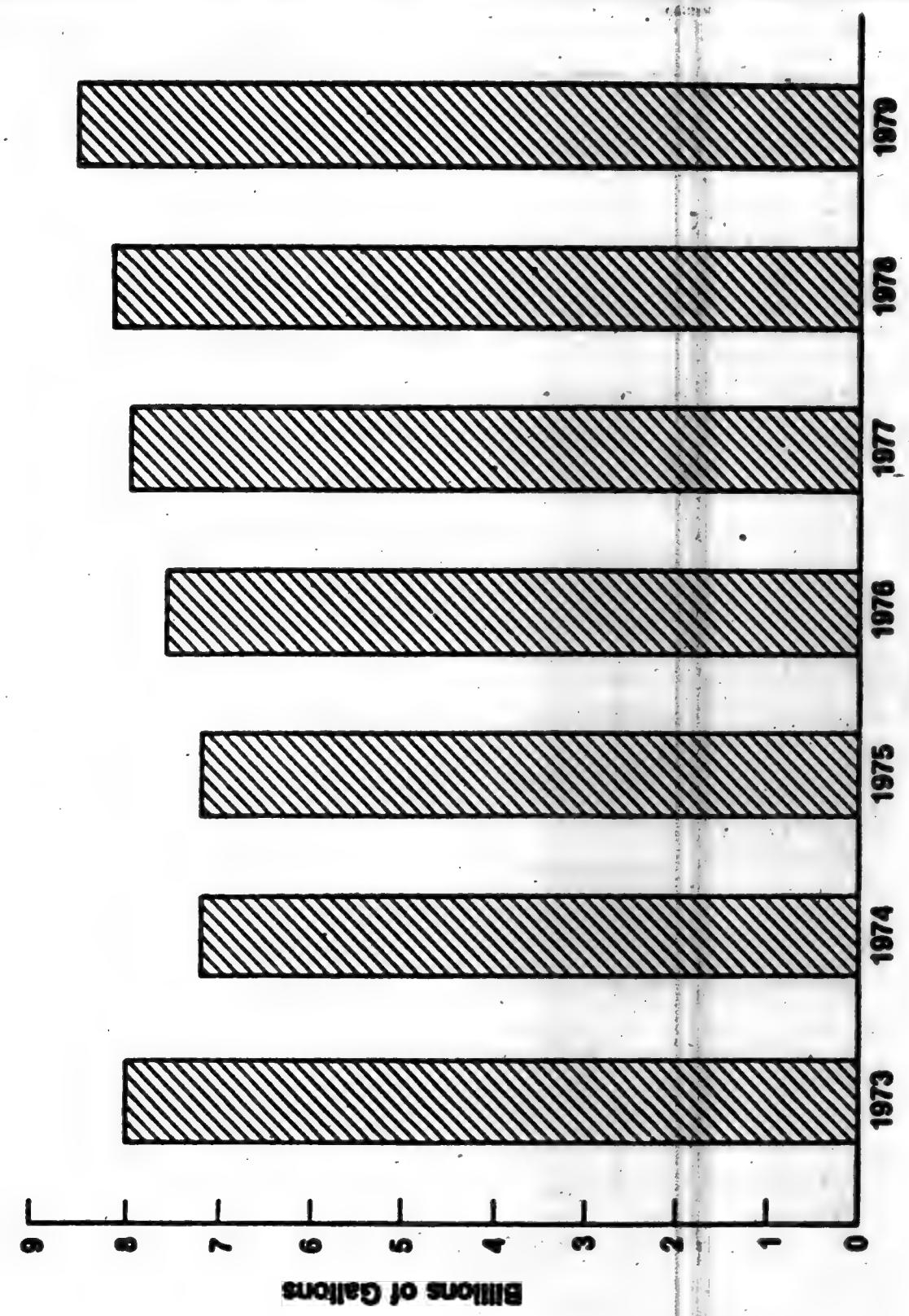

FIGURE 5

Domestic Air Carrier Fuel Efficiency

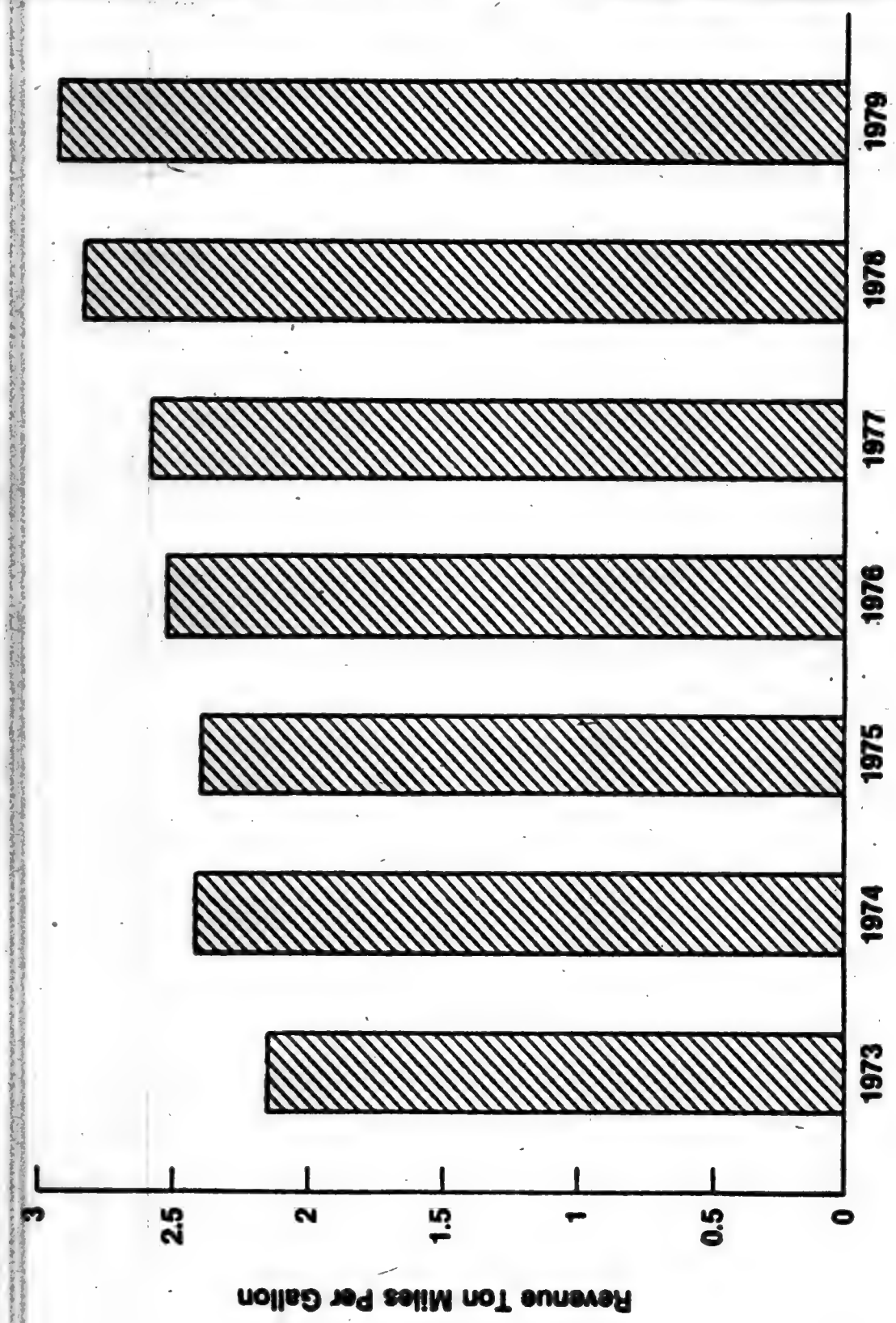

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General aviation fuel consumption has increased steadily since FY–1973 with jet fuel consumption growing at a faster rate than aviation gasoline. Of special interest to general aviation activity is the fact that in FY–1980 only 6,000 aircraft of the 193,000 general aviation fleet used jet fuel, accounting for only 8 percent of hours flown. However, this accounted for 64 percent of total general aviation fuel used. As general aviation operators turn to greater use of jets, fuel consumption will undoubtedly increase at a faster rate than otherwise.

Average General Aviation Fuel Prices

(Cents per Gallon)

Fuel	1973	1974	1975	1976	1977	1978	1979	1980
80/87	47	64	69	75	82	89	128	154
100/130	49	66	73	78	84	91	139	161
Jet Type A	50	62	66	69	76	79	138	148

General aviation fuel prices have risen approximately 228 percent and 166 percent for aviation gasoline and jet fuel, respectively, since 1973. In spite of these cost increases, general aviation itinerant operations and hours flown increased almost 46 percent and fuel use increased 100 percent over the same period.

Forecast of Aviation Activity

The FAA's baseline forecasts of aviation activity assume that the supply of energy and fuel will not significantly inhibit economic or aviation growth. Fuel prices, however, will be a significant controlling factor in determining the future level of aviation activity. The following forecasts assume a 22 percent increase in oil prices and an 11 percent inflation rate for the 1980–1981 period. Fuel price increases will be less dramatic in subsequent years, but are expected to average about 9 percent annually during the 1980–1992 forecast period. This includes the effect of price increases in domestic and imported oil, but not the impact of possible taxes on aviation fuels.

FAA Forecast of U.S. Domestic Civil Aviation

[Figures in millions]

	Fiscal year 1980	Fiscal year 1992	Percent change
Air Carriers:			
Revenue passenger enplanements	290.5	481.1	+66
Revenue passenger miles*	201.9	352.7	+75
Itinerant aircraft operations	10.3	12.5	+21
Jet fuel (gallons)	10,370	12,656	+22

*Note: Revenue Passenger Miles expressed in billions.

FAA FORECAST OF U.S. DOMESTIC CIVIL AVIATION

[Figures in millions]

	Fiscal year 1980	Fiscal year 1992	Percent change
General aviation:			
Hours Flown	42.1	64.3	+66
Itinerant Aircraft Operations	29.4	43.9	+49
Jet Fuel (Gallons)	909	1,851	+104
Aviation Gasoline (Gallons)	622	799	+51

Given the above estimates, air carrier revenue passenger enplanements and revenue passenger miles are expected to increase 66 percent and 75 percent, respectively, over the 12-year forecast. Itinerant aircraft operations will rise 21 percent for air carriers and 49 percent for general aviation. As expected, general aviation jet fuel consumption increases significantly more than aviation gasoline as the use of turbine-powered aircraft increases.

As noted earlier, civil aviation fuel consumption increased 25 percent over the past 10 years. FAA forecasts indicate that aviation fuel use will again increase 25 percent over the next decade. In light of a worldwide decreasing supply of petroleum, the development of alternative aviation fuels becomes increasingly important. The conservation and improved efficiency of existing fuels is also of primary concern to the viability of the aviation industry.

Contribution of Air Transportation

The airlines and general aviation together make up the Nation's balanced air transportation network—the safest, most dependable and most efficient in the world.

Scheduled air service is the foundation of the Nation's public intercity passenger system as shown in Figure 6. The system serves a comprehensive national network of 56,000 city pairs with 12,500 daily flights. In 1979, the airlines moved 286 million passengers a year at 735 airports. General aviation serves these airports plus an additional 14,000 airports around the country linking these cities with vital commercial air transportation. Air service has enviable records for safety, punctuality, comfort, and cleanliness. Furthermore, lower trip time is a fundamental element that differentiates air service from ground transportation. The speed of air transportation improves business opportunity and productivity which in turn benefits the Nation's economy. Also, speed is important in many family travel situations. Another major advantage of air travel is the flexibility which occurs because there is no need for right of way, i.e., aircraft operators can quickly and easily change markets, capacity, service, etc., in response to consumer demand. This is not true of rail, water and highway travel.

FIGURE 6

Distribution of Intercity Passenger Travel By Common Carrier

1979 Passenger Miles

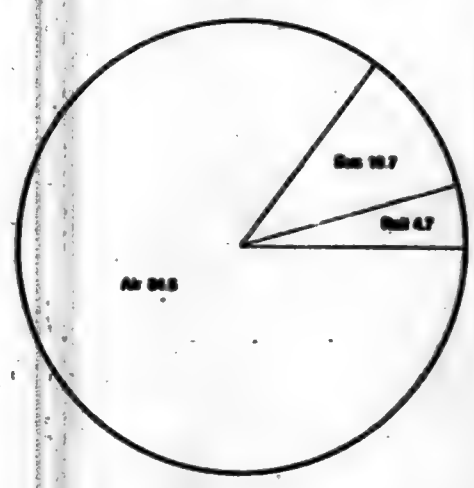

A healthy aviation industry also assists the foreign trade balance of payments. Airline competition in the United States has fostered a manufacturing industry whose products dominate world air transportation. In 1979, over 70 percent of the active free-world turbine-powered air carrier fleet were of U.S. manufacture. General aviation also contributes significantly to the U.S. balance of payments. Approximately 80 percent of the world's general aviation fleet were built in the United States.

The private automobile dominates short distance intercity transportation. The only substantial public service challenge is from air transportation on medium and longer distance trips. While a fully loaded automobile is generally fuel efficient, low occupancy automobile travel is neither cost effective nor fuel efficient. Since 57 percent of air passengers travel singly or in parties of two, energy may not be conserved if fuel allocations disrupt air service and the auto is used as an alternative mode.

The following table shows relative fuel efficiencies for the various modes based on the actual number of passenger-miles traveled in 1978. As noted earlier, speed is a fundamental element that differentiates air service from the ground modes. Passenger miles per gallon fails to reflect the value of a passenger's time in its measure of efficiency. While a bus is by far the most fuel-efficient mode, its passengers are limited to shorter distances than air travelers when time is important. Numerous studies have been done to develop a more satisfactory measure of efficiency, however, to date, there is no generally accepted measure of the value of passengers' time across the modes. Nevertheless, the DeOT/FAA supports the use of the most efficient means of transporting people and goods be it by air, rail, ship or highway. The improved efficiency of all those modes is a common objective. One final note is that when evaluating the total energy costs of a transportation mode, direct and indirect costs must be included. Indirect costs comprise, among other things, the energy costs of installing rails and highways.

Passenger Miles Per Gallon*

(Intercity travel, 1978)

Class I Bus	119.00
Rail	45.04
Automobile	43.22
Scheduled Air Carriers	33.87

*The equivalent level of BTU's was used to determine the "Passenger Miles Per Gallon" figure for rail.

The U.S. airlines have established an outstanding energy conservation record since the 1973 oil embargo. In 1979, the scheduled airlines used 4.7 percent more fuel than in 1973, but carried 91 million more passengers (a 47.3 percent increase). Domestic revenue ton-miles per gallon (RTM/G), a widely used measure of air carrier fuel efficiency, increased 35 percent from 1973 to 1979.

The substantial improvements in air carrier fuel efficiency to date have resulted primarily from reducing the number of flights as a result of the oil embargo (thus increasing load factors); the voluntary grounding of fuel-inefficient aircraft and airline investment in new, more fuel-efficient aircraft; and the efforts by the Federal Government and the industry to improve air traffic control and aircraft operating procedures. The rapidly escalating price of fuel has provided the incentive for continued efforts in these areas. In this regard, it is important to note that many people criticize the airlines for flying with empty seats. Actually, the domestic scheduled airlines have consistently recorded the highest load factor of all intercity public transportation modes (see Figure 7). In the future, there is a practical limit to raising seating density and to increasing load factors. Further improvement in aviation fuel efficiency, therefore, will require dedicated efforts by all segments of the industry.

Although there is no comparable measure of general aviation fuel efficiency (revenue ton-miles are meaningless for general aviation), this segment of the aviation industry has also implemented numerous programs to conserve energy. Most of these programs have focused on educating pilots in the most fuel-efficient operating techniques such as proper leaning procedures, engine maintenance, etc. FAA will continue to support these efforts wherever possible. General aviation serves an important function by providing direct origin-destination travel to non-airline markets or at non-airline times. In addition, general aviation provides ambulance, agricultural, firefighting, aerial surveying, banking and postal services as well as numerous other functions for the Nation's economy.

Aviation Fuel Supply Conditions

In the past, aviation fuels were subject to mandatory price and allocation regulations (administered by the Department of Energy). The allocation program regulated producers, distributors, and sellers of petroleum products with respect to the volumes of each regulated petroleum product they could provide to various consumers or classes of consumers. The pricing program was more complex due to the varying treatment of different classifications of crude oil by the producers. This pricing problem did not occur for aviation fuels because very few nonproduct costs were involved. As long-term, fixed price fuel contracts expired, they were replaced by contracts of shorter duration without fixed prices. The aviation fuel allocation system also worked well as long as demand patterns remained stable. As a result of the Airline Deregulation Act of 1978, numerous requests for route changes were filed and the allocation system broke down. The airlines' allocation problem was relieved when the price and allocation regulations for aviation fuels were repealed.

On February 26, 1979, the mandatory price and allocation regulations were revoked for kerojet fuel and aviation gasoline. Naptha jet fuel (use primarily by the military) was decontrolled on October 1, 1976. The current status, therefore, is a free market situation regarding price for all aviation fuels which will remain in effect unless standby regulations are fully or partially activated.

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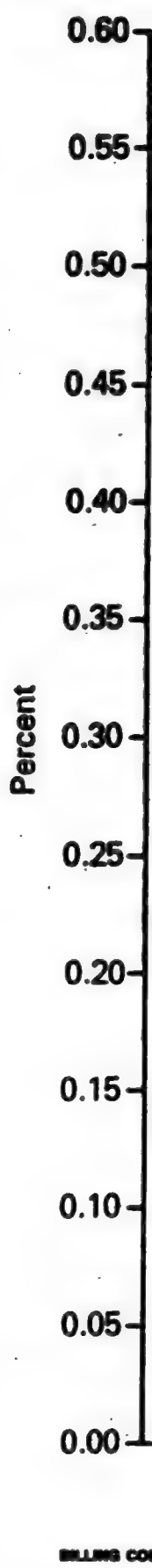

FIGURE 7

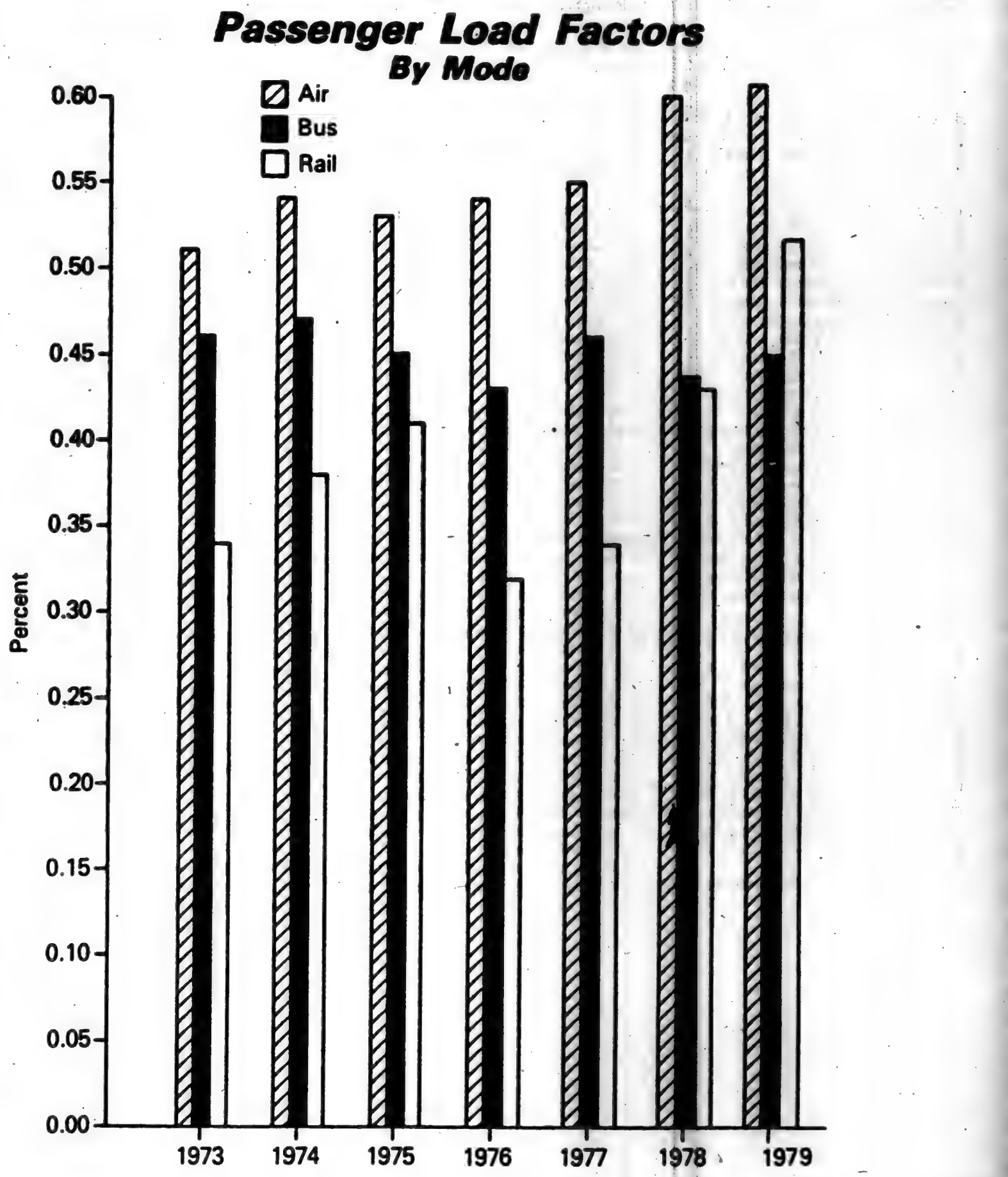

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Agency (EPA) requirements, unleaded motor gas will become more predominant in the future thus exacerbating the conflict with aviation gasoline.

A problem which surfaced as a result of the Airline Deregulation Act concerned the fuel availability for new carriers (primarily commuters). This was precipitated by a number of larger carriers terminating service to small communities and taking their fuel supplies with them. Regulations require that replacement service be provided, but in some cases replacement commuters could not make adequate fuel supply arrangements. The Civil Aeronautics Board and the Department of Energy, who have the primary responsibility in this area, coordinate to ensure that adequate fuel is available to guarantee a level of "essential" service; otherwise, the original carrier must continue to serve the market.

The FAA has no authority to regulate fuel production or distribution, however, the agency has coordinted informally with DOE on aviation fuel problems or request received from users. DOE maintains an airline fuel desk to handle requests for fuel and related problems. FAA actions focus primarily on monitoring the overall fuel supply and price conditions on a systemwide basis.

Alternative Fuels Development

As mentioned earlier, aviation is currently totally dependent on petroleum fuels. It is predicted that by the turn of the century, the price and availability of petroleum-based products, including aviation fuels, will be at the critical stage. Research has been done to develop alternative fuels, however, alternate fuels for aviation do not appear to be economically feasible or available in large quantities in the near term.

Petroleum-based aviation fuels exhibit characteristics which are amenable to safe and economic air tansport. Jet fuel density and energy properties allow fuel tanks to be far removed from the passenger compartment. Also, for a given payload, the airframe can be smaller in volume and lighter in weight than when large fuel tanks have to be accommodated. The boiling and freezing points of jet fuels also provide opportunities for regularly scheduled airline service over a wide range of ambient conditions.

The practical choices among future fuels appear to be dominated by two very different types: synthetic Jet A (synjet) and liquid hydrogen. Liquid methane is also an attractive possibility on a performance and cost basis, but restrictions concerning storage and handling of large quantities in populated areas make it a difficult choice for aircraft.

Synjet fuel can be manufactured from coal, oil shale and tar sands. Coal-based processes are reasonably well understood, and some have been used since World War II. The use of oil shale and tar sands is hindered by difficulties which have been encountered in exacting the usable hydrocarbon product. Significant environmental and economic obstacles must also be overcome before either of these natural resources can be used on a large scale. Despite these problems, the Air Force could be using shale oil jet fuel in limited quantities in the next few years.

The chief incentive for using synthetic Jet A is that it is compatible with existing airplanes, fuel storage, and distribution systems. A major disadvantage of synjet is that none of these fossil resources is available universally, nor are they renewable. Although the U.S. has an adequate supply of coal and oil shale to satisfy our domestic needs for one or two centuries, other areas of the world have little or no remaining fossil resources.

On the other hand, hydrogen can be produced directly from water, so it is both universally available and renewable. The major disadvantage is that hydrogen is not interchangeable with petroleum-based fuels and requires new airplane and engine designs, and fuel storage, supply, and distribution systems. Airport plant capital requirements would be substantial. Moreover, the relatively inefficient hydrogen manufacturing process would consume about twice as much energy as is delivered in the form of fuel.

All transportation modes depend heavily on petroleum. However, air transportation has fewer feasible near-term alternatives. As the energy content of fuels decreases, air transports suffer major weight penalties. The ground modes incur relatively minor weight changes, which permits greater flexibility in selecting fuel characteristics. In addition, the ground modes are not limited to portable liquid fuels. Electrified lines for trains and battery-powered automobiles allow several exchangeable choices of energy sources (coal, petroleum, nuclear, and eventually, solar). As a result, emphasis should be to develop and refine alternate fuels for industry and those uses where it is currently practical and to reserve petroleum for aviation and other areas where no economically feasible alternative exists. This policy provides for the most efficient allocation of our scarce national resources. In the meantime, the long range health of the aviation industry depends on stable fuel supplies including the long-term development of alternative fuels.

Issued in Washington, D.C. on January 13, 1981.

Langhorne Bond,
Federal Aviation Administrator.
Neil Goldschmidt,
The Secretary of Transportation

[FR Doc. 81-1827 Filed 1-16-81; 8:45 am]
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federal register

Monday
January 19, 1981

Part XXXIV

Department of the Interior

Bureau of Land Management

Leases, Permits, and Easements; Land Use Authorizations Under the Federal Land Policy and Management Act

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Parts 9 and 2920

[Circular No. 2463]

Leases, Permits, and Easements; Land Use Authorizations Under the Federal Land Policy and Management Act

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rulemaking.

SUMMARY: Section 302 of the Federal Land Policy and Management Act of 1976 authorizes the Secretary of the Interior to regulate through easements, permits, leases or other instruments, the use, occupancy and development of the public lands. This final rulemaking provides the procedures under which that authority will be exercised.

EFFECTIVE DATE: February 18, 1981.

ADDRESS: Any suggestions or inquiries should be sent to: Director (320), Bureau of Land Management, 1800 C Street, NW., Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT: Ralph Conrad, (202) 343-8893, or Robert C. Bruce, (202) 343-6735.

SUPPLEMENTARY INFORMATION: Proposed rulemaking was published in the Federal Register on May 12, 1980 (45 FR 31284). Comments were invited for 60 days. Comments were received from 31 different sources, 17 from Federal agencies, 8 from business interests, 3 from associations, 2 from individuals and 1 from an environmental group.

The general comments expressed the view that the proposed rulemaking was good and reflected a real effort to take full advantage of the possibilities for flexible land use authorization provided in section 302 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1732). Three or four comments were of the opinion that the proposed rulemaking was overly complicated and needed to be less specific. One of the comments suggested that there should be three sets of regulations developed, one for leases, one for permits and one for easements. This suggested process would, the comment felt, allow for a differentiation to be made in the requirements for each of the types of use authorization. The proposed rulemaking was designed to allow the flexibility afforded by section 302 of the Federal Land Policy and Management Act and to require the minimum amount of information needed to determine if a requested land use should or should not be permitted on the Federal lands. The final rulemaking continues this concept. It provides a process of availability of the public lands for approved uses of those lands, and a simplified process for public-initiated short term permits for uses that have minimum impact on the public lands.

The bulk of the comments on the proposed rulemaking were directed at specific provisions. Each of the sections that received comments will be discussed.

Purpose

A new section has been added to the final rulemaking to establish the purpose of the rulemaking. It makes clear that procedural and informational requirements will vary in relation to the nature of the anticipated use, thus permitting expedited issuance of permits.

Definitions

The term "authorized officer" drew several comments. One comment requested that the authority to issue land use authorizations not be delegated any lower than to the District Manager. As stated in the preamble to the proposed rulemaking, the authorized officer will be the District Manager in nearly every case. There may be some instances where an Area Manager will be the authorized officer, but those will not be the normal situations. Other comments on this term were concerned about the authority granted the authorized officer by the rulemaking and suggested that the rulemaking should set out the qualifications of the authorized officer. Nearly all of the regulations of the Bureau of Land Management place authority at the point where the granting action takes place, the issuance of a land use authorization in this case. It is the Bureau's concept that the people on the ground are closest to the conditions and have the most knowledge of the situation. This being the case, the authority to make decisions and put them in effect is properly placed at the point of the greatest knowledge. In the event an authorized officer improperly carries out his duties, the appeal system gives the wronged individual an avenue for correcting the wrong. No change has been made in the term "authorized officer".

Some of the comments questioned whether access to a lease, permit or easement would be handled as part of the land use authorization or would be obtained by the filing of an application under the provisions of the right-of-way regulations. As a result of a careful review of this question, it was decided that the final rulemaking would not be changed and access would be handled in the manner set forth in the proposed rulemaking. If an applicant for a land use authorization needs access across public lands, that access will be obtained through a request for a right-of-way under the provision of Part 2800 of this title.

The term "casual use" has been added to the definition section along with a new paragraph in § 2920.1 to make it clear that land use authorizations under this rulemaking are not required for short-term activities such as hunting, fishing and other individual activities. These additions have been added to clarify the intent of the rulemaking.

Several of the comments made the observation that the term "land use authorization" appeared several times in the rulemaking, but was not defined. The comments felt that defining this term would clarify the rulemaking. The suggestion has been adopted and the term "land use authorization" has been added to the definition section.

Policy

A comment raised a question about the process used for the determination of the fair market value of lands covered by a land use authorization. Fair market value will be determined by an appraisal performed by a Federal or independent appraiser, as determined by the authorized officer, using the principles contained in the *Uniform Appraisal Standards for Federal Land Acquisitions*. This system is used by Federal agencies for determining fair market value and will be used for that purpose in connection with this rulemaking.

Another comment expressed the view that the rulemaking should make some exceptions to the requirement that fair market value be received for land use authorizations issued under this rulemaking. The Congress, in section 102(a)(9) of the Federal Land Policy and Management Act, declared that it was their policy that the United States receive fair market value for the use of the public lands and their resources unless otherwise provided by statute. There is no statutory authority for issuing land use authorizations under section 302 of the Federal Land Policy and Management Act at less than fair market value. The Bureau of Land Management has other programs for granting public lands at less than fair market value and these will be used for special situations if the uses qualify. The appraisal should not unduly delay the issuance of land use authorizations.

A new paragraph has been added to this section to clarify the policy with regard to the informational and procedural requirements for the three

types of land use authorizations which may be issued under this rulemaking.

Uses Authorized

Several comments raised the point that this rulemaking could be the basis for authorizing uses such as certain right-of-way grants that can be authorized under the regulations implementing title V of the Federal Land Policy and Mangement Act of 1976. The comments were of the opinion that non-linear right-of-way grants could be handled as leases under this rulemaking. As stated in the rulemaking, this rulemaking will be used only for those uses that cannot be granted under title V of the Federal Land Policy and Mangement Act, section 28 of the Mineral Leasing Act or some other statutory provision. Right-of-way grants, both linear and non-linear, as well as grants for facilities closely related to a right-of-way grant will be handled under the regulations implementing title V of the Federal Land Policy and Management Act and section 28 of the Mineral Leasing Law. This suggestion has not been adopted.

A large number of the comments objected to the 30-year limitation placed on leases and the 1-year term placed on permits by the proposed rulemaking. The comments pointed out that the provisions of the Federal Land Policy and Management Act did not limit the term of a lease or permit and that the limitation imposed was not soundly based. The comments stated that the 30-year limitation could impact the ability of the land user to finance a project. After studying the question, the section has been changed to remove the 30-year limitation on leases, leaving the term to the discretion of the authorized officer, and to increase the term for permits from 1 to 3 years.

Another issue raised with regard to this section was the question of time limits on the term of an easement. The proposed rulemaking set no term. The final rulemaking has been changed to make it clear that the term of an easement will be determined by the authorized officer. A related comment on easements asked if the compatibility required by the rulemaking is to be with adjacent Federal lands or non-Federal lands. The intent of the rulemaking is that the easement will be used to assure compatibility with uses on adjacent lands, both Federal and non-Federal.

Proposal Procedures

As stated in the preamble to the proposed rulemaking, this final rulemaking provides two methods under which a land use authorization can come into being. The Bureau of Land Management can offer public lands for a non-Federal use on it own motion as a result of a determination through the land use planning process that public lands are available for a non-Federal use. The other process is initiated by an individual making a suggestion to the Bureau for a non-Federal use of a portion of the public lands.

The captions of the sections of the regulations relating to these processes have been changed to more clearly reflect the procedural requirements for public and Bureau of Land Mangement initiated land use proposals. Section 2920.2 has been retitled to "Proposal procedures for public-initiated land use proposals". A new § 2920.2–2 entitled "Minimum Impact Permits" has been added to provide for expedited short-term permits for uses that will cause no appreciable harm to the public lands, their resources or improvements and are consistent with Bureau plans, programs and policies for the use of the land. The previous § 2920.2–2 has been re-numbered 2920.3 and titled "Bureau of Land Management initiated land use proposals" to distinguish such proposals from public-initiated land use proposals.

Proposal Content

Comments on this section and a later section of the proposed rulemaking were concerned about the scale of the map that would be required and pointed out that the proposed rulemaking set no standards for the required maps. To clarify this provision, the sections calling for furnishing a map have been amended to require that the map be of sufficient scale to allow all of the required information to be legibly shown.

In a related comment, the thought was expressed that the legal description required in this and other sections of the proposed rulemaking was for a survey. It was not the intent of the rulemaking that a survey be required for the legal description. All that is required is a description that is sufficient to allow the project to be located on the ground with reasonable certainty and to tie the map to the description.

Some concern was expressed in the comments about the amount of information required for a simple permit. This objection should be resolved by the new language in § 2920.2–2 of the final rulemaking that allows the authorized officer to issue permits for uses having minimum impact on the public lands after discussion of a proposal and submission of a short form application.

Proposal Review

A few comments were concerned about the planning process and the determination of consistency required by the proposed rulemaking. In order to bring the language of this rulemaking in line with the terminology used in the land use planning regulations, the word "consistency" has been changed to "conformance". The change in wording has not changed the basic requirement of the rulemaking that a proposed land use must conform to the multiple uses designated for the area under the land use planning process before it can be authorized. This conformance can be determined in a very short time for minor projects, but will be one part of the longer clearance process required for substantial projects. Another change made in the rulemaking was to make it clear that the authorization must be in conformance with "an existing" land use plan. The addition of the words "an existing" when describing land use plans clarifies the rulemaking.

One comment requested that the section be amended to require the authorized officer to consider a proposal that is found to not conform to an existing land use plan as an application to amend or revise the plan rather than leaving it to the authorized officer's discretion as the proposed rulemaking does. This change has not been adopted. There will be instances where the land use proponent, once the non-conformance is explained, will not want to go any further with the matter. In nearly every instance, the authorized officer will discuss whether or not the proposal should be considered a request to amend or revise an existing land use plan with the proponent before proceeding. The amendment-revision process is a complicated procedure and the land use proponent may not want to spend the time and effort to complete the process. The suggested change has not been adopted.

Notice of Realty Action

A few of the comments expressed the view that the notice of realty action should be delated, with one comment being of the opinion that the Federal Land Policy and Management Act intended that the Federal Government exercise little control over proposed uses, but process all proposals and allow the use. Section 302 of the Federal Land Policy and Management Act requires the Secretary of the Interior to regulate the use of the public lands. This rulemaking provides the procedure for determining the appropriateness of a proposed use, as well as the identification of lands for non-Federal uses. The notice of realty action is a device to inform the public that a determination has been made that lands are available for a non-Federal use. The

notice of realty action is not intended to; nor will it prevent the public from initiating proposals for non-Federal uses of the public lands. The issuance and publication of a notice of realty action is required except in those instances where the authorized officer determines, as provided in § 2920.2-2, that a publicly initiated proposed use can be allowed under a permit because it will not cause appreciable damage to the public lands and their resources and is in compliance with Bureau of Land Management policies and programs. This authority is permitted only for permits, which are short term revocable authorizations, but not for leases and easements, which are authorizations for longer terms and give greater rights to the holder. The notice of realty action has been retained as part of the procedure in the final rulemaking.

A couple of comments on this section wanted language included that would specify that adjoining landowners and current and past users of the lands covered by the proposal would be interested parties who would be required to receive the notice of realty action. This suggestion has been adopted and appropriate language added to this section of the final rulemaking.

Finally, one comment pointed out that paragraph (d) of the section did not allow for those instances when the notice of realty action has been waived. The provisions concerning waiver of the notice of realty action have been clarified to take care of this comment.

Application content

The several comments on this section expressed the opinion that the requirements were too detailed and should be reduced. The information required by the rulemaking at the application stage was carefully analyzed before the publication of the proposed rulemaking and again as a result of the comments received on the proposed rulemaking. The information required is the minimum needed to enable the authorized officer to make a decision on the granting of a land use authorization.

Another change in this section of the final rulemaking is deletion of the citizenship requirement that appeared in the proposed rulemaking. Also deleted are the paragraphs containing requirements for documents to be furnished by corporations, partnerships, associations and other incorporated entities and State and local entities. This deletion will further simplify the final rulemaking.

Further, much of the information can be supplied on a one-time basis and a reference made to the case number containing the information if it has not changed since it was furnished. The new provision in the final rulemaking for quick issuance of a permit or a short form should alleviate much of the concern about the information required for a land use authorization. No significant change has been made in this section in response to these comments.

One comment wanted a change in the paragraph dealing with the discretion of the authorized officer to require evidence of financial and technical capability prior to initiation of construction on the project covered by the land use authorization. The authority has been left unchanged, but the manual sections that will be issued as guidance for the field on how to carry out this rulemaking will strongly suggest that the authorized officer require such evidence only for major projects or projects that involve extensive costs or technical capability.

One change was made in paragraph (b)(1) of the section to make clear that the authorized officer can require the applicant or applicants not only to perform needed studies, but to pay for those studies if it is decided that it would be in everyone's best interest to have the Bureau of Land Management either perform the studies or contract for their performance. This amendment does not increase the burden on an applicant; it just makes it clear that the matter can be resolved in more than one way.

Application Review

The comment on this section recommended that a time frame be imposed on the authorized officer to act on proposals or applications. This suggestion has not been adopted. However, every effort will be made to act on all proposals and applications in the shortest possible time. The procedure for discussion of a proposal should, if instituted by a proponent early enough in the process, shorten the processing of a proposal or application, and result in the issuance of short term permits without further paperwork.

The section has been amended to make it clear that the authorized officer has the option to deny an application, as well as to point out the deficiencies in an application. This change clarifies the section.

Competitive or Noncompetitive Bids

The only comment received on this section was a request that the section be amended to set fair market value as the maximum bid that could be accepted under competitive bidding procedures.

The rulemaking requires that the Secretary of the Interior receive at least fair market value for the use of the public lands. It does not limit bidding in a highly competitive situation to only fair market value. There is no reason to deprive the public of the return the market place affords by limiting the return to no more than fair market value. The suggested change has not been adopted.

Application Processing

The language of subsection (b) of this section has been changed to require that the selected land use applicant shall supply any additional information that the authorized officer considers necessary to process the application.

Reimbursement of Costs

This section was the focus of more comments than any other section of the proposed rulemaking. All of the comments were opposed to the concept of reimbursement of costs, with some suggesting that the Secretary of the Interior lacked the authority to impose such a condition. Others argued that the environmental analysis process was in the public interest and should not be charged to the proponent or applicant. A provision has been added to this section that exempts from the cost reimbursement requirements those land use authorizations whose total rental is less than $250. This will exempt most short term permits.

Section 304 of the Federal Land Policy and Management Act of 1976 specifically gives the Bureau of Land Management the authority to recover "reasonable" costs, including the costs of special studies and environmental reports, with respect to applications relating to the public lands. By Secretarial Order 3011 (42 FR 55280) the Secretary of the Interior established that costs of special studies and environmental reports legally necessary for the processing of applications are reasonable costs.

Since the issuance of that order, two court decisions have upheld the authority of the Federal Government to recover reasonable costs, including the costs of preparing an environmental impact statement under the National Environmental Policy Act of 1969 (42 U.S.C. 4331 et seq.). In *Mississippi Power and Light Co.* v. *Nuclear Regulatory Commission*, 601 F. 2d 223 (5th Cir. 1979), the court held that the Nuclear Regulatory Commission could, under the Independent Offices Appropriation Act, charge an applicant for a nuclear reactor license the full cost of expenses incurred by the Commission in processing the license application, including the cost of an environmental impact statement. Furthermore, the court

specifically stated that it was not necessary to segregate the costs of the private and public benefits of an environmental impact statement, holding that the Commission may recover the full cost of providing a service (i.e. application processing) to an identifiable recipient (i.e. the applicant), regardless of the incidental public benefits flowing from that service. The court virtually ignored the contrary holding in *Public Services of Colorado v. Andrus*, 433 F. Supp. 144 (D. Colo. 1977).

It is more appropriate to follow the interpretation given the Independent Offices Appropriation Act by the court of appeals than that of the district court. The rulemaking reflects that position.

In *Alumet v. Andrus*, 607 F. 2d 911 (10th Cir 1979), the court of appeals overturned the ruling of the lower court that section 304 of the Federal Land Policy and Management Act did not authorize the Secretary of the Interior to seek reimbursement from an applicant for any part of the cost of preparing an environmental impact statement. The decision of the district court below was substantially based on the analysis provided in *Public Services of Colorado v. Andrus*. The reversal of the *Alumet* district court decision cast further doubt on the holding of the district court in the *Public Services* case. While the court of appeals in the *Alumet* case left unanswered the question whether full costs of an environmental impact statement can be recovered, when *Alumet* is read together with *Mississippi Power and Light*, one can draw the conclusion that it is within the constitutional and statutory authority of the Secretary of the Interior to impose upon an applicant for a land use authorization the full costs of an environmental impact statement necessary to process the application. The comments on the proposed rulemaking suggest that because the authority of the Secretary of the Interior to seek reimbursement is discretionary, cost reimbursement should be eliminated or that certain organizations, presumably acting in the public interest, should be exempted from cost reimbursement altogether. It is clear that the language of section 304 of the Act is discretionary. Nevertheless, the Secretary's ability to reduce or eliminate cost reimbursement is severely restricted by the Congress in the exercise of its authority over appropriations.

Moneys paid by applicants for processing applications are placed in a revolving account at the Department of the Treasury:

> The moneys received for reasonable costs under this subsection shall be deposited with the Treasury in a special account and are hereby authorized to be appropriated and made available until expended * * *. 43 U.S.C. 1734(b) (1978).

On July 26, 1977, Congress implemented this revolving account through the Department of the Interior and Related Agencies Appropriations Act for Fiscal Year 1978, Pub. L. 95-74, 91 Stat. 285, by authorizing the expenditure of moneys collected under sections 304(a), 304(b), 305(a) and 504(g) of the Federal Land Policy and Management Act. At the same time, Congress appropriated no other funds for processing right-of-way applications. The Senate in its report on the bill which became Pub. L. 95-74 states:

> This self-sustaining account, established under authority of the Federal Land Policy and Management Act, permits the Bureau of Land Management to finance required environmental study costs for rights-of-way applications, using fees assessed against the applicants * * *. S. Rep No. 278, 95th Cong., 1st Sess. 9 (1977).

The House in its report stated:

> This account uses the revenue collected under specified sections of the Federal Land Policy and Management Act of 1976. These include the collection of reasonable administrative and other costs, including environmental impact statement preparation costs in connection with right-of-way applications from the private sector. This includes such programs as the Trans-Alaska pipeline, and other energy casework functions where the costs of projects will be provided in advance by the applicant before the BLM initiates any work on the application. H.R. Rep. No. 362, 95th Cong., 1st Sess. 20-21 (1977).

This revolving account has been continued on the same basis by Congress through fiscal year 1980. Since at the present time no money for preparation of environmental impact statements is provided by Congress, all funds for such work must be provided by the applicant.

A new paragraph (a) has been added to this section to make it clear that when there are two or more applications for a land use authorization on the same parcel of land, each applicant is liable for the identifiable cost of processing his/her application. Further, each applicant is also liable for an equal share of the unseparable cost of processing multiple applications up to the selection of a successful applicant. The remaining paragraphs of this section have been relettered to accommodate this new paragraph.

A few comments objected to the requirement for cost reimbursement when an application is denied and recommended that the requirement be dropped. The provision has been left in the final rulemaking. Even when an application is denied or withdrawn, the Bureau of Land Management will have expended manhours and money in connection with that application—money and manhours that it is entitled to recover. As stated above, the only funds available for processing applications are those recovered through this provision. Failure to recover the cost involved with applications that are denied or withdrawn would have an adverse impact on the total program and cannot be permitted.

Another comment on this section wanted to be certain that an accounting of the expenditure of cost reimbursement funds could be obtained from the Bureau of Land Management by a proponent or applicant. The rulemaking provides for such a statement upon request.

Another comment wanted the section to be amended to require that any unexpended funds be refunded to the proponent or applicant. The rulemaking gives the authorized officer the authority to either refund the unexpended funds or to credit them to any payments that may remain due or payable for services performed. It is not reasonable to require a refund of money that will have to be billed at a later time. None of the suggested changes were adopted and no substantive changes have been made in the reimbursement of costs section.

Terms and Conditions

Several of the comments were troubled by the provisions of paragraph (a) as it relates to provisions in the land use authorization that would permit use of the lands by the general public. Some felt that the provision should be deleted as a requirement of a land use authorization, while one comment was of the view that the holder of the land use authorization should have the right to close areas to public use. Another comment stated that there should be a term or condition guaranteeing the holder of a land use authorization certain rights in the lands. All of the comments appear to have overlooked the requirement that the public use be compatible or consistent with the authorized land use. This would mean that a land use authorization would close the area to public use if public use would interfere with the use the land use authorization allowed. If the land use would not preclude use of the lands by the public, public access would be made a term of the land use authorization. The terms and conditions of a land use authorization will be the subject of discussion between the authorized officer and the applicant

prior to the issuance of a land use authorization. If the applicant finds the terms and conditions of a land authorization are too stringent, the applicant can attempt to renegotiate them or not accept the authorization. No change has been made in this area of the proposed rulemaking.

One comment suggested deleting the language requiring holders of a land use authorization to keep open the roads or trails commonly in use on the public lands on the basis that the language was not needed. The language has been retained to prevent the closure of public roads and trails within an area covered by a land use authorization.

Another comment on this section suggested that the paragraph dealing with the removal of mineral or vegetive materials should be amended to allow the holder of the land use authorization to receive one-half of the proceeds of the sale of the mineral or vegetative materials from the lands covered by the land use authorization. The statutory authority covering removal of mineral and vegetative materials does not authorize such disposition of receipts, nor is there any logical reason for giving the holder of a land use authorization any of the proceeds of the sale of such material. The suggested change has not been adopted.

Several of the comments requested that the liability provisions of the terms and conditions section be deleted or amended to lessen their requirements. One of the areas of strong comment was the requirement that the holder of a land use authorization and its agents pay the United States for injuries or damages caused by it or its agents. There was also objection to the provision requiring such holders to pay for injuries or damages suffered by a third party as a result of action of a holder or its agents. The other area of concern was the imposition of strict liability for activities on an area covered by a land use authorization that the Secretary of the Interior determines to present a foreseeable hazard of risk of danger to the public lands or property of the United States. One comment questioned the authority of the Department to impose strict liability.

The liability provisions are in the rulemaking to protect the United States and users of the public lands from the negligent actions of a holder of a land use authorization and the holder's agents. This provision is designed to protect the taxpayers from the actions of a person authorized to use the public lands and assure that the United States will not have to bear the costs of the negligence of a user. The strict liability provision is a condition that the Secretary of the Interior imposes as a condition for using the public lands for an activity that has been determined to present a foreseeable hazard of risk of danger to the public lands or property of the United States. There is no express authority for imposing this standard in section 302 as there is in title V of the Federal Land Policy and Management Act. Neither is there a provision denying the Secretary of the Interior the authority to impose the standard as a condition of the use of the public lands. The provision is designed to protect the United States from those activities that present a hazard or risk to its lands or property. No change has been made in the liability provisions of the final rulemaking.

One comment requested that the bonding provision be deleted on the basis that the requirement was unrealistic and because bonds could not be obtained for activities authorized by the Federal Land Policy and Management Act of 1976. The bonding requirement will only be used to assure the authorized officer that the terms and conditions of a land use authorization will be carried out. The bonding provision will be used rarely since the holder will, in most instances, have the clearly demonstrated financial and technical ability to carry out the terms and conditions of the land use authorization. Further, there has been no indication of refusal of a bonding company to issue a bond for an activity just because it was authorized under the provisions of the Federal Land Policy and Management Act. No change has been made in the bonding section.

Fees

A few comments objected to the provision that permits the adjustment of the rental fees on leases and easements every five years. The comments wanted the provision removed, expressing the feeling that the fee should be set for the life of the land use authorization, with one suggesting incremental increases set at the time the land use authorization is granted. The adjustment provision is included in the rulemaking to allow the Secretary of the Interior to carry out the policy of Congress to obtain fair market value for the use of the public lands. If the rental fee could not be adjusted, the rental fee could become outmoded over the term of the authorization, costing the United States the income it is entitled to for the use of the public lands. There has been no change in the provisions of the final rulemaking as they relate to the rental fee.

One comment made the point that the processing fee for renewal should be extended to transfers and assignments of land use authorizations. The Bureau of Land Management is required to act on all three of these documents for the benefit of the parties and should be reimbursed for that action. The suggestion has been adopted and language added to the paragraph to include transfers and assignments.

Construction Phase

One comment objected to the provision in this section that allows the authorized officer to inspect and monitor construction on a land use authorization area as necessary to assure compliance with the terms and conditions of the authorization. The comment felt the authority could be abused, that the frequency of inspection should be set by the rulemaking or set by agreement in the authorization. It is essential, in the fulfillment of the Bureau's responsibility to protect the public lands that the authorized officer and his/her staff inspect and monitor the project grounds to be certain that all terms and conditions are being met. In addition if violations are reported to the authorized officer, the authorized officer is bound by his/her position or responsibility to check them out to ascertain if appropriate action is being taken by the holder. For these reasons, the section has been changed to direct the authorized officer to inspect and monitor. However, just as with the right of access to the area, there is no intention to "spy" on the holder of an authorization. Visits will normally be during regular business hours after contact by personnel of the Bureau of Land Management.

Termination and Suspension

A large number of comments were concerned with various provisions of this section. The first concern was with the provision making a 2-year non-use or failure to construct a presumption of abandonment and termination. The presumption is rebuttable by a showing of a sufficient reason for such failure, i.e., inability to obtain financing because of tight money, etc., or other reasons. If a two year period of non-activity occurs, the authorized officer will discuss the matter with the holder, letting the holder give his reasons for the non-activity prior to issuing a termination order. No change has been made in this paragraph.

A few comments misunderstood the paragraph allowing termination of a permit if the lands are needed for another purpose. One comment suggested that, if the provision is not deleted from the rulemaking, provision be made for compensation if a permit is revoked. The authority granted by this

paragraph is to be used only when the lands are needed for another purpose that would interfere with the permitted use, such as sale or exchange of the lands. Finally, the definition of permit makes it revocable at will. This paragraph is consistent with that definition and the rights of a holder of a permit under that definition. No change has been made in this paragraph.

One comment questioned the ability of the authorized officer and staff to make the determination that a noncompliance was adversely affecting the health, safety and welfare of the public or the environment. The Bureau of Land Management has the trained personnel to make this determination, but they are also able to obtain the assistance of State and local officials in arriving at this determination. The provision has been retained because it is needed to protect the public and the environment in those rare instances where such violations may occur.

A couple of comments expressed dissatisfaction with the appeal process for suspensions and terminations, with one comment suggesting that a jury of some type be used in a hearing on the suspension or termination rather than an administrative law judge. The appeal provision has not been changed. The use of administrative law judges on appeals is a process that is well recognized in administrative law and used throughout the Federal Government. The administrative law judge renders a fair hearing and finds against the action of the Federal Government where appropriate. Further, the decision of the administrative law judge is subject to review.

One comment wanted the language covering the action of the authorized officer on a request to resume activities amended to state that the action is granted if not acted on in 5 days rather than denied as stated in the proposed rulemaking. The suggestion has not been accepted because to do so could create a situation where the regulations would permit an activity that endangered the public or the environment to proceed where the authorized officer had not acted because of some administrative oversight. This is a dangerous precedent and the existing language gives the holder of the authorization the opportunity to appeal the denial and obtain action if the denial is improper. Finally, a few comments expressed the view that the 60 day period allowed for removing structures and reclaiming the site of the land use authorization was too short for most land use authorizations, since they will involve major improvements on the public lands. The provision has not been changed because the language of the paragraph authorizes the authorized officer to agree to a longer term if needed or if the land use authorization includes in its terms and conditions a longer period in recognition of the additional time needed to remove major improvements.

Editorial changes and corrections have been made as necessary.

The principal author of this final rulemaking is Ralph Conrad of the Division of Land Resources and Realty, Bureau of Land Management, assisted by the staff of the Office of Legislation and Regulatory Management, Bureau of Land Management.

The Department of the Interior has determined that this document is not a significant regulatory action requiring the preparation of a regulatory analysis under Executive Order 12044 and 43 CFR Part 14.

Under the authority of section 302 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1732), Subtitle A and Group 2900, subchapter B, Chapter II, Title 43 of the Code of Federal Regulations are amended as set forth below.

Guy R. Martin,

Assistant Secretary of the Interior.

January 14, 1981.

PART 9—LEASES, PERMITS, AND EASEMENTS FOR PUBLIC WORKS [REMOVED]

1. Subtitle A is revised by removing Part 9 in its entirety.

2. Group 2900 is amended by revising Part 2920 as follows:

Part 2920—LEASES, PERMITS AND EASEMENTS

Subpart 2920—Leases, Permits and Easements—General Provisions

Sec.

2920.0-1 Purpose.
2920.0-3 Authority.
2920.0-5 Definitions.
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2920.2-1 Discussion of proposals.
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2920.2-4 Proposal content.
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2920.5-5 Application processing.
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2920.7 Terms and conditions.
2920.8 Fees.
2920.9 Supervision of the land use authorization.
2920.9-1 Construction phase.
2920.9-2 Operation and maintenance.
2920.9-3 Termination and suspension.

Authority: Sec. 302, Federal Land Policy and Management Act of 1976 (43 U.S.C. 1732).

PART 2920—LEASES, PERMITS, AND EASEMENTS

Subpart 2920—General Provisions

§ 2920.0-1 Purpose.

The purpose of the regulatons in this part is to establish procedures for the orderly and timely processing of proposals for non-Federal use of the public lands. The procedural and informational requirements set by these regulations vary in relation to the nature of the anticipated use.

§ 2920.0-3 Authority.

Sections 302 and 310 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1732, 1740), authorize the Secretary of the Interior to issue regulations providing for the use, occupancy and development of the public lands through leases, permits and easements.

§ 2920.0-5 Definitions.

As used in this part, the term:

(a) "Authorized officer" means any employee of the Bureau of Land Management to whom has been delegated the authority to perform the duties described in this part.

(b) "Easement" means an authorization for a non-possessory, non-exclusive interest in lands which specifies the rights of the holder and the obligation of the Bureau of Land Management to use and manage the lands in a manner consistent with the terms of the easement.

(c) "Lease" means an authorization to possess and use public lands for a fixed period of time.

(d) "Permit" means a short-term revocable authorization to use public lands for specified purposes.

(e) "Land use proposal" means an informal statement, in writing, from any person to the authorized officer requesting consideration of a specified use of the public lands.

(f) "Land use plan" means resource management plans or management framework plans prepared by the Bureau of Land Management pursuant to its land use planning system.

(g) "Public lands" means lands or interests in lands administered by the Bureau of Land Management, except lands located on the Outer Continental Shelf and lands held for the benefit of Indians, Aleuts and Eskimos.

(h) "Person" means any person or entity legally capable of conveying and holding lands or interests therein, under the laws of the State within which the lands or interests therein are located, who is a citizen of the United States, or in the case of a corporation, is subject to the laws of any State or of the United States.

(i) "Proponent" means any person who submits a land use proposal, either on his/her own initiative or in response to a notice for submission of such proposals.

(j) "Applicant" means any person who submits an application for a land use authorization under this part.

(k) "Casual use" means any short term non-commercial activity which does not cause appreciable damage or disturbance to the public lands, their resources or improvements, and which is not prohibited by closure of the lands to such activities.

(l) "Land use authorization" means any authorization to use the public lands issued under this part.

§ 2920.2-6 Policy.

(a) Land use authorizations shall be issued only at fair market value and only for those uses that conform with Bureau of Land Management plans, policy, objectives and resource management programs. Conformance with land use authorizations will be determined through the planning process and procedures provided in Part 1600 of this title.

(b) In determining the informational and procedural requirements, the authorized officer will consider the duration of the anticipated use, its impact on the public lands and resources and the investment required by the anticipated use.

§ 2920.1 Uses authorized.

Uses not specifically authorized under other laws or regulations and not specifically forbidden by law may be authorized under this part. Uses which may be authorized include residential, agricultural, industrial and commercial uses, and uses which cannot be authorized under title V of the Federal Land Policy and Management Act or section 28 of the Mineral Leasing Act. Land use authorizations shall be granted under the following categories:

(a) Leases shall be used to authorize uses of public lands involving substantial construction, development or land improvement and the investment of large amounts of capital which are to be amortized over time. A lease conveys a possessory interest and is revocable only in accordance with its terms and the provisions of § 2920.9-3 of this title. Leases shall be issued for a term, determined by the authorized officer, that is consistent with the time required to amortize the capital investment.

(b) Permits shall be used to authorize uses of public lands for not to exceed 3 years that involve either little or no land improvement, construction or investment, or investment which can be amortized within the term of the permit. A permit conveys no possessory interest. It is renewable at the discretion of the authorized officer and may be revoked in accordance with its terms and the provisions of § 2920.9-3 of this title. Permits shall be issued on a form approved by the Director, Bureau of Land Management that has been filed by the applicant with the appropriate Bureau of Land Management office.

(c) Easements may be used to assure that uses of public lands are compatible with non-Federal uses occurring on adjacent or nearby land. The term of the easement shall be determined by the authorized officer. An easement granted under this part may only be for purposes not authorized under title V of the Federal Land Policy and Management Act or section 28 of the Mineral Leasing Act.

(d) No land use authorization is required under the regulations of this part for casual use of the public lands.

§ 2920.2 Procedures for public initiated land use proposals.

§ 2920.2-1 Discussion of proposals.

(a) *Suggestions by land use proponent.* Any person who seeks to use public lands may contact the Bureau of Land Management office having jurisdiction over the public lands in question and discuss the land use proposal. This contact should be made as early as possible so that administrative requirements and potential conflicts with other land uses can be identified.

(b) *Response by the authorized officer.* The authorized officer will discuss with the land use proponent whether the requested land use, suitability or non-suitability of the requested land use based on a preliminary examination of existing land use plans, where available, is or is not in conformance with Bureau of Land Management policies and programs for the lands, local zoning ordinances and any other pertinent information. The authorized officer will discuss administrative requirements for the type of land use authorization which may be granted (lease, permit or easement), including, but not limited to: additional information which may be required; qualifications; cost reimbursement requirements; associated clearances, other permits or licenses which may be required; environmental and management considerations; and special requirements such as competitive bidding and identification of on-the-ground investigations which may be required in order to issue a land use authorization.

§ 2920.2-2 Minimum impact permits.

The authorized officer may, without publication of a notice of realty action, issue a permit for a land use authorization upon a determination that the proposed use is in conformance with Bureau of Land Management plans, policies and programs, local zoning ordinances and any other requirements and will not cause appreciable damage or disturbance to the public lands, their resources or improvements.

§ 2920.2-3 Other land use proposals.

(a) A proposal for a land use authorization, including permits not covered by § 2920.2-2 of this title, shall be submitted in writing to the Bureau of Land Management office having jurisdiction over the public lands covered by the proposal.

(b) The submission of a proposal gives no right to use the public lands.

§ 2920.2-4 Proposal content.

(a) Proposals for a land use authorization shall include a description of the proposed land use in sufficient detail to enable the authorized officer to evaluate the feasibility of the proposed land use, the impacts if any, on the environment, the public or other benefits from the proposed land use, the approximate cost of the proposal, any threat to the public health and safety posed by the proposal and whether the proposal is, in the proponent's opinion, in conformance with Bureau of Land Management plans, programs and policies for the public lands covered by the proposal. The description shall include, but not be limited to:

(1) Details of the proposed uses and activities;

(2) A description of all facilities for which authorization is sought, access needs and special types of easements that may be needed;

(3) A map of sufficient scale to allow all of the required information to be legible and a legal description of primary and alternative project locations; and

(4) A schedule for construction of any facilities.

(b) The proposal shall include the name, legal mailing address and telephone number of the land use proponent.

§ 2920.2-6 Proposal review.

(a) A land use proposal shall, upon submission, be reviewed to determine if the public lands covered by the proposal are appropriate for the proposed land use and if the proposal is otherwise legal.

(b) If the proposal is found to be appropriate for further consideration, the authorized officer shall examine the proposal and make one of the following determinations:

(1) The proposed land use is in conformance with the appropriate land use plan and can be approved;

(2) The proposed land use has not been addressed in an existing land use plan and shall be addressed in accordance with the procedure in Part 1600 of this title;

(3) The proposed land use is in an area not covered in an existing land use plan and shall be processed in accordance with the procedure in § 1601.6 of this title; or

(4) The proposed land use is not in conformance with the approved land use plan. This determination may be appealed under 43 CFR 4.400 for review of the question of conformance with the land use plan.

(c)(1) If a proposed land use does not meet the requirements of this subpart or is found not to be in conformance with the land use plan, the authorized officer shall so advise the proponent and shall provide a written explanation of the reasons the proposed use does not meet the requirements of this subpart and/or is not in conformance with an existing land use plan.

(2) Where a proposed land use is determined not to be in conformance with an approved land use plan, with the land use plan, the authorized officer may consider the proposal for land use as an application to amend or revise the existing land use plan under part 1600 of this title.

§ 2920.3 Bureau of Land Management initiated land use proposals.

Where, as a result of the land use planning process, the desirability of allowing use of the public lands or providing increased service to the public from such use of the public lands is demonstrated, the authorized officer may identify a use for the public land and notify the public that proposals for utilizing the land through a lease, permit or easement will be considered.

§ 2920.4 Notice of realty action.

(a) A notice of realty action indicating the availability of public lands for non-Federal uses through lease, permit or easement shall be issued, published and sent to parties of interest by the authorized officer, including, but not limited to, adjoining land owners and current or past land users, when a determination has been made that such public lands are available for a particular use either through the submission of a public initiated proposal or through the land use planning process.

(b) The notice shall include the use proposed for the public lands and shall notify the public that applications for a lease, permit or easement shall be considered. The notice shall specify the form of negotiation, whether by competitive or non-competitive bidding, under which the land use authorization shall be issued. A notice of realty action is not a specific action implementing a resource management plan or amendment.

(c) The notice of realty action shall be published once in the Federal Register and once a week for 3 weeks thereafter in a newspaper of general circulation in the vicinity of the public lands included in the land use proposal.

(d) An application submitted before a notice of realty action is published shall not be processed and shall be returned to the person who submitted it. Return of an application shall not be subject to appeal or protest.

§ 2920.5 Application procedure.

§ 2920.5-1 Filing of applications for land use authorizations.

(a) Only after publication of a notice of realty action shall an application for a land use authorization be filed with the Bureau of Land Management office having jurisdiction over the public lands covered by the application.

(b) The filing of an application gives no right to use the public lands.

§ 2920.5-2 Application content.

(a) Applications for land use authorizations shall include a reference to the notice of realty action under which the application is filed and a description of the proposed land use in sufficient detail to enable the authorized officer to evaluate the feasibility of the proposed land use, the impacts, if any, on the environment, the public or other benefits from the land use, the approximate cost of the proposed land use, any threat to the public health and safety posed by the proposed use and whether the proposed use is, in the opinion of the applicant, in conformance with the Bureau of Land Management plans, programs and policies for the public lands covered by the proposed use. The description shall include, but not be limited to:

(1) Details of the proposed uses and activities;

(2) A description of all facilities for which authorization is sought, access needs and special types of easements that may be needed;

(3) A map of sufficient scale to allow all of the required information to be legible and a legal description of primary and alternative project locations; and

(4) A schedule for construction of any facilities.

(b) Additional information:

(1) After review of the project description, the authorized officer may require the applicant(s) to fund or to perform additional studies or submit additional environmental data, or both, so as to enable the Bureau of Land Management to prepare an environmental analysis in accordance with section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.); and comply with the requirements of the National Historic Preservation Act of 1966 (16 U.S.C. 470); The Archeological and Historic Preservation Act of 1974 (16 U.S.C. 469 et seq.); Executive Order 11593, "Protection and Enhancement of the Cultural Environment" of May 13, 1971 (36 FR 8921); "Procedures for the Protection of Historic and Cultural Properties (36 CFR Part 800); and other laws and regulations as applicable.

(2) An application for the use of public lands may require additional private, State, local or other Federal agency licenses, permits, easements, certificates or other approval documents. The authorized officer may require the applicant to furnish such documents, or proof of application for such documents, as part of the application.

(3) The authorized officer may require evidence that the applicant has, or prior to commencement of construction will have, the technical and financial capability to construct, operate, maintain and terminate the authorized land use.

(c) The application shall include the name and legal mailing address of the applicant.

(d) *Business Associations.* If the applicant is other than an individual, the application shall include the name and address of an agent authorized to receive notice of actions pertaining to the application.

(e) *Federal departments and agencies.* Federal departments and agencies are

not qualified to hold land use authorizations under this authority.

(f) If any of the information required in this section has already been submitted as part of a land use proposal submitted under § 2920.2 of this title, the application need only refer to that proposal by filing date, office and case number. The applicant shall certify that there have been no changes in any of the information.

§ 2920.5-3 Application review.

Every application shall be reviewed to determine if it conforms to the notice of realty action. If the application does not meet the requirements of this subpart, the application may be denied, and the applicant shall be so advised in writing, with an explanation.

§ 2920.5-4 Competitive or non-competitive bids.

(a) *Competitive.* Land use authorizations may be offered on a competitive basis if, in the judgment of the authorized officer, a competitive interest exists or if no equities, such as prior use of the lands, warrant non-competitive land use authorization. Land use authorizations shall be awarded on the basis of the public benefit to be provided, the financial and technical capability of the bidder to undertake the project and the bid offered. A bid at less than fair market value shall not be considered. Each bidder shall submit information required by the notice of realty action.

(b) *Non-competitive.* Land use authorizations may be offered on a negotiated, non-competitive basis, when, in the judgement of the authorized officer equities, such as prior use of the lands, exist, no competitive interest exists or where competitive bidding would represent unfair competitive and economic disadvantage to the originator of the unique land use concept. The non-competitive bid shall not be for less than fair market value.

§ 2920.5-5 Application processing.

(a) After review of applications filed, the authorized officer shall select one application for further processing in accordance with the notice of realty action. The authorized officer shall provide public notice of the selection of an applicant and notify the selected applicant, in writing, of the selection. All other applications shall be rejected and returned to the applicants.

(b) The selected land use applicant shall submit any additional information that the authorized officer considers necessary to process the land use authorization.

§ 2920.6 Reimbursement of costs.

(a) When two or more applications are submitted for a land use authorization, each applicant shall be liable for the identifiable costs of processing his (or her) application. Where the costs of processing two or more applications cannot be readily identified with particular applications, all applicants shall be liable for such costs, to be divided equally among them.

(b) The selected land use applicant shall reimburse the United States for reasonable administrative and other costs incurred by the United States in processing a land use authorization application and in monitoring construction, operation, maintenance and rehabilitation of facilities authorized under this part, including preparation of reports and statements required by the National Environmental Policy Act of 1969 (43 U.S.C. 4321 et seq.). The reimbursement of costs shall be in accordance with the provisions of § 2803.1-1 of this title, except that any permit whose total rental is less than $250 shall be exempt from reimbursement of costs requirements.

(c) The authorized officer may, before beginning any processing of a land use authorization application, require payment, as may be needed, to cover the estimated costs of processing the application. Before granting a land use authorization, the authorized officer shall assess and collect the actual costs of processing after furnishing the applicant with a statement of costs. This payment shall be determined in accordance with the provisions of § 2803 of this title.

(d) A selected applicant who withdraws, in writing, a land use application before a final decision is reached on the authorization is responsible for all costs incurred by the United States in processing the application up to the day that the authorized officer receives notice of the withdrawal and for costs subsequently incurred by the United States in terminating the proposed land use authorization process. Reimbursement of such costs shall be paid within 30 days of receipt of notice from the authorized officer of the amount due.

(e) Advance payments based on a schedule of rates developed by the authorized officer, are required for monitoring of operations and maintenance during the term of the land use authorization, which amount shall be paid simultaneously with the rental payment required by § 2920.8(a) of this title.

(f) The selected applicant shall, before a land use authorization is issued, submit a payment based on a schedule of rates developed by the Director, Bureau of Land Management, for monitoring rehabilitation or restoration of the lands upon expiration of the land use authorization.

(g) If payment, as required by paragraphs (b), (d) and (e) of this section, exceeds actual costs to the United States, refund may be made by the authorized officer from applicable funds under authority of 43 U.S.C. 1734, or the authorized officer may adjust the next billing to reflect the overpayment. Neither an applicant nor a holder of land use authorization shall set off or otherwise deduct any debt due to or any sum claimed to be owed them by the United States without the prior written approval of the authorized officer.

(h) The authorized officer shall, on request, give a selected applicant an estimate, based on the best available cost information, of the costs, which may be incurred by the United States in processing the proposed land use authorization. However, reimbursement shall not be limited to the estimate of the authorized officer if actual costs exceed the projected estimate.

(i) When through partnership, joint venture or other business arrangement, more than one person, partnership, corporation, association or other entity jointly make application for a land use authorization, each such party shall be jointly and severally liable for the costs under this section.

(j) Requests for modification of or addition to the land use authorization or reconstruction or relocation of any authorized facilities shall be treated as a new application for cost recovery purposes and are subject to the cost requirements of this section.

§ 2920.7 Terms and conditions.

(a) In all land use authorizations the United States reserves the right to use the public lands or to authorize the use of the public lands by the general public in any way compatible or consistent with the authorized land use and such reservations shall be included as a part of all land use authorizations. Authorized representatives of the Department of the Interior, other Federal agencies and State and local law enforcement personnel shall at all times have the right to enter the premises on official business. Holders shall not close or otherwise obstruct the use of roads or trails commonly in public use.

(b) Each land use authorization shall contain terms and conditions which shall:

(1) Carry out the purposes of applicable law and regulations issued thereunder;

(2) Minimize damage to scenic, cultural and aesthetic values, fish and wildlife habitat and otherwise protect the environment;

(3) Require compliance with air and water quality standards established pursuant to applicable Federal or State law; and

(4) Require compliance with State standards for public health and safety, environmental protection, siting, construction, operation and maintenance of, or for, such use if those standards are more stringent than applicable Federal standards.

(c) Land use authorizations shall also contain such other terms and conditions as the authorized officer considers necessary to:

(1) Protect Federal property and economic interests;

(2) Manage efficiently the public lands which are subject to the use or adjacent to or occupied by such use;

(3) Protect lives and property;

(4) Protect the interests of individuals living in the general area of the use who rely on the fish, wildlife and other biotic resources of the area for subsistence purposes;

(5) Require the use to be located in an area which shall cause least damage to the environment, taking into consideration feasibility and other relevant factors; and

(6) Otherwise protect the public interest.

(d) A holder shall be required to secure authorization under applicable law to pay in advance the fair market value, as determined by the authorized officer, of any mineral, vegetative materials (including timber) to be cut, removed, used or destroyed on public lands.

(e) A holder shall not use the public lands for any purposes other than those specified in the land use authorization without the approval of the authorized officer.

(f) Liability provisions:

(1) Holders of a land use authorization and all owners of any interest in, and all affiliates or subsidiaries of any holder of a land use authorization issued under these regulations shall pay the United States the full value for all injuries or damage to public lands or other property of the United States caused by the holder or by its employees, agents or servants, or by a contractor, its employees, agents or servants, except holders shall be held to standards of strict liability where the Secretary of the Interior determines that the activities taking place on the area covered by the land use authorization present a foreseeable hazard or risk of danger to public lands or other property of the United States. Strict liability shall not be applied where such damages or injuries result from acts of war or negligence of the United States.

(2) Holders of a land use authorization and all owners of any interest in, and affiliates or subsidiaries of any holder of a land use authorization issued under these regulations shall pay third parties the full value of all injuries or damage to life, person or property caused by the holder, its employees, agents or servants or by a contractor, its employees, agents or servants.

(3) Holders of a land use authorization shall indemnify or hold harmless the United States against any liability for damages to life, person or property arising from the authorized occupancy or use of the public lands under the land use authorization. Where a land use authorization is issued to a State or local government or any agency or instrumentality thereof, which has no legal power to assume such liability with respect to damages caused by it to lands or property, such State or local government or agency in lieu thereof shall be required to repair all damages.

(g) The authorized officer may require a bond or other security satisfactory to him/her to insure the fulfillment of the terms and conditions of the land use authorization.

(h) Any land use authorization existing on the effective date of this regulation is not affected by this regulation and shall continue to be administered under the statutory authority under which it was issued. However, by filing a proposal for amendment or renewal, the holder of a land use authorization shall be considered to have agreed to convert the entire authorization to the current statutory authority and the regulations in effect at the time of approval of the amendment or renewal.

(i) The holder of a land use authorization who has complied with the provisions thereof, shall, upon the filing of a request for renewal, be the preferred user for a new land use authorization provided that the public lands are not needed for another use. Renewal, if granted, shall be subject to new terms and conditions. If so specified in the terms of a permit, the permit may be automatically renewable upon payment of the annual rental unless the authorized officer notifies the permittee within 60 days of the expiration date of the permit that the permit shall not be renewed.

(j) Land use authorizations may be transferred in whole or in part but only under the following conditions:

(1) the transferee shall comply with the provisions of § 2920.2–3 of this title;

(2) the authorized officer may modify the terms and conditions of the land use authorization and the transferee shall agree, in writing, to comply with and be bound by the terms and conditions of the authorization as modified; and

(3) transfers shall not take effect until approved by the authorized officer.

(k) If public lands included in a lease or easement are to be disposed of, the conveyance shall be made subject to the lease or easement. Permits shall be revoked prior to disposal of the public lands.

§ 2920.8 Fees.

(a) *Rental.* (1) Holders of a land use authorization shall pay annually or otherwise as determined by the authorized officer, in advance, a rental as determined by the authorized officer. The rental shall be based either upon the fair market value of the rights authorized in the land use authorization or as determined by competitive bidding. In no case shall the rental be less than fair market value.

(2) Rental fees for leases and easements may be adjusted every 5 years or earlier, as determined by the authorized officer, to reflect current fair market value.

(3) The rental fees required by this section are payable when due, and a late charge of 1 percent per month of the unpaid amount or $15 per month, whichever is greater, shall be assessed if subsequent billings are required. Failure to pay the rental fee in a timely manner is cause for termination of the land use authorization.

(b) *Processing Fee.* Each request for renewal, transfer or assignment of a lease or easement shall be accompanied by a non-refundable processing fee of $25. The authorized officer may waive or reduce this fee for requests for permit renewals which can be processed with a minimal amount of work.

§ 2920.9 Supervision of the land use authorization.

§ 2920.9–1 Construction phase.

(a) Unless otherwise stated in the land use authorization, construction may proceed immediately upon receipt and acceptance of the land use authorization by the selected applicant.

(b) Where an authorization to use public lands provides that no construction shall occur until specific permission to begin construction is granted, no construction shall occur until an appropriate Notice to Proceed has been issued by the authorized officer, following the submission and approval of required plans or documents.

(c) The authorized officer shall inspect and monitor construction as necessary, to assure compliance with approved plans and protection of the resources, the environment and the public health, safety and welfare.

(d) The holder of a land use authorization may be required to designate a field representative who can accept and act on guidance and instructions from the authorized officer.

(e) The holder of a land use authorization may be required to provide proof of construction to the approved plan and required standards. Thereafter, operation of the authorized facilities may begin.

§ 2920.9–2 Operation and maintenance.

The authorized officer shall inspect and monitor the operation and maintenance of the land use authorization area, its facilities and improvements to assure compliance with the plan of management and protection of the resources, the environment and the public health, safety and welfare, and the holder of the land use authorization shall take corrective actions as required by the authorized officer.

§ 2920.9–3 Termination and suspension.

(a) Land use authorizations may be terminated under the following circumstances:

(1) If a land use authorization provides by its terms that it shall terminate on the occurrence of a fixed or agreed-upon event, the land use authorization shall thereupon automatically terminate by operation of law upon the occurrence of such event.

(2) Noncompliance with applicable law, regulations or terms and conditions of the land use authorization.

(3) Failure of the holder to use the land use authorization for the purpose for which it was authorized. Failure to construct or nonuse for any continuous 2-year period shall constitute a presumption of abandonment and termination.

(4) Mutual agreement that the land use authorization should be terminated.

(5) Nonpayment of rent for 2 consecutive months, following notice of payment due.

(6) So that the public lands covered by the permit can be disposed of or used for any other purpose.

(b)(1) Upon determination that there is noncompliance with the terms and conditions of a land use authorization which adversely affects the public health, safety or welfare or the environment, the authorized officer shall issue an immediate temporary suspension.

(2) The authorized officer may give an immediate temporary susension order orally or in writing at the site of the activity to the holder or a contractor or subcontractor of the holder, or to any representative, agent, employee or contractor of any of them, and the suspended activity shall cease at that time. As soon as practicable, the authorized officer shall confirm the order by a written notice to the holder addressed to the holder or the holder's designated agent. The authorized officer may also take such action considered necessary to require correction of such defects prior to an administrative proceeding.

(3) The authorized officer may order immediate temporary suspension of an activity regardless of any action that has been or is being taken by another Federal agency or a State agency.

(4) An order of temporary suspension of activities shall remain effective until the authorized officer issues an order permitting resumption of activities.

(5) Any time after an order of suspension has been issued, the holder may file with the authorized officer a request for permission to resume. The request shall be in writing and shall contain a statement of the facts supporting the request.

(6) The authorized officer may render an order to either grant or deny the request to resume within 5 working days of the date the request is filed. If the authorized officer does not render an order on the request within 5 working days, the request shall be considered denied, the holder shall have the same right to appeal the denial as if an order denying the request had been issued.

(c) Process for termination or suspension other than temporary immediate suspension.

(1) Prior to commencing any proceeding to suspend or terminate a land use authorization, the authorized officer shall give written notice to the holder of the legal grounds for such action and shall give the holder a reasonable time to correct any noncompliance.

(2) After due notice of termination or suspension to the holder of a land use authorization, if noncompliance still exists after a reasonable time, the authorized officer shall give written notice to the holder and refer the matter to the Office of Hearings and Appeals for a hearing before an Administrative Law Judge pursuant to 43 CFR 4.420–4.439. The authorized officer shall suspend or revoke the land use authorization if the Administrative Law Judge determines that grounds for suspension or revocation exists and that such action is justified.

(3) The authorized officer shall terminate a suspension order when the authorized officer determines that the violation causing such suspension has been rectified.

(d) Upon termination, revocation or cancellation of a land use authorization, the holder shall remove all structures and improvements except those owned by the United States within 60 days of the notice of termination, revocation or cancellation and shall restore the site to its pre-use condition, unless otherwise agreed upon in writing or in the land use authorization. If the holder fails to remove all such structures or improvements within a reasonable period, they shall become the property of the United States, but that shall not relieve the holder of liability for the cost of their removal and restoration of the site.

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Part XXXV

Department of the Interior

Bureau of Land Management

Grazing Administration and Treespass on Public Lands; Amendments to Grazing Regulations

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 4100

[Circular No. 2485]

Grazing Administration and Trespass on Public Lands; Amendments to Grazing Regulations

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rulemaking.

SUMMARY: This final rulemaking updates the policy for making grazing use adjustments and makes editorial amendments to and clarifies the intent of the present regulations. These changes are a result of consultation with all affected interests and experience gained from working with the existing regulations for two and one-half years. The intended effect of these regulations is to improve the management of the public rangelands for all multiple use values.

EFFECTIVE DATE: January 19, 1981.

ADDRESS: Any suggestions or inquiries should be addressed to: Director (220), Bureau of Land Management, 1800 C Street NW., Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT: Paul Leonard, (202) 343-5841.

SUPPLEMENTARY INFORMATION: The amendments to the regulations are part of a continued effort by the Bureau of Land Management to clarify and reform the policies and procedures by which it manages the Nation's public rangelands.

The first step in this process was the publication in November 1979 of a draft statement of rangeland management policy for public review. The document, the first such comprehensive statement of rangeland management in 20 years, was designed to set in motion a series of public discussions to explore procedures for more effectively and equitably managing public rangelands. The urgency of this policy review was underscored by the fact that the Bureau is preparing 144 Environmental Impact Statements (EIS's) on livestock grazing, covering 170 million acres of public land, pursuant to the National Environmental Policy Act and the agreement resulting from the *Natural Resources Defense Council* v. *Morton*, 388 F. Supp. 829, suit. Meetings and workshops were held with livestock operators, environmental and conservation groups, State officials, and other concerned individuals in an effort to design policies and procedures for adjusting livestock use that both ensure protection for the basic soil-vegetation resource and provide for the interests and needs of livestock operators and other users of rangeland resources. One of the principal results of these discussions was a general recognition that the Bureau's regulations for adjusting livestock use in accordance with changes in available forage needed to be revised to (1) provide for more meaningful consultation with affected operators and other interested parties; (2) phase decisions into effect over a period of time sufficient to permit monitoring; (3) provide for modification of such decisions on the basis of the results of monitoring studies; and (4) ensure more complete and effective public involvement.

The current regulations on grazing administration were published as final rulemaking on July 5, 1978 (43 FR 29058). They were amended in July and August 1980 to (1) provide for the consultation and cooperation required by the Public Rangelands Improvement Act of 1978, (2) provide for the placement of reductions in grazing use in suspended preference, and (3) expand the conditions under which exchange-of-use grazing agreements are authorized.

The amendments are the result of intensive public involvement in the refinement of a policy for adjusting livestock use on the public rangelands. They are designed to ensure that future decisions on livestock use are made in a manner that is fair and equitable to all users of the public rangelands, that ensures a maximum degree of public involvement and review, that provides for decisions to be based on the best scientific information available at the time of each decision, and that furthers the Nation's overall objective of increasing the productivity of the public rangelands. The changes made here also bring the procedures for grazing administration by the Bureau of Land Management more closely in line with those of the U.S. Forest Service.

Other changes included in this rulemaking reflect a need, after over 2 years of operating experience with the current regulations, to clarify intent or eliminate gaps or weaknesses.

Proposed rulemaking was published on October 15, 1980 (45 FR 68506). The comment period, which included extensions, totaled 84 days ending January 9, 1981. Approximately 150 different comments were received with most focusing on the process for making adjustments in livestock grazing, including the requirements for consultation, decisions, and monitoring. The following discussion summarizes the comments received on the proposal and the changes being made.

Definitions

A number of comments objected to the proposed definition of range improvement, particularly the reference to wild horses and burros and the statement that this definition includes the term "range betterment." Several commenters pointed out that wild horses and burros were not specifically included in the discussion of range improvements in section 401(b) of the Federal Land Policy and Management Act of 1976 (FLPMA). Other comments supported the inclusion of wild horses and burros in the definition. FLPMA does not exclude wild horse and burro habitat from the recognized benefits of range improvements and, where they existed prior to 1971, wild horses and burros are an integral part of the rangeland ecosystem.

The second concern relating to range betterment reflects a feeling that there must be a clear distinction between "range improvement" and "range betterment." Range improvement is the more general term applying to all types of treatments or projects that improve the rangeland ecosystem. Range betterment then is used only to identify a specific source of funding for range improvements, i.e., the monies derived from fifty percent of the grazing fee. The proposed definition would not change the manner in which the range betterment fund may be used for range improvements (see section 4120.6-1(d) of the current regulations). However, to prevent confusion on the possible difference between the meaning of the two terms, reference to range betterment has been removed from the definition of range improvement.

Many commenters opposed the use of the term "suspended preference" and suggested that "suspended nonuse" be substituted. They believed that negative economic impact would result if the term "suspended preference" were used because of the way lending institutions perceive that term when determining the collateral value of ranching properties. The final amendments continue to use the term "suspended preference" because it is more descriptive of the actual situation, i.e., a portion of the preference for public land grazing use is suspended. Any possible negative economic impact would not be significantly greater than would occur with use of the term "suspended nonuse" once the lending institutions become familiar with the adopted terminology.

Several comments suggested that the word "permanently" be removed from the phrase "until forage is permanently available" in the definition of suspended

preference. This has been done, but an additional phrase has been added to ensure that it is understood that the forage must be available on a sustained yield basis.

Some comments objected to the proposed definition of "suspension" and suggested that the definition in the current regulations is adequate. The definition has been changed to be more similar to the current regulations, except that the phrase "grazing authorized under" has been added to indicate more accurately that it is grazing use that is suspended rather than the grazing permit or lease.

Several comments recommended including additional definitions for "monitoring", "consultation", "affected interests", and "carrying capacity". New definitions have been added for "monitoring" and "affected interests". "Carrying capacity" is defined in the current regulations under the term "livestock grazing capacity".

Transfer of Grazing Preference

Almost all comments supported the proposed amendment. However, one comment suggested that a transfer of ownership would be an opportune time to make any needed reductions in grazing use. No change has been made from the proposal because any adjustments in grazing use should be tied to resource conditions and needs rather than ownership of properties.

Changes in Available Forage

Almost all comments addressed this section of the proposal. Concerns included those related to consultation on decisions, the process for allocating forage to livestock or determining the grazing capacity, the timing and number of decisions to implement a phased reduction, requirements for monitoring, the data requirements for determining grazing capacity or changing decisions, and specific provisions such as the exceptions to a five-year phase-in period.

Pursuant to the requirements of the National Environmental Policy Act and the Federal Land Policy and Management Act, the Bureau will provide full, formal, and regular opportunities for public participation by all affected interests throughout the decisionmaking process—in inventory, planning, impact assessment, and implementation.

The draft land use plan and EIS published by the Bureau will include proposed allocations of forage among uses and proposed determinations of livestock capacity. The final landuse plan and EIS will include final decisions on the allocation of forage and livestock grazing capacity.

Formal opportunities for consultation, cooperation, and coordination will be provided, pursuant to Section 8 of the Public Rangelands Improvement Act, in steps leading toward the development of allotment management plans following land use planning decisions.

In practice, additional opportunities for consultation, cooperation and coordination will be afforded lessees, permittees, intermingled landowners and others at other critical stages of the planning and decisionmaking process, such as design of rangeland inventory, determination of present and future grazing capacities, allocation of forage among uses, and scheduling and responsibilities for rangeland improvements. Because EIS's and land use plans are currently in various stages of preparation, the requirements of these regulations will apply only to those prepared in the future, but will be used to the extent practical in on-going processes.

Decisions on increases and decreases in livestock grazing use will normally become effective at the beginning of the second grazing season following completion of the EIS. Adjustments in grazing use will normally be phased in three increments over a 5-year period and the initial increment of any reduction, in combination with other planned management actions, will be sufficient to achieve significant progress toward the vegetation objectives set forth in the land use plan for the 5-year period. Livestock grazing decisions that are based upon the 3-year phasing provided in the current regulations may be converted to the 5-year phasing process when the next grazing adjustment is taken, unless one of the exceptions to the 5-year process specified in section 4110.3–2(d) applies. However, the total phase-in period will not exceed 5 years from the effective date of the original decision.

These amendments provide for adjustments to be completed in less than 5 years under one of three conditions. The period may be reduced if the authorized officer, the operator, and other affected interests agree to a shorter timetable. It may be reduced if, in the language of the 1981 Interior Appropriations Act, such a reduction is needed "to sustain resource productivity"—that is, if the authorized officer determines that failure to implement the decision in less than 5 years would cause significant and long-term resource damage. And finally, the adjustment may be taken in less than 5 years if it is 15 percent or less.

The authorized officer will have the authority to issue a new decision if monitoring information indicates rangeland conditions are not improving at the anticipated rate—or that they are improving faster than anticipated—and that the original decision should be adjusted accordingly. However, if a decision is modified based on monitoring, the authorized livestock grazing use will be brought into balance with the updated allocation of forage for livestock by the conclusion of the 5-year period specified in the original decision.

The BLM District Manager will, shortly after release of the final EIS on the grazing program, issue a Rangeland Program Summary (RPS) previously referred to in the supplementary information for the proposed rulemaking as the Rangeland Management Program Document. The RPS will summarize the land use planning objectives and proposed decisions for all rangeland uses, set forth those planning decisions that affect livestock grazing (including the allocation of forage for livestock), describe the relationship of these decisions to the alternatives analyzed in the EIS, identify the costs and benefits of the program, and summarize the monitoring program for the area. The RPS will also describe the procedures and time available for all affected interests to express their views or take action on decisions set forth in the document.

After the RPS is published, the Bureau will consult with all affected interests on the allotment-specific actions needed to implement the land use planning divisions. Consultation at this point will focus on steps leading toward the development of allotment management plans and other actions needed to implement a grazing management program based upon the forage allocation and livestock grazing capacity decision made in the land use plan, including rangeland improvements, grazing systems, a program of monitoring, and schedules for phasing in livestock use adjustments in accordance with the plan.

In addition to prior consultation, formal procedures under Section 8 of the Public Rangelands Improvement Act will be conducted during the consultation period following the issuance of the Rangeland Program Summary.

Following consultation with all interested parties, but before adjustment decisions are issued, the District Manager will publish an RPS update describing the actions determined through consultation to achieve the objectives and to implement the decisions of the land use plan and the

monitoring program designed for the area. Subsequent RPS updates will summarize, by allotment, the progress made toward achieving these objectives and implementing these decisions and will identify any proposals by the Bureau to modify scheduled adjustments in livestock grazing use.

The purpose of the RPS update is to provide a vital assurance to all interested parties that adjustment decisions being made are based on the current condition of the rangeland. It will enable all interested parties to examine the decisions reached at the areawide EIS level, rather than forcing them to follow individual allotment by allotment decisions, and will provide a clear public record for which the Bureau and users can be held accountable.

The objective of these amendments is to bring livestock grazing and other uses into line with capacity through a package of management actions by the fifth year after the decision schedule is established and to do so in the fairest manner possible. The process provides an opportunity for appeals before both the first- and third-year adjustments become effective. Appeals at these points suspend implementation of the decision while the appeal is being heard. However, grazing use must be brought into line with capacity by the fifth year, so appeals of the last incremental adjustment, if it is still required, will not stay implementation of the original decision. In addition, the process provides for an automatic review of available information prior to each scheduled adjustment and, if monitoring data indicates that the full reduction is not required, the scheduled adjustment will be modified by a new decision. The Bureau also recognizes that there are conditions under which a significant amount of forage may become temporarily available because of unusually high production of annual forage or for other reasons. Therefore, the current authority for authorizing temporary increases will be used, within the constraints of the land use plan, to adjust grazing use on a short-term basis. Temporary increases in livestock grazing use above the amount scheduled in the decision will be authorized under section 4130.4–2 as nonrenewable use which does not affect the grazing preference and will not require a change to the original decision.

Other Terms and Conditions

Several comments supported the proposal. However, a number believed that this section should be eliminated in favor of the provisions of the current regulations. Several comments objected to the reference to "achieving objectives identified in land-use plans, provide for proper range management, or assist in the orderly administration of the public rangelands." Other comments questioned one or more of the specific examples listed, such as class or breed of livestock or placement of supplemental feed. However, no changes have been made in the final amendments.

Several comments suggested that the provision for livestock grazing to be temporarily delayed or discontinued was unnecessarily negative. Therefore, the word "modified" has been inserted to permit greater flexibility to adjust to local conditions. Other minor wording changes have been made to clarify the intent of this provision.

Temporary Modifications and Closures to Livestock Use

Several comments questioned the use of the term "emergency". Therefore, the heading has been changed to read "Temporary modifications and closures to livestock use" and the term "emergency" has been removed from the descriptions of the conditions that might justify temporary modifications or closures.

The phrase "require temporary protection" has been inserted to more accurately describe the intent to use this authority only for short-term adjustments. If long-term adjustments are necessary, the authority of section 4110.3–2(b) will be used.

Several comments suggested that any closure should be made only after consultation with all affected interests. This requirement has been included.

Conditions for Range Improvements

Most comments supported this paragraph, but several comments suggested it was not needed. The intent is to clarify that a range improvement permit or cooperative agreement is an authorization to place improvements on the public lands, but does not convey to the permittee or cooperator any ownership of publicly-owned lands or resources. Therefore, no change from the proposal has been made.

Range Improvement Permits

In response to comments, a provision has been added to clarify that livestock use of such improvements authorized by a range improvement permit (Section 4, Taylor Grazing Act) shall be controlled by the permittees. There were some comments that there may be disagreements over which range improvements are "removable" and which, in effect, become a part of the land. The intent is to use range improvement permits where the improvements, such as corrals, fences, or loading chutes, could reasonably be removed if the range improvement permits were terminated. Improvements on the public lands such as seedings, wells, and reservoirs (except in water base areas) would be authorized under cooperative agreements with title to the improvement being held by the United States.

Grazing Permits and Leases

Most of the comments expressed concern with section 4130.2(e)(4) which provides that grazing lessees holding expiring leases shall be given first priority for receipt of a new lease if the base property offered by the lessee is contiguous to the public lands to be grazed. This provision applies only to grazing leases authorized under section 15 of the Taylor Grazing Act which gives first priority for grazing leases to those owning or controlling lands contiguous to the public lands to be grazed. A further provision has been added to the amendment to make clear that present lessees with non-contiguous base property will continue to have priority for renewal provided no conflicting application is filed by an applicant owning or controlling lands which qualify as base property and which are contiguous to the public lands to be grazed. These provisions do not apply to grazing permits administered under section 3 of the Taylor Grazing Act.

The only additional changes from the current regulations are the inclusion of a reference to grazing leases where the current regulations erroneously refer only to grazing permits and to include the term "suspended" in section 4130.2(d)(3) to be consistent with the provisions for suspensions under the section on decreases in forage.

Payment of Fees

A number of commenters recommended that the phrase "or its equivalent" or "approved grazing program" be inserted in the sentence which provides that fees must be paid in full prior to grazing use except where there is an Allotment Management Plan (AMP). The comments included a concern that development of AMP's in some areas will be delayed for several years until grazing EIS's are completed and manpower is available, as well as a concern that in some areas cooperative resource management plans involving several land managing agencies and land owners may be prepared in lieu of an Allotment Management Plan. The intent of the provision for after-the-fact payment of grazing bills is to permit the amount of the bill to reflect the actual use made within the flexibility

authorized by the AMP. It would not be appropriate to provide for this flexibility where an AMP has not been developed. The existing definition of an allotment management plan in the current regulations is sufficiently broad to include such things as coordinated resource management plans or other plans equivalent to an AMP. The amendment, however, has been changed to clarify that the after-the-fact billing procedure applies only where the AMP specifically includes such a provision.

Acts Prohibited on Public Lands

Several comments questioned the prohibition against allowing livestock on or driving them across public lands without authorization because emergency situations may require immediate action. In applying this provision, the Bureau has recognized that there are some situations, such as fire, for which immediate action must be taken to protect the lives of the animals. Such mitigating circumstances will be considered when determining whether a violation has occurred. One comment expressed concern that this section may be applied to wild indigenous animals. However, section 4140.1(b)(12) clearly refers only to those indigenous animals which are privately-owned or controlled. One technical change has been made in section 4140.1(b)(12)(iv) to correct the citation of section 4120.4(d) which refers to special marking or tagging requirements.

Settlement

One comment expressed a concern that this section was unnecessarily harsh and would prevent effective appeals because if a permittee failed to make payment for unauthorized use, he would be denied grazing use of the public lands until his appeal is resolved. The procedure for suspending a permit or lease or to deny an application because of a failure to make settlement is covered under section 4160 which makes it clear that the appeal of a final decision suspends implementation of the decision pending resolution of the appeal. Therefore, a permittee or lessee who was authorized grazing use the previous year could continue at that level of use until a decision is reached on the appeal, unless the circumstances warrant the placing of the decision in full force and effect.

Closure To Control Unauthorized Grazing Use

A number of comments revealed a misunderstanding as to the application of this section, particularly the effect that a closure would have on livestock authorized to graze in the affected allotments. Several language changes have been made to make it clear that the closure affects only unauthorized livestock. The intent of this provision is to provide a way to take timely action when there is a continuing problem of unauthorized grazing use and the unauthorized livestock are easily distinguishable from those authorized to graze in the area.

Decisions

Several commenters expressed a concern that the provisions for Rangeland Management Program Documents (RMPD) and RMPD updates are not included in these regulations. They feel that this is a key step in the process and are concerned that there is no regulatory commitment to the process. The provisions for and general content of these documents which, to prevent future confusion with land use plans called Resource Management Plans (RMP), have been retitled Rangeland Program Summaries (RPS's), have been included in these amendments. The RPS will follow shortly after completion of each grazing EIS with the first Update before decisions are issued to grazing permittees or lessees and thereafter as necessary to keep the public informed. The RPS focuses on the land use planning decisions which have been made while the RPS updates address actions being proposed to achieve the objectives of the land use plan.

A brief description has also been added for the content of a proposed decision that would make more than a temporary increase or decrease in livestock grazing use.

Several commenters questioned the relationship of later decisions to the original decision which specified a schedule for adjusting livestock grazing use. The primary concern appears to be for the potential delay in implementation of needed reductions because of multiple opportunities for appeal.

The changes being made preserve the rights of appeal by those affected by the Bureau's decisions and provide that an appeal of either the first or second increment of a three-step adjustment scheduled over five years will continue to stay implementation of the decision involved in the appeal.

This means that if there is an appeal of a five year phase-in decision at the time of its issuance, then the amount of use authorized while awaiting resolution of that appeal is the amount which was authorized during the year prior to the effective date of the decision. Even if the original decision was not appealed, the permittee can initiate an appeal by submitting an application for the third year greater than that scheduled for that year. If that application is denied, these amendments provide that the level of use to be authorized while awaiting resolution of the appeal is that level of use scheduled for the first year of the phase-in period. If an appeal is taken during any year other than the first or third year, the level of use to be authorized until the appeal is resolved would be as scheduled for that year in the original decision.

The rationale for these provisions is the assumption that the original decision is based upon the best available data and that no change should be made in the decision unless there is compelling information that indicates the scheduled adjustment is improper. If the original decision is appealed, the validity of the information will be determined during the appeals process. If the decision is not appealed or the Bureau's decision is upheld, then that decision will stand until new information indicates a change is warranted. However, the Bureau also recognizes that there is variability in vegetation inventories and that an equitable process should provide an opportunity to challenge the scheduled adjustment based on the experience gained after the first two years. However, during appeal at this third year, it is unreasonable to expect that, where a reduction was indicated, the appeal would result in grazing at the levels that existed prior to the original decision. Therefore, that level of use authorized while awaiting resolution of an appeal at this point will be the level scheduled for the first year of the reduction. There is also a firm commitment that the level of grazing use will be brought into balance with the grazing capacity by the fifth year, so these amendments provide that if there is an appeal involving use during the fifth year, the level of use to be authorized while awaiting resolution of the appeal will be as scheduled in the original decision.

The amendments also clarify that, where a decision is suspended because of an appeal, the level of use to be authorized while awaiting the outcome of the appeal does not include any temporary grazing use that was authorized the previous year on a nonrenewable basis under section 4130.6-2.

A number of commenters questioned the provisions in paragraph (d) for placing a decision in full force and effect. Some comments suggested that all decisions be placed in full force and effect while others requested elimination of the provision for full force

and effect decisions. Section 402(e) of the Federal Land Policy and Management Act of 1976 requires in certain circumstances that decisions be placed in full force and effect on the date specified. However, an opinion prepared by the Office of the Solicitor of the Department of the Interior has interpreted this requirement to mean that the date specified may be either a specific calendar date or the date at which a specific future event occurs, such as the date a decision is rendered on an appeal. To prevent future misunderstanding, this language has been added to section 4160.3(d).

Several comments requested that "orderly administration" and protection of resource values" be defined or that specific examples be given in the regulations. These terms have historically been used in the grazing regulations and are used in the current regulations. Their intent is to provide the authority to take necessary action when the delay of implementation pending an appeal would have serious consequences. To improve the understanding of this intent, several examples have been included in the regulations to illustrate some of the situations to which these provisions might be applied.

Show Cause

One comment recommended consultation with the local grazing advisory boards before any show cause notice is issued. However, section 403(b) of the Federal Land Policy and Management Act limits the responsibilities of the boards to providing advice and recommendations on development of AMP's and use of range betterment funds. The word "shall" has been changed to "may" to clarify that, depending on the circumstances, the authorized officer may either issue a show cause notice or issue, under section 4160.1–2, a proposed decision on an alleged violation.

Penalty For Violations

Several comments questioned the validity of this section and one comment suggested that local grazing advisory boards should be consulted prior to taking any action under this section. Since these provisions are a valid exercise of the Secretary's authorities and since the consideration of penalties for violations is not within the legally defined responsibilities of the grazing advisory boards, no changes from the proposed rulemaking have been made.

Federal and State Laws or Regulations

Several comments supported the proposed change which would incorporate the phrase "or by final determination of any agency charged with the administration of the conservation or environmental laws where no further appeals are outstanding." Much of the concern expressed by those opposed to this provision grew from an erroneous assumption that the right of a review by a court would be eliminated. This provision in no way affects an individual's right of court review. However, it does allow for action when an agency has determined that a violation has occurred and no appeal is made to the courts, thus leaving the agency's action as the final determination of the violation.

Other Changes

Editorial corrections have been made as needed and some wording has been modified to improve the clarity of the regulation.

The principal author of this rulemaking is David Little of the Division of Rangeland Management, Bureau of Land Management, assisted by the office of legislation and Regulatory Management.

Note.—The Department of the Interior has determined that this document is not a significant rule and does not require a regulatory analysis under Executive Order 12044 and 43 CFR Part 14.

Under the authority of the Taylor Grazing Act of 1934, as amended (43 U.S.C. 315, 315(a)-315(r)), Section 4 of the Act of August 28, 1937 (43 U.S.C. 1181(d)), and the Federal Land Policy and Management Act of 1976, as amended by the Public Rangelands Improvement Act of 1978 (43 U.S.C. 1701 et seq.), Part 4100, Subchapter D, Chapter II of Title 43 of the Code of Federal Regulations is amended as set forth below.

Guy R. Martin,

Assistant Secretary of the Interior.

January 14, 1981.

1. Section 4100.0–5 is amended by revising existing paragraphs (y) and (cc); deleting existing paragraph (w); redesignating existing paragraphs (b) through (t) as (c) through (u) respectively; redesignating existing paragraphs (u) and (v) as (w) and (x) respectively; redesignating existing paragraphs (x) through (bb) as (y) through (cc) respectively; redesignating existing paragraph (cc) as (ee); and inserting new paragraphs (b), (v) and (dd) to read as follows:

§ 4100.0–5 Definitions.

* * * * *

(b) "Affected interests" means any individual or organization who has been identified by the authorized officer as being potentially affected by a proposed action or who has expressed, in writing to the authorized officer, concern for the management of livestock grazing on specific grazing allotments. In addition to grazing permittees and lessees, such interests may include, for example, State officials, intermingled land owners, and wildlife or conservation representatives.

* * * * *

(v) "Monitoring" means the collection of data by a systematic and periodic examination of rangeland resources on specific areas by qualified individuals using techniques or methods, approved by the Director, designed to evaluate progres in meeting land-use or allotment management planning objectives.

* * * * *

(z) "Range improvement" means any activity on or relating to rangelands designed to improve production of forage, change vegetation composition, control pattern of use, provide water, stabilize soil and water conditions, and enhance habitat for livestock, fish, wildlife, and wild horses and burros.

* * * * *

(dd) "Suspended preference" means that portion of a grazing preference which has been suspended and for which active grazing use will not be reauthorized until forage is available and allocated for livestock grazing use on a sustained yield basis.

(ee) "Suspension" means temporarily withholding, in whole or in part, grazing use authorized under a grazing permit, lease or other grazing use authorization.

2. Section 4110.2–1 is amended by revising paragraphs (a) introductory text and (c) to read as follows:

§ 4110.2–1 Base property.

(a) The authorized officer shall find land or water owned or controlled by an applicant to be base property (see § 4100.0–5(g)) if:

* * * * *

(c) An applicant shall provide a legal description, or plat, of his base property and shall certify to the authorized officer that this base property meets the requirements under paragraphs (a) and (b) of this section and § 4100.0–5(g).

3. Section 4110.2–3 is amended by revising paragraph (f) to read as follows:

§ 4110.2–3 Transfer of grazing preference.

* * * * *

(f) Failure of the transferee to comply with the regulations of this section may result in the cancellation of the grazing preference.

4. Section 4110.3 is revised to read as follows:

§ 4110.3 Changes in available forage.

The allocation of forage for livestock grazing shall be determined through the land use plan which has been prepared in consultation, coordination and cooperation with affected grazing permittees and lessees, owners of intermingled lands, and other affected interests.

5. Section 4110.3–1 is amended by adding paragraph (d) to read as follows:

§ 4110.3–1 Additional forage.

* * * * *

(d) Additional forage for livestock grazing use shall be allocated to qualified applicants by the authorized officer in accordance with the land use plan. The authorized officer shall provide that permanent increases in allocations of livestock forage be phased in over a period not to exceed 5 years, except that increases of 15 percent or less of the authorized active use for the previous year shall be phased in over a period of less than 5 years. The authorized officer may subsequently modify (either increase or decrease) the allocation of forage to livestock based on the results of monitoring and the land use plan.

6. Section 4110.3–2 is amended by revising paragraph (c) and adding paragraphs (d) and (e) to read as follows:

§ 4110.3–2 Decrease in forage.

* * * * *

(c) Suspensions under paragraph (b) of this section shall be implemented over a 5-year period, with an initial reduction taken on the effective date of the decision and the balance taken in the third and fifth years following the effective date of the decision, except as provided in paragraphs (d) and (e) of this section The initial reduction, in combination with other management actions specified in the decision, shall be sufficient to achieve significant progress toward achieving the vegetation objectives set forth in the land use plan for the five-year period. In allotments containing more than one permittee or lessee, suspensions under paragraphs (a) or (b) of this section shall be equitably apportioned by the authorized officer or as agreed among the permittees or lessees and the authorized officer.

(d) The authorized officer shall schedule suspensions under paragraph (b) of this section over a period of less than 5 years if, after consultation with the affected permittees or lessees and other affected interest—

(1) An agreement is reached to implement the suspension in less than 5 years;

(2) The authorized officer determines that the suspension is required within less than 5 years to sustain resource productivity, i.e., to protect the resource from substantial and long-term damage; or

(3) The total scheduled suspension is 15 percent or less of the authorized active grazing use for the previous year.

(e) Prior to implementation of each step of a phased suspension, the authorized officer shall review available information to determine whether the amount of the suspension should be modified (either increased or decreased). If the authorized officer determines that monitoring data indicate that the amount of a scheduled suspension should be modified, a new decision shall be issued under § 4160 of this title. However, the new decision shall not extend a phase-in period established in a previous decision.

7. Section 4110.5 is amended by revising paragraph (a) to read as follows:

§ 4110.5 Conflicting applications.

* * * * *

(a) Historical use of the public lands (see § 4130.2(e));

* * * * *

8. Section 4120.2–2 is revised in its entirety to read as follows:

§ 4120.2–2 Other terms and conditions.

The authorized officer may specify in grazing permits or leases other terms and conditions which will assist in achieving objectives identified in land use plans, provide for proper range management, or assist in the orderly administration of the public rangelands. This may include, but is not limited to—

(a) The class of livestock that will graze on an allotment;

(b) The breed of livestock in allotments within which two or more permittees or lessees are authorized to graze;

(c) Authorization to use, and directions for the placement of, supplemental feed, including salt, for livestock on the public lands;

(d) A requirement that permittees or lessees, operating under a grazing permit or lease not incorporating an allotment management plan, submit within 15 days after completing their annual grazing use, or as otherwise specified in the permit or lease, a report of the actual livestock grazing use made;

(e) The kinds of indigenous animals authorized to graze under specific terms and conditions;

(f) Provision for livestock grazing to be temporarily delayed, discontinued or modified to provide for the reproduction, establishment or restoration of vigor of plants, or to prevent compaction of wet soils, such as where delay of spring turnout is required because of weather conditions or lack of plant growth; and

(g) The percentage of public land use determined by the proportion of livestock forage available on public lands within the allotment compared to the total amount available from both public lands and those owned or controlled by the permittee or lessee.

9. Section 4120.2–3 is amended by revising paragraph (a) to read as follows:

§ 4120.2–3 Allotment management plans.

* * * * *

(a) An allotment management plan shall be prepared in careful and considered consultation, cooperation, and coordination with its affected permittee(s) or lessee(s), landowners involved, the district grazing advisory boards where established, any State having lands within the area to be covered by such an allotment management plan, and when approved by the authorized officer shall be implemented (see § 4100.0–5(d) of this title). The allotment management plan shall include terms and conditions under 4120.2–1 of this title, may include terms and conditions under § 4120.2–2 of this title, and shall prescribe a system of grazing designed to meet specific management objectives. The plan shall include the limits of flexibility within which the permittee or lessee may adjust his/her operation without prior approval of the authorized officer. The plan shall provide for the collection of data that shall be used to evaluate the effectiveness of the system of grazing in achieving the specific objectives.

* * * * *

10. Section 4120.3 is revised in its entirety to read as follows:

§ 4120.3 Temporary modifications and closures to livestock use.

When the authorized officer determines that the soil, vegetation, or other resources on the public lands require temporary protection because of conditions such as drought, fire, flood, or insect infestation, and after consultation with affected permittees or lessees and other affected interests, action shall be taken either to close allotments or portions of allotments to grazing by any kind of livestock or to modify authorized grazing use.

(a) Notices of closure and decisions requiring modification of authorized grazing use shall be issued as final decisions which are placed in full force and effect under § 4160.3(c) of this title; and shall—

(1) State the reasons for the action;

(2) Specify the period of time during which the closure or modification will remain in effect and/or describe the resource conditions that must be present before the regularly authorized grazing use may resume;

(3) Be served personally or by certified mail to those who are authorized to graze livestock on the allotments affected;

(4) Require all owners of livestock affected to remove such livestock or modify grazing use as specified in the decision; and

(5) In the case of a closure, be published in the local newspaper(s) and be posted at the county courthouse and post office near the public land involved.

(b) The authorized officer shall modify grazing use authorizations as required by actions taken under paragraph (a) of this section.

(c) The authorized officer may, as provided under § 4150.5 of this title, impound, remove, and dispose of any livestock found in violation of a closure or modification of grazing use required under paragraph (a) of this section.

11. Section 4120.6-1 is amended by revising and redesignating existing paragraph (d) as paragraph (e) and inserting a new paragraph (d) to read as follows:

§ 4120.6-1 Conditions for range improvements.

* * * * *

(d) A range improvement permit or cooperative agreement does not convey to the permittee or cooperator right, title, or interest in any lands or resources held by the United States.

(e) When appropriated, one-half of the range betterment funds (see § 4130.5-1(f)) shall be available for use in the district from which the grazing fees were collected for the purpose of on-the-ground rehabilitation, protection, and improvement of public lands. The other one-half of the range betterment funds shall be used for on-the-ground range rehabilitation, protection, and improvement of public lands at the discretion of the Director. The range betterment funds shall be used as directed after consultations with user representatives. These funds shall be used for the installation, maintenance, modification, and removal of range improvements including such things as planning, environmental assessment, design, survey, materials, equipment, labor, and supervision related to these improvements.

12. Section 4120.6-3 is Revised to read as follows:

§ 4120.6-3 Range improvement permits.

(a) Any permittee or lessee may apply for a range improvement permit to install, use, maintain, and/or modify range improvements that are needed to achieve management objectives within his designated allotment. The permittee or lessee shall agree to provide full funding for construction, installation, modification, or maintenance. Such range improvement permits are issued at the discretion of the authorized officer.

(b) The permittee or lessee shall have title to removable range improvements authorized under range improvement permits.

(c) The use by livestock of stock ponds or wells on public lands which are recognized as base water under § 4110.2-1 of this title and authorized by a range improvement permit shall be controlled by the grazing permittee or lessee holding the range improvement permit.

13. Section 4130.2 is amended by revising paragraphs (d)(2), (d)(2)(v), (d)(3), (e)(2) and (e)(3); and adding a new paragraph (e)(4) to read as follows:

§ 4130.2 Grazing permits and leases.

* * * * *

(d) * * *

(2) Exceptions to the issuance of a grazing permit or lease for a term of 10 years shall be made on a case-by-case basis. In determining whether the interest of sound land management warrants the issuance of a grazing permit or lease for less than 10 years, the following are elements that the authorized officer shall consider.

* * * * *

(v) Whether significant adverse environmental impacts will result from issuance of a grazing permit or lease for a term of 10 years;

* * * * *

(3) Grazing permits or leases shall be modified, suspended, or canceled as required by land use planning decisions.

* * * * *

(e) * * *

(2) The permittee or lessee is in compliance with the regulations contained in this part and the terms and conditions of his grazing permit or lease;

(3) The permittee or lessee accepts the terms and conditions to be included in the new permit or lease by the authorized officer; and

(4) The base property offered by a grazing lessee is contiguous to the public lands to be grazed or, if noncontiguous, there are no conflicting applications submitted by those offering qualified base property which would be contiguous to the public lands to be grazed.

14. Section 4130.5-1 is amended by revising paragraph (e) to read as follows:

§ 4130.5-1 Payment of fees.

* * * * *

(e) Fees are due upon issuance of the billing notices and must be aid in full prior to grazing use except where an allotment management plan providing for later payment has been incorporated in a grazing permit or lease. In such cases a billing notice based on actual use may be issued at the end of the grazing period or year, or a billing notice based on the normal operation may be issued prior to the grazing period or year followed by an adjusted billing notice based on actual use after grazing use has been completed. If an actual use report is not submitted, the amount due will be based on grazing use at the upper limit of flexibility specified in the allotment management plan. Actual use billing privileges shall be cancelled by the authorized officer where the permittee or lessee fails or refuses to—(1) submit a timely actual use report; or (2) make timely payment upon issuance of a billing notice based upon an actual use report or, if the actual use report has not been submitted, the upper level of flexibility specified in the allotment management plan. The permittee or lessee, however, is not relieved of the responsibility for submitting an actual use report under § 4120.3-3(e).

* * * * *

15. Section 4140.1 is amended by revising paragraphs (b)(1) and (b)(12) to read as follows:

§ 4140.1 Acts prohibited on public lands.

* * * * *

(b) * * *

(1) Allowing livestock on or driving livestock across these lands—

(i) Without a permit, lease or other grazing use authorization;

(ii) In violation of the terms and conditions of a permit, lease, or other grazing use authorization including, but not limited to, livestock in excess of the number authorized;

(iii) In an area or at a time different from that authorized; or

(iv) Failing to comply with a requirement under § 4120.4(d) of this title.

* * * * *

(12) Allowing privately owned or controlled indigenous animals on or driving them across these lands—

(i) Without a permit, lease or other grazing use authorization;

(ii) In violation of the terms and conditions of a permit, lease, or other grazing use authorization including, but

not limited to, animals in excess of the number authorized;

(iii) In an area or at a time different from that authorized; or

(iv) Failing to comply with a requirement under § 4120.4(d) of this title.

16. Section 4150.3 is amended by revising paragraph (c) to read as follows:

§ 4150.3 Settlement.

* * * * *

(c) Violators shall not be authorized to make grazing use on the public lands or other lands administered by the Bureau of Land Management until any amount found to be due the United States under this section has been paid. The authorized officer may take action under § 4160.1–2 or 4160.5, of this title, to cancel or suspend grazing authorizations or to deny approval of applications for grazing use until such amounts have been paid.

17. Subpart 4150 is amended by adding a new § 4150.6 to read as follows:

* * * * *

§ 4150.6 Closure to control unauthorized grazing use.

To control unauthorized grazing use, the authorized officer may temporarily close allotments or portions of allotments to grazing by any kind or class of livestock different from those authorized to graze in the allotment, for a period not to exceed 12 months. The action taken by the authorized officer shall be specified in a written notice of closure which shall—

(a) State why the allotments, or portions of allotments, are being closed;

(b) Specify the kind or class of livestock to which the areas are closed;

(c) Specify the period for which the areas will be closed;

(d) Be published in the local newspaper(s);

(e) Be posted at the county courthouse and at a post office near the public land area involved;

(f) Be delivered personally or by certified mail to those who are authorized to graze livestock on the allotments affected;

(g) Be issued as a final decision in full force and effect under § 4160.3(c); and

(h) Require all owners of unauthorized livestock affected thereby to remove such livestock in accordance with provisions of the notice. The authorized officer may proceed to impound, remove, and dispose of any livestock found in violation of the closing notice after the closure date specified in the notice in accordance with § 4150.5–2 through § 4150.5–5 of this title.

18. Section 4160.1–1 is revised to read as follows:

§ 4160.1–1 Proposed decisions on permits or leases.

The authorized officer shall serve a proposed decision on any applicant, permittee or lessee, or his agent, or both, who is affected by his/her proposed action on applications for permits (including range improvement permits) or leases or by his/her proposed action related to terms and conditions or permits (including range improvement permits) or leases, by certified mail or personal delivery, and shall notify any lienholder of record of the proposed decision. The authorized officer shall also send copies to those who have indicated in writing that their interests may be affected by the proposed decision. The proposed decision shall state that reasons for the action, including reference to the pertinent terms, conditions and/or provisions of these regulations, and shall provide for a period of 15 days after receipt for the filing of a protest.

(a) Following completion of each grazing environmental impact statement and land use plan, the authorized officer shall prepare and distribute for public information a rangeland program summary and appropriate updates for the area before issuing proposed decisions to grazing permittees or lessees which would adjust livestock grazing use under §§ 4110.3–1(b) or 4110.3–2(b) of this title, unless a specific exception is approved by the State Director on a case-by-case basis because resource conditions require more immediate action.

(1) The rangeland program summary shall summarize the land use planning objectives and decisions for all rangeland uses and shall set forth those decisions that affect livestock grazing, including, for each allotment, the allocation of forage to livestock; the relationship of those planning decisions to the alternatives analyzed in the environmental impact statement; and the costs and benefits of the program. The rangeland program summary shall also describe the procedures and time available for all affected interests to express their views or take action on decisions set forth in the document.

(2) Rangeland program summary updates shall be prepared prior to the initial adjustment and each subsequent step of phased adjustments scheduled under §§ 4110.3–1(d) and 4110.3–2(d) of this title. The first rangeland program summary update shall summarize the actions being proposed to achieve the land use planning decisions and the monitoring program for the area. Subsequent updates shall summarize, by allotment, the progress toward achieving these objectives and implementing these decisions and shall identify any proposals by the authorized officer to modify scheduled adjustments in livestock grazing use.

(b) The authorized officer shall include in proposed decisions which would adjust livestock grazing use under §§ 4110.3–1(b) or 4110.3–2(b) of this title the recognized grazing preference, the allocation of forage to livestock, the specific schedule for implementing the adjustments, the specific management objectives for the allotment, the resource values to be evaluated to determine progress in meeting these objectives, the changes in these values that would warrant a modification of the scheduled adjustments and other information necessary to set forth actions required to achieve the required management objectives for the allotment.

19. Section 4160.3 is amended by revising paragraph (c), and adding new paragraphs (d), (e) and (f) to read as follows:

§ 4160.3 Final decisions.

* * * * * *

(c) A period of 30 days after receipt of the final decision is provided for filing an appeal. Decisions that are appealed shall be suspended pending final action except as otherwise provided in this section. Except where grazing use the preceding year was authorized on a temporary basis under § 4110.3–1(a) of this title, an applicant who was granted grazing use in the preceding year may continue at that level of authorized active use pending final action on the appeal except as further provided in paragraphs (e) and (f) of this section. However, if the authorized officer places the final decision in full force and effect, as provided in paragraph (d) of this section, it shall take effect on the date specified, regardless of appeal.

(d) A decision shall be placed in full force and effect on the date specified by the authorized officer, either a specific calendar date or the date at which a specific event occurs such as the date a decision is rendered on an appeal, if it would—

(1) Make a temporary modification in livestock use or close an area to livestock use under § 4120.3 of this title;

(2) Close an area to unauthorized grazing use under § 4150.6 of this title;

(3) Modify the terms and conditions of a permit or lease under § 4120.3–1(b) of this title; or

(4) Be required for the orderly administration of the range or the protection of resource values.

(i) Orderly administration of the range could, for example, include situations where—

(A) All members of a group of operators should be treated alike, e.g., in common use allotments where all but one operator are agreeable to a management program;

(B) Rangelands are managed as ephemeral or annual rangeland with no predetermined stocking level and grazing is allowed only when growth of forage plants occurs or utilization levels are used to determine when grazing use of such ranges should be extended or terminated;

(C) Range improvements shall be completed in a specific sequence in several allotments, e.g., a water pipeline servicing several allotments, and the level of grazing use or existing patterns of use in one or more of the allotments would not permit prudent investment in the improvement;

(D) Special project funding is directed by Congress; or

(E) Forage or water is not available due to fire, drought, insects, floods and other disasters.

(ii) The protection of resource values could, for example, necessitate a full force and effect decision where—

(A) Utilization of key forage species by grazing animals significantly exceeds the biological limit to sustain these species and long-term damage or loss of the forage plans would result if prompt action is not taken to modify grazing use;

(B) The trend in range condition is significantly declining in relation to management objectives with no probable change in trend unless prompt action is taken;

(C) Prompt action is needed to arrest accelerated erosion resulting from grazing which is causing a continual decline in site productivity and/or is causing measurable deterioration of water quality or other serious resource damage, either on- or off-site; or

(D) Livestock grazing use is threatening other significant resources, such as the habitat of threatened or endangered species, significant cultural properties or critical habitat for wildlife.

(e) An appeal of the fifth-year increment of a final decision, or of a decision on an application for grazing use in any year, shall not suspend implementation of the decision. An appeal of a decision which concerns grazing use to be made in the third year of a scheduled 5-year phase-in period shall suspend implementation of the decision and grazing use shall be authorized at the level scheduled for the first year of the phase-in period.

(f) Where a decision that provides for implementation of an action within a specified period of time is appealed and the decision is upheld, the final date for completing implementation shall remain as specified in the decision or 30 days from the effective date of the decision on the appeal, whichever is later.

20. Section 4160.5 is revised to read as follows:

§ 4160.5 Show cause.

Whenever it appears to the authorized officer that disciplinary action is advisable because a permittee or lessee has willfully or repeatedly violated provisions of this part, the authorized officer may serve a show cause notice on the permittee or lessee, or the operator's agent, or both, by certified mail or personal delivery and shall notify any lienholder of record. The show cause notice shall state the alleged violation and refer to the specific terms, conditions, and/or provisions of these regulations alleged to have been violated. As applicable, the notice shall state the amount due under § 4130.5–1 or 4150.3 of this title. The show cause notice shall cite the permittee or lessee to appear before an administrative law judge at a designated time and place, in accordance with § 4.470 of this title, to show cause why the grazing use authorized under his/her grazing permit or grazing lease should not be suspended in whole or in part or why his/her grazing permit or grazing lease and grazing preference should not be canceled in whole or in part under § 4170.1–1 of this title.

21. Section 4170.1–1 is revised to read as follows:

§ 4170.1–1 Penalty for violations.

(a) The authorized officer may withhold issuance of a grazing permit or lease, or suspend the grazing use authorized under a grazing permit or lease, in whole or in part, or cancel a grazing permit or lease and grazing preference, or a free use grazing permit or other grazing authorization, in whole or in part, under subpart 4160 of this title, for violation by a permittee or lessee of any of the provisions of this part.

(b) The authorized officer shall suspend the grazing use authorized under a grazing permit, in whole or in part, or shall cancel a grazing permit or lease and grazing preference, in whole or in part, under subpart 4160 of this title for repeated willful violation by a permittee or lessee of § 4140.1(b)(1) of this title.

(c) Whenever a nonpermittee or nonlessee violates § 4140.1(b) of this title and has not made satisfactory settlement under § 4150.3 of this title the authorized officer shall refer the matter to proper authorities for appropriate legal action by the United States against the violator.

22. Section 4170.1–3 is amended by revising paragraph (c) to read as follows:

§ 4170.1–3 Federal or State laws or regulations.

* * * * *

(c) The permittee or lessee has been convicted of or otherwise found to be in violation of any of these laws or regulations by a court or by final determination of any agency charged with the administration of the conservation or environmental laws where no further appeals are outstanding.

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Monday
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Part XXXVI

Department of the Interior

Bureau of Land Management

Federal Land Withdrawals; Amendment To Withdrawal Procedures; Final Rulemaking

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[Circular No. 2494]

43 CFR PARTS 2090, 2300, 2310, 2320, 2340 and 2350

Federal Land Withdrawals; Amendment to Withdrawal Procedures

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rulemaking.

SUMMARY: This final rulemaking sets out the procedures by which the Secretary of the Interior will process withdrawal applications and make, modify or extend Federal land withdrawals. This final rulemaking will implement the authority of the Secretary of the Interior derived from various statutes, but principally from section 204 of the Federal Land Policy and Management Act of 1976, to make, modify and extend Federal land withdrawals. It is also intended to implement the authority of the Secretary of the Interior to process national defense withdrawal applications in excess of 5,000 acres under the Act of February 28, 1958.

EFFECTIVE DATE: February 18, 1981.

ADDRESS: Any inquiries or suggestions should be sent to: Director (323), Bureau of Land Management, 1800 C Street, NW., Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT: Greg Sukya, (202) 343-8466 or Robert C. Bruce, (202) 343-8735.

SUPPLEMENTARY INFORMATION: A proposed rulemaking on this subject was published in the Federal Register on December 4, 1979 (44 FR 69608). Comments were invited for a 90-day period ending March 3, 1980. Comments were received from 42 different sources, with 14 coming from Federal departments and agencies, 14 from private interests, 7 from State and local governments and 7 from associations. The analysis of the comments and a careful reexamination of the proposed rulemaking have led to an extensive rewriting. None of the changes are substantive. The rewrite provides a better organization of the withdrawal process and should make the regulations easier to use.

General

Most of the comments from the private sector commended the Department of the Interior for issuing regulations on this subject because they create a management system for withdrawals. Several of the comments from the private sector voiced the view that withdrawals should be severely limited and that even stronger regulations might be needed. On the other side of that issue, one comment suggested that the proposed rulemaking was unduly restrictive and expressed the view that it should be made less restrictive. Several comments were of the opinion that the rulemaking should be expanded to include revocation of withdrawals. The Department of the Interior has determined that the revocation procedures will be covered at a later date by a separate rulemaking. Another general suggestion made by several of the comments was that the proposed rulemaking should be rewritten in language to make it clearer and more easily understood. With this objective in mind, the rulemaking has been extensively rewritten.

Comments on specific sections of the proposed rulemaking are discussed on a section-by-section basis. Only those sections on which comments were received, or which were significantly changed, are discussed in this preamble.

Purpose

In addition to general comments requesting the inclusion of revocations in this rulemaking, a few comments wanted the purpose section expanded to include the revocation of withdrawals. This comment has not been adopted because revocations will be covered in a separate rulemaking, as was pointed out earlier in this preamble. Another group of comments wanted the purpose section to state specifically the lands and types of withdrawals that are covered by the rulemaking. The authority section adequately sets out the discretionary authority that may be exercised by the Secretary of the Interior on withdrawals through the procedure established in this rulemaking. Regulations governing withdrawals under the Surface Mining Control and Reclamation Act of 1977 will be issued as a separate subpart to this title.

Authority

Several comments recommended that the reference in the authority section to Executive Order 10355 be deleted. The Office of the Solicitor advises that even though most of the President's withdrawal authority has been repealed by section 704 of the Federal Land Policy and Management Act of 1976, the Statutes-at-Large may still contain Presidential withdrawal authority of a limited nature that has been delegated to the Secretary of the Interior by Executive Order 10355. Further, section 1326(a) of the Alaska National Interest Lands Conservation Act (Pub. L. 96-487), authorizes the President to make withdrawals of more than 5,000 acres in the State of Alaska, subject to the provisions of that section. Therefore, the reference to Executive Order 10355 has been retained in the rulemaking.

One comment wanted a reference to the Mining and Minerals Policy Act of 1970 included in the authority section so that the authorized officer would be reminded of the responsibilities of the Secretary of the Interior under that statute. This recommendation has not been adopted because the statute in question does not afford direct authority for withdrawal procedures. However, the various statutory responsibilities of the Secretary of the Interior, to the extent delegated, should be taken into account by all officials of the Department in carrying out their day-to-day functions.

Another comment felt that this section could be read to imply that the Secretary of the Interior can make withdrawals for military purposes under the Act of February 28, 1958, sometimes referred to as the Engle Act. To clarify the Secretary's authority and the scope of this rulemaking, a sentence has been added to the provision covering the Act of February 28, 1958, to make it clear that, as to withdrawals in excess of 5,000 acres, a national defense withdrawal can only be made by an act of Congress.

A reference to section 302(b) of the Federal Land Policy and Management Act of 1976 has been added to the authority section to clarify the authority for memoranda of understanding that will be required in connection with certain withdrawals.

A reference to section 1326(a) of the Alaska National Interest Lands Conservation Act (Pub. L. 96-487), has been added to the authority section to identify the authority of the President and the Secretary of the Interior in regard to withdrawals exceeding 5,000 acres in the State of Alaska.

Two new paragraphs have been added to the statutory references for general information purposes. The new paragraphs cover the Classification and Multiple Use Act and the first proviso of section 302(b) of the Federal Land Policy and Management Act of 1976. While these references are not required for the rulemaking, their inclusion does provide background information.

Definitions

This section was the subject of a large number of comments—as many as any other section of the proposed rulemaking. Each comment has been carefully studied, and several of them prompted changes in this second prepared rulemaking.

Several of the comments expressed the view that the term "public lands" or "Federal lands" should be defined. One comment on this subject expressed the view that the proposed rulemaking was based primarily on the Federal Land Policy and Management Act of 1976 and, therefore, should refer exclusively to "public lands." In rejecting these contentions, it is noted that section 204(a) of the Federal Land Policy and Management Act of 1976 which confers general withdrawal authority on the Secretary of the Interior, carefully avoids the use of the term "public lands." Further, the definition of the term "withdrawal" in section 103(j) of the Federal Land Policy and Management Act of 1976 uses the term "Federal Lands," not the term "public lands." The rulemaking is designed to cover withdrawals on all lands under Federal jurisdiction, and not just those relating to "public lands." The definition section has not been expanded to include either the term "public lands" or "Federal lands."

One comment requested that the term "mineral" be defined more specifically than it was in the proposed rulemaking. After studying the rulemaking and its use of the term "mineral," the term "mineral" has been deleted from the definition section because it is not used frequently in the rulemaking and the term is employed in keeping with its general usage.

In response to a comment questioning the exact meaning of the term "segregation," the term has been added to the definition section of the rulemaking. In addition, definitions of the terms "withdrawal petition" and "withdrawal proposal" have been added to the section.

One comment requested that the word "legendary" be deleted from the definition of the term "cultural resources" because its use in the definition could lead to confusion. This comment has been adopted.

One comment suggested that the use of the word "transfer," as found in the definition of "withdrawal" was not proper. This comment has been rejected because a transfer of jurisdiction is one of the basic elements of a "withdrawal" as that term is defined in section 103(j) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1702(j)).

A comment indicated that the inclusion of land and water areas in the definition of the term "lands" might cause some problems. After considering this comment, the definition has been revised.

A few comments were concerned about the emphasis placed on withdrawing lands from the general mining laws and the impacts such action has on the need for hard rock minerals. Withdrawal from the general mining laws is specifically mentioned in the rulemaking because withdrawal is the only method the Secretary of the Interior has to close Federal lands, on a long term basis, to location and disposal under the general mining laws. This is true because the 1872 Mining Law is a nondiscretionary land law which grants anyone the right to enter those public lands not closed to its operation for the purpose of exploring for and extracting hard rock minerals. The Mineral Leasing Act of 1920, as amended, on the other hand, gives the Secretary the discretion to preclude leasing of the minerals on the public lands that are covered by that Act, so the Secretary can, when necessary, prevent mining activity involving these minerals. There has been no change in the reference to the general mining laws in the rulemaking.

Two comments raised concerns about the definition of the term "legal description" and its impact on the rulemaking. The concerns were properly raised and the definition of the term "legal description" has been completely rewritten in the rulemaking.

A couple of comments wanted some reference to "valid existing rights" included in the definition of the term "withdrawal," with one comment making the point that land withdrawals would have no impact on valid existing rights. This suggested change has been made.

The term "resource uses" has been added to the definition section because of some confusion reflected in the comments about its use in other parts of the proposed rulemaking. In order to clear up this confusion, the term has been defined.

The term "modify" has been added to the definition section to clarify what that term means in the context of section 204(a) of the Federal Land Policy and Management Act of 1976.

Applications and Succeeding Sections on Application Processing

These sections were the basis of numerous comments, nearly all of which felt that changes were needed in order to clarify the process for submitting and processing an application for withdrawal. After considering the comments, these sections have been rearranged and rewritten, and some new sections have been added. The revision results in a much clearer statement of what is required for the submission and processing of an application for a withdrawal. The rewritten proposal attempts to answer all of the fundamental issues raised in the comments on this group of sections.

In an effort to achieve better coordination on a withdrawal application, the rulemaking now includes a section on preapplication consultation where problems can be surfaced and worked out prior to the submission of a formal application. Further, the elements required to be submitted with an application have been reduced substantially. The remaining items required by the rulemaking can be supplied in the two-year period during which the segregation is in effect. This is covered in a new section on developing and processing a case file for submission to the Secretary of the Interior.

Another new section outlines the actions that will be taken on an application after submission of the case file to the Secretary of the Interior. This latter section essentially adopts the language from the first proposed rulemaking relating to public land orders and denial notices. Also included in this general rewrite of stages in the submission and processing of applications is the section on duration of withdrawals, which has been retained with only minor editorial changes.

In connection with the processing of applications, a large number of comments were directed to the type of mineral survey that would be required on lands covered by a withdrawal application. Several of the comments went so far as to specify possible survey standards. The rulemaking continues to require a mineral survey for all withdrawal applications. The standards for these surveys, while not included in this rulemaking, will be part of the Bureau of Land Management's manual on withdrawal procedures that will be prepared for field use after this rulemaking becomes final.

One comment objected to the requirement for a memorandum of understanding, with special objection to those instances where the transfer of jurisdiction will be complete. The requirement for the memorandum of understanding has been retained. In those instances where the transfer of jurisdiction is not complete and some management responsibility is retained by the Bureau of Land Management, the memorandum of understanding will set out the terms of the shared management. In those instances where the transfer of jurisdiction is for all functions, the memorandum of understanding will so state.

Compensation for Improvements

This section has been revised in response to numerous comments and

suggestions. Analysis of the section disclosed that it was deficient and needed revision to make it effective.

Transfer of Administrative Jurisdiction

The comments on this section indicated a high degree of confusion about what the section was intended to accomplish. Several of the comments strongly suggested that the section be rewritten to clarify its intent and meaning. In response to these comments, the section has been revised.

Extensions

Only a couple of comments were received on this section. One comment requested assurance that a proposed extension would be granted only after adequate notice to the public. The rulemaking clearly indicates that an extension will not be granted until the public has received appropriate notice of the extension. A second comment on this section raised a question as to the type of environmental analysis that would be required for the allowance of a proposed withdrawal extension.

The circumstances at the time the withdrawal is being reviewed for purposes of an extension will determine the type of environmental analysis that will be required. For example, where little change in use is expected to occur, an environmental assessment, or, at most, a supplement to the environmental impact statement that was prepared for the initial withdrawal may be sufficient.

Special Action on Emergency Withdrawals

The comments on this section asked that the section be amended to include a provision for a notice for requesting public input prior to the making of an emergency withdrawal. This type of notice would defeat the purpose of an emergency withdrawal. In recognition of this fact, Congress expressly excluded the notice/publication requirements of section 204(b) of the Federal Land Policy and Management Act of 1976 from the procedures that are applicable to emergency withdrawals (See section 204(b)(2) of the Act). Emergency withdrawals may not last for more than 3 years, and terminate automatically. The same lands may then be withdrawn only if justified after processing a withdrawal application following normal procedures. For this reason, no change has been made in this section.

Federal Energy Regulatory Commission Withdrawals

As pointed out in the preamble to the proposed rulemaking, this subpart is a restatement, with only minor changes, of the existing regulations on this subject. The subpart has been included as part of Title 43 of the Code of Federal Regulations in accordance with an agreement between the Department of the Interior and the Federal Energy Regulatory Commission. Only minor comments, other than the request that the subpart be deleted, were received on this subpart, and no change has been made.

Editorial changes and technical corrections have been made as necessary.

The principal authors of this final rulemaking are Greg Sukys, Division of Land Resources and Realty, and Robert C. Bruce, Office of Legislation and Regulatory Management, Bureau of Land Management.

It is hereby determined that the publication of this document is not a major Federal action significantly affecting the quality of the human environment and that no detailed statement pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) is required.

The Department of the Interior has determined that this document is not a significant regulatory action requiring the preparation of a regulatory analysis under Executive Order 12044 and 43 CFR Part 14.

Under the authority of section 204 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1714), the Federal Power Act of 1920 (16 U.S.C. 818), the Act of February 28, 1958 (43 U.S.C. 155 et seq.), section 1326(a) of the Alaska National Interest Lands Conservation Act (Pub. L. 96-487), and Executive Order 10355 (17 FR 4831), Group 2300, Subchapter B, Chapter II, Title 43 of the Code of Federal Regulations is revised as set forth below.

Guy R. Martin,

Assistant Secretary of the Interior.

January 14, 1981.

1. Part 2300 is revised as follows:

PART 2300—LAND WITHDRAWALS

Subpart 2300—Withdrawals, General

Sec.

2300.0-1 Purpose.
2300.0-3 Authority.
2300.0-5 Definitions.

Subpart 2310—Withdrawals, General—Procedure

2310.1 Procedures—general.
2310.1-1 Preapplication consultation.
2310.1-2 Submission of applications.
2310.1-3 Submission of withdrawal petitions.
2310.1-4 Cancellation of withdrawal applications or withdrawal proposals and denial of applications.
2310.2 Segregative effect of withdrawal applications or withdrawal proposals.
2310.2-1 Termination of segregative effect of withdrawal applications or withdrawal proposals.
2310.3 Action on withdrawal applications and withdrawal proposals, except for emergency withdrawals.
2310.3-1 Publication and public meeting requirements.
2310.3-2 Development and processing of the case file for submission to the Secretary.
2310.3-3 Action by the Secretary—public land orders and notices of denial.
2310.3-4 Duration of withdrawals.
2310.3-5 Compensation for improvements.
2310.3-6 Transfer of jurisdiction.
2310.4 Review and extension of withdrawals.
2310.5 Special action on emergency withdrawals.

Subpart 2320—Federal Energy Regulatory Commission Withdrawals

2320.0-3 Authority.
2320.1 Lands considered withdrawn or classified for power purposes.
2320.2 General determinations under the Federal Power Act.

Authority: 43 U.S.C. 1201; 43 U.S.C. 1740; Executive Order No. 10355 (17 FR 4831, 4833).

Group 2300—Withdrawals

PART 2300—WITHDRAWALS

Subpart 2300—Withdrawals, General

§ 2300.0-1 Purpose.

(a) These regulations set forth procedures implementing the Secretary of the Interior's authority to process Federal land withdrawal applications and, where appropriate, to make, modify or extend Federal land withdrawals. Procedures for making emergency withdrawals are also included.

(b) The regulations do not apply to withdrawals that are made by the Secretary of the Interior pursuant to an act of Congress which directs the issuance of an order by the Secretary. Likewise, procedures applicable to withdrawals authorized under the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1272(b); 1281), and procedures relating to the Secretary's authority to establish Indian reservations or to add lands to the reservations pursuant to special legislation or in accordance with section 7 of the Act of June 18, 1934 (25 U.S.C. 467), as supplemented by section 1 of the Act of May 1, 1936 (25 U.S.C. 473a), are not included in these regulations.

(c) General procedures relating to the processing of revocation of withdrawals and relating to the relinquishment of reserved Federal land areas are not included in this Part.

§ 2300.0-3 Authority.

(a)(1) Section 204 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1714) gives the Secretary of the Interior general authority to make, modify, extend or revoke withdrawals, but only in accordance with the provisions and limitations of that section. Among other limitations, the Federal Land Policy and Management Act of 1976 provides that the Secretary of the Interior does not have authority to:

(i) Make, modify or revoke any withdrawal created by an Act of Congress;

(ii) Make a withdrawal which can be made only by an Act of Congress;

(iii) Modify or revoke any withdrawal creating national monuments under the Act of June 8, 1906 (16 U.S.C. 431–433), sometimes referred to as the Antiquities Act;

(iv) Modify or revoke any withdrawal which added lands to the National Wildlife Refuge System prior to October 21, 1976, the date of approval of the Federal Land Policy and Management Act of 1976 or which thereafter adds lands to that System under the terms of that Act. In this connection, nothing in the Federal Land Policy and Management Act of 1976 is intended to modify or change any provision of the Act of February 27, 1976 (16 U.S.C. 668 dd(a)).

(2) Executive Order 10355 of May 26, 1952 (17 FR 4831), confers on the Secretary of the Interior all of the delegable authority of the President to make, modify and revoke withdrawals and reservations with respect to lands of the public domain and other lands owned and controlled by the United States in the continental United States or Alaska.

(3) The Act of February 28, 1958 (43 U.S.C. 155–158), sometimes referred to as the Engle Act, places on the Secretary of the Interior the responsibility to process Department of Defense applications for national defense withdrawals, reservations or restrictions aggregating 5,000 acres or more for any one project or facility. These withdrawals, reservations or restrictions may only be made by an act of Congress, except in time of war or national emergency declared by the President or the Congress and except as otherwise expressly provided in the Act of February 28, 1958.

(4) Section 302(b) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1732(b)) authorizes the Secretary of the Interior to regulate the management of the public lands as defined in the Act through instruments, such as memorandum of understanding, which the Secretary deems appropriate.

(5) Section 1326(a) of the Alaska National Interest Lands Conservation Act (Pub. L. 96–487), authorizes the President and the Secretary to make withdrawals exceeding 5,000 acres, in the aggregate, in the State of Alaska subject to the provisions that such withdrawals shall not become effective until notice is provided in the Federal Register and to both Houses of the Congress and such withdrawals shall terminate unless Congress passes a Joint Resolution of approval within one year after the notice of withdrawal has been submitted to the Congress.

(b) The following references do not afford either withdrawal application processing or withdrawal authority but are provided as background information.

(1) Executive Order 6910 of November 26, 1934, and Executive Order 6964 of February 5, 1935, as modified, withdrew sizable portions of the public lands for classification and conservation. These lands and the grazing districts estalished under the Taylor Grazing Act of 1934, as amended, are subject to the classification and opening procedures of section 7 of the Taylor Grazing Act of June 28, 1934, as amended (43 U.S.C. 315f); however, they are not closed to the operation of the mining or mineral leasing laws unless separately withdrawn or reserved, classified for retention from disposal, or precluded from mineral leasing or mining location under other authority.

(2) The Classification and Multiple Use Act of September 19, 1964 (43 U.S.C. 1411–1418), authorized the Secretary of the Interior to classify, in appropriate cases, public lands and other Federal lands exclusively administered by the Secretary of the Interior through the Bureau of Land Management for retention or disposal under Federal ownership and management. Numerous classification decisions based upon this statutory authority were made by the Secretary of the Interior. For the effect of these classification with regard to the disposal and leasing laws of the United States, see Subparts 2440 and 2461 of this title.

(3) Section 202 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1712) provides for land use planning and resultant management decisions which may operate to totally eliminate a particular land use, including one or more "principal or major uses," as defined in the Act. Withdrawals made pursuant to section 204 of the Federal Land Policy and Management Act of 1976 may be used in appropriate cases, to carry out management decisions, except that "public lands," as defined in the Act, can be removed from or restored to the operation of the Mining Law of 1872, as amended, or transferred to another department, agency or office, only by withdrawal action pursuant to section 204 of the Federal Land Policy and Management Act of 1976 or other action pursuant to applicable law.

(4) The first proviso of section 302(b) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1732(b)) provides, in part, that unless otherwise provided for by law, the Secretary of the Interior may permit Federal departments and agencies to use, occupy and develop public lands *only* through rights-of-way under section 507 of the Act (43 U.S.C. 1767); withdrawals under section 204 of the Act (43 U.S.C. 1714); and, where the proposed use and development are similar or closely related to the programs of the Secretary for the public lands involved, cooperative agreements under section 307(b) of the Act (43 U.S.C. 1737(b)).

(5) Section 701(c) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 note) provides that all withdrawals, reservations, classifications and designations in effect on October 21, 1976, the effective date of the Act, shall remain in full force and effect until modified under the provisions of the Act or other applicable law.

§ 2300.0-5 Definitions.

As used in this part, the term:

(a) "Secretary" means the Secretary of the Interior or a secretarial officer subordinate to the Secretary who has been appointed by the President by and with the advice and consent of the Senate and to whom has been delegated the authority of the Secretary to perform the duties described in this part to be performed by the "Secretary."

(b) "Authorized officer" means any employee of the Bureau of Land Management to whom has been delegated the authority to perform the duties described in this part to be performed by the "authorized officer."

(c) "Act" means the Federal Land Policy and Management Act of 1976, as amended (43 U.S.C. 1701 et seq.), unless otherwise specified.

(d) "Lands" includes both upland and submerged land areas and any right or interest in such areas. To the extent provided in section 1 of the Act of February 28, 1958 (43 U.S.C. 155), the term also includes offshore waters.

(e) "Cultural resources" means those fragile and nonrenewable physical remains of human activity found in districts, sites, structures, burial mounds, petroglyphs, artifacts, objects, ruins, works of art, architecture or natural settings or features which were

important to prehistoric, historic or other land and resource use events.

(f) "Archeological areas/resources" means sites or areas containing important evidence of the physical remains of former but now extinct cultural groups, their skeletons, settlements, implements, artifacts, monuments and inscriptions.

(g) "Resource use" means a land use having as its primary objective the preservation, conservation, enhancement or development of:

(1) Any renewable or nonrenewable natural resource indigenous to a particular land area, including, but not limited to, mineral, timber, forage, water, fish or wildlife resources, or

(2) Any resource value associated with a particular land area, including, but not limited to, watershed, power, scenic, wilderness, clean air or recreational values. The term does not include military or other governmental activities requiring land sites only as an incidental means to achieving an end not related primarily to the preservation, conservation, enhancement or development of natural resources or resource values indigenous to or associated with a particular land area.

(h) "Withdrawal" means withholding an area of Federal land from settlement, sale, location, or entry under some or all of the general land laws, for the purpose of limiting activites under those laws in order to maintain other public values in the area or reserving the area for a particular public purpose or program; or transferring jurisdiction over an area of Federal land, other than "property" governed by the Federal Property and Administrative Services Act (40 U.S.C. 472), from one department, bureau or agency to another department, bureau or agency.

(i) "Department" means a unit of the Executive branch of the Federal Government which is headed by a member of the President's Cabinet.

(j) "Agency" means a unit of the Executive branch of the Federal Government which is not within a Department.

(k) "Office" means an office or bureau of the Department of the Interior.

(l) "Applicant" means any Federal department, agency or office.

(m) "Segregation" means the removal for a limited period, subject to valid existing rights, of a specified area of the public lands from the operation of the public land laws, including the mining laws, pursuant to the exercise by the Secretary of regulatory authority to allow for the orderly administration of the public lands.

(n) "Legal description" means a written land description based upon either an approved and filed Federal land survey executed as a part of the United States Public Land Survey System or, where specifically authorized under Federal law, upon a protraction diagram. In the absence of the foregoing, the term means a written description, approved by the authorized officer, which defines the exterior boundaries of a tract of land by reference to a metes and bounds survey or natural or other monuments.

(o) "Modify" or "modification" does not include, for the purposes of section 204 of the act (43 U.S.C. 1714), the addition of lands to an existing withdrawal or the partial revocation of a withdrawal.

(p) "Withdrawal petition" means a request, originated within the Department of the Interior and submitted to the Secretary, to file an application for withdrawal.

(q) "Withdrawal proposal" means a withdrawal petition approved by the Secretary.

Subpart 2310—Withdrawals, General—Procedure

§ 2310.1 Procedures—general.

(a) The basic steps leading up to the making, modification or extension of a withdrawal, except emergency withdrawals, are:

(1) Preapplication consultation;

(2) Obtaining Secretarial approval of a withdrawal petition in appropriate cases;

(3) Submission for filing of an application for a requested withdrawal action;

(4) Publication in the Federal Register of a notice stating that a withdrawal proposal has been made or that an application has been submitted for filing.

(5) Negotiations between the applicant and the authorized officer as well as the accomplishment of investigations, studies and analyses which may be required to process an application.

(6) Preparation of the case file to be considered by the Secretary, including the authorized officer's findings and recommendations;

(7) Transmittal of the case file to the Director, Bureau of Land Management, for the Director's review and decision regarding the findings and recommendations of the authorized officer;

(8) Transmittal of the case file to the Secretary.

(9) Publication of a public land order or a notice of denial signed by the Secretary. If the application seeks a national defense withdrawal that may only be made by an act of Congress, the Secretary will transmit to the Congress proposed legislation along with the Secretary's recommendations, and documentation relating thereto.

§ 2310.1-1 Preapplication consultation.

A potential applicant should contact the appropriate State office of the Bureau of Land Management well in advance of the anticipated submission date of an application. Early consultation can familiarize the potential applicant with the responsibilities of an applicant, the authorized officer and the Secretary. Early consultation also will assist in determining the need for a withdrawal, taking possible alternatives into account, increase the likelihood that the applicant's needs will be considered in ongoing land use planning, assist in determining the extent to which any public lands that may be involved would have to be segregated if an application is submitted; and result in preliminary determinations regarding the scheduling of various investigations, studies, analyses, public meetings and negotiations that may be required for a withdrawal. Studies and analyses should be programmed to ensure their completion in sufficient time to allow the Secretary or the Congress adequate time to act on the application before the expiration of the segregation period.

§ 2310.1-2 Submission of applications.

(a) Applications for the making, modification or extension of a withdrawal shall be submitted for filing, in duplicate, in the proper Bureau of Land Management office, as set forth in § 1821.2-1 of this title, except for emergency withdrawal requests and applications that are classified for national security reasons. Requests for emergency withdrawals and applications that are classified for national security reasons shall be submitted, in duplicate, in the Office of the Secretary, Department of the Interior, Washington, D.C. 20240.

(b) Before the authorized officer can take action on a withdrawal proposal, a withdrawal application in support thereof shall be submitted. The application may be submitted simultaneously with the making of a withdrawal proposal, in which case only the notice required by § 2310.3-1(a) of this title, referencing both the application and the withdrawal proposal, shall be published.

(c) No specific form is required, but, except as otherwise provided in § 2310.3-6(b) of this title, the application shall contain at least the following information:

(1) The name and address of the applicant. Where the organization intending to use the lands is different from the applicant, the name and address of such using agency shall also be included.

(2) If the applicant is a department or agency other than the Department of the Interior or an office thereof, a statement of the delegation or delegations of authority of the official acting on behalf of the department or agency submitting the application, substantiating that the official is empowered to act on behalf of the head of the department or agency in connection with all matters pertaining to the application.

(3) If the lands which are subject to an application are wholly or partially under the administration of any department or agency other than the Department of the Interior, the Secretary shall make or modify a withdrawal only with the consent of the head of the department or agency concerned, except in the case of an emergency withdrawal. In such case, a copy of the written consent shall accompany the application. The requirements of section (e) of Executive Order 10355 (17 FR 4831), shall be complied with in those instances where the Order applies.

(4) The type of withdrawal action that is being requested (See § 2300.0–5(h) of this title) and whether the application pertains to the making, extension or modification of a withdrawal.

(5) A description of the lands involved in the application, which shall consist of the following:

(i) A legal description of the entire land area that falls within the exterior boundaries of the affected area and the total acreage of such lands;

(ii) A legal description of the lands, Federal or otherwise, within the exterior boundaries that are to be excepted from the requested action, and after deducting the total acreage of all the excepted lands, the net remaining acreage of all Federal lands (as well as all non-Federal lands which, if they should be returned to or should pass to Federal ownership, would become subject to the withdrawal) within the exterior boundaries of the affected land areas;

(iii) In the case of a national defense withdrawal which can only be made by an act of Congress, sections 3(2) and 3(3) of the Act of February 28, 1958 (43 U.S.C. 157 (2), (3)) shall be complied with in lieu of subparagraphs (5) (i) and (ii) of this paragraph.

(6) If the application is for a withdrawal that would overlap, or that would add lands to one or more existing withdrawals, the application shall also contain:

(i) An identification of each of the existing withdrawals, including the project name, if any, the date of the withdrawal order, the number and type of order, if known, or, in lieu of the foregoing, a copy of the order;

(ii) As to each existing withdrawal that would be overlapped by the requested withdrawal, the total area and a legal description of the area that would be overlapped; and

(iii) The total acreage, Federal or otherwise, that would be added to the existing withdrawal, if the new application is allowed.

(7) The public purpose or statutory program for which the lands would be withdrawn. If the purpose or program for which the lands would be withdrawn is classified for national security reasons, a statement to that effect shall be included; but, if at all possible, a general description of the use to which the lands would be devoted, if the requested withdrawal is allowed, should be included. In the case of applications that are not classified for national security reasons, an analysis of the manner in which the lands as well as their natural resources and resource values would be used to implement the purpose or program shall be provided.

(8) The extent to which the lands embraced in the application are requested to be withheld from settlement, sale, location or entry under the public land laws, including the mining laws, together with the extent to which, and the time during which, the lands involved in the application would be temporarily segregated in accordance with § 2310.2 of this title.

(9) The type of temporary land use that, at the discretion of the authorized officer, may be permitted or allowed during the segregation period, in accordance with § 2310.2 of this title.

(10) An analysis and explanation of why neither a right-of-way under section 507 of the act (43 U.S.C. 1767), nor a cooperative agreement under sections 302(b) (43 U.S.C. 1732(b)) and 307(b) (43 U.S.C. 1737(b)) of the act would adequately provide for the proposed use.

(11) The duration of the withdrawal, with a statement in justification thereof (see § 2310.3–4 of this title). Where an extension of an existing withdrawal is requested, its duration may not exceed the duration of the existing withdrawal.

(12) A statement as to whether any suitable alternative sites are available for the proposed use or for uses which the requested withdrawal action would displace. The statement shall include a study comparing the projected costs of obtaining each alternative site in suitable condition for the intended use, as well as the projected costs of obtaining and developing each alternative site for uses that the requested withdrawal action would displace.

(13) A statement as to whether water will or will not be needed to fulfill the purpose of the requested withdrawal action.

(14) The place where records relating to the application can be examined by interested persons.

(d) Except in the case of an emergency withdrawal, if the preceding application requirements have not been met, or if an application seeks an action that is not within the scope of the Secretary's authority, the application may be rejected by the authorized officer as a defective application.

§ 2310.1–3 Submission of withdrawal petitions.

(a) Withdrawal petitions shall be submitted to the Director, Bureau of Land Management, for transmittal to the Secretary.

(b) No specific form is required, but the petition shall contain at least the following information:

(1) The office originating the petition;

(2) The type and purpose of the proposed withdrawal action (See § 2300.0–5(h) of this title) and whether the petition pertains to the making, extension or modification of a withdrawal;

(3) A legal description of the entire land area that falls within the exterior boundaries affected by the petition, together with the total acreage of such lands, and a map of the area;

(4) The extent to which and the time during which any public lands that may be involved in the petition would be temporarily segregated and the temporary land uses that may be permitted during the segregation period, in accordance with § 2310.2 of this title; and

(5) A preliminary identification of the mineral resources in the area.

(c) Except in the case of petitions seeking emergency withdrawals, if a petition is submitted simultaneously with a withdrawal application, the information requirements pertaining to withdrawal applications (See § 2310.1–2 of this title), shall supersede the requirements of this section.

(d) If a petition seeks an emergency withdrawal under the provisions of section 204(e) of the act, the petition shall be filed simultaneously with an application for withdrawal. In such instances, the petition/application shall provide as much of the information required by §§ 2310.1–3(c) and 2310.3–2(b) of this title as is available to the

petitioner when the petition is submitted.

(e) Upon the approval by the Secretary of a petition for withdrawal, the petition shall be considered as a Secretarial proposal for withdrawal, and notice of the withdrawal proposal shall be published immediately in the Federal Register in accordance with § 2310.3–1(a) of this title. If a petition which seeks an emergency withdrawal is approved by the Secretary, the publication and notice provisions pertaining to emergency withdrawals shall be applicable. (See § 2310.5 of this title.)

§ 2310.1–4 Cancellation of withdrawal applications or withdrawal proposals and denial of applications.

(a) Withdrawal or extension applications and proposals shall be amended promptly to cancel the application or proposal, in whole or in part, with respect to any lands which the applicant, in the case of applications, or the office, in the case of proposals, determines are no longer needed in connection with a requested or proposed action. The filing of a cancellation notice in each such case shall result in the termination of the segregation of the public lands that are to be eliminated from the withdrawal application or withdrawal proposal. (See § 2310.2–1 of this title)

(b) The Secretary may deny an application if the costs (as defined in section 304(b) of the act (43 U.S.C. 1734(b)) estimated to be incurred by the Department of the Interior would, in the judgment of the Secretary, be excessive in relation to available funds appropriated for processing applications requesting a discretionary withdrawal, or a modification or extension of a withdrawal.

§ 2310.2 Segregative effect of withdrawal applications or withdrawal proposals.

The following provisions apply only to applications or proposals to withdraw lands and not to applications or proposals seeking to modify or extend withdrawals.

(a) *Withdrawal applications or withdrawal proposals submitted on or after October 21, 1976.*—Within 30 days of the submission for filing of a withdrawal application, or whenever a withdrawal proposal is made, a notice stating that the application has been submitted or that the proposal has been made, shall be published in the Federal Register by the authorized officer. Publication of the notice in the Federal Register shall segregate the lands described in the application or proposal from settlement, sale, location or entry under the public land laws, including the mining laws, to the extent specified in the notice, for 2 years from the date of publication of the notice unless the segregative effect is terminated sooner in accordance with the provisions of this Part. The notices published pursuant to the provisions of this section shall be the same notices required by § 2310.3–1 of this title. Publication of a notice of a withdrawal application that is based on a prior withdrawal proposal, notice of which was published in the Federal Register, shall not operate to extend the segregation period which commenced upon the publication of the prior withdrawal proposal.

(b) *Withdrawal applications submitted before October 21, 1976.*—The public lands described in a withdrawal application filed before October 21, 1976, shall remain segregated through October 20, 1991, from settlement, sale, location or entry under the public land laws, including the mining laws, to the extent specified in the Federal Register notice or notices that pertain to the application, unless the segregative effect of the application is terminated sooner in accordance with other provisions of this Part. Any amendment made on or after October 21, 1976, of a withdrawal application submitted before October 21, 1976, for the purpose of adding Federal lands to the lands described in a previous application, shall require the publication in the Federal Register, within 30 days of receipt of the amended application, of a notice of the amendment of the withdrawal application. All of the lands described in the amended application which includes those lands described in the original application shall be segregated for 2 years from the date of publication of the notice of the amended application in the Federal Register.

(c) Applications for licenses, permits, cooperative agreements or other discretionary land use authorizations of a temporary nature that are filed on or after October 21, 1976, regarding lands involved in a withdrawal application or a withdrawal proposal and that are listed in the notices required by § 2310.3–2 of this title as permissible during the segregation period, may be approved by the authorized officer while the lands remain segregated.

(d) Except as provided in paragraph (c) of this section, applications for the use of lands involved in a withdrawal application or a withdrawal proposal, the allowance of which is discretionary, shall be denied.

(e) The temporary segregation of lands in connection with a withdrawal application or a withdrawal proposal shall not affect in any respect Federal agency administrative jurisdiction of the lands, and the segregation shall not have the effect of authorizing or permitting any use of the lands by the applicant or using agency.

§ 2310.2–1 Termination of the segregative effect of withdrawal applications or withdrawal proposals.

(a) The publication in the Federal Register of an order allowing a withdrawal application, in whole or in part, shall terminate the segregative effect of the application as to those lands withdrawn by the order.

(b) The denial of a withdrawal application, in whole or in part, shall result in the termination of the segregative effect of the application or proposal as to those lands where the withdrawal is disallowed. Within 30 days following the decision to disallow the application or proposal, in whole or in part, the authorized officer shall publish a notice in the Federal Register specifying the reasons for the denial and the date that the segregative period terminated. The termination date of the segregation period shall be noted promptly on the public land status records on or before the termination date.

(c) The cancellation, in whole or in part, of a withdrawal application or a withdrawal proposal shall result in the termination of the segregative effect of the application or proposal, as to those lands deleted from the application or proposal. The authorized officer shall publish a notice in the Federal Register, within 30 days following the date of receipt of the cancellation, specifying the date that the segregation terminated. The termination date of the segregation shall be noted promptly on the public land status records. If the cancellation applies to only a portion of the public lands that are described in the withdrawal application or withdrawal proposal, then the lands that are not affected by the cancellation shall remain segregated.

(d) The segregative effect resulting from the publication on or after October 21, 1976, of a Federal Register notice of the submission of a withdrawal application or the making of a withdrawal proposal shall terminate 2 years after the publication date of the Federal Register notice unless the segregation is terminated sooner by other provisions of this section. A notice specifying the date and time of termination shall be published in the Federal Register by the authorized officer 30 days in advance of the termination date. The public land status records shall be noted as to the termination date of the segregation period on or before the termination date.

Such a termination shall not affect the processing of the withdrawal application.

(e) The segregative effect resulting from the submission of a withdrawal application or withdrawal proposal before October 21, 1976, shall terminate on October 20, 1991, unless the segregation is terminated sooner by other provisions of this part. A notice specifying the date and time of termination shall be published in the Federal Register by the authorized officer 30 days in advance of October 20, 1991. The public land status records shall be noted as to the termination date of the segregation period on or before October 20, 1991.

§ 2310.3 Action on withdrawal applications and withdrawal proposals, except for emergency withdrawals.

§ 2310.3-1 Publication and public meeting requirements.

(a) When a withdrawal proposal is made, a notice to that effect shall be published immediately in the Federal Register. The notice shall contain the information required by § 2310.1-3 of this title. In the event a withdrawal petition, which subsequently becomes a withdrawal proposal, is submitted simultaneously with a withdrawal application, the information requirements for notices pertaining to withdrawal applications (See paragraph (b) of this section) shall supersede the information requirements of this paragraph. However, in such instances, the notice required by paragraph (b) of this section shall be published immediately without regard to the 30-day period allowed for the filing for publication in the Federal Register of withdrawal application notices.

(b)(1) Except for emergency withdrawals and except as otherwise provided in paragraph (a) of this section, within 30 days of the submission for filing of a withdrawal, extension or modification application, the authorized officer shall publish in the Federal Register a notice to that effect. The authorized officer also shall publish the same notice in at least one newspaper having a general circulation in the vicinity of the lands involved and, with the cooperation and assistance of the applicant, when appropriate, shall provide sufficient publicity to inform the interested public of the requested action.

(2) The notice shall contain, in summary form, the information required by § 2310.1-2 of this title, except that the authorized officer may exclude the information required by § 2310.1-2(c)(2) of this title, and as much of the descriptive information required by §§ 2310.1-2(c) (5) and (6) of this title as the authorized officer considers appropriate. The notice shall:

(i) Provide a legal description of the lands affected by the application, together with the total acreage of such lands;

(ii) Specify the extent to which and the time during which any lands that may be involved may be segregated in accordance with § 2310.2 of this title;

(iii) Identify the temporary land uses that may be permitted or allowed during the segregation period as provided for in § 2310.2(c) of this title;

(iv) Provide for a suitable period of at least 90 days after publication of the notice, for public comment on the requested action;

(v) Solicit written comments from the public as to the requested action and provide for one or more public meetings in relation to requested actions involving 5,000 or more acres in the aggregate and, as to requested actions involving less than 5,000 acres, solicit and evaluate the written comments of the public as to the requested action and as to the need for public meetings;

(vi) State, in the case of a national defense withdrawal which can only be made by an act of Congress, that if the withdrawal is to be made, it will be made by an act of Congress;

(vii) Provide the address of the Bureau of Land Management office in which the application and the case file pertaining to it are available for public inspection and to which the written comments of the public should be sent;

(viii) State that the application will be processed in accordance with the regulations set forth in Part 2300 of this title;

(ix) Reference, if appropriate, the Federal Register in which the notice of a withdrawal proposal, if any, pertaining to the application was published previously;

(x) Provide such additional information as the authorized officer deems necessary or appropriate.

(c)(1) In determining whether a public meeting will be held on applications involving less than 5,000 acres of land, the authorized officer shall consider whether or not:

(i) A large number of persons have expressed objections to or suggestions regarding the requested action;

(ii) The objections or suggestions expressed appear to have merit without regard to the number of persons responding;

(iii) A public meeting can effectively develop information which would otherwise be difficult or costly to accumulate;

(iv) The requested action, because of the amount of acreage involved, the location of the affected lands or other relevant factors, would have an important effect on the public, as for example, the national or regional economy;

(v) There is an appreciable public interest in the lands or their use, as indicated by the records of the Bureau of Land Management;

(vi) There is prevailing public opinion in the area that favors public meetings or shows particular concern over withdrawal actions; and

(vii) The applicant has requested a public meeting.

(2) A public meeting, whether required or determined by the authorized officer to be necessary, shall be held at a time and place convenient to the interested public, the applicant and the authorized officer. A notice stating the time and place of the meeting, shall be published in the Federal Register and in at least one newspaper having a general circulation in the vicinity of lands involved in the requested action, at least 30 days before the scheduled date of the meeting.

§ 2310.3-2 Development and processing of the case file for submission to the Secretary.

(a) Except as otherwise provided in § 2310.3-6(b) of this title, the information, studies, analyses and reports identified in this paragraph that are required by applicable statutes, or which the authorized officer determines to be required for the Secretary or the Congress to make a decision or recommendation on a requested withdrawal, shall be provided by the applicant. The authorized officer shall assist the applicant to the extent the authorized officer considers it necessary or appropriate to do so. The qualifications of all specialists utilized by either the authorized officer or the applicant to prepare the information, studies, analyses and reports shall be provided.

(b) The information, studies, analyses and reports which, as appropriate, shall be provided by the applicant shall include:

(1) A report identifying the present users of the lands involved, explaining how the users will be affected by the proposed use and analyzing the manner in which existing and potential resource uses are incompatible with or conflict with the proposed use of the lands and resources that would be affected by the requested action. The report shall also specify the provisions that are to be made for, and an economic analysis of, the continuation, alteration or

termination of existing uses. If the provisions of § 2310.3–6 of this title are applicable to the proposed withdrawal, the applicant shall also furnish a certification that the requirements of that section shall be satisfied promptly if the withdrawal is allowed or authorized.

(2) If the application states that the use of water in any State will be necessary to fulfill the purposes of the requested withdrawal, extension or modification, a report specifying that the applicant or using agency has acquired, or proposes to acquire, rights to the use of the water in conformity with applicable State laws and procedures relating to the control, appropriation, use and distribution of water, or whether the withdrawal is intended to reserve, pursuant to Federal law, sufficient unappropriated water to fulfill the purposes of the withdrawal. Water shall be reserved pursuant to Federal law for use in carrying out the purposes of the withdrawal only if specifically so stated in the relevant withdrawal order, as provided in § 2310.3–3(b) of this title and only to the extent needed for the purpose or purposes of the withdrawal as expressed in the withdrawal order. The applicant shall also provide proof of notification of the involved State's department of water resources when a land use needed to carry out the purposes of the requested withdrawal will involve utilization of the water resources in a State. As a condition to the allowance of an order reserving water, the applicant shall certify to the Secretary that it shall quantify the amount of water to be reserved by the order.

(3) An environmental assessment, an environmental impact statement or any other documents as are needed to meet the requirements of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)), and the regulations applicable thereto. The authorized officer shall participate in the development of environmental assessments or impact statements. The applicant shall designate the Bureau of Land Management as a cooperating agency and shall comply with the requirements of the regulations of the Council on Environmental Quality. The Bureau of Land Management shall, at a minimum, independently evaluate and review the final product. The following items shall either be included in the assessment or impact statement, or they may be submitted separately, with appropriate cross references.

(i) A report on the identification of cultural resources prepared in accordance with the requirements of 36 CFR Part 800, and other applicable regulations.

(ii) An identification of the roadless areas or roadless islands having wilderness characteristics, as described in the Wilderness Act of 1964 (16 U.S.C. 1131, et seq.), which exist within the area covered by the requested withdrawal action.

(iii) A mineral resource analysis prepared by a qualified mining engineer, engineering geologist or geologist which shall include, but shall not be limited to, information on: General geology, known mineral deposits, past and present mineral production, mining claims, mineral leases, evaluation of future mineral potential and present and potential market demands.

(iv) A biological assessment of any listed or proposed endangered or threatened species, and their critical habitat, which may occur on or in the vicinity of the involved lands, prepared in accordance with the provisions of section 7 of the Endangered Species Act of 1973, as amended (16 U.S.C. 1536), and regulations applicable thereto, if the Secretary determines that assessment is required by law.

(v) An analysis of the economic impact of the proposed uses and changes in use associated with the requested action on individuals, local communities, State and local government interests, the regional economy and the Nation as a whole.

(vi) A statement as to the extent and manner in which the public participated in the environmental review process.

(4) A statement with specific supporting data, as to:

(i) Whether the lands involved are floodplains or are considered wetlands; and

(ii) Whether the existing and proposed uses would affect or be affected by such floodplains or wetlands and, if so, to what degree and in what manner. The statement shall indicate whether, if the requested action is allowed, it will comply with the provisions of Executive Orders 11988 and 11990 of May 24, 1977 (42 FR 26951; 26961).

(5) A statement of the consultation which has been or will be conducted with other Federal departments or agencies; with regional, State and local Government bodies; and with individuals and nongovernmental groups regarding the requested action.

(c) Prior to final action being taken in connection with an application, the applicant shall prepare, with the guidance and participation of the authorized officer, and subject to the approval of the authorized officer, the Secretary and other affected departments, agencies or offices, a resource management plan and implementation program regarding the use and management of any public lands with their related resources uses. Consideration shall be given to the impact of the proposed reservation on access to and the use of the land areas that are located in the vicinity of the lands proposed to be withdrawn. Where appropriate, the plan and program will be implemented by means of a memorandum of understanding between the affected agencies. Any allocation of jurisdiction between the agencies shall be effected in the public land order or legislation. In those cases where the Secretary, acting through the Bureau of Land Management, would continue to exercise partial jurisdiction, resource management of withdrawn areas may be governed by the issuance of management decisions by the Bureau of Land Management to implement land use plans developed or revised under the land use planning requirements of section 202 of the act (43 U.S.C. 1712).

(d) In regard to national defense withdrawals that can only be made by an act of Congress, and to the extent that they are not otherwise satisfied by the information, studies, analyses and reports provided in accordance with the provisions of this section, the provisions of section 3(7) of the Act of February 28, 1958 (43 U.S.C. 157(7)), shall be complied with.

(e) The authorized officer shall develop preliminary findings and recommendations to be submitted to the Secretary, advise the applicant of the findings and recommendations, and provide the applicant an opportunity to discuss any objections thereto which the applicant may have.

(f) Following the discussion process, or in the absence thereof, the authorized officer shall prepare the findings, keyed specifically to the relevant portions of the case file, and the recommendations to the Secretary in connection with the application. The authorized officer also shall prepare, for consideration by the Secretary, a proposed order or notice of denial. In the case of a national defense withdrawal which can only be made by an act of Congress, the authorized officer shall prepare, with the cooperation of the applicant, a draft legislative proposal to implement the applicant's withdrawal request, together with proposed recommendations for submission by the Secretary to the Congress. The findings and recommendations of the authorized officer, and the other documents previously specified in this section to be prepared by the authorized officer shall be made a part of the case file. The case

file shall then be sent to the Director, Bureau of Land Management. At the same time, a copy of the findings and recommendations of the authorized officer shall be sent to the applicant.

(1) If the applicant objects to the authorized officer's findings and recommendations to the Secretary, the applicant may, within 30 days of the receipt by the applicant of notification thereof, state its objections in writing and request the Director to review the authorized officer's findings and recommendations. The applicant shall be advised of the Director's decision within 30 days of receipt of the applicant's statement of objections in the Bureau of Land Management's Washington office. The applicant's statement of objections and the Director's decision shall be made a part of the case file and thereafter the case file shall be submitted to the Secretary.

(2) If the applicant disagrees with the decision of the Director, Bureau of Land Management, the applicant may, within 30 days of receipt by the applicant of the Director's decision, submit to the Secretary a statement of reasons for disagreement. The statement shall be considered by the Secretary together with the findings and recommendations of the authorized officer, the applicant's statement of objections, the decision of the Director, the balance of the case file and such additional information as the Secretary may request.

§ 2310.3-3 Action by the Secretary—public land orders and notices of denial.

(a) Except for national defense withdrawals which can only be made by an act of Congress, and except as may be otherwise provided in section 1(d) of Executive Order 10355 (17 FR 4833), for applications that are subject to that order, the allowance or denial, in whole or in part, of a withdrawal, modification or extension application, may only be made by the Secretary.

(b)(1) Before the allowance of an application, in whole or in part, the Secretary shall first approve all applicable memoranda of understanding and the applicant shall make all certifications required in this part. When an application has been finally allowed, in whole or in part, by the Secretary, an order to that effect shall be published promptly in the Federal Register. Each order shall be designated as, and shall be signed by the Secretary and issued in the form of, a "public land order." Water shall be reserved pursuant to Federal law for use in carrying out the purposes of the withdrawal only if specifically so stated in the relevant public land order. In appropriate cases, the public land order also shall refer to the memorandum of understanding discussed in § 2310.3-2(c) of this title and shall be drawn to comply with § 2310.3-6 of this title.

(2) On the same day an order withdrawing 5,000 or more acres in the aggregate is signed, the Secretary shall advise, in writing, each House of the Congress, or in the case of an emergency withdrawal, the appropriate Committee of each House, of the withdrawal action taken. Pursuant to the Secretary's authority under the act, the notices that are sent to the Congress shall be accompanied by the information required by section 204(c)(2) of the act (43 U.S.C. 1714(c)(2)), except in the case of an emergency withdrawal, transmittal of the required information may be delayed as provided in § 2310.5(c) of this title.

(c) When the action sought in an application involves the exercise by the Secretary of authority delegated by Executive Order 10355 (17 FR 4831) and the Secretary denies the application in whole or in part, the applicant shall be notified of the reasons for the Secretary's decision. The decision shall be subject to further consideration only if the applicant informs the Secretary, in writing, within 15 days of the receipt by the applicant of the Secretary's decision, that the applicant has submitted the matter to the Office of Management and Budget for consideration and adjustment, as provided for in section 1(d) of the Executive Order.

(d) A withdrawal application shall be denied, if, in the opinion of the Secretary, the applicant is attempting to circumvent the Congressional review provisions of section 204(c)(1) of the act (43 U.S.C. 1714(c)(1)) concerning withdrawals of 5,000 or more acres in the aggregate.

(e) When an application is denied in its entirety by the Secretary, a notice to that effect, signed by the Secretary, shall be published promptly in the Federal Register.

(f) In the case of a national defense withdrawal that may only be made by an act of Congress, the Secretary shall transmit to the Congress proposed legislation effecting the withdrawal requested, together with the recommendations of the Secretary which may or may not support the proposed legislation in whole or in part. The proposed legislation shall contain such provisions for continued operation of the public land laws as to the public land areas included in the requested withdrawal as shall be determined by the Secretary to be compatible with the intended military use.

§ 2310.3-4 Duration of withdrawals.

(a) An order initially withdrawing 5,000 or more acres of land in the aggregate, on the basis of the Secretary's authority under section 204 of the act (43 U.S.C. 1714), may be made for a period not to exceed 20 years from the date the order is signed, except that withdrawals exceeding 5,000 acres in the State of Alaska shall not become effective until notice is provided in the Federal Register and to both Houses of Congress. All orders withdrawing 5,000 or more acres in the aggregate shall be subject to the Congressional review provision of section 204(c) of the act (43 U.S.C. 1714(c)), except as follows:

(1) A National Wildlife Refuge System withdrawal may not be terminated as provided in section 204(c)(1) of the act (43 U.S.C 1714(c)(1)) other than by an act of Congress; or

(2) A withdrawal exceeding 5,000 acres in the State of Alaska shall terminate unless Congress passes a joint Resolution of approval within 1 year after the notice of such withdrawal has been submitted to the Congress.

(b) An order initially withdrawing less than 5,000 acres of land, in the aggregate, on the basis of the Secretary's authority under section 204 of the act (43 U.S.C. 1714), may be made:

(1) For such time as the Secretary determines desirable for a resource use;

(2) For not more than 20 years for any other use, including, but not limited to, the use of lands for non-resource uses, related administrative sites and facilities or for other proprietary purposes; or

(3) For not more than 5 years to preserve the lands for a specific use then under consideration by either House of Congress.

(c) An order withdrawing lands on the basis of an emergency as provided for in section 204(e) of the act (43 U.S.C. 1714(e)) may be made for not more than 3 years.

(d) Except for emergency withdrawals, withdrawals of specific duration may be extended, as provided for in § 2310.4 of this title.

§ 2310.3-5 Compensation for improvements.

(a) When an application is allowed, the applicant shall compensate the holder of record of each permit, license or lease lawfully terminated or revoked after the allowance of an application, for all authorized improvements placed on the lands under the terms and conditions of the permit, license or lease, before the lands were segregated or withdrawn. The amount of such compensation shall be determined by an appraisal as of the date of revocation or

termination of the permit, license or lease, but shall not exceed fair market value. To the extent such improvements were constructed with Federal funds, they shall not be compensable unless the United States has been reimbursed for such funds prior to the allowance of the application and then only to the extent of the sum that the United States has received.

(b) When an application is allowed that affects public lands which are subject to permits or leases for the grazing of domestic livestock and that is required to be terminated, the applicant shall comply with the cancellation notice and compensation requirements of section 402(g) of the act (43 U.S.C. 1752(g)), to the extent applicable.

§ 2310.3-6 Transfer of jurisdiction.

A public land order that reserves lands for a department, agency or office, shall specify the extent to which jurisdiction over the lands and their related resource uses will be exercised by that department, agency or office. (See § 2310.3-2(c) of this title).

§ 2310.4 Review and extensions of withdrawals.

(a) Discretionary withdrawals of specific duration, whether made prior to or after October 21, 1976, shall be reviewed by the Secretary commencing at least 2 years before the expiration date of the withdrawal. When requested, the department, agency or office benefitting from the withdrawal shall promptly provide the Secretary with the information required by § 2310.1-2(c) of this title, and the information required by § 2310.3-2(b) of this title, in the form of a withdrawal extension application with supplemental information. If the concerned department, agency or office is delinquent in responding to such request, the deliquency shall constitute a ground for not extending the withdrawal. Such withdrawals may be extended or further extended only upon compliance with these regulations, and only if the Secretary determines that the purpose for which the withdrawal was first made requires the extension, and then only for a period that shall not exceed the duration of the original withdrawal period. In allowing an extension, the Secretary shall comply with the provisions of section 204(c) of the act (43 U.S.C. 1714(c)), or section 204(d) of the act (43 U.S.C. 1714(d)), whichever is applicable; and, whether or not an extension is allowed, the Secretary shall report promptly on the decision for each pending extension to the Congressional Committees that are specified in section 204(f) of the act (43 U.S.C. 1714(f)).

(b) Notwithstanding the provisions of this section, if the Secretary determines that a National Wildlife Refuge System withdrawal of specific duration shall not be extended, the Secretary shall nevertheless extend or reextend the withdrawal until such time as the withdrawal is terminated by an act of Congress.

§ 2310.5 Special action on emergency withdrawals.

(a) When the Secretary determines, or when either one of the two Committees of the Congress that are specified in section 204(e) of the act (43 U.S.C. 1714(e)) notifies the Secretary, that an emergency exists and that extraordinary measures need to be taken to protect natural resources or resource values that otherwise would be lost, the Secretary shall immediately make a withdrawal which shall be limited in its scope and duration to the emergency. An emergency withdrawal shall be effective when signed, shall not exceed 3 years in duration and may not be extended by the Secretary. If it is determined that the lands involved in an emergency withdrawal should continue to be withdrawn, a withdrawal application should be submitted to the Bureau of Land Management in keeping with the normal procedures for processing a withdrawal as provided for in this subpart. Such applications will be subject to the provisions of section 204(c) of the act (43 U.S.C. 1714(c)), or section 204(d) of the act (43 U.S.C. 1714(d)), whichever is applicable, as well as section 204(b)(1) of the act (43 U.S.C. 1714(b)(1)).

(b) When an emergency withdrawal is signed, the Secretary shall on the same day, send a notice of the withdrawal to the two Committees of the Congress that are specified for that purpose in section 204(e) of the act (43 U.S.C. 1714(e)).

(c) The Secretary shall forward a report to each of the aforementioned committees within 90 days after filing with them the notice of emergency withdrawal. Reports for all such withdrawals, regardless of the amount of acreage withdrawn, shall contain the information specified in section 204(c)(2) of the act (43 U.S.C. 1714(c)(2)).

Subpart 2320—Federal Energy Regulatory Commission Withdrawals

§ 2320.0-3 Authority.

(a) Section 24 of the Federal Power Act of June 10, 1920, as amended (16 U.S.C. 818), provides that any lands of the United States included in an application for power development under that Act shall, from the date of filing of an application therefor, be reserved from entry, location or other disposal under the laws of the United States until otherwise directed by the Federal Energy Regulatory Commission or by Congress. This statute also provides that whenever the Commission shall determine that the value of any lands of the United States withdrawn or classified for power purposes shall not be injured or destroyed for such purposes by location, entry or selection under the public land laws, the Secretary of the Interior shall declare such lands open to location, entry or selection for such purposes under such restrictions as the Commission may determine are necessary, and subject to and with a reservation of the right of the United States or its permittees or licensees to enter upon, occupy and use any and all of the lands for power purposes. Before any lands are declared open to location, entry or selection, the Secretary shall give notice of his intention to make this declaration to the Governor of the State within which such lands are located, and the State shall have a preference for a period of 90 days from the date of this notice to file under any applicable law or regulation an application of the State, or any political subdivision thereof, for any lands required as a right-of-way for a public highway or as a source of materials for the construction and maintenance of such highways. The 90-day preference does not apply to lands which remain withdrawn for national forest or other purposes.

(b) The Mining Claims Rights Restoration Act of 1955 (30 U.S.C. 621 et seq.), opened public lands which were then, or thereafter, withdrawn or classified for power purposes, with specified exceptions, to mineral location and development under certain circumstances.

§ 2320.1 Lands considered withdrawn or classified for power purposes.

The following classes of lands of the United States are considered as withdrawn or classified for the purposes of section 24 of the Federal Power Act (16 U.S.C. 818): Lands withdrawn for powersite reserves under sections 1 and 2 of the Act of June 25, 1910, as amended (43 U.S.C. 141–148); lands included in an application for power development under the Federal Power Act (16 U.S.C. 818); lands classified for powersite purposes under the Act of March 3, 1879 (43 U.S.C. 31); lands designated as valuable for power purposes under the Act of June 25, 1910, as amended (43 U.S.C. 148); the Act of June 9, 1916 (39 Stat. 218, 219), and the Act of February

28, 1919 (40 Stat. 1178, 1180); lands within final hydroelectric power permits under the Act of February 15, 1901 (43 U.S.C. 959); and lands within transmission line permits or approved rights-of-way under the aforementioned Act of February 15, 1901, or the Act of March 4, 1911 (43 U.S.C. 961).

§ 2320.2 General determinations under the Federal Power Act.

(a) On April 22, 1922, the Federal Power Commission (as predecessor to the Federal Energy Regulatory Commission) made a general determination "that where lands of the United States have heretofore been or hereafter may be reserved or classified as powersites, such reservation or classification being made solely because such lands are either occupied by power transmission lines or their occupancy and use for such purposes have been applied for or authorized under appropriate laws of the United States, and such lands have otherwise no value for power purposes, and are not occupied in trespass, the Commission determines that the value of such lands so reserved or classified or so applied for or authorized, shall not be injured or destroyed for the purposes of power development by location, entry or selection under the public land laws, subject to the reservation of section 24 of the Federal Power Act."

(b) The regulations governing mining locations on lands withdrawn or classified for power purposes, including lands that have been restored and opened to mining locations under section 24 of the Federal Power Act, are contained in Subpart 3730 and in Group 3800 of this title.

§ 2320.3 Applications for restoration.

(a) Other than with respect to national forest lands, applications for restoration and opening of lands withdrawn or classified for power purposes under the provisions of section 24 of the Federal Power Act shall be filed, in duplicate, in the proper office of the Bureau of Land Management as set forth in § 2321.2–1 of this title. No particular form of application is required, but it shall be typewritten or in legible handwriting, and it shall contain the information required by 18 CFR 25.1. Each application shall be accompanied by a service charge of $10 which is not returnable.

(b) Favorable action upon an application for restoration shall not give the applicant any preference right when the lands are opened.

PARTS 2310, 2320, 2340, AND 2350—[REMOVED]

2. The following parts are removed as indicated:

(a) Part 2310—removed in its entirety.
(b) Part 2320—removed in its entirety.
(c) Part 2340—removed in its entirety.
(d) Part 2350—removed in its entirety.

PART 2090—SPECIAL LAWS AND RULES

§§ 2091.4 and 2091.2–5 [Removed]

3. Sections 201.2–4 and 2091.2–5 are removed from Subpart 2091.

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federal register

Monday
January 19, 1981

Part XXXVII

Department of Transportation

Urban Mass Transportation Administration

Buy America Requirements

DEPARTMENT OF TRANSPORTATION

Urban Mass Transportation Administration

49 CFR Part 660

Buy America Requirements

AGENCY: Urban Mass Transportation Administration, DOT.

ACTION: Final rule.

SUMMARY: The Urban Mass Transportation Administration (UMTA) is revising its regulations implementing Section 401, "Buy America" of the Surface Transportation Assistance Act of 1978. These revisions are based on comments received on the original emergency final rule published on December 6, 1978 (43 FR 57144) and on our experience in implementing the statutory provision. These revisions clarify the existing regulations and respond to several issues and comments presented to us since the passage of the statute.

EFFECTIVE DATE: The revisions are effective on February 18, 1981.

FOR FURTHER INFORMATION CONTACT: John Collins or Edward Gill, Office of the Chief Counsel (202) 426-1906.

SUPPLEMENTARY INFORMATION: Section 401 of the Surface Transportation Assistance Act of 1978 provides, with exceptions, that funds authorized may not be obligated for urban mass transportation projects unless articles, materials, and supplies used are of United States origin.

UMTA issued emergency regulations implementing the statute on December 6, 1978, which were effective retroactive to November 6, 1978 (the effective date of the statute). We requested comments on the regulations. We have received approximately fifty written comments and numerous telephonic comments and inquiries concerning the statute, the regulations, and their implementation. We have utilized all of these plus the experience gained in carring out the statute and the regulations in developing the revisions and the discussions in this document.

In addition to these final revisions, we are also issuing a Notice of Proposed Rulemaking which is published elsewhere in this Federal Register. This NPRM will address several issues concerning the implementation of the Buy America statute which we will propose to treat differently than they are treated under the existing regulations. A detailed discussion of these issues is contained in the NPRM.

The Administrator has determined that this regulation is a significant regulation under the criteria in the DOT Order for Improving Government Regulations (44 FR 11042, February 26, 1979) since significant public interest was expressed during the previous comment period.

A Regulatory Evaluation has been prepared and has been placed in the public docket, and is available at the Office of the Chief Counsel, Urban Mass Transportation Administration, Room 9320, 400 7th Street, S.W., Washington, D.C. 20590.

The provisions of OMB Circular A-95 apply to this Final Rule. It covers the following programs as listed in the Catalog of Federal Domestic Assistance (CFDA):

20.500—Urban Mass Transportation Capital Grants
20.504—Mass Transportation Technology
20.507—Urban Mass Transportation Capital and Operating Assistance Formula Grants
20.509—Public Transportation for Rural and Small Urban Areas.

This regulation will not have a significant economic impact on a substantial number of small entities, within the meaning of the Regulatory Flexibility Act of 1980 (Pub. L. 96-354). Small entities, such as small businesses and small governmental organizations, must already comply with the statutory domestic preference requirement of Section 401, when contracts are awarded that use UMTA funds. The changes made by this regulation do not impose any significant economic impacts beyond those currently required by the terms of the statute and the regulation that was published in 1978 (43 FR 57144). Therefore, this regulation will not have a significant economic impact on a substantial number of small entities.

Environmental Impact Statement

This regulation does not significantly affect the environment. An environmental impact statement is not required under the National Environmental Policy Act of 1969.

Discussion of Comments

Exclusion of Non-Federal Preferences

The preamble to the 1978 regulation stated that a grantee could not impose any local or domestic preference requirements other than the UMTA Buy American requirement. Several commentors questioned UMTA's authority to condition eligibilty for financial assistance upon compliance with the Section 401 regulations and to exclude differing local preference provisions, and differing State and local Buy American provisions. They noted that no provision of the Surface Transportation Assistance Act expressly pre-empted State and local preference legislation. Furthermore, they stated that they failed to find Congressional intent to pre-empt State and local actions in the legislative history of Section 401. They point out that UMTA's position, as reflected in the Section 401 regulations, might force grantees either to violate State law or to forego UMTA financial assistance.

We have received specific guidance from the Congress in the resolution of this issue for the current fiscal year which ends on September 30, 1981. This guidance was published in the Federal Register on October 16, 1980 (45 FR 68555) and is presented here for the convenience of the reader. Congress mandated different treatment of non-Federal local preference laws ("Buy State" or "Buy Local" laws) compared to non-Federal national preference laws ("Buy National" laws). The guidance that applies to all of these non-Federal preference laws after September 30, 1981 will depend on the future instructions from the Congress.

The DOT and Related Agencies Appropriations Act for fiscal year 1981 (Pub. L. 96-400 (94 Stat. 1669)) mandates that UMTA administer our grant program "pursuant to the provisions of section 401, Pub. L. 95-599". The Conference Report for the Act (House Report No. 96-1400 (September 25, 1980) pp. 16-17) clarifies what is meant by this language. The Conferees explained that:

> If a contract bid does not fall within the scope of any of the exceptions cited in Section 401 of Public Law 95-599, then the grantee should not be denied UMTA financial assistance simply because of the imposition of a state domestic preference law. The conferees do not intend the term "state domestic preference law" to include so-called "buy-state laws" which require preferences for products manufactured in a particular state or subdivision and any such state laws shall not prevail over Federal law. On the other hand, if the imposition of a state domestic preference law causes the contract bid to fall within the scope of any or all of the exceptions cited in Section 401 of Pub. L. 95-599, then UMTA financial assistance could be denied because State statutes are undoubtedly subject to Federal law prescribing the "Buy America" exceptions of public interest, unavailability and unreasonable cost.

During the period October 9, 1980 to September 31, 1981, state "Buy National" preference provisions that are more restrictive with respect to the procurement of foreign made products than Section 401 will be permitted in contracts awarded using UMTA funds provided that the preference provision and its terms are specifically set out in state law. The Federal exceptions to the

application of "Buy National" statutes described in Section 401(b) of the Buy America statute will continue to govern UMTA's participation in such contracts. These exceptions require UMTA to withhold funds from contracts where application of the state "Buy National" law is: not in the public interest, adds unreasonably to the cost of rolling stock, makes materials unavailable, or adds more than 10% to the cost of the contract. If an exception under Section 401(b) is appropriate, it will be granted by UMTA under the procedural provisions of subpart C of 49 CFR Part 660. UMTA will not participate in such contracts if the state law is administered in a manner that is inconsistent with the application of the Federal exceptions. The administration of the state statute must conform to the Federal waiver or we will not help fund the contract. The contracting process must not exclude contractors who have the potential to qualify for the Federal exceptions.

The original policy remains applicable to all other preference provisions. We will continue to decline to participate in contracts governed by:

1. Preference provisions which are not as strict as the Federal requirement.

2. State and local "Buy National" preference provisions which are not explicitly set out under state law. For instance, administrative interpretations of non-specific state legislation will not control.

3. State and local "Buy Local" preference provisions.

The following example illustrates the application of this guidance. State "A" has three types of preference provisions that it wishes to include in an UMTA-funded contract. Preference provision No. 1 permits bids only from manufacturers located within the state. Preference provision No. 2 is a state law which requires all structural steel used in the contract to be manufactured in the United States. Preference provision No. 3 is an administrative regulation, not supported by an explicit state law, which requires manufacturers to use 100% domestic components. Applying the above guidance, No. 1 and No. 3 would make the contract ineligible for UMTA assistance. No. 1 is a "Buy State" provision. No. 3 is an administrative regulation which is not required by a specific state statute. A type No. 2 preference could be included in the bidding documents, but it would be subject to the specific waivers of subpart C. For example, it would have to be waived if it increased the price of the contract by more than 10% (see § 660.32(a)(4)).

Construction Contracts

Under UMTA's 1978 Buy America regulations, procurement of construction is treated as procurement of a manufactured product in that the deliverable of the construction contract is considered as the end product and the construction materials used therein are considered components of the end product. Thus an UMTA construction project may be considered domestic if more than fifty percent of the value of the construction materials delivered to the jobsite and incorporated into the project is domestic and if the final assembly of the components (construction) takes place in the United States. As can be seen, the UMTA regulations permit bidders to use up to 50% of foreign construction materials without forfeiting the competitive advantages of a domestic bid. The UMTA regulations differ from other Federal laws and regulations that require each construction material used in the project to be domestic, unless a waiver is granted, thus making the use of foreign construction materials far more difficult.

UMTA has received few comments about this unique treatment of construction for purposes of Section 401. Most have been oral inquiries about what the regulations require.

It is useful to view the UMTA treatment of construction in the context of the 1933 Act that governs direct Federal construction. Unlike the UMTA provision, the Buy American Act of 1933 has a separate provision, 41 U.S.C. section 10b tailored to construction contracts. Recognizing that construction is a type of service requiring the use of materials, and is thus functionally different from the procurement of materials, Section 3 (41 U.S.C. § 10(a)) of the 1933 Act requires, ". . . that in the performance of the work the contractor, subcontractors, material men, or suppliers, shall use only . . ." domestic articles, materials and supplies. Section 3 of the 1933 Act does permit the agency head to waive the Buy America requirements to the extent appropriate if he finds, ". . . that in respect to some particular articles, materials, or supplies it is impracticable to make such requirement or that it would unreasonably increase the cost . . ." It should be noted that the "impracticable" grounds permitted for waiver in construction projects under the 1933 Act would be easier to meet than the "public interest" or "unavailable" grounds of Section 2 of the 1933 Act (41 U.S.C. § 10a) and of the Section 401 of the Surface Transportation Assistance Act of 1978.

The Federal Procurement Regulations set forth "Buy American" regulations for construction in a separate Part (41 CFR Part 1–18) from the "Buy American" regulations for the procurement of articles, materials, and supplies (41 CFR Part 1–6).

Unlike the Buy American Act of 1933, Section 401 has no separate provisions directed toward the treatment of construction projects. Instead, the language of Section 401 is confined to the procurement of manufactured and unmanufactured articles, materials and supplies.

For this reason UMTA's emergency regulations do not provide different treatment for construction projects than for equipment acquisition projects. Instead UMTA's regulations provide that, "These regulations apply to all federally-assisted procurements . . . for equipment and construction of facilities in which a third party contract exceeds $500,000 and is financed by funds administered by UMTA. . . ." 49 CFR § 660.11(a). The UMTA grantee is charged to ". . . include in its bid specifications for procurement of equipment and construction of facilities . . . an appropriate notice of the Buy America provision." 49 CFR § 660.21(b). Nowhere in the UMTA regulations is there a special definition of "construction" or "construction material." Instead, the construction project is treated as a manufactured end product whose final assembly takes place at the construction site. Within the Federal Government, this treatment of construction for "Buy America" purposes is unique to UMTA.

The Public Works Employment Act of 1977, 42 U.S.C. 6705(f)(1) and the Clean Water Act of 1977, 33 U.S.C. § 1286 impose domestic preference requirements on other grant programs. Neither of these measures contains specific requirements about the treatment of construction nor does the word "construction" appear within any of these measures. But unlike the UMTA regulations, the Department of Commerce regulations implementing the Public Works Employment Act of 1977, 13 CFR § 317.18(c) and § 317.35(i), and the Environmental Protection Agency regulations implementing the Clean Water Act of 1977, 40 CFR § 35.936–13(d) require that each construction material used in the grant must be domestic unless a waiver is obtained.

However, both of these statutes provide for a waiver upon a finding of "unreasonable cost." Section 401 provides that a waiver be granted if "inclusion of domestic material will increase the cost of the over-all project contract by more than 10 per centum."

Thus it is much easier for EPA or Commerce to grant a waiver for an unreasonably expensive component than for UMTA to grant a waiver because a component for a construction contract could not easily be argued to constitute the "overall project contract."

In addition, the Federal Highway Administration follows the approach of these other regulations for construction projects, which poses little complication for FHWA since its regulations are directed only at steel construction materials. On November 24, 1980, FHWA issued a proposed rule which would apply the current UMTA test of "Buy America" to equipment and ferry boats purchased with funds authorized under Title 23 of the United States Code. [See 45 FR 77456].

UMTA will continue the treatment of construction as set forth in the emergency regulations. The statute gives no reason to treat construction procurement contracts differently from equipment procurement contracts. Since items of unknown origin are deemed to be foreign, this means that the contractor can stop his record-keeping when he ascertains that 50% by value of the materials delivered to the jobsite were made in the U.S. The provision would be likely to protect U.S. manufacturers of high cost items, such as steel producers, since their product might account for more than 50% of the material delivered to the jobsite. It avoids problems of tracing the origin of every item that is delivered to the job site. However, we are inviting comments on alternative approaches to this treatment of construction in the NPRM that is being published elsewhere in this Federal Register.

Two questions raised by commentors in regards to construction contracts require clarification.

Construction equipment used by a contractor at a construction jobsite is not covered by the requirement since it is not physically "incorporated into the end-product."

A question was raised whether temporary supporting materials, such as soldier piles, which could be removed at the end of construction without affecting the end-product were included within the scope of the regulation. If an item is used in the construction process as an aid to construction and remains at the construction site but serves no purpose in the completed end product, then the item is not a component since it is not "directly incorporated" into the end product and its origin and cost need not be computed for the purposes of § 660.22. The definition of component in § 660.13 is being revised to clarify this point.

Relation to 1933 Act

One commentor requested clarification of the relationship between the 1933 Buy American Act (41 U.S.C. 10a–10d) and Section 401 of the Surface Transportation Assistance Act of 1978. The 1978 Act applies to direct procurement and to federally-assisted procurements under grants, loans, and cooperative agreements made pursuant to the Urban Mass Transportation Act of 1964, as amended, and sections 103(e)(4) and 142 of Title 23 United States Code, for equipment and construction of facilities. We will not issue separate regulations for direct federal procurement, but will utilize the regulations in Part 660. We are promulgating Part 660 under the authority of the 1978 Act and the 1933 Act.

Types of Contracts

Several questions were raised concerning the applicability of the requirements as set forth in § 660.11. The requirements do not apply to consultant contracts since the regulations do not apply to the procurement of services. They also do not apply to a lease if a lease is considered a purchase of service. Also, under Appendix A to Subpart C of the regulation, a waiver has been granted for operating assistance grants, and the majority of leasing arrangments are undertaken utilizing operating assistance funds. It should be pointed out, however, that the requirements would apply to a lease/purchase agreement in which the third party contract exceeds $500,000.

One commentor requested clarification as to whether the requirements apply to sole-source procurements. Section 660.11 states that the "regulations apply to all federally-assisted procurements." This includes sole-source procurement. This statement in the regulation is adequate and no change is being made.

One commentor felt that engineering services included in the cost of an end product should be excluded from the requirements. These engineering services are not treated separately. If engineering costs are allocated to a component under normal accounting principles, then they increase the cost of that foreign or domestic component. If they are properly allocated to the final assembly of the end-product, then they are included as part of the final assembly test.

Definitions and Applicability

One commentor requested clarification as to what constitutes an end product. The deliverable item specified in the contract is the end product. For example, in a contract for 10 buses that must contain 500 h.p. engines, the 10 buses are the end-products (We will utilize this example throughout this document for clarification).

Section 660.11(b) is being revised to utilize the term "domestic end product." This term is defined in § 660.13 and "domestic end products" are the subject of the specific requirement in § 660.11(b). It must be emphasized that this change does not alter the thrust of the requirements. Only domestic unmanufactured articles, materials and supplies and manufactured articles, materials and supplies that have been manufactured in the United States substantially all from domestic articles, materials, and supplies may be procured with assistance provided by UMTA unless a waiver is granted.

Section 660.11(c) is being revised to indicate that materials of foreign origin "may" be considered for UMTA-assisted procurements rather than "should be considered." There is no UMTA direction to grantees to use foreign materials. This concept emphasizes the fact that the statute provides for domestic preference, but does not set up an absolute "Buy American" requirement.

Section 660.11(f) is being revised to clarify that the location where components are manufactured, mined or produced is critical in determining the origin of the components or end products. The nationality of suppliers or their employees is not a factor. For example, a foreign firm that manufactures a component in the United States (thereby utilizing U.S. labor) would be considered as manufacturing a domestic component.

We have received a request concerning clarification of the concepts of "component" and "final assembly." The current regulation defines component as that which is "directly incorporated" into the end-product. We interpret this phrase to be a test of what comes "through the walls" of the final assembly point. This means that any item shipped to the final assembly point is a "component" in the form that it arrives at the final assembly point. The component must be shipped to the final assembly point. Shipment means the steps that would normally take place in a plant-to-plant shipment, including, but not limited to, packing, labeling, on-loading, and off-loading. Movement of an item that takes place within a plant (by hand, forklift, or assembly line, for example) is not "shipment." In order for an item to be considered a component, it

must be "shipped" to the final assembly location, in the manner described and defined above. A sufficient amount of labor and overhead costs must be undertaken at the final assembly location to constitute a legitimate final assembly step. In response to a specific inquiry, UMTA has determined that if at least 10 percent of the cost of each end-product is attributable to work done at the final assembly location, then there is legitimate final assembly. We will continue to review final assembly on a case-by-case basis until the definition of final assembly proposed in the NPRM is finalized.

One commentor requested that UMTA specifically name or delineate the major components of an end product. We have set up tests to determine the origin of components, and these appear to be sufficient. For example, an engine for a bus is a component of that bus if it is directly incorporated into the bus at the final assembly point. On the other hand, the engine is an end product in and of itself if it is ordered as a spare part. Thus, delineation of this item as a component would be misleading and confusing since it is not, in fact, always a component. The commentator also requested that we differentiate between components and major components. There is no differentiation needed since *anything* directly incorporated into an end product at final assembly is a component, whether it be considered a major item or less than a major item. Section 660.13(c) is being revised to clarify that a component must be directly incorporated into an end product at the point of final assembly. This revision makes the definition compatible with other requirements in the regulations.

One commentor requested that the definition of component in § 660.13(c) be revised to indicate that all parts of an engineered system taken together represent a "component." The definition of "component" tracks the definition used to implement the 1933 Buy American Act. If a "system" is delivered to the final assembly point and is directly incorporated into an end product, then the system is considered a component. If individual parts of the system are delivered to the final assembly point and are incorporated into the end product, then each part is considered a component. The regulation does not contemplate a system being considered a component in and of itself if it is not delivered to the final assembly point and incorporated as a unit into the end product.

One commentor questioned whether the certification required by § 660.21 is required to be submitted by sub-component manufacturers. A sub-component manufacturer is not required to submit the certification to the grantee. However, a prime contractor may require a sub-contractor to certify to him that domestic components will be delivered so that the prime contractor has a means to ensure that there will be adequate domestic component content.

One commentor suggested that we require the bidder to submit information in sufficient detail to permit an analysis of whether the bidder has grounds for submitting the certificate required by § 660.21. This back-up material would include a specific listing of foreign components to be used, a listing of the costs of the components, and a discussion of the method used in arriving at the cost. We are using the certification procedure used in the 1933 Act and we feel that the submission of the certificate is sufficient. The bidder must list foreign end products. A listing of the cost of components is not required at the time of submission of a bid, as long as the bidder certifies that domestic end-products are being provided (see section 660.22). We feel that the enforcement procedure set out in Subpart D of the regulations is sufficient to ensure compliance.

Grantee Responsibility

One commentor requested that the regulations be revised to provide bidders with sufficient certainty that a waiver would be sought if the grounds for a waiver exist. As written, § 660.21 permits only grantees to seek a waiver. The commentor felt that this put grantees in the position of being able to exclude bids offering foreign end products by not seeking a waiver. The commentor further stated that it felt that the waiver process should not be used to exclude competitive responsive and responsible bids offering foreign products. Section 660.21 is being revised and will require the grantee to indicate its intention to seek a waiver if the grounds for a waiver exist. This is consistent with the statute since we are required to grant a waiver if we find that the statutory conditions have been met. It should also be pointed out that § 660.31(c) provides that a waiver may be granted by the Administrator on his own initiative when he believes that it would be appropriate.

Shipping Costs

A question was raised as to whether the cost of shipping a foreign component on a U.S. flag carrier is considered a U.S. component. Since the "Buy America" requirements do not apply to services, the cost of shipping is not a separate component. The cost of shipping must be included as part of the cost of the component being shipped and not as a separate component. A similar question was raised concerning the relationship of the "Buy America" requirements to cargo preference requirements. Again, it must be pointed out that transportation and shipping are not, in and of themselves, components, but are to be considered in determining the cost of a component being shipped.

50 Percent Test

Clarification was requested as to how the 50 percent domestic component cost required under § 660.22 is computed. It is calculated as the cost of domestic components compared to the cost of all components. For example, in a contract bid at $1 million, if all components shipped to the final assembly point cost $600,000 then the cost of domestic components must exceed 50 percent of this or $300,000. The cost of a component is the cost of the component to the bidder or offeror. If a component is manufactured by the bidder or offeror, the cost of the component is the cost of labor and materials incorporated into the component, plus an allowance for profit and administrative overhead costs under normal accounting principles. For example, design costs would be factored into a component cost if a prime contractor hires a sub-contractor to design the component.

However, it should be pointed out that the design and labor costs for making an end-product are not included when calculating component cost but are rather considered as final assembly costs. All of the final assembly costs are used to decide whether meaningful final assembly has taken place in the United States. This is part of the test established in § 660.22(a)(2). Only the cost of the component is computed, but this cost can include the design of the conponent. A new § 660.22(d) is being added to clarify what is meant by component cost.

One commentor requested that § 660.22(a) be revised to reflect that the "substantially all" requirement of Section 401 be satisfied if the cost of domestic components and subcomponents exceed 75 percent of the total cost of the end product.

Before discussing the "75 percent test" versus the "50 percent test" which is used in the regulation, two clarifications are necessary. As mentioned elsewhere in this document, the percentage test applies to component cost and not to subcomponent cost. Also, as mentioned previously, the treatment of subcomponents is being addressed in a separate Notice of Proposed

Rulemaking. Secondly, it is again emphasized that cost is determined using the cost of components and *not* the cost of the end product.

The commentor is recommending that we utilize the "75% test" rather than the "50% test" felt that the legislative history of Section 401 mandated that we use the "75% test" since this was the original standard utilized to implement the 1933 Buy American Act. Executive Order 10582 which currently governs the implementation of the 1933 Act, mandates that "materials shall be considered to be of foreign origin if the cost of the foreign products used in such material constitutes 50% or more of the cost of all the products used in such materials." The commentor argued that Executive Order 10582 does not apply to Section 401. We disagree. Our reading of the legislative history of Section 401 is that Executive Order 10582 gives broad guidance to agencies in interpreting the Act; whereas the commentor felt that in implementing Section 401, Congress intended us to follow the 1933 Act exclusively. During the debate on the Conference Report on Section 401 *(Daily Congressional Record,* Vol. 124, pg. S 1894, October 14, 1978), Executive Order 10582 was specifically mentioned, and the fact that it is still in force was emphasized. Senator Randolph stated that it was the conferee's intent that in implementing Section 401, we should not vary from existing Federal procurement practices. Thus, we have followed Executive Order 10582 and utilized the "50% test" and in so doing, carried out the express intent of Congress.

Waivers—Application

One commentor requested that UMTA waive the requirement for final assembly in the United States if the quantities involved are uneconomical, or if specialized skills or capabilities not readily available or economically available in the United States are required. The statute does not provide for a waiver of the final assembly requirement, as such, and thus we will not grant this general waiver. However, public interest waivers could be considered in this area on a case-by-case basis.

A new paragraph is being added to § 660.31 to provide that a request for a waiver and the subsequent action taken by UMTA on the requests will be available for public inspection.

One commentor requested that § 660.31 be revised to permit a bidder to apply for a waiver directly to UMTA rather than through the grantee. We are not making a change to this requirement since we feel that it is a grantee's responsibility to request the waiver, including the preparation of the justification.

Several commentors requested that we clarify what is meant by "in a timely manner" as used in § 660.31(a). We were requested to insert a date certain for submittal of requests. We are not revising the regulation at this time. It is anticipated that most requests for a waiver will be submitted within 30 days of bid opening. However, we will not insert this time frame in the regulations since there may be circumstances which dictate a request being made more that 30 days after bid opening. These will be considered on a case-by-case basis to determined their reasonableness.

Section 660.31(b) is being revised to clarify that a request for a waiver must be submitted to the UMTA Administrator through the UMTA Regional Administrator.

Waivers—Types

Section 660.32(b) is being revised to indicate that the Administrator will issue a written determination of whether or not a public interest waiver will be granted, and the reasons for granting the request or denying the request. This change will enable the grantee to be aware of the rationale for a denial of a request for a public interest waiver.

Section 660.32(f) is being revised to indicate that the waivers are separate and distinct from one another. The granting of a waiver or the grounds for a waiver do not depend on any other waiver. There are four separate reasons for the granting of a waiver which are independent of one another.

One commentor suggested that the second sentence of § 660.32(f) be deleted since the statute does not provide for waivers for components. UMTA disagrees with the suggestion since the implementation of the 1933 Act has contained a history of waivers for components. UMTA has used the public interest waiver for those components listed in 41 CFR 12–6.105 (Appendix A, Paragraph (a) of Subpart C of these regulations.)

Several comments were received which recommended that we issue a general public interest waiver in order to honor treaty commitments, off-set agreements with foreign nations, and trade agreements with foreign nations. Our review of these treaties and agreements does not indicate a requirement that we issue a blanket waiver. However, we will continue to review requests for public interest waivers in this area on a case-by-case basis.

Several comments were received which questioned the use of the word "supplies" in the waiver in § 660.32(a)(3) and the criteria for determining whether that waiver will be issued which speaks to the unavailability of domestic end products. In response to this comment, we are revising § 660.32(d) to reflect that our authority to waive the Buy America provision, if no domestic bids are received, flows from both Section 401(b)(1) and Section 401(b)(3). If no domestic bids are received, we believe that it is in the public interest to proceed with the award of the contract. The Federal government cannot force a domestic company to bid.

One commentor requested that the test established for the 10% differential waiver be revised. The commentor felt that only the costs of major foreign and domestic components should be compared rather than the over-all bids. The waiver speaks to inclusion of domestic material increasing the over-all project contract cost. Thus, a bid offering domestic end products must be compared to a bid offering foreign end products to determine if the inclusion of domestic materials would increase the over-all project contract cost by more than 10%. The comparison of the over-all bids includes all costs and this is the only way to determine if the over-all cost of the project contract will be increased by 10% or more.

One commentor requested that § 660.32(e) be revised to provide that the 10% differential be calculated solely on the actual costs of the materials, supplies or equipment being acquired, exclusive of the service, labor, or other non-material costs of project contracts. The differential is based on the bid price for the end-product. The statutory language speaks to "inclusion of domestic material" increasing "the cost of the overall project contract by more than 10 per centum." In this case "material" means "end product" and thus the differential is applied to the overall project contract bid. "Material" means "end product" because it is possible to have a domestic "end product" which contains foreign components and also have a foreign "end product" containing domestic components. The key in this area is to determine the origin of the end product and apply the differential to the overall project contract to determine if the bid consisting of foreign "end products" qualifies for the waiver.

The rolling stock/tax waiver (Section 401(b)(2)) was the source of six comments. One commentor asked if taxes paid by other than the bidder would be considered. The commentor also asked if taxes paid by the bidder included workman's compensation, corporate tax, and real estate tax. One

commentor asked if a multiplication factor that assumed a certain percentage of tax benefits could be developed by UMTA and applied to bids.

Three commentors asked that the types of taxes that were included be expanded. One asked that all direct taxes of suppliers to the bidder be included in the computation. Another commentor asked that workers' taxes paid to state and local governments be included in the computation. A third commentor asked that all taxes be included in the computation such as "payroll taxes, worker's income taxes, social security taxes by the employer and employee, real estate taxes, and the like."

The problems inherent in this waiver are manifest. The desire for the specific tax waiver appears only after the bids are opened (since the foreign bidders might have hoped that he would qualify for the 10% differential or that no domestic end products would be offered). UMTA and the grantee would have to evaluate the waiver during the limited amount of time available while the bids are valid. Tax projections of the foreign bidder and the lowest domestic bidder would be speculative since they would be based on future costs, future locations, future profits, and future worker pay scales. Further the bidders might view the information as proprietary. Even if the information could be gathered in the short amount of time it would defy analysis since the taxes would vary with corporate profitability, the state in which the work is done, profits, and worker pay scales.

The rolling stock/tax waiver is unique to Section 401. No other statute has a similar provision.

UMTA has decided to maintain the current guidance that only bidders' direct taxes are included in determining whether or not the waiver will be granted. This approach limits the suppositions as to what future taxes of employees and foreign suppliers will be, and provides guidance to bidders and grantees to assist in determining whether the waiver would apply.

UMTA will monitor the use of the waiver and determine if a study is necessary. The study would address various methods of computations of taxes, and which taxes could be considered.

Waivers—Issuance

One commentor requested that we delete §§ 660.33(b) and 660.34(a) since he felt that we are unable to make waiver determinations before bids are opened. We feel that in certain circumstances we are able to make the necessary determinations prior to a bid opening. For example, the general waivers in Appendix A to § 660.34 have obviously been granted prior to any bid, and we do expect that some request for waivers, especially public interest waivers, could be made prior to bids.

Section 660.33(b) is being revised to clarify the time frame within which UMTA may issue a waiver.

Waivers—Rural Operating Assistance

A conforming change has been made to Appendix A of § 660.34 to include operating assistance grants given to rural areas under the § 18 grant program. Operating assistance under all of the other UMTA programs has already been excluded.

Waivers—Spare Parts

Several comments were received concerning the treatment of spare parts under Section 401.

If spare parts are "deliverables," then they are end-products in and of themselves. For example, in a contract for ten buses with 500 h.p. engines and two extra 500 h.p. engines for the buses, the buses and the two extra engines would each be end-products. If the engines for the ten buses were directly incorporated into the buses at the final assembly point, those engines are components. A separately specified spare part is an end-product by itself.

UMTA has decided to issue a general public interest waiver which provides that foreign-sourced spare parts which are end-products will be granted an automatic waiver if their total cost is 10% or less of the overall project contract cost. This waiver is being issued in order to provide for compatibility of parts. It is in the public interest that this compatibility exist since it promotes efficiency and economy.

This general waiver will be added to Appendix A to § 660.34.

Enforcement

One commentor requested that § 660.45 be deleted because it was felt that the interpretation of the statute and rights under the statute are more properly the role and function of the courts. This section does not attempt to usurp the role or function of courts, but merely sets out an administrative interpretation concerning the rights of third parties under the statutory provision.

Accordingly, Part 660 of Title 49 of the Code of Federal Regulations is amended as follows:

1. In § 660.11, by revising paragraphs (b), (c) and (f) and adding a new paragraph (g) to read as follows:

§ 660.11 Applicability.

* * * * *

(b) Only domestic end products may be procured with assistance provided by UMTA unless the Administrator waives the application of these requirements as set forth in Subpart C of this Part.

(c) Because a domestic preference requirement, rather than an absolute "Buy America" requirement, has been established, materials of foreign origin may be considered for UMTA-assisted procurements.

* * * * *

(f) The location where components and end products are manufactured, mined, or produced is critical in determining their origin. The nationality of suppliers or the employees of these suppliers does not affect the origin of end products or components.

(g) UMTA will not participate in procurements in which a competitive advantage is given to State or local bidders or to bidders that agree to use State or local products.

2. By revising paragraphs (c) and (e) of § 660.13 to read as follows:

§ 660.13 Definitions.

(c) "Component" means any article, material, or supply, whether manufactured or unmanufactured, directly incorporated into an end product at the point of final assembly. An item used in the construction process as an aid to construction which remains at the construction site but serves no purpose in the completed end product is not a component.

* * * * *

(e) "End product" means an article, material or supply, whether manufactured or unmanufactured, that is to be acquired by the grantee, with financial assistance derived from UMTA, and that is to be delivered to the grantee, as specified by the third party contract. In construction projects, the deliverable of the construction contract is the end product. Materials delivered to the jobsite and incorporated directly into the construction end-product are components.

3. By revising paragraph (a) and adding a new paragraph (c) in § 660.21 to read as follows:

§ 660.21 Grantee responsibility.

(a) The grantee shall adhere to the Buy America clause set forth in its grant agreement with UMTA. The clause directly affects any third party contract utilizing funds obligated by UMTA after November 6, 1978. These requirements do not apply to any third party contract financed without UMTA funds or to any procurement or construction third party contract not exceeding $500,000. The

Buy America clause will be included in any grant or loan agreement entered into by UMTA that exceeds $500,000.

* * * * *

(c) The grantee shall include in its bid specifications a statement that a waiver from the Buy America provision will be sought if the grounds for a waiver exist.

4. By revising paragraph (c) and adding a new paragraph (d) in § 660.22 to read as follows:

§ 660.22 Determination of origin.

* * * * *

(c) Transportation costs to the place of incorporation into the end product and, in the case of foreign components, applicable duties, must be included in determining component cost under paragraph (a) of this section.

(d) The cost of a component is the price that a bidder or offeror must pay to a subcontractor or supplier for components. If the component is manufactured by the bidder or offeror, the cost of the component is the cost of labor and materials incorporated into the component and an allowance for profit and administrative and overhead costs attributable to that component under normal accounting principles.

5. By revising paragraph (b) and adding a new paragraph (d) to § 660.31 to read as follows:

§ 660.31 Application for waiver.

* * * * *

(b) In the case of third party contracts, only a grantee may request a waiver. The request must be in writing, include facts and justification to support the granting of the waiver, and be submitted to the Administrator through the Regional Administrator.

* * * * *

(d) Each request for a waiver and UMTA's action on the request are available for public inspection under the provisions of 49 CFR Part 601, Subpart C.

6. In § 660.32, by revising paragraphs (b), (d), and (f) to read as follows:

§ 660.32 Types of waivers.

* * * * *

(b) In determining whether the waiver described in paragraph (a)(1) will be granted, the Administrator considers all appropriate factors including, but not limited to, the cost, "red tape", and delay that would be imposed if the provision were not waived. The Administrator will issue a written determination setting forth the reasons for the granting or denial of the waiver.

* * * * *

(d) A domestic end product will be presumed unavailable if no responsive and responsible domestic bid has been received and a waiver will be granted by UMTA.

* * * * *

(f) The statutory waiver provisions of Section 401 of the Act are separate and distinct from each other. End products and components of end products may be granted different waivers.

7. By revising paragraph (b) of § 660.33 to read as follows:

§ 660.33 Relationship of waivers to bid process

* * * * *

(b) Waivers may be issued for a particular contract at any time based on information available to UMTA.

8. By revising item (a) and adding a new item (c) to Appendix A to § 660.34 to read as follows:

Appendix A—Compilation of Waivers Issued Under § 660.33(a)

(a) The provision has been waived for all operating assistance grants under Sections 5, 17, and 18 of the UMT Act, and for any operation assistance portions of grants under Section 6 of the UMT Act.

* * * * *

(c) The provision is waived for foreign sourced spare parts whose total cost is 10% or less of the overall project contract cost.

(49 U.S.C. 1602, note (Sec. 401, Pub. L. 95–599; 92 Stat. 2689); 41 U.S.C. 10a, 10c, and 10d; 49 CFR 1.51).

Dated: January 14, 1981.

Theodore C. Lutz,

Administrator.

[FR Doc. 81-1942 Filed 1-16-81; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Urban Mass Transportation Administration

49 CFR Part 660

[Docket No. 80-L]

Buy America Requirements

AGENCY: Urban Mass Transportation Administration, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Urban Mass Transportation Administration (UMTA) is proposing to amend its "Buy America" regulations which apply to UMTA-funded contracts. The proposed amendments would permit subcomponents manufactured in the United States that receive Customs Bureau tariff exemptions to retain their domestic identity for purposes of determination of origin under the Buy America regulations. A definition of "final assembly" is also being proposed. These proposals are based on comments received on the original Buy America regulations issued in December 1978, and on our experience to date in implementing the Buy America statute and the regulations.

DATE: Comments must be received by April 20, 1981.

ADDRESS: Comments must be submitted to UMTA Docket No. 80-L, 400-7th Street, S.W., Washington, D.C. 20590. All comments and suggestions received will be available for examination in room 9320 at the above address between 8:30 a.m. and 5:00 p.m., Monday through Friday. Receipt of comments will be acknowledged by UMTA if a self-addressed, stamped postcard is included with the comment.

FOR FURTHER INFORMATION CONTACT: John Collins or Edward Gill, Office of the Chief Counsel, (202) 426-1906.

SUPPLEMENTARY INFORMATION: All comments received before the expiration of the comment period will be considered before final action is taken on this proposal. Comments received after the expiration of the comment period will be considered to the extent feasible.

The Administrator has determined that this regulation is a significant regulation under the criteria in the DOT Order for Improving Government Regulations (44 FR 11042, February 26, 1979) since significant public interest was expressed during the previous comment period, and since these proposals will have an impact on the transit supply industry.

A draft Regulatory Evaluation has been prepared for this proposal and has been placed in the public docket, and is available at the address listed above.

The provisions of OMB Circular A-95 apply to this Notice of Proposed Rulemaking. It covers the following programs as listed in the Catalog of Federal Domestic Assistance (CFDA):

20.500—Urban Mass Transportation Capital Grants
20.504—Mass Transportation Technology
20.507—Urban Mass Transportation Capital and Operating Assistance Formula Grants
20.509—Public Transportation for Rural and Small Urban Areas

Environmental Impact Statement

This policy change does not significantly affect the environment. An environmental impact statement is not required under the National Environmental Policy Act of 1969.

This proposed regulation will not have a significant economic impact on a substantial number of small entities, within the meaning of the Regulatory Flexibility Act of 1980 (Pub. L. 96-354). Small entities, such as small businesses and small governmental organizations, must already comply with the Statutory domestic preference requirements of Section 401 of Pub. L. 95-599 when contracts are awarded that use UMTA funds. The changes that are proposed here do not impose any significant economic impacts beyond those currently required by the express terms of the statute.

Discussion of Proposal and Background

In addition to this NPRM, we are issuing final revised regulations implementing other provisions of the "Buy America" statute. These final regulations are published elsewhere in this Federal Register.

We have received several comments requesting that we revise our treatment of "subcomponents". In § 660.22(b) of the "Buy America" regulation, the statement is made that "(t)he origin of subcomponents is immaterial." This statement is made in the regulations which establish the criteria for determining the origin of components and end products. In order for an item to be a "domestic end product", the cost of its domestic components must exceed 50% of the cost of all components, and the final assembly of the components to form the end product must take place in the United States. The commentors felt that the cost of domestic U.S. subcomponents that are incorporated into components in other countries should be included in the computation of domestic components.

In connection with this, several commentors also requested that we define the term "final assembly". Several suggested definitions were forwarded to us. UMTA had maintained, pursuant to its current regulations, that the end product is the item or items specified as the deliverables in the proposed third party contract and the components are the items that are "directly incorporated into an end product" at the final assembly point. Thus if an intermediate assembly of domestic origin were incorporated into a higher assembly abroad and if then this new higher assembly were shipped to the United States for final assembly into the end product, this higher assembly would be the component and the intermediate assembly would be the subcomponent under the UMTA regulations. The domestic content of the intermediate assembly made in the United States, therefore, would not be included in the computation for the fifty percent domestic component test. If, however, an assembly of domestic origin were sent abroad to aid in the manufacturing process and the same assembly were later returned unchanged to the United States and directly incorporated into the end product at the final assembly point, this assembly would then be a component under our regulations and its cost to the bidder would be treated as a domestic component cost.

Several of the commentors questioned the fairness of the provisions that would result in a U.S. subcomponent losing its U.S. identity for purposes of "Buy America", if the subcomponent were incorporated into a higher assembly outside of the U.S. Treating as entirely foreign a component that contains substantial and traceable U.S. content is claimed to be inequitable and to inhibit trade unduly.

The UMTA approach in determining the origin of end-products and components and the treatment of subcomponents is generally consistent with the implementation of the Buy American Act of 1933 (41 U.S.C. 10a-10d). Neither Section 401 nor the 1933 Act contain statutory language addressing the end-product, component, or subcomponent. The "fifty percent test" for determining the origin of a product for purposes of the 1933 Act was first established in Section 2(a) of Executive Order No. 10582, December 17, 1954, which provides as follows:

(a) For the purposes of this order, materials shall be considered to be of foreign origin if the cost of the foreign products used in such materials constitutes fifty per centum or more of the cost of all the products used in such materials.

The Federal Procurement Regulations (FPR), which implement the requirements of the 1933 Act for direct procurement, set forth definitions of end-products, components, and domestic source end-products at 41 CFR § 1–6.101 that have been the basis for the requirements of the UMTA regulations. Most pertinent is the language of 41 CFR § 6.101(b) and the first sentence of 41 CFR § 1–6.101(d) that state:

(b) Components means those articles, materials, and supplies which are directly incorporated in end products.

(d) Domestic source end product means an unmanufactured end product which has been mined or produced in the United States, or an end product manufactured in the United States if the cost of its *components which are mined, produced, or manufactured in the United States* exceeds 50 percent of the cost of all its components. [Emphasis added]

The FPR does not give further guidance on the application of this but leaves it up to the individual agency in the context of a particular procurement. The General Accounting Office (GAO) often reviews these factual determinations when disappointed bidders filed bid protests. There is no clear rule concerning the point in a manufacturing process when a subcomponent becomes a component. Before 1976, GAO typically held that a component was something directly used in the manufacture of an end product; and that foreign subcomponents lose their foreign identity when assembled into domestic components. See, e.g. B-156869, April 27, 1966, 45 Comp. Gen. 668. But in a 1976 GAO decision, *In re Cincinnati Electronics Corporation, et al.*, 55 Comp. Gen. 1479, GAO recognized the concept that domestic objects acquired for assembly into end products need not lose their domestic nature even though they are sent abroad and fashioned into a higher assembly with final manufacturing to take place in the United States. Here GAO deferred to the contractor and procuring agency's assertion that the purchase in the United States, initial assembly in Mexico, with completion in the United States is one complete manufacturing process. However, GAO expressly limited the application of this concept to the particular fact pattern. There is no clear rule about what constitutes a single manufacturing process or what constitutes separate manufacturing processes. It should be noted, however, that GAO is inclined to honor agency interpretations of particular contracts that are arguably reasonable. Agency regulations are afforded even more deference.

UMTA chose to develop regulations rather than relying on case by case decisions to provide some predictability to the procurement process. This was considered to be especially important in the case of a grant program since procurements are administered at the local and state levels.

However, the 1978 regulation created a mechanical test that the place of assembly of the component automatically determined whether the total value of the component was foreign or domestic. Because most transit vehicles are relatively complex, many major components consist of several subcomponents. For example, a car body that is a vehicle component might include windows, lighting, floors, seats and other interior parts that would be treated as subcomponents. Even if those subcomponents were domestic, they would lose their identity under the UMTA regulations if incorporated into a foreign shell abroad to form the car body.

The following illustrations set forth below demonstrate the problem in establishing fair treatment for subcomponents.

(1) Under the current UMTA regulations, if the value of the domestic components of an end-product were less than 50% and the value of foreign components of that end-product exceeded 50%, and even if many identifiable subcomponents of the foreign components were domestic, the end-product would still be considered foreign. The 1978 regulation encourages the prime bidder to do large amounts of final assembly in the U.S., but does not provide any incentive to buy U.S.-made subcomponents.

(2) Conversely, under an approach that would permit the value of domestic subcomponents to be included in determining the origin of an end product, if final assembly took place in the U.S. and if the value of the domestic components were less than 50% and the remaining foreign components contained sufficient identifiable domestic subcomponents to cause the overall domestic content of the end product to exceed 50% in value, the end product would then be considered domestic. This would encourage the purchase of U.S. subcomponents but could lead to less final assembly work in the United States.

UMTA is proposing to revise its regulations to permit manufactures to include the cost of domestic subcomponents in the fifty percent test, utilizing an existing Bureau of Customs procedure. A review of the U.S. Tariff Schedules reveals that Item 807.00 implements a legislative exemption from customs duty on those components which are products of the United States that have been assembled abroad into articles if those United States products (a) were exported in condition ready for assembly without further fabrication, (b) have not lost their physical identity in such articles by change in form, shape, or otherwise, and (c) have not been advanced in value or improved in condition abroad except by being assembled and except by operations incidental to the assembly process such as cleaning, lubricating, and painting. The duty imposed on such manufactured articles is computed by subtracting the cost of value of the United States products from the duty that is applicable to the full value of the imported articles. The United States Customs Service has published regulations implementing Item 807.00 at 19 CFR 10.11–10.24. An importer who desires to take advantage of this exception files documentation identifying the United States components in the assembled product. This determination of value of the U.S. subcomponents utilizing the Customs approach is considered a suitable substitute for the simple "origin" test now contained in our regulation. Under this approach, of course, United States subcomponents would not need to lose their identity simply because they had been sent abroad to be assembled into higher components.

We are proposing to permit United States subcomponents that receive Customs Bureau tariff exemptions to retain their domestic identity for purposes of determining origin of end-products. The cost of subcomponents that receive Customs Bureau tariff exemptions would be included in the computation of domestic components. The cost of the foreign components, after substracting the cost of such subcomponents, would be included in the computation of non-domestic components. This approach is being proposed because it would provide more flexibility to end-product manufacturers; would provide an advantage to U.S. subcomponent manufacturers and their workers; and because it is administratively feasible to identify U.S. subcomponents by reference to Customs documents.

Since we are proposing this change, we are also proposing a definition of "final assembly" to ensure that an adequate amount of final assembly takes place in the United States. As the current regulation is drafted, the term "final assembly" neither has, nor needs, much definition to insure that it is a meaningful step. The definition of components and the emphasis placed on

components under the current regulation provide insurance that final assembly will entail the assembly of a number of different U.S. components. Since under the proposed treatment of subcomponents, assembly of he end-product in the U.S. could be a trivial step if components were manufactured in a foreign country, all from U.S. subcomponents, we are proposing a definition of "final assembly" which establishes a test of meaningful final assembly. The test of final assembly that we are proposing would require that the cost of labor effort and overhead at the final assembly point in the United States must be 10 percent of the bid price. Less of an effort would mean that the end-product would not qualify as a domestic end-product.

As an alternative to defining final assembly in terms of the cost of labor and overhead at the final assembly point, we invite comment on a substitute treatment which would require that 10 percent of the total assembly hours be done at the final assembly point. Under this approach, the manufacturer would estimate total manufacturing hours for all items that are not off-the-shelf items. The manufacturer would have to undertake 10 percent of these hours at the final assembly point in the United States or would fail to qualify as a domestic end-product manufacturer.

As a result of our experience to date in implementing the statute and the regulations we are proposing to revise the regulation to permit the non-final assembly United States labor effort performed at the final assembly point to be included in the dollar value of the United States component. The value is used in determining whether or not the "50% test" required in the regulation is met. The labor effort is proposed to be limited to the direct labor cost plus fringe benefits.

This proposal will encourage manufacturers to increase the amount of United States labor involvement in the manufacturing process.

We specifically request comments on this approach. While we believe that it offers more flexibility than exists under the current regulation, we are interested in learning whether this change would lead to burdensome recordkeeping for manufacturers.

As an alternative to the changes that we are proposing today to § 660.22 "Determination of Origin", we invite comments on two other ways of implementing the Section 401 provision which have been suggested by domestic manufacturing firms. While either approach would require comprehensive changes to the current regulation, we would be willing to pursue these approaches if commentors believed that we could offer adequate preferences to domestic industries while reducing red tape and cost to the industry.

Alternative #1 would be to use manhours to test whether an end-product is domestic rather than the current two step final assembly and component content tests that are calculated using cost. Under this alternative, each bidder would be required to estimate the total number of hours to manufacture each end-product (e.g. a railcar), excluding off-the-shelf items. The bidder would also have to estimate the number of such manhours performed in the United States. An end-product would be domestic only if more than 15 percent of the manhours were done in the United States.

Alternative #2 would be to use a value added approach to test whether an end-product is domestic rather than the current two step test. Under this alternative, the cost of the associated end-product. The value added in the United States would have to be at least double the value of the imported sub-items for the end-product to be considered domestic. For example, if the imported value was $50, at least $100 of value would have to be added in the United States. That is, the end-product would have to cost at least $150.

We would especially like comments evaluating the proposed changes to § 660.22, Alternative #1, and Alternative #2 in terms of the protection that would be afforded to domestic companies versus the cost to the manufacturer of complying with the three different approaches. We would welcome comments on the reliability of data that the manufacturers would have and whether any of the approaches is susceptible to abuse. Commentors are invited to suggest different numerical tests for Alternatives #1 and #2. All comments should be supported by verifiable facts and figures whenever possible. We are also interested in comments on the economic effects of the current and proposed regulation and any effects of the regulations on small business.

We also welcome comments on alternatives to the treatment of construction that is described in the final rule published elsewhere in this Federal Register. We are especially interested in alternative approaches that would provide additional protections to United States manufacturers without creating unduly burdensome tracking and record-keeping requirements.

In consideration of the foregoing, it is proposed that Part 660 of Title 49 of the Code of Federal Regulations be amended as follows:

1. By adding a new § 660.13(e–1) and (g–1) to read as follows:

§ 660.13 Definitions.

* * * * *

(e–1) "Final assembly" means the effort expended at the final assembly point to manufacture the end-product.

* * * * *

(g–1) "Non-final assembly labor" means the cost of any labor effort and overhead at the final assembly point that exceeds the cost required by §660.22(a–1).

* * * * *

2. By revising §660.22 to read as follows:

§ 660.22 Determination of origin.

(a) In order for a manufactured end-product to be considered a domestic end-product, (1) the cost of the domestic components plus non-final assembly labor must exceed 50 percent of the cost of all its components plus non-final assembly labor; and (2) the final assembly of the components to form the end-product must take place in the United States.

(a–1) The cost of the final assembly must be 10 percent of the overall project contract cost.

(b) In determining the origin of components, each component must be treated as either entirely domestic or entirely foreign, based on the place where the component is mined, produced, or manufactured. Components of unknown origin must be treated as foreign. The origin of subcomponents, that is, items contained in components, is immaterial except for those subcomponents that receive Customs Service tariff exemptions as set out in paragraph (b–1).

(b–1) United States subcomponents that receive Customs Service tariff exemptions under 19 CFR 10.11–10.24 retain their domestic identity and are considered to be of domestic origin. Their cost may be included in determining the cost of domestic components under paragraph (a).

* * * * *

(49 U.S.C. 1602, note (Sec. 401, Pub. L. 95–599, 92 Stat. 2688); 41 U.S.C. 10a, 10c, and 10d; 49 CFR 1.51)

Dated: January 14, 1981.

Theodore C. Lutz,

Administrator.

[FR Doc. 81-1903 Filed 1-16-81; 8:45 am]

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Part XXXVIII

Department of Transportation

Urban Mass Transportation Administration

Urban Initiatives Program; Final Rules

JAN 19 1981

DEPARTMENT OF TRANSPORTATION

Urban Mass Transportation Administration

49 CFR Part 642

Urban Initiatives Program

AGENCY: Urban Mass Transportation Administration, DOT.

ACTION: Final rule.

SUMMARY: The Urban Mass Transportation Administration (UMTA) is issuing regulations governing its Urban Initiatives Program. The Urban Initiatives Program provides funding for mass transportation projects that enhance urban development. The regulations codify and clarify existing requirements and guidelines concerning the program.

DATES: The regulations are effective on February 18, 1981.

FOR FURTHER INFORMATION CONTACT: Casimir Bonkowski, Office of Grants Assistance (202) 472-7037.

SUPPLEMENTARY INFORMATION: A notice of proposed rulemaking was published on October 23, 1980 (45 FR 70412). Interested persons were given until December 8, 1980 to submit comments. Approximately 40 written comments were received. The Administrator has determined that this regulation is not a significant regulation under the criteria in the DOT Order for Improving Government Regulations (44 FR 11042, February 26, 1979).

Under the DOT Order, a full evaluation is not warranted because the expected economic impact of the regulation is minimal. The proposed regulation is a codification and clarification of existing requirements.

The provisions of OMB Circular A-95 apply to this Final Rule. It covers the following program as listed in the Catalog of Federal Domestic Assistance (CFDA): 20:500 Urban Mass Transportation Capital Grants.

The NPRM set out the requirements as Part 654 of Title 49 of the Code of Federal Regulations. The Final Rule establishes a new Part 642, which is only an editorial revision. The only other major changes are discussed below.

Discussion

The requirement for development of an employment plan was most often mentioned by commenters. Most felt that the requirement made it difficult to secure private investor participation, and that procedures for development of the plan were unnecessarily proscriptive. After consideration we have decided to retain the requirement intact. An employment plan is only required when a project creates new permanent employment. This will affect only a portion of the Urban Initiatives projects. Second, the number and type of employment opportunities created will dictate the level of information to be required. UMTA and Department of Labor (DOL) personnel will assist the project sponsor and private developers in the preparation of the plan, identifying DOL resources available to assist in the recruiting and training of new job holders. Third, agreements similar to the DOT agreement with DOL were also signed by the Department of Housing and Urban Development (HUD) and the Economic Development Administration (EDA) thereby providing a uniform mechanism for linking employment opportunities for the long term unemployed.

UMTA's position not to fund parking not directly associated with a mass transit project also elicited comment. Comments both favorable and negative to the policy decision were received. While acknowledging that parking plays an integral role in the commuting habits of the public, and cognizant of the fact that the provision of parking is required for the success of many development activities, we continue to maintain the position that the national mass transportation program is not the appropriate source to finance parking facilities *which are not directly related to the provision of mass transportation services*. Local and other Federal agencies have resources available to them to finance parking components. If, as part of a comprehensive development project, the creation of parking is demonstrated to significantly enhance local mass transportation usage, UMTA will consider funding of the *transit* aspects of such multi-faceted projects on a case-by-case basis.

In regard to comments that UMTA should finance transit malls which provide a roadway for private automobiles as well as public transportation vehicles, we feel that in order to ensure the economic enhancement and provide the operating efficiency and visability that the Urban Initiatives Program attempts to achieve, transit malls funded under the Urban Initiatives Program must be transit exclusive. In areas where roadways are extraordinarily wide, expansion of pedestrian spaces, creation of bike paths and the incorporation of public and private people-oriented activity centers which generate transit and retail patronage should be considered.

In response to requests to consider funding of the construction of revenue-producing space, this activity is beyond UMTA's statutory authority. UMTA's financial support of private investment is restricted to activities detailed in § 642.29.

In response to comments that the existence of special considerations, as identified in Subpart D, penalized some applicants, we emphasis that these elements are taken into consideration after the project eligibility has been established and are utilized to establish priorities when projects are relatively equal. The regulations identify the factors which are being considered and invite the project sponsor to elaborate on project features or circumstances which warrant additional consideration. The inclusion of a request for information as to proposal features which the community feels are a special or unique opportunity to meet local priority needs is intentional and an attempt to encourage flexibility within the program and innovation on the part of the applicant.

In response to comments that applicants would prefer to submit one complete application, the two phase preapplication and final application process will continue because it succeeds in reducing paperwork for applicants. Once a project is selected, applicants need only provide supplementary information. They need not duplicate existing material. Unsuccessful candidates will have been spared the expenditure of time and resources required to assemble material not essential to making a selection.

In response to a comment that the Urban Initiatives Program should finance acquisition of vehicles, it has been determined that there are insufficient funds available to finance the acquisition of vehicles within the Urban Initiatives Program budget. Where appropriate, UMTA will work with the applicant to provide funding under other programs.

In refining the review process, UMTA has reduced the time necessary to establish if it will participate in a project. Therefore, the request that an option for a Letter of No Prejudice be retained since the length of the review process presents a hardship was not considered valid. Prior to the actual selection of projects, when a number of worthwhile proposals are under consideration, it would be inappropriate to bias the selection process by authorizing a Letter of No Prejudice. Such requests will continue to be turned away during the preapplication phase.

Once a fund reservation is made, no prejudice requests can be considered.

In response to other comments that the regulation specify UMTA's requirements on consideration of traffic disruption and air quality prior to grant approval UMTA's requirements pertaining to environmental assessment provide for extensive analysis of these issues and therefore they are not separately addressed here.

A commentor noted that new capital projects often resulted in increased deficits and that these features of a project should also be considered in making a funding decision. This area had been assumed to be considered within the section requesting that the burdens the central city would assume as a result of the project be documented. A clarifying reference to the transit provider and the potential negative impact on operating budgets has been added.

In response to a comment that the joint development program guidelines appeared to be biased towards industrial projects and another that they were biased against housing, facts do not substantiate either interpretation. There have been no industrial projects funded to date and a number of grants awarded for projects with a housing component.

There were a number of references to the $5 million limit on UMTA participation in Urban Initiatives projects. It is important to note that the focus on smaller budgeted projects does not preclude the consideration of proposals from larger cities. The goal is to encourage a wider range of projects with multiple funding sources thereby enabling a broader impact within the program's budget. Projects requiring a Federal share larger than $5 million have been considered. It is expected however, that there is a commensurate increase in benefits if they are selected for funding. The emphasis of the program is also not on projects in larger rail oriented cities as some have commented. Innovative proposals by small urban areas and medium size cities have enabled Urban Initiatives funds to be awarded to a substantial number of areas with emerging bus transit systems. The consensus is that projects from cities of various population sizes appear to be competitive without further constraints or incentives placed on their participation. For these reasons, and because of the limited financial resources available to the program, creation of a separate pool of funds for projects from large and small cities was not considered to be appropriate at this time.

In consideration of the foregoing, a new Part 642 be added to Title 49 of the Code of Federal Regulations to read as follows:

PART 642—URBAN INITIATIVES PROGRAM

Subpart A—General

Sec.

642.1 Eligible Recipients.
642.3 Funding.
642.5 Project Scope and Feasibility.

Subpart B—Eligible Project Categories

642.11 General Requirements.

Intermodal Transfer Facilities

642.13 Types of Facilities.
642.15 Requirements: Intermodal Transfer Facilities.
642.17 Eligible Projects Costs: Intermodal Transfer Facilities.

Transit Malls

642.19 Types of Malls.
642.21 Requirements: Transit Malls.
642.23 Eligible Projects Costs: Transit Malls.

Joint Development Projects

642.25 Types of Projects.
642.27 Requirements: Joint Development Projects.
642.29 Eligible Project Costs: Joint Development.
642.31 Participation in Proceeds Derived from UMTA Investment.

Subpart C—Criteria for Meeting Policy Objectives

642.41 General.
642.43 Transit.
642.45 Socio-Economic: Employment.
642.47 Socio-Economic: Involvement of Neighborhood Organizations and Voluntary Associations.
642.49 Development: Urban Economic Development/Private Sector Investment.
642.51 Development: Business Opportunities for Small and Minority Business.
642.53 Development: Enhancement of the Immediate Physical Environment Around the Project.
642.55 Development: Coordination.

Subpart D—Special Considerations

642.61 Establishing Priorities.

Subpart E—Application Procedures

642.71 Preapplication Procedures.
642.73 Application Procedures.
642.75 Post Grant Activities.
Appendix A Policy Objectives.
Appendix B DOT–DOL Memorandum of Understanding.
Appendix C Timing and Degree of Public and Private Commitments for Joint Development Projects.
Appendix D Project Application Review and Selection Process.

Authority: 49 U.S.C. 1602(a)(1)(D) and 1603(c)(1)(B); 49 CFR 1.51.

Subpart A—General

§ 642.1 Eligible recipients.

(a) A public agency which is eligible for UMTA capital assistance is eligible for Urban Initiatives grants. These public agencies include transit authorities, local governments, States, agencies of States, and quasi-public development corporations.

(b) Eligible public bodies may pass through funds to a quasi-public development corporation to manage projects.

(c) Applicants other than transit authorities or State and local governments must provide evidence of their financial and managerial ability to ensure continued operation of the transportation components of an Urban Initiatives project over the life of the project in order to be an eligible recipient.

§ 642.3 Funding.

(a) In reviewing funding sources for potential Urban Initiatives projects, every effort should be made to match each available funding source with the most appropriate project elements, based on various eligible cost requirements and restrictions.

(b) Project components such as traffic diverters and barriers, pedestrian malls, sidewalks and walkways, bicycle paths, and street landscaping and furniture independent of a transit mall or terminal, should be funded from DOT's Federal Highway Administration Federal Aid Urban Systems funds to the maximum extent feasible rather than as Urban Initiatives project components.

(c) The applicant shall develop a project implementation schedule for financial participation.

§ 642.5 Project scope and feasibility.

(a) Each applicant shall sufficient feasibility analysis in the planning phase of Urban Initiatives project development to provide a minimum level of technical data with which UMTA may evaluate the project. Funds for technical assistance are available from the UMTA Section 8 Technical Studies Program through local Metropolitan Planning Organizations.

(b) In developing projects, applicants are encouraged to undertake sufficient environmental analysis and engineering to enable UMTA to establish the project scope.

Subpart B—Eligible Project Categories

§ 642.11 General requirements.

(a) To qualify for consideration under the funding authorization of the Urban Initiatives Program, a project must extend beyond the scope of traditional

transit improvements to clearly demonstrate a significant degree of impact on the urban physical and economic environment, including increased private investment, enhanced interagency coordination and the support of social goals including increased employment opportunities and accessibility for disadvantaged groups.

(b) Projects which do not contain a significant transit element are not eligible for funding under the Urban Initiatives Program.

(c) The acquisition of vehicles is not an eligible Urban Initiatives activity.

(d) There are three categories of eligible projects: Intermodal terminals, transit malls and joint development.

Intermodal Transfer Facilities

§ 642.13 Types of facilities.

Intermodal transfer facilities that are eligible for funding under the Urban Initiatives Program include the construction and improvement of facilities which provide for the integration of urban public transportation systems with other forms of public and private transportation services such as intercity bus and rail systems, and taxis, which enhance the effectiveness of mass transit and facilitate coordination among modes.

§ 642.15 Requirements: Intermodal transfer facilities.

(a) UMTA will not participate in the construction of an intermodal terminal unless the space and service needs of local mass transportation constitute a reasonable component of the project.

(b) Project sponsors must notify private carriers operating within the area of the project of their intent to apply for Urban Initiatives funds for construction or reconstruction of an intermodal facility.

(c) If an intermodal terminal is to provide space for private carriers, the preapplication data must contain letters of interest committing the carriers to use of the facility providing that acceptable accommodations and rents are negotiated.

(d) Prior to award of construction funds, the applicant must secure a lease or lease equivalent type agreement from private carriers committing them to long term use of the facility.

(e) The intermodal facility must be the property of a public body.

(f) The proceeds from rental payments or other reimbursements in excess of operating and maintenance expenses must be used to offset eligible local mass transit capital expenses.

(g) Proceeds realized from lease or sale payments may not be used to reduce local debt service payments, or otherwise reduce local share requirements without a commensurate reduction in the Federal share.

§ 642.17 Eligible projects costs: intermodal transfer facilities.

(a) Eligible project costs for intermodal transfer facilities include, but are not limited to, the following:

(1) Design and engineering tasks.

(2) Acquisition of real property, facilities, and equipment.

(3) Roadbeds, tracks, and bus ramps.

(4) Pedestrian concourses, and related equipment and facilities.

(5) Loading shelters.

(6) Improvements of existing bus or rail transit terminals, stations, major transfer points, and shelters as well as other facilities directly related to the linking of public transportation facilities with other modes of transportation.

(7) Incidental parking. A small number of spaces may be provided. The number is limited to the amount required to reasonably accommodate the needs of intermodal facility patrons and employees who are not within the transit service area of any public transportation provider including taxis. It must be demonstrated that parking cannot be financed from other sources.

(b) Urban Initiatives funds may only be used to finance the engineering and construction of non-revenue producing elements. Funds may not be used for restaurants, major concessions, package storage and delivery facilities, and other revenue producing facilities not directly required for the transport of passengers.

Transit Malls

§ 642.19 Types of malls.

Transit malls eligible for funding under the Urban Initiatives Program are those on streets which—

(a) Have been improved for pedestrian use; and

(b) Retain a roadway reserved for public transportation vehicles integrated with the city-wide, or regional transportation system.

§ 642.21 Requirements: Transit malls.

(a) The type of public transportation vehicles to be allowed to utilize the transit mall is a local decision determined by local priorities and the vehicular capacity of the mall. Public transportation vehicles may include, but are not restricted to, taxis, paratransit vehicles, or other high occupancy vehicles whose use provides increased mass transit service. General access by private vehicles, other than public transportation and emergency vehicles, must be restricted.

(b) Preferential signalization to facilitate bus movements must be incorporated within the mall design whenever appropriate.

(c) Parking is not an eligible item in a transit mall project.

§ 642.23 Eligible project costs: Transit malls.

Eligible project costs for transit malls include, but are not limited to the following:

(a) Design and engineering.

(b) Mall construction activities such as surveying, utility relocation (to the extent that the utility is not responsible for such costs), materials testing, and construction management.

(c) Street, sidewalk and utility construction.

(d) Traffic control devices.

(e) Landscaping.

(f) Pedestrian concourses and walkways and other passenger and pedestrian amenities.

Joint Development Projects

§ 642.25 Types of Projects.

Joint development projects that are eligible for funding under the Urban Initiatives Program are commercial, residential, industrial, or mixed use developments that are induced by or enhance the effectiveness of mass transportation projects, including private development activities associated with new rail rapid transit systems, automated systems, improvement and extension of existing rail systems, intermodal transfer facilities, transit malls, and Federal, State or local investments in existing facilities.

§ 642.27 Requirements: Joint Development Projects.

(a) Each joint development project must—

(1) Include a transit element;

(2) Enhance the effectiveness of a significant mass transportation project;

(3) Be physically or functionally related to the mass transportation project;

(4) Create new or enhanced coordination between public transportation, and other forms of transportation; and

(5) Enhance urban economic development through the incorporation of private investment including office, commercial, or residential development.

(b) A project is physically related to a mass transportation project if it provides a direct physical connection with mass transportation services or facilities, including projects involving air rights over stations or adjacent property.

(c) A project is functionally related to a mass transportation project if it is related by activity and use and is functionally linked (with or without direct physical connection) to mass transportation services or facilities. Functional relationships must not extend beyond the distance most people will reasonably walk to use a transit service. The eligible project area for a functionally related project will be defined on a case-by-case basis.

§ 642.29 Eligible Project Costs: Joint Development Project.

(a) Eligible project costs for joint development projects include, but are not limited to, the following:

(1) Site design, engineering, and environmental analysis as appropriate.

(2) Real estate packaging for a specific UMTA capital project including assessment of market potential, preliminary design and engineering, estimates of operating income and expenses, capital costs, and negotiations to secure financing, developers and prime tenants.

(3) Land acquisition, relocation, and demolition.

(4) Foundations and substructure improvements for buildings over transit facilities.

(5) Pedestrian connections and access links between mass transportation services and related development.

(6) Other facilities and infrastructure investments needed to induce significant private investment and to improve access between new or existing development and mass transportation facilities.

(b) The eligibility of the costs of utility work associated with private investment will be considered on a case-by-case basis. UMTA will not pay for the costs of utility work that are attributable to non-UMTA project purposes unless—

(1) The utility serves a joint private and transit use; or

(2) The utility lines will be located under a collocated street or sidewalk or within other common elements so that it would benefit the project to provide adequate capacity at the outset of the project.

(c) Front end (expect as noted in paragraph (a)(2) of this section), construction and permanent financing costs related to the design and construction of retail, commercial, housing or other public and private revenue producing facilities are not eligible joint development costs.

(d) Requests for UMTA participation in financing parking elements of joint development projects will be considered on a case-by-case basis.

(e) In developing proposals which contain a parking element, the applicant must demonstrate that—

(1) The provision of parking is strictly required for the success of the project and cannot be determined to adversely impact on the efficiency and effectiveness of mass transit service;

(2) The proposal will increase public transportation patronage;

(3) Trips to the project site cannot be adequately accommodated by use of existing or reasonably upgraded transit service. The local political jurisdiction is encouraged to document steps undertaken to upgrade area transit service, operator efficiency, visibility or accessibility, which when completed, will serve to reduce the public's dependency on private automobiles;

(4) The amount of parking in the proposal conforms to an approved local parking plan;

(5) All other possible sources of financing have been exhausted, including other Federal agencies, revenue bonds, and State and local agencies. UMTA is the source of funding for parking only as a matter of last resort;

(6) In cases where UMTA finances land acquisition or infrastructure improvements in support of a private or otherwise non-UMTA funded parking facility, local transit must participate in any disposition of proceeds arrangements (see § 642.31); and

(7) In cases where UMTA finances the construction of a parking facility, the project sponsor must assure that—

(i) The proportion of the structure and number of spaces financed are necessary to the proper functioning of the mass transportation facility; and

(ii) The net revenues realized from the accrual of parking receipts are to be used to offset transit system operating expenses (consistent with UMTA Circular 9050.1, Application Instructions for Section 5 Operating Assistance Projects).

(f) The applicant must provide all necessary documentation regarding the provision and justification for UMTA participation in projects with parking elements.

§ 642.31 Participation in proceeds derived from UMTA investment.

(a) Each grantee must negotiate a fair and equitable return of the benefits to be generated as a result of the UMTA investment.

(b) Local mass transit must benefit from revenues accruing as a result of UMTA financial participation in a project.

(c) Project sponsors must retain for transit related use proceeds and profits realized in connection with UMTA participation in joint development projects.

(d) Proceeds and profits may include returns generated from, but not limited to, sale or lease of property, mortgage proceeds, or returns stemming from local agency participation in the distribution of project revenues.

(e) Local mass transit's participation in proceeds will reflect the percentage of the UMTA investment in relation to that of other participating public agencies.

(f) If property is sold, the entire proceeds of the sale up to the amount of the combined UMTA and local investment must be applied to finance other existing or proposed capital project elements that would be eligible for assistance under Section 3 of the UMT Act, or the proceeds may be returned to UMTA to reduce the amount of the Urban Initiatives grant. These project elements include traditional transit projects, existing Urban Initiatives projects, or new Urban Initiatives projects. Funds from these proceeds may not be used for local share of such federally assisted projects. Should profits result from such a sale, (that is, any amount above the combined UMTA and local share) those profits must be used for the above purposes and may also be used as the local share for other capital or operating projects. The grantee must obtain UMTA concurrence in the disposition of proceeds.

(g) If property is leased, or if any payments are made to the grantee or the public agency in consideration for the use of the property, the entire proceeds of the lease, as well as the proceeds from local agency participation in the distribution of project revenues, up to the amount of the appraised value of the leased property must be applied to capital project elements eligible for assistance under Section 3 of the UMT Act or the proceeds may be returned to UMTA to reduce the amount of the Urban Initiatives grant. These project elements include traditional transit, projects, existing Urban Initiatives projects or new Urban Initiatives projects. UMTA will approve the appraised value in accordance with the procedures set forth in UMTA Circular 4530.1 "Land Acquisition and Relocation Assistance Manual". Any additional proceeds from the lease beyond the approved appraised value must be used for the above purposes or as the local share for other capital or operating projects. The grantee must obtain UMTA concurrence in the disposition of lease proceeds.

(h) Agreements which transfer title or control of land or facilities acquired as

part of the UMTA project must contain provisions which—

(1) Extend the requirements of the UMTA grant contract;

(2) Ensure that the grantee retains continuing control of the mass transportation project; and

(3) Assures that transit participates in the disposition of proceeds in the manner established in the grant contract.

Subpart C—Criteria for Meeting Policy Objectives

§ 642.41 General.

(a) Applicants for grants to assist in funding projects under the Urban Initiatives Program must demonstrate how the proposed project will meet the objectives of the President's Urban Policy Statement (the President's Policy Objectives are set out in Appendix A to this part).

(b) The criteria that an applicant must follow in meeting the Objectives are set out in this subpart.

§ 642.43 Transit.

(a) Projects must demonstrate a positive impact on transit patronage and quality of service. A project demonstrates a positive transit impact if it—

(1) Improves accessibility and equity of service for elderly, handicapped and minority communities;

(2) Increases system security and attractiveness;

(3) Makes improvements allowing for more efficient use and operation of service and facilities; or

(4) Increases public transportation access to employment, social, educational, health, recreational, and residential areas.

(b) The applicant must provide both general and specific information as appropriate on the project's transit impact including such factors as transit patronage, operational efficiency, increased service, projected changes in revenues/deficit, accessibility and security.

(c) Each proposal must include a description of any related changes in transit operations which, though not part of a specific project, will increase public access and facilitate circulation (i.e., headways, increased service, and special demonstrations).

(d) The project sponsor, if other than the local transit provider, must provide documentation that the transit provider participated in the development of the proposal, and identify the proposal's relative priority within the Transportation Improvement Program.

§ 642.45 Socio-economic: Employment.

(a) For projects that create new permanent jobs, each applicant shall set a goal of reserving 10–15 percent of the jobs for long term unemployed persons eligible to obtain assistance under the Comprehensive Employment and Training Act (CETA) (29 U.S.C. 801 et seq.).

(b) Each applicant for a project that creates new permanent jobs shall certify the established goal as a part of project development.

(c) Each applicant for a project that creates new permanent jobs shall develop an employment plan that documents how employment opportunities will be made available.

(d) The employment plan must be submitted prior to grant award or before receipt of construction funds.

(e) The employment plan must include the following elements:

(1) The total number, title, and description of jobs to be created.

(2) The goals for the total number, titles and timing of jobs to be made available to the long term unemployed.

(3) The skill requirements for the jobs that are being made available to the long term unemployed.

(4) A description of the activities which are to be undertaken in order to link new employment opportunities, training programs and assistance for CETA eligible individuals (The Linkage Program). This description must include:

(i) The name of the CETA prime sponsor, or other employment and training provider, who is assisting the applicant in developing and implementing the employment plan, including the name of a responsible person, with an address and telephone number;

(ii) An identification of the employment and training programs to be applied in preparing or referring qualified persons to available jobs with an indication of how they will be used and any special conditions required by the employer (i.e., number of referrals per vacancy to be filled, timing of referrals);

(iii) An identification of the roles and responsibilities of the participants in the employment plan (i.e., UMTA applicant, UMTA beneficiary, if different from applicant; employment and training provider; and local agency, if not the applicant);

(iv) The steps to be taken and the schedule for implementing the plan; and

(v) The signatures of persons or agencies party to the employment plan, (i.e. UMTA beneficiary, if different from the applicant; employment and training provider; and the economic development agency).

(f) After UMTA approval of the employment plan, each applicant shall provide UMTA with comprehensive quarterly status reports on the plan's implementation.

§ 642.47 Socio-Economic: Involvement of Neighborhood Organizations and Voluntary Associations.

(a) Each project sponsor shall document the degree to which the project considers established priority needs of the local community, and contributes to local plans.

(b) Each project should have active citizen participation at the planning and development stages. This participation can be satisfied by involvement of neighborhood organizations and voluntary associations.

§ 642.49 Development: Urban Economic Development/Private Sector Investment.

(a) Each project must enhance urban economic development and/or incorporate or leverage private sector investment.

(b) Each applicant shall provide documentation concerning how public/private financial participation and investment ratios are determined.

§ 642.51 Development: Business Opportunities for Small and Minority Businesses.

Each applicant shall indicate the extent to which the project will provide business opportunities for female owned, small, and minority businesses during the construction phase, or the extent to which the project generates opportunities for female, small or minority businesses to participate in spin-off development and business formation generated by the Federal investment.

§ 642.53 Development: Enhancement of the immediate physical environment of the project.

(a) Each project must enhance the immediate physical environment of the project.

(b) Each applicant shall document the extent to which the project is part of larger development plans or projects.

(c) Each applicant shall identify—

(1) Potential secondary development including private as well as public investment;

(2) A timetable for development;

(3) Any interface between the project and future development; and

(4) Changes in the nature of transportation services, accessibility and detailed impacts of broader development plans, parking regulations, auto restrictions, and impacts on air and noise pollution.

(d) Each applicant shall provide specific information as to how and to what degree private investors will financially participate in the project directly, or in related redevelopment in the project area.

(e) Each applicant shall provide information concerning the status of securing a developer's commitment.

(f) Each applicant shall submit pro formas and projected cash flow statements identical to those submitted to financial institutions to secure financing in those cases in which financing has been secured. If financing has not been secured, the applicant shall submit a preliminary pro forma and cash flow statement.

§ 642.55 Development: Coordination.

Each applicant shall submit—

(a) A discussion of the effect of investment on the economic viability of the central city;

(b) A discussion of the consistency of the project with local and State (if appropriate) plans including land use, economic development, employment, and housing;

(c) A discussion of the impacts of the project on central city revenues, accounting for anticipated changes in property, sales and income taxes; and

(d) A discussion of additional public expenditures (if any) which the transit provider and the central city will have to bear as a result of the proposed project and its corresponding development shifts.

Subpart D—Special Consideration

§ 642.61 Establishing priorities.

The extent to which projects meet the criteria set out in Subpart C of this part determines their priority within the Urban Initiatives Program. However, all else being equal, special considerations will be given to the following:

(a) Projects with smaller dollar value which provide strong potential for achieving the programs' objectives and those which can be fully funded within the budgetary constraints of the program. Emphasis is placed on funding smaller projects of less than $5 million Federal share, and on ensuring a representative geographic balance in selecting projects.

(b) Projects which are located in those cities or sections of cities which have been determined to be distressed. Rules and regulations governing the basis for determining a city's economic status have been published by a number of Federal agencies including the Department of Housing and Urban Development (HUD), the Economic Development Agency (EDA), or Department of Interior. Applicants shall state if the project is in a distressed city; identify the distress index utilized; provide the city's (area's) rank standing; and state how the project contributes to eliminating or alleviating the area's distress status.

(c) Projects which target UMTA funds cooperatively with HUD, EDA, and other Federal agency resources to maximize the economic development potential of Federal investments. Where appropriate, Urban Initiatives projects should be developed in maximum cooperation with projects planned or committed to by other Federal agencies. The application must include a discussion of the status and anticipated timing of any commitments by other Federal agencies.

(d) Projects which contain evidence of significant state financial participation. This includes, but is not limited to, long term lease arrangements for use of facilities; independent financing of integral components of the project, or separate but supporting components; engineering, design and construction of public works improvements in support of the project; commitment of other Federal funds within the control of the State, i.e. interstate substitution, or Federal Aid Urban System funds, to the project; contributed services; and participation in assisting the applicant to meet local share requirements.

(e) Projects which represent a special or unique opportunity to meet local priority needs and which are consistent with the overall objectives of the President's Urban Policy. Applicants should provide information about features of their proposal, program, neighborhood or community which are considered sufficiently special or unique to justify special consideration.

(f) Projects that meet UMTA's Employment Initiatives goal. In this regard, it is recognized by UMTA that not all projects will result in new permanent job opportunities, and that certain types of projects by their nature, will generate substantially less employment opportunities than others.

Subpart E—Application Procedures

§ 642.71 Preapplication procedures.

(a) In order to limit the requirements all applicants must address during the initial review process, each applicant shall submit a preapplication in lieu of a full Section 3 discretionary capital grant application package. The preapplication must include the following information:

(1) Standard Form 424.

(2) A brief description of the total project, including a discussion of prospective funding sources.

(3) A separate discussion and budget for the elements to be funded by UMTA stressing the proposal's physical and functional relationship to the project.

(4) Documentation required to support eligibility (as discussed in Subpart B of this part).

(5) Data demonstrating the degree to which the project meets the selection criteria (as discussed in Subpart C of this part).

(6) Employment Initiatives requirements (as discussed in § 642.45).

(7) Data demonstrating how the project addresses the Special Consideration Criteria (as discussed in Subpart D of this part).

(8) Discussion of the project applicant's compliance with regulations dealing with Historic Preservation/ Environmental Protection (UMTA Circular 5620.1).

(9) Status of attempts to utilize FHWA Federal Aid Urban Systems (FAUS) funds as well as resources available from HUD, EDA and other Federal agencies to finance components of the project.

(10) Financial pro formas establishing the value of the private investment, and the need for Federal participation are to be submitted for new private sector development proposed as part of the project.

(b) All forms, and the format for submitting data are available from the UMTA regional offices.

(c) In order to be eligible for consideration during the two selection periods, preapplication data must be submitted to the UMTA Regional Office, prior to September 15 for the December 31 announcement and prior to February 15 for the May 31 announcement.

(d) Letters of No Prejudice will not be issued during the preapplication phase of the selection process.

§ 642.73 Application procedures.

(a) Each applicant shall meet all standard Section 3 discretionary capital grant requirements before a grant can be awarded.

(b) Each applicant shall—

(1) Comply with the following regarding Civil Rights:

(i) UMTA Circular 1160.1 "Guidelines for Title VI Information Specific to UMTA Program", dated December 30, 1977.

(ii) UMTA Circular 1155.1 "UMTA Equal Employment Opportunity Policy and Requirements for Grant Recipients", dated December 30, 1977.

(iii) 49 CFR Part 23, "Participation by Minority Business Enterprise in Department of Transportation Programs".

(iv) 49 CFR Part 27, "Nondiscrimination on the basis of handicap in Federally-Assisted Programs and Activities Receiving or Benefitting from Federal Financial Assistance".

(2) Comply with the provisions of 23 CFR Part 450, Subpart C requiring that proposed projects be incorporated into the Annual Element of the local Transportation Improvement Program (TIP) in order to be considered eligible for funding;

(3) Possess adequate local public and private funds to assure implementation. Anticipated local public and private commitment must be identified in the application;

(4) Develop an Employment Plan;

(5) Sign a labor protection agreement meeting the provision of Section 13(c) of the Urban Mass Transportation Act;

(6) Secure OMB Circular A-95 clearance, addressing comments if appropriate; and

(7) Provide sufficient data to satisfy UMTA environmental impact and historic preservation requirements.

(c) The Section 3 application with supporting requirements must be completed within 90 days after fund reservation. If it is determined that an applicant cannot meet program requirements by the end of the fiscal year for which the funds are reserved, the reservation will be withdrawn, and funds programed for another project.

§ 642.75 Post Grant Activities.

Subsequent to grant award, grantees shall submit quarterly progress reports as to the status of project implementation, and the steps being taken to ensure that the project, when completed, achieves the objectives of the President's Urban Policy.

Appendix A—Policy Objectives

The objectives of the President's Urban Policy Statement are as follows:

1. Encourage and support efforts to improve local planning and management capacity, and the effectiveness of existing Federal programs by coordinating these programs, simplifying planning requirements, reorienting resources, and reducing paperwork.
2. Encourage States to become partners in assisting urban areas.
3. Stimulate greater involvement by neighborhood organizations and voluntary associations.
4. Provide fiscal relief to the most financially hardpressed communities.
5. Provide strong incentives to attract increased private investment in distressed communities.
6. Provide increased employment opportunities, primarily in the private sector, for the long-term unemployed and disadvantaged in urban areas.
7. Increase access to opportunities for those disadvantaged by a history of discrimination.
8. Expand and improve social and health services to disadvantaged people in cities, counties, and other communities.
9. Improve the urban physical environment and the cultural and aesthetic aspects of urban life.

Appendix B—Interagency Agreement Between the Urban Mass Transportation Administration of the Department of Transportation and the Employment and Training Administration of the Department of Labor

I. Purpose

In an effort to effectively implement the Interagency Coordinating Council's Employment Initiatives, this agreement specifies the process by which the Employment and Training Administration (ETA) of the Department of Labor (DOL) and the Urban Mass Transportation Administration (UMTA) of the Department of Transportation (DOT) will coordinate their activities to ensure that the maximum feasible number of jobs created by UMTA's Urban Initiatives Program go to the long-term unemployed. For purposes of this agreement, "long-term unemployed" is defined as persons who are eligible to obtain assistance under the Comprehensive Employment and Training Act (CETA).

II. Scope

In order to accomplish the purpose of this agreement, the provisions set forth herein relate to: (1) Specific employment goals to be established by UMTA with respect to the long term unemployed; (2) operational procedures to be used by UMTA and ETA in achieving these employment goals; (3) reporting and monitoring; and (4) provision for technical assistance and training to facilitate placing long term unemployed in permanent jobs created by federally assisted mass transportation projects.

III. Employment and Goals

Consistent with the President's national urban policy to stimulate private investments as well as increase employment opportunities in urban areas, the Urban Mass Transportation Administration, in consultation with the Employment and Training Administration, agrees to the following provisions:

(1) As a fiscal 1980 goal, 10–15% of the permanent jobs created by its Urban Initiatives Program will be filled by the long term unemployed.

(2) By no later than September 1 of each year, in conjunction with the Employment and Training Administration, UMTA will review the current annual employment goal and experience, and establish its goal for the next fiscal year no later than September 20.

IV. Operational Procedures

A. UMTA

To achieve the employment goal that has been established for FY 1980 as well as those of succeeding years, UMTA will institute the following operational procedures relative to the Urban Initiatives Program:

1. *Provide ETA with List of Employment Initiatives Coordinators*—UMTA will provide each ETA Regional Administrator with the names, addresses and telephone numbers of the UMTA Employment Initiatives Coordinators in the respective region.

2. *Certification of Intent to Establish Project Employment Goals*—Applicants seeking assistance under UMTA's Urban Initiatives Program will, as a criterion of participation, be expected to make a certification at the preapplication stage (project data sheet submission) that if new, permanent jobs result from such support, 10–15% will be earmarked for CETA eligible persons.

UMTA will review the preapplication data to determine if new permanent jobs will be created as a result of the project. UMTA's Regional Employment Initiatives Coordinator will also notify the relevant ETA Regional Employment Initiatives Coordinator of the project and its estimated employment impacts. The ETA representative will be invited to provide comments as to the viability of projects' employment generating possibilities and their potential impact on local unemployment. ETA comments, when provided, will be incorporated into the preapplication data to be considered during project review and evaluation. UMTA will review the applicant's certification in addition to other project support data in making its determination as to which projects to advance to the final application stage.

3. *Initiate Consultation*—Upon notifying an applicant to prepare a final application, the applicant working in conjunction with the UMTA Employment Initiative Coordinator, will develop an employment plan and initiate formal consultation with a CETA prime sponsor or other employment/training provider. UMTA will advise its applicant to consult first with the CETA prime sponsor. This consultation is

expected to continue as required, throughout the application, project funding, and implementation stages.

4. *Employment Plan*—Applicants from whom UMTA elects to solicit final applications for Urban Initiatives assistance will be required to prepare an employment plan when new permanent jobs will be created. If an employment plan is not appropriate, an explanation of why it is not must be submitted with the application. The employment plan shall include the following elements:

a. The total number and titles (and/or description) of jobs to be created by the project.

b. The goals for the total number, specific titles, and timing of jobs to be made available to CETA eligible persons.

c. The skill requirements for the jobs that are being made available to CETA eligible persons.

d. The linkage process:

i. Name of the CETA prime sponsor or other employment/training provider who is assisting the applicant in developing and implementing this employment plan. (Including name of responsible person, address, and telephone number.)

ii. Identification of any employment and training programs to be applied to preparing and/or referring qualified persons to available jobs. Indication of how they will be used and any special conditions required by the employer (e.g., number of referrals per vacancy to be filled, timing of referrals).

iii. Identification of the roles and responsibilities of the participants in the employment plan (i.e., UMTA applicant; UMTA beneficiary, if different from applicant; CETA prime sponsor or other employment and training provider; and local transit agency, if not the applicant).

iv. Indication of the procedure and schedule for implementing the employment plan.

v. Providing the signatures of persons or agency representatives party to the employment plan (i.e., UMTA beneficiary, if different from applicant; CETA prime sponsor or other employment and training provider; and local transit agency, if not the applicant).

5. *Contingent Project Approvals*—If the applicant certifies that the project will conform to program employment goals, but is unable to complete an employment plan by the time of scheduled grant award, UMTA may elect to approve the project contingent upon subsequent receipt of a satisfactory plan. Contract language will be included however, which would withhold construction funds until an employment plan acceptable to UMTA is provided.

UMTA may elect to award architectural and engineering funds in order to assess feasibility of a project prior to concurring in an employment plan: *Provided,* The project sponsor certifies that new permanent jobs resulting from subsequent Urban Initiatives construction funding will be consistent with the program employment goals.

6. *Notification*—Upon approval of a project which includes or will include an employment plan, UMTA in conjunction with its grantee, will notify the CETA prime sponsor or other employment/training provider signatory to the employment plan, as well as the ETA Employment Initiatives Coordinator.

7. *Certification of Eligibility*—UMTA and its grantee will provide the information necessary to assist the CETA prime sponsors and the ETA delivery system in certifying the eligibility of persons who may be eligible for CETA assistance but are not CETA participants when such persons are to fill new and permanent jobs resulting from UMTA's Urban Initiatives projects.

8. *Identifying Alternate Employment/Training Provider*—When the local prime sponsor is unable to assist UMTA's staff and applicant in developing and implementing an employment plan, the UMTA staff may call upon the ETA Employment Initiatives Coordinator to discuss an alternate employment/training provider who might provide the necessary services.

B. ETA

The Employment and Training Administration recognizes that linking its employment and training programs with UMTA's Urban Initiatives Program can result in increased permanent employment opportunities for CETA eligible persons and agrees to facilitate this linkage by taking the lead in coordination of several activities.

1. *Provide UMTA with List of Prime Sponsors*—The Employment and Training Administration will provide each UMTA Regional Administrator with an updated list of CETA prime sponsor directors and regional ETA Employment Initiatives Coordinators along with their telephone numbers and addresses.

2. *Staff*—ETA will require each Regional Administrator and prime sponsor to identify an Employment Initiatives Coordinator to assume responsibility for coordinating activities related to the Employment Initiatives. To the extent possible, personnel assigned these functions at the Federal and local levels should be the same staff that has been assigned to the Private Sector Initiatives Program.

3. *Responsibilities of Employment Initiatives Coordinators*—The designated Employment Initiatives Coordinators (EIC) assigned to coordinate activities related to the Employment Initiatives in each of the regions by ETA and at the local level by prime sponsors will assist UMTA's staff and applicants in developing and implementing the employment plan delineated above. The Employment Initiatives Coordinators will also be responsible, at their respective levels, for consulting with the UMTA Employment Initiatives Coordinators to determine the status of a project so that they can initiate required CETA activities (e.g. employment, training, recruiting, screening, referral and counseling services) in a timely fashion, to place CETA eligible persons in permanent jobs created by UMTA's Urban Initiatives Program.

4. *Identifying Alternate Employment/Training Provider*—When the local prime sponsor is unable to assist UMTA's staff and applicants in developing and implementing an employment plan, ETA's Employment Initiatives Coordinator will assist in identifying an alternate employment/provider who might provide the necessary services.

5. *Assist UMTA in Describing CETA Programs and Participants*—Consistent with available funds, ETA will assist UMTA in involving its applicants in employment/training programs by jointly developing and publishing information packets geared to the private sector, focusing on the availability and benefits of employment/training resources, including various tax credits.

6. *Certification of Eligibility*—Prime sponsors and the ETA delivery system, working with UMTA and its funds recipients, will certify the eligibility of persons who fill new and permanent jobs resulting from UMTA's Urban Initiatives projects.

V. Reporting/Monitoring

In order to keep the Interagency Coordinating Council (IACC), the Office of Management and Budget (OMB), and each of the participating agencies informed of the progress in achieving the goals of this agreement, UMTA and ETA agree to the following reporting/monitoring provisions:

A. Effective April 1, 1980, and on a semi-annual basis thereafter (October 1 and April 1), UMTA will submit reports to OMB. These reports shall include the

total number of projects funded for the six-month and annual periods, the federal dollars committed, the number of permanent jobs anticipated, the total number of actual jobs created, and the number/percentage of jobs to be filled by CETA eligible persons.

B. Effective April 1, 1980, and on a semi-annual basis thereafter (October 1 and April 1), ETA will submit reports to OMB. These reports shall include the total number of employment plans that prime sponsors and the ETA delivery system have entered into with UMTA and is grantees, the total number of jobs projected for the long term unemployed, and the total number of persons actually placed in jobs created by UMTA's Urban Initiatives Program.

VI. Technical Assistance

To facilitate and promote the placement of CETA eligible persons in permanent jobs resulting from UMTA assistance, both ETA and UMTA agree to provide the following technical assistance:

A. Whenever necessary, the agencies will brief each other's staff on programmatic and/or procedural changes affecting the implementation of the Employment Initiatives.

B. Jointly develop and publish promotional information on the placement of CETA eligible persons in permanent jobs created by UMTA investments.

C. As necessary, jointly conduct interagency workshops/seminars related to the Employment Initiatives, assessing experiences and focusing on techniques and strategies to be used to more effectively implement the Employment Initiatives.

VII. Duration

This agreement shall remain in effect through November 1, 1982. ETA and UMTA will, however, jointly review the provisions herein on an annual basis (prior to September 30) in order to make any necessary modifications. The operational procedures that are being utilized by UMTA and ETA to achieve UMTA's employment goal will be given particular attention during the annual review.

Appendix C—Timing and Degree of Public and Private Commitments for Joint Development Projects:

Joint development project negotiations typically progress through the following stages:

Stage 1. Executing letters of intent between local public agencies, developers, and financial institutions.

Stage 2. Executing development contracts, financing agreements and securing building permits.

Stage 3. Executing construction contracts.

UMTA's commitment to fund the project will depend on the stage of local negotiations. If the applicant has not progressed to Stage 2, UMTA would be reluctant to make a commitment to participate in the project. This will not preclude UMTA from making grants for preliminary engineering, design, appraisals and other analyses, which will allow costs to be more accurately defined. At Stage 1, UMTA may award a grant, or set aside funds for the project pending completion of final negotiations and grant approval requirements. At Stage 2 and/or 3, the local commitment would be sufficiently secure to allow UMTA to award a grant. However, the timing and degree of mutual commitments will be adjusted to reflect the needs of particular situations.

Appendix D—Project Application Review and Selection Process:

A.

The Urban Mass Transportation Administration will announce grant fund reservations for Urban Initiatives projects bi-annually based on preapplications received and evaluated. The first announcement will be made no later than December 31, and the second announcement no later than May 31. Additional announcements may be made if selected projects prove unable to meet Section 3 program requirements or additional program funds become available. Fund reservations will be made based upon a preapplication submission.

B. Preapplication Review

(1) The project sponsor will be sent a letter from the UMTA Regional Office within the first 15 days of the review period acknowledging receipt of the proposal for processing.

(2) All preapplications will be screened for completeness by the Regional Office before being officially accepted for review.

(a) If the preapplication is incomplete, the UMTA Regional Office will notify the project sponsor of the items needed to complete the preapplication. Consideration of the proposal will, however, be deferred until the next review period.

(b) Complete preapplications will be assessed to establish the proposal's eligibility for funding under the Urban Initiatives Program. The Regional Office will notify applicants if the project is eligible for further consideration within 30 days of the beginning of the review period.

(3) All eligible projects will be included in the Urban Initiatives national competition.

C. Selection Process/Fund Reservation

UMTA will make announcement of approvals or reservations no later than December 31 and May 31 respectively.

UMTA will determine which proposals best meet the objectives of the Urban Initiatives Program. Because funds are limited not all eligible projects will be funded.

Applicants will be notified of their proposal's status with the announcements of reservations and approvals:

(1) If a proposal is rejected, the preapplication will be returned with the deficiencies noted.

(2) If a proposal is deferred for lack of sufficient supporting data, the applicant will be advised to work with the Regional Office to provide the necessary data. These proposals will be reconsidered in the following review period if the applicant satisfies all deficiencies noted.

(3) Should lack of sufficient Urban Initiatives funds be cited as the reason for deferral, the proposal will automatically be reconsidered in one additional round of review.

(4) If a proposal is accepted, and a fund reservation made, the applicant will be notified to work with the Regional Office to develop a final application.

UMTA will announce a reservation of funds for those proposals which have been selected as part of the Urban Initiatives Program national competition. The action will set aside a specified sum of Urban Initiatives funds to be made available to the project sponsor upon satisfactorily fulfilling the requirements for a Section 3 discretionary capital grant.

If a project application cannot satisfactorily meet Section 3 program requirements by September 30 of the fiscal year in which the reservation is made, funds will be withdrawn. Projects for which funds have been withdrawn are automatically reconsidered as part of the national competition in the next two review periods. If it is determined that significant program requirements are not or cannot be met within this time, the application will be withdrawn and returned to the project sponsor.

D. Grant Award

UMTA will make grants no later than the last day of the fiscal year. The applicant will be notified in writing of grant award and will receive

appropriate contract documents from the UMTA Regional Office.

E. UMTA Regional Offices

Region I: Donald Sullivan, Acting Regional Administrator, Transportation Systems Center, Kendall Square, 55 Broadway, Cambridge, MA 02142, Tel: (617) 494–2055.
Region II: Hiram Walker, Regional Administrator, Suite 14–130, 26 Federal Plaza, New York, NY 10007, Tel: (212) 264–8162.
Region III: Peter N. Stowell, Regional Administrator, Suite 1010, 434 Walnut Street, Philadelphia, PA 19106, Tel: (215) 597–8098.
Region IV: Carl Richardson, Acting Regional Administrator, Suite 400, 1720 Peachtree Road, N.W., Atlanta, GA 30309, Tel: (404) 881–3948.
Region V: Joel Ettinger, Regional Administrator, Suite 1740, 300 South Wacker Drive, Chicago, IL 60606, Tel: (312) 353–2789.
Region VI: Glen Ford, Regional Administrator, Suite 9A32, 819 Taylor Street, Fort Worth, TX 76102, Tel: (817) 334–3787.
Region VII: Lee Waddleton, Regional Administrator, Suite 303, 6301 Rock Hill Road, Kansas City, MO 64131, Tel: (816) 926–5053.
Region VIII: Lou Mraz, Regional Administrator, Suite 1822, Prudential Plaza, 1050 17th Street, Denver, CO 80265, Tel: (303) 837–3242.
Region IX: Dee Jacobs, Regional Administrator, Suite 620, Two Embarcadero Center, San Francisco, CA 94111, Tel: (415) 556–2884.
Region X: Aubrey Davis, Regional Administrator, Suite 3142, Federal Building, 915 Second Avenue, Seattle, WA 98174, Tel: (206) 442–4210.

(49 U.S.C. 1602(a)(1)(D) and 1603(c)(1)(B); 49 CFR 1.51)

Dated: January 14, 1981.

Theodore C. Lutz,
Administrator.

[FR Doc. 81–2295 Filed 1–16–81; 8:45 am]
BILLING CODE 4910–57–M

federal register

Monday
January 19, 1981

Part XXXIX

Department of Transportation

Urban Mass Transportation Administration

Technology Introduction Program; Proposed Rulemaking

DEPARTMENT OF TRANSPORTATION

Urban Mass Transportation Administration

49 CFR Part 641

[Docket No. 81-A]

Technology Introduction Program

AGENCY: Urban Mass Transportation Administration, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Urban Mass Transportation Administration (UMTA) is proposing regulations governing the applications for and the administration of its Technology Introduction Program. This program will provide grants or loans to assist States and local public bodies and agencies to finance the introduction of both innovative and improved products into public transportation service.

DATE: Comments must be received on or before March 20, 1981. All comments received before the expiration of the comment period will be considered before final action is taken on this proposal. Comments received after the expiration of the comment period will be considered to the extent feasible.

ADDRESS: Comments must be submitted to UMTA Docket No. 81-A, 400 7th Street, SW., Washington, D.C. 20590. All comments and suggestions received will be available for examination in room 9320 at the above address between 8:30 a.m. and 5:00 p.m., Monday through Friday. Receipt of comments will be acknowledged by UMTA if a self-addressed, stamped postcard is included with each comment.

FOR FURTHER INFORMATION CONTACT: Robert Haught, Office of Safety and Product Qualification, (202) 426-9545.

SUPPLEMENTARY INFORMATION: UMTA has determined that this document does not contain a significant proposal according to the criteria established by the Department of Transportation's policies and procedures issued pursuant to E.O. 12044. The anticipated economic impact is so minimal as not to require the preparation of a full regulatory evaluation at this time. Based on comments received in response to this rulemaking, UMTA will review the need for a regulatory evaluation in conjunction with the preparation of a final rule.

UMTA believes that this document may have an impact on small private mass transportation companies and other small businesses. UMTA, therefore, requests comment on this issue.

The provisions of OMB Circular A-95 apply to this Notice of Proposed Rulemaking. It covers the following program in the Catalog of Federal Domestic Assistance (CFDA), 20.500—Urban Mass Transportation Capital Grants.

Background

Section 3(a)(1)(C) of the Urban Mass Transportation Act of 1964, as amended, (49 U.S.C. 1602 (a)(1)(C)), (UMT Act) authorizes the Secretary of the Department of Transportation, "to make grants or loans * * * to assist States and local public bodies and agencies thereof in financing * * * the introduction into public transportation service of new technology in the form of innovative and improved products." The purpose of the proposed regulations is to prescribe the policies and procedures for administering this grant program.

UMTA's specific objective in financing new technology is to encourage transit suppliers to produce and transit operators to adopt innovations and improved products that will:

(a) Provide societal benefits such as energy conservation, environmental protection, or central city revitalization;

(b) Provide consumer benefits that make urban transit more attractive to potential transit users and to transit users, including the elderly and the handicapped;

(c) Reduce transportation life cycle costs; and/or

(d) Improve the competitive position of the domestic transit suppliers' industry.

To meet this objective, UMTA will provide financial assistance to grantees to purchase limited production quantities of new products. UMTA has determined that there is often a gap between the end of the research and development process of a product, which merely proves technical and engineering feasibility, and transit industry acceptance of that product. UMTA hopes to bridge this gap by providing financial assistance to purchase products. The successful performance in revenue service of new products should enhance the grantees' confidence in the new products and provide a sound and valid empirical basis for cost effectiveness tradeoffs in transit equipment selection decisions. Extraordinary project costs, which are not eligible for reimbursement under UMTA capital grant funds, may be funded using Section 6 funds.

UMTA encourages potential grantees to seek financial assistance under the Technology Introduction Program for improved facilities, equipment, techniques, and methods in the provision of mass transportation service. UMTA will consider applications for funding under this program for any promising innovations or product improvement. The following innovations and improved products have been developed in the past or are being developed with UMTA funds and would be considered to qualify for funding under the Technology Introduction Program. Position within the list does not indicate priority.

Product Improvements

1. Noise Kit for Buses.
2. Paratransit Vehicles.
3. Escalator Modification Kits.
4. Ring-Damped Wheels.
5. New Engines for Buses.
6. New Brakes for Buses.
7. Multiplexing.
8. Modular Air Conditioning.
9. Improved Doors.
10. Off-Vehicle Fare Collection.
11. Wheelchair Lifts.
12. Snow Removal Equipment.
13. Track Geometry Measurement System.
14. Automated Transit Information System (for telephone inquires).
15. Screw-Type Elevators/other unconventional Elevators.
16. Gap-Fillers between Rail Vehicle and Loading Platform.

Major Innovations.

1. Tunnel Construction Machines.
2. Energy Storage Flywheels.
3. Steerable Trucks.
4. AC Propulsion.
5. Static Inverter.

Project Schedule

The project selection and approval process for the Technology Introduction Program shall consist of eight phases: Proposal solicitation; proposal submission; proposal evaluation and ranking; grant budget planning; notification to potential grantees; grant application; grant approval; and grant management.

The schedule which UMTA proposes to follow in administering the Technology Introduction Program is:

Phase	Month/Calendar Year
Proposal Solicitation	October/X.
Proposal Submission	December/X.
Proposal Evaluation	February/X+1.
Grant Budget Planning (for two years beyond year X).	March/X+1.
Notification to Potential Grantees	October/X+1.
Grant Application	During X+1.
Grant Approval	X+1.

Until the proposed procedures and schedule become final, however, UMTA will consider grants for new technology deployment on a case-by-case basis using the intent of the proposed regulation as guidance. Potential grantees for Fiscal Year 1981 funds are requested to submit their proposals, as

soon as possible, in accordance with the procedures described in § 641.503. The December 1 deadline in § 641.503 for proposal submission will not be applicable until the rule becomes final.

In consideration of the foregoing it is proposed that a new Part 641 be added to Title 49 of the Code of Federal Regulations to read:

PART 641—TECHNOLOGY INTRODUCTION PROGRAM

Subpart A—Purpose and Definitions

Sec.

641.101 Purpose.
641.103 Definitions.

Subpart B—General Requirements

641.301 Eligible project expenditures.
641.303 Test and acceptance.
641.305 Recoupment of extraordinary costs.
641.307 Recoupment provisions.
641.309 Patents, inventions and rights in data.
641.311 Special contract clauses.
641.313 Civil rights act title VI responsibilities.
641.315 Equal employment opportunity.
641.317 Minority business enterprise obligation.
641.319 Compliance with regulations concerning handicapped individuals.
641.321 Environmental requirements.
641.323 Labor protection requirements.
641.325 Local share.
641.327 Public hearing.
641.329 Charter bus/school bus.
641.331 Planning.
641.333 Capability.

Subpart C—Project Selection, Approval and Management

641.501 Proposal solicitation.
641.503 Proposal submission..
641.505 Private mass transportation companies.
641.507 Proposal evaluation and ranking.
641.509 Criteria to be used for proposal evaluation.
641.511 Notification to potential grantees.
641.513 Grant application and approval.
641.515 Grant management.
641.517 Project evaluation and information dissemination.

Authority: Sec. 3(a)(1)(C) of the Urban Mass Transportation Act of 1964, as amended, 49 U.S.C. 1602(a)(1)(C); and 49 CFR 1.51(a).

Subpart A—Purpose and Definitions

§ 641.101 Purpose.

This part prescribes the Urban Mass Transportation Administration's policies and procedures for administering the Technology Introduction Program, which provides grants for projects using innovative and improved products in the management and operation of public transportation systems.

§ 641.103 Definitions.

(a) Capital grants. UMTA capital assistance projects are referred to in this regulation as capital grants, whether the assistance instrument is a grant, cooperative agreement or loan.

(b) Grantee refers to the recipient of an UMTA grant, cooperative agreement or loan intended to assist with new product introduction, whether funded solely from Section 3(a)(1)(C) or jointly from 3(a)(1)(C) and Section 6.

(c) Product improvements are those incremental new developments and modifications of existing technology which are incorporated into standard or commercially available transportation equipment, software or services, as a normal part of product upgrading, reflecting purchaser demands or advantages which accrue to suppliers or users. Product improvements have minor effects on other components or subsystems within the assembled systems.

(d) Major innovations are new technologies, service improvements or software which are significantly different from existing products, components or subsystems in operational service. Major innovations affect or alter the operational characteristics of other components or subsystems within the assembled system.

(e) Section 3(a)(1)(C) grants are capital assistance projects which, in addition to meeting all the usual requirements, terms, and conditions for assistance under Section 3 of the Urban Mass Transportation Act, are subject to technical control and direction by the Office of Technology Development and Deployment.

(f) Extraordinary project costs are costs, incurred by the grantee or UMTA, which UMTA determines to be necessary to the successful conduct of a technology introduction project. Extraordinary project costs are not normally eligible for reimbursement under the terms of an UMTA capital grant because of policy or administrative restrictions. Extraordinary project costs, when deemed appropriate by UMTA, will be funded from Section 6 money.

(g) UMT Act. The Urban Mass Transportation Act of 1964, as amended, 49 U.S.C. 1601 *et seq.*

Subpart B—General Requirements

§ 641.301 Eligible product expenditures.

(a) Discretionary capital grant assistance under the 3(a)(1)(C) program may be used for improved facilities, equipment, techniques, and methods in the provision of mass transportation service.

(b) Funding for this program will be used for appropriate technology introduction only when:

(1) The technology has reached a state suitable, per paragraph 641.303, for introduction or application in providing public transportation service;

(2) Potential benefits to the grantee have been identified; and

(3) The grantee has demonstrated that a public agency has agreed to assume the local share and attendant risks associated with the introduction of new technology.

§ 641.303 Tests and acceptance.

(a) Technology introduction for either product improvements or major innovations must meet the following tests in order to be funded as part of an UMTA capital assistance project:

(1) To be acceptable for 3(a)(1)(C) grants, new products must have successfully completed engineering and prototype testing for each component (subsystem) and for the assembled product (system). Required testing is limited to those factors which are likely to be affected by these improvements.

(2) All such improvements must have been successfully tested in their operational environment using at least prototypes on a limited scale.

(b) In addition to those requirements in paragraph (a) of this section, a field demonstration must be conducted for major innovations to establish the utility, economic feasibility, and, where applicable, the public acceptance of the product.

(c) Grantees may mandate certain tests as a condition of acceptance of the product. The cost of testing may be reflected in both the grantee's grant application and grant proposal.

(d) Grantees are responsible for assuring UMTA that tests under paragraph (a) and (b) of this section have been conducted. As a basic requirement for projects selected for Section 3(a)(1)(C) funding assistance, grantees must assure UMTA that manufacturers have conducted adequate engineering and pre-production tests of subsystems and of the fully assembled systems and will demonstrate/document this to purchasers. UMTA reserves the right to concur with any test plan prior to approval of the Section 3(a)(1)(C) application.

(e) Where the national importance of the innovation warrants, UMTA may decide that capital assistance funds may be made available to purchase facilities and equipment for the field trials and limited operational tests indicated in paragraphs (a)(2) and (b) of this section.

Facilities and equipment purchased under this clause must still meet those requirements indicated in paragraph (a)(1) of this section.

§ 641.305 Recoupment of extraordinary costs.

In those instances where the Government has contributed financial assistance for the research and development of new technology, UMTA will determine whether a special competitive advantage in the private commercial or international market is likely to accrue to the supplier of a newly introduced product or technology assisted under this program. If so, UMTA may, in its discretion, recommend that the grant document contain special terms and conditions by means of which extraordinary project costs to UMTA or the grantee may be recovered, in whole or in a part, through reimbursement by the supplier from profits derived from future sales revenues (e.g., prorated on the basis of a fixed amount per unit sold). The following considerations will be reflected in UMTA's administration of this policy:

(a) Royalties will not be required unless the commercial product developed under the contract is profitably sold.

(b) Royalties will cease when the Federal Government's investment in the development is reimbursed.

(c) Royalties will not be so high as to price the product out of the market.

§ 641.307 Recoupment provisions.

If UMTA determines that the grantee is likely to bear a substantial share of extraordinary project costs, any recoupment from the supplier of such costs, pursuant to § 641.305 of this part, may be deemed to reduce the net project cost of the capital grant for product introduction. If, however, extraordinary project costs are expected to be borne entirely by the Government, the terms of the supplier's third-party contract may require that a pro-rated amount of future revenues derived from commercial sales of the new product may be reimbursed directly to UMTA, not to exceed the initial level of Government financial participation.

§ 641.309 Patents, inventions, and rights in data.

Although the primary purpose of this program is to foster the introduction of already developed projects into public transportation service, capital grant projects for new product or technology introduction may, directly or indirectly, provide Federal support for additional research and product development which produces patents, inventions or data to which the Federal Government may have rights.

§ 641.311 Special contract clauses.

UMTA reserves the right to draft appropriate special clauses, for use in third-party contracts with suppliers of new products, that may be needed to provide for recoupment of extraordinary project costs or for securing the government's rights to patents, inventions, and data.

§ 641.313 Civil Rights Act Title VI responsibilities.

The grantee shall administer its Technology Introduction Program in such a manner as to assure that no person in the United States shall, on the grounds of race, color, sex, or national origin be excluded from the participation in, be denied the benefits of, or otherwise be subjected to discrimination under the program. The requirements concerning Title VI responsibilities are in Part 21 of this Title.

§ 641.315 Equal employment opportunity.

Grant recipients shall not discriminate against any employee or applicant for employment because of race, color, religion, sex or national origin according to UMTA Circular 1155.1.

§ 641.317 Minority business enterprise obligation.

That grant recipient shall administer its Technology Introduction Program in such a manner as to assure that minority business enterprises as defined in Part 23 of this Title have the maximum opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with Federal funds under this program. In this regard all grant recipients shall take all necessary and reasonable steps in accordance with Part 23 of this Title to ensure that minority business enterprises have the maximum opportunity to compete for and perform contracts. Grant recipients and their contractors shall not discriminate on the basis of race, color, national origin or sex in the award and performance of Department of Transportation assisted contracts.

§ 641.319 Compliance with regulations concerning handicapped individuals.

The grant recipient shall administer its Technology Introduction Program in such a manner as to assure that no otherwise qualified handicapped individual shall, solely by reason of his handicap, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under the program. The regulations governing non-discrimination on the basis of handicap are in Part 27 of this Title.

§ 641.321 Environmental requirements.

For each project selected for funding by UMTA and prior to the obligation of any program funds, the applicant must comply with the environmental procedures described in Part 622 of this Title.

§ 641.323 Labor protection requirements.

(a) Each applicant shall make fair and equitable arrangements to protect the interest of employees affected by an UMTA grant, as required by Section 13(c) of the UMT Act.

(b) Section 13(c) of the UMT Act is administered by the Department of Labor in accordance with guidelines published in 29 CFR Part 215. Section 215.2 of the guidelines sets out the information that must be included in a grant application.

(c) Each application must contain information to assist the Secretary of Labor in certifying that fair and equitable arrangements have been made to protect affected employees. Such information must include the names and addresses of labor unions representing employees of the transit systems to be assisted and any other transportation systems to be affected.

(d) The grant agreement will specify the terms and conditions of the arrangements, as certified by the Secretary of Labor.

641.325 Local Share.

UMTA must be assured by the applicant that at least 20 percent of net project cost is or will be available in a form and derived from sources satisfactory to UMTA.

641.327 Public Hearing Requirement.

(a) After a potential grantee has been invited to submit an application pursuant to § 641.513 of this part, each potential grantee must provide the opportunity for a hearing by publishing a notice that a hearing will be held if a written request for a hearing is received.

(b) Each potential grantee must provide the public at least thirty days to request a public hearing.

(c) If a written request for a hearing is received by a potential grantee after publication of the notice required by paragraph (a), the potential grantee must hold a hearing.

(d) Each notice must be published in a newspaper of general circulation, including newspapers oriented to the minority community, in the proposed service area of the proposal.

(f) Each notice required by paragraph (a) of this section must describe the proposed project in detail sufficient to inform the public of the following:

(1) The name of the potential grantee.

(2) The location or service area of the proposed project.

(3) A description of the proposed project.

(g) Each notice must indicate—

(1) That views of interested parties may be submitted orally or in writing at the hearing.

(2) That a copy of the application and the transcript, if a hearing is held, is available for public inspection, and state the location where the copies are available.

(3) That any person interested in having a public hearing held must request the hearing in writing.

(4) That if any written request is received, a hearing will be held.

(5) The name of the person and the address to which the written request must be sent.

(6) The deadline for submission of request (at least thirty days after publication of the notice).

(h) If a written request for a public hearing is received, a notice containing the subject, date, and location of the hearing must be published at least twice in newspapers of general circulation in the proposed service area of the proposal, including newspapers oriented to the minority community. The first notice must be published at least 30 days before the date of the hearing. The second notice may be published at any time preceding the hearing.

(i) At the hearing, interested persons may submit evidence and recommendations in writing or orally with respect to the proposed projects.

(j) If a public hearing is held, the applicant must assure that—

(1) A transcript of the hearing is made;

(2) The transcript is kept on file; and

(3) The transcript is available for public inspection. (The transcript may be an electronic tape recording.)

(k) Each potential grantee must submit a certified copy of the transcript of a hearing if held, with its application. If no hearing is held, each potential grantee must submit a certified copy of the notice required by paragraph (a) of this section with its application.

(l) If UMTA determines that the notice of intent to hold a public hearing or the public hearing itself (if held) was inadequate to give interested parties an adequate opportunity to present their views with regard to the proposed project, UMTA may require the applicant to publish an additional notice or to conduct an additional hearing.

641.329 Charter bus/School bus.

No recipient may engage in charter or school bus operations using financial assistance provided under this part except as may be allowed by Section 3(f) and (g) of the UMT Act or the implementing regulations in 49 CFR Parts 604 and 605.

641.331 Planning.

The planning requirements of Section 8 of the UMT Act and the Planning Assistance and Standards regulations pertaining to the transportation improvement program and other matters at 49 CFR Part 613 must be met prior to grant award.

641.333 Capability.

The Grantee must demonstrate to UMTA that it has or will have—

(a) The legal, financial, and technical capacity to carry out the proposed project; and

(b) Satisfactory continuing control, through operation or lease or otherwise, over the use of the project equipment or facilities.

Subpart C—Project Selection, Approval, and Management

§ 641.501 Proposal solicitation.

At the start of each fiscal year, the UMTA Administrator will request project proposals for this program.

§ 641.503 Proposal submission.

Potential grantees must submit proposals to the appropriate UMTA regional offices with a copy to the Associate Administrator for Technology Development and Deployment (UTD–1), UMTA Headquarters, Washington, D.C., *no later than December 1.* Proposals shall contain anticipated costs and approximately two pages of technical description. In addition, the proposals shall verify that the candidate technology has met the requirement outlined in § 641.303 of this part.

§ 641.505 Private mass transportation companies.

If the Technology Introduction Program will be used to provide, by contract or otherwise, for the operation of mass transportation facilities or equipment in competition with, or supplementary to, the service provided by an existing private mass transportation company, the proposal must contain sufficient information to permit the UMTA Administrator to find that the assistance is essential to the Transportation Improvement Program (TIP) and that such a project, to the maximum extent feasible, provides for the participation of private mass transportation companies. This information must include:

(a) A description of the nature and the extent of the competitive or supplemental public and private mass transportation services;

(b) An explanation of why the operation assistance is essential to the program of projects in the TIP; and

(c) A description of the extent to which private mass transportation companies in the urbanized area participate in the program of projects in the TIP.

§ 641.507 Proposal evaluation and ranking.

All proposals will be evaluated and ranked by February 1.

§ 641.509 Criteria to be used for proposal evaluation.

Proposal evaluation shall be based on:

(a) Expected and identified benefits of the new products in terms of improving public transportation service and productivity, reducing the total cost of such service, and/or meeting national objectives (such as energy conservation, revitalizing urban centers or improved accessibility of public transportation for handicapped persons);

(b) Suitability of the project for capital funding in terms of technological risks associated with delivering a product acceptable for routine use in transit operations;

(c) Degree to which Federal sponsorship and financial participation of initial deployment of the new product is necessary because of technical or market risks or lack of available private venture capital sufficient to fund initial operational deployment;

(d) Evidence of support for the proposed project by transit operating bodies, potential supplier(s) and potential users of the new or improved product;

(e) Estimated cost of the project (including level of grantee or private participation), whether to be incurred by UMTA and/or the prospective grantee, in proportion to expected benefits and available discretionary capital assistance funding;

(f) Likelihood that the supplier(s) will market the new product to the public transportation industry assuming the project succeeds in establishing its benefits;

(g) Management and technical capability of prospective grantee to successfully conduct and administer the project;

(h) Plans for full implementation of technology by a property if project is successful;

(i) Potential for industry-wide utilization if project is successful; and

(j) The extent to which provision has been made to involve private mass transportation companies.

§ 641.511 Notification to potential grantees.

After the proposals have been evaluated and ranked, the appropriate regional office shall notify a potential grantee of the selected projects. The grantee must update its transportation improvement plan at this time to include the proposed projects.

§ 641.513 Grant application and approval.

(a) After notification of proposal selection the regional office will assist a potential grantee in preparation of a Technology Introduction Program grant application in accordance with the normal grant application, UMTA Order 1000.2, Application Instructions for Capital Grant Projects.

(b) In addition, a Section 6 grant application may be requested for extraordinary project costs.

(c) At a minimum, the project description must contain:

(1) A statement of objectives;

(2) A description of proposed project with a statement of the benefits to be derived;

(3) A cost description of proposed project, including

(i) A description of capital costs;

(ii) A description of other costs;

(4) An identification of other participating organizations and their responsibilities;

(5) A statement of commitment or letter of endorsement by other involved organizations, if any;

(6) A commitment of other Federal, State or local funds or programs to share in the cost of the project;

(7) A description of how project will be monitored and evaluated;

(8) A plan for technical review, technical reporting, and problem reporting;

(9) A project time schedule and funding plan;

(10) A technical description of local funding;

(11) Assurances of testing per § 641.303 of this part; and

(12) A cover summary sheet containing the following:

(i) The name, address and telephone number of the applicant agency;

(ii) The contact person responsible for the proposed project;

(iii) The total amount of Federal funds being requested under the program divided into capital costs, operating costs, and monitoring and evaluation costs;

(iv) The amount of funding commitments or participation of other Federal, State or local programs and contributions; and

(v) The duration of service to be provided.

(d) Applicants shall submit their completed application to the appropriate regional office, which will review them for compliance with administrative requirements specified in this Title. Applications will also be reviewed for technical content by the Office for Technology Development and Deployment before the application is approved for Section 3(a)(1)(C) funding.

§ 641.515 Grant management.

The regional offices will be responsible for the overall management of each project, with the exception of technical management. The Office for Technology Development and Deployment (UTD) will be responsible for the technical management of each project.

§ 641.517 Project evaluation and information dissemination.

The Associate Administrator for Technology Development and Deployment is responsible for conducting evaluations of Technology Introduction Projects and for disseminating those evaluations and other information resulting from such projects.

Theodore C. Lutz,

Administrator.

January 14, 1981.

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Monday,
January 19, 1981

Part XL

Environmental Protection Agency

Control of Air Pollution From New Motor Vehicles and New Motor Vehicle Engines; Gaseous Emission Regulations for 1985 and Later Model Year Light-Duty Trucks and 1986 and Later Model Year Heavy-Duty Engines

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 86

[AMS-FRL 1698-8]

Control of Air Pollution From New Motor Vehicles and New Motor Vehicle Engines; Gaseous Emission Regulations for 1985 and Later Model Year Light-Duty Trucks and 1986 and Later Model Year Heavy-Duty Engines

AGENCY: Environmental Protection Agency.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Clean Act requires EPA to regulate nitrogen oxides (NO_x) emissions from certain light-duty trucks and heavy-duty engines. This Advance Notice requests information and comment on our preliminary analysis and on possible standards. We expect to propose standards, effective for all 1985 and later model year light-duty trucks (LDTs) and 1986 and later model year heavy-duty engines (HDEs).

Section 202(a)(3)(A) of the statute (42 U.S.C. 7521(a)(3)(A)) requires a 75 percent reduction in NO_x emissions (compared to uncontrolled levels) from heavy-duty engines, a requirement that would result in a standard of 1.7 grams per brake horsepower-hour (g/BHP-hr). However, our preliminary analysis indicates that it may not be technologically feasible for diesel-powered heavy-duty trucks to meet this standard by 1988. Section 202(a)(3)(C) of the Act pemits EPA to set a different standard if the 75 percent reduction level cannot be reached "without increasing cost or decreasing fuel economy to an unreasonable degree". Since this appears to be the case, we do not expect to propose 1.7 g/BHP-hr for heavy-duty engines. We are requesting information to help us choose a more feasible standard and to develop a public record to support it.

This Advance Notice also contains a discussion of changes to the HDE and LDT certification processes that we expect to propose with new NO_x standards in the summer of 1981. These include the following: An in-use durability program similar to the one proposed as a part of the 1984 HC and CO rulemakings; a provision requiring manufacturers to show a "reasonable likelihood" that in-use maintenance will be performed on key emission-related components; and minimum maintenance intervals for electronic engine controls. We are requesting comment on the draft regulations embodying these concepts.

DATES: EPA will hold a public hearing on this Advance Notice approximately 30 days after the date of publication. The time and place of the hearing will be announced later by a hearing notice published in the Federal Register.

ADDRESSES: Comments should be submitted (4 copies if possible) to: Central Docket Section (A–130), Environmental Protection Agency, Attn: Docket No. A–80–31, 401 M St. SW, Washington, D.C. 20460.

Docket No. A–80–31 also contains supporting material relevant to this rulemaking, and is located in the U.S. Environmental Protection Agency, Central Docket Section, West Tower Lobby, Gallery I, 401 M St., S.W., Washington, D.C. The docket may be inspected between 8 a.m. and 4 p.m. on weekdays, and a reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Tad Wysor, Emission Control Technology Division, U.S. Environmental Protection Agency, 2565 Plymouth Road, Ann Arbor, MI 48105, Telephone: (313) 668–4497.

SUPPLEMENTARY INFORMATION:

I. Introduction

Initially, we did not plan to issue an Advanced Notice of Proposed Rulemaking (ANPRM) for LDT and HDE NO_x control. An NPRM was prepared and a regulatory analysis performed for a 0.9 gpm standard for light-duty trucks and a 1.7 gpm standard for heavy-duty trucks. However, during the regulatory development process it became apparent that we needed more information to choose and to support appropriate standards. We are issuing this ANPRM announcing our general intentions and requesting information and comment on possible standards. Also included in the ANPRM are certain changes in vehicle certification procedures that the Agency plans to propose.

The discussion and analysis of the economic, environmental and other effects of possible NO_x standards draws heavily on the Draft Regulatory Analysis EPA prepared when we believed we would soon propose truck NO_x standards. Because the Agency is not committed to the standards analyzed in the "Regulatory Analysis," its usefulness is somewhat limited. However, we think that much of the information it contains may be valuable to potential commenters, and are therefore including it (along with a set of draft regulations) in the public docket (referenced earlier).

EPA will consider a number of options in the preparation of a Notice of Proposed Rulemaking. In each of the components of the rulemaking—the standards and their stringency, the revised durability requirements, and the new allowable maintenance provisions—there will be alternatives to consider. Please refer to Chapter VI of the Draft Regulatory Analysis for a more complete discussion of the alternatives.

Under Section 202(a)(3) of the Clean Air Act, EPA is empowered to consider NO_x standards representing a full 75 percent reduction from uncontrolled NO_x levels. However, there are three potential courses of action. First, the standards can be promulgated at that level if they are not changed for feasibility* or health effects reasons pursuant to Sections 202(a)(3)(B) and/or (E). The second path, the one that we expect to follow in this rulemaking, results if there is a feasibility problem, in which case section 202(a)(3)(B) authorizes EPA to promulgate a standard at the level of maximum feasible reduction (assuming an adequate record to support such an action is established). Since we believe there is a feasibility problem for HDDs, we expect to propose a temporary standard under section 202(a)(3)(B) that is less stringent than statutory standard. This course of action is coupled with a requirement to revisit the standard every three years and successively tighten it until the 75 percent reduction is achieved. The third possible scenario relates to the relationship between the level of the standard and the health effects of the pollutant. Under section 202(a)(3)(E), EPA may adjust a standard either up or down to account for effects on public health. Although we expect to follow the second course of action (as indicated above), the choice among these options, and the level of any "revised" standard under option two, will depend largely on the information received in public comments during the rulemaking.

Several other options relating to the stringency of the standards also are available. The disproportionate difficulty which heavy-duty diesel engine manufacturers will experience in meeting the proposed HDE standard compared to HDG engine manufacturers suggests the possibility of two different standards for heavy-duty engines. A second option regarding the standards arises because there are currently two methods of diesel NO_x measurement—bag sampling and direct sampling—and it appears that it may be appropriate to apply to correction factor to the

*"Feasibility" here refers not only to technical aspects but also includes cost, lead time, and fuel economy effects.

standard if direct NO_x measurement is used (since the baseline was based on bagged NO_x sampling). A final option which will be considered involves the issue of whether we should pursue a standard representing equivalent stringency for LDVs and LDTs or whether we must propose a standard based on a mechanical calculation of a 75 percent reduction from the baseline, as will be discussed below in the "Emission Standards" section. All of these options will be considered further as we receive comments. A final alternative that is related to standard stringency, an averaging concept, is being pursued in a separate rulemaking as discussed in Section E below.

We are also considering alternatives to the proposed heavy-duty in-use durability program. Retaining the current dynamometer-based service accumulation procedure is possible but there is considerable agreement (even in the industry) that this method is not realistic. Another option, modifying the dynamometer procedure to be more representative of in-use operation, would cost significantly more than the in-use program we expected to propose. We thus at this time plan to abandon a dynamometer approach in the proposal. An issue paper which goes into some depth on this issue may be found in the public docket for this rulemaking under the title "Heavy-Duty Engine Durability Testing."

The final area in which we have considered alternative paths is allowable maintenance. An issue paper is available from the docket which addresses this issue ("1985 HDV/LDT NO_x NPRM Allowable Maintenance Provisions"). Its conclusion is that an improved version of the regulations proposed in earlier rulemakings (cited above) should be proposed. What we outline here and expect to propose is based heavily on the conclusions of the issue paper.

II. Summary of the ANPRM

While we will continue to consider the options outlined above as well as others that emerge as a result of the information and comments EPA receives as a result of this ANPRM, we nevertheless describe in this ANPRM a more specific program. This program represents our best (if on some points rough) estimate at the present time of what we will be proposing this summer. We believe it is in the interest of responsible rulemaking to lay out this information in as much detail as we have for comment.

This ANPRM announces consideration of a program for implementing (1) the remaining aspects of EPA's direct congressional mandate regarding gaseous emission control for vehicles whose GVWRs (gross vehicle weight ratings) exceed 6,000 lbs., (2) emission standards for light-duty trucks whose GVWRs are 6,000 lbs. or below (these we expect to be the same standards as those proposed for the over-6,000 lbs. GVWR light-duty trucks), (3) changes in the certification process which we proposed earlier in a similar form but did not promulgate, and (4) minor changes to the heavy-duty transient test procedure. This package of anticipated requirements is planned to be another stage in the comprehensive regulatory approach we began in the two recent rulemakings. Following the completion of the heavy-duty nonconformance penalty and diesel particulate rulemakings, most aspects of the LDT and HDE emission control programs will be in place. The following paragraphs detail each of the aspects of this ANPRM.

A. Emission Standards

The "heavy-duty" class created by Congress in the 1977 amendments to the CAA includes not only EPA's "heavy-duty engine" class but a portion of its light-duty truck class as well. Thus, the emission reductions mandated by Congress for vehicles (and engines in vehicles) which exceed 6,000 lbs. GVWR actually apply to two EPA classes—the heavy-duty engine class (engines used in vehicles with GVWRs exceeding 8,500 lbs.) as well as to the upper, "heavy" portion of our light-duty truck class (LDTs between 6,001 and 8,500 lbs. GVWR). for convenience, we will refer to LDTs between 0 and 6,000 lbs. GVWR as "light" LDTs, and LDTs between 6,001 and 8,500 lbs. GVWR as "heavy" LDTs. We anticipate that our rulemaking will propose emission standards for heavy-duty engines and for the entire light-duty truck class (both above and below 6,000 lbs. GVWR). The inclusion of the "light" LDTs is explained later in this section under *"'Light' Light-Duty Trucks"*.

1. *Heavy-Duty Engines and "Heavy" Light-Duty Trucks:*

As mentioned earlier, the Clean Air Act (Section 202(a)(3)(A)(ii) of the Act, 42 U.S.C. 7521(a)(3)(A)(ii)), contains a requirement for a 75% reduction in heavy-duty truck NO_x. This reduction is to be measured against a baseline sampling of pre-controlled, gasoline-fueled, heavy-duty engines. The reduction also applies to vehicles exceeding 6,000 lbs. GVWR. The NO_x regulations were to apply beginning in the 1985 model year. While we do indeed plan to propose the LDT NO_x standard for 1985, certain leadtime considerations which we discuss later have led us to anticipate proposing the HDE NO_x requirements for 1986.

In order to determine the "baseline" level of NO_x emissions—that is, the level which existed before there were Federal regulations for NO_x control—EPA completed two baseline testing programs, one for LDTs and one for HDEs. While the 1973 model year was the last year before Federal NO_x regulations were enacted, some manufacturers anticipated the change and voluntarily installed NO_x controls on their 1973 models. Therefore, our baseline samples consist of both 1972 and 1973 vehicles and engines, depending on which model year immediately preceded NO_x controls on a given engine. Samples of 25 LDTs and 28 HDEs made up the baseline programs.

The "statutory" heavy-duty standard is computed directly from the results of the baseline testing. The sales-weighted NO_x emission level from the HDE program multiplied by a factor of 0.25 yields a Congressionally mandated 75 percent reduction standard, with a value of 1.7 g/BHP-hr. As discussed later in this document, we do not believe this to be a feasible level for heavy-duty diesel engines. Because of this, EPA will probably revise the standard for heavy-duty engines. Based upon limited (and largely confidential) data currently available to us we believe that an appropriate level for a revised standard would be approximately 4.0 g/BHP-hr. Of course, the standard finally established will have to be based on a publically discloseable record, to be established during this rulemaking.

In the case of LDTs, the 75 percent reduction calculation from the LDT baseline yields a value of 0.9 g/mi. This value would represent a tighter standard than will exist for 1981 and later light-duty *vehicles* (LDVs). Since LDTs are generally larger, have larger engines, and carry heavier loads than LDs, their average emissions are slightly higher. Clearly, it will be more difficult for LDTs to meet a standard of 0.9 g/mi than for LDVs to meet 1.0 g/mi. However, we believe that Congress intended the 75 percent NO_x reduction to parallel the anticipated gains in passenger car NO_x control; i.e., to require approximately equivalent control efforts in the two areas.

In promulgating the *1979* LDT NO_x standard of 2.3 g/mi we applied a "worst-case" formula to the LDV NO_x standard of 2.0 g/mi. The formula was based on the ratio of the emissions of the heaviest LDTs to the heaviest LDVs when both used the same control technology. Applying the same ratio to the new LDV standard of 1.0 g/mi yields

a value of 1.2 g/mi.* We believe this value to be of essentially equal stringency to the LDV standard.

2. *"Light" Light-Duty Trucks:*

We expect to apply the same, presumably revised, standard to all LDTs, above and below 6,000 lbs. GVWR. Although the "light" LDTs (those below 6,000 lbs. GVWR) are not covered by section 202(a)(3)(A)(ii) of the Act, authority for their regulation is found in the general authority of section 202(a)(1), 42 U.S.C. 7521(a)(1). The September 25, 1980 LDT rulemaking invoked this authority in establishing the same HC and CO standards for the "light" LDTs as for the "heavy" LDTs. Each of the prerequisites to the regulation of "light" LDTs under section 202(a)(1) is met. It is clear that NO_x emissions from "light" LDTs contribute to air pollution which endangers public health. (A thorough discussion of the health effects associated with NO_x emissions can be found in Chapter IV of the Draft Regulatory Analysis). The other factors which must be considered before regulating under section 202(a)(1)—leadtime, feasibility, and cost—are each discussed later in this document.

Finally, at least two additional considerations suggest that a single LDT standard should apply to trucks above and below 6,000 lbs. GVWR. First, applying a stiffer standard to the "light" LDTs than to the "heavy" LDTs (the lighter vehicles are cleaner in NO_x than the heavier ones and hence could meet a lower standard) could discourage the current trend toward downsizing LDTs to more fuel efficient models. Second, it is more consistent to apply a common standard across the entire LDT class and to follow the same regulatory approach for NO_x as was followed for HC and CO. By maintaining this kind of regulatory consistency, both the manufacturers and EPA should be able to manage their respective emission control programs much more efficiently than if two sets of standards existed or if compliance requirements varied among the pollutants.

B. Changes in the Certification Process

In addition to new NO_x standards, EPA anticipates for LDTs and HDEs two significant changes in the way vehicles and engines are certified for production. One is a program that requires that service accumulation be accomplished by in-vehicle, on-the-road operation. The other requires manufacturers to give some indication that the maintenance they recommend to their customers will actually be performed in the field. Both initiatives were proposed earlier during the recent LDT and HDE rulemakings. (Those Notices of Proposed Rulemaking are found in the Federal Register at 44 FR 9464 (heavy-duty) and 44 FR 40784 (light-duty trucks)). The two proposed actions were withdrawn from the rulemakings for further consideration, and we plan to repropose them in modified forms.

A third concept which affects certification is discussed later (Part F of Section III) but will not be contained in our anticipated proposal. That concept is a framework which would make it possible to introduce an increased measure of flexibility into the certification process by allowing some form of averaging of emissions. Development of averaging is now proceeding as a separate rulemaking, initiated by the publication of an ANPRM on November 28, 1980 (45 FR 79382).

1. Revised Durability Testing Procedures

The procedures used to determine deterioration factors (DFs) for HDE and LDT engine family certification have recently been changed (as a part of the recent HDE and LDT rulemakings cited earlier). The new provisions, identical for both HDEs and LDTs, resulted from a decision *not* to promulgate a proposed program of in-service mileage accumulation. What was left in each case was the portion of the proposal that described the procedure for determining preliminary, temporary deterioration factors. Whereas in the original proposals these manufacturer-determined deterioration factors would have been eventually superseded by factors calculated from the in-service durability fleet, the removal of the in-service requirements left the "preliminary" deterioration factors as the sole and final factors. The effect of our planned proposal would be to restore to these manufacturer-determined deterioration factors the status of "preliminary" factors and to repropose the associated in-service requirements in a slightly different form. Because they affect testing to determine emission compliance, these changes fall under the authority of section 206 of the Act.

It will be helpful to define the three types of deterioration factors which enter into the program. We have already mentioned "preliminary" DFs. They, in turn, are superseded by "in-use" DFs which, as this section will describe, are derived from in-service operation. However, in-use DFs are to be used while the in-service vehicles are still accumulating mileage as well as after they are finished. Thus, a further refinement into "interim in-use" DFs and "final in-use" DFs is useful.

The durability regulations which we expect to propose would be rather detailed, but their general thrust would be very straightforward. As the paragraphs above imply, there would be a dual system for determining deterioration factors. Manufacturers would have the complete responsibility for establishing the preliminary DFs, subject only to three constraints. Manufacturers would be required to (1) design any testing so that it simulates, in their judgment, real-world emission deterioration, (2) conduct that testing according to good engineering practice, and (3) comply with the provisions relating to maintenance. Otherwise, the manufacturer would be free to design and conduct any testing and to derive deterioration factors in any manner it chooses. EPA would not approve or disapprove either the testing or the DFs. Once submitted the preliminary DF would be used to project the low-mileage emissions of the emission-data vehicle out to the end of its engine-family's useful life.

Under the expected program, a set of preliminary DFs (one DF for each pollutant) would be submitted and used for each engine family-control system combination (hereafter called a family-system combination), with the exception of those using the small-family waiver discussed later in this document. This would occur for *all* (unwaivered) family-system combinations in the initial model year of the in-use program (1985 for LDTs, 1986 for HDEs). After that, preliminary DFs would be needed each time a manufacturer introduced a new family-system combination or redesigned an existing combination to such an extent that a new combination was created. Preliminary DFs would be used in certification until the manufacturer's in-use durability vehicles had logged enough mileage to become the basis for the second type of deterioration factor, the in-use DF. In-use DFs, either interim or final, would supersede the preliminary DFs under the proposed system and would be used in all subsequent extrapolations of low mileage data.

The in-use mileage accumulation program which would eventually yield interim and/or final in-use DFs would begin early, shortly after preliminary

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*The difference in the units of the anticipated HDE and LDT standards reflects the different testing methodologies applied in the two classes. As with passenger cars, LDT emissions are expressed on a per-mile basis; HDE emissions are expressed on a per-unit-of-work basis in order to avoid penalizing an engine which performs more useful work while travelling the same distance.

DFs were first used in certification. First, the manufacturer would choose at least three *production* vehicles (LDT) or engines (HDE) to become durability-data vehicles/engines. The manufacturer's responsibility would then be to make arrangements for placing the vehicles into service (engines would of course have been installed in vehicles), selecting applications which well represented ordinary operation. While we expect to propose the option of operation on a test track or road route, manufacturers would also be able to integrate the durability-date vehicles into their normal corporate operations. For example, LDT durability-data vehicles could become a part of a company motor pool, or heavy-duty durability-data vehicles might serve a second purpose as a part of a corporate truck fleet.

A fundamental reason for the use of preliminary DFs is that it is not practical to collect in-use data prior to the initial year's certification of a new engine family. Such a requirement would impose several years of additional leadtime for the introduction of a new engine family and would not allow the use of actual production engines. Rather than impose such a burden on manufacturers, we would allow the use of preliminary DFs, which would later be confirmed by in-use data. Even if an engine family is taken out of production it would still be necessary to substantiate the preliminary DF which was applied to those engines already sold. The automatic regulatory provisions for what to do if the in-use DF is too large (i.e., change future engines, as discussed below) would no longer apply since they would not be retroactive to engines that have already been produced. However, it would still be the manufacturer's responsibility to verify that it is indeed supplying valid preliminary DFs to EPA. In addition, there are recall provisions in the Clean Air Act which apply to heavy-duty vehicles. Although in-use fleet data would not alone be sufficient to require a recall, it could alert EPA to a potential in-use problem needing investigation. Therefore, even if an engine family goes out of production, it would still be necessary for the manufacturer to continue operating the in-use fleet.

As the durability vehicles accumulated mileage, the manufacturer would periodically test them for emissions. By compiling the results of these tests, manufacturers would assemble a periodically updated base of information about each family/system's on-the-road emission deterioration characteristics. The interim DFs would be calculated from this data and hence would themselves be updated. (The actual calculation of DFs is discussed later). This process of testing, compiling results, and updating the interim DFs would continue until the durability vehicles had reached the end of their useful life (as defined in § 86.084–2, 45 FR 63734). At that time the *final* DF for the family/system would be computed.

At some point the preliminary DFs would be superseded by the in-use DF. Which model year it occurred in would depend to a certain extent on the preference of the manufacturer. This is because for the second model year, the manufacturer would have the option of either carrying over its previous certification based on the preliminary DFs or using an interim in-use DF, provided that the minimum annual mileage had been accumulated (10 percent of the family's useful life). (If the carryover option is chosen, it would still be necessary to submit any accumulated in-use data to EPA at the time of the application.) For the third model year after the preliminary DFs were first used, the regulations would *require* the use of the interim or final in-use DFs.

When the preliminary DFs are superseded, the most current in-use DFs would then be used. Each subsequent year's updated in-use DFs would supersede the previous DF until each durability vehicle has reached its useful life. After that, the final in-use DF would remain in effect for as long as the family/system combination exists.

The manufacturer would be confronted by one of two situations when it substitutes a new in-use DF for a preliminary DF or for an interim in-use DF. On the one hand, it might find that the new DF is smaller than the previous DF, meaning that the earlier DF overestimated the rate at which the emissions were deteriorating. Obviously, this would be a favorable situation from the manufacturer's standpoint. It would mean that when the low-mileage emission values from the emission-data vehicle or engine were projected out to account for deterioration, the result would fall somewhat below the standard. The manufacturer would have exceeded its requirements and would be in compliance with the regulations.

If, on the other hand, the manufacturer found that a subsequent year's in-use DF is greater than the preliminary DF of the previous in-use DF—and the performance of the emission system on the low-mileage emission-data vehicle does not provide enough of a margin of safety to accommodate the larger factors—then the manufacturer would have to act to correct the situation. This most current in-use emission data for that family-system combination would have indicated that the earlier DF underestimated emission deterioration. A small recalibration of the engine or emission system might be enough to compensate and allow a continuation of the certification process. Alternatively, the manufacturer might find it necessary to redesign the family-system combination for lower low-mileage emissions or for reduced deterioration characteristics.

It would be our intent in a proposal to restart the multi-year certification cycle—that is, emission-data collection and preliminary DFs followed by annually-updated in-use DFs—whenever the manufacturer makes a design change which can be expected to affect emission deterioration. To make this criterion more specific, we anticipate that in most cases a design change which affects emission-system durability would include changes in features (called determinants) which distinguish one family-system combination from another. Conversely, we expect that changes in these determinants would usually occur with changes that affect emission deterioration. Therefore, we would key the beginning of the certification cycle to the first year in which a manufacturer applied for a certificate of conformity for a given family-system combination.

A pitfall of such a system would be that a manufacturer might choose to change the engine periodically to avoid ever using an in-use DF. Nothing in the regulations as they are now would prevent this from happening, but two provisions would discourage such a practice. On one hand, it would take a fairly large—and expensive—change to create a new engine family under the current regulations. Thus, such a change would not be a trivial effort. Also, as noted earlier, even if a family went out of production it would be necessary to keep running the durability fleet out to its useful life. The combination of these provisions should prevent large-scale circumventing of the in-use program through engine family changes.

A related problem might arise if a manufacturer wanted to make a change which, although it didn't alter any existing engine family determinants, did have the potential for influencing (and presumably improving) deterioration characteristics. Because the existing determinants would not have changed, the certification cycle would not automatically start again. The Administrator, however, already has the discretion to introduce engine family

determinants not currently specified in the regulations (and an engine family determinant is by definition an engine family-control system determinant). He would be able to take advantage of that discretion if the particular circumstances of a situation indicate that re-starting the certification cycle would be advisable.

As a final note on this subject, it is important to stress that restarting the certification cycle for a new family-system combination would also mean retesting an *emission-data* vehicle or engine which incorporates the new changes.

Because responses to the earlier proposed versions of the in-use durability program revealed some confusion, it is worth stressing the following point. Any increase in the DF resulting from the in-use emissions data would not be retroactive. In other words, the earlier model year(s) of production, certified according to the previous DF, would not be affected. (The recall provisions of the CAA would remain in force however.) What *would* be affected is the next model year's production, which could not proceed until some adjustment or change in the engine or emission system was made and, if it affected engine family determinants, the certification was begun again (emission-data tests, preliminary DF, and subsequent in-use service accumulation). It is likely that the manufacturer would foresee from the accumulating data that by the beginning of the next model year a change would be needed. Thus, enough time to incorporate the change should exist before the next year's production begins.

Any proposal would also likely include a measure of protection for a manufacturer that believed it had made a favorable durability-related change but had failed to persuade the Administrator to restart the certification cycle. That protection would be the ability to start another in-use durability fleet. A manufacturer could at any time place additional fleets into operation. After the new fleet(s) had run to the end of their useful life, the manufacturer would use their emission results for the DF calculation instead of those of the original fleet. In this way, a manufacturer that made an improvement in durability could in all cases begin realizing the benefits of the change within a few model years (that is, when the new fleet had finished), regardless of whether EPA accepted the change as a new family-system combination.

Also a part of the proposal which we expect to issue is an important change in the way deterioration factors are calculated from durability data, a change that corrects a potential deficiency in the method currently used (that is, prior to 1984). Simply put, the present method determines the DF by calculating a linear regression of the mileage/emission level points derived from the durability-data vehicle (or engine). The problem is that if an important component fails on the durability-data vehicle/engine either early in the service accumulation or late in the process, the emissions may suddenly jump upward significantly compared to the gradual deterioration during the remainder of the process. The linear regression, however, would tend to "wash out" the evidence of the failure, giving an incomplete view of the true deterioration.

The current regulations partially guard against this pitfall by prohibiting "line-crossing," meaning the durability-data engine or vehicle may not exceed the standard at any time up to the useful life. Thus a failure in an important component would probably cause "line-crossing." If the manufacturer can show that the failure is unrepresentative, EPA may allow the running of new vehicles, which will in turn either confirm the "statistical freak" or exhibit line-crossing themselves. In the latter case, EPA would be in a position to deny certification.

Under the anticipated proposal line-crossing *would be allowed* during in-use service accumulation. This provision would appear primarily for two reasons. First, the in-use durability program would take years, not months. It would not be practical to start a new vehicle if one vehicle line-crossed. Thus, allowing an individual *durability* vehicle to exceed the standard would be a necessary by-product of the in-use program. Second, allowing line-crossing would be appropriate because there would be much more certainty in the proposed program than in the current program that an individual data point which line-crossed really represented what would happen in the field. The greater certainty would arise because at least three vehicles—*production* vehicles—would be running. A component failure in one or more of them would be likely to also occur in the field and it is important for EPA to know this. In any event, we do not expect that line-crossing would be a frequent phenomenon.

If, however, a data point were far removed from the trend that was set by the rest of the data, we believe it should be reflected in the DF, whether or not line-crossing occurred. The proposed regulations would provide that if an individual vehicle's data point fell beyond a certain distance from the least-squares best-fit line of all the points, then that point would become a candidate for the DF calculation. That is, instead of extending the *best-fit* line out to the appropriate point and dividing the predicted high mileage emissions level by the low-mileage emission level, the *outlying point* itself would be used in the DF calculation. The DF would simply be the ratio of the emission level of the "outlier" to the low-mileage emission level. If this DF were larger than that resulting from the least-squares fit then it would be used as that vehicle's DF in future calculations.

We expect to propose that the measure of whether an average data point is an "outlier" be twice the standard error of the distribution of all points around the best fit line. We believe any point which lies more than that distance from the line would be a real indication of the kind of problem which the DF should reflect.

Two final aspects of the anticipated proposal deserve comment, both of which were not a part of the original proposed programs. The first provision would relate to the DF calculation process, and it would act to reduce the manufacturer's risk when DFs were determined from less-than-full-useful-life data (that is, interim DFs). Because extrapolating early data to a "distant" full-life point might be unrealistic, we would propose that extrapolations be made to a point separated from the test point by no more than 50 percent of the useful life of the family-system combination. Thus, if it happened that the early test points were unrepresentative of the full-life trend, the effect of extending their regression out from these points would be blunted.

The remaining provision we are considering would significantly reduce the effort required by the manufacturers, while retaining the bulk of the benefits of the in-use program. This proposal would be to waive in-use testing requirements for each engine family for which the expected production is less than 5,000 vehicles or engines, up to a total of 5,000 per manufacturer. Use of the waiver by manufacturers for each eligible heavy-duty family would reduce the number of in-use fleets by 52 percent while still allowing for in-use data on 90 percent of the sales. (The impact on the light-duty truck industry would be minimal because of the scarcity of small-volume LDT families). In place of the preliminary and in-use DFs would be an EPA-assigned DF, based on historical data.

Finally, we wish to make clear to the reader that the foregoing discussion

covers only the most substantial aspects of the program we expect to propose. The complete requirements are found in §§ 86.085–21 through 26, 28, and 30 of the draft regulations available in the public docket.

2. Proof of In-Use Maintenance

The recently-published LDT and HDE rulemakings restricted allowable maintenance which is done on certification engines and vehicles. By limiting emission-related maintenance to no more often than certain specified intervals, we hoped to encourage the design of more durable emission-oriented components. While the success of this program will reduce the amount of maintenance which needs to be done to keep the emission systems operating, the program lacks any way of assuring that necessary maintenance will actually be performed.

An emission system that tends to be neglected by the owner—because it too often requires maintenance or because the neglect has no effect on the operation of the vehicle, for example—may not serve the purpose for which it was installed. We believe that if a "critical" emission-related component* requires attention or replacement during the useful life of the vehicle or engine, the manufacturer should accept the burden of showing that the work is likely to be performed by the owners. Otherwise, the installation of the control system could be a mere formality that is exercised to receive a certificate but then fails to accomplish its intended emission reduction in the actual on-the-road vehicles. The additional maintenance regulations which we are considering proposing, like the maintenance restrictions already in place, would help to re-focus the attention of manufacturers from simply passing a laboratory certification test toward designing and mass producing vehicles and engines which remain clean in actual use.

Specifically, we anticipate provisions which would require for each "critical" emission-related component that the manufacturer establish a "reasonable likelihood" that proper maintenance will be performed in actual use. The manufacturer could establish "reasonable likelihood" by compliance with one of four criteria, designed to cover several kinds of situations. We expect that manufacturers would most often install an audible and/or visual signal to indicate that maintenance is due, followed up by a survey to gauge the success of the signal in encouraging proper maintenance. It would also be an acceptable indication of "likelihood" if a manufacturer chose to bear the cost of the maintenance or replacement. For components which had already been in service long enough to have accumulated in-use experience, a survey showing that proper maintenance was currently performed would fulfill the "reasonable likelihood" requirement. And finally, if failing to perform a maintenance item seriously harmed the performance of the vehicle, EPA would consider that to be enough assurance that the maintenance would be done by the owners. We expect to propose the regulations in such a way that EPA could approve a different method of meeting this requirement if it confirmed the likelihood of proper in-use maintenance.

In addition, minimum maintenance intervals are expected to be proposed for certain new emission-related components. Maintenance on electronic engine controls and related sensors and actuators during mileage accumulation would be proposed to be limited to every 100,000 miles. The authority for establishing minimum maintenance intervals is found in sections 206(d) and 207(c)(3)(A) of the Act.

C. Changes in the Heavy-Duty Test Procedure

As we have accumulated experience on the new transient heavy-duty test procedure promulgated in the January 21, 1980 rulemaking (referenced earlier), we have been able to make minor improvements in several aspects of the test. We intend to incorporate them into a proposed revised Subpart N and will include adjustments to the forced-cool-down procedure and the mapping methodology as well as various equipment specifications.

III. Major Issues and Impacts

This section presents an overview of the analyses and discussions found in our preliminary Draft Regulatory Analysis document (referenced at the end of this Notice). Because the analyses were done at a time when it still appeared that this notice might be issued much earlier, 1985 is used as the first year of implementation of the regulations for both LDTs and HDEs. The one year postponement in the effectives model year which we expect to propose for HDEs would have little effect on the conculsions of the analyses,* and we have left them as they originally were—with 1985 as the initial model year.**

We discuss 1.2 and 4.0 because we think they are the most likely alternative levels. Others may be more appropriate, however, depending on comments received as a result of this ANPRM.

A. Technological Feasibility and Leadtime

An analysis of the feasibility of the NO_x standards need to be broken down according to class (HDE and LDT) and by engine technology (gasoline and diesel). As the following discussion will detail, the degree of difficulty which would be likely to be encountered by manufacturers in complying with the standards by the proposed model years varies considerably.

At one extreme fall gasoline-powered light-duty trucks, which appear to be within reach of a 1.2 g/mi standard. Three-way catalyst/feedback carburetor systems are available today which allow light-duty *vehicles* to comply with the 1981 standard of 1.0 g/mile. And one 1980 LDT is already certified at 0.7 g/mi using a 3-way/feedback system, even though EGR was not used. Because of the similarity in emission control technology between LDVs and LDTs, LDTs would probably be able to meet a 1.2 g/mi standard by 1985.

The most uncertain aspect of gasoline LDT feasibility seems to be maintaining the conversion efficiency of three-way systems at high mileage. We believe that such common approaches as increased catalyst loading and sizing would be effective in addressing this problem.

Diesel LDTs would not have the benefit of three-way systems, but other control options are available. EGR, or increased EGR where it is already in place, would be the most obvious approach. Also, combustion chamber and/or injector re-design, retarded injector timing and advanced (higher pressure) fuel injection are paths which would be open to some manufacturers. Finally, the popularization of electronic controls in gasoline engines suggests that this technology may soon be applied to diesels for such purposes as modulating the EGR or varying the injector timing. It is also significant that the manufacturers have up until now had to expend very little effort to meet the existing 2.3 g/mi NO_x standard with diesel LDTs. Accordingly, past efforts are probably not indicative of the

*Defined as a component installed for the sole purpose of complying with emission standards.

*The industry would have an extra year to rebound, probably making capital formation easier. The additional year would also provide more time for the optimization of electronic controls. In general, though, costs, leadtime, feasibility, and air quality benefits would remain approximately as we analyzed them.

**To avoid unnecessary confusion in this Preamble, however, we have substituted "1985" for "1982" where it is appropriate. For the same reason, the dates in the title of the preliminary Draft Regulatory Analysis have also been changed.

amount of control that could be achieved.

On the one hand, some manufacturers are already beginning to work which would make the task of reaching the anticipated NO_x standard (in the presence of a tight particulate standard) easier with respect to diesel LDTs. Both General Motors and Volkswagen were recently granted waivers of the 1981 light-duty *vehicle* standard for their diesel powered passenger cars. The two-year waivers of the 1.0 g/mi standard were granted specifically to allow the companies to do development work toward reaching that standard without excessive harm to fuel economy, particulate control, and durability. Work is also progressing toward meeting the 1985 LDV particulate standard under the current NO_x standard. Since LDT diesel engines are currently very similar to LDV diesel engines, these two manufacturers (who are the only diesel LDT makers at this time) are in effect beginning development work now toward the equivalent stringency LDT NO_x standard we anticipate proposing in this rulemaking as well as the 1985 LDT particulate standard. It is reasonable to conclude at this point that a standard in the 0.6-1.2 g/mi range would be a realistic goal for 1985 light-duty diesel trucks.

Turning now to heavy-duty engines, we find a sharp contrast in the ability of gasoline and diesel engines to reach the statutory 1.7 g/BHP-hr standard by 1988. In the case of HDGs, we can point to a clear technological path to compliance. On the other hand, it appears that no HDDs would be able to reach the 1.7 g/BHP-hr level. Thus, revising the standard upward to near 4.0 g/BHP-hr for the whole heavy-duty class will probably be necessary. (Reasons for including gasoline engines in the revised standard are discussed presently). We would expect to propose such a revised standard based on information currently in our hands and the information we receive or develop as a result of this Advanced Notice.

For heavy-duty gasoline engines, it appears technologically feasible to reduce emissions to a level of 1.7 g/BHP-hr by 1988. As in the case of gasoline LDTs, three-way/feedback systems could be used, perhaps in conjunction with oxidation catalysts (to clean up residual HC and CO). In an ongoing test program at the EPA Motor Vehicle Emission Laboratory, we have already been able to closely approach the required target emission level with a 1978 IHC 404 engine retrofitted with a three-way plus-oxidation-catalyst system (see our Draft Regulatory Analysis for details). Without ignoring the durability issue, the ease with which EPA has been able to assemble a well performing NO_x control system for a rather large engine speaks to the strong potential for 1988 HDG compliance with the proposed standards. Further, since three-way systems are not conceptually new and have already seen extensive development and use in passenger cars, compliance by 1985 may even be possible.

Given the preceding discussion, one could conclude that a revision of the HDE standard to a level near to 4.0 g/BHP-hr would place manufacturers of gasoline engines in an easy compliance posture. Indeed, manufacturers might be able to comply without adopting three-way systems. There would be the potential for a fuel economy penalty if less expensive means like EGR were used, but even in that case we believe a penalty could be avoided.

In the case of heavy-duty diesel engines (HDDs) we find no current engines which even approach the statutory 1.7 g/BHP-hr level. Indeed, up until now there has been little pressure to develop low-NO_x technology for HDDs. But while we believe that substantial NO_x reductions can be obtained, it appears that such a standard would be out of reach.

We believe that a combination of conventional approaches and more advanced techniques could offer significant HDD NO_x reduction. The more familiar approaches of EGR and retarded injector timing are inexpensive but can result in lost fuel economy and increased particulate emissions. More promising are such things as electronic engine controls, electronic fuel injection, advanced inter-/aftercooling, high-pressure injection, and design modifications to engines, combustion chambers, and injectors. Electronic controls are perhaps the most promising technology because of their potential to modulate injector timing, EGR, degree of aftercooling, and other parameters throughout the range of engine operating conditions.

There is another NO_x control approach which is less promising but nevertheless deserves mentioning. We know of one manufacturer which has developed a working ammonia-injection catalyst. The ammonia catalyst has been demonstrated to EPA, and preliminary data indicates that it could be capable of attaining the 1.7 g/BHP-hr standard. Use of this tecnology can result in lower NO_x levels for diesels. On the other hand, there are clear enforceability problems because the ammonia supply would need to be frequently replenished. Also, establishing a distribution system to make ammonia readily available would be very difficult. Lastly, the cost of adopting this technology could be quite high. Therefore, we do not believe such a system will be practicable for the 1988 model year. We request that comments on this system (particularly hardware and operating costs) and other advanced technologies be included in response to the requests for comments found later in this Preamble.

The Agency also has been exploring a fundamental technological alternative to conventional approaches to oxides of nitrogen and particulate control. This alternative is the use of methanol as a fuel. Methanol may be attractive from several perspectives: (1) it is readily available from plentiful domestic sources such as coal and biomass, (2) it can probably be produced by more thermally efficient and environmentally acceptable processes than many processes which yield syncrude, (3) it can be produced with readily available, commercially proven technology which requires less capital investment than syncrude production processes, and (4) methanol appears to have the potential for very low particulate, oxides of nitrogen, hydrocarbon and biologically active organic emissions. EPA is currently evaluating a Volvo heavy-duty engine equipped with diesel fuel pilot injection and methanol combustion (i.e., a dual injection system). We are testing this engine for emissions (including unregulated pollutants) as part of the heavy-duty test program at Southwest Research Institute. The results of these studies will certainly influence the degree to which the government actively pursues this alternative. In any case, we do not today view widespread conversion to methanol as a possibility for the 1988 model year.

Revision of the Heavy-Duty Standard

Based on the analysis highlighted above, we expect to propose a revised standard for all HDEs for 1988, based on the limitations of diesel NO_x control. Such a revision to the Congressionally mandated 75 percent reduction standards would be proposed pursuant to Section 202(a)(3)(B) and would depend on EPA's being able to make the findings specified in subsections (3)(B) and (3)(C) of that section. The limited data we have seen so far, combined with our projections of technological progress lead us to a preliminary conclusion that a NO_x standard in the area of 4.0 g/BHP-hr would be attainable by diesels without increasing other pollutants or affecting fuel consumption to an unreasonable degree. We expect that manufacturers would

use combinations of the following approaches: Electronic controls and/or electronic fuel injection, inter-/aftercoolers (perhaps modulated), higher pressure fuel injection engine or injector modifications, and perhaps limited EGR and retarded injector timing. Later in this Preamble we request specific comments and data on both the 1.7 and 4.0 g/BHP-hr levels (as well as higher or lower levels), and we will rely heavily on this data in making any findings under subsection (3)(c). In determining an appropriate level for a revised standard we have had to rely on information which manfacturers to date have considered confidential. It is our intention to make decisions for the NPRM and eventual final rulemaking based upon information available in the public record of the rulemaking and available to all interested parties. It is crucial that the information submitted by the manufacturers during this rulemaking present an accurate portrayal of all NO_x control strategies, their potential, their trade-offs, and their leadtime characteristics. We are confident that significant reductions in NO_x are achievable.

The attainment of any substantial NO_x reduction for heavy-duty diesels without significant fuel economy degradation would require time-consuming development and testing work. At this time we do not believe such a effort could be completed in time for the 1985 model year. Therefore, we expect to propose that 1986 be the effective model year for heavy-duty engines, rather than the 1985 model year specified in the Act. On the other hand, we believe that the reductions required for LDTs can be attained by 1985. Therefore, we expect to propose the LDT standard for the 1985 model year. Consistent with the position we took in the recent HDE and LDT rulemakings, we believe that if enough leadtime is available, the statutory model year of compliance should be retained.

We expect to propose a single revised heavy-duty standard covering gasoline engines as well as diesels. The Clean Air Act clearly places both types of engines in a single heavy-duty engine class, and EPA has always applied the same standard to both types of engines. We believe that it would be inequitable to establish different requirements for competing engines within the same class. By applying the same standards to both gasoline and diesel engines, we hope to avoid the appearance of treating one power plant more favorably than another one with which it must compete in the heavy-duty market. If diesel manufacturers would have relatively more difficulty than gasoline engine manufacturers in meeting a given heavy-duty standard, this is because of the inherently higher NO_x emissions of diesels—not because of inequitable treatment by EPA. In addition, the fraction of gasoline heavy-duty engines sold relative to diesels has been rapidly diminishing (Tables II–Y and II–Z, Draft Regulatory Analysis, Chapter II), and we project this trend to continue, reducing each year the contribution of emissions from gasoline engines.

Finally, if gasoline engines were required to incorporate the additional hardware and engine modifications necessary to reduce their NO_x emissions from 4.0 to 1.7 g/BHP-hr, then the stringent standard would accelerate the decline of the gasoline engine—simply because it could be made to comply with the standard. Since the engines displacing the gasoline engines would be diesels emitting at the 4.0 g/BHP-hr level, it seems both inequitable and illogical to force the cleaner engine out of production and have it replaced by the higher emitting engine. (Diesels also emit much higher levels of fine particulate than gasoline engines.) In addition, the basic structure of the Clean Air Act contemplates application of the same standard to any engine or vehicle within a a given class without regard to its design.

EPA is required to review any "revised" standard every three years and tighten it until the statutory standard is reached. During the three years following the promulgation of a revised standard we would be looking at new ways of improving NO_x control (without increasing other pollutants or harming fuel economy), of which the most promising seems to be new fuels such as methanol. We fully expect to be able to adopt a significantly lower NO_x standard for HDEs by the end of that time, perhaps even the 1.7 g/BHP-hr statutory standard itself.

Particulate/NO_x Interaction

A matter relating to HDDs is the question of particulate emissions. In parallel with this NO_x rulemaking, EPA recently proposed a particulate standard for heavy-duty diesel engines. Since some NO_x control techniques can adversely affect particulate emissions, the relationship between these two pollutants will need to be considered in establishing final NO_x levels.

We determined in the particulate NPRM (referenced earlier) that a feasible level of engine-out particulate emissions (that is, prior to any exhaust aftertreatment device) is 0.41 g/BHP-hr, and we have used this level in developing our proposed particulate standard. In the analysis for that proposal, we established as a constraint that we would not consider engine modifications which reduce particulates but at the same time increase NO_x. Thus, 0.41 g/BHP-hr represents what we believe to be the best feasible particulate level if NO_x emissions are not to be compromised. Conversely, in determining a proposed NO_x standard we will use a level which can be attained without having to increase engine-out particulate levels above 0.41 g/BHP-hr. This constraint should not be interpreted to mean that we are excluding consideration of NO_x control techniques which, if applied alone, would increase particulates above 0.41 g/BHP-hr. That would be unnecessarily limiting. We will rather be evaluating an overall combination of techniques, including particulate-reducing engine modifications not otherwise required to meet the particulate proposal.

Particulate/NO_x tradeoffs are also an issue for diesel LDTs, and we will, of course, consider the final stage of the LDT particulate regulations as we determine a proposed LDT NO_x standard.

Fuel Economy

Finally, establishment of stringent NO_x reductions would have the potential to affect the fuel economy of LDTs and HDEs. Gasoline-powered light-duty trucks might experience an actual improvement in fuel economy from moving to three-way/feedback systems. This improvement could occur as well in gasoline HDEs if they, too, were to adopt feedback systems. If EGR and/or retarded spark time were used instead, then fuel consumption might increase. In the case of diesels, we believe that substantial fuel economy penalties could be avoided by sing a proper mix of controls. (Fuel economy will certainly be considered in establishing proposed levels.) Again, however, reliance on substantial EGR or retarded timing might harm fuel economy. We have little data to indicate how much fuel economy improvement or penalty might occur and are requesting comment on this issue. We have not attempted to quantify or attribute a cost to changes in fuel economy. We have, however, calculated the sensitivity of lifelong operating costs to fuel economy penalties (Chapter V, Draft Regulatory Analysis).

B. Environmental Impact

Atmospheric nitrogen and oxygen combine in the high-temperature environment of the combustion chamber to form NO and a comparatively small amount of NO_2. In the atmosphere, the

NO is converted into NO_2 by direct reaction with oxygen and through photochemical processes. It is NO_2 that is responsible for most of the adverse effects of NO_2 emissions. NO_2 in the atmosphere also acts as a precursor to ozone formation.

Elevated levels of NO_2 in the air have been correlated with both long-term and short-term harm to the respiratory system. In addition to these health effects, NO_2 damages some materials and impairs visibility with a brownish haze. Further, NO_2 emissions have been implicated in contributing to the formation of "acid rain," which is capable of eliminating life from lakes and streams, leaching nutrients from the soil, and causing damage to crops and such materials as steel, paint, and concrete.

As noted previously, our initial preparation of this action was based on the planned proposal of the statutory standards (0.9 g/mi for LDTs, 1.7 g/BHP-hr for HDEs). We have done a preliminary environmental impact analysis based on the assumption of compliance with these standards. We have not yet analyzed the environmental impact of either a 1.2 g/mi LDT standard or a 4.0 g/BHP-hr HDE standard. Such an analysis will be done in our proposal for whatever levels we actually propose.

In reviewing the results of our preliminary analysis, it is important to emphasize the assumption of compliance with the statutory 75 percent reduction levels. This is especially true in the case of heavy-duty diesels, for which the feasibility of the 1.7 g/BHP-hr level has not been established. As the environmental analysis shows, compliance with this standard would result in considerably greater emission improvements for diesel HDEs than for the other truck classes. Clearly, if less stringent standards are promulgated, there will be some reduction in emission benefits, and we will carefully analyze these in the proposal.

A look at the per-vehicle NOx emission reductions which would be achieved highlights immediately the contribution of heavy-duty diesels were they to meet a 1.7 g/BHP-hr standard. Low-altitude non-California vehicles would experience lifetime NOx reductions of 0.19 ton, 0.92 ton, and 7.82 tons for LDTs, HDGs, and HDDs, respectively, as compared to 1984 LDTs and 1985 HDEs. On a percentage basis, the reductions are 59 percent for LDTs, 77 percent for HDGs, and 79 percent for HDDs.

Currently, the ambient NOx problem is somewhat localized: only a few air quality regions exceeded the ambient NO_2 standard in 1978. It is crucial to realize, however, that the growth of NOx emission sources, especially in the absence of these regulations, would cause a substantial increase in NOx emissions over the next decades. The regulations noticed here would help minimize that growth.

The impact of such regulations on urban air quality—and hence on health—is best analyzed by looking at the specific regions that already have high ambient NO_2 levels. Using 1978 as a base year, our analysis of these regions indicates that (if the unrevised standards were adopted) there would be an improvement of approximately 30 percent compared to what would occur without the new standards. In the absence of any new NOx regulations for HDE and LDTs, there would be a large net loss in air quality in those regions.

On the other hand, *nationwide* emission reductions are important from the standpoint of welfare effects, such as damage to materials, reduced visibility, and acid rain. The per-vehicle reductions estimated above translate into a 12 percent reduction in the nationwide NOx emissions which would otherwise occur by 1990.

C. Economic Impact

Although a great amount of information about the costs of compliance is not available at this early stage of the rulemaking process, we have been able to construct a reasonable projection of the economic impact. The analysis is very detailed and attempts to look at all possible economic costs which are likely to fall on the manufactures of LDTs and HDEs, on consumers, and on the nation as a whole.The basis for much of this analysis is our projection of the probable emission control strategies which would be pursued in response to the 75 percent reduction emission levels (0.9 g/BHP-hr for LDTs, 17. g/BHP for HDEs). (Chapter III, Regulatory Analysis). In the probable event that less stringent standards are proposed, costs will accordingly be less in most cases. (HDDs are in exception, since their costs here are actually based on the same technology we believe would be used to reach 4.0 g/BHP-hr.)

1. Light-duty Trucks

The costs attributable to the regulations as we expect to propose them go toward 1) research and development, 2) emission control hardware, 3) certification, 4) the in-use durability program, and 5) the new allowable maintenance requirements. We have made estimates for each of these costs and have summed them to arrive at the total manufacturers' cost. Translating this into a sales-weighted average cost results in a per-vehicle first-price increase of $153, the lion's share of which ($145) would go for emission control hardware. If diesel LDTs are broken out, we estimate a $47 rise in their prices. Because the fuel consumption of gasoline LDTs would be unlikely to increase if these regulations are proposed, their owners would not experience an increase in operating costs. But fuel costs might go up for owners of diesel LDTs since some NOx control measures can hurt fuel economy.

We have calculated aggregate cost to the nation from the array of detailed cost estimates. The total cost over five years of production is found to be equivalent to a $2.4 billion investment at the beginning of 1985, expressed in 1980 dollars using a discount rate of 10 percent. Since we are not able to quantify the extent to which fuel economy would be affected, this cost does not include any increased fuel costs.

2. Heavy-Duty Engines

Gasoline and diesel HDEs were treated separately in the analysis but in general would both require the same types of costs: development, production, and installation of new systems, certification, in-use testing, and costs associated with the new allowable maintenance requirements (the latter would apply to diesels only if electronic controls were adopted).

The first price of the average gasoline HDE would increase by about $284, or (at most) 2.8 percent of the price of a new heavy-duty vehicle if the statutory standard were adopted. HDDs would increase by $741, or (at most) 7.4 percent of the vehicle price. While we do not think a fuel economy penalty need occur among the gasoline engines, there might be some increase in fuel costs for operators of heavy-duty diesels if EGR or retarded timing were used. Our lack of certainty about the types of emission controls which HDD manufacturers would pursue and how successful they could be in achieving low NOx emissions makes it unwise for us to attempt to quantify a loss in fuel economy.

Finally, we have computed an estimated aggregate cost to the nation of the heavy-duty portion of these regulations if the 1.7 g/BHP-hr standard were promulgated. Expressing this cost as a lump sum spent at the beginning of 1986, in 1980 dollars, the aggregate cost would be $1.8 billion. This number is calculated assuming that gasoline HDEs would meet the statutory 1.7 g/BHP-hr NOx level. In the anticipated range of

the revised HDE standard, this aggregate cost would be less because some manufacturers would be able to comply without EECs or three-way catalysts.

D. Cost Effectiveness

Cost effectiveness analysis is a way of gauging the "economic efficiency" of a regulatory program. In the case of air pollution regulations, cost effectiveness is generally expressed in dollars per ton of pollutant reduced.

We have calculated cost effectiveness in two distinct ways—on an incremental basis and an integrated basis. The incremental analysis shows the effect of removing each of the individual components of the proposal from the "package" of regulations. The second approach looks at the cost effectiveness of the total package as an integrated strategy. Only the overall cost effectiveness numbers appear below; the figures for the individual components are found in Chapter VII of the Draft Regulatory Analysis with the complete cost effectiveness discussion.

Because the Draft Regulatory Analysis is based on the original 75 percent reduction standards, the cost effectiveness numbers need special explanation. In the case of light-duty trucks, the numbers are based on compliance with the 0.9 g/mi level. Costs and benefits will be slightly less if a 1.2 g/mi standard is proposed, but the cost effectiveness values should not change greatly. The heavy-duty gasoline engine cost effectiveness number was calculated assuming compliance with the 1.7 g/BHP-hr level. At a revised level in the vicinity of 4.0 g/BHP-hr, benefits and possibly costs would drop since three-way systems are unlikely to be pursued.

Because of the special problem of heavy-duty diesel feasibility, HDD benefits are based on the estimated 40.0 g/BHP-hr revised level; the original costs are valid. The original cost effectiveness analysis which appears in the Regulatory Analysis assumed HDD compliance with the 1.7 g/BHP-hr standard.

None of the overall cost effectiveness numbers, which are presented in the following table, include fule-related costs:

Cost Effectiveness*—($/ton of NOx reduction)

LDT (gasoline)—900.
LDT (diesel)—270.
HDE (gasoline)—320.
HDE (diesel)—157.

These values are cost effective as compared to other NOx control regulations. For example, the 90 percent control performance standard for utility boilers has an estimated cost-effectiveness value of $1200 per ton (Interagency Task Force on Motor Vehicle Goals Beyond 1980, March 1976).

E. The Concept of Averaging

EPA is considering a sweeping change in the way motor vehicle certification has been done for nearly a decade. The goal is to introduce some method of emissions "averaging" in order to inject some flexibility and presumably some cost savings into the certification program. Any such averaging system would need to be designed (1) to maintain the same average NO_x emission benefits as are offered by the non-averaging system we expect to propose in this rulemaking and (2) to be consistent with existing programs (such as recall and inspection/maintenance). Of course, such a system would not change the NO_x standard but rather would change how EPA assesses compliance. The design would also have to take into account the Clean Air Act's intent that *each vehicle* pass the standard, the concept that is embodied in the 10 percent Acceptable Quality Level used in the Selective Enforcement Auditing Program. To design and implement such a program is clearly a major task.

The prospect that a carefully designed averaging system could increase flexibility for the industry while at the same time retaining the air quality benefits of the existing programs makes it nearly certain that EPA will soon propose such a system. A task force has been established to explore concrete ideas, and a workshop with industry representatives is scheduled for January 29 and 30 in Ann Arbor. We have initiated the beginning stages of an averaging rulemaking, and an Advance Notice of Proposed Rulemaking was published recently (45 FR 79382, November 28, 1980). We will attempt to complete any resulting rulemaking as close as possible to the final action on the proposal contemplated by today's Notice.

F. Nonconformance Penalties

Section 206(g) of the Clean Air Act provides for nonconformance penalties (NCPs) "* * * in the case of any class or category of heavy-duty vehicles or engines to which a standard promulgated under Section 202(a) of this Act applies * * *." Accordingly, the emission standards we expect to propose for 1985 light-duty trucks (LDTs) over 6,000 pounds GVWR for 1986 heavy-duty engine (HDEs) will be subject to nonconformance penalties.

As discussed elsewhere in this document, EPA, at this time, has varying degrees of certainty depending on the class or category of engines or vehicles, concerning the technological feasibility of LDTs and HDEs complying with the NO_x emission standards we expect to propose. The technological feasibility section of this document indicates that for each class or category of engines or vehicles, a manufacturer may need to do substantial development work and/or make substantial modifications to existing emission control techniques to both certify and produce HDEs and LDTs capable of complying with all regulatory requirements. In such instances, there is some risk that unforeseen circumstances could result in "technological laggards," i.e., manufacturers whose HDEs or LDTs are incapable of complying with the regulatory requirements. EPA intends to make NCPs available for any proposed NO_x emission standards for this reason. The effect of all of the regulatory changes contemplated in this notice on a manufacturer's ability to both certify and produce HDEs and LDTs capable of complying with all regulatory requirements could also necessitate making NCPs available for other appropriate pollutant standards in the 1985 and 1986 model years.

We do not anticipate proposing NCPs in the NPRM. These will be proposed at a later date through a separate rulemaking, with full opportunity for public comment. EPA's intention to offer NCPs does not affect leadtime considerations in meeting the NO_x emission standards and all other regulatory requirements in the applicable model years. When the NO_x emission standards are issued, if not before, all manufacturers should begin making good faith efforts toward compliance. We intend to structure the NCPs, as required by the Act, to remove any competitive disadvantage to manufacturers complying with the regulatory requirements. The penalty will also increase periodically to provide a further incentive to bring nonconforming vehicles/engines into compliance as expeditiously as possible or to develop new replacement engines.

As discussed elsewhere in this document, EPA has a number of alternatives to evaluate in developing the proposed rulemaking. The use of any of these alternative courses of action might affect the Agency's posture on the applicability of NCPs to any pollutant affected by the regulatory requirements of the final rule.

Requests for Specific Comments:

In the past, rulemakings similar to this one have prompted the submission of a large volume of comments. However, many of these comments have been of little use to EPA in preparing proposed or final rules because of their lack of specificity, clarity, completeness, and/or factual support. As indicated above EPA's choice among alternative options in this rulemaking may depend heavily on information submitted in public comments. Accordingly, the following requests for comments are arranged to encourage submission of more helpful information. We ask that commenters follow the outline in their submissions, indicating the number of the question to which a particular comment responds. If a particular question is not addressed, we would appreciate a short explanation as to why it is not. Finally, we do not in any way intend to limit the range or nature of comments, and we will, of course, consider comments which do not fall within the boundaries of the outline.

Responses should include specific quantitative values whenever possible, as well as supporting data for such values. Failure to include such data will make it difficult for us to meaningfully evaluate your comments.

All comments should be submitted to the Public Docket, at the address given earlier in this Notice (see "ADDRESS").

I. Technology and Feasibility (please specify LDT or HDE and gasoline or diesel.)

A. What techniques/technology do you believe are or could be effective in reducing NO_x emissions?

B. Which of these approaches would you consider available for the anticipated applicable model year (1985 for LTDs, 1986 for HDEs).

C. If the list in Question I.B. is different from that in Question I.A., why is this so? When would the remaining items become available?

D. To the extent possible, please identify the effectiveness of each the various approaches listed in your response to Question I.A. in reducing NO_x emissions. Do you have test data which illustrates this effectiveness? What are the incremental emission reductions associated with each approach?

E. If tradeoffs in such things as fuel economy, durability, and particulate emissions are excluded for the moment, is (are) the standard(s) contemplated in this notice feasible using the approaches you identified in Question I.A.? For what model year? Please answer as well for an approximate revised heavy-duty engine standard of 4.0 g/BHP-hr and for the 75 percent reduction LDT level of 0.9 g/mi.

F. If you believe an anticipated proposed standard is not feasible for the applicable model year, identify the lowest NO_x level which you believe is feasible for that model year, subject to the qualifications of Question I.E. above. Provide supporting data and rationale.

G. To whatever extent you can, please show how each of the following items changes, and how they interact, as the level of NO_x emissions is reduced. Please be as specific as possible and include as wide a range of NO_x levels as you can. Also, please include all supporting data. A matrix-style table may be the best way to present this information.

1. Fuel economy.
2. Engine durability.
3. Particulate or other emissions.
4. Earliest model year of production.

H. Are the effects from Question I.G. a function of the control approach that is used? What approach(es) is the information in I.G. based on?

I. If other pollutants are increased by NO_x control techniques, please answer Question I.D. for any additional controls necessary for those other pollutants.

J. Heavy-duty only: If the trends demonstrated in Question I.G. are based on steady-state or bench testing, can you estimate how those trends would be different in transient engine testing, and to what degree? Please supply any test data which you might have to verify this.

K. For gasoline-fueled LTDs and HDEs, please discuss the fuel economy impacts on the following:

1. Eliminating or reducing air injection requirements with three-way catalyst systems.

2. For HDEs, attainment (where possible) of the 4.0 g/BHP-hr approximate revised level by other means than a three-way system (e.g., EGR). At what NO_x level does a three-way system become necessary in order to avoid an unacceptable fuel economy penalty? Please compare the fuel economy impacts of your likely response to each of the possible proposed standards of 1.7 and 4.0 g/BHP-hr.

3. Fully interactive electronic engine controls.

4. The efficient use of fuel purged from the evaporative emission canister.

II. Leadtime

A. Please place estimates for the period of time necessary for each of the following items on a time-line. Assume the use of the control approaches which are most likely to be used to comply with the regulations. For gasoline HDEs, please do parallel analyses assuming a standard of 1.7 g/BHP-hr and a standard of 4.0 g/BHP-hr. For HDDs, assume a standard of 4.0 g/BHP-hr (or the nearest feasible standard if you believe 4.0 g/BHP-hr is out of reach). In addition, please show the maximum reasonable amount of overlap among the items which can occur. The time-line should at least cover 1981, 82, 83, 84, 85, and, for HDEs, 1986. Please indicate how the time-line might be different for different engine families.

If you believe that a standard could not be reached, please complete the timeline assuming the greatest degree of control you think is possible.

1. Research and development.
2. Tooling.
3. Determination of the deterioration factor.
   a. Preliminary DF.
   b. Interim DF.
   c. Date of beginning of in-use fleet.
4. Certification.
5. Date of engine job #1.
6. Date of vehicle job #1 (if applicable).

B. Please analyze the effect on leadtime of implementation of the other technologies identified in question I.A.

III. Cost

A. To the extent possible, please break out anticipated costs separately for *each* of the program(s) outlined in Section II according to the following outline.

Wherever the choice of control technique affects the cost, please provide separate data for each technique identified in Section I. If techniques vary among families or configurations, please show how costs would subsequently vary. Also, please indicate the year(s) during which each expenditure is likely to take place. Finally, where it is not clear, please give the methodology used in the calculations.

1. Research and development costs.
2. Emission control system costs. Please respond in as much detail as you can.
3. Certification costs.
   a. Preliminary DF assessment.
   b. In-use durability testing.
   c. Emission-data testing.
   d. Other costs.
4. Costs resulting from new maintenance requirements.
5. Aggregate cost to the manufacturer (present value at start of 1985 (for LDTs) or 1986 (for HDEs), 10 percent discount rate, 1980 dollars).

B. Can you give a specific estimate of how the demand for your vehicles or engines would change as a result of the additional cost? As a result of other

factors related to this rulemaking (e.g., fuel economy)?

C. How will operators' costs change if these regulations are proposed and finalized (for example, a penalty or bonus in fuel economy)?

D. Please comment on EPA's estimated fleetwide sales projections and characteristics for LDTs and HDEs (dieselization and engine downsizing).

E. Please summarize the anticipated capital investment and give a schedule of expenditures and amortization of the costs.

IV. Policy Issues

A. Please comment on the issue of whether it would be appropriate to revise the statutory standard for diesel—but not gasoline-fueled—HDEs. To some extent this is an issue of equity. For example, is it important to retain standards of equal numerical stringency for both engine technologies, or would an emphasis on equal effort of compliance for both gasoline and diesel engine manufacturers (i.e., through separate standards) be more reasonable? If an equal effort approach is favored, what would be the appropriate measure of effort?

B. Please comment on any perceived anti-competitive effects of this rulemaking. In particular, comments are requested on possible anti-competitive effects from the proof of in-use maintenance provisions, where the manufacturer may establish the "reasonable likelihood" of maintenance being performed by assuming the cost and/or providing the maintenance free to vehicle owners. We welcome suggestions for specific steps which we could take to accomplish the desired end without creating a potential or perceived disruption of the marketplace.

V. Environmental Impact

A. Do you see any flaws in the *methodology* used in EPA's preliminary calculation of the emission reductions and air quality benefits of this rulemaking? Please be specific.

B. Please analyze and evaluate the environmental impact of a revised standard of 4.0 g/BHP-hr for HDEs.

VI. Additional Requests

A. What is the variability (standard deviation divided by the mean) of NOx emissions in your current production vehicles or engines on an engine family-control system configuration basis? How will this change with the control technologies required to meet the standards which we expect to propose?

B. What would be the anticipated low-mileage emission target levels for NOx? How might the target levels for other pollutants be affected by the contemplated regulations?

Administrative Designation and Regulatory Analysis

Since we expect that a proposed action along the lines of this notice will be a "significant" regulation, as mentioned earlier, while we were working towards the proposal itself we prepared a preliminary document entitled "Draft Regulatory Analysis, Environmental Impact Statement, and NOx Pollutant Specific Study for Proposed Gaseous Emission Regulations for 1985 and Later Model Year Light-Duty Trucks and 1986 and Later Model Year Heavy-Duty Engines." It includes assessments of environmental and economic impacts, feasibility, and alternative actions as well as an analysis of Urban and Community Impacts. This document may be found in the Public Docket (as described early in this Preamble). Also, free single copies are available upon request through the Director, Emission Control Technology Division, 2565 Plymouth Road, Ann Arbor, MI 48105, Attn: Heavy-Duty Section.

Pollutant Specific Study

Section 202(a)(3)(E)(i) of the 1977 amended Clean Air Act calls for the preparation of pollutant specific studies "concerning the effects of each air pollutant emitted from heavy-duty vehicles or engines and from other sources of mobile source related pollutants on the public health and welfare." In the case of NOx, the document described in the preceding paragraph also incorporates a preliminary draft of the pollutant specific study, and when finalized (with the final regulations), it will be published in the Federal Register and submitted to Congress.

Draft Regulations

A set of draft regulations embodying the concepts discussed in this ANPRM have been prepared and are available in the docket. These should be referred to for further understanding of the concepts EPA expects to propose.

Authority for this rulemaking is found in Sections 202, 206, 207, 208, and 301 of the Clean Air Act (42 U.S.C. 7521, 7525, 7541, 7542, and 7601).

Dated: January 13, 1981.

Douglas M. Costle,

Administrator.

[FR Doc. 81-1933 Filed 1-16-81; 8:45 am]

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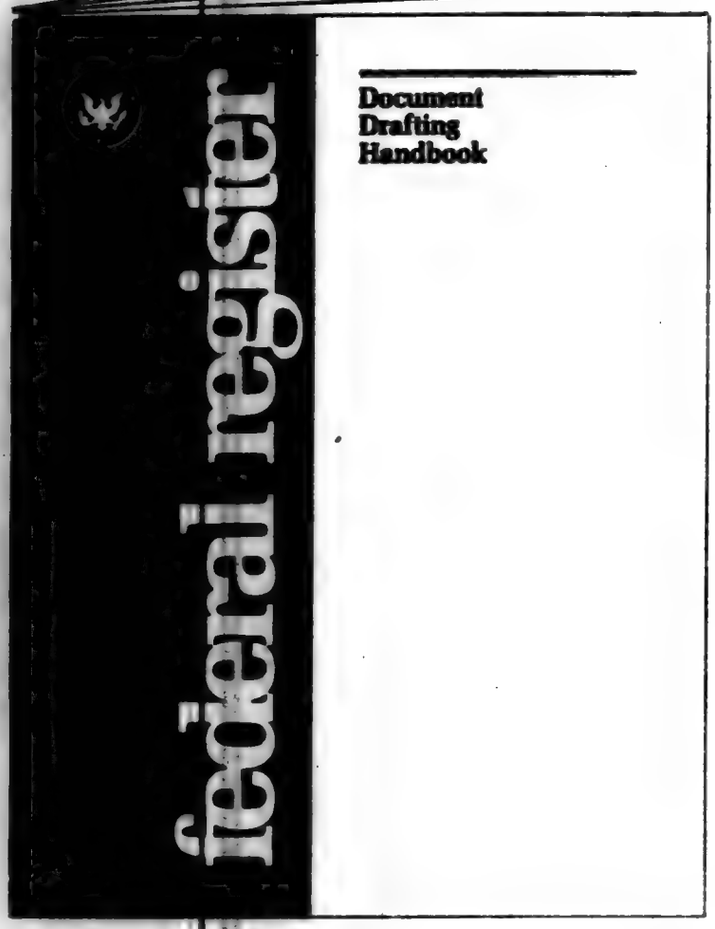

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federal register

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5851-5857 **The President** releases executive orders and a proclamation (5 documents)

6358 **Hostage Relief** State, upon authorization by the President, proposes to issue regulation, providing for assistance to American hostages and members of their families and households; comments by 3-23-81 (Part XI of this issue)

6266 **Food Relief Programs** USDA/FNS reorganizes final rule regarding Summer Food Service Program for children; effective 1-1-81 (Part IV of this issue)

6296 **Medicare** HHS/HCFA proposes certification of medicare supplemental health insurance policies; comments by 3-23-81 (Part V of this issue)

6310 **Food Stamps** USDA/FNS publishes procedures and requirements for State agencies to follow to administer the Food Stamp Program; effective 2-20-81 (Part VI of this issue)

6114 **Veterans** VA publishes statements of procedures implementing provisions of the Veterans' Rehabilitation and Education Amendments of 1980; comments by 2-19-81

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FEDERAL REGISTER Published daily, Monday through Friday, (not published on Saturdays, Sundays, or on official holidays), by the Office of the Federal Register, National Archives and Records Service, General Services Administration, Washington, D.C. 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

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Questions and requests for specific information may be directed to the telephone numbers listed under INFORMATION AND ASSISTANCE in the READER AIDS section of this issue.

6134 **Lead** Labor/OSHA publishes supplemental statement of reasons and amendment of standard regarding occupational exposure to lead; effective 2-30-81 (Part II of this issue)

6322 **Education** ED publishes regulations regarding certain educational programs concerning a student's cost of attendance at school; comments by 3-23-81 (Part VII of this issue)

6029 **Grant Programs—Food Stamps** USDA/FNS gives notice of availability of fiscal year 1981 funds for demonstration, research, and evaluation grants related to Food Stamp Program operations; apply by 3-23-81

6019 **Income Tax** Treasury/IRS publishes extension of time for comments to 2-17-81, regarding payments to foreign countries for oil and gas that are not considered taxes

6019 **Income Tax** Treasury/IRS releases proposal regarding limitation on foreign tax credit for foreign oil and gas taxes; comments by 2-17-81

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Title 3—

The President

Proclamation 4817 of January 16, 1981

Proclamation To Modify the Suspension in Part of the Tariff Concessions on Certain Lead Products

By the President of the United States of America

A Proclamation

1. On October 31, 1979, under the authority of section 101(a)(1) of the Trade Act of 1974 (the Trade Act) (19 U.S.C. 2111(a)(1)), the United States entered into a trade agreement with the United Mexican States (Mexico) containing certain tariff concessions by the United States. These tariff concessions were implemented by Proclamation No. 4707 of December 11, 1979, beginning January 1, 1980. This agreement provides that, under certain circumstances which now exist, the United States may suspend or withdraw these concessions in whole or in part.

2. An expectation, which this agreement stated to be the basis for the United States concessions therein, not having materialized, and only partially equivalent substitute concessions having been received from Mexico, the President, by Proclamation 4792 of September 15, 1980 (45 Fed. Reg. 61589), suspended in part tariff concessions which were granted to Mexico in the October 31, 1979 agreement because adequate substitute compensatory concessions had not been provided by Mexico at that time.

3. In view of the temporary modification of the rate of duty on unwrought lead other than lead bullion by section 114 of Public Law 96-609, of December 28, 1980, and of the extent of concessions which have been received from Mexico, I determine that the suspension of the concessions under the Agreement of October 31, 1979 should be modified as set forth below.

NOW, THEREFORE, I, JIMMY CARTER, President of the United States of America, acting under the authority vested in me by the Constitution and the statutes of the United States, including sections 125 and 604 of the Trade Act (19 U.S.C. 2135 and 2483), do proclaim that:

The tariff concessions proclaimed by Proclamation No. 4707 on litharge and red lead provided for in items 473.52 and 473.56 of the Tariff Schedules of the United States (19 U.S.C. 1202), (in the case of litharge as partially suspended by Proclamation 4792) are suspended as set forth in the Annex of this proclamation.

IN WITNESS WHEREOF, I have hereunto set my hand this sixteenth day of January, in the year of our Lord nineteen hundred and eighty-one, and of the Independence of the United States of America the two hundred and fifth.

Jimmy Carter

ANNEX

Part 2D of the Appendix to the Tariff Schedules of the United States is modified to read as follows:

Item	Articles	Rates of Duty 1	Rates of Duty 2	Effective Period
	Subpart D.-Temporary Duties, Pursuant to Section 125 of the Trade Act of 1974			
	Subpart D headnote:			
	1. Any article described in the provisions of this subpart, if entered during the period specified in the last column, is subject to duty at the rate set forth herein in lieu of the rate provided therefor in schedules 1 to 8, inclusive.			
948.10	Litharge (provided for in item 473.52)	3% ad val. or such other rate as may be proclaimed by the President	No change	On and after 1/19/81
948.12	Red lead (provided for in item 473.56)	3.4% ad val. or such other rate as may be proclaimed by the President	No change	On and after 1/19/81

[FR Doc. 81-2201
Filed 1-19-81; 10:19 am]
Billing code 3195-01-M

Presidential Documents

Executive Order 12272 of January 16, 1981

Foreign Service Retirement and Disability System

By the authority vested in me as President of the United States of America by Section 805 of the Foreign Service Act of 1946, as amended (22 U.S.C. 1065), and in order to further conform the Foreign Service Retirement and Disability System to the Civil Service Retirement and Disability System, it is hereby ordered as follows:

1-101. Section 852(c) of the Foreign Service Act of 1946, as amended (22 U.S.C. 1121(c)), shall be deemed to be amended (a) by striking out paragraph (1) thereof, and (b) by inserting in lieu thereof the provisions of Section 8340(c)(1) of Title 5 of the United States Code.

1-102. The amendment made by subsection 1-101(a) hereof shall apply with respect to annuities commencing after January 19, 1981.

Jimmy Carter

THE WHITE HOUSE,
January 16, 1981.

[FR Doc. 81-2822
Filed 1-19-81; 10:20 am]
Billing code 3195-01-M

Presidential Documents

Executive Order 12273 of January 16, 1981

Central Intelligence Agency Retirement and Disability System

By the authority vested in me as President of the United States of America by Section 292 of the Central Intelligence Agency Retirement Act of 1964 for Certain Employees, as amended (50 U.S.C. 403 note), and in order to further conform the Central Intelligence Agency Retirement and Disability System to certain amendments to the Civil Service Retirement and Disability System, it is hereby ordered as follows:

1–101. Section 291(b) of the Central Intelligence Agency Retirement Act of 1964 for Certain Employees, as amended, shall be deemed to be amended (a) by striking out paragraph (1) thereof, and (b) by inserting in lieu thereof the following:

"(1) The first cost-of-living increase (if any) made to an annuity which is payable from the Central Intelligence Agency Retirement and Disability Fund to a participant who retires, or to the widow or widower of a deceased participant, shall be equal to the product (adjusted to the nearest of 1/10 of one percent) of:

a. ⅓ of the applicable percent change computed under subsection (a) of this Section, multiplied by

b. the number of full months for which the annuity was payable from the Fund before the effective date of the increase (counting any portion of a month as a full month).".

1–102. The amendment made by subsection 1–101(a) hereof shall apply with respect to annuities commencing after January 19, 1981.

Jimmy Carter

THE WHITE HOUSE,
January 16, 1981.

[FR Doc. 81-2333
Filed 1-19-81; 10:21 am]
Billing code 3195-01-M

Presidential Documents

Executive Order 12274 of January 16, 1981

Military Pay and Allowances

By the authority vested in me as President and as Commander in Chief of the Armed Forces of the United States of America by Sections 301c, 305a, and 403 of Title 37 of the United States Code, and in order to implement incentive pay for submarine duty for Navy enlisted members and officers, to implement special pay for officers serving on sea duty and increased rates of special pay for enlisted personnel serving on sea duty, and to extend the payment of basic allowances for quarters to certain members without dependents, it is hereby ordered as follows:

1–1. *Incentive Pay for Submarine Duty.*

1–101. Executive Order No. 11157, as amended, is further amended by revising Section 106 of Part I thereof to read as follows:

"Sec. 106(a). As determined by the Secretary of the Navy, a member who is entitled to basic pay, who holds or is in training leading to a submarine duty designator, who is not entitled to continuous monthly submarine duty incentive pay, and who is in and remains in the submarine service on a career basis, is also entitled to submarine duty incentive pay for the frequent and regular performance of operational submarine duty required by orders, except as provided by 37 U.S.C. 301c(c).

"(b) To the extent provided for by appropriations, a member of the Naval Reserve who is entitled to compensation under Section 206 of Title 37 of the United States Code, and who performs, under orders, duty on a submarine during underway operations, is eligible for an increase in such compensation equal to one-thirtieth of the monthly submarine duty incentive pay for the performance of that duty by a member of a corresponding grade and years of service who is entitled to basic pay when those orders specify such increased entitlement. Such member is eligible for the increase for each day served, for as long as he is qualified for it, during each regular period of appropriate duty.

"(c) As determined by the Secretary of the Navy, a member who is entitled to basic pay, who holds or is in training leading to a submarine duty designator and who is in and remains in the submarine service on a career basis, is entitled to continuous monthly submarine duty incentive pay, subject to the performance of required number of years of operational submarine duty (37 U.S.C. 301c(a) (3)–(4)), except as provided by 37 U.S.C. 301c(c).

"(d) The Secretary of the Navy is hereby designated and empowered to issue additional implementing regulations with respect to entitlement of regular and reserve officers and enlisted members of the Navy to submarine duty incentive pay, or continuous monthly submarine duty incentive pay.".

1–2. *Special Pay for Career Sea Duty.*

1–201. Section 201 of Part II of Executive Order No. 11157, as amended, is further revised to read as follows:

"Sec. 201(a). The following members of a uniformed service who are entitled to receive basic pay shall be entitled to receive, additionally, career sea pay while on sea duty:

(1) enlisted members who are in pay grade E–4 or above,

(2) warrant officers,

(3) commissioned officers in pay grade 0–3 or above who have over three years of sea duty, and

(4) commissioned officers in pay grades 0–1 and 0–2 with at least four years active service as enlisted members or as noncommissioned warrant officers and over three years of sea duty.

"(b) The period of sea duty shall include the date of reporting and the date of detachment as stated in orders. Career sea pay shall be at the rates prescribed in Section 305a of Title 37 of the United States Code.".

1–202. Section 202 of Part II of Executive Order No. 11157 as amended, is revoked.

1–203. Part II of Executive Order No. 11157, as amended, is further revised by adding a new Section 202 as follows:

"Sec. 202. A member of a uniformed service who is entitled to career sea pay and who has served 36 consecutive months of sea duty as such period is computed under regulations of the Secretary concerned, is entitled to a monthly career sea pay premium for the thirty-seventh consecutive month and each subsequent consecutive month of sea duty service by such member when such member is entitled to career sea pay. In the regulations published by the Secretary concerned, the term "consecutive months of sea duty" may be defined to include periods during which a member is serving in or under orders to duties, service in which qualifies the member for career sea pay, either periodically or continuously during assignment to such duties. Examples of such periods are periods of service as a member of a two crewed submarine or fleet aviation units assigned to ships, or periods for training, hospitalization, or other periods of a similar nature.".

1–204. Section 206 of Part II of Executive Order No. 11157, as amended, is further revised by deleting subsection (b).

1–3. *Basic Allowance for Quarters.*

1–301. Subsection 401 of Part IV of Executive Order No. 11157, as amended, is amended by adding new subsections (e) and (f) as follows:

"(e) The term "deployed" shall apply to time during which the unit is at sea or in a port more than 50 miles from its home port; provided, however, time during which the unit is in a port for overhaul or extended repairs is not to be considered deployed time. Unanticipated overhauls or extended repairs which occur during a period scheduled as extended deployment in the mission assignment of the ship is time deployed unless otherwise classified by appropriate command authority.

"(f) The phrase "while the unit to which he is assigned is deployed for a period in excess of 90 days" shall apply to periods of time commencing on the 91st day the unit to which the member is assigned is deployed.".

1–302. Executive Order No. 11157, as amended, is further amended by deleting section 406 of Part IV thereof.

1–4. *Effective Date.*

1–401. The amendments made by this Order to Executive Order No. 11157, as amended, shall be effective as of January 1, 1981.

Jimmy Carter

THE WHITE HOUSE,
January 16, 1981.

[FR Doc. 81–2294
Filed 1–18–81; 10:22 am]
Billing code 3195–01–M

Presidential Documents

Executive Order 12275 of January 18, 1981

Design Liaison Council

By virtue of the authority vested in me as President by the Constitution of the United States of America, and in order to affirm our commitment that each Federal dollar spent on design shall be viewed as an investment in enriching the quality of American life, it is hereby ordered as follows:

1–101. To encourage good design within the Federal government, there is hereby established an interagency Design Liaison Council composed of the heads of the following agencies or their designees:

Department of State.

Department of the Treasury.

Department of Defense.

Department of Justice.

Department of the Interior.

Department of Agriculture.

Department of Commerce.

Department of Labor.

Department of Health and Human Services.

Department of Housing and Urban Development.

Department of Transportation.

Department of Energy.

Department of Education.

Environmental Protection Agency.

National Aeronautics and Space Administration.

Office of Personnel Management.

General Services Administration.

Veterans Administration.

International Communication Agency.

Small Business Administration.

Federal Council on the Arts and the Humanities.

1–102. The following agencies are invited to participate in the activities of the Design Liaison Council:

Commission on Fine Arts.

Smithsonian Institution.

U.S. Postal Service.

Tennessee Valley Authority.

1–103. The representative of the Federal Council on the Arts and the Humanities shall chair the Design Liaison Council.

1–104. Representatives of other interested agencies may be invited to participate in the functions of the Design Liaison Council.

1–105. For the purposes of this Order, "design" encompasses products and processes of architecture, energy conservation, engineering, graphic design, industrial and product design, interior design, landscape architecture, urban design and city planning, and other related disciplines.

1–106. The Design Liaison Council shall encourage the exchange of information and research on design issues among federal agencies. The Council shall also recommend those changes in agency standards and procedures which will enhance the functional and visual quality of design products and processes.

Jimmy Carter

THE WHITE HOUSE,
January 16, 1981.

[FR Doc. 81-2335
Filed 1-19-81; 10:23 am]
Billing code 3195-01-M

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Rules

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DEPARTME

Agricultura

7 CFR Part

[Orange, Gra Regulation 4,

Oranges, G Tangelos G Amendmen Requiremen

AGENCY: Ag USDA.

ACTION: Am

SUMMARY: T minimum di Florida Hon inches to 2⅝ January 15 t This action conditions a available su growers and

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SUPPLEMENT final action h USDA proce Secretary's M implement E has been cla This regulati marketing ag 905, (7 CFR P handling of o tangerines, a Florida. The effective und

Rules and Regulations

Federal Register
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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each month.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 905

[Orange, Grapefruit, Tangerine and Tangelo Regulation 4, Amendment 6]

Oranges, Grapefruit, Tangerines, and Tangelos Grown in Florida; Amendment of Tangerine Size Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Amendment to final rule.

SUMMARY: This amendment lowers the minimum diameter requirement for Florida Honey tangerines from 2 1/16 inches to 2 5/16 inches during the period January 15 through October 18, 1981. This action recognizes demand conditions and the size composition of available supply in the interest of growers and consumers.

EFFECTIVE DATE: January 15, 1981.

FOR FURTHER INFORMATION CONTACT: William J. Doyle, Acting Chief, Fruit Branch, F&V, AMS, USDA, Washington, D.C. 20250, telephone 202-447-5975. The Final Impact Analysis relative to this final rule is available on request from the above named individual.

SUPPLEMENTARY INFORMATION: This final action has been reviewed under USDA procedures established in Secretary's Memorandum 1955 to implement Executive Order 12044, and has been classified "not significant." This regulation is issued under the marketing agreement and Order NO. 905, (7 CFR Part 905), regulating the handling of oranges, grapefruit, tangerines, and tangelos grown in Florida. The agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674). This action is based upon the recommendation and information submitted by the Citrus Administrative Committee, and upon other available information. It is hereby found that the regulation of Florida Honey tangerines, as hereinafter provided, will tend to effectuate the declared policy of the act.

The minimum size requirements, herein specified, for domestic shipments reflect the Department's appraisal of the need for the amendment of the current regulation to permit handling of smaller size fresh Florida Honey tangerines during the specified period based on the size composition of the crop and current and prospective demand conditions.

It is further found that there is insufficient time between the date when information became available upon which this amendment is based and when the action must be taken to warrant a 60-day comment period as recommended in E.O. 12044, and that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rulemaking, and postpone the effective date until 30 days after publication in the Federal Register (5 U.S.C. 553), and this amendment relieves restrictions on the handling of Florida Honey tangerines. It is necessary to effectuate the declared purposes of the act to make this regulatory provision effective as specified, and handlers have been apprised of such provision and the effective time.

Accordingly, it is found that the provisions of § 905.304 (Orange, Grapefruit, Tangerine and Tangelo Regulation 4; (45 FR 67047; 79851; 79002; 80390; 81198; 83192) should be and are amended by revising Table I, paragraph (a) to read as follows:

§ 905.304 Orange, grapefruit, tangerine, and tangelo regulation 4.

(a) • • •

Table I

Variety	Regulation period	Minimum grade	Minimum diameter (inches)
(1)	(2)	(3)	(4)
Tangerines: Honey	Jan. 15, 1981, through Oct. 18, 1981	Florida No. 1	2 5/16

• • • • • • •

(Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674)

Dated: January 15, 1981.

D. S. Kuryloski,

Acting Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 81-2060 Filed 1-19-81; 8:45 am]

BILLING CODE 3410-02-M

7 CFR Part 907

[Navel Orange Regulation 504; Amendment 2]

Navel Oranges Grown in Arizona and Designated Part of California; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Amendment to final rule.

SUMMARY: This action increases the quantity of fresh California-Arizona navel oranges that may be shipped to market during the period January 9-January 15, 1981. Such action is needed to provide for orderly marketing of fresh navel oranges for the period specified due to the marketing situation confronting the orange industry.

DATES: The amendment is effective for the period January 9-January 15, 1981.

FOR FURTHER INFORMATION CONTACT: William J. Doyle, 202-447-5975.

SUPPLEMENTARY INFORMATION: *Findings.* This amendment is issued under the marketing agreement, as amended, and Order No. 907, as amended (7 CFR Part 907), regulating the handling of navel oranges in Arizona and designated part

of California. The agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). The action is based upon the recommendations and information submitted by the Navel Orange Administrative Committee and upon other information. It is hereby found that this action will tend to effectuate the declared policy of the act.

This action is consistent with the marketing policy for 1980–81 which was designated significant under the procedures of Executive Order 12044. The marketing policy was recommended by the committee following discussion at a public meeting on October 14, 1980. A final impact analysis on the marketing policy is available from William J. Doyle, Acting Chief, Fruit Branch, FaV, AMS, USDA, Washington, D.C. 20250, telephone 202–447–5975.

The committee met again on January 14, 1981, at Los Angeles, California, to consider the current and prospective conditions of supply and demand and recommended a quantity of navel oranges deemed advisable to be handled during the specified week. The committee reports the demand for navel oranges is improving.

It is further found that there is insufficient time between the date when information became available upon which this amendment is based and when the action must be taken to warrant a 60-day comment period as recommended in E.O. 12044, and that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rulemaking, and postpone the effective date until 30 days after publication in the Federal Register (5 U.S.C. 553), and this amendment relieves restrictions on the handling of navel oranges. It is necessary to effectuate the declared policy of the act to make this regulatory provision effective as specified, and handlers have been apprised of such provisions and the effective time.

Section 907.804 Navel Orange Regulation 804 (46 FR 2025; 46 FR 3493) is revised to read as follows:

Order

§ 907.804 Navel Orange Regulation 804.

The quantity of navel oranges grown in Arizona and California which may be handled during the period January 9, 1981, through January 15, 1981, are established as follows:

(1) District 1: 1,400,000 cartons;
(2) District 2: 54,500 cartons;
(3) District 3: unlimited cartons;
(4) District 4: 44,000 cartons;

(b) As used in this section, "handled," "District 1," "District 2," "District 3," "District 4," and "carton" mean the same as defined in the marketing order.

(Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674)

Dated: January 15, 1981.

D. S. Kuryloski,
Acting Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 81-2290 Filed 1-19-81; 8:45 am]
BILLING CODE 3410-02-M

Agricultural Stabilization and Conservation Service

7 CFR Part 1484

Feed Grains; Deletion

AGENCY: Agricultural Stabilization and Conservation Service (ASCS), USDA.

ACTION: Final rule.

SUMMARY: This rule deletes the regulations issued under Part 1484, Feed Grains, including the Subpart—Feed Grain Export Program. These regulations no longer need to be set forth in the Code of Federal Regulations since the Feed Grain Export Program has been inoperative for more than five years.

EFFECTIVE DATE: January 21, 1981.

FOR FURTHER INFORMATION CONTACT: Mr. Ronald Burgess, Chief, Commodity Operations Branch, Inventory Management Division, Agricultural Stabilization and Conservation Service, USDA, Room 5969 South Building, P.O. Box 2415, Washington, D.C. 20013, (202) 447–2762.

SUPPLEMENTARY INFORMATION: This final action has been reviewed under USDA procedure established in Secretary's Memorandum 1955 to implement Executive Order 12044 and has been classified as "not significant." In compliance with Secretary's Memorandum 1955 and the final report issued by the Secretary with respect to Executive Order 12044 and entitled "Improving USDA Regulations" (43 FR 50988), it is determined after review of these regulations for need, currency, clarity, and effectiveness, that deletion of these regulations is appropriate at this time. Furthermore, it has been determined that it is impractical and contrary to the public interest to comply with the public rulemaking requirement of 5 U.S.C. 553 since this action merely deletes provisions which are no longer applicable.

The Feed Grain Export Program, as provided for in 7 CFR Part 1484, authorized the making of payments to exporters of feed grains to encourage exports. While statutory authority for this program continues to exist, this program has been inoperative for more than five years.

Final Rule

Accordingly 7 CFR Part 1484 is removed and reserved.

PART 1484—[RESERVED]

Signed at Washington, D.C. on January 13, 1981.

Ray Fitzgerald,
Executive Vice President, Commodity Credit Corporation.

[FR Doc. 81-2291 Filed 1-19-81; 8:45 am]
BILLING CODE 3410-05-M

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7 CFR PART 1498

Flaxseed and Linseed Oil; Deletion

AGENCY: Agricultural Stabilization and Conservation Service (ASCS), USDA.

ACTION: Final rule.

SUMMARY: This rule deletes the regulations issued under 7 CFR Part 1498, Flaxseed and Linseed Oil. These regulations no longer need to be set forth in the Code of Federal Regulations since the Flaxseed and Linseed Oil Export Program has been inoperative for more than five years.

EFFECTIVE DATE: January 21, 1981.

FOR FURTHER INFORMATION CONTACT: Mr. Ronald Burgess, Chief, Commodity Operations Branch, Inventory Management Division, Agricultural Stabilization and Conservation Service, USDA, Room 5969 South Building, P.O. Box 2415, Washington, D.C. 20013.

SUPPLEMENTARY INFORMATION: This final action has been reviewed under USDA procedure established in Secretary's Memorandum 1955 to implement Executive Order 12044 and has been classified as "not significant." In compliance with Secretary's Memorandum 1955 and the final report issued by the Secretary with respect to Executive Order 12044 and entitled "Improving USDA Regulations" (43 FR 50988), it is determined after review of these regulations for need, currency, clarity, and effectiveness, that deletion of these regulations is appropriate at this time. Furthermore, it has been determined that it is impractical and contrary to the public interest to comply with the public rulemaking requirement of 5 U.S.C. 553 since this action merely deletes provisions which are no longer applicable.

The Flaxseed and Linseed Program as provided for in 7 CFR Part 1498, has been inoperative for more than five years and continuation of the program regulations is not necessary.

Final rule

Accordingly 7 CFR Part 1486 is removed and reserved.

PART 1486—[RESERVED]

Signed at Washington, D.C. on January 13, 1981.

Ray Fitzgerald,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 81-2000 Filed 1-20-81; 8:45 am]

BILLING CODE 3410-05-M

Animal and Plant Health Inspection Service

9 CFR Part 51

Brucellosis Indemnity; Correction

Correction

In FR Doc. 80-40649, at page 86409, in the issue of Wednesday, December 31, 1980, on page 86410, the first column, in the codified material, paragraph (c) of § 51.6, fourth line down, insert the number "15" after the word "within".

BILLING CODE 1505-01-M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 335

Preliminary Examination on Petitions for Naturalization; Designation of Examiners

Correction

In FR Doc. 80-39300 appearing on page 83195 in the issue for Thursday, December 18, 1980, make the following correction:

On page 83195, in the second column, under § 335.11, in paragraph (b), in the thirty-fifth line, the words "and issue" should have read "and issue such".

BILLING CODE 1505-01-M

FEDERAL RESERVE SYSTEM

12 CFR Part 262

[Docket No. R-0343]

Waiver of Procedural Rules for Applications Requiring Immediate or Expeditious Action

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: This amendment to the Board's Rules of Procedure permits waiver of public notice and other procedural rules for applications that require immediate or expeditious action.

EFFECTIVE DATE: January 21, 1981.

FOR FURTHER INFORMATION CONTACT: Bronwen Mason (202/452-3594), Legal Division, Board of Governors of the Federal Reserve System, Washington, D.C. 20551.

SUPPLEMENTARY INFORMATION: (1) *Background.* On November 6, 1978 (43 FR 47,157), the Board amended its Rules of Procedure to require applicants for the Board's approval for expansion of their banking operations through merger, consolidation, acquisition, or branching to publish notices of their applications in newspapers of general circulation for two consecutive weeks (12 CFR 262.3(b)), and in some cases to post notices in branch lobbies. Occasionally the Board must act immediately on such applications because an institution involved is likely to fail otherwise, or the Board must act expeditiously because of some emergency. In those rare circumstances, normally initiated by a request from the primary supervisor of a bank for immediate or expedited action, the delay involved in the publication of newspaper notice and the solicitation of public comment will normally not be in the public interest. This amendment permits the Board (or the Reserve Bank or officer having authority over a particular application) to waive or curtail notice and comment reuirements in those cases as circumstances dictate. This amendment does not reflect any change in the Board's commitment to maximize public participation in the regulatory process, it does not affect the statutory obligation of a bank to publish notice of an application requiring expeditious action filed under the Bank Merger Act (12 U.S.C. 1828(c)); and for all applications requiring expeditious, but not immediate, action the Board will expect applicants to satisfy the requirements of its Rules of Procedure to the fullest extent compatible with the emergency.

Under this amendment the Board, Reserve Bank, or responsible official may also waive or curtail any other procedural rule that might prevent immediate or expditious action when needed. For example, the Board may find it necessary to eliminate or shorten notice of a proposed acquisition of a nonbank company by a bank holding company in exigent circumstances. However, the Federal Reserve System and applicants normally should be able to observe all other procedural rules even in emergencies.

(2) *Authority.* This action is taken pursuant to the Board's authority under sections 3(a), 4 and 5(b) of the Bank Holding Company Act of 1956 (12 U.S.C. 1842(a), 1843, and 1844(b)), section 18 of the Federal Deposit Insurance Act (12 U.S.C. 1828(c)), and sections 9 and 11(l) of the Federal Reserve Act (12 U.S.C. 321 and 248(l)).

(3) *Effective date.* This amendment has been adopted without following the provisions of 5 U.S.C. § 553 relating to notice, public participation, and deferred effective date because the change involved is procedural in nature and does not constitute a substantive rule subject to the requirements of that section. The Board's expanded rulemaking procedures (44 FR 2,967 (1979)) have not been followed because the amendment is a technical one and because it relieves a procedural burden that could obstruct necessary and prompt action that would be in the public interest.

Accordingly, § 262.3 of the Board's Rules of Procedure (12 CFR 262.3) is amended by adding the following paragraph (l):

§ 262.3 *Applications.*

* * * * *

(l) *Waiver.* The Board, or the officer or Reserve Bank authorized to approve an application, may waive or modify any procedural requirements for that application prescribed or cited in this section and may excuse any failure to comply with them upon a finding that immediate action on the application is necessary to prevent the probable failure of a bank or company or that an emergency exists requiring expeditious action.

* * * * *

By Order of the Board of Governors of the Federal Reserve System, January 13, 1981.

Theodore E. Allison,

Secretary of the Board.

[FR Doc. 81-2010 Filed 1-20-81; 8:45 am]

BILLING CODE 6210-01-M

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12 CFR Part 255

[Docket No. R-0346]

Authority To Accept Agreements Under the Securities Exchange Act of 1934

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: Section 8 of the Securities Exchange Act of 1934 requires nonmember banks wishing to extend credit in connection with securities transactions to enter into an agreement with the Board to comply with the provisions of law and the Board's rules

in connection with such extensions of credit. The Board has delegated to the Federal Reserve Banks authority to receive such agreements.

EFFECTIVE DATE: January 21, 1981.

FOR FURTHER INFORMATION CONTACT: Laura Homer, Securities Credit Officer (202/452-2786), Board of Governors of the Federal Reserve System, Washington, D.C. 20551.

SUPPLEMENTARY INFORMATION: Section 8(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78h(a)) prohibits a broker or dealer from borrowing on a security registered on a national exchange from any bank other than a member of the Federal Reserve System, or one that has filed an agreement with the Board. The agreement provides that the nonmember bank will comply with the provisions of the 1934 Act, the Federal Reserve Act and the Banking Act of 1933 as well as the rules and regulations issued thereunder. This amendment authorizes the Federal Reserve Banks to accept on the Board's behalf these agreements, which are executed on forms approved by the Board.

The provisions of 5 U.S.C. 553, relating to notice, public participation and deferred effective date are not followed in connection with adoption of the amendment because the change involved is procedural in nature and does not constitute a substantive rule subject to the requirements of that section. The Board's expanded rulemaking procedures (44 FR 3,957 (1979)) have not been followed because the amendment is a technical one and because it relieves a burden that could obstruct necessary and prompt action.

Pursuant to its authority under section 11(k) of the Federal Reserve Act and section 8(a) of the Securities Exchange Act of 1934, the Board amends its Rules Regarding Delegation of Authority (12 CFR 265) by adding paragraph (f)(53) to read as follows:

Section 265.2 is amended by adding paragraph (f)(53) as follows:

§ 265.2 Specific functions delegated to Board employees and to Federal Reserve Banks.

* * * * *

(f) * * *

(53) Under the provisions of section 8(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78h(a)) concerning extensions of credit to finance securities transactions, to accept agreements on behalf of the Board from nonmember banks in the form prescribed by the Board.

By Order of the Board of Governors of the Federal Reserve System, January 13, 1981.

Theodore E. Allison,
Secretary of the Board.

[FR Doc. 81-2169 Filed 1-20-81; 8:45 am]
BILLING CODE 6210-01-M

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12 CFR Part 265

[Docket R-0345]

Authority To Approve Applications To Acquire Failing Banks

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: This amendment to the Board's Rules Regarding Delegation of Authority permits the Director of the Board's Division of Banking and Supervision and Regulation to approve applications by a company to acquire a bank and to permit an individual to acquire a bank when immediate or expeditious action is necessary.

EFFECTIVE DATE: January 21, 1981.

FOR FURTHER INFORMATION CONTACT: Bronwen Mason (202/452-3564), Board of Governors of the Federal Reserve System, Washington, D.C. 20551.

SUPPLEMENTARY INFORMATION: Occasionally urgent consideration is required of certain applications under the Bank Holding Company Act or notices under the Change in Bank Control Act because the institution is likely to fail otherwise or because of some emergency. In order to avoid undue delay, under this amendment, the Board has delegated authority to the Director of its Division of Banking Supervision and Regulation to approve such applications and to permit such acquisitions that meet the conditions specified for Reserve Bank approval under delegated authority.

This action is taken pursuant to the Board's authority under sections 3(a) and 5(b) of the Bank Holding Company Act of 1956 (12 U.S.C. 1842(a) and 1844(b), and the Change in Bank Control Act (12 U.S.C. 1817(j)).

The provisions of 5 U.S.C. 553 relating to notice, public participation and deferred effective date are not followed in connection with adoption of the amendment because the change involved is procedural in nature and does not constitute a substantive rule subject to the requirements of that section. The Board's expanded rulemaking procedures (44 FR 3,957 (1979)) have not been followed because the amendment is a technical one and because it relieves a burden that could obstruct necessary and prompt action that would be in the public interest.

In order to accomplish this delegation, § 265.2(c) of the Board's Rules Regarding Delegation of Authority is amended by adding subparagraph (30) to read as follows:

§ 265.2 Specific functions delegated to Board employees and to Federal Reserve Banks.

* * * * *

(c) * * *

(30) Under the provisions of § 3(a) of the Bank Holding Company Act (12 U.S.C. § 1842(a)) and the Change In Bank Control Act (12 U.S.C. § 1817(j)) to take actions the Reserve Bank could take under paragraphs (f)(22) and (f)(30) of this section if immediate or expeditious action is required to avert failure of a bank or because of an emergency.

* * * * *

By Order of the Board of Governors of the Federal Reserve System, January 13, 1981.

Theodore E. Allison,
Secretary of the Board.

[FR Doc. 81-2167 Filed 1-20-81; 8:45 am]
BILLING CODE 6210-01-M

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12 CFR Part 265

[Docket No. R-0347]

Authority To Approve Branch Applications

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final regulation.

SUMMARY: Section 265.2(f) of the Board's Rules Regarding Delegation of Authority is hereby amended to eliminate the requirement that Federal Reserve Banks may approve the application of a State member bank to establish a branch only if the proposed branch has already been approved by the appropriate State supervisory authority.

EFFECTIVE DATE: January 21, 1981.

FOR FURTHER INFORMATION CONTACT: Bronwen Mason, Senior Attorney (202/452-3564) of the Board of Governors of the Federal Reserve System, Washington, D.C. 20551.

SUPPLEMENTARY INFORMATION: Section 265.2(f) of the Board Rules Regarding Delegation of Authority authorizes Federal Reserve Banks to approve applications pursuant to section 9 of the Federal Reserve Act (12 U.S.C. 321) by State member banks to establish branches. The Reserve Banks may approve branch applications if the proposed branch has already been approved by the appropriate state

supervisory authority and if several other conditions are met. The other conditions that must be met relate to the Reserve Bank's evaluation of the overall financial condition of the applicant bank, as well as competitive considerations, and the convenience and needs of the community to be served. In a 1963 interpretation concerning this policy, the Board noted that embarrassment may result if the Board approves a branch before a state supervisor acts. However, in the Board's experience with matters requiring action by an agency other than the Board, such conflicts arise rarely. Accordingly, in order to promote greater efficiency, the requirement of state approvals before Reserve Banks can approve branch applications has been eliminated. Of course, the Reserve Banks may require supervisory approval in cases where it appears that the record is not complete or where precipitous Board action might create a conflict.

This action is taken pursuant to the Board's authority under section 9 of the Federal Reserve Act (12 U.S.C. 321).

The provisions of 5 U.S.C. 553 relating to notice, public participation and deferred effective date are not followed in connection with adoption of the amendment because the change involved is procedural in nature and does not constitute a substantive rule subject to the requirements of that section.

Accordingly, paragraph (f)(1) of § 265.2 is revised to read as follows:

§ 265.2 Specific functions delegated to Board employees and Federal Reserve Banks.

* * * * *

(f) * * *

(1) Under the provisions of the third paragraph of section 9 of the Federal Reserve Act (12 U.S.C. 321), section 5155 of the Revised Statutes (12 U.S.C. 36), and § 208.8 of this chapter (Regulation H), to approve the establishment by a State member bank of a domestic branch if the Reserve Bank is satisfied that approval is warranted after giving consideration to:

(i) The bank's capitalization in relation to the character and condition of its assets and to its deposit liabilities and other corporate responsibilities, including the volume of its risk assets and of its marginal and inferior quality assets, all considered in relation to the strength of its management;

(ii) The ability of bank's management to cope successfully with existing or foreseeable problems, and to staff the proposed branch without any significant deterioration in the overall management situation;

(iii) The convenience and needs of the community;

(iv) The competitive situation (either actual or potential);

(v) The prospects for profitable operations of the proposed branch within a reasonable time, and the ability of the bank to sustain the operational losses of the proposed branch until it becomes profitable; and

(vi) The reasonableness of bank's investment in bank premises after the expenditure for the proposed branch.

* * * * *

By Order of the Board of Governors of the Federal Reserve System, January 13, 1981.

Theodore E. Allison,

Secretary of the Board.

[FR Doc. 81-2268 Filed 1-20-81; 8:45 am]

BILLING CODE 6210-01-M

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12 CFR Part 265

[Docket R-0344]

Modifications of Commitments and Conditions

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: In order to expedite and facilitate the performance of certain of its functions with respect to applications and notices under the Bank Holding Company Act, Bank Merger Act, Federal Reserve Act, International Banking Act, Federal Reserve Act, and Change of Bank Control Act, the Board of Governors has delegated to the Director of the Division of Banking Supervision and Regulation the authority to grant or deny requests for modification, including extension of time, to fulfill commitments or conditions relied on by the Board in acting on such applications.

EFFECTIVE DATE: January 21, 1981.

FOR FURTHER INFORMATION CONTACT: Bronwen M. Mason, Senior Attorney (202-452-3564) or Jennifer J. Johnson, Senior Attorney (202-452-3564), Legal Division, Board of Governors of the Federal Reserve System, Washington, D.C. 20551.

SUPPLEMENTARY INFORMATION: From time to time, often because of economic conditions or changes of circumstances, the Board receives requests from companies for modification, including extension of time to fulfill conditions or commitments relied on by the Board in acting on applications. Under existing procedures, each of these requests, including the most routine, must be acted upon by the Board resulting in unnecessary delay in processing such requests. To avoid this delay, the Board has, by the instant amendment, delegated the authority to grant or deny such extensions to the Director of the Division of Banking Supervision and Regulation in consultation with other interested Divisions.

This action is taken pursuant to the Board's authority under sections 3(a), 4 and 5(b) of the Bank Holding Company Act of 1956 (12 U.S.C. 1842(a), 1843 and 1844(b)), section 18 of the Federal Deposit Insurance Act (12 U.S.C. 1828 (c)), sections 9 and 11(l) of the Federal Reserve Act (12 U.S.C. 321 and 248(l)) and section 13 of the International Banking Act (12 U.S.C. 3106), sections 25 and 25a of the Federal Reserve Act (12 U.S.C. 604(a) and 615), and Change in Bank Control Act (12 U.S.C. 1817(j)).

The provisions of 5 U.S.C. 553 relating to notice, public participation and deferred effective date were not followed in connection with the adoption of this amendment because the change involved herein is procedural in nature and does not constitute a substantive rule subject to the requirements of such section. The Board's expanded rulemaking procedures (44 FR 3,957 1979) have not been followed because the amendment is a technical one and because it relieves a burden that could obstruct necessary and prompt action that would be in the public interest.

In order to accomplish this delegation, § 265.2(c) of the Rules Regarding Delegation of Authority is amended by adding subparagraph (29) to read as follows:

§ 265.2 Specific functions delegated to Board employees and to Federal Reserve Banks.

* * * * *

(c) * * *

(29) To grant or deny requests for modification, including extension of time, for the performance of a commitment or condition relied on by the Board or its delegee in taking any action under the provisions of the Bank Holding Company Act, the Bank Merger Act, the Change in Bank Control Act of 1978, the Federal Reserve Act or the International Banking Act. In acting on requests hereunder, the Director may take into account changed circumstances and good faith efforts to fulfill the commitments or conditions, and shall consult with the Directors of other interested divisions, where appropriate. The Director may not take any action hereunder that would be inconsistent with or result in an evasion of the provisions of the Board's original action.

* * * * *

By Order of the Board of Governors of the Federal Reserve System, January 13, 1981.

Theodore E. Allison,
Secretary of the Board.

[FR Doc. 81-2109 Filed 1-20-81; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF ENERGY

Economic Regulatory Administration

10 CFR Part 212

[Docket No. ERA-R-79-69-A]

Newly Discovered Crude Oil Rule

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Notice.

SUMMARY: The Economic Regulatory Administration of the Department of Energy ("DOE") is issuing this Notice to answer several questions concerning the identification report that 10 CFR 212.79(c) requires for each newly discovered crude oil property.

FOR FURTHER INFORMATION CONTACT:

Jim Mayberry, Southwest Office of Special Counsel for Compliance, U.S. Department of Energy, 1341 West Mockingbird Lane, Suite 200-E, Dallas, Texas 75247, (214) 767-7407

John Marks, Office of Enforcement, U.S. Department of Energy, 2000 M Street, NW., Room 5002, Washington, D.C. 20461, (202) 653-3817

Ben McRae, Office of General Counsel, Department of Energy, 1000 Independence Avenue SW., Room 6A-127, Washington, D.C. 20585, (202) 252-6739.

SUPPLEMENTARY INFORMATION: On November 18, 1980, we adopted several amendments concerning newly discovered crude oil. (45 FR 76568, November 25, 1980). As a result of one of these amendments, an identification report for each newly discovered crude oil property must be filed with DOE on or before February 1, 1981. Several firms have asked similar questions concerning the manner in which they should comply with the requirement to file this report. In order to minimize the burden on firms that must file this report, we are issuing this Notice to set forth our answers to the questions most frequently asked by these firms.

1. *Who must file this report?* A report must be filed for each property that qualifies as a newly discovered crude oil property.[1] It is not necessary, however, for each producer of oil from a specific property to file a report. Rather, the operator of a property may file a report that will satisfy the requirement for all producers of oil from that property, provided that the report lists the names and addresses of those producers.

2. *What should this report contain?* There is no official format for this report. Rather, a firm that is complying with the requirement should prepare a letter that supplies the information requested by 10 CFR 212.79(c).[2] The report must be signed by an official who is authorized to act for the firm. The report also should contain the name and telephone number of a person who may be contacted with regards to the content of the report.

3. *Where should this report be filed?* The address of the appropriate DOE office for a property from which one of the thirty-four major refiners is a producer of oil is: Southwest Office of Special Counsel for Compliance, U.S. Department of Energy, 1341 West Mockingbird Lane, Suite 200-E, Dallas, Texas 75247, Attn: Mr. Jim Mayberry.

The address of the appropriate DOE office for a property from which a firm that is not one of the thirty-four major refiners is a producer of oil is: Office of Enforcement, U.S. Department of Energy, 2000 M Street, NW., Room 5002, Washington, D.C. 20461, Attn: Mr. John Marks.

(Emergency Petroleum Allocation Act of 1973, 15 U.S.C. 751 *et seq.*, Pub. L. 93-159, as amended, Pub. L. 93-511, Pub. L. 94-99, Pub. L. 94-133, Pub. L. 94-163, and Pub. L. 94-385; Federal Energy Administration Act of 1974, 15 U.S.C. 787 *et seq.*, Pub. L. 93-275, as amended, Pub. L. 94-332, Pub. L. 94-385, Pub. L. 95-70, and Pub. L. 95-91; Energy Policy and Conservation Act, 42 U.S.C. 6201 *et seq.*, Pub. L. 94-163, as amended, Pub. L. 94-385, Pub. L. 95-70, Pub. L. 95-619, and Pub. L. 96-30; Department of Energy Organization Act, 42 U.S.C. 7101 *et seq.*, Pub. L. 95-91, Pub. L. 95-509, Pub. L. 95-619, Pub. L. 95-620, and Pub. L. 95-621; E.O. 11790, 39 FR 23185; E.O. 12009, 42 FR 46267)

Issued in Washington, D.C., January 14, 1981.

Barton R. House,
Acting Administrator, Economic Regulatory Administration.

[FR Doc. 81-1971 Filed 1-20-81; 8:45 am]

BILLING CODE 6450-01-M

[1] 10 CFR 212.79(b) defines a "newly discovered crude oil property" as "(1) a new lease on the Outer Continental Shelf; or (2) a property (not on the Outer Continental Shelf) from which no crude oil was produced and sold in commercial quantities in calendar year 1978; or (3) any unitized property that includes only properties that prior to inclusion within the unit qualified as newly discovered crude oil properties. For purposes of this definition, crude oil is produced and sold in commercial quantities from a property if crude oil is produced from that property on a continuing basis. Crude oil shall be deemed to be produced on a continuing basis from a property if installation of a production facility for the crude oil produced from that property has begun."

[2] 10 CFR 212.79(c) requests the following information:

(i) the type of legal instrument which establishes the property and its effective date;

(ii) the date on which crude oil first was produced and sold from the property;

(iii) the date on which crude oil first was produced and sold in commercial quantities from the property;

(iv) where the property is a reservoir that is to be or has been designated as a newly discovered crude oil property, evidence of the reservoir designation by the appropriate governmental authority and the basis upon which the reservoir qualifies;

(v) where the property is a unitized property, the amount of production that will be certified as imputed newly discovered crude oil and the name of the unitized property; and

(vi) the location of the producer's main place of business.

DEPARTMENT OF COMMERCE

International Trade Administration

15 CFR Parts 371 and 374

Expansion of Foreign Policy Control; Correction

AGENCY: U.S. Department of Commerce, International Trade Administration, Office of Export Administration.

ACTION: Interim Final Rule; Correction.

SUMMARY: This notice corrects an incorrect date in the Expansion of Foreign Policy Control notice printed in the January 6, 1980 Federal Register.

DATE: This correction is effective January 21, 1981.

FOR FURTHER INFORMATION CONTACT: Daniel E. Cook, Assistant to the Director, Policy Planning Division, Office of Export Administration, U.S. Department of Commerce, Washington, D.C. 20230, Telephone: (202) 377-4150.

SUPPLEMENTARY INFORMATION: This notice corrects an incorrect date in a notice published January 6, 1981 (45 FR 1258) which expanded a foreign policy export control. The second sentence in the second paragraph of the Supplementary Information in the third column reads "Effective January 1, 1980, computers exported to South African or Namibian government officials will be subject to foreign policy controls regardless of their performance level." It should read instead "Effective January 1, 1981, computers exported to South African or Namibian government officials will be subject to foreign policy controls regardless of their performance level." This notice effectuates that change.

(Secs. 6, and 13, Pub. L. 96-72, 93 Stat. 503, 50 U.S.C. app. 2401 *et seq.*; Executive Order 12214, 45 FR 29783 [May 6, 1980]; Department Organization Order 10-3, 45 FR 6141 [January 25, 1980]; International Trade Administration

Organization and Function Order 41-1, 45 FR 11862 (February 22, 1980)].

Issued in Washington, D.C. on January 14, 1981.

William V. Skidmore,

Director, Office of Export Administration.

[FR Doc. 81-2004 Filed 1-19-81; 8:45 am]

BILLING CODE 3510-25-M

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15 CFR Part 377

Short Supply Controls; Establishment of Criteria for Consideration of Applications for Exceptions

AGENCY: Office of Export Administration, International Trade Administration, U.S. Department of Commerce.

ACTION: Interim Rule with Invitation to Comment.

SUMMARY: These regulations establish the basis for the consideration of applications for exceptions to the regulations governing exports of commodities subject to short supply export controls. They are intended to supplement the regulations under which short supply control programs are administered without significantly altering applicable program policies.

DATES: These rules are effective on publication, but may be revised after comments are received. Comments must be received by the Department by March 23, 1981.

ADDRESS: Written comments (five copies) should be sent to: Mr. Robert F. Kan, Special Assistant to the Director, Short Supply Division, Office of Export Administration, P.O. Box 7138, Ben Franklin Station, Washington, DC 20044, (202) 377-3984.

FOR FURTHER INFORMATION CONTACT: Mr. Robert F. Kan, Special Assistant to the Director, Short Supply Division, Office of Export Administration, P.O. Box 7138, Ben Franklin Station, Washington, DC 20044, (202) 377-3984.

SUPPLEMENTARY INFORMATION: On September 25, 1974, the Department published regulations establishing standards for the consideration of applications for relief from short supply export controls on grounds of unique hardship. These regulations, contained in § 377.3, remain in effect. With limited exceptions, they have been the sole basis on which relief from short supply controls have been granted.

Since publication of those regulations, the Department has administered short supply export control programs covering ferrous scrap (in 1973-74) and petroleum and petroleum products, and a statutorily mandated control program covering western red cedar. In administering these programs, it has noted that certain applications have presented persuasive reasons, not explicitly contemplated by the unique hardship criteria, for considering the issuance of an export license outside the quota system. In the Department's experience, the express provisions of this unique hardship criteria have tended to be particularly applicable to the period immediately following the institution of export controls, but after controls have been in place for a considerable period of time, the hardship criteria have been less applicable to the kinds of cases which might warrant consideration for the granting of an exception to the regulations. Therefore, the Department has concluded that it should provide by regulation a basis for the consideration of exceptions to short supply export controls on grounds other than those specified in the provisions on unique hardship.

The Department has also noted that the types of exceptions applications filed under short supply programs tend to vary significantly according to the commodity under control. Consequently, while this rule establishes certain general criteria applicable to all short supply export control programs, irrespective of the commodity involved, it also enumerates factors more particularly applicable to the petroleum control program.

Hardship and exceptions applications for western red cedar are already provided for in the regulations. It is anticipated that specific factors for the consideration of applications for exceptions involving other commodities that may be made subject to short supply export control in the future will be issued at the appropriate time.

The establishment of these criteria for the consideration of exceptions cases does not represent a change of policy by the Department and does not reflect any change in the Department's administration of current control programs, including the petroleum short supply and the western red cedar programs. Exporters are placed on notice that applications for licenses considered under these criteria are likely to be approved only under exceptional circumstances.

This rule also revokes the special exception under the petroleum regulations applicable to residual fuel oil refined on the West Coast from California-origin crude petroleum. The circumstances which gave rise to the establishment of that special exception no longer exist. Furthermore, should an application be filed which heretofore would have been considered under that special rule, it may now be considered under the new exceptions criteria established herein.

Rulemaking Procedure and Invitation to Comment

Section 13(a) of the Export Administration Act of 1979 (Pub. L. 96-72, to be codified at 50 U.S.C. App. 2401 *et seq.)* ("the Act") exempts regulations promulgated under the Act from the public participation in rulemaking procedures of the Administrative Procedures Act. Because they relate to a foreign affairs function of the United States, it has been determined that these regulations are not subject to Department of Commerce Administrative Order 218-7 (44 FR 2082, January 9, 1979) and International Trade Administration Administrative Instruction 1-6 (44 FR 2093, January 9, 1979) which implement Executive Order 12044 (43 FR 12661, March 23, 1978), "Improving Government Regulations."

However, because of the importance of the issues raised by these regulations and the intent of Congress set forth in section 13(b) of the Act, these regulations are issued in interim form and comments will be considered in developing final regulations.

The period for submission of comments will close March 23, 1981. However, in order that they may be given maximum consideration, persons wishing to comment are urged to submit their comments as soon as possible. All comments received before the close of the comment period will be considered by the Department in the development of final regulations. While comments received after the end of the comment period will be considered if possible, their consideration cannot be assured. Public comments which are accompanied by a request that part or all of the material be treated confidentially, because of its business proprietary nature or for any other reason, will not be accepted. Such comments and materials will be returned to the submitter and will not be considered in the development of the final regulations.

All public comments on these regulations will be a matter of public record and will be available for public inspection and copying. In the interest of accuracy and completeness, comments in written form are preferred. If oral comments are received, they must be followed by written memoranda (in five copies) which will also be a matter of public record and will be available for public review and copying.

Communications from agencies of the United States Government or foreign governments will not be made available for public inspection.

The public record concerning these regulations will be maintained in the International Trade Administration Freedom of Information Records Inspection Facility, Room 3012, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, D.C., 20230. Records in this facility, including written public comments and memoranda summarizing the substance of oral communications, may be inspected and copied in accordance with regulations published in Part 4 of Title 15 of the Code of Federal Regulations. Information about the inspection and copying of records at the facility may be obtained from Mrs. Patricia L. Mann, the International Trade Administration Freedom of Information Officer, at the above address or by calling (202) 377–3031.

Accordingly, the Export Administration Regulations, 15 CFR 368 *et seq.*, are revised as follows:

1. Section 377.2 is amended by inserting a new paragraph (c)(2) and renumbering the present paragraphs (c)(2) and (3) as (c)(3) and (4).

§ 377.2 Past participation in exports licensing method.

* * * * *

(c) Submission of Statement of Past Participation.

* * * * *

(2) Unique or unusual factors. If there are any unique or unusual factors affecting an exporter's history of exports during the base period—such as commencement or termination of export activity, disruption of exports due to strikes, acts of God, or seasonal variations or supply-demand cycles impacting his level of exports—which an exporter believes should be taken into consideration in the allocation of quotas, these should be succinctly stated in a letter to be considered with the Past Participation Statement.

* * * * *

2. Section 377.3 is amended by revising the section's title, retitling and renumbering subsection (a) as paragraph (a)(1), inserting a new paragraph (a)(2), and inserting a new subsection (c).

§ 377.3 Unique hardship and exceptions.

(a) *General.* (1) Unique Hardship * * *

(2) *Exceptions.* If an applicant seeks an exception, on grounds other than unique hardship, to quota limitations or other restrictions on export imposed for reasons of short supply, he must specifically cite this subsection in his application and state the precise reason(s) why he believes an exception is warranted. Each such application will be considered on a case-by-case basis and will be approved only in exceptional circumstances and only if the Office of Export Administration determines that granting of the requested exception would be consistent with the national interest and the purposes of the applicable short supply control program.

* * * * *

(c) Standards for Exceptions Cases. In making a determination with respect to an application for an exception, the Office of Export Administration will consider, in addition to the general guidelines of § 377.3(a)(2):

(1) Factors such as the following, to the extent that they are relevant to a particular case:

(i) Whether, for specific economic or technological reasons, the particular materials to be exported cannot be practicably processed or untilized within the United States;

(ii) The impact of the proposed export on the adequacy of domestic supply;

(iii) The probable impact on the domestic economy, including consumer and wholesale prices (nationally, regionally, or sectorally);

(iv) The extent to which the proposed country of destination engages in equitable trade practices with respect to the United States and treats the United States equitably in times of short supply;

(v) The extent to which the proposed export would advance or impair specific U.S. policy objectives (including those set forth in statutes or in any international agreement to which the United States is a party);

(vi) The extent to which the exceptions request arises from unique circumstances and is unlikely to be repeated;

(vii) The extent to which the circumstances giving rise to the exceptions request were within the control of the applicant; and

(viii) Any additional factors applicable to the particular commodity to be exported, as set forth elsewhere in this Part 377.

(2) What effect a finding in favor of the applicant would have on attainment of the basic objectives of the short supply control program.

3. Section 377.6 is amended by revising the present subsection (d)(10) and removing subsection (e)(10).

§ 377.6 Petroleum and petroleum products.

* * * * *

(d) Issuance of Export Licenses

* * * * *

(10) *Exceptions Cases.* An application for a validated license to export a petroleum commodity, other than crude petroleum, submitted under Section 377.2(a)(2) will be considered under the standards for exceptions cases set forth in § 377.3(c) and under the following factors, if applicable:

(i) Whether there is a practicable domestic market for the commodity;

(ii) The level of domestic stocks of the commodity proposed for export, both nationally and in the area from which the export would take place, in relation to normal levels;

(iii) Whether the applicant, for bona fide business reasons other than export,

(A) Refined (or fractionated),

(B) Purchased, or

(C) Is contractually obligated to purchase the commodity proposed for export;

(iv) Whether the commodity will be only temporarily exported (e.g., for convenience or increased efficiency of transporation) and will reenter the United States;

(v) Whether the export would be part of a two-way transaction with Canada or Mexico, which has not yet begun, involving the import of an equal quantity of the same commodity, to be initiated under either of the following circumstances:

(A) To meet an emergency shortage in the importing country, or

(B) To relieve a temporary lack of practicable storage facilities in the exporting country.

(vi) If the proposed export is represented as an exchange, the extent to which:

(A) The commodity to be imported is otherwise available for purchase on the world market so that the export is not necessary for the import to take place, and

(B) The export-import transaction would result in a net gain or loss of energy, as measured in quantity and/or BTU content, to the United States.

(vii) Whether the export would be part of a transaction involving a temporary import, which has not yet begun, to be carried out for convenience or increased efficiency of transportation; and

(viii) The effect of the export (or combined export-import transaction in the case of an exchange) on wholesale and consumer prices in the United States.

* * * * *

Drafting Information

The principal authors of these rules are Converse Hettinger, Director, Short Supply Division, Office of Export Administration; Robert F. Kan, Special

Assistant, Short Supply Division, Office of Export Administration; Roman W. Sloniewsky, Deputy Assistant General Counsel for Domestic Commerce, Department of Commerce; Pete M. Dalmut, Attorney-Advisor, Office of General Counsel, Department of Commerce; and Robin B. Schwartzman, Special Advisor to the Under Secretary for International Trade.

(Secs. 7, 15 and 21, Pub. L. 96-72, 50 U.S.C. App. 2401 et seq.; sec. 103, Pub. L. 94-163, 42 U.S.C. 6212; E.O. 12214, (45 FR 29783, May 6, 1980); Department Organization Order 10-3, (45 FR 6141, January 25, 1980); International Trade Administration Organization and Function Order 41-1 (45 FR 11862, February 22, 1980) and 41-4 (45 FR 66003, October 1, 1980))

Dated: January 14, 1981.

Eric L. Hirschhorn,

Deputy Assistant Secretary for Export Administration.

[FR Doc. 81-1989 Filed 1-15-81; 11:45 am]

BILLING CODE 3510-25-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 250

[Release No. 35-21881; File No. S7-845]

Rules Exempting Certain Acquisitions by Electric Utility Companies and Exempting Such Companies as "Holding Companies"

AGENCY: Securities and Exchange Commission.

ACTION: Final rules.

SUMMARY: The Commission is adopting Rule 14, which exempts from the requirements of sections 9(a)(2) and 10 of the Public Utility Holding Company Act of 1935 ("Act") the acquisition by one or more electric utility companies of securities of a power supply company as defined in the rule. The Commission is also adopting Rule 15, a related rule, to provide an exemption from regulation as a "holding company" under section 3(a)(2) of the Act for an electric utility company that makes any such acquisitions. The rules eliminate the need for case-by-case consideration of projects by electric utility companies that would not be subject to regulation under the Act but for the fact that a separate company is employed to provide additional capacity to generate or transmit electric energy.

EFFECTIVE DATE: January 21, 1981.

FOR FURTHER INFORMATION CONTACT: Aaron Levy, Director, Division of Corporate Regulation (202) 523-5691, Grant G. Guthrie, Associate Director (202) 523-5156, or James E. Lurie, Special Counsel (202) 523-5663, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: The Commission is adopting Rules 14 and 15. The first exempts from Commission review and approval under sections 9(a)(2) and 10 of the Act acquisitions by one or more electric utility companies (hereinafter referred to as "participating" or "sponsoring companies") of securities of defined electric generation or transmission companies (hereinafter referred to as "power supply companies"). Rule 15 exempts pursuant to section 3(a)(2) of the Act companies that as a result of the acquisitions become holding companies. An electric utility company that also distributes gas at retail is an "electric utility company" as defined in section 2(a)(3) of the Act and under these rules.

When electric utility companies acquire the voting securities of a separate company organized to construct or operate electric generation or transmission facilities, one or more of the sponsoring companies may become "holding companies" within the meaning of section 2(a)(7)(A) of the Act.[1] Such acquisitions may require Commission approval under sections 9(a)(2) and 10 of the Act [2] if the acquiring company is an "affiliate" of another utility company within the meaning of section 2(a)(11)(A) of the Act and will become an affiliate of a power supply company by acquiring five percent or more of its voting securities.[3]

Electric utilities are increasingly relying on joint ownership of large new base-load generating plants and related transmission facilities in an effort to spread the risks associated with escalating costs of plant and equipment. It permits unaffiliated utilities to share the benefits of efficient new facilities that are too large for any one utility to construct for its own needs. The organization of a separate power supply company by one or more sponsoring utilities offers some advantages over joint ownership under a tenancy in common. The principal advantage is the ability to utilize "project financing," which allows the sponsoring utilities to finance the facility by the power supply company issuing long-term securities that are not subject to the mortgage bond indentures of the sponsoring companies and which provides flexibility with respect to the kind of security and the amount of debt used to finance the project. In addition, the proportionate interests of the participants in the new facility can be altered as load forecasts change and new participants in the project can be admitted by a transfer of the voting securities.

Over the years, the Commission has authorized, by order, the acquisition by electric utilities of equity interests in companies that would construct and operate generating facilities and sell power to the participating utilities or to a government agency.[4] On the basis of this experience, the Commission believes that an acquisition of a proportionate interest in a power supply company by an operating electric utility is not the kind of acquisition that the Commission need review and approve by order under section 10 in all cases. The requirement in Rule 14 that the energy produced be sold to the sponsoring utilities (except for sales to municipal and cooperative utilities) and the regulatory approvals relating to the financings of the power supply company satisfy the main objectives of section 10 without additional review by this Commission. Such an acquisition does not enlarge the service area of any sponsoring electric utility company, nor, in terms of the Act, frustrate effective local regulation of the sponsoring companies. It does no more than provide a sponsoring utility a source of supply to serve existing or future needs. These are the assumptions upon which the exemptions under Rules 14 and 15 are predicated.

The proposed rules were published for comment July 22, 1980 (HCAR No. 21681) (45 FR 48864, July 22, 1980). Twenty-nine

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[1] A "holding company" is defined in section 2(a)(7)(A) as "any company which directly or indirectly owns, controls, or holds with power to vote, 10 per centum or more of the outstanding voting securities of a public utility company * * *." A "holding company" and its subsidiaries must register under section 5 of the Act, unless exempt under section 3(a) of the Act.

[2] Section 9(a)(2) provides: "Unless the acquisition has been approved by the Commission under section 10, it shall be unlawful for any person * * * to acquire, directly or indirectly, any security of any public utility company, if such person is an affiliate [under section 2(a)(11)(A)] of such [public utility] company and of any other public utility or holding company, or will by virtue of such acquisition become such an affiliate."

[3] If any company owns five percent or more of the voting securities of one public utility company or of a holding company, it is an "affiliate" of that company within the meaning of section 2(a)(11)(A) of the Act.

[4] *See Middle South Utilities, Inc.*, HCAR No. 19497 (June 4, 1974); *Maine Yankee Atomic Power Company*, 43 Sec. 704 (1968); *Vermont Yankee Nuclear Power Corporation*, 43 Sec. 488 (1968); *Connecticut Yankee Atomic Power Company*, 41 Sec. [illegible] (1966); *Southern Electric Generating Company*, HCAR No. 12210 (June 28, 1956); *Yankee Atomic Electric Company*, 36 Sec. 552 (1956); *Mississippi Valley Generating Company*, 36 Sec. 129 (1955); *Electric Energy, Inc.*, 24 Sec. 559 (1947); *Ohio Valley Electric Corporation*, 24 Sec. 239 (1946); *Central Illinois Public Service Company*, 23 Sec. 262 (1951); *Wisconsin River Power Company*, 27 Sec. 229 (1948).

letters of comment were received, all but one in favor of the proposed rules with suggested amendments. The rules, as now adopted, have been revised in light of the comments and have been clarified in other respects. The American Public Power Association ("APPA") is opposed in principle for reasons discussed below.

The exemption under Rule 14 applies to an electric utility company provided it is not an "affiliate" of any other company under clause (B) of section 2(a)(11).[5] This requirement limits the exemption to an independent utility that is not under the influence or control of another company as an affiliate or subsidiary of such other company. An affiliation under clause (B), when linked to the affiliations subject to section 9(a)(2), would result in an affiliate chain of a kind that might not meet the standards of section 10, particularly section 10(b)(3).[6] In this respect the limitation in the rule is consistent with section 10.

Rule 14 does not deny an exemption to a sponsoring company that, by reason of the voting securities it owns, has subsidiaries or affiliates as defined in clause (A) of section 2(a)(11). Indeed, the affiliate acquisition exempted by Rule 14 from section 9(a)(2) assumes that the sponsoring company has at least one other utility affiliate under clause (A). Nor does it preclude the sponsoring company from affiliate acquisitions of other electric utilities or of other power supply companies. Acquisitions by a registered holding company, directly or through a subsidiary, are governed by sections 9(a)(1) and 10. Rule 14 provides an exemption from section 9(a)(2), which applies to affiliate acquisitions by "any person" [7] other than a registered holding company or its subsidiary. Rule 14 does not apply to the latter acquisitions, but that does not affect exemptions under the rule for other participating utilities.

In response to comments, Rule 14(a)(1) substitutes approval by "a regulatory authority" for "the regulatory authorities." An acquisition by a sponsoring utility may require approval by more than one such authority, depending on the laws to which it is subject. For purposes of the rule one approval is sufficient.

The required authorization extends also to the obligation by the sponsoring companies to provide funds to the power supply companies pursuant to a capital funds agreement among the utility companies or a guarantee of their debt obligations. These are essential to effective review of project financing by the authorizing agencies. During the construction of its facilities, the power supply company has no revenues or income to supply any construction funds. Some of the funds are provided by the sponsoring utilities by a purchase of common stock. A far greater proportion of the capital funds are obtained from other sources, mostly institutional lenders. The obligations to them are supported or secured by the investment and financial commitments of the sponsoring companies, which are normally in proportion to their respective power entitlements.

When a utility company proposes to become a participating member in a power supply company, it must and does consider the exent or magnitude of the obligations or guarantees it is required to undertake. In fact these commitments are essential to the project's financing. It is not to be assumed that, in reviewing proposed financings of the power companies or the capital investments by the participating companies, regulatory agencies would or should be content with less. That is not to say that Rule 14 requires that these commitments shall be separately reviewed by the regulatory agencies. All that the rule requires is a determination that the total obligations or commitments by the participating utilities have been expressly considered and found acceptable by the regulatory agencies when granting the required authorization for the transactions that have been submitted to them.

The requirement in subsection (a)(2) of the rule that the electric energy produced by the power supply company shall be sold to the sponsoring companies does not restrict resale by them. The business of an electric utility company is to sell electric energy, at retail or wholesale, so that all of its energy is normally subject to sale. The terms of resale are governed by the Federal Power Act or state laws, not by the Holding Company Act, whether jurisdiction over acquisitions under section 9(a)(2) is exercised by order or exemption by rule. Subsection (a)(2) rests on the basic assumption of Rule 14 that participation of each sponsoring utility is for the purpose of securing additional capacity for its own needs. In this respect subsection (a)(2) is in accord with the policy of section 10 as expressed in subsection (c)(2) thereof.[8]

Rule 14 includes a transmission company in its definition of a "power supply company." A transmission company does not normally buy or sell the energy it transmits. Subsection (a)(2) has been revised accordingly to allow for transmission to the sponsoring utility or to its customers.

Subsection (a)(3) of Rule 14 has been revised to provide that the issuance of securities by the power supply company shall be expressly authorized by a regulatory authority having jurisdiction "over their issuance" rather than over "rates and services." Rates and services of the power supply company will generally be regulated by the Federal Energy Regulatory Commission under the Federal Power Act, but under sections 204 (a) and (f) of that statute its security issues may be subject to regulation by the regulatory agency of the state in which it is organized and operating. As revised, subsection (a)(3) or Rule 14 is consistent with that division of authority under the Federal Power Act.

Rule 14(b) provides that if the voting securities of the power supply company are acquired by more than one sponsoring utility, the requirements for exemption under the rule "shall apply to each." Some of the comment letters mistakenly infer that if one of the sponsoring utilities does not qualify for an exemption the exemption is not available to the others. The exemption under the rule, like section 9(a)(2) itself, applies to affiliate acquisitions by each of the participating utilities. If a participating utility does not qualify for the exemption that does not affect the exemption for the others. If a participating utility sells the voting securities it acquired, the purchaser's acquisition will be subject to section 9(a)(2) unless exempt under Rule 14. The revision stating that the exemption requirements "shall apply independently to each" eliminates any question about what is meant.

APPA objects to the exemption of Rule 14, citing *Municipal Electric Association of Massachusetts* v. *SEC*, 413 F.2d 1052 (C.A.D.C. 1969). In that case the court reversed orders of the Commission that, without a hearing, had approved under the standards of section 10 the acquisition, by a group of New England utilities, of the common stocks

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[5] Under clause (B) of section 2(a)(11) an "affiliate" of a specified company is defined as "any company 5 per centum or more of whose outstanding voting securities are owned, controlled, or held with power to vote, directly or indirectly, by such specified company * * *."

[6] Section 10(b)(3) provides that approval be granted unless "such acquisition will unduly complicate the capital structure of the holding company system of the applicant * * *."

[7] Under section 2(a)(1) "person" means "an individual or company."

[8] Section 10(c)(2) provides that the Commission shall not approve of the acquisition unless the Commission finds that the acquisition will tend toward the development of "an integrated public utility system."

of two companies, each organized to construct and operate nuclear power generating facilities. The Massachusetts municipal utilities requested a hearing, claiming that their exclusion from participation in these projects was contrary to the Federal antitrust laws.[9] The court agreed that the municipals should have been granted a hearing and the opportunity to develop a record supporting their contentions.[10] APPA urges that the exemption under Rule 14 deprives excluded utilities, including municipal utilities and cooperatives, of an adjudicatory forum to present those issues.

The exemption from sections 9(a) (2) and 10, as provided by Rule 14, is not a grant of immunity from suit under Federal antitrust laws, and Rule 14 was not designed to foster exclusion of municipal and cooperative utilities. Rule 14 allows for their participation by the sale of electric energy to them without any equity or capital investment in the power supply company. The Commission is satisfied that the exemption under Rule 14 is consistent with the policies of the Act as expressed in Section 10. It does not share APPA's apprehensions that the exemption will be turned against municipal or cooperative utilities or APPA's assumption that only approval by order under section 10, issued after notice and opportunity for hearing, is necessary to assure their participation in the power supply company.

One of the comment letters, although supporting the rules, prefers an amendment to section 2(a)(3). The adoption of exemptive Rules 14 and 15 does not bar this legislative route.

Actually, the direct and simple way to achieve the aim of Rules 14 and 15 is by an amendment to section 2(a)(3) that would declare a power supply company not to be an "electric utility company." The assumption underlying such an amendment is that, although a separate company, the power supply company, whether a corporation or a partnership, is only a source of supply of electric energy to its sponsoring utilities and in practical effect is a divisional unit within the operations of the utilities it serves. It is the same assumption, as noted before, upon which the exemption of Rules 14 and 15 are predicated. If the power supply company were not an "electric utility company," section 9(a)(2) would not apply to any affiliate acquisitions of its voting securities; the acquisition of their voting securities would not make the acquiring utility a "holding company;" [11] and no exemptions from section 9(a)(2) or pursuant to section 3(a) would be needed.

Rule 15 is adopted pursuant to section 3(a) which authorizes the Commission, by rule or order, to exempt five classes of holding companies. The exemption in section 3(a)(2) is for a public-utility company, operating in the state of its organization and contiguous states, that is a holding company because it has one or more public-utility subsidiaries.

Rule 15 limits the exemption under section 3(a)(2) to a public-utility company that is an electric utility company and defines the exemption in terms related to the exemption under Rule 14. Subsection (a) of Rule 15 provides that an electric utility company is exempt pursuant to section 3(a)(2) if as a holding company it has one or more power supply companies as a subsidiary utility or utilities and the acquisitions are exempt under Rule 14. It further provides that if the electric utility otherwise qualifies for exemption pursuant to section 3(a)(2), by order or Rule 2(a)(2),[12] that exemption is not affected by an affiliate acquisition exempt under Rule 14. The sequence in the acquisition is not relevant.

Subsection (b) is for the special case in which the first affiliate acquisition with respect to a power supply company is not subject to section 9(a)(2), and Rule 14 is therefore not applicable. For that case, subsection (b) provides that the exemption under subsection (a) applies if the conditions for exemption under Rule 14 are satisfied.

APPA objects to Rule 15 as well. It refers to the Pacific Northwest Electric Power Planning and Conservation Act, which was signed into law on December 5, 1980 (P.L. 96–501). Section 9(h) of that statute declares the power supply company not a utility company and thus exempt or excluded from the definition in section 2(a)(3) of the Act. That legislation is a response to an anticipated regional shortage of electric generation and permits the utility companies in the region to provide additional facilities through jointly-owned companies. It differs from the pattern contemplated by Rule 14 in that the energy will be sold under contract to the Bonneville Power Administration for pooling with its own hydroelectric power and for redistribution to all utilities in the regional network, public and private. The Commission is satisfied that the Congress did not intend for that statute to provide a model or mandate for the exemptions the Commission is authorized to grant under the Act. For reasons previously discussed, the Commission considers Rules 14 and 15 consistent with the intent and purposes of the Act.

The definition of "power supply company" in Rule 14(c) is revised and is restated solely in terms of the included properties. The reference to ownership interests has been eliminated as not relevant to the definition. No change of substance is intended.

It has been suggested that Rule 14 should be revised to allow for participation by non-utility companies, either by extending the exemption to the non-utility companies or by providing that their participation would not affect the exemptions for the utility participants. These proposals might require republication for comment and in any case would delay adoption of Rules 14 and 15 as now drawn. Consideration of these proposals is deferred for further review to determine if there is a real and public need for non-utility participations and whether the present exemption, by order, under section 3(a)(3) is adequate.

Statutory Basis and Text of the Rules

The Securities and Exchange Commission hereby amends Title 17, Chapter II of the Code of Federal Regulations, pursuant to its authority under the Public Utility Holding Company Act of 1935 [15 U.S.C. 79a *et seq.* and particularly sections 3(a), 3(d) and 20(a) thereof [15 U.S.C. 79c(a), 79c(d) and 79t(a)]] by adding § 250.14 and § 250.15 to read as set forth below. This action is effective immediately pursuant to the Administrative Procedure Act [5 U.S.C. 553(d)(1)].

PART 250—GENERAL RULES AND REGULATIONS, PUBLIC UTILITY HOLDING COMPANY ACT OF 1935

§ 250.14 Exemption of acquisitions of securities of power supply companies from section 9(a)(2) of the act.

(a) An electric utility company which is not an "affiliate" of any other company under clause (B) of section 2(a)(11) shall be exempt from section

[9] Section 10(b)(1) provides for disapproval of the acquisition if it "will tend towards interlocking relations or the concentration of control of public utility companies, of a kind or to an extent detrimental to the public interest or the interest of investors or consumers."

[10] After some hearings the parties reached a settlement, which the Commission approved. *Vermont Yankee Nuclear Power Corp.* and *Maine Yankee Atomic Power Co.*, 44 SEC 398 (1970).

[11] A holding company as defined in section 2(a)(7)(A) is based on the ownership of voting securities (fn. 1 *supra*) of a "public utility company," which section 2(a)(5) states is either "an electric utility company or a gas utility company."

[12] Rule 2 provides a procedure under which a holding company and every subsidiary thereof as such may claim an exemption pursuant to sections 3(a)(1) or 3(a)(2) of the Act by filing a statement claiming such exemption, rather than by application and order.

9(a)(2) of the Act with respect to the acquisition of any security of a power supply company, either directly or through a wholly-owned company organized solely for that purpose, provided that:

(1) The acquisition of any securities of the power supply company, including its voting securities, and any obligation by such electric utility company to provide funds to the power supply company pursuant to a capital funds agreement or guarantee of its debts, is authorized by a regulatory authority having jurisdiction over the rates and services of such electric utility company;

(2) All of the voting securities of the power supply company are owned by one or more electric utility companies to which the power supply company sells all of its electric energy, or as a transmission company provides all its transmission services to them or their customers (exclusive of any electric energy or transmission services which it sells to or provides to any person described in section 2(c) of the Act or to any rural electric cooperative association); and

(3) The issue of securities by the power supply company (other than any security maturing not more than one year after the date of issue) is subject to express authorization by a regulatory authority having jurisdiction over their issuance.

(b) If the voting securities of the power supply company are acquired by more than one electric utility company, the requirements of this rule shall apply independently to each (except that paragraph (a)(1) shall not apply to any person referred to in section 2(c) of the Act or to any rural electric cooperative association).

(c) *Definitions.* (1) The term "electric utility company," as used in this rule, includes any person referred to in section 2(c) of the Act.

(2) The term "power supply company" means any company which owns and/or operates facilities for the generation or transmission of electric energy for sale to one or more electric utility companies, together with such other facilities as are incidental and functionally related thereto.

(3) The term "voting security" shall have the same meaning as in section 2(a)(17) of the Act, including any voting interest that serves the same defined purpose.

§ 250.16 Exemption of holding company and subsidiary companies under section 3(a)(2) of the act.

(a) When an electric utility company becomes a holding company with respect to one or more power supply companies in a transaction or transactions exempted under § 250.14, the electric utility company, as such holding company, shall be exempt pursuant to section 3(a)(2) of the Act. If an electric utility company otherwise qualifies for an exemption pursuant to section 3(a)(2) of the Act, either by order or pursuant to § 250.2(a)(2) of these rules, that exemption shall not be affected by an acquisition exempt under § 250.14.

(b) The exemption under paragraph (a) of this section shall apply to an electric utility company whose acquisition, though not subject to section 9(a)(2) of the Act, satisfies all the requirements provided by § 250.14 for an exempt acquisition.

By the Commission.

George A. Fitzsimmons,
Secretary.

January 13, 1981.

[FR Doc. 81-2121 Filed 1-19-81; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Part 416

Supplemental Security Income for the Aged, Blind, and Disabled; Required Reports

AGENCY: Social Security Administration, HHS.

ACTION: Final rule.

SUMMARY: These final regulations reorganize and restate our rules on reports required from each applicant, eligible individual, eligible spouse, eligible child, and representative payee under the Supplemental Security Income (SSI) program. To administer the program efficiently we must receive timely notice of events that affect eligibility and the amount of benefits. The final rules set forth all the provisions regarding required reports and explain the penalties we impose for failure to report on time. They also explain that if an individual has good cause for not making a report on time, we will not impose a penalty, but may still require that the individual refund an overpayment caused by a failure to report on time. We are making several minor revisions in the regulations. However, our principal purpose in rewriting this subpart is to make the rules clearer and easier for the public to use.

EFFECTIVE DATE: These regulations are effective January 21, 1981.

FOR FURTHER INFORMATION CONTACT: Mr. Marvel Cazer, Office of Regulations, Social Security Administration, Room 4-H-10, West High Rise Building, 6401 Security Boulevard, Baltimore, MD 21235; Phone (301) 594-7463.

SUPPLEMENTARY INFORMATION: We have recodified Subpart G of 20 CFR Part 416 as part of Operation Common Sense, a Department-wide project to review and clarify all of our current regulations. We published our proposed recodification of this subpart as a Notice of Proposed Rule Making (NPRM) in the Federal Register on June 19, 1980 (45 FR 41453) with a 60-day comment period. A number of comments were received and are discussed under the heading Discussion of Comments.

Sections Retitled, Rearranged

We have rearranged the sections in this Subpart G in a more logical sequence. We have retitled and rewritten the sections in clear, plain language. We have added subtitles to highlight important rules and make them easier to find.

Definitions

We have added a new section (§ 416.702) to define terms used in this subpart.

Report Provisions

To administer the SSI program efficiently, the Social Security Administration (SSA) must receive timely notice of events that affect eligibility and the amount of benefits.

Section 416.704 states that an applicant, an eligible individual, and eligible spouse, an eligible child, or a representative payee of any of these, must report certain events to SSA. In addition, this section explains that a person who has been legally adjudged incompetent need not make reports, but that the incompetent person's representative payee must make the required reports.

Section 416.708 describes the events that must be reported to SSA. They include, for example, a change of address, a change in marital status, and an increase or decrease in the amount of income or resources an individual has. As explained in the NPRM, we are adding the requirement that a change in marital status and a change in school attendance must be reported for an ineligible child who lives with an eligible individual and an ineligible spouse. We are also clarifying the requirement that reports of temporary absences from the United States need be made only for absences of 30 or more consecutive days or for a full calendar month.

Section 416.710 lists what the reports must include, such as the event being reported and the date it happened. Also the name and social security number under which benefits are paid must be reported.

Section 416.712 describes the various ways an individual can make a report. For example, an individual can send a written report to SSA or go to one of SSA's offices and make an oral report.

Section 416.714 explains when reports are due. In addition, this section explains that SSA sometimes sends a written request for information needed to determine continuing eligibility or the correct amount of an SSI benefit payment. If an individual fails to respond to a written request for a report within 30 days, SSA may determine that he or she is ineligible to receive SSI benefits and benefits will be suspended.

Office of Management and Budget Clearance

The Department of Health and Human Services is required to submit to the Office of Management and Budget (OMB) for review and approval § 416.708, which deals with reporting requirements imposed on the public. All of the reporting events listed in § 416.708, with three exceptions, have OMB clearance under number 072–R0678. The exceptions are:

1. Section 416.708(i)—*Refusal to accept vocational rehabilitation services.* We generally receive these reports on Form SSA–1406 (VR Initiated Report to SSA). That form does not require OMB clearance.

2. Section 416.708(j)—*Refusal to accept treatment for drug addiction or alcoholism.* We generally receive these reports on Form SSA–8740 (Referral and Treatment Status). That form does not require OMB clearance.

3. Section 416.708(m)—*A termination of residence in the U.S.* We generally receive these reports from the Immigration and Naturalization Service on Form I–157 (Notice of Deportation).

However, when a recipient reports any of these three events directly to us, the report is taken on Form SSA–795 (Statement of Claimant or Other Person). The Form SSA–795 has OMB clearance under number 072–R0442.

Penalty Deduction

Section 416.722 explains that SSA will make a penalty deduction from an individual's SSI benefits if:

He or she has not made a required report on time;

SSA reduces, suspends, or terminates his or her benefits;

The individual has received and accepted an SSI benefit for the penalty period; and

The individual does not have good cause for not reporting on time.

Section 416.724 lists the amount of penalty deductions and explains that SSA will limit the number of penalty deductions imposed to one penalty deduction for any one penalty period.

Sections 416.726–416.730 describe penalty periods, give examples of penalty periods, and explain when a penalty period may be extended. We have clarified the beginning and ending dates of penalty periods. This clarification makes clear that where an event (described in § 416.708) occurs in one penalty period and does not become overdue until after that penalty period ends, a new penalty period is created.

Section 416.732 explains that if an individual has good cause for not making a report on time, SSA will not impose a penalty deduction, but may require that the individual refund an overpayment because of the event that was not reported. Good cause means that an individual was "without fault" as defined in § 416.552 or his or her delay in reporting was not willful.

Discussion of Comments

As previously indicated, we received a number of comments on the NPRM published on June 19, 1980 (45 FR 41453). A summary of the comments and our responses follow.

Report Provisions (§§ 416.704–416.714)

1. *Comment:* One commenter states the proposed rules fail to comply with the Privacy Act because the regulations do not inform the recipient of the purpose for which the information will be used and its effect on their benefit levels. In addition, the commenter states the regulations do not define "in-kind income", or adequately define "living arrangement", and "household".

Response: Section 416.701(a) clearly indicates that the events listed in this subpart must be reported because they may affect continued eligibility or payment amount. We disagree with the suggestion that we define "in-kind income" or expand the discussion on "living arrangement" or "household" in this subpart. This information appropriately belongs with the rules on income. Accordingly, in § 416.708(c) we specifically refer the reader to Subpart K, which contains the rules on income, for a complete discussion of what we consider income. We have used a cross-reference because we do not believe the rules should be repeated here. Also, it would be confusing to include only a partial listing of what constitutes income. For these reasons and since this subpart is designed only to alert the reader as to why we require reports of certain events, the events that must be reported, and the penalties for not making required reports, no change is being made in the regulations.

2. *Comment:* One commenter states that § 416.708(k) limits reporting to admission to or discharge from a public institution or medical facility. The commenter suggests this section be revised to include admission to or discharge from a private institution.

Response: This comment is correct. Admission to or discharge from any kind of facility including a private institution may affect eligibility or payment amount and must be reported. Accordingly, § 416.708(k) is being revised to include private institutions.

3. *Comment:* One commenter is concerned that the reporting requirement of "any improvement in your medical condition" (§ 416.708(h)) will unduly burden those agencies serving as representative payees for disabled or blind recipients. The commenter suggests that § 416.708(h) be revised to state that medical improvement need not be reported if the recipient is a resident of an inpatient medical program or other alternative living arrangement where the recipient's medical condition is monitored by a health professional. In this situation the recipient or representative payee would report medical improvement only where it would affect eligibility for benefits.

Response: We do not believe the regulations require a change to clarify the conditions under which medical improvement need be reported. The proposed change is unacceptable because the recipient or representative payee would not be able to determine under what conditions medical improvement affects eligibility for benefits. We require reports of medical improvement in all cases because this information is necessary for us to determine whether to conduct a continuing disability investigation. We use the results of the investigation to determine if eligibility for benefits continues or should be terminated.

4. *Comment:* One commenter points out that § 416.708 (m) and (n) makes a distinction between reporting a permanent change in U.S. residency and a temporary change in U.S. residency for more than 30 days or a full calendar month. The commenter suggests these paragraphs be combined to read as follows:

(m) *Leaving the U.S.* You must report to us if you leave the U.S. for 30 or more consecutive days or for a full calendar month.

Response: We disagree with this suggestion. We believe two separate paragraphs are necessary to avoid any potential misunderstandings. The purpose of having two paragraphs is to clarify and state more clearly when reports for leaving the U.S. are required. The rule in § 416.709(m) is intended to cover those cases where the individual no longer meets the citizenship or alienage requirements as well as residency in the U.S. Paragraph (n) deals with the situations where a person would no longer be considered a resident only for the period he or she was outside the U.S.

Penalty Deductions (§§ 416.722–416.732)

5. *Comment:* One commenter strongly opposed the penalty provisions for tardy reports and recommended we eliminate it.

Response: Section 1631(e)(2) of the Social Security Act clearly requires that we impose a penalty by reducing subsequent benefits where an individual fails to timely report events and changes in circumstances relevant to eligibility and benefit amount unless the individual had good cause for such failure or delay. Since this is a statutory requirement, we cannot eliminate the penalty provisions.

6. *Comment:* One commenter believes that the penalty imposed as a result of these regulations is a reduction, suspension, or termination of benefits. The commenter believes that such a penalty provision would force SSI recipients whose benefits are reduced, suspended, or terminated to seek public assistance from other programs, thereby overburdening those programs. The commenter also believes that the regulations will have an adverse effect on children and that children cannot be penalized if their parents fail to report.

Response: The penalty for failure to report is not a reduction, suspension, or termination of benefits. However, the penalty for failure to report, which is a dollar amount ($25–$100), is or may be withheld from SSI payments. The events listed in this subpart must be reported because they affect eligibility and payment amount. If eligibility and payment amount are affected, we will reduce, suspend, or terminate benefits as required by the circumstances.

We are not aware of any public assistance program that has been overburdened with applications from SSI recipients whose benefits have been reduced, suspended, or terminated. We have no reason to believe that other public assistance programs will be adversely affected by SSI benefit reductions, suspensions, or terminations arising in the future. In any case since the penalty is required by statute we could not change the rules reflecting this requirement.

In regard to the commenter's final point as to the reporting requirements for children, § 416.704(a)(3) requires an eligible child to make the required reports. The parents of the child are not responsible for making the report unless the parent is the representative payee. Eligible children will not be penalized if they have good cause for failure to report a change in their circumstances. As a general rule, children who fail to report are usually found to be "without fault" in failing to report and are not penalized.

7. *Comment:* One commenter states that the definition of "not willful" in § 416.732 is insufficiently defined.

Response: We have expanded the definition of "not willful" to explain more fully what we mean. The expanded definition states that "not willful" means the individual did not have full knowledge of the existence of an obligation to make a required report or did not intentionally, knowingly, and purposely fail to make a required report.

8. *Comment:* One commenter believes that where it is the representative payee's responsibility to report and he or she fails to do so, the penalty should not be imposed upon the recipient as it is obviously not the recipient's fault.

Response: Under § 416.704(c), a recipient with a representative payee shares the responsibility for making a report unless the recipient has been adjudged legally incompetent. In that case, a recipient is relieved of his or her responsibility and the responsibility to report rests solely with the representative payee. In those situations a recipient would not be penalized for a representative payee's failure to report. However, a recipient who has not been adjudged legally incompetent can be penalized for failing to report even if the representative payee also failed to report. For recipients with representative payees, as well as all recipients, we would determine if "good cause" existed for failure to report.

Periodic Notices

9. *Comment:* One commenter suggested that the regulations include a requirement that SSA periodically notify applicants, recipients, and representative payees of their duty to report.

Response: We, in fact, issue periodic reminders to SSI recipients and representative payees as to what events must be reported. We are opposed to changing the language of the regulations to mandate that these reminders be issued at specific times. We are evaluating our current methods of issuing periodic reminders of reporting responsibilities to recipients and representative payees (that is, check stuffers, periodic redeterminations, public information newspaper articles) to see if they can be improved.

Relationship to Medicaid Regulations

10. *Comment:* One commenter notes that States are required to use SSI criteria in determining Medicaid eligibility for aged, blind, and disabled individuals. The commenter asks what impact does §§ 416.714 and 416.722 have on the States' Medicaid eligibility determination? The commenter also asks if the applicable sections of this subpart will be incorporated in the Medicaid regulations?

Response: Section 416.714(b) (which provides that failure to submit a report requested by us could result in a determination of ineligibility for SSI benefits), will impact on a State's Medicaid eligibility determinations in those States which condition Medicaid eligibility solely on SSI eligibility. Therefore, in those States, if a recipient failed to answer our written request for information within 30 days, the person may be determined to be ineligible for SSI and, as a result, also lose Medicaid eligibility. Many States which use SSI eligibility as a condition for Medicaid eligibility use other criteria to determine Medicaid eligibility if a recipient loses SSI eligibility. In those States, a loss of SSI eligibility under section 416.714(b) will not necessarily result in loss of Medicaid.

Section 416.722 (which lists the circumstances under which we make a penalty deduction), will have no impact on Medicaid eligibility determinations in any Statem, including those which condition Medicaid eligibility solely on SSI eligibility. Recipients whose benefits are reduced for collection of a penalty deduction are not considered ineligible for SSI, even if that reduction results in the recipient not receiving any benefits. Since these recipients do not lose SSI eligibility, they should not lose their Medicaid eligibility. Decreased SSI payments will not result in any increase in Medicaid to compensate for the reduction.

Since these regulations are merely a clarification of SSI regulations and there is no substantive change in them, changes in the Medicaid regulations do not appear necessary. Nevertheless, we have forwarded a copy of this comment to the Health Care Financing Administration (which administers the Medicaid program) for any action it believes may be necessary.

Differences between Current Regulations, NPRM, and Final Regulations

As indicated in the NPRM we proposed a number of changes which we are incorporating into these final regulations.

1. In § 416.708(g) we have added the requirement that an eligible individual must report to us the marriage of an ineligible child who lives with an eligible individual and an ineligible spouse. This report is required because a change in marital status could affect the amount of income that is deemed (as described in Subpart K of this part) to an eligible individual from his or her ineligible spouse. When an ineligible child marries, we cease allocating a portion of the ineligible spouse's income to that child beginning in the month after the child's marriage.

2. In § 416.708(l) we have added the requirement that an eligible individual must report to us a change in school attendance of an ineligible child who is at least age 18 but less than 21 and who lives with the eligible individual and his or her ineligible spouse. This report is required because a change in school attendance could affect the amount of income that is deemed (as described in Subpart K of this part) to an eligible individual from his or her ineligible spouse. When an ineligible child who is at least age 18 but less than 21 stops attending school we cease allocating a portion of the ineligible spouse's income to that child beginning in the month after the child stops attending school. Conversely, when an ineligible child who is at least age 18 but less than 21 becomes a student, we allocate a portion of the ineligible spouse's income to that child beginning in the month after the child becomes a student.

3. In § 416.708(m) we have added the requirement that an eligible individual must report to us when he or she leaves the United States with the intent of abandoning his or her residence in the United States. This report is required because an eligible individual who abandons his or her residence in the United States becomes ineligible in the first month he or she is no longer a resident of the United States. The current regulations (§ 416.708(n)) state that an eligible individual must report the loss of his or her status as a resident of the United States. This clarification makes clear that intent to abandon residence in the United States, whether voluntary or not, must be reported to us.

4. In § 416.708(n) we explain that an eligible individual must report to us when he or she leaves the United States for 30 or more consecutive days or for a full calendar month without intending to abandon his or her residence in the United States. The current regulations (§ 416.708(j)) state that an eligible individual must report any departure from the United States. The final rule states more clearly what is intended.

In addition to the above changes we are also making several changes based on the comments we received.

1. In § 416.708(k) we are adding the requirement that admission to or discharge from a private institution must be reported. We are also defining the term "private institution".

2. In § 416.732(b) we have expanded the definition of "not willful" to more fully explain what we mean.

Accordingly, the regulations with these clarifying and editorial changes are adopted as set forth below.

(Catalog of Federal Domestic Assistance Program No. 13.807, Supplemental Security Income Program)

Dated: December 10, 1980.

William J. Driver,

Commissioner of Social Security.

Approved: January 9, 1981.

Patricia Roberts Harris,

Secretary of Health and Human Services.

Subpart G of Part 416, Chapter III of Title 20 of the Code of Federal Regulations is revised to read as follow:

Subpart G—Reports Required

Introduction

Sec.

416.701 Scope of subpart.
416.702 Definitions.

Report Provisions

416.704 Who must make reports.
416.706 What you must report.
416.710 What reports must include.
416.712 Form of the report.
416.714 When reports are due.

Penalty Deductions

416.722 Circumstances under which we make a penalty deduction.
416.724 Amounts of penalty deductions.
416.726 Penalty period: First failure to report.
416.728 Penalty period: Second failure to report.
416.730 Penalty period: Three or more failures to report.
416.732 No penalty deduction if you have good cause for failure to report timely.

Authority: Secs. 1102, 1611, 1612, 1613, 1614, and 1631 of the Social Security Act, as amended; Sec. 211 of Pub. L. 93–66; 49 Stat. 647, as amended; 86 Stat. 1468, 1469, 1470, 1471, and 1475; 87 Stat. 154; 42 U.S.C. 1302, 1382, 1382a, 1382b, 1382c, and 1383.

Subpart G—Reports Required

Introduction

§ 416.701 Scope of subpart.

(a) *Report provisions.* The Social Security Administration, to achieve efficient administration of the Supplemental Security Income (SSI) program for the Aged, Blind, and Disabled, requires that you (or your representative) must report certain events to us. It is important for us to know about these events because they may affect your continued eligibility for SSI benefits or the amount of your benefits. This subpart tells you what events you must report; what your reports must include; and when reports are due. The rules regarding reports are in §§ 416.704–416.714.

(b) *Penalty deductions.* If you fail to make a required report when it is due, you may suffer a penalty. This subpart describes the penalties; discusses when we may impose them; and explains that we will not impose a penalty if you have good cause for failing to report timely. The rules regarding penalties are in §§ 416.722–416.732.

§ 416.702 Definitions.

For purposes of this subpart—

"Essential person" means someone whose presence was believed to be necessary for your welfare under the State program that preceded the SSI program. (See §§ 416.261–416.269.)

"Parent" means a natural parent, an adoptive parent, or the spouse of a natural or adoptive parent.

"Representative payee" means an individual, an agency, or an institution selected by us to receive and manage SSI benefits on your behalf. (See Subpart F of this part for details describing when a representative payee is selected and a representative payee's responsibilities.)

"Residence in the United States" means that your permanent home is in the United States.

"United States" or *"U.S."* means the 50 States, the District of Columbia, and the Northern Mariana Islands.

"We," "Us," or *"Our"* means the *Social Security Administration.*

"You" or *"Your"* means an applicant, an eligible individual, an eligible spouse, or an eligible child.

Report Provisions

§ 416.704 Who must make reports.

(a) You are responsible for making required reports to us if you are—

(1) An eligible individual (see § 416.120(13));

(2) An eligible spouse (see § 416.120(14));

(3) An eligible child (see §§ 416.120(13) and 416.1060); or

(4) An applicant awaiting a final determination upon an application.

(b) If you have a representative payee, and you have not been legally adjudged incompetent, either you or your representative payee must make the required reports.

(c) If you have a representative payee and you have been legally adjudged incompetent, you are not responsible for making reports to us; however, your representative payee is responsible for making required reports to us.

§ 416.708 What you must report.

This section describes the events that you must report to us. They are—

(a) *A change of address.* You must report to us any change in your mailing address and any change in the address where you live.

(b) *A change in living arrangements.* You must report to us any change in the make-up of your household: that is, any person who comes to live in your household and any person who moves out of your household.

(c) *A change in income.* You must report to us any increase or decrease in your income, and any increase or decrease in the income of—

(1) Your ineligible spouse who lives with you;

(2) Your essential person;

(3) Your parent, if you are an eligible child and your parent lives with you; or

(4) An ineligible child who lives with you.

However, you need not report an increase in your Social Security benefits if the increase is only a cost-of-living adjustment. (For a complete discussion of what we consider income, see Subpart K. See Subpart M, § 416.1323 regarding suspension because of excess income.)

(d) *A change in resources.* You must report to us any resources you receive or part with, and any resources received or parted with by—

(1) Your ineligible spouse who lives with you;

(2) Your essential person; or

(3) Your parent, if you are an eligible child and your parent lives with you. (For a complete discussion of what we consider a resource, see Subpart L. See Subpart M, § 416.1324 regarding suspension because of excess resources.)

(e) *Eligibility for other benefits.* You must report to us your eligibility for benefits other than SSI benefits. See §§ 416.230 and 416.1330 regarding your responsibility to apply for any other benefits for which you may be eligible.

(f) *Certain deaths.* (1) If you are an eligible individual, you must report the death of your eligible spouse, the death of your ineligible spouse who was living with you, and the death of any other person who was living with you.

(2) If you are an eligible spouse, you must report the death of your spouse, and the death of any other person who was living with you.

(3) If you are an eligible child, you must report the death of a parent who was living with you, and the death of any other person who was living with you.

(4) If you are a representative payee, you must report the death of an eligible individual, eligible spouse, or eligible child whom you represent; and the death of any other person who was living in the household of the individual you represent.

(5) If you have a representative payee, you must report the death of your representative payee.

(g) *A change in marital status.* You must report to us—

(1) Your marriage, your divorce, or the annulment of your marriage;

(2) The marriage, divorce, or annulment of marriage of your parent who lives with you, if you are an eligible child;

(3) The marriage of an ineligible child who lives with you, if you are an eligible child; and

(4) The marriage of an ineligible child who lives with you if you are an eligible individual living with an ineligible spouse.

(h) *Medical improvements.* If you are eligible for SSI benefits because of disability or blindness, you must report any improvement in your medical condition to us.

(i) *Refusal to accept vocational rehabilitation services.* If we have referred you for vocational rehabilitation services and you refuse to accept these services, you must report your refusal to us.

(j) *Refusal to accept treatment for drug addiction or alcoholism; discontinuance of treatment.* If you have been medically determined to be a drug addict or an alcoholic, and you refuse to accept treatment for drug addiction or alcoholism at an approved facility or institution, or if you discontinue treatment, you must report your refusal or discontinuance to us.

(k) *Admission to or discharge from a medical facility, public institution, or private institution.* You must report to us your admission to or discharge from—

(1) A hospital;

(2) A skilled nursing facility;

(3) An intermediate care facility; or

(4) A public institution (defined in § 416.231); or

(5) A private institution. "Private institution" means an institution as defined in § 416.231(b)(1) which is not administered by or the responsibility of a governmental unit.

(l) *A change in school attendance.* You must report to us—

(1) A change in you school attendance if you are an eligible child;

(2) A change in school attendance of an ineligible child who is at least age 18 but less than 21 and who lives with you if you are an eligible child; and

(3) A change in school attendance of an ineligible child who is at least age 18 but less than 21 and who lives with you if you are an eligible individual living with an ineligible spouse.

(m) *A termination of residence in the U.S.* You must report to us if you leave the United States voluntarily with the intention of abandoning your residence in the United States or you leave the United States involuntarily (for example, you are deported).

(n) *Leaving the U.S. temporarily.* You must report to us if you leave the United States for 30 or more consecutive days or for a full calendar month (without the intention of abandoning your residence in the U.S.).

§ 416.710 What reports must include.

When you make a report you must tell us—

(a) The name and social security number under which benefits are paid;

(b) The name of the person about whom you are reporting;

(c) The event you are reporting and the date it happened; and

(d) Your name.

§ 416.712 Form of the report.

You may make a report in any of the ways described in this section.

(a) *Written reports.* You may write a report on your own paper or on a printed form supplied by us. You may mail a written report or bring it to one of our offices.

(b) *Oral reports.* You may report to us by telephone, or you may come to one of our offices and tell one of our employees what you are reporting.

(c) *Other forms.* You may use any other suitable method of reporting—for example, a telegram or a cable.

§ 416.714 When reports are due.

(a) *A reportable event happens.* You should report to us as soon as an event listed in § 416.708 happens. If you do not report within 30 days after the calendar quarter in which the event happens, your report will be late. We may impose a penalty deduction from your benefits for a late report (see §§ 416.722–416.732).

(b) *We request a report.* We may request a report from you if we need information to determine continuing eligibility or the correct amount of your SSI benefit payments. If you do not report within 30 days of our written request, we may determine that you are ineligible to receive SSI benefits. We will suspend your benefits effective with the month following the month in which we determine that you are ineligible to receive SSI benefits because of your failure to give us necessary information.

Penalty Deductions

§ 416.722 Circumstances under which we make a penalty deduction.

A penalty deduction is made from your benefits if—

(a) You fail to make a required report on time (see §§ 416.708 and 416.714);

(b) We must reduce, suspend, or terminate your benefits because of the event you have not reported;

(c) You received and accepted an SSI benefit for the penalty period (see §§ 416.724–416.728 for penalty period definitions); and

(d) You do not have good cause for not reporting on time (see § 416.732).

§ 416.724 Amounts of penalty deductions.

(a) *Amounts deducted.* If we find that we must impose a penalty deduction, you will lose from your SSI benefits a total amount of—

(1) $25 for a report overdue in the first penalty period;

(2) $50 for a report overdue in the second penalty period; and

(3) $100 for a report overdue in the third (or any following) penalty period.

(b) *Limit on number of penalties.* Even though more than one required report is overdue from you at the end of a penalty period, we will limit the number of penalty deductions imposed to one penalty deduction for any one penalty period.

§ 416.726 Penalty period: First failure to report.

(a) *First penalty period.* The first penalty period begins on the first day of the month you apply for SSI benefits and ends on the day we first learn that you should have made a required report, but did not do so within 30 days after the calendar quarter in which the event happened. There may be more than one required report overdue at the end of the first penalty period, but we will impose no more than one penalty deduction for the period.

Example: On February 1 Mr. Jones filed for SSI benefits. His benefit payments began with February. On May 5 Mr. Jones left the U.S. to visit relatives in Europe. On September 1 he returned to his home in the U.S. On November 20 he reported that he had been out of the U.S. The event (being out of the U.S. for more than 30 consecutive days) happened in the second calendar quarter (April–May–June). Mr. Jones should have reported it to us within 30 days after the calendar quarter in which the event happened (before July 31). The first penalty period began February 1, the day Mr. Jones filed his application, and ended November 20, the day we learned that his report was overdue.

(b) *Extension of first penalty period.* If you have good cause for not making a report on time (see § 416.732), we will extend the first penalty period to the day when we learn that you should have made another required report, but did not do so within 30 days after the calendar quarter in which the event happened. There may be more than one required report overdue at the end of the extended first penalty period, but we will impose no more than one penalty deduction for the extended period.

Example: Mr. Jones was found to have good cause for failing to report that he had been outside the U.S. (see § 416.732); therefore, the first penalty period did not end on November 20. On December 6 we learned that he had failed to report to us income he received in March and April. He did not have good cause for failing to report this income; therefore, the first penalty period ended December 6 and we imposed a penalty deduction for his failure to report the income.

§ 416.728 Penalty period: Second failure to report.

(a) *Second penalty period.* The second penalty period begins on the day after the first penalty period ends. The second penalty period ends on the day we first learn that you should have made a required report, but did not do so within 30 days after the calendar quarter in which the event happened. (The event may have happened during the first penalty period, with the reporting due date in the second penalty period. The due date and the failure to report on time are the important factors in establishing a penalty period.) There may be more than one required report overdue at the end of the second penalty period, but we will impose no more than one penalty deduction for the period.

Example: Mrs. Martin's first penalty period had ended June 30. On December 31 Mrs. Martin reported that she had received a $2,000 inheritance on July 3. The event happened in the third calendar quarter (July–August–September). She should have reported it to us within 30 days after the calendar quarter in which the event happened (before October 31). The second penalty period began July 1, the day after the first penalty period ended, and ended December 31, the day we learned that her report was overdue.

(b) *Extension of second penalty period.* If you have good cause for not making a report on time (see § 416.732), we will extend the second penalty period to the day when we learn that you should have made another required report, but did not do so within 30 days after the calendar quarter in which the event happened. There may be more than one required report overdue at the end of the extended second penalty period, but we will impose no more than one penalty deduction for the extended period.

Example: Mrs. Martin did not have good cause for failing to report on time (see § 416.732); therefore, we did not extend the second penalty period—it ended on December 31, the day we learned that her report was overdue, and we imposed a penalty deduction. One year later, we first learned that Mrs. Martin was absent from the United States for several months and her report of this event was overdue during the second penalty period, but we did not impose another penalty deduction.

§ 416.730 Penalty period: Three or more failures to report.

(a) *Third (or a following) penalty period.* A third (or a following) penalty period begins the day after the last penalty period ends. This penalty period ends on the day we first learn that you should have made a required report during the penalty period, but did not do so within 30 days after the calendar quarter in which the event happened. (The event may have happened during an earlier penalty period, with the reporting due date in the third (or a following) penalty period. The due date and the failure to report on time are the important factors in establishing a penalty period.) There may be more than one required report overdue at the end of a penalty period, but we will impose no more than one penalty deduction for any one penalty period.

(b) *Extension of third (or a following) penalty period.* Just as with the first and second penalty periods, if you have good cause for not making a report on time during the third (or a following) penalty period [see § 416.732), we will extend the penalty period to the day when we learn that you should have made another required report, but did not do so within 30 days after the calendar quarter in which the event happened. There may be more than one required report overdue at the end of an extended penalty period, but we will impose no more than one penalty deduction for any one extended penalty period.

§ 416.732 No penalty deduction if you have good cause for failure to report timely.

We will find that you have good cause for failure to report timely and we will not impose a penalty deduction, if—

(a) You are "without fault" as defined in § 416.552; or

(b) Your failure or delay in reporting is not willful. "Not willful" means that—

(1) You did not have full knowledge of the existence of your obligation to make a required report; or

(2) You did not intentionally knowingly, and purposely fail to make a required report.

However, in either case we may require that you refund an overpayment caused by your failure to report. See Subpart E of this part for waiver of recovery of overpayments.

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DEPARTMENT OF LABOR

29 CFR Part 4

Office of the Secretary

Labor Standards for Federal Service Contracts

Note.—This document originally appeared for Monday January 19, 1981. It is reprinted in this issue to meet requirements for publication on the Tuesday–Friday schedule assigned to the Department of Labor.

AGENCY: Wage and Hour Division, Labor.

ACTION: Final rule.

SUMMARY: This rule revises § 4.133 of the regulations of the Department of Labor (29 CFR 4.133) to clarify the treatment of concession contracts under the Service Contract Act. Subsection (a) of the revised regulation makes it clear that government concession contracts, like all other government contracts for services, are covered by the Act. Subsection (b) indicates the types of concession contracts the Secretary of Labor is exempting from the Act's coverage pursuant to his authority under Section 4(b) of the Service Contract Act.

EFFECTIVE DATE: February 18, 1981.

FOR FURTHER INFORMATION CONTACT:
Dorothy P. Come, Assistant Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Room S–3502, 200 Constitution Avenue, NW., Washington, D.C. 20210. Telephone: 202–523–8333.

SUPPLEMENTARY INFORMATION:

Coverage of the Service Contract Act is broad. It encompasses all contracts, or any bid specifications therefor, entered into by and with the Government, which have as their principal purpose the furnishing of "services in the United States through the use of service employees." Since 1966 the Department of Labor excepted from the Act's requirements those concession contracts which provide services of "indirect or remote" benefit to the Government, for example, National Park Service food and lodging concessionaires serving the general public.

However, difficulties were encountered in applying the language of 29 CFR 4.133, particularly in circumstances where it is difficult to determine how "indirect or remote" is the benefit to the Government. Further, the regulation was susceptible of being misconstrued as providing that the Act itself does not cover a contract unless the services provided are of direct benefit to the Government.

For these reasons, the Department of Labor proposed to recast the regulation to indicate that the Act covered all government concession contracts for services, and to continue to provide an exemption for National Park Service concession contracts which furnish food or lodging services to the general public. This proposed revision of § 4.133 was published in the Federal Register (44 FR 77057) on December 28, 1979. Comments concerning this proposed revision were received from the National Counsel of Technical Service Industries and three government agencies—the Federal Aviation Administration (FAA), the National Aeronautics Space Administration (NASA), and the General Services Administration (GSA). All except GSA questioned the correctness of the interpretation of the Department of Labor that the Service Contract Act covers concession contracts for services irrespective of the beneficiary of the contract services. NASA and FAA contended that the Act was intended to cover only concession contracts which are of a direct benefit to the Government or its personnel, and was not intended to cover concession contracts which primarily benefit the general public.

However, these contentions must be rejected. As previously noted, the language of the Act is very broad and covers all contracts the principal purpose of which is furnishing services. The Act's language makes no distinction based on the beneficiary of the contract services. In addition, the legislative history of the statute provides no evidence of a Congressional intent to limit coverage to service contracts of direct benefit to the Government. Comments by members of Congress that the Act should not be applied to certain concession contracts providing services to the general public were made after the passage of the Act, and do not constitute part of the statute's legislative history.

GSA and the National Council of Technical Service Industries submitted comments questioning whether there was a sufficient basis to exempt concession contracts in National Parks while not exempting similar concession contracts involving other Federal agencies. As a consequence of these comments, the Department of Labor proposed additional revisions to the regulation, which were published in the Federal Register (45 FR 81765) on December 12, 1980. Under this further proposed revision, subsection (b) was modified and clarified to specifically list which types of concession contracts were exempt, and to indicate that the exemption is not limited to National Park Service concession contracts but applies to qualifying concession contracts of other government agencies as well.

FAA and NASA submitted additional comments concerning these further proposed revisions. FAA generally approved of the revisions, but recommended that the list of exempt concession contracts be expanded to include those involving taxicabs, barber shops, commercial advertising displays and aircraft fuel sales. This recommendation is rejected as not being appropriate for incorporation in the regulation at this time. Further information is needed to establish both the basis for and the precise scope of these additionally suggested exemptions.

NASA submitted additional comments again contesting the interpretation of the Act found in § 4.133 that concession contracts which provide services of indirect or remote benefit to the Government are covered by the Act. NASA expressed concern with the possible effect this proposed regulation might have on the status of a pending lawsuit, and recommended that the proposed regulation be held in abeyance until the court rules in the case. However, in light of the real need for clarification of the position of the Department of Labor concerning the application of the Service Contract Act to government concession contracts, and the fact that it has been over a year since publication of the proposed revision of the regulation, the Department of Labor feels it would not be in the public interest to further delay publication of the regulation as a final rule.

The Secretary of Labor has determined, based on the information available, that because the proposed exemption is supported by statements of members of Congress, it is necessary and proper in the public interest; and further that because the proposed regulation will clarify the limits and make clear the basis of the previous exemption, it is therefore in accord with its remedial purpose to protect prevailing labor standards.

It has been determined that the amendments to this Regulation do not meet the criteria of Executive Order 12044 and the Department of Labor Guidelines (44 FR 5570) for a regulatory analysis. The revised regulation essentially clarifies interpretations and policies, and will not, in any event, cause major cost/price increases.

Accordingly, 29 CFR § 4.133 is revised as set forth below:

§ 4.133 Beneficiary of contract services.

(a) The Act does not say to whom the services under a covered contract must be furnished. So far as its language is concerned, it is enough if the contract is "entered into" by and with the government and if its principal purpose is "to furnish services in the United States through the use of service employees". It is clear that Congress intended to cover at least contracts for services of direct benefit to the Government, its property, or its civilian or military personnel for whose needs it is necessary or desirable for the government to make provision for such services. For example, the legislative history makes specific reference to such contracts as those for furnishing food service and laundry and dry cleaning service for personnel at military installations. Furthermore, there is no limitation in the Act regarding the beneficiary of the services, nor is there any indication that only contracts for services of direct benefit to the Government, as distinguished from the general public, are subject to the Act. Therefore, where the principal purpose of the Government contract or any bid specification therefor is to provide services through the use of service employees, the contract is covered by the Act, regardless of the direct beneficiary of the services or the source

of the funds from which the contractor is paid for the service, and irrespective of whether the contractor performs the work in its own establishment, on a Government installation, or elsewhere. The fact that the contract requires or permits the contractor to provide the services directly to individual personnel as a concessionaire, rather than through the contracting agency, does not negate coverage by the Act.

(b) Because of comments made shortly after the Act's passage by some members of Congress that the Act's requirements should not be imposed on certain concession contracts providing services to the general public, the Department of Labor, pursuant to Section 4(b) of the Act, exempts from the provisions of the Act certain kinds of concession contracts as provided herein. Specifically, concession contracts (such as those entered into by the National Park Service) for the furnishing of food, lodging, automobile fuel, souvenirs, newspaper stands, and recreational equipment to the general public, as distinguished from the United States Government or its personnel, are exempt. Where concession contracts, however, include specifications for services other than those stated, such as the maintenance of government buildings and grounds, and the dissemination of information about government programs or facilities, those services are not exempt. Exemption of additional recreational or similar services under concession contract will be determined in the discretion of the Secretary on a case-by-case basis in accordance with 29 CFR 4.123 and section 4(b) of the Act. The exemption provided does not affect a concession contractor's obligation to comply with the labor standards provisions of any other statutes such as the Contract Work Hours and Safety Standards Act, the Davis-Bacon Act (40 U.S.C 276 *et seq.*; see Part 5 of this title) and the Fair Labor Standards Act (29 U.S.C. 201 *et seq.*). This clarification and limitation of the exemption previously granted (33 FR 9880, July 10, 1968) is necessary and proper in the public interest and is in accord with the remedial purpose of the Act.

(Secs. 2(a) and 4, 79 Stat. 1034, 1035; 41 U.S.C. 351, 353, and under 5 U.S.C. 301)

Signed at Washington, D.C. this 14th day of January, 1981.

Donald Elisburg,

Assistant Secretary of Labor, Employment Standards Administration.

[FR Doc. 81-1827 Filed 1-19-81; 8:54 am]

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Occupational Safety and Health Administration

29 CFR Part 1990

Identification, Classification and Regulation of Potential Occupational Carcinogens; Conforming Deletions

Note.—This document originally appeared for Monday January 19, 1981. It is reprinted in this issue to meet requirements for publication on the Tuesday–Friday schedule assigned to the Department of Labor.

AGENCY: Occupational Safety and Health Administration, Department of Labor.

ACTION: Final Rule.

SUMMARY: Deletions are made to the permanent standard for the Identification, Classification and Regulation of Potential Occupational Carcinogens ("Cancer Policy" standard, 45 FR 5002, Jan. 22, 1980) to conform it to the recent Supreme Court decision on OSHA's benzene standard, *Industrial Union Department, AFL-CIO* v. *American Petroleum Institute, et al.* 65 L. Ed. 2d 1010, 100 S. Ct. 2844 (July 2, 1980). The deletions carry out the Court's interpretation of the Occupational Safety and Health Act of 1970 that consideration must be given to the significance of the risk in the issuance of a carcinogen standard and that OSHA must consider all relevant evidence in making these determinations.

EFFECTIVE DATE: February 18, 1981.

FOR FURTHER INFORMATION CONTACT: Mr. James F. Foster, OSHA Office of Public Affairs, Room N–3641, U.S. Department of Labor, Third Street and Constitution Avenue, NW., Washington, D.C. 20210, telephone (202) 523–8151.

SUPPLEMENTARY INFORMATION:

1. Introduction

On January 22, 1980, the Occuaptional Safety and Health Administration published a final standard (29 CFR Part 1990) for the Identification, Classification and Regulation of Potential Occupational Carcinogens (the "Cancer Policy") at 45 FR 5002. On June 27, 1980, OSHA issued a correction document at 45 FR 43403. The Cancer Policy included scientific policies, regulatory policies and procedures designed to lead to the more effective regulation of occupational carcinogens. Among the regulatory policies was the provision that exposures to Category I Occupational Carcinogens be reduced to the lowest feasible level taking into account economic and technical considerations. Limitations on the consideration of some types of evidence already considered in the cancer Policy were also included.

On July 2, 1980, the Supreme Court issued its decision on the OSHA benzene standard, *Industrial Union Department, AFL-CIO* v. *American Petroleum Institute et al.*, 65 L. Ed. 2d 1010, 100 S. Ct. 2844 (the "benzene decision" or *"I.U.D. v. A.P.I."*). The Court held that OSHA must consider the significance of the risk before regulating toxic substances and that OSHA had the burden of demonstrating the significance of the risk.

The Cancer Policy shares certain policies with the benzene standard.

Therefore to conform the Cancer Policy to the benzene decision, OSHA is deleting the provisions of the Cancer Policy which required the automatic setting of the lowest feasible level for Category I Potential Carcinogens. Also deleted are limitations on the evidence which OSHA may consider in determining the exposure limit for carcinogens. The results of these deletions are that in setting exposure limits for carcinogens on a substance by substance basis, OSHA will take into account significance of the risk, feasibility, all relevant provisions of the Act, court interpretations, all relevant evidence, prudent occupational health policy and its experience in regulating toxic substances. No automatic setting of exposures at the lowest feasible level will occur.

Most provisions of the Cancer Policy are not affected by the benzene decision. These include scientific policies, priority setting, identification criteria and classification criteria. OSHA is, of course, not deleting them and they remain in force.

2. OSHA's Cancer Policy

The Cancer Policy preamble discusses the basis for the policy at great length. Very briefly occupational carcinogens pose a serious health problem. OSHA had regulated a number of such chemicals, (asbestos, vinyl chloride, coke oven emissions, arsenic, etc.), but discovered that it was a slow process, in part because it was necessary to reevaluate the scientific basis for identifying potential human carcinogens in each rulemaking. Therefore there were a significant number of likely occupational carcinogens which OSHA would not be able to regulate for a substantial period of time. However, during the course of the earlier rulemakings, it became clear that there was a significant body of well established scientific data to provide the basis for identifying and regulating carcinogenic substances.

In the Cancer Policy proposal, OSHA proposed to make use of this scientific data and its regulatory experience, to lead to a more efficient regulatory process and better protection for employees exposed to carcinogens. The proposal was intensively and extensively explored in a 10 week hearing during which many scientific and policy experts testified, and literally hundreds of scientific articles were submitted. That record and the final standard are analyzed in a 300 page Federal Register preamble.

The final Cancer Policy modified the proposal in a number of ways to meet suggestions and criticism made in the record and the scientific evidence. The final standard includes provisions for setting priorities (see §§ 1990.131, .132). There are provisions to amend the policies to reflect advances in science and changes in policy (see §§ 1990.104 and .145).

The Cancer Policy sets forth scientific principles for the identification and classification of carcinogenic chemicals. These principles are primarily stated in §§ 1990.111, .112 and .143. They deal with the relevance of animal data to humans, the appropriateness of high dose testing, the relevance of various routes of exposure to the chemical in test animals, the uses and abuses of human data, the relevance of benign tumors in test animals, and other scientific principles. These scientific principles are based on an extensive scientific record and are analyzed in depth in the preamble.

The Cancer Policy treats these scientific policies as binding on the Agency and the public. Inconsistent evidence may not be considered, unless it is substantial and new and forms the basis for amending the Cancer Policy (see § 1990.145).

The Supreme Court's benzene decision is fully consistent with the aspects of the Cancer Policy just discussed, including the scientific principles and all the identification and classification provisions of the Cancer Policy. Therefore, there is no need to change any of these provisions of the Cancer Policy based on the benzene decision. It should also be noted that all these provisions and specifically the identification and classification provisions of the Cancer Policy are readily severable from the regulatory policies, and it is OSHA's intention that they be considered severable.

2. Conforming Changes to Regulatory Sections

The following paragraphs discuss those sections of the Cancer Policy standard required to be deleted by the Supreme Court's decision in *I.U.D.* v. *A.P.I.* and explain why the Court's decision compels the changes made.

Section 1990.111(h)

This paragraph states that for Category I Potential Carcinogens, exposures will be reduced to the lowest feasible level primarily through engineering and work practice controls. The words "to the lowest feasible level" are deleted. In consequence no binding requirement for exposure level is included in the Cancer Policy and the level will be set on a substance by substance basis taking into account all relevant evidence and statutory provisions. Obviously included within this would be consideration of the significance of the risk present by each substance.

The last sentence in § 1990.111(h) is deleted to avoid the inappropriate inference that the significance of the risk should be ignored. However, the general scientific principle concerning thresholds is already included in § 1990.143(h) and it remains one of those principles adopted by OSHA based on the record evidence in the Cancer Policy rulemaking.

No change is made in the regulatory policy of primary reliance on engineering and work practice controls. That policy was adopted by OSHA based on an extensive analysis of the record (see the discussion at 45 FR 5222) and was not affected by the Supreme Court's decision.

Section 1990.111(i)

This paragraph provided that exposures to Category II Potential Carcinogens "will be reduced as appropriate and consistent with the statutory requirements on a case-by-case basis." No changes are needed, since the formulation of the criterion for setting the exposure limit is "as appropriate and consistent with statutory requirements." the existing language therefore automatically incorporates the Supreme Court's interpretation in *I.U.D.* v. *A.P.I.* and consideration of the significance of the risk becomes an issue.

Section 1990.111(j)

This paragraph states that risk assessments will be performed based on the available data utilizing cautious and prudent assumptions and that they will depend on the Secretary's judgment. The last sentence has been deleted to eliminate the possible interpretation that the risk assessments would depend solely on the Secretary's judgment. The assessment of risk and its significance have become regulatory issues as a result of the Supreme Court's decision. In consequence, determinations by the Secretary are to be based on the evidence in the record as to factual matters, and appropriate reasonable policies.

The clause that "cautious and prudent assumptions" are to be used remains. The Supreme Court held this was appropriate, stating that,

> So long as they are supported by a body of reputable scientific thought, the agency is free to use conservative assumptions in interpreting the data with respect to carcinogens, risking error on the side of over protection, rather than under-protection, (slip. op. p. 45)

Section 1990.111(k)

This paragraph provides that when suitable substitutes exists for a use of a chemical, a no occupational exposure limit should be set for that use to encourage substitution. Criteria are set for the determination of the suitability of substitutes including consideration of "regulatory requirements".

That terminology, of course, automatically incorporates into the determination of suitability, the regulatory requirements of the Supreme Court that OSHA consider the significance of the risk. Therefore there is no need to change the language of the paragraph to conform to the benzene decision. OSHA, before it encourages substitution, must consider whether the significance of the risk presented by the carcinogen makes it appropriate to encourage substitution.

Section 1990.142(a)(2)(iii)

This paragraph provided that exposure limits for Category I Carcinogens be set at the lowest feasible level achieved through engineering and work practice controls. For the reasons stated in the discussion of § 1990.111(h), the deletion of the reference to the lowest feasible level conforms the paragraph to *I.U.D.* v. *A.P.I.* No change in the suitable substitute language is required because as stated in the discussion of § 1990.111(k), the language of that section automatically incorporates into the suitability determination the significant risk question.

Section 1990.142(b)(2)

This paragraph stated that Category I Potential Carcinogens automatically create a "grave danger" for purposes of determining whether an Emergency Temporary Standard may be issued pursuant to section 6(c) of the OSH Act. [29 U.S.C. 655(c)). The Supreme Court's decision interpreted the Act to require non-emergency regulation of

carcinogens to be based on consideration of the significance of the risk as well as qualitative evidence of their carcinogenicity. Clearly then, qualitative evidence of carcinogenicity must be accompanied by consideration of the gravity of the danger before the issuance of an ETS. (See sl. op. p. 30, n. 45). Therefore, this interpretation of the Court requires the deletion of § 1990.142(b)(2). In consequence, the issuance of an ETS under the Cancer Policy requires that the agency determine that a "grave danger" exists and that an "emergency standard is necessary to protect employees from such danger" as provided by § 6(c) of the Act. Conforming changes in numeration are also made.

Section 1990.142(b)(3)(iii) (Renumbered to § 1990.142(b)(2)(iii))

This section provided that the exposure limit for Emergency Temporary Standards shall be set at the lowest feasible level through any practical combination of engineering and work practice controls and respiratory protection. The deletion of the words "set as low as feasible," conforms the paragraph to *I.U.D.* v. *A.P.I.* for the same reasons specified in the discussion of § 1990.111(h).

Section 1990.143

This section sets forth scientific principles to be utilized in the identification of carcinogenic chemicals. They are based on an extensive scientific record including review of many hundreds of scientific articles, testimony of more than 100 scientific witnesses and extensive OSHA experience in earlier rulemaking proceedings. They are discussed in over 200 pages of Federal Register preamble. The agency is to apply these principles unless contrary arguments are based on substantial new evidence not considered by the agency, substantial new issues (§ 1990.145), or upon evidence which meets certain threshold criteria (§ 1990.144).

The Supreme Court's decision is consistent with OSHA's recognizing scientific principles and policies based on a substantial evidentiary record. Several Supreme Court cases have recognized the appropriateness of generic policies in these areas so that the same issues need not be constantly repeated.

To require the Commission to proceed only on a case-by-case basis would require it, so long as its policy outlawed indefinite price changing provisions, to repeat in hearing after hearing its conclusions that condemn all of them. There would be a vast proliferation of hearings * * *. We see no reason why under the statutory scheme the process of regulation need be so prolonged and so crippled. (*F.P.C.* v. *Texaco*, 377 U.S. 33, 112 (1964).)

See also *United States* v. *Storer Broadcasting*, 351 U.S. 192 (1956) and *Weinberger* v. *Hynson*, 412 U.S. 609 (1973). Therefore these scientific principles remain established for the identification of carcinogens and the language of the introductory paragraph of the section indicates that their purpose is for the identification of carcinogens.

However, arguments based on evidence which would not be relevant for identification (such as the dose levels in animal testing) could be relevant in assessing the significance of the risk. Since § 1990.143 only refers to identification, arguments and evidence inconsistent with the principles may be introduced and considered on their merits for purposes of setting exposure limits. Therefore, no changes are made in § 1990.143.

Section 1990.144

This section sets minimum quality standards for the consideration of certain types of evidence for the identification, classification and regulation of carcinogens. As discussed in regard to § 1990.143, the criteria are based on an extensive scientific record and are consistent with the Supreme Court's decision when utilizing the criteria for the identification and classification of carcinogens. However, data which do not meet those criteria may be relevant to assessing the significance of the risk pursuant to the Supreme Court's decision. Therefore, the word "regulating" is deleted from the third line, to indicate that evidence not meeting the quality criteria will nonetheless be considered for purposes of assessing the significance of the risk.

Section 1990.146

This section lists the issues to be considered during the rulemaking proceeding on a carcinogen. Paragraph (h) provides for the consideration of "issues required by statute or executive order." The preamble discussion at 45 FR 5114 states that "this issue recognizes that future court decisions interpreting the Act and amendments to the Act may require OSHA to consider additional issues". Clearly then, the issues required to be considered by the benzene decision such as the significance of the risk and its assessment become germane to the proceeding. Evidence and arguments on each issue may be introduced in the proceeding and will be considered by the Secretary in his decision.

Paragraph (i) of this section provided for the consideration of the "lowest feasible level to control exposure to Category I Potential Carcinogens * * *." The words "lowest feasible" are deleted to conform the paragraph to the benzene decision for the reasons stated in the discussion of § 1990.111(h). As a result of the deletion all evidence and arguments as to the setting of exposure levels consistent with the statute and the benzene decision are relevant.

Sections 1990.151(c) and .152(c)

Sections 1990.151 and .152 are the model standards for permanent and emergency temporary standards setting forth guidelines for monitoring, exposure limit format, control strategy, medical protection, housekeeping and other provisions. Conforming deletions are made by striking the lowest feasible terminology from the time weighted average limit, ceiling limit, eye exposure limit and dermal limit. The reasons are explained in the discussion of § 1990.111(h). The suitable substitutes provisions automatically pick up the significant risk requirements of *I.U.D.* v. *A.P.I.* as discussed above. Certain minor typographical errors are also corrected.

5. The Process for Conforming the Cancer Policy to the Benzene Decision

As this discussion indicates, the Supreme Court's interpretation of the OSHA Act is clear and the deletions necessary to make the Cancer Policy standard consistent with the Act as interpreted are relatively simple. The deletions merely incorporate the law, as stated by the Supreme Court, into the language of the Cancer Policy, where the Court found OSHA's policy inconsistent with the OSHA Act. Indeed the Supreme Court's benzene decision has already legally nullified those sections of the Cancer Policy inconsistent with the decision, and these changes merely conform the regulations to the law. The agency has not changed any of the factual determinations and has not changed any policies except as required by the Supreme Court's holding in interpreting the OSHA Act.

It is true that the determination of what constitutes significant risk and the role of risk assessment in making these determinations may include many difficult policy and factual questions. However, the agency, by these changes, is not determining those policy or factual questions or setting criteria for those determinations. Rather, those determinations will be made in the regulatory proceedings on specific substances.

It should be noted that the Supreme Court required consideration of the significance of the risk including risk assessments when they could be appropriately performed. The Court stated this requirement was not to be a "mathematical straitjacket"; "OSHA is not required to support its finding that significant risk exists with anything approaching scientific certainty." The agency can utilize the "best available evidence" and "there are a number of ways in which the agency can make a rational judgment about the relative significance of the risks * * *" (sl. op. pp. 44, 45, 46). Therefore, when data are not available to perform a formal quantitative risk assessment, qualitative evidence, expert testimony and other evidence may be appropriately utilized to base a determination of significance of risk.

OSHA has therefore concluded that notice and comment is unnecessary in the process of conforming the Cancer Policy to the holding of the Supreme Court in the benzene decision. The deletions of certain Cancer Policy provisions are compelled by the Supreme Court's benzene decision. They concern only matters of law and they do not involve the reconsideration of evidentiary issues. OSHA's decision would be neither enhanced nor assisted by the receipt of evidence on the issue of what changes are compelled.

In addition, as also discussed above, OSHA recognized when it issued the Cancer Policy that changes in the issues considered may become necessary because of changes in law and provided that such issues would be automatically considered without the need to amend the Cancer Policy. Section 1990.146(h) provides for the consideration of "any issues required by statute or executive order." The preamble discussion at 45 FR 5214 states that "this issue recognizes that future court decisions interpreting the Act and amendments to the Act may require OSHA to consider additional issues." The requirement for consideration of additional issues required by court decision clearly implies that those issues become relevant to the Secretary's decisions. Therefore the conforming deletions from the Cancer Policy merely make explicit the issues which have already become relevant to the Cancer Policy as a result of the Supreme Court's decision.

This document was prepared under the direction and supervision of Eula Bingham, Assistant Secretary of Labor for Occupational Safety and Health.

Accordingly, pursuant to sections 4(b), 6(b), 8(c) and 8(g) of the Occupational Safety and Health Act of 1970 (84 Stat. 1592, 1593, 1599; 29 U.S.C. 653, 655, 657), the Secretary of Labor's Order 8-76 (41 FR 25059), and section 4 of the Administrative Procedure Act (5 U.S.C. 553), Part 1990, of Title 29, of the Code of Federal Regulations is hereby amended as set forth below.

Signed at Washington, D.C. this 14th day of January, 1981. This amendment is effective on February 18, 1981.

Eula Bingham,

Assistant Secretary of Labor.

Part 1990 of Title 29, Code of Federal Regulations, is amended as follows:

1. Section 1990.111 is amended by revising paragraphs (h) and (j) to read as follows:

§ 1990.111 General statement of regulatory policy.

* * * * *

(h) Worker exposure to Category I Potential Carcinogens will be reduced primarily through the use of engineering and work practice controls.

* * * * *

(j) The assessment of cancer risk to workers resulting from exposure to a potential occupational carcinogen will be made on the basis of available data. Because of the uncertainties and serious consequences to workers if the estimated risk is understated, cautious and prudent assumptions will be utilized to perform risk assessments.

* * * * *

2. Section 1990.142 is amended by revising paragraph (a)(2)(iii), removing paragraph (b)(2) and renumbering paragraph (b)(3) as new paragraph (b)(2) and by revising newly redesignated paragraph (b)(2)(iii) as follows:

§ 1990.142 Initiation of rulemaking.

* * * * *

(a) * * *

(2) * * *

(iii) The permissible exposure limit shall be achieved primarily through engineering and work practice controls except that if a suitable substitute is available for one or more uses no occupational exposure shall be permitted for those uses.

* * * * *

(b) * * *

(2) * * *

(iii) The permissible exposure limit shall be achieved through any practicable combination of engineering controls, work practice controls and respiratory protection.

3. Section 1990.144 is amended by revising the introductory paragraph as follows:

§ 1990.144 Criteria for consideration of arguments on certain issues.

Arguments on the following issues will be considered by the Secretary in identifying or classifying any substance pursuant to this Part, if evidence for the specific substance subject to the rulemaking conforms to the following criteria. Such arguments and evidence will be evaluated based upon scientific and policy judgments.

* * * * *

4. Section 1990.146 is amended by revising paragraph (i) as follows:

§ 1990.146 Issues to be considered in the rulemaking.

* * * * *

(i) The determination of the level to control exposures to Category I Potential Carcinogens primarily through the use of engineering and work practice controls including technological and economic considerations.

* * * * *

5. Section 1990.151 is amended by revising paragraph (c) as follows:

§ 1990.151 Model standard pursuant to section 6(b) of the Act.

* * * * *

(c) Permissible exposure limits provisions. (1) Inhalation. (i) Time weighted average limit (TWA). Within (insert appropriate time period) of the effective date of this section, the employer shall assure that no employee is exposed to an airborne concentration of———in excess of: (insert appropriate exposure limit or when it is determined by the Secretary that there are available suitable substitutes for uses or classes of uses that are less hazardous to humans, the proposal shall permit no occupational exposure) as an eight (8)-hour-time-weighted average.

(Where the Secretary finds that suitable substitutes for———may exist, the determination of the———level shall include consideration of the availability, practicability, relative degree of hazard, and economic consequences of the substitutes.)

(ii) Ceiling limit. (If appropriate.) Within (insert appropriate time period) of the effective date of this section, the employer shall assure that no employee is exposed to an airborne concentration of———in excess of: (insert exposure limit) as averaged over any: (insert appropriate time period) during the working day.

(2) Dermal and eye exposure. (As appropriate.) (i) Within (insert appropriate time period) of the effective date of this section, the employer shall (If eye exposure to———does not create a risk of cancer, insert exposure level or criteria which will prevent other adverse

health affects of eye exposure to———if any. If eye exposure creates a risk of cancer, insert exposure level or criteria which represents the level of eye exposure to———).

(ii) Within (insert appropriate time period) of the effective date of this section, the employer shall (If skin exposure to———does not create a risk of cancer, insert exposure level or criteria which will prevent other adverse health effects of skin exposure to——— if any. If skin exposure creates a risk of cancer, insert exposure level or criteria which represents the level of skin exposure to———).

6. Section 1990.152 is amended by revising paragraph (c) as follows:

§ 1990.151 Model emergency temporary standard pursuant to section 6(c) of the Act.

* * * * *

(c) Permissible exposure limits—(1) Inhalation. (i) Time-weighted average limit (TWA). Within (insert appropriate time) from the effective date of this emergency temporary standard, the employer shall assure that no employee is exposed to an airborne concentration of———in excess of: (insert appropriate exposure limit representing a level that can be complied with immediately) as an eight (8)-hour time-weighted average.

(ii) Ceiling limit. (If appropriate.) The employer shall assure that no employee is exposed to an airborne concentration of———in excess of: (insert appropriate exposure limit representing a level that can be complied with immediately) as averaged over any: (insert appropriate time period) during the working day.

(2) Dermal and eye exposure. (As appropriate.)

(i) Within (insert appropriate time period) of the effective date of this section, the employer shall (If eye exposure to———does not create a risk of cancer, insert exposure level or criteria which will prevent other adverse effects of eye exposure to———, if any. If eye exposure creates a risk of cancer, insert exposure level or criteria which represent the level of eye exposure to———.)

(ii) Within (insert appropriate time period) of the effective date of this section, the employer shall (If skin exposure to———does not create a risk of cancer, insert exposure level or criteria which will prevent other adverse health affects of skin exposure to——— if any. If skin exposure creates a risk of cancer, insert exposure level or criteria which represents the level of skin exposure to———).

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Pension and Welfare Benefit Programs

29 CFR Parts 2520 and 2560

Limited Relief From Reporting, Disclosure, and Claims Procedure Requirements With Respect to Welfare Plans Offering Membership in a Qualified Health Maintenance Organization as an Option

AGENCY: Department of Labor.

ACTION: Adoption of final regulation.

SUMMARY: These regulations provide limited relief from certain of the reporting, disclosure, and claims procedure requirements of the Employee Retirement Income Security Act of 1074 (ERISA) with respect to employee welfare benefit plans under which an available option is membership in a health maintenance organization qualified under Title XIII of the Public Health Service Act, "Health Maintenance Organizations", 42 U.S.C. 300e *et seq.* (HMO Act). The regulations are designed to avoid duplicative or otherwise unnecessary requirements which might result from the interaction of ERISA and the HMO Act. The regulations affect all plans that include membership in a federally qualified health maintenance organization (QHMO) as an available option.

EFFECTIVE DATE: February 20, 1981.

FOR FURTHER INFORMATION CONTACT: Robert Doyle, Office of Reporting and Plan Standards, Pension and Welfare Benefit Programs, U.S. Department of Labor, Washington, D.C. 20216, (202) 523–8664, or Doris Jacobs, Office of the Solicitor, Plan Benefits Security Division, U.S. Department of Labor, Washington, D.C. 20210, (202) 523–6844. These are not toll-free numbers.

SUPPLEMENTARY INFORMATION: On June 22, 1979, the Department published in the **Federal Register** (44 FR 36862) a notice of proposed rulemaking proposing the addition of a new § 2520.102–5 and the amendment of §§ 2520.104–20, 2520.104–44, and 2560.503–1 to provide relief from certain reporting, disclosure and claims procedure requirements of ERISA for plans that include membership in a QHMO as an available option.

Section 1310 of the HMO Act requires that certain employers which offer health benefits plans[1] to their employees make available, as an option under those plans, membership in a health maintenance organization which is qualified under the HMO Act.[2] Under ERISA and the Department's regulations thereunder, certain information relating to benefits made available under a plan must be disclosed to plan participants and beneficiaries. Furthermore, certain procedures must be established with regard to the making of claims for benefits and the review of any denials of such claims. Because there are comparable provisions in the HMO Act and the regulations of HHS thereunder, some of these ERISA requirements are duplicative or otherwise unnecessary when the benefit in question is made available through membership in a QHMO. Accordingly, the Department proposed limited exemptions and other relief in these areas. In addition, the Department proposed amendments to existing exemptions from the reporting and disclosure requirements of ERISA so as to make clear that those exemptions apply to the extent that plans offer benefits through QHMOs.

At the time the proposed regulations were published, the Department solicited comments from interested persons. The Department has reviewed the comments received and modified the regulations where appropriate, as discussed below. The Department considers the final regulations to be "significant" within the meaning of Department of Labor guidelines implementing Executive Order 12044.

Discussion of Comments

The HMO Act and the HHS regulations thereunder set forth specific requirements that an employer offering a health benefits plan must comply with when such an employer is approached by a QHMO. Among other things, the employer is required to give the QHMO reasonable access to employees (42 CFR Subpart H 110.806(a)); is given the opportunity to review, revise and approve the QHMO offering materials (42 CFR 110.806(b); must assure that employees choosing the HMO option do not lose certain other health benefits (42 CFR 110.806(d)); must elicit an affirmative written selection from employees as to whether they wish to choose the QHMO option (42 CFR 110.806(e)); and must make contributions to the QHMO on behalf of selecting employees in accordance with specific standards (42 CFR 110.806). Some

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[1] A "health benefits plan," as defined in regulations of the Department of Health and Human Services (HHS) under the HMO Act, comes within the definition of "employee welfare benefit plan" under section 3(1) of ERISA. See 42 CFR § 110.801(b).

[2] In order for a health maintenance organization to be qualified under the HMO Act, HHS must be satisfied that the health maintenance organization will be operated in accordance with various provisions of the HMO Act relating to fiscal soundness, nature of services, and other matters. See sections 1301 and 1310 of the HMO Act.

commenters took the view that in cases where the employer did no more than fulfill these obligations under the HMO Act and the HHS regulations, and did not contract with the QHMO regarding the substantive terms and conditions of coverage, the employer's involvement would not warrant a finding that the employer had established or maintained a plan within the meaning of section 3(1) of ERISA. These commenters concluded that in such circumstances the QHMO would not be subject to coverage under Title I of ERISA.

As the Department indicated in the preamble to the proposed regulations, when an employer, in order to comply with Federal law, offers employees the option of membership in a QHMO, the QHMO itself will not, solely by virtue of this fact, be deemed a plan under ERISA. On the other hand, in the Department's opinion, a plan established or maintained by an employer is established or maintained for the purpose of providing benefits enumerated in section 3(1) of Title I of ERISA,[3] to the extent the plan offers participants memberships in a QHMO (or any other HMO). Accordingly, the provisions of ERISA will apply, in relevant part, to the extent a plan established or maintained by an employer offers membership in a HMO.

Section 1310(a) of the HMO Act provides that an employer covered under that Act shall "include in any health benefits plan offered to its employees" the option of membership in a QHMO. These provisions of the HMO Act assume a pre-existing plan established by an employer for the purpose of providing health benefits, and require that the QHMO membership option be included in that plan. Since this pre-existing health benefits plan must be established by an employer, the provisions of ERISA will apply to the plan to the extent the plan offers benefits listed under section 3(1) of Title I, whether those benefits are offered through a QHMO or otherwise. Nothing in either the wording of section 3(1) of ERISA, which defines the term "employee welfare benefit plan," or in section 4 of ERISA, which specifies which employee benefit plans are subject to Title I of ERISA, suggests that the provisions of Title I do not apply to a plan to the extent the plan provides one or more of the benefits listed in section 3(1) through an option that is offered to participants by requirement of law, rather than by the choice of the plan sponsor. Accordingly, the Department is of the opinion that the provisions of Title I of ERISA are applicable, in relevant part, to a plan that offers a QHMO option pursuant to the HMO Act and HHS regulations thereunder, regardless of whether the employer enters into a contract with the QHMO as to the specific terms and conditions of coverage, and without regard to the terms of any such contract.

However, the existence and terms of such a contract are relevant to the reporting and disclosure requirements of ERISA, because such a contract may affect participants' and beneficiaries' rights under the plan. For this reason, one commenter recommended that the regulations require that participants and beneficiaries be given access to any contract between the employer and the QHMO. Section 104 (b)(2) and (b)(4) of ERISA require a plan administrator to make available for inspection and furnish at a reasonable charge "instruments under which [a] plan is . . . operated." Under this provision, a plan administrator is required to make available any relevant contract that the QHMO enters into with the employer or other plan sponsor, or with the plan. Moreover, under 29 CFR 2520.102–3(t)(2), the plan administrator is required to include a notice in the summary plan description (SPD) informing participants and beneficiaries that they may inspect and obtain copies of such documents. The Department does not think that any additional language is needed in the QHMO regulations to clarify the plan administrator's duty in this regard. As to the QHMO, under the HMO Act and the HHS regulations thereunder, the QHMO would be required to disclose all provisions in a contract between the plan, the plan administrator, or the plan sponsor and the QHMO that would be necessary for a full and fair description of the QHMO option. See 42 CFR 110.108(c) (45 FR 72512, 72534, October 31, 1980).

Some commenters suggested that the Department should extend relief not only to plans offering federally qualified HMOs, but also to those offering HMOs, which are qualified only under state law. The Department has decided not to extend the relief provided in § 2520.102–5 and § 2520.503(j) to plans offering HMOs which are qualified only under state law. The Department proposed relief under both of those provisions because these were areas where the federal HMO Act and ERISA imposed overlapping requirements, and because the Department was able to determine that the requirements of the HMO Act and HHS regulations thereunder were sufficiently protective of participants' rights to warrant limited relief under ERISA. On the other hand, the Department is unable to conclude, on the basis of the information submitted, that the various state laws regulating non-qualified HMOs would necessarily provide sufficient protections to participants to warrant relief for plans providing those benefits from the requirements of ERISA. However, the Department notes that the limited reporting and disclosure exemption for small plans contained in § 2520.104–20, and the limited reporting exemption and alternative method of compliance contained in § 2520.104–44 are available if, among other things, benefits are provided through an organization that is (1) similar to an insurance company and (2) qualified to do business in any state. The Department has indicated that an HMO that is registered with a state insurance commissioner and regulated under state insurance laws can qualify as an organization similar to an insurance company under § 2520.104–20. See ERISA Opinion Letter 76–05. Moreover, such an HMO would also qualify as an organization similar to an insurance company for purposes of § 2520.104–44.

One commenter expressed concern as to the scope of § 2520.102–5(b)(3)(ii) of the proposed regulation, which refers to certain information regarding eligibility that the QHMO must supply to participants and beneficiaries upon request. The comments indicated that § 2520.102–5(b)(3)(ii), as written, might be interpreted to mean that a QHMO would have to disclose the general rules of the plan pertaining to eligibility for participation in the plan, as well as the specific rules of the QHMO pertaining to eligibility to receive services from the QHMO. Since information relating to general conditions of eligibility imposed by the plan must be disclosed in the summary plan description ("SPD"), additional disclosure of this information by the QHMO is unnecessary. Accordingly, the wording in § 2520.102–5(b)(3)(ii) has been modified to make clear that the information to be supplied by the QHMO does not include information regarding general conditions of eligibility for participation in the plan.

One commenter raised a question as to the timing of the required disclosure. Under § 2510.102–5(a)(3) of the proposed regulation the employer was required to furnish a notice identifying all QHMOs

[3] Section 3(1) of Title I of ERISA defines an employee welfare benefit plan to mean: "any plan, fund, or program which was heretofore or is hereafter established or maintained by an employer or by an employee organization, or by both, to the extent that such plan, fund, or program was established or is maintained for the purpose of providing for its participants or their beneficiaries, through the purchase of insurance or otherwise, (A) medical, surgical, or hospital care or benefits in the event of sickness, accident [or] disability . . ."

in which membership was available as a benefit under the plan "at the time the summary plan description is furnished or within 30 days after such information is made available to the plan administrator." The commenter noted that this language leaves doubt as to whether the identity of the QHMO is to be supplied within thirty days of the date an employer is approached by the QHMO, or within thirty days of the date the QHMO offering is made to the employees. The commenter also pointed out that the date on which disclosure by the plan administrator is required under this section of the proposed regulation may not coincide with the date on which disclosure by the QHMO is required under HHS's regulations. To deal with these problems, the Department has modified the regulation to provide that the plan administrator must disclose the identity of the QHMO at a date no later than the date when the QHMO is offered to employees pursuant to 42 CFR 110.807.

One commenter recommended that the QHMO be considered an ERISA fiduciary in administering the QHMO grievance procedures. In the Department's view, the QHMO would be a fiduciary to the extent the QHMO acts as a final decision maker on claims for benefits. See News Release USDL-78-188, March 10, 1978.

A minor editorial change has also been made in that regulation for purposes of clarity.

Statutory Authority

The regulations set forth below are issued under the authority of sections 104, 109, 503 and 505 of ERISA (29 U.S.C. §§ 1024, 1029, 1133, and 1135).

In consideration of the matters discussed above, Parts 2520 and 2560 of Chapter XXV of Title 29 of the Code of Federal Regulations are amended as follows:

PART 2520—RULES AND REGULATIONS FOR REPORTING DISCLOSURE

1. Add a new § 2520.102–5, to provide as follows:

§ 2520.102–5 Limited exemption with respect to summary plan descriptions of welfare plans providing benefits through a qualified health maintenance organization.

(a) The summary plan description of an employee welfare benefit plan under which some or all benefits are provided through membership in one or more qualified health maintenance organizations, as defined in section 1310(d) of the Public Health Service Act, as amended, 42 U.S.C. § 300e-9(d), shall not be required to include, with respect to any such qualified health maintenance organization, the information described in sections 102–3(j)(2), 102–3(l), 102–3(q) and 102–3(s) of this Part 2520, provided that:

(1) Such summary plan description contains a notice of the type described in paragraph (b) of this section;

(2) Any request made in the manner described in paragraph (b)(4) of this section is transmitted promptly by the plan administrator to any such organization in which the person making the request is eligible for membership as a benefit under the plan; and

(3) The plan administrator furnishes, in the manner described in section 104b–1 of this Part 2520, to each person to whom such summary plan description is furnished, the identity of all such qualified health maintenance organizations in which such person is eligible for membership as a benefit under the plan at a date no later than the date when the option of membership in the qualified health maintenance organization is offered to such person.

(b) The notice referred to in paragraph (a) of this section shall indicate:

(1) The availability of membership in one or more qualified health maintenance organizations as defined in section 1310(d) of the Public Health Service Act, as amended, 42 U.S.C. § 300e-9(d), as an option under the plan;

(2) Whether such membership is made available as the sole benefit under the plan, in addition to one or more other benefits, or as an alternative to one or more other benefits;

(3) That each such organization in which membership is available to the participant or beneficiary will supply him or her upon request, written materials concerning (i) the nature of services provided to members; (ii) conditions pertaining to eligibility to receive such services (other than general conditions pertaining to eligibility for participation in the plan) and circumstances under which services may be denied; and (iii) the procedures to be followed in obtaining such services, and the procedures available for the review of claims for services which are denied in whole or in part; and

(4) That requests for the materials described in paragraph (b)(3) of this section may be addressed to the plan administrator.

2. Amend § 2520.104–20 by revising paragraph (b)(2)(ii) thereof to read as follows:

§ 2520.104–20 Limited exemption for certain small welfare plans.

* * * * *

(b) * * *

(2) * * *

(ii) The benefits of which are provided exclusively through insurance contracts or policies issued by an insurance company or similar organization which is qualified to do business in any State or through a qualified health maintenance organization as defined in section 1310(d) of the Public Health Service Act, as amended, 42 U.S.C. § 300e-9(d), the premiums for which are paid directly by the employer or employee organization from its general assets or partly from its general assets and partly from contributions by its employees or members, *Provided,* that contributions by participants are forwarded by the employer or employee organization within three months of receipt, or

* * * * *

3. Amend § 2520.104–44 by revising paragraph (b)(1)(ii) thereof to read as follows:

§ 2520.104–44 Limited exemption and alternative method of compliance for annual reporting by unfunded plans and certain insured plans.

* * * * *

(b) Application. * * *

(1) * * *

(ii) The benefits of which are provided exclusively through insurance contracts or policies issued by an insurance company or similar organization which is qualified to do business in any State or through a qualified health maintenance organization as defined in section 1310(d) of the Public Health Service Act, as amended, 42 U.S.C. § 300e-9(d), the premiums for which are paid directly by the employer or employee organization from its general assets or partly from its general assets and partly from contributions by its employees or members, provided that any plan assets held by such an insurance company are held solely in the general account of such company or organization, contributions by participants are forwarded by the employer or employee organization within three months of receipt and, in the case of a plan that provides for the return of refunds to contributing participants, such refunds are returned to them within three months of receipt by the employer or employee organization, or

* * * * *

PART 2560—RULES AND REGULATIONS FOR ADMINISTRATION AND ENFORCEMENT

(4) Amend § 2560.503–1 by revising paragraph (b)(1)(i) thereof and adding thereto a new paragraph (j), to read as follows:

§ 2560.503–1 Claims procedure.

* * * * *

(b) *Obligation to establish.* * * *

(1) * * *

(i) Complies with the provisions of paragraphs (d) through (h) of this

section, except to the extent that it is deemed to comply with some or all of such provisions under the authority of paragraph (b)(2) or paragraph (j) of this section.

* * * * *

(j) *Qualified Health Maintenance Organizations.* Claims procedures with respect to any benefits provided through membership in a qualified health maintenance organization, as defined in section 1310(d) of the Public Health Service Act, as amended, 42 U.S.C. § 300e–9(d), shall be deemed to satisfy the requirements of this section with respect to the provision of such benefits to persons who are members of such qualified health maintenance organization, provided those procedures meet the requirements of section 1301 of the Public Health Service Act, as amended 42 U.S.C. § 300e and the regulations thereunder.

Signed at Washington, D.C. this 15th day of January, 1981.

Ian D. Lanoff,

Administrator, Pension and Welfare Benefit Programs, Labor-Management Services Administration.

[FR Doc. 81-2306 Filed 1-19-81; 8:45 am]

BILLING CODE 4510-29-M

Mine Safety and Health Administration

30 CFR Part 90

Coal Miners Who Have Evidence of the Development of Pneumoconiosis

AGENCY: Mine Safety and Health Administration (MSHA), Department of Labor.

ACTION: Final rule; correction.

SUMMARY: The Department of Labor's mandatory health standard for coal miners who have evidence of the development of pneumoconiosis, 30 CFR Part 90, was amended at 45 FR 80760 (December 5, 1980). This document corrects a technical error which appeared in the final rule.

EFFECTIVE DATE: February 1, 1981.

FOR FURTHER INFORMATION CONTACT: William H. Sutherland, Chief, Division of Health, Mine Safety and Health Administration, Room 810, Ballston Tower No. 3, 4015 Wilson Boulevard, Arlington, Virginia 22203, (703) 235–1358.

SUPPLEMENTARY INFORMATION: The Mine Safety and Health Administration makes the following revision to FR Doc. 80–37866, 30 CFR Part 90 which appeared as a final rule at 45 FR 80760 (December 5, 1980):

1. On page 80770, paragraph (a) of § 90.3 is corrected in the sixteenth line by removing the words "during each shift" the second time it appears and reads as follows:

§ 90.3 Part 90 option; notice of eligibility; exercise of option.

(a) Any miner employed at an underground coal mine or at a surface work area of an underground coal mine who, in the judgment of the Secretary of Health and Human Services, has evidence of the development of pneumoconiosis based on a chest X-ray, read and classified in the manner prescribed by the Secretary of Health and Human Services, or based on other medical examinations shall be afforded the option to work in an area of a mine where the average concentration of respirable dust in the mine atmosphere during each shift to which that miner is exposed is continuously maintained at or below 1.0 milligrams per cubic meter of air. Each of these miners shall be notified in writing of eligibility to exercise the option.

* * * * *

Dated: January 12, 1981.

Frank A. White,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 81-2305 Filed 1-19-81; 8:45 am]

BILLING CODE 4510-43-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 915

Conditional Approval of the Permanent Regulatory Program Submission From the State of Iowa Under the Surface Mining Control and Reclamation Act of 1977

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), U.S. Department of the Interior.

ACTION: Final rule.

SUMMARY: The State of Iowa resubmitted to the Department of the Interior its proposed permanent regulatory program under the Surface Mining Control and Reclamation Act of 1977 (SMCRA), following an initial approval in part and disapproval in part. The notice announcing the initial decision was published in the Federal Register, October 16, 1980 (45 FR 68673–68685). The purpose of the resubmission is to demonstrate the State's intent and capability to administer and enforce the provisions of SMCRA and the permanent regulatory program regulations, 30 CFR Chapter VII. After providing opportunities for public comment and conducting a thorough review of the program resubmission, the Secretary of the Interior has determined that the Iowa program meets the requirements of SMCRA and the federal permanent program regulations except for minor deficiencies discussed below under "Supplementary Information." Accordingly, the Secretary of the Interior has conditionally approved the Iowa program. A new Part 915 is being added to 30 CFR Chapter VII to implement this decision.

EFFECTIVE DATE: This conditional approval is effective April 10, 1981.

ADDRESSES: Copies of the Iowa program and the administrative record on the Iowa program are available for public inspection and copying during business hours at:

Office of Surface Mining Reclamation and Enforcement, Room 153, Interior South Building, 1951 Constitution Avenue NW., Washington, D.C. 20240, telephone: (202) 343–4728

Office of Surface Mining Reclamation and Enforcement, Region IV, Scarritt Building, 818 Grand Avenue, Kansas City, Missouri 64106

Iowa Department of Soil Conservation, Mines and Minerals Division, Wallace State Office Building, Des Moines, Iowa 50319

FOR FURTHER INFORMATION CONTACT: Carl C. Close, Assistant Director for State and Federal Programs, Office of Surface Mining Reclamation and Enforcement, U.S. Department of the Interior, Interior South Building, 1951 Constitution Avenue, N.W., Washington, D.C. 20240, telephone (202) 343–4225

SUPPLEMENTARY INFORMATION: The general background on the permanent program, the state program approval process, and the Iowa program submission were discussed in the October 16, 1980, Federal Register (45 FR 68673–68676).

Also, in that notice the Secretary announced his partial approval and partial disapproval of the Iowa program. The legislative provisions were approved with the exceptions noted in the "Secretary's Decision," (45 FR 68676–68686, October 16, 1980).

Under 30 CFR 732.13(f), the State of Iowa had 60 days (until December 15, 1980) from the date of publication of the Secretary's partial approval decision in which to submit a revised program for consideration. Iowa submitted its revised program for consideration on December 15, 1980. Announcement of Iowa's resubmission was made in newspapers of general circulation within the State of Iowa and published in the Federal Register on December 15, 1980 (45 FR 82276).

A public hearing on the submission was also announced in the December 15,

1980, Federal Register notice (45 FR 82276) and in the newspapers of general circulation in Iowa and was held in Des Moines, Iowa on December 30, 1980. The post-resubmission public comment period ended December 31, 1980. Public disclosure of comments by Federal agencies was made on January 9, 1981 (46 FR 2366).

On January 14, 1981, the Administrator of the Environmental Protection Agency transmitted to the Secretary his written concurrence with the decision on the Iowa program.

The Regional Director completed his program review on January 7, 1981, and forwarded the public hearing transcripts, written presentations, and copies of all comments to the Director together with a recommendation that the program be approved conditionally.

On January 12, 1981, the Director recommended to the Secretary that the Iowa program be approved conditionally.

On behalf of the Secretary, the Regional Director discussed the conditions of approval in a telephone conversation with Lawrence G. Vance, Director, Iowa Department of Soil Conservation on January 7, 1981 (*see* the Regional Director's memorandum of this telephone conversation contained in Administrative Record No. IA–161). On January 8, 1981, the Director, Iowa Department of Soil Conservation telegraphed acceptance of the conditions of approval (*see* Administrative Record No. IA–162).

The Iowa program consists of the formal submission of February 28, 1980, (Administrative Record Nos. IA–9, 10, 11 and 22) as amended on June 11, 1980, (Administrative Record No. IA–75) and revised on December 15, 1980, (Administrative Record No. IA–148).

Throughout the review period beginning with the submission of the program, OSM has had frequent contact and discussions on the state program submission with the staff of the Iowa Department of Soil Conservation. Minutes or notes of the discussions were placed in the Iowa Administrative Record and made available for public review. All contacts between officials or staffs of the Department of the Interior and the State of Iowa were conducted in accordance with the Department's guidelines for such contacts published September 19, 1979 (44 FR 54444–54445).

In the initial decision notice approving in part and disapproving in part the Iowa program, the Secretary made findings on the Iowa program provisions pursuant to section 503 of SMCRA and 30 CFR 732.15. Iowa's resubmission, except as noted below in the "Secretary's Findings," amends the program to correct the deficiencies identified in that notice. Therefore, any deficiencies previously identified in the initial decision notice and corrected by the Iowa resubmission will not be discussed in the "Secretary's Findings," below.

Throughout the remainder of this notice, the term "Iowa Program" or "Iowa Submission" is used to mean the resubmission together with those parts of the original submission partially approved on October 16, 1980.

Secretary's Findings

In reaching his decision to approve conditionally the Iowa submission, the Secretary makes the following findings pursuant to section 503 of SMCRA and 30 CFR 732.15.

1. In accordance with section 503(a) of SMCRA, the Secretary finds that Iowa has the capability to carry out the provisions of SMCRA and to meet its purposes in the following ways:

(a) The Iowa Surface Coal Mining Act (ISCMA), and the Iowa Administrative Procedures Act (IAPA), and the regulations adopted thereunder provide for the regulation of surface coal mining and reclamation operations on non-Indian and non-federal lands in Iowa in accordance with SMCRA with the exception noted in Findings 4(l) and 4(o).

(b) The ISCMA provides sanctions for violations of Iowa laws, regulations or conditions of permits concerning surface coal mining and reclamation operations, and these sanctions meet the requirements of SMCRA, including civil and criminal action, forfeiture of bonds, suspensions, revocations, withholding of permits, and the issuance of cessation orders by the Iowa Department of Soil Conservation or its inspectors with the exceptions noted in Finding 4(h).

(c) The Iowa Department of Soil Conservation has sufficient administrative and technical personnel and sufficient funds to enable Iowa to regulate surface coal mining and reclamation operations in accordance with the requirements of SMCRA. The Iowa Department of Soil Conservation has requested an increase for the staff of the Mines and Minerals Division by three additional positions effective July 1, 1981. From the effective date of the Iowa program until July 1, 1981, the Mines and Minerals Division will rely upon a combination of personnel borrowed from other agencies through memoranda of agreement and contracts with consultants to adequately staff the program. The Secretary finds that these measures, when implemented, should provide for adequate administration and implementation of the Iowa regulatory program until the proposed staffing and budget plan is approved. The Secretary will, through OSM, carefully monitor the State's administration and implementation measures to ensure that the requirements of SMCRA and 30 CFR Chapter VII are being met. *See* Administrative Record No. IA–148 (Attachment 1) and transcripts to the public hearing held on December 30, 1980, in Des Moines, Iowa (Administrative Record No. IA–156).

(d) The ISCMA provides for the effective implementation, maintenance, and enforcement of a permit system that meets the requirements of SMCRA for the regulation of surface coal mining and reclamation operations on non-Indian and non-federal lands within Iowa;

(e) The ISCMA has established a process for the designation of areas as unsuitable for surface coal mining in accordance with section 522 of SMCRA, 30 U.S.C. 1272;

(f) Iowa has established for the purpose of avoiding duplication, a process for coordinating the review and issuance of permits for surface coal mining and reclamation operations with other federal and state permit processes applicable to the proposed operations;

(g) As of April 10, 1981, Iowa will have fully enacted regulations consistent with the federal regulations issued pursuant to SMCRA with the exceptions noted in Findings 4(h) and 4(o).

2. As required by sections 503(b)(1)–(3) of SMCRA, 30 U.S.C. 1253(b)(1)–(3), and 30 CFR 732.11–732.13, the Secretary has, through OSM:

(a) Solicited and publicly disclosed the views of the Administrator of the Environmental Protection Agency, the Secretary of Agriculture, and the heads of other federal agencies concerned with or having specific expertise pertinent to the proposed Iowa program;

(b) Obtained the written concurrence of the Administrator of the Environmental Protection Agency with respect to those aspects of the Iowa program that relate to air or water quality standards promulgated under the authority of the Clean Water Act as amended, (33 U.S.C. 1151–1175), and the Clean Air Act as amended, (42 U.S.C. 7401 *et seq.*), and;

(c) Held a public review meeting in Des Moines, Iowa on April 15, 1980, to discuss the completeness of the Iowa program submission, held a public hearing in Des Moines, Iowa on July 17, 1980, on the substance of the program submission, and subsequently held a public review meeting in Des Moines, Iowa on December 30, 1980, on the resubmitted program;

(d) Obtained an opinion from the U.S. Fish and Wildlife Service that the approval of the Iowa program is not likely to jeopardize the continued existence of species listed in Iowa as threatened or endangered under the Endangered Species Act, 16 U.S.C. 1531 *et seq.*

3. In accordance with section 503(b)(4) SMCRA (30 U.S.C. 1253(b)(4)), the Secretary finds the Department of Soil Conservation and other agencies having a role in the program of Iowa have as described in Finding 1(c) sufficient legal, technical, and administrative personnel and the necessary legal authority for the enforcement of the environmental protection standards of SMCRA and 30 CFR Chapter VII.

4. In accordance with 30 CFR 732.15, and on the basis of information in the Iowa program submission, including the section-by-section comparison of the Iowa statutes and rules with SMCRA and 30 CFR Chapter VII, public comments, testimony at the public meeting and hearings, and other relevant information, the Secretary makes the following findings:

(a) Pursuant to 30 CFR 732.15(a), the Secretary finds that the proposed Iowa program provides for the Iowa Department of Soil Conservation to carry out the provisions and meet the purposes of SMCRA and 30 CFR Chapter VII because the program includes fully enacted regulations consistent with 30 CFR Chapter VII, except as noted below in Findings 4(h) and 4(o). The original program submission contained four alternatives submitted pursuant to 30 CFR 731.13. The Secretary explained in the October 16, 1980, Federal Register (45 FR 68673–68685), why these four alternatives did not meet the criteria in 30 CFR 731.13. Iowa has subsequently withdrawn these four alternatives, and has not proposed any additional alternatives pursuant to 30 CFR 731.13.

(b) Pursuant to 30 CFR 732.15(b)(1), the Secretary finds that the Iowa Department of Soil Conservation has the authority under Iowa statutes and enacted regulations to implement, administer and enforce all applicable requirements consistent with 30 CFR Chapter VII, Subchapter K.

(c) Pursuant to 30 CFR 732.15(b)(2), the Secretary finds that the Iowa Department of Soil Conservation has the authority under the ISCMA and under enacted regulations to implement, administer and enforce a permit system consistent with 30 CFR Chapter VII, Subchapter G and to prohibit surface coal mining and reclamation operations without a permit issued by the Iowa Department of Soil Conservation.

(d) Pursuant to 30 CFR 732.15(b)(3), the Secretary finds that the Iowa Department of Soil Conservation has the authority under ISCMA section 18 and under enacted regulations to regulate coal exploration consistent with 30 CFR Parts 776 and 815, and to prohibit coal exploration that does not comply with 30 CFR Parts 776 and 815.

(e) Pursuant to 30 CFR 732.15(b)(4), the Secretary finds that the Iowa Department of Soil Conservation has the authority under ISCMA Section 26 and enacted regulations to require that persons extracting coal incidental to government-financed construction maintain information on-site consistent with 30 CFR Part 707.

(f) Pursuant to 30 CFR 732.15(b)(5), the Secretary finds that the Iowa Department of Soil Conservation has the authority under section 13 of the ISCMA and enacted regulations to provide for entry, inspections, and monitoring of all coal exploration and surface coal mining and reclamation operations on non-Indian and non-federal lands within Iowa consistent with section 517 of SMCRA and 30 CFR Chapter VII, Subchapter L.

(g) Pursuant to 30 CFR 732.15(b)(6), the Secretary finds that the Iowa Department of Soil Conservation has the authority in sections 10 and 16 of the ISCMA and enacted regulations, to implement, administer, and enforce a system for performance bonds and liability insurance, or other equivalent guarantees, consistent with sections 507(f), 509, 510 and 519 of SMCRA and 30 CFR Chapter VII, Subchapter J.

(h) Pursuant to 30 CFR 732.15(b)(7), the Secretary finds that the Iowa Department of Soil Conservation has the authority under section 15 of the ISCMA but does not have fully enacted regulations to provide for civil and criminal sanctions for violations of the Iowa law, regulations and conditions of permits and exploration approvals including civil and criminal penalties in accordance with section 518 of SMCRA (30 U.S.C. 1268) and consistent with 30 CFR Part 845 (except to the extent remanded) including the same or similar procedural requirements.

(1) Iowa has proposed a judicial system of penalty assessment, rather than the administrative system prescribed in section 518 of SMCRA and 30 CFR 845.17–845.20. In the initial decision notice (Finding 4(h), 45 FR 68678), the Secretary identified five aspects of the proposed Iowa system for proposal and assessment of civil penalties found to be inconsistent with section 518 of SMCRA and 30 CFR Part 845. These deficiencies were that (i) the proposed judicial assessment system did not adequately address the five considerations identified in the preamble to the permanent regulatory program at 44 FR 15296 (March 13, 1979). These considerations are used in determining whether a judicial system is the same or similar as the administrative system for proposal and assessment of civil penalties in section 518 of SMCRA; (ii) the proposed program did not provide procedures for proposing assessments of civil penalties, informing operators of the amount of those proposed assessments and providing an opportunity for payment of the penalty prior to a formal assessment hearing; (iii) the proposed program did not provide for mandatory assessment of civil penalties for cessation orders as required by section 518(a) of SMCRA; (iv) the program lacked criteria for determining when a civil penalty or an injunction would be sought when a notice of violation is issued under sections 14(3) and 15(1) of the ISCMA; and, (v) the program did not provide for prepayment of civil penalties into an escrow account, as required by section 518(c) of SMCRA. Iowa's resubmission addresses those deficiencies through an attorney general's opinion and a proposed amendment to rule 4.8(8) (*see* Administrative Record No. IA–148, Attachments 4 and 5). The Secretary has reviewed the information in the Administrative Record and has determined that, with two exceptions, the problems identified in the initial decision notice would be corrected if proposed rule 4.8(8) is enacted as proposed.

(2) One ambiguity not fully clarified in the proposed rule amendment is whether the proposed Iowa program provides for mandatory assessment of civil penalties for cessation orders as required by section 518(a) of SMCRA (see 45 FR 68678, Finding 4(h)(3)). Both the ISCMA section 15(1) and proposed Iowa rule 4.8(8) require the Department of Soil Conservation to request the Attorney General to institute a civil action for recovery of a penalty whenever a cessation order has been issued. The Attorney General's opinion and section 15(1) of the ISCMA state that, in the judicial penalty action, the Department's findings as to the fact of the violation, the issuance of the cessation order, and the amount of the penalty shall be conclusive if supported by substantial evidence. However, the ISCMA is not clear as to whether the court must assess a penalty for a cessation order upon recommendation of the Attorney General and the Department of Soil Conservation. The Iowa Attorney General's office has

advised OSM that in its opinion section 15 of the ISCMA was intended to establish mandatory penalties for cessation orders, and that the Attorney General's office will take this position in any relevant enforcement action under section 15 of the ISCMA (*see* Administrative Record No. IA–146). In view of these assurances from the Attorney General of Iowa, the Secretary finds that the procedures in section 15(1) of the ISCMA and proposed rule 4.6(6), if enacted as proposed, will be in accordance with section 518 of SMCRA. The Secretary will, through OSM, carefully monitor the implementation of these procedures for penalty assessments for cessation orders to ensure that the requirements of section 518(a) are being met.

(3) The second apparent inconsistency is that the Iowa program does not contain provisions comparable to those in section 518(c) of SMCRA and 30 CFR Part 845 requiring prepayment of civil penalties into an escrow account. However, pursuant to the order of the United States District Court for the Southern District of Iowa in *Star Coal* v. *Andrus*, 14 ERC 1825 (1980), the Secretary has been enjoined on constitutional grounds from requiring Iowa to include in its program a provision comparable to section 518(c)'s prepayment requirement. *Star Coal* v. *Andrus* has been appealed to the United States Supreme Court (appeal filed March 13, 1980). Moreover, the issue of the constitutionality of section 518(c) is presently before the Supreme Court in two cases, *Virginia Surface Mining and Reclamation Association* v. *Andrus*, Nos. 79–1538 and 79–1566 and *Andrus* v. *Indiana*, No. 80–22[illegible]. Should the Supreme Court rule that the prepayment requirement of section 518(c) is constitutional, the Secretary will then take steps to require the Iowa permanent program to comply with the requirements of section 518(c) relating to prepayment of civil penalties.

The Secretary conditions his approval of Iowa's judicial penalty assessment system on Iowa's correcting the deficiencies identified above (with the exception of the escrow provision for civil penalties) by enacting rule 4.6(6) as proposed or by otherwise amending its program to establish procedures for proposal and assessment of civil penalties similar to those established in section 518 of SMCRA and 30 CFR Part 845.

(i) Pursuant to 30 CFR 732.15(b)(8), the Secretary finds that the Iowa Department of Soil Conservation has the authority under section 14 of ISCMA, and regulations consistent with 30 CFR Chapter VII, Subchapter L to issue, modify, terminate and enforce notices of violation, cessation orders and show cause orders in accordance with section 521 of SMCRA (30 U.S.C. 1271) (with the exception noted specifically below) including the same or similar procedural requirements. However, according to the opinion of the Attorney General of Iowa (See Administrative Record No. IA–148, Attachment 5), section 17A.18(3) of the Iowa Administrative Procedures Act requires that an administrative hearing be held prior to the issuance of a cessation order for failure to abate a violation. This requirement potentially conflicts with section 14(2) of the ISCMA and with section 521(a)(3) of SMCRA, which provide that a cessation order shall be issued immediately upon the expiration of the time for abatement if abatement has not been accomplished. In its resubmission, Iowa has proposed an amendment to rule 4.363(2) to minimize the chance of conflict between the ISCMA and the IAPA. This proposed rule requires an operator who wishes to show compliance with abatement requirements to seek an expedited administrative hearing before the time set in the order for abatement. Hearings must be held promptly, and the abatement time may not be extended beyond ninety days from the date of issuance of the notice of violation.

However, even if the proposed amendment to Iowa rule 4.363(2) were promulgated as proposed, an Iowa operator could be able to extend the abatement time up to ninety days by requesting and participating in a hearing on the fact of abatement. In the case of a notice of violation with a short abatement period (e.g., 25 days) this potential delay in the issuance of a cessation order makes this procedure inconsistent with SMCRA. The Secretary conditions his approval of the Iowa program on Iowa's amending its program to provide for the immediate issuance of a cessation order for failure to abate a violation so as to be consistent with section 521(a)(3) of SMCRA.

(j) Pursuant to 30 CFR 732.15(b)(9), the Secretary finds that the Iowa Department of Soil Conservation has authority under section 8 of the ISCMA and enacted regulations to provide for the designation of areas as unsuitable for surface coal mining, consistent with 30 CFR Chapter VII, Subchapter F.

(k) Pursuant to 30 CFR 732.15 (b)(10), the Secretary finds that the Iowa Department of Soil Conservation has authority under the ISCMA and enacted regulations, to provide for public participation in the development, revision and enforcement of Iowa regulations and the Iowa program consistent with the public participation requirements of SMCRA, 30 CFR Chapter VII, and 43 CFR Part 4. Iowa also has the authority under the ISCMA and enacted regulations to provide for public participation in the permitting process and the enforcement of its laws consistent with 30 CFR Chapter VII and 43 CFR Part 4. The Secretary further finds that the public has had a meaningful opportunity to participate in the development of the state program submitted to OSM based on the information in the Administrative Record, the public hearings Iowa held on January 30, 1980, and July 23, 1980, in Des Moines, Iowa and the public comment periods provided pursuant to the Iowa Administrative Procedures Act.

(l) Pursuant to 30 CFR 732.15(b)(11), the Secretary finds that the Iowa Department of Soil Conservation has the statutory authority under the ISCMA, section 15, and enacted regulations to monitor, review, and enforce the prohibition against indirect or direct financial interests in coal mining operations by employees of the Iowa Department of Soil Conservation, consistent with 30 CFR Part 705.

(m) Pursuant to 30 CFR 732.15(b)(12), the Secretary finds that the Iowa Department of Soil Conservation has the authority under section 6(2) of the ISCMA to require the training, examination and certification of persons engaged in or responsible for blasting and the use of explosives in accordance with section 719 of SMCRA. Iowa has no regulations on the training, examination, and certification of persons engaged in blasting, but 30 CFR 732.15(b)(12) does not require the State to implement regulations governing such training, examination and certification until six months after complete federal regulations have been promulgated for these provisions. On December 12, 1980, OSM published partial final rules establishing minimal requirements for training and certifying persons involved in blasting in surface coal mining operations (45 FR 82084–82100). These regulations are codified at 30 CFR Chapter VII, Subchapter M, Part 850. Subchapter M is now final and complete with the exception of four subsections concerning qualification requirements and experience requirements. These subsections will be reproposed and subject to public comment prior to their final promulgation. Once the complete Subchapter M is finally promulgated, Iowa will have an additional six months

to prepare and submit to OSM regulations consistent with the federal regulations.

(n) Pursuant to 30 CFR 732.15(b)(13), the Secretary finds that the Iowa Department of Soil Conservation has the authority under section 4.1(d) of the ISCMA and enacted regulations to implement for a small operator assistance program consistent with 30 CFR Part 795.

(o) Pursuant to 30 CFR 732.15(b)(14), the Secretary finds that while the Iowa program contains authority in section 718.4 of the Iowa Code to provide for protection of state employees, the Iowa program does not establish penalties as stringent as those provided in section 704 of SMCRA. In the initial decision notice, 45 FR 66679, Finding 4(o), the Secretary determined that the Iowa Code provides a maximum penalty of 30 days imprisonment and a $100 fine for interference or harassment of state employees, whereas section 704 of SMCRA provides a maximum penalty of 1 year imprisonment and a $5,000 fine. In its resubmission, Iowa has proposed a rule which, as a condition of each permit, prohibits the permittee from willfully resisting, preventing, impeding, or interfering with state employees in the performance of their duties. When promulgated, this rule will subject violators to the sanctions provided in ISCMA section 15(2). This section establishes a maximum penalty of $10,000, and provides that violation of a permit condition shall constitute a serious misdemeanor. Under Iowa criminal law, serious misdemeanors are punishable by up to one year imprisonment. Therefore, Iowa's penalties for violation of a permit condition will satisfy the requirements of section 704 of SMCRA.

This scheme will provide protection to state employees comparable to that provided federal employees by section 704 of SMCRA, except that persons who are not employees of a permittee will not be subject to criminal sanctions for a violation of a permit condition. The Secretary believes that there is no material risk of interference with government employees from "wildcat operators" or others, in light of the information on the nature of the Iowa coal industry in the program submission and the absence of any public comments on this issue. The Secretary conditions his approval of the Iowa program on Iowa's amending its program to provide for protection of state employees by promulgating the proposed rule described above, or accomplishing the same results by other means. *See* Administrative Record No. IA–145 (Attachment 6).

(p) Pursuant to 30 CFR 732.15(b)(15), the Secretary finds that the Iowa Department of Soil Conservation has the authority under section 14 of the ISCMA and the Iowa Administrative Procedures Act and enacted regulations to provide for the administrative and judicial review of the Iowa program actions in accordance with section 525 and 526 of SMCRA, and with 30 CFR Chapter VII, Subchapter L.

(q) Pursuant to 30 CFR 732.15(b)(16), the Secretary finds that the Iowa Department of Soil Conservation has authority under Iowa laws and that the Iowa program contains provisions to cooperate and coordinate with, and provide documents and other information to, the Office of Surface Mining under the provisions of 30 CFR Chapter VII.

(r) Pursuant to 30 CFR 732.15(c), the Secretary finds that the ISCMA and other laws and regulations of Iowa do not contain provisions that would interfere with or preclude implementation of the provisions of SMCRA and 30 CFR Chapter VII with the exception noted in Finding 4(i).

(s) Pursuant to 30 CFR 732.15(d), the Secretary finds that the Iowa Department of Soil Conservation and other agencies having a role in the program have sufficient legal, technical, and administrative personnel and sufficient funding to implement, administer, and enforce the provisions of the program, the requirements of 30 CFR 732.15(b), and other applicable state and federal laws (*See* Finding 1(c)).

Disposition of Comments

The Heritage Conservation and Recreation Service commented that the Iowa rules should require consideration of cultural resources which have been determined eligible for the National Register of Historic Places when issuing a permit for surface coal mining or exploration, or when designating lands unsuitable for mining. However, pursuant to litigation in the United States District Court, the phrase "eligible for listing on" has been suspended in connection with 30 CFR Chapter VII regulations dealing with the National Register of Historic Places, (*see* 44 FR 67942), OSM and the Advisory Council on Historic Preservation have entered into a Programmatic Memorandum of Agreement (PMOA) setting forth OSM's responsibilities for compliance with section 106 of the National Historic Preservation Act of 1966, as amended (NHPA). In the PMOA, OSM has agreed to propose a modification to the permanent regulatory program, which will require state programs to include information on properties protected under section 106 of the NHPA in applications for approval to conduct coal exploration of 250 tons or more or surface coal mining operations. In addition, applicants for permits would be required to identify and describe historic properties on lists maintained by the State. When the changes to the federal regulations are made, Iowa will be required to have regulations consistent with them. The Secretary finds that the Iowa rules relating to the National Register of Historic Places are consistent with 30 CFR Chapter VII as affected by the court decision. Therefore, the Secretary will not require any program change at this time.

Background On Conditional Approval

The Secretary is fully committed to two key aims that underlie SMCRA. The Act calls for comprehensive regulation of the effects of surface coal mining on the environment and public health and safety, and for the Secretary to assist the states in becoming the primary regulators under the Act. To enable the states to achieve that primacy, the Secretary has undertaken many activities, of which several are particularly noteworthy.

The Secretary has worked closely with several state organizations, such as the Interstate Mining Compact Commission, the Council of State Governments, the National Governors Association and the Western Interstate Energy Board. Through these groups OSM has frequently met with state regulatory authority personnel to discuss informally how the Act should be administered, with particular reference to unique circumstances in individual states. Often these meetings have been a way for OSM and the states to explain portions of the federal requirements and how the states might meet them. Alternative state regulatory options, the "state window" concept, for example, were discussed at several meetings of the Interstate Mining Compact Commission and the National Governors Association.

The Secretary has dispensed over $6.8 million in program development grants and over $37.8 million in initial program grants to help the states to develop their programs, to administer their initial programs, to train their personnel in the new requirements, and to purchase new equipment. In several instances OSM detailed its personnel to states to assist in the preparation of their permanent program submissions. OSM has also met with individual states to determine how

best to meet the Act's environmental protection goals.

Equally important, the Secretary structured the state program approval process to assist the states in achieving primacy. He voluntarily provided his preliminary views on the adequacy of each state program to identify needed changes and to allow them to be made without penalty to the state. The Secretary adopted a special policy to insure that communication between him and the states remained open and uninhibited at all times. This policy was critical to avoiding a period of enforced silence with the state after the close of the public comment period on its program and has been a vital part of the program review process (*see* 44 FR 54444, September 19, 1979).

The Secretary has also developed in his regulations the critical ability to approve conditionally a state program. Under the Secretary's regulations, conditional approval gives full primacy to a state even though there are minor deficiencies in a program. This power is not expressly authorized by the Act; it was adopted through the Secretary's rulemaking authority under 30 U.S.C. 201(c), 503(b) and 503(a)(7). The Act expressly gives the Secretary only two options—to approve or disapprove a state program. Read literally, the Secretary would have no flexibility; he would have to approve those programs that are letter perfect and disapprove all others. To avoid that result and in recognition of the difficulty of developing an acceptable program, the Secretary adopted the regulation providing the authority to approve conditionally a program.

Conditional approval has a vital effect for programs approved by the Secretary: It results in the implementation of the permanent program in a state months earlier than might otherwise be anticipated. While this may not be significant in states that already have comprehensive surface mining regulatory programs, in many states that earlier implementation will initiate a much higher degree of environmental protection. It also implements the rights SMCRA provides to citizens to participate in the regulation of surface coal mining through soliciting their views at hearings and meetings and enabling them to file requests to designate lands as unsuitable for mining if they are fragile, historic, critical to agriculture, or simply cannot be reclaimed to their prior productive capacity.

The Secretary considers three factors in deciding whether a program qualifies for conditional approval. First is the State's willingness to make good faith efforts to effect the necessary changes. Without the state's commitment, the option of conditional approval may not be used.

Second, no part of the program can be incomplete. As the preamble to the regulations says, the program, even with deficiencies, must "provide for implementation and administration of all processes, procedures, and systems required by the Act and these regulations" (44 FR 14961). That is, a state must be able to operate the basic components of the permanent program: the designation process; the permit and all coal exploration systems; the bond and insurance requirements; the performance standards; and the inspection and enforcement systems. In addition there must be a functional regulatory authority to implement the other parts of the program. If some fundamental component is missing, conditional approval may not be issued.

Third, the deficiencies must be minor. For each deficiency or group of deficiencies, the Secretary considers the significance of the deficiency in light of the particular state in question. Examples of deficiencies that would be minor in virtually all circumstances are correction of clerical errors and resolution of ambiguities through attorneys general opinions, revised regulations, policy statements and changes in the narrative or the side-by-side.

Other deficiencies require individual consideration. An example of a deficiency that would most likely be major would be a failure to allow meaningful public participation in the permitting process. Although this would not render the permit system incomplete because permits could still be issued, the lack of any public participation could be such a departure from a fundamental purpose of the Act that the deficiency would most likely be major.

The use of a conditional approval is not and cannot be a substitute for the adoption of an adequate program. Section 732.13(i) of Title 30 of the regulations gives the Secretary little discretion in terminating programs where the state fails to fulfill the conditions. The purpose of the conditional approval power is to assist the states, not to excuse them from achieving compliance with SMCRA.

Conditional Approval

As indicated under Secretary's Findings 4(h), 4(i) and 4(o) there are three minor deficiencies in the Iowa program that the Secretary requires be corrected as a condition of program approval, and which the State has agreed to correct. In all other aspects, the Iowa program meets the criteria for approval. The deficiencies identified in the findings and the reason why they are considered minor are summarized below. In each instance, the discussion of the deficiencies found under "Secretary's Findings" discusses one means of eliminating the deficiency. The State may take other measures to eliminate the deficiencies, and so long as the same result is achieved, the conditions will be met.

1. As noted in Finding 4(h), Iowa has proposed a system of judicial assessment for civil penalties, rather than the administrative civil penalty assessment system prescribed by 30 CFR Chapter VII, Subchapter L and section 518 of SMCRA. The administrative rules proposed to correct the deficiencies identified in Finding 4(h) have not been fully enacted. Due to the short time between the effective date of the Secretary's conditional approval of the Iowa program and the date the proposed rules are scheduled to be enacted, and to the small number of violations and civil penalties expected during that time, this deficiency is viewed as minor. The Secretary is requiring Iowa to amend its program by enacting the proposed rules described in Finding 4(h), or by any other means, to be consistent with section 518 of SMCRA.

2. As noted in Finding 4(i), section 17A.18(3) of the Iowa Administrative Procedures Act requires that an administrative hearing be held prior to the issuance of a cessation order for failure to abate a violation. The Secretary has determined that this requirement potentially conflicts with section 14(2) of the ISCMA and with section 521(a)(3) of SMCRA, which provide that a cessation order shall be issued immediately upon the expiration of the time for abatement if abatement has not been accomplished. While the Secretary is requiring Iowa to amend its program to be consistent with SMCRA, this deficiency is viewed as minor in light of the small number of operating mines and violations expected to occur during the period when this deficiency is being corrected.

3. As noted in Finding 4(o), Iowa's program provisions that provide for the protection of state employees during the performance of their duties establish penalties which are less stringent than those provided by section 704 of SMCRA. While the Secretary is requiring Iowa to amend its program to be as stringent as SMCRA, this deficiency is viewed as minor in light of the history of mining in the state and the small number of operating mines. The

probability of harassment of state employees during the period while Iowa amends its program is relatively small.

Given the nature of these three deficiencies and their magnitude in relation to all other provisions of the Iowa program, the Secretary has concluded they are minor. Accordingly, the program is eligible for conditional approval under 30 CFR 732.13(i), because:

1. The deficiences are of such a size and nature as to render no part of the Iowa program incomplete since all other aspects of the program meet the requirements of SMCRA and 30 CFR Chapter VII, and the three deficiencies, which the state has agreed to correct promptly, will not directly affect the environmental performance of surface coal mining and reclamation operations;

2. Iowa has initiated and is actively proceeding with steps to correct the three deficiencies; and

3. Iowa has agreed, by telegram dated January 8, 1981, to correct the regulation deficiencies concerning rules for proposal and assessment of civil penalties and protection of state employees by July 1, 1981, and the statutory deficiency concerning the issuance of cessation orders for failure to abate notices of violations by January 1, 1982.

Accordingly, the Secretary is conditionally approving the Iowa program. This approval shall terminate if regulations correcting the deficiencies concerning rules for proposal and assessment of civil penalties and protection of state employees are not enacted by July 1, 1981, or if state legislation correcting the statutory deficiency concerning the issuance of cessation orders for failure to abate notices of violation is not enacted by January 1, 1982. This conditional approval is effective on April 10, 1981. This is the effective date of the Iowa rules. On December 15, 1980 (45 FR 82277), the Secretary announced he was considering waiving the provisions of 30 CFR 732.13(h), which state that the State program becomes effective on the date the Secretary's decision is published in the **Federal Register**. The Secretary is waiving this rule in light of the short delay between the date of publication of this notice and the effective date of the Iowa rules, and the lack of any public comments on his proposal to do so. The Secretary chooses to delay the effective date of the conditional approval until Iowa's rules become effective. In the December 15, 1980, **Federal Register** notice (45 FR 82277), the Secretary indicated that the Iowa rules were to take effect on January 29, 1981, and that the Iowa program would become effective on that date were it to be approved or approved conditionally by the Secretary. That date has since been extended to April 10, 1981. Iowa and the Department of the Interior will continue to implement the interim regulatory program during this period. The Iowa Legislative Rules Committee is presently reviewing the State's rules. The Secretary will indicate to Iowa that should any changes be made to the State's rules, the Secretary will have to review such revisions and make them available for public review, and may have to reconsider this decision in light of the revisions. This information is hereby being provided to Iowa by this notice and will also be included in the letters the Secretary is sending to Iowa Governor Robert D. Ray and to Lawrence G. Vance, Director, Iowa Department of Soil Conservation, to communicate to the State his decision on the Iowa program. These letters will be sent shortly and will be included in the Iowa Administrative Record.

Beginning on April 10, 1981, the Iowa Department of Soil Conservation shall be deemed the regulatory authority in Iowa and all surface coal mining and reclamation operations and all coal exploration on non-federal and non-Indian lands in Iowa shall be subject to the permanent regulatory program.

On non-federal and non-Indian lands in Iowa, the permanent regulatory program consists of the state program as conditionally approved by the Secretary.

On federal lands, the permanent regulatory program consists of the federal rules made applicable, under 30 CFR Chapter VII, Subchapter D, Parts 740–745. Iowa and the Department of the Interior may enter into a cooperative agreement to apply the requirements of the approved Iowa permanent regulatory program to federal lands under 30 CFR Part 745.

The Secretary's approval of the Iowa program relates at this time only to the permanent regulatory program under Title V of SMCRA. The approval does not constitute approval of any provisions related to implementation of Title IV of SMCRA, the abandoned mine lands reclamation program. In accordance with 30 CFR Part 844 (State Reclamation Plans), Iowa may submit a state AML reclamation plan. At the time of such a submission, all provisions relating to Abandoned Mined Lands Reclamation will be reviewed by officials of the Department of the Interior.

Additional Findings

The Secretary has determined that, pursuant to section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this conditional approval.

The Secretary has determined that this document is not a significant rule under E.O. 12044, or 43 CFR Part 14, and no regulatory analysis is being prepared on this conditional approval.

Dated: January 15, 1981.

Joan M. Davenport,

Assistant Secretary of the Interior for Energy and Minerals.

A new PART, 30 CFR Part 915, Subchapter T is adopted to read as follows:

PART 915—IOWA

Sec.
915.1 Scope.
915.10 State regulatory program approval.
915.11 Conditions of State regulatory program approval.

Authority: Pub. L. 95–87, sections 102, 201 and 503, 30 U.S.C. 1202, 1211, and 1253.

§ 915.1 Scope.

This part contains all rules applicable only within Iowa which have been adopted under the Surface Mining Control and Reclamation Act of 1977.

§ 915.10 State regulatory program approval.

The Iowa program, as submitted on February 28, 1980, and amended, and clarified on June 11, 1980, and December 15, 1980, is conditionally approved, effective on April 10, 1981. Beginning on that date, the Iowa Department of Soil Conservation shall be deemed the regulatory authority in Iowa for surface coal mining and reclamation operations on non-federal and non-Indian lands. Copies of the approved program, together with copies of the telegram from the Iowa Department of Soil Conservation agreeing to the conditions in 30 CFR 915.11, are available at:

Iowa Department of Soil Conservation, Mines and Minerals Division, Wallace State Office Building, Des Moines, Iowa 50319

Office of Surface Mining Reclamation and Enforcement, Region IV, 5th Floor, Scarritt Building, 818 Grand Avenue, Kansas City, Missouri 64106

Office of Surface Mining Reclamation and Enforcement, Interior South Building, Room 153, 1951 Constitution Avenue NW., Washington, D.C. 20240, Telephone: (202) 343–4728.

§ 915.11 Conditions of State regulatory program approval.

The approval of the State regulatory program is subject to the following conditions:

(a) The approval found in § 915.10 will terminate on July 1, 1981, unless Iowa submits to the Secretary by that date

copies of fully enacted regulations establishing procedures for proposal and assessment of civil penalties similar to those established in section 518 SMCRA and 30 CFR Part 845, or otherwise amends its program to accomplish the same result.

(b) The approval found in § 915.10 will terminate on January 1, 1982, unless Iowa submits to the Secretary by that date copies of fully enacted statutes resolving the conflicting provisions of section 14(2) of the Iowa Surface Coal Mining Act and section 17A.18(3) of the Iowa Administrative Procedures Act so as to provide that cessation orders for failure to abate notices of violation shall be issued immediately, to be consistent with section 521(a)(3) of SMCRA or otherwise amends its program to accomplish the same result.

(c) The approval found in § 915.10 will terminate on July 1, 1981, unless Iowa submits to the Secretary by that date copies of fully enacted regulations establishing penalties to protect state employees during the performance of their duties in accordance with section 704 SMCRA, or otherwise amends its program to accomplish the same result.

[FR Doc. 81-2000 Filed 1-16-81; 8:45 am]

BILLING CODE 4310-05-M

30 CFR Part 916

Conditional Approval of the Permanent Program Submission From the State of Kansas Under the Surface Mining Control and Reclamation Act of 1977

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), U.S. Department of the Interior.

ACTION: Final rule; conditional approval of Kansas' permanent regulatory program.

SUMMARY: The State of Kansas resubmitted to the Department of the Interior its proposed permanent regulatory program under the Surface Mining Control and Reclamation Act of 1977 (SMCRA), following an initial approval in part and disapproval in part. The notice announcing the initial decision was published in the Federal Register, September 4, 1980 (45 FR 58569–58576). The purpose of the resubmission is to demonstrate the state's intent and capability to administer and enforce the provisions of SMCRA and the permanent regulatory program regulations, 30 CFR Chapter VII.

After providing opportunities for public comment and conducting a thorough review of the program resubmission, the Secretary of the Interior has determined that the Kansas program meets the minimum requirements of SMCRA and the federal permanent program regulations, except for minor deficiencies discussed below under "Supplementary Information." Accordingly, the Secretary of the Interior has conditionally approved the Kansas program.

A new Part 916 is being added to 30 CFR Chapter VII to implement this decision.

EFFECTIVE DATE: This conditional approval is effective January 21, 1981.

This conditional approval will terminate as specified in 30 CFR 916.11, adopted below, unless the deficiencies identified below have been corrected in accord with 30 CFR 916.11.

ADDRESSES: Copies of the Kansas program and the administrative record on the Kansas program, including the telegram from the Kansas Mined-Land Conservation and Reclamation Board agreeing to correct the deficiencies identified below, are available for public inspection and copying during business hours at:

Office of Surface Mining Reclamation and Enforcement, Department of the Interior, Scarritt Building, 818 Grand Avenue, Kansas City, Missouri 64106, Telephone: (816) 374–3920

Mined-Land Office, 107 West 11th Street, Pittsburg, Kansas 66762, Telephone: (316) 231–8540

Kansas Corporation Commission, Legal Office, 4th Floor, State Office Building, 915 Harrison, Topeka, Kansas 66612, Telephone: (913) 296–3361

Office of Surface Mining Reclamation and Enforcement, Room 153, Interior South Building, 1951 Constitution Avenue NW., Washington, D.C. 20240, Telephone: (202) 343–4728.

FOR FURTHER INFORMATION CONTACT:

Carl C. Close, Assistant Director, State and Federal Programs, Office of Surface Mining Reclamation and Enforcement

U.S. Department of the Interior, South Building, 1951 Constitution Avenue NW., Washington, D.C. 20240, Telephone (202) 343–4225.

SUPPLEMENTARY INFORMATION: The general background on the permanent program, the general background on state program approval process, and the background on the Kansas program submission were discussed in the Federal Register, September 4, 1980 (45 FR 58569–58576).

Also, in that notice the Secretary announced the partial approval and partial disapproval of the Kansas program. The legislative provisions were approved with the exceptions noted in the "Secretary's Decision," September 4, 1980, (45 FR 58569–58576). Under 30 CFR 732.13(f), Kansas had 60 days from the date of partial disapproval to resubmit a revised program. Kansas submitted its revised program for consideration on October 31, 1980. Announcement of Kansas' resubmission was made in two newspapers of general circulation within the State of Kansas and published in the Federal Register on November 10, 1980 (45 FR 74513–74515).

A public hearing on the resubmission was announced in the November 10, 1980, Federal Register, and was held in Pittsburg, Kansas, on November 24, 1980. The post-resubmission public comment period ended November 26, 1980. Public disclosure of comments by federal agencies was made on December 23, 1980 (45 FR 84824).

On December 15, 1980, the Regional Director completed the program review and forwarded the public hearing transcript and copies of all comments to the Director together with a recommendation that the program be conditionally approved.

On December 30, 1980, the Administrator of the Environmental Protection Agency transmitted his written concurrence on the Kansas program.

On January 13, 1981, the Director recommended to the Secretary that the Kansas program be conditionally approved.

On January 8, 1981, Kansas agreed to accept the conditions of approval. The Secretary's decision to approve conditionally the Kansas program was conveyed in a letter to Governor John Carlin. Copies of these documents are available for review in the Administrative Record.

Throughout the review period, beginning with the submission of the program, OSM has had frequent contact and discussions on the state program submission with the staff of the Mined Land Conservation and Reclamation Board. Minutes or notes of the discussions were placed in the Kansas Administrative Record and made available for public review. All contacts between officials or staffs of the Department of the Interior and the State of Kansas were conducted in accordance with the Department's guidelines for such contacts published September 19, 1979 (44 FR 54444–54445).

Throughout the remainder of this notice, the term "Kansas program" or "Kansas submission" is used to mean the resubmission, together with those parts of the original submission partially approved on September 4, 1980.

When the Secretary announced the initial decision on the Kansas program on September 4, 1980 (45 FR 58569–58576), he included with the analysis of the Kansas program the findings on the regulatory provisions and the disposition of comments. Kansas' resubmission, except as noted below under "Secretary's Findings," amends the program to correct the deficiencies identified in that notice.

Therefore, any deficiencies previously identified in the initial decision notice and corrected by the Kansas resubmission will not be discussed in the Secretary's Findings below.

The Secretary has determined that the conclusions in the initial decision were correct with the exception of Finding 4(e). Finding 4(e) concerned an exemption for coal extraction incidental to government-financed highway or other construction as provided for in Section 528(3) of SMCRA and 30 CFR Part 707. The Kansas Mined Land Conservation and Reclamation Board does not have the authority under the Mined Land Conservation and Reclamation Act (MLCRA) or under state regulations to require that persons extracting coal incidental to government-financed construction maintain information on site consistent with 30 CFR Part 707. However, the Secretary finds that the Kansas program can be approved without these provisions because the MLCRA does not contain an exemption from the requirements of the Act for the extraction of coal incidental to government-financed construction, as does SMCRA (Sec. 528(3), 30 U.S.C. 1228(3)). Therefore, the Kansas program is more stringent than SMCRA in this regard.

Also in the September 4, 1980, Federal Register notice, the Secretary explained that since Kansas had withdrawn its proposed regulations prior to that notice, the Secretary was unable to provide a list of regulations in the Kansas program affected by the orders of the U.S. District Court for the District of Columbia in *In Re: Permanent Surface Mining Regulation Litigation.*

The Secretary also noted that under these court orders, he need not affirmatively disapprove state regulations similar to those federal regulations suspended or remanded by the court where the state has adopted such provisions after the date of the Round II District Court decision (May 16, 1980), or where a state official specifically requests the Secretary to approve them. (45 FR 58570).

By the letter dated October 27, 1980 (Administrative Record Document KS–183), the Chairman of the Mined-Land Conservation and Reclamation Board stated that Kansas desires to retain all state regulations corresponding to suspended or remanded OSM regulations. In addition, all such state regulations except one were adopted on October 8, 1980, after the date of the Round II decision. Therefore, the Secretary need not affirmatively disapprove any Kansas regulations as a result of the above-mentioned litigation.

The contents of the September 4, 1980, notice also provide part of the basis for the following findings and for this decision.

Secretary's Findings

1. In accordance with Section 503(a) of SMCRA, the Secretary finds that Kansas has the capability to carry out the provisions of SMCRA and to meet its purposes in the following ways:

(a) The Kansas Mined-Land Conservation and Reclamation Act (MLCRA) and the regulations adopted thereunder provide for the regulation of surface coal mining and reclamation operations on non-Indian and non-Federal lands in accordance with SMCRA with the exceptions noted below in Findings 4(b), 4(g), 4(h), 4(i), 4(o), 4(p), and 4(r);

(b) The MLCRA provides sanctions for violations of Kansas laws, regulations or conditions of permits concerning surface coal mining and reclamation operations with the exception noted below in finding 4(h). These sanctions meet the requirements of SMCRA, including civil and criminal actions, forfeiture of bonds, suspensions, revocations, withholding of permits, and the issuance of cessation orders by the Kansas Mined-Land Conservation and Reclamation Board or its inspectors;

(c) The Kansas Mined-Land Office has sufficient administrative personnel and funds to enable Kansas to regulate surface coal mining and reclamation operations in accordance with the requirements of SMCRA. In the "Secretary's Findings" supporting the initial decision on the Kansas program, the Secretary noted that while the proposed staff and budget would probably be sufficient, the staffing and budget plan had not been approved by the Kansas Legislature. *See* Finding 1(c), 45 FR 58571, September 4, 1980. The Kansas Legislature is not expected to be able to act on the proposed staffing and budget plan until it reconvenes in early 1981. Until the proposed staffing and budget plan is approved, Kansas proposes to administer and implement the State regulatory program using the following measures. Kansas has agreed to contract the services of qualified consulting firms to provide technical support as needed. The budget has been increased to cover these contractual services (Volume III, 731.14(K), page 186, Administrative Record document KS–189). Kansas also has agreed to utilize the expertise of other state agencies, as needed. In addition, OSM and Kansas have entered into an agreement under the Intergovernmental Personnel Act, whereby OSM will provide to Kansas a full-time technically qualified person for a period of one year, beginning January 11, 1981. Accordingly, the Secretary finds that these measures, when implemented, should provide for adequate administration and implementation of the Kansas regulatory program during the immediate time period until the proposed staffing and budget plan is approved by the Kansas Legislature. The Secretary will, through OSM, carefully monitor these measures and the permanent program staffing and budget plan once it is approved by the Kansas Legislature to ensure that the requirements of SMCRA and 30 CFR Chapter VII will be met;

(d) The MLCRA provides for the effective implementation, maintenance, and enforcement of a permit system that meets the requirements of SMCRA for the regulation of surface coal mining and reclamation operations on non-Indian and non-Federal lands within Kansas;

(e) The MLCRA has established a process for the designation of areas as unsuitable for surface coal mining in accordance with Section 522 of SMCRA, 30 U.S.C. 1272;

(f) Kansas has established, for the purpose of avoiding duplication, a process for coordinating the review and issuance of permits for surface coal mining and reclamation operations with other federal and state permit processes applicable to the proposed operations;

(g) Kansas has fully enacted regulations consistent with regulations issued pursuant to SMCRA. These regulations were enacted as temporary regulations on October 8, 1980, and will become effective as permanent regulations on May 1, 1981.

2. As required by Section 503(b)(1)–(3) of SMCRA, 30 U.S.C. 1253(b)(1)–(3), and 30 CFR 732.11–732.13, the Secretary has through OSM:

(a) Solicited and publicly disclosed the views of the Administrator of the Environmental Protection Agency, the Secretary of Agriculture, and the heads of other federal agencies concerned with

or having special expertise pertinent to the proposed Kansas program;

(b) Obtained the written concurrence of the Administrator of the Environmental Protection Agency with respect to those aspects of the Kansas program that relate to air or water quality standards promulgated under the authority of the Clean Water Act as amended, (33 U.S.C. 1151–1175); and the Clean Air Act as amended, (42 U.S.C. 7401 *et seq.*), and;

(c) Held a public review meeting in Topeka, Kansas, on April 10, 1980, to discuss the completeness of the Kansas program submission, held a public hearing in Pittsburg, Kansas, on July 14, 1980, on the substance of the program submission, and subsequently held a public hearing in Pittsburg, Kansas, on November 24, 1980, on the resubmitted program;

(d) Obtained an opinion from the U.S. Fish and Wildlife Service that the approval of the Kansas program is not likely to jeopardize the continued existence of species listed in Kansas as threatened or endangered under the Endangered Species Act, 16 U.S.C. 1531 *et seq.*

3. In accordance with Section 503(b)(4) of SMCRA, 30 U.S.C. 1253(b)(4), the Secretary finds the State of Kansas has the legal authority and qualified personnel necessary for the enforcement of the environmental protection standards of SMCRA and 30 CFR Chapter VII. However, see Finding 1(c).

4. In accordance with 30 CFR 732.15, and on the basis of information in the Kansas program submission, including the section-by-section comparison of the Kansas MLCRA and regulations and SMCRA and 30 CFR Chapter VII, public comments, testimony at the public meeting and hearings, and other relevant information, the Secretary makes the following findings:

(a) Pursuant to 30 CFR 732.15(a), the Secretary finds that the proposed Kansas program provides for the Mined Land Conservation and Reclamation Board to carry out the provisions and meet the purposes of SMCRA and 30 CFR Chapter VII. The Secretary further finds that Kansas, in its resubmission, has not proposed any alternative approaches to the requirements of 30 CFR Chapter VII pursuant to 30 CFR 731.13;

(b) Pursuant to 30 CFR 732.15(b)(1), the Secretary finds that the Kansas Mined Land Conservation and Reclamation Board has the authority under the MLCRA and regulations (except as specifically set forth below in this paragraph) to implement, administer, and enforce all applicable requirements consistent with 30 CFR Chapter VII, Subchapter K. These provisions are incorporated in Sections 49–405 and 49–406 of the MLCRA and Article 9 of Kansas' regulations. The Secretary further finds that Sections 49–411 and 49–412 of the MLCRA, which allow for deferred planting and delayed reclamation, are inconsistent with Section 515(b)(16) of SMCRA which requires reclamation contemporaneously with mining. The Secretary conditions his approval of the Kansas program on Kansas amending MLCRA Section 49–411 to the extent it authorizes deferred planting and repealing Section 49–412 which authorizes delayed reclamation;

(c) Pursuant to 30 CFR 732.15(b)(2), the Secretary finds that the Kansas Mined Land Conservation and Reclamation Board has the authority under the MLCRA and regulations to implement, administer and enforce a permit system consistent with 30 CFR Chapter VII, Subchapter G and prohibit surface coal mining and reclamation operations without a permit issued by the Kansas Mined Land Conservation and Reclamation Board. These provisions are incorporated in Sections 49–405, 49–406, 49–407, 49–410, 49–427, and 49–429 of the MLCRA and Articles 2, 3, 4, 6, 7, 10, 11, 14, and 15 of Kansas' regulations;

(d) Pursuant to 30 CFR 732.15(b)(3), the Secretary finds that the Kansas Mined Land Conservation and Reclamation Board has the authority under the MLCRA and regulations to regulate coal exploration consistent with 30 CFR Parts 776 and 815, and to prohibit coal exploration that does not comply with 30 CFR Parts 776 and 815. These provisions are incorporated in Sections 49–405 and 49–427 of the MLCRA and Article 7 of Kansas' regulations;

(e) Pursuant to 732.15(b)(4) the Secretary finds that the MLCRA and the Kansas program do not provide an exemption from permanent program requirements for coal extraction incidental to government-financed construction. The Secretary further finds that without the exemption, the Kansas program is more stringent than SMCRA and 30 CFR Part 707;

(f) Pursuant to 30 CFR 732.15(b)(5), the Secretary finds that the Kansas Mined Land Conservation and Reclamation Board has the authority under the MLCRA and regulations to provide for entry, inspections, and monitoring of all coal exploration and surface mining and reclamation operations on non-Indian and non-federal lands within Kansas consistent with Section 517 of SMCRA and 30 CFR Chapter VII, Subchapter L. These provisions are incorporated in Sections 49–405, 49–405c and 49–405d of MLCRA and Articles 5 and 15 of Kansas' regulations;

(g) Pursuant to 30 CFR 732.15(b)(6), the Secretary finds that the Kansas Mined Land Conservation and Reclamation Board has the authority under the MLCRA and regulations to implement, administer and enforce a system for performance bonds and liability insurance, or other equivalent guarantees, consistent with 30 CFR Chapter VII, Subchapter J (with the exceptions noted specifically below in this paragraph). These provisions are incorporated in Sections 49–405, 49–406, 49–415 and 49–416 of the MLCRA and Articles 2, 3, and 8 of Kansas' regulations. The Secretary further finds that Sections 49–413 and 49–414 of the MLCRA, which allow for bond release once the Kansas Mined Land Conservation and Reclamation Board has determined that a satisfactory vegetative cover has been established, are inconsistent with Sections 515(b)(20) and 519(c) of SMCRA, which require an operator to assume a five year minimum period of responsibility for successful revegetation. Approval of the Kansas program is conditioned on Kansas amending Section 49–413 to the extent it authorizes discretionary bond release and repealing Section 49–414 of the MLCRA which authorizes release of bond in conjunction with deferred planting;

(h) Pursuant to 30 CFR 732.15(b)(7), the Secretary finds that the Kansas Mined Land Conservation and Reclamation Board has the authority under the MLCRA and Kansas regulations to provide for civil and criminal sanctions for violations of the Kansas law, regulations and conditions of permits and exploration approvals including civil and criminal penalties in accordance with Section 518 of SMCRA and 30 CFR Part 845 including the same or similar procedural requirements (with the exception noted specifically below in this paragraph). These provisions are incorporated in Sections 49–405 and 49–405c of the MLCRA and Article 5 of Kansas' regulations. The Secretary further finds that Section 49–421 of the MLCRA, relating to penalties, is inconsistent with SMCRA inasmuch as it does not authorize mandatory penalties for cessation orders as high as the $5,000 maximum contained in Section 518(a) of SMCRA. The Kansas statute limits such penalties to $250. The MLCRA also contains a provision (Section 49–405c) that establishes a penalty of $5,000 that is consistent with SMCRA. However, Section 49–421 is inconsistent with Section 49–405c;

apparently the Kansas legislature inadvertently failed to repeal Section 49-421 when Section 49-405c was enacted. The Secretary conditions his approval on Kansas repealing Section 49-421 of the MLCRA;

(i) Pursuant to 30 CFR 732.15(b)(6), the Secretary finds that the Kansas Mined Land Conservation and Reclamation Board has the authority (except as specifically set forth below in this paragraph) under the MLCRA and regulations to issue, modify, terminate and enforce notices of violation, cessation orders and show-cause orders in accordance with Section 521 of SMCRA (30 U.S.C. 1271), and consistent with 30 CFR Chapter VII, Subchapter L, including the same or similar procedural requirements. These provisions are incorporated in Section 49-405, 49-405c and 49-406d of the MLCRA and Articles 5 and 15 of Kansas' regulations. The Secretary further finds that Section 49-416 of the MLCRA is inconsistent in part with and less stringent than Section 521 of SMCRA (and Section 49-405(m) of the MLCRA) because it allows for discretionary permit revocation as distinguished from the mandatory cessation orders required under Section 521 for violations creating imminent danger to public health or safety or causing imminent environmental harm. The Secretary conditions his approval on Kansas amending Section 49-416 to the extent that it provides for discretionary permit revocation;

(j) Pursuant to 30 CFR 732.15(b)(9), the Secretary finds that the Kansas Mined Land Conservation and Reclamation Board has the authority under the MLCRA and regulations to provide for designation of areas as unsuitable for surface coal mining consistent with 30 CFR Chapter VII, Subchapter F. These provisions are incorporated in Sections 49-405, 49-405b, 49-406 and 49-422a of the MLCRA and Articles 3 and 12 of Kansas' regulations;

(k) Pursuant to 30 CFR 732.15(b)(10), the Secretary finds that the Kansas Mined Land Conservation and Reclamation Board has the authority under the MLCRA and regulations to provide for public participation in the development, revision and enforcement of Kansas regulations and the Kansas program consistent with the public participation requirements of SMCRA, 30 CFR Chapter VII, and 43 CFR Part 4. The Secretary further finds that the public has had a meaningful opportunity to participate in the development of the state program submitted to OSM based on the information in the administrative record, the public hearings Kansas held on July 24, 1979, December 10, 1979, and September 29, 1980, in Pittsburg, Kansas, and the public comment periods provided pursuant to Kansas Statutes Annotated, Chapter 77, Article 4;

(l) Pursuant to 30 CFR 732.15(b)(11), the Secretary finds that the Kansas Mined Land Conservation and Reclamation Board has the authority under the MLCRA and regulations to monitor, review, and enforce the prohibition against indirect or direct financial interests in coal mining operations by employees of the Kansas Mined Land Conservation and Reclamation Board consistent with 30 CFR Part 705. These provisions are incorporated in Sections 49-404, 49-405 and 49-406 of the MLCRA and Articles 2 and 14 of Kansas' regulations;

(m) Pursuant to 30 CFR 732.15(b)(12), the Secretary finds that the Kansas Mined Land Conservation and Reclamation Board has the authority under the MLCRA, but does not have the authority under fully enacted regulations, to require the training, examination, and certification of persons engaged in or responsible for blasting and the use of explosives in accordance with Section 719 of SMCRA. Under 30 CFR 732.15(b)(12), the State is not required to implement regulations governing such training, examination and certification until six months after complete federal regulations have been promulgated for these provisions. On December 12, 1980, OSM published partial final rules establishing minimal requirements for training and certifying persons involved in blasting in surface coal mining operations (45 FR 82094-82100). These regulations are codified at 30 CFR Chapter VII, Subchapter M, Part 850. Subchapter M is now final and complete with the exception of four subsections concerning qualification and experience reuirements. These subsections will be reproposed and subject to public comment prior to their final promulgation. Once the complete Subchapter M is finally promulgated, Kansas will have an additional six months to prepare and submit to OSM regulations consistent with the federal rules;

(n) Pursuant to 732.15(b)(13), the Secretary finds that the Kansas Mined Land Conservation and Reclamation Board has the authority under the MLCRA and regulations to implement a small operator assistance program consistent with 30 CFR Part 795. These provisions are incorporated in Sections 49-405 and 49-406 of the MLCRA and Article 11 of Kansas' regulations;

(o) Pursuant to 30 CFR 732.15(b)(14), the Secretary finds that the Kansas program does not provide for protection of employees of the Kansas Mined Land Conservation and Reclamation Board in accordance with the protection afforded federal employees under Section 704 of SMCRA. The Secretary conditions his approval on Kansas amending the MLCRA to include provisions for the protection of employees of the Kansas Mined Land Conservation and Reclamation Board consistent with the protection afforded federal employees under Section 704 of SMCRA;

(p) Pursuant to 30 CFR 732.15(b)(15), the Secretary finds that the Kansas Mined Land Conservation and Reclamation Board has the authority under the MLCRA and regulations to provide for the administrative and judicial review of the Kansas program actions (except as specifically set forth in this paragraph) in accordance with Sections 525 and 526 of SMCRA and with 30 CFR Chapter VII, Subchapter L. These provisions are incorporated in Sections 49-407, 49-410a and 49-422a of the MLCRA and Article 4 of Kansas' regulations. The Secretary further finds that Sections 49-422 and 49-422a of the MLCRA are inconsistent with each other and neither Section 49-422 nor 49-422a of the MLCRA states whether judicial review of an administrative action will be *de novo* or on the record made before the Board. The Secretary conditions his approval on Kansas repealing Section 49-422 and amending Section 49-422a to demonstrate that the review provided for will be on the record or consistent with the federal requirements for *de novo* review as stated in Finding 4(p) of the initial decision on the Kansas program (45 FR 58573, September 4, 1980);

(q) Pursuant to 30 CFR 732.15(b)(16), the Secretary finds that the Kansas Mined Land Conservation and Reclamation Board has authority under the MLCRA and regulations to cooperate and coordinate with, and provide documents and other information to the Office of Surface Mining under the provisions of 30 CFR Chapter VII;

(r) Pursuant to 30 CFR 732.15(c), the Secretary finds that the MLCRA contains provisions that would interfere with or preclude implementation of the provisions of SMCRA and 30 CFR Chapter VII, as noted in findings 4(b), 4(g), 4(h), 4(l), and 4(p) above;

(s) Pursuant to 30 CFR 732.15(b), the Secretary finds that the Kansas Mined Land Conservation and Reclamation Board and other agencies having a role in the program have sufficient legal and administrative personnel and sufficient funding to implement, administer, and enforce the provisions of the program, the requirements of 30 CFR 732.15(b)

and other applicable state and federal laws; however, see Finding 1(c) above.

Disposition Of Comments

The comments received on the Kansas program resubmission during the public comment period held between November 10, 1980, and November 26, 1980, raised several issues. The Secretary considered these comments in evaluating Kansas' program, as indicated below.

1. The Heritage Conservation and Recreation Service requested that Kansas adopt supplemental regulations that would adequately address compliance with Section 106 of the National Historic Preservation Act of 1966, as amended. The suggested supplemental regulations are discussed below:

(a) Both Kansas regulations 47–12–4(j) and 47–3–42(a)(2) should include a provision that would restrict public release of information identifying historic, archeological or Indian burial site locations if such disclosures might result in vandalism of these sites. Although the National Historic Preservation Act has been recently amended to restrict release of information in these circumstances for sites on federal lands, OSM's regulations at present, do not impose this requirement on the states. Therefore, the Secretary will not require Kansas to change its regulations at this time. If the Secretary subsequently adopts a regulation requiring such a provision in state programs, Kansas will be required to amend its program at that time.

(b) Both Kansas regulations 47–3–42(a)(32) and 47–20–1(c) should include a provision for consultation with the Heritage Conservation and Recreation Service in the development of measures to minimize or prevent adverse impacts to public parks and historic places. Kansas regulation 47–12–4(c) incorporates by reference 30 CFR 761.12(f), which provides for consultation with the Federal, State or local agency with jurisdiction over any public park or places listed on the National Register of Historic Places which may be adversely affected by a proposed surface coal mining operation. Such consultation would include HCRS when HCRS is the Federal agency with jurisdiction.

2. The Environmental Protection Agency (EPA) requested that the Memorandum of Agreement (MOA) between the Kansas Mined Land Conservation and Reclamation Board and the Kansas Department of Health and Environment specify provisions to coordinate water quality planning activities. In addition, EPA stated that the MOA did not specify how coordination on air pollution issues would be accomplished. The MOA does specify how the Board will coordinate with the Department of Health and Environment (DHE) on NPDES matters. The Board has no general water quality planning activities under the permanent program. The MOA also specifies that the board will consult with DHE before approving air pollution related aspects of an application for a surface coal mining permit. Therefore, no change to this part of the program is required.

3. The EPA recommended a larger staff for the Kansas Mined Land Office. The Secretary shares EPA's concern over Kansas' staffing and budget plans; see the detailed discussion contained in Finding 1(c) above.

4. The Soil Conservation Service (SCS), United States Department of Agriculture, noted that a clearer and more defined process for the review of reclamation plans would help inform all reviewers of their responsibilities and reduce delays in permit approvals. Volume 3 of the Kansas program, at pages 69–73 (Administrative Record No. KS–189), sets out in adequate detail the proposed process for coordinating the review of permit applications. These pages include a flow chart with time limits, as well as a narrative description of the process. Therefore, no additional information is required.

5. The SCS commented that Kansas regulation 47–3–21 should not consider historical use to determine prime farmland. The SCS further commented that the identification of prime farmland should be classified according to the USDA Soil Conservation Service definition, not based on historical use. Section 701(20) of SMCRA requires the Secretary to consider historical use in the determination of whether land is prime farmland. Therefore, Kansas' regulation 47–3–21 is consistent with SMCRA.

6. The Environmental Policy Institute (EPI) commented that by using Kansas' workload assumptions, Kansas needs to hire additional reclamation specialists to meet the Kansas projected inspection workload. The Secretary believes, based on experience in the interim program, the Kansas projection of inspection workload is overestimated. Partial inspections should require about 8 hours and complete inspections about 16 hours because the mines in Kansas are moderate to small in size. Also, because the mines are located in one small region of the state, the travel time to and between mines is relatively short. In light of these factors, the Secretary believes that the proposed inspection staff will be sufficient to permit Kansas to meet its inspection mandates. Also, see the discussion of Kansas' overall staffing and budget plan in Finding 1(c) above.

7. The EPI noted that the Kansas program does not include a provision comparable to section 704 of SMCRA providing for the protection of employees of the Kansas Mined Land Conservation and Reclamation Board in accordance with the protection afforded federal employees. The Secretary concurs; see the discussion under Finding 4(o), above.

The Secretary's Decision

The Secretary is fully committed to two key aims which underlie SMCRA. The Act calls for comprehensive regulation of the effects of surface coal mining on the environment and public health and safety, and for the Secretary to assist the states in becoming the primary regulators under the Act. To enable the states to achieve that primacy, the Secretary has undertaken many activities, of which several are particularly noteworthy.

The Secretary has worked closely with several state organizations, such as the Interstate Mining Compact Commission, the Council of State Governments, the National Governors Association and the Western Interstate Energy Board. Through these groups OSM has frequently met with state regulatory authority personnel to discuss informally how the Act should be administered, with particular reference to unique circumstances in individual states. Often these meetings have been a way for OSM to explain portions of the federal requirements and how the states might meet them. Alternative state regulatory options, the "state window" concept, for example, were discussed at several meetings of the Interstate Mining Compact Commission and the National Governors Association.

The Secretary has dispensed over $6.9 million in program development grants and over $37.6 million in initial program grants to help the states to develop their programs, to administer their initial programs, to train their personnel in the new requirements, and to purchase new equipment. In several instances OSM detailed its personnel to states to assist in the preparation of their permanent program submissions. OSM has also met with individual states to determine how best to meet the Act's environmental protection goals.

Equally important, the Secretary structured the state program approval process to assist the states in achieving primacy. He voluntarily provided his

preliminary views on the adequacy of each state program to identify needed changes and to allow them to be made without penalty to the state. The Secretary adopted a special policy to insure that communication between him and the states remained open and uninhibited at all times. This policy was critical to avoiding a period of enforced silence with a state after the close of the public comment period on its program and has been a vital part of the program review process (*see* 44 FR 54444, September 19, 1979).

The Secretary has also developed in his regulations the critical ability to approve conditionally a state program.

Under the Secretary's regulations, conditional approval gives full primacy to a state even though there are minor deficiencies in a program. This power is not expressly authorized by the Act; it was adopted through the Secretary's rulemaking authority under 30 U.S.C. 201(c), 503(b), and 503(a)(7). The Act expressly gives the Secretary only two options—to approve or disapprove a state program. Read literally, the Secretary would have no flexibility; he would have to approve those programs that are letter-perfect and disapprove all others. To avoid that result, and in recognition of the difficulty of developing an acceptable program, the Secretary adopted the regulation providing the authority to approve conditionally a program.

Conditional approval has a vital effect for programs approved by the Secretary: it results in the implementation of the permanent program in a state months earlier than might otherwise be anticipated. While this may not be significant in states that already have comprehensive surface mining regulatory programs, in many states that earlier implementation will initiate a much higher degree of environmental protection. It also implements the rights SMCRA provides to citizens to participate in the regulation of surface coal mining through soliciting their views at hearings and meetings and enabling them to file requests to designate lands as unsuitable for mining if they are fragile, historic, critical to agriculture, or simply cannot be reclaimed to their prior productive capability.

The Secretary considers three factors in deciding whether a program qualifies for conditional approval. First is the state's willingness to make good faith efforts to effect the necessary changes. Without the state's commitment, the option of conditional approval may not be used.

Second, no part of the program can be incomplete. As the preamble to the regulations says, the program, even with deficiencies, must "provide for implementation and administration for all processes, procedures, and systems required by the Act and these regulations" (44 FR 14961). That is, a state must be able to operate the basic components of the permanent program: the designation process; the permit and coal exploration systems; the bond and insurance requirements; the performance standards; and the inspection and enforcement systems. In addition there must be a functional regulatory authority to implement the other parts of the program. If some fundamental component is missing, conditional approval may not be used.

Third, the deficiencies must be minor. For each deficiency or group of deficiencies, the Secretary considers the significance of the deficiency in light of the particular state in question. Examples of deficiencies that would be minor in virtually all circumstances are correction of clerical errors and resolution of ambiguities through attorneys general opinions, revised regulations, policy statements, and changes in the narrative or the side-by-side.

Other deficiencies require individual consideration. An example of a deficiency that would most likely be major would be a failure to allow meaningful public participation in the permitting process. Although this would not render the permit system incomplete because permits could still be issued, the lack of any public participation could be such a departure from a fundamental purpose of the Act that the deficiency would most likely be major. The use of a conditional approval is not and cannot be a substitute for the adoption of an adequate program. Section 732.13(i) of Title 30 of the regulations gives the Secretary little discretion in terminating programs where the state fails to fulfill the conditions. The purpose of the conditional authority power is to assist the states, not to excuse them from achieving compliance with SMCRA.

Conditional Approval

As indicated under "Secretary's Findings," there are minor deficiencies in the Kansas program that the Secretary requires be corrected as a condition of program approval, and which the State has agreed to correct. In all other aspects, the Kansas program meets the criteria for approval. The deficiencies identified in prior findings and the reasons why they are considered minor are summarized below. In each instance, the discussion of the deficiencies found under "Secretary's Findings" discusses one means of eliminating the deficiency. The State may take other measures to eliminate the deficiencies, and so long as the same result is achieved, the conditions will be met.

The statutory deficiencies identified below cannot be repealed or amended until the Kansas Legislature convenes in January 1981. However, the Chairman of the Kansas Mined Land Conservation and Reclamation Board stated in a letter of October 27, 1980, that the Board "will exercise its discretion, within the allowable limits of the law, in favor of the standards and policies identified in the proposed statutory revisions to the State Act. In other words, where a conflicting statute which the Board wishes to have repealed or amended currently contains language making an Act discretionary with the Board, and that Act conflicts with OSM regulations and P.L. 95-87, then the Board will not exercise its discretion to allow or order that Act." Administrative Record Document KS-183.

1. Sections 49-411 and 49-412 of the MLCRA allow the state regulatory authority to authorize deferred planting and delayed reclamation. These provisions are capable of implementation in a manner inconsistent with Section 515(b)(16) and SMCRA which requires reclamation as contemporaneously as practicable with mining.

As noted above, Kansas has agreed not to exercise its discretion in a manner inconsistent with SMCRA. Based on this representation, there is little likelihood of environmental damage prior to revision of the statute.

2. Sections 49-413 and 49-414 of the MLCRA allow the state regulatory authority to authorize bond release upon a determination that a satisfactory vegetative cover has been established. These sections are inconsistent with Sections 515(b)(20) and 519(c) of SMCRA which require an operator to assume a five year minimum period of responsibility for successful revegetation.

As noted above, Kansas has agreed not to exercise its discretion in a manner inconsistent with SMCRA. Based on this representation, there is little likelihood of any impact prior to the time when a statutory revision can be made.

3. Section 49-421 of the MLCRA limits mandatory civil penalties for cessation orders to $250. This provision is inconsistent with and less stringent than Section 518(a) of SMCRA which authorizes mandatory penalties of up to $5000. The Kansas MLCRA also contains a provision (Section 49-423c) that establishes a maximum penalty of

§5060. Apparently, Kansas inadvertently failed to repeal Section 49-421 when Section 49-405c was enacted.

Kansas state law (Section 49-405c) and regulations provide for penalties consistent with federal law and regulations. The deficiency noted above appears to be the result of an inadvertent error. While it is possible that in the period prior to revision of the statute these provisions could be applied to limit civil penalty assessments in a manner inconsistent with SMCRA, this is a minor deficiency in that operators will, in all cases, be subject to some fines, and the period before correction of the legislation should be brief.

4. Section 49-418 of the MLCRA is inconsistent in part with Section 521 of SMCRA (and Section 49-406(m) of the MLCRA) because it allows for discretionary permit revocation as distinguished from the mandatory cessation orders required under Section 521 for violations creating imminent danger to public health or safety or causing imminent environmental harm.

As noted above, Kansas has agreed not to exercise its discretion in a manner inconsistent with SMCRA. Based on this representation, there is little likelihood of any impact prior to revision of the statute.

5. The Kansas program contains no counterpart to Section 704 of SMCRA concerning protection of employees of the Kansas Mined Land Conservation and Reclamation Board equivalent to the protection afforded federal employees under Section 704.

The history of state and coal industry relations in Kansas indicates that state employees will not likely be either significantly deterred in performing their duties or subject to violence or harassment during the time necessary to amend the statute. State inspectors will be protected under certain circumstances by the general state assault and battery statutes.

6. Sections 49-422 and 49-422a of the MLCRA are inconsistent with each other (the retention of Section 49-422 may have been inadvertent) and neither Section states whether judicial review of an administrative action will be *de novo* or on the record made before the Mined Land Conservation and Reclamation Board. To the extent that the Kansas program provides for trial *de novo* review of an administrative action such review must incorporate procedures adequately addressing the seven criteria enumerated in Finding 4(p) of the Federal Register notice announcing the initial decision on the Kansas program. (45 FR 58573, September 4, 1980).

Based on the time periods involved in the administrative process and the small number of mines in Kansas, there are not likely to be any appeals from administrative decisions prior to correction of this deficiency in the state program. The probability of an appeal and of an inconsistent interpretation of federal regulations is considered minimal.

Given the nature of these deficiencies and their magnitude in relation to all the other provisions of the Kansas program, the Secretary of the Interior has concluded they are minor deficiencies. Accordingly, the program is eligible for conditional approval under 30 CFR 732.13(i), because:

1. The deficiencies are of such a size and nature as to render no part of the Kansas program incomplete since all other aspects of the program meet the requirements of SMCRA and 30 CFR Chapter VII, and these deficiencies, which have been agreed to be promptly corrected, will not directly affect environmental performance at coal mines;

2. Kansas has initiated and is actively proceeding with steps to correct the deficiencies (See Kansas Administrative Record Document KS-198 of draft legislation); and,

3. Kansas has agreed, by telegram dated January 9, 1981, to correct the statutory deficiencies by June 1, 1981.

Accordingly, the Secretary is conditionally approving the Kansas program. This approval shall terminate if the state legislation correcting the statutory deficiencies is not fully enacted by June 1, 1981. This conditional approval is effective on January 21, 1981. Beginning on that date, the Kansas Mined Land Conservation and Reclamation Board shall be deemed the regulatory authority in Kansas and all surface coal mining and reclamation operations and all coal exploration on non-federal and non-Indian lands in Kansas shall be subject to the permanent regulatory program.

On non-federal and non-Indian lands in Kansas, the permanent regulatory program consists of the state program as conditionally approved by the Secretary.

On federal lands, the permanent regulatory program consists of the federal rules made applicable under 30 CFR Chapter VII, Subchapter D, Parts 740-745. Kansas and the Department of Interior may enter into a cooperative agreement to apply the requirements of the approved Kansas permanent regulatory program to federal lands under 30 CFR Part 745.

The Secretary's approval of the Kansas program relates at this time only to the permanent regulatory program under Title V of SMCRA. The approval does not constitute approval of any provisions related to implementation of Title IV of SMCRA, the abandoned mine lands reclamation program. In accordance with 30 CFR Part 884, Kansas may submit a state reclamation plan now that its permanent program has been conditionally approved. At the time of such a submission, all provisions relating to abandoned mined lands reclamation will be reviewed by officials of the Department of the Interior.

Additional Findings

The Secretary has determined that, pursuant to Section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this conditional approval.

The Secretary has determined that this document is not a significant rule under E.O. 12044 or 43 CFR Part 14, and no regulatory analysis is being prepared on this conditional approval.

Dated: January 13, 1981.

Joan M. Davenport,

Assistant Secretary, Energy and Minerals.

A new Part, 30 CFR Part 916, is adopted to read as follows:

PART 916—KANSAS

Sec.

916.1 Scope.
916.10 State regulatory program approval.
916.11 Conditions of State program approval.

Authority: Pub. L. 95-87, Sections 102, 201 and 503; 30 U.S.C. 1202, 1211, and 1253.

§ 916.1 Scope.

This part contains all rules applicable only within Kansas which have been adopted under the Surface Mining Control and Reclamation Act of 1977.

§ 916.10 State regulatory program approval.

The Kansas program as submitted on February 26, 1980, and amended on October 31, 1980, is conditionally approved, effective January 21, 1981. Beginning on that date, the Kansas Mined Land Conservation and Reclamation Board shall be deemed the regulatory authority in Kansas for all surface coal mining and reclamation operations on non-federal and non-Indian lands. Copies of the approved program, together with copies of the telegram from the Kansas Mined Land Conservation and Reclamation Board agreeing to the conditions in 30 CFR 916.11, are available at:

(a) Office of Surface Mining Reclamation and Enforcement, Region IV, Fifth Floor, Scarritt Building, 818

Grand Avenue, Kansas City, Missouri 64106. Telephone: (816) 374–3620

(b) Mined-Land Office, 107 West 11th Street, Pittsburg, Kansas 66762. Telephone: (316) 231–8540

(c) Kansas Corporation Commission, Legal Office, 4th Floor, State Office Building, 915 Harrison, Topeka, Kansas 66612. Telephone: (913) 296–3361

(d) Office of Surface Mining Reclamation and Enforcement, Room 153, Interior Building, 1951 Constitution Avenue NW., Washington, D.C. 20240. Telephone: (202) 343–4728.

§ 916.11 Conditions of State program approval.

The approval of the State regulatory program is subject to the following conditions:

(a) The approval found in Section 916.10 will terminate on June 1, 1981, unless Kansas corrects the deficiencies by submitting to the Secretary by that date a law amending Section 49–411 of the MLCRA to remove the discretion to allow deferred planting and a law repealing Section 49–112 of the MLCRA which allows the state regulatory authority to authorize delayed reclamation, or otherwise amends its program to accomplish the same result.

(b) The approval found § 916.10 will terminate on June 1, 1981, unless Kansas corrects the deficiencies by submitting to the Secretary by that date a law amending Section 49–413 of the MLCRA to remove the discretion to allow bond release upon a determination that a satisfactory vegetative cover has been established and a law repealing Section 49–414 of the MLCRA which authorizes release of bond in conjunction with deferred planting, or otherwise amends its program to accomplish the same result.

(c) The approval found in § 916.10 will terminate on June 1, 1981, unless Kansas corrects the deficiency by submitting to the Secretary by that date a law repealing Section 49–421 of the MLCRA to the extent that it provides for a civil penalty assessment limit of $250, or otherwise amends its program to accomplish the same result.

(d) The approval found in § 916.10 will terminate on June 1, 1981, unless Kansas corrects the deficiency by submitting to the Secretary by that date a law amending Section 49–416 of the MLCRA to the extent that it provides for discretionary permit revocation, or otherwise amends its program to accomplish the same result.

(e) The approval found in § 916.10 will terminate on June 1, 1981, unless Kansas corrects the deficiency by submitting to the Secretary by that date a law providing for the protection of employees of the Kansas Mined Land Conservation and Reclamation Board consistent with the protection afforded federal employees under Section 704 of SMCRA, or otherwise amends its program to accomplish the same result.

(f) The approval found in § 916.10 will terminate on June 1, 1981, unless Kansas corrects the deficiency by submitting to the Secretary by that date a law repealing Section 49–422 and amending Section 49–422a of the MLCRA to establish that judicial review of an administrative action will be on the record before the Board or if trial *de novo*, that it complies with the federal requirements, or otherwise amends its program to accomplish the same result.

[FR Doc. 81-2005 Filed 1-19-81; 8:45 am]
BILLING CODE 4310-05-M

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30 CFR Part 944

Conditional Approval of the Permanent Regulatory Program Submission From the State of Utah Under the Surface Mining Control and Reclamation Act of 1977

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final Rule; Conditional Approval of Utah's Proposed Permanent Regulatory Program.

SUMMARY: The State of Utah resubmitted to the Department of the Interior its proposed permanent regulatory program under the Surface Mining Control and Reclamation Act of 1977 (SMCRA), following an initial approval in part and disapproval in part. The notice announcing the initial decision was published in the Federal Register, October 24, 1980 (45 FR 70481–70510). The purpose of the resubmission is to demonstrate the State's intent and capability to administer and enforce the provisions of SMCRA and the permanent regulatory program regulations, 30 CFR Chapter VII. After providing opportunities for public comment and conducting a thorough review of the program submission, the Secretary of the Interior has determined that the Utah program meets the minimum requirements of SMCRA and the permanent program regulations except for minor deficiencies discussed below under "Supplementary Information." Accordingly, the Secretary of the Interior has conditionally approved the Utah program. A new Part 944 is being added to 30 CFR Chapter VII to implement this decision.

EFFECTIVE DATE: This conditional approval is effective January 21, 1981. This conditional approval will terminate as specified in 30 CFR 944.11 unless the deficiencies identified below have been corrected in accordance with 30 CFR 944.11, adopted below.

FOR FURTHER INFORMATION CONTACT: Mr. Carl C. Close, Assistant Director, State and Federal Programs, Office of Surface Mining Reclamation and Enforcement, U.S. Department of the Interior, South Building, 1951 Constitution Avenue NW., Washington, D.C. 20240, telephone (202) 343–4225.

ADDRESSES: Copies of the Utah program and the administrative record on the Utah program are available for public inspection and copying during business hours at:

Office of Surface Mining Reclamation and Enforcement, Region V, Brooks Towers, Room 2218, 1020 15th Street, Denver, Colorado 80202, telephone: (303) 837–5121

Office of Surface Mining Reclamation and Enforcement, Room 153, Interior South Building, 1951 Constitution Avenue NW., Washington, D.C. 20240, telephone: (202) 343–4728

Division of Oil, Gas and Mining, 1588 West North Temple, Salt Lake City, Utah 84116, telephone: (801) 533–5771

SUPPLEMENTARY INFORMATION: The general background on the permanent program, the state program approval process, and the Utah program submission were discussed in the Federal Register, October 24, 1980 (45 FR 70481–70510). That notice, and the findings and discussions in it, form part of the basis and purpose of the decision being announced in this notice and are incorporated herein.

In that notice the Secretary announced his partial approval and partial disapproval of the Utah program. Regulatory and legislative provisions were disapproved because they did not meet the minimum requirements of SMCRA and the permanent program regulations. Under 30 CFR 732.13(f), Utah had 60 days from the date of partial disapproval to resubmit a revised program.

Utah resubmitted its program to OSM on December 23, 1980. The resubmission included: Utah Coal Mining and Reclamation Act—Proposed Housekeeping Amendments; Cooperative agreement; Utah State Program Amended Text and Clarifications—Rules and Regulations (Adopted Amendments); Amendments to Bonding Provisions; Penalty Provisions; Attorney General's Opinion;

Coal Mining and Reclamation Regulations—Proposed Amendments for Adoption; State Window Submission; Errors in adopted regulations; errors in Bonding Provisions, Proposed amendments for adoption on December 18, 1980; and Addendum to Attorney General Opinion dated December 19, 1980. Announcement of Utah's resubmission was made in the Salt Lake City Tribune within the State of Utah and published in the Federal Register on December 23, 1980 (45 FR 84824–26).

A public hearing on the resubmission was announced in the December 23, 1980, Federal Register, and held in Salt Lake City, Utah, on January 7, 1981.

The Utah program was resubmitted pursuant to 30 CFR 732.13(f). The post-resubmission public comment period ended January 8, 1981. Public disclosure of comments by Federal agencies was made on January 14, 1981 (45 FR 3238).

On January 15, 1981, the Administrator of the Environmental Protection Agency transmitted his written concurrence on the Utah program.

The Regional Director completed his program review on January 12, 1981, and forwarded the public hearing transcripts, written presentations, and copies of all comments to the Director together with a recommendation that the program be conditionally approved.

On January 12, 1981, the Director recommended that the Utah program be conditionally approved.

Throughout the remainder of this notice, the term "Utah program" or "Utah submission" is used to mean the resubmission together with those parts of the original submission approved on October 16, 1980.

Secretary's Findings

1. In accordance with section 503(a) of SMCRA, the Secretary finds Utah has, subject to the exceptions in findings (3)(1)(a)(i-v); (4)(b)(i); (c)(viii), (xv), (xx)(5), (xxix), (xxxi); and (4)(d)(i), below, the capability to carry out the provisions of SMCRA and to meet its purposes in the following ways:

(a) The Utah Coal Mining and Reclamation Act (Utah CMRA) and the Utah Coal Mining and Reclamation Regulations adopted thereunder provide for the regulation of surface coal mining and reclamation operations on non-Indian and non-federal lands in Utah in accordance with SMCRA except as noted in the following findings. Approval of the Utah program is based on the following findings or conditions of approval by the Secretary or representations made by Utah concerning Utah laws:

(i) Section 507(c) of SMCRA concerning criteria for the establishment of a Small Operator Assistance Program requires that under certain circumstances the regulatory authority pay for the required determination of probable hydrologic consequences and the statement of results of test borings and core samplings. The Utah CMRA limits this requirement by adding the phrase in Section 40–10–10(3) UCA "contingent upon receipt of funding from the Office of Surface Mining." This limitation is inconsistent with and less stringent than the federal requirement. Approval of the Utah program is conditioned on the State's revision of Section 40–10–10(3) UCA of the Utah CMRA or other appropriate revision to Utah's Program to provide for a Small Operator Assistance Program consistent with that mandated by Section 507(c) of SMCRA.

(ii) The state statute contains several apparently inadvertent errors. The statute's reference in 40–10–17(2)(j)(ii)(B) UCA to "(2)(h)(ii)" should be to "(2)(j)(ii)". In 40–10–16(4) UCA, the word "approves" should be "disapproves," as set forth in Section 519(d) of SMCRA. That section of SMCRA prescribes that if the regulatory authority disapproves the application for bond release, the regulatory authority must notify the permittee of the reasons for disapproval and recommended corrective action. Approval of the Utah program is conditioned upon the correction of these errors such that the noted provisions are consistent with SMCRA.

(iii) Section 40–10–21 UCA allows a suit against the United States in state court. The Secretary does not agree to submit to the jurisdiction of the Utah courts in all circumstances involving lawsuits under SMCRA or the Utah program. Accordingly, Section 40–10–21 UCA of the Utah CMRA is found to be inconsistent with Federal law to the extent that it purports to grant the Utah courts jurisdiction over the Secretary in these areas. Approval of the Utah program is conditioned upon Utah amending its statute to delete the provision for state court jurisdiction over the United States in citizen suits filed in state courts. The Secretary explicitly reserves the right to remove any suit brought against him in the courts of Utah, and further reserves his right to object to the jurisdiction of the Utah courts over him. By approval of the Utah program, the Secretary in no way consents to such jurisdiction.

(iv) Section 510(b)(6) of SMCRA and 30 CFR 788.15(b) provide that where the private mineral estate has been severed from the private surface estate, the permit applicant must submit either the written consent of the surface owner or a conveyance expressly granting or reserving the right to use surface mining methods, or where the conveyance does not have express language, the relative legal rights of the parties must be determined in accordance with state law. Section 40–10–11(f) UCA differs from the federal provisions in that these requirements are triggered only when the state mineral estate has been severed from the private surface estate.

Utah submitted to the Utah Legislative Drafting Committee, on November 18, 1980, an admendment to Section 40–10–11(f) UCA changing "state mineral estate" to "private mineral estate". With this change, the Utah statute will be verbatim to Section 510(b)(6) of SMCRA. Approval of the Utah program is conditioned upon the adoption of a statutory provision or other program modification to make the determination of property rights equivalent to that prescribed in the federal statute.

(v) The Utah statute does not reflect the dates of SMCRA for the determinations listed below. On December 9, 1980, Utah submitted housekeeping amendments to the Utah Legislative Drafting Committee to change the noted dates to be consistent with those set forth in SMCRA. Approval of the Utah program is conditioned upon Utah amending its statute to be consistent with the requirements of SMCRA.

(a) The date for the establishment of the "grandfathering" date of alluvial valley floors under Section 40–10–11(2)(e)(ii) UCA/Section 510(b)(5)(B) of SMCRA.

(b) The date for prime farmland permit application requirements under Section 40–10–11(4) UCA/Section 510(d)(2)of SMCRA.

(c) The date for the establishment of valid existing rights in Section 40–10–24(4) UCA/Section 522(e) of SMCRA.

(d) The date for the determination of substantial legal and financial commitments in Section 40–10–24(1)(e) UCA/Section 522(a)(6) of SMCRA.

(vi) Subsection 516(b)(1) of SMCRA requires operators to take steps consistent with known technology to prevent and mitigate damage from subsidence to the extent technologically and economically feasible, except where the mining method used involves planned subsidence and with the proviso that "nothing in this subsection shall be construed to prohibit the standard method of room and pillar mining * * *". Section 40–10–18 UCA has the same provisions, except that the proviso declares that "nothing in this

subsection shall be construed to prohibit the standard methods of mining."

The Secretary requested in his October 24, 1980 decision (45 FR 70484) partially approving the Utah program, that Utah either clarify that Utah's reference to "standard methods of mining" applies to "room and pillar" or "longwall" mining or a combination of those methods or to revise its statute.

Utah submitted on December 23, 1980, a Utah Attorney General's opinion stating that the reference in Section 40-10-18 UCA of the Utah CMRA to "standard methods of mining" applies only to the two methods or a combination thereof given special status under SMCRA. The Secretary bases his approval of Section 40-10-18 UCA on Utah's representation and on the Secretary's understanding that longwall mining results in predictable and controlled subsidence and as such is consistent with Section 516(b)(1) of SMCRA.

(b) The Utah CMRA provides sanctions for violations of Utah laws, regulations, or conditions of permits concerning surface coal mining and reclamation operations, and these sanctions meet the requirements of SMCRA, including civil and criminal actions, forfeiture of bonds, suspensions, revocations, withholding of permits, and the issuance of cease-and-desist orders by the Utah Division of Oil, Gas and Mining or its inspectors.

(c) The Utah Division of Oil, Gas and Mining has sufficient administrative and technical personnel and sufficient funds to enable Utah to regulate surface coal mining and reclamation operations in accordance with the requirements of SMCRA.

(d) Utah law provides for the effective implementation, maintenance, and enforcement of a permit system that meets the requirements of SMCRA for the regulation of surface coal mining and reclamation operations on non-Indian and non-federal lands within Utah except as noted in findings 4(d)(ii).

(e) The Utah (CMRA) has established a process for the designation of areas as unsuitable for surface coal mining in accordance with Section 522 of SMCRA, 30 U.S.C. 1271.

(f) Utah has established, for the purpose of avoiding duplication, a process for coordinating the review and issuance of permits for surface coal mining and reclamation operations with other federal and state permit processes applicable to the proposed operations.

(g) Utah has fully enacted regulations consistent with regulations issued pursuant to SMCRA, subject to the exceptions discussed below in these findings.

2. As required by Section 503(b)(1)-(3) of SMCRA, 30 U.S.C. 1253(b)(1)-(3), and 30 CFR 732.11-732.13, the Secretary has, through OSM:

(a) Solicited and publicly disclosed the views of the Administrator of the Environmental Protection Agency, the Secretary of Agriculture, and the heads of other federal agencies concerned with or having special expertise pertinent to the proposed Utah program (45 FR 55477, August 20, 1980, and 46 FR 3238, January 14, 1981).

(b) Obtained the written concurrence of the Administrator of the Environmental Protection Agency with respect to those aspects of the Utah program that relate to air or water quality standards promulgated under the authority of the Clean Water Act as amended (33 U.S.C. 1151-1175), and the Clean Air Act as amended (42 U.S.C. 7401 *et seq.*). The administrator's concurrence was given in letter dated January 15, 1981 Utah Administrative Record No. 191, and;

(c) Held a public review meeting in Salt Lake City, Utah, on April 11, 1980, to discuss the completeness of the Utah program submission and subsequently held a public hearing in Salt Lake City, Utah, on July 21, 1980, on the substance of the program submission, and subsequently held a public hearing January 7, 1981, in Salt Lake City, Utah, on the resubmitted program.

3. In accordance with Section 503(b)(4) of SMCRA, 30 U.S.C. 1253(b)(4), the Secretary finds the State of Utah has the legal authority and qualified personnel necessary for the enforcement of the environmental protection standards of SMCRA and 30 CFR Chapter VII.

4. In accordance with 30 CFR 732.15, the Secretary finds, on the basis of information in the Utah program submission, including the section-by-section comparison of the Utah law and regulations with SMCRA and 30 CFR Chapter VII, public comments, testimony and written presentation at the public meeting and hearings and other relevant information that:

(a) The Utah program provides for Utah to carry out the provisions and meet the purposes of SMCRA and 30 CFR Chapter VII within its borders;

(b) Utah has proposed the following alternative approach to the requirements of 30 CFR Chapter VII pursuant to 30 CFR 731.13:

(i) Performance Standards for Steep Slope Grading and Backfilling Section 515(b)(3) of SMCRA requires operators to backfill and grade in order to restore the approximate original contour (AOC) of the land with all highwalls * * * eliminated * * *" 30 CFR 817.101 and .102 implement this statutory requirement. The basic purpose of backfilling and grading is to reshape the disturbed area to AOC to minimize erosion and water pollution and prevent slides. (44 FR 15271 March 13, 1979). Utah proposed (July 24, 1980 submission) to allow the reduction rather than the elimination of the highwall in those cases where, as determined by the Division, the reduced highwall would meet requirements associated with approximate original contour, mass stability and hydrologic balance.

In his partial approval/partial disapproval decision on the Utah program, published in the October 24, 1980 (45 FR 70481-70510), the Secretary agreed with the concept of Utah's proposed alternative approach, but noted that such an alternative must be defined to carefully limit the exception to highwall elimination in order to be consistent with SMCRA.

In his finding on the proposed alternative, the Secretary noted that the provision contained in UMC 817.101(8)(1), which would implement the proposed alternative was deficient in that it did not specifically state that alternative applied only to underground mining activities in terrain with steep slopes composed of steep escarpments. Further, the provision was deficient because it allowed the Division, as it determined to be "practical and appropriate" to apply the alternative of not eliminating highwalls in all cases. The lack of defined criteria for the Division's determination to apply this alternative made the provision deficient in that it could allow the retention of highwalls in situations where the unique topographical justification was lacking. In addition, the state allowed the reduction rather than the elimination of depressions and spoil piles. The Secretary stated that these deficiencies must be corrected before the proposed alternative approach could be approved.

Utah adopted, on November 19, 1980, amendments to UMC 817.101(b)(1). The Utah provision requires that all areas at underground mines affected by surface operations be graded and restored to achieve approximate original contour except where settled fills have become stabilized and revegetated. Utah requires the elimination of highwalls except, where approved by the Division, the highwall may be reduced in order to achieve approximate original contour when the underground coal mining is in steep slope terrain. Utah further prescribes that all applicable requirements for insuring a static safety factor of 1.5 and protecting the hydrologic balance of the surrounding

terrain as specified in the regulation, the program and the (state) Act shall be met.

The Secretary finds that Utah's provision for allowing settled fills that have become stabilized and revegetated to remain is consistent with the court's order *In Re: Permanent Surface Mining Regulation Litigation* (Civil Action No. 79-1144, February 26, May 16 and August 15, 1980). The Secretary believes that 817.101(b)(1) adequately addresses the concern for stability, protection of the environment and health and safety of the public through its reference to the 1.5 static safety factor requirement and the incorporation of the requirements of regulations, the program and the state's Act.

The court ordered the Secretary to suspend the requirements of 30 CFR 817.101(b)(1) and .102 insofar as they did not provide for some flexibility for settled fills that have become stabilized and revegetated. Upon promulgation of new regulations replacing 30 CFR 817.101, the Secretary will afford the state an opportunity to amend its program, as appropriate to comply with the revised federal regulations. Until that time, the Secretary finds Utah's implementation acceptable based on his understanding that the stabilized fill will be compatible with the hydrology of the area, the approved past mining land use, aesthetics, and the need for fill at other locations.

The Secretary finds, however, that the state has not adequately addressed the concern in his initial decision that criteria be defined by the Division such that a carefully limited exception to highwall elimination is implemented consistent with SMCRA. The Secretary believes that environmental considerations, such as the following, that are applicable to Utah, should be specified in order to ensure approximate original contour is achieved and the environment is protected:

- The "reduced" highwall is not significantly greater in size or length than the cliffs in the surrounding area.
- The residual highwall is similar in structural composition to the preexisting cliffs in the surrounding area and is compatible with the visual attributes of the area.
- The residual highwall is compatible with the geomorphic processes of the area.

A condition of the Secretary's approval of the Utah program is the adoption by Utah of provisions that prescribe criteria that must be met before the Division will approve the "reduction" of highwalls rather than their elimination.

(c) In accordance with 30 CFR 732.15(b)(1), the Secretary finds that the Utah Division of Oil, Gas and Mining has the authority under Utah law and regulations, to implement, administer, and enforce all applicable requirements consistent with 30 CFR Chapter VII, Subchapter K. The Utah law and regulations on performance standards are consistent with SMCRA and those sections of 30 CFR Chapter VII, Subchapter K, except for the provisions discussed in 4(viii), (xv), (xx)(5), (xxix), (xxxd) below. Approval is based on the following findings or conditions of approval by the Secretary or representations made by Utah concerning the Utah law and regulations:

(i) On November 19, 1980, Utah adopted an amendment to the definition of "surface operations" in UMC/SMC 700.5. The amendment added to the definition the requirement for the "construction, use, maintenance and reclamation of roads". The Secretary finds that this change makes the state's definition consistent with the definition of "surface coal mining operations" in 30 CFR 701.5. Further, the Secretary finds that the state's adoption of an amendment on November 19, 1980, to the definition of "underground operations" in UMC/SMC 700.5, adding "the reclamation of shafts, adits, underground support facilities, in situ processing, underground mining, hauling, storage and blasting" to that term, makes the state definition consistent with the definition of "underground mining activities" in 30 CFR 701.5 which encompasses those activities.

(ii) Utah amended the definition of "coal exploration" in UMC/SMC 700.5 on November 19, 1980, to include the gathering of environmental data which would cause substantial disturbance to the earth's surface or subsurface. The Secretary finds Utah's definition to be consistent with and as stringent as the definition of "coal exploration" in 30 CFR 701.5 and that the state's definition provides Utah with the authority to guarantee the environmental protection standards of Sections 512 and 515 of SMCRA and Sections 40-10-8 UCA and 40-10-17 UCA of the Utah CMRA.

(iii) The Secretary finds that Utah's adoption of an amendment on August 20, 1980, to the definition of "topsoil" in UMC/SMC 700.5, deleting the phrase "and other materials as determined in accordance with UMC 817.22(e)/SMC 816.22(e)", makes that definition verbatim to the definition of "topsoil" in 30 CFR 701.5. With this modification, the Secretary finds that Utah's performance standards regulations for topsoil in UMC 817.22(e)/SMC 816.22(e) are internally consistent and met the requirements of 30 CFR 817/816.22(e).

(iv) Utah amended its definition of "coal" in UMC/SMC 700.5 on August 20, 1980, to include the reference to ASTM Standard D388.77, contained in the definition of "coal" in 30 CFR 701.5. The Secretary finds the state's definition of "coal" consistent with that of the federal regulations.

(v) On August 20, 1980, Utah amended its definitions of "head-of-hollow fill" and "valley fill" in UMC/SMC 701.5 to reflect verbatim the requirements of 30 CFR 701.5 for those definitions. Accordingly, the Secretary finds the Utah provisions consistent with those of the federal regulations.

(iv) The Secretary finds that Utah's August 20, 1980, amendment to the definition of "applicant" in UMC 701.5, changing the reference to "surface coal mining and reclamation activities" to "underground coal mining and reclamation activities," makes that definition consistent with the definition of "applicant" in 30 CFR 701.5.

(vii) The Secretary finds that the state's standards for topsoil storage as provided by an amendment to UMC 817.23(b)(1)(ii) and SMC 816.23(b)(1)(ii) adopted on August 20, 1980, are the same as the federal standards at 30 CFR 817/816.23(b)(1)(ii), and the Utah provisions are accordingly consistent with the federal requirements for topsoil storage.

(viii) 30 CFR 817.42(a)(3)(ii)(A) requires that "For drainage from areas affected by surface operations and facilities, an exemption (to the sedimentation pond requirements) may be authorized only if the disturbed surface area within the disturbed area is small and there is no mixture of surface drainage with a discharge from underground mine workings." The state, in UMC 817.42(a)(3)(ii), deletes this limiting language and therefore would allow exemptions to be granted which are prohibited by the federal rules. This is less stringent than the federal requirement. A condition of the Secretary's approval of the Utah program is the correction of this deficiency through adoption by Utah of a provision that would apply the sedimentation pond exemption in a manner consistent with the requirements of 30 CFR 817.42(a)(3).

(ix) 30 CFR 816.43(b) and 817.43(b) require that permanent diversions be constructed with "gently" sloping banks that are stabilized by revegetation. The state in its corresponding sections, SMC 816.43(b) and UMC 817.43(b), deletes the term "gently". As part of its December

23, 1980, resubmission, Utah explained that the state has limited precipitation and severe temperature extremes. As a result of these conditions, Utah considers any slope that is capable of subetaining revegetation to be "gently" sloping. Further, Utah points out that its regulations require all permanent diversion banks to be stabilized by revegetation. Thus the state program requires that the banks of permanent diversions be sloped to be stable and to support vegetation. Based on these considerations, the Secretary finds that Utah's provisions for requiring the construction of diversions that are stable and compatible with the environment to be consistent with the requirements of 30 CFR 816/817.43(b), since "gentle slopes" serve no environmental or safety function given Utah's unique local conditions.

(x) On November 19, 1980, Utah amended its definition of "intermittent stream" in UMC/SMC 700.5 to mean "a stream or reach of a stream that is below the local water table for at least some part of the year, and that contributes to the stream and obtains its flow from both surface runoff and ground water discharge." Utah also amended UMC 817.44(a) and SMC 816.44(a) to include ephemeral streams with drainage areas greater than one square mile. The Secretary finds that these amendments make the Utah regulations consistent with and as stringent as the definition of "intermittent stream" in 30 CFR 701.5 and the stream channel diversion requirements of 30 CFR 816/817.44(a). This finding is based on the Secretary's understanding that the phrase "and that contributes to the stream" in UMC/SMC 700.5, refers the ground water associated with the local water table referred to in the definition of intermittent stream in 30 CFR 701.5.

(xi) On December 18, 1980, Utah amended its provisions for sedimentation control in UMC 817.45(a) and .46(a) and SMC 816.45(a) and .46(a) to be identical to the requirements of 30 CFR 817/816.45(a) and .46(a). Accordingly, the Secretary finds that these standards are consistent with those prescribed by the federal regulations.

(xii) 30 CFR 816.46(c) and 817.46(c) prescribe materials that may not be used as fill materials in sedimentation ponds. Federal regulations specifically prohibit the use of coal processing waste. The preamble to the Federal regulations explains the reason for the prohibition (44 FR 15166, March 13, 1979). The major problems cited are: (1) The difficulty in obtaining the required compaction needed to insure stability, (2) the potential for toxic drainage and (3) the potential for spontaneous combustion. Standards for using coal processing waste in dams and embankments are set forth in 30 CFR 817/816.81–.83. These standards prohibit the use of waste in dam construction, unless the waste is proven to be a suitable fill material in accordance with standard engineering practices. Utah has adopted provisions in UMC 817.46(c) and SMC 816.46(c) which allow the use of non-acid and non-toxic forming coal processing waste as a fill material in sedimentation pond embankments when the waste is determined to be of a quality suitable as a construction material for its intended use as demonstrated by standard engineering and chemical tests and the sedimentation pond dam or embankment is designed and constructed pursuant to UMC 817.81–.83 and SMC 816.81–.83. The Secretary believes that Utah has adequately addressed the concerns mentioned above which limited the use of coal processing waste in 30 CFR 816/817.46(c), and as such, the state's provisions provide protection of the environment equal to that guaranteed by the federal regulations. The Secretary's finding is based on his understanding that, in accordance with sound engineering practice, material which fails to exhibit the proper strength necessary to achieve stability will not be allowed in any dam construction.

(xiii) On August 20, 1980, Utah adopted amendments to UMC 817.49 and 816.49 that make those sections identical to the provisions of 30 CFR 817/816.49. Specifically, the state added the requirement in UMC 817.49(c) and SMC 816.49(c) that excavations that impound water have slopes not steeper than 2v:1h. In addition, in (c), the state incorporated the requirement that all dams and embankments be inspected by a "qualified registered professional engineer or someone under the supervision of a qualified registered professional engineer." The Secretary finds that these changes make the Utah regulations consistent with the federal regulations.

(xiv) The Secretary finds that Utah's verbatim adoption on August 20, 1980, of the requirements of 30 CFR 817/816.52(a)(1) for surface and ground water monitoring, in UMC 817.52(a)(1) and SMC 816.52(a)(1), makes the Utah regulations consistent with the federal regulations.

(xv) 30 CFR 816.53(c) provides that upon an approved transfer of a well, the transferor shall be secondarily liable for the transferee's obligations until release of the bond for the area in which the well is located. The state had omitted this provision from both its surface coal mining and underground operations in its initial submission. On August 20, 1980, the state adopted verbatim at SMC 816.53(c) the requirements of 30 CFR 816.53(c) regarding liability for a well on surface coal mining operations consistent with the federal regulations. However, the State of Utah did not adopt the parallel requirement of 30 CFR 817.53(c) in its underground regulation, UMC 817.53. The Secretary finds that this omission makes the state provision less stringent than the federal regulation.

Approval of the Utah program is conditional on the revision of the state program to be consistent with the federal regulation.

(xvi) On August 20, 1980, Utah amended UMC 817.57(a) and SMC 816.57(a), deleting the phrase "important to a downstream fishery". The Secretary finds that this revision to Utah's provision for the establishment of buffer zones for perennial and intermittent streams consistent with the requirements of 30 CFR 817/816.57(a). This finding is based on the Secretary's understanding that the phrase "and which contains a biological community" in the Utah regulations applies to both perennial and intermittent streams.

The Secretary also finds Utah's amendment to UMC 817.57(c) and SMC 816.57(c), which adopts, verbatim, the requirements of 30 CFR 817/816.57(c) for the determination of a biological community in a manner consistent with and as stringent as the federal regulations.

(xvii) Utah's amendments of August 20, 1980, to SMC 816.65 and UMC 817.65 make those sections the same as the federal requirement at 30 CFR 816/817.65. The amendments corrected several typographical errors in SMC 816.65 and UMC 817.65 and incorporated the following missing paragraphs of 30 CFR 817.65 in UMC 817.65: (i) Concerning maximum peak particle velocity, (j) concerning variance to maximum peak particle velocity and (l) concerning the maximum weight of explosives to be detonated. The Secretary finds that these state regulations are consistent with and as stringent as the federal regulations.

(xviii) The Secretary finds that Utah's adoption on August 20, 1980, of the requirement in 30 CFR 816.68(a)(2) that seismograph records contain the name of the person taking the seismograph reading, to make SMC 816.68(a)(2) consistent with the federal requirement.

(xix) On August 20, 1980, Utah amended UMC 817.93(a) and SMC 816.93(a) by adding the phrase "or intended to impound such waste" to those sections' standards for design and construction criteria for dams and embankments. The Secretary finds that this modification makes UMC 817.93(a) and SMC 816.93(a) identical to the requirements of 30 CFR 817/816.93(a) and, therefore, consistent with and as stringent as the federal provision.

(xx) On August 20, 1980, and November 19, 1980, Utah amended several provisions of UMC 817.71–.74 and SMC 816.71–.74. These sections prescribe procedures for the disposal of excess spoil. The amendments to these provisions and the Secretary's finding on each amendment is provided below:

(1)(a) SMC 816.71(f)/30 CFR 816.71(f)—Utah uses the term "fill material" in lieu of the term "spoil" used in the federal regulation in specifying the disposal requirements of the section. Both SMC 816.71 and 30 CFR 816.71 are entitled "Disposal of excess spoil: General requirements", and the use of the term "fill material" in the federal regulation is deemed by the Secretary to be equivalent to the state's use of the term "spoil" in SMC 816.71(a). Utah also modifed SMC 816.71(f) to specify that the "fill materials" (spoil) be covered "as necessary to establish revegetation. The Secretary understands this to be a clarification that excess spoil is not to be covered for the sake of covering but rather for the purpose of establishing vegetation to meet the revegetation requirements of the Utah regulations. The Secretary finds this clarification to be consistent with the requirements of 30 CFR 816.71(f) for protecting the environment from any adverse effects from the excess spoil disposal.

The Secretary finds that Utah's adoption on August 20, 1980, of an amendment to SMC 816.71(f) requiring that excess spoil fills be constructed to ensure a long term static safety factor of 1.5 makes the Utah regulation consistent with fill construction requirements of 30 CFR 816.71(f).

UMC 817.71(f)/30 CFR 817.71(f)—Utah amended its regulation on August 20, 1980, adopting the requirements of the federal regulation for requiring that excess spoil fills be constructed to ensure a long term static safety factor of 1.5. Utah also modified the section to clarify that the fill must be covered as necessary to meet revegetation and stability requirements. The federal regulation only requires that the fill be "covered" and does not specifically prescribe a standard. The Secretary finds that the Utah regulations are consistent with the federal regulations.

(1)(b) SMC 816.71(j) UMC 817.71(j)/30 CFR 816/817.71(k)—Utah has amended its provisions to explain specifically that while coal processing waste cannot be included in head-of-hollow and valley fills, it can be disposed of, in a prescribed manner in head-of-hollows or valleys. Utah requires that coal processing waste disposed in those areas be placed in a coal waste bank in accordance with SMC 816.85/UMC 817.85 or where there is the potential for the bank to impound water, disposed of in accordance with the dam or embankment standards of SMC 816.91–.93/UMC 817.91–.93. 30 CFR 816/817.71(g) and UMC 817.71(g)/SMC 816.71(g) prescribe that no permanent impoundments are to be allowed on the completed fill. As such, Utah addresses the potential for impoundment of water and also sets forth measures for insuring stability. The Secretary's approval of the Utah provisions is based on his understanding that the State's reference to the impoundment of water is provided to insure that in the event water is *temporarily* impounded, the stability of the disposed material will not be affected and that in no case is the disposed material intended to permanently impound water. The Secretary finds that Utah's provision is consistent with the federal regulations in ensuring protection of the environment.

(1)(c) SMC 816.72(a)/UMC 817.72(a)/30 CFR 816/817.72(a)—Utah amended SMC 816.72(a) and UMC 817.72(a) on August 20, 1980, adopting verbatim the requirements of 30 CFR 816/817.72(a) for prescribing that valley fills be designed to attain a long term static safety factor of 1.5. The Secretary finds that the Utah regulations at SMC 816.72(a)/UMC 817.72(a) are consistent with the federal regulations.

(1)(d) Utah amended UMC 817.74(b)(2) and SMC 816.74(b)(2) on August 20, 1980, adopting verbatim the requirements of 30 CFR 816/817.74(b)(2) for valley fill and head-of-hollow fill embankment factors of safety. Accordingly, the Secretary finds that these standards are consistent with those prescribed by the Federal regulations.

(2)(a) SMC 816.71(a)/30 CFR 816.71(a)—On August 20, 1980, Utah modified its regulation to specify that spoil not required to achieve approximate original contour within the area where overburden has been removed and "which is not used as backfill" shall be transported and placed in designated disposal areas. The Secretary understands Utah's addition of the phrase "which is not used as backfill" to mean that the spoil which is used as backfill will be graded to the approximate original contour (a.o.c.) and that any material not required to achieve a.o.c. will be disposed of in accordance with the requirements of the regulations. Accordingly, the Secretary finds that SMC 816.71(a) as amended on August 20, 1980, is consistent with and as stringent as 30 CFR 816.71(a).

Utah also amended this section on August 20, 1980, by deleting the provision that allowed the use of non-acid and non-toxic forming coal processing waste in excess spoil fills. The Secretary finds that this modification makes the Utah provision consistent with the Federal regulations.

(2)(b) UMC 817.71(a)/30 CFR 817.71(a)—Utah amended its regulation on November 19, 1980, by deleting the provision that allowed non-acid and non-toxic forming waste to be used in "excess spoil fills." The Secretary finds Utah's regulations for the disposal of underground development waste and spoil are consistent with the Federal regulations.

(2)(c) SMC 816.72(c)/UMC 817.72(c)/30 CFR 816/817.72(c); SMC 816.73/UMC 817.73/30 CFR 816/817.73—The Utah regulations were amended on August 20, 1980, by deleting the provision in those sections which allowed the use of non-acid and non-toxic forming coal processing waste in valley and head-of-hollow fills. The Secretary finds Utah's provisions for head-of-hollow valley fills consistent with the Federal regulations.

(3) On August 20, 1980, Utah adopted an amendment to UMC 817.71(g) and SMC 816.71(g) making those sections identical to the provisions of 30 CFR 816/817.71(g). Utah adopted the requirement that no depressions or impoundments are allowed on the completed fill. The Secretary finds that Utah's standards for final fill configuration are consistent with the Federal standards.

(4) Utah amended UMC 817.72(b) and SMC 816.72(b) on August 20, 1980, by adopting verbatim the requirements of 30 CFR 816/817.72(b) (2), (3) and (4) for valley fill underdrain construction. The Secretary finds that these modifications make the Utah provisions consistent with the Federal standards. Section 515(b)(22) of SMCRA and Section 40–10–17(2)(Z)UCA of the Utah CMRA prescribe the placement of "all excess spoil material resulting from coal surface mining and reclamation activities in such a manner that appropriate surface and internal drainage systems and diversion ditches are used so as to prevent soil erosion and movement." 30 CFR 816/817.72(b) and UMC 817.72(b)/SMC 816.72(b)

implement this statutory requirement. Utah has modified the Federal regulatory provision which always requires that a subdrain system be constructed for valley fills. Utah allows an exemption from this requirement when the operator can demonstrate, to the satisfaction of the Division, that the runoff, precipitation and ground water from springs or seeps will adequately drain from the fill such that the long term static safety factor of 1.5 will be maintained and the requirements for ensuring that the quality of the water drainage meets the standards of SMC 816.42 and UMC 817.42 and that acceptable quality will be maintained. By delineating these performance standards that must be met, the Secretary finds that Utah has set forth the conditions for identifying the "appropriate" or necessary subdrain systems for a valley fill which will meet the statutory mandate to prevent spoil erosion and movement. Further, the Secretary finds that Utah's provision for implementing the exception could provide appropriate criteria to ensure that the mass stability is maintained, mass movement is prevented, and contamination of drainage is avoided. However, the State presented no justification based on local conditions to support this variance from the requirements of 30 CFR Chapter VII, as required by 30 CFR 730.13. Accordingly, the Secretary conditions his approval on Utah amending its program to assure that the underdrain requirement is not waived in any instance except with the consent of the Director, after a demonstration that the waiver qualifies under the requirements for experimental practices found in Section 711 of SMCRA and 30 CFR 785.13. The Secretary expects OSM to approve a reasonable number of valley fills which can demonstrate eligibility for the waiver based on the criteria found in UMC 817.72(b)/SMC 816.72(b), to determine whether this approach should lead to a change in the Federal rule. Based on these findings, and subject to this condition, the Secretary considers the Utah regulation to provide environmental protection equal to that prescribed by the Federal regulations.

(5) SMC 816.72(c)/UMC 817.72(c)—30 CFR 816/817.72(c)—The Utah regulations allow the Division to authorize lifts greater than four feet for valley fills. The federal regulations allow lifts no greater than four feet in thickness or less, to achieve densities necessary to ensure mass stability, prevent mass movement, avoid contamination of fill drainage systems or the creation of voids. The Utah regulations are inconsistent with the federal regulations because they mandate less environmental protection in fill construction. Approval of the Utah program is conditioned on the revision of the Utah regulation to prescribe a lift thickness for valley fills consistent with the federal regulations.

(xxii) On August 20, 1980, Utah amended UMC 817.72 and SMC 816.72 deleting the provisions in those sections which allowed "non-acid and non-toxic coal processing waste" to be used in "valley fills." The Secretary finds that these amendments to the Utah regulations make the state's standards for defining "valley fill" materials consistent with and as stringent as the standards of 30 CFR 816/817.72.

(xxiii) On August 20, 1980, Utah adopted an amendment to UMC 817.97(d)(10) and SMC 816.97(d)(10) which makes the state's requirements for the protection of fish, wildlife and related environmental values identical to the requirements of 30 CFR 817/816.97(d)(10). The Secretary finds the Utah provisions consistent with the federal provisions.

(xxiii) The Secretary finds that Utah's adoption on August 20, 1980, of an amendment to SMC 816.102(a)(2), making the state's provision identical to the requirement of 30 CFR 816.102(a)(2) for backfilling and grading performance standards, makes the Utah regulation consistent with the federal regulation.

(xxiv) Sections 30 CFR 816.103(a)(1) and 817.103(a)(1) require that all exposed coal seams remaining after mining and all acid-forming materials, toxic-forming materials, combustible materials or any other materials identified by the regulatory authority as exposed, used or produced during mining be covered with a minimum of 4 feet of the best available non-toxic and non-combustible material. The District Court for the District of Columbia remanded this provision to also allow the treatment of such materials in *In re: Permanent Surface Mining Regulation Litigation* Action No. 79-1144 (D.D.C., February 26, 1980, p. 17). Utah adopted an amendment on August 20, 1980, amending SMC 816.103(a)(1) and UMC 817.103(a)(1) to require that all debris, acid-forming materials, toxic materials, or materials constituting a fire hazard be treated or covered with a minimum of four feet of the best non-toxic and non-combustible material.

Based on the Secretary's decision, published in the October 24, 1980, Federal Register Notice (45 FR 47481-47510), Utah suspended, in accordance with the court order described above, SMC 816.103(a)(1) and UMC 817.103(a)(1) on December 18, 1980. The Secretary finds Utah's suspension consistent with the court order and will provide the state opportunity to revise its regulations once final federal regulations are promulgated for these sections.

(xxv) The Secretary finds that Utah's deletion on August 20, 1980, of the term "or reduce" in SMC 816.104(b)(1), makes the state's provision identical to the requirements of 30 CFR 816.104(b)(1), to "cover all acid-forming and toxic-forming materials." As such, the Utah standards for backfilling and grading are consistent with and as stringent as the federal standards. See Federal Register (45 FR 70628), October 24, 1980, Finding (c)(xxv).

(xxvi) On August 20, 1980, Utah adopted at SMC 816.105(b)(5) a provision identical to 30 CFR 816.105(b) for backfilling and grading thick overburden. The Secretary finds that the state's provision is consistent with and as stringent as the federal provision.

(xxvii) On August 20, 1980, Utah adopted at SMC 816.111(b)(1) a provision identical to 30 CFR 816.111(b)(1) regarding general revegetation standards. The Utah regulation is consistent with the federal regulation, Section 515(b)(19) of SMCRA and Section 40-10-17(2)(a) UCA of the Utah CMRA.

(xxviii) On August 20, 1980, Utah adopted an amendment to UMC 817.116(b)(1) and SMC 817.116(b)(1) making the state's standards for revegetation success identical to the federal standards in 30 CFR 817/816.116(b)(1). The Secretary finds the state regulation consistent with the comparable federal provision.

(xxix) On August 20, 1980, Utah amended UMC 817.124(b), (b) (1) and (3). Utah deleted the provision in (b) that allowed an operator to comply with the requirements of the section for surface land and structure protection "at his option". Utah added a provision to (b)(1) however, that requires the operator to restore, rehabilitate, or remove and replace materially damaged structures, features or values only "to the extent technologically and economically feasible." This limitation on the liability of the operator is inconsistent with the purpose of 30 CFR 817.124 which was to provide surface owner protection from the potential adverse effects of subsidence. By allowing an operator to "restore * * *" only to the extent "technologically and economically feasible", Utah fails to ensure the protection of the surface and compensation for the surface owner to the extent guaranteed by the federal regulations. For example, 30 CFR 817.124(b)(2) requires that a damaged

structure or feature be purchased for its pre-subsidence fair market value. Subsection 3 of that same section requires that the owner be compensated in the full amount of the decrease in value resulting from subsidence. Hence, under the federal regulations the surface owner is guaranteed that the value of his or her property interest will not diminish as a result of underground mining activities.

The federal regulations at 30 CFR 817.124(b)(3) require by contrast the purchase of a "noncancellable premium prepaid insurance policy". The Utah provisions at UMC 817.124(b)(3) allows the purchase of a "noncancellable renewable premium prepaid policy". The Secretary does not understand Utah's intent in providing for a policy that is both "noncancellable and renewable". If the policy is truly renewable then there is the possibility that it could expire thereby depriving the surface owner of the protection guaranteed by the federal rules. The Utah provision for renewable policies is less stringent than the federal provision to the extent that it allows a policy to be cancelled or expire. As a condition of the Secretary's approval of the Utah program is the revision of UMC 817.124 to guarantee surface owner protection equal to that prescribed by 30 CFR 817.124.

(xxx) On August 20, 1980, Utah amended UMC 817.126 (a) and (c), deleting the provision that limited the prohibition against conducting underground operations in certain areas to those operations "which will cause subsidence." The Secretary finds that this amendment makes UMC 817.126 (a) and (c) consistent with and as stringent as the requirements of 30 CFR 817.126 (a) and (c) for the establishment of buffer zones to protect areas from potential subsidence damage.

(xxxi) On November 18, 1980, Utah adopted UMC 817.101(c). In its December 23, 1980, resubmission, Utah explained that this provision is intended to parallel the requirements of 30 CFR 826.12(a) for preventing the placement of spoil, waste materials, debris and abandoned equipment on the downslope on steep slopes. UMC 817.101(c)(1) does not prescribe that spoil will not be placed on the downslope and further allows the placement of waste material, including waste mineral matter on the downslope if it is demonstrated to be "non-acid and non-toxic forming and to be compatible with the stability of the slope." The Secretary finds that this provision is inconsistent with and less stringent than the 30 CFR 826.12(a) because it would allow the dumping of materials on the downslope specifically prohibited, except under certain conditions, by the federal regulations. A condition of the Secretary's approval of the Utah program is the revision of the Utah regulation to ensure that materials are placed on the downslope in steep slope areas in a manner that provides protection of the environment equal to that provided by 30 CFR 826.12(a).

(xxxii) The federal regulation at 30 CFR 826.11(b)(3) requires that in situ processing activities be planned and conducted to minimize disturbance to the hydrologic balance by avoiding annular injections between the wall of the drill hole and the casings. On August 20, 1980, Utah adopted verbatim, at UMC/SMC 826.11(b)(3) the federal regulation. Accordingly, the Secretary finds that it is consistent with the federal regulations.

(xxxiii) On August 20, 1980, Utah amended SMC 816.97(d)(2), to include the construction of "overpasses and construct the necessary passages." The Secretary finds that this regulation is consistent with the federal amendment on June 5, 1980, (45 FR 37818) to 30 CFR 816.97(d)(2) which added the same requirement.

(xxxiv) On November 19, 1980, Utah amended its definition of "aquifer" in UMC/SMC 700.5, to be identical to the definition of that term at 30 CFR 701.5. By this action, the state is deleting its reference to the "quality" of the water as a criterion in defining a water supply as an aquifer. The Secretary finds the state's definition of aquifer to be consistent with the definition at 30 CFR 701.5.

(d) In accordance with 30 CFR 732.15(b)(2), the Secretary finds that the Utah Division of Oil, Gas and Mining has the authority under Utah law and regulations, and the Utah program includes provisions to implement, administer and enforce a permit system and prohibit surface coal mining and reclamation operations without a permit issued by the regulatory authority consistent with those sections of 30 CFR Chapter VII, Subchapter G that are not affected by the district court decision. Approval is based on the following findings or conditions of approval by the Secretary or representations made by Utah concerning the Utah law and regulations:

(i) On August 2, 1906, Utah amended SMC 779.19(a), to require that the permit application vegetation map include plant communities within any proposed reference area. The Secretary finds that Utah's amended rule is identical to and consistent with 30 CFR 779.19(a).

(ii) On August 20, 1980, Utah amended UMC 784.20(b)(3)(v) to eliminate the provision that had allowed the state to require subsidence monitoring in "only those areas that may be affected by subsidence if it occurred." The state further modified the section to provide that monitoring, if any, would not be imposed as a control measure in "those instances where the mining technology requires planned subsidence in a predictable and controlled manner: provided, that nothing in this subsection shall be construed to prohibit the standard methods of mining." The state's added provision is inconsistent with 30 CFR 784.20(b)(3)(v) insofar as it limits the state's discretion to require monitoring when the site conditions warrant monitoring. If the operator has represented that subsistence will be controlled and predictable, the regulatory authority must be in a position to verify this through monitoring. Approval of the Utah program is conditioned upon the state revising its regulation to be consistent with and as stringent as the federal provision for subsidence monitoring.

(iii) The Secretary finds that Utah's amendment to UMC/SMC 785.19(c)(1), adopted on August 20, 1980, which changes the phrase "*lack* of an alluvial valley floor" to "presence of an alluvial valley floor" makes the Utah provisions consistent with the federal rquirements for an alluvial valley floor determinations as set out at 30 CFR 785.19(c)(1).

(iv) On December 18, 1980, Utah adopted an amendment to UMC/SMC 785.19(c) deleting the provision which had allowed a waiver of the requirements of subsections (d) and (e) of that section (UMC/SMC 785.19) where the Division determined that the proposed surface operation would not adversely affect an alluvial valley floor. The state also adopted an amendment to subsection (d), to prescribe that the requirement that surveys and baseline data be "adapted to site-specific conditions and the degree of proposed disturbance." The Secretary finds that this phrase further clarifies the state's intent to parallel federal procedures in the determination and protection of alluvial valley floors as delineated in 30 CFR 785.13 (c)(1) and (d)(1). The Secretary finds that the adoption of these changes render Utah's regulations consistent with 30 CFR 785.19 (c) and (d).

(v) On December 18, 1980, Utah adopted an amendment to UMC/SMC 786.19(h), to require that all reclamation fees required by Subchapter R of CFR Chapter VII, be paid before a permit is issued. The Secretary finds that the adoption of this change makes Utah's

provisions consistent with the provisions of 30 CFR 786.19(h) that require payment of all reclamation fees before a permit application can be approved.

(vi) On August 20, 1980, Utah amended UMC/SMC 786.12 (a)(1)(i) by adding *surface or subsurface* before the words "area disturbed * * *". This amendment makes clear that an increase in an area disturbed encompasses the area both above and below ground. The state has also deleted section (iv) which allowed the Division to decide on a site-by-site basis, "reasonable" permit revisions. The Secretary finds that these changes make Utah's provisions consistent with the requirements of 30 CFR 788.12(a) for determining what changes constitute significant departures from the approved method of mining under the original permit and, therefore, require a permit revision.

(vii) Utah's amendment to UMC/SMC 786.19(b)(2), adopted on August 20, 1980, replaces the phrase "the time required by the regulations of the particular regulatory program" with "30 days from the date of publication as required in (b)(1) above." The Secretary finds that this change meets the federal requirements under 30 CFR 786.18(b)(2) for prescribing the time in which written comments may be submitted concerning requests for permit transfers, assignment or sale of permit rights.

(e) In accordance with 30 CFR 732.15(b)(3), the Secretary finds that Section 40–10–8 and 40–10–17 UCA of the Utah CRMA and the Utah regulations under UMC/SMC 776 and UMC/SMC 815, provide Utah with the authority to regulate coal exploration consistent with Sections 512 and 515 of SMCRA and to 30 CFR Parts 776 and 815 and to prohibit exploration that does not comply with 30 CFR Parts 776 and 815.

(f) In accordance with 30 CFR 732.15(b)(4), the Secretary finds that the Utah Division of Oil, Gas and Mining has the authority under Section 40–10–5 UCA of the Utah CMRA and the Utah regulations, UMC/SMC 707, and the Utah program includes provisions to require that persons extracting coal incidental to government-financed construction maintain information on-site consistent with Section 528 of SMCRA and with 30 CFR Part 707.

(g) In accordance with 30 CFR 732.15(b)(5), the Secretary finds that the Utah Division of Oil, Gas and Mining has the authority under Section 40–10–19 UCA of the Utah CRMA and the Utah program includes in UMC/SMC 840 of the regulations, provisions for entry, inspection and monitoring of all coal exploration and surface coal mining and reclamation operations on non-Indian and non-federal lands within Utah consistent with the requirements of Section 517 of SMCRA and Subchapter L of 30 CFR Chapter VII.

(h) The Utah Division of Oil, Gas and Conservation has the authority under Utah laws and the Utah program includes provisions for the implementation, administration and enforcement of a system of performance bonds and liability insurance, or other equivalent guarantees, consistent with 30 CFR Chapter VII, Subchapter J. The performance bond and liability insurance provisions of Sections 507(f), 509, 510 and 519 of SMCRA and 30 CFR Chapter VII, Subchapter J are incorporated in Sections 40–10–10(8) UCA, 40–10–15 UCA and 40–10–16 UCA of the Utah CMRA and in Parts 800–808 of the Utah regulations. Portions of the federal bonding regulations were proposed for amendment on January 24, 1980 (45 FR 6028–6042) and final regulations were published on August 6, 1980, (45 FR 52308–52324). Utah has incorporated those changes into its regulations and submitted these changes as part of its resubmission. The Secretary's finding on those changes in the Utah regulations is in finding 4(h)(iii). Approval is based on the following findings, or conditions of approval by the Secretary or representation made by Utah concerning the Utah law and regulations:

(i) the Secretary finds that Utah's verbatim adoption in UMC/SMC 800.5 of the definition of "current assets" contained in 30 CFR 800.5 makes the Utah regulation consistent with the federal regulation.

(ii) Utah has amended UMC/SMC 806.13(b), deleting the provision which allowed an exemption from the revegetation liability period standards. The Secretary finds that with this amendment, UMC/SMC 806.13(b) are identical to 30 CFR 806.13(b) and that the Utah standards are consistent with and as stringent as the federal standards.

(iii) Portions of the following federal bonding regulations were proposed for amendment on January 24, 1980 (45 FR 6028–6042); 30 CFR 800.5, 800.11(b)(1), 800.13, Part 801, 805.13, 805.14, 806.11, 806.12, 806.13, 806.14, 806.17, 807.12, 808.11, 808.12, and 808.13(a). Final federal regulations on these bonding sections were published on August 6, 1980, (45 FR 52308–52324). Utah has adopted these final provisions, verbatim, in its bonding regulations set forth in UMC/SMC Parts 800–808. In addition, Utah has deleted its definition of "accumulating fund bond" contained in UMC/SMC 800.5. The Secretary finds Utah bonding provisions consistent with the federal bonding regulations promulgated on August 6, 1980.

(iv) Utah amended UMC/SMC 806.12 (e)(2) and (e)(3) to delete the references in those sections to the "state law" for the establishment of bonding standards, because in Utah, no state law exists that is applicable to those provisions. Utah incorporated the analogous federal provisions of 30 CFR 806.12(e) (2) and (3) in UMC/SMC 806.12(e) (2) and (3). The Secretary accordingly finds that Utah's regulations for the establishment of a maximum single obligation for a company beyond which a surety is restrained from bonding, is consistent with the 30 CFR 806.12(e) (2) and (3).

Utah also amended UMC/SMC 806.12(g) by deleting subsection (g)(6). That subsection provided that the Division could require in the indemnity agreement that the amount of the letter of credit be confessed to judgment upon forfeiture, such a procedure was authorized by state law. Utah does not have an applicable law so the subsection is not applicable. The Secretary finds these changes of the state's regulations to be consistent with the bonding provisions of the federal regulations.

(v) On August 20, 1980, Utah amended SMC/UMC 807.11(h) to provide an objector the right to request that a bond release hearing be held, at the option of the objector, in the town or city nearest the permit area or in Salt Lake City, Utah. The Secretary finds that Utah's provisions for conducting the bond release hearing are consistent with the requirements of 30 CFR 807.11(h).

(i) In accordance with 30 CFR 732.15(b)(7), the Secretary finds that the Utah Division of Oil, Gas and Mining has the authority under Sections 40–10–21 and 22 UCA of the Utah CMRA and UMC/SMC 845 of the Utah regulations to provide for civil and criminal sanctions for violations of Utah law, regulations and conditions of permits and exploration approvals, including civil and criminal penalties, in accordance with Section 518 of SMCRA (30 U.S.C. 1268) and consistent with 30 CFR Part 845. Approval is based on the following findings by the Secretary or representations made by Utah concerning the Utah laws and regulations:

(i) Utah's amendment to UMC/SMC 845.20(c), which was adopted on November 13, 1980, added the phrase "or at the prevailing Department of the Treasury rate, whichever is greater." The Secretary finds that this change makes the State's regulation consistent with 30 CFR 845.20(c).

(ii) The Secretary finds that Utah's regulations, UMC/SMC 845.17(c), provides for a formal hearing on the fact of the violation or amount of penalty as required by 30 CFR 845.19(b) and the Utah provision is therefore consistent with its federal counterpart.

(iii) The Secretary finds that Utah's provisions for administrative adjudication of proposed civil penalties under Section 40–10–20 UCA and UMC/SMC 845 are consistent with the federal requirements. Under OSM's assessment conference procedure, 30 CFR 845.18, no more than 150 days will elapse between the initial proposal of a penalty and the conclusion of the first level of administrative review. At that time an operator wishing further review must request a formal adjudicatory hearing and place the full amount of the proposed penalty in escrow. Utah omits an assessment conference in favor of an administrative hearing as the first level of review. The Secretary believes that since Utah's hearing is sequentially similar to OSM's assessment conference, that the escrow requirement can be deferred to the second level of review as it is under federal procedure. Utah's second level of review is judicial review. The Utah statute provides that upon the filing of a petition for a hearing—"the hearing shall be held without undue delay" Section 40–6–6–(1) UCA. Utah has amended regulation, UMC/SMC 845.17(c), to further provide that upon a request for a formal hearing "(the order) will be set for hearing before the Board within 30 days of date of receipt of such request." Further, in a Utah Attorney General opinion submitted on December 23, as part of the Utah resubmission, the state presented that the hearing will be set and take place within 30 days of the request for the hearing. The Board is required to enter its order within sixty days after the hearing. The Secretary bases his approval of Utah's provisions for adjudication of civil penalties upon the understanding that the Board of Oil, Gas, & Mining will proceed in an expedient manner to hold a hearing and that the entire procedure before which payment of the proposed assessment into escrow is required, will not exceed 150 days.

(j) In accordance with 30 CFR 732.15(b)(8), the Secretary finds that the Utah Division of Oil, Gas and Mining has the authority under Section 40–10–22 UCA of the Utah CMRA and Sections 840 through 845 of the Utah regulations contain provisions to issue, modify, terminate and enforce notices of violation, cessation orders and show cause orders in accordance with Section 521 of SMCRA (30 U.S.C. 1271) and with 30 CFR Chapter VII, Subchapter L.

(k) In accordance with 30 CFR 732.15(b)(9), the Secretary finds that the Utah Division of Oil, Gas and Mining has authority under Section 40–10–24 UCA of the Utah CMRA and Sections UMC/SMC 760, 761, 762 and 764 of the Utah regulations, and the Utah program contains provisions for the designation of areas as unsuitable for surface coal mining consistent with 30 CFR Chapter VII, Subchapter F. Approval is based on the following findings by the Secretary or representations made by Utah concerning the Utah laws and regulations:

(i) On August 20, 1980, Utah amended UMC 761.11(a)(3) and SMC 761.11(c) to restrict mining on any lands that will "adversely affect" any public park or any place included on the National Register of Historic Places. The Secretary finds that this change makes the state's regulations consistent with the requirements of 30 CFR 761.11(c) and Section 522(e) of SMCRA for the protection of such lands.

(ii) Section 522(e)(5) of SMCRA and the regulations at 30 CFR 761.11(e) provide that no "surface coal mining operations" may be conducted within 300 feet measured horizontally from any occupied dwelling unless a written waiver is obtained from the owner of the dwelling. "Surface coal mining operations" includes surface mining and the surface effects of underground mining. Section 40–10–24(4)(d) UCA, of the Utah CMRA mirrors the mandate of SMCRA. On December 18, 1980, Utah amended UMC 761.11(b)(1), to require that the restriction apply to "underground mining and reclamation activities". With this change, protection of surface lands equal to that prescribed by 30 CFR 761.11(b)(1) is guaranteed by the Utah underground regulations. The Secretary finds Utah's provision consistent with and as stringent as the federal regulation.

(iii) Utah has amended the definition of "area" in UMC/SMC 762.5 to mean "a geographic unit defined by a legal subdivision (i.e., township, range, and section number)." The term "area" is not defined in the federal regulations. In its July 24, 1980, submission, Utah stated that it was defining the term "area" to clarify the location which the petition seeks to designate or un-designate as suitable for mining. Utah is a public lands state. As such the land has been surveyed and defined by township, range and section numbers. The state noted that this information is readily available from a U.S. Geological Survey topographic map or the county records office. Based on his understanding that the definition of the term "area" is only for clarifying purposes, and will not inhibit the designation process, the Secretary finds Utah's definition acceptable.

(iv) Utah has amended UMC/SMC 764.13 such that only the information required by 30 CFR 764.13 is required in a petition under the Utah program. However, the state also requests additional information, with the proviso that the petitioner may provide the information if it is available, but failure to provide the information will not jeopardize the review of the petition or constitute a reason for rejection of the petition. (See 45 FR 70493, Findings 4(k)(iv)) Utah states that it does not intend these discretionary items to be a burden to the petitioner and will clearly set forth in its Petition Assistance Package, as it has in the regulations, that the lack of information on those items will not adversely affect the review of the petition.

In addition, the State's promulgated regulations in UMC/SMC 764.13(b)(2) require a legal description of the area covered by the petition rather than the Federal requirement of the location and size. On November 18, 1980, the state amended this section to indicate that "legal description" means "township, range and section number." The Secretary finds that these changes make the Utah regulations consistent with the federal regulations. Further, Utah's regulations do not impose a burden on the petitioner because the state has made it clear that the additional information will not adversely affect the review of the petition.

(v) The Secretary finds that Utah's amendment to UMC/SMC 764.15(b)(2), deleting its reference to a state register for a petition completeness notice is consistent with 30 CFR 764.15(b)(2). There is no state register in Utah.

(vi) Utah has amended UMC/SMC 764.17(a) to require the Board to hold a public hearing on a petition in Salt Lake City, Utah, or, at the written request of any interested person, to appoint a hearing examiner for the purpose of taking evidence at a public hearing in the locality of the area covered by a petition and to recommend findings of fact and conclusions of law for ultimate disposition by the Board. The hearing will be legislative and fact finding in nature, without cross-examination of witnesses. The Secretary finds that Utah's provisions for conducting a petition hearing are consistent with the requirement of 30 CFR 764.17(a) for providing for a hearing in the locality of the petition area and the procedures to be followed in the course of the hearing.

(1) In accordance with 30 CFR 732.15(b)(10), the Secretary finds that the Utah Division of Oil, Gas and Mining has the authority under the Utah Rules of Practice and Procedure, Utah laws and regulations and the Utah program to provide for public participation in the development, revision and enforcement of Utah regulations and program, consistent with the public participation requirements of SMCRA and 30 CFR Chapter VII. The Secretary finds that the public has had a meaningful opportunity to participate in the development of the state program submitted to OSM based on the information in the administrative record and the public hearings held in Salt Lake City, Utah on the adoption of regulations pursuant to the Utah (CMRA) and the Utah Rules of Practice and Procedure (June 26–27, 1979; July 26–27, 1979; August 23, 1979; January 9–10, 1980; January 24, 1980; February 14, 1980; August 20, 1980; November 19, 1980 and December 18, 1980). Further, the State on December 1, 1980 provided a summary of the proposed and adopted amendments to their regulations for public review and comment. Approval is based on the following findings by the Secretary or representations made by Utah concerning its laws and regulations:

(i) Utah's amendment to UMC/SMC 771.21(b)(1), adopted on November 19, 1980, provides a three month time limit for the acceptance of a complete permit application. The Secretary finds that Utah's time frame allows sufficient opportunity for review by the Division and the public, and is consistent with the intent of 30 CFR 771.21(b)(1). In addition, on December 18, 1980, Utah adopted an amendment to UMC 771.21(b)(1) changing "surface" to "underground" coal mining and reclamation activities. The Secretary finds that the adoption of this change to UMC 771.21(b)(1) makes the Utah underground regulation consistent with the federal regulations.

(ii) Utah's amendment to UMC/SMC 786.14, which was adopted on November 19, 1980, parallels the federal regulations by including the word "informal" before "conference" whenever referring to conferences on proposed permit applications in sections (a)(1), (a)(2), (b), (b)(2), (b)(3), (b)(4), (c), and (d). The state also deleted in section (b)(4) "Section 5 of the Administrative Procedures Act as amended (5 U.S.C. 544)" and inserted "the Board's Rules of Practice and Procedure." Utah's amended regulation 900(b)(ix) adopting the Board's Rules of Practice and Procedures contains amendments necessary to meet the requirements of 43 CFR 4 and the federal Administrative Procedure Act, 5 U.S.C. 551 et seq. The Secretary finds that Utah's changes are consistent with the requirements of 30 CFR 786.14 for prescribing procedures for requesting and conducting informal hearings on proposed permit applications.

(iii) Utah's amendment to UMC/SMC 700.14(b) which was adopted on August 20, 1980, deletes the provision referring to requests for records and documents under the federal provision 43 CFR Part 2 and the Freedom of Information Act. The Secretary finds Utah's policy of providing records and documents directly from the Division of Oil, Gas and Mining consistent with 30 CFR 700.14(b).

(iv) Utah's amendment to Rule B-1 of the Board's Rules of Practice and Procedure, which was adopted on August 20, 1980, defines "interested person" as "*any* person with an interest which is or may be adversely affected to bring action before the Board." UCA 63-46-8 provides that "an interested person may petition an agency requesting the promulgation, amendment or repeal of a rule" and UCA 40-6-3.3 further provides that "any person or the attorney general on behalf of the state may apply for a hearing before the board . . ." It therefore follows that if any person may petition the board for a hearing that any person may at that hearing also petition for a rule change. This interpretation was confirmed in a telephone conversation between a representative of OSM and the Utah Attorney General (See Administrative Record No. 183). Accordingly, the Secretary finds Utah's provisions under UMC/SMC 700.12 consistent with the intent to provide for public participation in the administration of the state program as found under 30 CFR 700.12.

(m) In accordance with 30 CFR 732.15(b)(11), the Secretary finds that the Utah Division of Oil, Gas and Mining has the authority under Utah law and the Utah program includes provisions to monitor, review, and enforce the prohibition against indirect or direct financial interests in coal mining operations by employees of the Utah Division of Oil, Gas and Mining consistent with 30 CFR Part 705.

These provisions are incorporated in UMC/SMC 705 of the Utah regulations. Approval is based on the following findings by the Secretary or representations made by Utah concerning the Utah laws and regulations:

(i) The Secretary finds that Utah's August 20, 1980, amendment to UMC/SMC 705.6 (a) and (b), which changes the state's reference to "30 CFR Part 705" to "Section 40-10-7 UCA of the Utah CMRA," makes the state provision consistent with the reference in 30 CFR 705.6(a) to Section 517(g) of SMCRA. 30 CFR 705.6 provides that any employee who fails to file a financial interest statement is in violation of SMCRA and is subject to removal.

(ii) The Secretary finds that Utah's adoption of the provisions of 30 CFR 705.21 (a) and (b) in UMC/SMC 705.21 (a) and (b) makes the state's procedures for employee and Division Director's appeals during the review of conflict of interest charges consistent with the federal requirements.

(n) In accordance with 30 CFR 732.15(b)(12), the Secretary finds that the Utah Division of Oil, Gas and Mining has the authority under Utah law to require the training, examination and certification of persons engaged in or responsible for blasting and the use of explosives in accordance with Section 719 of SMCRA. Utah currently has no regulations on the training, examination and certification of persons engaged in blasting because 30 CFR 732.15(b)(12) does not require a state to implement regulations governing such training, examination and certification until six months after federal regulations for these provisions have been promulgated.

On December 12, 1980, OSM published partial final rules establishing minimal requirements for training and certifying persons involved in blasting in surface coal mining operations (45 FR 82034–82100). These regulations are codified at 30 CFR Chapter VII, Subchapter M, Part 850. Subchapter M is now final and complete with the exception of four subsections concerning qualification requirements and experience requirements. These subsections will be reproposed and subject to public comment prior to their final promulgation. Once the complete Subchapter M is finally promulgated, Utah will have an additional six months to prepare and submit to OSM regulations consistent with the federal regulations.

(o) In accordance with 30 CFR 732.15(b)(13), the Secretary finds that the Utah Division of Oil, Gas, and Mining has the authority under Section 40-10-10 UCA of the Utah CRMA and UMC/SMC 795 of the regulations except as discussed in finding 4(o)(i) to provide for a small operator assistance program. Approval is based on the following findings or conditions of approval by the Secretary or representations made by Utah concerning the Utah laws and regulations:

(i) The Secretary finds that Utah's deletion, in UMC/SMC 795.3, of the

provision that limits the Small Operators Assistance Program (SOAP) to the receipt of funding "from the Office of Surface Mining specifically for SOAP," makes the state provision consistent with 30 CFR 795.3. A condition of the Secretary's approval of the Utah program is the deletion of the same phrase from Section 40–10–10(3) UCA of the Utah CMRA or other equivalent program revision so that the state statute will be consistent with the requirements of Section 705(c) of SMCRA for prescribing a Small Operators Assistance Program.

(ii) Utah has amended the definition of "probable hydrologic consequences" in UMC 795.5 to mean the "projected result of proposed underground coal mining and reclamation activities * * *." Utah also amended SMC 795.5 to include "reclamation" in the definition of "probable hydrologic consequences" for surface coal mining activities. The Secretary finds that these changes make the state's definition of "probable hydrologic consequences" consistent with the federal definition in 30 CFR 795.5.

(iii) Utah has amended UMC/SMC 795.14(f)(2) to provide for OSM right of entry to inspect lands to be mined or adjacent lands which may be affected in order to collect environmental data or to install necessary monitoring instruments on such lands as prescribed by 30 CFR 795.14(f)(2). The Secretary finds Utah's regulations consistent with the federal regulations which ensure this right of entry.

(p) In accordance with 30 CFR 732.15(b)(14), the Secretary finds that the Utah Division of Oil, Gas and Mining has the authority under Utah law and the Utah program contains provisions to provide for protection of employees of the Utah Division of Oil, Gas and Mining in accordance with the protection afforded federal employees under Section 704 of SMCRA. UMC/SMC 865 contains the provisions for protection of employees of the Utah Division of Oil, Gas and Mining.

(q) In accordance with 30 CFR 732.15(b)(15), the Secretary finds that the Utah Division of Oil, Gas and Mining has the authority under Section 40–10–22 UCA of the Utah CMRA and UMC/SMC 840, 842, 843 and 845 of the Utah regulations to provide for administrative and judicial review of state program actions in accordance with Sections 525 of SMCRA and 30 CFR Chapter VII, Subchapter L. Approval is based on the following findings or representations made by Utah concerning the Utah laws and regulations:

(i) Utah's amendment to UMC/SMC 840.15, which was adopted on August 20, 1980, deletes the reference to 30 CFR 842, 843, 845 and 43 CFR 4, and references UMC/SMC Part 842, 843, 845; the Board's Rules of Practice and Procedure; and Part 900(b)(ix). The Secretary finds that the state's amended regulations, UMC/SMC 900(b)(ix), which adopt the Board's Rules of Practice and Procedure contain amendments to Rule B–15 meet the federal requirements for discovery, intervention and award of attorney fees. He therefore finds that Utah's provisions are consistent with 43 CFR Part 4.

(ii) Utah's amendment to UMC/SMC 845.20(a), which was adopted on November 19, 1980, corrected a typographical error by adding a new section (a) that makes the state's provision identical to 30 CFR 845.20(a). The Secretary finds that Utah's regulations are consistent with and as stringent as the federal requirement which prescribes that if a person issued a proposed penalty fails to request a hearing, the proposed penalty is due and payable.

(iii) The Secretary finds that Utah's amendment to UMC 700.13 which was adopted on November 19, 1980, includes the term "underground coal mining and reclamation activities", and encompasses complaints on underground as well as surface mining activities, making the State's provisions consistent with 30 CFR 700.13(b).

(iv) On August 20, 1980, Utah amended UMC/SMC 840.15 by deleting the reference to federal regulations 30 CFR Parts 842, 843, 845 and 43 CFR Part 4, and referencing state provisions Part 842, 843, 845, the Board's Rules of Practice and Procedure; and Part 900(b)(ix). The Secretary finds that these changes make the state provisions for public participation valid and workable.

(v) Utah amended UMC/SMC 843.13(d), on November 19, 1980, to prescribe procedures for notice of the Board's order to show cause that are consistent with 30 CFR 843.13 (c) and (d). The Secretary finds that the State's procedures are as stringent as their federal counterpart in that the Board Rules of Practice and Procedure require publication in a newspaper of general circulation, and a statement of the procedure for intervention (Rule B2). Further, the state has amended UMC/SMC 843.13(d) on August 20, 1980 to provide 30 days written notice of the date, time and place of the hearing to the permittee, Division and any intervenor.

(vi) Utah's amendment to UMC/SMC 843.13(e), which was adopted on November 19, 1980, requires that a permittee immediately cease mining and fulfill certain other obligations after the Board determines that a pattern of violations exists. The Secretary finds that the State's amendment is verbatim to and consistent with 30 CFR 843.13(e).

(vii) The Secretary finds that Utah's amendment to UMC/SMC 843.14 which was adopted on November 19, 1980 is identical to 30 CFR 843.14 (a), (b), and (c). The State's omission of section (d), requiring the Division to make available copies of notices and orders is not significant since this requirement falls within UMC/SMC 700.14(b) (see finding 4(1)(iii)).

(viii) The Secretary finds that Utah's amendment to UMC/SMC 843.16, which was adopted on November 19, 1980, requires the Board to issue a decision within 30 days of receipt of a petition for the review of a cessation order, consistent with 30 CFR 843.16 and Section 525(b) of SMCRA.

(ix) Utah's amendment to UMC/SMC 700.5, which was adopted on August 20, 1980, provides that the state regulatory authority is the "Board and Division", as that term is used in the definition of "person having an interest which is or may be adversely affected or person with a valid interest * * *." The Secretary finds that Utah's provisions are consistent with 30 CFR 700.5.

(r) In accordance with 30 CFR 732.15(b)(16), the Secretary finds that the Utah Division of Oil, Gas and Mining has authority under Utah law and regulations, and the Utah program contains provisions to cooperate and coordinate with and provide documents and other information to the Office of Surface Mining under the provisions of 30 CFR Chapter VII.

(s) In accordance with 30 CFR 732.15(c), the Secretary finds that the Utah (CMRA) and regulations adopted thereunder and the other laws and regulations of Utah do not contain provisions that would interfere with or preclude implementation of the provisions of SMCRA and 30 CFR Chapter VII.

(t) The Division of Oil, Gas and Mining and other agencies having a role in the program have sufficient legal, technical, and administrative personnel and sufficient funding to implement, administer and enforce the provisions of the program, the requirement of 30 CFR 732.15(b), and other applicable state and federal laws.

The Secretary undertook an analysis of the proposed Utah staffing plan to assess Utah's ability to properly carry out inspection and enforcement activities and permitting functions as required by the Act. Based on this analysis, the Secretary found in his decision in the October 24, 1980, Federal Register Notice (45 FR 70481–70510), that

Utah needed additional staff. Utah indicated on December 15, 1980 in a discussion with OSM (Administrative Record No. 187), that it has requested funding from its legislature for three fulltime equivalents (FTEs) for inspection and enforcement and one FTE for permit review and administration. Utah expects these additional staff within six months of the Secretary's final decision. As such, Utah will have adequate staff to support its programs on non-federal and non-Indian programs within the initial eight month permit review requirement mandated by Section 506 of SMCRA.

In addition, Utah submitted to OSM for review, a proposed cooperative agreement, which, if entered into by the Secretary, would require necessary inspection and enforcement and permitting staff to carry out the program activities on mines which invoke federal lands. The adequacy of the Utah staffing and funding plan to undertake activities on federal lands will be examined during the review of the proposed cooperative agreement.

Secretary's Decision Background on Conditional Approval

The Secretary is fully committed to two key aims which underlie SMCRA. The Act calls for comprehensive regulation of the effects of surface coal mining on the environment and public health and safety and for the Secretary to assist the states in becoming the primary regulators under the Act. To enable the states to achieve that primacy, the Secretary has undertaken many activities of which several are particularly noteworthy.

The Secretary has worked closely with the Division of Oil, Gas and Mining, and the Utah Oil, Gas and Mining Board. OSM has frequently met with state regulatory authority personnel to discuss informally how the Act should be administered, with particular reference to unique circumstances in individual states. Often these meetings have been a way for OSM to explain portions of the federal requirements and how the state might meet them. Alternative state regulatory options, the "state window" concept, for example, were discussed at several meetings with the Division and Board.

The Secretary has dispensed over $8.9 million in program development grants and over $37.6 million in initial program grants to help the states to develop their programs, to administer their initial programs, to train their personnel in the new requirements, and to purchase new equipment. In several instances OSM detailed its personnel to states to assist in the preparation of their permanent program submissions. OSM has also met with individual states to determine how best to meet the Act's environmental protection goals.

Equally important, the Secretary structured the state program approval process to assist the states in achieving primacy. He voluntarily provided his preliminary views on the adequacy of each state program to identify needed changes and to allow them to be made without penalty to the state. The Secretary adopted a special policy to insure that communication between him and the states remained open and uninhibited at all times. This policy was critical to avoiding a period of enforced silence with a state after the close of the public comment period on its program and has been a vital part of the program review process (*see* 77 FR 54444, September 19, 1979).

The Secretary has also developed in his regulations the critical ability to approve conditionally a state program. Under the Secretary's regulations, conditional approval gives full primacy to a state even though there are minor deficiencies in a program. This power is not expressly authorized by the Act; it was adopted through the Secretary's rulemaking authority under sections 201(c), 503(b), and 503(a)(7) of SMCRA, 30 U.S.C. 1253(b), and 1253(a)(7).

The Act expressly gives the Secretary only two options—to approve or disapprove a state program. Read literally, the Secretary would have no flexibility; he would have to approve those programs that are letter-perfect and disapprove all others. To avoid that result and in recognition of the difficulty of developing an acceptable program, the Secretary adopted the regulation providing the authority to approve conditionally a program.

Conditional approval has a vital effect for programs approved in the Secretary's initial decision: it results in the implementation of the permanent program in a state months earlier than might otherwise be anticipated. While this may not be significant in states that already have comprehensive surface mining regulatory programs, in many states that earlier implementation will initiate a much higher degree of environmental protection. It also implements the rights SMCRA provides to citizens to participate in the regulation of surface coal mining through soliciting their views at hearings and meetings and enabling them to file requests to designate lands as unsuitable for mining if they are fragile, historic, critical to agriculture, or simply cannot be reclaimed to their prior productive capability.

The Secretary considers three factors in deciding whether a program qualifies for conditional approval. First is the state's willingness to make good faith efforts to effect the necessary changes. Without the state's commitment, the option of conditional approval may not be used.

Second, no part of the program can be incomplete. As the preamble to the regulations says, the program, even with deficiencies, must "provide for implementation and administration for all processes, procedures, and systems required by the Act and these regulations" (44 FR 14961). That is, a state must be able to operate the basic components of the permanent program: The designation process; the permit and coal exploration systems; the bond and insurance requirements; the performance standards; and the inspection and enforcement systems. In addition there must be a functional regulatory authority to implement the other parts of the program. If some fundamental component is missing, conditional approval may not be used.

Third, the deficiencies must be minor. For each deficiency or group of deficiencies, the Secretary considers the significance of the deficiency in light of the particular state in question. Examples of deficiencies that would be minor in virtually all circumstances are correction of clerical errors and resolution of ambiguities through attorney general's opinions, revised regulations, policy statements, changes in the narrative or the side-by-side.

Other deficiencies require individual consideration. An example of a deficiency that would most likely be major would be a failure to allow meaningful public participation in the permitting process. Although this would not render the permit system incomplete because permits could still be issued, the lack of any public participation could be such a departure from a fundamental purpose of the Act that the deficiency would most likely be major.

The use of a conditional approval is not and cannot be a substitute for the adoption of an adequate program. Section 732.13(i) of Title 30 of the regulations gives the Secretary little discretion in terminating programs where the state, in the Secretary's view, fails to fulfill the conditions. The purpose of the conditional authority power is to assist, not excuse, states from achieving compliance with SMCRA.

Conditional Approval

As indicated under "Secretary's Findings," there are minor deficiencies in the Utah program which the Secretary

requires be corrected. In all other respects, the Utah program meets the criteria for approval. The deficiencies identified in prior findings are summarized below.

1. A regulation which prescribes standards which a reduced highwall must achieve, in accord with Finding 4(b). Based on knowledge of current mining activities in Utah and the little, if any, potential for major environmental problems to occur before adoption of such standards, since (1) few, if any mines are scheduled for closure and final reclamation, and (2) new operations are required to retain materials necessary to grade to approximate original contour, the effect of the delayed promulgation of such standards is minimal.

2. A regulation which applies the exemption from the use of sediment ponds only to drainages from areas affected by surface operations and facilities where the disturbed surface drainage area within the total disturbed surface area is small and there is no mixture of surface drainage with a discharge from underground mine workings, in accord with Finding 4(c)(viii). All underground mines in Utah use sediment ponds as a sedimentation control measure (Administrative Record No. 168). Further, in not providing the small area exemption, the probability of a mine justifying not using sedimentation ponds to meet the effluent standard limitation is minimal. Finally, the Secretary's approval is conditioned upon Utah adopting revisions to its regulations before the eight month permit application and review deadline, prescribed by Section 506(a) of SMCRA and Section 40-10-9 UCA of the Utah CMRA and 30 CFR 771.13 and UMC/SMC 771.13.

3. A regulation which requires that upon an approved transfer of a well, the transferor is secondarily liable for the transferee's obligations until release of the bond or other equivalent guarantee for the area in which the well is located in accord with Finding 4(c)(xv). While there is no case law in Utah on secondary liability in the event of transfer of water wells, the state does not follow normal rules of liability. For example, in the area of negligence, the Utah Supreme Court stated that:

"* * * [W]e have indicated our agreement with the well established rule that where one is injured by the concurrent negligence of two wrongdoers he can recover from either or both; and this includes circumstances where one has previously created a dangerous condition, which combines with a later act of negligence, if the former is in fact a concurring proximate cause." (Footnote omitted.)

Anderson v. *Parson Red-E-Mix Paving Co.*, 24 Utah 2d 128, 467 P. 2d 45, 46 (1970)

Accordingly, it follows that if an operator negligently created an attractive nuisance with latent defects by drilling a water well, both the operator and his transferee may well be held liable under Utah tort law. As such, the effect of Utah not having a specific regulatory provision prescribing secondary liability in the event of water well transfer is minimal. The state has agreed to correct the regulation by July 1, 1981 as part of the Secretary's conditional approval of the Utah program. Further the likelihood that the State will approve such a transfer prior to the adoption of its proposed regulatory provision for this requirement is minimal.

4. A regulation which prohibits lifts for valley fills greater than four feet, in accordance with Finding 4(c)(xx)(5) and which requires federal approval for the waiver of the underdrain requirement in accordance with Finding 4(c)(xx)(4). Eighty percent of the permitted mining operations in Utah are considered to be on federal lands. The Secretary will have to approve any mine plan for such operations. Further, there are currently no pending new or revised permit applications on non-federal land that involve valley fills. The state has agreed to correct the regulation by July 1, 1980 as part of the Secretary's conditional approval of the Utah program.

5. A regulation which provides surface owner protection from the potential adverse effects of subsidence, in accordance with Finding 4(c)(xxix). Given that the Utah regulation is deficient on only one of three alternatives available to the operator, and the subsidence control measures must be approved as part of the permanent program permit, it is highly unlikely that the alternative would result in any adverse affect on surface owners or resources, before the regulation is revised. The state had agreed to correct the regulation by July 1, 1981 as part of the Secretary's conditional approval of the Utah program.

6. A regulation which prohibits the placement of certain materials on the downslope of steep slopes, in accordance with Finding 4(c)(xxxi). Because of the limited waste material from underground mines and the need for such materials to construct roads and portal embankments in steep slope areas, the probability of any material being deposited on the downslope, out of compliance, is negligible. This is reinforced by the fact that approximately 80% of the mines in Utah are on federal lands and must comply with the prohibition on downslope placement of materials under the interim cooperative agreement. The state has agreed to correct the regulation by July 1, 1981 as part of the Secretary's conditional approval of the Utah program.

7. A regulation that requires monitoring, as a possible subsidence control measure, in accord with Finding 4(d)(ii). Because monitoring is only one of several measures that may be taken to reduce the likelihood of future subsidence, from nearby mining, it is unlikely that this option will be used rather than the others available, in a subsidence control plan approved by the state. The state has agreed to correct the regulation by July 1, 1981 as part of the Secretary's conditional approval of the Utah program. As this date precedes the eight month permit application submission and review deadline prescribed by the Act and the regulations, it is highly unlikely a permit will be approved before a revised regulation is adopted.

8. A statutory amendment that provides for a Small Operator Assistance Program, in accord with Finding 1(a)(i). Utah has had no operators apply for assistance under the interim federal Small Operator Assistance Program, hence it is unlikely that there will be an application before an amendment can be adopted.

9. The statutory amendments correcting errors, in accord with Finding (1)(a). The state has proposed to adopt corrections to the noted typographical errors. The state's recognition of these inconsistencies insures that they will have no impact on the implementation of the law and the state program.

10. A statutory amendment which only allows a citizen suit against the Secretary in a federal court in accord with Finding (1)(a). The state has proposed a statutory amendment correcting this inconsistency. The state's corrective action, the limited probability that such a suit would be initiated before adoption of the amendment and the explicit reservation, hereby, of the right of the Secretary to remove to a Federal Court any suit brought against him in a state court, result in little, if any, effect of the deficiency.

11. A statutory amendment which recognizes "private" mineral estates, in accord with Finding 4(d)(viii). Based on the fact that the state has proposed such an amendment, and the fact that in Utah, the traditional dominance of the mineral estate over the surface estate with respect to private property exists, there will be little, if any, effect of the

state's variance before adoption of the statutory amendment.

12. Statutory amendments to provide that the dates for the determinations for alluvial valley floors, prime farmlands, valid existing rights and substantial legal and financial commitments reflect the dates of SMCRA, in accord with Finding (1)(a). Utah submitted on December 9, 1980, housekeeping amendments to the Utah Legislative Drafting Committee to make these statutory dates consistent with SMCRA. Utah's regulations reflect the dates of 30 CFR Chapter VII for these requirements. Based on the fact that the state expects adoption of these amendments before the eight month statutory and regulatory deadline for the submission and review of all permit applications, effects from the statutory date differences will be denoted or absent. Further, a condition of the Secretary's approval is that the revisions be implemented before the eight month deadline, which for Utah is September 15, 1981.

Given the nature of these deficiencies and their magnitude in relation to all the other provisions of the Utah program, the Secretary of the Interior has concluded they are minor deficiencies. Accordingly, the program is eligible for conditional approval under 30 CFR 732.13(i), because:

1. The deficiencies are of such a size and nature as to render no part of the Utah program incomplete since all other aspects of the program meet the requirements of SMCRA and 30 CFR Chapter VII, and these deficiencies, which will be promptly corrected, will not directly affect environmental performance at coal mines;

2. Utah has initiated and is actively proceeding with steps to correct the deficiencies; and

3. Utah has agreed, by letter dated January 13, 1981, to correct the regulation deficiencies by July 1, 1981 and the statutory deficiencies by December 1, 1981. Accordingly, the Secretary is conditionally approving the Utah program. This approval shall terminate if regulations correcting the deficiencies are not enacted by July 1, 1981, or if state legislation correcting the statutory deficiencies is not enacted by December 1, 1981. This conditional approval is effective January 21, 1981. Beginning on that date, the Division of Oil, Gas and Mining shall be deemed the regulatory authority in Utah for all surface coal mining and reclamation operations and for all coal exploration operations on non-federal and non-Indian lands in Utah shall be subject to the permanent regulatory program.

On non-federal and non-Indian lands in Utah, the permanent regulatory program consists of the state program as approved by the Secretary.

On federal lands, the permanent regulatory program consists of the federal rules made applicable under 30 CFR Chapter VII, Subchapter D, Parts 740–745. In addition, in accordance with Section 523(a) of the SMCRA, 30 U.S.C. 1273(a), the federal lands program in Utah shall include the requirements of the approved Utah permanent regulatory program. The approved state/federal cooperative agreement contained in 30 CFR Part 211 will terminate within 120 days of this approval of the Utah regulatory program. Utah and the Department of the Interior will have the opportunity to enter a revised cooperative agreement to include the requirements of the approved Utah permanent regulatory program.

The Secretary's approval of the Utah program relates at this time only to the permanent regulatory program under Title V of SMCRA. The approval does not constitute approval of any provisions related to implementation of Title IV of SMCRA, the abandoned mine lands reclamation program. In accordance with 30 CFR Part 884, Utah may submit a state reclamation plan now that its permanent program has been approved. At the time of such a submission, all provisions relating to abandoned mined lands reclamation will be revised by the Department of the Interior.

Public and Government Agency Comments

The Secretary received several comments from the public on Utah's program. There were no comments concerning outstanding issues by any of the federal agencies. All of the comments from the public were reviewed and considered by the Secretary in making the decision to conditionally approve the Utah program. The Secretary intends to publish in the Federal Register within the next few days, a summary of the comments received and his disposition of each significant issue they raise.

Additional Findings

The Secretary has determined that, pursuant to Section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this conditional approval.

The Secretary has determined that this document is not a significant rule under E.O. 12044 or 43 CFR Part 14, and no regulatory analysis is being prepared on this conditional approval.

Dated: January 15, 1981.

Joan M. Davenport,

Assistant Secretary of the Interior for Energy and Minerals.

A new Part, 30 CFR Part 944, is added to Subchapter T to read as follows:

Part 944—Utah

Sec.

944.1 Scope.

944.10 State Regulatory Program Approval.

944.11 Conditional State Regulatory Program Approval.

944.12 Provisions of State Regulatory Program Disapproved to Comply with the Order of the District Court.

Authority: Sec. 503, Pub. L. 95–87; 30 U.S.C. 1253.

§ 944.1 Scope.

This part contains all rules applicable only within Utah that have been adopted under the Surface Mining and Reclamation Act of 1977.

§ 944.10 State Regulatory Program Approval.

(a) The Utah State Program, as submitted on March 3, 1980, amended and clarified on June 16 and July 24, 1980, and resubmitted on December 23, 1980, is conditionally approved, effective January 21, 1981.

(b) Copies of the approved program, together with copies of the letter of the Division of Oil, Gas and Mining agreeing to the conditions in 30 CFR 944.11, are available at:

Division of Oil, Gas and Mining, 1588 West North Temple, Salt Lake City, Utah 80441, Telephone: (801) 533–5771.

Office of Surface Mining, Brooks Towers, Room 2115, 1020 15th Street, Denver, CO 80202, Telephone: (303) 837–5421.

Office of Surface Mining, Interior South Building, Room 153, 1951 Constitution Avenue, NW, Washington, DC 20240, Telephone: (202) 343–4728.

§ 944.11 Conditions of State Regulatory Program Approval.

The approval of the state program is subject to the following conditions:

(a) The approval found in Section 944.11 will terminate on December 1, 1981 unless Utah submits to the Secretary by the date copies of fully enacted statutes which delete the condition in Section 40–10–10(d) UCA of the Utah CMRA which limits the Small Operator Assistance Program to receipt of funding from the Office of Surface Mining, to be consistent with Section 517(c) of SMCRA, or otherwise amends its program to accomplish the same result.

(b) The approval in § 944.11 will terminate on December 1, 1981 unless Utah submits to the Secretary by the date copies of fully enacted statutes

revising the dates for the following determinations to be consistent with the dates of SMCRA, or otherwise amends its program to accomplish the same result:

(1) the date for the establishment of the "grandfathering" date of alluvial valley floors under Section 40–10–11(2)(e)(ii) UCA/Section 510(b)(5)(B) of SMCRA

(2) the dates for prime farmland permit application requirements under Section 40–10–11(4) UCA/Section 510(d)(2) of SMCRA.

(3) the date for the establishment of valid existing rights in Section 40–10–24(4) UCA/Section 522(e) of SMCRA.

(4) the date for the determination of substantial legal and financial commitments in Section 40–10–24(1)(e) UCA/Section 522(e)(3) of SMCRA.

(c) The approval in § 944.11 will terminate on December 1, 1981 unless Utah submits to the Secretary by the date copies of fully executed statutes correcting the errors in Sections 40–10–17(2)(j)(ii)(B) UCA and 40–10–16(4) UCA to be consistent with Sections 515(b)(10)(B)(ii) and 519(d) of SMCRA, or otherwise amends its program to accomplish the same result.

(d) The approval in § 944.11 will terminate on December 1, 1981 unless Utah submits to the Secretary by the date copies of fully executed statutes revising the jurisdiction of the Utah courts such that a suit against the United States cannot be conducted in a state court but only in a federal court under Section 40–10–21 UCA of the Utah CMRA, to be consistent with Section 520 of SMCRA, or otherwise amends its program to accomplish the same result.

(e) The approval in Section 944.11 will terminate on December 1, 1981 unless Utah submits to the Secretary by that date copies of fully enacted statutes recognizing "private" mineral estates under Section 40–10–11(f) UCA to be consistent with Section 510(b)(6) of SMCRA or otherwise amends its program to accomplish the same result.

(f) The approval in Section 944.11 will terminate on July 1, 1981 unless Utah submits to the Secretary by the date copies of fully enacted regulations adopting standards for the reduction of highwalls in UMC 817.101(b)(1) to be consistent with 30 CFR 817.101 and Section 510 of SMCRA, or otherwise amends its program to accomplish the same result.

(g) The approval in Section 944.11 will terminate on July 1, 1981 unless Utah submits to the Secretary by the date copies of fully enacted regulations adopting a sediment pond exemption provision in UMC 817.42(a)(3) consistent with 30 CFR 817.42(a)(3)(ii)(A), or otherwise amends its program to accomplish the same result.

(h) The approval in § 944.11 will terminate on July 1, 1981 unless Utah submits to the Secretary, by that date, copies of fully enacted regulations specifying that underdrains are required in all valley fills unless a waiver is granted in connection with an experimental practice approved by OSM, in UMC 817.72(b)/SMC 816.72(c) and specifying lifts for valley fills will not be greater than four feet, or less, if required by the regulatory authority, in UMC 817.72(c)/SMC 816.72(c) consistent with 30 CFR 817.72(c), or otherwise amends its program to accomplish the same result.

(i) The approval in § 944.11 will terminate on July 1, 1981 unless Utah submits to the Secretary by the date copies of fully enacted regulations adopting well transfer liability provisions in UMC 817.53(c) consistent with 30 CFR 817.53(c), or otherwise amends its program to accomplish the same result.

(j) The approval in § 944.11 will terminate on July 1, 1981 unless Utah submits to the Secretary by the date copies of fully enacted regulations providing for surface owner protection from the potential effects of subsidence in UMC 817.124(b) (1) and (3) consistent with 30 CFR 817.124(b) (1) and (3), or otherwise amends its program to accomplish the same result.

(k) The approval in § 944.11 will terminate on July 1, 1981 unless Utah submits to the Secretary by the date copies of fully enacted regulations prohibiting the placement of certain materials on the downslope in steep slope areas in UMC 817.101(c) consistent with 30 CFR 826.12(a), or otherwise amends its program to accomplish the same result.

(l) The approval in § 944.11 will terminate on July 1, 1981 unless Utah submits to the Secretary by the date copies of fully enacted regulations which allow monitoring as a subsidence control measure in UMC 784.20(c)(3)(v) consistent with 30 CFR 784.20(c)(3)(v), or otherwise amends its program to accomplish the same result.

§ 944.12 Provisions of State Regulatory Program Disapproval to Comply with the Order of the District Court.

(a) The following provisions of the Utah permanent regulatory program submission are hereby disapproved to the extent indicated in compliance with the February 26, 1980, May 16, 1980, and August 15, 1980, opinions and orders of the U.S. District Court for the District of Columbia (*In re: Permanent Surface Mining Regulation Litigation* (Civ. Action No. 79–1144)).

(1) Sections UMC/SMC 700.5, the definition of "mine plan area," and the use of the term in Parts SMC 779, SMC 780, UMC 783 and UMC 784 to the extent that they require information outside the permit area that is not specifically articulated in Sections 507 and 508 and the corresponding Utah statutory provisions of 40–10–10 UCA.

(2) Sections UMC/SMC 701.11(d)(1) (i) and (ii), relating to exemptions for existing structures, to the extent that the exemptions are not mandatory after the appropriate findings are made.

(3) Sections SMC/UMC 761.5(a)(2)(i), the definitions of "valid existing rights," to the extent they do not allow recognition of such rights an operator may claim by having made a good faith effort to obtain all permits before 8/3/77 as stipulated by the court's decision.

(4) Sections SMC 761.11(c), 761.12(f)(1) and UMC 761.11(a)(3) and .12(b) to the extent that they prohibit or restrict mining near places eligible for listing on the National Register of Historic Places, and the words "or a statutory or regulatory responsibility for" in UMC/SMC 761.12(f)(1). Further, both provisions are disapproved to the extent that they apply to privately owned places listed on the National Register of Historic Places in addition to publicly owned places.

(5) Sections UMC/SMC 770.11(b)(3), concerning the requirements for maps of the proposed exploration area.

(6) Sections UMC/SMC 761.11(b)(5), concerning the requirements that operators explain their basis for the exploration area when the surface is owned by a person other than the operator.

(7) Sections SMC 779.20, SMC 780.16, UMC 783.20, and UMC 784.21 requiring a permit application to contain a study of fish and wildlife and to include a fish and wildlife reclamation plan.

(8) Sections 779.21 and UMC 783.21 to the extent they require a soil survey for lands other than those which a reconnaissance inspection suggests may be prime farmland.

(9) Sections UMC/SMC 785.17(b)(3) and SMC/UMC 823.14(c), concerning excessive soil compaction, pending OSM's promulgation of a standard for soil compaction.

(10) Sections SMC/UMC 785.17(b)(8), to the extent that they require prime farmland reclamation target yields to be based on estimated yields under a high level of management rather than a level of management equivalent to that used on prime farmlands in the surrounding area.

(11) Sections UMC/SMC 785.19(d)(2)(iii) and (iv) to the extent that the regulations do not allow an analysis from data collected over a period of less than one year or extrapolated from existing data if such shorter period or extrapolation process is sufficient to enable the regulatory authority to make a determination of the impact of the proposed operation on the hydrologic balance of the area.

(12) Sections UMC/SMC 785.19(3)(1)(ii) insofar as the regulations do not allow negligible farmland interruption and undeveloped range lands as exclusions to the hydrologic requirements of Section 40-10-11(2)(e) UCA of the Utah statute.

(13) Sections UMC/SMC 785.19(e)(2) insofar as they prohibit mining when the mining would create a negligible impact on the farm's productive capacity.

(14) Sections SMC/UMC 805.13(d) to the extent that the exception the regulatory authority may grant might be from all of Section 816.

(15) Sections UMC/SMC 806.12(e)(6)(iii), (g)(7)(iii) to the extent they require cessation of operations upon the insolvency of a surety.

(16) Sections UMC/SMC 807.11(e) to the extent they fail to provide for citizens' access to the mine site for performance bond release.

(17) Sections UMC/SMC 808.12(c) to the extent that they limit bond liability to protection of the hydrologic balance.

(18) Sections UMC/SMC 808.14(b) to the extent they allow the regulatory authority to forfeit and keep the entire amount of a bond where the entire amount is not needed to complete a reclamation plan.

(19) Sections SMC 816.42 (a)(1) and (a)(7) to the extent they apply effluent limitation standards to the reclamation phase of a surface coal mining operation.

(20) Sections SMC 816.42(b) and UMC 817.42(b), relating to effluent standard exemptions during major storm periods, pending OSM's promulgation of new sediment removal regulations.

(21) Sections SMC 816.46(b) and UMC 817.46(b), concerning sediment storage volume in sediment ponds, pending OSM's promulgation of new requirements.

(22) Sections SMC 816.46(c) and UMC 817.16.46(c), concerning detention time for water in sediment ponds, pending OSM's promulgation of new requirements.

(23) Sections SMC 816.46(d) and UMC 817.46(d) to the extent they require dewatering devices to have a discharge rate to achieve and maintain the theoretical detention time for sediment ponds.

(24) Sections SMC 816.46(h) and 817.46(h), concerning sediment removal from sediment ponds, pending OSM's promulgation of rules.

(25) Sections SMC 816.65(f), requiring special approval prior to blasting within 1,000 feet of certain buildings and 500 feet of other facilities and which restricts blasting at distances greater than 300 feet.

(26) Sections UMC 817.95 and SMC 816.95, concerning air resources protection, to the extent the control measures enumerated for control of fugitive dust are not directly related to control of soil erosion.

(27) Sections SMC 816.115 and UMC 817.115 to the extent they require an operator who proposes range or pasture as the post-mining land use to actually use the land for grazing for the last two years of bond liability.

(28) Sections UMC 817.116(b) and SMC 816.116(b) to the extent that they state that an operator's responsibility for successful revegetation does not begin until the vegetation reaches 90 percent of the natural cover in the area.

(29) Sections SMC 816.133(b)(1) and UMC 817.133(b)(1) to the extent they do not allow restoration of lands to the conditions they were capable of supporting prior to any mining.

(30) Sections SMC 816.133(c) and UMC 817.133(c) to the extent they require an operator to provide "letters of commitment" for proposed land use changes or for proposed cropland use.

(31) Sections UMC/SMC 823.11(c), 823.15(b), and 823.15(c) to the extent they require an operator on prime farmland to actually return the land to crop production. The land needs only to be "capable" of supporting the designated use.

(32) Sections UMC/SMC 845.13 and 845.14 to the extent they impose a civil penalty point system.

(33) Sections UMC 783.25(c), (h), and (i) to the extent that they require cross sections, maps and plans as part of the information requisite of an underground permit application.

(34) Section UMC 817.54 to the extent that it requires an underground operator to replace the water supply of landowners if the operation contaminates, diminishes or interrupts the supply.

(35) Sections UMC/SMC 823 to the extent that they do not allow an exemption to the performance standards of operations on prime farmlands for surface facilities used over extended periods of time but which effect a minimal amount of land.

(b) The court suspended the requirements of 30 CFR 816.83(a) and 30 CFR 817.83(a) to the extent that they would preclude an exemption from the underdrain requirements for coal processing waste banks where an operator could demonstrate that an alternative to the required subdrainage system would ensure structural integrity of the waste bank and protection of ground or surface water quality. The Utah regulations SMC 816.83(a) (1) and (2) and UMC 817.83(a) (1) and (2) provide for the exemption, as specified by the Court. Nevetheless, Utah's provisions for water control measures for coal processing waste banks would be disapproved to comply with the court's order. UMC 817.102 insofar as these sections do not provide some flexibility for settled fills that have become stabilized and revegetated.

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30 CFR Part 948

Conditional Approval of the Permanent Program Submission From the State of West Virginia Under the Surface Mining Control and Reclamation Act of 1977

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule.

SUMMARY: The State of West Virginia resubmitted to the Department of the Interior its proposed permanent regulatory program under the Surface Mining Control and Reclamation Act of 1977 (SMCRA), following an initial approval in part and disapproval in part. The notice announcing the initial decision was published in the Federal Register on October 30, 1980 (45 FR 69249-69271). The purpose of the resubmission is to demonstrate the State's intent and capability to administer and enforce the provisions of SMCRA and the permanent regulatory program regulations, 30 CFR Chapter VII.

After providing opportunities for public comment and conducting a thorough review of the complete program submission, the Secretary of the Interior has determined that the West Virginia program meets the requirements of SMCRA and the Federal permanent program regulations except for minor deficiencies discussed below. Accordingly, the Secretary of the Interior has conditionally approved the West Virginia program.

A new Part 948 is being added to 30 CFR Chapter VII to implement this decision.

EFFECTIVE DATE: This approval is effective January 21, 1981. This conditional approval will terminate as specified in 30 CFR 943.11 unless the deficiencies identified below have been corrected in accordance with the dates specified in 30 CFR 943.11, adopted below.

ADDRESSES: Copies of the West Virginia program and the administrative record on the West Virginia program, including the letter from the West Virginia Department of Natural Resources agreeing to correct the deficiencies which resulted in the conditional approval, are available for public inspection and copying during business hours at:

Office of Surface Mining, Reclamation and Enforcement, Region I, 603 Morris Street, Charleston, West Virginia 25301, Phone: (304) 342-8125.

West Virginia Department of Natural Resources, Division of Reclamation, Room 322, 1800 Washington Street, East, Charleston, West Virginia 25305, Phone: (304) 348-2757.

Office of Surface Mining, Reclamation and Enforcement, U.S. Department of the Interior, South Building, Room 153, 1951 Constitution Avenue, NW., Washington, D.C. 20240, Phone: (202) 343-4728.

FOR FURTHER INFORMATION CONTACT:

Carl C. Close, Assistant Director, State and Federal Programs, Office of Surface Mining, Reclamation and Enforcement, U.S. Department of the Interior, South Building, 1951 Constitution Avenue, NW., Washington, D.C. 20240, Phone: (202) 343-4225.

SUPPLEMENTARY INFORMATION:

A. Background

The general background on the permanent program, the general background on the state program approval process, and the background on the West Virginia program submission were discussed in the initial decision published in the Federal Register on October 20, 1980 (45 FR 69249-69271). Also, in that notice the Secretary announced his partial approval and partial disapproval of the West Virginia program. The disapproved rules and legislative provisions were disapproved because: (1) the draft regulations submitted on June 16, 1980, had not been promulgated before the 104th day after program submission, as required by 30 CFR 732.11, and (2) the legislative provisions identified as deficient in the October 20, 1980, Federal Register notice were inconsistent with SMCRA and the regulations promulgated thereunder. Under 30 CFR 732.13(f), West Virginia had 60 days from the date of partial disapproval (October 20, 1980) to resubmit a revised program. Thus, the period allowed for resubmission ended December 19, 1980.

On December 19, 1980, West Virginia resubmitted its program, which contains proposed statutory amendments and regulations. Announcement of West Virginia's resubmission was made in newspapers of general circulation within the State of West Virginia and published in the Federal Register on December 19, 1980 (45 FR 83544-83546). A public comment period extending until January 6, 1981, was announced in the December 19 notice. A public hearing on the resubmission was also announced in that notice. The hearing was held in Charleston, West Virginia on January 5, 1981. In response to a request from a mining industry organization, the comment period was extended until January 9, 1981. This extension was announced in the Federal Register on January 6, 1981, (46 FR 1311). The resubmission public comment period ended at 4:00 p.m. on January 9, 1981. Public disclosure of comments by Federal agencies was made on January 15, 1981, in the Federal Register (46 FR 3560).

The Regional Director completed his program review on January 12, 1981, and forwarded the public hearing transcripts, written presentations, and copies of all comments to the Director together with a recommendation that the program be conditionally approved.

On January 15, 1981, the Director recommended to the Secretary that the West Virginia program be conditionally approved.

On January 14, 1981, the Administrator of the Environmental Protection Agency transmitted his written concurrence on approval of the West Virginia program.

The basis and purpose statement for the Secretary's decision to conditionally approve West Virginia's program consists of this notice, the other Federal Register notice cited above, and the October 20, 1980, Federal Register notice announcing the Secretary's initial decision. Throughout the remainder of this notice, the term "West Virginia program" or "West Virginia submission" is used to mean the resubmission together with those parts of the original partially approved on October 20, 1980. The term "State Regulation" or "West Virginia Regulation" refers to the regulations (Sections 2-16) submitted by West Virginia as part of the December 19 resubmission. The term "Technical Handbook" refers to the Technical Handbook which is referred to and incorporated as part of the State's regulations. The term "December 30, 1980, meeting" refers to a meeting held between OSM and the West Virginia Department of Natural Resources (DNR) (Administrative Record No. WV 313). The purpose of the meeting was to discuss apparent deficiencies which had been found in the State program submission.

The Secretary's Findings below are organized to follow the order set forth in Sections 503 of SMCRA and 30 CFR 732.15, respectively. These sections specify the findings which the Secretary must make before he may approve a regulatory program. Where appropriate, the reader is referred to specific paragraphs in the October 20, 1980, Federal Register notice for a complete discussion of the issues.

B. Secretary's Findings

Finding 1

The Secretary finds that Chapter 20, Article 6 of the Code of West Virginia, known as the West Virginia Surface Coal Mining and Reclamation Act (WV SCMRA), and the West Virginia Administrative Procedures Act provide, except as noted in subsequent Findings, for the regulation of surface coal mining and reclamation operations on non-Indian and non-federal lands in West Virginia in accordance with the Surface Mining Control and Reclamation Act of 1977 (SMCRA).

This finding is based on the requirements of Section 503(a)(1) of SMCRA [30 U.S.C. 1253(a)(1)]. Analysis of the issues underlying this finding is found in Findings 12 through 30, below.

Finding 2

The Secretary finds that the WV SCMRA provides, except as noted in subsequent Findings, sanctions for violations of West Virginia laws, regulations or conditions of permits concerning surface coal mining and reclamation operations and that these sanctions meet, except as noted in subsequent Findings, the requirements of SMCRA, including civil and criminal actions, forfeiture of bonds, revocation of permits, withholding of permits, and the issuance of cessation orders by the Department of Natural Resources or its inspectors.

This finding is based on the requirements of Section 503(a)(2) of SMCRA [30 U.S.C. 1253(a)(2)]. Analysis of the issues underlying this finding is found in Findings 18, 19, and 20, below.

Finding 3

The Secretary finds that the Department of Natural Resources has

demonstrated that it has sufficient administrative and technical personnel and funds to enable West Virginia to regulate surface coal mining and reclamation operations in accordance with the requirements of SMCRA.

This finding is based on the requirements of Section 503(a)(3) of SMCRA [30 U.S.C. 1253(a)(3)]. An analysis of the issues underlying this finding is found in Finding 30, below.

Finding 4

The Secretary finds that West Virginia law provides, except as noted below, for the effective implementation, maintenance, and enforcement of a permit system that meets the requirements of SMCRA for the regulation of surface coal mining and reclamation operations on non-Indian and non-federal lands within West Virginia.

This finding is based on the requirements of Section 503(a)(4) of SMCRA [30 U.S.C. 1253(a)(4)]. An analysis of the issues underlying this finding is found in Finding 14, below.

Finding 5

The Secretary finds that West Virginia has established a process for the designation of areas as unsuitable for surface coal mining in accordance with Section 522 of SMCRA.

This finding is based on the requirements of Section 503(a)(5) of SMCRA [30 U.S.C. 1253(a)(5)]. An analysis of the issues underlying this finding is found in Finding 21, below.

Finding 6

The Secretary finds that West Virginia has established, for the purpose of avoiding duplication, a process for coordinating the review and issuance of permits for surface coal mining and reclamation operations with other federal and State permit processes applicable to the proposed operations.

This finding is based on the requirements of Section 503(a)(6) of SMCRA [30 U.S.C. 1253(a)(6)]. An analysis of the issues underlying this finding is found in Findings 13 and 14, below.

Finding 7

The Secretary finds that West Virginia has enacted a statute and regulations, except as noted in subsequent Findings, consistent with regulations issued pursuant to SMCRA.

This finding is based on the requirements of Section 503(a)(7) of SMCRA [30 U.S.C. 1253(a)(7)].

West Virginia has developed and submitted with the material provided on December 19, 1980, revised regulations to implement the WV SCMRA. These regulations are being enacted as temporary rules concurrent with the decision announced in this notice. This action is consistent with the requirements of SMCRA in that West Virginia has all necessary authority to enforce a permanent regulatory program at the time approval by the Secretary is effective. See State Administrative Procedures Act Section 29A-3-14 (Temporary Rules).

Finding 8

The Secretary has, through OSM, solicited and publicly disclosed the views of the Administrator of the Environmental Protection Agency, the Secretary of Agriculture, and the heads of other federal agencies concerned with or having special expertise pertinent to the proposed program.

This finding is based on the requirements of Section 503(b)(1) of SMCRA [30 U.S.C. 1253(b)(1)] and on the information contained in a Federal Register notice published January 15, 1981 (46 FR 3560). This notice identified the federal agencies from which comments were solicited, the agencies which responded and the offices of OSM and the West Virginia Department of Natural Resources at which copies of the comments were made available.

Finding 9

The Secretary has obtained the written concurrence of the Administrator of the Environmental Protection Agency with respect to those aspects of the West Virginia program which relate to air or water quality standards promulgated under the authority of the Clean Water Act, as amended (33 U.S.C. 1151–1175) and the Clean Air Act, as amended (42 U.S.C. 1857 *et seq.*).

This finding is based on the requirements of Section 503(b)(2) of SMCRA [30 U.S.C. 1253(b)(2)] and on the letter transmitted by the Administrator of EPA to the Secretary on January 14, 1981. A copy of this letter has been placed in the West Virginia Administrative Record.

Finding 10

The Secretary, through the OSM Regional Director for Region I, held a public meeting in Charleston, West Virginia, on April 9, 1980, to discuss the completeness of the West Virginia program submission, and held public hearings in Morgantown, West Virginia on July 14, 1980, and in Charleston, West Virginia on July 14, 1980, and January 5, 1981, to solicit public comments on the substance of the West Virginia program submission.

This finding is based on the requirements of Section 503(b)(3) of SMCRA [30 U.S.C. 1253(b)(3)].

Finding 11

The Secretary finds that the State of West Virginia has the legal authority and has demonstrated that it has sufficient qualified personnel necessary for the enforcement of the environmental protection standards of SMCRA and 30 CFR Chapter VII.

This finding is based on the requirements of Section 503(b)(4) of SMCRA [30 U.S.C. 1253(b)(4)]. Analysis of the issues underlying this finding is found in Findings 12 through 30, below.

Finding 12

The Secretary finds that the West Virginia program provides, except as noted below, for West Virginia to carry out the provisions and meet the purposes of SMCRA and 30 CFR Chapter VII.

This finding is made under the requirements of the first half of 30 CFR 732.15(a). Analysis of the issues underlying this finding is found throughout this Federal Register notice. Additional issues which arose during review of the program are as follows.

12.1 As discussed in Finding 12.2 of the October 20 Federal Register notice, Section 20-6-3(t) of the WV SCMRA defines "surface mining" in such a way that it could be interpreted to exempt certain permanent facilities which would be considered "surface coal mining operations" under Section 701(28) of SMCRA. However, in Regulation Section 8A.05, the State defines the permanent facilities which will not be subject to regulation under the State program. The regulation provides that the operator must show the location of the facility and his or her nearest permit area; must describe the use proposed for the facility during mining and its proposed use after mining as well as its present use; and must submit a verified statement that the facility will not be directly involved in the extraction, loading, storage or processing of coal. This regulation clarifies that the State statute is designed to exclude only offices and other permanent facilities not within the permit area. The Secretary finds that this clarification is consistent with the federal definition of surface coal mining operations.

12.2 Section 20-6-10(a)(13)(H) of West Virginia's statute provides that a surface mining permit application must contain maps depicting the location of any "significant aquifers," while Section 507(b)(14) of SMCRA requires that those maps reveal the location of aquifers.

without the qualifying adjective "significant." However, West Virginia Regulation Section 2.106 defines "significant aquifer" consistent with the 30 CFR 701.5 definition of "aquifer." Therefore, West Virginia's provision is equivalent to the federal provision.

12.3 Under 30 CFR 701.5, the definition of "prime farmland" includes the phrase "historically used for cropland," which in turn is defined to include land that has been used for cropland for any five years or more out of the ten years preceding the acquisition of the land for the purpose of mining or resale for mining. Section 4G.03a. of West Virginia's Regulations specifies five years out of the twenty years before the date of the permit application, rather than the date of acquisition. However, it also provides that for lands obtained after the passage of the West Virginia statute and retired from farming, the twenty years shall be calculated, using as an ending date, the date of acquisition for the purpose of mining. Thus, prime farmland bought for mining purposes cannot be exempted from the special requirements applicable to prime farmlands by actions of the purchaser to retire the land from farming. West Virginia's provision is consistent with the federal provision.

12.4 West Virginia defines "valid existing rights" in State Regulation Section 2.131 to include people who were mining coal as of August 2, 1977, people who had made a good faith effort to obtain all necessary permits by that date and people whose property rights would be unconstitutionally taken without compensation by the prohibitions of Section 22(d) of the State statute if they were not deemed to possess valid existing rights.

The federal requirements are different in several respects. First, under Section 522(e) of SMCRA and 30 CFR 761.11, operations which existed on August 3, 1977, are exempt from the prohibitions of Section 522(e). The Secretary interprets the language of State Regulation Section 2.131 which refers to persons mining coal on August 2, 1977, as having the same meaning as the federal provisions; that is, he assumes that West Virginia means only to exempt such persons with regard to the particular operation which existed on August 2, 1977, and not to create an across-the-board exemption covering any operation connected with a person who was mining coal anywhere on August 2, 1977.

The second difference between the West Virginia and federal definitions of valid existing rights is that the State refers to a good faith effort to obtain all permits while the federal rule originally required that such permits be actually issued. However, the court in Round I of *In re: Permanent Surface Mining Regulation Litigation*, Civil Action No. 79-1144 (D.D.C., February 26, 1980) at page 20 held that a good faith effort should suffice to meet the all permits test, and the Secretary is revising his rule accordingly. He assumes that West Virginia will interpret its good faith language consistent with the court's opinion. When the Secretary issues a final rule implementing the court's opinion, the State will, if necessary, have an opportunity to demonstrate that its interpretation of the good faith language is consistent with such a final rule.

The third difference between the State and federal definitions of valid existing rights is that the State definition refers to persons whose rights would be unconstitutionally taken unless they were treated as having valid existing rights. This concept is consistent with the federal provision. As discussed in the preamble to the federal rule, (44 FR 14992, March 13, 1979), the Secretary believes that the purpose of the valid existing rights language in Section 522(e) of SMCRA is to avoid unconstitutional takings, and the federal definition of valid existing rights is designed to protect those rights. Further, meeting the requirements in 30 CFR 761.5 is not the only way to establish valid existing rights, as "VER must be applied on a case-by-case basis, except that there should be no question about the presence of VER where an applicant had all permits for the area as of August 3, 1977" (44 FR 14993, March 13, 1979). As discussed in the meeting of December 30, 1980, West Virginia's rule is intended to mean that the Department of Natural Resources could determine that an applicant has valid existing rights only where it finds that he or she meets one of the first two criteria of the State's definition. If the DNR is unable to make such a finding, the applicant would have the option of asking a court to make the determination under the third criterion that he or she has valid existing rights because the designation would otherwise be an unconstitutional taking. The State does not believe that the DNR is legally authorized to make this consitutional determination. Thus, the third provision under State Regulation 2.131 would come into play only after a judicial determination had been made that the individual would suffer an unconstitutional taking of property unless VER was granted. The Secretary finds that West Virginia's definition is consistent with the federal requirements.

Finding 13

The Secretary finds that the Department of Natural Resources has, except as noted below, the authority under West Virginia laws to implement, administer, and enforce applicable requirements consistent with 30 CFR Chapter VII, Subchapter K (performance standards) and the West Virginia program includes, provisions adequate to do so, with the exceptions noted below. This finding is made under the requirements of 30 CFR 732.15(b)(1).

West Virginia incorporate provisions corresponding to Sections 515 and 516 of SMCRA and the provisions of Subchapter K of 30 CFR Chapter VII in Sections 13 and 14 of Chapter 20, Article 6 of the Code of West Virginia and throughout the body of the State's regulations. Section (g)(8) of the program narrative contains a discussion of West Virginia's administrative and enforcement procedures for performance standards.

Discussion of significant issues raised during the review of the West Virginia environmental performance standards follows.

13.1 As discussed in Finding 13.1 of the October 20, 1980 Federal Register notice, although the West Virginia statute is consistent with federal requirements concerning backfilling and grading, the regulations concerning auger mining on previously mined lands are inconsistent. State Regulation Section 6B.09f.3. only requires backfilling after augering on previously mined lands to a depth of four feet over the augered coal seam. Section 515(b)(3) of SMCRA, 30 CFR 816.102(a)(2) and the policy statement of Walter Heine of September 13, 1979, all require complete highwall elimination following augering, although deviations from approximate original contour may be allowed on previously mined lands. This interpretation is supported by the decision of the Interior Board of Surface Mining Appeals in *Miami Springs Properties*, IBSMA 80-76 (1980) which has been remanded for further hearings. Approval of West Virginia's program is conditioned upon amendment of the State regulation to require highwall elimination following auger mining of previously mined lands.

13.2 As discussed in Finding 13.2 of the October 20 Federal Register notice, State law (Section 20-6-13(b)(20)) holds the operator responsible for revegetation success for five growing seasons, while Section 515(b)(20) of SMCRA refers to five years. However, West Virginia Regulation Section 2.54 defines "growing season" to mean one year, thus making

the State program consistent with the federal requirements.

13.3 As discussed in Finding 13.3 of the October 20 Federal Register notice, Section 20-6-13(b)(21) of the State's law is inconsistent with Section 515(b)(22) of the SMCRA. State Regulation Section 6B.06f defines the conditions under which the Director, DNR, will exercise the discretion granted him by Section 20-6-13(b)(21) to allow disposal of excess spoil outside a permit area for surface mining operations. These conditions restrict such areas to those under a different permit or under contract for reclamation pursuant to West Virginia SCMRA and regulations. The Secretary considers the existence of a contract for reclamation work performed under State law to be the equivalent of a permit and bond for the purposes of this section. Since the disposal area will either be under State permit or subject to a State abandoned mine lands reclamation project, the Secretary finds this provision of the State program is consistent with the requirements of Section 515(b)(22) of SMCRA.

The State regulations for underground mining and facilities incidental to mining do not have a similar provision. Instead, each requires that the disposal area must be within the permit area, State Regulation Sections 7B.09a. and 8B.10a. The Secretary interprets this omission to mean that the Director will not exercise his discretion to allow the variance with respect to underground mining and facilities incidental to mining. On this basis, the Secretary finds that the State provisions are consistent with the federal requirements.

13.4 As discussed in Finding 13.4 of the October 20 Federal Register notice, West Virginia's statute [Section 20-6-13(b)(25)] allows the use of constructed outcrop barriers to prevent slides and erosion, while Section 515(b)(25) of SMCRA requires retention of a natural barrier. As part of its resubmission, the State has submitted evidence (Dames & Moore study, *Alternate Practice for Outcrop Barriers)* which indicates that West Virginia's provision may be more stringent than the SMCRA requirement. After having reviewed the Dames & Moore study, the Secretary agrees that the State's alternative for a constructed outcrop barrier may be more stringent than its federal counterpart. However, the State submission does not contain specific criteria for design of constructed outcrop barriers that would ensure that their performance in preventing slides and erosion will be more effective than that of a natural barrier.

Approval of West Virginia's program is conditioned on amendment of the State program to include specific criteria for design of constructed outcrop barriers which will achieve better results than under Section 515(b)(25) of SMCRA when constructed outcrop barriers are approved by the regulatory authority.

13.5 As discussed in Finding 13.5 of the October 20 Federal Register notice, Section 20-6-13(d) of the West Virginia SCMRA contains a provision for spoil from the initial cut to be placed on the downslope with the approval of the Director of the Department of Natural Resources. This appears to conflict with Section 515(d)(1) of SMCRA, which forbids spoil on the downslope except where spoil not needed for restoration to approximate original contour is permanently stored in a fill under Section 515(b)(22). The Attorney General's opinion submitted with West Virginia's resubmission (Part A, response to Finding 13.5) refers to State Regulations Sections 6B.06, 7B.09 and 8B.10 for interpretation of the language of the State law. The Secretary finds that these sections require that all spoil not required to achieve the approximate original contour shall be disposed of in accordance with standards that are consistent with Section 515(b)(22) of SMCRA. On this basis, the Secretary finds that first cut material must be disposed of in accordance with requirements for excess spoil or used to return the site to its approximate original contour. Thus, the State requirements are found to be consistent with the federal requirements.

13.6 As discussed in Finding 13.6 of the October 20 Federal Register notice, West Virginia needed to enact regulations establishing jurisdiction over liquid waste consistent with Section 516(b)(5) of SMCRA. State Regulation Sections 6B.07c.3. and 7B.08c.3. provide such jurisdiction, rendering the State program consistent with the federal requirements.

13.7 As discussed in Finding 13.7 of the October 20 Federal Register notice, WV SCMRA Sections 20-6-13(b)(10)(B) and 20-6-14(b)(9)(B) regarding effluent standards do not alone meet all the requirements of Section 515(b)(10)(B)(i) of SMCRA and the federal regulations which implement this provision. State Regulation Sections 6B.04b., 7B.04b., 8B.04b., 9B.03b. and 10C.03c. include language consistent with the federal provisions. Further, the Attorney General's Opinion (Part A, response to Finding 13.7) points out that the West Virginia Code, Chapter 20, Article 5A, also requires all permittees to comply with applicable federal water quality standards and effluent limitations. The Secretary finds that the regulations cited above and the requirements of Chapter 20-5A of the WV Code make the program consistent with federal requirements.

The Attorney General also advised that additional language will be proposed to the West Virginia Legislature to make the WV SCMRA consistent with the SMCRA. The Secretary believes the additional language would be helpful in resolving any questions that may result from the differing construction of the two laws and urges that the change be made. A successful challenge to the authority of the DNR to promulgate or enforce the regulations being approved could result in the Secretary being forced to intervene in the administration of the West Virginia program. A statutory amendment would obviate this possibility.

13.8 As discussed in Finding 13.8 of the October 20 Federal Register notice, West Virginia allows woodlands as an alternative postmining land use in mountaintop removal operations. [WV SCMRA Section 20-6-13(c)(3)]. Section 2.13 3 of the State's regulations defines "woodlands" to include only *commercial* woodlands "where flat or gently rolling land is essential for the operation and harvesting: Provided that environmental benefits would occur from such a woodland, post-mining land use".

Finding 13.8 of the October 20 notice pointed out that the preamble to the federal rules, 44 FR 15336–15339 (March 13, 1979), states that flat or gently rolling terrain is not necessary for silviculture and therefore silviculture would not be an acceptable alternative postmining land use. However, by strictly limiting its definition of woodlands to require that the operator demonstrate that flat land is *essential* to the proposed *commercial* land use, West Virginia would permit such an alternative post-mining land use only where the concern discussed in the federal regulation preamble is met. Thus, although there may be no across-the-board need for flat areas for silviculture, there might in a specific case be special circumstances which would make flat land essential. The Secretary finds that West Virginia's provision for a *commercial* woodlands alternative post-mining land use is consistent with the federal provisions.

13.9 As discussed in Finding 13.9 of the October 20 Federal Register notice, West Virginia's program initially failed to require design and/or certification by a registered professional engineer (RPE) as required by Sections 515(b)(10) of

SMCRA with regard to siltation structures and 515(c)(3) with regard to the stability, drainage and configuration necessary for the intended alternative post-mining land use. West Virginia Regulation Section 3E.01 provides that an "approved person" for purposes of Sections 20-6-10(a)(13) of the State statute must be a registered professional engineer (RPE). Section 20-6-13(b)(10) of the State law covers siltation structures. RPE certification of fill stability is required by Chapters 8.10, 9.10, and 10.9 of West Virginia's Technical Handbook; RPE certification of drainage systems is required by Section 20-6-13(b)(10)(B) of the State statute; and RPE certification of the final surface configuration is required by Section 20-6-10(a)(13)(iv) of the State statute. The Secretary finds the West Virginia provisions are consistent with Sections 515(b)(10) and 515(c)(3) of SMCRA.

13.10 As discussed in Finding 13.10 of the October 20 Federal Register notice, WV SCMRA Section 20-6-14(b)(12) regarding the location of drift-mine openings in acid producing or iron producing coal seams is inconsistent with Section 516(b)(12) of SMCRA. The Attorney General's opinion (Part A) indicates that changes to this State section will be proposed to delete the Director's discretion with regard to the placement of these openings. The opinion also refers to State Regulation Section 7D, which limits the Director's discretion. However, this regulation still provides variances to Section 516(b)(12), which specifically requires "that openings for *all* new drift mines working acid-producing or iron-producing coal seams be located in such a manner as to *prevent* a gravity discharge of water from the mine." (Emphasis supplied) State Regulation Section 7B.05 also allows for gravity discharge from these types of mines. In view of this language, the Secretary finds that WV SCMRA Section 20-6-14(b)(12) and Regulation Sections 7B.05 and 7D are inconsistent with Section 516(b)(12) of SMCRA. Approval of the West Virginia program is conditioned on the State amending its statute and regulations or otherwise amending its program to prohibit gravity discharge consistent with Section 516(b)(12) of SMCRA.

13.11 As discussed in Finding 13.11 of the October 20 Federal Register notice, Section 20-6-3(e) of West Virginia's statute allows "minor deviations" in its definition of approximate original contour. In its resubmission (Attorney General's opinion, Part A), the State identifies Chapter 18.4.2 of the Technical Handbook as demonstrating consistency with SMCRA. This section of the Handbook discusses constructed drainage facilities near the tops of backfilled highwalls. In the meeting of December 30, 1980, the State confirmed that these drainage structures are the only minor deviations allowed under their statute and regulations. The structures allowed in Chapter 18.4.2 of the State's Technical Handbook are consistent with the Secretary's interpretation of approximate original contour and do not violate the requirement that the highwall be eliminated. The Secretary considers this official State interpretation to be a binding element of the State program and relies upon it in approving the State's provisions as consistent with the federal requirements.

13.12 As discussed in Finding 13.12 of the October 20 Federal Register notice, the State definition of "adequate treatment" in Section 20-6-3(a) of its statute states that treated water shall not lower the water quality standards established for the body of water concerned. Since lowering of water quality standards is an administrative process and not a function of a mining operation, the meaning of the State's definition is unclear. The Attorney General's opinion (Part A) indicates that changes will be proposed to the State Legislature to make this section of the law consistent with Section 515(b)(10) of SMCRA. Furthermore, as stated in Finding 13.7 above, State Regulation Sections 6B.04b, 7B.04b., 8B.04b., 9B.03b. and 10C.03c. are consistent with the federal rules. Approval of West Virginia's program is conditioned on amendment of its statute or other program amendment to meet the concerns discussed in the October 20 notice and make it consistent with Section 515(b)(10) of the SMCRA.

13.13 As discussed in Finding 13.13 of the October 20 Federal Register notice, the State's definition of "affected area" in Section 20-6-3(b) of its statute may not provide jurisdiction over ground water. The Attorney General's opinion (Part A, response to Finding 13.13) points to Section 20-6-14(b)(9) of the WV SCMRA which specifically requires protection of "* * * the quantity and the quality of water in surface and ground water systems * * *". This specific performance requirement establishes the necessary jurisdiction.

13.14 In Finding 13.14 of the October 20 Federal Register notice, the Secretary found that the definition of "disturbed area" in Section 20-6-3(j) of the State law is inconsistent with the federal definition in 30 CFR 701.5. This finding was based on two factors. First, the State definition fails to include areas upon which topsoil, spoil, coal processing waste, underground development waste or non-coal waste are placed. Second, the definition does not provide that the area is considered to be disturbed until the bond is released.

The first concern has been addressed by the requirements of State Regulation Sections 2.20 and 10B.03a, and Chapters 8.4 and 8.12 of the Technical Handbook, except for topsoil storage areas. Section 10B.03a provides that as a requirement of site development for coal mine waste piles, the area must first be cleared and grubbed. Chapter 8.4 and 8.12 of the Technical Handbook provides the same requirement for spoil disposal areas. This means that the area would be "disturbed" as defined by Section 20-6-3(j) of the West Virginia statute. Additionally, State Regulation Section 2.20 provides that "coal waste" is any waste coal, rock shale, slurry, culm, gob, boney, slate, clay or related materials associated with or near a coal seam. These two provisions would assure treatment of the areas which were of concern to the Secretary as "disturbed", except for topsoil storage areas. The Secretary is unable to find that a topsoil storage area would fall within the definition of "disturbed area". Thus, such areas would not be subject to provisions of the program, such as Section 6B.04a. of the State Regulations which requires all surface drainage from the disturbed area to pass through sediment control structures.

The second concern is addressed by the definition of the term "completion of reclamation" at State Regulation Section 2.31.

That definition provides that reclamation is incomplete until the total bond has been released.

Approval of the State's definition of "disturbed area" is conditioned upon inclusion of topsoil storage areas under this provision or other amendment of the State program to make its provisions consistent with the federal requirements.

13.15 As discussed in Finding 13.15 of the October 20 Federal Register notice, Section 711 of SMCRA provides for the use of experimental practices with the authorization of the regulatory authority and the approval of the Secretary, but Section 20-6-33 of the WV SCMRA fails to provide for the Secretary's approval. In the October 20 notice, OSM stated that this deficiency could be corrected by a regulation requiring that all proposed experimental practices receive approval of the Secretary prior to their initiation. State

Regulation Section 3H.04 requires that the Director of OSM approve any experimental practice authorized by the regulatory authority. Since the Secretary has delegated this authority to the Director of OSM, West Virginia's requirement is equivalent to the federal provisions.

13.16 As discussed in Finding 13.16 of the October 20 notice, the narrative discussion in the State's original submission was inadequate to demonstrate the State's capability of administering and enforcing its program. In the narrative discussion in the State's resubmission, the State provided more detailed information on the number, qualification and distribution of permanent program staff. This information is presented at several places in the narrative resubmission. The State describes the staffing of the District Review Teams for reviewing permit applications under the topic "Finding 14.5 Comment No. 25." The number, qualifications and distribution of its permanent program staff, together with estimates as to how existing and proposed staff can effectively administer the program, are identified under the topic "Finding No. 30." On the basis of this new information, the Secretary finds that the State has demonstrated that it has the capability for administering and enforcing its permanent program performance standards. Further discussion concerning these issues can be found in Findings 14, 20 and 30 below.

13.17 30 CFR 816.101(a) (1) and (3) provides that the time for backfilling and grading may be extended only where the permittee demonstrates through a "detailed written analysis" that more time is necessary. State Regulation Section 6B.09b.7 provides that extensions may be granted where the permittee "affirmatively demonstrates" necessity. The Secretary interprets this language to mean that the demonstration must be in writing and thus finds the State's regulations to be equivalent to the federal rule.

13.18 The Secretary finds that State Regulation Section 6B.02, which addresses the casing and sealing of holes for purposes of assuring that water pollution does not result, is not consistent with 30 CFR 816.13–15 because it does not contain provisions for protective devices and temporary sealing. The federal provisions provide for the protection of the public, livestock, wildlife and machinery for the potential harmful effects of exploratory and other holes which are not properly managed or plugged. Approval of West Virginia's program is conditioned upon the addition of language in its regulations or other program amendment providing the additional safeguards found in 30 CFR 816.13–15.

13.19 Federal rule 30 CFR 819.11(c)(1) requires that auger holes discharging water containing toxic-forming or acid-forming material be sealed or treated within 72 hours, while non-discharging holes must be sealed within 30 days. West Virginia's statute, Section 20–6–13(b)(9), require that all auger holes be sealed, but contains no time limit. State Regulation Section 6B.09.b.2. and .3. require that backfilling and grading follow augering within 30 days. Since auger holes would have to be sealed prior to backfilling and grading, this in effect requires that auger holes be sealed within 30 days. With regard to the 72-hour requirement, State Regulation Section 6B.02 provides that no discharge from an auger hole may violate water quality standards. West Virginia representatives stated at the December 30, 1980 meeting that they interpret their rules to require immediate treatment of leaking auger holes. This is more stringent than the federal 72-hour requirement. The Secretary considers this policy statement by West Virginia to be a binding and enforceable part of the State program, and finds the State provisions consistent with the federal provisions.

13.20 The Secretary finds that State Regulation Section 6B.07b., which deals with auger mining, does not meet the requirements of 30 CFR 819.11. First, the State has no counterpart to the requirement in 30 CFR 819.11(a) that auger mining be conducted to maximize recoverability of mineral reserves remaining after mining by providing undistributed areas for future underground entrances along augered highwalls. The requirement generally pertains to only those coal seams and areas where later recovery of remaining minerals would be practical by underground mining techniques.

The second inconsistency is that 30 CFR 819.11(c) provides that the regulatory authority "shall" prohibit auger mining under certain circumstances, including where a prohibition is necessary to maximize mineral recoverability, as well as where there are environmental problems. The State regulations and Section 20–6–13(b)(9) of the WV SCMRA provide that augering "may" be prohibited in order to maximize the utilization, recovery or conservation of the mineral and under certain other listed circumstances.

Approval of West Virginia's program is conditioned on the inclusion of provisions to maximize recoverability of mineral resources as required by Section 515(b)(9) of SMCRA and 30 CFR 819.11, and to make the prohibition of auger mining mandatory as in 30 CFR 819.11(c).

13.21 30 CFR 816.85(d) requires that coal refuse shall be covered with four feet of non-toxic and non-combustible material, except under specified conditions. While Section 6B.05.b of the West Virginia regulations provides for the four-foot cover for facilities incidental to coal mining, Section 10 of the regulations, which governs coal mine waste piles, does not. At the December 30, 1980, meeting, the State noted that omission of the four-foot standard was inadvertent. Approval of West Virginia's program is conditioned upon addition of corrective language in its regulations or other program amendment to provide standards consistent with the federal requirements.

13.22 30 CFR 816.85(a) requires that coal processing waste banks be constructed in compliance with the provisions of 30 CFR 816.71 and 816.72. State Regulation Section 10 fails to incorporate all provisions of 30 CFR 816.71 and .72. Specifically, the State has failed to include requirements consistent with the provisions of 30 CFR 816.71(j), which provides for inspections during construction and 816.72 (b)(1) and (b)(4), which pertain to the design of drainage structures. In addition, State Section 10(3.08c.3.c. provides for approval of impoundments on the fill, while 30 CFR 816.71(g) provides that no impoundments shall be allowed. Approval of the West Virginia program is conditioned on amendment of Section 10 of the State regulations or other program amendment to make the State program consistent with these federal requirements.

13.23 30 CFR 816.74(c)(1) requires that fill underdrain design be based on the maximum anticipated discharge. Chapter 10.5.4 of West Virginia's Technical Handbook requires that the system be designed based on measured or anticipated flows, but does not specifically state that maximum flows must be anticipated. However, State Regulation Sections 6A.02.b.1 and 2 require that field flow data must be taken at regular monthly intervals for a period of at least six consecutive months before the permit application. Thus, as the State explained in the December 30, 1980, meeting, it would not be acceptable for an operator to measure or anticipate flow only during a dry season; he or she must anticipate maximum flows. The State provisions are equivalent to the federal rule.

13.24 State Regulation Section 6B.07e.1. provides for modification of backfilling and grading requirements for

special land use purposes. The language of the regulation appears to provide a broad variance from other requirements for backfilling and grading, including requirements for approximate original contour or highwall elimination. The State has provided no explanation of the variance and no criteria for its use. The Secretary cannot approve a provision which allows variances from approximate original contour requirements, except as authorized by Sections 515(c) and 515(e) of SMCRA and 30 CFR 824.11 and 826.15. The language of the West Virginia regulation does not include the criteria included in the federal law and regulations. Approval of the West Virginia program is, therefore, conditioned upon the exclusion of this provision as submitted from the program. If the State intends Regulation Section 6B.07e.1. to implement Section 20-6-13(e) of the WV SCMRA, revised regulations consistent with 30 CFR 824.11 and 826.15 should be proposed.

13.25 30 CFR 780.21(b) provides that existing structures which cannot be reconstructed without causing significant harm to the environment or public health and safety shall be abandoned. West Virginia has no regulation explicitly stating this requirement. However, as the State explained at the meeting of December 30, 1980, they interpret their rules to imply such a requirement. State Regulation Sections 3H.02 and 3H.03 and Chapter 21 of the Technical Handbook provide that all pre-existing structures must comply with all standards in order to be used. This implies that such structures must be abandoned if the standards cannot be met. The Secretary considers this interpretation to be a binding element of the State program and relies upon it in approving this provision as consistent with the federal requirement.

13.26 West Virginia Regulation Sections 6A.02.b.1 and 7A.02.b.1. do not require that permit applications contain water analyses related to total manganese, as required by 30 CFR 783.16(b)(2)(vi). However, WV SCMRA Section 20-6-10a[19] and State Regulation Section 6A.02b. grant the State the necessary authority to require this analysis. Approval of West Virginia's program is conditioned upon addition of a requirement consistent with 30 CFR 783.16(b)(2)(vi).

13.27 30 CFR 816.101(a)(3) requires that during area strip mining operations rough backfilling and grading (1) shall be completed *within 180 days* following coal removal, and (2) shall not be more than four spoil ridges behind the pit being worked. State Regulation Section 6B.09b.4., although it provides that backfilling and grading shall not be more than two spoil ridges or 3,000 feet behind the pit and is more stringent in this regard, is not as stringent overall as the federal rule because it omits the 180-day requirement. Accordingly, approval of the West Virginia program is conditioned upon a regulatory change that incorporates the 180-day requirement into the regulations for backfilling and grading in area strip mining.

13.28 Federal regulation 30 CFR 824.11(a)(7) requires a static safety factor of 1.5 or greater if the outslopes of the level plateau or rolling configuration created by mountaintop removal exceed a slope of lv:2h. West Virginia Regulation Section 6B.07c.2. fails to restrict slopes in excess of lv:2h to those having a static safety factor of 1.5 or greater. Accordingly, the Secretary finds this provision inconsistent with the federal requirements. Approval of the West Virginia program is conditioned upon an amendment which provides for the prohibition of outslopes greater than lv:2h unless a minimum static safety factor of 1.5 will be attained.

13.29 Section 515(d)(1) of SMCRA and 30 CFR 826.12(a)(i)(C) forbid placing or leaving debris on the downslope in areas of steep slopes. State Regulation Section 6B.07.a.2 allows the Director of the DNR to permit windrowing timber where the permittee makes certain showings. The Secretary considered and rejected a similar modification to the federal rule 44 FR 15291, (March 13, 1979). Approval of West Virginia's program is conditioned on amendment of the State program to forbid leaving any debris on the downslope consistent with the federal provisions.

13.30 State Regulation Section 4C.04g. allows a peak particle velocity of two (2) inches per second which shall not be exceeded at the nearest residence, building, or structure. This is inconsistent with 30 CFR 816.65(i), which requires that the maximum peak particle velocity shall not exceed 1 (one) inch per second at the location of any dwelling, public building, etc.

The first problem is that the State standard of two inches per second peak particle velocity is less stringent than the federal standard. The second problem is that the State states that the peak particle velocity shall not be exceeded at the *nearest* residence, building, etc. while the federal regulation says the peak particle velocity shall not be exceeded at the location of *any* dwelling, public building, etc. Ground motion resulting from a blast, depending upon location, topography, and geologic conditions may not be in excess at the nearest dwelling but be in excess at a more distant structure in another direction from the blast location. Therefore, the State regulation is less stringent than its federal counterpart.

Approval of the West Virginia program is conditioned upon amendment of State Regulation Section 4C.04g to reflect the requirements of 30 CFR 816.65(i) regarding peak particle velocity and the locations where the velocity is to be measured.

13.31 The Secretary finds that State Regulation Section 4D.04 does not provide for a 60 day period for alternate land use plan review by appropriate State and Federal fish and wildlife management agencies. This time period is found in 30 CFR 816.133(c)(8) and is designed to provide adequate review of the suitability of such proposed plans prior to the beginning of operations. Approval of West Virginia's program is conditioned upon the inclusion of a regulation or other program amendment to provide for a review period consistent with 30 CFR 816.133(c)(8).

13.32 State regulations addressing the transfer of exploratory or monitoring wells consistent with 30 CFR 816.53 and 30 CFR 817.53 have not been submitted. State Regulation Sections 6B.02, 7B.02 and 8B.02 provide for management, sealing, or casing, or use in groundwater monitoring, but do not contain criteria for transfer of such wells to a third party. Since the State Attorney General has indicated the transfer of wells could occur in West Virginia (Administrative Record No. WV 3236), such regulations should be included. Approval of the West Virginia program is conditioned upon the addition of requirements consistent with 30 CFR 816.53 and 30 CFR 817.53.

13.33 The West Virginia program does not require that operators promptly notify the regulatory authority of slides which may have a potential adverse affect on public property, health, safety, or the environment or that the operator comply with remedial measures required by the regulatory authority when such slides occur as required by 30 CFR 816.99(b) and 30 CFR 817.99. Notification is important because it is the first in a sequence of events (e.g., emergency evacuations, traffic control, or entry for remedial measures by other than mine personnel) that might occur should the slide pose substantial threats or require more effective measures than those contemplated by the operator or within his power to effect. Approval of West Virginia's program is conditioned upon the inclusion of regulations or other program amendments to require

operators to notify the regulatory authority of slides and comply with any remedial measure required.

13.34 In accordance with 30 CFR 731.13 the State of West Virginia proposed in its resubmission of December 19, 1980 an alternative to the provisions of 30 CFR 816.72, 816.73, and 817.72 which provide for the design standards of valley and head-of-hollow fills. The legal authority for West Virginia's proposal is found in Section 20-6-13 of the West Virginia SCMRA and State Regulation Section 6B.06c. and Chapter 8 of the Technical Handbook.

The State proposal combines all federal requirements for valley and head-of-hollow fills with the exception of the requirements for diversions of water off or away from the fill in channels at the sides of the fill, 30 CFR 816.72 and 817.72. This combination of criteria would result in all West Virginia fills having a central rock core drain without the diversion of water provided in the federal valley fill requirements. The requirement found in 30 CFR 816.73(a), which assures that head of hollow fills are limited to a maximum 250,000 cubic yards if not constructed to the ridge line, would not be included. The State could approve exceptions to these requirements under State Regulation 6B.06c if the method of construction had been previously approved by OSM.

The limitation on the size of head of hollow fills that are not constructed at the ridge line was adopted in the federal regulations based upon evidence then available and expert opinion submitted to the Secretary. This data indicated that the central rock core drain system could be blocked or the flow of water entering the core impeded over time if the structure was situated so as to be subjected to the flow from a substantial upstream drainage area. This impeded flow or blockage could affect the water carrying capacity of the rock core system and eventually, the structural integrity of the fill. In addition, there was concern that the increased flow onto the face of the fill from the increased upslope drainage would erode the surface of the fill creating downstream pollution and surface instability and potentially saturate the fill so as to affect its integrity.

The State has provided two justification documents in support of its proposal: The West Virginia Section of the American Society of Civil Engineers, Committee on Surface Mining Regulations Report and a professional field evaluation of existing fills in West Virginia, conducted June 30 through July 2, 1980, by a committee composed of industry and State government officials representing a variety of disciplines. It is difficult to draw specific conclusions from these documents regarding long term effects of allowing run-off from upslope drainage areas through a rock core system in or over fills greater than 250,000 cubic yards. The documents do provide evidence and experience that West Virginia rock core fills are sound and may provide "* * * a higher factor of safety than natural hillsides * * *" The two studies take note of the fact that the rock core has a percentage of voids as high as 25 to 30% of total volume of the core and that the voids are substantial in relation to the amount of fines which would be transported through the core. Further infiltration of material from the face of the fill or to the core would be limited due to required revegetation and reclamation practices. These factors support a finding that the probability of blockage or impeded water flow is within acceptable limits.

The results of the American Society of Civil Engineers report are further verified by the field inspection and study of actual fills constructed in the 1970's in West Virginia under equivalent or very similar design criteria as that proposed. The observations indicate that the fills have remained stable in fact and show for all practical purposes that neither degradation in their integrity nor significant pollution from the flow through the core or from drainage transported across the face of the core have occurred.

The local geologic, topographic, and hydrologic conditions and industry familiarity with West Virginia rock core drainage systems establish the need for the modification of federal requirements proposed by West Virginia. These factors must be balanced against the complexity of designing, constructing and maintaining steep slope conveyances for drainage across natural ground required by the present valley fill requirements.

The Secretary finds that the materials provided by West Virginia support approval of the proposed "state window" but remains concerned about the potential impacts of substantial flows of water onto or over the fill from drainage areas above. In order to fully assure that substantial problems will not result, the Secretary's approval is conditioned on the State providing additional scientific data or studies to substantiate the capability of the rock core system to handle the long term excess run-off that can result from allowing uncontrolled drainage onto or over the fill without adverse effects. If the additional data provided by the State indicate that size changes in the drainage system or maximum fill limits are needed to insure long term water carrying capacity and integrity, such changes will be required of the State.

13.35 West Virginia Regulation Section 6B.06 allows spoil blending as a method of handling acid-producing or toxic-producing materials. Federal regulation 30 CFR 816.103(a)(1), which required burial in all cases, has been suspended and an amendment has been proposed. 45 FR 8241–8245 (February 6, 1980). Until this rule becomes final, States need only meet the requirement in the federal Act. Under Section 515(b)(14) of the Act, such materials must be treated, buried "or otherwise disposed of in a manner designed to prevent [water] contamination * * *" This would allow blending in circumstances where blending would be an effective method of preventing contamination. The Secretary assumes that the Department of Natural Resources will only allow blending where it will be effective, and accordingly finds the State provision consistent with the federal provision.

13.36 30 CFR 824.11(a)(8) requires that surface runoff from mountaintop removal operations be diverted away from valley or head-of-hollow fills. State Regulation Section 6B.07c.2. contains no such requirement. However, the State Regulation does require that the contour shall be graded to drain inward from the outslope except at specific points where it drains over the downslope in constructed channels. At the December 30, 1980, meeting, the State clarified that this provision was consistent with 30 CFR 824.11(a)(8) in that it would not allow drainage from the operation to be diverted through the associated fill. The Secretary considers this interpretation to be a binding element of the State program and relies upon it in approving the State's provision as consistent with federal requirements.

13.37 30 CFR 816.46(a) (1) and (4) and 817.46(a) (1) and (4) require that the quality of water in permanent impoundments be maintained and that discharges meet applicable water quality standards. West Virginia has no such explicit requirement. However, State Regulation Section 6B.07e.2. requires that the plan for an impoundment include data on water quality, and 6B.04b. requires that federal or State water quality and effluent limitations be met. Further, as the State explained in the December 30, 1980, meeting, the bond will not be released if these standards are not met. The Secretary considers this interpretation to be a binding element of the State program and relies upon it in approving

the State's provision as consistent with federal requirements.

Finding 14

The Secretary finds that the Department of Natural Resources has the authority under West Virginia laws and regulations and the West Virginia program includes, except as noted below, provisions to implement, administer and enforce a permit system consistent with 30 CFR Chapter VII, Subchapter G (permits). This finding is made under the requirements of 30 CFR 732.15(b)(2).

West Virginia incorporates provisions corresponding to Sections 506, 507, 508, 510, 511, and 513 of SMCRA and Subchapter G of 30 CFR Chapter VII in Chapter 20, Article 6, Sections 8, 9, 10, 11, and 18 of the Code of West Virginia and State Regulation Sections 3, 5A, 6A, 7A, 8A, 9A and 10A. Section (g)(1) of the State's program narrative contains discussions of the systems for (1) issuing permits, (2) incidental mining permits, (3) surface mining, underground mining and other operations permits, (4) permit revisions, (5) permit renewals and (6) transfer, assignment, and/or sale of permit rights.

Discussion of significant issues raised during the review of the West Virginia permit provisions follows.

14.1 As discussed in Finding 14.1 of the October 20, 1980 Federal Register notice, WV SCMRA Section 20-6-10(a)(3) is inconsistent with Section 507(b)(3) of SMCRA. The federal statute requires that a permit applicant submit with the application a statement of any current or previous surface coal mining permits or pending application for such a permit held by the applicant in the United States. West Virginia law requires only a statement of any current surface mining permits held by the applicant or pending application in West Virginia. The Attorney General's opinion refers to proposed statutory amendments to correct this deficiency. Approval of West Virginia's program is conditioned on statutory changes necessary to meet the requirements of 507(b)(3) of SMCRA as outlined above.

14.2 As discussed in Finding 14.2 of the October 20, 1980 Federal Register notice, Section 507(b)(5) of SMCRA requires that a permit applicant submit a statement of suspended or revoked mining permits for the previous five year period. WV SCMRA Section 20-6-10(a)(5) limits this requirement to "permanently" suspended permits which are, in effect, revoked permits. The Attorney General's opinion (Part A) indicates that legislative changes will be proposed to make the State program consistent with the federal sections. Approval of West Virginia's program is conditioned on amendment of its statute to correct this deficiency.

14.3 As discussed in Finding 14.3 of the October 20, 1980 Federal Register notice, Section 510(c) of SMCRA requires that the applicant file with his permit application a schedule listing any and all notices of violation pertaining to air or water environmental protection incurred by the applicant on any coal mining operation in the United States within the three-year period prior to the date of the application. WV SCMRA Section 20-6-10(f) requires this schedule only for bond forfeitures, permit revocation, cessation orders or permanent suspension orders. It does not require that other types of notices of violations be reported. In addition, Section 20-6-18(c) of the WV SCMRA allows the Director to consider only violations of West Virginia laws during the decision making process on permit applications. The Attorney General's opinion (Part A) states that a statutory change will be proposed to correct this deficiency.

Furthermore, State Regulation Section 3P.01b., which was submitted to partially correct this deficiency, has in fact complicated the issue. It requires reporting "violations of any law, rule, or regulation of West Virginia, or of any State law, rule, or regulation enacted pursuant to Federal law, rule or regulation. . . ." This means that violations of any federal law, rule or regulation would not have to be reported. Approval of West Virginia's program is conditioned on amendment of the State law and regulations to make them consistent with the requirements of Section 510(c) of SMCRA.

14.4 Under Section 20-6-31 of the WV SCMRA, special provisions exist under which a person involved in non-coal development of a property may obtain a special permit if, in the course of the non-coal development, coal will be removed from five acres or less. These provisions are implemented in Section 9 of the West Virginia Regulations.

The special provisions for these "incidental permits" apply to the development of land for commercial, residential, industrial or civic use. The purpose of the incidental permits is to expedite coal removal in instances where the primary purpose of the land development is not coal mining, but where a coal seam is or will be encountered in the course of the development.

West Virginia has had incidental permits as part of its regulatory scheme for the past three years. During that period, 35 incidental permits were issued for development affecting a total of 130 acres. Five of those permits affected two acres or less, which means they would have been exempt from the requirements of SMCRA. No special or severe environmental problems have been brought to the Secretary's attention by any member of the public in connection with any of these incidental permits. The Secretary specifically requested public comment on this provision of the State program in Finding 14.4 of the October 20, 1980, Federal Register notice. Incidental permits represent a particularly useful mechanism for expedited permitting in West Virginia, where commercial land development often occurs in areas underlain by coal and where coal is encountered in the course of unrelated construction projects. The statistics and other specific information presented to the Secretary on incidental permits are found in a December 1, 1980, letter from James Pitsenbarger to Paul Reeves, together with 100 pages of accompanying justification, copies of which were included in the West Virginia resubmission. (Administrative Record No. WV-381)

Under Section 528(2) of SMCRA and the implementing regulations, all operations affecting two acres or less are exempt from all requirements of the federal law. In addition, coal removal incidental to government financed construction is exempt from the substantive requirements of SMCRA, without regard to acreage affected. Accordingly, the only incidental permit operations required to comply with minimum Federal standards are those privately funded projects affecting between two and five acres.

The Secretary has examined the incidental permit provisions in West Virginia's law and regulations to determine whether they meet minimum requirements for permitting, bonding, performance standards and inspection and enforcement. With respect to the contents of the incidental permit application, there are detailed requirements for maps, ownership information, compliance history of the developer, site development plans, blasting plans and vegetation plans. Several specific requirements for permit contents found in Sections 507 and 508 of SMCRA are not explicitly required in SCMRA or State regulations. However, the State has assured the Secretary that it will require all additional information which may be appropriate to determine compliance with the performance standards applicable to the operation. Approval of the State provision is conditioned on the State demonstrating

that all applicable data will be included in the application.

The incidental permit regulations also include detailed performance standards, including signs and markers, top soil, water quality, acid-producing and toxic materials, monitoring, revegetation, backfilling and grading. In addition, there are special standards for projects located on steep slopes. While these requirements include most of the relevant performance standards of SMCRA and 30 CFR Chapter VII, some Federal requirements are not clearly included, such as prime farmlands requirements, requirements related to augering during construction, and the like. A complete list of these areas is found in Administrative Record No. WV–317. The State has agreed to provide further information to remedy deficiencies in the performance standards, or explain why the program is not deficient. Approval of this provision is conditioned on the State completing this demonstration.

Bonding of incidental permits is required at the rate of $2,000 per acre affected. This is in keeping with the bonding scheme for all West Virginia permits, where a general fund will be used to cover bond liability above a minimum amount. The State has assured the Secretary that this fund is available for incidental permit liability above the $2,000 otherwise posted by the developer. The State provisions allow the release of the bond at the conclusion of site preparation, rather than requiring the five-year revegetation responsibility found in Section 515(b)(20) of SMCRA. Since the permits are only issued where development would occur, revegetation will not normally be a problem. The State will, however, look to the general fund after the posted bond is released. (Administrative Record WV 318) Since Section 519(c) of SMCRA allows 85 percent of the bond to be released before the five-year revegetation responsibility period runs out, the Secretary deems the West Virginia provisions approvable as an alternative bonding system under Section 509(c) of SMCRA.

Section 20–6–31(c) of the WV SCMRA is somewhat ambiguous, in that it might be read to exempt developers holding incidental permits from periodic inspections and enforcement provisions applicable to all other permittees. The Office of the Attorney General has assured the Secretary that this section does not exempt incidental permittees from the inspection and enforcement provisions of the West Virginia program. (Administrative Record WV–318).

Finally, the program does not set forth in detail the public participation provisions applicable to these incidental permits, although State Regulation Section 9A.03 does require evidence of notification by the operator to owners of contiguous surface areas. The State has assured OSM that it will post all incidental permit applications for at least ten days in the DNR office nearest the development site.

The Secretary finds that the West Virginia provisions for public participation in issuance of incidental permits is inadequate, and conditions his approval upon the State adopting provisions to assure public notice of and opportunity to participate in decisions on incidental permits.

14.5 As discussed in Finding 14.5 of the October 20 Federal Register notice, many deficiencies existed in the State's permitting procedures, as addressed in a letter dated May 23, 1980, from OSM to the Department of Natural Resources. [Administrative Record No. WV 84] Additional program narrative (identified as "Finding 14.5, Response to Part II") resolved all of the concerns expressed in this letter.

14.6 Under 30 CFR 780.37 and 784.24, each permit application must describe each road, conveyor, or rail system in the permit area. State Regulation Section 4A.01 requires the same information, but subsection b. provides that it shall include only railroads over which the applicant has a reasonable opportunity to exercise control, and defines when such an opportunity will be considered to exist. The definition is narrowly drawn and assures that the operator cannot, by voluntarily transferring ownership of part of the operation, avoid the requirements otherwise applicable to a coal operation.

West Virginia's provision is as stringent as the federal provision because the Secretary does not interpret 30 CFR 780.37 to require that an operator submit information for portions of a railroad over which the operator could not possibly exercise any control. Such areas are not required to be within the permit area and need not be bonded. These areas are subject to the jurisdiction of other governmental agencies.

14.7 30 CFR 788.12(a)(3) requires that a permit revision shall be obtained in order to continue operation after the cancellation or material reduction of the liability insurance or performance bond upon which the original permit was granted. The State does not have a provision explicitly stating this requirement. However, as the State explained in the December 30, 1980, meeting, they interpret their rules to require that a permit be revoked if the operator loses or reduces his or her bond or insurance. This interpretation is based on State Regulation Section 2D.02, which requires that the insurance policy remain in effect during the life of the permit or any renewal, and on State Regulation Section 4H.03.a., which requires that liability under the bond continue until all reclamation is complete.

14.8 West Virginia regulations do not contain provisions for public and other notification by the regulatory authority as to the approval, modification or denial of a permit application, as required by 30 CFR 786.23(e). Under this provision, the regulatory agency's written findings regarding the permit application must be sent to the applicant and simultaneously to each person and government official who filed written objection or comment with respect to the application and to the Regional Director of (OSM). The regulatory authority must also publish a summary of its decision in a newspaper or similar periodical of general circulation in the general area of the proposed operation. Approval of West Virginia's program is conditioned on the adoption of a regulation or other program amendment consistent with 30 CFR 786.23(e) regarding public and other notification of permit application decisions.

14.9 The Secretary finds that West Virginia Regulation Section 12B.07b., possibly due to clerical error, could be construed to restrict the availability of boring and sampling analyses to the public in conflict with 30 CFR 786.15(a)(2) and Section 507(b)(17) of SMCRA. The State regulation is also inconsistent with WV SCMRA Section 20–6–11(a)(12). The State regulation would require only that information on potentially toxic materials be made available to the public and that all other information be kept confidential. Approval of West Virginia's program is conditioned upon the amendment of State regulation 12B.07b. to be consistent with Section 20–6–11(a)(12) of the WV SCMRA and 30 CFR 786.15(a)(2).

Finding 15

The Secretary finds that the Department of Natural Resources has, except as noted below, the authority to regulate coal exploration consistent with 30 CFR Parts 776 and 815 and to prohibit coal exploration that does not comply with 30 CFR Parts 776 and 815, and the West Virginia program includes provisions adequate to do so, except as noted below. This finding is made under the requirements of 30 CFR 732.15(b)(3).

The West Virginia program incorporates provisions corresponding to Section 512 of SMCRA and 30 CFR

Parts 776 and 816 (as related to coal exploration) in Chapter 2, Article 6, Section 8 of the WV Code of and State Regulation Section 5. Section (g)(1) of the program narrative includes discussion of the systems for exploration, review, and approval. In the West Virginia law and program, exploration is referred to as prospecting.

15.1 As discussed in Finding 15 of the October 20 Federal Register notice, West Virginia's program narrative discussing approval or denial of prospecting permits was inconsistent with Section 20–6–8 of the State law. The Secretary finds that Section (g)(1) of the State's narrative resubmission (identified as "Finding 14.5 Comment No. 6") now discusses State procedures for approval or denial of prospecting permits consistent with State statutory requirements.

15.2 30 CFR 776.12(a)(3)(i) and 30 CFR 776.12(a)(5) require that exploration applicants requesting approval to remove more than 250 tons of coal supply, among other information, a map and narrative describing the proposed area. WV SCMRA Section 20–6–8(b)(1) and State Regulation Section 5A.01b.12. also require a map and a narrative. However, the West Virginia program lacks provisions consistent with several of the federal requirements. Approval of the West Virginia program is conditioned on adoption of provisions consistent with the following: An additional provision as required by 30 CFR 776.12(a)(3)(i), requiring a description of surface topography, geology, surface water and other physical features, vegetative cover, and the distribution and important habitats of fish and wildlife; and a map, as required by 30 CFR 776.12(a)(5), identifying proposed trenches, roads, structures, land excavations, water and coal exploratory holes, wells, and earth and debris disposal areas, historic, cultural, and drainage features, and habitats of any endangered or threatened species listed pursuant to the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.).

Finding 16

The Secretary finds that the Department of Natural Resources has the authority under West Virginia law and that the West Virginia program includes provisions to require that persons extracting coal incidental to government-financed construction maintain information on site consistent with 30 CFR Part 707. This finding is made under the requirements of 30 CFR 732.15(b)(4).

As discussed in Finding 16 of the October 20 Federal Register notice, West Virginia needed to enact regulations adequate to implement Section 20–6–29(3) of the WV SCMRA, concerning extraction of coal incidental to government-financed construction, in accordance with the requirement of 30 CFR Part 707 and 30 CFR 732.15(b)(4). The West Virginia program resubmission contains State Regulation Section 9C which is consistent with 30 CFR Part 707 and meets the requirements of 30 CFR 732.15(b)(4).

Finding 17

The Secretary finds that the Department of Natural Resources has the authority and the West Virginia program includes provisions to enter, inspect, and monitor all coal exploration and surface coal mining and reclamation operations on non-Indian and non-federal lands within West Virginia, consistent, except as noted below, with the requirements of Section 517 of SMCRA (inspections and monitoring) and 30 CFR Chapter VII, Subchapter L (inspection and enforcement). This finding is made under the requirements of 30 CFR 731.15(b)(5).

Provisions corresponding to Section 517 of SMCRA and Subchapter L of 30 CFR Chapter VII for inspection and monitoring are found in Chapter 20, Article 6, Section 15 of the Code of West Virginia and State Regulation Section 14 of the State Regulations. Section (g)(4) of the program narrative contains a discussion of West Virginia's inspection procedures. Discussion of significant issues raised during the review of the West Virginia inspection and enforcement procedures follows:

As discussed in Finding 17 of the October 20 Federal Register notice, Section 521(a)(1) of SMCRA grants authority to citizens to accompany an inspector during an inspection resulting from a citizen's complaint. Section 20–6–15(g) of the WV SCMRA provides, however, that neither the permittee nor his authorized agents or employees shall be liable for any injury sustained by a citizen accompanying the inspector onto the minesite except for willful and deliberate acts. The Secretary found in the October 20 Federal Register notice that this provision of the West Virginia SCMRA could operate as a constraint on citizens exercising their right to go to the mine site. Consequently, approval of the West Virginia program is conditioned upon the deletion of this provision from Section 20–6–15(g) of the WV SCMRA.

Finding 18

The Secretary finds that the Department of Natural Resources has the authority under the West Virginia law and the West Virginia program includes provisions to implement, administer, and enforce a system of performance bonds and liability insurance, or other equivalent guarantees consistent with the requirements of Sections 509 and 519 of SMCRA and 30 CFR Chapter VII, Subchapter J (performance bonds). The Secretary finds that the Department of Natural Resources has the authority under West Virginia law and the West Virginia program includes provisions to implement, administer, and enforce an alternative system of performance bonds consistent, except as noted below, with Section 509(c) of SMCRA. This finding is made under the requirements of 30 CFR 732.15(b)(6).

Provisions corresponding to Sections 509 and 519 of SMCRA and to Subchapter J of 30 CFR Chapter VII are incorporated in Chapter 20, Article 6, Sections 12 and 23 of the Code of West Virginia and State Regulation Section 4H. Section (g)(3) of the State program narrative contains descriptions of the State's process for implementing, administering, and enforcing a system of performance bonds and liability insurance or other equivalent guarantees.

Discussion of significant issues raised in the review of West Virginia's bonding and insurance provisions follows:

18.1 As discussed in Finding 18.1 of the October 20 Federal Register notice, West Virginia needed to submit additional information to demonstrate that its alternative bonding system will provide sufficient funds to allow the DNR to complete reclamation where necessary and that the system will provide an incentive for the operator to fulfill his or her obligations. Regulation 4H and the Attorney General's opinion (Part A, as Finding 18.1) address these concerns. The Secretary agrees that the approach taken by West Virginia is innovative and finds that the funding system is procedurally approvable.

The sole remaining concern of the Secretary is whether or not the State fund will always contain enough money to cover the demands made upon it. The materials submitted in the Attorney General's opinion, although they provide some information on the amount of money in the fund, are not sufficient for a final determination by the Secretary that projected fund balances will be either more or less than may be required under reasonably projectable conditions. The Secretary believes that such a determination, based on standard statistical and actuarial techniques, is required before the size of the fund is finally approved. Thus, approval of the State alternative bonding system is

conditioned on the State providing the Secretary within a reasonable period of time with the results of an analysis by a professionally qualified party using standard statistical and actuarial techniques, sufficient to demonstrate that the amount of money going into the fund will cover the demands likely to be placed upon it. Further, the State will have to modify the limits on the fund balance now included in West Virginia SCMRA if such changes are found necessary as a result of this study. OSM will assist the State in the design and conduct of the study if requested to do so by DNR.

18.2 Finding 18.2 of the October 20 Federal Register notice stated that Section 20-6-12(f) of the WV SCMRA was inconsistent with Section 509(a) of SMCRA because it could allow violation of federal water quality requirements. The West Virginia provision allows release of the bond if untreated drainage or discharge "is not lower than the water quality of the receiving stream." The Secretary's finding was in error to the extent it relied upon Section 509(a) since neither that section nor Section 519 of SMCRA restrict the release of the backfilling and grading portion of a bond on the basis of water quality. However, to the extent the State provision could be interpreted to allow discharges in violation of the water quality standards for the receiving stream it would violate the provisions of the Federal Water Pollution Control Act, as amended, and the requirements of Sections 510 and 515 of SMCRA regarding the protection of hydrologic resources. The Secretary finds that State Regulation Section 6B.04b. does require all discharges from the permit area to meet water quality standards. This provision and West Virginia Code, Chapter 20, Article 5A, resolves the concerns expressed by the Secretary in the October 20 notice. (See also the Attorney General's opinion Part A, response to Finding 13.7.)

18.3 As discussed in Finding 18.4 of the October 20 Federal Register notice, the narrative discussion in the State's original submission was inadequate in that it provided no information on the State procedures for filing bonds or insurance policies. The narrative resubmission relating to Finding 18.1 presents additional information on West Virginia's bonding and insurance provisions. This information together with State Regulation Sections 3 and 4H of the State's regulations demonstrates that the State's bonding and insurance procedures meet the requirements of 30 CFR Part 806. The Secretary finds these procedures acceptable.

18.4 Section 507(f) of SMCRA and 30 CFR 806.14(b) provide that the liability insurance policy must remain in force during the life of the permit, including reclamation operations. Section 20-6-10(a)(19)(d) of the WV SCMRA contains a similar provision, but State Regulation Section 3D.01 provides that blasting insurance need be in effect only as long as blasting activities occur. The Secretary finds this provision consistent with the federal provision. Section 507(f) of SMCRA and 30 CFR 806.14(b) do not require that the insurance policy continue to cover blasting when no blasting is occuring. However, the basic liability policy must remain in effect until reclamation activities are complete.

Finding 19

The Secretary finds that the Department of Natural Resources has, except as noted below, the authority and the West Virginia program provides, except as noted below, for civil and criminal sanctions for violations of West Virginia law, regulations and conditions of permits and exploration approvals including civil and criminal penalties consistent with Section 518 of SMCRA (penalties) including the same or similar procedural requirements. This finding is made under the requirements of 30 CFR 732.15(b)(7).

Provisions corresponding to Section 518 of SMCRA and to 30 CFR 845 are incorporated in Chapter 20, Article 6, Section 17 of the Code of West Virginia and in Section 14 of the State's Regulations. Section (g)(7) of the program narrative contains descriptions of the State's procedures for civil and criminal sanctions.

In Finding 19 of the October 20 Federal Register notice the Secretary found several provisions of State law unacceptable as being inconsistent with SMCRA and the regulations promulgated thereunder. Many of these problems involve statutory deficiencies which could not be addressed before the resubmission, because the State legislature did not convene until after resubmission. The State has submitted both revised and additional regulations which do modify the nature and extent of some deficiencies. Thus, the Secretary finds that State requirements and provisions remain inconsistent with federal requirements and provisions as set forth in the following findings. Approval of the West Virginia program is conditioned upon revisions which remedy these inconsistencies.

19.1 In Finding 19.2 of the October 20 Federal Register notice, the Secretary noted several inadequacies in the State's proposal for assessing, adjudicating, and collecting civil penalties. The areas of concern were (1) inadequate description of the procedures for proposing civil penalties; (2) lack of regulations pertaining to the administrative assessment of civil penalties; (3) use of the Magistrate Courts to impose civil penalties; (4) failure to provide for the prepayment of civil penalties into an escrow account; (5) failure to provide that findings of fact and a written decision shall be prepared after a public hearing; (6) no specific provision for public participation; and (7) provision for a jury trial in magistrate court. A detailed discussion of the issues involved with each of these considerations can be found in the October 20 Federal Register notice (45 FR 69258-69259).

With respect to the description of the procedures for proposing civil penalties and the development of regulations pertaining to the administrative assessment of civil penalties, the State's resubmission contains State Regulation Section 14A.02. This section provides that each reclamation inspector shall, within fifteen days of issuing a notice or order, confer with his reclamation supervisor or other duly authorized person, who shall determine the amount of penalty to be sought using the factors listed in WV SCMRA Section 20-6-17(c). This approach to making penalty assessments is sufficient to meet the Secretary's concerns in this regard with one exception. Section 518(b) of SMCRA envisions the administrative assessment of penalties. Section 20-6-17(c) of the WV SCMRA contains the same general criteria for assessing penalties as Section 518(a) of SMCRA, but the State program contains no regulations or other procedures which would give inspectors or magistrates any guidance as to how these general criteria would be applied in specific factual situations. Although the State cannot be required to develop any particular system for assessing civil penalties, some form of guidance is necessary. The failure to provide any regulations or guidelines for assessing penalties would almost certainly result in widely varying assessments under similar factual situations. In addition, without additional written guidance, magistrates could change the penalty proposed by the inspector with virtual impunity. This would, for all practical purposes, result in judicial determination of penalties, which is inconsistent with 518(b) of SMCRA. Accordingly, approval of West Virginia's procedures for proposing civil penalties is conditioned on the adoption of regulations, or other program amendment, which would provide

guidance to inspectors and magistrates for applying the general criteria of WV SCMRA Section 20–6–17(c).

The State's proposal for using the magistrate court to impose civil penalties contained in its original March 3, 1980 submission has been changed by virtue of proposed statutory amendments to WV SCMRA Section 20–6–17(d). These changes, as explained in the Attorney General's opinion (discussion at Part A, response to Findings 19.3 and 27.4) address the concerns of the Secretary previously set forth in Finding 19.2 of the October 20 Federal Register notice. The proposed statutory changes would make the magistrate judges similar to administrative law judges in all significant respects. Approval of this aspect of the West Virginia program is conditioned upon enactment of proposed statutory changes or other program amendments which meet the concerns of the Secretary expressed here and in Finding 19.2 of the October 20 Federal Register notice.

The State has proposed an amendment to WV SCMRA Section 20–6–17(d) which provides that an operator must place the amount of a proposed penalty in escrow if the operator wishes to challenge the penalty in magistrate court. Approval of the West Virginia program is conditioned upon the enactment of statutory language or other program changes which meet the prepayment requirement of Section 518(c) of SMCRA.

The State has proposed an amendment to Section 20–6–17(d) of the WV SCMRA that would provide citizens full access to the magistrate court, including intervention and recovery of attorney fees. Approval of the State program is conditioned upon the enactment of statutory changes or other program changes which address the concerns of the Secretary as set out here and in Finding 19.2 of the October 20 Federal Register notice. The State has proposed an amendment to Section 20–6–17(d) which makes clear that jury trials are not available in civil penalty proceedings in magistrate court. Approval of the West Virginia program is conditioned upon statutory or other program changes which insure that jury trials will not be available in civil penalty proceedings.

19.2 In Finding 19.3 of the October 20 Federal Register notice, the Secretary found that West Virginia Code Ann. Section 50–5–12, which provides that appeals from the magistrate court to the county circuit court are *de novo*, is inconsistent with Section 525 of SMCRA. The Attorney General's opinion (Part A, response to Findings 19.3 and 27.4) states that a legislative change will be proposed to eliminate *de novo* review of magistrate decisions. Approval of the West Virginia program is conditioned on amendment of the State statute or other program change which corrects this deficiency.

19.3 In Finding 19.4 of the October 20 Federal Register notice, the Secretary found that Section 20–6–17(a) of the WV SCMRA, which provides that mandatory daily penalties for certain cessation orders terminate once corrective steps have been *initiated* to the satisfaction of the inspector, is inconsistent with 518(h) of SMCRA, which provides that the penalty shall be imposed for each day the violation continues unabated. The Attorney General's opinion (Part A, response to Finding 19.4) states that a legislative change will be proposed to correct this inconsistency. In the interim, State Regulation Section 14A.02c specifies that only when the violation is abated will corrective steps have been "initiated to the satisfaction of the reclamation inspector." While this regulation reduces the Secretary's concern, approval of the West Virginia program is conditioned on amendment of the State statute which corrects this deficiency.

19.4 In Finding 19.5 of the October 20 Federal Register notice, the Secretary found that the West Virginia program provides two independent avenues for appealing a notice of violation, which could lead to forum shopping and inconsistent interpretations of State law. The Attorney General's opinion (Part A, response to Finding 19.5) states that a legislative change will be proposed to place jurisdiction over civil penalty cases exclusively in the magistrate system. In the interim, the Reclamation Board will interpret the provisions of 20–6–17(d) of the WV SCMRA as removing appeals of civil penalty cases from board jurisdiction. While this regulation reduces the Secretary's concern, approval of the West Virginia program is conditioned upon revisions to the program which correct this deficiency.

Finding 20

The Secretary finds that the Department of Natural Resources has, except as noted below, the authority under West Virginia law to issue, modify, terminate and enforce notices of violation, cessation orders and show cause orders consistent with Section 521 of SMCRA (enforcement) and with 30 CFR Chapter VII, Subchapter L (inspection and enforcement), including the same or similar procedural requirements. This finding is made under the requirements of 30 CFR 732.15(b)(8).

Provisions corresponding to Section 521 of SMCRA and to Subchapter L of 30 CFR Chapter VII are included in Chapter 20, Article 6, Sections 16 and 17 of the Code of West Virginia and Section 14 of the State's Regulations.

In Finding 20 of the October 20, 1980 Federal Register notice, the Secretary found certain provisions of the West Virginia program unacceptable as inconsistent with SMCRA and the regulations promulgated thereunder. Several of the problems previously identified by the Secretary involve statutory deficiencies which could not be addressed before the State resubmission because the legislature does not convene until after the resubmission. However, West Virginia has made changes in its resubmission in several areas which address certain previously identified problems and minimize the effect of others.

The following constitute the Secretary's findings on this portion of the West Virginia resubmission. Approval of the West Virginia program is conditioned upon revisions to the State Program which remedy these inconsistencies.

20.1 As discussed in Finding 20.1 of the October 20 Federal Register notice, Section 20–6–16(a) of the WV SCMRA grants discretionary authority for an inspector to issue a cessation order in situations of imminent danger. Section 521(a)(2) of SMCRA mandates that such orders be issued.

State Regulation Section 14A.03a mandates that inspectors issue a cessation order in situations of imminent danger. The Secretary finds that with this revision the West Virginia program is consistent with the federal requirements.

The Secretary recommends that the West Virginia statute be changed to provide for mandatory issuance of cessation orders in these situations. A successful challenge to the authority of the Department of Natural Resources to promulgate or enforce the regulation might result in the Secretary being forced to intervene in the administration of the West Virginia program. A statutory amendment mandating the issuance of a cessation order in cases of imminent environmental harm or danger to persons would obviate this possibility.

20.2 As discussed in Finding 20.2 of the October 20 Federal Register notice, Section 20–6–17(a) of the WV SCMRA provides that if an operator affirmatively demonstrates that compliance with a notice of violation is unattainable due to conditions totally beyond the control of the operator, issuance of a cessation order for failure

to abate is not mandatory. As the Secretary noted in the October 20 Federal Register notice, this appears to be inconsistent with Section 521(a)(3) of the SMCRA, which provides for a maximum time limit of 90 days for abatement of violation and for immediate cessation where a violation is not timely abated.

The Attorney General's opinion explains that this exception applies only to (1) strikes which result in employees of the operator being completely excluded from taking steps to correct the problem, and (2) acts of God as that phrase is generally understood (i.e. cataclysmic events and not just heavy rain, *Adkins v. City of Hinton*, 142 S.E. 2nd 869 (1965)).

The Secretary believes that he has the authority to recognize legitimate, narrowly-drawn exceptions to the ninety-day abatement limitation, and that the State's exceptions meet this test. These exemptions in no way act as a deterrent to prompt remedial action and would never provide a defense to an operator whose negligence, tardiness or failure to anticipate foreseeable problems were a contributing factor in his failure to abate. The Secretary, therefore, finds that the exceptions to the ninety-day abatement limitation contained in Section 20-6-17(a) of the WV SCMRA, as limited by the Attorney General's opinion, are consistent with Section 521(a)(3) of SMCRA.

20.3 As discussed in Finding 20.3 of the October 20 Federal Register notice, Section 20-6-17(a) of the WV SCMRA provides that if any of the requirements of the law and regulations or permit conditions have not been complied with, the Director "may cause a notice of violation to be served on the operator". Section 521(a)(3) of the SMCRA requires mandatory issuance of a notice of violation when the Secretary or his authorized representative determines that any permittee is in violation of any requirement of the Act or any permit condition required by the Act. State Regulation Section 14A.04 requires each inspector to issue a notice of violation for all violations observed. The Secretary finds that this regulation makes West Virginia's program consistent with the Federal Act.

The Secretary recommends that Section 20-6-17(a) of the WV SCMRA statute be amended to provide for mandatory issuance of notices of violations for all observed violations. A successful challenge to the authority of the Department of Natural Resources to promulgate or enforce this regulation might result in the Secretary being forced to intervene in the administration of the West Virginia program. A statutory amendment mandating the issuance of a notice of violation would obviate this possibility.

20.4 As discussed in Finding 20.4 of the October 20 Federal Register notice, Section 521(a)(3) of SMCRA provides that a cessation order shall remain in effect until the Secretary determines that the violation has been abated. Section 20-6-17(a) of the WV SCMRA provides for a mandatory daily civil penalty only until corrective steps have been initiated. The Secretary finds this provision inconsistent with the Federal requirements. The Attorney General's opinion (Part A, response to Finding 20.4) states that a legislative change will be proposed to correct this inconsistency. In the interim, State Regulation Section 14A.03b specifies that the cessation order shall remain in effect until the violation is abated. While this regulation reduces the Secretary's concern, approval of the West Virginia program is conditioned on amendment of the State statute which corrects this deficiency.

20.5 As discussed in Finding 20.5 of the October 20 Federal Register notice, Section 20-6-16(a) of the WV SCMRA mandates that a cessation order shall expire twenty-four hours after the order becomes effective unless an informal conference is held by a reclamation supervisor at or near the mine site. Section 521(a)(5) of SMCRA states that a cessation order shall expire within thirty days unless a public hearing is held at or near the mine site. In Finding 20.5 of the October 20 Federal Register notice, the Secretary found that the State had not adequately demonstrated that it could conduct the required hearings in a timely manner. The Secretary requested the State to provide documentation that the State has adequate staff to insure that cessation orders will not expire because of insufficient personnel to conduct the hearings. In the revised program narrative provided with its resubmission, the State demonstrates that it has adequate staffing to conduct such hearings in a timely manner. Therefore, the Secretary finds this provision of WV SCMRA Section 20-6-28(a) is acceptable.

20.6 In Finding 20.6 of the October 20 Federal Register notice the Secretary found that the State failed to address the procedures for issuance of orders and notices in accordance with 30 CFR 731.14(g)(4). In the revised program narrative (identified as "Comment No. 30") the State described its procedure for the issuance of orders and notices. In addition, the State has provided regulations (Section 14) and proposed statutory amendments which further explain its inspection procedures. The Secretary finds that these procedures are the same or similar to those in SMCRA and the regulations promulgated thereunder.

20.7 State Section 20-6-16(c) of the WV SCMRA provides that an inspector shall be readily available to vacate a cessation order upon abatement of a violation. As the Secretary noted in Finding 20.7 of the October 20 Federal Register notice, this section could allow, or possibly require, the vacation rather than termination of such orders. Therefore, the Secretary finds that this provision of State law is less stringent than federal law. The Attorney General's opinion (Part A, response to Finding 20.7) states that a legislative change will be proposed to correct this inconsistency. In the interim, State regulation Section 14A.03d. specifies that the term "vacate" will not mean that the violation is to be treated as if it never existed, which is the meaning usually assigned to the term in the federal regulations. While this regulation reduces the Secretary's concern, approval of the West Virginia program is conditioned upon revisions to the statute which remedy this deficiency.

20.8 In Finding 20.8 of the October 20 Federal Register notice, the Secretary noted that Section 20-6-17(a) of the WV SCMRA omits the language in Section 521(a)(3) of SMCRA which states that in a cessation order issued for failure to abate a notice of violation, "the Secretary shall determine the steps necessary to abate the violation in the most expeditious manner possible, and shall include the necessary measures in the order." The Secretary finds the State provision inconsistent with SMCRA to the extent that the federal requirement is omitted. The Attorney General's opinion (Part A, response to Finding 20.8) states that a legislative change will be proposed to correct this inconsistency. In the interim, State Regulation Section 14A.03c. requires the inspector to identify the necessary steps to abate the violation in the most expeditious manner possible. While this regulation reduces the Secretary's concern, approval of the West Virginia program is conditioned upon revisions to the statute or other program amendments which remedy this deficiency.

20.9 State Regulation Section 14A.01 contains procedures for issuance of show cause orders similar to the requirements of 30 CFR 843.13. However, federal law provides that an unwarranted failure to comply exists where a permittee fails to prevent or

abate a violation due to indifference, lack of diligence, or lack of reasonable care. Although the State regulation is similar with respect to the failure to prevent a violation, it does not reference the failure to abate a violation. In some situations the failure to prevent a violation may be excusable whereas the failure to abate the violation is unwarranted, so it is important that both situations be covered in the State regulation. Also, the word "no" in State Regulation Section 14A.01.a.3 negates the meaning of the show cause regulations. This is an obvious clerical error (Administrative Record No. WV 313) which must be corrected. Approval of the program is conditional upon changes which correct these problems.

Finding 21

The Secretary finds that the Department of Natural Resources has the authority and the West Virginia program contains provisions to designate areas unsuitable for surface coal mining consistent, except as noted below in part, with 30 CFR Chapter VII, Subchapter F (designations of areas unsuitable for mining). This finding is made under the requirements of 30 CFR 732.15(b)(9).

Provisions corresponding to Section 522 of SMCRA and to Subchapter F of 30 CFR Chapter VII are included in 20-6-22 of the Code of West Virginia and in Sections 3 and 23 of the State regulations. Section (g)(11) of the West Virginia program narrative describes the system by which petitions for designating areas unsuitable for surface coal mining will be received and processed and the establishment of a data base and inventory system. A discussion of significant issues raised in the review of West Virginia's provisions concerning unsuitability designations follows.

21.1 As discussed in Finding 21.1 of the October 20 Federal Register notice, Section 20-6-22(d)(1) of the WV SCMRA allows the Director of DNR to issue variances to the prohibitions of Section 522(e)(1) of SMCRA which relate to mining within the boundaries of certain areas of national importance established by Congress. Approval of West Virginia's program is conditioned upon amendment of the State statute to eliminate the variance provision. In addition, the Director of DNR has agreed not to issue such a variance before the statute is amended.

21.2 As discussed in Finding 21.2 of the October 20 Federal Register notice, the State has proposed to use the West Virginia Heritage Trust Program to satisfy the requirements of a data base and inventory system under Section 522(2)(4)(B) of SMCRA. The original narrative did not include an adequate discussion work plan or methodology for developing the Trust Program to provide the required information, nor did the State identify local, State, or federal sources of information necessary for the process. The narrative resubmission contains a work plan for systematically developing an inhouse data base around the nucleus of the Heritage Trust data base. Local, State and federal sources of information are listed in the discussion. The program narrative resubmission also contains a description of the State's procedure for designating lands unsuitable for coal mining activity (identified as "Comment No. 42"). On the basis of this information, the Secretary finds the State's narrative describing its proposed data base system acceptable.

Finding 22

The Secretary finds that the Department of Natural Resources has the authority under West Virginia laws and the West Virginia program contains, except as noted below, provisions for public participation in the development, revision and enforcement of West Virginia's laws and regulations and the West Virginia program consistent with the public participation requirements of SMCRA and 30 CFR Chapter VII. This finding is made under the requirements of 30 CFR 732.15(b)(10).

Provisions corresponding to public participation requirements in SMCRA and in 30 CFR Chapter VII are included throughout the West Virginia statutes and rules submitted as part of the program. Revised Section (g)(14) of the program narrative describes the procedures for insuring that adequate public participation is provided throughout the development and functioning of the State program.

Discussion of significant issues raised in the review of West Virginia's public participation provisions follows:

22.1 In Finding 22.1 of the October 20, 1980 Federal Register notice, the Secretary found that Section 20-6-24(b) of the WV SCMRA was inconsistent with 43 CFR Part 4 to the extent that it provided for a determination of timeliness of intervention on a case by case basis. 43 CFR 4.1110(a) allows intervention at any stage in an enforcement proceeding. Part C of the Attorney General's opinion in the State program resubmission of December 19, 1980 explains that "an intervenor may intervene in any stage of the proceeding. Obviously once the hearing is started or ended an intervenor may be allowed to proceed only upon showing a reason for not appearing before and how his intervention and his evidence or brief will further the process." The Secretary finds that this legal interpretation of WV SCMRA Code Section 20-6-24 shows that it is consistent with the Federal intervention provision and bases his approval on the interpretation.

22.2 In Finding 22.2 of the October 20 Federal Register notice, the Secretary found that although the State submitted a listing in Section (g)(14) of the narrative of areas of public participation, he could not find that the State is capable of providing for public participation throughout the program because the program did not describe avenues of public participation. The narrative resubmission presents a more detailed list of areas for public participation than the original submission and presents a ten-point discussion of avenues for public participation. Accordingly, the Secretary finds that the public participation process is consistent with Federal requirements.

22.3 In Finding 22.3 of the October 20 Federal Register notice the Secretary found that Section 20-6-24(f) of the WV SCMRA provides that, with respect to appeals to the Reclamation Board of Review, all fees and mileage expenses incurred and the expense of preparing the record at the request of the appellant would have to be paid by the appellant. This Section and Section 20-6-25(c) require the appellant to bear the cost of preparing and transcribing the record. Section 29A-6-1(f) of the West Virginia Code appears to place the cost of preparing the transcript upon the agency. The Secretary found that the West Virginia procedures were inconsistent with SMCRA to the extent that appellants would be required to bear the cost of preparing the record of proceedings. Since the statute has not been amended to resolve this problem the Secretary finds that this provision is inconsistent with SMCRA. Approval of the State program is conditioned on amendment of the program to meet the requirements of SMCRA.

Finding 23

The Secretary finds that the West Virginia Department of Natural Resources has the authority under West Virginia laws, except as noted below, and the West Virginia program includes, except as noted below, provisions to monitor, review, and enforce the prohibition against indirect or direct financial interests in coal mining operations by employees of the West Virginia Department of Natural Resources or other State employees consistent with 30 CFR Part 705 (restrictions on financial interests of

State employees). This finding is made under the requirements of 30 CFR 732.15(b)(11).

Provisions corresponding to Section 517(g) of SMCRA are incorporated in Chapter 20, Article 6, Section 40 of the Code of West Virginia.

In Finding 23 of the October 20 Federal Register notice, the Secretary found the lack of conflict of interest requirements for the Reclamation Commission unacceptable. The revised Attorney General's opinion (Part A, response to Finding 23) states that an amendment will be proposed to the State Legislature to correct this deficiency. Approval of the State program is conditioned upon adoption of a provision subjecting all members of the Reclamation Commission to the provisions of Section 20-6-40 of the Code of West Virginia.

Finding 24

The Secretary finds that the West Virginia Department of Natural Resources has the authority under West Virginia laws and the West Virginia program includes provisions to require the training, examination, and certification of persons engaged in or responsible for blasting and the use of explosives in accordance with Section 719 of SMCRA to the extent required for approval of its program. This finding is made under the requirements of 30 CFR 732.15(b)(12).

Provisions corresponding to Section 719 of SMCRA are incorporated in Chapter 20, Article 6, Section 34 of the Code of West Virginia. Section (g)(13) of the West Virginia program narrative contains a description of the cooperative effort between the State Department of Mines and the Department of Natural Resources as it relates to blaster training and certification. West Virginia has no regulations on training, examination, and certification of persons engaged in blasting. However, under 30 CFR 732.15(b)(12) the State is not required to implement regulations governing such training, examination and certification until six months after complete federal regulations on those provisions have been promulgated. On December 12, 1980, OSM published partial final rules establishing minimum requirements for training and certifying persons involved in blasting in surface mining operations. 45 FR 82084–82100. These regulations are codified at 30 CFR Chapter VII, Subchapter M, Part 850. This portion of Subchapter M is now final. However, four subsections concerning qualification requirements and experience requirements remain to be promulgated. These subsections will be reproposed and subjected to public comment prior to their promulgation. Once the complete Subchapter M is finally promulgated, West Virginia will have an additional six months to prepare and submit to OSM regulations consistent with the federal regulations.

Finding 25

The Secretary finds that the West Virginia Department of Natural Resources has the authority under West Virginia laws and the West Virginia program contains provisions for small operator assistance consistent with 30 CFR Part 795 (small operator assistance). This finding is made under the requirements of 30 CFR 732.15(b)(13).

Provisions corresponding to Section 507(c) of SMCRA are incorporated in Chapter 20, Article 6, Section 10(19)(b) of the Code of West Virginia and Section 11 of the State Regulations. Section (g)(16) of the State program submission contains a description of the small operator assistance program within the State.

Only one significant issue was raised in the review of the West Virginia small operator assistance program. Section 20-6-10(b) of the WV SCMRA provides for the payment of costs associated with the determination of probable hydrologic consequences and the statement of the result of test borings and core sampling for operators producing less than one hundred thousand tons of coal annually. This section further provides that the cost "shall be assumed by the Department from funds provided by the United States Department of the Interior pursuant to Public Law 95–87." This has the effect of limiting funding for the small operator assistance program to federal funds. Such a limitation is inconsistent with Section 507 of the SMCRA. The federal funds currently available to West Virginia for small operator assistance are sufficient to meet the present needs of West Virginia. However, this may not be the case in the future, and thus the West Virginia law concerning small operator assistance does not fully comply with Section 507(c) of SMCRA.

The Attorney General's opinion has responded to this issue by preparing changes to WV SCMRA 20-6-10(b) which would delete the proviso stated above and which appear, subject to public comment, to make the WV SCMRA consistent with SMCRA. Furthermore, State regulations Sections 11C and 11C.01 provide that the "Division of Reclamation shall: select and *pay* a qualified laboratory * * *" When supported by statutory authority, this provision will make the State program consistent with SMCRA. Approval of the State program is conditioned upon amendment of the State statute or other program amendment to meet the requirements of Section 507(c) of SMCRA.

Finding 26

The Secretary finds that the West Virginia Department of Natural Resources has the authority under West Virginia law and the West Virginia program contains provisions to provide protection of employees of the Department of Natural Resources corresponding with the protection afforded federal employees under Section 704 of SMCRA. This finding is made under the requirements of 30 CFR 732.15(b)(14).

Provisions corresponding to Section 704 of SMCRA are incorporated in Chapter 20, Article 6, Section 17(l) of the West Virginia Code. The Secretary finds this is consistent with federal law.

Finding 27

The Secretary finds that West Virginia has, except as noted below, the authority under its laws and the West Virginia program contains, except as noted below, provisions for administrative and judicial review of State program actions in accordance with Sections 525 and 526 of SMCRA. This finding is made under the requirements of 30 CFR 732.15(b)(15).

Provisions corresponding to Sections 525 and 526 of SMCRA are incorporated in Chapter 6, Article 9A; Chapter 20, Article 6; Sections 24 and 25; and Chapter 29A of the Code of West Virginia. Section (g)(15) of the program narrative contains a description of the administrative and judicial procedures which are available for the review of administrative decisions, action, and refusals to act.

Discussion of significant issues raised in the review of West Virginia's public participation provisions follows.

27.1 In Finding 27.1 of the October 20 Federal Register notice, the Secretary found that Section (g)(15) of the West Virginia program narrative contained a seemingly erroneous statement that the administrative hearing before the Reclamation Board would be held within sixty days of the notice of filing. In the revised program narrative (Table G15–1), the State has corrected this error, stating that such hearing will be held within thirty days of the notice of filing as provided in Section 20-6-24(c) of the WV SCMRA.

27.2 In Finding 27.2 of the October 20 Federal Register notice, the Secretary requested that West Virginia submit its rules under the State Open Government Proceedings Law, which the State has

done in Section 15 of its regulations. However, these regulations do not state how much notice will be provided to the public in advance of a formal hearing as required in Section 525(a)(2) of SMCRA, which requires at least 5 days written notice. Approval of the West Virginia program is conditioned on a change in the State program which insures that 5 days notice will be provided to the public.

27.3 In Finding 27.3 of the October 20 Federal Register notice, the Secretary found that West Virginia had not demonstrated that a State court has authority to enter an order requiring payment of any civil penalty assessment enforced by its judgment. The State has submitted West Virginia Code 50-6-1, which contains such authority. The Secretary finds that State law is consistent with federal law on this matter.

27.4 In Finding 27.4 of the October 20 Federal Register notice, the Secretary noted several deficiencies in the State's provisions for administrative and judicial review, including (1) dual avenues of appeal for operators cited for a violation, (2) use of jury trials in magistrate court and (3) *de novo* review of magistrate decisions if appealed to circuit court.

These problems are discussed at Finding 19 above. Also, a detailed discussion of the problems with jury trials and *de novo* review is set forth at Finding 27.4 of the October 20 notice. 45 FR 69202. Approval of the program is conditioned upon the enactment of revisions making the State program consistent with the federal requirements.

Finding 28

The Secretary finds that the West Virginia Department of Natural Resources has the authority under West Virginia laws and the program contains provisions to cooperate and coordinate with and provide documents and other information to the Office of Surface Mining under the provisions of 30 CFR Chapter VII, except as noted in Finding 14.8. This finding is made under the requirement of 30 CFR 732.15(b)(16).

Chapter 20, Article 6, Section 20(a) of the Code of West Virginia provides for public notice of applications for permits, applications for permit revisions and actions to revoke permits. In addition, the West Virginia Administrative Procedures Act assures that information is publicly available.

Finding 29

The Secretary finds that the West Virginia laws and regulations and the West Virginia program contain no provisions which would interfere with or preclude implementation of the provisions of SMCRA and 30 CFR Chapter VII. This finding is made under the requirements of 30 CFR 732.15(c).

In West Virginia's permanent program submission, the following laws other than the West Virginia Surface Coal Mining Reclamation Act were referenced as legal authority for various sections of West Virginia's program:

Open Government Proceedings Law (Chapter 6, Article 9A)
Conflict of Interest Law (Chapter 6B, Article 1)
Administrative Procedures Law (Chapter 29A and Chapter 29B)
Civil Jurisdiction and Authority Law (Chapter 50, Article 2)

Other state laws and regulations directly affecting the regulation of surface coal mining and reclamation operations include:

Existing Chapter 20, Article 6 of the Code of West Virginia, Surface Mining and Reclamation
Enrolled H.B. 1404, Surface Mining and Reclamation
Existing Chapter 20-6, Series VII (1978) Rules and Regulations Draft Chapter 20-6, Series VII Rules and Regulations
Chapter 20, Article 5 of the Code of West Virginia, Water Resources
Administrative Regulations of the State of West Virginia for Water Quality Criteria on Inter- and Intrastate Streams, 1977
Proposed Administrative Regulations of the State of West Virginia for Water Quality Criteria on Inter- and Intrastate Streams, 1980
Chapter 19 Articles 12 D and 20 of the Code of West Virginia, Department of Agriculture
Chapter 22 of the Code of West Virginia, Underground Coal Mine Safety Laws
Chapter 38, Articles 3, 4, 5 and 6 of the Code of West Virginia, Liens
Judicial Code of Ethics, Appendix

In the substantive review of the program submission, these laws and regulations were reviewed as part of the adequacy analysis or reviewed for their potential for conflicting with the statutory and regulatory elements of the State program. No conflicts were found which might weaken those State laws and State regulations which form the basis for implementation of a program equal to or more stringent than SMCRA or 30 CFR Chapter VII.

The provisions in these laws and regulations which constitute West Virginia's requirements corresponding to the minimum standards found in SMCRA of 30 CFR Chapter VII are part of the State regulatory program being approved today.

Finding 30

The Secretary finds that the West Virginia Department of Natural Resources has demonstrated that it will have sufficient legal, technical, and administrative personnel, and sufficient legal, technical, and administrative personnel, and sufficient funds to implement, administer, and enforce the provisions of the program, the requirements of 30 CFR 732.15(b) (program requirements), and other applicable State and federal laws. This finding is made under the requirements of 30 CFR 732.15(d).

The Secretary finds that the West Virginia Department of Natural Resources had demonstrated that it will have sufficient funds to implement, administer, and enforce the provisions of the program, the requirements of 30 CFR 732.15(b) (program requirements), and other applicable State and federal laws. This finding is made under the requirements of 30 CFR 732.15(d), the narrative discussion in the program resubmission (identified as "Finding 30") and in memoranda provided by the West Virginia Department of Natural Resources in response to comments made at the public hearing on the resubmission. (Administrative Record No. WV 32). The State describes the proposed staff and demonstrates how such staff will be adequate to carry out the functions for the projected workload to ensure that coal exploration and surface mining and reclamation operations comply with the requirements of SMCRA and the federal regulations. This discussion also includes budget information which demonstrates that adequate funds are available.

C. Disposition of Public Comments

The Secretary received a number of public comments on the resubmitted West Virginia program. The disposition of these comments has been organized into categories to assist the reader. Comments from Federal agencies are addressed first; all other comments follow.

The disposition of public comments constitutes a part of the Secretary's basis and purpose in deciding to approve, with conditions, West Virginia's program. Comments with which the Secretary agrees have been incorporated directly into specific Findings and the Conditions stated in Section E of this notice, where appropriate.

Under Section 505(b) of SMCRA and 30 CFR 730.11, State provisions which provide more stringent environmental protection than the federal provisions shall not be construed to be inconsistent with SMCRA. The Secretary has no authority to disapprove State provisions which are more stringent than the

federal provisions. Thus, State provisions characterized by the Secretary in the disposition of public comments as "consistent with" federal provisions may be more stringent than the federal requirements.

I. General Comments

1. The West Virginia Coal Association (WVCA) and other industry commenters objected that the comment period was not long enough. They stated that they had difficulty in obtaining copies of the resubmission, that there were changes to the regulations after the resubmission, and that the holidays and vacations made it difficult for them to review the program. One of these commenters stated that it was difficult to encourage people to do the work required to review the program because some people believed that their comments would not receive serious consideration.

The comment period was originally set at eighteen days, and in response to an industry request (letter of December 29, 1980, from WVCA to OSM, Administrative Record No. WV 270), was extended to twenty-one days. The extra three days correspond to the three days of official holidays occurring during the comment period. This is consistent with 30 CFR 732.13(f), which states that in the resubmission process, the comment period may be shortened to 15 days. There were no adverse comments on this provision when it was promulgated in March, 1979, and no lawsuits were brought challenging it. The Secretary exercised his discretion in setting a comment period of twenty-one days, which he believes was sufficient to allow review of the program. This period was greater than that afforded in any other State resubmission, including that of Kansas, where the entire body of the regulations was withdrawn after the original submission, necessitating review of an entire set of new regulations on resubmission. [Kansas, 45 FR 74513 (November 10, 1980), 16 days—Oklahoma, 45 FR 80637 (December 8, 1980), 18 days—Utah, 45 FR 84824 (December 23, 1980), 15 days—Wyoming, 45 FR 49597 (July 25, 1980), 15 days—Mississippi, 45 FR 37223 (June 2, 1980), 18 days—Iowa, 45 FR 82276 (December 15, 1980), 16 days—Louisiana, 45 FR 58576 (September 4, 1980), 15 days].

The Secretary's belief that the 21-day comment period was adequate is largely based on the fact that the nature of the review required is narrow. The question the Secretary has considered in deciding whether to approve West Virginia's program and upon which he solicited public comments is whether the State program is consistent with the federal program. Comments attacking the wisdom of the State rules, rather than their consistency with the federal rules, should be directed to the State in its own public participation process, not to the Secretary. Thus, the reviewer's task in this procedure is identifying inconsistencies between the State and federal programs. Furthermore, since under Section 505 of SMCRA the Secretary has no power to disapprove a State provision which provides more stringent environmental protection than the federal rule, reviewers need only be concerned with those differing State provisions which are less stringent than the federal rules. Also see response to comment No. 2 for a further discussion of the narrow nature of the issues under consideration.

The adequacy of the comment period is further borne out by the extent and detail of the public comments received, including detailed comments submitted by several environmental groups on the date of the public hearing, January 5, 1981, four days before the close of the public comment period. One of these environmental groups commented that although they experienced "a slight amount" of hardship in reviewing the resubmission because of the holiday season, they felt that there was adequate time to review the program. They also stated that "by keeping up with the drafts as they were developed over the past two months, we were able to quickly analyze the relatively small volume of new material which was not first available for public inspection until December 19." (Testimony of Ed Light, Administrative Record No. WV 294).

In addition, the industry, as well as other members of the public, had and took advantage of numerous opportunities to familiarize themselves with the draft regulations and discuss them with OSM and the State well before the resubmission. Like the commenter quoted above they were in fact already familiar with many of the regulations in the resubmission. The State held a workshop on May 19, 1980, which was well attended by all facets of the industry, including WVCA and the West Virginia Surface Mining and Reclamation Association (WVSMRA), where the draft regulations were discussed. It was these draft regulations which, after incorporating industry comments, became the June 16, 1980, initial State program submission. The State also met with industry representatives on many occasions to discuss issues in the draft regulations. Industry representatives reviewed drafts of the regulations, discussed them with the State and presented the State with a list of items which they considered to be problems. They then met with OSM and the State on December 8, 1980, to review these items. At this meeting, the participants also discussed the list of issues presented to the State by OSM in letters dated November 19 and 20, 1980 (Administrative Record Nos. WV226 and WV227). Thus, the Secretary believes that the industry, like the environmental groups, was already familiar with most of the regulations in the resubmission and could have conducted a complete review of the program material within the time allowed.

Furthermore, several other factors convinced the Secretary that it would not be overly difficult to review the resubmission in the allotted time. There were several tools available to the public to assist in focusing on the new aspects of the resubmission and to otherwise aid review. Part B of the Attorney General's opinion in the resubmission contains a discussion of how each of the issues in the November 19 and 20, 1980, letters was resolved and cites the State and federal provisions involved. The opinion also contains in Part A a discussion of how each problem raised in the Secretary's October 20, 1980 partial approval/partial disapproval was resolved and citations to the parts of the program which the state felt resolved the problem. Thus, it should not have been difficult for the industry or any other commenters to focus on the program and identify any remaining problems. OSM itself relied heavily on these tools in its own review of the program.

Many of the regulations in the resubmission which differ from previously circulated drafts are nearly identical to the parallel federal regulations, making review of these provisions for consistency with the federal program relatively easy. In addition, in the December 19, 1980, notice announcing receipt of the resubmission and the public comment period the Secretary offered to assist the public in reviewing the program by keeping a list of those wishing to be kept apprised of changes in the resubmission and contacting these people when any such changes were made. 45 FR 83546 (December 19, 1980). Very few such changes were made and OSM received no requests for assistance from these commenters. Thus, the industry's complaint that it was too difficult to keep abreast of program amendments is without foundation.

With regard to the industry's complaints that they were not able to obtain copies of the program, the

Secretary's obligations under 30 CFR 732.12 are to make copies of the program available for inspection at the office of the Regional Director and at the central office and each field office of the State agency. In addition, any person who so requested could receive, free of charge, one copy of the State statutes and regulations (not the program narrative or Attorney General's opinion) from OSM.

In every case where a copy of the statutes and regulations was requested, it was sent by OSM within 24 hours. (Administrative Record No. WV300). Copies of the program were available for review in more than a dozen locations throughout the State. Although there were some minor delays in getting copies of the program to some field offices of OSM and the State, every field office reported that no one requested to see the program before the program was delivered. (Administrative Record No. WV290). In addition, the Federal Register notice announcing the public comment period, 44 FR 63544 (December 19, 1980), identified and provided the telephone number of the Public Affairs Officer at OSM in Charleston to provide further information about the submission. No one contacted this official with regard to difficulty in obtaining copies of the program.

Furthermore, in response to a request from WVCA to the State, OSM reproduced 75 copies of the program for WVCA to send to its members. WVCA, although based in Charleston, never picked up these copies from OSM's Charleston office.

In summary, the narrow nature of the review required and the many tools available to assist in that review should have made the comment period adequate. The industry's claims that they were unable to obtain or view copies of the State program or to keep abreast of changes in the program are unsubstantiated. The Secretary does not agree that the public comment period was too short, or that the holiday season unduly hampered the efforts of those who conscientiously worked to review the program under the applicable legal standards, since the three-day extension of the comment period more than made up for the holidays during the comment period. The extensive and detailed comments actually submitted by many commenters, including the coal industry, confirm the Secretary's view.

2. One commenter argued that the Secretary must specifically answer in detail all comments which "do not match the Federal Act." The Secretary interprets this to mean that the commenter wishes him to consider comments which criticize the wisdom of the State rules rather than comparing the State and federal rules to determine whether they are consistent.

However, under Section 503(a)(7) of SMCRA, the Secretary is authorized only to determine whether the State rules are consistent with the federal rules; furthermore, under Section 505, State provisions which are more stringent than the federal provisions may not be deemed inconsistent with the federal provisions. Thus, the Secretary may not disapprove State rules which impose requirements in addition to, or requirements which are more stringent than, the federal requirements; he also may not impose upon the States any requirements beyond those in the federal regulations. The public has already had an opportunity to comment on the wisdom of the federal rules themselves and to challenge in court those which they believe to be unwise or illegal. Further, the public will have an opportunity to comment on the wisdom of the State rules when the State completes its public participation requirements for its permanent regulations. If at that time the State decides in response to public comments to change any of its rules, it may do so under the program amendment provision, 30 CFR 732.17, as long as its rules do not become less stringent than the Federal program.

3. One commenter argued that West Virginia's submission fails to consider the distinct differences between surface and underground coal mining, as required by Section 516 of SMCRA and Section 20–6–14(a) of the State law. Although the commenter alleged that there are numerous problems presented by the State submission because of this alleged failure, no specific instances were identified. As discussed in the reponse to comment No. 2, the issue considered by the Secretary in deciding whether to approve State programs is whether a State's provisions are consistent with federal requirements. The commenter's specific allegations, if any, should be directed to the State in its permanent rulemaking procedures. With regard to the federal regulations on which the Secretary's review is based, the Secretary took the distinct differences between surface and underground mining into account and provided an opportunity for public comment when he promulgated the permanent federal regulations.

4. WVCA argued that the Federal regulations require that enacted State regulations be submitted but that West Virginia's regulations do not meet this requirement because they are in draft form with an additional process required before they can be enacted. WVSMRA also noted that the Federal Register notice of October 20, 1980, which partially approved the West Virginia program, stated that 30 CFR 732.11(d), as amended [45 FR 33927 (May 20, 1980)], requires that regulations be enacted by the 104th day after submission. WVCA and WVSMRA quoted portions of the October 20 notice which stated that the Secretary could not consider West Virginia's regulations because they were not enacted. They argued that because the State regulations were still not enacted as of the date of the public hearing, January 5, 1981, the Secretary cannot consider them.

The regulations which the Secretary is approving are being enacted as emergency regulations simultaneously with the Secretary's approval, a process which under W. Va. Code, Section 29A–3–14, is done immediately without further procedures (although hearings will be required to make the rules permanent). This meets the requirement of Section 503(a)(7) of SMCRA, which provides that in order for a State program to be approved, the State must be capable of carrying out the purposes of SMCRA through regulations consistent with the Secretary's regulations. There is no statutory requirement that the State regulations be enacted *before* approval.

The 104-day rule cited by WVSMRA, 30 CFR 732.11(d), as amended [45 FR 33927 (May 20, 1980)], governs the initial submission process, not the resubmission process. If the Secretary were to interpret the 104-day rule as applying to resubmissions, no State program which was initially disapproved because of failure to have enacted regulations by the 104th day after submission could ever receive approval on resubmission, since it would still fail to have had enacted regulations on the 104th day. The purpose of the 104-day rule was to assist commenters by insuring that the State program would be "fixed" at some point, rather than allowing it to change from day to day, which would make it difficult for commenters to keep up with program changes. This rule was not related to the requirement of Section 503(a)(7) of SMCRA that a State have effective regulations when the State program is approved. The policy of assisting commenters was met in the process of considering the West Virginia program by the Secretary's offer, 45 FR 83546 (December 19, 1980) to keep a list of anyone wishing to be kept apprised of changes to the program and to contact these people when changes were

made—an offer of which no one took advantage.

The language quoted by WVSMRA from the October 20 notice announcing the Secretary's initial decision does not support its allegation that the Secretary may not consider draft regulations which are enacted concurrently with conditional approval. That quoted language relates the application of the 104-day rule to the initial decision and in no way suggests that the rule would apply to the resubmission. Finding 7 of that notice, which WVSMRA cites as supporting its view, merely states that under Section 503(a)(7) of SMCRA the Secretary cannot approve a program which lacks enacted regulations. He is not doing so here, as the State rules are being enacted concurrently with this approval.

5. Several commenters stated that West Virginia violated the provisions of *W. Va. Code*, Section 20-6-23b by submitting a program to OSM which contained provisions which were more stringent than federal law and regulations. Section 23b was added to Chapter 20, Article 6, by H.B. 1404 in 1979. This section authorizes the DNR and the West Virginia Joint Committee on Government and Finance to develop a program which allows West Virginia to gain primacy under Section 503 of SMCRA. Subsections 23b (b), (c), and (d) expressed the legislature's disapproval of provisions in the State program which are more stringent than the federal law and required that any existing provisions which were more stringent be submitted to the Joint Committee by May 1979. Under Subsection 23b(e) the Joint Committee was required to insure that the intent of Section 23b was carried out and to recommend proposed surface mining legislation to the legislature by January 1980. All of these requirements were met. The legislation recommended by the Joint Committee became H.B. 1529, which is the effective West Virginia surface mining statute upon proclamation by the Governor that the West Virginia proposed program had been approved by the Secretary of the Interior.

It is DNR's position (Administrative Record No. WV 352) that to the extent that H.B. 1404 imposed any obligations on DNR and the Joint Committee, those obligations were fulfilled by the actions of May 1979 and January 1980. It is also DNR's position that its actions in program development were ratified as being in compliance with the entirety of Section 23b by the Joint Committee's recommendations to the legislature pursuant to Subsection 23b(e).

Based on the foregoing, the Secretary finds the provisions of the West Virginia program to be fully authorized by State law, even though some provisions may be classified as more stringent. As pointed out above in Part B, "Secretary's Findings," except for those provisions upon which a condition has been placed, the West Virginia program is consistent with and at least as stringent as the federal requirements. In addition, as discussed in response to comment 2 above, if any portions of the West Virginia program are more stringent than the federal rules, Section 505(b) of SMCRA makes it clear that they are to be construed as consistent with the federal requirements.

6. The following is OSM's response to comments made by WVSMRA and other commenters on the following definitions contained in the State regulations:

a. WVSMRA argued that the phrase "or the State as a result of bond forfeiture to reclaim it under State or Federal Law" contained in State Regulation Section 2.01 defining "Abandoned Coal Waste Disposal Area" is not accurate or necessary. However, this does not affect the consistency of the State regulation with the federal requirements in Section 404 of SMCRA, 30 CFR 816.81 and 816.87.

b. Several commenters argued that the listing of specific seam names in the definition of "Acid Producing Overburden" is misleading since "some of the seams in some areas of the state have differing characteristics." However, this has no effect on the consistency of the State Regulation Section 2.05 with the term "Acid Forming Materials" in 30 CFR 701.5, as used in 30 CFR 779.14. The Secretary has no power to require a change in this definition of acid-producing overburden.

c. WVSMRA argued that State Regulation Section 2.13, which defines "Best Technology Currently Available", is too broad because it gives the Director of the Department of Natural Resources discretion to require equipment, devices, systems methods or techniques. However, the provision is consistent with federal requirements in 30 CFR 701.5, and the Secretary has no authority to require the change.

d. It was argued that State Regulation Section 2.18, defining "Coal Processing Plant," should be rewritten because in West Virginia it is not possible to expect a coal processing plant to have control over all roads, railroads and other transportation facilities. The State regulation is identical to the definition in 30 CFR 701.5. However, see Finding 14.6.

e. A commenter stated that in State Regulation Section 2.49, "fragile lands" should be defined to be "what fragile lands actually are and not what the federal regulations say they are." The State regulations are identical to 30 CFR 762.5 and are consistent with federal requirements.

f. WVSMRA criticized the State's definition of "growing season" under State Regulation Section 2.54 and argued that it should be changed because in West Virginia a growing season is not one year. In finding 13.2 it is determined that the State regulations are consistent with federal requirements.

g. A commenter believed that State Regulation Section 2.56, the definition of "haulageway or access road," is too broad because it follows a federal definition which was designed to solve problems in states other than West Virginia. The West Virginia regulation is consistent with the federal definition in Section 701(28) of SMCRA and 30 CFR 701.5, and the Secretary has no authority to require this change.

h. A commenter stated that the West Virginia definition in State Regulation Section 2.60 of "historic lands" is too broad because it includes any land which is *eligible* for listing on a State or National Register of Historic Places instead of just lands which are actually *considered* historic. The State Regulation is identical to 30 CFR 762.5 and is consistent with federal requirements.

i. A commenter stated that in State Regulation Section 2.61, defining "Occupied Dwelling," dwellings occupied on a temporary basis should not be considered occupied and that "regular" basis should be defined using number of days. The State regulation is identical to 30 CFR 761.5 and is consistent with federal requirements. The Secretary has no authority to require this change.

7. The following is the Secretary's response to comments submitted by WVSMRA which address provisions of the WV SCMRA and generally do not address possible inconsistencies between the federal Act and the West Virginia law. The comments relating to the following West Virginia statute sections are merely objections to the federal requirements. Some are covered in Findings.

a. Section 20-6-17(d) of the WV SCMRA, governing the imposition of civil penalties by the magistrate courts. Finding 19.1.

b. Section 20-6-17(a) of the WV SCMRA, governing the issuance of notices of violation.

c. Section 20-6-16(a) of the WV SCMRA, governing the issuance of permits by the Director.

d. Section 20-6-22(d)(1) of the WV SCMRA, prohibiting surface mining activities in national parks, wildlife refuges, recreation areas, etc.

e. Section 20-6-3(2) of the WV SCMRA, defining "adequate treatment" of water. Finding 13.12.

f. Section 20-6-(a)(3) of the WV SCMRA, requiring for each permit application a statement of any current surface mining permits held by the applicant. Finding 14.1.

g. Section 20-6-10(a)(5) of the WV SCMRA, requiring from each permit applicant a statement of whether the applicant or any officer, partner, etc. has ever been an officer, partner, etc. in any company which has ever held a federal or State mining permit which in the previous five years has been suspended.

h. Section 20-6-10(b) of the WV SCMRA, governing the payment by the State for the cost of certain test data for small operators.

i. Section 20-6-10(f) of the WV SCMRA, requiring that the permit applicant file as part of his permit application a schedule listing all his or her bond forfeitures, permit revocations, cessation orders, etc. Finding 14.2.

j. Section 20-6-14(b)(12) of the WV SCMRA, which relates to the location of openings for all new drift mines in acid-producing or iron-producing coal seams. Finding 13.10.

k. Section 20-6-15(g) of the WV SCMRA providing for inspections following citizen complaints inspections.

l. Section 20-6-39(a) of the WV SCMRA, giving the inspector the authority to issue cessation orders. Finding 20.1.

m. Section 20-6-24(a) of the WV SCMRA, relating to the reclamation board of review.

n. Section 20-6-40(a) of the WV SCMRA, regarding conflict of interest. Finding 23.

8. The Carbon Fuel Company submitted comments on a number of West Virginia regulations which Carbon identified as being more stringent than the federal regulations. As discussed above in the response to comment 2 and in the general discussion under "Disposition of Public Comments," the Secretary may not disapprove State provisions that are more stringent than the federal requirements.

a. State Regulation Section 2.39, which defines "downslope" to include mining-related construction, is consistent with the federal definitions of 30 CFR 701.5.

b. State Regulation Section 3G.02a, which requires that the permit application include maps showing the location of all buildings on and within 1,000 feet of the proposed permit area, is consistent with 30 CFR 779.24.

c. State Regulation Section 3H.02a.2, which requires the applicant to specifically request for each existing structure an exemption from the design criteria required by SCMRA, is consistent with 30 CFR 780.12.

d. State Regulation Section 3H.02b., which requires the applicant to submit the necessary modifications in the event he fails to qualify for the exemption provided for existing structures, is consistent with 30 CFR 780.12.

e. State Regulation Section 4A.01a., which requires certain data in the description of transportation facilities, is consistent with 30 CFR 780.37.

f. State Regulation Section 4A.01d., which could, according to the comment, be read to cover existing railroad lines all the way to the market if under common ownership, is consistent with 30 CFR 701.5 and 30 CFR 780.37. (See comment No. 6d. and Finding No. 14.6.)

g. State Regulation Section 4A.02b., which provides the construction requirements for road fills, is consistent with 30 CFR 816.71.

h. State Regulation Section 4A.06, which requires dust control from the surface of haulageways or access roads, is consistent with 30 CFR 780.15.

i. State Regulation Section 4A.13d, which requires that other transportation facilities shall, unless exempted, be designed, constructed and maintained, and the area restored to control and minimize air pollution, is consistent with 30 CFR 780.15.

j. State Regulation Section 4B.06e.3., which requires that a request to leave a structure in place after the final release must contain a statement signed by the landowner and the operator, is consistent with 30 CFR 780.23.

k. State Regulation Section 4C.04c., which requires that the maximum air blast level of 128 decibel linear peak shall not be exceeded at any residence or occupied structure within one-half mile of the blast site, is consistent with 30 CFR 816.65.

l. State Regulation Section 4C.04f.1., which requires that, except under certain conditions, blasting shall not be conducted within 1,000 feet of any building used as a dwelling, school, church, hospital or nursing facility, is consistent with 30 CFR 816.65. (See discussion of remanded regulations in response to comment 9 below.)

m. State Regulation Section 5A.01a.1., which requires that the "Notice of Intent" shall identify the boundaries of the property to be prospected and the surface and mineral owners of the tract, is consistent with 30 CFR 776.11.

n. State Regulation Section 4A.11, which requires that existing roads used for access or haulage comply with certain regulations, is consistent with Section 701(28) and 515(b)(17) of SMCRA. (See response to Comment 9e. below.)

o. State Regulation Section 4A.07, requiring sediment control provisions for roads and other transportation facilities, is consistent with Sections 701(28) and 515(b)(17) of SMCRA. (See response to Comment 9d. below.)

p. State Regulation Section 4A., which applies to short term roads such as exploration roads, is consistent with Section 701(28) and 515(b)(17) of SMCRA and 30 CFR Part 776.

9. Consolidation Coal Company and the WVCA commented that several provisions of the State regulations contain requirements corresponding to federal provisions which had been remanded or suspended. While this is correct, the Secretary cannot require the State to delete these requirements. The court ruled in *In re: Permanent Surface Mining Regulation Litigation*, Civil Action No. 79-1144 (D.D.C., August 8, 1980) that regulations which a State promulgates after the court's decision or for which the State requests approval, are not to be disapproved. Since all of the West Virginia regulations were promulgated after May 16, 1980 and in addition, on September 4, 1980, Director David C. Callaghan of the West Virginia DNR requested approval of all State regulations which correspond to remanded or suspended federal regulations (Administrative Record No. WV-200), the Secretary has no authority to require that they be deleted from the program. Also see response to comment 2.

Below is a listing of State regulations included in the above comment:

a. State Regulation Section 2.51, which defines the term "fugitive dust" and is related to remanded regulation 30 CFR 816.95. (Note, however, that the federal definition of fugitive dust has not been remanded or suspended.)

b. State Regulation Section 2.60, which defines historic lands.

c. State Regulation Section 4A.03, regarding stream crossings.

d. State Regulation Section 4A.07, regarding sediment control for haulageways and access roads.

e. State Regulation Section 4A.11, regarding existing haulageways or access roads.

f. State Regulation Section 4B.06b, relating to sediment storage volume.

g. State Regulation Section 4D.02a, relating to the premining use of land.

h. State Regulation Section 4D.04d, relating to letters of commitment.

i. State Regulation Section 4E.01, relating to fish and wildlife information.

j. State Regulation Section 4F.09d.2, which relates to standards for evaluating vegetative cover.

k. State Regulation Section 46.03, regarding prime farmlands requirements for underground mines.

l. State Regulation Section 4G.05e.1, regarding compaction of soils for prime farmlands.

m. State Regulation Sections 4G.06b. and 4G.06c, relating to actual crop production on prime farmlands.

n. State Regulation Section 4H.02, addressing escrow accounts and self-bonding.

o. Chapter 3.5 of the Technical Handbook, relating to cleanout of sediment basins at the 60% level.

p. Chapter 3.6 of the Technical Handbook, addressing storage of sediment.

q. Chapter 4.6 of the Technical Handbook, relating to NPDES Standards.

r. Chapters 13.2, 13.4.2, 13.6.3, 13.10, 13.12, 13.15, 13.17, 13.19 and 13.21 of the Technical Handbook, addressing haulageways or access roads.

s. Chapter 13.6 of the Technical Handbook, which relates to culverts for haulageways and access roads.

10. One commenter pointed out that there are two titles numbered "4A" in the State's rules and recommended that the second title, "Transportation Facilities," be dropped. This error does not affect the consistency of the State program with the federal requirement.

11. One commenter stated that the titles of State Regulation Sections 4 and 4A are switched. This does not affect the consistency of the State rules with the federal provisions.

12. One commenter stated that State Regulation Section 4A.01c. is incoherent, conflicting and unintelligible because it is not a properly constructed sentence and refers to alternative specifications while stating that alternatives are not allowed. These editorial deficiencies do not interfere with the meaning or the consistency of the regulation with federal requirements.

13. Consolidation Coal Company and WVCA criticized various aspects of the State program. The following sections, alleged to be more stringent than federal law, have been reviewed and are found to be consistent with the SMCRA and 30 CFR chapter VII requirements or to impose a requirement not presently contained in federal law:

State Regulation Section 2.11, regarding the definition of buffer zone, the commenter states, should contain a clarification of intermittent stream. The definition is consistent with the requirements of 30 CFR 816.57 and a further clarification is not necessary.

State Regulation Section 2.18, which defines coal processing plants, is consistent with 30 CFR 701.5. The commenter request a clarification because "as currently written this could well include all the *rail* of the C & O railroad." However, further clarification is not necessary for consistency with the federal regulation.

State Regulation Section 2.51, which defines fugitive dust, is consistent with 30 CFR 701.5, for the reasons discussed in response to comment 9.

State Regulation Section 2.60, which defines historic lands, is consistent with 30 CFR 701.5, for the reasons discussed in the response to comment 9.

State Regulation Section 2.66, which defines intermittent streams, should not be changed as the commenter states because to do so would exclude all surface runoff intermittent streams.

Redefinition of State Regulation Section 2.92, to exclude the term "bond" from the pre-plan, is not necessary because it would merely be a clarification of a regulation that is consistent with federal requirements.

State Regulation Section 2.105, which defines sediment control structures, is consistent with 30 CFR 701.5. Language almost identical to that which the commenter wants deleted appears in the federal definition of "sedimentation pond."

The commenter asks for a clarification of State Regulation Section 3A.02, regarding the submission and approval of phased applications. This regulation meets the federal requirement of 30 CFR 771.21 and a mere clarification cannot be required.

The commenter requests that State Regulation Section 3A.02c., be reworded to require the director of the DNR to allow an operator to continue to operate after eight months from the date of approval of the state program if he or she has shown a good faith attempt to submit complete permit applications. The Director's discretionary authority is consistent with 30 CFR 701.11(a) and the State need not make the requested change.

The commenter states that state Regulation Section 3A.03, should be deleted because it has no basis in law or existing regulations. The legal basis is W. Va. Code Section 20-6-15(a)(1). The commenter further objects to the Director's requiring from operators a schedule for compliance with DNR regulations. While Section 3A.03 is not required by federal law, it is within the State's prerogative to require this.

The commenter request that State Regulation Section 3B.02c., addressing information to be contained in the public notice for filing of permit applications, be changed to require legal advertisements "in an abbreviated form". The regulation is consistent with 30 CFR 786.11(a) and the change requested is not necessary.

The commenter requests that State Regulation Section 3B.02e., regarding proof of public notices for the filing of permit applications, be deleted because it is not required in the Federal Act. This regulation is consistent with 30 CFR 778.21 and 782.21 and the fact that there is no comparable federal provision does not require deletion.

The commenter requests the deletion of a map scale requirement from State Regulation Section 3C.02, regarding final maps for prospecting operations because it is covered in another State regulation. This provision is consistent with 30 CFR 771.23 and a further clarification is not necessary.

The commenter requests in State Regulation Sections 3C.03, 7A.01c.1., 8A.01c.1., 9A.01a., 10B, and 10B.05b., regarding the size of maps, certain changes in size. This provision is consistent with 30 CFR 779.24 and 783.24 and it is within the states prerogative to establish map sizes.

The commenter objects to State Regulation Section 3E.02, regarding testing of engineers or surveyors, because the commenter believes State registration should be adequate proof of a person's qualifications. The State regulation is consistent with 30 CFR 780.14(c) and 783.23(c) and it is within the state's discretion to require additional proof of qualifications.

The commenter requests a clarification of State Regulation Section 3G.01, regarding permit application plans. The regulation is consistent with 30 CFR 780.11 and 784.11 and a mere clarification is not necessary.

The commenter requests a change in State Regulation Section 3G.02, regarding required maps to require *USGS* maps. The State regulation is consistent with 30 CFR 779.24 and 783.24 and the requested change is not necessary.

The commenter asked for an unspecified clarification of State Regulation Section 3G.03, regarding permit term information and general environmental resources information. The State regulation is consistent with 30 CFR 778.17(a), 779.12(a), 782.17(a) and 783.12(a), and the Secretary has no authority to require additional clarification.

The commenter requested deletion of the word "Premining" in State Regulation Section 3G.04, regarding cross-sections for existing *premining* surface configurations. The regulation is consistent with 30 CFR 779.25(k) and 783.15(k) and there is, thus, no basis for the requested change.

The commenter requested a clarification of "pre-existing" in State Regulation Section 3H.02, regarding pre-existing as opposed to existing in State regulation 2.45. The State regulation is consistent with 30 CFR 780.12(b) and 784.12(b) and there is no basis for requiring the clarification requested.

State Regulation Section 3H.04, regarding experimental practices, is consistent with 30 CFR 785.13(h)(3) for the reasons discussed in Finding 13.15.

The commenter stated that State regulation Section 3Q.06 does not provide the specific exemption of 30 CFR 761.13(b) for preventing lands unsuitable designation when a permit has been issued. The exemption, while not explicit in the State regulation, need not be further clarified because it is within the State's prerogative to provide a more narrow exemption than that of 30 CFR 761.13(b).

The commenter objected to State Regulation Section 4A.01a., concerning general permit application requirements, stating that this regulation must be affirmatively disapproved because it is more stringent and because the federal regulations contain no comparable provision. The provision is consistent with the federal program, and the Secretary has no authority to require this change.

State Regulation Section 4A.01c., regarding geotechnical analysis, was objected to as being unintelligible and incoherent. The State is permitted to establish its own requirements within the confines of the federal regulation. While parts of this regulation may be confusing, it is consistent with the requirements of 30 CFR 771.23(a) and there is no basis for rejecting it.

The commenter objected to State Regulation Section 4A.01d., addressing control of railroads. However, this provision is consistent with 30 CFR 780.37 and 784.24 for the reasons discussed in Finding 14.6.

State Regulation Section 4A.06, which addresses dust control from haulageways and access roads, is consistent with 30 CFR 816.95 and 817.95.

State Regulation Section 4A.13, which addresses railroad loops, spurs, sidings, surface conveyor systems, chutes and aerial tramways, is consistent with 30 CFR 816.150 and 817.150.

The commenter criticized State Regulation Section 4B.03, requiring "buffer zones" along intermittent streams. However, this provision is consistent with 30 CFR 816.57 and 817.57.

Although the commenter asked that State Regulation Section 4B.04, requiring that diversions be capable of diverting a 10-year, 24-hour precipitation event, be changed to include only permanent diversions, the West Virginia Regulation is consistent with 30 CFR 816.43(b) and 817.43(b) and there is no basis for requiring the change.

The commenter asked that State Regulation Section 4B.06, requiring runoff from disturbed areas to pass through a sedimentation pond, be changed to eliminate runoff from roads. This regulation is consistent with 30 CFR 816.42(a)(4) and 817.42(a)(4).

The commenter objected to State Regulation Section 4B.08, regarding intermittent streams. However, this provision is consistent with 30 CFR 816.57 and 817.57.

The commenter objected to State Regulation Section 5A.01b.3., regarding notice of intent to prospect, as being overly broad because it includes persons "associated with" the person filing the Notice of Intent. This regulation is consistent with 30 CFR 776.11.

The commenter objected to State Regulation Section 4C.02a., which limits the blasting notice to cover an area no larger than 300 acres. This requirement is consistent with 30 CFR 816.64(b)(2)(i) and need not be deleted.

The commenter stated that State Regulation Section 4C.04e. does not clearly indicate whether the State requires air blast monitoring by the operators. The State rule is consistent with 30 CFR 816.65(e)(4) and 817.65(e)(4).

The commenter stated that State Regulation Section 4C.04h., regarding blasting, does not meet the federal requirements. See Finding 13.30.

The commenter objected to West Virginia State Regulation Section 4D.02a., regarding postmining land use, alleging that it places an additional requirement for comparison to land that has been properly managed. This is consistent with 30 CFR 816.133(b).

The commenter objected to State Regulation Section 4F.01a., regarding revegetation, allegeding that it adds provisions for providing economic benefit and restoring aesthetic appeal. There is no basis for requiring the deletion of these provisions merely because there is no federal counterpart.

The commenter objected to State Regulation Section 4F.08, establishing mulching rates, because the commenter believes that a hydroseeder can not apply mulch so heavily. The State regulation is consistent with 30 CFR 816.114 and 817.114.

The commenter objected to State Regulation Section 4F.09f.2.a., because the State regulation requires 600 trees per acre, while 30 CFR 816.117(b)(1) and 817.117(b)(1) require only 450 trees per acre in stocking for commercial woodlands. The State provision is consistent with the federal rule.

The commenter objected to State Regulation Section 5B.01b.7. regarding drilling exemptions. See response to 5A.016.3., above as the same response applies.

The commenter stated that State Regulation Section 5B.02, regarding off road travel, is already covered by Section 5B.02a. This does not make the State rule inconsistent with any federal provision.

The commenter requested the exclusion of roads from State Regulation Section 5B.04, regarding drainage, arguing that prospecting roads are infrequently used. The State rule is consistent with the federal requirements. The commenter objected to the requirements in State Regulation Section 5B.05a. regarding prospecting on steep slopes. This regulation is consistent with 30 CFR 815.15.

The commenter objected to State Regulation Section 5B.05b., regarding revegetation of prospecting areas, arguing that future mining activities would render revegetation useless. This regulation is consistent with 30 CFR 815.15(f).

The commenter asked that State Regulation Section 5B.06(L) be deleted because registration requirements are already spelled out in Section 5B.07. This appears to be an improper cite, as there is no Section 5B.06(L).

The commenter asked for a definition of mine site in State Regulation Sections 6A.02a.5., 7A.02a.5. and 8A.02a.5., regarding the request for additional information by the Director on a permit application. These provisions are consistent with 30 CFR 779.15 and 783.15 and the definition need not be added to meet federal requirements.

The commenter asked that the State not consider potential uses of water in State Regulation Sections 6A.02a.6., 7A.02a.6., 8A.02a.6. and 8B.07b.2., regarding ground water analysis. These regulations are consistent with 30 CFR 779 and 783.

The commenter objected to the State's requirement for the use of rain gauges in State Regulation Sections 6A.02c., 7A.02c., and 8A.02c. This requirement is consistent with 30 CFR 779.18(a) and 783.18(a).

The commenter objected because 30 CFR 779.24(b)(1) allows for field estimates of compaction and erodibility while State Regulation Sections 6A.03a.3., 7A.03a.3. and 8A.03a.3., regarding overburden analysis, do not. The State regulations are consistent with the federal rules.

The commenter requested State Regulation Sections 6A.03b., 7A.03b. and 8A.03b., require a response by the Director to the operator within 10 days if data are available from previous investigations. The regulations are consistent with 30 CFR 779.14(b)(3) and 783.14(b), and the ten day limit need not be added.

The commenter requested that State Regulation Sections 6A.02, 7A.02, and 8A.02 include a definition of "mine site." There is no federal requirement for such a definition.

State Regulations Sections 6B.03b., 7B.03b., and 8B.03b., regarding topsoil segregation, require the segregation of subsoil. The commenter believes the Director should have discretion not to impose this requirement. This regulation is consistent with 30 CFR 816.22(c) and 817.22(a).

The commenter stated that State Regulation Section 6B.04a., regarding water quality control, should not require that water leaving the permit area shall not violate the water quality standards of the water into which it is discharged, arguing that OSM only applies this requirement to runoff from reclaimed areas. This provision is consistent with 30 CFR 816.42(a)(2) and 817.42(a)(2).

The commenter stated that State Regulation Section 6B.04b., regarding the discharge of water from a permit area, is unclear as to which standard applies. Such clarification is not necessary because the State regulation is consistent with 30 CFR 816.41(c).

The commenter requested that State Regulation Sections 6B.04b.1. and 9B.03b.1., regarding the discharge of water from a grade, be changed to allow for the consideration of existing background levels, in determining allowable effluent concentrations. The State regulation is consistent with 30 CFR 816.42 and 817.42.

The commenter objected because State Regulation Sections 6B.04f.2., 7B.04Af.2. and 8B.04f.2. do not allow the discharge of materials into underground workings, arguing that 30 CFR 816.55 and 817.55 allow such discharges. The State rules are consistent with the federal requirements.

The commenter argued that State Regulation Sections 6B.05b., 7B.06b. and 8B.05b. attempt to allow lesser amounts of cover than do 30 CFR 816.103(a) (1) and (4) and 817.103 (1) and (4) regarding the treatment of toxic materials. The State rules are consistent with the federal requirements.

The commenter stated that State Regulation Section 6B.06a.2., regarding the sampling of water discharged from a permit area, should not require *daily* sampling. This is consistent with 816.42 (a)(2) and 817.42(a)(2).

The commenter argued that State Regulation Section 6B.06b.2., regarding the variance from reclamation requirements, should give the Director discretion to allow underground mining to commence more than one year after the completion of surface mining activities. This regulation is consistent with 30 CFR 816.101, 816.102, 817.101 and 817.102.

The commenter criticized State Regulation Section 7A.01c.1., regarding the size of permit maps. However, the rule is consistent with 30 CFR 771.23(e).

The commenter states that State Regulation Section 7A.01c.2., which addresses the *preferred* scale of maps used in a permit application, should address only the *suggested* scale. This provision is consistent with 30 CFR 771.23(e)(1).

The commenter objected to State Regulation Section 7A.01c.12., requiring a map showing fish and wildlife facilities. This regulation is consistent with 30 CFR 779.24(1), 779.25(b), 783.24(1) and 783.25(b).

The commenter requested further guidance as to where signs may be required. State Regulation Section 7B.01a., regarding permanent monuments, is consistent with 30 CFR 816.11(c) and 817.11(c). The Secretary notes that the State rule clearly requires that a monument be posted at the entrances to public roads.

The commenter requested that State Regulation Sections 7B.01b., 8B.01b. and 10C.01b., regarding perimeter markers, be deleted. However, these regulations are consistent with 30 CFR 816.11(d) and 817.11(d).

State Regulation Section 7B.01f. concerns the marking of slope measurements. The commenter desires that this marking be restricted to within 300 feet of the face-up area for a deep mine. However, the regulation is consistent with 30 CFR 816.11 and 817.11.

The commenter stated State Regulation Section 7B.03e.2., regarding topsoil substitutes, should require approved methods rather than approved laboratories for certification of soil test. This requirement is consistent with 30 CFR 816.22 and 817.22.

The commenter requested that State Regulation Section 7B.04a., regarding water quality standards and the reference to "pit area", be deleted in part. However, this provision is consistent with 30 CFR 816.42 and 817.42.

The commenter requested that State Regulation Section 7B.04d.1., regarding the regulation of water breakthroughs, be deleted. However, this provision is consistent with 30 CFR 816.41 and 817.41.

The commenter requested that State Regulation Section 7B.04d.2., regarding breakthrough procedures, be deleted because it reiterates a previous regulation. This does not make the State rule inconsistent with the federal rules.

The commenter objected to State Regulation Section 7B.05a., regarding discharge from underground operations, arguing that it should be clarified. However, the rule is consistent with 30 CFR 817.50(c).

The commenter requested that State Regulation Section 7B.06a.1., regarding the disposal of acid-forming and toxic-forming material and the treating of such material to prevent adverse effects on water quality, be replaced by the language of 30 CFR 816.46 and 817.46. The State rule is consistent with the federal requirements.

The commenter desires the recording of only precipitation events in excess of 1." However, State Regulation Sections 7B.07a.1., 8B.06a.1. and 9B.05a.1. are consistent with 30 CFR 816.52(b) and 817.52(b). These federal rules authorize the regulatory authority to adopt standards on the nature of data requirements and frequency of collection.

The commenter requested that State Regulation Sections 7B.07b.3. and 8B.06b.3., regarding submission of monthly reports of records pertaining to testing dates and analytical data to the Director, be deleted. However, the State rule is consistent with 30 CFR 816.52(a) and 817.52(a).

The commenter desires the inclusion of a phrase concerning weather conditions in State Regulation Section 7B.10a.1., regarding temporary revegetation. However, the rule is consistent with 30 CFR 816.113 and 817.113.

The commenter requested a longer period of time to accomplish grading. However, State Regulation Section 7B.11b., regarding backfilling and grading, is consistent with 30 CFR 816.101 and 817.101.

The commenter asked for inclusion of a definition of "material damage" in State Regulation Section 7C.02, regarding subsidence and surface owner protection. However, the rule is consistent with 30 CFR 817.124.

The commenter desires that the State include a provision concerning valid existing rights in State Regulation Section 7C.03b., regarding standards for surface effects of underground mining, is consistent with 30 CFR 817.124.

The commenter objected to State Regulation Section 7C.03a., which

prohibits underground mining beneath perennial streams and impoundments unless the Director determines subsidence will not cause material damage. However, the existing state language is virtually identical to 30 CFR 817.126(a).

The commenter objected to State Regulation Section 7C.03c., which prohibits underground mining beneath public buildings without the Director's authorization. However, the rule is consistent with 30 CFR 817.126(c). The State rule authorizes the Director to provide the requested flexibility.

The commenter requested director discretion in State Regulation Section 7C.04, concerning subsidence control plans. This regulation is consistent with 30 CFR 784.20.

The commenter asked for a clarification of State Regulation Section 8A.01, regarding "at or near the mine site." This regulation is consistent with Section 701(28) of SMCRA and further clarification is not necessary.

State Regulation Section 8A.01c.2., which requests that maps be on a scale of 1:2400, is consistent with 30 CFR 771.23. See response to comment on State Regulation 7A.01c.2., above.

The commenter questioned the use of the word "premining" in State Regulation Section 8A.02b, regarding surface water requirements for incidental facilities. This usage is consistent with 30 CFR 779.16 and 783.16 and premining need not be changed to "existing" as the commenter suggests.

The commenter requested in State Regulation Section 8A.03a., concerning geological information, a reduction in the requirement for a description of the geology. The State Regulation is consistent with 30 CFR 779.14 and 783.14 and the change is not necessary for meeting federal requirements.

The commenter suggested that State Regulation Section 8B.05, regarding permanent facilities, provide certain exemptions for permanent facilities not involved in the excavation, loading, etc., of coal. This Section is consistent with SMCRA Section 701 and 30 CFR Part 827 and a broadening of the exemption is not required.

The commenter asked for a clarification of State Regulation Section 8B.01a., which addresses signs and markers. This regulation is consistent with 30 CFR 816.11 and 817.11 and a clarification is not necessary.

The commenter asked for a clarification regarding the certification of soil testing in State Regulation Section 8B.03e.2. The regulation is consistent with 30 CFR 816.22(e)(ii) and 817.22(e)(ii) and a clarification is not necessary.

The commenter asked for an addition to include sludged in State Regulation Section 8B.04f.2., regarding discharge of water into an underground mine. This regulation is consistent with 30 CFR 816.55(c)(4) and (c)(5) and 817.55(c)(4) and (c)(5) and the additions are not necessary.

State Regulation Section 8B.06a.1, regarding temporary revegetation, requires revegetation within 30 days. The commenter requested the beginning of the next growing season. The regulation is consistent with 30 CFR 816.113 and 817.113 and the change is not necessary.

The commenter in State Regulation Section 8B.09g.1. and 2., regarding remining of previously mined areas, requested that a change be made to require only *new* highwalls be elminated.

This regulation meets the requirement of 30 CFR 826.15 and no change is necessary.

The commenter requested the addition of a reference and language modification to allow flexibility in State Regulation Sections 10A and 10A.01b.3., regarding coal waste piles and impounding structures for coal mine waste piles. However, the State rule is consistent with 30 CFR 816.81, 816.91(b), 817.91(b), 816.92(b), 816.93 and 817.93.

The commenter requested that a reference to Technical Paper 40 be added to Section 10A. Such a change is not necessary for meeting the federal requirement.

The commenter stated that State Regulation Sections 10B.03, 10B.04a.1.a., 10B.04a.1.e. and 10B.04b.3., regarding coal waste piles, contain unnecessary language which should be deleted. These regulations are consistent with 30 CFR 816.82, 816.42, and 816.81. The commenter also recommended adding flexibility to the design standards in Section 10B.04a.1.e. This section is consistent with the federal requirement and no further change may be required.

The commenter stated that State Regulation Section 10B.04a.1., regarding permanent structures, should clarify the meaning of the word permanent. This section is consistent with 30 CFR 816.49 and 817.49. A more clarification is not required.

The commenter requested a clarification of State Regulation Sections 10B.04c.6.a.(iii) and 10B.04d., regarding coal waste piles, to provide for flexibility in construction methods. These sections are consistent with 30 CFR 816.49, 817.49, 816.83(a) and 817.83(a) and no clarification is required.

The commenter suggested that State Regulation Section 10B.04d.3., regarding predominant type of fill material, be changed to allow use of coal refuse material in underdrains. Section 10B.04d.3 is consistent with 30 CFR 816.72(b)(3) and 817.72(b)(3), which specify that underdrains shall consist of durable rock free of coal.

The commenter recommended deletion of the last sentence of State Regulation Section 10B.05b.2., regarding coal waste piles. This section is consistent with 30 CFR 816.81 and 817.81, and the Secretary has no authority to require deletion unless a section is inconsistent with federal requirements. The commenter also recommended adding the words "or otherwise per good engineering standards" to Section 10C.09.b.8. This section is consistent with 30 CFR 816.81 and 817.81 and no further change is required.

The commenter suggested that State Regulation Section 10C.06a.9., concerning the use of concrete in spillways and diversion construction, delete the words "and diversion ditches" in the first sentence. This section is consistent with the federal requirements, and no further change is necessary.

The commenter requested clarification of State Regulation Section 10C.06a.1., addressing drainage from acid-forming and toxic-forming underground development waste. This section is consistent with 30 CFR 816.48(c) and 817.48(c), and no clarification is required.

The commenter suggested that Chapter 3.4 of the Technical Handbook, which addresses drainage area and site evaluation and limitations, delete the mandatory requirement to use "Water Management Practices." Chapter 3.4 is consistent with 30 CFR 816.46 and 817.46, and no change is required.

The commenter stated the requirements to clean sediment ponds when sediment reaches the 60% level should be eliminated from Chapter 3.5 of the Technical Handbook. See response to Comment Number 9.

The Commenter stated that the requirements of Chapters 3.5, 4.6, 5.6, 7.5 and 14.5 of the Technical Handbook, regarding sediment control on pre-mining disturbances, should be deleted. These requirements are consistent with 30 CFR 816.42 and 817.42.

The commenter stated that Chapters 3.8 and 3.9 of the Technical Handbook, specifying technical requirements for the design of principal and emergency spillways, should be revised to allow site-specific design. These chapters are consistent with 30 CFR 816.49 and 817.49.

The commenter stated that Chapter 3.8.5.1.1 of the Technical Handbook,

regarding the thickness of pipe conduits in sediment dams (embankment type), should be revised to allow the thickness of pipe to be determined on a case-by-case basis. This requirement is consistent with 30 CFR 816.46(d) and 817.46(d).

The commenter stated that Chapter 3.8.6.2 of the Technical Handbook requiring dewatering devices for structures, including sedimentation ponds, should be revised to delete this mandatory requirement. This requirement is consistent with 30 CFR 816.46(d) and 817.46(d).

The commenter suggested that the requirement in Chapter 3.8.6.3 of the Technical Handbook for anti-seep collars to prevent seepage should not be required for corrugated metal pipe and may not be needed for other types of conduits. This requirement is consistent with 30 CFR 816.45(b)(6) and 817.45(f).

The commenter stated that the requirement in Chapter 3.8.6.4 of the Technical Handbook, specifying two suitable anti-vortex devices for sediment dams (embankment type), should be expanded to allow other devices. This requirement is consistent with 30 CFR 816.46 and 817.46.

The commenter stated that the requirement in Chapter 3.9.4.2 of the Technical Handbook, regarding emergency spillways in rock, should allow greater maximum velocity than that specified. This requirement is consistent with 30 CFR 816.46(i) and 817.46(i).

The commenter stated that the requirement in Chapter 3.9.5 of the Technical Handbook specifying two conditions for use of concrete spillways should be amended to allow use of concrete in accordance with good engineering practices. This requirement is consistent with 30 CFR 816.46 and 817.46.

The commenter stated that Chapter 3.10.2 of the Technical Handbook, regarding minimum top width of embankments, should be modified to allow a lower minimum top width. Chapter 3.10.2 is consistent with 30 CFR 816.46(l) and 817.46(l).

The commenter stated that Chapters 3.10.7, 11.7.4, and 13.10 of the Technical Handbook, relating to mulching and vegetation requirements, should be modified to allow delayed seeding until a more favorable planting season. These requirements are consistent with 30 CFR 816.113, 152 (c)(3) and (d)(15) and 817.113, 152 (c)(3) and (d)(15).

The commenter stated that the requirement in Chapter 4.32.d of the Technical Handbook, that inspection reports on embankment type sediment dams must be provided, should be changed to required only that such reports be made available if requested. The requirement is consistent with 30 CFR 780.25 and 784.16.

The commenter stated that Chapters 4.10 and 5.10 of the Technical Handbook, addressing entrance channel side slope configuration, should not require a 1 to 1 slope because this serves no purpose when the pond is discharging. These requirements, however, are consistent with 30 CFR 816.46 and 817.46.

The commenter stated that Chapter 4.12.5 of the Technical Handbook, which requires a design height of 10% to allow for settlement, should be changed to 5%, the federal requirement. The West Virginia requirement is consistent with 30 CFR 816.46 and 817.46. The State can exercise its discretion to set different standards so long as they are consistent with federal requirements.

The commenter stated that Chapters 4.12.9, 5.17.14, 6.14.7 and 7.14.8 of the Technical Handbook, which address vegetation protection against erosion, should be modified to allow delayed seeding until a more favorable planting season. These requirements however, are consistent with 30 CFR 816.46(s) and 817.46(s).

Consolidation Coal Co. argued that the requirement in Chapter 5.17.3 of the Technical Handbook, that embankment materials contain a certain amount of moisture, should be deleted because it is allegedly not of a technical nature. This requirement is consistent with the federal requirements.

Consolidation Coal Co. argued that Chapters 8.4 and 9.4 of the Technical Handbook, should not require that all valley and head-of-hollow fills have rock toe buttresses. The commenter argued that fills can be designed to have a 1.5 static safety factor without such buttresses. However, this requirement is consistent with 30 CFR 816.71(i), 817.71(i), 816.71(j) and 817.71(j).

Consolidation Coal Co. argued that Chapter 8.5 of the Technical Handbook, which requires rock fill drains in valley fills, should allow constructed underdrains instead. However, this provision is consistent with the federal requirements.

Consolidation Coal Co. argued that Chapter 10.4 of the Technical Handbook, which defines materials greater than 6" in diameter as rock and materials less than 6" in diameter and soil, should be deleted. However, this requirement is consistent with 30 CFR 816.74 and 817.74.

Consolidation Coal Co. argued that Chapter 10.5.4 of the Technical Handbook, regarding internal drainage for rock fills, should be more flexible by reflecting various alternatives for underdrains. However, the state's provision is consistent with 30 CFR 816.74, 817.74, 816.71, 817.71, 816.72, and 817.72.

Consolidation Coal Co. argued that Chapter 10.7.3 of the Technical Handbook, should not require that soil materials in durable rock fills be compacted to a certain degree. The commenter argued that compaction occurs automatically, due to dumping. However, the state provision is consistent with 30 CFR 816.74(a)(1) and 817.74(a)(1).

Consolidation Coal Co. commented that all of Chapter 10.8 of the Technical Handbook, which requires a registered professional engineer or qualified person under the direct supervision of a registered professional engineer to be retained at the site during the construction of the rock fill, should be deleted. The commenter argued that this requirement is excessive because the construction specifications for durable rock fills are no more difficult than those for other fills. However, this provision is consistent with 30 CFR 816.71(i) and 817.71(i).

Consolidation Coal Co. argued that Chapter 12.4.2 of the Technical Handbook, addressing velocity in stream channel diversions, should not require riprap in every case. However, this requirement is consistent with 30 CFR 816.41(d)(2)(v), 817.41(d)(1)(v), 816.43(f)(1) and 817.43(f)(1).

Consolidation Coal Co. argued that Chapter 13.17 of the Technical Handbook, regarding sediment control, should not require runoff from roads to pass through sedimentation ponds. However, this regulation is consistent with 30 CFR 816.46 and 817.46.

Consolidation Coal Co. argued that Chapter 13.21(5)(d) of the Technical Handbook, regarding plan, design data and construction specifications, should require that motor graders be used only where necessary to maintain cross slopes. However, this provision is consistent with the federal requirements.

Consolidation Coal Co. argued that Chapter 14.4 of the Technical Handbook, which requires that the plan concerning drainage areas use the methods of "Water Management Practices" in Chapter 18, should be deleted. The commenter argued that it is questionable whether this guide includes the best technology currently available. However, the provision is consistent with 30 CFR 780.11(b)(6), 784.11(b)(1), (5), 780.18(b)(5), (9) and 780.21.

II. Performance Standards

1. One commenter questioned the lack of criteria for the design and construction of "alternative outcrop barriers" in the State submission. The Secretary agrees, as discussed in Finding 13.4, and has conditioned his approval of West Virginia's program accordingly.

2. One commenter stated that the State had not justified the use of woodlands as an acceptable alternative land use for mountaintop removal as required by the Secretary in Finding 13.8 of the October 20 Federal Register notice. The commenter pointed out that no showing had been made to demonstrate that flat or gently rolling terrain would be "essential" for the woodlands use. However, the State has limited its discretion to allow woodlands in State Regulation Section 2.133 by allowing only commercial woodlands where flat or gently rolling land is essential. This qualification of the State provision satisfies the concern expressed in the Secretary's original Finding of October 20, 1980. The use of this provision by the State will be reviewed by the Department during its oversight responsibilities under the permanent program. This issue is discussed further in Finding 13.8.

3. On commenter stated that although an amendment will be submitted to the West Virginia Legislature to remove the provision allowing gravity discharge in iron and acid producing coal seams, he was concerned that the measure would have no chance of approval in the Legislature unless detailed information is presented by well informed experts on the subject. This issue is addressed in Finding 13.10 wherein approval of the West Virginia program is conditioned upon the State amending its statute. OSM will attempt to give any assistance requested by DNR in providing technical information to the Legislature on this issue.

4. One commenter stated that the State regulations do not provide for the use of protective devices and temporary sealing to prevent access to drill holes by the public, livestock, wildlife and machinery. This issue is discussed in Finding 13.18.

5. One commenter asked for clarification of State Regulation Section 6B.07c.3. in light of the requirements of 30 CFR 824.11(a)(8). It is not clear that the State regulation prohibits discharges from a mountaintop removal operation through a valley fill, although this is current practice in the State. This issue was identified by OSM in the review of the program and was discussed in the December 30, 1980 meeting with the State. (See Administrative Record No. WV 313). West Virginia representatives stated for the record that State Regulation Sections 6B.07c.3. and 7B.07c.3. do not allow mountaintop drainage into or through a fill. This issue is discussed further in Finding 13.36.

6. One commenter stated that State Regulation Section 6B.07b. does not provide that auger holes must be located so as to leave room for future deep mining operations. This issue is discussed in Finding 13.20.

7. One commenter noted that State Regulation Section 6B.07e.1. provides a very broad exemption from the regrading standards for special land use considerations. This issue is discussed in Finding 13.24.

8. One commenter suggested State Regulation Section 4C.04g which requires two (2) inch per second peak particle velocity be changed to reflect the standard of one (1) inch per second as found in 30 CFR 816.65(i) and 817.65(i). This issue is discussed in Finding 13.30.

9. One commenter noted the absence of State regulations containing provisions and criteria for transfer of wells as found in 30 CFR 816.53 and 817.53. This issue is discussed in Finding 13.32.

10. One commenter stated that the phrase "not permitted under a general Surface Mining Permit" should be added to State Regulation Section 10A. While the federal regulations do not require separate permits for coal waste piles, it is entirely within the discretion of the State to require additional permits. The State regulations are consistent with 30 CFR 780.25.

11. Consolidation Coal Company commented that West Virginia requirements on the construction of end-dump fills, Chapter 10 of Technical Handbook, are more stringent than federal requirements and therefore are not authorized by Section 20-6-23b of the WV Surface Mining and Reclamation Act.

General comments concerning the effect of Section 23b have been disposed of in response to comment 5 of Section I, above. The commenter did not provide any reference to the portions of Chapter 10 of the Technical Handbook concerning end-dump fills which were considered more stringent. However, a comparison of 30 CFR 816.71, 816.74, 817.71 and 817.74 with the requirements of Chapter 10 of the Technical Handbook reveals that West Virginia requirements are consistent with the federal requirements.

12. The West Virginia Coal Association (WVCA) suggested deletion of the last sentence in State Regulation Sections 10B.04c.2.b., 10B.04c.2.c.2. and 10B.04c.2.c.3. which require a dewatering device to maintain water in a slurry impoundment at the lowest practicable elevation. OSM regulations do not contain a comparable provision. However, the West Virginia regulations protect the integrity of the slurry impoundment, and thus provide additional protection for the public and the environment. The West Virginia regulations are consistent with the purposes of the federal requirements, and therefore acceptable.

13. The WVCA commented that State Regulation Section 10B.04c.6.a.iii., requiring grated drainpipes for ponds built without principal spillways, should be deleted because it conflicts with State Regulation Section 10B.04c.2., impoundment requirements. The comment does not specify in what manner these sections are in conflict, and a review of these regulations shows them to be consistent with federal requirements.

14. One commenter stated that the West Virginia regulatory program does not have a definition for permit area. Permit area as defined in Section 20-6-3(p) of the WV SCMRA is consistent with the federal requirements in 30 CFR 701.5.

15. One commenter argued that State Regulation Section 4A.04, which governs seeding of cut and fill slopes "in accordance with subsections 4F," must be changed to make the cross-reference more specific. The entirety of State Regulation Section 4F governs all requirements which must be met for revegetation. These requirements are consistent with the revegetation requirements of the 30 CFR 816.111-816.117 and 817.111-817.117.

16. One commenter objected to State Regulation Section 6A.03.a.4. limiting overburden analysis to the procedure in EPA manual 600/2-78-054 (Field and Laboratory Methods Applicable to Overburden Mine Soils). State Regulation Section 4F.02, however, does allow for "other methods." The State regulations, while not delineating "other methods," are consistent with 30 CFR 779.14.

17. The West Virginia Surface Mining and Reclamation Association (WVSMRA) commented that State Regulation Section 6B.06a.4., regarding surface water monitoring after grading approval, should be required "only if the discharge does not meet the quality of the receiving stream." Such monitoring is necessary in order to determine that discharges are not violating water quality standards. The State regulation is consistent with 30 CFR 816.52, and is acceptable.

18. One commenter questioned whether the use of the phrase "other approved sediment control structures" in State Regulation Section 6B.04a. would allow operators to avoid the requirement to pass all drainage through ponds as required by 30 CFR 816.42(a)(1). State Regulation Section 2.105 defines "sediment control structure" as a pond and specifically exludes secondary sediment control structures such as straw bale dikes, check dams, etc. In addition, State Regulation Section 4B.06 requires that "all runoff from the disturbed area shall pass through a sedimentation pond(s) * * *" These requirements make it clear that all surface drainage from West Virginia operations must be passed through sedimentation ponds. The State regulations are consistent with the requirements of 30 CFR 816.42(a)(1).

19. Several commenters stated that State Regulation Section 7B.04f improperly limits materials which could be disposed of in underground workings in such a way that would prohibit disposal of flue gas desulfurization sludge and acid mine drainage treatment sludge. 30 CFR 816.55 is a restrictive provision which allows the State regulatory authority to prohibit disposal of certain materials in any particular case. It is entirely within the proper discretion of the State to choose, *a priori*, which materials it will not allow to be disposed of in underground workings in any case. The State provision is consistent with federal requirements and, therefore, acceptable.

20. One commenter stated that the State Regulation Section 6B.04b. establishing "pH" water quality standards * * * is "unrealistic" because of environmental conditions in West Virginia. The State provision is consistent with 30 CFR 816.42(a)(7) and effluent limits for the coal mining industry established by EPA in 40 CFR Part 434.

21. One commenter noted that 30 CFR 816.52(a)(2), requiring monitoring of ground water "adequate to plan for modification of surface mining activities, if necessary, to minimize disturbance to the prevailing hydrologic balance," is more stringent than State Regulation Section 6B.06b. The State regulations provide for monitoring adequate to reflect "changes in groundwater quantity and quality" and are within the discretion given to States under 30 CFR 816.52. The State regulations are consistent with federal requirements.

22. The WVSMRA commented that State Regulation Section 4C.02, regarding information on obtaining a pre-blast survey, should be deleted. The State regulation is identical to 30 CFR 816.62 and 817.62 and is consistent with federal requirements.

23Several commenters stated that State Regulation Section 4C.04a. fails to require that the blasting schedule contain a list of foreseeable situations which might necessitate blasting outside the scheduled times as required by 30 CFR 816.64(b)(v). State Regulation Section 4C.04a does specify the emergency situations where deviation from the schedule may be permitted. This regulation provides ample notice to the public as to when an operator may deviate from the published schedule, and is consistent with federal requirements.

24. One commenter questioned the absence of West Virginia regulations which coincide with 30 CFR 816.65(c) requiring that persons who live or work within one-half mile of the permit area shall be instructed on the meaning of the blasting signal. State Regulation Section 4C.02 requires that public notice of blasting shall be published in a newspaper of general circulation in the county of the proposed permit area and the schedule mailed or delivered to each residence within one-half mile of the permit area at least every 12 months. Persons near the permit area are warned by signs required by State Regulation Section 6B.01e. to be posted at all entrances to the permit area. These State provisions for public warning and notification are consistent with 30 CFR 816.65(c).

25. The WVSMRA commented that State Regulations Section 4C.04f.1., regarding the prohibition of blasting, should be changed from 1,000 feet to 300 feet. Since in 30 CFR 816.65(f) and 817.65(f) which contain these provisions have been remanded, the State is free to adopt whatever limitations are reasonable. See response to Comment 9 of Section I, above.

26. The WVSMRA commented that State Regulations Section 4C.04h. regarding the formula for maximum weight of a detonation, should be changed from $W=(d/60)^2$ to $W=(d/50)^2$. The State regulation is identical to 30 CFR 816.65(l)(1) and 30 CFR 817.65(l)(1) and is consistent with federal requirements.

27. One commenter objected to the hazard classification system for embankments and impoundments found in State Regulation 10B.04.b.1. Although OSM does not utilize a hazard classification system, the State requirements for coal waste embankments and impoundments are consistent with federal requirements in 30 CFR 816.81–816.93 and 817.81–817.93 and are acceptable. The commenter also points out a difference between West Virginia requirements in 10B.04.d.3. which provide minimum size for shale underdrains and federal requirements in 30 CFR 817.72(b)(3) which also include minimum size requirements for sandstone underdrains. The West Virginia regulations provide that all drains are to be constructed of durable rock and provide criteria for durability. The West Virginia requirements are consistent with the federal regulations.

28. One Commenter questioned the absence of a requirement in State Regulation Section 10B.04d. preventing the use of acid-forming/toxic-forming rock in the construction of underdrain systems for valley fills as required in 30 CFR 816.72(b)(4) and 817.72(b)(4). State Regulation Section 10C.06a.2., however, requires that "acid-forming or toxic-forming material shall not be buried or stored in proximity to a drainage course * * *" This prohibition would apply for material used in the underdrain itself since such material is in proximity to a drainage course. The State provisions are consistent with federal requirements.

29. The WVCA and others also recommended deletion of State Regulations 10B.04.c.6.a.iv.8. which states that water may not be diverted under a coal refuse area by means of a pipe or conduit. The commenter stated that this practice was acceptable to MSHA and that any problems could be avoided by proper design. The West Virginia requirement is consistent with requirements of 30 CFR 816.72(d) and 816.83(b) which require that surface drainage be diverted off of and around a coal refuse area, rather than through it.

30. The WVCA recommended deletion of State Regulation 10B.05.a which requires that upon reprocessing of abandoned coal waste piles, the entire pile must be removed. Under 30 CFR 816.81(b), 816.87, 817.81(b) and 817.87, discretion is granted to State regulatory authorities in dealing with abandoned coal refuse piles. The West Virginia requirements are a proper exercise of that discretion and are consistent with federal requirements.

31. A commenter requests clarification of the term "qualified person" utilized in State Regulation 10C.06d.2. by proposing it be defined in the definitions section of the West Virginia regulations. 30 CFR 816.82(a) requires that inspections be made during construction of coal waste piles by an RPE or person approved by the regulatory authority. Discussion of the West Virginia system for "approved persons" is found in Finding 13.9. As stated therein, the West Virginia requirements are consistent with federal requirements. Placement of any

definitions is within the discretion of the State.

32. One commenter stated that Section 10 of the Technical Handbook is unclear in its application to impounding and non-impounding coal waste areas. The commenter suggested that the requirements for each type of area be separated for the sake of simplicity. This comment is not directed to the consistency of the West Virginia regulations. The organization of State regulations is entirely up to the State.

33. The same commenter also objected to the requirement in State Regulation Section 10C.06d. calling for weekly inspections of impoundments and embankments. 30 CFR 816.82(a) requires at least quarterly inspections, but vest State regulatory authorities with discretion to require more frequent inspections. The West Virginia requirement of weekly inspections is a consistent exercise of this discretion.

34. One commenter stated that State Regulation Section 10C does not include the requirement for keyway cuts or rock toe buttresses found in 30 CFR 816.85(a) and 816.71(i) for coal refuse piles on steep slopes. Chapter 8.4 of the Technical Handbook, requires these measures "in all cases" for valley-fills. Coal refuse pile construction is to be in accordance with modified valley fill standards, therefore the State provisions are consistent with the federal requirements.

35. One commenter objected to State Regulation Section 6B.05a.1. which allows blending as an appropriate means of handling toxic materials. The commenter stated that there is not an accurate correlation between total potential acidity and alkalinity in many instances. Blending is an acceptable method of handling toxic or acid-forming material, for the reasons discussed in Finding 13.35.

36. The WVSMRA commented that in State Regulation Section 4E.02c., regarding protection of fish, wildlife and related values, the reference of electric power lines should be deleted. The State regulation is identical to the relevant portions of 30 CFR 816.97(c) and 817.97(c) and is consistent with federal regulations.

37. The WVSMRA commented that State Regulation Section 4F.01a., regarding the purpose of revegetation requirements, should delete the reference to providing economic benefits and restoring esthetic appeal. The State regulation is consistent with 30 CFR 816.111 and 817.111.

38. The WVSMRA commented that State Regulation Section 4F.06 should only require mulch to be distributed on areas where it is needed instead of on "all" disturbed areas. The State regulation is consistent with 30 CFR 816.114(a) and 817.114(a).

39. The WVSMRA commented that State Regulation Section 4F.09 should require that perennials be planted after the last season instead of "after the last year." The State regulation is consistent with 30 CFR 816.116(b)(1) and 817.116(b)(1).

40. The WVSMRA commented that State Regulation Section 4D.04a.–j., regarding postmining land use should be changed to require reporting on future land use instead of specific plans and commitments. The State regulation is consistent with 30 CFR 816.133 and 817.133, which also require specific plans and commitments.

41. The WVSMRA commented that State Regulation Section 4D.02a. and 4D.02a.3., which governs the determination of premining land use, should regard previously mined land as an acceptable premining land use. The State regulation is identical to 30 CFR 816.133(b) and 30 CFR 817.133(b) and is consistent with federal requirements.

42. The WVSMRA commented that State Regulations 6B.04b.2., 7B.04b.2, 7B.07a.3., and 8B.04b.2., regarding the quality of water discharges from a grade release area, should be changed to require meeting only the quality of the receiving stream. The State regulation is consistent with 30 CFR 816.41(c), 816.42(a)(2), 817.41(c) and 817.42(a)(2), which require that all federal and State water quality statutes, regulations, standards and effluent limitations must be met.

43. The WVSMRA commented that the word "desirable" should be deleted from State Regulation Section 4A.05 regarding the materials used in surfacing of haulageways and access roads. The word "desirable" does not appear in this regulation. If the commenter meant to suggest that "durable" should be deleted, the Secretary does not have authority to require that this be done.

44. United States Steel Corporation (USSC) commented that it was of the opinion that State Regulation Sections 7B.04a., b., c. and 8B.04a., b., c. are inconsistent with 30 CFR 817.42 because the State regulations do not provide a variance for the utilization of sediment ponds as provided in the federal regulations. The Secretary has no authority to require this change, as the State rules are consistent with the federal rules.

45. The WVSMRA commented that State Regulation Section 8B.09b should not require that a permanent facility has to be removed. The State regulation is consistent with the federal rules.

46. The WVSMRA commented that State Regulation Section 8A.01, regarding permit requirements for facilities incidental to coal mining, should delete the reference to "mine buildings." The State regulation is consistent with 30 CFR 817.181(a), and 816.181(a) which also contains this phrase.

III. Permitting

1. The United States Fish and Wildlife Service commented that State Regulation Section 3Q.03 requiring the Director to make a written determination concerning threatened or endangered species should be amended to refer to Section 3J.02 rather than 3J.01. This appears to be a typographical error which does not obscure the meaning of the requirement and the Secretary assumes that this mistake will be corrected.

2. The United States Fish and Wildlife Service suggested that State Regulation Sections 6A.01c. and 7A.01c., specifying the maps which a permit shall contain, should also require a map to show the location of any unusual wildlife habitats including habitats for endangered or threatened species occurring within the areas to be mined and within the drainage areas to be affected by the proposed mining. The Secretary finds that Sections 6A.01c. and 7A.01c. regarding maps are consistent with 30 CFR 779.24 and 783.24. The requirements of 30 CFR 779.20 and 783.20 regarding fish and wildlife information have been remanded; therefore, no changes will be required in the West Virginia regulations.

3. The United States Fish and Wildlife Service suggested that State Regulation Section 13.07(a) regarding the criteria for designating lands as unsuitable for surface coal mining operations be expanded to include, upon petition, these areas where endangered or threatened species may be jeopardized or their critical habitats adversely affected. The Secretary finds that Section 13.07a. is consistent with 30 CFR 762.11, therefore, no changes will be required.

4. One commenter questioned the status of pending interim program permit applications following program approval. Specifically, this commenter requested that the State be required to conduct an inspection prior to the issuance of a permit and at the request of the applicant. While a pre-permit inspection may be desirable in some circumstances, there is no provision in SMCRA or the federal regulation for such an inspection, and the State cannot be required to make provision for this.

5. One commenter stated that the State should accept, as part of meeting the requirements for a permit, maps approved by the Mine Safety and Health Administration. Such maps are acceptable under federal requirements and the State program as long as they meet the standards of 30 CFR 779.24, 783.24 and Section 20-6-10 of the WV SCMRA and State Regulation Section 3.

6. One commenter stated that he did not believe that the State inquired into an applicant's legal right to mine coal prior to issuance of a permit. He also stated that he wanted the State to comply with 30 CFR 782.15 and 30 CFR 778.15. These Sections require an identification and description of the document upon which the applicant bases his or her legal right to enter and begin the underground or surface mining of coal. This information is also required by Section 20-6-10(a)(9) of the WV SCMRA and is consistent with the federal requirements.

7. One commenter referred to the lack of simultaneous notification to the public, State Regulation Section 3Q, regarding the determination made concerning a permit application, especially to those who filed written objections or comments. This issue is discussed in Finding 14.8.

8. One commenter identified an inconsistency between State Regulation Section 12B.07b. and 30 CFR 786.15(a)(2) as it relates to public availability of permit application information pertaining to overburden and soil sample analysis. This concern is addressed in Finding 14.9.

9. One commenter questioned several portions of State Regulation Section 4D.04, "Criteria for Approving Post-Mining Use of Land". The first concern was that specific criteria be used in approval of alternative post-mining land use. These criteria are provided in State Regulation Section 4D.04. The second concern was that the alternative use be approved prior to permit issuance. This is provided in the reclamation plan requirements of Section 20-6-11 of the WV SCMRA. The third concern was the omission of the words "financing" and "attainment" in the State regulations. Section 20-6-11(a)(4) of the WV SCMRA requires a detailed description of how the post-mining land use is to be achieved and the necessary support activities needed to achieve the proposed land use. These requirements are consistent with the Act.

10. One commenter referred to "written statements of the views of the authorities with statutory responsibilities" not being required in State Regulation Section 4D.04. The federal standard in 30 CFR 816.133(c)(1) and 817.133(c)(1) allows 60 days for such written statements, while the State requires such statements "accompany the request for (alternate post mining land use) approval." The State provision is consistent with the federal requirements.

11. One commenter indicated that the requirement for a 60 day alternate land use plan review period by State and federal fish and wildlife management agencies before surface mining activities begin as reflected in 30 CFR 816.133(c)(3) is not provided for in the State program. This issue is discussed in Finding 13.12.

12. One commenter objected to State Regulation Section 4E.01 in that it appears to mean that the submittal of a permit application triggers an evaluation by the Director as to whether or not that area is unsuitable for mining and whether fish and wildlife studies will be necessary. The Secretary finds that the lands unsuitability inquiry conducted by the Director is an informal process intended to assist the applicant in the permitting process. The Director's review of the environmental resources of the proposed permit area is only intended to alert the applicant to those resources which may need special consideration, and therefore, is found to be consistent with the federal requirements.

13. The West Virginia Society of Professional Engineers commented that the requirements of State Regulation Section 3E.02b. exceeds the requirements of the Act by requiring all persons who wish to qualify to prepare application and preplans to pass an examination administered by the Director. The commenter stated that this was unacceptable because of the provisions of Section 20-6-23(b), of the WV Surface Mining and Reclamation Act which the commenter stated forbid any regulations more stringent than the federal requirements.

General comments concerning the effect of Section 20-6-23(b) of the WV Surface Mining and Reclamation Act have been disposed of in number 5 Section I, above. In addition, the West Virginia provision concerning examinations for "approved persons" is consistent with federal requirements. [See Finding 13.9, above]

14. Carbon Fuel Company commented that State Regulation Section 3A.02c. which allows operators with interim program permits to continue operating without a permanent program permit past the eight month cut-off date set forth in State Regulation Section 3A.02 and Section 502(a) of SMCRA, must be construed to include permits issued by the West Virginia Department of Mines (DOM) for underground mines. These DOM permits, issued before 1977, are usually known as "D" numbers. These "D" permits, by themselves, cannot be construed as interim program permits because they do not incorporate the provisions required by Section 502(b) and (c) of SMCRA.

Since January, 1980, DNR has been accepting DR-14 and DR-23 forms from underground mines existing before the effective date of SMCRA. These DR-14 and DR-23 forms basically upgrade the existing permits to assure compliance with the interim standards. As stated in Carbon's comment, the industry obtained an injunction in Kanawha County Circuit Court, *Amherst Coal Corp. v. Callaghan*, Civil Action No. 80-701 (1980), prohibiting DNR from *requiring* all underground operators to submit DR-14 and DR-23 forms. However, DNR has continued to accept, process and approve those DR-14 and DR-23's which were voluntarily submitted.

Carbon has also argued that the Secretary's legal position in the case of *Union Carbide v. Andrus*, Civil Action No. 79-2182 (S.D.W.V. 1979), mandates that "D" numbers be considered interim program permits. This is not correct. In that case, the Secretary argued that DNR had jurisdiction over all underground mines by virtue of West Virginia statutes and Section 502(c) of SMCRA, even though all these mines did not have permits from DNR. This position was adopted by the Court. However, it does not follow that because DNR has jurisdiction over underground mines to enforce performance standards, that this automatically transforms "D" numbers into interim program permits. As stated above, this transformation can only be accomplished by a DR-14 and DR-23. The State may take the position that only those operators who have applied for DR-14 and DR-23's prior to the approval of the State program are eligible for extensions of time beyond the eight-month cut-off date.

15. The West Virginia Surface Mining and Reclamation Association (WVSMRA) commented that State Regulation Section 4E.01, regarding the determination of whether a study should be made on the impacts of fish and wildlife resources of the affected area, should not delay the issuance of a SMA number. This requirement is within the discretion of the State and is consistent with federal requirements.

16. The WVSMRA commented that State Regulation Sections 20.01 (e) and (f), in regard to the requirement of a progress map, should be deleted. This provision is consistent with Section 517(b)(1) of SMCRA.

17. The WVSMRA commented that State Regulation Section 4A.04, regarding the seeding of slopes, should not be "immediately" seeded, but "seeded in the first appropriate season." This section is consistent with the seeding requirements of 30 CFR 816.113 and 817.113.

18. The WVSMRA commented that the word "horizontal" should be deleted from State Regulation Section 3K.01, regarding the measurement of distance from an occupied dwelling to a coal mining operation. The State provision is consistent with 30 CFR 761.12(e).

19. The WVSMRA commented that State Regulation Section 3G.05, pertaining to the effective date of determining substantial, financial and legal commitments, should be changed from January 4, 1977, to August 3, 1977. The State regulation is consistent with Section 522(a)(6) of SMCRA and 30 CFR 776.16(b) and 782.16(b).

20. One commenter stated that State Regulation Section 6A.03, regarding the submission of a description of the geology within adjacent areas with a permit application, is unnecessary. The State regulation is consistent with 30 CFR 779.14.

21. The WVSMRA commented that State Regulation 5B.11, regarding newspaper advertisements for prospecting operations, should be deleted. The State regulation is consistent with 30 CFR 776.14(a).

22. The WVSMRA commented that the State Regulation Section 6A.03a.5., regarding the submission of a test for marcasite and clay content in the geologic description, should be deleted. The State regulation is consistent with 30 CFR 779.14(b)(1) (ii), (iv) and (v).

23. One commenter stated that the State Regulation Sections 6A.02, 6A.03, 7A.02 and 7A.03 and WV SCMRA Section 20-6-18(b)(3) require submission of hydrologic data with a permit application which is unnecessary and costly to the operator. The State requirements are consistent with SMCRA and 30 CFR 779.13, 779.14, 779.17, 783.13, 783.14, 783.17 and 783.19(c).

24. One commenter suggested that the requirement of State Regulation Sections 6A.02a. and 7A.02a., regarding the submission of groundwater information with a permit application, are unnecessary. The State regulations are consistent with 30 CFR 779.15 and 783.15.

25. The WVSMRA commented that State Regulation Section 3G.02a., requiring a permit application to contain information on buildings within 1,000 feet of the proposed permit area, should not be required if the building is not used by the mining operation. The State regulation is consistent with 30 CFR 779.24(d) and 783.24(d).

26. The WVSMRA commented that State Regulation Section 3G.02e., requiring information in the permit application on designated study rivers under Section 5(a) of the Wild & Scenic Rivers Act, should be deleted. The State regulation is consistent with 30 CFR 779.24(k) and 783.24(k).

27. The WVSMRA commented that State Regulation Section 6A.01c.9., requiring the measurement of slopes for a permit application, should be deleted. The State regulation is consistent with 30 CFR 779.25(k).

28. The WVSMRA commented that State Regulation Section 3F.016. requiring a permit application to contain a listing of any notice of violation, should be deleted. The State regulation is consistent with 30 CFR 778.14(c) and 782.14(c).

29. One commenter suggested that State Regulation Section 3H.03 should be disapproved to the extent that it is applicable to something other than existing structures. The Secretary finds that the West Virginia definition of existing structures includes facilities used in connection with or to facilitate surface coal mining and reclamation operations and is consistent with 30 CFR 780.12, 784.12 and 785.12.

30. One commenter stated that State Regulation Section 3H.03 (c) and (d) requires more than conformance with the performance standards of the WV SCMRA for existing roads and coal waste piles. The Secretary finds this provision of the West Virginia program is consistent with 30 CFR 780.12, 784.12 and 785.12.

31. One commenter stated that State Regulation Section 3D.01 is inconsistent with 30 CFR 762.18 because the West Virginia program does not provide the option for self insurance. The West Virginia personal injury and property damage provision is consistent with the federal requirements. The federal regulations provide the option for self insurance, but do not require this provision to be included in a State program.

32. The WVSMRA commented that State Regulation Section 7A.03a.5., regarding the analysis of the coal seam in the geology description, should be deleted. The State regulation is consistent with 30 CFR 783.14.

33. United States Steel Corporation (USSC) also commented that it was of the opinion that State Regulation Sections 7A.02b. and 8A.02b., concerning surface water information, are inconsistent with 30 CFR 783.18 because they do not provide that alternative methods of data collection may be employed. USSC continued that this section of the State regulations are also inconsistent with guidance provided to USSC by OSM and with other state programs which have been provided conditional program approval, because the state regulations require that water quality data be collected on a monthly basis for not less than six months, rather than on a quarterly basis for one year. The West Virginia provision is consistent with the federal requirements. The requirements in 30 CFR 783 do not provide a specific sampling frequency or duration for the hydrologic data to be included in the permit application, but require that it be sufficient to provide certain information. West Virginia has provided in State Regulation Section 3A.02 that permit applicants may submit partial or phased applications if such action is approved by the Director of DNR, provided that a complete application is submitted no later than eight months after approval of the permanent state program. Therefore, the applicant will have an ample opportunity to collect the additional water quality data which DNR requires to be a part of the permit application before the deadline for submitting a complete application.

34. The WVSMRA commented that State Regulation Section 4A.01c. and d., regarding the descriptions of coal transportation systems to be contained in the permit application, should only describe the transportation facilities under the control of the operator. The State regulation is consistent with 30 CFR 780.37 and 784.24. See Finding 14.6.

35. The WVSMRA commented that State Regulation Section 3H.04, requiring the Director of OSM to approve any experimental practices prior to the beginning of operation, should be changed giving the approval authority to DNR. Section 711 of SMCRA and 30 CFR 785.13 require the Director of OSM to approve all experimental practices. The State regulations are consistent with the federal requirements.

IV. Designating Lands Unsuitable

1. One commenter stated that he had been told that the State must deny a petition to designate a certain area as unsuitable for mining if any portion of the area was determined to be suitable for mining. This is incorrect. Section 20-6-22(a)(1) of the WV SCMRA, which is consistent with Section 522(a)(2) of SMCRA, places a mandatory responsibility upon the Reclamation Commission to designate an area as unsuitable if it determines that reclamation is not technologically or economically feasible. The Commission

is not required, however, to designate the entire petitioned area as unsuitable. They must designate only the areas where reclamation is not feasible.

V. Civil Penalties

The Tug Valley Recovery Center (TVRC) and other commenters submitted a number of comments pertaining to West Virginia's civil penalty procedure contained in Section 20-6-17 of the WV SCMRA (including the amendments proposed thereto) and State Regulation Section 14A.02. Disposition of these comments relates to Finding 19.

1. TVRC commented that use of an administrative hearing officer to review penalty assessments imposed by the DNR is preferable to the State's reliance on the magistrate court system because it is more likely that hearing officers would develop subject matter expertise than magistrates. Although it is possible that this observation is correct, the use of magistrates is acceptable because of their general experience in adjudication. Expertise in the specific area of surface mine assessments will develop over time. In addition, the State has traditionally utilized the magistrate courts to process criminal complaints against persons accused of violating the State's Surface Mining laws.

2. TVRC commented that delays in the imposition of civil penalties will occur because there are inadequate resources available to the magistrate courts. The State is proposing amendments to Section 20-6-17(d) of WV SCMRA which would require, among other things, that all such cases be heard by the magistrate within 60 days, that a written decision be entered within 10 days, and that preference be given to civil penalty cases. Enactment of this language would insure that such cases would be disposed of promptly, even if the resolution of other cases pending before the magistrate is delayed. Accordingly, approval of the State's submission has been conditioned upon amendment of the program to insure that disposition of civil penalty cases is accomplished in a timely fashion.

3. TVRC stated that the magistrate court in West Virginia was subject to political pressure and, therefore, would result in penalty decisions favorable to industry. Information in the Administrative Record (Administrative Record No. WV 105—Exhibit A submitted by Benjamin C. Green, President of the West Virginia Surface Mining Reclamation Association) showed 784 successful prosecutions before magistrates by DNR in 1979. This would tend to refute this contention. In addition, magistrates decisions would be subject to both judicial review and secretarial oversight.

4. TVRC comments that the failure of the State program to provide for an administrative hearing officer to adjudicate civil penalty matters will result in a lack of uniformity of assessment of penalties, especially since this function will be performed by magistrates who are spread across the State. This comment states that the problem is aggravated by the fact that, since the magistrate court system is independent of the regulatory authority, it would be acting without guidance from a policy making body such as the Reclamation Board of Review.

The Secretary believes that this comment somewhat misperceives the federal civil penalty process. In the federal system, penalties are proposed by OSM in accordance with a point system set forth at 30 CFR Part 845. (As discussed in detail in Finding 19 of the October 20, 1980, Federal Register Notice (45 FR 69258), the Secretary cannot require that states utilize any particular system for assessing penalties). Although the review of a proposed penalty is before an administrative law judge, the review is based on OSM compliance with the regulations; the judge is not bound by OSM policy.

The State system is similar in that the proposed amendment to Section 20-6-17(d) of WV SCMRA would require in Section 17(d)(2) that, "The magistrate shall be bound by the provisions of this Act, regulations promulgated pursuant thereto, and any decisions rendered by the Reclamation Board of Review pursuant to Section 20-6-24 of this Act."

However, the Secretary agrees that it is unlikely that uniform assessments will occur as the State program is now written. Although Section 20-6-17(c) of WV SCMRA contains the same general criteria for assessing penalties as Section 518(a) of SMCRA, there are no State regulations which provide guidance as to how these factors are to be applied. Without such guidance it is unlikely that any semblance of uniformity in civil penalties can be achieved. Of even more significance, however, is the fact that, with only the general statutory criteria to use in reviewing penalty assessments, the magistrates could substitute freely their judgment for that of the regulatory authority. Accordingly, approval of the State program has been conditioned on the promulgation of regulations or other program changes which provide guidance to DNR personnel and magistrate courts as to the application of the penalty criteria in Section 20-6-17(d) of WV SCMRA to factual situations.

5. TVRC stated that reliance on the magistrate system in the civil penalty process deprives citizens of the ability to review the effectiveness of the system and eliminates their ability to petition for rule changes that would adjust the process to make it effective and efficient. The Secretary believes that the West Virginia system does provide for the imposition of civil penalty assessments by the regulatory authority; the only function of the magistrate is to review the DNR's proposed penalty. Since citizens would have access to DNR's records, this information would be readily available. Citizens could always petition for changes if they felt the penalties were inadequate to deter violations.

6. TVRC stated that Section 518(d) of SMCRA demonstrates that Congress intended the courts to be involved solely in the collection of civil penalties and in appeals from initial assessments by an administrative agency. That section provides that "Civil penalties owed under this Act, may be recovered in a civil action brought by the Attorney General at the request of the Secretary in any appropriate district court of the United States." Although this language is written for the expressed purpose of collecting federally imposed penalties in the federal judicial system, Section 518(i) of the Act requires that State programs contain the same or similar procedural requirements but that additional enforcement procedures available under State law are not to be eliminated. The Attorney General's opinion states that magistrate courts have authority to enforce their judgments. One reason Section 518(d) is needed in the federal law is because administrative law judges cannot directly enforce their orders. Therefore, the Secretary concludes that use of the magistrate courts to perform the adjudicatory function of the administrative law judge is in accordance with the language of Section 518(i) because it provides a more direct way of enforcing penalty judgments than does the federal system.

7. TVRC stated that since Article III, Section 13 of the West Virginia Constitution provides for a trial by jury in civil matters where the value in controversy exceeds $20.00, the DNR proposal to amend Section 20-6-17(d) of the WV SCMRA to eliminate the availability of jury trials in civil penalty proceedings may conflict with the State Constitution. In response to this comment, the West Virginia Attorney General's office was contacted and

requested to offer an opinion on this issue. The Attorney General's office advised that State case law had clearly established that the constitutional provision for a jury trial was limited to those situations where jury trial was available at common law when the constitution was adopted in 1863 and did not preclude the legislature from providing that jury trials would not be available in the instant situation. [*State Human Rights Commission* v. *Pearlman Realty Agency*—W. Va.—, 239 S.E. 2nd 145, (1977); *Simms* v. *Dillon*, 119 W. Va. 284, 193 S.E. 331 (1937)]. The Secretary accepts this interpretation of State law and concludes that the legislature does have authority to preclude the use of jury trials in adjudicating civil penalty issues.

8. TVRC notes that Article VII, Section 10 of the West Virginia Constitution provides that magistrate courts "shall have original jurisdiction in all civil cases at law wherein the value or amount in controversy, exclusive of interest and costs, shall not exceed $1,500, unless such amount in value shall be increased by the legislature * * *." Therefore, the magistrate system would not have jurisdiction over any proposed penalty in excess of $1,500.

The Secretary notes that Section 20-6-17(d) of the WV SCMRA provides that, "notwithstanding the jurisdictional limitations contained in Article 2, Chapter 50 of the West Virginia Code, any such penalty may be imposed and collected by the magistrate courts which shall have jurisdiction over all civil penalty actions brought by the Director." (Slight changes to this language are being proposed). This provision would appear to give the magistrates legal authority to hear civil penalty cases involving more than $1500 because the Constitution on its face anticipates that the legislature may increase the $1500 limit.

9. One commenter stated that West Virginia Code Section 50-6-1 pertaining to enforcement of judgements was not consistent with the requirements of Section 526(a)(2) of SMCRA because the State section does not establish that State courts have jurisdiction to issue an order in *equity* requiring payment of civil penalties. Section 526(a)(2) of SMCRA states, "* * * the court shall have jurisdiction to enter an order requiring payment of any civil penalty assessment enforced by its judgment." There is no specific requirement in federal law that enforcement must be via the court's contempt power. Rather, federal law requires that the court have jurisdiction to enter an order requiring payment of the civil penalty. The actual enforcement of this order could equally be accomplished by use of contempt powers, liens, or any other mechanism that would enable the court to actually enforce its order. The Secretary finds that West Virginia Code Sections 50-6-1 and 20-6-17(d) are adequate in this regard.

10. One commenter stated that the magistrate courts are not subject to the conflict of interest provisions contained in Section 20-6-40 of the WV SCMRA and Section 517(g) of SMCRA. The commenter went on to state that although the magistrates are subject to the West Virginia judicial code of ethics under the West Virginia Code, there is no provision which would preclude a magistrate from presiding over a case where he had an interest in a surface mining operation although he does not have an interest in the particular operation which is presently a party before him. Furthermore, the commenter stated that the judicial code of ethics, unlike Section 20-6-40 of the WV SMCRA and Section 517(g) of SCMRA, does not provide for criminal sanctions.

The Secretary believes that nothing in SMCRA prevents a program function from being performed in a State agency that is different from the regulatory authority. Thus, the Secretary believes that nothing in SMCRA dictates *against* the West Virginia proposal to have the magistrate court system impose civil penalties. See Finding 19.1 for discussion of West Virginia's use of the magistrate system.

This being the case, it is necessary to address the conflict of interest provision that applies to magistrates in light of the conflict of interest provisions required by SMCRA to apply to regulatory authority personnel. SMCRA and 30 CFR Part 705 clearly provide that any administrative personnel are deemed to be within the regulatory authority (for conflict of interest purposes), and, therefore, are subject to the conflict of interest provisions of Section 517(g) of the Act. However, the Secretary has never taken the position that judicial personnel are subject to those same provisions. The Secretary believes this is not only a proper interpretation of SMCRA but also it is in keeping with traditional concepts of separation of power. For example, in the federal system, federal judges have never been considered federal administrative employees subject to the conflict of interest provisions for employees. Federal judges have always been subject to judicial codes of ethics and will continue to be so, although SMCRA's federal conflict of interest provisions apply to all federal employees. See Section 201(f) of SMCRA.

The Secretary does not believe that it is appropriate under SMCRA either to require that the magistrates be subject to an administrative code of ethics or that West Virginia devise new conflict of interest provisions for its judicial code. Therefore, the Secretary believes that the conflict of interest provisions of Section 517(g) of SMCRA dictate that Section 20-6-40 of WV SCMRA apply only to regulatory authority personnel.

As mentioned above, nothing in SMCRA prevents magistrates from imposing civil penalties. If West Virginia's purpose in placing this authority in the magistrate court system were to avoid the conflict of interest provisions of Section 517(g) of SMCRA, then the Secretary could not find approvable the magistrate court system for imposing civil penalties. However, this is not the case. The magistrate system has a long history in the imposition of penalties under West Virginia law. The Secretary believes that West Virginia is merely utilizing the magistrate court system in a manner that is in keeping with the routine operation of that State's government.

West Virginia Code Chapter 50-2-3 provides, and the practice is highly developed and utilized, for the transfer of pending cases from one magistrate to another where any of the parties or the magistrates would be unable to render a fair and impartial decision. Additionally, under the proposed West Virginia system the circuit courts of record could reverse any improper decision to transfer, or a decision on the merits of the case itself, where a fair and impartial decision is not made.

Because the court system is governed by a judicial code of ethics and provides for due process protection, OSM will not require that magistrates be determined to be administrative personnel subject to the code of ethics provisions of Section 517(g) or Section 20-6-40 of the WV SCMRA, or that West Virginia's judicial system revise its code of ethics.

11. TVRC stated that the State submission failed to make clear how penalty assessments for continuing violations would be handled. Presumably the commenter is concerned that this language might allow the assessment of penalties for only some days the violation is unabated, rather than imposing a penalty for each day the violation is unabated. State Regulation Section 14 A.02c. provides that civil penalties continue until the violation is corrected. State Regulation Section 14 also contains general procedures for assessing and collecting these penalties. The Secretary believes that the

regulations state clearly that assessments *shall* continue and that there is no question that the penalties would be imposed on a daily basis for every day the violation remains unabated. State law provides that a proposed assessment must be issued within 30 days after the violation is issued. Should a violation continue unabated beyond the 30 days, the regulatory authority should have some flexibility in deciding when to seek penalties for the additional days the operator is in violation. Accordingly, no change in the West Virginia program will be required.

12. One commenter expressed concern that the West Virginia proposed statutory amendment to Section 20-6-17(d) of the WV SCMRA does not make clear that attorney's fees could not be awarded against a participating party in civil penalty cases where it was determined a violation existed, even though the individual may have proceeded in bad faith and for the purposes of harassing or embarrassing the violator. The commenter notes that this language does appear in Section 17(d)(10)(d) of the proposed State statutory amendment which states when attorney fees can be awarded against the DNR. The Secretary believes that where a violation is determined to have existed, it is highly unlikely that a court would ever award attorney's fees to a violator against a participating party. In view of this, the Secretary finds that the change requested by this commenter would be superfluous because the concern expressed is at best theoretical and would in all likelihood never occur.

13. One commenter stated that there was a strong likelihood that the State's proposed use of the magistrate court system in the civil penalty process would be struck down by the West Virginia Supreme Court. The reason for this commenter's concern was that the magistrates would be acting in a fashion more closely akin to that of a hearing officer employed by the Executive Branch of the government than as a judicial officer employed by the Judicial Branch of government; therefore, the State's approach is inconsistent with the separation of powers doctrine. The Secretary notes that at the present time the magistrates have jurisdiction over criminal actions brought by the State Department of Natural Resources for violations of the State's Surface Mining Law. Even with the statutory changes proposed by West Virginia, the role of the magistrate court in making decisions on civil penalty cases would not change in any significant way. The magistrates would continue to adjudicate disputes between the DNR and operators concerning civil penalty assessments and the underlying fact of violation. Since the changes in the magistrate system proposed by the State appear to be well within the powers of the legislature (e.g., requiring a written decision, requiring a decision to be rendered within a specific period of time), the Secretary finds that the use of the magistrate system envisioned by the proposed statutory changes does not conflict with the separation of powers doctrine, nor is there a significant likelihood that the system would be struck down by the West Virginia Supreme Court of Appeals.

14. One commenter expressed concern that Section 20-6-16(a) of the WV SCMRA read in conjunction with Section 20-6-17(a) of the WV SCMRA might result in situations where no mandatory daily penalty would be assessed even though the violation had not actually been abated. The commenter notes as an example that the situation could occur where a cessation order expires because a hearing is not held within 24 hours after the order was issued, as required by Section 20-6-16(a). This concern is shared by the Secretary as reflected in Finding 19.1 of the October 20, 1980, Federal Register notice. At that time the Secretary required that the State demonstrate it had adequate personnel to conduct hearings within the 24-hour time period to insure that such cessation orders did not expire prematurely. The State has submitted the requested information in their program narrative. Further review and monitoring of the State's ability to conduct the required 24-hour hearings will occur during the Secretary's oversight of the West Virginia program.

VI. Inspection and Enforcement

1. One commenter noted that State Regulation Section 14A.01 defines "unwarranted failure to comply" as "the failure to prevent the occurrence of any violation." This is contrasted to 30 CFR 843.13 of the federal regulations, which provides that unwarranted failure to comply means the failure of the permittee to prevent the occurrence of any violation of the permit or any requirement of the Act *or the failure to abate any violation* (emphasis added). This issue is discussed further in Finding 20.9.

2. One commenter objected to the presence of the word "no" in State Regulation Section 14A.01a.3. which reads, "The director shall after hearing determine that a pattern of violations exists, if he finds that there were *no* violations of the same or related requirement of this Article * * *" The presence of the word "no" is clearly contrary to the purpose of this section. The State has advised the Secretary that this is a clerical error and that regulations promulgated to implement this section will have the word "no" deleted (Administrative Record No. WV 313). Approval of the State's program is with the understanding that this language will be corrected to reflect the intention of the State. This issue is discussed further in Finding 20.9.

3. One commenter stated that Section 20-6-17(a) of the WV SCMRA, which provides that a cessation order is not mandatory if the operator affirmatively demonstrates that compliance is unattainable due to conditions totally beyond the control of the operator, is inconsistent with Section 521(a)(3) SMCRA. Federal law provides for immediate cessation and a maximum time limit of 90 days for abatement. This section of the State's submission is discussed fully in Finding 20.2.

4. One commenter objected to the language in Section 20-6-15(g) of the WV SCMRA which provides that, "any such person accompanying an inspector on an inspection shall be responsible for supplying any safety equipment required for his use." This commenter is of the opinion that any requirement that a citizen provide his own hard hat and safety shoes would have a negative effect on the citizen's exercising his or her right to go onto the mine site. Section 521(a)(1) of SMCRA provides that any person providing information which results in an inspection is entitled to accompany an inspector during the inspection. The granting of this right to individuals does not also mean that the regulatory authority is legally obliged to provide a hard hat or safety shoes to the complainant. Furthermore, this comment relates to a provision in the West Virginia law that was approved in the Secretary's initial decisions published in the Federal Register on October 20, 1980.

5. One commenter stated that Section 20-6-17(h) of the WV SCMRA pertaining to the authority of the State to obtain injunctive relief for violations of the State program is not as broad as federal law. The commenter noted that 30 CFR 843.19 authorizes obtaining injunctive relief against any "person," whereas the State section references "permittee or his agent." 30 CFR 843.19 is derived from Section 521(c) of the Federal Act which also uses the phrase "permittee or his agent." The scope of West Virginia's authority to obtain judicial review is founded in the West Virginia SCMRA and Section 521(c) of SMCRA and Section 20-6-17(h) of WV SCMRA are the same.

VII. Citizen Participation

1. One commenter noted that Section 20-6-26(h) of the WV SCMRA provides that in a hearing regarding a proposed bond release, a verbatim record of each public hearing shall be made. The section goes on to state that the transcript will be made available on the motion of any party or by order of the Director at the cost of the person requesting the transcript. The commenter stated that the State should be required to change this language so as not to require the person requesting a transcript to bear the cost of preparing the record. This issue is discussed in Finding 22.3.

2. One commenter noted that the regulations issued pursuant to the State Open Governmental Proceedings Law submitted by the State did not state how much advance notice of meetings would be given to the public. Section 525(a)(2) of SMCRA requires at least five days. This issue is further discussed in Finding 27.2.

VIII. Bonding

1. One commenter stated that the West Virginia bonding discussion does not conclusively prove that there will be sufficient funds to reclaim all forfeited lands. This comment is correct. The Secretary has determined that the State has not conclusively demonstrated that its alternative bonding system is capable of providing the necessary funds under all possible situations. Approval of the alternative bonding system is conditioned upon the submission of an independent study demonstrating that the fund will contain, on a continuous basis, enough money to meet the demands placed upon it. See Finding 18.1.

2. The same commenter also requested that the Secretary consider requiring the removal of the two million dollar ceiling on the fund and an amendment to authorize the reclamation commission to adjust the per ton tax or per acre bond when necessary to keep the fund solvent. This aspect of the State bonding proposal is also discussed at Finding 18.1.

3. The West Virginia Surface Mining and Reclamation Association (WVSMRA) commented that State Regulation Sections 4H.07b.1.b. and 4H.06a.1., regarding combined surety/escrow bonding, should be changed from "total reclamation cost" to the "bonding rate." The State regulations are consistent with 30 CFR Part 806.17 and reflects the difference required to be covered by the total escrow balance.

4. The WVSMRA commented that State Regulation Section 4I.01a., regarding release of the performance bond, should be amended to delete "or part." State Regulation Section 4I.01a. is consistent with 30 CFR Part 807.12(a) which allows portions and does not require full phase release.

5. The WVSMRA commented that State Regulation Section 4I.01a.1., regarding evaluation of reclamation operations prior to bond release, should be deleted. State Regulation Section 4I.01a.1. is consistent with 30 CFR 807.11(a)(1) because it requires identification in the permit application of the time when an inspection is to be conducted.

D. Background on Conditional Approval

The Secretary is fully committed to two key aims which underlie SMCRA. The Act calls for comprehensive regulation of the effects of surface coal mining on the environment and public health and safety and for the Secretary to assist the states in becoming the primary regulators under the Act. To enable states to achieve that primacy, the Secretary has developed in his regulations the critical ability to conditionally approve a state program. Under the Secretary's regulations, conditional approval gives full primacy to a state even though there are minor deficiencies in a program. This power is not expressly authorized by the Act; it was adopted through the Secretary's rulemaking authority under 30 USC 201(c), 502(b), and 503(a)(7). The Act expressly gives the Secretary only two options—to approve or disapprove a state program. Read literally, the Secretary would have no flexibility; he would have to approve only those programs that are letter-perfect and disapprove all others. To avoid that result and in recognition of the difficulty of developing an acceptable program, the Secretary adopted the regulation providing the authority to approve conditionally a program.

Conditional approval has a vital effect for state programs. It results in the implementation of the permanent program in a state months earlier than might otherwise be possible. It also implements the rights SMCRA provides to citizens to participate in the regulation of surface coal mining through soliciting their views at hearings and meetings and enabling them to file requests to designate lands as unsuitable for mining if they are fragile, historic, critical to agriculture, or simply cannot be reclaimed to their prior productive capability.

The Secretary considers three factors in deciding whether a program qualifies for conditional approval. First is the state's willingness to make good faith efforts to effect the necessary changes. Without the state's commitment, the option of conditional approval may not be used.

Second, no part of the program can be incomplete. As the preamble to the regulations says, the program, even with deficiencies, must "provide for implementation and administration for all processes, procedures, and systems required by the Act and these regulations" (44 FR 14961, March 13, 1979). That is, a state must be able to operate the basic components of the permanent program: the designation process; the permit and coal exploration systems; the bond and insurance requirements; the performance standards; and the inspection and enforcement systems. In addition, there must be a functional regulatory authority to implement the other parts of the program. If some fundamental component is missing, conditional approval may not be used.

Third, the deficiencies must be minor. For each deficiency or group of deficiencies, the Secretary considers the significance of the deficiency in light of the particular state in question. Correction of clerical errors would be minor in virtually all circumstances. Other deficiencies require individual consideration. An example of a deficiency that would most likely be major would be a failure to provide a bonding system as required by Section 509 of SMCRA. The lack of such provisions would be such a departure from a fundamental purpose of the Act that the deficiency would most likely be major.

The use of a conditional approval is not and cannot be a substitute for the adoption of an adequate program. Section 732.13(i) of Title 30 of the regulations gives the Secretary little discretion in terminating programs where the state, in the Secretary's view, fails to fulfill the conditions. The purpose of the conditional authority power is to assist states in achieving compliance with SMCRA, not to excuse them from compliance.

E. The Secretary's Decision

As indicated in the Secretary's Findings, there are minor deficiencies in the West Virginia program which the Secretary requires be corrected. In all other respects, the West Virginia program meets the criteria for approval. The deficiencies identified in prior findings are summarized below and an explanation is given to show why each deficiency is minor, as required by 30 CFR 732.13(i).

(1) As discussed in Finding 13.1, the State program does not require highwall

elimination where auger mining is conducted at pre-existing highwalls. The environmental effect of this deficiency is minor, because augering represents only a small portion of mining conducted in West Virginia, and the deficiency will only affect sites where the augering occurs at a highwall created prior to the passage of West Virginia's statute. Finally, all the other permitting and performance standards which must be applicable to auger mining under Federal law, are required to be met by West Virginia's program.

(2) State law allows for the use of constructed outcrop barriers but fails to provide criteria for design of such barriers as discussed in Finding 13.4. This deficiency is considered minor because State law provides that barriers can be allowed only when natural barriers would result in future water quality deterioration and would conflict with the goal of maximum resource utilization. Furthermore, State law requires the stability factor of constructed barriers must be least equal that of the natural outcrop barrier. In view of these requirements it is unlikely that any environmental harm will result before the design criteria are developed.

(3) As discussed in Finding 13.10, the West Virginia program would allow drift mine openings to be located in a manner which might allow gravity discharges. The impact of this deficiency is minor because drift mines are located in only a limited part of the State, and only certain coal seams there are able to support a drift mine. In addition, the State may not allow openings which would lead to gravity discharges after consideration of safety and environmental factors.

(4) The State law definition of "adequate treatment" as discussed in Finding 13.12, does not accurately reflect the manner in which water quality standards for streams are set. This deficiency is minor because the state's regulations regarding water quality will provide guidance to applicants preparing permanent program permit applications during the period before the change is made.

(5) As discussed in Finding 13.14, the definition of "disturbed area" does not include topsoil storage areas. However, since topsoil storage areas are required to be on the permit area, and all drainage leaving the permit area must meet effluent limits this deficiency is considered minor. It is unlikely that any significant environmental harm would occur before the definition is revised.

(6) State regulations for protective devices and temporary sealing of exploratory and other holes are inadequate as discussed in Finding 13.18. This deficiency is minor because the casing and sealing requirements found in West Virginia Regulation Section 6B.02 aimed at preventing pollution, should result in most holes being adequately and promptly sealed. The Secretary expects this will significantly reduce the danger of injury to the public or wildlife from the dangers of exploratory holes during the period before the deficiency is corrected.

(7) As discussed in Finding 13.20, State Regulation Section 6B.07b does not include provisions for maximizing mineral resource recovery during augering operations. The deficiency is minor because of the limited amount of augering within the state, and because the State law grants the Director of DNR the authority to take the steps which SMCRA makes mandatory. The Secretary has no reason to believe that the Director will exercise this discretion in a manner inconsistent with maximum resource recovery.

(8) As discussed in Finding 13.21 and 13.22, West Virginia Regulations fail to include certain provisions relating to coal waste piles. Each of these omissions are minor for the following reasons.

a. The failure to provide for four feet of cover with non-toxic and non-combustible material on toxic or acid-forming spoil in coal mine waste piles as discussed in Finding 13.21 is minor because other state requirements relating to water quality will result in prevention of most of the environmental problems intended to be prevented by the four-foot cover.

b. As discussed in Finding 13.22, the State fails to require submission of a certified report to the regulatory authority within two weeks after inspection of waste piles. This is minor because West Virginia requires weekly inspections and reports must be prepared and made available on site. The only deficiency relates to submission of the reports to the Department of Natural Resources at critical construction stages.

c. As discussed in Finding 13.22, State Regulation 10C.06c.3.c allows for approval of impoundments on waste piles by the Director. The deficiency is minor because the deficiency must be corrected before any permit is likely to be issued authorizing an impoundment on a waste pile.

(9) The State regulations allow broad variances for special land use purposes at the Director's discretion, with no regulatory criteria for his exercising this discretion, as discussed in Finding 13.24. This deficiency is minor because the variance may only be granted when it is "consistent with the purposes of" the State Act (Regulation Section 6B.07e.1.), and thus the Director may only grant the variance in the limited circumstances where the variance doesn't jeopardize protection of the public or the environment, and where the variance is not used to allow mining where reclamation is not feasible. See State Act Section 20-6-2(b) (1) and (3).

(10) West Virginia regulations fail to require that permit applications contain water quality information relating to the manganese content, as discussed in Finding 13.26. The impact of this deficiency will be minor, since manganese represents only one of a large number of pollutants on which information is required, and since the deficiency should be corrected relatively soon. In addition, the performance standards regulate manganese pollution.

(11) The State regulations do not require that for area strip mining, rough backfilling and grading operations be completed within 180 days of coal extraction, as discussed in Finding 13.27. The deficiency is minor since the State does require that no more than two spoil piles may be allowed nor more than 3,000 linear feet of open pit. It is unlikely that situations will occur in area strip mining where operations would greatly exceed the 180 day limitation during the short period required to modify present State regulations, since these situations could only occur where mining proceeds on a sporadic basis.

(12) As discussed in Finding 13.28, the State regulations do not, due to an apparent clerical error, prohibit static safety factors of less than 1.5 on the outslopes of the plateau created by mountaintop removal where these slopes exceed lv:2h. This deficiency is minor because it is unlikely that any such steep slopes will be permitted without the required static safety factor during the brief period before the regulation is clarified.

(13) As discussed in Finding 13.29, the State Regulations allow the Director of DNR to permit windrowing timber on the downslope, which is contrary to the federal requirements. This deficiency is minor because under the State rule the Director may permit windrowing only where the permittee demonstrated that such placement will not reduce stability and it is unlikely that the amount of windrowing which might be allowed during the short period before their regulation is changed will cause significant water degradation.

(14) As discussed in Finding 13.30, the State regulations allow a peak particle velocity of two inches per second at the nearest residence from the blast contrary to the federal requirements.

This deficiency is minor because Section 4C.04h limits the weight of explosives consistent with the federal formula, which is based on meeting the federal one inch per second peak particle velocity requirement. It is unlikely that there will be many instances where measurement of peak particle velocity at the nearest residence, rather than at any dwelling, as under the federal rule, would be inadequate during the period before the regulation is changed. Further, this regulation should be changed before the deficient practice could be put into effect under the permanent program.

(15) As discussed in Finding 13.31, the State regulations do not require that fish and wildlife agencies be given 60 days to review alternate land use plans. This problem is minor because State Regulation 4D.04h requires that any necessary approvals from fish and wildlife agencies must be obtained before the plans can be approved. This will provide significant protection to fish and wildlife during the short period before the regulation is changed. Further, the normal opportunities for comment by government agencies will be provided, as for all permits.

(16) As discussed in Finding 13.32, the State rules do not contain the provisions for the transfer of wells equivalent to those under the federal program. Due to the infrequent use of wells by persons other than the permittee, this omission in the regulations will have little effect during the short period before the regulation is changed.

(17) As discussed in Finding 13.33, State regulations do not require that the operator immediately inform the regulatory authority of dangerous slides and comply with any remedial measures ordered. However, the State permit requires that the operator notify endangered parties and initiate self-imposed remedial measures. In addition, such slides are not likely to occur during the short period before the State program is changed, as the program already contains numerous measures designed to prevent slides.

(18) As discussed in Finding 13.34, the State provision which allows head-of-hollow fill, rock-core drain system design criteria to be used when the fill is not constructed at the ridge line could pose long term threats to integrity of the fills. This program is minor because, if the additional data being requested from the State substantiates a long term problem, surficial changes to the drainage pattern can be made with relative ease to divert water away from the fill. Few fills will be completed to the point of bond release in the time allowed for collection of the additional data. Further, there is substantial professional opinion in the administrative record that the potential problem will be found to be minimal when the additional data has been fully analyzed.

(19) As discussed in Findings 14.1, 14.2, 14.3, the State program fails to require all necessary information in permit applications relating to other operations of the applicant or the applicant's record of violations. This deficiency is minor because, as explained in the cited findings, only out-of-State operations are excluded from the requirement to identify other operations of the applicant, and only temporary suspensions are excluded from the requirement to report permit revocations and suspensions. While all violations of West Virginia environmental laws must be reported, violations of other laws need not be. The State and the public are likely to identify any applicant with a serious compliance problem with the information being required.

(20) As discussed in Finding 14.4, the State provisions for incidental permits are not completely consistent with the federal requirements. However, this deficiency is minor, as most of the federal environmental protection standards and permit information requirements are met and there is some opportunity for public participation. Further, as discussed in the Finding, only 35 of these permits have been granted in the last three years, and many of these involved areas under two acres, which would not be regulated at all under SMCRA. Finally, the fact that these permits must be under 5 acres makes it unlikely that any significant environmental harm will occur during the short period before the regulation is changed.

(21) As discussed in Finding 14.8, the State program omits the requirement that the State provide a copy of its written findings concerning permit approval, modification or denial to each person and government official who filed written objections or comment and the Regional Director and publish a summary of its decision in a newspaper of general circulation in the area of the coal mining operation. The effect of this deficiency is minor because the State does assist interested members of the public in keeping informed under Regulation Section 3Q.07, which requires that DNR notify the Clerk of the County Commission where the permit is located that a permit has been issued, and under Regulation Section 3Q.02, which requires that DNR send copies of renewal decisions to any person who filed comments on the renewal or was a party to any informal conference on the renewal.

(22) As discussed in Finding 14.9, due to an apparent clerical error the State regulations may be inconsistent with the federal program concerning public availability of borings and sampling analyses. The problem is minor because Section 20-6-11(a)(12) of SCMRA requires that this information be available.

(23) As discussed in Finding 15.2, West Virginia fails to include the requirement for a narrative description and map of the proposed exploration area consistent with the federal program. West Virginia law [Section 20-6-8(b)(1)] does require submission of a United States Geological Survey topographical map, and Regulation Section 5A.01b.12. requires submission of a map and narrative containing certain additional information. The amount of information required by West Virginia is adequate for the short period of time required to amend the State Regulations since exploration operations do not normally cause substantial problems.

(24) As discussed in Finding 17, the State law contains language which provides that, except for willful and deliberate acts, neither the permittee nor his authorized agents or employees shall be liable for any injury sustained by a citizen accompanying an inspector onto the minesite. This statutory problem is minor because it is very unlikely that anyone accompanying an inspector onto a minesite will be injured during the short period the Secretary has given the State to correct this provision. The Secretary is aware of no instance in which a citizen accompanying an inspector onto a minesite during the interim Federal program has been injured. Accordingly, few, if any citizens are likely to be deterred from exercising their statutory right to go onto a minesite pending resolution of this deficiency.

(25) As discussed in Finding 18.1, the State must provide an actuarial study of the funding mechanism for its alternative bonding system to insure that sufficient funds will be available to cover any necessary reclamation. This deficiency is deemed to be minor because, Section 20-6-12(h) of West Virginia SCMRA requires the net amount in the fund to equal or exceed one million dollars at all times. As explained in the Attorney General's opinion (Part A, response to Finding 18.1) the State utilizes this bonding procedure at the present time and has encountered no funding difficulties. The information in the Attorney General's

opinion pertaining to the State's past history of forfeitures, indicates the amounts in fund will be more than adequate pending completion of the actuarial study. This is especially true in view of the fact that the State requires a $1,000 per acre, $10,000 minimum bond from each operator in addition to the Special Reclamation Fund.

(28) State law fails to provide for the following civil penalty assessment requirements, as discussed in Finding 19.

(a) Adequate regulations or guidelines to insure (1) that penalties assessed in accordance with the State's broad statutory criteria will be uniform or consistent as applied to various factual situations, and (2) that the State's assessment procedures are adequate to constitute *administrative* assessment rather than judicial assessment. This deficiency is deemed to be minor because the Department of Natural Resources clearly has authority to assess and collect civil penalties during the short period allowed to develop guidelines for assessing penalties. The absence of guidelines will not preclude the State from implementing its civil penalty assessment authority during this period.

(b) Requirement that hearings in magistrate court be on the record, that Findings of Fact be made, that a written decision be entered, and that review in the circuit court be on the record. These deficiencies are deemed to be minor for several reasons: (1) the Department of Natural Resources has agreed to make a record of any magistrate proceedings to insure that a transcript is available; (2) since review of magistrate decisions by the circuit court will be *de novo* until the State statute is amended to provide for review on the record, preservation of the record presented in magistrate court is not vital; (3) relatively few notices are likely to be ripe for hearing, much less for circuit court review, before the required changes are made; and (4) although *de novo* review may be frustrating and cumbersome, it will not preclude the DNR from issuing and adjudicating civil penalty assessments during the period before the program is changed.

(c) Adequate provisions for citizen participation in magistrate court proceedings including provision for recovery of Attorney fees. This deficiency is deemed to be minor because, although it is an important provision, it is not utilized frequently.

(d) Provisions for timely resolution of disputes about civil penalty assessments. This deficiency is deemed to be minor because the State can, as a practical matter, insure that penalties for violations of the State law can be quickly resolved by exercising its criminal prosecution authority as it has in the past. As stated in the Attorney General's opinion, the State will continue to do this.

(e) Provisions for resolution of civil penalty issues without the availability of trial by jury. The possibility of an operator requesting a trial by jury is deemed minor because there should be relatively few instances where penalty assessments would be ripe for hearing during the period allowed for program amendment. Even if operators elect to utilize the present provision in State law which allows for a jury trial, the DNR would still be able to proceed with assessment and adjudication of civil penalties.

(f) Provision for payment into escrow as a condition precedent to contesting a proposed civil penalty assessment. This deficiency is deemed to be minor because, in the short period allowed for program change, the State can, and will, continue to utilize its authority to proceed against violators criminally. A criminal prosecution requires posting of a bond, which serves to some extent the same function as prepayment into escrow.

(g) Provisions in State law which clarify that an operator has only one avenue of appeal for challenging violations or penalty assessments, as discussed at Findings 19.4 and 20.4. This problem is deemed to be minor because it is unlikely that an appellant will have an opportunity to take advantage of the dual system before the problem is corrected by the State. Even if an operator seeks review of a notice of violation before the magistrate court and the Reclamation Board of Review simultaneously, a problem will arise only if different decisions are reached by the two bodies. In addition, the Attorney General's opinion states that the issuance of a civil penalty by the Department at any time before or after an appeal of a notice or order to the Reclamation Board of Review deprives the Board of Jurisdiction to hear the appeal. Although the law as it is now written does not, on its face, confirm this view, this interpretation can probably be utilized to avoid dual appeals pending the program revision.

As stated in a–g above each of the noted deficiencies is considered to be minor. In addition, the Secretary considers the cumulative effect of the deficiencies to be minor because they do not preclude the State from proposing, issuing, adjudicating or collecting civil penalty assessments for violations of the State program. In addition, the State has available very effective criminal prosecution authority to insure that monetary fines can be imposed swiftly against anyone who violates any provision of the program pending resolution of all the deficiencies identified by the Secretary.

(27) As discussed in Findings 19.4 and 20.4, State law does not require that daily civil penalties for cessation orders issued for failure to abate a notice of violation be imposed until the violation is abated. This problem is deemed to be minor because regulation 14A.03b. provides that any cessation order issued under Section 17(a) "shall remain in effect until the violation has been abated." This regulation should be sufficient to insure that, during the period allowed for a statutory amendment, no cessation order will be terminated before complete abatement is accomplished.

(26) As discussed in Finding 20.7, State law provides that cessation orders shall be "vacated" once remedial action has been accomplished. The Secretary deems this problem to be minor because a very short period of time has been allowed to correct this deficiency. Since Federal law provides up to 90 days to abate a violation before a cessation order must issue, relatively few cessation orders will be issued before the required change is made. Also, State Regulation 14A.03d provides that the word "vacate" means "terminate." In view of the legislative history of this particular section of State law as outlined in the Attorney General's opinion, it is possible that a challenge to the DNR's authority to promulgate regulation 14A.03d would be unsuccessful.

(29) As discussed in Finding 20.7 and Finding 20.8, State law does not clearly define vacation as opposed to termination and does not contain a provision which requires inspectors to determine the steps necessary to abate each violation. The Secretary deems this problem to be minor because State inspectors clearly have the authority to issue cessation orders and State Regulation Section 14A.03d. applies. Therefore, it is unlikely that many problems will occur. As far as determining abatement steps, the inspector can insist on specific or particular remedial steps to be taken by the operator. In addition, State Regulation 14A.03c. directs inspectors to include in the order the measures necessary to abate the cessation order. This regulation offers support for the inspector's authority to demand specific actions, should specific requirements for abatement contained in the order be challenged by the operator.

(*30*) State law fails to provide that an operator's unwarranted failure to abate a violation is to be considered in determining whether an operator should be issued an order to show cause why his permit should not be suspended or revoked, as discussed in Finding 20.9. Also, because of a clerical error, the word "no" appears in Regulation 14A.01.a.3, which negates the purpose of the regulation. The Secretary deems these deficiencies to be minor because it is highly unlikely that any operator would develop a pattern of violations before the deficiency is corrected.

(*31*) The State statute allows variances to certain of the prohibitions against mining contained in Section 522(e)(1) of SMCRA, as discussed in Finding 21.1. This deficiency is minor because 20-6-22(d)(2) of SCMRA restricts its use to cases where there is an affirmative finding that positive environmental benefits will result. This restriction assures that the variance will not be used frequently. Further, the required change is expected to have been made before any permits are issued which incorporate such a variance.

(*32*) State law imposes certain costs of taking an appeal on the appellant, as discussed in Finding 22.3. The Secretary deems this to be a minor problem because few appeals are likely to be taken during the short time period before the requisite statutory changes are accomplished. In addition, the Attorney General's opinion says that current practice is that appellants pay only for the cost of personal copies of the transcript, not the full cost of transcription.

(*33*) State law fails to make the Reclamation Commission subject to certain conflict of interest provisions, as discussed in Finding 23. Three of the four members of the Commission are subjected to these requirements by virtue of their employment with the Department of Natural Resources. The fourth member, the Director of the Department of Mines, is subject to a conflict of interest provision under Chapter 6B of the Code of West Virginia. These provisions will provide adequate protection against conflicts of interest during the short period before the statute is changed.

(*34*) State law limits the scope of Small Operator Assistance, discussed in Finding 25, by providing funds only as available from the U.S. Department of the Interior. Since it is not expected that the Small Operator Assistance Program in West Virginia will receive a substantial number of applications, and since federal funds will probably be adequate to fund the program during the period between the program approval and the legislative change, this deficiency is considered to be minor.

(*35*) As discussed in Finding 27.2, the State program does not provide for 5 days written notice of formal hearings. This deficiency is considered to be minor because the regulations promulgated pursuant to the Open Government Proceedings Law do require advance notice be given. In addition, since due process requires that adequate notice be given to parties to any litigation; ample notice will be provided as a matter of constitutional law.

Given the nature of the deficiencies set forth in the Secretary's Findings and their magnitude in relation to all the other provisions of the West Virginia program, the Secretary of the Interior has concluded they are minor deficiencies. Accordingly, the program is eligible for conditional approval under 30 CFR 732.13(i) because:

1. The deficiencies are of such a size and nature as to render no part of the West Virginia program incomplete since all other aspects of the program meet the requirements of SMCRA and 30 CFR Chapter VII and these deficiencies, which will be promptly corrected, will not directly affect environmental performance at coal mines;

2. West Virginia has initiated and is actively proceeding with steps to correct the deficiencies; and

3. West Virginia has agreed, by letter dated January 13, 1981, to correct the statutory and regulatory deficiencies by the dates specified in 30 CFR Part 948.

Accordingly, the Secretary is conditionally approving the West Virginia program. This approval shall terminate if regulations correcting the deficiencies are not enacted by the dates specified in 30 CFR Part 948.

This conditional approval is effective January 21, 1981. Beginning on that date, the West Virginia Department of Natural Resources shall be deemed the regulatory authority in West Virginia and all West Virginia surface coal mining and reclamation operations on non-federal and non-Indian lands in West Virginia shall be subject to the permanent regulatory program.

On non-federal and non-Indian lands in West Virginia, the permanent regulatory program consists of the state program approved by the Secretary.

The Secretary's approval of the West Virginia program relates at this time to the permanent regulatory program under Title V of SMCRA. The approval does not constitute approval of any provisions related to implementation of Title IV under SMCRA, the abandoned mine lands reclamation program. In accordance with 30 CFR Part 884, West Virginia may submit a state reclamation plan now that its permanent program has been approved. At the time of such a submission, all provisions relating to abandoned mined lands reclamation will be reviewed by officials of the Department of the Interior.

F. Additional Findings

The Secretary has determined that, pursuant to Section 702(d) of SMCRA, 30 USC 1292(d), no environmental impact statement need be prepared on this conditional approval.

The Secretary has determined that this document is not a significant rule under E.O. 12044 or 43 CFR Part 14, and no regulatory analysis is being prepared on this conditional approval.

Dated: January 15, 1981.

Joan M. Davenport,

Assistant Secretary.

A new Part, 30 CFR Part 948, is adopted to read as follows:

PART 948—WEST VIRGINIA

Sec.

948.1 Scope.
948.10 State regulatory program approval.
948.11 Conditions of State regulatory program approval.

Authority: Pub. L. 95-87, Surface Mining Control and Reclamation Act of 1977, (30 U.S.C. 1201 *et seq.*)

§ 948.1 Scope.

This Part contains all rules applicable only within West Virginia that have been adopted under the Surface Mining Control and Reclamation Act of 1977.

§ 948.10 State regulatory program approval.

The West Virginia State program, as submitted on March 3, 1980, as amended and clarified on June 16, 1980, and resubmitted December 19, 1980, is conditionally approved, effective January 21, 1981. Beginning on that date, the Department of Natural Resources shall be deemed the regulatory authority in West Virginia for all surface coal mining and reclamation operations and for all exploration operations on non-federal and non-Indian lands. Only surface coal mining and reclamation operations on non-federal and non-Indian lands shall be subject to the provisions of the West Virginia permanent regulatory program. Copies of the approved program, together with copies of the letter of the Department of Natural Resources agreeing to the conditions in 30 CFR 948.11, are available at:

(a) West Virginia Department of Natural Resources, Division of Reclamation, Room 322, 1800 Washington Street,

East, Charleston, West Virginia 25311; Telephone: (304) 348–3287.

(b) Office of Surface Mining, Region I, 603 Morris Street, Charleston, West Virginia 25301; Telephone: (304) 342–8125.

(c) Office of Surface Mining, Interior South Building, Room 153, 1951 Constitution Avenue, NW., Washington, DC 20240; Telephone: (202) 343–4728.

§ 948.11 Conditions of State regulatory program approval.

(a) The approval of the West Virginia State program is subject to the State revising its program to correct the deficiencies listed in this section. The program revisions may be made, as appropriate, to the statute, the regulations, the program narrative, or the Attorney General's opinion. This section indicates, for the general guidance of the State, the component of the program to which the Secretary recommends the change be made.

(1) The approval found in § 948.10 will terminate on July 1, 1981, unless West Virginia submits to the Secretary by that date copies of an enacted law, and, if necessary, regulations requiring elimination of highwalls in all augering operations consistent with Section 515(b)(2) of SMCRA and 30 CFR 816.102(a)(2) or otherwise amends its program to accomplish the same result.

(2) The approval found in § 948.10 will terminate on May 1, 1981, unless West Virginia submits to the Secretary by that date copies of enacted regulations or otherwise amends its program to provide criteria for the design of constructed barriers which will assure protection of water quality and long term stability at least equal to that of natural barriers.

(3) The approval found in § 948.10 will terminate on April 1, 1982, unless West Virginia submits to the Secretary by that date copies of enacted law and regulations or other amendment to its program to prohibit updip mining consistent with Section 516(b)(12) of SMCRA.

(4) The approval found in § 948.10 will terminate on May 1, 1981, unless West Virginia submits to the Secretary by that date copies of an enacted statutory changes which are consistent with Section 515(b)(10) of SMCRA and which clarify the definition of "adequate treatment".

(5) The approval found in § 948.10 will terminate on July 1, 1981, unless West Virginia submits to the Secretary by that date copies of fully enacted statutory or regulatory revisions or other program amendments that will result in inclusion of topsoil storage areas within the definition of "disturbed area" consistent with 30 CFR 705.1.

(6) The approval found in § 948.10 will terminate on May 1, 1981, unless West Virginia submits to the Secretary by that date copies of enacted regulations which contain provisions that are the same or similar to 30 CFR 816.13 through 816.15 or other program amendments requiring the protection of the public, wildlife, and others from the dangers of exploratory or other bore holes which have not been properly managed or controlled.

(7) The approval found in § 948.10 will terminate on May 1, 1981, unless West Virginia submits to the Secretary by that date copies of enacted regulations designed to maximize the ultimate mineral recoverability when augering operations are conducted consistent with 30 CFR 819.11(a) and to make the prohibition of auger mining mandatory as in 30 CFR 819.11(e).

(8) The approval found in § 948.10 will terminate on May 1, 1981, unless West Virginia submits to the Secretary by that date copies of an enacted regulations which (i) require covering of coal mining waste banks with non-toxic and non-combustible material consistent with 30 CFR 816.85(d); (ii) specify construction criteria for subdrainage systems consistent with 30 CFR 816.72(b)(1) and (b)(4); (iii) prohibit the use of impoundments on constructed fills consistent with 30 CFR 816.71(g); and (iv) require inspection of coal refuse piles consistent with 30 CFR 816.71(j) or otherwise amends its program to accomplish the same results.

(9) The approval found in § 948.10 will terminate on May 1, 1981, unless West Virginia submits to the Secretary by that date enacted regulations which eliminate the broad variance now found in State Regulation 6B.07e.1. or define criteria for use of the variance consistent with Section 515(e) of SMCRA and 30 CFR 826.15.

(10) The approval found in § 948.10 will terminate on May 1, 1981, unless West Virginia submits to the Secretary by that date copies of enacted regulations or other program amendments requiring that permit applications contain water quality information on total manganese consistent with 30 CFR 783.16(b)(2)(vi).

(11) The approval found in § 948.10 will terminate on May 1, 1981, unless West Virginia submits to the Secretary by that date copies of enacted regulations requiring completion of rough backfilling and grading in area strip mining operations within 180 days, consistent with 30 CFR 816.101(a)(3).

(12) The approval found in § 948.10 will terminate on May 1, 1981, unless West Virginia submits to the Secretary by that date copies of enacted regulations containing a provision which prohibits a static safety factor of less than 1.5 on slopes greater than 1v:2h on the outslopes of the plateau created by mountaintop removal mining operations consistent with 30 CFR 824.11(a)(7).

(13) The approval found in § 948.10 will terminate on May 1, 1981, unless West Virginia submits to the Secretary by that date copies of enacted regulations which prevent placing debris on the downslope consistent with Section 515(d)(1) of SMCRA and 30 CFR 826.12(a)(1)(C).

(14) The approval found in § 948.10 will terminate on May 1, 1981, unless West Virginia submits to the Secretary on that date copies of enacted regulations which limit the maximum peak particle velocity to one (1) inch per second at *any* residence or other structure, consistent with 30 CFR 816.65.

(15) The approval found in § 948.10 will terminate on May 1, 1981, unless West Virginia submits to the Secretary by that date copies of enacted regulations or other program amendment which provide a minimum of 60 days for review of alternate land use proposals consistent with 30 CFR 816.133(c)(3).

(16) The approval found in § 948.10 will terminate on May 1, 1981, unless West Virginia submits to the Secretary by that date copies of enacted regulations or other program amendment containing provisions regarding the transfer of wells consistent with 30 CFR 816.53 and 30 CFR 817.53.

(17) The approval found in § 948.10 will terminate on May 1, 1981, unless West Virginia submits to the Secretary by that date copies of enacted regulations or other program amendment containing provisions requiring notification of the regulatory authority of slides and compliance with required remedial measues to mitigate the threat posed by such slides consistent with 30 CFR 816.99(b) and 30 CFR 817.99.

(18) The approval found in § 948.10 will terminate on April 1, 1982, unless West Virginia submits to the Secretary by that date additional data demonstrating that large volumes of water runoff will not damage the fills along with copies of enacted regulations or other program changes, if any, necessary to correct deficiencies identified by the data provided.

(19) The approval found in § 948.10 will terminate on July 1, 1981, unless West Virginia submits to the Secretary by that date copies of enacted statutes and regulations to require data on the applicant's past record of mining

consistent with Sections 507(b)(3), 507(b)(5) and 510(c) of SMCRA.

(20) The approval found in § 948.10 will terminate on July 1, 1981, unless West Virginia submits to the Secretary by that date copies of enacted regulations or other program amendments to show that applicable permit data, performance standards and public participation requirements of SMCRA are included in the State provisions for incidental permits.

(21) The approval found in § 948.10 willwill terminate on May 1, 1981, unless West Virginia submits to the Secretary by that date copies of enacted regulations regarding the type of boring and sampling analyses information to be made available to the public consistent with 30 CFR 786.15(a)(2) and the State law [20-6-11(a)(12)].

(22) The approval found in § 948.10 will terminate on May 1, 1981, unless West Virginia submits to the Secretary by that date copies of enacted regulations regarding the type of boring and sampling analyses information to be made available to the public consistent with 30 CFR 786.15(a)(2) and the State law [20-6-11(a)(12)].

(23) The approval found in § 948.10 will terminate on May 1, 1981, unless West Virginia submits to the Secretary by that date copies of enacted regulations or other program amendments which provide a narrative description and map of the proposed exploration area if more than 250 tons of coal will be removed consistent with 30 CFR 776.12.

(24) The approval found in § 948.10 will terminate on May 1, 1981, unless West Virginia submits to the Secretary by that date copies of enacted law which eliminates the provision that a permittee and his authorized agents and employees are not liable for any injury sustained by a citizen accompanying the inspector onto the minesite except for willful and deliberate acts.

(25) The approval found in § 948.10 will terminate on April 1, 1982, unless West Virginia submits to the Secretary by that date an actuarial study of the Fund, prepared by a qualified professional, that demonstrates the amount of money going into the Fund will cover the demands to be placed on it, along with copies of enacted law, or other program changes needed to redress any deficiencies identified by the actuarial study.

(26) The approval found in § 948.10 will terminate on July 1, 1981, unless West Virginia submits to the Secretary by that date copies of enacted law and regulations which provide for a system for assessment, enforcement and collection of civil penalties the same or similar to Section 518 and the related provisions of Sections 525 and 526 of SMCRA.

(27) The approval found in § 948.10 will terminate on May 1, 1981, unless West Virginia submits to the Secretary by that date copies of enacted law which requires that civil penalties for cessation orders issued for failure to abate a notice of violation be imposed on a daily basis consistent with Section 518(h) of SMCRA.

(28) The approval found in § 948.10 will terminate on May 1, 1981, unless West Virginia submits to the Secretary by that date copies of enacted law which provides that the abatement for a validly issued cessation order does not result in the vacation of the order.

(29) The approval found in § 948.10 will terminate on May 1, 1981, unless West Virginia submits to the Secretary by that date copies of enacted law which provides that, in issuing cessation orders, inspectors specify the steps necessary to abate the violation in the most expeditious manner possible, including all necessary abatement measures, as is required by Section 521(a)(3) of SMCRA.

(30) The approval found in § 948.10 will terminate on May 1, 1981, unless West Virginia submits to the Secretary by that date copies of enacted regulations which provide that an operator's unwarranted failure to abate will be considered in determining whether a show cause order should be issued and that other provisions of the State regulations are consistent with 30 CFR 843.13.

(31) The approval found in § 948.10 will terminate on May 1, 1981, unless West Virginia submits to the Secretary by that date copies of enacted law which does not allow mining to be approved within areas where mining is prohibited by Section 522(e)(1) of SMCRA.

(32) The approval found in § 948.10 will terminate on May 1, 1981, unless West Virginia submits to the Secretary by that date copies of enacted law which provides that the appellant does not have to bear the cost of transcribing the proceedings or pay the mileage or transportation expenses incurred by other parties consistent with 43 CFR Part 4.

(33) The approval found in § 948.10 will terminate on May 1, 1981, unless West Virginia submits to the Secretary by that date copies of enacted law which subjects all members of the Reclamation Commission to the conflict of interest provisions of Section 20-6-40 of the West Virginia law.

(34) The approval found in § 948.10 will terminate on April 1, 1982, unless West Virginia submits to the Secretary by that date copies of fully enacted law consistent with Section 507(c) of SMCRA which does not restrict assistance to small operators to funds provided by the federal government.

(35) The approval found in § 948.10 will terminate on May 1, 1981, unless West Virginia submits to the Secretary by that date copies of enacted regulations which provide for advance public notice of formal hearings consistent with Section 525 of SMCRA.

[FR Doc. 81-2000 Filed 1-19-81; 8:45 am]
BILLING CODE 4310-05-M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR 372a

[DoD Directive 5120.20][1]

American Forces Radio and Television Service

AGENCY: Office of the Secretary of Defense.

ACTION: Final rule.

SUMMARY: This rule defines the Department of Defense policy, responsibilities, information requirements, management and operations of the American Forces Radio and Television Service (AFRTS). It is issued in support of the provisions of PART 372 of this title.

EFFECTIVE DATE: December 23, 1980.

FOR FURTHER INFORMATION CONTACT: LTC C. William Duerre, Office of the Assistant Secretary of Defense (Public Affairs), American Forces Information Service (AFIS), The Pentagon, Washington, D.C. 20301, Telephone 202-694-4606.

Accordingly, 32 CFR is being amended by adding a new Part 372a, reading as follows:

PART 372a—AMERICAN FORCES RADIO AND TELEVISION SERVICE (AFRTS)

Sec.

372a.1 Purpose.
372a.2 Applicability.
372a.3 Policy.
372a.4 Responsibilities.
372a.5 Information Requirements.

Enclosure 1—AFRTS Management and Operations.

Authority: 10 U.S.C. 133.

§ 372a.1 Purpose.

This Rule:

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1 Copies may be obtained, if needed, from the U.S. Naval Publications and Forms Center, 5801 Tabor Avenue, Philadelphia, PA. 19120. Attention: Code 301.

(a) Reflects the AFRTS organization, states policy, and assigns responsibilities for the AFRTS.

(b) Authorizes the development and publication of DoD 5120.20–R, "Management and Operation of AFRTS," in compliance with DoD Directive 5025.1,[1] "DoD Directives System," October 16, 1980. Upon publication of DoD 5120.20–R, enclosure 1 of this Part will be canceled and any subsequent reference to enclosure 1 will be deemed a reference to the relevant provision of DoD 5120.20–R.

§ 372a.2 Applicability.

The provisions of this Part apply to the Office of the Secretary of Defense and its field activities, the Military Departments, the Organization of the Joint Chiefs of Staff and the Unified and Specified Commands, and the Defense Agencies (referred to herein as "DoD Components"). As used in this Part, the term "Military Services" refers to the Army, Navy, Air Force, and Marine Corps.

§ 372a.3 Policy

(a) The *American Forces Radio and Television Service*, an activity of the American Forces Information Service (AFIS), under the direction of the Assistant Secretary of Defense (Public Affairs) (ASD(PA)):

(1) Supports the internal information program of the Department of Defense, as stipulated in 32 CFR 372, by providing a broad range of information and entertainment programing, through the radio and television media, to overseas DoD personnel and their dependents. As used in this Directive, the term "overseas" refers to geographic locations outside of the contiguous United States including Navy ships at sea, Alaska, and Hawaii.

(2) Provides U.S. military commanders, worldwide, with unique means to communicate internal information directly to DoD personnel overseas.

(3) Assists in maintaining and enhancing the morale, readiness, and well-being of DoD personnel.

(4) Does not seek to compete for audiences with any other broadcast facility or organization. AFRTS broadcasts are directed toward DoD audiences overseas. The fact that others may receive these broadcasts is the result of electronic media characteristics.

(5) Does not endorse or imply DoD endorsement of any commercial product or service.

(6) Is part of the internal information program of the Department of Defense. Funds appropriated for AFRTS may not be used to support external information programs.

(b) *American Forces Radio and Television Service Outlets:*

(1) Operate under the centralized management and control of the Military Departments, in accordance with the policies and procedures developed by the Director, AFIS, under the provisions of this Part and 32 CFR 372.

(2) Adhere to AFIS broadcast policy, which prohibits censorship, propagandizing, or manipulation, and which mandates that overseas DoD personnel and their dependents are entitled to the same type of information and entertainment programing as their fellow citizens in the United States.

(i) This policy is subject to the following considerations:

(A) *Host Country Sensitivities.* AFRTS outlets operate in foreign countries with the approval of the host government which assigns broadcast frequencies. Program topics considered sensitive to a host country may be restricted from broadcast on an AFRTS outlet. Such restrictions shall be based soley on official determination by the U.S. Embassy or U.S. Country Team.

(B) *Area Restrictions.* When legal owners of programs prohibit AFRTS from broadcasting certain programs in specified geographic areas, these restrictions must be honored.

(ii) The above considerations do not permit the calculated withholding or editing of information and entertainment programing based on personal taste or preference. Such practices constitute censorship and are prohibited.

(3) Shall give maximum use to information and entertainment programing provided by the AFRTS Programing Center located in Los Angeles, California, and to Service-produced internal information programing distributed by the Military Departments. AFRTS outlets may produce local information, entertainment and religious programing to meet internal information objectives.

(4) May not produce news editorials, commentary, or analysis; engage in investigative reporting; or initiate political news coverage.

(5) Shall protect all programing and associated broadcast products from unauthorized use. These materials remain in the custody of the Department of Defense.

(6) May be advised by the Director, AFIS, to broadcast special programing on certain occasions. Failure to comply with this requirement must be justified to the ASD(PA).

(7) May not offer broadcasts in other than the English language, except as stated in subsection C.2., enclosure 1.

(8) May be used to promote military training or off-duty education. However, AFRTS facilities may not be used for training or educational purposes except at designated remote sites and aboard Navy ships, and as stated in paragraph C.2.b., enclosure 1. Further exceptions to this policy shall be considered by the Director, AFIS, on a case-by-case basis. In no instance shall the primary mission of AFRTS be jeopardized.

(9) May not use films and program materials from the Army and Air Force Exchange Service and the Navy Motion Picture Service.

(c) The *American Forces Radio and Television Service Programing Center*, a field activity of the AFIS:

(1) Provides information and entertainment programing for the exclusive use of AFRTS outlets.

(2) Is the only source authorized to negotiate for, procure, and distribute commercial and public broadcasting programing, except as stated in paragraph C.3.k., enclosure 1. Further exceptions to this policy will be considered by the Director, AFIS, on a case-by-case basis.

(3) Provides internal information programing and distributes radio and television spot announcements provided by the AFIS, in support of DoD internal information themes, goals, and objectives.

(4) Provides religious programing approved solely by the Armed Forces Chaplains Board, Office of the Assistant Secretary of Defense (Manpower, Reserve Affairs, and Logistics).

(5) Establishes procedures to alert AFRTS outlets of specific entertainment programing containing discretionary subject matter including that considered sensitive to a host country.

§ 372a.4 Responsibilities

(a) The *Assistant Secretary of Defense (Public Affairs)* shall:

(1) Comply with 32 CFR 372.

(2) Provide policy and operational direction to the Director, AFIS, for the management and operation of AFRTS.

(3) Issue directive-type memorandums and provide policy guidance to AFRTS centralized management elements within the Military Departments.

(b) The *Director, American Forces Information Service*, shall:

(1) Comply with 32 CFR 372.

(2) Develop policies and procedures, and oversee their implementation, for the management and operation of the AFRTS radio and television broadcasting activities of the Department of Defense; and evaluate

[1] See footnote page 1.

and direct corrective action by the Military Departments to ensure AFRTS is properly structured and managed.

(3) Exercise AFRTS fiscal and personnel resource control through the Planning, Programming, and Budgeting System, and monitor the implementation of approved programs.

(4) Authorize the configuration and capabilities of AFRTS outlets.

(5) Ensure a free flow of information and entertainment programing to overseas DOD personnel and their dependents without censorship, propagandizing, or manipulation.

(6) Ensure that all AFRTS broadcast activities are in conformance with host country rules and regulations governing radio and television transmissions, and are guided by the applicable rules and regulations of the Federal Communications Commission (FCC), and the Radio and Television Codes of the National Association of Broadcasters (NAB).

(7) In coordination with the Military Departments, establish standards for the training of management, production, and technical staffs; and for the operation and maintenance of equipment at AFRTS outlets.

(8) Establish and develop policies for a worldwide radio and television satellite distribution system to designated AFRTS outlets.

(9) Oversee management of the AFRTS Programing Center.

(10) Issue instructional-type memorandums and provide policy guidance to the Military Departments for ASD(PA) approved programs.

(11) As appropriate, consult with and inform Unified/Specified Commands on matters that impact on their mission and responsibilities.

(c) The *Commanders of the Unified and Specified Commands* shall:

(1) Comply with 32 CFR 372.

(2) Provide the Director, AFIS, and the Military Departments with contingency plans to assume control of AFRTS outlets.

(3) Provide a list of subjects considered sensitive to host countries as related to AFRTS programing in accordance with § 372a.5(c) of this Part.

(4) Upon request of the Director, AFIS, negotiate agreements or memorandums with host countries authorizing the establishment and continuance of AFRTS outlets.

(5) Upon request of the Director, AFIS, negotiate agreements, contracts, and clearances with music and performing arts societies of host countries.

(6) Ensure that nothing inhibits the free flow of radio and television information and entertainment programing to overseas DoD personnel and their dependents.

(d) The *Secretaries of the Military Departments* shall:

(1) Comply with 32 CFR 372.

(2) Through their respective AFRTS centralized management elements, provide all personnel, financial, engineering, maintenance, and logistics resources to establish, centrally manage, control, operate, and maintain AFRTS outlets, in accordance with this Part, 32 CFR 372, 32 CFR 169, and 32 CFR 169a.

(3) Ensure that a U.S. citizen is designated as a commander or manager of an AFRTS outlet. This individual may be either military or civilian. Civilians must be employed by the U.S. Government, or a concern under contract to the U.S. Government. Exceptions may be granted when required by a host country agreement.

(4) Establish and maintain centralized equipment allowances and authorizations for AFRTS outlets, in accordance with DoD Directive 5040.2,[1] "Audiovisual Activities," July 23, 1979 and DoD 5040.2–R, "Management and Operation of DoD Audiovisual Activities," November 1979, and the provisions of the AFIS program for the standardization and certification of broadcast equipment.

(5) Ensure that nothing inhibits the free flow of radio and television information and entertainment programing to overseas DoD personnel and their dependents.

(6) Negotiate an Interservice Support Agreement, in accordance with Section D., enclosure 1, of this Part, and DoD Directive 4000.19,[1] "Interservice, Interdepartmental and Interagency Support," October 14, 1980, when an AFRTS outlet serves personnel of more than one Military Service. Normally, these agreements will be negotiated at the lowest feasible level. Differences in reaching agreements shall be adjudicated by the Director, AFIS.

(e) The *Secretary of the Army* shall designate the U.S. Army Materiel Development and Readiness Command (DARCOM) to provide support to the DoD-wide AFRTS mission. Responsibilities shall be delegated to the Television-Audio Support Activity (T–ASA), a DARCOM activity located at the Sacramento Army Depot, California. This is in accordance with DoD Instruction 4115.1,[1] "DoD Coordinated Procurement Program Purchase Assignments," September 1, 1972, and the policy direction provided by the Director, AFIS. T–ASA shall comply with the provisions of section E, enclosure 1.

(f) *Heads of DoD Components* shall follow the AFRTS management and operations procedures found in enclosure 1.

§ 372a.5 Information Requirements

(a) The Audiovisual (AV) Annual Report, DD Form 2054, Report Control Symbol DD–PA(A)1348 shall be completed in accordance with the provisions of DoD Directive 5040.2, and DoD 5040.2–R.

(b) The AFRTS Outlet/Network Registration, DD Form 2137, Report Control Symbol DD–PA(AR)1572, shall be submitted through channels to the Director, AFIS, at the time of initiation of a request for an AFRTS outlet and within 30 days of a substantive change affecting an AFRTS outlet.

(c) The AFRTS host country Sensitive Subject Summary Narrative Report, Report Control Symbol DD–PA(A&AR)1537, shall be submitted to: the Director, AFIS; the Director, AFRTS Programing Center; and the Commandant, DINFOS. Public Affairs Officers of Unified and Specified Commands, or other major commands having AFRTS outlets under their cognizance, shall forward this report annually and as changes, additions, and deletions occur. Annual reports are due September 15th of each year.

§ 372a.6 Definitions

(a) *AFRTS.* A worldwide broadcast organization that comprises: (1) An AFRTS headquarters element within AFIS; (2) the AFRTS centralized management elements within the Military Departments; (3) AFRTS outlets around the world; and (4) the AFRTS Programing Center in Los Angeles, California.

(b) *AFRTS Outlet.* Any facility authorized by the Director, AFIS, in accordance with policy to disseminate radio or television programing. An outlet includes AFRTS radio and television stations and networks, relay sites, translators, Navy ships using AFRTS program materials, mini-TV sites, and any other AFRTS broadcast facility.

(c) *AFRTS Network.* Two or more AFRTS stations, authorized by the Director, AFIS, to disseminate programing through interconnecting broadcast quality transmission circuits.

(d) *AFRTS Mini-TV.* A self-contained videotape playback system used in remote or isolated areas not accessible to a radiated AFRTS television signal.

(e) *AFRTS Programing Center.* A field activity of the AFIS located in Los Angeles, California, which provides

[1] See footnote page 1.

[1] See footnote page 1.

information and entertainment programing to AFRTS outlets.

(f) *Censorship.* The withholding or editing of information and entertainment programing, when such action is not supported by legitimate host country sensitivities or by broadcast restrictions imposed by program owners.

(g) *Host Country Sensitivities.* Topics that are restricted from broadcast on an AFRTS outlet when determined by the U.S. Embassy or U.S. country team, normally in writing, to be sensitive to the host country concerned.

(h) *Information Programing.* Radio and television programing that communicates knowledge and includes: world, national (U.S.), Service, major/local command, community, and host country news; sports news; analysis and commentary; public affairs; and spot announcements on internal information themes.

(i) *Entertainment Programing.* Radio and television programing that affords pleasure, diversion or amusement, such as comedy, drama, variety, play-by-play sports, and musical recordings.

Enclosure 1

AFRTS Management and Operations

A. Procedures

1. *Establishment of an AFRTS Outlet.* In accordance with responsibilities and policies established herein, an AFRTS outlet may be proposed for establishment wherever a requirement for such a communication medium can be demonstrated.

a. Upon determining that there is a need for an AFRTS outlet and before the investment of funds, the local command will forward a request to the appropriate Military Department with an information copy to the appropriate Unified/Specified Command. The Military Department will take steps to ensure that funds, personnel, administrative, and logistics support are available prior to submitting the request for the approval of the Director, AFIS. The Military Department will provide the following information for the consideration of the Director, AFIS, keeping the appropriate Unified/Specified Command informed:

(1) Number of military (by branch of Service) and civilian DoD personnel and dependents who will benefit from the outlet.

(2) Amount and format of English language programing currently available.

(3) Designation of the activity that will exercise immediate control over the outlet.

(4) Type of outlet and physical location.

(5) Staffing plan for the outlet, including the number of military and civilian spaces to be allocated.

(6) Financial plan to fund for the outlet, including the amount of investment, and operation and maintenance estimates.

(7) Estimated "on-air" date.

(8) Copy of frequency allocation authorization or other suitable documentation, if radiating.

(9) Copy of the agreement with the host government when the outlet is to be based in a foreign country. When no formal written agreement has been negotiated, a memorandum of understanding or record from the U.S. Embassy or U.S. Country Team will suffice.

(10) Appropriate documentation in compliance with 32 CFR 189, 22 CFR 161e when applicable.

b. In considering any request for a new AFRTS outlet, the following criteria will apply:

(1) An outlet in a foreign country will abide by existing treaties, agreements, or regulations. Outlets located in other than foreign countries will not cause interference, as determined under the rules of the FCC, to licensed broadcast stations.

(2) An outlet will not be operated within the United States, except in certain isolated areas or where the Director, AFIS, determines that U.S. commercial radio and television programs are inadequate.

(3) An outlet will not be established when the Director, AFIS, determines that English language commercial, public, or government radio and television programs are adequate.

c. With the exception of designated mobile stations during time of war and Navy ships at sea, the geographic location of authorized AFRTS outlets will not be changed without approval of the Military Department concerned. The Director, AFIS will be advised in advance of such proposed changes. The appropriate Unified/Specified Command will be informed.

d. Changes or modifications to equipment that will alter materially the type of broadcast, the broadcast coverage area, or will result in a condition contrary to host country agreements, will not be made without approval of the Military Department concerned in coordination with the appropriate Unified/Specified Command. The Director, AFIS, will be advised in advance of such proposed changes.

e. For new outlets requiring AFRTS program materials, the Military Departments will furnish the Director, AFIS, and the appropriate Unified/Specified Command, an advisory at least 90 days prior to the planned "on-air" date, and an updated advisory 30 days prior to the firm "on-air" date.

f. Frequency assignment parameters (frequency, emission, power, or time restrictions) will not be exceeded without the approval of the Director, AFIS, and the appropriate broadcast frequency assignment authority.

g. A request for the establishment of a relay station as an AFRTS outlet will be considered only if it is intended to relay programs from an existing AFRTS outlet.

2. *Disestablishment of an AFRTS Outlet.* When a need no longer exists for an AFRTS outlet, the responsible Military Department in coordination with the appropriate Unified/Specified Command, will obtain the approval of the Director, AFIS, to disestablish and will:

a. Notify the appropriate U.S. Embassy or U.S. Country Team of the disestablishment, if the outlet is located in a foreign country, and forward a copy of the notification to the Director, AFIS.

b. Advise the JCS and the Office of the Assistant Secretary of Defense (Communications, Command, Control, and Intelligence) (ASD(C3I)) when FCC jurisdiction is involved.

c. At least 60 days prior to disestablishment, request from the AFRTS Programing Center disposition instruction for program materials.

d. Determine equipment disposition and furnish appropriate instructions to the outlet.

e. Notify the appropriate broadcast frequency assignment authority.

3. *Station Identification*

a. AFRTS networks and stations will:

(1) Identify themselves at prescribed regular intervals in compliance with international and host country regulations. If call letters, an identifying phrase, or a local television on-air logo has been assigned by the appropriate Military Department with the approval of the Director, AFIS, they may be used. If call letters or an identifying phrase has not been assigned, the network or station identification will be made as follows: "This is the American Forces Radio and Television Service," followed by the city, geographical location, or name of the Navy ship.

(2) Identify themselves at least once daily, or at sign-on and sign-off, as "This is the American Forces Radio and Television Service."

(3) Play the National Anthem of the United States at the normal sign-on and sign-off times, if not in contravention with an existing agreement with a host country. Networks and stations operating 24 hours a day will play the National Anthem at least once a day at the most appropriate time.

b. Networks will not be identified as such unless they exist in fact, and then they will be identified as being operated for the benefit of the American Forces as a whole.

4. *Emergency Announcements.* AFRTS outlets may not broadcast emergency announcements without clearance from an appropriate local commander or the AFRTS outlet commander/manager, who must verify the requirement. Recall, alert, or maneuver announcements for training purposes are not considered emergency announcements and will not be broadcast.

B. AFRTS Program Materials

1. *Authorization.* AFRTS program service may be authorized only for approved AFRTS outlets. Requests for this service will be made to the Director, AFIS, through the appropriate Military Department, keeping the Unified/Specified Command informed.

2. *Ownership.* All AFRTS program materials remain in the custody of the DoD and are restricted for use on AFRTS outlets only. The use or reproduction of AFTS program materials, in whole or in part, for any other purpose is prohibited without specific authorization from the Director, AFIS, or as prescribed in paragraphs B.5.e. and B.5.f. of this enclosure.

3. *Disposition*

a. AFRTS program materials, including spot announcements, on hand at AFRTS outlets will be screened at least semi-annually to ensure that obsolete recordings, spot announcements, and films are removed from station libraries.

b. AFRTS outlets will obtain disposition instructions for outdated program materials from the AFRTS Programing Center.

c. When disposal has been authorized by the AFRTS Programing Center, the program materials will be disposed of in accordance with furnished instructions. Certified statements of such disposition will be forwarded to the Programing Center.

d. To meet emergency situations AFRTS outlets will develop contingency plans for removing or destroying AFRTS program materials.

4. *Restrictions*

a. AFRTS program materials will not be used:

(1) On foreign or domestic commercial, private, or government-owned broadcasting stations without specific authorization from the Director, AFIS.

(2) In a program originating from a military installation and broadcast by a commercial station.

(3) As a feed from a hospital program broadcasting system to provide entertainment for such nontherapeutic activities as service clubs, staff quarters, barracks, and offices.

(4) In any manner that constitutes competition with, or is detrimental to commercial artists, copyright owners, or other private interests determined to be competitive.

(5) For direct projection exhibitions.

(6) Aboard Navy ships, while the ships are in port and within range of U.S. commercial stations broadcasting or telecasting U.S. programs.

b. Program materials produced by AFRTS outlets will not be made available to commercial, private, or government-owned radio or television stations or networks, or their representatives, without approval through normal public affairs channels.

5. *Use*

a. AFRTS program materials will be broadcast as received from the AFRTS Programing Center. Editing, for any purpose, is prohibited without prior approval of the Programing Center, except as prescribed in paragraphs e. and f., below.

b. TV information programing designated as "priority" by the AFRTS Program Center will be aired by AFRTS outlets in local prime time. Requests for exceptions to this requirement will be submitted to the Director, AFIS. (This requirement does not apply to Navy ships, when such broadcasts would interfere with operational commitments.)

c. Program materials furnished by the AFRTS Programing Center may be taped for delayed broadcast only when authorized by the Programing Center. The same security measures will apply to duplicate copies as to original recordings. All copies will be erased as soon as operational requirements are met. None will be retained without authority from the Programing Center.

d. AFRTS outlets may excerpt individual musical recordings from AFRTS radio programs for continuing local use.

e. AFRTS outlets may delete material in entertainment programing to remove host country sensitivities. To facilitate this process outlets are authorized to reproduce (dub) the original program. Such reproductions will be erased immediately after airing. The AFRTS Programing Center will be notified when deletions for sensitivities are made.

f. AFRTS outlets may use short excerpts electronically edited (dubbed) out of television shows or feature films for the purpose of informing viewers of upcoming television programs. The use of these excerpts (for promotionals) will met specific criteria provided by the AFRTS Programing Center.

g. AFRTS outlets may not conduct fund-raising radiothons or telethons in support of the overseas Combined Federal Campaign. Outlets may conduct such fund-raising programs in support of command relief, welfare, and organizational activities within the limits of DoD Directive 5035.1, "Fund-Raising Within the Department of Defense," April 7, 1978.

h. AFRTS outlets may use program materials furnished by the AFRTS Programing Center for broadcasts originating from remote locations providing the following criteria are met:

(1) Adequate justification exists to preclude broadcast of the program from the studios of the AFRTS outlet.

(2) The primary purpose of the remote broadcast is not to provide entertainment to an audience at the remote location.

(3) The preponderance of the audience at the remote location does not comprise foreign nationals.

(4) The length of the remote broadcast conforms to similarly formatted programs broadcast from the studios of the AFRTS outlet.

(5) Upon termination of the remote broadcast, AFRTS program materials will not continue to be used at the remote location.

(6) All agreements with host country organizations that have music rights are observed.

C. Programs

1. *Authorized Programs*

a. Except for those programs supplied or authorized by the AFRTS Programing Center and those specified in paragraph b., below, no AFRTS outlet may broadcast or rebroadcast any program produced in behalf of private or commerical interests or foreign governments without the approval of the Director, AFIS.

b. In certain instances, programs, events, or ceremonies broadcast by a foreign government or agency may be considered of sufficient cultural or informational value to warrent broadcast by AFRTS outlets. No broadcast of this nature may be made without the express permission of the originating or controlling foreign government or agency. Use of such programs requires the concurrence of the appropriate Military Department. The Director, AFIS, will be notified.

c. All requests for satellite program service will be submitted to the Director, AFIS, through the appropriate Military Department and with a copy to the appropriate Unified/Specified Command. The Director, AFRTS Programing Center, will effect coordination and circuit-order validation with communications carriers.

d. Military Departments may authorize AFRTS outlets under their command to produce local programing, including live broadcasts and spot announcements.

2. *Foreign Language Broadcasts.* Broadcasts in other than the English language may not be made without obtaining approval from the Director, AFIS, except as outlined below:

a. Those broadcasts designed to satisfy the needs of U.S. Forces speaking other than the English language.

b. Programs or announcements in the language of the host country, with adequate English translation, addressed specifically to DoD personnel to increase their knowledge of the language, and appreciation of the host country, its customs, background, and people.

c. Official requests by the host government to alert its civilian population of emergency conditions, such as storms, floods, and earthquakes. Such announcements must be confirmed and approved for broadcast by the U.S. Country Team or senior host command. The appropriate Unified/Specified Command, and the Director, AFIS, will be advised as soon as possible of the circumstances and action taken.

3. *News Programs*

a. The AFRTS Programing Center will provide a broad spectrum of news programs and materials from the major U.S. commercial and public broadcasting networks and wire services. This service provided by the Programing Center will be the principal source of world and national (U.S.) news for AFRTS outlets.

b. The DoD has assured the U.S. commercial and public networks that it will protect the integrity of all news programs and materials. No change will be made in the editorial content of any news programs and materials used. Radio news actualities and correspondents' reports may be excerpted from network newscasts, but must be excerpted in their entirely. Radio actualities presented within correspondents' reports may not be excerpted. Television news programing may not be excerpted in any manner unless specifically authorized by the AFRTS Programing Center. If television news programing is procured locally by an AFRTS outlet, as authorized in paragraph k. below, the provisions of the contract with the source of such programing will apply.

c. AFRTS outlets will use news analyses or commentaries provided by the AFRTS Programing Center only. Outlets will identify analyses or commentaries as such, distinguishing them from newscasts and straight news reporting.

d. The AFRTS Programing Center and AFRTS outlets' news policy is guided by the FCC's Fairness Doctrine. This doctrine requires that U.S. broadcast stations provide a significant cross section of opposing views on controversial issues. The Fairness Doctrine applies to issues rather than persons and does not require "equal opportunities." It does require U.S. broadcast stations to provide "reasonable opportunities" for the presentation of conflicting views on the important controversial public issues. All AFRTS news programing will be characterized by its fairness.

e. The AFRTS political broadcasting policy is based on the FCC's law of Political Broadcasting and Cablecasting, which does require "equal opportunities" for political candidates. For example, a U.S. broadcast

station may grant "equal opportunities" to a candidate to compensate for a speech or other appearance by a rival candidate. Accordingly, if an AFRTS outlet carries an original speech (or appearance), it is required to broadcast the answering response, which will also be made available from the AFRTS Programing Center. It is noted, however, the requirement for "equal opportunities" does not apply to four kinds of news programs: newscasts, news interviews, news documentaries, and spot coverage of news events. All AFRTS political programing will be characterized by its fairness.

f. The AFRTS Programing Center will provice a free flow of political programing from U.S. commercial and public networks. The Programing Center and AFRTS outlets will maintain the same "equal opportunities" balance offered by these sources. AFRTS outlets should make extensive use of such programing, especially during presidential election years, and should provide their audience with political analysis, commentary, and public affairs programs, in addition to political hard news.

g. AFRTS outlets may disseminate Service, major/local command, community, and host country news that is of special interest to DoD personnel and their dependents.

h. AFRTS outlets may routinely mention the name of a commercial sponsor, along with other pertinent facts, in news stories and local announcements concerning Armed Forces Professional Entertainment Programs.

i. The content, format, and presentation of local news programs will be carefully supervised to ensure that such programing is factual, fair, and unbiased, and is in compliance with all of the applicable provisions of this Directive. Equal care will be exercised in the selection of editors, newscasters, and supervisory personnel who direct and disseminate the news.

j. Locally produced newscasts will contain appropriate attribution at the beginning and end of each newscast. Normally, it is necessary to reattribute individual news items related to U.S. Government or DoD policies and operations. AFRTS outlets will not delete source attribution in news programs and materials provided by the AFRTS Programing Center.

k. To ensure complete and balanced news programing, AFRTS outlets have authority to contract for commercial news services, subject to normal budgeting and contracting procedures.

D. Interservice Support Agreements

1. When a proposed or existing AFRTS outlet serves personnel of more than one Military Service, an Interservice Support Agreement will be executed covering staffing, operations, support services, programing and internal information requirements. This agreement will be initiated by the responsible Military Service in accordance with DoD Directive 4000.19.[1] Normally this agreement is executed at the time establishment is requested. A copy of these Interservice Support Agreement will be provided to the appropriate Unified/Specified Command.

2. Budgeting and funding functions will be performed by the responsible Military Department. When a Military Department requests either a new service or an increase in present AFRTS service for an installation in another Military Department's geographical area of responsibility, the requester will fund the new service, reimbursing the geographical area manager for the balance of the current fiscal year, plus one additional fiscal year. Within this time frame, the geographical area manager will program and budget resources for the additional service. The pay, allowances (including subsistence), and permanent change of station expenses of military personnel permanently or temporarily assigned to assist in the management, operation, or engineering of the AFRTS outlet will be borne by the parent Military Department of those personnel. Where host-tenant support is provided by a command other than the one assigned control over the AFRTS outlet concerned, the requirement for reimbursement shall be determined in accordance with DoD Directive 4000.19.[1]

3. Military personnel authorizations for AFRTS outlets will be shared by the Military Services in proportion to the respective audience of each Service within the coverage area. For purposes of personnel authorizations, audience includes military, DoD civilians, and dependents. Where U.S. civilian personnel spaces are required, the proportionate share of these spaces and funds will be transferred to the operating Service from the other Services at the time of outlet establishment or transfer.

E. Television-Audio Support Activity (T-ASA) will:

1. Procure (based upon specified requirements and funds made available by the respective Military Departments), temporarily hold and issue, in accordance with DoD Instruction 4115.1,[1] nonstandard radio and television supplies and equipment requisitioned by AFRTS outlets. Minimum stocks (to include National Stock Numbers) of fast moving repetitive-demand type items, will be stocked to preclude the necessity for individual purchases for each requisition.

2. Process in-warranty and repair cycle float requirements for AFRTS outlets.

3. Review excess listings for feasibility of repair and redistribution to AFRTS outlets.

4. Provide engineering support for new and existing outlets when requested by other Military Departments. The requesting Service will be required to furnish travel and per diem funds.

5. Provide engineering expertise on the selection of replacement equipment to ensure maximum standardization.

6. Provide technical guidance on the maintenance and rehabilitation of existing AFRTS outlets.

7. Provide supervision and engineering expertise associated with the on-site survey, procurement, issuance and installation of nonstandard radio and television supplies and equipment upon request. The requesting Service will be required to furnish travel and per diem funds.

8. Conduct on-site maintenance advisory visits and provide on-the-job training as required/requested to AFRTS maintenance personnel.

9. Conduct on-site logistics advisory visits and provide supply procedure training as requested. Funding will be furnished by the requesting Service.

10. Provide Commodity Management for AFRTS outlets. This includes life cycle management for all systems, end items, repairables, consumables, and commercial technical literature in support of AFRTS outlets.

11. Develop, in coordination with the Military Departments and the Director, AFIS, specifications and standards for professional equipment for AFRTS outlets.

F. Telecommunications

1. Established military standards for long haul communications (strategic) are to be complied with when the use of Defense Communications System facilities is anticipated. This is necessary in order to provide appropriate interface and compatibility.

2. The ASD (C3I) is responsible for the coordination of AFRTS matters involving correspondence with the FCC and the National Telecommunications and Information Administration (NTIA).

3. Commanders will ensure required coordination, when applicable, with the Joint Frequency Panel of the U.S. Military Communications Electronics Board.

4. Early planning concepts, as well as requests for establishment of AFRTS facilities for broadcasting within the United States and possessions, will also be submitted through command channels to the ASD(C3I), who will effect necessary coordination with the NTIA and the FCC; and who will advise on consistency with national and departmental international telecommunications policy. The ASD(C3I) will advise the appropriate Military Department whether or not an application for frequency assignment may be processed to the NTA.

5. Frequency assignments will be obtained in accordance with established procedures and command responsibilities for frequency coordination and assignments.

G. Direct Communication

Direct communication is authorized between:

1. AFRTS outlets, Military Departments, Unified/Specified Commands, ASD(PA), and AFIS, concerning immediate operational matters only.

2. AFRTS outlets, Military Departments, and the T-ASA, Sacramento Army Depot, concerning routine supply matters, procurement actions, and technical engineering advice.

3. AFRTS outlets and the AFRTS Programing Center in Los Angeles on program matters such as new radio and television programs, program complaints, satellite transmissions, area program restrictions, and advisories on program sensitivities. Mini-TV outlets and Navy ships will channel such communications through the appropriate circuit manager to ensure proper coordination. All AFRTS outlets will channel communications concerning such matters as broadcast policy, or proposed changes in existing program services through the appropriate Military Department.

[1] See footnote page 1.

4. AFRTS outlets and host country commercial or government broadcasters, with the approval of the Director, AFIS. This direct link would be authorized for such local matters as lifting area program restrictions and the use of satellite broadcasters.

January 15, 1981.

M. S. Healy,

OSD Federal Register Liaison Officer Washington Headquarters Services Department of Defense.

[FR Doc. 81-2089 Filed 1-20-81; 8:45 am]

BILLING CODE 3810-70-M

Department of the Navy

32 CFR Part 706

Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972

AGENCY: Department of the Navy, DOD.

ACTION: Final rule.

SUMMARY: The Department of the Navy is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS) to reflect that the Secretary of the Navy: (1) has determined that USNS MOHAWK (T-ATF 170) is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with Annex I, section 2(f) of the 72 COLREGS without interfering with its special function as a naval fleet tug, and (2) has found that USNS MOHAWK (T-ATF 170) is a member of the T-ATF 166 Class of ships, certain exemptions for which have been previously granted under 72 COLREGS Rules 38(a), 38(b), and 38(d)(i). The intended effect of this rule is to warn mariners in waters where the 72 COLREGS apply.

EFFECTIVE DATE: January 7, 1981.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander Charles Stanley Prentace, JAGC, USN, Admiralty Division, Office of the Judge Advocate General, Navy Department, 200 Stovall Street, Alexandria, Virginia 22332, Telephone number: (202) 325-9744.

SUPPLEMENTARY INFORMATION: Pursuant to the authority granted in 33 U.S.C. § 1605 and Executive Order 11964, the Department of the Navy amends 32 CFR Part 706. This amendment provides notice that the Secretary of the Navy has certified that USNS MOHAWK (T-ATF 170) is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with 72 COLREGS Annex I, section 2(f), in that, during those situations when the USNS MOHAWK must simultaneously display masthead lights used for towing as required by Rule 24 and the task lights of a vessel restricted in its ability to maneuver as required by Rule 27, the masthead lights used for towing will not be located above and clear of the task lights. Full compliance with this provision would interfere with the special function of the ship. The Secretary of the Navy has also certified that the aforementioned masthead lights are located in closest possible compliance with the applicable 72 COLREGS requirement.

Notice is also provided to the effect that the Secretary of the Navy has previously authorized the use by T-ATF 166 Class of vessels of certain exemptions permitted by 72 COLREGS Rule 38. Specifically, the use of the exemptions has been authorized as allowed in Rule 38(a), pertaining to lights with ranges and intensities prescribed in Rule 22; Rule 38(b), pertaining to lights with color specifications prescribed in Annex I, section 7; and, Rule 38(d)(i), pertaining to the repositioning of masthead lights on vessels less than 150 meters in length required by Annex I, section 3(a).

The Secretary of the Navy has determined that USNS MOHAWK is a member of the T-ATF 166 Class, is in compliance with the 1960 Rules of the Road, and the keel of the T-ATF 166 Class lead ship was laid prior to July 15, 1977.

Moreover, it has been determined, in accordance with 32 CFR Parts 296 and 701, that publication of this amendment for public comment prior to adoption is impracticable, unnecessary and contrary to the public interest since it is based on technical findings that the placement of lights on this ship in a manner different from that prescribed herein will adversely affect the ship's ability to perform its military function. Accordingly, 32 CFR Part 706 is amended as follows:

§ 706.2 [Amended]

1. Table Four of § 706.2 is amended by adding the following note 14 which reflects the certification issued by the Secretary of the Navy:

* * * * *

14. On USNS MOHAWK (T-ATF 170), the masthead lights used for towing required by Rule 24 will be displayed approximately 4.1 meters below the lowest of the lights required to be displayed by Rule 27 when a vessel is not under command or is restricted in its ability to maneuver.

* * * * *

Dated: January 7, 1981.

Robert J. Murray,

Acting Secretary of the Navy.

[FR Doc. 81-2089 Filed 1-20-81; 8:45 am]

BILLING CODE 3810-71-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 3

[FRL AS-FRL 1720-6]

Employee Responsibilities and Conduct

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: This rule revokes the procedures for filing public financial disclosure statements under the Toxic Substances Control Act, the Solid Waste Disposal Act, the Clean Air Act, and the Environmental Research, Development, and Demonstration Authorization Act of 1978. The Ethics in Government Act of 1978 (Pub. L. 95-521) supersedes financial disclosure requirements under these statutes. This rule also sets forth procedures for administrative enforcement of the post-employment restrictions of 18 U.S.C. 207, as required by the Ethics in Government Act and Office of Government Ethics regulations published February 1, 1980, at 45 FR 7402. This rule is intended to implement these requirements.

EFFECTIVE DATE: January 21, 1981.

FOR FURTHER INFORMATION CONTACT: Donnell Nantkes, Office of General Counsel, Contract and General Administration Branch (A-134), U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460, telephone: 202-426-8630.

SUPPLEMENTARY INFORMATION: Four statutes under which the Environmental Protection Agency (EPA) conducts business contain provisions requiring certain EPA employees to file public reports of their financial interests in persons regulated under the statutes or persons receiving funds under the statutes. In response to these requirements, EPA promulgated regulations to implement the reporting of such financial interests. The procedures for filing such reports under section 26(e) of the Toxic Substances Control Act (15 U.S.C. 2625(e)) are contained in 40 CFR 3.306. Section 3.306 contains the procedures for filing such reports under section 1007 of the Solid Waste Disposal Act (also referred to as the Resource Conservation and Recovery Act, 42 U.S.C. 6906). Section 3.307 contains the procedures for filing such reports under section 218 of the Clean Air Act (42 U.S.C. 7618). Section 3.308 contains the procedures for filing such reports under section 12 of the Environmental Research, Development, and

Demonstration Authorization Act of 1978 (Pub. L. 95-155).

On October 26, 1978, the Ethics in Government Act (Pub. L. 95-521) became law. Section 207(c) of the Act provides in pertinent part:

> The provisions of this title requiring the reporting of information shall supersede any general requirement under any other provision of law or regulation with respect to the reporting of information required for purposes of preventing conflicts of interest or apparent conflicts of interest.

On April 11, 1980, the Office of Legal Counsel of the Department of Justice rendered its opinion that section 207(c) has displaced the financial reporting requirements of the four specific statutes discussed above "and brought the provision of Title II of the Ethics Act into play in their stead." Accordingly, this rule revokes the reporting procedures under the four statutes.

The Ethics in Government Act contains certain amendments concerning post-employment restrictions for government employees and requires agencies to establish procedures for administrative enforcement of these restrictions. EPA drafted such procedures and, as required by the act, EPA sent these procedures to the Office of Government Ethics for review. On April 14, 1980, the Office of Government Ethics found that "EPA's proposed administrative procedures, implementing the provisions of 18 U.S.C. 207(j) conform with the law and the regulations promulgated by this Office on February 1, 1980, (45 FR 7402)." Accordingly, this rule establishes those procedures as a new Appendix C to Subpart A of the rules.

Dated: January 13, 1981.

(95 U.S.C. 301)

Douglas Costle,

Administrator.

40 CFR Chapter I, Part 3, is amended as follows:

1. The Table of Sections, Subpart A, is amended by adding Appendix C to read as follows:

Subpart A—General Provisions

Sec.

* * * * *

Appendix C—Procedures for Administrative Enforcement of Post-Employment Restrictions

2. The Table of Sections, Subpart C, is amended by Revising §§ 3.305, 3.306, 3.307 and 3.308, and Appendices D, E, F, G and H to read as follows:

Subpart C—Financial Interests and Investments

Sec.

* * * * *

3.305 Special requirements under the Clean Air Act.

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3.306 3.308 [Reserved]

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Appendix D—Employees exempt from special requirements under the Clean Air Act.

Appendices E—H [Reserved]

3. Subpart A is amended by adding the following new Appendix C after Appendix B:

Appendix C—Procedures for Administrative Enforcement of Post-Employment Restrictions

1. Purpose

The purpose of this Appendix is to implement provisions of The Ethics in Government Act which concern restrictions on post-EPA employment. This Appendix contains procedures which EPA follows whenever it believes that a former EPA employee has violated 18 U.S.C. 207 (a), (b), or (c), as implemented by 5 CFR Part 737.

Authority: 18 U.S.C. 207 (a), (b), (c), as implemented by 5 CFR Part 737.

2. Delegation

The Administration delegates the authority to carry out this Appendix to the Inspector General, with the following exceptions:

(a) The General Counsel has the authority to appoint the presiding official of a hearing, as provided by paragraph (9)(a) of this Appendix;

(b) The Agency Ethics Official has the authority to designate the Agency Counsel, as provided by paragraph 9(b) of this Appendix;

(c) The Deputy Administrator has the authority to impose appropriate administrative sanctions, as provided by paragraph (15) of this Appendix.

3. Preliminary Review and Referral of Information About Violations

The Inspector General receives and reviews written or oral information concerning a possible violation of the post-employment restrictions of 18 U.S.C. 207 (a), (b), or (c) as implemented by 5 CFR Part 737. The Inspector General reviews the information to determine whether the matter is clearly frivolous and does not merit further action. If the Inspector General (IG) determines that the matter merits further action, the IG informs the Director of the Office of Government Ethics and consults with the Criminal Division of the Department of Justice regarding the conduct of an investigation. The purpose of the consultation is to avoid prejudicing any criminal proceeding that the Justice Department may have under consideration.

4. Investigation by the Inspector General

If the Criminal Division of the Justice Department agrees that EPA should handle the matter, the IG must conduct an investigation of the possible violation of the post-employment restrictions of 18 U.S.C. 207 (a), (b), or (c).

5. Initiating Process to Impose Sanctions: Notice

If the Inspector General's investigation establishes that there are reasonable grounds to believe that a former EPA employee has violated the post-employment restrictions of 18 U.S.C. 207 (a), (b), or (c), the IG may initiate the process of imposing sanctions under 18 U.S.C. 207(j). The Inspector General must send the former EPA employee a written notice of charges and a copy of this Appendix by certified mail, return receipt requested. The notice of charges must describe the allegations against the former employee in sufficient detail to enable the former employee to prepare an adequate defense and must contain the following final paragraph:

> You must request a hearing by mailing or otherwise furnishing written notice of your request to me within 30 days after the date you receive this notice of charges. If you do not request a hearing within 30 days, the Agency may nonetheless determine that you have violated the provisions of 18 U.S.C. 207 (a), (b), (c) as implemented by 5 CFR Part 737 and impose administrative sanctions set forth in paragraph 15 of the enclosed Appendix to 40 CFR Part 3, Subpart A: You have a right to counsel, at your own expense, at all stages of this administrative enforcement proceeding. The procedures for administrative enforcement of the post-employment restrictions are set forth in the enclosed Appendix.

6. Request for a Hearing

A former EPA employee must request a hearing within 30 days after receiving the notice of charges. Otherwise, the initial determination of the charges is made without a hearing.

7. Initial Decision Without a Hearing

If a former EPA employee fails to make a timely request for a hearing, the Inspector General must prepare an initial decision in writing. The Inspector General must furnish this decision to the former employee by certified mail, return receipt requested within 60 days after the time for requesting a hearing expires. The initial decision must set forth the findings of fact and conclusions of law on which it is based.

8. Appeal of an Initial Decision Made Without a Hearing

A former employee may appeal an initial decision made without a hearing. The appeal must be submitted to the Deputy Administrator in accordance with paragraph (10)(b) of this Appendix.

9. Initial Decision After a Hearing

If the former employee requests a hearing, an initial decision is made after a hearing takes place.

(a) *Appointment of a Presiding Official.* The General Counsel must appoint an impartial examiner to preside over the hearing. The examiner must be an attorney and an employee of the Environmental Protection Agency. The General Counsel must promptly notify the former employee and the Inspector General of the examiner's name, address and telephone number.

The examiner shall preside at the hearing, conduct it in a fair and impartial manner, and issue an initial decision as promptly as possible after the record is complete, but in no event later than 60 days after the hearing is terminated. No person who has participated in any way in the investigation or in the decision to initiate administrative enforcement, or is a subordinate of the Agency Counsel, or who has had any connection or dealings with the former employee may serve as an examiner. The General Counsel may remove an examiner for cause.

(b) *Appointment of Agency Counsel*

The Agency Ethics Official shall designate an attorney to act as Agency Counsel. The Agency Ethics Official must notify the examiner and the former employee (or if the former employee is represented by counsel, his or her attorney) of the name, address and telephone number of the Agency Counsel.

(c) *Hearings*

Hearings will be held at EPA Headquarters in Washington, D.C., or at an EPA regional office or laboratory. After conferring with the parties, the examiner shall set a reasonable time, date and place for the hearing with due regard for the former employee's need for adequate time to prepare a defense and the need to expeditiously resolve allegations which may damage the former employee's reputation. At least 15 days before the date set for the hearing, the examiner shall notify the parties of the time, date and place by certified mail, return receipt requested. Hearings will be as informal as reasonably possible consistent with establishing an orderly record. Federal rules of evidence do not control the hearing, although the examiner may use these rules as guidance. The examiner generally will admit evidence unless it is clearly irrelevant, immaterial or unduly repetitious. The parties have the right to:

(i) Introduce and examine witnesses;

(ii) Offer documentary evidence;

(iii) Confront and cross-examine adverse witnesses; and

(iv) Present oral argument in the form of brief opening and closing statements.

In addition, the former employee has the right:

(i) To represent himself or herself or be represented by counsel at all stages of administrative enforcement; and

(ii) To require that all persons be excluded from the hearing room except the reporter, the examiner, the Agency Counsel and witnesses during the time they are actually testifying.

Witness shall testify under oath or affirmation administered by the examiner.

The examiner must arrange for a transcript of the hearing through the EPA Procurement and Contracts Management Division using the funds of the Office of Management and Agency Services. The former employee is entitled to a copy of the transcript at no charge, and the examiner must furnish it as soon as it is received from the reporter.

(d) *Burden of Proof*

The Agency has the burden of proof and must establish a violation by clear and convincing evidence.

(e) *Initial Decision*

The Examiner must make an initial decision exclusively on matters of record in the proceeding. The initial decision must be made within 60 days after the hearing and must set forth the findings of fact and conclusions of law on which it is based. The examiner must furnish this decision to the former employee by certified mail, return receipt requested to the Agency Counsel and to the Inspector General.

10. Appeal of an Initial Decision Made After a Hearing

(a) *Initial Decision After a Hearing*

The initial decision of the examiner becomes the final Agency decision unless, within 30 days after receiving the initial decision, either party appeals by mailing or otherwise furnishing to the Deputy Administrator written notice of appeal, with a copy to the opposing party. The notice of appeal may discuss the reasons why the party contends that the initial decision is erroneous, subject to the right of the opposing party to present a written response to the Deputy Administrator within 30 days after receiving a copy of the notice of appeal. Neither party may submit new evidence.

The Deputy Administrator must base his or her decision solely on the record of the proceedings or those portions cited by the parties to limit the issue, and the notice of appeal and response. If the Deputy Administrator modifies or reverses the initial decision, he or she must state in writing why the initial decision was erroneous.

(b) *Initial Decision Without a Hearing*

If the former employee did not request a hearing, the initial decision of the Inspector General will become the final Agency decision unless the former employee submits a written notice of appeal to the Deputy Administrator within 30 days after receipt of the initial decision, with a copy to the Inspector General. The notice of appeal may discuss reasons why the initial decision is erroneous, subject to the right of the Inspector General to present a written response to the Deputy Administrator within 30 days after receiving the notice of appeal. The Deputy Administrator's review will be based on an examination of the Inspector General's evidence and any legal arguments which the former employee or the Inspector General presents.

11. Exparte Communications (communications outside the record)

Neither an examiner nor the Deputy Administrator will receive from any person any written or oral communication outside the record about the merits of an administrative enforcement proceeding or appeal. This does not apply to exparte discussions concerning administrative functions or procedures under this Appendix, or to consultations between the Deputy Administrator and the judicial officer or other staff member who assists the Deputy Administrator.

12. Calculating Deadlines

If a deadline falls on a Saturday, Sunday or federal holiday, the next working day is considered the deadline.

13. Administrative Sanctions

Whenever a final determination is made that a former employee has violated 18 U.S.C. 207 (a), (b) or (c) as implemented by 5 CFR Part 737, the Deputy Administrator may impose an appropriate administrative sanction, which may include one or more of the following:

(i) Prohibiting the former employee from making, on behalf of any other person (except the United States) any formal or informal appearance before, or, with the intent to influence, any oral or written communication to, the U.S. Environmental Protection Agency on any matter of business for a period not to exceed 5 years. This will be accomplished by a memorandum to all EPA employees directing them to refuse to participate in any such appearance or to accept any such communication during the restriction period.

(ii) Debarring the former employee receiving any EPA contract, grant, cooperative agreement or loan for a period of up to 5 years, provided that the violation was committed in the context of seeking or performing a government contract, grant, cooperative agreement or loan.

(iii) A written reprimand with a copy to be placed in the former employee's official personnel file.

(iv) A written reprimand without a copy to the former employee's official personnel file.

The Deputy Administrator may confer with the parties before deciding upon an administrative sanction. The former employee must be notified of any administrative sanction by certified mail, return receipt requested.

14. Confidentiality

All records and information regarding administrative enforcement proceedings under this Appendix will be kept confidential and will not be disclosed except as required by law or regulation.

15. Judicial Review

Any person found to have violated 18 U.S.C. 207 (a), (b) or (c) as implemented by 5 CFR, Part 737, may seek judicial review of this administrative determination.

4. Subpart C is amended by revising §§ 3.305, 3.306, 3.307 and 3.308 and Appendices D, E, F, G and H to read as follows:

§ 3.305 Special requirements under the Clean Air Act.

(a) Notwithstanding the other provisions of this part, after August 7, 1978, no employee who is not listed in Appendix D as exempt may be employed by, serve as attorney for, act as consultant for, or hold any other official or contractual relationship to (other than ownership of stock, bonds, or other financial interest)—

(1) The owner or operator of any major stationary source or any stationary source which is subject to a standard of performance or emission standard under section 111 (42 U.S.C. 7411) or section 112 (42 U.S.C. 7412) of the Act;

(2) Any manufacturer of any class or category of mobile sources if such mobile sources are subject to regulation under the Act;

(3) Any trade or business association of which an owner or operator referred to in paragraph (h)(1) of this section or a manufacturer referred to in paragraph (h)(2) of this section is a member;

(4) Any organization (whether non-profit or not) which is a party to litigation, or engaged in political, educational, or informational activities, relating to air quality.

(b) In reviewing financial interest statements, Deputy Counselor and the Agency Counselor shall consider whether certain financial interests of non-exempt employees may be inconsistent with the particular employee's position and duties. In particular, any financial interest that presents a conflict of interest or an apparent conflict of interest with an employee's duties under the Act shall be resolved under § 3.203.

(c) Under § 318(d) of the Clean Air Act, any employee subject to this provision who knowingly violates the provisions of this section is subject to a fine of not more than $2500 or imprisonment for not more than one year, or both.

§ 3.306–3.308 [Reserved.]

Appendix D.—Employees Exempt From Special Requirements Under the Clean Air Act

The positions listed below have been determined to be of a non-regulatory or non-policymaking nature under section 318(d) of the Clean Air Act. Whenever the title of a position is listed, it includes any person who occupies the position as "acting" and any person who occupies a successor position under a subsequent reorganization.

Exemptions:

(1) All special government employees.

(2) Under the Office of the Administrator:

All employees except the Administrator, Deputy Administrator, General Counsel, Deputy General Counsel, Associate General Counsel for Air, Noise and Radiation and Director of the Science Advisory Board.

(3) Under the Office of Planning and Management:

All employees except the Assistant Administrator for Planning and Management, Associate Assistant Administrator for Planning and Management, Deputy Assistant Administrator for Planning and Evaluation and the Director of the Standards and Regulations Evaluation Division.

(4) Under the Office of Enforcement:

All employees except the Assistant Administrator for Enforcement, Deputy Assistant Administrator for General Enforcement, Director of the Stationary Source Enforcement Division and Director of the Mobile Source Enforcement Division.

(5) Under the Office of Air, Noise and Radiation:

All employees except the Assistant Administrator for Air, Noise and Radiation, Director of the Office of Policy Analysis, Director of the Office of Transportation and Land Use Policy, Deputy Assistant Administrator for Air Quality Planning and Standards and Division Directors reporting to this official, and the Deputy Assistant Administrator for Mobile Source Air Pollution Control and Division Directors reporting to this official.

(6) All other employees.

Appendices E–H [Reserved]

[FR Doc. 81-1881 Filed 1-19-81; 8:45 am]
BILLING CODE 6560-38-M

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40 CFR Part 52

[A-9-FRL 1729-5]

South Coast Air Basin Nonattainment Area Plan; Approval and Promulgation of Implementation Plans

AGENCY: Environmental Protection Agency.

ACTION: Notice of Final Rulemaking.

SUMMARY: On April 1, 1980 (45 FR 21271), the Environmental Protection Agency (EPA) published a notice of proposed rulemaking for the South Coast Air Basin nonattainment area plan (NAP) for ozone, carbon monoxide (CO), particulate matter (PM), and nitrogen dioxide (NO_2). The April 1, 1980 notice proposed to disapprove the NAP because the lack of the following constituted major deficiencies with respect to Part D of the Clean Air Act, "Plan Requirements for Nonattainment Areas:"

1. For ozone, CO, PM, and NO_2, new source review (NSR) rules.
2. For ozone, rules reflecting reasonably available control technology (RACT) for certain volatile organic compound (VOC) sources.
3. For ozone and CO, legal authority to implement an inspection and maintenance (I/M) program.

The State has submitted the necessary VOC RACT and NSR rules and therefore has corrected two of the major deficiencies. However, the California State Legislature has not provided the necessary legal authority to implement and enforce an I/M program. Because the major deficiency of the lack of the I/M program has not been corrected, today's notice takes final action to disapprove the NAP for ozone and CO. Further, since the major deficiency concerning PM and NO_2 has been corrected and the State has provided assurances to correct the minor deficiencies in the NAP, today's notice takes final action to conditionally approve the NAP for PM and NO_2. These actions retain the prohibition on construction of certain major new or modified VOC and CO sources, but removes the prohibition for PM and oxides of nitrogen (NO_x) sources.

This notice also provides a brief summary of the proposed rulemaking notice, describes recent revisions which supplement the NAP, discusses public comments received, specifies deadlines by which the State is required to submit material to correct minor deficiencies in the NAP, and describes EPA's final action on the NAP.

DATES: This action is effective January 21, 1981.

FOR FURTHER INFORMATION CONTACT: Louise P. Gierach, Director, Air and Hazardous Materials Division, 215 Fremont Street, San Francisco, CA 94105. Environmental Protection Agency, Region IX, Attn: Douglas Grano (415) 556-2938.

A copy of today's revision to the California State Implementation Plan (SIP) is located at: The Office of the Federal Register, 1100 "L" Street, N.W., Room 8401, Washington, D.C. 20408.

SUPPLEMENTARY INFORMATION:

Background

The Clean Air Act, as amended in 1977, requires states to revise their SIPs for all areas that have not attained the National Ambient Air Quality Standards (NAAQS). On July 25, 1979, the Executive Officer of the California Air Resources Board (ARB), the Governor's official designee, submitted revisions to the California SIP consisting of a control strategy and regulations for the South Coast Air Basin. These revisions, submitted as the South Coast Air Basin NAP, are intended to provide for the attainment of the ozone, CO, NO_2, and PM NAAQS in the South Coast Air Basin.

On April 1, 1980 (45 FR 21271), EPA published a notice of proposed rulemaking for the South Coast Air Basin NAP. That notice provided a description of the NAP, summarized the applicable Clean Air Act requirements into 14 criteria, compared the NAP to those criteria, and, as described below, proposed to approve, conditionally approve, or disapprove portions of the NAP. The April 1, 1980 notice should be used as a reference in reviewing today's action.

EPA proposed to approve the reasonable further progress, emissions growth, annual reporting, public and government involvement, and public hearing portions of the NAP for ozone, CO, NO_2, and PM because they were found to be consistent with Part D of the Clean Air Act. EPA also proposed to

approve the modeling portion of the NAP for CO and NO_2.

EPA proposed to conditionally approve the emission inventory, emission reduction estimates, attainment provision, and resources portions of the NAP for ozone, CO, NO_2, and PM because they were found to contain minor deficiencies with respect to Part D. EPA also proposed to conditionally approve the modeling portion of the NAP for ozone and PM.

EPA proposed to disapprove the legally adopted measures/schedules, permit program, extension requirements, and extension requirements for VOC RACT portions of the NAP. EPA proposed to disapprove these portions because the lack of an I/M program, NSR rules, and rules reflecting RACT for certain VOC sources constituted major deficiencies with respect to Part D. As a result of the absence of an I/M program, NSR rules, and nine VOC rules, the April 1, 1980 notice proposed to disapprove the overall South Coast Air Basin NAP with respect to Part D and continue the construction prohibition.

After publication of the April 1, 1980 notice, the State submitted the necessary VOC and NSR rules as SIP revisions. As a result of the State's submittal of these rules, two of the three major deficiencies in the NAP were corrected.

However, the California State Legislature has failed to provide the necessary legal authority to implement and enforce an I/M program. On September 8, 1980 (45 FR 59180), EPA published a rulemaking which proposed to limit certain Federal funding assistance for specific areas in the State of California, including the South Coast Air Basin. This action was proposed in response to Sections 176(a) and 316(b) of the Clean Air Act because the State has failed to submit or make a reasonable effort to submit an SIP revision containing an I/M program including the legal authority to implement and enforce the I/M program. On December 12, 1980 (45 FR 81746), EPA published a final rulemaking on the September 8, 1980 proposal. This rulemaking took action to limit certain Federal funding assistance for the South Coast Air Basin and other areas in California. These limitations apply to funds provided under the Clean Air Act (42 U.S.C. 7401 et seq.), the Clean Water Act (33 U.S.C. 1251 et seq.), and the Surface Transportation Act (23 U.S.C. 101 et seq.).

Supplemental Revisions

After EPA's review of the July 25, 1979 submittal, the State submitted revisions which correct some of the deficiencies noted in the April 1, 1980 notice. These revisions are discussed below.

New Source Review

As discussed in the April 1, 1980 notice, a legally enforceable NSR rule was not included in the NAP and this constituted a major deficiency. However, the State did submit a draft NSR rule. EPA reviewed the draft NSR rule (See EPA's Evaluation Report) and concluded that it contained only minor deficiencies with respect to the Part D requirements. Thus, EPA proposed that the permit program portion of the NAP could be conditionally approved if the State submitted an adopted NSR rule similar and equivalent to the draft rule.

On the dates noted below, the Governor's designee submitted the following NSR rules for the South Coast Air Quality Management District (AQMD):

Regulation XIII—New Source Review

April 3, 1980:

Rule 1301—General
Rule 1302—Definitions
Rule 1303—Applicability and Analysis
Rule 1304—Exemptions from Regulation XIII
Rule 1306—Special Permit Provisions
Rule 1308—Emission Calculations
Rule 1307—Emission Offsets
Rule 1309—Eligibility of Emission Offsets
Rule 1310—Analysis, Notice, and Reporting
Rule 1311—Power Plants
Rule 1313—Permits to Operate

August 15, 1980:

Rule 1302—Definitions
Rule 1309—Eligibility of Emission Offsets

Section 173 of the Act contains the requirements for approval of a permit program. EPA has established guidance based on Section 173 in: (1) EPA's Emission Offset Interpretative Ruling (January 16, 1979, 44 FR 3274) and (2) EPA's proposed amendments to regulations for NSR and the Emission Offset Interpretative Ruling (September 5, 1979, 44 FR 51924).

EPA has reviewed the South Coast AQMD's NSR rules with respect to both the draft NSR rule and to the guidance based on Section 173. The South Coast AQMD's NSR rules do contain differences from both the draft rule and the Section 173 guidance. The only significant differences are as follows:

1. Rule 1309, "Emission Calculations" does not count emission increases up to 100 lbs/day when the October 8, 1976 cutoff date is used and it allows company records to be used in some cases to calculate emissions for offsets using the highest three years of the past five year period.

2. Rule 1307, "Emission Offsets" does not require offsets for the first 150 lbs/day of emission increases for VOC, NO_x, and PM and for the first 750 lbs/day for CO.

An NSR permit program cannot be approved or conditionally approved with these deficiences, hence the two rules noted above are being disapproved. Aside from these disapproved portions, the South Coast AQMD's NSR rules contains only minor deficiencies with respect to the Section 173 requirements, including the definitions of "stationary source" and lowest achievable emission rate (LAER) (All of the deficiencies are described in EPA's Evaluation Report Addendum, which is available at the Region IX Office, the ARB, the South Coast AQMD, Southern California Association of Governments (SCAG), and the EPA Library in Washington, D.C.) Thus, the NSR rules being approved in this notice are (1) similar to the draft rule in that the definitions and requirements are substantially the same and are equivalent to the draft rule in that they are at least as effective in meeting the requirements of Section 173, and (2) contain only minor deficiences with respect to Section 173.

It should be noted that EPA has published two final rulemaking notices on the September 5, 1979 proposed amendments to EPA's NSR regulations and the Emission Offset Interpretative Ruling. These notices, published on May 13, 1980 (45 FR 31307) and August 7, 1980 (45 FR 52676), amend EPA's Interpretative Ruling and set out new requirements for NSR under Section 173. The State is required to comply with the August 7, 1980 requirements by May 7, 1981. In revising the South Coast AQMD's NSR rules, the State/AQMD must address (1) any new requirements in EPA's amended regulations for NSR (45 FR 31307, May 13, 1980 and 45 FR 52676, August 7, 1980) which the AQMD rules do not currently satisfy and (2) those deficiencies cited in EPA's Evaluation Report Addendum which still apply despite EPA's new NSR requirements (contained in Document File NAP–CA–9 at the EPA Library in Washington D.C. and the Region IX Office).

VOC RACT Rules

As discussed in the April 1, 1980 notice, nine legally enforceable VOC rules were not included in the NAP and this constituted a major deficiency. However, the State did submit model VOC rules. EPA reviewed these model rules and concluded that they contained only minor deficiencies with respect to the Part D requirements. Thus, EPA proposed that the legally enforceable measures/schedules and extension requirements for VOC RACT portions of

the NAP could be conditionally approved if the State submitted legally adopted rules which were similar and equivalent to the model rules.

On the dates noted below, the State submitted the following VOC rules for the South Coast AQMD:

December 17, 1979:
Rule 1108—Cutback Asphalt
Rule 1108.1—Emulsified Asphalt
Rule 1126—Paper and Fabric Coating Operations
Rule 1107—Manufactured Metal Products and Coatings
April 2, 1980:
Rule 1123—Solvent Metal Cleaners (Degreasers)
April 22, 1980:
Rule 464—Wastewater Separators
Rule 465—Vacuum Producing Devices and Systems
Rule 1123—Refinery Process Turnaround
Rule 1125—Can and Coil Operations

EPA has reviewed each of these rules against both the applicable model rule and Control Technique Guideline document (CTG) (See Evaluation Report Addendum). EPA has concluded that the adopted rules (1) are similar to the model rules in that the definitions and requirements are substantially the same and are equivalent to the model rules in that they are at least as effective in meeting RACT and (2) are consistent with the applicable CTG. Therefore, all the deficiencies noted in the April 1, 1980 notice concerning these rules have been corrected.

Rule 461, "Gasoline Transfer and Dispensing" submitted on July 25, 1979 was proposed to be conditionally approved in the April 1, 1980 notice. However, in response to public comments (See *Public Comment* Section, Criterion 14), EPA has decided that rule 461 is fully approvable. On February 7, 1980 the ARB submitted a revised rule 461. This revised rule is being approved and incorporated into the SIP without further notice and comment because the revisions to the rule are minor (See 5 U.S.C. Section 553(b)(B), Administrative Procedure Act). Therefore, the minor deficiencies concerning Rule 461 has been corrected.

In addition, Rules 1122, 1125, and 1128 contain exemptions for the use of methylene chloride and methyl chloroform (1,1,1 trichloroethane). On May 16, 1980, EPA published a clarification of Agency policy concerning the control of methyl chloroform and methylene chloride in ozone SIPs (45 FR 32424). EPA explained that it cannot approve or enforce controls on either of these two compounds as part of a Federally enforceable ozone SIP because current information indicates that neither compound is an ozone precursor. Consequently, EPA is not disapproving California's exemption of methyl chloroform and methylene chloride.

This policy is in no way an expression of EPA's view on the desirability of controls on these compounds. States retain the authority to control these compounds under the authority reserved to them in Section 116 of the Clean Air Act. However, State officials and sources should be advised that there is a strong possibility of future regulatory action by EPA to control emissions of these two compounds (See Proposed New Source Performance Standards for Organic Solvent Cleaners, 45 FR 39788, June 11, 1980).

California Environmental Quality Act (CEQA)

The April 1, 1980 notice proposed to conditionally approve the NAP based upon the submittal of those portions of CEQA that relate to the requirement providing for an analysis of alternatives for new sources which demonstrates that the benefits of the source outweigh the environmental costs (Section 172(b)(11)(A) of the Clean Air Act).

On October 20, 1980, the State submitted the following portions of CEQA:

Sections 2100; 21001; 21002; 21002.1; 21061; 21063; 21065; 21080.1; 21080.4(a); 21080.5 (a), (b), (c) and (d); 21081; 21082; 21100; 21104; 21151; 21153; and 21160.

These portions of CEQA require all "State agencies, boards, and commissions" to certify the completion of an environmental impact report (EIR) on any project "which may have a significant effect on the environment." The EIR shall include "a detailed statement" setting forth, among other things, "alternatives to the proposed action." In order to approve a project under CEQA, the agency must find either (1) that changes have been required in the project "which mitigate or void the significant environmental effects thereof as identified in the completed environmental impact report" or (2) that "[S]pecific economic, social, or other considerations make infeasible mitigation measures or project alternatives identified in the environmental impact report.

EPA has determined that these portions of CEQA satisfy the requirements of Section 172(b)(11)(A) of the Clean Air Act and therefore this minor deficiency has been corrected.

Public Comments

Comments Specific to the South Coast Air Basin NAP

During the public comment period, EPA received numerous comments. The comments received were both general comments and comments related to EPA's criteria for approval which are described in the April 1, 1980 notice. In response to these comments, EPA has revised certain proposed actions. Each of the points raised by the commenters and EPA's responses follow.

I. General Comments

Comment: The ARB, SCAG, and the South Coast AQMD believe that EPA should modify the proposed conditions of approval because they will require them to take several actions that will impair their ability to develop an acceptable 1982 NAP.

Response: Because the South Coast Air Basin NAP did not satisfy all of the Part D requirements for the 1979 NAP, EPA cannot approve it. However, EPA believes that most of the materials that will be required to satisfy the conditions of approval are also necessary steps directed toward developing the 1982 NAP. Therefore, correcting the minor deficiencies should not significantly impair the development of the 1982 NAP.

Comment: The South Coast AQMD and SCAG commented that EPA's proposed dates for satisfying the conditions of approval should be revised as follows: (1) the minimum deadline should be 90 days after the final rulemaking is published, (2) the January, 1981 proposed deadline should be set at six months after the final rulemaking is published, and (3) the June and July 1981 proposed deadlines should be set at one year after the final rulemaking is published. The Federal Highway Administration (FHWA) commented that the dates of May 1, 1980 are almost impossible to meet because the proposal was published on April 1, 1980, and that the dates should be tied to ongoing work specified in the Overall Work Program (OWP).

Response: EPA is revising the dates as recommended by the South Coast AQMD, SCAG, and the ARB. However, EPA is extending certain dates recommended by these agencies so that there will be fewer deadlines. EPA is also making the dates consistent with the OWP, where possible.

Comment: The Western Oil and Gas Association (WOGA) commented that EPA should make every effort to allow State and local governments maximum flexibility in developing NAPs. WOGA further commented that EPA should not scrutinize the NAPs by a point-by-point

review, but should look at the NAP as a whole when determining compliance with the Clean Air Act.

Response: Throughout the NAP development process, EPA has encouraged State and local governments to initiate, study, develop, and adopt an attainment plan which reflects the unique characteristics of each nonattainment area. While the Clean Air Act allows for State and local governments to use unique approaches in satisfying NAP requirements, EPA does not have the flexibility to "trade-off" any of these requirements, because they all must be satisfied.

Comment: WOGA requested that EPA extend the public comment period.

Response: Prior to the May 1, 1980 deadline, the Regional Office contacted WOGA and informed them that all comments would be accepted until May 16, 1980. All the comments made during this period have been incorporated into this notice.

Comment: The Southern California Edison Company requested that a public hearing be held to provide a full examination of the actions taken by the ARB in submitting the NAP.

Response: A public hearing was held in January 1979, when the NAP was adopted by the South Coast AQMD and SCAG. The ARB held public hearings on April 26, 27, and 28, 1979. The NAP was adopted by the Board at a public hearing held on May 10, 1979. As a result, EPA believes that there has been adequate opportunity to orally comment on the NAP and that the requirements of Section 172(b) and 40 CFR 51.4 have been met.

Comment: The Urban Mass Transportation Administration (UMTA) commented that sub-regional plans (i.e., air quality plans prepared by a County) were apparently prepared by the four counties in the South Coast Air Basin and the City of Los Angeles, but were not made available for review nor effectively summarized in the NAP. They further commented that they must review these plans in order to provide informed comments on the NAP and its implications.

Response: EPA did not receive these plans with the NAP for the South Coast Air Basin. Therefore, these plans cannot be considered in EPA's evaluation of the NAP.

II. Comments on EPA's Criteria For Approval

1. Emission Inventory

Comment: The ARB stated that they disagreed with EPA's proposed conditions of approval which required that certain revisions be made to the CO, NO_x and PM emission inventories. The ARB stated that they are developing appropriate 1979 base year emission inventories for CO, NO_x and PM. The South Coast AQMD and SCAG agreed with EPA's proposed conditions.

Response: The 1979 base year emission inventories will satisfy the proposed conditions of approval concerning the submittal of an annual NO_x inventory, winter inventory for CO, and an inventory for PM which includes non-traditional emission sources.

Comment: The South Coast AQMD, SCAG, and the ARB commented that Tables VI–1 and VII–12 presented emission inventories that only include emissions from the South Coast Air Basin. The South Coast AQMD and SCAG also stated that no additional work should be done on the inventories in the 1979 NAP and that the conditions of approval concerning these inventories should be deleted. The ARB, however, also commented that they would submit an inventory that does not include emissions from Ventura County.

Response: While it appears that Tables V–1 and VII–12 included emissions from Ventura County, the 1979 base year inventories that will be submitted (see previous comment) can satisfy this condition of approval if the emissions from the South Coast Air Basin are specifically delineated.

Comment: WOGA commented that emissions from tankers and outer continental shelf (OCS) facilities should not be included in the emission inventories as proposed by EPA.

Response: EPA believes that emissions from OCS activities should be included in the inventories to improve the accuracy of the air quality analyses that will be conducted in the future.

2. Modeling

Comment: The ARB stated that the documentation and procedures needed to satisfy EPA's proposed condition of approval regarding ozone modeling is contained in the public hearing record.

Response: EPA has reviewed the information contained in the hearing record and concluded that it supports the hydrocarbon emission reduction estimate. EPA is therefore deleting this condition of approval.

Comment: The ARB commented that they will submit a revised modeling analysis for PM to satisfy EPA's proposed condition of approval concerning PM modeling. The South Coast AQMD and SCAG agreed with the proposed condition, but requested clarification from EPA on the input data required.

Response: As noted in the April 1, 1980 notice, an inventory which includes non-traditional source categories is necessary to use as input to the air quality model for PM. EPA has published many technical reports which provide emisson factors for non-traditional sources. Each factor specifies the input data needed for its emission calculation. With regard to secondary aerosols, emission inventories of the precursor pollutant emitting source categories need to be developed and used in the modeling. The simplest approach would be to assume that each precursor source contributes secondary aerosol to each downwind monitor in direct proportion to the level of secondary aerosol determined to be in the total suspended particulate (TSP) sample. Emission factors for each precursor source are also available in published EPA technical documents.

Comment: FHWA stated that the air quality base year in the modeling analyses must be consistent with the emissions inventory base year.

Response: Air quality concentrations are directly related to meteorological conditions as well as to the emission inventory. While meteorological conditions can vary considerably from year to year, the emission inventory is relatively stable. In order to account for this meteorological variability, it is not always appropriate to use the same base year air quality data and emission inventory data.

Comment: FHWA believes that it is not reasonable to require a state to submit a photochemical modeling analysis in the 1979 NAP. FHWA further commented that EPA should modify its statement concerning the State's use of an accurate photochemical model to assess the relationship between ozone and NO_x.

Responses: EPA did not require the State to submit a photochemical modeling analysis in the 1979 NAP. However, in the South Coast Air Basin, reductions in NO_x emissions are needed to attain the NO_2 NAAQS. Since NO_x emissions also affect ozone concentrations, EPA Region IX feels that a photochemical model is necessary to assess the relationship of VOC to NO_x in ozone formation, and to evaluate the effectiveness of varying degrees of VOC and NO_x controls.

3. Emission Reduction Estimates

Comment: The ARB, South Coast AQMD, and SCAG commented that they will submit revised emission reduction estimates for the pre-1982 stationary source and transportation control measures and thereby satisfy EPA's proposed condition of approval concerning emission reduction estimates.

Response: EPA believes that the ARB's submittal of the emission reduction estimates for the pre-1982 control measures will satisfy this proposed condition of approval.

Comment: The Southern California Edison Company believes that the NO_x control strategy is misdirected. They believe that emphasis should be placed on controlling emissions from motor vehicles, rather than stationary sources, because they are the primary source of NO_x emissions in the South Coast Air Basin. The City of Newport Beach commented that the control of NO_x emissions from stationary sources is inadequate.

Response: As discussed in the April 1, 1980 notice and in today's notice, further air quality and emission reduction control strategy analyses are required as conditions of approval. These analyses will help identify the most effective control strategy for attaining the NO_x and ozone NAAQS.

Comment: The Southern California Edison Company commented that Rule 475.1, "Controlling Emissions of Oxides of Nitrogen from Electric Power Generating Equipment" (submitted to EPA as Rule 1135.1) does not accurately reflect LAER nor best available control technology (BACT).

Response: The ARB has rescinded Rule 1135.1. Therefore, EPA cannot evaluate this rule. However, EPA cannot disapprove a rule because it is too stringent (See Section 116 of the Clean Air Act), and LAER and BACT refers to NSR and prevention of significant deterioration (PSD) provisions, respectively, while Rule 1135.1 is a rule for existing sources.

Comment: UMTA commented that the baseline data in the NAP reflect regional growth factors between 20%–35%, while the baseline transit system is projected to remain at the current level. UMTA feels that this constitutes a decrease in the level of transit service in view of the significant growth forecast. UMTA believes that the baseline assumption for transit should reflect service improvements between a "do nothing" situation and full RTP implementation.

Response: EPA agrees that the baseline assumption may not be appropriate. However, the assumption will be corrected in the 1982 NAP, which will discuss how the State and local agencies will use Federal, State, and local funds to implement public transportation programs to meet basic transportation needs.

Comment: UMTA stated that there was little documentation for control tactic H–13, "Trip Reduction Programs." UMTA further commented that they do not believe that this control tactic can reduce VMT by 5.8 percent.

Response: EPA has accepted this estimate for initial planning purposes, recognizing that a limited amount of data exist to make such an estimate. While EPA is approving this estimate, it should be noted that the Annual Reports submitted to EPA each year by the State will include verification of emission reductions by monitoring of transportation control measures and updated emission reduction estimates for the transportation control measures.

4. Attainment Provision

Comment: The ARB commented that the condition of approval concerning the inclusion of emissions from planned highway and freeway projects in the baseline inventory should be deleted for two reasons. First, it is not the intent of the State to preempt, preclude, or circumvent the federal process for determining consistency between the SIP and these projects. The identification and inclusion of these projects in the baseline inventory was to provide an estimate of the potential emissions which may require mitigation. Second, most of these projects have already moved through the federal approval process and have already been determined by FHWA to be consistent with the SIP.

SCAG and the Orange County Chapter of the Building Industry Association of Southern California, Inc. commented that EPA should agree that the baseline inventory documents SIP conformance for four reasons. First, the inclusion of these projects in the baseline inventory was an attempt to account for both mobility and air quality needs. Second, the emissions from these projects were mitigated by the control measures in the NAP and are therefore consistent with the SIP. Third, EPA staff has misinterpreted the status of the projects in that these measures are not placed in the same priority category as the transportation control measures. Fourth, their inclusion in the baseline inventory has removed SIP conformance as an issue that will unnecessarily block the implementation of these projects. FHWA commented that the air quality analyses included these projects and therefore their air quality impacts were considered. FHWA further commented that if the air quality analyses are found to be inadequate, they should be done over in the 1982 SIP revision.

Response: EPA agrees with the ARB in that the inclusion of these projects in the baseline inventory does not remove demonstration of SIP conformance as a necessary requirement. Therefore, based upon the ARB's clarification, EPA is deleting this condition of approval. Since the NAP does not demonstrate attainment, the claim that emissions from these projects have been mitigated is not acceptable. While EPA is deleting this as a condition of approval, a demonstration of SIP conformance remains a requirement for approval of any transportation project, program, or plan.

Comment: SCAG disagreed with EPA's statement that the NAP does not demonstrate a commitment to an emission reduction target for the transportation sector. SCAG stated that an emission reduction target is committed to in the NAP. The emission reduction target is the sum of all the adopted transportation control measures shown in Chapter IX. SCAG also stated that the local commitment is identified in Chapter I.

Response: EPA disagrees in that the NAP does not demonstrate attainment. Without such a demonstration, an acceptable target cannot be provided.

Comment: The ARB commented that the proposed condition of approval concerning the selection of a design value for PM should be deleted because additional study was necessary before either the annual geometric mean (AGM) or the 24-hour NAAQS could be projected to be attained.

The South Coast AQMD disagreed with this proposed condition of approval for three reasons. First, the Friedlander/Trijonis modified rollback model, which was used in the NAP, can only estimate reductions to meet the AGM NAAQS. Second, a simple linear rollback model is not appropriate for the South Coast Air Basin because a major portion of the PM concentration is aerosol. Third, there are no other PM air quality models that are valid or appropriate for the South Coast Air Basin.

Response: The selection of a design value does affect the projected attainment date, but only to the extent that it provides the means from which to calculate a first-order approximation for an emission reduction goal. It makes little difference whether a quantifiable amount of air quality improvement is achieved by eliminating the directly contributing PM or by eliminating a percentage of the precursor pollutant in proportion to the desired aerosol air quality improvement. In response to the South Coast AQMD's rationale: (1) the model used in the NAP is not an EPA approved model and any limitations inherent in its use are solely the responsibility of the user, (2) simple linear rollback can be adapted to TSP situations involving aerosol, and (3) EPA does not agree that "no other air quality models are valid or appropriate . . ."

other models are appropriate for use and valid to varying degrees of accuracy within certain limitations.

Comment: The ARB commented that the proposed condition of approval regarding the submittal of a schedule and work program to study nontraditional control measures and a revised modeling work program for PM should be deleted in the final rulemaking notice. The ARB believes that this condition of approval should be deleted because they committed to study and adopt all measures found to be reasonably available and effective in reducing emissions from sources of precursors of secondary particulates. The ARB also provided a schedule that identifies the measures that will be studied and the time frame, and stated that they are developing a work plan that identifies the elements that will be submitted as part of the December 1981 SIP revision that will demonstrate attainment of the PM NAAQS.

Response: EPA disagrees and feels that a schedule and work program must be submitted. Further, EPA has determined that the schedule which identifies the non-traditional control measures that will be studied is adequate. However, the schedule must be submitted as an SIP revision. Therefore, to satisfy this condition of approval, the State must submit as an SIP revision the schedule and a revised modeling work program for PM.

Comment: The ARB commented that the date for submitting the material to satisfy the condition of approval regarding the estimation of the emission reduction needed to attain the NO_2 NAAQS should be extended at least 60 days beyond the final rulemaking notice. The South Coast AQMD commented that the material to satisfy this condition of approval should be submitted with the draft 1982 NAP.

Response: EPA has revised the deadline to May 20, 1981.

5. Reasonable Further Progress

Comment: The ARB commented that EPA should modify its comment on the annual reports because EPA/ARB guidance has been provided to the local agencies.

Response: The comment was modified in a letter dated February 23, 1980. This letter transmitted EPA's and the ARB's guidance on what is required to be contained in the Annual Reports to the South Coast AQMD and SCAG.

Comment: SCAG agreed with EPA's comments concerning the concept of a transportation monitoring program, but indicated that the date for a system to be in place should be submitted as part of the 1982 Annual Report.

Response: Although this is not a condition of approval, EPA policy requires that the transportation monitoring program be in place by 1980 as a basis for emission reduction credit and that the program be discussed in the 1980 Annual Report.

Comment: SCAG and the Orange County Chapter of the Building Industry Association of Southern California, Inc. commented that EPA should employ the criteria contained in the ARB resolution (79-27) for reviewing wastewater treatment facilities and not continue individual project review.

Response: Until the details of the air quality and water quality integration policy are reviewed and committed to by the implementing agencies and approved by EPA after public notice and review, the requirements of RFP concerning wastewater treatment facilities must be satisfied by individual project review. In addition, EPA's policy on Section 316 of the Clean Air Act was published on August 11, 1980 (45 FR 53382). This policy must also be followed in reviewing wastewater treatment facilities.

Comment: The South Coast AQMD commented that the proposed condition of approval requiring the submittal of a refined RFP assessment for non-traditional PM control measures should be deleted in the final rulemaking notice. The South Coast AQMD further commented that this information should be submitted in the draft 1982 NAP because no new information is currently available.

Response: This was not a condition of approval in the April 1, 1980 notice. However, based on the work being accomplished under the condition of approval in Criterion 4, "Attainment Provision," EPA feels that the next Annual Report must include a refined assessment of reasonable further progress for the PM non-traditional control measures.

6. Legally Adopted Measures

Comment: The ARB commented that all the applicable CTG Group I rules have been submitted as SIP revisions and therefore the major deficiency concerning the submittal of these rules has been corrected.

Response: EPA agrees and a discussion of these rules is contained in the April 1, 1980 notice, Supplemental Revisions section of this notice, and in EPA's Evaluation Report Addendum.

Comment: The ARB commented that EPA should structure its final rulemaking action such that the major deficiency is based solely on the failure of the State to submit evidence of legal authority to implement an I/M program and, upon correction of the major deficiency, the NAP could be automatically conditionally approved.

Response: EPA agrees that the only major deficiency remaining in the South Coast Air Basin NAP is the lack of legal authority to implement an I/M program. However, EPA believes that there must be an opportunity for public comment on the adequacy with respect to Part D of any I/M program authorized by the State before the NAP can be conditionally approved. Thus, the NAP cannot be automatically conditionally approved upon correction of the major deficiency.

Comment: The Sierra Club commented that the South Coast Air Basin NAP should not be approved until the legal authority to implement an I/M program has been provided by the State Legislature.

Response: EPA agrees.

Comment: WOGA believes that applying the construction prohibition to major sources which totally offset any emission increases goes beyond the requirements of the Act.

Response: This comment pertains to the question of which "sources" should be subject to the construction moratorium. This issue is addressed by EPA's regulations promulgated on August 7, 1980 [45 FR 52675], which define "source" for the purposes of the moratorium. Under those regulations, only significant net increases in emissions at a major source are covered by the moratorium. "Source" is defined as both an entire plant and a piece of process equipment. WOGA argues that EPA should look only at the entire plant. WOGA's comments therefore really go to EPA's August 7 rulemaking and not to EPA's proposal on the South Coast Air Basin NAP. In fact, similar comments were submitted when EPA proposed its definition of source on September 5, 1979 (44 FR 51924). EPA's rationale for its definition and its response to comments can be found at 45 FR 52696–98.

Comment: SCAG commented that they will continue to seek the general commitments from the responsible local jurisdictions to implement the six transportation control measures that are identified in the NAP to satisfy EPA's proposed condition of approval concerning the State's submittal of these commitments and schedules. SCAG further commented that the submittal of these commitments should be part of an ongoing Annual Reporting process. SCAG also stated that EPA must recognize the limits on local governments for providing legally enforceable schedules for an extended period.

Response: EPA feels that policy level commitments and schedules for implementation from the agencies and local jurisdictions responsible for implementing the six transportation control measures identified in the 1979 NAP must be submitted as SIP revisions to satisfy this condition of approval.

Comment: The South Coast AQMD and the ARB agreed with EPA's proposed condition of approval regarding the submittal of a schedule which identifies the dates that the non-CTG stationary source hydrocarbon control measures will be adopted and submitted to EPA. The South Coast AQMD and the ARB also commented that these measures will be adopted in accordance with the State-wide rule development schedule submitted to EPA with their public comments. The ARB also stated that this proposed condition of approval should be modified to (1) reflect that the schedules have been provided for most measures and (2) identify specifically the measures which EPA considers to have inadequate schedules.

Response: Because the State requested an extension of the attainment date to December 31, 1987, EPA feels that the schedule that was submitted satisfies this condition of approval. Therefore, the submittal of the schedule by the ARB satisfies the Part D requirements and the proposed condition of approval is being deleted.

Comment: The ARB commented that they are working with SCAG and the other transportation agencies to obtain the necessary commitments to evaluate and implement the transportation control measures contained in Section 108(f) of the Act that were not adopted in the 1979 NAP. SCAG commented that the Executive Committee and the South Coast AQMD Board committed to implement reasonably available control measures by 1982 and to study other measures for implementation after 1982. SCAG also commented that they cannot obtain commitments to implement further study measures as required by EPA until these measures are found to be "reasonable."

Response: EPA agrees that commitments for the further study measures should not be submitted at this time. The commitments and schedules for implementation must be submitted with the 1982 NAP for all measures found to be reasonably available between 1979 and 1982. Therefore, the condition of approval concerning the submittal of commitments to implement the further study measures is being deleted.

Comment: The ARB commented that the condition of approval regarding the submittal of a schedule to study non-traditional and secondary particulate control measures should be modified to (1) reflect that the schedules have been provided for most measures and (2) identify specifically which measures EPA considers to have inadequate schedules. The South Coast AQMD provided a schedule which identifies the dates by which the non-traditional control measures will be adopted. The South Coast AQMD also commented that additional measures will be adopted in accordance with the State-wide rule development schedule.

Response: EPA agrees that the schedule was provided by the ARB along with its comments on the April 1, 1980 notice. EPA has determined that this schedule will satisfy this condition of approval if it is submitted as an SIP revision.

Comment: The ARB commented that EPA's proposed condition of approval regarding the specific schedules for rule development and adoption of the NO_x control measures should be deleted for several reasons. First, Rule 1135.1, "Controlling Emissions of Oxides of Nitrogen from Electric Power Generating Equipment" submitted to EPA in April, 1980 will reduce NO_x emissions from power plants by approximately 90%. Second, schedules for the study of additional NO_x control measures have been established as part of the State-wide rule development schedule. Third, Table 18-2 of the NAP contains several measures identified for further study. Fourth, the ARB has committed to submit an SIP revision in 1981 that will demonstrate attainment of the NO_x NAAQS by December 31, 1982.

Response: EPA agrees that the schedule was provided by the ARB along with its comments on the April 1, 1980 notice. EPA has reviewed this schedule and has determined that it is adequate. However, it must be submitted as an SIP revision to satisfy this condition of approval. Further, the ARB has requested EPA to delay its review of Rule 1135.1 until a rehearing is completed. EPA has delayed review, but notes that the Rule is still part of the control strategy in the NAP as submitted by the State.

Comment: UMTA commented that they could not conduct a thorough review of the NAP because no commitments for implementing the transportation control measures were included. UMTA further commented that they would like to review the commitments when they are submitted to EPA.

Response: These commitments will be available for review after they are submitted to EPA from the State in response to the conditions of approval.

Comment: Riverside County commented that they should not be penalized for not providing resolutions supporting the implementation of the six transportation control measures because they adopted the necessary resolutions. They further commented that no provision was made for review of sub-regional plans within the South Coast Air Basin.

Response: EPA can apply funding restrictions by geographic area if the NAP is disapproved because of the State's failure to satisfy Part D requirements. Because EPA did not receive the resolutions as part of the NAP, EPA cannot determine the adequacy of Riverside County's resolutions. Further, EPA must review the NAP for the South Coast Air Basin as a whole as submitted by the State and not by sub-region because sub-regional plans were not submitted by the State.

7. Emissions Growth

No comments were received.

8. Annual Reporting

No comments were received.

9. Permit Program

Comment: The ARB stated that EPA should be more specific in its final rulemaking notice with respect to identifying the deficiencies in the South Coast AQMD's NSR rules and how to correct the deficiencies.

Response: EPA's review of the NSR rules and the deficiencies found by EPA are summarized in the Supplemental Revisions section of this notice and are described in EPA's Evaluation Report Addendum.

Comment: Several commenters stated that the major deficiency concerning the submittal of legally adopted NSR rules has been corrected by the ARB's submittal of the South Coast AQMD's NSR rules.

Response: EPA agrees that the major deficiency concerning the submittal of legally adopted NSR rules for the South Coast AQMD has been corrected. EPA's evaluation of these rules is discussed in the Supplemental Revisions and EPA Actions sections of this notice.

Comment: The ARB commented that the deficiency cited by EPA (Number 2 in the April 1, 1980 notice) concerning the modeling requirement that oxides of sulfur (SO_x) PM, and CO show a net air quality benefit has been corrected because Regulation XIII allows offset credit without modeling only for sources of offsets located within a 3 mile radius of the new or modified source. (Note:

SO_2, was inadvertently referred to in the April 1, 1980 notice.)

Response: EPA disagrees in that the 1 : 1.2 offset ratio will not provide a net air quality benefit in all cases within 5 miles of the new or modified source. The rules should be revised so that this determination will be based upon an air quality model or the State must demonstrate that this ratio will result in a net air quality benefit.

Comment: The ARB disagreed with EPA's statement that offsets must be made for the same pollutant. The ARB commented that a interprecursor offset should be acceptable when a decrease in one precursor can be shown to offset an increase in emissions of another precursor to the same pollutant so that the ambient levels of that pollutant do not increase.

The ARB further commented that (1) the South Coast AQMD's NSR rules are more restrictive than the draft rule in that it allows interprecursor offsets only for PM and only when the applicant demonstrates that reductions in directly emitted PM are not available, (2) this provision is based upon estimates calculated from air quality monitoring data, and (3) interprecursor offsets will result in a reduction of small particulates which will result in greater health and visibility benefits.

Response: EPA's offset guidance does not allow NO_x, SO_2, or hydrocarbon (HC) emissions to be used in lieu of PM offsets for a PM program. EPA interprets the rules to preclude such an occurrence and thus, based upon the ARB's three conditions, EPA feels that such offsets are warranted in this case.

WOGA and the Southern California Edison Company submitted several comments concerning EPA's review of the ARB's draft NSR rule for the South Coast AQMD. Each of the points raised and EPA's responses follow.

Comment: WOGA noted that since the South Coast AQMD's legally adopted NSR rule may differ substantially from the ARB's draft NSR rule, review of any other rule is meaningless.

Response: As discussed in the Supplemental Revisions and EPA ACTIONS sections, the South Coast AQMD's NSR rules differ significantly only with respect to certain requirements pertaining to emission calculations and offset provisions, which EPA is disapproving. Otherwise, EPA has found that the rules are similar and equivalent. Therefore, EPA's review of the draft rule was meaningful.

Comment: WOGA stated that EPA is ignoring the actual NSR rules adopted by the South Coast AQMD and is explicitly encouraging them to merely parrot the ARB, and not adopt rules adapted to their local needs.

Response: Prior to the time EPA published its notice of proposed rulemaking, the NSR rules had been adopted by the South Coast AQMD with the exception of a minor revision submitted to EPA on August 15, 1980. Thus, EPA's notice did not lead the South Coast AQMD to parrot the ARB's draft rule. In addition, the proposal clearly stated that it is EPA's policy to approve any NSR rules adopted by the South Coast AQMD that would meet the requirements of the January 16, 1979 Interpretative Ruling (44 FR 3274) or the criteria of the September 5, 1979 proposal (44 FR 51924). Therefore, the South Coast AQMD was provided the flexibility to adopt any NSR rules it chose, provided they satisfied either of EPA's two sets of criteria.

Comment: WOGA stated that in reviewing the South Coast AQMD's legally adopted NSR rules, EPA should look at the overall stringency of the rules, and not be concerned with a point-by-point check of isolated portions of the rules. WOGA also commented that EPA should consider that the ARB's draft rule is more stringent than EPA's criteria.

Response: EPA's policy regarding NSR programs allows states to develop rules which differ in some respects from EPA's criteria (44 FR 3280, January 16, 1979 and 44 FR 51924, September 5, 1979). EPA may approve such rules if the State submits a demonstration that the overall impact on emissions in the areas where the rules apply is at least as stringent as EPA's criteria. Since the State did not provide such a demonstration, EPA reviewed the South Coast AQMD's NSR rules by comparing them to both the January 16, 1979 and September 5, 1979 criteria.

Comment: WOGA argued that the ARB's requirement that a new onshore source offset emissions generated by associated tankers while they are loading, unloading, and operating on the outer shelf (OCS) constitutes regulation of such tankers and offshore facilities. This provision, according to WOGA, is beyond EPA, State, and local jurisdiction. In addition, WOGA cited two recent court cases, *California v. Kleppe*, 13 E.R.C. 1577 (9th Cir., August 2, 1979) and *California v. Exxon*, (U.S. District Court, Central District of California, No. 78–249 RMT, November 14, 1978), which held that neither EPA nor ARB have authority over sources on the OCS for the purpose of controlling air pollution.

Response: The ARB's draft NSR rule requires that a new *onshore* source offset emissions from tankers while they are operating on the OCS. Therefore, only the onshore source is regulated and the cases cited by WOGA are not applicable.

Comment: WOGA noted that a 1979 Court decision on EPA's regulations for Prevention of Significant Deterioration (PSD) of Air Quality affect EPA's NSR requirements for NAPs as well. WOGA stated that EPA should not require APCD's to adopt either (1) the September 5, 1979 regulations until they have been finalized or (2) "de minimis" significance levels until adequate scientific studies have been conducted.

Response: In the September 5, 1979 Proposal (44 FR 51924), EPA's views were presented on how the *Alabama Power* decision affects NSR requirements for NAPs. EPA also responded to WOGA's concerns in the May 13, 1980 (45 FR 31307) and August 7, 1980 (45 FR 52676) Federal Register. Further, today's notice requires that the South Coast AQMD adopt rules that are consistent with EPA's final NSR requirements that were published on May 13, 1980 and August 7, 1980.

Comment: WOGA commented that the South Coast Air Basin is an attainment area for sulfur dioxide and therefore sulfur dioxide offsets should not be required as proposed by EPA in the April 1, 1980 notice.

Response: EPA inadvertently referred to sulfur dioxide in the April 1, 1980 notice.

Comment: WOGA noted that EPA objected to the provision in the draft rule which describes the areas in which offsets may be allowed. WOGA also noted that EPA indicated that EPA's criteria call for offsets to be made in the immediate vicinity of the site of increased emissions. WOGA commented that the draft rules' approach may be justified for site-specific pollutants (CO and PM), but that it is inappropriate for VOC and NO_x emissions which often do not form ozone or NO_2 until they are well away from the source.

Response: EPA agrees.

Comment: WOGA stated that EPA should disapprove the ARB's oxides of nitrogen (NO_x) offset requirement for ozone if EPA does not approve provisions allowing interpollutant offsets. WOGA further stated that EPA must disapprove this requirement because (1) EPA only requires VOC offsets as a precursor to ozone and (2) EPA's policy regarding the control of ozone is based in part on the belief that there is a substantial risk involved in controlling NO_x as a precursor to ozone. WOGA also submitted a modeling study for the Bay Area which showed that NO_x control would result in higher

ozone levels than would occur with a hydrocarbon only control strategy. The Southern California Edison Company commented that the ARB's definition of "precursors" is too broad and should be limited to NO as a precursor to NO_2 and VOC as a precursor to ozone.

Response: To meet the minimum Federal NSR requirements, only emissions of the nonattainment pollutants are subject to NSR requirements. For ozone, whose precursors are VOC and NO_x, federal requirements specify that, at a minimum, VOC emissions be offset. However, the State has the option of requiring offsets for NO_x in addition to VOC if they wish.

EPA's present policy requiring the control of ozone, as noted by WOGA, is based upon controlling VOC emissions. This strategy appears to reduce both maximum concentrations of ozone and area-wide exposure to ozone. The effectiveness of controlling NO_x emissions is not well known. The current research suggests that controlling NO_x will increase ozone concentrations near sources of NO, but this effect becomes less pronounced downwind. In addition, there is good reason to believe that a beneficial impact would be observed downwind and during multi-day stagnation periods if NO_x emissions were controlled. As a result, EPA is neither encouraging nor discouraging states to control NO_x as a precursor to ozone. However, EPA is recommending that states not ignore NO_x emissions growth and is encouraging that NO_x emissions remain at the same level, if possible. The ARB's requirement of NO_x offsets essentially accomplishes this in that it will help keep NO_x emissions at the same level.

In addition, the modeling study submitted by WOGA for the Bay Area is inconclusive in that it does not address the effect of controlling NO_x emissions on ozone concentrations downwind of the Bay Area or the effect of multi-day stagnation periods.

Comment: WOGA stated that the public should be given the opportunity to comment on EPA's evaluation of the South Coast AQMD's legally adopted NSR rules, and that failure to allow an opportunity to comment on these rules would be a violation of the Administrative Procedure Act.

Response: As stated in the SUPPLEMENTAL REVISIONS section, EPA has determined that the South Coast AQMD's NSR rules are similar and equivalent to the ARB's draft rule and Section 173 of the Act, with the exception of certain requirements pertaining to emission calculations and offset provisions. Since these requirements in the South Coast AQMD's NSR rules are not consistent with Section 173, EPA must disapprove them. As a result, the NSR rules being conditionally approved in this notice are similar and equivalent to the ARB's draft rule which are discussed in the April 1, 1980 notice. Therefore, EPA feels that the public has been provided adequate opportunity to comment on the approvability of the South Coast AQMD's NSR rules through EPA's evaluation and notice of proposed rulemaking on the ARB's draft rule.

Comment: The Southern California Edison Company commented that an exemption is needed for subparagraph B.4. of the draft rule to allow minor modifications to be made to obtain a marginal increase in the capacity of an electric generating unit. According to Southern California Edison, this is needed to forestall the building of new generating facilities where the BACT requirements would render the increase in capacity infeasible.

Response: EPA policy allows exemptions only for minor modifications where the increase in emissions is below EPA's "de minimis" levels (See August 7, 1980, 45 FR 52676).

Comment: The Southern California Edison Company believes that sections C and D of the draft rule should be completely revised because the requirements reflected in these provisions go beyond the intent of the Clean Air Act.

Response: The State's draft rule and Regulation XIII of the South Coast AQMD each contain provisions which are both more and less stringent than EPA's criteria. The rules must be corrected in those cases where it is less stringent, and Section 116 of the Clean Air Act allows the State to adopt more stringent regulations. Further, the State's draft rule and Regulation XIII serve not only as an NSR regulation but also as a control measure to attain the NAAQS. Therefore, Sections C and D of the State's draft rule are consistent with the overall intent of the Clean Air Act.

Comment: The Southern California Edison Company commented that the maximum impact of a new or modified facility should be based on the emission rates achieved at maximum designed capacity *or demonstrated capacity, whichever is greater.* Southern California Edison further commented that the emission offset requirements should be determined on the basis of annual average emissions because it is impossible to mitigate the impact of a new source upon pollutant concentrations under varying conditions as the draft rule attempts to do. They also commented that annual average emissions should be used because the net air quality benefit of emission changes can be considered "on balance" for the area affected by the source.

Response: EPA can only approve or disapprove revisions submitted by the State. EPA is approving the approach used in Regulation XIII because the impact of a new or modified source is based upon the emission rates achieved at maximum design capacity and because this approach is consistent with the Clean Air Act. Further, EPA feels that the approach taken by both the draft rule and Regulation XIII of mitigating seasonal emissions is better than using annual emissions.

Comment: The Southern California Edison Company commented that where more than one source is owned by an applicant, the effect of a new or modified source on emissions from the existing sources should be considered in determining offset requirements. They noted that this is particularly true for electric utilities, where the effect of operation of a new unit will have an immediate effect on the operation of and the emissions from all other units on the system. For this reason, they believe that section D.2.a.1. of the draft rule should be revised so that emission offset requirements are based on changes in basin-wide emissions for each basin within the system from the 3-year period to the in-service date and not the date of application. They further commented that if the new unit results in an emission reduction because of better controls, offsets should not be required until the years when system load increases to the point where the emissions from the electric generating system were projected to be above the base period for the air basin.

Response: Section D.2.a.1. of the draft rule refers to air quality and not establishing an emissions baseline. However, EPA cannot approve an approach such as the one recommended by Southern California Edison because EPA's criteria specifies that the emission baseline should be determined by using emissions data from one to two years prior to the date of application (See August 7, 1980, 45 FR 52676, 40 CFR 51.18(j)(1)(vii) and (xv)).

Comment: The Southern California Edison Company commented that emission offsets should not be restricted to 15 miles, and arbitrary offset ratios should not be included as requirements in the draft rule. They further commented that such ratios should be determined on a case-by-case basis, and there may very well be justifiable reasons where a 10% reduction in emissions would be more than adequate.

Response: Offsets are not restricted to 15 miles in either the draft rule or

Regulation XIII. In the draft rule when offsets are obtained outside of 15 miles the applicant shall conduct a modeling analysis to determine an offset ratio sufficient to show a net air quality benefit in the area affected by emissions from the new source or modification. For ozone and NO_x, Regulation XIII requires the ratio to be increased as the distance increases from the source. This approach is consistent with EPA's criteria. For CO and PM, EPA requires a case-by-case demonstration that offsets will provide a net air quality benefit. To the extent that Regulation XIII does so it is approvable.

Comment: The City of Newport Beach objected to the offset provision in the draft rule because there is no requirement that offsets be obtained directly upwind of a source.

Response: The NSR rules that were adopted by the South Coast AQMD are being conditionally approved. One of the conditions of approval is that the rules be revised to require that a net air quality benefit be obtained for ozone, CO, NO_x, and PM before a new source is built. For CO and PM, this net air quality benefit is based upon modeling. However, EPA allows offsets for VOC and NO_x emissions to be obtained within a broad area because area-wide ozone and NO_x levels are generally not as dependent on specific VOC or NO_x source locations as they are on overall areawide emissions.

Comment: The Southern California Edison Company commented that the emission offset bank for electric utilities should not be site specific, but should be at least a basin-wide bank.

Response: Regulation XIII does not contain a banking provision.

Comment: The Southern California Edison Company stated that provisions for power plant siting are assigned to the Energy Commission by the Warren-Alquist Act and therefore the State and the South Coast AQMD should only serve as a reviewing agency for compliance with their rules and regulations.

Response: In the development of Regulation XIII, the ARB, South Coast AQMD, and the Energy Commission together established procedures for reviewing power plants. These procedures are consistent with the Warren-Alquist Act.

Comment: The Southern California Edison Company commented that the ARB uses BACT for its definition of LAER and this creates a confusing situation. Southern California Edison further commented that the definition of "stationary source" is *too* broad and should be made consistent with the Act.

Response: Although the definitions are somewhat different, EPA does not require the State to use identical wording. However, the definitions of BACT and "stationary source" in Regulation XIII are not fully consistent with the Act. Therefore, the State must correct these deficiencies.

Comment: The Southern California Edison Company commented that Section I.1.a. of the draft rule should be clarified to prevent requiring unproven emission control techniques when the LAER determination is made and that Section I.1.b. should be deleted as unnecessary given Section I.1.a.

Response: EPA feels that Section I.1.a. of the draft rule would not result in the application of unproven emission control techniques because the applicant is involved with negotiations when the LAER determination is made. Further, this points was clarified in Regulation XIII, which states that a specific control technique shall not apply if the owner or operator of the proposed source demonstrates to the satisfaction of the Executive Officer that such control techniques are not available. EPA also feels that Section I.1.b. is necessary because new information may be found which will result in a new LAER determination.

10. Resources

Comment: The ARB commented that the condition of approval requesting information identifying (1) the personnel and financial resources needed to implement the control measures and (2) the commitments which identify the resources necessary for implementation of the NAP should be deleted. The ARB requested that this condition of approval be deleted because it is not legally possible for California agencies to commit to multi-year budget commitments. The ARB commented that EPA's concerns regarding this issue can be addressed in the Annual Reports. SCAG also commented that resolutions which demonstrate commitments made by the major implementing agencies for the individual transportation control measures were submitted to the ARB on August 31, 1979.

Response: EPA agrees that it is not legally possible for California to provide multi-year budget commitments. Therefore, the identification of necessary resource commitments for implementation of the NAP for the future year as well as the South Coast AQMD and ARB identification of the personnel and financial resources needed to implement the control measures for the future year must be submitted by the State to EPA when the local budgets are adopted. The NAP must include a commitment to provide this information annually.

Comment: UMTA commented that attainment of the NAAQS will apparently require transportation control measures which will result in a funding shortfall. UMTA further commented that their analysis of the funding sources for the transportation control measures was hampered by the lack of any specific indication of the funding sources being considered.

Response: Because the NAP must provide reasonable assurances for implementation, the State and local agencies must obtain the necessary commitments and sources of funding, or new measures with more realistic assurances of funding must be developed. The funding sources for the transportation control measures will be provided with the commitments from the local agencies that will implement the transportation control measures. When the State submits this material in response to the conditions of approval, EPA will provide UMTA with a copy and request additional comments at that time.

11. Public and Government Involvement

No comments were received.

12. Public Hearing

No comments were received.

13. Extension Requirements

Comment: The ARB commented that the condition of approval regarding the submittal of the relevant portions of CEQA should be deleted in the final rulemaking because they have been submitted.

Response: As discussed in the SUPPLEMENTAL REVISIONS section, the CEQA provisions have been submitted by the State and they satisfy the Clean Air Act requirements providing for an analysis of alternative sites, sizes, processes, and controls which demonstrate that the benefits of the facility outweigh the environmental costs. Therefore, this condition is being deleted.

Comment: SCAG commented that EPA's proposed condition of approval requiring the submittal of a commitment to use federal grants and state and local funds as necessary to meet basic transportation needs has been substantially satisfied and that additional commitments should not be required until the plan to meet basic transportation needs is developed and adopted.

Response: EPA feels the existing commitments satisfy the requirements for the 1979 NAP for a commitment to meet basic transportation needs.

Comment: The ARB commented that the proposed condition of approval regarding the prioritization of federal funds for highway projects should be deleted. The ARB believes that this condition of approval should be deleted because (1) it is not the State's intent in submitting the NAP to reject the requirements of Section 176(d), (2) the policy of programming 50% of available funds for "air quality measures" constitutes a conceptual response to the requirements of Section 176(d), and (3) this issue should be directed toward the federally required transportation planning process and not the subject of a condition of approval on 1979 NAP.

SCAG commented that this condition of approval should be deleted because (1) this policy was adopted as a commitment to implement the transportation control measures in the NAP, (2) the transportation control measures contained in the NAP are given top priority in the programming policies and (3) the procedures and criteria adequately address the Section 176(d) procedures.

FHWA disagreed with EPA's critique of SCAG's programming an equal proportion of funding of "air quality projects" and "capital highway projects" as not meeting the prioritization requirement.

Response: EPA believes that the policy contained in the NAP may be in potential conflict with Section 176(d). Further, EPA feels that no commitment was adopted as part of the NAP which will ensure continued compliance with Section 176(d). Consequently, there is no assurance that priority will be given to the implementation of the transportation control measures. Also, EPA did not critique SCAG's programming an equal proportion of funding of "air quality projects" and "capital highway projects" because they were not included in the NAP as submitted by the ARB. This provision was developed at a later date and it has not been submitted to EPA as an SIP revision. Therefore, to satisfy this condition of approval, the State must submit SCAG's greater weight and equal proportion programming policy and procedures as they relate to prioritization and funding of "air quality projects" and "capital highway projects" and justification that the NAP provisions are consistent with Section 176(d) of the Clean Air Act.

Comment: SCAG commented that the procedures to ensure that priority be given to projects in the Transportation Improvement Plan (TIP) which have air quality benefits have been submitted.

Response: EPA agrees that SCAG has submitted draft procedures to EPA. However, these procedures must be submitted as an SIP revision in order to meet the requirements of the condition of approval concerning this issue.

14. Extension requirements for VOC RACT

Comment: The ARB commented that EPA's proposed condition of approval regarding exemptions from the Stage I Gasoline Vapor Recovery rule should be deleted in the final rulemaking because the cost of retrofitting the exempted tanks is prohibitive.

Response: EPA agrees.

Comment: The Can Manufacturers Institute commented that the ARB's model rule emission limitations for can manufacturing do not reflect current or near future RACT for the can coating industry. The Can Manufacturer's Institute recommended that EPA adopt Rule 1125 of the South Coast AQMD rather than the ARB's model rule.

Response: As discussed in the SUPPLEMENTAL REVISIONS section, Rule 1125 meets EPA's RACT requirements for can coating. Therefore, EPA is approving Rule 1125 of the South Coast AQMD.

National Comments

One commenter submitted extensive comments and requested that they be considered part of the record for each state plan. Another commenter, a national environmental group, discussed EPA's action on permit fee systems and the composition of state boards. Although some of the issues raised are not relevant to provisions in the South Coast Air Basin NAP, the November 10, 1980 Federal Register (45 FR 74420) should be referred to for a discussion of these comments and EPA's responses.

EPA Actions

Introduction

It is important for reviewers of this notice to understand the overall nature of NAPs and of EPA's review and approval role. Central to such an understanding is recognition that action may be taken on a portion of the NAP for a specific pollutant. Therefore, a portion of the NAP may be adequate for one pollutant but inadequate for others. It is EPA's policy to take final action on all portions of the NAP for each pollutant. As a result, this notice contains a series of actions for each pollutant and for each portion of the NAP rather than a single action. The following three actions are taken for each portion of the NAP:

1. Disapproval where the State does not agree to correct minor deficiencies or where deficiencies are of such magnitude as to significantly interfere with the basic objective; or

2. Approval where the portion of the NAP under consideration meets all requirements;

3. Approval with conditions where deficiencies exist, but where the effect of the deficiency is not judged to be major and where the State has agreed to take those steps necessary to correct the deficiency. In this case, it is EPA's intent that the State proceed expeditiously to correct the noted deficiency by certain dates.

EPA's final action on each portion of the NAP for each pollutant is based upon the proposed rulemaking notice, supplemental revisions submitted by the State, and public comments received by EPA. Each action is described below.

Disapproved Portions of the NAP

As proposed in the April 1, 1980 notice and as discussed in the BACKGROUND and PUBLIC COMMENTS sections of this notice, EPA has determined that the legally adopted measures/schedules for I/M and the extension requirements for I/M portions of the NAP for ozone and CO cannot be approved because of the State's failure to submit the necessary legal authority along with schedules and commitments to implement and enforce an I/M program. Therefore, EPA takes final action under Part D of the Clean Air Act to disapprove these two portions of the NAP for ozone and CO.

Approved Portions of the NAP

As proposed in the April 1, 1980 notice and as discussed in the Background and Public Comments sections of this notice, EPA has determined that the reasonable further progress, emissions growth, annual reporting, public and governmental involvement and public hearing portions of the NAP for ozone, CO, NO_2 and PM are consistent with the Part D requirements. Therefore, EPA takes final action under Part D to approve these portions of the NAP.

In addition, without legal authority to implement and enforce an I/M program, the NAP cannot demonstrate reasonable further progress for ozone and CO through 1987. However, at this time there is no point in disapproving the reasonable further progress portion of the NAP for ozone and CO since the key deficiency, the I/M portion of the NAP, is disapproved and causes disapproval of the overall NAP for ozone and CO. Once I/M legislation is passed, the State would be able to demonstrate reasonable further progress and the NAP could be approved. Therefore, EPA is approving the reasonable further progress portion of the NAP.

As proposed in the April 1, 1980 notice, EPA is taking final action under Section 110 of the Clean Air Act to approve Rule 481 (VOC rule) because it strengthens existing requirements. Also as proposed, EPA is taking final action under Section 110 and Part D to approve Rules 481, 482, 1104, 1115, and 1126 (VOC rules) because they satisfy the requirements for RACT.

The State did not officially submit nine VOC rules with the NAP in July 1979, but they did submit their model VOC rules and requested EPA to review them. As described in the April 1, 1980 notice, EPA reviewed these model rules, determined that they contained only minor deficiencies, stated that the NAP could be conditionally approved upon submittal of rules similar and equivalent to the model rules, and provided an opportunity for public comment on these actions. As stated in the SUPPLEMENTAL REVISIONS section, EPA has found that the South Coast AQMD's rules are (1) similar and equivalent to the State's model rules and (2) satisfy the RACT requirements of Part D. Therefore, EPA is taking final action under Section 110 and Part D to approve Rules 404, 465, 1107, 1108, 1108.1, 1122, 1123, 1125 and 1128 because they strengthen existing SIP requirements and satisfy the RACT requirements of Part D.

Conditionally Approved Portions of the NAP

Although the State did not officially submit the NSR rules with the NAP in July 1979, the State did submit their draft NSR rule and requested EPA to review this rule. As described in the April 1, 1980 notice, EPA reviewed the draft rule, determined that it contained only minor deficiencies with respect to Section 173, stated that the NAP could be conditionally approved upon submittal of an NSR rule similar and equivalent to the draft rule, and provided an opportunity for public comment on these actions. As stated in the SUPPLEMENTAL REVISIONS and PUBLIC COMMENTS sections, EPA has found that the South Coast AQMD's NSR rules (1) are similar and equivalent to the State's draft rule and (2) contain only minor deficiencies with respect to Section 173, with the exception of certain deficiencies pertaining to emission calculations and offset provisions. Further, EPA found that a NAP containing these deficiencies cannot be approved or conditionally approved. Therefore, EPA disapproves those provisions in the NSR rules that contain these deficiencies. As a result, the South Coast AQMD's NSR rules are conditionally approvable with respect to Section 173 and contain only insignificant differences which tend to make the rules more stringent, than the model rule, and since the rules which are being conditionally approved are similar and equivalent to the draft rule which was subject to public comment and since the effect of the conditional approval will be to lift the construction prohibition for PM and NO_x sources, EPA finds that good cause exists for taking action on the South Coast AQMD's NSR rules without additional comment on those rules (See 5 U.S.C. Section 553(b)(B), Administrative Procedure Act). Further, new rules will be submitted by May 7, 1981 which will be subject to notice and comment. Therefore, EPA takes final action to conditionally approve the South Coast AQMD's NSR rules (permit program portion of the NAP) with the exception of the provisions noted above which are disapproved.

The State, South Coast AQMD, and SCAG have assured EPA that they will submit the material to correct the minor deficiencies noted in the April 1, 1980 notice and discussed in the PUBLIC COMMENTS section of this notice. EPA therefore takes final action to conditionally approve the following portions of the South Coast Air Basin NAP:

1. For ozone, CO, PM, and NO_x, emission inventory, emission reduction estimates, attainment provision, permit program, and resources.
2. For ozone and CO, legally adopted measures and extension requirements.
3. For ozone, extension requirements for VOC RACT.
4. For PM, modeling.

To correct the minor deficiencies, the State must submit the following material as SIP revisions by the following dates:

New Source Review

1. By May 7, 1981, NSR rules must be revised and submitted as an SIP revision. The rules must satisfy Section 173 and 40 CFR 51.18, "Review of new sources and modifications." In revising the South Coast AQMD's NSR rules, the State/AQMD must address (1) any new requirements in EPA's amended regulations for NSR (45 FR 31307, May 13, 1980 and 45 FR 52676, August 7, 1980) which the AQMD rules do not currently satisfy and (2) those deficiencies cited in EPA's Evaluation Report Addendum which still apply despite EPA's new NSR requirements (contained in Document File NAP-CA-9 at the EPA library in Washington D.C. and the Region IX Office).

Resources

1. By May 20, 1981, a commitment to submit annual implementing agency fiscal and personnel commitments to implement the South Coast Air Basin NAP.

Ozone and Carbon Monoxide

1. By May 20, 1981, a refined emission inventory for the South Coast Air Basin for (1) CO which is based upon winter emissions and (2) for VOC.
2. By May 20, 1981, revised emission reduction estimates for each year for the adopted control measures which are based upon the refined emission inventories.
3. By May 20, 1981, a schedule for the submittal of the revised emission reduction estimates for the pre-1982 control measures that are not yet adopted.
4. By May 20, 1981. Written evidence of local adoption of legally enforceable commitments and implementation schedules consistent with reasonable further progress for the six transportation control measures presently found to be reasonable.
5. By May 20, 1981. A schedule to analyze alternative packages of transportation control measures, including but not limited to those measures listed in Section 108(f)(1)(A) of the Clean Air Act.
6. By May 20, 1981. The Southern California Association of Governments (SCAG) greater weight and equal proportion programming policy and procedures as they relate to prioritization and funding of "air quality projects" and "Highway Projects" and justification that the NAP provisions are consistent with Section 176(d) of the Clean Air Act.

Particulate Matter

1. By December 31, 1981, a refined emission inventory which includes estimates of emissions from traditional and nontraditional (fugitive dust) sources for the South Coast Air Basin.
2. By December 31, 1981, documentation for the PM design value used to determine the allowable PM emission level, and a modeling analysis using the new emissions inventory data which shows the emission reductions necessary to provide for attainment of the PM NAAQS by December 31, 1982.
3. By December 31, 1981, revised emission reduction estimates per control measure for each year which are based upon the revised emission inventory.
4. By May 20, 1981. A work program for modeling, a commitment and schedule to study and adopt nontraditional PM control measures.

and a commitment to implement those control measures necessary to provide for attainment.

Nitrogen Dioxide

1. By May 20, 1981. An annual average emission inventory for the South Coast Air Basin.

2. By May 20, 1981. The results of an air quality analysis giving a preliminary quantification of the total emission reductions needed to attain the NO_2 NAAQS.

3. By May 20, 1981. Revised emission reduction estimates for each year which are based upon the revised emission inventory for the control measures that are adopted.

4. By May 20, 1981. A schedule and work program for the submittal of a detailed air quality analysis giving the final quantification of the needed emission reductions needed to attain the NO_2 NAAQS.

5. By May 20, 1981. A commitment and schedule to develop and adopt NO_2 control measures and a commitment to implement those control measures necessary to provide for attainment.

Final Action of the NAP

Since the major deficiency concerning I/M has not been corrected, EPA is taking final action to disapprove the NAP for ozone and CO. This action continues the construction prohibition for these two pollutants.

Since the major deficiencies noted in the April 1, 1980 notice for NO_2 and PM have been corrected and only minor deficiencies remain, EPA is taking final action to conditionally approve the NAP for PM and NO_2. As a result, the current prohibition on construction of certain major new or modified sources in the South Coast Air Basin is no longer in effect for NO_2 and PM sources.

In those areas for which the State of California has submitted approvable or conditionally approvable NAPs in accordance with the requirements of Part D of the Clean Air Act, EPA has a responsibility to take final action as soon as possible in order to lift the construction prohibition. Since the NO_2 and PM portions of the NAP are conditionally approvable for the South Coast Air Basin, EPA finds that good cause exists for making this action immediately effective. Under Section 307(b)(1) of the Clean Air Act, judicial review of today's final action is available *only* by the filing of a petition for review in the United States Court of Appeals for the appropriate circuit within 60 days of today. Under Section 307(b)(2) of the Clean Air Act, the requirements which are the subject of today's notice may *not* be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

Conditional Approval Procedure

A discussion of conditional approval and its practical effect appears in two supplements to the General Preamble (44 FR 38583, July 2, 1979 and 44 FR 67192, November 23, 1979). Conditional approval of the NAP requires the State to submit additional material by the deadlines specified in today's notice. There will be no extensions granted to the condition of approval deadlines being promulgated today. EPA will follow the procedures described below when determining if the State has satisfied the conditions.

1. If the State submits the required additional documentation according to schedule, EPA will publish a notice in the Federal Register announcing receipt of the material. EPA will also announce that the conditional approval is continued pending EPA's final action on the submittal.

2. EPA will evaluate the State's submittal to determine if the conditions are fully met. After EPA's review is completed, a Federal Register notice will be published proposing to either (1) find the conditions have been met and approve the submittal or (2) find the conditions have not been met and disapprove the submittal. If the submittal is disapproved, the Section 110(a)(2)(I) prohibitions on construction would be effective.

3. If the State fails to submit the required materials to meet a condition, EPA will publish a Federal Register notice shortly after the expiration of time limit for the submittal. The notice will announce that the conditional approval is withdrawn, the NAP is disapproved, and the Section 110(a)(2)(I) prohibition on construction is in effect.

Certain deadlines for satisfying conditions have been changed from those proposed and are being promulgated today without further notice and comment. EPA finds that for good cause additional notice and comment on these deadlines are unnecessary (see 5 U.S.C. Section 553(b)(B), Administrative Procedure Act). The State is the party responsible for meeting the deadlines and the State has agreed to the deadlines. In addition, the public has had an opportunity to comment generally on the concept of conditional approval and on what deadlines should apply for these conditions (44 FR 38583, July 2, 1979 and 45 FR 21271, April 1, 1980).

40 CFR Part 52 Rescissions

EPA is taking final action to rescind certain federally promulgated regulations from 40 CFR Part 52 as proposed. No supplemental revisions or public comments addressed EPA's proposed rescissions.

VOC RACT Requirements

The April 4, 1979 General Preamble (44 FR 20376) requires agencies to submit VOC RACT regulations for certain sources located in ozone nonattainment areas. The first set of RACT regulations were required for sources covered by the Group I CTG documents published before January 1978. Regulations for sources covered by the Group I documents were to have been submitted by January 1, 1979. A second set of RACT regulations are required for sources covered by the GROUP II CTG documents, published between January 1978 and January 1979. Regulations for sources covered by the Group II documents were to have been submitted by January 1, 1981 (45 FR 78121, November 5, 1980). Regulations must be submitted in order for the Part D requirements of the ozone portion of the South Coast Air Basin NAP to be fully approvable. Further, these requirements have been set forth in 40 CFR 52.223.

Attainment Dates

The 1979 edition of 40 CFR Part 52 lists, in the Subpart for California, the applicable deadlines for attaining the NAAQS (attainment dates) required by Section 110(a)(2)(A) of the Act. For each nonattainment area where a NAP provides for attainment by the deadlines required by Section 172(a) of the Act, the new deadlines are substituted on California's attainment data chart in 40 CFR Part 52. The earlier attainment dates will be referenced in a footnote to the chart. Sources subject to plan requirements and deadlines established under Section 110(a)(2)(A) prior to the 1977 Amendments remain obligated to comply with those requirements, as well as the new Section 172 requirements. Congress established new attainment dates under Section 172(a) to provide additional time for previously regulated sources to comply with new, more stringent requirements, and to permit previously uncontrolled sources to comply with the newly applicable emission limitations. These new deadlines were not included to give sources that failed to comply with pre-1977 plan requirements by the earlier deadlines more time to comply with those requirements. As noted by

Congressman Paul Rogers in discussing the 1977 Amendments.

Section 110(a)(2) of the Act made clear that each source had to meet its emission limits "as expeditiously as practicable," but not later than three years after approval of a plan. This provision was not changed by the 1977 Amendments.

It would be a perversion of clear Congressional intent to construe Part D to authorize relaxation or delay of emission limits for particular sources. The added time for attainment of the National Ambient Air Quality Standards was provided, if necessary, because of the need to tighten emission limits or bring previously uncontrolled sources under control. Delays or relaxation of emission limits were not generally authorized or intended under Part D (123 Cong. Rec. H 11953, daily ed. November 1, 1977).

To implement Congress' intention that sources remain subject to pre-existing plan requirements, sources cannot be granted variances extending compliance dates beyond the attainment dates established prior to the 1977 Amendments. EPA cannot approve such compliance date extensions, even though a NAP with a later attainment date has been approved. However, a compliance date extension beyond a pre-existing attainment date may be granted if it will not contribute to a violation of an ambient standard or a PSD increment (44 FR 20373–74, April 4, 1979).

In addition, sources subject to pre-existing plan requirements may be relieved of complying with such requirements if a NAP imposes new, more stringent control requirements that are incompatible with controls required to meet the pre-existing regulations. Decisions on the incompatibility of requirements will be made on a case-by-case basis.

Note.—EPA has determined that this action is "specialized," and therefore not subject to the procedural requirements of Executive Order 12044.

Authority: Sections 110, 129, 171–178, and 301(a) of the Clean Air Act, as amended [42 U.S.C. 7410, 7429, 7501–7508, and 7601(a)].

Dated: January 12, 1981.

Douglas M. Costle,

Administrator.

Note.—Incorporation by reference of the State Implementation Plan for the State of California was approved by the Director of the Federal Register on July 1, 1982.

Subpart F of Part 52 of Chapter I of Title 40 of the Code of Federal Regulations is amended as follows:

Subpart F—California

1. Section 52.220, paragraph (c) is amended by adding subparagraphs (47)(i)(B), (58)(ii), (63), (65), (66), (67), (68), (69,) and (70), as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(47) * * *

(i) * * *

(B) New or amended rules 462, 481, and 1104.

(58) * * *

(ii) South Coast AQMD.

(A) New or amended Rules 1107, 1106, 1106.1 and 1128.

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(63) The following portions of the *California Environmental Quality Act* submitted on October 20, 1980, by the Governor's designee: Sections 21000; 21001; 21002; 21002.1; 21061; 21063; 21065; 21080.1; 21080.4; 21080.5 (a), (b), (c) and (d); 21081; 21082; 21100; 21104; 21151; 21153; 21160.

* * * * *

(65) The *South Coast Air Basin Control Strategy* (Chapter 16 of the Comprehensive Revision to the State of California Implementation Plan for the Attainment and Maintenance of Ambient Air Quality Standards), submitted on July 25, 1979 by the Governor's designee. Those portions of the *South Coast Air Basin Control Strategy* identified by Table 16–1, "Location of Plan Elements Which Meet Clean Air Act Requirements," together with Rules 1115 and 1126, comprise the submitted nonattainment area plan control strategy. The remaining portions are for informational purposes only.

(66) Revised regulations for the following APCD's, submitted on February 7, 1980, by the Governor's designee.

(i) South Coast AQMD.

(A) New or amended Rule 461.

(67) Revised regulations for the following APCD's, submitted on April 2, 1980, by the Governor's designee.

(i) South Coast AQMD.

(A) New or amended Rule 1122.

(68) Revised regulations for the South Coast AQMD, submitted on April 3, 1980, by the Governor's designee.

(i) New or amended Rules 1301, 1303, 1304, 1305, 1306, 1307, 1310, 1311, and 1313.

(69) Revised regulations for the South Coast AQMD submitted on April 23, 1980, by the Governor's designee.

(i) New or amended Rules 464, 465, 1123, and 1125.

(70) Revised regulations for the following APCD's submitted on August 15, 1980, by the Governor's designee.

(i) South Coast AQMD.

(A) New or amended Rules 1302 and 1306.

2. Section 52.222 is amended by adding subparagraph (b)(2), and removing and reserving paragraph (c), as follows:

§ 52.222 Extensions.

* * * * *

(b) * * *

(2) South Coast Air Basin for NO_x and particulate matter (PM).

(c) [Reserved].

* * * * *

3. Section 52.223 is amended by adding subparagraphs (b)(3), (c), and (c)(1) as follows:

§ 52.223 Approval status.

* * * * *

(b) * * *

(3) South Coast Air Basin for NO_x and PM.

* * * * *

(c) The Administrator finds that the plan does not satisfy all the requirements of Part D, Title I of the Clean Air Act as amended in 1977, for the nonattainment areas listed in this paragraph.

(1) South Coast Air Basin for ozone and CO.

4. In § 52.229, paragraph (a) is removed and reserved.

5. Section 52.223 is amended by adding subparagraph (a)(3), as follows:

§ 52.232 Part D conditional approval.

(a) * * *

(3) *The South Coast Air Basin portion of the California SIP.* The following material must be submitted as SIP revisions by the following dates.

(i) For ozone, CO, NO_x and PM:

(A) By May 7, 1981, the NSR rules must be revised and submitted as an SIP revision. The rules must satisfy Section 173 of the Clean Air Act and 40 CFR 51.18, "Review of new sources and modifications." In revising the South Coast AQMD's NSR rules, the State/AQMD must address (1) any new requirements in EPA's amended regulations for NSR (45 FR 51307, May 13, 1980 and 45 FR 52676, August 7, 1980) which the AQMD rules do not currently satisfy and (2) those deficiencies cited in EPA's Evaluation Report Addendum which still apply despite EPA's new NSR requirements (contained in Document File NAP–CA–9 at the EPA Library in Washington, D.C. and the Regional Office).

(B) By May 20, 1981. A commitment to submit annual implementing agency fiscal and personnel commitments to implement the South Coast Air Basin NAP.

(ii) For ozone and CO:

(A) By May 20, 1981. A refined emission inventory for the South Coast

Air Basin for (1) CO which is based upon winter emissions and (2) for VOC.

(B) By May 20, 1981. Revised emission reduction estimates for each year for the adopted control measures which are based upon the refined emission inventories.

(C) By May 20, 1981. A schedule for the submittal of the revised emission reduction estimates for the pre-1982 control measures that are not yet adopted.

(D) By May 20, 1981. Written evidence of local adoption of legally enforceable commitments and implementation schedules consistent with reasonable further progress for the six adopted transportation control measures.

(E) By May 20, 1981. A schedule to analyze alternative packages of transportation control measures, including but not limited to those measures listed in Section 108(f)(1)(A) of the Clean Air Act.

(F) By May 20, 1981. The Southern California Association of Governments (SCAG) greater weight and equal proportion programming policy and procedures as they relate to prioritization and funding of "air quality projects" and "Highway Projects" and justification that the NAP provisions are consistent with Section 176(d) of the Clean Air Act.

(iii) For particulate matter:

(A) By December 31, 1981, a refined emission inventory which includes estimates of emissions from fugitive dust sources for the South Coast Air Basin.

(B) By December 31, 1981, documentation for the PM design value used to determine the allowable PM emission level, and a modeling analysis using the new emissions inventory data which shows the emission reductions necessary to provide for attainment of the PM NAAQS by December 31, 1982.

(C) By December 31, 1981, revised emission reduction estimates per control measure for each year which are based upon the revised emission inventory.

(D) By May 20, 1981. A commitment and schedule to study and adopt non-traditional PM control measures and a commitment to implement those control measures necessary to provide for attainment.

(iv) For nitrogen dioxide:

(A) By May 20, 1981. An annual average emission inventory for the South Coast Air Basin.

(B) By May 20, 1981. The results of an air quality analysis giving a preliminary quantification of the total emission reductions needed to attain the NO_2 NAAQS.

(C) By May 20, 1981. Revised emission reduction estimates for each year which are based upon the revised emission inventory for the control measures that are adopted.

(D) By May 20, 1981. A schedule and work program for the submittal of a detailed air quality analysis giving the final quantification of the needed emission reductions needed to attain the NO_2 NAAQS.

(E) By May 20, 1981. A commitment and schedule to develop and adopt NO_2 control measures and a commitment to implement those control measures necessary to provide for attainment.

6. Section 52.233 is revised by adding subparagraph (a)(3), as follows:

§ 52.233 Review of new source and modifications.

(a) * * *

(3) South Coast AQMD.

(i) In Rule 1306(a)(i), submitted on April 3, 1980, sentence 3 is disapproved.

(ii) In Rule 1306(d)(1)(B)(ii), submitted on April 3, 1980, the following portion of the rule is disapproved: "which have occurred during the highest three years of the last five year period, divided by three, provided the applicant demonstrates that such permit units have been operated at least 90 days during each of such three years."

(iii) In Rule 1307(a) submitted on August 15, 1980, the following portion of the rule is disapproved: "greater than 68 kilograms (150 pounds) per day, except carbon monoxide, for which the value is an increase greater than 340 kilograms (750 pounds) per day."

7. Section 52.237 is amended by adding subparagraph (a)(1), as follows:

§ 52.237 Part D disapproval.

(a) The following portions of the California SIP are disapproved because they do not meet the requirements of Part D of the Clean Air Act.

(1) The portions of the *South Coast Air Basin Control Strategy* that pertain to an I/M program.

8. Section 52.252 is amended by adding subparagraph (b)(2)(ii) to read as follows:

§ 52.252 Control of degreasing operations.

* * * * *

(b) * * *

(2) * * *

(ii) South Coast AQMD.

* * * * *

9. In § 52.238, the "Metropolitan Los Angeles Intrastate" line is revised to read as follows:

§ 52.238 Attainment dates for national standards.

* * * * *

Air quality control region and nonattainment area	Pollutants						
	TSP		SO_2		NO_2	CO	O_3
	Primary	Secondary	Primary	Secondary			
* * *							
South Coast Air Basin	h	c	d	e	h	i	i

10. Section 52.253 is amended by revising paragraph (b)(2) to read follows:

§ 52.253 Metal surface coating thinner and reducer.

* * * * *

(b) * * *

(2) In the following portions of the Metropolitan Los Angeles Intrastate Region, this section is either fully rescinded or partially rescinded subject to the conditions specified as follows:

(i) This section is fully rescinded for the Ventura County APCD.

(ii) This section is rescinded for magnet wire insulators, can and coil coaters, metal parts coaters, and auto assembly line coaters which are subject to and in full compliance with Rules 1107, 1115, 1125, and 1126 in the South Coast AQMD.

* * * * *

11. Section 52.255 is amended by removing and reserving paragraph (b)(1)(vii), and by adding paragraph (b)(3) to read as follows:

§ 52.255 Gasoline transfer vapor control.

* * * * *

(b) * * *

(3) The control requirements of this section are rescinded in the following air pollution control districts:

(i) South Coast AQMD.

* * * * *

12. Section 52.256 is amended by revising paragraph (b) to read as follows:

§ 52.256 Control of evaporative losses from the filling of vehicular tanks.

* * * * *

(b) This section is applicable in the Metropolitan Los Angeles, Sacramento

Valley and San Joaquin Valley Intrastate Air Quality Control Regions, except as follows:

(1) In the following portions of the Metropolitan Los Angeles Intrastate Region, this section is rescinded.

(i) South Coast AQMD.

* * * * *

[FR Doc. 81-2066 Filed 1-20-81; 8:45 am]

BILLING CODE 6560-26-M

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40 CFR Part 52

[A-1-FRL 1729-6]

Approval and Promulgation of Implementation Plans; Revision

AGENCY: Environmental Protection Agency.

ACTION: Final Rule.

SUMMARY: The Director of the Rhode Island Department of Environmental Management (DEM) submitted on August 28, 1980 a request for EPA approval of a revision to the Rhode Island State Implementation Plan (SIP). This revision constitutes a variance from Regulation 8, "Sulfur Content of Fuels" of DEM's Rules and Regulations for the Prevention, Control and Abatement, and Limitation of Air Pollution which requires fuel oil burning sources to use fossil fuel containing 0.55 pounds or less of sulfur per million Btu heat release (approximately equivalent to 1 percent by weight). The revision allows an alternative emission reduction option for control of sulfur dioxide in accordance with EPA's controlled trading policy (Federal Register Vol. 44, No. 239, Tuesday, December 11, 1979), commonly refered to as the "Bubble Policy." This revision allows the Narragansett Electric Company to increase its sulfur-in-fuel oil content from 1 percent to 2.2 percent at its electric power generating station on South Street in Providence during such times that it ceases operation or burns natural gas at its electric power generating station on Manchester Street in Providence. EPA published a proposed approval of this revision on October 24, 1980 (45 FR 70513). No letters of comment were received during the thirty (30) day comment period which ended November 24, 1980. EPA is today approving this revision.

EFFECTIVE DATE: January 21, 1981.

FOR FURTHER INFORMATION CONTACT: Marcia L. Spink, Air Branch, Environmental Protection Agency, Region I, Room 1903, J.F.K. Federal Building, Boston, Massachusetts 02203, (617) 223-4448.

ADDRESSES: Copies of the Rhode Island revision document, which is incorporated by reference, are available for public inspection during regular business hours at the Environmental Protection Agency, Region I, Room 1903, J.F.K. Federal Building, Boston, Massachusetts 02203; Public Information Reference Unit, Environmental Protection Agency, 401 M Street SW., Room 2401, Washington, D.C. 20460; and the Rhode Island Department of Environmental Management, 75 Davis Street, Room 204, Cannon Building, Providence, Rhode Island 02908.

SUPPLEMENTARY INFORMATION: On October 24, 1980 (45 FR 70513) EPA proposed approval of a revision to the Rhode Island SIP which would allow the Narragansett Electric Company (NEC) to increase its sulfur-in-fuel oil limit from 1 percent to 2.2 percent at its electric power generating station on South Street in Providence when it ceases operation or burns natural gas at its electric power generating station on Manchester Street in Providence. This revision involves a variance from Regulation 8, "Sulfur Content of Fuels," of DEM's Rules and Regulation for the Prevention, Control and Abatement, and Limitation of Air Pollution and is being undertaken in accordance with EPA's controlled trading policy (Federal Register, Vol. 44, No. 239, Tuesday, December 11, 1979), commonly referred to as the "Bubble Policy."

The SIP revision and EPA's reasons for approving it were explained in the Notice of Proposed Rulemaking, cited above, and will not be repeated here. No comments having been received, EPA is now taking final action to approve the revision.

EPA finds good cause for making this revision immediately effective for the following reasons:

1. The revision to the SIP is already in effect under State law and EPA approval imposes no additional regulatory burden.

2. The NEC estimates fuel cost savings of 2.7 to 4 million dollars annually as a result of the revision.

3. The revision will result in a 600,000 barrel per year reduction of imported oil.

Under Section 307(b)(1) of the Clean Air Act, judicial review of (this action) is available *only* by the filing of a petition for review in the United States Court of Appeals for the appropriate circuit within 60 days of today. Under Section 307(b)(2) of the Clean Air Act, the requirements which are the subject of today's notice may *not* be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

After evaluation of the State's submittal, the Administrator has determined that the Rhode Island revision meets the requirements of the Clean Air Act and 40 CFR part 51. Accordingly, this revision is approved as a revision to the Rhode Island SIP.

(Sec. 110(a) of the Clean Air Act, as amended, 42 U.S.C. 7401 et seq.)

Dated: January 12, 1981.

Douglas M. Costle,
Administrator.

Note.—Incorporation by reference of the State Implementation Plan for the state of Rhode Island was approved by the Director of the Federal Register on July 1, 1980.

Part 52 of Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

Subpart OO—Rhode Island

1. Section 52.2070, paragraph (c) is amended by adding subparagraph (13) as follows:

§ 52.2070 Identification of plan.

* * * * *

(c) * * *

(13) A revision to Regulation 8, "Sulfur Content in Fuels," for the Narragansett Electric Company, Providence, submitted on August 28, 1980 by the Director of the Department of Environmental Management.

[FR Doc. 81-2072 Filed 1-20-81; 8:45 am]

BILLING CODE 6560-26-M

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40 CFR Part 180

[PH-FRL 1731-4; PP 4F1514/R296]

Polyamide Polymer Derived From Sebacic Acid

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes an exemption from the requirement of a tolerance for polyamide polymer derived from sebacic acid, vegetable oil acids with or without dimerization, terephthalic acid and/or ethylenediamine when used as an encapsulating medium for methoprene only.

EFFECTIVE DATE: Effective on January 21, 1981.

ADDRESS: Written objections may be submitted to the: Hearing Clerk, Environmental Protection Agency, Rm. M-3708, 401 M St. SW., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: John Shaughnessy, Registration Division (TS-767), Office of Pesticide Programs,

Environmental Protection Agency, Rm. E-229, 401 M St. SW., Washington, D.C. 20460, (202-426-9458).

SUPPLEMENTARY INFORMATION: EPA issued a notice that published in the Federal Register of November 18, 1980 (45 FR 76211) that the agency proposed deleting an inert ingredient from § 180.1001(d) where it is listed without restriction, and establishing an exemption from the requirement of a tolerance for polyamide polymer derived from sebacic acid, vegetable oil acids without dimerization, terephthalic acid and/or ethylenediamine when used as an encapsulating medium for methoprene only.

No comments or requests for referral to an advisory committee were received by the agency in response to this notice of proposed rulemaking.

It has been concluded, therefore, that the proposed regulation to 40 CFR Part 180 will protect the public health, and is established as set forth below.

Any person adversely affected by this regulation may, on or before February 20, 1981, file written objections with the Hearing Clerk, EPA, Rm. M-3708 (A-110), 401 M St. SW., Washington, D.C. 20460. Such objections should be submitted in quintuplicate and specify the provisions of the regulation deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

Under Executive Order 12044, EPA is required to judge whether a regulation is "significant" and therefore subject to the procedural requirements of the Order or whether it may follow other specialized development procedures. EPA labels these other regulations "specialized." This regulation has been reviewed and it has been determined that it is a specialized regulation not subject to the procedural requirements of Executive Order 12044.

Effective date: January 21, 1981.

(Sec. 408(e), 68 Stat. 514 (21 U.S.C. 346a(e)))

Dated: January 13, 1981.

Edwin L. Johnson,

Deputy Assistant Administrator for Pesticide Programs.

Therefore, Subpart D of 40 CFR Part 180 is amended as follows:

§ 180.1001 [Amended]

1. By deleting "Polyamide polymer derived from sebacic acid, vegetable oil acids with or without dimerization, terephthalic acid and/or ethylenediamine" from the table under § 180.1001(d).

2. By adding a new § 180.1053 to read as follows:

§ 180.1053 Polyamide polymer derived from sebacic acid; exemption from requirement of tolerance.

Polyamide polymer derived from sebacic acid, vegetable oil acids with or without dimerization, terephthalic acid and/or ethylenediamine is exempted from the requirement of a tolerance when used as an encapsulating medium for methoprene only.

[FR Doc. 81-2017 Filed 1-20-81; 8:45 am]

BILLING CODE 6560-32-M

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40 CFR Part 180

[PH-FRL 1732-1; PP OF2277/R276A]

1-Naphthaleneacetic Acid; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final Rule; correction.

SUMMARY: This document corrects a regulation that appeared in the Federal Register of November 28, 1980 (45 FR 78666), in which the lethal dose appeared incorrectly.

FOR FURTHER INFORMATION CONTACT: Robert J. Taylor, Product Manager (PM) 25, Registration Division (TS-767), Office of Pesticide Programs, Environmental Protection Agency, Rm. E-359, 401 M St. SW., Washington, D.C. 20460, (202-755-2196).

SUPPLEMENTARY INFORMATION: EPA issued a notice that published in the Federal Register of November 28, 1980 (45 FR 78666) that a regulation had been established for residues of the plant growth regulator 1-naphthaleneacetic acid. In the 2nd column, 6th paragraph, the acute oral LD_{50} appeared incorrectly. Please correct the document to read: "The toxicology data evaluated included an acute oral LD_{50} (1-NAA) with a LD_{50} of 1 gram (g)/kilogram; * * *"

(Sec. 408(e), 68 Stat. 514, (21 U.S.C. 346a(e)))

Dated: January 13, 1981.

Edwin L. Johnson,

Deputy Assistant Administrator for Pesticide Programs.

[FR Doc. 81-2022 Filed 1-19-81; 8:45 am]

BILLING CODE 6560-32-M

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40 CFR Part 762

[OPTS-66006A; TSH-FRL 1681-1]

Fully Halogenated Chlorofluorocarbons; Exemption for Spinnerette Release Agents

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA proposed that the essential use exemption from the Agency's chlorofluorocarbon rule for spinnerette release agents be revoked. This proposal was published in the Federal Register of June 14, 1979 (44 FR 34167). EPA is now promulgating a final rule which revokes the essential use exemption effective March 1, 1982.

EFFECTIVE DATE: This rule becomes effective March 1, 1982.

ADDRESS: The official record of rulemaking is available from 8:00 a.m. to 4:00 p.m., Monday through Friday, except legal holidays by contacting: Joni T. Repasch, Office of Pesticides and Toxic Substances, Environmental Protection Agency, Rm. E-447, 401 M St., SW., Washington, D.C. 20460, (202-755-8050).

FOR FURTHER INFORMATION CONTACT: John B. Ritch, Jr., Director, Industry Assistance Office, Office of Toxic Substances, (TS-799), Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460, Toll Free (800-424-9065), In Washington, DC: (554-1404).

SUPPLEMENTARY INFORMATION: EPA's chlorofluorocarbon rule (40 CFR 762) prohibits the manufacture, processing, and distribution in commerce of fully halogenated chlorofluoroalkanes (chlorofluorocarbons) for nonessential aerosol propellant uses, published in the Federal Register of March 17, 1978 (43 FR 11318). Section 762.21(b) contains an essential use exemption for "release agent for molds used in the production of plastic and elastomeric materials". EPA had interpreted this exemption to include spinnerette release agents.

A spinnerette is a metal plate with tiny holes (0.1-1.0 mm diameter) used in the formation of man-made fibers. By preventing filaments from adhering to the spinnerettes, release agents keep the spinnerettes clean, thereby ensuring the quality of the filaments.

EPA proposed to immediately revoke the exemption for spinnerette release agents, because of the Agency's belief that substitutes for chlorofluorocarbon-propelled spinnerette release agents had been developed. This proposal was published in the Federal Register of June 14, 1979 (44 FR 34167). Comments on that proposal have convinced EPA that the substitutes available as of the date of the proposed rule were not as effective as EPA had thought and that industry needs more time to develop a substitute. Therefore, EPA is revoking the essential use exemption for spinnerette release agents, but delaying the effective date of the action until March 1, 1982.

This change is based on comments submitted to EPA in response to the June 14, 1979 proposal and on information obtained as a result of a visit to a DuPont Corporation plant in Kinston, N.C. Comments on the June 14, 1979 proposal were received from fiber producers, producers of substitute products, a distributor for one of the producers, and a trade association.

Producers of substitute products reported that they needed more time to refine their product delivery system. At the same time fiber producers reported that, while substitute products were available, they were not completely satisfactory for all fibers and processes used.

Generally the problems encountered in developing a substitute can be summarized as follows: (1) Spinnerette release agents are used on many different types of fibers and in many different processes making it unlikely that one substitute product could service all of the industry's needs, (2) carbon dioxide-propelled products have unsatisfactory spray characteristics, (3) hydrocarbon-propelled products have flammability problems, and (4) there are potential toxicity problems from products containing methylene chloride or 1,1,1-trichloroethane.

EPA now recognizes that the spinnerette release agents marketed at the time the proposed rule was published were inadequate to serve all the needs of fiber producers. However, EPA believes that acceptable substitute products can be developed, and that the additional year extension granted under this rule will be sufficient time to complete the development of a substitute. This extension has the effect of actually allowing approximately two additional years from the original proposal date for development and testing of substitute products.

Under Executive Order 12044, EPA is required to judge whether a regulation is "significant" and therefore subject to the procedural requirements of the Order or whether it may follow other specialized development procedures. EPA labels these other regulations "specialized". This proposed regulation has been reviewed and determined to be a specialized regulation not subject to the procedural requirements of Executive Order 12044.

The rulemaking record for this action consists of the rulemaking record for EPA's chlorofluorocarbon rule under 40 CFR Part 762 published in the Federal Register of March 17, 1978, and the following documents:

Federal Register Notices

1. "Fully Halogenated Chlorofluorocarbons: Spinnerette Release Agents", EPA, Published June 14, 1979 (44 FR 34127)
2. USEPA, OPTS, "Essential Use Determinations—Revised", March 17, 1978

Company File

A. W. Chesterton Co.:
Main Comment, Aug. 31, 1979
Aerosol Systems, Inc.:
Communication, Dec. 28, 1978
Communications (2), Apr. 12, 1979
Allied Chemical Co.:
Communication, Jan. 24, 1979
Communication, July 13, 1979
Main Comment, Sept. 10, 1979
Communication, Nov. 5, 1979
American Enka Co.:
Main Comment, Sept. 5, 1979
D. B. Powers Corporation:
Communication, Jan. 9, 1979
Communications (4), Apr. 12, 1979
Communication, May 10, 1979
Communication, Aug. 30, 1979
Main Comment, Sept. 6, 1979
Communication, Sept. 26, 1979
Communication, Nov. 26, 1979
Diamond Hill:
Communication, Apr. 11, 1979
Communication, Aug. 30, 1979
Dixie Bearings, Inc.:
Communication, May 15, 1979
Communication, May 29, 1979
E. I. DuPont deNemours and Company:
Communication, Dec. 27, 1978
Main Comment, Aug. 28, 1979
EPA Memorandum on Nov. 15, 1979, site visit, Dec. 31, 1979
Eastman Kodak Company:
Main Comment, Aug. 31, 1979
Essex Chemical Corporation:
Communication, July 2, 1979
Fenwal Inc.:
Communication, June 20, 1979
Fibers Industries:
Main Comment, Aug. 27, 1979
Hoescht Fibers Industries:
Main Comment, Sept. 10, 1979
Man-Made Fiber Producers Assn., Inc.:
Main Comment, Sept. 11, 1979
Communication, Sept. 24, 1979
Monsanto Textile Co.:
Main Comment, Sept. 10, 1979
Main Comment, Sept. 28, 1979
O'Brian-Maco Co., Inc.:
Communication, Mar. 12, 1979
Sherwin-Williams Co.:
Communication, June 28, 1979
Sprayon Products:
Communication, Mar. 19, 1979

(Sec. 6, Pub. L. 94-469, 90 Stat. 2020 (15 U.S.C. 2605))

Dated: January 12, 1981.

Douglas M. Costle,

Administrator.

40 CFR Part 762 is amended by revising § 762.21(b) to read as follows:

§ 762.21 Essential use exemptions.

* * * * *

(b) Release agents for molds used in the production of plastic and elastomeric materials; including spinnerette release agents until March 1, 1982.

* * * * *

[FR Doc. 81-2305 Filed 1-20-81; 8:45 am]
BILLING CODE 6560-01-M

GENERAL SERVICES ADMINISTRATION

41 CFR Parts 5A-1, 5A-2

[APD 2800.3 CHGE 18]

Procurement Regulations; Miscellaneous Amendments

AGENCY: General Services Administration.

ACTION: Final rule.

SUMMARY: Chapter 5A, General Services Administration Procurement Regulations, is amended to (1) prescribe examples of "Age on Delivery" type clauses applicable to procurements of shelf-life items, and (2) update solicitation cover page notices and miscellaneous text provisions by deletion or revision. The purpose of these changes is to improve regulatory coverage of contract clauses and procurement procedures.

EFFECTIVE DATE: This regulation is effective February 13, 1981.

FOR FURTHER INFORMATION CONTACT: Philip G. Read, Director, Federal Procurement Regulations Directorate, Office of Acquisition Policy (703-557-8947).

PART 5A-1—GENERAL

Subpart 5A-1.3—General Policies

1. In § 5A-1.370-3, paragraph (a) is revised and paragraph (c)(7) is added as follows:

§ 5A-1.370-3 Use of warranty.

(a) The procuring director shall approve the use of a warranty in supply contracts, except when the warranty is in the specification, or the contractor's commercial warranty is included, or a warranty is prescribed in the GSPR for specific situations. To the extent practicable, a clause substantially similar to that prescribed in § 5A-1.370-4 shall be used. Warranty clauses that differ substantially shall be approved or prescribed by the Assistant Administrator for Acquisition Policy.

* * * * *

(c) * * *

(7) Warranty clauses applicable to shelf-life items should, to the extent feasible, indicate the nature of and the degree to which deterioration will be permitted during the warranty period,

unless such factors are adequately covered in the product specification.

* * * * *

2. In § 5A–1.370–4, paragraph (a) of the "Warranty of Supplies" clause is revised to read as follows:

§ 5A–1.370–4 Warranty clause for supply contracts.

* * * * *

Warranty of Supplies

(a) Notwithstanding inspection and acceptance by the Government of supplies furnished under the contact or any provision of this contract concerning the conclusiveness thereof, the Contractor warrants that for *(enter specific warranty period such as "one year after specified date," or other applicable warranty provision) all supplies* furnished under this contract will be free from defects in material or workmanship and will conform with the specifications and all other requirements of this contract. Further, the Contractor certifies that the supplies will be suitable for their intended purpose. Unless otherwise provided, this warranty period shall begin 60 days after the date of shipment.

* * * * *

PART 5A–2—PROCUREMENT BY FORMAL ADVERTISING

The table of contents for Part 5A–2 is amended to delete § 5A–2.202–51 in its entirety.

Sec.

* * * * *

5A–2.202–51 [Deleted]

* * * * *

Subpart 5A–2.2—Solicitation of Bids

§ 5A–2.202–4 [Amended]

1. In § 5A–2.202–4, paragraphs (e) and (l) are amended by changing the words "Quality Control Division" to "quality assurance activity." In paragraph (k), the organizational title "Office of Standards and Quality Control (FM)" is changed to "Office of Engineering and Technical Management (FRE)."

§ 5A–2.202–51 [Removed]

2. Section 5A–2.202–51 is removed in its entirety.

3. Section 5A–2.202–70 is revised as follows:

§ 5A–2.202–70 Unsolicited samples, descriptive literature, or brand name references.

(a) The following clause shall be inserted in each solicitation (applicable to formally advertised procurements).

Unsolicited Samples, Descriptive Literature, or Brand Name References

When procurement is effected under specifications or purchase descriptions (other than "brand name or equal") and the Government does not specifically request bid samples, descriptive literature, or references to brand names, models, or part numbers as an integral part of the bid, bids which are accompanied by any of the foregoing will be rejected unless it is clear from the bid or accompanying papers that the samples, descriptive literature, or references to brand names, models, or part numbers are not intended to qualify the bid and that the bidder proposes to furnish items fully in accordance with the specifications or purchase descriptions. When offers contain unsolicited material such as samples, descriptive literature, or references to brand names, models, or part numbers, the Government will not be responsible in any way for determining whether the items which are offered meet the Government's requirements set forth in the applicable specifications or purchase descriptions.

(End of Clause)

(b) The following notice shall be included on GSA Form 1602, Notice Concerning Your Solicitation for Offers, except when "brand name or equal" items are being procured.

Unsolicited Material

Bidders are cautioned that the submission of unsolicited bid samples or descriptive literature, or references in the bid to brand names, models, or part numbers may cause rejection of the offer. The bidder's attention is directed to the clause entitled "Unsolicited Samples, Descriptive Literature, or Brand Name References."

(End of Notice)

§ 5A–2.203–1 [Amended]

4. Section 5A–2.203–1 is amended by removing the parenthetical statement at the end of paragraph (c).

5. Section 5A–2.203–70 is revised as follows:

§ 5A–2.203–70 Solicitation Copies clause.

The following clause shall be included in all solicitations (may be included as a notice on GSA Form 1602 if a cover page is used):

Solicitation Copies

To reduce costs, only a single copy of this solicitation is mailed to addressees on our bidders mailing list, except that complete bid sets are furnished to active bidders who responded to previous solicitations for similar commodities. If additional copies are required (see Block 9, page 1, for number of bid copies to be submitted), you may reproduce them yourself, provided they are complete in every respect, or you may obtain them from the GSA Business Service Center, *(insert address and phone number of the BSC serving the issuing office).*

(End of Clause)

PART 5A–7—CONTRACT CLAUSES

The table of contents for Part 5A–7 is amended to remove § 5A–7.103–58 and to add new § 5A–7.103–70, as follows:

Sec.

* * * * *

5A–7.103–58 [Deleted]

* * * * *

5A–7.103–70 Acceptable age of shelf-life items.

* * * * *

Subpart 5A–7.1—Fixed-Price Supply Contracts

1. Section 5A–7.103–57 is amended by removing paragraphs (c) and (d) in their entirety.

§ 5A–7.103–57 Standby-stock clauses.

* * * * *

(c) [Deleted]
(d) [Deleted]

§ 5A–7.103–58 [Removed]

2. Section 5A–7.103–58 is removed in its entirety.

3. Section 5A–7.103–70 is added as follows:

§ 5A–7.103–70 Acceptable age of shelf-life items.

In accordance with § 101–27.208–2 of the Federal Property Management Regulations, contractors are required to furnish shelf-life items within a specified number of months from the date of manufacture or production of the supplies.

(a) When the required shelf-life period is 12 months or less, the corresponding age-on-delivery period as suggested in FPMR 101–27.208–2 is relatively short (i.e., one or two months from date of manufacture). Consequently, if the supplies are to be laboratory tested by the Government prior to acceptance, the acceptable age period should stop at the time the supplies are offered for inspection and testing. Otherwise, contractors may be prejudiced by unusual delays on the part of the Government in completing the testing process. Accordingly, in these circumstances a clause substantially as follows shall be used:

Acceptable Age of Supplies

The supplies furnished under this contract shall not be more than ——— months old, beginning with the first full month after the date of manufacture marked on the container. For the purpose of this clause, supplies shall be considered to be furnished (1) when they are offered to the Government for inspection and testing, or (2) on the date of shipment if the supplies are shipped under a Quality Approved Manufacturer Agreement. If the age of the supplies furnished under this contract is greater than the specified number of months, the Government may exercise its rights under the Inspection clause of this contract (Article 5, Paragraph (b), Standard Form 32).

(End of Clause)

(b) If the minimum shelf-life period of the supplies being procured is more than 12 months and/or if lengthy testing is not involved, the end of the acceptable age period may be either the time of shipment or the time of delivery, as considered appropriate by the contracting officer. In these circumstances, a clause substantially as follows shall be used. (Note.—This example is applicable to procurements which cover both shelf-life and non-shelf-life items, or items with different shelf-life periods.)

Age on Delivery

Included in the item description of each shelf-life item covered by this procurement is a statement regarding the "age of delivery" of the item. The age of the item(s) shall not exceed the number of months shown in the item description, counted from the first day of the month following the month of manufacture to the date of actual delivery to the delivery point(s) specified herein. If the age of the supplies delivered under this contract is greater than the number of months shown, the Government may exercise its rights under the Inspection clause of this contract (Article 5, Paragraph (b), Standard Form 32).

(End of Clause)

4. Section 5A-7.103-71 is revised as follows:

§ 5A-7.103-71 Special discount terms.

(a) When inspection is at destination and laboratory testing is required prior to acceptance of the supplies, the following clause shall be used. The number of days to be entered in the blank space in the clause shall be the number of days needed for testing and/or analysis, including the time required for shipping samples of the supplies to the testing facility. The period entered shall not exceed 30 calendar days unless the quality assurance activity furnishes a written statement that additional time is absolutely necessary.

(b) If Standard Form 33-A is not incorporated as a part of the solicitation (as in the case of the small purchases), the parenthetical statement at the beginning of the clause shall be omitted.

Special Discount Terms

(Article 9, Discounts, of Standard Form 33-A, Solicitation Instructions and Conditions, is deleted and the following is substituted therefor.)

(a) Prompt payment discounts offered for payment within less than 20 calendar days will not be considered in evaluating offers for award. However, offered discounts of less than 20 calendar days will be taken if payment is made within the discount period, even though not considered in the evaluation of offers.

(b) Prior to final acceptance, the supplies described in this solicitation will be laboratory tested for conformance with the specifications cited. It is estimated that such testing will require a maximum of calendar days, and any discount period offered will begin that same number of calendar days after the date of arrival of the supplies at the destination or port of embarkation, or on the date a correct invoice or voucher is received in the office specified by the Government, if the latter date is later than the date of final acceptance. Payment is deemed to be made for the purpose of earning the discount on the date of mailing of the Government check.

(End of Clause)

(Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c))

Dated: December 18, 1980.

William B. Ferguson

Acting Assistant Administrator for Acquisition Policy

[FR Doc. 81-2098 Filed 1-19-81; 8:45 am]

BILLING CODE 6820-61-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[Docket No. 20828; FCC 80-628]

Miscellaneous Rules Relating to Common Carriers

AGENCY: Federal Communications Commission.

ACTION: Reconsideration of Final Decision in Docket No. 20628 (Final Decision).

SUMMARY: The Reconsideration Order modifies and clarifies the Final Decision of the Second Computer Inquiry. It amends Rule 64.702(c) by modifying the structure under which certain communications common carriers may provide enhanced services and consumer premises equipment. The Order removes certain carriers from the list of those required to provide these services and equipment under that structure. It also adopts a bifurcated schedule for deregulation of consumer premises equipment.

DATES: Effective dates: Carrier provided customer premises equipment which is federally tariffed or not in service as of March 1, 1982 and is offered to consumers after that date must be detariffed prior to March 1, 1982. The date by which all other carrier provided customer premises equipment must be detariffed is undetermined; Rule Amendment effective February 3, 1981.

ADDRESS: Federal Communications Commission, 1919 M Street NW., Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Kathleen B. Levitz, Common Carrier Bureau, (202)632-9342.

In the matter of amendment of § 64.702 of the Commission's rules and regulations (second computer inquiry), Docket No. 20828. *Memorandum Opinion and Order* (45 FR 31319).

Adopted: October 28, 1980.

Released: December 30, 1980.

By the Commission: Chairman Ferris issuing a separate statement; Commissioners Quello, Fogarty and Jones concurring and issuing a statement.

1. On April 7, 1980 the Commission adopted its *Final Decision* in the Second Computer Inquiry. 77 FCC 2d 384 (1980). Petitions seeking reconsideration of this decision were filed by 34 parties, including those filing oppositions to the petitions and replies. Appendix A contains a list of all parties filing pleadings on reconsideration. The pleadings focus on four general areas: network services, carrier provision of customer-premises equipment (CPE), corporate separations requirements, and legal considerations. We will consider each of these areas in turn.

I. Network Services

a. Summary of Comments

2. In the *Final Decision* we adopted a regulatory scheme under the Communications Act of 1934, as amended, that distinguishes between the common carrier offering of basic transmission services and the provision of enhanced services. This scheme is embodied in Section 64.702 of the Commission's Rules, 47 CFR § 64.702. Under this decision basic services are common carrier communications services and regulated as such under Title II of the Act, whereas enhanced services are not. Our action in this regard represents an adjustment of the regulatory demarcation adopted over a decade ago in the *First Computer Inquiry*[1] required by technolological developments that have occurred since then and the resulting need to establish more clearly the parameters of regulation under Title II of the Act.

3. In petitions for reconsideration various parties have focused on the basic/enhanced dichotomy. Generally, the parties seek either clarification or expansion of the definition of basic service. For its part, Tymnet requests that the Commission confirm that Tymnet's Tariff FCC No. 2 is an enhanced service offering.[2] American Telephone and Telegraph Co. (AT&T) and GTE Service Corp. (GTE) requests that the Commission expand the definition of basic service in order to permit telephone companies to offer voice and data storage and retrieval applications as part of basic service. In particular, AT&T is concerned that the restrictions on storage and retrieval applications could prevent the offering of the call answering and advance calling features of its Custom Calling II Service. AT&T submits that basic service must not be construed so narrowly as to limit the technological capabilities and evolution of the network, and that services that can be more effectively provided by the network should be so provided. It also asserts that mass calling services (e.g. "Dial-It") must be provided through the network as part of basic service. In addition, AT&T requests that the Commission modify the *Final Decision* to permit basic service to include information storage, so long as "once information is given to the communications facility, its progress towards the destination is subject to only those delays caused by congestion within the network or transmission priorities given by the originator *or the called party.*" (AT&T Comments at 38.) AT&T and GTE also contend that code and protocol conversion should be permitted as part of a basic service. In addition, while the Commission stated its intent to institute an inquiry in this regard, GTE contends that it is procedurally incorrect for the Commission to prohibit the provision of code and protocol conversion as a part of basic service before the Commission initiates the proposed inquiry.

4. A number of parties have urged the Commission to reject the arguments of the petitioners seeking modification of the basic/enhanced dichotomy.[3] These parties argue that the distinction drawn in the *Final Decision* between basic and enhanced services is reasonable and workable. Moreover, they claim that not only would further attempts at clarification prove futile, such attempts would create uncertainty in the marketplace as to which services could be provided without regulation and could lead to the eventual regulation of the enhanced service market. Additionally, they argue that the parties seeking modification of the *Final Decision* have offered no new evidence that warrants revisiting these issues.

5. With respect to the information storage issues, the parties opposing modification of the *Final Decision* contend that such applications are properly classified as enhanced and that to permit them to be offered as part of a basic service would completely blur the distinction between basic and enhanced service. The parties further argue that any demarcation between basic and enhanced service other than the one adopted would lead to burdensome *od hoc* determinations. Rebutting AT&T's contentions, parties claim that storage services such as call answering and advance calling are enhanced as these services allow customers to store and retrieve information for purposes other than to facilitate the transmission of information and perform the same function as existing telephone answering equipment.

6. Similarly, the parties assert that "Dial-It" goes far beyond the ancillary functions which may be offered with traditional telephone service. They reject AT&T's argument that these services must be provided through the network, pointing out that these services cannot readily be distinguished from a number of voice or simulated voice services already ubiquitously available from unregulated data-base storage companies. (CBEMA Opposition at 43.)

7. In response to AT&T's proposal to allow information storage based on priorities established by the called party, CBEMA states that the Commission should make clear that all voice storage systems are enhanced regardless of whether the storage is accomplished by the originator or the called party. Moreover, parties such as ADAPSO state that if telephone companies were permitted to offer voice storage services as part of basic service, the monopoly ratepayer will bear the expense of switching equipment designed and installed with extra capacity needed only to compete with existing enhanced services and CPE. The parties also assert that the threat of voice storage and retrieval as part of a basic service would establish carrier dominance over such offerings and force heretofore unregulated vendors to seek regulated status to offer the same degree of service.

8. Taking issue with the proposal that carriers be permitted to offer code and protocol conversion as part of basic service, various parties contend that to permit such conversions would totally distort the basic/enhanced dichotomy. These parties reject the argument that code and protocol conversion must be provided within the carrier's network as part of basic service and point out the current availability of these services in the marketplace, none of which is provided within the network. Finally,

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[1] *Regulatory and Policy Problems Presented by the Interdependence of Computer Communications Services and Facilities*, 28 FCC 2d 291 (1970) (*Tentative Decision*); 28 FCC 267 (271) (*Final Decision*), *aff'd in part sub nom.* GTE Service Corp. v. FCC, 474 F. 2d 724 (2d Cir. 1973), *decision on remand*, 40 FCC 2d 293 (1973).

[2] Tymnet noted the diminished need for clarification as a result of our determination that Telenet's tariff F.C.C. No. 1, which is comparable to Tymnet's Tariff F.C.C. No. 2, constitutes an enhanced service. *See* Memorandum Opinion and Order, FCC 80-425, released July 22, 1980.

[3] *See e.g.*, Oppositions of ADAPSO, CBEMA, Delphi, IBM, Sperry Univac, SPCC. (See Appendix B for complete names of these organizations.)

concern is expressed that significant anticompetitive abuses could arise from allowing carriers to offer code and protocol conversion as part of their basic service offerings.

b. Discussion

9. The arguments summarized above essentially address the issue of whether we have drawn a reasonable boundary between basic and enhanced services or whether we should have drawn the basic/enhanced demarcation at some other point. Those requesting modification would seek to have us expand the basic category to include services that fall within the enhanced category as set forth in our *Final Decision*. In assessing the merits of these arguments it is important to understand the underpinnings of our basic/enhanced dichotomy. First, the decision is premised on our factual determination that under Title II of the Act basic services are regulated as common carrier communications services whereas enhanced services are not. Second, the record supported our conclusion that the distinction set forth in the *Final Decision* between basic and enhanced services constituted the most enduring demarcation which could be established as to those services which when offered by common carriers are regulated under Title II and those which are not. At the same time numerous reasons were given as to why this demarcation should not be contaminated by subjecting some enhanced services to Title II regulation, but not others. See *Final Decision* at paras. 106–113. Under this structure "the scope of Commission regulation is focused on those services which are clearly within the contemplation of the Communications Act and which serve as the foundation for all enhanced services . . . . This structure enables us to direct our attention to the regulation of basic services and to assuring non-discriminatory access to common carrier telecommunications facilities by all providers of enhanced services." *Id.* at para. 118.[4]

10. A basic transmission service is the common carrier offering of transmission capacity for the movement of information between two or more points. Various basic services are offered depending upon the amount of bandwidth employed, the analog or digital characteristics of the transmission medium, and other line conditioning parameters that affect overall transmission quality. In providing such services a carrier offers to the public channel(s) of communications with associated network switching and routing. In this sense, a basic service is the offering of a "transmission pipeline" in contrast to the myriad services that are dependent upon, but different in kind, from the pipeline service. This is reflected in our basic service category and forms the underlying premise for the demarcation between basic and enhanced services. The basic services category therefore must be broad enough to insure our ability to carry out our statutory mandate as set forth in Section 1 of the Act and our concamitant responsibilities under Title II, but narrow enough to exclude other services that are separate from the common carrier offering.

11. In this context, we are asked to reassess our demarcation between basic and enhanced services. AT&T and GTE contend that various information storage and "mass calling" services should be included within the basic category. In considering these contentions, we must distinguish between two separate and very different considerations. The first is whether the proposed services fall within the transmission pipeline concept which we have described as basic service. The second is whether the proposed services, even if enhanced, cannot be offered apart from intergration within the communications network which provides basic service. The former implicates the scope of Title II regulation. The latter implicates the requirement that AT&T engage in the provision of enhanced services only through a separate subsidiary utilizing separate computer facilities.

12. Upon review and consideration of the pleadings filed on reconsideration, we are of the view that the classification scheme for basic and enhanced services as set forth in the *Final Decision* should be affirmed. In the *Final Decision* we noted that many enhanced services feature voice or data storage and retrieval applications, and thus in an enhanced service the content of the information need not be changed but may simply involve subscriber interaction with stored information. *Id.* at para. 97. The information storage and mass calling services raised by petitioners fall into this category. These are services that are dependent upon the availability of common carrier facilities, but the end product is not the offering of a common carrier communication service. Moreover, to include voice or data information storage services within the ambit of a basic service would be to destroy any meaningful regulatory boundary that otherwise exists and unduly expand the common carrier offering beyond one of providing the appropriate communications pipeline for the transmission of information to services in which communications is merely a factor of production.

13. These conclusions are reinforced when we examine the specific concerns which AT&T has raised, such as its "Dial-It," and "Custom Calling II" offerings.[5] AT&T markets "Dial-It" as a "mass calling service" which can be subdivided into public announcement services (PAS) and media stimulated calling (MSC) services. Under PAS, information such as news, stock prices, sports reports, etc. is recorded or stored within the carrier's network for retrieval by a subscriber to the service. MSC also involves the storage of recordings or information within the network, but is promoted through such media as radio or television to produce highly concentrated, peaked, calling patterns, unlike PAS. For example, the public might be invited to call different specified numbers to register their approval or disapproval of policy position on a given public issue. AT&T analogizes such services to time and weather information as support for their classification as basic services. Moreover AT&T argues that classifying voice storage services as enhanced could prevent the offering of various features of its Custom Calling II service, which involves storage of telephone messages in the network for subsequent sending or retrieval—commonly referred to as "advanced calling" and "call answering".

14. As presently structured, Dial-It and Custom Calling II constitute enhanced services under our *Final Decision*. They constitute more than the common carrier offering of a channel of communication and clearly fall outside the scope of a basic service. See *Final Decision* at paras. 93–98. Needless to say these offerings present only a small sample of the type of voice storage related services that may be offered consumers. AT&T notes that it may introduce additional offerings which involve the storage of information. (AT&T comments at 35.) To alter the basic category as suggested by AT&T and GTE would be to bring within the scope of basic service as host of

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[4] The basic/enhanced dichotomy is applicable to both domestic and international services provided over common carrier facilities.

[5] On August 27, 1980, special permission No. 80-440 was issued under delegated authority whereby AT&T was authorized to advance the effective date of tariff revisions for "Dial-It" service, on the condition that the tariff have an expiration date of no later than March 1, 1982, without prejudice to the Commission ordering an earlier expiration date. While this service was viewed as enhanced, the staff was also aware of its pendency before the Commission on reconsideration in this proceeding, and thus did not reject the tariff.

computer-based voice storage and retrieval applications and customer-interactive services that far exeed basic transmission and related switching and routing functions. Not only might this require common carrier regulation of such services under Title II, but it would undermine any workable demarcation as to the boundary between basic and enhanced services. Technological advances are negating network differentiation of voice and non-voice transmissions. Customers can technically use Custom Calling II to store data now; as networks become increasingly digital, there will be no way to distinguish between voice storage and other types of information storage services. This compels that any enduring and workable demarcation between basic and enhanced services exclude information storage and retrieval services—both voice and data—from the basic category.

15. The parameters of a basic service should be dictated by the purposes of the Act and the statutory scheme set forth in Title II for the regulation of common carrier communications services. Our affirmance of the regulatory demarcation set forth in the *Final Decision* recognizes this and the corresponding need for regulatory stability and greater certainty in the marketplace. To impose regulation over some enhanced services, in light of our determination that information storage and retrieval services are not common carrier communications services, would be to impose a scheme of Title II regulation that attempts to distinguish regulated and unregulated enhanced services. This we specifically rejected in our *Final Decision* at paras. 102–113. Evidence has not been submitted on reconsideration to warrant a contrary conclusion.

16. AT&T's attempts to classify these services as basic by analogizing to its time and weather recordings also must be rejected. The provision of time and weather information has never been determined to be a common carrier communictions service. Their availability may, in fact, be noted in a given tariff for informational purposes, but these offerings are not regulated and are not marketed as discrete common carrier services pursuant to tariff.[6] AT&T is seeking to have Dial-It and Custom Calling II regulated as common carrier communications services, *i.e.*, separately offered pursuant to tariffed charges as discrete services. The PAS portion of Dial-It represents the offering of an information retrieval service whereby a subscriber pays to obtain information, whether it be news, stock reports, or other matters of broad interest. That which is being offered to the public as a common carrier communication service is not a transmission service; only the transmission component of the service is tariffable. The same is true for the messages and recordings stored within the network for MSC services and the advanced calling and call answering features of Custom Calling II.

17. While Dial-It as currently structured is an enhanced service, there are network control features that are properly associated with a basic service and tariffable as part of a common carrier service. For example, "choke" techniques are built into the network to block excessive calls and to avoid congestion and interference with other network traffic that is not MSC. The ability of a carrier to include capabilities within a basic service to handle peaked demands on the network or to accommodate special signalling needs associated with a given vendor's enhanced service offerings was clearly provided for in our *Final Decision*. We stated that "we are in no way restricting the carrier's ability to take advantage of advancements in technology in designing its telecommunications network." *Id.* at para. 96. Moreover, nothing in this proceeding precludes a carrier from imposing the costs of such capabilities on those users of the service. Because AT&T's "Dial-It" offering is an enhanced service, it must be offered on a nonregulated basis through a separate corporate entity. To allow an appropriate transition period, AT&T must detariff "Dial-It" by March 1, 1982. This transition period is consistent with that allowed other carriers for the detariffing of their enhanced services. *See Memorandum Opinion and Order*, FCC 80-425, released July 22, 1980.

18. Aside from the arguments which suggest that various enhanced services are common carrier communications services, the argument is made that certain services should be provided as part of an integrated basic transmission network on the theory that they must be offered in the network to be efficiently offered or ubiquitously available. Thus a separate issue is whether compelling reasons exist for allowing various services, even though enhanced, to be offered through network computer facilities of those carriers that would otherwise be subject to the separate subsidiary requirement. Based on the record in this proceeding, we conclude that evidence has not been presented that warrants such a determination. To the contrary, parties such as Delphi Communications Corp., IBM and CBEMA demonstrate that current voice storage services, and specifically AT&T's Custom Calling II features, actually employ entirely separate computer facilities which need not be co-located with the carrier's central office facilities to be provided or ubiquitously available on an economic basis.[7]

19. No evidence has been submitted to warrant departure from our conclusion in the *Final Decision* regarding the requirement that AT&T offer enhanced services only through a separate corporate entity. (As discussed below, we are removing from GTE the separate subsidiary requirement.) At the same time we recognize that strict adherence to such structural separation may foreclose the availability to consumers of certain enhanced services if, for example, state of the art technology dictates that only through the use of network facilities could the carrier provide a given enhanced service, or if complying with the separate subsidiary requirement results in the imposition of unreasonable costs upon consumers. Should such situations arise we are prepared to assess the merits of granting a waiver of our separation requirement for a specific service after notice and opportunity to comment on the request is afforded interested parties.

20. It is not our desire to impose unnecessarily increased costs upon consumers, or to cause them to pay unreasonable prices for a specific enhanced service in order to preserve the integrity of structural separation. In order to assess the economic costs of maintaining structural separation for a given enhanced service, we must determine whether the offering of an enhanced service through the subsidiary's facilities would impose upon consumers unreasonable costs outweighing the benefits which we have herein identified as underlying our adaption of the separate subsidiary requirement in the first instance. In so doing, we recognize that the calculus for assessing the merits of any waiver required for existing or future services must be premised on the existence of the separate subsidiary and its computer facilities, and must include not only the costs of not waiving the separate facilities requirement but also the potential for cross-subsidization and

[6] To the extent time and weather recordings continue to be offered as a public service, we are not foreclosing any carrier from continuing to offer these features on a non-regulated basis.

[7] See IBM's Opposition at 21–23, Delphi's Opposition at 9–12, CBEMA Reply at 20–22.

other unacceptable effects upon ratepayers.

21. At this time AT&T's arguments to justify the provision of certain enhanced services through its common carrier network facilities are too generalized to warrant our granting a waiver. Its arguments seek to expand the parameters of a basic service, an action we have rejected. Reclassification of services is not a proper subject for consideration in determining whether a particular requirement, for example, facilities separation, should be waived. Petitioners carry the burden of demonstrating that concerns about any cross-subsidization or other anticompetitive effects which may arise from grant of a waiver are outweighed by the possibility of imposition of unreasonable costs upon consumers, or unavailability of an enhanced service, if the waiver is not granted. As part of a waiver request, a petitioner will be expected to provide detailed economic and technical information to support its assertions. The Commission, in its discretion, may give notice and opportunity for comment on the request, and will make every effort to act on petitions for waiver within 90 days of the expiration of any ordered pleading cycle. Where opportunity for comment is afforded, parties generally will be given 30 days after release of the public notice to file comments and 15 days thereafter for the filing of reply comments.

22. AT&T suggests that paragraph 95 of the *Final Decision* should be modified to permit within a basic service the originator "or the called party" to control the progress of information through the network. It perceives an artificial distinction being created between storage within the network that occurs at the direction of the called party from that storage which takes place at the direction of the originating party (e.g. the difference between call answering and advance calling). As to the storage of information within the network, however, there was no intent to distinguish basic services on such a basis. We stated: "Thus in a basic service, once information is given to the communications facility, its progress toward the destination is subject to only those delays caused by congestion within the network or transmission priorities given by the originator" *Id.* at para. 95. The phrase "transmission priorities given by the originator" was intended to focus on consumer options in obtaining different levels of service quality, for example, if subscribing to a relatively inferior grade of service affected transmission priorities within the network.[8] There was no intention to include within a basic service the ability of the originator of a message to control storage within the network. Services involving storage or retrieval of information within the network are enhanced—independent of the actions of the sender or recipient. This is reflected in the language of Section 64.702(a).[9] The phrase "or involve subscriber interaction with stored information" makes no distinction between the originator and intended recipient.

23. In addition to those issues involving storage within the network; various parties have proposed alternative definitions for enhanced service. NTIA argues that the definitions of basic and enhanced are imprecise and proposes that an "encryption" test be used to distinguish these services. IBM, the original proponent of the encryption test, argues that the test was suggested "simply to demonstrate a characteristic of pure transmission"; but is incomplete for classifying basic and enhanced service. (IBM Reply at 5) It notes for example that storage and retrieval and other programmed actions on user's information would satisfy the encryption criterion, but would be enhanced under our definition. Tymnet, on the other hand, proposes that the Commission classify as enhanced all "service offerings in which computer processing power is dynamically applied to a bit stream during transmission." (Tymnet Opposition at 8).

24. It is essential that the delineation between basic and enhanced service comport with the statutory scheme established by Congress. This entails the identification of common carrier services from other services provided over a carrier's network. Within this framework we have set forth a classification scheme which adjusts the regulatory parameters of the service categories established in the *First Computer Inquiry*, while not restricting a carrier's ability to take advantage of advancements in technology in designing its telecommunications network. Neither NTIA's nor Tymnet's proposals are sufficient in this regard. NTIA's "encryption" test identifies a characteristic of a common carrier communications service; but, as NTIA itself recognizes, it is also descriptive of various information storage retrieval services which are enhanced. Nor does Tymnet's result in an understandable demarcation; it may, moreover, impair a carrier's ability to employ computer technology in providing basic services. The demarcation between basic and enhanced services set forth in the *Final Decision* comports with our congressional mandate and, while not conferring absolute precision as to the bounds of regulation, is a reasonable and workable regulatory demarcation. It draws as clear a line as is probably possible in a rapidly changing technological environment and will permit businesses to plan, invest, and innovate more free from uncertainty than would any of the other proposals which have been advanced during the four year course of this proceeding.

Protocol Conversion

25. As to our conclusion that code and protocol conversion services are enhanced, AT&T and GTE contend they should be able to offer them as part of their basic services. AT&T argues that the Commission should differentiate for regulatory purposes between various levels of protocol conversion. Other parties express total disagreement with the merits of their contentions, while still others suggest that the Commission should initiate the proceeding indicated at footnote 37 of the *Final Decision* if further examination is warranted.

26. To clarify any misconceptions about the scope of our determination, the *Final Decision* is not intended to restrict protocol conversion capabilities a carrier may employ internal to its own network. In a basic service, while various conversions may take place within the network, the result of the common carrier offering is not a change in protocol. For example, if information enters a carrier's network on protocol "A", it must exit the network on the same protocol, even though within the network it could be converted to "x", "y" or "z" protocols for network traffic management or security purposes. Nor does our prohibition prevent multiplexing of protocol "A" for output. The record on reconsideration does not support modification of our determination that the offering of code and protocol conversion capabilities external to the carrier's network transmission function is an enhanced service. Evidence is lacking to support the proposition that protocol conversion

[8] We do not intend to foreclose the use of message switching in which the progress of information, either voice or data, from origination to destination, is a function of both the priority chosen by the user and internal congestion within the network.

[9] Section 64.702 reads: (a) For the purpose of this Subpart, the term "enhanced service" shall refer to services, offered over common carrier transmission facilities used in interstate communications, which employ computer processing applications that act on the format, content, code, protocol or similar aspects of the subscriber's transmitted information; provide the subscriber additional, different, or restructured information; or involve subscriber interaction with stored information. Enhanced services are not regulated under Title II of the Act.

must be performed as part of a basic service. The market-place to date demonstrates that users are able to choose among an increasing number of alternatives—all of which are external to the basic transmission network—for performance of all levels of protocol conversion. These include providers of enhanced services, equipment manufacturers, and firms that provide specialized protocol converters. Moreover, to conclude that these activities constitute basic service would be to cloud the regulatory boundary that we have established and to disregard the fact that protocol conversions capabilities are now being offered completely external to the basic transmission network of underlying carriers.

27. At the same time we must reject GTE's argument that it is procedurally incorrect for the Commission to prohibit the provision of code and protocol conversion as part of a basic service prior to further examination in a separate inquiry. The thrust of this argument is based on the false premise that if a determination is made that it is in the public interest to have various protocol conversion services performed in conjunction with the basic transmission network of a carrier bound by the separate subsidiary requirement, the resulting service must therefore be basic. Needless to say, even in the event such a determination were made, the Commission has discretion to determine the terms and conditions under which code and protocol conversion may be incorporated into the underlying network, short of classifying the offering as a basic service. Thus we have not prejudged further consideration in a separate proceeding of the limits of permissible protocol conversion that may be employed within a given network, along with concomitant public interest considerations. We therefore affirm the basic/enhanced classification scheme as set forth in the *Final Decision*.

II. Customer-Premises Equipment (CPE)

a. Summary of the Final Decision

28. In the *Final Decision* we determined that the provision of customer-premises equipment (CPE) [10] was not communications common carriage. We determined that CPE offered by communications common carriers should be unbundled from charges for transmission service and that CPE should be provided on a non-tariffed basis. We provided for a transition period, lasting until March 1, 1982, during which this Commission, the Joint Board, state commissions and the carriers would complete transitional activities. We required that unbundled rates be filed by March 1, 1981 with the respective state commissions and that all carrier terminal equipment be detariffed by March 1, 1982. We further provided that, once unbundled, carrier provided residential CPE (including maintenance) be offered at pre-deregulation rates that would be fixed for the life of the instrument in order to insulate residential subscribers from any significant dislocations resulting from deregulation.

29. We further observed that it would be necessary to address a number of related issues during the transition, including depreciation rates, investment recovery and "prices at which terminal equipment is removed from carriers' rate bases." *Id.*, para. 166. We anticipated the need to initiate a "proceeding that would examine into possible changes to depreciation schedules and also address the basis upon which unsold equipment should be removed from a carrier's regulated rate base and books of account." *Id.*

b. Summary of Comments

30. Commenting parties addressed both our transition proposal—in some cases suggesting alternate approaches—and the desirability of including or excluding one or more elements within CPE.

31. Eleven parties argued for a longer transition period. Several parties suggested that the deadline for CPE deregulation be postponed until the Joint Board, or the Commission in a full hearing, considers the broad public interest implications of deregulation. WUI asked that the effective date of the transition be deferred until we have acted upon the various requests for clarification and provided an opportunity for comment. United, on the other hand, favored the earliest practicable date for detariffing of CPE, and suggested retention of the March 1, 1982, implementation date to assure the necessary proceedings are concluded as quickly as possible.

32. Four parties—GTE, NTIA, Centel and USITA—put forth alternative transition plans. Centel's plan would have the transition proceed in two stages. During the first stage, encompassing twelve to twenty-four months, Commission and Joint Board proceedings would lay the groundwork for the second stage. The length of the second stage, estimated to be between thirty-six and sixty months, would be established at the end of the groundwork phase. Carriers would be given flexibility in the sequence and timing of implementation. Carriers could choose to make transfers all at once or in stages, so long as the transition was completed by the Commission-prescribed deadline. Centel suggests that its transition plan could be implemented along with or could incorporate other transition alternatives. These would include a gradual reduction of the obligation to provide service to particular groups or classes of customers, and a freeze upon all additions to FCC accounts 231 (Station Apparatus) and 234 (Large Private Branch Exchanges) as of a fixed date, followed by amortization of the investment in those accounts over a fixed period.

33. USITA's alternative transition plan, like those suggested by NTIA and the GTE telcos, prescribes separate treatment for new and embedded CPE. On a specified date, the investment in the CPE accounts, including inside wiring, would be capped. The capped investment would be amortized over a period selected by the telephone company, not to exceed ten years. A two-year transition period would be provided. During this period, new CPE would be separately identified, accounted for and unregulated. Embedded CPE would continue under flexible regulation during this period while companies unbundled CPE from related services, and then transferred prices, revenues, investment and expenses relating to CPE to non-regulated accounts. Regulation would continue as to terminal equipment and related services associated with multi-party lines, pending further study.

34. NTIA's transition proposal would include inside wiring as part of CPE. Only new CPE would be detariffed by March 1, 1982 (or, alternatively, two years after the decision on reconsideration). Installations of CPE (and wiring) already in place on the specified date would continue under state tariff until retired or until some time limit set by the state commission, but not in excess of eight years. NTIA's plan requires unbundling of rates for embedded CPE prior to the specified date. NTIA's plan describes the manner in which sales of embedded CPE and wiring might take place during transition. It further provides that, at the

[10] Customer-premises equipment includes all equipment provided by common carriers and located on customer premises except over voltage protection equipment, inside wiring, coin operated or pay telephones, and multiplexing equipment to deliver multiple channels to the customer. This decision applies to CPE provided in the fifty states, the District of Columbia, Puerto Rico, and the Virgin Islands, as did the *Final Decision* (footnote 37 inadvertently was printed without listing the District of Columbia). *See also* fn. 12.

end of the transition period, those customers who had paid the full book value through amortization charges under the unbundled tariff rates would own the CPE and inside wiring.

35. The GTE telephone companies propose that new CPE be offered on a completely unregulated basis, subject only to separate accounting, beginning on the effective date of the decision on reconsideration. Old CPE, in place on the effective date of the reconsideration decision, would be removed from regulation over a transition period of three to five years to be determined by a Joint Board. Recovery of capital investment in embedded CPE would be permitted through accelerated depreciation or other modes of capital recovery. To the extent necessary to achieve recovery, increases in both interstate and intrastate CPE-related rates are contemplated under the GTE plan. Embedded CPE would continue to be provided on a bundled basis during the transition period. Revenues, investment and expenses associated with the embedded investment in CPE would remain in the regulated portion of the business during transition and would be subject to review by the appropriate commission.

36. In addition to those parties proposing a bifurcated transition approach to CPE deregulation, other parties identified transition issues which pertain solely to embedded CPE. Numerous parties asserted that unbundling of rates for embedded CPE cannot be accomplished by March 1, 1981. Many state commissions would soon be inundated with revised local exchange tariffs, which state commission staff would be required to review. Other parties note that we have neither required that the instrument charge, once unbundled, be cost-based, nor prescribed an unbundling methodology. Several parties contend that a transition period of less than eight years may result in increased revenue requirements for some telephone companies as a result of recapture of accelerated depreciation and of investment tax credits. Increased costs could be avoided by permitting a longer transition period for embedded CPE. In addition, arguments are advanced that any necessary rate changes and changes in separations or access charges should be phased in gradually, minimizing any dislocation which might result from an abrupt detariffing of all CPE. Uncertainty was also expressed as to the status of telephone cooperatives and municipally-owned telephone companies exempt by law from state commission regulation.

37. AT&T opposed a bifurcated transition, arguing that any such plan would create operational difficulties for the Bell System, because of the separate subsidiary requirement. Embedded CPE would remain with the regulated entity, while the new CPE would be provided by a separate subsidiary on an unregulated basis. This, it was argued, would inevitably lead to wasteful duplication of facilities and confusing treatment of customers.

38. CBEMA and IDCMA urged prompt completion of transition activities. CBEMA urged that unbundling be required as soon as possible, while recognizing that detariffing may not be feasible by March 1, 1982. IDCMA urged prompt transfer of all data communications CPE, both new and embedded, to AT&T's separate subsidiary, to prevent AT&T from using the transition period to reduce book value of CPE in preparation for a transfer at less than fair market value.

39. Our rate proposal for residential subscribers was criticized by numerous parties who asserted that the proposal prescribed local exchange rates in violation of Sections 2(b) and 221(b). It was also argued that, by failing to make allowance for increasing labor and transportation costs over time, frozen rates would be confiscatory. Some commenters asserted that prescription of frozen rates for CPE affiliates after March 1, 1982, runs counter to our basic premise that CPE should be provided on an unregulated, competitive basis.

40. A number of parties would have us take various actions which would limit the scope of future action by state commissions. Both AT&T and United would have us convey to the states our expectation that increased intrastate rates will be necessary to permit recovery of increased costs of more rapid depreciation. AT&T would have us announce our intention to preempt the state commissions as to valuation and transfer pricing of CPE and Centel would favor a similar announcement as to depreciation. AT&T asked that we consider steps to ensure uniformity in rate structures after CPE is unbundled. Centel urged us to preempt state action that would require formation of separate subsidiaries within a given state.

41. Several parties asserted that restrictions should be placed upon activities of one or more carriers during transition. Datapoint urged us to reconsider our finding that AT&T should be permitted to provide enhanced services and CPE through a subsidiary, and to bar AT&T from providing CPE on a competitive basis. NATA argued that telephone companies should be prohibited from offering CPE on a nonregulated basis during the transition. REA and the Alaska petitioners (Alaska PUC, ATA, ATU), asked that small and municipally-owned telephone companies be exempted from unbundling and detariffing.

42. A number of parties asked that we expedite consideration of issues pending in other dockets, or consolidate those issues in this proceeding for resolution. Among the proceedings mentioned were: CC Docket No. 79-105, on station connection accounting; CC Docket No. 78-196, revision to the Uniform System of Accounts; Amendments to Part 68 of the Commission's Rules to include inside wiring and party line equipment within the registration program; and the Joint Board proceeding in CC Docket No. 80-286.

43. Several parties suggested that inside wiring be deregulated along with CPE. Some commenters asserted that, absent deregulation of inside wiring, customers might be required to obtain private branch exchanges and associated instruments from an unregulated provider while the inside wiring would remain regulated.

44. A number of commenters argued that multi-party service is not insubstantial, especially in rural areas, and that some means should be provided whereby telephone companies could continue to provide such service notwithstanding general deregulation of CPE. One alternative suggested by the commenters was to amend Part 68 of the Commission's rules to bring CPE attached to multi-party lines within the registration program and subsequently deregulate such CPE. A related concern was that the *Final Decision* was silent on the status of CPE used with multi-party lines in connection with business and "farmer" services.

45. Motorola requested that we amend Section 64.702 specifically to exclude all mobile radio equipment from the definition of CPE. Both AT&T and SBS asked that we address the issue of whether earth stations are to be considered CPE. SBS argued that, at least in its own system, the earth station is an essential system component and should be provided under tariff. On the other hand, AT&T asserted that its enhanced service and CPE subsidiary or subsidiaries should be permitted to own and operate earth stations, in order to be fully competitive.[11]

[11] AT&T raised the issue in the context of the bar on ownership of "transmission facilities" by the separate subsidiary, suggesting that there are difficult questions involved in establishing the boundary between CPE and "transmission facilities" in the case of satellite earth stations. SBS, in its opposition, suggested that classification of all or a portion of a satellite earth station as CPE would

c. Discussion

46. In conferring jurisdiction upon this agency over "all instrumentalities . . . incidental to . . . transmission," Congress intended ". . . to give the FCC ability to regulate any charge or practice associated with a common carrier service in order to insure that the carrier operated for the public benefit." *Final Decision*, at para. 170. We affirm our determination that the provision of CPE is not communications common carriage and should be offered separate and apart from a carrier's tariffed services. The continued provision of CPE by common carriers under regulation impedes the evolution of a truly competitive CPE market. *Id.* at paras. 144–159. Although some of the commenting parties believe that one or more of the potential competitors should be barred from full competition, or subject to more stringent structural or accounting requirements, there is generally no dispute that CPE should be provided on a competitive basis. Given this, the issue before us, and the one receiving substantial comment on reconsideration, is the manner in which CPE should be deregulated.

47. In this regard we perceive three basic alternatives available to us. We could elect to proceed along the path delineated in the *Final Decision*, hoping to resolve the remaining issues in time for a single transition at March 1, 1982. On the other hand, we could eliminate the date certain for CPE deregulation and allow interested parties to submit transition plans as soon as practicable, with implementation of a given plan conditioned on regulatory determinations of depreciation, capital recovery and corresponding rate issues. Alternatively, we could bifurcate the transition and separately address here the deregulation of that CPE which does not result in the substantial dislocations alleged by various petitioners while designating implementation issues as to other CPE for further comment and study.

48. In weighing the comments and alternatives proposed, we conclude that modifications of our previous determinations are warranted. The transition mechanism outlined in the *Final Decision* required that CPE first be unbundled from local exchange rates and then removed from regulation by March 1, 1982. In order to insulate residential ratepayers from significant dislocation, we required carriers and affiliates to offer a CPE lease option to existing residential subscribers at unbundled, fixed rates. As we indicated above, both aspects received substantial criticism. However, various petitioners have suggested a bifurcated transition plan that would enable regulators to address separately equipment which is embedded in the separations process and tariffed with the various States. We find this approach to be reasonable. It would allow for an orderly transition to deregulation of that equipment where significant dislocations are alleged to arise if detariffing is to occur by March 1, 1982. Moreover it would not foreclose this Commission from proceeding with the deregulation of non-embedded CPE and that equipment tariffed at the federal level when offered in conjunction with interstate or foreign communications. The difficult transitional issues arise not in connection with the provision of new CPE, but in connection with the necessity to make adjustments to existing arrangements involving allocations of costs, investments and revenues associated with embedded equipment jointly used for both intrastate and interstate or foreign services. Deregulation of such existing or "embedded" CPE gives rise to different concerns from those associated with that CPE investment which is either not factored into the separations process or directly assigned to interstate services. A bifurcated approach would avoid the significant dislocations of an abrupt transition that are alleged to occur if all CPE is deregulated and removed from separations as of March 1, 1982.

49. Accordingly, for transitional purposes we will distinguish new CPE and federally tariffed CPE from that CPE which is tariffed at the state level and subject to the separations process. The latter we shall refer to as embedded CPE. On the other hand, "new CPE" is that equipment which is not in service as of March 1, 1982 and is offered to consumers after this date. For accounting purposes and compliance with the corporate structure requirements, therefore, new CPE is that equipment not in the subscriber's possession as of March 1, 1982. As of this date new CPE and associated maintenance must be separated from a carrier's basic service and offered on a nonregulated basis. Moreover, all equipment tariffed with this Commission in conjunction with interstate or foreign communications shall likewise be detariffed as of this date.[12] Under this scenario we are maintaining our implementation date set forth in the *Final Decision* of March 1, 1982 for new CPE and also that CPE which is tariffed at the federal level. To the extent that unbundling and detariffing of embedded CPE tariffed at the state level and subject to the separations process is not required as of March 1, 1982, the immediacy of the need for regulatory commissions to address all the relevant regulatory implications of such deregulation is diminished. As to embedded CPE we intend to institute a separate "implementation proceeding" to address the transitional mechanisms for deregulating this equipment.[13]

50. We recognize that a bifurcated approach requires that carriers subject to the resale structure make some operational changes. We do not believe, despite AT&T's assertion, that duplication of facilities will result from a bifurcation of the transition. One option, which we intend to address in the implementation proceeding, is the provision of maintenance and other related services for embedded CPE on an unregulated basis, after March 1, 1982. Under this approach there would be no real need for separate maintenance for regulated and nonregulated CPE. One carrier-affiliated installation and maintenance force could provide service for all CPE after that date.

51. We also recognize that under a bifurcated approach some customers may pay more than other for equivalent CPE, depending upon the date service was instituted, and that a single customer, ordering the same equipment and service both before and after the transition date, might be required to deal with different entities or pay different rates. Absent such an approach, however, the progress towards a more competitive equipment environment and the promise of a more efficient and reasonably priced service mandated by Section 1, 47 U.S.C. § 151, would be postponed. Offerings of new carrier-provided equipment would continue to be subject to suspicions of subsidy as a result of opportunities for pricing variations which inhere in the separations process. The bifurcation plan we have set forth freezes growth in CPE investment that is subject to the separations process as of March 1, 1982. Carrier-provided equipment offered

be equivalent to an exception from the transmission ownership bar.

[12] Excluded from the requirement is telex terminal equipment provided by the international record carriers which is being addressed separately in Docket No. 21005.

[13] Under this bifurcated approach, customers would continue their relationship with the telephone company as to their embedded CPE under local regulation until they terminated service, returned the equipment or until the end of the transition period. Any accounting changes required for the disposition of inventory as of March 1, 1982 will be addressed in the implementation proceeding.

after this date can be competitively provided relative to other equipment vendors. The advantages of such a plan are such that, on balance, we believe the public interest would best be served by the detariffing of CPE under a bifurcated plan.

d. Other Proceedings

52. As noted in paragraph 166 of the *Final Decision*, detariffing of CPE requires consideration not only of transition procedures, but also of separations implications, depreciation rates, investment recovery, asset valuation and transfer pricing. Efforts have begun in several areas. We recently appointed the members of the Joint Board in CC Docket No. 80-286, FCC 80-546, released September 25, 1980 which will consider, among other things, the separations implications of detariffing CPE. Moreover, in a separate proceeding, we have prescribed revised depreciation rates for eleven telephone companies which reflect, among other things, the effect of competition on terminal equipment lives.[14]

53. As part of Docket No. 20188 we have authorized carriers to employ the equal life group method of computing depreciation expense with respect to plant additions commencing in 1981. Alternative methods, including the use of capital recovery schedules, which allocate investment recovery on a straight line basis may also be employed for new additions. As to embedded investment, we permit the use of remaining life methods of calculating depreciation charges, subject to certain conditions. In order to implement these changes, a disaggregation of book reserves to plant categories may be required for some companies. These changes not only address a number of concerns the carriers have raised in the capital recovery area, but also facilitate identification of asset book values.

54. In CC Docket No. 79-105 we have prescribed accounting rules governing the sale of new CPE. These operations will be accounted for as non-telephone activities in separately identified sub-accounts by all carriers under the new rules. In addition, we conclude that existing accounting rules appropriately address sales of in-place CPE and maintenance of existing customer-owned terminal equipment pending the completion of transitional activities. We further amended the accounting rules to require expensing of inside wiring. The issue of whether the inside wiring portion of station connections should be detariffed is to be addressed in the next phase of that proceeding.

55. In the implementation proceeding which we will initiate shortly, we will address issues of capital recovery [15] and asset valuation, alternative mechanisms by which transition to an unregulated CPE environment may be achieved, and the appropriate time period for removal of embedded CPE investment from separations and a carrier's rate base. We will also address the potential deregulation of maintenance for embedded CPE as of March 1, 1982. Due consideration will be given to the views of consumers, carriers, state commissions and other interested parties. Because the implementation proceeding will address the manner in which embedded CPE tariffed at the state level is deregulated, we are modifying the *Final Decision* insofar as it required (a) that new state tariffs showing an unbundled charge for embedded CPE, (b) that rate levels for residential service be no higher following unbundling than before, and (c) that existing residential customers be offered an option to continue to lease the instrument(s), including maintenance, at pre-deregulation rates for a fixed period. These requirements are eliminated.

e. Applicability

56. *Inside Wiring.* Commenting parties are divided on the issue of whether inside wiring should be included within CPE and deregulated. The issue was not addressed in the earlier phases of this proceeding, and we believe that further comment is warranted before we determine whether, and to what extent, inside wiring should be deregulated. Accordingly, we will address this issue in a further notice of proposed rulemaking in CC Docket No. 79-105.

57. *Party Line.* In the *Final Decision*, at para. 161, n. 57, we excluded "CPE attached to residential party line service because such CPE cannot currently be registered under Part 68 of the Rules." Absent a control mechanism for connection to the network, there would be no institutional assurance that connection of non-carrier-provided terminal equipment to party lines would not cause harm to the telephone network,[16] or substantially disrupt service to other subscribers.

58. Both REA and RTC submitted comments in opposition to our exclusion of CPE attached to party lines. These parties note that the percentage of party line service is quite substantial in areas served by small companies, and that party line service is provided, on a functionally identical basis, to both business and residential subscribers. Moreover, practical problems arise if a regulatory scheme is imposed on party line CPE, but not other equipment. For some carriers a substantial portion of their equipment would continue to be regulated and subject to the separations process. In addition, carriers subject to the separate subsidiary requirement for the provision of CPE might also be required to separately offer and maintain regulated equipment. Upon reconsideration, we conclude that our definition of CPE subject to the *Final Decision* principles should be revised to include party line CPE. While such equipment is not registered under Part 68, we intend to examine in a separate proceeding what network and subscriber safeguards may be necessary to accommodate direct multi-vendor provision of CPE used in conjunction with multiparty service. Any necessary adjustments to the timing of party line CPE deregulation can be made in light of determinations made in that proceeding.

59. *Mobile Telephone Equipment.* The *Final Decision* did not expressly exclude all mobile radio equipment from the definition of CPE. At paragraph 161, n. 57, we noted that the status of mobile telephone equipment is currently being examined in the Cellular Mobile Radio proceeding, CC Docket No. 79-318, 77 FCC 2d 364 (1980). That proceeding only addresses mobile equipment used in conjunction with cellular systems. Motorola, suggesting that nothing in the rationale of the *Final Decision* indicates that such equipment be included in CPE, asks that we amend Section 64.702 expressly to exclude mobile radio equipment. Since this equipment can be provided on a competitive basis, there may be no reason for applying different policies. However, because the status of some mobile telephone equipment will be addressed in CC Docket No. 79-318, we believe that any determination with respect to such equipment should await final Commission action in that

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[14] The studies underlying these rates were completed prior to the *Final Decision*. Although these rates do not explicitly consider the impact of this decision, they do reflect the growth of terminal equipment competition over the past several years. Pending before the Commission is a request filed by AT&T on behalf of the Bell System companies that we prescribe new depreciation rates for accounts 231 (station apparatus) and 234 (large private branch exchanges), which accounts contain the vast majority of terminal equipment affected by the *Final Decision*.

[15] Represcription of depreciation rates for terminal equipment is expected to proceed on a parallel course, utilizing the existing processes. We believe this course to be desirable because of the need to closely coordinate our represcription of depreciation rates for jointly-used plant with affected state commissions. See 47 U.S.C. Sec. 220(i).

[16] For a definition of *harm*, see 47 C.F.R. Sec. 68.3(g).

proceeding, regardless of whether or not it is used solely with cellular systems.

60. *Satellite Earth Stations.* We have been asked to address the status of satellite earth stations when they are located on the customer's premises. Receive-only earth stations, since the adoption of the First Report and Order in CC Docket 78-374, 77 FCC 2d 205 (1979) need not be licensed. These earth stations, like CPE in general, are manufactured and sold by a number of carriers (including carrier affiliates) and independent entities. We believe that such stations are appropriately classified as CPE. Transmit earth stations that are located on the customer's premises present a different situation. In the offering of integrated satellite systems, such a transmit earth station could constitute a necessary component of the transmission offering for network control purposes. This may not be the case, however, for those entities desiring merely to offer transponder capacity to providers of other services. Whether transmit earth stations should be accorded a different status in such situations may warrant further consideration. However, this matter is more appropriately addressed in a separate proceeding. Accordingly, earth station equipment that requires licensing under Title III of the Act is not considered CPE under the *Final Decision.*

III. Structural Separation

a. Introduction

61. In the *Final Decision* we addressed the structure under which various communications common carriers may engage in the provision of enhanced services and CPE. In essence, we removed for all carriers, except AT&T and GTE, the requirement established in the First Computer Inquiry that certain non-regulated services be offered to the public through a separate corporate entity. In the case of AT&T and GTE, we specified that enhanced services and CPE must be provided through a separate subsidiary. Various conditions affecting the degree of separation between the present organizational structures of AT&T and GTE, and their separate subsidiaries were set forth to protect the communications rate-payer. Many of the conditions were designed to reflect the degree of separation established in the First Computer Inquiry.

62. Numerous petitions for reconsideration have been submitted addressing both the determination as to which carriers should be subject to the separate subsidiary requirement and the degree of separation imposed on those carriers that are so subject. AT&T and GTE have petitioned for more lenient separation conditions, including a request by GTE that the separate subsidiary requirement not apply to it. Other parties have petitioned that this requirement should be applied to other carriers and that more stringent separation conditions be imposed, including a request for a complete ban on AT&T's entry into the enhanced service market.

63. We believe our general approach to the provision of enhanced services and CPE in the *Final Decision* is a moderate one and one that serves the public interest. Consumers and the public in general will benefit from the fullest exploitation of common carrier facilities in the provision of enhanced services by all entities. Given the structural safeguards we have imposed, no statutory objective is gained in foreclosing any carrier from providing enhanced services or CPE. Nor do we believe that structural separation is warranted where the potential costs of separation exceed the benefits and where other regulatory tools are available to aid in the exercise of our statutory responsibilities. Within these parameters we will address those arguments that question the extent to which the separate subsidiary requirement is imposed. We will also consider concerns as to the degree of separation required. However, we approach this with the view that our separation conditions will evolve over time as we gain more experience in this very complex area of communications regulation and as the marketplace continues to evolve. See *Final Decision* at para. 207. Neither absolute precision nor a complete permanence in establishing the degree of separation is a realistic objective. Our goal nevertheless is, to the extent possible given present levels of experience with the separate subsidiary regulatory mechanism, to specify the degree of separation between regulated and unregulated activities of a given carrier that maximizes consumer welfare, within the parameters of our overall statutory mandate.

b. Applicability

64. Several parties have criticized the criteria and/or analysis used in determining that AT&T and GTE alone must form separate subsidiaries to provide CPE and enhanced services. For example, NTIA proffers an alternative method to identify carriers that should be subject to the separate subsidiary requirements based on the revenues generated from interexchange services.[17] GTE argues that it is nondominant and therefore should not be required to form a separate subsidiary. Others claim that many independent telephone companies satisfy the criteria necessitating separation and therefore should be subject to the requirement. Still others assert that the specialized common carriers can cross-subsidize their enhanced services and deny equal access to their basic services.

65. In assessing the need to maintain structural separation, consideration was given to the following factors: (a) a carrier's ability to engage in anticompetitive activity through control over "bottleneck" facilities, i.e., local exchange and toll transmission facilities, on a broad national geographic basis; (b) a carrier's ability to engage in cross-subsidization to the detriment of the communications ratepayer; (c) the integrated nature of the carrier and affiliated entities, with special emphasis upon research and development and manufacturing capabilities that are used in conjunction with, or are supported by, communications derived revenues; and (d) the carrier's possession of sufficient resources to enter the competitive market through a separate subsidiary. In weighing these factors, we took the view that consumers would be best served if the separate subsidiary mechanism were imposed only where essential to assure the objectives of the Act. As to other carriers, where the risk of serious harm to statutory values appeared less, we thought it better to wait to see if competitive abuses develop which warrant further application of our separation conditions for the carrier provision of either enhanced services or CPE. See *Final Decision* at para. 223.

66. On reconsideration we conclude that GTE should be excluded from the separate subsidiary resale structure of the *Final Decision.* GTE has advanced persuasive arguments as to why it should not be subject to the separate subsidiary requirement for either enhanced services or CPE. Concerning enhanced services, the most compelling argument tendered is that GTE is dependent upon AT&T for the vast majority of its interstate transmission needs. GTE-Telenet has also argued that the separation condition barring ownership of transmission facilities by the subsidiary would deprive it of the ability to construct its own transmission plant if AT&T facilities are either unavailable or inadequate for its service needs.

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[17] Petition of NTIA at p. 10.

67. The fact that GTE has relied heavily upon AT&T toll facilities militates against its receiving the same treatment as AT&T. In fact, in our GTE-Telenet merger decision, 72 FCC 2d 111 (1979), we authorized GTE to acquire Telenet Corporation subject to several structural separation conditions which sought to ensure Telenet's position as an alternative supplier of nationwide data communications service. In that decision we stated that "our greatest concern in this matter is whether GTE will actually compete with AT&T." *Id.* at 117. The Merger decision placed on the GTE-Telenet subsidiary responsibility for providing augmented data services, and the thrust of the decision was to maintain Telenet's incentive to develop and exploit fully its packet switched technology. The *Final Decision* could restrict GTE-Telenet's potential as an alternative supplier to AT&T if GTE-Telenet were to be prevented from providing basic services or if the proscription against the GTE subsidiary's owning transmission facilities is maintained. In all likelihood GTE-Telenet would have been GTE's vehicle for providing enhanced services because various of the former's augmented data services fall within the enhanced service category established in the *Final Decision*. This combined with GTE-Telenet's continuing, substantial reliance on AT&T's transmission facilities warrants, on balance, that the separate subsidiary requirement of the *Final Decision* not apply to GTE for enhanced services. We wish to make clear, however, that in this proceeding we are not modifying in any way the conditions imposed upon the GTE-Telenet merger. These conditions are now the subject of reexamination in a separate proceeding, Docket No. 80-197, 78 FCC 2d 403 (1980). We point out, however, that should GTE engage in conduct detrimental to the interests of the communications ratepayer recourse is available under Section 208 of the Act.

68. With respect to CPE, GTE states that over 90 percent of its 2200 exchanges have fewer than 7500 main stations and that only 1.1 percent of these exchanges have over 50,000 main stations. Given that GTE's operating territories are predominantly rural, it is questionable whether the costs of separation outweigh the benefits. Based on the above-stated facts, it is not at all clear that structural separation for GTE's provision of CPE is warranted. Absent more compelling facts, we conclude that the public will be better served if the separate subsidiary requirement is removed for GTE for its provision of CPE.

69. Moreover, subjecting other independent telephone companies or specialized common carriers to the separate subsidiary requirement is not warranted at this time, based on the factors we have set forth and the regulatory concerns they address. Specialized carriers do not have captive monopoly ratepayers to whom they can pass the costs of competitive services nor do they have control of bottleneck facilities which could be employed to deny competitors entry into the market. Enhanced service providers always have the option of alternative basic transmission facilities from AT&T, for example, at cost-based prices. The need for structural solutions to stem potential anticompetitive behavior is not as great where such behavior is constrained by marketplace forces. Moreover, other regulatory tools, such as the complaint process under Section 208 of the Act, are available to the Commission where abuses do occur.

70. In a similar vein, arguments are advanced that the regulatory problems posed by the joint provision of CPE and enhanced services are common to all telephone companies, including the "leverage to manipulate customers' preferences" in these areas.[18] However, the ability of a telephone company "to manipulate customer preferences" is not a regulatory concern which the structural separation we are imposing seeks to remedy. More generally, there are fundamental aspects of the market that counsel us to draw the line right below AT&T with respect to telephone companies. First, because the enhanced service and CPE markets generally are national in scope, the ability of AT&T to cross subsidize these services is much larger than that of the independent telephone companies. Such cross-subsidization redounds to the detriment of the communications ratepayer. Second, the costs of separation are borne disproportionately by smaller companies due to indivisibilities. These additional costs may foreclose entry into the enhanced service or CPE market for some carriers. Thus both the costs and benefits of imposing separation requirements on telephone companies are related to both firm and market size. There is no dispute in the record as to the relative size of AT&T compared to the independent telephone companies. We believe this disparity in size leads to the result that the benefits of structural separation for AT&T are greater than the costs, while this calculus is reversed for the independent telephone companies. In addition AT&T has enormous research and development and manufacturing capabilities, which greatly complicates assessing allegations of cross-subsidy.

71. In this proceeding we have performed a careful analysis of the communications industry to determine which carriers possess the ability and incentive either to cross-subsidize the provision of CPE and enhanced services or to engage in anticompetitive conduct through their control over bottleneck facilities. We have then determined for each of these carriers, or for each similarly situated group of these carriers, whether the benefits to consumers from reducing the risk of undetected cross-subsidization or discriminatory access by imposing structural remedies would be greater or less than the costs imposed by the separation requirements. We recognize the possibility of undetected cross-subsidization and other anticompetitive conduct by carriers that are not subject to the separation requirement. For purposes of this proceeding, however, we have concluded that maintaining the separate subsidiary requirement for carriers other than AT&T does not outweigh other public interest considerations.

c. Separation Conditions

72. Having modified the *Final Decision* so that the separate subsidiary requirement applies only to AT&T we now analyze those arguments addressing the degree of separation imposed on its operations.

Resale Structure

73. In the *Final Decision* we adopted a resale structure for the provision of enhanced services. Under the resale structure AT&T is required to form a separate subsidiary for the provision of enhanced services and "[i]nherent in the resale structure is the fact that the separate corporate entity may not construct, own, or operate its own transmission facilities. In essence, the resale subsidiary must acquire all its transmission capacity from an underlying carrier pursuant to tariff." *Id.* at para. 229.[19]

[18] Petition of IDCMA at p. 41.

[19] Those carriers not subject to the separate subsidiary requirement, when employing their own common carrier transmission facilities in the provision of enhanced services, must obtain transmission capacity pursuant to the terms and conditions embodied in their tariff. This proceeding does not remove a carrier's obligation to provide basic services, nor does this proceeding alter existing policies and rules under which carriers are certificated, or transmission facilities are owned or constructed. The Commission is reviewing whether various currently regulated entities are properly classified as common carriers and whether their

74. AT&T objects to the prohibition on the ownership of transmission facilities by its separate subsidiary. AT&T argues that such a restriction will prevent the subsidiary from operating as an economically viable competitor. AT&T believes the restriction will prevent the subsidiary from "meeting customers' specialized needs for transmission services, developing CPE and transmission facilities concurrently to achieve synergy and optimal price/performance, and integrating transmission facilities into a total system design in which the location of intelligence and other functions are matched to the user's special requirements." (AT&T Petition at p. 8).

75. AT&T also provides numerous reasons to support its belief that the restriction on the ownership of transmission facilities by the separate subsidiary is not necessary. It argues that "nondiscriminatory access to existing underlying facilities is already assured by their availability for resale on equal terms to affiliated and nonaffiliated suppliers of enhanced services; continued access to improved transmission facilities is assured because the supply of technological improvements to transmission facilities will not be controlled by underlying carriers, but will be provided by all who can profit from such innovation; and the potential for cross-subsidization of enhanced services by basic services is eliminated through separation of joint ownership of underlying facilities." (AT&T Petition at p. 9).

76. Before addressing AT&T's arguments, it would be helpful to set forth the scope of the proscription against ownership of transmission facilities by the subsidiary as required under Section 64.702(c)(1). In this context we are referring to that transmission medium, whether it be "radio" or "wire," 47 U.S.C. § 152, that constitutes the communications "pipeline" over which information is tranmitted. The enhanced service subsidiary need only acquire communications links pursuant to tariff, but is otherwise free to utilize its own switching equipment, network nodes, and other computer facilities necessary for the provision of its enhanced services. For example, if the enhanced services subsidiary needed a communications link between two centralized computers, or between a computer and a network node, that link must be acquired from a common carrier pursuant to tariff. Once having obtained that link, however, the subsidiary is free to add channelizing or concentrating equipment, etc. to tailor the transmission capacity to its own needs as dictated by the requirements of the enhanced services provided. The subsidiary is not precluded from constructing transmission facilities for a third party, as long as the facilities are not owned or operated by the subsidiary. Nor do we intend that the bar on transmission facility ownership or operation encompass facilities that link various operations of a customer where its communication needs are spread among multiple buildings at a common location, such as an industrial park.

77. Within this framework, we believe AT&T's arguments that the proscription against ownership of transmission facilities will prevent the subsidiary from operating as an economically viable competitor are without merit. Marketplace developments since our *First Computer Inquiry* nearly a decade ago indicate otherwise. There are many enhanced service providers that do not own transmission facilities, yet integrate transmission facilities into a total system design that meets the needs of their customers with high quality service and at competitive prices. There is no reason to expect otherwise for AT&T's separate subsidiary. For example, using the underlying network as a basic building block, the subsidiary is permitted to aid intelligence of its own to perform enhanced services. The subsidiary is not restricted in its ability to design its services, including the ability to place intelligence either within its network components or within equipment located on the customers' premises. Neither is an underlying carrier affiliated with the subsidiary restricted in its use of packet switch technology in applications that constitute basic services. *See Final Decision* at para. 95.

78. Imposition of the facility ownership bar upon AT&T's subsidiary arises from our recognition that most enhanced service providers are and will remain dependent upon AT&T's common carrier facilities. AT&T controls the vast majority of interstate transmission facilities and local exchanges in a substantial number of major metropolitan areas. Thus several regulatory objectives assume paramount importance in affirming the proscription against the subsidiary's owning transmission facilities. First, it is crucial that AT&T make adequate transmission capacity available to enhanced service vendors on a non-discriminatory basis. Second, it is imperative that access to and use of this transmission capacity is afforded all enhanced service providers under equal terms and conditions. By establishing a structure in which the subsidiary must acquire needed transmission capacity from a carrier exercise of our powers under Sections 201–205 of the Act can ensure that all enhanced service vendors, including AT&T's subsidiary, obtain access to and use of this transmission capacity on fully equal terms and conditions. Third, the benefits of any improvements introduced into AT&T's transmission facilities to accommodate the needs of the subsidiary would become available to all users of the underlying facility. In addition, the bar against the subsidiary's owning transmission would provide an important incentive to AT&T to continue to improve its common carrier network and to assure an adequate supply of basic services compatible with enhanced service use. Such continuing improvement of this network is clearly in the public interest.

79. Thus, the facility ownership bar is fundamental to our resale structure. "Requiring the subsidiary to acquire its transmission capacity from other sources pursuant to tariff provides a structural constraint on the potential for abuse of the parent's market power through controlling access to and use of the underlying transmission facilities in a discriminatory and anticompetitive manner." *Final Decision* at para. 228. In addition, the construction authorization for common carrier facilities is premised on the licensee's providing a basic common carrier communications service, which an enhanced service is not. "Thus the subsidiary may not provide basic transmission services, for to do so would subject it to regulation and negate the structural separation of regulated and nonregulated activities." *Id.* at para. 230. We have required the separation of AT&T's nonregulated enhanced services from its regulated basic services "thereby lessening the potential that the communications ratepayer will be subsidizing its unregulated ventures." *Id.* at para. 230. AT&T controls more than 80% of the private line market. The subsidiary's ownership of transmission facilities would enable AT&T to shift some or all of its private line services to the separate subsidiary, and its dominance in this market could lead to improper cross-subsidization to the detriment of the communications ratepayers.

80. The *Final Decision* established a resale structure whereby AT&T's enhanced services subsidiary must acquire all its transmission capacity from an underlying carrier pursuant to

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services must be provided pursuant to tariff. *See* Second Report and Further Notice of Proposed Rulemaking (Docket No. 79-252), FCC 80-742, adopted December 18, 1980.

tariff, and no new evidence has been submitted to warrant a different conclusion.[29] Accordingly we affirm the resale structure as set forth for AT&T in the *Final Decision*.

81. As to those contentions that the subsidiary must be able to construct its own transmission facilities if suitable facilities are not available, we would merely note that under this structure meeting the transmission needs of consumers and enhanced service vendors is the responsibility of the communications common carrier, not the enhanced service provider. The parent or carrier affiliated with the subsidiary has the option of seeking appropriate authorization to construct the requisite facilities. Indeed, the resale structure imposed here is premised upon the hope that it would encourage underlying carriers to have sufficient capacity, appropriately configured, to meet the needs of enhanced service firms without requiring our intervention under Section 214. It is anticipated that more transmission alternatives will be available to all enhanced service providers as new carriers enter the communications arena and as existing carriers provide additional capacity.

82. We recognize, as we must, that our requirement precluding AT&T's enhanced service subsidiary from owning or controlling transmission facilities would have to give way if the subsidiary could not obtain adequate transmission capacity for a highly specialized service. Thus we do not intend to imply that we would not consider granting a waiver of the facility proscription to allow the subsidiary to own or operate its own transmission facilities. Should a need develop for the subsidiary to construct or operate a specialized transmission network for a given customer, other than at a common business location (c.f. para. 78 *supra*), we will consider on a case-by-case basis, requests for waiver of the facility ownership proscription imposed on the enhanced service subsidiary. Moreover, waiver requests will be considered should the subsidiary desire to obtain under contract (as opposed to under tariff) from a third party the total output of a given transmission system. In such a situation, the public-interest concerns which may arise from precluding other service vendors access to the system must be considered.

[29] AT&T cites a study by MARTECH STRATEGIES Inc. That was entered into the record in this proceeding subsequent to our *Final Decision* as support for its position. However, the primary focus of this study was not the facility ownership issue and the study fails to adequately consider the limits of the proscription as we have more clearly delineated here.

83. In determining whether to grant such a request, petitioners carry the burden of demonstrating that any negative effects on ratepayers which may arise from grant of a waiver are outweighed by the possibility of imposition of unreasonable costs upon consumers, or unavailability of an enhanced service if waiver is not granted. Such a consideration of negative effects should include, but not necessarily be limited to, those possibilities discussed in paragraphs 78 and 79 above. The Commission, in its discretion, may give notice and opportunity for comment on the request, and we will make every effort to act on petitions for waiver within 90 days of the expiration of any ordered pleading cycle. Where opportunity for comment is afforded, parties generally will be given 30 days after release of the public notice to file comments and 15 days thereafter to file reply comments.

Research and Development

84. The *Final Decision* permits the sharing, on a cost compensatory basis, of research and development work products in the area of hardware, firmware, and generic software. We required the subsidiary to perform its own design and development work for non-generic software, or applications programs. Several parties, including CBEMA,[31] question the lack of an objective standard for "compensatory," while AT&T, ADAPSO, NTIA,[32] and others are convinced we have assumed a hopeless definitional burden in attempting to distinguish among software, firmware, and hardware.

85. CBEMA's concern about the definition of "compensatory" is not surprising. It is probably not possible to clarify this term to the satisfaction of all the parties concerned.

86. We have not required third-party transactions in every area where the compensatory nature of parent-subsidiary transactions might be at issue. In particular, we have not established such a requirement with respect to research and development. We also will not attempt to anticipate all the forms that such intracorporate transactions might take, so the specificity of the term "compensatory" is necessarily limited. Still, this does not mean that we cannot offer some clarification. Our use of "compensatory" in this proceeding means that for each transaction, the parent corporation or affiliated entity must recover from its subsidiary the full cost of the transferred goods or services at the same terms, prices, and conditions that would be available to a nonaffiliated purchaser if third-party transactions were required. Since the parent would expect to earn reasonable profits on third-party transactions, it will be expected to earn similar profits on intracorporate transfers. Since it would expect to recover transaction costs and overhead loadings in its third-party transactions, it will be expected to make similar recoveries in its intracorporate transfers.

87. We realize, as IBM has pointed out,[33] that standard accounting procedures presently in use in the regulated telecommunications industry may not be sufficient to insure the compensatory nature of such intracorporate transactions where neither party is a regulated common carrier, but potential burdens on the communications ratepayer still exists. In such circumstances, it may be necessary to require the creation of additional accounting records to enable us to monitor more accurately the cost allocations within the manufacturing or research affiliates.

88. There is substantial agreement among diverse interests that the distinctions we have attempted to draw among software, firmware, and hardware are unworkable. AT&T tells us, "The technology is rapidly evolving, and the technical distinction is perishing. In the future, manufacturers will have greater capability to develop all of what is now regarded as applications software together with the hardware." [34] Others agree, although they disagree on how we should respond to such a definitional quandry. ADAPSO, for example, would have us expand our prohibition against joint work to encompass all research and development, while AT&T would have us remove any such prohibition. AT&T argues that software restrictions would leave its subsidiary at a competitive disadvantage, and deprive users of highly integrated hardware-software designs for communications equipment.

89. In the *Final Decision* we did not foreclose the subsidiary from sharing research and development capabilities with affiliated entities. At the same time we stated that "we intend to examine into the license contract arrangements and other issues generic to the use of monopoly revenues to support competitive research and development." *Id.* at para. 248. Such a proceeding is being initiated and at its conclusion we

[31] Statement of CBEMA, at 7–13.

[32] Petition of AT&T, at 45–48; Opposition of AT&T, at 10–11; Petition of ADAPSO, at 14–18; Opposition of ADAPSO, at 23–32; Petition of NTIA at 12.

[33] Opposition of IBM, at 29–30.

[34] Petition of AT&T, at 48.

are free to take whatever action may be appropriate, but we will not here modify our decision in this regard. It is not our intention to forestall technological contributions on the part of AT&T to the extent such contributions require some joint research and development work.

90. At the same time, we cannot permit the entry of AT&T into new markets under conditions that would expose the communications consumer to unacceptable risks of anti-competitive activity, either through cross-subsidization or through its control over access to the underlying transmission facilities. Software also is a significant cost element in developmental efforts for the competitive markets and, thus, is an area where established carriers could gain a substantial competitive advantage through misallocation of joint and common costs if joint work were allowed. AT&T does not dispute our conclusion that software costs are a large and growing part of development costs, or our conclusion that joint development work would be susceptible to cost misallocations. Beyond this, however, is the more important fact that joint software development for CPE and computer facilities of the subsidiary can also affect the manner in which information about network interfacing is conveyed to the subsidiary. First, the subsidiary may be privy to interconnection information, or information as to the technical parameters of affiliated carriers' facilities that might not be available to the general trade. Second, such joint cooperation could result in the subsidiary's obtaining advance information of changes being made to the underlying network. The separate subsidiary structure is, in part, aimed at insuring non-discriminatory access to underlying transmission facilities of the parent. At the same time the record indicates that we made unworkable distinctions as to permissible activity in the area of joint software development. We, therefore, conclude that modification of our *Final Decision* is warranted as to joint software development.

91. We remain convinced that some restrictions on joint software development are essential. We believe the best resolution of the problem is to follow the approach we have taken in our GTE/Telenet merger authorization, requiring the separated subsidiary or its outside contractors to perform all software development, including firmware, while allowing the subsidiary either to contract with affiliated or non-affiliated entities for research and develop equipment into which such software might be inserted, or to develop equipment on its own.[85] The subsidiary may purchase any equipment its parent sells to the general trade so long as any software, or firmware, contained therein is not customized, but is generic. Software may only be considered generic if it is contained, in standard form, within equipment that is sold "off the shelf" to any interested purchaser. The subsidiary is free to contract with its manufacturing affiliate to perform research and development on an exclusive basis on products and processes that do not use software. Moreover, we believe it is reasonable to expect the manufacturer, at its option, to be responsible for the installation and maintenance of its own equipment. Thus, we will not prohibit such an arrangement unless we discover evidence that the burden of misallocated installation and maintenance costs is being borne by the ratepayer. However, installation and maintenance performed by the parent or its unseparated affiliates may extend only to that hardware and software actually provided.

Information Flow Restrictions

92. Three areas of information flow were addressed in the *Final Decision*. The first consists of information relating to the basic network, including information concerning network design and technical standards, information affecting changes which are being contemplated to the telecommunications network that would affect either intercarrier interconnection or the manner in which interconnected CPE must operate, and information concerning construction plans. This information must be disclosed by AT&T to all interested parties, including its separate subsidiaries, at the same time and under the same terms and conditions. The second area of information flow relates to information dealing with research and development. This information must be transferred between parent and subsidiary on a fully compensatory basis. Finally we required that customer proprietary information acquired through the normal course of the parent's business activities must be disclosed to all interested parties at the same time and under the same terms and conditions that it is disclosed to the separate subsidiary, if disclosed at all.

93. Several parties have petitioned the Commission to reconsider its rules for each of the areas of information flow. ADAPSO, for example, seeks expansion of the requirements relating to disclosure of network information between affiliated entities. IDCMA suggests that all carriers should be required to make timely disclosures of network information. AT&T requests both a reduction in the recording and filing of information between its carriers, affiliates and subsidiaries and a provision for filing summary reports in lieu of the contracts, agreements and other arrangements. Finally several parties requested modification of the Commission's rules concerning customer proprietary information so that the confidentiality of that information could be protected.

94. We do not believe that additional information flow restrictions are warranted between entities affiliated with separate subsidiaries. Paragraph 248 of the *Final Decision* sets forth in unambiguous terms the requirement that network information must be disclosed to competitors of the subsidiaries at the same time and under the same terms and conditions as it is disclosed to the subsidiaries, if it is made available at all.

95. IDCMA submits that all carriers should be required to make timely disclosures of network information.[86] We believe this submission has some merit. We note that the absence of a requirement for structural separation does not imply that a firm does not have the incentive to behave anticompetitively. It merely signifies that we believe the costs of separation exceed the benefits. However it is clear that carriers providing basic network service, whether they must enter a competitive market through a separate subsidiary or not, have the incentive and ability to withhold information to the detriment of competition and the communications ratepayer in that competitive market. Therefore we will extend to all carriers owning basic transmission facilities the requirement that all information relating to network design be released to all interested parties on the same terms and conditions, insofar as such information affects either intercarrier interconnection or the manner in which interconnected CPE operates.

96. AT&T has requested that the rules requiring recording of transactions should be modified to include only transactions between subsidiaries and affiliated manufacturers or other transactions relating to manufacturing, purchasing of products or product research and development. Similarly AT&T believes that contracts, agreements or other arrangements

[85] Memorandum Opinion and Order, 77 FCC 2d 320.

[86] Petition of IDCMA at n. 22.

between a separate subsidiary and the carrier or its affiliates should be filed with the Commission only for these same transactions. Finally AT&T would prefer to file summary reports as a basis for on-premises auditing of such records by the Commission staff or an independent auditing staff in lieu filing all contracts with the Commission.[97]

97. We believe that such modifications to our *Final Decision* are unwarranted. The ability and incentive of AT&T to cross-subsidize competitive services need not be re-emphasized here. It is imperative, however, that all parties to this proceeding understand that the primary method to detect and police cross-subsidization and other anticompetitive behavior, once the structural safeguards for AT&T have been erected, is to have a written account of all transactions, agreements and other arrangements between the parent, affiliates and separate subsidiaries. This affords the Commission and interested parties the ability to analyze the firms' behavior to ascertain whether they are performing within permissible guidelines. We believe the framework established in the *Final Decision* with respect to the recording and filing of all arrangements between parent, affiliates and separate subsidiaries is a crucial aspect of our structural safeguards and one that is necessary to allow AT&T to enter the enhanced service and CPE markets.

98. Several parties object to the rule requiring that AT&T not provide to its separate subsidiary any customer proprietary information unless such information is available to any member of the public under the same terms and conditions. ADAPSO, for example, has argued that a carrier's customers who are also competitors of the carrier's separated subsidiary could be disadvantaged by information disclosures concerning their contractual arrangements with the parent, even if the disclosures are made publicly.[98] We believe this requirement has been misinterpreted. We are not requiring unauthorized disclosures. Our decision assumes that disclosures of customer information will take place only with the approval of the affected customers, thus obviating ADAPSO's objection.

Marketing of Network Equipment by the Separate Subsidiary

99. The *Final Decision* barred a separate subsidiary providing both CPE and enhanced services from marketing any transmission or other network equipment because of the potential of the communications ratepayer bearing the cost of non-compensatory intracorporate transfer pricing that may inure to the benefit of the subsidiary. *Id.* at para. 253. AT&T disputes this restriction, claiming that nowhere in the *Final Decision* does the Commission explain how the communications ratepayers might be injured by the subsidiary's marketing of other equipment, or how the subsidiary would unfairly benefit, or how this condition guards against the potential injury.

100. The concept of intracorporate transfer pricing for vertically integrated, rate-of-return regulated, dominant firms is a simple one. Specifically, AT&T's telephone companies have the incentive to purchase equipment from their affiliates, even if that equipment is not completely competitive with that of the general trade, because as a general proposition the affiliates are not subject to a rate of return constraint. This, then, is just a specific example of the broad proposition that firms subject to public utility regulation have an incentive to transfer costs to jurisidictional activities and profits to non-jurisdictional activities. In the present context, the incentive may be manifested by the subsidiary's serving as a conduit, buying equipment from the company's manufacturing affiliate and marking up the equipment for sale to the operating companies.

101. In addressing AT&T's argument, our concerns are limited to the potential impact on the communications ratepayer from intracorporate transfer pricing. The stated prohibition appears too broad in that it would foreclose the subsidiary from marketing equipment to non-affiliated entities. These concerns can be met by revising the proscription and merely restricting affiliated entities from acquiring such equipment from the separate subsidiary if the equipment is not manufactured by the subsidiary. This more appropriately guards against the potential injury to the ratepayer, and we so modify the *Final Decision*.[99]

Administrative Services

102. With respect to the degree of separation required for administrative services, ADAPSO has requested two specific clarifications.[99] Regarding our statement in para. 255 of the *Final Decision* that parent and subsidiary will be allowed to share administrative services on a cost reimbursable basis, ADAPSO has asked for a listing of the services included. In this area we will follow the pattern established by the Bureau Audit Report for GTE/Telenet, permitting the sharing of the following administrative services: accounting, auditing, legal services, personnel recruitment and management, finance, tax, insurance, and pension services. *See GTE/Telenet Merger*, 78 FCC 2nd at 427. The sharing of physical space should be confined to that used for joint administrative services, as listed above.

Advertising

103. The propriety of joint advertising has been questioned by IDCMA.[91] In the *Final Decision* we prohibit the parent corporation from engaging in "the sale or promotion of enhanced services or customer-premises equipment, on behalf of the separate corporation."[92] This means that entities affiliated with the subsidiary may not engage in advertising that is product or service specific on behalf of the subsidiary. Since institutional advertising is not product or service specific, it will be permitted on a joint basis. There is no harm to the communications ratepayer in letting the parent take advantage of its good will. Cf. *GTE Service Corp.* v. *FCC*, 474 F.2d 724, 732–736 (2d Cir. 1973).

Financing and Transitional Reporting

104. In our *Final Decision* we rejected a requirement of outside financing, pending a review of the subsidiary's capitalization plans, partly because "the corporate and regulatory implications of outside financing have not been addressed in any significant detail in the course of this proceeding. Prior to imposing such a requirement we believe these areas deserve further exploration." *Id.* at para. 257. In subsequent filings this subject has received more attention and substantial questions have been raised. The record is still not adequate to support a conclusive finding prior to our review of capitalization plans, but other issues that have been raised deserve some immediate attention. Earnings of the subsidiary from unregulated activities shall not be imputed to the parent's regulated activities or serve to alter the parent's revenue requirements.

105. We required that the separate subsidiaries obtain Commission approval as to capitalization. Several parties have voiced the concern that the Commission will not be in a position to examine capitalization plans adequately

[97] Petition of AT&T at pp. 53–54.
[98] Petition of ADAPSO at p. 20.
[99] Absent practices which adversely affect communications consumers, anticompetitive concerns should be left to the antitrust authorities and the antitrust laws. Where the factual premise of harm to communications customers can be established, however, we would continue to exercise our jurisdiction in aid of the goals of the Communications Act.
[99] Petition of ADAPSO, at 23–27.
[91] Petition at IDCMA at p. 21.
[92] Appendix, para. 64.702[d][1].

without information on the expenses incurred by AT&T in the interim period before structural separation occurs. We believe these parties have demonstrated a need for a mechanism to control, and to hold AT&T accountable for, the expenses incurred in the interim period. These expenses relate to the costs of setting up the separate subsidiaries and to the costs of developing the CPE and the enhanced services that will be offered by the unregulated subsidiaries after separation. Therefore, we are requiring AT&T to 1) account for all expenses incurred to date relating to existing and future enhanced service offerings; 2) account for all expenses incurred to date that directly relate to the separate subsidiary; and 3) submit a plan describing accounting methodology for the interim expenses relating to the provision of enhanced services.[33] Such a plan should include a breakdown of all major categories of expenses. This information shall be filed within 30 days from the release of this order and an update provided every six months thereafter to reflect additional expenses incurred. Finally, the capitalization plans for the separate subsidiary must be filed with the Commission at least 120 days prior to the formation of the separate subsidiary in order to allow time for public comment.

IV. Legal Considerations

a. Introduction

106. Our *Final Decision* in the Second Computer Inquiry is the culmination of a comprehensive examination of regulatory issues raised by the ever-increasing use of computer processing technology and by the interdependence of this technology and common carrier communications services. On reconsideration of this decision, petitioners have challenged our authority to: a) adopt the basic/enhanced classification scheme for services provided over the telecommunications network; b) preempt the states and deregulate CPE in the manner proposed; c) impose structural separation limitations on certain carriers possessing monopoly control over a significant portion of the telecommunications network; and d) construe the 1956 Western Electric Consent Decree [34] as not foreclosing AT&T's participation in the enhanced services and CPE markets.

[33] It is also our intent that no earnings of the subsidiary be imputed to the regulated activities of affiliates for determining either their revenue requirements or their proper return on investment.

[34] United States v. Western Electric Co., 1956 Trade Cas. 71,134 (D.N.J. 1956).

b. Jurisdiction

107. *The Final Decision*, 77 FCC 2d 384 (1980), draws a distinction between basic transmission services, which encompass traditional common carrier communications services, and enhanced services. 77 FCC 2d at paras. 90–94, paras. 114–18. There we rejected a proposal set forth in the *Tentative Decision* to break the enhanced services category into subcategories based on services' communications or data processing nature. *Id.* at paras. 103–10. In so doing, we eliminated the concepts of "hybrid communications" and "hybrid data processing" developed in the *First Computer Inquiry*. Cognizant of the rapid development of computer and communications technology and their concomitant market applications in a distributed data processing environment, we concluded that any refinement of enhanced services into subcategories would soon become obsolete.

108. We determined in the *Final Decision* that enhanced services are subject to the Commission's ancillary jurisdiction. The decision indicates that this agency receives subject matter jurisdiction over enhanced services under Section 2(a), 47 U.S.C. § 152(a), which states that the provisions of the Communications Act "shall apply to all interstate and foreign communication by wire or radio and all interstate and foreign transmission of energy by radio, which originates and/or is received within the United States. . . ". The *Final Decision* supports this jurisdictional assertion by reference to our mandate in 47 U.S.C. § 151 and the use of "communication" and "transmission" in 47 U.S.C. § 153(a) and (b). *Id.* at paras. 124–125. Having asserted Section 2(a) jurisdiction, we found, on the basis of the detailed record developed in this proceeding, that extensive regulation of enhanced services is unnecessary at present. *Id.* at paras. 127. We did conclude, however, that our jurisdiction over enhanced services allows us to impose cetain separate subsidiary requirements where necessary. *Id.* at para. 132.

109. In the *Final Decision* we recognized that our demarcation of the basic/enhanced services boundary, as well as our view of agency jurisdiction over these services and their providers, would give rise to significant debate. We discuss issues raised in the Petitions for Reconsideration on these topics in three section belows. These sections deal with the line which we draw between basic and enhanced services, with our jurisdiction over enhanced services and with our power to impose separate subsidiary requirements on certain providers of enhanced services and CPE. We briefly address questions of adequate notice under the Administrative Procedure Act in a fourth section below.

110. (1) *Line of demarcation between basic and enhanced services.* Petitioners disagree about the propriety of our basic/enhanced distinction. ARINC, CBEMA and IBM specifically endorse the manner in which we distinguished between Titles II regulated basic services and enhanced services. GTE Telcos, Telenet/CNS and Xerox object to the approach taken in the *Final Decision*. Telenet argues that enhanced communications services meet what it terms "the appropriate tests of common carrier status". Telenet contends that the Commission has in the past classified services as common carrier services which would now be reclassified "enhanced". Telenet and the GTE Telcos maintain that Commission characterization of these services as enhanced is an unlawful withdrawal of Title II jurisdiction. They state that this Commission lacks the authority to "forbear" from regulation of enhanced services under Title II. Xerox states that the Commission has historically recognized entities providing "hybrid communications services" as common carriers and has regulated them as such.

111. Having studied petitioners' arguments, we remain convinced that the distinction drawn in the *Final Decision* between basic common carrier services and enhanced services is a reasonable and valid one. We foresaw that any boundary which we set between basic and enhanced services would be questioned. We stated:

> We appreciate there can be disagreement as to the line we have drawn between basic and enhanced services. Plausible arguments can be tendered for drawing it elsewhere. At the margin, some enhanced services are not dramatically dissimilar from basic services or dramatically different from communications as defined in *Computer Inquiry I*. But any attempt to draw the line at this margin potentially could subject both the enhanced services providers and us to the prospect of literally hundreds of adjudications over the status of individual service offerings. We have noted the danger that such proceedings could lead to unpredictable or inconsistent regulatory definitions. See para. 107 *supra*. Such proceedings also could consume a very significant proportion of the resources of this agency. The requirement to devote significant resources to try to make individual service distinctions would necessarily reduce the resources available for regulating basic services and ensuring non-discriminatory access to common carrier telecommunications facilities. *Final Decision* at para. 130.

112. We note that even if we shift somewhat the boundary between Title II regulated services and other services as delineated by the *First Computer Inquiry* we have acted within our discretion as an administrative agency. If an administrative body acts based on "reasoned analysis" consistent with the language and intent of its statutory mandate, "[a]n agency's view of what is in the public interest may change, either with our without a change in circumstances." *Greater Boston Television Corp.* v. *FCC*, 444 F.2d 841, 852 (D.C. Cir. 1970), *cert. denied*, 403 U.S. 923 (1971). As the Second Circuit stated very recently, "[t]he FCC's own construction of its enabling statute, even if it is a changing one, is entitled to deference from the courts." *New York Telephone Co.* v. *FCC*, No. 1137, slip. op. at 5642 (2d Cir. Sept. 17, 1980). We have articulated a reasoned analysis for our action in the *Final Decision*. We noted that, "the reality that technology and consumer demand have combined to so overrun the definitions and regulatory scheme of the *First Computer Inquiry* that today no comparable, minimally enduring line of demarcation can be drawn." *Id.* at para. 120.[36]

113. Furthermore, in our decisions in both the *First Computer Inquiry* and in *Resale and Shared Use* we recognized that any boundary then drawn between common carrier communications services and other services with a communications component was tentative. We were aware that we might need to realign our distinction as technology and services developed. The result of such a shift could be that certain services which had previously been on the "common carrier" side of the regulatory boundary would no longer be regulated under Title II. In our *Resale and Shared Use* decision on reconsideration we specifically stated:

> Thus if what is ultimately offered to the public is "data processing" or anything other than "communications", this proceeding is not applicable to such activity. The question as to what is "data processing" or "communications" is at issue in docket No. 20828. This proceeding is not concerned with the definitions of those terms, and we assume herein that our jurisdiction attaches only to the activities which are found to be "communications."

62 FCC 2d at 600. *See also First Computer Inquiry Final Decision*, 28 FCC 2d at pp. 296–298.

114. We have in the past decided admittedly close factual questions about whether particular services, with some similarities to common carrier services, fall within our Title II jurisdiction. The Courts have recognized our expertise in making such determinations. *FCC* v. *Midwest Video Corp.*, 440 U.S. 689 (1979) (cable television systems); *AT&T* v. *FCC*, 572 F.2d 1725 (2d Cir. 1978) (shared use of communications services); *American Civil Liberties Union* v. *FCC*, 523 F.2d 1344 (9th Cir. 1975) (cable television access channels); *NARUC* v. *FCC*, 525 F.2d 630 (D.C. Cir. 1976) (specialized mobile radio); *Philadelphia Television Broadcasting Co.* v. *FCC*, 359 F.2d 282 (D.C. Cir.), *cert. denied*, 325 U.S. 837 (1966) (cable television systems).

115. In their petitions Xerox and Telenet contend that we cannot forbear from regulating enhanced services under Title II of the Act. These petitioners have misapprehended our factual conclusion in the *Final Decision* that enhanced services are not common carrier services. *Id.* at paras. 121–23. Hence, forbearance from Title II regulation of enhanced services is not an issue in this proceeding.[38]

116. Any argument which leads to the conclusion that all the myriad types of services provided over common carrier facilities are necessarily Title II services must fall of its own weight. As we indicated in the *Final Decision* at para. 109: "(T)here are literally thousands of unregulated computer service vendors offering competing services connected to the interstate telecommunications network." This Commission has never regulated all the services provided over common carrier facilities. As an evolution of determinations made in the *First Computer Inquiry*, we have in this proceeding delineated those services which are outside the scope of Title II. Basic services are regulated under Title II, and the basic service category includes those kinds of services that have traditionally been regulated under Title II. See para. 10, *supra*, and *Final Decision* at paras. 93–95. On the other hand our enhanced category reflects services which are different in kind from basic services and for the most part have not been regulated under Title II. In addition, we have, in a factual context analyzed the characteristics of enhanced services within the framework of our overall statutory mandate and have rejected further classification of different enhanced services for purposes of Title II regulation. *Final Decision* at paras. 107–113. Under this structure a workable and reasonably enduring demarcation is established as to the scope of Title II jurisdiction.

117. As noted in our *Final Decision*, para. 123, we believe that the critical regulatory line we have drawn between basic and enhanced services is fully consistent with *NARUC I*, *supra*. As discussed in our *Final Decision*, enhanced services do not fall within the criteria set forth in *NARUC I* for determining what is a common carrier offering; that is, enhanced services are specialized services not offered on an indifferent basis. We also expressed, in our *Final Decision*, reservations about certain aspects of the Court's opinion which attempted to focus more on an *a priori* definition of common carriage (based on historical or common law interpretations), rather than on the specific factual nature of the service offered and on a demonstrated need for the Commission to impose common carrier obligations on such service providers. We believe that in our current determinations, we are free, and perhaps required, to consider empirically-derived distinctions between different types of activities and to implement such destinctions in a principled manner that is consistent with our statutory goals. The regulatory treatment of any particular activity must thus be derived from a calculus which considers whether a statutory purpose is served by such treatment. *See Philadelphia Television*, *supra*.

118. In dealing with the question of which entities were to be regulated as common carriers, *NARUC I* focused on historically derived criteria relating to how a particular service is offered to the public as well as on the Commission's determination as to whether Title II obligations should be imposed. In our *Final Decision*, we pointed out some of the deficiencies of a "holding out" test which focuses only on the intentions of

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[36] A general principle of administrative law is that regulatory agencies may alter their interpretation or application of their governing statute. For example, the Supreme Court sustained an Interstate Commerce Commission decision in which that agency changed its views of its jurisdiction over trailer-on-flatcar services. The Court concluded:

> [T]he Commission, faced with new developments or in light of reconsideration of the relevant facts and its mandate, may alter its past interpretation and overturn past administrative rulings and practice. In fact, . . . this kind of flexibility and adaptability to changing needs and patterns of transportation is an essential part of the office of a regulatory agency. Regulatory agencies do not establish rules of conduct to last forever; they are supposed, within the limit of the law and of fair and prudent administration, to adapt their rules and practices to the Nation's needs in a volatile, changing economy.

American Trucking Ass'n., Inc. v. Atchinson, Topeka & Santa Fe Railway Co., 387 U.S. 397, 416 (1967). *See also* Andrus v. Sierra Club, 442 U.S. 347, 358 (1979); NLRB v. J. Weingarten, Inc., 420 U.S. 251, 266–60 (1975); Public Interest Research Group v. FCC, 522 F.2d 1220, 1232–33 (3d Cir.), *cert. denied*, 424 U.S. 995 (1975).

[38] For the record, we disagree with the view that we lack the authority in proper circumstances to forbear from the application of Title II regulatory mechanisms to acknowledged communications common carriers. We are addressing this issue in a separate proceeding, *See* Second Report and Further Notice of Proposed Rulemaking, Docket No. 79-252.

a service provider and could leave to such an entity's discretion whether or not an obligation to serve on a nondiscriminatory basis will be imposed. Moreover, it is clear that to the extent *NARUC I* considered questions only with regard to the nature of the service *provider*, rather than the nature of the *service*, it does nof answer the question in this proceeding. We believe, therefore, that the second prong of the *NARUC I*, test, i.e., the Commission's determination of the need to impose an obligation to serve the public indifferently is critical to our discussion here. 525 F.2d at 642–43. In this respect, we believe that our approach in this proceeding draws on, and can be reconciled with the D.C. Circuit's *NARUC I* decision.

119. We are not persuaded of by the argument GTE Telcos and Telenet/CNS that the line of cases beginning with *Packet Communications, Inc.*, 43 FCC 2d 922 (1973), obliges us to retain former classifications in the communications/data processing area. To speed processing of its application, the applicant in *Packet Communications, Inc.*, PCI, was " . . . willing to have itself treated as a traditional common carrier, whether or not the Commission [would] ultimately determine that such service should be regulated by it as common carriage." 43 FCC 2d at 922–23. PCI indicated that it was ". . . not now proposing to offer hybrid data processing service, but rather is proposing to offer a pure communication service". 43 FCC 2d at 924. Furthermore, the applicability of Title II was generally assumed, rather than focused precisely upon, in the ensuing decisions, *Graphnet Systems, Inc.*, 44 FCC 2d 800 (1974), and *Telenet Communications Corp.*, 46 FCC 2d 680 (1974). The fact that parties to earlier proceedings and the Commission assumed certain findings without discussing the point does not confer common carrier status for all time.

120. (2) *Jurisdiction over enhanced services.* The preponderance of petitions for reconsideration addressing the question of our jurisdiction over enhanced services contend that the Commission does not have jurisdiction over all enhanced services or all enhanced service providers. Petitioners state that this Commission should narrow the focus of its jurisdictional assertion either by stating that we do not have authority over enhanced services which are primarily data processing services or that we have no jurisdiction over certain classes of service providers and the services offered by them. ANPA, ARINC and Xerox maintain that services which are primarily data processing in nature or "hybrid data" services are outside our reach. ADAPSO, IBM and IDCMA argue that this Commission should only extend its jurisdiction to enhanced services offered by common carriers and their affiliates. CBEMA and Sperry Univac suggest that we only assert jurisdiction over enhanced services provided by dominant carriers or their affiliates. On the other hand, AT&T and NTIA support the jurisdictional claim made in the *Final Decision*.

121. After review of petitioners' arguments we conclude that clarification of our assertion of jurisdiction over enhanced services would be helpful. Various statements in the *Final Decision* may reasonably be read as asserting jurisdiction over all enhanced services. We seek to make clear on reconsideration that it is not our intent in this proceeding to assert that *any* service or activity in which communications is a component is within the subject matter jurisdiction of Section 2(a) of the Communications Act. On the other hand, we do not here exclude *a priori* all enhanced services from within the scope of Section 2(a) of the Act either. The question of whether a specific activity is "communications" is a mixed question of fact and law, and thus one which, we believe, is most appropriately left for a case-by-case determination when the necessary facts are before us. Thus, we need not and should not resolve in the abstract questions of whether any enhanced services, while clearly not within our Title II jurisdiction, may be otherwise within our jurisdiction.

122. At the outset we note that some petitioners urge a delineation of jurisdiction which would render either all enhanced services within the Commission's jurisdiction or all enhanced services beyond our jurisdiction. We reject this categorical approach. As has often been recognized by the courts and by this agency, the Communications Act does not rigidly compartmentalize our jurisdiction. The Act includes only imprecise definitions of our mandate in Section 2(a) and the definitions of wire and radio communications in Section 3(a) and (b). As the Supreme Court has recognized repeatedly, the imprecision which necessarily accompanies any broad conferral of legislative authority serves an important purpose of permitting the Commission to deal with a dynamic and constantly changing industry through case-by-case evolution and delineation of agency authority. *NBC* v. *United States*, 319 U.S. 190, 219 (1943). Since such fully delineated jurisdicitional grant—based on specifically delineated inclusions and exclusions of authority—is not the general thrust of the Act, we see no reason to conclude that in delegating authority to the Commission, Congress intended that we delineate Commission jurisdiction over enhanced services on a rigid categorical basis. While identifying the dividing line between services for purposes of determining the relevant regulatory scheme under Title II or Title III is appropriate when that precise issue is before us, as was the case in creating the basic/enhanced classification scheme, the establishment of rigid categories that go to the essence of Commission jurisdiction under Title I would be inappropriate and unwarranted.

123. Moreover, even if we were capable of making findings in a generic context on the question of whether any enhanced service is within the scope of Congress' jurisdictional grant to the Commission, more would be required before any action on our part would be sustainable. Recent Supreme Court and federal appellate court decisions relating to the Commission's ancillary jurisdiction show plainly that beyond the threshold 2(a) finding, we must also determine whether a proposed exercise of agency jurisdiction would serve a relevant statutory purpose and whether there is an adequate factual predicate shown for the proposed agency action. *United States* v. *Southwestern Cable Co.*, 392 U.S. 157, 178 (1968); *Midwest Video Corp.* v. *FCC*, 406 U.S. 649, 659–60 (1972); *Home Box Office* v. *FCC*, 567 F.2d 9, 36, 4043 (1977).

124. Under this three prong test, assertion of Commission jurisdiction, and determinations of the limits of our ancillary jurisdiction, require a more pragmatic response; such issues must be dealt with in a specific, factual, and individualized context. Whether a given activity falls within or outside Section 2(a) of the Act is a factual determination which cannot be divorced from the concrete matter in dispute or from consideration of the relevant statutory purpose to be served by any assertion of jurisdiction. Moreover, assuming the statutory jurisdictional nexus exists, the exercise of such jurisdiction through specific agency action must be predicated on the need to satisfy an overall statutory purpose or objective.

125. Within this context we conclude that such a statutory nexus exists for the assertion of Commission jurisdiction over the provision of enhanced services by communication common carriers. We now assert jurisdiction over the terms and conditions of a common carrier or

its affiliate's provision of enhanced services but only insofar as such offerings affect our traditional Title II concerns that there be no unjust or unreasonable discrimination in the offering of Title II services and that such regulated services not cross-subsidized enhanced services or otherwise negatively affect communications ratepayers. We are entitled to some leeway in choosing which jurisdictional base will most effectively advance those congressional objectives, such as effective rate supervision, embodied in the Communications Act. *Philadelphia Television, supra* at 284.

126. We have concluded that we have jurisdiction to regulate a carrier's participation in the provision of enhanced services under *GTE Service Corp.* v. *FCC*, 474 F.2d 724, 731 (1973) [hereinafter *GTE Service*], because these carriers' enhanced services activities "may substantially affect the efficient provision of reasonably priced communications service". In *GTE Service* the Second Circuit found that the Commission had authority to promulgate rules governing common carrier entry into data processing services because these rules were designed to ensure that communications services be provided efficiently and at reasonable rates. 474 F.2d at 731–32. It stated:

> The rules we are now considering are generically based upon the primary charge of the Commission that its carriers provide efficient and economic service to the public. The burgeoning data processing activities of the common carrier pose, in the view of the Commission's a threat to efficient public communications services at reasonable prices and hence regulation is justified under its broad rulemaking authority. 474 F.2d at 730.

127. In *GTE Service*, the court reasoned that the rules which it had upheld were "supported by the Commission; concern that its regulated carriers continue to provide the public with efficient and economic telephone service." 474 F.2d at 733. The court stated:

> The *media via* approach of "maximum separation" of services is logically directed at eliminating the potential hazards to efficient and economic phone service which is clearly the Commission's primary responsibility and interest here. Specifically, the Commission was concerned that data processing costs would be passed on directly or indirectly to the public consumer of telephone services and that revenues derived from common carrier services would be used to subsidize data processing services. This concern is met by rules 64.702(b), (c)(1), (2) and (3). . . . These rules effectively reduce the possibility of shifting costs, hiding operating or advertising expenses or any juggling of accounts which might otherwise occur. The efficiency of carrier service presumably is maintained and secured by the corporate, physical and financial separation prescribed by the regulation. 474 F.2d at 732.

128. Furthermore, the Second Circuit sustained a rule prohibiting common carrier leasing or selling of computer system components or extra capacity because of the effect which these activities could have on common carrier facilities provisioning, regulated under Section 214. The court found that this rule ". . . is aimed at the protection of efficient telephone service to the public by eliminating the possibility of a diversion of facilities to other purposes". 474 F.2d at 732.

129. The import of the holding in *GTE Service* is that this Commission can regulate a common carrier's provision of enhanced services because the provision of such services by a carrier may affect the carrier's Title II regulated services.

> While these cases [prior Communications Act jurisdiction cases] do not deal with the precise issue here under consideration, they nevertheless point the direction that must be followed in interpreting the Commission's authority under the Communications Act. The plain implication of these precedents is that, even absent explicit reference in the statute, the expansive power of the Commission in the electronic communications field includes the jurisdictional authority to regulate carrier activities in an area as intimately related to the communications industry as that of computer services, where such activities may substantially affect the efficient provision of reasonably priced communications service. We so hold. 474 F.2d at 731.

130. As we noted above, at present only enhanced services provided by common carriers or their affiliates for whom the Commission already has Title II responsibility seem likely to affect the efficient provision of reasonably priced communications service. The Commission is legitimately concerned that cross-subsidization of enhanced services by basic common carrier services can influence the rates for basic services regulated under Sections 201 through 205. *GTE Service* also indicates that the Commission can regulate the use of carrier facilities to make certain that facilities subject to Title II regulation not be diverted to use in the data services area. Again, the basis for governing use of facilities either for data processing or for communications services is that the Commission has broad jurisdiction to regulate common carrier activities.

131. Precedent dealing with the authority of other regulatory agencies reinforces our view that the Commission can regulate a carrier's participation in activities which otherwise might not be within its jurisdiction when these activities are engaged in by carriers and when they have a potential impact on regulated activities. The Supreme Court has held that the Interstate Commerce Commission is empowered by a combination of Interstate Commerce Act provisions, including its public interest mandate, to regulate motor carrier equipment leasing practices in order "to protect the industry from practices detrimental to the maintenance of sound transportation services consistent with the regulatory system" in *American Trucking Association* v. *United States*, 344 U.S. 298, 310 (1953). Furthermore, the D.C. Circuit found that the Civil Aeronautics Board could rely on "a combination of sections of the Federal Aviation Act", including its public convenience and necessity mandate, to regulate "the actions of air carriers and their affiliates in order to protect the financial integrity of the carriers so as to foster sound economic conditions in air transportation" in *United Air Lines, Inc.* v. *C.A.B.*, 569 F.2d 640, 649 (1977). Here the D.C. Circuit supported the CAB's conclusions that the acquisition of control by holding companies over air carriers presents a "substantial danger of harm to the carriers' ability to serve the public convenience and necessity" and that this formed a "sufficient basis for the Board to take preventive measures." 569 F.2d at 653. The court stated:

> What is involved in this case is neither an attempt by the Board to prohibit holding companies from acquiring air carriers nor an attempt to "control the financial structure" of air carriers. Rather, the Board is seeking to regulate financial activities by air carriers that affect the ability of the carriers efficiently to serve the public convenience and necessity. This is one of the most basic powers of the Board.

569 F.2d at 640.

132. Thus, we believe that we have properly declined various petitioners' requests that we make "final" determination of the precise contours of our jurisdiction in this broad policy making proceeding rather than in particular contexts when the specific facts of the matter would be before us. Moreover, we have not found, as we have clearly stated, and here reiterated, that any relevant statutory purpose would be served by regulating such activities. On the other hand, both in the *Final Decision*, and here on reconsideration, we have pointed out that we could regulate the carrier's participation in the very same activities when offered in connection with other currently regulated activities. The definitions of wire and radio communications in Section 3 (a) and (b)

which include reference to "all instrumentalities, facilities, apparatus and services . . . incidental to such transmission" lend credence, we believe, to focusing the agency's regulatory powers only on those activities with respect to which a clear nexus with specifically conferred responsibilities can be demonstrated. We, therefore, see no reason to enter at this time the jurisdictional thickets presented by Section 2(a) together with Sections 3 (a) and (b) insofar as the activities of those who are neither licensed under Title III or certificated under Title II are concerned.

133. Thus we have in this proceeding established several demarcations in assessing the parameters of jurisdiction under the Act. First, we have classified network services as either basic or enhanced for purposes of delineating the scope of Title II. Under this scheme common carrier regulation addresses the manner in which transmission capacity is made available for the movement of information. Excluded from common carrier regulation are services where communications is only a component of a service which is different in kind from the offering of transmission capacity. Second, a further distinction has been made relative to the scope of Commission jurisdiction over a carrier's participation in the provision of enhanced services. We have not addressed the extent, if any, of our jurisdiction over enhanced services. We have asserted jurisdiction only where a statutory nexus exists. This approach is reasonable and consistent with our statutory purpose, since it is the role of this Commission to apply regulatory mechanisms where warranted. In this regard, specific attention is given to the manner in which enhanced services are provided by common carriers.

134. (3) *Jurisdiction to order the establishment of separate subsidiaries.* In the *Final Decision* we removed the maximum separation requirements established in the *First Computer Inquiry* from all carriers except AT&T and GTE. We concluded that maintaining the requirement that AT&T and GTE offer enhanced services and CPE on a resale basis through a fully separated subsidiary was necessary to guard against potential abuses which would disserve the interests of the communications rate payer. On reconsideration we have decided that GTE need not offer enhanced services through a fully separated subsidiary. *See* para. 63 *supra.*

135. In its petition, AT&T "reserves" its position that the Commission generally lacks authority to require structural separation. In any case, it states that it could adjust to the separation scheme proposed with modifications. AT&T Petition at pp. 8–9. GTE and Telenet/CNS maintain that imposition of the separation requirement on only two carriers is deficient constitutionally and under the Communications Act. USITA lauds the Commission for removing the separation requirement from all telephone companies except AT&T and GTE. RTC also approves of our removal of the separation requirement from most telephone companies. RTC states that our broad authority under Title II to enforce interconnection and nondiscrimination requirements on telephone companies operating on an integrated basis should amply protect the communications consumer. ADAPSO and ICDMA assert that we acted within our statutory mandate and constitutional bounds when we imposed the separation requirements on AT&T and GTE. They suggest that we consider placing these requirements on additional telephone companies as well. Finally, ANPA alleges that we committed a "legal error" by not undertaking a "cost/benefit" analysis to decide whether to impose additional structural restrictions on AT&T and GTE. Having reviewed the petitions, we conclude that we have jurisdiction under the Act to impose structural separation on AT&T. Furthermore, we have determined that subjecting AT&T and not others to structural separation does not amount to unlawful discrimination under the Communications Act or the Constitution. Our decision on reconsideration not to impose structural separation on GTE moots GTE's arguments that since GTE itself is not a common carrier it cannot be subjected to structural separation and that such structural separation is a violation of equal protection guarantees.

136. We have authority under the Act to impose structural safeguards on communications carriers to fulfill our regulatory responsibilities. See *Southwestern Cable* and *GTE Service.* In *GTE Service,* the Second Circuit upheld our authority to require that communications carriers offer data processing services only through a maximally separated subsidiary. Structural remedies have been repeatedly utilized by us as a regulatory tool and have been recognized by the courts as serving an important statutory purpose. *See United States* v. *FCC,* (D.C. Cir. No. 77–1249, Mar. 7, 1980) and *Final Decision* at fn. 103.

137. Our imposition of separation requirements on AT&T is not unlawfully discriminatory under the Communications Act. In our *Final Decision* we evaluated carriers' ability to engage in anticompetitive activity and their ability to absorb the costs of separation and still find it worthwhile to enter the competitive, and thus riskier, enhanced services market. We concluded, based on the relative size of AT&T and GTE as well as the diverse national markets which they serve, that we needed only to impose a resale structure on AT&T and GTE. *Id.* at paras. 215–232. We ruled that all other entities providing basic services were subject to the full range of Title II regulation. *Id.* at para. 264. We reevaluate today our assessment in the *Final Decision* of GTE's ability to engage in anticompetitive activity and conclude that changing GTE's corporate structure is not now necessary. Our assessment of the need to impose structural separation on AT&T remains valid. We can continue to enforce our interconnection and nondiscrimination requirements where structural separation is not warranted. *Bell Telephone of Pennsylvania* v. *FCC,* 503 F.2d 1250, 1273 (3d Cir. 1974), *cert. denied sub nom., AT&T* v. *FCC,* 422 U.S. 1026 (1975).

138. *Philadelphia Television* establishes our broad discretion to determine the choice of regulatory tools applicable to particular services in general; and *GTE Service* establishes our broad discretion to choose between structural remedies or solely conduct regulation in the communications/data processing area. 474 F.2d at 731. Furthermore, the *First Computer Inquiry* separation rules upheld in *GTE Service* did not apply to all carriers. These rules exempted carriers with operating revenues not in excess of $1,000,000 annually. 474 F.2d at 730, n.7. A regulatory scheme marked by traditional Title II regulation of all carriers and imposition of a separate subsidiary structure on AT&T is within our "broad discretion in choosing how to regulate" under *AT&T* v. *FCC,* 572 F.2d 17, 26 (2d Cir. 1978). We reject ANPA's contention that we failed to undertake a "cost/benefit" analysis of whether to impose other structural restrictions and that this amounts to legal error. Our discussion in the *Final Decision* demonstrates that we carefully assessed the need for structural limitations imposed. *Id.* at paras. 232–60. Moreover, we noted that there must be a recalculation from time to time "to ensure in the first instance, that the balance was correctly struck here and, second, that important events have not caused a disequilibrium to develop", *Id.* at para. 207.

139. (4) *Notice.* We reject the argument by some parties that the Commission did not provide adequate notice, under Section 553(c) of the Administrative Procedure Act, of its intent to assert jurisdiction over all enhanced services and to order the unbundling of all CPE. ANPA states that notice about assuming jurisdiction over all enhanced services was not given. Xerox questions the adequacy of notice about Commission jurisdiction over hybrid data processing and all CPE. ATA, ATU and NARUC maintain that they were not properly notified of CPE unbundling and detariffing. In fact, the public received adequate notice and a "fair opportunity to present their views on the contents of the final regulatory plans proposed". *BASF Wyandote* v. *Costle*, 598 F.2d 637, 643–46 (1st Cir. 1979). We specifically solicited comments in the *Tentative Decision and Further Notice of Inquiry and Rulemaking*, 72 FCC 2d 358 (1979), on the "deregulation of . . . all customer-premises equipment". *Id.* at para. 65. Additionally, throughout this document we discussed our resolve to establish valid categories for communications and data services. We were forthright in asserting that certain services might be subjected to different regulation depending upon which side of the Title II margin they fell. *See Tentative Decision*, 72 FCC 2d at paras. 65–88, paras. 165–73. Moreover, we have clarified here any confusion concerning the reach of our jurisdiction over enhanced services.

d. Jurisdiction over Customer-Premises Equipment

140. In the *Final Decision* we determined that the provision of stand-alone CPE is not a common carrier activity and that the objectives of the Communications Act would best be fulfilled by deregulating all CPE. We concluded that we have jurisdiction over terminal equipment; that we have the authority to order carriers to unbundle and detariff it, that we can forbear from regulation of CPE and that our preemption of state authority over CPE does not violate the Communications Act or any other laws. We found that carriers' bundling of CPE and services "has a direct effect on the rates charged for interstate service". *Id.* at para. 146. It produces "distortions in interstate rates which would be difficult to remedy without requiring unbundling". *Id.* at para. 154. We found that the bundling of non-usage sensitive CPE into usage-sensitive rates for service is very likely to result in misallocation of costs among services and facilities offerings. This in turn increases the potential for cross-subsidization of competitive CPE offerings from monopoly service revenues.

141. In the *Final Decision* we determined that CPE must also be detariffed because otherwise the carrier could distort either the price for CPE or the charges for basic service through the allocation of joint and common costs on which we set a rate of return. We reasoned, ". . . it is important that the costs attributable to the regulated utility service be separated from competitive provision of equipment used in conjunction with the service by the removal of such equipment from a carrier's rate base". *Id.* at para. 156. The present system discriminates against subscribers who purchase and use non-carrier CPE in making MTS calls but pay the same charge, including an element of cost for carrier-provided CPE, as the subscriber using a carrier-provided terminal equipment. We concluded that deregulation of CPE and removal of related investment from separations were required to eliminate this discrimination between customers.

142. Certain petitioners seek to characterize the order to unbundle and detariff CPE as an unlawful forbearance from its regulation. We disagree. The choice of a proper regulatory approach is within this agency's broad discretion. *United States* v. *Southwestern Cable Co.*, 392 U.S. 157, 173 (1968); *National Broadcasting Co.* v. *United States*, 319 U.S. 190, 219 (1943). We recognize that we have significant flexibility in determining how to regulate terminal equipment offered by carriers separately from transmission service. *Final Decision* at para. 161. Under the "all instrumentalities" provision of Section 3 of the Act the Commission receives permissive authority over CPE, as discussed in our Tentative Decision at paras. 115–118. We have the authority under Section 205 to require the unbundling of CPE from transmission service, even if the provision of such equipment together with transmission service is characterized as common carrier service. Furthermore, Sections 203(b)(2) and 203(c) confer on us the authority to order the detariffing of terminal equipment.

143. (1) *Commission jurisdiction over CPE.* Our general assertion that carrier provision of equipment as part of an end-to-end offering has traditionally been subject to Title II regulation was not challenged on reconsideration. We have frequently in the past asserted jurisdiction over carrier-provided CPE when used with an interstate communications service.[37] As indicated in *North Carolina Utilities Commission* v. *F.C.C.*, 552 F.2d 1036, 1050 (4th Cir. 1976) (hereinafter *NUUC II*), our jurisdiction extends to CPE used for both intrastate and interstate communications should the need for federal action arise.[38] We noted in the *Final Decision* that, while such terminal equipment is within our subject matter jurisdiction, the Act does not mandate its regulation. Under *Permian Basin Area Rate Cases*, 390 U.S. 747 (1968); *United States* v. *Southwestern Cable Co.*, 392 U.S. 157 (1968) and *HBO* v. *F.C.C.*, 567 F.2d 9, (D.C. Cir.) *cert. denied*, 434 U.S. 829 (1977), any regulation by tariff or otherwise must be demonstrated to be reasonably ancillary to the effective performance of the Commission's responsibilities.

144. IDCMA, Motorola, Telenet/CNS, WUI and Xerox question, however, whether we have jurisdiction over non-carrier-provided CPE. Cognizant of the serious concerns voiced by several petitioners about the breadth of the *Final Decision's* holding of ancillary jurisdiction over stand-alone CPE, and based on our view that no statutory purpose would be served by regulating non-carrier-provided CPE, on reconsideration we need only conclude that the provision of CPE by carriers or their affiliates subject to our Title II jurisdiction is within our jurisdiction. We do not reach the issue of whether other CPE falls within our jurisdiction under Title I. We have discussed several general aspects of our ancillary jurisdiction in paras. 121–125 *supra*, and we believe that analysis is relevant as well to our consideration here of the scope of our jurisdiction over non-carrier provided CPE. To the extent that all carriers become involved in competitive CPE provisioning they must of course comply with antitrust standards. *See Cantor v. Detroit Edison Co.*, 428 U.S. 579, 596 (1976).

145. *GTE Service* teaches that common carrier offering of even stand-alone CPE is within our jurisdiction because it can affect the cost of and

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[37] Department of Defense v. General Telephone Co., 38 FCC 2d 808 (1973), *review denied*, FCC 73-854, *aff'd per curiam sub nom.*, St. Joseph Telephone & Telegraph Co. v. FCC, 505 F.2d 676 (D.C. Cir. 1974); AT&T "Foreign Attachment" Tariff Revisions, 15 FCC 2d 605 (1968); *reconsideration denied*, 18 FCC 2d 871 (1969); Hush-a-Phone Corp. v. United States, 238 F.2d 266 (D.C. Cir. 1956), *decision on remand*, 22 FCC 112 (1957); Jordaphone Corp. v. AT&T, 18 FCC 644 (1954); Katz v. AT&T, 43 FCC 1328 (1963); Use of Recording Devices, 11 FCC 1033 (1947).

[38] RTC has questioned whether we have the authority to enforce our decision on non-fully subject Section 2(b)(2) carriers. We need only note that such carriers' CPE is subject to the separation process and raises the same regulatory concerns.

efficient provisioning for common carrier services. For example, we imposed structural separation on AT&T in part because of our concern that AT&T can cross-subsidize between competitive CPE sales and Title II regulated basic transmission services. Such separation is well within the bounds of our jurisdiction under *GTE Service*.

146. (2) *Jurisdiction to implement the specific CPE regulatory scheme mandated.* Petitioners assumed differing positions on our authority to order the unbundling and detariffing of CPE and the rate freeze. Among the parties questioning our jurisdiction to order the deregulation of CPE were APUC and USITA. CBEMA, Centel and REA maintain that the Commission does have authority to order unbundling and detariffing in certain circumstances. ATU and ATA recommend that we convene a Joint Board pursuant to 47 U.S.C. § 410(c) to consider CPE removal from the separations process. Xerox questions whether, having taken jurisdiction over CPE, we can then forbear from its regulation. AT&T, Centel, GTE, NTIA, RTC, United and USITA question whether our paragraph 165 guidelines for the pricing of local exchange service are equivalent to prescription of a rate, to be accomplished only pursuant to a hearing under Section 205. United maintains that the freeze of a rate for the life of the instrument by the Commission violates Section 203 of the Act because it precludes affected carriers from filing new rates when justified. Requiring certain rate levels after detariffing CPE exceeds the subject matter jurisdiction of this Commission, according to ATU. Centel argues that the rate freeze is possibly an unconstitutional taking of property without just compensation. AT&T and GTE add, in a related argument, that the extraction of CPE from the state and federal rate bases has a retroactive effect and is confiscatory under the Fifth Amendment and the APA.

147. Our decision on reconsideration to defer the unbundling and detariffing of embedded CPE pending the outcome of a further proceeding moots petitioners' arguments addressed to our power to deregulate embedded CPE as outlined in the *Final Decision*. However, we discuss here our authority to order the prospective unbundling and detariffing of CPE because our decision today will ultimately have this result.

148. We find the authority to require carriers to unbundle and detariff CPE in Sections 4(i), 203 and 205 of the Act. Unbundling and detariffing are the most effective ways to control charges for terminal equipment used in interstate commerce. Section 205 authorizes us to establish "... what classification, regulation, or practice is or will be just, fair, and reasonable ...". As stated in the *Final Decision*, we have in the past exercised our Section 205 power broadly in the areas of customer/provided equipment and interstate transmissions service. *See First Report and Order in Docket No. 19528*, 56 FCC 2d 593 (1975), *on reconsideration*, 57 FCC 2d 1216 (1976), 58 FCC 2d 716 (1976) and 59 FCC 2d 83 (1976); *Second Report and Order in Docket No. 19528*, 58 FCC 2d 736 (1976), *aff'd sub nom., North Carolina Utilities Commission* v. *FCC*, 552 F.2d 1036 (4th Cir.), *cert. denied*, 434 U.S. 874 (1977); *Regulatory Policies Concerning Resale and Shared Use of Common Carrier Services and Facilities*, 60 FCC 2d 261 (1976), *on reconsideration*, 62 FCC 2d 588 (1977), *aff'd sub nom., AT&T* v. *FCC*, 572 F.2d 17 (2d Cir.), *cert. denied*, 439 U.S. 875 (1978).

149. In the *Final Decision* we pointed out that the current regulatory approach, which involves tariff review of CPE charges only to the extent that they are bundled into charges for interstate transmission services, provides "little or no effective oversight over the offering of terminal equipment utilized jointly for interstate and intrastate communications". *Id.* at paras. 177, 178. In contrast, we found that "the provision of terminal equipment on an unbundled and detariffed basis should enhance significantly or flexibility to assure cost-based provision of transmission services in an increasingly competitive market place". *Id.* at para. 179. We expressed our strong conviction that terminal equipment charges made in connection with interstate service should be offered on a cost-related, not a usage-sensitive, basis and on a separate, not a bundled, basis. *Id.* at para. 177. Unbundling CPE would explicitly identify to a customer the cost of the terminal equipment service component. In the *Final Decision* we also make known our intention to require certain carriers to offer terminal equipment through an entity separate from the company providing transmission services. This would, we concluded, more effectively assure against cross-subsidization of essentially competitive services by distinct and separate transmission services than present practices do. *Id.* at para. 177.[39]

[39] Our decision to order the unbundling and detariffing of CPE was based on our independent assessment of the record in this proceeding and of all factors which would serve the public interest in efficient communications service at reasonable rates. Our assessment of market conditions is one such factor. *See* FCC v. RCA Communications, Inc., 346 U.S. 86, 94 (1952).

150. We scrutinized different approaches to assuring that communications customers have access to CPE at reasonable, cost-based rates in the *Final Decision*. Having done so, we concluded that by unbundling and not tariffing individual equipment offerings we could more effectively meet our responsibilities under the Communications Act than under present arrangements. We summarized our conclusion in paragraph 178: "[f]aced with this choice between alternative regulatory approaches, we believe that there are extraordinarily compelling reasons for adopting a new regulatory approach to the interstate provision of terminal equipment". In reliance on our broad Section 205 power we chose unbundling and detariffing as a "different set of regulatory tools" better designed to insure reasonable, efficient communications service in the developing competitive marketplace. We found that our mandating interconnection in *Carterfone* and our subsequent establishment of technical standards in this area have helped create the conditions for a strong market for equipment which assures users a wide range of competitive alternatives. *Id.* at para. 179.

151. On reconsideration we rely additionally on our Section 203(b)(2) and 203(c) powers to order the prospective detariffing of terminal equipment. Section 203(b)(2) grants this Commission the authority "in its discretion and for good cause shown" to "modify any requirement made by or under the authority of this section either in particular instances or by general order applicable to special circumstances". Section 203(c), coupled with Section 4(i), Section 205, and Section 211, provides us with significant discretion on how to regulate tariffed service.[40]

152. (3) *State Preemption.* Certain petitioners challenge our CPE regulatory scheme by stating that it preempts areas of regulation reserved to the states by

[40] Section 203(c) provides that:

No carrier, unless otherwise provided by or under authority of this Act, shall engage or participate in such communication unless schedules have been filed and published in accordance with the provisions of this Act and with the regulations made thereunder; and no carrier shall (1) charge, demand, collect, or receive a greater or less or different compensation, for such communication, or for any service in connection therewith, between the points named in any such schedule than the charges specified in the schedule then in effect, or (2) refund or remit by any means or device any portion of the charges so specified, or (3) extend to any person any privileges or facilities, in such communication, or employ or enforce any classifications, regulations, or practices affecting such charges, except as specified in such schedule.

the Act. State preemption arguments are directed to our order unbundling and detariffing CPE as well as to our rate guidelines set forth in paragraph 165 of the *Final Decision*. Our decision on reconsideration moots arguments directed to the formerly mandated tariff filing and rate freeze. Our requirement today that embedded CPE used solely in conjunction with interstate or foreign transmission offerings and associated maintenance be detariffed not later than March 1, 1982 deals solely with equipment within our jurisdiction. It cannot give rise to state preemption claims. Embedded CPE employed in both interstate and intrastate service will be addressed in a separate implementation proceeding.

153. In their petitions, APUC, ATU, GTE, NARUC and USITA contend that our decision to order the unbundling and detariffing of CPE treads on state prerogatives. They contend that our action is prohibited by Section 2(b), which excludes "charges, classifications, practices, services, facilities, or regulations for or in connection with intrastate communication service by wire or radio of any carrier . . ." from our jurisdiction.

154. We are aware that requiring carriers to unbundle and detariff CPE used jointly in the provision of interstate and intrastate service has the practical effect of eviscerating state jurisdiction to establish charges for this terminal equipment in a manner that conflicts with federal interests. But, we preempt the states here only to the extent that their terminal equipment regulation is at odds with the regulatory scheme set forth. We do not assess here the legality under the Communications Act of future attempts by the states to regulate CPE in ways which they perceive to be consistent with this decision. We shall address such regulatory attempts, should they present themselves, on an *ad hoc* basis.

155. Section 2(b) does not preclude us from exercising our conceded section 2(a) regulatory authority over terminal equipment as part of an interstate service in ways which may result in the displacement of state authority to regulate intrastate rates. In the *Final Decision* we found that current bundling of non-usage sensitive CPE with usage-sensitive service rates and its incorporation in the separations process produces price distortions among interstate and intrastate customers. We stated that, ". . . it is important that the costs attributable to the regulated utility service be separated from the competitive provision of equipment used in conjunction with the service by the removal of such equipment from a carrier's rate base". *Id.* at para. 156. We do not unduly infringe on the states' Section 2(b)(1) jurisdiction by requiring that new terminal equipment not be tariffed as of March 1, 1982. While this requirement may impair the states' ability to establish charges for intrastate service, we have imposed it only to best implement our jurisdiction under Sections 1 and 2(a) over interstate service. When the exercise of our jurisdiction over interstate services requires the imposition of requirements for unbundling and nonusage sensitive charges, however, inconsistent state regulations must yield to preeminant claims of the federal regulatory scheme.

156. Section 2(b)(1) does not reserve authority over carrier offered CPE solely to the states. This section reserves to the states jurisdiction over classifications, practices, services, facilities or regulations for or in connection with *intrastate* communication service by wire or radio. Under *North Carolina Utilities Commission* v. *F.C.C.*, 537 F.2d 787, 793 (4th Cir. 1976) (hereinafter *NCUC I*), Section 2(b) only prevents Commission regulation of "local services, facilities and disputes that in their nature and effect are separable from and do not substantially affect the conduct or development of interstate communications". Furthermore, in ruling on this Commission's terminal equipment registration program, the Fourth Circuit found that Section 2(b)(1) "does not deny the Commission jurisdiction with respect to intrastate facilities used for interstate communications". *NCUC II*, 552 F.2d at 1046.

157. NARUC and the RTC maintain that *NCUC II* distinguishes between federal preemption of contrary state regulation "where the efficiency or safety of the national communications network is at stake" and federal preemption of "state ratemaking prerogatives". *NCUC II* at 1046–1048. We reiterate that it is not our desire to infringe on purely local rates, but to ensure economic interstate service. According to *NCUC II*, " . . . once it is recognized that FCC regulations may preempt any contrary state regulations where the efficiency or safety of the national communications network is at stake, there can be little argument that FCC regulation of jointly used terminal equipment for the purpose of improving interstate communications service may not also displace conflicting state regulations". *NCUC II* at 1046. In *NCUC II* the court stated: "[r]ecognition of federal primacy in the regulation of jointly used terminal equipment no more curtails state ratemaking *as a matter of jurisdiction* than would the denial of state authority to set rates for interstate calls in order to subsidize local exchange and intrastate services." *NCUC II* at 1048.[41]

158. Finally, a few parties contend that the Commission should refer the issue of whether removal of all CPE from the separations process is warranted to a Federal/State Joint Board convened under Section 410(c) of the Communications Act. This argument is moot as to embedded CPE because we do not today propose to remove such CPE from the separations process. A Joint Board is considering the effect of removing all embedded CPE from the separations process. We are, furthermore, aware of no precedent which would require us to convene a Joint Board prior to ordering that as of March 1, 1982, new CPE must be offered on an unbundled and detariffed basis. Section 410(c) was not intended to hamstring this Commission in the formulation of its long range policies by requiring that every decision which could have a wholly prospective impact on the size of the separations pool be referred to a Joint Board.

e. 1956 Western Electric Decree

159. We set forth our reading of the 1956 Western Electric Decree in the *Final Decision*. We determined that excluding CPE from tariff-type regulation would not foreclose Bell System participation in the CPE market under Section IV; that enhanced services are "incidental to" the provision of common carrier communications services under Section V(g); and that Section II(i), which defines the activities which the Bell System can engage in under the decree, does not specify more than that the

[41] We are unconvinced by the contention of NARUC that Congress in enacting Section 2(b)(1) denied us jurisdiction over the CPE regulatory scheme proposed because it did not want this Commission to exercise the type of ICC jurisdiction upheld in the *Shreveport Rate Cases, Houston, East & West Texas Railway* v. *I.C.C.* 234 U.S. 342 (1914). These cases do not circumscribe our authority to regulate directly rates for interstate communications services. While in the *Schreveport Rate Cases* the ICC ordered a change in intrastate rates solely because of their indirect effect on interstate commerce, here we do not seek to set rates for local services. Rather, we have ordered the unbundling of CPE at the local level because of the direct effect of CPE inclusion in end-to-end service on interstate service rates. NARUC mischaracterizes CPE provision and maintenance as "exclusively local services". NARUC Petition at page 8. Separations and settlements from interstate revenues currently partially subsidize CPE. Furthermore, when a local carrier offers CPE it intends to provide the customer with access to the interstate and intrastate switched networks alike.

regulation of charges required be "public" and "under the Communications Act of 1934." *Id.* at para. 277. The petitions for reconsideration present us with challenges to our authority to interpret the decree and questions about the validity of the interpretation presented.

160. ANPA, CCIA, GTE, IDCMA, WUI and Xerox argue that we cannot "modify" the 1956 Western Electric Decree. GTE, IDCMA and Telenet/CNS state that the judgement court is the appropriate forum to definitively construe or modify it. AT&T and NTIA maintain that an administrative agency's interpretation of a judicial decree which has far-reaching implications in its area of expertise should be accorded substantial deference.

161. We believe that we can and, in fact, are obligated by our public interest mandate to assess the impact of the Final *Decision* upon the Bell System's activities under the decree. In the *Final Decision* we expressly stated that "no attempt is being made to render a definitive construction of the decree." *Id.* at para. 275. We conceded that the judgment court with jurisdiction over the decree is the appropriate body to render a conclusive construction of it. *Id.* We stated that it was AT&T's responsibility to approach the judgment court should it seek such a definitive construciton. *Id.* at para. 280. We assessed the meaning of the decree for our regulatory purposes in the *Final Decision.* We believe the existence and meaning of the decree to be relevant facts, like any others, to be considered in our effort to locate the public interest in the extraordinarily important and complex communications policy matters being considered in this proceeding. Indeed, we would have been remiss had we not assessed the impact of the comprehensive regulatory scheme established in this proceeding on the largest company in the telecommunications industry. Our action here is not an attempt to usurp judicial power. It represents an effort to weigh the effects of a comprehensive industry regulatory scheme on the industry's donimant participant.

162. Much debate focuses on our interpretation of the 1956 Western Electric Decree. ADAPSO and Telenet/CNS argue that the regulation referred to in Section II(i) of the decree must be tariff-type regulation.[48] CCIA, Datapoint and IDCMA maintain that regulation specified under Section II(i) is either tariff-type regulation or the imposition of stronger structural separation on AT&T's enhanced services and CPE subsidiary. NTIA contends that our interpretation of Section II(i) is correct. According to NTIA, services referred to under Section II(i) need only be subject to ongoing surveillance and protection of the public interest, provided under the *Final Decision.* AT&T holds the opinion that the regulatory regime for enhanced services and CPE in the *Final Decision* does in fact regulate "charges" under Section II(i). CCIA does not accept our reading of Section IV of the decree. ANPA, CCIA, GTE and IDCMA contend that enhanced services are not "incidental to" communications under Section V(g). CBEMA "questions" this characterization of enhanced services. AT&T and NTIA agree with it.

163. On reconsidering we adhere to our reading of the 1956 Western Electric Decree in the *Final Decision.* We do not interpret the decree as foreclosing AT&T involvement in enhanced services and CPE subject to proper structural safeguards. The consent decree clearly does not address the evolution of a more competitive communications equipment market by breaking the monopoly hold of AT&T's communications services affiliates. Rather, it is premised upon constraining the equipment prices which can be charged by Western Electric and accumulated as part of the operating affiliates' public utility rate bases. The decree's purpose is to protect monopoly ratepayers from inflated charges through rate base padding.

164. While we believe that a simple assessment of the terms of the decree itself makes this plain enough, there is collateral evidence which puts this beyond dispute. The Department of Justice concluded the decree only after soliciting this agency's expert advice as to our ability, and that of similarly chartered state public utility commissions, to prevent the imposition of excessive charges for Western Electric products upon the Bell operating companies. The point of requiring in Section II(i) that the "charges" for services and facilities be "subject to public regulation" was to guarantee that costs of a non-jurisdictional nature not be attributed to public utility service and that profits in fact generated by utility service not escape regulatory constraints by being funneled to a non-regulated manufacturing affiliate.

165. The Commission's advice to the Department of Justice that we could in fact protect the monopoly ratepayer from excessive prices for goods and services obtained from affiliated entities through traditional regulatory mechanisms such as disallowances led the Department to enter into the decree. We feel very confident in attesting that the separate subsidiary form of regulation imposed here promises far greater protection for the monopoly ratepayer, and concomitantly for AT&T's competitors, than the more traditional public utility approaches comprehended by those who would insist upon a narrow reading of "charges" in Section II(i).

166. In dealing with Section II(i) as well as other provisions of the decree, we have noted the breadth and ambiguity of the decree's language. Section II(i) in particular invites resort to this agency's expertise in delineating the particular forms of public regulation available under the 1934 Act. We note that the decree makes no explicit reference to the Commission's Title II or tariff-related powers; and, therefore, we believe that it would be unreasonable to view the form of "public regulation" referred to in the decree as so narrowly limited. In fact, we believe that our requirement for a separate subsidiary for the provision of terminal equipment and enhanced services—with various competitive safeguards imposed in this proceeding—constitutes a more effective form of public regulation than is available under a tariff-oriented regulatory scheme. Indeed, over the past twenty years of the development of a competitive terminal equipment market, our affirmative scrutiny of terminal equipment prices has been very limited.[49] Moreover, different states have greatly varying degrees of resources to be dedicated to examination of terminal equipment prices to protect monopoly ratepayers against cross-subsidization. As a legitimate regulatory tool, the establishment of a subsidiary will provide a coordinated focus for dealing on an accounting basis with cross subsidy problems and provides checks on anticompetitive behavior. In the case of enhanced services, a subsidiary is being required for services that are not to a significant degree being provided by AT&T. That subsidiary must obtain its transmission services under tariff, cannot obtain certain software from affiliated entities and cannot obtain other competitive advantages as a result of its affiliations. We believe that all these regulatory requirements should be

[48] Section II(i) states, "'[c]ommon carrier communications services' shall mean communications services and facilities, other than message telegram service, the charges for which are subject to public regulation under the Communications Act of 1934. . . ."

[49] See Docket No. 18418, 23 FCC 2d 876; 29 FCC 2d 466 (1972); 29 FCC 2d 837 (1972); 42 FCC 2d 667 (1973); Datapoint 40/4, 62 FCC 2d 21 (1977), aff'd sub nom. International Business Machines Corp. v. FCC, 570 FCC 2d 451 (2d Cir. 1978); SIC Telex Equipment, CC Docket No. 80-286, 79 FCC 2d 175 (1980).

regarded as fully effectuating the basic goals and objectives of Section II(i).[44]

167. In the *Final Decision* we interpreted the decree based on a full-scale analysis of antitrust concerns and of the public interest in general. We concluded that our reading of the decree is compatible with antitrust principles favoring open entry. *See Northern Pacific Railway v. U.S.*, 356 U.S. 1, 4 (1958). Accordingly, we indicated: "[w]hen an unstrained interpretation of the decree, holding out some reasonable promise both of avoiding such an anticompetitive result and of preventing possible controversies regarding AT&T's competitive activities from spreading beyond the range of markets 'incidental' to common carrier communications is available, we believe it would be unreasonable to adopt rules premised upon the assumption that either the Justice Department or the District Court in New Jersey would subscribe to a less attractive interpretation." *Id.* at fn. 117.

168. Our jurisdictional determinations on reconsideration in no way affect our discussion of the Bell System's opportunities to participate in the enhanced service and CPE markets under the decree. We perceive that enhanced services are incidental to the provision of common carrier communications services described by Section V(g) of the consent decree because they presuppose the use of common carrier telecommunications facilities. We maintain that any enhanced services provided by the separate Bell subsidiary would remain subject to our jurisdiction under *GTE Service*. In addition, as we indicated in the *Final Decision*, our jurisdictional assertion and our interpretation of the 1956 Western Electric Decree stand independently. We reserve the right to inquire closely, and even to prescribe price levels within the fully separated subsidiary if violations of basic separations safeguards are made out and such remedial action is necessary to protect the statutory rights of the monopoly ratepayer.

V. Conclusion

169. In acting on the petitions for reconsideration we have attempted to clarify various points raised, and we have modified the *Final Decision* where appropriate. We recognize that a fair number of issues remain for resolution. Some will be addressed as part of on going proceedings such as Docket 79-105 and Docket No. 20188. We are also instituting proceedings to examine the implications of various license contract arrangements and to implement the deregulation of embedded CPE. Thus, the *Second Computer Inquiry* may be viewed as an on-going proceeding.

170. We have attempted to make our determinations as clear as possible. In addition to those issues which remain for resolution in separate proceedings, some ambiguity may exist in our decision. This may be inevitable, considering the scope of the proceeding, it may be difficult to cover all related areas. The Commission intends to give expeditious consideration to those matters that bear on the effective implementation of the *Final Decision*, as modified herein, and to render advice when necessary.

171. CWA has filed comments in this proceeding which express its concern about the effects of the proceeding upon its members. We expect that AT&T will make every effort to accommodate the impact of the *Final Decision* on its employees in terms of wage structures, benefits, pension rights, and senority and collective bargaining rights within the prescribed period. We continue to believe that a cooperative approach among all affected parties is essential if significant institutional and personal dislocations are to be avoided. It is important that the transition be accomplished in a manner which will not disadvantage the affected carriers, their employees or their shareholders. We continue to believe, however that "the burdens of working out the transition must be borne in the largest measure by the affected carriers." *Final Decision* at para. 286.

VI. Ordering Clauses

172. Accordingly, IT IS ORDERED pursuant to Sections 4(i), 4(j), 201–205, 403 and 404 of the Communications Act of 1934, as amended, that the *Final Decision* adopted in this proceeding is modified to the extent set forth herein.

173. *It is further ordered* that petitions for reconsideration are granted to the extent set forth herein, and are otherwise denied.

174. *It is further ordered* that Section 64.702 of the Commission's Rules and Regulations is amended as set forth below effective February 3, 1981.

Federal Communications Commission.

William J. Tricarico,

Secretary.

Section 64.702(c)(4) is amended to read as follows:

§ 64.702 Furnishing of data processing services.

* * * * *

(c) * * *

(4) Any research or development performed on a joint or separate basis for the subsidiary must be done on a compensatory basis. Except for generic software within equipment, manufactured by an affiliate, that is sold "off the shelf" to any interested purchaser, the separate corporation must develop its own software, or contract with non-affiliated vendors.

* * * * *

APPENDIX A

Petitioners

American Telegraph & Telephone Co. (AT&T)
United Telephone System, Inc. (United)
Datapoint Corporation
Public Utilities Commission of California
TDX Systems, Inc.
Computer and Business Equipment Manufacturers Association (CBEMA)
NCR Corporation (NCR)
Western Union International, Inc. (WUI)
GTE Service Corporation (GTE)
Computer Corporation of America (CCA)
Communications Workers of America (CWA)
Central Telephone & Utilities Corporation (Centel)
U.S. Telephone and Telegraph Corporation (UST&T)
Plantronics Inc.
Alaska Public Utilities Commission
Independent Data Communications Mfg. Association (IDCMA)
Association of Data Processing Service Orgs., Inc. (ADAPSO)
Rural Electrification Administration (REA)
North American Telephone Association (NATA)
GTE Telenet Communications Corporation and GTE Communications Network Systems Incorporated (GTE-Telenet)
Tymnet, Inc.
Anchorage Telephone Utility
Rural Telephone Coalition (RTC)
Alaska Telephone Association (ATA)
United States Independent Telephone Association (USITA)
National Association of Regulatory Utility Commissions (NARUC)
Motorola, Inc.
American Newspaper Publishers Association (CCIA)
Xerox Corporation

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[44] In paragraph 17 we have proposed certain transitional arrangements under which existing AT&T "enhanced" services could be offered pending the establishment of a fully separated subsidiary. We regard these "transitional" measures as an adequate mechanism for public oversight of such activities for the limited transition period anticipated. Parenthetically, as to the acceptability of nontariff oversight under the consent decree, we have noted the Department of Justice acquiescence in numerous unregulated Bell System activities. See *Final Decision* at fn. 116 and *Tentative Decision* at paras. 142–144. By contrast, we have here implemented a scheme which establishes both a separate subsidiary and a set of competitive safeguards or separation requirements. Except to the extent that certain more limited transitional arrangements are afforded for certain existing AT&T enhanced services on a short-term basis, as noted above, we regard these separation requirements as integral and essential to our conclusion that the AT&T activities in question—and indirectly, of course, the charges for such activities—are subject to a scheme of public regulation at least as effective if not more effective in our view than traditional tariff regulation.

Nebraska Public Service Commission (Motion for Extension of Time)
United Computing Systems, Inc. (Intention to Reply)
Minnesota Public Service Commission
National Telecommunications & Information Administration (NTIA)
Computer Law & Tax Report

Oppositions

United	NCR
AT&T	USITA
ANPA	GTE-Telenet
UST&T	RTC
IDCMA	ADAPSO
NTIA	Tymnet
Central	CSEMA

America Satellite Company (ASC)
Sperry Univac Division Sperry Corporation (Sperry Univac)
Anchorage Telephone Utility
Delphi Communications Corporation
Satellite Business Systems (SBS)
National Burglar and Fire Alarm Association and the Alarm Industry Telecommunications Committee (NBFAA & AITC)
Southern Pacific Communications Company (SPCC)
International Business Machines Corporation (IBM)

Reply Comments

CSEMA	NTIA
AT&T	Xerox
GTE	ADAPSO
NATA	IDCMA
IBM	NARU
CCIA	Plantronics Inc.
USITA	ANPA
SPCC	Tymnet

Anchorage Telephone Utility
Society of Telecommunications Consultants
Telecommunications Association of Minnesota and Wisconsin
Telecommunication Contractors Association

Separate Statement of Charles D. Ferris, Chairman

Re: Reconsideration of the *Final Decision* in the *Second Computer Inquiry*.

We have modified our *Final Decision* in the *Second Computer Inquiry* in several important respects. First, the pleadings have demonstrated that the complexities of deregulating embedded terminal equipment require a separate proceeding, so we are modifying our Decision to reflect that fact. Second, we are now convinced that imposing the same separation requirements on GTE as on AT&T is not justified in light of their differing circumstances. Third, we have refined our legal analysis to clarify our jurisdiction with respect to enhanced services.

I am gratified that the structural safeguards we have placed on the American Telephone and Telegraph Company have survived intact. These regulatory safeguards are absolutely necessary if we are to carry out our responsibility under the *Communications Act* to protect ratepayers from cross-subsidy and ensure non-discriminatory access to underlying basic transmission facilities by all participants in the evolving enhanced communications industry.

Guaranteeing non-discriminatory access is, in my view, the most important goal of the structure we have established. If AT&T, with its overwhelming share of both the local distribution and intercity transmission markets, is allowed to combine both basic transmission facilities and enhanced services in the same organizational and operational structure, we could never be certain that competitors would receive non-discriminatory access to the building blocks upon which all of the evolving communications markets are based.

These regulatory safeguards take on added significance in light of the 1956 Consent Decree. I am satisfied that substituting structural regulation for our traditional Title II regulation satisfies both the public interest and the requirements of the Decree. Anything less, however, would serve neither.

I hope that in the future this Commission will evaluate requests for waivers of this structure in light of the compelling need to satisfy our obligations to consumers and competitors, as well as the constraints imposed on AT&T by virtue of the Consent Decree. Evisceration of this regulatory structure would not only defeat the fundamental policy premises of the *Second Computer Inquiry*, it would expose the decision to unnecessary risks in the New Jersey court, which has responsibility for construing the Decree that AT&T voluntarily entered into in 1956.

Let me emphasize, however, that while providing for AT&T's participation in these evolving markets is very important, removing needless, wasteful regulation from *all* competitors is even more important. If faced with the choice of regulating all competitors or keeping AT&T out, I would vote to guarantee that these markets could grow and prosper free from traditional regulation.

Concurring Statement of Commissioner James H. Quello

Re: Reconsideration of Final Decision in Docket No. 20828—Second Computer Inquiry.

I believe that this decision, as it has evolved, is a good one which will contribute to the offering of more and better telecommunications service for the American public. The Commission, upon reconsideration, has wisely eliminated some of the more burdensome aspects of the *Final Order* and has clarified some of its provisions.

While I wholeheartedly support the main thrust of this order, I continue to have concerns that it might be overly restrictive particularly with regard to ownership of transmission facilities by AT&T's subsidiary. Only time will tell whether the waiver standards we have adopted are capable of providing relief where such relief is necessary and desirable as a matter of public policy.

I am hopeful that over time this decision will continue to evolve and that we will have encouraged development of a telecommunications system that will truly meet the needs and interests of the public.

Therefore, I concur.

Statement of Commissioner Joseph R. Fogarty

Concurring in Part

In Re: *Computer Inquiry II*—On Reconsideration

When the Commission adopted the *Final Decision* in its Second Computer Inquiry on April 7, 1980, I described that action as a "landmark" in the history of telecommunications, observing that no other decision since the passage of the Communications Act of 1934 and the creation of this Commission is so momentous in terms of impact on industry, regulation, and the public interest. I believe that the *Final Decision*, as amended along the lines I proposed, represents significant progress and accomplishment in resolving the critical issues of telecommunications regulation in the computer age which have confronted the Commission now for well over a decade. In particular, the essential concept of a basic/enhanced service dichotomy and resale structure, together with dominant carrier structural regulation and forbearance from regulation for the rest of the enhanced service competitors, is wise, pragmatic, and supported by a strong policy foundation. The unbundling and detariffing of customer premises equipment (CPE) is also premised on sold legal and policy considerations.

The Commission's *Final Decision*, as refined in this order, will, for the most part, bring the benefits of competition to the American consumer. Our decision will permit AT&T to offer enhanced services for the first time. This entry is long overdue and, because of AT&T's tremendous research and development potential, the Commission's action should result immediately in benefit to consumers in terms of innovative, widely-available, and low cost enhanced services. AT&T, however, will

not be the only competitor to benefit from this decision. Pursuant to the policy enunciated in our *Computer II* rulings, a number of companies, who are not traditional common carriers, will now be permitted to provide a wide range of services, including communications components, without being constrained to limit the nature and scope of their offerings in order to avoid Commission regulation. Moreover, our decision will permit a myriad of common carriers, other than AT&T, to expand their offerings to include enhanced services without being constricted by burdensome regulation in general, and the separate subsidiary requirement in particular. In the long run, these actions encouraging competition in the enhanced services market by non-AT&T companies will prove to be the most important consequence of our *Computer II* decisions. As a result of this new and expanded competition, I foresee truly dynamic growth in the number of low-cost and innovative services and equipment products available to the consumer in the future.

During the course of this proceeding, I have questioned the adequacy and wisdom of various proposals considered by the Commission in several critical areas. Central to my partially dissenting views[1] has been the concern that while the Commission has attempted to implement an almost pristine devotion to economic theories of "marketplace competition," the actual effect of such actions would be anti-competitive in terms of denying certain entities and most importantly, the public they serve, the benefits of "full and fair" competition. I have also been troubled that in certain key areas the real-world consequences of the Commission's actions have been only dimly perceived or wholly unanticipated with no assurance that the public interest will be served in fact, as well as in theory. This has been my primary and vital concern, for under our existing statutory mandate, it is the public interest—the interest of consumers, ratepayers, and end users—and not the interest of particular competitors, which must command the Commission's paramount attention and responsibility.

Many of the issues which I raised have been addressed and resolved over the long and somewhat tortuous course of this proceeding, and the decision which we adopt here represents a vast improvement over the *Tentative Decision* and the *Final Decision*. In particular, although I agreed in principle with the position reached in the *Final Decision* on customer premises equipment (CPE), I questioned whether the Commission had properly addressed the serious problem of the upward rate pressures on local exchange rates which would result from the removal of terminal equipment revenue requirements from the separations process.[2] I was also concerned that the March 1, 1982 implementation date for the deregulation of CPE was totally unrealistic.[3] The bifurcated approach with respect to new and imbedded CPE and the proposed implementation proceeding which we have adopted in this decision go a long way toward easing my concerns.[4] In my judgment, it is critical that the Commission not deregulate in-place CPE until the numerous rate issues have been addressed and satisfactorily resolved. In light of the Commission's recognition of these issues, my concerns regarding the March 1, 1982 implementation deadline have been mooted. I suggest that in order to speed our consideration of these issues, the implementation proceeding should be promptly instituted as a Notice of Inquiry and Proposed Rulemaking. The rate issues not addressed in this implementation proceeding should be dealt with by the Joint Board recently convened in Docket 80-286, and as a member of this Joint Board, I intend to see that this responsibility is met.

With respect to both the *Tentative Decision* and the *Final Decision*, I observed that the Commission had never assessed the critical cost benefit trade offs inherent in the various degrees of separation proposed for "dominant" carriers. Here, I have been especially concerned that we have never examined the question of whether the economies which might flow to the ratepayer from vertical integration may outweigh any potential abuses.[5] Again, many of my concerns have been met. On reconsideration, I argued that GTE should not be subject to the separate subsidiary requirement. In fact, GTE should never have been considered a dominant carrier for the purposes of the *Computer II* resale requirements. The record in this proceeding is clear that GTE does not have sufficient market power to allow it to engage in the cross-subsidization of enhanced services. In this order, the Commission has relieved GTE of the burden of the resale requirement, and GTE may now provide CPE and enhanced voice services directly. However, on its face, this order still leaves GTE subject to the conditions imposed in the *GTE Telenet Merger* decision.[6] I believe this result is inconsistent with the plain effect and rationale of the Commission's decision lifting the separate subsidiary requirement from GTE. In essence, the Commission has overruled the GTE Telenet merger conditions. However, a question has been raised as to whether parties have had sufficient notice of this action, and I will defer to the need for procedural certainty on this point. The Commission should move quickly on the rulemaking proceeding which will address this issue with the requisite finality.

This order also represents an improvement over the *Final Decision* and *Tentative Decision* with respect to the basic/enhanced service dichotomy and its application. My partial dissent to the *Final Decision* emphasized that this dichotomy and its accompanying restrictions, as adopted in that order, would preclude AT&T from offering a number of important services via the core network. On reconsideration, certain modifications have been made which substantially lessen these concerns.

Under the standard adopted in this order, AT&T will be able to petition the Commission for waiver permitting it to offer enhanced services directly upon a public interest showing. I concur in this standard. I would have preferred, however, that the Commission amend the definition of basic service to include the offering of voice storage, forward and retrieval services, such as AT&T's Custom Calling II and Dial-It services and Plantronics' CentraVox. I believe that by precluding the offering of these services as a part of basic service, the Commission has sacrificed the public interest to preserve an allegedly "bright and enduring" line between basic and enhanced services.[7] Any line which attempts to distinguish between AT&T's Custom Calling I offering, which is permitted as a part of basic service,[8] and Custom Calling II, Dial-It and CentraVox, which are not, is neither

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[1] See, e.g., *Second Computer Inquiry—Final Decision*, Statement of Commissioner Joseph R. Fogarty Dissenting in Part, 77 FCC 2d 384 (1980).

[2] *Id.* at 513.

[3] *Id.* at 517.

[4] See Notice of Proposed Rulemaking and Order Establishing a Joint Board, [Docket No. 80-286, FCC 2d [1980]]. I note that this Joint Board has already held one meeting in Houston, Texas on November 12, 1980.

[5] See Separate Statement of Commissioner Joseph R. Fogarty, *Tentative Decision*, 72 FCC 2d 358, 452 (1979); Separate Statement of Commissioner Joseph R. Fogarty, 77 FCC 2d 384, 508 (1980).

[6] *GTE Telenet Merger*, 72 FCC 2d 111 (1979).

[7] I cannot accept the argument that the impact of this is somehow lessened because only AT&T is affected. AT&T serves 81.9 percent of this nation's telephones. Therefore, the vast majority of consumers will be potentially affected.

[8] See, Final Decision at para. 98.

[9] 47 U.S.C. § 151.

"bright" nor "enduring," nor in the public interest. If all consumers, particularly residential or occasional users and the less affluent in our society in the ghetto and rural areas, are ever to be able to obtain the full benefits of modern telecommunications technology, AT&T must be permitted to offer these services as a part of basic service. The criterion separating basic from enhanced services should be whether the content of the information is altered during transmission not the obsolete "real time," "human-to-human" concept adopted by the *Final Decision*. The Commission is not mandated simply to promote competition in and of itself nor to promote a particular economic theory, but rather to regulate "so as to make available, so far as possible to all the people of the United States a rapid, efficient, Nation-wide, and world-wide wire and radio communication service with adequate facilities at reasonable charges." [9] This mandate may well mean that the distinction between basic and enhanced services will have to be blurred, but if the public interest requires such a blurring, then blurred it should be.

Although I concur in the network services waiver standard adopted by the majority, I am not completely satisfied with the language contained in paragraphs 19–21 of this order. My main difficulty with the language on this point is that while it would properly identify "unreasonable costs" as a ground for a waiver request, it overlooks other possible grounds for waiver, namely, technological inefficiencies, transitional factors, and national defense or security considerations, and thus may limit our discretion to too rigid an application of the separate subsidiary requirement. For these reasons, I proposed that paragraphs 19–21 be amended to indicate that the Commission would consider granting a waiver in the following circumstances:

(1) Where it is technologically impossible to provide the service as an enhanced service through the separate subsidiary as opposed to its being offered as a part of the basic network;

(2) Where the provision of the service as enhanced instead of basic would result in an unreasonably higher economic burden or significantly greater costs to be borne by consumers of the service;

(3) Where transitional considerations require that existing or soon to be offered services be given a reasonable period of time to comply with the separation requirement; or

(4) Where other public interest factors, such as national defense or security, require that a particular enhanced service be offered as basic.

[9] 47 U.S.C. § 151.

I withdrew my proposed amendment after I was assured during the course of the Commission's discussion that these circumstances were covered by language extant in the Order.

I also concur in the standard which would permit AT&T's subsidiary to seek a waiver of the Rules in order to construct or operate a specialized transmission network for a given customer, other than at a common business location. [10] As originally drafted, the proposed *Reconsideration* order would have affirmed the *Final Decision's* flat prohibition on construction, ownership, or operation of transmission facilities by the dominant carrier's enhanced service and CPE separate subsidiary. The subsidiary would not have been permitted even to build a customized network for a particular customer. I believe that such a broad prohibition would be anti-competitive in effect, overly restrictive in terms of preserving the basic/enchanced service dichotomy, and unnecessary in terms of essential regulatory policy. On reconsideration, I argued that the separate subsidiary should be allowed to construct, own, or operate its own transmission facilities to optimize the flexibility, innovation, and cost economy of its enhanced service and CPE offerings. The potential competitors of the dominant carrier separate subsidiary—e.g., Exxon, Xerox, IBM/SBS, Comsat—will have these clear and advantageous benefits of joint facilities/enhanced service-CPE planning, marketing, control, and operation, and I see no sound reason to deny these same competitive benefits to the dominant carrier separate subsidiary. I believe that any legitimate—as opposed to illusory—concerns about the integrity of that basic/enhanced service dichotomy could be met through the Section 214 process which would require prior Commission authorization of any separate subsidiary construction or ownership of transmission facilities. This process would provide a fully adequate safeguard against any abuse by the parent of its "market power" with respect to basic underlying transmission facilities or any neglect of its "building block" responsibilities with respect to the adequacy of the basic core network. Although I would have preferred that the transmission facilities bar be eliminated, I believe that the waiver standard adopted in this order will permit AT&T's subsidiary to be fully competive.

This order is also vast improvement over the *Tentative Decision* and the *Final Decision* with respect to the treatment of code and protocol conversion. The *Final Decision* would have precluded code and protocol conversion by AT&T within the core network. If that had occurred, it would have meant the end of telephone service as we know and need it. This *Reconsideration* order makes clear the AT&T may perform code and protocol conversion within the core network. We have recently adopted a Notice of Inquiry seeking comment as to whether AT&T should be permitted to offer code and protocol conversion services without being subjected to the separation requirement. [11] We should pursue the important issues of core network flexibility and utility which are raised in this proceeding as expeditiously as possible.

In conclusion, I firmly believe that the competitive forces we have now unleashed are the best means of stimulating technological innovation and of ensuring the highest quality service at the lowest cost to the consumer. This is, however, no time for complacency. The newly created competitive market will require continuing surveillance by the Commission to ensure that real-world performance matches theoretical promise. The Joint Board convened in Docket No. 80-286 to examine separations impacts has only recently begun its deliberations. The proceeding to study whether AT&T should be permitted to offer code and protocol conversion service offerings as a part of the core network has just been initiated, while the proceeding to work out the details for implementing the deregulation of in-place CPE has not yet been established. The Commission must promptly address the large number of issues remaining so that we may continue the positive progress achieved in this proceeding thus far—progress which will mean a dramatic improvement in telecommunications service and equipment offerings to the American people.

December 16, 1980.

Statement of Commissioner Anne P. Jones—Reconsideration of the Final Decision in the Second Computer Inquiry

I believe that the Commission's action on Reconsideration in the Second Computer Inquiry has gone a long way towards alleviating the concerns which I have previously expressed regarding the Final Decision. The modification we have adopted should provide a sound

[10] See, *supra*, para. 82.

[11] Digital Communications Protocols, Notice of Inquiry, ——FCC 2d ——, FCC 80-792 (Adopted On December 4, 1980; Released on December 8, 1980).

structural framework for service providers, allowing them to bring innovative and diverse services and products to the marketplace to the benefit of users and consumers.

In my statement on the Final Decision, I expressed some reservations regarding the degree of structural separation imposed upon both AT&T and GTE, prior to any clear and convincing evidence that anticompetitive abuse would take place in the provision of enhanced services and customer premises equipment (CPE). However, I am now convinced that AT&T's sheer size, and its potential for either inhibiting or harming competition before there could be effective regulatory intervention, argues for the imposition of the structural separation measures adopted by the Commission.

By the same token, I feel that the gamble of not requiring the original structural separation provisions set out in the Final Decision is worth taking in the case of GTE, since, due to its smaller relative size, the same potential for harm does not exist. In addition, GTE is highly dependent on AT&T's toll facilities in order to provide its own enhanced services. Therefore, unlawful cross subsidization of enhanced services is much less likely to occur than in the case of AT&T itself.

While I believe that the structural separation requirements imposed upon AT&T are justified, I also believe that there may be specific situations in which the benefits to consumers due to reducing the potential for anticompetitive abuse are outweighed by the extra costs which the separation requirements may cause. It is for this reason that I suggested the creation of an explicit waiver process specifically designed to deal with two such situations: problems arising from the Basic/Enhanced definition, and problems arising from the prohibition on the ownership of transmission facilities by a separate subsidiary.

I believe that our Basic/Enhanced definitional structure draws a bright line in the correct place between basic services, which we may continue to regulate, and enhanced services, which will be provided on an unregulated basis. Since I believe that competition should be relied upon to the fullest extent possible to meet the telecommunication needs of this country, I believe that a heavy burden of proof should be placed upon any carrier which wishes to modify any of the separation requirements imposed on the provision of enhanced services because such modifications would result in more services being subjected to varying degrees of regulation rather than being subjected to the test of the marketplace.

The prohibition on the ownership of transmission facilities by a separate subsidiary was one of the most troublesome issues faced by the Commission on Reconsideration. Valid arguments have been made on both sides of this issue but on balance I am now convinced that the prohibition on AT&T should be sustained. At present virtually all enhanced service providers are dependent upon AT&T for underlying basic services. I believe the prohibition on ownership of transmission facilities in AT&T's separate subsidiary will provide the proper incentive for AT&T to continue to upgrade its underlying basic service network, since its own subsidiary will be dependent upon it. Such an incentive will stimulate the introduction of new technologies into the basic service network, will help insure the provision of adequate capacity for all enhanced service providers, and will help guarantee that complex interfaces into the basic service network will be available to all enhanced service providers on an equitable basis.

As in the case of the Basic/Enhanced definition, in certain circumstances the prohibition on the ownership of transmission facilities may cause undue hardship to consumers or users of telecommunication services. In such circumstances a waiver may be required.

Further, as I suggested, the subsidiary will not be precluded from constructing transmission facilities for a third party as long as these facilities are not owned or operated by the subsidiary. Moreover, the bar on transmission facilities ownership will not encompass facilities "that link various operations of a customer where its communication needs are spread among multiple buildings at a common location".

Another concern that I raised in my previous statement on the Final Decision was that the March 1, 1982 deadline for CPE deregulation was too early. We have now adopted a bifurcated approach to the deregulation of CPE. The more complex problems associated with embedded CPE will be resolved in a subsequent proceeding. I hope that this approach will permit an adequate transition for the deregulation of embedded CPE and its resulting impact upon local ratepayers. However, I still feel that the March 1, 1982 deadline for the deregulation of new CPE may be unrealistic.

Few if any deicisions made by this Commission or during my tenure as a Commissioner will influence this nation's telecommuncation services and products more than the decision made in the Second Computer Inquiry. I believe the foundation has been laid for the growth of innovative and diverse services free from the constraints of unnecessary regulation, and, as a result, the nation's telecommunications industry will better be able to meet the needs of the future.

[FR Doc. 81-2004 Filed 1-20-81; 8:45 am]
BILLING CODE 6712-01-M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 1

[OST Docket No. 1; Amdt. 1]

Organization and Delegation of Powers and Duties; Order of Secretarial Succession

AGENCY: Department of Transportation.

ACTION: Final rule.

SUMMARY: This amendment adds the Administrator of the Saint Lawrence Seaway Development Corporation to the list of Department of Transportation officials who succeed to the Office of Secretary of Transportation in the case of disability or absence of the Secretary, or vacancy in the Office of Secretary.

EFFECTIVE DATE: January 15, 1981.

FOR FURTHER INFORMATION CONTACT: Robert I. Ross, Office of the General Counsel, 202-426-4723.

SUPPLEMENTARY INFORMATION: Since this amendment relates to Departmental management, procedures, and practices, notice and public procedure on it are not required and it may be made effective in fewer than thirty days after publication in the Federal Register.

In consideration of the foregoing, § 1.26 of Title 49, Code of Federal Regulations, is amended by adding a new subparagraph (7) at the end of paragraph (a), to read as follows:

§ 1.26 Secretarial succession.

(a) The following officials, in the order indicated, shall act as Secretary of Transportation, in case of the absence or disability of the Secretary, until the absence or disability ceases, or, in the case of a vacancy, until a successor is appointed:

* * * * *

(7) Saint Lawrence Seaway Development Corporation Administrator.

(Sec. 9(e), Department of Transportation Act, 49 USC 1657(e).)

Issued in Washington, DC, on January 15, 1981.

William J. Beckham, Jr.,

Acting Secretary of Transportation.

[FR Doc. 81-2121 Filed 1-19-81; 8:45 am]

BILLING CODE 4910-62-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 32

Hunting; Opening of Wildlife Refuges in Arkansas and Mississippi

AGENCY: Fish and Wildlife Service.

ACTION: Special regulations.

SUMMARY: The Director has determined that the opening to hunting of certain national wildlife refuges in Arkansas and Mississippi is compatible with the objectives for which the areas were established, will utilize a renewable natural resource, and will provide additional recreational opportunity to the public. In addition, managed big game hunts are designed to keep population levels compatible with habitat capabilities. This document establishes special regulations effective for the upcoming hunting seasons for certain big game species.

DATES: Period covered—March 21, 1981 to May 3, 1981.

FOR FURTHER INFORMATION CONTACT: The Area Manager or appropriate refuge manager at the address or telephone number listed below:

Gary L. Hickman, Area Manager, 200 E. Pascagoula St., Suite 300, Jackson, Mississippi 39201, Telephone (601) 960-4900.

Raymond McMaster, Refuge Manager, White River National Wildlife Refuge, Box 308, DeWitt, Arkansas 72042, Telephone 501/946-1468.

George Chandler, Acting Refuge Manager, Panther Swamp National Wildlife Refuge, P.O. Box 107, Yazoo City, Mississippi 39194, Telephone 601/746-8511.

Supplementary Information

Alton Dunaway is the primary author of these special regulations.

General Conditions

1. Hunting is permitted on national wildlife refuges indicated below in accordance with 50 CFR Part 32, all applicable state regulations, the general conditions, and the following special regulations:

The Refuge Recreation Act of 1962 (16 U.S.C. 460k) authorizes the Secretary of the Interior to administer such areas for public recreation as an appropriate incidental or secondary use only to the extent that it is practicable and not inconsistent with the primary objectives for which the area was established. In addition, the Refuge Recreation Act requires: (a) that any recreational use permitted will not interfere with the primary purpose for which the area was established; and (b) that funds are available for the development, operation, and maintenance of the permitted forms of recreation.

The recreational use authorized by these regulations will not interfere with the primary purposes for which these refuges were established. This determination is based upon consideration of, among other things, the Service's Final Environmental Statement on the Operation of the National Wildlife Refuge System published in November, 1976. Funds are available for the administration of the recreational activities permitted by these regulations.

2. A list of special conditions applying to individual refuge hunts and a map of the hunt area(s) are available at each refuge headquarters. Portions of refuges which are closed to hunting are designated by signs and/or delineated on maps.

3. Access points on certain refuges are limited to designated roads or other specified areas. Vehicle use on all refuge areas is restricted to designated roads and lanes.

4. Persons under 16 must be under the close supervision of an adult. For safety reasons each adult may not have more than two juveniles under his supervision.

5. Dogs are not permitted on refuge areas during hunts.

§ 32.22 Special regulations; big game hunting for individual wildlife refuge areas.

Arkansas—White River National Wildlife Refuge

(1) Turkey hunting is permitted Wednesday through Saturday as follows: April 1, 1981 through April 4, 1981; April 8, 1981 through April 11, 1981; April 15, 1981 through April 18, 1981; April 22, 1981 through April 25, 1981; and April 29, 1981 through May 2, 1981.

(2) Loaded firearms are not allowed in boats, vehicles, or on campgrounds.

(3) Boats may be used to reach hunting areas. Roads will be closed if too wet for traffic.

(4) Permit is required and will be made available at State license dealers near the refuge in DeWitt, Elaine, Mellwood, Tichnor, St. Charles, Marvell, and Helena.

(5) All turkey killed must be checked at one of the following check stations: Wild Goose Bait Ship, Rush's Bait Shop—Tichnor, Rush's Sport Shop—DeWitt, O.B.'s Catfish Farm—Ethel, White River Bait Shop—St. Charles, Singleton's Bait Shop—Indian Bay, or Davis Grocery—Mellwood.

Mississippi—Panther Swamp National Wildlife Refuge

(1) Turkey hunting will be permitted throughout the State spring season. No Sunday hunting.

The provisions of these special regulations supplement the regulations which generally govern hunting on wildlife refuge areas and which are set forth in Title 50, *Code of Federal Regulations*, Part 32. The public is invited to offer suggestions and comments at any time.

Dated: January 7, 1981.

Gary L. Hickman,

Area Manager.

[FR Doc. 81-2209 Filed 1-19-81; 8:45 am]

BILLING CODE 4310-55-M

Proposed Rules

Federal Register
Vol. 46, No. 13
Wednesday, January 21, 1981

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF ENERGY

Economic Regulatory Administration

10 CFR Part 211

[Docket Nos. ERA-R-80-69A; ERA-R-80-36]

Alaska North Slope Crude Oil Entitlement Adjustment; Domestic Crude Oil Entitlements

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Notice of intent to defer issuance of final rules.

SUMMARY: On September 8, 1980, the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) issued a further notice of proposed rulemaking and public hearings (45 FR 61268, September 15, 1980) to reduce the entitlement obligation on controlled Alaska North Slope (ANS) crude oil by $2.00 per barrel. In a separate notice of proposed rulemaking issued on October 24, 1980 (45 FR 72552, October 31, 1980), ERA proposed amendments to the entitlements program in 10 CFR 211.67 to reduce post-entitlement cost differences between equivalent price-controlled and uncontrolled domestic crude oil by establishing separate entitlement obligations for refineries in PADDs I–IV and refineries in PADD V. An adjustment to reflect the differential between high and low sulfur controlled crude oil also was proposed. Public hearings were held on both proposals and written comments were received.

The purpose of this notice is to advise the public that ERA has evaluated the written and oral comments and has assessed the current crude oil market, and as a result of this analysis has determined at this time to defer issuance of final rules with respect to both proposals.

FOR FURTHER INFORMATION CONTACT:

Cynthia Ford (Hearing Procedures), Economic Regulatory Administration, Room B–210, 2000 M Street NW., Washington, D.C. 20461, (202) 653–3271

William L. Webb (Office of Public Information), Economic Regulatory Administration, Room B–110, 2000 M Street NW., Washington, D.C. 20461, (202) 653–4055

David A. Welsh (Office of Petroleum Operations), Economic Regulatory Administration, Room 6206, 2000 M Street NW., Washington, D.C. 20461, (202) 653–3459

Daniel J. Thomas (Office of Petroleum Price Regulations), Economic Regulatory Administration, Room 7116, 2000 M Street NW., Washington, D.C. 20461, (202) 653–3271

William Funk or Peter Schaumberg (Office of General Counsel), Department of Energy, Room 6A–127, 1000 Independence Avenue SW., Washington, D.C. 20585, (202) 252–6736 or 252–6754.

SUPPLEMENTARY INFORMATION: We have decided to defer action on our proposal to reduce the entitlement obligation imposed upon controlled ANS crude oil for several reasons. First, recent changes in prices for crude oils indicate that any price disadvantage of price-controlled ANS crude oil in comparison with alternative sour crude imports at the Gulf Coast has been reduced significantly so as to restore the competitiveness of the post-entitlement price of controlled ANS. Second, because of the increasing effect of the phased decontrol of domestic crude oil prices, the amount of ANS crude oil that may to some extent be disadvantaged has diminished substantially. Finally, at the public hearing on our proposal in this proceeding, the ANS producers reaffirmed our opinion that retention of the existing ANS entitlement obligation would not adversely affect North Slope production.

The decision to defer adoption of the other proposed changes to the entitlements program also was based upon several factors. First, the post-entitlement cost differential between controlled and equivalent exempt domestic crude oils in PADDs I–IV has diminished significantly. As a result, many commenters were of the view that the additional reporting and administrative burdens associated with the proposed changes outweighed any anticipated benefits at this time. Also, as with the ANS proposal, the diminishing volume of controlled crude oil each month is ameliorating the effects of any remaining disparities between controlled and exempt domestic crude oil.

Therefore, the proposed changes for ANS crude oil will not be made effective for crude oil runs-to-stills beginning October 1, 1980, and the other proposed changes for domestic crude oil entitlements will not be made effective for crude oil runs-to-stills beginning January 1, 1981. Until further notice, refiners and producers should continue to base their business decisions on the existing entitlement regulations.

Issued in Washington, D.C., January 9, 1981.

Hazel R. Rollins,

Administrator, Economic Regulatory Administration.

[FR Doc. 81-1772 Filed 1-15-81; 8:45 am]
BILLING CODE 6450-01-M

FEDERAL TRADE COMMISSION

16 CFR Part 13

[File No. 811 0015]

Godfrey Company; Proposed Consent Agreement with Analysis to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order, accepted subject to final Commission approval, would require, among other things, a Waukesha, Wis. operator of a retail grocery chain to divest, within six months from the effective date of the order, seven specified retail grocery stores located in "The Milwaukee SMSA." Such divestiture would have to be made to an acquirer or acquirers approved in advance by the Commission. The company would also be prohibited for a period of ten years from making any acquisition in the retail grocery store business involving four or more stores without prior Commission approval.

DATE: Comments must be received on or before March 23, 1981.

ADDRESS: Comments should be directed to: Office of the Secretary, Federal Trade Commission, 6th St. and Pennsylvania Ave., N.W., Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT: FTC/C, E. Perry Johnson, Washington, D.C. 20580. (202) 523-3601.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist and an explanation thereof, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(14) of the Commission's Rules of Practice (16 CFR 4.9(b)(14)).

United States of America Before Federal Trade Commission

In the matter of Godfrey Company, a corporation; file No. 811-0015, agreement containing consent order to divest and other relief.

The Federal Trade Commission having initiated an investigation of the proposed acquisition by Godfrey Company, a corporation, of certain assets of Jewel Companies, Inc., a corporation, and it now appearing that Godfrey Company, a corporation, hereinafter sometimes referred to as Godfrey, is willing to enter into an agreement containing an Order to Divest and Other Relief:

It is hereby agreed by and between Godfrey Company, a corporation, but its duly authorized officer and its attorney, and counsel for the Federal Trade Commission that:

1. Proposed respondent Godfrey Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of Wisconsin with its principal executive offices located at 1200 West Sunset Drive, in the City of Waukesha, State of Wisconsin 53187.

2. Godfrey admits all of the jurisdictional facts set forth in the draft of the complaint here attached.

3. Godfrey waives:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law; and

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement.

4. This agreement shall not become a part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission it, together with the draft of the complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify Godfrey in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by Godfrey that the law has been violated as alleged in the draft of complaint here attached.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may, without further notice to Godfrey, (1) issue its complaint corresponding in form and substance with the draft of the complaint here attached and its decision containing the following Order to Divest and Other Relief in disposition of the proceeding, and (2) make information public in respect thereto. When so entered, the Order to Divest and Other Relief shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to order to Godfrey's address as stated in this agreement shall constitute service. Godfrey waives any right it might have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or the agreement may be used to vary or to contradict the terms of the order.

7. Proposed respondent has read the proposed complaint and order contemplated hereby. It understands that once the order has been issued, it will be required to file one or more compliance reports showing that it has fully complied with the order. Proposed respondent further understands that it be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

8. This agreement is conditioned in its entirety on the consummation of the acquisition of Jewel assets pursuant to the agreement dated October 13, 1980 between Godfrey and Jewel. If for any reason such acquisition shall be cancelled and not occur, this agreement shall thereafter be of no effect.

ORDER TO DIVEST AND OTHER RELIEF

I.

As used in this order:

(A) "Godfrey" means Godfrey Company, a corporation organized under the laws of Wisconsin with its principal executive offices at 1200 West Sunset Drive, Waukesha, Wisconsin 53187 and its directors, officers, agents and employees, and its subsidiaries, successors and assigns.

(B) "Jewel" means Jewel Companies, Inc., a corporation organized under the laws of New York with its principal executive offices at 5725 East River Road, Chicago, Illinois 60631.

(C) "Retail grocery stores" are retail stores presently classified under Bureau of Census Industry Classification No. 541, including supermarkets, convenience stores and delicatessens, which primarily sell a wide variety of canned or frozen foods, such as vegetables, fruits and soups; dry groceries, either packaged or in bulk, such as tea, coffee, cocoa, dried fruits, processed food, and non-edible grocery items. In addition, these stores often sell smoked and prepared meats, and fresh fish and poultry, fresh vegetables and fruits, and fresh or frozen meats.

(D) "The Milwaukee SMSA" means the Milwaukee Standard Metropolitan Statistical Area, consisting of the four Wisconsin counties of Milwaukee, Waukesha, Washington and Ozaukee.

(E) "Godfrey stores" means those retail grocery stores in the Milwaukee SMSA owned by or operated by Godfrey.

(F) "Jewel stores" means those retail grocery stores in the Milwaukee SMSA owned or operated by Jewel.

(G) The "disposition stores" means the following Godfrey ("G") stores and Jewel ("J") stores:

1. G-427 (3045 S. 13th St., Milwaukee, WI.)
2. G-607 (6077 S. Packard Ave., Cudahy, WI.)
3. G-810 (3630 S. 76th St., Milwaukee, WI.)
4. J-1201 (1201 N. 35th St., Milwaukee, WI.)
5. J-729 (729 S. Layton Blvd., Milwaukee, WI.)
6. J-13182 (N81 W13182 Appleton Ave., Menomonee Falls, WI.)
7. J-6251 (6251 S. 27th St., Greenfield, WI.)

(H) "Acquisition", "acquire", "merger", or "merge with" includes al other forms of arrangement by which Godfrey may obtain, directly or indirectly, all or any part of the stock or assets, both tangible and intangible, of any other retail grocery store or stores.

II.

It is ordered that within six months from the date on which this order becomes final, Godfrey shall divest itself absolutely and in good faith of all of its right, title and interest in the disposition stores; provided, however, that Godfrey may, if so required by the lessor(s) of any one or more of the disposition stores, remain a party to its lease with such lessor(s) and may take possession of any of the disposition stores upon default under the lease or sublease for such store by the sublessee which acquired such disposition store from Godfrey. In the event of such reacquisition of any of the disposition stores, Godfrey shall divest the reacquired disposition store in accordance with the terms of this order within six (6) months of the date of reacquisition of any such store. Until approval of divestiture, Godfrey shall continue to operate disposition stores C-427, C-607 and C-810 as retail grocery stores. Divestiture shall be made only to an acquirer or acquirers approved in advance by the Federal Trade Commission. The purpose of

the divestiture required by this paragraph is to assure the continued operation of the disposition stores as retail grocery stores and their survival as viable competitors in the Milwaukee SMSA.

III.

It is further ordered that for a period of ten (10) years from the date on which this order becomes final, Godfrey shall not merge with or acquire, or merge with or acquire and thereafter hold, as corporately operated or as franchised retail grocery stores, directly or indirectly through subsidiaries or in any other manner, without the prior approval of the Federal Trade Commission, the whole or any part of the stock or assets of any individual, firm, partnership, corporation or other legal or business entity which directly or indirectly owns or operates any retail grocery store, where such acquisition or merger involves four or more such retail grocery stores; provided, however, that nothing in this order shall be construed to prevent Godfrey from being or becoming a guarantor of lease obligations of any Godfrey franchisee.

IV.

It Is Further Ordered that within sixty (60) days from the date on which this order becomes final and every sixty (60) days thereafter until the divestiture required by paragraph II of this order is completed, Godfrey shall submit to the Federal Trade Commission a written report setting forth in detail the manner and form in which Godfrey intends to comply, is complying, and has complied with the terms of this order and such additional information relating thereto as may from time to time be required. In addition, upon written request of the staff of the Federal Trade Commission, Godfrey shall submit such reports in writing with respect to the other requirements of this order as may from time to time be requested.

V.

It Is Further Ordered that Godfrey notify the Federal Trade Commission at least thirty (30) days prior to any proposed corporate changes, such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or any other change in the corporation, which may affect compliance with the obligations arising out of this order.

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted an agreement to a proposed consent order from Godfrey Company.

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments from interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

The Commission's investigation in this matter concerned the November, 1980 acquisition by Godfrey Company ("Godfrey") of the assets of eleven retail grocery stores operated by Jewel Companies, Inc. ("Jewel") in the Milwaukee, Wisconsin Standard Metropolitan Statistical Area (SMSA). Godfrey is a retail grocery chain which does business in the Milwaukee area as well as in other parts of Wisconsin. The Commission complaint accompanying the proposed consent order charges that Godfrey's acquisition of Jewel's assets in Milwaukee violated section 7 of the Clayton Act and section 5 of the Federal Trade Commission Act. The complaint alleges that there may be anticompetitive effects of the acquisition in the Milwaukee SMSA, a highly concentrated market. The alleged anticompetitive effects include (a) the elimination of actual competition between Godfrey and Jewel in the Milwaukee SMSA; (b) increased concentration in the retail grocery store business in the Milwaukee SMSA; and (c) the encouragement of further acquisitions and mergers by and among other leading firms in the retail grocery store business in the Milwaukee SMSA.

The proposed order contains provisions requiring divestiture and imposing limitations on Godfrey's future acquisitions. Under the order Godfrey will be required to divest seven retail grocery stores in the Milwaukee SMSA, within six months of the date the order becomes effective. Divestiture will be made to an acquirer or acquirers approved in advance by the Federal Trade Commission. The proposed order states that the purpose of this divestiture is to assure that the divested retail grocery stores continue to operate as such, and as viable competitors in Milwaukee. The proposed order also requires that for a period of ten years from the effective date of the order, Godfrey will not be permitted to make any acquisitions in the retail grocery store business involving four or more stores without prior Commission approval.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

Carol M. Thomas,

Secretary.

[FR Doc. 81-2101 Filed 1-19-81; 8:45 am]

BILLING CODE 6750-01-M

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1406

Provision of Performance and Technical Data for Coal and Wood Burning Appliances

AGENCY: Consumer Product Safety Commission.

ACTION: Extension of comment period on proposed rule.

SUMMARY: The Commission extends the period for submitting written data, views, and arguments on its proposed rule that would require certain performance and technical data to be supplied with coal and wood burning stoves, free-standing fireplaces and similar appliances. The period is extended one month, from January 2, 1981, to February 2, 1981. The extension was made in response to requests from groups representing the interests of retailers and distributors of the affected products.

DATES: The comment period is extended to February 2, 1981.

ADDRESSES: Written comments, preferably in five copies, should be submitted to the Secretary, Consumer Product Safety Commission, Washington, D.C., 20207, and should be titled *Coal and Wood Stoves, Proposed Labeling Rule.*

All materials the Commission has that are relevant to this proceeding, including any comments that may be received on the proposal, may be seen in, or copies obtained from the Office of the Secretary, Third Floor, 1111 18th Street, N.W., Washington, D.C. 20207.

FOR FURTHER INFORMATION CONTACT: Stan Morrow, Project Manager, Fire and Thermal Burn Hazards Program, Office of Program Management, Consumer Product Safety Commission, Washington, D.C., 20207, phone (301) 492-6453.

SUPPLEMENTARY INFORMATION: On November 17, 1980, the Commission proposed a rule that would require that certain performance and technical data be supplied with coal and wood burning stoves, free-standing fireplaces, and similar appliances in order that consumers will be aware of important safety information concerning the installation, operation, and maintenance of these appliances (45 FR 76018). Part of the required data would be in the form of a permanent, conspicuous written notice on the device that would provide the following information:

a. Appropriate minimum clearances between the stove and chimney

connector and combustibles to avoid the occurence of fire.

b. Type of chimney and connector appropriate for use with the appliance and identification of parts or precautions required for passing the chimney or connector through combustible walls or ceilings.

c. Type and dimensions of floor protection, if necessary to protect combustible floors.

d. Information to prevent overfiring of the appliance.

e. A statement of how often the chimney and chimney connector should be inspected and cleaned.

f. A statement that local building or fire officials should be contacted about restrictions and installation inspection in the owner's area.

g. The name and address of the manufacturer or private labeler, and the model designation of the appliance.

Items (d) and (e) and the appropriate distance to be maintained from furnishings in the room would be placed so that they are readily visible during normal use of the appliance.

The proposed rule would also require that complete installation, operation, and maintenance directions be provided with the appliance. The appliance's packaging would bear a statement referring to the installation directions. Sales catalogs and other point of sale literature would contain the information required by items (a) and (f) above. To facilitate the Commission's confirmation that manufacturers are adequately complying with the rule, manufacturers must provide copies of the notice on the appliance, and of the directions, to the Commission.

The proposal provided for the submission of written comments to the Commission by January 2, 1981.

By letter dated December 1, 1980, Marcus J. Smith of the National (Wood Stove & Fireplace) Journal requested an extension of the comment period. He stated that it was impossible for his magazine to notify its readers, who make, distribute, and retail stoves, before January 2, 1981.

On December 23, 1980, the Commission received additional requests for an extension of the comment period from the American Retail Federation and the National Retail Merchants Association. These requests cited the difficulty of formulating comments by January 2 because the comment period extended through the retailers' busiest season.

After considering these requests, the Commission extended the time for submitting data, views, and arguments on the proposal until February 2, 1981.

Dated: January 13, 1981.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 81-1882 Filed 1-19-81; 8:45 am]

BILLING CODE 6355-01-M

DEPARTMENT OF LABOR

Employment and Training Administration

20 CFR Part 653

Fiscal Year 1981 Level For Veterans Preference Indicators of Compliance

AGENCY: Employment and Training Administration, Labor.

ACTION: Proposed Rule.

SUMMARY: The Employment and Training Administration of the Department of Labor is proposing to update the levels for the veterans preference indicators of compliance for fiscal year 1981 as it is required to do on an annual basis under 20 CFR 653.230(c) (e) and (j). The veterans preference indicators of compliance are used by the Department to monitor State employment service agencies to insure that veteran applicants receive priority service as required by 38 U.S.C., Chapters 41 and 42 and by 20 CFR 653, Subpart C. The Department does not propose any change in the structure of the indicators of compliance. Changes are limited to adjustments in the floor levels for job placement in several States.

DATES: Comments addressing the proposed changes to the veterans preference indicators of compliance for fiscal year 1981 are due by February 20, 1981. Comments directed to the basic structure of the veterans indicator system are due by April 21, 1981.

ADDRESSES: Comments on the proposed rule should be sent to: David O. Williams, Administrator, U.S. Employment Service, Room 8000, 601 D Street, NW., Washington, D.C. 20213.

FOR FURTHER INFORMATION CONTACT: Gilbert Apodaca, Acting Director, Office of Program Review, U.S. Employment Service, Room 8208, 601 D Street, NW., Washington, D.C. 20213, 202-376-6755.

SUPPLEMENTARY INFORMATION: The Department has issued regulations to implement 38 U.S.C. Chapters 41 and 42 at 20 CFR Part 653, Subpart C. These regulations set forth requirements concerning services to veterans by State employment service agencies. Sections 653.221–226 set forth standards of performance governing State agency service to veterans, and § 653.230 sets forth veterans preference indicators of compliance for use in determining whether the performance standards have been met. Under 20 CFR 653.230(c), (e), and (j) the Employment and Training Administration is required to update the numerical values for the veterans preference indicators of compliance on an annual basis and to publish such values in the Federal Register.

Indicators of Compliance

In accordance with 20 CFR 653.230(a), (c) and (e) and (j), the performance of each State agency and factors outside of each agency's control were considered in developing the proposed fiscal year 1981 veterans preference indicators and appropriate numerical values for each indicator. Historical performance data examined covered six months of fiscal year 1980 as well as fiscal years 1979, 1978 and 1977.

As a result of the above review process, changes to the fiscal year 1980 compliance indicators for fiscal year 1981 are limited to changes in the floor level indicators for several States as discussed below. The Department proposes no change in the computational method used in fiscal year 1980. While alternatives incorporating significant revisions to the particular indicators and numerical standards were considered, such changes to the present set of indicators and required levels were judged not to be appropriate at this time.

A review of job service performance shows that substantial progress in service provision to all applicants was made during the 1977–79 period. This period was characterized by expanding employment opportunities in the regular unsubsidized job market and a sharp increase in the number of subsidized jobs available to unemployed job seekers unde the President's Economic Stimulus Program. State agencies took full advantage of these opportunities by expanding their contacts with the business community and providing strong support to the Economic Stimulus Program. As reflected by State agency performance on the veterans preference indicators during these years, these efforts were particularly beneficial to veterans as their numbers served rose in absolute terms and on a preferential basis.

A number of factors indicate that the expanding employment opportunities that characterized most of the 1977–1979

period have been reversed during fiscal year 1980, with recovery not anticipated until the second quarter of fiscal year 1981. The effect of the decline in economic activity has been to significantly increase the number of job applicants while concurrently producing a sharp reduction in job opportunities available to ES applicants, including veterans. Accordingly, State agency performance data through the first half of fiscal year 1980 show declines in service levels particularly in the area of placements. For fiscal year 1981, expectations for the overall condition of the economy including employment prospects are uncertain. In addition, State agencies will again be operating with budget levels similar to those of previous years with no reasonable expectation for additional resources.

The Department believes that the above consideration represent "other appropriate factors" under 20 CFR 652.230(c) for use in computing State agency floor levels. Therefore, based on recent State agency performance, reduced availability of job opportunities for ES applicants, uncertain economic conditions for fiscal year 1981 and the lack of increases in State agency resources, the Department has determined with few exceptions (described below) to propose in fiscal year 1981 the same floor level and preference level service indicators and corresponding numerical values established in fiscal year 1980.

Based on the above considerations, ETA proposed to limit changes lto the veterans preference indicators of compliance to revision of the placement floor level indicator as follows:

West Virginia, 12%.
Indiana, 10%.
Michigan, 14%.
Ohio, 10%.

These States all have serious unemployment problems. Michigan has the highest unemployment rate in the nation with Indiana second, Ohio fourth and West Virginia fifth. Michigan, Indiana and Ohio have also had the largest increase in unemployment from May 1979 to May 1980, while West Virginia has been beset by a sluggish coal industry. These levels recognize the impact of adverse economic conditions but are not so low as to guarantee achievement.

Comments of the Structure of the Indicators of Compliance System

ETA invites comments from federal, State and local government units, veterans organizations and other interested persons on ways to improve the veterans perference indicator system to make it more effective, manageable and usabale in promoting services to veterans. All aspects of the veterans preference indicator system can be addressed. Comments received on the structure of the system will be carefully considered and analyzed and, if appropriate, provide the basis for changes in the current veterans preference indicators for future years.

Comments on the structure of the system should be submitted by April 21, 1981. However, commenters may submit system related comments in conjunction with comments to the proposed indicator levels for fiscal year 1981 February 20, 1981.

The proposed regulation is neither a "significant" nor a "major" regulation under the criteria set forth in the Department of Labor's guidelines under Executive Order 12044 which were published on January 26, 1979 at 44 FR 5570. Consequently, neither an action plan, which is required for significant regulations, nor a regulatory analysis, which is required for major regulations has been prepared.

Accordingly, it is proposed that in 20 CFR 653.230(c)(1)(iii) the state values in the following four states be revised to read as follows:

§ 653.230 Veterans preference indicators of compliance for fiscal year 1981.

* * * * *

(c) * * *

(1) * * *

(iii) * * *

Region III (Philadelphia):
* * *
West Virginia 10

Region V. (Chicago):
Indiana 10
Michigan 14
Ohio 10

* * * * *

(29 U.S.C. 49 *et seq.* 39 U.S.C. 2012)

Signed at Washington, D.C. this 16th day of December, 1980.

Ray Marshall,
Secretary of Labor.

[FR Doc. 81-2194 Filed 1-19-81; 8:45 am]
BILLING CODE 4510-30-M

DEPARTMENT OF THE TREASURY
Internal Revenue Service
26 CFR Part 1
[LR-70-75]
Limitation on Foreign Tax Credit for Foreign Oil and Gas Taxes

AGENCY: Internal Revenue Service, Treasury.

ACTION: Extension of Time for Comments and Requests for a Public Hearing.

SUMMARY: This document provides notice of an extension of time for submitting comments and requests for a public hearing concerning the notice of proposed rulemaking relating to the limitation on the foreign tax credit with respect to taxes paid on foreign oil related income. The extended deadline for submission of comments and requests for a public hearing is February 17, 1981.

DATES: Written comments and requests for a public hearing must be delivered or mailed by February 17, 1981.

ADDRESS: Send comments and requests for a public hearing to Commissioner of Internal Revenue, Attn: CC:LR:T (LR-70-75), Washington, D.C. 20224.

FOR FURTHER INFORMATION CONTACT: Donald K. Duffy of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, D.C. 20224, CC:LR:T, 202-566-4336, not a toll-free call.

SUPPLEMENTARY INFORMATION: By a notice of proposed rulemaking published in the Federal Register for Monday, November 17, 1980 (45 FR 75886), comments and requests for a public hearing with respect to the proposed rules were to be delivered or mailed to the Commissioner of Internal Revenue, Attn: CC:LR:T (LR-70-75), Washington, D.C. 20224, by January 16, 1981. The date by which comments or requests must be delivered or mailed is hereby extended to February 17, 1981.

This document does not meet the criteria for significant regulations set forth in paragraph 8 of the Treasury directive on improving government regulations appearing in the Federal Register for Wednesday, November 8, 1978.

By direction of the Acting Commissioner of Internal Revenue.

David E. Dickinson,
Acting Director, Legislation and Regulations Division.

[FR Doc. 81-2274 Filed 1-19-81; 4:37 pm]
BILLING CODE 4830-01-M

26 CFR Part 1

[LR-65-75]

Payments to Foreign Countries for Oil and Gas that are Not Considered Taxes

AGENCY: Internal Revenue Sevice, Treasury.

ACTION: Extension of Time for Comments and Requests for a Public Hearing.

SUMMARY: This document provides notice of an extension of time for submitting comments and requests for a public hearing concerning the notice of proposed rulemaking with respect to payments to foreign countries for oil and gas that are not considered taxes. The extended deadline for submission of comments and requests for a public hearing is February 17, 1981.

DATES: Written comments and requests for a public hearing must be delivered or mailed February 17, 1981.

ADDRESS: Send comments and requests for a public hearing to Commissioner of Internal Revenue, Attn: CC:LR:T (LR-65-75), Washington D.C. 20224.

FOR FURTHER INFORMATION CONTACT: Donald K. Duffy of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, D.C. 20224, CC:LR:T, 202-566-4336, not a toll-free call.

SUPPLEMENTARY INFORMATION: By a notice of proposed rulemaking published in the Federal Register for Monday, November 17, 1980 (45 FR 75692), comments and requests for a public hearing with respect to the proposed rules were to be delivered or mailed to the Commissioner of Internal Revenue, Attn: CC:LR:T (LR-65-75), Washington, D.C 20224, by January 16, 1981. The date by which comments or requests must be delivered or mailed is hereby extended to February 17, 1981.

This document does not meet the criteria for significant regulations set forth in paragraph 8 of the Treasury Directive on improving government regulations appearing in the Federal Register for Wednesday, November 8, 1978.

By direction of the Acting Commissioner of Internal Revenue.

David R. Dickinson,

Acting Director, Legislation and Regulations Division.

[FR Doc. 81-2075 Filed 1-15-81; 8:45 am]

BILLING CODE 4830-01-M

DEPARTMENT OF LABOR
Office of the Secretary
29 CFR Part 8
Practice Before the Board of Service Contract Appeals

Note.—This document originally appeared in the Federal Register for Monday January 19, 1981. It is reprinted in this issue to meet requirements for publication on the Tuesday-Friday schedule assigned to the Department of Labor.

AGENCY: Office of the Secretary, Labor.

ACTION: Withdrawal of proposed regulations.

SUMMARY: It had been proposed to create a new Board of Service Contract Appeals and to give it broad jurisdiction to hear the various kinds of issues which can arise under the Service Contract Act. The appeals would arise from either rulings of the Wage and Hour Administrator or from the decisions of the administrative law judges. Because of concerns expressed during the notice and comment period, this proposal is now withdrawn. An appeal to the Secretary of Labor has been substituted as Subpart F of the revision of 29 CFR Part 6.

FOR FURTHER INFORMATION CONTACT: Gail V. Coleman, Counsel for Contract Labor Standards, General Legal Services, Office of the Solicitor, Department of Labor Building, 200 Constitution Avenue, NW, Washington, D.C. 20212. Phone 202-523-8268.

SUPPLEMENTAL INFORMATION: On April 22, 1980, a proposal was published (45 FR 27410) to create a Board of Service Contract Appeals to hear appeals from rulings of the Wage and Hour Division and from decisions by administrative law judges involving Service Contract Act matters and related Contract Work Hours and Safety Standards Act matters. Great concern was expressed in the comments received that such a formal appeal mechanism would create unacceptable delays in areas of procurement requiring quick decisions, such as wage determinations. There was also concern expressed regarding the creation of another formal review body.

Upon reflection, the Department has decided to withdraw the proposal and to substitute what should be a more expeditious appeal to the Secretary. These regulations are being published as a new Subpart F to 29 CFR Part 6.

Signed at Washington, D.C. this 14th day of January, 1981.

Ray Marshall,

Secretary of Labor.

[FR Doc. 81-1829 Filed 1-16-81; 8:45 am]

BILLING CODE 4510-23-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 762

[OPTS-62010; TSH-FRL 1861-2]

Fully Halogenated Chlorofluoroalkanes; Proposed Essential Use Exemption for Pharmaceutical Rotary Tablet Press Punch Lubricants

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to amend its chlorofluorocarbon rule to add a new essential use exemption for pharmaceutical rotary tablet press punch lubricants.

DATES: All comments and requests for a public hearing must be submitted by February 20, 1981.

ADDRESS: Written comments should be addressed to the Document Control Officer for this proposed rulemaking and should bear the identifying notation "OPTS-62010." Joni T. Repasch, Technical Information Specialist, Office of Pesticides and Toxic Substances (TS-793), Environmental Protection Agency, Rm. E-447, 401 M St., SW Washington, D.C. 20460, (202-755-8050).

Requests for public hearing should be submitted, in writing, by the end of the comment period. These requests should include: (1) A brief statement of the interest of the person or organization in the proceeding; (2) a brief outline of the points to be addressed; (3) an estimate of the time required; and, (4) a nonbinding list of the persons to take part in the presentation. Requests should be directed to the Record and Hearing Clerk: Gordon McCurdy, Record and Hearing Clerk, Office of Pesticides and Toxic Substances, Environmental Protection Agency, Room E-523A, 401 M St., SW, Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: John B. Ritch, Jr., Director, Industry Assistance Office, Office of Pesticides and Toxic Substances, (TS-799), Environmental Protection Agency, 401 M ST., SW, Washington, D.C. 20460, Toll Free: (800-424-9065). In Washington, DC: (554-1404).

SUPPLEMENTARY INFORMATION: EPA promulgated a rule under 40 CFR Part 762 (43 FR 11318) which prohibited almost all manufacture, processing and distribution in commerce of fully halogenated chlorofluoroalkanes (hereinafter referred to as chlorofluorocarbons or CFCs) for those aerosol propellant uses which are subject to the Toxic Substances Control Act (TSCA) (15 U.S.C. 2601 et. seq.).

published in the Federal Register of March 17, 1978 (43 FR 11318). EPA provided exemptions from this general prohibition for uses determined to be "essential" according to certain criteria. EPA is now proposing to amend the rule in order to add and essential use exemption for pharmaceutical rotary tablet press punch lubricants.

Pharmaceutical rotary tablet press punch lubricants are used to lubricate various moving parts of machines which make medicine tablets. Punches and dies are used in the press to form solid tablets. Since the punches are located in punch sockets which have a clearance of only .002 inches, lubrication is considered critical.

EPA is aware of two different types of lubricants which are used on pharmaceutical rotary tablet press punches. One is grease; the other is Teflon® Only Teflon® lubricants are propelled by chlorofluorocarbons.

The primary area of lubrication is the side or shank area of the punches. The lubricant is not placed on the surface which actually touches the tablet. Therefore, these lubricants are not mold release agents which have previously been granted and essential use exemption.

A request for this exemption was made before EPA promulgated the final rule on March 17, 1978. EPA denied the request on the grounds that nonaerosol application of the lubricants was feasible and that carbon dioxide-propelled products should be suitable alternatives. Information submitted since promulgation of the final rule has led EPA to reevaluate this determination.

The process EPA has used in evaluating applications for essential use exemptions is described in "Essential Use Determinations—Revised", a support document to the March 17, 1978 rule. In making these determinations, EPA considers the availability or nonavailability of substitutes, the possibility of severe economic hardship if the use of CFC is not allowed, and the health and environmental consequences of use of another product in place of CFCs. Decisions to grant or deny exemptions are based on all these criteria. In particular, the nonavailability of an alternative by itself is not a basis for finding that a product is essential.

In evaluating this exemption request, EPA considered potential alternatives to chlorofluorocarbon-propelled Teflon lubricants, including grease and other methods for application of Teflon®.

Grease is not a suitable lubricant for newer machines which run at greater speeds than the older machines. The increased speed causes the grease to fall down the shank of the punch and contaminate the medicine tablet.

In theory, Teflon® lubicants can be applied by brush by aerosol. However, brush application is not considered to be safe. Punches must be moved during lubrication so that all surfaces requiring lubrication are exposed. In the past employees would lubricate the machines while they were moving. This procedure was a safety hazard and is currently prevented by OSHA regulations which require placement of a guard under 29 CFR 19.10 212(a)(3)(i). Employees can stop the machines to lubricate them. However, they must move the punches by hand in order to lubricate them thoroughly, and this is a safety hazard. Brush application has an additional disadvantage in that bristles may break off and contaminate the medicine tablets. Because of the difficulties with brush application, EPA does not consider it a suitable alternative to aerosol application.

Finally, EPA considered the use of alternative propellants for application of Teflon® lubricants, including carbon dioxide and hydrocarbons. Carbon dioxide does not offer adequate performance characteristics. The CO_2 spray is much colder than the F-12 chlorofluorocarbons spray and creates the condensation when the spray touches the steel punches. The water Mixes with the Teflon® and causes a smearing effect in the punch socket and eventual binding of the punch in the socket. Furthermore, some parts of the machinery are cast iron, and the water causes rusting. Hydrocarbon sprays cannot be used because they create a flammability hazard. Thus, only CFCs of the major aerosol propellants have been proved to be technically effective and generally safe.

On the basis of the above, EPA believes that there is no safe and effective alternative to CFC propellants in the lubrication of newer, high-speed pharmaceutical rotary tablet press punches. EPA has not performed a detailed assessment of the economic impact of not using newer machines because of a lack of an acceptable lubricant. However, EPA believes that denial of the exemption would lead to a slowdown of tableting operations, and a greater probability of product contamination. Particular problems might result in operation of the most modern high speed machines without Teflon.® The overall result would mean substantially increased cost to the manufacturer, and eventually to the consumer.

The detriment to public health resulting from unavailability of adequate lubricants is unknown. Presumably, a cessation of the use of newer machines could result in at least a short-term shortage of necessary medicinal products. On the other hand, continued production of aerosol products for this use would not have a significant impact on the environment. The annual production of this product by the company which dominates the market amounts to 6,000 cans, containing 3,000 pounds of CFCs.

Therefore, on the basis of the lack of alternatives to the use of CFCs, the economic and potential health impacts of nonavailability of such products, and the fact that the release of CFCs into the environment would be small, EPA has concluded that the use meets the criteria for an essential use, and is proposing to amend § 762.21 to provide for an exemption on this basis. This exemption would become effective upon final promulgation of the rule.

EPA has established a public record for this rulemaking, (OPTS docket number 62010) that is available for inspection in Rm. E-447, Environmental Protection Agency, 401 M St., SW, Washington, D.C., during the hours from 8:00 a.m. until 4:00 p.m., Monday through Friday, except for legal holidays. This record includes all information considered by the Agency in developing this proposal. EPA will supplement the record with additional information as it is received. The record includes the following categories of information:

1. The exemption applications from Key Industries (February 20, 1979).
2. "Essential Use of Determinations—Revised", EPA, March 17, 1978.
3. Records of all communications and meetings between EPA personnel and persons outside the Agency pertaining to the development of this rule.
4. Any factual information considered by the Agency.
5. Comments received on this notice.

Under Executive Order 12044, EPA must determine whether a regulation is "significant" and therefore subject to the procedure requirements of the order or whether it may follow other specialized development procedures. EPA labels these other regulations "specialized." This rule has been reviewed and determined to be a specialized regulation not subject to the procedural requirements of Executive Order 12044.

(Sec. 6, Pub. L. 94-469, 90 Stat. 2020 (15 U.S.C. 2605))

EPA proposes to amend 40 CFR Part 762 by adding a new paragraph (h) to § 762.21 to read as follows:

§ 762.21 Essential use exemptions.

* * * * *

(h) pharmaceutical rotary tablet press punch lubricants.

Dated: January 12, 1981.

Douglas M. Costle,

Administrator.

[FR Doc. 81-2101 Filed 1-20-81; 8:45 am]

BILLING CODE 6560-01-M

40 CFR Part 52

[A-10-FRL 1724-1]

Availability of Implementation Plan Revision; State of Oregon

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Availability and Advance Notice of Proposed Rulemaking.

SUMMARY: EPA announces today receipt of four (4) revisions submitted by the Department of Environmental Quality in fulfillment of a condition on the approval of this portion of the Oregon Part D SIP revision.

The public is invited to submit written comments to the record which will be held open for a period of thirty (30) days.

A Notice of Proposed Rulemaking describing the rules and the action that EPA intends to take regarding them will be published in the Federal Register after the initial thirty (30) day public comment period has closed. A second period for the submittal of written comments will extend for thirty (30) days after the publication of the Notice of Proposed Rulemaking.

DATE: Comments will be accepted up to February 20, 1981.

ADDRESSES: The related material in support of this revision may be examined during normal business hours at the following locations:

Central Docket Section (10A-70-2), West Tower Lobby, Gallery I, Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460

Air Programs Branch, Environmental Protection Agency, Region 10, 1200 Sixth Avenue, Seattle, Washington, 98101

State of Oregon, Department of Environmental Quality, 522 S.W. 5th Avenue, Yeon Building, Fourth Floor, Portland, OR 97207

COMMENTS SHOULD BE ADDRESSED TO: Laurie M. Kral, Air Programs Brauch, M/S 629, Environmental Protection Agency, 1200 Sixth Avenue, Seattle, Washington 98101.

FOR FURTHER INFORMATION CONTACT: Michael Gearheard, Air Programs Branch, M/S 625, Environmental Protection Agency, 1200 Sixth Avenue, Seattle, Washington 98101 (206) 442-1228.

SUPPLEMENTARY INFORMATION: On June 24, 1980 EPA published in the Federal Register (45 FR 42308) final rulemaking on Part D revision to the Oregon SIP. As part of this action, EPA conditioned various portions of the Part D SIP pending revisions. The state responded to these conditions by submitting four (4) revisions. They are:

(1) September 8, 1980—Certain aspects of RACT determinations for OAR 340-22-170.

(2) October 16, 1980—revision and additions to the Volatile Organic Compounds rules.

(3) December 17, 1980—draft new source review rules.

(4) December 18, 1980—source testing procedures.

The October 16, 1980 Volatile Organic Compound (VOC) rules include revised rules for both Group I and Group II VOC sources. Only the Group I VOC rules were subject to EPA's June 24, 1980 conditional SIP approval. EPA will proceed with a separate rulemaking action for the Oregon VOC rules applicable to Group II sources.

The purpose of this notice is to call the public's attention to the fact that these rules have been formally submitted to EPA and are available for public inspection at the locations noted above. The public is encouraged to submit written comments regarding the proposed rules and thus participate in this rulemaking activity.

A more detailed description of the proposed Oregon SIP revisions will be published in the Federal Register at a later date as part of a Notice of Proposed Rulemaking.

Pursuant to the provisions of 5 U.S.C. § 605(b) I hereby certify that the attached rule will not if promulgated have a significant economic impact on a substantial number of small entities. This action only approves state actions. It imposes no new requirements. Moreover, due to the nature of the federal-state relationship, federal inquiry into the economic reasonableness of the state actions would serve no practical purpose and could well be improper.

(Sec. 110, 172, Clean Air Act (42 U.S.C. 7410 and 7502))

Dated: January 13, 1981.

Donald P. Dubois,

Regional Administrator.

[FR Doc. 81-2118 Filed 1-20-81; 8:45 am]

BILLING CODE 6560-26-M

40 CFR Part 721

[OPTS-59013A; TSH-FRC 1722-4]

N-Methanesulfonyl-p-Toluenesulfonamide; Public Meeting on Proposed Significant New Use Determination

AGENCY: Environmental Protection Agency (EPA).

ACTION: Public Meeting.

SUMMARY: EPA proposed that certain uses of the chemical substance N-methanesulfonyl-p-toluenesulfonamide be designated as "significant new uses" under section 5(a)(2) of the Toxic Substance Control Act (TSCA) (15 U.S.C. 2604) in the Federal Register of November 28, 1980 (45 FR 78870). The comment period for written comment to the proposed rule ended on January 12, 1981. The Chemical Manufacturers Association (CMA) requested an opportunity to convey comments orally to EPA. EPA grants the request and is holding a meeting, open to the public, to receive comments on the proposal from CMA.

DATE: The public meeting will begin at 2:00 p.m. on February 17, 1981.

ADDRESS: The meeting will be held in Washington, D.C. at: EPA Headquarters, Rm. 3906, Waterside Mall, 401 M St., SW., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT:

John B. Ritch, Jr., Director, Industry Assistance Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm. E-429, 401 M St. SW., Washington, D.C. 20460, Toll-Free (800-424-9060), In Washington, D.C. (554-1404).

SUPPLEMENTARY INFORMATION: EPA will hold a meeting, open to the public, concerning the N-Methanesulfonyl-p-Toluenesulfonamide significant new use proposal from 2:00 p.m. to 4:00 p.m. on Tuesday, February 17, 1981, to obtain oral comments from the Chemical Manufacturers Association. Participation in the meeting will be limited to representatives of CMA. As a standard operating policy, the Office of Toxic Substances offers an opportunity for oral comment that is not duplicative of written commentary after the close of written comment periods. This scheme allows EPA to review in advance the written commentary of those who have some additional material or interpretation to communicate which is better conveyed orally in a face-to-face, roundtable type of session. The meeting with CMA falls within this policy. The Agency will include a transcript of the session in the official public record.

Dated: January 12, 1981.

Edward A. Klein,

Director, Chemical Control Division, Office of Toxic Substances.

[FR Doc. 81-2035 Filed 1-20-81; 8:45 am]

BILLING CODE 6560-01-M

OFFICE OF PERSONNEL MANAGEMENT

41 CFR Ch. 16

Procurement Regulations for Federal Employees Health Benefit Plans

AGENCY: Office of Personnel Management (OPM).

ACTION: Advance Notice of Proposed Rulemaking.

SUMMARY: OPM is drafting proposed regulations to apply to the negotiation and administration of contracts between OPM and carriers for Federal Employees Health Benefit Plans. This Advance Notice explains the major concepts that OPM intends to place in the proposed regulations, and invites comments from all interested persons.

DATE: Comments must be received on or before March 23, 1981.

ADDRESS: Office of Personnel Management, Compensation Group, Office of Pay and Benefits Policy, P.O. Box 57, Washington, D.C. 20044.

FOR FURTHER INFORMATION CONTACT: Ms. Mary Ann Mercer, Telephone (202) 632-4634.

SUPPLEMENTARY INFORMATION: Pursuant to the Federal Employees Health Benefits Act (FEHBA), Pub. L. 86-382, 73 Stat. 708 (1959), as now amended and codified in Chapter 89 of Title 5, United States Code, Federal employees and annuitants may purchase health insurance as a fringe benefit of their Government employment. The Government does not act as an insurer. Rather, in accordance with FEHBA, the Health Benefits Program consists of a group of "health benefit plans." These plans are group insurance policies, contracts or similar group arrangements with nongovernmental organizations, called "carriers," established for the purpose of "providing, paying for or reimbursing expenses for health services." Title 5, United States Code, Subsections 8901 (6) and (7).

Chapter 89 of Title 5 designates the Office of Personnel Management (OPM) as the agency responsible for the administration of the Federal Employees Health Benefits Program. OPM is authorized by the statute to enter into contracts with carriers to make available four categories or types of health benefit plans: (a) one Government-wide service benefit plan; (b) one Government-wide indemnity benefit plan; (c) employee organization plans available only to members of the organization and their families; and (d) comprehensive medical plans, wherein the plan itself provides health care to enrollees on a prepaid basis. 5 U.S.C. 8903. There are now over 100 plans participating in the program, including the two Government-wide plans and 18 employee organization plans.

FEHBA also provides that the Government will pay part of the cost of coverage for each employee, with the employee assuming the remainder. Currently, for all employees except those in the Postal Service, the Government pays a contribution of up to 60 percent of the average charge made by six plans designated by criteria set forth in Section 8906 of Title 5.

Under Subsection 8906(a) of Title 5, each employee is permitted to choose to enroll in one of the health benefit plans approved by OPM. Under Sections 8905(e) and 8913 of Title 5, OPM has, by regulation, designated an "open season" during each year when an employee may make changes in enrollment, including transferring from one plan to another. 5 CFR 890.301(d).

The National Treasury Employees Union v. Campbell Lawsuit

OPM entered into a contract with the Blue Cross Association and the Blue Shield Association to establish the Government-wide Service Benefit Plan authorized by 5 U.S.C. 8903. This contract is known as "Contract No. CS 1039."

On September 18, 1980, the United States District Court for the District of Columbia issued its order in the case of *National Treasury Employees Union* v. *Campbell*, C.A. No. 75-2173. The Court held that Contract No. CS 1039 is a Government procurement contract, and that therefore the Federal Procurement Regulations (FPR's) must, in part, be applied to Contract No. CS 1039. The FPR's are regulations issued by the General Services Administration; the FPR's consist of uniform policies and procedures applicable to Federal agencies in the procurement of, among other things, nonpersonal services. See 41 CFR 1-1.002. The FPR's are set forth in 41 CFR Chapter 1.

The District Court further held that while the FPR's are applicable in general to Contract No. CS 1039, "their specific application necessarily differs because of the distinctive nature of the service involved." *National Treasury Employees Union* v. *Campbell*, Slip Opinion, at 6. The District Court stated that OPM is obligated to issue regulations which inform contractors and employees of which portions of the FPR's are applicable, and of the extent to which OPM policies deviate from the FPR's. The District Court therefore ordered OPM to issue such regulations.

Purpose of This Notice

OPM believes that comments from interested parties and the public would be helpful in drafting the contemplated regulations which will define the applicability of the FPR's to the contracts between OPM and health benefits carriers for Federal employees health benefit plans. OPM anticipates that the final regulations will apply to all such contracts.

The FPR's contain in their provisions numerous Government-wide policies on the negotiation and administration of procurement contracts. OPM believes that this is an appropriate time to reexamine the manner in which these Government-wide policies apply to the rather unique form of procurement that contracts between OPM and health benefit carriers constitute. OPM has therefore set forth for comment the major concepts and policies which OPM contemplates its regulations will embody.

Material for Comment

The FPR's provide a format for each Federal agency to publish "implementing regulations deemed necessary for business concerns, and others properly interested to understand basic and significant agency procurement policies and procedures which implement, supplement or deviate from the FPR." 41 CFR 1-1.008. Such implementing and supplementing material is to be published in the Federal Register and then incorporated into succeeding chapters of Title 41, Code of Federal Regulations. 41 CFR 1-1.006-1. In order to carry out the order of the District Court in *National Treasury Employees Union* v. *Campbell*, OPM proposes to follow the FPR format and establish a new chapter in Title 41, Code of Federal Regulations. OPM will describe in that chapter the applicability of the FPR's to contracts between OPM and health benefit carriers, including any OPM deviations from the FPR's.

OPM proposes to generally define the applicability of the FPR's to contracts with health benefit carriers as follows: "The Federal Procurement Regulations set forth in Chapter 1 of Title 41, Code of Federal Regulations are applicable to contracts between the Office of Personnel Management (OPM) and health benefits carriers which establish health benefit plans for Federal employees and annuitants, except to the

extent that this chapter indicates that a part of the Federal Procurement Regulations is inapplicable, or that OPM has determined to deviate from a part of the Federal Procurement Regulations."

OPM proposes to then implement the particular parts of the FPR's applicable to the contracts for health benefit plans through a series of more specific regulations dealing with those parts requiring supplementation or modification. Those numerous parts of the FPR's which, by their own terms, have no apparent application to these contracts, will not be referenced in the OPM regulations. For example, part 1–2, "Procurement by Formal Advertising," has no application because FEHBA exempts these contracts from formal advertising. Similarly, parts 1–5, "Special and Directed Sources of Supply;" 1–6, "Foreign Purchases;" 1–9, "Patents, Data and Copyrights;" 1–10, "Bonds and Insurance;" 1–14, "Inspection and Acceptance;" 1–17, "Extraordinary Contractual Actions to Facilitate the National Defense;" 1–18, "Procurment of Construction;" and 1–19, "Transportation" have no apparent relevance to these contracts. This list is illustrative and not intended to be complete. In addition, parts 1–1 and 1–7 contain numerous contract clauses which the contracting officer will have to determine the applicability of on an individual basis for each contract.

Part 1–1. This part contains general procurement policies. Subpart 1–12 deals with determination of responsible prospective contractors. OPM has previously issued regulations which specifically set minimum standards for health benefit plans and carriers for participation in the Federal Employees Health Benefits Program, thereby implementing statutory requirements set forth in Section 8902 of Title 5. These regulations, 5 CFR 890.201–890.202, will continue to govern admission to the program.

Part 1–3. Contracts between OPM and health benefit carriers are exempted by 5 U.S.C. 8902 from any requirements for formal advertising for bids. Contracts between OPM and health benefit carriers are consequently procured by negotiation, and thus are generally subject to part 1–3 of the FPR's. OPM proposes to implement part 1–3 of the FPR's, "Procurement by Negotiation," by defining the types of contracts involved, by describing how subpart 1–3.8, "Price Negotiation Policies and Techniques," applies to these types of contracts, and by stating the extent of applicability of subpart 1–3.12, "Cost Accounting Standards."

OPM's proposed definitions of the types of contracts are as follows:

"Contracts between OPM and health benefit carriers are of two principal types:

(a) Community rated contracts: The subscription charge per subscriber is fixed for the term of the contract and is not subject to any redetermination. The contract is with a health benefit carrier which offers a single basic benefit package to all of its subscribers (including Federal employees and annuitants) at the same basic subscription rate. The community rate per subscriber is calculated to produce sufficient revenue to cover the cost of benefits delivered to all enrollees as well as the overhead costs of delivering the benefits. The rate charged to Federal subscribers may differ somewhat from the community rate because: (1) certain additional benefits above the basic package may be provided to Federal subscribers (this cost is referred to as a "benefit loading"); and (2) minor adjustments from the basic community rate may be made in the rate charged to Federal subscribers to cover unique requirements of the Federal Employees Health Benefits Program (this cost is referred to as a "standard loading"). Where, because of lead-time requirements in rate negotiations, an estimated community rate is used, and subsequently the actual community rate turns out to differ from the estimated rate, some readjustment may be made.

(b) Experience rated contract: In this contract, the subscription charge per subscriber is set at the beginning of the contract term, and a fixed service charge (fee) to the carrier may be set. Administrative expenses of the carrier are subject to a negotiated limitation.

At the end of the contract term, any surplus of the subscription charges collected by the carrier over the cost of providing the benefits is carried forward to the next contract term as a positive balance in an account called the "special reserve;" conversely, any shortfall where cost of providing the benefits exceeded rates collected is carried forward as a negative special reserve balance. The special reserve balance becomes a factor in determining subscription charges for the next contract term. See 5 CFR 890.201(a)(8)."

OPM proposes to describe the applicability of subpart 1–3.8 of the FPR's to the process of negotiating health benefit plan contracts in the following manner: "Application for approval of, and proposal of amendments to, health benefit plans should be made according to the procedures set out in 5 CFR 890.203. OPM applies the requirements of Subpart 1–3.8 of 41 CFR, "Price Negotiation Policies and Techniques," to such proposals for a plan subscription charge during a contract term as follows:

(a) For a community-rated health benefit plan contract, the carrier is required to demonstrate to the contracting officer that the base community rate is in fact a true community rate offered to non-Federal subscribers. The Office of Actuary, Compensation Group, OPM, will assist the contracting officer in analyzing the proposed rate, and the Office of Actuary may request that the carrier provide appropriate supporting data or documentation. The Office of Actuary will examine any standard and benefit loadings.

(b) For an experience-rated plan, the carrier is required to demonstrate to the contracting officer that the proposed rate reasonably and equitably reflects the costs of the benefits to be provided. The Office of Actuary will assist the contracting officer in analyzing the proposed rate, and the Office of Actuary may request that the carrier provide appropriate supporting data or documentation on the costs to be incurred by the carrier under the proposal.

Each experience-rated plan is required to submit, with its rate proposal, a projection of its operations for the current and succeeding years, and to explain the derivation of each item in the projection. Data supplied by the plan is checked against statements filed by the plan showing monthly paid claims by incurred quarter of each year. The data in these reports are also verified by comparison to the plan's annual accounting statement filed with OPM. The Office of Actuary will review the information filed by the plan and compare the plan's data with an independent projection developed by the actuary.

(c) Each health benefit plan is audited by the Audit Division, Compensation Group, OPM, on a periodic basis according to a schedule determined by the Audit Division in consultation with the contracting officer. The Audit Division prepares audit reports which are supplied to the contracting officer and the Office of the Actuary. The contracting officer utilizes these audit reports in evaluating the validity and accuracy of data submitted by the carriers, in conducting negotiations on rates proposed by carriers, and in evaluating the efficiency and effectiveness of carrier operations.

(d) Carriers are required to submit a "Certificate of Current Cost on Pricing Data" in a format designated by OPM. For community-rated carriers, this certificate will require the carrier to

certify that the base community rate is a true community rate. The certificate will, with respect to experience rates, require the carrier to certify that to the best of the carrier's knowledge and belief, the data is accurate, complete and current.

OPM also proposes to explain its policy relating to a service charge (fee or profit) for health benefit carriers. OPM proposes the following statement of its policies on this subject:

"(a) Community-rated contracts with health benefit carriers include a fee, if any, as part of the overall subscription charge, and there is no separately negotiated fee item.

(b) Experience-rated contracts with health benefit carriers may contain an item called the "service charge," which is analogous to a fee. The amount of the service charge is determined by negotiation between the contracting officer and the carrier. In addition to the factors set forth in 41 CFR 1–3.808, the following types of factors may be considered in negotiating the amount of a service charge:

(1) Underwriting risk;

(2) Size of enrollment in plan;

(3) Level of capital investment by plan in facilities;

(4) Plan efforts and effectiveness in containment of health care costs;

(5) Quality of plan service to subscribers;

(6) Plan participation in or sponsorship of subscriber and provider education, and other community service programs;

(7) Unrecovered costs to carrier for enrollees converting from enrollment in plan to individual coverage;

(8) Changes in the Consumer Price Index; and

(9) For plans sponsored by employee organizations, the amount of associate membership dues, if any, received by the organization.

Subpart 1–3.12 of the FPR's sets forth a series of Cost Accounting Standards issued by the Cost Accounting Standards Board. OPM proposes to define the extent of the applicability of the Cost Accounting Standards through the following statement: "Experience-rated contracts between OPM and health benefit carriers will include the 'modified contract coverage clause' set forth in 41 CFR 1–3.1204–2(b). This clause, entitled 'Consistency of Cost Accounting Practices-Nondefense Contract,' requires compliance with 41 CFR 1–3.1220–1, 'Consistency in Estimating, Accumulating and Reporting Costs,' and 41 CFR 1–3.1220–2, 'Consistency in Allocating Costs incurred for the Same Purpose.'"

Although application of the remaining cost accounting standards (41 CFR 1–3.1220–3 to 1–3.1220–14) is not required by the modified contract coverage clause, OPM believes that these standards represent the application of sound cost accounting theory which, if adhered to by carriers, would result in an equitable and reasonable allocation of expenses to the health benefit plans. Consequently, OPM plans to review the other cost accounting standards for possible future application to the health benefit plan contracts, and OPM requests comments regarding the appropriateness of applying each standard.

Part 1–8. This part contains procedures for termination of procurement contracts. The procedures for withdrawal of approval of a health benefit plan are governed by specific program regulations set forth at 5 CFR 890.205 and are implemented by provisions in each of these contracts.

Part 1–11. This part concerns Federal, State and local taxes. The contracts between OPM and health benefit carriers contain specific provisions governing taxes.

Part 1–12. This part deals with general policies concerning labor. In subpart 1–12.1, "Basic Labor Policies," certain requirements for prospective and retroactive approvals of overtime premiums and shift premiums are set forth at 41 CFR 1–12.102–4. OPM will not require any agency approval of overtime or shift premiums.

OPM contracts with health benefit carriers will contain appropriate clauses to implement the subparts of Part 1–12 which relate to restrictions on use of convict labor and to equal opportunity in employment.

Part 1–15. This part of the FPR's contains general cost principles and procedures for the negotiation and administration of several types of contracts. OPM has maintained that the cost principles set forth in subpart 1–15.2 apply to experience-rated contracts with health benefit carriers, and OPM proposes to so state through the following language:

"The Contract Cost Principles and Procedures set forth in 41 CFR Subpart 1–15.2, entitled "Contracts with Commercial Organizations," apply to all experience-rated contracts between OPM and health benefit carriers. Allowable costs under such experience-rated contracts will be determined according to Subpart 1–15.2."

OPM is studying the "selected costs" principles set forth in § 1–15.205, and welcomes comments regarding particular cost items. In particular, OPM has the option, pursuant to FPR Temporary Regulation 40, 41 Federal Register 44475 (October 8, 1976), of implementing Cost Accounting Standard No. 414, "Cost of Money as an Element of the Cost of Facilities Capital."* Interested parties should be aware that if OPM determines to issue regulations allowing the imputed cost of money in facilities capital as an allowable administrative cost, OPM expects that, consistent with General Services Administration guidance, the service charge paid to the carrier would no longer reflect the level of investment by the carrier, and would be correspondingly reduced.

At this time OPM is proposing several clarifications of the selected costs subsections. These proposals are as follows: "The 'Selected Costs' set forth in 41 CFR 1–15.205 are supplemented or modified to the following extent:

(1) Advertising costs (§ 1–15.205(1)). Advertising includes any message in the media which identifies the name of the carrier or of its Federal Employees Health Benefit plan, and which is directed at either the plan's current subscribers, Federal employees and annuitants, providers of medical services, or the general public. Media messages with an asserted "educational" content or purpose are deemed advertising when the above circumstances exist, regardless of the fact that the messages may include information related to health care or cost containment. The expense of advertising is not allowable as a cost; however, the expense of plan educational efforts may be a factor to be considered by the contracting officer in negotiating the "service charge."

(2) Compensation for personal services (§ 1–15.205–6(b)). OPM approval of overtime is not required for overtime premiums, extra-pay shifts and multi-shift work premiums to constitute allowable costs.

"(3) Professional and consultant service costs—legal, accounting, engineering and other (§ 1–15.205–31(d)). Expenses incident to carrier appeals under the disputes clause of a contract from final decisions of the contracting officer are not allowable costs."

Part 1–16. This part prescribes various forms for use in procurement actions. OPM generally uses forms it has developed for use within the Federal Employees Health Benefits Program, and which serve comparable functions to the forms set forth in Part 1–16.

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* FPR Temporary Regulation 40 may be rescinded in the near future pursuant to Policy Letter 80-7 of the Office of Federal Procurement Policy (December 9, 1980). Should FPR Temporary Regulation 40 be revoked, OPM will evaluate the situation in the light of whatever future provisions are inserted into the FPR's concerning cost of money.

Part 1–20. This section prescribes requirements for records retention. This part applies to contracts between OPM and health benefit carriers, except that 16–20.202(a), "Other record retention requirements," will be modified to ensure consistency among all FEHBP contracts. OPM will require retention of records and accounts for 5 years after the end of the contract year to which they relate, except that claims records shall be maintained for 3 years after the end of the contract year to which they relate.

Part 1–30. This part concerns contract financing. The contracts between OPM and health benefit carriers contain specific provisions defining the method of payment from the Federal Employees Health Benefit Fund to the carrier.

This advance notice of proposed rulemaking is issued under the authority of 40 U.S.C. 486(c) and 5 U.S.C. 8913.

Office of Personnel Management.

Beverly M. Jones,

Issuance System Manager.

[FR Doc. 81-1868 Filed 1-19-81; 8:45 am]

BILLING CODE 6325-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 63

[CC Docket No. 78–72—Phase II]

MTS and WATS Market Structure; Order Extending Time for Filing Comments and Reply Comments

AGENCY: Federal Communications Commission.

ACTION: Report and Third Supplemental Notice of Inquiry and Proposed Rule; Extension of comment and reply period.

SUMMARY: This Order grants Alascom, Inc., a one month extension of time in which to file comments in CC Docket 78–72–Phase II relating to MTS and WATS market structure. The extension is granted to give Alascom additional time to complete market studies and to prepare comments.

DATES: Initial comments are now due on or before January 8, 1981, and reply comments are due on or before February 16, 1981.

ADDRESSES: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Douglas Slotten, Policy and Program Planning Division, Common Carrier Bureau, 202–632–6342.

SUPPLEMENTARY INFORMATION:

Order Extending Time for Filing Comments and Reply Comments (45 FR 55777); August 21, 1980

Adopted: December 4, 1980.

Released: December 5, 1980.

By the Chief, Common Carrier Bureau:

1. On December 1, 1980, Alascom, Inc., filed a petition for an extension of time to file comments to the Commission's *Report and Third Supplemental Notice of Inquiry and Proposed Rulemaking* in *CC Docket No. 78–72 Phase II*, FCC 80–463 (released August 25, 1980).[1] The *Third Supplemental Notice* separated the question of competitive versus monopoly supply of telecommunications services in the Alaska submarket from the consideration of that issue for the remainder of the United States. In so doing, it provided Alascom with a further opportunity to support its argument that Alaska should be served on a sole source basis. On December 3, 1980, General Communications Inc. (GCI), filed an opposition to Alascom's petition.

2. Alascom seeks an extension of time until January 8, 1981, in which to file initial comments, and until February 14, 1981, in which to file reply comments. In support of its request, Alascom states that the month extension to December 8 was the minimum necessary if everything happened without delay. It states that it has made considerable progress in preparing its studies but needs an additional month to complete the studies and to prepare its comments. Alascom states that it does not believe the Commission or other parties will be injured by a short delay.

3. GCI argues that Alascom has failed to justify its request for an extension of time in which to file comments, and that the Commission should deny, or severely limit, any extension of the due date. In support of its position, GCI submits that it and other carriers desire an early confirmation that an open entry policy in the MTS–WATS market is applicable to Alaska as well as the other 49 states; that Alascom has already had 90 to 120 days to develop a study methodology and prepare its comments; and that this is the third 30 day extension requested by Alascom.

4. The Commission is cognizant of the uncertainty engendered by the existence of an outstanding docket which is inquiring into the question of whether an open entry policy for the MTS–WATS market in Alaska is in the public interest. To reach a decision, the Commission must develop a record on which a decision can be made. Based on Alascom's representation that considerable effort has been expended in preparing market studies and that significant progress has been made, the Commission finds that the grant of an additional month in which to file comments is in the public interest. This should provide the Commission with a complete record upon which to base its decision. We would emphasize, however, that the Commission will not look with favor on further requests for extension of time by Alascom in the absence of compelling circumstances. Reply comments will be due on February 16, 1981, since the fourteenth is a Saturday.

5. Accordingly, it is ordered, pursuant to Sections 4(i), 5(d)(1) and 303(f) of the Communications Act, as amended, and Section 0.291 of the Commission's Rules, that the dates for filing comments in response to the *Report and Third Supplemental Notice of Inquiry and Proposed Rulemaking* IS EXTENDED to and including January 8, 1981, and the date for filing reply comments IS EXTENDED to and including February 16, 1981.

Federal Communications Commission.

William B. Ginsberg,

Deputy Bureau Chief (Policy).

[FR Doc. 81-2032 Filed 1-19-81; 8:45 am]

BILLING CODE 6712-01-M

[1] That Order initially established filing dates of October 17, 1980, for initial comments and November 17, 1980, for reply comments. Because of Commission delays in issuing the Order, the Common Carrier Bureau extended the dates at Alascom's request until November 10, 1980, and December 10, 1980, respectively. See Mimeo No. 35462. Subsequently, the Commission granted an additional extension of time to December 8, 1980, and January 14, 1981, respectively. See Mimeo No. 01148 (released November 4, 1980).

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47 CFR Part 76

[CT Docket No. 79–183; RM–3116; FCC 80–754]

Television Broadcasting; Television Broadcasting; Cable Television; Addition to Huntsville-Decatur, Alabama, Market

AGENCY: Federal Communications Commission.

ACTION: Denial of proposed rule.

SUMMARY: The Commission does not adopt a proposed amendment to its list of the top 100 television markets utilized in the cable television rules (47 CFR 76.51) to add Florence, Alabama to the hyphenated market now designated as Huntsville-Decatur, Alabama (#98). Inclusion of Florence in the market would have made Florence television stations "must-carry signals" for cable systems within the Grade B contour of Huntsville and Decatur television stations. The Commission finds that

Florence is not part of the Huntsville-Decatur viewing market; that there is no public need to include Florence in the market; and that the burden would be too great on Huntsville and Decatur cable systems to require them to carry the Florence station under the mandatory signal carriage rules.

ADDRESSES: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Deborah L. Stuehrmann, Cable Television Bureau, (202) 632-6460.

SUPPLEMENTARY INFORMATION: In the matter of amendment of § 76.51 of the Commission's rules and regulations, CT-Docket NO. 79-196, RM-3115.

Report and Order

Adopted: December 18, 1980.
Released: January 14, 1981.

By the Commission: Commissioners Quello and Jones absent.

1. Television Muscle Shoals, Inc., ("TMS"), licensee of Station WOWL-TV (NBC, channel 15), Florence, Alabama, has requested that the Commission revise its list of the top 100 television markets utilized in the cable television rules (47 CFR 76.51), to add Florence, Alabama to the hyphenated market now designated as Huntsville-Decatur, Alabama (#96). TMS originally filed its request as a petition for special relief pursuant to § 76.7 of the Commission's Rules. Objections to that petition were filed by Teleprompter Southeast, Inc., and Decatur TeleCable Corp., both operators of cable systems that would be required to carry the signal of WOWL-TV if the market designation were changed. When TMS replied to these objections, it became clear that what TMS sought was in fact a change in § 76.51(a)(96) of the Rules, rather than special relief. TMS's pleading was thus converted to a petition for rulemaking and in response the *Notice of Proposed Rule Making in CT Docket 79-196*, FCC 79-484, FCC 2d , 44 FR 48997 (1979), was issued proposing the change in market designation urged by TMS. Comments and Reply Comments were filed by Teleprompter Southeast, Inc., Rocket City Television, Inc., American Valley Broadcasting Company, Decatur TeleCable Corporation, Television Muscle Shoals, Inc., and Athens TV Cable of Alabama, Inc. In addition all pleadings in the special relief proceeding have been considered in the present rulemaking.

Comments

2. The Comments in support of the proposed rulemaking argue: (1) That it is unfair to exclude Florence from the Huntsville-Decatur market when, in fact, the Florence population was included in the calculation of the market rank in 1970; (2) that Florence is a part of the Huntsville-Decatur community due to the amount of advertiser support in that market from Florence viewers; and (3) that the inclusion of Florence in the market could be accomplished without undue economic hardship to existing cable systems. Athens TV Cable of Alabama, operator of a cable television system in Athens, Alabama, supports the change since in its absence it is prohibited from carrying the signal of WOWL-TV.

3. The cable television system comments in opposition to the proposed change argue: (1) That Florence is a community separate and distinct from Huntsville-Decatur, such that there is no integration of economic and social units to justify including it in the market; (2) that the petition is actually based upon a conflict between TMS and Arbitron such that the Commission should not be "used" to settle their dispute; and (3) that to include Florence in the Huntsville-Decatur market would force cable operators to carry Station WOWL-TV and that such a requirement would be costly to cable systems already carrying a full complement of signals. The cable system in Decatur, for example, estimates that carriage of WOWL-TV would require an upgrading of its plant and the installation of converters involving an initial capital outlay of $641,050 and annual operating costs of $40,520. The change is also resisted by American Valley Broadcasting, Inc., the licensee WAFF, a Huntsville, Alabama television station, which states that the communities in question are geographically and economically separate and that while it has audience in the Florence area it does not rely on the area for advertising support or attempt to ascertain or serve the needs and interest of that area. It claims that what is really involved, is a dispute between the Florence television station and ARB, that ARB's decision to include Florence in the market is erroneous, and that the Commission should not permit itself to be used to resolve this private dispute.

Discussion

4. The presence or absence of a community on the major (top 100) market list has a number of consequences for television stations licensed to that community: (1) It determines whether the station obtains the benefits of smaller or major market network nonduplication protection (smaller market stations receive a large zone of protection), (2) it determines whether the station receives syndicated program exclusivity and the type of protection from distant signal carriage to which it is entitled (the Commission in its *Report and Order in Docket 20988 and 21284*, FCC 80-443, 45 FR 80185 (1980) has voted to eliminate these rules), and (3) it determines the scope of a station's mandatory cable television carriage rights (a station is entitled to mandatory carriage throughout the market with which it is identified). The Commission originally based it major market list on the American Research Bureau's (now Arbitron) 1970 primetime households ranking, although it made minor adjustments to this list. Para. 75, *Cable Television Report and Order*, FCC 72-108, 36 FCC 2d 143, 171-172 (1972). Arbitron's 1970 market rankings refer to the "Huntsville-Decatur-Florence" market. However, when the list was incorporated into Section 76.51 of the rules, the market was designated "Huntsville-Decatur." The absence of Florence from this list is unexplained in the *Cable Television Report and Order, supra*.

5. In the present context what is in issue is the mandatory carriage rights of WOWL-TV. It would like to have such rights on additional cable systems, including particularly those in Huntsville and Decatur. The cable systems are resisting such carriage on the grounds of inadequate channel capacity, technical unavailability of the WOWL-TV signal, unnecessary duplication of signal carriage from stations that might be subject to deletion under the network nonduplication rules, and a desire for freedom from governmental interference in the broadcast signals distributed to their subscribers. The change would also create additional competition for the stations in Huntsville and is resisted by one of the stations there.

6. In the *Cable Television Report and Order, supra*, at 176, the subject of "hyphenated markets" was discussed. The Commission said:

> In such markets, characterized by more than one major population center supporting all stations in the market but with competing stations licensed to different cities within the market area, we will permit and, on request of the station involved, require carriage of all stations licensed to designated communities in the market. Because of the structure of these markets, including the terrian and the population distribution, portions of the market are occasionally located beyond the Grade B contours of some market station. Consequently, we are adopting this rule in order to help equalize competition between stations in markets of this type, and to assure that stations will have access to cable subscribers in the market and that cable subscribers will have access to all stations in the market. (Footnote omitted).

7. The term "market" as it is used in the cable television rules, and indeed as it is used by the audience rating services and the broadcasting industry generally, is not without certain ambiguities. Since the term is used in a number of different contexts and in particular has been used to perform a number of functions in the regulation of cable television, certain compromises inevitably have been incorporated into the definition. For purposes of the cable television syndicated program exclusivity rules the definition was intended to be a partial reflection of the manner in which television programming was sold; for purposes of protecting television stations from distant signal competition it was intended to define a core area on which the stations in question principally relied for their economic support; and for purposed of the mandatory carriage rules it was intended as an area on which the stations in the market actually relied or could logically rely on for economic support. For all of these purposes the greater the separation between cities, involved, the thinner the common bond allowing both to be considered part of the same market.[1]

8. Our research has failed to produce any definitive answer to the question of why Florence was eliminated from the Arbitron list which was used as the basis for the 1972 cable television top 100 market list. Although the *Notice of Proposed Rulemaking* in this proceeding refers to the absence of Florence from the major market list as "inadvertent error" (para. 4), further investigation suggests that while unexplained in the *Cable Television Report and Order*, the absence of Florence from the list was probably not inadvertent. As that *Report* explains, the list used by the Commission was not identical to that used by Arbitron. Certain changes were made as the result of the Commission's own experience with the various market situations involved and it appears that the decision had been made prior to the *Cable Television Report and Order* that the Florence and Huntsville-Decatur areas were separate, at least for some purposes, such as the Commission's reporting of aggregate market-by-market television station financial data. See, for example, "TV Broadcast Financial Data—1970," Sept. 7, 1970, mimeo 71434 which lists the Huntsville-Decatur market separately.

9. Regardless of the historical reasons for the market list created in 1972, the question to be resolved now is whether, in terms of the functions of the cable television rules, the areas here involved should be one market or two. What is involved in the present proceeding is a situation in which the two cities in question—Florence and Huntsville—are some 75 miles apart. Both Huntsville and Decatur are outside the Grade B contour of the station in Florence and Florence is outside of the Grade B contours of the stations licensed to Huntsville. Although stations from Huntsville have a considerable viewing audience in the Florence area and are carried on the Florence cable television system, the Florence station has little if any off-air audience in the Huntsville area and historically has not been available for cable television carriage on the Decatur or Huntsville cable television systems because of the operation of the Commission's cable television rules. A review of recent Arbitron county coverage audience surveys shows that WOWL–TV has very little over-the-air audience in any part of the 35-mile zone around Huntsville and Decatur where cable carriage would be mandatory if the proposed rule were adopted.[2] The lack of cable television carriage thus cannot be said to be impeding the station from reaching its natural over-the-air audience. Nor has TMS offered any other persuasive evidence of a *public* need to include Florence in the Huntsville-Decatur market. It has rather simply asserted that it is prejudiced by *Arbitron's* list through impacts on its advertising rates.[3] TMS has not brought forth any facts indicating a public desire for reception of WOWL–TV in the Huntsville-Decatur area. Our conclusion is that, in terms of the cable television rules, a strong case has not been to merge these two markets into one.

10. Besides the lack of evidence of any public benefits to be derived from the proposed rule change, it could involve significant costs. Mandatory carriage of several television signals in areas far beyond their Grade B contours would be required if the rule change were adopted. For example, a cable system in Scottsboro, Alabama, within the 35 miles zone and Grade A contour of Huntsville, would be forced, under the mandatory carriage rules, to carry the Florence station, which is approximately 100 miles away. The same would be true of cable systems in Mississippi, just outside the Grade A contour of Florence but within its 35 mile zone, which would have to carry the Huntsville stations, again approximately 100 miles away. It is impossible to justify such carriage as necessary to assure these stations access to the audience they are licensed to serve given the distances involved. Moreover, the cable systems involved would be required to carry an NBC affiliated station, largely duplicative of stations already carried, from communities with little immediate economic or social relationship to them. In sum, given the distances involved, the fact that most of the area in which this change would afford WOWL–TV expanded carriage rights is outside its Grade B service area, and the absence of any clear showing or particularized need by the station requesting the change, or indication of how the public would benefit from the change, we have concluded that it should not be adopted. It should be emphasized, however, that this market definition is for purposes principally of enforcing the cable television mandatory cable television signal carriage rules and should not be taken as automatically applicable as a market definition for other purposes.

11. The *Notice of Proposed Rule Making* in this proceeding also proposed the elimination of Decatur from the Huntsville-Decatur designated market

[1] It should be acknowledged that market definitions are also reflections of economic decisions made by the three major national television networks. The three networks attempt to provide coverage of the entire nation through the broadcasts of their affiliates but at the same time reduce their costs by minimizing diplication of coverage. Thus, the presence of two affiliates of the same network in an area suggests that two markets are present since two affiliates are required to provide adequate coverage of the area. It not infrequently occurs, however, that for various reasons, including particularly differences in the transmission capabilities between UHF and VHF stations, that one network can obtain full coverage of an area with one station while another network will require more than one affiliate. Thus, the area is one "market" for some networks and two "markets" for others. The Commission and the rating services may then be required to chose one or the other categorization depending upon the purposes the market definition or list is to be used for.

[2] According to Arbitron's *1979 County Coverage Survey, CATV-Controlled*, WOWL–TV receives no measurable share of off-air viewing in Marshall County where Huntsville is located and only a 1 share in Morgan County where Decatur is situated. However the Huntsville stations do receive a respectable portion of the off-air viewing in Colbert and Lauderdale counties where Florence is located. WAFF–TV, the Huntsville-Decatur NBC affiliate, receives a 6 share in Colbert county and an 8 share in Lauderdale. WAAY–TV's (ABC, Huntsville-Decatur) off-air share is 25 in both counties. WHNT–TV (CBS, Huntsville) receives viewing shares of 42 and 39 in Colbert and Lauderdale counties, respectively.

[3] Various commenting parties have argued that this controversy is really between *Arbitron* and TMS, and that the Commission should not be "used" as an arbitrator of an essentially private matter. It is not clear, however, just how this dispute would be resolved by a Commission ruling nor what its impact would be on the advertising rates charged by TMS. Nor is it sufficiently clear what the basis would be for any court action by TMS against *Arbitron*. In any event, it is not the Commission's responsibility to settle disputes of this kind, nor will our decision be influenced by the existence of this private controversy.

because there is no station licensed to that community. Since there is no station licensed to Decatur no "specified zone" (see 47 CFR 76.5 (f)) exists around it and its inclusion has no regulatory consequence. Its deletion from the list was therefore proposed. Compare *Order*, FCC 74-1128, 49 FCC 2d 198 (1974) deleting Jacksonville from the Springfield-Decatur-Champaign, Illinois market. We are cited to a number of other situations by commenting parties in which communities on the major market list have no commercial stations licensed to them. Since the inclusion of these cities on the list has no regulatory consequence we do not believe that by themselves they provide justification for continuing the existing confusion with respect to Decatur. However, in § 73.606 (the broadcast table of assignments), channel 54 has been allocated to the hyphenated Huntsville-Decatur community and it is evident that should a station on that channel be activated that this would be the appropriate market designation. Therefore, in order to avoid the necessity of further proceedings if that channel is activated we have decided to leave the list as it is in its present form. It should be understood, however, that until a station comes on the air in Decatur, there is no station there to have a "specified zone" § 76.5(f)) and therefore the inclusion of this community on the list has no immediate regulatory consequence.

Authority for the action taken herein is contained in Sections 2, 3, 4 (i) and (j), 301, 303, 307, 308, and 309 of the Communications Act of 1934 as amended.

Accordingly, it is ordered, that the rule change proposed in CT Docket 79-193 is denied.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 81-2026 Filed 1-19-81; 8:45 am]

BILLING CODE 6712-01-M

Notice

This section contains docu proposed rule public. Notice investigations, decisions and authority, filing applications a organization a of documents

DEPARTMEN

Food and Nu

Food Stamp Funds for De and Evaluati Availability

AGENCY: Food USDA.

ACTION: Notic

SUMMARY: Th Service (FNS) availability of demonstration grants related operations. Th under Section of 1977, as am Notice provid information o proposals whi describes how made.

DATE: The cut applications i

FOR FURTHER Dr. Claire Lips Development Programs, Foo USDA, Room Washington, D

SUPPLEMENTA

Background a

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Notices

Federal Register
Vol. 46, No. 13
Wednesday, January 21, 1981

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Food Stamp Program: Fiscal Year Funds for Demonstration, Research, and Evaluation Projects; Grant Availability

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice of grant availability.

SUMMARY: The Food and Nutrition Service (FNS) gives notice of the availability of Fiscal year 1981 funds for demonstration, research, and evaluation grants related to Food Stamp Program operations. The grants are authorized under Section 17 of the Food Stamp Act of 1977, as amended (7 U.S.C. 2026). This Notice provides general background information on the types of grant proposals which are being solicited and describes how grantee selections will be made.

DATE: The cutoff date for receipt of applications is March 23, 1981.

FOR FURTHER INFORMATION CONTACT: Dr. Claire Lipsman, Director, Program Development Division, Family Nutrition Programs, Food and Nutrition Service, USDA, Room 672 GHI Building, Washington, D.C. 20250, (202) 447–8325.

SUPPLEMENTARY INFORMATION:

Background and Objectives

With the growth of the Food Stamp Program, both Congress and the Administration recognized the importance of earmarking special funds which could be used to gain increased program knowledge. This recognition was translated into legislative and budgetary authority for the operation of research, evaluation, and demonstration projects. With the initiation of those projects mandated by the 1977 Act, FNS has turned its attention to the development of a systematic mechanism for improving program operations through research activities. This announcement marks the first step in implementing an on-going mechanism for such research.

FNS intends, at least annually, to solicit proposals for the conduct of demonstration, research, and evaluation projects. Such initiatives will be undertaken with the purpose of gaining specific knowledge which would lead to the improvement of program administration and/or service delivery. For FY 1981, FNS intends that project and research proposals focus on priority policy areas such as program simplification; reduction of error, fraud, waste, and abuse; and strengthened program management.

FNS proposes the conduct of demonstration projects and research studies. While it is expected that many demonstration projects will come from State welfare agencies, given their role as program administrators, other public agencies or non-profit organizations may be more inclined to submit proposals related to the research topics listed in this notice. Universities and colleges are particularly encouraged to respond to this solicitation. This latter emphasis is reinforced through a recent Executive Order which mandates a governmentwide commitment to enlarge the role of historically Black colleges and universities in Federally funded research and evaluation projects.

Funding

Depending on the nature and objective of the research or demonstration project, FNS will pay up to 100% of the total cost. In other instances, grantees may be asked to share the expenses at a rate not to exceed 25% of total costs. Grantees' portion of funds may be in either cash or in-kind contributions which meet the Department's definition of "allowable" under appropriate financial regulations.

Areas of Research and Demonstration Projects

FNS wishes to encourage applicants to develop proposals which reflect creative and innovative approaches to Food Stamp Program administration and service delivery. Such creativity need not necessarily be a totally new idea or concept, but could be the application of an existing concept to Food Stamp Program operations Proposals should not, however, alter recipient eligibility and benefit level standards but rather explore the adaptation of alternative management techniques or modified procedures that can be cost effective and result in program improvement.

Presented below is a compilation of project and research ideas which have emerged from discussions regarding the Agency's objectives/priorities. This list is intended to provide examples of the types of projects or research in which the Department is interested. This list is not intended to be limiting, but to present an idea of the scope and variety of topics. Issuance project/research proposals have intentionally been omitted from the following listing as these issues will be requested under a separate solicitation.

(1) Effects of refining specific certification and recertification procedures—introducing modifications and measuring costs and impacts of processes such as the application cycle, recipient information and face-to-face interviews.

(2) Effects of current and alternative appeals procedures—how to best accommodate recipient appeal rights in a more timely and cost effective manner.

(3) Analysis of patterns of Food Stamp Program participation—relating recipient characteristics to benefits and benefit duration.

(4) Effects of standardizing Food Stamp and AFDC procedures.

(5) Impacts of caseload management alternatives—experimenting with various approaches to local Food Stamp office organization, procedures and staffing.

(6) Participant and cost effects of methods of allocating resources to accomplish verification requirements while reducing errors.

(7) Effects of different methods of local office organization and procedures on meeting expedited service standards, and impacts on participants and costs of alternative expedited service processing standards.

(8) Effects of alternative procedures for detecting program fraud and abuse—exploring specific measures such as matching computer records, using special investigative teams, etc.

(9) Techniques for State and local caseload projections for planning, budgeting and management purposes.

(10) Information dissemination—how to best communicate new information to and within State agency structures.

Selection Process

In response to this announcement, FNS invites potential grantees to submit a pre-application, using Form AD–625. By requesting pre-applications rather than full applications as original submissions, FNS hopes to keep to a minimum the costs involved in initial proposal preparation.

Upon receipt of the pre-applications, FNS will convene a panel to review all project submissions received to date. The panel will be composed of FNS representatives and representatives of other Agencies if project ideas impact their areas of operation. Organizations submitting ideas which are selected for further review will be subsequently contacted and asked to submit full proposals. At the same time, FNS will inform the potential grantees of any modifications to the project scope which are considered necessary. Full proposals shall be submitted in accordance with all appropriate requirements as established under OMB Circular A–95 and other applicable OMB Circulars, and shall be signed by representatives of the applicant agency with the authority to commit the agency to the project. Final proposals will be evaluated based on criteria discussed under Proposal Evaluation.

Successful negotiations on project operations will result in the issuance of a Notice of Grant Award. The Grant Notice will set forth the amount of the grant, the purpose of the grant, the terms and conditions of the grant, the grantee's level of financial participation, the effective date of the grant, and the budget period of the grant. Unsuccessful applicants will be notified in writing that their proposals have either not been selected for funding or are being held for consideration at a future date.

The grant awards resulting from this notice will be awarded in Fiscal Year 1981. It is recognized that the operational period for the majority of such grants may extend beyond FY 1981.

Proposal Contents

The *Program Narrative* section of the pre-application form (AD–625) should provide sufficient information to allow FNS to make a judgement on how the research or the demonstration project will add to program knowledge, the proposer's ability to conduct the project, and the project's potential cost. At a minimum, the following information will be required:

(1) The added knowledge and/or the objectives of the research or demonstration project, or problem(s) which the project is intended to address;

(2) A brief description of the demographic and administrative characteristics for the proposed demonstration project site;

(3) A description of the project or research design and/or operation in sufficient detail to demonstrate the proposer's development of the concept;

(4) A brief description of the qualifications of the staff which will be responsible for the development and conduct of the research or demonstration project; and

(5) Estimated project cost, including an identification of that portion of the cost the potential grantee would be willing to share.

Applicants selected for further negotiation would be expected to submit full applications for project operations within 45 days from the date of notification. Additional time allotted for submission will depend upon the scope of the research or demonstration project and the time judged necessary for preparation of a full application.

The full application would be expected to contain, at a minimum, the following information:

(1) A detailed research/project design statement which would include:

(a) A statement of goals;

(b) A description of project or research scope;

(c) A description of the operational procedures;

(d) Identification of regulatory waivers necessary for project operation; and

(e) A description of data used in the research or the evaluation procedures used to judge the project's success.

(2) A work plan describing specific tasks for project implementation and operation, including timeframes for task accomplishment;

(3) A management plan, which would include the identification of all groups or agencies to be involved in the research/project, the names of persons and/or job descriptions for key personnel, and a description of all facilities, equipment and other resources available to the applicant;

(4) A brief economic and demographic profile of the project jurisdiction, including the characteristics of persons currently participating in the Program and an estimate of potential eligibles; and

(5) A budget summary and justification.

Proposal Evaluation

Pre-applications will be judged on how well project ideas conform to the priority policy areas mentioned in this announcement, the research/project design, the proposer's ability to conduct the research/project, and the cost.

Final applications will be evaluated using the following criteria:

(1) Suitability of the research/project in relation to current agency objectives/priorities;

(2) The degree to which economic and demographic characteristics meet the requirements for a successful testing environment;

(3) The applicant's understanding of the research/project to be undertaken and ability to accomplish the objectives;

(4) The reasonableness of the budget and justification thereof;

(5)(a) For a demonstration project, a sound evaluation component which should include a description of data collection and the analysis procedure that will be used to assess quantitatively the achievement of project objectives;

(b) For research, a description of data, data collection and the procedure(s), used to analyze data; and

(6) The qualifications of key personnel and the applicant's accessibility to adequate facilities and other resources.

The Application Proposal Process

Applicants are requested to submit pre-applications, using Form AD–625 in response to this Notice. The AD–625 may be obtained by writing: PRAB, Program Development Division, Family Nutrition Programs, Food and Nutrition Service, USDA, Room 672, GHI Building, Washington, D.C. 20250 or calling (202) 447–8332.

The pre-application should be submitted in an original and two copies to Dr. Claire Lipsman, Director, Program Development Division, Family Nutrition Programs, at the above address.

(91 Stat 958 (7 U.S.C. 2011–2027))

(Catalog of Federal Domestic Assistance, Program No. 10.551 Food Stamps)

Dated: January 15, 1981.

Robert Greenstein,

Administrator, Food and Nutrition Service.

[FR Doc. 81–2033 Filed 1–19–81; 8:45 am]

BILLING CODE 3410–30–M

Forest Service

Gila National Forest Grazing Advisory Board; Meeting

The Gila National Forest Grazing Advisory Board will meet at 2:00 P.M., February 12, 1981 in large Conference Room, Federal Building, 2610 North Silver Street, Silver City, New Mexico.

The agenda for this meeting is:

1. Review of Carrizo Allotment Management Plan.

2. Election of Officers.

The meeting will be open to the public.

Dated: January 12, 1981.

Kenneth C. Scoggin,

Forest Supervisor.

[FR Doc. 81-2015 Filed 1-19-81; 8:45 am]

BILLING CODE 3410-11-M

Office of the Secretary

Human Nutrition Board of Scientific Counselors; Intent To Establish an Advisory Board

Notice is hereby given that the Secretary of Agriculture intends to establish a Human Nutrition Board of Scientific Counselors. The purpose of this Board is to review and advise the Department as to the scope and quality of the research carried out at the Human Nutrition Research Centers in Houston, Texas; Boston, Massachusetts; San Francisco, California; Grand Forks, North Dakota; Beltsville, Maryland; and Hyattsville, Maryland. Members will review the research activities of each center on site, and in addition will meet as a Board at least once per year. The Board will prepare and submit to the Director, SEA, no later than September 30 of every year, a report which shall include its evaluation and recommendations.

It has been determined that the establishment of this Board is in the public interest in connection with the work of the U.S. Department of Agriculture.

Interested parties are invited to submit written comments, views, or data concerning this proposal to D. Mark Hegsted, Administator, Human Nutrition, Science and Education Administration, USDA, Washington, D.C. 20250, by February 5, 1981.

Done at Washington, D.C., this 14th day of January, 1980.

Joan S. Wallace,

Assistant Secretary for Administration.

[FR Doc. 81-2084 Filed 1-19-81; 8:45 am]

BILLING CODE 3410-01-M

ARMS CONTROL AND DISARMAMENT AGENCY

General Advisory Committee; Renewal

Notice is hereby given in accordance with paragraph 7(a) of Office of Management and Budget Circular No. A-63 (revised March 27, 1974), as amended by Transmittal Memorandum No. 1 (July 19, 1974), that the General Advisory Committee has been renewed effective January 5, 1981.

Dated: January 14, 1981.

Ralph Earle II,

Director.

[FR Doc. 81-2078 Filed 1-19-81; 8:45 am]

BILLING CODE 6820-32-M

CIVIL AERONAUTICS BOARD

[Dockets 33363, 34652, and 34653]

Former Large Irregular Air Service Investigation; Applications of Great Plains Airlines, Ltd.; Hearing

Notice is hereby given, pursuant to the Federal Aviation Act of 1958, as amended, that a hearing in the above-entitled proceeding is assigned to be held on February 23, 1981, at 10:00 a.m. (local time), in Room 1003, Hearing Room B, Universal North Building, 1875 Connecticut Avenue, N.W., Washington, D.C., before the undersigned administrative law judge.

Dated at Washington, D.C., January 13, 1981.

William A. Pope II,

Administrative Law Judge.

[FR Doc. 81-2075 Filed 1-19-81; 8:45 am]

BILLING CODE 6320-01-M

DEPARTMENT OF COMMERCE

Maritime Administration

[Docket S-684]

Aeron Marine Shipping Co., Aries Marine Shipping Co., Atlas Marine Co., Aquarius Marine Co., American Shipping, Inc., Pacific Shipping, Inc., Worth Oil Transport Co.; Joint Application

The subject companies—parties to long-term operating-differential subsidy contracts in the foreign bulk trade of the United States—are affiliates of Anndep Steamship Corp. (Anndep), Archon Shipping, Inc. (Archon) and Arcturus Shipping, Inc. (Arcturus). Archon and Arcturus may become the bareboat charterers, respectively, of the 225,000 DWT tankers, BROOKLYN and WILLIAMSBURGH, and Anndep may become the operator of the vessels. The BROOKLYN and the WILLIAMSBURGH, built with construction-differential subsidy (CDS) are under long-term time charter to American Petrofina, Inc. (Fina). Both vessels have operated in the domestic Alaskan oil trade under waivers granted pursuant to section 506 of the Merchant Marine Act, 1936, as amended (the Act), and may operate in the domestic trade in the future. Application has been made for the total repayment of CDS on the BROOKLYN in exchange for the removal of domestic trading restrictions. If the application for total repayment of CDS on the BROOKLYN is denied or if the pendency of that application continues, it is anticipated that applications will be filed periodically under section 506 of the Act for the temporary employment of the vessel in the domestic trade. Future applications under section 506 are also anticipated for the WILLIAMSBURGH.

The subject companies request written permission under section 805(a) of the Act for Archon and Arcturus to be the bareboat charterers of the BROOKLYN and WILLIAMSBURGH, respectively, and for Anndep to be the operator of the two vessels.

Any person, firm, or corporation having any interest in such application (within the meaning of section 805(a)) and desiring to submit comments concerning the application must file written comments in triplicate with the Secretary, Maritime Administration, by close of business on January 28, 1981 together with petition for leave to intervene. The petition shall state clearly and concisely the grounds of interest, and the alleged facts relied on for relief.

If no petitions for leave to intervene are received within the specified time or if it is determined that petitions filed do not demonstrate sufficient interest to warrant a hearing, the Maritime Administration will take such action as may be deemed appropriate.

In the event petitions regarding the relevant section 805(a) issues are received from parties with standing to be heard, a hearing will be held, the purpose of which will be to receive evidence under section 805(a) relative to whether the proposed operations (a) will result in unfair competition to any person, firm, or corporation operating exclusively in the coastwise or intercoastal service, or (b) would be prejudicial to the objects and policy of the Act.

(Catalog of Federal Domestic Assistance Program No. 11.504 Operating-Differential Subsidies (ODS))

By order of the Assistant Secretary for Maritime Affairs.

Dated: January 15, 1981.

Robert J. Patton, Jr.,

Secretary.

[FR Doc. 81-2069 Filed 1-19-81; 8:45 am]

BILLING CODE 3510-15-M

COMMODITY FUTURES TRADING COMMISSION

Proposed Futures Contracts; Proposed Rules of Major Economic Significance: Terms and Conditions of the 20-Year United States Treasury Bond Futures Contract of the Chicago Mercantile Exchange

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of proposed rules of contract markets.

SUMMARY: The Chicago Mercantile Exchange ("CME") has applied for designation as a contract market in $100,000 20-year United States Treasury bonds ("U.S. T-bonds"). The Commodity Futures Trading Commission ("Commission") has determined that the proposed terms and conditions of this proposed futures contract are of major economic significance and that, accordingly, publication of the proposed terms and conditions is in the public interest, will assist the Commission in considering the views of interested persons, and is consistent with the purposes of the Commodity Exchange Act.

DATE: Comments must be received on or before March 23, 1981.

ADDRESS: Interested persons should submit their views and comments to Jane K. Stuckey, Secretary, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, D.C. 20581. Reference should be made to CME 20-Year U.S. T-Bond Futures Contract.

FOR FURTHER INFORMATION CONTACT: George Garrow, Staff Attorney, Division of Trading and Markets, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, D.C. 20581; Telephone: (202) 254-8955.

SUPPLEMENTARY INFORMATION: The terms and conditions of CME's proposed 20-Year U.S. T-Bond futures contract are as follows:

Chapter —

20-Year U.S. Treasury Bonds

—00. Scope of Chapter.—This chapter is limited to futures trading in 20-year U.S. Treasury Bonds. The procedures for trading, clearing, settlement, and any other matters not specifically covered herein shall be governed by the rules of the Exchange.

—01. Commodity Specifications.—Each futures contract shall be valued at the current market value of United States Treasury bonds maturing in 20 years with a face value at maturity of $100,000 and a ten percent (10%) coupon.

—02. Futures Cell.—

A. Trading Months and Hours.—Futures contracts shall be scheduled for trading during such hours and for delivery in such months as may be determined by the Board of Governors.

B. Trading Unit.—The unit of trading shall be $100,000 U.S. Treasury bonds of twenty (20) years maturity.

C. Minimum Increments.—Bids and offers shall be quoted in terms of the value of 10% coupon U.S. Treasury bonds with exactly twenty years to maturity, expressed as a percentage of par. The minimum fluctuation of the futures contract will be one thirty-second (1/32) of one percentage point, or $31.25 per contract.

D. Daily Limits.—There shall be no trading at a level more than 6 2/32, equivalent to $2,000 per contract, above or below the preceding day's settlement except as provided by Rule —06.

E. Discretionary Position Limits.—The Board may in its sole and complete discretion impose limits upon an individual or related accounts.

F. Termination of Trading.—No trades in long-term U.S. Treasury bond futures in the spot month shall be made during the last seven business days of that month.

G. Contract Modifications.—Specifications shall be fixed as of the first day of trading of a contract. If any U.S. governmental agency or body issues an order, ruling, directive or law that conflicts with the requirements of these rules, such order, ruling, directive or law shall be construed to take precedence and become part of these laws.

—03. Deliveries.—The following shall specifically apply to the delivery of twenty-year U.S. Treasury bonds.

A. Delivery Days.—Delivery may be made on the business day selected by seller and satisfying Rule —03.C.

B. Registered Banks and Other Facilities.—The Board shall establish such requirements and preconditions for registration as a facility for the delivery of Treasury bonds as it deems necessary.

C. Seller's Duties.—The clearing member representing the seller shall deliver to the Exchange Clearing House by 2:00 p.m. (Chicago time) on any business day of the spot month, two business days before the seller's chosen delivery date, or on the last day of trading, a seller's delivery commitment indicating a Chicago Bank, registered with the Exchange and a member of the Federal Reserve System, and the name of the account from which the delivery unit will be transferred. By 12:45 p.m. (Chicago time) on the day of delivery, the seller shall deliver to a Chicago bank, registered with the Exchange and a member of the Federal Reserve System, selected by the buyer, a deliverable U.S. Treasury bond. Delivery shall be made no later than the fifth business day immediately preceding the last business day of the spot month.

D. Buyer's Duties.—The clearing member representing the buyer shall deliver to the Clearing House by 12 noon (Chicago time) on the delivery date assigned to him by the Clearing House, or on the last day of trading, a buyer's delivery commitment that includes: the buyer's name and account number, and the name of a Chicago bank registered with the Exchange and a member of the Federal Reserve System to which the delivery unit should be transferred. The clearing member representing the buyer shall, by payment against delivery on the day of delivery, present to the selling clearing member's bank or its designated agent a wire transfer of Federal funds for the net invoicing price.

E. Matching Longs and Shorts.—The Clearing House shall pair Seller's and Buyer's Delivery Commitments by matching the oldest long positions with the Seller's Delivery Commitments as received. The Clearing House shall, as soon as practicable thereafter, present to make known the Buyer's Delivery Commitment to the appropriate, paired clearing member.

F. Payment.—The Clearing House shall monitor the delivery procedure to ensure proper transfer of Treasury bonds from the seller to the buyer and correct payment by the buyer to the seller. The net invoicing price shall be determined on the basis of the settlement price on the day seller submits his delivery commitment, or the last day of trading after adjustment for any accrued interest (which shall be computed in accordance with Department of the Treasury Circular 300) and after adjustment by an appropriate factor reflective of the actual coupon rate and maturity length of the bond being transferred which equates the yields of deliverable bonds to a 10% coupon bond selling at par.

The formula for this computation shall be as follows: Net invoice price = (settlement price × conversion price) + accrued interest. The conversion price is the price at which a deliverable bond with a particular coupon rate and maturity length has a yield of 10% according to bond tables prepared by the Financial Publishing Company of Boston, Massachusetts.

Interest accrued on the bonds shall be charged to long's clearing member by short's clearing member in accordance with Department of Treasury Circular 300, Subpart P.

—04. Par Delivery.—

A. Par Delivery.—A delivery unit shall be composed of a United States Treasury bond maturing 20 years hence with a face value of $100,000 at maturity.

B. Delivery Points.—Delivery shall be made to a Chicago or New York bank, registered with the Exchange and a member of the Federal Reserve System, specified by the buyer's clearing member. All banks selected by the buyer and by the seller to effectuate delivery must be members of the Federal Reserve System.

—05. Deliverable Bonds.—Bonds suitable for delivery on U.S. Treasury bond futures contracts shall be U.S. Treasury bonds which if callable are not callable for at least 15 years, or if not callable, have a maturity of at least 15 years from the delivery date.

All bonds deliverable against a contract must be of the same issue. For settlement, the time to maturity of a given issue is calculated in complete three-month increments (i.e., 15 years and 5 months = 15 years and one quarter) from the first day of the delivery month.

—06. Emergencies, Acts of God, Acts of Government.—If delivery or acceptance or any precondition or requirement of either is prevented by strike, fire, accident, act of government, act of God, or other emergency the seller or buyer shall immediately notify the Exchange President. If the President determines that emergency action may be necessary, he shall call a special meeting of the Board of Governors or the Business Conduct Committee and arrange for the presentation of evidence respecting the emergency condition. If the Board or the Committee determines that an emergency exists, it shall take such action as it deems necessary under the circumstances and its decision shall be binding upon all parties to the contract. For example, and without limiting the Board's or Committee's power, it may: determine and assess losses in accordance with the procedures specified in Rule —07; extend delivery dates; and designate alternate delivery points in the event of conditions interfering with the normal operations of approved facilities.

In the event that the Board of Governors or Business Conduct Committee determines that there exists a shortage of deliverable U.S. Treasury bonds, it may upon a two-thirds vote of the members present or upon a two-thirds vote of the members who respond to a poll take such action as may in the Board's or Committee's sole discretion appear necessary to prevent, correct, or alleviate the condition. Without limiting the foregoing, the Board or Committee may: (1) designate as deliverable any specified U.S. Treasury bonds otherwise meeting the specifications and requirements stated in Rule —01; (2) designate as deliverable one or more issues of U.S. Treasury bonds having maturities shorter than 15 years or longer than 20 years and otherwise meeting the specifications and requirements stated in Rule —01 above; and/or (3) determine a cash settlement based on the current cash value of 10% coupon rate, 20-year U.S. Treasury bond as determined by using the current cash market yield curve for U.S. Treasury securities on the last day of trading.

—07. Failure to Perform.—If the clearing member with a delivery commitment fails to perform all acts required by this chapter, then that clearing member shall be deemed as failing to perform, which may be punishable as a major violation. A clearing member failing to perform shall be liable to the clearing member to which it was matched on the failing transaction for any loss sustained. The Board shall determine and access losses sustained, taking into account the settlement price, interest earnings foregone, and such other factors as it deems appropriate. The Board may also assess such penalties as it deems appropriate in addition to damages.

—08. Expanded Daily Limits.—Whenever on two successive days any contract month closes at the normal daily limit in the same direction (not necessarily the same contract month on both days) an expanded daily limit schedule shall go into effect as follows:

1. The third day's limit in all contract months shall be 150% of the normal daily limit.

2. If any contract month closes at its expanded daily limit on the third day in the same direction, then the fourth day's expanded daily limit shall be 200% of the normal daily limit.

3. If any contract month closes at its expanded daily limit on the fourth day in the same direction then there shall be no daily limit for said contract on the fifth day.

4. On the sixth day of the foregoing progression, the normal daily limit shall be reinstated.

5. Whenever the foregoing daily limit schedule is in effect and no contract month closes at the limit in the same direction which initiated the expanded schedule, then the normal daily limit shall be reinstated on the following day.

* * * * *

The Commission also will make available any other materials submitted by the CME in support of its application for contract market designation to the extent that such materials are not entitled to confidential treatment under Part 145 of the Commission's regulations (17 CFR Part 145). Copies of such materials submitted by the CME in support of its application for designation will be available through the Commission's Secretary or its offices in Washington, New York, Chicago, Minneapolis, Kansas City and San Francisco.

Any person interested in submitting written data, views or arguments on the terms and conditions of the proposed futures contract, or with respect to other materials submitted by the CME in support of its application for contract market designation, should send such comments to Jane K. Stuckey, Secretary, Commodity Futures Trading Commission, 2033 K Street, N.W., Washington, D.C. 20581, by March 23, 1981.

Issued in Washington, D.C., on January 14, 1981.

Jane K. Stuckey,

Secretary of the Commission.

[FR Doc. 81-2059 Filed 1-19-81; 8:45 am]

BILLING CODE 6351-01-M

DEPARTMENT OF ENERGY

Past Due Accounts; Assessment of Interest Charges

AGENCY: Department of Energy.

ACTION: Notice of Change in Interest Rates.

SUMMARY: The U.S. Department of Energy (DOE) hereby announces a change in the method of assessing interest charges for overdue accounts.

This notice supercedes a similarly entitled notice published in the Federal Register of November 19, 1979.

Background

The Department of Treasury revised its Treasury Fiscal Requirement Manual to reflect changes in the cash managment regulations, (Section 8070, "Billings and Collections" of Chapter 8000 "Cash Management"). The revision is a direct result of the findings of a Government wide task force on debt collection which stated that in order for the Federal Government to management its accounts receivables more efficiently, interest should be collected on all overdue accounts. The rate at which the interest is assessed should be representative of current economic conditions.

In order to comply with Treasury guidelines, the Department of Energy is proposing to change the rate at which interest on delinquent accounts will be

assessed. The rate will be based on percentage rates published quarterly in Treasury Fiscal Requirements bulletins by the Department of Treasury. This annualized percentage rate determined by the Treasury represents the average of the current value of funds to the Treasury for a recent three month period.

Use of this rate enables the government to recoup the approximate value that has been lost by the delayed receipt of funds rather than to penalize the debtor. Assessment of interest on overdue accounts will be vigorously pursued by the Department. Interest will also be assessed on deferred payments.

Notice

The Department of Energy shall assess interest charges on all overdue accounts owed the Department, both foreign and domestic, but exclusive of other Federal agencies. The rate of interest will be based on percentage rates published quarterly by the Department of Treasury in the Treasury Fiscal Requirements bulletin. This rate can be obtained from the Cash Management Regulation and Compliance Staff, Bureau of Government Financial Operations, Department of Treasury, Washington, D.C.

In the absence of a different rule prescribed by existing contract, statue or regulation, interest on delinquent debts will be assessed in conformance with Treasury Fiscal Requirements Manual Volume 1, Part 6 Section 8020.20. Deferrals of payment beyond a due date for specified time periods will similarly be assessed interest, regardless of amount.

References: Treasury Fiscal Requirements Manual, Volume 1, Part 6, Section 8020.20 Charges for Late Payments.

DATES: Comments must be received on or before February 20, 1981.

ADDRESS: Send comments on this proposal to: Mark D. Loop, Cash Management Specialist, Office of the Controller, Department of Energy, Washington, D.C. 20545, (301) 353-4581.

Issued in Washington, D.C., January 14, 1981.

Clarence E. Mahan,

Acting Controller.

[FR Doc. 81-2077 Filed 1-19-81; 8:45 am]

BILLING CODE 6450-01-M

Office of Assistant Secretary for International Affairs

Proposed Subsequent Arrangement

Pursuant to Section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of a proposed "subsequent arrangement" under the Additional Agreement for Cooperation Between the Government of the United States of America and the European Atomic Energy Community (EURATOM) Concerning Peaceful Uses of Atomic Energy, as amended.

The subsequent arrangement to be carried out under the above mentioned agreement involves approval for supply of 175 grams of normal uranium oxide to France, for use as standard reference material at the EURODIF facility at Tricastin.

In accordance with Section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that the furnishing of the nuclear material under Contract Number S-EU-675 will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

For the Department of Energy.

Dated: January 14, 1981.

Harold D. Bengelsdorf,

Director for Nuclear Affairs, International Nuclear and Technical Programs.

[FR Doc. 81-1995 Filed 1-19-81; 8:45 am]

BILLING CODE 6450-01-M

Proposed Subsequent Arrangement

Pursuant to Section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of a proposed "subsequent arrangement" under the Additional Agreement for Cooperation Between the Government of the United States of America and the European Atomic Energy Community (EURATOM) Concerning Peaceful Uses of Atomic Energy, as amended, and the Agreement for Cooperation Between the Government of the United States of America and the Government of Switzerland Concerning Civil Uses of Atomic Energy, as amended.

The subsequent arrangement to be carried out under the above mentioned agreements involves approval for the retransfer from the Federal Republic of Germany to Switzerland of 24,500 kilograms of uranium, containing 810.950 kilograms of U-235 (3.31% enrichment), in the form of fuel elements to be used for the third reload of the Kernkraftwerk Gosgen power reactor.

In accordance with Section 131 of the Atomic Energy act of 1954, as amended, it has been determined that the approval of this retransfer, designated as RTD/SD(EU)-34 will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

For the Department of Energy.

Dated: January 14, 1981.

Harold D. Bengelsdorf,

Director for Nuclear Affairs, International Nuclear and Technical Programs.

[FR Doc. 81-1996 Filed 1-19-81; 8:45 am]

BILLING CODE 6450-01-M

Proposed Subsequent Arrangement

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of a proposed "subsequent arrangement" under the Additional Agreement for Cooperation Between the Government of the United States of America and the European Atomic Energy Community (EURATOM) Concerning Peaceful Uses of Atomic Energy, as amended.

The subsequent arrangement to be carried out under the above mentioned agreement involves approval for the sale to the Central Bureau for Nuclear Measurements at Geel, Belgium of 47.027 grams of uranium, enriched to greater than 90% in U-235, to be used for the preparation of targets for neutron physicists in the European Community.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that the furnishing of the nuclear material under Contract Number S-EU-673 will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

For the Department of Energy.

Dated: January 14, 1981.

Harold D. Bengelsdorf,

Director for Nuclear Affairs, International Nuclear and Technical Programs.

[FR Doc. 81-2000 Filed 1-19-81; 8:45 am]

BILLING CODE 6450-01-M

Proposed Subsequent Arrangement

Pursuant to Section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of a proposed "subsequent arrangement" under the Agreement for Cooperation Between the Government of the United States of America and the Government of Japan Concerning Civil Uses of Atomic Energy, as amended.

The subsequent arrangement to be carried out under the above mentioned agreement involves approval for the sale of 350 grams of natural uranium to the

Mitsubishi Nuclear Fuel Company, Ltd., Japan for use as standard reference material.

In accordance with Section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that the furnishing of the nuclear material under Contract No. S–JA–292 will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

For the Department of Energy.

Dated: January 14, 1981.

Harold D. Bengelsdorf,

Director for Nuclear Affairs, International Nuclear and Technical Programs.

[FR Doc. 81–1989 Filed 1–19–81; 8:45 am]

BILLING CODE 6450–01–M

Proposed Subsequent Arrangement

Pursuant to Section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of a proposed "subsequent arrangement" under the Agreement for Cooperation Between the Government of the United States of America and the Government of Norway Concerning Civil Uses of Atomic Energy, as amended, and the Additional Agreement Between the Government of the United States of America and the European Atomic Energy Community (ERATOM) Concerning Peaceful Uses of Atomic Energy, as amended.

The subsequent arrangement to be carried out under the above mentioned agreements involves approval for the retransfer of 54 kilograms of uranium, containing 4.32 kilograms of U–235 (8% enrichment) from the Federal Republic of Germany to Norway for fabrication of fuel elements for the Halden research reactor.

In accordance with Section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that approval of this retransfer, designated as RTD/NO(EU)–31, will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

For the Department of Energy.

Dated: January 14, 1981.

Harold D. Bengelsdorf,

Director for Nuclear Affairs, International Nuclear and Technical Programs.

[FR Doc. 81–1990 Filed 1–19–81; 8:45 am]

BILLING CODE 6450–01–M

Meeting of the Coordinating Subcommittee of the Committee on Emergency Preparedness of the National Petroleum Council

AGENCY: Department of Energy, Economic Regulatory Administration.

ACTION: Notice of Meetings.

SUMMARY: The National Petroleum Council (NPC), an advisory committee to the Department of Energy (DOE), provides technical advice and information to the Secretary of Energy on matters relating to oil and gas or the oil and gas industries. The NPC Committee on Emergency Preparedness is currently undertaking an analysis of issues bearing on emergency preparedness planning and the ability of the refining industry to respond to energy emergencies. NPC's Coordinating Subcommittee will hold two meetings to review and discuss study modules of this analysis. Because the need for these meetings was determined within the last week, and the timing can not be altered, the DOE is unable to provide the customary 15 days notice prior to the January 29, 1981, meeting.

DATE AND LOCATION: The Coordinating Subcommittee of the NPC's Committee on Emergency Preparedness will meet:

• Thursday, January 29, 1981, starting at 9:00 a.m., Exxon Building, Room 3920, 800 Bell Avenue, Houston, Texas.

FOR FURTHER INFORMATION CONTACT:

Mr. David A. Eaton, Office of Energy Contingency Planning, 2000 M Street, N.W., Room 7302, Washington, D.C. 20461, Telephone: (202) 653–3202.

Ms. Joan Walsh Cassedy, National Petroleum Council, 1625 K Street, N.W., Washington, D.C. 20006, Telephone: (202) 393–6100.

SUPPLEMENTARY INFORMATION:

Items for discussion and review at the meeting will include:

1. Review and comment on drafts of individual sections of the study.
2. Review and discuss the overall schedule of Subcommittee activities.
3. Discuss any other matters pertinent to the overall assignment from the Secretary.

All meetings are open to the public. The Chairman of the Subcommittee is empowered to conduct the meetings in a fashion that will, in his judgement, facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the Subcommittee will be permitted to do so, either before or after the meeting. Members of the public who wish to make oral statements at the meeting should inform Joan Walsh Cassedy, National Petroleum Council, (202) 393–

6100, prior to the meeting, and provisions will be made for their appearance on the agenda. A transcript of the Coordinating Subcommittee meeting will be available for public review at the Freedom of Information Public Hearing Room, Room 5B–180, Department of Energy, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C., between the hours of 8:00 a.m., and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, D.C., on January 14, 1981.

Barton R. House,

Deputy Administrator for Operations and Emergency Management, Economic Regulatory Administration.

[FR Doc. 81-1870 Filed 1-19-81; 8:45 am]

BILLING CODE 6450-01-M

Energy Information Administration

Publication of Alternative Fuel Price Ceilings and Incremental Price Threshold for High Cost Natural Gas

The Natural Gas Policy Act of 1978 (NGPA) (Public Law 95–621), signed into law on November 9, 1978, mandated a new framework for the regulation of most facets of the natural gas industry. In general, under Title II of the NGPA, interstate natural gas pipeline companies are required to pass through certain portions of their acquisition costs for natural gas to industrial users in the form of a surcharge. The statute requires that the ultimate cost of gas to the industrial facility does not exceed the cost of the fuel oil which the facility could use as an alternative.

Pursuant to Title II of the NGPA of 1978, Section 204 (e), the Energy Information Administration (EIA) herewith publishes for the Federal Energy Regulatory Commission (FERC) computed natural gas ceiling prices and a high cost gas incremental pricing threshold which are to be effective February 1, 1981. These prices are based on the prices of alternative fuels.

For further information contact: Leroy Brown, Jr., Energy Information Administration, Federal Building, 12th & Pa. Ave., N.W., Rm 4121, Washington, D.C. 20461, (202) 633–9710.

Section I. Alternative Fuel Price Ceilings

As required by FERC Order No. 50, computed prices are shown for the 48 contiguous States. The District of Columbia's ceiling is included with the ceiling for the State of Maryland. FERC also by Interim Rule, issued on December 24, 1980, in Docket No. RM81–9 amended price ceilings for Kentucky for the months following January 1981 to be set at the price ceiling at the Region D price until the Commission takes final action on its generic rulemaking in Docket No. RM79–21.

The price ceiling is expressed in dollars per million British Thermal Units (BTU's). The method used to determine the price ceilings is described in Section III.

State	Dollars per million BTU's
Alabama	4.40
Arizona	3.81
Arkansas	4.81
California	3.75
Colorado	3.57
Connecticut	4.81
Delaware	5.07
Florida	4.98
Georgia	4.86
Idaho	3.90
Illinois	2.91
Indiana	3.71
Iowa	4.32
Kansas	4.10
Kentucky[1]	2.46
Louisiana	4.11
Maine	4.48
Maryland	4.81
Massachusetts	4.50
Michigan	4.26
Minnesota	4.02
Mississippi	4.40
Missouri	4.04
Montana	3.85
Nebraska	4.14
Nevada	3.81
New Hampshire	4.69
New Jersey	4.36
New Mexico	4.79
New York	4.08
North Carolina	4.80
North Dakota	4.82
Ohio	3.39
Oklahoma	3.85
Oregon	4.00
Pennsylvania	4.25
Rhode Island	4.52
South Carolina	4.79
South Dakota	4.14
Tennessee	4.48
Texas	3.47
Utah	4.28
Vermont	4.87
Virginia	4.71
Washington	3.91
West Virginia	4.04
Wisconsin	3.67
Wyoming	3.32

[1] Region based price as required by FERC Interim Rule, issued on December 24, 1980 in Docket No. RM81-9.

Section II. Incremental Pricing Threshold for High Cost Natural Gas

The EIA has determined that the volume-weighted average price for No. 2 distillate fuel oil landed in the greater New York City Metropolitan area during

November 1980 was $35.53 per barrel. In order to establish the incremental pricing threshold for high cost natural gas, as identified in the NGPA, Title II, Section 203(a)(7), this price was multiplied by 1.3 and converted to its equivalent in millions of BTU's by dividing by 5.8. Therefore, the incremental pricing threshold for high cost natural gas, effective February 1, 1981, is $7.76 per million BTU's.

Section III. Method Used to Compute Price Ceilings

The FERC, by Order No. 50, issued on September 28, 1979, in Docket No. RM79-21, established the basis for determining the price ceilings required by the NGPA. FERC also, by Order No. 61, issued in the same docket on May 7, 1980, established that only the price paid for No. 6 high sulfur content residual fuel oil would be used to determine the price ceilings until November 1, 1981.

A. Data Collected

The following data were required from all companies identified by the EIA as sellers of No. 6 high sulfur content (greater than 1 percent sulfur content by weight) residual fuel oil: for each selling price, the number of gallons sold to large industrial users in the months of September 1980, October 1980, and November 1980.[1] All reports of volume sold and price were identified by the State into which the oil was sold.

B. Method Used to Determine Alternative Price Ceilings

(1) *Calculation of Volume-Weighted Average Price.* The prices which will become effective February 1, 1981, (shown in Section I) are based on the reported price of No. 6 high sulfur content residual fuel oil, for each of the 48 contiguous States, for each of the 3 months, September 1980, October 1980, and November 1980. Reported prices for sales in September 1980 were adjusted by the percent change in the nationwide volume-weighted average price from September to November 1980. Prices for October 1980 were similarly adjusted by the percent change in the nationwide volume-weighted average price from October to November 1980. The volume-weighted 3-month average of the adjusted September 1980 and October 1980, and the reported November prices were then computed for each State.

(2) *Adjustment for Price Variation.* States were grouped into the regions identified by the FERC (see Section III.C.). Using the adjusted prices and associated volumes reported in a region during the 3-month period, the volume-weighted standard deviation of prices was calculated for each region. The volume-weighted 3-month average price (as calculated in Section III.B.(1) above) for each State was adjusted downward by two times this standard deviation for the region to form the adjusted weighted average price for the State.

(3) *Calculation of Ceiling Prices.* The lowest selling price within the State was determined for each month of the 3-month period (after adjusting up or down by the percent change in oil prices at the national level as discussed in Section III.B.(1) above). The products of the adjusted low price for each month times the State's total reported sales volume for each month were summed over the 3-month period for each State and divided by the State's total sales volume during the 3 months to determine the State's average low price. The adjusted weighted average price (as calculated in Section III.B.(2)) was compared to this average low price, and the higher of the values was selected as the base for determining the alternative fuel price ceiling for each State. For those States which had no reported sales during one or more months of the 3-month period, the appropriate regional volume-weighted alternative fuel price was computed and used in combination with the available State data to calculate the State's alternative fuel price ceiling base. The appropriate lag adjustment factor (as discussed in Section III.B.4.) was then applied to the alternative fuel price ceiling base. The alternative fuel price (expressed in dollars per gallon) was multiplied by 42 and divided by 6.3 to estimate the alternative fuel price ceiling for the State (expressed in dollars per million BTU's).

(4) *Lag Adjustment.* The EIA has implemented a procedure to partially compensate for the two-month lag between the end of the month for which data are collected and the beginning of the month for which ceiling prices become effective. It was determined that *Platt's Oilgram Price Report* publication provides timely information relative to the subject. The prices found in *Platt's Oilgram Price Report* publication are given for each trading day in the form of high and low prices for No. 6 residual oil in 21 cities throughout the United States. The low posted prices for No. 6 residual oil in these cities were used to calculate a national and a regional lag adjustment factor. The national lag adjustment factor was obtained by calculating a weighted average price for No. 6 high sulfur residual fuel oil for the ten trading days ending January 14, 1981, and dividing that price by the corresponding weighted average price computed from prices published by Platt's for the month of November 1980. A regional lag adjustment factor was similarly calculated for four regions. These are: One for FERC Regions A and B combined; one for FERC Region C; one for FERC Regions D, E, and G combined and one for FERC Regions F and H combined. The lower of the national or regional lag factor was then applied to the alternative fuel price base for each State in a given region as calculated in Section III.B.(3).

C. Listing of States by Region

States were grouped by the FERC to form eight distinct regions as follows:

Region A

Connecticut	Rhode Island
Maine	Vermont
Massachusetts	
New Hampshire	

Region B

Delaware	New York
Maryland	Pennsylvania
New Jersey	

Region C

Alabama	North Carolina
Florida	South Carolina
Georgia	Tennessee
Mississippi	Virginia

Region D

Illinois	Ohio
Indiana	West Virginia
Kentucky	Wisconsin
Michigan	

Region E

Iowa	Nebraska
Kansas	North Dakota
Missouri	South Dakota
Minnesota	

Region F

Arkansas	Oklahoma
Louisiana	Texas
New Mexico	

Region G

Colorado	Utah
Idaho	Wyoming
Montana	

Region H

Arizona	Oregon
California	Washington
Nevada	

Issued in Washington, D.C. on January 15, 1981.

Albert H. Linden, Jr.,

Acting Administrator, Energy Information Administration.

[FR Doc. 81-2271 Filed 1-20-81; 8:45 am]

BILLING CODE 6450-01-M

[1] Large Industrial User—A person/firm which purchases No. 6 fuel oil in quantities of 4,000 gallons or greater for consumption in a business, including the space heating of the business premises. Electric utilities, governmental bodies (Federal, State or Local) and the military are excluded.

Federal Energy Regulatory Commission

[Docket No. ER81-203-000]

Arizona Public Service Co.; Proposed Tariff Change

January 12, 1981.

The filing company submits the following:

Take notice that on January 5, 1981, Arizona Public Service Company (APS) tendered for filing a proposed Letter Agreement amending APS-FPC Rate Schedule No. 52 by decreasing the contract demand for the sale of firm power with the Papago Tribal Utility Authority.

Waiver is requested under the provisions of Section 35.11 so that the said decrease would become effective on December 16, 1980, simultaneously with the requested effective date of service in the filing with FERC of APS' Agreement with Washington Water Power Company.

A copy of the filing was served upon the Arizona Corporation Commission.

Any person desiring to be heard or to protest said application should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before January 30, 1981. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this application are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 81-1994 Filed 1-19-81; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. ER81-204-000]

Arizona Public Service Co.; Proposed Tariff Change

January 12, 1981.

The filing company submits the following:

Take notice that on January 1, 1981, Arizona Public Service Company (APS) tendered for filing a Power Agreement between APS and Washington Water Power Company for the sale of power and energy. The filing is made pursuant to § 35.1 of the Commission's Regulations.

The parties request waiver under the provision of § 35.11 so that service could be commenced on December 16, 1980.

A copy of the filing was served upon the Arizona Corporation Commission.

Any person desiring to be heard or to protest said aplication should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before January 30, 1981. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this application are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 81-1995 Filed 1-19-81; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. QF81-6-000]

Canners Steam Co.; Application for Commission Certification of Qualifying Status as a Cogeneration Facility

January 12, 1981.

On November 12, 1980, Canners Steam Company filed with the Federal Energy Regulatory Commission (Commission) an application for certification of a proposed facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's rules.

The proposed facility is a topping-cycle cogeneration facility which will be located at Terminal Island, California. Canners Steam Company states that is is a customer owned and operated central steam generating facility which provides process steam to the fish canneries, and related industries, within the environs of Fish Harbor, Port of Los Angeles, California. The primary fuel to be used will be natural gas with No. 2 distillate as an alternate. The generator output for the facility will be 2600 kilowatts.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Steet, NE., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed on or before February 20, 1981, and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 81-1996 Filed 1-19-81; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. ER81-200-000]

Central Illinois Light Co.; Filing

January 12, 1981.

The filing company submits the following:

Take notice that on January 6, 1981, Central Illinois Light Company (CILCO) tendered for filing Modification No. 2, dated December 23, 1980 to the Interconnection Agreement between CILCO and the city of Springfield, Illinois (Springfield) (CILCO Rate Schedule FERC No. 21).

Modification No. 2 increases the demand rates for Scheduled Maintenance, Short-Term Firm and Short-Term Non-Firm Power in Service Schedules C, E and F to the Interconnection Agreement, and effects certain other changes in the terms and conditions of the Service Schedules to Interconnection Agreement. CILCO has requested waiver of § 35.3 of the Commission's regulations in order to permit Modification No. 2 to become effective in accordance with its terms on December 1, 1980.

Any person desiring to be heard or to protest said application should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426 in accordance with §§ 1.8 and 1.10 of the Commission's rules of practice and procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before January 31, 1981. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this application are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 81-1997 Filed 1-19-81; 8:45 am]

BILLING CODE 6450-85-M

[Project No 3672-000]

Columbia Irrigation District; Application for Preliminary Permit

January 12, 1981.

Take notice that Columbia Irrigation District (Applicant) filed on November 7, 1980, an application for preliminary permit [pursuant to the Federal Power Act, 16 U.S.C. § 791(a)–825(r)] for proposed Project No. 3672 to be known as Horn Rapids Water Power Project located on Yakima River in Benton County, Washington. The application is on file with the Commission and is available for public inspection. Correspondence with the Applicant should be directed to: L. J. Sunford, Manager, Columbia Irrigation District, 10 East Kennewick Avenue, Kennewick, Washington 99336. Any person who wishes to file a response to this notice should read the entire notice and must comply with the requirements specified for the particular kind of response that person wishes to file.

Project Description—The proposed project would consist of: (1) Horn Rapids Dam, a 4–foot high rock filled timber crib weir structure approximately 500–feet long; (2) a 170–acre reservoir; and (3) a powerhouse with a turbine and 3 generating units rated at 465 kW each.

The Applicant estimates that the average annual energy output would be 7,200,000 kWh.

Purpose of Project—The power produced by the proposed project would be sold to the City of Richland's Energy Services Department.

Proposed Scope and Cost of Studies under Permit—The Applicant seeks issuance of preliminary permit for a period of 36 months during which time they would secure hydrologic and geologic data, assess environmental impacts, and make a feasibility study. The Applicant estimates the cost of the studies to be $40,000 to $50,000.

Purpose of Preliminary Permit—A preliminary permit does not authorize construction. A permit, if issued, gives the Permittee, during the term of the permit, the right of priority of application for license while the Permittee undertakes the necessary studies and examinations to determine the engineering, economic, and environmental feasibility of the proposed project, the market for power, and all other information necessary for inclusion in an application for a license.

Agency Comments—Federal, State, and local agencies that receive this notice through direct mailing from the Commission are invited to submit comments on the described application for preliminary permit. (A copy of the application may be obtained directly from the Applicant.) Comments should be confined to substantive issues relevant to the issuance of a permit and consistent with the purpose of a permit as described in this notice. No other formal request for comments will be made. If an agency does not file comments within the time set below, it will be presumed to have no comments.

Competing Applications—Anyone desiring to file a competing application must submit to the Commission, on or before March 2, 1981, either the competing application itself or a notice of intent to file a competing application. Submission of a timely notice of intent allows an interested person to file the competing application no later than May 1, 1981. A notice of intent must conform with the requirements of 18 CFR 4.33 (b) and (c) (1980). A competing application must conform with the requirements of 18 CFR 4.33 (a) and (d) (1980).

Comments, Protests, or Petitions to Intervene—Anyone desiring to be heard or to make any protests about this application should file a petition to intervene or a protest with the Commission, in accordance with the requirements of its Rules of Practice and Procedure, 18 CFR 1.8 or 1.10 (1980). Comments not in the nature of a protest specified in § 1.10 for protests. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but a person who merely files a protest or comments does not become a party to the proceeding. To become a party, or to participate in any hearing, a person must file a petition to intervene in accordance with the Commission's Rules. Any comments, protest, or petition to intervene must be received on or before March 2, 1981.

Filing and Service of Responsive Documents—Any comments, notices of intent, competing applications, protest, or petitions to intervene must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", or "PETITION TO INTERVENE", as applicable. Any of these filings must also state that it is made in response to this notice of aplication for preliminary permit for Project No. 3672. Any comments, notices of intent, competing applications, protests, or petitions to intervene must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Applications Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208, 400 First Street, N.W., Washington, D.C. 20426. A copy of any notice of intent, competing application, or petition to intervene must also be served upon each representative of the Applicant specified in the first paragraph of this notice.

Kenneth F. Plumb,
Secretary.

[FR Doc. 81-1988 Filed 1-19-81; 8:45 am]
BILLING CODE 6450-85-M

[Project No. 3717-000]

Continental Hydro Corp.; Application for Preliminary Permit

January 12, 1981.

Take notice that Continental Hydro Corporation (Applicant) filed on November 13, 1980, an application for preliminary permit [pursuant to the Federal Power Act, 16 U.S.C. 791(a)–825(r)] for proposed Project No. 3717 to be known as the Ringold Wasteway Project located on the Ringold Wasteway in Franklin County, Washington. The application is on file with the Commission and is available for public inspection. Correspondence with the Applicant should be directed to: Mr. A. Gail, 141 Milk Street, Suite 1143, Boston, Massachusetts 02109. Any person who wishes to file a response to this notice should read the entire notice and must comply with the requirements specified for the particular kind of response that person wishes to file.

Project Description—The proposed project would consist of: (1) an intake structure; (2) a penstock approximately 1,100 feet long; (3) a powerhouse containing a single generating unit with a maximum capacity rating of 3.1 MW; and (4) a 3-mile long transmission line.

The Applicant estimates that the average annual energy output would be 10,760 MWh.

Purpose of Project—Project power would be sold to Pacific Power and Light Company or other appropriate purchaser.

Proposed Scope and Cost of Studies under Permit—Applicant would conduct a feasibility study including data acquisition and analysis, technical studies, energy production and capacity evaluation, project design, construction options, and financial and economic examinations. Applicant estimates the cost of performing these studies at $45,000.

Purpose of Preliminary Permit—A preliminary permit does not authorize construction. A permit, if issued, gives

the Permittee, during the term of the permit, the right of priority of application for license while the Permittee undertakes the necessary studies and examinations to determine the engineering, economic, and environmental feasibility of the proposed project, the market for power, and all other information necessary for inclusion in an application for a license.

Agency Comments—Federal, State, and local agencies that receive this notice through direct mailing from the Commission are invited to submit comments on the described application for preliminary permit. (A copy of the application may be obtained directly from the Applicant.) Comments should be confined to substantive issues relevant to the issuance of a permit and consistent with the purpose of a permit as described in this notice. No other formal request for comments will be made. If an agency does not file comments within the time set below, it will be presumed to have no comments.

Competing Applications—Anyone desiring to file a competing application must submit to the Commission, on or before March 12, 1981, either the competing application itself or a notice of intent to file a competing application. Submission of a timely notice of intent allows an interested person to file the competing application no later than May 11, 1981. A notice of intent must conform with the requirements of 18 CFR 4.33(b) and (c) (1980). A competing application must conform with the requirements of 18 CFR 4.33(a) and (d)-(1980).

Comments, Protests, or Petitions to Intervene—Anyone desiring to be heard or to make any protests about this application should file a petition to intervene or a protest with the Commission, in accordance with the requirments of its Rules of Practice and Procedure, 18 CFR 1.8 or 1.10 (1980). Comments not in the nature of a protest may also be submitted by conforming to the procedures specified in § 1.10 for protests. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but a person who merely files a protest or comments does not become a party to the proceeding. To become a party, or to participate in any hearing, a person must file a petition to intervene in accordance with the Commission's Rules. Any comments, protest, or petition to intervene must be received on or before March 12, 1981.

Filing and Service of Responsive Documents—Any comments, notices of intent, competing applications, protests, or petitions to intervene must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTESTS", or "PETITION TO INTERVENE", as applicable. Any of these filings must also state that it is made in response to this notice of application for preliminary permit for Project No. 3717. Any comments, notices of intent, competing applications, protests, or petitions to intervene must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Applications Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208, 400 First Street, NW., Washington, D.C. 20426. A copy of any notice of intent, competing application, or petition to intervene must also be served upon each representative of the Applicant specified in the first paragraph of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 81-1889 Filed 1-19-81; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. ES81-21-000]

Edison Sault Electric Co.; Application

January 12, 1981.

Take notice that on December 23, 1980, Edison Sault Electric Company (Applicant) filed an application seeking an order pursuant to Section 204 of the Federal Power Act authorizing the issuance and sale from time to time on or before December 31, 1981, of Promissory Notes to commercial banks purchasing such notes as a financial institution and to residents of the State of Michigan, up to but not exceeding $2,300,000 in aggregate principal amount.

Any person desiring to be heard or to make any protest with reference to said application should on or before January 25, 1981, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, petitions to intervene or protests in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10). The application is on file with the Commission and available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 81-1890 Filed 1-19-81; 8:45 am]

BILLING CODE 6450-85-M

[Project Nos. 3413 and 3427]

Henwood Associates, Inc. and William Symons, Jr.; Application for Preliminary Permit

January 12, 1981.

Take notice that Henwood Associates, Inc. and William Symons, Jr. (Applicants) filed on August 28, 1980 and September 22, 1980, respectively, competing applications for preliminary permit [pursuant to the Federal Power Act, 16 U.S.C. 791(a)–825(r)] for proposed Project Nos. 3413 and 3427 to be known as Milliner Creek located on Milliner Creek in Mono County, California. The applications are on file with the Commission and are available for public inspection. Correspondence with the Applicants should be directed to: Dr. Kenneth Henwood, Henwood Associates, Inc., P.O. Box 7, Smartville, California 95977, and John Symons, P.O. Box 1267, Bishop, California 93514. Any person who wishes to file a response to this notice should read the entire notice and must comply with the requirements specified for the particular kind of response that person wishes to file.

Project Description—The project proposed by Henwood Associates, Inc. would consist of: (1) a concrete diversion dam, approximately 8' high×14' wide; (2) a perforated 12" horizontal pipe tapping the creek underflow; (3) a 12" diameter steel penstock approximately 23,000-feet long; (4) a powerhouse containing an impulse turbine and generating unit, having a total installed capacity of 700 kW; (5) a switchyard; and (6) 3,700 feet of transmission line. Henwood Associates, Inc. estimates that the average annual energy output would be between 1.5 and 3.5 million kWh.

The project proposed by William Symons, Jr. would consist of: (1) a 22,000-foot long penstock with a minimum diameter of 12"; (2) a powerhouse containing a Pelton-type turbine and generating unit, having a total installed capacity of 658 kW; (3) an intake structure; (4) a 2,500 cubic foot capacity off stream storage reservoir; (5) a pipeline connecting the stream diversion structure with the settlement reservoir; and (6) approximately one mile of 12.5 kVA transmission line. The Applicant estimates that the average annual energy output would be between 4 and 5 million kWh.

Purpose of Project—Each Applicant plans to sell the power generated by the project to Southern California Edison Company.

Proposed Scope and Cost of Studies Under Permit—Henwood Associates, Inc. seeks issuance of a preliminary

permit for a period of two years, during which time it would conduct hydrologic investigations, carry out technical and economic analyses, collect environmental data, and prepare a FERC license application. The cost of these activities is estimated by the Applicant to range from $30,000–$50,000.

William Symons, Jr. seeks issuance of a preliminary permit for a period of 15 months, during which time hydrologic investigations and economic, technical, and environmental studies would be carried out; necessary agencies would be contacted; and a FERC license application would be prepared. The cost of the activities is estimated by the Applicant to be $30,000.

Purpose of Preliminary Permit—A preliminary permit does not authorize construction. A permit, if issued, gives the Permittee, during the term of the permit, the right of priority of application for license while the Permittee undertakes the necessary studies and examinations to determine the engineering, economic, and environmental feasibility of the proposed project, the market for power, and all other information necessary for inclusion in an application for a license.

Agency Comments—Federal, State, and local agencies that receive this notice through direct mailing from the Commission are invited to submit comments on the described application for preliminary permit. (A copy of the application may be obtained directly from the Applicant.) Comments should be confined to substantive issues relevant to the issuance of a permit and consistent with the purpose of a permit as described in this notice. No other formal request for comments will be made. If an agency does not file comments within the time set below, it will be presumed to have no comments.

Competing Applications—Anyone desiring to file a competing application must submit to the Commission, on or before March 23, 1981, either the competing application itself or a notice of intent to file a competing application. Submission of a timely notice of intent allows an interested person to file the competing application no later than May 22, 1981. A notice of intent must conform with the requirements of 18 CFR 4.33 (b) and (c) (1980). A competing application must conform with the requirements of 18 CFR 4.33 (a) and (d) (1980).

Comments, Protests, or Petitions to Intervene—Anyone desiring to be heard or to make any protests about this application should file a petition to intervene or a protest with the Commission, in accordance with the requirements of its Rules of Practice and Procedure, 18 CFR 1.8 or 1.10 (1980). Comments not in the nature of a protest may also be submitted by conforming to the procedures specified in § 1.10 for protests. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but a person who merely files a protest or comments does not become a party to the proceeding. To become a party, or to participate in any hearing, a person must file a petition to intervene in accordance with the Commission's Rules. Any comments, protest, or petition to intervene must be received on or before March 23, 1981.

Filing and Service of Responsive Documents—Any comments, notices of intent, competing applications, protests, or petitions to intervene must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", or "PETITION TO INTERVENE", as applicable. Any of these filings must also state that it is made in response to this notice of application for preliminary permit for Project Nos. 3413 and 3497. Any comments, notices of intent, competing applications, protests, or petitions to intervene must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.W., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Applications Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208, 400 First Street, N.W., Washington, D.C. 20426. A copy of any notice of intent, competing application, or petition to intervene must also be served upon each representative of the Applicant specified in the first paragraph of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 81-1891 Filed 1-19-81; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. ER81-201-000]

Illinois Power Co.; Filing

January 12, 1981.

The filing company submits the following:

Take notice that on January 2, 1981, Illinois Power Company ("Illinois Power") tendered for filing proposed Modification No. 2, dated November 25, 1980, to the Interchange Agreement, dated January 17, 1966, between Central Illinois Public Service Company ("CIPS") and Illinois Power.

The parties propose that effective December 1, 1980, with respect to said Modification, Section 3 of the current Emergency Interchange Agreement be modified and supplemented by the deletion therefrom of the cents quantity 1% and by substitution, therefore, the cents quantity 3.

Illinois Power states that a copy of the filing was served upon CIPS and the Illinois Commerce Commission.

Any person desiring to be heard or to protest said filing should file comments or protests with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with §§ 1.8 or 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such comments or protests should be filed on or before January 30, 1981. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 81-1892 Filed 1-19-81; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. RA80-103]

Jeffrey Moore, d.b.a. Moore's Arco; Filing of Petition for Review Under 42 U.S.C. 7194

January 12, 1981.

Take notice that Jeffrey Moore, d.b.a. Moore's Arco on August 28, 1980, filed a Petition for Review under 42 U.S.C. § 7194(b) (1977) Supp.) from an order of the Secretary of Energy (Secretary).

Copies of the petition for review have been served on the Secretary and all participants in prior proceedings before the Secretary.

Any person who participated in the prior proceedings before the Secretary may be a participant in the proceeding before the Commission without filing a petition to intervene. However, any such person wishing to be a participant is requested to file a notice or participation on or before February 2, 1981, with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426. Any other person who was denied the opportunity to participate in the prior proceedings before the Secretary or who is aggrieved or adversely affected by the contested order, and who wishes to be a participant in the Commission proceeding, must file a petition to intervene on or before February 2, 1981,

in accordance with the Commission's Rules of Practice and Procedure (18 CFR 1.8 and 1.40(e)(3)).

A notice of participation or petition to intervene filed with the Commission must also be served on the parties of record in this proceeding and on the Secretary of Energy through John McKenna, Office of General Counsel, Department of Energy, Room 6H–025, 1000 Independence Avenue, S.W., Washington, D.C. 20585.

Copies of the petition for review are on file with the Commission and are available for public inspection at Room 1000, 825 North Capitol St., N.E., Washington, D.C. 20426.

Kenneth F. Plumb,

Secretary.

[FR Doc. 81-2004 Filed 1-19-81; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. EM81-103-000]

Northern States Power Co.; Filing

January 12, 1981.

The filing company submits the following:

Take notice that Northern States Power Company, on December 29, 1980, tendered for filing a Notice of Cancellation dated December 15, 1980, terminating the Firm Power Service Resale Agreement dated March 11, 1970, with Valley Springs, South Dakota.

Any person desiring to be heard or to protest said application should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's rules of practice and procedure (18 CFR 1.8, 1.10). All such petitions and protests should be filed on or before January 30, 1981. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this application are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 81-1999 Filed 1-19-81; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. ER81-192-000]

Pacific Gas and Electric Co; Filing

January 12, 1981.

The filing company submits the following:

Take notice that on January 5, 1981, Pacific Gas and Electric Company (PG and E) tendered for filing a contract dated October 8, 1980. The contract specifies rates to be charged to the United States Department of Energy, Western Area Power Administration (WAPA) for transmission service rendered by PG and E to WAPA between Tracy Switchyard and the Delta Pumping Plant of the California Department of Water Resources. The service will be provided from the proposed date of December 1, 1980 until the contract is terminated, or similar transmission service is provided under United States Power Contract No. 14–06–200–2948A.

Copies of this filing were served upon the California Public Utilities Commission and the California Department of Water Resources.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426 in accordance with §§ 1.8 and 1.10 of the Commission's rules of practice and procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before January 30, 1981. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this application are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 81-2004 Filed 1-19-81; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. QF81-8-000]

Sea World; Application for Commission Certification of Qualifying Status as a Cogeneration Facility

January 13, 1981.

On December 18, 1980, Sea World filed with the Federal Energy Regulatory Commission (Commission) an application for certification of a cogeneration facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's rules.

The facility is located at 1720 South Shores Road, San Diego, California. Sea World states that the existing capacity of the facility is 1.2 megawatts. The facility is privately owned with no utility participation.

The facility consists of two natural gas-fired engines with heat recovery equipment on exhaust gases and engine jacket water. The fuel input per engine is equal to 7,540,000 Btu's/hour. The electrical output per engine equals 630 kilowatts or 2,150,442 Btu's/hour. The steam per engine equals 3,429,240 Btu's/hour. The fuel input for the total facility is 15,080,000 Btu's/hour. The electrical output for the total facility is 4,300,884 Btu's/hour. The useful thermal energy for the total facility is 6,858,480 Btu's/hour.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE, Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed on or before February 20, 1981, and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 81-2003 Filed 1-19-81; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. ER81-194-000]

Mississippi Power Co.; Proposed Tariff Change

January 12, 1981.

The filing company submits the following:

Take notice that Mississippi Power Company on December 29, 1980, tendered for filing proposed agreement with Municipal Energy Agency of Mississippi for bulk power transmission services. The filed agreement and rate will provide charges for bulk power service performed by Mississippi Power Company for Municipal Energy Agency of Mississippi for the period from December 1, 1980 through November 30, 1981.

This filing is an initial filing for a new service. At the request of the customers, the service has already commenced.

Posting of the filing has been accomplished with notice to Municipal Energy Agency of Mississippi, the only affected customer.

Any person desiring to be heard or to protest said application should file a petition to intervene or protest with the

Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before January 30, 1981. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this application are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,
Secretary.

[FR Doc. 81-2000 Filed 1-19-81; 8:45 am]
BILLING CODE 6450-85-M

[Project No. 3699-000]

Mitchell Energy Company, Inc.; Application for Preliminary Permit

January 12, 1981.

Take notice that Mitchell Energy Company, Inc. (Applicant) filed on November 7, 1980, an application for preliminary permit [pursuant to the Federal Power Act, 16 U.S.C. 791(a)–825(r)] for proposed Project No. 3699 to be known as Palo Verde Diversion Dam Project located on Colorado River in Riverside County, California. The application is on file with the Commission and is available for public inspection. Correspondence with the Applicant should be directed to: Mr. Mitchell L. Dong, President, Mitchell Energy Company, Inc., 173 Commonwealth Avenue, Boston, Massachusetts 02116. Any person who wishes to file a response to this notice should read the entire notice and must comply with the requirements specified for the particular kind of response that person wishes to file.

Project Description—The proposed project would utilize an existing government dam owned by the United States Water and Power Resources Service and would consist of a powerhouse with a total installed capacity of 8,700 kW.

The Applicant estimates that the average annual energy output would be 53,000,000 kWh.

Purpose of Project—Power generated by the project would be sold to Southern California Edison Company or another local utility.

Proposed Scope and Cost of Studies Under Permit—The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of the studies, Applicant would decide whether to proceed with more detailed studies and the preparation of an application for license to construct and operate the project. Applicant estimates that the cost of the studies to be performed under the preliminary permit would be $50,000.

Purpose of Preliminary Permit—A preliminary permit does not authorize construction. A permit, if issued, gives the Permittee, during the term of the permit, the right of priority of application for license while the Permittee undertakes the necessary studies and examinations to determine the engineering, economic, and environmental feasibility of the proposed project, the market for power, and all other information necessary for inclusion in an application for a license.

Agency Comments—Federal, State, and local agencies that receive this notice through direct mailing from the Commission are invited to submit comments on the described application for preliminary permit. (A copy of the application may be obtained directly from the Applicant.) Comments should be confined to substantive issues relevant to the issuance of a permit and consistent with the purpose of a permit as described in this notice. No other formal request for comments will be made. If an agency does not file comments within the time set below, it will be presumed to have no comments.

Competing Applications—Anyone desiring to file a competing application must submit to the Commission, on or before March 12, 1981, either the competing application itself or a notice of intent to file a competing application. Submission of a timely notice of intent allows an interested person to file the competing application no later than May 11, 1981. A notice of intent must conform with the requirements of 18 CFR 4.33 (b) and (c) (1980). A competing application must conform with the requirements of 18 CFR 4.33 (a) and (d) (1980).

Comments, Protests, or Petitions to Intervene—Anyone desiring to be heard or to make any protests about this application should file a petition to intervene or a protest with the Commission, in accordance with the requirements of its Rules of Practice and Procedure, 18 CFR 1.8 or 1.10 (1980). Comments not in the nature of a protest may also be submitted by conforming to the procedures specified in § 1.10 for protests. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but a person who merely files a protest or comments does not become a party to the proceeding. To become a party, or to participate in any hearing, a person must file a petition to intervene in accordance with the Commission's Rules. Any comments, protest, or petition to intervene must be received on or before March 12, 1981.

Filing and Service of Responsive Documents—Any comments, notices of intent, competing applications, protests, or petitions to intervene must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", or "PETITION TO INTERVENE", as applicable. Any of these filings must also state that it is made in response to this notice of application for preliminary permit for Project No. 3699. Any comments, notices of intent, competing applications, protests, or petitions to intervene must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Applications Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208, 400 First Street NW., Washington, D.C. 20426. A copy of any notice of intent, competing application, or petition to intervene must also be served upon each representative of the Applicant specified in the first paragraph of this notice.

Kenneth F. Plumb,
Secretary.

[FR Doc. 81-2001 Filed 1-19-81; 8:45 am]
BILLING CODE 6450-85-M

[Project No. 3708-000]

Mitchell Energy Company, Inc.; Application for Preliminary Permit

January 12, 1981.

Take notice that Mitchell Energy Company, Inc. (Applicant) filed on November 10, 1980, an application for preliminary permit [pursuant to the Federal Power Act, 16 U.S.C. 791(a)–825(r)] for proposed Project No. 3708 to be known as the Navajo Project located on the San Juan River in San Juan County, New Mexico. The application is on file with the Commission and is available for public inspection. Correspondence with the Applicant should be directed to: Mr. Mitchell L. Dong, President, Mitchell Energy Company, Inc., 173 Commonwealth Avenue, Boston, Massachusetts 02116. Any person who wishes to file a response to this notice should read the

entire notice and must comply with the requirements specified for the particular kind of response that person wishes to file.

Project Description—The proposed run-of-the-river project would utilize the existing United States Water and Power Resources Service's Navajo Dam (almost 4,000-feet long, including a 138-foot wide spillway, and 400 feet high) and Lake and would consist of: (1) a new powerplant just below the dam; (2) new turbine/generator units with a total capacity of 325 MW; and (3) transmission and appurtenant facilities.

The Applicant estimates that the average annual energy output would be 655 GWh.

Purpose of Project—Project power would be sold to Public Service Company of New Mexico, or another local utility.

Proposed Scope and Cost of Studies under Permit—Applicant seeks issuance of a preliminary permit for a period of three years, during which time it would perform surveys and geological investigations, determine the economic feasibility of the project, reach final agreement on sale of project power, secure financing commitments, consult with Federal, State, and local government agencies concerning the potential environmental effects of the project, and prepare an application for FERC license, including an environmental report. Applicant estimates the cost of studies under the permit would be $60,000.

Purpose of Preliminary Permit—A preliminary permit does not authorize construction. A permit, if issued, gives the Permittee, during the term of the permit, the right of priority of application for license while the Permittee undertakes the necessary studies and examinations to determine the engineering, economic, and environmental feasibility of the proposed project, the market for power, and all other information necessary for inclusion in an application for a license.

Agency Comments—Federal, State, and local agencies that receive this notice through direct mailing from the Commission are invited to submit comments on the described application for preliminary permit. (A copy of the application may be obtained directly from the Applicant.) Comments should be confined to substantive issues relevant to the issuance of a permit and consistent with the purpose of a permit as described in this notice. No other formal request for comments will be made. If an agency does not file comments within the time set below, it will be presumed to have no comments.

Competing Applications—Anyone desiring to file a competing application must submit to the Commission, on or before March 23, 1981, either the competing application itself or a notice of intent to file a competing application. Submission of a timely notice of intent allows an interested person to file the competing application no later than May 22, 1981. A notice of intent must conform with the requirements of 18 CFR 4.33(b) and (c) (1980). A competing application must conform with the requirements of 18 CFR 4.33(a) and (d) (1980).

Comments, Protests, or Petitions to Intervene—Anyone desiring to be heard or to make any protests about this application should file a petition to intervene or a protest with the Commission, in accordance with the requirements of its Rules or Practice and Procedure, 18 CFR 1.8 or 1.10 (1980). Comments not in the nature of a protest may also be submitted by conforming to the procedures specified in § 1.10 for protests. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but a person who merely files a protest or comments does not become a party to the proceeding. To become a party, or to participate in any hearing, a person must file a petition to intervene in accordance with the Commission's Rules. Any comments, protest, or petition to intervene must be received on or before March 23, 1981.

Filing and Service of Responsive Documents—Any comments, notices of intent, competing applications, protests, or petitions to intervene must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTESTS", or "PETITION TO INTERVENE", as applicable. Any of these filings must also state that it is made in response to this notice of application for preliminary permit for Project No. 3708. Any comments, notices of intent, competing applications, protests, or petitions to intervene must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Applications Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208, 400 First Street, NW., Washington, D.C. 20426. A copy of any notice of intent, competing application, or petition to intervene must also be served upon each representative of the Applicant specified in the first paragraph of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 81-1998 Filed 1-19-81; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. QF81-7-000]

Occidental Geothermal, Inc.; Application for Commission Certification of Qualifying Status as a Small Power Production Facility

January 12, 1981.

On November 21, 1980, Occidental Geothermal, Inc. filed with the Federal Energy Regulatory Commission (Commission) an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's rules.

The facility is located in Bakersfield, California. Occidental Geothermal, Inc., states that the facility will generate electric power solely through the utilization of geothermal steam from wells located in Lake and Sonoma Counties in the "geysers" geothermal area of Northern California. The facility will have a net power production capacity of 80 megawatts.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed on or before February 20, 1981, and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 81-2001 Filed 1-19-81; 8:45 am]

BILLING CODE 6450-85-M

[Project No. 3726-000]

South Carolina Electric and Gas Co.; Application for Preliminary Permit

January 12, 1981.

Take notice that South Carolina Electric and Gas Company (Applicant) filed on November 13, 1980, an application for preliminary permit

[pursuant to the Federal Power Act, 16 U.S.C. 791(a)–825(r)] for proposed Project No. 3728 to be known as Lower Saluda River Project located on the Saluda River in Richland and Lexington Counties, South Carolina. The application is on file with the Commission and is available for public inspection. Correspondence with the Applicant should be directed to: E. H. Crews, Jr., Vice President and Group Executive, South Carolina Electric and Gas Company, P.O. Box 764, Columbia, S.C. 29218. Any person who wishes to file a response to this notice should read the entire notice and must comply with the requirements specified for the particular kind of response that person wishes to file.

Project Description—The proposed project would consist of: (1) a concrete dam, approximately 1,250 feet long and 70 feet high, with an integral powerhouse containing 3—6,000 kW generating units; (2) a 115-kV transmission line, approximately 1.5 miles long, and (3) appurtenant facilities.

The Applicant estimates that the average annual energy output would be 48,000,000 kWh.

Purpose of Project—All of the energy generated would be transmitted into the Applicant's system to supply customer loads and contract obligations to other utilities.

Proposed Scope and Cost of Studies under Permit—The Applicant seeks issuance of a preliminary permit for a period of 36 months. During this time, Applicant proposes to carry out field surveying, studies of the hydrology, right-of-way requirements, conceptual design and locations and geology, preliminary design and locations, economic evaluations, an environmental impact assessment and preparation of license application. The estimated cost of these studies is $105,000.

Pupose of Preliminary Permit—A preliminary permit does not authorize construction. A permit, if issued, gives the Permittee, during the term of the permit, the right of priority of application for license while the Permittee undertakes the necessary studies and examinations to determine the engineering, economic, and environmental feasibility of the proposed project, the market for power, and all other information necessary for inclusion in an application for a license.

Agency Comments—Federal, State, and local agencies that receive this notice through direct mailing from the Commission are invited to submit comments on the described application for preliminary permit. (A copy of the application may be obtained directly from the Applicant.) Comments should be confined to substantive issues relevant to the issuance of a permit and consistent with the purpose of a permit as described in this notice. No other formal request for comments will be made. If an agency does not file comments within the time set below, it will be presumed to have no comments.

Competing Applications—Anyone desiring to file a competing application must submit to the Commission, on or before March 23, 1981, either the competing application itself or a notice of intent to file a competing application. Submission of a timely notice of intent allows an interested person to file the competing application no later than May 22, 1981. A notice of intent must conform with the requirements of 18 CFR 4.33 (b) and (c) (1980). A competing application must conform with the requirements of 18 CFR 4.33 (a) and (d) (1980).

Comments, Protests, or Petitions to Intervene—Anyone desiring to be heard or to make any protest about this application should file a petition to intervene or a protest with the Commission, in accordance with the requirements of its Rules of Practice and Procedure, 18 CFR 1.8 or 1.10 (1980). Comments not in the nature of a protest may also be submitted by conforming to the procedures specified in § 1.10 for protests. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but a person who merely files a protest or comments does not become a party to the proceeding. To become a party, or to participate in any hearing, a person must file a petition to intervene in accordance with the Commission's Rules. Any comments, protest, or petition to intervene must be received on or before March 23, 1981.

Filing and Service of Responsive Documents—Any comments, notices of intent, competing applications, protests, or petitions to intervene must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", or "PETITION TO INTERVENE", as applicable. Any of these filings must also state that it is made in response to this notice of application for preliminary permit for Project No. 3728. Any comments, notices of intent, competing applications, protests, or petitions to intervene must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Applications Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208, 400 First Street NW., Washington, D.C. 20426. A copy of any notice of intent, competing application, or petition to intervene must also be served upon each representative of the Applicant specified in the first paragraph of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 81-2056 Filed 1-19-81; 8:45 am]

BILLING CODE 6450-85-M

[Project No. 3483 and Project No. 3508]

City of Shawano, Wis., North American Hydro, Inc., Application for Preliminary Permit

November 18, 1980.

Notice that City of Shawano, Wisconsin (Shawano), and North American Hydro, Inc. (NAHI), (Applicant) filed on September 18, 1980, and September 22, 1980, respectively, an application for preliminary permit [pursuant to the Federal Power Act, 16 U.S.C. §§ 791(a)—825(r)] for proposed Project No. 3483 and 3508 respectively to be known as Hayman Falls Dam located on the Hayman Falls Dam on the Embarass River near Pella in Shawano County, Wisconsin. The application is on file with the Commission and is available for public inspection. Correspondence with the Applicant should be directed to: Mr. J. Leroy Thilly, Attorney for the City of Shawano, P.O. Box 8937, Madison, Wisconsin 53701. Correspondence with NAHI should be sent to: Mr. Jerry Donohue, North American Hydro, Inc., P.O. Box 11578, Fond du Lac, Wisconsin 54935.

Any person who wishes to file a response to this notice should read the entire notice and must comply with the requirements specified for the particular kind of response that person wishes to file.

Project Description—Shawano's proposed project would consist of: (1) an existing concrete dam, approximately 115 feet long and 13 feet high; (2) an existing reservoir with a storage capacity of 414.8 acre-feet at normal pool elevation of 881 feet m.s.l. and an approximate area of 79.5 acres; (3) a proposed one-quarter mile long steel penstock; (4) an existing reinforced concrete powerhouse located on the east bank of the river; (5) proposed transmission lines; and (6) appurtenant facilities. Shawano estimates the capacity of the project to be 780 kW

with an annual energy output of 3,400,000 kWh.

NAHI's proposed project would consist of: (1) an existing concrete dam, approximately 130 feet long with a hydraulic head of 14 feet; (2) an existing reservoir with a storage capacity of 80 acres; (3) a proposed penstock approximately 1,200 feet long; (4) a proposed reinforced concrete powerhouse located on the east bank of the river; (5) proposed transmission lines; and (6) appurtenant facilities. NAHI estimates the capacity of the project to be 750 kW with an annual energy output of 2,500,000 kWh.

Purpose of Project—Both Shawano and NAHI would sell its project power to either Wisconsin Power and Light Company or Wisconsin Public Service Corporation.

Proposed Scope and Cost of Studies under Permit—Both Applicants have requested 36-month permits to prepare definitive project reports, including preliminary design and economic feasibility studies, hydrological studies, environmental and social studies, and soils and foundation data. The costs of the aforementioned activities along with obtaining agreements with other Federal, State, and local agencies are estimated by Shawano to be 40,000 while NAHI's costs are estimated to be from $30,000 to $35,000.

Purpose of Preliminary Permit—A preliminary permit does not authorize construction. A permit, if issued, gives the Permittee, during the term of the permit, the right of priority of application and examinations to determine the engineering, economic, and environmental feasibility of the proposed project, the market for the power, and all other information necessary for inclusion in an application for a license.

Agency Comments—Federal, State, and local agencies that receive this through direct mailing from the Commission are invited to submit comments on the described application for preliminary permit. (A copy of the application may be obtained directly from the Applicant.) Comments should be confined to substantive issues relevant to the issuance of a permit and consistent with the purpose of a permit as described in this notice. No other formal request for comments will be made. If an agency does not file comments within the time set below, it will be presumed to have no comments.

Competing Applications—Anyone desiring to file a competing application must submit to the Commission, on or before January 21, 1981, either the competing application itself or a notice of intent to file a competing application. Submission of a timely notice of intent allows an interested person to file the competing application no later than March 23, 1981. A notice of intent must conform with the requirements of 18 CFR 4.33(b) and (c)(1980). A competing application must conform with the requirements of 18 CFR 4.33(a) and (d)(1980).

Comments, Protests, or Petitions to Intervene—Anyone desiring to be heard or to make any protest about this application should file a petition to intervene or a protest with the Commission, in accordance with the requirements of its Rules of Practice and Procedure, 18 CFR 1.8 or 1.10 (1980). Comments not in the nature of a protest may also be submitted by conforming to the procedures specified in 1.10 for protests. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but a person who merely files a protest or comments does not become a party to the proceeding. To become a party, or to participate in any hearing, a person must file a petition to intervene in accordance with the Commission's Rules. Any comments, protest, or petition to intervene must be filed on or before January 21, 1981.

Filing and Service of Responsive Documents—Any comments, notices of intent, competing applications, protests, or petitions to intervene must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", or "PETITION TO INTERVENE", as applicable. Any of these filings must also state that it is made in response to this notice of application for preliminary permit for Project Nos. 3483 and 3508. Any comments, notices of intent, competing applications, protests, or petitions to intervene must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street., NE., Washington, D.C 20426. An additional copy must be sent to Fred E. Springer, Chief, Applications Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208, 400 First St., NW., Washington, D.C 20426. A copy of any notice of intent, competing application, application, or petition to intervene must also be served upon each representative of the Applicant specified in the first paragraph of this notice.

Kenneth F. Plumb,
Secretary.

[FR Doc. 81-1997 Filed 1-19-81; 8:45 am]
BILLING CODE 6450-85-M

[Docket No. ER81-105-000]

Indiana & Michigan Electric Co.; Order Granting Waiver of Filing Requirements, Denying Waiver of Notice, Accepting for Filing and Suspending Proposed Rates, Consolidating Dockets, Directing Summary Disposition, Granting Intervention, and Establishing Procedures

Issued: January 9, 1981.

On November 10, 1980, Indiana & Michigan Electric Company (IME) tendered for filing revised tariffs proposed to become effective November 1, 1980, which provide for an increase in jurisdictional revenue from its municipal wholesale customers of approximately $209,035 based on the twelve month period ending December 31, 1979.[1] IME proposes to increase its demand charge from $8.60/kWh to $9.14/kWh, to decrease its energy charge from 9.60 mills/kW to 9.41 mills/kW, and to decrease its monthly customer charge from $385.05 to $231.93. In addition, the base cost of fuel will be increased from 6.9109 mills/kWh to 7.5945 mills/kWh and the loss factor will be decreased from 3.547% to 2.975%. IME also proposes to eliminate the currently specified 60% billing demand ratchet.

Notice of the filing was issued on November 18, 1980, with responses due on or before December 5, 1980. Petitions to intervene were filed on December 5, 1980, by the Cities of Anderson and Auburn, Indiana (Anderson), and on December 5, 1980, as amended on December 19, 1980, by the Cities of Avilla, Bluffton, Columbia City, Frankton, Garrett, Gas City, Mishawaka, New Carlisle, and Warren, Indiana, and the Cities of Niles, South Haven, and Sturgis, Michigan together with the Indiana and Michigan Municipal Distributors Association (IMMDA). On December 17, 1980, IME filed its response.

Anderson and IMMDA argue that the rate increase is, in actuality, substantially larger than IME suggests. Anderson urges that the filing be rejected. Anderson, in the alternative, and IMMDA seek a maximum five month suspension and an order instituting a hearing concerning the

[1] See Attachment for rate schedule designations.

lawfulness of the proposed rate increase. In addition, Anderson and IMMDA raise a variety of cost of service issues.

Both Anderson and IMMDA also allege that the proposed rates will result in a price squeeze, and they request that the Commission institute price squeeze procedures.

Discussion

Initially, we find that participation by each of the petitioners is in the public interest. Consequently, we shall grant the petitions to intervene.

In Order No. 91, Docket No. RM79-64, issued June 27, 1980, the Commission indicated that until revised filing requirements became effective, the Commission would waive the filing requirements of the then current section 35.13 for those utilities that seek to implement the revised cost of service format. Although IME has not specifically requested such waiver, our review of its filing indicates that IME tendered its revised rates in accordance with the filing requirements of section 35.13, as revised by Order No. 91, and we thus shall regard such a request as implicit in IME's filing. Accordingly, we find that waiver of the filing requirements of section 35.13 at the time of IME's filing is warranted and the motion to reject will be denied.

IME has requested waiver of the 60-day notice requirement of section 35.3 of the Commission's regulations in order to allow an effective date of November 1, 1980. IME states that the proposed rates represent a nominal increase, and constitute only a technical filing designed to create a locked-in period with respect to rates which have been in effect, subject to refund, since December 23, 1978. According to IME, the purpose for creating such a locked-in period is to limit IME's exposure to refunds which might result if a recent initial decision[2] respecting the earlier rates is affirmed by the Commission. As indicated above, Anderson and IMMDA contend that the Commission should deny IME's request because the increase in rates is not minimal, but rather is substantial in comparison to rates which might be expected on the basis of the pending initial decision. Upon consideration, the Commision finds that IME's arguments do not constitute the requisite showing of good cause for waiver of the notice requirements, as required by section 35.11 of the Commission's regulations. The request will therefore be denied.

[2] *Indiana & Michigan Electric Co.*, Docket Nos. ER78-379, *et al.*, Initial Decision, issued June 18, 1980.

Considering the allegations raised by the intervenors, we find that the proposed rates have not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory, preferential, or otherwise unlawful. Accordingly, we shall accept the proposed rates for filing and suspend them as ordered below.

In a number of suspension orders,[3] we have addressed the considerations underlying the Commission's policy regarding rate suspensions. For the reasons given there, we have concluded that rate filings should generally be suspended for the maximum period permitted by statute where preliminary study leads the Commission to believe that the filing may be unjust and unreasonable or that it may run afoul of other statutory standards. We have acknowledged, however, that shorter suspensions may be warranted in circumstances where suspension for the maximum period may lead to harsh and inequitable results. Such circulmstances have been presented here. The Commission notes that a variety of substantive contentions have been raised by the intervenors, but that our preliminary analysis indicates that the proposed rates may not yield excessive revenues. We therefore believe that a five month suspension is unnecessary and may be inequitable to IME. However, in order to ensure refund protection for the affected customers pending further review, we believe we should exercise our discretion to suspend the rates for only one day from sixty days after filing, permitting the rates to take effect subject to refund thereafter on January 11, 1981.

Both IME and Anderson request that the instant docket be consolidated with the proceedings in Docket Nos. ER81-46-000 *et al.* These dockets, involving revised rates filed on October 24, 1980, for three other wholesale customer classes, were suspended for one day from sixty days after filing to become effective on December 25, 1980, were set for hearing, and were consolidated for hearing and decision thereon.[4] Because the instant docket and these dockets present common questions of law and fact, we shall consolidate Docket No. ER81-105-000 with these dockets for purposes of hearing and decision.

[3] *E.g., Boston Edison Co.*, Docket No. ER80-508 (August 29, 1980) (five month suspension); *Alabama Power Co.*, Docket Nos. ER80-506, *et al.* (August 29, 1980) (one day suspension); *Cleveland Electric Illuminating Co.*, Docket No. ER80-468 (August 22, 1980) (one day suspension).

[4] *Indiana and Michigan Electric Company*, Docket Nos. ER81-46-000 *et al.*, order issued December 18, 1980.

Anderson and IMMDA correctly note that IME has reflected accumulated deferred investment tax credits (ADITC) in its capitalization at the company's claimed overall rate of return. The Commission has previously determined that summary disposition is appropriate under these circumstances,[5] and we shall so resolve the issue in this docket. However, the Commission notes that the revenue impact of this summary disposition is relatively small in relation to the proposed rate increase. Moreover, as noted above, our preliminary analysis has indicated that IME's proposed rates may not produce excessive revenues. As a result, we shall not require IME to refile its cost of service and rates at this time. Nonetheless, summary disposition of the ADITC issue shall be reflected in any rates finally approved by the Commission.

The Commission observes that IME's proposed rate schedules for Anderson and IMMDA contain a tax adjustment clause. We shall not reject the tax adjustment clause, but we note that implementation of the clause will constitute a change in rate necessitating a timely filing with the Commission pursuant to section 35.13 of the regulations.

The Commission further observes that IME's proposed rates incorporate by reference the curtailment provision at issue in Docket Nos. E-9548 and E-9549, currently awaiting Commission action. We note that the curtailment provision shall remain subject to the outcome of the proceedings in those dockets.

In accordance with the Commission's policy established in *Arkansas Power & Light Company*, Docket No. ER79-339, order issued August 6, 1979, we shall phase the price squeeze issue. As we have noted in previous orders, this procedure will allow a decision first to be reached on the cost of service, capitalization and rate of return issues. If, in the view of the intervenors or staff, a price squeeze persists, a second phase of the proceeding may follow.

The Commission Orders:

(A) The requirement of section 35.13 of the Commission's regulations at the time of IME's filing that cost of service data, Period I, end no earlier than seven months prior to the date of the filing is hereby waived. The motion to reject is hereby denied.

(B) IME's request for waiver of the Commission's notice requirements is denied.

(C) IME's proposed rates tendered for filing on November 10, 1980, are

[5] *E.g., El Paso Electric Co.*, Docket No. ER79-339, order issued September 24, 1979.

accepted for filing and suspended for one day from sixty days after filing, to become effective on January 11, 1981, subject to refund pending hearing and decision thereon.

(D) The proceedings in Docket No. ER81–105–000 are hereby consolidated with the proceedings in Docket Nos. ER81–46–000 *et al.* for purposes of hearing and decision thereon.

(E) IME's inclusion of ADITC in its capitalization at the claimed overall rate of return is summarily rejected. This determination shall be reflected in any rates ultimately approved by the Commission in this docket.

(F) IME is hereby advised that implementation of its tax adjustment clause will require timely filing in accordance with the provisions of section 35.13 of the Commission's regulations.

(G) IME is hereby advised that the curtailment provision incorporated by reference in the instant filing is subject to the outcome of the proceedings in Docket Nos. E-9548 and E-9549.

(H) We hereby order initiation of price squeeze procedures in Docket No. ER81–105–000 and further order that the proceeding be phased so that the price squeeze procedures begin after issuance of a Commission opinion establishing the rate which, but for a consideration of price squeeze, would be just and reasonable. The presiding judge may order a change in this schedule for good cause. The price squeeze portion of this case shall be governed by the procedures set forth in section 2.17 of the Commission's regulations as they may be modified prior to the initiation of the price squeeze phase of this proceeding.

(I) The petitions to intervene are granted subject to the rules and regulations of the Commission; *Provided, however,* that participation by the intervenors shall be limited to matters set forth in their petitions to intervene; and *Provided, further,* that the admission of the intervenors shall not be construed as recognition by the Commission that they might be aggrieved because of any order or orders by the Commission entered in this proceeding.

(J) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the DOE Act and by the Federal Power Act, particularly sections 205 and 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the Federal Power Act [18 CFR, Chapter I (1980)], a public hearing shall be held concerning the justness and reasonableness of IME's proposed rates.

(K) A presiding administrative law judge, to be designated by the Chief Administrative Law Judge, shall convene a conference in this proceeding to be held within approximately ten (10) days of the service of top sheets in a hearing room of the Federal Energy Regulatory Commission, 825 North Capitol Street, NE, Washington, D.C. 20426. The designated law judge is authorized to establish procedural dates, and to rule on all motions (except motions to consolidate or sever and motions to dismiss), as provided for in the Commission's Rules of Practice and Procedure.

(L) The Commission staff shall serve top sheets in this proceeding on or before January 9, 1981.

(M) The Secretary shall promptly publish this order in the Federal Register.

By the Commission.

Kenneth F. Plumb,

Secretary.

Indiana and Michigan Electric Company

Docket No. ER81–105–000

Filed: November 10, 1980.

Other Parties: (1) Cities of Anderson, Auburn, and Mishawaka; (2) Towns of Avilla, Frankton, New Carlisle, and Warren, and Cities of Bluffton, Columbia City, Garret, Gas City, Niles, South Haven, and Sturgis

(1) First Revised Sheet No. 1B, Second Revised Sheet Nos. 1 and 6–1, Third Revised Sheet Nos. 5 and 6, and Fourth Revised Sheet No. 4 under Schedule WS under FPC Electric Tariff, Original Volume No. 2 (Supersede Original Sheet No. 1B, First Revised Sheet Nos. 1 and 6–1, Second Revised Sheet Nos. 5 and 6, and Third Revised Sheet No. 4 thereunder)

(2) First Revised Sheet No. 1C, Second Revised Sheet No. 8–2, Third Revised Sheet No. 1, Fourth Revised Sheet Nos. 8 and 8–1, and Fifth Revised Sheet No. 7 under Schedule MRS under FPC Electric Tariff, Original Volume No. 1 (Supersede Original Sheet No. 1C, First Revised Sheet No. 8–2, Second Revised Sheet No. 1, Third Revised Sheet Nos. 8 and 8–1, and Fourth Revised Sheet No. 7 thereunder)

[FR Doc. 81–1982 Filed 1–19–81; 8:45 am]

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[Volume 342]

Determinations by Jurisdictional Agencies Under the Natural Gas Policy Act of 1978

Issued: January 12, 1981.

Determinations by Jurisdictional Agencies Under the Natural Gas Policy Act of 1978

Issued: January 12, 1981.

JD NO	JA DKT	API NO	SEC	D	WELL NAME	FIELD NAME	PROD	PURCHASER
NORTH DAKOTA GEOLOGICAL SURVEY								
-APACHE CORPORATION					RECEIVED: 12/09/80 JA: ND			
8108728		3300700310	102		EVONIUK NO 1-8	ELKHORN RANCH	35.8	KOCH HYDROCARBON CO
8108732		3300700333	102		STATE OF NORTH DAKOTA #1-16	ELKHORN RANCH	16.7	KOCH HYDROCARBON CO
8108729		3300700350	102		STATE WELL NO 2-16	ELKHORN RANCH	31.1	KOCH HYDROCARBON CO
-GULF OIL CORPORATION					RECEIVED: 12/09/80 JA: ND			
8108730		3302500145	102		LEONARD KOSTELNAK 4-28-4D	LITTLE KNIFE	36.0	MONTANA-DAKOTA UTILI
8108731		3300700374	102		TEDROW 5-12-1D	LITTLE KNIFE	18.0	MONTANA-DAKOTA UTILI
-KERR-MCGEE CORPORATION					RECEIVED: 12/09/80 JA: ND			
8108734		3305301037	103		NORTH DAKOTA STATE WELL NO 3	BOXCAR BUTTE	121.0	MONTANA DAKOTA UTILI
-SHELL OIL CO					RECEIVED: 12/09/80 JA: ND			
8108727		3305301046	102		EIKREN 44-10	BICENTENNIAL	31.0	MONTANA DAKOTA UTILI
-TENNECO OIL COMPANY					RECEIVED: 12/09/80 JA: ND			
8108733		3300700510	102		EGLY - #2-20	BIG STICK	155.0	WESTERN GAS PROCESSO
OKLAHOMA CORPORATION COMMISSION								
-ADAMS PETROLEUM ENTERPRISES CORP					RECEIVED: 12/08/80 JA: OK			
8108683	06359	3506300000	103		MEADOWLAND #1-ML	GREASY CREEK	123.7	TRANSOK PIPE LINE CO
-AL MCCORD INC					RECEIVED: 12/08/80 JA: OK			
8108684	06360	3501721052	103		EVERY #1-9	NORTH PIEDMONT	36.0	PHILLIPS PETROLEUM
-AN-SON CORPORATION					RECEIVED: 12/08/80 JA: OK			
8108686	06364	3501520678	103		BREHM #1	EAST HINTON	365.0	DELHI GAS PIPE LINE
-ANADARKO PRODUCTION COMPANY					RECEIVED: 12/08/80 JA: OK			
8108685	06363	3500721755	103		ALLEN D NO 1	MOCANE	500.0	COLORADO INTERSTATE
-ANDOVER OIL COMPANY					RECEIVED: 12/08/80 JA: OK			
8108651	05258	3501721348	102		SIEGRIST #9-1	WILDCAT	185.0	DELHI GAS PIPELINE C
-ARCO OIL AND GAS COMPANY					RECEIVED: 12/08/80 JA: OK			
8108655	03834	3504721817	103		DICK TOEDTMAN #3	SOONER TREND	110.0	PANHANDLE EASTERN PI
8108652	04923	3500721555	103		ERNEST NELSON #2	LAVERNE	36.5	MICHIGAN WISCONSIN P
8108671	06774	3504722365	102		J J BROWN #1	SOUTH DOUGLAS	36.5	
8108724	06142	3504721907	102		JOEL J BROWN #1	SOUTH DOUGLAS	110.0	
8108621	04068	3508720359	103		LINDSAY DEESE #15-2	GOLDEN TREND	10.9	WARREN PETROLEUM CO
8108623	04069	3508720416	103		LINDSAY DEESE #17-1	GOLDEN TREND	6.9	WARREN PETROLEUM CO
8108622	04071	3508720415	103		LINDSAY DEESE #2-1	GOLDEN TREND	10.9	WARREN PETROLEUM CO
8108626	04070	3508720445	103		LINDSAY DEESE #3-1	GOLDEN TREND	6.9	WARREN PETROLEUM CO
8108620	04072	3508720446	103		LINDSAY DEESE #7-1	GOLDEN TREND	10.9	WARREN PETROLEUM CO
8108653	04395	3500700000	108		ULLRICH PARKER #1U & 1L	MOCANE-LAVERNE	10.0	NORTHERN NATURAL GAS
8108654	03962	3505920773	103		W F DUNAWAY #2	LAVERNE	73.0	MICHIGAN WISCONSIN P
-B R POLK INC					RECEIVED: 12/08/80 JA: OK			
8108675	06437	3508521752	103		PFEIFFER #1	WEST ORLANDO	27.0	EASON OIL CO
-BANUCH-FOSTER CORP					RECEIVED: 12/08/80 JA: OK			

JO NO	DKT	API NO	SEC	J	WELL NAME	FIELD NAME	PROD	PURCHASER
8108638	06887	3501820623	102		WRIGHT-LANE REDRILL #1	RAVENDALE	70.0	CITIES SERVICE GAS C
-BOBBY J DARNELL					RECEIVED: 12/08/80 JA: OK			
8108694	06380	3507322224	103		BENNETT #1	SOONER TREND	912.5	CONOCO INC
-BONANZA PETROLEUM INC					RECEIVED: 12/08/80 JA: OK			
8108636	06388	3526920036	103		BONANZA #1 SHARP (CHESTER)	LAVERNE CHESTER	625.0	MICHIGAN WISCONSIN P
-BROWN & BORELLI INC					RECEIVED: 12/08/80 JA: OK			
8108688	06368	3507322168	103		AMBER/GARRETT #1	SOUTH WEST DOVER	18.3	CITIES SERVICE CO
8108682	06374	3507322348	103		BOLLENBACH #1	SOONER TREND	25.6	PHILLIPS PETROLEUM C
-C & S RESOURCES INC					RECEIVED: 12/08/80 JA: OK			
8108689	06375	3508100000	103		NEILL #1	SOUTH CARNEY	25.6	SUN GAS CO
-C M C OIL & GAS INC					RECEIVED: 12/08/80 JA: OK			
*8108641	06959	3514721181	102		SOUDERS B-8	BARTLESVILLE-DEWEY	150.0	BARTLESVILLE GATHERI
-CHAMPLIN PETROLEUM COMPANY					RECEIVED: 12/08/80 JA: OK			
8108691	06377	3509321627	103		HARRY C EBERHART NO 2	EAST CHANEY DELL	68.0	CHAMPLIN PETROLEUM C
8108692	06378	3500321628	103		LOLA J JEFFRIES NO 2	EAST CHANEY DELL	38.0	CHAMPLIN PETROLEUM
8108693	06379	3504721939	103		MARIE R SIDWELL NO 2	N E ENID	110.0	CHAMPLIN PETROLEUM C
-CLARK RESOURCES INC					RECEIVED: 12/08/80 JA: OK			
8108695	06384	3507322293	103		PEACH #2-1	SOONER TREND	224.7	PANHANDLE EASTERN PI
-COBRA OIL AND GAS CORPORATION					RECEIVED: 12/08/80 JA: OK			
8108645	06653	3515320985	102		BLASDEL 15 #1		360.0	NORTHERN NATURAL GAS
8108702	06629	3515321003	103		PEOPLES 10 #1		0.0	NORTHERN NATURAL GAS
-CONOCO INC					RECEIVED: 12/08/80 JA: OK			
8108639	06836	3514920070	102		LEPPKE NO 1	FT COBB	118.6	
-COQUINA OIL CORPORATION					RECEIVED: 12/08/80 JA: OK			
8108690	06376	3501120986	103		DUNCAN 1-33	WATONGA TRENO	123.0	DELHI GAS PIPELINE C
-COTTON PETROLEUM CORPORATION					RECEIVED: 12/08/80 JA: OK			
8108635	06386	3501520848	103		SCHIMMEL NO 1	EAST LOOKEBA	275.0	TRANSOK PIPE LINE CO
8108723	06733	3501520871	102		SEMINARY NO 1	S W HINTON	500.0	TRANSOK PIPE LINE CO
-DALCO PETROLEUM INC					RECEIVED: 12/08/80 JA: OK			
8108658	06045	3507322278	103		JOHNSON #1	SOONER TREND	91.3	DALCO PETROLEUM US L
8108657	06358	3507322445	103		STAUDE #1	SOONER TREND	91.2	DALCO PETROLEUM US L
-F C D OIL CORP					RECEIVED: 12/08/80 JA: OK			
8108643	06911	3504722193	102		GULLEDGE 1-16	KREMLIN	36.5	C R A INC
8108709	06261	3507300000	103		RODENBERG 3-19A	N E OKARCHE	0.0	PHILLIPS PETROLEUM C
-F HOWARD WALSH JR					RECEIVED: 12/08/80 JA: OK			
8108640	06823	3505120894	102		HULME #1	SE CHICKASHA	1095.0	ARKANSAS LOUISIANA G
8108636	06816	3505120896	102		POAG #1	SE CHICKASHA	365.0	ARKANSAS LOUISIANA G
-GETTY OIL COMPANY					RECEIVED: 12/08/80 JA: OK			
*8108710	06399	3513700000	103		DOMA SPEARS NO 9	SHO-VEL-TUM	73.0	LONE STAR GAS COMPAN
-HAMM PRODUCTION CO					RECEIVED: 12/08/80 JA: OK			
8108701	06349	3509321768	103		STATE #1	S W AMES	182.5	PHILLIPS PETROLEUM C
-HARPER OIL COMPANY					RECEIVED: 12/08/80 JA: OK			
8108633	06539	3509321719	102		KLUCKNER #1	DANE	73.0	PANHANDLE EASTERN PI
8108656	06348	3509321787	103		RUFUS PARKER #1	NORTH DANE	100.0	DELHI GAS PIPELINE C
-J M HUBER CORPORATION					RECEIVED: 12/08/80 JA: OK			
8108687	06367	3504500000	103		GRANTHAM B NO 1	SOUTHEAST GAGE	18.0	ONG WESTERN INC
-J WALTER DUNCAN JR					RECEIVED: 12/08/80 JA: OK			
8108637	06779	3501520903	103		MARGIE #1	N E SICKLE	2190.0	
-JONES & PELLOW OIL CO					RECEIVED: 12/08/80 JA: OK			
8108719	05851	3504921154	103		RINGERWOOD #10-4	EOLA	180.0	LONE STAR GAS CO
-JORDAN OIL & GAS COMPANY					RECEIVED: 12/08/80 JA: OK			
8108703	05854	3504500000	103		IKARD NO 1	SOUTH HIGGINS FIELD	100.0	NORTHERN NATURAL GAS

JO NO	DKT	API NO	SEC	J	WELL NAME	FIELD NAME	PROD	PURCHASER
-KAISER-FRANCIS OIL COMPANY					RECEIVED: 12/08/80 JA: OK			
8108699	06332	3505900000	108		MUNDELL #1	MOCANE	17.0	NORTHERN NATURAL GAS
-KEITH F WALKER					RECEIVED: 12/08/80 JA: OK			

JO NO	JA OKT	API NO	SEC D	WELL NAME		
-JORDAN OIL & GAS COMPANY				RECEIVED: 12/08/80	JA: OK	
8108703	05854	3504500000	103	IKARD NO 1		
-KAISER-FRANCIS OIL COMPANY				RECEIVED: 12/08/80	JA: OK	
8108699	06332	3505900000	108	MUNDELL #1		
-KEITH F WALKER				RECEIVED: 12/08/80	JA: OK	
8108659	06225	3501900000	103	TATGE		
-KENNEDY & MITCHELL INC				RECEIVED: 12/08/80	JA: OK	
8108649	05877	3504500000	103	BRIGGS #20-304		
8108706	06069	3500700000	103	BROWN #23-325		
8108661	06067	3505900000	103	CHARLESTON #24-354		
8108705	06071	3505900000	103	SHORT #14-118-3		
-KENT E PHILLIPS CO				RECEIVED: 12/08/80	JA: OK	
8108670	06930	3503120541	102	BENTLEY #1-22		
-KENT PHILLIPS EXPLORATION LTD				RECEIVED: 12/08/80	JA: OK	
8108678	06416	3501721450	103	CHEEK #1-35		
-KETAL OIL PRODUCING CO				RECEIVED: 12/08/80	JA: OK	
8108664	06434	3504722109	103	BIBY #2		
8108677	06433	3504721367	103	WORTHINGTON #1		
-L & N EXPLORATION INC				RECEIVED: 12/08/80	JA: OK	
8108720	05385	3507322165	103	RANDOLPH #1-1		
-L & T OIL & GAS INC				RECEIVED: 12/08/80	JA: OK	
8108721	09226	3507322659	103	ALLISON 16 NO 2		
8108722	09225	3507322572	103	ALLISON 19 NO 1		
-L G WILLIAMS OIL COMPANY INC				RECEIVED: 12/08/80	JA: OK	
8108696	06240	3501721259	103	WRIGHT 33-2		
-MACKELLAR INC				RECEIVED: 12/08/80	JA: OK	
8108708	06391	3507322427	103	ALFRED #1		
-MAGUIRE OIL COMPANY				RECEIVED: 12/08/80	JA: OK	
8108707	06392	3500300000	103	REXROAT #2		
-MAHAN ENERGY CORP				RECEIVED: 12/08/80	JA: OK	
8108698	06330	3508120932	103	NOSSAMAN #1		
-MARK GANER OIL & GAS				RECEIVED: 12/08/80	JA: OK	
8108715	06401	3507121464	108	BRAWNER #1		
8108714	06402	3507121833	108	BRAWNER #2		
-MOBIL OIL CORP				RECEIVED: 12/08/80	JA: OK	
8108711	06396	3506120319	103	CHUNN HEIRS B UNIT WELL		
8108712	06395	3507920349	103	ROY REED UNIT WELL #2		
-NICHOLS PETROLEUM CO				RECEIVED: 12/08/80	JA: OK	
8108642	06919	3511720727	102	BRANCH #C-2		
8108672	06712	3511720622	102	RED BUD RANCH		
-NORTHERN NATURAL GAS CO				RECEIVED: 12/08/80	JA: OK	
8108697	06329	3500721439	103	FILE 2-29		
-OKLAHOMA PETROLEUM MANAGEMENT CORP				RECEIVED: 12/08/80	JA: O	
8108648	06935	3514920057	103	#1 MCABEE		
-OKLAND OIL CO				RECEIVED: 12/08/80	JA: OK	
8108676	06435	3509920802	103	RUBLE 1-2		
-PENINSULA RESOURCES CORPORATIUN				RECEIVED: 12/08/80	JA: OK	
8108700	06338	3504721849	103	LEROY A TEFFT #1		
-PETROLEUM RESERVE CORP				RECEIVED: 12/08/80	JA: OK	
8108680	06411	3500320721	103	BROWN #26-1		
-PETROMARK EXPLORATION INC				RECEIVED: 12/08/80	JA: OK	
8108681	06410	3509300000	103	MARTINDALE #21-1		
-PHILLIPS PETROLEUM COMPANY				RECEIVED: 12/08/80	JA: OK	
8108717	06436	3500700000	108	BOCKELMAN AH NO 1		

FIELD NAME	PROD	PURCHASER
MOCANE	17.0	NORTHERN NATURAL GAS
OIL CITY	125.0	MOBIL OIL CORP
	275.0	NORTHERN NATURAL GAS
(C SE SE SEC 31-4N-21ECM	500.0	NORTHERN NATURAL GAS
UNALLOCATED	180.0	MICHIGAN WISCONSIN P
	275.0	NORTHERN NATURAL GAS
WEST STERLING	36.0	CITIES SERVICE GAS C
RICHLAND	60.1	CONOCO INC
SHELL LAKE	0.1	
RAMONA	0.1	
WEST MARSHALL	144.0	EASON OIL CO
SOONER TREND	0.0	CONOCO INC
SOONER TREND	0.0	CONOCO INC
YUKON	0.0	PHILLIPS PETROLEUM C
SOONER TREND	0.0	CITIES SERVICE GAS C
CHANEY DELL	0.2	PANHANDLE EASTERN PI
PRAIRIE GEM	1.7	SUN GAS CO
NORTH DILWORTH	11.0	EUFUALA ENTERPRISES
NORTH DILWORTH	11.0	EUFUALA ENTERPRISES
KINTA	217.0	OKLAHOMA GAS & ELECT
RED OAK-NORRIS	800.0	ARKANSAS LOUISIANA G
GREENUP	220.0	COLORADO GAS COMPRES
GREENUP	180.0	COLORADO GAS COMPRES
IVANHOE N	18.0	NORTHERN NATURAL GAS
WEST ROCKY	15.0	OKLAHOMA NATURAL GAS
LOVEDALE	82.5	DELMI GAS PIPELINE C
NORTH ENID	102.0	PANHANDLE EASTERN PI
S W JET	182.5	PIONEER GAS PRODUCTS
	91.3	PIONEER GAS PRODUCTS
IVANHOE	9.0	

JO NO	JA DAT	API NO	SEQ NO	WELL NAME	FIELD NAME	PROD	PURCHASER
8108713	06413	3501721417	103	REICH A NO 1		0.0	PANHANDLE EASTERN PI
8108718	06415	3501721418	103	SCHIEBER A NO 1		0.0	PANHANDLE EASTERN PI
8108679	06414	3501721467	103	WIEWEL D NO 1		0.0	PANHANDLE EASTERN PI
-PIONEER PRODUCTION CORPORATION				RECEIVED: 12/08/80 JA: OK			
8108665	06960	3515121054	103	WILBER W MADDOX #1-27	WILDCAT	204.0	
8108666	06960	3515121054	103	WILBER W MADDOX NO 1-33	WILDCAT	65.0	PANHANDLE EASTERN PI
-RAMEY OIL CORP				RECEIVED: 12/08/80 JA: OK			
8108704	06253	3503700000	108	PRESTON #5 03721241	GLENPOOL	13.6	PHILLIPS PETROLEUM C
-RICKS EXPLORATION CO				RECEIVED: 12/08/80 JA: OK			
8108644	06928	3515120924	102	NIDA 31A	N AVARD	300.0	PANHANDLE EASTERN PI
-ROBMAN PETROLEUM CORP				RECEIVED: 12/08/80 JA: OK			
8108669	06407	3507321982	103	MAXWELL 33-1	SOONER TREND	30.0	PHILLIPS PETROLEUM C
-SAXON OIL COMPANY				RECEIVED: 12/08/80 JA: OK			
8108668	06455	3504321041	103	DEAN UNIT A NO 1	TONKAWA	100.0	MOBIL OIL CORP
8108673	06454	3504321027	103	DEAN UNIT NO 1	TONKAWA	100.0	MOBIL OIL CORP
8108667	06456	3504321035	103	HENDRIX UNIT NO 1	TONKAWA	100.0	MOBIL OIL CORP
-SOUTHLAND ROYALTY CO				RECEIVED: 12/08/80 JA: OK			
8108650	05289	3504320797	103	DOWLING #1		50.0	OKLAHOMA GAS & ELECT
8108660	06223	3513921242	102	HEIRS #1-33	CAPLE	70.0	NORTHERN NATURAL GAS
-SUN OIL COMPANY (DELAWARE)				RECEIVED: 12/08/80 JA: OK			
*8108628	05997	3507300000	108	BORELLI SECTION 8 WELL NO 2	S E DOVER	11.0	EXXON CORP
*8108663	05969	3507300000	108	KARCH WELL NO 1	SE DOVER	9.5	EXXON CORP
8108674	06439	3505920828	103	LENZ A NO 1	MOCANE-LAVERNE	548.0	MICHIGAN-WISCONSIN P
*8108646	05964	3504700000	108	S E FLYNN UNIT NO 46-1	DOVER-HENNESSEY	1.5	EXXON CORP
*8108647	05967	3504700000	108	S E FLYNN UT NO 58-1	DOVER-HENNESSEY	1.0	EXXON CORP
8108662	05971	3512300000	108	SCOTT BROWN WELL NO 7	FITTS	7.0	KOCH EXPLORATION CO
8108630	05993	3503700000	108	STROUD PRUE UNIT NO 26-4	STROUD	2.5	KERR-MCGEE CORP
8108627	05992	3508100000	108	STROUD PRUE UNIT NO 30-1	STROUD	0.5	KERR-MCGEE CORP
8108629	06002	3508100000	108	STROUD PRUE UNIT NO 32-1	STROUD	0.5	KERR-MCGEE CORP
8108631	06003	3503700000	108	STROUD PRUE UNIT NO 33-4	STROUD	0.5	KERR-MCGEE CORP
8108625	06006	3508100000	108	STROUD PRUE UNIT NO 33-5	STROUD	0.5	KERR-MCGEE CORP
8108624	05995	3503700000	108	STROUD PRUE UNIT NO 45-5	STROUD	0.5	KERR-MCGEE CORP
-UNION OIL COMPANY OF CALIF				RECEIVED: 12/08/80 JA: OK			
8108725	06140	3505900000	108	HIERONYMUS #1-18	LAVERNE	15.0	MICHIGAN WISCONSIN P
8108726	06139	3500700000	108	PARKER A #1-11	N E ELMWOOD	12.0	NORTHERN NATURAL GAS
-WAGNER & BROWN				RECEIVED: 12/08/80 JA: OK			
8108716	06693	3505120951	102	SMITH NO 1	S E CHICKASHA	700.0	
-WOODS PETROLEUM CORPORATION				RECEIVED: 12/08/80 JA: OK			
8108632	06818	3512920445	102	SWITZER C #5-1	S W LEEDY	730.0	DELHI GAS PIPELINE C

WEST VIRGINIA DEPARTMENT OF MINES

-COLUMBIA GAS TRANSMISSION CORP				RECEIVED: 12/09/80 JA: WV			
8108735		4705700016	102	MASTELLAR COAL CO 620364	KEYSER	350.0	COLUMBIA GAS TRANSPO
8108736		4705700022	102	MASTELLAR COAL CO 620616	KEYSER	105.0	
-CONSOLIDATED GAS SUPPLY CORPORATION				RECEIVED: 12/09/80 JA: WV			
8108747		4703302076	103	ALICE V KNISLEY 12597	WEST VIRGINIA OTHER A857	23.0	GENERAL SYSTEM PURCH
8108737		4701702363	103	A C STEWART 12571	WEST VIRGINIA OTHER A857	27.0	GENERAL SYSTEM PURCH
8108739		4703302146	103	EMMA A POST 12594	WEST VIRGINIA OTHER A857	50.0	GENERAL SYSTEM PURCH
8108738		4703300940	108	SUSAN V CURRY 12057	WEST VIRGINIA OTHER A857	19.0	GENERAL SYSTEM PURCH
-F F MCINTOSH SR ESTATE				RECEIVED: 12/09/80 JA: WV			
8108752		4701303058	108	ESTER GIBSON #1		4.0	CONSOLIDATED GAS SUP

JO NO	JA DAT	API NO	SEQ NO	WELL NAME	FIELD NAME	PROD	PURCHASER
-FOX DRILLING CO INC				RECEIVED: 12/09/80 JA: WV			
8108748		4701101262	103	A F ROSELY #1 (47-101-1262)	BELINGTON FIELD	60.0	COLUMBIA GAS TRANSMI
8108749		4701101263	103	C POE #3-1 (47-101-1263)	BELINGTON FIELD	40.0	COLUMBIA GAS TRANSMI
8108750		4701101264	103	A POLING #1 (47-101-1264)	BELINGTON FIELD	40.0	COLUMBIA GAS TRANSMI
-GAS DRILLING CO				RECEIVED: 12/09/80 JA: WV			
8108740		4705700017	102	MASTELLAR COAL CO 620384	KEYSER	350.0	COLUMBIA GAS TRANSPO
8108741		4705700023	102	MASTELLAR COAL CO 620626	KEYSER	105.0	
-GAS DRILLING CO				RECEIVED: 12/09/80 JA: WV			
8108742		4705700018	102	MASTELLAR COAL CO 620394	KEYSER	350.0	COLUMBIA GAS TRANSPO
8108743		4705700024	102	MASTELLAR COAL CO 620636	KEYSER	105.0	
-GAS DRILLING CO				RECEIVED: 12/09/80 JA: WV			
8108744		4705700019	102	MASTELLAR COAL CO 620404	KEYSER	350.0	COLUMBIA GAS TRANSPO
8108745		4705700025	102	MASTELLAR COAL CO 620646	KEYSER	105.0	
-GAS DRILLING CO				RECEIVED: 12/09/80 JA: WV			
8108746		4705700020	102	MASTELLAR COAL CO 620414	KEYSER	350.0	COLUMBIA GAS TRANSPO
8108751		4705700026	102	MASTELLAR COAL CO 620656	KEYSER	105.0	
-GAS DRILLING CO				RECEIVED: 12/09/80 JA: WV			
8108753		4705700021	102	MASTELLAR COAL CO 620424	KEYSER	350.0	COLUMBIA GAS TRANSPO
8108754		4705700027	102	MASTELLAR COAL CO 620666	KEYSER	105.0	

8108752	4701503098	108	ESTER GIBSON #1	4.0 CONSOLIDATED GAS SUP

J.	J. KT	API #		WELL NAME
-FOX DRILLING CO INC				RECEIVED: 12/09/80 JA: WV
8108748		4700101262	103	A F MOSELY #1 (47-001-1262)
8108749		4700101263	103	C POE #2-1 (47-001-1263)
8108750		4700101265	103	H POLING #1 (47-001-1265)
8108751		4700101316	103	R AUVIL #2 (47-001-1316)
-J & J ENTERPRISES INC				RECEIVED: 12/09/80 JA: WV
8108754		4700102373	103	B-113
8108753		4700100000	103	B-213
8108756		4701702625	103	J-232
8108757		4701702675	103	J-262
8108755		4701702656	103	J-264
-N G & R E BUSCH DBA RICHTER OIL CO				RECEIVED: 12/09/80 JA: WV
8108745		4710500873	108	M RICHTER NO 10
8108744		4710500874	108	M RICHTER NO 14
8108743		4710500875	108	M RICHTER NO 15
8108742		4710500876	108	M RICHTER NO 18
8108741		4710500877	108	M RICHTER NO 20
8108746		4710500872	108	M RICHTER NO 3
8108740		4710502524	108	M RICHTER NO 7
-PETROLEUM DEVELOPMENT CORP				RECEIVED: 12/09/80 JA: WV
8108758		4701702566	103	L S MCGEE #2

OTHER PURCHASERS VOLUME NO 1342

8108428 OKLAHOMA NATURAL GAS CO
8108441 CITIES SERVICE
8108446 OKLAHOMA NATURAL GAS COMPANY
8108447 OKLAHOMA NATURAL GAS CO
8108463 OKLAHOMA NATURAL GAS CO
8108710 OKLAHOMA NATURAL GAS CO
8108711 PUBLIC SERVICE COMPANY OF OKLAHOMA

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FIELD NAME	PROD	PURCHASER
BELINGTON FIELD	60.0	COLUMBIA GAS TRANSMI
BELINGTON FIELD	40.0	COLUMBIA GAS TRANSMI
BELINGTON FIELD	45.0	COLUMBIA GAS TRANSMI
BELINGTON FIELD	25.0	COLUMBIA GAS TRANSMI
PHILIPPI	400.0	CONSOLIDATED GAS SUP
UNION	400.0	CONSOLIDATED GAS SUP
CENTRAL	400.0	COLUMBIA GAS TRANSMI
CENTRAL	400.0	COLUMBIA GAS TRANSMI
CENTRAL	400.0	COLUMBIA GAS TRANSMI
BURNING SPRINGS DISTRICT	0.5	PENNZOIL CO
BURNINGS SPRINGS DISTRIC	0.5	PENNZOIL CO
BURNING SPRINGS DISTRICT	0.5	PENNZOIL CO
BURNING SPRINGS	0.5	PENNZOIL CO
BURNING SPRINGS DISTRICT	0.5	PENNZOIL CO
BURNING SPRINGS DISTRICT	0.5	PENNZOIL CO
BURNING SPRINGS DISTRICT	0.5	PENNZOIL CO
STRT FORK-BLUESTONE CREE	115.0	COLUMBIA GAS TRANSMI

BILLING CODE 6450-85-C

The above notices of determination were received from the indicated jurisdictional agencies by the Federal Energy Regulatory Commission pursuant to the Natural Gas Policy Act of 1978 and 18 CFR 274.104. Negative determinations are indicated by a "D" after the section code. Estimated annual production (PROD) is in million cubic feet (MMcf). An (*) preceding the control number indicates that other purchasers are listed at the end of the notice.

The applications for determination in these proceedings together with a copy or description of other materials in the record on which such determinations were made are available for inspection, except to the extent such material is treated as confidential under 18 CFR 275.206, at the Commission's Division of Public Information, Room 1000, 825 North Capitol Street, N.E., Washington, D.C. 20426.

Persons objecting to any of these determinations may, in accordance with 18 CFR 275.203 and 18 CFR 275.204, file a protest with the Commission within fifteen (15) days after the date of publication of this notice in the Federal Register.

Please reference the FERC Control Number (JD No.) in all correspondence related to these determinations.

Kenneth F. Plumb,

Secretary.

[FR Doc. 81-1986 Filed 1-16-81; 8:45 am]

BILLING CODE 6450-85-M

[Volume 344]

Determinations by Jurisdictional Agencies Under the Natural Gas Policy Act of 1978

Issued: January 12, 1981.

Determinations by Jurisdictional Agencies Under the Natural Gas Policy Act of 1978

Issued: January 12, 1981.

JD NO	JA DKT	API NO	SEC D	WELL NAME	FIELD NAME	PRCD	PURCHASER
OKLAHOMA CORPORATION COMMISSION							
-AMES OIL AND GAS CORP				RECEIVED: 12/12/80 JA: OK			
8108911	06482	3511700000	103	PORTER #1		10.9	COLORADO GAS COMPRES
8108909	06478	3511700000	103	ROGERS #1		109.8	COLORADO GAS COMPRES
-AMOCO PRODUCTION CO				RECEIVED: 12/12/80 JA: OK			
8108908	06477	3509330229	108	STALLMAN GAS UNIT #1 (2ND FILING)	TODD EAST	15.7	MICHIGAN WISCONSIN P
8108914	06476	3505935299	109	WOLF UNIT #1 (2ND FILING)	WOCANE LAVERNE	17.9	MICHIGAN WISCONSIN P
-ANADARKO PRODUCTION COMPANY				RECEIVED: 12/12/80 JA: OK			
8108941	05706	3505320504	102	GARY A NO 2-32	RENFROW	49.0	PANHANDLE EASTERN PI
8108940	05699	3505320521	102	KENNEDY A NO 1-31	RENFROW	26.0	PANHANDLE EASTERN PI
8108939	05698	3505320496	102	SCHOFFNER A NO 1-29	RENFROW	24.0	PANHANDLE EASTERN PI
8108942	05707	3505320523	102	SCHUNEMAN A NO 1-33	RENFROW	32.0	PANHANDLE EASTERN PI
8108937	05705	3505320519	102	SUBERA A NO 1-30	RENFROW	26.0	PANHANDLE EASTERN PI
-ARCO OIL AND GAS COMPANY				RECEIVED: 12/12/80 JA: OK			
8108936	04379	3505100000	108	ELMER S POOLER A #5U & SL	CHICKASHA	19.7	ARKANSAS LOUISIANA G
8108938	03592	3504320811	108	VANDERWORK UNIT #3	PUTNAM	19.5	MICHIGAN WISCONSIN P
-BARUCH-FOSTER CORP				RECEIVED: 12/12/80 JA: OK			
8108910	06479	3508321335	103	BOZALIS #1	NE PLEASANT VALLEY	98.0	CITIES SERVICE GAS C
-BERRY PETROLEUM CORP				RECEIVED: 12/12/80 JA: OK			
8108934	05180	3507300000	109	MILDRED LOWERY #2-1	SOONER TREND	150.0	PHILLIPS PETROLEUM
-BONANZA PETROLEUM INC				RECEIVED: 12/12/80 JA: OK			
8108947	06372	3505920835	103	BONANZA #1 CHAIR (WORKOVER)	LAVERNE MORROW	429.0	MICHIGAN WISCONSIN P
8108946	06365	3500721713	103	WATSON NO 1	SEC 26 T6N R26ECM	90.0	PANHANDLE EASTERN PI
-BROWN & BORELLI INC				RECEIVED: 12/12/80 JA: OK			
8108918	06373	3507322302	103	#1 DAVID	SOONER TREND	36.5	PHILLIPS PETROLEUM C
-CHAMPLIN PETROLEUM COMPANY				RECEIVED: 12/12/80 JA: OK			
8108935	04573	3500300000	108	SUSIE K LEIERER B NO 1	E CHANEY DELL	12.3	CHAMPLIN PETROLEUM C
-CHASE EXPLORATION CORP				RECEIVED: 12/12/80 JA: OK			
8108903	06483	3507121232	103	BROWN #2-7		7.0	CITIES SERVICE GAS C
*8108904	06484	3507121043	103	DAY #1-28		6.5	CITIES SERVICE GAS C
*8108906	06486	3507120973	103	THAIN #2-27		8.0	CITIES SERVICE GAS C
*8108907	06487	3507121819	103	WHITING #1-29		11.0	CITIES SERVICE GAS C
*8108905	06485	3507121816	103	YEDICA-HENNEBERRY #1-12		1.2	CITIES SERVICE GAS C
-CROUCH PETROLEUM COMPANY				RECEIVED: 12/12/80 JA: OK			
8108921	06383	3502300000	108	ADA JOHNSON #1 029-45553	S E GRIGGS	2.0	WESTERN GAS INTERSTA
8108920	06382	3502520179	108	CRONE #1 029-44179	S E GRIGGS	6.0	WESTERN GAS INTERSTA
8108919	06381	3502520167	109	STAFFORD #1 029-43765	S E GRIGGS	15.0	WESTERN GAS INTERSTA
-GEORGE RODMAN INC				RECEIVED: 12/12/80 JA: OK			
*8108922	06408	3509321850	103	WEAVER NO 1	W E CEDARDALE	649.0	MICHIGAN WISCONSIN P
-HARPER OIL COMPANY				RECEIVED: 12/12/80 JA: OK			
8108951	06502	3507300000	109	C R STURGEON 10-1	SOONER TREND	14.0	PHILLIPS PETROLEUM C
8108949	06500	3500300000	108	HERTZLER #1	S E ALINE	5.0	DELHI GAS PIPELINE C

JU NO	JA DKT	API NO	SEC	D	WELL NAME	FIELD NAME	PROD	PURCHASER
8108931	06432	3507321976	103		MACK #1	SOONER TREND	6.0	PHILLIPS PETROLEUM C
8108950	06501	3508320687	108		MAE #1	ORLANDO	9.0	EASON OIL CO
8108899	06494	3507300000	108		MARY BAXTER #1	SOONER TREND	4.0	EXXON CO USA
*8108901	06497	3509300000	108		MAY #1	RINGWOOD	6.0	UNION TEXAS PETROLEU
8108900	06496	3500900070	108		PENNINGTON #1	SOUTH ERICK	10.0	EL PASO NATURAL GAS
8108902	06498	3507320384	108		ROTTGER #1	SOONER TREND	10.0	PHILLIPS PETROLEUM C
8108948	06499	3506700000	108		SCOTT #2	SOONER TREND	7.0	EXXON CORP
-JAMES C MEADE					RECEIVED: 12/12/80 JA: OK			
8108932	06417	3506100000	103		EBERLY AND MEADE MASON #2A-18	KINTA FIELD	365.0	ARKANSAS LOUISIANA G
-KENT PHILLIPS CO					RECEIVED: 12/12/80 JA: OK			
8108923	06409	3503120541	103		BENTLEY #1-22	WEST STERLING	36.0	CITIES SERVICE GAS C
-NATIONAL OIL COMPANY					RECEIVED: 12/12/80 JA: OK			
8108924	06412	3505920825	103		MEADLEE 059 0618	LOVEDALE	511.0	DELMI PIPELINE CO
-PHILLIPS PETROLEUM COMPANY					RECEIVED: 12/12/80 JA: OK			
8108943	06215	3513900000	103		DRV #2	GUYMON HUGOTON	0.0	MICHIGAN WISCONSIN P
-SEARCH DRILLING CO					RECEIVED: 12/12/80 JA: OK			
8108912	06473	3502520422	103		THOMBLY #1-22A	E SAMPSEL	133.0	
-SHAR-ALAN OIL CO					RECEIVED: 12/12/80 JA: OK			
8108933	06298	3509300000	108		KECK 8-1	S W FAIRVIEW	200.0	DELMI GAS PIPELINE C
-SHELL OIL CO					RECEIVED: 12/12/80 JA: OK			
8108913	06474	3500721654	103		LONKER D 2-2	MOCANE LAVERNE	102.0	NORTHERN NATURAL GAS
-TENNECO OIL COMPANY					RECEIVED: 12/12/80 JA: OK			
8108930	06458	3500721724	103		CARLISLE 17-21	MOCANE-LAVERNE	3.6	COLORADO INTERSTATE
-TEXAS OIL & GAS CORP					RECEIVED: 12/12/80 JA: OK			
8108929	06461	3509321801	103		FAST # 8-1	WILDCAT	0.0	
-THOMPSON TYE DRILLING CO INC					RECEIVED: 12/12/80 JA: OK			
8108925	06457	3511921053	103		THOMPSON #5	BROYLES	0.0	SUN GAS CO
-TOWER OIL AND GAS COMPANY INC					RECEIVED: 12/12/80 JA: OK			
8108944	06233	3507322337	103		MILL #1	SOONER TREND	73.0	PHILLIPS PETROLEUM C
-UNION TEXAS PETROLEUM					RECEIVED: 12/12/80 JA: OK			
8108917	06471	3500320709	103		A WEDEL NO 2	E CHANEY DELL	24.0	PANHANDLE EASTERN PI
-UNIVERSAL RESOURCES CORPORATION					RECEIVED: 12/12/80 JA: OK			
8108926	06462	3501721440	103		ZUM MALLEN 1-26	PIEDMONT WEST	200.0	PHILLIPS PETROLEUM C
-VIERSEN & COCHRAN					RECEIVED: 12/12/80 JA: OK			
8108928	06464	3515321035	103		KING-HAMILTON #1-19	WEST VICI	180.0	PANHANDLE EASTERN PI
-VULCAN ENERGY CORP					RECEIVED: 12/12/80 JA: OK			
8108927	06463	3507322327	103		OBLANDER	NW LOYAL	85.0	CITIES SERVICE
8108915	06465	3507322327	103		TURNER #1	SOONER TREND	150.0	PHILLIPS PETROLEUM C
-WAGNER & BROWN					RECEIVED: 12/12/80 JA: OK			
8108916	06468	3506300000	103		BARKER NO 1	WEST LAURIE	18.0	EASON OIL CO
-WM J OCONNOR					RECEIVED: 12/12/80 JA: OK			
8108945	06291	3515121025	103		GOSS #1	ALINE	185.0	MICHIGAN-WISCONSIN P
**********								
WEST VIRGINIA DEPARTMENT OF MINES								
**********								
-TUG FORK CORP					RECEIVED: 12/15/80 JA: WV			
*8108957		4709900439	107		C J FRALEY 1-725	GRANT	8.6	TENNESSEE GAS PIPELI
*8108960		4709901496	107		GLEN JOHNSON 1-1201	GRANT	13.2	TENNESSEE GAS PIPELI
*8108976		4709900396	107		KOONCE-ZIMMERMAN 4-718	LINCOLN	2.7	TENNESSEE GAS PIPELI
*8108977		4709900407	107		KOONCE-ZIMMERMAN 5-719	LINCOLN	2.6	TENNESSEE GAS PIPELI
*8108979		4709900426	107		KOONCE-ZIMMERMAN 7-748	LINCOLN	9.1	TENNESSEE GAS PIPELI
*8108953		4709900737	107		MARION BURGESS 1-786	LINCOLN	4.4	TENNESSEE GAS PIPELI

JU NO	JA DKT	API NO	SEC	D	WELL NAME	FIELD NAME	PROD	PURCHASER
*8108962		4709900723	107		NILE BARTRAM 1-801	LINCOLN	1.1	TENNESSEE GAS PIPELI
*8108960		4709900049	107		WILSON COAL LAND CO 20-535	LINCOLN	15.9	TENNESSEE GAS PIPELI
*8108963		4709900066	107		WILSON COAL LAND CO 24-539	STONEWALL	1.9	TENNESSEE GAS PIPELI

JO NO	JA DKT	API NO	SEC	D	WELL NAME	FIELD NAME	POOL	PURCHASER
*8108962		4709900723	107		NILE BARTRAM 1-801	LINCOLN	1.1	TENNESSEE GAS PIPELI
*8108960		4709900049	107		WILSON COAL LAND CO 20-535	LINCOLN	15.9	TENNESSEE GAS PIPELI
*8108963		4709900066	107		WILSON COAL LAND CO 24-539	STONEWALL	1.9	TENNESSEE GAS PIPELI
*8108992		4709900193	107		WILSON COAL LAND CO 25-570	LINCOLN	26.7	TENNESSEE GAS PIPELI
*8108997		4709900210	107		WILSON COAL LAND CO 26-577	LINCOLN	7.1	TENNESSEE GAS PIPELI
*8108998		4709900230	107		WILSON COAL LAND CO 28-596	LINCOLN	0.6	TENNESSEE GAS PIPELI
*8108980		4709900247	107		WILSON COAL LAND CO 29-604	LINCOLN	6.3	TENNESSEE GAS PIPELI
*8108964		4709900019	107		WILSON COAL LAND CO 3-521	LINCOLN	9.5	TENNESSEE GAS PIPELI
*8108965		4709900260	107		WILSON COAL LAND CO 31-624	LINCOLN	10.6	TENNESSEE GAS PIPELI
*8108983		4709900304	107		WILSON COAL LAND CO 32-634	LINCOLN	9.7	TENNESSEE GAS PIPELI
*8108966		4709900328	107		WILSON COAL LAND CO 34-682	LINCOLN	10.2	TENNESSEE GAS PIPELI
*8108994		4709900340	107		WILSON COAL LAND CO 36-694	GRANT	5.9	TENNESSEE GAS PIPELI
*8108996		4709900347	107		WILSON COAL LAND CO 39-700	LINCOLN	1.8	TENNESSEE GAS PIPELI
*8108984		4709900382	107		WILSON COAL LAND CO 40-709	LINCOLN	9.6	TENNESSEE GAS PIPELI
*8108986		4709900397	107		WILSON COAL LAND CO 41-716	GRANT	14.2	TENNESSEE GAS PIPELI
*8108988		4709900409	107		WILSON COAL LAND CO 42-717	LINCOLN	7.4	TENNESSEE GAS PIPELI
*8108987		4709900487	107		WILSON COAL LAND CO 44-754	LINCOLN	2.4	TENNESSEE GAS PIPELI
*8108967		4709900633	107		WILSON COAL LAND CO 51-789	GRANT	1.1	TENNESSEE GAS PIPELI
*8108956		4709900634	107		WILSON COAL LAND CO 52-790	LINCOLN	5.4	TENNESSEE GAS PIPELI
*8109005		4709900641	107		WILSON COAL LAND CO 53-792	LINCOLN	30.1	TENNESSEE GAS PIPELI
*8108973		4709900753	107		WILSON COAL LAND CO 54-799	LINCOLN	4.2	TENNESSEE GAS PIPELI
*8109004		4709900761	107		WILSON COAL LAND CO 55-800	LINCOLN	1.1	TENNESSEE GAS PIPELI
*8108995		4709900790	107		WILSON COAL LAND CO 56-827	LINCOLN	1.0	TENNESSEE GAS PIPELI
*8108999		4709900792	107		WILSON COAL LAND CO 57-828	LINCOLN	1.5	TENNESSEE GAS PIPELI
*8108975		4709900793	107		WILSON COAL LAND CO 58-831	LINCOLN	1.5	TENNESSEE GAS PIPELI
*8108989		4709900820	107		WILSON COAL LAND CO 60-840	LINCOLN	4.2	TENNESSEE GAS PIPELI
*8108985		4709900871	107		WILSON COAL LAND CO 61-841	LINCOLN	3.2	TENNESSEE GAS PIPELI
*8109001		4709900824	107		WILSON COAL LAND CO 63-848	LINCOLN	1.8	TENNESSEE GAS PIPELI
*8108990		4709900853	107		WILSON COAL LAND CO 65-856	LINCOLN	4.6	TENNESSEE GAS PIPELI
*8109002		4709900854	107		WILSON COAL LAND CO 66-859	LINCOLN	1.3	TENNESSEE GAS PIPELI
*8108959		4709900856	107		WILSON COAL LAND CO 67-860	LINCOLN	5.2	TENNESSEE GAS PIPELI
*8108962		4709900862	107		WILSON COAL LAND CO 68-870	LINCOLN	0.5	TENNESSEE GAS PIPELI
*8108952		4709900877	107		WILSON COAL LAND CO 69-883	LINCOLN	1.9	TENNESSEE GAS PIPELI
*8108961		4709901291	107		WILSON COAL LAND CO 73-929	LINCOLN	13.6	TENNESSEE GAS PIPELI
*8108958		4709900981	107		WILSON COAL LAND CO 74-930	LINCOLN	8.9	TENNESSEE GAS PIPELI
*8108981		4709900972	107		WILSON COAL LAND CO 75-931	LINCOLN	26.9	TENNESSEE GAS PIPELI
*8108954		4709901486	107		WILSON COAL LAND CO 77-937	LINCOLN	7.4	TENNESSEE GAS PIPELI
*8108955		4709901464	107		WILSON COAL LAND CO 78-938	LINCOLN	9.4	TENNESSEE GAS PIPELI
*8108974		4709901466	107		WILSON COAL LAND CO 83-1192	LINCOLN	23.0	TENNESSEE GAS PIPELI
*8108976		4709901471	107		WILSON COAL LAND CO 84-1193	LINCOLN	4.4	TENNESSEE GAS PIPELI
*8108971		4709901487	107		WILSON COAL LAND CO 85-1194	LINCOLN	4.1	TENNESSEE GAS PIPELI
*8108969		4709901488	107		WILSON COAL LAND CO 86-1195	LINCOLN	9.5	TENNESSEE GAS PIPELI
*8108970		4709901491	107		WILSON COAL LAND CO 88-1197	LINCOLN	5.4	TENNESSEE GAS PIPELI
*8108972		4709901495	107		WILSON COAL LAND CO 89-1200	LINCOLN	3.8	TENNESSEE GAS PIPELI
*8108993		4709900037	107		WILSON COAL LAND CO 9-526	LINCOLN	2.6	TENNESSEE GAS PIPELI
*8109000		4709901500	107		WILSON COAL LAND CO 90-1205	LINCOLN	1.3	TENNESSEE GAS PIPELI
*8108991		4709901508	107		WILSON COAL LAND CO 93-1214	LINCOLN	3.4	TENNESSEE GAS PIPELI
*8109003		4709901507	107		WILSON COAL LAND CO 94-1215	LINCOLN	2.6	TENNESSEE GAS PIPELI

OTHER PURCHASERS	VOLUME NO (Mcf)			
	OKLAHOMA GAS & ELECTRIC CO	81C9003	INDUSTRIAL GAS CORPORATION	
	PHASE GATHERING SYSTEMS INC	81C9004	INDUSTRIAL GAS CORPORATION	
	PHASE GATHERING SYSTEMS INC	81C9005	INDUSTRIAL GAS CORPORATION	
	PHASE GATHERING SYSTEMS INC	81C9006	INDUSTRIAL GAS CORPORATION	
	CELMI GAS PIPELINE CORP	BILLING CODE 6450-85-C		
81C9001			INDUSTRIAL GAS CORPORATION	
81C9002			INDUSTRIAL GAS CORPORATION	
81C9003			INDUSTRIAL GAS CORPORATION	
81C9004			INDUSTRIAL GAS CORPORATION	
81C9005			INDUSTRIAL GAS CORPORATION	
81C9006			INDUSTRIAL GAS CORPORATION	
81C9007			INDUSTRIAL GAS CORPORATION	
81C9022			INDUSTRIAL GAS CORPORATION	
81C9023			INDUSTRIAL GAS CORPORATION	
81C9024			INDUSTRIAL GAS CORPORATION	
81C9025			INDUSTRIAL GAS CORPORATION	
81C9026			INDUSTRIAL GAS CORPORATION	
81C9027			INDUSTRIAL GAS CORPORATION	
81C9028			INDUSTRIAL GAS CORPORATION	
81C9041			INDUSTRIAL GAS CORPORATION	
81C9042			INDUSTRIAL GAS CORPORATION	
81C9043			INDUSTRIAL GAS CORPORATION	
81C9045			INDUSTRIAL GAS CORPORATION	
81C9046			INDUSTRIAL GAS CORPORATION	
81C9047			INDUSTRIAL GAS CORPORATION	
81C9048			INDUSTRIAL GAS CORPORATION	
81C9049			INDUSTRIAL GAS CORPORATION	
81C9070			INDUSTRIAL GAS CORP	
81C9071			INDUSTRIAL GAS CORP	
81C9072			INDUSTRIAL GAS CORP	
81C9073			INDUSTRIAL GAS CORP	
81C9074			INDUSTRIAL GAS CORP	
81C9075			INDUSTRIAL GAS CORP	
81C9076			INDUSTRIAL GAS CORP	
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ENVIRONMEN
AGENCY

[OPP-180547; P

California; Iss
Exemption for
Seeds

AGENCY: Envir
Agency (EPA).

ACTION: Notice

SUMMARY: EPA
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DATE: The spec
July 1, 1981.

FOR FURTHER I
Edward Gross,
(TS-767), Offic
Environmental

The above notices of determination were received from the indicated jurisdictional agencies by the Federal Energy Regulatory Commission pursuant to the Natural Gas Policy Act of 1978 and 18 CFR 274.104. Negative determinations are indicated by a "D" after the section code. Estimated annual production (PROD) is in million cubic feet (MMcf). An (*) preceding the control number indicates that other purchasers are listed at the end of the notice.

The applications for determination in these proceedings together with a copy or description of other materials in the record on which such determinations were made are available for inspection, except to the extent such material is treated as confidential under 18 CFR 275.206, at the Commission's Division of Public Information, Room 1000, 825 North Capitol Street, N.E., Washington, D.C. 20426.

Persons objecting to any of these determinations may, in accordance with 18 CFR 275.203 and 18 CFR 275.204, file a protest with the Commission on or before February 5, 1981.

Please reference the FERC Control Number (JD No.) in all correspondence related to these determinations.

Kenneth F. Plumb,

Secretary.

[FR Doc. 81-2222 Filed 1-19-81; 8:45 am]

BILLING CODE 6450-85-M

ENVIRONMENTAL PROTECTION AGENCY

[OPP-180547; PH-FRL 1723-8]

California; Issuance of Specific Exemption for Benomyl on Crucifer Seeds

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has granted a specific exemption to the California Department of Food and Agriculture (hereafter referred to the "Applicant") to use benomyl on 58,000 pounds of crucifer seeds (cabbage, cauliflower, broccoli, and Brussels sprouts) to control blackleg disease (*Phoma lingam*). The specific exemption is issued under the Federal Insecticide, Fungicide, and Rodenticide Act.

DATE: The specific exemption expires on July 1, 1981.

FOR FURTHER INFORMATION CONTACT: Edward Gross, Registration Division (TS-767), Office of Pesticide Programs, Environmental Protection Agency, Rm. E-124, 401 M St., SW., Washington, D.C. 20460 (202-426-0223).

SUPPLEMENTARY INFORMATION: According to the Applicant, *P. lingam* reduces germination and can devastate a field by killing the plants or severely stunting their growth and yield. The organism is often present on crucifer seed or weed hosts of the genus *Brassica* that are already at the planting site. Spores of *P. lingam* can remain viable on infected debris for up to 4 years, and uninfected fields can be infected by the introduction of contaminated seed. The Applicant claimed that effective disease control requires treatment of seed stock used for seed production as well as the treatment of commercial seed lots.

The Applicant estimates that California growers can expect to lose $21 million, with major losses in other States, without the use of benomyl. The Applicant claimed that there is no pesticide registered for this use, nor are there any successful cultural practices to control blackleg.

The Applicant proposed using a maximum of 140 pounds of Benlate (0.005-0.01 pound of the active ingredient benomyl per acre) to treat 58,000 pounds of seed as a slurry application in combination with Arasan or Captan. One application is to be made per seed lot.

EPA has determined that residues of benomyl are not likely to exceed 0.2 part per million (ppm) in cabbage and cauliflower and 0.4 ppm in broccoli and Brussels sprouts from this use. These levels have been judged adequate to protect the public health. No adverse effects to the environment are anticipated from this specific exemption.

It should be noted that a rebuttable presumption against registration (RPAR) of pesticide products containing benomyl was published in the Federal Register on December 6, 1977 (42 FR 61788). On Thursday, August 30, 1979 (44 FR 51166), EPA published in the Federal Register a preliminary notice of determination concluding the RPAR against benomyl. As developed in the position document, EPA has determined that benomyl poses risks of mutagenicity (as a spindle poison), tertogenicity, and spermatogenic depression to humans, and acute toxicity to aquatic organisms. EPA determined that other areas of concern had been successfully rebutted. EPA will require modification of labeling of benomyl pesticide products packaged in 5-pound or larger bags with aerial application directions. EPA has reflected this preliminary determination in imposing appropriate precautions in the specific exemption to protect employees working with benomyl.

After reviewing the application and other available information, EPA has determined that the criteria for an exemption have been met. Accordingly, the Applicant has been granted a specific exemption to use the pesticide noted above until July 1, 1981, to the extent and in the manner set forth in the application. The specific exemption is also subject to the following conditions:

1. The product Benlate 50 Percent Wettable Powder (EPA Registration No. 352-354) will be used.

2. Benlate will be applied at a maximum rate of 8 ounces formulation (4 ounces benomyl active ingredient) in sufficient water to treat 100 pounds of seed.

3. Each seed lot may receive no more than a single application of benomyl. Benomyl may be used in combination with Arsan or Captan products, which are registered for use as crucifer seed treatments, providing such combinations are not prohibited by the various product labels.

4. Application of benomyl will be restricted to seeds on which infestations have been confirmed or to seeds from areas where *Phoma lingam* is known to be present.

5. A maximum of 58,000 pounds of seeds may be treated.

6. Treated seeds will not be used for food, feed, or any other use except planting, and all shipments of seed must be so labeled.

7. Residues of benomyl, in the raw agricultural commodities, which result from treatment of the seeds are not likely to exceed 0.2 ppm in cabbage and cauliflower and 0.4 ppm in broccoli and Brussels sprouts. Cabbage, cauliflower, broccoli, and Brussels sprouts with residue levels not exceeding these levels may be shipped in interstate commerce. The Food and Drug Administration, U.S. Department of Health and Human Services, has been advised of this action.

8. Only seeds intended for commercial planting may be treated with benomyl. Benomyl-treated seeds will be clearly labeled as such.

9. The EPA has determined that benomyl causes birth defects and reduced sperm production in laboratory animals. Exposure to benomyl during pregnancy should be avoided. Exposure to benomyl might cause a depressed sperm count. In case of accidental spills or other unusual exposure, work must cease immediately and directions for contact with benomyl must be followed.

10. The Applicant is responsible for insuring that the restrictions of this specific exemption are met, and must

submit a report summarizing the results of this program by December 31, 1981.

11. All applicable directions, restrictions, and precautions on the EPA-registered label must be followed.

12. The EPA shall be immediately informed of any adverse effects resulting from the use of benomyl in connection with this exemption.

13. All applications will be made by, or under the direct supervision of, State-certified applicators. Applicators must wear dust masks when treating crucifer seeds with benomyl.

(Sec. 18 as amended 92 Stat. 819; (7 U.S.C. 136))

Dated: January 9, 1981.

Edwin L. Johnson,

Deputy Assistant Administrator for Pesticide Programs.

[FR Doc. 81-2026 Filed 1-20-81; 8:45 am]

BILLING CODE 6560-32-M

[OPP-180652; PH-FRL 1751-3]

California; Issuance of Specific Exemption for Fenvalerate on Tomatoes

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has granted a specific exemption to the California Department of Food and Agriculture (hereafter referred to as the "Applicant") to use fenvalerate (Pydrin) on a maximum of 3,800 acres of tomatoes in Fresno, San Diego, and Tulare Counties in California to control the tomato pinworm. The applicant had previously availed itself of a crisis exemption for this purpose. The specific exemption is issued under the Federal Insecticide, Fungicide, and Rodenticide Act.

DATE: The specific exemption expires on January 15, 1981.

FOR FURTHER INFORMATION CONTACT: Libby Welch, Registration Division (TS-767), Office of Pesticide Programs, Environmental Protection Agency, Rm. E-124, 401 M St. SW., Washington, D.C. 20460 (202-426-0223).

SUPPLEMENTARY INFORMATION: On August 29, 1980, the Applicant initiated a crisis exemption for the use of Pydrin (EPA Reg. No. 201-401), for control of the tomato pinworm on fresh market tomatoes in San Diego County, and so notified the Administrator. The Applicant submitted a request for a continuation of that program and later requested that the specific exemption be amended to include Fresno and Tulare Counties also.

According to the Applicant, a very heavy population of pinworms emerged in these counties this season as a result of a very wet and warm winter. Growers could not get into the wet fields last year to disk under the old tomato plants which contained overwintering pinworms. Many of the overwintering pinworms survived and emerged this season. Although the pest is a problem to a small degree every year, this year is proving to be a very severe pinworm year, according to the Applicant. Damage is caused by the pinworm's holes and secondary bacteria and fungi infections. Tomatoes with excessive pinworm damage do not meet the quality standards established by the California Administrative Code and are not marketable. The Applicant estimates that without the use of fenvalerate to control this pest, tomato growers face a potential loss of $5 million.

The Applicant proposed to make 10 applications of the active ingredient (a.i.) fenvalerate (cyano(3-phenoxyphenyl)methyl-4-chloro-alpha-(1-methylethyl)benzeneacetate) on fresh market tomatoes using ground and air equipment.

The Applicant indicates that none of the registered alternatives are controlling this pest. Light infestations of pinworm can be controlled with at least four applications of either methomyl or azinphosmethyl; heavy infestations cannot be controlled. In addition, the Applicant states, several applications of methomyl lead to a secondary outbreak of the vegetables leafminer which then requires applications of oxamyl for control of this pest. Also, azinphosmethyl requires a 14-day preharvest interval which is not practical in Fresno, San Diego, and Tulare Counties where tomatoes are harvested every 1 to 3 days.

According to the Applicant, the other alternatives, parathion, methyl parathion, toxaphene, endosulfan, cryolite, carbaryl, and pyrethrin have been ineffective for years and are no longer recommended for this use. A temporary tolerance for fenvalerate in or on fresh market tomatoes at 1 part per million (ppm) is currently in effect. Residues of fenvalerate from the proposed use should not exceed 1 ppm in or on fresh market tomatoes. This level has been judged adequate to protect the public health. EPA has determined that the proposed use should not pose an unreasonable hazard to the environment.

After reviewing the application and other available information, EPA has determined that the criteria for an exemption have been met. Accordingly, the Applicant has been granted a specific exemption to use the pesticide noted above until January 15, 1981, to the extent and in the manner set forth in the application. The specific exemption is also subject to the following conditions:

1. The product Pydrin 2.4 E.C., manufactured by Shell Chemical Co., may be used.

2. A total of not more than 3,800 acres of tomatoes may be treated.

3. A maximum of 7,700 pounds of a.i. may be applied at a maximum rate of 0.1 to 0.2 pound a.i. per acre.

4. A maximum of 10 applications are authorized.

5. A 2-day preharvest interval is imposed.

6. All applications must be made by State-certified applicators or persons under their direct supervision.

7. Treated acreage may not be planted to root crops for 12 months after the last application. Treated acreage may not be planted to any other crop for 60 days after the last application.

8. Fenvalerate will be applied by ground equipment in a minimum spray volume of 20 gallons of water per acre or by air in a minimum spray volume of 5 gallons of water per acre.

9. Fenvalerate may be applied to fields only when fields are to be harvested within 14 days and a State entomologist has determined that (a) a major infestation of pinworms exists; (b) registered pesticide are not controlling the pest; and (c) significant economic losses to fresh market tomatoes will occur.

10. It is recommended that fenvalerate not be applied any closer to fish-bearing freshwaters than 200 feet by ground and 750 feet by air at the 0.1 pound a.i. rate, and 300 feet by ground and 1,250 feet by air at the 0.2 pound a.i. rate. Applications closer than these may result in fish and/or other aquatic organism kills.

11. Participants are to be notified of their obligation to report any adverse effects on nontarget organisms arising from the use of Pydrin. The EPA shall be immediately informed of any adverse effects resulting from the proposed use.

12. Precautions must be taken to avoid or minimize spray drift to nontarget areas. It is recommended that pesticide application be made when wind speeds are between 2 and 5 miles per hour. No pesticide applications are to be made when wind speed exceeds 10 miles per hour.

13. Pydrin is highly toxic to bees exposed to direct treatment or to residues on crops or weeds. It may not be applied or allowed to drift to weeds or crops in bloom if bees are actively visiting the treatment area. Protective information may be obtained from the

State Cooperative Agricultural Extension Service.

14. Fenvalerate is extremely toxic to fish and aquatic invertebrates. It may not be applied directly to any body of water and drift reduction precautions must be observed. It may not be applied where excessive runoff is likely to occur. Care must be taken to prevent contamination of water by the cleaning of equipment or disposing of waste or excess pesticides.

15. Fresh market tomatoes with residues of fenvalerate not exceeding 1 ppm may enter interstate commerce. The Food and Drug Administration, U.S. Department of Health and Human Services, has been advised of this action.

16. Treated tomatoes may not be used for animal feed, byproducts, or processing.

17. All applicable directions, restrictions, and precautions on the EPA-registered product label must be followed.

18. The Applicant is responsible for assuring that all of the provisions of this specific exemption are met and must submit a final report summarizing the results of this program by June 30, 1981.

(Sec. 18 as amended 92 Stat. 819; (7 U.S.C. 136))

Dated: January 13, 1981.

Edwin L. Johnson,

Deputy Assistant Administrator for Pesticide Programs.

[FR Doc. 81-2010 Filed 1-19-81; 8:45 am]

BILLING CODE 6560-29-M

[PF-212; PH-FRL 1731-6]

Certain Pesticide Chemicals; Filing of Pesticide Petitions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces that certain companies have filed pesticide petitions with the EPA proposing that tolerances be established for certain pesticide chemicals in or on certain raw agricultural commodities.

ADDRESS: Written comments to the product manager given in each petition at the address below: Registration Division (TS-767), Office of Pesticide Programs, Environmental Protection Agency, 401 M St. SW., Washington, D.C. 20460.

Written comments may be submitted while a petition is pending before the agency. The comments are to be identified by the document control number "[PF-212]" and the specific petition number. All written comments filed pursuant to this notice will be available for public inspection in the product manager's office from 8:00 a.m. to 4:00 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: The product manager given in each specific petition at the telephone number cited.

SUPPLEMENTARY INFORMATION: EPA gives notice that the following pesticide petitions have been submitted to the agency to establish tolerances for certain pesticide chemicals in or on certain raw agricultural commodities in accordance with the Federal Food, Drug, and Cosmetic Act. The analytical method for determining residues, where required, is given in each specific petition.

PP 1F2447. Monsanto Co., 1101 17th St., Washington, D.C. 20036, proposes to amend 40 CFR 180.249 by establishing tolerances for the combined residues of the herbicide alachlor (2-chloro-2',6'-diethyl-*N*-(methoxyethyl)acetanilide) and its metabolities (calculated as alachlor) in or on the raw agricultural commodity sunflower seed at 0.5 part per million (ppm). The proposed analytical method for determining residues is gas chromatography with a nitrogen specific detector. (PM 25, Robert J. Taylor, Rm. E-359, 202-755-2196.)

PP 1F2449. Chevron Chemical Co., 940 Hensley St., Richmond, CA 94804, proposes to amend 180.108 by establishing a tolerance for the combined residues of the insecticide acephate (*O-S*-dimethyl acetylphosphoramidothioate) and its cholinesterase-inhibiting metabolite *O,S*-dimethyl phosphoramidothioate in or on the raw agricultural commodity grass (pasture and range) at 3.0 ppm. The proposed analytical method for determining residues is a gas chromatographic procedure utilizing a thermionic detector. (PM 16, William H. Miller, Rm. E-343, 202-426-9456.)

(Sec. 408(d)(1), 68 Stat. 512, (7 U.S.C. 135))

Dated: January 13, 1981.

Douglas D. Campt,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 81-2010 Filed 1-19-81; 8:45 am]

BILLING CODE 6560-32-M

[OPP-180541; PH-RL 1732-6]

Connecticut; Issuance of Specific Exemption for Mesurol on Grapes

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA granted a specific exemption to the Connecticut Department of Environmental Protection (hereafter referred to as the "Applicant") to use Mesurol to control depredating birds on approximately 45 acres of grapes in Connecticut. The specific exemption was issued under the Federal Insecticide, Fungicide, and Rodenticide Act.

DATE: The specific exemption expired on November 15, 1980.

FOR FURTHER INFORMATION CONTACT: Edward Gross, Registration Division (TS-767), Office of Pesticide Programs, Environmental Protection Agency, Rm. E-124, 401 M St. SW., Washington, D.C. 20460, (202-426-0223).

SUPPLEMENTARY INFORMATION: According to the Applicant, birds can seriously reduce the crop of marketable grapes. The amount of injury varies from year to year, reflecting bird populations and availability of alternative food sources. Grapes are generally harvested after other berry crops and thus can become a major food source for birds. Grapes are subject to feeding at all times after the fruit has begun to ripen.

There are currently no pesticides registered for bird control in grapes. There are two types of alternative control available: (a) scare devices, and (b) exclusion devices. According to the Applicant, scare devices do not prevent, but only reduce, feeding injury; some birds quickly adapt to these devices, while residents nearby are extremely discomforted. The Applicant claimed that exclusion devices are prohibitively expensive. Mesurol is currently registered as a bird repellent on cherries.

The Applicant proposed to apply 2.67 pounds of Mesurol, which contains the active ingredient (a.i.) 3,5-dimethyl-4-(methylthio) phenyl methylcarbamate, per acre up with to three applications. The Applicant anticipated that grape growers in Connecticut could lose from $750 to $1,600 per acre, depending on grape variety and expected yield, if Mesurol were not available.

EPA has determined that residues of the a.i. and its cholinesterase-inhibiting metabolites would not exceed 10 parts per million (ppm) in or on grapes, 20 ppm in or on raisins, and 50 ppm in or on grape pomace and raisin waste, from the proposed use. These residue levels have been judged adequate by EPA to protect the public health. EPA has also determined that the proposed use should not present an undue hazard to the environment.

After reviewing the application and other available information, EPA determined that the criteria for an

exemption had been met. Accordingly, the Applicant was granted a specific exemption to use the pesticide noted above until November 15, 1980, to the extent and in the manner set forth in the application. The specific exemption was also subject to the following conditions:

1. The product Mesurol 75 percent WP insecticide-bird repellent, EPA Reg. No. 3125-226, might be used. An unregistered label used in this connection was required to contain the identical, applicable precautions and restrictions which appeared on the registered label.

2. Mesurol was to be applied by ground equipment at a rate of 2.67 pounds (2.0 pounds a.i.) per acre. No more than three applications were to be made per season.

3. A 7-day preharvest interval was imposed.

4. A total of 360 pounds of Mesurol 75 percent WP were authorized to treat up to 45 acres of grapes.

5. Mesurol is toxic to fish and other aquatic organisms. It was not to be applied directly to any body of water, and drift precautions were to be observed. It was not to be applied where excessive runoff was likely to occur. Water was not to be contaminated by cleaning of equipment or disposal of wastes or excess pesticide.

6. Mesurol is highly toxic to bees exposed to direct treatment or residues on crops or blooming weeds. It was not to be applied or allowed to drift to crops or weeds when bees were actively visiting the area.

7. All applicable precautions, restrictions, and directions on the registered label were to be followed.

8. Residues of the a.i. and its cholinesterase-inhibiting metabolites not exceeding the following levels may enter into interstate commerce: grapes—10 ppm; raisins—20 ppm; raisin waste—50 ppm; grape pomace—50 ppm. The Food and Drug Administration, U.S. Department of Health and Human Services, was advised of this action.

9. The Applicant was responsible for ensuring that all of the provisions of this specific exemption were met and must submit a final report summarizing the results of this program by April 1, 1981.

(Sec. 18 as amended 92 Stat. 819; (7 U.S.C. 136))

Dated: January 9, 1981.

Edwin L. Johnson,

Deputy Assistant Administrator for Pesticide Programs.

[FR Doc. 81-2228 Filed 1-20-81; 8:45 am]

BILLING CODE 6560-32-M

[OPP-30194; PH-FRL 1731-8]

Dow Chemical Co.; Application To Register Pesticide Product Containing a New Active Ingredient

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Dow Chemical Co., has submitted an application to register the pesticide product LONTREL 205 HERBICIDE, which contains the active ingredient 2,4-dichlorophenoxyacetic acid as alkanolamine (salts of the ethanol and isopropanol series) at 32.2 percent and 3,6-dichloro-2-pyridinecarboxylic acid as alkanolamine (salts of the ethanol and isopropanol series) at 8.5 percent. The latter has not been included in any previously registered pesticide product.

DATE: Written comments must be received on or before February 20, 1981.

ADDRESS: Written comments to: Richard F. Mountfort, Product Manager (PM) 23, Registration Division (TS-767), Office of Pesticide Programs, Rm. E-351, 401 M St. SW., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: Richard F. Mountfort (202-755-1397).

SUPPLEMENTARY INFORMATION: Dow Chemical, USA, Agricultural Products Dept., P.O. Box 1706, Midland, MI 48640, has submitted an application to register the herbicide product LONTREL 205 HERBICIDE (EPA File Symbol 464-LAG) containing the active ingredient 2,4-dichlorophenoxyacetic acid as alkanolamine (salts of the ethanol and isopropanol series) at 32.2 percent and 3,6-dichloro-2-pyridinecarboxylic acid as alkanolamine (salts of the ethanol and isopropanol series) at 8.5 percent. The proposed classification is for general use.

The application is made pursuant to the provisions of the Federal insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended (92 Stat. 819; 7 U.S.C. 136) and the regulations thereunder (40 CFR 162.6). Notice of receipt of this application does not indicate a decision by the agency on the application. Interested persons are invited to submit written comments on the application referred to in this notice.

Notice of approval or denial of this application will be announced in the Federal Register. Except for such material protected by section 10 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended (92 Stat. 819; 7 U.S.C. 136) and the regulations thereunder (40 CFR 162.6), the test data and other scientific information deemed relevant to the registration decision may be made available after approval under the provisions of the Freedom of Information Act. The procedure for requesting such data will be given in the Federal Register if an application is approved.

(Sec. 3(c), 86 Stat. 972; (7 U.S.C. 136a))

Dated: January 13, 1981.

Douglas D. Campt,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 81-2021 Filed 1-19-81; 8:45 am]

BILLING CODE 6560-32-M

[OPTS-62011; TSH FRL 1691-3]

Fully Halogenated Chlorofluorocarbons; Denial of Exemption for the Propellant Use of Chlorofluorocarbons in Spray Adhesives

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA is denying a request for an essential use exemption to the chlorofluorocarbon (CFC) rule for the use of CFCs in spray adhesives.

FOR FURTHER INFORMATION CONTACT: John B. Ritch, Jr., Director, Industry Assistance Office, Office of Toxic Substances, (TS-799), Environmental Protection Agency, 401 M St., SW, Washington, D.C. 20460, Toll Free (800-424-9065), In Washington, DC: (554-1404).

SUPPLEMENTARY INFORMATION: The Environmental Protection Agency (EPA) promulgated a rule under 40 CFR Part 762, which prohibited almost all manufacturing, processing, and distribution in commerce of fully halogenated chlorofluoroalkanes (hereinafter referred to as chlorofluorocarbons) for aerosol propellant uses, published in the Federal Register of March 17, 1978 (43 FR 11318). The Agency granted exemptions for aerosol propellant uses which were determined to be essential.

The manufacturer of "Tax Wax Spray Adhesive," an aerosol propellant used in the graphic arts industry, has petitioned EPA to grant an essential use exemption for his product. The manufacturer contends that the product is a unique spray wax adhesive used in the graphic arts and further contends he cannot produce the spray wax without CFCs. Because hot wax is used in the formulation of "Tax Wax," a nonflammable propellant must be used; the manufacturer has not been able to adapt his formulation to any propellant besides chlorofluorocarbons.

The process EPA uses in evaluating applications for essential use exemptions is described in "Essential Use Determinations—Revised", a support document to the March 17, 1978 rule. In making these determinations, EPA considers the availability or nonavailability of substitutes, the possibility of severe economic hardship if the use of CFC is not allowed, and the health and environmental consequences of use of another product in place of CFCs. Decisions to grant or deny exemptions are based on all these criteria. In particular, the nonavailability of an alternative by itself does not qualify a product for an essential use exemption.

There are a number of aerosol spray adhesives and nonaerosol wax coaters currently on the market. Although these adhesives may not be perfect substitutes for "Tax Wax," EPA cannot grant an exemption on that basis. For EPA to grant an essential use exemption in this case, removal of the product would have to result in adverse economic, environmental or human health impacts. However, there is no evidence that adverse impacts are occurring or that they will occur if the product remains off the market.

For the above reasons, the request is denied.

Dated: January 12, 1981.

Douglas M. Costle,

Administrator.

[FR Doc. 81-2001 Filed 1-19-81; 8:45 am]

BILLING CODE 6560-01-M

[OPTS-82012; TSH-FRL 1681-4]

Fully Halogenated Chlorofluorocarbons; Denial of Exemption for Use of Chlorofluorocarbons in Aerosol Sprays To Produce Smoke or Fog

AGENCY: Environmental Protection Agency, (EPA).

ACTION: Notice.

SUMMARY: EPA is denying a request for an essential use exemption to the chlorofluorocarbon (CFC) rule for the use of CFCs in aerosol sprays to produce smoke or fog.

FOR FURTHER INFORMATION CONTACT: John B. Ritch, Jr., Director, Industry Assistance Office, Office of Toxic Substances, (TS-799), Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460, Toll Free (800-424-9065), In Washington, D.C.: (554-1404).

SUPPLEMENTARY INFORMATION: The Environmental Protection Agency (EPA) promulgated a rule, under 40 CFR Part 762, which prohibited almost all manufacturing, processing, and distribution in commerce of fully halogenated chlorofluoroalkanes (hereinafter referred to as chlorofluorocarbons) for aerosol propellant uses, published in the Federal Register of March 17, 1978 (40 CFR 762; 43 FR 11318). The Agency granted exemptions for aerosol propellant uses which were determined to be essential.

The distributor of "Fog Juice", an aerosol propellant used to generate fog for theatrical productions, has petitioned EPA to grant an essential use exemption for this use. EPA previously considered this use before publishing the final rule and determined that the use was not essential. EPA had denied this request on the basis that removal of this product without replacement by an alternative would have no known adverse impacts on environmental quality, human health, and safety. Also, EPA believed that an acceptable carbon dioxide-propelled product could be developed and that the economic impact of substitution of another product would be slight. (See "Essential Use Determinations—Revised", p. C-6.) After reevaluation, the Agency still considers the use to be nonessential.

"Fog Juice" is a mixture of chlorofluorocarbon aerosol propellant and mineral oil. The aerosol can is connected to a machine containing a hot plate. The mineral oil is propelled into the hot plate where it is vaporized and becomes smoke. The equipment can be operated by remote control.

Companies supporting the exemption request contend that the theatrical industry needs the fog machine for their special effects, that the industry would sustain sizable costs in set redesign if they could not use the fog machines, and that the available alternatives are not adequate substitutes. The fog machine has the unique characteristics of being portable, capable of being operated by remote control, and capable of dissipating a fine mist that rises quickly.

The two available alternatives, the "Mole-Richardson" machine and dry ice, are either expensive and nonportable in the former instance, or create a different low level fog effect unlike that achieved with the fog machine in the latter instance. A third alternative which was cited in EPA's "Essential Use Determinations—Revised" was that of a carbon dioxide-propelled product. However, the aerosol filler of "Fog Juice" was unable to pressurize the Fog Juice aerosol product with carbon dioxide.

Because the development of the carbon dioxide substitute did not occur as EPA thought, the company requested that EPA reconsider this request on the basis of the essential use criteria defined in the "Essential Use Determinations—Revised," the support document to the March 17, 1978 rule. The review process described in this document is as follows. EPA first considers whether or not an alternative propellant or nonaerosol product is available. If an alternative propellant is available, the use is determined to be nonessential. If an adequate alternative product is not available, which the company requesting the exemption contends in the instance, EPA then asks whether the environmental/health and economic impacts of its removal are acceptable. If they are, the use is determined to be nonessential. It is important to note that the absence of an available alternative does not alone qualify a product for an essential use exemption.

Although the carbon dioxide-propelled substitute could not be developed, alternative products do exist. These may not be perfect substitutes. However, even if no substitute existed, EPA would grant the exemption only if the health, environmental and economic impacts of its removal were unacceptable. EPA indicated in denying the original request that use of substitute products would have no known impacts on environmental quality, human health and safety. No new evidence has been presented that would lead EPA to revise this conclusion. In addition, since fog scenes are used infrequently in theater productions, there is no reason to believe that the economic impact of set redesign will result in significant overall injury to these productions.

For the above reasons, the request is denied.

Dated: January 12, 1981.

Douglas M. Costle,

Administrator.

[FR Doc. 81-2000 Filed 1-19-81; 8:45 am]

BILLING CODE 6560-01-M

[OPP-180550; PH FRL 1733-7]

Idaho and Oregon; Issuance of Specific Exemptions for Napropamide on Mint

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has granted specific exemptions to the Idaho and Oregon Departments of Agriculture (hereafter referred to as "Idaho," "Oregon," or the "Applicants") to use napropamide on up to 10,000 acres of mint in Idaho and

3,000 acres of mint in Oregon. The specific exemptions are issued under the Federal Insecticide, Fungicide, and Rodenticide Act.

DATE: The specific exemptions expire on March 1, 1981.

FOR FURTHER INFORMATION CONTACT: Libby Welch, Registration Division (TS-767), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Rm. E-128, Washington, D.C. 20460 (202-426-0223).

SUPPLEMENTARY INFORMATION: According to the Applicants, annual grasses are serious weed pests in mint. Weed competition during the growing season reduces yields and the quality of the oil and affects recovery of the mint after harvest to the extent that the crop is weakened. This results in winter kill and poor stands of mint the succeeding year. The Applicants state that populations of annual grasses increased dramatically in 1978. The Applicants claim that currently registered herbicides either provide inadequate control or are phytotoxic to the furrow-irrigated mint grown in these areas. Data indicate that napropamide would be an effective alternative for control of annual grasses in mint.

Idaho estimates that uncontrolled annual grass infestations could result in a loss of $1 million to Idaho mint growers and Oregon estimates losses of from $300,000 to $1.5 million without the use of napropamide.

The Applicant plans to make a single application of Devrinol 50-WP (napropamide) using ground equipment. 40,000 lbs. active ingredient (a.i.) in 20 to 100 gallons of water per acre will be used to treat approximately 10,000 acres of furow-(rill) irrigated mint in Idaho and 12,000 lbs. a.i. to treat 3,000 acres of furrow-irrigated mint in Malheur County, Oregon.

EPA has determined that residues of napropamide (N,N-diethyl-2-(1-naphthalenyloxy) propionamide) from the proposed use are not expected to exceed 0.1 part per million (ppm) in the fresh mint hay, oil, and spent mint hay. This residue level has been judged adequate to protect the public health. While EPA is unable to evaluate the hazard to applicators because of existing data gaps, it has been determined that there will be negligible incremental risk associated with this specific exemption since: (1) Devrinol 50-WP has been registered for a number of years for use on citrus, nuts, pome fruits, small fruits, stone fruits, vegetables, and tobacco without development of any known applicator hazards; (2) most registered uses involve the same rates and mixing and application technique as recommended in this requested use on mint; (3) the product is not restricted; and (4) treatment of the requested acreage will result in negligible applicator exposure when compared to the acreage planted to crops for which Devrinol 50-WP is registered. The proposed use should not pose an unreasonable hazard to the environment.

After reviewing the applications and other available information, EPA has determined that the criteria for exemptions have been met. Accordingly, the Applicants have been granted specific exemptions to use the pesticide noted above until March 1, 1981, to the extent and in the manner set forth in the applications. The specific exemptions are also subject to the following conditions:

1. Use of the product Devrinol 50-WP, EPA Reg. No. 476-2106, manufactured by Stauffer Chemical Co., is authorized. If an unregistered label is used, it must contain the identical applicable precautions and restrictions which appear on the registered label.

2. A single application of Devrinol will be made by ground equipment at a maximum rate of 4 pounds a.i. in 20 to 100 gallons of water per acre in Idaho and 3 to 4 pounds a.i. in 25-100 gallons of water per acre in Oregon.

3. A maximum of 10,000 acres may be treated in Idaho and 3,000 acres in Oregon.

4. A maximum of 40,000 pounds a.i. may be applied in Idaho and 12,000 in Oregon.

5. All applications will be made by State-licensed commercial applicators or certified growers.

6. All applicable directions, restrictions, and precautions on the EPA-registered product label must be followed.

7. Devrinol 50-WP must be kept out of lakes, streams, and ponds. It may not be applied where excessive runoff is likely to occur. Care must be taken to prevent contamination of water by the cleaning of equipment or disposal of wastes and excess pesticides.

8. This pesticide may not be applied in the vicinity of apiaries nor may it be allowed to drift to weeds in bloom on which significant numbers of bees are actively foraging.

9. Treatment of mint as proposed should not result in residues of napropamide exceeding 0.1 ppm in or on fresh mint hay, oil, and spent mint hay. These commodities with residues not exceeding that level may enter interstate commerce. The Food and Drug Administration, U.S. Department of Health and Human Services, has been advised of this action.

10. The EPA shall be immediately informed of any adverse effects resulting from the use of this pesticide in connection with these exemptions.

11. Each of the Aplicants shall be responsible for assuring that all provisions of its specific exemption are met and must submit a report summarizing the results of this program by September 1, 1981.

(Sec. 18 as amended 92 Stat. 819; (7 U.S.C. 136))

Dated: January 9, 1981.

Edwin L. Johnson,

Deputy Assistant Administrator for Pesticide Programs.

[FR Doc. 81-2027 Filed 1-19-81; 8:45 am]

BILLING CODE 6560-32-M

[A-10-FRL 1730-7]

Issuance of PSD Permit to the Weyerhaeuser Company

Notice is hereby given that on January 5, 1981, the Environmental Protection Agency issued a Prevention of Significant Deterioration (PSD) permit to the Weyerhaeuser Company for approval to construct a coal/wood-fired power boiler at the Longview, Washington facility.

This permit has been issued under EPA's Prevention of Significant Air Quality Deterioration (40 CFR Part 52.21) regulations subject to certain conditions, including:

1. Emissions of nitrogen oxides (NO_x) shall not exceed the following:

Emission Limitations

Source and concentration	Tons/year
Power boiler No. 12—0.6 lb/10^6 Btu on a 30-day rolling average	3,280

2. With the exception of NO_x, increases in potential emissions of any pollutant regulated under the Clean Air Act resulting from this operation will be less than 250 tons per year.

Under section 307(b)(1) of the Clean Air Act, judicial review of the PSD Permit is available *only* by the filing of a petition for review in the Ninth Circuit Court of Appeals within 60 days of today. Under Section 307(b)(2) of the Clean Air Act, the requirements which are the subject of today's notice may *not* be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

Copies of the permit are available for public inspection upon request at the following location EPA, Region 10, 1200 Sixth Avenue, Room 11C, Seattle, Washington 98101.

Dated: January 12, 1981.

Donald P. Dubois,

Regional Administrator.

[FR Doc. 81-2020 Filed 1-19-81; 8:45 am]

BILLING CODE 6560-38-M

[OPP-50618; PH-FRL 1732-2]

Extension of Experimental Use Permits

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The EPA has issued extensions of experimental use permits to the following applicants. Such permits are in accordance with, and subject to, the provisions of 40 CFR Part 172, which defines EPA procedures with respect to the use of pesticides for experimental purposes.

FOR FURTHER INFORMATION CONTACT: Robert J. Taylor, Product Manager (PM) 25, Registration Division, (TS-767), Office of Pesticide Programs, Environmental Protection Agency, Rm. E-359, 401 M St. SW., Washington, D.C. 20460 (202-755-2196).

SUPPLEMENTARY INFORMATION: EPA has extended the following experimental use permits:

524-EUP-47. Monsanto Co., 1107 17th St. NW., Washington, D.C. 20036. This experimental use permit allows the use of the remaining amount of glyphosate on stone fruit to evaluate control of weeds. A total of 2,080 acres are involved. This program is effective from April 16, 1981 to April 16, 1982. The program is authorized only in the States of Alabama, Arkansas, California, Georgia, Idaho, Illinois, Indiana, Michigan, Missouri, New Jersey, New York, North Carolina, Ohio, Oregon, Pennsylvania, South Carolina, Tennessee, Utah, Virginia, Washington, West Virginia, and Wisconsin. A permanent tolerance for residues of glyphosate on stone fruit has been established (40 CFR 180.364).

21137-EUP-3. EM Laboratories, Inc., Elmsford NY 10523. This experimental use permit allows the use of 75 pounds of the plant growth regulator methyl 2-chloro-9-hydroxyfluorene-9-carboxylate, methyl-9-hydroxyfluorene-9-carboxylate, and methyl 2, 7-dichloro-9-hydroxyfluorene-9-carboxylate on cucumbers to evaluate its ability to induce seedless fruit in all-female cultivars of pickling cucumbers. A total of 750 acres are involved. The program is authorized only in the States of Arizona, Arkansas, California, Colorado, Connecticut, Delaware, Florida, Georgia, Maryland, Massachusetts, Michigan, Minnesota, New York, North Carolina, Ohio, South Carolina, Texas, and Wisconsin. The program is effective from March 19, 1981 to March 19, 1982. A temporary tolerance for residues of the plant growth regulator has been extended.

Persons wishing to review the experimental use permits are referred to the Product Manager's office. Inquiries regarding these permits should be directed to the person given above. It is suggested that persons call before visiting the EPA headquarters office, so that the appropriate file may be made available for inspection from 8:00 a.m. to 4:00 p.m., Monday through Friday, except legal holidays.

(Sec. 5, 92 Stat. 819 as amended, (21 U.S.C. 136))

Dated: January 13, 1981.

Douglas D. Campt,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 81-2023 Filed 1-19-81; 8:45 am]

BILLING CODE 6560-38-M

[OPTS-51202; TSH-FRL 1732-3]

1,6-Hexanediamine, Distillation Residues—Amines, C_{1-4} Alkyl Di—and C_6 Cyclic Di—Dichloroethane—Epichlorohydrin Polymer; Premanufacture Notice

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Section 5(d)(2) requires EPA to publish in the Federal Register certain information about each PMN within 5 working days after receipt. This Notice announces receipt of a PMN and provides a summary.

DATE: Written comments by February 15, 1981.

ADDRESS: Written comments to: Document Control Officer (TS-793), Management Support Division, Office of Pesticides and Toxic Substances, Environmental Protection Agency, Rm. E-447, 401 M St., SW., Washington, D.C. 20460, (202-755-9050).

FOR FURTHER INFORMATION CONTACT: Kirk Maconaughey, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Rm. E-240, 401 M St., SW., Washington, D.C. 20460, (202-426-2600).

SUPPLEMENTARY INFORMATION: Section 5(a)(1) of TSCA (90 Stat. 2012 (15 U.S.C. 2604)), requires any person who intends to manufacture or import a new chemical substance to submit a PMN to EPA at least 90 days before manufacture or import commences. A "new" chemical substance is any substance that is not on the Inventory of existing substances compiled by EPA under section 8(b) of TSCA. EPA first published the Initial Inventory on June 1, 1979. Notices of availability of the Inventory were published in the Federal Register of May 15, 1979 (44 FR 28558—Initial) and July 29, 1980 (45 FR 50544—Revised). The requirement to submit a PMN for new chemical substances manufactured or imported for commercial purposes became effective on July 1, 1979.

EPA has proposed premanufacture notification rules and forms in the Federal Register issues of January 10, 1979 (44 FR 2242) and October 16, 1979 (44 FR 59764). These regulations, however, are not yet in effect. Interested persons should consult the Agency's Interim Policy published in the Federal Register of May 15, 1979 (44 FR 28564) for guidance concerning premanufacture notification requirements prior to the effective date of these rules and forms. In particular, see page 28567 of the Interim Policy.

A PMN must include the information listed in section 5(d)(1) of TSCA. Under section 5(d)(2) EPA must publish in the Federal Register nonconfidential information on the identity and use(s) of the substance, as well as a description of any test data submitted under section 5(b). In addition, EPA has decided to publish a description of any test data submitted with the PMN and EPA will publish the identity of the submitter unless this information is claimed confidential.

Publication of the section 5(d)(2) notice is subject to section 14 concerning disclosure of confidential information. A company can claim confidentiality for any information submitted as part of a PMN. If the company claims confidentiality for the specific chemical identity or use(s) of the chemical, EPA encourages the submitter to provide a generic use description, a nonconfidential description of the potential exposures from use, and a generic name for the chemical. EPA will publish the generic name, the generic use(s), and the potential exposure descriptions in the Federal Register.

If no generic use description or generic name is provided, EPA will develop one and after providing due notice to the submitter, will publish an amended Federal Register notice. EPA

immediately will review confidentiality claims for chemical identity, chemical use(s), the identity of the submitter, and for health and safety studies. If EPA determines that portions of this information are not entitled to confidential treatment, the Agency will publish an amended notice and will place the information in the public file, after notifying the submitter and complying with other applicable procedures.

After receipt, EPA has 90 days to review a PMN under section 5(a)(1). The section 5(d)(2) Federal Register notice indicates the date when the review period ends for each PMN. Under section 5(c), EPA may, for good cause, extend the review period for up to an additional 90 days. If EPA determines that an extension is necessary, it will publish a notice in the Federal Register.

Once the review period ends, the submitter may manufacture the substance unless EPA has imposed restrictions. When the submitter begins to manufacture the substance, he must report to EPA, and the Agency will add the substance to the Inventory. After the substance is added to the Inventory, any company may manufacture it without providing EPA notice under section 5(a)(1)(A).

Therefore, under the Toxic Substances Control Act, a summary of the data taken from the PMN is published herein.

Interested persons may, on or before January 30, 1981, submit to the Document Control Officer (TS-793), Management Support Division, Office of Pesticides and Toxic Substances, Environmental Protection Agency, Rm. E-447, 401 M St., SW., Washington, D.C. 20460, written comments regarding this notice. Three copies of all comments shall be submitted, except that individuals may submit single copies of comments. The comments are to be identified with the document control number "[OPTS-51202]". Comments received may be seen in the above office between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays.

(Sec. 5, 90 Stat. 2012 (15 U.S.C. 2604))

Dated: January 14, 1981.

Edward A. Klein,

Director, Chemical Control Division.

PMN 80-343

The following information is taken from data submitted by the manufacturer in the PMN.

Close of Review Period. March 1, 1981.

Manufacturer's Identity. Monsanto Company, 800 N. Lindbergh Boulevard, St. Louis, MO 63166.

Specific Chemical Identity. Claimed confidential business information. Generic name provided: 1,6-Hexanediamine, distillation residues—amines, C_{4-6} alkyl di- and C_6 cyclic di—dichloroethane—epichlorohydrin polymer.

Use. Corrugated medium in paperboard manufacture.

Production Estimates

1981—300,000 kg.
1982—450,000 kg.
1983—700,000 kg.

Physical/Chemical Properties

Viscosity—40–80 cps, typical.
Freezing point—25°F (−4°C) freeze/thaw stable.
Weight per gallon—9.25 lb/gal.
Solids—35±1%.
pH—4.5±0.5
Molecular weight—10–40K estimates.

Toxicity Data

Oral LD_{50}, single (rabbit)—6,060 mg/kg.
Dermal LD_{50}, single (rabbit)—5,000 mg/kg.
Skin irritation (rabbit)—Non-irritating. Irritation score of 0.6 on a scale of 8.
Eye irritation (rabbit)—Slightly irritating. Score of 5.2 on a scale of 110.
LC_{50} acquatic species:
Rainbow trout, 96 hr—0.26 mg/1.
Bluegill sunfish, 96 hr—0.24 mg/1.
Daphnia magna, 48 hr—0.26 mg/1.

Exposure. The manufacturer states that the manufacturing process will be in a closed system and no worker exposure is anticipated.

Users' sites. Monsanto estimates 15–20 users with 20–30 workers each site will be involved. The submitter states that dermal exposure as a result of spills, and inhalation due to evaporation of vapors of the impurities from closed storage tanks may be possible.

Environmental Release/Disposal. The manufacturer states that assuming no inadvertent spills occur, there is no disposal of the new polymer at the manufacturing site and that an environmentally insignificant amount of the polymer will be released into settling ponds after use of the product in paper manufacture.

[FR Doc. 81-3234 Filed 1-19-81; 8:45 am]

BILLING CODE 6560-31-M

[PP 1G2431/T280; PH FRL 1731-7]

Rohm and Haas Co.; Establishment of Temporary Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice establishes a tolerance for residues of the chemical hybridizing agent potassium (1-(p-cholorphenyl)-1,4-dihydro-6-methyl-4-oxopyridazine-3-carboxylate and related metabolites in or on wheat (second generation; grown-out of the hybrid seed) at 1 part per million (ppm).

FOR FURTHER INFORMATION CONTACT: Robert J. Taylor, Product Manager (PM) 25, Registration Division (TS-767), Office of Pesticide Programs, Environmental Protection Agency, Rm. E-359, 401 M St. SW., Washington, D.C. 20460, (202-755-2196).

SUPPLEMENTARY INFORMATION: EPA has established a temporary tolerance for the chemical hybridizing agent potassium (1-(p-cholorphenyl)-1,4-dihydro-6-methyl-4-oxopyridazine-3-carboxylate and related metabolites in or on wheat (second generation; grown-out of the hybrid seed) at 1 part per million. This tolerance was requested by Rohm and Haas Co., Independence Mall West, Philadelphia, PA 19105 (PP 1G2431).

This temporary tolerance will permit the marketing of the above raw agricultural commodity treated in accordance with the experimental use permit 707-EUP-85, which is being issued concurrently under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended (92 Stat. 819; 7 U.S.C. 136).

The scientific data reported and all other relevant material have been evaluated, and it has been determined that the temporary tolerance will protect the public health. Therefore, the temporary tolerance is being established on the condition that the experimental use permit and temporary tolerance be used with the following provisions:

1. The total amount of the pesticide to be used must not exceed the amount authorized in the experimental use permit.

2. Rohm and Haas Co. must immediately notify the EPA of any findings from the experimental use that have a bearing on safety. The company will also keep records of production, distribution, and performance, and on request make the records available to any authorized officer or employee of the EPA or the Food and Drug Administration.

This temporary tolerance expires on October 18, 1981. Residues not in excess of the amount remaining in or on the raw agricultural commodity after the expiration date will not be considered actionable if the pesticide is legally applied during the term of, and in accordance with, the provisions of the experimental use permit and temporary

tolerance. This tolerance may be revoked if the experimental use permit is revoked or if any scientific data or experience with this pesticide indicate such revocation is necessary to protect the public health.

(Sec. 408(j), 68 Stat. 561, (21 U.S.C. 346a(j)))

Dated: January 13, 1981.

Douglas D. Campt,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 81-2229 Filed 1-19-81; 8:45 am]

BILLING CODE 6560-32-M

[PP 7G1939/T279; PH FRL 1731-5]

Uniroyal Chemical; Establishment of Temporary Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has established temporary tolerances for residues of the defoliant and dessecant 2, 3-dihydro-5, 6-dimethyl-1, 4-dithiin-1, 1, 4, 4-tetraoxide in or on cotton at 0.2 part per million (ppm) and potatoes at 0.1 ppm.

FOR FURTHER INFORMATION CONTACT: Robert J. Taylor, Product manager (PM) 25, Registration Division (TS-767), Office of Pesticide Programs, Environmental Protection Agency, Rm. E-359, 401 M St. SW., Washington, D.C. 20460, (202-755-2196).

SUPPLEMENTARY INFORMATION: Uniroyal Chemical, Division of Uniroyal Inc., 74 Amity Rd., Bethany, CT 06525, submitted a pesticide petition (PP 7G1939) to the EPA. The petition requested that temporary tolerances be established for residues of the defoliant and dessicant 2, 3-dihydro-5, 6-dimethyl-1, 4-dithiin-1, 1, 4, 4-tetraoxide in or on cotton at 0.2 ppm and potatoes at 0.1 ppm.

These tolerances will permit the marketing of the above raw agricultural commodities when treated in accordance with an experimental use permit (400-EUP-53) which has been issued under the Federal Insecticide, Fungicide, and Rodenticide Act (92 Stat. 819, 7 U.S.C. 136).

The scientific data reported and other relevant material were evaluated, and it was determined that establishment of the temporary tolerances would protect the public health. The temporary tolerances have been established on the condition that the experimental use permit be used with the following provisions:

1. The total amount of the active defoliant to be used will not exceed the quantity authorized by the experimental use permit.

2. Uniroyal Chemical will immediately notify the EPA of any findings from the experimental use that have a bearing on safety. The company will also keep records of production, distribution, and performance, and on request make the records available to any authorized officer of employee of the EPA or the Food and Drug Administration.

These temporary tolerances expire July 8, 1981. Residues not in excess of the temporary tolerances remaining in or on the above raw agricultural commodities after expiration of these tolerances will not be considered actionable if the pesticide is legally applied during the term of, and in accordance with, provisions of the experimental use permit and temporary tolerances. These temporary tolerances may be revoked if the experimental use permit is revoked or if any scientific data or experience with this pesticide indicate such revocation is necessary to protect the public health.

(Sec. 408(j), 68 Stat. 561, (21 U.S.C. 346a(j)))

Dated: January 13, 1981.

Douglas D. Campt,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 81-2018 Filed 1-19-81; 8:45 am]

BILLING CODE 6560-32-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Farmers Bank of the State of Delaware; Dover, Delaware; Suspension of Trading

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Order.

DATES: Effective Midnight (E.S.T.) January 14, 1981 through Midnight January 15, 1981.

FOR FURTHER INFORMATION CONTACT: Patrick J. Moses, Chief, Registration and Disclosure Section, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, D.C. 20429. (202) 389-4651.

SUMMARY: It appearing to the Federal Deposit Insurance Corporation that the summary suspension of trading in the common stock of the Farmers Bank of the State of Delaware, Dover, Delaware being traded otherwise than on a national securities exchange, is required in the public interest and for the protection of investors;

Therefore, pursuant to Sections 12(i) and 12(k) of the Securities Exchange Act of 1934, trading in such securities otherwise than on a national securities exchange is suspended for the period beginning at Midnight (E.S.T.) on January 14, 1981 through Midnight January 15, 1981, unless earlier terminated.

By order of the Board of Directors, January 14, 1981.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 81-2281 Filed 1-19-81; 8:45 am]

BILLING CODE 6714-01-M

FEDERAL RESERVE SYSTEM

Hawkeye Bancorporation; Acquisition of Bank

Hawkeye Bancorporation, Des Moines, Iowa, has applied for the Board's approval under section 3(a)(3) of the Bank Holding Company Act (12 U.S.C. 1842(a)(3)) to acquire 100 percent of the voting shares of Cedar River Bancorporation, Cedar Rapids, Iowa, a one bank holding company which owns 91.35 percent of the voting shares of United State Bank, Cedar Rapids, Iowa. Applicant will also acquire directly 8.65 percent of the voting shares of United State Bank. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Chicago. Any person wishing to comment on the application should submit views in writing to the Reserve Bank to be received not later than February 9, 1981. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, January 12, 1981.

Jefferson A. Walker,

Assistant Secretary of the Board.

[FR Doc. 81-1828 Filed 1-19-81; 8:45 am]

BILLING CODE 6210-01-M

Bank Holding Companies; Proposed De Novo Nonbank Activities

The bank holding company listed in this notice has applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.4(b)(1) of the Board's Regulation Y (12 CFR 225.4(b)(1)), for permission to engage *de novo* (or continue to engage in an activity earlier commenced *de novo*), directly or indirectly, solely in the activities indicated, which have been

determined by the Board of Governors to be closely related to banking.

With respect to this application, interested persons may express their views on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interest, or unsound banking practices." Any comment on this application that requests a hearing must include a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of that proposal.

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank indicated for the application. Comments and requests for hearings should identify clearly the specific application to which they relate, and should be submitted in writing and received by the appropriate Federal Reserve Bank not later than February 9, 1981.

A. *Federal Reserve Bank of Atlanta* (Robert E. Heck, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

First Mississippi National Corporation, Hattiesburg, Mississippi (finance company activities; Mississippi): to engage through *de novo* offices of its subsidiary Bienville Finance Company, in the making of loans to persons, partnerships, corporations and other legal entities, taking security therefor as appropriate, such as would be done by a finance company. These activities will be conducted from offices in Hattiesburg, Jackson, and Biloxi, Mississippi, serving Mississippi.

B. *Other Federal Reserve Banks:* None.

Board of Governors of the Federal Reserve System, January 14, 1981.

Jefferson A. Walker,

Assistant Secretary of the Board.

[FR Doc. 81-1264 Filed 1-19-81; 8:45 am]

BILLING CODE 6210-01-M

Citizens Bancshares, Inc.; Formation of Bank Holding Company

Citizens Bancshares, Inc., Bristol, Tennessee, has applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company by acquiring 80 per cent or more of the voting shares of Citizens Fidelity Bank, Bristol, Tennessee. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Atlanta. Any person wishing to comment on the application should submit views in writing to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551 to be received no later than February 13, 1981. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, January 14, 1981.

Jefferson A. Walker,

Assistant Secretary of the Board.

[FR Doc. 81-1262 Filed 1-19-81; 8:45 am]

BILLING CODE 6210-01-M

El Pueblo Bancorporation; Formation of Bank Holding Company

El Pueblo Bancorporation, Espanola, New Mexico, has applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company by acquiring 80 per cent or more of the voting shares of El Pueblo State Bank, Espanola, New Mexico. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Kansas City. Any person wishing to comment on the application should submit views in writing to the Reserve Bank, to be received not later than February 13, 1981. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, January 14, 1981.

Jefferson A. Walker,

Assistant Secretary of the Board.

[FR Doc. 81-1263 Filed 1-19-81; 8:45 am]

BILLING CODE 6210-01-M

First Blackwell Bancshares, Inc.; Formation of Bank Holding Company

First Blackwell Bancshares, Inc., Blackwell, Oklahoma, has applied for the Board's approval under Section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company by acquiring 80 per cent or more of the voting shares of the First National Bank and Trust Company, Blackwell, Oklahoma. The factors that are considered in acting on the application are set forth in Section 3(c) of the act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Kansas City. Any person wishing to comment on the application should submit views in writing to the Reserve Bank, to be received not later than February 13, 1981. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, January 14, 1981.

Jefferson A. Walker,

Assistant Secretary of the Board

[FR Doc. 81-1265 Filed 1-19-81; 8:45 am]

BILLING CODE 6210-01-M

First Kansas BancGroup, Inc.; Formation of Bank Holding Company

First Kansas BancGroup, Inc., Herndon, Kansas, has applied for the Board's approval under Section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company by acquiring 88.90 per cent or more of the voting shares of State Bank of Herndon, Herndon, Kansas. The factors that are considered in acting on the application are set forth in Section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Kansas City. Any person wishing to comment on the application should submit views in writing to the Reserve Bank, to be received not later than February 13, 1981. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, January 14, 1981.
Jefferson A. Walker,
Assistant Secretary of the Board
[FR Doc. 81-1998 Filed 1-19-81; 8:45 am]
BILLING CODE 6210-01-M

Henry County Bancorp, Inc.; Formation of Bank Holding Company

Henry County Bancorp, Inc., Cambridge, Illinois, has applied for the Board's approval under Section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1) to become a bank holding company by acquiring 85.14 per cent or more of the voting shares of Peoples Bank of Cambridge, Cambridge, Illinois. The factors that are considered in acting on the application are set forth in Section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Kansas City. Any person wishing to comment on the application should submit views in writing to the Reserve Bank, to be received not later than February 13, 1981. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, January 14, 1981.
Jefferson A. Walker,
Assistant Secretary of the Board
[FR Doc. 81-1997 Filed 1-19-81; 8:45 am]
BILLING CODE 6210-01-M

Montfort Bancorporation, Inc.; Formation of Bank Holding Company

Montfort Bancorporation, Inc., Platteville, Wisconsin, has applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company by acquiring 80 per cent or more of the voting shares of Citizens State Bank, Montfort, Wisconsin. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Chicago. Any person wishing to comment on the application should submit views in writing to the Reserve Bank, to be received not later than February 10, 1981. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, January 14, 1981.
Jefferson A. Walker,
Assistant Secretary of the Board.
[FR Doc. 81-1999 Filed 1-19-81; 8:45 am]
BILLING CODE 6210-01-M

Southeast Capital Corp.; Formation of Bank Holding Company

Southeast Capital Corporation, Quitman, Mississippi, has applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company by acquiring 80 percent or more of the voting shares of Southeast Mississippi Bank, Quitman, Mississippi. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Atlanta. Any person wishing to comment on the application should submit views in writing to the Reserve Bank, to be received not later than February 13, 1981. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, January 14, 1981.
Jefferson A. Walker,
Assistant Secretary of the Board.
[FR Doc. 81-1989 Filed 1-19-81; 8:45 am]
BILLING CODE 6210-01-M

Southwest Texas Bankers, Inc.; Formation of Bank Holding Company

Southwest Texas Bankers, Inc., San Antonio, Texas, has applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company by acquiring 99 percent of the voting shares, less directors' qualifying shares, of San Antonio Bank and Trust Co., San Antonio, Texas; 100 percent of the voting shares of Southwest Texas Bankers, Inc., a Delaware corporation; and 13 percent of the voting shares of State Bank of Kingsville, Kingsville, Texas. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Dallas. Any person wishing to comment on the application should submit views in writing to the Reserve Bank, to be received not later than February 13, 1981. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, January 14, 1981.
Jefferson A. Walker,
Assistant Secretary of the Board.
[FR Doc. 81-1990 Filed 1-19-81; 8:45 am]
BILLING CODE 6210-01-M

Valley Bank Holding Co.; Formation of Bank Holding Company

Valley Bank Holding Company, Security, Colorado, has applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company by acquiring 80 percent or more of the voting shares of The Fountain Valley Bank, Security, Colorado. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Kansas City. Any person wishing to comment on the application should submit views in writing to the Reserve Bank, to be received not later than February 10, 1981. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, January 14, 1981.
Jefferson A. Walker,
Assistant Secretary of the Board.
[FR Doc. 81-1991 Filed 1-19-81; 8:45 am]
BILLING CODE 6210-01-M

Weldon Bancshares, Inc.; Formation of Bank Holding Company

Weldon Bancshares, Inc., Weldon, Illinois, has applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company by acquiring 92.8 percent of the voting shares of Weldon State Bank, Weldon, Illinois. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Chicago. Any person wishing to comment on the application should submit views in writing to the Reserve Bank, to be received not later than February 10, 1981. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, January 14, 1981.

Jefferson A. Walker,

Assistant Secretary of the Board.

[FR Doc. 81-2382 Filed 1-19-81; 8:45 am]

BILLING CODE 6210-01-M

FEDERAL TRADE COMMISSION

Transmittal Rules; Early Termination of the Waiting Period of the Premerger Notification Rules

AGENCY: Federal Trade Commission.

ACTION: Granting of request for early termination of the waiting period of the premerger notification rules.

SUMMARY: El Corte Ingles, S.A. is granted early termination of the waiting period provided by law and the premerger notification rules with respect to the proposed acquisition of all stock of the Harris Corporation. The grant was made by the Federal Trade Commission and the Assistant Attorney General in charge of the Antitrust Division of the Department of Justice in response to a request for early termination submitted by both. Neither agency intends to take any action with respect to this acquisition during the waiting period.

EFFECTIVE DATE: January 7, 1981.

FOR FURTHER INFORMATION CONTACT: Roberta Baruch, Senior Attorney, Premerger Notification Office, Bureau of Competition, Room 303, Federal Trade Commission, Washington, D.C. 20580 (202-523-3894).

SUPPLEMENTARY INFORMATION: Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Commission and Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the Federal Register.

By direction of the Commission.

Carol M. Thomas,

Secretary.

[FR Doc. 81-2302 Filed 1-19-81; 8:45 am]

BILLING CODE 6750-01-M

GENERAL ACCOUNTING OFFICE

Regulatory Reports Review; Receipt of Report Proposal

The following request for clearance of report intended for use in collecting information from the public was accepted by the Regulatory Reports Review Staff, GAO, on January 13, 1981. See 44 U.S.C. 3512(c) and (d). The purpose of publishing this notice in the Federal Register is to inform the public of such receipt.

The notice includes the title of the request received; the name of the agency sponsoring the proposed collection of information; the agency form number, if applicable; and the frequency with which the information is proposed to be collected.

Written comments on the proposed FCC request are invited from all interested persons, organizations, public interest groups, and affected businesses. Because of the limited amount of time GAO has to review the proposed requests, comments (in triplicate) must be received on or before February 9, 1981, and should be addressed to Mr. John M. Lovelady, Senior Group Director, Regulatory Reports Review, United States General Accounting Office, Room 5106, 441 G Street, N.W., Washington, D.C. 20548.

Further information may be obtained from Patsy J. Stuart of the Regulatory Reports Review Staff, 202-275-3532.

Federal Communications Commission

The FCC requests clearance of a new, voluntary Form 201 on Emergency Broadcast System Activation which will be sent to a possible 10,000 broadcasters. The form seeks information regarding when broadcast stations activate the Emergency Broadcast System and for what reason. The FCC states that the information will be used to assess the success of the Emergency Broadcast System Activation Program and will pinpoint what areas of the country need further assistance to develop their local Emergency Broadcast System. The form is a postcard. The card provides space for multiple entries in cases where several activations may occur within one day or other short periods of time, enabling the station to submit only one card. The FCC estimates approximately 5 minutes will be the average time required to complete the form.

Norman F. Heyl,

Regulatory Reports, Review Officer.

[FR Doc. 81-2320 Filed 1-19-81; 8:45 am]

BILLING CODE 1610-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources Administration

Advisory Council and Subcommittee; Meetings

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following National Advisory bodies scheduled to meet during the month of February 1981:

Name: National Guidelines and Technology Subcommittee of the National Council on Health Planning and Development.

Date and Time: Thursday, February 5, 1981; 9:00 a.m.-5:00 p.m.

Place: Conference Rooms 303A-305A, H. H. Humphrey Building, 200 Independence Avenue, S.W., Washington, D.C. 20201.

Open for entire meeting.

Purpose: The mission of the National Guidelines and Technology Subcommittee is to advise the Council on the formulation, adjustment, and refinement of the National Guidelines for Health Planning. The Guidelines include standards respecting the appropriate supply, distribution, and organization of health resources and a statement of national health planning goals. In the formulation of its recommendations to the Council, the Subcommittee will take into consideration National Health Priorities outlined in Pub. L. 96-79, include an evaluation of the implications of new medical technology for the organization, delivery and distribution of health care services, and evaluate factors related to improved productivity of the health care delivery system.

The Subcommittee will study the experience nationwide in the public and private sectors with the adoption and/or adjustment of the National Guidelines; study the experience of HSAs and SHPDAs in implementation of high priority goals and subgoals; investigate and coordinate information on relevant demonstrations by provider, reimbursement, regulatory, labor,

industry and community groups such as those on alcoholism and prevention; study, investigate and identify research needs; study and develop improved indicators to assess the impact of the guidelines and the need for revisions; and review technology assessment activities related to productivity in the health care field in order to assure they are relevant to the HSAs and are useful in the development and implementation of the National Guidelines.

Agenda: Update on data collection and reporting activities relating to the National Guidelines on Health Planning; review of comments on the National Health Planning Goals issuance of November 25, 1980; consideration of revisions in resource standards, including proposed standard on psychiatric services and others under study; and follow-up on the Institute of Medicine Study on National Guidelines development.

Name: Implementation and Administration Subcommittee of the National Council on Health Planning and Development.

Date and Time: Thursday, February 5, 1981; 9:30 a.m.–5:00 p.m.

Place: Room 1137, HHS North Building, 330 Independence Avenue, S.W., Washington, D.C. 20201.

Open for entire meeting.

Purpose: The objective of the Implementation and Administration Subcommittee is to study and make recommendations in the implementation and administration of Titles XV and XVI of the Public Health Service Act. Specific areas for the Subcommittee's consideration are (1) the impact of HHS's implementation and administration on the effectiveness of Health Systems Agencies (HSA) and State Health Planning and Development Agencies (SHPDA); (2) the effectiveness of the interrelationships between health planning agencies and HHS, Central and Regional Offices; (3) the timing and strategy of implementation and of the dissemination and distribution of regulatory and technical material; (4) how to better meet the needs of HSAs and SHPDAs; (5) the review of the Council's responsibilities under section 1122 of the Social Security Act; and (6) the review of the Council's responsibilities related to proposed terminations and/or non-renewals of HSAs and SHPDAs under sections 1515(c) and 1521(b) of the PHS Act.

Agenda: Section 1122 review; consideration of paper on consumer participation in health planning; and discussion of the health planning program of the future.

Name: National Council on Health Planning and Development.

Date and Time: Friday, February 6, 1981; 8:45 a.m.–3:30 p.m.

Place: Auditorium, H. H. Humphrey Building, 200 Independence Avenue, S.W., Washington, D.C. 20201.

Open for entire meeting.

Purpose: The National Council on Health Planning and Development is responsible for advising and making recommendations with respect to (1) the development of national guidelines under section 1501 of Pub. L. 93–641, (2) the implementation and administration of Title XV and XVI of Pub. L. 93–641, and (3) an evaluation of the implications of new medical technology for the organization, delivery and equitable distribution of health care services. In addition, the Council advises and assists the Secretary in the preparation of general regulations to carry out the purposes of section 1122 of the Social Security Act and on policy matters arising out of the implementation of it, including the coordination of activities under that section with those under other parts of the Social Security Act or under other Federal or federally assisted health programs. The Council considers and advises the Secretary on proposals submitted by the Secretary under the provisions of section 1122(d)(2) that health care facilities or health maintenance organizations be reimbursed for expenses related to capital expenditures notwithstanding that under section 122(d)(1) there would otherwise be exclusion of reimbursement for such expenses.

Agenda: Status reports from Health Resources Administration officials; reports and recommendations from the Subcommittee on National Guidelines and Technology and the Subcommittee on Implementation and Administration; and consideration of the health planning program of the future.

Anyone requiring information regarding the subject Council should write to or contact Mrs. S. Judy Silsbee, Executive Secretary, National Council on Health Planning and Development, Health Resources Administration, Room 10–27, Center Building, 3700 East-West Highway, Hyattsville, Maryland 20782. Telephone (301) 436–7175.

Agenda items are subject to change as priorities dictate.

Dated: January 14, 1981.

Irene D. Skinner,

Advisory Committee Management Officer, HRA.

[FR Doc. 81-1969 Filed 1-19-81; 8:45 am]

BILLING CODE 4110-83-M

National Institutes of Health

Sickle Cell Disease Advisory Committee; Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Sickle Cell Disease Advisory Committee, National Heart, Lung, and Blood Institute, February 19–20, 1981. The meeting will be held on the NIH Campus, 9000 Rockville Pike, Bethesda, Maryland, Building 31, Conference Room 9, C–Wing. The entire meeting will be open to the public from 9:00 a.m. to 5:00 p.m., to discuss recommendations on the implementation and evaluation of the Sickle Cell Disease Program.

Attendance by the public will be limited to space available.

Mr. York Onnen, Chief, Public Inquiries and Reports Branch, NHLBI, NIH, Building 31, Room 4A21, (301) 496–4236, will provide summaries of the meeting and roster of the Committee members.

Clarice D. Reid, M.D., Chief, Sickle Cell Disease Branch, DBDR NHLBI, NIH, Federal Building, Room 504, (301) 496–8931, will furnish substantive program information.

Dated: January 13, 1981.

Suzanne L. Fremeau,

Committee Management Officer, NIH.

(Catalog of Federal Domestic Assistance Program No. 13.839, Blood Diseases and Resources Research, National Institutes of Health)

Note.—NIH programs are not covered by OMB Circular A–95 because they fit the description of "programs not considered appropriate" in Section 8(b)(4) and (5) of that Circular.

[FR Doc. 81-1968 Filed 1-19-81; 8:45 am]

BILLING CODE 4110-83-M

Biotechnology Resources Review Committee; Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Biotechnology Resources Review Committee, Division of Research Resources, February 10, 1981, Conference Room 8, Bldg. 31, National Institutes of Health, Bethesda, Maryland, 20205.

This meeting will be open to the public from 8:30 a.m. to approximately 1:00 p.m. for discussion of Biotechnology Resources Program activities in 1981 and to discuss possible future activities in the area of mass spectrometry. attendance by the public will be limited to space available.

In accordance with the provisions set forth in Sections 552b(c)(4) and 552b(c)(6), Title 5, U.S. Code and section 10(d) of Pub. L. 92–463, the meeting will be closed to the public from approximately 1:00 p.m. to adjournment for review, discussion, and evaluation of individual research prospectuses submitted by organizations seeking access to PROPHET System services. These prospectuses and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the prospectuses, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mr. James Augustine, Chief, Office of Science and Health Reports, Division of

Research Resources, Bldg. 31, Rm. 5B–13, National Institutes of Health, Bethesda, Maryland, 20205, telephone area code 301 496–5545, will provide summaries of meetings and rosters of committee members.

Dr. Charles L. Coulter, Executive Secretary, Biotechnology Resources Review Committee, Division of Research Resources, Bldg. 31, Rm. 5B–41, National Institutes of Health, Bethesda, Maryland, 20205, telephone area code 301 496–5411, will furnish substantive program information.

Dated: January 13, 1981.

Suzanne L. Fremeau,

Committee Management Officer, National Institutes of Health.

(Catalog of Federal Domestic Assistance Program No. 13.371, Biotechnology Research, National Institutes of Health)

NIH programs are not covered by OMB Circular A–95 because they fit the description of "programs not considered appropriate" in section 8(b)(4) and (5) of that Circular.

[FR Doc. 81–1974 Filed 1–19–81; 8:45 am]

BILLING CODE 4110–08–M

Cancer Clinical Investigation Review Committee; Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Cancer Clinical Investigation Review Committee, National Cancer Institute, February 23–24, 1981, Building 31C, Conference Room 6, National Institutes of Health, Bethesda, Maryland 20205. This meeting will be open to the public on February 23, from 8:30 a.m. to 11:00 a.m., for a Mini-symposium on "The Role of Pathology in Cooperative Clinical Studies." Attendance by the public will be limited to space available.

In accordance with provisions set forth in Sections 552b(c)(4) and 552b(c)(6), Title 5, U.S. Code and Section 10(d) of Pub. L. 92–463, the meeting will be closed to the public on February 23, from 11:00 a.m. to 5:00 p.m., and on February 24, from 8:30 a.m. to adjournment, for the review, discussion and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individual associated with the applications, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

The Committee Management Officer, National Cancer Institute, Building 31, Room 4B43, National Institutes of Health, Bethesda, Maryland 20205 (301/496–5708) will provide summaries of the meeting and rosters of committee members, upon request.

Dr. Dorothy K. Macfarlane, Executive Secretary, National Cancer Institute, Westwood Building, Room 819, National Institutes of Health, Bethesda, Maryland 20205 (301/496–7481) will furnish substantive program information.

(Catalog of Federal Domestic Assistance Number 13.395, Project grants in cancer treatment research, National Institutes of Health)

[NIH programs are not covered by OMB Circular A–95 because they fit the description of "programs not considered appropriate" in section 8(b)(4) and (5) of that Circular.)

Dated: January 13, 1981.

Suzanne L. Fremeau,

Committee Management Officer, NIH.

[FR Doc. 81–1977 Filed 1–19–81; 8:45 am]

BILLING CODE 4110–08–M

Board of Scientific Counselors, Division of Cancer Treatment; Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Board of Scientific Counselors, DCT, National Cancer Institute, February 12–13, 1981, Building 31, 6th Floor, "C" Wing, Conference Room 10, National Institutes of Health. This meeting will be open to the public on February 12, 1981, from 8:30 a.m. until 10:30 a.m., and again from 1:30 p.m. until adjournment, and on February 13, 1981, from 8:30 a.m. until adjournment, to review program plans, followup on status of budget and a progress review of the DCT Biological Response Modifiers program and the Screening Component of the Drug Development program. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in Section 552b(c)(6), Title 5, U.S. Code and Section 10(d) of Pub. L. 92–463, the meeting will be closed to the public on February 12, 1981, from 10:45 a.m. until 12:30 p.m., for the review, discussion and evaluation of individual programs and projects conducted by the National Institutes of Health, including consideration of personnel qualifications and performance, the competence of individual investigators, and similar items, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Dr. Saul A. Schepartz, Acting Director, Division of Cancer Treatment, National Cancer Institute, Building 31, Room 3A–51, National Institutes of Health, Bethesda, Maryland 20205 (301–496–6404) will furnish summaries of meetings, rosters of committee members, and substantive program information.

Dated: January 13, 1981.

Suzanne L. Fremeau,

Committee Management Officer, NIH.

[FR Doc. 81–1975 Filed 1–19–81; 8:45 am]

BILLING CODE 4110–08–M

Clinical Applications and Prevention Advisory Committee; Meeting

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Clinical Applications and Prevention Advisory Committee, Division of Heart and Vascular Diseases, National Heart, Lung, and Blood Institute, January 29–30, 1981, Federal Building, Conference Room B119, Bethesda, Maryland 20205.

This meeting will be open to the public on January 29 from 1:30 p.m. to adjournment. At 2:30 the committee will break into subgroups to discuss research opportunities in heart and vascular disease. The meeting will also be open on January 30 from 8:30 a.m. to 3:00 p.m. when a status report of the 1981 new initiatives, and a report on the Recommendations of the National Black Health Providers Task Force on High Blood Pressure Education and Control will be presented. Attendance by the public will be limited to space available.

In accordance with provisions set forth in Sections 552b(c)(4) and 552b(c)(6), Title 5, U.S. Code and Section 10(d) of Public Law 92–463, the meeting will be closed to the public on January 30 from 3:00 p.m. to adjournment for the review discussion and evaluation of individual contract renewal proposals. The proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mr. York Onnen, Chief, Public Inquiries and Reports Branch, National Heart, Lung, and Blood Institute, Building 31, Room 4A21, National Institutes of Health, Bethesda, Maryland 20205, phone (301) 496–4236, will provide summaries of meetings and rosters of committee members. Dr. William Friedewald, Executive Secretary of the Committee, Federal Building, Room 212, Bethesda, Maryland 20205, phone (301) 496–2533, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program No. 13.837, Heart and Vascular Diseases Research, National Institutes of Health.)

(NIH programs are not covered by OMB Circular A–95 because they fit the description of "programs not considered appropriate" in Section 8(b)(4) and (5) of that Circular.)

Dated: January 14, 1981.
Suzanne L. Fremeau,
Committee Management Officer, NIH.
[FR Doc. 81-1978 Filed 1-19-81; 8:45 am]
BILLING CODE 4110-08-M

Clinical Cancer Program Project and Cancer Center Support Review Committee (Cancer Center Support Review Subcommittee); Meeting

Pursuant to Public Law 92-463, notice is hereby given of the meeting of the Clinical Cancer Program Project and Cancer Center Support Review Committee (Cancer Center Support Review Subcommittee), National Cancer Institute, March 19-20, 1981, Building 31C, Conference Room 6, National Institutes of Health, Bethesda, Maryland. This meeting will be open to the public on March 19, from 8:30 a.m. to 10:00 a.m., to review administrative details. Attendance by the public will be limited to space available.

In accordance with provisions set forth in Sections 552b(c)(4) and 552b(c)(6), Title 5, U.S. Code and Section 10(d) of Public Law 92-463, the meeting will be closed to the public on March 19, from 10:00 a.m. to 6:00 p.m., and on March 20, from 8:30 a.m. to adjournment, for the review, discussion and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Winifred Lumsden, the Committee Management Officer, National Cancer Institute, Building 31, Room 4B43, National Institutes of Health, Bethesda, Maryland 20205 (301/496-5708) will provide summaries of the meetings and rosters of committee members, upon request.

Dr. Robert L. Manning, Executive Secretary, National Cancer Institute, Westwood Building, Room 803, National Institutes of Health, Bethesda, Maryland (301/496-7721) will furnish substantive program information.

(Catalog of Federal Domestic Assistance Number 13.397, project grants in cancer center support, National Institutes of Health.)

(NIH programs are not covered by OMB Circular A-95 because they fit the description of "programs not considered appropriate" in section 8(b) (4) and (5) of that Circular.)

Dated: January 13, 1981.
Suzanne L. Fremeau,
Committee Management Officer, NIH.
[FR Doc. 81-1979 Filed 1-19-81; 8:45 am]
BILLING CODE 4110-08-M

General Clinical Research Centers Committee; Meeting

Pursuant to Public Law 92-463, notice is hereby given of the meeting of the General Clinical Research Centers Committee, Division of Research Resources, February 23-24, 1981. The meeting will be held in Conference Room 8, Building 31, National Institutes of Health, Bethesda, Maryland 20205.

The meeting will be open to the public on February 23, 1981, from 9:00 a.m. to approximately 11:00 a.m., to discuss administrative matters. Attendance by the public will be limited to space available. In accordance with the provisions set forth in Sections 552b(c)(4) and 552b(c)(6), Title 5, U.S. Code and Section 10(d) of Pub L. 92-463, the meeting will be closed to the public on February 23, 1981, from approximately 11:00 a.m. to recess and on February 24, 8:30 a.m. to adjournment for the review, discussion, and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mr. James Augustine, Informatin Officer, Division of Research Resources, Bldg. 31, Rm. 5B-13, National Institutes of Health, Bethesda, Maryland 20205, (301) 496-5545 will provide summaries of the meeting and rosters of the Committee members. Dr. Ephraim Y. Levin, Executive Secretary of the General Clinical Research Centers Review Committee, Bldg. 31, Rm. 5B51 National Institutes of Health, Bethesda, Maryland 20205, (301) 496-5595, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program No. 13.333, Clinical Research, National Institutes of Health)

(NIH programs are not covered by OMB Circular A-95 because they fit the description of "programs not considered appropriate" in section 8(b)(4) and (5) of the Circular.

[FR Doc. 81-1979 Filed 1-19-81; 8:45 am]
BILLING CODE 4110-08-M

Minority Access to Research Careers Review Committee; Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Minority Access to Research Careers Review Committee, National Institute of General Medical Sciences, National Institutes of Health, Building 31-C, Conference Room 7, on March 5-6, 1981, 9:00 a.m.

This meeting will be open to the public on March 5, 9:00 a.m. to 12:00 p.m. The meeting will consist of opening remarks and discussion of procedural matters. Attendance by the public will be limited to space available.

In accordance with provisions set forth in Section 552b(c)(6), Title 5, U.S. Code and Section 10(d) of Pub. L. 92-463, the meeting will be closed to the public for approximately the last four hours of the day on March 5, and approximately four hours on March 6. It is estimated that this will occur from 1:00 p.m. to 5:00 p.m., on March 5, and on March 6 from 9:00 a.m. until adjournment for the review, discussion and evaluation of institutional and individual grant applications. These applications and the discussions could reveal personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Ellen Casselberry, Public Information Officer, NIGMS, Westwood Building, Room 9A-10, 5333 Westbard Avenue, Bethesda, Maryland 20205, telephone (301) 496-7301, will furnish summary minutes of the meeting and a roster of committee members.

Substantive program information may be obtained from Harriet L. Gordon, M.D., Executive Secretary, Westwood Building, Room 949, Bethesda, Maryland 20205, telephone (301) 496-7565.

(Catalog of Federal Domestic Assistance Program 13.880, Minority Access to Research Careers (MARC), National Institutes of Health, Department of Health and Human Services.)

(NIH programs are not covered by OMB Circular A-95 because they fit the description of "program not considered appropriate" in section 8(b) (4) and (5) of that Circular.)

Dated: January 13, 1981.
Suzanne L. Fremeau,
Committee Management Officer, NIH.
[FR Doc. 81-1980 Filed 1-19-81; 8:45 am]
BILLING CODE 4110-08-M

Research Grants; Division Meetings

Pursuant to Pub. L. 92-463, notice is hereby given of the meetings of the following study sections for February through March 1981, and the individuals

from whom summaries of meetings and rosters of committee members may be obtained.

These meetings will be open to the public to discuss administrative details relating to Study Section business for approximately one hour at the beginning of the first session of the first day of the meeting. Attendance by the public will be limited to space available. These meetings will be closed thereafter in accordance with the provisions set forth in Sections 552b(c)(4) and 552(c)(6), Title 5, U.S. Code and Section 10(d) of Pub. L. 92-463, for the review, discussion and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Marian Oakleaf, Acting Chief, Grants Inquiries Office, Division of Research Grants, Westwood Building, National Institutes of Health, Bethesda, Maryland 20205, telephone area code 301-496-7441 will furnish summaries of the meetings and rosters of committee members. Substantive program information may be obtained from each Executive Secretary whose name, room number, and telephone number are listed below each study section. Anyone planning to attend a meeting should contact the Executive Secretary to confirm the exact meeting time. All times are A.M. unless otherwise specified.

Study section	February-March 1981 meetings	Time	Location
Allergy & Immunology: Dr. Morton Feldman, Rm. 325, Tel. 301-496-7380.	Mar. 21-14	8:30	Marriott Hotel, Bethesda, MD.
Applied Physiology & Orthopedics: Ms. Sheri E. Steward, rm. 350, Tel. 301-496-7081.	Mar. 11-14	1:00 p.m	Room 9, Bldg. 31C, Bethesda, MD.
Bacteriology & Mycology: Dr. Milton Gordon, Rm. 304, Tel. 301-496-7340.	Feb. 26-28	8:30	Holiday Inn, Bethesda, MD.
Behavioral Medicine: Dr. John Pickhouse, Rm. 203, Tel. 301-496-7109.	Mar. 4-6	9:00	Georgetown Holiday Inn, Washington, DC.
Biochemical Endocrinology: Dr. Norman Gold, Rm. A-17, Tel. 301-496-7430.	Feb. 23-25	8:30	In-Town Motel, Chevy Chase, MD.
Biochemistry: Dr. Adolphus P. Toliver, Rm. 316, Tel. 301-496-7516	Mar. 4-7	8:30	Marriott Hotel, Bethesda, MD.
Bio-Organic & Natural Products Chemistry: Dr. Michael Rogers, Rm. A-27, Tel. 301-496-7107.	Feb. 23-25	9:00	Marriott Hotel, Bethesda, MD.
Biophysics & Biophysical Chemistry A: Dr. James C. Cassatt, Rm. 238, Tel. 301-496-7070.	Feb. 20-22	9:00	Hyatt House, Arlington, VA.
Biophysics & Biophysical Chemistry B: Dr. John B. Wolff, Rm. 238, Tel. 301-496-7070.	Feb. 18-20	8:30	Room 7, Bldg. 31C, Bethesda, MD.
Bio-Psychology: Dr. A. Keith Murray, Rm. 220, Tel. 301-496-7008	Feb. 25-28	9:00	Maryland Inn, Annapolis, MD.
Cardiovascular & Pulmonary: Dr. Constance E. Weinstein, Rm. 5A-04, Tel. 301-496-7318.	Mar. 4-6	8:00	Georgetown Holiday Inn, Washington, DC.
Cardiovascular & Renal: Dr. Rosemary S. Morris, Rm. 321, Tel. 301-496-7901.	Feb. 18-20	8:30	Holiday Inn, Bethesda, MD.
Cell Biology: Dr. Gerald Greenhouse, Rm. 208, Tel. 301-496-7001	Feb. 16-20	8:30	Room A, Landow Bldg., Bethesda, MD.
Chemical Pathology: Dr. Edmund Copeland, Rm. 353, Tel. 301-496-7078.	Feb. 17-19	8:00	Holiday Inn., Bethesda, MD.
Communicative Sciences: Dr. Michael Halasz, Rm. 229, Tel. 301-496-7500.	Mar. 4-6	8:30	Connecticut Inn, Washington, DC.
Diagnostic Radiology: Dr. Catherine Wingate, Rm. 218, Tel. 301-496-7600.	Feb. 23-25	8:30	Marriott Hotel, Bethesda, MD.
Endocrinology: Mr. Morris M. Graff, Rm. 333, Tel. 301-496-7346	Feb. 23-25	7:00 p.m.	Linden Hill Hotel, Bethesda, MD.
Epidemiology & Disease Control: Dr. Ann Schwaderberg, Rm. 234, Tel. 302-496-7248.	Feb. 26-27	8:30	Ramada Inn, Bethesda, MD.
Experimental Cardiovascular Sciences: Dr. Richard Peabody, Rm. 310, Tel. 301-496-7940.	Feb. 24-26	8:00	Holiday Inn, Bethesda, MD.
Experimental Immunology: Dr. David Lawin, Rm. 222, Tel. 301-496-7238.	Feb. 25-28	8:30	Marriot Hotel, Bethesda, MD.
Experimental Therapeutics: Dr. Anne R. Bourke, Rm. 319, Tel. 301-496-7839.	Feb. 25-28	12:30 p.m	Marriott Hotel, Bethesda, MD.
Experimental Virology: Dr. Eugene Zabolitz, Rm. 206, Tel. 301-496-7474.	Feb. 22-25	2:00 p.m	Room 8, Bldg. 31C, Bethesda, MD.
General Medicine A: Dr. Harold Davidson, Rm. 354, Tel. 301-496-7797.	Feb. 26-27	8:30	Room 8, Bldg. 31C, Bethesda, MD.
General Medicine B: Dr. Marcia Friedman, Rm. 352, Tel. 301-496-7730.	Mar. 4-7	8:30	Georgetown Holiday Inn, Washington, DC.
Genetics: Dr. David Remondini, Rm. 349, Tel. 301-496-7271	Feb. 19-21	9:00	Room 6, Bldg. 31C, Bethesda, MD.
Hematology: Dr. Clark Lum, Rm. 355, Tel. 301-496-7506	Feb. 26-28	8:30	In-Town Motel, Chevy Chase, MD.
Human Development: Dr. Miriam Kelty, Rm. 303, Tel. 301-496-7025	Mar. 8-11	8:30	Gramercy Inn, Washington, D.C.
Human Embryology & Development: Dr. Arthur Hoversland, Rm. 221, Tel. 301-496-7597.	Mar. 3-6	6:00 p.m	Ramada Inn, Bethesda, MD.
Immunobiology: Dr. William Lynch, Rm. 226, Tel. 301-496-7769	Mar. 4-6	8:30	Linden Hill Hotel, Bethesda, MD.
Immunological Sciences: Dr. Lotte Kornfeld, Rm. 223, Tel. 301-496-7179.	Feb. 25-27	8:30	Linden Hill Hotel, Bethesda, MD.
Mammalian Genetics: Dr. Halvor Aaskestad, Rm. 349, Tel. 301-496-7271.	Feb. 26-28	9:00	Room 6, Bldg. 31C, Bethesda, MD.
Medicinal Chemistry A: Dr. Ronald Dubois, Rm. A-27, Tel. 301-496-7107.	Feb. 25-27	9:00	Holiday Inn, Chevy Chase, MD.
Metabolism: Dr. Robert Leonard, Rm. 334, tel. 301-496-7091	Feb. 26-28	8:30	Room 10, Bldg. 31C, Bethesda, MD.
Metallobiochemistry: Dr. Marjorie Behar, Rm. 310, Tel. 301-496-7733	Feb 26-28	9:00	Rosslyn Westpark Hotel, Arlington, VA.
Microbial Physiology: Dr. Martin Slater, Rm. 238, Tel. 301-496-7183	Feb. 25-27	8:30	Ramada Inn, Bethesda, MD.
Molecular Biology: Dr. Donald Disque, Rm. 338, Tel. 301-496-7830	Feb. 19-21	8:30	United Inn, Bethesda, MD.
Molecular Cytology: Dr. Ramesh Nayak, Rm. 233, Tel. 301-496-7149	Feb. 26-28	8:30	Room 7, Bldg. 31C, Bethesda, MD.
Neurological Sciences: Dr. Efraim Bertoz, Rm. 207, Tel. 301-496-7090.	Feb. 26-28	8:30	Sheraton Inn, Silver Spring, MD.
Neurology A: Dr. William Mobley, Rm. 336, Tel. 301-496-7095	Mar. 11-14	8:00	Executive House Hotel, Washington, D.C.
Neurology B: Dr. Willard McFarland, Rm. A-35, Tel. 301-496-7422	Feb. 25-28	8:30	Mayflower Hotel, Washington, D.C.
Nutrition: Dr. John R. Schubert, Rm. 204, Tel. 301-496-7179	Feb. 25-27	8:30	Room 9, Bldg. 31C, Bethesda, MD.

Study section	February–March 1981 meetings	Time	Location
Oral Biology & Medicine: Dr. Thomas Tarpley, Jr., Rm. 325, Tel. 301–496–7818.	Feb. 23–26	8:30	Marriott Hotel, Bethesda, MD.
Pathobiological Chemistry: Dr. Clarice E. Gaylord, Rm. A–26, Tel. 301–496–7620.	Mar. 2–5	8:30	Room 6, Bldg. 31C, Bethesda, MD.
Pathology A: Dr. Harold Waters, Rm. 337, Tel. 301–496–7305	Mar. 10–13	8:00	Shoreham-Americana Hotel, Washington, DC.
Pathology B: Dr. Earl Fisher, Rm. 352, Tel. 301–496–7244	Mar. 11–13	8:30	Holiday Inn, Bethesda, MD.
Pharmacology: Dr. Joseph Kaiser, Rm. 206, Tel. 301–496–7408	Feb. 24–26	8:30	Holiday Inn, Bethesda, MD.
Physical Biochemistry: Dr. Jeanne Kelley, Rm. 218, Tel. 301–496–7120.	Feb. 26–28	9:00	Georgetown Holiday Inn, Washington, DC.
Physiological Chemistry: Dr. Harry Brodie, Rm. 440, Tel. 301–496–7837.	Feb. 26–28	8:30	Rosslyn Westpark Hotel, Arlington, VA.
Physiology: Dr. Martin Frank, Rm. 208, Tel. 301–496–7878	Mar. 6–8	8:00	Sheraton Inn, Silver Spring, MD.
Radiation: Dr. Robert L. Straube, Rm. 218, Tel. 301–496–7073	Mar. 2–4	9:00	Holiday Inn, Chevy Chase, MD.
Reproductive Biology: Dr. Dharam Dhindsa, Rm. 307, Tel. 301–496–7318.	Feb. 17–20	8:30	Ramada Inn, Bethesda, MD.
Social Sciences & Population: Ms. Carol Campbell, Rm. 210, Tel. 301–496–7908.	Feb. 20–22	9:00	Georgetown Holiday Inn, Washington, DC.
Surgery, Anesthesiology & Trauma: Dr. Keith Kraner, Rm. 338, Tel. 301–496–7771.	Feb. 19–21	8:30	Holiday Inn, Bethesda, MD.
Surgery & Bioengineering: Dr. Joe Atkinson, Rm. 303, Tel. 301–496–7506.	Feb. 19–21	8:30	Holiday Inn, Bethesda, MD.
Toxicology: Dr. Raymond Baher, Rm. 205, Tel. 301–496–7570	Feb. 25–27	8:30	Holiday Inn, Washington, DC.
Tropical Medicine & Parasitology: Dr. Betty June Myers, Rm. 203, Tel. 301–496–7484.	Feb. 26–28	8:30	Connecticut Inn, Washington, DC.
Virology: Dr. Claire Wheelock, Rm. 309, Tel. 301–496–7605	Mar. 5–7	8:30	Room 6, Bldg. 31C, Bethesda, MD.
Visual Sciences A: Dr. Orvil E. A. Bolduan, Rm. 439, Tel. 301–496–7260.	Mar. 4–6	9:00	Olde Colony Motor Lodge, Alexandria, VA.
Visual Sciences B: Dr. Luigi Giacometti, Rm. 325, Tel. 301–496–7251	Mar. 11–14	9:00	Georgetown Holiday Inn, Washington, DC.

Dated: January 13, 1981.

Suzanne L. Fremeau,

Committee Management Officer, National Institutes of Health.

(Catalog of Federal Domestic Assistance Program Nos. 13.306, 13.333, 13.337, 13.393–13.396, 13.837–13.844, 13.846–13.878, 13.892, 13.893, National Institutes of Health, HHS).

NIH programs are not covered by OMB Circular A–95 because they fit the description of "programs not considered appropriate" in section 8(b) (4) and (5) of that Circular.

[FR Doc. 81–1873 Filed 1–19–81; 8:45 a.m.]

BILLING CODE 4110–08–M

Public Health Service

National Toxicology Program Board of Scientific Counselors; Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the National Toxicology Program Board of Scientific Counselors, U.S. Public Health Service, in Building 31C, National Institutes of Health, Bethesda, Maryland, on February 18, 1981.

The meeting will be held in Conference Room 6, and will be open to the public from 9 a.m. until adjournment for the purpose of completing external peer reviews on draft technical reports of bioassays from the National Toxicology Program (NTP) Carcinogenesis Testing Program. Reviews will be conducted by the Technical Reports Review Subcommittee of the Board in conjunction with an *ad hoc* panel of experts.

Draft technical reports will be peer reviewed February 18 on the following chemicals (and routes of administration):

Chemical	Route
C.I. Acid Orange 10	Dosed feed.
11–Aminoundecanoic acid	Do.
C.I. Disperse Yellow 3	Do.
D and C Red No. 9	Do.
C.I. Solvent Yellow 14	Do.
Eugenol	Do.
Vinylidine chloride	Gavage.
Agar agar	Dosed feed.
Guar gum	Do.
Gum Arabic	Do.
Gum Tara	Do.

The Executive Secretary, Dr. Larry G. Hart, Office of the Director, National Toxicology Program, P.O. Box 12233, Research Triangle Park, North Carolina 27709, telephone (919) 541–3989, FTS 629–3989, will furnish summary minutes of the reviews, rosters of Subcommittee and panel members, and other program information.

Dated: January 6, 1981.

David P. Rall, M.D., Ph.D.,

Director, National Toxicology Program.

[FR Doc. 81–1981 Filed 1–19–81; 8:45 am]

BILLING CODE 4110–08–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

[Docket No. N–81–1053]

Privacy Act of 1974; Proposed Amendment to System of Records

AGENCY: Department of Housing and Urban Development.

ACTION: Notice of proposed amendment to existing system of records.

SUMMARY: The Department is giving notice that it intends to amend the following Privacy Act system of records: HUD/DEPT–64, Congregate Housing Services Program Data Files.

EFFECTIVE DATE: The amendment shall become effective without further notice 30 calendar days from the publication of this notice unless comments are received on or before that date which would result in a contrary determination.

ADDRESS: Rules Docket Clerk, Room 5218, Department of Housing and Urban Development 451 Seventh Street, SW., Washington, D.C. 20510.

FOR FURTHER INFORMATION CONTACT: Robert English, Department Privacy Act Officer, Telephone: 202–557–0605. This is not a toll free number.

SUPPLEMENTARY INFORMATION. The Department is modifying the Congregate Housing Services Program (CHSP) Data Files (HUD/DEPT–64). The system is being expanded to increase the categories of individuals covered to include: (1) A sample of individuals residing in non-grantee public housing and Section 202 projects; and (2) a

random sample of individuals residing in CHSP grantee projects who did not apply for CHSP. The proposed modification also increases the categories of records maintained on all individuals. The modification is being made to allow an evaluation of the program as requested by OMB and Congress. The evaluation will not affect the privacy of any individual and will not release information on individuals or provide information which identifies any individual in any way. Previously, the system was published at 45 FR 67621 (October 10, 1980). Appendix A, which lists the addresses of HUD's offices was published at 45 FR 67626 (October 10, 1980). A report of intent to amend this system of records was filed with the Speaker of the House, the President of the Senate, and the Director, Office of Management and Budget on December 16, 1980.

HUD/DEPT-64

System Name:

Congregate Housing Services Program Data Files.

System Location:

Headquarters and Offices of HUD Contractor.

Categories of Individuals Covered by System:

Congregate Housing Services Program (CHSP) participants and selected applicants and non-applicants residing in grantee public housing and Section 202 (elderly) projects; and selected individuals residing in non-grantee public housing and Section 202 projects.

Categories of Records in the System:

The files will contain the following records on CHSP participants: Name, project, file number, race/ethnic background, birthdate, sex, marital status, residential history and current living arrangement, number of minors residing, number of children/relatives nearby and family relationships, education, socioeconomic status (occupation/income), total housing expense, characteristics (special features) of the Housing unit, size of unit, sources of income and medical coverage, handicap type, disability type, medical status (recurrent/chronic medical problems) and hospitalization in past year, scores on activities of daily living tests, level of informal service supports (family, friends, etc.), current and previous services received by program type (formal services), dates of service receipt, service needs assessment, morale scale and satisfaction with services and residential arrangements, mental status (primarily, disorientation for elderly and cognitive functioning for mentally retarded), emotional status, social interaction assessment (participation in formal and informal activities, and interpersonal skills), cost and usage of CHSP and other services, project admission date, CHSP application date, physical functioning/health status when entered project, current physical functioning/health status, physical functioning/health status at entry to CHSP, Professional Assessment Committee (PAC) determinations and recommended services, physical functioning/health status when left CHSP, date moved out of project, physical functioning/health status when moved out of project, new address/telephone (or contact person), name/telephone of physician, legal guardian, or family member.

The files will contain the following records on CHSP applicants who were not selected as participants: Name, project, file number, race/ethnic background, birthdate, sex, marital status, resident history and current living arrangement, number of minors residing, number of children/relatives nearby and family relationships, education, socio-economic status (occupation/income), total housing expense, characteristics (special features) of the housing unit, size of unit, sources of income and medical coverage, handicap type, disability type, medical status (recurrent/chronic medical problems) and hospitalization in past year, scores on activities of daily living tests, level of informal service supports (family, friends, etc.), current and previous services received by program type (formal services), dates of service receipt, service needs assessment, morale scale and satisfaction with services and residential arrangements, mental status (primarily, disorientation for elderly and cognitive functioning for mentally retarded), emotional status, social interaction assessment (participation in formal and informal activities, and interpersonal skills), cost and usage of services, project admission date, CHSP application date, physical functioning/health status when entered project, current physical functioning/health status, PAC determinations, date moved out of project, physical functioning/health status when moved out of project, new address/telephone (or contact person), name/telephone of physician, legal guardian, or family member.

The files will contain the following records on residents of CHSP projects who did not apply to the program and residents of non-CHSP projects: name, project, file number, race/ethnic background, birthdate, sex, marital status, residential history and current living arrangement, number of minors residing, number of children/relatives nearby and family relationships, education, socio-economic status (occupation/income), total housing expense, characteristics (special features) of the housing unit, size of unit, sources of income and medical coverage, handicap type, disability type, medical status (recurrent/chronic medical problems) and hospitalization in past year, scores on activities of daily living tests, level of informal service supports (family, friends, etc.), current and previous services received by program type (formal services), dates of service receipt, service needs assessment, morale scale and satisfaction with services and residential arrangements, mental status (primarily, disorientation for elderly and cognitive functioning for mentally retarded), emotional status, social interaction assessment (participation in formal and informal activities, and interpersonal skills), cost and usage of services, project admission date, physical functioning/health status when entered project, current physical functioning/health status, date moved out of project, physical functioning/health status when moved out of project, new address/telephone (or contact person), name/telephone of physician, legal guardian, or family member.

Authority for Maintenance of the System:

Title IV, Housing and Community Development Amendments of 1978 (Congregate Housing Services Act of 1978).

Routine Uses of Records Maintained in the System Including Categories of Users and the Purposes of Such Uses:

To HUD Contractor for conducting the evaluation.

Policies and Practices for Storing, Retrieving, Accessing, Retaining and Disposing of Records in the System:

Storage:

In file folders and on magnetic tape/disc/drum.

Retrievability:

Name, project, file number, race/ethnic background, birth date, sex, marital status, residential history and current living arrangement, number of minors residing, number of children/relatives nearby and family relationships, education, socio-economic

status (occupation/income), total housing expense, characteristics (special features) of the housing unit, size of unit, sources of income and medical coverage, handicap type, disability type, medical status (recurrent/chronic medical problems) and hospitalization in past year, scores on activities of daily living tests, level of informal service supports (family, friends, etc.), current and previous services received by program type (formal services), dates of service receipt, service needs assessment, morale scale and satisfaction with services and residential arrangements, mental status, emotional status, social interaction assessment (participation in formal and informal activities, and interpersonal skills), cost and usage of CHSP and other services, project admission date, CHSP application date, physical functioning/health status when entered project, current physical functioning/health status, physical functioning/health status at entry to CHSP, PAC determinations and recommended services, physical functioning/health status when left CHSP, date moved out of project, physical functioning/health status when moved out of project, new address/telephone (or contact person), name/telephone of physician, legal guardian, or family member.

Safeguards:

Manual files will be kept in lockable cabinets in a secured area, computer records will be maintained in a separate secured area. Access to either type of record will be limited to authorized personnel.

Retention and Disposal:

Manual and automated records are retained in accordance with officially approved mandatory standards contained in HUD handbooks 2225.6 and 2228.2.

System Manager and Address:

Director, Office of Consumer Affairs, NVACP, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, D.C. 20410.

Notification Procedure:

For information, assistance, or inquiry about existence of records, contact the Privacy Act Officer at the Headquarters location, in accordance with 24 CFR Part 16. This location is given in Appendix A.

Record Access Procedures:

The Department's rules for providing access to records to the individual concerned appear in 24 CFR Part 16. If additional information or assistance is required, contact the Privacy Act Officer at Headquarters. This location is given in Appendix A.

Contesting Record Procedures:

The Department's rules for contesting the contents of records and appealing initial denials, by the individual concerned, appear in 24 CFR Part 16. If additional information or assistance is needed, it may be obtained by contacting: (i) In relation to contesting contents of records, the Privacy Act Officer at the Headquarters location. This location is given in Appendix A; (ii) in relation to appeals of initial denials, the HUD Departmental Privacy Appeals Officer, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, D.C. 20410.

Record Source Categories:

Subject individuals, Professional Assessment Committee, Project Managers.

Authority: 5 U.S.C. 552a, 88 Stat. 1896; Sec. 7(d), Department of HUD Act (42 U.S.C. 3535(d))

Issued at Washington, D.C., January 12, 1981.

Vincent J. Hearing,

Deputy Assistant Secretary for Administration.

[FR Doc. 81-1861 Filed 1-19-81; 8:45 am]

BILLING CODE 4210-01-M

DEPARTMENT OF THE INTERIOR

Geological Survey

Designated Tar Sand Area; Argyle Canyon-Willow Creek, Utah

Under authority contained in Sections 17, 21, and 32 of the Mineral Lands Leasing Act of February 25, 1920, as amended (30 U.S.C. 189, 226, 241), and the Mineral Leasing Act for Acquired Lands of August 7, 1947 (30 U.S.C. 351–359), and delegations of authority in 220 Departmental Manual 2 and 7, and Geological Survey Manual 220.7, Federal lands within the State of Utah have been determined to be subject to the leasing provisions of the Mineral Lands Leasing Act of February 25, 1920, as amended (30 U.S.C. 226, 241). The name of the area, effective date, and total acreage involved are as follows:

Utah

Argyle Canyon-Willow Creek Designated Tar Sand Area; November 10, 1980; 21,863 acres.

A plat showing the boundary of the area designated for leasing has been filed with the appropriate land office of the Bureau of Land Management.

Copies of the plat and the land description may be obtained from the Conservation Manager, Central Region, U.S. Geological Survey, Stop 609, Box 25046, Denver Federal Center, Denver, CO 80225.

Dated: January 12, 1981.

George F. Brown,

Acting Chief, Conservation Division.

[FR Doc. 81-2059 Filed 1-19-81; 8:45 am]

BILLING CODE 4310-31-M

Designated Tar Sand Area; Hill Creek, Utah

Under authority contained in Sections 17, 21, and 32 of the Mineral Lands Leasing Act of February 25, 1920, as amended (30 U.S.C. 189, 226, 241), and the Mineral Leasing Act for Acquired Lands of August 7, 1947 (30 U.S.C. 351–359), and delegations of authority in 220 Departmental Manual 2 and 7, and Geological Survey Manual 220.7, Federal lands within the State of Utah have been determined to be subject to the leasing provisions of the Mineral Lands Leasing Act of February 25, 1920, as amended (30 U.S.C. 226, 241). The name of the area, effective date, and total acreage involved are as follows:

Utah

Hill Creek Designated Tar Sand Area; November 10, 1980; 107,240 acres.

A plat showing the boundary of the area designated for leasing has been filed with the appropriate land office of the Bureau of Land Management. Copies of the plat and the land description may be obtained from the Conservation Manager, Central Region, U.S. Geological Survey, Stop 609, Box 25046, Denver Federal Center, Denver, CO 80225.

Dated: January 12, 1981.

George F. Brown,

Acting Chief, Conservation Division.

[FR Doc. 81-2061 Filed 1-19-81; 8:45 am]

BILLING CODE 4310-31-M

Designated Tar Sand Area; Pariette, Utah

Under the authority contained in Sections 17, 21, and 32 of the Mineral Lands Leasing Act of February 25, 1920, as amended (30 U.S.C. 189, 226, 241), and the Mineral Leasing Act for Acquired Lands of August 7, 1947 (30 U.S.C. 351–359), and delegations of authority in 220 Departmental Manual 2 and 7, and Geological Survey Manual 220.7, Federal lands within the State of Utah have been determined to be subject to the leasing provisions of the Mineral Lands Leasing Act of February 25, 1920, as

amended (30 U.S.C. 226, 241). The name of the area, effective date, and total acreage involved are as follows:

Utah

Pariette Designated Tar Sand Area; November 10, 1980; 22,071 acres.

A plat showing the boundary of the area designated for leasing has been filed with the appropriate land office of the Bureau of Land Management.

Copies of the plat and the land description may be obtained from the Conservation Manager, Central Region, U.S. Geological Survey, Stop 609, Box 25046, Denver Federal Center, Denver, CO 80225.

Dated: January 12, 1981.

George F. Brown,

Acting Chief, Conservation Division.

[FR Doc. 81-2282 Filed 1-20-81; 8:45 am]

BILLING CODE 4310-01-M

Designated Tar Sand Area; Raven Ridge-Rim Rock and Vicinity, Utah

Under the authority contained in Sections 17, 21, and 32 of the Mineral Lands Leasing Act of February 25, 1920, as amended (30 U.S.C. 189, 226, 241), and the Mineral Leasing Act for Acquired lands of August 7, 1947 (30 U.S.C. 351–359), and delegations of authority in 220 Departmental manual 2 and 7, and Geological Survey Manual 220.7, Federal lands within the State of Utah have been determined to be subject to the leasing provisions of the Mineral Lands Leasing Act of February 25, 1920, as amended (30 U.S.C. 226, 241). The name of the area, effective date, and total acreage involved are as follows:

Utah

Raven Ridge-Rim Rock and Vicinity Designated Tar Sand Area; November 10, 1980; 16,258 acres.

A plat showing the boundary of the area designated for leasing has been filed with the appropriate land office of the Bureau of Land Management.

Copies of the plat and the land description may be obtained from the Conservation Manager, Central Region, U.S. Geological Survey, Stop 609, Box 25046, Denver Federal Center, Denver, CO 80225.

Dated: January 12, 1981.

George F. Brown,

Acting Chief, Conservation Division.

[FR Doc. 81-2283 Filed 1-20-81; 8:45 am]

BILLING CODE 4310-01-M

Designated Tar Sand Area; San Rafael Swell, Utah

Under the authority contained in Sections 17, 21, and 32 of the Mineral Lands Leasing Act of February 25, 1920, as amended (30 U.S.C. 189, 226, 241), and the Mineral Leasing Act for Acquired Lands of August 7, 1947 (30 U.S.C. 351–359), and delegations of authority in 220 Departmental Manual 2 and 7, and Geological Survey Manual 220.7, Federal lands within the State of Utah have been determined to be subject to the leasing provisions of the Mineral Lands Leasing Act of February 25, 1920, as amended (30 U.S.C. 226, 241). The name of the area, effective date, and total acreage involved are as follows:

Utah

San Rafael Swell Designated Tar Sand Area; November 10, 1980; 130,292 acres.

A plat showing the boundary of the area designated for leasing has been filed with the appropriate land office of the Bureau of Land Management.

Copies of the plat and the land description may be obtained from the Conservation Manager, Central Region, U.S. Geological Survey, Stop 609, Box 25046, Denver Federal Center, Denver, CO 80225.

Dated: January 12, 1981.

George F. Brown,

Acting Chief, Conservation Division.

[FR Doc. 81-2284 Filed 1-20-81; 8:45 am]

BILLING CODE 4310-01-M

Designated Tar Sand Area; White Canyon, Utah

Under authority contained in Sections 17, 21, and 32 of the Mineral Lands Leasing Act of February 25, 1920, as amended (30 U.S.C. 189, 226, 241), and the Mineral Leasing Act for Acquired Lands of August 7, 1947 (30 U.S.C. 351–359), and delegations of authority in 220 Departmental Manual 2 and 7, and Geological Survey Manual 220.7, Federal lands within the State of Utah have been determined to be subject to the leasing provisions of the Mineral Lands Leasing Act of February 25, 1920, as amended (30 U.S.C. 226, 241). The name of the area, effective date, and total acreage involved are as follows:

Utah

White Canyon Designated Tar Sand Area; November 10, 1980; 10,469 acres.

A plat showing the boundary of the area designated for leasing has been filed with the appropriate land office of the Bureau of Land Management.

Copies of the plat and the land description may be obtained from the Conservation Manager, Central Region, U.S. Geological Survey, Stop 609, Box 25046, Denver Federal Center, Denver, CO 80225.

Dated: January 12, 1981.

George F. Brown,

Acting Chief, Conservation Division.

[FR Doc. 81-2285 Filed 1-20-81; 8:45 am]

BILLING CODE 4310-01-M

Heritage Conservation and Recreation Service

Approval of the Lower Little Miami River as a State-Administered Component of the National Wild and Scenic Rivers System

Correction

In FR Doc. 81-625, appearing on page 2725 in the issue of Monday, January 12, 1981, make the following changes:

1. In column one, the last line should read, "11, 1980, the lower Little Miami River, as".

2. In column two, the Date line and signature should read, "Dated: January 11, 1980" and "Cecil D. Andrus" respectively.

BILLING CODE 4310-01-M

Bureau of Land Management

Proposed La Sal Pipeline ROW; Meetings

Public scoping meetings will be held in communities that may be affected by the proposed La Sal Pipeline right-of-way (ROW). The dates, times, and locations of the meetings are as follows:

January 26, 1981: 7:00 P.M.—Craig District Office, Bureau of Land Management, 455 Emerson Street, Craig, Colorado 81625.

January 27, 1981: 1:00 P.M. & 7:00 P.M.—Grant Junction District Office, Bureau of Land Management, 764 Horizon Drive, Grand Junction, Colorado 81502.

February 3, 1981: 7:00 P.M.—Casper District Office, Bureau of Land Management, 951 Union Blvd., Casper, Wyoming 82601.

February 4, 1981: 1:00 P.M. & 7:00 P.M.—Hitchin' Post Inn, 1700 W. Lincoln Way, Cheyenne, Wyoming 82001.

February 5, 1981: 1:00 P.M. & 7:00 P.M.—Denver Marina Hotel, 303 W. Colfax Avenue, Denver, Colorado 80202.

For further information, contact James E. Dean, Environmental Coordinator at (303) 837–3515, or at: Bureau of Land Management, Colorado State Office, 1600 Broadway, Suite 700, Colorado

State Bank Building, Denver, Colorado 80201.

Harold R. Martin,

Acting State Director, Colorado.

[FR Doc. 81-1997 Filed 1-19-81; 8:45 am]

BILLING CODE 4310-84-M

INTERSTATE COMMERCE COMMISSION

Minority Participation in the Motor Carrier Industry

AGENCY: Interstate Commerce Commission.

ACTION: Notice of public meeting and issue paper.

SUMMARY: Among several new objectives, it is now a goal of the National Transportation Policy (Section 10101(a)(7)(g) of the Interstate Commerce Act as amended by the Motor Carrier Act of 1980) to promote greater participation by minorities in the motor carrier industry. Pursuant to the Act the Interstate Commerce Commission will hold public hearings in seven cities throughout the nation (1) to identify the nature and magnitude of the problems facing minorities seeking to obtain ICC authority or expand their operations, and (2) to assess any relationship between minority business under-representation within the surface transportation industry and lack of employment opportunities. An issue paper prepared by the Commission is included in this notice and describes the major issues involved in our inquiry. In addition to the public meetings written comments are also invited.

DATES: Written comments should be submitted on or before 60 days after the publication of this notice. An original and 15 copies (if possible) should be submitted to: Bernard Gaillard, Room 3385, Interstate Commerce Commission, Washington, D.C. 20423.

The schedule for the public hearings is as follows.

February 5, 1981

Baltimore, MD

Holiday Inn Downtown, 301 West Lombard Street, Baltimore, MD 21201
ICC Contact Person: William Hughes, (301) 922-2560
Time: 10:30 a.m.

February 10, 1981

Cleveland, OH

Hotel Bond Court, 777 St. Clair Avenue, Cleveland, OH 44114
ICC Contact Person: Martin Monaghan, (216) 522-4000
Time: 9:00 a.m.

February 17, 1981

Chicago, IL

Best Roberts Motel, 301 63rd Street, Chicago, IL 60637
ICC Contact Person: Betty Gilliland, (312) 886-6463
Time: 9:00 a.m.

March 5, 1981

Newark, NJ

Robert Treat Hotel, 50 Park Place, Newark, NJ 07101
ICC Contact Person: Millie Stovall, (201) 645-3550
Time: 9:00 a.m.

March 12, 1981

Atlanta, GA

Admiral Benbow by the Airport, 1419 Virginia Avenue, Atlanta, GA 30337
ICC Contact Person: Sara Davis, (404) 881-2157
Time: 9:00 a.m.

April 3, 1981

New Orleans, LA

Fountain Bay, 4040 Tulane Avenue, New Orleans, LA 70119
ICC Contact Person: Bob Kirspel, (504) 682-6102
Time: 9:00 a.m.

April 6, 1981

Oakland, CA

California Public Utilities Commission, 111 Jackson Street, Assembly Room, Oakland, CA 94607
ICC Contact Person: Marga Deminne, (415) 764-7191
Time: 9:00 a.m.

PROCEDURE: The meetings will be conducted in an informal manner under the supervision of representatives from the ICC. Those wishing to speak should inform the appropriate ICC contact person as soon as possible. Copies of prepared statements to be delivered at the hearing will be appreciated.

FOR FURTHER INFORMATION CONTACT: Mr. Bernard Gaillard, (202) 275-7597, Rm. 3385, Director, Small Business Assistance Office, Interstate Commerce Commission, 12th and Constitution Avenue, N.W., Washington, D.C. 20423.

Issued: January 15, 1981.

Agatha L. Mergenovich,

Secretary.

Issue Paper on Minority Participation in Interstate Surface Transportation

Statement of the Problem

Historically, no established regulatory mechanism existed to measure the level of minority participation in the regulated motor carrier industry or in any other segment of interstate surface transportation.

Recent surveys have indicated that minorities are under-represented in all facets of the transportation industry. The Commission estimates that of the 21,000 motor carriers holding ICC certificates and permits today only 144 are minority-owned firms.

In recognition of the problem, Congress amended the National Transportation Policy when it enacted the Motor Carrier Act of 1980 to include promotion of greater minority participation as one of the mandates to be followed by the Commission in its regulation of motor carriers of property. Our preliminary review of the kinds of actions that should be taken to implement this Congressional directive reveals an absence of critical knowledge by the Commission about minority involvement in surface transportation. For example, although the Commission has some estimation of the number of minority firms involved in regulated transportation and related businesses generally, a more precise and comprehensive evaluation is needed. Secondly, since minorities appear clearly to be under-represented in all facets of the industry, the specific causes of the problems being experienced by minorities must be explored to assist the Commission in determining how best to increase the level of minority participation in the regulated sector. In order to develop a complete record on these issues, hearings are scheduled around the country to gather information from minorities in or seeking to enter the transportation field and to receive recommendations on what further action the Commission should take.

Background

In the broadest context of minority participation in the transportation industry there are at least two indentifiable problem areas: (1) inadequate opportunities to become an ICC regulated carrier, and (2) the lack of employment opportunities within the industry. These areas, though apparently separate, may be facets of the same problem. We know, for example, that many owner-operators were formerly city or long-haul company drivers. Later, some of these same owner-operators formed companies and eventually obtained ICC authority in their own name. Correspondingly, many small local trucking firms progressed through a period of agency relationship with regional and national long-haul interstate carriers to become effective competitors with formerly associated firms. With the exception of primarily

family-owned companies which were formed and expanded slowly over time and others which resulted from mergers, founders of motor carrier firms to a large extent appear to have evolved through a kind of uninstitutionalized but patterned system of apprenticeship. Our focus, therefore, will encompass both the areas of carrier entry and expansion as well as employment.

The Commission's estimate of minority-owned firms graphically illustrates the low level of participation by minorities in the regulated industry sector. There are at least two generally accepted historical explanations for this. In 1935 some individuals engaged in the trucking business were able, after passage of the first Motor Carrier Act, to receive "grandfather" certificates. Of course, just as there were fewer minority banks, retail stores, and insurance companies in 1935 in proportion to the general population, there were also disproportionately fewer minority truckers. In addition, the Commission's post 1935 entry standard for a grant of operating authority, i.e., that existing service be proven inadequate, served as a barrier to subsequent significantly minority entry.

There have been a number of governmental efforts in the past which sought either to define the problem or to find solutions to some part of the minority transportation issue. In 1975, and again in 1980, the Task Force on Minority Enterprise of the Subcommittee on General Oversight and Minority Enterprise of the House Committee on Small Business held hearings on the role of minority carriers in the regulated transportation industry. Commission witnesses at the Subcommittee hearings cited administrative actions which could have the potential for increasing minority participation. Examples included the establishment of the Small Business Assistance Office, streamlining the application process, eased entry standards, Ex Parte No. 373, *Impact of Commission Decisions on Small Businesses*, and Ex Parte No. MC 107, *Transportation of Government Traffic*. Subcommittee Chairman Congressman Parren J. Mitchell and others cited chronic complaints from minorities in this area and urged the Commission to take more definitive actions.

In 1979, the General Accounting Office issued a report, which discussed ways the federal government could increase opportunities for minority motor carrier participation in the government's transportation programs.[1] The report recommended that the Secretary of Commerce work with individual agencies to develop affirmative action programs which would (1) set specific objectives, goals, and methodologies for increasing the use of minority motor carriers, and (2) provide for a periodic evaluation process and a monitoring procedure to insure attainment of goals. GAO also issued a report with similar recommendations to the Department of Defense.[2]

In 1972, the Commission instituted an investigation into (a) the employment practices of and minority participation within the surface transportation industry, (b) the industry's compliance with applicable civil rights statutes and Executive Orders, and (c) the proper role to be assumed by the Commission in regard to these matters.[3]

In its report, the Commission found that unlawful discriminatory employment practices did exist in the industry but concluded that visible efforts were being made by the industry, including legal action by the U.S. Department of Justice, to correct these problems. In its decision the Commission, nevertheless, reaffirmed its commitment to assist and participate in programs designed to enhance and encourage greater minority participation in surface transportation.

An attempt to deal with the issue of greater minority participation in Federal procurement programs resulted in Congress' "enactment of Public Law No. 95-507."[4] Here, Congress amended the Small Business Act and the Small Business Investment Act of 1958 by establishing that small business concerns generally, and those owned and controlled by socially and economically disadvantaged individuals, shall have the maximum practicable opportunity to participate in the performance of contracts let by any Federal Agency.[5] In effect, government contractors were required to include in their bids details for subcontracting with minority firms. In spite of Public Law No. 95-507, minority transportation firms continue to complain of difficulties in participating effectively in government contracts. Some of the reasons given are a lack of good faith on the part of many contractors and Federal agencies, and barriers to obtaining appropriate ICC authority to become participants in government transportation procurement contracts.

Issues for Consideration

In the backdrop of these governmental actions, Congress has now included increased minority participation as a goal of the National Transportation Policy. We hope the scheduled hearings will provide the Commission with information on specific problem areas and shed light on potential solutions. The following is an inexhaustive list of the issues the Commission wants the participants to address at the hearing:

1. What specific types of problems or difficulties are minorities experiencing in getting, maintaining, or expanding ICC operating authority?

2. Is the application process for the type of authority you desire fully understood? If not, in what respects is it confusing?

3. Does the requirement for shipper support in some applications pose special problems for minority firms? If so, what kind, and have those problems ever precluded the filing of an application?

4. Is the cost of legal fees prohibitive to entry or expansion. In this context, would some form of legal assistance help alleviate this burden, or would you make some other recommendation?

5. Is the application filing fee itself prohibitive to entry or expansion? Would elimination of all filing fees, reduced fees, or some type of sliding-scale fee system based on ability to pay be helpful?

6. What is your general understanding of the Commission's financial fitness requirements? Are these requirements viewed as an obstacle to entry?

7. Do you believe it is easier to purchase ICC authority than to obtain it by application? If so, please explain why.

8. What investment capital problems have you had? Is the interest cost of loans prohibitive? Are loans available at *any* rate?

9. In what ways and to what extent do compliance and recordkeeping requirements imposed by the Commission create financial burdens to existing firms?

10. The Motor Carrier Act of 1980 requires motor carriers of property to maintain $750,000 public liability, property damage, and environmental restoration insurance. What is the impact, in terms of cost or otherwise, of this requirement on your ability to enter the motor carrier transportation field or expand your operations? Does the requirement amount to an entry barrier?

11. Have you missed opportunities to obtain ICC authority in the past because of a lack of information? Which ones? What recommendations would you

[1] *Federal Agencies Can Provide More Opportunities for Minority Motor Carriers*, LCD-79-208, April 25, 1979.

[2] *Minority Motor Carriers Can Be Given More Opportunities to Participate In Defense Transportation*, LCD-78-213, June 6, 1978.

[3] Ex Parte No. 278, *Equal Opportunity In Surface Transportation*, 353 I.C.C. 425 (1977).

[4] 92 Stat. 1757.

[5] 92 Stat. 1767.

make to the Commission to improve communication to minorities in the future?

12. Have you experienced any difficulties in obtaining support from other government agencies for ICC authority in the past? What were the nature of those difficulties?

13. Have you as a minority ever experienced employment discrimination by the ICC regulated carrier? What were the circumstances involved?

14. Have you or your firm ever been refused any association or affiliation with an ICC carrier on racial grounds?

Conclusion

The purpose of these hearings is to find the answers to these and other questions concerning the problems you have in entering the field and in expanding your operations. We want to explore the reasons for the small number of minorities in this industry and to develop politices and strategies for overcoming the obstacles. Bring your ideas, problems and solutions to the hearings. Testify! Fill our the questionnaire attached to this issue paper and help us to continue to raise the level of minority participation in the surface transportation industry. All interested parties are invited to participate in these hearings.

Minority Trucker Questionnaire

The Interstate Commerce Commission is seeking to develop more information about minority involvement in the interstate motor carrier transportation industry. This questionnaire is designed to assist us in developing specific strategies to increase minority participation. It is divided into five sections (A–E). Sections A and B apply to all persons. Section C relates to employee situations; Section D to transportation of government traffic; and Section E to owner-operators. To insure that we properly pursue our minority efforts, please complete all applicable sections of the questionnaire and return it to the ICC, Small Business Assistance Office, Room 3385, Washington, DC 20423.

The collection, use, and maintenance of the data requested here is in conformity with the Privacy Act of 1974, 5 U.S.C. 552a. Since compliance with this request is voluntary, the failure to provide all or any part of the information will have no adverse effect on any individuals' rights, benefits, or privileges under Federal programs.

Section A (to be completed by all):

1. Name and address:———
(Name) ———
(Street) ———
(City) ———
(State) ———
(ZIP code) ———

2. Minority status:
Black———
Spanish origin———
Aleutian———
Asian American———
American Indian———
Female———
Other (specify)———

3a. Type of transportation business:
Motor carrier
—general freight———
—household goods———
—passengers———
—Freight forwarder———
—Household goods agent———
—Property broker———
Water carrier———
Passenger broker———
Intrastate carrier———
Owner-operator———
Other (specify)———

b. Position held (i.e., owner, manager, driver, etc.)———

4. Number of years in transportation business:
0–5——— 6–20——— 20 or more———

5. Scope of transportation operations (number of States served) 1——— 2–5——— 6–20——— 20 or more———

6a. Do you hold ICC authority? Yes——— No———

b. If yes, indicate MC No.:———

c. Type of authority: Common carrier——— Contract carrier——— General freight——— Household goods——— Passenger——— Permanent authority——— Temporary authority———

d. Scope of regulated authority (number of States served):———

e. Did you use an attorney or ICC practitioner? Yes——— No———

7a. If you do not hold ICC authority, why not? Fearful of ICC rules and procedures——— No desire——— Lack of shipper support——— Unsuccessful application——— Too expensive——— Other (specify)———

b. Are you interested in obtaining ICC authority? Yes——— No———
What type (commodities and territory) ——

Section B (to be completed by all):

1. What are your primary sources of information about the transportation industry? The ICC——— Minority transportation associations——— Trade journals——— Other minority businessmen——— Attorney or practitioner——— Other (specify):———

2. What do you believe the ICC can do to best improve communications? Develop minority mailing list——— Distribute booklets/literature——— Conduct seminars/meetings——— Other (specify)———

3. Are you familiar with transportation terms as used by the ICC (such as common and contract carriage or radial and non-radial authority)? Yes——— No———

4. Are you familiar with the provisions of the Motor Carrier Act of 1980? Yes——— No———

5a. Do you have access to technical and managerial assistance? Yes——— No———

b. If no, do you believe the lack of this type of assistance has been an obstacle to successful competing in the transportation industry? Yes——— No———

6a. Are financing sources readily available to your firm? Yes——— No———

b. What is the primary source of your financing? Commercial institutions——— Direct loans from banks, loan companies, etc.——— Guaranteed government loans——— Government grants——— Other (specify)———

c. What are your major financing problems? Inability to secure loans——— Interest rates——— Length of loans——— Collateral required——— Other (specify)———

7a. Do you hold State motor carrier authority? Yes——— No———

b. Are you familiar with the State transportation licensing regulations of States other than where your business is located? Yes——— No———

c. Has compliance with these regulations created serious burdens on your firm? Yes——— No———

8. What is your perception about the dollar cost of acquiring ICC authority? $———

9a. Do you believe legal assistance is required to file for ICC authority? Yes——— No———

b. If desired, is legal assistance available to you? Yes——— No———

c. Would some form of government legal assistance program eliminate any problems you have had in securing legal advice? Yes——— No———

10. Are you familiar with ICC's rate filing requirements? Yes——— No———

11. Are you familiar with ICC's requirements that a regulated carrier designate process agents (persons upon whom legal papers may be filed on your behalf) in each State through which operations are conducted? Yes——— No———

12. Are you familiar with ICC reporting and recordkeeping requirements? Yes——— No———

13a. Are you familiar with DOT and ICC insurance requirements? Yes——— No———

b. What impact does the $750,000 minimum insurance requirement have on your ability to operate as an ICC carrier, in terms of increased cost or otherwise (as provided for in the Motor Carrier Act of 1980)? Cost $——— Barrier to acquiring authority: Yes——— No——— Other (specify)———

14a. What is your estimate of the time required to obtain an initial decision from the ICC on a permanent motor carrier application?
(Time)———

b. Has your perception of regulatory delay at the ICC ever prevented you from filing for authority? Yes——— No———

15a. Have you ever filed an appliation for ICC authority? Yes——— No———

b. If yes, how many permanent ——— Number approved ———
How many temporary ——— Number approved ———

16a. Is the $300 permanent authority filing fee prohibitive to entry or expansion in

regulated interstate operations? Yes——— No———

b. Would elimination of filing fees, reduced fees, or some form of sliding-scale fee system (based on ability to pay), enable you to file more applications with the ICC? Yes——— No———

17a. Does the shipper support requirement associated with some application filings present any special problems? Yes——— No———

b. If yes, specify what kind: ———

c. Have those problems ever prevented you from filing for authority? Yes——— No———

Section C (to be completed by job applicant and by past or present employees of a transportation business):

1a. Have you ever experienced employment discrimination with an ICC regulated carrier? Yes——— No———

b. If yes, identify type of problem: ———

c. Do you believe that past employment discrimination contributed to any lack of opportunity by you in gaining experience in the transportation industry? Yes——— No———

2. Have you ever filed (individually or as a member of a class of individuals) a formal complaint with the Equal Employment Opportunity Commission? Yes——— No———

3a. Have you ever encountered problems in gaining knowledge about the industry in areas other than employment? Yes——— No———

b. If yes, what type? ———

4. Are vocational and other educational courses on transportation available to you? Yes——— No———

Section D (to be completed by persons interested in transporting government traffic):

1. Are you familiar with federal government procurement procedures? Yes——— No———

2a. Have you ever filed a bid to transport government traffic? Yes——— No———

b. If yes, list government agencies ———

3a. Have you ever had difficulty in obtaining support for ICC authority from government agencies? Yes——— No———

If yes, list government agencies ———

4a. Have you ever encountered other types of problems in dealing with government agencies? Yes——— No———

If yes, explain ———

5a. In 1979 the ICC established special, simplified licensing procedures for handling government traffic (Ex Parte No. MC–107). Were you aware of these procedures? Yes——— No———

b. If yes, did you file a request for authority under these special procedures? Yes——— No———

c. If no application was filed, explain why not: ———

Section E (to be completed by owner-operators):

1. Are you: leased to an ICC carrier ——— an exempt hauler ———

2. If leased to an ICC carrier, are you familiar with ICC's leasing regulations? Yes——— No———

3. Have you ever been refused any association with an ICC carrier on what you believe to be racial grounds? Yes——— No———

4a. Have you ever encountered other problems as an owner-operator based on what you feel were racial grounds? Yes——— No———

b. If yes, explain: ———

Any other comments (optional) ———

Note.—No envelope or postage is necessary. Simply fold the questionnaire, staple closed, and drop in a U.S. mailbox. Thank you.

[FR Doc. 81-2082 Filed 1-19-81; 8:45 am]

BILLING CODE 7035-01-M

Motor Carrier Temporary Application

Correction

In FR Doc. 80-34509, published at page 73543, on Wednesday, November 5, 1980, on page 73544, in the third column, the fifth line "points in Guernsey City, OH and Kanawha City, WV" should be corrected to read "points in Guernsey County, OH and Kanawha County, WV".

BILLING CODE 1505-01-M

Motor Carriers; Decision-Notice

The following applications, filed on or after July 3, 1980, seek approval to consolidate, purchase, merge, lease operating rights and properties, or acquire control of motor carriers pursuant to 49 U.S.C. 11343 or 11344. Also, applications directly related to these motor finance applications (such as conversions, gateway eliminations, and securities issuances) may be involved.

The applications are governed by Special Rule 240 of the Commission's Rules of Practice (49 CFR 1100.240). An interim proposed final Rule 240 reflecting changes to comport with the Motor Carrier Act of 1980 was published in the July 3, 1980, Federal Register at 45 FR 45529 under Ex Parte 55 (Sub-No. 44), *Rules Governing Applications Filed By Motor Carriers Under 49 U.S.C. 11344 and 11349.* These rules provide, among other things, that opposition to the granting of an application must be filed with the Commission in the form of verified statements within 45 days after the date of notice of filing of the application is published in the Federal Register. Failure seasonably to oppose will be construed as a waiver of opposition and participation in the proceeding. If the protest includes a request for oral hearing, the request shall meet the requirements of Rule 240(C) of the special rules and shall include the certification required.

Persons wishing to oppose an application must follow the rules under 49 CFR 1100.240(B). A copy of any application, together with applicant's supporting evidence, can be obtained from any applicant upon request and payment to applicant of $10.00, in accordance with 49 CFR 1100.240(A)(h).

Amendments to the request for authority will not be accepted after the date of this publication. However, the Commission may modify the operating authority involved in the application to conform to the Commission's policy of simplifying grants of operating authority.

We find, with the exception of those applications involving impediments (e.g., jurisdictional problems, unresolved fitness questions, questions involving possible unlawful control, or improper divisions of operating rights) that each applicant has demonstrated, in accordance with the applicable provisions of 49 U.S.C. 11301, 11302, 11343, 11344, and 11349, and with the Commission's rules and regulations, that the proposed transaction should be authorized as stated below. Except where specifically noted this decision is neither a major Federal action significantly affecting the quality of the human environment nor does it appear to qualify as a major regulatory action under the Energy Policy and Conservation Act of 1975.

In the absence of legally sufficient protests as to the finance application *or* to any application directly related thereto filed within 45 days of publication (or, if the application later becomes unopposed), appropriate authority will be issued to each applicant (unless the application involves impediments) upon compliance with certain requirements which will be set forth in a notification of effectiveness of this decision-notice. To the extent that the authority sought below may duplicate an applicant's existing authority, the duplication shall not be construed as conferring more than a single operating right.

Applicant(s) must comply with all conditions set forth in the grant or grants of authority within the time period specified in the notice of effectiveness of this decision-notice, or the application of a non-complying applicant shall stand denied.

Dated: January 12, 1981.

By the Commission, Review Board Number 5, Members Krock, Taylor and Williams. (Member Krock not participating).

MC F 14525F, filed December 17, 1980. CARDINAL TRANSPORT, INC. (Cardinal) (1630 Mound Road, Joliet, IL.

60463)—Purchase—WILLIAM T. AUSTIN (Trustee) d.b.a. AUSTIN TRUCKING COMPANY (Austin) (P.O. Box 306, Decatur, AL 35602). Representative: Fred H. Daly, 2550 M Street, NW., Washington, D.C. 20037. Cardinal seeks authority to purchase the interstate operating rights of Austin. John M. Riley, the sole stockholder of Cardinal, seeks authority to acquire control of said rights through this transaction. Cardinal is purchasing the interstate operating rights of Austin evidenced by permit No. MC 143423 (Sub-Nos. 2, 3, 4, 7, and 8), which authorizes the transporation, as a motor contract carrier, of (1) *sugar* (except in bulk), (a) from Gramercy, LA, to Decatur, AL, and (b) from Decatur, AL, to those points in the United States in and east of TX, OK, KS, NE, SD, and ND, under continuing contract(s) with Contract Packaging International, Inc., of Decatur, AL, (2)(a) *paint coatings, resing, and adhesives* (except commodities in bulk, in tank vehicles), from the facilities of Whittaker Coatings and Chemicals, at Chicago and Rockdale, IL, Los Angeles, and Gardena, CA, West Alexandria and Wooster, OH, Decatur, IL, Lenior, NC, and Minneapolis, MN, to points in AL, AR, CA, CT, FL, GA, IL, MD, MA, MN, MS, NH, NJ, NY, NC, OH, PA, SC, TN, TX, and VA, and (b) *raw materials used in the manufacture of the above-described commodities* (except commodities in bulk, in tank vehicles), from points in AL, AR, CA, CT, FL, GA, IL, MD, MA, MN, MS, NH, NJ, NY, NC, OH, PA, SC, TN, TX, and VA, to the facilities of Whittaker Coatings and Chemicals, at Chicago and Rockdale, IL, Los Angeles and Gardena, CA, West Alexandria and Wooster, OH, Decatur, AL, Lenoir, NC, and Minneapolis MN, (3) *insulated copper wire*, from the facilities of Cerro Wire and Cable Company at Hartselle, AL, to points in GA, IN, LA, MS, NC, TN, SC, FL, KY, MI, PA, and NY, under continuing contract(s) with Cerro Wire and Cable Company of Decatur, AL, (4) *copper rods*, from the facilities of Cerro Wire and Cable Company, at Syosset, NY, to the facilities of Cerro Wire and Cable Company at Hartselle, AL, under continuing contract(s) with Cerro Wire and Cable Company at Hartselle, AL, (5)(a) *generators, motors, and internal combustion engines*, and (b) *parts* for the commodities named in (5)(A) above, between the facilities of Onan Corporation at Huntsville, AL, on the one hand, and, on the other, points in AZ, CO, CA, GA, KS, KY, MO, NM, NC, OH, OK, OR, PA, SD, TN, TX, VT, WA, and IL, under continuing contract(s) with Onan Corporation of Minneapolis, MN, and certificate No. MC 143423 (Sub-No. 11), which authorizes *household refrigerators*, from the facilities of General Electric Company of Decatur, AL, to Little Rock, AR, and points in the United States on and east of a line beginning at the mouth of the Mississippi River, and extending along the Mississippi River to its junction with the western boundary of Itasca County, MN, then northward along the western boundaries of Itasca and Koochiching Counties, MN, to the international boundary line between the United States and Canada. Cardinal is authorized to operate as a common carrier pursuant to certificates issued in MC 142059 and sub-numbers thereunder.

Note.—(1) An application for temporary authority has been filed. (2) A directly related conversion application was filed in MC 142059 (Sub-No. 148F) published in this same Federal Register issue.

Decision-Notice

The following operating rights applications, filed on or after July 3, 1980, are filed in connection with pending finance applications under 49 U.S.C. 10926, 11343 or 11344. The applications are governed by Special Rule 247 of the Commission's General Rules of Practice (49 CFR 1100.247). Special Rule 247 was published in the Federal Register of July 3, 1980, at 45 FR 45539.

Persons wishing to oppose an application must follow the rules under 49 CFR 1100.247(B). Persons submitting protests to applications filed in connection with pending finance applications are requested to indicate across the front page of all documents and letters submitted that the involved proceeding is directly related to a finance application and the finance docket number should be provided. A copy of any application, together with applicant's supporting evidence, can be obtained from any applicant upon request and payment to applicant of $10.00.

Amendments to the request for authority are not allowed. However, the Commission may have modified the application to conform to the Commission's policy of simplifying grants of operating authority.

Findings: With the exceptions of those applications involving duly noted problems (e.g., unresolved common control, unresolved fitness questions, and jurisdictional problems) we find, preliminarily, that each applicant has demonstrated that its proposed service warrants a grant of the application under the governing section of the Interstate Commerce Act. Each applicant is fit, willing, and able properly to perform the service proposed and to conform to the requirements of Title 49, Subtitle IV, United States Code, and the Commission's regulations. Except where specifically noted, this decision is neither a major Federal action significantly affecting the quality of the human environment nor a major regulatory action under the Energy Policy and Conservation Act of 1975.

In the absence of legally sufficient protests in the form of verified statements as to the finance application *or* to the following operating rights applications directly related thereto filed on or before March 9, 1981 (or, if the application later becomes unopposed), appropriate authority will be issued to each applicant (except where the application involves duly noted problems) upon compliance with certain requirements which will be set forth in a notification of effectiveness of this decision-notice. On or before March 23, 1981 an applicant may file a verified statement in rebuttal to any statement in opposition.

Applicant(s) must comply with all conditions set forth in the grant or grants of authority within the time period specified in the notice by effectiveness of this decision-notice, or the application of a non-complying applicant shall stand denied.

To the extent that any of the authority granted may duplicate an applicant's other authority, the duplication shall be construed as conferring only a single operating right.

Dated: January 12, 1981.

By the Commission, Review Board Number 5, Members Krock, Taylor, and Williams (member Krock not participating).

MC 142059 (Sub-148F), filed December 17, 1980. Applicant: CARDINAL TRANSPORT, INC.—conversion and extension—1830 Mound Road, Joliet, IL 60433. Representative: Fred H. Daly, 2550 M Street NW., Washington, D.C. 20037. Authority is sought to convert contract carrier authority to common carrier authority in Docket No. MC 143423 (Sub-Nos. 2, 3, 4, 7F, and 8F). The authority being converted is as follows: (1) *sugar* (except in bulk), (a) from Gramercy, LA, to Decatur, AL, and (b) from Decatur, AL, to those points in the United States in and east of TX, OK, KS, NE, SD, and ND, (2)(a) *paint coatings, resins, and adhesives* (except commodities in bulk, in tank vehicles), from Chicago and Rockdale, IL, Los Angeles and Gardena, CA, West Alexandria and Wooster, OH, Decatur, IL, Lenoir, NC, and Minneapolis, MN, to points in AL, AR, CA, CT, FL, GA, IL, MD, MA, NM, MS, NH, NJ, NY, NC, OH, PA, SC, TN, TX, and VA, and (b) *raw*

materials used in the manufacture of the above-described commodities (except commodities in bulk, in tank vehicles), from points in AL, AR, CA, CT, FL, GA, IL, MD, MA, MN, MS, NH, NJ, NY, NC, OH, PA, SC, TN, TX, and VA, to Chicago and Rockdale, IL, Los Angeles and Gardena, CA, West Alexandria and Wooster, OH, Decatur, AL, Lenoir, NC, and Minneapolis, MN, (3) *insulated copper wire*, from Hartselle, AL, to points in GA, IN, LA, MS, NC, TN, SC, FL, KY, MI, PA, and NY, (4) *copper rods*, from Syosset, NY, to Hartselle, AL, and (5) *generators, motors, and internal combustion engines*, and (b) *parts* for the commodities named in (5)(a) above, between Huntsville, AL, on the one hand, and, on the other, points in AZ, CO, CA, GA, KS, KY, MO, NM, NC, OH, OK, OR, PA, SD, TN, TX, UT, WA, and IL. Applicant seeks to broadened the scope of authority in the conversion application. The authority being broaden is as follows: (1) *sugar* (except in bulk), between points in Morgan County, AL, and Orleans County, LA, on the one hand, and, on the other, those points in the United States in and east of TX, OK, KY, NE, SD, and ND, (2) *paint, coatings, resins, and adhesives*, and *raw materials* used in the manufacture thereof, between points in Cook County, IL, Will County, IL, Los Angeles County, CA, Wayne County, OH, Preble County, OH, Morgan County, AL, Caldwell County, NC, and Hennepin County, MN, on the one hand, and, on the other, points in the United States, (3) *copper wire*, between points in Morgan County, AL, on the one hand, and, on the other, points in GA, IN, LA, MS, MO, SC, TN, FL, KY, MI, PA, and NY, (4) *copper rods*, between points in Nassau County, NY, on the one hand, and, on the other, points in Morgan County, AL, and (5) *electrical generation and internal combustion engines, and parts and accessories* related thereto; and *materials, equipment and supplies* used in the manufacture thereof, between points in Madison County, AL, on the one hand, and, on the other, points in the United States. Condition: Since the above authority is broadening the authority sought in the directly related conversion application, we will require an additional $350 filing fee as a condition to the approval of this application.

Note.—This application in part, is directly related to MC-F-14528F, published in this same Federal Register issue.

Agatha L. Mergenovich,
Secretary.

[FR Doc. 81-2020 Filed 1-20-81; 8:45 am]
BILLING CODE 7035-01-M

Motor Carrier Decision-Notice

The following applications, filed on or after July 3, 1980, seek approval to consolidate, purchase, merge, lease operating rights and properties, or acquire control of motor carriers pursuant to 49 U.S.C. 11343 or 11344. Also, applications directly related to these motor finance applications (such as conversions, gateway eliminations, and securities issuances) may be involved.

The applications are governed by Special Rule 240 of the Commission's Rules of Practice (49 CFR 1100.240). An interim proposed final Rule 240 reflecting changes to comport with the Motor Carrier Act of 1980 was published in the July 3, 1980, Federal Register at 45 FR 45529 under Ex Parte 55 (Sub-No. 44), Rules Governing Applications filed By Motor Carriers Under 49 U.S.C. 11344 and 11349. These rules provides among other things, that oppostion to the granting of an application must be filed with the Commission in the form of verified statements within 45 days after the date of notice of filing of the application is published in the Federal Register. Failure seasonably to oppose will be construed as a waiver of opposition and participation in the proceeding. If the protest includes a request for oral hearing, the request shall meet the requirements of Rule 240(C) of the special rules and shall include the certification required.

Persons wishing to oppose an application must follow the rules under 49 CFR 1100.240(B). A copy of any application, together with applicant's supporting evidence, can be obtained from any applicant upon request and payment to applicant of $10.00, in accordance with 49 CFR 1100.240(A)(h).

Amendments to the request for authority will not be accepted after the date of this publication. However, the Commission may modify the operating authority involved in the application to conform to the Commission's policy of simplifying grants of operating authority.

We find, with the exception of those applications involving impediments (e.g., jurisdictional problems, unresolved fitness questions, questions involving possible unlawful control, or improper divisions of operating rights) that each applicant has demonstrated, in accordance with the applicable provisions of 49 U.S.C. 11301, 11302, 11343, 11344, and 11349, and with the Commission's rules and regulations, that the proposed transaction should be authorized as stated below. Except where specifically noted this decision is neither a major Federal action significantly affecting the quality of the human environment nor does it appear to qualify as a major regulatory action under the Energy Policy and Conservation Act of 1975.

In the absence of legally sufficient protests as to the finance application *or* to any application directly related thereto filed within 45 days of publication (or, if the application later becomes unopposed), appropriate authority will be issued to each applicant (unless the application involves impediments) upon compliance with certain requirements which will be set forth in a notification of effectiveness of this decision-notice. To the extent that the authority sought below may duplicate an applicant's existing authority, the duplication shall not be construed as conferring more than a single operating right.

Applicant(s) must comply with all conditions set forth in the grant or grants of authority within the time period specified in the notice of effectiveness of this decision-notice, or the application of a non-complying applicant shall stand denied.

Dated: January 19, 1981.

By the Commission, Review Board Number 5, Members Krock, Taylor and Williams. (Board Member Krock not participating).

MC-F 14467F, filed December 17, 1980. MID-CITY FREIGHT LINES, INC. (Mid-City) (Route 1, Sibley, MO 64088)—Puchase (portion)—THUNDERBIRD MOTOR FREIGHT LINES, INC. (Thunderbird) (1473 Ripley, P.O. Box 5216, Lake Station, IN 46405). Representative: Wendell G. Rinacke, Route 1, Sible, MO 64088. Mid-City seeks authority to purchase a portion of the interstate operating rights of Thunderbird. Wendell G. Rinacke, who controls Mid-City through 100% of capital stock, as a condition to the approval of this transaction, will be required to join in the application. Mid-City is purchasing that portion of Thunderbird's Certificate No. MC-125708 (Sub-No. 104), which authorizes the transportation, as a motor common carrier, over irregular routes, of (1) *fertilizer equipment, fertilizer implements parts and accessories*, from the plant site and warehouse facilities of Clark Mfg. Co. (now Lely Independent Mfg. Co.) at Atherton, MO, to points in the U.S. (except AK and HI), and (2) *materials and supplies* used in the manufacture of fertilizer equipment, implement parts, and accessories, in the reverse direction. Mid-City is authorized to operate as a motor common carrier pursuant to authority issued in MC-138218 and sub-numbers thereunder. Condition: Approval and authorization of this transaction is conditioned upon

the prior receipt by the Commission of an affidavit signed by Wendell G. Rinacke, stating that he is in control of Mid-City Freight Lines, Inc., through stock ownership, that he joins in this application, and furnishing all information required by the application, form OP–F–44, to be submitted by an individual in control of an acquiring carrier.

MC–F 14527F, filed December 17, 1980. WOOSTER MOTOR WAYS, INC. (Wooster) (1357 Mechanicsburg Road, Wooster, OH 44691)—Purchase—BEAVERSON TRUCKING, INC. (Beaverson) (1752 Locust Street, Wooster, OH 44691). Representative: David A. Turano, 100 East Broad Street, Columbus, OH 43215. Wooster seeks authority to purchase the interstate operating rights of Beaverson. Kenneth E. Beaverson, the sole stockholder of Wooster, seeks authority to acquire control of said rights through the transaction. Wooster is purchasing those rights contained in Beaverson's Permits in MC–88321 and sub-numbers thereunder, which authorize the transportation, as a motor contract carrier, over irregular routes, of: (1) *truck bodies*, assembled and unassembled, and *parts, materials, and accessories* used in the assembly and sale of truck bodies when transported therewith, from Wooster and Akron, OH, to points in CT, DE, IL, IA, IN, KY, MD, MA, MI, MN, MO, NE, NJ, NY, PA, TN, VA, WV, and WI; (2) *supplies and materials* used in the manufacture, assembly and sale of truck bodies, from the above-specified destination points to Wooster and Akron, OH; (3) *unfinished sheet-metal stampings*, from Wooster, OH, to points in IN and to points in MI (except Willow Run, MI); (4) *paper and paper products* and *materials and supplies* used in the manufacture and sale thereof, between Wooster, OH, on the one hand, and, on the other, points in IL, IN, KY, MI, NJ, NY, OH, PA, and WV; (5) *paper and paper products*, and *equipment, materials and supplies* used in the manufacture, distribution, and sale of paper and paper product (except commodities in bulk, and except machinery, which by reason of size or weight requires the use of special equipment), between points in Sewickley Township, Westmoreland County, PA, on the one hand, and, on the other, points in IN, KY, MD, NJ, NY, PA, OH, VA, WV, and DC, under continuing contract with International Paper Company; and (6) *machinery, equipment, materials, and supplies* used in, or in connection with, the discovery, development, production, refining, manufacture, processing, storage, transmission, and distribution of natural gas and petroleum and their products and by-products (except commodities in bulk), between points in IL, IN, KY, MI, NY, OH, PA, and WV, under continuing contract with Cafaco, Inc., of Wooster, OH. Wooster is a common carrier operating under certificates issued in MC–145194, transporting specified commodities in described areas involving the States of MI, IL, IN, OH, NY, PA, MA, CT, RI, NJ, MD, DE, WV, VA, NC, SC, GA, and AL.

Note.—Application for TA has been filed.

MC F 14534F, filed December 18, 1980. JOHNSON'S BUS SERVICE, INC. (Johnson) (704 Main Street, Mt. Joy, PA 17552)—Purchase(portion)—BROWN'S BUS SERVICE, INC. d.b.a. CAN-AM TOURS, (Brown) (Coatesville, PA 19320). Representative: J. Bruce Walter, P.O. Box 1166, Harrisburg, PA 17108. Johnson seeks authority to purchase a portion of the interstate operating rights of Brown. Robert E. Johnson, sole stockholder of Johnson, as a condition to the approval and authorization of this transaction, will be required to join in this application as person in control. Johnson seeks to purchase the interstate operating rights contained in Brown's certificates which authorize the transportation, as a motor common carrier, over regular routes, as follows: MC–94774 (Sub-No. 2), *passengers, and their baggage* in the same vehicle with passengers, between Chester, PA, and Camden, NJ, serving all intermediate points; from Chester over U.S. Hwy 13 to junction PA Hwy 420, then over PA Hwy 420 to Essington, PA, then over PA Hwy 291 to Philadelphia, PA, then over the Walt Whitman Bridge and city streets to Camden, and return over the same route, service over the above-described route is restricted to the transportation of passengers who are picked up or discharged at the site of the plant of the New York Ship Building Corporation at Camden; and MC–94774 (Sub–No. 5), *passengers and their baggage* in the same vehicle with passengers, between Chester PA, and Gloucester City, NJ, serving all intermediate points except that no service shall be provided in the city of Philadelphia, PA, at points north of Interstate Hwy 676 or west of PA Hwy 291; from Chester over PA Hwy 291 to junction Interstate Hwy 676, then over Interstate Hwy 676 and the Walt Whitman Bridge to Camden, NJ, then over city streets and connecting hwys to Glucester City, and return over the same route. Johnson presently holds no authority from the Commission. Robert E. Johnson, sole stockholder of Johnson, controls 33% of Executive Coach (MC–144620F). Condition: Authorization and approval of this transaction and the issuance of an effective notice is conditioned upon the prior receipt by the Commission of an affidavit signed by Robert E. Johnson, stating that he is the person in control of Johnson's Bus Service, Inc., through stock ownership, and that he joins in this application.

[FR Doc. 81-1888 Filed 1-20-81; 8:45 am]

BILLING CODE 7035-01-M

Motor Carrier Permanent Authority Decisions; Decision-Notice

The following applications, filed on or after July 3, 1980, are governed by Special Rule 247 of the Commission's Rules of Practice, see 49 CFR 1100.247. Special Rule 247 was published in the Federal Register of July 3, 1980, at 45 FR 45539. For compliance procedures, refer to the Federal Register issue of December 3, 1980, at 45 FR 80109.

Persons wishing to oppose an application must follow the rules under 49 CFR 1100.247(f). A copy of any application, together with applicant's supporting evidence, can be obtained from any applicant upon request and payment to applicant of $10.00.

Amendments to the request for authority are not allowed. Some of the applications may have been modified prior to publication to conform to the Commission's policy of simplifying grants of operating authority.

Findings:

With the exception of those applications involving duly noted problems (e.g., unresolved common control, fitness, water carrier dual operations, or jurisdictional questions) we find, preliminarily, that each applicant has demonstrated its proposed service warrants a grant of the application under the governing section of the Interstate Commerce Act. Each applicant is fit, willing, and able to perform the service proposed, and to conform to the requirements of Title 49, Subtitle IV, United States Code, and the Commission's regulations. Except where noted, this decision is neither a major Federal action significantly affecting the quality of the human environment nor a major regulatory action under the Energy Policy and Conservation Act of 1975.

In the absence of legally sufficient interest in the form of verified statements filed on or before March 9, 1981, (or, if the application later becomes unopposed) appropriate authorizing documents will be issued to applicants with regulated operations (except those with duly noted problems) and will remain in full effect only as long as the applicant maintains

appropriate compliance. The unopposed applications involving new entrants will be subject to the issuance of an effective notice setting forth the compliance requirements which must be satisfied before the authority will be issued. Once this compliance is met, the authority will be issued.

On or before March 23, 1981, applicant may file a verified statement in rebuttal to any statement in opposition.

To the extent that any of the authority granted may duplicate an applicant's other authority, the duplication shall be construed as conferring only a single operating right.

Note.—All applications are for authority to operate as a motor common carrier in interstate or foreign commerce over irregular routes, unless noted otherwise. Applications for motor contract carrier authority are those where service is for a named shipper "under contract".

Volume No. OP1-[illegible]

Decided: January 14, 1981.

By the Commission, Review Board No. 3, Members Parker, Fortier, and Hill. (Member Hill dissenting.)

MC 33641 (Sub-156F), filed November 18, 1980, and previously noticed in FR issue of December 11, 1980, as MC 33541 (Sub-156F). Applicant: IML FREIGHT, INC., P.O. Box 30277, Salt Lake City, UT 54130. Representative: Eldon E. Bresee (same address as applicant). Transporting *general commodities* (except household goods as defined by the Commission and classes A and B explosives), between points in the U.S.

Note.—This republication deletes the condition previously imposed and corrects the docket number.

Volume No. OP2-[illegible]

Decided: January 14, 1981.

By the Commission, Review Board No. 2, Members Chandler, Eaton, and Liberman.

MC 144303 (Sub-28), (correction), filed November 5, 1980, published in the Federal Register, issue of December 10, 1980, and republished, as corrected, this issue. Applicant: YOUNGBLOOD TRUCK LINES, INC., P.O. Box 1048, Fletcher, NC 28732. Representative: Charles Ephraim, 406 World Center Bldg., 918 16th St., NW., Washington, D.C. 20006. Transporting *general commodities* (except household goods as defined by the Commission and classes A and B explosives), between points in the U.S., under continuing contract(s) with Franklin Chemical Industries, Inc., of Columbus, OH, and its subsidiaries and affiliates. The purpose of this republication is to correct the territorial description by adding "and its subsidiaries and affiliates". This application was originally published under sub 23, which has been re-numbered to sub 26 this publication.

Agatha L. Mergenovich,
Secretary.

[FR Doc. 81-2000 Filed 1-19-81; 8:45 am]
BILLING CODE 7035-01-M

[Finance Docket No. 29455 (Sub-Nos. 1-5)]

Norfolk and Western Railway Co; Purchase, Illinois Terminal Railroad Co.; Decision and Notice

AGENCY: Interstate Commerce Commission.

ACTION: Applications accepted for consideration.

SUMMARY: The Commission is accepting for consideration the application of Norfolk and Western Railway Company to purchase the assets of the Illinois Terminal Railroad Company. The proposed transaction is found not to constitute one of regional or national transportation significance within the meaning of the Staggers Rail Act of 1980. The Commission is also accepting related applications concerning certain trackage rights agreements with the Illinois Central Gulf Railroad Company and the Chicago and North Western Transportation Company, and the assumption of bonds of Illinois Terminal Railroad Company.

DATES: Written comments must be filed no later than February 20, 1981.

FOR FURTHER INFORMATION CONTACT: Ellen Hanson (202) 275-7245 or Ernest B. Abbott (202) 275-3002.

ADDRESS: An original and 10 copies of all statements should be sent to: Section of Finance, Room 5414, Interstate Commerce Commission, Washington, D.C. 20423.

SUPPLEMENTARY INFORMATION: Finance Docket No. 29455 (Sub-No. 1), Norfolk and Western Railway Company—Purchase—Illinois Terminal Railroad Company; Finance Docket No. 29455 (Sub-No. 2), Norfolk and Western Railway Company—Assumption and Obligation of Bonds of Illinois Terminal Company; Finance Docket No. 29455 (Sub-No. 3), Norfolk and Western Railway Company—Trackage Rights—Illinois Central Gulf Railroad Company; Finance Docket No. 29455 (Sub-No. 4), Norfolk and Western Railway Company—Trackage Rights—Illinois Central Gulf Railroad Company; Finance Docket No. 29455 (Sub-No. 5), Norfolk and Western Railway Company—Trackage Rights—Chicago and North Western Transportation Company.

On December 22, 1980, NORFOLK AND WESTERN RAILWAY COMPANY (N&W) and ILLINOIS TERMINAL RAILROAD COMPANY (IT) jointly filed an application under 49 U.S.C. 11343 seeking authority for N&W to purchase the assets and equipment of IT. A number of related applications were also filed on December 22, 1980, including three trackage rights applications (two involving the Illinois Central Gulf Railroad Company (ICG) and one with the Chicago and North Western Transportation Company (C&NW)) and an application for approval for N&W to assume obligation and liability of bonds of IT.

All of the applications have been consolidated for handling by the Commission.

These applications were filed under our current consolidation regulations, 49 CFR Part 1111, as modified in Ex Parte No. 282 (Sub-No. 3) [45 FR 62991, September 23, 1980], *Railroad Consolidation Procedures*, 363 I.C.C. 200 (1980). Applicability of these regulations was established in our decision in this proceeding served December 11, 1980. These regulations, subject to the waivers granted in our December 11, 1980 decision, apply to all other persons who may become parties to these proceedings.

We are accepting these applications for consideration because they substantially comply with the applicable regulations and the waivers granted in this proceeding.

The applications and exhibits are available for inspection in the Public Docket Room at the offices of the Interstate Commerce Commission in Washington, D.C. In addition, they may be obtained from applicants' representatives upon request.

Description of the Transaction

The proposed transaction involves the purchase by N&W, a Class I rail carrier, of the principal assets and equipment of IT, a Class II rail carrier. The transaction is governed by 49 U.S.C. § 11343 and the time limits of 49 U.S.C. 11345, as those sections are modified by Section 228 of the Staggers Rail Act of 1980, Public Law 96-448, October 14, 1980.

The rail carrier subsidiaries of N&W are set forth in the Appendix. IT has no rail carrier subsidiaries.

N&W operates a system comprised of 7,454 miles of railroad in IL, IN, IA, KY, MD, MI, MO, NE, NY, NC, OH, PA, VA, and WV, and in the Province of Ontario, Canada. N&W also operates in KS pursuant to trackage rights.

The principal lines of N&W extend from the eastern points of Norfolk, VA, Hagerstown, MD, and Buffalo, NY, westward to Kansas City, KS, and

Omaha, NE, and serve Detroit, MI, Cleveland, Toledo, Akron, Columbus and Cincinnati, OH, Ft. Wayne, Muncie, and Indianapolis, IN, Chicago and Decatur, IL, St. Louis, MO, and Pittsburgh, PA. N&W also provides north-south service between Chicago and St. Louis, between the upper midwest and western VA, and through the Shenandoah Valley of Va.

IT operates in Illinois and Missouri, with a system comprising 420.45 miles of main track of which 149.18 miles are owned and the remainder operated under trackage rights agreements. The principal line of IT extends from St. Louis, MO to Springfield, Decatur and Champaign, IL. IT also has a line that extends from Decatur to Peoria, IL.

If the transaction is approved N&W will operate over former IT lines as a single carrier. IT will be dissolved as a corporate entity.

Presently pending before the Commission is an application by NWS Enterprises, Inc., a holding company, to control both N&W and the Southern Railway Company. F.D. 29430 (Sub-No. 1). *See* 46 FR 173 (January 2, 1981). Should both applications be approved by the Commission, IT's lines would be incorporated in the new NWS system.

Statutory Standards

Under the Staggers Rail Act, if a proceeding does not involve the merger or control of at least two class I railroads, we must approve the application unless we find:

(1) As a result of the transaction there is likely to be a substantial lessening of competition, creation of a monopoly, or restraint of trade in freight surface transportation in any region of the United States; and

(2) The anticompetitive effects of the transaction outweigh the public interest in meeting significant transportation needs.

49 U.S.C. 11344(d). Parties filing comments are cautioned and urged to address these statutory criteria.

The Staggers Rail Act requires us to indicate in this notice whether the proposed transaction is of "regional or national transportation significance."[1] Our interim regulations state that a Section 11343 transaction between a Class I railroad and a Class II railroad is of regional or national transportation significance if it is a "control or merger" proceeding, or if it is a "major market extension" resulting from, *inter alia*, an acquisition or purchase. 49 CFR 1111.5(a), *as amended by* Ex Parte No. 282 (Sub-No. 8) [45 FR 74486, November 10, 1980], *supra*.

N&W's application does not appear to constitute a major market extension. First, the transaction does not give N&W access to any new market. N&W already serves IT's principal market area (St. Louis, MO). With one exception (Delany, IL), all IT terminal points connect with N&W. N&W and IT essentially operate parallel lines and N&W will gain access to only a few additional points, such as Morton and Mackinaw, IL. While the transaction arguably gives N&W access to new through routes from St. Louis to Peoria and from St. Louis to Champaign (both via Springfield and Decatur), IT's route is approximately equal in length to that of N&W, consists of relatively light weight rail, and is in poor condition; it does not provide N&W with an opportunity to improve its service time significantly.

The competitive insignificance of the transaction is reflected by the vote of IT's shareholders approving N&W's proposal. These shareholders are the 8 principal carriers serving the midwest area, and are N&W's principal competitors in the region. Yet all but the trustee of the Chicago, Rock Island, and Pacific Railroad Company, which is no longer in rail operations, voted for the proposal.

Finally, the price to be paid for the extensive mileage involved does not seem to reflect any major competitive benefits. The principal consideration for N&W's acquisition of all of IT's assets is the assumption by N&W of IT's first mortgage in the amount of $35.3 million.

For all of these reasons, we believe the proposed transaction is not a major market extension. Moreover, we believe that our "major market extension" analysis demonstrates directly that the transaction is not of regional or national transportation significance. Indeed, the purpose of our major market extension rules is to identify those transactions which will likely have a significant impact. See 49 CFR 1111.3(c).

We believe, on further reflection, that our statement in our interim regulations that a proceeding is of regional or national transportation significance if it involves the "merger or control"—as opposed to the "acquisition"—of a Class I and a Class II carrier is unduly restrictive. The form of the transaction—merger, control, or acquisition of assets and assumption of obligation—should not affect the substance of the transaction or its significance to the regional and national transportation systems.

Accordingly, whether or not N&W's purchase of substantially all assets of IT should be construed as, in essence, a "merger or control", we hereby find that the proposed transaction is not one of regional or national transportation significance.

Participation in the Proceeding: Comments

Any interested person may participate in this proceeding by submitting written comments regarding the applications. An original and 10 copies must be filed with the Section of Finance, Room 5414, Interstate Commerce Commission, Washington, DC 20423, no later than February 20, 1981. Written comments shall be concurrently served by first-class mail on the United States Secretary of Transportation, the Attorney General of the United States, and the applicants' representatives: Robert J. Cooney, Senior General Attorney, Norfolk and Western Railway Company, 1600 Railway Exchange Bldg., St. Louis, MO 63101 and Steven J. Anthony, Secretary and General Counsel, Illinois Terminal Railroad Company, 710 Tucker Boulevard, St. Louis, MO 63177.

Written comments must also be served upon all parties of record within 10 days of service of the service list by the Commission. We plan to issue that service list by March 2, 1981. All persons who file timely written comments may be considered as parties of record, but only if they so indicate in their comments. In this event no petition for leave to intervene need be filed.

Written comments must contain:

(1) The docket number and title of the proceeding;

(2) The name, address and telephone number of the commenting party and its representative upon whom service shall be made;

(3) The commenting party's position, *i.e.* whether it supports or opposes the proposed transactions;

(4) A statement of whether the commenting party intends to participate formally in the proceeding or merely comment upon the proposal;

(5) A list of all information sought to be discovered from applicant carriers;

(6) An initial list of specific protective conditions sought; and

(7) Any request for oral hearing that the commenting party will make with reasons supporting the request. Particular attention should be given to

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[1] This finding determines the time frames applicable to the proceeding. If the transaction is not of regional or national transportation significance, we must issue a final decision within 180 days from the date of publication of this notice in the Federal Register; otherwise, we have 270 days in which to issue a final decision.

Furthermore, there is no provision for the filing of inconsistent applications if the transaction is not of regional or national transportation significance. See Ex Parte No. 282 (Sub-No. 8), *Railroad Consolidation Procedures—Time Revisions*, (decided October 28, 1980) 45 FR 74486 (November 10, 1980).

Ex Parte No. 282 (Sub-No. 3A), *Railroad Consolidation Procedings, Expedited Processing*, (served December 17, 1980, 45 FR 84603 (December 23, 1980).

We advise interested person to direct their comments to the statutory criteria discussed above.

Preliminary comments from the Secretary of Transportation and the Attorney General must be filed with the Commission by March 9, 1981.

Responsive Applications

The Staggers Rail Act of 1980 contains no provision for inconsistent applications in connection with a transaction which is not of regional or national significance. Our interim regulations implementing the Act expressly prohibit such responsive application. Ex parte No. 282 (Sub-No. 3), *supra*. Thus, none will be entertained.

Procedural Information

Applicants are directed to respond no later than March 25, 1981, to any information request contained in the written comments of other parties. We encourage response to discovery requests as soon as possible in order to expedite the proceeding. Applicants' responses should indicate what information will be voluntarily supplied and the reasons why the remainder will not be voluntarily supplied. We warn parties now that we will not tolerate dilatory tactics in response to reasonable discovery requests designed to elicit relevant evidence. A refusal voluntarily to supply information will be treated as an objection to the request for discovery. Responses should be served upon all parties of record, and 10 copies of those responses should be concurrently filed with the Commission.

The original and 10 copies of all documents in this proceeding should be filed directly with the Section of Finance, Office of Proceedings, Interstate Commerce Commission, Room 5414, Washington, DC 20423.

Formal hearing are not contemplated at this time. On or before April 4, 1981, if hearings or other evidentiary proceedings are deemed necessary, we will issue a further order to that effect.

By statute, the evidentiary phase of the proceeding must be concluded by May 6, 1981. Service of an initial decision will be waived, and determination on the merits of the applications will be made in the first instance by the entire Commission, under 49 U.S.C. 11345, by June 20, 1981.

It is ordered:

1. The applications in Finance Docket No. 29455 (Subs. 1–6) are accepted for consideration.

2. The parties shall comply with all provisions as stated above.

3. This decision is effective on January 21, 1980.

Decided: January 14, 1981.

By the Commission, Chairman Gaskins, Vice Chairman Alexis, Commissioners Gresham, Clapp, Trantum, and Gilliam.

Agatha L. Mergenovich,
Secretary.

Appendix—Norfolk and Western Railway Company's Railroad Subsidiaries

Class III

The Akron, Canton & Youngstown Railroad Company.

Chesapeake Western Railway.

The Lorain & West Virginia Railway Company.

New Jersey, Indiana & Illinois Railroad Company.

Norfolk, Franklin and Danville Railway Company.

Terminal Company

The Lake Erie and Fort Wayne Railroad Company.

Other Railroad Companies

The Scioto Valley and New England Railroad Company.

The Toledo Belt Railway Company.

Wabash Railroad Company.

The Wheeling and Lake Erie Railway Company.

[FR Doc. 81-2088 Filed 1-19-81; 8:45 am]
BILLING CODE 7035-01-M

Motor Carriers; Permanent Authority Decisions

Correction

In FR Doc. 80-34324, published at page 73148, on Tuesday, November 4, 1980, on page 73154, in the second column, the first line, "Bridgeport, OH" should be corrected to read "Bridgeport, NJ".
BILLING CODE 1505-01-M

Motor Carrier Temporary Authority Application

Correction

In FR Doc. 80-36060, published at page 76538, on Wednesday, November 19, 1980, on page 76542, in the second column, in the fourth paragraph "MC 124078 (Sub-4-44TA)", in the ninth line, "Baton Rouge, IA" should be corrected to read "Baton Rouge, LA".
BILLING CODE 1505-01-M

Motor Carrier Temporary Authority Application

The following are notices of filing of applications for temporary authority under Section 10928 of the Interstate Commerce Act and in accordance with the provisions of 49 CFR 1131.3. These rules provide that an original and two (2) copies of protests to an application may be filed with the Regional Office named in the Federal Register publication no later than the 15th calendar day after the date the notice of the filing of the application is published in the Federal Register. One copy of the protest must be served on the applicant, or its authorized representative, if any, and the protestant must certify that such service has been made. The protest must identify the operating authority upon which it is predicated, specifying the "MC" docket and "Sub" number and quoting the particular portion of authority upon which it relies. Also, the protestant shall specify the service it can and will provide and the amount and type of equipment it will make available for use in connection with the service contemplated by the TA application. The weight accorded a protest shall be governed by the completeness and pertinence of the protestant's information.

Except as otherwise specifically noted, each applicant states that there will be no significant effect on the quality of the human environment resulting from approval of its application.

A copy of the application is on file, and can be examined at the ICC Regional Office to which protests are to be transmitted.

Note.—All applications seek authority to operate as a common carrier over irregular routes except as otherwise noted.

Motor Carriers of Property

Notice No. F-67

The following applications were filed in region I. Send protests to: Interstate Commerce Commission, Regional Authority Center, 150 Causeway Street, Room 501, Boston, MA 02114.

MC 140267 (Sub-1-2TA), filed January 8, 1981. Applicant: R. A. TRANSPORTATION, INC., Six Connerty Court, East Brunswick, NJ 08816. Representative: Thomas J. Beener, 67 Wall Street, Suite 2510, New York, NY 10005. *Contract carrier:* irregular routes: *Paint, stains, varnishes, liquid and dry*, from Parlin, NJ, to points in New York, NY. Supporting shipper: E. I. Dupont de Nemours & Co., Inc., 1000–1007 Market Street, Wilmington, DE 19898.

MC 6973 (Sub-1-6TA), filed January 8, 1981. Applicant: METROPOLITAN TRUCKING, INC., 75 Broad Avenue, Fairview, NJ 07022. Representative: Morton E. Kiel, Suite 1832, Two World Trade Center, New York, NY 10048. *Such commodities as are manufactured, dealt in or used by a manufacturer or distributor of chemicals, plastic materials (except in bulk),* between points in the US. Supporting shipper(s): Amoco Chemicals, 200 E. Randolph Drive, Chicago, IL 60601. Dow Chemical USA, P.O. Box 150, Building 3302, Plaquemine, LA 70764. B. F. Goodrich, 6100 Oak Tree Blvd., Cleveland, OH 44131. P. D. George Company, Industrial Coatings Div., 5200 N. 2nd Street, St. Louis MO 63147. Meer Corp., 9500 Railroad Avenue, North Bergen, NJ 07047.

MC 123408 (Sub-1-6TA), filed December 31, 1980. Applicant: FOOD HAULERS, INC., 600 York Street, Elizabeth, NJ 07207. Representative: Barbara R. Klein, 1101 Connecticut Avenue N.W., Washington, DC 20036. *Contract carrier:* Irregular routes: *Frozen food products* between points in the US, under continuing contracts with Lenders Bagel Bakery. Supporting shipper: Lender's Bagel Bakery Inc., Post Road, West Haven, CT 06516.

MC 106748 (Sub-1-2TA), filed December 31, 1980. Applicant: GODDARD'S TRANSPORTATION, INC., Route 4, Fair Haven, VT 05743. Representative: John P. Monte, P.O. Box 568, Barre, VT 05641. *Ground limestone,* from Florence VT to Franklin, PA. Supporting shipper: Omya, Inc., 61 Main Street, Proctor, VT 05765.

MC 150121 (Sub-1-1TA), filed December 30, 1980. Applicant: DVJ TRUCK LINES, INC., 1 Ridge Road, Monmouth Junction, NJ 08852. Representative: Henry J. Capro, 1585 Morris Avenue, Union, NJ 07083. *Contract carrier:* Irregular routes: *Toilet Preparations, bandages or dressings, soap and shampoo, swabs, diapers or diaper liners, baby gift sets, powder, baby talc and related raw materials,* between Somerset, North Brunswick, Linden, NJ; NJ TOFC ramps, Port Jervis, NY, Philadelphia TOFC ramps, Westchester, PA, and Harrisburg, PA. Supporting shipper: Johnson & Johnson Baby Products Company, 220 Centennial Avenue, Piscataway, NJ 08854.

MC 22388 (Sub-1-3TA), filed January 8, 1981. Applicant: K. G. MOORE, INC., 9 Park Ave., Hudson, NH 03051. Representative: Robert G. Parks, 20 Walnut St., Suite 101, Wellesley Hills, MA 02181. *General commodities (except those of unusual value, Classes A and B explosives, household goods as defined by the Commission, commodities in bulk, commodities requiring special equipment, and those injurious or contaminating to other lading)* (1) between points in CT, ME, MA, NH, RI and VT, and (2) between points in CT, ME, MA, NH, RI and VT, on the one hand, and, on the other, points in the U.S. (except HI). There are fourteen (14) certificates of support submitted with this application which may be examined at the I.C.C. Regional Office at Boston, MA.

MC 16872 (Sub-1-3TA), filed January 7, 1981. Applicant: WILLIAM MIRRER, d.b.a. MIRRER'S TRUCKING, 100 E. 25th Street, Paterson, NJ 07514. Representative: George A. Olsen, P.O. Box 357, Gladstone, NJ 07934. *(1) Plastic and metal articles, and (2) materials, equipment and supplies used in the manufacture and sale of the commodities named in (1) above,* (1) between Carlstadt, NJ, on the one hand, and, on the other, Sarasota, FL, and (2) between Carlstadt, NJ, on the one hand, and, on the other, points in TX. Supporting shipper: Atlantic Can Company, 101 7th St., Passaic, NJ 07055.

MC 153294 (Sub-1-2TA), filed January 6, 1981. Applicant: A YANKEE LINE, INC., 25 Chestnut Street, Cambridge, MA 02138. Representative: Michael Eby, Esq, Gilman, McLaughlin & Hanrahan, 10 Post Office Square, Boston, MA 02109. *Passengers and their baggage, in the same vehicle, in charter and special operations,* between Boston, MA, on the one hand, and, on the other, points in the US (excluding AK and HI). Supporting shippers: There are 6 statements in support attached to this application which may be examined at the I.C.C. Regional Office in Boston, MA.

MC 136386 (Sub-1-2TA), filed January 7, 1981. Applicant: BEE LINE INC., 17 Commerce Road, Fairfield, NJ 07006. Representative: George A. Olsen, P.O. Box 357, Gladstone, NJ 07934. *(1) Paper and paper articles, (2) plastic and plastic articles, and (3) materials, equipment, and supplies used in the manufacture and sale of the commodities named in (1) and (2) above (except commodities in bulk),* between Mechanic Falls, ME and Elmwood Park, NJ, on the one hand, and, on the other, points in the US. Supporting shipper: Marcal Paper Mills, Inc., 1 Market Street, Elmwood Park, NJ 07407.

MC 145629 (Sub-1-12TA), filed January 7, 1981. Applicant: ETI CORP., P.O. Box 1, Keasbey, NJ 08832. Representative: George A. Olsen, P.O. Box 357, Gladstone, NJ 07934. *Contract carrier:* Irregular routes: *General commodities (except commodities in bulk, household goods, classes A and B explosives, and commodities which because of size and weight require special handling),* between points in the US, under continuing contract(s) with ABC-TNT and Acme Fast Freight. Supporting shipper: ABC-TNT and Acme Fast Freight, 2110 Alhambra Avenue, Los Angeles, CA 90031.

MC 153449 (Sub-9-1TA), filed January 6, 1981. Applicant: FRANK P. PITTS, INC., Route 104, Williamson, NY 14589. Representative: John F. O'Donnell, Barrett and O'Donnell, 60 Adams St., P.O. Box 238, Milton, MA 02187. *Contract carrier:* Irregular routes: *Metals, metal products, plastics, plastic products, and containers,* between Rochester, NY, Chicago, IL, Philadelphia, PA, and Jackson, MS, under contract(s) with Caldwell Manufacturing Company, Rochester, NY. Supporting shipper: Caldwell Manufacturing Company, Rochester, NY 14602.

MC 153337 (Sub-1-1TA), filed December 30, 1980. Applicant: FULTONVILLE PLASTICS, INC., 1 Union Street, Fultonville, N.Y. 12072. Representative: Robert Dorfman, Conrie Ave., Johnston, N.Y. 12072. *Contract carrier, irregular routes, containers, glass with or without caps, stoppers or covers* from Clarion, PA to Canajoharie, NY under a continuing contract with Beech Nut Foods Corp., Canajoharie, NY. Supporting Shipper: Beech Nut Foods Corporation, Church Street, Canajoharie, NY 13317.

MC 145829 (Sub-1-11TA), filed January 6, 1981. Applicant: ETI CORP., P.O. Box 1, Keasbey, NJ 08832. Representative: George A. Olsen, P.O. Box 357, Gladstone, NJ 07934. *Contract carrier:* Irregular routes: *(1) Cleaning compounds, disinfectants, softeners, and insecticides; and (2) materials, equipment, and supplies used in the manufacture and distribution of the commodities named in (1) above (except in bulk),* between points in the U.S. Supporting shipper: Texize, Division of MortonNorwich, P.O. Box 368, Greenville, SC 29602.

MC 145488 (Sub-1-4TA), filed January 6, 1981. Applicant: KSS TRANSPORTATION CORP., Route 1 and Adams Station, P.O. Box 3052, North Brunswick, NJ 08902. Representative: Arlyn L. Westergren, Westergran & Hauptman, P.C., Suite 201, 9202 West Dodge Road, Omaha, NE 68114. *Meat and packinghouse products,* between Seward County, KS, on the one hand, and, on the other, points in the U.S. Supporting shipper: National Beef Packing Co., Inc., P.O. Box 1358, Liberal, KS 67901.

MC 109725 (Sub-1-2TA), filed January 6, 1981. Applicant: E. F. CROCKER TRANSPORTATION CO., INC., Jewell Hill Road, Ashby, MA 01431. Representative: James M. Burns, 1383 Main Street, Suite 413, Springfield, MA 01103. *Liquid sweeteners in bulk, in tank vehicles,* between Boston, MA and points east of the Mississippi River. Supporting shipper: Ingredient Technology Corp., Boston Molasses Division, 920 East First Street, South Boston, MA 02127.

MC144710 (Sub-1-1TA), filed January 6, 1981. Applicant: MONROE CONTRACTORS EQUIPMENT, INC., 1640 Penfield Road, Rochester, NY 14625. Representative: S. Michael Richards, P.O. Box 225, Webster, NY 14580. *Carbon electrodes, furnace or electrolytic bath and carbon plugs, carbon or graphite scrap, coke flour, machinery and machinery parts, and materials, equipment and supplies used in the manufacture, sale and distribution of carbon electrodes,* between points in Erie, Niagara and St. Lawrence Counties, NY and Elk County, PA, and points in AL, AZ, AR, CA, CO, DE, DC, ID, IA, KS, LA, ME, MD, MI, MN, MS, MO, MT, NE, NV, NH, NM, NY, ND, OK, OR, RI, SD, TX, UT, VT, WA and WY. Supporting shipper: Airco Speer, Carbon Graphite Div., Airco, Inc., 4861 Packard Rd., Niagara Falls, NY 14302.

MC 148155 (Sub-1-1TA), filed January 6, 1981. Applicant: TRANS COASTAL CORPORATION, P.O. Box 116W, Winslow, ME 04902. Representative: John C. Lightbody, Esq., Murray, Plumb & Murray, 30 Exchange Street, Portland, ME 04101. *General commodities (except household goods as defined by the Commission, explosives and commodities of unusual value),* between points in ME, GA, and CA, on the one hand, and, on the other points in the U.S. Supporting shipper(s): There are 17 statements in support attached to this application which may be examined at the I.C.C. Regional Office in Boston, MA.

MC 153232 (Sub-1-1TA), filed January 6, 1981. Applicant: DAVID D. SALKA FREIGHT LINES, 59 Valley View Drive, Meriden, CT 06450. Representative: John E. Fay, Esq., 663 Maple Avenue, Hartford, CT 06114. *Contract carrier:* irregular routes: *Raw materials and finished goods suitable for the manufacture and processing of soft drinks and production and distribution of same,* between Meriden, CT, on the one hand, and, on the other hand, points in MA, RI, NH, VT, ME, NY, NJ, PA, and MD, for account of Connecticut Seven-Up Bottling Co., Inc. Supporting shipper: Connecticut Seven-Up Bottling Co., Inc., 127 Pomeroy Ave., Meriden, CT 06450.

The following applications were filed in region 2: Send protests to: ICC, Federal Reserve Bank Building, 101 N. 7th St., Rm. 620, Philadelphia, PA 19106.

MC 121372 (Sub-II-5TA), filed January 5, 1981. Applicant: EXPRESS TRANSPORT COMPANY, 1217 Dalton St., Cincinnati, OH 45203. Representative: Paul F. Beery, 275 E. State St., Columbus, OH 43215. *(1) Iron and Steel, iron and steel articles, and (2) equipment, material and supplies used in the manufacturing, processing, sale and distribution of the commodities named in (1) above (except commodities in bulk),* Between Boyd and Greenup Counties, KY, on the one hand, and, on the other, points in AL, GA, FL, LA, MS, NC, SC, TN, VA and WV, for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: ARMCO, INC., 703 Curtis St., Middletown, OH 45043.

MC 140680 (Sub-II-11TA), filed January 5, 1981. Applicant: FIVE STAR TRUCKING, INC., 4720 Beidler Rd., Willoughby, OH 44094. Representative: Ignatius B. Trombetta, 1220 Williamson Bldg., Cleveland, OH 44114. Contract, Irregular. *Boxed, and packaged meats and meat products, poultry, poultry products, frozen and processed potato and potato products, canned fruits and vegetables, diatomaceous earth products, and other and sundry items, goods, materials, and equipment used in the wholesale and retail grocery business;* from points in TX, CO, NB, IA, OK, KS, AZ, NM, WA, OR, ID, WI, MN, TN, NC, SC, GA, and FL, to shippers facilities located in Monroe County, NY. Shipper: Wegman's Food Markets, Inc., 1500 Brooks Ave., Rochester, NY 14607.

MC 153474 (Sub-II-1TA), filed January 7, 1981. Applicant: WAYNE THOMAS, dba C&W TRUCKING. Representative: Edward A. O'Donnell, 1004 29th St., Sioux City, IA 51104. *Contract Irregular; Printing inks, materials, equipment and supplies utilized in the manufacture and distribution of printing inks* Between Elk City, PA, on the one hand, and on the other, points in the Commercial Zones of Akron, OH, Appleton, WI, Chicago, IL, Cincinnati, OH, Des Moines, IA, Detroit, MI, Holland, MI, Kalamazoo, MI, LaCrosse, WI, Louisville, KY, Milwaukee, WI, San Francisco, CA, Sioux Falls, SD, St. Louis, MO, St. Paul, MN, Waseca, MN, Youngstown, OH, for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: Ridgeway Color Co., 75 Front St., Ridgeway, PA 15853.

MC 2605 (Sub-II-6TA), filed January 7, 1981. Applicant: COMMERCIAL TRANSPORTATION, INC., 2300 E. Adams Ave., Phila. Pa. 19124. Representative: Donald J. Campanile (same address as applicant). *General commodities, in containers, having prior or subsequent movement by water or rail,* between Baltimore County, MD, Philadelphia County, PA, points in the States of OH, IN, KY, PA, Wayne County, MI, Cook County, IL, and New York, NY, for 270 days. Applicant intends to tack the authority sought herein with its existing authority. Supporting shipper: S. R. Teimouri, Chamber of Commerce Bldg., Baltimore, Md.

MC 113828 (Sub-II-12TA), filed January 7, 1980. Applicant: O'BOYLE TANK LINES, INC., P.O. Box 30006, Washington, D.C. 20014. Representative: William P. Sullivan, 815 Connecticut Ave., Washington, D.C. 20006. *Chemicals in bulk* between Rowan Co., and Brunswick Co., on the one hand, and, on the other, points in the U.S. for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: Proctor Chemical Co., Lumbert St., P.O. Box 399, Salisbury, NC 28144.

MC 136436 (Sub-II-22TA), filed January 2, 1981. Applicant: D. M. BOWMAN, INC., Rt. 2, Box 43A1, Williamsport, MD 21795. Representative: Edward N. Button, 580 Northern Ave., Hagerstown, MD 21740. *Brick, concrete products, and other building materials,* between points in and east of OH, KY, TN and AL, on the one hand, and, on the other, points in IL and IN, for 270 days. Supporting shipper: Ramm Brick and Materials, Inc., 223 Tilden Ave., La Grange, IL 60525.

MC 119791 (Sub-II-1TA), filed January 5, 1981. Applicant: R. J. TRUCKING, INC., 1220 Roosevelt Ave., York, PA 17405. Representative: Maxwell A. Howell, 1100 Investment Bldg., 1511 K St. NW., Washington, D.C. 20005. *Paper and paper products, and materials and supplies used in the manufacture and distribution thereof,* between points in York County, PA, on the one hand, and, on the other, points in CT, MA, NY, OH, VA, and WV for 270 days. The operations authorized herein are limited to a transportation service on behalf of St. Regis Paper Company. An underlying ETA seeks 120 days authority. Supporting shipper: St. Regis Paper Company, 150 E. 42nd St., New York, NY 10017.

MC 109820 (Sub-II-12TA), filed January 5, 1981. Applicant: RIGGS FOOD EXPRESS, INC., West Monroe St., P.O. Box 28, New Bremen, OH 45869. Representative: E. Stephen Heisley, 805 McLachlen Bank Bldg., 666 Eleventh St. NW., Washington, D.C. 20001. *Such*

commodities as are dealt in by food business houses, and materials, ingredients, and supplies used in their manufacture and distribution, between points in OH, on the one hand, and, on the other, points in CT, DC, DE, IA, IL, IN, KY, MA, MD, ME, MI, MN, MO, ND, NE, NH, NJ, NY, OH, PA, RI, SD, VA, VT, WI, and WV for 270 days. Restricted to traffic originating at or destined to the facilities utilized by Stouffer Corporation. Supporting shipper: Stouffer Foods Corporation, 5750 Harper Road, Solon, OH 44139.

MC 146551 (Sub-II-6TA), filed January 5, 1981. Applicant: TAYLOR TRANSPORT, INC., P.O. Box 285, Grand Rapids, OH 43522. Representative: Tommy R. Taylor (same as applicant). (1) *Bakery goods and equipment, materials and supplies used in the manufacture, preparation and distribution of bakery goods* (except commodities in bulk), between points in Hamilton County, OH, on the one hand, and, on the other, points in IL and MI (lower peninsula) and, (2) *Such merchandise as is dealt in by wholesale, retail, chain grocery and food business houses, institutions, catalog show room stores, and home center stores and equipment, materials and supplies used in the manufacture, preparation and distribution of commodities named above* (except commodities in bulk), between points in CT, GA, IL, IN, KY, MA, MI (lower peninsula), NJ, NY, NC, TN, OH, and PA. Restricted to shipments for the account of Victory Wholesale Grocers. For 270 days. An underlying ETA seeks 120 days authority. Supporting shippers: (1) Springwater Cookie Co. 11555 Grooms Rd. Cincinnati, OH 45242. (2) Victory Wholesale Grocers, 333 W. 1st Street, Suite 170, Dayton, OH 45402.

MC 127579 (Sub-II-10TA), filed January 2, 1981. Applicant: HAULMARK TRANSFER, INC., 1100 North Macon Street, Baltimore, MD 21205. Representative: Glen M. Heagerty (same as applicant). *General commodities* (except household goods, commodities in bulk and Class A and B explosives) between the facilities of Parke, Davis & Co., Greenwood, SC, on the one hand, and, on the other, points in the states of AR, CT, DE, IL, IN, IA, KS, KY, ME, MD, MA, MI, MO, NH, NJ, NY, OH, PA, RI, TN, VT, VA, WV, WI, and DC for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: Parke, Davis & Co., P.O. Box 368, Greenwood, SC 29646.

MC 110328 (Sub-2-3TA), filed January 5, 1981. Applicant: ROY A. LEIPHART TRUCKING, INC., 1298 Toronita St., York, PA 17402. Representative: Dixie C. Newhouse, 1329 Pennsylvania Ave., P.O. Box 1417, Hagerstown, MD 21740. *Automobile parts, carpets and carpeting, and materials and supplies used in the manufacture, sale and distribution of automobile parts and carpets and carpeting* between Carlisle and Lewistown, PA, and Mobile and Atmore, AL, on the one hand, and, on the other, points in the United States in and east of ND, SD, NE, KS, OK and TX, for 270 days. Supporting shipper: C. H. Masland & Sons, Box 40, 50 Spring Rd., Carlisle, PA 17013.

MC 153321 (Sub-2-1TA), filed December 31, 1980. Applicant: LAVCO, INC., 1620 Keyser Ave, Scranton, PA 18508. Representative: Louis J. Carter, Esq., 1625 Eye St. N.W. Ste 1009, Washington, DC 20006. *Non-radioactive hazardous wastes and industrial wastes and empty waste containers* from the City of Scranton, PA and within 120 miles of the City of Scranton, PA to points in PA, OH, NY, NJ, MD and SC for 270 days. An underlyng ETA seeks 120 days authority. Supporting shippers: L. E. Carpenter & Company, 170 North Main St., Wharton, NJ 07885; The Trane Company, P.O. Box 917, Scranton, PA 18501; Sanitas, Humboldt Industrial Park, Hazleton, PA 18201; Harte & Co., Oakhill Road, Crestwood Park, Mountaintop, PA 18707; Consolidated Molded Products, Inc., Greenwood & Warner Sts, Scranton, PA 18505.

MC 150939 (Sub-2-11TA), filed January 7, 1981. Applicant: GEMINI TRUCKING, INC., 1533 Broad St., Greensburg, PA 15601. Representative: William A. Gray, ESQ., 2310 Grant Bldg., Pittsburgh, PA 15219. *Petroleum and petroleum products, automotive chemicals and cleaning compounds and materials, equipment and supplies used by automotive service centers (except in bulk)* between the facilities of Ashland Petroleum Co., Division of Ashland Oil, Inc. in NJ, OH, KY, TX, IL, MO, PA, OR and CA on the one hand, and, on the other, points in the US, under a continuing contract or contracts with Ashland Petroleum Co., Division of Ashland Oil, Inc., for 270 days. Supporting shipper: Ashland Petroleum Co., Division of Ashland Oil, Inc., P.O. Box 391, Ashland, KY 41101.

MC 45194 (Sub-2-2TA), filed December 18, 1980. Applicant: LATTAVO BROTHERS, INC., 2230 Shepler Church Ave., S.W., Canton, OH 44706. Representative: James W. Muldoon, 50 W. Broad St., Columbus, OH 43215. (1) *metals, metal products* (except metal containers used in the food and beverage industry), *machinery and machinery parts*, except commodities in bulk; (2) *materials, equipment and supplies* used in the manufacture and distribution of the commodities in (1) above, except commodities in bulk, and (3) *contractors' and builders' materials, equipment and supplies*, except commodities in bulk, between points in AL, FL, GA, IL, IN, KY, MD, NJ, NY, NC, OH, PA, SC, TN, VA and WV. An underlying ETA seeks 120 days authority. Supporting shipper(s): There are 28 supporting shippers. Their statements can be examined at the ICC Phila. Regional office.

MC 138036 (Sub-2-1TA), filed December 29, 1980. Applicant: J & S, INC., P.O. Box 288, Indianola, PA 15051. Representative: Williams A. Gray, 2310 Grant Bldg., Pittsburgh, PA 15219. *General commodities* (except classes A and B explosives) between points in the US under a continuing contract(s) with J. C. Penney Company, Inc. of New York, NY., for 270 days. Supporting shipper: J. C. Penney Company, Inc., 1301 Avenue of the Americas, New York, NY 10019.

MC 148412 (Sub-2-2TA), filed December 29, 1980. Applicant: GRIESSER TRUCKING, INC., RD 3, Rockwood, PA 15557. Representative: John E. Fullerton, 407 N. Front St., Harrisburg, PA 17101. *Locomotive parts; electrical equipment; materials, supplies and equipment used in the manufacture and distribution of locomotives and electrical motors* between points in the United States, under continuing contracts with General Electric Company, Erie, PA, for 270 days. Supporting shipper: General Electric Company, 2901 E. Lake Rd., 24B. Erie, PA 16531.

MC 48366 (Sub-2-3TA), filed December 29, 1980. Applicant: GRAVER TRUCKING, INC., R.D. 7, Box 7655, Stroudsburg, PA 18360. Representative: Joseph A. Keating, Jr., 121 S. Main St., Taylor, PA 18517. *Wine*, From Hammondsport, NY to Jacksonville and Miami, FL, for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper(s): Gold Seal Wine Company, P.O. Box 203, Hammondsport, NY 14840.

MC 80653 (Sub-2-5TA), filed December 29, 1980. Applicant: DAVID GRAHAM COMPANY, P.O. Box 254, Levittown, PA 19059. Representative: Lois T. Philipkosky (same address as applicant). *Lumber and wood products* from MT, ID, WA, and OR, on the one hand, and, on the other, to points in and States East of MI, IL, KY, TN and MS, for 270 days. An underlying ETA seeks 120 days authority: Supporting shippers: Lightner Brokerage Service, Box 8208, Missoula, MT 59807; Missoula White Pine Sash Co., P.O. Box 7009, Missoula,

MT 59807; Louisiana—Pacific Corporation, Intermountain Division, P.O. Box 4007, Missoula, MT 59806.

MC 153269 (Sub-II-1TA), filed December 22, 1980. Applicant: GEORGE W. LANE, d.b.a., G. W. LANE TRUCKING, 5501 Fireside Court, Virginia Beach, VA 23464. Representative: Carroll B. Jackson, 1810 Vincennes Rd., Richmond, VA 23229. *Contract, irregular: bananas,* between Norfolk, VA (and points in the commercial zone thereof) on the one hand, and, on the other, Baltimore, MD; Charleston, SC; Miami and Tampa, FL; Mobile, AL; Newark, NJ; New York, NY; Philadelphia, PA; Wilmington, DE; (and points in the commercial zones thereof) for 270 days. Supporting shipper: Norfolk Banana Distributing Co., Inc., 3616 E. Virginia Beach, Blvd., Norfolk, VA 23502.

MC 143394 (Sub-2-20TA), filed December 24, 1980. Applicant: GENIE TRUCKING LINE, INC., 70 Carlisle Springs Rd, P.O. Box 840, Carlisle, PA 17013. Representative: G. Kenneth Bishop (same as applicant). Contract: Irregular: *General Commodities* (except those of unusual value, Class A & B explosives, household goods as defined by the Commission, commodities in bulk and those requiring special equipment) between Philadelphia, PA and commercial zone and Hoboken, NJ and commercial zone and points in the states of AL, FL, GA, IL, IN, LA, MS, NC, OH, SC, TN, TX and WI under continuing contract(s) with West Coast Shippers Association, Philadelphia, PA 19142 for 270 days. Supporting shipper: West Coast Shippers Association, 2000 S. 71st Street, Philadelphia, PA 19142.

MC 125335 (Sub-2-23TA), filed December 29, 1980. Applicant: GOODWAY TRANSPORT, INC. P.O. Box 2283, York, PA 17405. Representative: Gailyn L. Larsen, P.O. Box 82816, Lincoln, NE 68501. *Foodstuffs and such commodities as are used or dealt in by food business houses,* From Rocky Mount and Forest City, NC, to Mason City, IA, Quakertown, PA, La Grange, GA, Independence, MO, Frankfort, KY, and Jacksonville, FL, for 270 days. Supporting shipper: Fast Food Merchandisers, Inc., P.O. Box 1241, Rocky Mount, NC 27801.

MC 13134 (Sub-II-17TA), filed December 19, 1980. Applicant: GRANT TRUCKING, INC., Box 256, Oak Hill, OH 45656. Representative: James M. Burtch, 100 E. Broad St., Columbus, OH 43215. *Refractory products and materials and supplies* used in the manufacture, installation and distribution of refractory products, between points in Greenup County, KY, and Hamilton County, OH, on the one hand, and, on the other, Andrews, SC; Bauxite and Little Rock, AR; Mexico, MO, and Niagara Falls, NY, for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: Didier-Taylor Refractories Corp., Box 457, South Shore, KY 41175.

MC 147570 (Sub-2-4TA), filed December 17, 1980. Applicant: KABAT EXPRESS, INC., 1944 Scranton Rd., Cleveland, OH 44113. Representative: Daniel M. Kabat (same as applicant). Contract: Irregular: *Computing machine paper, plain or ruled; forms, printed NOI; computing machine paper, printed; teletype paper, printed;* between the facilities of Duplex Products, Inc., at Emigsville, PA; W. York, PA; Goshen, IN; Sycamore, IL; Temple, TX; and Atlanta, GA, on the one hand, and, on the other points in the US (except AK and HI), for 270 days. Supporting shipper: Duplex Products, Inc., 228 W. Page St., Sycamore, IL 60178.

MC 25562 (Sub-2-1TA), filed December 17, 1980. Applicant: A. R. GUNDRY, INC., 445 Earlwood Ave., Oregon, OH 43616. Representative: William P. Fromm (same as applicant). *Petroleum and petroleum products,* in bulk, in tank vehicles from Albany, NY to points within the states of VT, CT and MA for 270 days. Supporting shipper: Bray Terminals, Inc., River Road, Marcy, NY 13403.

MC 152984 (Sub-2-1TA), filed December 22, 1980. Applicant: WILLIAM R. LUTZ, SR., d.b.a. LUTZ ENTERPRISES, R. D. #2, Rte. 22, New Alexandria, PA 15670. Representative: John A. Vuono, 2310 Grant Bldg., Pittsburgh, PA 15219. *Contract Carrier, Irregular Route: Fabricated pipe and ferrous and non-ferrous metals,* between points in Westmoreland County, PA, on the one hand, and, on the other, points in DE, DC, IN, KY, MD, NY, OH, VA and WV under a continuing contract(s) with Universal Plumbing & Piping Supply, Inc. for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: Universal Plumbing & Piping Supply, Inc., P.O. Box Y, Latrobe, PA 15650.

MC 125335 (Sub-2-24TA), filed December 30, 1980. Applicant: GOODWAY TRANSPORT, INC., P.O. Box 2283, York, PA 17405. Representative: Gailyn L. Larsen, P.O. Box 82816, Lincoln, NE 68501. *Foodstuffs* (except in bulk), *and materials, supplies and equipment used in the production, sale and distribution thereof,* (1) From points in CT, DE, MD, MA, NJ, NY, PA, and RI, to Springfield, Belvidere, Ashton, and Chicago, IL, Terre Haute, New Albany, Lafayette, and Seelyville, IN, Martel, OH, and St. Louis, MO; (2) From Kansas City, KS, and Kansas City, MO, to Springfield and Belvidere, IL, and Terre Haute and New Albany, IN; (3) From Denison, TX, to points in AR, KS, LA, MS, MO, NE, OK, and SD; (4) From St. Louis, MO, to East Greenville, PA, and Denison, TX; (5) From Trenton, TN, to Terre Haute, IN, and East Greenville, PA; (6) From East Greenville, PA, to CT, DE, MD, MA, NJ, NY, RI, and DC; (7) From Terre Haute, IN, and Springfiled, IL, to Buffalo, NY; (8) From Miami, FL, to Doraville, GA, Lafayette, IN, Belvidere, IL, and Ft. Worth, TX; (9) Between Fridley, MN, Ft. Worth, TX, Doraville, GA, Carthage, MO, Bonner Springs, KS, Vineland, NJ, Tampa, FL, and Belvidere, IL; and (10) From Newnan, GA, to Murfreesboro, TN, and Joplin, MO, for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: The Pillsbury Company, 608 Second Avenue, South, Minneapolis, MN.

The following applications were filed in Region 3. Sent protests to ICC, Regional Authority Center, P.O. Box 7600, Atlanta, GA 30357.

MC 115841 (Sub-3-36TA), filed January 6, 1981. Applicant: COLONIAL REFRIGERATED TRANSPORTATION, INC., McBride Lane, P.O. Box 22168, Knoxville, TN 37922. Representative: Michelene Good (same as above). *Foodstuffs* (except commodities in bulk), from Cincinnati, OH to points in CT, DE, DC, MD, NJ, NY, PA and VA. Supporting shipper: Serv-A-Portion, 9140 Lurline Avenue, Chatsworth, CA 91311.

MC 138662 (Sub-3-34TA), filed January 6, 1981. Applicant: WILEY SANDERS TRUCK LINES, INC., P.O. Drawer 707, Troy, Alabama 36081. Representative: John J. Dykema (same address as applicant). (1) *Pressure sensitive paper, label stock, self-adhesive paper labels and reinforcements, gum paper, printing and wrapping paper, label machines, plastics and cellulose film, aluminum foil, textile label and tags, and reflective sheeting, and (2) Materials, equipment and supplies used in the manufacture and distribution of commodities named in (1) above* Between points in the US (except AK and HI). Restricted to traffic originating at or destined to the Fasson, Thermark, Avery Label and Soabar Divisions of Avery International. Supporting shipper: Avery International, 250 Chester St., Painesville, OH 44077.

MC 133757 (Sub-3-1TA), filed January 6, 1981. Applicant: CAROLINA EAST FURNITURE TRANSPORT, INC., P.O. Box 1428, Sumter, SC 29150. Representative: Terrell C. Clark, P.O. Box 25, Stanleytown, VA 24168. *1-(a) New furniture, (b)-materials, equipment and supplies used in the manufacture of*

new furniture, between Rocky Mount, NC and Sumter, SC, on the one hand, and, on the other, points in KY. *2-Fireplace accessories*, from New Albany, IN to points in GA, NC, and SC. There are eleven certificates of support attached to the application which may be examined at the ICC Regional Office.

MC 109676 (Sub-3-6TA), filed January 6, 1981. Applicant: A. J. METLER HAULING & RIGGING, INC., 117 Chicamauga Avenue, N.E., Knoxville, TN 37917. Representative: Michael S. Teets (same address as applicant). *Construction machinery and equipment* between points in the US (except AK and HI), restricted to transportation of shipments moving for the account of Astec Industries, Inc., Supporting Shipper: Astec Industries, Inc., 4101 Jerome Avenue, Chattanooga, TN 37407.

MC 115841 (Sub-3-39TA), filed January 6, 1981. Applicant: COLONIAL REFRIGERATED TRANSPORTATION, INC., McBride Lane, P.O. Box 22168, Knoxville, TN 37922. Representative: Michelene Good (same as above). *Canned Foodstuffs* from St. Henry, OH to points in AL, AR, DC, FL, GA, IL, IN, KY, LA, MD, MI, MS, MO, NJ, NY, NC, OK, PA, SC, TN, TX, VA, WV, and WI. Supporting Shipper: Beckman & Gast, P.O. Box 307, St. Henry, OH 45883.

MC 138157 (Sub-3-4TA), filed January 6, 1981. Applicant: SOUTHWEST EQUIPMENT RENTAL, INC., d.b.a. SOUTHWEST MOTOR FREIGHT, 2931 South Market Street, Chattanooga, TN 37410. Representative: Patrick E. Quinn (same as above). *General commodities (except Classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and commodities which by reason of size or weight require the use of special equipment)* from points in WA, OR, and CA to points in the United States. Restricted to traffic moving for the account of Onan Consolidation, Inc. Supporting Shipper: Onan Consolidation, Inc., 911 Western Avenue, Suite 522, Seattle, WA 98114.

MC 140646 (Sub-3-36TA), filed January 6, 1981. Applicant: BRISTOW TRUCKING CO., INC., P.O. Box 6355–A, Birmingham, AL 35217. Representative: James W. Segrest, (same address as applicant). *General Commodities (except household goods as defined by the Commission and Class A and B explosives)*, between points in the U.S. Restricted to the transportation of traffic for United Freight, Inc. Supporting shipper: United Freight, Inc., 1260 Southern Road, Morrow, GA 30260.

MC 138279 (Sub-3-2TA), filed January 6, 1981. Applicant: CONALCO CONTRACT CARRIER, INC., P.O. Box 966, Jackson, Tennessee 38301. Representative: Charles W. Teske, (address same as applicant). *Contract carrier*, irregular routes, *Pressure-sensitive paper, label stock, self-adhesive paper labels & reinforcements, gum paper, printing and wrapping paper, lable machines, plastics and cellulose film, aluminum foil, textile lables and tags, reflective sheeting and materials used in manufacturing thereof*, between all points in the US (except AK and HI) and facilities of Avery International, under a continuing contract or contracts with Avery International. Supporting shipper(s): Avery International, 250 Chester St., Painesville, OH 44077.

MC 75840 (Sub-3-45TA), filed January 6, 1981. Applicant: MALONE FREIGHT LINES, INC., Post Office Box 11163, Birmingham, AL 35202. Representative: William P. Jackson, Jr., Post Office Box 1240, Arlington, VA 22210. *Such commodities as are used, dealt in, or distributed by a manufacturer and distributor of paper and paper products (except in bulk)*, between the facilities of P. H. Glatfelter Company, located at or near Spring Grove, PA and West Carrollton, OH, on the one hand, and, on the other, points in TX, AR, LA, MS, TN, GA, FL, AL, KY, NC, SC, VA, DE, MD, WV, OH, PA, NY, NJ, RI, CT, MA and DC. Supporting shipper: P. H. Glatfelter Company, 228 South Main Street, Spring Grove, PA 17362.

MC 139858, (Sub-3-11TA), filed January 6, 1981. Applicant: R. T. TRUCK SERVICE, INC., 2334 Millers Lane, Louisville, KY 40216. Representative: Rudy Yessin, 113 West Main Street, Frankfort, KY 40601. *Pre-stressed concrete structural products, steel reinforced;* from Greenville, IN to points in OH, IA, KY and PA. Supporting shipper: Zurn Industries, Inc., P.O. Box 187, Greenville, IN 47124.

MC 126699 (Sub-3-3TA), filed January 2, 1981. Applicant: USHER TRANSPORT, INC., 3925 Old Benton Road, P.O. Box 3158, Paducah, KY 42001. Representative: George M. Catlett, 708 McClure Building, Frankfort, KY 40601. *Paper and plastic articles*, from Lexington, KY, to Cleveland and Columbus, OH, Indianapolis, IN, Pittsburgh, PA, Charleston, WV, Nashville, and Knoxville, TN, Detroit, MI. Supporting shipper: American Can Co., Lexington, KY.

MC 153396 (Sub-3-1TA), filed January 2, 1981. Applicant: ANTHONY D. SOSEBEE, d.b.a. LOAD-IT, 5211 Mitchell Bridge Road, Dalton, GA 30720. Representative: Anthony D. Sosebee (same address as applicant). *Contract carrier*: irregular: *General Commodities, except household goods as defined by the Commission and Classes A and B explosives*, between the facilities utilized by CO-AM Transport Services, Inc. and their customers and receivers, between points in the U.S. (except AK and HI), under continuing contract with CO-AM Transport Services, Inc. Supporting shipper: CO-AM Transport Services, Inc., P.O. Box 26793, Charlotte, NC 28213.

MC 152962 (Sub-3-1TA), filed December 2, 1980. Republication—originally published in Federal Register of December 15, 1980, Page 82381, volume 45, No. 242. Applicant: WAYNE SMITH, d.b.a. WAYNE SMITH TRUCKING COMPANY, Route 2, Box 462, Jacksonville, AL 36265. Representatives: Archie B. Culbreth, John P. Tucker, Jr., Suite 202, 2200 Century Parkway, Atlanta, GA 30345. *Lumber, lumber products and forest products*, between points in Etowah, Calhoun and Talladega Counties, AL on the one hand, and, on the other points in FL, GA, IA, IL, IN, KS, KY, MI, MN, MO, MS, NY, OH, PA, TN, and WI. Supporting shippers: Gerald Willis Lumber Co., Route 3, Box 467, Piedmont, AL 36272; Read Brothers Lumber Co., Route 9, Gadsden, AL.

MC 151727 (Sub-3-3TA), filed December 2, 1980. Republication—originally published in Federal Register of December 15, 1980, page 82381, volume 45, No. 242. Applicant: SABRE TRANSPORT, INC., P.O. Box 12288, Atlanta, GA 30305. Representative: H. L. Walsh (same address as applicant). *No. 300 Finished Metal Containers and Processed cat and dog food (canned)*, from Atlanta, GA to all points south and east of MN, WI, IA, KS, CO and NM. Supporting shipper: Allied Foods, Inc., 1450 Hills Place N.W., Atlanta, GA 30318.

MC 144827 (Sub-3-27), filed January 6, 1981. Applicant: DELTA MOTOR FREIGHT, INC., P.O. Box 18423, Memphis, TN 38118. Representative: R. Connor Wiggins, Jr., Suite 909, 100 N. Main Bldg., Memphis, TN 38103. (1) *Bread making compounds and ingredients* from Sanford, FL, and Dallas, TX, to points in the U.S.; and (2) *materials and supplies used in the processing and manufacturing and distribution of commodities in (1)* from points in the U.S. to Dallas, TX, and Sanford, FL. Supporting shipper: Southland Corporation, Chemical Div., 5601 Marvin D. Love Freeway, Suite 400, Dallas, TX 75237.

MC 139532 (Sub-3-33TA), filed January 6, 1981. Applicant: WILEY SANDERS TRUCK LINES, INC., P.O. Drawer 707, Troy, AL 36081.

Representative: John J. Dykema (same address as applicant). *(1) Malt beverages, in containers, and (2) Materials, equipment and supplies used in the manufacture and distribution of commodities in (1) above,* between San Antonio, TX and its commercial zone, and points in AL. Supporting shippers: (1) Alabama Distributing Co., Inc., P.O. Box 818, Selma, AL 36702, (2) Gulf Distributing Co., Inc., 3378 Moffat Road, Mobile, AL 36605, and (3) Allstate Beverage Company, Inc., P.O. Box 2308, Montgomery, AL 36103.

MC 136231 (Sub-3-1TA), filed January 6, 1981. Applicant: CUSTOMIZED PARTS DISTRIBUTION, INC., 3600 N.W. 82nd Avenue, Miami, FL 33166. Representative: Dale A. Tibbets (same address as applicant). *Contract:* Irregular: *automotive parts and materials, accessories and supplies used in the manufacture of automotive parts and automotive vehicles.* between Livonia and Detroit, MI; East Point and Atlanta, GA; Charlotte, NC; Miami and Jacksonville, FL; Richmond, VA; Pennsauken, NJ; New York, NY; Teterboro, NJ; Hopedale, MA; Baltimore, MD; and Memphis, TN; under continuing contract(s) with Ford Motor Company. Supporting shipper: Ford Motor Company, One Parklane Blvd., Dearborn, MI 48126.

MC 145837 (Sub-3-2TA), filed January 6, 1981. Applicant: B & B EXPRESS, INC., P.O. Box 5552, Station B, Greenville, SC 29606. Representative: Henry E. Seaton, 929 Pennsylvania Bldg., 425 13th St., N.W., Washington, DC 20004. *Medical and surgical supplies and materials, equipment and supplies used in the manufacture, sale and distribution of same,* between the facilities of Parke Davis & Co., Medical, Surgical Division, at or near Greenwood, SC, on the one hand, and, on the other, points in WA, OR, CA, AZ, TX, NM and ID. Supporting shipper(s): Parke Davis & Co., Medical and Surgical Division, P.O. Box 368, Greenwood, SC 29648.

MC 119777 (Sub-3-26TA), filed January 6, 81. Applicant: LIGON SPECIALIZED HAULER, INC., Highway 85 East, Madisonville, KY 42431. Representative: Carl U. Hurst, P.O. Drawer L, Madisonville, KY 42431. *(1) Off-highway vehicles, (2) off-highway vehicular bodies and (3) parts, and accessories for commodities in (1) and (2),* between ports of entry on the international boundary line between the United States and Canada at or near Detroit, MI, Buffalo and Champlain, NY, and Highgate Springs, VT, on the one hand, and, on the other, points in the United States. Restriction: Restricted to traffic originating at the facilities of Atlas Hoist & Body, Inc. Supporting shipper: Atlas Hoist & Body, Inc., 7500 Cote de Liesse, Montreal Quebec, H-4T 1E8.

MC 136157 (Sub-3-41TA), filed January 6, 1981. Applicant: SOUTHWEST EQUIPMENT RENTAL, INC., d.d.a. SOUTHWEST MOTOR FREIGHT, 2931 South Market Street, Chattanooga, TN 37410. Representative: Patrick E. Quinn (same as above). *General commodities (except Classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and commodities which by reason of size or weight require the use of special equipment)* between points in the United States. Restricted to traffic moving for the account of A. J. Fritz & Co. Supporting shipper: A. J. Fritz & Co., 1306 2nd Avenue, Room 210, Seattle, WA 98101.

MC 153429 (Sub-3-1TA), filed January 6, 1981. Applicant: LAKEWAY TRUCKING COMPANY, Post Office Box 763, Morristown, TN 37814. Representative: Carl W. Ellers, 111 East Market Street, Kingsport, TN 37660. *(1) Lumber, wood products, paper, paper products, and marble tops and (2) materials, equipment, and supplies used in the manufacture, assembly, and distribution of the commodities in (1)* above between points in Hamblen and Jefferson Counties, TN, on the one hand, and, on the other, points in the United States in and east of TX, OK, KS, NE, SD, and ND. Supporting Shippers: Lea Industries, Inc., 1530 Gluck Road, Morristown, TN 37814 and Triangle Pacific Corporation, 16803 Dallas Parkway, Dallas, TX 75248.

MC 75840 (Sub-3-44TA), filed January 6, 1981. Applicant: MALONE FREIGHT LINES, INC., Post Office Box 11103, Birmingham, AL 35202. Representative: William P. Jackson, Jr., Post Office Box 1240, Arlington, VA 22210. *Such commodities as are used, dealt in, or distributed by a manufacturer of rail and locomotive supplies and equipment (except in bulk),* between the facilities of Abex Corporation located at or near Winchester, VA, Niagara Falls, NY, and Salisbury, NC, on the one hand, and, on the other, points in TX, AR, LA, MS, TN, GA, FL, AL, KY, NC, SC, VA, DE, MD, WV, OH, PA, NY, NJ, RI, CT, MA and DC. Supporting shipper: Abex Corporation, 530 Fifth Avenue, New York, NY 10036.

MC 75840 (Sub-3-43TA), filed January 6, 1981. Applicant: MALONE FREIGHT LINES, INC., Post Office Box 11103, Birmingham, AL 35202. Representative: William P. Jackson, Jr., Post Office Box 1240, Arlington, VA 22210. *Such commodities as are used, dealt in, or distributed by a manufacturer of smoke vents and steel doors (except in bulk),* between the facilities of General Products Company, Inc., located at or near Fredericksburg, VA, on the one hand, and, on the other, points in TX, AR, LA, MS, TN, GA, FL, AL, KY, NC, SC, VA, DE, MD, WV, OH, PA, NY, NJ, RI, CT, MA and DC. Supporting shipper: General Products Company, Inc., Post Office Box 867, Fredericksburg, VA 22401.

MC 75840 (Sub-3-42TA), filed January 6, 1981. Applicant: MALONE FREIGHT LINES, INC., Post Office Box 11103, Birmingham, AL 35202. Representative: William P. Jackson, Jr., Post Office Box 1240, Arlington, VA 22210. *Such commodities as are used, dealt in, or distributed by a manufacturer of radios, stereo equipment and televisions (except in bulk),* between the facilities of Soundesign Corporation located at or near Jersey City, Bayonne, and Elizabeth, NJ, on the one hand, and, on the other, points in TX AR, LA, MS, TN, GA, FL, AL, KY, NC, SC, VA, DE, MD, WV, OH, PA, NY, NJ, RI, CT, MA and DC. Supporting shipper: Soundesign Corporation, Route 169, 30th Street, Bayonne, NJ 07002.

MC 151663 (Sub-3-2TA), filed January 6, 1981. Applicant: GLOSSON ENTERPRISES, INC., Route 15, Box 55 (Old 29 South), Lexington, NC 27292. Representative: J. C. Glosson (same address as applicant). *General Commodities, except household goods as defined by the Commission and Classes A and B explosives,* between the facilities utilized by CO-AM Transport Services, Inc. and their customers and receivers, between points in the U.S. (except AK and HI). Supporting shipper: CO-AM Transport Services, Inc., P.O. Box 26793, Charlotte, NC 28213.

MC 144061 (Sub-3-1TA), filed January 6, 1981. Applicant: D. W. STACY CO., INC., 100 North Bivens Road, Monroe, NC 28110. Representative: William P. Farthing, Jr., 1100 Cameron-Brown Building, Charlotte, NC 28204. *Contract carrier:* irregular: *such commodities as are dealt in by food business houses and materials, ingredients and supplies used in their manufacture and distribution,* between all points in the United States, under continuing contract with Stouffer Foods Corporation. Supporting shipper: Stouffer Foods Corporation, 5750 Harper Road, Solon, OH 44139.

MC 140484 (Sub-3-17TA), filed January 6, 1981. Applicant: LESTER COGGINS TRUCKING, INC., P.O. Box 69, Fort Myers, FL 33902. Representative: Frank T. Day (same as applicant). *Such merchandise as is dealt in by food*

business houses and materials, ingredients and supplies used in their manufacture and distribution between points in the states of OH and SC on the one hand, and on the other, points in the states of AL, AR, FL, GA, KY, LA, MS, NC, OH, OK, SC, TN, and TX. Restricted to traffic originating at or destined to the facilities utilized by the Stouffer Foods Corporation. Supporting shipper: Stouffer Foods Corporation, 5750 Harper Road, Solon, OH 44139.

MC 153427 (Sub-3-1TA), filed January 6, 1981. Applicant: H. G. TURNER, INC., U.S. Highways 129 and 41, P.O. Box 1007, Jasper, FL 32052. Representative: Martin Sack, Jr., 203 Marine National Bank Bldg., 311 W. Duval Street, Jacksonville, FL 32202. *Construction materials, and machinery, equipment, materials and supplies used in the manufacture, installation, distribution and packaging thereof,* between the facilities of General Laminates Corporation at or near Jasper, FL, on the one hand, and, on the other hand, points in the United States. Supporting shipper: General Laminates Corporation, P.O. Box 1011, Jasper, FL 32052.

MC 59150 (Sub-3-11TA), filed January 6, 1981. Applicant: PLOOF TRUCK LINES, INC., 1414 Lindrose Street, Jacksonville, FL 32206. Representative: Martin Sack, Jr., 203 Marine National Bank Bldg., 311 W. Duval Street, Jacksonville, FL 32202. *Roofing materials, Fibrous Glass Products, Wallboard, and Pipe,* between Winder, GA; Butner, NC; Savannah, GA; Green Cover Springs, FL; Etowah, TN; Natchez, MS; and Marrero, LA, on the one hand, and, on the other, points in AL, FL, GA, NC, SC, TN, VA, MS, LA, AR, KY, WV, MD and DC. Supporting shipper: Johns-Manville Sales Corporation, P.O. Box 105545, Atlanta, GA 30348.

MC 124639 (Sub-3-2TA), filed January 6, 1981. Applicant: BUILDERS TRANSPORT, INC., P.O. Box 500, Camden, SC 29020. Representative: B. M. Shirley, Executive Vice President, Builders Transport, Inc., P.O. Box 500, Camden, SC 29020; and William P. Sullivan, 618 Connecticut Avenue NW., Washington, DC 20006. *Contract,* irregular—*General commodities (except class A and B explosives and used household goods as defined by the Commission)* between points in, south and east of TX, OK, MO, IA, IL, IN, OH, PA and NY under a continuing contract(s) with Lowe's Companies, Inc. of North Wilkesboro, NC. Supporting shipper: Lowes Companies, Inc., Highway 268 East, P.O. Box 1111, North Wilkesboro, NC 28656.

MC 107515 (Sub-3-69TA), filed January 6, 1981. Applicant: REFRIGERATED TRANSPORT CO., INC., P.O. Box 308, Forest Park, GA 30050. Representative: Bruce E. Mitchell, Esq., 3390 Peachtree Rd. NE., 5th Floor, Lenox Towers South, Atlanta, GA 30326. *Foodstuffs, supplies and ingredients used in the manufacture of non-exempt food or kindred products* between Jacksonville, IL and Sherman, TX. Supporting shipper: Anderson Clayton Foods, P.O. Box 226105, Dallas, TX 75266.

MC 121654 (Sub-3-29TA) filed January 6, 1981. Applicant: COASTAL TRANSPORT & TRADING CO., P.O. Box 7438, Savannah, GA 31408. Representative: Bruce E. Mitchell, Esq., 3390 Peachtree Rd. NE., 5th Floor-Lenox Towers South, Atlanta, GA 30326. *Such commodities as are dealt in by manufacturers of paper and paper products (except in bulk)* from facilities of Container Corporation of America at or near Lansdale, North Wales, Philadelphia and Port Providence, PA and South Brunswick, NJ to Mobile, AL; Alexandria, LA; Medford, MA; Auburn, NY; and Dallas, TX, and points within their respective commercial zones. Supporting shipper: Container Corporation of America, 5000 Flat Rock Rd., Philadelphia, PA 19127.

MC 136686 (Sub-3-4TA), filed January 6, 1981. Applicant: BAKER TRANSPORT, INC., P.O. Box 668, Hartselle, AL 35640. Representative: M. Bruce Morgan, 100 Roesler Rd, Suite 200, Glen Burnie, MD 21061. *Contract:* Irregular: *General Commodities,* Between Points in the U.S. Supporting shipper: Alabama Farmers Cooperative, Inc., P.O. Box 2227, Decatur, AL.

MC 144627 (Sub-3-26TA), filed January 6, 1981. Applicant: DELTA MOTOR FREIGHT, INC., P.O. Box 18423, Memphis, TN 38118. Representative: R. Connor Wiggins, Jr., Suite 909, 100 N. Main Bldg., Memphis, TN 38103. *General commodities (except those of unusual value, Classes A & B explosives, commodities in bulk, household goods, and those requiring special equipment) which at the time are moving on bills of lading of freight forwarders* from Orange County and Los Angeles, CA to points in the U.S. Supporting shipper: Acme Fast Freight, Inc., 2110 Alhambra, Los Angeles, CA 90031.

MC 123712 (Sub-3-6TA) filed January 6, 1981. Applicant: GEORGE BENNETT MOTOR EXPRESS, INC., P.O. Box 569, McDonough, GA 30253. Representative: Frank D. Hall, Postell & Hall, P.C., Suite 713, 3384 Peachtree Rd. NE., Atlanta, GA 30326. *Contract,* irregular, *Lock sets, lock parts, hardware and materials, equipment and supplies used in the manufacture and distribution of such commodities,* between all points in the US, under a continuing contract(s) with Dexter Lock Co., a division of Kysor Industrial Corp. Supporting shipper: Dexter Lock Co., Division of Kysor Industrial Corp., 1601 Madison Ave., Grand Rapids, MI.

MC 144627 (Sub-3-25TA), filed January 6, 1981. Applicant: DELTA MOTOR FREIGHT, INC., P.O. Box 18423, Memphis, TN 38118. Representative: R. Connor Wiggins, Jr., Suite 909, 100 N. Main Bldg., Memphis, TN 38103. *Foodstuffs (except in bulk)* from facilities of La Rinascente Macaroni Co. at or near Hackensack, NJ, to New Orleans, LA; Omaha, NE; and points in FL and TX. Supporting Shipper: La Rinascente Macaroni Company, 41 James St., So. Hackensack, NJ 07606.

MC 151536 (Sub-3-1TA), filed January 6, 1981. Applicant: CEPHUS DALTON, Route 7, Box 750, Mt. Airy, NC 27030. Representative: Wayne Harrell, P.O. Box 1124, Mt. Airy, NC 27030. *Contract:* Irregular: *Portable Utility Buildings,* from Mt. Airy, NC to various sales lots in the following states: NC, SC, VA, GA, KY, TN, WV. Supporting Shipper: Leonard Aluminum Utility Buildings, Inc., P.O. Box 1124, Mt. Airy, NC 27030.

MC 115840 (Sub-3-6TA), filed January 6, 1981. Applicant: COLONIAL FAST FREIGHT LINES, INC., McBride Lane, P.O. Box 22168, Knoxville, TN 37922. Representative: Michelene Good (same as above). *Particleboard panels (finished and/or unfinished),* between Mocksville, NC on the one hand, and, on the other, points in AL, AR, DE, FL, GA, IL, IN, KY, LA, MA, MD, MI, MN, MO, MS, NJ, NY, OH, OK, PA, SC, TN, TX, VA, and WI. Supporting Shipper: Funder America, Inc., P.O. Box 607, Mocksville, NC 27028.

The following protests were filed in Region 4. Send protests to Consumer Assistance Center, Interstate Commerce Commission, 219 South Dearborn Street, Room 1304, Chicago, IL 60604.

MC 144667 (Sub-4-5TA), filed January 7, 1981. Applicant: R & J TRANSPORT, INC., 929 North 24th St., Manitowoc, WI 54220. Representative: Michael J. Wyngaard, 150 East Gilman St., Madison, WI 53703. *Construction materials and supplies* from points in AL, AR, CA, GA, ID, LA, MS, MT, OR, TX, WA and WY to WI and the Upper Peninsula of MI. Underlying ETA seeks 120 days authority. Supporting shipper: Amerhart, Ltd. 2455 Century Road, Green Bay, WI 54303.

MC 153502 (Sub-4-1TA), filed January 9, 1981. Applicant: POGO TRAVEL

SERVICE, INC., 223 W. Michigan Ave., P.O. Box 1129, Jackson, MI 49201. Representative: Karl L. Gotting, 1200 Bank of Lansing Bldg., Lansing, MI 48933. *Passengers and their baggage, in the same vehicle with passengers, in round trip special and charter operations* beginning and ending at points in Jackson, Hillsdale, Calhoun and Lenawee Counties, MI and extending to points in the U.S. (including AK, but excluding HI) and to points of entry on the International Boundary Line between the United States and Canada. Supporting shippers: There are eight (8) supporting shippers.

MC 153491 (Sub-4-1TA), filed January 8, 1981. Applicant: CARGO TRANSPORT, INC., P.O. Box 41265, Chicago, IL 60641. Representative: Donald B. Levine, 39 S. LaSalle St., Chicago, IL 60603. *(a) Institutional and industrial laundry equipment, materials and supplies and (b) machine tools, metal cutting saws, parts thereof and materials, equipment and supplies used in the manufacture and distribution thereof,* between Chicago, IL, and points in its commercial zone OTOH and, OTO Milwaukee and Oshkosh, WI. Supporting shippers: Armstrong-Blum Mfg. Co., 5800 West Bloomingdale Ave., Chicago, IL 60639, and, Southern Mills, Inc., 3250 N. Milwaukee, Chicago, IL 60618.

MC 126346 (Sub-4-17TA), filed January 7, 1981. Applicant: HAUPT CONTRACT CARRIERS, INC., P.O. Box 1023, Wausau, WI 54401. Representative: Elaine M. Conway, 10 S. LaSalle St., Chicago, IL 60603. *Contract; Irregular:* Such commodities as are dealt in or used by manufacturers of air conditioners, humidifiers, and dehumidifiers, between Edison, NJ and points in the U.S. under continuing contract with Edison Products. An underlying ETA seeks 120 days authority. Supporting shipper: Edison Products, Route 27 and Vineland, Edison, NJ 08817.

MC 148074 (Sub-4-6TA), filed January 9, 1981. Applicant: TRUTH MOTOR TRUCK SERVICE, INC. 720 Scheel St., P.O. Box 982, Belleville, IL 62221. Representative: Lesliesann G. Maxey, Attorney at Law, 307 S. Fourth St., Springfield, IL 62703. *Drugs, medicines, toilet preparations, shampoo, and plastic bottles, caps and articles* between Hillside, NJ and St. Louis, MO, OTOH and Franklin, KY. OTO Supporting shipper: Bristol Myers Products Company, 225 Long Ave, Hillside, NJ 07207.

MC 145004 (Sub-4-13TA), filed January 9, 1981. Applicant: STALBERGER, INC., 223 S. 50th Ave., W., Duluth, MN 55807. Representative: Norman A. Cooper, 145 W. Wisconsin Ave., Neenah, WI 54956. *Wrought iron pipe and/or tubing, supplies and materials used in the manufacture, sale and distribution of named commodities,* between the four (4) plant sites of UNR-Leavitt at Chicago, IL on the one hand, and on the other, points in MN and to Ashland, Barron, Bayfield, Buffalo, Burnett, Chippewa, Clark, Douglas, Dunn, Eau Claire, Iron, Jackson, La Crosse, Monroe, Pepin, Pierce, Polk, Price, Rusk, Saint Croix, Sawyer, Taylor, Trempealeau, Vernon, and Washburn Counties, WI. Supporting shipper: UNR-Leavitt, Div. of UNR, Inc., 1717 W. 115th Street Chicago, IL 60643.

MC 153496 (Sub-4-1TA), filed January 9, 1981. Applicant: STAGECOACH EXPRESS, INC., 7965 E. 190th St., Hastings, MN 55033. Representative: Val M. Higgins, 1600 TCF Tower, Minneapolis, MN 55402. *Contract irregular: General commodities* (except Class A & B explosives) between points in the U.S. Restricted to traffic moving under continuing contract with S. St. Paul Feed, Inc. Supporting Shipper: So. St. Paul Feed Inc., 500 Farwell Ave., So. St. Paul, MN 55075.

99025 (Sub-4-1TA), filed January 9, 1981. Applicant: LINCOLN TRANSFER COMPANY, INC., 305 S. Main St., Lincoln, IL 62656. Representative: James C. Hardman, 33 N. LaSalle St., Chicago, IL 60602. *Common* regular and irregular: *General commodities (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and commodities requiring special equipment),* over regular routes, (a) between Decatur, IL and Springfield, IL: from Decatur over U.S. Hwy 36 to Springfield and return over the same route; between Decatur, IL and Bloomington, IL: from Decatur over IL Hwy 51 to Bloomington and return over the same route; between Decatur, IL and Peoria, IL: from Decatur over IL Hwy 121 to its junction with I-Hwy 74, thence over I-Hwy 74 to Peoria and return over the same route; between Bloomington, IL and Springfield, IL: from Bloomington over I-Hwy 55 to Springfield and return over the same route; between Springfield, IL and Jacksonville, IL: from Springfield over U.S. Hwy 36 to Jacksonville and return over the same route; between Peoria, IL and Springfield, IL: from Peoria over IL Hwy 29 to Springfield and return over the same route; between Peoria, IL and Bloomington, IL: from Peoria over I-Hwy 74 to Bloomington and return over the same route; in connection with the routes described in (a) above, service is authorized to or from all other points in Woodford, Piatt, Mason, McLean, Fulton, DeWitt, Cass, Moultrie, Shelby, Christian, Sangamon, Menard, Morgan, Macon, Logan, Tazewell and Peoria Counties, IL as intermediate or off-route points; (b) between Lincoln, IL and Moline, IL: from Lincoln over IL Hwy 121 to its intersection with I-Hwy 74, thence over I-Hwy 74 to its intersection with I-Hwy 80, thence over I-Hwy 80 to Moline and return over the same route; between Lincoln, IL and Hamilton, IL: from Lincoln over IL Hwy 121 to its intersection with U.S. Hwy 136, thence over U.S. Hwy 136 to Hamilton and return over the same route; between Havana, IL and Quincy, IL: from Havana over IL Hwy 136 to its intersection with U.S. Hwy 24, thence over U.S. Hwy 24 to Quincy and return over the same route; between Macomb, IL and Rock Island, IL: from Macomb over U.S. Hwy 67 to Rock Island and return over the same route; between Lincoln, IL and South Beloit, IL: from Lincoln over I-Hwy 55 to Bloomington, thence over U.S. Hwy 51 to South Beloit; between Peoria, IL and Rockford, IL: from Peoria over IL Hwy 88 to its intersection with IL Hwy 2, thence over IL Hwy 2 to Rockford; between Bloomington, IL and East Dubuque, IL: from Bloomington over U.S. Hwy 51 to its intersection with U.S. Hwy 52, thence over U.S. Hwy 52 to its intersection with IL Hwy 84, thence over IL Hwy 84 to its intersection with U.S. Hwy 20, thence over U.S. Hwy 20 to East Dubuque; between Rockford, IL and East Dubuque, IL: from Rockford, IL over U.S. Hwy 20 to East Dubuque and return over the same route; between Lincoln, IL and Chicago Heights, IL: from Lincoln over I-Hwy 55 to its intersection with U.S. Hwy 30, thence over U.S. Hwy 30 to Chicago Heights and return over the same route; from Lincoln over IL Hwy 10 to its intersection with I-Hwy 57 to its intersection with U.S. Hwy 30, thence over U.S. Hwy 30 to Chicago Heights and return over the same route; between Lincoln, IL and Danville, IL: from Lincoln over IL Hwy 10 to its intersection with I-Hwy 74 thence over I-Hwy 74 to Danville and return over the same route; between Lincoln, IL and East St. Louis, IL: from Lincoln over I-Hwy 55 to East St. Louis and return over the same route; from Lincoln over I-Hwy 55 to Springfield, thence over U.S. Hwy 36 to its intersection with U.S. Hwy 67, thence over U.S. Hwy 67 to Alton, thence over Alternate U.S. Hwy 67 to East St. Louis and return over the same route; between Lincoln, IL and Cairo, IL: from Lincoln over IL Hwy 121 to its intersection with U.S. Hwy 51, thence over U.S. Hwy 51 to Cairo and return

over the same route; from Lincoln over IL Hwy 121 to U.S. Hwy 45, thence over U.S. Hwy 45 to its intersection with I-Hwy 57, thence over I-Hwy 57 to Cairo and return over the same route; between Lincoln, IL and Brookport, IL: from Lincoln over IL Hwy 121 to U.S. Hwy 45, thence over U.S. Hwy 45 to its intersection with I-Hwy 57, thence over I-Hwy 57 to its intersection with I-24, thence over I-Hwy 24 to its intersection with U.S. Hwy 45, thence over U.S. Hwy 45 to Brookport and return over the same route; (c) between Chicago Heights, IL and Waukegan, IL: from Chicago Heights over U.S. Hwy 30 to its intersection with I-Hwy 94, thence over I-Hwy 94 to its intersection with U.S. Hwy 41, thence over U.S. Hwy 41 to its intersection with IL Hwy 120, thence over U.S. Hwy 120 to Waukegan and return over the same route; between Chicago, IL and Fox Lake, IL: from Chicago over U.S. Hwy 12 to Fox Lake and return over the same route; between Chicago, IL and Barrington, IL: from Chicago over U.S. Hwy 14 to Barrington and return over the same route; between Chicago, IL and Elgin, IL: from Chicago over IL Hwy 194 to its intersection with I-Hwy 90, thence over I-Hwy 90 to Elgin and return over the same route; between Chicago, IL and St. Charles, IL: from Chicago over IL Hwy 64 to St. Charles and return over the same route; between Chicago, Il and Aurora, IL: from Chicago over I-Hwy 90 to its intersection with IL Hwy 5, thence over IL Hwy 5 to Aurora and return over the same route; between Chicago Heights, IL and Elgin, IL: from Chicago Heights over U.S. Hwy 30 to its intersection with IL Hwy 31, thence over IL Hwy 31 to Elgin and return over the same route; between Chicago Heights, IL and Des PLaines, IL: from Chicago Heights over U.S. Hwy 30 to its intersection with U.S. Hwy 45, thence over U.S. Hwy 45 to Des Plaines and return over the same route; between Chicago Heights, IL and Kankakee, IL: from Chicago Heights over U.S. Hwy 30 to its intersection with I-Hwy 57, thence over I-Hwy 57 to Kankakee and return over the same route; in connection with the routes described in (c) above, service is authorized to or from all points in Lake, Cook, DuPage, Kane, Iroquois, Will, Grundy, Kankakee and Kendall Counties, IL as intermediate or off-route points; Restrictions: The authority is subject to the following restrictions: (a) Service to any of the commercial zones of the points named is restricted to points in IL; (b) The regular route authority granted above shall not be severable by sale or otherwise from carrier's underlying irregular route authority granted below; (c) In connection with points described in (b) and (c), service is limited to that from, to, or between points in Woodford, Piatt, Mason, McLean, Fulton, DeWitt, Cass, Moultrie, Shelby, Christian, Sangamon, Menard, Morgan, Macon, Logan, Tazewell and Peoria Counties, IL; over irregular routes, (a) between points in Woodford, Piatt, Mason, McLean, Fulton, DeWitt, Cass, Moultrie, Shelby, Christian, Sangamon, Menard, Morgan, Macon, Logan, Tazewell and Peoria Counties, IL; (b) between points in the counties named in (a) above, on the one hand, and, on the other, points in IL; Restriction: Carrier shall not, pursuant to the irregular route operations authorized above, transport shipments moving between any points authorized to be served by it in regular route operations. Supporting shippers: There are 13 statements of support attached.

Note.—Authority is sought to serve the Illinois commercial zones of all named points. An underlying ETA seeks 120 days authority.

MC 125973 (Sub-4-2TA), filed January 8, 1981. Applicant: CROWN WAREHOUSE TRANSPORTATION COMPANY, INC., 710 East 9th Avenue, Gary, IN 46401. Representative: Jack H. Blanshan, 205 West Touhy Avenue, Suite 200, Park Ridge, IL 60068. Contract: irregular: *Sugar,* from Gary, IN and points in its commercial zone, to points in MN, MO, ND and SD and points in the U.S. in and east of MI, IN, KY, TN and MS, under a continuing contract with Indiana Sugars, Inc. Supporting shipper: Indiana Sugars, Inc., 911 Virginia Street, Gary, IN 46401.

MC 153478 (Sub-4-1TA), filed January 9, 1981. Applicant: S & W MOTOR SERVICES, INC., Suite 270, 823 Commerce, Oak Brook, IL 60521. Representative: Frederick W. Smart, Suite 202, 1301 W. 22nd St., Oak Brook, IL 60521. *Contract:* Irregular: *Such commodities as are dealt in by drug, health food, catalog and general department stores, and materials equipment and* supplies used in the manufacture between terminals and warehouses with a fifty mile radius of Oak Brook, IL and points and places in the states of IL, IN, IA, MI, MO, and WI under continuing contracts with General Nutrition Corp., Supporting shipper: General Nutrition Corporation, 3125 Preble Avenue, Pittsburg, PA 15233.

MC 153356 (Sub-4-1TA), filed January 8, 1981. Applicant: RAYMOND FULLER, d.b.a. AT&E TRUCKING, 18995 Forest Blvd. No., Forest Lake, MN 55025. Representative: James F. Finley, AAA Building, Suite 200, 170 E. 7th Place, St. Paul, MN 55101. *Contract:* Irregular *Confectionery Items* between all points in MN, DE, FL, GA, IL, IN, IA, KS, KY, MD, MA, MI, MO, NJ, NY, NC, OH, PA, SC, TN, VA, WV, WI and CT under a continuing contract with Fritz Company, Inc., Supporting Shipper: Fritz Company, Inc., 1912 Hastings Avenue, Newport, MN 55055.

MC 139482 (Sub-4-24TA), filed January 8, 1981. Applicant: NEW ULM FREIGHT LINES, INC., P.O. Box 877, New Ulm, MN 56073. Representative: Barry M. Bloedel, P.O. Box 877, New Ulm, MN 56073. *(1) Paper and paper products, scrap or waste paper and plastic articles, and (2) materials, supplies and equipment used in the manufacture and distribution of commodities listed in (1) above,* between points in the United States (except AK and HI). Restricted to traffic originating at or destined to the facilities of Stone Container Corporation. Supporting shipper: Stone Container Corporation, 360 North Michigan Avenue, Chicago, IL 60601.

MC 139482 (Sub-4-23TA), filed January 8, 1981. Applicant: NEW ULM FREIGHT LINES, INC., P.O. Box 877, New Ulm, MN 56073. Representative: Barry M. Bloedel, P.O. Box 877, New Ulm, MN 56073. *Such merchandise as is dealt in by food business houses and materials, ingredients and supplies used in their manufacture and distribution,* between points in the states of OH and SC, OTOH, and OTO points in the states of IA, IL, IN, KS, KY, MI, MN, MO, NE, OH, ND, SC, SD, TN and WI. Restricted to traffic originating at or destined to the facilities utilized by the Stouffer Corporation. Supporting shipper: Stouffer Foods Corporation, 5750 Harper Road, Solon, OH 44139.

MC 151365 (Sub-4-3TA), filed January 8, 1981. Applicant: MAC OF WISCONSIN, INC., 26 Lake View Dr., Sullivan, WI 53178. Representatives: Steven L. Weiman & Steven H. Dorne, 4 Professional Dr., Gaitersburg, MD 20760. *Bakery products,* from Ripon WI to Baltimore, MD, Jessup, MD, Edison, NJ, Franklin Township, NJ and Columbus, OH. Supporting shipper: Ripon Foods, Inc., Box 348, Oshkosh St, Ripon, WI 54971.

MC 112863 (Sub-4-4TA), filed January 8, 1981. Applicant: BULK TRANSPORT COMPANY, 100 Waukegan Road, P.O. Box 1000, Lake Bluff, IL 60044. Representatives: Michael V. Kaney (same as above). *Petroleum lubricating oil and rubber process oil* from Wood River, IL to Waukesha and Racine Counties, WI. Supporting shipper: Petron Corp., 16700 Glendale Dr., New Berlin, WI 53151.

MC 36556 (Sub-4-2), filed January 8, 1981. Applicant: BLACKMON TRUCKING, INC., P.O. Box 188, Somers,

WI 53171. Representatives: Howard E. Blackmon, P.O. Box 188, Somers, WI 53171. *Fertilizer compounds, ice melting compounds, and Vermiculite products,* from the plantsites and/or facilities utilized by Koos, Inc., in Kenosha County, WI, to Detroit, MI. An underlying ETA has been granted for 120 days. Supporting shipper: Koos, Inc., Kenosha, WI 53140.

MC 145042 (Sub-4-4TA), filed January 7, 1981. Applicant: ZEELAND FARM SERVICES, INC., 2468 84th Avenue, Zeeland, MI 49464. Representatives: James R. Neal, 1200 Bank of Lansing Bldg., Lansing, MI 48933. *Equipment, materials and supplies dealt with by bakeries in connection with the manufacturing, packaging and distribution of bakery goods and products* from points in IL, IN, MN, NY, OH and WI to Cadillac and Grand Rapids, MI and their commercial zones. Supporting shipper: Mid-State Fruit, Inc., P.O. Box 308, Cadillac, MI 49601.

MC 149092 (Sub-4-1TA), filed January 7, 1981. Applicant: ASPEN, INC., 2000 E. 83rd Place, Merrillville, IN 46410. Representatives: Donald W. Smith, P.O. Box 40348, Indianapolis, IN 46240. Contract; irregular: *petroleum and petroleum products,* in bulk, in tank vehicles, From East Chicago, IN to points in Berrien, Cass, Van Buren, Allegan, and Ottowa Counties, MI; and from Niles, MI to South Bend, IN. Restricted to service to be performed under continuing contracts with Pyramid Oil, Inc., 500 Paw Paw Avenue, Benton Harbor, MI 49022.

MC 146830 (Sub-4-5TA), filed January 7, 1981. Applicant: AERO DELIVERIES, INC., 529 Gidley Dr., Grand Haven, MI 49417. Representative: Edward Malinzak, 900 Old Kent Bldg., Grand Rapids, MI 49503. *Contract* irregular: *(except in bulk)* between points in IL and MI, under a continuous contract with ServiceMaster Industries, Inc. Supporting shipper: ServiceMaster Industries, Inc., 2300 Warrenville Rd., Downers Grove, IL 60515. *Cleaning Compounds, cleaning machinery and parts, and printed matter.*

MC 150242 (Sub-4-3TA), filed January 7, 1981. Applicant: BRIAN-DAWN TRUCKING, INC., Box 104, Tremont, IL 61568. Representative: Michael W. O'Hara, 300 Reisch Building, Springfield, IL 62701. *Feed, feed ingredients, dog food ingredients and meat scraps,* between points in Peoria, Tazewell, McLean and Woodford Counties, IL on the one hand, and on the other, points in IA, IL, IN, MI and WI. An underlying E/T/A seeks 120 days authority. Supporting shipper: Central Illinois Grain Company, R.R. #1, Tremont, IL 61568.

MC 90670 (Sub-4-6TA), filed January 7, 1981. Applicant: RIECHMANN ENTERPRISES, INC., Route Box 1284, Granite City, IL 62040. Representative: Cecil L. Goettsch, 1100 Des Moines Bdlg., Des Moines, IA 50307. *Forest products, lumber, lumber mill products, construction material, building material, supplies* between the facilities of D-J Lumber Sales, Inc., at Indianapolis, IN and points in GA, AL, IN, IL, MO, WI, IA, OK, KS, and points in TX on and North of Hwy 84 and points in KS on and East of Hwy 281. Supporting shipper: D-J Lumber Sales, Inc., 3605 Farnswate Ave., Indianapolis, IN.

MC 152282 (Sub-4-2TA), filed January 7, 1981. Applicant: FLOYD DUENOW, INC., P.O. Box 88, Savage, MN 55378. Representative: Stanley C. Olsen, Jr., 5200 Willson Road, Suite 307, Edina, MN 55424. *Contract* irregular *lumber and lumber products,* from points in ID, MT, OR and WA to points in IL, IN, IA, KS, MI, MN, MO, OH, NE, ND, SD and WI, under continuing contract(s) with Sprenger-Midwest, Inc., of Minneapolis, MN. Supporting shipper: Sprenger-Midwest, Inc., 4960 West 77th Street, Minneapolis, MN 55435.

MC 151556 (Sub-4-5TA), filed January 7, 1981. Applicant: ALLSTATE TRANSPORTATION COMPANY, 10700 Lyndale Avenue, So., Minneapolis, MN 55420. Representative: George L. Hirschbach, 920 West 21st Street, S. Sioux City, NE 68776. *Such commodities as are dealt in by farm supply cooperatives* (except foodstuffs, commodities in bulk and household goods as described by the Commission) between points in CO, IA, IL, IN, KS, MI, MN, MO, NE, ND, SD and WI. Supporting shipper: CENEX, 1185 North Concord Street, South St. Paul, MN 55164.

MC 120737 (Sub-4-9TA), filed January 8, 1981. Applicant: STAR DELIVERY & TRANSFER, INC., P.O. Box 39, Canton, IL 61520. Representative: James C. Hardman, 33 N. LaSalle St., Chicago, IL 60602. *Iron and steel articles,* from Putnam County, IL to points in MO, TN, AR, OK, AL and MS. Supporting shipper: Jones & Laughlin Steel Corporation, P.O. Box 325, Hennepin, IL 61327.

MC 149057 (Sub-4-3TA), filed January 8, 1981. Applicant: C & M TRUCKING, INC., 3500 North Monroe, Monroe, MI 48161. Representative: John C. Scherbarth, 22375 Haggerty Rd., P.O. Box 400, Northville, MI 48167. *Limestone,* in bulk, from Toledo, OH to Fremont, OH. Supporting shipper: Northern Ohio Sugar Company, Denver, CO 80217.

MC 153273 (Sub-4-2TA), filed January 5, 1981. Applicant: SCHREIBER TRANSIT, INC., 425 Pine Street, Green Bay, WI 54305. Representative: Norman A. Cooper, 145 W. Wisconsin Ave., Neenah, WI 54956. *Contract;* Irregular. *General Commodities* except Class A & B explosives, between points in the U.S. under contract with Winn-Dixie Stores, Inc. and its subsidiaries. Supporting shipper: Winn-Dixie Stores, Inc., 5050 Edgewood Ct., Jacksonville, FL 32203.

MC 720 (Sub-4-4TA), filed January 5, 1981. Applicant: BIRD TRUCKING COMPANY, INC., P.O. Box 227, Waupun, WI 53963. Representative: Tom Westerman, P.O. Box 227, Waupun, WI 53963. Contract; Irregular. *Materials, equipment and supplies used or useful in the sale, manufacture or distribution of foodstuffs* from Cook County, IL to points in CT, DE, IN, IA, KY, ME, MA, MD, MI, MN, MO, NH, NJ, NY, OH, PA, RI, VT, VA, WV, WI and DC. Under contract to Hospital and Kitchen Equipment Ltd. Underlying ETA seeks 120 days authority. Supporting shipper: Hospital and Kitchen Equipment Ltd., 555 Oakdale Rd., Downsview, Ontario.

MC 153400 (Sub-4-1TA), filed January 5, 1981. Applicant: C.S.I. TRUCKING, INC., 15430 58th Street North, Stillwater, MN 55082. Representative: Philip W. Getts, 10 South Fifth Street, Suite 930, Minneapolis, MN 55401. Contract; irregular. *Roofing granules* (washed, dried and crushed slag) in bulk, from Woodbury, MN to the point to entry at Emerson, Manitoba and MN. Supporting shipper: Black Diamond, Ltd., 499 Cottage Road Drive, Woodbury, MN 55107.

MC 153402 (Sub-4-1TA), filed January 5, 1981. Applicant: SAGINAW VALLEY MARINE TERMINAL AND WAREHOUSE, INC., 700 Harrison Street, Bay City, MI 48706. Representative: Paul Buda, 700 Harrison Street, Bay City, MI 48706. (A) *Doors and Door Frames, and parts thereof,* from Flint and West Branch, MI and from Auburndale, FL on the one hand, and on the other points and places in the U.S., (except AK and HI), and (B) *General Commodities,* except those of unusual value, and except dangerous explosives, household goods, commodities in bulk, commodities requiring special equipment, and those injurious or contaminating to other lading, from points and places in the U.S., (except AK and HI), OTOH and OTO points and places in the States of IA, IL, IN, KY, MI, MN, OH, PA, WV and WI. Shipper Taylor Building Products, 631 N. First St., West Branch, MI 48661.

MC 143002 (Sub-4-17TA), filed January 2, 1981. Applicant: C. D. B.,

INCORPORATED, 155 Spaulding Avenue, S.E., Grand Rapids, 49506. Representative: C. Michael Tubbs, 155 Spaulding Avenue, S.E., Grand Rapids, MI 49506. *Contract;* irregular. *Plastic materials and articles used in the manufacture thereof* between various points in the Continental United States under contract(s) with Southern Petrochemical, Inc. Supporting shipper: Southern Petrochemical, Inc.; 1293 Minhinnett Drive; Roswell, Georgia 30075.

MC 139482 (Sub-4–21TA), filed January 5, 1981. Applicant: NEW ULM FREIGHT LINES, INC., P.O. Box 877, New Ulm, MN 56073. Representative: Barry M. Bloedel, P.O. Box 877, New Ulm, MN 56073. *Such commodities as are dealt in by wholesale and retail grocery stores and food business houses (except commodities in bulk),* from New Prague and New Ulm, MN to points in the states in and east of WI, IL, KY, TN, and MS. Restricted to the facilities of International Multifoods Corporation. An underlying ETA seeks 120 days authority. Supporting shipper: International Multifoods Corporation, 1200 Multifoods Building, Minneapolis, MN 55402.

MC 139482 (Sub-4–22TA), filed January 5, 1981. Applicant: NEW ULM FREIGHT LINES, INC., P.O. Box 877, New Ulm, MN 56073. Representative: Barry M. Bloedel, P.O. Box 877, New Ulm, MN 56073. *(1) Sugar and sugar products, (2) materials, supplies and equipment used in the manufacture and distribution of (1) above (except commodities in bulk),* from Gary, IN to points in the United States (except AK and HI). Restricted to the transportation originating at the facilities of Indiana Sugars, Inc. An underlying ETA seeks 120 days authority. Supporting shipper: Indiana Sugars, Inc., 911 Virginia St., Gary, IN 46401.

MC 153399 (Sub-4–1TA), filed January 5, 1981. Applicant: GREEN RIVER LINES, INC., R.R. #1, Walnut, IL 61376. Representative: Glenn Hansen (same as above). *Passengers and their baggage, in special and charter operations,* between points in Lee, Bureau, and LaSalle Counties, IL OTOH and OTO all points in the U.S. (except HI). There are 6 statements of support attached. An underlying E.T.A. seeks 120 days authority.

MC 134045 (Sub-4–1TA), filed January 6, 1981. Applicant: LAKE STATE TRANSPORT, INC., P.O. Box 944, St. Cloud, MN 56301. Representative: Robert P. Sack, P.O. Box 6010, West St. Paul, MN 55118. *Compressed Air de-icing systems and anti-freeze compounds,* Between the facilities of Tanner Systems, Inc. At St. Cloud, MN on the one hand, and, on the other, points in the U.S. Supporting shipper: Tanner Systems, Inc., Box 67, Sauk Rapids, MN 56379.

MC 153434 (Sub-4–1TA), filed January 6, 1981. Applicant: LEONARD C. MILLARD, an individual, d.b.a., MILLARD TRUCKING, P.O. Box 606, St. Charles, Minnesota 55972. Representative: Robert S. Lee, 1600 TCF Tower, Minneapolis, MN 55402. *Contract;* irregular: *(1) such commodities as are dealt in by poultry processors* and *(2) equipment, materials and supplies used in the production, sale and distribution of the commodities in (1) above* between points in the U.S. Restricted to traffic moving under continuing contract with North Star Foods, Inc. Supporting shipper: North Star Foods, Inc., P.O. Box 587, St. Charles, MN 55972.

MC 142059 (Sub-4–14), filed January 5, 1981. Applicant: CARDINAL TRANSPORT, INC., P.O. Box 911, Joliet, IL 60434. Representative: Jack Riley (same address as applicant). *Sheet steel stoves or ranges in packages.* from Walled Lake, MI to Buffalo and Syracuse, NY: Camden, Trenton and Wayne, NJ; Reading, PA; Tulsa, OK; Dallas and Houston, TX; Chicago, Springfield and E. St. Louis, IL; Denver and Steamboat Springs, CO: Lake Tahoe, Reno and Las Vegas, NV; Salt Lake City, Provo and Ogden, UT; Casper and Cheyenne, WY; Los Angeles, San Francisco, Lake Elsimore and Jackson, CA and Nogales, Phoenix and Tucson, AZ. Supporting shipper: Freedom Stoves Works, 2700 W. Maple, Walled Lake, MI 48088.

MC 16503 (Sub-4TA), filed January 5, 1981. Applicant: GUEX TRUCKING, INC., P.O. Box 359, Shawano, WI 54166. Representative: DANIEL R. DINEEN, 710 North Plankinton Avenue, Milwaukee, WI 53203. *Contract;* irregular: *Canned goods,* from Plainview, MN, and Manitowoc, WI, to points in AL, FL, GA, KS, MO, and NE under continuing contracts with Lakeside Packing Company. An underlying ETA seeks 120 days authority. Supporting shipper: Lakeside Packing Company, 508 Jay Street, Manitowoc, WI, 54220.

MC 105159 (Sub-4–8TA), filed January 6, 1981. Applicant: KNUDSEN TRUCKING, INC., 1320 West Main Street, Red Wing, MN 55066. Representative: Stephen F. Grinnell, 1,600 TCF Tower, Minneapolis, MN 55402. *Foodstuffs;* from Minneapolis, MN to points in AZ, CA, CO, ID, MT, NE, NV, NM, OR, WA and WY. Supporting shipper: Food Producers International, Division of Beatrice Foods, 10505 Wayzata Blvd., Minneapolis, MN 55343. An underlying ETA seeks 120 days authority.

MC 105159 (Sub-4–9TA), filed January 6, 1981. Applicant: KNUDSEN TRUCKING, INC., 1320 West Main St., Red Wing, MN 55066. Representative: Stephen F. Grinnell, 1600 TCF Tower, Minneapolis, MN 55402. *Tires and tubes;* from Huntsville, AL; Los Angeles, CA; Mount Vernon, IL; Mayfied, KY; St. Louis, MO; Charlotte, NC; Buffalo, NY; Cincinnati, OH; Oklahoma City, OK; and Memphis, TN to Minneapolis, MN. An ETA seeks 120 days authority. Supporting shippers: Northwestern Tire Company, Inc., 1200 Glenwood Avenue North, Minneapolis, MN 55405; S & M Tire Co., 2101 Kennedy NE, Minneapolis, MN 55413.

MC 136699 (Sub-4–7TA), filed January 6, 1981. Applicant: HIGGINS TRANSPORTATION LTD., P.O. Box 637, Richland Center, WI 53581. Representative: Foster L. Kent, P.O. Box 255, Council Bluffs, IA. 51502. *(1) Such commodities as are dealt in or used by grocery and food business houses, and (2) materials, equipment and supplies used in the manufacture and distribution of items in (1) above,* between points in Towner County, ND on the one hand, and on the other, points in CO, IL, IN, IA, KS, MI, MN, MO, NE, OH, SD, and WI. An underlying ETA seeks 120 days authority. Supporting shipper: Noodles by Leonardo, Cando, ND 58324.

MC 148739 (Sub-4–1TA), filed January 6, 1981. Applicant: DOORN'S INC., I-90 and Betts Road, P.O. Box 1063, Mitchell, SD 57301. Representative: A. J. Swanson, P.O. Box 1103, 226 N. Phillips Avenue, Sioux Falls, SD 57101. *Building materials,* (1) between Davison County, SD, on the one hand, and, on the other, points in MT, WA, CA, and MN; and (2) from Webster and Woodbury Counties, IA; Davison County, SD; and Kansas City, MO and Minneapolis and Shakopee, MN, and points in their commercial zones, to points in SD and Cherry County, NE. An underlying ETA seeks 120 days authority. Supporting shipper: Fullerton Lumber Company, 1717 North Sanborn, Mitchell, SD 57301.

MC 146420 (Sub-4–2TA), filed January 6, 1981. Applicant: FRATE SERVICE, INC., Rural Route One, East Peoria, IL 61611. Representative: Samuel G. Harrod, Eureka Professional Building, Eureka, IL 61530. *Iron and steel group, rocks group,* and *machinery group* from points in IL to points in IN, KY, MI, OH, WI, IA, and return. Supporting shippers: Speedrack, Inc., 5300 Golf Road, Skokie, IL 60077; Keystone Consolidated Industries, Inc., 7000 South West Adams

Street, Peoria, IL 61641; and Rolled Steel Corp., 6101 Oakton, Skokie, IL 60076.

MC 125973 (Sub-4-1TA), filed January 6, 1981. Applicant: CROWN WAREHOUSE TRANSPORTATION COMPANY, 710 East 9th Ave., Gary, IN 46401. Representative: Jack H. Blanshan, Suite 200, 205 West Touhy Ave., Park Ridge, IL 60068. *Contract:* irregular: *Pulp board and scrap paper,* between Coshocton, OH and points in its commercial zone on the one hand, and on the other, Mishawaka, IN and North Chicago and Chicago, IL and points in their commercial zones, under a continuing contract with Stone Container Corporation. Supporting shipper: Stone Container Corporation, 360 North Michigan Avenue, Chicago, IL 60601.

MC 133689 (Sub-4-3), filed January 6, 1981. Applicant: OVERLAND EXPRESS, INC., 6051 Naples St. NE, Blaine, MN 55434. Representative: Robert P. Sack, P.O. Box 6010, West St. Paul, MN 55118. *Floor covering,* between the facilities of Lowry Enterprises, Inc. at St. Louis, MO on the one hand, and, on the other hand, points in and east of ND, SD, NE, KS, OK and TX. Supporting shipper: Lowry Enterprises, Inc., 4001 N. Kings Highway, St. Louis, MO 63115.

MC 153400 (Sub-4-3TA), filed January 6, 1981. Applicant: C. S. I. TRUCKING, INC., 15430 58th Street North, Stillwater, MN 55082. Representative: Philip W. Getts, 10 South Fifth Street, Suite 930, Minneapolis, MN 55401. *Contract,* irregular: *muriate of potash, potassium nitrate, potash fertilizer,* in bulk, from the International Boundary between MN and ND and Sask. and Man., to points in ND and SD, MN, and WI. Under contract with Howe, Inc. Supporting shipper: HOWE, INC., 4821 Xerxes Avenue North, Minneapolis, MN 55430.

MC 145394 (Sub-4-15TA), filed January 6, 1981. Applicant: A & B FREIGHT LINE, INC., 4805 Sandy Hollow Road, Rockford, IL 61109. Representative: James A. Spiegel, Attorney, Olde Towne Office Park, 6425 Odana Road, Madison, WI 53719. *Contract;* irregular; *liquefied petroleum products, in cylinders, cutting torches and tools, engine starting fluid and materials, equipment and supplies* used in the manufacture, sale and distribution of such commodities between Sycamore, IL, and points in the U.S. Restriction: Restricted to transportation performed under a continuing contract(s) with Turner Corp., Div. Cleanweld Products. An underlying ETA seeks 120 days authority. Supporting shipper: Turner Corp., Div. Cleanweld Products, Park Street, Sycamore, IL 60178.

MC 147435 (Sub-4-1TA), filed December 31, 1980. Applicant: BELTMANN NORTH AMERICAN CO., INC., 3400 N.W. Spring, Minneapolis, MN 55413. Representative: Andrew R. Clark, 1600 TCF Tower, Minneapolis, MN 55402. *Used household goods* which transportation is incidental to a pack and crate service on behalf of the Department of Defense, U.S. Government; between points in Lincoln, Cottonwood, Lyon, Murray, Nobles, Pipestone, Redwood, Renville, Jackson, Rock, Blue Earth, Brown, Faribault, Freeborn, LeSueur, Martin, Nicollet, Rice, Sibley, Steel, Waseca, Watonwan, MN Counties. Supporting shipper: Dept. of Defense, Fort Snelling, St. Paul, MN.

MC 140066 (Sub-4-2), filed January 6, 1981. Applicant: DeLARIA TRANSPORT, INC., 327 8th Avenue, N.W., New Brighton, MN 55112. Representative: James M. Christenson, 4444 IDS Center, 80 South Eighth Street, Minneapolis, MN 55402. *Liquid sugar, corn syrup and blends thereof,* from points in Minneapolis-St. Paul, MN commercial zone to points in MT. Supporting shipper: A. E. Staley Company, 2200 East Eldorado St., Decatur, IL 62521.

MC 41406 (Sub-4-4), filed January 6, 1981. Applicant: ARTIM TRANSPORTATION SYSTEM, INC., 6400 Westlake Dr, Merrillville, IN 46410. Representative: Ralph D. Artim, President, 6400 Westlake Dr, Merrillville, IN 46410. *Iron and Steel Articles, and materials, supplies and equipment,* used in the manufacture, processing, sale and distribution thereof, between Boyd and Greenup Counties, KY, on the one hand, and, on the other points in the states of AL, FL, GA, KS, KY, LA, MS, NC, SC, TN, VA, and WV. Supporting shipper: Armco Inc., 703 Curtis Street, Middletown, OH.

MC 146728 (Sub-4-5TA), filed January 5, 1981. Applicant: GOLDEN BROS., INC., 234 East McClure St, Kewanee, IL 61443. Representative: Donald S. Mullins, 1033 Graceland Ave, Des Plaines, IL 60016. *Iron and Steel Articles,* from points in TX to points in the U.S. except points in the states of AK, CA, CO, ID, HI, MT, NV, OR, TX, WA, and WY. Supporting shipper: Cook Steel Corp., Houston, TX, Mueller Supply Co. Inc., Ballinger, TX.

MC 121406 (Sub-4-1), filed January 5, 1981. Applicant: STAR LINE EXPRESS, INC., 700 West Estes Avenue, Schaumburg, IL 60193. Representative: Donald S. Mullins, 1033 Graceland Avenue, Des Plaines, IL 60016. *General Commodities, except commodities in bulk,* Between points in IL, and that portion of IN within the Chicago, IL, Commercial Zone, OTOH, and OTO, points in IA, IL, IN, KY, MI, MN, MO, and WI. Supporting shippers: 16 Supporting shippers.

MC 151966 (Sub-4-5), filed January 5, 1981. Applicant: ALLSTATE TRANSPORTATION COMPANY, 10700 Lyndale Avenue, South, Minneapolis, MN 55420. Representative: George L. Hirschbeck, P.O. Box 155, South Sioux City, NE 68776. Contract; Irregular. (1) *Engines, generators, generating sets, tractors, loaders, back hoes* and (2) *materials, equipment and supplies* used in the manufacture, installation and sale of commodities in (1) above (except commodities the transportation of which require the use of special equipment) between points in IA, MN, ND, SD and WI under continuing contract(s) with Valley Equipment Company. Supporting shipper: Valley Equipment Co., Valley Engine Div. Burnsville, MN.

MC 145746 (Sub-4-1TA), filed January 5, 1981. Applicant: MINDEMANN TRUCKING, INC., N63 W22685 Main Street, Sussex, WI 53089. Representative: Daniel R. Dineen, 710 North Plankinton Avenue, Milwaukee, WI 53203. Contract irregular: *Canned goods and materials, equipment, and supplies used in the manufacture, sale or distribution of canned goods* between the facilities of Friday Canning Corporation at points in WI, on the one hand, and, on the other, points in IA, IL, IN, MI, MN, MO, and OH, under continuing contracts with Friday Canning Corporation. An underlying ETA seeks 120 days authority. Supporting shipper: Friday Canning Corporation, 600 North 2nd Street, New Richmond, WI, 54017.

MC 95876 (Sub-4-10TA), filed January 2, 1981. Applicant: ANDERSON TRUCKING SERVICE, INC., 203 Cooper Avenue North, St. Cloud, MN 56301. Representative: Stephen F. Grinnell, 1600 TCF Tower, Minneapolis, MN 55402. *Lumber,* from Pine Bluff and Sheridan, AR to points in TX. Supporting shipper: Arkansas Oak Flooring Company, 2200 West 5th Street, Pine Bluff, AR.

MC 124078 (Sub-4-51TA), filed January 5, 1981. Applicant: SCHERMAN TRUCKING CO., 611 South 28th Street, Milwaukee, WI 53215. Representative: Richard H. Prevette, P.O. Box 1601, Milwaukee, WI 53201. *Salt cake,* in bulk from Nashua, NH and Front Royal, VA to Orangeburg, NY. Supporting shipper: Glenshaw Glass Co. Inc. 1101 Wm Flinn Hwy, Glenshaw, PA 15116.

MC 153446 (Sub-4-1TA), filed January 7, 1981. Applicant: CONTRUX, INC., 1050 Kingery Highway, Bensenville, IL 60106. Representative: Donald B. Levine,

39 S. LaSalle St., Chicago, IL 60603. *Contract: Irregular; General commodities (except Classes A and B explosives, commodities in bulk, household goods as defined by the Commission, commodities of unusual value, or those which because of size or weight require the use of special equipment),* between points in the U.S. (except AK and HI) under a continuing contract(s) with W. W. Grainger, Inc. of Chicago, IL. Supporting shipper: W. W. Grainger, Inc., 5959 W. Howard St., Chicago, IL 60648.

MC 145873 (Sub-4-1TA), filed January 7, 1981. Applicant: ROAD RAIL SERVICES, INC., 650 Skokie Hwy., Lake Bluff, IL 60044. Representative: Donald S. Mullins, 1033 Graceland Ave., Des Plaines, IL 60018. *Liquid Adhesives, except in bulk, in temperature controlled vehicles;* From Marshall, MI, to Wilmington, IL. Supporting shipper: Bostik Div. Emhart Corp., Middleton, MA 01949.

MC 153447 (Sub-4-2TA), filed January 6, 1981. Applicant: ROBERT J. KAMPS d.b.a. HI-CUBE TRANSPORT, 6812 S. Prairieview Ave., Woodridge, IL 60517. Representative: Donald S. Mullins, 1033 Graceland Ave, Des Plaines, IL 60018. Temporary authority sought for 270 days transporting: *Plastics and Plastic Products, Containers, Foodstuffs, Furniture, Sporting Goods. Household Utensils, Insulation, and Merchandise normally sold in a retail department store, except commodities in bulk;* Between points in AL, AR, AZ, CA, CO, DC, DE, FL, GA, IL, IN, IA, KS, KY, LA, MD, MI, MN, MS, MO, ND, NE, NC, NJ, NM, NY, OH, OK, PA, SC, SD, TN, TX, and WI. 6 Supporting shippers.

MC 153447 (Sub-4-1TA), filed January 6, 1981. Applicant: ROBERT J. JAMPS d.b.a. HI-CUBE TRANSPORT, 6812 S. Prairieview Ave., Woodridge, IL 60617. Representative: Donald S. Mullins, 1033 Graceland Ave., Des Plaines, IL 60018. Temporary authority sought to operate as a contract carrier, by motor vehicle, over irregular routes, transporting: *Plastic Articles (expect in bulk) and Materials, Supplies, and Equipment used in the manufacture, marketing, and distribution of plastic articles,* between Mason, MI; Leola, PA; Lithonia, GA; North Aurora, IL; Corona, CA; Waxahachie, TX; and Horse Cave, KY; OTOH, and, OTO, all points in the United States (expect AK and HI) under continuing contract(s) for the account of Dart Container Corp. Supporting Shipper: Dart Container Corp., Mason, MI 48854.

MC 153315 (Sub-4-1TA), filed January 5, 1981. Applicant: GEO. McNEIL TEAMING COMPANY, 700 West Erie Street, Chicago, IL 60610. Representative: J. A. Kundtz, 1100 National City Bank Bldg., Cleveland, OH 44114. *Contract,* irregular: *Such merchandise as is dealt in and used by retail department stores, wholesale mercantile establishments, and mail order houses,* between Elk Grove Village, IL, on the one hand, and, on the other, points in IN and WI, under contract(s) with J. C. Penny Company, Inc. Supporting shipper: J. C. Penney Company, Inc., 651 Devon Ave., Elk Grove Village, IL 60027.

MC 152206 (Sub-4-2), filed January 7, 1981. Applicant: GERALD J. GERIS (individual), 1105 5th Ave. East, Alexandria, MN 56308.. Representative: Robert P. Sack, P.O. Box 6010, West St. Paul, MN 55118. *Contract,* irregular: *Aluminum extrusions, aluminum billets and scrap metals* between points in the U.S. (except AK and HI) under a continuing contract(s) with Alexandria Extrusion Company, Alexandria, MN. An underlying ETA seeks 120 days authority. Supporting shipper: Alexandria Extrusion Company, County Road 22, Alexandria, MN 56308.

MC 152961 (Sub-4-2TA), filed January 7, 1981. Applicant: ERIC LOMEN, d.b.a. LOMEN AUTO TRANSPORT, Rural Route 1, Zumbrota, MN 55992. Representative: John B. Van de North, Jr., Briggs and Morgan, 2200 First National Bank Building, St. Paul, MN 55101. *Used motor vehicles,* between points in IL, MN, WI, MI, and IN. Supporting shippers: Lanny J. Boyer, L. B. Sales, Inc., 4000 Highway 61, White Bear Lake, MN 55110; Dick Kuehn, Kuehn Motor Co., 1210 6th Street NW, Rochester, MN 55901.

The following applications were filed in region 5. Send protests to: Consumer Assistance Center, Interstate Commerce Commission, Post Office Box 17150, Fort Worth, TX 76102

MC 200 (Sub-5-77TA), filed January 5, 1981. Applicant: RISS INTERNATIONAL CORPORATION, P.O. Box 100, 215 W. Pershing Road, Kansas City, MO 64141. Representative: H. Lynn Davis (same as applicant). *Plastic granules,* between Houston, TX and Ayer, MA. Supporting shipper: Plastic Distributing Corporation, Molumco Industrial Park, Ayer, MA.

MC 116184 (Sub-5-1TA), filed January 5, 1981. Applicant: ARROW TRANSPORTATION CO., 1911 N.E. 58th Avenue, Des Moines, IA 50313. Representative: Thomas E. Leahy, Jr., 1960 Financial Center, Des Moines, IA 50309. *Contract insulation and materials and supplies used in the manufacture and distribution of insulation* between pts in the U.S. under contract with L & L Insulation & Supply Company, Inc. Supporting shipper: L & L Insulation & Supply Company, Inc., 107 3rd Street, Des Moines, IA 50306.

MC 126600 (Sub-5-1TA), filed January 5, 1981. Applicant: EHRSAM TRANSPORT, INC., 108 North Factory, Enterprise, KS 67441. Representative: Bob W. Storey, Attorney at Law, 310 Columbian Title Building, 820 Quincy Street, Topeka, KS 66612 (913) 232-6302. *Contract irregular: Construction equipment, all types and kinds of commercial and industrial machinery, agricultural machinery and implements, and semi-trailer units,* between Wichita, KS on the one hand, and all points and places within the U.S., except AK and HI, on the other. Supporting shipper: Murphy Machinery Company, 4200 West MacArthur, Wichita, KS 67209.

MC 136786 (Sub-5-47TA), filed January 5, 1981. Applicant: ROBCO TRANSPORTATION, INC., P.O. Box 10876, Des Moines, IA 50306. Representative: Larry D. Knox, 600 Hubbell Building, Des Moines, IA 50309. *(1), Horticultural equipment, implements, and tools, (2) plastic articles, (3) insecticides, plant foods, and fertilizer (except commodities in bulk), and (4) equipment, materials, and supplies (except commodities in bulk) used in the manufacture or distribution of the products in (1), (2), and (3) above,* between West Des Moines, IA, on the one hand, and, on the other, all pts in the U.S. Supporting shipper: Ross Daniels, Inc., 1720 Fuller Road, West Des Moines, IA 50265.

MC 140665 (Sub-5-55TA), filed January 5, 1981. Applicant: PRIME, INC., P.O. Box 4208, Springfield, MO 65804. Representative: H. J. Anderson, P.O. Box 4208, Springfield, MO 65804. *Foodstuffs* from points in the U.S. to the facilities of Giant Eagle Markets, Inc., in Allegheny and Butler Counties, PA. Supporting shipper: Giant Eagle Markets, Inc., 101 Kappa Drive, Pittsburgh, PA 15238.

MC 141197 (Sub-5-5TA), filed January 5, 1981. Applicant: FLEMING-BABCOCK, INC., 4106 Mattox Road, Riverside, MO 64151. Representative: Tom B. Kretsinger, Kretsinger & Kretsinger, 20 East Franklin, Liberty, MO 64068. *Animal feed and feed ingredients, in bulk, in dump vehicles,* between points in Clay County, MO, on the one hand, and on the other hand, points in AR, CO, IA, NE, OK and TX. Supporting shipper: CPC International, Inc., International Plaza, Englewood Cliffs, NJ 07632.

MC 143859 (Sub-5-2TA), filed January 5, 1981. Applicant: ELITE TRUCKING CO., P.O. Box 66, Station E., St. Joseph, MO 64505. Representative: W. R.

England, III, P.O. Box 436, Jefferson City, MO 65102. *Contract irregular tree or weed killing compounds, insecticides, chemicals and packaging for said commodities (except commodities in bulk),* between the plant site and warehouse facilities of Rhone Poulenc, Inc., located in the States of CA, WA, ND, OR, MO and MT, on the one hand, and all points in the States of CA, ID, IL, ND, OR, WA, MT, WY, NV, MN, KS, CO, MO, IA, SD, on the other hand. Supporting shipper: Rhone-Poulenc, Inc., 125 Blackhorse Lane, P.O. Box 125, Monmouth Junction, NJ 08852.

MC 145904 (Sub-5-3TA), filed January 5, 1981. Applicant: SOUTH WEST LEASING, INC., P.O. Box 152, Waterloo, IA 50704. Representative: Stanley C. Olsen, Jr. 5200 Wilson Road, Suite 307, Edina MN 55424. *Meat, meat products, meat byproducts and articles distributed by meat packinghouses (except hides and commodities in bulk), as defined in Sections A and C of Appendix I to the report in Descriptions in Motor Carrier Certificates, 61 M.C.C. 209 and 766,* from Tama, IA to points in IN, OH and MI. Supporting shipper: Tama Meat Packing Corportion, P.O. Box 309, Tama, IA 52339.

MC 145904 (Sub-5-3TA), filed January 5, 1981. Applicant: SOUTH WEST LEASING, INC., P.O. Box 152, Waterloo, IA 50704. Representative: Stanley C. Olsen, Jr. 5200 Wilson Road, Suite 307, Edina MN 55424. *Meat, meat products, meat byproducts and articles distributed by meat packinghouses (except hides and commodities in bulk), as defined in Sections A and C of Appendix I to the report in Descriptions in Motor Carrier Certificates, 61 M.C.C. 209 and 766,* from the facilities of Wilson Foods Corp. located at Albert Lea, MN, Cedar Rapids, Cherokee and Des Moines, IA; Marshall, MO; Monmouth, IL; and Omaha, NE to points in IL, IA, KS, MN, MO, NE, and WI. Supporting shipper: Wilson Foods Corp., 4545 Lincoln Boulevard, Oklahoma City, OK 73105.

MC 146730 (Sub-5-1TA), filed January 5, 1981. Applicant: L & W TRANSPORTATION, Route 3, Box 195, Sedalia, MO., 65301. Representative: Charles J. Fain, Fain & Fain, Attorneys, 333 Madison Street, Jefferson City, MO 65101. *Lumber or wood products, except furniture,* from AR, MO, NE, and OK to points in CA, ID, IL, IN, MT, OH, OR, TN, UT and WA. Supporting shipper: Todd Slanker, Slanker and Co., 1732 Tanner Bridge Road, Jefferson City, MO 65101.

MC 147280 (Sub-5-1TA), filed January 5, 1981. Applicant: WARREN GRADWELL, d.b.a. W. L. GRADWELL TRANSPORT, 450 N.E. 44th Des Moines, IA 50313. Representative: James M. Hodge, 1980 Financial Center, Des Moines, IA 50309. Contract irregular *Meat, meat products, meat by-products and articles distributed by meat packinghouses, as described in Sections A and C of Appendix I to the report in Descriptions in Motor Carrier Certificates, 61 M.C.C. 209 and 766 (except hides and commodities in bulk)* from points in IA, IL, KS, MN, MO, NE, ND, SD and WI to points in CA, OR, TX and WA under continuing contract(s) with D. C. Buback Meat Co. of St. Louis, MO. Supporting shipper(s): D. C. Buback Meat Co., 12015 Manchester Road, Suite 116, St. Louis, MO 63131.

MC 153323 (Sub-5-1TA) filed January 5, 1981. Applicant: IOWA-TEXAS EXPRESS, LTD., P.O. Box 283, Denison, IA 51442. Representative: James M. Hodge, 1980 Financial Center, Des Moines, IA 50309. Contract irregular *Meat, meat products, meat byproducts, and articles distributed by meat packinghouses, as described in Sections A and C of Appendix I to the report in Descriptions in Motor Carrier Certificates, 61 MCC 209 and 766 (except hides and commodities in bulk,* from Dakota City and Crete, NE and Spencer, Denison and Iowa Falls, IA to points in TX. Supporting shipper(s): Handy Packing Company, Inc., P.O. Box 2420, San Angelo, TX 76902.

MC 153413 (Sub-5-1TA), filed January 5, 1981. Applicant: ROBERT E. GUNSALLUS, d.b.a. R. E. Gunsallus & Son, 906 Chase Street, Osage, IA 50461. Representative: Ronald R. Adams, 600 Hubbell Building, Des Moines, IA 50309. *Fertilizer (except in tank vehicles) and feed and feed ingredients (except in tank vehicles),* (1) between the facilities of Man-an-so at or near Fremont, NE, and Nevada, Oskaloosa, and Plainfield, IA, on the one hand, and points in IA, IL, and MN, on the other; and (2) from Ft. Worth, TX, Florence, CO, and Waterloo and Chicago, IL, to points in IA, IL, MN, and Fremont, NE, under continuing contract(s) with Man-an-so of Nevada, IA. Supporting shipper: Man-an-so, 603 Inn Avenue, Nevada, IA 50201.

MC 153416 (Sub-5-1TA), filed January 5, 1981. Applicant: ACCORD SERVICES, INC., 9414 Lewis, Kansas City, MO 64138. Representative: Frank W. Taylor, Jr., 1221 Baltimore Ave., Ste. 600, Kansas City, MO 64105. *Contract* Irregular *General commodities, except household goods as defined by the Commission and Classes A and B explosives,* between Johnson and Wyandotte Counties, KS and Jackson, Clay and Platte Counties, MO, on the one hand, and, on the other, points in the U.S. Supporting shipper: Metro Park Warehouses, Inc., 301 South Fifth Street, Kansas City, KS 66110.

MC 5853 (Sub-5-1TA), filed January 7, 1981. Applicant: NATIONWIDE MOVING & STORAGE CORP., 2200 DeSoto, P.O. Box 7577, Monroe, LA 71203. Representative Joseph E. Reisman, 314 North Broadway, 13th Floor, St. Louis, MO 63102. *Used household goods and personal effects,* between Caldwell, E. Carroll, Franklin, Madison, Morehouse, Richland, W. Carroll, Winn, Tensas and Ouachita Parishes in LA and Adams, Amite, Claiborne, Franklin, Jefferson and Wilkinson Counties in MS, restricted to the transportation of shipments having a prior or subsequent movement in containers, beyond the points authorized, and further restricted to the performance of pick-up and delivery service in connection with packing, crating and containerization, and unpacking, uncrating and decontainerazation of such shipments. Supporting shipper: U.S. Army, Military Traffic Management Command, 5611 Columbia Pike, Falls Church, VA 22041.

MC 106398 (Sub-5-54), filed January 7, 1981. Applicant: NATIONAL TRAILER CONVOY, INC., 705 South Elgin, Tulsa, OK 74120. Representative: Gayle Gibson (same as applicant). *Metal Products,* between Fulton County, OH, on the one hand, and, on the other, all points in the U.S. (except AK and HI). Supporting shipper: Arrow Tru-Line, Inc., P.O. Box 231, Archbald, OH 43502.

MC 106398 (Sub-5-55TA), filed January 7, 1981. Applicant: NATIONAL TRAILER CONVOY, INC., 705 South Elgin, Tulsa, OK 74120. Representative: Gayle Gibson (same as applicant). *Commodities used in the manufacture of metal building products,* from points in the U.S. (except AK and HI) to points in the state of CA. Supporting shipper: H. H. Robertson, Drawer G, Stockton, CA 95201.

MC 107727 (Sub-5-1TA), filed January 7, 1981. Applicant: ALAMO EXPRESS, INC., 6013 Rittiman Plaza, San Antonio, TX 78218. Representative: James M. Doherty, P.O. Box 1945, Austin, TX 78767. Common, regular. *General Commodities (except classes A and B explosives and household goods as defined by the Commission)* (1) Between Houston, TX and New Orleans, LA as follows: From Houston, TX to New Orleans, LA over IH 10 and return over the same route, serving all intermediate points. (2) Between Baton Rouge, LA and New Orleans, LA as follows: From Baton Rouge, LA over LA Hwy. 1 to its intersection with LA Hwy. 18, thence over LA Hwy. 18 to its intersection with U.S. Hwy. 90, thence over U.S. Hwy. 90

to New Orleans, LA, and return over the same route, serving all intermediate points. (3) Between Lafayette, LA and New Orleans, LA, as follows: From Lafayette, LA to New Orleans, LA over U.S. Hwy. 90, and return over the same route, serving all intermediate points, serving the plantsite of Ashland Chemical at United, LA, on U.S. Hwy. 90, as an off-route point in connection with such regular route operations. Applicant proposes to tack and interline, and to serve the commercial zones of all involved municipalities. Supporting shippers: There are 33 supporting shippers.

MC 119493 (Sub-5-50TA), filed January 7, 1981. Applicant: MONKEM COMPANY, INC., P.O. Box 1196, Joplin, MO 64801. Representative: Thomas D. Boone, Traffic Manager, Monkem Company, Inc. P.O. Box 1196, Joplin, MO 64801. *Paints, stains, and varnishes and materials and supplies used in the manufacture and distribution thereof (except commodities in bulk)* Between: Carl Junction, MO on the one hand And: points in AZ, AR, CA, CO, IA, IL, IN, KS, MN, NM, NE, OR, OK, and TX on the other hand. Supporting shipper: Master Made Paints, Inc., P.O. Box 566, Carl Junction, MO 64834.

MC 119988 (Sub-5-31TA), filed January 7, 1981. Applicant: GREAT WESTERN TRUCKING CO., INC. P.O. Box 1384, Lufkin, TX 75901. Representative: Kenneth W. Haskins, P.O. Box 1384, Lufkin, TX 75901. *Such commodities as are dealt in or used by manufacturers and distributors of plastic articles and paper articles (except in bulk)*, between the facilities of Solo Cup Co. at or near Chicago, Urbana, and Highland Parks, IL; Grandview, MO; Santa Paula, CA; Ada, OK; and Baltimore and Federalsburg, MD, on the one hand, and on the other, points in the U.S. (except AK and HI). Supporting shipper(s): Solo Cup Company, 1505 E. Main Street, Urbana, Illinois 61801.

MC 128273 (Sub-5-28TA), filed January 7, 1981. Applicant: MIDWESTERN DISTRIBUTION, INC., P.O. Box 189, Fort Scott, KS 66701. Representative: Elden Corban, P.O. Box 189, Fort Scott, KS 66701. *Salt and salt products* from the plant site of Cargill, Inc., at or near Hutchinson, KS, to points in IL, IN, MN, MO, and WI. Supporting shipper: Cargill, Incorporated, Minneapolis, MN.

MC 135797 (Sub-5-33TA), filed January 7, 1981. Applicant: J. B. HUNT TRANSPORT, INC., Post Office Box 130, Lowell, AR 72745. Representative: Paul R. Bergant, Esquire (same as above). *General commodities with the usual exceptions* between pts. in CA, on the one hand, and, on the other pts. in the U.S. (except AK and HI). Restricted to traffic originating at or destined to the facilities of California Cartage Company. Supporting shipper: California Cartage Company, 20021 Susana Road, Compton, CA 90221.

MC 142364 (Sub-5-10TA), filed January 7, 1981. Applicant: KENNETH SAGELY TRUCKING COMPANY, Post Office Box 368, Van Buren, AR 72956. Representative: Don Garrison, Esq., Post Office Box 1065, Fayetteville, AR 72701. *Such Commodities as are dealt in or used by retail and wholesale discount and variety stores and grocery stores* from pts. in CO, IA, LA, NC, NE, SC, VA and WV to the facilities of Wal-Mart Stores, Inc., located at pts. in AL, AR, IL, KS, KY, LA, MS, MO, OK, TN and TX. Supporting shipper: Wal-Mart Stores, Inc., Post Office Box 116, Bentonville, AR 72712.

MC 144505 (Sub-5-3), filed January 7, 1981. Applicant: DOYLE LOVE, d.b.a. LOVE TRUCKING, Route 1, Box 438, Mabank, TX 75147. Representative: Thomas L. Cook, First Continental Bank Bldg., Suite 301, 5801 Marvin D. Love Freeway, Dallas, TX 75237. *Bar-B-Q grills, accessories, hickory chips, outdoor cooking equipment, and materials and supplies used in the manufacturing of such commodities*, between the plantsite facilities of Smoker Products, Inc. located at or near Mabank, TX, on the one hand, and, on the other, points in the U.S. (except AK). Supporting shipper: Smoker Products, Inc., P.O. Drawer S, U.S. Highway 175E, Mabank, TX 75147.

MC 144603 (Sub-5-35TA), filed January 7, 1981. Applicant: F.M.S. TRANSPORTATION, INC., 2564 Harley Drive, Maryland Heights, MO 63043. Representative: Laura C. Berry (same address as applicant). *Such commodities dealt in by retail discount department store chains* between MO, IL, IN, IA and KS, on the one hand, and, on the other, points in the U.S. (except AK and HI), restricted to traffic from or to the facilities of Venture Stores, their vendors and suppliers. Supporting shipper: Venture Stores, 615 Northwest Plaza, St. Ann, MO 63074.

MC 144844 (Sub-5-2TA), filed January 7, 1981. Applicant: OZARK TRANSPORTATION, INC., P.O. Box 203, Greenville, MO 63944. Representative: Joseph Winter, 29 South LaSalle Street, Chicago, IL 60603. *Lumber or wood products*, (a) from points Wayne County, MS and Sabine Parish, LA, and points in AR, to points in AL, AR, CO, IL, IN, IA, LA, KS, KY, MO, MN, MS, NE, OH, OK, TN, TX and WI, and (b) from points in MO to points in AL, CO, LA, KS, MN, MS, NE, OH, OK and TX. Supporting shipper(s): There are five supporting shippers.

MC 147989 (Sub-5-5TA), filed January 7, 1981. Applicant: JOE S. BOWEN, INC., Highway 264 East, P.O. Box 282, Springdale, AR 72764. Representative: John C. Everett, 140 E. Buchanan, P.O. Box A, Prairie Grove, AR 72753. *Meat, meat products, meat by-products and articles distributed by meat packing houses except hides and commodities in bulk*, from the plant site and storage facilities of the Rath Packing Co. at Columbus Junction and Waterloo, IA, to points in OK and TX. Supporting shipper: The Rath Packing Company, P.O. Box 330, Waterloo, IA 50704.

MC 152200 (Sub-5-2TA), filed January 7, 1981. Applicant: SAM TANKSLEY TRUCKING, INC., P.O. Box 1120, Cape Girardeau, MO 63701. Representative: William F. King, Suite 400, Overlook Bldg., 6121 Lincolnia Road, Alexandria, VA 22312. *Contract, irregular, Printed matter; and materials, equipment and supplies used in the manufacture of printed matter; and by-products thereof*, between points in the U.S., except AK and HI. Supporting shipper: R. R. Donnelley & Sons Company, 2223 South Martin Luther King Drive, Chicago, IL 60616.

MC 153042 (Sub-5-1TA), filed January 7, 1981. Applicant: PROTOCOL TRUCKING CO., P.O. Box 40099, 2422 Ridgecrest, Garland, TX 75040. Representative: Shelly D. Smith (same address as applicant). *Bale Feeders, Roping Arenas, Horse Pens, IorS Gates, and Articles used in agriculture*, between Rowlett, TX, (Dallas County), on the one hand, and, on the other, points in LA, OK, and TX (for shipments only imported from Mexico). Supporting shipper: Top Hand Steel Products, 5613 Chiesa Rd., Rowlet, TX 75088.

MC 153283 (Sub-5-1TA), filed January 7, 1981. Applicant: REID WOODWARD CO., 3327 West Hillsboro, El Dorado, AR 71730. Representative: Joe D. Woodward, P.O. Box 727, Magnolia, AR 71730. *Pipe and pipe fabricating supplies*, between Union County, AR, and all points and places in the U.S. Supporting shipper: Mid-States Pipe Fabricating, Inc., 1130 East Main, El Dorado, AR 71730.

MC 153284 (Sub-5-1TA), filed January 7, 1981. Applicant: TEXAS MOTOR LINE, 301 West Tyler Avenue, Longview, TX 75601. Representative: C. M. Bowen (same as applicant). *Welding supplies, tires, oil field equipment, engines, parts, machinery, hand-tools, work benches and general commodities*, between TX counties of: Bowie, Titus,

Morris, Camp, Upshur, Franklin, Hopkins, Wood, Smith, Rusk, Panola, Gregg, Harrison, Marion and Cass, and Texarkana, AR. Supporting shippers: There are eight supporting shippers.

MC 153455 (Sub-6-1), filed January 7, 1981. Applicant: AMICK ROCK, SAND & GRAVEL, 320 North Adams, Papillion, NE 68046. Representative: Lavern R. Holdeman, P.O. Box 81849, Lincoln, NE 68501. *Rock, sand and gravel, in bulk, in dump vehicles,* between pts in the states of NE and IA. Supporting shippers: 5.

MC 153456 (Sub-6-1TA), filed January 7, 1981. Applicant: FRANK A. KOSAR, d.b.a. RITE WAY TRUCK RENTAL, 2606 Cartwright, Dallas, TX 75212. Representative: William Sheridan, P.O. Drawer 5049, Irving, TX 75062. *Heavy Machinery, Self-Propelled, and/or Attachments and Parts Thereof,* between Dallas, TX on the one hand, and, on the other, points in AL, AR, AZ, CA, CO, FL, GA, KS, KY, LA, MS, MO, NC, NM, OH, OK, PA, TN, TX and VA. Supporting shipper: Arthur Equipment Co., 1711 No. Beltline Road, Irving, TX 75061.

The following applications were filed in Region 6. Send protests to: Interstate Commerce Commission, Region 6 Motor Carrier Board, P.O. Box 7413, San Francisco, CA 94120.

MC 732 (Sub-6-4TA), filed January 7, 1981. Applicant: ALBINA TRANSFER CO., INC., 4320 N. Suttle Rd., Portland, OR 97217. Representative: Lawrence V. Smart, Jr., 419 N.W. 23rd Ave., Portland, OR 97210. *General Commodities* (except classes A and B explosives) in cargo containers, between Portland, OR and Seattle, WA, for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: General Steamship Corporation, Ltd., 421 S.W. 6th Ave., Portland, OR 97204.

MC 142407 (Sub-6-1TA), filed January 5, 1981. Applicant: CHEMICAL DISTRIBUTORS, 2332 N.W. Nicholai St., Portland, OR 97210. Representative: Jim Pitzer, 15 S. Grady Way, Suite 321, Renton, WA 98055. *Contract Carrier,* irregular routes: *Gypsum, Limestone and Dolomite,* between points in WA, OR, ID and MT, for 270 days. Carrier has applied for underlying 120 day ETA. Supporting shipper: Greenacres Gypsum and Lime Co., Inc., 17900 Euclid, Spokane, WA 99207.

MC 144758 (Sub-6-1TA), filed November 6, 1980. Applicant: DEDICATED TRUCKING CORP., Hamilton and Rush Roads, P.O. Box 1385, Chehalis, WA 98532. Representative: Henry C. Winters, 525 Evergreen Building, Renton, WA 98055. *Contract Carrier,* Irregular routes: *Such commodities as are dealt in by wholesale and retail grocery stores and food business houses, and starch, except commodities in bulk,* between points in AZ, CA, ID, MT, OR, UT and WA, under continuing contract(s) with Centennial Mills, Division of Univar, for 270 days. Supporting shipper: Centennial Mills, Division of Univar, 1404 N.W. Front Avenue, P.O. Box 3773, Portland, OR 97208.

MC 134404 (Sub-6-2TA), filed January 8, 1981. Applicant: EDWARDS BROS., INC., P.O. Box 1684, Idaho Falls, ID 83401. Representative: Timothy R. Stivers, P.O. Box 162, Boise, ID 83701. *Contract Carrier,* Irregular routes: *Beer, wine and related advertising matter in mixed loads with beer and wine,* from points in CA, OR, and WA to our facilities at or near Idaho Falls and Salmon, ID, for 270 days. Supporting shippers: B & F Distributing, P.O. Box 2396, Idaho Falls, ID 83401; Boneville Distributing, P.O. Box 456, Idaho Falls, ID 83401.

MC 145102 (Sub-6-12TA), filed January 2, 1981. Applicant: FREYMILLER TRUCKING, INC., 1400 S. Union Ave., Bakersfield, Ca 93307. Representative: Wayne W. Wilson, 150 E. Gilman St., Madison, WI 53703. *Frozen foods* from points in ID to points in TX, for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: Blue Bonnet Meat Company, Inc., 402 Dawson St., San Antonio, TX 78202.

MC 153134 (Sub-6-1TA), filed December 29, 1980. Applicant: HI COUNTRY CARRIERS, INC., 4061 South Broadway, Englewood, CO 80110. Representative: Charles J. Kimball, 350 Capitol Life Center, 1600 Sherman Street, Denver, CO 80203. *Fiberglass reinforcements,* from points in Anderson County, SC, Madison, County, TN, Randall County, TX, Huntingdon County, PA and Licking County, OH to points in CA for 270 days. Supporting shipper: THALCO, Division of United Merchants and Manufacturers, Inc., 6431 Flotilla, Street, Los Angeles, CA 90040.

MC 153134 (Sub-6-2TA), filed January 8, 1981. Applicant: HI COUNTRY CARRIERS, INC., 4061 S. Broadway, Englewood, CO 80110. Representative: Charles J. Kimball, 350 Capitol Life Center, 1600 Sherman St., Denver, CO 80203. *Transformers, electrical and switching equipment, lamps and display materials,* from the facilities of Westinghouse Electric Corporation, at or near Jefferson City, MO; Athens, GA; and Washington, PA to points in AZ, CA, ID, MT, NV, ND, OR, SD, UT, and WA for 270 days. Supporting shipper: Westinghouse Electric Corporation, 290 Leger Road, Huntingdon, PA, 16642.

MC 153481 (Sub-6-1TA), filed January 7, 1981. Applicant: J & I TRUCKING, 4730 16th N.E., No. A-2, Seattle, WA 98105. Representative: Jim Pitzer, 15 S. Grady Way, Suite 321, Renton, WA 98055. *Contract Carrier,* Irregular routes: (1) *Lumber or Wood Products* and (2) *Commodities as may be dealt in or used by Construction Supply Companies,* between points in U.S. as contract carrier for 270 days. Supporting shippers: Tyee Lbr. and Mfg. Co., Inc., 705 S. Myrtle St., Seattle, WA 98108; Unresco Construction Materials, Inc., P.O.B. 80414, Seattle, WA 98108.

MC 144885 (Sub-6-1TA), filed January 6, 1981. Applicant: JASCO TRUCKING, INC., 202 94th St., N.W., Albuquerque, NM 87109. Representative: John W. Peery (same as applicant). *Contract,* Irregular routes: *Coal* from Chimney Rock Mine, Archuleta County, CO, to Paul's Spur, Cochise County, AZ for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: Perma Resources Corporation, 6911 S. Yosemite St., Ste. 105, Englewood, CO 80112.

MC 153284 (Sub-6-1TA), filed January 1, 1981. Applicant: JERRY AND GAYLE TRUCKING, INC., P.O. Box 1016, Yuma, AZ 85364. Representative: Richard J. Herbert, 934 West McDowell Rd., Phoenix, AZ 85007. *Contract Carrier,* Irregular, *Beverages* in cans, bottles and kegs from Los Angeles, CA commercial zone to Yuma, AZ under continuing contract with Sun Valley Beverage Company, Inc., Yuma, AZ, for 270 days. Supporting shipper: Sun Valley Beverage Company, Inc., 536 E. 20th St., Yuma, AZ 85364.

MC 146561 (Sub-6-2TA), filed January 7, 1981. Applicant: L.M.T., INC., 15005 Faulkner Rd., Santa Paula, CA 93060. Representative: William J. Monheim, P.O. Box 1756, Whittier, CA 90609. *Foodstuffs,* from Prosser, WA, to points in CA, for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: Seneca Foods Corportation, Lee Road, P.O. Box 71, Prosser, WA 99350.

MC 125650 (Sub-6-2TA), filed January 6, 1981. Applicant: MOUNTAIN PACIFIC TRUCKING CORPORATION, 3805 Hwy. 10 W. Rt. 11, Missoula, MT 59801. Representative: Michael D. Duppenthaler, 211 S. Washington St., Seattle, WA 98104. *Flour and grain products,* from Billings and Great Falls, MT to points in CA, ID, NV, OR UT and WA, for 270 days. An underlying ETA seeks 120 days authority. Supporting shippers: ConAgra, Inc., P.O. Box 2548, Great Falls, MT 59403; Peavey Co., 730 Second Ave. S., Minneapolis, MN 55402.

MC 147012 (Sub-6-4TA), filed January 5, 1981. Applicant: T.B.T., Inc., P.O. Box 8472, Stockton, CA. 95208. Representative: Mark J. Hannon, 1884 West Willow Street, Stockton, CA 95203. *Contact Carrier:* Irregular routes: (1) *Prefabricated sheet metal ducting, in various shapes and sizes,* from Stockton, CA to various points in UT, for the account of United Sheet Metal, Division United McGill Corporation; for 270 days. An underlying ETA seeks 90 day authority. Supporting shipper: United Sheet Metal, Division United McGill Corporation, 1747 East Charter Way, Stockton, CA.

MC 152598 (Sub-6-1TA), filed January 8, 1981. Applicant: RICHARD L. BURKEY, d.b.a. TIMBERWOLF TRANSPORTATION, 441 Missouri, Casper, Wyoming 82601. Representative: Richard L. Burkey (same as applicant). *Contract Carrier,* Irregular routes: (1) *Dry chemicals* in packages from Dallas, TX and Denver, CO to points in WY, OK, and LA and (2) *Aluminum-Citrate,* in liquid bulk, from Garland, TX to points in WY, and MT, for the account of TIORCO, INC. for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: Tiorco, Inc., 1375 Pennsylvania St., Denver, Co. 80203.

MC 110325 (Sub-6-51TA), filed December 29, 1980. Applicant: TRANSCON LINES, P.O. Box 92220, Los Angeles, CA 90009. Representative: Wentworth E. Griffin, Midland Bldg., 1221 Baltimore Ave., Kansas City, MO 64105. Common carrier; *regular routes, general commodities,* (except household goods as defined by the Commission and Classes A and B explosives), (1) between Oklahoma City, OK and Las Cruces, NM, from Oklahoma City over Interstate Hwy 40 to junction U.S. Hwy 54, then over U.S. Hwy 54 to junction U.S. Hwy 70, then over U.S. Hwy 70 to Las Cruces, and return over the same route, (2) between Wichita, KS and Tucumcari, NM, from Wichita over U.S. Hwy 54 to Tucumcari, and return over the same route, as an alternate route, serving no intermediate points, with service at Tucumcari, NM for purposes of joinder in route (1) above, for 270 days.

Supporting shipper: There are no supporting shippers. Applicant's statement of economies may be reviewed at the Regional Office listed.

Note.—Applicant proposes to tack the authority sought with its authority in MC-110325 and subs thereto, and proposes to interline with other motor carriers.

MC 146577 (Sub-VI-2TA), filed January 8, 1981. Applicant: UNITED HAULING CORPORATION, 3rd and Railroad, Caldwell, ID 83605. Representative: David E. Wishney, P.O. Box 837, Boise, ID 83701. *Contract carrier,* irregular routes: *lumber, lumber mill products and particleboard,* from points in OR to points in ID, under continuing contact(s) with Kuzman Forest Products, Inc. for 270 days. Supporting shipper: Kuzman Forest Products, Inc., 1220 S.W. Morrison, Portland, OR 97205.

MC 26396 (Sub-6-56TA), filed January 5, 1981. Applicant: THE WAGGONERS TRUCKING, P.O. Box 31357, Billings, MT 59107. Representative: Bradford E. Kistler, P.O. Box 82028, Lincoln, NE 68501. *Steel wire rope,* from Kenosha, WI to Casper, WY, for 270 days. Supporting shipper: Macwhyte Wire Rope Co., 2906 14th Ave., Kenosha, WI 53141.

MC 53482 (Sub-6-1TA), filed January 7, 1981. Applicant: GENE WAGNER, 1254 W. 9th St., Escondido, CA 92025. Representative: Earl N. Miles, 3704 Candlewood Dr., Bakersfield, CA 93306. *Tile, facing or flooring,* from Polk County, FL to points in Los Angeles, Orange, San Diego, Santa Barbara and Ventura Counties, CA for 270 days. Supporting shippers: Morena Tile Supply, Inc., 606 Rancheros Dr., San Marcos, CA 92069 and Tileco Distributors, Inc., 721 S. Miller St., Santa Maria, CA 93454.

MC 147770 (Sub-6-1TA), filed January 5, 1981. Applicant: WEST AMERICAN TRANSPORT, INC., 1260 West North Temple, Salt Lake City, UT 84116. Representative: Mark K. Boyle, 10 Broadway Bldg., Suite 400, Salt Lake City, UT 84101. *Primary metal products; including galvanized products; fabricated metal products; machinery and supplies,* between points in the U.S., for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: Envirotech Corporation, 3000 Sand Hill Road, Menlo Park, CA 94025.

MC 145999 (Sub-6-6TA), filed January 7, 1981. Applicant: WESTERN DRYWALL TRANSPORT, INC., d.b.a. WESTERN DIRECT TRANSPORT, 2001 Broadway, Vallejo, CA 94590. Representative: Norman A. Sorensen (same address as applicant). *Lime, in bags,* from the lant site of The Flintkote Company at or near Henderson, NV to points in Orange and Los Angeles Counties, CA, for 270 days. Supporting shipper: The Flintkote Co., 5500 So. Alameda St., Vernon, CA 90058.

MC 146215 (Sub-6-2TA), filed January 5, 1981. Applicant: WOLFE TRUCKING, INC., 1333 E. 7th St., Los Angeles, CA 90021. Representative: Milton W. Flack, 8383 Wilshire Blvd., Suite 900, Beverly Hills, CA 90211. *Contract carrier;* Irregular routes: *General commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment) from points in CT, ME, MA, NH, NJ, NY, PA, RI and VT, to points in AZ, CA, NV and UT, for the account(s) of United Freight Forwarders, Inc., for 270 days. Supporting shipper: United Freight Forwarders, Inc., P.O. Box 380, Holyoke, MA 01041.

MC 42487 (Sub-6-44TA), filed October 27, 1980. Applicant: CONSOLIDATED FREIGHTWAYS CORPORATION OF DELAWARE, 175 Linfield Dr., Menlo Park, CA 94025. Representative: V. R. Oldenburg, P.O. Box 3062, Portland, OR 97208. *Common carrier,* regular routes: *General commodities, (except household goods as defined by the Commission, and Classes A and B explosives),* (1) Between Memphis, TN and Baton Rouge, LA, serving the intermediate points of Cleveland, Vicksburg and Natchez, MS, and serving the junction U.S. Hwy 61 and U.S. Hwy 82 and the junction U.S. Hwy 82 and MS Hwy 5, for purpose of joinder only: From Memphis over U.S. Hwy 61 to Baton Rouge, and return over the same route. (2) Between Memphis, TN and Laplace, LA, serving the intermediate points of Batesville, Grenada, Winona, Canton, Jackson, Crystal Springs, Hazlehurst, Brookhaven and McComb, MS and Hammond, LA: From Memphis over U.S. Hwy 51 to LaPlace, and return over the same route. (3) Between Corinth, MS and New Orleans, LA, serving the intermediate points of Booneville, Baldwyn, Tupelo, Columbus, Meridian, Laurel, Hattiesburg and Poplerville, MS and serving Shannon and Brooksville, MS for purpose of joinder only: From Corinth over U.S. Hwy 45 to Meridian, then over U.S. Hwy 11 to New Orleans, and return over the same route. (4) Between Shannon, MS and Brooksville, MS, and serving the intermediate point of West Point, MS, and serving the termini of Shannon and Brooksville, MS for purpose of joinder only and the junction Alt. Hwy 45 and U.S. Hwy 82 for purpose of joinder only: Fron Shannon over Alt. U.S. Hwy 45 to Brooksville, and return over the same route. (5) Between Memphis, TN and Tuscumbia, AL, serving the intermediate points of Corinth, Burnsville and Iuka, MS: From Memphis over U.S. Hwy 72 to Tuscumbia, and return over the same route. (6) Between Clarksdale, MS and Birmingham, AL, serving the intermediate points of Batesville,

Oxford, Pontotoc and Tupelo, MS and Hamilton, AL, and serving the junction U.S. Hwy 82 and MS Hwy 6 for purpose of joinder only: From Clarksdale over MS Hwy 6 to Tupelo, then over U.S. Hwy 78 to Birmingham, and return over the same route. (7) Between Greenville, MS and Birmingham, AL, serving the intermediate points of Greenwood, Winona, Starkville and Columbus, MS and serving the junction U.S. Hwy 61 and U.S. Hwy 82 and the junction Alt. Hwy 45 and U.S. Hwy 82 for purpose of joinder only: From Greenville over U.S. Hwy 82 to Tuscaloosa, AL, then over U.S. Hwy 11 to Birmingham, and return over the same route. (8) Between Vicksburg, MS and Birmingham, AL, serving the intermediate points of Clinton, Jackson, Pearl, Brandon, Newton and Meridian, MS, and York and Livingston, AL: From Vicksburg over U.S. Hwy 80 to Meridian, then over U.S. Hwy 11 to Birmingham, and return over the same route. (9) Between Memphis, TN and Tupelo, MS, serving the intermediate point of Holly Springs, MS: From Memphis over U.S. Hwy 78 to Tupelo, and return over the same route. (10) Between Jackson, MS and Hattiesburg, MS, serving no intermediate points: From Jackson over U.S. Hwy 49 to Hattiesburg, and return over the same route. (11) Between Natchez, MS and Hattiesburg, MS, serving the intermediate point of McComb, MS: From Natchez over U.S. Hwy 84 to junction U.S. Hwy 98, then over U.S. Hwy 98 to Hattiesburg, and return over the same route. (12) Between Hattiesburg, MS and Mobile, AL, serving no intermediate points: From Hattiesburg over U.S. Hwy 98 to Mobile, and return over the same route. (13) Between Meridian, MS and Mobile, AL, serving the intermediate points of Shubuta and Waynesboro, MS: From Meridian, over U.S. Hwy 45 to Mobile, and return over the same route, for 270 days. Service is authorized at the off-route points of Ackerman, Amory, Bude, Kosciusko, Louisville, New Albany, Philadelphia, Ripley and Tayloraville, MS, Sulligent, AL and Moscow and Grand Junction, TN, in connection with routes (1) through (13) described above. Authority will be tacked, and interlined. Supporting shipper(s): There are fifty-two supporting shippers. Their statements may be examined at the Regional Office listed.

Agatha L. Mergenovich,
Secretary.

[FR Doc. 81-1828 Filed 1-19-81; 8:45 am]
BILLING CODE 7035-01-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Museum Panel (Museum Purchase Plan); Meeting

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Museum Panel (Museum Purchase Plan) to the National Council on the Arts will be held February 10, 1981, from 9:00 a.m.-5:30 p.m. in room 1422 of the Columbia Plaza Office Complex, 2401 E Street, Washington, D.C.

This meeting is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the Federal Register of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c) (4), (6) and 9(b) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, D.C. 20506, or call (202) 634-6070.

John H. Clark,
Director, Office of Council and Panel Operations, National Endowment for the Arts.

January 14, 1981.

[FR Doc. 81-2013 Filed 1-19-81; 8:45 am]
BILLING CODE 7537-01-M

Office for Partnership Panel (State Programs Section); Meeting

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), notice is hereby given that a meeting of the Office for Partnership Panel (State Programs Section) to the National Council on the Arts will be held on February 4-5, 1981 from 8:30 a.m. to 5:00 p.m. and February 6, 1981 from 8:30 a.m. to 4:00 p.m. in the first floor conference room of the Shoreham Building, 806 15th Street NW., Washington, D.C.

This meeting will be open to the public on a space available basis. The topic for discussion will be guidelines, review of regional applications, and Dance Touring Program Presentations.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, D.C. 20506, or call (202) 634-6070.

John H. Clark,
Office of Council and Panel Operations, National Endowment for the Arts.

January 14, 1981.

[FR Doc. 81-2014 Filed 1-19-81; 8:45 am]
BILLING CODE 7537-01-M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. STN 50-488, 50-489, and 50-490]

Duke Power Co. (Perkins Nuclear Station, Units 1, 2, and 3); Oral Argument

Notice is hereby given that, in accordance with the Appeal Board's order of January 13, 1981, oral argument on the appeal of intervenors Mary Apperson Davis and the Yadkin River Committee from the February 22, 1980 partial initial decision of the Licensing Board in this construction permit proceeding will be heard at *10:00 a.m. on Wednesday, February 18, 1981 in the NRC Public Hearing Room, Fifth Floor, East-West Towers Building, 4350 East-West Highway, Bethesda, Maryland.*

Dated: January 14, 1981.
For the Appeal Board.

C. Jean Bishop,
Secretary to the Appeal Board.

[FR Doc. 81-2015 Filed 1-19-81; 8:45 am]
BILLING CODE 7590-01-M

[Docket No. 50-142 OL (Proposed Renewal of Facility License)]

The Regents of the University of California (UCLA Research Reactor); Order (Scheduling a Prehearing Conference)

January 12, 1981.

In a conference call on December 12, 1980, it was determined that February 4 and 5, 1981, were the first dates convenient to the parties and the Board for a prehearing conference. The purpose of the conference is to consider those contentions which are still in dispute.

The prehearing conference will begin at 9:30 a.m. (local time) on February 4, 1981, in the New Yorker Room in the Los Angeles Hilton, 930 Wilshire Boulevard, Los Angeles, California. Assuming that the conference will not be concluded in one day, it will be continued on

February 5 in the Patio Room in the Hilton.

The public is invited to attend. No limited appearance statements will be accepted at the prehearing conference. A time for limited appearance statements will be scheduled at a later date.

It is so ordered.

For the Atomic Safety and Licensing Board.
Elizabeth S. Bowers,
Administrative Judge.

[FR Doc. 81-2060 Filed 1-19-81; 8:45 am]
BILLING CODE 7590-01-M

Advisory Panel for the Decontamination of Three Mile Island, Unit 2; Meetings

Notice is hereby given pursuant to the Federal Advisory Committee Act that the Advisory Panel for the Decontamination of Three Mile Island, Unit 2, will hold three meetings during the month of February. The meetings will be open for public observation.

The meetings will be on February 4, February 11, and February 19 from 7:00 p.m. to 10:30 p.m. in The Forum of the Education Building, Commonwealth and Walnut Streets, Harrisburg, Pennsylvania.

Since these will be working meetings to develop Advisory Panel advice to the Commission, there are no specific meeting agenda.

Further information on the meetings may be obtained from Dr. William Travers, Three Mile Island Program Office, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, telephone 301-492-7611.

Dated: January 14, 1981.
John C. Hoyle,
Advisory Committee Management Officer.

[FR Doc. 81-2058 Filed 1-19-81; 8:45 am]
BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards; Subcommittee on Reactor Radiological Effects; Meeting

The ACRS Subcommittee on the Reactor Radiological Effects will hold a meeting at 1:00 p.m. on February 5, 1981 in Room 1167, 1717 H Street, NW, Washington, D.C. to review and comment on the NRC Staff's paper to the NRC Commissioners on the current status of thinking and research related to iodine releases and accident source terms.

In accordance with the procedures outlined in the **Federal Register** on October 7, 1980 (45 FR 66535), oral or written statements may be presented by members of the public, recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the Designated Federal Employee as far in advance as practicable so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements.

The entire meeting will be open to public attendance.

The agenda for subject meeting shall be as follows:

Thursday, February 5, 1981

1:00 p.m. until 7:00 p.m.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, will exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC Staff, their consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to Mr. Garry G. Young (telephone 202/634-1414) between 8:15 a.m. and 5:00 p.m., EST. The cognizant Designated Federal Employee for this meeting is Mr. John C. McKinley.

Dated: January 15, 1981.
John C. Hoyle,
Advisory Committee Management Officer.

[FR Doc. 81-2057 Filed 1-19-81; 8:45 am]
BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 11554; (811-1511)]

Hamilton High Yield Fund, Inc., (Formerly Hamilton Bond Fund, Inc.); Filing of Application Pursuant to Section 8(f) of the Investment Company Act of 1940 for an Order of the Commission Declaring That Applicant Has Ceased to be an Investment Company

January 14, 1981.

Notice is hereby given that Hamilton High Yield Fund, Inc. (formerly Hamilton Bond Fund, Inc.) ("Applicant"), 3600 South Yosemite Street, Denver, Colorado 80237, registered under the Investment Company Act of 1940 ("Act") as an open-end, diversified, management investment company, filed an application on November 28, 1980, pursuant to Section 8(f) of the Act, for an order of the Commission declaring that Applicant has ceased to be an investment company as that term is defined in the Act. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below.

Applicant was organized under the laws of the State of Delaware on May 1, 1967, as International Income Fund, Inc., and registered with the Commission under that name on July 10, 1967. Applicant effected numerous name changes after registering with the Commission, including the name change from Hamilton Bond Fund, Inc., to Hamilton High Yield Fund, Inc., on February 3, 1978. An application for a limited exemption from the provisions of Sections 10(a), 15(a), 15(c), 30(b), 30(d), and 32(a) of the Act was filed with the Commission on behalf of Applicant by its investment adviser, Hamilton Management Corporation, presently called Oppenheimer Asset Management Corporation ("Oppenheimer"), which the Commission granted by order dated Septe[illegible] 1, 1967 (Investment Company Act R[illegible]se No. 5074). Hamilton Future Fund, Inc. (former name used by Applicant) filed a registration statement (File No. 2-33568) under the Securities Act of 1933 ("1933 Act") to make a public offering of shares of its capital stock on June 20, 1968. This registration statement did not become effective, and on May 3, 1972, the Commission issued an order allowing withdrawal of such registration statement pursuant to Rule 477 under the 1933 Act. Subsequently, on November 22, 1972, a registration statement under the 1933 Act was filed by American Future Fund, Inc. (File No. 2-40411), another of Applicant's former names. According to the application, this registration statement was never declared effective. Thus, the application represents that Applicant has not made a public offering of its securities.

Applicant states that its sole shareholder, Oppenheimer, has been reimbursed for its initial investment, and that Applicant's shares which it held, representing the total number of Applicant's outstanding capital stock, have been retired with the exception of

one share of $1.00 par value stock which Oppenheimer still holds. Applicant further states that it presently has no assets; that it has no outstanding debts or other liabilities; that it is not a party to any litigation or administrative proceeding; and that it has not, for any reason, transferred any of its assets to a separate trust, the beneficiaries of which were or are securityholders of Applicant. Applicant also states that it is not now engaged, and does not propose to engage, in any business activities other than those necessary for the winding-up of its affairs. Finally, Applicant states that it has filed a Certificate of Dissolution with the Secretary of State of the State of Delaware, and that such filing terminates Applicant's existence under Delaware state law.

Section 8(f) of the Act provides, in pertinent part, that whenever the Commission, on its own motion or upon application, finds that a registered investment company has ceased to be an investment company, it shall so declare by order, and upon the effectiveness of such order the registration of such company shall cease to be in effect.

Notice is further given that any interested person may, not later than February 16, 1981, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the application accompanied by a statement as to the nature of his interest, the reasons for such request, and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicant at the address stated above. Proof of such service (by affidavit or, in case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0-5 of the Rules and Regulations promulgated under the Act, an order disposing of the application herein will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons,
Secretary.

[FR Doc. 81-2008 Filed 1-19-81; 8:45 am]
BILLING CODE 8010-01-M

[Release No. 11548; (812-4779)]

McDonald Money Market Fund, Inc., Filing of Application for an Order Pursuant to Section 6(c) of the Act Exempting Applicant From the Provisions of Section 2(a)(4) of the Act and Rules 2a-4 and 22c-1 Thereunder

January 13, 1981.

Notice is hereby given that McDonald Money Market Fund, Inc. ("Applicant"), 2100 Central National Bank Building, Cleveland, Ohio 44114, an open-end, diversified management investment company registered under the Investment Company Act of 1940 ("Act"), filed an application on December 5, 1980, requesting an order of the Commission, pursuant to Section 6(c) of the Act, exempting Applicant from the provisions of Section 2(a)(41) and Rules 2a-4 and 22c-1 thereunder to the extent necessary to permit Applicant to compute its net asset value per share using the amortized cost method of valuation. All interested persons are referred to the application on file with the Commission for a statement of the representations contined therein, which are summarized below.

Applicant states that it is a "money market" fund designed as an investment vehicle for investors who desire to place assets in money market investments where the primary considerations are safety, liquidity and, to the extent consistent with these objectives, a high income return. According to the application, Applicant's portfolio may be invested in a variety of short-term money market instruments consisting of marketable securities issued by the United States government or its agencies or instrumentalities; certificates of deposit; bankers' acceptances; repurchase agreements; and high grade commercial paper. Applicant further states that all its investments will consist of obligations maturing wihtin one year from the date of acquisition, and the average maturity of all its investments will be 120 days or less on a dollar-weighted basis.

As here pertinent, Section 2(a)(41) of the Act defines value to mean: (1) with respect to securities for which market quotations are readily available, the market value of such securities, and (2) with respect to other securities and assets, fair value as determined in good faith by the board of directors. Rule 22c-1 adopted under the Act provides, in part, that no registered investment company or principal underwriter therefor issuing any redeemable security shall sell, redeem or repurchase any such security except at a price based on the current net asset value of such security which is next computed after receipt of a tender of such security for redemption or of an order to purchase or to sell such security. Rule 2a-4 adopted under the Act provides, as here relevant, that the "current net asset value" of a redeemable security issued by a registered investment company used in computing its price for the purposes of distribution and redemption shall be an amount which reflects calculations made substantially in accordance with the provisions of that rule, with estimates used where necessary or appropriate. Rule 2a-4 further states that portfolio securities with respect to which market quotations are readily available shall be valued at current market value, and that other securities and assets shall be valued at fair value as determined in good faith by the board of directors of the registered company. Prior to the filing of the application, the Commission expressed its view that, among other things: (1) Rule 2a-4 under the Act requires that portfolio instruments of "money market" funds be valued with reference to market factors, and (2) it would be inconsistent, generally, with the provisions of Rule 2a-4 for a "money market" fund to value its portfolio instruments on an amortized cost basis (Investment Company Act Release No. 9786, May 31, 1977).

Applicant states that experience indicates that two qualities are helpful in order to attract investment: (1) stability of principal and (2) steady flow of investment income. Applicant asserts that by utilizing high quality money market instruments of short maturities combined with a stable net asset value, it would be possible to provide these features to investors. Applicant represents that its board of directors has determined in good faith that in light of the characteristics of Applicant, the amortized cost method of valuing portfolio securities is appropriate and preferable for Applicant and reflects fair value of such securities. According to the application, experience has shown that given the nature of Applicant's policies and operations, there will be a relatively negligible discrepancy between prices obtained by market value methods and amortized cost valuation. accordingly, Applicant requests exemptions from Section 2(a)(41) of the Act and Rules 2a-4 and

22c-1 thereunder to the extent necessary to permit Applicant to value its portfolio by means of the amortized cost method of valuation.

Section 6(c) of the Act provides, in pertinent part, that the Commission, by order upon application, may conditionally or unconditionally exempt any person, security or transaction, or any class or classes of persons, securities or transactions, from any provision under the Act or any rule or regulation thereunder, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Applicant expressly consents to the imposition of the following conditions in any order granting the relief it requests:

1. In supervising Applicant's operations and delegating special responsibilities involving portfolio management to Applicant's investment adviser, Applicant's board of directors undertakes—as a particular responsibility within the overall duty of care owed to its shareholders—to establish procedures reasonably designed, taking into account current market conditions and Applicant's investment objectives, to stabilize Applicant's net asset value per share, as computed for the purpose of distribution, redemption and repurchase at $1.00 per share.

2. Included within the procedures to be adopted by Applicant's board of directors shall be the following:

(a) Review by the board of directors, as it dems appropriate and at such intervals as are reasonable in light of current market conditions, to determine the extent of deviation, if any, of the net asset value per share as determined by using available market quotations from Applicant's $1.00 amortized cost price per share, and maintenance of records of such review.[1]

(b) In the event such deviation from the $1.00 amortized cost price per share exceeds ½ of 1%, the board of directors will promptly consider what action, if any, should be initiated.

(c) Where the board of directors believes the extent of any deviation from Applicant's $1.00 amortized cost price per share may result in material dilution or other unfair results to investors or existing shareholders, it shall take such action as it deems appropriate to eliminate or to reduce to the extent reasonably practicable such dilution or unfair results, which action may include: redemption of shares in kind; the sale of portfolio securities prior to maturity to realize capital gains or losses, or to shorten Applicant's average portfolio maturity; withholding dividends; or utilizing a net asset value per share as determined by using available market quotations.

3. Applicant will maintain a dollar-weighted average portfolio maturity appropriate to its objective of maintaining a stable net asset value per share; provided, however, that Applicant will not (a) purchase any instrument with a remaining maturity at the date of acquisition of greater than one year, or (b) maintain a dollar-weighted average portfolio maturity in excess of 120 days. In fulfilling this condition, if the disposition of a portfolio instrument results in a dollar-weighted average portfolio maturity in excess of 120 days, the Applicant will invest its available cash in such a manner as to reduce its dollar-weighted average portfolio maturity to 120 days or less as soon as reasonably practicable.

4. Applicant will record, maintain and preserve permanently in an easily accessible place a written copy of the procedures (and any modifications thereto) described in condition 1 above, and Applicant will record, main ain and preserve for a period of not less than six years (the first two years in the easily accessible place) a written record of the board of directors' considerations and actions taken in connection with the discharge of its responsibilities, as set forth above, to be included in the minutes of the board of directors' meetings. The documents preserved pursuant to this condition shall be subject to inspection by the Commission in accordance with Section 31(b) of the Act as though such documents were records required to be maintained pursuant to rules adopted under Section 31(a) of the Act.

5. Applicant will limit its portfolio investments, including repurchase agreements if any, to those United States dollar-denominated instruments which the board of directors determines present minimal credit risks, and which are of high quality as determined by any major rating service or, in the case of any instrument that is not rated, of comparable quality as determined by the board of directors.

6. Applicant will include in each quarterly report, as an attachment to Form N-1Q, a statement as to whether any action pursuant to condition 2(c) was taken during the preceding fiscal quarter, and, if any action was taken, will describe the nature and circumstances of such action.

Notice is further given that any interested person may, not later than February 6, 1981, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the application accompanied by a statement as to the nature of his interest, the reason for such request, and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Aplicant at the address stated above. Proof of such service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0-5 of the Rules and Regulations promulgated under the Act, an order disposing of the application will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 81-2000 Filed 1-19-81; 8:45 am]

BILLING CODE 8010-01-M

[1] To fulfill this condition, Applicant will use actual quotations or estimates of market value reflecting current market conditions selected by its board of directors in the exercise of its discretion to be appropriate indicators of value. The quotations or estimates utilized may include, *inter alia*, (1) quotations or estimates of market value for individual portfolio instruments or (2) values obtained from yield data relating to classes of money market instruments furnished by reputable sources.

[Release No. 17432; (SR-PSE-80-22)]

Pacific Stock Exchange; Order Approving Proposed Rule Change

January 8, 1981.

On November 17, 1980, the Pacific Stock Exchange, Incorporated ("PSE"), 301 Pine Street, San Francisco, CA

96104, filed with the Commission, pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78(s)(b)(1) ("Act") and Rule 19b–4 thereunder, copies of a proposed rule change which modify the PSE's four existing XYZ agreement forms designed for use between an applicant for PSE membership and the applicant's financial backer.[1] The modifications would permit the use of XYZ agreements for financing equity floor memberships, as well as for financing options floor memberships.[2] Further, under the terms of the XYZ forms, the period of time that the PSE could extend deadlines for the orderly closing of an applicant's business or its transfer from an applicant to a backer would be increased from 30 to 60 days. The PSE's present requirement that all agreements between an applicant and a backer must be approved by the PSE would be rescinded.

Notice of the proposed rule change together with the terms of substance of the proposed rule change was given by publication of a Commission Release (Securities Exchange Act Release No. 17349, December 1, 1980) and by publication in the Federal Register (45 FR 80624, December 5, 1980). No comments were received with respect to the proposed rule filing.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, the requirements of section 6 and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 81-2012 Filed 1-19-81; 8:45 am]

BILLING CODE 8010-01-M

[1] The four XYZ agreements, while containing the same general language, have variations depending on whether an applicant or a backer is a sole proprietorship or a member organization.

[2] Presently, XYZ forms are available only for financing options floor memberships, but under the proposed rule change they would also be available for financing equity floor memberships. This would be achieved by deleting from each of the XYZ forms certain language that has always been interpreted by the PSE as barring the use of the forms for equity floor memberships.

[Release No. 11549; (812–4330)]

Twentieth Century Investors, Inc. and Investors Research Corporation; Application for a Conditional Order Pursuant to Section 6(c) of the Act Exempting Certain Transactions and Classes of Transactions from the Provisions of Section 17(e)(1) of the Act

January 13, 1981.

Notice is hereby given that Twentieth Century Investors, Inc. ("Twentieth Century"), registered under the Investment Company Act of 1940 ("Act") as an open-end, diversified management investment company, and Investors Research Corporation, ("Research") (collectively with Twentieth Century, "Applicants"), 605 West 47th Street, Kansas City, MO 64112, an investment adviser registered under the Investment Advisers Act of 1940, filed an application on July 3, 1978, with amendments on April 23, November 5, and December 26, 1979, and March 24, June 6, and December 1980, for a conditional order of the Commission pursuant to Section 6(c) of the Act, exempting certain past transactions and proposed classes of transactions from the provisions of Section 17(e)(1) of the Act. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below.

Twentieth Century is a series company with two series of shares, one seeking capital appreciation and the other current cash distributions. Research is investment adviser to Twentieth Century. Applicants state that in 1973 Research developed computer programs that enable it to analyze the revenues and earnings over the past twenty quarters of over 6,000 publicly held companies, and that classify the companies according to their earnings and revenue characteristics. According to the application, the computer programs develop information which is applied to certain ideas, theories, concepts and techniques of stock selection developed by Research in conjunction with Richard H. Driehaus ("Driehaus"), currently an employee of Jessup & Lamont, Inc., a registered broker-dealer. Applicants argue that the information developed through the use of the computer programs is extremely valuable in managing Twentieth Century's two portfolios and that those programs have enabled Twentieth Century to enhance substantially its investment performance.

According to Administrative Proceeding File No. 3–4669 (incorporated by reference in the application), from August, 1973 to September, 1978 Research received payments from two broker-dealers for use of the computer programs developed by Research. During that period, a substantial portion of Twentieth Century's portfolio brokerage business was directed to those broker-dealers. In 1975, the Commission instituted administrative proceedings (the "Enforcement Proceeding") against the two broker-dealers, Research, Driehaus and James E. Stowers, Research's chief executive officer and principal owner, and president, director and portfolio manager of Twentieth Century. On May 1, 1978, the Commission found, *inter alia*, that Research had violated Section 17(e)(1) of the Act and, as a result, censured Research (*Investors Research Corporation*, Investment Company Act Release No. 10223). The Commission found that the leasing arrangement created a conflict of interest, giving Research an incentive to churn Twentieth Century's two portfolios and making it less likely that Research would be aggressive in negotiating with broker-dealers concerning best price and execution of portfolio transactions on behalf of Twentieth Century. Research appealed the Commission's decision, and the United States Circuit Court of Appeals for the District of Columbia affirmed the Commission's censure of Research (*Investors Research Corporation* v. *SEC*, [Current] Fed. Sec. L. Rep. (CCH) ¶97,526 (D.C. Cir. 1980).

Applicants state that, during the pendency of the Enforcement Proceeding, Research permitted Thomson & McKinnon Securities, Inc. ("Thomson & McKinnon"), to use its programs. Thomson & McKinnon paid $1,000 per month into an escrow account for a period of eight months and then ceased all payments when the administrative law judge entered his initial decision in which he found that the prior similar arrangements violated Section 17(e)(1) of the Act.

Applicants state that Research currently directs almost all of the portfolio brokerage business of Twentieth Century to Driehaus, that information from the computer programs is furnished to Driehaus because he utilizes the information to give investment advice to Research, and that Research finds Driehaus' advice useful in managing Twentieth Century's portfolios. Applicants further state that Driehaus utilizes the information in recommending securities transactions to his other customers and thereby enjoys for his own use and profit proprietary information which belongs to Research.

Applicants represent that Driehaus is willing to pay for the information, but that because of the Commission's decision in the Enforcement Proceeding, Driehaus is unable to pay, and Research is unable to accept, payment for the use of the programs.

Section 17(e)(1) of the Act provides, in part, that it shall be unlawful for any affiliated person of a registered investment company, acting as agent, to accept from any source any compensation for the purchase or sale of any property to or for such registered company, except in the course of such person's business as an underwriter or broker.

Section 6(c) of the Act provides, in part, that the Commission, by order upon application, may conditionally or unconditionally exempt any person, transaction, or any class or classes of persons or transactions, from any provision of the Act, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Without admitting that past or proposed payments violate any provisions of the Act, Applicants request a conditional order pursuant to Section 6(c) of the Act exempting from the provisions of Section 17(e)(1) of the Act, to the extent necessary, the future receipt by Research of payments for the use of its computer programs by brokers to whom portfolio brokerage of Twentieth Century is directed. Applicants suggest several conditions to such an order that they assert will respond to the Commission's concerns in the Enforcement Proceeding. Applicants argue that the following conditions would fulfill the prophylactic purpose of Section 17(e)(1) of the Act and would make the granting of the application by the Commission appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act:

(1) The aggregate of all payments to Research from participating brokers will be limited to an amount that will not exceed the out-of-pocket cost to Research and its affiliates for the computer hardware and attendant system software needed for the operation of its programs.[1]

(2) Research will submit quarterly reports to the board of directors of Twentieth Century. These reports will include: (a) the portfolio turnover rate in the preceding quarter for each of Twentieth Century's two portfolios, as compared with their respective rates for the preceding three years and an identification and explanation of any portfolio transaction during the quarter where a security was sold within sixty days of its purchase; (b) the brokerage commission rates paid in the preceding quarter to participating brokers, together with the brokers' rates charged other customers (and an annual letter from the independent auditors of participating brokers affirming that Twentieth Century had received "most favored customer" treatment from the participating brokers); (c) an evaluation of the quality of execution provided by the participating brokers, including identification and explanation of any portfolio transaction where a participating broker failed to comply with special instructions, where there was an unauthorized material delay in executing an order, where a sale was made at a price less than 95% of the price at the time of placing a sell order, or where a purchase was made at more than 105% of the price of the security at the time of placing a buy order.

(3) Twentieth Century's board of directors will review the quarterly reports and will evaluate Research's performance in dealing on behalf of Twentieth Century with the participating brokers. After the review of each report, the board will vote on whether to approve Research's actions. Approval by a majority of Twentieth Century's full board of directors and by a majority of its disinterested directors will be required in order that the leasing arrangements continue without compensation for harm.

(4) Research agrees to reimburse Twentieth Century for any harm to Twentieth Century that might result from the leasing arrangements between Research and the participating brokers as a result of excessive portfolio turnover, excessive brokerage expenses, or poor execution of portfolio transactions. To obtain reimbursement for harm, a majority of Twentieth Century's disinterested directors must request it. Research will pay, without recourse, any such requested amounts that do not exceed amounts it received from participating brokers during the quarter or quarters for which reimbursement is sought. With regard to claims for reimbursement in excess of leasing payments received from participating brokers in the quarter in question, Research reserves the right to present a good faith defense to a court of competent jurisdiction.

(5) Research will lease its computer programs only to brokers that agree to provide brokerage services to Twentieth Century at commission rates that are (a) at least as favorable as those charged their most favored customers on transactions of similar magnitudes to those of Twentieth Century and (b) no greater than usual and customary brokerage commission rates.

Applicants also request an order pursuant to Section 6(c) of the Act exempting from the provisions of section 17(e)(1) of the Act the receipt by Research of the payments (with interest) made into escrow by Thomson & McKinnon for use of the computer programs during the pendancy of the administrative hearing in the Enforcement Proceeding. Applicants represent that those payments were $1,000 per month and that Research's out-of-pocket costs for computer hardware and system software during that period were approximately $8,000 per month. Applicants further represent that, during the period covered by the escrowed payments, the portfolio turnover rates for each of Twentieth Century's two portfolios were less, on an annualized basis, than they had been in each of the three prior calendar years. Applicants further represent that the brokerage services provided by Thomson & McKinnon during the period of the escrowed payments were of acceptable quality and at a reasonable price. Applicants assert that an order pursuant to Section 6(c) of the Act permitting Research to receive the escrowed payments would be appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Notice is further given that any interested person may, not later than February 9, 1981, at 5:30 p.m., submit to the Commission in writing, a request for a hearing on the application accompanied by a statement as to the nature of his interest, the reasons for such request and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicants at the address stated above. Proof of such service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0-5 of the Rules and

[1] Applicants represent that such costs were $8,217 in the month of July, 1979.

Regulations promulgated under the Act, an order disposing of the application herein will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion.

Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

By the Commission.

George A. Fitzsimmons,

Secretary.

[FR Doc. 81-2030 Filed 1-20-81; 8:45 am]

BILLING CODE 8010-01-M

SELECTIVE SERVICE SYSTEM

Privacy Act of 1974; Notice of Systems of Records, Proposed Revision of System of Records

AGENCY: Selective Service System.

ACTION: Proposed Revision of System of Records.

SUMMARY: The Selective Service System proposes to revise its system of records SSS–8 necessitated by the resumption of registration under the Military Selective Service Act (50 U.S.C. App. 453). The system that will be revised pertains to suspected violators of the Military Selective Service Act.

COMMENT DATE: Comments are due on or before February 20, 1981.

ADDRESS: Selective Service System, ATTN: Records Manager, 600 E Street, NW., Washington, D.C. 20435.

FOR FURTHER INFORMATION CONTACT: C. E. Boston, Records Manager, Selective Service System, 600 E Street, NW., Washington, D.C. 20435. Phone (202) 724–0419.

SUPPLEMENTARY INFORMATION: The system of records, SSS–8, that will be revised appears at 41 FR 53965.

Bernard Rostker,

Director of Selective Service.

January 15, 1981.

SSS–8 as revised is:

SSS–8

SYSTEM NAME:

Suspected Violator Inventory System (SVIS)—SSS.

SYSTEM LOCATION:

National Headquarters, Selective Service System, 600 E Street, NW., Washington, D.C. 20435.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Alleged violators of the Military Selective Service Act (50 U.S.C. App. 451 et seq.).

CATEGORIES OF RECORDS IN THE SYSTEM:

Contains the name, Selective Service Number (if any), Social Security Account Number (if any), report of, and disposition data of, alleged violations of the Military Selective Service Act.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 10(b)(3) of the Military Selective Service Act (50 U.S.C. App. 460(b)(3)).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Exchange of information with the Department of Justice respecting alleged violations of the Military Selective Service Act.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The records are maintained in file folders, on tape, input forms and computer printouts.

RETRIEVABILITY:

Indexed by Selective Service Number, Social Security Account Number, and name.

SAFEGUARDS:

a. Records are available to authorized SSS personnel only.

b. Office is locked when authorized personnel are not on duty.

c. Periodic security checks.

RETENTION AND DISPOSAL:

Upon final disposition of violator case.

The input forms are destroyed by maceration, shredding or burning immediately after the information has been recorded in SVIS.

Computer printouts distributed to National Headquarters are destroyed when they have served their temporary purposes by maceration, shredding or burning.

SYSTEM MANAGER(S) AND ADDRESS:

Director of Selective Service, National Headquarters, Selective Service System, 600 E Street, NW., Washington, D.C. 20435.

NOTIFICATION PROCEDURE:

Same as the above. It is necessary to furnish the following information in order to identify the individual whose records are requested:

a. Full name.

b. Date of birth.

c. Selective Service Number or Social Security Account Number.

d. Mailing address to which the reply should be mailed.

RECORD ACCESS PROCEDURES:

An individual can obtain information on the procedures for gaining access to and contesting records through: Director of Selective Service, National Headquarters, Selective Service System, 600 E Street, NW., Washington, D.C. 20435, Attn: Records Manager.

CONTESTING RECORD PROCEDURES:

Same as the above.

RECORD SOURCE CATEGORIES:

Information concerning name of alleged violator is recorded in file folders by Records Manager and input documents are prepared by him.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 81-2027 Filed 1-20-81; 8:45 am]

BILLING CODE 8015-01-M

SMALL BUSINESS ADMINISTRATION

[License No. 04/04-5002]

Filing of Application for Approval of Conflict of Interest Transaction

Notice is hereby given that Vanguard Investment Company, Inc., (VICI), 309 Pepper Building, Fourth & Liberty Streets, Winston-Salem, N.C. 27101 a Federal Licensee under the Small Business Investment Act of 1958 Section 301(d) as amended has filed an application with the Small Business Administration, pursuant to Section 312 of the Act and covered by § 107.1004(b)(1) of the SBA Rules and Regulations, governing Small Business Investment Companies (13 CFR 107.1004(1980)) for approval of the Conflict of Interest transaction falling within the scope of the above Sections of the Act and Regulations.

Subject to such approval VICI proposes to invest $124,500 in A & B Fast Foods, Inc. of Charlotte, N.C. The purpose of the small business concern is to operate a Burger King restaurant in Charlotte, N.C. The principals are Mr. Lee D. Andrews (49%) and Mr. Matthew Beatty (51%).

The proposed financing is brought within the purview of § 107.1004 of the SBA Regulations because Mr. Andrews is an officer, director and 10 percent stockholder of the licensee.

Notice is hereby given that any interested person may not later than

February 2, 1981, submit written comments on the proposed investment to the Associate Administrator for Investment, Small Business Administration, 1441 L Street, NW., Washington, D.C. 20416.

(Catalog of Federal Domestic Assistance Program No. 59.011 Small Business Investment Companies.)

Dated: January 12, 1981.

Michael K. Casey,

Associate Administrator for Investment.

[FR Doc. 81-2070 Filed 1-19-81; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF STATE

[Public Notice 735]

Certain Foreign Passports; Validity

New Zealand and Senegal are added to the list of countries which have entered into agreements with the Government of the United States whereby their passports are recognized as valid for the return of the bearer to the country of the foreign issuing authority for a period of at least six months beyond the expiration date specified in the passport.

This notice amends Public Notice 633 of October 19, 1978 (43 FR 48751).

Dated: December 18, 1980.

Diego C. Asencio,

Assistant Secretary for Consular Affairs.

[FR Doc. 81-1965 Filed 1-19-81; 8:45 am]

BILLING CODE 4710-01-M

DEPARTMENT OF THE TREASURY

Office of the Secretary

Privacy Act of 1974; Revised System of Records

AGENCY: Office of the Secretary, Department of Treasury.

ACTION: Notice of Intent to Revise Privacy Act System of Records, Treasury/OS 00.190, General Allegations and Investigative Records System, as last published at 45 FR 18690, March 21, 1980.

SUMMARY: The above referenced system of records is being revised as follows:

System number:

Administrative change due to typographical error.

Categories of individuals:

Correct reference to Civil Service Merit System. Administrative change due to reorganization.

Authority for maintenance of the system:

Administrative update of citation.

Routine uses including categories of users and purposes of such uses:

Amended to add Special Counsel to the Merit Systems Protection Board; GAO Fraud Task Force, state and local licensing boards; and Intelligence Oversight Board, pursuant to requirements of Executive Order 12036 relating to the oversight of foreign intelligence activities in Treasury.

Policies and practices for storing, retrieving, accessing, retaining and disposing of records in the system:

Amended to update system description to include automated indexing.

Safeguards:

Reworded for clarity.

System exempt:

Administrative change to reinstate this data item which was inadvertently omitted from the previous printing of the system description.

The intended effect of the action is to provide more efficient and accurate retrieval of information due to the growth of the system files.

DATES: Public comment on this proposed revision must be received not later than February 20, 1981. Unless nonconcurrence of the report of this proposed revision by the Office of Management and Budget, or unless this Department publishes further notice of change or receipt of public comments, this proposed system will become effective on March 23, 1981.

ADDRESSES: Office of the Inspector General, Main Treasury Building, Washington, D.C. 20220.

FOR FURTHER INFORMATION CONTACT: Mrs. Carol Jolliffe, Office of the Inspector General, Main Treasury Building, Washington, D.C. 20220, 202-566-6900.

Dated: January 9, 1981.

Walter J. McDonald,

Assistant Secretary (Administration).

TREASURY/OS 00.190

SYSTEM NAME:

General Allegations and Investigative Records—Treasury/OS

SYSTEM LOCATION:

Office of the Inspector General, Main Treasury Building, Washington, D.C. 20220

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

(A) Current and former employees of the Department of Treasury and such other persons whose association with current and former employees relate to the alleged violations of the Department's rules of conduct, the Office of Personnel Management merit system, or any other criminal or civil misconduct, which affects the integrity or facilities of the Department of Treasury. The names of individuals and the files in their names may be:

(1) received by referral; or

(2) initiated at the discretion of the Office of the Inspector General in the conduct of assigned duties.

(B) Individuals who are: witnesses; complainants; confidential or non-confidential informants; suspects; defendants; parties who have been identified by the Office of the Inspector General or by other agencies; constituent units of the Department of Treasury and members of the general public in connection with the authorized functions of the Inspector General.

(C) Current and former senior Treasury and bureau officials who are the subject of investigations initiated and conducted by the Office of the Inspector General.

CATEGORY OF RECORDS IN THE SYSTEM:

Letters, memoranda, and other documents citing complaints of alleged criminal or administrative misconduct. Investigative files which include: reports of investigations to resolve allegations of misconduct or violations of law with related exhibits, statements, affidavits, records or other pertinent documents obtained during investigations; transcripts and documentation concerning requests and approval for consensual (telephone and consensual non-telephone) monitoring; reports from or to other law enforcement bodies; prior criminal or noncriminal records of individuals as they relate to the investigations; reports of actions taken by management personnel regarding misconduct and reports of legal actions resulting from violations of statutes referred to the Department of Justice for prosecution.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Reorganization Plan No. 26 of 1950, Treasury Department Order No. 256, dated July 16, 1978, Treasury Department Order No. 101-4, dated April 13, 1979, Treasury Department Order No. 101-14, dated February 20, 1980, and Treasury Department Order No. 101-15, dated February 27, 1980.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Routine disclosure of information contained in this system may be made to appropriate officials of the Treasury Department and the Department of Justice in connection with actual or potential criminal prosecution or civil litigation and to the Office of the General Counsel in connection with requests for legal advice; Special Counsel to the Merit Systems Protection Board; GAO Fraud Task Force; state and local licensing boards; Intelligence Oversight Board, pursuant to requirements of Executive Order 12036 relating to the oversight of foreign intelligence activities in Treasury; and to authorized investigative offices of the Treasury Department constituent units. Disclosure may be made during judicial proceedings and administrative hearings. Routine disclosure may be made (to the extent provided by law or regulation and as necessary) to report apparent violations of law to appropriate law enforcement agencies. Routine disclosure may be made to authorized investigative offices of other Federal Agencies in connection with security procedures. Disclosures may be made to those offices and employees of the Treasury Department who have a need for the records such as those disclosures required by the Freedom of Information Act (5 U.S.C. 522) as amended. For additional routine uses see Appendix AA entitled "Department of the Treasury Appendix Additional Routine Uses".

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file jackets and word processing discs maintained in locked safes.

RETRIEVABILITY:

By name and case number. Access to the physical files containing records is by case number obtained from alphabetized card indices and word processing discs.

SAFEGUARDS:

Records and word processing discs are maintained in locked safes and all access doors are locked when office is vacant. The records are available to Office of the Inspector General personnel who have an appropriate security clearance.

RETENTION AND DISPOSAL:

Investigative files are stored on-site for 3 years and indices to those files are stored on-site for 5 years. The word processing discs will be retained indefinitely, however they will be reviewed on a periodic schedule and will be purged when the information is no longer required. Upon expiration of their respective retention periods, the investigative files and their indices are transferred to the Federal Records Center for retention and in most instances destroyed by burning, maceration or pulping when 20 years old.

SYSTEM MANAGER(S) AND ADDRESS:

Inspector General, Main Treasury Building, Washington, D.C. 20220.

NOTIFICATION PROCEDURE:

Pursuant to 5 U.S.C. 552a(j)(2) and (k)(2), this system of records may not be accessed for purposes of determining if the system contains a record pertaining to a particular individual.

RECORDS ACCESS PROCEDURES:

See Notification Procedures above.

CONTESTING RECORD PROCEDURES:

See Notification Procedures above.

RECORDS SOURCE CATEGORIES:

See Categories of Individuals above. This system contains investigatory material whose sources need not be reported.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

As authorized by 5 U.S.C. 552a(j)(2) and (k)(2), this system is exempt from the various provisions of the Privacy Act enumerated in 31 CFR 1.36.

[FR Doc. 81-2017 Filed 1-19-81; 8:45 am]

BILLING CODE 4810-25-M

VETERANS ADMINISTRATION

Education Benefits; Policies and Procedures

AGENCY: Veterans Administration.

ACTION: Request for public comments.

SUMMARY: The Veterans Administration is publishing for public comment statements of procedures which have been adopted by the agency in order to implement some of the provisions of the Veterans' Rehabilitation and Education Amendments of 1980. These statements will better acquaint veterans, eligible persons, educational institutions and the public at large with the way these provisions will be implemented.

DATE: Comments must be received on or before February 18, 1981.

ADDRESS: Send written comments to: Administrator of Veterans Affairs (271A), Veterans Administration, 810 Vermont Avenue, N.W., Washington, D.C. 20420.

Comments will be available for inspection at the above address during normal business hours until March 2, 1981.

FOR FURTHER INFORMATION CONTACT: June C. Schaeffer, Assistant Director for Policy and Program Administration, Education Service, Department of Veterans Benefits, Veterans Administration, 810 Vermont Avenue, NW., Washington DC 20420 (202-389-2092).

SUPPLEMENTARY INFORMATION: This publication contains DVB Circular 22-80-39 and Appendix B to that circular. This circular and appendix implement the provisions of the Veterans' Rehabilitation and Education Amendments of 1980, especially those provisions dealing with flight training and payment of educational assistance allowance to veterans and eligible persons in correspondence training.

This circular and appendix have been distributed through the normal channels. The Veterans Administration is implementing the procedures contained in the circulars. All comments received will be reviewed and used in changing the circular and appendix, if necessary.

Additional Comment Information

Interested persons are invited to submit written comments, suggestions or objections regarding this document to the Administrator of Veterans Affairs (271A), Veterans Administration, 810 Vermont Avenue, NW., Washington, D.C. 20420. All written comments received will be available for public inspection at the above address only between the hours of 8 am and 4:30 pm Monday through Friday (except holidays) until March 2, 1981. Any person visiting Central Office for the purpose of inspecting any such comments will be received by the Central Office Veterans Services Unit in room 132. Such visitors to a VA field station will be informed that the records are available for inspection only in Central Office and furnished the address and the above room number.

Approved: January 13, 1981.

By direction of the Administrator.
Rufus H. Wilson,
Deputy Administrator.

Educational Provisions of the Veterans' Rehabilitation and Education Amendments of 1980 (PL 96-466)

[DVB Circular 22-80-39]

November 4, 1980.

1. *General:* H.R. 5228 was enacted as Pub. L. 96-466 on October 17, 1980. Some major provisions of the law are a 10% two-part increase in chapters 34 and 35 educational assistance, a reduction in the amounts VA can reimburse for correspondence and flight training, and changes to chapters 32, 34, 35, and 36. Provisions of the new law are arranged by effective dates. Those provisions for which more detailed instructions will be issued later are clearly indicated. Changes in the law concerning vocational rehabilitation (chapter 31 of title 38) and veterans' employment provisions (chapters 41 and 42 of title 38) will be covered in separate publications.

2. *Provision Effective January 1, 1977:* Title 38 U.S.C. 1652(1)(A) has been amended to allow participation in the chapter 32 VEAP Program by persons with a prior period(s) of military service, but who are ineligible for chapter 34 educational assistance. Although entry into active duty must still be January 1, 1977 or later, the amendment eliminates the requirement that it be the "initial" entry into military service.

Example: A person first entered into active military service on August 1, 1976 and received a hardship discharge on December 8, 1976 (130 days). He reenlisted on October 22, 1977 and is to be discharged on October 21, 1981. Prior to enactment of this law, he would not have been eligible for chapter 34 or chapter 32 benefits. He did not meet the 181 continuous days active service requirement for chapter 34. He also did not meet the "initial" period of service after January 1, 1977 for chapter 32. However, this law eliminates the "initial" entry requirement and he can now participate in the chapter 32 program.

3. *Provisions Effective October 1, 1980, Chapters 34 and 35:*

Note.—Some portions of provisions listed are effective on different dates. They are included here with the major subjects for clarity. Differing effective dates are clearly identified.

a. *Rates.* Chapters 34 and 35 benefit rates have been increased by 5% effective October 1, 1980. (The remainder of the 10% increase is effective January 1, 1981, as discussed in paragraph 6a of this circular.) The charge against entitlement for correspondence training is at the rate of $327 per month. The charge against entitlement for flight training is at the rate of $302 per month. The October 1, 1980, rates are shown in paragraph 8 a and b of this circular. The following sections of title 38, U.S.C., have been amended to reflect the new rates:

(1) Sections 1682 (a), (b) and (c); and 1787(b)—chapter 34 rates.

(2) Sections 1732(b) and 1742(a)—chapter 35 rates.

(3) Section 1788(a)(2)—correspondence rates.

(4) Section 1677(b)—flight rates.

b. *Tutorial Assistance.* Amendments to 38 U.S.C. 1682(b) increase the tutorial assistance rate and disqualify certain family members as tutors.

(1) The rate of tutorial assistance is increased to $72 per month with a maximum of $900. Payments for tutoring provided on or after October 1, 1980, will be computed at the new rate and will be subject to the new maximum.

(2) Legislation has confirmed VA policy to prohibit payment of tutorial assistance to a veteran for tutoring by his or her own parent, spouse, child (whether or not married or over 18 years of age), brother, or sister.

c. *SAA Reimbursement.* Title 38 U.S.C. 1774(b) is amended to increase the allowance for administrative expenses paid to State approving agencies by 5%. The new allowances range from $662 to $14,288 base. The administrative allowances for expenses incurred on or after October 1, 1980, will be computed on the basis of the following rate chart:

Total salary cost reimbursable	Allowance for administrative expenses
$6,000 or less	$662.
Over $6,000 but not exceeding $10,000.	$1,191.
Over $10,000 but not exceeding $26,000.	$1,191 for the first $10,000 plus $1,108 for each additional $5,000 or fraction thereof.
Over $26,000 but not exceeding $40,000.	$7,205.
Over $40,000 but not exceeding $75,000.	$7,205 for the first $40,000 plus $993 for each additional $5,000 or fraction thereof.
Over $75,000 but not exceeding $80,000.	$14,288.
Over $80,000	$14,288 for the first $80,000 plus $993 for each additional $5,000 or fraction thereof.

d. *Education Loans*

(1) Title 38 U.S.C. 1796(b)(3) is amended to increase the maximum amount a veteran or eligible person may borrow for an education loan to $327 multiplied by the number of months of remaining entitlement. This change applies to loans made on or after October 1, 1980. However, the maximum loan amount for a regular academic year remains $2,500 with corresponding amounts for loans for specific enrollment periods also remaining in effect.

(2) Title 38 U.S.C. 1788(c) is amended to allow education loans for flight training. Pending further instructions regarding this provision, all applications for loans based on flight training will be held.

e. *Extension of Delimiting Date Based on Disability*

(1) Title 38 U.S.C. 1662(a)(1) and 1712(b)(2) are amended to require that an application for an extension of delimiting date based on disability be made within 1 year of the following dates, whichever is latest:

(a) The delimiting period otherwise applicable; or

(b) The termination of the mental or physical disability; or

(c) The effective date of this law.

(2) This amendment codifies the procedures now applied when considering the timeliness of applications for delimiting date extensions. The only change to existing procedures is that the effective date of the provision of the law has been changed from November 23, 1978 (1 year from date of enactment of Pub. L. 95-202) to October 17, 1981 (1 year from date of enactment of Pub. L. 96-466). No review will be conducted of claims previously denied based on the earlier date (November 23, 1978) unless requested by the claimant.

f. *Clarification of Administrator's Authority to Disapprove an Application for Benefits.* Title 38 U.S.C. 1671 and 1721 are amended to provide express authority for disapproving applications for educational benefits filed by a veteran or eligible person if the enrollment would be precluded under any of the provisions of chapter 36 of title 38, U.S.C. This change involves no change in existing procedures.

g. *Elimination of Prohibition Against Sales and Sales Management Courses.* Specific reference concerning the approval of sales and sales management courses has been deleted from 38 U.S.C. 1673 and 1723. Approval of such courses will be treated the same as any other vocational course. Further instructions concerning this change will be provided by a separate circular.

h. *Modification of 50% Employment Reporting for Vocational Programs*

(1) In order to satisfy the 50% employment requirement (38 U.S.C. 1673 and 1723), at least half the persons who completed a program over the preceding 2-year period who are available for employment, must have been employed in the occupational category for which the program was designed to provide training. The law now also requires that the graduate work in the training-related

occupation for an average of 10 hours per week before he/she may be considered *employed* in a related occupation.

(2) The requirement for submission of recurring employment reports is not applicable if:

(a) The institution offering the program has had 35% or fewer of its students enrolled under chapter 34 or 35 during the preceding 2 years; *and*

(b) The program has met all provisions of the 50% employment requirement, including the provision for a *weekly average* of 10 hours training-related employment, for a 2-year period that ends on or after the enactment date of Pub. L. 96–466. Schools that are not currently collecting information on their graduates' *monthly hours of* employment should immediately begin to do so.

(3) The requirement for submission of recurring employment reports may be waived if the Administrator determines the submission of an employment report causes an undue hardship on the institution because only a small percentage of persons enrolled in the institution are receiving chapter 34 or 35 benefits.

(4) Detailed instructions concerning the changes in 50% employment reporting will be provided by a separate circular.

i. *85–15% Ratios Computations.* Confirming VA policy, a change to 38 U.S.C. 1673(d) eliminates persons receiving Federal grants such as BEOG (Basic Educational Opportunity Grant) and SEOG (Supplemental Educational Opportunity Grant) from 85–15% ratio computations.

j. *Standards for Determining Satisfactory Progress.* Title 38 U.S.C. 1674 and 1724 are amended to remove the VA standard of progress based on rate of completion. However, the requirement remains that an institution have and enforce its own standards of progress. The provisions of appendix M, Revised, of DVB Circular 20–76–64, concerning courses not counted to satisfy graduation requirements, remain in effect.

k. *Education Outside the United States.* The definition of institution of higher learning in 38 U.S.C. 1652(f) and 1701(a)(10) has been amended to include a foreign institution which offers a course leading to a standard college degree, or the equivalent, and which is recognized as such by the appropriate foreign education authority of the country or other jurisdiction in which the institution is located. This amendment does not involve any change in existing procedures.

l. *Independent Study.* Section 1652(e) is amended to revise the method of computing educational assistance when a student takes a combination of resident training and independent study. This change will greatly simplify the current method for paying these courses which is described in VAR 14280(C) (38 CFR 21.4280(c)).

(1) If independent study is combined with resident training, the total training time will be determined by adding the number of semester hours (or the equivalent) of resident training to the number of semester hours (or the equivalent) of independent study. However, the number of independent study hours that may be counted may not exceed the *maximum* number of hours required for "less than half-time" training (i.e., 5 hours if 12 hours is required for full-time).

Example: A student is enrolled in 4 resident hours and 8 independent study hours in a school where 12 hours are required for full-time measurement. The training time will be determined by adding the 4 resident hours to 5 independent study hours (the maximum that may be counted) for a total of 9 hours or ¾ training time. The student will be paid at the ¾ time rate and entitlement will also be charged at the ¾ time rate.

(2) No general review will be made to identify cases that might receive a higher rate as the result of this change in subparagraph (1) above. However, if such cases are identified in the normal course of adjudicating claims, award adjustments will be made effective October 1, 1980.

Note.—This change should never result in a lower rate.)

(3) If the entire enrollment is by independent study, the VA will continue to measure these courses as less than half-time training as provided in VAR 14280(B) [38 CFR 21.4280(b)]. Entitlement will continue to be charged at the one-quarter time rate for these cases.

m. *Courses Offered Through Open-Circuit Television.*

(1) For a course pursued in part by open-circuit television, the law no longer requires that a *major* portion of the credit hours be taken through resident training (38 U.S.C. 1673(c) and 1723(c)). However, a student will always be required to take at least one subject concurrently by resident training in order to receive payment for any open-circuit TV subjects.

(2) Amendments to 38 U.S.C. 1682 and 1732(c) provide the rate of educational assistance allowance payable for a course pursued in part by open-circuit television will be computed in the same manner as for a combined resident/independent study program. (See subparagraph 1(1) above.)

(3) Award adjustments will be handled in the same manner as for independent study. (See subparagraph 1(2) above.)

n. *Charge of Entitlement for Training Taken on a Less Than Half-Time Basis or While on Active Duty.* Title 38 U.S.C. 1682(b) is amended to state that, for institutional courses, entitlement will be charged based upon the monthly training time rates determined under 38 U.S.C. 1788. (This merely codifies the existing practice of charging entitlement based on training time.)

o. *Secondary Education Programs.* Title 38 U.S.C. 1661(a) is amended to provide entitlement-free certain secondary education training for inservice persons as well as for veterans. In addition, veterans not on active duty and eligible spouses enrolled in a program of secondary education will be reimbursed for tuition and fees or the training time rate, whichever is the lesser instead of the former rule allowing payment at the appropriate institutional rate based on training time.

(1) Effective October 1, 1980, no entitlement is charged an *inservice* person pursuing a secondary high school diploma (or equivalency certificate) program. It will continue to be charged for any other secondary program, however.

(2) The rate of educational assistance allowance payable is the lesser of the cost of tuition and fees or the single veteran's institutional rate for the particular training time.

(3) Application of the 85–15% requirement shall be in accordance with 38 U.S.C. 1673(d). Approvals for courses offering a program of secondary education under a contract with the Department of Defense which is given on or adjacent to a military base will be reviewed by regional offices for completeness and then forwarded to Central Office (223) for final approval [38 U.S.C. 1789(b)(6)].

(4) Any veterans enrolled as of October 1, 1980, will continue to receive educational assistance based on training time and number of dependents until interruption or termination of the program.

(5) Additional instructions on this change will be printed as an appendix.

p. *Repeal of Mandatory Counseling for Chapter 35 Dependents.* Title 38 U.S.C. 1720(a) is amended to eliminate mandatory counseling for an eligible child who selects a program other than a standard college degree for his or her original program under chapter 35. Accordingly, claims by eligible sons and daughters will be processed in the same

manner as claims filed by veterans under chapter 34, except that the eligible son or daughter (or parent/guardian) will still be required to furnish information on the educational plan. However, claims filed by: (1) eligible sons or daughters who are identifiable as having a mental or physical disability or handicap; and (2) applicants for a course of specialized vocational training (38 U.S.C. 1736) or for special restoration training (38 U.S.C. 1740–1743); should continue to be referred to the VR&C (Vocational Rehabilitation and Counseling) Division for review by counseling psychologist.

q. *SRT (Special Restorative Training).* Title 38 U.S.C. 1740 is amended to specify that SRT is available only to eligible chapter 35 children. Any spouse currently in training will be allowed to continue until interruption or completion.

r. *Extension of Chapter 35 Child's Period of Eligibility in Certain Cases.* Title 38 U.S.C. 1712(a) is amended to provide an 8-year delimiting date for a chapter 35 dependent child when eligibility arises after the child's 18th birthday (but before age 26) based upon the serviceperson's POW, MIA, or forcibly detained status. However, the delimiting period cannot extend beyond the child's 31st birthday.

s. *Payment of Chapter 35 Benefits.* Title 38 U.S.C. 1731(b) has been reworked to confirm existing policy on paying chapter 35 benefits in accordance with chapter 36 of title 38. No changes in current procedures are necessary.

t. *Periods of Payment.* Language is added to section 1780(a) which clarifies the proper payment period. Payment may only be made for the actual period of pursuit of one or more unit subjects even though this period is shorter than the usual enrollment period. This change confirms existing VA practice.

Example: A student completes an entire semester's work in a 6-week accelerated term which falls within the regular semester. The VA will pay for the 6-week term but not for the entire semester.

u. *Changes in Absence Accounting for NCD (Noncollege Degree) Programs*

(1) Title 38 U.S.C. 1780(a)(2) is amended to provide that, in addition to weekends and legal holidays, up to 5 days in a 12-month period will not be counted as absences if the institution is not in session on those days due to teacher conferences or teacher training sessions, and regularly scheduled classes would otherwise have been held.

(2) ELR's (Education Liaison Representatives) should promptly inform schools that offer NCD programs of this change, and should identify such days on VA Form 22–1998b, Approval Information—Accredited and Nonaccredited NCD Progams and Nonaccredited IHL Programs.

v. *Reports by Veterans, Eligible Persons, and Educational Institutions to the Veterans Administration.* The title of section 1784 of 38 U.S.C. is changed to "Reports by veterans, eligible persons, and institutions; reporting fee."

(1) Title 38 U.S.C. 1784(a) is amended to require both the veteran or eligible person and the institution to promptly report unscheduled terminations or interruptions of training.

(2) Prior to issuance of the annual reporting fee payment, an educational institution must certify that it has exercised reasonable diligence in meeting all applicable requirements of chapters 34, 35, and 36 and will promptly report to the VA any failure to meet such requirements. Compliance with this requirement will necessitate the installation of a computer bar to prevent the release of a reporting fee payment until the regional office received acceptable certification from the school.

w. *School Liability.* Section 1785 was rewritten to clarify the responsibilities and liabilities of trainees and schools. No change in current VA policies or procedures will be required.

(1) The liability of the veteran or eligible person for an overpayment is now made explicit in this section of the law.

(2) A school may be liable for an overpayment resulting from a "willful or negligent false certification." The prior language referred simply to "false certification." This distinction was already made by the VA in DVB Circular 22–79–6, appendix C.

(3) A school is not relieved of liability if the overpayment to the veteran or eligible person is waived. This change codifies the rule contained in VA Regulation 14009(f) (38 CFR 21.4009(f)).

x. *Standard Class Sessions.* Section 1788 is amended to require the VA to consider standard class sessions as well as credit hours in determining the proper training time for resident undergraduate college courses. This change confirms existing VA policy (see DVB Circular 20–77–16) but allows for monthly averaging of standard class sessions in certain cases. The following is a summary of the new language:

(1) Full-time measurement normally will require one standard class session per week for each quarter or semester hour of credit attempted.

(2) A standard class session is defined as 1 hour (or 50-minute period) of academic instruction, 2 hours of laboratory instruction, or 3 hours of workshop training.

(3) However, a course will be measured as full-time if:

(a) It is considered to be full-time for all administrative purposes; and

(b) Less than 50% of the persons enrolled in the course are receiving educational assistance under title 38; and

(c) The course meets all requirements for full-time measurement except for weekly class instruction; and

(d) The course requires that at least one standard class session be scheduled every 2 weeks for each credit hour; and that the monthly total number of standard class sessions must equal the same number that would be required if the student were training full-time on a regular weekly basis.

(4) Detailed instructions for implementing this provision will be issued as an appendix. No change in existing procedures will be attempted until the appendix is published. Cases that might be affected by this liberalization will continue to be processed under existing instructions but will be diaried for future review.

y. *Limitation on Payment of Educational Assistance Allowances to Incarcerated Veterans and Eligible Persons.* Effective October 1, 1980, the rates of educational assistance allowance payable to an *incarcerated* veteran or eligible person are changed. Any incarcerated felon pursuing a program of education on or after this date can be reimbursed for the lesser of cost of tuition, fees and necessary supplies, books and equipment, or the maximum chapter 34/35 rate payable for the particular training time (no dependents). These provisions will also apply if the person is an incarcerated felon residing in a halfway house or participating in a work-release program and has all of his or her living expenses defrayed by a Federal, State, or local government. This provision is included under 38 U.S.C. 1692. There are also restrictions to payment of benefits when any chapter 32, 34 or 35 veteran or eligible person is incarcerated and is having his or her tuition and fees paid by the local, State, or Federal Government (38 U.S.C. 1780(a)). Detailed instructions are forthcoming.

z. *Reduction in Educational Assistance Allowance for Correspondence and Flight Training.*

(1) Effective October 1, 1980, the reimbursement rates for flight and correspondence training are changed. Anyone enrolled in flight or correspondence training on September 1, 1980, will continue to be reimbursed

at the 90% rate as long as he or she is continuously enrolled in that program.

(2) Anyone entering into training between September 2 and September 30, 1980 (inclusive), will be reimbursed at the 90% rate for lessons completed that month. For lessons completed on or after October 1, 1980, the reimbursement rate will be 70% for correspondence (38 U.S.C. 1786(a)(1)) and 80% for flight (38 U.S.C. 1877(b)).

(3) Anyone entering into training October 1, 1980, or later, will be reimbursed at the 70% rate for correspondence and 80% rate for flight. Detailed instructions will be issued as an appendix.

4. Provisions Effective October 1, 1980, Chapter 32

a. Refund of Contributions in Death Cases

(1) Section 1624 has been revised to greatly simplify the refund procedure when there is no designated SGLI (Serviceman's Group Life Insurance) beneficiary(ies). Previously, the VA was required to pay the veteran's estate in such cases.

(2) The new wording is as follows:

"In the event of a participant's death, the amount of such participant's unused contributions to the fund shall be paid to the living person or persons first listed below:

"(1) The beneficiary or beneficiaries designated by such participant under such participant's Servicemen's Group Life Insurance policy.

"(2) The surviving spouse of the participant.

"(3) The surviving child or children of the participant, in equal shares.

"(4) The surviving parent or parents of the participant, in equal shares.

"If there is no such person living, such amount shall be paid to such participant's estate."

(3) Detailed instructions will be issued as a revision to DVB Circular 20-77-25, appendix D. In the interim, Adjudication personnel should continue to call Central Office (223E) at FTS 389-2829 for assistance in processing these cases.

b. Entitlement—Free Pursuit of Secondary Education Programs Under Chapter 32

(1) Title 38 U.S.C. 1631(b) has been amended to eliminate the approval of PREP courses under chapter 32. However, those courses have been replaced by the approval of pursuit of secondary level programs.

(2) This amendment provides for secondary level courses to be taken by *enlisted persons* during the last 6 months of the participant's first enlistment and at any time thereafter. Note this provision applies only to current and former enlisted members. It does not apply to officers. If the participant is a veteran, it will be necessary to review the DD Form 214 to insure that he/she was an enlisted person before approving the application for benefits. The monthly payments will be calculated as currently done in chapter 32 cases, but the banking record will not be adjusted since there is no charge to entitlement. Tuition and fees are not a factor in determining the monthly rate for these cases. For application of the 85–15% requirement see paragraph 3o(3).

c. Limitation on Entitlement Under Two or More Programs

(1) Title 38 U.S.C. 1631(a)(1) has been amended to include chapter 32 in the section of the law (1795) that limits the aggregate period for which a person may receive educational assistance under two or more laws to 48 months (or the part-time equivalent thereof).

(2) DOD (Department of Defense) is being requested to revise their application for chapter 32 documents to include a block requesting the participant to indicate any VA training pursued under prior laws. DOD will notify the VA if such prior training is indicated. Adjudication will then be responsible for notifying the applicable Service Department of the maximum number of months to which the participant is entitled under chapter 32. This is done so that the participant will not be contributing for a longer period than he/she will be entitled.

(3) Detailed instructions will follow as a revision to DVB Circular 20-77-25, Appendix C.

d. Counseling for Chapter 32. Title 38 U.S.C. 1661 has been amended to include section 1663 as being applicable to chapter 32. That section provides for counseling upon the veteran's request. Previously, chapter 32 recipients were only provided counseling if it was mandatory (unsatisfactory progress, second change of program, etc.)

e. Amendments Relating to Monthly Contributions

(1) Title 38 U.S.C. 1622 has been amended to allow for participant contributions to chapter 32 in the amounts ranging from $25 to $100 per month. Previously, the range was from $50 to $75. Any contribution must still be divisible by five.

(2) This amendment also provides for the applicable department to be able to pay all or part of the participant's monthly contribution in order to encourage persons to enter or remain in the Armed Forces. Prior to enactment of this law, the department were allowed to make a lump-sum DOD contribution on behalf of the participant upon completion of his/her enlistment, but were not allowed to pay the monthly contibutions.

(3) This amendment also permits a participant, while on active duty, to make lump-sum contributions to the fund. In the past, only monthly contributions were permitted, except in exceptional circumstances. Any lump-sum payment is not to exceed a total contribution of $2,700 and can be made in addition to or in lieu of monthly deductions. This lump-sum payment will be considered to have been made by monthly deductions in the amount of $75 per month or in such lesser amount as may be specified by the participant.

5. Miscellaneous Provisions Effective October 1, 1980

a. Elimination of PREP Programs. Title 38 U.S.C. 1695 through 1698 have been deleted to omit chapter 34 and chapter 32 PREP. (Pub. L. 94-502 enacted October 15, 1976, eliminated PREP for chapter 34 students.)

b. Advisory Committee for Veterans' Educational Assistance Programs. Since a separate advisory committee for rehabilitation is now established under 38 U.S.C. 1521, the Advisory Committee for Veterans' Educational Assistance Programs is now only concerned with the Administration of chapters 32, 34, 35, and 36. The Committee, which includes a veteran representative of the post-Vietnam era, will remain in existence until December 31, 1989.

6. Provisions Effective January 1, 1981, Chapters 34 and 35

a. Rates. Chapters 34 and 35 benefit rates will be increased by 4.7% effective January 1, 1981. The charge against entitlement for correspondence training will be at the rate of $342 per month. The charge against entitlement for flight training will be at the rate of $917 per month. The January 1, 1981 rates are shown in paragraph 9a and b of this circular. The following sections of title 38, U.S.C. will be amended to reflect the new rates:

(1) Sections 1682(a), (b) and (c); and 1787(b)—chapter 34 rates.

(2) Sections 1732(b) and 1742(a)—chapter 35 rates.

(3) Section 1786(a)(2)—correspondence rates.

(4) Section 1877(b)—flight rates.

b. Tutorial Assistance. The rate of tutorial assistance is increased to $76 per month with a maximum of $911. Payments for tutoring provided on or after January 1, 1981, will be computed at the new rate and will be subject to the new maximum.

c. SAA Reimbursement. Title 38 U.S.C. 1774(b) is amended to increase the allowance for administrative expenses paid to State approving agencies by 4.7%. The new allowances range from

$833 to $14,999 base. The administrative allowances for expenses incurred on or after January 1, 1981, will be computed on the basis of the following rate chart:

Total salary cost reimbursable	Allowance for administrative expenses
$5,000 or less	$833.
Over $5,000 but not exceeding $10,000.	$1,247.
Over $10,000 but not exceeding $35,000.	$1,247 for the first $10,000 plus $1,155 for each additional $5,000 or fraction thereof.
Over $35,000 but not exceeding $40,000.	$7,543.
Over $40,000 but not exceeding $70,000.	$7,543 for the first $40,000 plus $833 for each additional $5,000 or fraction thereof.
Over $70,000 but not exceeding $90,000.	$14,999.
Over $90,000	$14,999 for the first $90,000 plus $972 for each additional $5,000 or fraction thereof.

d. *Education Loans.* Title 38 U.S.C. 1798(b)(3) is amended to increase the maximum amount a veteran or eligible person may borrow for an education loan to $342 multiplied by the number of months of remaining entitlement. This change applies to loans made on or after January 1, 1981. However, the maximum loan amount for a regular academic year remains $2,500 with corresponding amounts for loans for specific enrollment periods also remaining in effect.

7. *Miscellaneous Provisions*

a. Title 38 U.S.C. 220 has been amended to expand the responsibilities of the VA Administrator to include advocacy on behalf of veterans.

b. This law also amends certain sections of other laws and amendments regarding the VA that do not pertain to the adjudication of an education claim.

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8. Payment Tables

a. Monthly Rates - GI Bill

EFFECTIVE OCTOBER 1, 1980

	No Deps.	1 Dep.	2 Deps.	Each Add. Dep.
Institutional-				
Full Time.....	$ 327	$ 389	$ 443	$ 27
Three-Quarter Time..	245	292	332	20
Half Time.....	164	195	222	14
Cooperative.....	264	309	351	21
Apprenticeship/OJT:				
1st 6 Months.....	237	267	291	13
2d 6 Months.....	177	207	232	13
3d 6 Months.....	119	148	172	13
4th and Any Succeeding 6 Mos.	89	88	113	13
Farm Cooperative:				
Full Time.....	264	309	351	20
Three-Quarter Time..	198	232	263	15
Half Time.....	132	155	176	10

Active Duty, Or Less Than Half Time..... Tuition Cost, Not to Exceed Rate of $327 For Full Time, $245 For 3/4 Time, $164 For 1/2 Time Or Less But More Than 1/4 Time, $82 For 1/4 Time Or Less.

Correspondence..... Entitlement Charged At Rate of 1 Month For Each $327 Paid.

Flight..... Entitlement Charged At Rate of 1 Month For Each $302 Paid.

b. Monthly Rates - Dependents' Educational Assistance Program.

EFFECTIVE OCTOBER 1, 1980

	Full Time	Three-Quarter	Half Time
Institutional.....	$ 327	$ 245	$ 164
Less Than Half Time	Tuition Cost, Not to Exceed Rate of $164 for 1/2 Time and $82 for 1/4 Time.		
Cooperative.....	$ 264	(Full Time Only)	
Farm Cooperative....	$ 264	$ 198	$ 132

Correspondence - Same Rates as Shown on Chart in subparagraph a.

OJT/AFT - Same as "No Deps." Rates Shown on Chart in subparagraph a.

Special Restorative Training..... (Full Time Only)	$ 327
Accelerated Charge Cost of Tuition and Fees in Excess of.....	$ 103 per mo.
Entitlement Reduced 1 Day for Each.....	$ 10.92

8. Payment Tables

a. Monthly Rates - GI Bill

EFFECTIVE JANUARY 1, 1981

	No Deps.	1 Dep.	2 Deps.	Each Add. Dep.
Institutional-				
Full Time.....	$ 340	$ 404	$ 460	$ 28
Three-Quarter Time..	255	303	345	21
Half Time.....	170	202	230	14
Cooperative.....	274	321	365	22
Apprenticeship/OJT:				
1st 6 Months.....	246	278	302	14
2d 6 Months.....	184	215	241	14
3d 6 Months.....	123	154	179	14
4th and Any Succeeding 6 Mos.	92	91	117	14
Farm Cooperative:				
Full Time.....	274	321	365	21
Three-Quarter Time..	206	241	274	16
Half Time.....	137	161	183	11

Active Duty, Or Less Than Half Time..... Tuition Cost, Not to Exceed Rate of $340 For Full Time, $255 For 3/4 Time, $170 For 1/2 Time Or Less But More Than 1/4 Time, $85 For 1/4 Time Or Less.

Correspondence..... Entitlement Charged At Rate of 1 Month For Each $340 Paid.

Flight..... Entitlement Charged At Rate of 1 Month For Each $314 Paid.

b. Monthly Rates - Dependents' Educational Assistance Program.

EFFECTIVE JANUARY 1, 1981

	Full Time	Three-Quarter	Half Time
Institutional.....	$ 340	$ 255	$ 170
Less Than Half Time	Tuition Cost, Not to Exceed Rate of $170 for 1/2 Time and $85 for 1/4 Time.		
Cooperative.....	$ 274	(Full Time Only)	
Farm Cooperative....	$ 274	$ 206	$ 137

Correspondence - Same Rates as Shown on Chart in subparagraph a.

OJT/AFT - Same as "No Deps." Rates Shown on Chart in subparagraph a.

Special Restorative Training..... (Full Time Only)	$ 340
Accelerated Charge Cost of Tuition and Fees in Excess of.....	$ 107 per mo.
Entitlement Reduced 1 Day for Each.....	$ 11.33

9. Payment Tables

a. Monthly Rates - GI Bill

EFFECTIVE JANUARY 1, 1981

	No Dependents	1 Dependent	2 Dependents	Each Additional Dependent
Institutional:				
Full Time	$ 342	$ 407	$ 464	$ 29
Three-Quarter Time	257	305	348	22
Half Time	171	204	232	15
Cooperative	276	329	367	21
Apprenticeship/OJT:				
1st 6 Months	249	279	305	13
2d 6 Months	186	217	243	13
3d 6 Months	124	155	180	13
4th and Any Succeeding 6 Mos.	62	93	119	13
Farm Cooperative:				
Full Time	276	323	367	21
Three-Quarter Time	207	242	275	16
Half Time	138	162	184	11

Active Duty, Or Less Than Half Time	Tuition Cost, Not To Exceed Rate Of $342 For Full Time, $257 For 3/4 Time, $171 For 1/2 Time Or Less But More Than 1/4 Time, $86 For 1/4 Time Or Less.
Correspondence	Entitlement Charged At Rate of 1 Month For Each $342 Paid.
Flight	Entitlement Charged At Rate of 1 Month For Each $117 Paid.

b. Monthly Rates - Dependents' Educational Assistance Program.

EFFECTIVE JANUARY 1, 1981

	Full Time	Three-Quarter	Half Time
Institutional	$ 342	$ 257	$ 171
Less Than Half Time	Tuition Cost, Not To Exceed Rate of $171 For 1/2 Time and $86 For 1/4 Time.		
Cooperative	$ 276	(Full Time Only)	
Farm Cooperative	$ 276	$ 207	$ 138

Correspondence - Same Rates as Shown on Chart in subparagraph a.

OJT/APP - Same as "No Depe." Rates Shown on Chart in subparagraph a.

Special Restorative Training (Full Time Only)	$ 342
Accelerated Charge Cost of Tuition and Fees in Excess of	$ 106 per mo.
Entitlement Reduced 1 Day for Each	$ 11.44

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10. Regional offices should insure that their State approving agency and all schools within their jurisdiction are furnished a copy of this circular.

Dorothy L. Starbuck,
Chief Benefits Director.

Appendix B—Flight and Correspondence Award Processing

[DVB Circular 22-80-39]

November 4, 1980.

1. General

a. Pub. L. 96-466 has increased the entitlement charge rate (legislative rate) and decreased the percent reimbursed to claimants (reimbursement rate) for flight and correspondence courses.

b. There are two increases to the entitlement charge rates: A 5 percent increase effective October 1, 1980, and an additional 4.7 percent increase effective January 1, 1981.

c. Paragraph 2 presents instructions for processing cases under the new entitlement charge rates. Paragraphs 3 through 7 describe how cases which receive the lower reimbursement rates will be handled.

d. Flight and correspondence awards and certifications being held in stations per previous Central Office instructions can be processed according to the following procedures.

e. These provisions apply to chapters 34-35 cases only; chapter 32 flight and correspondence awards are not affected.

2. Entitlement Charge Rates

a. *Correspondence.* Effective October 1, 1980, entitlement will be reduced at the rate of 1 month for each $327 paid for correspondence lessons serviced by schools on or after that date. Effective January 1, 1981, this amount will be increased to $342.

(1) Program modifications have been installed to charge entitlement at the old rate of 1 month for each $311 paid if the commencing date of the certification period on which payment is based is prior to October 1, 1980. If the certification period begins on or after October 1, 1980, entitlement will be charged at the rate of 1 month for each $327 paid.

(2) Since October 1, 1980 marks the beginning of a new certification quarter for correspondence courses, a proper entitlement charge will be effected as a result of routine processing of the computer-generated VA Form 22-6553b, Certification of Lessons Completed. Care must be taken, however, when processing a SSC transaction via other than a computer-generated VA Form 22-6553b to ensure that the certification period does not overlap legislative rates. If certification must be processed for lessons serviced both before and after October 1, 1980, submit two 35C transactions: The first, for those lessons completed prior to October 1; the second, for lessons serviced on or after October 1. Transmittal of these transactions must be controlled to ensure proper sequential processing.

(3) Stations are reminded that the legislative rate date now becomes October 1, 1980, and that supplemental award actions (14C) taken on correspondence awards will reject if their effective date is earlier than October 1, 1980.

b. *Flight.* Effective October 1, 1980, entitlement will be reduced at the rate of 1 month for each $302 paid for hours of flight training received on or after that date. Effective January 1, 1981, this amount will be increased to $317.

(1) Program modifications have been installed to charge entitlement at the old rate of 1 month for each $286 paid if the commencing date of the certification period on which payment is based is prior to October 1, 1980. If the certification period begins on or after October 1, 1980, entitlement will be charged at the rate of 1 month for each $302 paid.

(2) If certification must be processed for training completed both before and after October 1, 1980, submit two 35F transactions: The first, for training completed prior to October 1; the second for training completed on or after October 1. Transmittal of these transactions must be controlled to ensure proper sequence processing.

c. *January 1, 1981 Increase.* The same basic procedures outlined in subparagraphs a and b above will also be followed for the entitlement charge rate increase due January 1, 1981. This can be done by substituting the new rates and dates where appropriate.

3. Reimbursement Rates (Percent of Reimbursement)

a. *Program Begins On or Before September 1, 1980.* Any person entering into a program of education in flight or correspondence training on or before September 1, 1980, will continue to be reimbursed at the 90% rate for completed training. This 90% rate will apply to subsequent courses provided (1) that they are part of the same program of education, and (2) that enrollment is continuous. (See definitions in par. 4.)

b. *Program Begins September 2, 1980 Through September 30, 1980.* Any person entering into a program of education in flight or correspondence training between September 2, 1980 and September 30, 1980, inclusive, will be reimbursed as follows:

(1) Flight instruction completed prior to October 1, 1980, will be reimbursed at the 90% rate. Instruction completed on or after October 1, 1980, will be reimbursed at a 60% rate.

(2) Correspondence lessons serviced by the school prior to October 1, 1980, will be reimbursed at the 90% rate. Lessons serviced by the school on or after October 1, 1980, will be reimbursed at a 70% rate. If a certification is received which overlaps October 1, 1980, the school should be contacted to determine the actual dates the lessons were serviced.

c. *Program Begins On or After October 1, 1980*

(1) Flight instruction will be reimbursed at the 60% rate.

(2) Correspondence lessons serviced will be reimbursed at the 70% rate.

4. Concepts

a. *Protection of the 90% Rate.* Any person enrolled in a vocational program of flight or correspondence training prior to September 2, 1980, will continue to receive the 90% reimbursement rate for subsequent courses provided:

(1) A change of program is not chargeable under current regulations, and

(2) Enrollment remains continuous.

b. A person will be considered to be continuously enrolled as long as there is no period greater than 6 months between the exact date the last correspondence lesson was serviced or last flight instruction was received and the date the next correspondence lesson is serviced or flight instruction is received. A change of schools will not break the continuity of enrollment unless a change of program is also involved.

Note.—The Date Last Certified in the master record is not necessarily the date the last correspondence lesson was serviced or the date the last flight instruction was received. If this ending date is not in either the claims folder or Finance activity records then it should be requested from the school if it is needed in order to make a determination under this subparagraph.

c. *Beginning Date of Enrollment.* The effective date of a flight or correspondence award will be determined in accordance with current VA regulations and directives. However, for the purposes of determining if a program of flight or correspondence began on or before September 1, 1980, and therefore qualifies for the 90% reimbursement rate, the following rules apply:

(1) A flight training beginning date can be either the date a contract to pursue training was signed, the date training began, or the date an application to

pursue training was received in VA, whichever is earlier.

(a) If the flight school requires a formal contract to be signed by the student in order to pursue training it can be used to establish the beginning date of enrollment.

(b) To qualify under this provision, the veteran must have signed an individual, *written agreement* to pursue training. Statements merely expressing interest in the program or verbal agreements are not acceptable.

(c) A photocopy of the agreement must be submitted by the school to document these claims.

(d) Actual flight instructions must have been received within 6 months of the date of the agreement or date of receipt by VA of an application for flight training, whichever is earlier.

(2) The correspondence training beginning date will be the date the contract was signed (Item 4 on VA Form 22-1998c, Certification of Affirmation of Enrollment Agreement—Correspondence Course). It must be stressed that this date is to be used only to determine if the program began on or before September 1, 1980; it is *not* to be used as the effective date of the award.

5. Flight and Correspondence Award Processing

Until computer programing can be changed, special procedures will be required to enter flight and correspondence awards reimbursable at the lower rates. Awards which will be reimbursable at the 90 percent rate can continue to be entered normally.

a. *Correspondence—Reduced Reimbursement Cases (70 percent).* In order to have current computer programing issue the correct reimbursement rate for correspondence lessons serviced, the following procedures should be followed:

(1) Both the Total Charges and the Rate Per Lesson for the course should be multiplied by a factor of .778. The products of these calculations must be coded in on the award instead of the approved rates. When completed lessons are certified by the school and processed for payment into the computer, the actual payment issued will automatically equal the (correct) 70 percent rate. Fractional cents should be rounded to the nearest cent.

Example: The approved rates for a correspondence course are:

Total Charges	$1,000
Rate Per Lesson	10
Lessons	100

When multiplied by the (.778) factor, the new rates to be entered on the award are:

Total Charges	$778.00
Rate Per Lesson	7.78
Lessons	100

When the computer issues payment (temporarily using the old formula for a 90 percent reimbursement rate), it will pay at the correct current 70 percent reimbursement rate of $7 for each lesson for which payment is due.

(2) The award letter will be suppressed and a dictated letter patterned after the correspondence award letters shown in M22-2, part IV, chapter 11, must be sent informing the claimant of the award of benefits and the reimbursement rate(s). The reduced reimbursement rates (70 percent) will be inserted in lieu of the 90 percent figures.

(3) The folder should be "flashed" and the Target File Pull Indicator set to indicate that a lower reimbursement rate is being paid and that the Total Charges and Rate Per Lesson were reduced.

(4) A copy of the award should be routed to the Finance activity with a covering VA Form 3230 indicating that the reimbursement rate is lower.

(5) Finance should maintain these award copies for future computer adjustment actions and payment of certifications.

(b) *Flight—Reduced Reimbursement Cases (60 percent).* Flight awards which are reimbursable at the reduced rate may be entered normally except that:

(1) The award letter will be suppressed and a dictated flight letter patterned after the letters shown in M22-2, part IV, chapter 11, should be sent to the veteran informing him or her of the award of benefits and the reimbursement rate(s).

(2) The procedures outlined in subparagraph a(3), (4) and (5), will also be followed for flight cases.

(3) The actual payment of the reduced rate will be accomplished by adjusting certification processing (see par. 6b).

c. *Combination of Reimbursement Rates Cases*

(1) If a *flight* award is reimbursable at both the 90 percent rate and the reduced rate (see par. 3b), then the procedures outlined in subparagraph b should be followed.

(2) If a *correspondence* award is reimbursable at both rates then two awards should be prepared.

(a) One will show the actual (September) beginning date of the award, and will be entered normally (no reduction of Rate Per Lesson or Total Charges as required in subparagraph a above) except that the award letter will be suppressed.

(b) The second award will be coded per subparagraph a, on VA Form 22-1997S, and will show an October 1, 1980 beginning date. In addition, a "stop payment" date of October 1, 1980, will also be coded on this award. Both the original (OCR sheet) and carbon copy of this award will be forwarded to the finance activity along with a copy of the September award. A VA Form 3230 will also be sent to Finance stating that September training will be reimbursed at the 60 percent rate and all subsequent training will be reimbursed at the 70 percent rate. (See par. 6a.) The award letter will also be suppressed for this award.

(c) A dictated letter will be sent to the claimant explaining the dual reimbursement rate provisions.

6. Certification Processing

Until further notice, all flight and correspondence certifications (VA Forms 22-6553c, Monthly Certification of Flight Training, and 22-6553b) for periods on or after October 1, 1980, must be reviewed in the Finance activity before processing, to identify certifications payable at a reduced rate.

a. *Correspondence Certifications* for either the 60% reimbursement rate or the 70% reimbursement payments will have already been made to the award (see par. 5a). However, if certification is received for an award which is to be reimbursed under both rates (see par. 5c), the following additional steps should be taken:

(1) Enter a certification transaction (35C) for the lessons completed during September only.

(2) Submit the stop pay/reentrance award with the October 1, 1980 effective dates (being held in the Finance activity per par. 5c(2)) for entry into the next cycle. Any lessons completed during September must be withheld from this award (see M22-2, pt. IV, par. 4.14e(1)). When this award processes, it will terminate the previous 90% reimbursement) award and begin issuing payments at the reduced rate.

(3) Enter the remaining certifications with an effective date of October 1, 1980.

b. *Flight Certification* for awards reimbursable at the 90% rate can be entered normally. However, certifications (35 F transactions) reimbursable at the 60% rate must be entered as follows:

(1) The charges for the flight training to be certified must be multiplied by a factor of (.667). Fractional cents should be rounded to the nearest cent.

(2) The product of this calculation will be entered into the transaction in lieu of the actual charges certified by the school.

(3) When the computer issues payment for this certification (at the current 90% rate), the actual payment received by the veteran will be 60% of the charges certified by the school.

(4) Accurate records of the amount of flight instruction certified by the school must be maintained. Since the amount entered into the computer has been factored-down, there will be no automatic termination of the award when all the charges have been certified. When the school has certified the entire approved charges for the course, the award should be terminated with a "Quit Cert" or stop-payment.

7. Notice to Schools

It is very important that all schools which offer flight and correspondence awards are notified of the change to the reimbursement rates. The station Education Liaison representative should forward a letter to all affected schools, highlighting the new reimbursement rate provisions and VA policies for implementing these provisions.

8. Summary

It is very important that flight and correspondence cases which are to be reimbursement at a reduced rate are identified and controlled until programing for automatic adjustments are installed. This will require coordination between Adjudication Divisions and Finance activities. When the computer programing has been changed, additional award actions will have to be taken on these reduced reimbursement rate cases. Stations should attempt to centralize the award and certification activities involved in these types of training as much as possible.

9. Any problems or questions concerning these instructions should be referred to Central Office at FTS 389-3150.

Dorothy L. Starbuck,

Chief Benefits Director.

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Sunshine Act Meetings

Federal Register
Vol. 46, No. 13
Wednesday, January 21, 1981

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

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Federal Home Loan Bank Board	6
Federal Maritime Commission	7, 8
Federal Mine Safety and Health Review Commission	9
Metric Board	10, 11, 12, 13, 14, 15
National Council on Educational Research	16
National Railroad Passenger Corporation	17
Securities and Exchange Commission	18, 19

1

[M-304, Jan. 14, 1981]

CIVIL AERONAUTICS BOARD.

TIME AND DATE: 9:30 a.m., January 21, 1981.

PLACE: Room 1027, 1825 Connecticut Avenue, NW., Washington, D.C. 20428.

SUBJECT:

1. Ratification of items adopted by notation.

2. Northwest Airlines, Inc., credit card refund practices. (Memo No. 202, BCCP, BDA)

3. Docket 37313, *Air Florida* v. *Eastern Air Lines*—petition for review of BCP dismissal of third-party complaint alleging predatory conduct. (Memo No. 208, OGC)

4. Dockets 36949, 36950, *Muse Air Corporation Fitness Investigation, Application of Muse Air Corporation.* (OGC)

5. Docket 36910, Certification of Commuter Air Carriers. (Memo No. 223, OGC)

6. Dockets 32981 and 32982, *Former Large Irregular Air Service Investigation, Application for Air Specialities Corp.* (Memo No. 211, OGC)

7. Dockets 35982, 36488, 36494, 36564, 36569, 36595, 36612, 36618, 36629, 36655, 36691, 36715, 36777—Applications for exemptions from section 401 and 402 of the Act in order to resell air transportation obtained in a barter transaction with an airline. (Memo No. 210, OGC, BDA)

8. Docket 36807, Amendment to conform the air taxi operator rules in Part 298 to the new data requirements for fitness determinations in Part 204. (Memo No. 207, OGC, BDA)

9. Docket 36022, Petition by the Performance Incentives Company for rulemaking to remove the limitation on the commission that carriers can pay to travel agents for pro rata and single entity charters. (Memo No. 208, OGC, BDA)

10. Transfer to GPO of responsibility for distribution of CAB publications. (OGC, OASO, BIA)

11. Dockets EAS-416, 417, 418, 419, 420, 422, 423, 424, 425, 429, Appeal of the Essential Air Transportation Determinations of the Cities of Dodge City, Garden City, Goodland, Great Bend, Hays, Independence/Coffeyville/Parsons, Liberal/Guymon, Manhattan/Junction City/Ft. Riley, Salina, and Topeka, Kansas. (Memo No. 204, OGC, OCCR, BDA)

12. Docket EAS-521, Applications of Air Vectors and Courtesy Air Service to provide essential air transportation, with subsidy, to Glens Falls, New York. (Memo No. 212, BDA, OCCR)

13. Dockets 37501, EAS-565, and 38224, Essential Air Service at Hazleton, PA and notice of Perkiomen Airways to terminate service at Hazleton. (Memo No. 012-C, BDA, OCCR)

14. Docket 37720, Notice of intent of Aspen Airways to terminate service at Montrose, Colorado. (Memo No. 224, BDA, OCCR)

15. Dockets 35808, 36971, 36018 and 39031—Republic Airlines' notice to suspend service at Devils Lake, North Dakota, in 18 nonstop or single-plane markets, and application for an exemption. (BDA, OCCR)

16. Dockets 37972, 36705 and 36705, Cascade's petition for reconsideration and clarification of Order 80-11-73. (Memo No. 069-A, BDA, OCCR)

17. Docket EAS-667, Appeal of Essential Air Service Determination for Erie, Pa. filed by USAir. (OGC, BDA, OCCR)

18. Procedures for Handling Section 419 Subsidy Rates at the End of the Current Subsidy Rate Periods: Request for instructions. (Memo No. 198, BDA, OCCR, OGC, OEA)

19. Docket 35035, Application and petition of Cochise Airlines to remove the subsidy limitation condition from its section 401 certificate. (Memo No. 209, 209-A, BDA, OCCR)

20. Docket 36108, Application of Part 280 to Operators of Small Aircraft. (BDA, OGC)

21. Docket 23789, Petition of Air Florida, inc. for reconsideration of Order 79-11-109. (Memo No. 206, BDA)

22. Docket EAS-633, Renewal appeal of essential air service determination of Pago Pago filed by the Government of American Samoa. (OGC, OCCR, BDA)

23. Docket 36808, Petition of Aerolineas Nacionales del Ecuador, S.A., (ANDES) for reconsideration of Order 80-10-178, granting Aeroservicios Ecuatorianos, C.A. (AECA) a limited exemption to operate nonscheduled cargo flights between the United States and Colombia. (Memo No. 021-A, BIA, BCP, OGC)

24. Docket 36808, Application of Guy-America Airways, Inc. for a certificate of public convenience and necessity pursuant to section 401 of the Act to engage in foreign air transportation of persons, property and mail (New York-Georgetown, Guyana) (Memo No. 213, BIA, OGC, BALJ)

STATUS: Open.

PERSON TO CONTACT: Phyllis T. Kaylor, the Secretary (202) 673-5068.

[S-69-81 Filed 1-16-81; 3:07 pm]

BILLING CODE 6320-01-M

2

[M-304, Amdt. 1, Jan. 15, 1981]

CIVIL AERONAUTICS BOARD.

TIME AND DATE: 9:30 a.m., January 21, 1981.

PLACE: Room 1027, 1825 Connecticut Avenue NW., Washington, D.C. 20428.

SUBJECT:

Deletion: 15. Dockets 35808, 36971, 36018, 39031—Republic Airlines' notices to suspend service at Devils Lake, North Dakota, in 18 nonstop or single-plane markets, and application for an exemption. (BDA, OCCR)

Addition: 22a. Docket 36970, *Petition of Peninsula Airways, Inc., for establishment of fair and reasonable service mail rates;* Docket 36180, *Petition of Sea Airmotive, Inc., for establishment of fair and reasonable service mail rates.* (BDA)

Addition: 22b. Docket 36982, *Petition of Munz Northern Airlines, Inc., for establishment of Service Mail Rates.* (BDA)

STATUS: Open.

PERSON TO CONTACT: Phyllis T. Kaylor, the Secretary (202) 673-5068.

[S-67-81 Filed 1-16-81; 3:07 pm]

BILLING CODE 6320-01-M

3

FEDERAL DEPOSIT INSURANCE CORPORATION.

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 2:10 p.m. on Thursday, January 15, 1981, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session, by telephone conference call, to consider the following matters:

Recommendation regarding the liquidation of assets acquired by the Corporation from Franklin National Bank (In Liquidation), New York, New York (Case No. 44,853-L).
Personnel matters.

In calling the meeting, the Board of Directors determined, on motion of Chairman Irvine H. Sprague, seconded

by Director William M. Isaac (Appointive), concurred in by Mr. H. Joe Selby, acting in the place and stead of Director John G. Heimann (Comptroller of the Currency), that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the meeting was exempt from the open meeting requirements of the "Government in the Sunshine Act" by Authority of subsections (c)(2), (c)(6), (c)(8), and (c)(9)(B) thereof (5 U.S.C. 522b (c)(2), (c)(6), (c)(8), and (c)(9)(B)).

Dated: January 15, 1981.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[S-69-81 Filed 1-20-81; 2:00 pm]

BILLING CODE 6714-01-M

4

FEDERAL ENERGY REGULATORY COMMISSION.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 46 FR 2767, January 12, 1981.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 10 a.m., January 14, 1981.

CHANGES IN THE MEETING: The following item has been added:

Item No., Docket No., and Company

CP-7: CP81-139-000, Southern Energy Company, Southern Natural Gas Company and Boston Gas Company.

Lois D. Cashell,

Acting Secretary.

[S-68-81 Filed 1-19-81; 3:57 pm]

BILLING CODE 6450-85-M

5

FEDERAL ENERGY REGULATORY COMMISSION.

TIME AND DATE: 10 a.m., January 22, 1981.

PLACE: Room 9306, 825 North Capitol Street NE., Washington, D.C. 20426.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda.

Note.—Items listed on the agenda may be deleted without further notice.

CONTACT PERSON FOR MORE INFORMATION: Lois D. Cashell, Acting Secretary; telephone (202) 357-8400.

This is a list of matters to be considered by the Commission. It does not include a listing of all papers relevant to the items on the agenda; however, all public documents may be examined in the Division of Public Information.

Power Agenda—477th Meeting, January 22, 1981, Regular Meeting (10 a.m.)

CAP-1. Docket No. ER81-151-000, Iowa Utilities Co.
CAP-2. Docket No. ER81-148-000, New England Power Co.
CAP-3. Docket Nos. ER77-364 and ER78-14, Missouri Utilities Co.
CAP-4. Docket Nos. ER80-116 and ER80-511, Niagara Mohawk Power Co.
CAP-5. Docket No. ER80-398, El Paso Electric Co.
CAP-6. Docket No. ER80-473, Duke Power Co.
CAP-7. Docket No. ER80-2, Consolidated Edison, Co. of New York
CAP-8. Docket No. EL81-5-000, Edison Electric Institute
CAP-9. Docket No. EF80-3041, Southeastern Power Administration—Kerr-Philpott Projects

Miscellaneous Agenda—477th Meeting, January 22, 1981, Regular Meeting

CAM-1. Docket No. QF80-25, Granite City Steel
CAM-2. (a) Docket No. RM79-76 (Wyoming—3), high-cost gas produced from tight formations; (b) Docket No. RM79-76 (Louisiana—1), high-cost gas produced from tight formations
CAM-3. Docket No. GP81- , USGS New Mexico, South Central Region, Section 108 NGPA Determination, AMOCO Production Co., L.C. Kelly No. 1 Well USGS Docket No. NM-4396-79, FERC Control No. JD80-11212
CAM-4. Docket No. RA79-24, Exxon Co., U.S.A.
CAM-5. Docket No. RA80-92, Wedge Service Station, Inc.
CAM-6. Docket No. RA80-49, Mardiros Torikian
CAM-7. Docket No. RO80-11, Vic & Lou's Union
CAM-8. Docket No. RO80-9, Bill J. Graham
CAM-9. Docket No. RO81-3-000, Sunset Boulevard Car Wash; Docket No. RO81-5-000, Weber's Chevron Service; Docket No. RO81-6-000, Alameda Chevron; Docket No. RO81-8-000, Mike's Shell Chevron; Docket No. RO81-8-000, Tenth Street Chevron; Docket No. RO81-7-000, Ed Galarte Chevron; Docket No. RO81-8-000, Ted's Arco Service; Docket No. RO81-9-000, Petaluma Standard Service; Docket No. RO81-10-000, Westlake Union Service; Docket No. RO81-11-000, Ben's Exxon Service; Docket No. RO81-12-000, Bill Wren's Shell; Docket No. RO81-13-000, Wallace Arco Service; Docket No. RO81-14-000, Lazar Super Shell; Docket No. RO81-15-000, Gallagher's Shell Service; Docket No. RO81-16-000, Regalia's Chevron; Docket No. RO81-17-000, Joe Berube Services; Docket No. RO81-18-000, Peter Marenco Exxon Service; Docket No. RO81-19-000, Vale Vista Chevron; Docket No. RO81-20-000, Bob Hutchinson, Inc.; Docket No. RO81-21-000, Ray's Civil Center Mobil; Docket No. RO81-22-000, Chuck's Auto Service; Docket No. RO81-23-000, Berryessa Chevron; Docket No. RO81-24-000, Walt's Shell Service; Docket No. RO81-25-000, Miraloma Shell; Docket No. RO81-26-000, Dhority's Union 76; Docket No. RO81-27-000, Millbrae Shell; Docket No. RO81-28-000, Steve Horner Chevron Service; Docket No. RO81-29-000, Ken's Chevron Service; Docket No. RO81-30-000, Bill Pendergast & Son Chevron; Docket No. RO81-31-000, Cutting Shell; Docket No. RO81-32-000, Grapevine Texaco; Docket No. RO81-33-000, Starr Union Service; Docket No. RO81-34-000, McDowell Exxon; Docket No. RO81-35-000, Art's Chevron Service; Docket No. RO81-36-000, Richard Thompson Chevron; Docket No. RO81-37-000, Tom's Union; Docket No. RO81-38-000, Hal Abel Chevron; Docket No. RO81-39-000, John DeLavenge's Chevron; Docket No. RO81-40-000, Britton Chevron; Docket No. RO81-41-000, Marina Chevron; Docket No. RO81-42-000, Ralph Mitchell's Hilltop Ch.; Docket No. RO81-43-000, Smith's Chevron; Docket No. RO81-44-000, Art Gordon Chevron; Docket No. RO81-45-000, Fred Hartmann's Chevron; Docket No. RO81-46-000, Walt's Danville Chevron; Docket No. RO81-47-000, Petersen and Hill; Docket No. RO81-48-000, Elwood Chevron Service; Docket No. RO81-49-000, Doug Myers Chevron Service; Docket No. RO81-50-000, Santa Maria Chevron; Docket No. RO80-51-000, Willow Pass Chevron; Docket No. RO80-52-000, Tom's Coffee Tree Chevron

Gas Agenda—477th Meeting, January 22, 1981, Regular Meeting

CAG-1. Docket No. RP80-141, Locust Ridge Gas Co.
CAG-2. Docket No. RP78-58, Valero Interstate Transmission Co.
CAG-3. Docket No. RP80-78, Panhandle Eastern Pipe Line Co.
CAG-4. Docket No. RP79-3, Inland Gas Co.
CAG-5. Docket No. CI78-602, Roy M. Huffington, Inc.
CAG-6. Docket No. CI78-677, R. Lacy, Inc.
CAG-7. Rate Schedule No. 81, the Superior Oil Co.
CAG-8. Docket Nos. CP68-111, et al., Great Lakes Gas Transmission Co.
CAG-9. Docket Nos. CP80-448 and CP81-13-000, Texas Eastern Transmission Corp.
CAG-10. Docket No. CP80-472, Tennessee Gas Pipeline Co., Division of Tenneco Inc.
CAG-11. Docket Nos. CP78-118 and CP80-488, United Gas Pipe Line Co.
CAG-12. Docket No. CP80-211, Florida Gas Transmission Co., and Southern Natural Gas Co.
CAG-13. Docket No. CP77-411, Southwest Gas Corp.
CAG-14. Docket No. CP80-291, Northwest Pipeline Corp.
CAG-15. Docket No. CP80-800, Northern Natural Gas Co., Division of Internorth, Inc.

Power Agenda—477th Meeting, January 22, 1981, Regular Meeting

I. Licensed Project Matters

P-1. Reserved

II. Electric Rate Matters

ER-1. Docket No. ER81-144-000, Upper Peninsula Power Co.
ER-2. Docket Nos. ER77-494, ER78-537, ER79-478, ER79-479, ER80-513 and ER80-376, Public Service Co., of New Mexico

ER-3. Docket No. ER79-2021, Southeastern Power Administration Cumberland Basin Projects

Miscellaneous Agenda, 477th Meeting, January 22, 1981, Regular Meeting

M-1. Docket No. RM80-56, exemption from all or part of part I of the Federal Power Act of Small Hydroelectric Power Projects with an installed capacity of 5 megawatts or less
M-2. Reserved
M-3. Reserved
M-4. Docket No. RM80-33, final rules for part 270, subpart B, sections 270.201, 270.202 and 270.204
M-5. Docket No. RM81- , interstate pipeline blanket certificates for routine transactions—procedural rule

Gas Agenda—477th Meeting, January 22, 1981, Regular Meeting

I. Pipeline Rate Matters

RP-1. Docket No. RP78-59, Columbia Gas Transmission Corp.

II. Producer matters

CI-1. Reserved

III. Pipeline Certificate Matters

CP1. Docket Nos. CP76-142, et al., Pacific Alaska Lng Co., et al.; Docket Nos. CP74-160, et al., Pacific Indonesia Lng Co., et al.; Docket No. CP76-488, Pacific Lighting Gas Development Co.; Docket No. CP76-482, Pacific Simpco Partnership
CP2. Docket No. CP80-395, Arkansas Louisiana Gas Co.
CP3. Docket No. TC80-61, Central Florida Gas Corp.
CP4. Docket No. CP81-23-000, Southern Union Gathering Co.

Lois D. Cashell,
Acting Secretary.

[S-121-81 Filed 1-19-81 3:57 pm]
BILLING CODE 6450-85-M

8

FEDERAL HOME LOAN BANK BOARD.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: Vol. 46, Issue 8, p. 3197, published Tuesday, January 13, 1981.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 10 a.m., Friday, January 16, 1981.

PLACE: 1700 G Street NW., board room, Sixth Floor, Washington, D.C.

STATUS: Open meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Marshall (202-377-6677).

CHANGES IN THE MEETING: The Bank Board Meeting previously scheduled for Friday, January 16, 1981, has been changed from 10 a.m. to 2:30 p.m. The following items have been added to the open meeting:

Amendments relating to Officers and Directors of Federal Associations
Debt cards; Remote Service Unit Amendments

[S-69-81 Filed 1-19-81; 1:59 pm]
BILLING CODE 6720-01-M

7

FEDERAL MARITIME COMMISSION.

TIME AND DATE: 3 p.m., January 15, 1981.

PLACE: Room 12126, 1100 L Street NW., Washington, D.C. 20573.

STATUS: Closed.

MATTER TO BE CONSIDERED:
1. Implementation of "Fifty-Mile Rule" at East and Gulf Coast Ports.

CONTACT PERSON FOR MORE INFORMATION: Francis C. Hurney, Secretary (202) 523-5725.

[S-68-81 Filed 1-19-81; 12:59 pm]
BILLING CODE 6730-01-M

8

FEDERAL MARITIME COMMISSION.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 45 FR 2245, January 8, 1981.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: (9 a.m., January 14, 1981.

CHANGE IN THE MEETING: Addition of the following item to the closed session:

2. Docket No. 80-8: Dynamic International Freight Forwarder Inc., Independent Ocean Freight Forwarder License Application and Possible Violation of Section 44, Shipping Act, 1916—Further consideration of the record.

[S-66-81 Filed 1-19-81; 1:34 pm]
BILLING CODE 6730-01-M

9

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION.

January 16, 1981.

TIME AND DATE: 10 a.m., Wednesday, January 21, 1981.

PLACE: Room 600, 1730 K Street NW., Washington, D.C.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following:

1. Eastover Mining Company, Docket No. VA 80-64. (Petition for Discretionary Review; issues include interpretation and application of 30 CFR § 75.307).
2. Climax Molybdenum Company, Docket Nos. DENV 79-529-M, DENV 79-534-M, WEST 79-540-M. (Petition for Discretionary Review; issues include interpretation and application of 30 CFR § 57.12-62).

CONTACT PERSON FOR MORE INFORMATION: Jean Ellen, 202-653-5632.

[S-67-81 Filed 1-19-81; 1:59 pm]
BILLING CODE 6820-12-M

10

METRIC BOARD.

TIME AND DATE: 9:30 a.m., Thursday, February 5, 1981.

PLACE: Key Bridge Marriott Hotel, Salon D, Potomac Ballroom, 1401 Lee Highway, Arlington, Virginia 22209.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:
Approval of Agenda: Review/Approval of Minutes of December Board Meeting
Federal Plan. A joint report by Mr. Forest, USMB staff and Mr. Ellsworth, DOD official and Chairman of the Metrication Operating Committee will serve to: Convey to the Board a final report on the portion of the USMB Federal Plan which serves to define the Board's relationships and operating protocol with the Interagency Committee on Metric Policy (ICMP) and its supporting Metrication Operating Committee (MOC), and to present the final version of the Federal Policy and Guidelines to the USMB for review and endorsement. State Program. The Board will be presented with the long-term plan for continuing the formal establishment of the National Council on State Metrication and the establishment of the relationships between the State organization and USMB. Mrs. Francis West, an official of the State of Delaware and the chairperson of the Council, will give a short presentation and will be assisted in answering questions by Mr. Larry Chisholm, Director of USMB State Programs.
Annual Report: Review of final draft and design for USMB 1980 Annual Report.
Committee Reports. Report by the Chairman of the Planning and Coordination; Public Awareness & Education; Research; Ad Hoc Committee on Standards; Ad Hoc Committee on State Government, and Ad Hoc Committee on ANSIC on the status of each Committee's projects and activities.
Agenda Items for March Board Meeting: Agenda items to be considered for the March 5-6, 1981 meeting to be held in Albuquerque, New Mexico.
Proposed USMB Resolution for Discussion.

CONTACT PERSON FOR FURTHER INFORMATION: Ms. La Verne V. Hall, (703) 235-2202.

Louis F. Polk,
Chairman.

[S-65-81 Filed 1-19-81; 3:02 pm]
BILLING CODE 6820-32-M

11

METRIC BOARD.
(Executive Committee)
TIME AND DATE: 8 a.m., Thursday, February 5, 1981.

PLACE: United States Metric Board, 1600 Wilson Boulevard, fourth floor, Arlington, Virginia 22209.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED: Annual Report of the United States Metric Board.

CONTACT PERSON FOR FURTHER INFORMATION: Malcolm E. O'Hagan, Executive Director (703) 235–1933.

Louis F. Polk,

Chairman.

[S-61-81 Filed 1-16-81; 2:45 pm]

BILLING CODE 6820-61-M

12

METRIC BOARD.

(Research Committee)

TIME AND DATE: 10 am., Wednesday, February 4, 1981.

PLACE: United States Metric Board, 1600 Wilson Boulevard, Suite 400, Arlington, Virginia 22209.

STATUS: The meeting will be open to the public.

MATTERS TO BE CONSIDERED: Two briefings on Research Activities: (1) A general status report of all research projects and activities; (2) Discussions on the Fiscal Year 1983 Research Call.

CONTACT PERSON FOR MORE INFORMATION: G. Edward McEvoy, Director of Research, United States Metric Board, 1600 Wilson Boulevard, Suite 400, Arlington, Virginia 22209 (703) 235–2585.

Louis F. Polk,

Chairman, United States Metric Board.

[S-60-81 Filed 1-16-81; 2:45 pm]

BILLING CODE 6820-61-M

13

METRIC BOARD.

(Ad Hoc Committee on State Government)

TIME AND DATE: 10 a.m., Wednesday, February 4, 1981.

PLACE: U.S. Metric Board, Fourth floor, 1600 Wilson Boulevard, Arlington, Virginia 22209.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. NCSM Charter.
2. Program ideas for NCSM June meeting.
3. Metric clearinghouse.

CONTACT PERSON FOR FURTHER INFORMATION: Lawrence J. Chisholm (703) 235–2583.

Louis F. Polk,

Chairman, United States Metric Board.

[S-60-81 Filed 1-16-81; 2:44 pm]

BILLING CODE 6820-61-M

14

METRIC BOARD.

(Ad Hoc Committee on Standards)

TIME AND DATE: 1 p.m., Wednesday, February 4, 1981.

PLACE: U.S. Metric Board, Fourth floor, 1600 Wilson Boulevard, Arlington, Virginia 22209.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Approval of minutes.
2. Program Planning Activity Report.
3. ANMC Ad Hoc Committee on Standards.
4. Standards Organizations Communications.
5. Metric Practice National Standard Status.
6. Rationalization Opportunities—Preferred Units.

CONTACT PERSON FOR FURTHER INFORMATION: John M. Tascher (703) 235–2583.

Louis F. Polk,

Chairman, United States Metric Board.

[S-61-81 Filed 1-16-81; 2:45 pm]

BILLING CODE 6820-61-M

15

METRIC BOARD.

Planning and Coordination Committee

TIME AND DATE: 3 p.m., Wednesday, February 4, 1981.

PLACE: U.S. Metric Board, Fourth Floor, 1600 Wilson Boulevard, Arlington, Virginia 22209.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Construction Metrication Update.
2. Fiscal year 1981 Project Activities.
3. Report on Private Sector Meetings.
4. Discussion of Planning and Coordination Committee Involvement in Fiscal year 1981 Programs.
5. New Business.

CONTACT PERSON FOR FURTHER INFORMATION: Charles Danner (703) 235–2583.

Louis F. Polk,

Chairman, United States Metric Board.

[S-60-81 Filed 1-16-81; 2:45 pm]

BILLING CODE 6820-61-M

16

NATIONAL COUNCIL ON EDUCATION RESEARCH.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: (S–2343–80, December 19, 1980).

DATE AND TIME: 9:30 a.m.–3:30 p.m., January 22, 1981.

PLACE: Room 823, National Institute of Education, 1200 19th Street NW., Washington, D.C.

The National Council on Educational Research hereby gives notice that on January 16, 1981, Certification was received from the Department of Education, Office of General Counsel, that in the opinion of that office, the NCER "would be authorized to close portions of its meeting on January 22, 1981, under 5 U.S.C. 522b(c)(9)(B) and 34 CFR 705.2(a)(9) for the purposes of reviewing and discussing with the Director of NIE, the proposed executive branch budget for (Fiscal Year 1982, in particular, the sections dealing with the budget and funding priorities of NIE." As previously reported, agenda item #8 Fiscal Year 1982 Budget—2:30 p.m.–3:30 p.m.) will be *closed* to the public.

CONTACT PERSON FOR MORE INFORMATION: Ella L. Jones, Administrative Coordinator/NCER; telphone: 202/254–7900.

Peter H. Gerber,

Chief, Policy and Administrative Coordination, National Council on Educational Research.

[S-59-81 Filed 1-16-81; 1:01 pm]

BILLING CODE 4000-00-M

17

NATIONAL RAILROAD PASSENGER CORPORATION.

In Accordance with Rule 4a. of Appendix A of the Bylaws of the National Railroad Passenger Corporation, notice is given that the Board of Directors will meet on January 28, 1981.

A. The meeting will be held on Wednesday, January 28, 1981, at the Hotel del Coronado, 1500 Orange Avenue, Coronado, California, Beginning at 9:30 a.m.

B. The meeting will be open to the public at 10:30 a.m. beginning with agenda item No. 3, as described below.

C. The agenda items to be discussed at the meeting follow.

Agenda—National Railroad Passenger Corporation

Meeting of the Board of Directors—January 28, 1981

(9:30) Closed Session
1. Internal Personnel Matters
2. Litigation Matters
(10:30) Open Session
3. Approval of Minutes of Regular Meeting of December 17, 1980

4. Approval of FY 1981 Capital Budget
5. Approval of Policy Governing Levels of Authority for Capital Projects
6. Approval of Investment resolution
7. Commitment Approval Requests:
   81–26 New York-Sunnyside Yard—Extend 480 Volt Standby System
   81–36 Acquisition of Maintenance of Way Equipment
   81–37 through 81–40 Springfield Line—Right-of-Way Improvements
   81–41 through 81–46 Northeast Corridor—Facility and Right-of-Way Improvements
   81–47 through 81–55 Harrisburg Line—Facility and Right-of-Way Improvements
8. Board Committee Reports
   Finance
   Organization and Compensation
9. President's Report
10. New Business
11. Adjournment

D. Inquiries regarding the information required to be made available pursuant to Appendix A of the Corporation's Bylaws should be directed to the Assistance Corporate Secretary at (202) 382–3881.

January 15, 1981.

Barbara J. Willman,

Assistant Corporate Secretary

[S–84–81 Filed 1–16–81; 12:50 pm]

18

SECURITIES AND EXCHANGE COMMISSION.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 46 FR 2453, January 1, 1981.

STATUS: Closed meeting.

PLACE: Room 825, 500 North Capitol Street, Washington, D.C.

DATE PREVIOUSLY ANNOUNCED: Wednesday, January 7, 1981.

CHANGES IN THE MEETING: Additional meeting. The following items were considered at a closed meeting scheduled for Thursday, January 15, 1981, at 9:15.

Regulatory matter regarding financial institutions.
Consideration of *amicus* participation.

Chairman Williams and Commissioners Loomis, Evans, and Friedman determined that Commission business required the above changes and that no earlier notice thereof was possible.

At times changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Paul Lowenstein at (202) 272–2092.

January 15, 1981.

[S–83–81 Filed 1–16–81; 3:47 pm]

BILLING CODE 8010–01–M

19

SECURITIES EXCHANGE COMMISSION.

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meetings during the week of January 19, 1981, in Room 825, 500 North Capital Street, Washington, D.C.

Closed meeting will be held on Monday, January 19, 1981, at 10:00 a.m.

The Commissioners, their legal assistants, the Secretary of the Commission, and recording secretaries will attend the closed meeting. Certain staff members who are responsible for the calendared matters may be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, the items to be considered at the closed meeting may be considered pursuant to one or more of the exemptions set forth in 5 U.S.C. 522b(c)(4)(8)(9)(A) and (10) and 17 CFR 200.402(a)(4)(8)(9)(i) and (10).

Chairman Williams and Commissioners Loomis, Evans, and Friedman determined to hold the aforesaid meeting in closed session.

The subject matter of the closed meeting scheduled for Monday, January 19, 1981, at 10:00 a.m., will be:

Freedom of Information Act appeal.
Freedom of Information Act appeals and Confidential treatments.
Regulatory matter bearing enforcement implications.
Consideration of *amicus* participation.
Institution of an administrative proceeding of an enforcement nature.
Institution of injunctive actions.
Settlement of injunctive actions.

At times changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Bruce Mendelsohn at (202) 272–2091.

January 15, 1981.

[S–80–81 Filed 1–16–81; 2:45 pm]

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28 ..... 913, 916, 2076
32 6013
33 ..... 917, 918, 2078, 2352, 3215
230 66
285 3025
296 ..... 2302, 3534
611 ..... 1738, 2079, 2081
652 ..... 1740, 3534

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36 5008
216 ..... 1761, 2153
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AGENCY PUBLICATION ON ASSIGNED DAYS OF THE WEEK

The following agencies have agreed to publish all documents on two assigned days of the week (Monday/Thursday or Tuesday/Friday). This is a voluntary program. (See OFR NOTICE 41 FR 32914, August 6, 1976.)

Monday	Tuesday	Wednesday	Thursday	Friday
DOT/SECRETARY	USDA/ASCS		DOT/SECRETARY	USDA/ASCS
DOT/COAST GUARD	USDA/FNS		DOT/COAST GUARD	USDA/FNS
DOT/FAA	USDA/FSQS		DOT/FAA	USDA/FSQS
DOT/FHWA	USDA/REA		DOT/FHWA	USDA/REA
DOT/FRA	MSPB/OPM		DOT/FRA	MSPB/OPM
DOT/NHTSA	LABOR		DOT/NHTSA	LABOR
DOT/RSPA	HHS/FDA		DOT/RSPA	HHS/FDA
DOT/SLSDC			DOT/SLSDC	
DOT/UMTA			DOT/UMTA	
CSA			CSA	

Documents normally scheduled for publication on a day that will be a Federal holiday will be published the next work day following the holiday.
Comments on this program are still invited.
Comments should be submitted to the Day-of-the-Week Program Coordinator, Office of the Federal Register, National Archives and Records Service, General Services Administration, Washington, D.C. 20408

NOTE: As of September 2, 1980, documents from the Animal and Plant Health Inspection Service, Department of Agriculture, will no longer be assigned to the Tuesday/Friday publication schedule.

REMINDERS

The "reminders" below identify documents that appeared in issues of the Federal Register 15 days or more ago. Inclusion or exclusion from this list has no legal significance.

Rules Going Into Effect Today

AGRICULTURE DEPARTMENT

Food Safety and Quality Service—

85515 10-9-80 / Meat grading standards; beef carcass handling [*See also* 45 FR 51757, 8-5-80]

JUSTICE DEPARTMENT

Immigration and Naturalization Service—

84011 12-22-80 / Applications for certificates of citizenship; witness requirements

84010 12-22-80 / Petition to classify alien as immediate relative of a U.S. citizen or as a preference; passport as evidence of citizenship

Parole Commission—

84063 12-22-80 / Conditions of release, certificates of parole; clarification

84062 12-22-80 / Hearing examiner panel; delegated authority, revision

84062 12-22-80 / Hearing examiner panels; resolution of disagreements

84063 12-22-80 / Parole decision; reopening

84063 12-22-80 / Regional Commission; postponement of final decisions of hearing examiner panels, authority delegation

84064 12-22-80 / Warrant issuance, legal effect upon the naming of a sentence

Deadlines for Comments On Proposed Rules for the Week of January 26 through January 31, 1981

AGRICULTURE DEPARTMENT

Animal and Plant Health Inspection Service—

76000 11-26-80 / Wool, hair and bristles; import restrictions; comments by 1-26-81

Commodity Credit Corporation—

85039 12-24-80 / 1981 Peanut program; Proposed determinations regarding a loan and purchase program for the 1981 crop of peanuts; comments by 1-30-81

79822 11-28-80 / Export Credit Guarantee Program (GSM-102); guarantee against defaults by foreign banks; comments by 1-26-81

CIVIL AERONAUTICS BOARD

73667 11-4-80 / Classification and exemption of air taxi operators; dual authority; reply comments by 1-29-81

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration—

85789 12-30-80 / Advance notice of proposed rulemaking for improving coastal management in the United States; comments by 1-31-81

74178 11-7-78 / Shrimp fishery of Gulf of Mexico; comments by 1-31-81

[Corrected at 79128, 11-28-80]

COMMUNITY SERVICES ADMINISTRATION

85486 12-29-80 / Environmental protection; comments by 1-28-81

EDUCATION DEPARTMENT

79862 11-26-80 / Bilingual Education Training Program; comments by 1-25-81

85312 12-30-80 / Library Research and Demonstration Program (Title II-B HEA) provisions; comments by 1-29-81

ENERGY DEPARTMENT

Conservation and Solar Energy Office—

85610 12-29-80 / Grant programs for schools and hospitals and for buildings owned by units of local government and public care institutions; comments by 1-28-81

Federal Energy Regulatory Commission—

84614 12-23-80 / Gathering allowances and compression allowances under section 110 of the Natural Gas Policy Act of 1978; inquiry; comments by 1-30-81

1743 1-7-81 / Proposed elimination of requirement of Federal entities to file reports pursuant to § 141.1; comments by 1-29-81

ENVIRONMENTAL PROTECTION AGENCY

86606 12-31-80 / Air quality, Pennsylvania; revision of State Implementation Plan; alternative emission reduction option for Minnesota Mining and Manufacturing Company (3M) in Bristol, Pa., comments by 1-30-81

78174 11-25-80 / Standards of performance for new stationary sources—perchloroethylene dry cleaners; comments by 1-29-81

FEDERAL COMMUNICATIONS COMMISSION

72719 11-3-80 / Direct broadcast satellites; satellite-to-home television transmission; comments by 1-31-81

81215 12-10-80 / FM broadcast station in Lahaina, Maui, Hawaii; changes in table of assignments; comments by 1-27-81

81080 12-9-80 / FM broadcast station in Romney, W. Va.; proposed changes in table of assignments; comments by 1-27-81

81078 12-9-80 / FM broadcast station in Millersburg, Ohio; proposed changes in table of assignments; comments by 1-27-81

71384 10-29-80 / Policies governing ownership and operation of domestic satellite earth stations in Alaska Bush communities; reply comments by 1-29-81

73079 11-7-80 / Provisions for one-way paging stations in the domestic public land mobile radio service; reply comments by 1-30-81

82282 12-15-80 / TV broadcast station in Middleton, Mass.; proposed changes in table of assignments; comments by 1-30-81

FEDERAL EMERGENCY MANAGEMENT AGENCY

79122 11-28-80 / Floodplain management and protection of wetlands; comments by 1-27-81

FEDERAL RESERVE SYSTEM

81837 12-11-80 / Nonbanking activities of foreign banking organizations; comments by 1-30-81

GENERAL SERVICES ADMINISTRATION

89122 9-3-80 / Information system for furniture, furnishings, and certain other items; comments by 1-30-81

HEALTH AND HUMAN SERVICES DEPARTMENT

Food and Drug Administration—

79092 11-28-80 / Additional standards for human blood and blood products; source plasma (human); comments by 1-27-81

111 1-2-81 / Diagnostic X-Ray systems and their major components; proposed amendment to performance standard; comments by 1-29-81

79091 11-28-80 / Erythromycin enteric—coated tablets; disintegration standard; comments by 1-27-81

79089 11-28-80 / Radioactive drugs; reduction of reserve sample retention requirements; comments by 1-27-81

79162 11-25-80 / Tests and methods of assay of antibiotic and antibiotic containing drugs; revised standard response line concentrations; comments by 1-26-81

[Corrected at 46 FR 1298, 1-6-81]

Health Care Financing Administration

79453 12-1-80 / Collection of unpaid Medicare premiums; comments by 1-30-81

79088 12-1-81 / Withholding of payments for practitioners, providers, and suppliers of services; comments by 1-30-81

Human Development Services Office—

86817 12-31-81 / Foster care maintenance and adoption assistance child welfare services; Federal financial participation; fiscal requirements; comments by 1-30-81

Social Security Administration—

79501 12-1-80 / Federal old-age, Survivors, and disability insurance and supplemental security income for the aged, blind, and disabled; Representative payment; comments by 1-30-81

HOUSING AND URBAN DEVELOPMENT DEPARTMENT

Assistant Secretary for Fair Housing and Equal Opportunity—

79506 11-25-80 / Nondiscrimination in programs and activities receiving assistance under Title I of the Housing and Community Development Act of 1979; comments by 1-26-81

Assistant Secretary for Housing—Federal Housing Commission—

79164 11-25-80 / Coinsurance provision; comments by 1-26-81

INTERIOR DEPARTMENT

Fish and Wildlife Service—

72224 10-31-80 / Endangered plants; proposed endangered status and critical habitat for stephanomeria malheurensis (Malheur wire-lettuce); comments by 1-29-81

Fish and Wildlife Service—

86511 12-31-80 / Service and forfeiture procedures; increased value of seized property and posting of notices; comments by 1-30-81

Surface Mining Reclamation and Enforcement Office—

85797 12-30-80 / Surface coal mining and reclamation and enforcement; intent to prepare Federal Program and suspension of Ohio schedule for State program resubmission; comments by 1-29-81

INTERSTATE COMMERCE COMMISSION

79488 12-1-80 / Application procedures for motor carrier transportation, special intermodal authority; comments by 1-30-81

81799 12-12-80 / Cancellation of motor carrier joint rates through routes; comments by 1-29-81

86736 12-31-80 / Tariffs; intermodal carriers; authority to enter into international joint rates with nonvessel operating common carriers; comments by 1-30-81

LEGAL SERVICES CORPORATION

86511 12-31-80 / Restrictions and certain activities (legislative advocacy, etc.) by fund recipients; comments by 1-30-81

NATIONAL CREDIT UNION ADMINISTRATION

79494 12-1-80 / Adjustable rate mortgages; comments by 1-31-81

PERSONNEL MANAGEMENT OFFICE

79078 11-28-80 / Federal employees' group life insurance and health benefits; coverage for employees hired under career-related work-study programs; comments by 1-27-81

POSTAL SERVICE

86804 12-31-80 / Mailability of matter; advice to postal customers; comments by 1-29-81

SMALL BUSINESS ADMINISTRATION

79496 12-1-80 / Definition of social disadvantage; Minority group inclusion; comments by 1-30-81

[Comments date corrected at 45 FR 80117, 12-3-80]

TRANSPORTATION DEPARTMENT

Coast Guard—

81807 12-11-80 / San Juan Harbor, seaplane restricted area; comments by 1-28-81

Office of the Secretary—

83252 12-18-80 / Special air traffic rules and airport traffic patterns slot allocation at Washington National Airport; reply comments by 1-29-81

71236 10-27-80 / Washington National Airport; special air traffic rules and airport patterns; allocation of hourly number of instrument flight operations; reply comments by 1-28-81

TREASURY DEPARTMENT

Internal Revenue Service—

78094 11-28-80 / Income tax; partnerships and investments credit for used property; comments by 1-27-81

78167 11-25-80 / Treatment, for tax proposes, of expenditures for attempts to influence legislation; comments by 1-26-81

Deadlines for Comments on Proposed Rules for the Week of February 1 through February 7, 1981

AGRICULTURE DEPARTMENT

Agricultural Marketing Service—

80533 12-5-80 / Onions grown in south Texas; handling regulation; comments by 2-4-81

Animal and Plant Health Inspection Service—

80008 12-3-80 / Contagious equine metritis (CEM); specifically approved States to receive stallions imported from CEM-affected countries; Colorado; comments by 2-3-81

80267 12-4-80 / Handling of certain garbage residues; comments by 2-3-81

80813 12-8-80 / Veterinary Services policy and procedures in cooperative programs concerning the eradication of Exotic Newcastle Disease from populations of birds including poultry; comments extended to 2-6-81

[Originally published at 45 FR 67052, 10-9-80]

Federal Grain Inspection Service—

80085 12-8-80 / Delay effective date of requirement for change in mode of operation; comments by 2-6-81

Food and Nutrition Service—

80780 12-5-80 / Food Stamp Program; monthly reporting/retrospective accounting; comments by 2-3-81

CIVIL AERONAUTICS BOARD

80117 12-3-80 / Canadian charter air taxi operations; registration procedure for operating authority; comments by 2-2-81

80075 12-24-80 / Cooperative shippers associations; permission to act as agents of direct air carriers; comments by 2-2-81

COMMERCE DEPARTMENT

International Trade Administration—

80484 12-5-80 / Export licensing requirements for computer software; interim rule; comments by 2-3-81

Patent and Trademark Office—

73085 11-7-80 / Additional procedure for filing continuation and divisional applications; comments by 2-4-81

78172 11-25-80 / Patent interference proceedings; comments by 2-4-81

COMMODITY FUTURES TRADING COMMISSION

84082 12-22-80 / Contract market rules; comments by 2-2-81

73480 11-5-80 / Contract markets; dormant and low volume contracts; comments by 2-1-81

73004 11-5-80 / Economic and public interest requirements for contract market designation; comments by 2-1-81

80030 12-5-80 / Proposed registration firms and rules; comments by 2-3-81

EDUCATION DEPARTMENT

82289 12-18-80 / Emergency school aid; comments by 2-2-81

ENERGY DEPARTMENT

Economic Regulatory Administration—

81012 12-8-80 / Standby procedures for emergency purchases and emergency allocation of natural gas during a declared emergency; comments by 2-6-81

Western Area Power Administration—

80349 12-4-80 / Compliance with Title II of the Public Utility Regulatory Policies Act; comments by 2-3-81

ENVIRONMENTAL PROTECTION AGENCY

1316 1-6-81 / Alabama State Implementation Plans; comments by 2-5-81

133 1-2-81 / Approval and promulgation of implementation plans; Kentucky: Bubble action for the Kentucky Utilities Co.—Green River Station; comments by 2-2-81

78980 11-26-80 / Beverage can surface coating industry; standards of performance; comments by 2-5-81

72984 11-3-80 / Construction of treatment works; cost effective analysis of facility plans prepared under grants; comments by 2-2-81

3033 1-13-81 / Guidelines establishing test procedures for analysis of pollutants; comments by 2-2-81

80386 12-4-80 / Hazardous waste management system; identification and listing of hazardous waste; comments by 2-2-81

1314 1-6-81 / Kentucky State Implementation Plan; comments by 2-5-81

1315 1-6-81 / Maryland State Implementation Plan; comments by 2-5-81

80686 12-5-80 / Michigan State Implementation Plan; approval of revision; comments by 2-5-81

1316 1-6-81 / Mississippi State Implementation Plan; comments by 2-5-81

72948 11-3-80 / Pesticide registration hazard evaluation of use for nontarget plants and microorganism; comments by 2-2-81

1760 1-7-81 / Proposed approval of Alabama air quality surveillance plan revision; comments by 2-6-81

1761 1-7-81 / Proposed approval of Kentucky air quality surveillance plan revision; comments by 2-6-81

3021 1-3-81 / Solid waste disposal facilities and practices; criteria for classification; interim regulations; comments by 2-2-81

85300 12-24-80 / Water pollution control; disposal states for dredged or fill material; specification guidelines testing requirements; comments by 2-6-81

FEDERAL COMMUNICATIONS COMMISSION

85125 12-24-80 / Direct broadcast satellites for the period following the 1983 Regional Administration Radio Conference, development of regulatory policy (interim systems); comments by 2-2-81

79841 12-2-80 / FM Broadcast station in Ainsworth, Nebr.; proposed changes in table of assignments; reply comments by 2-2-81

78189 11-25-80 / FM broadcast station in Spirit Lake, Iowa; proposed changes in table of assignments; reply comments by 2-2-81

78190 11-25-80 / FM broadcast station in Wiggins, Miss.; proposed changes in table of assignments; reply comments by 2-2-81

85128 12-24-80 / Preparation for an International Telecommunication Union World Administration Radio Conference on the use of the geostationary-Satellite orbit and the planning of the Space Services utilizing it; comments by 2-4-81

82262 12-15-80 / TV broadcast station in East St. Louis, Ill.; proposed changes in table of assignments; comments by 2-2-81

84834 12-23-80 / TV Broadcast station in Scramento, Calif.; proposed changes in table of assignments; comments by 2-2-81

FEDERAL EMERGENCY MANAGEMENT AGENCY

81215 12-10-80 / Disaster assistance, cost reimbursement policy; use of National Guard; comments by 2-1-81

FEDERAL TRADE COMMISSION

70823 12-3-80 / Advance notice of proposed rulemaking following investigation of impact of state and private restraints on practice of optometry and comments by 2-3-81

[Corrected at 45 FR 80223, 12-5-80]

HEALTH AND HUMAN SERVICES DEPARTMENT

Food and Drug Administration—

73065 11-7-80 / Hair grower and hair loss prevention drug products for over-the-counter human use; comments by 2-5-81

[Corrected at 46 FR 3050, 1-31-81]

27 1-3-81 / Indirect food additives; Adjuvants production aids and sanitizers; Tris (2,4-Di-Tert-Butylphenyl) phosphite; comments by 2-2-81

85809 10-3-80 / Wart remover drug products (OTC); monograph establishment; reply comments by 2-2-81

[Corrected at 45 FR 80551, 12-5-80]

Public Health Service—

1316 1-6-81 / Indian health; redesignation of contract health service delivery area; comments by 2-5-81

INTERIOR DEPARTMENT

Indian Affairs Bureau—

1298 1-6-81 / Business practices on Indian reservations other than Navajo, Hopi, or Zuni Reservations; comments by 2-5-81

National Park Service—

1313 1-6-81 / Delaware Water Gap National Recreation Area; snowmobile route designations; comments by 2-5-81

Surface Mining Reclamation and Enforcement Office—

1306 1-6-81 / Alabama program; comments by 2-5-81

1309 1-6-81 / Tennessee program; comments by 2-4-81

INTERSTATE COMMERCE COMMISSION

83300 12-18-80 / Rail general exemption authority; long and short haul transportation; comments by 2-3-81

134 1-2-81 / Rail general exemption authority, miscellaneous commodities; comments by 2-2-81

JUSTICE DEPARTMENT

Attorney General—

1302 1-6-81 / Guidelines on methods of obtaining documentary materials held by third parties; comments by 2-5-81

LABOR DEPARTMENT

Mine Safety and Health Administration—

74444 11-7-80 / Criteria and procedures for proposed assessment of civil penalties; comments by 2-5-81

MANAGEMENT AND BUDGET OFFICE

Federal Procurement Policy Office—

70843 12-3-80 / Availability and request for comment on draft Federal Acquisition Regulation; comments by 2-6-81

NATIONAL CREDIT UNION ADMINISTRATION

84811 12-23-80 / Incidental Powers; advance notice of proposed rulemaking; Federal credit union insurance and group purchasing activities; comments by 2-6-81

NUCLEAR REGULATORY COMMISSION

81802 12-11-80 / Design and other changes in nuclear power plant facilities after issuance of construction permit; comments by 2-1-81

PERSONNEL MANAGEMENT OFFICE

80472 12-5-80 / Basic Life Insurance; coverage for younger employees; interim rule; comments by 2-3-81

80467 12-5-80 / Senior Executive Service; appointment by reinstatement; former career and Presidential appointees; interim rules; comments by 2-3-81

TRANSPORTATION DEPARTMENT

Coast Guard—

83267 12-18-80 / COLREGS demarcation line, Chesapeake Bay Entrance, VA; comments by 2-6-81

84104 12-22-81 / Oceanographic research vessels; comments by 2-6-81

Federal Aviation Administration—

80480 12-4-80 / Federal Aviation Regulations (FAR); miscellaneous amendments; comments by 2-4-81

80286 12-4-80 / Medical standards and certification; issuance of airmen medical certificates for certain conditions; comments by 2-4-81

Federal Highway Administration—

22 1-2-81 / Maximum width of trucks on the Interstate Highway System; notice of interpretation; comments by 2-2-81

41000 6-19-80 / National standards for traffic control; Manual on uniform traffic control devices; comments by 2-1-81

National Highway Traffic Safety Administration—

2007 1-6-81 / Performance standards for speed measuring radar devices; comments by 2-1-81

TREASURY DEPARTMENT

Internal Revenue Service—

2042 1-6-81 / Civil aircraft use tax; special rules for the period 7-1-80 through 9-30-80; deadline for filing returns, 2-3-81

80551 12-5-80 / Front-end tertiary oil under crude oil windfall profit tax of 1980; comments by 2-3-81

80309 12-4-80 / Manufacturers excise tax on tires, tubes, and tread rubber; comments by 2-3-81

Next Week's Meetings

AGRICULTURE DEPARTMENT

Farmers Home Administration—

81635 12-11-80 / Pacific Crest National Scenic Trail Advisory Council, Southern California Subcommittee; Pasadena, Cal. (open), 2-26-81

ARTS AND HUMANITIES NATIONAL FOUNDATION

2306 1-14-81 / Humanities Panel, Washington, D.C. (closed), 1-29 and 1-30-81

2007 1-13-81 / Media Arts Panel (AFI/Review), Beverly Hills, Calif. (closed), 1-29 and 1-30-81

CIVIL RIGHTS COMMISSION

2372 1-6-81 / Kentucky Advisory Committee, Louisville, Kentucky (open, 1-27-81

2372 1-6-81 / New Mexico Advisory Committee, Albuquerque, N.M. (open), 1-28-81

82687 12-16-80 / New York Advisory Committee, New York, N.Y. (open), 1-28-81

2373 1-6-81 / Ohio Advisory Committee, Cincinnati, Ohio (open), 1-28-81

2373 1-6-81 / Tennessee Advisory Committee, Memphis, Tenn. (open), 1-30-81

2373 1-6-81 / Vermont Advisory Committee, Montpelier, Vermont (open), 1-28-81

COMMERCE DEPARTMENT

National Oceanic and Atmosphere Administration—

2160 1-6-81 / New England Fishery Management Council, Danvers, Mass. (open), 1-27 and 1-28-81

84116 12-22-80 / South Atlantic Fishery Management Council, Savannah, Ga. (open), 1-27 through 1-29-81

85808 12-30-80 / Western Pacific Fishery Management Council's Pelagic Fishery Resources Subpanel, Honolulu, Hawaii (open), 1-26-81

85808 12-30-80 / Western Pacific Fishery Management Council's Scientific and Statistical Committee, Honolulu, Hawaii (open), 1-27-81

DEFENSE DEPARTMENT

Air Force Department—

2376 1-6-81 / USAF Scientific Advisory Board, Wright-Patterson Air Force Base, Ohio (closed), 1-29 and 1-30-81

Navy Department—

2376 1-6-81 / Chief of Naval Operations Executive Panel Advisory Committee, Tokyo and Yokosuka, Japan (closed), 1-26 and 1-27-81

Office of the Secretary—

76194 11-25-80 / Wage Committee, Wash., D.C. (partially open), 1-27-81

EDUCATION DEPARTMENT

61612 12-12-80 / Federal Impact Aid Program Review Commission: Arlington, Va., 1-29-81; Washington, D.C., 1-30-81 (all sessions open)

2382 1-14-81 / National Advisory Council on Ethnic Heritage Studies, Washington, D.C. (open), 1-28 through 1-30-81

2376 1-6-81 / National Advisory Council on Women's Educational Programs, Washington, D.C. (open), 1-26 and 1-27-81

ENERGY DEPARTMENT

2891 1-15-81 / National Petroleum Council, Arctic Oil and Gas Resources Committee, Resource Assessment Task Group, Palo Alto, Calif. (open), 1-27 through 1-30-81

Federal Energy Regulatory Commission—

1291 1-6-81 / Exemption from licensing requirements of category of small hydroelectric power projects with installed capacity of five megawatts or less, public scoping meetings:

Denver, Colo., 1-27-81

San Francisco, Calif., 1-29-81

1291 1-6-81 / Exemption from licensing requirements of category of small hydroelectric power projects with installed capacity of five megawatts or less, public scoping meetings:

Washington, D.C., 1-21-81

Boston, Mass., 1-23-81

ENVIRONMENTAL PROTECTION AGENCY

82516 12-15-80 / Heavy-duty engine and light-duty NO_x emissions, Ann Arbor, Mich., 1-29 and 1-30-81

2032 1-13-81 / Toxic Substances Advisory Committee, Washington, D.C. (open), 1-29 and 1-30-81

HEALTH AND HUMAN SERVICES DEPARTMENT

Alcohol, Drug Abuse, and Mental Health Administration—

84869 12-23-80 / Drug Abuse National Advisory Council, Rockville, Md. (partially open), 1-27 and 1-28-81

85159 12-24-80 / Mental health Small Grant Review Committee, Washington, D.C. (partially open), 1-29 through 1-31-81

85159 12-24-80 / Psychiatry Education Review Committee, Rockville, Md. (partially open), 1-28 through 1-30-81

Disease Control Centers—

83330 12-16-80 / Influenza immunization, Atlanta, Ga. (open), 1-27-81

Food and Drug Administration—

81687 12-12-80 / Miscellaneous Internal Drug Products Panel, Chevy Chase, Md. (open), 1-31 and 2-1-81

Health Resources Administration—

81263 12-10-80 / Nurse Training National Advisory Council, Hyattsville, Md. (partially open), 1-26 through 1-28-81

Health Services Administration—

81263 12-10-80 / National Health Service Corps National Advisory Council, Rockville, Md. (open), 1-26 and 1-27-81

Human Development Services Office—

86812 12-31-80 / Adoption assistance and child welfare service; foster care; State eligibility requirements for additional payments; New York, N.Y., 1-29-81; Seattle, Wash., 1-29-81 (both sessions open)

86124 12-31-80 / Foster care maintenance and adoption assistance; child welfare services; New York, N.Y., 1-29-81; Seattle, Wash., 1-29-81 (both sessions open)

86817 12-31-81 / Foster care maintenance and adoption assistance; child welfare services; Federal financial participation; New York, N.Y., 1-29-81; Seattle, Wash., 1-29-81 (both sessions open)

National Institutes of Health—

82268 12-15-80 / Aging National Advisory Council, Bethesda, Md. (open), 1-29 through 1-30-81

83674 12-19-80 / Allergy and Infectious Diseases National Advisory Council, Allergy and Immunology Subcommittee and Microbiology and Infectious Diseases Subcommittee, Bethesda, Md. (partially open), 1-29 through 1-30-81

83673 12-19-80 / Biometry and Epidemiology Contract Review Committee, Bethesda, Md. (partially open), 1-29-81

83673 12-19-80 / Cancer Biology and Diagnosis Division of the Board of Scientific Counselors, Frederick, Md. (partially open), 1-29 through 1-31-81

1351 1-6-81 / Dental Research National Advisory Council, Bethesda, Md. (partially open), 1-29 and 1-30-81

83673 12-19-80 / Environmental Health Sciences, National Institute, Board of Scientific Counselors, Research Triangle Park, N.C. (partially open), 1-28 and 1-29-81

83676 12-19-81 / General Medical Sciences National Advisory Council, Bethesda, Md. (partially open), 1-30-81

80266 12-4-80 / National Advisory Child Health and Human Development Council, Bethesda, Md. (open and closed), 1-26 and 1-27-81

80267 12-4-80 / National Advisory Neurological and Communicative Disorders and Stroke Council, Bethesda, Md. (open and closed), 1-29 and 1-30-81

80267 12-4-80 / National Advisory Neurological and Communicative Disorders and Stroke Council Planning Subcommittee, Bethesda, Md. (open and closed), 1-29-81

2383 1-14-81 / National Cancer Advisory Board Ad Hoc Subcommittee, Diet, Nutrition and Cancer Program, Bethesda, Md. (partially open), 1-29-81

82268 12-15-80 / National Cancer Institute, Resources, Centers, and Community Activities Division, Scientific Counselors Board, Chemoprevention Subcommittee, Bethesda, Md. (open) 1-28-81

1351 1-6-81 / National Library of Medicine, Board of Regents (partially open sessions:

Full Board meeting, 1-29 and 1-30-81

Extramural Programs Subcommittee, 1-29-81

Lister Hill Center and National Medical Audiovisual Center Subcommittee, 1-29-81

83674 12-19-80 / Resources, Centers, and Community Activities Division of the Board of Scientific Counselors, Silver Spring, Md. (open), 1-29 through 1-30-81

Office of the Secretary—

83172 12-17-80 / Adoption Assistance and Child Welfare Act of 1980, implementation; demonstration project assisting those wishing to comment on proposed regulations: New York City, N.Y., 1-29-81; and Seattle, Wash., 1-29-81 (both sessions open)

INTERIOR DEPARTMENT

Geological Survey—

2073 1-13-81 / Earthquake Prediction National Evaluation Council, Golden, Colo. (open), 1-26 and 1-27-81

Land Management Bureau—

81672 12-11-80 / Cedar City District Grazing Advisory Board, Cedar City, Utah (open), 1-28-81

2187 1-6-81 / La Sal Pipeline co., environmental impact statement on proposed crude oil pipeline; tentatively Grand Junction, Craig, and Denver, Colo., and Casper and Cheyenne, Wyo. (open) week of 1-26-81

1781 1-7-81 / Proceeding on Federal coal basin target for Powder River Coal Production Region, Billings, Mont., 1-27-81

83678 12-19-80 / Richfield District Multiple Use Advisory Council, Richfield, Utah (open), 1-27-81

84679 12-22-80 / Roseburg District Advisroy Council, Roseburg, Oreg. (open), 1-28-81

National Park Service—

2362 1-6-81 / Cuyahoga Valley National Recreation Area Advisory Commission, near Peninsula, Ohio (open), 1-29-81

84189 12-22-80 / Santa Monica Mountains National Recreation Area Advisory Commission, (open), Thousand Oaks, Calif., 1-26-81; Malibu, Calif., 1-27-81; and Los Angeles, Calif., 1-28-81

81668 12-31-80 / Statue of Liberty National Monument, general management planning: Queens N.Y., 1-27-81; Newark, N.J., 1-28-81; Staten Island, N.Y., 1-29-81 (all sessions open)

JUSTICE DEPARTMENT

2365 1-14-81 / Council on the Role of the Courts, Washington, D.C. (open), 1-31-81

LABOR DEPARTMENT

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2367 1-13-81 / Space and Terrestrial Applications Advisory Committee, Ad Hoc Informal Advisory Committee on Agriculture Land Cover and Hydrology, Washington, D.C. (open), 1-28 and 1-29-81

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80881 12-30-80 / Advisory Council Task Group 15, Washington, D.C. (open), 1-30-81

83688 12-17-80 / Behavioral and Neural Sciences Advisory Committee, Anthropology-Systematic (Museum collections) Subcommittee, Washington, D.C. (closed), 1-29 and 1-30-81

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2364 1-15-81 / Reactor Safeguards Advisory Committee, San Onofre Units 2 and 3 Subcommittee, Inglewood, Calif. (open), 1-31-81

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84836 12-23-80 / Voluntary guideline for the master metering standard under the Public Utility Regulatory Policies Act of 1978, Washington, D.C., 1-27-81

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List of Public Laws

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's List of Public Laws.

A complete listing for the second session of the 96th Congress is published in the Reader Aid section of the issue of January 7, 1981.

Documents Relating to Federal Grant Programs

This is a list of documents relating to Federal grant programs which were published in the Federal Register during the previous week.

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3400 1-14-81 / ED—Graduate and Professional Study Fellowship Program regulations; comments by 3-16-81

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3527 1-15-81 / HHS/Sec'y—State claims; time limits to file for plans approved under the Social Security Act; comments by 3-16-81

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3952 1-16-81 / Commerce/MBDA—General Business Service Program; Financial Assistance Application Announcement (2 documents); apply by 2-13-81

3585 1-15-81 / Commerce/MBDA—General Services Business Program, projects in Maryland and Pennsylvania; apply by 2-20-81

3584 1-15-81 / Commerce/MBDA—General Services Business Program, project in Virginia; apply by 2-20-81

3714 1-15-81 / DOT/RSPA—Hazardous materials accident prevention and emergency response programs; application date extended to 2-6-81

[*See also* 46 FR 1071, 1-5-81]

3285 1-14-81 / ED—Educational Services for Cuban and Haitian Entrant Children Program; apply by 2-16-81

3283 1-14-81 / ED—Experimental program for opportunities in advanced study and research in education; apply by 4-21-81

3589 1-15-81 / ED—Law-related education program; apply by 4-24-81

3284 1-14-81 / ED/BEMLA—Transition Program for Refugee Children; apply by 2-16-81

3527 1-15-81 / HHS/Sec'y—National Cancer Institute cost sharing agreement; development and marketing of AZQ as an anti-tumor agent; apply by 3-16-81

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3282 1-14-81 / HHS/NIH—Communicative Disorders Review Committee, Rockville, Md. (partially open), 3-27-81

3283 1-14-81 / HHS/NIH—National Heart, Lung, and Blood Advisory Council and its Manpower and Research subcommittees, Bethesda, Md. (partially open), 2-5 through 2-7-81

3284 1-14-81 / HHS/NIH—Neurological Disorders Program—Project Review B Committee, Bethesda, Md. (partially open), 2-20-81

3283 1-14-81 / HHS/NIH—Neurological Disorders Program Project Review A Committee, Marina Del Ray, Calif. (partially open), 2-14 through 2-16-81

3284 1-14-81 / HHS/NIH—Population Research Committee, Bethesda, Md. (partially open), 2-12-81

2782 1-13-81 / NFAH—Humanities Panel, Washington, D.C. (closed), 1-27-81

3286 1-14-81 / NFAH—Humanities Panel, Washington, D.C. (closed), 1-29 and 1-30-81

3087 1-13-81 / NFAH—Media Arts Panel (AFI/Review), Beverly Hills, Calif. (closed), 1-28 and 1-30-81

3086 1-13-81 / NFAH—Visual Arts Panel (Painting Fellowships), Washington, D.C. (closed), 2-2 through 2-6-81

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3677 1-16-81 / ED—Law-Related Education Program

3673 1-16-81 / ED/Office of Educational Research and Improvement—Minority Institutions Science Improvement Program (MISIP)

3675 1-15-81 / Justice/NIC—Concept papers on meeting court orders and special masters training proposed submissions extended through FY 1981

3293 1-14-81 / NFAH—Arts in Education Program; correction to application notice (deadline 2-27-81)

[*See also* 45 FR 66207, Oct. 7, 1980]

3814 1-16-81 / USDA/FNS—Child Care Food Program; matching Federal funds

3814 1-16-81 / USDA/FNS—Determining eligibility for free and reduced price meals and free milk in schools; implementation of revised income poverty guidelines

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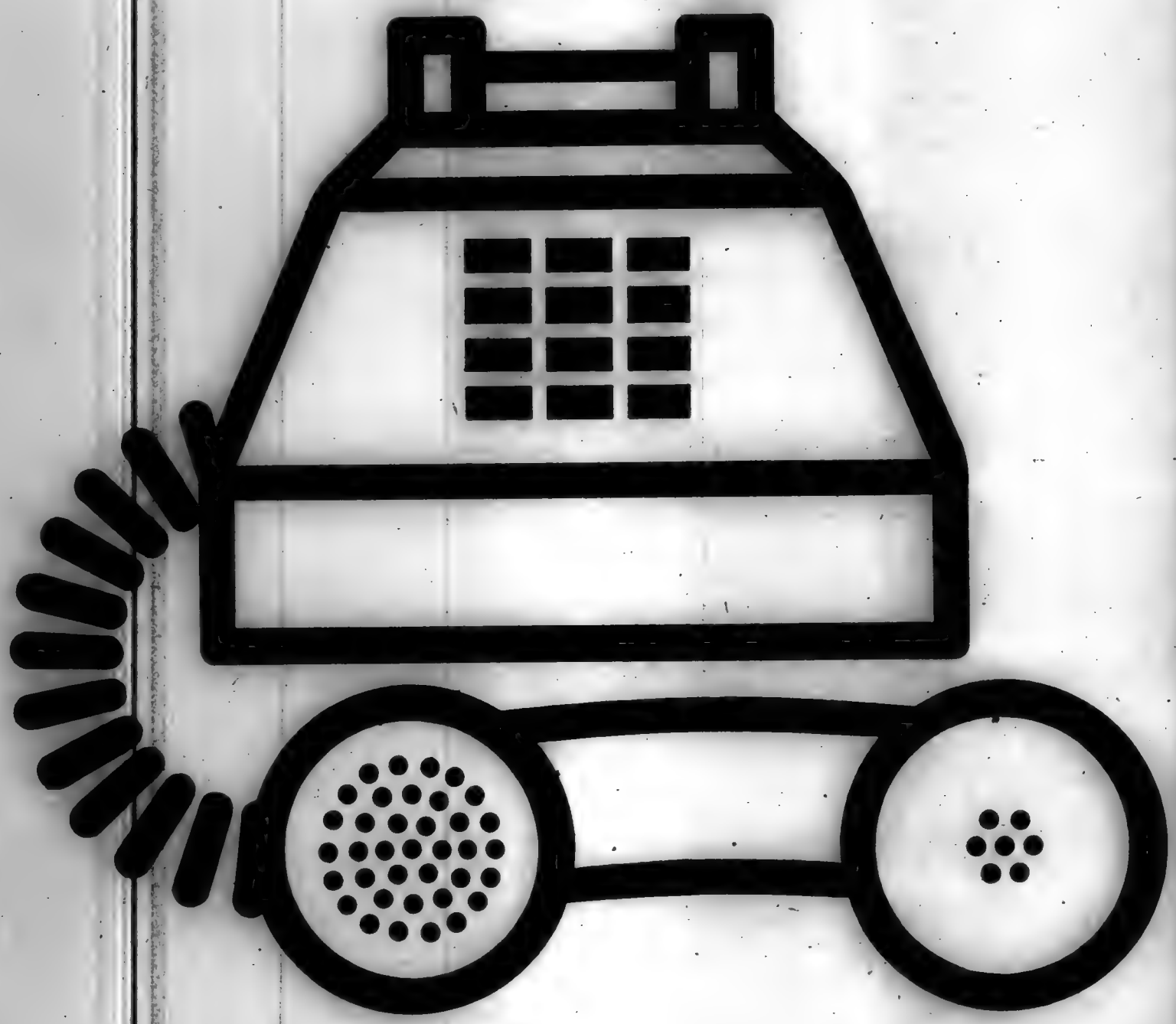

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6322 Part VII—ED:
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6334 Part VIII—DOT/UMTA:
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Part II

Department of Labor

Occupational Safety and Health Administration

Occupational Exposure to Lead; Supplemental Statement and Amendment of Standard; Final Rule

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1910

[Docket No. H-033E]

Occupational Exposure to Lead; Supplemental Statement of Reasons; and Amendment of Standard

AGENCY: Occupational Safety and Health Administration (OSHA), U.S. Department of Labor.

ACTION: Final Rule; Supplemental Statement of Reasons; and Amendment of Standard.

SUMMARY: This supplemental statement of reasons sets forth OSHA's reasoning and conclusions with regard to the technological and economic feasibility of meeting the permissible exposure limit (PEL) for lead of 50 micrograms per cubic meter ($\mu g/m^3$) as an 8-hour time weighted average for 46 specified industries or occupations. The statement is made in response to an order of the U.S. Court of Appeals for the D.C. Circuit which required OSHA to reconsider the question of feasibility for these industries. For most of the 46 categories, the supplemental record demonstrates that the standard is feasible either because exposure levels do not generally exceed the PEL, thus requiring minimal or no compliance actions, or because exposure levels above the PEL can be controlled by available and affordable engineering controls or work practices within the time periods permitted for compliance. Additionally, for a few industry categories, the record shows that feasible control measures are available, but that an extension in the compliance schedule is needed to assure the feasibility of their implementation. For some operations within certain industries, respiratory protection *may* be the only technologically feasible means of compliance.

EFFECTIVE DATE: February 20, 1981.

FOR FURTHER INFORMATION CONTACT: Dr. Robert P. Belles, Occupational Safety and Health Administration, Room N3718, U.S. Department of Labor, Washington, D.C. 20210, 202-523-7081.

SUPPLEMENTARY INFORMATION:

A. Regulatory and Judicial History

On October 3, 1975, OSHA proposed a standard for occupational exposure to lead (40 FR 45934) to replace the permissible exposure limit which had been adopted from a national consensus standard pursuant to § 6(a) of the Occupational Safety and Health Act (Act). A lengthy informal hearing was held in Washington, D.C. and two regional hearings were held in St. Louis, Missouri, and San Francisco, California, in the spring of 1977. In the fall of the same year, hearings were held for the receipt of additional information on certain specific issues, including medical removal protection. The hearing record was closed in January of 1978. On November 14, 1978, a final standard which limited occupational exposure to airborne concentrations of lead to 50 $\mu g/m^3$ (micrograms per cubic meter) based on an 8-hour time weighted average (TWA) was published in the Federal Register (43 FR 52952). Additional protective provisions included environmental monitoring, recordkeeping, employee education and training, medical surveillance, medical removal protection, hygiene facilities, and other requirements. Supplemental attachments were published November 21, 1978 (43 FR 54354).

Immediately after promulgation, the lead standard was challenged by both industry and labor in several U.S. Courts of Appeals. All cases were transferred and consolidated in the U.S. Court of Appeals for the District of Columbia Circuit. Simultaneously, various parties sought administrative reconsideration and stays of the regulation, one of which was granted. On March 1, 1979, the D.C. Circuit partially stayed the lead standard by delaying the requirement for installing engineering controls and instituting work practices. However, enforcement of the PEL and provisions for environmental monitoring, recordkeeping, employee education and training, medical surveillance, and medical removal protection was permitted to begin on March 1, 1979.

In a lengthy opinion issued on August 15, 1980, the United States Court of Appeals for the District of Columbia Circuit, per Chief Judge Wright, upheld the validity of OSHA's lead standard in most respects. However, the court found that OSHA failed to present substantial evidence or adequate reasons to support the feasibility of the standard with respect to certain industries, and remanded the standard to the Agency for reconsideration of the question of the technological and economic feasibility of the standard for those industries.

With respect to the following industries, the court found OSHA's analysis of the feasibility of the standard to be adequate and upheld the validity of the entire standard: primary smelting; secondary smelting; printing; can manufacturing; battery manufacturing; paint and coatings manufacturing; ink manufacturing; wallpaper manufacturing; electronics manufacturing; and gray-iron foundries.

The court also found that:

> OSHA failed to present substantial evidence or adequate reasons to support the feasibility of the standard for the following industries: Nonferrous foundries; pigment manufacture; shipbuilding; auto manufacture; solder manufacture; wire patenting; pottery; brick manufacture; agricultural pesticides manufacture; leather manufacture; pipe galvanizing; gasoline additives manufacture; linoleum-rubber-plastics manufacture; paint spraying; ammunition manufacture; smelting and refining of zinc, silver, gold, platinum, copper, and aluminum; machining; lead burning; glass manufacture; textile manufacture; book binding; steel alloy manufacture; terne metal manufacture; glass polishing and spinning; cutlery manufacture; diamond processing; plumbing; jewelry manufacture; pearl processing; casting; cable coating; electroplating; explosives manufacture; lamp manufacture; sheet metal manufacture; tin rolling; telecommunications; and independent collecting and processing of scrap lead (excluding collecting and processing that is part of a secondary smelting operation); (*United Steelworkers of America* v. *Marshall*, No. 79-1046 (D.C. Cir. Aug. 15, 1980), slip opinion, pg. 245).

The court did not vacate any portion of the lead standard. Rather, it stayed the enforcement of 29 CFR 1910.1025(e)(1) (requiring compliance with the PEL through engineering controls and work practices alone) for those industries for which OSHA failed to present substantial evidence or adequate reasons to support the feasibility of the standard. The court gave OSHA 6 months in which to complete its reassessment of the feasibility issue.

Accordingly, on September 24, 1980, OSHA published a Federal Register notice (45 FR 63478) which reopened the rulemaking record and scheduled a hearing for the limited and express purpose of soliciting and receiving additional information pertaining to the technological and economic feasibility of meeting the 50 $\mu g/m^3$ PEL solely by engineering controls and work practices. To supplement the notice, OSHA mailed nearly 200 letters urging participation in the rulemaking to representative business concerns, trade associations and unions so that the record might be more fully developed. Enclosed with the letters were copies of the notice. The notice requested information only for those industries for which the court ruled that OSHA had failed to present substantial evidence or adequate reasons to support feasibility, or for any other industry not heretofore identified as involving lead exposure. To help facilitate the formulation of comments, OSHA included in the notice a list of 30 specific questions pertaining to

feasibility. OSHA indicated that it expected to submit additional information to the record.

In attempting to meet the remand deadline set by the court, OSHA set October 27, 1980, as the date by which all comments must be received and notices of intention to appear at the hearing filed—a 23-day period. While this time period constituted legally adequate notice (see 29 U.S.C. 655(b)), the Agency recognized that it was a relatively short time period in which to conduct an OSHA rulemaking. The time allowed was nonetheless considered necessary if the rulemaking were to be completed in accordance with the court's deadlines. In the view of the Agency, the scheduled hearing together with the posthearing comment period would provide additional opportunity for input from interested parties.

To further develop the record, OSHA conducted several research efforts. Computer and other types of literature searches were conducted to find control technology studies relevant to these industries. NIOSH Health Hazard Evaluations concerning lead exposure were researched for relevant feasibility evidence. EPA environmental emission identification and control studies and other EPA data were searched for relevant evidence. In an attempt to obtain data from its own collective experience, OSHA researched several enforcement case files using MIS (Management Information System) data. Looking for relevant economic feasibility data, OSHA economists culled large amounts of publicly available economic and financial data—e.g., SEC 10–K reports and FTC quarterly financial reports. Additionally, a contractor, Radian Corporation, was employed to generate data by contacting industry sources.

During this concerted data collection effort OSHA looked for all relevant evidence and did not exclude from the record any documents relating to technological or economic feasibility. This information generated and collected by OSHA, which consists of approximately 800 entries, was compiled and presented to the OSHA Docket Office by October 27, 1980, receiving the exhibit number, 476.

In response to the notice, OSHA received 41 timely comments (Exhibit 475) and 9 late comments (Exhibit 478). Additionally, 28 interested parties filed timely notices of intention to appear at the hearing (Exhibit 477). The informal public hearing ran from the fifth to the seventh of November and was recorded by 800 pages of transcript. OSHA presented six expert witnesses who were vigorously cross examined. Although 28 parties had filed intentions to appear, only two industry presentations were made and were subject to questioning. Both unions who had filed appeared and, following their testimony, answered questions.

The record remained open for the receipt of additional comment and data until December 1, and, for posthearing argument until December 10, 1980. Thirty-four such submissions were received. Final certification of the record was completed on December 17, 1980, by Administrative Law Judge Fairtag.

In light of the above efforts to obtain all available evidence, any absence of evidence in the record cannot be due to the lack of notice or an opportunity to submit it or to any deficiencies in the agency's efforts. Where the record has factual gaps, it is because there is no additional evidence or because parties uniquely in possession of certain information have chosen not to submit it.

B. Decision by the U.S. Court of Appeals and the Remand Order

A brief review of the court's decision will assist in an understanding of these remand proceedings. By a 2–1 vote, the court rejected substantive and procedural challenges to the standard's validity, and except for the application of the engineering control provision to specified industries, affirmed the standard and lifted the partial stay in effect since March 1, 1979. In responding to a variety of arguments against the validity of the standard, the court concluded:

1. The rulemaking leading to the new lead standard was free of procedural error.
2. The substantive provisions of the lead standard, including the medical removal protection program, the multiple physician review program, and the rules governing access to medical records, fall within the scope of OSHA's statutory power and are reasonable exercises of that power.
3. OSHA presented substantial evidence for its decision that a Permissible Exposure Limit of 50 $\mu g/m^3$ was necessary to prevent material impairment of employees' health.
4. OSHA presented substantial evidence for the feasibility of the lead standard for the following industries: primary lead smelting, secondary lead smelting, battery manufacture, electronics, gray iron foundries, ink manufacture, paints and coatings manufacture, wallpaper manufacture, can manufacture, and printing. For these industries the standard shall go fully into effect.

Ibid., p. 244.

With respect to certain other industries, the court found that OSHA failed to present substantial evidence or adequate reasons to support the feasibility of the standard. These industries are listed above.

For these industries, the court remanded the rulemaking record and gave OSHA 6 months to reconsider the feasibility of the standard with instructions to "return the record * * * with sufficient evidence and fuller explanation * * *" *Ibid.*, p. 245. During this 6 month period the court stayed the effectiveness of a single provision (section (e)(1) which requires compliance with the PEL by engineering controls and work practices) for these industries. All other provisions were immediately put into effect.[1]

In deciding the feasibility issues presented in the case, the court provided detailed guidelines against which the feasibility of the standard for the industries covered by the remand order will be judged. These are briefly discussed here as a framework for the specific industry discussions which follow. For the most part, the court affirmed the guidelines OSHA had used for its initial feasibility determinations in Attachment D to the preamble (43 FR 54474–54478). The court concluded:

> First, within the limits of the best available evidence, and subject to the court's search for substantial evidence, OSHA must prove a reasonable possibility that the typical firm will be able to develop and install engineering and work practice controls that can meet the PEL in most of its operations. OSHA can do so by pointing to technology that is either already in use or has been conceived and is reasonably capable of experimental refinement and distribution within the standard's deadlines.
>
> The effect of such proof is to establish a presumption that industry can meet the PEL without relying on respirators, a presumption which firms will have to overcome to obtain relief in any secondary inquiry into feasibility in any of the proceedings we discuss below.
>
> * * * * *
>
> Second, as for economic feasibility, OSHA must construct a reasonable estimate of compliance costs and demonstrate a reasonable likelihood that these costs will not threaten the existence or competitive structure of an industry, even if it does portend disaster for some marginal firms. *Ibid.*, p. 188.

Of significant note, the court ruled that feasibility will be reviewed on an industry-by-industry basis, therefore requiring OSHA to "examine the feasibility of each industry individually" *Ibid.*, p. 223. OSHA's failure to include in the preamble separate industry-by-

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[1] On December 8, 1980, the Supreme Court stayed additional provisions of the standard for all affected industries pending the filing and disposition of petitions for certiorari in the Supreme Court. The Supreme Court's stay is identical to the one originally imposed by the Court of Appeals on March 1, 1979, and supersedes the Court of Appeal's limited stay.

industry analyses of all relevant factors led the court to reject the Agency's general finding of feasibility. Of the 38 industries which the court remanded, only four (nonferrous foundries, pigment manufacture, shipbuilding, and auto manufacture) had any individual discussions of both technological and economic feasibility. The court rejected OSHA's attempt to infer that a 1-year compliance period would be feasible for a large class of diverse industries whose only common characteristics were that exposure levels were generally low and that conventional engineering controls and work practices could probably be utilized at small cost. *Ibid.*, p. 218–224.

The court however, did not require that OSHA

> always present a detailed analysis for individual operations in supporting the feasibility of the standard. In industries where lead exposures are generally very low, or where strong evidence shows the standard to be technologically practicable for the most troublesome parts of the industry, OSHA can find the standard generally feasible and allow the variance process to account for unanticipated difficulties in isolated operations. But such an operation-by-operation analysis seems crucial in an industry where the evidence clearly suggests impracticality in important stages of the industrial process.
> *Ibid.*, p. 214, n. 155.

The court also reaffirmed the often-stated view that the OSH Act is a "technology-forcing" statute, *ibid.*, p. 142, and found that in proving technological feasibility

> [the court] cannot require of OSHA anything like certainty. Since "technology-forcing" assumes the agency will make highly speculative projections about future technology, a standard is obviously not infeasible solely because OSHA has no hard evidence to show that the standard has been met. More to the point here, we cannot require OSHA to prove with any certainty that industry will be able to develop the necessary technology, or even to identify the single technological means by which it expects industry to meet the PEL. OSHA can force employers to invest all reasonable faith in their own capacity for technological innovation, *Society of Plastics Industries, Inc.* v. *OSHA, supra*, 509 F. 2d at 1309, and can thereby shift to industry some of the burden of choosing the best strategy for compliance. *OSHA's duty is to show that modern technology has at least conceived some industrial strategies or devices which are likely to be capable of meeting the PEL and which the industries are generally capable of adopting.*
> *Ibid.*, p. 145 (emphasis added).

Reliance on "technology forcing" to achieve compliance with the PEL must however recognize the need to allow an industry adequate time for technological development. In sustaining the 10-year compliance schedule for the primary smelting industry, the court affirmed OSHA's application of this principle, and it is applied again here in the analysis of, for example, the automobile industry.

In proving the economic feasibility of the standard, the court ruled that cost estimates are generally required but that exact compliance costs are not. OSHA need only provide a reasonable assessment of the likely range of costs attributable to the regulation and evaluate the effect of those costs on the industry. *Ibid.*, p. 147. The costs will e examined "in relation to the financial health and profitability of the industry and the likely effect of such costs on unit consumer prices," *ibid.*, p. 144, taking into account industries' ability to pass regulatory costs forward onto purchasers or backward onto suppliers. *Ibid.*, p. 147. However, actual cost estimates and assessments of economic impact were not provided for certain industries and yet the Agency's conclusions on economic feasibility were affirmed. For example, in the electronics industry, the court ruled that "the ease with which this industry can adapt to the standard technologically essentially moots the economic question." *Ibid.*, p., 225. Similarly, in the wallpaper manufacturing industry where the "paucity of evidence [was] likely due to the industry itself," *Ibid.*, p. 229, OSHA's adaptation of the Short Reports conclusion was found to have been based on the "best available evidence."

In the manufacture of inks, the court upheld OSHA's determination of economic feasibility based on an inference from cost estimates for the proposed 100 $\mu g/m^3$ limit "in the absence of contrary evidence or argument." *Ibid.*, p. 227. Where similar circumstances exist, OSHA has used this mode of analysis in responding to the remand order.

When estimating costs, OSHA need not blindly rely on cost estimates submitted to the record by industry or by the Agency's own consultants. Citing Judge Bazelon's opinion in the cotton dust case, the court said that where the Agency finds specific faults in cost estimates, it "can produce its 'own' estimate" by making modifications, so long as the source and magnitude of the overestimates are identified and the Agency offers a counterestimate of costs which thoroughly and precisely explains its revisions. *Ibid.*, pp. 147–148. It also concluded that "OSHA can revise any gloomy forecast that estimated costs will imperil an industry by allowing for the industry's demonstrated ability to pass costs through to consumers." *Ibid.*, p. 147. It was precisely these actions the court upheld in affirming OSHA's conclusions regarding the standard's feasibility in the primary and secondary smelting industry.

C. Remand proceedings—Legal issues

In response to the remand order, OSHA reopened the rulemaking record to obtain additional evidence. To assure optimal procedural and due process rights to individuals interested in providing information to the record, the reopening was announced in a detailed notice in the Federal Register and actual notice was given to nearly 200 interested persons. A 30-day period for written comments was established, and a public hearing, although not required, was held.

During the remand proceedings several questions arose concerning the procedures employed by OSHA. Specifically, several industry parties contended that OSHA denied rulemaking participants the right to effective cross-examination (see, for example, the LIA posthearing brief, Ex. 516) by three alleged actions: (1) the remand proceedings, particularly the hearing, were scheduled without providing participants enough time for adequate preparation of comments, testimony and cross-examination; (2) OSHA's Docket Office was unable to provide copies of documents in the record on request because of mechanical breakdowns, further hampering the participants' ability to effectively cross-examine OSHA's witnesses, and (3) OSHA's failure to produce all consultants whose feasibility studies are included in the record denied participants the right to cross-examination on "crucial issues."

OSHA believes each of these claims is without merit. First, in an effort to maximize public participation and to avoid further procedural obstacles to implementation of the standard, OSHA decided that notice and public comment on remand would be the fairest and most effective course. Accordingly, OSHA reopened the lead record, allowing 30 days for written comments, and at the same time established a timetable which afforded interested parties an opportunity to participate in the hearing (45 FR 63281). This schedule allowed an initial comment period of 30 days and a posthearing comment period of 30 days. The procedure exceeds the requirements of the OSH Act, 29 U.S.C. 655(b) and the Administrative Procedure Act, 5 U.S.C. 553, and has enabled OSHA to meet the Court's 6-month remand deadline. OSHA believes that this schedule did not hamper the ability of affected parties to participate

meaningfully in the remand proceeding. Much of the information OSHA requested from the participants was already in existence and within industry's possession; e.g., job classifications for exposed employees, air monitoring data collected pursuant to 29 CFR 1910.1025(d), and industrial assets and net worth, although few of these data were actually submitted to the record.

Second, although OSHA's Docket Office experienced certain mechanical problems during the week of the remand hearings, no participants were prejudiced as a result. As soon as OSHA's staff was advised of copying difficulties, every effort was made to provide the participants with the requested documents. (Tr. 184, 250–57, 297, 315, 322, 262–63). In fact, no one was required to question any witnesses without the benefit of first reviewing the accompanying documentary evidence.

Third, the American Iron and Steel Institute (AISI) reiterated a claim rejected by the Court of Appeals, Opinion, pp. 59–62, that unless Dr. John Short was produced as a witness and subjected to cross-examination, OSHA should not be allowed to rely on the Short Report in its assessment of technological feasibility. (Tr. 38, 90). Moreover, although during the original lead proceedings AISI was unaware of the fact that David j. Burton had actually prepared the technological assessment within the Short Report, *see Ibid.*, p. 60, it now had this information and had the opportunity to cross-examine him during the remand. OSHA produced Mr. Burton as a witness and AISI chose not to question him concerning his earlier conclusions. It is OSHA's view, confirmed by the court's decision, that it clearly was not required to produce John Short at these proceedings. Also the Lead Industries Association (LIA) contended (Ex. 516, p. 6; Tr. 17) that representatives of Charles River Associates (CRA) should have been subjected to cross-examination during the remand hearing. CRA did no work for OSHA on remand (Tr. 27, 68); no useful purpose could have been served by CRA's appearance at the hearings.

Finally, it has been suggested during these proceedings that OSHA is required to (1) make a threshold finding under Section 3(8) of the Act that a "significant risk of harm" from lead exposure exists in each of the remand industries and (2) that the benefits to be derived from application of the standard exceed its costs. The Court of Appeals has already ruled on both points. The court found that "OSHA has carried its burden under Section 3(8)," in finding that lead poses a significant risk of harm to workers, opinion, p. 112, and "that in fact cost-benefit analysis would contravene the Congressional goal of protecting worker health and safety within the limits of economic possibility." *Ibid.*, p. 140, n. 102. Furthermore, OSHA has made it clear from the beginning of these proceedings that the record was reopened for the "limited and express purpose" of soliciting information relevant to feasibility. No information on issues other than feasibility was requested. (45 FR 63476).[3]

D. Conclusions

1. *Generally.* The Court of Appeals remanded the record to OSHA to reconsider the feasibility of the standard in 36 specific industrial or occupational categories. These categories were listed in the Short report (Ex. 22) as having potential lead exposure. For the purpose of the remand, OSHA has additionally considered the standard's feasibility for industries or occupations where lead exposure is present, but which were not included in the group of 36 (e.g., stevedoring), and has in some cases modified the category to better describe the actual processes. The final list has 46 categories; each is discussed in detail below.

For most of the 46 categories, the supplemented record demonstrates that the standard is feasible either because exposure levels do not generally exceed the PEL, thus requiring minimal or no compliance actions, or because exposure levels above the PEL can be controlled by available and affordable engineering controls or work practices within the time periods permitted for compliance.

For a few industry categories, the record supports the availability of feasible control measures, but indicates that an extension in the compliance schedule is necessary to assure the feasibility of their implementation. This is true, for example, in the primary steel manufacturing and automobile manufacturing industries.

An interpretation of the standard, initially made by the Agency in response to a petition by Ethyl Corporation in 1978, will achieve the same result for a few other industries, thereby enhancing their capability to comply in a feasible manner. This interpretation construed the term "secondary lead production" in Table I of Section (e)(1) of the standard to apply to all operations in any industry in which new or used scrap or waste materials were smelted through a chemical reduction process and refined to produce lead metal, whether the operation was performed by a firm whose primary purpose was to produce lead metal or was a captive process in the manufacture of other products (Ex. 476–74).

Ethyl Corporation manufactures tetraethyl lead, a chemical additive used in gasoline. As part of the process, it recycles a sludge-like waste and smelts it in a reverberatory furnace to return unused lead to the process stream. Similar activities may occur, for example, in the manufacture of solder and ammunition. Where an operation can be described as secondary lead production, the appropriate compliance period is 3 years for the interim 100 $\mu g/m^3$ limit and 5 years for the PEL. This interpretation covers only those operations and equipment pertinent to the secondary lead production operation. (This interpretation has been incorporated into OSHA's compliance directive for the lead standard; see OSHA Instruction CPL 2–2.58A, page A–3.)

Another interpretation of the standard may be required in some cases. Where one process within a facility is within the zone of contamination of another process and one of the two processes has an extended compliance period, the one with the shorter time may require the longer time period to achieve full compliance. This is necessary because contamination of one process by the other would preclude effective engineering solutions.

For example, Bunker Hill's zinc fuming furnace is within the confines of its primary lead smelter: the zinc operation has one year to achieve compliance, the primary smelter 10 years. However, due to cross contamination, complete control of the zinc operation may not be possible until emissions from the primary smelter have been controlled. The entire facility, therefore, may realistically require 10 years to comply with the standard, although all feasible engineering controls and work practices are still required to be used in the interim even if

[3] Several industry participants have suggested that "significant risk" must be established for each industry where lead exposures occur. (Ex. 475–22; Ex. 488; Ex. 500; Ex. 517). OSHA disagrees with this view. The "significant risk" findings OSHA has made, and which have been upheld by the D.C. Circuit, are equally applicable to the remand industries. In any event, the evidence submitted by some parties in an effort to demonstrate the absence of significant risk in their industries is without merit and does not detract from the earlier conclusion that employees exposed to lead even in the workplace circumstances presented by these industries, face a significant risk of material impairment of health.

they are not capable of reaching ultimate compliance. Where similar compliance problems arise, the affected employer should incorporate this information into its compliance plans or seek an official interpretation from OSHA.

For some limited operations within certain industries, respiratory protection *may* be the only technologically feasible means of compliance with the PEL in light of known or currently available technology. These cases, discussed in more detail in the industry-by-industry analysis below, include certain spray painting operations, activities in certain confined spaces (e.g., in some areas inside ship hulls), activities at non-fixed worksites or workstations (e.g., repair and maintenance), and excursions in exposure caused by unpredictable and uncontrollable changes in conditions (e.g., spills, equipment failure). In these specific but limited instances, the presumption in favor of the feasibility of engineering controls and work practices would not be applicable and would not support a violation of section (e)(1). However, as the court stated:

> Insufficient proof of technological feasibility for a few isolated operations within an industry, or even OSHA's concession that respirators will be necessary in a few such operations, will not undermine this general presumption in favor of feasibility (for that industry). Rather, in such operations firms will remain responsible for installing engineering and work practice controls to the extent feasible, and for using them to reduce lead exposure as far as these controls can do so. In any proceeding to obtain relief from an impractical standard for such operations, however, the insufficient proof or conceded lack of proof will *reduce* the strength of the presumption a firm will have to overcome in justifying its use of respirators.
>
> Opinion, page 159.

It should be noted that many workers in occupations or industries listed in the remand order will be excluded from coverage because of the exemption for the construction industry from the standard. 29 CFR 1910.1025(a)(2), as corrected in 44 FR 50538, August 28, 1979. This exemption would apply, for example, to welders, lead burners, painters, and plumbers employed by the construction industry. Accordingly, this preamble only addresses nonconstruction aspects of those occupations.

II. Industry-by-Industry Analyses

The following is a discussion of the general principles of control of hazardous materials, the specific application of these controls to lead exposures, the cost of implementing these controls and the economic impact on the industries affected. Each of the individual industry analyses includes a section on the use of the particular industrial commodities; a description of the processes and the areas where lead exposure may occur; the control technology currently being used by the industry; the current exposure levels in the industries; the population exposed; the additional controls needed to comply with 50 $\mu g/m^3$; the summary of the technological findings; the cost of compliance with paragraph (e) of the standard; an economic profile of the affected industry; and finally a summary of the Agency's economic feasibility findings.

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A. General Feasibility

OSHA has determined that compliance with the standard may be generally achieved by the application of existing methods of exposure control. In this section OSHA presents the basic principles on which its conclusions regarding feasibility for each industry are based.

There are several methods available to control a worker's exposure to lead. These approaches include isolation, enclosure, the use of ventilation, and process or product changes. These principles were discussed at length in the original preamble, 43 FR 54476–54479, and will not be reiterated here. OSHA reaffirms and adopts the general principles concerning feasibility discussed therein.

Isolation consists of the construction and use of primary, secondary, or tertiary barriers or containments around the process, the operation, or the equipment for the purposes of containing material, minimizing the release of airborne contaminants to the workplace, and minimizing, limiting, or otherwise preventing access to the area near the contaminant (Ex. 467).

Enclosure includes construction of a partial barrier around the process or operation (usually with access from one side), typically represented by a paint spray booth or a laboratory fume hood, and accompanied by directed air movement to control dispersion of the contaminant. (Id.) Ventilation is the engineered application of air motion and direction to capture, contain, and convey contaminants from the source at the workplace, away from the worker into the ventilation system. (Id.) Industrial ventilation is a widely used and effective method of control of workplace airborne contamination. Local exhaust ventilation is usually more effective and less costly than general ventilation.

Product or process changes may be used for specific problems and are usually central to a structural change in the industry involving new plant and larger capital investment. Elimination is the removal or replacement of the hazardous substance or condition from the work environment. Both types of changes may result in a change in the manufacturing method or machine, or the process or operation to reduce or eliminate hazards, and both represent permanent solutions to the occupational health problem. Substitution usually involves removal (elimination) of one component and its replacement in the process by another less or non-toxic substance.

During the initial lead hearing, Dr. First discussed at length the use of these methodologies in achieving control in any industrial setting. His testimony was relied upon initially; OSHA continues to find his reasoning persuasive and applicable to the remand industries. (See 43 FR 54477; Ex. 270)

Dr. First's testimony, echoed by many engineers and industrial hygienists during the first lead rulemaking (e.g., Schneider, Tr. 2057–2100; Stewart, Tr. 2577–2619), leads to the conclusions that rigorous and innovative application of basic engineering and industrial hygiene techniques will, in almost all cases,

enable employers to comply with the standard.

When one correctly applies principles of engineering control, an operation or a machine is totally controlled. That is to say, when an operation or a machine is properly enclosed, it no longer discharges lead dust to the workroom atmosphere; when an operation or a machine is properly exhaust ventilated, it no longer is capable of discharging lead dust or fumes into the workroom; when a process has been automated, no worker is in the vicinity to be exposed to lead emissions. Therefore, as a practical matter, machines and processes are "controlled" or they are "not controlled"; there are no way-stations on the road to process control. You either do it or you don't (Ex. 270, pp. 23–24).

Schneider added:

My contention is that with proper engineering control coupled with good maintenance and good work practices; proper design of process to minimize emissions, and education of workers and good hygiene that we can today achieve levels in the atmosphere of less than 50 micrograms per cubic meter of air. (Tr. 2065–66).

Dr. Billings of the Johns Hopkins School of Public Health reaffirmed and reiterated the views of Dr. First and others concerning the use of engineering controls to achieve compliance with the lead standard, and stated:

There appears to be no technological limitation to application of engineering control technology to most manufacturing technologies and operations. There may be limiting economic constraints in certain specific applications, but these are usually structural to the industry in question. (Ex. 467, p. 13)

Dr. Billings also stressed the importance of housekeeping (e.g., to prevent the redispersion of contaminants or to eliminate personal contacts); dust suppression (e.g., wetting down dusty sources, wet drilling, use of soil, stock or waste pile stabilizers, windbreaks and the like); maintenance (e.g., continued maintenance of effective control system performance, as well as of process, operation, or manufacturing equipment to reduce or eliminate inadvertent releases of hazardous materials); sanitation (e.g., use of hygienic principles to reduce or eliminate hazardous materials from the person as with clothing changes, shower-in or shower-out, sterilization chlorination, pasteurization, and so on); work practices (e.g., specification of proper work procedures to reduce or control release, dissemination, or inadvertent exposure to hazardous substances or conditions); education (of worker and managment, and of the public, to the nature of a hazard and how properly to minimize risk and most importantly, education of engineers to discover, develop, and design products, processes and systems with minimum hazard to workers and users); and administrative control to achieve compliance.

Dr. Billings stated that the engineering controls he discussed were relevant to the industries under consideration in this proceeding. Dr. Billings further testified:

Any defined industrial health hazard can be controlled to any degree required with creative innovative ingenuity, experience, and resources adequate to develop cost-effective control measures.

Some industrial processes lend themselves more readily to applications of conventional control technology, most commonly those processes that contain continuous, repetitive, or automated operations.

Other processes are less amenable to simpler solutions and may require somewhat greater effort to solve satisfactorily, such as, e.g.; spray painting in confined spaces, shot blasting of lead-based paints on large structures, and possibly welding, lead burning maintenance tasks, or similar transient, intermittant, or mobile operations. Effective technical solutions in these instances may require some worker participation. (Ex. 467 p. 20)

Dr. First also testified that the time required for a conscientious employer to comply can vary from 9 to 12 months for the design, construction, and installation of relatively simple and conventional systems, such as exhaust ventilation hoods and associated dust systems, enclosed automatic conveyors, and central vacuum cleaning systems, to approximately 4 to 5 years for the construction of an entirely new modern plant that incorporates innovative, mechanized, and automated production and materials handling systems and processes. (Tr. 2309). DBA's estimates of the time frames were similar. David J. Burton of DBA states that as a general matter the implementation of simple controls could take as little as "several months: while a very complex system could take as much as 40 months". (Tr. 1025) Dr. First (Tr. 2310, 2328, 2362) and Knowlton Caplan of IHE (Tr. 3031–33) also noted time limitations on obtaining equipment parts, and adequate engineering assistance. These factors are incorporated into the implementation schedule provided in the standard so that many firms need not apply for a temporary variance.

Given the myriad of controls available to the industry, compliance with the standard appears readily feasible. As Dr. First testified, drastic reductions in exposure to coal dust, vinyl chloride monomer, and asbestos fibers were achieved very rapidly where the effort was made (Ex. 270, pp. 18–19). The union representatives from the URW also testified that changes in the rubber and plastics industry were made readily when OSHA citations indicated such were necessary. (Tr. 740). However, for some firms in some industries (for example in the manufacture of lead pigment, the steel industry, and the auto industry), compliance with the 50 $\mu g/m^3$ standard will require reliance upon technological change. The extended compliance deadlines granted these industries have been provided so that these changes may be implemented.

In establishing the requirements of this standard and evaluating whether compliance is feasible, OSHA has identified affected industries and investigated the available technology in those industries based on the best available evidence. It has attempted to estimate the length of time necessary to implement the technology required, taking into account firms' need to plan, construct, test and refine their efforts, as well as the economic factors involved. The result is that OSHA has incorporated into its compliance scheme an implementation schedule based on OSHA's judgment in view of the record evidence, of the time each industry, as a whole, will need to effect the technological changes necessary for compliance. Interim milestones are required for some industries where ultimate compliance will take several years and where significant protection can be accomplished in a shorter period. The time limits also take economic factors into account in that they are expected to enable firms in the industry to implement these changes without serious economic repercussions to the industry as a whole. In some cases, the implementation schedules take into account the industries' modernization plans, etc., in planning compliance activities.

The implementation schedule represents a merging of both economic and technological factors used to evaluate feasibility. Firms can choose from an array of technical solutions over a time frame sufficient for long-run economic optimization. The implementation schedule is incorporated into the "methods of compliance" paragraph of the standard, and the basis for the time limit for each industry is explained in the industry-by-industry analysis below.

After analyzing the techological feasibility of compliance with an OSHA regulation, the Agency estimates the costs of controlling the workplace hazard at issue. Given an estimate of compliance costs, OSHA then assesses the economic feasibility of compliance with the regulations. Thus, compliance

costs link the technological and economic aspects of feasibility and are fundamental to determining feasibility.

Several methods can be used to estimate compliance costs. The methods vary in reliability and are largely dependent on the type of data available. For example, in decreasing order of accuracy, there are piece or component estimates, unit cost estimates, experience estimates, and hypothetical cost estimates (Tr. 418–419).

Piece estimates are compiled by actually summing the individual costs of the components of a control system. For instance, the cost of a ventilation system can be broken down into the separate costs for fans, ductwork, hoods, other materials, labor require for installation, and routine maintenance (Ex. 482). Unit cost estimates are developed by applying publicly available costs for items or approaches that can be used to control hazardous exposures (Ex. 482); for example, dollars per cubic foot per minute of ventilation, average costs of installing hygiene facilities, or costs of personal protective equipment, such as gloves, safety shoes, or respirators, can be used to determine compliance costs. Where detailed engineering estimates or unit costs are unavailable, the professional judgment and experience of labor and industry experts in the field may be relied on to develop experience cost estimates (Ex. 482). Finally, a hypothetical model of a production process and necessary control requirements may be costed out, thereby generating hypothetical cost estimates (Tr. 419).

In the analyses of feasibility in these industries, OSHA has primarily relied on unit cost and experience estimates. These estimates constitute the best available evidence and were provided by OSHA's contractor and by industry. Industry submissions from previous rulemaking and new data submitted in response to the Federal Register notice of September 24, 1980, were included in OSHA's consideration of costs.

Most of the industry estimates are experience estimates that are not supported by detailed engineering studies. In these cases, OSHA has adjusted some of these estimates downward on the basis of Agency experience. Where the estimates appear to overstate compliance costs, OSHA's reasons for rejecting these estimates are explained. The sources of overestimates are summarized below.

First, many estimates include the costs associated with controls required by the Environmental Protection Agency rather than OSHA. Since these costs are frequently substantial, their inclusion greatly inflates the costs presented.

Second, some estimates were calculated on the basis of replacing entire plants or pieces of equipment that are at the end of their economic lives. In these cases, the replacement costs would be incurred even in the absence of an OSHA regulation. Thus, the cost appropriately attributable to the OSHA regulation is the difference between simple replacement of plant and equipment and replacement that achieves compliance with the regulation. Third, many controls are currently in place or required by other regulations and are double-counted if attributed to the lead standard. Further, some of these controls may simultaneously reduce exposure to other toxic substances. Thus, the costs attributable to the lead regulation are actually some fraction of the total costs of the control. Fourth, OSHA notes that historically industry has overestimated compliance costs consistently in all rulemakings. Thus, the Agency concludes that it is likely that these estimates are similarly biased on the high side. While OSHA has not attempted to adjust the estimates downward by some consistent factor, the Agency cautions that past industry predictions of high costs and consequent economic disruption have proven to be unfounded. (See Ex. 475–1). The costs presented by OSHA in the following analyses are, therefore, presented on the best available evidence and accurately represent the anticipated compliance costs that potentially affected industries may incur.

Capital costs of compliance, however, are not typically incurred in any one year because firms borrow money to finance the investment. In making a determination of feasibility, OHSA concludes that the appropriate comparison is between the costs incurred in any one year and the financial condition of the affected industry in that year. Therefore, the Agency compares total industry shipments, sales, profitability or other measures of economic viability with annualized capital costs. OSHA converted the capital costs to an annual rate based on the standard captial recovery formula $i(1+i)^n/(1+i)^n-1$, retaining DBA's assumptions of a 10 year equipment lifetime and a 12% interest rate (Ex. 26).

B. *Specific Industries.* On the basis of all the evidence accumulated during the rulemaking proceeding, OHSA has determined that by the dates specified in paragraph (e)(1) of the standard, compliance with the PEL by the use of engineering controls, work practices, and, in some limited instances, respiratory protection is feasible.

These conclusions are based on the best available evidence of what each affected industry, taken as a whole, can achieve with presently available production and control technology. These conclusions are necessarily industry-wide generalizations, and since some involve projected compliance activities, they rely in part on policy judgments. OHSA recognizes that compliance problems may exist at individual plants or work areas, but concludes that these problems can be better dealt with through enforcement activities where solutions can be worked out by affected parties.

The following is a detailed discussion of the technological and economic factors in the major industries affected by the standard. In making these industry-by-industry analyses of feasibility, OHSA relies fully on the general principles expressed by Dr. First, Dr. Billings and others that were treated in this section. Throughout the following discussion, phrases such as "meeting the PEL", "achieving compliance", or "meeting 50 $\mu g/m^3$" all refer to the permissible exposure limit, which is 50 $\mu g/m^3$ as an 8-hour time-weighted average. (See 43 FR 52967).

1. Agricultural Pesticides

(a) *Uses*

There are approximately 1.5 billion pounds of pesticides produced yearly, which account for $2.5 billion in sales. Production, as measured by consumption, is growing slowly at a rate of 1.4 percent per year, with insecticide production showing the slowest rate of increase (less than 1 percent per year). Twenty-six percent of total pesticide production can be attributed to the production of insecticides (Ex. 476–50).

Exposure to lead in the insecticide industry may occur during the manufacture or formulation of the insecticide, lead arsenate (also known as acid lead arsenate, ortho arsenic acid, basic ortho arsenate, or basic lead arsenate). Acid lead arsenate has been used extensively to control fruit insects in apple and other orchards. However, synthetic organic chemicals have largely replaced acid lead arsenate (Ex. 476–50). Basic lead arsenate is only used on peach and other fruit trees grown in moist climates, where the less stable acid form causes leaf burn (Ex. 476–50). The Environmental Protection Agency restricts the use of lead arsenate as an insecticide to Florida.

Data indicating what percentage of total insecticide production lead arsenate represents were not available. Based on record evidence submitted by Woolfolk Chemical, Dupont Chemicals,

Dow Chemicals and Los Angeles Chemicals (Ex. 476–45, 49, 52, and 54), OHSA found that only one domestic firm, Landia Chemicals of Lakeland, Floride (Ex. 476–53), formulates lead arsenate. The company formulates a lead arsenate pesticide during approximately 3 months each year and only one employee is exposed to lead during this time (Ex. 476–53).

Representatives of Woolfolk Chemical Co. (Ex. 476, #54) indicated that they, along with Allied and Dow Chemical, stopped producing lead arsenate in 1972 as a result of the hazards associated with arsenic exposure and the difficulties of reducing this exposure (Ex. 476–45).

(b) *Process Description and Exposure Areas*

When lead arsenate is manufactured by batch process, the greatest potential for exposure to lead occurs during the mixing of lead oxide with arsenic acid (Ex. 476–50). The resulting precipitated slurry may either be piped to drying drums and packaged or shipped as a liquid.

Exposures may also occur during the cleanup of liquids spilled from batch mix vats, although spill pans installed below each processing unit capture most spills and then recycle the liquid back into the processing line (Ex. 476–50). Other exposures may occur during drying operations, although water vapor collected from the dryers is usually vented through the stacks (Ex. 476–50). Finally, the handling of lead arsenate for packaging and distribution is also a potential source of exposure (Ex. 476–50).

Based on the record evidence, Landia Chemical Co. appears to be a formulator rather than a manufacturer of lead arsenate. The company has stated that it receives lead arsenate, mixes it with water to form an aqueous solution, and packages the substance for distribution. Exposure to lead appears to occur primarily in the handling or processing of lead arsenate and does not appear to occur during the handling of the raw materials used in the manufacture of lead arsenate.

(c) *Controls Currently Used*

Various control technologies are available to contain dusts generated by the handling or mixing of toxic powders, including: ventilation control, process enclosure, automated weighing and handling equipment, and equipment operator booths to reduce worker exposure (Ex. 476–50). Depending upon the quantity of lead substance to be handled, the following control measures are available for reducing or eliminating exposure to lead during materials handling operations.

Portable bins (e.g. Tote Bin or Invert-a-Bin) may be used to handle dry compounds, thereby minimizing manual handling of the pesticide. Multi-wall, 50-pound paper bags (instead of single walled paper bags) may be used when transporting finely powdered ingredients. The dumping of bags, in general, is not recommended because this presents the greatest potential for dust emissions. To minimize exposures, it is recommended that unloading occur by breaking bags or cutting them open with a stationary knife over a grill equipped with proper ventilation, or by dumping bags into the boot of an elevator. The emptied bags, which still contain some powder, should be disposed of using the same hood used for emptying. Bag opening machines, which permit the operator to unload paper bags without opening them, thereby avoiding contact with the contents, may also be used. These machines may be moved from one process line to another. Drums can be opened under local exhaust ventilation to minimize dust hazards and drum dumping can be performed in enclosed booths. Pneumatic vacuum systems may also be used in unloading or loading lead compounds to vented storage bins. In charging operations, enclosed drum-dumping cabinets have been developed to mechanize this process, thereby reducing manual handling of toxic substances. Specially designed hoods which capture the dust at the source of exposure have been used, in some cases, to minimize employee exposure (Ex. 476–50, p. 84–107).

Dr. Billings suggested a control method for lead pigment formulators that OHSA believes to be applicable to pesticide manufacturers and formulators as well. He suggested the use of containers which are soluble in the particular vehicle or solvent being used (Tr. 116). Mr. Brustein, representing the United Rubber Workers, supported Dr. Billings' testimony and indicated that Goodyear produces a product called Elastifilm which can be used as a soluble container (Tr. 736).

Representatives of the Landia Chemical Company did not indicate which (if any) of the engineering control technologies discussed above were in use in their establishment, nor did they indicate which work practices were being used.

(d) *Exposure Levels*

The Landia Chemical Company did not submit data indicating the exposure levels to lead which result from the formulation of lead arsenate. The company did indicate, however, that complying with the 50 $\mu g/m^3$ standard (Ex. 476–53) was not expected to present any problems for them, and the company therefore declined to submit comments in response to the Federal Register notice of September 24, 1980 (Ex. 476–53).

(e) *Additional Controls*

The data presented to the Agency by the Landia Chemical Company indicate that additional engineering controls and work practices are not necessary to achieve compliance with the 50 $\mu g/m^3$ standard.

(f) *Conclusion: Technological Feasibility*

The Agency assumes, based on its knowledge of the control technology available to the pesticides industry (Ex. 476–50), its knowledge of the comparability of material handling in pesticide manufacturing and similar processes, and Landia Chemical's own statement that achieving 50 $\mu g/m^3$ poses no problem, that the company must be using transitional control methods for materials handling. In addition, the company may be relying, in some part, on the use of good work practices, housekeeping, and worker rotation to aid in maintaining exposures below 50 $\mu g/m^3$. Furthermore, Landia Chemical, the only known processor of lead arsenate, has indicated that only one employee is exposed to lead exposure and this employee is potentially exposed for only 3 months annually (Ex. 476–53). Present engineering controls appear to be adequate to reduce this worker's 8-hour time-weighted exposure to below the PEL.

(g) *Cost of Compliance*

It appears that the technology already in use is sufficient to maintain levels below the 50 $\mu g/m^3$ limit. As a result, expenditures need not be made to retrofit existing equipment with improved ventilation systems or to invest in housekeeping equipment (such as a central vacuum system). Because these expenditures are not necessary, no costs will be incurred as a result of complying with the lead standard.

(h) *Industry Profile*

Production data on lead arsenate are classified in SIC 2879, Agricultural Chemicals, Not Elsewhere Classified. Lead arsenate is further disaggregated into SIC 2879207, however, entries for quantity and value in dollars of production and shipments were withheld by the U.S. Commerce Department to avoid disclosing operations of individual companies (Ex.

476–20). By 1972, major domestic producers of lead arsenate had withdrawn from the market (Ex. 476–45, 49, 52, 53, and 54). Landis Chemical, the only known formulator of lead arsenate in the United States, is a small, privately held firm. The company did not submit financial information indicating that the regulation would be burdensome.

(i) *Conclusion: Economic Feasibility*

The economic impact of the lead standard on the agricultural pesticides market and, specifically, on the production of lead arsenate, will be insignificant. This finding is based on the fact that no compliance costs will be incurred by this industry as a result of the lead standard.

2. Aluminum Smelting

(a) *Uses*

Aluminum is used in the manufacture of chemical vessels, kitchenware, electrical transmission lines and other products. It has architectural applications and is used extensively in the land, sea, and air transportation industries. (Ex. 476–5G)

(b) *Process Description and Exposure Areas*

Although aluminum ores are widely distributed in the earth's crust, only bauxite has proven to be economical as an ore from which the metal can be smelted (Ex. 476–5G). Bauxite is usually mined through the open-pit method, crushed, sometimes washed to remove clay, and dried. It is then refined through the Bayer process into aluminum oxide or "alumina." In this process, dried, finely ground bauxite is charged into a digester where it is treated, under elevated pressure and temperatures, with caustic NaOH solution to form sodium aluminate. (Ex. 476–5K)

After the digestion process is completed, the residue (containing impurities) is forced out of the digester through filter presses and discarded. The liquid, which contains extracted alumina in the form of sodium aluminate, is pumped to precipitator tanks where seed crystals are added to aid in separating aluminum hydroxide from the solution. The aluminum hydroxide that settles out from the liquid is filtered and then calcined in kilns which convert the alumina to a form suitable for smelting (Id.).

Metallic aluminum is produced by an electrolytic process that reduces the alumina into oxygen and aluminum. In this process, pure alumina is dissolved in a batch of molten cryolite (sodium aluminum fluoride) in large electrolytic furnaces called reduction cells or "pots." An electric current is passed through a carbon anode suspended in the bath mixture, causing metallic aluminum to be deposited on the carbon cathode at the bottom of the cell. The heat generated by passage of this electric current keeps the bath molten so that alumina can be added as necessary to make the process a continuous one. At intervals, aluminum is siphoned from the pots and the molten metal is transferred to holding furnaces either for alloying or impurity removal. It is then cast into ingots of various sizes for further fabrication. (Id.)

Exposures to lead arises from trace amounts in the ore. Exposures may occur at materials handling equipment or during pyrometallurgical processing (Ex. 461). Since most of the bauxite processed in this country comes primarily from Jamaica, Brazil, Surinam, Australia, and Ghana and contains only traces of lead (Ex. 476–56), very little exposure occurs during the handling of raw ore. In fact, the principal source of lead exposure during ore handling is not from the ore itself but rather from the acid leach (the process by which the impurities are separated from the ore) which contains traces of lead (0.004 percent lead sulfite) (Ex. 476–57)

The primary exposure problems in the pyrometallurgical process occur when ores containing lead undergo smelting, thereby releasing fugitive emissions, such as lead oxide, or from emissions resulting from impurities which rise to the top of the molten aluminum and must be periodically skimmed off as dross from the melting and holding furnaces. This dross is transferred to a floor area known as a dross pad where it is dumped and raked out to cool. After cooling, the dross is mixed with salts and charged into a rotary melting furnace, where more of the aluminum is recovered.

(c) *Controls Currently Used*

(i) Materials handling controls include: Pneumatic conveyance; elimination, by redesign or use of dead drops or long material drops; belt wipes; conveyor curtains and skirts; ventilation hoods at transfer points; complete enclosure of conveyors; liquid sprays to suppress dust; chemical dust suppressants; vacuuming (preferably wet vacuuming) instead of dry sweeping of spilled or otherwise deposited materials; and clean air pulpits (Ex. 461).

The selection of the appropriate control strategy depends upon the material being handled, the extent of the exposure problem, the process involved, and the extent to which engineering controls are already in place.

(ii) Pyrometallurgical controls include: Exhaust hoods for tapping and skimming ports; exhaust hoods for ladles, pots, and kettles; covers and hoods for launders; maintaining the unit at negative pressure; enclosure of the entire unit or pertinent parts of the unit; ventilation to capture fugitive emissions which cannot be contained otherwise; enclosed control rooms supplied with clean air; and controlled air pulpits (Ex. 461).

(d) *Exposure Levels*

During aluminum smelting, lead is present as lead sulfide in bauxite ores. Bauxite containing .04% lead would produce an air lead concentration of 4 $\mu g/m^3$ when bauxite concentrations are 10 mg/m^3. "Therefore, lead exposure would be well below existing or proposed limits." (Ex. 461)

Sampling data in a NIOSH report on the Martin Marietta Aluminum Company in Lewisport, Kentucky (Ex. 476–58) revealed nondetectable lead exposure levels, in most instances, although one sample showed 7.5 $\mu g/m^3$ of inorganic lead (Id.). These figures indicate that exposure levels are well below the OSHA permissible exposure limit of 50 $\mu g/m^3$ and the 30 $\mu g/m^3$ action level. The results of the NIOSH survey are consistent with the statements made by Kaiser and Alcoa Aluminum indicating that lead exposure is not a significant problem in aluminum smelting (Ex. 476–56, 57).

(e) *Additional Controls*

The exposure data indicate that lead levels in aluminum smelting are well below 30 $\mu g/m^3$. Control technology already in use has been effective in maintaining lead exposure levels below the PEL. Additional engineering controls, work practices, housekeeping and worker rotation are not needed. Compliance with the PEL has been achieved (461)

(f) *Conclusion: Technological Feasibility*

The record shows that bauxite ores processed in the United States contain only trace quantities of lead and that alumina (aluminum oxide), from which aluminum is reduced, contains virtually no lead (Ex. 476–56, 57; Ex. 22). Exposures to lead above the PEL are unlikely to occur, as representatives from both Kaiser and Alcoa Aluminum have acknowledged (Ex. 476–56, 57).

Control technologies already in use will be sufficient to control any exposures to lead which may occur.

(g) *Economic Feasibility*

Because the exposure levels are so low, the industry need not enhance existing ventilation systems, establish additional work practice programs, enhance housekeeping practices or rotate workers as a result of this regulation. Therefore, there will be no costs of compliance nor any economic impact incurred as a result of the lead standard.

3. Ammunition Manufacturing

(a) *Uses*

Lead continues to be the major metal used to produce sport ammunition in the form of shot and small caliber shells. Although lead ammunition is no longer used in wartime applications, it is still used in military training (Ex. 476–123). The Federal Government has enacted legislation requiring steel shot for water fowl shotgun loads in some parts of the country. If this were universally adopted, it would eliminate the manufacture of lead shot, and also the problem of lead exposure from this material (Ex. 476–20).

(b) *Process Description and Exposure Areas*

Ammunition fabrication may be done using either a hot or cold lead process (Ex. 22, p. 231). Lead used in the manufacture of ammunition may be in the form of ingots or may be processed from scrap lead. Lead processing from scrap requires smelting prior to refining and is therefore considered a secondary smelting operation. Companies that just melt lead prior to fabrication are not considered as secondary smelters.

OSHA has proven the technological feasibility of achieving compliance for secondary smelting operations and the Agency's findings have been upheld by the court Slip Op. at 181–87. The implementation dates and interim levels for secondary smelting and refining operations are applicable to ammunition manufacturers whose initial operations are, in fact, secondary smelting operations. In addition to fabrication, ammunition manufacturers also maintain ballistics ranges which are used to test the quality of the ammunition manufactured.

(i) *Fabrication.* Lead exposures occur during the melting, drossing, pouring, casting, extrusion, cut-off and assembly portions of the process of fabricating bullets from hot lead (Ex. 475–35). In the fabrication of lead shot, lead exposure occurs during the melting, drossing, dropping, polishing and loading of lead shot. (Id.)

(*a*) *Hot Lead Processes.* Lead is melted in refining kettles and treated by drossing to remove impurities. Further refining may be necessary to achieve a specific composition prior to casting lead into molds to produce bullets by extrusion or by dropping lead to form shot (Id.). Finishing processes for bullet manufacturing include extrusion, cut-off, assembly, inspection and packaging. (Id.) Finishing processes for the manufacture of lead shot include shot lubrication, screening, polishing, packaging, and loading cartridges with shot. (Id.)

(*b*) *Cold Processes.* In the cold processes, lead is used to form bullets by feeding wire into forming machines which extrude the projectiles (Ex. 476–65). Employees working at the forming machines may be exposed to lead, but such exposures appear to be very low (Ex. 476–65).

(ii) *Testing of Ammunition (Firing Ranges).* Ammunition that has been fabricated must be tested, and manufacturers use ballistics ranges for this purpose. Most firing ranges are equipped for the firing of handguns, shotguns, rifles, and machine guns. They are used by ammunition manufacturers to check ballistics, as practice ranges for firearms enthusiasts and as practicing and qualifying ranges for law enforcement officers.

It should be noted that while many persons may be exposed to lead at a firing range, only the exposures of range employees (of ammunition manufacturers or private ranges) fall within the scope of the standard: the exposures of firearms enthusiasts who use the ranges for practice are outside the scope of this standard because they are not occupationally related.

The dimensions of firing ranges vary in length from 70 to 120 feet, in width from 20 to 80 feet, and in height from 8 to 10 feet, and the range may house any number of firing booths. Ranges are installed in "available" space (Ex. 476–64) or they may be constructed as part of a manufacturing process, as is the case with some ballistics test ranges. (Ex. 475–35)

The bulletproof firing booths are approximately 4 feet wide, 8 feet long, and 9 feet high, and the distance from the firing line to the bullet trap is approximately 75 feet. Ranges are usually equipped with a steel bullet trap in which the spent lead accumulates in a trough at the bottom of the trap. The spent lead is removed from the trough when necessary, and may either be discarded or remelted and cast into small ingots for sale or reincorporation into the manufacturing process.

Lead dust and fumes are generated from the bullet primer when weapons are fired. The primer is approximately 35 percent lead styphnate and lead peroxide. The lead styphnate is used as a detonator. Lead vapors (because of cylinder and barrel misalignments and gaps from wear and manufacturing tolerances) pass through the weapon after firing and are expelled at right angles to the direction of fire. This effect is commonly known as "side blast." The side blast creates turbulence in the breathing zone of the shooter, thus increasing his exposure to lead dust and fumes (Ex. 476–64).

Another source of lead contamination occurs when the bullet is fragmented as it strikes the bullet trap. In this situation, personal exposure to lead is believed to be minimal, since the distance between the shooter and the bullet trap is normally at least 75 feet (Ex. 476–64).

(c) *Controls Currently Used*

(i) *Fabrication.* The refining operation for ammunition manufacture is comparable to refining in secondary smelting operations, and therefore some of the difficulties associated with secondary lead refining may be applicable to ammunition refining.

In fact, it may be difficult to control lead exposures in refining operations depending upon the size of the operation (46 FR 54484). Operations requiring the use of overhead cranes are difficult to control (Tr. 5635). Local exhaust ventilation, either in a stationary or portable form (43 FR 54484), is used primarily at drossing operations (Ex. 28, p. 5–32).

Submissions from Remington Industries and a NIOSH HHE of the Hoyt Plant indicate that local exhaust ventilation is being used by some facilities (Ex. 475–35; Ex. 476–309) in casting and fabrication areas.

Local exhaust ventilation used in the die casting areas, hooding of the drop shot kettles and the enclosure or separation of some processes from others are methods being used to reduce lead exposures. In the lubrication of lead shot, substitute lubricants have been used which appear to reduce lead exposures (Ex. 475–35).

(ii) *Testing of Ammunition (Firing Ranges).* The controls to reduce lead exposure require local or general ventilation to control the air flow so that the concentration of lead in the environment does not continue to increase after the number of shooters has been reduced. (Systems should be capable of preventing airborne lead "build-up.") Floors are also often painted smooth concrete surfaces which can be easily cleaned using wet vacuuming methods. Spent lead is often collected in water traps to further

minimize the lead exposure (Ex. 476–64; Ex. 475–35).

(d) *Exposure Levels*

(i) *Fabrication.* Data submitted indicate that typical exposures in ammunition manufacturing range from 10–170 $\mu g/m^3$ (Ex. 22, p. 231). Remington did not provide specific exposure data but indicated that at one plant of 465 exposed employees, 425 were exposed to less than 50 $\mu g/m^3$ of lead, with 40 employees exposed to levels in excess of 50 $\mu g/m^3$. Remington further qualified that statement by stating that this number of employees was exposed prior to the installation of certain engineering controls (Ex. 475–35). No information was submitted indicating what effect these controls had on reducing the number of workers exposed above 50 $\mu g/m^3$. In another Remington plant, 590 of 600 employees are exposed to levels below 50 $\mu g/m^3$ and 10 are exposed above 50 $\mu g/m^3$. Some of these 10 individuals worked on the firing ranges and were not directly associated with the manufacturing process (Ex. 475–35).

Exposure data (Ex. 476–309) from N.L. Industries Hoyt Plant indicate that respirable dust levels were 10 $\mu g/m^3$ for the buckshot kettle operator, 30 $\mu g/m^3$ for the lead man in the shot building and 30 $\mu g/m^3$ for the shot drop operator.

(ii) *Testing of Ammunition (Firing Ranges).* Surveys such as those taken at La Salle College (Ex. 476–66), New York State Police Facilities (Ex. 476–67), St. Bernard Police Firing Range (Ex. 476–68), and the U.S. Customs House Firing Range (Ex. 476–70), have all found lead levels in excess of the 50 $\mu g/m^3$ PEL. Remington Arms also indicated that compliance with 50 $\mu g/m^3$ on their ballistics range would be difficult (Ex. 475–35).

(e) *Population Exposed*

(i) *Fabrication.* In a previous report to OSHA (Ex. 22, p. 231) it was estimated that 500–900 workers are exposed to lead in the manufacture of ammunition (id.). The percent of these individuals exposed above and below 50 $\mu g/m^3$ is not know.

Remington submitted data that indicated that out of 1,065 employees (number of workers in the entire plant) only 50 were exposed in excess of 50 $\mu g/m^3$ (Ex. 475–35). It is also believed that 95 percent of all ammunition manufacturing is done by three large companies, one of which is Remington (Ex. 22, p. 231). Extrapolating from Remington's data, OSHA estimates that only 150 to 200 employees are exposed to lead in excess of 50 $\mu g/m^3$.

(ii) *Testing of Ammunition (Firing Ranges).* There is no way of estimating how many employees are exposed to lead in public firing ranges or in ranges operated by ammunition manufacturers (Ex. 22, p. 231).

(f) *Additional Controls*

(i) *Fabrication.* Remington discusses four difficult areas of compliance in their plants: the ballistics range (see discussion of firing ranges), shot tower (especially where lead dross is handled), the maintenance of certain exhaust systems (see discussion of maintenance) and production equipment, and primer mixing and charging (see discussion of explosive manufacture). Remington suggests that improved ventilation will be required at drossing operations and that vacuuming has already greatly reduced exposures by reducing dust levels in maintenance operations. In addition, employees should be instructed in the proper manner of handling lead materials to minimize their exposures (Ex. 487).

In finishing processes local exhaust ventilation can be used on extruding machinery, at cut-off machinery, etc., as suggested by Dr. Billings. Isolation, local ventilation and housekeeping may also be used. Workers handling extruded products and those filling and inspecting cartridges should be cautioned to use appropriate work practices to minimize dust exposures and should also be instructed to wash their hands and forearms thoroughly before eating, smoking, etc. (Ex. 487).

(ii) *Testing of Ammunition (Firing Ranges).* NIOSH recommends that to control lead fumes, dust and gaseous combustion products in the firing range, a minimum ventilation rate of 50 feet per minute (fpm) should be maintained at the firing line, with all of the air being exhausted at the bullet trap (Ex. 476–64). The firing range should be maintained at a slight negative pressure in relation to adjacent areas.

Floors should be constructed with a drain and should be made of dense, continuous-poured concrete or steel. The concrete should be finished to a smooth surface to facilitate proper clean-up, using either the wet method or the vacuum cleaner method. A routine range maintenance program is essential. NIOSH recommends that employees performing maintenance or removing lead from the trays wear an approved respirator.

In addition, worker rotation may be necessary, especially in firing range maintenance operations, to meet the 50 $\mu g/m^3$ limit.

Data have been compiled which indicate that levels have been reduced using minimal controls. For example, the Springdale firing range made improvements in the ventilation system by increasing the flow rates, which resulted in dust levels being reduced from 200 $\mu g/m^3$ to approximately 60 $\mu g/m^3$ (Ex. 476–69). Additional efforts, such as increased housekeeping and maintenance, should bring this range into full compliance.

Remington also presented data which discussed the difficulties encountered in bringing their ballistic range into compliance with the 50 $\mu g/m^3$ limit. The company felt that engineering controls, such as improved ventilation and improved water bullet traps, had been successful and that work practices such as vacuuming and wetting down shooting booths have also helped (Ex. 475–35) to reduce lead levels. However, they felt that 1 year was not a long enough period to bring the lead levels into full compliance.

A great deal of data was presented on firing range design and emission controls for firing ranges generally; however, little data were furnished by ammunition manufacturers who have ballistic ranges. While the controls peculiar to firing range use are the same whether the range is privately owned or owned by a manufacturer, the degree to which controls must be implemented depends upon the extent to which the range is used by employees and the level of exposures. Ammunition manufacturers who use their ranges constantly will have to install more sophisticated controls than a range that has one or two occasionally used booths. Therefore, Remington may, in fact, need more time to implement sophisticated engineering controls to reduce levels to 50 $\mu g/m^3$.

(g) *Conclusion: Technological Feasibility*

(i) *Fabrication.* The technology to achieve 50 $\mu g/m^3$ is available and is apparently being effectively used by the Hoyt Plant in its shot operations. Remington also indicated that improvement of existing ventilation systems would be necessary to achieve compliance with 50 $\mu g/m^3$, although they admit that reducing exposures in some operations solely through the use of engineering controls might prove difficult; in addition, Remington stated that one of the most difficult operations to control would be the drossing process. Caplan (Ex. 138D) recommended that controls used in primary lead drossing plants should be used in refining operations also. Many of these controls would also be applicable to melting operations. It appears that the available engineering controls, when coupled with good work practices, effective housekeeping, and

worker rotation, will bring lead levels down to 50 $\mu g/m^3$. Exposure data from the Hoyt Plant indicate that the PEL is feasible and has been achieved.

Most of these operations involve the use of machinery to produce finished products. As Dr. Billings stated, "you can put control technology on a machine" (Tr. 146).

The technology to control finishing operations exists and may require isolation, ventilation, careful housekeeping and perhaps worker rotation to achieve compliance with the 50 $\mu g/m^3$ standard for lead.

In addition, the making of ammunition by cold lead processes presents few, if any, exposure hazards. Manufacturers may substitute this process and significantly eliminate lead exposures in projectile formation. OSHA finds that compliance with the standard in one year is feasible.

(ii) *Testing Ammunition (Firing Ranges).* While Remington anticipates difficulty in bringing its firing range into compliance in a year, other ranges have made substantial progress in reducing levels in considerably less time. The Springfield Firing Range was surveyed in September of 1977 and resurveyed in December of 1977. During this 3 month period, ventilation controls were implemented which reduced exposures from 200 $\mu g/m^3$ to approximately 60 $\mu g/m^3$ (Ex. 476–60).

Ventilation controls are not the only acceptable means of achieving compliance with the 50 $\mu g/m^3$ level. Work practices, housekeeping, and worker rotation may be used. OSHA believes that Remingon, like other owners of firing ranges, can achieve compliance with the 50 $\mu g/m^3$ level simply by enhancing existing ventilation controls with appropriate work practices and administrative controls. Respirators may be required for some operations, such as cleaning traps, where engineering controls, work practices, or rotation are not sufficient to reduce levels to the 50 $\mu g/m^3$ limit. However, the Agency believes such situtations will occur infrequently and will be of short duration. Remington does not dispute that given the appropriate time period for compliance, lead levels can be reduced to 50 $\mu g/m^3$ through the use of engineering controls (Ex. 475–35). Based on these factors, OSHA concludes that compliance with the standard in one year is technologically feasible for firing ranges.

(h) *Cost of Compliance*

None of the potentially affected manufacturers of ammunition presented cost data to OSHA. However, Remington Arms submitted a comment that described its progress in reaching the 50 $\mu g/m^3$ standard and asked for 3 to 5 years to reach this goal (Ex. 475–35). The record indicates that small arms projectile manufacturing, as typically done, is a cold process operation (Ex. 475–35). However, the production of lead shot may require hot processes, in which case controls may be necessary. Ventilation systems already in place, may require upgrading, however, the less costly use of housekeeping and worker rotation will significantly aid in achieving compliance and will also reduce arsenic exposures. Therefore, compliance costs will be minimal.

The record does not contain data on the costs of compliance with the standard for indoor firing ranges. However, a NIOSH study of the problem of excessive exposures of this nature indicates that with appropriate planning in the design and construction of indoor firing ranges, the lead hazard could be eliminated. (Ex. 476–64) OSHA contends that such planning will result in cost-effective implementation of control measures. In addition, NIOSH points out that many firing ranges have very poor housekeeping. Remington also indicated that housekeeping improvements have had a great effect on reducing exposures (Ex. 475–35). Good housekeeping is an effective and inexpensive aspect of controlling overexposure to lead dust.

(i) *Industry Profile.* There are 65 establishments employing a total of 7,700 workers in the production of small arms ammunition (SIC 3482). Shipments were valued at $436,200,000 in 1977. In addition, 81 establishments employ 13,000 production workers in the manufacture of ammunition other than that for small arms (SIC 3483). The 1977 value of these shipments are reported at $775,000,000.

In SIC 3482, two establishments with 250 to 499 employees produce shipments valued at $394,700,000. Forty establishments in this SIC employed less than five workers. In SIC 3483, $415,900,000 in shipments was produced by six establishments with 1,000 to 2,499 employees. Twenty-five establishments employed less than five workers (Ex. 476–30). Thus, there is significant market concentration in the production of small arms ammunition and less concentration in the production of other forms of ammunition.

If there are significant exposure problems in smaller companies, and if the costs of compliance with this regulation are large, smaller companies may be at a competitive disadvantage with the large producers. Some smaller companies might not be able to pass on the higher costs of production and would exit from the market, thereby increasing industry concentration. However, it appears that the current trend of increasing concentration will continue even in the absence of the lead regulation, and it is likely that the effect of OSHA on market concentration will be relatively small. Therefore, OSHA concludes the lead regulation is economically feasible for this industry.

4. Artificial Pearl Processing

(a) *Uses*

Artificial pearls serve as substitutes for natural pearls in jewelry manufacture.

(b) *Process Description and Exposure Areas*

United States plants manufacture the pearlescent coating; Japanese and Puerto Rican firms usually dip the pearls. (Ex. 22, p. 289)

Lead-based pigments, such as lead carbonate, are used as a base coat to cover the bead being coated. A pearlescent coating, guanine, is used to cover this base coat, resulting in a bead resembling a pearl.

(c) *Controls Currently Used*

The pearl coating is applied by spraying or dipping the bead into the pigment. Spraying is done in a booth with an exhaust hood system (Id.).

(d) *Exposure Levels*

No data were submitted indicating the extent to which workers may be exposed to lead as a result of the manufacture of pearlescent coating. However, data from comparable operations, such as the glazing of bricks, pottery or glass, in which lead based compounds are applied, indicate that levels in artifical pearl making may range from 0.002 (brick glazing), to 60 $\mu g/m^3$ (hand-dipping of pottery). The degree of exposure will vary depending upon many factors, including the degree of automation. The manufacture of the pigment, lead carbonate, is discussed in the lead pigment section.

(e) *Population Exposed*

The Short Report estimated that 50 people are exposed to lead as a result of this process in the United States (Id.). The number of workers exposed above and below 50 $\mu g/m^3$ is not known.

(f) *Additional Controls*

Ventilation controls appear to be effective in maintaining acceptable lead levels. The Agency believes that existing ventilation, when coupled with improved work practices and effective housekeeping, will be adequate to achieve the 50 $\mu g/m^3$ PEL. Where spontaneous high levels of exposure

occur, worker rotation may also be necessary.

Finally, nonlead based undercoats may be substituted for lead-based coatings in the pearlizer process (Id.).

(g) *Conclusion: Technological Feasibility*

None of the firms manufacturing artifical pearls submitted any exposure data or control technology data to OSHA, although the trade association for this industry was contacted. OSHA has extrapolated exposure levels from levels in comparable operations. The Agency believes exposures to be below 50 $\mu g/m^3$, in general, and that current controls will be sufficient to achieve compliance. No evidence or arguments to the contrary were offered by industry representatives who were contacted by OSHA. They did, however, indicate that compliance with the proposed standard of 100 $\mu g/m^3$ or the 50 $\mu g/m^3$ action level posed no problems for the industry.

OSHA concludes that compliance with the 50 $\mu g/m^3$ standard within 1 year is feasible for this industry.

(h) *Cost of Compliance*

None of the potentially affected firms in this industry offered any cost data to OSHA for use in this analysis of feasibility. Because exposures are presumed to be below the PEL, the industry need not enhance existing ventilation systems, establish additional work practice programs or improve housekeeping programs. Therefore, no significant costs will be attributable to the lead standard. If, however, exposures exceed the PEL, some minimal compliance costs may be incurred.

(i) *Industry Profile*

There were only six to eight firms in the United States working with pearlings or artificial pearls in 1976, each employing, at most, six workers (Ex. 22, p. 289) who were potentially exposed to lead. The greatly reduced demand for pearls over the past 10 years and the availability of less expensive imported pearls from the Orient have contributed to the reduction in the size of this industry (Id.). Sales of pearlescent pigments have dropped from an average of 200 pounds per customer order in 1960 to, at most, 3 pounds per customer order in 1976 (Id.). The economic impact of the OSHA lead regulation on this industry is expected to be negligible.

5. Automobile Manufacture/Soldering

(a) *Uses*

Soldering of welded joints with lead-tin solder may be necessary in auto body assembly. This is the major use of lead in the auto industry, although several other operations may also use lead products, e.g., spraying automotive bodies with lead-based paints or primers. Exposure to lead in these operations is covered under other industry classifications as appropriate.

(b) *Process Description and Exposure Areas*

In the assembly of an automotive body, it may be necessary to apply solder to some welded joints. Excess solder must then be removed to achieve a smooth finish of the joint. Removal of the excess solder is accomplished in solder grinding booths. These booths, which vary from about 100 to 200 feet in length, can accommodate a line of several car bodies, with about 6 feet on either side for the solder grind operators to work. These workers use grinding and finishing tools to remove excess solder and smooth the finish. The first operator in the line will use a relatively coarse abrasive, with successive employees using finer abrasives as the car body passes through the booth (Ex. 475–20). Other related operations in the automotive body shop where there may be some lead exposure are joint preparation, tinning, solder filling, door hanging, stud welding and metal finishing.

(c) *Controls Currently Used*

Industry, in general, has not found the exclusive use of engineering methods practical for controlling airborne lead produced by the use of power tools on solder. To control exposures, the automotive industry has developed exhaust-ventilation booths in which grinders must also wear air-fed helmets known as hoods. The industry has thus combined engineering controls with elaborate personal protective equipment. The Motor Vehicle Manufacturers Association asserted that "the technical state-of-the-art regarding engineering and administrative controls have (sic) been reached." (Ex. 28(36)) Refinements of the process, of course, are still possible. Two companies have reported some success with high velocity/low volume tool ventilation systems. (Ex. 26, p. 5–135)

Spokesmen for the United Auto Workers Union (UAW) suggested that not all feasible engineering controls have been installed. Dr. Mirer, for example, testified that "the essential engineering design feature of the grinding booth is that it is a negative pressure enclosure that seeks to contain the airborne lead, but the design specifications do not include measures to reduce the airborne lead by such measures as a downdraft or a specified capture velocity downwards." (Tr. 5252) Frank Nix, health and safety representative for UAW Local No. 10, stated that, in his plant, particles are thrown out of both ends of the booth and, because the car bodies do not go through a water wash after grinding, subsequent workers on the assembly line are exposed to lead. He also expressed concern about lack of a grinding booth for repair work. (Tr. 5242–47)

(d) *Exposure Levels*

Data submitted as part of variance requests by Chrysler, Ford, and General Motors indicated that lead levels in solder/grind booths were far in excess of the 50 $\mu g/m^3$ standards (Ex. 476–77, 80). Data have not been submitted by other vehicle manufacturers which indicate the levels of exposure in their operations.

Some vehicle manufacturers have been successful in controlling lead exposures during solder grind operations. One manufacturer had lead levels of 231 $\mu g/m^3$ (TWA) prior to installing a solder grind booth. After installation of engineering controls, lead levels were reduced to 17 $\mu g/m^3$ and 40 $\mu g/m^3$ (Ex. 476–16, #TO–3). In another instance, lead levels were 907, 63 and 180 $\mu g/m^3$. After substitution of epoxy resins, lead levels were non-detectable.

(e) *Population Exposed*

The Short Report estimated that between 13,000 and 15,500 employees are potentially exposed to lead in all operations in this industry. (Ex. 22, p. 214) The record does not contain data permitting an estimate to be made of the number of workers exposed to lead from the soldering process or at what levels.

(f) *Additional Controls*

Maintenance of solder grinding booths is of the utmost importance in attempting to achieve exposure levels below 50 $\mu g/m^3$. In addition, work practices must be strictly adhered to and employees must be educated with respect to safe work practices. Vacuuming of surfaces (preferably wet) and maintenance of stringent housekeeping programs will also be necessary for this industry to minimize exposure levels. Worker rotation may be necessary.

(g) *Conclusion: Technological Feasibility*

Dr. Mirer stated that "ultimately, the only solution is engineering the solder out of the car body by redesign of the body or finding a substitute material for filling out the seam." (Tr. 5249) OSHA agrees with this statement. In fact, industry has already reduced the use of solder in automobiles by substituting plastics and epoxies. One line of cars has totally eliminated the use of solder in production. (Ex. 28, p. 5–133)

General Motors and Chrysler (Ex. 476–77) have petitioned for, and received, a permanent variance from the lead and arsenic standards (45 FR 46922, 45 FR 74096). Ford's application is still pending with the Agency. (Ex. 504B) The variances permit the continued use of air-supplied respirators while the automakers engineer the solder out of the auto body. OSHA granted the variances because: (1) Each company has committed itself to eliminate the need for lead solder in the auto body assembly process by redesigning certain exterior solder joints; and (2) during the interim, employee health is being protected by the use of personal protective equipment.

In their applications, three major automobile manufacturers have admitted that it is technologically and economically feasible for them to eliminate the use of lead solder within seven years (See, e.g., Ex. 476–60; Ex. 504B; 504C). No comments have been received from the remaining automobile manufacturers, but there appears to be no reason why they should not similarly be able to eliminate lead solder within seven years. For this reason, OSHA finds that the auto industry has an economically and technologically feasible means of complying with the lead standard.

Accordingly, OSHA has decided to regulate the automobile industry in accordance with the mutually agreed upon variances and has extended the compliance time for this operation to seven years from the effective date. The table in paragraph (e)(1) of the standard has been amended to reflect this decision.

Some firms may choose not to engineer solder out of the auto body design because they can achieve compliance through the application of engineering controls to existing equipment and work practices. The record indicates that in some plants engineering controls are being used to achieve compliance with the 50 $\mu g/m^3$. (Ex. 476–16, #TO–3). In addition, emphasis should be placed on the importance of housekeeping, booth maintenance, work practices, and worker rotation in achieving compliance with the standard.

6. Book Binding

(a) *Summary*

No person could be located who had any knowledge of lead exposure in the book binding process itself. However, it appears that if lead is present, it is in the form of a bonding agent or adhesive.

Contacts were made with the Binding Industries of America, Book Manufacturer's Institute, Library Binding Institute, and the Guild of Book Workers (Ex. 22 p. 259). These organizations indicated that they were not aware of problems with lead exposure resulting from lead use in book binding. If exposures are present they are clearly below the action level.

7. Brick Manufacture

(a) *Uses*

Bricks have many uses in construction and repair work. Tiles are thin brick-like structures used for facings.

(b) *Process Description and Exposure Areas*

Red or yellow bricks or tiles are made from clay. As the clay comes from the pit or storage bins, it is ground in dry pans and carried to a pug mill, where it is tempered with water to give it a stiff, mud-like consistency. From the pug mill it is forced by an auger screw through a steel die to the shape and size desired for the finished ware. The clay issues from the die head as a continuous column. A few feet from the die head, a cutter, generally automatic and consisting of piano wires set at proper distances on a jog (movable frame), cuts the column into the correct lengths. The cut raw ware continues on a belt conveyor, from which it is transferred to a dryer car. From the dryers, the ware is taken to the kiln (usually of the downdraft type) for firing (Ex. 476–5G).

In districts without clay resources, bricks are made from sand, or crushed sandstone mixed with approximately eight percent hydrated lime. Sand and water are added to create a dough which may be shaped in presses. The new bricks are loaded on small trucks and pushed into autoclaves. This operation is called "curing" and corresponds to the firing of the red clay bricks.

Firebricks are the material used in the construction of linings for open-hearth steel furnaces, for iron and other blast furnaces and stoves, for cupolas, calciners, and many other types of chemical engineering apparatus. They are used to line fireboxes and furnaces.

Bricks may be glazed prior to being fired or autoclaved. Glazing compounds are usually applied to facing bricks and tile to provide a smooth coat or finish (Ex. 476–5G). Glazes are usually applied automatically by spraying.

Lead exposure results primarily from the application of lead-based glazes on bricks. There appears however, to be limited industrial use of these glazes (Ex. 476–51, 52, 53). Exposure may also occur at the kiln area when glazed bricks are being fired.

(c) *Controls Currently Used*

The brick manufacturing industry already uses extensive control technology, consisting of mechanical handling and mixing of clays, automated material conveyance systems, automated glazing operations, and ventilation in kiln areas, to control worker exposure to crystalline silica. These controls also reduce lead exposures. (Refractory Institutes submissions to ANPRM for crystalline silica).

(d) *Exposure Levels*

A NIOSH Health Hazard Evaluation at the Colorado Brick Company (Ex. 476–24) found that of 10 lead samples taken at the furnace area, all levels were 0.002 $\mu g/m^3$, far below the 30 $\mu g/m^3$ action level. Data supplied by one manager of a large brick manufacturing facility also indicated that "no exposure exists in the industry." (Ex. 22, p. 259)

(e) *Population Exposed*

No information regarding the number of workers exposed to lead during brick manufacturing was furnished by the industry. Because exposure levels are so low, however, OSHA assumes that only a small percentage of brick workers are exposed in this industry.

(f) *Additional Controls*

No additional controls will be needed to reduce lead levels to below 50 $\mu g/m^3$ in this industry. The data indicate that exposure levels are currently less than 50 $\mu g/m^3$ with existing controls.

(g) *Conclusion: Technological Feasibility*

Based on record information it appears that this industry is already in compliance with the 50 $\mu g/m^3$ limit. Therefore, requiring compliance with the standard within the one year period is technologically feasible.

(h) *Conclusion: Economic Feasibility*

This industry will not have to improve existing ventilation equipment, train employees in proper work practices, enhance existing housekeeping or rotate

workers, and therefore expenditures need not be made by this industry to comply with the lead standard. Therefore, no costs of compliance nor any economic impact will be incurred as a result of this standard.

8. Cable coating

(a) *Uses*

Lead-sheathed cable is used to weigh down underwater cable; eliminate air, water or corrosive substances; as a rodent control; or in cleaning processes where the ends of steel wires are coated prior to being joined. Also, lead soaps may be used as lubricants during the installation of locomotive and power equipment control cables. (Ex. 22, p. 299)

Information regarding this industry was provided by several sources, some of whom requested that their identities remain confidential. One source indicated that the domestic use of lead-jacketed cables has declined. Production is now limited to three companies: Perelli at Union, N.J.; Okonite at Ramsey, N.J.; and Phelps Dodge at Yonkers, N.Y. (Ex. 476–88). Reportedly, lead is still being used to jacket cable for some underwater uses (Ex. 476–88) and for use in insulated high voltage cables (Ex. 476–87). In addition, lead is being used in the process of tinning stranded wires (Ex. 476–89), and is also used by the telecommunications industry (Ex. 475–22). Apparently, at least one company, Keyrite, is involved only in the splicing of lead-jacketed cable (Ex. 476–92).

Although lead-sheathed cable is still manufactured by certain companies, the use of led cable is declining and is being replace by aluminum, which is lighter, cheaper, easier to extrude and less toxic to the environment. Lead, as a jacketing material, is also being replaced by rubber, nylon, polyvinyl chloride, paper cloth and plastics (Ex. 22, p. 299).

(b) *Process Description and Exposure Areas*

Prior to pressing, the wire needed for coating is made by drawing a hot-rolled wire rod through one or more dies to decrease its size and enhance its physical properties. The wire rod is rolled from a single billet and cleaned in an acid bath to remove scale, rust or any protective coatings.

Single-draft or continuous drawing processes may be used. In single draft, a coil is placed on a reel or frame and the end of the rod pointed so that it will enter the die. The end is grasped by tongs on a drawbench and pulled through to appropriate lengths for winding around a drawing block or reel (Ex. 476–5K). In continuous drawing, wire is fed through several dies and drawn blocks are arranged in series. This permits maximum drawing in one operation before annealing is necessary (Ex. 476–5K).

Lead powders are mixed at coating blenders and conveyed to press areas where coatings are pressed into the wire by pressurized steel dies (Ex. 476–5K). The lead-sheathed cable is then passed through a water bath to cool the materials prior to winding (Ex. 22, p. 300).

Tinning is frequently used as a coating prior to bonding or soldering. This process involves the dipping of the workpiece in a molten tin-lead bath. Often, the molten metal is quenched in cold acidified water or warm soapy water so that bonding or soldering may be performed sooner (Ex. 476–4A).

Operations in the lead coating process (which presents the greatest exposure hazard) are the lead press, coating blender, pulverizing and catching operations, mixer operations, and stripping operations at wire drawing machines (Ex. 22, pp. 299–301). Reports concerning the tinning process stated that mixing of the tin-lead solution created the highest lead exposure (Ex. 476–89). No specific exposure problems were associated with lead cable splicing operations (Ex. 476–92).

(c) *Controls Currently Used*

Several companies already maintain very low exposure levels because of their excellent ventilation systems (Ex. 22, p. 301). Another source agreed with this comment, stating that lead exposures are generally well controlled (Ex. 476–92). Dr. Billings of Johns Hopkins University also indicated that simple, straightforward technology is effective to control lead exposures in cable coating. He noted, "If it is an industrial situation, and the control technology will work, (and) there is no reason why it wouldn't; if you are coating a cable, and you have a machine that is doing it, then you can put control technology on a machine" (Tr. 146).

Exposures within the cable coating industry are generally low (Ex. 22, p. 303) and most companies maintain ventilation systems. Ventilation systems on the processes were described as simple, straightforward hood and duct designs, already existing in the plant. One company involved in lead coating operations uses vacuum charge presses in batch operations processing 700-pound charges. Twelve employees are engaged in these operations, which produce 15 percent of all domestic lead-coated cable (Id.).

A second lead-cable coating processor reported that standard hooding and duct ventilation equipment had been on its machines for years. This company has 9 employees with potential lead exposure and produces approximately 33 percent of the domestically manufactured product (Ex. 476–91).

In general, local exhaust ventilation must be used at lead presses, stripping (wire drawing), compounding, and soldering operations (Ex. 22, p. 301). Handling and mixing of lead powders is the most difficult operation to control. The process should be automated and controls such as those described for similar materials handling operations in pesticides, pigments, and plastics and rubber production should be used. Therefore, even in the most difficult to control operation, mixing, feasible engineering controls are available to reduce exposure. (Ex. 476–89).

(d) *Exposure Levels*

Initially, the Short Report (Ex. 22, p. 300) reported exposure levels of 500 $\mu g/m^3$ in the blending rooms, 140 $\mu g/m^3$ in the duct, 37 $\mu g/m^3$ for the catcher, 20 $\mu g/m^3$ in the coiling department, and 30 $\mu g/m^3$ in the mixer. Most companies reported both areas of high level exposure and areas of low exposure (Id.). More recent data, however, indicate that lead levels in some operations are well below the 30 $\mu g/m^3$ action level. In fact, actual breathing zone samples furnished by one company's insurance carrier indicated that lead levels of 3, 5.5 and 13 $\mu g/m^3$ exist (Ex. 476–91). Several companies indicated that these low exposure levels are maintained because of their excellent ventilation systems (Ex. 22, p. 301).

Despite low air-lead levels, several high blood lead levels were reported. In two instances, however, industry sources attributed the few elevated blood lead levels among cable-coating employees to poor personal hygiene rather than elevated airborne concentrations (Ex. 476–89).

(e) *Population Exposed*

The Short Report estimated that 40 cable companies processed lead sheathing and assumed that 105 employees were employed by each company for a total of 4,200 persons potentially exposed to lead (Ex. 22, p. 301). However, more recent data indicate that only three companies make lead sheathing and one of these companies has estimated that only nine of its employees are exposed to lead (Ex. 476–91). Assuming that 9 is an average number, approximately 27 employees would be exposed to lead in this industry. Information is not available indicating how many

employees are exposed above or below 50 $\mu g/m^3$. Additional number of employees may be exposed in tinning operations and during the application of lead soaps as lubricants in the locomotive and power control cable operations. However, the total number of such affected employees is unknown.

(f) *Additional Controls*

Recent data submitted to OSHA indicate that additional engineering controls will not be necessary (Ex. 476–89, 90, 91). Although, improvement and maintenance of existing controls will be needed (Ex. 22, p. 300). Increased housekeeping may also be necessary (Id.). Emphasis should be placed on personal hygiene practices to reduce some elevated blood lead levels which have been attributed to poor hygiene practices rather than high airborne concentrations (Ex. 476–89).

(g) *Conclusion: Technological Feasibility*

This industry appears to be in compliance with the existing 50 $\mu g/m^3$ standard, or nearly so in most cases (Ex. 476–89, 90, 91). The industry has achieved compliance through the appropriate use of ventilation equipment (Ex. 22, p. 301, Ex. 476–91). Firms not yet in compliance can use other measures such as equipment maintenance, housekeeping and worker rotation to attain the PEL within one year. The industry realizes the importance of worker training and has indicated that poor personal hygiene has resulted in elevated blood levels (Ex. 476–89). Through proper training in appropriate work practices, the firms currently having difficulty with elevated blood lead levels should be able to eliminate this problem.

(h) *Costs of Compliance*

Manufacturers of lead-coated, sheathed or jacketed cable have not presented cost estimates for complaince with this standard. Costs of compliance may be incurred as a result of maintenance and housekeeping activities. These costs will be relatively low when compared to use of more costly engineering controls to achieve compliance.

(i) *Industry Profile*

Of all the domestic producers of cable, only three remain in the lead-sheathed or coated cable industry. The three firms, Perelli Company, Okonite, and Phelps-Dodge, are located in close proximity to each other in New York and northern New Jersey. The record also indicates that Japan produces a significant quantity of lead-sheathed cable; however, there is no evidence of domestic competition with Japanese cable or of Japanese exports of this product to the United States. (Ex. 476–88)

The public record shows that power cable, formerly insulated with paper and coated with lead, is now insulated with polyethylene and covered with plastic, other synthetic, or aluminum jackets (Ex. 22, pp. 299–301). These substitutions have occurred in most cable products. Exceptions are underwater cable and other applications requiring mechanical strength (Ex. 22, pp. 299–301) and, possibly high voltage paper-insulated cables (Ex. 476–87). In addition to some performance problems associated with lead cable, there is a strong economic incentive to substitute other coatings because of the high costs associated with repairing lead cable (Ex. 476–87).

(j) *Conclusion: Economic Feasibility*

In summary, the declining use of lead cable, the curent low exposure levels, and the minimal compliance costs have convinced OSHA that the economic impact of the lead standard will be insignificant in this industry. Moreover, in those few markets where the performance of lead cable cannot be matched by subetitutes, the continued demand for these products will permit producers to pass on a significant part of these costs to the purchasers of the cable.

9. Collection and Processing of Lead Scrap:

(a) *Uses*

The lead scrap from radiators, solder, telecommunications parts, cables, sheet lead, batteries, lead bearing dross, etc., are received by waste recyclers which sort, pack and ship the scrap lead to secondary lead smelters. (Tr. 245–246) The recycler may melt the scrap prior to shipment in an effort to handle the scrap more efficiently. (Id.). However, Mr. Ness, of the National Association of Recycling Industries, indicated that waste recyclers usually do not melt scrap. (Ex. 476–103) More than half of the lead scrap recycled in secondary lead smelters consists of used lead-acid batteries (Ex. 476–319, p. 341). This section does not apply to recyclers who process scrap lead as part of a secondary smelting operation. In addition, scrap processing of gold, silver, platinum, copper, zinc, brass and bronze are discussed as secondary smelting processes, in the appropriate sections.

(a) *Battery Breaking*

(i) *Process Description and Exposure Areas.* Battery breaking is accomplished by various methods. (1) Quick acting guillotine devices may be used to cut the battery in half, after which the lead-bearing contents are emptied from the case and the case discarded. (2) Batteries may be ground in a mill and the lead-bearing materials separated from the case through flotation. (3) Batteries may be run over by large tractors, after which the lead-bearing materials are separated from the case. (4) The top of the battery may be cut off, using a hand saw, or slow-moving guillotine shears may be used to separate the top of the battery case from the battery. The contents of the battery are then emptied out and the case discarded (Ex. 476–319). Battery breaking has traditionally been one of the most difficult operations in which to control exposure to lead; exposures to acid mist and lead have been high (Ex. 476–319).

In recent years, polypropylene cases have replaced hard rubber cases. Polypropylene batteries can be charged to the blast furnace in larger quantities than the rubber-cased batteries. Typically, however, these batteries must also be broken so that efficient heating and smelting can occur in the blast furnace. (Ex. 476–319)

The primary exposure hazards resulting from the battery breaking operation are lead particulate and acid mist. Further, acid mist, lead sulfate and lead oxide may become airborne during the process of shearing the battery top, emptying the battery case, and transporting lead materials from the battery breaking building. Lead becomes airborne through two basic mechanisms: (1) The mechanical action of shearing, emptying, etc., which causes leaded mists and particulates to become airborne; or (2) the drying of lead oxide on adjacent surfaces which are then redispersed into the air by the agitation of heavy equipment. (Ex. 476–319).

(ii) *Controls Currently Used.* The chief method of exposure control require that all surfaces be wet to suppress dusts; that enclosed exhausted plastic battery shredders be used; that equipment or operations which would tend to provide energy for pulverization be avoided; and that slow-moving hydraulic shears be used to remove battery tops. The shear, the batteries, the floor, the conveyor belts, and all equipment in the building may be kept wet with automatic and manually applied water sprays. This approach is intended to minimize the secondary introduction of contaminants into the air (Ex. 476–319).

With polypropylene battery shredders, lead mists may be controlled through the use of an enclosed negative-pressure exhaust system coupled with a venturi/cyclone containment separator. The scrubber consists of a primary venturi scrubber, a secondary venturi scrubber, and a cyclone. The polypropylene shredder costs approximately $150,000 in 1974. It is capable of processing 1,000 batteries per hour, and is designed primarily to increase the production rate rather than as an environmental control for lead exposure. (Id.)

These controls are found in some operations. However, many scrap companies do not apply the technology that the more advanced plants have. Some still do not use ventilation at battery saws, dumping stations, or at guillotine knives. (Ex. 28, pp. 5–31). Side terminal batteries and industrial batteries may also be broken manually, with no controls to protect employees.

(iii) *Exposure Levels.* Exposure levels in battery breaking operations have been estimated to average between 50 and 150 $\mu g/m^3$ of lead (Ex. 476–319, p. 347). Battery breaker levels ranged from 107 to 785 $\mu g/m^3$; control room levels were measured at 31 to 86 $\mu g/m^3$, and levels outside the building were 149 to 359 $\mu g/m^3$. (Id.). The Short Report concluded that exposures in battery breaking operations would pose no significant problem if the plates were kept damp (Ex. 22).

(iv) *Population Exposed.* Mr. Ness, of the National Association of Recycling Industries, indicated that there are approximately 7,000 to 8,000 scrap processors (Ex. 476–103), with approximately one to ten workers per plant (Ex. 476–) No data are available which indicate how many workers may be exposed to lead above or below 50 $\mu g/m^3$.

(v) *Additional Controls.* The control data available were taken from one battery breaking operation. Other battery breakers with similar capacities will be required to use a comparable degree of technology, including automated battery shredding or shearing of some sort (Ex. 476–319). In smaller operations, the wetting of all surfaces with manually applied sprays and the use of local exhaust ventilation equipment may be relied upon to reduce exposures.

Of utmost importance is maintaining working surfaces and areas as free of accumulated lead dust as practical. Scrupulous attention to immaculate housekeeping forms an important strategy for compliance regardless of the size of the operation (Ex. 480).

The control technology necessary to achieve a 50 $\mu g/m^3$ standard in battery scrap processing is available. These technologies include containment, suppression using water, use of local exhaust ventilation, and mechanized handling of materials (Tr. 248). In addition, preventive maintenance, work practices and vacuum systems for housekeeping also can be used to reduce the concentrations of airborne lead (Tr. 248). On a large scale, battery breaking, in general, may be replaced by methods discussed in the secondary smelting section of the final standard (Ex. 476–319).

The data also indicates that lead levels outside of the battery breaking plants are in excess of 50 $\mu g/m^3$ (*Id.*). Where possible, compliance with ambient air standards should also compliment control of lead in the occupational setting by prohibiting the re-entry of lead into the work environment.

Benjamin Wake, an OSHA expert witness, concluded that the 50 ug/m^3 level is achievable in most operations, most of the time, using available control options. This concludion seems appropriate (Tr. 249).

(b) *Processing of Lead Scrap from Radiators, Solder, Telecommunications Parts, Cables, Lead Sheet and Lead Bearing Dross*

(i) *Process Description and Exposure Areas.* Scrap may be merely cut, bundled and shipped to secondary smelters or may be melted, cut, bundled and shipped. Processors of scrap fall into two broad categories: melters and non-melters. (Tr. 245–246).

Non-melters may be scrap processors who handled dross and flue dust. They must ship, transfer, load, unload, weigh and store the scrap. The potential for lead exposure occurs at all handling operations and in mechanized processes at transfer points. (Ex. 22, pg. 143)

The Metal Salvage Company of Salt Lake City, Utah, is another type of non-melting scrap processor. It receives scrap lead sheets, radiators, etc., and sorts, chops or cuts, and bales or bundles the lead scrap to be sold to secondary smelters (Ex. 476–102). It does not melt lead scrap, nor does it process dross or flue dust (Ex. 476–102). Further, no battery breaking is done. Melters may be companies such as Keystone Resources, of Mars, Pennsylvania, which, in the past, remelted lead from telecommunications equipment, cables, and boxes. Part of the process involves the stripping of lead from the wires prior to melting (Ex. 476–101).

(ii) *Controls Currently Used.* The technology available and currently being used by these scrap processors includes water sprays to suppress dusts and local exhaust ventilation (Ex. 476–101). Melting pots are provided with exhaust ventilation (Ex. 476–112).

(iii) *Exposure Levels.* Little exposure data was provided to OSHA (Ex. 476–94, 96, 101, 102). Some companies, however, did indicate that controlling lead exposure presents no problem (Ex. 476–101, 102). These firms represent both melters and non-melters. One company stated that they are very close to compliance with the 50 $\mu g/m^3$ standard. (Ex. 476–112)

(iv) *Population Exposed.* No data was available on the number of workers exposed. The number of workers employed by scrap processors appears to range between 6 and 25 (Ex. 476–93–117). Since available exposure data indicates that many of these companies may be nearly in compliance with the standard, OSHA estimates that the number of exposed employees exposed above 50 $\mu g/m^3$ is probably very small.

(v) *Additional Controls.* Based on the data available, controls other than those existing and already applied in some cases, are probably not necessary (Ex. 476–101, 112). The melting scrap processor, that indicated that it was in compliance used both wet suppression and local exhaust ventilation (Ex. 476–101). The processor that used only exhaust ventilation was very nearly in compliance. (Ex. 476–112) The processor that did no melting did not indicate that any controls were necessary and mentioned no compliance problems. (Ex. 476–101). Thus the application of controls already existing within the industry seems sufficient to achieve compliance. (Ex. 476–102, 112).

(c) *Conclusion: Technological Feasibility.* The National Association of Recycling Industries argued extensively regarding the infeasibility of collectors and processors as well as secondary smelters and refiners in achieving compliance with the 50 $\mu g/m^3$ limit. Basically, the Association contends that collectors and processors should have the same 5 to 10 years compliance period as do secondary smelters and refiners. They also stated that "these small collectors and processors cannot comply within one year much less through the use of respirators alone." (Ex. 447–17, 478). In its post-hearing submission, the Association argued that is it "technologically infeasible for these additional scrap collectors and processors to comply with the OSHA lead standard—without the continued use of respirators in most of their operations." (Ex. 488, p. 37)

It appears to OSHA that the industry, apart from alleging that it cannot comply

with the standard has not provided the Agency any consistent evidence as to why compliance is not feasible. OSHA has repeatedly requested this Association to provide data on exposure, on controls being used, and on controls to be implemented. However, all the Agency has received are assertions that it is not technologically or economically feasible for the industry to comply. On the contrary, OSHA concludes that the controls discussed in the general feasibility section of this document could also be used to reduce exposures in the recycling industry.

NARI contends that most scrap handlers only handle lead scrap occasionally and also that they are small businesses that lack the resources to implement costly controls. As a result of these factors, NARI believes OSHA should designate collectors and processors of scrap as part of the construction industry and thus relieve them of the burdens of complying with the standard (Ex. 498, p. 37).

OSHA notes that while the construction industry is not covered by *this* lead standard, it is covered by a lead standard in Part 1926. The attempt to analogize the recycling industry validity in the NARI arguments for concluding that being a small business or handling various kinds of scrap (some of which contain lead, and some of which do not) warrants exemption from the standard. In fact, the intermittent nature of processing leaded scrap could, itself, serve to maintain levels below 50 $\mu g/m^3$.

Also, based on the data submitted to the record, it appears that in processing scrap, other than batteries, the simplest control technologies are being used, including wet suppression and local exhaust ventilation (Ex. 476–101), with substantial success. Many of the companies that supplied data to OSHA were small businesses (less than 10 employees) who indicated that lead exposure posed no problem (Ex. 476–101, 102). Perhaps, this is because they did not envision, nor anticipate, constructing the grossly exaggerated solutions suggested by NARI, but instead used the simplest of controls (water suppression and portable exhaust ventilation) to reduce lead levels.

Melting operations may require somewhat more effort for exposure control. However, as one commenter contended, melting pots are provided with exhaust ventilation (Ex. 476–112). Containment of fugitive emissions from melting pots is a standard operation with many different industries using general ventilation, local ventilation at emission points, negative pressures, maintenance of seals, etc., to achieve compliance with many standards, in addition to lead. These controls are "tried and true" and used by industry as a whole, as noted by Billings and First. (Ex. 487, 104).

Battery breaking operations may require that some firms use extensive controls to achieve compliance with 50 $\mu g/m^3$ if only the use of engineering controls and work practices are employed. Extra efforts may be necessary to encourage use of automated materials handling operations. However, this industry appears to be adding more automated production equipment to increase productivity and this will also achieve worker protection as a benefit. Once again, materials handling controls, are controls that are used by industry as a whole and are generally applicable to all situations (Ex. 487, 104). However, extensive use of engineering controls will only be necessary when very few controls currently exist. Also, the industry should consider the positive effects housekeeping alone would have on dust suppression. In addition, the less costly alternative of worker rotation could also be used effectively to achieve compliance with the 50 $\mu g/m^3$ limit. Those firms not in compliance should look to the implementation of a variety of control techniques and use such interchangeably to achieve compliance.

For manual battery breaking operations done by sole proprietors or small operations, compliance will not be difficult only if proper consideration is given to controls available. For example, portable ventilation units are available and can be purchased very inexpensively. In addition, the less costly alternatives of worker rotation, wet suppression, etc., may be used. It should be noted, however, that as battery breaking operations become more automated, the larger companies which adopt these processes can sell scrap lead at a lower price, which will affect the markets of the small operators.

This industry can comply with a 50 $\mu g/m^3$ standard and, in some cases as previously discussed, has already complied with the standard. The engineering controls used are readily available with the only problems in implementation, in some cases, stemming from the fact that very little in the way of controls was done in the past. Most change in this industry has come about as a result of process productivity (battery breaking) with little thought being given to safety and health related changes. However, OSHA has allowed this industry, as well as others, to use worker rotation to achieve compliance with the 50 $\mu g/m^3$ PEL and, even in the very smallest of operations, hiring one more individual may prove the least costly alternative for complying with the standard.

(d) *Cost of Compliance*

The record contains sparse and unsupported industry estimates of costs of compliance in some scrap facilities. One recycler of lead scrap reported that the installation of a water spray system (costing $2000) and the use of administrative controls were effective in achieving compliance with the standard (Ex. 476–100). Another recycler had a 20 ton remelting operation in which all pots were equipped with exhaust hoods. These hoods were installed at a cost of $15,000 and the firm was reported to be very close to compliance with the standard. With increased attention to personal hygiene, the firm expected to achieve full compliance (Ex. 476–112).

The majority of scrap recyclers are not remelters, therefore, potential compliance costs for most firms will be low. Remelters may require more significant investments in ventilation equipment. A multifaceted approach to reducing air lead levels can result in cost-effective compliance with the lead standard, while simultaneously controlling exposures to other toxic substances present in scrap.

(e) *Industry Profile*

There are an estimated 7428 establishments in SIC 5093, Scrap and Waste Materials (Ex. 476–109). These establishments are primarily engaged in collecting, cleaning, breaking, sorting, chopping, baling, and distributing all types of scrap for delivery to remelters and secondary smelters (Ex. 476–109). The public record indicates that approximately 4000 to 5000 of these establishments employ a total of 40,000 workers to handle lead scrap (Tr. 246). These scrap processors, however, do not ordinarily melt lead (Ex. 476–109) and, in fact, it is estimated that only 200 of these establishments may perform remelting operations (Tr. 246).

There is evidence to support positive prospects for the scrap industry in the future. There is a continuing national emphasis on the recovery and reuse of natural resources (Ex. 476–109). In addition, current deposits of lead-bearing ores are diminishing (Ex. 476–109).

Firms within the industry are widely distributed across the nation with concentrations in California, New York, Pennsylvania, Illinois, and Texas (Ex. 476–109). Because of the high cost of transportation, it is unlikely that

potential increases in price as a result of compliance would cause major changes in market structure or increased concentration. During ebbs in the business cycle, scrap dealers may be forced to cut prices if their customers, also complying with the lead standard, attempt to shift costs back to them. However, on balance the potential economic impact on this industry should be negligible, since the firms that enage in remelting operations are generally the larger firms that will be able to afford any required additional capital investment. The smaller firms do not ordinarily melt lead and, therefore, will face few new compliance costs.

10. Copper Smelting

(a) *Primary Copper Smelting*

(i) *Uses.* The largest use of copper is in electrical equipment and supplies. Electrical instruments and test equipment, power distribution systems including transformers, switchgears, and electrical lighting and wiring equipment require large quantities of copper. Copper also has widespread uses in the construction industry, in the production of nonelectrical industrial machinery, and in the transportation industry (Ex. 476–123).

There are 15 primary copper smelters in the U.S. Seven of them are located in Arizona. Most of the firms engaged in the smelting of copper ore also engaged in the mining, beneficiation, refining and fabrication of copper products and in the processing of other non-ferrous metals such as arsenic, lead, zinc, gold, cadmium, etc. (Ex. 476–119).

(ii) *Process Description and Exposure Area.* Pyrometallurgical smelting methods are used extensively in the United States to produce copper from sulfide ores. These ores usually contain less than one percent copper when mined and, therefore, must be concentrated before being transported to the smelter. This is accomplished by crushing, grinding, and flotation operations at the mine site. The sulfur content of the concentrate is generally 25 percent and the water content 10 percent. Some concentrates also contain boron, antimony, precious metals and other heavy metals (Ex. 476–118).

The operations for pyrometallurgical copper smelters in the United States include roasting, reverberatory or electric furnace smelting, and conversion to produce blister copper from concentrate. The remaining impurities are usually removed by fire refining and electrolytic refining. About half of the smelters in the United States do not use the roasting step, but instead feed wet or "green" charge directly to the smelting furnace. The roasted product, called calcine, serves as a dried and preheated charge for the smelting furnace. Either multiple-hearth or fluidized-bed roaster furnaces are used for roasting copper concentrate (Ex. 476–118).

After roasting, the copper concentrate is smelted. In this process, hot calcines from the roaster, or raw, unroasted concentrate are fused with limestone and siliceous flux in reverberatory or electric-arc furnaces to produce copper matte. Slag floats on top of the molten bath and is removed continuously. Copper matte remains in the furnace until poured (Ex. 476–119).

The final step in the production of blister copper is converting. Converting is normally performed in a Pierce-Smith shell. An opening in one side of the converter functions as a mouth through which molten matte, siliceous flux, and scrap copper are charged to the converter and gaseous products are vented. Air or oxygen-enriched air is blown through the metal to form a slag, which floats on the surface, and pure Cu_{2}, which is collected on the bottom of the coverter. After removal of the slag, a renewed air blast oxidizes the sulfur into SO_2 leaving blister copper in the converter (Ex. 476–118).

Blister copper usually contains from 98.5 to 99.5 percent pure copper. Impurities may include gold, silver, antimony, arsenic, bismuth, iron, lead, nickel, selenium, sulfur, tellurium and zinc. To further purify the blister copper, fire refining and electrolytic refining are used. In fire refining, air is blown through the metal to oxidize remaining impurities.

The principal sources of lead exposure are the solid particulate materials in handling circuits and the vaporized metal oxide fumes from pyrometallurgical processes (Ex. 481). Materials handling exposures result from the handling of the ores and the calcine, matte, etc. Pyrometallurgical emissions result from roasters, reverberatory furnaces, converters, and other processes associated with the use of these furnaces.

The principal source of fugitive emissions from roasters is the process of removing hot solid calcine from the roaster. Both lead dust and residual sulfur dioxide may be released. When the process also involves dumping the calcine into cars for transfer to the reverberatory furnace, as is the case with some multiple-hearth roasters, the sudden dissipation of kinetic energy as the calcine strikes the car causes the generation of a puff of lead dust and trapped gases. Emissions may also result from leaks in the roaster (Ex. 476–118).

Reverberatory furnaces produce molten matte from either "green" charge or calcine. Charging and tapping of the furnace are carried out intermittently while melting continues. Although the furnace operates at slightly less than atmospheric pressure, the charging operation is conducted through openings in the furnace from which some lead dust or fume and sulfur dioxide may escape (Ex. 476–118).

Molten matte is removed from the furnace through tap holes which are normally plugged. During tapping, the holes are opened and the matte flows through channels called launders to ladles. Most furnaces have two or three matte tap holes on each side. Because the matte is still close to furnace temperature as it is removed, the remaining sulfur (in the form of sulfides) can continue to oxidize, outside of the furnace, for a time, forming sulfur dioxide. Oxides of volatile metals may be emitted also as materials are transported to the converters (Ex. 476–118). The less dense slag that floats on top of the matte in the reverberatory furnace is also removed periodically through slag tap holes and launders. Some emissions result from this operation but they are generally not as intense as those from the matte (Ex. 476–118).

(iii) *Controls Currently Used.* At the materials handling stage, jaw crushers are used to crush and grind the ore which is then sent to bedding bins. Typical controls include: the mechanical conveyance of ores to the jaw crusher; containment of the dust through the elimination (by redesign or use of dead drops) of long material drops; belt wipes; conveyor curtains and skirts; ventilation hoods at materials handling points; complete enclosure of conveyors; liquid sprays to suppress dusts; vacuuming (wet) of spilled materials; and the use of clean air pulpits for workers operating mechanical conveying systems (Ex. 481).

Pyrometallurgical processes may be controlled by using various ventilation control schemes, depending upon the equipment used in the process and the emission sources.

Reverberatory furnaces are constructed of refractory bricks. Because of the need to allow room for thermal expansion, it is difficult to design a leakproof furnace. Leaks in reverberatory furnaces may be sealed by the spraying of a slurried refractory (Ex. 476–118).

Fugitive emissions associated with copper converting generally result from ineffective capture of fumes and sulfur

dioxide during certain phases of the converter operation. During blowing, the exhaust hood placed over each converter generally fits rather tightly; thus, fugitive emissions are minimal. The fit is not perfect, however, as there must be a gap between the hood and the opening to prevent freezing of the hood to the converter as a consequence of molten copper splashes. A chain-curtain closure is sometimes used at the edge of the hood to minimize this gap while still providing durability and flexibility. A metal skirt is sometimes used to improve the seal and minimize deterioration of the converter. In a properly designed system it is possible to collect nearly all of the emissions during the "roll-in" and blowing phases (Ex. 476–118).

Automatic damper controls are generally used to prevent excess dilution air from being drawn into the system, while at the same time maintaining effective fume collection from most phases of converter operation. If the damper control point is improperly set, or if the charge level in the converter is higher than normal, fugitive emissions can result (Ex. 476–118).

When the converter is rolled out for the pouring of either slag or blister copper, the hood draft is usually shut off by dampers to maintain a higher concentration of sulfur dioxide in gases that are fed to the by-product acid plant (if such a plant is provided). When the dampers are closed the converter emissions are not captured and discharged directly into the atmosphere. This operation can amount to 3 to 6 hours out of every 24-hour period for each converter (Ex. 476–118).

Another minor source of fugitive lead emissions is fire refining. The residual sulfur content of blister copper is only about 2 percent and only small amounts of impurities remain. Therefore, when final blowing is conducted the potential for lead emissions is small. These furnaces are, therefore, not hooded (Ex. 476–118).

(iv) *Exposure Levels.* A great deal of exposure data has been compiled for the copper smelting industry. Industry-wide area sampling averages of airborne lead concentrations indicate: 70 $\mu g/m^3$ at reverberatory furnace charging deck areas; 60 $\mu g/m^3$ around reverberatory furnace floors; 50 $\mu g/m^3$ in converter aisles; and 10 $\mu g/m^3$ in the anode casting areas. Personal breathing zone sampling showed lead levels of: 70 $\mu g/m^3$ on the charging decks; 70 $\mu g/m^3$ on the reverberator furnace floors, 30 $\mu g/m^3$ in the converter aisles; and 10 $\mu g/m^3$ in the anode casting areas (Ex. 461).

While these data suggests that compliance with 50 $\mu g/m^3$ has almost been achieved in primary copper smelters, it should be emphasized that these figures represent averages and do not reflect conditions in any one smelter at any given time (Ex. 461). They are very useful, however, for determining the magnitude of exposures.

However, the specific industry data is consistent with these industry-wide averages. At the Tacoma smelter (Ex. 461) forty-two samples were taken on workers in the roaster area with the low value being non-detectable, the high value being 180 $\mu g/m^3$, and the average 42 $\mu g/m^3$. Twenty-nine samples were taken in the reverberatory furnace area, with the low value being non-detectable, the high value 110 $\mu g/m^3$, and the average 12 $\mu g/m^3$. Thirty-two samples were taken in the converter area (excluding flue dust pullers), with a low value of 10 $\mu g/m^3$, a high value of 200 $\mu g/m^3$, and an average of 82 $\mu g/m^3$. Exposures for flue dust pullers were quite high, four samples ranged from 280 $\mu g/m^3$ to 4060 $\mu g/m^3$, and averaged 2180 $\mu g/m^3$. In an earlier survey at the Tacoma smelter in July 1972 (Exhibit 461–10), nine area samples were taken on the charge deck of the reverberatory furnace with a low value of 10 $\mu g/m^3$, a high of 140 $\mu g/m^3$, and an average of 63 $\mu g/m^3$. The concentrate was 1.3 percent lead, which is relatively high for a copper smelter concentrate.

ASARCO's El Paso plant was surveyed by NIOSH in April 1972 (Ex. 461), at which time area and personal samples were taken in the copper smelter (which also includes a zinc fuming operation). Twenty-two areas samples were taken ranging from less than 10, to 290 $\mu g/m^3$, and averaging 99 $\mu g/m^3$. Samples were taken in cranes, on the converter skimming platform, in the reverberatory furnace area and the zinc-fuming area also. The 10 personal samples ranged from 10 to 190 $\mu g/m^3$ and averaged 61 $\mu g/m^3$. At the time, the smelter building was relatively open. This building has since been enclosed to comply with EPA standards. An OSHA survey of this facility in 1977 (Ex. 461) indicated that lead exposures, however, remained relatively low. Two beltmen in the roaster area had exposures of less than 10 $\mu g/m^3$ and 4 personal samples taken in the anode furnace area showed levels of 24, 26, 28, and 41 $\mu g/m^3$.

A survey conducted at Kennecott Copper Company's McGill, Nevada, facility in August 1972 (Ex. 461–3) consisted of one sample on the reverb furnace charge deck of 20 $\mu g/m^3$. The green feed to the reverberatory furnace contained 0.03 percent lead. Kennecott's Hayden, Arizona, plant was surveyed in March 1973 (Ex. 461–6) and 9 area samples, taken on the reverb charge floor, ranged from less than 10 to 20 $\mu g/m^3$. The concentrate contained 0.06 percent lead.

A survey of Kennecott's Hurley, New Mexico, smelter consisted of 5 area samples from the reverb charge deck which averaged 4 $\mu g/m^3$ (Ex. 461). The range was less than 2 to 10 $\mu g/m^3$. The concentrate contained 0.016 percent lead.

Kennecott has rebuilt its Garfield smelter near Salt Lake City and instead of using reverberatory furnaces, it is now using three modified Noranda continuous smelting furnaces. During a NIOSH Health Hazard Evaluation conducted in December 1979 (Ex. 461–22), 24 personal samples were taken with lead values ranging from less than 5 to 290 $\mu g/m^3$ and averaging 64 $\mu g/m^3$. Thirteen of the samples (54 percent) were below 50 $\mu g/m^3$.

Two area samples taken on the reverb charge deck at the Phelps-Dodge smelter at Ajo, Arizona, in March 1972 (Ex. 461–4), indicated that lead levels were less than 0.001 $\mu g/m^3$. The concentrate contained 0.10 percent lead. The Phelps-Dodge smelter at Douglas, Arizona, was studied a year later (Ex. 461–7) and 11 area samples taken from around the reverberatory furnace charge floor averaged 11 $\mu g/m^3$. The range of values was from less than 10 to 320 $\mu g/m^3$.

Inspiration Consolidated Copper Company's smelter at Inspiration, Arizona, was surveyed by NIOSH in 1973 (Ex. 461–11). All of the 36 area samples taken from around the reverb charge deck indicated lead levels of less than 10 $\mu g/m^3$. The concentrate contained 0.06 percent lead. The reverberatory furnace at Inspiration has recently been replaced with an electric furnace.

Extensive surveys were also conducted at White Pine, Michigan, in 1972 (Ex. 461, 8 and 9). Twenty-seven area samples from the reverb furnace, converter furnace, fire refining, casting, holding furnace, and waste heat boiler areas averaged only 3.0 $\mu g/m^3$ (the high value was 13 $\mu g/m^3$). Personal samples which obtained for the reverb furnace operator, tripper man, flue dust man, conveyor belt operator, laborer, tapper, tapper helper, brick mason, converter puncher, craneman, refining furnace operator, rappler, and research technician job titles averaged 2.8 $\mu g/m^3$. Estimated time-weighted-average exposures ranged from non-detectable to 50 $\mu g/m^3$. This upper value is inconsistent with the personal sampling data, because the concentrate contained

only 0.005 percent lead at the time of the survey. (Ex. 481).

The above data, as Dr. Wagner stated, as OSHA consultant, indicates that "there is considerable variability in airborne lead concentrations among individual smelters and among areas within individual smelters." (Ex. 481).

OSHA estimates that the number of workers potentially exposed includes all 5,000 workers who are directly involved in copper smelting activities. (Ex. 481).

(vi) *Additional Controls.* According to information contained in the public record:

> Some smelters are already substantially in compliance with the OSHA standard of 50 $\mu g/m^3$; others would only have to concentrate their engineering efforts in certain areas or on certain processes. A few smelters would have to make a major effort throughout the entire operation and even consider making major process changes. The variabilty in concentrations is a function of the amount of lead in the raw materials and feed, the type of equipment and process, the adequacy of existing controls, and the maintenance and operation of controls (Ex. 481).

The technology needed to comply with the lead standard in the smelting industry generally was discussed at length in the gold, silver, and platinum section. This technology is currently available and its application to copper smelting requires little innovation in order for existing controls to be adopted to existing equipment. (Ex. 481).

In addition, the types of controls necessary for lead are already in place in many smelters, needing only to be upgraded, modified, and/or maintained (Ex. 481). Quite often, airborne lead concentrations can be reduced by properly fitting the components of the control system or by improving enclosures so that emissions are captured more efficiently. In some instances, otherwise adequately designed systems lack sufficient capture velocity to provide proper ventilation under changing conditions. (Ex. 481).

Maintenance and proper operation of control systems is a major problem throughout the industry (Ex. 481). Housekeeping is also usually poor; certainly part of the airborne lead comes from dust and materials found lying around throughout many smelters (Ex. 481). Many of the witnesses felt that if increased emphasis should be placed on control system design, maintenance and operation, and on good housekeeping, to lower the concentrations of airborne lead (Ex. 481 and 487).

The time required for each smelter to come into compliance will vary with individual situations (Ex. 481). Some smelters are already in compliance, some have only a few areas which need additional control, and some need only to upgrade existing systems, initiate improved maintenance and housekeeping programs, and enforce their better operating procedures (Ex. 481). In general, smelters appear to be able to come substantially into compliance within one year. (See 43 FR 54477–78). A few smelters may have problems achieving compliance in all operations within a year, but can make substantial improvements in air levels and will have many areas in compliance (Ex. 481). Some smelters may have to consider expensive, long-term changes in their processes in order to come fully into compliance (Ex. 481). Where the process cannot be entirely controlled or enclosed, the worker can be provided a clean air control room in which to work or a clean air pulpit in which to stay during periods when only observation is required. Many jobs in the copper industry, such as matte tapping, slag skimming, and charge deck work, are performed intermittently and, if clean air pulpits were provided, the time-weighted-average exposures of these workers would be significantly reduced (Ex. 481).

(vii) *Conclusion: Technological Feasibility.* ASARCO submitted comments during the hearing stating that the technology for controlling lead exposure in copper smelters does not exist (Ex. 475–28). The company's position was premised on the notion that processes invoved in the primary production of copper and zinc are similar to those involved in primary lead production, and that similar technology is necessary to control exposure to lead in zinc and copper operations. The company also argued that primary lead smelters were given extended periods to comply because innovation was necessary (Ex. 475–28) and that allowing copper smelters one year to comply was inconsistent with the number of years allowed for primary lead smelting (10 years) and secondary lead smelting (5 years).

While there may be similarities in processes, the underlying problems associated with control of lead exposure depend on the percentage of lead in the ore. Dr. Wagner testified that this percentage was extremely variable and that copper smelters smelt ore ranging from less than .01 to 1.3 percent (Ex. 481). Smelters smelting ores containing a higher percentage of lead may have more difficulty in controlling lead exposures and may require additional time to come into compliance than those using ores with lead concentrations at the lower end of the range. (Tr. 353–354). However, the comparison to lead smelting is not accurate. Primary and secondary lead smelters process sulfide ores with lead content far greater than 1 percent and, therefore, have much higher lead exposures. The technology necessary to reduce these exposures is not the same in that it requires a much greater degree of control which involves application of engineering controls and major process and equipment modifications. As stated above, upgrading and modifying existing controls is all that is required for most copper smelters in the United States, and one year is an appropriate time limit for these smelters.

Many of these copper smelters must also comply with the OSHA arsenic standard (29 CFR 1910.1018). The control technology necessary to comply with that standard will also control lead concentratone to lower levels (Ex. 481).

However, in a minority of plants smelters may have peculiarities, aged plants are in need of extensive renovation, or lead in ore concentrations are particularly high, compliance with the standard within one year may be difficult. Individual firms' claims of infeasibility in one year can be considered through compliance or variance mechanisms between the company and OSHA (43 FR 52991).

(b) *Secondary Copper Smelting*

(i) *Uses.* The secondary copper industry processes scrap metals for the recovery of copper. Products include refined copper or copper alloys in forms such as ingots, wirebar, anodes, and shot. Copper alloys are combinations of copper with other materials, typically, tin, zinc and lead. For special applications, combinations may include such metals as cobalt, manganese, iron, nickel, cadmium and beryllium as well as nonmetals, such as arsenic and silicon (Ex. 476, 118).

(ii) *Process Description and Exposure Areas.* The principal processes involved in copper recovery are scrap metal pretreatment and smelting. Pretreatment includes the cleaning and concentration processes necessary to prepare the material for the smelting furnace. Smelting involves heating and treating of the scrap to achieve separation and purification of special metals (Ex. 476–118).

The feed material used in the recovery processes can be any metallic scrap containing a useful amount of copper, bronze (copper and tin), or brass (copper and zinc). Traditional forms are punchings; turnings and borings; defective or surplus goods; metallurgical residues such as slags, skimmings and drosses; and obsolete, worn out, or

damaged articles, including automobile radiators, pipe, wire, bushings and bearings (Ex. 476–118).

The type and quality of the feed material determine the processes the smelter will use. Due to the large variety of possible feed materials available, the method of operation varies greatly between plants. Generally, a secondary copper facility deals with less pure raw materials and produces a more refined product, whereas brass and bronze alloys processors take cleaner scrap and perform less purification and refining (Ex. 476–118).

Pretreatment of the feed material can be accomplished using several different procedures, either separately or in concert. Feed scrap is concentrated by manual and mechanical methods such as sorting, stripping, shredding, and magnetic separation. Feed scrap is sometimes briquetted in a hydraulic press. Pyrometallurgical pretreatment may include sweating, burning of insulation (especially from wire scrap), and drying (burning off oil and volatiles) in rotary kilns. Hydrometallurgical methods include flotation and leaching with chemical recovery (Ex. 476–118).

In smelting, low-grade scrap is melted in a cupola furnace, producing "black copper" and slag; these are often separated in a reverberatory furnace from which the melt is transferred to a converter or electric furnace to produce "blister" copper.

Blister copper may be poured to produce shot or castings, but is often further refined electrolytically or by fire refining. The fire-refining process is essentially the same as that described in the primary copper smelting industry and includes: (1) Charging; (2) melting in an oxidizing atmosphere; (3) skimming the slag; (4) blowing with air or oxygen; (5) adding fluxes; (6) "poling" or otherwise providing a reducing atmosphere; (7) reskimming and (8) pouring (Ex. 476–118).

To produce bronze or brass, rather than copper, an alloying operation is required. Clean, selected bronze and brass scrap is charged to a melting furnace with alloys to bring the resulting mixture to the desired final composition. Fluxes are added to remove impurities and to protect the melt against oxidation by air. Air or oxygen may be blown through the melt to adjust the composition by oxidizing excess zinc (Ex. 476–118).

The final step is casting of the alloy or refined metal into a desired form. This form may be shot, wirebar, anodes, cathodes, ingots, or other cast shapes. As in the case of primary smelters, exposure to lead dust can be expected from materials handling, furnace charging, and uncaptured or uncontrolled furnace emissions (Ex 476–118).

(iii) *Controls Currently Used.* The technology to control lead in the secondary copper industry is the same as that required in other smelter operations; it requires mechanized methods of handling scrap and installation of additional or improved systems for collecting emissions (see discussion in copper smelting).

The Southwire Company submitted data indicating that its anticipated scheme for achieving compliance with 50 $\mu g/m^3$ requires the use of available controls, such as hooding of the Maerz charging area and blast furnaces; adding more duct work; hooding the converter charge and blast furnace tops and adding six baghouse additions, two fans, a 60-meter stack and a sample furnace exhaust (Ex. 475–32).

(iv) *Exposure Levels.* The Lead Industries Association indicated that exposures in smelter departments, casting operations, furnace areas, sampling departments, and maintenance operations are consistently in excess of 200 $\mu g/m^3$ (Ex. 475–27). It is not clear whether these levels represent workers' time-weighted averages, however. The Southwire Co. has indicated that exposures in its plants are above the 50 $\mu g/m^3$ limit, but has also indicated that past exposures were higher before engineering controls were installed. Controls are being implemented currently which are intended to reduce levels to below 50 $\mu g/m^3$ (Ex. 475–32). NIOSH, in its report on the secondary nonferrous smelting industry (Ex. 476–133) found that secondary brass and bronze smelters have lead levels as high as 200, 320, and 380 $\mu g/m^3$ at the tapping/pouring hood and 220, 320 and 490 $\mu g/m^3$ at the reverberatory furnace charging hood (Ex. 476–133). However, exposure levels are a function of the percentage of lead in the brass or bronze, and lead concentrations were not available in this report to make comparisons. The controls at these secondary smelters discussed by NIOSH were not anywhere near the "state of art" as are those found at the Southwire Corporation's smelter.

(v) *Population Exposed.* No data has been submitted which indicate how many workers may be exposed to lead as a result of secondary copper operations.

(vi) *Additional Controls.* The engineering controls necessary to comply with lead exposure limits in secondary copper smelters have been described previously and are already commercially available. Southwire, in fact, is using many of these technologies in its plant and anticipates achieving compliance with the standard (Ex. 475–32). Improved housekeeping and worker rotation may also be necessary in some plants.

(vii) *Conclusion: Technological Feasibility.* The Lead Industries Association has indicated that engineering controls are theoretically feasible to achieve compliance with 50 ug/m^3 in this industry, but states that it does not know whether implementing such controls will, in fact, achieve compliance (Ex. 476–32). However, primary lead smelters, where the lead content of the raw material is much higher, have been shown to have the technology necessary to comply. Therefore, if primary lead smelters, with higher concentrations of lead, can comply, secondary copper smelters, using materials containing less lead, should be able to use similar, but much less extensive controls to achieve compliance. Further, one must consider that as not all scrap copper contains lead, the intermittent nature of exposure in many operations makes worker rotation a viable control alternative.

The National Association of Recycling Industries (NARI), in its post-hearing comments, discussed extensively the lead exposure problems of the Southwire Corporation. NARI has portrayed the Southwire facility as one of the most modern, technologically advanced secondary copper smelters and, despite Southwire's expectations that compliance with the PEL will be achieved, NARI has stated that there are no guarantees that implementation of the best engineering controls will meet a 100 $\mu g/m^3$, much less a 50 $\mu g/m^3$ standard (Ex. 498).

NARI, however, ignores two things. It does not consider the use of housekeeping, effective maintenance and worker rotation in complying with a 50 $\mu g/m^3$ standard as, in all cases, only the use of engineering controls is discussed as the method to achieve compliance (Ex. 498, pp. 61, 62). The use of less costly alternatives has not been considered. These work practices and administrative controls would be especially appropriate in this operation because of the varying and intermittent nature of exposure. OSHA has determined that compliance is possible (Slip op. at 189).

(c) *Economic Feasibility: Primary and Secondary Copper Smelting*

(i) *Cost of Compliance.* ASARCO has submitted data on the cost of compliance with the lead standard in primary copper smelters (Ex. 475–33). The following compliance expenditures have been estimated for ASARCO's four

facilities: Hayden, Arizona, $16,628,000; Tacoma, Washington $20,941,000; Amarillo, Texas, $667,000; and El Paso, Texas, $18,504,500. These calculations are based on the cubic feet of air per minute necessary to ventilate specific areas of the plants and on the costs of vacuum systems. Costs of associated devices designed and installed to prevent the emission of pollutants into the general atmosphere also appear to be included in these estimates. For instance, wet scrubbers and wet scrubber gas cleaning systems, costing a total of $1,540,000, have been included in three of the estimates. Thus, ASARCO claims that total expenditures of $56,740,000 would be required and also claims that this amount would not guarantee compliance with the standard.

Three secondary copper smelters—Southwire Copper, AMAX, and ASARCO—have submitted cost estimates to OSHA (Ex. 475–32, Ex. 475–31, and Ex. 475–28). In addition, Lead Industry Associates (LIA) has expressed concern as to continued viability of one unidentified secondary copper producer. LIA contends that the smelter is not currently in compliance and is confronted with technological difficulties that will require "several million dollars" to correct. However, LIA did not submit the specific data that OSHA requires to evaluate this particular situation (Ex. 475–27).

Southwire plans expenditures of $1.1 million in capital costs and $80,000 in annual operating costs to control lead emissions. These figures combine both EPA and OSHA-related expenditures. For example, six baghouse additions and a 60-meter stack are included in the estimate. The submission divides the $1.1 million figure into $902,000 for air quality and $198,000 for blast furnace charge fume control (Ex. 475–32). The Cadre Report prepared for Southwire disaggregates, in detail, the costs of ventilation approaches to fume control to be attributed to OSHA requirements. These costs total $244,094 (not including installation) (Ex. 475–32A). Southwire cautions that these expenditures even with careful planning do not guarantee full compliance with the 50 $\mu g/m^3$ standard.

AMAX submitted costs of compliance for its subsidiary, United States Metals Refinery. Cost estimates are broken out by areas in the plant. However, the types of equipment to be installed are not specified (Ex. 475–31). AMAX predicts that compliance would not be guaranteed by USMR's expenditure of $13,240,000 in capital costs and $5,014,000 in annual costs (Ex. 490). The components of annual costs include maintenance, power, and capital costs annualized at 20 percent.

ASARCO submitted costs of compliance for a secondary copper facility in Houston, Texas. The firm estimated that a vacuum system would cost $53,000 and that ventilation would cost $70,200 for a total cost of $123,200 (Ex. 475–28).

The record shows that estimates of compliance costs for secondary copper smelters vary significantly from $123,200 to over $12 million, and estimates of costs for ASARCO's primary facilities vary from $667,000 to $20,941,000. Such wide variations can be explained by differences among firms in costing methodologies, and perhaps more importantly, by differences in the initial levels of workplace exposures for primary and secondary producers. In other words, those firms attempting to reduce levels from conditions in excess of the previous lead standard of 200 $\mu g/m^3$ may be facing greater absolute expenditures than those firms that have already invested in control technology. However, based on expenditures per unit of abatement, firms with higher lead levels may, in fact, be spending less than firms that have made previous efforts to reduce lead levels.

Three major omissions in the calculation of costs by industry bias these estimates of compliance costs upward. First, industry estimates have not always reflected a cost-effective method for reducing lead levels. For example, the submissions tend to reflect only the mechanical ventilation approach to the control of lead when, in fact, housekeeping, work practices, and administrative controls in combination with ventilation would be both less expensive and more effective in achieving compliance (Ex. 481). Therefore, OSHA contends that the proper approach to reducing exposure levels is through an effective, multi-faceted approach to the problem. In this way, industry can minimize the resources spent on achieving a given level of lead in the workplace. Second, industry estimates do not reflect the value obtained by the firm from the reclamation of copper and other metals that are captured by control systems. This financial gain will to some extent offset the costs of compliance. However, industry has not presented data indicating the magnitude of the offset. Third, primary and secondary copper smelters have simultaneous legal obligations to comply with other regulations, such as the arsenic regulation. To the extent that actions taken to reduce arsenic levels also reduce lead levels, these expenditures are not attributable solely to the lead standard. In addition, costs attributable to EPA regulations are sometimes included in the estimates. Thus, doublecounting has substantially inflated many industry estimates.

Considering the above factors, OSHA concludes that Wagner's estimates of the total costs for *all* potentially affected copper smelters are reasonable counterestimates to the compliance costs as estimated by industry. Wagner has estimated that costs will not exceed $6 million and might be as low as $1.3 million (Ex. 481). However, because Wagner did not have definitive data on the compliance status of all firms in the industry, he placed caveats on this estimate. Wagner stated that he could have underestimated the costs by as much as 200 percent. Assuming an underestimate of this magnitude, the upper bound on capital costs for the primary copper producers would be only $18 million. If the costs of compliance for primary producers are the same as the costs for secondary producers, OSHA calculates an upper bound of $30 million in compliance costs for secondary copper producers. Thus, total capital costs in the copper industry will be at most $48 million. Annualized over the useful life of the equipment, primary copper producers will incur $3.2 million in total annual costs, and secondary producers will incur total annual costs of $5.3 million.

(ii) *Industry Profile.* The primary copper industry consists of establishments engaged in smelting copper from ore and in refining copper by electrolytic or other processes. Total value of shipments amounted to $3.9 billion in 1977, an increase of 41 percent from 1972 (Ex. 476–20). Historical statistics show that, since 1967, the number of companies in the industry declined from 15 firms, operating 32 establishments, to 11 firms, with 31 establishments in 1972, and 9 firms, with 27 establishments in 1977.

More recent Bureau of Mines data list the primary producers ranked in order of output as: (1) Phelps Dodge, (2) Kennecott, (3) ASARCO, (4) Magma Copper, (5) Copper Range, (6) Inspiration Consolidated Copper, and (7) Cities Services. These companies operated smelters and/or refineries. Several domestic producers, through subsidiaries or stock holdings, have interests in foreign copper-producing facilities in Australia, Canada, Peru, Mexico, South Africa, and Namibia (Ex. 476–122).

Prior to the exit of Anaconda from the market in October, 1980, the top three companies produced about 60 percent of the total industry output (Ex. 476–119).

The net profit margins in 1979 for Phelps-Dodge, Kennecott, and ASARCO were 8.7 percent, 5.4 percent, and 15 percent, respectively, with estimated net profit margins in 1982 through 1984 of 11 percent, 7.2 percent, and 15.9 percent (Ex. 476–130, 476–131, 476–132). Kennecott's lower profits were attributed to its relatively high and rising cost structure, which results from "ancient and outdated equipment" (Ex. 476–131).

Although the market shares and profitability of the top three producers indicate that the domestic market is moderately concentrated, the copper market is internationally competitive. Hence, the ability of the primary producers, regardless of individual market share, to raise prices is limited. Although it appears that the domestic market is not currently threatened by foreign copper imports, forward shifting of costs to customers is to some extent constrained. Producers largely eliminated foreign price advantages by basing domestic prices on the New York Commodity Exchange (COMEX) in 1978 (Ex. 476–26). Proximity to markets, a stable political situation, the existence of an advanced infrastructure, and scale of operations should maintain a viable domestic copper industry even in the face of a potentially worsened position vis-a-vis foreign competition (Ex. 476–122).

The ability to pass costs on is also limited by potential substitutes for copper. For instance, in electrical applications, aluminum, cryogenic power transmission techniques, microminiaturization circuitry, and use of satellites may impede the growth in demand for copper. In construction, the trend toward multiple housing units (which reduces the materials needed per unit), and the substitution of plastic pipes may curtail the demand for copper. Uses of copper in transportation vehicles is expected to continue to decline. In 1975, 34 pounds of copper per automobile were used. In 1979, this was reduced to 29 pounds. The use of only 25 pounds of copper per automobile is forecast for 1985 (Ex. 476–33). However, growth in armaments production may increase the demand for copper. On balance, total U.S. demand for copper is forecast to rise by the year 2000 to 5.1 million tons, representing an annual growth rate of 3.6 percent (Ex. 476–122). This demand is expected to strain supply sources as growth in demand for electrical equipment, computers, and underground power distribution systems rises.

Because the demand for copper parallels the demand for durable goods, the market is volatile and quite sensitive to national economic business cycles. The demand for copper also increases sharply with increased military activity because of its use in ammunition and military equipment. Typically, the industry expands to meet military demand and suffers from overcapacity during times of peace (Ex. 476–118).

In 1978, the International Trade Commission recommended that an import quota be imposed through 1982 to protect domestic copper producers. However, the petition was rejected, largely because the action carried an unacceptable risk of accelerating inflation, but also because the copper market was in the process of recovering from its depressed condition (Ex. 476–122).

At least two factors have contributed to increasing costs in the copper industry. First, fuel costs, which account for a major portion of production costs in smelting and refining, rose significantly between 1974 and 1978. The second major factor affecting production costs is the long-term declining yield of copper from ores. From 1950 to 1977, average yield has dropped from 18 pounds of copper per ton of ore to 10 pounds, with some deposits containing only 8 pounds of copper per ton of ore. (The cutoff grade is 4 pounds.) In addition, surface mines, which now account for 82 percent of domestic output, have large ratios of overburden (earth that must be removed during mining operations) to ore (Ex. 476–122).

However, a new process has been developed to recover copper from low ore concentrates (Ex. 476–124). The new hydrometallurgical process is pollution-free. Initial testing demonstrates that it is competitive with conventional smelting techniques. Diffusion of this new process throughout the industry may result in significant changes since costs of producing copper are both currently variable and highly dependent on location and physical composition of ore deposits.

Capital expenditures for new buildings, plant, and equipment in 1977 in the copper industry were withheld by the Commerce Department to avoid disclosing operations of individual companies. However, expenditures rose steadily from 1963 to 1975 from $13.1 million to $164.6 million. In 1978, the industry's investments dropped to $52.4 million, reflecting the depressed state of the market beginning in 1974 (Ex. 476–20).

Copper production is considered to be a capital intensive industry. On average, $7,000 per annual ton of new capacity for facilities is required for a totally integrated facility. Expansion of existing facilities requires about $5,000 per annual ton in capital costs (Ex. 476–121).

The primary copper industry employs about 10,000 production workers at smelters and refineries. The ratio of skilled to unskilled laborers has risen with increasing mechanization and large-scale operations have generated demand for mechanics, technicians, and machine operators. In 1971, employee hours per ton of copper averaged 20.3 hours; whereas in 1977, there were 16.2 employee hours per ton of copper (Ex. 476–122), indicating a slight increase in productivity.

Secondary copper producers are classified in SIC 3341. Total shipments in this SIC were valued at $719.2 million in 1977 (Ex. 476–20). Firms in this industry include Southwire, Cerro Copper, Chemetco, U.S. Metals Refining, Franklin Smelting and Refining, Reading Metals Refining, and Nassau Recycling (Ex. 476–32). These producers are located near their sources of scrap materials.

The low availability of scrap, a raw material for this industry, and the high cost of fuel have inhibited capital investments to increase plant capacity in the secondary production industry. The limited quantity of scrap increases the competition among secondary copper producers for sources of supply. The recent entry of Nassau Recycling into the secondary market increased the competitiveness of buyers in the scrap market by removing telephone scrap from available supplies. (Nassau Recycling is a subsidiary of Western Electric (Ex. 476–32), a major manufacturer of telephone equipment.)

While secondary producers are, at present, more energy efficient than primary producers, the threat of an oil embargo or fuel restrictions is sufficient to increase the reluctance of producers to expand operations. However, test results on a new experimental furnace designed for continuous smelting of copper-bearing scrap show that substantial energy savings and an increase in product quality can be realized (Ex. 476–124). On balance, however, the past volatility of the copper industry gives every incentive to delay expansion decisions.

The primary and secondary producers of scrap operate in the same market, because their products are generally perfect substitutes. Copper prices are set by the primary producers at the level that, in their estimation, will yield a reasonable profit without encouraging import competition or substitution. Copper demand is met first by the processing of scrap that can be done below the cost of primary production. Primary copper supplies the remaining

demand. During shortages, rather than raise prices, primary producers may ration sales. When the demand and hence the price of scrap rises, the supply of copper scrap ultimately increases. This happens as lower quality, more dispersed scrap is gathered and processed at a price that purchasers are willing to pay to fill needs not met by primary producers. Although this market activity is limited by the cost of imported copper, this price is generally significantly higher than the domestic price during shortages (Ex. 475–32). Thus, the domestic market does not appear to face major import competition now or in the future. In addition, the secondary copper industry does not appear to be at a competitive disadvantage with the primary copper producers.

(iii) *Conclusion: Economic Feasibility.* The copper market has demonstrated past volatility and remains sensitive to the demand for durable goods. Thus, the demand for copper will fluctuate with swings in the national economy. However, on balance, the demand for copper is expected to grow at an annual rate of 3.6 percent.

Copper is produced and sold in a world market. The domestic industry has a demonstrated ability to compete successfully in this world market. Foreign price advantages no longer pose a threat to the domestic industry, and the stable political situation in the U.S., the existence of an advanced infrastructure, and the domestic scale of operations are expected to contribute to the continued viability of the domestic producers.

The primary copper industry, which produced shipments valued at almost $4 billion in 1977 (Ex. 476–20), will be required to spend a maximum of $3.2 million in annualized compliance costs. OSHA estimates that annualized compliance costs for the secondary copper industry, which produced shipments valued at $719.2 million in 1977 (Ex. 476–20), will not exceed $5.3 million. Therefore, OSHA concludes that the domestic copper industry will be able to comply with the lead standard within one year, and that compliance will not adversely affect the economic viability of the industry.

11. Cutlery

(a) *Process Description Exposure Areas*

Cutlery is produced by die manufacturing and casting (Ex. 22 p. 279). Decorative handles are soldered on and the products are packaged for sale.

A small amount of lead is used in the cutlery industry when handles are soldered (lead-tin solder), when a quick mold check in the die manufacturing and casting of knives is necessary, and when heat treatment of cutlery is necessary. (Ex. 22, p. 279)

The greatest sources of exposure occur in the soldering and heat treatment operations (Ex. 22, p. 279) Soldering of handles to knives is not usually done with lead; when it is however, the appropriate controls, such as local exhaust ventilation, are used (see soldering section for a complete discussion).

Heat treatment with lead is discussed in the section entitled "Wire Patenting and Annealing." In the heat treatment of cutlery, pots measuring 13 by 18 inches, are filled with lead and layers of sand, charcoal and fine steel and heated to high temperatures. The knives or blades are placed in the pot for about 5 minutes. As the blade is pulled out, the upper layers of sand, charcoal and steel remove all trace of lead. The blade is then quenched in oil. The layers of sand and charcoal help prevent the escape of lead fumes and maintain the temperature in the pot. Due to high prices, lead's use is diminishing in heat treating and is being replaced by salt. Also, heat treatment of cutlery and razor blades is often performed in furnaces rather than with molten lead.

(b) *Controls Currently Used*

Soldering operations in cutlery are comparable to other soldering operations, and may be done at benches or in soldering furnaces. Soldering done in furnaces may also use exhaust ventilation (see Soldering section for further discussion).

Heat treating operations are usually segregated from the rest of the workplace because of smoke from the oil, the intense heat, and fire danger. Lead pots are supplied with exhaust hooding. Almost all companies are believed to have exhaust fans and ventilation over the lead pots. (Ex. 22, p. 279) Ventilation methods will be heavily relied upon to achieve compliance in the heat treating rooms and solder areas. (Ex. 22, p. 279)

(c) *Exposure Levels*

No data were submitted indicating the levels of exposure to be found in soldering or heat treatment operations within the cutlery manufacturing process. Exposure levels can be estimated from comparable processes such as soldering of small components and parts, as well as other heat treating operations.

Soldering operations involving small components generally have minimal levels of lead exposure. Some studies have found levels ranging from 3–9 $\mu g/m^3$ (Ex. 476–401). Very little ventilation, if any, was available at these sites.

In heat treatment, lead is melted and heated to a certain temperature; where lead is also melted in melt pots, the company estimated that 50 $\mu g/m^3$ is usually achieved (Ex. 476–228).

It should be noted that lead baths used for heat treatment are covered with layers of sand and charcoal to maintain heat. These layers also tend to prevent the escape of dust and fumes from the process, whereas lead casting melt pots have no such internal controls.

(d) *Population Exposed*

It is estimated that of 11,000 employees in the cutlery industry, fewer than 65 persons are exposed to lead in the heat treatment process, with an additional 50 persons exposed through housekeeping, maintenance, etc. (Ex. 22, p. 279).

(e) *Additional Controls*

Additional engineering controls are not expected to be necessary to achieve compliance in this industry. Existing ventilation methods will be heavily relied upon to meet compliance in the heat treating rooms and solder areas. (Ex. 22, p. 279) The ventilation systems may require upgrading to produce desired flow rates, etc. Housekeeping will have to be improved to achieve compliance with 50 $\mu g/m^3$, with work practices and worker rotation being relied upon when companies choose not to implement engineering control changes.

(f) *Conclusion: Technological Feasibility*

Despite the fact that OSHA provided direct notice to at least one firm (W.P. Case and Sons of Bradford, Pennsylvania), concerning these special proceedings on the issue of the feasibility of the lead standard, no cutlery manufacturers participated in the public hearings, nor did any submit exposure or feasibility data to the Agency. Based upon the Short Report and analogies to comparable processes (such as soldering and smelting of lead), OSHA believes that attaining the 50 $\mu g/m^3$ PEL in this industry is feasible using the simplest of engineering controls. Employers who do not wish to upgrade existing ventilation systems may rely upon housekeeping, work practices, and worker rotation to achieve compliance with the 50 $\mu g/m^3$ limit within one year.

(g) *Economic Feasibility*

Neither compliance costs nor economic impact data were offered by any cutlery industry representatives. Based on the record evidence, it appears

that, at most, employers may need to upgrade existing ventilation systems. Most probably, however, employers will need to rely only on the less costly, but equally effective alternatives, such as housekeeping, work practices and worker rotation, to achieve compliance. The costs of these controls are relatively small in comparison with engineering controls. The industry has stated that compliance poses no problems, therefore, no economic impact is expected as a result of the implementation of this standard (Ex. 22, p. 260).

12. Diamond Processing

(a) *Uses*

Lead is not used in the cutting, polishing or setting of diamonds (Ex. 22, p. 282). However, lapidary wheels having lead sheeting impregnated with powered diamonds are used to polish metal and rock surfaces (Ex. 22, p. 282). In 1977, it was estimated that about 100 such lapidary wheels were in use in this country. The record indicates, however, that the use of these wheels is rapidly declining because the soft lead wheels are not as durable as brass or cast iron wheels. (Ex. 22, p. 282)

(b) *Process Description and Exposure Areas*

An object, either metal or stone, is held against the lapidary wheel which turns and polishes the surface. Lead exposure results from the abrasion of the lead-diamond impregnated sheet surrounding the wheel.

(c) *Controls Currently Used*

The principal method presently used to control exposure during this operation is ventilation. A tight hood enclosure with minimum wheel-hood clearance is used to provide dust control at a minimum exhaust volume. Fixed operations may use conventional controls and portable units may require movable exhaust ventilation units. Some operations use no controls. Water may also be used to reduce dust, but does not eliminate the need for ventilation (Ex. 476–48).

(d) *Exposure Levels*

OSHA is unaware of any available monitoring data (Ex. 22, p. 282). It is expected that little to no lead exposure results from this operation (Ex. 22, p. 282), although data were not furnished by any industry source.

(e) *Population Exposed*

It is believed that approximately 200 persons are exposed as a result of this operation (Ex. 22, p. 282). However, data were not available to indicate how many of these individuals are exposed above or below the 50 $\mu g/m^3$ PEL.

(f) *Additional Controls*

Because of the very limited nature of lead exposures in this industry, controls, other than those currently being used, are not necessary to comply with 50 $\mu g/m^3$.

(g) *Conclusion: Technological Feasibility*

The magnitude of lead exposures in this industry appears to be very slight. Thus, it appears that this industry is already in compliance with the 50 $\mu g/m^3$ limit. The controls needed to achieve the PEL are already being used effectively. In addition, the inadequacies of lead wheels have resulted in substitution of more durable wheels made of cast iron or bronze. These wheels will probably replace all lead lapidary wheels, thus eliminating the potential for lead exposure in excess of the 50 $\mu g/m^3$ standard. Based on these factors, OSHA concludes that compliance with the standard within one year is technologically feasible for this industry.

(h) *Economic Feasibility*

Since better substitutes have virtually replaced the lead lapidary wheel in this industry and, where the wheel remains in use, lead exposures are likely to be below the PEL, no costs of compliance and, thus, no significant economic impact will be incurred, and the standard will have no effect on the national economy.

13. Electroplating

(a) *Uses*

Plated lead is used primarily in battery parts and chemical construction when resistance to the corrosive effects of sulfuric acid is needed (Ex. 476–145). Lead plating is done for the electronics industry also (Ex. 476–150). The National Association of Metal Finishers indicated that electroplated lead is probably used in the electronics industry only for solder plating (lead-tin alloy plated on printed circuit boards) (Ex. 476–149). However, data from TRW indicate that copper wire plated with lead is used in electrical resistors (Ex. 476–148).

(b) *Process Description and Exposure Areas*

Electroplating consists of coating one metal with another metal by means of an electric current. The cathode, which holds the work, is negatively charged. The anode, made of the material to be coated, is positively charged. The anode and cathode are positioned in a solution and the plating is completed by anode material traveling through the solution and depositing on the cathode. (Ex. 476–145)

Many different materials can be plated using the electroplating process; lead and its alloys are among these. Lead is plated from a fluoroborate solution. At the temperatures involved, it is believed that no lead fumes or dusts are generated. Dr. Billings testified that lead exposures result primarily from lead emissions being given off from open-surface tanks during the electroplating process (Tr. 146), but that exposure to lead is insignificant (Ex. 22, p. 305).

(c) *Controls Currently Used*

The primary method of control involves the use of local exhaust ventilation. The *Industrial Ventilation Manual* recommends the use of local exhaust ventilation for this process and provides specific air-flow parameters sufficient to contain exposures in open surface tanks (Ex. 476–147). Dr. Billings also recommended total system enclosure (Tr. 146). Data indicating which controls are used in the electroplating processes were not made available by the industry, however, the industry feels that application of these control technologies as well as good housekeeping should maintain levels below the 50 $\mu g/m^3$ limit. In fact, only very low lead levels are found in the industry and industry representatives believe that airborne lead is not a significant problem (Ex. 22, p. 305).

(d) *Exposure Levels*

The only available data, collected at TRW, indicate that, in plating operations, airborne concentrations to lead were undetectable (Ex. 476–145).

(e) *Additional Controls*

The engineering controls and work practices currently being used by the industry will be sufficient to maintain levels below the 50 $\mu g/m^3$ standard. Additional controls, such as housekeeping and worker rotation, may be necessary, in some instances, to insure that compliance with the standard is achieved in all operations.

(g) *Conclusion: Technological Feasibility*

Very low exposure data and the industry's statement that lead levels are insignificant indicate that this industry is already in compliance with the standard and, thus, it is certainly feasible for this industry to achieve compliance within one year.

(h) *Economic Feasibility*

Because exposure levels are apparently well below 50 $\mu g/m^3$, no

costs for compliance are anticipated nor is any economic impact expected. Compliance with the standards is, therefore, economically feasible.

14. Explosives Manufacture

(a) *Uses*

Explosives serve two main purposes. They serve as labor saving devices in dislodging rocks, coal and other minerals (industrial uses) and as destructive devices (military uses).

Explosives may be chemical, physical or nuclear in type. Chemical explosives are the most widely used, and involve use of lead in greater quantities than other types. Chemical explosives use initiating devices to ignite the explosive. Lead azide and lead styphnate are among some of the chemical compounds used for this purpose. These lead compounds are mixed with other materials to form the initiator (blasting cap or detonator). The amount of lead compound used is small.

Some uses of lead have been discontinued. For example, the addition of lead to rocket propellants to increase thrust has been replaced by more effective metals, such as aluminum (Ex. 476–152).

(b) *Process Description and Exposure Areas*

The manufacture of lead explosives involves the handling, mixing, precipitating, and drying of various lead compounds and the storing or packaging of the lead based explosives formed. In the case of lead azide, formation results from the mixing of sodium azide with lead acetate or lead nitrate. Lead styphnate is formed from lead acetate and magnesium styphnate (Ex. 476–TG).

Lead exposure results from the handling and mixing of lead compounds used in the preparation of the explosives themselves. Lead exposure may also result from the repair of lead flooring which is used by this industry when sparking dangers are present. Lead plates used to test blasting caps may also result in lead exposure, but only if the plates are melted, poured and cast by the explosives' manufacturer (Ex. 22, p. 308). Lead exposure does not result from the use of plates as detonating devices. Exposure to lead may also occur in the soldering operations, where lead solder is used to attach wires onto the initiators.

(c) *Controls Currently Used*

The handling and mixing of lead compounds is generally well controlled since dust accumulations generated by mixing explosive chemicals are undesirable (Ex. 22, p. 308). The process is usually automated, and the operator is separated from the mixing operation by a protective barrier (Id.).

A few companies indicated that they have an ongoing repair program for their lead flooring. The defective parts are cut away and new sheets of lead flooring are burned into place (Ex. 476, 151). Most others reported that the floor was replaced every five to ten years. Lead burning operations are used quite extensively to repair or replace lead flooring.

Soldering operations are usually ventilated and automated where possible. (See Soldering-Discussion of Control Technology). Lead floor repairing uses no ventilation controls. Blasting caps are now being detonated in water rather than on lead plates, mostly as a means of controlling noise exposure.

DuPont Chemical commented that the use of mechanical engineering controls such as mechanical ventilation would be an unsafe means of reducing employee exposure to 50 $\mu g/m^3$ of lead during the manufacture of two types of explosive initiators (Ex. 475–35). DuPont argued that the two compounds, lead azide and the complex lead salt of dinitro ortho cresol (lead DNOC), are extremely sensitive to impact and that subjecting them to the friction caused by the moving parts in mechanical ventilation systems could lead to detonation. DuPont also pointed out that insertion of a filter into the system ahead of the moving parts, would permit the accumulation of lead compounds that could detonate either on removal of the filter or on impact of moving particles in the air stream against particles held by the filter. In support of these arguments, DuPont submitted impact sensitivity test data for lead azide and lead DNOC. The data showed that a 0.5 inch diameter, 8.35 gram steel ball must fall from 20 to 28 inches to detonate a 0.013 inch thick layer of lead azide. A similar steel ball must fall 5 to 10 inches to detonate lead DNOC. Based on this data, lead particles of 30 microns in diameter which might enter a ventilation system and impact on a collection filter within the duct would have to impact with a velocity of over 55,000 miles per hour to impart enough energy to detonate a layer of lead azide and a velocity of similar magnitude would be required to detonate a layer of lead DNOC. Thus, the detonation hazard allegedly created by colliding particles in a ventilation duct appears to be highly unlikely.

The detonation hazard associated with filter removal could be minimized by wetting the filter before removal. In fact, wet methods to prevent detonation are employed by DuPont in its sieve room, where the employees entering the room to remove lead azide or DNOC products and reload the sieve is required to wet mop the floor ahead of him. Also consideration could be given to employing wet filtering methods (scrubbers, water curtains, etc.) upstream of the ventilation system's moving parts.

(d) *Exposure Levels*

Exposure data were not available for the manufacturing of lead initiators and the soldering of initiator wires. However, industry representatives indicated that exposure levels were well below the 50 $\mu g/m^3$ level (Ex. 22, p. 306). Representatives of Hercules, Inc., of Wilmington, Delaware, indicated that exposures are low because the lead azide cartridge primer prepared by the company is prepared in gram quantities and the process is kept wet throughout (including during the mixing of other compounds with explosives) (Ex. 476–152).

In lead floor repair, where lead burning may be done, exposure results have indicated lead levels 10 to 20 percent below 200 $\mu g/m^3$ (Ex. 22, p. 306). This would place the industry below the 50 $\mu g/m^3$ PEL. In addition, companies like Atlas Power Co. of Dallas, Texas (Ex. 476–151), have indicated that they only encounter lead exposures twice yearly during the repair of lead floors. Exposure to lead was not considered a problem even in these repair activities because of sophisticated ventilation systems already in place to control nitroglycerine vapors.

In operations using lead plate as a detonating device the lead discs used by Hercules to test low-intensity charges would not be expected to give rise to significant lead exposures since the test explosion deforms, but does not volatilize, the lead (Ex. 476–152). The thickness of the discs are measured before and after the explosion as a quality control check of the uniformity of the explosive charges. For testing ammunition charges, blasting caps, and other high-intensity charges, Hercules uses harder copper discs. Moreover, testing of blasting caps in water, instead of on lead plates, would minimize exposure problems (Ex. 22, p. 308).

(e) *Population Exposed*

Total employment in the explosives industry is estimated to be 30,000, of which 100 employees may be potentially exposed to lead (Ex. 22, p. 309).

It appears that most exposure areas are already in compliance using existing controls. Work practices and housekeeping are invaluable tools for this industry, and in many cases are

emphasized due to the extreme explosion hazards. Also many of these lead-bead explosives are made in extremely small quantities (Hercules) and this also tends to minimize exposure hazards.

(f) *Conclusion: Technological Feasibility*

Compliance with the 50 $\mu g/m^3$ standard has been achieved in the explosives industry through a series of compliance endeavors including the use of ventilation, careful adherence to strict work practices, and good housekeeping practices. The importance of striving for a dust free environment in explosives manufacture, revolves around the fact that poor work practices and sloppy housekeeping might result in an explosion. Because exposures are already below the PEL, compliance is feasible.

(g) *Economic Feasibility*

The explosive industry is made up of five major producers with several small firms. It is estimated that 9 or 10 firms manufacture 90 percent of the explosives produced in the United States (Ex. 22, p. 309).

Since this industry appears to be well below the 50 $\mu g/m^3$ limit, there will be no cost for compliance with the lead standard, and the standard will have no effect on the national economy.

15. Gasoline Additives

(a) *Summary*

OSHA has interpreted the processes in this industry (in which lead wastes are recycled) as falling under the definition of "secondary lead production" (Ex. 476–7H). Table I of section (e)(1) of the standard gives this industry five years to comply with the 50 $\mu g/m^3$ PEL. The Agency made this determination because several of the processes that occur at secondary smelters are functionally similar to the recycling processes used in the manufacture of gasoline additives and present the same exposure control problems. Gasoline additive manufacture involves the initial handling of lead sludge, the removal of moisture from the sludge by drying, the smelting of sludge in reverberatory furnaces, the transfer of lead to hold-up pots, the drossing of the lead, the melting and drossing of pig lead additions, and the alloying of lead including weighing, drossing and sodium addition. Since the feasibility of the standard has been upheld for secondary smelting and refining, the similar processes involved in this industry warrant a conclusion of technological and economic feasibility here. Ethyl Corporation's request for this interpretation, together with the absence of objections from any other manufacturers in the industry reinforces this conclusion.

16. Glass Manufacture

(a) *Primary Glass Manufacture*

(i) *Uses.* Glass is manufactured as flat glass, container glass, pressed and blown glass and fiberglass. In subsequent operations, these basic glass types are further processed to form window glass, wire glass, figured rolled glass, plate glass, slash blocks, health glass and special glasses (stained glass and glassware).

(ii) *Process Description and Exposure Areas.* Glass is manufactured by the high temperature conversion of raw materials into a homogeneous melt capable of fabrication into useful articles (Ex. 476–174). The process can be broken down into three subprocesses: raw material handling and mixing, melting and forming and finishing (Ex. 476–174).

Raw materials are received in packages or in bulk and are unloaded by hand, vibrator gravity, drag shovels, or vacuum systems. Raw materials are then weighed and mixed (Ex. 476–174).

Raw materials are delivered to the furnace where they are transformed into glass (Ex. 476–174). Glass is produced in day pots, day tanks, or continuous operating regenerative or recuperative furnaces (Ex. 476–174). Melters are charged either manually or automatically, usually through screw or reciprocating type feeders (Ex. 476–174).

Molten glass at the yellow-orange temperature is drawn quickly from the furnace and worked in forming machines to press, blow in molds, draw, roll or cast. Annealing is done to remove internal stress (Ex. 476–174).

Lead exposure in glass manufacturing can result from the general use of a lead litharge in some melting operations (Ex. 476–195), from the production of leaded glass, or from the production of colored glasses (Ex. 476–6G). Particular process points where lead exposure may occur include materials handling and mixing, charging areas, melting areas (fugitive emissions) and finishing processes (Ex. 476–174).

(iii) *Controls Currently Used.* Controls for materials handling include automated handling of materials by tote bins (Ex. 476–190). Bins may also be mechanized to discharge lead via pinch valves (Ex. 476–190). Buckets may be mechanically interconnected with mixers and automatically dumped, thereby minimizing employee exposure to dusts (Ex. 476–190). Exposures during manual handling can be controlled through the use of exhaust ventilation (Ex. 476–193). Where bags are dumped into barrels and the barrels are fork lifted to mixers, exhaust enclosures have been used successfully to control dust exposures (Ex. 476–193). General batch house controls can include the use of hoods over the weighing hoppers, the top of the mixer, the end of the belt and the whole of the mixer; the use of a vacuum system to maintain clean surfaces; and the use of batch wagons at feeding and dumping points (Ex. 476–189). Batch house operations that result in the highest exposures, such as ingredient weighing, have also required the use of worker rotation to achieve compliance with the 50 $\mu g/m^3$ standard (Ex. 476–190).

Some companies minimize dust emissions by using an oil-base lead oxide (main constituent of glazing compound) (Ex. 476–193). Others perform the work wet (Ex. 476–195), while still others use pelletized or briquetted lead oxide (Ex. 476–190).

To maximize the effectiveness of dust collection systems, baghouses have been enclosed and exhausted to prevent the dispersal of dust into the workplace.

In melting operations, exposures have been controlled by installing continuous melters with dust collection systems (Ex. 476–193). When continuous melters are not used, exhaust ventilation has been used over day pots or tanks to control exposure (Ex. 476–174).

In finishing operations, such as hand blowing, local exhaust systems have been used (Ex. 476–190). Automated press production areas have also been exhaust ventilated (Ex. 476–190).

(iv) *Exposure Levels.* Exposure data for batch house operations were presented by Lenox Glass, Schott Glass, Fostoria Glass and Nuclear Pacific. Exposures at Lenox, Schott, and Fostoria ranged from 24 to 53 $\mu g/m^3$, however, all companies reported average levels of 30 $\mu g/m^3$ (Ex. 476–35; 476–189, 190 and 193). Nuclear Pacific indicated that exposures in its batch operations were in excess of 50 $\mu g/m^3$ (Ex. 476–41, 476–101). Prior to installing a vacuum system, Fostoria indicated that dust levels ranged from 18 to 73 $\mu g/m^3$ in this operation (Ex. 476–189).

An OSHA inspection of a glass manufacturing facility found levels of 44 $\mu g/m^3$ prior to the implementation of engineering controls. After implementation, levels were below 20 $\mu g/m^3$. Only ventilation was used. Another OSHA inspection of a company making television face plates (WB–1) found that batch attendants were exposed to levels of 740 $\mu g/m^3$, prior to

the implementation of controls, and 30 μg/m³ after the implementation of a totally enclosed materials handling system.

Exposures in melting operations were reported to be 6 to 25 μg/m³ by Fostoria Glass (Ex. 476–189) and less than 8 μg/m³ by Schott Glass (Ex. 476–189). Lenox indicated that the 50 μg/m³ PEL was achievable (Ex. 476–193). At Nuclear Pacific, exposures were reported to be in excess of 50 μg/m³ (Ex. 475–41, 476–181).

In its glass blowing areas, Fostoria indicated that exposures ranged from 20 to 50 μg/m³ for employees involved in the melting process and less than 10 μg/m³ in the melting pot areas (Ex. 476–189). Nuclear Pacific reported exposures to be below 50 μg/m³ in this area (Ex. 476–181). Lenox indicated that 50 μg/m³ is achievable (Ex. 475–25, 475–41, 476–193).

(v) *Population Exposed.* The Short Report estimated that about 1500 glass workers are potentially exposed to lead (Ex. 22, p. 248). Exposure data presented by representative companies indicated that in only one instance were workers exposed to levels in excess of 50 μg/m³ (three workers at the Nuclear Pacific Company) (Ex. 475–41, 476–181). No definitive estimate of the number of exposed workers can be made, but it can be reasonably assumed that only a small percentage is exposed to levels in excess of 50 μg/m³.

(vi) *Additional Controls.* In most instances, existing engineering controls have proven effective in controlling exposures to lead in glass manufacturing (Ex. 475–25, 475–41, 476–189, 190, 193). Engineering controls and administrative controls (worker rotation) have been used to achieve compliance in even the more difficult areas (Ex. 475–25, 475–41, 476–190–193). Exposure levels are, by and large, below 30 μg/m³, although in some operations exposures approach 50 μg/m³ (Ex. 476–193). Consequently, controls in addition to those existing and in use by most firms are probably not needed. Improved housekeeping may be helpful in those areas where exposures are near 50 μg/m³ (Ex. 476–189).

(b) *Secondary Glass Operations*

Secondary operations include grinding, spinning and polishing of glass to produce final products; the remelting of glass for coloring prior to product formation; and the glazing or painting of finished glass surfaces.

Commercial uses include lamp tubing, iron sealing ware, solder sealing, tungsten sealing electron tubes, radiation shielding, capacitors, and television tubes (Ex. 476–5G).

(i) *Process Description and Exposure Areas.—(a) Grinding and Polishing.* Grinding is done with sand, garnet, carborundum, silicon carbide, boron carbide or diamond (Ex. 476–5G). These materials may be used loose, as is done in plate glass grinding (Ex. 476–5G), or grinding may be done by machine. In general, the same machines used for metal grinding may be used to grind glass (Ex. 476–5G). Polishing is similar to grinding, but the polishing compound is finer (felt pads with rouge (iron oxide)) (Ex. 476–4B). Acid polishing and fire polishing are also done (Ex. 476–5G).

Exposure results from ground up lead glass emitted from the process or from lead fumes emitted during chemical or heat polishing. Mechanical grinding operations are generally performed under water mists to suppress dusts (Ex. 22, p. 271).μg/m³

(b) Spinning. Fiberglass is produced by throwing a thread of glass pulled from a heated glass rod over a rapidly revolving drum which draws the glass out into fibers resembling wool or silk (Ex. 476–5G). The potential for lead exposure exists when leaded glass is being spun.

(c) Glazing. Glazing is used to color and to increase the strength, durability and abrasion resistance of glass. A water suspension of the glaze forming ingredients is applied through spraying, dipping or screening (Ex. 476–5G). Exposures occur when lead-based glazes are applied to surfaces.

(d) Staining. The staining process involves ion exchange and migration (Id.). When the potash-lead glass is melted down, the colorant is added. The glass is cooled and then often reheated to produce the correct color (Id.). Lead exposure may result from the melting of lead-based glass.

(e) Painting. Lead paint resembling a crayon is melted at low temperatures and poured over a screen onto the glass and then annealed for several hours in an oven. Exposure results from the use of a lead-based paint.

(f) Soldering. Solder glass is a highly leaded glass that melts easily at low temperatures. It is commonly used to seal the various components of television tubes and comes in paste or powder form. Exposure results from the use of lead solder glass.

(ii) *Controls Currently Used.—(a) Grinding and Polishing.* Water mists are used to suppress dusts generated by this process (Ex. 22, p. 271). Local exhaust ventilation has also been used successfully to contain dusts as well as to capture fumes in chemical or heat polishing operations. A detailed discussion of the appropriate design, ventilation rates, etc. is available in the *Industrial Ventilation Manual* (Ex. 487) and the NIOSH criteria document entitled, "Grinding, Buffing, and Polishing Operations" (Ex. 476–30). Companies have reported no problem with controlling exposures in the operation (Ex. 22, p. 475).

(b) Spinning. Local exhaust ventilation applied to the drawing stage of the operation and the glass pulling operations is often used to control exposures.

(c) Glazing Operations. Data were not furnished which indicated the kinds of controls used in glazing operations. However, glazing of glass can be compared to pottery glazing where automated or manual spraying in booths may be done. (See the section on pottery glazing for more details.)

(d) Staining Operations. Data were also not provided indicating the specific controls needed for staining processes. However exposure results from the melting of potash-lead glass and, thus, the controls needed for any melting operation are applicable here also (see glass manufacture).

(e) Painting Operations. Data were not provided for glass painting. However, local exhaust ventilation may apparently be used in areas where lead crayons are melted and poured over the screens. Proper ventilation can also be used in the annealing process to control lead exposures. Ovens are generally enclosed and exhausted (Ex. 476–355).

(f) Soldering. The same controls needed for any soldering operation (i.e., local exhaust ventilation) must be used here.

(iii) *Exposure Levels.—(a) Grinding/Polishing Operations.* Exposure data were not provided by any industry. However, many industry representatives indicated that lead exposure posed little problem (Ex. 22, p. 271). The plate glass industry had replaced grinding to finish the glass surfaces with a flotation process (Ex. 476–172).

(b) Spinning. There appears to be no data available on lead levels associated with fiberglass production, although there are some data indicating exposure levels for fiberglass particulates (Ex. 476–200). Dr. Konzan, of Owens-Corning, stated that in 13 years with the company he has only known of two occasions in which lead was even mixed with fiberglass (Ex. 476–195).

(c) Other Processes. Exposure data for other processes were not provided.

(iv) *Population Exposed.* There are no data indicating the number of workers who may be exposed to lead in secondary glass operations.

(v) *Additional Controls.* No additional controls are anticipated to be necessary to achieve compliance with the 50 μg/m³ level. The use of local exhaust

ventilation, improved housekeeping and worker rotation should be sufficient.

(c) *Conclusion: Technological Feasibility (Primary and Secondary Processes)*

Primary and secondary glass operations can achieve the 50 $\mu g/m^3$ PEL. Primary operations will have to make use of engineering controls, to the extent feasible, and supplement them with worker rotation (as the industry is currently doing) to bring areas of high or intermittent peak exposures into compliance with the standard. In addition, improved housekeeping and maintenance operations will be necessary. Compliance with the lead standard will probably also bring about a significant reduction in employee exposure to silica.

Secondary glass operations appear to require minimal controls such as local exhaust ventilation (movable or stationary). Extensive control technology does not appear to be necessary and only in a few instances will worker rotation be necessary.

Representatives of the glass industry emphasized in their submissions that compliance with the 50 $\mu g/m^3$ standard was not possible through engineering controls alone. Based on the evidence submitted, OSHA agrees that the success experienced by this industry in meeting the 50 $\mu g/m^3$ limit has been based on multi-faceted control strategies that include enhancement of existing controls, automation of many processes, stringent work practice programs, improved housekeeping and maintenance and worker rotation. This approach avoids the more costly strategy of relying solely upon engineering controls to achieve compliance. OSHA believes that the use of such balanced controls strategies, rather than reliance upon a single method of control, is perfectly consistent with the lead standard since the Agency's ultimate goal in regulating worker exposure to lead is to reduce workers' exposures through the combined use of engineering controls, work practices, housekeeping, and some worker rotation. The industry did not dispute the feasibility of achieving compliance using this combination of controls.

(d) *Economic Feasibility*

(i) *Costs of Compliance.* Most of the establishments affected by this regulation are currently required to comply with OSHA's standard for silica, and some must also comply with the arsenic standard. Therefore, to the extent that compliance activities simultaneously control other toxic substances, the costs attributable to lead are overstated.

Only three firms submitted cost data to OSHA and none of them documented the derivation of their estimates. Bausch and Lomb estimated that $500,000 would be required to bring its very old optical glass operation into compliance (Ex. 476-171). Owens-Illinois stated that in excess of $1,800,000 has been spent to achieve the 200 $\mu g/m^3$ standards (Ex. 475-195). Nuclear Pacific stated, without supporting data, that it had invested $44,000 in controls for lead (Ex. 475-181).

On the basis of OSHA's assessment of additional controls necessary and the submissions of glass manufacturers, OSHA estimates that costs will range from $10.4 to $26.6 million. Annualized costs, therefore, will range from $1.9 to $4.8 million.

(ii) *Industry Profile.* There are four separate and distinct Standard Industrial Classification codes for glass products. The industries affected by the standard are primarily classified in 3229, Pressed and Blown Glass, Not Elsewhere Classified. While there are a total of 382 establishments employing 38,600 production workers in this SIC, most of these establishments are not engaged in the manufacture of lead-bearing products (Ex. 476-20). Lead-bearing products include radiation shielding glass, television glass parts, optical glass and lead crystal.

Only two domestic firms, Nuclear Pacific and Schott Glass, produce radiation shielding glass. Because of high transportation costs for this specialty product, it is unlikely that the secure market position of these firms would be threatened by foreign products as a result of regulation under the lead standard. In addition, there do not appear to be substitutes for lead in this application, with the possible exception of cadmium (Ex. 476-181). However, cadmium is much more expensive than lead and is also toxic.

Schott Glass, a relatively new facility built in 1969, has invested in control technology and produces several product lines in addition to radiation shielding glass (Ex. 476-190). Nuclear Pacific's radiation shielding glass operation comprises a small part of its business and employs only three workers. Nuclear Pacific reported that OSHA-related expenditures constitute 20 percent of the firm's total machinery and equipment investment, but did not substantiate this claim (Ex. 476-181).

Five firms (RCA, Owens-Illinois, Schott Glass, Lancaster Glass, and Corning Glass) manufacture leaded glass television parts, such as surface plates, funnels and television tube necks (Ex. 476-170). As with other luxury items, the demand for televisions is generally elastic and fluctuates with the general state of the economy. In addition, foreign imports have been a major influence on this market because television sets produced abroad are often perfect substitutes for domestic sets. In fact, Owens-Illinois Television Products Division contends that, as a result of "unrelenting pressure from foreign competition," the industry now has an overcapacity problem (Ex. 475-195). Although a 1977 agreement between the U.S. and Japan limited imports of Japanese color television sets for three years, foreign competition continues to make inroads into the domestic market (Ex. 476-26).

Nevertheless, the effect of the lead standard on the glass parts firms should be relatively small because the economics of the domestic manufacture of these sets will be largely determined by the volume of foreign imports permitted into the country. If domestic production remains viable, the demand for glass parts will be sustained because there are no direct substitutes for these parts, and they comprise only a minor portion of the value of the final product (Ex. 476-174). If foreign competition brings about a sharp decline in the domestic production of television sets, the glass parts firms could probably expand into other product lines with existing plant and equipment because these firms can also manufacture other glasswares.

Three firms produce optical glass in the U.S. They are Schott Glass, Corning Glass, and Bausch and Lomb (Ex. 476-180). Thus, a high degree of concentration exists in the domestic optical glass market. Bausch and Lomb has indicated that allocating resources to comply with the standard in its plant will present a serious dilemma for three reasons: (1) The plant is very old, (2) its output of glass is small, and (3) only seven people are involved in the glass operations (Ex. 476-171). However, the cost estimated by Bausch and Lomb is unsupported. Moreover, given the age of the plant, the firm would increase production efficiency and control lead exposures simultaneously with the advent of new equipment. In addition, there is no evidence to indicate that international competition is occurring, or would occur, in this market as a result of this regulation. Therefore, because these primary uses are considered medical necessities and because the are no suitable substitutes for the product, the demand for optical glass should remain relatively constant with most of the costs of compliance with the OSHA lead standard passed forward to consumers.

Although there are seven domestic producers of crystal (Lenox, Fostoria, Viking, Fenton Art Glass, Rainbow, Pilgrim, and Seneca), Lenox and Fostoria produce the majority of domestic crystal (Ex. 476–170). Lenox submitted a detailed statement on the problems of complying in its china operations, however, no similar material was presented with respect to the manufacture of crystal (Ex. 476–25). Therefore, OSHA assumes that exposure problems in this area are much less severe. Lenox crystal is produced exclusively by hand (Ex. 476–180) whereas Fostoria also uses automatic processes for some of its product lines (Ex. 476–189).

There has always been strong foreign competition in certain quality ranges of the crystal products market. Foreign products may enjoy the advantage of lower labor costs. However, leaded crystal products are valued by the consumer for their quality and craftsmanship. These are luxury items for which many consumers will defer purchase in times of economic uncertainty, but because of the unique aesthetic quality of these products, will generally not substitute lower cost imports, even if they are functionally equivalent.

Both the domestic wool and textile fiberglass markets are highly concentrated, with no prospects for competition from foreign producers (Ex. 476–191). Given the high demand for insulation materials, rising energy costs and the oligopolistic nature of the industry, any cost increases incurred as a result of the lead standard would likely be passed on to consumers. Since specialty orders requesting the addition of lead in these products appear to be extremely infrequent, no significant economic impact is anticipated for this industry.

The record shows that there is little potential for exposure to lead in the production of fiberglass and other insulating materials. Minimal compliance costs may be incurred by companies that intermittently accept special order jobs that might require the addition of lead to their products (Ex. 476–201).

(iii) *Conclusion: Economic Feasibility.* None of the industries or firms within the industries presented financial data to OSHA for consideration. However, the annualized costs of compliance are expected to comprise, at most, 0.8 percent of the total value of shipments ($505.6 million in 1977) (Ex. 476–20). This information and the apparent stability of the lead glass industries lead the Agency to conclude that no major economic impact will occur.

17. Gold, Silver and Platinum Smelting

(a) *Primary Gold Smelting and Refining*

(i) *Uses.* The oldest and the most important commercial use of gold is in jewelry. It is also used in dental devices such as inlays, crowns, bridges and orthodontic appliances (Ex. 476–204). The most important industrial use of gold is in electronic devices, especially printed circuit boards, connectors, keyboard contactors and miniaturized circuitry. Gold containing brazing alloys are also important to the aerospace industry, especially in jet engine assembly. Gold is used as a reflector of infrared radiation in radiant heating and drying devices and heat-insulating windows for large buildings (Id.).

In the United States, 60 percent (Id.) of the domestically produced gold is obtained by recovering natural gold from gold-bearing ores or placer deposits or as a byproduct of lead and copper smelting (Ex. 461 p. 20). The total domestic output of mined gold comes from approximately 225 mines. Three mines accounted for 63 percent, and 25 mines for about 95 percent, of domestic output in 1977 (Ex. 476–204). Eighty-five percent of the gold ore in the U.S. comes from South Dakota, Nevada, Utah, and Arizona. The leading producer, Homestake Mining Company, provides about one-third of domestic output from deep underground mines in South Dakota. The Kennecott Copper Corporation, a major copper producer that produces gold as a by-product of its extensive copper smelting operations, is the second largest gold producer (Id.). The third largest producer, the Carlin Gold Mining Company, has an open pit mine in north-central Nevada. Due to increased gold prices, other mines are now being refurbished (Id.).

(ii) *Process Description and Exposure Areas.—(a) Smelting.* Except for certain alluvial deposits, the first step in recovering gold from ore to is crush it very finely with water in a ball mill to liberate the gold. At the Homestake Mines in Lead, South Dakota, good milling practices have resulted in the recovery of 96 percent of the gold contained in the ore. The remaining gold is removed by amalgamation and cyanidation (Ex. 476–4B).

For some ores (tellurides), a preliminary roasting step may be required prior to amalgamation (Id.). Ores which are to undergo amalgamation are crushed, concentrated, and sorted before the concentrates are passed over mercury-treated (amalgamated) copper plates, to which the gold particles adhere. The discharge from the plates is then extracted with a cyanide solution. Mercury may also be added during the crushing stage to achieve direct amalgamation. The crushed ore may be treated directly with a cyanide solution, thereby making the entire process described above unnecessary.

During cyanidation, the ore is placed in large vats and treated with a dilute solution of sodium cyanide or an equivalent amount of calcium cyanide plus a little lime. Air is bubbled through the mixture to provide oxygen. Cyanide will dissolve any silver present as well as some of the base metals in the ore, further reducing impurities. The cyanide slurry is then filter pressed. This process allows gold to be extracted, without roasting, after fine grinding (Ex. 476–4B). The gold and other metals dissolved by the cyanide are recovered by treatment with zinc dust or, occasionally, with aluminum, that precipitates the gold out of the solution. Frequently, lead acetate is used to assist in the precipitation (Ex. 481).

(*b*) *Refining.* The impure gold recovered from amalgamation or cyanidation is melted under oxidizing conditions to remove most of the copper and the base metals, leaving gold and silver. A cupel, or an open-hearth furnace with a hearth of special construction, furnishes a refractory base of noncontaminating materials to absorb a portion of the fused litharge (a lead solution which is added to the precious metals to formulate the fine metal blends). The litharge is run through a trough and collected for future use. The process requires a blast of air directed at the metals in the hearth while at red heat. The process is complete when the last film of oxide is removed, and the gold flashes out brightly. This process removes all trace metals, including lead (Ex. 476–5G). However, the gold must be further refined to produce a final product.

The gold product can usually be recovered by electrolysis in a chloride solution. In this process, developed by Wohlwill, the gold in the anode is dissolved and deposited in pure form on the cathode. Any remaining silver is converted to chloride, which tends to coat the anode, however, superimposing alternating current on the system will sharply reduce this problem. The resulting cathode deposit should contain 99.95 percent pure gold after melting (Ex. 476–4B).

Electrolytic recovery of gold from impure gold may also be accomplished through the Miller process in which chlorine is bubbled through the molten metal and converts the base metals into volatile chlorides, which then can be poured off and further refined. The

remaining gold is less pure and may require additional treatment (Id.).

Lead exposure occurs in the initial stages of material handling such as crushing, grinding and conveying of the ores. Preconditioning of ores which requires pyrometallurgical treatment may also result in exposures. Cyanidation processes are another potential area for lead exposure. In refining operations, exposures can occur during furnace charging when litharge is being added, from the furnaces' fugitive emissions, and from handling litharge for reprocessing. During the electrolytic processes, very little lead exposure should occur because most impurities have been removed. In the casting areas, very little lead exposure occurs; although trace amounts of lead may remain in bars of silver, gold, or platinum, the lead is in alloy form and does not present an exposure hazard (Ex. 22, p. 236).

(iii) *Controls Currently Used.* The ores are mechanically conveyed to the grinding areas and grinding is done at a ball mill with water (Ex. 476–4B). The companies are very careful about dust collection so as not to lose the noble metals (Ex. 22, p. 235). Materials are stored in bins with chutes and are conveyed by screw conveyors. Belt wipes, dead drops, conveyor curtains or skirts and local exhaust ventilation at material transfer points can also be used to control dust. Dust suppression is accomplished by keeping the materials moist and, on many lines, liquid sprays or chemical dust suppressants are added to ores being handled. Vacuuming (preferably wet) minimizes the reentry of settled dusts into the air. In some instances, clean air pulpits are used in automated operations in very dusty handling processes (Ex. 481).

Controls in cyanidation processes may consist of enclosed materials conveying systems, exhaust ventilation of cyanidation tanks and the automated or mechanical addition of chemical precipitators.

Controls used during pyrometallurgical processes consist of maintaining negative pressure in the furnaces and providing ventilation to capture fugitive furnace emissions or enclosure of the source of contamination. In addition, materials handling systems, such as ladles, pots, kettles and launders, are provided with exhaust hooding, as are tapping and skimming pots (Ex. 481).

In refining operations, exposure control involves the application of pressure differentials to furnaces, ventilation to capture fugitive emissions from furnaces, total or partial enclosure of units and the use of materials handling systems with ventilation of tapping and skimming pots. In addition, electrolytic precipitatory processes are ventilated.

The casting areas utilize exhaust ventilation.

(iv) *Exposure Levels.* Exposure data in ore handling operations were provided. One gold processor reported that the percentage of lead present in gold ore was so low as to preclude any problems in meeting the standard (Ex. 22, p. 235). William Wagner, an expert witness on smelting, agreed that the 50 $\mu g/m^3$ limit was achievable in material handling operations (Ex. 481). Data on lead levels resulting for pre-treatment of telluride ores were not available. However, companies stated that lead exposure from this operation presented no problems (Ex. 22, p. 235). Exposure data were also unavailable for lead exposures resulting from cyanidation, although Wagner stated that he was unaware of any data indicating that lead levels exceed 50 $\mu g/m^3$ in this operation (Ex. 481, p. 20).

A NIOSH survey of the Homestake Gold Refinery (Ex. 476–210) indicated that lead exposures can range from 50 to 13,800 $\mu g/m^3$ in gold refinery operations. Wagner stated that exposures ranged from nondetectable to a few hundred $\mu g/m^3$ at plants that he had sampled (Ex. 481). The broad range of exposure levels is due to a lack of engineering controls at some facilities (Ex. 481). No exposure data were submitted by industry representatives.

(v) *Population Exposed.* The exact number of workers exposed to lead in this industry is probably less than 100. Short estimated that 100 workers in silver and gold smelting (both primary and secondary) are exposed to lead (Ex. 22, p. 237). Wagner stated that approximately 2000 workers are engaged in the gold, silver and platinum industries, but that only 200 are exposed to lead (Ex. 481). No data are available which indicate the numbers of workers exposed to lead above and below 50 $\mu g/m^3$.

(vi) *Additional Controls.* Wagner testified that "all areas associated with the processing and refining of gold, silver and platinum could be brought into compliance with the OSHA lead standard by the application of generally available controls" (Ex. 481).

The selection of the appropriate control, or combination of controls will depend on the material handled, the extent of the dust problem, the process involved, and the extent to which engineering controls are already in place.

Mr. Wagner stated that:

Materials handling problems occur when bins and chutes become plugged, at transfer points, and when dry or hot materials must be conveyed. Standard engineering solutions for all of these problems exist, especially since materials handling is a problem common to many industries, not just the smelting and refining industries (Ex. 481).

Basically, all commenters agreed that, depending upon the particular condition of a plant, different plans for achieving compliance with the 50 $\mu g/m^3$ standard might be necessary (Ex. 481; 475–28; 479; 487). Applying exhaust hoods and fans to capture and contain fugitive emissions at tapping holes, troughs and charging areas and use of worker observation booths may be necessary in cases where exposure levels are extremely high. Where exposures are intermediate, the use of local exhaust ventilation in specified areas in conjunction with an enhanced housekeeping and worker rotation program may be sufficient. Where levels are slightly above 50 $\mu g/m^3$, employee rotation alone may suffice.

The best controls available will not be effective, however, unless they are properly designed, fabricated, installed, and conscientiously operated and maintained. Ventilation hoods and ducts permitted to deteriorate beyond use; conveyor skirtings that are remove or improperly adjusted; inspection doors that have been removed, left open or replaced by screens; and new systems that are simply tacked onto existing ones with little or no thought to proper air flow balancing will counteract any effort to achieve the 50 $\mu g/m^3$ limit (Ex. 481). Ducts that are not attached to the associated hood or that are completely detached from the ventilation system are also insufficient (Ex. 479). The necessity for enhanced maintenance cannot be stressed enough in this particular industy.

(vii) *Conclusion: Technological Feasibility.* Compliance for primary gold production and refining appears feasible through the use of the conventional control techniques discussed by William Wagner (Ex. 481), Melvin First (Ex. 270), and Charles Billings (Ex. 487). Materials handling systems, pyrometallurgical controls and controls for chemical processes all involve either containment of the source of exposure or worker isolation (Ex. 270). In all areas except for gold refining, compliance with the PEL appears to have been achieved. In refining, levels of exposure are high but, as Wagner testified, the plant he observed with the highest exposures had virtually no controls. Therefore, using the controls methods discussed herein, OSHA concludes that

compliance with 50 $\mu g/m^3$ is feasible in one year in gold smelting and refining.

(b) *Primary Silver Smelting and Refining*

(i) *Uses.* In 1977, domestic use of silver amounted to 154 million ounces. Major consuming areas were photography, silverware, and electrical equipment (Ex. 476–205). Chemicals are produced from about one-third of the silver.

Refineries normally ship silver in the form of ingots. These go largely to several principal producers or fabricators of semi-manufactured products, such as rolled and extruded bars, rods, wire, sheet, foil and powdered or pelleted silver. These semi-manufactured forms go, in turn, to about 5,000 manufacturers of silver products. New scrap, resulting from the manufacture of finished products, is reprocessed internally or returned to one of a number of refiners for reprocessing (Ex. 476–205).

(ii) *Process Description and Exposure Areas.*—(*a*) *Primary Ore Recovery.* Silver is recovered from ores almost entirely by a flotation process that recovers silver from intermediate products of lead, zinc or copper smelting. Silver is carried down with the lead in smelting and separated from it by the Parkes process. This process requires the addition of zinc to the molten silver-lead mixture. The mixture is allowed to cool, and the virtually insoluble silver-zinc alloy separates from the molten lead and rises to the surface, where it is skimmed. This first crust contains much lead, more than 2,000 ounces of silver per ton, and all of the gold in the original bullion. By use of a retort, the zinc is distilled for reuse. The retort residue is cupelled to recover the gold and silver as dore metal, and the lead as litharge (Ex. 476–205).

(*b*) *Refining.* Silver found in association with gold from gold-placer or lode-gold mining is recovered in the electrolytic refining of gold bullion and was discussed in the primary gold smelting and refining section.

Crude silver bullion, which usually contains small quantities of gold or other metals and old scrap silver, may be treated at a copper refinery. The electrolytic refining process is commonly used, that consists of an electrolyte of silver nitrate and nitric acid. Fine silver crystals are produced and remelted into commercial bullion bars. Commercial silver is guaranteed to be a minimum of 99 fine and may range from 99.4 to 99.9 fine purity, with copper or gold the usual impurity (Ex. 476–205).

(iii) *Controls Currently Used.* Materials handling control technology for silver smelting is comparable to that used in gold, lead and copper smelting, and generally requires the use of storage and mixing bins; belt, screw or mobile conveyors; pneumatic conveyance; and enclosure and hooding of conveying systems, etc. (Ex. 461). The controls for the electrolytic processes and refining are also comparable to gold smelting and include ventilation of pyrometallurgical equipment and electrolytic processes.

The areas of exposure are essentially the same as in the copper and gold smelting industries, and consist of materials handling, pyrometallurgical processes, and chemical processes (Ex. 461). The Bunker Hill Company stated that the greatest potential for exposure occurred during the handling of silver concentrates when they are transferred to holding bins via an overhead conveyor system, and when carts are used to transfer the concentrates from the bin to the refining furnace (Ex. 475–38B). Specific sources of exposure include spillage of concentrate, dust from shoveling, fuming furnaces and skimming molten metals from furnaces (*Id.*).

(iv) *Exposure Levels.* The Short Report estimated that in gold and silver smelting combined the 100 workers were exposed to low to medium concentrations of lead. Low was defined as 70 percent below 50 $\mu g/m^3$, 20 percent above 50 but below 100 $\mu g/m^3$, and 10 percent above 100 $\mu g/m^3$. In the medium category, the percentages were 40, 30, and 30 respectively (Ex. 22, pp. 239, 124). Lead exposure estimates by the Bunker Hill Company indicate that 20 percent of all employees are exposed below 30 $\mu g/m^3$ and 80 percent are above 50 $\mu g/m^3$ (*Id.*) Exposures were significantly higher than 50 $\mu g/m^3$ in certain of the areas the company labeled as high exposure areas (Ex. 475–38B, p. 2). This inconsistency with the Short estimate suggests that Bunker Hill's levels may be higher and, therefore, are not representative of the rest of the industry.

(v) *Population Exposed.* As stated for the gold smelting and refining industry, the number of workers exposed to lead in silver smelting alone is not known, but is probably below 100. William Wagner estimated that about 200 workers are exposed to lead in the silver, gold and platinum smelting industries combined (Ex. 461).

(vi) *Additional Controls.* Wagner concluded that the application of generally available controls can bring the silver industry into compliance in those areas where compliance has not yet been achieved (Ex. 461). These controls were discussed extensively in the section above. In the case of Bunker Hill, additional efforts may be required, such as upgrading existing dust collection systems. For example, Bunker Hill provided data which indicated that the handling of the concentrate presents the most difficult control situation (Ex. 475–38B). Overhead conveyor systems are used, as are carts, to transfer the concentrate to refining furnaces. A detailed description of the existing technology was not provided, thus, it is not clear whether the conveyance system is totally enclosed, whether long material drops are used, whether protective curtains or barriers can be applied, etc. However, as Wagner stated, materials handling is a problem for most industries and existing, already tested, workable controls are available. Bunker Hill must assess the controls it has in place and determine their effectiveness. The extent to which upgrading or additional controls will be required depends upon the characteristics of the ores being handled, the extent of the dust problem, the exposure levels of the workers (eight-hour time-weighted averages) and the design of existing equipment.

In areas where exposure levels are high, improvements to existing ventilation systems may be necessary and, perhaps, the addition of worker observation booths. Where exposures moderately exceed 50 $\mu g/m^3$, proper ventilation, enhanced housekeeping and worker rotation may be sufficient to achieve compliance. Where levels are only slightly above 50 $\mu g/m^3$, worker rotation may suffice (Ex. 461).

(vii) *Conclusion: Technological Feasibility.* Compliance with the 50 $\mu g/m^3$ PEL within one year appears to be feasible for the silver smelting and refining industry, in most cases, simply by upgrading existing control technologies, using effective work practices and using worker rotation. Since silver smelting is, for the most part, a by-product of primary lead and copper smelting, the controls needed to achieve compliance with a 50 $\mu g/m^3$ PEL in these operations will also control lead exposure during silver recovery processes. In the refining of silver, improvements in the areas of material handling should bring the industry into compliance with the standard.

(c) *Platinum Smelting*

(i) *Uses.* Platinum is used as a catalyst in synthetic organic chemistry, in contacts for relays and switch gears, in resistors and capacitors, electro-chemical electrodes, spacts electrodes, grids for power tubes and radar tubes, fuel cells, thermocouples, retardants, and as an ingredient in corrosion resistant subetances, hardening agents,

medical or dental uses, jewelry, reflecting ornamental surfaces, and brazing alloys (Ex. 47B, 4L). Of the platinum metal refined in the U.S., new metal either as a placer or by-product from gold and copper refining accounts for a very small portion of the production, whereas attainment of the precious metal from recycling accounts for the largest production (Id.).

(ii) *Process Description and Exposure Areas.* There are two principal stages in the isolation of reasonably pure platinum metals from raw materials. One is the extraction of a concentrate of precious metals from a large body of ore. The other is the refining of the precious metals, which involves the separation of the concentrates from each other and, ultimately, their purification (Id.).

In one process most of the platinum metal is separated from the bulk of the copper and nickel during slow cooling of a Bessemer matte. During this cooling, the oxidation of sulfur is regulated and produces small amounts of metallic nickel and copper. The latter serve as collectors of the precious metals from the original ore, and separation of the metallic phase is facilitated because the phase is magnetic. The separated material can be concentrated to an even richer alloy, the electrolytic refining of which yields a rich concentrate in the anodic slimes. Smaller amounts of the precious metals are also recovered during refining of nickel either electrolytically or by the Mond carbonyl process. The separation from placer gold ores is also done electrolytically.

Areas of exposure are similar to those in gold and silver smelting (Ex. 481), exposure can occur at materials handling stages, during pyrometallurgical processes, and possibly during electrolytic precipitation.

(iii) *Controls Currently Used.* The controls necessary to achieve the 50 μg/m³ standard in gold, nickel, silver and copper smelting would be the same controls necessary to achieve 50 μg/m³ limit for platinum, since platinum is recovered as a by-product of the smelting of gold, lead, silver, copper, and nickel.

(iv) *Exposure Levels.* No data on levels of exposure were presented by any witnesses nor as part of any written submissions. Levels are assumed to be the same as those in gold and silver operations and to depend entirely upon the percent of lead in the ore (Ex. 481).

(v) *Population Exposed.* Approximately two hundred workers are exposed to lead in gold, silver, and platinum smelting combined (Ex. 481). The number potentially exposed in platinum operations alone is not known.

(vi) *Additional Controls.* Controls are not necessary to control lead exposure occurring as a result of platinum recovery, since platinum is recovered exclusively as a by-product of a gold, silver, copper, lead or nickel smelting process.

(vii) *Conclusion: Technological Feasibility.* Since platinum is recovered almost exclusively as a byproduct of the smelting of another ore, the controls needed to achieve 50 μg/m³ lead exposure for the recovery of primary ore will also achieve 50 μg/m³ in the recovery of platinum.

(d) *Secondary Smelting of Gold, Silver, and Platinum*

(i) *Uses.* The uses of silver, gold and platinum obtained from secondary operations are the same as for metals produced through primary production operations.

(ii) *Process Description and Exposure Areas.—(a) Sampling of Scrap.* Sampling is done to determine the content of materials so that the correct treatment for extracting the impurities may be selected. There are three major forms in which materials are sampled: (1) Sweep, which are the residues from jewelry and dental laboratories; (2) bullion, which are materials received in pigs or bars; and (3) slimes, which are the dried residues from electro-refining or electrowinning processes (Ex. 475–31).

Materials for sweep sampling are received in 55-gallon drums. The powder is mixed in double cone blenders, repackaged in the drums, the thiefed for sampling. Bullion bars must be melted, prior to processing, for sampling. Kaplan described AMAX as having a bullion room containing with five furnaces, four oil-fired and one electric to melt bars prior to sampling (Ex. 475–31). Sampling of slimes is accomplished by dumping the materials onto the floor and quartering and coning (Id.). The operation has already been enclosed in a separate isolated room, with that room placed under suction to a dust collector, in order to localize the problem (Id.).

(*b*) *Pyrometallurgical, Wet Chemistry, or Electrowinning Processes.* Following sampling, materials are fed either to the Dore furnace for pyrometallurgical treatment, or to the wet chemistry and electrowinning sections of the precious metals process (Id.).

The dore furnace is a special type of reverberatory furnace (Id.). Pyrometallurgical treatment is comparable to treatment performed in primary operations and basically involves the melting of the materials, separation, and skimming or raking. Chemical separation is also done quite often, of pyrometallurgical separation.

Sweeps and related materials containing nonmetallic particles can be treated by adding the appropriate flux to produce a low-melting slag. Litharge (PbO) should be present in the mixture and some of this is reduced to produce metallic lead, which dissolves the fine precious-metal particles. The resulting noble metal-lead alloy, which should contain a reasonable amount of silver, is oxidized in a later step to produce litharge, which is poured off, and the residual dore is treated electrolytically (Ex. 47B–5G).

(*c*) *Refining.* A number of special problems arise in the treatment of precious metal wastes of various types, such as "sweeps" and in treating scrap containing copper, nickel, zinc, and possibly some iron, tin, and lead, plus gold and silver. Dilution of the zinc can be fumed off as zinc oxide, and iron, lead, and some of the tin may be slagged off. The precious metals remain with the copper and most of the nickel. This product can be made at the anode in a sulfate solution and most of the copper and nickel removed, the precious metals remaining as an anode slime or mud, which is further recovered through electrolysis (Id.).

In refining precious metal scrap and some concentrates, the gold is converted to its chloride by treatment with aqua regia. After heating to remove nitrogen oxide, gold is precipitated from this solution by reduction with sulfur dioxide or ferrous sulfate. Any platinum metals can be recovered from this solution after the complete precipitation of the gold. (Id.)

Silver also can be removed from dore metal by treatment with hot sulfuric acid. The gold remains undissolved but is lower in purity than that resulting from most other processes. (Id.)

Dore containing moderate amounts of gold can be treated by electrolysis in a nitrate solution. The gold does not dissovle but is retained in canvas anode bags. The silver deposits are very pure. (Id.)

Exposures may occur in sampling operations, in the dore furnace areas, and in chemical processing and electrostatic precipitation processes.

(iii) *Exposure Levels.* Typical exposure levels are not known, but Short's statement that "companies anticipate no difficulties or costs involved with compliance with the proposed standard" (Ex. 22, p. 236) indicates exposure level must be below 100 μg/m³ as a general matter. At one site for which exposre levels were obtained, exposure in sweep sampling range from 15 to 5280 μg/m³ (Ex. 475–

31). Typically, four workers are involved per shift. No information was given which indicated if these were personal samples or area samples, or if they were peak exposures or 8-hour time-weighted averages. The bullion furnace operations create exposures ranging from 17 to 530 $\mu g/m^3$ (Id.) These numbers also have not been characterized to determine accurately what environmental conditions are at this site. No exposure data were given concerning lead concentrations in the dore furnace areas.

(iv) *Population Exposed.* The Short Report did not separate the number of employees in primary recovery of gold and silver from secondary recovery (Ex. 22, p. 237), but the number is less than the total amount of 100.

(v) *Additional Controls.* Improvement of existing technology may be necessary for some plants; use of work practices, housekeeping, and worker rotation may also be necessary to achieve compliance with 50 $\mu g/m^3$.

Materials handling operations involving the sampling of sweeps pose some problems as a result of trade customs which dictate the methods and size of shipments (Ex. 475–31). While it may be true that this particular operation may require improved ventilation to recover lost precious metals from the ambient air as a result of these customs, an economic incentive for implementing such improvements is created by rising prices for precious metals (Ex. 22). Of course, one should also consider that the recovery of these precious metals is economically advantageous to the company (Ex. 461). However, where ventilation cannot be used to reduce levels to 50 $\mu g/m^3$, worker rotation can be used as a supplement to achieve compliance with the intent of the standard, to control worker exposure.

The electric furnace is amenable greater fume control with a lesser air volume than are oil-fired furnances (Ex. 475–31), thus, Kaplan suggests converting to all electric furnaces. This certainly is the most costly alternative; however, less expensive and technologically less drastic changes such, as the use of local exhaust ventilation, containment, etc., as suggested by Wagner, could also be utilized (Ex. 461).

Current trade practice dictates that only one method of slime sampling is acceptable, and Kaplan testified that this is the method AMAX uses and that no further mechanization is possible under present circumstances (Ex. 475–31). In this case, stringent adherence to work practices, effective maintenance and housekeeping plans and worker rotation should be sufficient to reduce levels to 50 $\mu g/m^3$.

Improved ventilation of the dore furnaces may also be necessary. In Kaplan's example, improved ventilation was applied to prevent strong air currents from disrupting the air flow of exhaust hoods and to prevent contaminated air from being carried to other portions of the precious metals department. (Id.)

The importance of plant maintenance cannot be overstated. Repairing floors, leaking pipes, etc., can reduce or eliminate exposures in many instances. One example presented by Mr. Kaplan involved lead exposure in a leach room which resulted from lead emissions from the dore furnace area. It appeared that the leach room was located above and generally downwind of the dore furnace room, and the lead concentrations in the leach room were due to contaminated air rising from the dore furnaces. Kaplan felt that repairing the leach room floor, keeping the stairway opening closed, and installing a make-up air system to pressurize the room slightly would resolve this problem. (Id.)

(vi) *Conclusion: Technological Feasibility.* The most difficult areas to control appear to be in the materials handling processes. As Bill Wagner testified, the materials handling problems are common to many industries, and standard engineering controls do exist to reduce exposures in these areas (Ex. 461).

Controls for pyrometallurgical processes are also available and used extensively in primary operations and include hooding of tapping and skimming ports, ladles, pots, kettles, launders, etc. (Ex. 461) and are also applicable to secondary processes.

Even though there may be areas for which engineering controls *alone* may not be able to reduce exposures below 50 $\mu g/m^3$ (i.e., sweep sampling and slime sampling), effective work practices, worker rotation, and housekeeping can be used to control exposures to the 50 $\mu g/m^3$ level. The industry is, therefore, capable of compliance within one year.

(e) *Gold, Silver, and Platinum as By-Products of Lead or Copper Smelting Operations*

(i) *Uses.* The uses of these precious metals are the same as those discussed in the primary smelting of gold, silver, or platinum ores.

(ii) *Process Description and Exposure Areas.* The precious metal may also be recovered from the smelting of base metals such as lead and copper by the cupellation method. Subsequent processing to remove precious metals may involve chemical treatment to precipitate one or more precious metals or an electrolytic method.

The electrolytic method is the preferred means of separating precious metals from base metals in the U.S. One process uses anodes of dore silver, with the cathode being a movable silver belt with a light coating of oil. The belt moves in a trough of redwood coated with acid-resisting paint. The bath is silver nitrate, kept slightly acidic with nitric acid. The belt moves under the cathode, is brushed off automatically at the turn, and delivers silver powder. The anode is hung in a fabric basket in which the gold slime deposits. The slimes are collected, washed with sulfuric acid, and melted to recover gold metal (Ex. 476–48).

The composition of the anode and cathode determines which precious metals will be precipitated electrolytically.

When precious metals are recovered as a by-product of the primary smelting of a lead or copper ore, the greatest exposure to lead occurs in the initial stages of the base metal processing. The feasibility of the standard in these operations has been established. The final electrolytic processing to remove the precious metals involves very little lead exposure.

(iii) *Controls Currently Used.* The technology necessary to achieve compliance with a 50 $\mu g/m^3$ standard in primary lead smelting and copper smelting will suffice to control lead exposure in the recovery of by-products such as gold, silver and platinum, since the lead in all cases is separated from the precious metals prior to electrolytic treatment.

(iv) *Exposure Levels.* Exposure levels during primary lead refining were discussed in the initial preamble (43 FR 54461–62). Exposure levels during primary copper smelting and refining is discussed in the primary copper smelting section. Data on lead exposure in electrolytic processes were not available.

(v) *Population Exposed.* Data were not provided indicating the populations exposed to lead as a result of the recovery of precious metals as a by-product. However, one can assume that the same population exposed in primary lead and copper smelting would also be potentially exposed in these refining processes.

(vi) *Conclusion: Technological Feasibility.* Since gold, silver, and platinum are recovered electrolytically as by-products of primary lead and copper smelting operations, the controls necessary to achieve compliance in primary operations would suffice to control by-product emissions.

(f) *Economic Feasibility: Precious Metals*

(i) *Cost of Compliance (Gold and Silver).* Industry submitted no cost data relevant to the recovery of precious metals as by-products from zinc and copper smelting. Although both ASARCO and Bunker Hill presented comments that referred to precious metal recovery, they submitted no data on controlling lead exposures in these areas (Ex. 475–29 and Ex. 475–36).

OSHA estimates that the cost of compliance in these areas will be between $500,000 and $1,500,000 (Ex. 481). These estimates were entered into the record and presented during the hearings. At no time did industry submit any data which would counter this estimate.

(ii) *Industry Profile.—(a) Gold.* In 1977, production of domestic gold was 1,100,000 troy ounces. Total value of shipments was $163,197,000 (Ex. 476–206). About 60 percent of gold is obtained from predominantly gold ores, while the balance (40 percent) is a coproduct primarily of copper and partly of other base metal productions. Of this base metal production, seven percent of the total gold mined involved lead ores (Ex. 476–206).

Three major smelting and refining companies produce 65 percent of domestic primary gold. These companies are Homestake Mining Co., Kennecott Copper Corporation, and Carlin Gold Mining Corporation. Three individual mines produce 63 percent of domestic primary gold.

Major uses of gold include jewelry and arts, dental supplies, industrial uses and investment. In 1977, 55 percent of U.S. demand for gold was for jewelry and arts, 15 percent for dental supplies, 25 percent for industrial uses and 5 percent for investment. There are no major individual demanders for gold in the U.S. With respect to the elasticity of these demands for gold, the demand for gold in jewelry and arts and in dental supplies is inelastic. There are very few acceptable substitutes for gold in these industries. However, with respect to industrial demand for gold, this appears to be much more elastic. As evidence, the industrial demand for gold in troy ounces fell by one-half between 1975 and 1977. Taking the place of the industrial demand for gold has been the investment demand for gold. Traditionally, gold has been considered to be a hedge against inflation because of its limited supply and its resistance to tarnish and corrosion. Expectations of inflation lead to this increase in the demand for gold and this component of demand becomes a larger and larger component over time as inflation remains unabated. Thus, minor cost increases in the production of gold are not likely to have a significant impact upon the gold market.

As relatively little gold is produced as a by-product of other metal refining and, as 92 percent of that by-product gold is currently recovered, other metals markets will have little impact upon total gold production. Recent gold price fluctuations simply illustrate the volatile nature of investor expectations and their impact upon the price of gold. These price increases have also shown that the secondary gold supply is extremely responsive to prices.

(*b*) *Silver.* In 1977, five primary and 17 secondary producers in SICs 3339335, 3341531, and 3341571 produced 111,623,000 troy ounces of silver and silver-based alloys. Total value of shipments was $388,300,000 (Ex. 476–20). Nearly one-third of silver is obtained from predominantly silver ores, while the balance is produced as a coproduct of copper, lead, zinc, and other mineral production. Nineteen of 25 mines from which silver was obtained were copper, lead, lead-zinc, and copper-lead-zinc-gold mines (Ex. 476–206).

Four major smelting and refining companies produce the bulk of domestic primary silver. They are ASARCO, the largest, and Bunker Hill, Kennecott, and U.S. Metals Refining Company (a division of AMAX). Three silver processing and fabricating firms consume nearly two-thirds of all domestic unmanufactured silver. They are Eastman-Kodak, Handy and Harman, and Engelhard Minerals and Chemicals (Id.).

Major uses of silver include photography, silverware, and electrical and electronic equipment. In photography, demand for silver is relatively inelastic since there are no suitable substitutes. The relatively low value of silver content in electronics applications in comparison to the high unit value of the end product, leads to an inelastic demand for silver in this use as well (Id.). Thus, price increases are not expected to adversely affect the firms in this industry.

However, since production is dependent on other metals, silver output also responds to economic factors other than the price of silver. Recent silver price fluctuations have been attributed more to speculation than to the gap between supply and demand (Id.). Future increases in market price will probably result in an increase in the supply of secondary silver.

(iii) *Conclusion: Economic Feasibility.—(a) Gold.* Over the past few years, the price of gold has risen dramatically. Mines that were previously closed because it was not economically profitable to work them have been reopened. Because of the relatively low compliance costs that gold producers may incur and the high rates of profitability in the industry, OSHA concludes that the standard will clearly not be financially burdensome in this industry.

(*b*) *Silver.* There has been a pronounced increase in the profitability of producing silver and other precious metals in the past few years. Given the relatively small compliance costs in this industry, OSHA concludes that the standard will not be financially burdensome to the silver producers and will not have an adverse effect on the economy as a whole.

(*c*) *Platinum.* There are no additional costs attributable to platinum smelting beyond those required to achieve compliance in the smelting of the primary ore.

18. Jewelry Manufacture

(a) *Uses*

Jewelry manufacture does not use lead in the actual production of pieces of jewelry, but lead solder is used in the laminating of two metals or in construction of items such as service emblems. The technological discussion relates to the soldering of jewelry.

(b) *Process Description and Exposure Areas*

Manual jewelry soldering is a typical soldering operation. Workers may solder at "bench type" operations where a soldering iron is used to melt solder to individual work pieces.

One large costume jewelry company reported that most costume jewelry soldering is done in furnaces (Ex. 22, p. 287). In one company having 500 employees, a total of one pound or less of lead solder is used per year (Id.).

(c) *Controls Currently Used*

One industry contact felt that 50 percent of the companies have well ventilated facilities at present (Id.). Local exhaust ventilation (see discussion in soldering section) and housekeeping can be relied upon to maintain levels below 30 $\mu g/m^3$ (Id.). Where furnaces are used to melt solder, proper ventilation, consisting of fugitive emission capture hoodings, is used.

(d) *Exposure Levels*

Data were not furnished by jewelry manufacturers. However, in comparable soldering operations (Ex. 476–494), breathing zone samples were less than 3 $\mu g/m^3$. One operation surveyed had mostly nondetectable levels, except for

one which was .018 $\mu g/m^3$ (Ex. 476–400). All levels in manual soldering were less than the 30 $\mu g/m^3$ action level (Id.).

(e) *Population Exposed*

Data indicating the number of workers exposed to lead in jewelry manufacturing were not available.

(f) *Additional Controls*

None are needed other than those already being used.

(g) *Conclusion: Technological Feasibility*

One company stated that if there was any lead exposure, its insurance company would know about it and would have made recommendations for corrections (Ex. 22, p. 287). A trade association representative stated that lead use in jewelry soldering has been studied at length by State and local officials, and that lead exposure was not found to be a problem (Id.).

Based on the data from comparable soldering operations, it would appear that companies in this industry are correct in stating that lead exposure poses no feasibility problem. Levels are less than 30 $\mu g/m^3$, which signifies that compliance with the standard is currently being achieved (Id.).

(h) *Economic Feasibility*

Since existing control technology will be sufficient to keep levels below 50 $\mu g/m^3$, there will be no compliance costs nor economic impact as a result of this standard.

19. Lamp Manufacturing

(a) *Uses*

Lead is used in the manufacture of incandescent lamps, either in the remelting of leaded glass to form specific parts or in the soldering together of parts (Ex. 22, p. 312).

(b) *Process Description and Exposure Areas*

Operations have been described quite differently at various locations. At the Quoizel Plant, glass patterns are set, copper foil is wrapped around the edges of the glass and lead flux is poured around the glass to glass interface (Ex. 476–215). At the General Electric lamp making facility, lead compounds are used primarily in the application of solder, in some lamp types, to seal the wires to the metal bases, and in lead glass, in flares at the base of lime glass bulbs (Ex. 476–214). While the specific manufacture of a product is variable, the exposure to lead results from either the reworking of a lead glass or a soldering process.

(c) *Controls Currently Used*

The basic controls include the use of local exhaust ventilation at points of exposure, such as melting, pouring and soldering areas.

(d) *Exposure Levels*

Exposure monitoring performed at the Quoizel Plant indicates no exposure to lead (Ex. 476–215). General Electric also has indicated that air levels are below 50 $\mu g/m^3$ (Ex. 476–214).

The three major lamp producers suggested that compliance with the 50 $\mu g/m^3$ PEL was achievable (Ex. 22, p. 312). General Electric also indicated that the 50 $\mu g/m^3$ limit had been achieved in soldering processes (Ex. 476–214).

(e) *Additional Controls*

No additional ventilation controls are needed. In fact local exhaust ventilation was not being used by the Quoizel Company and compliance was being achieved (Ex. 476–215). Soldering processes are already well ventilated and automated (Ex. 22, p. 312). It appears that existing technology, when coupled with good housekeeping, will enable these companies to remain in compliance with the 50 $\mu g/m^3$ standard.

(f) *Conclusion: Technological Feasibility*

Indications are that compliance has been achieved in the manufacture of lamps either through the use of engineering controls or by housekeeping and worker rotation. Companies have indicated that the 50 $\mu g/m^3$ PEL is achievable and, where monitoring data were compiled, levels were shown to be below 50 $\mu g/m^3$ and, in fact, they were nondetectable (Ex. 476–215).

(g) *Economic Feasibility*

Since compliance with the standard apparently has been achieved, there are no estimated costs for compliance, nor is any economic impact anticipated.

20. Lead Burning, Brazing, Welding and Surface Preparation

(a) *Uses.*—(i) *Burning, Brazing, and Welding.* Welding is a term applied to various processes that join pieces of metal by heat, pressure, or both (Ex. 476–5G). There are over 80 different types of welding and allied processes in commercial use; those allied processes include brazing and thermal cutting. Welding, brazing, and thermal cutting are widely applied in all industries where metals are used in construction, repair, and manufacture (Ex. 476–39).

Brazing is a process that produces fusion by using a nonferrous filler material having a melting point above 450° C but below that of the base metals. The filler metal is distributed between the closely fitted surfaces of a joint by capillary action. Thermal cutting (commonly referred to as burning) severs or removes metals by using welding heat sources. Thermal cutting processes include gouging, burning, and scarfing.

Recent technological advances have introduced new and more efficient welding and allied processes. The magnitude of these changes is shown by the change in materials used. In 1976, for the first time, stick electrodes constituted less than 60 percent of the electrode market. Ten years earlier, stick electrodes accounted for 75 percent of the filler metal used. The decrease in stick electrode production in 1976 indicated the trend towards automatic and semiautomatic welding methods using a continuous wire instead of rods (Ex. 476–39).

Many of the recently introduced processes are finding only limited application. Electron beam welding has found application in the aerospace and automobile industry; laser welding in automobile manufacture; and plasma arc, an extremely high temperature process, in cutting processes. (Id.)

(ii) *Abrasive Blasting.* This process entails use of an abrasive media such as sand, steel shot, or grit to remove a surface coating prior to painting. The construction industry has been exempt from the lead standard, however, the industry has not been exempt from complying with the provisions in 29 CFR 1926 which regulate abrasive blasting operations. So while some of the exposure data was compiled from abrasive blasting at construction sites, the exposures are comparable to abrasive blasting exposures found elsewhere.

(b) *Process Description and Exposure Areas*

Exposure to lead can occur in a variety of situations where any of these operations are performed and lead sheet or a lead containing product is being used. Specifically lead exposure results when workers must handle and weld, lead sheets and pipes for waterproofing, chemical resistance lining (this use has declined with the increased use of either specialty coatings or plastics, although a recent increase in lead sheeting for lining pollution control ductwork has been reported (Ex. 22, p. 244), non-sparking electrical bonding (i.e., lead floors for explosives manufacturers), when workers perform lead burning or braze leaded materials, or when lead surfaces are cleaned with an abrasive.

(i) *Welding.* Welding processes differ in the way heat is created and applied to the parts being joined. In arc welding, the most frequently used process, heat is created as electricity flows across a gap between the top of the welding electrode and the metal. In gas welding, the heat from burning gas melts the metal. As part of any welding process, filler materials, including welding rods, stick electrodes, or welding wire, are melted and added to the joint to give it greater strength. Lead exposure results from the welding of lead materials (Ex. 476–56).

(ii) *Burning (Cutting).* The fabrication or burning of joints previously formed or shaped is accomplished by utilizing a small torch (oxygen-acetylene), to heat a surface to a red color. Flame size is intentionally kept small, liquefying the smallest possible area. Lead exposure at burning operations results from the melting of the lead and the accompanying emission of fumes from this process (Ex. 22, p. 244).

(iii) *Brazing.* A nonferrous alloy is introduced in the liquid state between the pieces of metal to be formed. Four methods are used to heat the metal, (1) dipping the parts in a bath of molten metal; (2) furnace brazing; (3) torch brazing; or (4) electric brazing (Ex. 476–5G).

Exposures in all cases may occur at stationary places (such as in anode manufacture) or may involve movable sites (such as in the shipbuilding industry), or may simply be part of maintenance activities (such as repairing lead flooring in explosives manufacture) (Ex. 476–5G).

(iv) *Abrasive Blasting.* An abrasive substance is used to clean a surface prior to painting, or to remove dust and scale. This is usually accomplished by using compressed air to propel the abrasive. Exposure results from lead-containing abraded materials.

(c) *Controls Currently Used*

(i) *General Controls.—(a) Welding, Burning, Brazing Operations.* The reduction of fume concentrations within the breathing zone of a welder, brazer, or cutter can be accomplished by using either of two ventilation methods. The fume can be dispersed by diluting fume-laden air with uncontaminated air, or the fume can be captured by a hood collector connected to an exhaust system (Ex. 476–39).

Dilution ventilation can be provided either naturally or mechanically. Natural ventilation relies on wind currents or vertical temperature gradients to move the air. General mechanical ventilation uses fans to exhaust contaminated air and to provide clean make-up air in order to dilute the concentration of contaminants in the workplace air.

The use of local exhaust ventilation has been shown to be a practicable means of controlling the exposure of welders, brazers, and thermal cutters from fumes (which may contain lead) produced in their work. Compared with general ventilation, local exhaust ventilation can control fumes more effectively and is the preferred means of ventilation, provided the exhaust hood can be positioned close enough to the process to capture air contaminants.

In addition to ventilation, another method of lowering total emitted fume is the use of operating procedures that minimize the fume generation rate. The techniques identified in one report (Ex. 476–39) include using lower currents than those recommended by the manufacturer, using larger diameter electrodes, and positioning the electrode for minimum arc length, minimum contact tube-to-work distance, and maximum angle from the work. Slower speeds not only decrease the fume generated per unit of time but also per unit of length, because a lower temperature may be used (Id.).

Enclosure can also be effective in limiting airborne levels of fume. Electron beam welding, brazing, and cutting performed in a partial vacuum exemplify this practice. Dust emissions can be reduced by storing and dispensing powders in closed containers, (e.g., fluxes in submerged arc welding and filler metals in furnace brazing and thermal welding). Substitution of cleaner welding processes such as dip-arc and foil seam welding or the use of redesigned equipment such as the welding torch, can lower fume production. Proper selection of consumable welding electrodes can also lower total fume emission. Because of their widespread use, covered stick electrodes have been tested and reformulated to reduce fume generation. (Id.)

In the welding, brazing, and thermal cutting of metals, control of lead exposures also requires the use of well-designed work practices. Such practices, together with engineering controls, can minimize worker exposures to airborne lead. In open work areas, exposure to lead may be controlled by ventilation, but in confined spaces, the application of safe work practices becomes essential.

However, under some circumstances, respiratory protection may be necessary to adequately protect workers. Concentrations of a lead within a worker's breathing zone may reach an unsafe level because work is being performed in an area too confined to provide adequate ventilation, or because the quantity of emissions is quite high.

(*b*) *Abrasive Blasting.* The NIOSH criteria document entitled "Abrasive Blasting Operations Control Manual", provides a detailed discussion of the controls necessary to protect workers from the hazards of abrasive blasting, including lead hazards. In addition, OSHA's general industry standard for ventilation 29 CFR 1910.94(a) establishes requirements for abrasive blasting operations, some of which include the use of supplied air respirators when using certain abrasives or when blasting under certain conditions. Currently, the operations are controlled by using local exhaust ventilation in confined or enclosed areas in addition to supplied-air respirators.

(ii) *Specific Application of Controls to Work Operations.—(a) Welding/Burning/Brazing.* Lead burning operations are used quite extensively to repair or replace lead flooring. The lead flooring is approximately ¼ inch thick and thus a relatively small flame is required for the burning of the lead (Ex. 475–37). This results in very few lead fumes being generated and thus low exposure. Lead emissions occur where the torch melts the surface. Local exhaust ventilation at the point of emission is often used to control exposure. Respirators are also used.

Republic Lead is primarily engaged in the manufacture of lead anodes used in the electroplating industry. Each of eight lead burning stations has local exhaust ventilation and the workers wear respirators while burning (Ex. 476–222). After evaluation, NIOSH concluded that Republic's ventilation system should be revamped and recommended the installation of local exhaust for the hook coating and the specialty casting process, stressed the importance of assuring that local exhaust ventilation hoods be maintained close to the point of contaminant generation, suggested that the temperatures of the small lead pots be thermostatically controlled, and recommended improving housekeeping within the plant since it was believed that fugitive dust contributes significantly to air lead levels and employee exposures. Finally, NIOSH noted that in two instances where lead burning hoods were being operated, air movement from an open door created air turbulence sufficient to override the capture velocity of the exhaust system, thus rendering the engineering controls ineffective. (Ex. 476–222).

NIOSH also surveyed Texaco Incorporated's Casper, Wyoming welding facility (Ex. 476–223). NIOSH's measurements and calculations for this plant indicate that the new ventilation

systems had (lead burning hoods) adequate capacity, but modifications would increase air flows through the system. These modifications include (1) decreasing the amount of flexible duct since it has a high resistance, (2) keeping bends, in the flexible ducts to a minimum, and (3) using a more conventional type of hood in the place of the present hoods whose slot lengths of 2 to 4 feet are not ideal. Keeping the hoods close to the point of contaminant generation would assist in assuring a minimum capture velocity of 200 fpm, since the capture velocity at the point of contaminant generation decreases with distance from the hood. Lead exposures resulted from: (1) Lead aerosols generated from the lead burning processes, and (2) re-entrainment of lead-containing dusts into the air caused by foot traffic, air currents, fork lift usage.

In one instance, engineering controls at a lead burning operation consisted of large floor fans designed to blow fumes away from employees, but when the fans were mispositioned they blew fumes into other work areas. (Ex. 476–221)

(b) *Abrasive Blasting.* A 1975 NIOSH health hazard of demolition and reconstruction activities performed at seven missile silo sites in the Minot, North Dakota, area discovered that sandblast helmets were being used by workers performing sandblast operations (Ex. 476–220).

(d) *Exposure Levels*

(i) *Welding/Burning/Brazing.* One company reported that airborne lead exposure for workers performing lead floor burning is 10 percent to 25 percent of the previous T.L.V. of 200 $\mu g/m^3$ with no local ventilation (Ex. 476–37), thus exposure levels are at or below 50 $\mu g/m^3$ PEL.

Other air samples, both personal and fixed location, were taken to indicate exposures to, and general ambient levels of, lead. The personal air sample results for lead ranged from 60 $\mu g/m^3$ to 1,180 $\mu g/m^3$ with a mean of 300 $\mu g/m^3$. The fixed location samples ranged from 20 $\mu g/m^3$ to 150 $\mu g/m^3$ with a mean value of 100 $\mu g/m^3$.

Specific personal sampling results reflected the following lead exposures: lead burning of hooks to anodes, 60 $\mu g/m^3$ and 1,180 $\mu g/m^3$; lead burning involving coating of hooks, 150 $\mu g/m^3$; grinding and miscellaneous work, 170 $\mu g/m^3$; and plastisol coating and crating, 60 $\mu g/m^3$. Area samples indicated the following lead concentrations: Adjacent to burning station, 20 $\mu g/m^3$; 3 feet from lead casting pot, 150 $\mu g/m^3$ and adjacent to lunch room table, 90 $\mu g/m^3$.

Lead levels were measured in several areas of the plant. In the thermal spraying area, lead levels were reported to be less than 111 $\mu g/m^3$; in the torch brazing shop, described as a 20x20 foot enclosed room with local exhaust, 330 $\mu g/m^3$ of lead were found; and in an unenclosed but locally exhausted torch brazing area, 550 $\mu g/m^3$ of lead were found. (Ex. 476–222)

(ii) *Abrasive Blasting.* Results of data collected at four different missile sites where abrasive blasting was being done were reported by NIOSH. Ten measurements taken at one site ranged from 0.8 to 5,300 $\mu g/m^3$ with a mean of 1,470 $\mu g/m^3$. At a second site, nine measurements ranged from 8 to 620 $\mu g/m^3$ with a mean of 230 $\mu g/m^3$. For a third site, nine samples ranged from 20 to 19,000 $\mu g/m^3$, with a mean of 4,340 $\mu g/m^3$. At the fourth site, two samples indicated lead levels of 210 and 200 $\mu g/m^3$. Respirators were being used.

(e) *Additional Controls*

The controls needed to comply with a 50 $\mu g/m^3$ standard consist of simple straight forward portable or fixed local exhaust ventilation. However, some operations or locations are not amenable to engineering solutions, and respirators may also be necessary. Less reliance on respirators may, however, be accomplished by employers relying upon worker rotation. In fact, OSHA expects that employers will use existing ventilation equipment, maintain this equipment in optimum order, and rotate workers, in an effort to comply with 50 $\mu g/m^3$ in difficult compliance situations.

Fred Mabry of the United Steelworkers described one situation where engineering controls were effectively utilized in reducing lead exposures during lead burning operations (TR 533–525).

Mr. Mabry testified:

> When lead burning is done in a stationary location adequate ventilation can be used. At other times, there are other devices that perhaps could be available. One of those devices could be a welding suction device which is not that expensive; in this case it cost them less than $1,000 each for two complete units, which consisted of two 4-inch suction hoses with a magnetic pick-up head so that it would stick to the iron wherever they needed it. This was sufficient to remove all the welding fume including the lead from all four welding stations completely.

Charles Billings of Johns Hopkins University, also testified on exposure control technology (TR 140–141).

> But there is no reason why control technology that is presently developed cannot be applied to that. The problem here is an infrastructure problem, an implementation problem. For example, there are small, portable control devices which can be applied to any welding application. They simply have to buy it, instruct the welder how to use it, and make sure that the welder does use that. Now, you argue that involves participation on the part of the welder, and I think it does. But for the case where you are welding, and the material that you are welding, you have to move, your control technology has to move with it, and it isn't the same situation as a fixed location might be.

(g) *Conclusion: Technological Feasibility*

Inexpensive ventilation can be employed in most cases to effectively control fumes generated during welding, burning, and brazing operations. In some limited operations or locations engineering controls alone may not be effective in reducing exposures to below the PEL and supplemental respirators will be required.

21. Lead Casting

(a) *Uses*

Lead casting, as discussed in this section, relates to casting of finished special order or routinely manufactured products. The type of casting used to form pigs, ingots or billets by primary or secondary lead smelters and refineries is not covered here, but instead is discussed as part of primary and secondary lead processes.

The American Die Casting Institute states that only a few of its members continue to cast lead, and this is done only upon special customer request (Ex. 22, p. 291). Castings are most often made of aluminum, zinc and magnesium, since those metals are lighter, cheaper and have better mechanical properties than lead. Lead is used when greater corrosion resistance and weight are needed. In fact, lead has generally been replaced by plastics and lighter metals. One establishment reported that lead is cast only as a customer service and is not a money-making proposition. Also, in this instance, lead is cast in a separate facility to prevent contamination of the aluminum and magnesium casting processes. Lead casting is still used, to some extent, in making weights used balancing automobile wheels, in fishing weights and in industrial size expansion shields (Ex. 22, p. 291).

(b) *Process Description and Exposure Areas*

When lead is cast, it is melted to a barely fluid state and poured. One company described its process as having 17 pots, ranging from 1 to 10 tons with a 3–5 ton average, and a gas furnace melting lead for casting. Metal is either hand ladled or pumped into

molds. The hardened castings may then require further finishing prior to sale. Exposure results from the melting, pouring, casting and finishing of lead castings (Ex. 22, p. 291).

(c) *Controls Currently Used*

Melting pots are equipped with exhaust ventilation. Material conveying systems may also be hooded and ventilation hoods are often placed over the casts. Of course, any grinding, buffing or polishing would require the use of local exhaust ventilation also (Ex. 476–228).

(d) *Exposure Levels*

The company estimates that 50 $\mu g/m^3$ is usually achieved but occasionally exposures do go above 50 $\mu g/m^3$. Data were not submitted which indicate whether these were personal or area exposures (Ex. 476–228).

(e) *Population Exposed*

No data are available on the number of employees exposed above 50 $\mu g/m^3$, although based on data which indicate that lead specialty casting is being replaced by substitutes, the number is expected to be very low (Ex. 22).

(f) *Additional Controls*

Housekeeping and worker rotation may be necessary to ensure that levels remain below 50 $\mu g/m^3$.

(g) *Conclusion: Technological Feasibility*

Conclusion. The data suggest that levels are presently at or very near 50 $\mu g/m^3$ in this industry, although exposures occasionally exceed 50 $\mu g/m^3$. Existing engineering controls appear to be sufficient for maintaining levels at 50 $\mu g/m^3$, in general, with intermittent exposures being controlled by worker rotation. Housekeeping and maintenance may need upgrading since controlling general exposures to the lowest limits will allow occasional excursions to be accommodated with minimal effort.

(h) *Economic Feasibility*

Compliance costs were not furnished by the industry. However, since compliance is generally being achieved through the use of existing ventilation controls and work practices (except for occasional excursions) any additional compliance costs should be minimal and should be for the less costly controls, such as improved housekeeping or worker rotation.

22. Lead Chemical Manufacture

(a) *Uses*

Lead based chemicals may have many uses some of which are plasticizers, stabilizers, catalysts, oxidants, soaps, and colorants. Some common lead chemicals are: red lead, a rust-inhibitor and a component in positive storage battery blends and in ceramics; lead dioxide, used as a powerful oxidizing agent in the dyeing and chemical industry; lead silicates, used as a stabilizer or inhibitor; lead oxide, which has many uses as an ingredient to form other lead compounds and as a litharge in numerous chemical processes; and the lead soaps, which are used extensively in the polyvinyl chloride (PVC) industry as stabilizers, as driers in paints and varnishes, and in lubricating greases. (Ex. 476–4B).

Lead Stearates and lead 2-ethylhexoate are stabilizers for vinyl and other plastics. Lead stearate is used in the metal powder and molding industries. Other lead soaps include the following:

lead caprate
lead undecylenate
lead laurate
lead myristate
lead palmitate
lead dibasic stearate
lead resinate
lead neodecanoate
lead lignocerate
lead cerolate
lead melissate
lead hydrocarpate
lead chaulmoograte
lead linoleate
lead 2-ethylhexoate
lead tallate [7]

(b) *Process Description and Exposure Areas*

(i) *Lead Pigments (includes lead oxides).* The primary metal, lead, is fed to a smaller melting pot at approximately 900 degrees F. Following an air/stream oxidation and separation process, the oxides of lead are produced (Ex. 476–235). See Pigment section.

(ii) *Lead Soaps.* Lead soaps are produced mainly by *chemical* specialty companies in a batch process in a *partially* closed kettle. The powdered lead litharge is added to the kettle under a slight negative pressure so as to draw the lead dust into the pot. This process takes about 15 minutes, and generally is not performed more than once a day. Precautions are taken to reduce lead litharge dust and the empty shipping bag is sealed in plastic for disposal. Companies monitor employee air-lead exposures by urine and blood sampling.

Only employees involved in dumping and mixing the lead litharge could be generally exposed to inorganic lead. These employees wear respirators and protective equipment (Ex. 22, p. 318).

(c) *Controls Currently Used.*

Most exposures result from handling and mixing lead containing materials. (Id.). As discussed in lead pigment manufacture and plastics manufacture, automated or mechanized materials handling systems, hooding and enclosure of mixing operations, and worker control booths have been used successfully in some plants to control exposures. (See these sections for a complete discussion.)

Cyanamid (Ex. 475–30) submitted data on the compliance activities at their plant. This company manufactures litharge (lead oxide) and from the lead oxide produces other lead chemicals. The process here basically involves acquiring the raw lead, melting, oxygenating and separating out oxide. As a result of several OSHA inspections it was determined that lead levels were in excess of the PEL and after negotiation an abatement plan was devised. This plan would include, many changes, some of which are: Local exhausting of the screening station, dryer, and dressing door; enclosing the screw conveyor feeding the pre-oxidizer; replacement of one mill with an enclosed mill which does not require routine mill screen examination; modifying the drumming station by lengthening the feed chute to reduce dust generation and the hopper by flanging the hood to improve dust collection efficiency; enclosing four dust collector dumping stations; balancing ventilation systems; and improving maintenance by applying new seals; reducing leakage from screw conveyor seals and gaskets, etc.

Blood lead levels prior to 1971 were very high at this plant with 5 employees having levels above 100 ug/100g of blood. Recent levels average at 42 ug/100g. Cyanamid attributes this to stringent management of employee practices (work practices), improved respiratory protection, and engineering modifications.

(d) *Exposure Levels*

(i) *Lead Oxides.* Data was not submitted by the companies indicating the levels to which workers are exposed. OSHA is aware that Cyanamid (cite to 475–2 or 475–30) had levels in excess of 80 $\mu g/m^3$; however, compliance with the abatement plan should reduce levels to below 50 $\mu g/m^3$. On follow-up OSHA found that levels in some part of the process were in compliance with 50 $\mu g/m^3$. (Ex. 475–16).

(ii) *Lead Soaps.* Due to precautions now taken, exposures to inorganic lead are low. (Ex. 22)

(e) *Population Exposed*

(i) *Lead Oxides.* Data on the numbers of workers exposed to lead oxide as a result of its manufacture was not available.

(ii) *Lead Soaps.* In one establishment that produces thousands of specialty chemicals, 12 employees out of 240 production employees are potentially exposed to inorganic lead. (Ex. 22, p. 317). A total of 12 companies are reported to make lead soaps with an estimated total of 240 employees nationwide being potentially exposed to lead. (Ex. 22)

(f) *Additional Controls*

Controls already in place or soon anticipated to be in place are expected to achieve compliance with the 50 $\mu g/m^3$ standard. Clearly, in some cases, enhancement of existing controls will be necessary. In the survey done on the N.L. Industries plant, recommendations were made to improve local exhaust ventilation, isolate and enclose dusty operations, and improve housekeeping. (Ex. 476–309). Cyanamid has an abatement plan which includes many ventilation improvements. In addition, housekeeping and worker rotation will be necessary in difficult to control areas.

(g) *Conclusion: Technological Feasibility*

Although exact exposure levels were not available, the Agency knows that lead exposure may be a problem in this industry due in part to the similarity in processes between this industry and the lead pigment industry. Exposure may be high in some cases, due to the failure on the part of the industry to automate, mechanize, etc. This same failure puts the industry at a competitive disadvantage with regard to more modernized foreign competitors. Compliance is achievable even in the most difficult of situations such as that faced by Cyanamid. Controls exist for materials handling problems, and enclosure of mixing operations has been done successfully by many plastics firms. This industry may, however, need an amount of time for compliance comparable to that given the pigments industry, not because the technology is not available, but because the industry has been laggard in some cases in keeping up with control technology.

23. Lead Pigments Manufacture

(a) *Uses*

Pigments are used as the colorants for linoleum, plastics, paints, rubber, pottery, glass, and other products. They also serve as plastics stabilizers. Pigment products include lead chromate-lead molybdate (molybdate orange), red lead, lead sulfates, lead carbonates, lead silicates, lead oxides, and lead chromates. Lead chromate is by far the most commonly used.

(b) *Process Description and Exposure Areas*

The manufacture of pigments involves a number of different processes. Only pulverizing and grinding processes for reducing the particle size are common to all members in the class. Inorganic pigment manufacture is a combination of chemical-physical processes involving both wet and dry reactions and including precipitation, filtering, washing, fusing, calcining, etc. The processes may be carried out as a batch system, as continuous production, or as a combination of the two.

Pig lead is often the basic raw material in inorganic lead pigment; litharge and other lead forms, however, are sometimes used. Because litharge is a powder, it presents the potential for lead exposures at every transfer point. Filtering, drying, grinding, sizing, grading, blending, and bagging are all considered to be areas of potential exposure to lead. Cross contamination between operations also occurs.

DuPont (Ex. 476–269) manufactures, among others, yellow lead chromate, orange lead chromate (molybdate orange), and "Krolor," a silica-encapsulated lead chromate containing pigment. The pigments are made by both batch and continuous processes. In the initial stages of the batch process for the manufacture of yellow lead chromate, an aqueous sodium chromate solution is reacted with a lead nitrate solution. To make the orange pigment, some of the sodium chromate solution would be replaced by a sodium molybdate solution at this stage. From there, the pigment slurry is dewatered in a filter press, then dried, ground, blended, and packaged.

To make Krolor, bags of dried lead chromate pigment are manually dumped into tanks and slurried in water. This water pigment dispersion is then silica coated in a strike tank. All operations after the silica strike are identical to the molybdate orange batch process.

Manual handling operations of the batch process for all of these pigments involve loading wet presscake from the filter press onto dryer trays, transporting and dumping dryer cars, dumping dried material into grinders or blenders, packing pigment out of the blenders into bags, and dumping dry pigment into dispersion vats for processing Krolor. All of these operations require manual handling of dry pigment and result in exposure to lead.

Contamination between colors and even between shade grades is detrimental to product quality. Consequently equipment is dedicated to specific product groups; there are five separate tank/press units for the "Krolor" operation and three tank/press units for molybdate orange. The equipment is spread over four separate buildings.

Sodium chromate (or sodium chromate/molybdate solution) and lead nitrate are continuously reacted to produce a pigment slurry. The slurry is continuously dewatered and washed in centrifuges, then discharged to a belt dryer. The dried pigment is automatically conveyed to a grinder and the packing system where bags are manually filled.

The unit is operated on a campaign basis with cleanouts between color grades. The campaign cycle consists of the manufacture of zinc chromate, followed by a major cleanout; primrose shade lead chromate cleanout; light shade lead chromate, cleanout; medium shade lead chromate, followed by a major cleanout; and molybdate orange, followed by a major cleanout.

The most significant dust exposure sources in the continuous unit include: packing the finished product into bags; attending the dryer and grinder operations, which requires entering their enclosures; and cleaning operations for the centrifuges, belt dryers, and grinders.

Cleaning operations are performed about once every 2 weeks and take 28 to 48 hours to complete. This operation involves high pressure water cleaning of about 10 process tanks, opening of the continuous belt dryer for vacuuming and washout, opening material transfer equipment including five screw conveyors and bucket elevators for vacuum cleanout, and cleaning of storage bins, product collectors and packing equipment. Each of these cleaning operations presents a lead exposure problem for employees performing the cleaning and introduces airborne lead into surrounding work areas.

(c) Controls Currently Used

DuPont described engineering controls to reduce pigment dust exposures which are presently in place or contemplated for installation (Ex. 475–37).

In the early 1970's, enclosures were installed in the continuous unit at the dryer and grinding equipment locations. Special gaskets and seals were added to the material transfer equipment to reduce dusting. In a typical day, an employee will fill over 500 bags. To pack these products, a pressured, air flow packer is used. The packer is susceptible to dust generation if slight seal problems occur or as the filling air pressure is relieved to take the bag off the packer. In 1977, a simple exhaust hood was installed at the packer. DuPont reports that operator exposure (95 percent value) is 266 to 2,921 $\mu g/m^3$, as an 8-hour TWA. An improved exhaust hooding system was installed at the bag packing station with levels being reduced to 127–182 $\mu g/m^3$. This system included:

—Digital check weigh scale enclosed in a hood with 250 feet per minute face velocity;
—Catch pan and partial enclosure under and around the packer filling spout to catch any spills;
—High velocity exhaust from around the filling spout to control leaks during bag filling and puffs of color when the bag is removed;
—Exhausting all hoods to an existing scrubber system used primarily to service the dryer;

In 1974, DuPont installed a new system to control dust during the unloading of tray dryers into drums during batch processing. Facilities included:

—Separate building area for the unloading operation;
—Two tray dryer dumping stations with exhaust hoods pulling 250 feet per minute face velocity with a hoist system to raise or lower cars so dumping only occurs at waist to shoulder height;
—Monorail system for moving and staging dryer cars;
—Conveyor system for removing full pigment drums;
—Hooding and ventilating (H & V) system for the dump hoods and staging areas;
—Portable vacuum floor scrubber;

DuPont reports the dry room operator's (95 percent value) 8-hour time-weighted average exposure is 1,100 $\mu g/m^3$. DuPont has also indicated that they have in progress work to increase the laminar flow fresh air supply which will provide a slight reduction in dust levels.

In 1975, a completely new inorganic finishing area was constructed for dust control. The new facilities included:

—Three separate grinding lines dedicated to different product groups to reduce cleanout; and
—Two large blending lines with wet packers.

Dust control features included:

—Enclosure of grinding equipment in separate rooms;
—Isolation of equipment where possible;
—Exhaust hoods at all pigment dumping locations;
—Specially developed packers that reduce dust generation and which are equipped with exhaust hoods.
—Tote bin filling and unloading equipment; Tote bins are used in place of drums for interim storage between grinding and blending;
—Separate tote bin storage area;
—Automatic bag dumping machine. (This proved to be unsatisfactory and did not live up to the vendor's claims);
—Central vacuum clean-up system;
—Portable vacuum floor scrubber;
—Central exhaust system and dust collector (36,000 CFM);
—Central H & V system;

With completion of this project, DuPont reports that dust levels were significantly reduced. The 95-percent, 8-hour time-weighted average values for employees assigned to this area were stated to be 428–1,122 $\mu g/m^3$.

New dumping hoods were installed in the "Krolor" manufacturing process in late 1979. The new facilities included:

—Two dumping hoods with very small open areas and 250 feet/minute hood face velocity. One hood is used for yellow, and one hood for orange;
—Unit dust collectors mounted directly over the hoods which can recycle captured dust;
—Side slot inside the hood for transferring empty bags directly into a plastic bag for disposal. Before this, empty bags were placed inside a plastic bag which was kept outside the hood;

Since the installation of the new dumping hoods, 13 8-hour time-weighted average personal breathing zone samples reported by DuPont showed employee exposure when making "Krolor" to range from 1 to 119 $\mu g/m^3$ and to average 26 $\mu g/m^3$.

Engineering controls considered by DuPont to reduce exposure levels in the continuous process include replacement of grinding and packing systems, installation of flash or spray dryers and dust collection H & V systems. For the batch process DuPont is considering installing packing area air-sweep rooms, automating drumming and bag dumping operations, and utilizing ultrasonic, dryer car cleaning, and additional hoods and dust collectors.

With the installation of these controls, DuPont estimates that dust levels in lead chromate pigment manufacture could be consistently (95 percent value) controlled to 200 $\mu g/m^3$ (8-hour TWA) and optimistically as low as 100 $\mu g/m^3$, (8-hour TWA). Additionally, DuPont states that regardless of the extent of engineering controls, the need for respirators during the following operations will always be necessary:

—Equipment cleanout for color grade changes,
—Equipment malfunction repairs such as cleaning jammed mill air lock (1,620 $\mu g/m^3$, 8-hour TWA measured 5/13/80), unjamming mill chute (1,975 $\mu g/m^3$, 8-hour TWA measured 5/12/80), cleaning air ducts (3,662 $\mu g/m^3$, 8-hour TWA measured 9/4/80);
—Equipment servicing requiring work in the blender pit (640 $\mu g/m^3$, 8-hour TWA measured 8/21/80);
—Changing dust collector or product collector bags;
—Mechanical work inside grinding equipment enclosures;
—Unloading tray dryer cars. During this operation, the employee can accidentally drop the tray causing dust or the tray may get stuck in the car and have to be forced out;
—Packing pigment bags can break, usually at the seam, during bag filling.

The project to automate drum and bag dumping to reduce dust levels in the batch finishing area is underway and, according to DuPont, the use of additional technological controls that will give significant reductions at reasonable cost will be undertaken. DuPont did not specify when the additional controls would be available nor did they indicate to what extent "significant reductions" might be achieved.

Information on pigment production at the Harshaw Chemical Company was also provided to the record (Ex. 478–244). The number of employees exposed at the Harshaw plant is small, since the process is not labor intensive. At Harshaw only two or three workers are required at one time at each stage of the process; i.e., precipitation, filtering, spray drying, milling, and packaging.

This company has replaced some equipment in their plant and has eliminated some processes, such as press filtering and tray drying, which were the source of high employee exposures. The process has been modified so that pigment precipitate slurry is now pumped from batch tanks through a continuous filter, then the wet precipitate is conveyed to a spray dryer after which the dry pigment is conveyed to a mill, and then to the bagging operation. Exposures at the bagging operations are reported to be the most

difficult to control. Some exposure may also occur at the milling operation. Most Harshaw production line workers are estimated to have 8-hour TWA exposures below 100 $\mu g/m^3$ of lead and some are below 50 $\mu g/m^3$ of lead, according to a Harshaw spokesman. Enclosure and local exhaust ventilation have yielded the best results in lowering exposures.

Changes of production from one color to another at Harshaw were not reported to be a serious source of lead exposure. The company employs separate production lines for dark shades, light shades, etc., of lead chromates and a separate line for molybdate orange. Color changes are made from one shade to a slightly different shade, resulting in the need for less frequent equipment cleaning. Thus it appears that installing separate production lines for different colors and graduating slightly from shade to shade during the runs could reduce equipment breakdown and resulting release of lead into the surrounding work area.

Hercules, Inc., of Wilmington, Delaware, manufactured lead-containing pigments until recently. A company source familiar with Hercules' process when in operation provided the following information on lead chromate pigment manufacture. (Ex. 476–245).

Solubilization of the lead before reaction with a chromate solution was mentioned as a possible source of employee exposure, particularly if pig lead is the raw material used. The lead is melted and poured into a stream of rapidly moving water to "feather" and increase surface area. The feathered lead is partially dissolved in acetic acid, using a series of tanks in which there is a continuous counter current flow of the acid over the lead particles. Lead which does not dissolve in the acetic acid is then dissolved in similar tanks using nitric acid. The employee lead hazard is exposure to the acid mists containing soluble lead acetate or nitrate.

The Hercules spokesman stated that some companies now buy litharge for a raw material and dissolve it in nitric acid, so the process can more readily be enclosed.

Various shades of chrome pigments can be obtained by coprecipitating lead sulfate with lead chromate. A high proportion of lead sulfate gives a light lemon color, while very little lead sulfate gives orange to primrose colors.

The Hercules representative felt that the degree of difficulty and the available technology for controlling lead exposures is about the same for lead chromate pigments and other lead pigments (such as litharge, red lead, lead carbonate, lead sulfate, lead silicate, etc.). All involve handling a dry, fluffy powder with small particle size. Bagging is a problem for all lead pigments. The ultimate control technique in bagging involves automation of the process so that the operator can control it from within an enclosure.

The Hercules pigment facility has been purchased by the Ciba-Geigy Corporation. A company representative for Ciba-Geigy indicated that they were presently in the process of planning and implementing engineering modifications to reduce exposures during the pigment manufacturing process. Though no details were provided by Ciba-Geigy, the company source indicated that they felt they could achieve compliance with a 50 $\mu g/m^3$ exposure limit by March 1, 1984. (Ex. 476–262).

Finally, Kikuchi Color and Chemicals, Paterson, N.J., provided details on their operations. (Ex. 476–264). Kikuchi Color and Chemicals is a subsidiary of a Japanese company of the same name, headquartered in Tokyo. The Paterson, N.J., plant makes a single product, a lead chromate pigment. The color is constant, except for minor adjustments to achieve the desired hue.

Mixing of chemicals to form the lead chromate precipitate is done by a batch process where no significant lead exposures are reported. All other steps are automated and enclosed. These steps include washing, centrifuging, conveying to the oven dryer, conveying to the bagger, and bagging.

The plant is entirely new. It has been in operation for 11 months. The plant employs nine people. Pigment is produced in batch tanks, and pumped to a washer. From the washer, the pigment is pumped as a slurry to the centrifuge. From the centrifuge, a concentrated slurry is pumped to the feed tank for the oven dryer. The dry pigment is conveyed pneumatically to the bagging station. No grinding is required.

The Paterson plant produces a medium chrome yellow pigment. The hue is carefully controlled by sampling the pigment at the washer and analyzing it in the lab. Color adjustment is made as needed by pumping the contents of one batch tank into another batch tank. All blending is done by pumping slurries. No blending is done at the "dry end."

Under the present bagging system, pigment is poured into open top bags, and the bagging operator then sews the top of each bag. The new equipment being sent from Japan in November will allow Kikuchi to convert to valve-type filling. That new equipment will consist of a conveyor line which will carry an empty bag with the top already sewn, to a scale. A filling spout will introduce pigment into the bag through an opening on the side near the top of the bag. Air will be sucked from the bag as pigment enters it. The pigment feeder will be automatically stopped at 50 pounds, and the bagger will remove the filling spout and close the bag manually.

The new ventilation system for the bagging station will be mounted above the bagging station, with the bagging operator external to it. It does not involve any new technology, and according to Kikuchi, similar systems could be easily developed by other companies. The unique features are multiple points for dust pickup and dust control equipment inside the enclosure so that the unit is self-contained.

Even with their present equipment, Kikuchi stated that there is very little dust on the outside of the filled bags and they have had no problem with bags breaking. Thus, warehousing involves little lead exposure.

The New Jersey Department of Labor and Industry inspected the facility and found that the only lead exposure in excess of 50 $\mu g/m^3$ was at the bagger. Eight-hour TWA lead levels included: Bagger operator—66 $\mu g/m^3$; Centrifuge operator—45 $\mu g/m^3$. The two operators sampled spent the entire workday at their respective work stations. Following advice offered by the New Jersey Department of Labor, ventilation was improved at the centrifuge and the bagger. The exhaust system at the centrifuge was modified to vent directly to the outside. The exhaust system at the bagger was upgraded to achieve better capture of the pigment. Kikuchi is hopeful that lead exposure of the bagger operator is now below 50 $\mu g/m^3$ and that lead concentrations at the centrifuge are significantly lower. A vacuum cleaner is used at the bagger for spills, and the entire plant is kept as clean as possible and is now being repainted.

In summary, Kikuchi reports that no new technology was required to achieve their present, relatively low air lead levels in the plant and that the key elements to exposure control are good enclosure of processes and good ventilation.

(d) *Exposure Levels*

Exposure levels vary greatly in this industry from highs reported at DuPont's pigment facility in maintenance operations where levels of 1,830, 1,975, 3,982, 640 $\mu g/m^3$ were reported (Ex. 475–37), to a low at Kikuchi Color and Chemicals (Ex. 476–264) at which all levels in the plant were below 50 $\mu g/m^3$. Harshaw (Ex. 476–244) reported levels of most production line workers to be

below 100 $\mu g/m^3$ with some levels being above 50 $\mu g/m^3$.

(e) *Population Exposed*

The number of production employees in lead pigment manufacturing is estimated to be 2,000. DBA's survey of several plants indicated that 90 percent of the workers were exposed to levels of lead above 100 $\mu g/m^3$. (Ex. 28, p. 5–93)

(f) *Additional Controls*

DuPont predicted that the additional, conventional controls, exposure could be controlled at least to 200 $\mu g/m^3$ and possibly to 100 $\mu g/m^3$. (Ex. 475–37). Kikuchi and Ciba-Geigy suggest that there appear to be controls available to achieve compliance with the 50 $\mu g/m^3$ standard (Ex. 475–282, 475–2). However, most pigment plants appear to be rather old structures which were originally built with no consideration given to dust control. Subsequent additions of control equipment have required great capital expenditures because of the antiquity of plant design and the difficulty of retrofitting equipment with controls. This lack of modernization is also reflected in the stiff competition experienced by American firms with more modernized foreign competitors.

Even though the technology exists, continual retrofitting of equipment in this industry poses problems and in some cases firms could be required to make major changes.

(g) *Conclusion: Technological Feasibility*

The Court of Appeals rejected OSHA's original conclusion that compliance could be achieved if employers undertook major renovations and redesign of outmoded plants and equipment. It objected not to the notion that OSHA had the authority to require major rebuilding in an industry (if it were economically feasible), but to the lack of "logic and supporting evidence" (Slip opinion, p. 210). The Court cited the absence of descriptions of the technology that could be used and rejected OSHA's reliance on a "casual" statement by DBA and Dr. First's generalizations as central evidence on feasibility (Id.).

OSHA now confirms its earlier conclusion on the feasibility of the standard in this industry, but supplements the conclusion with specific detailed discussion of a pigment plant which has, in fact, used conventional control technology to already achieve compliance with the standard. The Kikuchi plant has applied the basic control principles discussed by Dr. First, Dr. Billings, and others and stands as a concrete example of what can be achieved by other pigment manufacturing firms. The company reported that no new technology was required in achieving these low air lead levels in the plant and that the elements of exposure control are good enclosure of processes and good ventilation. There is no reason why these controls cannot be employed by other pigment manufacturers to achieve the PEL in the time allowed under the standard. As the Court of Appeals stated:

> At the very least, * * * OSHA can impose a standard which only the most technologically advanced plants in an industry have been able to achieve—even if only in some of their operations some of the time * * *. But under this view OSHA can also force industry to develop and diffuse new technology. (Slip opinion, p. 142)

For this industry, it is not a matter of the diffusion of *new* technology, but simply a matter of permitting firms sufficient time to utilize *conventional* technology already demonstrated to be technologically feasible (Kikuchi) or expected to be in four years (Ciba-Geigy). After careful reevaluation of the 5 year period for compliance with the PEL, OSHA has concluded that 5 years is adequate for firms in this industry to make the necessary changes if economic resources permit.

The interim level has, however, been deleted for this industry. Most plants are old and retrofitting may not be effective in many cases. The industry, *as a whole*, is not close to compliance with either the PEL or the interim level in most operations and will require major renovation in plant and equipment to achieve either 100 or 50 $\mu g/m^3$.

(h) *Costs of Compliance*

One producer of lead chromate pigments, the lead chromate producers' trade association, one producer of lead frit, and one producer of other lead pigments submitted written comments to OSHA on the feasibility of the 50 $\mu g/m^3$ standard. In addition, OSHA has estimated the compliance costs that may be incurred by producers in this industry.

The Dry Color Manufacturers Association (DCMA) contends that the lead standard will necessitate the expenditure of "very significant amounts of money" with no assurance that compliance can in fact be achieved (Ex. 475–23). However, the DCMA did not provide a more specific estimate of the magnitude of the costs for the industry or for any firms within the industry. Furthermore, details on the types of controls that may be necessary have not been provided.

DuPont states that expenditures of more than $5,000,000 from 1971–1979 have not guaranteed compliance with the lead standard. In the early 1970's, more than $140,000 was invested in controls, enclosures, and hoods. A new system for unloading tray dryers was installed at a total cost of $280,000 in 1974. In 1975, $4,300,000 was invested in a completely new inorganic finishing area. DuPont considers this project a failure, because design control dust levels (not specified in the company's submission) were not achieved. In 1978, $30,000 was invested in new dumping hoods in another part of the plant. Levels in most areas are still significantly greater than the previous 200 $\mu g/m^3$ lead standard (Ex. 475–37).

DuPont suggests that additional, new controls including another continuous unit at a cost of $2,740,000, air-sweep rooms, automation of dumping, ultrasonic dryer car cleaning, and additional hoods at a cost of $1,805,000, might reduce levels. DuPont estimates the total capital cost of these controls to be $5,245,000 plus $1,300,000 in increased annual operating costs. Thus, capital expenditures on controls since 1971 would total $9,945,000. DuPont estimates optimistically that levels of 100 $\mu g/m^3$ might be achieved with these controls in place (Ex. 475–37).

The large control costs that have already been expended and that DuPont estimates would still be required include the high costs of building new structures and replacing entire product lines or processes. As demonstrated by the DuPont case, this is certainly a more efficient and cost-effective method of reducing levels than retrofitting old plants and equipment. However, it is probable that an industry with relatively old plants and equipment would incur many of these expenses for modernization even in the absence of the lead standard. Therefore, OSHA regards these figures as overestimates of actual costs of controlling lead exposure, since some replacement of equipment and expansion would be occurring in response to market stimuli other than regulation. In addition, companies are able to deduct expenses incurred in coming into compliance with a regulation as costs of doing business. Therefore, the after-tax financial impact on the firm will be reduced as it deducts costs of coming into compliance.

Harshaw Chemical has reduced lead levels by modifying its processes to limit handling of pigment. The company has separate automated product lines for various colors produced. Harshaw provided neither costs of current controls nor estimates of additional costs of achieving the 50 $\mu g/m^3$ standard (Ex. 475–283). Similarly, Ciba-Geigy,

which acquired two Hercules facilities, is currently planning to install engineering controls in these plants. The company stated that expenditures would be large, but did not provide specific figures (Ex. 476–282). Anticipated controls include continuous equipment, preferably enclosed systems, product packaging modifications and increased local exhaust ventilation (Ex. 476–2).

Kikuchi Chemicals appears to be substantially in compliance now. The company is also planning to install new equipment from the parent company in Japan to reduce lead levels in the bagging area. The company stated that the unit represents a "substantial investment." However, a dollar cost for the unit was not provided (476–284).

The Ferro Corporation manufactures lead frit and has spent about $300,000 to control exposures to lead. A combination of automation, exhaust ventilation, and use of pelletized litharge have contributed to reductions in lead levels (Ex. 476–241). No costs of compliance for additional controls, which may not be necessary, were provided.

Eagle-Picher produces white lead pigments. In its submission, engineering controls such as containment, isolation, ventilation, and baghouse collectors are described as "perhaps available" and expensive (Ex. 475–13). OSHA knows that these methods of control are indeed available and have been successful in controlling dust exposures and does not dispute that controls may be expensive. However, Eagle-Picher's qualitative assessment of burden is difficult to evaluate without a supporting quantitative estimate of the cost of compliance.

Eagle-Picher also does not offer data on the controls currently in place and installed "at great cost over the past five years." This information would be of substantial use in determining the additional costs necessary to continue the reduction in levels that the company currently reports (Ex. 475–13). Furthermore, the company states that "minor" improvements in levels owing to better ventilation and better housekeeping have yielded commercial benefits by reducing cross-contamination of products and consequently reducing the costs of rectifying contamination problems (Ex. 475–13). To the extent that these cost-savings offset control costs, they should be subtracted from the costs of compliance.

All of the pigment producers mentioned bagging operations as a particularly troublesome and expensive process to control. However, there are substitute forms in which to package and ship pigments, such as slurries and pastes. In addition, dust suppressants could be added to the dry product. This would reduce control problems at bagging operations as well as contamination of other plant areas and exposure potential for downstream users (except spray painters). The adoption of these alternatives would offset to some extent increases in cost of transporting products in wet forms, which are heavier than dry pigment.

DBA estimated the costs of compliance for three pigment producers and derived costs per ton of pigment produced and costs per employee. The estimates were based on retrofit technology in two of the plants and the cost of substantially rebuilding a third plant. Initially, DBA estimated that the upper bound on compliance costs was $109 million. This appears to assume, however, that the firm from which they received data was representative of every other firm and that each firm would rebuild at a cost of $7.1 million. Clearly, there is substantial variation in the degree of current compliance for pigment producers, hence, this upper bound estimate is excessive.

On the basis of the estimated unit cost estimates, DBA then extrapolated the compliance costs to the lead pigment industry as a whole to yield a range of potential compliance costs. The total capital cost of compliance for the pigment industry ranged from $4,451,000 to $43,617,000 using costs per ton as a basis for extrapolation. Using costs per employee, the total capital costs for the entire industry ranged from $15,620,000 to $80,226,000 (Ex. 474–26).

These upper bound estimates overstate the costs of compliance. First, as DBA states, the costs do not reflect the simultaneous reduction of other toxic substances, such as hexavalent chromium. Second, the costs associated with complete rebuilding in an industry already in need of modernization should not be attributed in their entirety to OSHA regulation. Rather, the cost attributable to the lead standard is the difference in expenditures between rebuilding to comply with the standard and rebuilding in the absence of the standard. In addition, economic benefits gained by modernization further offset these compliance costs. Examples of offsetting benefits include increases in product quality, increases in capacity, and increases in labor productivity stemming from reduced absenteeism and lower labor turnover.

OSHA concludes that the costs of compliance in this industry are best represented by an average of the extrapolated costs calculated by DBA. Averaging the costs expected for a large and small firm adjusts the costs to reflect more accurately the variation between large and small producers, and reduces the distortion created by extrapolating on the basis of either extreme. Thus, the estimated capital costs would then range between $21.5 and $41 million. Annualized over the life of the equipment, these costs range between $3.8 and $7.3 million.

(l) *Industry Profile*

There are 71 companies operating 106 establishments and employing 8,000 workers in the manufacture of inorganic pigments (SIC 2816). New capital expenditures for the industry totalled $20,800,000 in 1967 and rose to $124,300,000 in 1977. Average hourly wages of production workers in the industry rose from $3.57 in 1967 to $6.72 in 1977 (Ex. 476–20).

Within the industry, it is estimated that about 15 companies produce pigments or frit that contain lead (Ex. 476–248, Ex. 475–37, and Ex. 476–2). The product lines manufactured by these companies include chrome green (2816311), chrome yellow and orange (2816315), molybdate chrome orange (2816317), red lead (2816341), litharge (2816345), basic carbonate and sulfate white lead (2816213), and leaded zinc oxide (2816225). Quantity of litharge produced has dropped significantly since 1972, while the quantities of lead chromate pigments produced rose very slightly between 1972 and 1977. The value of product shipments of lead chromates doubled in this same period. Total value of shipments of all lead pigments in 1977 exceeded $170,000,000 (Ex. 476–20).

Twelve companies produce lead chromate pigments. They are F.D. Davis, DuPont, Harshaw, Ciba-Geigy, Reichold, National Lead, Chemetron, Bordon Chemical, Kikuchi Chemical, Nichem, Wayne Chemical, and Industrial Color (Ex. 476–250). Lead chromate pigments are considered to possess a versatility superior to all other inorganic pigments. In addition, white lead pigments are dual purpose products that can serve as vinyl stabilizers in the plastics industry. Lead pigments are used in a myriad of formulations destined for numerous end uses including paints, inks, vinyl, rubber, and paper colorants.

There are technical substitutes for the chrome yellows and oranges in most of their uses, but, most of these substitutes are not price competitive and do not offer the combination of properties that make lead chromates so attractive. One exception to this lack of substitutes is the chrome green pigments. Between 1955 and 1965, the rate of production of chrome green pigments was almost

halved as a result of two factors. First, mandatory "lead-free" legislation specifying a low lead content in interior paints has excluded chrome green from this market and restricted its use to exterior and industrial applications. Second, its market dominance has been effectively challenged by phthalocyanine green, even though it is more than five times as expensive as chrome green (Ex. 476–249). To avoid disclosure of company operations, current production figures on chrome green have not been published by the Department of Commerce (Ex. 476–20).

The industry has been characterized by a substantial degree of concentration. In 1972, the top four producers of chrome colors and other inorganic pigments manufactured 47 percent of the industry output and the top eight firms produced 64 percent of the industry output (Ex. 474–28). Current estimates indicate that the top four firms manufacture close to 80 percent of the lead chromate pigment industry output (Ex. 475–37), and that the top eight firms produce close to 95 percent of the industry output of lead chromate pigments (Ex. 475–23).

Foreign imports do not appear to be a significant source of competition at this time in the lead chromate market. (Ex. 476–28). In fact, between 1973 and 1977, imports of chrome yellows and oranges have fallen from 9,000,000 pounds to 5,700,000 pounds, and imports of molybdate orange have fallen from 1,100,000 pounds to 500,000 pounds (Ex. 476–409).

No significant export activity for lead chromate pigments exists for U.S. producers (Ex. 476–2), except for DuPont. Since 1977, DuPont's exports have risen from 2,900,000 to 4,000,000 pounds (Ex. 475–37).

Hercules has expressed concern that domestic producers may leave the market because foreign producers can produce the lead pigments products at lower cost. However, neither the foreign producers nor their competitive advantages were identified. Cost advantages for foreign producers may be maintained because transportation costs for dry pigment are not prohibitive in relation to the value of the product (Ex. 476–245). Moreover, the influence of foreign interests is evidenced by the fact that Hercules is now a subsidiary of a foreign-owned (Swiss) corporation, which has plans to revamp the production process in its newly-acquired facility and to achieve compliance with the 50 $\mu g/m^3$ standard by 1984 (Ex. 476–262). Furthermore, a Japanese firm recently built a new facility in this country because raw material costs are rising faster abroad than in the U.S. and foreign exchange rates favor production in the U.S. The company does not import lead chromates into the American market from Japan (Ex. 476–254).

One submission states that the trend in the demand for lead chromate pigments is declining. In 1979, demand was 70 percent of the pre-1974 demand for lead chromate pigments (Ex. 475–37). However, these figures are significantly influenced by demand fluctuations stemming from the general business cycle. Comparison of the demand for these two years is not an accurate indicator of the health of the market. The DCMA argues that there are no cost-effective substitutes for lead pigments and that substitution would require significant production and process changes. Hence, many customers would not be able to afford a switch to other pigments (Ex. 475–23). While there does not appear to be growth in the industry in excess of 2 percent, according to census data (Ex. 476–26), the market is not contracting.

The DCMA also forecasts "massive dislocation which threatens the competitive stability" of the industry and devastating effects including the "complete discontinuance of manufacture" of lead chromate pigments by many firms (Ex. 475–23). Given the degree of market concentration apparent among producers, the standard may indeed have differential impacts on smaller versus larger producers. However, other factors may mitigate the severity of such an effect. First, the pigment industry in general tends to be regionally oriented (Ex. 474–28). Production and distribution are closely tied to regional markets. Therefore, the geographic location of a small firm may be its largest competitive advantage.

Second, large producers have no monopoly on successful control of lead exposure. In fact, the largest producer with the best access to capital has invested in controls which it considers to be, on balance, a disappointing failure. By contrast, other large producers and at least one smaller producer appear to be having more success reducing lead exposures (Ex. 476–244 and Ex. 476–264). Third, because of the batch nature of the processes in most of the older plants, economies of scale do not appear to be significant (Ex. 474–28).

Pigment products are intermediate or industrial inputs into final products. Thus, general economic conditions will be a significant determinant of the demand for pigments. The demand for pigments is derived from the demand for paint, ink, plastics, rubber, and ceramics, demand for all of which is derived in turn from the demand for final durable goods such as construction equipment, farm equipment, trucks, school buses, and automobiles (Ex. 474–28). The market for pigments can be characterized as a bilateral monopoly with a competitive fringe of small sellers and small buyers existing in conjunction with the large sellers and large buyers (Ex. 474–28). The price of pigments, therefore, is set within a range bounded by the cost of production and the value to the user of the pigment. To the extent that the large and small sellers and buyers perceive one another as alternative sources of the product, some downward pressure exists on the prices of lead pigments (Ex. 474–28).

Large producers may pass costs of compliance with the lead standard to consumers with no effect on output (Ex. 474–28), but some contraction may occur in the output of small producers. If the small producers were identical, perfectly competitive and substitute products were unavailable, then each producer would cut output by an equal quantity. However, DBA suggests that it is more likely that there are marginal firms in the industry that will exit the market, thereby reducing total output of some of the small producers. On the basis of evidence gathered to date, however, there is no reason to believe that small producers are necessarily at a competitive disadvantage with large producers. In fact, small producers may be at a competitive advantage over large producers because of geographic location, and the inability of large producers to comply may ultimately lead to less concentration in the industry.

The market for white lead pigments is much smaller than the market for lead chromates. White lead pigments, primarily basic carbonate and sulfate and leaded zinc oxide, are expected to disappear from the market partly as a result of the 1971 Lead-Base Paint Poisoning Prevention Act (42 U.S.C. 4831) but more importantly due to the superiority of water-based titanium dioxide paints for residential and commercial applications (Ex. 474–28). One producer of white pigments, Eagle-Picher, claims that it will be forced out of business by the lead standard. Eagle-Picher is currently operating a plant that was built 105 years ago (Ex. 475–13).

One domestic firm produces pigment grade dibasic lead phosphate and basic lead silica sulfate. One domestic firm produces basic lead silicate and basic lead sulfate. Five domestic producers manufacture basic lead carbonate (Ex. 476–250). One of the five is now a subsidiary of a foreign firm (Ex. 476–247). Sales of this firm and one of the lead chromate companies to European

firms indicate the increasing cost and diminishing profits of the facilities (Ex. 476–29), which are usually quite old. On the other hand, takeovers by other producers also forecast a good market for the products.

The market for corrosion-inhibiting lead pigments refers primarily to red lead, a lead oxide. A small quantity of litharge, an input into the production of pigments and red lead, is used directly as a paint additive (Ex. 476–409). In 1972, product shipments were 26,300 short tons of red lead valued at $9,900,000 and 157,200 short tons of litharge valued at $45,000,000. In 1977, product shipments of red lead had declined to 9,300 short tons valued at $7,800,000 and litharge fell to 97,200 short tons valued at $37,300,000 (Ex. 476–29). Imports of red lead rose from 1,200,000 pounds in 1973 to 2,500,000 pounds in 1977 while litharge imports rose from 22,000,000 pounds to 38,000,000 pounds (Ex. 476–409). Exports for red lead and litharge combined fell from 4,300,000 pounds to 3,500,000 pounds between 1973 and 1977, with peaks in 1974 and 1975 of 6,800,000 pounds and 5,200,000 pounds, respectively (Ex. 476–409).

These corrosion-inhibiting lead pigments are used in resistant primers with the largest volumes in industrial maintenance and marine finishes. However, there are numerous suitable substitutes in these applications. Lead pigments comprise only 20,300,000 out of 861,400,000 pounds (or 2 percent) of corrosion inhibitors used in industrial settings. In marine environments, 40,800,000 pounds of corrosion inhibitors were used, but only 3,000,000 pounds (or 7 percent) were lead based (Ex. 476–409).

Production of leaded frit (SIC 2899, Miscellaneous Chemical Products), colorants used in the ceramics industry may be in a temporarily depressed state with output as much as 40 percent lower than normal (Ex. 476–242). Frit is used in products such as glass bottles, glass-lined vessels and pipes, hot water heaters, household crockery, tile, and piezoelectric products (Ex. 476–241).

The number of producers of leaded frit is now known but it is estimated to be small. Some users may produce their own frit by mixing lead oxide and silicates. One producer stated that it has a plant in Mexico that is not yet capable of producing frit of acceptable quality. However, the entire operation would be shifted to Mexico if quality were not a problem (Ex. 476–241).

(j) *Conclusion: Economic Feasibility*

OSHA recognizes that the pigment industry consists of many firms that operate plant and equipment built more than 50 and even 100 years ago. For these firms, retrofit controls would be expensive and, as demonstrated by the experience of DuPont, may be ineffective in achieving compliance. While OSHA cannot require the construction of new plants, it encourages affected firms to consider this means of compliance, especially in light of the many other benefits of modernization in addition to the benefits of a healthier work force.

Given a compliance period of 5 years, pigment producers would face annualized costs ranging approximately between $3.8 and $7.3 million dollars. The costs are reasonable and feasible in an industry that produces total shipments valued at $170 million per year. Compliance costs range between .025 and .048 percent of total value of shipments. OSHA requested data on profitability of potentially affected firms. However, pigment producers did not submit financial data to the Agency for its consideration.

Market changes may occur as a result of compliance with the standard. First, there may be a slight shift in demand in favor of substitute products. Some downstream users may decide to use a different pigment rather than incur their own compliance costs. Others, responding to changes in relative prices, may switch to substitute pigments. However, given the present wide difference between the prices of lead chromates and substitutes currently characterizing the industry, a significant shift is not likely. Furthermore, lead pigments are not closely rivaled in technical properties by substitute pigments. Therefore, the stability of the market even in the face of an increase in price is enhanced. The relatively inelastic demand for lead pigments will also allow producers to pass forward the increases in costs to consumers in the long-run.

The domestic market for lead chromates is not facing competition from foreign producers. However, a recent increase in imports of litharge could signal the onset of foreign competition in this market. The industry did not raise this as an issue. Therefore, OSHA infers that domestic producers will not be placed at a competitive disadvantage relative to foreign producers as a result of the standard.

OSHA anticipates that the standard will generate changes in market structure. However, the impact of compliance with the standard on the relative market position of small firms and large firms is uncertain. Smaller firms with compliance costs which are large in relation to total costs of production may no longer be able to compete with large firms. But the regional orientation of the pigments market may mitigate to some extent the reduction of a small firm's competitive edge. But more importantly, it appears that small lead chromate producers will not necessarily be at a competitive disadvantage because of the standard. On the contrary, if some small firms are relatively close to compliance now, their costs may be proportionately smaller than a large firm's costs. In fact, if larger producers, which currently dominate the lead chromate market leave the market, then several smaller firms might enter the market thereby reducing industry concentration and enchancing competition.

24. Lead Sheet Metal Manufacture

(a) *Summary*

Lead sheet metal is used in roofing, flashing and sheeting for radiation protection (Ex. 22, p. 144). The manufacture of lead sheet metal is a secondary lead smelting operation (Ex. 22). A discussion of this process and the accompanying exposure areas can be found in the feasibility section of the final lead standard. The feasibility of the standard in secondary smelters has already been established. Slip Op., at 151–97.

The use of lead sheets may also result in exposure in that sheets must be cut, welded, brazed, or burned into place. A discussion of these operations and accompanying exposure problems can be found in the section of this document entitled Lead Burning (Brazing/Welding).

25. Leather Manufacture

(a) *Uses*

Leather is a skin permanently combined with a tanning agent so that its principal fibrous protein is rendered resistant to decay while the fibrous structure and desirable physical properties of the skin are retained.

Leather must be cured, soaked, dehaired, delimed, baited, pickled, tanned, and dyed (post-tanning operation).

Lead chemicals are no longer used in the tanning of leather so exposure to lead only occure when lead chromate dyes are used.

(b) *Process Description and Exposure Areas*

The only data on the application of lead based dyes to leather indicates that dyes are swabbed on (Ex. 22, p. 207).

(c) *Controls Currently Used*

Local exhaust ventilation may be used in some cases, in operations involving

the swabbing of materials onto the finished hides, protective gloves may be used. Further data concerning current use of controls was not available.

(d) *Exposure Levels*

The only data available indicated that solid waste residues could contain as high as 0.3 percent lead (Ex. 22, p. 207). No data was available on ambient levels.

(e) *Population Exposed*

The actual number of exposed employees was not available. Industry contacts indicated that the number exposed is not appreciable (Ex. 22, p. 207).

(f) *Additional Controls*

Since finishes containing lead chromates are swabbed on, no fumes or dust are generated and exposures are low. Moreover, the total elimination of lead-base pigments would have no adverse impact on the industry (Id.).

(g) *Conclusion: Technological Feasibility*

The data indicates that no exposures to lead in excess of the 50 $\mu g/m^3$ level occur in this industry. Where exposures may occur they could be eliminated entirely by eliminating use of lead-based pigments.

(h) *Cost of Compliance*

It appears that potential exposures to lead in the finishing of leather have already been controlled to 50 $\mu g/m^3$. Therefore, there are no costs attributed to this regulatory action and no economic impact is anticipated.

(i) *Industry Profile*

In the past, patent leather workers were on occasion exposed to inorganic lead. However, lead-free urethanes have been substituted for the lead salt driers that caused past exposures. The only current source of exposure to lead in the industry is in the dyeing of leather with lead chromate pigments (Ex. 22, p. 207) however, use of lead chromate based dyes in declining (Ex. 476–278).

Tanneries (SIC 3111–11) employ 14,300 production workers in 315 establishments and contract tanneries employ only 4,500 production workers in 107 establishments. (1977 Census of Manufacturers Industry Services MC77–1–31A). A very small percentage of these workers are in finishing departments and no workers are directly exposed to dry lead-based pigments or to spray mist. Application of finishes occurs in specialized, mechanized operations. (Ex. 476–278)

26. Machining

(a) *Uses*

Machining and milling serve to cut away excess metals from product edges and to finish a surface by the grinding or polishing action of a machine.

(b) *Process Description and Exposure Areas*

The process may be like the one used at Schulmerich Carillons, Inc. where rough cast bronze bells are machined to achieve predetermined pitch (Ex. 476–298) or at Raybestos-Manhattan, Inc. (Ex. 476–299) where sintered metals are machined into gears and clutch plates.

Only machining or milling of lead metals or lead-based alloys poses any lead exposure problem. The points of exposure are at the machines being used.

(c) *Exposure Levels*

Exposure data from Raybestos-Manhattan (Ex. 476–299) indicated that lead exposures were below 35 $\mu g/m^3$. In fact, all sample groups except for one were below 30 $\mu g/m^3$. Exposure data from Schulmerich Carillon Inc. consisting of five samples taken at the machining operations showed no detectable levels of lead. (Ex. 476–298). Samples taken at the Western Gear Corp. were also below the limits of detection (Ex. 476–300).

(d) *Controls Currently Used*

Control technology in each of these establishments consists of local exhaust ventilation over the source exposure points (Ex. 476–299, 300), the use of a water-soluble cutting fluid (Ex. 476–300), and housekeeping (Ex. 476–298, 299, 300). At Raybestos-Manhattan, which had detectable lead levels, it was recommended that the use of compressed air for cleaning be restricted and consideration be given to the use of a vacuum cleaning system in lieu of forced air hoses (Ex. 476–299).

(e) *Additional Controls*

Controls other than those already being used are not needed since compliance is being achieved.

(f) *Conclusion: Technology Feasibility*

Exposure levels are below the 50 $\mu g/m^3$ PEL thus, compliance is being achieved.

(g) *Economic Feasibility*

There will be no cost of compliance nor any economic impact because the industry is well below the 50 $\mu g/m^3$ standard already.

27. Miscellaneous Lead Products

(a) *Uses*

There are many other products that use or contain lead. Only those for which data was submitted to the Agency are discussed here.

Collapsible tubes that are used for glue packaging, often contain lead, as does lead caulking used by plumbers and certain specialty lubricants.

The use of lead in the collapsible tube industry has dropped considerably. One explanation for this is the adoption of aluminum and plastic collapsible tubes. However, this replacement is limited by the compatibility of the product and the container. It is doubtful that lead will be totally replaced by other materials.

(b) *Process Description and Exposure Areas*

(i) *Lead Tubes.* A survey of several companies (Ex. 22, p. 315) indicated that lead tubes are made in much the same way from company to company. Lead is purchased in billets, melted and then poured or rolled into shapes for further processing. When rolled or poured, the end result is a slug (the shape of a coin). It is then impact-extruded into the tube shape. Further processes involve capping one end and possibly lining the tube with a wax or some other type of sealer.

Potential exposure exists during all processes of fabrication. The highest exposure probably exists in the melting area. All sources indicated these processes are ventilated and that lead is brought just to the melting temperature (less than 1,000°F) which decreases the probability of significant lead fumes being created.

(ii) *Petrochemical Industry.* The only data that was available involves the manufacture of specialty lubricants from crude oil. (Ex. 476–305)

Oil is filtered through bauxite to remove impurities, material is conveyed to a multi-stage burner and impurities are burned off.

Lead is the pyrolysis product from the combustion of the impurities from the oil. Air monitoring indicates that all levels are less than 5 $\mu g/m^3$.

(iii) *Lead Caulking Used by Plumbers in Forming Lead and Oakum Joints.* Much of the caulking lead is manufactured as part of secondary lead operations. (Ex. 22, p. 316). This section covers those operations that primarily take large lead ingots and melt them down and cast them into smaller ingots. Melting is accomplished in a large pot (typically, 3,000 pound capacity). Some melting pots are vented, others are not.

(d) *Exposure Levels*

(i) *Lead Tubes.* Although no data is available for any operations making collapsible lead tubes, it is felt that exposure is not excessively high. With ventilation in existence, exposure of employees in the melting areas is estimated to be 50–200 $\mu g/m^3$ (Ex. 22, p. 306).

(ii) *Petrochemical Industry.* Air monitoring indicates that all levels are less than 5 $\mu g/m^3$ (Ex. 476–306).

(iii) *Lead Caulking.* Data was not available indicating exposures in caulking operations.

(e) *Population Exposed*

Using an estimate of 5 percent to 15 percent of total employees as representing those potentially exposed, a range of 250 to 750 potentially exposed employees is derived. Assuming one person per pot and 100 pots, an estimated 100 potentially exposed employees for the small shop manufacturing of lead caulking is obtained. Data on other exposed groups was not available. (Ex. 22, p. 316–317).

(f) *Additional Controls*

Manufacturers and shops fabricating collapsible tubes and lead caulking will probably have to add to or improve their present local ventilation. Improved housekeeping will also be required. Definite compliance methods are difficult to determine without better exposure data and site visits.

(g) *Conclusion: Technological Feasibility*

Very little information was furnished by companies indicating what exposure levels were or what problems exist with achieving the 50 $\mu g/m^3$ PEL. The Short Report was the only source of information which the Agency had to rely on. (Ex. 22, p. 215). Based on the information in this report, it appears that compliance is feasible with improved ventilation and housekeeping. In addition, the companies can rely upon worker rotation to achieve compliance with a 50 $\mu g/m^3$ standard in this industry.

(h) *Economic Feasibility*

The cost of compliance is assumed to be minimal in that inexpensive ventilation controls, housekeeping, and worker rotation will be relied upon to meet the 50 $\mu g/m^3$ PEL.

22. Nickel Smelting

(a) *Uses*

Nickel and nickel alloys are used for the fabrication of equipment to resist corrosion. Nickel is also used chemically to form catalysts. It is also used extensively as a plating medium.

There are only two nickel smelting operations in the United States. One of these, the Hanna Nickel Co. located in Riddle, Oregon operates the only nickel mine in the United States (Ex. 476–212). Trace amounts of lead in ores result in worker exposures.

(b) *Process Description and Exposure Areas*

The first step in processing the ore is to screen and crush it prior to transportation either by tramway or by some other automated method to the smelter (Id.).

Ore is reclaimed from the stockpile by rubber-tired front end loaders and is conveyed to dryers, where the moisture content is reduced. After drying, the ore is conveyed to the screening, crushing, and sampling plant. The ore is properly screened and sent to a storage bin.

From the storage bins, the coarse ore is fed to two natural gas or oil fired rotary calciners, while the fines are fed to two natural gas or diesel fired multiple hearth roasters (Ex. 476–212).

After calcining, the ore discharged from both the calciners and roasters is transported by automatic skips to hot ore bins above four electric melting furnaces in the smelter building (Ex. 476–212).

The ore is charged to the melting furnaces by gravity. Molten ore is poured from the melting furnaces into ladles for the reduction process (Ex. 476–212).

Reduction of nickel and iron is accomplished by the Ugine process, which consists of adding a reducing agent containing metallic silicon to an oxide ore in the presence of molten ferrous metals and using vigorous mixing action for good contact of reductant and ore (Ex. 476–212). After the vigorous mixing cycle, the ferronickel is allowed to settle to the bottom of the ladle. The slag is skimmed off and granulated with high pressure water jets.

As the reducing reactions continue, ferronickel accumulates in the ladle. At regular intervals, a portion of this product is removed, or "thieved," and transported to one of two identical small electric steel furnaces. Here the impurities, predominantly phosphorous, are removed by suitable refining slags, after which the ferronickel is cast into pigs. (Id.).

(c) *Controls Currently Used*

Control of dust emissions from the plant was recognized as a substantial technological problem during the initial design phase prior to 1954 because of the nature of the ore to be handled (Id.). Fabric filters were considered to be the best equipment available, for dust control and were installed on the melting furnaces, crusher house and storage bins ventilations systems. Electrostatic precipitators were installed on the calciner and wet scrubbers were installed on the dryers and furnace. This equipment operated at 98.3 percent efficiency (Id.).

In 1970, new State air quality standards again made it necessary to upgrade the system's efficiency, to 99.8 percent. Large cloth dust filters on the crusher house, ore melting furnaces, and a ferrosilicon furnace, handling a total of 720,000 actual cubic feet of gas per minute, were required. Improvements to existing equipment on the calciners, roasters, dryers, and storage bins were made (Id.). The system was completed in July, 1974, and now meets State air quality standards.

(d) *Exposure Levels*

Exposure data made available from the NIOSH survey of this smelting operation indicate that lead levels are well below the 30 $\mu g/m^3$ action level. In fact, of 81 samples analyzed for lead, the highest exposure was 0.013 $\mu g/m^3$. The company presented no data at the hearings, presumably because compliance with the lead standard poses no problem. There is no reason to suspect that the other nickel smelter has appreciably different environmental conditions.

(e) *Population Exposed*

No workers are believed to be exposed above 30 $\mu g/m^3$.

(f) *Additional Controls*

No additional controls are necessary, since the industry is already in compliance.

(g) *Conclusion: Technological Feasibility*

Levels of exposure are below 30 $\mu g/m^3$ and thus compliance with the 50 $\mu g/m^3$ lead standard is already being achieved.

(h) *Economic Feasibility*

There will be no cost of compliance nor any economic impact as a result of this regulation.

29. Nonferrous Foundries

(a) *Uses*

There are currently 1,620 foundries in the United States which do some casting of brass and bronze. Copper-based alloys are the primary raw materials at approximately 900 of these foundries. Lead is used in this industry in the form

of ingots or scrap metals and may vary in amount from less than 1 percent to 20 percent of the brass or bronze casting (Ex. 28, p. 5–73; Ex. 475–33D; Ex. 479).

(b) *Process Description and Exposure Areas*

The processes found in nonferrous foundries are similar to most foundry operations, and consist of coremaking, molding, melting, pouring, shake-out, and cleaning of castings. Cores are produced by chemical reaction or by baking a resin coated mixture. (Ex. 476–331, 337, 339).

The molding process consists of compacting a prepared sand layer around a pattern; the cores are set in position within the opening left by the patterns; the two mold sections are then joined together. (Ex. 476–331, 337, 339).

Lead exposures in the molding area come either from the reuse of sand in which lead has condensed or from cross-contamination from other operations of the plant (Ex. 479; Ex. 22, p. 172). Usually this area is located near the pouring area, so that spills often contribute to the exposures. (Ex. 22, p. 172).

Solid metal is melted in an electrical induction, reverberatory, or gas or oil-fired crucible furnace (Ex. 476–317; Ex. 22, p. 172). When the metal is ready for pouring, dross is skimmed off the surface of the molten metal, increasing the amount of fumes released. (Ex. 479; Ex. 476–339, 337, 331; Ex. 475–10). Emissions at the melting operation come primarily from the furnace during charging the cupola launder leading to the forehearth; and the tapping of the ladles.

Pouring is performed at the transfer of metal from the furnace to the ladle and from the ladle to the mold. (Ex. 476–331, 339; Ex. 22, p. 172). Lead fumes may be released during each pouring (Ex. 22, p. 172; Ex. 479; Ex. 475–33C).

After a cooling period, the castings are removed and transported to the shake-out and/or the wheelabrator which rids the castings of any remaining sand. (Ex. 479; Ex. 476–331, 339). Castings are then cleaned by grinding, cutting or buffing. (Id.).

There are two important sources of lead in the finishing department: the dust generated from the finishing operation and background dust. Final processing may include plating with gold, brass or silver (Ex. 476–317). Lead exposures may also occur during baghouse operations from the melting of lead the pouring of lead into casts and shakeout and cleaning. (Ex. 22, p. 172).

(c) *Controls Currently Used*

Engineering controls in the foundry industry range from general ventilation to numerous local exhaust systems. The most frequent control in the melting department is a hood over the furnace. (Ex. 476–332). In one foundry, each furnace was equipped with a mechanical exhaust canopy hood to collect fugitive lead emissions (Ex. 479).

Another foundry had totally enclosed the furnace (Ex. 479). Some foundries have provided tightly enclosed exhaust ventilation around their furnaces, local exhaust ventilation on the ladles and side draft exhaust ventilation in the pouring stations (Id.). These additions have sufficiently reduced the lead emissions (Id.). Several of these hoods were portable, allowing better access (Ex. 476–317, 332). The American Foundrymen's Society agreed, noting that canopy hoods are generally ineffective and that using a close capture, high velocity hood performs more effectively (Ex. 476–332). Total enclosure of the furnace was also recommended as a means for reducing exposures (Ex. 479; Ex. 476–323). Enclosure allowed Allis Chalmers to reduce lead exposures from 280 $\mu g/m^3$ to 30 $\mu g/m^3$. (Id.). NIOSH observed a movable side-draft hood on an arc furnace which reduced the furnace operator's lead levels to 20 $\mu g/m^3$; on the melting deck similar background levels were found. (Ex. 476–332). One company isolated the operator from the furnace by enclosing him in a positive-pressured booth, and the charging operation was totally automated and controlled from the booth (Ex. 476–332); these controls subetantially reduced lead exposures.

Other methods of control included: proper control of charge materials and furnace operations, charge bucket filling and preheating stations with local exhaust, use of a charge bucket cover during loading and unloading of charge materials into the furnace, control of charge door emissions by local exhaust, and use of a charge bucket only slightly smaller than the opening. The charging and tapping operations can be exhausted by using a hood with an air volume of 19,000 cfm (Ex. 476–319, 332). Other suggestions include keeping the furnace covered, minimizing overheating and wing deoxidizers or alloying agents while the crucible is still in the furnace shell (Ex. 476–319). By replacing a crucible furnace with an electrical induction furnace, George Butler, OSHA's expert witness reported lead levels were reduced from 325 $\mu g/m^3$ to 200 $\mu g/m^3$; coupled with isolation of the melting area with a barrier was recommended (Ex. 479). One foundry reported that installation of an induction furnace resulted in a cleaner metal.

NIOSH recommended several methods for reducing lead emissions at the slagging station. They included: a side-draft hood exhausting 25,000 cfm, a fresh air supply directed past the worker, rollers to ease the use of long slagging poles used on large ladles and "roast slagger" used to isolate the worker during slagging on large ladles. (Ex. 476–329). DBA suggested that the dross be disposed of in barrels with a mobile ventilation system (Ex. 28, p. 5–80).

The most effective method for controlling lead in the pouring area was the use of a mobile ladle hood which exhausts the ladle at the source and is connected by flexible ducting to a traveling exhaust carriage which moves along a stationary plenum extending the entire length of the pouring area. Air volumes ranged from 2,000–7,000 cfm (Ex. 475–3; Ex. 479; Ex. 476–330, 328, 323, 339, 337, 317). Using this technology, Allis Chalmers reported a drop in lead levels from 600 to 40 $\mu g/m^3$ (Ex. 476–323). NIOSH reported levels of 100–140 $\mu g/m^3$ for the molten and 52–100 $\mu g/m^3$ for the metal pourer (Ex. 476–329).

One company visited by NIOSH had an automatic transfer system for metal from the melting area to holding furnaces through a launder, and then automatic pouring from the holding furnace (Id.). Ladle covers were also suggested as a means of reducing emissions (Id.; Ex. 317). In addition, careful work practices to reduce spills as much as possible (Ex. 22, p. 174) or pouring in a remote area would reduce lead levels. (Ex. 476–319).

Butler and Marion Bronze suggested other methods to control lead levels. Butler suggested changing the type of alloys cast to reduce the lead content (Ex. 479). Marion Bronze has developed a patented process where metal is continuously cast and then finished while cold. The idea is not new, but it has not been applied in nonferrous foundries. (Ex. 475–18). Marion Bronze has achieved compliance with these controls.

One of the most frequently used and least effective methods of reducing lead exposures is the use of roof fans. The fans have a tendency to allow air currents to bring the emissions back into the plant. This can be prevented by increasing the height of the stack (Ex. 476–317).

The molding area is generally ventilated, primarily to control silica (Ex. 479). Rigorous housekeeping in this area is mandatory. (Ex. 22, p. 173). Cast Metals Federation (CMF) found that

cooling fans, so often used in this area, can disrupt the calculated air flows.

The finishing department includes grinders, chippers, buffers, cut-off saws, torch cut-offs, and air ranging and cutting, all of which can be exhausted locally (Ex. 476–330, 331, 332, 317; Ex. 22, p. 174; Ex. 479). Low-volume, high-velocity exhaust systems were used by one company (Ex. 476–337). Down draft tables were found at the chipping, grinding and buffing operations (Ex. 476–332), and enclosures or booths have also been used. (Ex. 475–3; Ex. 22, p. 174; Ex. 479; Ex. 476–330, 332, 317). NIOSH found a company using an air-supplied booth exhausting 10,000 cfm on a torch cut-off operation. Lead levels were less than 1 $\mu g/m^3$. (Ex. 476–332). In an air operation for small castings, NIOSH also noted a backdraft hood on a bench exhausting 8,300 cfm and an air supply of 1,500 cfm. For large castings there was a ventilated booth with supplied air and a materialized turntable for positioning the castings. The air volume exhausted was 8,500 cfm; the air supplied was 3,000 cfm. Booth curtains were used to separate this area from other areas (Ex. 476–337). CMF suggested the use of kiss gating for the casting area which would reduce, if not eliminate, some cut-off operations. Cosmetic grinding might also be eliminated (Ex. 475–33).

Nearly all of the foundries utilized local exhaust ventilation for capturing lead-containing dust in the cleaning rooms when dust is generated from grinding operations. However, the high-speed rotation of the grinding wheel interferes with the effectiveness of capturing the grinding dust (Ex. 479). Grinding dust containing lead can be satisfactorily controlled with an exhausted booth (Id.).

Vacuum cleaning also must be regularly performed (Id.; Ex. 22, p. 174). Preventive maintenance is a major part of any ventilation system and must be done regularly to maintain effective control of emissions (Ex. 476–332).

Finally, crane operations can use fresh air cabs. One company had lead levels of 300 $\mu g/m^3$ outside the cab and 30 $\mu g/m^3$ inside (Id.).

In the small foundries, rotation of employees occurs out of necessity and therefore, individual exposure is reduced. Another inherent control in the brass and bronze foundry industry is the variability of lead content in the metal. However, this exposure reduction may be offset by a lack of housekeeping, resulting in accumulations of lead from fugitive emissions from past formulations. (Ex. 479) Air filtering respirators are also sometimes used by the workers.

(d) *Exposure Levels*

The job classifications in a foundry include core maker, muller, molder, furnace operator, pourer, shake-out operator, wheelabrator operator, chippers, grinders, and other maintenance personnel (Ex. 476–317). In the very small foundries, one worker may be responsible for several of these jobs. Of these jobs, the furnace operator, pourer, and cleaner are exposed to the highest lead levels. These operations account for approximately 60 percent of the workforce (Ex. 479).

Exposure levels within foundries are quite variable. Levels at Hersey Products were: 50–222 $\mu g/m^3$ at melting operations with a mean value of 118 $\mu g/m^3$; 100–280 $\mu g/m^3$ at pouring operations with a mean value of 190 $\mu g/m^3$; 10–660 $\mu g/m^3$ at cleaning operations with a mean value of 228 $\mu g/m^3$ (Ex. 476–337). At another Hersey Products site, levels for melting were 25 $\mu g/m^3$; less than 7 $\mu g/m^3$ in pouring operations; and 242 $\mu g/m^3$ in cleaning operations. (Ex. 479). Gorsuch Foundry had levels with a mean value of 86 $\mu g/m^3$ at melting operations; 123 $\mu g/m^3$ at pouring operations; 102 at cleaning operations; and 85 at molding operations. (Ex. 476–330). Other plants had considerably lower levels in melting, less than 40 $\mu g/m^3$; in pouring less than 40 $\mu g/m^3$; and higher levels in cleaning 165 $\mu g/m^3$ mean value. (Ex. 476–317).

When all the data submitted for the record is compiled the range of exposure levels found were: molders ranged from 3–250 $\mu g/m^3$; melters and helpers from nondetectable to 2,000 $\mu g/m^3$; pourer's and helpers from nondetectable to 820 $\mu g/m^3$; shake-out from 2–300 $\mu g/m^3$; finishing department from nondetectable to 4,400 $\mu g/m^3$; miller was from 32–180 $\mu g/m^3$, wheelabrator operator was from nondetectable to 160 $\mu g/m^3$. (See, Ex. 476–337, 339, 331, 343, 328, 336, 317; Ex. 22, p. 176; Ex. 28, p. 5–76; Ex. 475–33I)

Although the exposure data varies greatly, it should be noted that many of these establishments were, in fact, in compliance with the 50 $\mu g/m^3$ lead standard in some operations. As Butler testified, 6 of the 12 foundries he surveyed were either in compliance in the melting areas or could easily be brought into compliance; 4 were in compliance in cleaning operations; and 3 foundries were in compliance in finishing operations. (Ex. 479)

OSHA compliance activities indicate that in a foundry making red brass (5% lead) workers time-weighted exposure were 20 $\mu g/m^3$ for the floor man, 10 $\mu g/m^3$ for the squeeze molder, 20 $\mu g/m^3$ for the share-out furnace tender, 10 $\mu g/m^3$ for grinders and share-out, 50 $\mu g/m^3$ for cut-off men, and 118 $\mu g/m^3$ for ferrous furnace tenders. (Ex. 476–317). This plant has a Hawley monorail traveling exhaust hooding system, an induction furnace, down draft ventilation of grinding areas, and good use of general and local exhaust ventilation.

(f) *Additional Controls*

The engineering controls and work practices to achieve compliance with a 50 $\mu g/m^3$ standard are available and have been used by some of the firms in this industry to achieve compliance. Some foundries have used isolation to separate areas of high exposure from areas of low lead exposure. Fossil fueled crucible furnaces have been replaced with electric induction furnaces. Foundries not in compliance with the standard may find it necessary to upgrade existing ventilation systems, upgrade housekeeping practices and rotate workers to meet the 50 $\mu g/m^3$ standard. Many of the facilities are not in compliance simply because of a reluctance on the part of the industry to invest in health and safety controls. Thus while current technology will enable this industry to comply with the standard, the absence of existing controls in some plants and inadequate design of controls in others indicates that compliance activities will take careful planning and time. OSHA has incorporated these considerations into its implementation schedule. The five years provided for compliance allowed the industry a sufficient planning horizon to install efficient, well designed, cost-effective ventilation systems or new processes.

Thus, while current technology will enable this industry to comply with the standard, the absence of existing controls in some plants and inadequate design of controls in others indicates that compliance activities will take careful planning and time. OSHA has incorporated these considerations into its implementation schedule. The five-years provided for compliance allows industry a sufficient planning horizon to install efficient, well designed cost-effective ventilation systems, new equipment, or other engineering control.

(g) *Conclusion: Technology Feasibility*

The Court of Appeals remanded the standard for this industry because the preamble did not explain OSHA's basis for extrapolating the feasibility of the proposed 100 $\mu g/m^3$ PEL and did not describe technological developments that might be utilized (Slip opinion, pp. 206–207). In this analysis, OSHA has presented direct evidence of the technological feasibility of the 50 $\mu g/m^3$ PEL. Exposure data for several foundries

demonstrated that foundries which have utilized state-of-the-art controls have in fact already achieved compliance.

However, in the foundry industry, the use of effective engineering controls and work practices is not uniformly applied. Some firms have achieved compliance throughout, others have achieved amazing success in controlling lead exposures in some processes but lack controls in others areas necessary to achieve compliance, and other have done virtually nothing.

Many firms believe that it is not possible to bring all operations in the foundry in compliance with the permissible exposure level of 50 $\mu g/m^3$ (Ex. 478; Ex. 475–334, 33H, 33F, 33A, 3). Billard Pattern and Brass Foundry stated that even with the latest technology in use, in the most critical areas such as melting, levels remain in the 50–100 $\mu g/m^3$ range. (Id., at 33D). Another company said that at best they could meet the 200 $\mu g/m^3$ standard (Id., at 33D). The industry contends that the lead standard is not feasible and presented the Ford Motor Company as an example of a state-of-the-art foundry which is not in compliance with 50 $\mu g/m^3$. However, this state-of-the-art foundry appears to suffer from the lack of "common sense" in achieving control. As Gary Mosher from the American Foundrymen's Society observed: "Smoke tube testing done in the foundry at the same time as the air sampling indicated that there seemed to be no unifors air flow patterns in the foundry. A significant problem in the foundry is the use of man cooling fans. These fans are doing a fine job disrupting air flow patterns around exhaust hoods." It appears that a common sense approach to design and maintenance of ventilation controls would facilitate the ability of this industry to comply with the standard. Foundries that modify their processes and adopted those used by the Marion Bronze Company could easily come into compliance. This process in which alloys are continuously cast and then cold finished greatly minimizes the lead which becomes airborne. This process is readily adaptable to the industry (Ex. 475–18).

The American Foundrymen's Society (Ex. 503) discussed problems with the data relied upon by Butler in determining feasibility. They maintain that the exposure data was not representative of foundries doing casting of brass and bronze in that either low percentages of lead were involved or casting of non-lead substances was done, but provide no documentation of this claim. OSHA has no reason to believe that the data upon which it relied was not the representative, and in fact it was the best available data. OSHA made every attempt to get the best information, but industry has failed to provide adequate data.

(h) *Costs of Compliance*

The record contains a substantial amount of cost data on reducing exposures to lead in nonferrous foundries. The cost estimates for individual foundries vary widely for at least three reasons. First, some estimates were based upon a nonlinear relationship between compliance costs and exposure levels, whereas other estimates assumed a linear relationship. However, OSHA believes that documentation is available to support a linear relationship between costs of compliance and levels of exposure above 25 $\mu g/m^3$ (Tr. p. 85–86). Further evidence has been provided to corroborate the linearity relationship (Ex. 270, p. 25). Second, different methodologies were used to estimate the cost of these controls. Third, the baseline of current exposure levels varied from foundry to foundry over a wide range. Whereas some foundries were close to or in compliance with 50 $\mu g/m^3$, others were in excess of the previous 200 $\mu g/m^3$ standard.

One foundry reported that it had purchased and installed two induction furnaces with mechanical exhaust ventilation hoods. Each furnace cost between $10,000 and $11,000, and a $40,000 control panel for the furnaces was also installed. No other ventilation was installed. This represents a major undertaking by the foundry. However, the costs of reducing workplace emissions will be partially offset by savings stemming from a cleaner metal product (Ex. 476–314).

Another foundry reported the expenditure of $15,000 for increased ventilation of 6,000 to 7,000 cfm over pouring stations, and $3,000 for an increase of 10,000 cfm to ventilate furnaces (Ex. 476–330). Since the system is not yet operational, no exposure levels were reported by the firm. However, contaminant emissions are expected to be substantially reduced, and all fumes over the pouring stations should be captured by the hoods (Ex. 476–330). Thus, these two foundries indicate that measures can be taken to control exposures to toxic substances in foundries. Furthermore, because foundry workers are exposed to a multitude of hazardous substances, these controls are simultaneously effective in affording protection to workers against other metals, silica and other toxic substances.

A number of foundries submitted provision-by-provision cost estimates through their trade association, the Cast Metals Federation (CMF). Eight firms provided cost data ranging from capital expenditures of $111,190 to $4,000,000 per foundry to reach 50 $\mu g/m^3$ lead (Ex. 475–33). Total costs for these foundries were $14,446,423, and the average cost per foundry was $1,805,804. In addition, one firm estimated the cost of constructing a new, fully-automated foundry with the latest technology at $6,275,000 (Ex. 475–33(I)). The foundry was to be located in a warm climate, thereby eliminating costs associated with heating make-up air.

These cost estimates were not supported by engineering studies and appear to be speculative in nature. For instance, one respondent wrote that the installation of a ventilation system "would probably cost about $60,000" (Ex. 475–33(c)), while another submitted that it was "led to believe that (it would) be required to spend up to $4,000,000 more if this standard is upheld, with no guarantees of success" (Ex. 475–33(E)) in achieving compliance. One foundry estimated a cost of $23,000 for "removing partial moisture from brass chips" without an explanation of the reason for this process and its relationship to the revised lead standard (Ex. 475–33(A)).

The variation among the cost estimates also indicates that not all of the costs presented are reasonable. For example, one foundry with 24 employees estimates the cost of a shower/change/locker room at $70,000 (Ex. 475–33(A)); one with 12 employees estimates a cost of $5,000 for a change room and showers (Ex. 475–33(C)), another with 600 employees estimates the cost of change rooms and showers to be $30,000 (Ex. 475–33(E)); and still another with about 100 employees claims that change rooms, showers, a lunchroom, and lavatory modifications will cost $750,000 (Ex. 475–33(H)). With respect to costs of housekeeping, most foundries estimated that costs would be in the vicinity of $20,000 per year. However, one firm estimated much larger annual housekeeping costs of $180,000 (Ex. 475–33(T)) with no apparent explanation for this deviation.

All of the foundries forecast large decreases in productivity as a result of "nonproductive" hours spent by employees in compliance activities, such as housekeeping and showering. However, the firms did not explain the derivation of the productivity loss estimates, nor did they attempt to calculate offsetting gains in productivity that may be realized through

modernization and a cleaner work environment. Furthermore, classification of work practices as "nonproductive" fails to depict accurately the purpose and effects of safety and health in the workplace. While work practices may not necessarily be perceived as contributing to the conventional product output of the firm, utilization of these resources does contribute to the health of employees and, therefore, may reduce worker turnover and absenteeism.

At least one foundry claims that it will incur large costs of training new employees because a certain percentage of its workforce would switch to other jobs as a result of "loss of personal freedom" at work (Ex. 475–33(F)). The firm claims that the calculation of the 8-hour TWA would require rescheduling shifts such that many employees would seek other employment. On the contrary, OSHA believes that providing cleaner and safer foundries would be likely to reduce worker turnover. Workers who were previously dissatisfied with the workplace, as exemplified by high rates of turnover and absenteeism, would be more likely to remain in current positions and attend with greater reliability. This would be of substantial benefit to the firm, because retraining costs associated with new workers would be reduced. In addition, overstaffing in the face of high absenteeism, to ensure an adequate workforce on any particular day, could be reduced.

In contrast to the relatively high compliance costs provided by some members of the CMF, other data indicate that compliance costs may be considerably lower. These data are estimates of the cost of complying with the 200 $\mu g/m^3$ lead standard. Bolt, Beranek, and Newman (BBN), a consulting firm that conducted a program of on-site consultations in the foundry industry as part of an OSHA National Emphasis Program, made estimates of the specific costs of controlling metal fumes in participating foundries. The reports also included separate cost estimates for controls recommended to reduce exposures to free silica, noise, binders, and safety hazards. A total of 282 firms sought BBN's consultative services. For all these foundries, including steel foundries, gray iron foundries, malleable iron foundries and nonferrous foundries, total control costs for all hazards were estimated to be $8,200,000. In other words, on average, each foundry needed to spend about $22,000. However, BBN pointed out that costs for individual foundries varied widely (Ex. 476–317).

OSHA reviewed the BBN reports pertaining to nonferrous foundries, especially those establishments in which brass and bronze were cast. The compliance costs and the estimated time necessary for implementation of control measures ranged from a minimum of $75 and one month to $95,000 and one year. Three establishments were advised that immediate actions, that bore *no* costs, such as moving a hood or a worker's position, could be taken to achieve compliance (Ex. 476–317).

BBN estimated the total costs for coming into compliance with the 200 $\mu g/m^3$ lead standard and all simultaneous exposures to metal fumes at $364,100 for the nonferrous foundries participating in the consultation program. The average cost per foundry was only $8,300. Excluding those foundries that were in compliance and that therefore incurred no costs, the average cost per firm rose slightly to $8,500. The average length of time required for implementation of controls was 4.5 months.

For their estimates, BBN used an integrated cost-effective method of solving exposure problems, that is, a combination of engineering controls, work practices, and administrative controls. This multifaceted approach to reducing levels is necessary to provide an effective, least-cost solution to the exposure problem. Because the industry estimates do not take this approach, they are probably overstated.

The study by Jacko and Overmyer similarly emphasized the multifaceted approach to lowering lead levels by utilizing housekeeping, work practices, proper layout of plant and equipment, and ventilation. Since it is important to reduce the amount of air exhausted, which is the most costly component of compliance, these other methods represent important ways of reducing costs for firms. In addition, the estimated costs of ventilation control per cfm typically include the costs of complying with EPA air pollution regulations. To the extent that this is the case, the costs attributable to OSHA should be systematically reduced (Ex. 475–3A(2)).

The Census of Manufacturers estimates that there are 480 brass, bronze, and copper foundries and 365 nonferrous foundries, not elsewhere classified (Ex. 476–26). However, according to the American Foundrymen's Society (AFS), there are 364 copper-base alloy foundries, 59 steel foundries, and 29 other nonferrous foundries in which exposure to lead may occur (Ex. 475–3A). The AFS also noted 246 gray iron foundries and 304 aluminum foundries in its estimate of the number of nonferrous foundries potentially using lead.

The two trade associations (CMF and AFS) concur that exposure to lead occurs in approximately 1,000 foundries (Ex. 475–3A and Ex. 475–33). The Census data identify 476 brass and bronze foundries but do not identify other foundries in which brass and bronze may be cast as secondary products or other alloys containing lead may be cast. Thus, OSHA accepts 1,000 firms as the best available estimate of the number of potentially affected firms.

Using this estimate of the number of affected foundries and the BBN cost estimate of $8,500 per foundry to reach 200 $\mu g/m^3$, OSHA estimates that at least $8,500,000 would be expended to achieve compliance with the 200 $\mu g/m^3$ standard. Assuming that the BBN estimates are understated by a factor of ten, that is, that there is a ten-fold difference between achieving 50 $\mu g/m^3$ and 200 $\mu g/m^3$, total cost in the foundry industry of achieving 50 $\mu g/m^3$ may reach $85,000,000. Butler's cost estimate of $107,000,000 to reach 50 $\mu g/m^3$ is based solely on controlling lead levels with ventilation (Ex. 479), which is likely to be more expensive than a multi-faceted approach. The best estimate of DBA for achieving the 100 $\mu g/m^3$ standard was $161,000,000. However, this figure was based on 1,620 foundries rather than 1,000 foundries producing bronze and brass castings. OSHA believes that the BBN data constitute the best available evidence, because they were collected more recently than the DBA data and because BBN visited a much larger sample of firms. Thus, OSHA concludes that the foundry industry may expend $35,000,000 to $107,000,000 complying with the lead regulation. On an annualized basis, these health-related expenditures range from $15.2 million to $19.2 million.

(i) *Industry Profile.* Exposure to lead in nonferrous foundries occurs primarily in the manufacture of brass and bronze castings (Ex. 476–1). According to the Department of Commerce, there are 476 companies operating 480 establishments in this industry, SIC 3362. About 10,200 production workers were employed in this industry in 1977 (Ex. 476–26). However other foundries may produce copper-base alloy castings as a secondary product, thereby increasing the number of workers potentially exposed to lead. For instance, the CMF estimates that there are about 1,000 foundries in the U.S. producing brass and bronze castings (Ex. 475–33), and the AFS estimates that 1,004 foundries in the U.S. produce nonferrous castings, including 364 which produce copper-

base alloy castings as their primary product, and 246 gray iron, 2 malleable iron, 50 steel, 204 aluminum and 29 other nonferrous foundries with copper-base alloy casting as a secondary product. Total employment may be as high as 80,000 workers, according to the AFS (Ex. 475–3A). The value of shipments for the nonferrous foundries was $813.7 million in 1977; the value of shipments for the brass, bronze, and copper foundries was $553.3 million (Ex. 476–26).

Using employment as a measure of size, most of the foundries in SIC 3362 are small with 41 percent employing less than 10 employees, and forty-six percent of the establishments employing between 10 and 50 employees. Only three establishments employed between 250 to 499 employees, the largest firm size category. In other foundries producing bronze and brass castings, the number of employees per foundry is not known. However, since 10,200 workers are employed in the bronze and brass foundry industry, and since the AFS estimates that there are 80,000 workers in the nonferrous industry at issue (Ex. 475–3A), this leaves 69,800 workers in the remaining establishments.

The CMF and some of its members predicted severe financial hardship, plant closures, increased unemployment, and productivity losses of 10 percent to 20 percent after compliance with the lead standard (Ex. 475–33). The AFS addressed the issue of technological feasibility but did not submit data on the economic feasibility of compliance nor claim that this regulation would present a hardship for affected foundries (Ex. 475–3A).

One manufacturer of bronze bearings presented data in support of the feasibility of the lead standard. The Marion Bronze Company, with the assistance of Battelle Columbus Laboratories, developed a new method of casting bronze. The research and development effort was stimulated by the incentive to lower production costs associated with rising energy costs (Ex. 475–18). A grant was awarded by the Department of Energy to supplement the work prepared to date, which has been patented by the U.S. Patent Office. The funding is designated for the completion of the research necessary to market the new technology (Ex. 475–18B).

Because substantial cost reductions can be gained by manufacturers switching to the process, it is likely to be rapidly accepted. The National Bureau of Standards (NBS) regards the process as commercially feasible. The NBS indicated that reductions in costs are based on lower capital investments required to produce a wide range of bearing sizes, significant reductions in energy usage, and significant increases in productivity compared to current processes in use (Ex. 475–18C). In addition, the new continuous casting method is a cold process and does not require melting metal (Ex. 475–18). This new process which offers significant economic benefit to producers would also virtually eliminate lead exposures in the production of some bronze castings.

The conventional processes used in foundries involve pattern making (generally customer specific), mold making, metal pouring, and finishing. Foundries usually specialize in either job contract or volume business in producing standardized products. The demand for foundry products is determined by a highly diversified group of customers purchasing a wide selection of standard and specialty castings. The dominant factor in determining the price of final products is the price of brass and bronze ingots (Ex. 476–26).

There are less than 30 firms in the brass and bronze ingot manufacturing industry, which is separate from but essential to the foundry industry. Copper-based ingots of specific alloy compositions are produced and sold primarily to nonferrous foundries, which in turn melt the ingots and cast brass and bronze products. All but one of the ingot manufacturers are small, closely held corporations. Industry commented that the capital-intensive nature of the industry, the strong competitive pressures, and the demanding government regulations result in small profit margins for ingot producers relative to other manufacturers (Ex. 475–10). The industry also contends that lack of access to capital has forestalled modernization. The industry is composed of older facilities located in urban areas (Ex. 475–10).

The submission of the Joint Government Liaison Committee of the Assocation of Brass and Bronze Ingot Manufacturers and the Brass and Bronze Ingot Institute further describes the role of the industry as essential (Ex. 475–10). They describe no domestic competitors nor foreign penetration of the brass and bronze ingot market in supplying foundries with these alloys. Most foundries will not produce their own ingots because extensive and expensive laboratory facilities are required to produce alloys of specific compositions (Ex. 474–26). Thus, it appears that any compliance costs incurred in protecting workers in the ingot manufacturing industry could be passed on to nonferrous foundries. Furthermore, since the industry is described as consisting of small, highly competitive firms operating under similar conditions and producing a homogeneous product, compliance costs should not impose a disproportionate burden on any specific firm within the industry.

In the foundry industry, however, market conditions are somewhat different. Job shop foundries are supplying a service to customers who order specialty castings. Here, the quality of the castings produced appears to be an important method of product differentiation. Thus, the reputation of the foundry may be a critical factor under consideration by the buyer. Thus, small foundries with a reputation for high quality may retain their competitive advantages even in the face of rising costs. Castings that are mass produced, on the other hand, may meet much less stringent demands on quality (Ex. 476–26). Small firms in the market may be unable to compete with larger firms because of disproportionate cost increases.

Establishments in the industry are distributed throughout the nation with a large proportion of producers in the Middle Atlantic, East North Central, and New England census regions. For standardized products, competition is less regionalized than for job-contract work. Within given geographical markets, competition for specialty orders is fairly intense (Ex. 475–10).

While the foundry industry is vulnerable to business recessions, especially in construction and consumer durables, the industry's flexibility and diversity of product lines tend to buffer the severity of such impacts. As the economy recovers, the foundry industry should share in the growth. There may be a trend to shift from brass and bronze to ferrous castings; however, the magnitude and strength of this shift is not measurable owing to a lack of data.

The structure of the industry as a whole closely resembles a monopolistically competitive market. The low concentration ratios for 1972 from the Census of Manufacturers provide evidence of the competitive nature of the industry, although this measure probably overestimates the competitive nature of regional markets. Economic and technological barriers to entry appear to be very low on the basis of available evidence (Ex. 474–26), and the size distribution of firms does not indicate that there are significant economies of scale in production (Ex. 474–26). Thus, low unit production costs can be obtained at low levels of output.

About 25 percent of the foundries classified as brass and bronze foundries are unincorporated, single plant firms.

Since these companies produce at low volumes, they have not in the past benefited from bulk discount buying of raw materials. Therefore, when the price of brass ingots rose sharply in 1972 and 1974, many of these firms were unable to compete with larger producers (Ex. 474–26).

DBA indicated that costs of production rise as a result of compliance with the lead regulation, firms would initially pass on to consumers most of the increase. Moreover, in the long run, the prices would rise to fully pass on the costs of compliance, although there might be some increase in market concentration (Ex. 474–26).

Some of the present markets for brass and bronze castings may change to reflect increasingly elastic demand if plastic castings are accepted as suitable substitutes. Aluminum and ferrous castings may also compete successfully if the relative prices of bronze and brass castings rise.

One company commented that foreign competition was much stronger than in the past and was adversely affecting its ability to export castings (Ex. 475–33I). However, foreign producers do not appear to be competing with foundries in domestic markets. On the other hand, in an effort to escape regulatory requirements, and to lower costs of labor, some foundries may consider the option of moving abroad (Ex. 476–26). For instance, if some domestic foundries relocate to Mexico, the impact on the southwest regional market for brass and bronze castings might be disrupted (Ex. 476–26). The extent of this dislocation is not measurable with the available data.

(j) *Conclusion: Economic Feasibility*

The foundry industry has been given 5 years to comply with the standard. In light of this extended compliance period and the cost evidence, OSHA concludes that the economic impact of the lead standard will not prove disruptive to the domestic foundry industry. OSHA calculates that compliance costs will comprise between 1.4 percent and 3.4 percent of total shipments, valued between $553.3 million (brass and bronze foundries) and $813.7 million (nonferrous foundries) in 1977 (Ex. 476–20). Although marginal firms may exist the market or drop lead-related product lines from their operations, causing some increase in market concentration, entry barriers are low. Therefore, new firms may enter the market if others shut down. Thus, in the long run, increases in concentration may not occur.

30. Pipe Galvanizing

(a) *Uses*

Large quantities of steel wire, pipe, hot and cold rolled strip and sheet are coated with molten zinc in a process called galvanizing. Galvanized steel is used where corrosion resistance is required, for example, in the underbody of automobiles, for air conditioning ducts, culverts and storage tanks. Often the galvanized sheet is given a paint coating to make it fit more attractively in its surroundings. Some farm silos are made of continuously painted galvanized sheet. Curtain walls in building exteriors, interior partitions, and parts of kitchen cabinets or major appliances such as refrigerators may also be manufactured from painted galvanized sheet.

(b) *Process Description and Exposure Areas*

Metal to be galvanized may require annealing to remove the effects of cold working. For galvanizing wire a continuous annealing process consisting of a lead-bath is usually employed. A pan filled with molten lead is installed in front of the cleaning and galvanizing apparatus. The lead also serves to burn off the wire-drawing lubricant. Since the rate of cooling in continuous process annealing has little effect upon the physical properties of the wire, the wires are cooled in air, or, if the space is limited, low-carbon wires will be cooled by conducting them from the annealing furnace into a vat of water. Following annealing, the materials are cleaned of scale by being drawn through a bath of hot acid at predetermined concentrations and later through hot water. The cleaned wire must be dried before galvanizing. A flux is used to prevent any oxidation or rust from forming during the drying process. The dried wires are drawn at once into the molten zinc, or spelter. This molten metal is contained in a spelter pan, which is usually made of boiler plate and is supported by a brick setting of suitable construction for firing with the most satisfactory fuel available. Pans designed for galvanizing coarse sizes of wire may reach a length of 30 feet. The depth of the pan must be sufficient to prevent the wires from coming into contact with the dross which settles and collects upon the bottom. This dross which is an alloy of iron and zinc and solid at the temperature of molten spelter, forms a pastelike mixture that is very harmful to the coating. As molten zinc oxidizes rapidly, the pan is provided with some form of covering, which rests upon the molten spelter and protects it from the air, except at the ends where the wires enter and leave the bath. Here, the surface of the metal must be kept free from oxide by frequent skimming. The mixture of zinc and zinc oxide thus obtained is known as zinc skimmings.

The wire, just after it emerges from the zinc bath, is passed through either one of two devices known as wipes or headers.

Galvanizing of cold rolled sheets and strips is performed in a similar manner, however, annealing is performed in a box furnace which eliminates the need for the lead bath preceding the zinc-bath. Pipe and hot rolled steel do not require annealing so the lead bath is likewise not necessary.

Electrogalvanizing, as the name implies, is a process which applies a coating of zinc to steel by means of an electric current. Electrogalvanizing uses a long, shallow plating vat, usually from 100 to 200 feet long. This vat is filled with a solution such as zinc sulphate which must be continuously agitated to maintain a uniform density. From the vat the steel goes to a wiping unit and is then permitted to dry in air.

Lead exposure results from processes preceding the hot galvanizing, such as annealing, which is often done in a lead bath (Ex. 476–463). Lead is sometimes added to the zinc bath because a lead layer acts to hold down other impurities which may be present in the zinc bath (Ex. 22, p. 209).

(c) *Controls Currently Used*

Suggested control technology consists of two hoods, one over the dip tank and one to exhaust the blowbox (steam ejector for removing coating metal from the inside of the pipe) (Ex. 476–344).

(d) *Exposure Levels*

Specific exposure data was unavailable, although the consensus among those expressing an opinion was that lead exposure poses no problems in this industry (Ex. 22, p. 209). AISI furnished blood lead data to the record, but furnished no exposure data (Ex. 500).

(e) *Population Exposed*

No data was available.

(f) *Additional Controls*

AISI stated that engineering controls were infeasible and that fluidized bed systems (which cannot be used in all cases) have replaced the galvanizing process. (Ex. 500, p. 9). While this may be a reliable way to eliminate lead exposures, other traditional methods such as those recommended by Short appear suitable (Ex. 22, p. 209). The submission from industry (Ex. 476–343)

also indicates that relatively standard control technologies are being used. The less costly housekeeping and worker rotation controls are also available to the industry.

(g) *Conclusion: Technological Feasibility*

The data which was available indicate the exposure to lead from galvanizing is low and poses very few compliance problems (Ex. 22, p. 209). Controls appear relatively simple and consist primarily of hooding. Additional preventive measures such as enhanced maintenance and housekeeping may also be used to insure that levels are kept below 50 $\mu g/m^3$. Compliance with the standard thus is feasible.

(h) *Economic Feasibility*

Data was not submitted by any industry source which indicated that there would be any costs of compliance associated with the use of traditional controls for complying with this standard. Exposure levels are low and the costs incurred, if any, will probably be for maintenance and housekeeping improvements, both of which require minimal expenditures. AISI did submit data in their post hearing comments which indicated that replacement of existing controls with a fluidized bath in galvanizing operations would be $650,000 (Ex. 500, p. 9). They further indicated delivery of the system would occur 1 year after the purchase order.

In view of the apparent low exposures in this industry and the relative simplicity of the controls required, compliance with the standard should not cause significant economic impact on this industry.

31. Plastics and Rubber Manufacture

(a) *Uses*

Polymerization processes result in many different kinds of bulk plastics and resins which are later molded to form plastic products or processed to form paints, solvents, varnishes, etc. Rubber has many uses, but is primarily used in the formation of tire and rubber hosing. Linoleum is no longer made in the United States (Ex. 476–286) and therefore its manufacture is not discussed.

(b) *Process Description and Exposure Areas*

The processes for the production of plastics and resins are numerous. Eighteen general processes are used to produce various plastics. Only the compounding of lead based ingredients poses an exposure problem in rubber and plastics manufacture (Ex. 22, p. 224).

Lead exposure may result from the compounding of a polymer. The term "compounding of a polymer" refers to those chemical and, especially, physical methods used to modify the polymer's properties in accordance with specific performance, appearance, or economic requirements. Most commonly, the compounding of a plastic involves the incorporation of certain additives, the compounding ingredients, into the polymer to produce a homogeneous dispersion or mixture. In this way, improvements may be made in processing characteristics (e.g., by the use of plasticizers), in resistance to degradation (e.g., by stabilizers), in strength (e.g., by modifiers or reinforcing fillers), in appearance (e.g., by antistatic agents), and in cost (e.g., by fillers or extenders). Curing agents are also important compounding ingredients, especially in the case of thermosetting resins and elastomers. The nature and proportions of the compounding ingredients; i.e., the formula or recipe to be used depends primarily on the nature of the polymer and its intended use (Ex. 476–286).

Important classes of compounding ingredients are: Antioxidants; antiozonants; antistatic agents; biocides; blowing agents; carbon; catalysts; curing agents; driers and metallic soaps; dyes; inorganic fibers; fillers; flame retardants; pigments; plasticizers; release agents; stabilizers; and ultraviolet radiation absorbers. (Id.)

Polymers are modified using a multitude of products, but most compounding methods generally consist of three steps. The premixing or preblending step involves breaking of agglomerates and gross dispersion of compounding ingredients. The compounding ingredients are heated and intensively mixed or blended in order to give the polymer particles a homogeneous dispersion on a molecular level. The last stage in compounding involves shaping the compounding material into a usable form (Id.).

General methods of compounding polymers may be divided into those of compounding thermoplastics and those for compounding thermosetting resins because the effect of heat differs greatly depending on whether the polymer is in the former or the latter group. The compounding of elastomers is a specialized technology. (Id.)

(i) *The Compounding of Thermoplastic Polymers* Premixing operations may be carried out in large batches with the aid of mixers and blenders. In mixing dry materials (e.g., in dry coloring), a less intensive type mixer, like ribbon blenders, conical mixers or sigma-blade blenders, may be used. If the material is dough or taffy-like, a more intensive mixer like the Muller-type mixer or vertical-action mixer will be required (as in the mixing of color contentrates with uncolored resin). The premixed materials are usually screened to eliminate remaining aggregates before the next operation. (Id.)

Fusion is accomplished by the external application of heat, shearing action, or both. A number of different types of equipment are available for this purpose. Extruders are widely used because they provide heating by shear and permit continous operation. The Banbury internal mixer is particularly useful for compounding plastics that are difficult to process and for compounding and reclaiming elastomers. It is usually employed in conjunction with a two-roll mill or an extruder (Id.).

The last stage in compounding a thermoplastic involves shaping of the compounded material into a usable form. For example, the Banbury mixer will produce thick, shapeless masses of several hundred pounds that must then be cut into small pieces. The compounded material is therefore placed on a two-roll mill and a sheetlike material is produced. The sheet can be reduced in size by cutting and further subdividing into granules or rounds (Id.).

The final product from an extruder can be obtained in tape, tube or strand form, or, after cooling, may be granulated. Pellets can be obtained directly by die-face cutting where the extruded polymer is cut underwater upon emerging from the extruder while still hot (Id.).

(ii) *The Compounding of Thermosetting Resins.* Thermosetting resins are usually in the form of a syrup or of a finely divided powder prior to compounding. They are mixed with a variety of other solids, e.g., fillers like wood floor, asbestos, clay or mica. In addition to the usual compound ingredients, thermosetting resins are also compounded with suitable curing agents before they are fully set. Equipment used for compounding includes ball mills, sigma-blade blenders and vertical mixers. Ball milling is particularly useful for the production of powders with exact shades of color (Id.).

The sensitivity of resins to heatsetting requires that heating only be carried out at low temperatures and for short periods of time. Likewise, pH conditions must be carefully controlled. Fusion (fluxing) for brief periods can be performed on two-roll mills or a Banbury mixer. (Id.) The compounded material produced from the two-roll mills or Banbury mixer may then be

reground into a powder or granulated after extrusion. (Id.).

(iii) *The Compounding of Elastomers.* High quality natural rubber is too hard and tough to process. Therefore, the first step in its use is a preliminary breakdown or mastication. This is accomplished by the shearing action of a two-roll rubber mill or an internal mixer such as a Gordon plasticator. This breakdown causes the rubber to become smoother, more plastic and more thermoplastic in subsequent steps. Most synthetic elastomers also require some breakdown of a similar type. The amount of breakdown required varies with the type and grade of elastomer. In most cases, the breakdown of synthetic elastomers differs from and is less extensive than that of natural rubber. All rubber compounds contain some added chemicals and most contain softeners and pigments. All of these materials must be thoroughly blended with the rubber to give an essentially homogeneous mixture.

When using an internal mixer of the Banbury type, the rubber is added first and then worked; the compounding ingredients are added later. Many elastomers, such as those for tire treads, are mixed in several steps.

The first step in the process is premixing. Mixing results in elevated temperatures as a result of the mechanized agitation. In many cases, especially when mixing is in a high-speed mixer, the temperature rise in the batch is quite rapid. To prevent scorching or premature vulcanization, part or all of the curing agents may be kept out of the batch until the final mix. The batch is dumped onto a sheeting mill as soon as it reaches a definite temperature instead of being mixed for a definite period of time. The batch comes out of the Banbury mixer in chunks of various sizes which are dropped onto a two-roll mill under the mixer. On this mill, the batch is further blended, sheeted and cooled. It is cut off the mill in sheets, cooled in water, dusted or dispersed with separators to prevent sticking and stored for further processing.

There are many ways to shape rubber products. One widely used method, for either an intermediate or end product, is extrusion through a tuber or extruder. Calendering, another method, produces a smooth, uniform sheet of unvulcanized rubber by pressing between rollers. Such sheets may be cured as sheeting, cut into threads, or plied with fabric. In a friction calender, the rubber stock is pressed and smeared into the interstices of woven fabric to make raincoats, boots, etc. Another method spreads or coats properly compounded latex or cements onto fabrics. The machines required for spreading and coating are simpler and cheaper than those used for calendering but the coated fabrics must be dried. When cords are used instead of fabrics, they are usually dipped into latex and then dried.

Lead is used at the beginning of the process, in the compounding of the rubber and plastic itself, and later in the fabrication of rubber and plastic goods (Ex. 469). Lead oxide is used to accelerate the rubber vulcanizing process (Ex. 469).

Lead is used in the compounding of chlorosulfonated and isoprene-isobutene rubbers and is the common heat and light stabilizer for vinyl plastics where they often do double duty as lubricants or colorants (Ex. 469).

Lead exposures occur as a result of handling, weighing, applying and using lead bearing anti-oxidants, colorants, color concentrates, plasticizers, fillers, stabilizers, inks, paints, and internal and external lubricants (Ex. 22, p. 224). The potential for lead exposure exists in the following circumstances: (1) Whenever dry lead-bearing powder components are introduced into the system and until they become combined with liquids or reacted constituents; (2) when heating or curing operations raise temperatures sufficiently to increase vapor release; (3) during grinding, buffing, and machine operations which create airborne dust; or (4) in spray operations for coloring, painting or other purposes which disperse lead-bearing particulates into the atmosphere (Id). Specifically, the operations which are major sources of toxic dust generation are raw material handling and storage, additive weighing and batch recipe make-up, entry of additives into mixing and blending operations until the additives are fused into resin, and all hoppers and material transfer systems.

(c) *Controls Currently Used*

Numerous control technologies are available and used by the industry to control lead exposures: Total enclosure of the system; control by computer vacuumized propolymerization; local exhaust and general ventilation; mechanical stepping switches to control operations; enclosed control rooms under positive pressure; air local entry systems in charging operations; batch mix tanks with a flexible hose exhaust permanently situated at the top inside of the point; blend tanks equipped with an exhaust hood for the manway; screw conveyors under negative pressure; and small mobile blowers (Ex. 476–286).

The following controls are in use in a congoleum industry's plant (Id.). In the pigment preparation area, one employee working in a chemical kitchen area makes up all the additive solutions for addition to solution tanks of the reactors and coagulation area. The kitchen area is well ventilated and good housekeeping is emphasized. Attempts are made to receive dry materials in flake or large particle form, rather than as a fine powder. Also, material container sizes are selected to correspond with the weight requirements of the various batches, thus minimizing the need for the operator to measure shortweights (removal of part of the contents in the bag to obtain the desired weight) of dry materials, which is usually a very dusty operation. The solution tanks are open to the room and are not provided with local exhaust (Id.).

Exposure of workers to solid catalysts during normal plant operations is eliminated by the Catalyst Vacuum Loader. The solid catalyst for the solid resin facilities is unloaded from drums into a charge system via a vacuum conveying system to eliminate contact with personnel and reduce dust. The sensors and control elements interface with a computer and are automatically controlled (Id.).

While dumping dry additives, bags are positioned directly in front of the charge booth. One at a time, they are placed over a grate, slit open, turned over and dumped into the mixer. Empty bags are purged of residual particulate matter by vigorous shaking directly in front of the exhaust slot. Depending on the contents, the bag is either dropped into a polythylene-lined container, or flattened and baled inside or outside the booth. Any spillage is swept into the booth (Id.).

Partial or short weight amounts of additives are handled specially; the bags are slit into two equal sections, one is dumped and the other is carried to the scale and weighed. If short weight operations are frequent then an exhausted scale facility is probably necessary. Major spills from leaky pallet loads are vacuumed up immediately (Id.).

Good housekeeping is also essential to proper control, as is evidenced by the low measured concentrations of airborne dust. In some plants (Ex. 469) every 2 weeks, the entire plant (including rafters) is thoroughly vacuumed. This means that settled dust will never accumulate sufficiently to become a significant secondary source of contamination.

(d) *Exposure Levels*

The Kentile Floor Co. (Ex. 476–271) is a manufacturer of vinyl coating and vinyl floor covering. Dust samples were

collected in the compounding area where compounders load a compound, charging the hopper with dry chemicals. The chemicals are then transferred to the pre-mixer and finally to the Banbury mixer. Lead levels in the process area were nondetectable.

In the compounding department materials are transported by vacuum to compounders who weigh and mix pigments etc., and ultimately charge the Banbury mixer. Levels in the charging areas ranged from 43–70 $\mu g/m^3$ (three samples were taken). The survey concluded that even though the two samples exceeded OSHA limits, this did not constitute a major area of exposure. The significantly higher lead concentrations measured on one filter would indicate that a re-evaluation of the compound-charging area is necessary to determine whether this sample's filters were inadvertently contaminated or whether employee work practices here are significantly different than those of other workers. In fact, the survey recommends that compounders be instructed to empty bags of chemicals more gently in order to prevent dust generation. Representatives of Monsanto (Ex. 476–280) and Dow (Ex. 476–287) indicated that lead was not a problem in their operations.

Armstrong Cork (Ex. 476–297) also manufactures several types of floor tiles where lead is used in the pre-mix stages. Levels of exposure were approximately 0.01 $\mu g/m^3$. In 1975 this plant was re-evaluated and lead levels were nondetectable. Ventilation controls had been implemented to control asbestos exposure; these also served to reduce lead levels.

Dover Molded Products (Ex. 476–280) is a job shop producing small plastic items by injection molding. Colorants are added to the plastics by mixing white plastic with a dry colorant in 55 gallon drums. Of 9 samples taken, lead levels were nondetectable except for one which measured 0.02 $\mu g/m^3$. Even though lead levels were low, exposure to cadmium and chromates exceeded the PEL's. The survey recommended that colorants be substituted in these operations; discussions with company and supplier representatives indicate that it is technically and economically feasible to replace these colorants with nontoxic substitutes.

Lead exposure in the rubber industry occurs during vulcanization when lead oxide is added as an accelerator and during the manufacture of braided hose. The Rubber Manufacturers Association (Ex. 476–290) estimates that the amount of lead used in tire manufacture is relatively small and exposures are well controlled and pose no problem. Lead may also be used as a balance paint (a paint with a litharge to give it weight) which is painted on the side of a tire to give them balance. Monitored exposures were less than 6 $\mu g/m^3$.

The manufacture of braided hose can also result in lead exposures when the hose is vulcanized by encasing it in molten lead, and heating the encased lead in an autoclave to yield a smooth surface (Ex. 476–290). The lead is then stripped off, melted and reused.

At the Gates Rubber Co. (Ex. 476–293) 20 environmental samples were taken. Exposures ranged from 10–190 $\mu g/m^3$. The average of the samples was 87 $\mu g/m^3$. The Gates Rubber Co. (Ex. 476–293) submitted data which indicate that all employees have 8-hour time-weighted averages below the PEL and that most are below the action level. The company does have problems with intermittent exposures in dross handling (these exceed 1,000 $\mu g/m^3$) and maintenance, although the company is planning to install a new system for dross barrel handling which should reduce exposure.

B.F. Goodrich submitted sampling data from their braided rubber hose operation and found levels in 1971 with a median exposure of 34 $\mu g/m^3$ and 1980 levels with a median exposure of 5 $\mu g/m^3$. The lower exposure figures in 1980 may have resulted from an improved air filtering system which was installed primarily to comply with EPA lead regulations.

(e) *Additional Controls*

The control technology to comply with the PEL exists and in many cases has been installed by various plants. In some plants general ventilation may be inadequate to remove very small particulates and these systems may have to be upgraded. Also, some employers still use dry sweeping and compressed air blowing to remove dust; this must be replaced with vacuuming or wet sweeping. The transportation or storage of toxic materials in open containers (i.e., half bags, plastic cups) must also be replaced by contained methods.

Work practices are critical to successful dust control and many plants may have to use added efforts to change poor practices into good ones. Opening additive containers outside of the hoods provided for dust containment, sloppy handling of additive powders, poor opening procedures for bags, and generally improper use of local exhaust systems must be stopped and replaced with good work practices.

In plants with either nonexistent or poorly designed local ventilation systems, efforts must be made to insure that airflows are proper, exhaust slots are properly sized and placed, the appropriate duct transport velocities are achieved and hoods are of the proper depths. Ventilation systems should also be checked to ensure that they are not rendered useless by excessive cross drafts either from pedestal fans or open windows. Mixers, blenders, hoppers, feed chutes and conveyor belts should also be provided with local ventilation. Not enough emphasis can be placed on the importance of maintaining dust collecting systems.

Another control which may be required in some cases is the use of less dusty forms of the lead compounds. For example, Halstab offers lead stearate under the trade name, Hel-Lub-N, (described as light-tan flakes about 1 inch in diameter to keep down dusting in compounding operations) (Ex. 476–41). Kenrich Petrochemicals, Inc. offers litharge pre-dispersed in a rubber base under the trade name, Kenlastic. Litharge is also offered pre-dispersed in process oil in the form of a paste under the trade name, Kenmix. (Ex. 469). The use of pre-dispersions may offer other benefits. Kenrich points out that the use of pre-dispersions is standard practice for some applications where it is necessary to insure even mixing of high concentrations of litharge.

The use of a returnable container and sealed materials-handling systems to prevent escape of the product into plant atmospheres may also be necessary. Plastic bags which are soluble can be added unopened to the mixer, such as a product "Elastifilm," made by Goodyear (Ex. 469).

In some cases complete elimination of existing equipment may be necessary. Both ribbon blenders and Banbury's are internal mixers, and thus may be readily equipped with ventilation. The use of open two-roll mills for the initial mixing of rubber batches has largely been eliminated in the industry. It may not be feasible to install ventilation which would reduce airborne lead to acceptable levels on such equipment. The URW believes that the complete elimination of open mill mixing of hazardous materials for production batches is both feasible and necessary. (Ex. 476–291).

Once the rubber or plastic batch is compounded and mixed, exposure to lead from the batch itself is not usually a problem. Grinding or machining operations may generate rubber or plastic dust, but these operations are not unique to the rubber and plastics industry. Workers are also exposed to lead in the mixing and application of paint and ink, casting of lead tools and fittings, machining, of bushings, battery

repair, soldering, etc. Again, these processes are not unique to the industry.

Metallic lead is used in the curing of rubber hose. While this process itself is not found in any other industry, the principles of control are the same as those for any process in which slab metallic lead is extruded, scrapped and melted to be reclaimed. Sampling data from URW Local Union No. 241 (Ex. 475–14) indicates that engineering control are feasible.

There has been widespread substitution of other materials for lead in the rubber industry. Further substitution of less toxic materials may be feasible in both rubber and plastics (Ex. 476–285) as well as in pigments for resilient flooring. Lead exposure in compounding can be controlled through the use of non-dusting forms of lead or through the use of engineering controls.

The URW (Id.) submitted exposure data for the Inland Division of GMC, using wipe samples for lead. Dust was settled on handrails and eye wash fountains, as a result of dry sweeping; some high dust levels were detected. This clearly demonstrates that the use of housekeeping will prevent secondary re-entry of dust into the workplace.

(f) *Conclusion: Technology Feasibility*

It appears that the technology exists in the compounding of plastics and rubber to achieve 50 $\mu g/m^3$. The exposure data which has been compiled indicates that levels are generally well below 50 $\mu g/m^3$ in some operations and exposures only intermittently exceed the PEL in others. The plastics industry is an extremely automated industry and controls used to increase productivity and product quality have also resulted in reductions in lead levels. Pre-measured colorants, stabilizers, etc., only insure that entire batches of plastics are not spoiled by sloppy, weighing. The URW submissions (Ex. 475–14) clearly demonstrate that compliance has been achieved in many operations by the use of controls such as automated and mechanized material handling and mixing operations, enclosed processes, and worker operating booths. The advent of pre-mixed and containerized additives has further eliminated the need for workers to handle toxic additives.

(g) *Costs of Compliance*

(i) *Plastics.* Of the four manufacturers of lead stabilizers, only American Cyanamid submitted data to OSHA. They indicated that a study performed for them by a consulting firm estimated a cost of $746,600 to install engineering controls to lower levels to 200 $\mu g/m^3$ and to modernize the plant. The company further indicated that the cost of implementing a 1979 settlement agreement between them and OSHA was estimated to be $75,000 for feasible engineering controls (Ex. 475–30). However, assuming that each of the four companies producing lead stabilizers will each need to spend $750,000, the total capital costs for this industry would be $3,000,000. American Cyanamid stated that levels would not be reduced below 200 $\mu g/m^3$ and contended that "space age" technology would be necessary to achieve a 50 $\mu g/m^3$ standard (Ex. 475–30). OCAW argued, however, that using design concepts based on existing technology, American Cyanamid has a good chance of meeting the current lead standard (Ex. 475–34).

No manufacturers of plastic products submitted any cost or other data to OSHA on the issue of feasibility. However, Monsanto Corporation indicated that it does not have any lead exposure problems (Ex. 476–289). Similarly, Dow Chemical, which infrequently uses lead in its plastics operations, does not have an exposure problem (Ex. 476–281). Congoleum Corporation, which produces resilient vinyl flooring, uses lead predominantly in a wet form, thereby virtually eliminating an exposure hazard (Ex. 476–286) Armstrong, which is also a producer of resilient vinyl flooring, has substituted other materials for lead in its pigment and stenciling operations (Ex. 476–285).

(ii) *Rubber.* In 1976, B. F. Goodrich contended that engineering controls would cost a total of $255,000 to control 600 exposures to lead (Ex. 474–3(133)). This is an average cost of $425 per exposure. No supporting data were provided to explain what controls the estimate reflects or how the estimate was calculated.

In connection with the October 1980 hearings, B. F. Goodrich provided data indicating that its lead encased hose plant is substantially in compliance with the lead standard, most likely as a result of installing an improved air filtering system to reduce emissions into the ambient air (Ex. 476–284). In a similar operation, Gates Rubber reported that while all employees were below the 50 $\mu g/m^3$ standard, brief high excursions occur in three operations. It was added that control of these operations by means of engineering controls would be prohibitively expensive, however, no cost estimate was offered (Ex. 476–288). OSHA assumes worker rotation will be used to achieve compliance, thus creating no significant costs.

No compliance costs were submitted for other users of lead compounds in the rubber industry. This is most likely because the potentially affected companies have already come into compliance by means of process changes or substitution. For example, B. F. Goodrich no longer uses lead as an accelerator in the manufacture of tires (Ex. 476–284), and in compounding, exposure can be controlled by substitution of less toxic substances or by use of nondusting forms of lead products which are supplied by a wide range of producers (Ex. 469). Significant commercial benefits in the form of increased product quality are also promoted as advantages of these control measures (Ex. 469).

(h) *Industry Profile*

(i) *Plastics.* From 1972 to 1977, total value of shipments in the plastic materials industry (SIC 2821) increased 141 percent to $10,818,000,000 and total value of shipments in the manufacture of miscellaneous plastic products (SIC 3079) rose 121 percent to $23,668,000,000. There were an estimated 397 establishments employing 36,700 production workers in SIC 2821, and 10,212 establishments employing 358,000 production workers in SIC 3079. New capital expenditures have grown from $654,000,000 to $1,154,200,000 in SIC 3079 and from $253,200,000 to $395,200,000 in SIC 2821 between 1972 and 1977. (Ex. 476–20). The plastics industry is expected to outperform the economy and grow at a rate of 4 percent to 5 percent in 1980 (Ex. 476–26).

However, only four companies—American Cyanamid, Associated Lead, Hammond Lead, and to a limited extent, Eagle-Picher—produce lead-based stabilizers (Ex. 475–30). These stabilizers are commonly used in the production of polyvinyl chloride (PVC) plastic insulation for application in commercial and residential electrical wiring. The final product contains 4 percent to 6 percent lead stabilizer which prevents degradation. There is no substitute available, that can impart the same heat stability and electrical properties (Ex. 475–30). Therefore, because no substitute products are available, any increases in costs due to the lead standard can be passed on to the consumers.

Approximately 21,000,000 pounds of lead stabilizers were produced in 1976 and the projected growth rate for the industry is 3 percent per year. The industry is characterized as mature with a flat sales growth curve. Over 100 downstream consumers of lead stabilizers produce finished products containing stabilizers. The wire and cable industry alone annually uses

about $200 million of lead stabilized PVC for insulation (Ex. 475–30).

Lead compounds are also added to plastics as colorants. The market for colorants varies with cyclic changes in color preferences or tastes and is generally characterized by a steady mass market for a few simple "wide-tolerance" colors (Ex. 476–295). The incorporation of colorants should be done in a manner that speeds production, upgrades product quality, and reduces cost. Dry coloring, which is the most hazardous operation for workers, offers the marketing advantage of almost unlimited color range and flexibility in production color changes. However, it generates dust which may contaminate other products, does not disperse as completely as other forms of colorants, and involves careful weighing, timing of batch mixing, and drying of the resin (Ex. 476–295). Other methods of adding colorants, such as using wet or paste colorants or pelletized products, avoid these disadvantages while virtually eliminating the potential exposure of workers to lead. Thus, OSHA concludes that methods for complying are readily available and that these measures will probably yield commercial benefits for producers in addition to bringing them into compliance with the lead standard.

(ii) *Rubber.* There are an estimated 56 companies operating 63 establishments that employ 7,100 production workers in the manufacture of synthetic rubber (SIC 2822). In addition, there are 127 companies employing 66,300 production workers in 200 tire manufacturing plants (SIC 3011) and 102 companies employing 23,400 production workers in 146 establishments manufacturing rubber and plastic hose and belting (SIC 3041).

One-third of the establishments in SIC 2822 (synthetic rubber manufacture) employ fewer than ten employees per plant, nine employ more than 500 employees per plant and one firm employs between 1,000 and 2,500 employees. Data on the latter are withheld to avoid disclosing operations of the company, however, the ten largest companies by employment (or one-sixth of the firms) produce $1,355,100,000 out of a total value of shipments of $1,863,300,000 (or 72.7 percent) and invested $36,200,000 in new capital expenditures in 1977. Similarly, 65 of 200 establishments in SIC 3011 (tire manufacturing) employ fewer than 10 employees and 46 establishments employ more than 1,000 employees. One-quarter of all firms produced $7,500,700,000 in value of shipments out of a total of $8,971,000,000 (or 83.6 percent). The distribution of firms by employment in SIC 3041 is much more even, however, the top five firms produced $675,100,000 in value of shipments out of total industry shipments of $1,765,700,000 (or 38.2 percent). Thus, some degree of concentration is apparent in the three industries (Ex. 476–20).

Exposures above the standard (although not necessarily as TWA's) occur only in the production of lead-encased hose. There are only 12 to 15 domestic companies out of more than 100 involved in such operations (Ex. 476–290). No evidence of a suitable substitute for lead-encased hose was apparent. Therefore, OSHA concludes that the demand for this product is inelastic and that the increased cost of production as a result of potential compliance costs, if any, can be passed on to consumers.

(i) *Conclusion: Economic Feasibility.*—(i) *Plastics.* In their submission, American Cyanamid did not provide any financial or profit data for their firm's operations upon which OSHA could evaluate the economic feasibility of these costs (Ex. 475–30). OSHA estimates that if each of the four companies producing lead stabilizers will each need to spend $750,000, the total capital costs for this industry would be $3,000,000. This represents an annualized cost of about $540,000 or about 0.3 percent of the $200 million in annual sales of lead stabilized PVC for insulation alone. OSHA therefore concludes that the standard is clearly economically feasible for this industry.

No other manufacturers of products submitted data concerning the issue of economic feasibility. However, Monsanto Corporation, Dow Chemical, Congoleum Corporation, and Armstrong have no exposure problems or have already eliminated such problems. Moreover, the control of lead exposures, in particular in its use as a colorant through the use of wet or paste colorants and pelletized products, will probably yield commercial and financial benefits to producers which will offset, at least partially, the cost of complying with the lead standard. Since the total value of shipments in the plastic materials and miscellaneous plastic products industries is over $34 billion, OSHA has concluded that the minimal increases in costs that may be necessary to comply with the lead standard are clearly economically feasible.

(ii) *Rubber.* Exposures above the standard occur in only 12 to 15 domestic companies. If each of these companies needs to spend $255,000 to install engineering controls, as B.F. Goodrich estimated, this would total, at most, $3,825,000 in capital costs or about $367,000 in annualized costs. This amounts to $45,800 for each of the 12 to 15 companies involved. The total shipments for the manufacture of rubber and plastics hose and belting is $1,765,700,000. Dividing by the number of companies in this industry (102) yields an average of $17,310,000 in shipments. The annualized cost of $45,800 represents less than 0.3 percent of the average shipments for these companies. OSHA therefore concludes that the standard is economically feasible.

32. Plumbing

(a) Uses

Lead is utilized in about 15 percent of the plumbing business. Lead is still used in extra heavy pipes, some drain wash and vent systems, and in roof flashing to waterproof the area where a pipe penetrates the roof. It is also used in 4-inch pipes for closet bend and ¾-inch pipe for water surfaces. Previously, lead has been used as a noncorrosive lining for shower floors, but this use is being displaced by plastics, copper and coated steel. (Ex. 22, p. 384).

The most common use of lead is for lead and oakum (jute-like fiber) joints used to repair oil lead-oakum joints. The use of lead-oakum is a time-consuming and old-fashioned method of plumbing repair, and is most prevalent in the Eastern Seaboard area. The old lead-oakum joints are being replaced by metallic clamp joints with compression gaskets. The newer materials are often easier to work with and much lighter than lead and, therefore, more desirable. (Id). Lead is also used in the soldering of copper pipe joints.

(b) *Process Description and Exposure Areas*

When used in joints, lead is melted in a small pot and typically dipped out with a 24-inch ladle. The plumber's work areas are 18–25 inches from their noses. They wear gloves, but not respirators, and the lead is barely molten, with few fumes present (Ex. 22, p. 384).

(c) *Controls Currently Used*

Plumbers may work in well ventilated open areas or in confined areas. The controls most often used in confined areas would be local exhaust ventilation or dilution, although the data submitted showed no use of ventilation. (Ex. 22, p. 384).

(d) *Exposure Levels*

The American Society of Plumbing Engineers, the Plumbing, Heating and Casting Information Bureau, and the Plumbing Manufacturers Institute

indicated that lead in plumbing is being phased out and they know of no exposure data. (Ex. 476–346, 349 and 350). The Plumbing and Mechanical Officials indicate that lead is still in the Codes of Chicago and New York (lead-caulk). (Ex. 476–363). The only exposure data available came from a report from the Heating and Plumbing Contractors of California which indicated that levels were well below the OSHA Standard, ranging from 4–10 $\mu g/m^3$. A NIOSH survey on the Denver Dry Good Company showed similar results with lead levels from 0.01—0.03 $\mu g/m^3$ (Ex. 476–351). This is a once-a-year operation with no ventilation. The levels are sufficiently low that they will rarely exceed the 30 $\mu g/m^3$ action level.

(e) *Additional Controls*

None are necessary, since compliance with the standard is already achieved.

(f) *Conclusion: Technological Feasibility*

Exposure data indicates that lead levels are below the 50 $\mu g/m^3$ standard and that this industry is in compliance with the lead standard. However, it should be noted that plumbing work which is part of construction operations is beyond the scope of the standard.

(g) *Economic Feasibility*

No cost of compliance and no economic impact are anticipated, because levels are below the 50 $\mu g/m^3$ level.

33. Pottery and Ceramics

(a) *Uses*

Pottery and ceramics manufacture includes production of ordinary building bricks and tile, sewer pipe and electrical conduit, drain tile, refractory bricks of all kinds, electrical and chemical porcelain and stoneware, whiteware such as dinnerware, china, floor and wall tile, porcelain enamels and abrasives. (Ex. 476–359).

(b) *Process Description and Exposure Areas*

The process begins with the proper amounts of clays being weighed and blended to form a slip. The slip flows to filter presses where it is pressed into cakes (aging may be done). The slip is then converted through more mixing into a casting slip or sent for jiggering or jolling. (Ex. 476–5 C).

Casting of the slip is usually done in plaster of paris molds. Castings are dried in hot air dryers prior to firing. Glaze coatings may also be applied to dry ware prior to firing.

In jiggering or jolling the clay is fed from the storage bins to a pug mill and mixed with water to form a mud. The mud is then forced by augers through a die to form a wad. The wad is fed to the jigger which consists of a rotating unit carrying a mold which will form one face and a tool which will form the other. The ware is then dried, and glazed (if necessary) prior to firing.

Exposure to lead results from the use of frits applied as a glaze (Ex. 22, p. 211; Ex. 476–357, 373). These are nonsoluble lead silicates, lead borates or bi-silicates. (Ex. 22, p. 211). Some companies also make the raw material which comprise the glazing compounds (Ex. 476–369). A discussion of the control problems in the manufacture of glazing materials is discussed in pigment manufacture. Fine china manufacturers may also use white lead (Ex. 476–363).

The preparation of frits for glazing requires that lead-based materials be mixed with other materials and ground in a ball mill. (Ex. 476–373, 363). Water is usually added (Ex. 22, p. 211, Ex. 476–373) and the glaze applied to the piece by spraying or dipping. (Exs. 22, p. 211; 476–371); 476–372; 476–373), either manually or by machine. The piece is then placed on a "setter" which is introduced into a kiln for firing (Ex. 22, p. 211).

The other processes and job titles in which lead exposures occur include the manufacture of the glaze (the slip house leader, journeyman, forklift operator); the application of the glaze to the ware (the dipper, duster, glaze cleaner, glaze sprayer, inspector, spray machine loader, unloader, operator, setter-carrier, reclaim operator, and service operator); and, the handling and firing of the glazed piece (kiln placer, setter, reworker and kiln utility). Other exposed employees include the production supervisors and technicians. (Ex. 476–373).

(c) *Controls Currently Used*

The materials handling controls used to handle glazes or glazing compound components are the same as those used by many other industrial segments. Materials may be mechanically dumped or pneumatically conveyed. Materials may be stored in bins and gravity fed or containers may be dumped in ventilated areas. Premeasured, containerized glaze components may be added to the mixers in disposable containers to reduce the potential for dust exposure. System enclosure and local exhaust ventilation at point of emission are controls which have been used successfully. Also, mixing the glazing compounds with water at the ball mill reduces the dust exposure but does not eliminate the potential for lead exposure since the mist formed may contain lead.

The glaze is usually applied to the ware either by spraying or dipping the ware. Spraying or dipping may be done manually but spray booths and mechanized dips are usually used. Local exhaust ventilation is used in both manual and mechanized operations to reduce exposure levels. Spray booths may be automated with workers controlling operations from outside the booth or may require the worker to hand spray the ware from within.

Glazes which are applied as powders to heated surfaces require extensive automation and ventilation controls to achieve exposure limits of 50 $\mu g/m^3$ (Ex. 476–369).

Once the ware has been glazed, it must be dried. Drying is done either by allowing the ware to sit in well-ventilated areas, or gas-fired or infrared dryers may be used. Local exhaust ventilation is usually employed to capture emissions from the drying ware.

(d) *Exposure Levels*

Data submitted by Employers Insurance of Wausau indicated that lead levels in the tile and ceramics industry ranged from 10–140 $\mu g/m^3$. The highest measured levels, 140 $\mu g/m^3$, were found in the batch making process. Workers in glaze making areas were exposed to levels of 210 $\mu g/m^3$ and the machine operator had an exposure of 130 $\mu g/m^3$. Weighing and mixing workers were exposed to levels of 70 $\mu g/m^3$ with hand dipping glaze workers being exposed to 60 $\mu g/m^3$ of lead. A description of the engineering controls used, if any, was not provided, also it is not clear whether these were time-weighted averages, area exposures, or peak exposures.

Exposure data collected at the Allan-Bradley Co. indicated that lead levels in their mixing and pressing departments were 0.4–0.3 $\mu g/m^3$ (Ex. 476–367). This company employed 374 persons; 246 production workers of whom 36 were monitored for lead exposure.

A survey done by NIOSH on the Lance Corporation found lead levels ranging between 10–70 $\mu g/m^3$ in the dipping operation. (Ex. 476–370). Data was not available for mixing operations. Lead levels resulting from the firing of glazed ware were nondetectable in the kiln area.

During an OSHA inspection, levels of 19–31 $\mu g/m^3$ were reported for a company using a Binks spray booth in the glaze application department (Ex. 476–377).

Other companies submitted data indicating percentages of employees above or below 50 $\mu g/m^3$, however, the exact levels above 50 $\mu g/m^3$ were not provided. For example, Piezoelectric (Ex. 475–40) which mixes and applies

glazes containing litharge and red lead estimates that 80 percent of their employees are exposed to 50 $\mu g/m^3$ or less and that 20 percent are exposed in excess of 50 $\mu g/m^3$. The company also indicated that exposure above 50 $\mu g/m^3$ occurred from "time to time" and did not indicate that levels were generally above 50 $\mu g/m^3$.

Lenox China estimated that out of 130 lead exposed workers, 50 percent are exposed to less than 50 $\mu g/m^3$. The other 50 percent are estimated to be exposed in excess of 50 $\mu g/m^3$ (Ex. 476–373).

(e) *Population Exposed*

Short estimates that the total population of potentially exposed employees in this industry ranges from 1,000 to 10,000 people. (Ex. 22, p. 211). Data presented from companies indicate that levels are closer to 1,000. (Ex. 475–25; 475–29; 476–371; 476–372; 476–373). This lower figure is consistent with the statement from the Fine Earthenware Food Utensils and Vitrcore China Food Utensils who have estfinated that potentially exposed employees range from 1.5 percent to 8 percent of production workers in these industries (Ex. 22).

(f) *Additional Controls*

Some companies appear to be in compliance, some are nearly in compliance and some will be required to make changes in current controls to achieve compliance with the 50 $\mu g/m^3$ standard. The controls are available and many companies have used engineering controls to effectively reduce lead exposure levels. Others may have to apply these successfully used controls to achieve compliance with the 50 $\mu g/m^3$ standard. For example, problems in batch processing areas have been solved by installing new conveying systems including tanks, pneumatic conveying systems and local exhaust ventilation at emission sources (Ex. 476–366).

Some companies that manufacture the raw chemical ingredients used to prepare the glazes have installed reclamation systems in which the plant is blown down every two weeks and materials are collected and remelted to be used again in the process. These reclamation systems may also be effectively used by companies mixing and applying the glazes (Ex. 476–356).

In one plant, through various control strategies, several areas are kept below 50 $\mu g/m^3$. These areas were not identified but the controls which had been installed included total enclosure of certain equipment, installation of wet scrubbers with special ductwork, employee rotation and upgrading the housekeeping (Ex. 476–373).

In areas of exposure above 50 $\mu g/m^3$ the employer stated that additional scrubbers and dust collection systems can be installed, with increases in the air velocity of existing systems (Ex. 476–373).

Billings testified that exposure to lead in the spraying operation could be reduced by dipping the ware rather than spraying. However, Merwin of the USPA said that dipping is much slower and that generally, spraying is done automatically in an enclosed booth (Ex. 476–363; 476–366), although some companies must dip odd shaped ware. Airless spraying may also be used to reduce lead exposures. Although, as Mr. Merwin testified, to his knowledge there is no airless spraying done in this country. Currently, however, there is a company in the United States (U.S.P.A.) selling airless units (Ex. 476–363).

If methods such as dipping or airless spraying cannot be done, more effective spray booths such as the Binks spray booth may be used. This booth is 57 inches in height, 42 inches in width, and 46 inches in depth. It spins the ware and has a deflection screen. Face velocities ranged from 200 to 350 fpm and behind the booth there is an exhaust chamber which collects the excess glaze. This booth is very efficient and does keep levels below 50 $\mu g/m^3$ (Ex. 476–377).

Where employers are reluctant to replace existing spray booths with more efficient models, upgrading of existing ventilation controls may be necessary.

In finishing operations requiring buffing and grinding of ware, local exhaust ventilation may need upgrading. For example, in a NIOSH survey of one finishing operation, ventilation hoods had face velocities of 0–10 fpm for soldering, 200–800 fpm for the buffing, 0–960 fpm for polishing operations, 50–200 fpm for spray booths, and 60–150 fpm for the toolroom. NIOSH recommended upgrade and repair of existing systems and noted that maintenance appeared to be lacking in most cases (Ex. 476–370).

In may cases, effective maintenance, improved housekeeping, and worker rotation may be necessary to achieve compliance with the 50 $\mu g/m^3$ lead standard.

Lenox indicated that they have been unable to reduce air levels to 50 $\mu g/m^3$ through engineering controls. At present they have plans to add controls in the glaze department including modifying the hand dip dryer and installing down draft tables, purchasing a high lift truck for overhead cleaning, purchasing a high efficiency vacuum and filter system, installing a scrubber, installing a spindle wash system, modifying spray booths and tunnels, modifying dust collectors, installing infrared dryer systems, applying sealant to the floors and walls and purchasing a truck and board cleaner. Lenox is also installing a dust collection system at the ball mill loading area in the slip department and at the die making area in the mall department. These controls will be completed in 1981. Work practices currently being implemented include both daily clean up in the glaze department and quarterly cleaning (which includes all elevated equipment, piping, electrical conduits, light fixtures). This employer is continuing to share information with other manufacturers to improve work practices and expects the improvements will take another 2 to 5 years to complete. Thus they summarize their submittal by recommending a 5-year implementation schedule (Ex. 476–25).

(g) *Conclusion: Technological Feasibility*

As previously stated, some companies and some processes are in compliance with the 50 $\mu g/m^3$ standard. Others like Lenox will be required to make improvements to existing controls to achieve 50 $\mu g/m^3$. The company anticipates that these controls will achieve the PEL but notes that they are not certain that this will be the case. The company also stated that 5 years will be necessary to implement all controls—work practices and engineering (Ex. 476–25).

OSHA finds several puzzling problems with these industry compliance assessments. First, as Dr. Billings testified, careful planning and design of ventilation equipment requirs that companies plan controls with the premise that a margin of error is designed into the equipment. More precisely, if you are to comply with the 50 $\mu g/m^3$ PEL, controls should be designed to achieve a level equal to 10 percent of the desired PEL (5 $\mu g/m^3$) or at least some margin of error should be used (Tr. 106). Also, since OSHA was not furnished with a description of specific controls for this particular company, it is difficult to determine if the need for extensive use of ventilation equipment is a result of the inadequacy of existing controls or the complete lack of any controls. Also, the Agency wonders if some of these controls, especially those having to do with scrubbers and capture equipment, require extensive upgrade as a result of the high levels of silica found in the plant and only secondarily to reduce lead levels. As a result of these questions, the Agency is unable to determine with any certainty the extent

to which these controls will actually be necessary to achieve compliance with the lead standard and the extent to which other airborne contaminants will also be reduced. Also, the Agency is unable to determine, what, if any, controls were existing before this extensive remake was begun.

The company also indicated that 2–5 years would be necessary to implement work practices and 5 years would be necessary to implement engineering controls. Clearly, however, it does not take two years to train employees in the proper handling of toxic materials and to maintain surfaces free from dust accumulations. The most effective work practice programs have been developed by employers simply observing employee work habits. Not every employee has to be followed through his daily routine; excessively high blood lead levels often signal the employer that employee practices may be the source of the problem (See Cable Coating discussion). Regarding the issue of whether a 5-year implementation period is necessary to achieve compliance with 50 $\mu g/m^3$, it appears that this company may need this amount of time. The time indicated by this company only considers the implementation of engineering controls to achieve compliance. OSHA, however, has given all industries the option of using a variety of control strategies as opposed to specifying only the use of engineering controls. By employing this strategy, OSHA is allowing employers the maximum amount of flexibility in complying with the standard and in fashioning solutions consistent with their particular workplace situations. Therefore, OSHA finds that compliance with a 50 $\mu g/m^3$ PEL is feasible within one year for the pottery industry.

While some employers may experience difficulty achieving compliance in some operations, it is not because the technology does not exist. Also, this industry appears to rely too heavily upon engineering controls to achieve compliance and has ignored the less costly approaches of work practices, housekeeping and worker rotation.

(h) *Cost of Compliance*

Several producers in different SIC's within the pottery industry have provided cost data to OSHA for this standard. In SIC 3229, Vitreous Plumbing Fixtures, Koehler estimates that it has already spent $2.5 million to eliminate its exposure problems. Controls included an entire new structure, tanks, pneumatic conveying system, and ventilation (Ex. 476–369). The specific controls are not described in detail, nor was a derivation of the cost estimate provided. However, the costs attributable to the lead standard are properly represented by the difference between the costs for a new plant and equipment including control equipment, and the costs that the firm would have undertaken in the absence of the standard. In this case, Koehler may have changed systems primarily for commercial reasons, such as to increase productivity or capacity, rather than as a response to a regulatory action. Koehler indicated that the changes made were beneficial to production but did not indicate why this was true (Ex. 476–369).

In SIC 3262, Vitreous China Food Utensils, two producers provided cost data to OSHA. Lenox has already invested in some control technology. By 1981, Lenox will have spent $230,000 on engineering controls and $200,000 on work practices (Ex. 475–25). Lenox also indicates that it is converting to "low solubility fritted glazes", and requests that a 5-year implementation period be adopted for the schedule of compliance in pottery manufacture (Id.).

On behalf of the producers of products in SIC 3263, Fine Earthenware Food Utensils, the American Ceramic Tableware Council submitted comments indicating that the standard will require extensive and costly engineering controls and new work practices (Ex. 475–29). Neither the specific controls required nor the actual cost estimates were provided. However, the submission states that the Department of Commerce, which is currently devising strategies to increase the competitiveness of domestic earthenware producers, may recommend expenditures for new, technologically superior plant and equipment (Ex. 475–29). Expenditures of this kind, incorporating modern control technology, would be preferable to more costly and often less efficient retrofit technology. Such outlays may provide long-run savings with respect to production compliance costs by removing workers from exposure sources. A quantification of these savings, however, must be postponed until data on compliance costs become available.

Finally in SIC 3264, Porcelain Electrical Supplies, Vernitron Corporation submitted cost information for its Piezoelectric Division. Vernitron indicates that numerous engineering and work practice controls have already been implemented and asserted that the cost of achieving compliance with the 50 $\mu g/m^3$ standard, would be between $300,000 and $500,000 (Ex. 475–40).

DBA submitted the only industry-wide estimates of the costs of compliance in the pottery industry. They considered both the installation of local exhaust ventilation at stations where workers may mix and spray frit and the additional costs for maintenance and housekeeping. DBA's estimates of the total capital costs ranged from $1,000,000 to $10,400,000 and annual costs from $770,000 to $7,700,000 on the basis of a population at risk of 1,000 to 10,000 exposed workers. Their estimates of annualized capital costs ranged between $177,000 and $1,869,000. OSHA believes that these estimates are reasonable and thus the industry's total annual costs are not expected to exceed $9,569,000 and may be as low as $947,000.

(i) *Industry Profile.* There are 54 companies operating 70 establishments in SIC 3261, Vitreous Plumbing Fixtures. The firms employ 7,800 production workers whose average hourly wages were $6.23 in 1977. The four largest companies, measured by number of employees, produce about 25 percent of the total value of shipments, while the top 30 firms produce $390,900,000 out of $411,400,000 (or 95 percent) of shipments (Ex. 476–20).

Both Koehler and Eljer Plumbingware said that lead is no longer used in coating sanitary pottery, but potential exposures to lead may occur through application of glazes on product lines (such as sinks and bathtubs) in which porcelain enamels are sprayed onto cast iron base metals (Exs. 476–356, 369). While stainless steel sinks and plastic bathtubs and other plumbingware products made from relatively inexpensive materials have captured an increasingly large share of the market, Koehler, Eljer, American Standard, and a few other firms still make cast iron products (Ex. 476–350). Since these firms appear to be substantially in compliance and have not submitted contrary evidence to OSHA, compliance costs, if any, are assumed to be minimal and will not result in significant economic impact. If some consumers maintain preferences for the cast iron base plumbing fixtures, then the relatively inelastic demand for this "specialty product" would allow producers to pass on the costs of compliance with the standard to the customers.

Porcelain enamel is also applied to many durable goods, such as stoves, refrigerators, washers, and dryers (Ex. 476–360). There are no substitutes for porcelain enamels in these uses. However, the lead colorant is a very small proportion of the final price of the product. Thus, costs of compliance are

not expected to significantly increase the price of major appliances, and this minimal cost would likely be passed on to consumers.

Since 1963, the number of firms in SIC 3262, Vitreous China Food Utensils, has risen slightly from 26 to 27, with a maximum of 35 firms in the market in 1967. Employment has been relatively steady with about 6,000 production workers in the industry in 1977. Capital expenditures have risen steadily from $700,000 in 1963 to $5,400,000 in 1977. Average wages have increased from $2.22 per hour in 1963 to $4.62 per hour in 1977. Three establishments employ more than 50 percent of the production workers and produce over 50 percent of the total value of shipments in the industry, which were $170,700,000 in 1977 (Ex. 476–20).

There are only three producers in the American fine china industry today. These companies are Lenox, Gorham Division of Textron, and Pickard (Ex. 476–362). Manufacturers of fine china are the only users of white lead in the pottery industry (Ex. 476–363). Lenox alleges that competitive pressure from foreign producers has caused eight domestic firms to close down (Ex. 475–25). It contends that foreign imports now dominate 75 percent of the fine china market (Id.).

In SIC 3263, Fine Earthenware Food Utensils, the number of establishments has been relatively constant over the years (20 firms in 1963; 22 firms in 1977). However, the number of production workers has fallen from 6,600 in 1963 to 3,500 in 1977. Capital expenditures have increased from $800,000 in 1963 to $1,700,000 in 1977, while average hourly wages have risen in that period from $2.14 to $4.23. Four establishments produce $52,400,000 (or 64 percent) of the total value of shipments of $81,300,000 and employ 2,000 of 3,500 workers (Ex. 476–20).

The American Ceramic Tableware Council has submitted comments (Ex. 475–29) on behalf of several of the producers of earthenware (Anchor Hocking, Hall China, Homer Laughlin, Pfaltzgraff, Royal China, Sabin, and Scio Pottery), who use lead in their glazes (Ex. 476–362). Lenox also produces dinnerware in this market (Ex. 475–25). However, there are many small firms with limited access to capital and who use labor intensive processes in the industry (Ex. 475–27).

SIC 3269, Pottery Products, Not Elsewhere Classified, consists of 727 establishments employing 9,200 production workers. The industry has grown since 1967 when 434 establishments employed 6,700 production workers. Average hourly wages in the industry have risen from $2.05 in 1967 to $3.88 in 1977. More than half of the establishments are small (four employees or less) and 677 (or 93 percent) out of the 727 establishments employ fewer than 50 employees. Most of these small plants are centered in and around Ohio (Ex. 475–29). The top four companies, measured by number of employees, employ at most 500 workers each and produce $41,700,000 (or 18 percent) of a total value of shipments of $229,900,000 (Ex. 476–20).

Lenox and the American Ceramic Council report that the domestic earthenware industry is struggling to maintain a 20 percent share of the domestic market in the face of severe foreign competition (Ex. 475–25 and Ex. 475–29). The industry submissions cite 75 percent and 80 percent penetration of the market by foreign producers, chiefly from Japan. However, the Department of Commerce shows imports of china dropping by 7 percent and earthenware imports by 9 percent in 1979. Total market share in 1979 by foreign producers is estimated at 44 percent and 59 percent for china and earthenware, respectively (Ex. 476–26).

Industry cites lower labor costs (Ex. 475–25), more relaxed regulatory constraints (Ex. 475–29), and unfavorable tariffs (Ex. 475–25) as major reasons for domestic competitive disadvantages. The claims are made, for instance, that British regulations classify low solubility fritted glazes as nontoxic, and that wage differentials between the United States and Japan create a situation in which the Japanese worker is paid 55 percent of the average American worker's wages for comparable work (Ex. 475–25). However, it is not clear that the wage comparison reflects real wages. Furthermore, the conclusion assumes that the Japanese and other foreign producers are not enjoying cost advantages based on a more advanced technology. Finally, since the Japanese pursue stringent environmental regulations, they probably have no competitive advantage in this respect.

Lenox China, which is a wholly-owned subsidiary of Lenox, Inc., and which was the only company responding individually, did not submit financial data to OSHA on the grounds that the information is confidential (Ex. 475–25). However, OSHA is not convinced that Lenox will be forced to absorb compliance costs. Luxury items, such as fine china, are often purchased on the basis of brand reputation. Thus, increases in price may not significantly affect demand.

There are 77 companies operating 88 establishments in SIC 3264, Porcelain Electrical Supplies. The industry employs 9,100 workers whose average hourly wages were $5.55 in 1977. The six largest firms, measured by employment, produced $172,700,000 (or 47 percent) of a total value of shipments of $367,500,000 and invested $11,600,000 (or 56 percent) of the industry total of $20,900,000 in new capital expenditures (Ex. 476–20).

Vernitron Corporation, which manufactures piezoelectric ceramic parts, is aware of eleven other plants distributed nationwide that compete with it in the electrical porcelain market. Total sales in this market are estimated at $20 million with no one company holding a dominant position (Ex. 475–40). The company comments that imports are increasing steadily although it has not provided documentation or estimates of the market share controlled by imports. This company shows a negative rate of return on equity from 1975 through 1977 (an average of minus 11 percent) and a 1979 profit of 10 percent. In view of its poor performance, the company may close its facility rather than invest in additional control measures (Ex. 475–40). However, no other companies in the industry came forward with similar data. Thus, OSHA has no reason to conclude that Vernitron's financial situation is typical of the industry.

(j) *Conclusion: Economic Feasibility*

The five markets within the pottery industry that are potentially affected by the lead standard produced shipments valued at $1,230,800,000 in 1977 (Ex. 476–20). OSHA estimates, based on the calculations of DBA, that compliance costs in these industries may be as low as $947,000 annually, but are not expected to exceed $9,500,000 annually. Hence, the costs of compliance range between 0.075 and 0.76 percent of total value of shipments.

The minmial size of the estimated costs compared to shipments leads OSHA to conclude that compliance with the lead standard will not cause economic disruption in the pottery industry. The industry appears to be under increasing pressure from foreign imports, a trend that is not likely to end in the near future. This pressure may reduce future profits for American firms, but the small, additional profit reduction that these firms may incur as a result of the lead standard should not severely affect the profitability of most firms in this industry. Although it is possible that some small firms may have some difficulty competing, OSHA does not expect, and the evidence does not show, that the viability of the industry as a whole will be threatened by compliance

with this standard. OSHA therefore concludes that the standard is economically feasible for the industry. Moreover, this OSHA action may stimulate modernization in this industry, which should result in both increased protection for workers from lead exposures and an improved competitive position vis-a-vis foreign producers.

35. Shipbuilding

(a) *Uses*

The shipbuilding industry includes repair as well as construction of ships. The sizes of the shipyards and the types of vessels being repaired or built vary widely. Also, shipbuilding may involve many construction activities found in other industries. Some shipyards have their own foundries, furniture shops, restaurants, alloying departments, blacksmith shops, carpenter shops, machine shops, etc. However, the major activities of the shipbuilding industry are: (1) The building of steel frames and hulls, and (2) the outfitting of the ship with its propulsion and support equipment (Ex. 28). Both activities are very closely related and are often present in the same shipyard. This industry also includes the conversion or alteration of ships.

Although the number of establishments included in SIC code 3731 exceeds 450, the actual number of private American shipyards totals approximately 138. Ten additional shipyards are operated by the U.S. Navy. It is estimated that only three shipyards are capable of constructing nuclear powered vessels.

(b) *Process Description and Exposure Areas*

(i) *Construction.* A ship's hull is almost invariably made of sheet steel plate of varying thickness that is often coated with a primer paint to reduce corrosion and make the work cleaner. The steel plate is treated initially by automatic shotblasting machines that shotblast both sides of the plate at once. (Small components (e.g., castings) may be shotblasted manually.) The plate is then painted, mostly by automatic spraying in booths by multi-head spray-guns. Hand-spraying and brush painting must be repeated to prevent corrosion because subsequent burning and welding removes paint. Final painting of the hull is done by airless spray painting.

The steel plate is then ready to be cut and bent to shape. It is cut by oxyacetylene, oxypropane or oxybutane flame. Larger or duplicate pieces are cut on automatic machines. Cutting by hand-burner is done mainly during hull erection since surplus material must be removed and small holes made for access or fittings. Some cutting is done by guillotine. Small parts may be formed using a punch press.

The shaping of steel pieces is accomplished by hot or cold processes which bend, roll or press. The shaped pieces of steel plate are then welded together to form units and subassemblies, a technique which has largely superseded drilling and hot riveting.

The majority of welding is performed manually, using consumable stick electric-arc electrodes, although increasing use is being made of automatic and semi-automatic electric-arc processes. These are often CO_2-shielded, and may use flux-cored or plain wire continuous electrodes. Gas welding is often used for pipe assembly.

Subassemblies are usually prepared in fabrication sheds and virtually all work is done under cover. The trend toward subassembly manufacturing techniques reportedly will continue in many shipyards. The number of launching berths has been reduced to increase the ground area available for prefabrication sheds. Thereafter, these large pieces, which will form the hull when fitted together, are moved by crane to the slipway or dock where the hull is being erected, usually in the open. They are welded together mainly by portable automatic welding machines.

Where high-quality welding is required, weld metal may be cut back to remove flaws either with compressed air chisels or by electric-arc air-gouging, where the melted weld metal is blown away with a high-pressure air jet. Further welding fills the groove and completes the joint. At this point, X-ray or ultrasonic equipment may be used for quality control. Finally, the weld bead may be trimmed flat by mechanical chisel or grinder (Ex. 476–385, p. 1303).

In recent years, more and more stainless steels have been used in shipbuilding, particularly in ships designed for nuclear propulsion or in cryogenic liquid container ships. Additionally, lead has become a prevalent material in nuclear powered vessels and submarines. A certain amount of the superstructure may be formed from aluminum alloys using argon-arc welding.

Once the hull of the ship has been erected it is launched from the slip or dock and floated to a fitting-out berth. In the fitting-out berth, pipes are fitted and insulated, electrical wiring and controls are installed, living accommodations are constructed, the super-structure is completed, and the deck equipment and rigging are installed. Fitting-out involves the skills of numerous workers such as engineers, plumbers, electricians, insulators, carpenters, joiners, boiler makers, technicians, etc.

The last step in shipbuilding is the trial of the newly completed ship at sea. The ship undergoes various tests to determine whether or not mechanical or physical defects exist. Rectification of faults may involve the removal of components, stripping of insulation, welding and the cleaning of oil tanks and lines prior to repair.

(ii) *Repair.* Major shipyards usually combine repair, overhaul, and conversion with shipbuilding capabilities. It is difficult to distinguish among these types of activities in shipbuilding yards and ship repair yards, since many engage in both types of work. However, the four activities commonly performed in ship repair yards include: unscheduled or emergency repair and casualty work, scheduled maintenance and inspection of ships, major overhauls and conversions and non-ship industrial work.

Planned maintenance or preventive maintenance is atypical. Ships generally come to be repaired due to a breakdown in machinery or equipment which cannot be repaired on board, when the ship's hull must be cleaned and painted to achieve greater fuel efficiency or when repairs are necessitated by casualties. Over the years, planned maintenance, especially that requiring drydocking, has been scheduled to coincide with required inspection activities and with the periodic application of antifouling coatings.

Conversion of ships to increase their size, change their purpose, etc., is also an activity of the repair yard. Conversion activity presently includes jamborizing—placing a new midship section between the bow and stern to allow more cargo to be carried. Other conversions involve a change in propulsion systems to a type that burns less fuel, or even a complete change of the commodity carrying characteristics of a ship. Both conversion and major overhaul work typically involve lengthy repair activities. A complex overhaul of a naval ship may take a year or more. In these major overhauls, virtually every part of the ship is removed, inspected, repaired and/or replaced.

(iii) *Operations in Construction and Repair Which May Result in Lead Exposure.* Shipyard operations in which lead exposures may arise include welding, sandblasting, painting and other lead working activities, such as tinning, torch bonding, lead caulking, casting hull shielding panels, grinding of leaded surfaces, sawing and packing

lead ballast, burning on leaded or tinned structures, burning on lead-contaminated steel, carbon-arc gouging of canning plates overlaying lead, steel gritblasting on or near leaded structures, mineral gritblasting of steel prior to paint application, and sorting scrap lead for salvage. A discussion of these operations is presented below.

(a) *Abrasive Blasting.* Gritblasting with open gun-type blast systems is widely employed in ship reworking and repaid to remove paint from lead-painted surfaces. Gritblasting is necessary to remove old, deteriorating paint and to create small indentations or etchings on the ship's surface to facilitate the bonding of new paint.

(b) *Lead Bonding/Tinning.* The first step in a lead bonding operation is "tinning" prior to the installation of a lead panel. Tinning is the operation by which a thin coat of lead-tin alloy is applied to a clean and heated steel surface. The surface is heated by an oxygen-hydrogen torch to provide a thin lead film on the steel. Tinning is essential because, without the application of such an alloy, the metallurgical bond between steel and lead would be inadequate to assure the structural integrity of a lead panel under shock.

This process requires a team, with one or two operators using oxygen-hydrogen torches in the joint while another operator ladles lead into the joint. The ladle operator transports molten lead from a small portable lead pot to the joint or seam that is being bonded.

Manual torch bonding is used in lieu of manual ladling for local repairs. In such situations, accessibility to the joint is reported to be limited in the majority of cases. Manual torch bonding is the process of depositing lead into a joint by melting prefabricated lead bars with an oxygen-hydrogen torch. The purpose is to effect fusion of the lead to the base metal. In both construction and repair, this process occurs chiefly on the hull.

Manual ladle bonding is the process of depositing molten lead in the joint or seam between steel and lead panels from a hand ladle. The bonders use oxygen-hydrogen torches to fuse the molten lead to the lead base metal and to bond the lead to tinned steel surfaces. When it is applied, the molten lead must be between 700°F and 850°F.

Although the temperature of the molten lead is such that its vapor pressure is insignificant, the ladle operator is exposed to light lead suboxide dust from drossing both the portable pot and the joint that is being bonded. The Shipbuilders Council (SBC) maintains that in bonding operations, although the portable pot may be ventilated, the ventilation serves no useful purpose once the lid of the portable pot is opened. To fill the ladle, the ladle operator must expose the molten lead. SBC noted that the use of excessive ventilation on the portable lead pot would cool the lead surface and cause excessive dross to form, requiring the operator to dross more frequently, thus, exposing the operator to greater amounts of lead dust then would otherwise be the case.

(c) *Welding/Burning.* Although welding is not a work function performed with lead, welding on lead structures can cause lead exposures. Exposure may occur when a welder strikes an arc in close proximity to lead-contaminated surfaces. The heat generated is sufficient to vaporize the lead, which then becomes airborne. Exposures to lead can occur also during burning on leaded or tinned structures. This may occur when a burner cuts off a strip of steel contaminated with lead splatter or tinning paste for fitting up to a hull. Exposure to lead occurs when the heat of the burning torch is applied to the steel and causes lead, lead dust or tinning to fume off and become airborne. The Shipbuilders Council believes that, when this occurs, the operation has created high-velocity airborne particles that are not readily captured by local exhaust ventilation because space constraints and configurations often prohibit the use, or eliminate the effectiveness, of units capable of capturing such emissions.

(d) *Milling, Chipping, and Grinding.* The fabrication and subsequent fit-up of lead panels involve milling, chipping, grinding and planing. Exposures during these operations result from mechanical working of the lead surface. Grinding on leaded structures can also generate airborne concentrations of lead. The grinder is responsible for cleaning and flushing off welds and for removal of any defects which inspection may identify. Airborne lead results from grinding on structures contaminated with lead tinning and in areas adjacent to lead shielding.

(e) *Foundry Operations.* The melting, pouring, and casting of lead is done to form lead hulls and reactor shielding.

(f) *Caulking.* Lead caulking is another operation occasionally performed on nuclear ships. This is a procedure in which lead wool rope is installed in a joint or seam and compressed to a solid mass using a flat-ended tool driven by a pneumatic hammer. Bonders may be exposed to airborne lead when the lead oxides on the surface of the lead wool become airborne as a result of repeated mechanical compression.

(c) *Current Controls*

(i) *Abrasive Blasting.* Gritblasting of lead paint generates respirable airborne lead particles. The Council indicates that blast operators are currently equipped with air-fed respirators and protective clothing. Further, whenever possible, work areas are restricted and blasting is performed during the least busy shifts.

In one category of work involving lead exposure, mineral gritblasting on unleaded surfaces, the SBC suggested the possibility of substituting steel grit for lead containing mineral grit. Mineral gritblasting removes rust, hull scale and paint and provides an anchor pattern suitable for the application of new paint. Steel grit provides a comparable anchor pattern.

Gritblasting, whether mineral or steel grit is used, creates a high volume of abrasive that rebounds at very high velocity. The SBC maintains that even if steel grit were substituted for mineral grit, the operator of the blasting mechanism would still have to wear personal protective equipment, such as full-face airline respirators, coveralls, etc. Thus, the SBC argued that substitution would not afford the worker any additional protection and would be highly costly, since the current market price of mineral grit is approximately $40 per ton, while the current market price of steel grit is approximately $370 per ton. It takes 2.5 times the weight of steel grit to achieve the same coverage achieved by mineral grit.

(ii) *Tinning/Bonding Operations.* Local exhaust ventilation hoods are necessary at tinning operations because the bonding must be performed at the job site. This is true whether the tinning is performed onboard the ship or off. When work is performed off hull, it is performed on sections of bulkheads of varying configurations. Thus, the angles at which lead bonders must approach their work vary. Even though shipyards have developed portable hoods designed to suit a variety of structural configurations, the SBC indicates that the system still requires continual placement and replacement of the hoods by employees. The Council argues that since the torches used in this process produce combustion products with an initial velocity of over 20,000 feet/minute, creating high turbulence, the capture velocity of local exhaust ventilation will be exceeded, thus, portable ventilation systems would be unable, in this instance, to achieve the 50 $\mu g/m^3$ PEL.

The SBC indicates that while most of the applications of manual torch bonding can be serviced with local

exhaust ventilation, manual torch bonding is often performed in confined spaces, in which local exhaust ventilation is ineffective, or in spaces that are too constricted to allow access by portable ventilation equipment. As described by the SBC, the breathing zone of the operator, who is often sitting or kneeling, can be within six to ten inches of the heated surface being worked. In such circumstances, the Council notes that local exhaust ventilation may be above the worker's head and, therefore, ineffectual in protecting the worker from fumes. In such cases, respirators are usually used.

(iii) *Lead Welding/Burning.* For burning operations, oxygen-acetylene torches are used to cut through coated metal. The flame velocity blows molten metal and fume on both sides of the surface. The SBC maintains that there is no hood that can provide adequate protection from the exposures this process creates. In other lead burning operations, portable exhaust ventilation is most often used.

The SBC believes that the only known means of reducing a welder's exposure to lead by engineering controls is through the use of local exhaust ventilation, but that this approach is not possible when operations are performed in areas in which accessibility is limited. In these instances, respirators are used.

(iv) *Milling, Chipping, and Grinding.* The SBC maintains that reducing exposure to lead by use of local exhaust ventilation is of questionable value in this process because grinding on lead-contaminated steel surfaces generates high velocity particulates that can not be readily captured by local exhaust ventilation. The SBC also states that configurations exist which would often prohibit access of the large-diameter local exhaust ventilation ductwork that is necessary for the capture of high velocity particulates. Therefore, OSHA assumes that ventilation is rarely employed.

(v) *Foundries.* The SBC reports that approximately two percent of lead workers in the shipbuilding industry perform foundry work. Lead hull and reactor shielding are made by pouring molten lead from a lead furnace into adjustable molds. The operation is performed under a canopy hood that, the SBC believes, significantly reduces employee exposures. Employee exposures also result from drossing the lead furnace, preheating molds, preheating the chute, tinning and drossing molds. Even with what is described as state-of-the-art ventilation, however, SBC reports that some exposures above the 50 $\mu g/m^3$ PEL continue to occur. This is especially true when specific applications require the operator to move under the hood and his breathing zone is placed between the source of emission and the point of exhaust.

The SBC states that local exhaust ventilation has been found to be effective in reducing exposures below the 50 $\mu g/m^3$ PEL in some open spaces, but that caulking must often be performed in enclosed spaces that preclude the use of local ventilation and result in exposures exceeding 50 $\mu g/m^3$.

(d) *Exposure Levels*

(i) *Abrasive Blasting/Painting.* The SBC maintains that exposure levels in excess of 50 $\mu g/m^3$ and, sometimes, in excess of 100 $\mu g/m^3$ (on an 8-hour time-weighted average), are encountered by employees in the areas where blasting of lead paint takes place. (Specifically, levels were indicated as being between 62 and 2,984 $\mu g/m^3$.)

Sandblasting is used to remove all coating materials, including those containing lead, before painting the hull of a vessel. DBA estimated that the exposure levels of sandblasters exceed the PEL (Ex. 26, p. 5–117). Painters, in contrast, are assumed to fall into the low energy category. When painting is not done in a ventilated spray booth, however, most painters now wear respirators (Ex. 26, p. 5–117). Lead-based paint is being replaced and some shipyards no longer use lead-based paint (Ex. 22, p. 321).

(ii) *Bonding/Tinning.* According to the SBC, ship construction and repair yards experience mean air-lead levels in tinning of 100 $\mu g/m^3$ to 150 $\mu g/m^3$ TWA, with excursions in excess of 150 $\mu g/m^3$ caused by the oblique angle at which the flame impinges on a flat surface.

Exposure data presented by SBC indicated that lead levels in tinning operations conducted in open areas were 120 to 1949 $\mu g/m^3$ (uses 4" to 8" ducting) and 41 to 374 $\mu g/m^3$ (uses 8" ducting). In enclosed areas, levels were 36 to 160 $\mu g/m^3$ (4") and 29 to 436 $\mu g/m^3$ (8"). These levels represent area samples rather than eight-hour TWA's. Since the fpm's per ducting were not provided, OSHA does not know what the effectiveness of the system was. Manual ladle and manual torch bonding exposures were 55–2254, 47–2072, 7–332, 11–1702, 6–526, 18–410 $\mu g/m^3$. There are obvious problems with these data, because no information was provided concerning the number of workers, the nature of the samples taken, etc.

(iii) *Welding/Burning.* Exposure during welding can originate in the base metal being welded, the coatings used on the electrodes, and the coatings on the base metal. The studies reviewed by DBA indicate that welders may be exposed to concentrations of lead well in excess of 100 $\mu g/m^3$. One 1968 study, however, reported mean lead concentrations of 40 $\mu g/m^3$ in shipyard welding. DBA estimates that the exposures of 81 percent of welders would fall above 100 $\mu g/m^3$. Especially high exposures result from work in confined spaces and on galvanized metals coated with zinc silicates (Ex. 26, pp. 5–113, 5–114). The SBC reported levels of 0 to 1,800 $\mu g/m^3$ (Ex. 806).

Lead burning occurs only in the construction of nuclear ships, when lead is welded to the hull in order to shield the ship's reactor. DBA estimated that 40 percent of these workers have exposures above 100 $\mu g/m^3$ (Ex. 26, p. 5–111). The SBC reported levels of 45 to 540 $\mu g/m^3$ in carbon arc gouging and levels of 5 to 410 $\mu g/m^3$ in burning.

(iv) *Grinding/Finishing.* Measurements for grinding, without ventilation, indicated levels of 6 to 1661 $\mu g/m^3$. Saving lead ballast found levels of 55 to 365 $\mu g/m^3$. Passing and packing of ballast, measured without ventilation, indicated levels of 0 to 558 $\mu g/m^3$.

(v) *Foundry Operations.* Measurements taken during the casting of hull shielding panels indicated levels of 16 to 224 $\mu g/m^3$. Quality control inspections found levels of 6 to 367 $\mu g/m^3$. Measurements of scrap lead sorting indicated levels of 5 to 140 $\mu g/m^3$.

(vi) *Lead Caulking.* Caulking operator's levels were reported to be 0 to 161 $\mu g/m^3$.

(e) *Population Exposed*

The number of workers exposed to lead during burning is estimated to be 1,374; during sandblasting, 284; during welding, 16,120 and during painting, 4,496. However, employees often work at a variety of assignments, and thus their work may expose them to lead only 1 or 2 days per week (Ex. 26, pp. 5–110 and 5–111).

(f) *Additional Controls*

The engineering and work practice controls applicable to the operations of welding, burning, brazing, abrasive blasting, painting and tinning have been effectively used by other industries to obtain compliance with the 50 $\mu g/m^3$ lead standard. The need for upgrading of ventilation systems, improved housekeeping and the rotation of workers varies according to the industry and its state-of-the-art with respect to the use of these controls.

Substituting less hazardous materials, equipment or processes may be the least expensive, as well as the most positive, method of controlling occupational hazards resulting from spray painting. In

order to minimize the hazards in spray finishing, coating materials should be formulated with relatively safe ingredients, and with minimum amounts of solvents.

In many instances, organic pigments can be used in place of the lead pigments currently used in industrial finishes. However, the organic pigments are less durable, have reduced corrosion resistance, and have a tendency to fade. Therefore, they are not always adequate substitutes.

Shipbuilding is not a process that uses a production line or work stations to which engineering controls can be attached. As ship construction proceeds, the work environment changes. In such operations, compliance calls for local exhaust ventilation, using portable, flexible equipment and absolute filters. Large shipyards have installed such controls. Some confined spaces, however, may not have room for portable ventilation ducts (Ex. 26 p. 5–119).

Complying with the standard may be more difficult for some small companies, especially during work on hulls painted with lead-based paints. If the proper welding practice of removing an area 3" wider than the weld is strictly followed, however, exposure above the PEL is less likely to occur (Ex. 26, p. 5–119). Also, replacement of lead-based paint by non-lead-based substitutes will reduce exposures in welding and repairing (Ex. 22, p. 323). Otherwise, operations involving exposures to lead-based paint (blasting, welding, burning, painting, chipping and needle gun) were described by the SBC as not lending themselves to engineering controls.

For ship exteriors, the SBC argues that because of the large cloud of respirable lead particles generated by abrasive blasting, there is no ventilation-extraction system that can be employed to reduce respirable lead particles to a concentration below the PEL, and further, since employees engaged in blasting of ship exteriors must constantly shift positions, any type of engineering control would have to be portable, capable of ventilating large air volumes and capable of reaching inaccesible areas, including the underside of the hull.

The SBC believes that no feasible alternatives to gritblasting are available. It stated that while needle gun vibrators are sometimes used to remove paint from small or highly inaccessible ship surface areas, this mechanism is too slow for general blasting of a ship's hull or interior. (Ship repair yards are required to blast ship hulls within a short period of time since prompt repainting is necessary to avoid rusting of exposed surfaces.)

The SBC argued that, for several reasons, self-contained robot-like abrasive blasters would not be feasible for general blasting of ship hulls. First, a hydraulic crane is required to maneuver the robot blaster around the ship and, according to the SBC, many small ship yards do not have, and could not afford, such cranes. Further, SBC maintains that robotblasters are incapable of effectively removing paint from curved surfaces, such as the undersides of hulls; that robot blasting is slower than hand blasting and would unduly delay the completion of repair jobs; and that robot blasters would only limit exposure of the worker who otherwise would do the blasting function, but would not limit exposure of other workers in the area in which the blasting is being conducted.

For blasting ship interiors, SBC states that the only potential engineering controls for lead exposure are portable ventilation systems (with flexible ductwork and filters). However, the SBC characterizes these systems as extremely cumbersome, requiring substantial time and labor (by multiple trades) to disconnect, rewire, transmit and rearrange, and in any case, inadequate to reduce exposure levels below 50 $\mu g/m^3$ in confined spaces.

Gritblasting generates lead particulate matter that collects on platforms used by workers blasting the hull, under the hull, in the bay of the dry dock and on the floor of ship interiors. Several personnel are required to collect and dispose of this material through vacuuming and shoveling. The SBC maintains that this cleanup process agitates the lead particulate residue, resulting in exposures in excess of those permitted under the standard, and that engineering controls are as infeasible for this operation as for the initial blasting operation itself.

In ship repairing, welders and burners may be required to work near lead-painted surfaces and on surfaces from which lead-based paint has been removed. Burners and welders may work in a variety of situations, including enclosed or confined spaces, and they also may operate in close proximity to other types of workers, such as machinists, pipe fitters and shipfitters. The SBC states that airborne lead concentrations greatly in excess of the PEL occur in such operations and that engineering control of lead exposures in welding is infeasible because of the numerous spaces in which portable ventilation cannot be placed or is ineffective. On the exterior of ships, the problem, as described by SBC, is that portable ventilation is suitable on elevations accessible only through use of stage work or hydraulic lifts and there is no place, in these cases, to hang portable equipment. In ships interiors, SBC indicates that numerous welding operations occur in spaces so confined that they are not accessible to ventilation equipment or so shaped that ventilation cannot be placed in positions that will effectively protect the worker.

As noted earlier, it is often necessary to remove lead paint from small or inaccessible areas of a ship's surface to prepare for welding, burning or similar repair functions. Chipping or needle-gunning operations are performed. The SBC states that airborne lead concentrations, substantially in excess of the PEL, occur during those operations, and that because chipping and needle-gunning are almost always conducted in confined areas of the ship interior and difficult to reach exterior surfaces, engineering controls are infeasible.

For the actual painting operation, SBC reports that, due to the excess amounts of paint projected into the air by spray painting, local exhaust and/or general mechanical ventilation are, in themselves, inadequate to reduce lead exposure levels below the PEL.

In addition to the engineering problems encountered by shipyards due to lead-based paints, shipyards that do construction, conversion, overhaul or repair of nuclear vessels for the United States Navy are confronted with additional circumstances in which, according to SBC, control of airborne lead to the PEL is infeasible.

The use of lead in nuclear ship construction and repair is required by the United States Navy for the purpose of shielding the reactor compartment and for ballast. As perceived by the SBC, the essential problem with the use of engineering controls in nuclear shipbuilding stems from the fact that a majority of the lead worker population is engaged in work that must be done on location, involving mobile operations in a variety of structural configurations.

The installation of lead panels is the largest source of exposure to lead in nuclear shipbuilding. Lead panels must be bonded to steel structural components. Because lead and steel resist the bond, very close work is required. Lead bonders and quality control inspectors can be expected to have daily exposures to lead during nuclear ship construction.

For welding operations the Council maintains that, even in areas where ventilation is adequate for most purposes, welders will come upon unexpected situations resulting in high lead exposures due to the fact that

shipbuilding and ship repair are not standardized operations. As an example, the SBC reports that a welder may be welding on canning plates above exposed lead or tinning and the exposure to lead will be determined by the amount of exposed tinning paste on the surface of the steel, which will vary with the thickness of the lead panel, the location of the canning plate and the technique of the person who applied the tinning paste.

Welders may also be exposed to lead concentrations in the process of carbon-arc gouging of canning plates which cover lead. Carbon-arc gouging is the process by which defective welds are removed and steel structures are cut. In carbon-arc gouging, an arc is formed between the carbon rod and a grounded steel structure. The metal surface becomes molten and is removed from the gouge path by the controlled release of compressed air. Exposure to lead occurs due to gouging on steel plates that cover lead bins or during operations that are performed on lead contaminated surfaces. The SBC reports that both repair and construction yards have had limited success in using local exhaust ventilation since the lead exposure of any worker engaged in carbon-arc gouging is dependent upon that individual's work practices. High air-lead levels are said to occur when the arc burns completely through the steel and impinges upon the lead surface beneath. When this occurs, the SBC reports air-lead levels of up to approximately 540 $\mu g/m^3$ TWA, because of the high velocity at which molten metal is ejected. Thus, according to the Council, control of lead exposure depends upon the welder's care in adjusting the arc height so that the steel is not penetrated.

The SBC reports that Navy specifications require lead ballast installation on Naval ships. (1,000,000 pounds of ballast are installed per vessel.) Carpenters may be exposed to lead oxides in sawing lead ballast, as well as in passing, packing and in overhaul work requiring the removal of ballast. Ballast is sawed in shops. Sixty-pound planks, or "pigs," are sawed into shapes for fitting into the hull as specified by design drawings. Lead oxide abrades off the surface of the pig during handling, and lead dust is generated by the sawing. The SBC indicates that this is one of the few shipyard operations that resembles stationary factory work. Thus, SBC believes that fixed ventilation systems may, in fact, control these exposures to below the 50 $\mu g/m^3$ PEL.

The SBC does not believe, however, that this is true with respect to passing and packing lead ballast. Lead packers, who are commonly the same carpenters responsible for sawing lead pigs, are responsible for installing the lead in ballast bins. The pigs are hammered, cut and shimmed to fit. Airborne lead may be generated when lead oxide is dislodged from the surface of the lead while it is being handled and during hammering. SBC argues that lead passing is a mobile activity and lead packing takes place in confined quarters and, therefore, local exhaust systems are infeasible.

A lead boot is required by Navy specifications to be installed inside the primary shield tank in the installation of nuclear instrumentation. The lead boot is designed to protect measurement instruments placed in the radioactive area. Since the precision of this instrumentation must be maintained, the lead boot must be bored to close tolerances. Work on a lead boot occurs during the construction of each ship, and boring of the boot takes about six weeks out of the multi-year schedule for construction of a ship. Thus, machinists having responsibility for boring the boot will go for long periods with only background exposures to lead, even in the busiest nuclear yards.

The lead boot is machined with a boring bar that simulates the proper configuration required in the boot. The outside machinist who performs this operation is exposed to airborne dust. SBC believes that heavy dust vacuums can collect most of the lead chips that are generated in this operation but that, even though control of exposure is dependent upon the housekeeping procedures, employee exposure to levels below 50 $\mu g/m^3$ can generally be achieved.

The SBC reports that approximately two percent of lead exposed shipyard workers do foundry work. Lead hull and reactor shielding are made by pouring molten lead from a lead furance into present adjustable molds. The operation is performed under a canopy hood that the SBC believes significantly reduces employee exposures. Employee exposure results from drossing the lead furnace, preheating molds, preheating the chute, tinning and drossing molds. Even with state-of-the-art ventilation, however, the SBC reports that some exposures above the 50 $\mu g/m^3$ PEL continue to occur where specific applications require the operator to move under the hood and place his breathing zone between the source of emission and the point of exhaust. OSHA regards these foundry operations, however, as essentially the same as all foundary operations, and will treat them accordingly.

The SBC indicates that control to the PEL has been achieved in the pouring of molten lead into missile tube ballast cans since the pouring of the missile tube resembles a fixed factory operation that is stationary and can be exhausted by one hood.

SBC believes that no engineering controls exist that can keep lead exposures to the worker consistently under even 100 $\mu g/m^3$ in tinning operations. The bonding torch must be maintained at a temperature of 4,830° F in order to create a heated structure adequate to take the bond. The alternative to such torches, oxygen-acetylene torches, cannot be used because they create carbon deposits in the structural bond unacceptable for nuclear shielding. The SBC attributes this to the nature of the work which generates large volumes of lead fumes that are difficult to capture because the high heat generated by the oxygen-hydrogen flame virtually boils off the lead.

(g) *Conclusion: Technological Feasibility*

The Court of Appeals, in finding that OSHA had not demonstrated the feasibility of the 50 $\mu g/m^3$ PEL for this industry, concluded that the original record supported the conclusion that attaining exposure levels of 100 $\mu g/m^3$ is generally feasible (Slip opinion, pp. 212–213). The first hearing record indicated that attaining exposures of 100 $\mu g/m^3$ is generally feasible in the shipbuilding industry. The SBC, as well as General Dynamics and Ingall Shipbuilding, a division of Litton Industries, described the proposed standard as "technologically possible" (Ex. 230, p. 2; Ex. 28(30), p. 3; Ex. 3(58), p. 2). Whether further reductions to 50 $\mu g/m^3$ can be achieved requires an analysis of methods of controlling each particular operation generally and under the conditions peculiar to shipyards. OSHA believes that its analysis of technological feasibility in the general sections on welding, burning, brazing, spray painting, foundries, abrasive blasting, etc. are applicable as a general matter to these operations when performed in a shipyard. In each of these, OSHA has found the 50 $\mu g/m^3$ PEL feasible in one year.

However, in shipyards, these operations may be performed under conditons where controls, otherwise effective, might not be adequate. Where this is the case, engineering controls and work practices must be used to reduce exposure to the extent feasible and must

be supplemented with respirators. No data have been presented to assess the extent of respirator usage required, but it may be prevalent in most operations. Clearly, in abrasive blasting operations respirators are already required by existing regulations when certain abrasives are being used. Spray painters are also required by the Longshoremen and Harborworkers Act to wear respirators (Ex. 506, p. 3). And as the Shipbuilders Council stated, "respirators for this reason would be worn regardless of the lead standard."

Although, the Shipbuilders Council discussed extensively the problems associated with using engineering controls and work practices in the shipbuilding and repair industry, they did not consider the alternative approach to compliance of worker rotation. Worker rotation, in some instances, could be used by the industry to replace the current, extensive reliance on respirators.

It should be noted that no industry-wide implementation schedule has been provided for shipbuilding. For example, shipyard foundry operations are controlled by the general section discussing foundries; lead burning by the lead burning section; and spray painting by the spray painting discussion.

(h) *Costs of Compliance*

DBA estimated that the average costs of compliance with the lead standard would be approximately $5.69 per worker in capital expenditures and $1000 per worker in annual operating expenditures (Ex. 474–28). These costs were derived by estimating the numbers of workers and levels of exposure of these workers, and by developing a compliance scenario for all feasible engineering controls and work practices. DBA estimated that a total of 22,253 workers in shipyards are potentially exposed to lead in welding, burning, painting, sandblasting, and lead worker (in nuclear shipbuilding yards) occupations. Thus, the total compliance cost to this industry would be about $127,000 in capital expenditures and $22,253,000 in annual operating costs.

On the basis of estimated exposure levels, DBA prepared compliance cost estimates for monitoring, personal protective equipment and clothing, housekeeping, engineering controls, maintenance, work practices, medical surveillance, training, and recordkeeping. The capital costs of compliance per worker for workers exposed in excess of 100 $\mu g/m^3$ was $00; for workers exposed between 50 $\mu g/m^3$ and 100 $\mu g/m^3$ the cost was $16.33; and for workers exposed to less than 50 $\mu g/m^3$ the cost was $.50 (Ex. 474–28). The annual operating expenditures per worker were estimated to be $2000, $1358 and $983 for workers above 100 $\mu g/m^3$, between 50 $\mu g/m^3$ and 100 $\mu g/m^3$, and under 50 $\mu g/m^3$, respectively (Ex. 474–28).

The SBC did not offer counterestimates to the DBA figures. The SBC did charge that DBA had neglected to count the costs of "reduced worker efficiency, disruption of repair operations, production upsets, and work schedule delays" that the engineering and work practice controls might cause (Ex. 475–26). However, to the contrary, the DBA estimates did incorporate the additional costs of lost production associated with housekeeping, maintaining and setting up portable engineering controls, time lost for medical exams and training, and time lost for hygiene practices. Furthermore, DBA did calculate the cost of hiring the additional labor required to prevent production delays and losses (Ex. 474–28). These costs have been included in the estimates of the total costs per worker provided above.

Therefore, OSHA believes that the DBA estimates constitute the best available evidence on costs of compliance. Neither the SBC nor any other participants in the rulemaking effectively refuted them or supplied other estimates of the actual costs in this industry.

(i) *Industry Profile*

There are approximately 537 establishments in the shipbuilding and repairing industry (SIC 3731) employing 175,385 workers. Of the 208 firms operating these establishments, about 80 are shipbuilding firms and about 128 are ship repairing firms (Ex. 475–28(b)). Only 3 shipyards are equipped to build nuclear-powered ships (Ex. 474–28). Classified by employment size, 19 percent of all establishments employ 4 or fewer workers. The distribution of establishments with 5 to 9, 10 to 19, 20 to 49, 50 to 99, and 100 to 249 employees ranges from 11 percent to 16 percent for each size category. Only 4 percent of the establishments employ 1000 or more employees (Ex. 475–25). Within the industry, a greater proportion of small establishments are in ship repairing than shipbuilding (Ex. 475–26(c)).

The industry appears to be characterized by a high degree of concentration. There are 9 conglomerate-owned, 16 independent, and 100 general yards. But a few large firms control most of the major shipyards. Tenneco owns Newport News Shipbuilding and Drydock, Congoleum owns Bath Iron Works, Sun Oil owns Sun Shipbuilding, Freshauf owns Maryland Shipbuilding and Drydock, and Bethlehem Steel owns the Bethlehem Shipyard. Todd Shipyards is the major independent yard. Two of these large shipyards control 13 repair yards that provide 60 percent of all repairs. Assuming each yard has a fairly equal market share, this evens out to approximately 5 percent per yard. Forty three yards control 75 percent of all private repairs (Ex. 475–28(b)). Due to the highly competitive nature of ship repairing among the yards, this distribution is expected to be maintained (Ex. 475–28(c)).

Ship repairing is more profitable than shipbuilding (Ex. 475–28(c)). Approximately 75 percent of the revenue from ship repairing is generated by the federal government (Ex. 475–28(b)). The total number of repairs done in domestic shipyards is a function of world trade (the major determinant), the age of the fleet, and the rate of technological change. Proximity to ship traffic is a basic element in establishing a successful repair yard. Consequently, U.S. yards are located predominantly on the west, east and Gulf coasts and on the Great Lakes (Ex. 475–28(c)).

There are several criteria that customers consider in addition to placement of repair yards along shipping routes. Four major factors are cost of the repair, the yard's reputation for quality, turnaround time, knowledge of the ship, and other special skills.

The U.S. has a reputation for quick turnaround with fewer days both in a drydock and in completing the repair. Thus, while the U.S. is not as price competitive as foreign shipyards, the service offered is characterized by more rapid turnaround time (Ex. 475–28(c)). The U.S. is, however, becoming more price competitive with foreign shipyards. In the face of worldwide overcapacity, the gap in foreign versus domestic drydock charges is narrowing and labor costs, which are critical in an industry as labor-intensive as shipbuilding and repairing, are becoming less of a cost disadvantage to U.S. yards as wages rise abroad. Fluctuations in exchange rates have also been advantageous to the U.S. shipyards in terms of major competitive foreign countries, especially West Germany, the Netherlands, and Japan. Thus, whereas costs in West Germany in 1976 were 98 percent of the lowest U.S. cost, they were 117 percent of the lowest U.S. cost in 1978. In Japan in 1976, average repair costs were 20 percent less than in the U.S.; by contrast, in 1978, Japanese costs were only 4 percent less than U.S. costs (Ex. 475–28(c)).

The ship repairing industry faces a stable future and will prosper well into the 1990s as a result of several factors. First, more stringent environmental safety requirements for tankers in U.S. coastal waters will generate an increased market for inspections, minor repair, and retrofit overhauls of ships. Second, there are perceived needs for modifying, especially "jumboizing" existing vessels to meet shipping demands more quickly and less expensively than by constructing new ships. Third, U.S. repair services are becoming more competitive in the world market. U.S. ship repair yards already have a reputation for superior work and high productivity and are continuing to improve efficiency by investing in more modern equipment. Fourth, shipyards are diversifying into non-ship-related industrial work that utilizes shipwork skills, such as sheet metal working, welding, and blasting. Fifth, repair and overhaul of Naval vessels is expected to increase. Sixth, increased shipping activity with the expansion of world trade and transportation of Alaskan oil will generate a need for more ship repairs (Ex. 475–28(b)). The anticipated increase in world trade is especially important since the demand for ship repairs is a derived demand, that is, it cycles with the demand for both domestic and international trade (Ex. 475–28(c)).

Revenue in repair yards is expected to grow at an annual rate of nine percent for the next decade. Funding for Naval repairs, which occur almost exclusively in Naval shipyards, is expected to increase by about 6.2 percent per year. Commercial ship repair is forecast to grow at 5.5 percent annually. The largest increase of 14.3 percent per year is expected in foreign repairs. Overall, revenue for commercial repairs are projected to stabilize at a 6.5 percent rate of return per repair over the next decade (Ex. 475–28(c)).

The market outlook for shipbuilding is not as stable as the ship repairing forcast. While most shipbuilders have integrated ship repairing operations into their facilities, new construction orders and employment in shipyards will probably decline in the immediate future, reflecting the worldwide slump in shipping (Ex. 475–28(a)). However, during 1978 and the first and second quarters of 1979, an unexpectedly large number of new orders brightened the outlook for the shipbuilding industry (Ex. 476–28). Total orders in 1979 were the largest since 1973, with contracts reflecting a healthy demand for deep-draft commercial vessels (Ex. 475–28(b)). A prime source of commercial ship orders for U.S. yards stems from the severe shortage of dry bulk charter vessels. The American-flag fleet includes only 19 bulk ships, and 13 of its ships are over 20 years old. The demand for product tankers has also shown a revival that should continue through the 1980s (Ex. 476–28). Furthermore, Naval expenditures authorized by Congress for new ships are expected to continue at least at the same level (Ex. 475–28(b)), thus bolstering the demand in the shipbuilding industry.

The shipbuilding and repairing industry considers shipbuilding less profitable than repairing. Ship repairs command excellent prices because the work is typically urgent and repair yards can usually control overhead more successfully than construction yards (Ex. 476–28). However, to ease the financial situation for shipbuilders, federal construction differential subsidies are granted for ships built, owned, operated, and manned by Americans. The amount of the subsidy is calculated on the basis of the construction cost difference between U.S. and foreign shipyards (Ex. 475–28(b)).

In the long-run, that is, beyond 1985, the market for shipbuilding looks very good. The future boom in fishing, resulting from the implementation of the 200 mile limit, will require larger and more efficient vessels. Also, the prospects for mining undersea mineral nodules may contribute to a rising demand for new ships (Ex. 475–28(b)). Since the industry is cyclical and dependent on worldwide conditions in many markets, recovery can be expected as water-borne trade expands again (Ex. 476–28).

In addition to the anticipated upturn in the shipbuilding industry, there appear to be long-run trends away from the use of lead in ships. The shipbuilding industry is currently in the process of adopting substitutes for lead-based paints in ships. Existing ships that still contain lead painted surfaces will continue to be a source of potential exposure during ship repairs. However, ultimately, this source of exposure will be eliminated. Some technological improvements that increase the mechanization and automation of shipbuilding and repairing processes may also lead to reduced exposures where lead use is retained. In addition, underwater painting and underwater welding processes are being developed (Ex. 475–28(a)).

There does not appear to be a perfect substitute for lead in nuclear shielding of reactors. One possible substitute is a cement shield. However, cement shields require much more space than lead shields (Ex. 475–28(a)). Only three yards have a current capability to build nuclear ships. For these yards, it is expected that the cost of controlling lead exposure would be such a small percentage of the total cost of building a ship that the percentage increase in price of the ship would be negligible. Furthermore, the production of nuclear ships is exclusively funded by the military, and military demand for nuclear ships is relatively insensitive, even to large increases in price. Any increased costs of production would be passed on ultimately to the taxpayers by the few yards involved in nuclear shipbuilding.

(j) *Conclusion: Economic Feasibility*

OSHA concludes that the economic impact of the lead standard on the market for ship repairing and shipbuilding will not be disruptive to the industry. Since the estimated total annualized costs amount to only about 0.68 percent of the value of the industry's sales (Ex. 476–20), ship repair yards will be able to pass costs on to customers because the commercial and military demand for repairs is relatively inelastic. Small independent yards may have more limited access to capital than yards that are owned by large parent corporations. However, competitive advantages of location and individual reputation for quality work will help to offset potentially adverse impacts on small versus large owners of ship repair yards.

Similarly, the shipbuilding industry will be able to pass costs of compliance on to commercial and military customers. The cost of controlling lead exposures represents a very small percentage of the cost of building a ship. Thus, any price increases are expected to be negligible. Furthermore, the future profitability of the industry will rise as the demand for new ships increases in the 1980s. Concurrent substitution away from lead use in most new ships will significantly reduce compliance costs, and consequently the economic impact of the lead standard.

36. Solder Manufacture

(a) *Uses.* Solder is sold in the form of ingots, rods, bars, anodes, solid wire, cored wire, foil, sheet and paste (Ex. 22, p. 294). In addition to its many other uses, solder is essential for the manufacture of electronic devices. No substitutes for solder are known (Ex. 65B, p. 40–42).

(b) *Process Description and Exposure Areas*

Refined lead is used to make lead-tin and other solders. The ratio of lead to

tin, bismuth, antimony and other metals varies depending upon the type of solder desired. In the making of solder, metals are melted down at low temperature and blended in established ratios. Handling of lead is minimal, but employees do handle raw lead ingots before they are melted (Ex. 488).

Material handling includes manual material transfer or transfer by forklift. The material may be in the form of pigs, skidded materials, semi-finished products or final products exposed and/or in packages. Material handling often includes weighing, breaking up of ingots into smaller parts for accurate alloy charges, loading the solder pot with metal, transferring semi-finished or finished items from one operation to another, etc. (Ex. 488).

Alloying includes the melting of charges, mixing of molten metal, removing samples for analysis and the removal of dross from the charge.

The allowing of solder is usually performed by melting the elements at 100°F. above their melting point and stirring them to achieve homogeneity. Depending upon the composition of the solder, the temperature and the partial vapor pressure of lead, one can calculate the evolution of lead in air. In general, metallic lead fumes are unlikely to occur when the temperatures are kept below 1,000°F., as in the case with solder manufacture where the temperature is kept low to prevent excessive dross formation that reduces the yield of the charge (Ex. 488). Lead fumes are normally expected at temperatures between 1,500° and 2,700°F. (Ex. 488).[1/2] Thus, the exposure in this area is not from metallic lead fumes, but rather from the reaction of products with air (mostly lead oxide) which is called dross. This constitutes the greater potential for airborne lead since dross is a dry, powdery substance (unless special additives are used).

Finished solder is cast into blocks, ingots, rods or bars, sheets and foil, and extruded into solder wire and sheets (Ex. 22, p. 294).

Casting involves such operations as dross removal, pouring, topping of slugs and removal from the molds. Extrusion may be done directly from the melt in a continuous form or with the use of precast billets. Basically, this requires hydraulic pressing through dies to achieve final shapes. The extrusion often includes such operations as cutting, loading and unloading the presses, and transfer of the extruded material to the next operation (Ex. 488).

Hook attachment to anodes may be stainless steel or tinned copper alloys. (Tinning is often performed as an auxiliary operation to anode manufacturing. It involves the fluxing and dipping in molten alloy of the hooks in question.) The hooks are either attached mechanically (using a drill and tap operation) or by lead burning, which is a form of soldering (Id.).

Wire drawing is performed by running materials through lubricated reducing dies and includes threading the wire into the dies, reattaching the wire when it breaks, cleaning the dies, maintaining the solution, and a feed and unload operation. The lubricant (also called a drawing solution) contains fine particles of solder which may cling to the wire as it leaves at high speeds. These particles may then become airborne during spooling and handling (Id.).

Spooling of solder wire is often done manually, although semi-automatic and fully automatic equipment exists. This includes such operations as manual spooling, cutting and weighing, and reconnecting brakes.

Rolling and cladding are processes whereby solder is metallurgically or mechanically bonded to other metals, such as copper. This includes such operations as cleaning (dangerous only if it involves mechanical abrasion), feeding, measuring, and transfer of the finished product.

Stamping and wire forming (to make preforms) include such operations as setting up the dies and equipment, the physical operation of the equipment (lubrication used to prevent equipment damage eliminates particles from being generated into the air), and collecting, measuring, and cleaning the end product.

Powder blowing is an operation which, by its nature, creates airborne lead contamination. Although powder is often blown into a special environment of liquids rather than air, it requires special control. Powder blowing of molten solder is acknowledged to be the most hazardous operation, resulting in the greatest potential for lead exposure in solder manufacturing. Powder is normally blown from a molten reservoir by feeding a steady stream of liquid solder through an air nozzle. By the time the metallic droplets solidify, they settle into the bottom of the equipment where they are sized.

Powder classification or sizing is the operation where powders are separated into various sizes (referred to as mesh sizes). This is achieved either through gravity by horizontal air blowing or mechanically by a series of different sieves. Here again, there is danger of airborne lead and adequate controls are required.

Powder blending requires that powders be mixed with the fluxes to create the end product, which is either a paste or a cream.

Packaging and shipping is an operation which includes the handling, weighing, inspecting, and packaging of all final products. The exposure depends on the form of the product being handled (i.e., whether it is in powder or compressed forms).

Housekeeping includes the cleanup of all floors and surfaces to remove particulate matter containing lead. Wet sweeping and vacuum cleaning are two mechanized methods possible.

The potential for lead exposure exists for almost all operations, but the greatest potential is experienced in alloying, casting, powder blowing, housekeeping, and machine operations such as cutting and drilling.

(c) *Controls Currently Used*

Materials handling presently is done manually or with a forklift. Alloying operations have tight enclosures which use air exhausts. Casting operations use ventilation. Powder blowing operations are performed in tight enclosures with negative pressure. Ventilation is used in machine operations. (Ex. 488)

(d) *Exposure Levels*

Originally, in the Short Report, most industry sources indicated that lead levels were probably low and that problems in meeting the standard were not anticipated (Ex. 22, p. 294). OSHA inspections at two solder plants reported levels above 200 $\mu g/m^3$ in spooling operations, furnace areas, and kettle areas (Ex. 65B, p. 42). One company reported that even with excellent ventilation, lead levels in the casting area reached 200 $\mu g/m^3$. (Ex. 22, p. 294.) Levels of 220 $\mu g/m^3$ to 300 $\mu g/m^3$ were reported in the spooling and wire drawing operations (Id.). Results of OSHA inspection # CN-2 found lead levels of 140 $\mu g/m^3$, on an 8 hour TWA. The only control at this facility was ventilation consisting of two 42" ceiling fans located above the melting pot and one 20" wall fan (Ex. 47B-16). In more recent exposure estimates, one large company reported that most of its direct labor force is exposed below 30 $\mu g/m^3$. In addition, in the older, smaller to medium sized plants, 20–25 percent of all employees (or 124–155 workers) are exposed above 50 $\mu g/m^3$ while in the large plants 8–12 percent (or 100–125 workers) are exposed above 50 $\mu g/m^3$ (Ex. 488)

(e) *Population Exposed*

The data presented by Howard Manko, an OSHA expert witness, indicate that approximately 280 workers

in the entire industry may be exposed in excess of 50 $\mu g/m^3$ (Ex. 468)

(f) *Additional Controls*

Data indicating additional controls needed to comply with the 50 $\mu g/m^3$ standard were not submitted by the industry. Therefore a comparison of solder manufacture to comparable processes and a discussion of the applicable controls are provided in this section.

Materials handling may be done mechanically by conveyor system or pneumatically, depending upon the size of the materials being moved. Materials to be cut to smaller size or broken into pieces should be processed under exhaust hoods or should be broken and cut using automated mechanical devices. This whole area of exposure could be eliminated by buying scrap from collectors and processors already reduced to size. Weighing can be done in automated hooded weighing areas. (Ex. 270, 46, 486)

Additional ventilation may be necessary in some areas for compliance with the PEL. In a few areas that are difficult to ventilate, such as spooling, other protective measures may also be necessary. Slowing the spool rate is one possible method for controlling lead levels in the spool and wire drawing area, although this method would decrease the production rate. (Ex. 486)

Alloying operations can use exhaust ventilation in the melting areas and mixing areas. Dross can be mechanically conveyed to discharge areas with hooding of the conveyance ducts being provided. Casting areas can have local exhaust ventilation over casts. All machine operations can be successfully exhaust ventilated at the source of exposure and cutting fluids can be used to suppress dusts.

Spooling operations can be done automatically to avoid worker contact. Powder blowing may be done in fully enclosed systems of negative pressure with workers in clear air pulpits to minimize exposure. Powder classing and signing should be done mechanically with the entire sieving area ventilated and local exhaust ventilation being supplied to each sieve. Powder blending can be done mechanically and wet. Handling and shipping operations can also be mechanized, depending upon the substance being handled. (Id.)

Housekeeping should be emphasized with frequent wet sweeping or vacuuming. Floors and wall surfaces should be finished to eliminate cracks, crevices or porousness, which will tend to hold dusts. (Ex. 486)

In areas of high pressure, worker rotation should be utilized. Also, emphasis should be placed on the importance of proper work practices. Workers should be instructed to avoid stirring up dusts by improper dumping of materials, etc.

Mr. Manko suggested that manufacturers could also reclaim lead for reprocessing, which would greatly reduce the airborne contaminants and be cost effective by recycling wastes.

(g) *Conclusion: Technological Feasibility*

Most employers protect employees from lead exposure by ventilation. Hoods, exhaust fans, vents, air ducts, and beghouses are usually used. (Ex. 22, p. 294.)

Conclusions offered on the feasibility of achieving compliance with the 50 $\mu g/m^3$ PEL are based exclusively on the use of engineering controls. The consequence of work practices and effective housekeeping for complying with a 50 $\mu g/m^3$ standard was not considered. Solder manufacturing is an extremely dusty operation and re-entry of lead into the air from moving equipment could be effectively eliminated if proper housekeeping was practiced. In addition, rather than putting respirators on workers in high exposure areas, workers could be rotated, thereby minimizing their exposure.

Considering the available controls discussed here, the significant contribution which housekeeping can make in reducing levels, and the fact that at least one company has stated that most of its direct labor force is exposed to levels below 30 $\mu g/m^3$, compliance for the industry as a whole appears feasible. OSHA concludes that compliance with the standard as a whole is feasible for the industry within one year.

(h) *Cost of Compliance*

The total cost of compliance for the solder industry would include the capital expenditures and the operating costs that would be incurred to reduce lead levels. One industry source reported capital expenditures for EPA and OSHA improvements of $325,000 for two plants over a five year period (Ex. 468). This would suggest annual capital expenditures for the entire industry of $4.1 million. Annualized capital costs, therefore, are estimated to be $740,000. The corresponding operating costs for these two plants, as provided by this source, were $95,000 a year. Extrapolating from this cost figure to the entire industry yields an estimate of $5.9 million a year. Thus, total annual costs are estimated to be $6.6 million. However, four qualifications must be attached to these extrapolated figures. First, the costs provided by the industry source include costs for both EPA and OSHA improvements. Hence, using these estimates to evaluate the costs associated with the OSHA lead standard only is inaccurate. Second, the industry representative did not indicate whether these expenditures were necessary to achieve compliance with other OSHA standards. If these expenditures do include compliance costs for all OSHA standards then again these figures would be grossly inflated measures of costs of compliance with the lead standard. Third, these two plants need not be representative of the industry; in this case these figures would not be an appropriate basis from which to extrapolate to the entire industry. Fourth, these expenditures may have yielded other benefits to the employer in addition to those attributed to the EPA and OSHA requirements. These jointly produced benefits would then offset some of the costs of compliance with the OSHA standard.

(i) *Industry Profile*

Solder manufacturers are classified in either SIC 3356, in which the product is made from virgin metal, or SIC 3341, in which it is produced from secondary metal. Between 1975 and 1979, total value of shipments of solder averaged $306.5 million per year. The end uses of solder are divided among building and construction (9,777 metric tons or 18 percent), metal cans and shipping containers (14,455 metric tons or 26 percent), electronic components and accessories (10,344 metric tons or 19 percent), other electrical machinery and equipment (2,711 metric tons or 5 percent) and motor vehicles and equipment (16,901 metric tons or 31.3 percent).

In all uses, with the possible exception of other electrical machinery and equipment, declines in the use of solder are expected. Competition with light-weight plastics in the container industry has stalled the anticipated growth of the solder market. Newly designed automobiles, which will be smaller and lighter in weight, may reduce use of solder in this application.

Furthermore, substitutes for solder in the automotive industry have been developed. DuPont first invented and began licensing the technology for adhesives known as toughened acrylics five years ago. This glue, which is capable of eating through oil and grease, eliminates the need for arduous surface cleaning of parts to be joined and is superior to solder in resisting environmental degradation caused by heat and moisture. The Japanese auto

industry already makes considerable use of adhesive chemistry to lighten the weight of cars (Ex. 476–26). Increasing miniaturization in the electronics industry will cause some contraction in demand for solder. Finally, declines in usage in construction are expected.

Production of solder from 1975 to 1979 closely tracked the general business cycle in the U.S. In 1976, the economy was in the initial stage of a recovery from the 1974–1975 recession. The demand for automobiles, machinery, and equipment was reviving. In addition, the building and construction industry was responding to a strengthened demand during this period. The production of solder paralleled this expansion. Output of solder increased from 73,987 short tons in 1975 to 105,504 short tons in 1978. Between 1977 and 1978, solder production expanded by approximately 27 percent. This rapid growth could be attributed to the upturn of the economy and perhaps to lags in the demand for durable goods during an expansion. The production surge could also be a consequence of the substantial increase in the average price of imports of solder. By the end of 1977, average solder prices for foreign producers had increased by $0.56 per pound; by contrast, average production costs for U.S. producers increased by only $0.07 per pound. One possible implication that could be drawn from these figures is that a change in relative prices between U.S. and foreign producers caused some shift in demand in favor of the U.S. industry.

The percent of lead in solder during 1975–1979 actually fell from 77.5 percent to 76.3 percent. The change in the percent of lead in solder was even more dramatic between 1977 and 1978. In 1977, the percent of lead in solder was 77.1 percent and, in 1978, it was 71.4 percent. Much of the increase in solder production appears to have been concentrated in non-lead solder.

The solder manufacturing industry can be characterized as a mature industry that has undergone few technological changes in the past 30 years. An estimated 20 percent of production equipment is less than 15 years old, while at least 60 percent of production equipment exceeds 30 years in age. Very few modern installations exist in the domestic market. This characteristic of the industry contributes significantly to the rising average cost of production.

There are an estimated 125 plants that are domestically producing solder. Twenty-seven firms, operating 30 plants and having total assets in excess of $1 million each, control 80 percent of the known solder production. Twelve companies, operating 13 plants and having total assets of at least $1 million each, and the remaining firms with fewer than $500,000 each, produce the remaining 20 percent of the solder. These smaller companies, whose raw material is predominantly scrap, generally market a limited product line of lower quality solder.

The small shops are dispersed across the U.S. This localization of operations results in some cost advantage to these producers. This advantage stems from both the proximity to scrap suppliers and the high costs of transporting solder. The latter is an especially important component of price, since solder is a heavy product.

Most of the large producers are located on the east coast. The maturity of the industry may inhibit these large producers from relocating to new areas. Hence, the small producers will probably continue to enjoy a substantial cost advantage over their larger competitors.

The cost of compliance with the standard may represent a higher proportion of total production cost for small producers than for large producers. However, in light of the immobility of large producers and the location advantages of many of the smaller plants, the competitive advantage of the small producers is not expected to be severely curtailed. This conclusion is supported by the fact that evidence of an increase in concentration in the industry, or a decline in the comparative advantage of small producers relative to large producers, has not been provided in the record.

However, foreign producers, who currently enjoy lower labor costs, may continue to increase their penetration of the domestic market, irrespective of an OSHA standard. In fact, some domestic firms have already begun some overseas operations in response to these cost advantages. Major foreign competitors are the United Kingdom and Canada, which account for 90 percent of the volume of imported solder. Other competitors include Spain, Denmark and Mexico. These latter countries present an attractive climate for business expansion and may prove to be dominant in the supply of solder for use in the electronics industry. In addition to this potential change in market concentration, foreign competition in higher grade solders, containing 37 percent to 40 percent lead, may increase since such operations typically have higher profit margins.

(j) *Conclusion: Economic Feasibility*

Annual compliance costs are not expected to exceed $6.6 million. (Shipments totalled $306.5 million averaged between 1974 and 1979.) Thus, OSHA estimates that annual compliance costs in the solder manufacturing industry will not exceed 2 percent of the total value of shipments produced in the industry.

Furthermore, the standard will not adversely affect the comparative advantage currently enjoyed by the smaller producers of solder. Hence, an increase in concentration in the industry is not expected. Foreign competitors may be encouraged to further infiltrate the domestic market. However, rising costs of energy and, consequently, of transportation will be constraining factors on foreign sales in the U.S. Evidence of this import constraint is provided by the rapid rise in the average price of imported solder between 1976 and 1977.

37. Soldering

(a) *Uses.* The application of solder, a lead-tin alloy, can be done mechanically or by hand. Operations performed by hand are usually "bench type" operations where employees are stationed individually and use soldering irons to melt solder to form a connection. Exposure occurs at the point of melting the solder (Ex. 79). Soldering in radiator shops seems to create lead exposure problems. During the repair of radiators, they are disassembled using oxygen acetylene torches. After the radiators are cleaned, they are reassembled using soldering wire. Lead fumes become airborne during the soldering and workers are also exposed to lead by handling the soldering wire and the lead contaminated radiators.

(b) *Controls Currently Used*

Local exhaust ventilation has been used to capture fumes in some cases but most stations have no ventilation. Each employee must clean his station and remove lead dross each day. Wetting down of dross is not done.

Soldering of small components or parts does not appear to cause a problem. Ventilation controls at most radiator repair shops were either non-existent or very poor. Ventilation at the Empire Radiator Company consisted of one large exhaust fan in the upper wall which moved air across the work areas at 50 linear feet per minute (Ex. 476–399). At George's Radiator Shop ventilation consisted of three roof-mounted exhaust fans with make-up air added by leaving doors open (Ex. 476–408).

(c) *Exposure Levels*

Numerous health hazard surveys have been done on hand soldering operations.

At the Monoghan Co. (Ex. 476–401), sampling was done at the hand soldering stations in the electronic assembly areas. Exposure levels were approximately 0.005 $\mu g/m^3$ of lead.

Western Electric did a study of its soldering operations and found that breathing zone samples indicated that exposures were less than 3 $\mu g/m^3$ of lead, typical of hand soldering operations. The average number of work years for employees of these operations was 16, and blood lead levels, when compared to those of a group of non-solder exposed office workers were also low. The author concluded that soldering does not present a health hazard associated with soldering does not exist (Ex. 3 (9)).

Similar surveys were done on the Hospital Medical Corporation (Ex. 476–400) and the Westinghouse Electric Corp. (Ex. 476–404). Most lead levels were non-detectable, except for one sample of 18 $\mu g/m^3$.

In some processes, automatic soldering irons may be used. Exposure levels were below the 30 $\mu g/m^3$ limit in this operation also (Ex. 476–405).

A survey at the Rock Mountain Radiator Shop found lead levels as low as 0.4 $\mu g/m^3$ and as high as 210 $\mu g/m^3$ for radiator mechanics (Ex. 476–402). At Empire Radiation Co. lead levels averaged 60 $\mu g/m^3$ (Ex. 476–399). At George's Radiator similar levels of lead were found for the repairmen. Levels ranged from 20 to 100 $\mu g/m^3$. Most levels were above 50 $\mu g/m^3$ (Ex. 476–406). Aero Radiator's levels were in excess of 50 $\mu g/m^3$ (Ex. 476–395).

(d) *Additional Controls*

NIOSH made recommendations to several companies to add local exhaust ventilation and increase general ventilation at soldering areas. Recommended controls include movable local exhaust ventilation installed at each repairman's station to capture lead fumes and acid mists. Companies were also advised to improve housekeeping. This would aid in removing dust from old solder areas, thereby reducing the amount of lead introduced as a secondary source of emission. Wet mopping and the use of water sprays to suppress lead dusts were also recommended.

(e) *Conclusion: Technological Feasibility*

Soldering operations, except for soldering of radiators, are in compliance with the 50 $\mu g/m^3$ standard. The control technology consists of simple exhaust ventilation and housekeeping. In radiator soldering, the data indicate that compliance with the 50 $\mu g/m^3$ standard has not been achieved. Soldering in these operations is done with virtually no use of ventilation equipment, even though portable units are readily available and inexpensive. Housekeeping also is virtually nonexistent in these small firms. NIOSH has recommended that implementation of ventilation, housekeeping also is virtually nonexistent in these small firms. NIOSH has recommended that implementation of ventilation, housekeeping, equipment, and wet suppression will enable radiator soldering operations to achieve compliance with a 50 $\mu g/m^3$ PEL.

(e) *Economic Feasibility*

The cost of compliance will be negligible and may consist of costs for portable ventilation systems; however, the less costly alternatives of housekeeping and worker rotation may suffice to reduce levels to the 50 $\mu g/m^3$ PEL in radiator soldering. The economic impact of the lead regulation on this industry is assumed to be negligible.

38. Spray Painting

(a) *Uses*

Spray painting is performed in two general situations: (1) Manufacturing processes where products are conveyed to a station and spray painted, and then conveyed forward for further processing, or (2) construction or repair painting requiring that the paint application workers and systems move to the location needing the coating (Ex. 228). Painting is usually done by spraying because of the excellent finish that can be obtained and the speed at which the coating materials can be applied (Ex. 476–412, p. 14).

(b) *Process Description and Exposure Areas*

There are four basic work environments in which employees may be exposed to lead. Manual spray booths require that the operator remain outside the enclosure and use various types of pressurized guns to apply the paint. Automatic spray painting booths require that the pressurized spray gun be automatically operated. Manual spray painting rooms are usually much larger than booths and may be either totally enclosed or open on one side. The objects to be painted are usually large and must be positioned in manual spray rooms, or automatically conveyed in. Open spraying consists of those paint applications undertaken outside locally ventilated spray booths or rooms. (Id.)

In any of these methods, the spray may be generated by compressed air, by hydraulic pressure, or by electrostatic forces (Id.). Compressed air spraying is the most widely used because of its versatility, low cost, and because it creates a high quality finish. In this method, compressed air provides the energy to atomize the finish. The atomization is produced by an air nozzle. Two types of nozzles are used: external mix and internal mix nozzles. In the external mix nozzle, the coating and the compressed air exit from separate orifices and are mixed outside the nozzle. The air jet atomizes and shapes the spray fan. Internal mix nozzles combine the compressed air and finishing materials in a chamber inside the nozzle. The atomized mixture is shaped by the geometry of the chamber opening. (Id.)

Airless spray equipment atomizes paint by forcing it through a very small orifice at a very high pressure. The airless spray gun simply consists of a device to hold the orifice and a value for shutting off the flow. The size and shape of the nozzle determine the volume of material sprayed and the geometry of the spray pattern. The hydraulic pressure necessary for atomization is provided by a high pressure pump that is operated by compressed air or an electric motor. (Id.)

In electrostatic spraying, an electrical charge is applied to the atomized coating particles, either by the creation of an ionized zone within the spray cone area, or by imparting a charge to the fluid stream prior to its release from the spray gun head. The charged, atomized paint particles are attracted to the conductive object being finished by the electrostatic field between the paint and the object. Atomization can be achieved by the use of air-atomizing or airless-type equipment, or solely by the use of electrostatic means. In this last method, the coating material is introduced into the center of a rapidly spinning disk or bell, which is highly charged. As the coating reaches the edge of the disk or bell, the repulsive forces of the like charges cause the coating to atomize. (Id.)

(c) *Controls Currently Used*

The use of airless atomization, heated paint, and electrostatic attraction in place of conventional, compressed air spray equipment can significantly reduce the amount of stray mist or fog produced. Compressed air spraying atomizes liquid paint by directing a high velocity air jet at the paint stream as it exits from a nozzle. The flow of air conveys the finely atomized droplets to the object being painted. This stream of air is deflected when it strikes the object. Paint particles of sufficient mass are not deflected and deposit

themselves on the object. Additional paint mist is lost when the spray pattern does not completely contact the object. Total paint losses of 50 percent are not uncommon. (Id.)

On the other hand, in airless spraying, the paint is atomized by forcing it through a small orifice under very high pressure. This method produces less fog than compressed air spraying because not as many fine droplets are produced, and thus the "bounce-back" phenomenon is largely reduced because the paint droplets are conveyed to the object being painted by their own momentum rather than by a stream of air. Other advantages of airless or high pressure spraying include higher capacity, compatibility with high-solids coating, more adequate coverage of awkward shapes, and negligible stray mist. Some disadvantages include relatively high cost, limited pattern and flow adjustment, and difficulties in overlapping. (Id.)

In electrostatic spraying, the paint can be atomized with compressed air, by hydraulic pressure as in airless spraying, or solely by electrostatic forces. The chief advantage of electrostatic spraying is the improved working environment and the paint economy that is achieved. Electrostatic systems usually permit use of substantially less exhaust and make-up air than conventional compressed air spraying for the same painted surface area. This technique also provides significant wrap around, coats sharp edges, and can be highly automated. However, null points in the electrostatic field (caused by recesses or object interiors) may not be coated. (Id)

Isolation can be achieved by the use of a physical barrier, or by the separation of the worker from the hazard by time or space.

Automation of the paint application process is another means of isolating the worker from the hazard. There are two fundamentally different methods of automating spray finishing operations. The first method involves mounting the spray guns in fixed positions or on a reciprocating assembly. The product items are painted as they pass by the assembly on a conveyor. The parts may be rotated as they are painted. This type of automation is designed and built for the requirements of a limited product line, where the size and shape of the objects finished are easily definable. Manual paint sprayers are often required for touch-up. The second method of automation involves the use of programmed robots. These machines can accommodate production runs of various sizes and shapes. Since they can duplicate virtually all of the movements of a manual spray painter, the use of robots allows for the removal of workers from potentially hazardous areas or unhealthful working conditions. (Id.)

Ventilation systems can be either local or general in nature. A general ventilation system supplies and exhausts large volumes of air in an attempt to dilute air contaminants. General ventilation can successfully control the buildup of explosive vapors in enclosed spaces. (Id.)

The practice of placing a fan in a manhole, doorway, or window is not satisfactory to reduce paint mist because the air is circulated only at the opening; the fan does not move or dilute the air in other portions of the enclosed area. Munger recommends that clean air be drawn into the enclosed space from an opening at the top by exhausting air from the lowest portion. (Id.)

Reichenbach describes a similar procedure for ventilating the spray painting of ship holds and tanks and other confined spaces and recommends that painters in enclosed areas should wear supplied-air respirators. The fan capacity required for dilution ventilation can be calculated from the lower explosive limits for the solvents employed and the paint application rate, using the formulas in *Industrial Ventilation: A Manual of Recommended Practice*. (Id.)

Excessive quantities of air need to be handled to protect the breathing zone of a spray finisher solely by the use of general ventilation. Hence, indoor spray finishing operations are usually controlled by ventilated spray booths. They function by directing relatively uncontaminated air past the worker towards the process, and into a collection point or exhaust hood. The source of the uncontaminated air may be a tempered fresh air supply or simply general workroom air. (Id.)

For practical purposes, spray booths can be classified into two basic designs based on the direction of air flow. Booths with a horizontal air flow are termed "sidedraft booths." These booths take advantage of the momentum of the spray mist and can successfully be used when painting small- to medium-sized articles. With larger articles, it may not be possible to maintain adequate air flow on all sides of the object being painted, and rotating the workpiece may not be practical. In these situations, a downdraft spray booth permits greater protection, while allowing more freedom of movement for the painter. Both sidedraft and downdraft booths will vary in size, in the degree of enclosure, in the method of air makeup, in air velocity, and in overspray control. (Id.)

Spray booths range in size from small bench-type models that are designed for spraying small objects to huge chambers that are capable of holding a large airplane. The basic consideration in determining the size of a spray paint booth is the size of the object being painted; adequate space around the top and sides of the object are needed to permit the painter easy access to these areas. The booth should be deep enough to allow the operator to work inside. If the object is transported by a conveyor, the booth must be sufficiently long to permit coating within the time the object remains inside the confines of the booth at the maximum line speed. (Id.)

Both sidedraft and downdraft booths are available in open or enclosed versions. Overspray is easier to control in a closed booth; random room air currents may upset the flow pattern designed for an open booth. In addition, an open booth is more costly to operate than an enclosed booth, because a larger volume of air is necessary in order to achieve a given air velocity at the operator's location. (Id.)

The air exhausted from the spray booth must be replaced in order to achieve optimum plant environmental control. Whether this air is supplied directly to the spray booth or to the general workroom is largely a function of how dusty the plant air is. Spray booths may be equipped with filter doors or fresh air inlet plenums to prevent plant dust from settling on freshly painted surfaces. Air should enter the booth at low velocity (200 fpm or less), and in the same direction as it is being exhausted to avoid unnecessary turbulence. Fresh air inlet plenums should be equipped with baffles or other positive means of air distribution. (Id.)

The air cleaning section of the spray booth not only removes paint mist from the exhaust air, but acts as a means of air distribution within the booth. An arrangement of metal baffles is the simplest form of air cleaner. Specific design criteria for baffle-type booths are listed in *Industrial Ventilation: A Manual of Recommended Practice*. The baffle-type booth provides a constant flow of air. Mist removal and clean-up difficulties limit its use to low production applications. Dry filter booths combine low cost with high efficiency paint mist removal, but have the disadvantage of a variable air flow. The air flow is at a maximum when the filters are clean, but continuously decreases to a point where the filters require replacement. Like baffle-type booths, the dry filter booth is best suited for low production operations. Water wash booths incorporate various

combinations of water curtains and sprays to scrub the paint mist from the exhaust air. They have the advantage of constant air flow, inherent fire protection, and high mist removal efficiency, but at a greater cost than dry-type booths. Maintenance is necessary to retain the high rate of mist removal. Cost of maintenance may equal or exceed that of the dry-type booths. (Id.)

Inadequate training and supervision in the techniques of spray finishing can result in a poor work environment as well as a faulty finish and a waste of paint. Because spray booths function by directing clean air past the worker towards the process, the operator must not position himself between the object being painted and the point of exhaust. (Id.)

When four sides of an object are sprayed in a sidedraft booth, all four sides can be painted without the operator being covered with his own overspray by incorporating a turnable. The painter's breathing zone can be removed from the area of active mist generation if an extension or pole gun is used. Airless spray equipment is useful for such cases because of its inherent low mist generation and its superior coverage of deep recesses. In a tall object in a downdraft booth, stepladders, platforms, or manlifts can be employed to avoid exposure to the spray backwash. (Id.)

(d) *Specific Applications*

(i) *Automotive Manufacture.* Automobile manufacturers utilize a booth which is designed with downdraft supplied at 1000–2000 cfm per linear foot of booth. An equal exhaust volume is provided. The supply air provided overhead is tempered, filtered and directed downward over the product, which moves through the booth at a rate of approximately 70 jobs per hour and is exhausted through a grating in the floor and scrubbed in the back section of the booth. Velocities of approximately 200–300 feet per minute exist on the skin of the product being painted. This type of ventilation system represents the current "state of the art" technology. Individual plants may have slight variations in the design; however, the basic control system has remained essentially the same in motor vehicle assembly plants over the past 30–40 years. (Ex. 478–411). Air-supplied respirators are also used.

(ii) *Automotive Refinishing.* The automobile refinishing industry is considered separately from the automobile producing industry because of the nature of the refinishing production process. Many of these shops can be characterized as small, poorly ventilated, and having few or no controls. Only modern, larger automobile paint shops use auto refinishing booths.

The surface that is to be painted is normally cleaned, sealed, and sanded before paint application. These operations are usually performed by hand. Coatings are normally applied by hand-held air atomizing equipment. The coating material is generally cured by air drying.

Alkyd enamels are used for total body repainting because, unlike the case with lacquer finishes, no hand rubbing is needed to gain a high gloss surface film. The rapid cure of lacquer finishes permits blending of spot repairs into undamaged areas, which makes this type of finish more popular in body repair shops. The air drying alkyds are more typically applied in spray booths because of their susceptibility to contamination by airborne dust. (Ex. 478–412)

(iii) *Wood Furniture.* Before coating, the wood surface is prepared and pretreated in several steps, such as sealing, glazing, sanding, and polishing. These techniques are used for both natural wood and unfinished exterior or interior grades of plywood. Some materials may require solvent wiping and sanding. Coating materials are generally applied in several layers, which require intervening steps like sanding, rubbing, daubing, and polishing. These procedures are performed by hand and, therefore, the workers are exposed not only to the liquid coating material itself, but to the wood dust that may also contain the coating material. Coating materials are predominately applied by hand. Sometimes electrostatic spray techniques are used; they require the use of a conductive primer (applied by dipping), or controlled moisture content. (Id.)

(iv) *Metal Furniture.* The metal surface to be coated is cleaned and pretreated. Most plants use automated three-stage or five-stage pretreatment processes, incorporating hot water rinses, phosphoric acid baths, and chromic acid rinses. (Id.)

Alkyd baking enamels are most used. Various acrylics (both thermosetting and emulsion), high-solid polyesters, and powders are also used in lesser quantities. Electrostatic spray guns are used in both automatic and hand-held operations. Both liquid paint and powder coating lines are highly automated, but hand-held conventional and airless spray guns are still used in reinforcement operations. It is common for defective coating to be manually reworked. (Id.)

(v) *Major Appliances.* Before coating, the metal surfaces are prepared in order to remove rust, oil and other unwanted material. Treatment generally involves eight automated stage, consisting of alkali cleaning, double water rinsing, and a zinc-phosphate bath, followed by water, chromic acid, and deionized water rinsing.

Primers are generally applied by electrocoating in a water bath that contains 8 to 10 percent paint material. As alternatives to this method, dip and flow coating techniques can be utilized. Some primers are still applied by manual or automatic spraying. (Id.)

Top coating is usually accomplished by electrostatic spraying. Both automatic and hand-held electrostatic guns are used. The automatic equipment is typically an electrostatic bell or disk. Manual spray equipment is used primarily for reinforcement on less accessible surfaces and touch-up operations. (Id.)

(vi) *Transportation (Non-automotive).* Because of the size and shapes of these products, both primers and topcoats are generally applied by hand spray equipment. Railroad cars are painted primarily for protection against corrosion; aesthetic considerations are secondary. Application techniques (primarily airless) are therefore geared to providing a high film build in a minimum amount of time. Truck finishes are also applied by hand-held spray guns and cured by baking or air drying. Alkyd-type finishes predominate in this industry. (Id.)

In the aircraft industry two component epoxy and urethanes predominate because of their ability to produce a baked quality finish without baking. Airless spray equipment is generally not accepted because of aesthetics. (Id.)

(vii) *Machinery and Equipment.* Coating application is generally by airless or electrostatic-airless spray technology; however, dipping and flow coating are also used. Despite some automation, most top coating is done by hand-spray equipment. As a curing method, air-dry and force-dry techniques are used. (Id.)

(viii) *Spray Painting in Other Industries.* Spray painting is done in many other industries, primarily those in which repair and refurbishing are performed. The shipbuilding industry is discussed under that industry category. Wherever spray painting is done the controls and method of application discussed in the general section apply. (Id.)

(e) *Exposure Levels*

(i) *General Methods For Determining Exposure Resulting From Paints.* Paint mist refers to the nonvolatile component of the coating aerosol. Its concentration in the breathing zone of spray painters can be determined gravimetrically as an index of overspray control. NIOSH reports concentrations for continuous painting operations as 8-hour time-weighted averages; results from intermittent painting operations are reported for the duration of the specific painting operations. (Id.)

The level of airborne paint mist is a more reliable indicator of the degree of control in manual spray finishing than the concentration of solvent vapors. Solvent concentrations were well below the recommended maximum even when paint mist levels exceeded the maximum concentration permitted for nuisance dusts. In no case was the reverse true. If the paint composition is known, the concentration of paint mist can also be used as a guide in estimating the potential exposure to specific nonvolatile paint components. For example, if the concentration of paint mist is 5 $\mu g/m^3$, and lead represents 1 percent by weight of the paint solids, then the airborne concentration of lead could be estimated at 50 $\mu g/m^3$. (Id.)

Continuous operations include both manual and automatic application processes where the painter remains in one location as the workpiece passes by on a conveyor. The concentration of total paint mist for the majority of continuous spray finishing operations did not exceed 5 $\mu g/m^3$, provided that spray booth ventilation rates met minimum OSHA requirements (specified in 29 CFR 1910.94) and good spray painting practices were observed. The continuous painting operations that exceeded this concentration involved either the spraying of internal cavities (case study 6) or faulty ventilation and work practices (case study 3). With the corrections suggested in these case studies, paint mist levels could be controlled to below 5 $\mu g/m^3$, and would achieve compliance with the lead standard (Id.).

Intermittent operations are non-conveyorized processes where a relatively large workpiece is positioned in a booth; after finishing operations are completed by a mobile painter, the workpiece is removed and replaced by the next unit. The concentrations of paint mist reported for intermittent painting operations range from 2.0 to 43.3 $\mu g/m^3$. Differences were due to the relative success in maintaining proper air flow orientation as the painter changes position and the degree of sophistication of the paint application equipment. The paint mist concentration for the majority of these operations could be controlled to below 10 $\mu g/m^3$ if ventilation and/or application techniques were improved. An exception would be the finishing of relatively enclosed spaces, such as vehicle interiors. (Id.)

Specific data have been compiled which indicate the levels of lead which may be in some paint mists. The amount of lead, by weight, in the dried film of paints using these pigments may reach 15 percent. In no case where the lead content approached this figure was the 50 $\mu g/m^3$ limit for lead met. Operations using alkyd resin enamels employing lead only as soaps for paint drying did not exceed the 50 $\mu g/m^3$ standard when minimum ventilation requirements were met. (Id.)

Based on the maximum paint mist concentration of 5 $\mu g/m^3$ found in well-controlled finishing operations, up to 1 percent lead could be tolerated in the dried film and the OSHA standard for airborne lead would still be met. This is not a practical concentration for the pigments typically used. However, where a variety of colors are painted, the "average" paint for the workshift may be well below this figure and the subsequent average exposure for the shift may be below 50 $\mu g/m^3$. (Id.)

The lead pigments provide durability to paint finishes and thus find greatest use on transportation and heavy equipment. Of the operations in these categories, the heavy equipment finishing operation comes closest to meeting the 50 $\mu g/m^3$ standard, with an 8-hour time-weighted average concentration of about 100 $\mu g/m^3$ during painting of equipment exteriors. (Id.)

(ii) *Specific Exposure Data.* Some data specific to lead exposures have been compiled as a result of OSHA compliance activities. Case No. PIT–3 involves spray painting in the automobile industry (Ex. 476–16). Automobiles are moved by conveyor system, electrically charged with the opposite charge of the paints being used, and then sprayed on the cars as they leave the booth. Exposures were 32.8 $\mu g/m^3$. The company indicated that in its previous sampling, levels were generally around 30 $\mu g/m^3$. All workers are exposed below 50 $\mu g/m^3$ of lead, although the company requires that MSA comfort II respirators are worn. OSHA Case No. TD–5 involved spray painting of plastic parts for automobiles. Levels measured were 187 $\mu g/m^3$, 293 $\mu g/m^3$ and 132 $\mu g/m^3$ before the company upgraded the spray paint facility. After upgrading, the levels ranged from 0 to .067 $\mu g/m^3$. Respirators also were being used. Most of the upgrading consisted of increasing the ventilation, improving or replacing filters, installation of new fans, and performing needed maintenance. Two spray booths were replaced by ones which utilize a water-wash entrapment technique to collect contaminants.

OSHA case number WB–2 involves painting of large industrial mufflers. Painting was done in an enormous spray booth. Levels of exposure were measured at 14 $\mu g/m^3$ and 24 $\mu g/m^3$. Compliance was achieved solely through the use of exhaust ventilation of the booth. However, although the company was in compliance, company policy requires that respirators be worn at all times. The company also stated that its implementation of this ventilation system in the spray booth resulted in an improved spray finish on its products.

(f) *Additional Controls*

Spray booths that meet OSHA design requirements are capable of controlling total paint mist and organic solvent vapors to within recommended maximums. Spray booths are partially effective in the control of toxic metals and other dangerous materials, insofar as they contain the hazard within the booth.

Several factors not addressed by the OSHA standard have a significant bearing on the effectiveness of a booth in protecting the health of the painter.

The distribution of air within the spray booth is at least as significant as the average air velocity. Supply and exhaust air chambers are often built without regard to accepted criteria for plenum design (Ex. 476–412). Particular problems occur where fresh air is supplied at a velocity that is too great, introduced in a direction other than the direction of exhaust, or introduced between the painter and the point of exhaust.

In order for protection to be maintained, the spray painter must not position himself between the object being painted and the point of exhaust. Where all sides of an object require painting, the operator can maintain proper position if the object is rotated, or if a downdraft booth is employed. (Ex. 476–12)

The air velocities recommended in the standard are useful guides in determining air volume requirements, but may be either too restrictive or inadequate, depending on the toxicity of the paint material, and the method and rate of paint application. Higher air flow rates should be considered for highly toxic materials in order to minimize

exposure, although even at these higher rates control may not be complete.

In spray booths equipped with dry filters, airflow must be monitored because it decreases with the build-up of overspray on the filters. Manometers are frequently used to monitor the pressure loss across the filter media. Filters are changed when resistance reaches a predetermined level. Too often these manometers are broken, low on fluid, mounted where they cannot be seen, or no change point has been determined. A more positive means to ensure that the filters are changed is the use of a pressure switch and interlock that prohibits activation of the spray gun when the filter is fully loaded.

The working environment of the spray finisher can be improved by the use of paint application methods that minimize the energy expended in the atomization process. Electrostatic discs and bells atomize paint primarily by electrostatic forces and produce very little stray paint mist. An electrostatic bell system was evaluated in case study 6 (Id.). With minimal air movement in the automated spray room (for the purpose of diluting the evaporating solvents), the mean concentration of paint mist was only 0.1 $\mu g/m^3$.

When either air-atomized or airless electrostatic methods are used with heated paint, they can produce low levels of overspray, even when relatively large and complex shapes are painted. Paint mist concentrations of 2.0 $\mu g/m^3$ were measured when these methods were used to finish the exteriors of heavy equipment. Airless techniques appear to be particularly useful in painting recesses or internal cavities. Not only do they provide a cleaner work environment, but they apply paint faster and cover inside corners better. In a similar operation using conventional spray guns, paint mist concentrations were over 10 times as high. This higher level of paint mist was found despite the fact that the total number of units requiring internal painting was significantly less.

There is some reluctance to use high technology application equipment, especially where appearance is a critical factor. This is due either to the greater versatility of conventional air-atomized spray equipment or to some inherent cost limitations with the more sophisticated techniques. However, in many operations, ventilation is impractical, and efficient application techniques are the only logical choice.

Respiratory protection may be required in those spray finishing operations that employ significant quantities of highly toxic materials, such as lead, chromium, or reactive compounds (isocyanates and epoxy curing agents). It is also necessary for protection against paint mist and organic solvents in painting enclosed spaces and other areas where ventilation is compromised. The lead standard contains respirator selection guidelines.

(g) *Conclusion: Technological Feasibility*

OSHA has determined that substitution of non-lead based paints is one feasible alternative for the industry. Lead and other toxic metal pigments should be eliminated where possible.

Spray booths can be used which maximize the enclosure of the painting operation. The choice of a downdraft or sidedraft booth depends largely on the configuration of the object that is to be painted. Air flow must be in a direction which will carry contaminated air away from the breathing zone of the painter. If necessary, work platforms, product rotators, or other means must be provided in order that the proper orientation of air flow can be maintained.

Application equipment is available which minimizes the energy expended in the atomization process, thus reducing the amount of stray mist that is generated. The recommendations of the paint formulator concerning the method of application and the atomization parameters should be strictly followed.

Several commenters discussed the problems associated with applying lead paint to surfaces. Billings noted problems encountered with "bounce back" and suggested that application be automated or be done by brush or roller in these instances where possible. However, it appears that in some cases, depending on the number of spray painters, the size of the object, and numerous other environmental factors, the PEL in spray painting can be achieved through the use of currently acceptable control technologies and without reliance on a respirator, as OSHA's compliance activities demonstrate (Ex. 476–16). Even in industries such as the automobile industry which were previously felt to be at the state-of-the-art, new techniques are being used which are achieving compliance with 50 $\mu g/m^3$. In most of these situations, even when compliance is being achieved, employers are requiring workers to wear respirators as an added safety measure, but not air-supplied respirators. Certain operations, such as painting deep recesses or confined spaces cannot be effectively controlled by ventilation. Airless application methods can be used for these operations. However, OSHA recognizes that in some of these cases, due to the conditions of application, engineering controls alone will not be adequate to achieve the PEL and respirators may be necessary in addition to currently available controls. However, the industry generally appears to have the control technology necessary to achieve compliance with 50 $\mu g/m^3$. In addition, employers may rotate workers, thereby reducing levels to an even lower extent.

39. Steel Manufacture

(a) *Primary Steel Production*

(1) *Process Description and Exposure Areas.* The basic oxygen steelmaking process uses as its principal raw material molten pig iron from a blast furnace. The other source of metal is scrap. Scrap is processed similar to the methods used in scrap processing and collection; hydraulic scrap cutters may be used. Only the processing of lead scrap poses a problem. Lime, rather than limestone, is the fluxing agent. As the name implies, heat is provided by the use of oxygen.

The basic oxygen furnace (BOF) is a steel shell lined with refractory materials which is supported on horizontal trunnions so that it can be tilted. Usually these furnaces are installed in pairs so that while one is making steel the other can be filled with raw materials.

The first step for making a heat of steel in a BOF is to tilt the furnace and charge it by larry car with steel scrap. Immediately following the scrap charge, an overhead crane presents a ladle of molten iron from a blast furnace or from a holding device called a mixer.

As soon as the furnace is charged, and set uprighted the oxygen lance is lowered and the oxygen is turned on. In a very short time the heat increases and lime, fluorspar (and sometimes scale) are added via a retractable chute to the metallic charge. From that point on, the blowing procedure is uninterrupted. Oxygen combines with carbon and other unwanted elements eliminating those impurities from the molten charge and converting it to steel. The lime and fluorspar help to carry off the impurities as a flowing layer of slag on top of the metal which is now entirely molten.

When the batch of steel is complete, the oxygen is shut off, the clamps on the lance are released, and the lance is retracted through the hood. The furnace is then tilted in the direction opposite to that in which it is charged, and molten steel flows through a tap hole that is located near the top of the furnace. A ladle receives the molten steel. The slag, which floats on top of the steel, stays

above the taphole by the progressive tilt of the furnace.

Electric arc furnaces are used for producing alloy, stainless, tool and other specialty steels. More recently operators have also learned to make larger heats of carbon steels in these furnaces. Therefore, the electric steel making process is becoming a high-tonnage producer.

Electric arc furnaces are shallow steel cylinders lined with refractory brick. They are charged in one operation from buckets or other containers brought in by overhead cranes. The roof of an electric furnace is pierced so that three carbon or graphite electrodes can be lowered into the furnace. These electrodes provide the current arcs from one electrode to the metallic charge and then from the charge to the next electrode, causing intense heat.

In each process the end product is molten steel in a ladle. In this form the steel is useless. It must be solidified into forms that are suitable for further shaping by the steel industry's rolling mills and other finishing facilities. Molten steel direct from furnaces is rarely cast into finished products.

The traditional method of handling raw steel from a furnace it to "teem" it from the ladle into ingot molds of various sizes and shapes. Alloys are added to the ladle of steel often by chutes extended from above the teeming floor. However, injection may be by gun.

The ladle into which the molten steel from the furnace has been tapped is usually mounted on a railcar which is moved to a position where an overhead crane can lift it. The overhead crane lifts the ladle of molten steel to a position where it can be poured into ingot molds, (or into a strand or continuous casting machine) for solidification.

The size and shape of an ingot is determined by the size of the roughing mill designed to handle it. Roughing mills produce semifinished forms of steel such as blooms, which are roughly square in cross section; slabs, which are rectangular in cross section; and billets which are smaller than blooms in cross section and usually much longer.

A more modern technique than the traditional ingot procedure is the use of a strand casting machine to receive molten steel and produce such semifinished solid products as slabs or billets. In so doing, they bypass ingot teeming, stripping, soaking and rolling.

There are several kinds of strand casting machines, but the principles of their operation are similar. Molten steel from a furnace is carried in a ladle to the top of the strand caster. A stopper in the bottom of the furnace ladle is lifted so that molten metal drops into the tundish (which provides an even pool of molten metal to be fed into the casting machine), which also acts as a reservoir allowing an empty ladle to be removed and a full ladle to be positioned and to start pouring without interrupting the flow of metal to the casting machine. In some strand casters the descending column of steel is cut to desired lengths while still in a vertical position. This is done by traveling cutting torches.

Molten metal is often received from conventional steelmaking furnaces and refined to remove impurities quickly before the steel solidifies. Among the vessels and other facilities used in this operation are those for vacuum stream degassing, vacuum/ladle degassing, argon-oxygen decarburization and vacuum/oxygen decarburization. Electron beam processing generally begins with carefully selected and prepared cold raw materials. However, there is nothing to prevent the electron beam facilities from being charged with molten steel from a primary smelter. These remelting processes are used mostly in the production of sophisticated alloys and specialty steels.

Sources of lead exposure in steel making include leaded heats (i.e., additions of lead either to the blast furnace as an additive to the molten iron or to the ingot molds at the time that the steel from the furnace is poured into the molds). Lead is usually added to ingot molds as lead shot in order to provide the finished steel with useful properties for machining operations (477–5G). More specifically lead exposures occur at the pouring stand of the "Pit" section where leaded steel is produced. (476–442). From the BOF, a steel ladle is transported via a crane to a stand where ingot molds are present. During each "teeming" (adding molten steel to ingots molds) 50 pounds of lead shot are added to each ingot when it is one-third to two-thirds full. Lead is added to the steel stream with a "lead" gun comprised of a rubber hose and long steel pipe with a nozzle. Workers must operate the guns, throw toppings on each ingot to keep the molds from losing their heat, and must take a steel sample.

(ii) *Controls Currently Used.* Materials handling is often done mechanically or pneumatically. Scrap is processed by using hydraulic cutters to reduce its size prior to charging furnaces (Ex. 500, p. 5). Local exhaust ventilation of furnace areas, ladles carrying molten melts, and casting areas is also used.

Companies may (Ex. 476) use a pneumatically operated "lead gun" to inject lead shot into the molten metal stream from the teeming ladle. A traveling ventilation system is attached to the teeming ladle. A hood serves the ingot mold being filled, and is connected to a 20-foot flexible duct which exhausts through a plenum to a baghouse. The traveling exhaust system is disconnected and reconnected during teeming so that it can be moved along with the teeming ladle. The duct (which ventilates the exhaust hood) is moved manually at its point of connection into the plenum.

At the molding operations, the ventilation consists of built-in local exhaust systems. Adjacent to each ingot mold there are lateral exhaust hoods. Hoods are opened in a sequence to reduce total ventilation air quantity. Lead captured is conveyed to fabric filters, shaken into polyethylene lined bags.

An OSHA inspection identified as case #PIT–2 reported that 3–4 hours per day, while the molten steel is being poured (Ex. 476–480), once or twice per shift. Also, this company invented a sliding ventilation system with telescoping duct work. The system was also connected to a baghouse which emptied the contaminant collected into a drum for disposal. The system is used exclusively for leaded steel pours. In this particular operation the crane operator was not in an enclosed cab and his exposures were in excess of 200 $\mu g/m^3$; the company is installing a positive pressure, filtered air cab on the crane to achieve compliance with 50 $\mu g/m^3$. This company also rotated workers' shifts (i.e. one crew works one month with lead and spends two months removed from lead).

(iii) *Exposure Levels.* Exposure data collected at teeming operations indicate that at the CFI Steel (Ex. 476–457) plant lead breathing zone samples ranged from 1 $\mu g/m^3$–70 $\mu g/m^3$ with 22 percent of the samples exceeding the 50 $\mu g/m^3$ standard. Other comparable data has been recorded which ranges from 10 $\mu g/m^3$–190 $\mu g/m^3$ with the mean value near 50 $\mu g/m^3$ (Ex. 476–456).

Data collected during teeming indicates that levels range from 20 $\mu g/m^3$ to 2800 $\mu g/m^3$ with the majority of data exceeding 200 $\mu g/m^3$ (Id.). OSHA inspection number PIT–2 found levels at one teeming operation of 200 $\mu g/m^3$ for the ladle preparer, 60 $\mu g/m^3$ and 70 $\mu g/m^3$ for helpers, 40 and 50 $\mu g/m^3$ for pitmen, 60 $\mu g/m^3$ for pourer's and 30 $\mu g/m^3$ for the pourer's helper and 230 $\mu g/m^3$ for the craneman (Ex. 476–460). Controls which were in place were designed to achieve compliance with a 200 $\mu g/m^3$ standard.

(iv) *Additional Controls.* The controls exist to achieve compliance in steel manufacture, more specifically in alloying, but some employers may need to upgrade existing equipment. In fact,

OSHA's recommendation in case #PIT-2 was that compliance in this operation with 50 $\mu g/m^3$ could be achieved by widening the flanges on the hood of the telescoping duct work and increasing the total ventilation system air volume flow rate.

Materials handling operations should include more local exhausting of emissions sources. Recommended controls also consist of improving the ventilation at the teeming operations. The local exhaust hoods used are only as wide as the molds. Flanges and side baffles should be used to increase the capture area. Crane operators can be placed inside enclosed cabs.

Good employee work practices can help minimize exposure. High lead concentrations are a result of workers heaving toppings into the molds instead of gently pushing to avoid splattering (Ex. 476-455). NIOSH HHE-CFI). Workers can be taught to position themselves in pouring operations, etc. in such a fashion as to minimize their lead exposure. In addition, employers may find it necessary to rotate workers on a more frequent basis than monthly to comply with 50 $\mu g/m^3$ standard.

(v) *Conclusion: Technological Feasibility.* The steel industry is presently undergoing a modernization program. To be consistent with the modernization program, OSHA recognizes the need to have control of lead exposures accomplished in conjunction with these modernization efforts. The extended compliance period of three years is consistent with these efforts and is provided despite the fact that existing controls can technologically control lead. Rather, OSHA believes lead control should not occur in a vacuum when a more cost-effective, long-term solution to a host of environmental problems can be accomplished within the framework of modernization. OSHA has concluded that compliance deadlines for the lead standard should parallel the timetable established for modernization by the Steel Tripartite Advisory Committee. The Committee envisions that modernization will be completed in 3 years; then, if retooling is not completed another two years will be provided. Accordingly, OSHA has provided a 3 year compliance deadline and may reconsider extending that period based on existing conditions at that time (Slip opinion, p. 162).

OSHA has also set an interim level of one year in which to achieve compliance with the 100 $\mu g/m^3$ level. This action is taken to assure that employers who do not plan to remodel their teeming facilities do not allow lead levels to remain unnecessarily high. Those employers who do plan to modernize their teeming facilities will be eligible to bypass the interim level. 29 CFR 1910.1025(e)(4). In the interim, these employers should maintain the effectiveness of existing systems, provide enhanced housekeeping, and rotate workers to maintain lead levels as close to the 50 $\mu g/m^3$ standard as possible.

(b) *Secondary Steel Manufacture*

(i) *Process Description and Exposure Area.* Scrap steel is received and cut using acetylene cutting to reduce the size of the scrap so that it will be suitable to feed into the furnace. Exposure to lead may occur where the scrap contains lead.

Electric induction furnaces are primarily used to remelt scrap. As the steel scrap melts, a pool of liquid metal is formed on the furnace bottom, but when the entire bath is molten, the stirring action of the inducing current moves all of the liquid steel with no dead spots.

There is little need for a slag during induction melting since the surface of the liquid metal exposed to air is small in relation to its volume.

After melting is complete, the operator makes necessary additions of alloys or deoxidizers to bring the steel to a specified chemical composition. When the analysis and temperature of a heat are completed the furnace is tilted and the molten metal runs out over the lip into a ladle or directly into a mold.

(ii) *Controls Currently Used.* Materials handling is done mechanically or pneumatically, with scrap either being processed on the site or purchased ready to use. Scrap processing in the steel industry is comparable to general scrap processing and requires sorting, chopping, and burning (cutting). Local exhaust ventilation at the ladles, molds, and other sources of emissions is also used. Generally, the ventilation controls are similar to those found in the primary steel processes.

(iii) *Exposure Levels.* Exposure data submitted by USWA (Ex. 483) indicates that lead levels in scrap processing are low. Out of 13 samples taken none were above 36 $\mu g/m^3$ and most were between 7–15 $\mu g/m^3$

(iv) *Population Exposed.* The number of workers exposed in secondary steel operations is unknown. However, since the data indicate that lead levels in scrap processing may be low, OSHA estimates that only a small percentage of workers are exposed in excess of 50 $\mu g/m^3$

(v) *Additional Controls.* None are required. Maintenance of existing controls and housekeeping should keep lead levels below 50 $\mu g/m^3$.

(vi) *Conclusion: Technological Feasibility.* In secondary steel manufacture it appears that 50 $\mu g/m^3$ can be met and in some operations is currently being met with existing technology. In those instances where levels are in excess of the PEL, upgraded ventilation systems coupled with worker rotation can be used to achieve compliance with 50 $\mu g/m^3$. In addition, improved housekeeping and maintenance of existing controls will permit compliance with 50 $\mu g/m^3$ in one year even in the more difficult situations.

(c) *Forming Steel Products*

(i) *Process Description and Exposure Area.*—(a) *Processes.* Forging may be defined as using compressive force in such a manner that the lines of metal-flow in a product put the greatest strength where it is needed. There are two major types of hot forgings—open-die and closed-die. In open-die forgings, large presses are used which squeeze the steel between two flat surfaces. Closed-die forging uses matching tool steel dies into which the shape of the desired finished product has been "carved." The steel is placed between the two dies which are hammered together. The hot metal inside the closed dies flows to fill both halves upon impact from a steam hammer. Forging presses may be driven hydraulically, although some exert pressure through mechanical devices.

Other operations which fall under the general category of forging include extrusion, upsetting and roll forging. All of these knead the original steel into a denser structure and bring it so close to its original finished shape that it requires minimal cutting with machine tools. Thus, very little metal is lost as scrap.

Steel may be rolled hot or cold. The cold rolling process hardens sheet steel so that it must be heated in an annealing furnace to make it more formable. The batch (or box) annealing furnace requires that coils of cold rolled sheets be stacked on a special base with huge covers that are cylindrical. Then a huge box-like annealing furnace is lowered over the covered stacks of cold reduced sheets and the temperature is increased to a specific level for the desired end product. The length of time that the sheets are heated at a given temperature, and the length of time allowed for them to cool is of extreme importance in meeting customer specifications. The heating and recooling of the cold, reduced sheets may take 5 or 6 days.

Alternatively, continuous annealing facilities may be used, depending upon the end product desired. Continuous annealing lines are imposing structures often longer than a city block and several stories high. The coils of cold rolled sheet are uncoiled and led up and down through towers in the annealer, and subjected to heat. The steel is "softened" in preparation for further processing.

If the desired end product is cold rolled sheet and the product will not be coated, the annealed cold rolled sheet will often be sent to a temper mill. The temper mill provides flatness and surface quality for many end products such as sheets for automoble bodies, or home appearance.

It is not at all uncommon to prepare steel slabs scheduled for rolling into high quality sheet and then strip these sheets by grinding or burning off surface imperfections on them with torches in a process called scarfing.

A Sendzimir mill rolls extremely thin-gage steel sheets. Most tin plate is produced by the electrolytic method.

There are three continuous tin plating processes in general use in the United States today; halogen, alkaline and acid. All three start with a product called black plate which is actually a form of cold rolled sheet that has been annealed, usually in a continuous annealing line.

Other products formed from steel are hot rolled or cold drawn bars, structural steel shapes, steel plates, clad plates, pipes, tubing, and wire. A discussion of pipe galvanizers and wire patenting is provided in separate sections.

Lead exposure only results when the steel being worked contains lead.

(ii) *Controls Currently Used.*

The initial operation in the forming of steel is the heating of metal ingots in soaking pits. These pits are charged and emptied by overhead cranes and are heated by gas. Potential contaminants from this operation include carbon monoxide from incomplete combustion of the gas, and dust from the slag that falls from the ingots and is removed from the bottom of the pits in the cinder tunnel. The soaking pitmen and bottom-makers are the most likely employees to be exposed to toxic dust when they clean and repair the pits. The crane operators who work above the soaking pits are in air conditioned crane cabs, so their exposure is expected to be low.

The hot ingots are moved by crane from the soaking pits to a transfer table which moves them to the rolling or roughing mill. The transfer table is operated from an air conditioned enclosure or "pulpit" and employees are exposed to very little dust or other contaminants. (Ex. 476–453).

The roughing mill is operated from an air conditioned pulpit and the ingot is passed back and forth between the rollers until it has been reduced to a billet or slab of desired dimensions. It is then sent to a scarfing operation, also controlled from an air conditioned pulpit, where the outer coating of impurities is removed with a combination of high pressure water and flame. The ends of the bloom, billet, or slab are then sheared off and the semi-finished shape is removed from the area. This shearing step is also controlled from an air conditioned enclosure.

While the first few passes of the ingot through the rollers creates some metal fumes and dust particles, these are generally of a large diameter and nonrespirable and the major source of toxic contamination is the scarfing. During a NIOSH investigation, a dense smoke was observed rising from the scarfer, especially during the scarfing of ingots identified as being from high sulfur heats. There is one overhead crane operator who works in this area in an open cab and his exposures can be quite high except that he does not spend his full work shift in the crane. There are also workers on the floor in the vicinity of the rolling mill and these employees are potentially exposed to many contaminants.

Other employees routinely stationed in this department are the scarfer repairmen who spend much of their time in a workroom partitioned off from the general mill area. They are exposed to the fumes and dust from the mill and also to metal dust created in grinding and cleaning operations they perform in their workroom.

(iii) *Exposure Levels.* Exposure levels averaged 10–20 $\mu g/m^3$ of lead except for one sample from a mill laborer which was 190 $\mu g/m^3$ (Ex. 476–452). Two years later lead levels were 17 $\mu g/m^3$ (Ex. 476–453). One sample in the study was as high as 35.4 $\mu g/m^3$. (Id.)

Exposure data collected at scarfing operations shows a great deal of variation; sometimes these jobs are below 50, sometimes they are not (CFI).

Lead exposure reductions in flame scarfing operations have been accomplished by staggering the workers. Conditioning may be done by grinding. In fact CFI suggests that flame scarfing is being replaced by grinding machines due in part to the fact that the cost of gas used in scarfing is prohibitive in certain locations. (Ex. 476, CFI)

(iv) *Additional Controls.* The controls needed for compliance when forming steel products consists of the use of existing technologies such as ventilation, isolation and enclosure. AISI (Ex. 500, p. 6) estimates that some companies which have not used these controls may have to isolate processes and install crane pulpits, although. AISI states that even with these engineering and administrative controls levels would not consistently be below 50 $\mu g/m^3$. AISI also maintains that ventilation of mill stands is not possible, because ventilation above the stands would be destroyed by cobbles (twisting masses of steel). Down draft ventilation in these instances could be used, although with some effort and keen awareness of engineering design, a local exhaust system for this operation could be devised. Grinding operations can be controlled by the use of local exhaust ventilation although AISI maintains that the use of air-supplied respirators is necessary to comply with 50 $\mu g/m^3$. Scarfing operations could be substituted with grinding, thereby reducing levels. However, while this may be an alternative, more traditional methods have been used in other burning operations to achieve compliance with 50 $\mu g/m^3$ (See Lead Burning section).

(v) *Conclusion: Technological Feasibility.* Although AISI maintains that it is not feasible to use existing technologies to achieve compliance with 50 $\mu g/m^3$ in steel product formation, the data suggests that compliance is achievable and existing technology need only be applied to the industry. Unlike the primary production of steel, this portion of the industry is not modernizing due to financial constraints. Easily installed, available technology can reduce lead to the PEL. Therefore, compliance with the standard is required within a one-year period. The exposure data indicates that some mills are complying. Scarfing operations (Ex. 476–455) in some cases are merely being controlled by staggering workers and the alternative of grinding is being reduced in some instances by the high costs of fuel needed to operate scarfing torches. Firms not in compliance in this industry need only try, and through the use of control strategies consisting of engineering controls, work practices, and worker rotation the 50 $\mu g/m^3$ standard can be met.

(d) *Steel Fabrication*

Sheets of steel are cut using an oxygen-acetylene cutting torch, then welded together to produce a finished product.

Lead exposure could result if the sheets being cut are lead steel. The NIOSH HHE (Ex. 476–456) done on the Grand Junction Steel Co. indicates that lead levels were nondetectable, however, excesses of iron oxide, etc.,

were found. Recommended controls include the use of local exhaust ventilation and/or electrostatic precipitators to minimize welding fumes. The same controls would reduce lead exposures if lead were present.

(e) *Economic Feasibility*

(i) *Cost of Compliance.* There are several potential sources of lead exposure in the steel industry. These include the production of leaded steel and terne metal (a lead-tin alloy), and the processes of annealing, patenting, grinding and scarfing steel products (USWA, Ex. 477–5).

The American Iron and Steel Institute states that compliance with the lead standard is "prohibitively costly" and estimates costs in the range of $500,000 to $1,000,000 per teeming facility for upgraded evacuation systems, and $5,500,000 per teeming facility when no evacuation systems are currently in place (Ex. 475–30(A)). No engineering or financial details were provided with these estimates. Similarly, an unsupported estimate of $5,600,000 for a completely redesigned hood in a teeming operation was provided by AISI (Ex. 500). With respect to operations in rolling mills, AISI received estimates from one member company of $10,000 for isolation controls, $30,000 for two crane pulpits, and $200,000 for four crane cabs to control exposures in soaking pits. Ventilation of mill stands was estimated to be "so expensive that it is not economically feasible." Downdraft ventilation, which was the only type of ventilation deemed effective, would necessitate reconstruction of complete facilities (Ex. 475–500).

Estimates for substitution of two salt baths, which have been substituted for lead baths in wire patenting processes, were $65,000 to $115,000 where existing controls were in place. Replacement of existing controls with a fluidized bed system was estimated to cost $750,000. The Stelmor process, which reduces but does not eliminate the need for patenting operations in the production of wire or rod (Ex. 475–500), requires capital investment of about $100,000,000 for new plant construction (Ex. 476–482). However, about 25 steel works in the steel industry have already switched to the Stelmor process (Ex. 474–22), and some steel plants have substituted salt baths for lead baths in annealing and patenting operations (Ex. 476–486). Bethlehem Steel has instituted a process change in wire patenting operations that enables it to achieve compliance, but neither the details on the process nor the costs were specified (Ex. 476–481). According to the International Wire Association, the use of lead in wire patenting is being phased out by replacement with other processes (Ex. 476–484).

Cost data for the substitution of grinding for scarfing operations, which reduces exposure to lead (Ex. 475–500), were estimated at $1,530,000 with a 2-year period required for design, building, and installation (Ex. 476–425). AISI stated an additional cost of $2,750,000 for a baghouse (Ex. 500) to prevent release of pollutants into the ambient air, however, this cost is not attributable to OSHA. Furthermore, there may be cost incentives spurring the move from scarfing to grinding in certain locations where the price of special gases needed for scarfing is rising. This increase in price limits the attractiveness of scarfing when compared with grinding (Ex. 476–425).

AISI did not describe the baseline of current controls in the industry nor did it attempt to show examples of current attempts at compliance in the industry. Both Copperweld and Jones and Laughlin stated that OSHA requirements were "burdensome," but they also indicated that process controls, such as stationary and traveling local exhaust ventilation systems, were in place and effective in reducing air lead levels (Ex. 476–440 and Ex. 476–431). In addition, AISI did not consider the effectiveness of housekeeping and work practices, which are relatively inexpensive methods of control, in estimating costs of compliance. Thus, OSHA believes that their costs are biased upward for each plant and, if extrapolated, would substantially overstate costs for the industry as a whole.

OSHA estimates, based on the data of DBA (Ex. 474–65B), capital costs for the wire patenting firms would range between $1.25 million and $2.5 million. In addition, firms may also need to spend $3 to $5 million in annual operating costs. For long terne metal producers the annualized capital costs are estimated to range between $63,000 and $125,000. Estimated annual operating costs range between $157,000 and $265,000 for these producers.

(ii) *Industry Profile.* Within the steel industry there are an estimated 58 companies in SIC 33122 producing steel ingot and semifinished shapes, 85 companies in SIC 33124 producing hot rolled bars, bar shapes, and plate, and 24 companies in SIC 33125 producing steel wire as part of steel mill operations. Alloy steels, including leaded steels, valued at $1,067,343,000 comprised about 25 percent of total steel ingot shipments valued at $4,028,000,000 in 1977. Steel wire, some of which is produced by lead patenting or annealing), manufactured in steel mills was valued at $308,900,000 in 1977. The quantity and value of long ternes (SIC 3312317) and short ternes (SIC 3312329) were not disaggregated from other tin mill products in the published data (Ex. 476–436), but represents a relatively small portion of steel mill production (Ex. 476–475). All processes that potentially involve exposure to lead in steel production are included in the industrial classifications above.

Several of the major steel producers, including Bethlehem Steel, U.S. Steel, Inland Steel, Copperweld, Republic Steel, and Jones and Laughlin, produce leaded steel alloys (Ex. 476–434, Ex. 476–431, Ex. 476–449). In addition, some specialty steel producers may also add lead to steel ingots for end use in free machining castings (Ex. 474–22, p. 203).

Very few companies produce terne metal products (Ex. 476–475). Long ternes (sheet steel that has been coated with a tin-lead alloy) can be produced in continuous and single-sheet coating processes. The latter is less efficient than the continuous process which eliminates some intermittent operations associated with sheet pots and produces a higher quality product since the coating is more uniform. All long terne production processes at U.S. Steel facilities are continuous, but other companies may still use single-sheet coating, which has the advantage of being more adaptable to small, varied orders, especially with respect to the size of sheets needed. Gasoline tanks for tractors, trucks, and automobiles are the major end use of long ternes (Ex. 476–475). Terne plate, occasionally known as short terne, is produced in very small quantities today. It is no longer used at all for roofing material, firedoor plates, or other former uses (476–475).

An estimated 100 plants produce wire by using lead patenting operations (Ex. 474–22). Not all patented wire is produced by steel companies, however, and those steel companies that do produce wire usually have separate facilities or distinct plants for this purpose. At least two of these producers have used substitution or other controls to comply with the lead standard. CF&I has switched to a sodium bath (Ex. 476–435), and Bethlehem Steel has controlled lead exposures by improving local exhaust ventilation and adding a surface active agent to the molten lead (Ex. 476–454).

Another producer, who produces lead patented wire only when orders are received from customers, considers the operation "marginal." Exposures, which occur intermittently, are not controlled by any ventilation at all. However,

housekeeping, including vaccuming of dust created in scale from the dragout operation, is performed (Ex. 476–431).

For this analysis, OSHA recognizes that data specific to the producers of leaded products within the steel industry would be preferable to data for the steel industry in general. However, neither the published data nor the submission of AISI are disaggreated in this manner. Therefore, the following discussion of economic conditions in the steel industry is assumed to be applicable to those firms within the steel industry that are affected by the lead standard.

The steel industry has been characterized as a laggard industry that has failed to keep up with changes in technology. The industry faces strong foreign competition and recent reduced demand for steel stemming from the decline in production of automobiles and other consumer durables, such as home appliances. Domestic industry shipments are expected to decline 5 percent in 1980 (Ex. 476–26).

In 1978, significantly increased demand for steel in the nonresidential construction market and for machinery, industrial equipment, and railroad equipment resulted in the third best volume year on record with 100 million tons in domestic shipments. However, metal production decined nearly 2 percent as steel mills reduced their inventories by more than 1 million tons. Steel imports also declined 24 percent in 1979, as a result of increased prices for foreign steel, which rose from $314 per ton to $400 per ton. Trigger prices, which are based on the production costs of the most efficient foreign producers (the Japanese) were instituted in 1978 to discourage sales of imported steel at less than fair value (Ex. 476–26). Thus, a Steel Tripartite Advisory Committee, sponsored by the Departments of Labor and Commerce, was formed in 1979 to address the problems of modernization and capital formation, labor and community adjustment assistance, technological research and development, international trade, and environmental protection (Ex. 476–26). The committee found that the current situation of individual steel companies in terms of efficiency, profitability, and competitiveness varies significantly. Differences in technology, location, sources of raw materials, and management have affected the current conditions of firms. The slow growth in consumption of steel products, the worldwide excess steelmaking capacity and the increasing market share of foreign producers in the domestic market have combined to give the industry as a whole insufficient financial capability and incentive to modernize operations. For example, the advent of continuous casting processes were adopted in 50 percent of Japanese steel mills by the late 1970's, but only 15 percent of American steel producers used the more efficient technique (Ex. 476–39F). Moreover, while some U.S. Steel producers are phasing out 40- to 50-year-old mills, major Japanese companies are shutting down 20-year-old facilities, which would be regarded as modern by U.S. standards (Ex. 476–430). Thus, the domestic industry is left with an aged capital stock, declining productivity, obsolescence and falling industry employment (Ex. 476–39F).

In 1979, U.S. Steel alone, which produces leaded steels, closed 15 plants with a loss of 12,500 jobs (Ex. 476–430). However, one of U.S. Steel's problems was its continued production of steel products in many plants that had long since failed to generate adequate returns on investment. The long overdue restructuring has helped steel product lines remain profitable, suggesting that further consolidation moves will occur (Ex. 476–440).

On the other hand, some major producers have not felt the impact of current market conditions as severely. For instance, Inland Steel's capacity is sufficient to enable it to participate fully in steel production when the market recovers, and its major diversification out of steel has kept the company profitable over the past years (Ex. 476–442). Bethlehem Steel, which retired 10 percent of its steel capacity after difficulties in 1974 and 1975, has excellent prospects for record profits in the mid-1980's owing to recent and projected extensive modernizations (Ex. 476–443). Republic Steel, in spite of recent decisions to delay major capital outlays, is in sound financial condition and can keep its plans to modernize among its first priorities (Ex. 476–441). Armco has performed impressively in view of recessionary tendencies in the economy and declining steel demand. Record high profits were reported in 1980, owing partly to successful diversification but also to Armco's up-to-date operation of steel facilities. Electric furnaces comprise 45 percent of Armco's production (Ex. 476–441). Jones and Laughlin, a subsidiary of LTV Corporation, is undergoing operating problems. However, these may be moderated by the expenditure of hundreds of millions of dollars for needed modernizations (Value Line, Ex. 476–441).

In order to survive profitably, the domestic steel industry must modernize. The Tripartite Commission has set the stage for steel modernization in the 1980's, with particular emphasis on modernizing the economic base and adopting the best possible technology (Ex. 476–39F). Since it is probable that the most advanced technology is also the cleanest technology, OSHA regards modernization as generally beneficial to the safety and health of workers. In addition, since retrofit technology is typically expensive and more likely to be ineffective than redesigned equipment, the 1980's would appear to be the rational time to invest in safe and healthful equipment and processes.

(iii) *Conclusion.* The decade of the 1980's is set for the revitalization of the domestic steel industry. AISI reports that the industry needs to spend $4.4 billion per year to modernize and replace productive capability (476–39). Modernization of the industry inherently involve the installation of cleaner and more productive technology. To the extent that modernization is accompanied by a safer and more healthful work place, OSHA its implementation. OSHA also emphasizes that effective and efficient allocation of resources occurs when controls are designed into new processes rather than applied in retrofit fashion. Thus, the Agency urges steel producers to anticipate potential sources of hazardous exposure to lead and other substances and to engineer such hazards out of existence during the planning phase of rebuilding.

Moreover, AISI indicates that steel operations involving the use of lead are generally intermittent, "occurring for short periods in a day, weekly or even monthly" (Ex. 476–39A, pp. 7, 8). Consequently, although the industry did not submit data relating to the overall importance of lead steel, it is likely that leaded steel operations constitute only a minor part of the total output for many individual firms. Therefore, some of the firms which would be required to make large capital outlays for compliance may decide to concentrate exclusively on non-leaded steel products. This tendency toward specialization would significantly limit the overall compliance costs to the industry.

Therefore, in accordance with the goals of the revitalization plan, OSHA concludes that within 3 years, it should be economically feasible for the steel producers to comply with the lead standard. (Depending on conditions in the industry, OSHA will consider granting a two-year extension). OSHA encourages firms to comply with the regulation as soon as possible and requires interim protection of exposed

workers by means of worker rotation, respirators, or other effective measures.

The steel-related operations of wire patenting and terne metal production, which are not included within the scope of the revitalization plan, will be required to comply with the lead standard within one year. OSHA is allowing the firms included within the revitalization plans 3 years to comply because one of OSHA's concerns is promoting economic efficiency in complying with its regulations. Those firms will be able to implement more effective and efficient controls if they are allowed to be implemented in conjunction with the new investments which will be made over the next few years. It would be inefficient and ineffective for OSHA to require firms to retrofit production equipment that is going to be replaced and modified in the near future. In the case of firms involved in wire patenting and terne metal production, these considerations do not apply. In these operations, compliance can be achieved through simple modifications of existing equipment redesign or extensive retrofitting is not required.

To determine the economic feasibility for wire patenting firms to comply with this standard, estimates of the capital and operating costs of compliance are needed. These were provided by DBA and presented in the cost of compliance section above. Using those estimates and assuming a 12 percent rate of interest and a life expectancy of ten years for the required capital equipment, OSHA estimates that the annualized capital costs to this industry will now range between $1.25 million and $2.5 million. The new capital expenditures for this industry in 1977 were $79.4 million (Ex. 476–20). Thus, as these annualized capital costs represent, at most, only 3.1 percent of the total new capital expenditures in this industry, the rate of return to these firms' investments will not be appreciably lowered by compliance with this standard. DBA further supplies estimates of the annual operating costs of complying with this standard which ranges between $3 million and $5 million. Total 1977 shipments in this industry were $2,258.6 million. Thus, the annual operating costs represent, only 0.4% of the total shipments. Therefore, on the basis of the available data, OSHA concludes that this standard would impose very small costs upon the wire patenting industry. That conclusion, in turn, implies that this standard will have a minimal impact upon the price of lead coated wire, the prices of goods and services produced by industries using lead coated wire, the output and employment of firms producing lead coated wire, and the profitability of wire patenting operations, and, hence, the economic viability and health of small businesses, would not be altered by the costs of complying with this standard.

In order to determine the economic feasibility of the standard for long terne metal producing firms, estimates of the capital and operating costs of compliance were derived from data provided by DBA. Using those estimates and assuming a 12 percent rate of interest and a life expectancy of 10 years for the capital equipment required to comply with the standard, capital costs to this industry are estimated to range between $63,000 and $125,000. The estimated annual operating costs of complying with this standard range between $157,000 and $265,000. The available data indicate that only 3 companies manufacture long terne metal plate and that technological and economic efficiency dictates the use of large scale production technology. Thus, these costs should be a minor component of the total cost of long terne metal output. Another point to consider is that this product has no substitute (within the feasible price range) for automobile gas tanks and in gasoline truck tanks. Thus, this industry's costs of complying with the standard are likely to be passed on to the industrial purchaser of long terne metal plate. The effect which this passed-on cost will have upon the prices of the final goods using long terne metal plate (automobiles and gasoline tanker trucks) will be very small because the cost of the long terne metal products is only a minor component of the price of the final goods. Thus, the costs of complying with this standard will not measurably affect the prices of goods produced by industries using long terne metal plate, the output and employment of firms producing long terne metal plate, and the profitability of long terne metal plate operations.

40. Stevedoring

(a) *Uses.*

Stevedoring companies are those which arrange for the manpower to load or unload cargo from seagoing vessels. Only those stevedoring activities which require the handling of lead ore are discussed below.

(b) *Process Description and Exposure Areas*

West Gulf Maritime Association (Ex. 475–17) has indicated that a number of its member companies have been engaged in handling bulk concentrate ores of lead sulfide. Operations for its member companies consist of loading or unloading these concentrate ores to or from ships or barges with gantry cranes or mobile cranes utilizing clam buckets and industrial front-end loaders. Import ores are either discharged directly to trucks or railcars or stockpiled in dock-side warehouses for later land transit. Export ores are received at dock-side warehouses and stockpiled in the warehouses for later loading aboard ship or barge. The number of longshoremen or warehousemen involved in the handling of concentrate ores varies according to the kind of cargo, the size of the cargo, material handling equipment, vessel compartment size/configuration, etc. Lead exposure results from the handling of lead ores. Approximately, 50,000–100,000 tons of lead ore are handled each year (Ex. 475–17) in approximately 10–20 shipments (Ex. 475–28).

(c) *Controls Currently Used*

West Gulf Maritime Association (Ex. 475–17) presented data depicting the controls used in a typical operation. Discharging is performed with a clam bucket from a vessel direct to railcars and involves 1 signalman, 1–2 machine operators, 8–10 sweepers and 1 gang foreman. The signalman gives hoisting and bucket position signals to the crane operator. Machine operators operate a front end loader in hold of the vessel to position ore for pick-up by the clam bucket. Sweepers salvage and hand shovel ore from between vessel ribs (structural members) into the clam bucket for final discharge. These sweepers are usually needed only for final cleanup near the end of the job.

Discharging can be accomplished by clam bucket from a vessel to the dock. Stockpiling in a dock-side warehouse involves the same operations as above, but can also involve another machine operator for a front-end loader to move ore from the dock apron to the warehouse. From the warehouse, the ore will eventually be moved by a front-end loader to the railcar.

Loading ore with a clam bucket from warehouse stockpile into a vessel involves 2 machine operators, 1 crane operator, 1 signalman, and 2 foremen. The machine operators use front-end loaders to stockpile the ore dumped by truck at the dock-side warehouse, and to move ore from the dock-side warehouse to the dock apron. The crane operator, directed by the signalman, operates a clam bucket to move the ore from the dock apron to within the vessel. The 2 foremen supervise the warehouse and vessel gangs.

(d) *Exposure Levels.*

West Gulf reported that initial air monitoring performed during the handling of lead sulfide concentrate and zinc concentrate with lead sulfide ore, revealed employee exposures to air lead levels ranging from 20–140 $\mu g/m^3$ (Ex. 475–7R). The highest concentrations were found for workers in the warehousing operations, for machine operators, and for sweepers. One West Gulf port, where lead and zinc concentrate ores are handled, employed an average of 1,020 longshoremen and warehousemen, during 1978 and 1979, with a nucleus work force of 119. (Ex. 475–17.) Another West Gulf port averaged 920 employees with a nucleus of 76. (Id.) However, because lead concentrates ores are handled intermittently, West Gulf estimated that only several employees in each port would have lead exposures slightly above 30 days per year. In no case were any employees exposed to lead in excess of 45 days per year. (Id.) Other sources confirmed that, usually, employees would be exposed to lead concentrates in ore for only a few days per year (Ex. 475–28, 27). However, as previously mentioned, exposure for these 30–45 days could be in excess of 50 $\mu g/m^3$.

(e) *Additional Controls.*

Stevedoring operations are mechanized and engineering and work practice controls, if properly used, should be effective in keeping lead levels to the 50 $\mu g/m^3$ limit except in certain operations where workers must physically remove the ore especially in confined spaces (shoveling, trimming, etc.). Work practices are also important tools in achieving compliance with 50 $\mu g/m^3$ lead standard. Mr. Richardson from West Gulf also noted that, during his recent visit to an unloading operation, the high moisture content of the lead concentrate resulted in no visible dusting, except during trimming with payloaders in the hold, and during spillage cleanup. In addition, he offered the following recommendations to further reduce dust exposures:

—Greater care should be exercised in crane operation. Overfilling of bucket or feed hopper should be avoided.
—The ridge on the crane bucket should be machined down so that material does not adhere.
—Refinements should continue on a workable fogging system that does not overwet the material. A fixed fogging position on the nozzle should be maintained permanently, with an on-off valve installed upstream of the nozzle.
—Spillage should be occasionally wetted as precaution against blowing dust.
—The belt sock on the railcar feed chute should be used consistently to reduce visible dust.
—Better education and supervision of stevedores may reduce the number of observed incidents of poor work practices, such as shoveling dry spillage from the vessel to the dock below where others were working.

If it is possible, payloader work should be completed in the hold before trimmers begin their shovel work. This precaution will reduce dust exposures to trimmers. (Ex. 475–28 (App. C)) Trimming operations may require the use of a respirator to achieve compliance with the 50 $\mu g/m^3$ limit.

The data submitted to OSHA indicates that improved work practices, especially material handling procedures, and limited use of respirators for some jobs will enable this industry to comply with the standard.

(f) *Conclusion: Technological Feasibility*

OSHA believes, based on the data furnished by ASARCO (Ex. 475–28) and the West Gulf Maritime Association, (Ex. 475–17) that lead levels can be controlled to 50 $\mu g/m^3$ in stevedore operations by implementing simple and relatively cost free work practices, such as avoiding excessive spillage from the cranes, cleaning up spills as soon as possible, and not allowing concurrent work to be done in the holds by the cranes/payloaders/trimmers. In addition, the use of an appropriate respirator may also be necessary to achieve compliance with the 50 $\mu g/m^3$ PEL in some of these operations where engineering or work practice controls may not be feasible or at some dockside facilities which stevedoring companies do not own.

ASARCO and St. Joe did not dispute the feasibility of work practices, presently utilized engineering controls and respirators to reduce lead levels to 50 $\mu g/m^3$ in these operations. These firms requested an exemption from the standard for these operations, indicating that stevedore companies were unwilling to utilize such controls and, to avoid compliance with the standard, may refuse to load or unload lead ores. This possibility, should it arise, is unfortunate but cannot deter OSHA from exercising its responsibility, as mandated by the Act, to develop and implement safety and health regulations to adequately protect workers. In so doing, the Agency must consider the feasibility of complying with its regulations. OSHA has determined, based on record evidence, that stevedoring operations can feasibly comply with the lead standard, and, in fact, has determined that compliance can be achieved largely through the less costly implementation of work practices in addition to engineering controls presently in use. In a few limited circumstances, e.g., clean-up operations following off-loading, these controls will have to be supplemented by respirators.

OSHA has no control over stevedoring companies' decisions to handle or not handle lead ores, but there are other, more appropriate means of resolving the problem of stevedoring companies' refusal to handle certain cargoes. But denying workers protection from health and safety hazards is not a legitimate basis for granting an exemption.

41. Telecommunications

(a) *Uses*

Telecommunications has been defined as "that industry that repairs those cables above our heads, and pulls them out from under the street, and pulls them in the street." (Tr. 172) For this remand, it is limited to that segment of the telecommunications industry which repairs, replaces, or installs lead sheathed cables above and below the ground.

(b) *Process Description and Exposure Areas*

Telecommunications involves the laying of new lead sheathed cable (Ex. 476–482), although one company reported that very little laying of lead sheathed cable is being done (Ex. 476–485); the withdrawal of old cable (wrecking); and the repair of cables by forming new splice cases or sleeves (Ex. 476–482). The last process involves opening lead sheathed cable splices by torch and sealing lead sheathed cable splice closures (sleeves) by pot wiping or torch (Ex. 476, GTE). Lead exposure results only from encounters with lead cable, the use of which is declining. This work may be done above ground (stringing cable between telephone poles) or in underground facilities (manholes).

(c) *Controls Currently Used*

Most companies use a portable blower system to control the employee's exposure and do achieve the PEL most of the time by these methods. (Ex. 475–22; 476–482) Bell Telephone currently controls exposures by using a spray containing water and a wetting agent, minimizing physical manipulation of the cable and rotating job assignments (assignments are ½ day) (Ex. 476–482;

475–22). Other companies have advocated the use of lead particle entrapment creams applied prior to carding (Ex. 475–22 & 22(a)) and also the use of a wetting spray during wrecking operations (Id.).

(d) *Exposure Levels*

The General Telephone and Electronic Corporation stated that "the nature of the telecommunications industry reduces to virtually zero any potential health hazard from lead exposure. A 'potentially' exposed employee only works with lead sheathed cable on an intermittent basis at best; it may be once a week, once a month, once a year or never." (Ex. 476–485; 475–22) A NIOSH Health Hazard Evaluation was performed at the New York Telephone Company to determine whether wiping sleeves in manholes resulted in excess lead exposures. (Ex. 476–484) The average time for completing a sleeve-wiping operation was approximately 60–150 minutes. Breathing zone samples were taken for the outside helper and at several spots inside the manhole (due to the size of the space, it was not possible to hang a personal sampler on the repairman). Nine of eleven samples taken indicated nondetectable lead levels. Two samples indicated lead levels of 14.8 and 35.2 $\mu g/m^3$. One sample was taken from above the sleeve, the other from behind the worker. When computed on a time-weighted average basis, lead exposures in cable splicing are probably below the action level.

In a typical day's work, a crew will remove and replace cable at different sites: there is no lead exposure between sites; while they are preparing manholes for work; or while the old lead sheathed cable is being replaced by non-lead sheathed cable. The company also stated that work with lead sheathed cable is an infrequent occurrence.

Cable removal operations, where lead oxide is produced, create the greatest potential for lead exposure. Exposure levels have been estimated to be between 100–200 $\mu g/m^3$ for the time periods in which the work is done. (Ex. 476–7B; 476–5) These levels should then be below the PEL of 50 $\mu g/m^3$ when measured as a time-weighted average. In addition, when cable pulling occurs under water, little, if any, exposure is expected.

(e) *Populations Exposed*

Approximately 12,000 Bell System employees are potentially exposed. However, based on the exposure data, it appears that very few are exposed above 50 $\mu g/m^3$ on an 8-hour time-weighted average basis. (Ex. 476–7B)

(f) *Additional Controls*

Telecommunication companies are already using controls such as suppressing creams, wetting agents, dilution ventilation, and good work practices, that are effective in keeping exposures below 50 $\mu g/m^3$. The random nature of lead exposures and the limited amount of time required to perform lead related tasks should keep employee exposures below the 50 $\mu g/m^3$ PEL. In addition, many repair crews consist of at least two men; alternating these employees' contacts with lead would further reduce individual exposures. Employee exposures will rarely be in excess of the PEL, however, when exposures exceed the PEL, employee rotation will be more than adequate to achieve compliance.

(g) *Conclusion: Technological Feasibility*

The industry maintained that its problems with complying with the lead standard were comparable to the difficulties associated with the construction industry, and that OSHA should exempt them from the standard's coverage (Ex. 475–22 and 22(a)).

OSHA does not agree that the similarities warrant an exemption (Ex. 476–7C). While workers may be required to move from site to site, the sites themselves are stationary and the company does know the location of each work place and has been able to determine representative exposure levels. Furthermore, the work force is highly specialized and not transient in nature, as it is the construction industry. Thus, the same employees continue to have potential lead exposures. The fact that telecommunications repairmen move from site to site and that sites infrequently have leaded cable, tends to aid employer compliance by naturally eliminating continuous worker exposure to lead.

Industry has contended that compliance with the standard would also require installing "a shower in every manhole" (Tr. 203, 206) and that this requirement rendered the standard infeasible. This fear is unfounded: the standard requires hygiene facilities to be constructed only when employee exposures exceed the PEL. Since worker rotation will assure that no employee's exposure to lead exceeds the PEL, no requirement to furnish hygiene facilities will ever arise.

(h) *Economic Feasibility*

There are no significant costs of compliance or economic impact because lead levels, on a time-weighted basis, can easily be maintained below 50 $\mu g/m^3$.

42. Terne Metal

(a) *Uses*

The iron and steel industry uses numerous non-ferrous metals to coat its products. Primary among these are—other than tin, zinc and chromium—aluminum, copper, nickel and lead. An alloy of lead and tin is used to make a coating for steel sheets; the end product is called terne plate. One of the most useful applications for terne plate is in the manufacture of sheets for roofing, where it has an exceptionally long life. Its uses also include fabricated metal parts, automobile gas tanks, and radio chassis.

(b) *Process Description and Exposure Areas*

There are two methods generally used for applying terne metal to single sheets in the manufacture of long ternes.

The flux process employs a flux of molten zinc chloride, a water solution of zinc chloride, or a solution of zinc chloride in hydrochloric acid to remove any oxides of iron that may be present and also to effect a rapid drying of the sheets. The terne pot temperatures range from 620° to 660°F. The process is carried out in a "rigging" or machine which carries the sheet through the several process steps prior to passing sheets through the molten terne metal, where the coating is applied. The sheets are then moved upward through a coating machine which contains an oil (palm oil, fish oils, mineral oils, or combinations thereof) that floats on top of the metal.

The equipment and processes involved are a coil holder followed by a payoff reel which feeds the strip into a pinch-roll unit. This, in turn, is followed by a squaring shear and a welder if the process is continuous. Cleaning may also be done.

The highest lead exposures occur after the terne alloy bath, when excess lead is brushed off of the coated steel strips or sheets. (Ex. 22, p. 288.)

(c) *Controls Currently Used*

Hoods are located over baths to provide local exhaust ventilation. Some plants have ventilated control booths for the protection of workers. Flaking at the coiler requires extensive housekeeping. (Id.)

(d) *Exposure Levels*

Exposure data were not presented to OSHA, but the Short Report estimated that exposures have been kept below 200 $\mu g/m^3$ (Id.). It is not clear that this estimate represents a time-weighted

exposure. An OSHA inspection of a terne operation found levels of 210 μg/m³ prior to implementing engineering controls which included enclosing the terne pot operations and improving ventilation. After implementation of these controls, levels were reported as 48 μg/m³ and 41 μg/m³ for workers in these areas (Ex. 476–16, #TO–1).

(e) *Population Exposed*

The Short Report estimated that 100 individuals are exposed. (Ex. 22, p. 208.)

(f) *Additional Controls*

Ventilation systems may require upgrading. Ventilated booths for workers may be required. Improved housekeeping will be required. High exposure areas may require worker rotation.

(g) *Conclusion: Technological Feasibility*

Since this operation is automated, with mechanical devices moving and dipping sheets or stripe, the oil which floats on top of the lead bath should help to keep lead from becoming airborne. In addition, ventilation is provided which, if properly used, will also control exposures. In fact, OSHA inspection data shows that simple engineering controls can be effectively used to achieve the PEL. (Ex. 476–16, #TO–1.) Occasionally, exposures may exceed 50 μg/m³ where only engineering controls exist and it is in these cases that worker rotation can be used to achieve compliance with 50 μg/m³. AISI also suggests the process change of using a fluidized bath, which eliminates lead exposure.

OSHA has concluded that compliance can be achieved in one year. It should be noted that the extended compliance period the Agency has provided for primary steel manufacturing is not applicable to terne metal production. Terne metal production does not require an extended compliance period for several reasons: (1) Terne metal is a steel fabrication process, rather than a steel production process; (2) steel fabrication is not included within the remodernization program established for steel producers (Ex. 475–39F); and (3) exposure levels are moderate and basic engineering controls are available to reduce these exposures.

(h) *Economic Feasibility*

See discussion in Steel Manufacturing.

43. Textiles

(a) *Uses*

Lead based dyes or finishes may be used in coloring or finishing textiles.

(b) *Process Description and Exposure Areas*

Colors with potential lead exposure include inorganic yellow pigments, comprised of lead chromates with varying amounts of lead sulfate. Chrome orange is a basic lead chromate, but it is not used in the textiles industry (Ex. 476–467). Also, chrome green is not used. Textile finishes may be lead based.

(c) *Exposure Levels*

Representatives from the American Textile Manufacturers Association, Compton and Knowles, and Monsanto stated that they knew of no problems from use of lead-based dyes in textiles (Ex. 476–471, 472, 473). The small amounts of lead which occur in trace metal effluents resulting from chromate-lead based dyes have been measured at 52 ppm.

The exposure problems the Short Report assumed to be associated with lead in textile finishing (insect protection, water proofing, fungus inhibitors) do not, in fact, exist. A NIOSH Health Hazard Evaluation performed at the A&S Tribal Industries (Ex. 476–470) found no detectable levels of lead as a result of handling camouflage netting that had been finished with an insect repellant.

(d) *Conclusion: Technological Feasibility*

Because exposure to lead appears to be negligible in this industry, it has been assumed that compliance has already been achieved or poses no problem.

(e) *Economic Feasibility*

There will be no significant compliance costs nor economic impact in the textile industry as a result of the lead standards. This is due to the fact that there are no appreciable employee lead exposures in this industry.

44. Tin Rolling and Plating

(a) *Summary*

Rolling refers to the rolling of lead-tin alloys (Metal Handbook). The plating of tin-lead alloys with copper alloys is comparable to other plating operations discussed above (see terne metal). Lead exposure in these operations results from the formation of the tin-lead alloy and not from the alloy being coated with a copper alloy. Alloying of steel is discussed in the steel section. Alloying of lead sheets has been classified as secondary lead smelting and has been discussed in the feasibility section of the final lead standard.

45. Wire Making

(a) *Uses*

Once a rod is drawn through a die it is called wire even though it may be re-drawn. It has been estimated that there are more than 100,000 applications for wire; its uses are as diverse as suspension bridge cables, musical instruments and dry cleaners' coat hangers. (Ex. 476–483).

(b) *Process Description and Exposure Areas*

(i) *Wire Making.* The simplest form of wire drawing involves coils of lime-coated wire rods which are drawn through a lubricant and then through dies which are smaller in diameter than the rods. The enormous force required to draw a rod through a die is provided by a device known as a draw block which rotates on its axis building up a continuous coil of wire. In a continuous wire drawing frame, wire (properly prepared and lubricated) is pulled through a series of dies. Between each of these dies are sheave wheels around which the wire is looped. These sheave wheels control the tension of the wire between die blocks. (Id).

(ii) *Quality Control.* The drawing of wire hardens the steel, therefore, prior to drawing, the rods must be treated to withstand the rigors of this operation. In addition, when wire of very small diameter is desired, annealing or patenting may be required after initial drawing and before final drawing. Heat treating is required to produce the precise quality, and may be done by annealing or patenting. Patenting is a heat treatment applied to rods and wire and is a term peculiar to the steel industry. The object of patenting is to obtain a structure which combines high tensile strength with high ductility. Annealing, on the other hand, refers to slow cooling of a metal from an elevated temperature and is used to soften, add toughness, remove stresses, and increase the ductility of metals. (Ex. 476–5K).

(a) *Annealing*

Controlled atmosphere annealing is the current method of annealing used by the wire indusry. Both batch-type and continuous-type furnaces are employed. (Ex. 476–483).

Salt-bath annealing is used occasionally for common sizes of wire. The wire in coils is immersed for 30 minutes to one hour in gas-fired pots containing molten salt which is held at some predetermined temperature. The advantages of this process over other methods are that small amounts of wire may be quickly annealed at closely

controlled temperatures without scaling the surface of the wire. This process has a somewhat limited application in wire processing. (Id).

Continous lead annealing consists of drawing the wire through a bath of molten lead heated to the proper temperature. The molten lead is contained in a shallow rectangular steel pan, about 10 to 15 inches deep, 3 to 4 feet wide, and 15 to 25 feet long. (Sometimes two pans are used, the first known as the cold pan and the second as the hot pan, and the wire is drawn through each in succession.) In practice several strands of wire are drawn through the bath by a take-up block placed at a convenient distance from the end. To keep the wire immersed in the molten lead, devices known as sinkers are used. (Id).

The principal use of lead annealing is in connection with galvanizing plants, where it is used to anneal process wire. In these plants, layouts are provided that permit the wire to be annealed, cooled, cleaned, washed, dried and galvanized or tinned, in one continous operation. Only lead bath annealing results in workers being exposed to lead. Fluidized bed and sodium nitrate baths are possible substitute process equipment for lead-bath heat treatment. Use of either of these processes would eliminate lead exposure in annealing processes. (Id).

(b) *Patenting Heat Treatment*

Metal patenting consists of heating the material to point well above the upper critical temperature, then cooling through the critical temperature at a comparatively rapid rate to a predetermined temperature to yield the desired microstructure and mechanical properties. There are several kinds of patenting and patenting may be done to wire or rod.

(*i*) *Air Patenting.* The rod is heated by passing it through alloy-steel tubes arranged in an open muffle or in an open flame without tubes and cooled by pulling it from the furnace into the open air—"O.P." (old process or air) patenting.

(*ii*) *Lead Patenting.* The wire may be cooled by passing it into a lead bath held at a relatively low temperature; this process is known as the metallic hardening process. In another process, the wire is heated in a bath of very hot lead and cooled in another bath of lead at a lower temperature; this is the double lead process. In this last process the temperatures of both baths can be readily controlled and accurately measured, making it possible to obtain any desired structure even in rods of high carbon content, a quality not available using "O.P." patenting. This last method also forms less scale than in the other two methods. In the wire industry, both the metallic-hardening process and the double-lead process are generally referred to as "lead patenting."

(*iii*) *Stelmor Patenting.* The Stelmor process, takes rods, on a single strand basis, heats them to their critical temperature and rapidly water cools them to a predetermined temperature. The patented rods are formed into rod rings. The process compliments the higher rolling speeds of today's mills and enables heavier weight coils to be produced.

(*iv*) *Other Methods of Patenting.* Another method of patenting involves the use of electric direct-reistance heating and quenching in a molten alloy metal bath. A recent development, particularly applicable to patenting very high carbon and hypereutectoid steels, involves a double cascade quenching of the rod or wire from the austenitizing temperature.

Sources of exposures in patenting operations result from fumes escaping from inadequately ventilated baths and from dust flaking from process coils (Ex. 22, p. 260).

(c) *Controls Currently Used*

Ventilation and housekeeping controls are commonly used to control lead exposure. Vacuum cleaners are used to clean up areas where scale from dragout occurs (Ex. 476–484). Currently, U.S. Steel and Republic Steel are using the Stelmor process. This process eliminates lead from patenting. (Ex. 476–482). This process also tends to increase productivity (Ex. 476, 482).

(d) *Exposure Levels*

Exposure data indicate that lead exposure in patenting operations averages 100–200 $\mu g/m^3$ (Ex. 22 p. 260).

(e) *Additional Controls*

Improved ventilation and housekeeping will be necessary to control lead levels to 50 $\mu g/m^3$. However, like the pipe galvanizing process, the basic control is hooding of lead baths. Also, since the process is mechanized, workers may be protected by rotation or by providing clean air pulpits from which they can control equipment when necessary.

(f) *Conclusion: Technological Feasibility*

OSHA believes that lead exposure can be reduced to 50 $\mu g/m^3$ in this industry through minimal efforts consisting of improving and maintaining existing ventilation equipment, good housekeeping practices, and worker rotation within a 1 year period.

(g) *Economic Feasibility*

See discussion of Steel Manufacturing.

48. Zinc Smelting

(a) *Uses*

Zinc metal is used for galvanizing, brass and bronze products, and metal casting. In addition to metallic applications, significant quantities of zinc are consumed in pigments or other chemicals (Ex. 475–491).

(b) *Process Description and Exposure Areas*

The processing of zinc from its ore begins with the milling of the ore to prepare a concentrate that can be treated to recover zinc and its associated byproduct and coproduct metals (Id.).

The mineriogy of zinc-containing ores determines the technology and economics of the milling practice. Heavy-media separation pretreatment prior to zinc flotation has been designed into newer mills. About one-half of the mill feed can be floated at relatively coarse size with the reject fraction assaying as low as 0.04 percent zinc (Ex. 476, 491).

Flotation is the basic mineral reduction process. The general scheme for the flotation of mixed sulfide ore is: (1) Flotation of the lead copper minerals and depression of the zinc and iron minerals; (2) separation, also by flotation, of the lead-copper concentrate into separate lead and copper concentrates; (3) activation and flotation of the sphalerite from the iron and gangue minerals; and (4) flotation of the pyrite if recovery is desired (Id.).

Reduction of the zinc ores and concentrates is accomplished by electrolytic deposition from a sulfate solution or by distillation retorts or furnaces. In either method, the zinc concentrate is roasted to eliminate most of the sulfur to produce roasted concentrate or calcine (Id.).

At electrolytic zinc plants, the roasted zinc concentrate is leached with dilute sulfuric acid to form a zinc sulfate solution. The solution is then purified and piped to electrolytic cells, where the zinc is electrolytically deposited on aluminum cathodes (Ex. 476, 491). The cathodes are lifted from the tanks at intervals and stripped of the zinc, which is then melted in a furnace and cast into slabs (Ex. 476, 491).

There are three types of distillation retort plants—batch horizontal retorts, continuous vertical retorts heated by fuel, and continuous vertical retorts.

A blast furnace process for producing zinc, also known as the Imperial Smelting Process, was developed by Imperial Smelting Corporation, Ltd., of Avonmouth, England. This process is similar to the normal blast furnace practice of burning coke in intimate association with the ore to be reduced but, as in the retort process, the zinc is released as a vapor and must be condensed (Id.).

The Klvcet-CS process, developed in the U.S.S.R. and available for commercial distribution, combines the functions of sintering, blast furnacing, and slag fuming in one autogenous smelting unit. It offers the possibility of recovering, along with lead, either zinc metal or zinc oxide. The process is characterized by high metal recoveries, low environmental contamination, and low labor and capital costs compared with those of a conventional smelter (Ex. 478, 491).

Potential lead exposure occurs during the handling and storing of concentrates and charging of concentrates to the roaster. Typical operations involve the receipt of concentrates by railcar or dump truck, storage in the open or in storage buildings, moving of concentrates by front-end loader to open conveyors, drying in a rotary dryer, holding in storage bins, and charging by conveyor to the roaster. Exposures in this area are due largely to dust emissions from mechanical screens and conveying equipment, overflow from front-end loaders, and reentrainment by wind (Ex. 481).

(c) *Controls Currently Used*

Undisputed evidence suggests that the technology necessary to control lead is available. Mr. Wagner's analysis of available control technology is consistent with the practices which Bunker Hill, ASARCO, St. Joe, etc. currently employ (Ex. 481). In some cases, such as the American Chemet Co., enhanced housekeeping practices are all that would be necessary to achieve compliance with the standard (Ex. 476–501). Bunker Hill, in its statement (Ex. 475–36), agreed that improved ventilation would reduce exposures at its anode casting and welding operations. In addition, it believes that automation of the handling of zinc concentrate would reduce lead exposure levels. St. Joe's also outlined control technologies consistent with the recommendations made by Mr. Wagner and others. (Ex. 475–36)

(d) *Exposure Levels*

The level of exposure to lead is dependent on the lead content of the concentrates: Lead concentrations ore range from 0.3 percent (Ex. 481–35) to 1.8 percent (Ex. 481–19). For example, airborne lead exposures among concentrate handlers at Bunker Hill's zinc smelter averaged between 50 and 800 $\mu g/m^3$, while levels at National Zinc (Ex. 481–25) and Jersey-Miniere Zinc (Ex. 481–23) did not exceed 30 $\mu g/m^3$.

Other potential lead exposures occur in the roasting department: these exposures vary with the type of roaster. The highest exposures were found at Bunker Hill where open, multiple hearth roasters are used (Ex. 481–19). Lead levels there averaged between 481 $\mu g/m^3$ and 2087 $\mu g/m^3$. These can be compared to levels at New Jersey Zinc in the 150–200 $\mu g/m^3$ range where closed, multiple hearth roasters are employed (Ex. 481–20). At National Zinc, where a fluidized bed roaster is used, no lead levels in excess of 30 $\mu g/m^3$ were measured in the roasting department (Ex. 481–25).

In the electrolytic process, calcine and dilute sulfuric acid are introduced into a series of tanks for the leaching operation. Since the concentrates become wet and stay wet throughout the remaining processes, little potential lead exposure occurs (Ex. 481). In the recast process at Bunker Hill, lead exposure levels for the workers casting the anodes averaged 200 $\mu g/m^3$ (Ex. 481–19) and at National Zinc (Ex. 481–25) about the same average is seen with one exposure measured as high as 1200 $\mu g/m^3$. The cathode strippers in both plants have lead exposure levels that average slightly in excess of 50 $\mu g/m^3$ (Ex. 481–19 & 25).

In the pyrometallurgical process, the sintering machine represents the last significant lead exposure area. Lead levels have been seen as high as 200 $\mu g/m^3$ for the fume equipment operator at New Jersey Zinc (Ex. 481–20) and in excess of 50 $\mu g/m^3$ for the other workers in this department. Most of the lead and cadmium is fumed off at this operation, thus little potential for significant lead exposure exists in remaining processes (Ex. 481).

Zinc fuming furnaces are operated by Bunker Hill, ASARCO at El Paso, Texas, and by St. Joe at Monaca, Pa. The Bunker Hill fuming furnace is physically located within the primary lead smelter (not far from the lead blast furnace), and levels of lead in this area have been measured in the range of 269 to 11,152 $\mu g/m^3$. In fact, approximately, 65 percent of employees are exposed below 30 $\mu g/m^3$ (Ex. 476–386) and 35 percent of all employees are exposed above 50 $\mu g/m^3$ (Ex. 476–386). William Wagner, an expert witness on smelting, testified that "a significant portion of worker exposure to lead in this area is due to contamination from primary lead smelter activities and that it would be difficult, if not impossible, to bring this area into compliance with the 50 $\mu g/m^3$ standard until the remainder of the lead smelter is in compliance." OSHA agrees that Bunker Hill's lead levels are exceptionally high due to cross-contamination. Other zinc fuming processes showed that most lead levels were below 50 $\mu g/m^3$ (Ex. 481).

In a NIOSH Health Hazard Evaluation survey at the American Chemet Co., of 8 samples taken at the zinc smelter (Ex. 476, American Chemet) 6 were below 50 $\mu g/m^3$. NIOSH recommended that housekeeping be used to reduce levels significantly. An OSHA inspection of the National Zinc Co. found that 260 workers were exposed below 30 $\mu g/m^3$ and only 17 above 50 $\mu g/m^3$ (Ex. 476–503). Based on these findings OSHA believes exposure to lead is probably not a significant problem in most zinc smelting operations (Ex. 481).

(e) *Population Exposed*

There are an estimated 2,000 production workers potentially exposed to lead in the zinc smelting and refining industry, 70 percent of whom are exposed to less than 30 $\mu g/m^3$. Fifteen percent are exposed to between 30 $\mu g/m^3$ and 50 $\mu g/m^3$, and 15 percent are exposed to over 50 $\mu g/m^3$ (Ex. 481, p. 16).

(f) *Additional Controls*

To bring zinc smelters into compliance requires that some firms to retrofit existing ventilation equipment with equipment to increase capture potential. Other firms may need to automate more processes or to rotate workers, while some need only enhance their housekeeping practices to achieve compliance with 50 $\mu g/m^3$.

(g) *Conclusion: Technological Feasibility*

The record evidence indicates that most operations within most zinc smelters are in compliance, and that in those which are not fully in compliance, many of their processes are below 50 $\mu g/m^3$ and some even below 30 $\mu g/m^3$. Thus, compliance for the industry, as a whole, appears feasible within one year, except one difficult compliance situation exists. Bunker Hill, because the zinc smelter is located inside the primary lead smelter, may not be able to control lead levels in the zinc smelter until the primary lead smelter is controlled. Since the lead smelter has 10 years under the standard to be in compliance, it is necessary for OSHA to recognize that Bunker Hill's zinc operation may not be able to reach 50 $\mu g/m^3$ in one year

without respirators. But consistent with the Court's opinion, Bunker Hill would still be obligated to reduce exposure to the lowest feasible level even if ultimate compliance will take a longer time.

(h) *Cost of Compliance*

Three primary producers of zinc—ASARCO, Bunker Hill, and St. Joe Minerals—provided OSHA with written submissions on the feasibility of meeting the lead standard in their operations. Other primary producers and the secondary producers did not respond to OSHA's request for information.

Bunker Hill did not submit a cost-effective, multifaceted approach to reducing levels through a combination of engineering controls, work practices, housekeeping, and administrative controls (Ex. 475–38). Indeed, Bunker Hill did not provide actual cost estimates but it contends that compliance costs for ventilation and process automation will be required to comply with the standard. These measures, although constituting an important aspect of control technique, are typically the most expensive approaches to reducing worker exposure levels. In fact, the company was recently cited for violation of housekeeping provisions of the lead standard, which are effective in making immediate reductions in dust levels and relatively inexpensive to implement (Tr. p. 559–560). Furthermore, control of primary lead emissions, which contaminate zinc operations in the smelter, will significantly reduce the lead levels of exposure, and therefore, the amount of additional control required, and the cost of compliance attributable to zinc operations.

ASARCO provided estimates of compliance costs in its Corpus Christi, Texas, primary zinc facility and its Sand Springs, Oklahoma, secondary zinc facility. In addition, costs for the zinc department of ASARCO's El Paso, Texas, primary copper facility were provided. (Zinc dust from this operation is transported to Corpus Christi for recovery.)

ASARCO claims that the total cost of compliance will be $13,308,000 for its zinc operations. These costs include ventilation and vacuum systems and are divided between primary production ($13,002,000) and secondary production ($306,000) (Ex. 475–28). The Corpus Christi plant estimates do not consider potential changes in work practice controls, which are necessary to eliminate some of their worst exposures resulting from power sweeping (Tr. 531). ASARCO also overlooks potentially less costly solutions by omitting standby pulpits with pressurized filtered air for intermittent operations, such as sampling (Tr. 532). ASARCO did not consider the use of pressurized cabs, which are readily available for mobile equipment (Tr. 532), nor did they consider apparently simple solutions such as placing workers farther away from dusty areas by providing longer hammer handles for belt watchers, who break up concentrates by manual hammering (Tr. 532). Finally, a participant from the United Steelworkers of America suggested that a device known as a vacuum truck, which costs at most $50,000, might be able to reduce exposure levels as effectively and much less expensively than the sulfide car dumper that ASARCO costed out at $1,898,000 (Tr. p. 536).

OSHA also suggests that other methods of control could be used, such as chemical dust suppressants, traveling ventilation systems, secondary and tertiary hoods (which are currently used in Japan), and process changes, such as slag granulation in lieu of transporting molten slag (Tr. 789–791). These methods are available, effective, and economically attractive when compared with the alternatives provided by ASARCO.

St. Joe Minerals submitted a compliance cost estimate of $13 million in capital costs and $400,000 in annual operating costs (both in 1978 dollars). This estimate reflects use of "conventional control techniques" (Ex. 475–36A). St. Joe stated that this estimate originated from its prior experience in meeting safety, health, and environmental regulations, and that derivation of the figure was available in its submission to the 1977 rulemaking proceedings (Tr. p. 770). However, OSHA is wary of relying on these estimates, since they are not clearly explained and do not appear to be based on cost-effective solutions to reducing exposure.

First, there were no data presented in support of the cost estimates in the original submission. Second, these estimates were calculated on the basis of 1975 replacement costs for control systems that had been installed from 1948 through 1975. However, the economic life of the equipment was not presented. Because some of this equipment would certainly be due for relacement in the absence of the standard, the costs for newly designed controls would not fully attributable to OSHA. At most, only the difference between the controls designed to meet the 200 $\mu g/m^3$ standard and the new controls which would permit compliance with the 50 $\mu g/m^3$ standard would be attributable to OSHA. Third, the types of equipment and their functional relation to reducing in-plant lead levels are not explained. In fact, the identification of control systems is listed in abbreviated form in St. Joe's submission. Fourth, the estimate relies solely on ventilatory reductions to achieve compliance rather than a cost-effective, multifaceted approach to lower lead levels. Finally, the total costs were only $7,380,000 (Ex. 474–3(103)). The derivation of $13,000,000 from this previous estimate remains unclear. It is especially difficult to evaluate in view of the fact that the smelter will be operating at 25 percent of its capacity. However, it seems unlikely that compliance costs would nearly double with a drop in capacity of 75 percent.

OSHA estimates that the costs of compliance with the lead standard will be in the range of $3.5 to $10.5 million for the zinc industry (Ex. 481 and Tr. 345). This estimate factors in the use of a broad array of control technologies and work practices. Some of these work practices are very inexpensive or carry no costs at all (Tr. 349). Approaches such as enclosing people rather than enclosing equipment are also reflected in these estimates (Tr. 347). For instance, control rooms, especially with air-lock entry anteroom systems and boot-washing facilities could be used at St. Joe's zinc smelter (Tr. 561). The record shows that some zinc smelters are currently in compliance or near compliance with the lead standard in most of their operations. Hence, not all smelters will incur significant costs. OSHA also recognizes but does not have data to measure the value of reclamation of other metals, which will offset compliance costs for some firms in the industry (Tr. 348). Furthermore, expenditures for compliance are considered business expenses, thereby reducing the after tax burden of these firms (Tr. 349). In addition, zinc smelters are already under an obligation to control exposures to arsenic. OSHA estimated that the industry would spend $9.3 million in capital costs and $940,000 in annual costs to comply with the arsenic standard (Ex. 476–488). To the extent that resources have been allocated for this purpose, and that they will have reduced lead levels simultaneously, the costs should not be double-counted by adding them a second time. In light of these considerations, OSHA concludes that its high estimate of $10,500,000 is a reasonable assessment of the upper bound of the potential costs for the zinc industry. Annualized over the useful life of equipment, the industry is not

expected to incur costs in any one year in excess of $1.9 million.

(i) *Industry Profile*

In 1967, there were 10 companies operating 18 establishments and employing 6,400 production workers in the primary zinc industry (SIC 3333). By 1977, ge there were 8 companies operating 8 facilities and employing 3,500 production workers. Value added per production worker rose from $8.85 to $16.03 per hour while average hourly earnings of production workers rose from $3.17 to $7.17 per hour (Ex. 476–20). Investments in new capital fell from $25.8 million to a low of $5.9 million in 1969, but have risen then to $39.8 million in 1977 (Ex. 476–20). Total shipments were valued at $430.7 million in 1977 (Ex. 476–20).

Since 1969, there has been a continuous decline in the production of domestic zinc coinciding with the closure of 9 smelters (Ex. 476–490). Thus, although United States demand for zinc metal over the decade has remained relatively stable, smelting capacity has declined by almost 50 percent. Smelters closed for a variety of reasons, including obsolescence, failure to meet environmental standards, and an inability to obtain sufficient concentrate feed (Ex. 476–490).

ASARCO commented that several operations closed as a result of a downturn in demand lagging the recessionary period of 1974 to 1975 and the long-run trend in substitution away from zinc in the automotive industry (Ex. 475–28). However, the industry has made steady progress in developing and promoting the use of thin-wall zinc diecastings, which are lighter in weight. Thus, zinc has begun to recapture some of the market and currently is used in 150 automotive diecastings compared with 100 in 1976. In addition, the rising costs of substitute materials, such as plastic and aluminum, have increased the competitiveness of zinc in some markets (Ex. 476–26).

Historically, the demand for zinc correlates closely with economic activity (Ex. 476–490). The major use of zinc metal is in the construction industry, which is the major market for zinc coated or galvanized products, such as structural steel, roofing, siding, guttering and duct material in air conditioning, ventilating and heating systems. Transportation accounts for the second major use of zinc metal. The largest use within this sector is diecastings for automobile components. Zinc is also used as a nonmetallic oxide in the rubber industry, production of photocopying chemicals, and paints. Zinc is most vulnerable to substitution in these nonmetallic uses (Ex. 476–490).

There are currently five domestic producers of primary zinc AMAX, ASARCO, Bunker Hill, Jersey-Miniere, and National Zinc. (Ex. 476–489). In addition, St. Joe Minerals has reactivated at 25 percent of capacity its zinc smelting operation. This decision was made because of the discovery of a high-grade zinc deposit in New York (Tr. p. 752–753). Depletion of this deposit is expected to occur within 15 years (Tr. p. 764).

The tenor of zinc ores in the United states tends to be lower than that of foreign ores. Therefore, to ensure a continuing domestic supply and to foster development of domestic low-grade ores, incentives exist to develop and implement efficient mining and extraction processes (Ex. 476–490). However, major United States companies also have substantial interests in foreign zinc mining activities (Ex. 476–49E).

Also, foreign investment by a Belgian firm in the United States zinc industry supplied capital for a joint venture to build an electrolytic, highly automated facility in Tennessee and to develop four mines. In addition, several Japanese companies and a United States oil firm entered into a 3-year partnership to explore for zinc deposits in Tennessee (Ex. 476–49B).

Pilot research in the field of zinc recovery has shown that some ores that were previously used to a limited extent or not at all as sources of zinc can become commercial sources of the metal. Specifically, the Kivet CS shaft furnace allows simultaneous smelting of lead and zinc and is ready for industrial scale application in the Soviet Union. Advantages of the process include reduced volumes of waste gas, high metal recovery, improved environmental control of emissions and lower labor and capital costs compared with conventional smelters (Ex. 476–49B).

The construction of electrolytic plants and the development of hydrometallurgical processes, which will eliminate roasting, can also produce unintended benefits, such as reduced environmental pollution. The newest plant in the United States, a $97 million joint venture of New Jersey Zinc and Union Miniere, uses a highly automated electrolytic process. Some of the plants that closed between 1969 and the present were utilizing obsolete technology and could not meet environmental standards (Ex. 476–490).

Foreign producers with more modern technology and lower labor costs enjoy competitive advantages over domestic producers. Foreign penetration into the domestic market is approaching 50 percent (Ex. 476–493), and may reach 53 percent by 1981 (Ex. 476–53(b)). However, even absent the OSHA lead regulation, this trend is expected to continue and in fact may be accelerated. Given the current depressed condition of zinc prices in spite of an international cartel active in supporting zinc prices since 1965 (Ex. 476–493), primary producers probably will continue to defer decisions concerning reinvestment in new plant and equipment and more modern technology. Perhaps the costs of such investments will induce a rise in the number of joint ventures to cover the risks of investing in the zinc industry until the development of new markets secures the future of zinc as an industrially important metal.

(j) *Conclusion: Economic Feasibility*

OSHA estimates that the annualized compliance costs in this industry will not exceed $1.9 million, which is only 0.4 percent of the industry's total value of shipments. Therefore the convergence of many factors more significant than the OSHA lead regulation will determine the future of the zinc industry. Current market conditions have resulted in depressed prices in the industry, and the strength of foreign competition is increasing as domestic producers retire obsolete, inefficient plants and deplete domestic ores. Developments of new zinc markets and modernization of technology in the industry may contribute to a brighter outlook for producers. However, if world producers ignore demand, excess supply could force prices down, resulting in lower profits. This might impel additional capacity reductions, which would reduce available supplies in the late 1980s.

OSHA recognizes that the zinc industry is operating in a depressed world market. However, the estimated annualized compliance costs ($1.9 million) are only 0.4 percent of the industry's total value of shipments based on the most recent available data (Ex. 476–20). In addition, most zinc smelters are currently in or close to compliance in most operations.

However, two smelters may pose potential compliance problems. Bunker Hill's unique situation has been addressed in a previous section (see Technological Feasibility). St. Joe contends that it cannot afford to comply with the lead standard because of adverse conditions in the zinc market. However, St. Joe has reopened its zinc smelter at 25 percent capacity because of the discovery of an ore deposit, which will be depleted in about 15 years. The decision to reopen this smelter was

made after promulgation of the lead standard. Therefore, OSHA assumes that St. Joe concluded that the venture would be profitable within the context of a 50 $\mu g/m^3$ lead standard.

Authority

This document was prepared under the direction of Eula Bingham, Assistant Secretary of Labor for Occupational Safety and Health, 200 Constitution Ave., NW., Washington, D.C. 20210.

Accordingly, pursuant to sections 6(b) and 8(c) of the Occupational Safety and Health Act of 1970 (84 Stat. 1593, 1599, 29 U.S.C. 655, 657), Secretary of Labor's Order No. 8-76 (41 FR 25059), and 29 CFR Part 1911, Part 1910 of Title 29, Code of Federal Regulations is hereby amended, for the reasons set forth in the preamble, by revising Table I of section 1910.1025(e)(1).

Signed at Washington, D.C., this 13th day of January 1981.

Eula Bingham,

Assistant Secretary of Labor.

Part 1910 of Title 29 of the Code of Federal Regulations is hereby amended by revising Table I of § 1910.1025(e)(1) to read as follows:

§ 1910.1025 Lead.

* * * * *

(e) *Methods of Compliance*—(1) *Engineering and work practice controls.*

* * *

Table I.—*Implementation Schedule*

Industry[1]	Compliance dates[2]		
	200 $\mu g/m^3$	100 $\mu g/m^3$	50 $\mu g/m^3$
Primary lead production	(3)	3	10
Secondary lead production	(3)	3	6
Lead acid battery manufacturing	(3)	3	6
Nonferrous foundries	(3)	1	5
Lead pigment manufacturing	(3)	N/A	5
Primary steel production	(3)	1	3
Automobile manufacturing/soldering	(3)	N/A	7
All other industries	(3)	N/A	1

[1] Includes ancillary activities located on the same worksite.

[2] Expressed as the number of years from the effective date by which compliance with the given airborne exposure level, as an 8-hour TWA, must be achieved.

[3] On effective date. This continues an obligation from Table Z-2 of 29 CFR 1910.1000 which had been in effect since 1971 but which was deleted upon the effectiveness of this section.

(Secs. 6, 8, 84 Stat. 1593 (29 U.S.C. 655, 657); Secretary of Labor's Order 8-76 (41 FR 25059); 29 CFR Part 1911)

[FR Doc. 81-1887 Filed 1-[illegible]; 8:45 am]

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federal register

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January 21, 1981

Part III

Department of Commerce

Office of the Secretary

National Voluntary Laboratory Accreditation Program (NVLAP); Quarterly Report

DEPARTMENT OF COMMERCE

National Voluntary Laboratory Accreditation Program (NVLAP); Quarterly Report

This quarterly report covers the period from October 1 to December 31, 1980, and has been prepared in accordance with section 7a.17(a), 7b.17(a), and 7c.17(a) of the National Voluntary Laboratory Accreditation Program (NVLAP) procedures (15 CFR Parts 7a, 7b, 7c). Notice of accreditation actions under NVLAP for the month of December are included in this quarterly report.

Accreditation Actions

A total of 90 laboratories were accredited or reaccredited during the last quarter of 1980.

DOC reported October accreditation actions for 71 laboratories on November 14, 1980 (45 75542–75547) and November accreditation actions for two of those laboratories on December 12, 1980 (45 FR 81804–81805). Nineteen laboratories were granted accreditation during the month of December. The terms of these accreditations are valid for one year from the date that each accreditation was granted, unless otherwise revoked due to violation of the criteria or other conditions of accreditation, or terminated at the request of the laboratories. An alphabetical listing of all accredited laboratories and the test methods for which each is accredited as of December 31, 1980 is shown in Appendix 1. The test methods available under each LAP and the laboratories accredited for each test method are listed in Appendix 2.

NVLAP accreditations shall in no way relieve the laboratories from the necessity of observing and being in compliance with any existing Federal, State, and local statutes, ordinances, and regulations that may be applicable to the operations of the laboratories, including consumer protection and antitrust laws.

Applications Suspended or Withdrawn

Further processing of the application submitted by Terralab Engineers, Salt Lake City, Utah, has been suspended until all required fees are paid and all data from required proficiency tests are submitted. Testing Laboratories, Inc., Alamagordo, New Mexico, withdrew its application before the assessment process was initiated.

Insulation LAP

The LAP for thermal insulation materials has 50 test methods for which accreditation may be sought. A total of 37 laboratories have been accredited to perform one or more of these test methods.

In a letter of December 2, 1980, the U.S. Department of Energy requested DOC to include additional test methods for urea-formaldehyde foam insulation, under the insulation LAP. Action on this request has been suspended pending the outcome of a Consumer Product Safety Commission decision on whether to ban the use of urea-formaldehyde foam.

The charter for the National Laboratory Accreditation Criteria Committee for Thermal Insulation Materials (NLACC–1) expired on October 29, 1980.

Concrete LAP

The LAP for freshly mixed field concrete has two groups of test methods (with one method optional) for which accreditation may be sought. A total of 41 laboratories have been accredited under the concrete LAP.

The National Laboratory Accreditation Criteria Committee for Freshly Mixed Field Concrete (NLACC–2) met for the last time on November 25, 1980 to advise DOC on certain technical issues which arose during the laboratory assessment process. The NLACC–2 charter expired on December 31, 1980.

Carpet LAP

The LAP for carpet has 12 test methods for which accreditation may be sought. A total of 23 carpet testing laboratories have been accredited for one or more of these test methods.

New Policy

On December 10, 1980 (45 FR 81249–81250) the Department of Commerce (DOC) announced a new policy for accepting applications. Laboratories seeking NVLAP accreditation may now make application at any time during the year for initial entry into NVLAP, for additional laboratory accreditation programs (LAPS), and for additional test methods within existing LAPS. Applications will be reviewed and laboratory assessments will be initiated on a continual basis. Appendix 3 provides information on how to request an application.

Potential LAPs

On November 10, 1980 (45 FRF 74884–74886), DOC announced a preliminary finding of need to accredit laboratories that provide acoustical testing services. Public comments are due January 9, 1981, the same day on which a public hearing on the need for such a LAP will be held in the Department of Commerce, in Washington, D.C.

A determination of whether or not to make a final finding of need based on the comments submitted and on further analysis of the August 6, 1980 preliminary finding of need to accredit laboratories that provide electromagnetic calibration services (45 FR 52328–52329) is expected during the first quarter of 1981.

On December 10, 1980 (45 FR 80183–80184), DOC announced the declination of further action on two formal requests to find that there is a need to accredit wastewater testing laboratories under NVLAP based upon objections to the development of such a LAP by the U.S. Environmental Protection Agency.

Two formal requests for new LAPs were received during the last quarter of 1980. In a letter dated October 20, 1980, Stadium System, Inc. requested that DOC establish a LAP for athletic equipment. An analysis of this request (made under Part 7a of the NVLAP procedures) is under way. In a letter dated December 4, 1980, the U.S. Department of Housing and Urban Development requested that DOC establish a LAP for solid fuel room heaters. Analysis of this Part 7b request was not completed as of the end of 1980.

Dated: January 13, 1981.

Robert B. Ellert,

Acting Assistant Secretary for Productivity, Technology and Innovation.

BILLING CODE 3510-13-M

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AMERICAN ADMIXTURES CORP.
Attn: Mr. S. S. Borowski
5909 N. Rogers Avenue
Chicago, IL 60646
Phone: (312) 286-3737

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APPENDIX 1

LISTING OF LABORATORIES ACCREDITED BY THE UNITED STATES DEPARTMENT OF COMMERCE UNDER PROVISIONS OF THE

APPENDIX 1

LISTING OF LABORATORIES ACCREDITED BY THE UNITED STATES DEPARTMENT OF COMMERCE UNDER PROVISIONS OF THE NATIONAL VOLUNTARY LABORATORY ACCREDITATION PROGRAM AND THE TEST METHODS FOR WHICH EACH LABORATORY IS ACCREDITED TO TEST THERMAL INSULATION MATERIALS*

AGUIRRE ENGINEERS, INC.
Attn: Mr. Vukoslav E. Aguirre
14 Inverness Drive East, Unit BH
Englewood, CO 80112
Phone: (303) 771-4446

NVLAP Code	Test Method Designation	Short Title (property) Subtitle (if applicable)
02/M01	ASTM C31	Making and Curing Concrete Test Specimens in the Field
02/M03	ASTM C172	Sampling Fresh Concrete
02/P01	ASTM C143	Slump of Portland Cement Concrete
02/W01	ASTM C138	Unit Weight, Yield, and Air Content (Gravimetric) of Concrete
02/A01	ASTM C231	Air Content of Freshly Mixed Concrete by the Pressure Method
02/S01	ASTM C39	Compressive Strength of Cylindrical Concrete Specimens
02/A02	ASTM C173	Air Content of Freshly Mixed Concrete by the Volumetric Method

NOTE: Accreditation is granted on 10/20/80 and expires on 10/19/81.

* It should be noted that testing laboratories accredited by the Secretary under these procedures are in no manner immune from the necessity of being in compliance with all legal obligations and responsibilities imposed by existing Federal, State, and local laws, ordinances, and regulations, including those related to consumer protection and antitrust prohibitions.

AMERICAN ADMIXTURES CORP.
Attn: Mr. G. S. Bobrowski
5909 N. Rogers Avenue
Chicago, IL 60646
Phone: (312) 286-3737

NVLAP Code	Test Method Designation	Short Title (property) Subtitle (if applicable)
02/M01	ASTM C31	Making and Curing Concrete Test Specimens in the Field
02/M03	ASTM C172	Sampling Fresh Concrete
02/P01	ASTM C143	Slump of Portland Cement Concrete
02/W01	ASTM C138	Unit Weight, Yield, and Air Content (Gravimetric) of Concrete
02/A01	ASTM C231	Air Content of Freshly Mixed Concrete by the Pressure Method
02/S01	ASTM C39	Compressive Strength of Cylindrical Concrete Specimens
02/A02	ASTM C173	Air Content of Freshly Mixed Concrete by the Volumetric Method

NOTE: Accreditation is granted on 10/20/80 and expires on 10/19/81.

AMERICAN CARPET LABORATORIES, INC.
Attn: Mr. Michael D. Connell
P. O. Box 357
111 W. Nashville Street
Ringgold, GA 30736
Phone: (404) 935-5672

NVLAP Code	Test Method Designation	Short Title (property) Subtitle (if applicable)
03/C01	AATCC 16E	Colorfastness to Light (Xenon Arc)
03/C02	AATCC 8	Colorfastness to Crocking
03/D01	ASTM D418	Methods of Testing Woven and Tufted Pile Floor Coverings
		Pile Weight - Uncoated (Para. 10-19)
		Pile Weight - Coated (Para. 20-29) as modified by UN 44C
		Pile Thickness - (Para. 30-36)
		Tuft Height - (Para. 37-45) as modified by UN 44C
03/D02	DOD-C-95A	Shrinkage
03/S01	ASTM D1335	Tuft Bind of Floor Coverings
	Federal Test Method Standard 191-5100	Textile Test Method - Breaking Strength
	191-5950	Textile Test Method - Delamination
03/P02	DoC FF1-70	Methenamine Pill Test
03/B01	UN 44C Addendum 3	Attached Cushion Tests
03/B02	UN 44C Addenda 2 and 3	Attached Cushion Tests

NOTE: Accreditation is granted on 10/20/80 and expires on 10/19/81.

ARMSTRONG WORLD INDUSTRIES, INC., MARIETTA CARPET PLANT
Attn: Mr. John H. Cooper
Route 441
Marietta, PA 17547
Phone: (717) 653-2031

NVLAP Code	Test Method Designation	Short Title (property) Subtitle (if applicable)
03/C01	AATCC 16E	Colorfastness to Light (Xenon Arc)
03/C02	AATCC 8	Colorfastness to Crocking
03/D01	ASTM D418	Methods of Testing Woven and Tufted Pile Floor Coverings
		Pile Weight - Uncoated (Para. 10-19)
		Pile Weight - Coated (Para. 20-29) as modified by UN 44C
		Pile Thickness - (Para. 30-36)
		Tuft Height - (Para. 37-45) as modified by UN 44C
03/D02	DOD-C-95A	Shrinkage
03/S01	ASTM D1335	Tuft Bind of Floor Coverings
	Federal Test Method Standard 191-5100	Textile Test Method - Breaking Strength
	191-5950	Textile Test Method - Delamination
03/F03	DoC FF1-70	Methenamine Pill Test

NOTE: Accreditation is granted on 10/20/80 and expires on 10/19/81.

THE ARUNDEL CORPORATION, GREENSPRING LABORATORY
Attn: Mr. John M. Glowacki
6806 Greenspring Avenue
Baltimore, MD 21209
Phone: (301) 296-6400

NVLAP Code	Test Method Designation	Short Title (property) Subtitle (if applicable)
02/M01	ASTM C31	Making and Curing Concrete Test Specimens in the Field
02/M03	ASTM C172	Sampling Fresh Concrete
02/P01	ASTM C143	Slump of Portland Cement Concrete
02/M01	ASTM C138	Unit Weight, Yield, and Air Content (Gravimetric) of Concrete
02/A01	ASTM C231	Air Content of Freshly Mixed Concrete by the Pressure Method
02/S01	ASTM C39	Compressive Strength of Cylindrical Concrete Specimens
02/A02	ASTM C173	Air Content of Freshly Mixed Concrete by the Volumetric Method

NOTE: Accreditation is granted on 12/22/80 and expires on 12/21/81.

ATEC ASSOCIATES, INC., OHIO DISTRICT
Attn: Mr. Larry A. Jeffers
11306 Tamarco Drive
Cincinnati, OH 45242
Phone: (513) 793-7972

NVLAP Code	Test Method Designation	Short Title (property) Subtitle (if applicable)
02/M01	ASTM C31	Making and Curing Concrete Test Specimens in the Field
02/M03	ASTM C172	Sampling Fresh Concrete
02/P01	ASTM C143	Slump of Portland Cement Concrete
02/M01	ASTM C138	Unit Weight, Yield, and Air Content (Gravimetric) of Concrete
02/A01	ASTM C231	Air Content of Freshly Mixed Concrete by the Pressure Method
02/S01	ASTM C39	Compressive Strength of Cylindrical Concrete Specimens
02/A02	ASTM C173	Air Content of Freshly Mixed Concrete by the Volumetric Method

NOTE: Accreditation is granted on 12/22/80 and expires on 12/21/81.

BIGELOW-SANFORD, INC., GEORGIA RUG MILL,
QUALITY CONTROL LABORATORY (SUMMERVILLE, GEORGIA)
Attn: Mr. Van A. Pullen
Lyerly Street
Summerville, GA 30747
Phone: (404) 857-2421

NVLAP Code	Test Method Designation	Short Title (property) Subtitle (if applicable)
03/C01	AATCC 16E	Colorfastness to Light (Xenon Arc)
03/C02	AATCC 8	Colorfastness to Crocking
03/D01	ASTM D418	Methods of Testing Woven and Tufted Pile Floor Coverings
		Pile Weight - Uncoated (Para. 10-19)
		Pile Weight - Coated (Para. 20-29) as modified by UN 44C
		Pile Thickness - (Para. 30-36)
		Tuft Height - (Para. 37-45) as modified by UN 44C
03/D02	DOD-C-95A	Shrinkage
03/S01	ASTM D1335	Tuft Bind of Floor Coverings
	Federal Test Method Standard 191-5100	Textile Test Method - Breaking Strength
	191-5950	Textile Test Method - Delamination
03/F03	DoC FF1-70	Methenamine Pill Test
03/B01	UN 44C Addendum 3	Attached Cushion Tests

NOTE: Accreditation is granted on 10/20/80 and expires on 10/19/81.

BIGELOW-SANFORD, INC.
TECHNICAL SERVICES (GREENVILLE, SOUTH CAROLINA)
Attn: Mr. Ronald V. Canova

NVLAP Code	Test Method Designation	Short Title (property) Subtitle (if applicable)

BIGELOW-SANFORD, INC.
TECHNICAL SERVICES (GREENVILLE, SOUTH CAROLINA)
Attn: Mr. Ronald V. Canova
Interstate 85 & White Horse Road
Greenville, SC 29602
Phone: (803) 299-2630

NVLAP Code	Test Method Designation	Short Title (property) Subtitle (if applicable)
03/C01	AATCC 16E	Colorfastness to Light (Xenon Arc)
03/C02	AATCC 8	Colorfastness to Crocking
03/D01	ASTM D418	Methods of Testing Woven and Tufted Pile Floor Coverings
		Pile Weight - Uncoated (Para. 10-19)
		Pile Weight - Coated (Para. 20-29) as modified by UM 44C
		Pile Thickness - (Para. 30-36)
		Tuft Height - (Para. 37-45) as modified by UM 44C
03/D02	DOD-C-95A	Shrinkage
03/S01	ASTM D1335	Tuft Bind of Floor Coverings
	Federal Test Method Standard 191-5100	Textile Test Method - Breaking Strength
	191-5950	Textile Test Method - Delamination
03/E01	AATCC 134/ CRI 102	Electrostatic Propensity of Carpets
03/F03	DoC FF1-70	Methenamine Pill Test
03/F04	ASTM E648	Radiant Panel (Carpet)
03/B01	UM 44C Addendum 3	Attached Cushion Tests

NOTE: Accreditation is granted on 10/20/80 and expires on 10/19/81.

BONSER-HORNER TESTING LABS, INC., DAYTON, OHIO LABORATORY
Attn: Mr. Kenneth A. Taylor
420 Davis Avenue
P. O. Box 51
Dayton, OH 45401
Phone: (513) 253-8805

NVLAP Code	Test Method Designation	Short Title (property) Subtitle (if applicable)
02/M01	ASTM C31	Making and Curing Concrete Test Specimens in the Field
02/M03	ASTM C172	Sampling Fresh Concrete
02/P01	ASTM C143	Slump of Portland Cement Concrete
02/M01	ASTM C138	Unit Weight, Yield, and Air Content (Gravimetric) of Concrete
02/A01	ASTM C231	Air Content of Freshly Mixed Concrete by the Pressure Method

NVLAP Code	Test Method Designation	Short Title (property) Subtitle (if applicable)
02/S01	ASTM C39	Compressive Strength of Cylindrical Concrete Specimens
02/A02	ASTM C173	Air Content of Freshly Mixed Concrete by the Volumetric Method

NOTE: Accreditation is granted on 10/20/80 and expires on 10/19/81.

BONSER-HORNER TESTING LABS, INC., MAYSVILLE, KENTUCKY LABORATORY
Attn: Mr. Kenneth A. Taylor
Mary Ingles Way, Route 8 West
P. O. Box 636
Maysville, KY 41056
Phone: (513) 253-8805

NVLAP Code	Test Method Designation	Short Title (property) Subtitle (if applicable)
02/M01	ASTM C31	Making and Curing Concrete Test Specimens in the Field
02/M03	ASTM C172	Sampling Fresh Concrete
02/P01	ASTM C143	Slump of Portland Cement Concrete
02/M01	ASTM C138	Unit Weight, Yield, and Air Content (Gravimetric) of Concrete
02/A01	ASTM C231	Air Content of Freshly Mixed Concrete by the Pressure Method
02/S01	ASTM C39	Compressive Strength of Cylindrical Concrete Specimens
02/A02	ASTM C173	Air Content of Freshly Mixed Concrete by the Volumetric Method

NOTE: Accreditation is granted on 12/22/80 and expires on 12/21/81.

BONSER-HORNER TESTING LABS, INC., TOLEDO, OHIO LABORATORY
Attn: Mr. Kenneth A. Taylor
122 South St. Clair Street
P. O. Box 838
Toledo, OH 43696
Phone: (513) 253-8805

NVLAP Code	Test Method Designation	Short Title (property) Subtitle (if applicable)
02/M01	ASTM C31	Making and Curing Concrete Test Specimens in the Field
02/M03	ASTM C172	Sampling Fresh Concrete
02/P01	ASTM C143	Slump of Portland Cement Concrete
02/M01	ASTM C138	Unit Weight, Yield, and Air Content (Gravimetric) of Concrete
02/A01	ASTM C231	Air Content of Freshly Mixed Concrete by the Pressure Method

NVLAP Code	Test Method Designation	Short Title (property) Subtitle (if applicable)
02/S01	ASTM C39	Compressive Strength of Cylindrical Concrete Specimens
02/A02	ASTM C173	Air Content of Freshly Mixed Concrete by the Volumetric Method

NOTE: Accreditation is granted on 10/20/80 and expires on 10/19/81.

BUTLER MANUFACTURING COMPANY RESEARCH CENTER
Attn: Mr. Marvin K. Snyder
135th St. and Botts Road
Grandview, MO 64030
Phone: (816) 763-3022

NVLAP Code	Test Method Designation	Short Title (property) Subtitle (if applicable)
01/T04	ASTM C236	Thermal conductance; Guarded hot box
01/T06	ASTM C518	Thermal transmission properties; Heat flow meter

NOTE: Accreditation is granted on 10/12/80 and expires on 10/11/81.

C. H. MASLAND AND SONS
Attn: Mr. David A. Boyles
P. O. Box 40
Carlisle, PA 17013
Phone: (717) 249-1866

NVLAP Code	Test Method Designation	Short Title (property) Subtitle (if applicable)
03/C01	AATCC 16E	Colorfastness to Light (Xenon Arc),
03/C02	AATCC 8	Colorfastness to Crocking
03/D01	ASTM D418	Methods of Testing Woven and Tufted Pile Floor Coverings Pile Weight - Uncoated (Para. 10-19) Pile Weight - Coated (Para. 20-29) as modified by UN 44C Pile Thickness - (Para. 30-36) Tuft Height - (Para. 37-46) as modified by UN 44C
03/D02	DOD-C-95A	Shrinkage
03/S01	ASTM D1335	Tuft Bind of Floor Coverings
	Federal Test Method Standard 191-5100	Textile Test Method - Breaking Strength
	191-5950	Textile Test Method - Delamination
03/F03	DoC FF1-70	Methenamine Pill Test

NOTE: Accreditation is granted on 10/20/80 and expires on 10/19/81.

CAPITOL CEMENT
Attn: Mr. Thomas L. Vick
P. O. Drawer 33240
11551 Nacogdouches Road
San Antonio, TX 78233
Phone: (512) 655-3010

NVLAP Code	Test Method Designation	Short Title (property) Subtitle (if applicable)
02/M01	ASTM C31	Making and Curing Concrete Test Specimens in the Field
02/M03	ASTM C172	Sampling Fresh Concrete
02/P01	ASTM C143	Slump of Portland Cement Concrete
02/W01	ASTM C138	Unit Weight, Yield, and Air Content (Gravimetric) of Concrete
02/A01	ASTM C231	Air Content of Freshly Mixed Concrete by the Pressure Method
02/S01	ASTM C39	Compressive Strength of Cylindrical Concrete Specimens

NOTE: Accreditation is granted on 12/22/80 and expires on 12/21/81.

CENTRAL READY MIXED CONCRETE, RESEARCH & TECHNICAL CENTER
Attn: Mr. Frank W. Hadderon
4350 S. 13th Street
Milwaukee, WI 53221
Phone: (414) 282-4200

NVLAP Code	Test Method Designation	Short Title (property) Subtitle (if applicable)
02/M01	ASTM C31	Making and Curing Concrete Test Specimens in the Field
02/M03	ASTM C172	Sampling Fresh Concrete
02/P01	ASTM C143	Slump of Portland Cement Concrete
02/W01	ASTM C138	Unit Weight, Yield, and Air Content (Gravimetric) of Concrete
02/A01	ASTM C231	Air Content of Freshly Mixed Concrete by the Pressure Method
02/S01	ASTM C39	Compressive Strength of Cylindrical Concrete Specimens

NOTE: Accreditation is granted on 10/20/80 and expires on 10/19/81.

CERTAINTEED CORPORATION, RESEARCH & DEVELOPMENT LABORATORY
Attn: Mr. W. Francis Olix
1400 Union Meeting Road
Blue Bell, PA 19422

CERTIFIED TESTING LABORATORIES, INC.
Attn: Mr. John H. Frank
1105 Riverbend Drive

CERTAINTEED CORPORATION, RESEARCH & DEVELOPMENT LABORATORY
Attn: Mr. W. Francis Olix
1400 Union Meeting Road
Blue Bell, PA 19422
Phone: (215) 542-0500

NVLAP Code	Test Method Designation	Short Title (property) Subtitle (if applicable)
01/C02	MH-I-515 (para. 4.8.5 in D version, Amendment 1)	Corrosiveness; Cellulosic fiber (loose-fill)
01/D01	ASTM C136	Sieve or screen analysis
01/D02	ASTM C167	Thickness and density; Blanket and batt
01/D08	ASTM C302	Density; Preformed pipe insulation
01/D09	ASTM C303	Density; Preformed block insulation
01/D13	ASTM C519	Density; Loose-fill (fibrous)
01/D25	MH-I-515 (para. 4.8.3 in D version, Amendment 1)	Moisture absorption; Cellulosic fiber (loose-fill)
01/D26	MH-I-515 (para. 4.8.1 in D version, Amendment 1)	Settled density; Cellulosic fiber (loose-fill)
01/F01	ASTM D777 (as modified by MH-8-1008)	Flammability; Paper and paperboard
01/F05	ASTM E136	Behavior of Materials in a Vertical Tube Furnace
01/F07	MH-I-515 (para. 4.8.7 in D version, Amendment 1)	Critical radiant flux; Radiant Panel (cellulosic fiber, loose-fill)
01/F08	MH-I-515 (para. 4.8.8 in D version, Amendment 1)	Smoldering combustion; Cellulosic fiber (loose-fill)
01/S01	ASTM C165	Compressive properties; Thermal insulation (proc. A)
01/S08	ASTM C446	Breaking load/modulus of rupture; Preformed pipe insulation
01/S09	ASTM D781	Puncture test; Paperboard and fiberboard
01/S10	ASTM D828	Tensile breaking strength; Paper and paperboard
01/T01	ASTM C177	Thermal transmission properties; Low-temperature guarded hot plate
01/T04	ASTM C236	Thermal conductance; Guarded hot box
01/T05	ASTM C335	Thermal conductivity; Pipe insulation
01/T06	ASTM C518	Thermal transmission properties; Heat flow meter
01/T09	ASTM C653	Thermal resistance (Rec. Practice); Blanket (mineral fiber)
01/T10	ASTM C687	Thermal resistance (Rec. Practice); Loose-fill (fibrous)
01/V04	ASTM E96	Water vapor transmission; Thin sheets (proc. A)

NOTE: Accreditation is granted on 10/12/80 and expires on 10/11/81.

CERTIFIED TESTING LABORATORIES, INC.
Attn: Mr. John H. Frank
1105 Riverbend Drive
P. O. Box 2041
Dalton, GA 30720
Phone: (404) 226-1400

NVLAP Code	Test Method Designation	Short Title (property) Subtitle (if applicable)
01/C02	MH-I-515 (para. 4.8.5 in D version, Amendment 1)	Corrosiveness; Cellulosic fiber (loose-fill)
01/D25	MH-I-515 (para. 4.8.3 in D version, Amendment 1)	Moisture absorption; Cellulosic fiber (loose-fill)
01/D26	MH-I-515 (para. 4.8.1 in D version, Amendment 1)	Settled density; Cellulosic fiber (loose-fill)
01/F07	MH-I-515 (para. 4.8.7 in D version, Amendment 1)	Critical radiant flux; Radiant Panel (cellulosic fiber, loose-fill)
01/F08	MH-I-515 (para. 4.8.8 in D version, Amendment 1)	Smoldering combustion; Cellulosic fiber (loose-fill)
01/V06	MH-I-515 (para. 4.8.9 in D version, Amendment 1)	Starch; Cellulosic fiber (loose-fill)
03/C01	AATCC 16E	Colorfastness to Light (Xenon Arc)
03/C02	AATCC 8	Colorfastness to Crocking
03/D01	ASTM D418	Methods of Testing Woven and Tufted Pile Floor Coverings Pile Weight - Uncoated (Para. 10-19) Pile Weight - Coated (Para. 20-29) as modified by UN 44C Pile Thickness - (Para. 30-36) Tuft Height - (Para. 37-45) as modified by UN 44C
03/D02	CCC-C-95A	Shrinkage
03/S01	ASTM D1335 Federal Test Method Standard 191-5100 191-5960	Tuft Bind of Floor Coverings Textile Test Method - Breaking Strength Textile Test Method - Delamination
03/E01	AATCC 134/ CRI 102	Electrostatic Propensity of Carpets
03/F03	DoC FF1-70	Methenamine Pill Test
03/F04	ASTM E648	Radiant Panel (Carpet)
03/R02	UN 44C Addenda 2 and 3	Attached Cushion Tests

NOTE: Accreditation is granted on 10/12/80 and expires on 10/19/81.

CHISHOLM TRAIL TESTING AND ENGINEERING COMPANY, INC.
Attn: Mr. James F. Rosendahl
302 South Miller Street
Decatur, TX 76234
Phone: (817) 627-5216

NVLAP Code	Test Method Designation	Short Title (property) Subtitle (if applicable)
03/C01	AATCC 16E	Colorfastness to Light (Xenon Arc)
03/C02	AATCC 8	Colorfastness to Crocking
03/D01	ASTM D418	Methods of Testing Woven and Tufted Pile Floor Coverings
		Pile Weight - Uncoated (Para. 10-19)
		Pile Weight - Coated (Para. 20-29) as modified by UN 44C
		Pile Thickness - (Para. 30-36)
		Tuft Height - (Para. 37-45) as modified by UN 44C
03/D02	DOD-C-95A	Shrinkage
03/S01	ASTM D1335	Tuft Bind of Floor Coverings
	Federal Test Method Standard 191-5100	Textile Test Method - Breaking Strength
	191-5950	Textile Test Method - Delamination
03/F03	DoC FF1-70	Methenamine Pill Test

NOTE: Accreditation is granted on 10/20/80 and expires on 10/19/81.

COMMERCIAL TESTING COMPANY, INC.
Attn: Mr. William Rindosh
1215 S. Hamilton Street
P. O. Box 985
Dalton, GA 30720
Phone: (404) 278-3935

NVLAP Code	Test Method Designation	Short Title (property) Subtitle (if applicable)
01/C02	HH-I-515 (para. 4.8.5 in D version, Amendment 1)	Corrosiveness; Cellulosic fiber (loose-fill)
01/D25	HH-I-515 (para. 4.8.3 in D version, Amendment 1)	Moisture absorption; Cellulosic fiber (loose-fill)
01/D26	HH-I-515 (para. 4.8.1 in D version, Amendment 1)	Settled density; Cellulosic fiber (loose-fill)
01/F02	ASTM E84	Surface burning characteristics; Building materials
01/F07	HH-I-515 (para. 4.8.7 in D version, Amendment 1)	Critical radiant flux; Radiant Panel (cellulosic fiber, loose-fill)
01/F08	HH-I-515 (para. 4.8.8 in D version, Amendment 1)	Smoldering combustion; Cellulosic fiber (loose-fill)

NVLAP Code	Test Method Designation	Short Title (property) Subtitle (if applicable)
01/T06	ASTM C518	Thermal transmission properties; Heat flow meter
01/V06	HH-I-515 (para. 4.8.9 in D version, Amendment 1)	Starch; Cellulosic fiber (loose-fill)
03/C01	AATCC 16E	Colorfastness to Light (Xenon Arc)
03/C02	AATCC 8	Colorfastness to Crocking
03/D01	ASTM D418	Methods of Testing Woven and Tufted Pile Floor Coverings
		Pile Weight - Uncoated (Para. 10-19)
		Pile Weight - Coated (Para. 20-29) as modified by UN 44C
		Pile Thickness - (Para. 30-36)
		Tuft Height - (Para. 37-45) as modified by UN 44C
03/D02	DOD-C-95A	Shrinkage
03/S01	ASTM D1335	Tuft Bind of Floor Coverings
	Federal Test Method Standard 191-5100	Textile Test Method - Breaking Strength
	191-5950	Textile Test Method - Delamination
03/F01	ASTM E84	Surface Flammability (Carpet)
03/F03	DoC FF1-70	Methenamine Pill Test
03/F04	ASTM E648	Radiant Panel (Carpet)
03/B01	UN 44C Addendum 3	Attached Cushion Tests
03/B02	UN 44C Addenda 2 and 3	Attached Cushion Tests

NOTE: Accreditation is granted on 10/12/80 and expires on 10/19/81.

CONTRACTORS SUPPLY CORPORATION OF WEST VIRGINIA, INC.
Attn: Mr. Fontaine B. Hooff
P. O. Box 6587
24th and Water Streets
Wheeling, WV 26003
Phone: (304) 232-1048

NVLAP Code	Test Method Designation	Short Title (property) Subtitle (if applicable)
02/M01	ASTM C31	Making and Curing Concrete Test Specimens in the Field
02/M03	ASTM C172	Sampling Fresh Concrete
02/P01	ASTM C143	Slump of Portland Cement Concrete
02/M01	ASTM C138	Unit Weight, Yield, and Air Content (Gravimetric) of Concrete
02/A01	ASTM C231	Air Content of Freshly Mixed Concrete by the Pressure Method
02/S01	ASTM C39	Compressive Strength of Cylindrical Concrete Specimens

NOTE: Accreditation is granted on 12/22/80 and expires on 12/21/81.

CONTROLLED CONCRETE METHODS, INC. *
Attn: Mr. Raymond A. Ayres
Foot of Main Street
Tarrytown, NY 10591
Phone: (914) 631-9000

NVLAP Code	Test Method Designation	Short Title (property) Subtitle (if applicable)

THE DOLESE COMPANY, ENGINEERING DEPARTMENT LABORATORY
Attn: Mr. A. Darrell George
20 Northwest 13th Street
P. O. Box 677
Oklahoma City, OK 73101
Phone: (405) 235-2311

CONTROLLED CONCRETE METHODS, INC. *
Attn: Mr. Raymond A. Ayres
Foot of Main Street
Tarrytown, NY 10591
Phone: (914) 631-9000

NVLAP Code	Test Method Designation	Short Title (property) Subtitle (if applicable)
02/M01	ASTM C31	Making and Curing Concrete Test Specimens in the Field
02/M03	ASTM C172	Sampling Fresh Concrete
02/P01	ASTM C143	Slump of Portland Cement Concrete
02/W01	ASTM C138	Unit Weight, Yield, and Air Content (Gravimetric) of Concrete
02/A01	ASTM C231	Air Content of Freshly Mixed Concrete by the Pressure Method
02/S01	ASTM C39	Compressive Strength of Cylindrical Concrete Specimens
02/A02	ASTM C173	Air Content of Freshly Mixed Concrete by the Volumetric Method

NOTE: Accreditation is granted on 10/20/80 and expires on 10/19/81.

* Effective January 31, 1981, Controlled Concrete Methods, Inc. will discontinue operating as a testing laboratory.

CORONET CARPETS
Attn: Mr. Winfred L. Jones
Cleveland Road
P. O. Box 1248
Dalton, GA 30720
Phone: (404) 259-4511 x272

NVLAP Code	Test Method Designation	Short Title (property) Subtitle (if applicable)
03/C01	AATCC 16E	Colorfastness to Light (Xenon Arc)
03/C02	AATCC 8	Colorfastness to Crocking
03/D01	ASTM D418	Methods of Testing Woven and Tufted Pile Floor Coverings
		Pile Weight - Uncoated (Para. 10-19)
		Pile Weight - Coated (Para. 20-29) as modified by UM 44C
		Pile Thickness - (Para. 30-36)
		Tuft Height - (Para. 37-45) as modified by UM 44C
03/D08	DOD-C-98A	Shrinkage
03/S01	ASTM D1335	Tuft Bind of Floor Coverings
	Federal Test Method Standard 191-5100	Textile Test Method - Breaking Strength
	191-5950	Textile Test Method - Delamination
03/F03	DoC FF1-70	Methenamine Pill Test

NOTE: Accreditation is granted on 10/20/80 and expires on 10/19/81.

THE DOLESE COMPANY, ENGINEERING DEPARTMENT LABORATORY
Attn: Mr. A. Darrell George
20 Northwest 13th Street
P. O. Box 677
Oklahoma City, OK 73101
Phone: (405) 235-2311

NVLAP Code	Test Method Designation	Short Title (property) Subtitle (if applicable)
02/M01	ASTM C31	Making and Curing Concrete Test Specimens in the Field
02/M03	ASTM C172	Sampling Fresh Concrete
02/P01	ASTM C143	Slump of Portland Cement Concrete
02/W01	ASTM C138	Unit Weight, Yield, and Air Content (Gravimetric) of Concrete
02/A01	ASTM C231	Air Content of Freshly Mixed Concrete by the Pressure Method
02/S01	ASTM C39	Compressive Strength of Cylindrical Concrete Specimens
02/A02	ASTM C173	Air Content of Freshly Mixed Concrete by the Volumetric Method

NOTE: Accreditation is granted on 12/22/80 and expires on 12/21/81.

DONALD S. GILMORE LABORATORIES, THE UPJOHN COMPANY
Attn: Mr. Herbert G. Nadeau
410 Sackett Point Road
North Haven, CT 06473
Phone: (203) 281-2762

NVLAP Code	Test Method Designation	Short Title (property) Subtitle (if applicable)
01/D10	ASTM C355	Water vapor transmission; Thick materials; Desiccant method
01/D18	ASTM D1622	Apparent density; Rigid cellular plastics
01/D19	ASTM D2126	Response to thermal and humid; Aging (proc. B); Rigid cellular plastics
01/D20	ASTM D2126	Response to thermal and humid; Aging (proc. D); Rigid cellular plastics
01/D23	ASTM D2842	Water absorption; Rigid cellular plastics
01/S02	ASTM C203	Breaking load/flexural strength; Preformed block insulation
01/S07	ASTM C273	Shear test; Sandwich construction
01/S11	ASTM D1621	Compressive properties; Rigid cellular plastics (proc. A-Crosshead)
01/T06	ASTM C518	Thermal transmission properties; Heat flow meter
01/V04	ASTM E96	Water vapor transmission; Thin sheets (proc. A)

NOTE: Accreditation is granted on 10/14/80 and expires on 10/13/81.

DOW CHEMICAL U.S.A., GRANVILLE R & D CENTER
Attn: Mr. L. R. LaBelle
P. O. Box 515
Granville, OH 43023
Phone: (614) 587-4300

NVLAP Code	Test Method Designation	Short Title (property) Subtitle (if applicable)
01/D07	ASTM C272	Water absorption; Core materials
01/D10	ASTM C355	Water vapor transmission; Thick materials; Desiccant method
01/D18	ASTM D1622	Apparent density; Rigid cellular plastics
01/D19	ASTM D2126	Response to thermal and humid; Aging (proc. B); Rigid cellular plastics
01/D20	ASTM D2126	Response to thermal and humid; Aging (proc. D); Rigid cellular plastics
01/D21	ASTM D2126	Response to thermal and humid; Aging (proc. E); Rigid cellular plastics
01/D22	ASTM D2126	Response to thermal and humid; Aging (proc. F); Rigid cellular plastics
01/D23	ASTM D2842	Water absorption; Rigid cellular plastics
01/S01	ASTM C165	Compressive properties; Thermal insulation (proc. A)
01/S02	ASTM C203	Breaking load/flexural strength; Preformed block insulation
01/S11	ASTM D1621	Compressive properties; Rigid cellular plastics (proc. A-Crosshead)
01/T01	ASTM C177	Thermal transmission properties; Low-temperature guarded hot plate
01/T06	ASTM C518	Thermal transmission properties; Heat flow meter

NOTE: Accreditation is granted on 10/12/80 and expires on 10/11/81.

DYNATECH R/D COMPANY
Attn: Mr. Stephen E. Smith
99 Erie Street
Cambridge, MA 02139
Phone: (617) 868-8050

NVLAP Code	Test Method Designation	Short Title (property) Subtitle (if applicable)
01/C02	MH-I-515 (para. 4.8.5 in D version, Amendment 1)	Corrosiveness; Cellulosic fiber (loose-fill)
01/D25	MH-I-515 (para. 4.8.3 in D version, Amendment 1)	Moisture absorption; Cellulosic fiber (loose-fill)

NVLAP Code	Test Method Designation	Short Title (property) Subtitle (if applicable)
01/D26	MH-I-515 (para. 4.8.1 in D version, Amendment 1)	Settled density; Cellulosic fiber (loose-fill)
01/T01	ASTM C177	Thermal transmission properties; Low-temperature guarded hot plate
01/T04	ASTM C236	Thermal conductance; Guarded hot box
01/T05	ASTM C335	Thermal conductivity; Pipe insulation
01/T06	ASTM C518	Thermal transmission properties; Heat flow meter
01/V06	MH-I-515 (para. 4.8.9 in D version, Amendment 1)	Starch; Cellulosic fiber (loose-fill)

NOTE: Accreditation is granted on 10/12/80 and expires on 10/11/81.

DYNATHERM ENGINEERING
Attn: Mr. James B. Funkhouser
595 Marshan Lane
Lino Lakes, MN 55014
Phone: (612) 786-1863

NVLAP Code	Test Method Designation	Short Title (property) Subtitle (if applicable)
01/T04	ASTM C236	Thermal conductance; Guarded hot box

NOTE: Accreditation is granted on 10/12/80 and expires on 10/11/81.

ENGINEERING TESTING LABORATORY
Attn: Mr. James L. Beckett
1420 Triplett Blvd. -- Bldg. #2
Akron, OH 44306
Phone: (216) 375-2861

NVLAP Code	Test Method Designation	Short Title (property) Subtitle (if applicable)
02/M01	ASTM C31	Making and Curing Concrete Test Specimens in the Field
02/M03	ASTM C172	Sampling Fresh Concrete
02/P01	ASTM C143	Slump of Portland Cement Concrete
02/W01	ASTM C138	Unit Weight, Yield, and Air Content (Gravimetric) of Concrete
02/A01	ASTM C231	Air Content of Freshly Mixed Concrete by the Pressure Method
02/S01	ASTM C39	Compressive Strength of Cylindrical Concrete Specimens

NOTE: Accreditation is granted on 10/20/80 and expires on 10/19/81.

ENGINEERS TESTING LABORATORIES, INC.
Attn: Mr. J. G. Bennitt
P. O. Box 21387
3737 East Broadway Road
Phoenix, AZ 85040

FACTORY MUTUAL RESEARCH CORP.
Attn: Mr. P. E. Johnson
1151 Boston-Providence Turnpike
Norwood, MA 02062
Phone: (617) 762-4300

ENGINEERS TESTING LABORATORIES, INC.
Attn: Mr. J. G. Bennitt
P. O. Box 21387
3737 East Broadway Road
Phoenix, AZ 85040
Phone: (602) 268-1381

NVLAP Code	Test Method Designation	Short Title (property) Subtitle (if applicable)
02/M01	ASTM C31	Making and Curing Concrete Test Specimens in the Field
02/M03	ASTM C172	Sampling Fresh Concrete
02/P01	ASTM C143	Slump of Portland Cement Concrete
02/W01	ASTM C138	Unit Weight, Yield, and Air Content (Gravimetric) of Concrete
02/A01	ASTM C231	Air Content of Freshly Mixed Concrete by the Pressure Method
02/S01	ASTM C39	Compressive Strength of Cylindrical Concrete Specimens
02/A02	ASTM C173	Air Content of Freshly Mixed Concrete by the Volumetric Method

NOTE: Accreditation is granted on 10/20/80 and expires on 10/19/81.

EVANS AND BLACK CARPET MILLS, INC.
Attn: Mr. Robert H. Davis
1020 Riverbend Drive
Dalton, GA 30720
Phone: (404) 278-3197

NVLAP Code	Test Method Designation	Short Title (property) Subtitle (if applicable)
03/C01	AATCC 16E	Colorfastness to Light (Xenon Arc)
03/C02	AATCC 8	Colorfastness to Crocking
03/D01	ASTM D418	Methods of Testing Woven and Tufted Pile Floor Coverings Pile Weight - Uncoated (Para. 10-19) Pile Weight - Coated (Para. 20-29) as modified by UM 44C Pile Thickness - (Para. 30-36) Tuft Height - (Para. 37-45) as modified by UM 44C
03/D02	DOD-C-95A	Shrinkage
03/S01	ASTM D1335 Federal Test Method Standard 191-5100 191-5950	Tuft Bind of Floor Coverings Textile Test Method - Breaking Strength Textile Test Method - Delamination
03/F03	DoC FF1-70	Methenamine Pill Test

NOTE: Accreditation is granted on 10/20/80 and expires on 10/19/81.

FACTORY MUTUAL RESEARCH CORP.
Attn: Mr. P. E. Johnson
1151 Boston-Providence Turnpike
Norwood, MA 02062
Phone: (617) 762-4300

NVLAP Code	Test Method Designation	Short Title (property) Subtitle (if applicable)
01/C02	NH-I-515 (para. 4.8.5 in D version, Amendment 1)	Corrosiveness; Cellulosic fiber (loose-fill)
01/D25	NH-I-515 (para. 4.8.3 in D version, Amendment 1)	Moisture absorption; Cellulosic fiber (loose-fill)
01/D26	NH-I-515 (para. 4.8.1 in B version, Amendment 1)	Settled density; Cellulosic fiber (loose-fill)
01/F02	ASTM E84	Surface burning characteristics; Building materials
01/F07	NH-I-515 (para. 4.8.7 in D version, Amendment 1)	Critical radiant flux; Radiant Panel (cellulosic fiber, loose-fill)
01/F08	NH-I-515 (para. 4.8.8 in D version, Amendment 1)	Smoldering combustion; Cellulosic fiber (loose-fill)
01/Y06	NH-I-515 (para. 4.8.9 in D version, Amendment 1)	Starch; Cellulosic fiber (loose-fill)
03/F01	ASTM E84	Surface Flammability (Carpet)
03/F04	ASTM E648	Radiant Panel (Carpet)

NOTE: Accreditation is granted on 10/12/80 and expires on 10/19/81.

FLINTKOTE STONE PRODUCTS CO., QUALITY CONTROL LABORATORIES
Attn: Mr. Robert L. Chester
10300 Pulaski Highway
White Marsh, MD 21162
Phone: (301) 686-4000

NVLAP Code	Test Method Designation	Short Title (property) Subtitle (if applicable)
02/M01	ASTM C31	Making and Curing Concrete Test Specimens in the Field
02/M03	ASTM C172	Sampling Fresh Concrete
02/P01	ASTM C143	Slump of Portland Cement Concrete
02/W01	ASTM C138	Unit Weight, Yield, and Air Content (Gravimetric) of Concrete
02/A01	ASTM C231	Air Content of Freshly Mixed Concrete by the Pressure Method
02/S01	ASTM C39	Compressive Strength of Cylindrical Concrete Specimens
02/A02	ASTM C173	Air Content of Freshly Mixed Concrete by the Volumetric Method

NOTE: Accreditation is granted on 10/20/80 and expires on 10/19/81.

FRANKLIN RESEARCH CENTER
Attn: Mr. John R. Stover
20th and Parkway
Philadelphia, PA 19103
Phone: (215) 448-1413

NVLAP Code	Test Method Designation	Short Title (property) Subtitle (if applicable)
02/M01	ASTM C31	Making and Curing Concrete Test Specimens in the Field
02/M03	ASTM C172	Sampling Fresh Concrete
02/P01	ASTM C143	Slump of Portland Cement Concrete
02/M01	ASTM C138	Unit Weight, Yield, and Air Content (Gravimetric) of Concrete
02/A01	ASTM C231	Air Content of Freshly Mixed Concrete by the Pressure Method
02/S01	ASTM C39	Compressive Strength of Cylindrical Concrete Specimens

NOTE: Accreditation is granted on 12/22/80 and expires on 12/21/81.

GALAXY CARPET MILLS, INC., TESTING LABORATORY
Attn: Mr. Lou Childers
P. O. Box 800
Industrial Blvd.
Chatsworth, GA 30705
Phone: (404) 695-9611

NVLAP Code	Test Method Designation	Short Title (property) Subtitle (if applicable)
03/C01	AATCC 16E	Colorfastness to Light (Xenon Arc)
03/C02	AATCC 8	Colorfastness to Crocking
03/D01	ASTM D418	Methods of Testing Woven and Tufted Pile Floor Coverings
		Pile Weight - Uncoated (Para. 10-19)
		Pile Weight - Coated (Para. 20-29) as modified by UN 44C
		Pile Thickness - (Para. 30-36)
		Tuft Height - (Para. 37-45) as modified by UN 44C
03/D02	DDD-C-95A	Shrinkage
03/S01	ASTM D1335	Tuft Bind of Floor Coverings
	Federal Test Method Standard 191-5100	Textile Test Method - Breaking Strength
	191-5950	Textile Test Method - Delamination
03/F03	DoC FF1-70	Methenamine Pill Test
03/B02	UN 44C Addenda 2 and 3	Attached Cushion Tests

NOTE: Accreditation is granted on 10/20/80 and expires on 10/19/81.

GARCO TESTING LABORATORIES
Attn: Mr. J. Robbin Duncan
41 West Central Avenue
P. O. Box 7006
Murray, UT 84107
Phone: (801) 266-4498

NVLAP Code	Test Method Designation	Short Title (property) Subtitle (if applicable)
02/M01	ASTM C31	Making and Curing Concrete Test Specimens in the Field
02/M03	ASTM C172	Sampling Fresh Concrete
02/P01	ASTM C143	Slump of Portland Cement Concrete
02/M01	ASTM C138	Unit Weight, Yield, and Air Content (Gravimetric) of Concrete
02/A01	ASTM C231	Air Content of Freshly Mixed Concrete by the Pressure Method
02/S01	ASTM C39	Compressive Strength of Cylindrical Concrete Specimens
02/A02	ASTM C173	Air Content of Freshly Mixed Concrete by the Volumetric Method

NOTE: Accreditation is granted on 10/20/80 and expires on 10/19/81.

GENERAL TESTING LABORATORIES, INC.
Attn: Mr. Ben Polsner
1517 Walnut Street
Kansas City, MO 64108
Phone: (816) 471-1205

NVLAP Code	Test Method Designation	Short Title (property) Subtitle (if applicable)
02/M01	ASTM C31	Making and Curing Concrete Test Specimens in the Field
02/M03	ASTM C172	Sampling Fresh Concrete
02/P01	ASTM C143	Slump of Portland Cement Concrete
02/M01	ASTM C138	Unit Weight, Yield, and Air Content (Gravimetric) of Concrete
02/A01	ASTM C231	Air Content of Freshly Mixed Concrete by the Pressure Method
02/S01	ASTM C39	Compressive Strength of Cylindrical Concrete Specimens

NOTE: Accreditation is granted on 10/20/80 and expires on 10/19/81.

GEOSCIENCE LTD.
Attn: Mr. Heinz F. Poppendiek
410 South Cedros Avenue
Solana Beach, CA 92075

NVLAP Code	Test Method Designation	Short Title (property) Subtitle (if applicable)

NVLAP Code	Test Method Designation	Short Title (property) Subtitle (if applicable)
02/M01	ASTM C138	Unit Weight, Yield, and Air Content (Gravimetric) of Concrete
02/A01	ASTM C231	Air Content of Freshly Mixed Concrete by the Pressure Method
02/S01	ASTM C39	Compressive Strength of Cylindrical Concrete Specimens
02/A02	ASTM C173	Air Content of Freshly Mixed Concrete by the Volumetric Method

NOTE: Accreditation is granted on 12/22/80 and expires on 12/21/81.

HARDWOOD PLYWOOD MANUFACTURERS ASSOCIATION
Attn: Mr. Gary D. Gramp
1825 Michael Faraday Drive
P. O. Box 2789
Reston, VA 22090
Phone: (703) 435-2900

NVLAP Code	Test Method Designation	Short Title (property) Subtitle (if applicable)
01/F02	ASTM E84	Surface burning characteristics; Building materials
01/F07	NH-I-515 (para. 4.8.7 in D version, Amendment 1)	Critical radiant flux; Radiant Panel (cellulosic fiber, loose-fill)
03/F01	ASTM E84	Surface Flammability (Carpet)
03/F04	ASTM E648	Radiant Panel (Carpet)

NOTE: Accreditation is granted on 10/14/80 and expires on 10/13/81.

HAUSER LABORATORIES
Attn: Mr. Ray L. Hauser
5680 Central Avenue
P. O. Box 8
Boulder, CO 80306
Phone: (303) 443-4862

NVLAP Code	Test Method Designation	Short Title (property) Subtitle (if applicable)
01/C02	NH-I-515 (para. 4.8.5 in D version, Amendment 1)	Corrosiveness; Cellulosic fiber (loose-fill)
01/D12	ASTM C411	Hot-surface performance; High temperature insulation
01/D25	NH-I-515 (para. 4.8.3 in D version, Amendment 1)	Moisture absorption; Cellulosic fiber (loose-fill)

GEOSCIENCE LTD.
Attn: Mr. Heinz F. Poppendiek
410 South Cedros Avenue
Solana Beach, CA 92075
Phone: (714) 755-9396

NVLAP Code	Test Method Designation	Short Title (property) Subtitle (if applicable)
01/T01	ASTM C177	Thermal transmission properties; Low-temperature guarded hot plate

NOTE: Accreditation is granted on 10/14/80 and expires on 10/13/81.

THE H. C. NUTTING COMPANY
Attn: Mr. G. J. Spieker
4120 Airport Road
Cincinnati, OH 45226
Phone: (513) 321-5816

NVLAP Code	Test Method Designation	Short Title (property) Subtitle (if applicable)
02/M01	ASTM C31	Making and Curing Concrete Test Specimens in the Field
02/M03	ASTM C172	Sampling Fresh Concrete
02/P01	ASTM C143	Slump of Portland Cement Concrete
02/M01	ASTM C138	Unit Weight, Yield, and Air Content (Gravimetric) of Concrete
02/A01	ASTM C231	Air Content of Freshly Mixed Concrete by the Pressure Method
02/S01	ASTM C39	Compressive Strength of Cylindrical Concrete Specimens

NOTE: Accreditation is granted on 10/20/80 and expires on 10/19/81.

HALES TESTING LABORATORIES, INC.
Attn: Mr. George F. Durbin
23286 Foley Street
P. O. Box 6124
Hayward, CA 94540
Phone: (415) 887-1430

NVLAP Code	Test Method Designation	Short Title (property) Subtitle (if applicable)
02/M01	ASTM C31	Making and Curing Concrete Test Specimens in the Field
02/M03	ASTM C172	Sampling Fresh Concrete
02/P01	ASTM C143	Slump of Portland Cement Concrete

NVLAP Code	Test Method Designation	Short Title (property) Subtitle (if applicable)
01/D26	NH-I-515 (para. 4.8.1 in D version, Amendment 1)	Settled density; Cellulosic fiber (loose-fill)
01/F05	ASTM E136	Behavior of Materials in a Vertical Tube Furnace
01/F07	NH-I-515 (para. 4.8.7 in D version, Amendment 1)	Critical radiant flux; Radiant Panel (cellulosic fiber, loose-fill)
01/F08	NH-I-515 (para. 4.8.8 in D version, Amendment 1)	Smoldering combustion; Cellulosic fiber (loose-fill)
01/T06	ASTM C518	Thermal transmission properties; Heat flow meter
01/T09	ASTM C653	Thermal resistance (Rec. Practice); Blanket (mineral fiber)
01/T10	ASTM C687	Thermal resistance (Rec. Practice); Loose-fill (fibrous)
01/V05	NH-I-515 (para. 4.8.6 in D version, Amendment 1)	Fungus; Cellulosic fiber (loose-fill)
01/V06	NH-I-515 (para. 4.8.9 in D version, Amendment 1)	Starch; Cellulosic fiber (loose-fill)

NOTE: Accreditation is granted on 10/12/80 and expires on 10/11/81.

HERRON CONSULTANTS, INC.
Attn: Mr. J. R. Sutcliffe
5555 Canal Road
Cleveland, OH 44125
Phone: (216) 447-1335

NVLAP Code	Test Method Designation	Short Title (property) Subtitle (if applicable)
02/M01	ASTM C31	Making and Curing Concrete Test Specimens in the Field
02/M03	ASTM C172	Sampling Fresh Concrete
02/P01	ASTM C143	Slump of Portland Cement Concrete
02/W01	ASTM C138	Unit Weight, Yield, and Air Content (Gravimetric) of Concrete
02/A01	ASTM C231	Air Content of Freshly Mixed Concrete by the Pressure Method
02/S01	ASTM C39	Compressive Strength of Cylindrical Concrete Specimens
02/A02	ASTM C173	Air Content of Freshly Mixed Concrete by the Volumetric Method

NOTE: Accreditation is granted on 10/20/80 and expires on 10/19/81.

INDEPENDENT TEXTILE TESTING SERVICE, INC.
Attn: Mr. Cornelius C. Setter
P. O. Box 1948
1499 Murray Avenue
Dalton, GA 30720
Phone: (404) 278-3013

NVLAP Code	Test Method Designation	Short Title (property) Subtitle (if applicable)
03/C01	AATCC 16E	Colorfastness to Light (Xenon Arc)
03/C02	AATCC 8	Colorfastness to Crocking
03/D01	ASTM D418	Methods of Testing Woven and Tufted Pile Floor Coverings
		Pile Weight - Uncoated (Para. 10-19)
		Pile Weight - Coated (Para. 20-29) as modified by UN 44C
		Pile Thickness - (Para. 30-36)
		Tuft Height - (Para. 37-45) as modified by UN 44C
03/D02	DOD-C-96A	Shrinkage
03/S01	ASTM D1335	Tuft Bind of Floor Coverings
	Federal Test Method Standard 191-5100	Textile Test Method - Breaking Strength
	191-5960	Textile Test Method - Delamination
03/E01	AATCC 134/ CRI 102	Electrostatic Propensity of Carpets
03/F03	DoC FF1-70	Methenamine Pill Test
03/F04	ASTM E648	Radiant Panel (Carpet)
03/B01	UN 44C Addendum 3	Attached Cushion Tests
03/B02	UN 44C Addenda 2 and 3	Attached Cushion Tests

NOTE: Accreditation is granted on 10/20/80 and expires on 10/19/81.

INTEST LABORATORIES, INC.
Attn: Mr. Donald J. Valsvik
2820 Anthony Lane South
Minneapolis, MN 55418
Phone: (612) 781-2603

NVLAP Code	Test Method Designation	Short Title (property) Subtitle (if applicable)
01/C02	NH-I-515 (para. 4.8.5 in D version, Amendment 1)	Corrosiveness; Cellulosic fiber (loose-fill)
01/D25	NH-I-515 (para. 4.8.3 in D version, Amendment 1)	Moisture absorption; Cellulosic fiber (loose-fill)
01/D26	NH-I-515 (para. 4.8.1 in D version, Amendment 1)	Settled density; Cellulosic fiber (loose-fill)

NVLAP Code	Test Method Designation	Short Title (property) Subtitle (if applicable)
01/F07	NH-I-515 (para. 4.8.7 in D version,	Critical radiant flux; Radiant Panel (cellulosic fiber,

NVLAP Code	Test Method Designation	Short Title (property) Subtitle (if applicable)
01/S03	ASTM C209 (para. 9 in 72 version)	Transverse strength; Board (cellulosic fiber)

NVLAP Code	Test Method Designation	Short Title (property) Subtitle (if applicable)
01/F07	MH-I-515 (para. 4.8.7 in D version, Amendment 1)	Critical radiant flux; Radiant Panel (cellulosic fiber, loose-fill)
01/F08	MH-I-515 (para. 4.8.8 in D version, Amendment 1)	Smoldering combustion; Cellulosic fiber (loose-fill)
01/V06	MH-I-515 (para. 4.8.9 in D version, Amendment 1)	Starch; Cellulosic fiber (loose-fill)

NOTE: Accreditation is granted on 10/12/80 and expires on 10/11/81.

JIM WALTER RESEARCH CORPORATION
Attn: Mr. D. E. Hipchen
10301 9th Street, N.
St. Petersburg, FL 33702
Phone: (813) 576-4171

NVLAP Code	Test Method Designation	Short Title (property) Subtitle (if applicable)
01/D03	ASTM C209 (para. 6 in 72 version)	Thickness; Board (cellulosic fiber)
01/D04	ASTM C209 (para. 13 in 72 version)	Water absorption, 2 hour; Board (cellulosic fiber)
01/D05	ASTM C209 (para. 13 in 72 version) by D1037 (para. 100-106 in 72 version)	Water absorption, 24 hour; Board (cellulosic fiber)
01/D06	ASTM C209 (para. 13 in 72 version) by D1037 (para. 107-110 in 72 version)	Linear expansion; Board (cellulosic fiber)
01/D09	ASTM C303	Density; Preformed block insulation
01/D18	ASTM D1622	Apparent density; Rigid cellular plastics
01/D19	ASTM D2126	Response to thermal and humid; Aging (proc. B); Rigid cellular plastics
01/D20	ASTM D2126	Response to thermal and humid; Aging (proc. D); Rigid cellular plastics
01/D21	ASTM D2126	Response to thermal and humid; Aging (proc. E); Rigid cellular plastics
01/D22	ASTM D2126	Response to thermal and humid; Aging (proc. F); Rigid cellular plastics
01/D23	ASTM D2842	Water absorption; Rigid cellular plastics
01/S01	ASTM C165	Compressive properties; Thermal insulation (proc. A)
01/S02	ASTM C203	Breaking load/flexural strength; Preformed block insulation

NVLAP Code	Test Method Designation	Short Title (property) Subtitle (if applicable)
01/S03	ASTM C209 (para. 9 in 72 version)	Transverse strength; Board (cellulosic fiber)
01/S04	ASTM C209 (para. 10 in 72 version)	Deflection at specified load; Board (cellulosic fiber)
01/S05	ASTM C209 (para. 11 in 72 version)	Tensile strength; Parallel to surface; Board (cellulosic fiber)
01/S06	ASTM C209 (para. 12 in 72 version)	Tensile strength; Perpendicular to surface
01/S07	ASTM C273	Shear test; Sandwich construction
01/S11	ASTM D1621	Compressive properties; Rigid cellular plastics (proc. A-Crosshead)
01/T01	ASTM C177	Thermal transmission properties; Low-temperature guarded hot plate
01/T04	ASTM C236	Thermal conductance; Guarded hot box
01/T05	ASTM C335	Thermal conductivity; Pipe insulation
01/T06	ASTM C518	Thermal transmission properties; Heat flow meter

NOTE: Accreditation is granted on 10/12/80 and expires on 10/11/81.

JOHNS-MANVILLE SALES CORP., R & D CENTER
Attn: Mr. Robert L. Mason
10100 W. Ute Avenue
P. O. Box 5108
Denver, CO 80217
Phone: (303) 979-1000 x4663

NVLAP Code	Test Method Designation	Short Title (property) Subtitle (if applicable)
01/D02	ASTM C167	Thickness and density; Blanket and batt
01/D03	ASTM C209 (para. 6 in 72 version)	Thickness; Board (cellulosic fiber)
01/D04	ASTM C209 (para. 13 in 72 version)	Water absorption, 2 hour; Board (cellulosic fiber)
01/D05	ASTM C209 (para. 13 in 72 version) by D1037 (para. 100-106 in 72 version)	Water absorption, 24 hour; Board (cellulosic fiber)
01/D06	ASTM C209 (para. 13 in 72 version) by D1037 (para. 107-110 in 72 version)	Linear expansion; Board (cellulosic fiber)
01/D08	ASTM C302	Density; Preformed pipe insulation
01/D09	ASTM C303	Density; Preformed block insulation

NVLAP Code	Test Method Designation	Short Title (property) Subtitle (if applicable)
01/D10	ASTM C355	Water vapor transmission; Thick materials; Desiccant method
01/D11	ASTM C366	Linear shrinkage; Soaking heat; Preformed high temperature insulation
01/D12	ASTM C411	Hot-surface performance; High temperature insulation
01/D13	ASTM C519	Density; Loose-fill (fibrous)
01/D14	ASTM C520	Density; Granular loose-fill
01/F01	ASTM D777 (as modified by NH-8-1008)	Flammability; Paper and paperboard
01/F02	ASTM E84	Surface burning characteristics; Building materials
01/F05	ASTM E136	Behavior of Materials in a Vertical Tube Furnace
01/S01	ASTM C165	Compressive properties; Thermal insulation (proc. A)
01/S02	ASTM C203	Breaking load/flexural strength; Preformed block insulation
01/S03	ASTM C209 (para. 9 in 72 version)	Transverse strength; Board (cellulosic fiber)
01/S04	ASTM C209 (para. 10 in 72 version)	Deflection at specified load; Board (cellulosic fiber)
01/S05	ASTM C209 (para. 11 in 72 version)	Tensile strength; Parallel to surface; Board (cellulosic fiber)
01/S06	ASTM C209 (para. 12 in 72 version)	Tensile strength; Perpendicular to surface
01/S07	ASTM C273	Shear test; Sandwich construction
01/S08	ASTM C446	Breaking load/modulus of rupture; Preformed pipe insulation
01/S09	ASTM D781	Puncture test; Paperboard and fiberboard
01/S10	ASTM D828	Tensile breaking strength; Paper and paperboard
01/T04	ASTM C236	Thermal conductance; Guarded hot box
01/T05	ASTM C335	Thermal conductivity; Pipe insulation
01/T06	ASTM C518	Thermal transmission properties; Heat flow meter
01/T09	ASTM C653	Thermal resistance (Rec. Practice); Blanket (mineral fiber)
01/T10	ASTM C687	Thermal resistance (Rec. Practice); Loose-fill (fibrous)
01/V04	ASTM E96	Water vapor transmission; Thin sheets (proc. A)

NOTE: Accreditation is granted on 10/12/80 and expires on 10/11/81.

KELSO INDUSTRIES, INC.
Attn: Mr. Chris G. Slate
Building Materials Company Div.
Quality Control Laboratory
7002 Port Industrial Blvd.
P. O. Box 659
Galveston, TX 77553
Phone: (713) 744-5341

NVLAP Code	Test Method Designation	Short Title (property) Subtitle (if applicable)
02/M01	ASTM C31	Making and Curing Concrete Test Specimens in the Field
02/M03	ASTM C172	Sampling Fresh Concrete
02/P01	ASTM C143	Slump of Portland Cement Concrete
02/W01	ASTM C138	Unit Weight, Yield, and Air Content (Gravimetric) of Concrete
02/A01	ASTM C231	Air Content of Freshly Mixed Concrete by the Pressure Method
02/S01	ASTM C39	Compressive Strength of Cylindrical Concrete Specimens
02/A02	ASTM C173	Air Content of Freshly Mixed Concrete by the Volumetric Method

NOTE: Accreditation is granted on 12/22/80 and expires on 12/21/81.

LANDER THERMAL CONDUCTIVITY LABORATORY
Attn: Mr. R. M. Lander
1320 West 28th Street
Minneapolis, MN 55408
Phone: (612) 872-7230

NVLAP Code	Test Method Designation	Short Title (property) Subtitle (if applicable)
01/T01	ASTM C177	Thermal transmission properties; Low-temperature guarded hot plate
01/T05	ASTM C335	Thermal conductivity; Pipe insulation

NOTE: Accreditation is granted on 10/14/80 and expires on 10/13/81.

LOUISIANA-PACIFIC CORPORATON, PABCO R & D LABORATORY
Attn: Mr. F. B. Mutte, Jr.
1110 16th Road
Fruita, CO 81521
Phone: (303) 858-3694

NVLAP Code	Test Method Designation	Short Title (property) Subtitle (if applicable)
01/T05	ASTM C335	Thermal conductivity; Pipe insulation

NOTE: Accreditation is granted on 10/12/80 and expires on 10/11/81.

LOWRY TESTING LABORATORIES
Attn: Mr. Thomas G. Connelly
123 Commerce Circle
P. O. Box 12340

MATERIALS TESTING CONSULTANTS, INC.
Attn: Mr. Robert T. Billington
693 Plymouth, N.E.
Grand Rapids, MI 49505
Phone: (616) 456-5460

LOWRY TESTING LABORATORIES
Attn: Mr. Thomas G. Connolly
123 Commerce Circle
P. O. Box 13340
Sacramento, CA 95813
Phone: (916) 929-9012

NVLAP Code	Test Method Designation	Short Title (property) Subtitle (if applicable)
02/M01	ASTM C31	Making and Curing Concrete Test Specimens in the Field
02/M03	ASTM C172	Sampling Fresh Concrete
02/P01	ASTM C143	Slump of Portland Cement Concrete
02/M01	ASTM C138	Unit Weight, Yield, and Air Content (Gravimetric) of Concrete
02/A01	ASTM C231	Air Content of Freshly Mixed Concrete by the Pressure Method
02/S01	ASTM C39	Compressive Strength of Cylindrical Concrete Specimens
02/A02	ASTM C173	Air Content of Freshly Mixed Concrete by the Volumetric Method

NOTE: Accreditation is granted on 12/22/80 and expires on 12/21/81.

MATERIALS SERVICE CORPORATION
Attn: Mr. John M. Albinger
901 North Sangamon
Chicago, IL 60622
Phone: (312) 372-3600

NVLAP Code	Test Method Designation	Short Title (property) Subtitle (if applicable)
02/M01	ASTM C31	Making and Curing Concrete Test Specimens in the Field
02/M03	ASTM C172	Sampling Fresh Concrete
02/P01	ASTM C143	Slump of Portland Cement Concrete
02/M01	ASTM C138	Unit Weight, Yield, and Air Content (Gravimetric) of Concrete
02/A01	ASTM C231	Air Content of Freshly Mixed Concrete by the Pressure Method
02/S01	ASTM C39	Compressive Strength of Cylindrical Concrete Specimens

NOTE: Accreditation is granted on 12/22/80 and expires on 12/21/81.

MATERIALS TESTING CONSULTANTS, INC.
Attn: Mr. Robert T. Billington
683 Plymouth, N.E.
Grand Rapids, MI 49505
Phone: (616) 456-8469

NVLAP Code	Test Method Designation	Short Title (property) Subtitle (if applicable)
02/M01	ASTM C31	Making and Curing Concrete Test Specimens in the Field
02/M03	ASTM C172	Sampling Fresh Concrete
02/P01	ASTM C143	Slump of Portland Cement Concrete
02/M01	ASTM C138	Unit Weight, Yield, and Air Content (Gravimetric) of Concrete
02/A01	ASTM C231	Air Content of Freshly Mixed Concrete by the Pressure Method
02/S01	ASTM C39	Compressive Strength of Cylindrical Concrete Specimens
02/A02	ASTM C173	Air Content of Freshly Mixed Concrete by the Volumetric Method

NOTE: Accreditation is granted on 10/20/80 and expires on 10/19/81.

MONASCO CORPORATION, PHYSICAL TESTING LABORATORY
Attn: Mr. Piet Bodenhorst
67 Lyon Street
Amsterdam, NY 12010
Phone: (518) 841-2172

NVLAP Code	Test Method Designation	Short Title (property) Subtitle (if applicable)
03/C01	AATCC 16E	Colorfastness to Light (Xenon Arc)
03/C02	AATCC 8	Colorfastness to Crocking
03/D01	ASTM D418	Methods of Testing Woven and Tufted Pile Floor Coverings Pile Weight - Uncoated (Para. 18-19) Pile Weight - Coated (Para. 20-29) as modified by UM 44C Pile Thickness - (Para. 30-36) Tuft Weight - (Para. 37-46) as modified by UM 44C
03/V02	DOD-C-98A	Shrinkage
03/S01	ASTM D1335 Federal Test Method Standard 191-6100 191-8900	Tuft Bind of Floor Coverings Textile Test Method - Breaking Strength Textile Test Method - Delamination
03/E01	AATCC 134/ CRI 102	Electrostatic Propensity of Carpets
03/P02	DoC FF1-70	Methenamine Pill Test
03/F04	ASTM E648	Radiant Panel (Carpet)

NOTE: Accreditation is granted on 10/20/80 and expires on 10/19/81.

NAMS RESEARCH FOUNDATION, INC.
Attn: Mr. Burt Wilsker
627 Southlawn Lane
P. O. Box 1627
Rockville, MD 20850
Phone: (301) 762-4200

NVLAP Code	Test Method Designation	Short Title (property) Subtitle (if applicable)
01/V06	ASTM C167	Thickness and density; Blanket and batt
01/D13	ASTM C519	Density; Loose-fill (fibrous)
01/T06	ASTM C518	Thermal transmission properties; Heat flow meter
01/T09	ASTM C653	Thermal resistance (Rec. Practice); Blanket (mineral fiber)
01/T10	ASTM C687	Thermal resistance (Rec. Practice); Loose-fill (fibrous)

NOTE: Accreditation is granted on 10/12/80 and expires on 10/11/81.

NORTHERN TESTING LABORATORIES, INC., BILLINGS, MONTANA LABORATORY
Attn: Mr. Larry G. O'Dell
600 South 25th Street
P. O. Box 30615
Billings, MT 59107
Phone: (406) 248-9161

NVLAP Code	Test Method Designation	Short Title (property) Subtitle (if applicable)
02/M01	ASTM C31	Making and Curing Concrete Test Specimens in the Field
02/M03	ASTM C172	Sampling Fresh Concrete
02/P01	ASTM C143	Slump of Portland Cement Concrete
02/M01	ASTM C138	Unit Weight, Yield, and Air Content (Gravimetric) of Concrete
02/A01	ASTM C231	Air Content of Freshly Mixed Concrete by the Pressure Method
02/S01	ASTM C39	Compressive Strength of Cylindrical Concrete Specimens
02/A02	ASTM C173	Air Content of Freshly Mixed Concrete by the Volumetric Method

NOTE: Accreditation is granted on 10/20/80 and expires on 10/19/81.

NORTHERN TESTING LABORATORIES, INC., BOISE, IDAHO LABORATORY
Attn: Mr. Roger W. Pecta
370 Benjamin Lane
P. O. Box 7857
Boise, ID 83709
Phone: (208) 377-2100

NVLAP Code	Test Method Designation	Short Title (property) Subtitle (if applicable)
02/M01	ASTM C31	Making and Curing Concrete Test Specimens in the Field
02/M03	ASTM C172	Sampling Fresh Concrete
02/P01	ASTM C143	Slump of Portland Cement Concrete
02/M01	ASTM C138	Unit Weight, Yield, and Air Content (Gravimetric) of Concrete
02/A01	ASTM C231	Air Content of Freshly Mixed Concrete by the Pressure Method
02/S01	ASTM C39	Compressive Strength of Cylindrical Concrete Specimens
02/A02	ASTM C173	Air Content of Freshly Mixed Concrete by the Volumetric Method

NOTE: Accreditation is granted on 10/20/80 and expires on 10/19/81.

NORTHERN TESTING LABORATORIES, INC., GREAT FALLS, MONTANA LABORATORY
Attn: Mr. Robert M. Gillespie
528 Smelter Avenue
P. O. Box 961
Great Falls, MT 59403
Phone: (406) 453-1641

NVLAP Code	Test Method Designation	Short Title (property) Subtitle (if applicable)
02/M01	ASTM C31	Making and Curing Concrete Test Specimens in the Field
02/M03	ASTM C172	Sampling Fresh Concrete
02/P01	ASTM C143	Slump of Portland Cement Concrete
02/M01	ASTM C138	Unit Weight, Yield, and Air Content (Gravimetric) of Concrete
02/A01	ASTM C231	Air Content of Freshly Mixed Concrete by the Pressure Method
02/S01	ASTM C39	Compressive Strength of Cylindrical Concrete Specimens
02/A02	ASTM C173	Air Content of Freshly Mixed Concrete by the Volumetric Method

NOTE: Accreditation is granted on 12/22/80 and expires on 12/21/81.

OLIN CORPORATION, PHYSICAL TESTING LABORATORY
Attn: Mr. D. Robert Shine
275 S. Winchester Avenue, Bldg. 117C
New Haven, CT 06511
Phone: (203) 789-5882

NVLAP Code	Test Method Designation	Short Title (property) Subtitle (if applicable)
01/D11	ASTM C303	Density; Preformed high temperature insulation
01/D13	ASTM C519	Density; Loose-fill (fibrous)
01/T06	ASTM C518	Thermal transmission properties; Heat flow meter
01/T09	ASTM C653	Thermal resistance (Rec. Practice); Blanket (mineral fiber)
01/T10	ASTM C687	Thermal resistance (Rec. Practice); Loose-fill (fibrous)

NOTE: Accreditation is granted on 10/20/80 and expires on 10/19/81.

NVLAP Code	Test Method Designation	Short Title (property) Subtitle (if applicable)
01/D11	ASTM C303	Linear shrinkage; Soaking heat; Preformed high temperature insulation
01/D13	ASTM C519	Density; Loose-fill (fibrous)
01/T06	ASTM C518	Thermal transmission properties; Heat flow meter
01/T09	ASTM C653	Thermal resistance (Rec. Practice); Blanket (mineral fiber)
01/T10	ASTM C687	Thermal resistance (Rec. Practice); Loose-fill (fibrous)

NOTE: Accreditation is granted on 10/20/80 and expires on 10/19/81.

OLIN CORPORATION, PHYSICAL TESTING LABORATORY
Attn: Mr. D. Robert Shine
275 S. Winchester Avenue, Bldg. 117C
New Haven, CT 06511
Phone: (203) 789-5682

NVLAP Code	Test Method Designation	Short Title (property) Subtitle (if applicable)
01/D18	ASTM D1622	Apparent density; Rigid cellular plastics
01/D19	ASTM D2126	Response to thermal and humid; Aging (proc. B); Rigid cellular plastics
01/D21	ASTM D2126	Response to thermal and humid; Aging (proc. E); Rigid cellular plastics
01/S07	ASTM C273	Shear test; Sandwich construction
01/T06	ASTM C518	Thermal transmission properties; Heat flow meter

NOTE: Accreditation is granted on 10/14/80 and expires on 10/13/81.

OWENS-CORNING FIBERGLAS CORP., TECHNICAL CENTER LABORATORY
Attn: Mr. Harland E. Fargo
Route 16, P. O. Box 415
Granville, OH 43023
Phone: (614) 587-7010

NVLAP Code	Test Method Designation	Short Title (property) Subtitle (if applicable)
01/C01	ASTM C739 (para. 7.7 in 77 version)	Corrosiveness; Cellulosic fiber (loose-fill)
01/C02	HH-I-515 (para. 4.8.6 in D version, Amendment 1)	Corrosiveness; Cellulosic fiber (loose-fill)
01/D02	ASTM C167	Thickness and density; Blanket and batt
01/D03	ASTM C209 (para. 6 in 72 version)	Thickness; Board (cellulosic fiber)
01/D04	ASTM C209 (para. 13 in 72 version)	Water absorption, 2 hour; Board (cellulosic fiber)
01/D05	ASTM C209 (para. 13 in 72 version) by D1037 (para. 100-106 in 72 version)	Water absorption, 24 hour; Board (cellulosic fiber)
01/D06	ASTM C209 (para. 13 in 72 version) by D1037 (para. 107-110 in 72 version)	Linear expansion; Board (cellulosic fiber)
01/D07	ASTM C272	Water absorption; Core materials
01/D08	ASTM C302	Density; Preformed pipe insulation
01/D09	ASTM C303	Density; Preformed block insulation
01/E00	ASTM C355	Water vapor transmission; Thick materials; Desiccant method

NVLAP Code	Test Method Designation	Short Title (property) Subtitle (if applicable)
01/D11	ASTM C356	Linear shrinkage; Soaking heat; Preformed high temperature insulation
01/D12	ASTM C411	Hot-surface performance; High temperature insulation
01/D13	ASTM C519	Density; Loose-fill (fibrous)
01/D15	ASTM D795	Weight and shape changes; Accelerated service (proc. A); Plastics
01/D16	ASTM D795	Weight and shape changes; Accelerated service (proc. B); Plastics
01/D17	ASTM D795	Weight and shape changes; Accelerated service (proc. E); Plastics
01/D18	ASTM D1622	Apparent density; Rigid cellular plastics
01/D19	ASTM D2126	Response to thermal and humid; Aging (proc. B); Rigid cellular plastics
01/D20	ASTM D2126	Response to thermal and humid; Aging (proc. D); Rigid cellular plastics
01/D21	ASTM D2126	Response to thermal and humid; Aging (proc. E); Rigid cellular plastics
01/D22	ASTM D2126	Response to thermal and humid; Aging (proc. F); Rigid cellular plastics
01/D23	ASTM D2842	Water absorption; Rigid cellular plastics
01/D24	ASTM C739 (para. 7.5 in 77 version)	Moisture absorption; Cellulosic fiber (loose-fill)
01/D25	HH-I-515 (para. 4.8.3 in D version, Amendment 1)	Moisture absorption; Cellulosic fiber (loose-fill)
01/D26	HH-I-515 (para. 4.8.1 in D version, Amendment 1)	Settled density; Cellulosic fiber (loose-fill)
01/F01	ASTM D777 (as modified by HH-B-1008)	Flammability; Paper and paperboard
01/F02	ASTM E84	Surface burning characteristics; Building materials
01/F05	ASTM E136	Behavior of Materials in a Vertical Tube Furnace
01/F07	HH-I-515 (para. 4.8.7 in D version, Amendment 1)	Critical radiant flux; Radiant Panel (cellulosic fiber, loose-fill)
01/F08	HH-I-515 (para. 4.8.8 in D version, Amendment 1)	Smoldering combustion; Cellulosic fiber (loose-fill)
01/S01	ASTM C165	Compressive properties; Thermal insulation (proc. A)
01/S02	ASTM C203	Breaking load/flexural strength; Preformed block insulation
01/S03	ASTM C209 (para. 9 in 72 version)	Transverse strength; Board (cellulosic fiber)
01/S04	ASTM C209 (para. 10 in 72 version)	Deflection at specified load; Board (cellulosic fiber)

NVLAP Code	Test Method Designation	Short Title (property) Subtitle (if applicable)
01/S05	ASTM C209 (para. 11 in 72 version)	Tensile strength; Parallel to surface; Board (cellulosic fiber)
01/S06	ASTM C209 (para. 12 in 72 version)	Tensile strength; Perpendicular to surface
01/S07	ASTM C273	Shear test; Sandwich construction
01/S08	ASTM C446	Breaking load/modulus of rupture; Preformed pipe insulation
01/S09	ASTM D781	Puncture test; Paperboard and fiberboard
01/S10	ASTM D828	Tensile breaking strength; Paper and paperboard
01/S11	ASTM D1621	Compressive properties; Rigid cellular plastics (proc. A-Crosshead)
01/T01	ASTM C177	Thermal transmission properties; Low-temperature guarded hot plate
01/T04	ASTM C236	Thermal conductance; Guarded hot box
01/T05	ASTM C335	Thermal conductivity; Pipe insulation
01/T06	ASTM C518	Thermal transmission properties; Heat flow meter
01/T09	ASTM C653	Thermal resistance (Rec. Practice); Blanket (mineral fiber)
01/T10	ASTM C687	Thermal resistance (Rec. Practice); Loose-fill (fibrous)
01/V02	ASTM D501	Starch in paper; Qualitative test
01/V03	ASTM D2020	Mildew (fungus) resistance; Paper and paperboard
01/V04	ASTM E96	Water vapor transmission; Thin sheets (proc. A)
01/V05	HH-I-515 (para. 4.8.6 in D version, Amendment 1)	Fungus; Cellulosic fiber (loose-fill)
01/V06	HH-I-515 (para. 4.8.9 in D version, Amendment 1)	Starch; Cellulosic fiber (loose-fill)

NOTE: Accreditation is granted on 10/12/80 and expires on 10/11/81.

OWENS-CORNING FIBERGLAS CORP.
BARRINGTON, NEW JERSEY PLANT LABORATORY
Attn: Mr. Harland E. Fargo
Route 16, P. O. Box 415
Granville, OH 43023
Phone: (614) 587-7010

NVLAP Code	Test Method Designation	Short Title (property) Subtitle (if applicable)
01/D02	ASTM C167	Thickness and density; Blanket and batt
01/D09	ASTM C303	Density; Preformed block insulation
01/T06	ASTM C518	Thermal transmission properties; Heat flow meter

NOTE: Accreditation is granted on 10/12/80 and expires on 10/11/81.

OWENS-CORNING FIBERGLAS CORP.
DELMAR, NEW YORK PLANT LABORATORY
Attn: Mr. Harland E. Fargo
Route 16, P. O. Box 415
Granville, OH 43023
Phone: (614) 587-7010

NVLAP Code	Test Method Designation	Short Title (property) Subtitle (if applicable)
01/D02	ASTM C167	Thickness and density; Blanket and batt
01/T06	ASTM C518	Thermal transmission properties; Heat flow meter

NOTE: Accreditation is granted on 10/12/80 and expires on 10/11/81.

OWENS-CORNING FIBERGLAS CORP.
FAIRBURN, GEORGIA PLANT LABORATORY
Attn: Mr. Harland E. Fargo
Route 16, P. O. Box 415
Granville, OH 43023
Phone: (614) 587-7010

NVLAP Code	Test Method Designation	Short Title (property) Subtitle (if applicable)
01/D02	ASTM C167	Thickness and density; Blanket and batt
01/T06	ASTM C518	Thermal transmission properties; Heat flow meter

NOTE: Accreditation is granted on 10/12/80 and expires on 10/11/81.

OWENS-CORNING FIBERGLAS CORP.
KANSAS CITY, KANSAS PLANT LABORATORY
Attn: Mr. Harland E. Fargo
Route 16, P. O. Box 415
Granville, OH 43023
Phone: (614) 587-7010

NVLAP Code	Test Method Designation	Short Title (property) Subtitle (if applicable)
01/D02	ASTM C167	Thickness and density; Blanket and batt
01/D09	ASTM C303	Density; Preformed block insulation
01/T06	ASTM C518	Thermal transmission properties; Heat flow meter

NOTE: Accreditation is granted on 10/12/80 and expires on 10/11/81.

OWENS-CORNING FIBERGLAS CORP.
NEWARK, OHIO PLANT LABORATORY
Attn: Mr. Harland E. Fargo
Route 16, P. O. Box 415
Granville, OH 43023
Phone: (614) 587-7010

NVLAP Code	Test Method Designation	Short Title (property) Subtitle (if applicable)
01/D02	ASTM C167	Thickness and density; Blanket and batt
01/T06	ASTM C518	Thermal transmission properties; Heat flow meter

NOTE: Accreditation is granted on 10/12/80 and expires on 10/11/81.

PORTLAND CEMENT ASSOCIATION, CONSTRUCTION TECHNOLOGY LABORATORIES
Attn: Mr. W. K. Kunze, Jr.
5420 Old Orchard Road
Skokie, IL 60077
Phone: (312) 966-6200

NVLAP Code	Test Method Designation	Short Title (property) Subtitle (if applicable)
01/D02	ASTM C167	Thickness and density; Blanket and batt
01/T06	ASTM C518	Thermal transmission properties; Heat flow meter

NOTE: Accreditation is granted on 10/12/80 and expires on 10/11/81.

OWENS-CORNING FIBERGLAS CORP.
NEWARK, OHIO PLANT LABORATORY
Attn: Mr. Harland E. Fargo
Route 16, P. O. Box 415
Granville, OH 43023
Phone: (614) 587-7010

NVLAP Code	Test Method Designation	Short Title (property) applicable (if applicable)
01/D02	ASTM C167	Thickness and density; Blanket and batt
01/D09	ASTM C303	Density; Preformed block insulation
01/T06	ASTM C518	Thermal transmission properties; Heat flow meter

NOTE: Accreditation is granted on 10/12/80 and expires on 10/11/81.

OWENS-CORNING FIBERGLAS CORP.
SANTA CLARA, CALIFORNIA PLANT LABORATORY
Attn: Mr. Harland E. Fargo
Route 16, P. O. Box 415
Granville, OH 43023
Phone: (614) 587-7010

NVLAP Code	Test Method Designation	Short Title (property) applicable (if applicable)
01/D02	ASTM C167	Thickness and density; Blanket and batt
01/D09	ASTM C303	Density; Preformed block insulation
01/T06	ASTM C518	Thermal transmission properties; Heat flow meter

NOTE: Accreditation is granted on 10/12/80 and expires on 10/11/81.

OWENS-CORNING FIBERGLAS CORP.
WAXAHACHIE, TEXAS PLANT LABORATORY
Attn: Mr. Harland E. Fargo
Route 16, P. O. Box 415
Granville, OH 43023
Phone: (614) 587-7010

NVLAP Code	Test Method Designation	Short Title (property) applicable (if applicable)
01/D02	ASTM C167	Thickness and density; Blanket and batt
01/D09	ASTM C303	Density; Preformed block insulation
01/T06	ASTM C518	Thermal transmission properties; Heat flow meter

NOTE: Accreditation is granted on 10/12/80 and expires on 10/11/81.

PORTLAND CEMENT ASSOCIATION, CONSTRUCTION TECHNOLOGY LABORATORIES
Attn: Mr. W. K. Kunze, Jr.
5420 Old Orchard Road
Skokie, IL 60077
Phone: (312) 966-6200

NVLAP Code	Test Method Designation	Short Title (property) applicable (if applicable)
02/M01	ASTM C31	Making and Curing Concrete Test Specimens in the Field
02/M03	ASTM C172	Sampling Fresh Concrete
02/P01	ASTM C143	Slump of Portland Cement Concrete
02/W01	ASTM C138	Unit Weight, Yield, and Air Content (Gravimetric) of Concrete
02/A01	ASTM C231	Air Content of Freshly Mixed Concrete by the Pressure Method
02/S01	ASTM C39 Concrete Specimens	Compressive Strength of Cylindrical
02/A02	ASTM C173	Air Content of Freshly Mixed Concrete by the Volumetric Method

NOTE: Accreditation is granted on 10/20/80 and expires on 10/19/81.

SWAN INDUSTRIES, INC., QUALITY CONTROL LABORATORY
Attn: Mr. Carey Mitchell
P. O. Drawer 2128
Dalton, GA 30720
Phone: (404) 278-3812

NVLAP Code	Test Method Designation	Short Title (property) applicable (if applicable)
03/C01	*AATCC 16E	Colorfastness to Light (Xenon Arc)
03/C02	AATCC 8	Colorfastness to Crocking
03/F03	DoC FF1-70	Methenamine Pill Test

NOTE: Accreditation is granted on 10/20/80 and expires on 10/19/81.

SMITH-EMERY COMPANY
Attn: Mr. George E. Battey, Jr.
781 E. Washington Blvd.
Los Angeles, CA 90021
Phone: (213) 749-3411

NVLAP Code	Test Method Designation	Short Title (property) applicable (if applicable)
02/M01	ASTM C31	Making and Curing Concrete Test Specimens in the Field
02/M03	ASTM C172	Sampling Fresh Concrete
02/P01	ASTM C143	Slump of Portland Cement Concrete

NVLAP Code	Test Method Designation	Short Title (property) Subtitle (if applicable)
02/M01	ASTM C138	Unit Weight, Yield, and Air Content (Gravimetric) of Concrete
02/A01	ASTM C231	Air Content of Freshly Mixed Concrete by the Pressure Method
02/S01	ASTM C39	Compressive Strength of Cylindrical Concrete Specimens
02/A02	ASTM C173	Air Content of Freshly Mixed Concrete by the Volumetric Method

NOTE: Accreditation is granted on 12/22/80 and expires on 12/21/81.

SOIL TESTING SERVICES, INC.
Attn: Mr. Clyde N. Baker, Jr.
111 Pfingsten Road
Northbrook, IL 60062
Phone: (312) 272-6620

NVLAP Code	Test Method Designation	Short Title (property) Subtitle (if applicable)
02/M01	ASTM C31	Making and Curing Concrete Test Specimens in the Field
02/M03	ASTM C172	Sampling Fresh Concrete
02/P01	ASTM C143	Slump of Portland Cement Concrete
02/M01	ASTM C138	Unit Weight, Yield, and Air Content (Gravimetric) of Concrete
02/A01	ASTM C231	Air Content of Freshly Mixed Concrete by the Pressure Method
02/S01	ASTM C39	Compressive Strength of Cylindrical Concrete Specimens
02/A02	ASTM C173	Air Content of Freshly Mixed Concrete by the Volumetric Method

NOTE: Accreditation is granted on 12/22/80 and expires on 12/21/81.

SOUTHWEST RESEARCH INSTITUTE, DEPARTMENT OF FIRE TECHNOLOGY
Attn: Mr. Gordon E. Hartzell
6220 Culebra Road
San Antonio, TX 78229
Phone: (512) 684-5111

NVLAP Code	Test Method Designation	Short Title (property) Subtitle (if applicable)
01/C02	NH-I-515 (para. 4.8.5 in D version, Amendment 1)	Corrosiveness; Cellulosic fiber (loose-fill)
01/D25	NH-I-515 (para. 4.8.3 in D version, Amendment 1)	Moisture absorption; Cellulosic fiber (loose-fill)

NVLAP Code	Test Method Designation	Short Title (property) Subtitle (if applicable)
01/F06	ASTM C739 (para. 10.4 in 77 version)	Flame resistance permanency cellulosic fiber (loose-fill)
01/T04	ASTM C236	Thermal conductance; Guarded hot box
01/V02	ASTM D591	Starch in paper; Qualitative test
01/V03	ASTM D2020	Mildew (fungus) resistance; Paper and paperboard
01/V05	NH-I-515 (para. 4.8.6 in D version, Amendment 1)	Fungus; Cellulosic fiber (loose-fill)
01/V06	NH-I-515 (para. 4.8.9 in D version, Amendment 1)	Starch; Cellulosic fiber (loose-fill)
03/F01	ASTM E84	Surface Flammability (Carpet)
03/F02	UL 992	Surface Flammability
03/F03	DoC FF1-70	Methenamine Pill Test
03/F04	ASTM E648	Radiant Panel (Carpet)

NOTE: Accreditation is granted on 10/12/80 and expires on 10/19/81.

SOUTHWESTERN LABORATORIES
Attn: Mr. William J. Harper
222 Cavalcade
P. O. Box 8768
Houston, TX 77009
Phone: (713) 862-2323

NVLAP Code	Test Method Designation	Short Title (property) Subtitle (if applicable)
02/M01	ASTM C31	Making and Curing Concrete Test Specimens in the Field
02/M03	ASTM C172	Sampling Fresh Concrete
02/P01	ASTM C143	Slump of Portland Cement Concrete
02/M01	ASTM C138	Unit Weight, Yield, and Air Content (Gravimetric) of Concrete
02/A01	ASTM C231	Air Content of Freshly Mixed Concrete by the Pressure Method
02/S01	ASTM C39	Compressive Strength of Cylindrical Concrete Specimens
02/A02	ASTM C173	Air Content of Freshly Mixed Concrete by the Volumetric Method

NOTE: Accreditation is granted on 10/20/80 and expires on 10/19/81.

SPARRELL ENGINEERING RESEARCH CORP.
Attn: Mr. James K. Sparrell
Bristol Road
P. O. Box 130
Damariscotta, ME 04543

THE TANNER COMPANIES, UNITED METRO DIVISION LABORATORY
Attn: Mr. Richard H. Steerman
3240 South 19th Avenue
Phoenix, AZ 85036
Phone: (602) 252-1323

SPARRELL ENGINEERING RESEARCH CORP.
Attn: Mr. James K. Sparrell
Bristol Road
P. O. Box 130
Damariscotta, ME 04543

NVLAP Code	Test Method Designation	Short Title (property) subtitle (if applicable)
01/T01	ASTM C177	Thermal transmission properties; Low-temperature guarded hot plate
01/T04	ASTM C236	Thermal conductance; Guarded hot box
01/T06	ASTM C518	Thermal transmission properties; Heat flow meter

NOTE: Accreditation is granted on 10/12/80 and expires on 10/11/81.

STANDARD TESTING AND ENGINEERING COMPANY
Attn: Mr. Lawrence V. Mars
3400 Lincoln Blvd.
Oklahoma, OK 73105
Phone: (405) 528-0541

NVLAP Code	Test Method Designation	Short Title (property) subtitle (if applicable)
02/M01	ASTM C31	Making and Curing Concrete Test Specimens in the Field
02/M03	ASTM C172	Sampling Fresh Concrete
02/P01	ASTM C143	Slump of Portland Cement Concrete
02/W01	ASTM C138	Unit Weight, Yield, and Air Content (Gravimetric) of Concrete
02/A01	ASTM C231	Air Content of Freshly Mixed Concrete by the Pressure Method
02/S01	ASTM C39	Compressive Strength of Cylindrical Concrete Specimens
02/A02	ASTM C173	Air Content of Freshly Mixed Concrete by the Volumetric Method

NOTE: Accreditation is granted on 12/22/80 and expires on 12/21/81.

THE TANNER COMPANIES, UNITED METRO DIVISION LABORATORY
Attn: Mr. Richard H. Stearman
3240 South 19th Avenue
Phoenix, AZ 85036
Phone: (602) 262-1323

NVLAP Code	Test Method Designation	Short Title (property) subtitle (if applicable)
02/M01	ASTM C31	Making and Curing Concrete Test Specimens in the Field
02/M03	ASTM C172	Sampling Fresh Concrete
02/P01	ASTM C143	Slump of Portland Cement Concrete
02/W01	ASTM C138	Unit Weight, Yield, and Air Content (Gravimetric) of Concrete
02/A01	ASTM C231	Air Content of Freshly Mixed Concrete by the Pressure Method
02/S01	ASTM C39	Compressive Strength of Cylindrical Concrete Specimens
02/A02	ASTM C173	Air Content of Freshly Mixed Concrete by the Volumetric Method

NOTE: Accreditation is granted on 12/22/80 and expires on 12/21/81.

TECHNICAL MICRONICS CONTROL, INC.
Attn: Mr. Ronald K. McClendon
210 Wynn Drive
P. O. Box 1330
Huntsville, AL 35806
Phone: (205) 837-4430

NVLAP Code	Test Method Designation	Short Title (property) subtitle (if applicable)
01/C02	MH-I-515 (para. 4.8.5 in B version, Amendment 1)	Corrosiveness; Cellulosic fiber (loose-fill)
01/D26	MH-I-515 (para. 4.8.1 in B version, Amendment 1)	Settled density; Cellulosic fiber (loose-fill)
01/F07	MH-I-515 (para. 4.8.7 in B version, Amendment 1)	Critical radiant flux; Radiant Panel (cellulosic fiber, loose-fill)
01/F08	MH-I-515 (para. 4.8.8 in B version, Amendment 1)	Smoldering combustion; Cellulosic fiber (loose-fill)
01/T01	ASTM C177	Thermal transmission properties; Low-temperature guarded hot plate
01/T06	ASTM C518	Thermal transmission properties; Heat flow meter
01/V05	MH-I-515 (para. 4.8.6 in B version, Amendment 1)	Fungus; Cellulosic fiber (loose-fill)
03/F04	ASTM E648	Radiant Panel (Carpet)

NOTE: Accreditation is granted on 10/12/80 and expires on 10/19/81.

TESTING ENGINEERS, INC., OAKLAND, CALIFORNIA LABORATORY
Attn: Mr. Clifford N. Craig
P. O. Box 24075
Oakland, CA 94623
Phone: (415) 835-3142

NVLAP Code	Test Method Designation	Short Title (property) Subtitle (if applicable)
02/M01	ASTM C31	Making and Curing Concrete Test Specimens in the Field
02/M03	ASTM C172	Sampling Fresh Concrete
02/P01	ASTM C143	Slump of Portland Cement Concrete
02/M01	ASTM C138	Unit Weight, Yield, and Air Content (Gravimetric) of Concrete
02/A01	ASTM C231	Air Content of Freshly Mixed Concrete by the Pressure Method
02/S01	ASTM C39	Compressive Strength of Cylindrical Concrete Specimens
02/A02	ASTM C173	Air Content of Freshly Mixed Concrete by the Volumetric Method

NOTE: Accreditation is granted on 10/20/80 and expires on 10/19/81.

TESTING ENGINEERS, INC., SANTA CLARA, CALIFORNIA LABORATORY
Attn: Mr. Lee W. Mattis
401 Aldo Avenue
Santa Clara, CA 95050
Phone: (408) 988-8886

NVLAP Code	Test Method Designation	Short Title (property) Subtitle (if applicable)
02/M01	ASTM C31	Making and Curing Concrete Test Specimens in the Field
02/M03	ASTM C172	Sampling Fresh Concrete
02/P01	ASTM C143	Slump of Portland Cement Concrete
02/M01	ASTM C138	Unit Weight, Yield, and Air Content (Gravimetric) of Concrete
02/A01	ASTM C231	Air Content of Freshly Mixed Concrete by the Pressure Method
02/S01	ASTM C39	Compressive Strength of Cylindrical Concrete Specimens
02/A02	ASTM C173	Air Content of Freshly Mixed Concrete by the Volumetric Method

NOTE: Accreditation is granted on 10/20/80 and expires on 10/19/81.

TEXAS TESTING LABORATORIES, INC.
Attn: Mr. Robert L. Henry
1526 S. Good-Latimer Exp.
P. O. Box 2144
Dallas, TX 75221
Phone: (214) 428-7481

NVLAP Code	Test Method Designation	Short Title (property) Subtitle (if applicable)
02/M01	ASTM C31	Making and Curing Concrete Test Specimens in the Field
02/M03	ASTM C172	Sampling Fresh Concrete
02/P01	ASTM C143	Slump of Portland Cement Concrete
02/M01	ASTM C138	Unit Weight, Yield, and Air Content (Gravimetric) of Concrete
02/A01	ASTM C231	Air Content of Freshly Mixed Concrete by the Pressure Method
02/S01	ASTM C39	Compressive Strength of Cylindrical Concrete Specimens
02/A02	ASTM C173	Air Content of Freshly Mixed Concrete by the Volumetric Method

NOTE: Accreditation is granted on 10/20/80 and expires on 10/19/81.

THERMTRON RESEARCH LABORATORY
Attn: Mr. Milton L. Gerber
11400 Bluffton Road
P. O. Box 9146
Fort Wayne, IN 46809
Phone: (219) 747-9183

NVLAP Code	Test Method Designation	Short Title (property) Subtitle (if applicable)
01/C02	NH-I-515 (para. 4.8.5 in D version, Amendment 1)	Corrosiveness; Cellulosic fiber (loose-fill)
01/D26	NH-I-515 (para. 4.8.1 in D version, Amendment 1)	Settled density; Cellulosic fiber (loose-fill)
01/F07	NH-I-515 (para. 4.8.7 in D version, Amendment 1)	Critical radiant flux; Radiant Panel (cellulosic fiber, loose-fill)
01/F08	NH-I-515 (para. 4.8.8 in D version, Amendment 1)	Smoldering combustion; Cellulosic fiber (loose-fill)

NOTE: Accreditation is granted on 10/14/80 and expires on 10/13/81.

TREND/ROXBURY DIVISIONS OF MMB INDUSTRIES, INC.
Attn: Mr. Tom Blalock
P. O. Box 162
Redmond Road
Rome, GA 30161
Phone: (404) 291-8349

NVLAP Code	Test Method Designation	Short Title (property) Subtitle (if applicable)
02/S01	ASTM C39	Compressive Strength of Cylindrical Concrete Specimens
02/A02	ASTM C173	Air Content of Freshly Mixed Concrete by the Volumetric Method

TREND/ROXBURY DIVISIONS OF IMC INDUSTRIES, INC.
Attn: Mr. Tom Blalock
P. O. Box 162
Redmond Road
Rome, GA 30161
Phone: (404) 291-8349

NVLAP Code	Test Method Designation	Short Title (property) Subtitle (if applicable)
03/C01	AATCC 16E	Colorfastness to Light (Xenon Arc)
03/C02	AATCC 8	Colorfastness to Crocking
03/D01	ASTM D418	Methods of Testing Woven and Tufted Pile Floor Coverings Pile Weight - Uncoated (Para. 10-19) Pile Weight - Coated (Para. 20-29) as modified by UM 44C Pile Thickness - (Para. 30-36) Tuft Weight - (Para. 37-45) as modified by UM 44C
03/D02	DOD-C-95A	Shrinkage
03/S01	ASTM D1335 Federal Test Method Standard 191-6100 191-5950	Tuft Bind of Floor Coverings Textile Test Method - Breaking Strength Textile Test Method - Delamination
03/F03	DoC FF1-70	Methenamine Pill Test
03/B02	UM 44C Addenda 2 and 3	Attached Cushion Tests

NOTE: Accreditation is granted on 10/20/80 and expires on 10/19/81.

TWIN CITY TESTING AND ENGINEERING LABORATORY, INC.
Attn: Mr. Norman E. Henning
662 Cromwell Avenue
St. Paul, MN 55114
Phone: (612) 646-7601

NVLAP Code	Test Method Designation	Short Title (property) Subtitle (if applicable)
01/D10	ASTM C355	Water vapor transmission; Thick materials; Desiccant method
01/D18	ASTM D1622	Apparent density; Rigid cellular plastics
01/T04	ASTM C236	Thermal conductance; Guarded hot box
02/M01	ASTM C31	Making and Curing Concrete Test Specimens in the Field
02/M08	ASTM C172	Sampling Fresh Concrete
02/P01	ASTM C143	Slump of Portland Cement Concrete
02/W01	ASTM C138	Unit Weight, Yield, and Air Content (Gravimetric) of Concrete
02/A02	ASTM C231	Air Content of Freshly Mixed Concrete by the Pressure Method

NVLAP Code	Test Method Designation	Short Title (property) Subtitle (if applicable)
02/S01	ASTM C39	Compressive Strength of Cylindrical Concrete Specimens
02/A02	ASTM C173	Air Content of Freshly Mixed Concrete by the Volumetric Method

NOTE: Accreditation is granted on 10/14/80 and expires on 12/21/81.

UNDERWRITERS LABORATORIES, INC., NORTHBROOK, ILLINOIS
Attn: Mr. Steve Mazzoni
333 Pfingsten Road
Northbrook, IL 60062
Phone: (312) 272-8800

NVLAP Code	Test Method Designation	Short Title (property) Subtitle (if applicable)
01/C01	ASTM C739 (para. 7.7 in 77 version)	Corrosiveness; Cellulosic fiber (loose-fill)
01/C02	MH-I-515 (para. 4.8.5 in D version, Amendment 1)	Corrosiveness; Cellulosic fiber (loose-fill)
01/D01	ASTM C136	Sieve or screen analysis
01/D02	ASTM C167	Thickness and density; Blanket and batt
01/D03	ASTM C209 (para. 6 in 72 version)	Thickness; Board (cellulosic fiber)
01/D04	ASTM C209 (para. 13 in 72 version)	Water absorption, 2 hour; Board (cellulosic fiber)
01/D05	ASTM C209 (para. 13 in 72 version) by D1037	Water absorption, 24 hour; Board (cellulosic fiber)
01/D06	(para. 100-106 in 72 version) ASTM C209 (para. 13 in 72 version) by D1037 (para. 107-110 in 72 version)	Linear expansion; Board (cellulosic fiber)
01/D08	ASTM C302	Density; Preformed pipe insulation
01/D09	ASTM C303	Density; Preformed block insulation
01/D13	ASTM C519	Density; Loose-fill (fibrous)
01/D14	ASTM C520	Density; Granular loose-fill
01/D18	ASTM D1622	Apparent density; Rigid cellular plastics
01/D24	ASTM C739 (para. 7.5 in 77 version)	Moisture absorption; Cellulosic fiber (loose-fill)
01/D25	MH-I-515 (para. 4.8.3 in D version, Amendment 1)	Moisture absorption; Cellulosic fiber (loose-fill)
01/D26	MH-I-515 (para. 4.8.1 in D version, Amendment 1)	Settled density; Cellulosic fiber (loose-fill)

NVLAP Code	Test Method Designation	Short Title (property) Subtitle (if applicable)
01/F02	ASTM E84	Surface burning characteristics; Building materials
01/F06	ASTM C739 (para. 10.4 in 77 version)	Flame resistance permanency; Cellulosic fiber (loose-fill)
01/F07	NH-I-515 (para. 4.8.7 in D version, Amendment 1)	Critical radiant flux; Radiant Panel (cellulosic fiber, loose-fill)
01/F08	NH-I-515 (para. 4.8.8 in D version, Amendment 1)	Smoldering combustion; Cellulosic fiber (loose-fill)
01/S02	ASTM C203	Breaking load/Flexural strength; Preformed block insulation
01/S03	ASTM C209 (para. 9 in 72 version)	Transverse strength; Board (cellulosic fiber)
01/S04	ASTM C209 (para. 10 in 72 version)	Deflection at specified load; Board (cellulosic fiber)
01/S05	ASTM C209 (para. 11 in 72 version)	Tensile strength; Parallel to surface; Board (cellulosic fiber)
01/S06	ASTM C209 (para. 12 in 72 version)	Tensile strength; Perpendicular to surface
01/S09	ASTM C446	Breaking load/modulus of rupture; Preformed pipe insulation
01/S11	ASTM D1621	Compressive properties; Rigid cellular plastics (proc. A-Crosshead)
01/T06	ASTM C518	Thermal transmission properties; Heat flow meter
01/T09	ASTM C653	Thermal resistance (Rec. Practice); Blanket (mineral fiber)
01/T10	ASTM C687	Thermal resistance (Rec. Practice); Loose-fill (fibrous)
01/V02	ASTM D691	Starch in paper; Qualitative test
01/V03	ASTM D2020	Mildew (fungus) resistance; Paper and paperboard
01/V06	NH-I-515 (para. 4.8.6 in D version, Amendment 1)	Fungus; Cellulosic fiber (loose-fill)
01/V06	NH-I-515 (para. 4.8.9 in D version, Amendment 1)	Starch; Cellulosic fiber (loose-fill)
03/F01	ASTM E84	Surface Flammability (Carpet)
03/F02	UL 992	Surface Flammability
03/F03	DoC FF1-70	Methenamine Pill Test
03/F04	ASTM E648	Radiant Panel (Carpet)

NOTE: Accreditation is granted on 10/12/80 and expires on 10/19/81.

UNDERWRITERS LABORATORIES, INC., SANTA CLARA, CALIFORNIA LABORATORY
Attn: Mr. Steve Mazzoni
333 Pfingsten Road
Northbrook, IL 60062
Phone: (312) 272-8800

NVLAP Code	Test Method Designation	Short Title (property) Subtitle (if applicable)
01/D13	ASTM C518	Density; Loose-fill (fibrous)
01/D26	NH-I-515 (para. 4.8.1 in D version, Amendment 1)	Settled density; Cellulosic fiber (loose-fill)
01/F02	ASTM E84	Surface burning characteristics; Building materials
01/F07	NH-I-515 (para. 4.8.7 in D version, Amendment 1)	Critical radiant flux; Radiant Panel (cellulosic fiber, loose-fill)

NOTE: Accreditation is granted on 10/12/80 and expires on 10/11/81.

U.S. TESTING COMPANY, INC., HOBOKEN, NEW JERSEY
Attn: Mr. Carl B. Yoder
1415 Park Avenue
Hoboken, NJ 07030
Phone: (201) 792-2400

NVLAP Code	Test Method Designation	Short Title (property) Subtitle (if applicable)
01/C02	NH-I-515 (para. 4.8.5 in D version, Amendment 1)	Corrosiveness; Cellulosic fiber (loose-fill)
01/D10	ASTM C355	Water vapor transmission; Thick materials; Desiccant method
01/D25	NH-I-515 (para. 4.8.3 in D version, Amendment 1)	Moisture absorption; Cellulosic fiber (loose-fill)
01/D26	NH-I-515 (para. 4.8.1 in D version, Amendment 1)	Settled density; Cellulosic fiber (loose-fill)
01/F02	ASTM E84	Surface burning characteristics; Building materials
01/F05	ASTM E136	Behavior of Materials in a Vertical Tube Furnace
01/F07	NH-I-515 (para. 4.8.7 in D version, Amendment 1)	Critical radiant flux; Radiant Panel (cellulosic fiber, loose-fill)
01/F08	NH-I-515 (para. 4.8.8 in D version, Amendment 1)	Smoldering combustion; Cellulosic fiber (loose-fill)
01/T06	ASTM C518	Thermal transmission properties; Heat flow meter

NVLAP Code	Test Method Designation	Short Title (property) Subtitle (if applicable)
01/V04	ASTM E96	Water vapor transmission; Thin sheets (proc. A)
01/V05	NH-I-515 (para. 4.8.6 in D version, Amendment 1)	Fungus; Cellulosic fiber (loose-fill)
01/V06	NH-I-515 (para. 4.8.9 in D version, Amendment 1)	Starch; Cellulosic fiber (loose-fill)

U.S. TESTING COMPANY, INC., CALIFORNIA BRANCH LABORATORY
Attn: Mr. Carl B. Yoder
1415 Park Avenue
Hoboken, NJ 07030
Phone: (201) 792-2400

NVLAP Code	Test Method Designation	Short Title (property) Subtitle (if applicable)

NVLAP Code	Test Method Designation	Short Title (property) Subtitle (if applicable)
01/V04	ASTM E96	Water vapor transmission; Thin sheets (proc. A)
01/V05	MH-I-515 (para. 4.8.6 in D version, Amendment 1)	Fungus; Cellulosic fiber (loose-fill)
01/V06	MH-I-515 (para. 4.8.9 in D version, Amendment 1)	Starch; Cellulosic fiber (loose-fill)
02/M01	ASTM C31	Making and Curing Concrete Test Specimens in the Field
02/M03	ASTM C172	Sampling Fresh Concrete
02/P01	ASTM C143	Slump of Portland Cement Concrete
02/W01	ASTM C138	Unit Weight, Yield, and Air Content (Gravimetric) of Concrete
02/A01	ASTM C231	Air Content of Freshly Mixed Concrete by the Pressure Method
02/S01	ASTM C39	Compressive Strength of Cylindrical Concrete Specimens
02/A02	ASTM C173	Air Content of Freshly Mixed Concrete by the Volumetric Method
03/C01	AATCC 16E	Colorfastness to Light (Xenon Arc)
03/C02	AATCC 8	Colorfastness to Crocking
03/D01	ASTM D418	Methods of Testing Woven and Tufted Pile Floor Coverings
		Pile Weight - Uncoated (Para. 10-19)
		Pile Weight - Coated (Para. 20-29) as modified by UN 44C
		Pile Thickness - (Para. 30-36)
		Tuft Weight - (Para. 37-45) as modified by UN 44C
03/D02	DDD-C-95A	Shrinkage
03/S01	ASTM D1336 Federal Test Method Standard 191-5100 191-5050	Tuft Bind of Floor Coverings
03/F01	ASTM E84	Textile Test Method - Breaking Strength
03/F03	DoC FF1-70	Textile Test Method - Delamination
03/F04	ASTM E648	Surface Flammability (Carpet)
03/B02	UN 44C Addenda 2 and 3	Methenamine Pill Test
		Radiant Panel (Carpet)
		Attached Cushion Tests

NOTE: Accreditation is granted on 10/12/80 and expires on 10/19/81.

U.S. TESTING COMPANY, INC., CALIFORNIA BRANCH LABORATORY
Attn: Mr. Carl B. Yoder
1415 Park Avenue
Hoboken, NJ 07030
Phone: (201) 792-2400

NVLAP Code	Test Method Designation	Short Title (property) Subtitle (if applicable)
01/C02	MH-I-515 (para. 4.8.5 in D version, Amendment 1)	Corrosiveness; Cellulosic fiber (loose-fill).
01/D18	ASTM D1622	Apparent density; Rigid cellular plastics
01/D21	ASTM D2126	Response to thermal and humid; Aging (proc. E); Rigid cellular plastics
01/D25	MH-I-515 (para. 4.8.3 in D version, Amendment 1)	Moisture absorption; Cellulosic fiber (loose-fill)
01/D26	MH-I-515 (para. 4.8.1 in D version, Amendment 1)	Settled density; Cellulosic fiber (loose-fill)
01/F02	ASTM E84	Surface burning characteristics; Building materials
01/F05	ASTM E136	Behavior of Materials in a Vertical Tube Furnace
01/F07	MH-I-515 (para. 4.8.7 in D version, Amendment 1)	Critical radiant flux; Radiant Panel (cellulosic fiber, loose-fill)
01/F08	MH-I-515 (para. 4.8.8 in D version, Amendment 1)	Smoldering combustion; Cellulosic fiber (loose-fill)
01/S11	ASTM D1621	Compressive properties; Rigid cellular plastics (proc. A-Crosshead)
01/V04	ASTM E96	Water vapor transmission; Thin sheets (proc. A)
01/V06	MH-I-515 (para. 4.8.9 in D version, Amendment 1)	Starch; Cellulosic fiber (loose-fill)
03/C01	AATCC 16E	Colorfastness to Light (Xenon Arc)
03/C02	AATCC 8	Colorfastness to Crocking
03/D01	ASTM D418	Methods of Testing Woven and Tufted Pile Floor Coverings
		Pile Weight - Uncoated (Para. 10-19)
		Pile Weight - Coated (Para. 20-29) as modified by UN 44C
		Pile Thickness - (Para. 30-36)
		Tuft Weight - (Para. 37-45) as modified by UN 44C
03/D02	DDD-C-95A	Shrinkage
03/S01	ASTM D1336 Federal Test Method Standard 191-5100 191-5050	Tuft Bind of Floor Coverings
		Textile Test Method - Breaking Strength
		Textile Test Method - Delamination

NVLAP Code	Test Method Designation	Short Title (property) Subtitle (if applicable)
02/F01	ASTM E84	Surface Flammability (Carpet)
02/F03	DoC FF1-70	Methenamine Pill Test
02/F04	ASTM E648	Radiant Panel (Carpet)
02/R01	NBS 64C Addendum 3	Attached Cushion Tests

NOTE: Accreditation is granted on 10/12/80 and expires on 10/10/81.

U.S. TESTING COMPANY, INC., TULSA BRANCH LABORATORY
Attn: Mr. Carl B. Yoder
1415 Park Avenue
Hoboken, NJ 07030
Phone: (201) 792-2400

NVLAP Code	Test Method Designation	Short Title (property) Subtitle (if applicable)
01/C02	NH-I-515 (para. 4.8.5 in D version, Amendment 1)	Corrosiveness; Cellulosic fiber (loose-fill)
01/D10	ASTM C355	Water vapor transmission; Thick materials; Desiccant method
01/D18	ASTM D1622	Apparent density; Rigid cellular plastics
01/D25	NH-I-515 (para. 4.8.3 in D version, Amendment 1)	Moisture absorption; Cellulosic fiber (loose-fill)
01/D26	NH-I-515 (para. 4.8.1 in D version, Amendment 1)	Settled density; Cellulosic fiber (loose-fill)
01/F08	NH-I-515 (para. 4.8.8 in D version, Amendment 1)	Smoldering combustion; Cellulosic fiber (loose-fill)
01/V05	NH-I-515 (para. 4.8.6 in D version, Amendment 1)	Fungus; Cellulosic fiber (loose-fill)
01/V06	NH-I-515 (para. 4.8.9 in D version, Amendment 1)	Starch; Cellulosic fiber (loose-fill)

NOTE: Accreditation is granted on 10/12/80 and expires on 10/11/81.

W. R. GRACE & COMPANY
Attn: Mr. Heyman C. Duecker
Construction Products Division
Cement and Concrete Laboratory
62 Whittemore Avenue
Cambridge, MA 02140
Phone: (617) 876-1400

NVLAP Code	Test Method Designation	Short Title (property) Subtitle (if applicable)
02/M01	ASTM C31	Making and Curing Concrete Test Specimens in the Field
02/M03	ASTM C172	Sampling Fresh Concrete
02/P01	ASTM C143	Slump of Portland Cement Concrete
02/M01	ASTM C138	Unit Weight, Yield, and Air Content (Gravimetric) of Concrete
02/A01	ASTM C231	Air Content of Freshly Mixed Concrete by the Pressure Method
02/S01	ASTM C39	Compressive Strength of Cylindrical Concrete Specimens
02/A02	ASTM C173	Air Content of Freshly Mixed Concrete by the Volumetric Method

NOTE: Accreditation is granted on 12/22/80 and expires on 12/21/81.

THE WALT KEELER COMPANY, INC.
Attn: Mr. Earl F. Callison, Jr.
826 E. Lincoln
P. O. Box 197
Wichita, KN 67201
Phone: (316) 268-0515

NVLAP Code	Test Method Designation	Short Title (property) Subtitle (if applicable)
02/M01	ASTM C31	Making and Curing Concrete Test Specimens in the Field
02/M03	ASTM C172	Sampling Fresh Concrete
02/P01	ASTM C143	Slump of Portland Cement Concrete
02/M01	ASTM C138	Unit Weight, Yield, and Air Content (Gravimetric) of Concrete
02/A01	ASTM C231	Air Content of Freshly Mixed Concrete by the Pressure Method

NOTE: Accreditation is granted on 12/22/80 and expires on 12/28/81.

WORLD CARPETS, INC., R & D
Attn: Mr. Charles Howell
One World Plaza
Dalton, GA 30720
Phone: (404) 278-8000

NVLAP Code	Test Method Designation	Short Title (property) Subtitle (if applicable)

APPENDIX 2

LIST OF TEST METHODS AND THE LABORATORIES ACCREDITED TO PERFORM EACH TEST METHOD

WORLD CARPETS, INC., R & D
Attn: Mr. Charles Howell
One World Plaza
Dalton, GA 30720
Phone: (404) 278-8000

NVLAP Code	Test Method Designation	Short Title (property) Subtitle (if applicable)
03/C01	AATCC 16E	Colorfastness to Light (Xenon Arc)
03/C02	AATCC 8	Colorfastness to Crocking
03/D01	ASTM D418	Methods of Testing Woven and Tufted Pile Floor Coverings Pile Weight - Uncoated (Para. 10-19) Pile Weight - Coated (Para. 20-29) as modified by UN 44C Pile Thickness - (Para. 30-36) Tuft Height - (Para. 37-45) as modified by UN 44C
03/D02	DOD-C-95A	Shrinkage
03/S01	ASTM D1336	Tuft Bind of Floor Coverings
	Federal Test Method Standard 191-5100 191-5950	Textile Test Method - Breaking Strength Textile Test Method - Delamination
03/F03	DoC FF1-70	Methenamine Pill Test

NOTE: Accreditation is granted on 10/20/80 and expires on 10/19/81.

APPENDIX 2

LIST OF TEST METHODS AND THE LABORATORIES ACCREDITED TO PERFORM EACH TEST METHOD

INSULATION LAP -- CORROSIVENESS TEST METHODS

01/C01 ASTM C739 Corrosiveness: cellulosic fiber (loose-fill)(para. 7.7 in 77 version)
- OWENS-CORNING FIBERGLAS CORP., TECHNICAL CENTER LABORATORY
- UNDERWRITERS LABORATORIES, INC., NORTHBROOK, ILLINOIS

01/C02 NM-I-515 Corrosiveness: cellulosic fiber (loose-fill)(para. 4.8.5 in D version, Amendment 1)
- CERTAINTEED CORPORATION, RESEARCH & DEVELOPMENT LABORATORY
- CERTIFIED TESTING LABORATORIES, INC.
- COMMERCIAL TESTING COMPANY, INC.
- DYNATECH R/D COMPANY
- FACTORY MUTUAL RESEARCH CORP.
- HAUSER LABORATORIES
- INTEST LABORATORIES, INC.
- OWENS-CORNING FIBERGLAS CORP., TECHNICAL CENTER LABORATORY
- SOUTHWEST RESEARCH INSTITUTE, DEPARTMENT OF FIRE TECHNOLOGY
- TECHNICAL MICRONICS CONTROL, INC.
- THERMTRON RESEARCH LABORATORY
- UNDERWRITERS LABORATORIES, INC., NORTHBROOK, ILLINOIS
- U.S. TESTING COMPANY, INC., HOBOKEN, NEW JERSEY
- U.S. TESTING COMPANY, INC., CALIFORNIA BRANCH LABORATORY
- U.S. TESTING COMPANY, INC., TULSA BRANCH LABORATORY

INSULATION LAP - DIMENSIONS, STABILITY, AND DENSITY PROPERTIES TEST METHODS

01/D01 ASTM C136 Sieve or screen analysis
- CERTAINTEED CORPORATION, RESEARCH & DEVELOPMENT LABORATORY
- UNDERWRITERS LABORATORIES, INC., NORTHBROOK, ILLINOIS

01/D02 ASTM C167 Thickness and density: blanket and batt
- CERTAINTEED CORPORATION, RESEARCH & DEVELOPMENT LABORATORY
- JOHNS-MANVILLE SALES CORP., R & D CENTER
- NAHB RESEARCH FOUNDATION, INC.
- OWENS-CORNING FIBERGLAS CORP., TECHNICAL CENTER LABORATORY
- OWENS-CORNING FIBERGLAS CORP., BARRINGTON, NEW JERSEY PLANT LABORATORY
- OWENS-CORNING FIBERGLAS CORP., DELMAR, NEW YORK PLANT LABORATORY
- OWENS-CORNING FIBERGLAS CORP., FAIRBURN, GEORGIA PLANT LABORATORY
- OWENS-CORNING FIBERGLAS CORP., KANSAS CITY, KANSAS PLANT LABORATORY
- OWENS-CORNING FIBERGLAS CORP., NEWARK, OHIO PLANT LABORATORY
- OWENS-CORNING FIBERGLAS CORP., SANTA CLARA, CALIFORNIA PLANT LABORATORY
- OWENS-CORNING FIBERGLAS CORP., WAXAHACHIE, TEXAS PLANT LABORATORY
- UNDERWRITERS LABORATORIES, INC., NORTHBROOK, ILLINOIS

01/D03 ASTM C209 Thickness: board (cellulosic fiber) (para. 6 in 72 version)
- JIM WALTER RESEARCH CORPORATION
- JOHNS-MANVILLE SALES CORP., R & D CENTER
- OWENS-CORNING FIBERGLAS CORP., TECHNICAL CENTER LABORATORY
- UNDERWRITERS LABORATORIES, INC., NORTHBROOK, ILLINOIS

01/004 ASTM C209 Water absorption, 2 hour; board (cellulosic fiber)(para. 13 in 72 version)
JIM WALTER RESEARCH CORPORATION
JOHNS-MANVILLE SALES CORP., R & D CENTER
OWENS-CORNING FIBERGLAS CORP., TECHNICAL CENTER LABORATORY
UNDERWRITERS LABORATORIES, INC., NORTHBROOK, ILLINOIS
01/005 ASTM C209 Water absorption, 24 hour; board (cellulosic fiber)(para. 13 in 72 version by 01037; para. 100-106 in 72 version)
JIM WALTER RESEARCH CORPORATION
JOHNS-MANVILLE SALES CORP., R & D CENTER
OWENS-CORNING FIBERGLAS CORP., TECHNICAL CENTER LABORATORY
UNDERWRITERS LABORATORIES, INC., NORTHBROOK, ILLINOIS
01/006 ASTM C209 Linear expansion; board (cellulosic fiber)(para. 13 in 72 version by 01037; para. 107-110 in 72 version)
JIM WALTER RESEARCH CORPORATION
JOHNS-MANVILLE SALES CORP., R & D CENTER
OWENS-CORNING FIBERGLAS CORP., TECHNICAL CENTER LABORATORY
UNDERWRITERS LABORATORIES, INC., NORTHBROOK, ILLINOIS
01/007 ASTM C272 Water absorption; core materials
DOW CHEMICAL U.S.A., GRANVILLE R & D CENTER
OWENS-CORNING FIBERGLAS CORP., TECHNICAL CENTER LABORATORY
01/008 ASTM C302 Density; preformed pipe insulation
CERTAINTEED CORPORATION, RESEARCH & DEVELOPMENT LABORATORY
JOHNS-MANVILLE SALES CORP., R & D CENTER
OWENS-CORNING FIBERGLAS CORP., TECHNICAL CENTER LABORATORY
UNDERWRITERS LABORATORIES, INC., NORTHBROOK, ILLINOIS
01/009 ASTM C303 Density; preformed block insulation
CERTAINTEED CORPORATION, RESEARCH & DEVELOPMENT LABORATORY
JIM WALTER RESEARCH CORPORATION
JOHNS-MANVILLE SALES CORP., R & D CENTER
OWENS-CORNING FIBERGLAS CORP., TECHNICAL CENTER LABORATORY
OWENS-CORNING FIBERGLAS CORP., BARRINGTON, NEW JERSEY PLANT LABORATORY
OWENS-CORNING FIBERGLAS CORP., KANSAS CITY, KANSAS PLANT LABORATORY
OWENS-CORNING FIBERGLAS CORP., NEWARK, OHIO PLANT LABORATORY
OWENS-CORNING FIBERGLAS CORP., SANTA CLARA, CALIFORNIA PLANT LABORATORY
OWENS-CORNING FIBERGLAS CORP., WAXAHACHIE, TEXAS PLANT LABORATORY
UNDERWRITERS LABORATORIES, INC., NORTHBROOK, ILLINOIS
01/010 ASTM C355 Water vapor transmission; thick materials; desiccant method
DONALD S. GILMORE LABORATORIES, THE UPJOHN COMPANY
DOW CHEMICAL U.S.A., GRANVILLE R & D CENTER
JOHNS-MANVILLE SALES CORP., TECHNICAL CENTER LABORATORY
OWENS-CORNING FIBERGLAS CORP., TECHNICAL CENTER LABORATORY
TWIN CITY TESTING & ENGINEERING LABORATORY, INC.
U.S. TESTING COMPANY, INC., HOBOKEN, NEW JERSEY
U.S. TESTING COMPANY, INC., TULSA BRANCH LABORATORY
01/011 ASTM C356 Linear shrinkage; oscillus heat; preformed high temperature insulation
JOHNS-MANVILLE SALES CORP., R & D CENTER
OWENS-CORNING FIBERGLAS CORP., TECHNICAL CENTER LABORATORY
01/012 ASTM C411 Hot-surface performance; high temperature insulation
HAUSER LABORATORIES
JOHNS-MANVILLE SALES CORP., R & D CENTER
OWENS-CORNING FIBERGLAS CORP., TECHNICAL CENTER LABORATORY

01/013 ASTM C519 Density; loose-fill (fibrous)
CERTAINTEED CORPORATION, RESEARCH & DEVELOPMENT LABORATORY
JOHNS-MANVILLE SALES CORP., R & D CENTER
NAHB RESEARCH FOUNDATION, INC.
OWENS-CORNING FIBERGLAS CORP., TECHNICAL CENTER LABORATORY
UNDERWRITERS LABORATORIES, INC., NORTHBROOK, ILLINOIS
UNDERWRITERS LABORATORIES, INC., SANTA CLARA, CALIFORNIA
01/014 ASTM C520 Density; granular loose-fill
JOHNS-MANVILLE SALES CORP., R & D CENTER
UNDERWRITERS LABORATORIES, INC., NORTHBROOK, ILLINOIS
01/015 ASTM D756 Weight and shape changes; accelerated service (proc. A); plastics
OWENS-CORNING FIBERGLAS CORP., TECHNICAL CENTER LABORATORY
01/016 ASTM D756 Weight and shape changes; accelerated service (proc. B); plastics
OWENS-CORNING FIBERGLAS CORP., TECHNICAL CENTER LABORATORY
01/017 ASTM D756 Weight and shape changes; accelerated service (proc. E); plastics
OWENS-CORNING FIBERGLAS CORP., TECHNICAL CENTER LABORATORY
01/018 ASTM D1622 Apparent density; rigid cellular plastics
DONALD S. GILMORE LABORATORIES, THE UPJOHN COMPANY
DOW CHEMICAL U.S.A., GRANVILLE R & D CENTER
JIM WALTER RESEARCH CORPORATION
OLIN CORPORATION, PHYSICAL TESTING LABORATORY
OWENS-CORNING FIBERGLAS CORP., TECHNICAL CENTER LABORATORY
TWIN CITY TESTING & ENGINEERING LABORATORY, INC.
UNDERWRITERS LABORATORIES, INC., NORTHBROOK, ILLINOIS
U.S. TESTING COMPANY, INC., CALIFORNIA BRANCH LABORATORY
U.S. TESTING COMPANY, INC., TULSA BRANCH LABORATORY
01/019 ASTM D2126 Response to thermal and humid; aging (proc. B); rigid cellular plastics
DONALD S. GILMORE LABORATORIES, THE UPJOHN COMPANY
DOW CHEMICAL U.S.A., GRANVILLE R & D CENTER
JIM WALTER RESEARCH CORPORATION
OLIN CORPORATION, PHYSICAL TESTING LABORATORY
OWENS-CORNING FIBERGLAS CORP., TECHNICAL CENTER LABORATORY
01/020 ASTM D2126 Response to thermal and humid; aging (proc. D); rigid cellular plastics
DONALD S. GILMORE LABORATORIES, THE UPJOHN COMPANY
DOW CHEMICAL U.S.A., GRANVILLE R & D CENTER
JIM WALTER RESEARCH CORPORATION
OWENS-CORNING FIBERGLAS CORP., TECHNICAL CENTER LABORATORY
01/021 ASTM D2126 Response to thermal and humid; aging (proc. E); rigid cellular plastics
DOW CHEMICAL U.S.A., GRANVILLE R & D CENTER
JIM WALTER RESEARCH CORPORATION
OLIN CORPORATION, PHYSICAL TESTING LABORATORY
OWENS-CORNING FIBERGLAS CORP., TECHNICAL CENTER LABORATORY
U.S. TESTING COMPANY, INC., CALIFORNIA BRANCH LABORATORY
01/022 ASTM D2126 Response to thermal and humid; aging (proc. F); rigid cellular plastics
DOW CHEMICAL U.S.A., GRANVILLE R & D CENTER
JIM WALTER RESEARCH CORPORATION
OWENS-CORNING FIBERGLAS CORP., TECHNICAL CENTER LABORATORY

01/023 ASTM D2842 Water absorption; rigid cellular plastics
DONALD S. GILMORE LABORATORIES, THE UPJOHN COMPANY
DOW CHEMICAL U.S.A., GRANVILLE R & D CENTER
JIM WALTER RESEARCH CORPORATION
OWENS-CORNING FIBERGLAS CORP., TECHNICAL CENTER LABORATORY
01/024 ASTM C739 Moisture absorption; cellulosic fiber (loose-fill) (para. 7.6

OWENS-CORNING FIBERGLAS CORP., TECHNICAL CENTER LABORATORY
UNDERWRITERS LABORATORIES, INC., NORTHBROOK, ILLINOIS
UNDERWRITERS LABORATORIES, INC., SANTA CLARA, CALIFORNIA
U.S. TESTING COMPANY, INC., HOBOKEN, NEW JERSEY
U.S. TESTING COMPANY, INC., CALIFORNIA BRANCH LABORATORY
01/025 ASTM E136 Behavior of materials in a vertical tube furnace

01/D23 ASTM D2842 Water absorption; rigid cellular plastics
DONALD S. GILMORE LABORATORIES, THE UPJOHN COMPANY
DOW CHEMICAL U.S.A., GRANVILLE R & D CENTER
JIM WALTER RESEARCH CORPORATION
OWENS-CORNING FIBERGLAS CORP., TECHNICAL CENTER LABORATORY
01/D24 ASTM C739 Moisture absorption; cellulosic fiber (loose-fill) (para. 7.5 in 77 version)
OWENS-CORNING FIBERGLAS CORP., TECHNICAL CENTER LABORATORY
UNDERWRITERS LABORATORIES, INC., NORTHBROOK, ILLINOIS
01/D26 MH-I-515 Moisture absorption; cellulosic fiber (loose-fill) (para. 4.8.3 in D version, Amendment 1)
CERTAINTEED CORPORATION, RESEARCH & DEVELOPMENT LABORATORY
CERTIFIED TESTING LABORATORIES, INC.
COMMERCIAL TESTING COMPANY, INC.
DYNATECH R/D COMPANY
FACTORY MUTUAL RESEARCH CORP.
HAUSER LABORATORIES
INTEST LABORATORIES, INC.
OWENS-CORNING FIBERGLAS CORP., TECHNICAL CENTER LABORATORY
SOUTHWEST RESEARCH INSTITUTE, DEPARTMENT OF FIRE TECHNOLOGY
UNDERWRITERS LABORATORIES, INC., NORTHBROOK, ILLINOIS
U.S. TESTING COMPANY, INC., HOBOKEN, NEW JERSEY
U.S. TESTING COMPANY, INC., CALIFORNIA BRANCH LABORATORY
U.S. TESTING COMPANY, INC., TULSA BRANCH LABORATORY
01/D26 MH-I-515 Settled density; cellulosic fiber (loose-fill) (para. 4.8.1 in D version, Amendment 1)
CERTAINTEED CORPORATION, RESEARCH & DEVELOPMENT LABORATORY
CERTIFIED TESTING LABORATORIES, INC.
COMMERCIAL TESTING COMPANY
DYNATECH R/D COMPANY
FACTORY MUTUAL RESEARCH CORP.
HAUSER LABORATORIES
INTEST LABORATORIES, INC.
OWENS-CORNING FIBERGLAS CORP., TECHNICAL CENTER LABORATORY
TECHNICAL MICRONICS CONTROL, INC.
THERMATRON RESEARCH LABORATORY
UNDERWRITERS LABORATORIES, INC., NORTHBROOK, ILLINOIS
UNDERWRITERS LABORATORIES, INC., SANTA CLARA, CALIFORNIA LABORATORY
U.S. TESTING COMPANY, INC., HOBOKEN, NEW JERSEY
U.S. TESTING COMPANY, INC., CALIFORNIA BRANCH LABORATORY
U.S. TESTING COMPANY, INC., TULSA, BRANCH LABORATORY

INSULATION LAP - FIRE PROPERTIES TEST METHODS

01/F01 ASTM D777(as modified by MH-R-1008)Flammability; paper and paperboard
CERTAINTEED CORPORATION, RESEARCH & DEVELOPMENT LABORATORY
JOHNS-MANVILLE SALES CORP., R & D CENTER
OWENS-CORNING FIBERGLAS CORP., TECHNICAL CENTER LABORATORY
01/F02 ASTM E84 Surface burning characteristics; building materials
COMMERCIAL TESTING COMPANY, INC.
FACTORY MUTUAL RESEARCH CORP.
HARDWOOD PLYWOOD MANUFACTURERS ASSOCIATION
JOHNS-MANVILLE SALES CORP., R & D CENTER

OWENS-CORNING FIBERGLAS CORP., TECHNICAL CENTER LABORATORY
UNDERWRITERS LABORATORIES, INC., NORTHBROOK, ILLINOIS
UNDERWRITERS LABORATORIES, INC., SANTA CLARA, CALIFORNIA
U.S. TESTING COMPANY, INC., HOBOKEN, NEW JERSEY
U.S. TESTING COMPANY, INC., CALIFORNIA BRANCH LABORATORY
01/F05 ASTM E136 Behavior of Materials in a Vertical Tube Furnace
CERTAINTEED CORPORATION, RESEARCH & DEVELOPMENT LABORATORY
HAUSER LABORATORIES
JOHNS-MANVILLE SALES CORP., R & D CENTER
OWENS-CORNING FIBERGLAS CORP., TECHNICAL CENTER LABORATORY
U.S. TESTING COMPANY, INC., HOBOKEN, NEW JERSEY
U.S. TESTING COMPANY, INC., CALIFORNIA BRANCH LABORATORY
01/F06 ASTM C739 Flame resistance permanency; cellulosic fiber (loose-fill) (para. 10.4 in 77 version)
SOUTHWEST RESEARCH INSTITUTE, DEPARTMENT OF FIRE TECHNOLOGY
UNDERWRITERS LABORATORIES, INC., NORTHBROOK, ILLINOIS
01/F07 MH-I-515 Critical radiant flux; radiant panel (cellulosic fiber, loose-fill)(para. 4.8.7 in D version, Amendment 1)
CERTAINTEED CORPORATION, RESEARCH & DEVELOPMENT LABORATORY
CERTIFIED TESTING LABORATORIES, INC.
COMMERCIAL TESTING COMPANY, INC.
FACTORY MUTUAL RESEARCH CORP.
HARDWOOD PLYWOOD MANUFACTURERS ASSOCIATION
HAUSER LABORATORIES
INTEST LABORATORIES, INC.
OWENS-CORNING FIBERGLAS CORP., TECHNICAL CENTER LABORATORY
TECHNICAL MICRONICS CONTROL, INC.
THERMATRON RESEARCH LABORATORY
UNDERWRITERS LABORATORIES, INC., NORTHBROOK, ILLINOIS
UNDERWRITERS LABORATORIES, INC., SANTA CLARA, CALIFORNIA
U.S. TESTING COMPANY, INC., HOBOKEN, NEW JERSEY
U.S. TESTING COMPANY, INC., CALIFORNIA BRANCH LABORATORY
01/F08 MH-I-515 Smoldering combustion; cellulosic fiber (loose-fill) (para. 4.8.8 in D version, Amendment 1)
CERTAINTEED CORPORATION, RESEARCH & DEVELOPMENT LABORATORY
CERTIFIED TESTING LABORATORIES, INC.
COMMERCIAL TESTING COMPANY, INC.
FACTORY MUTUAL RESEARCH CORP.
HAUSER LABORATORIES
INTEST LABORATORIES, INC.
OWENS-CORNING FIBERGLAS CORP., TECHNICAL CENTER LABORATORY
TECHNICAL MICRONICS CONTROL, INC.
THERMATRON RESEARCH LABORATORY
UNDERWRITERS LABORATORIES, INC., NORTHBROOK, ILLINOIS
U.S. TESTING COMPANY, INC., HOBOKEN, NEW JERSEY
U.S. TESTING COMPANY, INC., CALIFORNIA BRANCH LABORATORY
U.S. TESTING COMPANY, INC., TULSA BRANCH LABORATORY

INSULATION LAP - STRENGTH PROPERTIES TEST METHODS

01/S01 ASTM C165 Compressive properties; thermal insulation (para. A)
CERTAINTEED CORPORATION, RESEARCH & DEVELOPMENT LABORATORY
DOW CHEMICAL U.S.A., GRANVILLE R & D CENTER

JIM WALTER RESEARCH CORPORATION
JOHNS-MANVILLE SALES CORP., R & D CENTER
OWENS-CORNING FIBERGLAS CORP., TECHNICAL CENTER LABORATORY

01/S02 ASTM C203 Breaking load/flexural strength; preformed block insulation
DONALD S. GILMORE LABORATORIES, THE UPJOHN COMPANY
DOW CHEMICAL U.S.A., GRANVILLE R & D CENTER
JIM WALTER RESEARCH CORPORATION
JOHNS-MANVILLE SALES CORP., R & D CENTER
OWENS-CORNING FIBERGLAS CORP., TECHNICAL CENTER LABORATORY
UNDERWRITERS LABORATORIES, INC., NORTHBROOK, ILLINOIS

01/S03 ASTM C209 Transverse strength; board (cellulosic fiber) (para. 9 in 72 version)
JIM WALTER RESEARCH CORPORATION
JOHNS-MANVILLE SALES CORP., R & D CENTER
OWENS-CORNING FIBERGLAS CORP., TECHNICAL CENTER LABORATORY
UNDERWRITERS LABORATORIES, INC., NORTHBROOK, ILLINOIS

01/S04 ASTM C209 Deflection at specified load; board (cellulosic fiber) (para. 10 in 72 version)
JIM WALTER RESEARCH CORPORATION
JOHNS-MANVILLE SALES CORP., R & D CENTER
OWENS-CORNING FIBERGLAS CORP., TECHNICAL CENTER LABORATORY
UNDERWRITERS LABORATORIES, INC., NORTHBROOK, ILLINOIS

01/S05 ASTM C209 Tensile strength; parallel to surface; board (cellulosic fiber (para. 11 in 72 version)
JIM WALTER RESEARCH CORPORATION
JOHNS-MANVILLE SALES CORP., R & D CENTER
OWENS-CORNING FIBERGLAS CORP., TECHNICAL CENTER LABORATORY
UNDERWRITERS LABORATORIES, INC., NORTHBROOK, ILLINOIS

01/S06 ASTM C209 Tensile strength; perpendicular to surface (para. 12 in 72 version)
JIM WALTER RESEARCH CORPORATION
JOHNS-MANVILLE SALES CORP., R & D CENTER
OWENS-CORNING FIBERGLAS CORP., TECHNICAL CENTER LABORATORY
UNDERWRITERS LABORATORIES, INC., NORTHBROOK, ILLINOIS

01/S07 ASTM C273 Shear test; sandwich construction
DONALD S. GILMORE LABORATORIES, THE UPJOHN COMPANY
JIM WALTER RESEARCH CORPORATION
JOHNS-MANVILLE SALES CORP., R & D CENTER
OLIN CORPORATION, PHYSICAL TESTING LABORATORY
OWENS-CORNING FIBERGLAS CORP., TECHNICAL CENTER LABORATORY

01/S08 ASTM C446 Breaking load/modulus of rupture; preformed pipe insulation
CERTAINTEED CORPORATION, RESEARCH & DEVELOPMENT LABORATORY
JOHNS-MANVILLE SALES CORP., R & D CENTER
OWENS-CORNING FIBERGLAS CORP., TECHNICAL CENTER & LABORATORY
UNDERWRITERS LABORATORIES, INC., NORTHBROOK, ILLINOIS

01/S09 ASTM D781 Puncture test; paperboard and fiberboard
CERTAINTEED CORPORATION, RESEARCH & DEVELOPMENT LABORATORY
JOHNS-MANVILLE SALES CORP., R & D CENTER
OWENS-CORNING FIBERGLAS CORP., TECHNICAL CENTER LABORATORY

01/S10 ASTM D828 Tensile breaking strength; paper and paperboard
CERTAINTEED CORPORATION RESEARCH & DEVELOPMENT LABORATORY
JOHNS-MANVILLE SALES CORP., R & D CENTER
OWENS-CORNING FIBERGLAS CORP., TECHNICAL CENTER LABORATORY

01/S11 ASTM D1621 Compressive properties; rigid cellular plastics (prog. A-crosshead)
DONALD S. GILMORE LABORATORIES, THE UPJOHN COMPANY
DOW CHEMICAL U.S.A, GRANVILLE R & D CENTER
JIM WALTER RESEARCH CORPORATION
OWENS-CORNING FIBERGLAS CORP., TECHNICAL CENTER LABORATORY
UNDERWRITERS LABORATORIES, INC., NORTHBROOK, ILLINOIS
U.S. TESTING COMPANY, INC., CALIFORNIA BRANCH LABORATORY

INSULATION LAP - THERMAL PROPERTIES TEST METHODS

01/T01 ASTM C177 Thermal transmission properties; low-temperature guarded hot plate
CERTAINTEED CORPORATION, RESEARCH & DEVELOPMENT LABORATORY
DOW CHEMICAL U.S.A., GRANVILLE R & D CENTER
DYNATECH R/D COMPANY
GEOSCIENCE LTD.
JIM WALTER RESEARCH CORP.
LANDER THERMAL CONDUCTIVITY LABORATORY
OWENS-CORNING FIBERGLAS CORP., TECHNICAL CENTER LABORATORY
SPARRELL ENGINEERING RESEARCH CORP.
TECHNICAL MICRONICS CONTROL, INC.

01/T04 ASTM C236 Thermal conductance; guarded hot box
BUTLER MANUFACTURING COMPANY RESEARCH CENTER
CERTAINTEED CORPORATION, RESEARCH & DEVELOPMENT LABORATORY
DYNATECH R/D COMPANY
DYNATHERM ENGINEERING
JIM WALTER RESEARCH CORPORATION
JOHNS-MANVILLE SALES CORP., R & D CENTER
OWENS-CORNING FIBERGLAS CORP., TECHNICAL CENTER LABORATORY
SOUTHWEST RESEARCH INSTITUTE, DEPARTMENT OF FIRE TECHNOLOGY
SPARRELL ENGINEERING RESEARCH CORP.
TWIN CITY TESTING & ENGINEERING LABORATORY, INC.

01/T05 ASTM C335 Thermal conductivity; pipe insulation
CERTAINTEED CORPORATION, RESEARCH & DEVELOPMENT LABORATORY
DYNATECH R/D COMPANY
JIM WALTER RESERCH CORPORATION
JOHNS-MANVILLE SALES CORP., R & D CENTER
LANDER THERMAL CONDUCTIVITY LABORATORY
LOUISIANA-PACIFIC CORPORATION, PABCO R & D LABORATORY
OWENS-CORNING FIBERGLAS CORP., TECHNICAL CENTER LABORATORY

01/T06 ASTM C518 Thermal transmission properties; heat flow meter
BUTLER MANUFACTURING COMPANY RESEARCH CENTER
CERTAINTEED CORPORATION, RESEARCH & DEVELOPMENT LABORATORY
COMMERCIAL TESTING COMPANY, INC.
DONALD S. GILMORE LABORATORIES, THE UPJOHN COMPANY
DOW CHEMICAL U.S.A., GRANVILLE R & D CENTER
DYNATECH R/D COMPANY
HAUSER LABORATORIES
JIM WALTER RESEARCH CORP.
JOHNS-MANVILLE SALES CORP., R & D CENTER
MAHB RESEARCH FOUNDATION, INC.
OLIN CORPORATION, PHYSICAL TESTING LABORATORY
OWENS-CORNING FIBERGLAS CORP., TECHNICAL CENTER LABORATORY

OWENS-CORNING FIBERGLAS CORP., BARRINGTON, NEW JERSEY PLANT LABORATORY
OWENS-CORNING FIBERGLAS CORP., DELMAR, NEW YORK, PLANT LABORATORY
OWENS-CORNING FIBERGLAS CORP., FAIRBURN, GEORGIA PLANT LABORATORY
OWENS-CORNING FIBERGLAS CORP., KANSAS CITY, KANSAS PLANT LABORATORY
OWENS-CORNING FIBERGLAS CORP., NEWARK, OHIO PLANT LABORATORY

01/Y06 HH-I-515 Starch; cellulosic fiber (loose-fill) (para. 4.8.9 in D version, Amendment 1)
CERTIFIED TESTING LABORATORIES, INC.
COMMERCIAL TESTING COMPANY, INC.
DYNATECH R/D COMPANY
FACTORY MUTUAL RESEARCH CORP.

OWENS-CORNING FIBERGLAS CORP., BARRINGTON, NEW JERSEY PLANT LABORATORY
OWENS-CORNING FIBERGLAS CORP., DELMAR, NEW YORK, PLANT LABORATORY
OWENS-CORNING FIBERGLAS CORP., FAIRBURN, GEORGIA PLANT LABORATORY
OWENS-CORNING FIBERGLAS CORP., KANSAS CITY, KANSAS PLANT LABORATORY
OWENS-CORNING FIBERGLAS CORP., NEWARK, OHIO PLANT LABORATORY
OWENS-CORNING FIBERGLAS CORP., SANTA CLARA, CALIFORNIA PLANT LABORATORY
OWENS-CORNING FIBERGLAS CORP., WAXAHACHIE, TEXAS PLANT LABORATORY
SPARRELL ENGINEERING RESEARCH CORP.
TECHNICAL MICRONICS CONTROL, INC.
UNDERWRITERS LABORATORIES, INC., NORTHBROOK, ILLINOIS
U.S. TESTING COMPANY, INC., HOBOKEN, NEW JERSEY

01/T09 ASTM C653 Thermal resistance (rec. practice); blanket (mineral fiber)
CERTAINTEED CORPORATION, RESEARCH & DEVELOPMENT LABORATORY
JOHNS-MANVILLE SALES CORP., R & D CENTER
MAUSER LABORATORIES
NAHB RESEARCH FOUNDATION, INC.
OWENS-CORNING FIBERGLAS CORP., TECHNICAL CENTER LABORATORY
UNDERWRITERS LABORATORIES, INC., NORTHBROOK, ILLINOIS

01/T10 ASTM C687 Thermal resistance (rec. practice); loose-fill (fibrous)
CERTAINTEED CORPORATION, RESEARCH & DEVELOPMENT LABORATORY
MAUSER LABORATORIES
JOHNS-MANVILLE SALES CORP., R & D CENTER
NAHB RESEARCH FOUNDATION, INC.
OWENS-CORNING FIBERGLAS CORP., TECHNICAL CENTER LABORATORY
UNDERWRITERS LABORATORIES, INC., NORTHBROOK, ILLINOIS

INSULATION LAP - VAPOR BARRIERS PROPERTIES TEST METHODS

01/V02 ASTM D591 Starch in paper; qualitative test
OWENS-CORNING FIBERGLASS CORP., TECHNICAL CENTER LABORATORY
SOUTHWEST RESEARCH INSTITUTE, DEPARTMENT OF FIRE TECHNOLOGY
UNDERWRITERS LABORATORIES, INC., NORTHBROOK, ILLINOIS

01/V03 ASTM D2020 Mildew (fungus) resistance; paper and paperboard
OWENS-CORNING FIBERGLAS CORP., TECHNICAL CENTER LABORATORY
SOUTHWEST RESEARCH INSTITUTE, DEPARTMENT OF FIRE TECHNOLOGY
UNDERWRITERS LABORATORIES, INC., NORTHBROOK, ILLINOIS

01/V04 ASTM E96 Water vapor transmission; thin sheets (proc. A)
CERTAINTEED CORPORATION, RESEARCH & DEVELOPMENT LABORATORY
DONALD S. GILMORE LABORATORIES, THE UPJOHN COMPANY
JOHNS-MANVILLE SALES CORP., R & D CENTER
OWENS-CORNING FIBERGLAS CORP., TECHNICAL CENTER LABORATORY
U.S. TESTING COMPANY, INC., HOBOKEN, NEW JERSEY
U.S. TESTING COMPANY, INC., CALIFORNIA BRANCH LABORATORY

01/V05 MH-I-515 Fungus; cellulosic fiber (loose-fill) (para. 4.8.6 in D version, Amendment 1)
MAUSER LABORATORIES
OWENS-CORNING FIBERGLAS CORP., TECHNICAL CENTER LABORATORY
SOUTHWEST RESEARCH INSTITUTE, DEPARTMENT OF FIRE TECHNOLOGY
TECHNICAL MICRONICS CONTROL, INC.
UNDERWRITERS LABORATORIES, INC., NORTHBROOK, ILLINOIS
U.S. TESTING COMPANY, INC., HOBOKEN, NEW JERSEY
U.S. TESTING COMPANY, INC., TULSA BRANCH LABORATORY

01/V06 MH-I-515 Starch; cellulosic fiber (loose-fill) (para. 4.8.9 in D version, Amendment 1)
CERTIFIED TESTING LABORATORIES, INC.
COMMERCIAL TESTING COMPANY, INC.
DYNATECH R/D COMPANY
FACTORY MUTUAL RESEARCH CORP.
MAUSER LABORATORIES
INTEST LABORATORIES, INC.
OWENS-CORNING FIBERGLAS CORP., TECHNICAL CENTER LABORATORY
SOUTHWEST RESEARCH INSTITUTE, DEPARTMENT OF FIRE TECHNOLOGY
UNDERWRITERS LABORATORIES, INC., NORTHBROOK, ILLINOIS
U.S. TESTING COMPANY, INC., HOBOKEN, NEW JERSEY
U.S. TESTING COMPANY, INC., CALIFORNIA BRANCH LABORATORY
U.S. TESTING COMPANY, INC., TULSA BRANCH LABORATORY

CONCRETE LAP TEST METHODS

02/M01 ASTM C31 Making and Curing Concrete Test Specimens in the Field
02/M03 ASTM C172 Sampling Fresh Concrete
02/P01 ASTM C143 Slump of Portland Cement Concrete
02/W01 ASTM C138 Unit Weight, Yield, and Air Content (Gravimetric) of Concrete
02/A01 ASTM C231 Air Content of Freshly Mixed Concrete by the Pressure Method
02/S01 ASTM C39 Compressive Strength of Cylindrical Concrete Specimens
02/A02 ASTM C173 Air Content of Freshly Mixed Concrete by the Volumetric Method

AGUIRRE ENGINEERS, INC.
AMERICAN ADMIXTURES CORP.
THE ARUNDEL CORPORATION, GREENSPRING LABORATORY
ATEC ASSOCIATES, INC., OHIO DISTRICT
BOWSER-MORNER TESTING LABS, INC., DAYTON, OHIO LABORATORY
BOWSER-MORNER TESTING LABS, INC., MAYSVILLE, KENTUCKY LABORATORY
BOWSER-MORNER TESTING LABS, INC., TOLEDO, OHIO LABORATORY
CAPITOL CEMENT [1]
CENTRAL READY MIXED CONCRETE, RESEARCH & TECHNICAL CENTER [1]
CONTRACTORS SUPPLY CORPORATION OF WEST VIRGINIA, INC. [1]
CONTROLLED CONCRETE METHODS, INC. [1]
THE DOLESE COMPANY, ENGINEERING DEPARTMENT LABORATORY
ENGINEERING TESTING LABORATORY [1]
ENGINEERS TESTING LABORATORIES, INC.
FLINTKOTE STONE PRODUCTS CO., QUALITY CONTROL LABORATORIES
FRANKLIN RESEARCH CENTER [1]
GAACO TESTING LABORATORIES
GENERAL TESTING LABORATORIES, INC. [1]
THE H. C. NUTTING COMPANY [1]
HALES TESTING LABORATORIES, INC.
HERRON CONSULTANTS, INC.
KELSO INDUSTRIES, INC.
LUMRY TESTING LABORATORIES
MATERIALS SERVICE CORPORATION [1]
MATERIALS TESTING CONSULTANTS, INC.
NORTHERN TESTING LABORATORIES, INC., BILLINGS, MONTANA LABORATORY
NORTHERN TESTING LABORATORIES, INC., BOISE, IDAHO LABORATORY
NORTHERN TESTING LABORATORIES, INC., GREAT FALLS, MONTANA LABORATORY

PORTLAND CEMENT ASSOCIATION, CONSTRUCTION TECHNOLOGY LABORATORIES
SMITH-EMERY COMPANY
SOIL TESTING SERVICES, INC.
SOUTHWESTERN LABORATORIES
STANDARD TESTING AND ENGINEERING COMPANY
THE TANNER COMPANIES, UNITED METRO DIVISION LABORATORY
TESTING ENGINEERS, INC., OAKLAND, CALIFORNIA LABORATORY
TESTING ENGINEERS, INC., SANTA CLARA, CALIFORNIA LABORATORY
TEXAS TESTING LABORATORIES, INC.
TWIN CITY TESTING & ENGINEERING LABORATORY, INC.
U.S. TESTING COMPANY, INC., HOBOKEN, NEW JERSEY
W. R. GRACE & CO.
THE WALT KEELER COMPANY, INC. 1,2

NOTES: 1--This laboratory is not accredited for test method 02/A02, ASTM C173.
2--This laboratory is not accredited for test method 02/S01, ASTM C39.
3--Effective January 31, 1981, Controlled Concrete Methods, Inc. will discontinue operating as a testing laboratory.

CARPET LAP TEST METHODS

03/C01 AATCC 16E Colorfastness to Light (Xenon Arc)
AMERICAN CARPET LABORATORIES, INC.
ARMSTRONG WORLD INDUSTRIES, INC., MARIETTA CARPET PLANT
BIGELOW-SANFORD, INC., GEORGIA RUG MILL, QUALITY CONTROL LABORATORY
BIGELOW-SANFORD, INC., TECHNICAL SERVICES, GREENVILLE, SOUTH CAROLINA
C. H. MASLAND & SONS
CERTIFIED TESTING LABORATORIES, INC.
CHISHOLM TRAIL TESTING AND ENGINEERING COMPANY, INC.
COMMERCIAL TESTING COMPANY, INC.
CORONET CARPETS
EVANS & BLACK CARPET MILLS, INC.
GALAXY CARPET MILLS, INC., TESTING LABORATORY
INDEPENDENT TEXTILE TESTING SERVICE, INC.
MOHASCO CORPORATION, PHYSICAL TESTING LABORATORY
SHAW INDUSTRIES, INC., QUALITY CONTROL LABORATORY
TREND/ROXBURY DIVISIONS OF WMG INDUSTRIES, INC.
U.S. TESTING COMPANY, INC., HOBOKEN, NEW JERSEY
U.S. TESTING COMPANY, INC., CALIFORNIA BRANCH LABORATORY
WORLD CARPETS, INC., R & D
03/C02 AATCC 8 Colorfastness to Crocking
AMERICAN CARPET LABORATORIES, INC.
ARMSTRONG WORLD INDUSTRIES, INC., MARIETTA CARPET PLANT
BIGELOW-SANFORD, INC., GEORGIA RUG MILL, QUALITY CONTROL LABORATORY
BIGELOW-SANFORD, INC., TECHNICAL SERVICES, GREENVILLE, SOUTH CAROLINA
C. H. MASLAND & SONS
CERTIFIED TESTING LABORATORIES, INC.
CHISHOLM TRAIL TESTING AND ENGINEERING COMPANY, INC.
COMMERCIAL TESTING COMPANY, INC.
CORONET CARPETS
EVANS & BLACK CARPET MILLS, INC.
GALAXY CARPET MILLS, INC., TESTING LABORATORY
INDEPENDENT TEXTILE TESTING SERVICE, INC.

MOHASCO CORPORATION, PHYSICAL TESTING LABORATORY
SHAW INDUSTRIES, INC., QUALITY CONTROL LABORATORY
TREND/ROXBURY DIVISIONS OF WMG INDUSTRIES, INC.
U.S. TESTING COMPANY, INC., HOBOKEN, NEW JERSEY
U.S. TESTING COMPANY, INC., CALIFORNIA BRANCH LABORATORY
WORLD CARPETS, INC., R & D
03/D01 ASTM D418 Methods of Testing Woven and Tufted Pile Floor Coverings: Pile Weight - Uncoated (Para. 10-19); Pile Weight - Coated (Para. 20-29) as modified by DM 44C; Pile Thickness (Para. 30-36); Tuft Weight - (Para. 37-45) as modified by DM 44C.
AMERICAN CARPET LABORATORIES, INC.
ARMSTRONG WORLD INDUSTRIES, INC., MARIETTA CARPET PLANT
BIGELOW-SANFORD, INC., GEORGIA RUG MILL, QUALITY CONTROL LABORATORY
BIGELOW-SANFORD, INC., TECHNICAL SERVICES, GREENVILLE, SOUTH CAROLINA
C. H. MASLAND & SONS
CERTIFIED TESTING LABORATORIES, INC.
CHISHOLM TRAIL TESTING AND ENGINEERING COMPANY, INC.
COMMERCIAL TESTING COMPANY, INC.
CORONET CARPETS
EVANS & BLACK CARPET MILLS, INC.
GALAXY CARPET MILLS, INC., TESTING LABORATORY
INDEPENDENT TEXTILE TESTING SERVICE, INC.
MOHASCO CORPORATION, PHYSICAL TESTING LABORATORY
TREND/ROXBURY DIVISIONS OF WMG INDUSTRIES, INC.
U.S. TESTING COMPANY, INC., HOBOKEN, NEW JERSEY
U.S. TESTING COMPANY, INC., CALIFORNIA BRANCH LABORATORY
WORLD CARPETS, INC., R & D
03/D02 DOD-C-95A Shrinkage
AMERICAN CARPET LABORATORIES, INC.
ARMSTRONG WORLD INDUSTRIES, INC., MARIETTA CARPET PLANT
BIGELOW-SANFORD, INC., GEORGIA RUG MILL, QUALITY CONTROL LABORATORY
BIGELOW-SANFORD, INC., TECHNICAL SERVICES, GREENVILLE, SOUTH CAROLINA
C. H. MASLAND & SONS
CERTIFIED TESTING LABORATORIES, INC.
CHISHOLM TRAIL TESTING AND ENGINEERING COMPANY, INC.
COMMERCIAL TESTING COMPANY, INC.
CORONET CARPETS
EVANS & BLACK CARPET MILLS, INC.
GALAXY CARPET MILLS, INC., TESTING LABORATORY
INDEPENDENT TEXTILE TESTING SERVICE, INC.
MOHASCO CORPORATION, PHYSICAL TESTING LABORATORY
TREND/ROXBURY DIVISIONS OF WMG INDUSTRIES, INC.
U.S. TESTING COMPANY, INC., HOBOKEN, NEW JERSEY
U.S. TESTING COMPANY, INC., CALIFORNIA BRANCH LABORATORY
WORLD CARPETS, INC., R & D
03/S01 ASTM D1335 Tuft Bind of Floor Coverings (Federal Test Method: Standard 191-5100, Textile Test Method - Breaking Strength; Standard 191-5950, Textile Test Method - Delamination
AMERICAN CARPET LABORATORIES, INC.
ARMSTRONG WORLD INDUSTRIES, INC., MARIETTA CARPET PLANT
BIGELOW-SANFORD, INC., GEORGIA RUG MILL, QUALITY CONTROL LABORATORY
BIGELOW-SANFORD, INC., TECHNICAL SERVICES, GREENVILLE, SOUTH CAROLINA
C. H. MASLAND & SONS
CERTIFIED TESTING LABORATORIES, INC.

CHISHOLM TRAIL TESTING AND ENGINEERING COMPANY, INC.
COMMERCIAL TESTING COMPANY, INC.
CORONET CARPETS
EVANS & BLACK CARPET MILLS, INC.
GALAXY CARPET MILLS, INC., TESTING LABORATORY

INDEPENDENT TEXTILE TESTING SERVICE, INC.
MOHASCO CORPORATION, PHYSICAL TESTING LABORATORY
SOUTHWEST RESEARCH INSTITUTE, DEPARTMENT OF FIRE TECHNOLOGY
TECHNICAL MICRONICS CONTROL, INC.
UNDERWRITERS LABORATORIES, INC., NORTHBROOK, ILLINOIS

CHISHOLM TRAIL TESTING AND ENGINEERING COMPANY, INC.
COMMERCIAL TESTING COMPANY, INC.
CORONET CARPETS
EVANS & BLACK CARPET MILLS, INC.
GALAXY CARPET MILLS, INC., TESTING LABORATORY
INDEPENDENT TEXTILE TESTING SERVICE, INC.
MOHASCO CORPORATION, PHYSICAL TESTING LABORATORY
TREND/ROXBURY DIVISIONS OF WAG INDUSTRIES, INC.
U.S. TESTING COMPANY, INC., HOBOKEN, NEW JERSEY
U.S. TESTING COMPANY, INC., CALIFORNIA BRANCH LABORATORY
WORLD CARPETS, INC., R & D

03/E01 AATCC 134/CRI 102 Electrostatic Propensity of Carpets
BIGELOW-SANFORD, INC., TECHNICAL SERVICES, GREENVILLE, SOUTH CAROLINA
CERTIFIED TESTING LABORATORIES, INC.
INDEPENDENT TEXTILE TESTING SERVICE, INC.
MOHASCO CORPORATION, PHYSICAL TESTING LABORATORY

03/F01 ASTM E84 Surface Flammability (Carpet)
COMMERCIAL TESTING COMPANY, INC.
FACTORY MUTUAL RESEARCH CORP.
HARDWOOD PLYWOOD MANUFACTURERS ASSOCIATION
SOUTHWEST RESEARCH INSTITUTE, DEPARTMENT OF FIRE TECHNOLOGY
UNDERWRITERS LABORATORIES, INC., NORTHBROOK, ILLINOIS
U.S. TESTING COMPANY, INC., HOBOKEN, NEW JERSEY
U.S. TESTING COMPANY, INC., CALIFORNIA BRANCH LABORATORY

03/F02 UL 992 Surface Flammability
SOUTHWEST RESEARCH INSTITUTE, DEPARTMENT OF FIRE TECHNOLOGY
UNDERWRITERS LABORATORIES, INC., NORTHBROOK, ILLINOIS

03/F03 DoC FF1-70 Methenamine Pill Test
AMERICAN CARPET LABORATORTES, INC.
ARMSTRONG WORLD INDUSTRIES, INC., MARIETTA CARPET PLANT
BIGELOW-SANFORD, INC., GEORGIA RUG MILL, QUALITY CONTROL LABORATORY
BIGELOW-SANFORD, INC., TECHNICAL SERVICES, GREENVILLE, SOUTH CAROLINA
C. H. MASLAND & SONS
CERTIFIED TESTING LABORATORIES, INC.
CHISHOLM TRAIL TESTING AND ENGINEERING COMPANY, INC.
COMMERCIAL TESTING COMPANY, INC.
CORONET CARPETS
EVANS & BLACK CARPET MILLS, INC.
GALAXY CARPET MILLS, INC., TESTING LABORATORY
INDEPENDENT TEXTILE TESTING SERVICE, INC.
MOHASCO CORPORATION, PHYSICAL TESTING LABORATORY
SHAW INDUSTRIES, INC., QUALITY CONTROL LABORATORY
SOUTHWEST RESEARCH INSTITUTE, DEPARTMENT OF FIRE TECHNOLOGY
TREND/ROXBURY DIVISIONS OF WAG INDUSTRIES, INC.
UNDERWRITERS LABORATORIES, INC., NORTHBROOK, ILLINOIS
U.S. TESTING COMPANY, INC., HOBOKEN, NEW JERSEY
U.S. TESTING COMPANY, INC., CALIFORNIA BRANCH LABORATORY
WORLD CARPETS, INC., R & D

03/F04 ASTM E648 Radiant Panel (Carpet)
BIGELOW-SANFORD, INC., TECHNICAL SERVICES, GREENVILLE, SOUTH CAROLINA
CERTIFIED TESTING LABORATORIES, INC.
COMMERCIAL TESTING COMPANY, INC.
FACTORY MUTUAL RESEARCH CORP.
HARDWOOD PLYWOOD MANUFACTURERS ASSOCIATION

INDEPENDENT TEXTILE TESTING SERVICE, INC.
MOHASCO CORPORATION, PHYSICAL TESTING LABORATORY
SOUTHWEST RESEARCH INSTITUTE, DEPARTMENT OF FIRE TECHNOLOGY
TECHNICAL MICRONICS CONTROL, INC.
UNDERWRITERS LABORATORIES, INC., NORTHBROOK, ILLINOIS
U.S. TESTING COMPANY, INC., HOBOKEN, NEW JERSEY
U.S. TESTING COMPANY, INC., CALIFORNIA BRANCH LABORATORY

03/B01 UM 44C, Addendum 3 Attached Cushion Tests
AMERICAN CARPET LABORATORTES, INC.
BIGELOW-SANFORD, INC., GEORGIA RUG MILL, QUALITY CONTROL LABORATORY
BIGELOW-SANFORD, INC., TECHNICAL SERVICES, GREENVILLE, SOUTH CAROLINA
COMMERCIAL TESTING COMPANY, INC.
INDEPENDENT TEXTILE TESTING SERVICE, INC.
U.S. TESTING COMPANY, INC., CALIFORNIA BRANCH LABORATORY

03/B02 UM 44C, Addendum 2 and 3 Attached Cushion Tests
AMERICAN CARPET LABORATORTES, INC.
CERTIFIED TESTING LABORATORIES, INC.
COMMERCIAL TESTING COMPANY, INC.
GALAXY CARPET MILLS, INC., TESTING LABORATORY
INDEPENDENT TEXTILE TESTING SERVICE, INC.
TREND/ROXBURY DIVISIONS OF WAG INDUSTRIES, INC.
U.S. TESTING COMPANY, INC., HOBOKEN, NEW JERSEY

APPENDIX 3

REQUESTING AN APPLICATION

IN ORDER TO RECEIVE A NVLAP APPLICATION AND INFORMATION DETAILING THE REQUIREMENTS AND FEES FOR ACCREDITATION FOR THE TEST METHODS OF YOUR INTEREST, THE FOLLOWING INFORMATION SHOULD BE SUBMITTED TO:

NVLAP Coordinator
Room 3876
U.S. Department of Commerce
Washington, D.C. 20230

Laboratory Name _____

Street _____

City _____ State _____ Zip Code _____

Attn: (Requester's Name) _____

Phone ( ) _____ Date _____

CHECK EACH LABORATORY ACCREDITATION PROGRAM (LAP) FOR WHICH INFORMATION IS DESIRED.

_____Insulation LAP

THE NVLAP CODES LISTED BELOW CORRESPOND TO THE AVAILABLE TEST METHODS IN THE INSULATION LAP (SEE APPENDIX 2 FOR THE TEST METHOD DESIGNATION AND TITLE CORRESPONDING TO EACH NVLAP CODE). CHECK THE APPROPRIATE NVLAP CODE FOR THE TEST METHODS OF YOUR INTEREST. WE WILL SEND INFORMATION DETAILING THE REQUIREMENTS FOR EACH TEST METHOD CHECKED.

___ 01/C01	___ 01/D10	___ 01/D21	___ 01/F08	___ 01/S11
___ 01/C02	___ 01/D11	___ 01/D22	___ 01/S01	___ 01/T01
___ 01/D01	___ 01/D12	___ 01/D23	___ 01/S02	___ 01/T04
___ 01/D02	___ 01/D13	___ 01/D24	___ 01/S03	___ 01/T05
___ 01/D03	___ 01/D14	___ 01/D25	___ 01/S04	___ 01/T06
___ 01/D04	___ 01/D15	___ 01/D26	___ 01/S05	___ 01/T09
___ 01/D05	___ 01/D16	___ 01/F01	___ 01/S06	___ 01/T10
___ 01/D06	___ 01/D17	___ 01/F02	___ 01/S07	___ 01/V02
___ 01/D07	___ 01/D18	___ 01/F05	___ 01/S08	___ 01/V03
___ 01/D08	___ 01/D19	___ 01/F06	___ 01/S09	___ 01/V04
___ 01/D09	___ 01/D20	___ 01/F07	___ 01/S10	___ 01/V05
				___ 01/V06

_____Concrete LAP

_____Carpet LAP

MAKING A REQUEST FOR AN APPLICATION POSES NO OBLIGATION TO PARTICIPATE IN THE PROGRAM.

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federal register

Wednesday
January 21, 1981

Part IV

Department of Agriculture

Food and Nutrition Service

Summer Food Service Program for Children

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Part 225

Summer Food Service Program for Children

AGENCY: Food and Nutrition Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule completely reorganizes the regulations as they existed in 1980 for the Summer Food Service Program (Program) to make them easier to understand and use. The rule also makes several substantive changes to the prior regulations. It now requires State agencies to establish for each food service site serving vended meals an approved level of meal service. Program sponsors will no longer receive reimbursement for meals served in excess of the approved levels. This change is intended to reduce waste in the Program by reducing the number of excess meals claimed for reimbursement under the Program. The final rule spells out new corrective action requirements for State agencies dealing with meal service violations at the site level. These requirements will assist State agencies in reducing Program mismanagement, waste and abuse. The requirements for State agency monitoring of sponsor and site operations have been changed to reduce the burden of conducting reviews early in the summer while emphasizing the need for follow-up reviews of program operations. This change from the 1980 regulations is intended to give State agencies greater flexibility in utilizing their monitoring resources. The final rule will allow Food and Nutrition Service regional offices (FNSRO's) greater discretion in the scheduling of conducting management evaluations of State agencies.

EFFECTIVE DATE: January 1, 1981.

FOR FURTHER INFORMATION CONTACT: Jordan Benderly, Director, Child Care and Summer Programs Division, Food and Nutrition Service, U.S. Department of Agriculture, Washington, D.C. 20250, or by telephone at (202) 447-8211.

The Final Impact Statement describing the options considered in developing this final rule and the impact of implementing each option is available on request from either Mr. Benderly or Ms. Beverly Walstrom at the above address or telephone number. Copies of all written comments on the proposed rule will be available for review during normal business hours at room 644, 500 12th Street, SW., Washington, D.C. 20250.

SUPPLEMENTARY INFORMATION: This final regulation has been reviewed under USDA procedures established in Secretary's Memorandum 1955 to implement Executive Order 12044 and has been classified "not significant."

The Summer Food Service Program is authorized by section 13 of the National School Lunch Act. Comprehensive Progam regulations were last published on January 2, 1979 (44 FR 6). On October 30, 1979 (44 FR 62279), and February 1, 1980 (45 FR 7227), amendments were published implementing the provisions of Public Law 96-38, which set a deadline for the submission of the final claim for reimbursement for fiscal year 1979. On January 8, 1980 (45 FR 1844), amendments to the regulations were published which implemented the changes in Program eligibility mandated by Public Law 96-108, and made several other minor changes. Section 13 of the National School Lunch Act was amended on December 15, 1980, with the enactment of Public Law 96-499, which extends the Program's authorization through Fiscal Year 1984 and limits daily meal service of food service sites. On December 15, 1980, Public Law 96-528 was enacted, prohibiting FNS from administering the Program in States in which FNS did not administer the Program in FY 1980.

Proposed regulations for the Program were published on November 7, 1980 (45 FR 74384). The proposal incorporated a comprehensive reorganization of the regulations and several changes based on Program experience and recommendations received from various sources. The preamble to the proposed rule encouraged readers to submit comments. A comment period of 30 days was allowed for interested parties to submit criticisms, favorable opinions, and information to affect the final regulations. (Justification for the shortened comment period is provided at 45 FR 74384 in the November 7, 1980, proposal.) A total of 80 comments were received from private citizens, sponsors, State agencies, Food and Nutrition Service (FNS) Regional Offices, advocacy groups, and others. All comments were studied, and were summarized and catalogued according to the section of the regulations to which they refer so that they could be considered systemically during the development of the final rule.

Comments on regulatory issues are presented by issue in the preamble. In most instances, comments which recommended changes contrary to the Program's authorizing statute or which were not accompanied with some justification or discernible rationale are not addressed in this preamble. This preamble sets forth the basis and purpose behind significant deviations from the November 7, 1980, proposed regulations. Interested parties can generally assume the reasons given in the preamble to the proposed rule are still valid for those provisions which are not changed in the final rule. A thorough understanding of the grounds for the final rule may require reference to the proposed rule.

Statutory Changes

The concluding section of the preamble to the proposed rule discussed anticipated legislative amendments and the Department's proposals for their implementation. This section was included in the preamble to facilitate implementation of the legislative changes if enacted, and to solicit public input, with the cautionary advice that some or all of the amendments might be enacted. As it turned out, Congress did not pass any of the amendments discussed in the last section of the preamble. The Department will retain the comments received on that section of the preamble for use in the event that the next Congress considers and passes similar legislation.

The 96th Congress did pass the Omnibus Reconciliation Act of 1981, which was enacted as Public Law 96-499 on December 5, 1980. Public Law 96-499 extends authorization for the Program until September 30, 1984, and limits daily meal services at sites other than camps and those which primarily serve migrant children. On December 15, an appropriations act for FY 1981 was also enacted, as Public Law 96-528, prohibiting FNS from administering the Program during FY 1981 in those States which undertook to administer the Program in FY 1980, thereby leaving administration of the program in those States to State agencies.

The provisions implementing these changes appear in the final rule, rather than in a proposed rule which would be subject to public coment, for three reasons. First, the mandatory deadline of January 1, 1981 for the publication of final regulations for the Program would be greatly exceeded if a proposal were to be published and a comment period allowed. Secondly, the provisions of the statutory amendment are nondiscretionary and public comment could not, therefore, affect their implementation. Finally, Congress passed these amendments in order to reduce Federal expenditures and to improve Program management during this Fiscal Year. The Department believes that these objectives can best be served by immediate implementation

of the changes in the final rule. Therefore, the solicitation of public comments is unnecessary. Inclusion of these provisions in the final rule is in accordance with the conditions specified in Executive Order 12044 for exclusions from the requirements for public comment in the rulemaking process. It has been determined by Bob Greenstein, Administrator, FNS, that the emergency nature of these changes warrant publication without opportunity for public comment at this time. Good cause exists both for dispensing with the solicitation of public comments and for making this rule effective earlier than 30 days after publication.

The changes from the proposed rule incorporated in the final rule are described below.

1. Definitions

a. *Areas where poor economic conditions exist.* The Department has received comments that indicate some confusion about the definition of "areas where poor economic conditions exist" as it relates to enrollment programs. Sponsors of enrollment programs may demonstrate that they serve areas where poor economic conditions exist in either of two ways. (1) They may establish, as for any other site which is not a camp, that 33⅓ percent of the children in the local area from which the site draws its attendance qualify for free or reduced price school meals, as allowed under 7 CFR 225.2(d) (1), or (2) they may document that at least 33⅓ percent of the children enrolled in the site qualify for free or reduced price school meals, as allowed under 7 CFR 225.2(d)(2). However, if the sponsors wish to establish their sites' eligibility under the second method it is necessary to collect family size and income information for enrolled children at these sites. Sponsors of enrolled or unenrolled sites other than camps are only required to submit documentation every other year that their sites serve areas where poor economic conditions exist. Sponsors of camps must, however, collect family size and income information each session at each camp. Camps cannot qualify for eligibility under subparagraph (1) above, as serving areas where poor economic conditions exist. (See also 7 CFR 225.9(a)(2).)

b. *Camps.* The proposed rule modified the definition of "camps" by requiring that nonresidential camps operate for at least six hours each day.

One commenter pointed out that six hours is not enough time to provide the minimum number of meal services for which nonresidential camps may be approved (a breakfast, lunch, and supper each day). Two other commenters argued that the six hour requirement is unnecessary. In response to these comments, the definition in the final rule has been changed to require simply that nonresidential camps offer a continuous schedule of organized cultural or recreational activities between meal services. The Department has determined that the deletion of the reference to a minimum number of hours of operation each day will not detract from the original purpose of changing the definition, which was to ensure that sites which qualify as nonresidential camps actually provide the other services associated with the term "day camp." (See 7 CFR 225.2(c).)

c. *Income accruing to the Program.* One commenter pointed out that a minor discrepancy exists between the definitions of the term "income accruing to the Program" included in the proposed rule and the regulations for the Child Care Food Program (7 CFR Part 226). The definition included in the proposed rule refers to monies "received by a sponsor for use in the Program," and the definition used in Part 226 refers to monies "used in an institution's" child care food program. Although the discrepancy may seem significant, it was unintentional, and therefore the definition is changed in this final rule to make them consistent. If it becomes necessary to pay food service bills with non-Program funds, sponsors may wish to borrow the needed funds from their other accounts, paying back such loans to the extent possible with Program reimbursement.

Money lent rather than permanently transferred to the food service program should not be reported as income accruing to the Program. (See § 225.2(n).)

2. Turn-back of administrative responsibility

FNS Regional Offices have had to assume administrative responsibility for the Program in as many as 21 States. Recognizing the increasing number of States in which the Federal government directly administers the Program, Congress has prohibited the Department from assuming administration during FY 1981 in any States which administered the Program in FY 1980. This prohibition was made a part of Public Law 96–528 which was enacted on December 15, 1980.

In order to comply with Public Law 96–528, the final rule prohibits FNS Regional Offices from assuming administrative responsibility for the Program during FY 1981 in any State where a State agency administered the Program in FY 1980. (See 7 CFR 225.3(b).)

3. Special developmental projects

The proposed rule deleted provisions for special developmental project funding under the Program. Although a majority of commenters opposed the deletion (seven out of thirteen), the Department has determined that, in the interest of effective use of Federal funds and critical administrative staff time, the Department should exercise its discretion in the best interest of the success of the Program by discontinuing funding for special developmental projects.

As the preamble to the proposed rule pointed out, the special developmental projects have proven costly and have generally yielded no useable results. One commenter argued that rather than eliminate the funding, the Department could improve the effectiveness of the projects simply by exercising more discretion in approving them. The Department maintains, however, that the potential effectiveness of the projects is severely limited by the short duration of the Program. The Program's administrative demands during the summer are such that adequate oversight of the projects frequently cannot be provided. More careful review of project proposals would not resolve these problems. Special developmental projects have greater potential to produce useful results in the programs that operate year round.

4. Priority for allocation of sites

In the proposed rule, an inadvertent error was made in identifying the priority for approval where two or more applicant sponsors propose to serve the same area or the same enrolled children. The proposed rule specified that public and nonprofit private schools which successfully operated the Program in the past would be the highest priority applicants in such situations. The final rule properly identifies the highest priority applicants as "applicants which are public or nonprofit schools, and other applicants which have demonstrated successful Program performance in a prior year." (See 7 CFR 225.6(g)(1).)

5. Approved levels of meal service

The proposed rule contained a provision requiring State agencies to establish an approved level of meal service for each site serving meals obtained from a food service management company. The approved level would constitute the maximum number of meals which the site potentially could serve at a meal service and claim for reimbursement. The proposed rule provided, in very general

terms, the bases for establishing the approved levels and for adjusting them should a site's attendance drop below or have potential to rise above its initially established approved level.

More than 50 comments were received on this proposal, and the comments were evenly divided between those supporting and those opposing the provision. While a slight majority of commenting sponsors and advocacy groups supported the proposal, a slight majority of the State agencies which commented opposed the change. The Department has decided to retain the requirement in the final rule, with minor modifications. The Department believes that establishing approved levels for vended sites will provide the mechanism needed to reduce the number of excess meals delivered to the sites. Sponsors can use approved levels to better plan their programs. Food service management companies can rely on approved levels as a system to help prevent sponsors from over-ordering, and thus not receiving enough reimbursement to cover their costs when excess meals are delivered and disallowed.

Seven commenters (three State agencies, two advocacy groups, and two sponsors) expressed reservations about the provision, with the argument that establishing and adjusting approved levels for vended sites would place too great a burden on State agencies. This concern has also been raised by some FNS Regional Offices. The Department believes, however, that the additional workload will prove manageable, especially once State agencies have established their procedures for implementing the requirement. Also, it should be noted that significant reductions in the minimum preapproval and monitoring visits to some extent counter-balance the additional workload that the requirement for approved levels will entail.

The concept of setting maximum approved levels of meal service for sites is not new to the Program. Some administering agencies have made use of approved level systems in the last few years and have found that with an approved level system they have been able to reduce Program waste by reducing the number of excess meals that are delivered to the sites. These administering agencies have developed systems which are fully consistent with the requirements of the proposed (and final) rule and which mitigate the workload which the approved level requirement would appear to entail.

The regulatory provisions for approved levels are stated in general terms in order to allow State agencies as much flexibility as possible in developing their systems, while maintaining a basic requirement that State agencies implement a site approved level system aimed at reducing the delivery of excess meals to sites. The following discussion explores some of the mechanisms which State agencies may wish to consider in developing their systems for establishing and adjusting approved levels.

In approving a sponsor's application for vended sites, the State agency should use any available and reliable information about the sites' attendance in prior years to establish an approved level. To ensure that there are enough meals to serve the children at the site, the State agency may wish to give the site an approved level somewhat higher than the exact level of attendance indicated in the records from the prior years. Such a margin will avoid the problem of having to adjust the approved level upwards when attendance at the site exceeds by only a small number the attendance levels recorded for the site in prior years. Of course, if the State has reason to believe that attendance at the site will actually decrease, it should not build such a margin into the approved level.

The proposed rule stipulated that if no reliable record of a site's probable attendance is available, the State agency would establish the approved level based upon its own best estimate of attendance for each site. In order to provide more flexibility to State agencies, the final rule modifies this provision. The final rule allows the State agency to use other procedures besides making an estimate of a site's likely attendance in those situations where an accurate record of attendance is not available and making an estimate of likely attendance would prove difficult.

For example, an acceptable procedure for sites for which no reliable record is available would be to establish a uniform, standard level of meal service that could be provided at all those sites (such as 100 meals per site), subject to adjustment based on review findings or any other information which may become available to the State agency. The standard level which a State agency chooses to employ will depend on the character and the size of the programs and sites which operate in the State. For example, a standard approved level of 50 may be appropriate in some States, while a standard level of 100 may be more appropriate in others. States may use a standard approved level for some sites and make an estimate of attendance for others. In any case, States should consider making an estimate of attendance rather than using a standard approved level for each site which has had problems with excess meals in prior years. States which choose to use a standard approved level must provide a mechanism for establishing approved levels higher than the standard level for sites of sponsors which provide evidence that they will serve more children than the standard approved level would permit. Of course, if the site information sheet submitted by the sponsor or any other information indicates estimated attendance will be significantly lower than the State's standard approved level, the State agency may consider using the lower figure in establishing the site's approved level.

When State agencies review a site and discover that attendance is significantly below the site's approved level, the State agency should consider reducing the approved level. A downward adjustment will be particularly important if it appears that the sponsor has not adjusted meal orders for the site with the objective of providing only one meal per child. The State agency may consider various options for making downward adjustments. It may want to adjust the approved level to a number equalling a reasonable percentage of the site's attendance on the day of the review to leave sufficient margin to accommodate any normal fluctuation in site attendance. For example, such a percentage might be 115 or 120 percent of the site's attendance on the day of a review. The State agency may want to make a more stringent adjustment in some cases.

When the State agency makes adjustments in the approved level, it should do so with the intention of accurately reflecting the site's probable attendance without setting the level so low that frequent readjustments will be necessary. The possible mechanisms for implementing the approved levels requirement described above do not constitute the only possibilities. State agencies are encouraged to establish systems for approved levels which best suit the programs in their States and which will make the most effective use of their staff resources in reducing waste in the Program.

Among the comments on the proposal were a few recommending that, instead of requiring approved levels for sites, a sponsor-wide approved level should be required. One commenter argued that a sponsor-wide approved level would provide sponsors with more flexibility to ensure that enough meals could be

ordered for each site to provide one meal for each attending child. This recommendation was rejected because it would not be effective in reducing the number of excess meals delivered to sites.

Several other commenters expressed concern that approved levels would prevent sites from receiving as many meals as they need to serve each attending child. Clearly this is not the intent of this change in the Program. The Department believes that State agencies will ensure that sponsors have rapid recourse whenever they find that a site's approved level is too low.

Three commenters argued that establishing an approved level of meal service would actually increase waste in the Program by encouraging sponsors to order the full approved number of meals each day without adjusting their meal orders in response to trends in site attendance. To address this concern, the final rule emphasizes the sponsor's responsibility for rapid adjustments in meal orders downwards when site attendance is below the approved level. In no case should the approved level be used as a standing meal order. State agencies must continue to review sites and sponsors to ascertain whether the sponsors have in fact adjusted meal orders with the objective of providing only one meal per child.

A few other commenters recommended that State agencies also be required to set approved levels for sites of sponsors which prepare their own meals. This recommendation was rejected because of the additional workload it would impose on State agencies. Also, the Department believes that excess meals are not as serious a problem for self-preparation programs as for vended programs. Sponsors which prepare their own meals tend to adjust more quickly the number of meals prepared to the number of children in attendance. However, State agencies may choose, as under prior regulations, to establish approved levels of meal service for the sites of any sponsor which prepares its own meals. (See 7 CFR 225.8(j)).

6. Sponsor applications

The proposed rule required that, within two weeks of receiving notification of their approval, each sponsor submit (1) a copy of its letter advising the appropriate health department of its intention to operate a food service at its sites, and (2) if the sponsor expects to receive more than $75,000 in Program payments, a copy of its letter of engagement with an auditor. Two comments received have raised a valid concern that providing two weeks following approval for the submission of these letters may prove detrimental to the Program in situations where the sponsor plans to begin its food service program less than two weeks following approval. In such a case, the letters might not be submitted until after the sponsor's program has actually started operating. The Department has decided that it must ensure that sponsors have taken the necessary steps to involve the appropriate health department and to arrange for an audit before opening their summer food service programs. Therefore, the final rule stipulates that these letters must be submitted within two weeks of approval *and* prior to commencement of operations under the Program. State agencies may, of course, choose to require that the sponsor submit along with its application a copy of the letters the sponsors will send. (See 7 CFR 225.9 (d) and (e).)

7. Late applications

The proposed rule introduced a change in the Program requiring that the State agency not approve an application submitted after the deadline date any sooner than seven days following its submission. In response to strong disapproval of this change registered in eleven out of fourteen comments received on the subject, this change has not been included in the final rule. The Department concurs with the argument of several of the commenters that this constraint on the application approval process would unnecessarily reduce the flexibility of State agencies in dealing with late sponsor applications. The Department also agrees with commenters that such a mandatory delay in approving late applications might have the effect of denying meals to children who otherwise might be served.

8. Funding assessment

The proposed rule retained the requirement from prior regulations that FNS Regional Offices collect data on each State's administrative funding needs by August 1 of each year. The funding assessments serve as the basis for adjustments in the State's final Letter of Credit. Commenters from Regional Offices recommended that the deadline date for funding assessments be changed because State agencies often do not receive enough information from Claims for Reimbursement from sponsors prior to August 1 to conduct accurate funding assessments. In recognition of the validity of this argument, the Department has reviewed the entire process for making funding assessments and has determined that it can be changed in two ways. First, the final regulations extend to August 20 the deadline for Regional Offices to report on funding assessments. Additionally, final regulations restructure this reporting process from a complete State by State tally to exception reporting. Thus, Regions need only report, by August 20, any necessary adjustments to the information submitted in a State's Management and Administration Plan (MAP) which would impact on a State's Letter of Credit. If no new information is submitted by August 20, only the information submitted in the MAP will be considered. These changes reflect consideration of concerns expressed by commenters about the August 1 deadline and further reduces the reporting burden by instituting an exception reporting process. (See 7 CFR 225.13(d).)

9. Audit requirements

Regulations in prior years have required that sponsors which expected to earn $50,000 or more in Program reimbursement arrange for an audit of their programs every year. The proposed rule changing this level to $75,000 was supported by fifteen out of nineteen commenters. Several State agencies pointed out that this change has the effect of increasing the number of audits which State agencies must pay for out of their State administrative funds (SAF). Five State agencies indicated that their SAF would not be sufficient to cover the additional audit costs. The Department realizes that this change will put a strain on some States' administrative funds. However, 7 CFR 225.13(a)(4) allows States to appeal the requirement if they can demonstrate financial hardship. States which find that the change in the audit requirement entails unaffordable additional costs may want to initiate such appeals.

10. Tolerance system

One of the proposed changes which received numerous comments was the provision giving State agencies the option to allow a five percent tolerance on meal service violations observed during a site review. The proposal would permit State agencies to allow sponsors to claim reimbursement for meals in violation of the meal service requirements, as long as the number in violation did not exceed five percent of the total number of meals at the service.

While a majority of the commenters indicated support for the proposal, many of the commenters indicated that the five percent level would be far too low. Seventeen of the commenters recommended a ten percent tolerance. A few others stated that fifteen percent would be a more realistic level. The Department believes that many of the

eleven commenters which endorsed the proposed five percent level (most of whom are Program sponsors) did not fully realize that the change would result in a stricter and more formalized disallowance policy in some States than has been in effect in the past. Unfortunately, the comments did not reveal any consensus on what the appropriate tolerance level should be.

The Department has determined, however, that it should not provide authorization in regulations for a higher tolerance on meal service violations. A higher tolerance could cause serious Program management and accountability problems and encourage criticism of the Program.

After taking these issues into consideration, the Department has decided not to include provisions for tolerance levels in the final rule. Instead of providing tolerance through a flat percentage, the final rule provides a different mechanism to help ensure that sponsors which operate efficiently are not penalized for unavoidable losses, and that Program integrity is strengthened at the same time.

Under the final rule, all meals in violation would continue to be disallowed from the meals times rates calculation (i.e., as meals served to children) in the Claim for Reimbursement. The State agency would, however, be allowed to permit sponsors to include the cost of disallowed meals as operating costs, except that in no case shall the cost of meals in excess of a site's approved level of meal service established in accordance with 7 CFR 225.6(j) be considered allowable or be reported as an operating cost.

Sponsors receive, as reimbursement for their operating costs, the lesser of (1) the amount derived by multiplying the number of allowable meals served to children times the reimbursement rates, or (2) their allowable operating costs. If sponsors are not permitted either to include disallowed meals in the meals times rates computation or to include the cost of the disallowed meals as operating costs, then even a single disallowed meal will result in reimbursement being reduced below costs that a sponsor has actually incurred, and the sponsor will experience a financial loss. This loss would have to be borne by the sponsor out of other funding sources, or the sponsor would be left with a debt that it could not pay off. The Department recognizes that to a small extent disallowances may be unavoidable, even for sponsors which carefully manage their programs, and that State agencies may not want to impose such losses on sponsors which run good programs. If such losses are imposed, the most scrupulous sponsors may be discouraged from participating in the Program, with the result that waste in the Program may increase due to less careful sponsors taking their place.

This rulemaking addresses this issue by permitting disallowed meals to be considered as allowable operating costs. At the same time, by disallowing these meals from the meals times rates computation, and maintaining the requirement that allowable operating costs will be reimbursed only up to the meals times rates level, reimbursement for high levels of disallowed meals will be prevented.

The requirement of prior regulations that not even a single disallowed meal be included in operating costs may have discouraged some high quality sponsors from participating, and may also have influenced some sponsors who participate to report costs and meal counts incorrectly. For example, when a sponsor prepared or purchased 100 meals (incurring the cost of 100 meals), only the cost of the meals that were served to children in accordance with Program requirements could be claimed as an allowable cost. If only 90 of the 100 meals were served to children and met all of the requirements, only the cost of 90 meals was allowable. The cost of the other 10 meals was not allowable and, unless reported improperly on the claim, would have represented a loss to the sponsor.

Under the tolerance provision in this final rule, the sponsor can still only claim 90 meals as meals served to children, which can be used in the meals times rates calculation in order to determine the maximum potential reimbursement. However, unlike prior regulations, the final rule allows this sponsor to claim the cost of all 100 meals in its report of operating costs as long as none of the meals were in excess of the site's approved level of meal service. In reimbursement for operating costs, the sponsor will continue to receive the lesser of (1) allowable meals times the reimbursement rates, or (2) allowable operating costs. To the extent that the sponsor has kept its per meal costs below the reimbursement rates, the sponsor may be allowed to recover the cost of disallowed meals.

The provision included in the final rule will encourage accurate reporting and more efficient program management. While efficiency will be encouraged, the provision should not cause sponsors to keep their costs low by reducing the quality or quantity of the food served to children, as State agencies will continue to conduct reviews, examine meals, and disallow meals which do not meet the meal pattern requirements. If the State agency determines that the sponsor is reducing costs by reducing meal quality or is not taking the necessary steps to control its program, the State agency may choose to require the sponsor to reduce the costs reported on its Claim according to the number of meals disallowed.

Efforts to secure the most qualified sponsors will be facilitated by this provision. State agencies will be able to assure potential sponsors that they will not necessarily suffer financial losses for all disallowances.

The costs of meals in excess of a site's approved level of meal service are given separate treatment (i.e., they must be excluded in all cases from the Claim for Reimbursement) because such violations are easily avoidable. Ordering meals in excess of a site's approved level would constitute a willful violation, and the cost of such meals cannot be considered a necessary cost of operating the Program.

This provision is like the proposed 5 percent tolerance level system in that it can help sponsors to recover some of the costs of meals which otherwise would not be reimbursed. However, unlike the tolerance level system, this provision will provide additional incentive to sponsors to control and accurately report their costs and is, therefore, consistent with the goal of encouraging good Program management. (See 7 CFR 225.12(c)(8).)

11. Corrective action

The proposed rule contained several changes emphasizing corrective action regarding sponsors and sites which are found not to meet Program requirements. The proposal also modified the requirements for State agency reviews of sponsors and sites, emphasizing the need for State agency follow up when corrective action is necessary.

The final rule incorporates a provision meant to trigger special State agency attention to corrective action and follow-up when site violations reach a high level. In addition to requiring that sponsors take actions to ensure that any violations observed by the State agency during a site review do not recur, the final rule requires the State agency to prescribe a specific corrective action plan if it finds what it considers to be a high level of meal service violations at the site being reviewed. To ensure that the corrective action plan has been implemented, the State agency is required either to conduct a follow-up visit or in some other manner verify that the corrective action has been taken.

The Department believes that this requirement for a corrective action plan is probably not unlike systems already utilized by many State agencies, and will therefore not entail additional work. The provision will help to highlight the importance of follow-up efforts and will provide State agencies with specific regulatory support for mandating corrective action. (See 7 CFR 225.14(e)(4).)

12. Appeal procedures

In the proposed rulemaking, the Department outlined four major modifications to the appeal process: appellants must submit written documentation refuting the State agency's decision within seven days of submitting a request for review; State agencies must provide appellants with five days advance written notification of the time and place of hearings; a representative of the State agency must be allowed to attend hearings; and the time limit for review officers to render their decisions was raised from three to five work days. The Department received eight comments on these proposals, including two from administrative review officers. In general, the commenters approved of this section of the proposed regulations, although some criticisms and suggestions were made. In response to these comments the Department is modifying the proposed rulemaking in several ways.

First, the Department is including the revocation of a food service management company's registration as an appealable action. The Department never intended that vendors should be without administrative redress in such situations.

Therefore, this modification merely corrects the original oversight.

Secondly, the Department is specifiying that all appeals must clearly identify the precise State agency action being appealed and must include a photocopy of the State agency's notice of action. This stipulation is intended to enable review officers to determine immediately the reason for the appeal, thereby avoiding lost time spent by the review officer researching the nature of the appeal and permitting decisions to be rendered as expeditiously as possible.

The final regulation stipulates that the State agency, as well as the appellant, must be provided with five days advance written notice of the time and place of the hearing.

The proposed regulations also would have raised the time limit for rendering decisions from three work days to five. Some commenters, however, believe the time limit should be even longer, up to a maximum of thirty days. The Department originally proposed the two-day increase because the three-day limit was not always sufficient to allow review officers to reach decisions, particularly when appeals were complex or caseloads were large. A modest increase in the time limit is desirable, therefore, but because the SFSP operates for such a short period of time, it is imperative that all decisions be rendered as expeditiously as possible. For this reason, the Department does not believe that the time limit should be expanded beyond five working days.

Finally, in response to some queries and comments, the Department wishes at this point to clarify the intention of the provision requiring the State agency to maintain a complete record of each appeal. Such a record should provide an outside party with the opportunity to determine whether the State agency has followed the regulations in such matters as notification and time frames. The record should also make it clear why the review officer rendered the decision. It is not necessary, however, that verbatim transcripts of hearings or, for that matter, any other particular kind of documentation be included in every record. The Department has no wish to encumber review officers with an extensive list of materials which must be part of the record. Instead, the Department intends that review officers have flexibility in this area provided that the record is sufficiently complete to document the State agency's compliance with these regulations and the basis for the decision. This issue is clarified in the final rule. (See 7 CFR 225.16 (b) and (c).)

13. Daily meal services

Section 206 of Pub. L. 96-499 stipulates that sites other than camps and those which primarily serve migrant children shall only be approved to provide up to two meal services under the Program each day. If such sites provide one meal service each day, it may be either breakfast, lunch, or a supplement. If such sites provide two meal services each day, one of the meal services must be lunch, and the other may be breakfast or a supplement. These sites shall not be approved to serve both breakfast and a supplement each day. The statute permits camps and sites which primarily serve migrant children to serve up to four meals each day. Congress made this change in the Program in order to reduce Federal expenditures, Program mismanagement, and abuse associated with multiple daily meal services. The final rule incorporates this change.

As before, the regulations provide that residential camps may serve up to four meals per day. The same language is used allowing sites primarily serving migrant children to serve up to four meals. Consistent with regulations for prior years, the proposed rule stipulated that nonresidential camps, however could be approved only to serve four meals, or three meals consisting of breakfast, lunch, and supper, each day. Several commenters argued that nonresidential camps should be permitted, like residential camps, to serve any number of meals up to four each day, on the grounds that the minimum meal service stipulation is an unnecessary encumbrance. The Department has decided to accept their recommendation. State agencies can achieve the original objective of the proposed provision, which was to ensure that nonresidential camps offer the other services associated with the term "day camp," by careful scrutiny of the sponsor applications with regard to the schedule of activities which the camp will provide for enrolled children. (See 7 CFR 225.19(f), (g), and (h).)

14. Meal pattern requirements

The final rule retains the presentation of the meal component and portion requirements for the various meal types in chart, rather than narrative, form. However, the order of listing the individual components of each meal type has been adjusted in order to conform to the format presented in guidance materials developed by the Department.

A provision has been added to the final regulations that clarifies the use of enriched macaroni products with fortified protein in the Program. These products may be used to meet either part of the meat/meat alternate requirement or the bread/bread alternate requirement in a meal. However, these products cannot be counted toward meeting both component requirements in the same meal. (See 7 CFR 225.21(c)(3).)

15. Unitization of meals

Under prior regulations, all meals purchased from food service management companies were required to be unitized, with or without milk. This final rule modifies this provision by requiring that these meals be unitized, with or without milk or juice. This change responds to complaints that when juice has been included in the unitized meal, it has sometimes spilled and damaged other components in the unit. The change will help to prevent wasting of food. (See 7 CFR 225.17(a).)

16. Affirmative action to increase participation by minority food service management companies

The Department received no comments relating to the proposal to collect information during the registration process on minority food service management companies desiring to participate in the 1981 Program. Because the Department believes that increased emphasis on minority business participation is both necessary and important, this provision has been included in the final regulations. (See 7 CFR 225.17(c)(2)). If the 1981 data reveals a disproportionately low level of minority business participation in the Program, the Department intends to re-evaluate the means it has used in the past to increase the level of participation of minority owned firms in the Program.

17. Other changes

Finally, in the proposed rulemaking, the Department outlined several changes in the requirements for monitoring, meal patterns, audits and management evaluations. These changes were designed to allow for greater flexibility and more efficient and effective utilization of personnel and administrative expenditures, and public comment was overwhelmingly favorable. The Department, therefore, is incorporating the following proposals into these final regulations for the reasons discussed in the preamble to the proposed rulemaking:

a. State agencies shall make preapproval visits to all sponsors which did not participate during the previous year or which are determined to need such a visit.

b. The requirement that State agencies make preapproval visits to all new non-school sites located in cities with total elementary and secondary public school enrollment exceeding 75,000 is deleted.

c. The requirement that State agencies make preapproval visits to all new sites with proposed average daily attendances of more than 300 children is limited to non-school sites.

d. State agencies are relieved of the burden of conducting reviews during the first four weeks of operation of sponsors with 10 or more sites which had no significant problems during the previous year's Program. Such sponsors must still be reviewed, but the reviews may be conducted at any time during the period of Program operations.

e. Department has deleted the requirement that States expecting to earn $250,000 or more in State administrative funds conduct reviews of 75 percent of the non-school sites and 25 percent of the school sites operated by sponsors with 10 or more sites in cities with public school enrollments exceeding 75,000 during the first four weeks of operations.

f. The number of program reviews which State agencies are required to conduct of sponsors with fewer than 10 sites is reduced from an average of 50 percent to 70 percent of the sites of such sponsors.

g. The number of items which State agencies must include on the monitoring forms used by sponsors is expanded to include the number of meals prepared or delivered, the number of meals served to children, and any deficiencies noted.

h. Regional Offices are allowed to conduct management evaluations of State agencies either prior to or during the first six weeks of Program operations.

i. Regional Offices shall conduct a follow-up evaluation if the original management evaluation reveals serious problems in a State's administration of the program.

j. Regional Offices have authority to require a State agency to submit on 20 days notice a corrective action plan addressing serious problems revealed during management evaluations.

k. The National School Lunch Program's (NSLP) equivalencies for various foods (published at 45 FR 32502), including the number of eggs and the amount of cooked dry beans or peas needed to provide the protein equivalent of the meat/meat alternate component are adopted.

l. Meals served with lesser quantities than are established under these regulations are required to meet the quantity requirements for age groups in the Child Care Food Program. Moreover, lesser quantities may be served only to children under the age of six and must have prior approval of the State agency.

Accordingly, 7 CFR Part 225 is revised and reissued as follows:

PART 225—SUMMER FOOD SERVICE PROGRAM

Subpart A—General

Sec.

225.1 General purpose and scope.
225.2 Definitions.
225.3 Administration.

Subpart B—Assistance to States

225.4 Payments to State agencies and use of Program funds.
225.5 Commodity assistance.

Subpart C—State Agency Provisions

225.6 Program management and administration plan.
225.7 State agency personnel.
225.8 Procedures for approval of applications.
225.9 Program applications.
225.10 Program expansion, monitoring and assistance.
225.11 Records and reports.
225.12 Program payments.
225.13 Audits and management evaluations.
225.14 Corrective action procedures.
225.15 Claims against sponsors.
225.16 Appeal procedures.
225.17 Procedures for food service management companies.
225.18 Procurement standards.

Subpart D—Provisions for Sponsors

225.19 Requirements for sponsor participation.
225.20 Operational responsibilities of sponsors.
225.21 Meal service requirements.
225.22 Free meal policy.

Subpart E—Miscellaneous Provisions

225.23 Other provisions.
225.24 Program information.

Authority: Secs. 5, 7, 10, Pub. L. 95-627, 92 Stat. 3603 (42 U.S.C. 1771); sec. 2, Pub. L. 95-166, 91 Stat. 1325 (42 U.S.C. 1761); sec. 7, Pub. L. 91-248, 84 Stat. 211 (42 U.S.C. 1759a).

Subpart A—General

§ 225.1 General purpose and scope.

This part announces the policies and prescribes the regulations under which the Secretary will carry out a Summer Food Service Program to assist States through grants-in-aid to initiate, maintain, and expand non-profit food service programs for children during the summer months and at other approved times. The primary purpose of the Program is to provide food service to children as a substitute for the National School Lunch and School Breakfast Programs, during periods when area schools are closed for vacation, except that the Summer Food Service Program is directed toward children from needy areas.

§ 225.2 Definitions.

(a) "Act" means the National School Lunch Act, as amended.

(b) "Administrative costs" means costs incurred by a sponsor related to planning, organizing, and managing a food service under the program, and excluding interest costs and operating costs.

(c) "Advance payments" means financial assistance made available to a sponsor for its operating costs and/or administrative costs prior to the end of the month in which such costs will be incurred.

(d) "Areas in which poor economic conditions exists" means (1) the local areas from which a site draws its attendance in which at least 33⅓ percent of the children are eligible for free or reduced price school meals under the National School Lunch Program and the School Breakfast Program, as

determined (i) by information provided from departments of welfare, education, zoning commissions, census tracts, and organizations determined by the State agency to be migrant organizations, (ii) by the number of free and reduced price lunches or breakfasts served to children attending public and nonprofit private schools located in the areas of Program sites, or (iii) from other appropriate sources, or (2) an enrollment program in which at least 33⅓ percent of the children at the site are eligible for free or reduced price school meals as determined by statements of eligibility based on the sizes and incomes of the families of the children enrolled.

(e) "Camps" means residential summer camps and nonresidential day camps which offer a regularly scheduled food service as part of an organized program for enrolled children. Nonresidential camps shall offer a continuous schedule of organized cultural or recreational program for enrolled children between meal services.

(f) "Children" means (1) persons 18 years of age and under, and (2) persons over 18 years of age who are determined by a State educational agency or a local public educational agency of a State to be mentally or physically handicapped and who participate in a public or nonprofit private school program established for the mentally or physically handicapped.

(g) "Costs of obtaining food" means costs related to obtaining food for consumption by children. Such costs may include, in addition to the purchase price of agricultural commodities and other food, the cost of processing, distributing, transporting, storing, or handling any food purchased for, or donated to, the Program.

(h) "Continuous school calendar" means a situation in which all or part of the student body of a school are (1) on a vacation for periods of 15 continuous school days or more during the period October through April and (2) in attendance at regularly scheduled classes during most of the period May through September.

(i) "Department" means the U.S. Department of Agriculture.

(j) "Fiscal year" means the period beginning October 1 of any calendar year and ending September 30 of the following calendar year.

(k) "FNS" means the Food and Nutrition Service of the Department.

(l) "FNSRO" means the appropriate FNS Regional Office.

(m) "Food service management company" means any commercial enterprise or non-profit organization which contracts with a sponsor to manage any aspect of the food service program. Food service management companies may be (1) public agencies or entities; (2) private, nonprofit organizations; or (3) private, for-profit companies.

(n) "Income accruing to the program" means all funds used by a sponsor in its food service program, including but not limited to all monies, other than program payments, received from Federal, State and local governments, from food sales to adults, and from any other source, including cash donations or grants. Income accruing to the Program will be deducted from combined operating and administrative costs.

(o) "Meals" means food which is served to children at a food service site and which meets the nutritional requirements set out in this part.

(p) "Milk" means whole milk, lowfat milk, skim milk, and buttermilk. All milk must be fluid and pasteurized and must meet State and local standards for the appropriate type of milk. Milk served may be flavored or unflavored. In Alaska, Hawaii, American Samoa, Guam, Puerto Rico, the Trust Territory of the Pacific Islands, the Northern Mariana Islands, and the Virgin Islands of the United States, if a sufficient supply of such types of fluid milk cannot be obtained, reconstituted or recombined milk may be used. All milk should contain Vitamins A and D at the levels specified by the Food and Drug Administration and at levels consistent with State and local standards for such milk.

(q) "Needy children" means children from families whose incomes are equal to or below the Secretary's Guidelines for Determining Eligibility for Reduced Price School Meals.

(r) "OIG" means the Office of the Inspector General of the Department.

(s) "Operating costs" means the cost of operating a food service under the Program, including (1) cost of obtaining food, (2) labor directly involved in the preparation and service of food, (3) cost of nonfood supplies, (4) rental and use allowances for equipment and space and (5) costs for transporting children in rural areas to feeding sites in rural areas, but excluding (i) the cost of the purchase of land, acquisition or construction of buildings, (ii) alteration of existing buildings, (iii) interest costs, (iv) the value of in-kind donations, and (v) administrative costs.

(t) "Private nonprofit" means tax exempt under the Internal Revenue Code of 1954, as amended.

(u) "Program" means the Summer Food Service Program for Children authorized by Section 13 of the Act.

(v) "Program funds" means Federal financial assistance made available to State agencies for the purpose of making Program payments.

(w) "Program payments" means financial assistance in the form of start-up payments, advance payments or reimbursement paid to sponsors for operating and administrative costs.

(x) "Rural" means (1) any area in a county which is not a part of a Standard Metropolitan Statistical Area or (2) any "pocket" within a Standard Metropolitan Statistical Area which, at the option of the State agency and with FNSRO concurrence, is determined to be geographically isolated from urban areas.

(y) "Secretary" means the Secretary of Agriculture.

(z) "Self-preparation" means the sponsor prepares the meals which will be served at its site(s), and does not contract with a food service management company for the preparation of all or a portion of the meals.

(aa) "School Food Authority" means the governing body which is responsible for the administration of one or more schools and which has the legal authority to operate a lunch program in those schools.

(bb) "Session" means a specified period of time during which an enrolled group of children attend camp.

(cc) "Site" means a physical location at which a sponsor provides a food service for children and at which children consume meals in a supervised setting.

(dd) "Special account" means an account between a sponsor and a food service management company with a State or Federally insured bank in which checks from the State agency for operating costs are deposited by the sponsor and released only in accordance with the terms of the special account agreement.

(ee) "Sponsor" means a public or private nonprofit institution which develops a special summer or other school vacation program providing food service similar to that available to children during the school year under the National School Lunch and School Breakfast Programs and which is approved to participate in the Program. Institutions eligible to be sponsors include (1) camps and (2) nonresidential institutions which provide a year-round service to the community, or provide a food service to the children of migrant workers, or provide a food service for a significant number of needy children which would not otherwise have reasonable access to the Program.

(Sponsors are referred to in the Act as "service institutions.")

(ff) "Start-up payments" means financial assistance made available to a sponsor for administrative costs to enable it to effectively plan a summer food service, and to establish effective management procedures for such a service. These payments shall be deducted from subsequent administrative costs payments.

(gg) "State" means any of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands of the United States, Guam, American Samoa, the Trust Territory of the Pacific Islands, and the Northern Mariana Islands.

(hh) "State agency" means the State educational agency or an alternate State agency that has been designated by the Governor or other appropriate executive or legislative authority of the State and which has been approved by the Department to administer the Program within the State, or in States where FNS administers the Program, FNSRO.

§ 225.3 Administration.

(a) FNS shall act on behalf of the Department in the administration of the Program.

(b) Within the States, responsibility for the administration of the Program shall be in the State agency, except that FNSRO shall administer the Program in any State where the State agency is not permitted by law or is otherwise unable to disburse Federal funds paid to it under the Program to any sponsor in the State. Notwithstanding the provisions of this paragraph, no FNSRO shall assume administration of the Program in any State during the period October 1, 1980, through September 30, 1981, unless the Program in that State was administered by FNSRO during the period October 1, 1979, through September 30, 1980. Each agency shall notify the Department by each November 1 of the fiscal year involved as to whether or not it intends to administer the Program.

(c) Each State agency desiring to take part in the Program shall enter into a written agreement with FNS for the administration of the Program in the State in accordance with the provisions of this part. The agreement shall cover the operation of the Program during the period specified therein and may be extended by written consent of both parties. The agreement shall contain an assurance that the State agency will comply with the Department's nondiscrimination regulations (7 CFR Part 15), issued under Title VI of the Civil Rights Act of 1964, and any instructions issued by FNS pursuant to those regulations.

(d) When the Secretary determines that the State is not operating the Program in accordance with the provisions of this part, he shall, through FNSRO, assume the responsibility for administration of the Program in the State as provided for in § 225.23(b). Notwithstanding the provisions of this paragraph, no FNSRO shall assume administration of the Program in any State during the period of October 1, 1980, through September 30, 1981, unless the Program in that State was administered by FNSRO during the period October 1, 1979, through September 30, 1980.

(e) In States in which FNSRO administers the Program, it shall assume all of the responsibilities of a State agency and shall earn State administrative and Program funds as set forth in this part.

Subpart B—Assistance to States

§ 225.4 Payments to State agencies and use of Program funds.

(a) *Letter of Credit for Program payments.* (1) Not later than April 15 of each fiscal year, FNS shall make available to each participating State in a Letter of Credit an amount equal to 65 percent of the preceding fiscal year's Program payments for operating costs plus 65 percent of the preceding fiscal year's Program payments for administrative costs in the State. This amount may be adjusted to reflect changes in reimbursement rates made pursuant to § 225.12(c)(12). However, the State shall not withdraw funds from this Letter of Credit until its Program management and administration plan is approved by FNS.

(2) Not later than May 15, FNS shall make available, if necessary, additional funds in a Letter of Credit to ensure that at least 65 percent of the Program operating and administrative funds estimated to be needed for the summer in the State's approved management and administration plan has been provided to each State.

(3) Not later than July 1, FNS shall make available, if necessary, in a Letter of Credit an amount sufficient to ensure that as least 65 percent of the Program operating and administrative funds determined during the evaluation required in § 225.13(c) to be needed for the summer has been provided to the State. Funds made available in these Letters of Credit shall be used by the State agency to make Program payments to sponsors. FNS may make appropriate changes in the amounts included in these Letters of Credit based on any information available upon which determinations of actual program size may be made.

(b) *Continuous school calendar.* The Letter of Credit shall include sufficient funds to enable the State agency to make advance payments to sponsors serving areas in which schools operate under a continuous school calendar. These funds shall be made available no later than the first day of the month prior to the month during which the food service will be conducted.

(c) *Remaining funds.* FNS shall make available any remaining Program funds due within 45 days of the receipt of valid Claims for Reimbursement from sponsors by the State agency. However, no payment shall be made for claims submitted for any fiscal year if they are submitted after December 31 of the following fiscal year, except as allowed under § 225.12(c)(7).

(d) *Return of funds.* Each State agency shall release to FNS any Program funds which it determines are unobligated as of September 30 of each fiscal year. Release of funds by the State agency shall be made as soon as practicable, but in no event later than 30 calendar days following demand by FNS, and shall be accomplished by an adjustment in the State agency's Letter of Credit.

(e) *State administrative funds.* For each fiscal year, FNS shall pay to each State agency for administrative expenses incurred in the Program an amount equal to (1) 20 percent of the first $50,000 in Program funds properly payable to the State in the preceding fiscal year; (2) 10 percent of the next $100,000 in Program funds properly payable to the State in the preceding fiscal year; (3) 5 percent of the next $250,000 in Program funds properly payable to the State in the preceding fiscal year; and (4) 2½ percent of any remaining Program funds properly payable to the State in the preceding fiscal year: *Provided, however,* That FNS may make appropriate adjustments in the level of State administrative funds to reflect changes in Program size from the preceding fiscal year as evidenced by information submitted in the State Program management and administration plan and any other information available to FNS.

(f) *Use of State administrative funds.* State administrative funds paid to any State shall be used by State agencies to employ personnel, including travel and related expenses, and to supervise and give technical assistance to sponsors in their initiation, expansion, and conduct of any food service for which Program funds are made available. State agencies may also use administrative funds for such other administrative expenses as are set forth in their

approved Program management and administration plan.

(g) *State administrative funds Letter of Credit.* (1) At the beginning of each fiscal year, FNS shall make available to each participating State agency by Letter of Credit an initial allocation of State administrative funds for use in that fiscal year. This allocation shall not exceed one-third of the administrative funds provided to the State in the preceding fiscal year. For State agencies which did not receive any Program funds during the preceding fiscal year, the amount to be made available shall be determined by FNS.

(2) Additional State administrative funds shall be made available upon the receipt and approval by FNS of the State's Program management and administration plan. The amount of such funds, plus the initial allocation, shall not exceed 80 percent of the State administrative funds determined by the formula set forth in paragraph (e) of this section and based on the estimates set forth in the approved Program management and administration plan.

(3) The remaining State administrative funds shall be paid to each State agency as soon as practicable after the conduct of the funding assessment described in § 225.13(c) and (d) (but not later than September 1) and shall be in an amount equal to that determined to be needed during the funding evaluation, less the amounts paid under paragraphs (g)(1) and (2) of this section.

(h) *Funding assurance.* At the time FNS approves the State's management and administration plan, the State shall be assured of receiving State administrative funding equal to the lesser of the following amounts: 80 percent of the amount obtained by applying the formula set forth in paragraph (e) of this section to the total amount of Program payments made within the State during the prior fiscal year, or, 80 percent of the amount obtained by applying the formula to the amount of Program funds estimated to be needed in the management and administration plan.

The State agency shall be assured that it will receive no less than this level unless FNS determines that the State agency has failed or is failing to meet its responsibilities under in this part.

(i) *Limitation.* In no event may the total payment for State administrative costs in any fiscal year exceed the total amount of expenditures incurred by the State agency in administering the Program.

(j) *Adjustment of Letter of Credit.* Prior to May 15 of each fiscal year, FNS shall make any adjustments necessary in each State's Letter of Credit to reflect actual expenditures in the preceding fiscal year's Program.

(k) *Health inspection funds.* By April 15 of each fiscal year, FNS shall make available by Letter of Credit to each State agency an amount equal to one percent of Program funds expended in the preceding fiscal year in the State. Following approval of the State's management and administration plan, FNS shall make available in a Letter of Credit any additional funds necessary to ensure that 1 percent of Program funds estimated to be needed for Program payments in the State's management and administration plan is available to the State. These funds shall be used solely to enable State or Local health departments or other governmental agencies charged with health inspection functions to carry out health inspections and meal quality tests, provided that if these agencies cannot perform such inspections or tests, the State agency may use the funds to contract with an independent agency to conduct the inspection or meal quality tests. An adjustment may be made in the amount provided for in this paragraph based on the evaluation required in § 225.13(c) and (d), if such an adjustment is warranted. Funds so provided but not expended or obligated shall be returned to the Department by September 30 of the same fiscal year.

§ 225.5 Commodity assistance.

(a) Sponsors eligible to receive commodities under the Program include only those which prepare the meals to be served at their sites and those which have entered into an agreement with a school or school district for the preparation of meals. The State agency shall make available to these sponsors information on available commodities.

(b) Not later than June 1 of each year State agencies shall prepare a list of the names of sponsors which are eligible to receive commodities. The list shall indicate the average daily number of eligible meals to be served by each of these sponsors. If the State agency does not handle the distribution of commodities donated by the Department, this list shall be forwarded to the agency of the State responsible for the distribution of commodities. The State agency shall be responsible for promptly revising the information included on the list to reflect additions or terminations of sponsors and for adjusting the average daily participation data as it determines necessary.

Subpart C—State Agency Provisions

§ 225.6 Program management and administration plan.

(a) Not later than February 15 of each year, each State Agency shall submit to FNS/RO a Program management and administration plan for that fiscal year.

(b) Each plan shall be acted on or approved by March 15, or if it is submitted late, within 30 calendar days of receipt of the plan. If the plan initially submitted is not approved, the State agency and FNS shall work together to ensure that changes to the plan, in the form of amendments, are submitted so that the plan can be approved within 60 calendar days following the initial submission of the plan. Upon approval of the plan, the State agency shall be notified of the level of State administrative funding which it is assured of receiving under § 225.4(h).

(c) Prior to submission, the State shall ensure that interested parties have opportunity to make comments and recommendations and that timely comments and recommendations have been given full consideration in the development of the Plan.

(d) The Plan shall have the original signature of the Chief Official (Commissioner or Superintendent) of the State agency.

(e) The State agency shall give the Governor, or his delegated agent, the opportunity to comment on the management and administration plan. A period of 45 calendar days from the date of receipt of the Plan shall be afforded to make such comments.

(f) Approval of the Plan by FNS shall be a prerequisite to the withdrawal of Program funds by the State from the Letter of Credit and to the donation by the Department of any commodities for use in the State's Program.

(g) The Plan shall include, at a minimum, the following information:

(1) The State's plan for the use of State administration funds, Program funds, and funds from within the State to reach needy areas, and a description of the means of identifying needy areas. It shall provide the procedures and timeframes for achieving the maximum participation of needy children, particularly needy children in rural areas, in Indian tribal territories, and in areas with a concentration of migrant farmworkers, by disseminating information on the availability of the Program to potential sponsors. The Plan shall provide the State's procedures for locating sponsors eligible under § 225.19(a) (1) through (5);

(2) The estimated number and types of sponsors and sites expected to participate and the estimated average

daily attendance. A description of the estimation methods used shall be included;

(3) The estimated amount of Program funds, by month, needed for operating costs payments to sponsors. The plan shall describe the State's method for calculating the amount and the procedures and timeframes for disbursing these payments to sponsors;

(4) The estimated amount of Program funds, by month, needed for administrative costs payments to sponsors. The plan shall describe the State's method for calculating the amount and the method and timeframes for disbursing these payments to sponsors;

(5) The State agency budget, by month, for the use of State administrative funds, including but not limited to staffing, salaries, travel, and per diem;

(6) The State's procedures, deadlines, timeframes, and criteria to be used in the approval process for sponsor applications, including sponsors seeking eligibility under § 225.19(a)(6);

(7) The State's procedures and timeframes for providing technical assistance and training to sponsors, including the number of such training sessions and any other types of technical assistance the State agency intends to provide;

(8) The State's procedures and timeframes for (i) monitoring sponsors and sites, including the number of pre-approval visits and Program reviews conducted in the prior fiscal year and the number of Program reviews planned for the current fiscal year, (ii) followup and corrective action to remedy Program deficiencies and violations detected during such monitoring, and (iii) additional monitoring of sponsors described in § 225.19(a)(6) and sites administered by such sponsors;

(9) The State's procedures and timeframes for (i) registering, (ii) training, and (iii) monitoring of food service management companies, (iv) ensuring that food service management companies do not enter into contracts for more than they can provide effectively and efficiently, and (v) followup and corrective action to remedy food service management company Program deficiencies and violations;

(10) The State's Plan to provide for health inspections and meal quality tests, and the State's plan for the use of funds provided under § 225.4(k);

(11) The State's plan for maximizing the use of school food service facilities and on-site meal preparation;

(12) The actions to be taken to ensure compliance with the requirements of the Department's regulations respecting nondiscrimination (7 CFR Part 15);

(13) The State's procedures and timeframes for auditing sponsors not subject to the auditing requirements prescribed by the Secretary in accordance with § 225.13(a)(1). The Plan shall also include the total number of audits performed during the prior fiscal year;

(14) The State's procedures for granting a fair hearing and prompt determination to any sponsor wishing to appeal a State's decision affecting its application for participation, its site participation, or its Program payments, and the State's procedures for granting a hearing and prompt determination to any food service management company wishing to appeal a State's denial of registration in the State. The State shall also identify the title and/or position of the hearing official responsible for hearing appeals by sponsors and food service management companies of any State decision concerning any aspect of their participation in the Program. The Plan shall provide evidence of that official's independence from the original decision-making process;

(15) The amount of non-Federal funds made available to the Program through direct State appropriations;

(16) An explanation of significant deviations in last year's actual Program operations from that proposed in the Plan for last year. This explanation shall include the State's corrective action plan for resolving any problems or deficiencies which occurred during the prior fiscal year and for reducing waste and mismanagement in the Program.

§ 225.7 State agency personnel.

(a) The State agency shall provide sufficient qualified consultative, technical, and managerial personnel to administer the Program, monitor performance, and measure progress in achieving Program goals. The State agency shall assign Program responsibilities to personnel to ensure that all applicable requirements under this part are met.

(b) All administrative personnel shall be employed and available for Program duties at least 30 days prior to the State agency's sponsor application deadline date. All field staff personnel shall be employed and available at least 15 days prior to the first day of Program operations. However, the State agency may submit to FNSRO a written request for an exception to these hiring dates. The requests shall include information in sufficient detail for FNSRO to determine that the exception is necessary and will not adversely affect Program administration and operation. The requests must be submitted prior to the first of the hiring dates.

§ 225.8 Procedures for approval of applications.

(a) Each State agency shall establish and inform all of the previous year's sponsors and all potential sponsors of the deadline date for submitting a written application for participation in the Program. The State agency shall approve the application of an otherwise eligible applicant sponsor submitted after the deadline date established by the State agency only when the failure to do so would deny the Program to an area in which poor economic conditions exist or a significant number of needy children would not otherwise have reasonable access to the Program. The State agency shall inform potential sponsors inquiring after the sponsor application deadline date of the possibility of approval if the sponsor qualifies under these terms.

(b) Within 30 days of receiving a complete and correct application, the State agency shall notify the applicant of its approval or disapproval. If an incomplete application is received, the State agency shall so notify the applicant within 15 days and shall provide technical assistance for the purpose of completing the application. Any disapproved applicant shall be notified of its right to appeal under § 225.16.

(c) The State agency shall determine the eligibility of applicant sponsors applying for participation in the Program in accordance with the applicant sponsor eligibility criteria outlined in § 225.19.

(d) The State agency shall review each applicant's administrative budget as a part of the application approval process, in order to assess the applicant's ability to operate in compliance with these regulations within its projected level of reimbursement. In approving the applicant's administrative budget, the State agency shall take into consideration the number of sites and children to be served, as well as any other relevant factors. A sponsor's administrative budget shall be subject to review for adjustments by the State agency if the sponsor's level of site participation or the number of meals served to children changes significantly.

(e) State agencies may approve the application of an otherwise eligible applicant which does not provide a year-round service to the community which it proposes to serve under the Program only if it meets one or more of the following criteria: (1) it is a residential camp, or (2) it proposes to

provide a food service for the children of migrant workers, or (3) a failure to do so would deny the Program to an area in which poor economic conditions exist, or (4) a significant number of needy children will not otherwise have reasonable access to the Program. Such an applicant may be approved to operate more than 50 sites only if it will provide a food service for the children of migrant workers and the State agency determines that the applicant has adequate capabilities and facilities and has provided services to migrant communities in prior years. When approving the applications of such applicants, the State agency shall take particular care to ensure that such applicants are timely in their Program planning and thoroughly prepared to assume and carry out all Program responsibilities.

(f) Applicants which qualify as camps shall be approved for reimbursement only for meals served free to enrolled children who meet the eligibility requirements for free and reduced price school meals.

(g) The State agency shall use the following order of priority in approving applicants eligible under § 225.19(a) (1) through (5) to operate sites which propose to serve the same area or the same enrolled children:

(1) Applicant sponsors which are public or nonprofit private schools, and other applicants which have demonstrated successful Program performance in a prior year;

(2) Applicant sponsors which propose to prepare meals at their own facilities or which operate only one site;

(3) Applicant sponsors which propose to utilize local school food service facilities for the preparation of meals;

(4) Other applicant sponsors which have demonstrated ability for successful Program operations; and

(5) Applicant sponsors which plan to integrate the Program with Federal, State, or local employment or training programs.

(h) The State agency shall not approve the application of any applicant which seeks eligibility under § 225.19(a)(6) unless the applicant fully documents that it has a consistent record of reliable and honest management and administration of community food service programs. For the purpose of determining eligibility under § 225.19(a)(6), "community food service program" means a program that provides meals on a regular schedule, and which has the stated objective of providing nutritionally balanced meals to participants. The State agency shall approve these applicants only if sponsors identified in § 225.19(a) (1) through (5) are not available to administer the Program in the same geographic area or a significant number of needy children will not otherwise have reasonable access to the Program. Upon receiving an application from a potential sponsor seeking eligibility under § 225.19(a)(6), the State agency shall make every reasonable effort to locate a sponsor eligible under § 225.19(a) (1) through (5) to serve sites in that same area. The State agency may also assist applicants seeking eligibility under § 225.19(a)(6) in making changes in their proposed programs that would make the applicants eligible under one of the other categories in § 225.19(a) (1) through (5).

(i) When evaluating a proposed food service site, the State agency shall ensure that:

(1) If not a camp, the proposed site serves an area in which poor economic conditions exist, as defined by § 225.2(d);

(2) The number of meals, by type, proposed to be served to children at the site does not exceed the number of children residing in the area to be served, or, if applicable, the number enrolled;

(3) The area which the site proposes to serve is not or will not be served in whole or in part by another site, unless it can be demonstrated to the satisfaction of the State agency that each site will serve children not served by any other site in the same area for the same meal and that the total number of meals, by type, served to children at all sites does not exceed the number of children residing in the area; and

(4) The site is approved to serve no more than the number of children for which its facilities are adequate.

(j) When approving an application, the State agency shall establish for each meal service an approved level for the maximum number of meals which may be served under the Program for each site which will serve meals prepared by a food service management company. These approved levels shall be established in accordance with the following provisions.

(1) The initial maximum approved level shall be based upon historical record of attendance at the site if such a record has been established in prior years and the State agency determines that it is accurate. The State agency shall develop a procedure for establishing initial maximum approved levels for sites when no accurate record from prior years is available.

(2) The maximum approved level shall be adjusted, if warranted, based upon information collected during site reviews. If attendance at the site on the day of the review is significantly below the site's approved level, the State agency should consider making a downward adjustment in the approved level with the objective of providing only one meal per child each day.

(3) The sponsor may seek an upward adjustment in the approved level for its sites by requesting a site review or by providing the State agency with evidence that attendance exceeds the sites' approved levels.

(4) Whenever the State agency establishes or adjusts approved levels of meal service for a site, it shall document the action in its files, and it shall provide the sponsor with immediate written confirmation of the approved level.

(5) Upon approval of its application or any adjustment of maximum approved levels, the sponsor shall inform the food service management company with which the sponsor contracts of the approved level for each meal service at each site for which the food service management company will provide meals. This notification of any adjustments in approved levels shall take place within the time frames set forth in the contract for adjusting meal orders. Whenever the sponsor notifies the food service management company of the approved levels or any adjustments to these levels for any of its sites, the sponsor shall clearly inform the food service management company that an approved level of meal service represents the maximum number of meals which may be served at a site and is not a standing level for meal orders at that site. The sponsor shall adjust meal orders with the objective of serving only one meal per child, as required under § 225.20(d), when the number of children attending is below the site's approved level.

(k) Each State agency shall inform potential sponsors of the procedure for applying for advance operating and administrative costs payments as provided for in § 225.12(b), and where applicable, each State agency shall inform sponsors of the procedure for applying for start-up payments provided for in § 225.12(a).

(l) The State agency shall not approve any applicant sponsor to operate more than 200 sites or to serve an average daily attendance of more than 50,000 children unless it can demonstrate to the satisfaction of the State agency that it has the capability of managing a program of that size.

(m) The State agency shall not approve the application of any applicant sponsor identifiable through its organization or principals as a sponsor which participated during the prior three

fiscal years and was seriously deficient in its Program operations during any one of those years, except as allowed under § 225.14(c). In the event that an applicant sponsor's application is denied, the State agency shall inform such applicant sponsor of the procedure to request a review of the denial. The official making the determination of denial must notify the applicant sponsor in writing stating all of the grounds on which the State agency based the denial. Serious deficiencies which are grounds for nonapproval are described in § 225.14(c).

(n) Pending the outcome of a review of a denial the State agency shall proceed to approve other applicants in accordance with its responsibilities under paragraph (g) of this section, without regard to the application under review.

(o) The State agency shall not approve the application of any applicant sponsor which submits fraudulent information or documentation when applying for Program participation or knowingly withholds information which may lead to the disapproval of its application. Complete information regarding such disapproval of an applicant shall be submitted by the State agency through FNSRO to OIG.

§ 225.9 Program applications.

(a) The applicant shall submit a written application to the State agency for participation in the Program as a sponsor. The State agency may use the application form developed by FNS or it may develop an application form for use in the Program. Application shall be made on a timely basis in accordance with the State agency deadline date established under § 225.8(a). At a minimum, the application shall include the items listed below:

(1) A site information sheet, as developed by the State agency, for each site where a food service operation is proposed. The site information sheet shall demonstrate or describe the following:

(i) An organized and supervised system for serving meals to attending children;

(ii) The estimated number and types of meals to be served and the times of service;

(iii) Arrangements, within standards prescribed by the State or local health authorities, for delivery and holding of meals until time of service, and arrangements for storing and refrigerating any leftover meals until the next day;

(iv) Arrangements for food service during periods of inclement weather;

(v) Access to a means of communication for making adjustments as needed in the number of meals delivered in accordance with the number of children attending daily at each site;

(vi) The geographic area to be served by the site;

(vii) The percentage of children to be served by the site who meet the eligibility requirements for free or reduced price school meals; and

(viii) Whether the site is rural, as defined by § 225.2(x), or non-rural, and whether the site's food service will be self-preparation or vended.

(2) Along with its site information sheet for a site that is not a camp, documentation supporting the eligibility of each site as serving an area in which poor economic conditions exist. For those sites at which applicants will serve children of migrant workers, the documentation requirement may be met by providing the State agency with data from an organization determined by the State agency to be a migrant organization, which supports eligibility for those children as a group. When a sponsor proposed to serve a site which it served in the previous year, documentation from the previous year may be used to support the eligibility of the site. For such sites applicants shall only be required to obtain new documentation every other year. Prior to filing their Claims for Reimbursement for each session or at such time as specified by the State agency, camps shall submit to the State agency family-size and income information which documents the number of children enrolled in each session who meet the eligibility requirements for free or reduced price school meals.

(3) Information in sufficient detail to enable the State agency to determine whether the applicant meets the criteria for participation in the Program as set forth in § 225.19, and the extent of Program payments needed, including a request for advance payments and start-up payments, if applicable, an administrative and operating budget, and a staffing and monitoring plan.

(4) A complete administrative budget for State agency review and approval. The budget shall contain the projected administrative expenses which a sponsor expects to incur during the operation of the Program, and shall include information in sufficient detail to enable the State agency to assess the sponsor's ability to operate under the Program within its estimated reimbursement. A sponsor's approved administrative budget shall be subject to subsequent review by the State agency for adjustments in projected administrative costs.

(5) A plan for and a synopsis of its invitation to bid for food service, if a bid is required under § 225.17.

(6) A free meal policy statement, as required in § 225.22.

(7) For sponsors applying after the deadline date established by the State agency under § 225.6(a), an explanation to the State of why they are applying late. The State shall maintain a record documenting all late submissions.

(8) Applicants which sponsored the Program during any of the prior three fiscal years shall not be required to submit the documentation described in this paragraph. Applicants under § 225.19(a)(6) of this part which have not sponsored the Program during the prior three fiscal years shall submit sufficient documentation with the application to demonstrate that they have been consistently reliable and honest in the management and administration of community food service programs. The following types of documentation shall be submitted by these applicants for any other community food service programs administered during the prior three years, and may be submitted for any program administered prior to that time:

(i) A description of all food service programs which the applicant has managed or administered, including lists of names of corporate officers, addresses of food service sites, and sources of funding;

(ii) Independent audit reports stemming from any audits which may have been conducted of the applicant's food service programs;

(iii) An assurance that the applicant has not been terminated or determined to have been seriously deficient in its operation of community food service programs; and

(iv) Any other relevant information which is available to the applicant concerning its record in management and administration of food service programs.

(b) Sponsors approved for participation in the Program shall enter into written agreements with the State agency. The agreements shall provide that the sponsor shall:

(1) Operate a nonprofit food service during any period from May through September for children on school vacation or at some other time or times during the year for children on school vacation under a continuous school calendar system;

(2) Serve meals which meet the requirements and provisions set forth in § 225.21 during a period designated as the meal service period by the sponsor,

and serve the same meals to all children;

(3) Serve meals without cost to all children, except that camps may charge for meals served to children who are not served meals under the Program;

(4) Issue a policy statement in accordance with § 225.22;

(5) Meet the training requirement for its administrative and site personnel, as required under § 225.20(i);

(6) Provide for an audit as outlined in § 225.13(a)(2) if it expects to receive over $75,000 in Program payments;

(7) Claim reimbursement only for the type or types of meals specified in the agreement and served without charge to children at approved sites during the approved meal service period, except that camps shall claim reimbursement only for the type or types of meals specified in the agreement and served without charge to children who are eligible for free or reduced price school meals. The agreement shall specify the approved levels of meal service for the sponsor's sites for which approved levels have been established as required under § 225.6(j). No permanent changes may be made in the time of any meal service period unless the changes are approved by the State agency;

(8) Submit Claims for Reimbursement in accordance with procedures established by the State agency, and those stated in § 225.12;

(9) In the storage, preparation and service of food, maintain proper sanitation and health standards in conformance with all applicable State and local laws and regulations;

(10) Accept and use, in quantities that may be efficiently utilized in the Program, such foods as may be offered as a donation by the Department;

(11) Have access to facilities necessary for storing, preparing, and serving food;

(12) Maintain a financial management system as prescribed by the State agency;

(13) Maintain on file documentation of site visits and reviews in accordance with § 225.20(g) and (h);

(14) Upon request, make all accounts and records pertaining to the Program available to State, Federal, or other authorized officials for audit or administrative review, at a reasonable time and place. These records shall be retained for a period of 3 years after the end of the fiscal year to which they pertain, unless audit or investigation findings have not been resolved, in which case the records shall be retained until all issues raised by the audit or investigation have been resolved;

(15) Maintain children on site while meals are consumed; and

(16) Retain final financial and administrative responsibility for its program.

(c) Each State agency shall require applicant sponsors submitting Program applications, site information sheets, Program agreements or Claims for Reimbursement, and sponsors requesting advance payments, to certify that the information submitted on these forms is true and correct and that the sponsor is aware that deliberate misrepresentation or withholding of information may result in prosecution under applicable State and Federal statutes.

(d) Within two weeks of receiving notification of their approval, but in any case prior to commencement of operations under the Program, sponsors shall submit to the State agency a copy of their letter advising the appropriate health department of their intention to provide a food service during a specific period at specific sites.

(e) In accordance with § 225.13 (a) and (b) within two weeks of receiving notification of its approval, but in any case prior to commencement of operations under the Program, sponsor whose total Program payments are expected to exceed $75,000 shall submit to the State agency a copy of its letter of agreement with the accounting firm or individual which is to conduct the audit of its program.

(f) In addition, the State agency may require any sponsor which contracts with a food service management company to enter into an agreement with the State agency to provide that the sponsor shall establish a special account with a State or Federally insured bank for operating costs payable to the sponsor by the State. The special account agreement shall specify that any disbursement of monies from the account must be authorized by both the sponsor and the food service management company. The special account agreement may contain other terms agreed to by both sponsor and food service management company, which are not inconsistent with the terms of the contract between the sponsor and the food service management company. A copy of the special account agreement shall be submitted to the State agency and another copy maintained on file by the sponsor. Any charges made by the bank for the account described in this section shall be considered an allowable sponsor administrative cost.

§ 225.10 Program expansion, monitoring and assistance.

(a) *Program availability.* By February 1 of each fiscal year, each State agency shall announce the purpose, eligibility criteria, an availability of the Program throughout the State, through appropriate means of communication. As part of this effort, each State agency shall compile a listing of potential sponsors which have not previously participated in the Program and shall contact them. State agencies shall identify rural areas, Indian tribal territories, and areas with a concentration of migrant farmworkers which qualify for the Program and shall actively seek eligible applicant sponsors to serve such areas. States shall identify priority outreach areas in accordance with FNS guidance and target outreach efforts in these areas. Outreach efforts shall be directed toward potential sponsors which would be eligible under § 225.19(a) (1) through (5). State agencies shall make every reasonable effort to locate high priority sponsors for sites in areas where poor economic conditions exist. The State agency shall encourage potential sponsors to use their own facilities or the facilities of public or nonprofit private schools for the preparation, delivery, and service of meals under the Program.

(b) *Training.* Each State agency shall plan for and carry out Program training for sponsors, food service management company representatives, auditors, and health inspectors which will participate in the Program in that State. Prior to Program operations, each State agency shall ensure that the sponsor's supervisory personnel responsible for the food service receive training in all necessary areas of Program administration and operations. This training shall be structured and scheduled to reflect the fact that individual sponsors or groups of sponsors required different levels and areas of Program training. State agencies are encouraged to utilize sponsors which have previously participated in the Program in such training and to train site personnel regarding their responsibilities. Training should be made available at convenient locations. Prior to the beginning of Program operations, each State agency shall make available training in all necessary areas of Program administration for representatives from all food service management companies and each health department which will participate in the Program in the current year.

(c) *Program materials.* Each State agency shall develop and make available all necessary Program materials in sufficient time to enable applicant sponsors to adequately

prepare for their participation in the Program.

(d) *Food specifications and meal quality standards.* With the assistance of the Department, each State agency shall develop and make available to all sponsors minimum food specifications and model meal quality standards which shall become part of the contracts between sponsors and food service management companies.

(e) *Program monitoring and assistance.* The State agency shall conduct monitoring and provide Program assistance according to the following provisions:

(1) *Pre-approval visits.* The State agency shall conduct pre-approval visits of sponsors and sites as specified below, to further assess the applicant sponsor's or site's potential for successful Program operations and to verify information provided in the application. The State agency shall visit prior to approval:

(i) All applicant sponsors which did not participate in the Program in the prior year;

(ii) All other applicant sponsors which, as a result of operational problems noted in the prior year, the State agency has determined need a pre-approval visit;

(iii) All proposed nonschool sites with an expected average daily attendance of 300 children or more and which did not participate in the Program in the prior year.

(2) *Sponsor and site reviews.* The State agency shall review sponsors and sites, to ensure compliance with Program regulations and with the Department's nondiscrimination regulations (Part 15 of this title) and any other applicable instructions issued by the Department. In determining which sponsors or sites to review under this paragraph, the State agency shall, at a minimum consider whether or not the sponsor or site has been used or reviewed in prior years, the performance of the sponsor or site in prior years, the performance of other sites operated by the same sponsor in prior years and the current year, and the performance of the applicable sponsor in prior years and the current year. Reviews shall be conducted as follows:

(i) For the following types of sponsors, State agencies shall conduct both a review of sponsor operations and reviews of an average of 15 percent of their sites during the first four weeks of the sponsor's operations:

(A) Sponsors which have 10 or more sites and which did not operate the Program in the prior year, and

(B) Other sponsors of 10 or more sites which are determined by the State agency to need early reviews.

(ii) The State agency shall review the following types of sponsors and sites not reviewed under subparagraph (2)(i) of this paragraph at least once during the period of program operations:

(A) All remaining sponsors of 10 or more sites and an average of at least 15 percent of their sites, and

(B) 70 percent of all sponsors of fewer than 10 sites and an average of 10 percent of their sites.

(iii) The State agency shall conduct follow-up reviews of sponsors and sites as necessary.

(3) *Monitoring system.* Each State agency shall develop and implement a monitoring system to ensure that sponsors, including site personnel, and the appropriate food service management company, if applicable, immediately receive a copy of any review reports which indicate Program violations and which would result in a Program disallowance.

(4) *Records.* Documentation of Program assistance and results of such assistance shall be maintained on file by the State agency.

(5) *Food preparation facility visit.* As a part of the review of any sponsor which contracts with a food service management company for the preparation of meals, the State agency shall inspect the facilities of the food service management company. Each State agency shall establish an order of priority for visiting facilities at which food is prepared to be served in the Program. The State agency shall respond promptly to complaints concerning facilities with potential problems. Funds provided for in § 225.4(k) may be used for this purpose.

(6) *Forms for reviews by sponsors.* Each State agency shall develop and provide monitor review forms to all approved sponsors. These forms shall be completed by sponsor monitors. The monitor review form shall include, but not be limited to, time of reviewer's arrival and departure, site supervisor's signature, certification statement to be signed by monitor, the number of meals prepared or delivered, the number of meals served to children, the deficiencies noted, and corrective actions taken by sponsor and date of such actions.

(7) *Statistical monitoring.* State agencies may use statistical monitoring procedures in lieu of the site monitoring requirements prescribed in paragraph (e)(2) of this section to accomplish the monitoring and technical assistance aspects of the Program. State agencies which use statistical monitoring procedures may use the findings in evaluating claims for reimbursement. As appropriate, FNS will develop guidance outlining statistical monitoring procedures. States should use the statistical monitoring procedures provided by FNS, or develop alternate procedures and obtain FNS approval prior to implementation. Statistical monitoring may be used for some or all of a State's sponsors. Use of statistical monitoring does not eliminate the requirements for reviewing sponsors in paragraph (e)(2) of this section.

(8) *Corrective actions.* Corrective actions which the State agency may take when Program violations are observed during the conduct of a review are discussed in § 225.14. The State agency shall conduct follow-up reviews as appropriate when corrective actions are required.

(f) *Food quality and preparation facility inspections.* The State agency shall make a positive effort to ensure that inspections of food preparation facilities and food service sites, including meal quality tests, are conducted. The procedures for carrying out the inspections and tests shall be consistent with procedures used by local health authorities. For inspections of facilities of food service management companies not conducted by State agency personnel, copies of the results of the inspections shall be provided to the State agency. The company and the sponsor shall also immediately receive a copy of the results of these inspections when corrective action is required.

(g) *Financial management.* Each State agency shall establish a financial management system in accordance with Office of Management and Budget Circular A–102 and FNS guidance to identify allowable Program costs and establish standards for sponsor recordkeeping and reporting. The system shall also be consistent with Federal Management Circular 74–4. The State agency shall provide guidance on these financial management standards to each sponsor.

(h) *Nondiscrimination.* (1) Each State agency shall comply with the requirements of title VI of the Civil Rights Act of 1964, and the Department's regulations concerning nondiscrimination issued thereunder (7 CFR Part 15), including requirements of racial and ethnic participation data collection, public notification of the nondiscrimination policy, and reviews to assure compliance with such policy, to the end that no person shall, on the grounds of race, color or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under the Program. (2) Complaints of discrimination filed by applicants or participants shall be referred to FNS or

the Secretary of Agriculture, Washington, D.C. 20250.

§ 225.11 Records and reports.

(a) Each State agency shall maintain complete and accurate current accounting records of its Program operations which will adequately identify funds authorizations, obligations, unobligated balances, assets, liabilities, income, claims against sponsors and efforts to recover overpayments, and expenditures for administrative and operating costs. These records shall be retained for a period of three years after the date of the submission of the final Program Operations and Financial Status Report (SF–269), except that, if audit findings have not been resolved, the affected records shall be retained beyond the three year period until such time as any issues raised by the audit findings have been resolved. The State agency shall also retain a complete record of each review or appeal conducted, as required under § 225.18, for a period of three years following the date of the final determination on the review or appeal. Records may be kept in their original form or on microfilm.

(b) By December 15 of each year the State agency shall provide FNS with information on the scope of Program operations within the State.

(c) Each State agency shall report information to FNS on the use of funds and on Program operations on a form provided by, and as instructed by, FNS.

(d) Not later than March 1 of each fiscal year, the State agency shall submit to FNS a final Operations and Financial Status Report for the prior fiscal year, on a form (SF–269) provided by FNS. Any requested increase in reimbursement levels for a fiscal year resulting from corrective action taken after submission of the final Program Operations and Financial Status Reports shall be submitted to FNS for approval. The request shall be accompanied by a written explanation of the basis for the adjustment and the actions taken to minimize the need for such adjustments in the future. If FNS approves of such an increase, it will make payment, subject to the availability of funds. Any reduction in reimbursement for that fiscal year resulting from corrective action taken after submission of the final fiscal year Program Operations and Financial Status Reports shall be handled in accordance with the provisions of § 225.15(d), except that amounts recovered may not be used to make Program payments.

(e) By October 15, each State agency shall submit to FNS, on a form provided by FNS, information concerning each food service management company which applied to the State agency for registration for that calendar year's Program. FNS shall allow any food service management company to review the information concerning that company which was submitted to FNS in accordance with this paragraph.

§ 225.12 Program payments.

(a) *Start-up payments.* At their discretion, State agencies may make start-up payments to sponsors which have executed Program agreements. Start-up payments shall not be made more than two months before the sponsor is scheduled to begin food service operations and shall not exceed 20 percent of the sponsor's approved administrative budget. The amount of the start-up payment shall be deducted from the first advance payment for administrative costs or, if the sponsor does not receive advance payments, from the first administrative reimbursement.

(b) *Advance payments.* At the sponsor's request, State agencies shall make advance payments to assist sponsors in meeting operating costs and administrative expenses. For sponsors operating under a continuous school calendar, all advance payments shall be forwarded on the first day of each month of operation. Advance payments shall be made by the dates specified in paragraph (b) (1) and (2) of this section for all other sponsors whose requests are received at least 30 days prior to those dates. Requests received less than 30 days prior to those dates shall be acted upon within 30 days of receipt. When making advance payments, State agencies shall observe the following criteria:

(1) *Operating costs.*

(i) State agencies shall make advance payments for operating costs by June 1, July 15, and August 15. To be eligible for the second advance payment, the sponsor must have conducted training sessions for its own personnel and site personnel covering Program duties and responsibilities. A sponsor shall not receive advance operating cost payments for any month in which it will participate in the Program for less than ten days.

(ii) To determine the amount of the advance payment to any sponsor, the State agency shall employ whichever of the following methods will result in the larger payment: (A) The total operating costs paid to the sponsor for the same calendar month in the preceding year, or (B) for sponsors contracting with a food service management company, 50 percent of the amount determined by the State agency to be needed that month for meals, and, for sponsors preparing their own meals, 65 percent of the amount determined by the State agency to be needed that month for meals.

(2) *Administrative costs.*

(i) State agencies shall make advance payments for administrative costs by June 1 and July 15 of the year in which the program will be operated. To be eligible for the second advance payment, the sponsor must certify that it is operating the number of sites for which the administrative budget was approved and that its projected administrative costs do not differ significantly from the approved budget. A sponsor shall not receive advance administrative costs payments for any month in which it will operate under the Program for less than 10 days. However, if a sponsor operates for less than 10 days in June but for at least 10 days in August, the second advance administrative costs payment shall be made by August 15.

(ii) Each payment shall equal one third of the total amount which the State agency determines the sponsor will need to administer its program. For sponsors which will operate for ten or more days only in one month and, therefore, will qualify for only one advance administrative costs payment, the payment shall be no less than one half and no more than two thirds of the total amount which the State agency determines the sponsor will need to administer its program.

(3) *Advance payment estimates.* When determining the amount of advance payments payable to the sponsor, the State agency shall make the best possible estimate based on the sponsor's request and any other available data. Under no circumstances may the amount of the advance payment for operating or administrative costs exceed the amount estimated by the State agency to be needed by the sponsor to meet operating or administrative costs, respectively.

(4) *Limit.* The sum of the advance operating and administrative costs payments to a sponsor for any one month shall not exceed $40,000 unless the State agency determines that a larger payment is necessary for the effective operation of the Program and the sponsor demonstrates sufficient administrative and managerial capability to justify a larger payment.

(5) *Deductions from advance payments.* The State agency shall deduct from either advance operating payments or advance administrative payments the amount of any previous payment which is under dispute or which is part of a demand for recovery under § 225.15.

(6) *Withholding of advance payments.* If the State agency has reason to believe that a sponsor will not be able to submit a valid Claim for Reimbursement covering the month for which advance payments have already been made, the subsequent month's advance payment shall be withheld until a valid claim is received.

(7) *Repayment of excess advance payments.* Upon demand of the State agency, sponsors shall repay any advance Program payments in excess of the amount cited on a valid Claim for Reimbursement.

(c) *Reimbursements.* Sponsors shall not be eligible for reimbursements for operating and administrative costs unless they have executed an agreement with the State agency. All reimbursements shall be in accordance with the terms of this agreement. Reimbursements shall not be paid for meals served at a site before the sponsor has received written notification that the site has been approved for participation in the Program. The State agency may make full or partial reimbursement upon receipt of a Claim for Reimbursement, but shall first make any necessary adjustments in the amount to be paid. The following requirements shall be observed in submitting and paying claims:

(1) No reimbursement may be issued until the sponsor certifies that it operated all sites for which it is approved and that there has been no significant change in its projected administrative costs since its preceding claim or, for a sponsor receiving an advance payment for only one month, that there has been no significant change in its projected administrative costs since its initial advance administrative costs payment.

(2) Claims for reimbursement shall be submitted by the 10th day of the month following the month for which the claim is made. The State agency may require that claims be submitted more frequently than once each month.

(3) Sponsors which, in the first month of operation, operate less than 10 days shall submit a combined claim for that month and the month immediately following.

(4) Sponsors which, in the final month of operations, operate less than 10 days shall submit a combined claim for the final month and the month immediately preceding within 10 days of the last day of operation.

(5) The State agency shall forward reimbursements within 45 days of receiving valid claims. If a claim is incomplete or invalid, the State agency shall return the claim to the sponsor within 30 days with an explanation of the reason for disapproval. If the sponsor submits a revised claim, final action shall be completed within 45 days of receipt.

(6) The State agency is not required to act upon any Claim for Reimbursement which is not received within 30 days of the sponsor's last day of food service operations, unless the State agency determines that the late submission is due to circumstances beyond the sponsor's control, in which case payment shall be made if the claim is valid.

(7) Claims for Reimbursement for any fiscal year shall not be considered if they are submitted later than the following December 31, with the exception of Claims submitted on or before December 31 and subsequently amended as a result of audits or investigations.

(8) Claims for Reimbursement shall include data sufficient to justify the amount claimed and to enable the State agency to provide the information required in Program reports. Sponsors shall also certify that records supporting the claim are available. The cost of meals served to adults performing necessary food service labor may be included in the claim. The State agency may choose to allow sponsors to include the cost of meals disallowed as meals served to the children, in accordance with § 225.14(e) (1) and (2) in its report of operating costs on its Claim for Reimbursement. In no case shall the cost of meals in excess of a site's approved level of meal service established under § 225.8(j) be considered allowable.

(9) The State agency shall promptly take corrective action with respect to any Claim for Reimbursement for which such action is determined necessary based upon the results of Program reviews or any other information available. The corrective action must be completed in time to be reflected in the final Program Operations and Financial Status report for each fiscal year if reimbursement for the claim is to be made available for that fiscal year through the Letter of Credit system described under § 225.4(j).

(10) Payments to a sponsor for operating costs shall equal the lesser of the following totals:

(i) The actual operating costs incurred by the sponsor, or

(ii) The sum of the amounts derived by multiplying the number of meals, by type, actually served under the sponsor's program to eligible children by 85.75 cents for each lunch or supper, 47.75 cents for each breakfast and 22.50 cents for each supplement. These are base rates of reimbursement, not current rates, and must be adjusted in accordance with paragraph (c)(12) of this section.

(11) Payments to a sponsor for administrative costs shall equal the lowest of the following totals:

(i) The amount estimated in the sponsor's approved administrative budget (taking into account any amendments);

(ii) The actual administrative costs incurred by the sponsor; or

(iii) The sum of the amounts derived by multiplying the number of meals, by type, actually served under the sponsor's program to eligible children by 6.75 cents for each lunch or supper, 3.50 cents for each breakfast and 1.75 cents for supplements, except that sponsors shall be eligible to receive an additional 1.50 cents for each lunch or supper, 1.00 cents for each breakfast, and .50 cents for each supplement served to participating children at rural or self-preparation sites. All rates in this subparagraph are base rate of reimbursement, not current rates, and must be adjusted in accordance with subparagraph (12) of this paragraph.

(12) Each January 1, FNS shall publish a notice in the Federal Register announcing any adjustment to the reimbursement rates described in paragraphs (c)(10)(ii) and (11)(iii) of this section. Adjustments shall be based upon changes in the series for food away from home of the Consumer Price Index for all Urban Consumers since the establishment of the rates.

(13) Sponsors of camps shall be reimbursed only for meals served to children in camps whose eligibility for free or reduced-price meals is documented. Any nonresidential camp reduced to fewer than four meals per day under the terms of § 225.14(d) shall receive reimbursement only for those meals served to children eligible for free or reduced-price school meals.

(14) If a State agency has reason to believe that a sponsor or food service management company has engaged in unlawful acts in connection with Program operations, evidence found in audits, reviews, or investigations shall be a basis for nonpayment of the applicable sponsor's Claims for Reimbursement.

(d) The sponsor may claim reimbursement for any meals which are examined for meal quality by the State agency, auditors, or local health authorities and found to meet the meal pattern requirements.

(e) The sponsor shall not claim reimbursement for meals served at any site in excess of the site's approved level of meal service, if one has been established under § 225.8(j). In

reviewing a sponsor's claim, the State agency may limit payments to the sponsor according to the approved level for meal service which may be claimed for reimbursement at the sponsor's sites, as provided for in § 225.8(j).

§ 225.13 Audits and management evaluations.

(a) *Audits.* (1) Upon approval of applicant sponsors whose total Claims for Reimbursement are expected to exceed $75,000, the State agency shall provide those sponsors with an audit guide to be used in the conduct of the audit required by § 225.20(k) and any other guidance necessary to enable them to comply with the audit requirements of this part. The audit guide developed by the State agency shall, at a minimum, contain the standards set forth in the audit guide issued by the Department for the program.

(2) In addition to the plan submitted under § 225.8(g)(13), the State agency shall ensure that all sponsors within the State whose total Claims for Reimbursement are expected to be more than $75,000 provide for an annual audit of their program. Any sponsor required to provide for an audit of its program shall engage an accounting firm or individual which is independent of the sponsor to conduct the audit.

(3) The State agency shall also provide for biennial audits of sponsors whose total Claims for Reimbursement are expected to be less than $75,000 with the following exceptions: (i) sponsors under $10,000, (ii) sponsors receiving other Federal funds, and subject to an organization-wide audit in accordance with OMB Circular A–102, and (iii) sponsors for which the State agency determines an audit is unnecessary based on program performance. States must justify and document all exemptions made to the biennial audit requirement. The cost of such audits shall be considered an allowable State administrative expense, and in no case may the cost of such audits be passed through to sponsors. States which can demonstrate that compliance with the requirement will impose financial hardship may initiate an appeal through FNSRO to FNS.

(4) Any audit of an organization which is conducted in accordance with the Program audit guide and includes the Program covered by this part may be included to meet a portion of the audit requirement contained in this section.

(5) Audits shall be conducted by: State agency internal auditors; State Auditors General; State Comptroller's Offices; other comparable State or local government audit groups; Certified Public Accountants; or public accountants licensed on or before December 31, 1970, and currently certified or licensed by the regulatory authority of the State or other political subdivision of the United States.

(6) Within the first two weeks of the sponsor's operation of the Program, the auditor engaged by any sponsor required to have an annual audit shall submit to the sponsor and to the State agency a copy of a letter evaluating and making recommendations for the improvement of the sponsor's accounting and recordkeeping systems.

(7) Each State agency shall coordinate its monitoring review findings under § 225.10 and the audit reports provided for under § 225.20(k). Each State agency shall ensure that monitoring is conducted to result in a representative review of the sponsor's operations under the Program.

(8) While OIG shall rely to the fullest extent feasible upon State-sponsored audits, it shall, when considered necessary, (i) make audits on a State-wide basis, (ii) perform on-site test audits, and (iii) review audit reports and related working papers of audits performed by or for State agencies.

(9) State agencies shall provide FNS and OIG with full opportunity to conduct management evaluations (including visits to sponsors) and audits of all operations of the State agency. Each State agency shall make available its records, including records of the receipts and expenditures of funds, upon a reasonable request by FNS or OIG. OIG shall also have the right to make audits of the records and operations of any sponsor.

(10) Use of Program audit guides available from OIG is encouraged. When this guide is utilized, OIG will coordinate its audits with State sponsored audits to form a network of intergovernmental audit systems.

(b) For each sponsor whose total Program payments under any Program agreement are expected to exceed $75,000, the final Claim for Reimbursement under the agreement shall not be eligible for payment until the audit has been completed and the results have been reviewed by the State agency. The cost of the audit may be considered an administrative cost. All such audits shall be subject to review by the Department.

(c) *Management evaluations.* For management purposes, FNSRO shall conduct an annual evaluation of Program operations within each State agency to determine Program needs and identify potential problem areas. Based on information obtained during this assessment, FNSRO may provide training or technical assistance to the State agency. FNSRO shall conduct management evaluations either prior to the initiation of Program operations, or during the first six weeks of Program operations, whichever time FNSRO considers best to evaluate the State. If the management evaluation discloses serious problems, a follow-up evaluation shall be made.

(d) In addition to the management evaluation, FNSRO shall collect data on the need for Program and State administrative funding within any State agency if the funding needs estimated in a State's management evaluation and administration plan are no longer accurate. Based on this data, FNS may make adjustments in the level of State administrative funding paid or payable to the State agency under § 225.4(g) to reflect changes in the size of the State's Program as compared to that estimated in its management and administration plan. The data shall be based on approved Program participation levels and collected during the period of Program operations, but no later than August 20. Immediately following this data collection, payment of State administrative funds shall be made to the State agency. The payment may reflect adjustments in the level of State administrative funding, based on the information collected. FNS shall not decrease the amount of a State's administrative funds unless the State failed to make reasonable efforts to administer the Program as proposed in its management and administration plan or the State incurred unnecessary expenses.

(e) The State agency shall fully respond to any recommendations made by FNSRO pursuant to the management evaluation. The response shall be in the form of a corrective action plan, as required under § 225.8(g)(16).

(f) FNSRO may require the State agency to submit on 20 days notice a corrective action plan regarding serious problems observed during any phase of the management evaluation.

(g) In conducting management evaluations or audits for any fiscal year, the State agency, FNS or OIG may disregard overpayment which does not exceed $100 or, in the case of State agency administered programs, does not exceed the amount established by State law, regulations or procedures as a minimum for which claims will be made for State losses generally. No overpayment shall be disregarded, however, when there are unpaid claims for the same fiscal year from which the overpayment can be deducted or when there is substantial evidence of violation of criminal law or civil fraud statutes.

§ 225.14 Corrective action procedures.

(a) *Purpose.* The provisions in this section shall be used by the State agency to improve Program performance.

(b) *Investigations.* Each State agency shall promptly investigate complaints received or irregularities noted in connection with the operation of the Program, and shall take appropriate action to correct any irregularities. State agency shall maintain on file all evidence relating to such investigations and actions. The State agency shall inform the appropriate FNSRO of any suspected fraud or criminal abuse in the Program which would result in a loss or misuse of Federal funds. The Department may make investigations at the request of the State agency, or where the Department determines investigations are appropriate.

(c) *Denial of applications and termination of sponsors.* The State agency shall not enter into an agreement with any applicant sponsor identifiable through its corporate organization, officers, employees, or otherwise, as an institution which participated in any Federal child nutrition program at any time during the previous three fiscal years, including the fiscal year of its application to the Program, and which was seriously deficient in its operation of any such program. The State agency shall terminate the Program agreement with any sponsor which it determines to be seriously deficient. Following such termination, the sponsor shall not be eligible to participate in the Program during the remainder of the fiscal year of its termination and the subsequent two fiscal years. The State agency may, before the expiration of the three fiscal years, approve the application of a sponsor which has been disapproved or terminated in accordance with this paragraph if the State agency, with FNS concurrence, determines that the sponsor has taken appropriate corrective actions to prevent recurrence of the deficiencies. However, the State agency shall afford a sponsor every reasonable opportunity to correct problems before terminating the sponsor for being seriously deficient. Serious deficiencies which are grounds for disapproval of applications and for termination include, but are not limited to, any of the following:

(1) Noncompliance with the applicable bid procedures and contract requirements of federal child nutrition program regulations;

(2) The submission of false information to the State agency;

(3) Failure to return to the State agency any start-up or advance payments which exceeded the amount earned for serving meals in accordance with this part, or failure to submit all Claims for Reimbursement in any prior year, provided that failure to return any advance payments for months for which Claims for Reimbursement are under dispute from any prior year shall not be grounds for disapproval in accordance with this paragraph.

(4) Program violations at a significant proportion of the sites which include, but are not limited to, the following:

(i) Noncompliance with the between meal time requirements;

(ii) Failure to maintain adequate records;

(iii) Failure to adjust meal orders to conform to variations in the number of participating children;

(iv) The simultaneous service of more than one meal to any child;

(v) The claiming of Program payments for meals not served to participating children;

(vi) Service of a significant number of meals which did not include required quantities of all meal components;

(vii) Excessive instances of off-site meal consumption;

(viii) Continued use of food service management companies that are in violation of health codes.

(d) *Meal service restriction.* The State agency shall restrict to one meal service per day (1) any food service site which is determined to be in violation of the time restrictions for meal service included in § 225.21(a) when corrective action is not taken within a reasonable time as determined by the State agency, and (2) all sites under a sponsor if more than 20 percent of the sponsor's sites are determined to be in violation of the time restrictions included in § 225.21(a). If this action results in children not receiving any meals under the Program, the State agency shall make every reasonable effort to locate another source of meal service for the children.

(e) *Meal Disallowances.*

(1) Meal disallowances for improper planning. If the State agency determines that a sponsor has failed to plan and prepare or order meals with the objective of providing only one meal per child at each meal service at a site, the State agency shall disallow as meals served to children the number of meals prepared or ordered in excess of the number of children served.

(2) Meal disallowances for violations of meal service requirements. If the State agency observes meal service violations during the conduct of a site review, the State agency shall disallow as meals served to children all of the meals observed to be in violation.

(3) The State agency shall also disallow any meals which are in excess of a site's approved level established under § 225.8(j).

(4) Whenever the State agency observes violations during the course of a site review, it shall require the sponsor to take corrective action. If the State agency finds a high level of meal service violations, the State agency shall require a specific immediate corrective action plan to be followed by the sponsor and shall either conduct a follow-up visit or in some other manner verify that the specified corrective action has been taken. Paragraph (f) of this section indicates actions the State agency shall undertake if corrective action has not been taken.

(f) *Termination of sites.*

(1) The State agency shall terminate the participation of a sponsor's site if the sponsor fails to take action to correct the Program violations noted in a State agency review report within the timeframes established by the State agency and specified in the review report.

(2) The State agency shall immediately terminate the participation of a sponsor's site if during a review it determines that the health or safety of the participating children is imminently threatened.

(3) Within 48 hours of terminating a site, the State agency shall, if applicable, notify the food service management company providing meals to the site of the termination.

(4) Upon terminating a sponsor's site, the State agency shall inform the sponsor of its right to appeal under § 225.16.

§ 225.15 Claims against sponsors.

(a) The State agency shall disallow any portion of a Claim for Reimbursement and recover any payment to a sponsor not properly payable under this part, except as provided for in § 225.13(g). However, the State agency shall notify the sponsor of the reasons for the disallowance or demand for repayment, and allow the sponsor full opportunity to submit evidence on appeal as provided for in § 225.16.

(b) Minimum State agency collection procedures for unearned payments shall include: (1) written demand to the sponsor for the return of improper payments; (2) if after 30 days the sponsor fails to remit full payment or agree to a satisfactory repayment schedule, a second written demand for the return of improper payments, sent by certified mail, return receipt requested; (3) if, after 60 days following the original written demand, the sponsor fails to

remit full payment or agree to a satisfactory repayment schedule, a third written demand for the return of improper payments, sent by certified mail, return receipt requested; and (4) if after 90 calendar days following the original written demand, the sponsor fails to remit full payment or agree to a satisfactory repayment schedule, the State agency shall refer the claim against the sponsor to appropriate State or Federal authorities for pursuit of legal remedies.

(c) If FNS does not concur with the State agency's action in paying a sponsor or in failing to collect overpayment, FNS shall notify the State agency of its intention to assert a claim against the State agency. In all such cases, the State agency shall have full opportunity to submit evidence concerning the action taken. The State agency shall be liable to FNS for failure to collect an overpayment unless FNS determines that the State agency has conformed with this part in issuing the payment and has exerted reasonable efforts in accordance with paragraph (b) of this section to recover the improper payment.

(d) The amounts recovered by the State agency from sponsors may be utilized (1) to make Program payments to sponsors for the period for which the funds were initially available, and (2) to repay the State for any of its own funds used to make payments on Claims for Reimbursement. Any amounts recovered which are not so utilized shall be returned to FNS in accordance with the requirements of this part.

§ 225.16 Appeal procedures.

(a) Each State agency shall establish a procedure to be followed by an applicant requesting a review of a denial of an application for participation, a denial of a request by a sponsor for an advance payment, a denial of a claim by a sponsor for reimbursement, a claim against a sponsor for remittance of a payment, the termination of the sponsor or a site, a denial of a sponsor's application for a site, a denial of a food service management company's application for registration, or revocation of that registration.

(b) At a minimum, the procedures for those reviews shall provide that:

(1) The sponsor or food service management company be advised in writing of the grounds upon which the State agency based the action. The notice of action, which shall be sent by certified mail, return receipt requested, shall also include a full description of the sponsor's or food service management company's rights and responsibilities under this section;

(2) The sponsor or food service management company be advised in writing that the request for review must be made within a specified time and must meet the requirement of paragraph (b)(4) of this section. The State agency shall establish this period of time at not less than one week nor more than two weeks from the date of receipt of the notice of action;

(3) The appellant be afforded the opportunity to review any information upon which the action was based;

(4) The appellant may refute the charges contained in the notice of action either in person or by filing written documentation with the review official. To be considered, written documentation must be submitted by the appellant within seven days of submitting the request for review, must clearly identify the State agency action being appealed, and must include a photocopy of the notice of action issued by the State agency;

(5) A hearing shall be held by the review official in addition to, or in lieu of, a review of written information submitted by the appellant only if the appellant so specifies in the letter of request for review. The appellant may retain legal counsel, or may be represented by another person. Failure of the appellant's representative to appear at a scheduled hearing shall constitute the appellant's waiver of the right to a personal appearance before the review official, unless the review official agrees to reschedule the hearing. A representative of the State agency shall be allowed to attend the hearing to respond to the appellant's testimony and written information and to answer questions from the review official;

(6) If the appellant has requested a hearing, the appellant and the State agency shall be provided with at least 5 days advance written notice, sent by certified mail, return receipt requested, of the time and place of the hearing;

(7) The hearing shall be held within 14 days of the date of the receipt of the request for review, but, where applicable, not before the appellant's written documentation is received in accordance with paragraph (b)(4) of this section;

(8) The review official shall be independent of the original decision-making process;

(9) The review official shall make a determination based on information provided by the State agency and the appellant, and on Program regulations;

(10) Within 5 working days after the appellant's hearing, or within 5 working days after receipt of written documentation if no hearing is held, the reviewing official must make a determination based on a full review of the administrative record and inform the appellant of the determination of the review by certified mail, return receipt requested;

(11) The State agency's action shall remain in effect during the appeal process. However, participating sponsors and sites may continue to operate under the Program during an appeal of termination, and if the appeal results in overturning the State agency's decision, reimbursement shall be paid for meals served during the appeal process. However, such continued operation under the Program shall not be allowed if the State agency's action is based on imminent dangers to the health or welfare of children. If the sponsor or site has been terminated for this reason, the State agency shall so specify in its notice of action; and

(12) The determination by the State review official is the final administrative determination to be afforded to the appellant.

(c) A record regarding each review shall be kept by the State agency, as required under § 225.11(a). The record shall document the State agency's compliance with these regulations and shall include the basis for the decision.

§ 225.17 Procedures for food service management companies.

(a) Any sponsor may contract with a food service management company for the preparation of unitized meals with or without milk or juice. In all cases, the sponsor shall adhere to the procurement standards indicated in § 225.18. All meals prepared by a food service management company shall be unitized, with or without milk or juice, unless the sponsor submits to the State agency a request for exceptions to the unitizing requirement for certain components of a meal. These requests shall be submitted to the State agency in writing prior to advertising for bids. The State agency shall notify the sponsor in writing of its determination in a timely manner.

(b) Any sponsor which contracts with a food service management company shall be responsible for ensuring that the food service operation is in conformity with its agreement with the State agency and all the applicable provisions of this part. No sponsor may contract out for the management responsibilities of the Program such as monitoring, enforcing corrective action, or preparing Program applications.

(c) A sponsor may contract only with a food service management company which is registered with the State in which the sponsor will operate the

Program, except that a school acting as a food service management company and a food service management company which has an exclusive contract with a school for year-round service (and no contracts with other sponsors) shall not be required to register with the State. The procedures for registration of all other food service management companies are as follows:

(1) By February 1, each State agency shall notify each food service management company which participated in the Program in either of the prior two years in the State that it must register with the State agency if it wishes to participate in the current fiscal year. This notification shall include at a minimum: (i) a statement that registration with the State agency is a prerequisite to participation in the Program during the fiscal year; (ii) a list of the items which must be submitted in the application for registration as set forth in paragraph (c)(2) of this Section; (iii) a complete description of the criteria developed by the State agency for determining registrant eligibility; and (iv) any other information necessary to apply for registration. In addition, each State agency shall by the same date issue a public announcement of the registration requirement, including all the information necessary to apply for registration.

(2) With the exceptions described in the first sentence of this paragraph, each food service management company shall register with the State by March 15 of each fiscal year. At a minimum, registration shall require: (i) submission of name and mailing address and any other names under which such food service management company presently or in the past two years has marketed its services; (ii) a certification that the food service management company meets applicable State and local health, safety, and sanitation standards; (iii) disclosure of present company owners, directors, and officers, and their relationship in the past two years to any sponsor or food service management company which participated in the Program; (iv) records of contract terminations, disallowances, and health, safety, and sanitation code violations related to prior Program participation during the past two years; (v) records of any other contract terminations and health, safety, and sanitation code violations during the past two years; (vi) the address or addresses of the company's food preparation and distribution facilities which will be used in the Program and the local officials responsible for the operation of the facilities; (vii) the number of meals which can be prepared in each preparation facility in a twenty-four hour period for use in the Program; (viii) a certification that the food service management company will operate in accordance with current Program regulations; (ix) a statement that the food service management company understands that it will not be paid for meals which are delivered to non-approved sites, or for meals which are delivered to approved sites outside of the agreed upon delivery time, or meals that do not meet the meal requirements and food specifications contained in the contract between the sponsor and the food service management company; and (x) submission of a Certified Public Accountant's audit report if an audit was performed during the prior year and, (xi) a statement as to whether the organization is a minority business enterprise. A minority business enterprise is a business,

(A) in which the management and daily operations of the business are controlled by a member or members of a minority group; and

(B) at least 51 percent of which is owned by a member or members of a minority group; (*1*) if the business is a corporation, at least 51 percent of all classes of voting stock of the corporation must be owned by members of a minority group; (*2*) if the business is a partnership, at least 51 percent of the partnership must be owned by a member or members of a minority group. Minority groups are Black, Hispanics, American Indians, Alaskan Natives, Orientals and Aleuts.

(3) A State agency shall consider a food service management company's application for registration submitted after March 15 of the current year, if the State agency determines that the lack of registration could result in a significant number of needy children not having reasonable access to the Program.

(4) Prior to registration, the State agency shall provide for inspections of all food service management companies' food preparation facilities listed on the applications for registration, except those located outside the State. The State agency shall promptly notify FNSRO of the name and location of any out-of-State facility, and FNSRO shall ensure that the facility is inspected prior to registration. The purpose of the inspection is to evaluate each facility's suitability for preparation of meals for use in the Program. The State agency may waive this inspection requirement if a facility was registered last summer and operated in accordance with Program requirements.

(5) No food service management company shall be registered by the State agency if the State agency determines that the company lacks the administrative and financial capability to perform under the Program or if it is identifiable through its organization or principals as a food service management company which participated in the Program during any previous year and was seriously deficient in its Program operation. Serious deficiencies which are grounds for non-registration include, but are not limited to, any of the following:

(i) Noncompliance with the applicable bid procedures, contract requirements or Program regulations;

(ii) Submission of false information to the State agency;

(iii) Failure to conform meal deliveries to meal orders;

(iv) Delivery of a significant number of meals which do not meet contract requirements;

(v) Failure to maintain adequate records;

(vi) Significant health code violations which were not corrected upon reinspection;

(vii) Failure to deliver meals; or

(viii) The conviction of any officer, owner, partner, or manager of the company for a crime in connection with a prior Program operation.

(6) Each State agency shall require food service management companies submitting applications for registration to certify that the information submitted is true and correct and that the food service management company is aware that misrepresentation may result in prosecution under applicable State and Federal statutes.

(7) The State agency shall notify in writing each food service management company which applied for registration of its determination on the application within 30 calendar days after receipt of the complete application. The State agency shall inform any food service management company whose application for registration has been denied of the procedures to request a review of the denial as provided for in § 225.16. The official making the determination of denial must notify the food service management company in writing, stating all the grounds on which the State agency based the denial.

(8) Each State agency shall submit information to FNS regarding registration of food service management companies, as required under § 225.11(e).

(d) In the absence of any applicable State or local laws governing bid procedures and with the exceptions identified in this paragraph, each sponsor which contracts with a food service management company shall

comply with the competitive bid procedures described in this paragraph. Sponsors which are schools which have an exclusive contract with food service management companies for year-round service and sponsors whose total contracts with food service management companies will not exceed $10,000, shall not be required to comply with these procedures. These exceptions do not relieve the sponsor of the responsibility to ensure that normally accepted bidding procedures are followed in contracting with any food service management company. Each sponsor whose proposed contract is subject to competitive bidding procedure shall ensure, at a minimum, that:

(1) All proposed contracts shall be publicly announced at least once, not less than 14 calendar days prior to the opening of bids, and the announcement shall include the time and place of the bid opening;

(2) The bids shall be publicly opened; and

(3) The State agency is notified at least 14 calendar days prior to the opening of the bids, of the time and place of the bid opening.

(4) When advertising for bids, the sponsor shall adhere to the following requirements, at a minimum:

(i) The invitation to bid shall not specify a minimum price;

(ii) The invitation to bid shall contain a cycle menu approved by the State agency upon which the bid shall be based;

(iii) The invitation to bid shall contain food specifications and meal quality standards approved by the State agency upon which the bid shall be based;

(iv) The invitation to bid shall not specify special meal requirements to meet ethnic or religious needs unless such special requirements are necessary to meet the needs of the children to be served;

(v) Neither the invitation to bid nor the contract shall provide for loans or any other monetary benefit or term or condition to be made to sponsors by food service management companies;

(vi) Nonfood items shall be excluded from the invitation to bid, except where such items are essential to the conduct of the food service;

(5) A copy of the food service management company registration determination issued by the State agency shall be submitted by the food service management company with each bid;

(6) Sponsors shall submit to the State agency copies of all bids received and their reason for selecting the food service management company chosen;

(7) All bids in an amount which exceeds the lowest bid shall be submitted to the State agency for approval before acceptance. All bids totaling $100,000 or more shall be submitted to the State agency for approval before acceptance. State agencies shall respond to a request for approval of such bids within 5 working days of receipt.

(e) Each State agency shall develop a standard form of contract for use by sponsors in contracting with food service management companies. (Sponsors which are public institutions and sponsors exempt from the competitive bid procedures described in paragraph (d) of this section may use their existing or usual form of contract, if such form of contract has been submitted to and approved by the State agency.) The standard contract developed by the State agency shall expressly and without exception provide that:

(1) The sponsor shall provide to the food service management company a list of State agency approved food service sites, along with the approved level for the number of meals which may be claimed for reimbursement for each site (established under § 225.6(j)), and shall notify the food service management company of all sites which have been approved, cancelled, or terminated subsequent to the submission of the initial approved site list and of any changes in the approved level of meal service for a site. Such notification shall be provided within the time limits mutually agreed upon the contract;

(2) The food service management company shall maintain such records (supported by invoices, receipts, or other evidence) as the sponsor will need to meet its responsibilities under this part, and shall report to the sponsor promptly at the end of each month, at a minimum;

(3) The food service management company shall have State or local health certification for the facility in which it proposes to prepare meals for use in the Program, and it shall ensure that health and sanitation requirements are met at all times. In addition, the food service management company shall provide for meals which it prepares to be periodically inspected by the local health department or an independent agency to determine bacteria levels in the meals being served. These levels shall conform to the standards which are applied by the local health authority with respect to the level of bacteria which may be present in meals served by other food service establishments in the locality. Results of the inspections shall be submitted to the sponsor and to the State agency;

(4) The meals served under the contract shall conform to the cycle menus and meal quality standards and food specifications approved by the State agency and upon which the bid was based;

(5) The books and records of the food service management company pertaining to the sponsor's food service operation shall be available for inspection and audit by representatives of the State agency, the Department, and the U.S. General Accounting Office at any reasonable time and place for a period of 3 years from the date of receipt of final payment under the contract;

(6) The sponsor and the food service management company shall operate in accordance with current Program regulations;

(7) The food service management company shall be paid by the sponsor for all meals delivered in accordance with the contract and this part. However, neither the Department nor the State agency assumes any liability for payment of differences between the number of meals delivered by the food service management company and the number of meals served by the sponsor that are eligible for reimbursement;

(8) Meals shall be delivered in accordance with a delivery schedule prescribed in the contract;

(9) Increases and decreases in the number of meals ordered shall be made by the sponsor, as needed, within a prior notice period mutally agreed upon;

(10) All meals served under the Program shall meet the requirements of § 225.21;

(11) In cases of nonperformance or noncompliance on the part of the food service management company, the company shall pay the sponsor for any excess costs the sponsor incurs by obtaining meals from another source; and

(12) If the State agency requires the sponsor to establish a special account for the deposit of operating costs payments made by the State agency to the sponsor in accordance with the conditions given in § 225.9(f), the contract shall so specify.

(f) A food service management company entering into a contract with a sponsor under the Program shall not subcontract for the total meal, with or without milk, or for the assembly of the meal.

(g) Each State agency shall have a representative present at all procurement bid openings of sponsors which expect to receive more than $100,000 in Program payments.

(h) The State agency may require any sponsor which contracts with a food service management company to

establish a special account in a State or Federally insured bank for the deposit of Program payments for operating costs. The special account shall be such that any disbursement of monies from the account must be authorized by both the sponsor and the food service management company, and shall be in accordance with the other specifications included in § 225.9(f).

(i) Copies of all contracts between sponsors and food service management companies, along with a certification of independent price determination, shall be submitted to the State agency prior to the beginning of Program operations.

(j) Each food service management company which submits a bid over $100,000 shall obtain a bid bond in an amount not less than five (5) percent nor more than ten (10) percent, as determined by the sponsor, of the value of the contract for which the bid is made. A copy of the bid bond shall accompany each bid.

(k) Each food service management company which enters into a food service contract for over $100,000 with a sponsor shall obtain a performance bond in an amount not less than ten (10) percent nor more than twenty-five (25) percent of the value of the contract as determined by the State agency. Any food service management company which enters into more than one contract with any one sponsor shall obtain a performance bond covering all contracts if the aggregate amount of the contracts exceeds $100,000. Sponsors shall require the food service management company to furnish a copy of the bond within ten days of the awarding of the contract.

(l) Food service management companies shall obtain bid bonds and performance bonds only from surety companies listed in the current Department of the Treasury Circular 570.

(m) Failure by a sponsor to comply with the provisions of this section shall be sufficient grounds for the State agency to terminate participation by the sponsor in accordance with § 225.23(b). If a food service management company fails to take the actions recommended to correct violations noted by the State agency or health inspectors in the conducting of a review or inspection, the State agency shall notify the sponsor and the food service management company that reimbursement shall not be paid for meals prepared by the food service management company after a date specified in the notification. When the State agency takes such action, it shall inform the sponsor of its right to appeal under § 225.10.

§ 225.16 Procurement standards.

(a) State agencies and sponsors which are Federally recognized Indian tribal governments or entities of State or local governments (such as some school districts, elementary and secondary schools, and public park authorities) shall comply with the standards prescribed in Attachment O of Office of Management and Budget Circular A–102 in the procurement of food, supplies, goods, and other services with Program payments.

(b) All sponsors other than those identified in paragraph (a) of this section shall comply with the standards prescribed in Attachment O of Office of Management and Budget Circular A–110 in the procurement of food, supplies, goods, and other services with Program payments.

(c) The State agency shall make available to sponsors information on Office of Management and Budget Circulars A–102 and A–110, as appropriate.

(d) Sponsors may use their own procurement procedures which reflect applicable State and local laws and regulations, provided that procurements made with Program funds conform with provisions of this section, as well as with procurement requirements which may be established by the State agency, with the approval of FNS, to prevent fraud, waste, and Program abuse.

(e) The State agency shall ensure that all sponsors are aware of the following practices specifed in OMB Circular A–102, with respect to minority business enterprises:

(1) Including qualified minority business enterprises on solicitation lists,

(2) Soliciting minority business enterprises whenever they are potential sources,

(3) When economically feasible, dividing total requirements into smaller tasks or quantities so as to permit maximum participation by minority business enterprises,

(4) Establishing delivery schedules which will assist minority business enterprises to meet deadlines, and

(5) Using the services and assistance of the Small Business Administration, the Office of Minority Business Enterprise of the Department of Commerce and the Community Services Administration as required.

Subpart D—Provisions for Sponsors

§ 225.19 Requirements for sponsor participation.

(a) *Sponsor eligibility.* Applicants eligible to sponsor the Program include:

(1) Public sponsors;

(2) Private nonprofit sponsors, including residential summer camps, which prepare their own meals or obtain meals from a public facility, such as a school district, public hospital, or State university;

(3) Private nonprofit schools, including colleges and universities;

(4) Private nonprofit migrant farmworker organizations, including those that purchase meals from a food service management company, which develop programs for children of migrant families;

(5) Private nonprofit sponsors which serve not more than a total of 500 children daily at not more than three sites and which purchase meals from a food service management company; and

(6) In areas where no sponsors described in paragraph (a) (1) through (5) of this section are available to operate the Program, or where a significant number of needy children will not otherwise have access to the Program, private nonprofit service institutions which purchase meals from a food service management company, and which are determined to have a consistent record of reliable and honest management and administration of community food service programs.

(b) *Requirements.* No applicant sponsor shall be eligible to participate in the Program unless it:

(1) Demonstrates financial and administrative capability for Program operations and accepts final financial and administrative responsibility for total Program operations at all sites at which it proposes to conduct a food service;

(2) Has not been seriously deficient in operating the Program in the prior three years;

(3) Will conduct a regularly scheduled food service for children from areas in which poor economic conditions exist or qualifies as a camp;

(4) Has adequate supervisory and operational personnel for overall monitoring and management of each site including adequate personnel to conduct the visits and reviews required in § 225.20 (g) and (h);

(5) Provides an ongoing year-round service to the community which it proposes to serve under the Program, except as provided for in § 225.8(e);

(6) Certifies that all sites have been visited and have the capability and the facilities for the meal service planned for the number of children anticipated to be served;

(7) If not a camp, provides documentation that its food service will serve children from an area in which poor economic conditions exist, as defined in § 225.2(d). If a camp, certifies

that it will collect family size and income information to support its Claim for Reimbursement; and

(8) If a summer school, is open to serve children in addition to those enrolled in the accredited school program or is a school serving children outside of the summer school hours.

(c) *Applications.* Applicants shall make written application to the State agency for participation in the Program as sponsors. Such application shall be made on a timely basis in accordance with the requirements of § 225.9.

(d) *Agreements.* Each sponsor shall enter into a written agreement with the State agency upon approval of its application, as required in § 225.9(b).

(e) *Meal services.* The meals which may be served under the Program are breakfast, lunch, supper, and supplemental food. No sponsor shall be approved to provide more than two services of supplemental food per day. A sponsor shall only be reimbursed for meals served in accordance with paragraphs (f) and (g) of this section.

(f) *Camps.* Sponsors of camps shall only be reimbursed for meals served in camps to children from families which qualify for free and reduced price meals under the guidelines established for the National School Lunch Program (7 CFR Part 210). The sponsor shall maintain a copy of the family income documentation of each child receiving meals under the Program. Meal service at camps shall be subject to the following provisions:

(1) A camp may serve up to four meals each day.

(2) Residential camps are not subject to the time restrictions for meal service given in § 225.21(a)(1).

(3) A camp shall be approved to serve these meals only if it has the administrative capability and, where applicable, adequate food preparation and holding facilities, and if the service period of the different meals does not coincide or overlap.

(4) A camp may be approved to serve supplemental food and also participate in the Special Milk Program (7 CFR Part 215). Any camp which participates in both Programs shall keep separate records for each Program, and shall not claim or receive reimbursement under both Programs for the same milk.

(g) *Sites other than camps and those serving migrant children.* Food service sites other than camps shall serve children in areas where poor economic conditions exist, as defined in § 225.2(d). A sponsor which operates in accordance with this part shall receive reimbursement for all meals served to children at these sites in accordance with this part. Food service sites other than camps and those which primarily serve migrant children may serve either (1) one meal each day, a breakfast, a lunch, or a supplement, or (2) two meals each day, if one is a lunch and the other is a breakfast or a supplement. These sites shall not be approved both to serve supplemental food and also participate in the Special Milk Program (7 CFR Part 215).

(h) *Sites which serve children of migrant families.* Food service sites which primarily serve children from migrant families may be approved to serve up to four meals each day. These sites shall serve children in areas where poor economic conditions exist as defined in § 225.2(d). A sponsor which operates in accordance with this part shall receive reimbursement for all meals served to children at these sites. A site which primarily serves children from migrant families shall only be approved to serve more than one meal each day if it has the administrative capability and, where applicable, adequate food preparation and holding facilities, and if the service period of the different meals does not coincide or overlap. These sites shall not be approved both to serve supplemental food and also participate in the Special Milk Program (7 CFR Part 215).

§ 225.20 Operational responsibilities of sponsors.

(a) Sponsors shall operate the food service in accordance with the provisions of this part and any instructions and handbooks issued by FNS under this part or issued by the State agency which are not inconsistent with the provisions of this part.

(b) Each sponsor shall, to the maximum extent feasible, utilize either its own food service facilities, or obtain meals from a school food service facility. If the sponsor obtains meals from a school food service facility the applicable requirements of this part shall be embodied in a written agreement between the sponsor and the school.

(c) Upon approval of its application or any adjustment in the approved levels of meal service for its sites, established under § 225.8(j), the sponsor shall inform the food service management company with which the sponsor contracts of the approved level for each meal service at each site for which the food service management company will provide meals.

(d) Sponsors shall plan for and prepare or order meals on the basis of participation trends with the objective of providing only one meal per child at each meal service. The sponsor shall make the adjustments necessary to achieve this objective using the results from its monitoring of sites. For sites for which approved levels of meal service have been established in accordance with § 225.8(j), this means that the sponsor shall adjust the number of meals ordered or prepared with the objective of providing only one meal per child whenever the number of children attending the site is below the approved level. In no case shall the sponsor order or prepare meals for any site in excess of the site's approved level. Records of participation and of preparation or ordering of meals shall be maintained to demonstrate positive action toward this objective. In recognition of the fluctuation in participation levels which makes it difficult to precisely estimate the number of meals needed and to reduce the resultant waste, any excess meals within the approved level for the site that are prepared or ordered may be served to children and claimed for reimbursement unless the State agency determines that the sponsor has failed to plan and prepare or order meals with the objective of providing only one meal per child at each meal service. Second meals shall be served only after all participating children at the site's meal service have been served a meal. In no case shall the sponsor order or prepare meals for any site in excess of its approved level, established in accordance with § 225.8(j).

(e) Sponsors shall submit Claims for Reimbursement only for meals served to children in accordance with this part. Claims shall be submitted by the 10th day of the month following the month for which the claim is made. However, the State agency may require that claims be submitted more frequently.

(f) Sponsors shall maintain accurate records which justify all costs and meals claimed. The sponsor's records shall be available at all times for inspection and audit by representatives of the Secretary, the Comptroller General of the United States, and the State agency for a period of three years following the date of submission of the final Claim for Reimbursement for the fiscal year.

(g) Sponsors shall visit each of their sites at least once during the first week of operation under the Program and shall promptly take such actions as are necessary to correct any deficiencies.

(h) Sponsors shall review food service operations at each site at least once during the first four weeks of Program operations, and thereafter shall maintain a reasonable level of site monitoring. Sponsors shall complete a monitoring form developed by the State agency during the conduct of these reviews.

(i) Each sponsor shall hold training sessions for its administrative and site personnel with regard to Program duties and allow no site to operate until site personnel have attended at least one of these training sessions. Training of site personnel, at a minimum, shall include: the purpose of the Program, site eligibility, recordkeeping, site operations, meal pattern requirements, and duties of a monitor. Each sponsor shall ensure that its administrative personnel attend State agency training provided to sponsors, and sponsors shall provide training throughout the summer to ensure that administrative and site personnel are thoroughly knowledgeable in all requisite areas of Program administration and operation and are provided with sufficient information to enable them to carry out their Program responsibilities. Each site shall have present at each meal service at least one person who has received this training.

(j) Sponsors shall not claim reimbursement under parts 210, 215, 220, or 226 of this Chapter, or any other Federally-funded program for meals served under the Program.

(k) Each sponsor whose total Program payments under any Program agreement are expected to exceed $75,000 shall have an audit conducted of its Program claims and the supporting documentation for those claims. The audit shall be conducted in accordance with the provisions of § 225.13 (a) and (b). A report on the audit shall be submitted to the State agency.

§ 225.21 Meal service requirements.

(a) *Time restrictions for meal service.*

(1) Three hours shall elapse between the beginning of one meal service, including supplements, and the beginning of another, except that 4 hours shall elapse between the service of a lunch and supper when no supplement is served between lunch and supper. The service of supper shall begin no later than 7 p.m., unless the State agency has granted a waiver of this requirement due to extenuating circumstances. These waivers shall be granted only when the State agency and the sponsor ensure that special arrangements shall be made to monitor these sites. In no case may the service of supper extend beyond 8 p.m. The time restrictions in this subparagraph shall not apply to residential camps.

(2) The duration of the meal service shall be limited to two hours for lunch or supper and one hour for all other meals.

(3) Meals served outside of the period of approved meal service shall not be eligible for Program payments.

(4) Any permanent or planned changes in meal service periods must be approved by the State agency.

(5) Meals for each meal service which are not prepared at the food service site shall be delivered within one hour of the beginning of the appropriate meal service unless the site has adequate facilities for holding hot or cold meals within the temperatures required by State or local health regulations.

(6) The sponsor shall serve only the type(s) of meals for which it is approved under its agreement with the State agency.

(b) *Meal patterns.* The meal requirements for the Program are designed to provide nutritious and well-balanced meals to each child. Sponsors shall ensure that meals served meet all of the requirements. Except as otherwise provided in this section, the following tables present the minimum requirements for meals served to children in the Program.

BREAKFAST [1]

(1) The minimum amount of food components to be served as breakfast are as follows:

Food components	Minimum amount
Vegetables and Fruits	
Vegetable(s) and/or fruit(s)	½ cup. [2]
or	
Full-strength vegetable or fruit juice	½ cup (4 fl. oz.).
or	
An equivalent quantity of any combination of vegetable(s), fruit(s), and juice.	
Bread and Bread Alternates [3]	
Bread	1 slice.
or	
Cornbread, biscuits, rolls, muffins, etc.[4].	1 serving.
or	
Cold dry cereal [5]	¾ cup or 1 oz.
or	
Cooked cereal or cereal grains	½ cup.
or	
Cooked pasta or noodle products	½ cup.
or	
An equivalent quantity of any combination of bread/bread alternate.	
Milk [6]	
Milk, fluid	1 cup (½ pint, 8 fl. oz.).
Meat and Meat Alternates (Optional)	
Lean meat or poultry or fish	1 oz.
or	
Cheese	1 oz.
or	
Eggs	1 large egg.
or	
Cooked dry beans or peas	½ cup.
or	
Peanut butter	2 Tbsp.
or	
An equivalent quantity of any combination of meat/meat alternate.	

[1] Children age 12 and up may be served adult-size portions based on the greater food needs of older boys and girls, but shall be served not less than the minimum quantities specified in this section.
[2] For the purposes of the requirement outlined in this subsection, a cup means a standard measuring cup.
[3] Bread, pasta or noodle products, cereals, and cereal grains (such as rice, bulgur, or corn grits) shall be whole-grain or enriched; cornbread, biscuits, rolls, muffins, etc., shall be made with whole-grain or enriched meal or flour; cereal shall be whole-grain, enriched or fortified.
[4] Serving sizes and equivalents to be published in guidance materials by FNS.
[5] Either volume (cup) or weight (oz.), whichever is less.
[6] Milk shall be served as a beverage or on cereal, or used in part for each purpose.

Lunch or Supper [1]

(2) The minimum amounts of food components to be served as lunch or supper are as follows:

Food components	Minimum amount
Meat and Meat Alternates	
Lean meat or poultry or fish	2 oz.
or	
Cheese	2 oz.
or	
Eggs	2 large eggs.
or	
Cooked dry beans or peas	1 cup [2]
or	
Peanut butter	4 tbsp.
or	
An equivalent quantity of any combination of meat/meat alternate.	
Vegetables and Fruits	
Vegetable(s) and/or fruit(s) [3]	¾ cup total.
Bread and Bread Alternates [4]	
Bread	1 slice.
or	
Cornbread, biscuits, rolls, muffins, etc.[5].	1 serving
or	
Cooked pasta or noodle products	½ cup.
Cooked cereal grains	½ cup.
or	
An equivalent quantity of any combination of bread/bread alternate.	
Milk	
Milk, fluid, served as a beverage	1 cup (½ pint, 8 fl. oz.).

[1] Children age 12 and up may be served adult-size portions based on the greater food needs of older boys and girls, but shall be served not less than the minimum quantities specified in this section.
[2] For purposes of the requirements outlined in this subsection, a cup means a standard measuring cup.
[3] Serve 2 or more kinds of vegetable(s) and/or fruit(s) or a combination of both. Full-strength vegetable or fruit juice may be counted to meet not more than one-half of this requirement.
[4] Bread, pasta or noodle products, and cereal grains (such as rice, bulgur, or corn grits) shall be whole-grain or enriched; cornbread, biscuits, rolls, muffins, etc., shall be made with whole-grain or enriched meal or flour; cereal shall be whole-grain or enriched or fortified.
[5] Serving sizes and equivalents to be published in guidance materials by FNS.

Supplemental Food [1]

(3) The minimum amounts of food components to be served as supplemental food are as follows. Select two of the following four components. (Juice may not be served when milk is served as the only other component.)

Food components	Minimum amount
Meat and Meat Alternates	
Lean meat or poultry or fish	1 oz.
or	
Cheese	1 oz.
or	
Eggs	1 large egg.
or	
Cooked dry beans or peas	½ cup [2]
or	
Peanut butter	2 tbsp.
or	
An equivalent quantity of any combination of meat/meat alternate.	
Vegetables and Fruits	
Vegetable(s) and/or fruit(s)	¾ cup.

Food components	Minimum amount
or	
Full-strength vegetable or fruit juice	½ cup (6 fl. oz.)
or	
An equivalent quantity of any combination of vegetable(s), fruit(s), and juice.	
Bread and Bread Alternates [6]	
Bread	1 slice.
or	
Cornbread, biscuits, rolls, muffins, etc [4].	1 serving.
or	
Cold dry cereal [5]	¾ cup or 1 oz.
or	
Cooked cereal	½ cup.
or	
Cooked pasta or noodle products	½ cup.
or	
Cooked cereal grains	½ cup.
or	
An equivalent quantity of any combination of bread/bread alternate.	
Milk [6]	
Milk, fluid	1 cup [3] (½ pint, 8 fl. oz.).

[1] Children age 12 and up may be served adult-size portions based on the greater food needs of older boys and girls, but shall be served not less than the minimum quantities specified in this section.

[2] For purposes of the requirements outlined in this subsection, a cup means a standard measuring cup.

[3] Bread, pasta or noodle products, and cereal grains (such as rice, bulgur, or corn grits) shall be whole-grain or enriched; cornbread, biscuits, rolls, muffins, etc., shall be made with whole-grain or enriched meal or flour; cereal shall be whole-grain or enriched or fortified.

[4] Serving sizes and equivalents to be published in guidance materials by FNS.

[5] Either volume (cup) or weight (oz.), whichever is less.

[6] Milk should be served as a beverage or on cereal, or used in part for each purpose.

(c) *Meat or meat alternate.* Meat or meat alternates served under the Program are subject to the following requirements and recommendations.

(1) The required quantity of meat or meat alternate shall be the quantity of the edible portion as served. These foods must be served in a main dish, or in a main dish and one other menu item.

(2) Cooked dry beans or peas may be used as a meat alternate or as a vegetable, but they may not be used to meet both component requirements in a meal.

(3) Textured vegetable protein products, cheese alternate products, and enriched macaroni with fortified protein may be used to meet part, but not all, of the meat/meat alternate requirement. The Department will provide guidance on the part of the meat/meat alternate requirement which these foods may be used to meet. If enriched macaroni with fortified protein is served as a meat alternate, it shall not be counted toward the bread requirement.

(4) If the sponsor believes that the recommended portion size of any meat or meat alternate is too large to be appealing to children, the sponsor may reduce the portion size of that meat or meat alternate and supplement it with another meat or meat alternate to meet the full requirement.

(d) *Varying amounts.* The State agency may authorize the sponsor to serve food in smaller quantities than are indicated in paragraph (b) of this section to children under six years of age if the State agency determines that the sponsor has the capability to ensure that variations in portion size are in accordance with the age levels of the children served. In such cases, the sponsor shall follow the age-appropriate meal pattern requirements contained in the Child Care Food Program regulations (7 CFR Part 226).

(e) *Infant meal patterns.* Sponsors approved to serve children under one year of age shall be required to comply with the applicable meal requirements contained in the Child Care Food Program regulations (7 CFR Part 226).

(f) *Additional foods.* To improve the nutrition of participating children, additional foods may be served with each meal.

(g) *Temporary unavailability of milk.* If emergency conditions prevent a sponsor normally having a supply of milk from temporarily obtaining milk deliveries, the State agency may approve the service of breakfasts, lunches or suppers without milk during the emergency period.

(h) *Continuing unavailability of milk.* The inability of a sponsor to obtain a supply of milk on a continuing basis shall not bar it from participation in the Program. In such cases, the State agency may approve service of meals without milk, provided that an equivalent amount of canned, whole dry or nonfat dry milk is used in the preparation of the components of the meal set forth in the tables included in this section. In addition, the State agency may approve the use of nonfat dry milk in meals served to children participating in activities which make the service of fluid milk impracticable, and in locations which are unable to obtain fluid milk. Such authorization shall stipulate that nonfat dry milk be reconstituted at normal dilution and under sanitary conditions consistent with State and local health regulations.

(i) *Statewide substitutions.* In American Samoa, Puerto Rico, Guam, the Virgin Islands, the Trust Territory of the Pacific Islands, and the Northern Mariana Islands, the following variations from the meal requirements are authorized: a serving of a starchy vegetable, such as ufi, tanniers, yams, plantains, or sweet potatoes may be substituted for the bread requirements.

(j) *Individual substitutions.* Substitutions may be made by sponsors in food listed in paragraph (b) of this section if individual participating children are unable, because of medical or other special dietary needs, to consume such foods. Such substitutions shall be made only when supported by a statement from a recognized medical authority which includes recommended alternate foods. Such statement shall be kept on file by the sponsor.

(k) *Special variations.* FNS may approve variations in the food components of the meals on an experimental or a continuing basis for any sponsor where there is evidence that such variations are nutritionally sound and are necessary to meet ethnic, religious, economic, or physical needs.

(l) *Donated commodities.* Institutions shall efficiently use in the Program any foods donated by the Department and accepted by the institution.

(m) *Plentiful foods.* Institutions shall, in so far as practicable, purchase and efficiently use in the Program foods designated as plentiful by the Department.

(n) *Sanitation.* Institutions shall ensure that in storing, preparing, and serving food, proper sanitation and health standards are met which conform with all applicable State and local laws and regulations. Institutions shall ensure that adequate facilities are available to store food or hold meals.

§ 225.22 Free meal policy.

(a) *Basic policy.* As part of the application, applicants shall submit a statement of their policy for serving free meals at all sites under their jurisdiction. No application may be approved unless its accompanying policy statement is approved. The policy statement shall consist of an assurance to the State agency that all children are served the same meals at no separate charge and that there is no discrimination in the course of the food service.

(b) *Camps.* In addition, the policy statement for a camp which charges separately for meals shall include the following:

(1) A statement that the camp's eligibility standards conform to the State's family size and income standards for free and reduced-price school meals;

(2) A description of the method for accepting applications;

(3) A description of the method for collecting payments from children who pay the full price of the meal while protecting the anonymity of children receiving a free meal.

(4) An assurance that the camp will establish a hearing procedure for families wishing to appeal a denial of an application for free meals which provides for the following:

(i) That a simple, publicly announced method will be used for a family to make an oral or written request for a hearing;

(ii) That the family will have the opportunity to be assisted or represented by an attorney or other person;

(iii) That the family will have an opportunity to examine the documents and records supporting the decision being appealed both before and during the hearing;

(iv) That the hearing will be reasonably prompt and convenient for the family;

(v) That adequate notice will be given to the family of the time and place of the hearing;

(vi) That the family will have an opportunity to present oral or documentary evidence and arguments supporting its position;

(vii) That the family will have an opportunity to question or refute any testimony or other evidence and to confront and cross-examine any adverse witnesses;

(viii) That the hearing shall be conducted and the decision made by a hearing official who did not participate in the action being appealed;

(ix) That the decision shall be based on the oral and documentary evidence presented at the hearing and made a part of the record;

(x) That the family and any designated representative shall be notified in writing of the decision;

(xi) That a written record shall be prepared for each hearing which includes the action being appealed, any documentary evidence and a summary of oral testimony presented at the hearing, the decision and the reasons for the decision, and a copy of the notice sent to the family; and

(xii) That the written record shall be maintained for a period of three years following the conclusion of the hearing, during which it shall be available for examination by the family or its representatives at any reasonable time and place.

(5) An assurance that, if a family requests a hearing, the child shall continue to receive free meals until a decision is rendered.

(6) An assurance that there will be no overt identification of free meal recipients and no discrimination against any child on the basis of race, color, or national origin.

(c) *Public Announcements.* Each sponsor shall annually announce in the media serving the area from which it draws its attendance, the availability of free meals. Camps shall annually announce to all participants the availability of free meals for eligible children. All announcements must also state that meals are available without regard to race, color, or national origin.

Subpart E—Miscellaneous Provisions

§ 225.23 Other provisions.

(a) *Grant closeout procedures.* Grant closeout procedures for the Program shall be in accordance with Attachment K of the Office of Management and Budget Circular A–110 (41 FR 32016, July 30, 1976), or Attachment L of the Office of Management and Budget Circular A–102 (42 FR 45828, September 12, 1977), whichever is applicable.

(b) *Termination for cause.* (1) FNS may terminate a State agency's participation in the Program in whole, or in part, whenever it is determined that the State agency has failed to comply with the conditions of the Program. FNS shall promptly notify the State agency in writing of the termination and reason for the termination, together with the effective date and shall allow the State 30 calendar days to respond. In instances where the State does respond, FNS shall inform the State of its final determination no later than 30 calendar days after the State responds. (2) A State agency shall terminate a sponsor's participation in the Program by written notice whenever it is determined by the State agency that the sponsor has failed to comply with the conditions of the Program. (3) When participation in the Program has been terminated for cause, any funds paid to the State agency or a sponsor or any recoveries by FNS from the State agency or by the State agency from a sponsor shall be in accordance with the legal rights and liabilities of the parties.

(c) *Termination for convenience.* FNS and the State agency may agree to terminate the State agency's participation in the Program in whole, or in part, when both parties agree that the continuation of the Program would not produce beneficial results commensurate with the further expenditure of funds. The two parties shall agree upon the termination conditions, including the effective date and, in the case of partial termination, the portion to be terminated. The State agency shall not incur new obligations for the terminated portion after the effective date, and shall cancel as many outstanding obligations as possible. The Department shall allow full credit to the State agency for the Federal share of the noncancellable obligations properly incurred by the State agency prior to termination. A State agency may terminate a sponsor's participation in the manner provided for in this paragraph.

(d) *Maintenance of effort.* Expenditures of funds from State and local sources for the maintenance of food programs for children shall not be diminished as a result of funds received under the Act and a certification to this effect shall become part of the agreement provided for in § 225.3(c).

(e) *Program benefits.* The value of benefits and assistance available under the Program shall not be considered as income or resources of recipients and their families for any purpose under Federal, State or local laws, including, but not limited to, laws relating to taxation, welfare, and public assistance programs.

(f) *State requirements.* Nothing contained in this part shall prevent a State agency from imposing additional operating requirements which are not inconsistent with the provisions of this part, provided that such additional requirements shall not deny the Program to an area in which poor economic conditions exist, and shall not result in a significant number of needy children not having access to the Program. Prior to imposing any additional requirements, the State agency must receive approval from FNSRO.

(g) *Fraud penalty.* Whoever embezzles, willfully misapplies, steals, or obtains by fraud any funds, assets, or property that are the subject of a grant or other form of assistance under this part, whether received directly or indirectly from the Department or whoever receives, conceals, or retains such funds, assets, or property to his use or gain, knowing such funds, assets, or property have been embezzled, willfully misapplied, stolen, or obtained by fraud shall, if such funds, assets, or property are of the value of $100 or more, be fined not more than $100,000 or imprisoned not more than five years, or both, or, if such funds, assets, or property are of a value of less than $100, shall be fined not more than $1,000 or imprisoned for not more than one year, or both.

§ 225.24 Program information.

(a) persons desiring information concerning the Program may write to the appropriate State agency or Regional Office of FNS as indicated below:

(1) In the States of Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont: New England Regional Office, FNS, U.S. Department of Agriculture, 33 North Avenue, Burlington, MA 01803.

(2) In the States of Delaware, District of Columbia, Maryland, New Jersey, New York, Pennsylvania, Puerto Rico, Virginia, Virgin Islands, and West

Virginia: Mid-Atlantic Regional Office, FNS, U.S. Department of Agriculture, One Vahlsing Center, Robbinsville, NJ 08691.

(3) In the States of Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, and Tennessee: Southeast Regional Office, FNS, U.S. Department of Agriculture, 1100 Spring Street NW, Atlanta, GA 30367.

(4) In the States of Illinois, Indiana, Michigan, Minnesota, Ohio and Wisconsin: Midwest Regional Office, FNS, U.S. Department of Agriculture, 536 South Clark Street, Chicago, IL 60605.

(5) In the States of Arkansas, Louisiana, New Mexico, Oklahoma and Texas: Southwest Regional Office, FNS, U.S. Department of Agriculture, 1100 Commerce Street, Room 5–C–30, Dallas, TX 75202.

(6) In the States of Colorado, Iowa, Kansas, Missouri, Montana, Nebraska, North Dakota, South Dakota, Utah and Wyoming: Mountain Plains Regional Office, FNS, U.S. Department of Agriculture, 2420 West 26th Avenue, Room 430, Denver, CO 80211.

(7) In the States of Alaska, American Samoa, Arizona, California, Guam, Hawaii, Idaho, Nevada, Oregon, Trust Territory of the Pacific Islands, the Northern Mariana Islands, and Washington: Western Regional Office, FNS, U.S. Department of Agriculture, 550 Kearny Street, Room 400, San Francisco, CA 94108.

(Catalog of Federal Domestic Assistance Program No. 10.559, Summer Food Service Program for Children.)

(The Summer Food Service Program for Children is subject to Part III of Attachment A of OMB Circular No. A–95 (revised). Part III requires that Governors or their designated Plan review agency be given the opportunity to review the State plans required by Program regulations.)

Note.—The reporting and recordkeeping requirements contained in this rule are being submitted for approval to the Office of Management and Budget in accordance with the Federal Reports Act of 1942. This regulation will become effective January 1, 1981. The reporting and recordkeeping requirements may be subject to revision prior to implementation if the requirements, as presently formulated, are not approved without change by the Office of Management and Budget.

Dated: January 14, 1981.

Sydney J. Butler,

Acting Assistant Secretary for Food and Consumer Services.

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Part V

Department of Health and Human Services

Health Care Financing Administration

Medicare Program; Medigap—Certification of Medicare Supplemental Health Insurance Policies

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 403

Medicare program; Medigap—Certification of Medicare Supplemental Health Insurance Policies

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Proposed Rule.

SUMMARY: This proposal would establish a program of certification, by the Secretary, of Medicare supplemental health insurance policies (so-called Medigap policies) voluntarily submitted by insurers for review. It would implement, in part, section 507 of the Social Security Disability Amendments of 1980. HCFA will administer the certification program.

The voluntary certification program would go into effect July 1, 1982, and would apply only to policies issued in those States that do not have in effect a program for regulating Medigap policies equal to or more stringent than the one to be described in these regulations. A Supplemental Health Insurance Panel, consisting of the Secretary or a designee and four State Commissioners or Superintendents of Insurance appointed by the President, will determine the adequacy of a State's program in relation to the standards contained in the regulations.

These regulations would: (1) set standards for policies voluntarily submitted to HCFA for certification, (2) establish procedures for the certification program, and (3) promulgate the statutory requirements that the Supplemental Health Insurance Panel would use to approve State regulatory programs.

DATE: To assure consideration, comments should be received by: March 23, 1981.

ADDRESS: Address comments in writing to: Administrator, Health Care Financing Administration, Department of Health and Human Services, P.O. Box 17073, Baltimore, Maryland 21235. If you prefer, you may deliver your comments to Room 309–G Hubert H. Humphrey Building, 200 Independence Ave., S.W., Washington, D.C., or to Room 789, East High Rise Building, 6401 Security Boulevard, Baltimore, Maryland.

Please refer to BPP–91–P. Agencies and organizations are requested to submit comments in duplicate. Comments will be available for public inspection, beginning approximately two weeks after publication, in Room 309–G of the Department's office at 200 Independence Ave., S.W., Washington, D.C. 20201 on Monday through Friday of each week from 8:30 to 5:00 p.m. (202–245–7890).

FOR FURTHER INFORMATION CONTACT: Thomas Hoyer, 301–594–9690.

SUPPLEMENTARY INFORMATION: Because of the large number of comments we receive, we cannot acknowledge or respond to them individually. However, in preparing the final rule, we will consider all comments and will respond to them in the preamble to that rule.

Medicare Program

Medicare is a Federal health insurance program, provided for under title XVIII of the Social Security Act, for people 65 and older and some people under 65 who are disabled. The Medicare program consists of two parts, a Hospital Insurance Program (Part A) and a Supplementary Medical Insurance Program (Part B).

Part A, Hospital Insurance, covers hospital, skilled nursing facility (SNF) and home health care, as well as certain therapy services. It is oriented towards acute care, and its coverage provisions are based on the concept of a benefit period or "spell of illness", a period that begins when an individual receives inpatient hospital or SNF services and ends when that individual has been out of the hospital or SNF for 60 consecutive days. In each benefit period, individuals are entitled to up to 90 days of inpatient hospital care, up to 100 days of post-hospital SNF care, and up to 100 post hospital home health visits. If the full 90 days of hospital benefits are exhausted during a spell of illness, a beneficiary may draw on 60 additional lifetime reserve days.

Part B, the Supplementary Medical Insurance Program, provides coverage for physicians' services, medical and other health services (a wide range of services including diagnostic tests and X-rays, outpatient hospital services, durable medical equipment, ambulance service, prosthetic devices, physical therapy, etc.), and up to 100 home health visits per year.

Both parts of Medicare contain cost sharing provisions, that is, deductible and coinsurance. The law requires that, under Part A, the inpatient hospital deductibles and hospital and SNF coinsurance amounts be adjusted annually to reflect the rising costs of health care (Section 1813(b)(2) of the Act). Under Part A, there is currently an annual hospital deductible of $180, a daily co-payment of $45 for the 61st through the 90th day of care, and $90 a day for each lifetime reserve day. In a SNF, there is a $22.50 co-payment for care from the 21st through the 100th day.

Under Part B, medical insurance generally pays 80 percent of "reasonable charges", and the beneficiary pays 20 percent coinsurance. (Under Title XVIII, the "reasonable charge" is the amount of the actual charge of a physician or supplier that can be recognized for payment under Medicare.) Since actual charges generally exceed the "reasonable charges", beneficiaries are also responsible for the difference, unless the physician or supplier accepts "assignment" of a beneficiary's claim. In addition, the beneficiary must pay an annual $60 deductible.

There are a number of items and services that are not covered under either of Medicare's two insurance programs. These items and services include: custodial nursing home care, custodial home care, most prescription drugs, dental care, eyeglasses and eye examinations, immunizations, most foot care, and homemaker services. Beneficiaries must pay the full cost of these services out-of-pocket or obtain additional insurance protection to pay the costs.

Medicare Supplemental Health Insurance Policies—Nature and Problems

The Medicare program was never designed to cover the total cost of providing medical care for its beneficiaries. It has been estimated that Medicare paid for about 44 percent of all health care costs for its beneficiaries in 1978. The remaining 56 percent included the cost of noncovered services and cost-sharing provisions of the Medicare program. Since the enactment of the Medicare program, various insurance organizations, both profit and nonprofit, have developed and marketed health insurance policies aimed at paying health care expenses not covered by the Medicare program. In 1978, about 15 million of the 23 million Medicare beneficiaries spent $4 billion for approximately 19 million policies to supplement Medicare. These policies are commonly referred to as "Medigap" policies and principally include Medicare supplement policies, indemnity policies and specified disease policies.

Medicare supplement policies are designed to fill specific gaps in the Medicare benefit structure. These policies typically offer coverage of some or all of Medicare's deductible and coinsurance amounts and sometimes include coverage of services not covered under Medicare. There are many varieties of supplement policies with premiums and benefit structures

designed to meet the needs of people with a variety of incomes. A characteristic of most of these policies, however, is that they base their payments on Medicare's coverage and reimbursement structures. They seldom pay more than the 20 percent coinsurance amount of the "reasonable charge" recognized by Medicare. They rarely pay any of the difference between the "reasonable charge" and the actual amount that a physician or supplier of services might charge. Furthermore, they frequently do not cover a broader range of services than are covered under Medicare. The premiums for these policies are usually adjusted annually to compensate for increases in Medicare's deductible and coinsurance amounts.

Indemnity policies usually have fixed premiums and pay a predetermined amount of money when certain conditions are present or certain health care services are furnished. An indemnity policy, for example, might pay a fixed amount for each day of hospital or nursing home care, for each medical or surgical procedure required, or for a given diagnosis. The amount of benefits is usually predetermined and is not tied to the beneficiary's actual health care expenses. Indemnity benefits are usually payable without regard to other coverage.

Specified disease policies, popularly known as "dread disease policies", will pay certain specified amounts once a positive diagnosis (e.g., cancer) has been medically confirmed. As with indemnity policies, the benefits paid under specified disease policies are often fixed and are not usually tied to the beneficiary's actual expenses.

In May, 1972, the Senate Judiciary Committee, Subcommittee on Anti-Trust and Monopoly, held hearings related to the sale of Medigap policies. Since then more than a dozen other investigations and studies by congressional committees, the Federal Trade Commission, the news media, and various other individuals and agencies have revealed and confirmed certain problems with Medigap insurance. Some of the problems relate to the nature of the policies, and some of them relate to the manner in which they are sold:

1. There is such a wide variety of Medigap policies that it is difficult, if not impossible, for a beneficiary to compare them and effectively assess their relative benefits and costs.

2. The policies themselves are often written in complicated language that obscures the extent of their coverage or the nature of their exclusions. For example, many policies contain clauses which limit or exclude payment for services received in connection with medical conditions which were known to exist at the time the policy was sold. These pre-existing condition clauses can negate coverge described in other portions of the policy.

3. Medicare beneficiaries often misunderstand the coverage available under Medicare. This, when coupled with misunderstanding of coverage of the supplemental policies, may lead individuals to purchase coverage that duplicates Medicare coverage or coverage that exists under another supplemental policy, while at the same time leaving significant gaps in coverage.

4. It is also virtually impossible for Medicare beneficiaries to determine the value of the policy's benefits in relationship to the premiums paid. This relationship, known as the loss ratio, is a way of determining how much of the aggregate premium income from a policy an insurance organization spends on aggregate benefits. Many group policies return 80 to 90 cents, or more, on the premium dollar, while some individual policies return less than 25 cents. In general, Medigap policies as a class often return less money in benefits than most other health insurance policies. ("Medigap: State Responses to Problems with Health Insurance for the Elderly", T. Van Eilet; Intergovernmental Health Policy Project, The George Washington University, Washington, D.C.; October 30, 1979 (hereafter, "Medigap" by Van Eilet), p. 16.)

5. Financial incentives, including very large sales commissions, have led some insurance agents to persuade policyholders to terminate a good policy in order to subscribe to a new one. The practice is costly to the beneficiaries and often leaves them without protection for a period of time because the new policy usually has a waiting period for pre-existing conditions. In other cases, a beneficiary is persuaded to purchase additional insurance policies to increase coverage when, in fact, the additional policy duplicates rather than supplements existing protection.

6. Elderly beneficiaries tend to rely on insurance agents for information about the Medicare program and the coverage available under the Medigap policies they are offered, and they are particularly vulnerable to misrepresentation and other abuses. Evidence of fraud, forgery, and intimidation has also been uncovered.

Regulation of Medigap Policies

The McCarran-Ferguson Act of 1945 (15 U.S.C. 1011 et seq.) permitted individual States to regulate the insurance business, and the States have been traditionally responsible for regulating Medigap policies. States have general laws which affect the entire field of insurance, and a number of States have enacted, or have final approval pending of, laws and regulations specific to Medicare supplemental insurance. Despite the current level of activity among the States, however, studies have shown that the scope of regulation varies from State to State and that enforcement of existing regulations is also uneven. (See "Medigap" by Van Eilet.)

There have been several significant initiatives in recent years to address the problems associated with Medigap policies. The National Association of Insurance Commissioners (NAIC), an association of the chief insurance regulatory officials of the 50 States, the District of Columbia, Guam, Puerto Rico, and the Virgin Islands, has played a major role in the effort. The NAIC, in collaboration with HCFA, developed a "Guide to Health Insurance for People with Medicare". Over 6 million copies of the pamphlet have thus far been distributed through social security offices, insurance companies, State insurance departments, and senior citizen interest groups. More important, however, the NAIC also amended its model standards for individual accident and sickness insurance policies so they can be used by States specifically to regulate Medigap policies. The amended model, adopted by the NAIC on June 6, 1979, contains minimum standards that Medigap policies would be required to meet (Model Regulation to Implement the Individual Accident and Sickness Insurance Minimum Standards Act, as it applies to Medicare Supplemental policies: "NAIC Model Standards"). Standards address such issues as minimum coverage requirements, limits on exclusions of coverage because of pre-existing conditions, disclosure requirements, and refund requirements.

As a result of the abuses associated with Medigap policies, Congress enacted section 507 of Pub. L. 96-265 (the Social Security Disability Amendments of 1980). That section of the law established a voluntary certification program for Medicare supplemental health insurance policies (section 1882 of the Social Security Act (42 U.S.C. 1395ss)). The intent of the legislation is to establish a program that enables Medicare beneficiaries to identify Medigap policies for purchase that are represented accurately both by sales agents and promotional literature, do not duplicate Medicare or other health insurance coverage, and provide fairly priced minimum protection against

health care expenses that are not paid for by Medicare.

In the debate that preceded enactment of Pub. L. 98-265, and in the law itself, Congress recognized the progress already made by the States in the area of Medigap regulation. Further, it recognized and accepted the traditional role of the States in regulating insurance. Its intention in developing Medigap legislation was to provide the States and insurance companies with an incentive to speed up their activities to improve the regulation and quality of Medigap policies. At the same time, Congress established an alternative mechanism of certification that could be implemented at the national level for policies issued in States that choose not to establish minimum regulatory programs by July 1, 1982.

While the law relies on improve State and Federal regulation of Medigap policies as a major means of identifying and curbing abuses in the sale of Medigap policies, it also places strong reliance on consumer education as a force in improving the general quality of Medigap policy offerings. The presumption is that beneficiaries, assisted by information provided by HHS, the States, insurance companies and other sources, will become better informed, more aggressive purchasers of Medigap insurance and that insurance organizations will therefore improve the quality of the policies they offer for sale in order to retain their competitive position in the market.

The basic provisions of the Medigap legislation addressed in these regulations are as follows:

1. The statute mandates that the Secretary of HHS establish a program of review and certification of Medigap policies that meet or exceed requirements specified in the statute and regulations. The Secretary's program is voluntary in that it provides for review of only those policies that are voluntarily submitted by insurers (section 1882(a) of the Act). It goes into effect July 1, 1982. (The Secretary has determined that HCFA will administer the voluntary program.)

2. Medigap policies must meet the NAIC Model Standards in order to be certified in the Secretary's program. (A summary of the NAIC Model Standards applicable to Medigap policies is presented below.) However, Congress structured the voluntary program so that it would apply the NAIC Model Standards to group policies as well as individual policies and also established minimum loss ratio requirements for each category of policy (section 1882(c) of the Act).

The NAIC has standards applicable to a variety of policies, including Medicare supplement policies, indemnity policies, and specified disease policies. However, it is important to note that the NAIC Model Standards that Congress incorporated by reference into P.L. 98-265 specifically address only "Medicare supplement policies". Consequently, the focus of the voluntary certification program is on those policies and does not address the certification of, or minimum standards for, "specified disease policies" or "indemnity policies".

3. The Secretary's voluntary certification program will apply only in those States that have not implemented, under State law, a regulatory program that applies standards equal to or more stringent than the NAIC Model Standards and the loss ratio requirements as specified in the statute (section 1882 (b) and (l) of the Act). Regarding the NAIC standards and loss ratio requirements, Congress clearly did not intend to encourage States to limit their regulatory programs to the minimum level specified in the law. On the contrary, the intent of Congress was to encourage States to implement regulatory programs that they determine are appropriate to their needs and to assure States that those programs meeting or exceeding specified minimum standards would be approved by a panel, as specified below. (See Conference Committee Report on Social Security Disability Amendments of 1980, H.R. 3236, Report No. 96-944, pp. 76-77.)

4. The statute also provides for a Supplemental Health Insurance Panel that will determine whether or not State regulatory programs for Medigap policies meet the requirements of the law. The Panel will consist of the Secretary or a designee, who will serve as chairperson, and four State Commissioners or Superintendents of Insurance, to be appointed by the President (section 1882(b) of the Act).

5. The Secretary will authorize the use of an emblem by an insurer to indicate that a policy has been certified as meeting the standards of the voluntary certification program (section 1882(a) of the Act).

The statute contains provisions other than those addressed in these regulations. These include Federal criminal penalties designed to assist States and the Federal government in dealing with abuses identified in the various studies and investigations of Medigap policies (section 1882(d) of the Act). These penalties basically apply to cases in which false statements or misrepresentations are made about a policy's certification or about the extent and nature of the policy's coverage for the purpose of obtaining certification. They also apply to cases of misrepresentation by an insurance agent as an employee or agent of the Federal government (e.g., of the Medicare program) and to cases in which an individual sells a policy that is known to be duplicative of Medicare coverage or other health insurance the individual has. There is also a penalty governing the use of the mails for the delivery of advertisement of Medicare supplemental health insurance policies that have not been approved for sale in a State.

Section 1882(f) of the Act requires the Secretary to undertake a comprehensive study of the comparative effectiveness of various State regulatory approaches in (a) limiting marketing and agent abuse, (b) assuring the dissemination of information to Medicare beneficiaries (and to other consumers) that is necessary for informed purchase of Medigap policies, (c) promoting policies that provide reasonable economic benefits for the insured, (d) reducing the purchase of unnecessary duplicative coverage, (e) improving price competition, and (f) establishing effective State regulatory programs.

At the same time, the Secretary's study must address the need for standards for, or certification of, health insurance policies other than Medicare supplemental health insurance policies sold to Medicare beneficiaries. In order to carry out this study, HCFA needs to collect information concerning policy provisions, premium cost, premium volume and number of policyholders per policy on a State by State basis, loss ratio per policy, consumer knowledge of Medicare and other private health insurance coverage, and consumer purchasing behavior. This study would be used to collect baseline data for the later evaluation of the impact of the Federal voluntary certification program. Suggestions on how to obtain this information would be appreciated. Ideas on how to identify all health insurance products and the companies that sell them to Medicare beneficiaries, and ideas on comparing insurance policies, e.g., a scoring system, and establishing some method for comparing loss ratios would also be welcome.

The Secretary is also required to submit to Congress, no later than July 1, 1982, and at least every two years thereafter, a report evaluating the effectiveness of the certification procedures and the criminal penalties established under the law (section 1882(f) (2) of the Act). The report must include an analysis of the impact that

the certification program and the penalties have on the types, market share, value, and cost of policies certified by the Secretary. The report will also address whether the certification program and the criminal penalties should be continued or changed. We invite suggestions and comments regarding the potential sources of information for the report, the types of information that would be most appropriate, and the organizations or individuals that should be consulted.

Finally, section 1882(e) requires that the Secretary furnish all Medicare beneficiaries information that will enable them to make informed purchases of Medigap policies. Prior to the enactment of this provision, HCFA's Office of Beneficiary Service began distributing informational materials and conducting training classes for, and distributing training materials to, individuals who have contact with Medicare beneficiaries on the State and local levels. Those individuals will be in a position to inform beneficiaries of the problems inherent in the selection of Medigap insurance and of the certification program.

Provisions of the Regulations

State Regulation of Health Insurance Policies

Congress specifically stated that nothing in the statute should be construed so as to affect the right of any State to regulate Medicare supplemental health insurance policies that are marketed within its borders (section 1882(j) of the Act). This same provision would be contained in the regulations. In practice, for example, a policy certified in one State, either by that State or under the voluntary program, could be barred from sale in a second State, if the policy fails to meet the more stringent requirements of the second State.

Medicare Supplemental Health Insurance Policy

These regulations would define a Medicare supplemental health insurance policy, in accordance with section 1882(g) (1) of the Act, as a health insurance policy or other health benefit plan that a private entity offers to a Medicare beneficiary to supplement Medicare. Under the definition, the policy would provide payment for expenses that are not reimbursed under the Medicare program because of deductibles, coinsurance, noncoverage, or other limitations.

The term "Medicare supplemental health insurance policy" (Medigap policy) would include individual as well as group policies. In accordance with section 1882(c) of the Act, policies issued as a result of solicitation of individuals through the mail or by mass media advertising (including both print and broadcasting advertising) would be considered individual policies. The term "policy" would include a certificate issued under a policy (section 1882(g)(1) of the Act). However, in accordance with section 1882(g) of the Act, group health insurance policies of employers and labor organizations would not come under the provisions of these regulations. These policies were exempted for a number of reasons: they are usually sold without regard to age; they are not often sold specifically to supplement Medicare; and abuses commonly associated with Medigap policies have not generally been found to occur with respect to them. In fact, many of these policies have proven to be the best Medicare supplement available to retired workers.

Congress also intended that group health insurance policies of trade, professional, and occupational associations be exempted (Conference Committee Report on H.R. 3236, Report No. 96-944, p. 77). A policy would be exempt, however, only if the association—

1. Is composed of individuals all of whom are actively engaged in the same profession, trade, or occupation;
2. Has been maintained in good faith for a purpose other than the obtaining of insurance; and
3. Has been in existence at least two years before the date of its initial offering of a Medigap policy to its members.

General Requirements

In order to be certified under the voluntary or a State program, a policy must meet standards specified in section 1882(c) of the Act. It would have to meet the NAIC standards and the loss ratio standards, as provided for below. These standards would have to be met or exceeded either in a single policy or, in the case of policies of nonprofit hospital and medical service associations, in two or more policies issued in conjunction with one another.

NAIC Model Standards

Medigap policies must meet the NAIC model standards in order to be certified in either the voluntary program or an approved State program. (See section 1882(c)(1) of the Act.) These proposed regulations, however, would differ from the NAIC standards in specified instances:

1. The NAIC standards address only individual policies. However, the statute clearly addresses both individual and group policies, thereby establishing that Congress intended both individual and group policies to meet requirements prescribed by the NAIC standards (including the standards relating to minimum benefit provisions, pre-existing condition limitations, full disclosure, and cancellation clauses).
2. The NAIC standards define a Medigap policy as one offered to an individual eligible for Medicare by reason of age. The statute, however, defines a Medicare supplemental health insurance policy as one offered to an individual entitled to Medicare, without regard to age (section 1882(g) of the Act). Therefore, in these regulations, a certified Medigap policy for any Medicare beneficiary would be required to comply with the standards prescribed by the statute.
3. The NAIC standards provide optional loss ratio guidelines for individual policies only. These regulations would mandate the loss ratio standards for individual and group policies contained in the statute (section 1882(c) of the Act), as discussed below.

Loss Ratios

The proposed regulations would require that Medicare supplemental policies meet the loss ratio standards mandated in section 1882(c) of the Act. Policies would be expected to return to policyholders in the form of aggregate benefits provided under the policy at least 75 percent of the aggregate amount of premiums in the case of group policies and 60 percent in the case of individual policies. These regulations would specify the formula for determining loss ratios and the components and assumptions used in applying that formula. In addition, under the voluntary certification program insurers would be required to submit supporting information to HCFA that identifies the data incorporated into that formula. We believe that such specificity is necessary in the regulations to assure that policies meet the loss ratio standards of the law and that loss ratio calculations are done "in accordance with accepted actuarial principles and practices", as mandated in section 1882(c)(2) of the Act. Accordingly, insurers would be required to submit the following, together with the policy and the loss ratio computation:

1. The scale of premiums for the loss ratio calculation period.
2. A description of all assumptions made in the development of the loss ratio.
3. The formula used to calculate gross premiums.

4. The expected level of earned premiums in the loss ratio calculation period.

5. The expected level of incurred claims in the loss ratio calculation period.

We would also require that a qualified actuary sign an actuarial certification, a declaration that the expected loss ratio for a given policy is based on actuarial assumptions that are appropriate and reasonable, taking into account actual policy experience, if any, and reasonable expectations. For purposes of these regulations, a "qualified actuary" would mean a member in good standing of the American Academy of Actuaries, or a person who has otherwise demonstrated his or her actuarial competence to the satisfaction of the Commissioner or Superintendent of Insurance of the domiciliary State of the insurer.

Note.—These regulations address only the specifications of the loss ratio calculation and supporting information that would be required when the insurer submits a policy to HCFA in order to obtain initial certification. For a certified policy to maintain its certification, the insurer must submit material, including an updated loss ratio, at least on an annual basis to HCFA. The law clearly envisions that the Secretary's evaluation of that material would extend to the actual experience of the policy in previous years. Therefore, for purposes of those subsequent submittals, HCFA would require both a loss ratio that addresses anticipated experience and data on actual claims and premiums for that policy. We intend to publish proposed regulations, at a later date, regarding the specific data that HCFA would require.

In dealing with the issue of loss ratio specifications, HCFA has recognized that it is necessary to establish the formula for loss ratio calculations and to define carefully its direct and indirect components. The definitions have been included because of HCFA's recognition that "accepted actuarial principles and practices" permit a wide range of discretion to the actuary in selecting among the techniques and data at his or her disposal.

The loss ratio formula has been stated specifically in the regulations as a simple ratio of benefits to premiums. In the ratio, "benefits" would be computed by adding the present value, on the initial calculation date, of expected incurred benefits in the loss ratio calculation period to the present value, on the initial calculation date, of the total policy reserve at the last day of the loss ratio calculation period. The total policy reserve on the initial calculation date would then be subtracted. "Premiums" would be composed of the present value, on the initial calculation date, of expected earned premiums for the loss ratio calculation period. For purposes of the formula, "present values" could be an aggregate, computed by the insurer for a period not to exceed 12 consecutive months, of expected earned premiums and incurred benefits.

In developing definitions of the various direct and indirect loss ratio components, HCFA recognizes, as indicated above, that "accepted actuarial principles and practices" encompass a range of choices that are made by the actuary on the basis of his or her professional judgment as to appropriate data and techniques available. To avoid widely varying professional interpretations, HCFA has provided definitions for the components. These definitions specify the actuarial concepts that HCFA, on the basis of its consultations with actuaries internally and in the insurance industry, believes are appropriate for developing loss ratios for purposes of these regulations.

In addition to the formula and definitions discussed above, it will also be necessary for HCFA to specify other requirements relating to types of computations, assumptions, and data to be considered in developing loss ratios for purposes of these regulations. HCFA believes that these specifications will be necessary to assist actuaries in the development of loss ratios that are consistent will the intent of the law and regulations. These further issues are discussed in the next section of this preamble, which invites comments specifically on a number of the issues now under development.

We believe that the approach to loss ratio requirements taken in these regulations will assure that the requirements of the law are met, will provide for consistent application of the loss ratio threshold standards to all policies submitted for review, and enable comparison among policies on the basis of loss ratios. Once the system is fully articulated and in place, HCFA believes that different actuaries, considering the same Medigap policy and taking into account the principles and concepts described in these regulations, would be able independently to achieve comparable loss ratios.

Solicitation of Comments Specific to Loss Ratios

As we have noted above, some of the specifications for loss ratio determinations are not yet complete. HCFA is studying the practices of various States and is consulting insurance and actuarial groups and other professionals in the field to develop these specifications. We intend to take into consideration the data acquired in that study and through those consultations, and also the comments to this proposed rule, when we prepare the final rule. In addition, we will provide for a further comment period for the loss ratio specifications in the final regulations. We invite comments on all aspects of the loss ratio proposal; however, we are especially interested in comments on the following:

1. In determining premiums and benefits, the insurer must provide for various factors, as appropriate. Two of those are: (a) the expected future change in the distribution by age and sex of the insured group; and (b) the expected wearing off of the impact, in the early period(s) after a policy is issued, of the process the company used to select the insured and of clauses that temporarily exclude pre-existing conditions from coverage. These factors will influence claims. For example, the company that screens and selects the insured (excluding, for example, those with certain health conditions) will have fewer claims to pay in the early years of a policy than the company that guarantees acceptance to all applicants. (The insured in the former instance will most likely be healthier, at lower risk.) We believe that the insuring organization, in calculating the benefits of a policy, should provide for the impact of these factors on claims beyond the loss ratio calculation period.

2. Assumptions regarding a variety of factors, such as lapse of policies, interest, mortality, and morbidity, are integral components of a loss ratio formula. We will address them in final regulations, but we invite comments and suggestions now for our consideration.

3. These proposed regulations would require the insurer to submit supporting data for loss ratios (e.g., scale of gross premiums, a description of assumptions, formula used to calculate gross premiums, and expected level of earned premiums and incurred claims). We invite comments on that supporting data and recommendations regarding other or additional data that would be appropriate.

The Supplemental Health Insurance Panel

Establishment of the Supplemental Health Insurance Panel is authorized by section 1882(b) of the Act. The Panel will consist of the Secretary or a designee, who serves as chairperson, and four State Commissioners or Superintendents of Insurance appointed by the President. HCFA published a notice in the Federal Register on August 5, 1980 (45 FR 51923) inviting interested

parties to recommend, by September 4, 1980, State Commissioners and Superintendents of Insurance to serve on the Panel. The President is required by section 1882(b)(2) of the Act to make appointments to the Panel no later than December 31, 1980.

The principal function of the Panel is to assess State regulatory programs for Medigap policies and to determine if those programs meet minimum requirements. If the Panel approves a program as meeting the requirements of the law, that State has an "approved program". The decisions of the Panel are binding on HCFA; that is, HCFA can implement the voluntary program only in those States that do not have approved programs. The Secretary shall report to Congress, no later than January 1, 1982, the Panel's initial determinations as to which States cannot be expected to have implemented an approved program by July 1, 1982. (See section 1882(i)(2)(B) of the Act and Conference Committee Report on H.R. 3236, Report No. 96-944, p. 78.) Finally, the Panel could maintain oversight to assure that States satisfactorily implement their regulatory programs once the Panel has approved them.

The Panel is an independent component within HHS and will be responsible for establishing and implementing its own operating procedures. While those procedures are beyond the scope of these regulations, we are taking this opportunity to identify some of the questions and issues that will be before the Panel, and we invite comments and suggestions.

1. What criteria should the Panel use to determine whether or not a State has established and implemented a satisfactory program for the regulation of Medigap policies?

2. Determinations of the Panel are binding on States and on HCFA. Should the Panel establish procedures so that States might seek review of its determinations before they become effective? If so, what should they be?

3. How should the Panel communicate its determinations to affected parties, principally the State Commissioners and Superintendents of Insurance and the insurance industry? Should notices in the **Federal Register** be used for this purpose? What other means could be used?

Emblem

Section 1882(a) of the Act provides for an emblem, a graphic symbol the Secretary uses to indicate that a policy has been certified as meeting the requirements of the voluntary certification program. We would authorize the insurer to imprint the emblem on certified policies. (However, where a State prohibits the display of such symbols, insurers could not use the emblem.) We are currently in the process of designing the emblem.

We will also empower States with approved programs for regulating Medigap policies to authorize insurers to use the emblem on policies issued in their States.

As a safeguard to beneficiaries, we would require that an insurer could use the emblem only if the insurer agrees to inform the policyholder in writing within 60 days after his or her policy loses its certification.

States With Approved Regulatory Programs

HCFA would not review or certify policies issued in a State with an approved program for the regulation of Medigap policies. Those policies are presmued to meet the standards of the law and would be deemed certified. For a State to have an "approved program", the Panel must determine that the State has established, under State law, a regulatory program that applies standards equal to or more stringent than the NAIC standards and loss ratio requirements, specified in section 1882(c) of the Act, to each Medicare supplemental health insurance policy issued in that State. (See section 1882(b) of the Act.) For purposes of these regulations, "policy issued in that State" would mean—.

1. A group policy, if the holder of the master policy resides in that State; and

2. An individual policy, if a holder of that policy resides in that State. (See section 1882(g)(2)(c) of the Act.)

The Voluntary Certification Program

The Secretary has determined that HCFA will administer the voluntary certification program. Under these regulations, the procedures of that program would be as follows:

1. We would review policies that insurers voluntarily submit. However, we would review and certify only those policies issued in a State that does not have approved regulatory program for all Medicare supplemental health insurance policies issued in that State.

2. The insurer would be required to submit the following material to HCFA for review:

a. A copy of the policy and an outline of the policy's coverage, in the form prescribed by the NAIC model standards.

b. A statement that the information submitted for certification is accurate and complete and does not misrepresent any material fact. We would require that the president of the insurance company, or a designee, sign this statement. We believe that this requirement is necessary to assure that the material is accurate and that it has been submitted by an authorized representative of the insuring organization.

c. An actuarial certification, as specified in the regulations.

d. A statement that the policy meets the requirements of the State in which the policy is issued and of the States in which the policy will be marketed as a certified policy.

e. A list of the States in which the insurer is authorized to market the policy.

f. A statement that the insurer agrees to inform the policyholder in writing if HCFA decertifies that policy.

3. We would certify policies that meet or exceed the NAIC standards and loss ratio requirements specified in regulations.

4. We would certify a policy only if the insurer agrees to notify the policyholder in writing within 60 days of decertification, if the policy was identified as a "certified policy" at the time of sale and later decertified.

5. We would continue to recognize the State's role in regulating insurance policies marketed within its borders. Therefore, we would not certify a policy for sale in a State unless it meets both the requirements of these regulations and requirements of the State in which it is issued and of the States in which the policy will be marketed as a certified policy.

6. A policy that continues to meet the standards would retain its certification if the insurer files with HCFA, no later than June 30 of each year, updated versions of the documents listed in item 2 above. Submittal by this date is required by the statute (Section 1882 (a)).

Insurers would be encouraged to file the above material as early as possible, between January 1 and June 30, to facilitate annual review. The first annual submission of material for a newly certified policy would be due no later than June 30 of the calendar year following HCFA's certification of that policy.

Although the statute mandates that the insurer file material annually, no later than June 30, the insurer could be required in some cases to submit the material before that date. To obtain certification of a policy, the insurer must calculate a loss ratio for an identified period, called the "loss ratio calculation period". For the policy to retain its certification beyond the last date of that period, the insurer would have to submit a complete packet of material, including an updated loss ratio determination.

Accordingly, the regulations would require that the insurer submit the necessary documents no later than June 30 or the last date of the loss ratio calculation period, whichever occurs earlier.

7. We would decertify a policy if the policy fails to meet the standards specified in regulations or if the insurer fails to file material, as specified above.

8. We would authorize insurers to imprint the Secretary's emblem on certified policies. We would also monitor insurers to assure that they notify policyholders when a policy bearing the emblem loses its certification.

9. We would inform each State of all policies certified or decertified under the voluntary program.

Appeal of HCFA Determinations

These regulations would provide opportunity for an administrative review, if HCFA determines not to certify, or to decertify, a policy under the voluntary program.

1. *Notice to the insurer.* If HCFA determines not to certify, or to decertify, a policy, HCFA would send a notice informing the insurer of the following:

a. The reasons for the determination.

b. That the insurer has 30 days from the date of the notice to appeal, in writing, HCFA's determination and to submit additional information to HCFA for review.

c. That if the insurer appeals, HCFA will conduct an administrative review, as provided for below.

d. That in a case involving decertification, the decertification will go into effect in 30 days from the date of the notice, unless the insurer appeals. Should the insurer appeal, the policy would retain its certification, pending the results of the administrative review.

2. *Administrative review.*

a. A HCFA official, not involved in the original determination, would conduct an independent review of the material, including any additional information the insurer provides.

b. The administrative review would be initiated within 90 days of the date of the initial notice to the insurer of the decision to decertify, or not to certify, a policy.

c. Within 15 days of completion of the review, HCFA would inform the insurer of the results of that review, with an explanation of the final determination. In a decertification case a final decision to decertify would go into effect 15 days after the date of the notice to the insurer of the final determination.

We believe that these procedures afford a reasonable opportunity for the insurers to contest an adverse determination on certification, without undue administrative burden either on HCFA or the insurer.

Transfer of Policies From a State Program to the Voluntary Program

These regulations would provide for the orderly transfer of Medigap policies deemed certified under an approved State program to the voluntary program, if the Panel determines that the State no longer has an approved program. If the Panel determines that a State ceases to have an approved regulatory program for Medigap policies, all policies issued in that State immediately lose their deemed certification and automatically come under the aegis of the voluntary program. Policies that have certification status from the State on the day that the determination of the Panel is effective would be presumed to meet the requirements of, and would be certified under, the HCFA progam until the earlier of the following:

1. Six months after the effective date of the Panel's determination.

2. The expiration date of the certification received under the State program.

If the insurer wishes to have a policy retain its certification beyond the date specified above, the insurer would be required to submit the policy to HCFA for review and certification. The insurer is encouraged to submit the policy as soon as possible to enable HCFA to review the material and make a determination while the policy still retains its certification.

These regulations would not address the transition that would occur when policies certified under the HCFA program become subject to an approved State regulatory program. When the Panel determines the State has an approved program, all Medigap policies issued in that State come under the authority of that State's program. We anticipate that the State would provide for the orderly tranfer of policies from HCFA's certification progrm to its own regulatory program to avoid unnecessary difficulties for beneficiaries as well as insurers. We recommend that States begin to develop procedures for the transfer of policies from the HCFA program to their own programs.

Effective Dates

Final regulations would be effective 60 days after publication, except for the following:

1. The effective date of certification of a policy would be July 1, 1982 or later. That is also the first date that a certified policy could bear the emblem (section 1882(i) of the Act). The effective date for the use of the emblem is based on Congressional concern that insurers not be given an unfair competitive advantage in its use, specifically insurers with policies in force that already meet or exceed the standards specified in the statute. Congress intended to give insurers adequate lead time to review their policies and to make changes, as appropriate, in order to be certified under the voluntary program or to meet the requirements of an approved State program. In addition, States that wish to establish approved programs would have time to review and amend State laws and regulations. Finally, this also affords reasonable time for the Panel to assess State programs, so that HCFA would know those States in which the voluntary program would be operative.

2. HCFA cannot begin to certify policies until the Panel's determinations, as to which States have established programs that meet the requirements of the statute, become effective. Section 1882(i) of the Act specifies that the Panel's initial determinations must be submitted to Congress no later than January 1, 1982 and that they become effective 60 days later. In counting those 60 days, "days on which either House is not in session because of an adjournment sine die or an adjournment of more than three days to a day certain are excluded in the computation." (See section 1882(i)(2)(B) of the Act.)

In order to facilitate the start of the voluntary program and to enable companies to display the emblem on approved policies on July 1, 1982, HCFA would begin reviewing policies issued in States found not to have satisfactory programs as soon as the initial determinations of the Panel are sent to Congress. HCFA's certification of those policies, however, would not become effective before July 1, 1982. Moreover, if the Panel should reverse an earlier negative determination, by approving the State's regulatory program, any policy that HCFA reviewed, and that is issued in that State, would immediately come under the State program.

The Department is required to submit section 403.245 of the regulations to the Office of Management and Budget (OMB) for review and approval. This section deals with the submission of information by an insuring organization in order to obtain and maintain certification under the voluntary program. The Department will submit this section to OMB.

Economic Impact

The Department has analyzed the economic impact of these proposals and does not believe that they are "major" within the meaning of Executive Order

12044. For example, these proposals would not create a cost impact of $100 million or more within the next five years.

Direct administrative costs to beneficiaries, the insurance industry, States, and Federal government are unlikely to exceed several million dollars annually, compared to current costs approaching $4 billion annually for Medigap policies and approximately $122 million for State insurance regulation (covering all insurance, not just Medigap). The insurance companies would not be required to submit data to HCFA which they would not ordinarily have prepared either for internal use or State review; or both. However, some States do not now review policy content in detail; and these proposals may have consequential impact in insurance commissions in those States. Also, although we have sought to minimize administrative burdens, further improvements may be possible. We request comments on any aspect of administrative requirements in these proposals for which burden could be reduced further.

The proposed rule would create improved information for consumers. Nothing in the proposal imposes entry restrictions, licensing restrictions, or other forms of "command and control" government regulation. In addition, certification is voluntary. Accordingly, we do not believe that these proposals have direct regulatory impact on the insurance industry. Clearly, however, they will result in a market response over time as newly informed consumers purchase better policies and the insurance industry adjusts its policies to meet consumer expectations. We have no quantitative basis for projecting these responses at this time, but expect them to involve an increased proportion of the $4 billion spent to Medigap policies to be returned to consumers in the form of benefits, with offsetting reductions in administrative cost such as selling expenses. There should be no adverse impact, except insofar as companies unable or unwilling to adjust to a more competitive market lose market share. The study required by law in 1982 will address this issue, but we welcome comments at this time.

NAIC Model Standards

For the reader's information, we present here a summary of the basic requirements of the NAIC model standards, as applicable to Medigap policies. Complete copies of the text may be obtained from The National Association of Insurance Commissioners, 350 Bishops Way, Brookfield, Wisconsin 53004; Attention: Dana Horenberger, Publications Coordinator.

1. *General Provisions:*

a. "Medicare Supplement Coverage" means a policy of accident and sickness insurance (1) that is designed primarily to supplement Medicare, or is advertised, marketed or otherwise purported to be a supplement to Medicare, and (2) that meets the requirements of these standards.

b. The terms "Medicare Supplement", "Medigap", and words of similar import must not be used to characterize a policy, unless the policy is issued in compliance with these standards.

c. A policy issued as a "Medicare Supplement Coverage" must not include limitations or exclusions that are more restrictive than those of Medicare for any type of care covered under the policy.

Note.—The drafters of the NAIC Model Standards intended that nonprofit hospital and medical service associations be subject to these standards. In States where such hospital and medical service associations are prohibited from issuing single subscriber contracts that include all of the benefits required by these standards, the issuing entity must meet the following requirements: Subscriber contracts (1) must include as much of those benefits as are permitted, and (2) must be issued in conjunction with another contract that includes at least the remainder of the minimum benefits required. In that event, the combination of contracts will be considered to meet these standards.

2. *General Coverage provisions:* These are minimum standards and do not preclude policies from including additional benefits.

a. "Medicare benefit period" means the unit of time used in the Medicare program to measure use of services and availability of benefits under Part A, Medicare hospital insurance.

b. "Medicare eligible expenses" means health care expenses of the kinds covered by Medicare, to the extent that these expenses are recognized as reasonable by Medicare. Payment of benefits by insurers for Medicare eligible expenses may be conditioned upon the same or less restrictive payment conditions, including determinations of medical necessity, as are applicable to Medicare claims.

c. Except as provided for in paragraphs d and e of this section, policies must not contain waivers to exclude, limit, or reduce coverage or benefits for specifically named or described pre-existing diseases or physical conditions.

d. Pre-existing condition limitations must not exclude coverage, for more than 6 months after the effective date of coverage under the policy, of a condition for which medical advice was given by, or treatment was recommended by or received from, a physician within 6 months before the effective date of the coverage.

e. Coverage must not be subject to any exclusions, limitations, or reductions that are inconsistent with the exclusions, limitations or reductions permissible under Medicare. A policy may, however, stipulate that coverage is not provided for any expenses to the extent of any benefit available to the insured person under Medicare.

f. Coverage must not indemnify against expenses resulting from sickness on a different basis from losses resulting from accidents.

g. Coverage must provide that benefits designed to cover cost-sharing amounts under Medicare will be changed automatically to coincide with any changes in the applicable Medicare deductible amount and copayment percentage factors. Premiums may be changed to correspond with such changes.

3. *Minimum Benefit Provisions:* Medicare supplemental coverage must provide at least the following:

a. Coverage of Part A Medicare eligible expenses for hospitalization to the extent not covered by Medicare from the 61st day through the 90th day in any Medicare benefit period.

b. Coverage of Part A Medicare eligible expenses incurred as daily hospital charges during use of Medicare's lifetime inpatient reserve days.

c. Upon exhaustion of all Medicare hospital inpatient coverage, including the lifetime reserve days, coverage of 90 percent of all Medicare Part A eligible expenses for hospitalization not covered by Medicare, subject to a lifetime maximum benefit of an additional 365 days.

d. Coverage of 20 percent of Medicare eligible expenses under Part B regardless of hospital confinement, subject to a maximum calendar year out-of-pocket deductible of $200 of such expenses and to a maximum benefit of at least $5,000 per calendar year.

4. *Disclosure Provisions:*

a. All policies, except single premium nonrenewable policies and those resulting from direct response solicitation, must have a refund notice prominently printed on, or attached to, the first page of the policy. That notice must state that the policyholder has the right to return the policy within ten days of its delivery and to have the premium refunded if, after examination of the policy, the policyholder is not satisfied for any reason. With respect to policies issued as a result of a direct response

solicitation (that is, issued as result of solicitation through the news media or the mail), the policy must have a notice prominently printed on, or attached to, the first page of the policy stating in substance that the policyholder has the right to return the policy within 30 days of its delivery and to have the premium refunded if, after examination of the policy, the policyholder is not satisfied for any reason.

b. All insurers must provide an appropriate outline of coverage for a Medicare supplement policy. The insurers must deliver the outline to the applicant at the time application is made; and, except for a direct response policy, the insurer must obtain verification of receipt of that outline. The items included in the outline must appear in the sequence prescribed below. (The coverage outline that follows is taken verbatim from the NAIC Model Standards.)

(Company Name) Medicare Supplement Coverage Outline of Coverage

(1) Read Your Policy Carefully—This outline of coverage provides a very brief description of the important features of your policy. This is not the insurance contract and only the actual policy provisions will control. The policy itself sets forth in detail the rights and obligations of both you and your insurance company. It is, therefore, important that you Read Your Policy Carefully!

(2) Medicare Supplement Coverage—Policies of this category are designed to supplement Medicare by covering some hospital, medical, and surgical services which are partially covered by Medicare. Coverage is provided for hospital inpatient charges and some physician charges, subject to other limitations which may be set forth in the policy. The policy does not provide benefits for Custodial Care such as helping in walking, getting in and out of bed, eating, dressing, bathing and taking medicine (delete if such coverage is provided).

(3) (a) (for agents:) Neither (insert company's name) nor its agents are connected with Medicare.

(b) (for direct response:) (insert company's name) is not connected with Medicare.

(4) (A brief summary of the major benefit gaps in Medicare Parts A and B with a parallel description of supplemental benefits, including dollar amounts, provided by the Medicare Supplement Coverage in the following order:)

Service	Benefit	Medicare pays	This policy pays	you pay
Hospitalization:				
Semiprivate room and board general nursing and miscellaneous hospital services and supplies.	First 60 days	All but $(180)	$	$
	61st to 90th day	All but $(45) a day		
Includes meals, special care units, drugs, lab tests, diagnostic X-rays, medical supplies, operating and recovery room, anesthesia and rehabilitation services.	91st to 150 day	All but $(90) a day		
	Beyond 150 days	Nothing		
Posthospital skilled nursing care: In a facility approved by Medicare, you must have been in a hospital for at least 3 days and enter the facility within 14 days after hospital discharge.	First 20 days	100% of costs		
	Additional 80 days	All but $(22.50) a day		
	Beyond 100 days	Nothing		
Medical expense	Physician's services, inpatient and outpatient medical services and supplies at a hospital, physical and speech therapy and ambulance.	80% of reasonable charge (after $(60) deductible.		

(5) (A statement that the policy does or does not cover the following):

(a) Private duty nursing.

(b) Skilled nursing home care costs (beyond what is covered by Medicare).

(c) Custodial nursing home care costs.

(d) Intermediate nursing home care costs.

(e) Home health care (above number of visits covered by Medicare).

(f) Physician charges (above Medicare's reasonable charge).

(g) Drugs (other than prescription drugs furnished during a hospital or skilled nursing facility stay).

(h) Care received outside of U.S.A.

(i) Dental care or dentures, checkups, routine immunizations, cosmetic surgery, routine foot care, examinations for the cost of eyeglasses or hearing aids.

(6) (A description of any policy provisions which exclude, eliminate, resist, reduce, limit, delay, or in any other manner operate to qualify payment of the benefits described in (4) above, including conspicuous statements:)

(a) (That the chart summarizing Medicare benefits only briefly describes such benefits.)

(b) (That the Health Care Financing Administration or its Medicare publications should be consulted for further details and limitations.)

(7) (A description of policy provisions respecting renewability or continuation of coverage, including any reservation of right to change premium.)

(8) (The amount of premium for this policy.)

42 CFR Chapter IV, Subchapter A, is amended by adding a new Part 403 and Subpart B to read as follows:

PART 403—SPECIAL PROGRAMS AND PROJECTS

* * * * *

Subpart B—Certification of Medicare Supplemental Health Insurance Policies

Sec.

403.200 Basis and scope.

General Provisions

403.206 State regulation of insurance policies.
403.212 Medicare supplemental health insurance policy.
403.215 General standards for certified Medicare supplemental health insurance policies.
403.218 NAIC model standards.
403.221 Loss ratio standards.
403.224 Calculation of expected loss ratios: General provisions.
403.225 Calculation of expected loss ratios: Date and time frame provisions.
403.227 Actuarial certification.
403.230 Supplemental health insurance panel.
403.234 Emblem.

State Regulatory Programs

403.240 State with an approved regulatory program.
403.242 Certification of policies.

Voluntary Certification Programs

403.245 Requirements for obtaining certification.
403.248 Review and certification of policies.
403.251 Submittal of material to retain certification.
403.255 Decertification of policies.
403.258 Termination of a State program: Transfer of policies.
403.260 Administrative review of HCFA determinations.

Authority: Sections 1102, 1871, and 1882 of the Social Security Act (42 U.S.C. 1302, 1395hh, and 1395ss).

§ 403.200 Basis and scope.

This subpart implements, in part, section 1882 of the Social Security Act, which provides for voluntary certification, by the Secretary of Health and Human Services, of Medicare supplemental health insurance policies. The intent of the legislation is to establish a program that enables Medicare beneficiaries to identify Medicare supplemental health insurance policies that do not duplicate Medicare coverage and that provide adequate, fairly priced protection against health care expenses that are not covered by Medicare. This subpart sets forth the standards and procedures HCFA will use to implement the certification program.

General Provisions

§ 403.208 State regulation of insurance policies.

The provisions of this subpart do not affect the right of a State to regulate policies marketed in that State.

§ 403.212 Medicare supplemental health insurance policy.

(a) Except as specified in paragraph (c) of this section, "Medicare supplemental health insurance policy" (policy) means a health insurance policy or other health benefit plan—

(1) That a private entity offers to a Medicare beneficiary; and

(2) That provides payment for expenses incurred for services and items that are not reimbursed under the Medicare program because of deductibles, coinsurance, or other limitations under Medicare.

(b) Medicare supplemental health insurance policy includes the following:

(1) An individual policy. For purposes of this section, "individual policy" includes any policy issued as a result of solicitation of individuals—

(i) Through the mail; or

(ii) By mass media advertising.

(2) A group policy.

(3) A certificate issued under a policy.

(c) Medicare supplemental health insurance policy does not include any of the following health insurance policies or health benefit plans:

(1) A policy or plan of one or more employers for employees, former employees, or any combination thereof.

(2) A policy or plan of one or more labor organizations for members, former members, or any combination thereof.

(3) A policy or plan of the trustees of a fund established by one or more labor organizations, one or more employers, or any combination, for any one or combination of the following:

(i) Employees.

(ii) Former employees.

(iii) Members.

(iv) Former members.

(4) A policy or plan of a professional trade or occupational association, if the association—

(i) Is composed of individuals all of whom are actively engaged in the same profession, trade, or occupation;

(ii) Has been maintained in good faith for a purpose other than obtaining insurance; and

(iii) Has been in existence for at least two years before the date of its initial offering of a Medicare supplemental health insurance policy to its members.

§ 403.215 General standards for certified medicare supplemental health insurance policies.

(a) A policy that meets the requirements of this subpart will be either—

(1) Deemed certified in a State with an approved regulatory program, as provided for in § 403.242; or

(2) Certified under the voluntary certification program, as provided for in § 403.248.

(b) To be certified under paragraph (a) of this section, a policy must meet—

(1) The NAIC model standards of § 403.218;

(2) The loss ratio standards of § 403.221; and

(3) For purposes of paragraph (a)(2), any State requirements applicable to a policy—

(i) Issued in that State; or

(ii) Marketed in that State as a certified policy.

(c) The standards specified in §§ 403.218 and 403.221—

(1) May be met in two or more policies issued in conjuction with one another in the case of—

(i) A nonprofit hospital association; and

(ii) A medical service association; and

(2) Must be met in a single policy in all other cases.

§ 403.218 NAIC model standards.

(a) "NAIC model standards" means the National Association of Insurance Commissioners (NAIC) Model Regulation to Implement the Individual Accident and Sickness Insurance Minimum Standards Act, as amended and adopted by NAIC on June 6, 1979, as it applies to Medicare supplemental policies.

(b) The policy must meet or exceed the NAIC model standards, except that—

(1) The policy must meet the NAIC model standards, regardless of the Medicare beneficiary's age; and

(2) The policy must meet the loss ratio standards specified in §403.221.

§ 403.221 Loss ratio standards.

(a) The policy must be expected to return to the policyholders, in the form of aggregate benefits provided under the policy—

(1) At least 75 percent of the aggregate amount of premiums in the case of group policies; and

(2) At least 60 percent of the aggregate amount of premiums in the case of individual policies.

(b) The insuring organization must calculate loss ratios according to the provisions of §§ 403.224 and 403.225.

§ 403.224 Calculation of expected loss ratios: General provisions.

(a) *Basic formula.*

(1) The expected loss ratio is calculated by determining the ratio of benefits to premiums.

(2) To calculate the amount of "benefits"—

(i) Add the present values on the initial calculation date of—

(A) Expected incurred benefits in the loss ratio calculation period, to—

(B) The total policy reserve at the last day of the loss ratio calculation period; and

(ii) Subtract the total policy reserve on the initial calculation date from the sum of these values.

(3) To calculate the amount of "premiums", calculate the present value on the initial calculation date of expected earned premiums for the loss ratio calculation period.

(b) *Provisions for calculating "benefits".*

(1) "Total policy reserve" means the sum of—

(i) Additional reserve; and

(ii) The reserve for future contingent benefits.

(2) "Additional reserve" means the amount calculated on a net level reserve basis, using appropriate values to account for lapse, mortality, morbidity, and interest, that on the valuation date represents—

(i) The present value of expected incurred benefits over the loss ratio calculation period; less—

(ii) The present value of expected net premiums over the loss ratio calculation period.

(3) "Net premium" means the level portion of the gross premium used in calculating the additional reserve. On the day the policy is issued, the present value of the series of those portions equals the present value of the expected

incurred claims over the period that the gross premiums are computed to provide coverage.

(4) "Reserve for future contingent benefits" means the amounts, not elsewhere included, that provide for the extension of benefits after insurance coverage terminates. These benefits—

(i) Are predicated on a health condition existing on the date coverage ends;

(ii) Accrue after the date coverage ends; and

(iii) Are payable after the valuation date.

(c) *Provisions for calculating "premiums".*

(1) "Earned premium" for a given period means—

(i) Written premiums for the period; plus—

(ii) The total premium reserve at the beginning of the period; less—

(iii) The total premium reserve at the end of the period.

(2) "Written premiums in a given period" means—

(i) Premiums collected in that period; plus—

(ii) Premiums due and uncollected at the end of that period; less—

(iii) Premiums due and uncollected at the beginning of that period.

(3) "Total premium reserve" means the sum of—

(i) The unearned premium reserve;

(ii) The advance premium reserve; and

(iii) The reserve for rate credits.

(4) "Unearned premium reserve" means the portion of gross premiums due that provide for days of insurance coverage after the valuation date.

(5) "Advance premium reserve" means premiums received by the insuring organization that are due after the valuation date.

(6) "Reserve for rate credits" means rate credits on a group policy that—

(i) Accrue by the valuation date of the policy; and

(ii) Are paid or credited after the valuation date.

§ 403.225 Calculation of expected loss ratios: Date and time frame provisions.

(a) "Application date" means the day the insuring organization sends the policy to HCFA for review.

(b) "Initial calculation date" means the first date of the period that the insuring organization uses to calculate the policy's expected loss ratio.

(1) The initial calculation date may be before, the same as, or after the application date; except—

(2) The initial calculation date must not be earlier than January 1 of the calendar year of the application date.

(c) "Loss ratio calculation period" means the period beginning with the initial calculation date and ending with the last day of the period for which the insuring organization calculates the policy's scale of premiums.

(d) To calculate "present values", the insuring organization may use approximations that aggregate, for a period not to exceed 12 months—

(1) Expected earned premiums, and

(2) Expected incurred benefits.

§ 403.227 Actuarial certification.

(a) For purposes of certification requests submitted under § 403.245(b), "actuarial certification" means a signed declaration in which a qualified actuary states that the assumptions used in calculating the expected loss ratio are appropriate and reasonable, taking into account actual policy experience, if any, and reasonable expectations.

(b) "Qualified actuary" means—

(1) A member in good standing of the American Academy of Actuaries; or

(2) A person who has otherwise demonstrated his or her actuarial competence to the satisfaction of the Commissioner or Superintendent of Insurance of the domiciliary State of the insuring organization.

§ 403.230 Supplemental health insurance panel.

(a) *Membership.* The Supplemental Health Insurance Panel (Panel) consists of—

(1) The Secretary or a designee, who serves as chairperson, and

(3) Four State Commissioners of Superintendents or Insurance appointed by the President.

(b) *Functions.*

(1) The Panel determines whether or not a State regulatory program for Medicare supplemental health insurance policies meets and continues to meet minimum requirements, as specified under § 403.240.

(2) The Secretary, as chairperson of the Panel, informs the State Commissioners and Superintendents of Insurance of all determinations made under paragraph (b)(1) of this section.

§ 403.234 Emblem.

(a) The emblem is a graphic symbol, approved by HHS, that indicates that a policy meets the certification requirements of this subpart.

(b) Unless prohibited by the State in which the policy is marketed, the insuring organization may display the emblem on policies certified under the voluntary certification program.

(c) If a policy is issued in a State with an approved regulatory program, the State in which the policy is marketed may authorize the insuring organization to display the emblem on that policy.

(d) In the case of a policy displaying the emblem, the insuring organization must notify each holder of the policy within 60 days in writing, if—

(1) HCFA decertifies the policy, as specified in §§ 403.255, 403.258(b)(3), and 403.260(b)(5) and (c)(4); or

(2) The State with an approved regulatory program determines that the policy ceases to meet State requirements.

State Regulatory Programs

§ 403.240 State with an approved regulatory program.

(a) A State has an approved regulatory program if the Panel determines that the State has in effect under State law a regulatory program that provides for the application of standards, with respect to each Medicare supplemental health insurance policy issued in that State, that are equal to or more stringent than those specified in § 403.215.

(b) "Policy issued in that State" means—

(1) A group policy, if the holder of the master policy resides in that State; and

(2) An individual policy, if a holder of that policy resides in that State.

§ 403.242 Certification of policies.

If a State has an approved regulatory program, a policy issued in that State is deemed certified.

Voluntary Certification Program

§ 403.245 Requirements for obtaining certification.

(a) A policy must meet the standards specified in § 403.215 to be certified by HCFA.

(b) An insuring organization requesting certification of a policy must submit the following to HCFA for review:

(1) A copy of the policy.

(2) A copy of the outline of coverage, in the form prescribed by the NAIC model standards.

(3) A statement that the policy meets the requirements specified in paragraph (a) of this section.

(4) A copy of the calculations for the expected loss ratio.

(5) Supporting data used in calculating the expected loss ratio. That data must include—

(i) The scale of premiums for the loss ratio calculation period;

(ii) A description of all assumptions;

(iii) The formula used to calculate gross premiums;

(iv) The expected level of earned premiums in the loss ratio calculation period; and

(v) The expected level of incurred claims in the loss ratio calculation period.

(6) An actuarial certification, as specified in § 403.227, of the loss ratio computations.

(7) A list of States in which the insuring organization is authorized to market the policy.

(8) A statement that the insuring organization will notify the policyholders in writing within 60 days of decertification, if the policy is identified as a certified policy at the time of sale and later decertified.

(9) A signed statement in which the president of the insuring organization, or a designee, attests that the information submitted to HCFA for review is accurate and complete and does not misrepresent any material fact.

§ 403.240 Review and certification of policies.

(a) HCFA will review policies that the insuring organization voluntarily submits, except that HCFA will not review a policy issued in a State with an approved regulatory program under § 403.240.

(b) If the requirements specified in § 403.245 are met, HCFA will—

(1) Certify the policy; and

(2) Authorize the insuring organization to imprint the emblem on the policy, as provided for in § 403.234.

(c) HCFA will inform all State Commissioners and Superintendents of Insurance of Policies that it certifies.

§ 403.251 Submittal of material to retain certification.

(a) HCFA certification for policies that continue to meet the standards will remain in effect, if the insuring organization files the material specified in § 403.245(b) no later than the date specified in paragraph (b) or (c) of this section.

(b) Except as specified in paragraph (c) of this section, the insuring organization must file the material with HCFA no later than June 30 of each year. The first time the insuring organization must file the material is no later than June 30 of the calendar year that follows the year in which HCFA—

(1) Certifies a new policy; or

(2) Certifies a policy that has been decertified, as provided in § 403.255.

(c) If the loss ratio calculation period, used to calculate the expected loss ratio for the last actuarial certification submitted to HCFA, ends before the June 30 date of paragraph (b) of this section, the insuring organization must file the material with HCFA no later than the last day of that rate calculation period.

§ 403.255 Decertification of policies.

(a) HCFA will decertify a policy, if—

(1) The policy fails to meet the requirements specified in § 403.245(a); or

(2) The insuring organization fails to meet the requirements for submittal of material specified in § 403.251.

(b) If HCFA decertifies a policy, HCFA will inform the insuring organization and all State Commissioners and Superintendents of Insurance of its determination.

(c) HCFA will monitor the insuring organization to assure that the insuring organization notifies each policyholder in writing when his or her policy is decertified.

§ 403.258 Termination of a State program: Transfer of policies.

(a) When the Panel determines that a State no longer has an approved regulatory program, policies issued in that State are transferred to the jurisdiction of the voluntary certification program.

(b) If the policy was certified under a State regulatory program, but is transferred to the voluntary program, the following provisions apply:

(1) HCFA will waive the requirements specified in § 403.245(b) for submittal of certain information by the insuring organization to obtain initial certification.

(2) HCFA will certify the policy. That certification will be in effect—

(i) Until the expiration date of the certification the policy received under the State program; but

(ii) Not for more than 6 months.

(3) If the insuring organization wishes certification to continue beyond the date specified in paragraph (b) (2) of this section, the insuring organization must submit the material specified lin § 403.245(b) before that date.

(i) If HCFA certifies the policy on or before the date specified in paragraph (b) (2), the new certification will become effective on the date the determination is made.

(ii) If HCFA does not certify the policy on or before the date specified in paragraph (b) (2) of this section, that policy is decertified.

§ 403.260 Administrative review of HCFA determinations.

(a) This section provides for administrative review of a HCFA determination—

(1) Not to certify a policy; or

(2) To decertify a policy.

(b) HCFA will send a notice to the insuring organization containing the following information:

(1) That HCFA has made a determination—

(i) Not to certify a policy; or

(ii) To decertify a policy.

(2) The reasons for the determination.

(3) That the insuring organization has 30 days from the date of the notice to—

(i) Request, in writing, an administrative review of the HCFA determination; and

(ii) Submit additional information to HCFA for review.

(4) That, if the insuring organization requests an administrative review, HCFA will conduct the review, as provided for in paragraph (c) of this section.

(5) That, in a case involving decertification, the decertification will go into effect 30 days from the date of the notice, unless the insuring organization requests an administrative review. If the insuring organization requests an administrative review, the policy retains its certification until HCFA makes a final determination.

(c) If the insuring organization requests an administrative review, HCFA will conduct the review as follows:

(1) A HCFA official, not involved in the initial HCFA determination, will initiate an administrative review within 90 days of the date of the notice provided for in paragraph (c) of this section.

(2) The official will consider—

(i) The original material submitted to HCFA for review, as specified in §§ 403.245(b) or 403.251; and

(ii) Any additional information, that the insuring organization submits to HCFA.

(3) Within 15 days after the administrative review is completed, HCFA will inform the insuring organization in writing of the final decision, with an explanation of the final decision.

(4) If the final decision is to decertify a policy, the decertification will go into effect 15 days after the date of HCFA's notice to inform the insuring organization of the final decision.

(Secs. 1102, 1871, and 1882 of the Social Security Act (42 U.S.C. 1302, 1395hh, and 1395ss))

(Catalog of Federal Domestic Assistance Program No. 13.773, Medicare—Hospital Insurance Program; No. 13.774, Medicare—Supplementary Medical Insurance Program)

Dated: November 5, 1980.

Howard Newman,

Administrator, Health Care Financing Administration.

Approved: January 9, 1981.

Patricia Roberts Harris,

Secretary.

[FR Doc. 81-1775 Filed 1-20-81; 8:45 am]

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Part VI

Department of Agriculture

Food and Nutrition Service

Food Stamp Program: State Plans of Operation and Operating Guidelines

DEPARTMENT OF AGRICULTURE

7 CFR Parts 272 and 274

[Amdt. No. 186]

State Plans of Operation and Operating Guidelines

AGENCY: Food and Nutrition Service, USDA.

ACTION: Final rule.

SUMMARY: On November 9, 1979 (44 FR 65318) a proposed rule was published concerning changes to regulations dealing with State Plans of Operation (7 CFR 272.2) and State Operating Guidelines (7 CFR 272.3) under the Food Stamp Act of 1977, as amended.

The State Plans of Operation and Operating Guidelines sections set forth procedures and requirements for State agencies to follow to administer the Food Stamp Program.

The proposed rule also included revisions to Part 274 to add a reconciliation report which provides States with a form to identify unauthorized issuances of benefits; to Part 276, dealing with Federal sanctions and State liabilities; and to Part 277, dealing with administrative funding. The proposed revisions to Parts 276 & 277 have been removed from this rulemaking and are being published as two separate final rulemakings. The proposal relating to Part 274 will be incorporated into the final rulemaking of the May 27, 1980 proposed rule (45 FR 35335) establishing a new system for reporting issuance and participation data.

DATE: Effective as of February 20, 1981.

FOR FURTHER INFORMATION CONTACT: Susan D. McAndrew, Chief, Program Standards Branch, Program Development Division, Family Nutrition programs, FNS, USDA, Washington, D.C. 20250. (202) – 447–8535. The Final Impact Statement describing the options considered in developing this final rule and the impact of implementing each option is also available on request from Susan D. McAndrew.

SUPPLEMENTARY INFORMATION:

Introduction

This final action has been reviewed under USDA procedures established in Memorandum 1955 to implement Executive Order 12044 and has been classified as not significant. These are final regulations to revise the requirements for State Plans of Operation and for Operating Guidelines, and for public comment on certain aspects of them.

The basis and purpose for all significant changes from the proposed rules which have been adopted in these final rules are set forth herein, as are the reasons why significant recommended changes were not adopted. For a full understanding of the basis and purpose of all of the final rules, reference should be made to the November 9, 1979 proposed rulemaking (44 FR 65318).

Of the 52 comment letters received on the November 9 proposal, 43 included comments on the State Plans portion of the regulations and 29 on the Operating Guidelines. A total of 20 State agencies commented. In addition, 14 public interest groups, 7 Federal agencies and 1 Local agency submitted comments.

State Plans of Operation

Introduction

As proposed, the State Plans of Operation section was divided as follows:

272.2 (a) General Purpose and Content.
(b) Federal/State Agreement.
(c) Program and Budget Summary statement.
(d) Planning Documents.
(e) Submittal Requirements.
(f) Public Comment.
(g) Revisions.

These divisions are revised in the final rule by deleting (f) in its entirety (since public comment is now covered under the portion of the regulations dealing with Operating Guidelines) and relettering (g) as (f). Major changes were made to the areas of the Federal/State Agreement, the Program and Budget Summary Statement and public comment. An implementation paragraph was added to the final rule.

272.2(a) General Purpose and Content

Comments received on § 272.2(a) from public interest groups expressed support for consolidating planning documents, and recommended that the Operating Guidelines be a formal part of each State's Plan.

Requiring that all Operating Guidelines be made part of each Plan would result in an extremely lengthy and detailed document. Instead of being—as originally intended—a general statement of administrative agreements, the Plan would become cumbersome compendiums of technical manuals, instructions, and the like, concerned largely with day-to-day matters of procedure. The size and complexity of the Plan could cause delays in its review and approval by State agency officials and tardy submission to the Department. For these reasons, the Department has decided not to make all Operating Guidelines part of the State Plan.

Comments from program administrators were more technical. Two commentors suggested that the Plan be a pre-printed checklist like the one used by the Department of Health and Human Services, but another thought the Plan should be similar to that used in the Food Distribution Program. Others suggested that the Plan should not include anything but the Federal/State Agreement. Still others recommended that the Disaster and Outreach Plans be submitted individually, and that there be a separate submission of the budget information.

After considering these comments, the Department has adopted several changes, as described in relevant sections below. The most major changes are (1) to divide the Program and Budget Summary Statement into two separate documents to be known as the Budget Projection Statement and the Program Activity Statement, and (2) to clarify that the time period for the information to be submitted should be the Federal fiscal year in all cases except with regard to the Budget Projection and Program Activity Statements, which are designed to conform to State accounting periods. The Department has decided not to delete or separate from the Plan any of its basic components, which are the Federal/State Agreement, the Budget Projection Statement, the Program Activity Statement, and a number of attachments including the Outreach Plan, Disaster Plan, and Nutrition Education Plan. In the past, the practice of submitting segmented planning documents separately led to some confusion and duplication. While the submittal dates for the Plan's different components still vary, the Department has made an effort to coordinate them to the greatest extent possible while taking into account the administrative capabilities of State agencies. It would be impossible, however, to consolidate all timeframes for submittal because of the differing expectations with regard to these various components. Timeframes for state agency planning, FNS review and approval, implementation and implementation monitoring will vary from component to component depending on the nature of the document. The new preprinted Federal/State Agreement will satisfy the statutory requirements in a simpler manner while the other components will provide necessary management information in a more systematic fashion.

272.2(b) Federal/State Agreement

A number of comments were received on this provision, largely from program administrators. The Federal/State Agreement, as proposed, is the means for FNS and States to formally agree to administer the program in accordance with certain terms and conditions. Some state agencies commented that the Agreement has no statutory basis and should be deleted. They suggested that, if the Agreement is retained, the terms should be limited to simply require adherence to the provisions of the Act. While the Federal/State Agreement is not a specific requirement in the Act, it is the mechanism by which the State agency agrees to conduct a Food Stamp Program in accordance with the points specified in Section 11(e) of the Act as part of its State Plan of Operation.

Pub. L. 96-249, 94 Stat. 357, May 26, 1980 ("the 1980 Amendments" to the Food Stamp Act) revised Sections 11(g) and 16(b) of the Act to clarify that the States are required to follow *all* regulatory provisions, not just those specified in Section 11(e), the State Plan requirements. House Report No. 96-786, 96th Cong., 2nd Sess., states that "... some States ... claim incorrectly and rather absurdly that they are and Congress intended them to be ... free to violate any regulation not otherwise specifically listed in section 11(e) and suffer no fiscal consequences whatever other than the possibility of being enjoined by the Attorney General..." (p. 140). As Pub. L. 96-249 and the House Committee report indicate, the Federal/State Agreement, as originally proposed, does not subject the State to any unauthorized sanctions. For these reasons, the Federal/State Agreement has been retained.

Other commentors recommended adding a provision to the Federal/State agreement requiring States to follow FNS instructions, directives and policies. This suggestion was not adopted. Federal instructions do not contain new substantive material and do not go through notice and comment rulemakings. Therefore, requiring State agencies to abide by Federal regulations adequately covers compliance with substantive policy matters. However, in response to the comment, the Department amended the regulations to require States to adhere to their own FNS-approved manuals and similar operating guidelines which are reiteration of the regulations for the State's method of administering the Program. As these guidelines are binding on the local offices and generated by the State agency itself, the Department considered them appropriate for inclusion.

Other changes to this section were to add a statement that the Agreement could be modified with the mutual consent of both parties and to permit the State to propose alternative language to the pre-printed Agreement, again subject to mutual consent. These two revisions will make the Agreement more open to modifications that would meet the particular concerns of an individual State. The more flexible the Agreement is, the more useful and responsive it becomes to both parties involved.

Comments were received suggesting that the clause on consultation with Indian tribal organizations on reservations be modified to accommodate States without reservations. This suggestion was adopted by making this clause applicable only where appropriate.

272.2(c) Program and Budget Summary Statement

There were 26 comments on this provision, all but three from State or local agencies and FNS Regional offices. Two State agencies suggested separating the form into two documents, one containing a detailed functional breakdown of the proposed budget, and one summarizing program activity for the past year. Six more State agencies and two Regional offices recommended reporting cost and staff in one section without referring to activity.

The Department has incorporated a number of these suggested modifications into the final regulations along with other minor refinements. As has been noted, the principal change has been to separate the Program and Budget Summary Statement into two documents—a Budget Projection Statement and the Program Acitivity Statement. A single combined document would have been more complicated and a greater burden for States, while the information submitted would have been less useful and in some cases less reliable. This is because the two types of data requested—prospective budget estimates and retrospective activity level summaries—are for needed different timeframes, and in many States are not readily available at the same time of year, given their reporting systems and fiscal year budgeting cycles. By separating the two documents, each can be more appropriately tailored to its subject matter and can be compiled at a more convenient time for the State agencies. The documents can be simpler, the burden on States will be less, and the information obtained will be more useful.

The Budget Projection Statement and the Program Activity Statement, when analyzed jointly and in conjunction with data from the Financial Status Report, FNS-269, and other sources, will assist the Department in assessing the sources of and need for State agencies' expenditures to operate the program. The results of this analysis may be used to identify issues for further examination in the Department's management evaluation reviews of the State agencies or in consultations during the State Plan approval process. The Department is concerned by increases in program administration costs and recognizes its responsibility to assure that the program is run as efficiently and effectively as possible.

The Budget Projection and Program Activity Statements will each consist of a pre-printed form to be filled out by the State agency. In addition, a narrative must be attached to the Budget Projection Statement. The forms will be similar in scope and length to the combined form proposed originally, but with several revisions. Although Federal Register policy precludes printing here the forms themselves, their contents can be summarized as follows.

The final version of the Budget Projection Statement requires the State agency to provide estimates of its total program operating costs allocated among ten categories: certification, issuance, performance reporting, fair hearings, outreach, training, ADP development, ADP operations, fraud control, and all other direct and indirect Program costs. These categories reflect a reduction from and simplification of the sixteen items included in the original proposal. A change has also been made in the time period to be reported. In the comments, several States suggested that the budget projections should be based on the State's fiscal year whether or not it coincided with the Federal fiscal year (October–September). Thirty-seven States follow a July–June fiscal year, nine States are on a biennial fiscal schedule, and only two follow the Federal fiscal year schedule. The remainder have variable fiscal schedules. The Department has decided, therefore, to adopt an approach that will accommodate the States' accounting periods and will also provide the Department with more timely and accurate budget projections. The Budget Projection Statement is to be submitted quarterly with budget projections for four quarters beginning with the quarter already in progress and including the three quarters that follow. For example, the Budget Projection Statement due on May 15 is to include budget projections

for April to June and for the next three quarters. This approach, similar to that required by Department of Health and Human Services on their OA 41 report, will provide rolling updates of expenditure projections, making them more responsive to changing conditions. The Department believes that the burden of this additional reporting requirement is minimized by the fact that the report of actual expenditures (SF–269), which generally will be a primary input to the budget projection process, is already required on a quarterly basis. The requirement for submitting the Budget Projection Statement is timed to take this into account, with the SF–269 being submitted 30 days after the report quarter and the Budget Projection Statement due 15 days later (45 days after the end of each quarter). Furthermore, it is anticipated that State agencies will not have to request budget revisions as frequently as in the past since quarterly budget estimates should be more accurate than annual projections that were submitted well in advance of the period they were intended to cover.

State agencies are expected to base their budget projections on a careful analysis of the factors that determine their costs. Although the Department is not prescribing the methods, assumptions, data, or format that State agencies use, the analysis is expected to be systematic and supported by reasonable evidence. Such an analysis normally will take into account (but not necessarily be limited to):

- The number and salary level of employees,
- Other factors affecting personnel costs, including
  (1) Anticipated increases in pay rates or benefits,
  (2) The distribution of pay periods across quarters, and
  (3) Reallocations of staff among units or functions, insofar as these might result in cost increases or decreases.
- Costs for purchasing, leasing, and maintaining equipment and space, especially as concerns
  (1) Any upcoming one-time-only purchases of new capital assets such as ADP equipment,
  (2) Renegotiation of leases,
  (3) Changes in depreciation rates or procedures,
  (4) Relocations of offices,
  (5) Maintenance and renovation work, and
  (6) Inflation.
- Issuance system costs, including
  (1) Renegotiation of issuing agent fees, and
  (2) Plans to change issuance systems.
- Changes in caseload and factors contributing to increases or decreases in the numbers of recipients and recertifications, including the anticipated impact of economic conditions (and in particular unemployment) and seasonality,
- Cost implications of corrective action plans,
- Anticipated changes in program regulations and operating guidelines and instructions,
- Training needs,
- Travel Costs, and
- Adjustments in insurance premiums.

A narrative justification should be attached to each Budget Projection Statement, documenting and explaining the assumptions used to arrive at the figures reported. The narrative should cover as many of the items listed above, and any other items deemed relevant, as have a significant impact on costs. The State agency is not required to address every contributing factor in every submission of a Budget Projection Statement. Rather, the narrative should concentrate on items that account for increases or decreases in costs from the preceding submissions. Lengthy explanations are not necessary, but pertinent figures used in the analysis (for example, the inflation rate for salary rates and benefits) should be included. It is expected that the majority of the narratives submitted will not exceed 2 to 3 pages in length.

The Program Activity Statement, to be submitted once a year, requires State agencies to provide data on several indicators of the level of program activity that occurred during the preceding twelve months. The specific indicators requested are the numbers of eligibility determinations, issuance transactions, performance reporting system (PRS) reviews, fair hearings, and fraud control activities. Although some of this information is available from other sources, there has until now been no comprehensive summary of key activity indicators compiled for a single timeframe. The Program Activity Statement, serving this need, is designed to assist the Department and the States in analyzing current budgets and in planning future operations and objectives. State agencies should submit Program Activity Statements annually, no later than 45 days after the end of the State's fiscal year, with data covering the entire State fiscal year just ended.

In the proposed regulations, information on staff size was to be reported along with the program activity indicators. This requirement has been deleted from the final regulations in order to further minimize the reporting burden. The Department is exploring other means of obtaining this information through combined reporting with the Department of Health and Human services. Because of the overlap between food stamp and public assistance staff time within the State agency, this combined effort could provide a better overall picture of the dynamics of personnel allocations, patterns, and practices.

The Budget Projection Statement and the Program Activity Statement will be signed by the responsible Program official—usually the State Program director or the chief financial officer. A misreference has been corrected in the regulations that referred to a column on the proposed Form FNS–366 that had actually been deleted from it. Other items that needed clarification will be explained in detailed instructions that will be included with the form. One State agency requested that contracted issuance costs be provided separately. This has been done along with distinguishing mail issuance from other (non-contracted) over-the-counter issuance costs. The extensive explanatory material about the form has been deleted as the Department believes this level of detail is not needed in the regulations. Instructions will be included with the form itself.

A change is also being made in the SF–269, Financial Status Report. The headings on this form are being revised to be compatible with the modified items on the Budget Projection Statement.

Comments were also received on the Organizational Outline which was to have been on the reverse side of the Program and Budget Summary Statement. Several modifications have been made. In response to comments calling for less detailed information to be required, the proposed requirement for a description of the position of outreach coordinator in the State organizational structure has been dropped. The annual outreach plan should provide sufficient information for FNS to monitor State outreach activity. In addition, the Outline is now an attachment to the Program Activity Statement, so that States may substitute existing organizational charts rather than providing the information on the form itself. While some commentors believed that the Outline was too complex, others, including both State agencies and public interest groups supported it. The Outline is retained because the Department believes it is needed to provide the Agency with specific information about how State agency staff are organized. This

information will facilitate contact with the State agency, be helpful in preparation of Management Evaluation reviews and will enable FNS to respond to questions about how individual States administer the Program at the State-level. The instructions for what is to be included in the Organizational Outline have been expanded and clarified to simplify completion of this item as well as to ensure consistency from State to State.

Because of the timing of the final publications of these rules, the initial Budget Projection Statement will be due on May 15, 1981 with budget projections for the four quarters beginning in April, 1981 and ending in March, 1982. The initial submittal of the Program Activity Statement will be due 45 days after the end of the State's 1981 fiscal year. For example, State agencies that operate on a July-June fiscal year will submit their first Program Activity Statement on August 15, 1981. It is apparent from some of the comments received that some States will not be able to provide all of the data required on the Program Activity Statement initially. Therefore, only that information already collected by the State's data gathering systems is required on the initial reports, with the remainder being required in the FY 1982 submission.

Another revision to this section of the regulations is an additional requirement for attachment to the Program Activity Statement of any agreements between the State and the United States Postal Service on coupon issuance, between the State and the Social Security Administration for supplemental security income joint processing and for routine user status, and between the State and the State's Employment Security agency for work registration. The Work Registration and Job Search final regulations package to be published soon will more explicitly describe the Department of Labor's and Employment Security agency's role in developing a State Plan for Work Registration. The initial submission of these supporting documents is due with the Federal/State Agreement (120 days after publication of the final regulations). Subsequent submissions shall be attached to the Program Activity Statement.

272.2(d) Planning Documents

Comments received on this provision primarily concerned suggestions that certain documents should not be included as attachments, such as the Corrective Action Plan or the Outreach Plan. The reasons given were the varying due dates or the degree of complexity in negotiating these Plans which could delay submission of one Plan while others were ready for approval. The final rules do not require the Corrective Action Plan to be submitted in conjunction with other planning documents. The Corrective Action Plan is now an open-ended plan that is modified as needed, rather than submitted at regular yearly intervals. Final regulations regarding Corrective Action Plans were issued on March 11, 1980. The due dates for the Outreach Plan and other planning documents have been structured to coincide to the maximum extent possible.

A number of comments were received on the Nutrition Education Plan with the most frequented suggestions being to mandate a Nutrition Education Plan. The Department has decided not to mandate the Nutrition Education Plan since State activities in this area are optional. Federal responsibilities for nutrition education are outlined in Sections 11(e)(15) and (f) of the Act, and this Plan is designed to reflect any State efforts which result in a request for additional funding. The primary objective is to encourage States to supplement any existing nutrition education efforts.

Other comments suggested that a reference be added to encourage States to coordinate the Nutrition Education Plan with USDA's Expanded Food and Nutrition Education Program (EFNEP), rather than the proposed language which stated that the Plan's efforts not conflict with the EFNEP's. The final regulations were revised to require assurance that the efforts are not duplicative. This change was made in recognition of the expanded role of EFNEP under the 1977 Act. Because of EFNEP's involvement in nutrition education efforts, it is assumed that States agencies will be consulting with EFNEP when preparing their plans in order to best coordinate their programs.

272.2(e) Submittal Dates

Public interest groups commenting on this area expressed support of an annual Outreach Plan as opposed to the semi-annual Plan which was in effect under the 1964 Act. Other commentors suggested that the submittal dates be better coordinated. The Outreach Plan is due annually on August 15 to cover the Federal fiscal year. For most States, those with a July–June fiscal year, this will coincide with the date the Program Activity Statement is due. The August 15 deadline was necessary so that all States could be operating under approved Outreach Plans by the beginning of the Federal fiscal year. Therefore, further coordination was impracticable. The initial Nutrition Education Plan can be submitted at any time; however, the initial Plan should cover a period of months more or less than one year as appropriate, adjusted to permit cycling subsequent submissions annually on August 15th.

Commentors suggested that the time limit for submitting the Agreement be extended to allow more time for the internal reviews conducted prior to the Governor's review and signature. This suggestion was adopted, and the time period has been extened to 120 days. This change also responds to comments on whether the Governor's Review period is included. All steps in the process including the Governor's review are to be completed within the 120 day period.

Language is added to clarify that FNS will take action on Plans which it has received and for which it has sought additional information, within 30 days of receipt of that information from the State. This responds to comments received on this point, and remedies a concern of States that FNS did not place any time limits on itself beyond the first 30 days following initial submission.

272.2(f) Public Comment

The largest number of comments, 35, was received on this provision. Of these, 12 were from public interest groups, 12 from States agencies, and 6 from FNS Regional Offices. Two major concerns were raised by the public interest groups.

These were: (1) that the proposed rules limited the areas of the program subject to public comment and (2) that methods other than a State Administrative Procedures Act (APA) ought to be required to maximize public access to decisionmaking. State agencies were generally concerned about the additional burden of public comments and whether such procedures would unduly hamper their ability to manage resources and respond to problems efficiently.

The Department is committed to a Food Stamp Program which is efficiently managed and accessible to the public. Public participation regarding State's administration of the program can help identify unmet needs and provide useful information to State administrators evaluating choices in their use of State resources. Therefore, the Department reviewed the proposal on public comment on both Plans of Operation (§ 272.2(f)) and Operating Guidelines (§ 272.3(d)) in light of the comments received to assure it achieved both goals of meaningful public access and efficient program administration.

Significant changes were made to be responsive to comments. Areas of

change include program aspects subject to public comment, the timing and scheduling of public comment, and the methods to obtain public comment.

The proposed rules specified that the Outreach and Nutrition Education Plans, those parts of the operating guidelines where a State exercised a choice or requested a waiver and the training procedures be subject to public comment.

Several commenters wanted more items of the Plan of Operation to be subject to public comment while others were concerned with the time public comment would add to a State's implementation schedule for new program changes. The Department's goal was to focus comment on program areas most meaningful to the public and to do so in a manner which enhanced rather than interfered with timely program compliance.

The Department decided to delete the requirements for public comment on the Outreach and Nutrition Education Plans and not to add Corrective Action Plans (CAP) to the comment requirements. Given the complexity of these items and the requirement for FNS approval prior to their implementation, regular public comment periods could cause significant delays in submission and implementation. If delayed, lack of approved Plans could adversely affect the quality of service delivered. Soliciting and reviewing of comments would add a significant burden, given staff and budget constraints. Also, given the technical nature of the Plans, States would be required to develop explanatory material which would further tax time and staff limitations. Plans are used primarily as management tools for the State agency and to provide FNS with means to ensure compliance with the Act and the regulations in these areas. States may solicit comment on these Plans and, in fact, many States may be already receiving comment through their State Administrative Procedures Acts (APA's). In addition, all Plans are open to public inspection under § 272.1(d). Therefore, § 272.2(f) is deleted from this final rulemaking, and all public comment requirements are discussed under § 272.3(d).

The Department also concurred with comments which brought to light the administrative difficulties of soliciting comments prior to any change in operating guidelines. Therefore, the Department deleted the public comment requirements proposed in § 272.3(d) on Operating Guidelines.

The Department is instead requiring that States provide the public with an opportunity to comment on overall program operations at least once every four years, with special emphasis on the options available to States, such as utility standards and fair hearing procedures. This will provide the public with a broader opportunity to comment on program operations than was originally proposed. At the same time, because comment is solicited every four years, the State agency has a more manageable system with which to operate. Waivers which have a major and direct impact on participants are still subject to comment prior to submission to FNS although changes have been made to allow more flexibility. Because some waivers may need prompt implementation due to an emergency situation, the State agency may request an exemption to the public comment requirements.

The requirement that comments on overall program operations be solicited at least every four years would begin no later than the State's 1982 fiscal year. This scheduling is designed to provide enough operating experience to allow for meaningful evaluation of how the Program is running in the State yet relieve the burden on States.

Comments on waivers which have a major direct impact on participants will be solicited prior to submission to FNS. However, the comment period may be dropped if an emergency situation exists. If the State requests an exception, the request must be submitted promptly and include supporting justification for granting the exemption.

One last public comment provision appears in proposed rules issued by the Department on December 5, 1980 to provide a State option for periodic reporting and retrospective accounting.

The second major concern of public interest groups was that State APA procedures were inadequate as a method for meaningful public participation. Therefore, they suggested that either media publication or public hearings be mandated in addition to APA procedures in those States subject to these provisions. The Department has decided not to adopt this suggestion. One reason is that this suggestion would significantly add to Program expenses. In addition, it would be viewed as inequitable by States with APA's who would have to pursue two methods of soliciting public comment (which could require separate efforts to review and analyze material), while those States without APA's would only be dealing with one set of comments. Finally, despite the allegations in the comments, the Department does not have sufficient evidence to conclude that APA's are any more or less effective than other means of obtaining public participation suggested in the regulations. FNS does have a commitment, however, to making public comment a significant part of developing waivers and of improving overall State operations and will monitor the effectiveness of all such methods intended to achieve this goal.

Other comments were received recommending notification of certain organizations. It was clarified that States using the media to solicit comments must notify all groups on its Outreach list when waivers will be available for comment and when the overall comment periods are scheduled. In addition, a summary of the comments received and an explanation of what was decided shall be prepared. The comment summary must be available free of charge upon written request. The media announcements must include an address where further information about commenting and explanatory material can be obtained.

272.2(g) Revisions

This section details the steps States are to follow when submitting revisions to an already approved budget. Very few comments were received on this provision. The only changes to this section were to reflect changes in a new Federal financial management directive and to reletter it as paragraph (f). The comments on adjustments to the Letter of Credit and the time limits for budget revision requests were not adopted as the Department believes these factors are best handled on an individual basis when the State submits its requests.

Operating Guidelines

Introduction

As proposed, the Operating Guidelines section was divided as follows:

272.3 (a) Coverage of Operating Guidelines.
(b) Submittal and approval.
(c) Waivers.
(d) Public comment.

These main divisions remain in the final rule.

272.3 Operating Guidelines

In general, fewer changes were made to this section, especially as the comments did not indicate the need for as much revision as in the State Plans of Operation section. Some changes were made to make this provision conform to revisions in § 272.2. A discussion on § 272.3(d), relating to "Public comment," is included under § 272.2(f) above.

272.3(a) Operating Guidelines

Operating Guidelines are defined as any manuals, instructions, directives, and the like which the State agency

issues to administer the Program. Several public interest groups suggested that a requirement be added that State agencies provide copies of the Operating Guidelines to the public upon request. § 272.1(d) already delineates the procedures for obtaining material. Therefore, the Department believes this change is not necessary in light of other regulatory provisions.

A concern of State agencies was the provision on consulting with Indian Tribal Organizations on reservations. States without reservations requested that a permanent exemption be made for them. Language has been added to state that submission of this material is only required where appropriate. Some technical changes have been made including a revision to the Performance Reporting System material on submission of quality control sampling plans. In addition, in response to a comment from the California State agency, State regulations that are used in lieu of instructions or the like are considered as Operating Guidelines. This modification has been added to avoid requiring States using this method to also prepare instructional material.

Public Law 96-249 added an income and resource exclusion for payments from Federal, State and local energy assistance programs. In order to provide both certification workers and FNS with a readily available source of information on the various programs, States are required to list the State and local funds to be excluded as energy assistance as part of the Operating Guidelines and to indicate how they identify particular payments as exempt energy assistance benefits. For example, the State would explain the formula used to separate the increase in public assistance grants for energy assistance from other increases or special grants.

This could be done either as a revision to the State manual or through other instructions, such as program directives, to eligibility staff.

272.3(b) Submittal and Approval

Language has been added to this provision to correspond to changes in § 272.2(e) regarding FNS approval. In addition, in response to comments, a revision was made clarifying that if the State agency used FNS-developed material, then only that material or portion which has been developed by the State has to be submitted for FNS approval.

272.3(c) Waivers

In response to comments, a revision was made to allow States to request permanent waivers upon submission of adequate and compelling justification. This is to avoid unnecessary annual requests for waivers in States where the reasons for the initial request have not changed.

Another area of concern was the public comment procedure for waivers. As proposed, waivers which have major direct impact on participants are subject to the public comment provisions. As discussed earlier, the public comment requirements for waivers were made more flexible. This was the only other major change to this section.

Note.—Food Stamp forms have been revised or added in accordance with the requirements of this amendment. The reporting and/or record keeping requirements anticipated in this amendment have been forwarded to the Office of Management and Budget (OMB) for approval in accordance with the Federal Reports Act of 1942. The provisions in this rulemaking concerning submission of forms will be effective contingent upon OMB approval.

Therefore, Part 272 is amended as follows:

1. In Part 272, § 272.1 is amended and § 272.2 and § 272.3 are added as follows:

New subparagraph (28) is added to paragraph 272.1(g).

§ 272.1 General terms and conditions.

* * * * *

(g) Implementation.

* * * * *

(28) Amendment 156. State agencies shall implement the program changes required by amendment 156 within 120 days after publication of these regulations, meeting the submittal deadlines outlined in § 272.2 and § 272.3.

§ 272.2 Plan of operation.

(a) *General Purpose and Content.* (1) *Purpose.* State agencies shall periodically plan and budget program operations and establish objectives. When planning and budgeting for program operations for the next year, State agencies shall consider major corrective action objectives, existing program strengths and deficiencies, and other factors anticipated to impact on the operation of the State's Food Stamp Program and on projected expenditures.

(2) *Content.* The basic components of the State Plan of Operation are the Federal/State Agreement, the Budget Projection Statement, and the Program Activity Statement. In addition, certain attachments to the Plan are specified in this Section and in § 272.3. The requirements for the basic components and attachments are specified in § 272.2(c) and § 272.2(d) respectively. The Federal/State Agreement is the legal agreement between the State and the Department of Agriculture. This Agreement is the means by which the State elects to operate the Food Stamp Program and to administer the program in accordance with the Food Stamp Act of 1977, as amended, regulations issued pursuant to the Act, the FNS-approved State Plan of Operation, and any State-developed manuals approved by FNS. The Budget Projection Statement and Program Activity Statement provide information on the number of actions and amounts budgeted for various functional areas such as certification and issuance. The Plan's attachments include the Outreach Plan, Disaster Plan (currently reserved), and the optional Nutrition Education Plan. The Corrective Action Plan is considered part of the State Plan of Operation, but is submitted separately as prescribed under § 275.22.

(b) *Federal/State Agreement.* (1) The wording of the pre-printed Federal/State Agreement is as follows:

The State of ———— and the food and Nutrition Service (FNS), U.S. Department of Agriculture (USDA), hereby agree to act in accordance with the provisions of the Food Stamp Act of 1977, as amended, implementing regulations, the FNS-approved State Plan of Operation and FNS-approved manuals. The State and FNS (USDA) further agree to fully comply with any changes in Federal law and regulations. This agreement may be modified with the mutual consent of both parties.

Provisions

The State agrees to: 1. Administer the program in accordance with the provisions contained in the Food Stamp Act of 1977, as amended, and in the manner prescribed by regulations issued pursuant to the Act; and to implement the FNS-approved State Plan of Operation and to adhere to FNS-approved State manuals, State instructions, or State directives.

2. Comply with Title VI of the Civil Rights Act of 1964 (Pub. L. 88-352), Section 11(c) of the Food Stamp Act of 1977, as amended, the Age Discrimination Act of 1975 (Pub. L. 94-135) and the Rehabilitation Act of 1973 (Pub. L. 93-112, Sec. 504) and all requirements imposed by the regulations issued pursuant to these Acts by the Department of Agriculture to the effect that, no person in the United States shall, on the grounds of sex, race, color, age, political belief, religion, handicap, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subject to discrimination under the Food Stamp Program.

3. (For States with Indian Reservations only). Implement the Program in a manner that is responsive to the special needs of American Indians on reservations and consult in good faith with tribal organizations about that portion of the State's Plan of Operation pertaining to the implementation of the Program for members of the tribe on reservations.

FNS agrees to:

1. Pay administrative costs in accordance with the Food Stamp Act, implementing regulations, FNS-approved State manuals and an approved Cost Allocation Plan.

2. Carry-out any other responsibilities delegated by the Secretary in the Food Stamp Act of 1977, as amended.

Date _____
Signature _____
(Governor or Authorized Designee)
Date _____
Signature _____
(Regional Administrator, FNS)

(2) The State agency may propose alternative language to any or all the provisions listed in paragraph (1) of this section. The alternative language is subject to approval by both parties before signature.

(c) *Budget Projection Statement and Program Activity Statement.* (1) The State agency shall submit to FNS for approval a Budget Projection Statement and Program Activity Statement in accordance with the submittal dates in § 272.2(e).

(i) The Budget Projection Statement solicits projections of the total costs for ten areas of program operations (certification, issuance, performance reporting, fair hearings, outreach, training, ADP development, ADP operations, fraud control, and other). The Budget Projection Statement is to be submitted quarterly and shall contain projections for each of four successive quarters beginning with the quarter during which the current Statement is due. The State agency shall submit with each Budget Projection Statement a narrative justification documenting and explaining the assumptions used to arrive at the projections. The narratives shall cover such subjects as: the number and salary level of employees; other factors affecting personnel costs, including anticipated increases in pay rates or benefits, the distribution of pay periods across quarters and reallocations of staff among units or functions, insofar as these might result in cost increases or decreases; costs for purchasing, leasing, and maintaining equipment and space, especially as concerns any upcoming, one-time-only purchases of new capital assets such as ADP equipment, renegotiation of leases, changes in depreciation rates or procedures, relocations of offices, maintenance and renovation work, and inflation; issuance system costs, including renegotiation of issuing agent fees and plans to change issuance systems; changes in caseload and factors contributing to increases or decreases in the numbers of recipients and recertifications, including the anticipated impact of economic conditions (and in particular unemployment) and seasonality; cost implications of corrective action plans; anticipated changes in program regulations and operating guidelines and instructions; training needs; travel costs; and adjustments in insurance premiums.

The narrative should cover as many of the items listed above, and any other items deemed relevant by the State agency, as have a significant impact on costs. The State agency is not required to discuss every item in the list in every submission of a Budget Projection Statement. The narrative should concentrate on items that account for increases or decreases in costs from the preceding submissions.

(ii) The Program Activity Statement, to be submitted annually, solicits a summary of program activity for the State agency's operations during the preceding fiscal year. The specific items required are: the number of certification approvals and denials for public assistance and non-assistance households; the number of issuance transactions under different systems; the number of performance reporting reviews; the number of fair hearing decisions; and information on fraud control activities.

(2) An organizational outline shall be submitted at least annually as an attachment to the Program Activity Statement. The outline shall contain the following information:

(i) The position of the head of the State agency responsible for administering the Food Stamp Program in relation to the overall State organizational structure, i.e., the Program Director in relation to the Commissioner of Welfare;

(ii) A description of the organizational structure through which the State agency will administer and operate the Food Stamp Program, including whether the Program is State, county, locally, or regionally-administered; whether the workers have single Food Stamp Program or multi-program functions; and the title and position of the individual or panel designated as the hearing authority and whether officials conduct both fair and fraud hearings.

(iii) A description of the funding arrangement by which State, county, and local jurisdictions will contribute to the State agency portion of administrative costs;

(iv) The position within the State organizational structure of the Performance Reporting System (PRS) coordinator, including whether the PRS coordinator is full or part-time, and is responsible for direct supervision over Quality Control or Management Evaluation or if these functions are handled separately, and whether quality control reviewers have single Food Stamp Program or multi-program review responsibilities;

(v) The position of the training coordinator and whether this is a full or part-time position; and

(vi) The organizational entity responsible for corrective action.

(3) *Additional Attachments.* The following shall be attachments or addenda to the Program Activity Statement submitted annually:

(i) The special plan required by § 277.15 when requesting Federal funding at the present 75 percent level for investigation and prosecution activities; and

(ii) For informational purposes (not subject to approval as part of the plan submission procedures), the agreements between the State agency and the United States Postal Service for coupon issuance, between the State agency and the Social Security Administration for supplemental security income/food stamp joint application processing and for routine user status, and between the State agency and the State Employment Security agency for work registration and job search.

(d) *Planning Documents.* (1) The following planning documents shall be submitted:

(i) Outreach Plan as required by § 272.5;

(ii) Disaster Plan as required by § 280.6 (currently reserved), or certification that a previously submitted Disaster Plan has been reviewed and remains current;

(iii) Nutrition Education Plan if the State agency elects to request Federal Food Stamp Program administrative matching funds to conduct nutrition education programs as discussed in paragraph (d)(2) of this section.

(2) *Nutrition Education Plan.* If submitted, the Nutrition Education Plan shall contain:

(i) The number and positions of staff that will be conducting nutrition education;

(ii) Description of activities in the nutrition education program; and

(iii) Assurance that nutrition education programs for which USDA provides Food Stamp Program administrative matching funds are conducted exclusively for the benefit of Food Stamp Program applicants and participants and do not duplicate USDA's Expanded Food and Nutrition Education Program's efforts in the State.

(e) *Submittal Requirements.* States shall submit to the appropriate FNS Regional Office for approval each of the components of the Plan of Operation for approval within the timeframes established by this paragraph. Approval or denial of the document may be withheld pending review by FNS. However, if FNS fails to either approve,

deny, or request additional information within 30 days, the document is approved. If additional information is requested, the State agency shall provide this as soon as possible, and FNS shall approve or deny the Plan within 30 days after receiving the information.

(1) The Federal/State agreement shall be signed by the Governor of the State or authorized designee and shall be submitted to FNS within 120 days after publication of these regulations in final form and shall remain in effect until terminated.

(2) The Budget Projection Statement and Program Activity Statement shall be signed by the head of the State agency or its chief financial officer and submitted as follows:

(i) The Budget Projection Statement, shall be submitted 45 days after the end of each quarter (January–March, April–June, July–September, and October–December). The first report is due May 15, 1981 for the four quarters beginning April 1981;

(ii) The Program Activity Statement shall be submitted annually, not later than 45 days after the end of the State agency's fiscal year. The first report is due 45 days after the end of the State's 1981 fiscal year. The first report is not required to contain information that is not currently captured by the State agency's information system. State agencies shall amend their data gathering systems so that all items can be completed on the second report, due for the 1982 fiscal year.

(3) The initial submission of the organizational outline described in § 272.2(c)(2) and the additional attachments outlined in § 272.2(c)(3) shall be due 120 days after publication of this final rule and thereafter as an attachment to the Program Activity Statement due 45 days after the end of the State's fiscal year.

(4) The Outreach Plan shall be signed by the head of the State agency and submitted to FNS for approval each year no later than August 15.

(5) Disaster Plan [reserved].

(6) The Nutrition Education Plan shall be signed by the head of the State agency and submitted prior to funding of nutrition education activities when the State agency elects to request Federal administrative matching funds to conduct Nutrition Education Programs. The plan shall then be submitted annually no later than August 15. The initial submission may be for a period of less than or more than a year in order to meet the August 15 deadline.

(7) Where applicable, State agencies shall consult (on an ongoing basis) with the tribal organization of an Indian reservation about those portions of the State Plan of Operation pertaining to the special needs of the members of the tribe.

(f) *Revisions.* Revisions to any of the planning documents or the Program and Budget Summary Statement shall be prepared and submitted for approval to the appropriate FNS Regional Office in the same manner as the original document. However, revisions to the budget portion of the Budget Projection Statement and Program Activity Statement shall be submitted as follows:

(1) *Program funds.* (i) For program funds, State agencies shall request prior approvals promptly from FNS for budget revisions whenever:

(A) The revision indicates the need for additional Federal funding;

(B) The program budget exceeds $100,000, and the cumulative amount of transfers among program functions exceeds or is expected to exceed five percent of the program budget. The same criteria apply to the cumulative amount of transfers among functions and activities when budgeted separately for program funds provided to a subagency, except that FNS shall permit no transfer which would cause any Federal appropriation, or part thereof, to be used for purposes other than those intended;

(C) The revisions involve the transfer of amounts budgeted for indirect costs to absorb increases in direct costs; or

(D) The revisions pertain to the addition of items requiring prior approval by FNS in accordance with the provisions of the applicable cost principles specified in Part 277 Appendix A of the regulations.

(ii) No other changes to the Program fund budget require approval from FNS. Examples of changes which do not require Federal approval are: the use of State agency funds to accomplish program objectives over and above the State agency minimum share included in the approved Program budget; and the transfer of amounts budgeted for direct costs to absorb authorized increases in indirect costs.

(iii) The requirements of paragraph (f)(1)(i)(B) of this section may be waived by FNS provided that:

(A) No different limitation or approval requirement may be imposed; and,

(B) FNS shall not permit a transfer which would cause any Federal appropriation, or part, thereof, to be used for purpose other than those intended.

(2) *Authorized Funds Exceeding State Agency Needs.* When it becomes apparent that the funds authorized by the Letter of Credit will exceed the needs of the State agency, FNS will make appropriate adjustments in the Letter of Credit in accordance with Part 277.

(3) *Method of Requesting Approvals.* When requesting approval for budget revisions, State agencies shall use the same format as the Budget Projection Statement used in the previous submission. However, State agencies may request by letter the approvals required by paragraph (f)(1)(i)(D).

(4) *Notification of Approval or Disapproval.* Within 30 days from the date of receipt of the request for budget revisions, FNS shall review the request and notify the State agency whether or not the budget revisions have been approved. If the revision is still under consideration at the end of 30 days, FNS shall inform the State agency in writing as to when the decision will be made.

§ 272.3 Operating guidelines and forms.

(a) *Coverage of Operating Guidelines.* State agencies shall prepare and provide to staff responsible for administering the Program written operating procedures. In those States which have State regulations that outline these Operating Procedures, these are equivalent to Operating Guidelines. Other examples of Operating Guidelines are manuals, instructions, directives or transmittal memos. The following categories shall be included in the Operating Guidelines:

(1) Certification of households, including but not limited to:

(i) application processing;

(ii) nonfinancial eligibility standards;

(iii) financial criteria and the eligibility determination;

(iv) actions resulting from eligibility determinations;

(v) determining eligibility of special situation households as specified in § 273.11;

(vi) additional certification functions such as processing changes during certification periods and reporting requirements for households;

(vii) lost benefits/claims against households;

(viii) fair/fraud hearings;

(ix) a list of Federal and State energy assistance programs that qualify for the resource and income exclusions discussed in § 273.8(e)(11)(viii) and § 273.9(c)(10)(v) and how these payments are identified as being eligible for the exemption.

(2) Issuance, accountability, and reconciliation;

(3) The Performance Reporting System, including instructions or directives for conducting quality control and management evaluation reviews and the quality control sample plan;

(4) A description of the training program, including a listing of the

organizational component which conducts training, to whom and how often training is provided;

(5) Procedures for obtaining public comment;

(6) The fair/fraud hearing procedures if not included in the Certification Handbook.

(7) The consultation process (where applicable) with the tribal organization of an Indian reservation about the State Plan of Operation and Operating Guidelines in terms of the special needs of members of the tribe and the method to be used for incorporating the comments from the tribal organization into the State Plan of Operations and Operating Guidelines.

(b) *Submittal and Approval.* (1) State agencies may use the forms, manuals, handbooks, instructions, and other operating guidelines provided by FNS or develop and submit to FNS for approval alternate procedures and forms.

(2) If the State agency adopts any FNS-developed material, it shall only submit State-developed material for approval.

(3) FNS shall provide each State agency with approval, denial or appropriate comments on State-developed operating guidelines within 30 days of the receipt of such guidelines. FNS may acknowledge receipt of the guidelines and withhold approval or denial of the guidelines pending further review. However, if FNS fails to either approve, deny, request additional information, or acknowledge receipt of the guideline within 30 days, the guideline is approved. If FNS requests additional information, the State agency shall provide the requested information as soon as possible and FNS shall approve or deny the guidelines within 30 days of receipt of the additional information.

(4) Amendments to any of the operating guidelines shall be submitted to FNS for approval prior to implementation by the State agency. The timeframes in (3) above also apply to submission of amendments.

(c) *Waivers.* (1) The Administrator of the Food and Nutrition Service or Deputy Administrator for Family Nutrition Programs may authorize waivers to deviate from specific regulatory provisions. Requests for waivers may be approved only in the following situations:

(i) the specific regulatory provision cannot be implemented due to extraordinary temporary situations such as a sudden increase in the caseload due to the loss of SSI cash-out status;

(ii) FNS determines that the waiver would result in a more effective and efficient administration of the program; or

(iii) unique geographic or climatic conditions within a State preclude effective implementation of the specific regulatory provision and require an alternate procedure; for example, the use of fee agents in Alaska to perform many of the duties involved in the certification of households including conducting the interviews.

(2) FNS shall not approve request for waivers when:

(i) the waiver would be inconsistent with the provisions of the Act;

(ii) the specific regulatory provision to be waived is a national eligibility criterion;

(iii) the waiver would result in a denial, reduction or delay of benefits;

(iv) the waiver would deny a participant or potential participant any due process protection afforded by either the Act or regulations; or

(v) the waiver would result in a procedure that would not be in compliance with the processing standards specified in § 273.2(g) and (i) and § 273.12(c).

(3) FNS shall approve waivers for a period not to exceed one year unless the waiver is for an on-going situation. If the waiver is requested for longer than a year, appropriate justification shall be required and FNS will determine if a longer period is warranted and if so, the duration of the waiver. Extensions may be granted provided that States submit appropriate justification as part of the State Plan of Operation.

(4) When submitting requests for waivers, State agencies shall provide compelling justification for the waiver in terms of how the waiver will improve the efficiency and effectiveness of the administration of the Program. At a minimum, requests for waivers shall include but not necessarily be limited to:

(i) reasons why the waiver is needed;

(ii) the portion of caseload or potential caseload which would be affected and the characteristics of the affected caseload such as geographic, urban, or rural concentration;

(iii) anticipated impact on service to participants or potential participants who would be affected;

(iv) anticipated time period for which the waiver is needed; and

(v) thorough explanation of the proposed alternative provision to be used in lieu of the waived regulatory provision.

(5) The provisions of this paragraph do not apply to exceptions to service standards approved by the State agency or FNS in accordance with § 272.5 or approved by FNS in accordance with § 275.5.

(6) Waivers shall be subject to the public comment requirements in paragraph (d) of this section.

(d) *Public Comment.* States shall solicit public input and comment on overall Program operations at least once every four years, beginning no later than the State's 1982 fiscal year, and shall emphasize those areas in which the State has some discretion. Certain waivers shall also be subject to public comment.

(1) Prior to the beginning of the comment period, State agencies shall publicize in the media that a waiver or overall Program operations are open to public comment. State press releases and other methods of publicity shall contain addresses for obtaining further information and shall specify the method used for soliciting public comment. The State shall use one or more of the following methods:

(i) State Administrative Procedures Act (APA) if the Act includes procedures for obtaining public comment on food stamp matters and provides at least 30 days for comment;

(ii) Publication (in addition to the notice of the available components) of a summary of the waiver or general Program operations. Also instructions on how to obtain more information shall be included. This publication shall be in sufficient media sources to ensure general coverage in all project areas. In addition, all Outreach contacts in the State's current plan shall be notified separately. Public comment shall be solicited for a minimum of 30 days.

(iii) State wide public hearing(s) at location(s) that are accessible to a significant number of interested persons.

(2) State agencies shall review, analyze, consider and prepare a summary of the comments received. The summary shall briefly outline the sources and contents of the comments and explain what was decided upon. Copies of the comments (either letters or transcripts of oral comments) and a comment summary shall be available for public inspection at the State office during its regular business hours. Copies of the comment summary shall be made available free of charge upon written request. The comment letters or transcripts and the summary shall be retained for at least one year for both public and FNS review.

(3)(i) Waivers which have a major, direct impact on participants shall be subject to public comment prior to their submission to FNS. If the State agency determines that comment period cannot be held because prompt implementation of the waiver is necessary due to an emergency situation or a need for rapid action to protect program integrity and

prevent significant program loss, it shall submit justification for an exemption to FNS with its waiver request.

(ii) Comments on waivers shall be solicited prior to submission of the request to FNS, and a summary of the comments received shall be submitted with the other information.

(4) Special emphasis shall be placed on the following areas when soliciting comments at least once every four years on overall Program operations: (i) ongoing State options such as development of utility standards, hearing and issuance systems, verification, and, if adopted, the periodic reporting and retrospective accounting system; and (ii) all current, pending and anticipated waivers. A waiver or State option need not be included in a particular comment cycle on overall program operations if it has been subject to the public comment procedures prescribed under paragraph (d)(i) of this section within the two years immediately preceding the comment cycle.

(5) State agencies are encouraged to maintain any currently used methods and may also use other methods for obtaining public comment, in addition to the minimum requirements specified above; for example, States with APA's may also hold public hearings, or welfare or food stamp advisory councils may review the material.

(91 Stat. 958 (7 U.S.C. 2011–202)

(Catalog of Federal Domestic Assistance Program No. 10.551, Food Stamp)

Dated: January 14, 1981.

Carol Tucker Foreman,

Assistant Secretary.

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Wednesday
January 21, 1981

Part VII

Department of Education

National Direct Student Loan Program, College Work-Study Program, Supplemental Educational Opportunity Grant Program, Guaranteed Student Loan Program, Parent Loans for Undergraduate Students Program, and Pell Grant Program; Final Rule

DEPARTMENT OF EDUCATION

34 CFR Parts 674, 675, 676, 682, 683, and 690

National Direct Student Loan Program, College Work-Study Program, Supplemental Educational Opportunity Grant Program, Guaranteed Student Loan Program, Parent Loans for Undergraduate Students Progam, and Pell Grant Program

AGENCY: Department of Education.

ACTION: Final regulations with comments invited.

SUMMARY: The Secretary is issuing the regulations for the Pell Grant (formerly the Basic Educational Opportunity Grant Program), National Direct Student Loan, College Work-Study, Supplemental Educational Opportunity Grant, Guaranteed Student Loan and Parent Loans for Undergraduate Students Programs. These regulations are being issued to implement the statutory provisions contained in the Education Amendments of 1980, Pub. L. 96-374 concerning a student's cost of attendance at a postsecondary institution or school. The Secretary is also changing the provision in each program regulation that declares a student ineligible for that program if he or she has had a Guaranteed Student Loan, National Direct Student Loan or National Defense Student Loan discharged in bankruptcy. The provision will indicate that such a student is not ineligible for assistance.

DATES: All comments, suggestions, or objections must be received on or before March 23, 1981.

EFFECTIVE DATE: These regulations are expected to take effect 45 days after they are transmitted to the Congress. Regulations are usually transmitted to the Congress several days before they are published in the Federal Register. If you want to know the effective date of these regulations, call or write the Department of Education contact person.

ADDRESSES: Comments should be addressed to William L. Moran or Andrea Foley, U.S. Department of Education, Office of Student Financial Assistance, (Room 4318, ROB-3), 400 Maryland Avenue, SW., Washington, D.C. 20202.

FOR FURTHER INFORMATION CONTACT: William L. Moran or Andrea Foley, Office of Student Financial Assistance, Room 4318, ROB-3, 400 Maryland Avenue, SW., Washington, D.C. 20202. Telephone (202) 472-4300.

SUPPLEMENTARY INFORMATION:

I. On October 3, 1980, the Education Amendments of 1980 were enacted into law reauthorizing the title IV student financial assistance programs through the 1985–86 award year, as well as establishing the Parent Loans for Undergraduate Students Program.

One of the new provisions of the Education Amendments of 1980 involves the calculation of a student's cost of attendance at a postsecondary institution. This change will have a substantial impact on the Pell Grant Program and a lesser impact on the other title IV student programs. These programs include the National Direct Student Loan (NDSL), College Work-Study (CW–S), Supplemental Educational Opportunity Grant (SEOG), Guaranteed Student Loan (GSL), and Parent Loans for Undergraduate Students (PLUS) programs.

Under previous legislation, the cost of attendance for the Basic (Pell) Grant Program, as defined by the Commissioner of Education in regulations, was limited to three nondiscretionary components: (1) Actual tuition and fees charged to a full-time student for an academic year, (2) Actual institutional charges for room and board or a $1,100 allowance for all off-campus students, and (3) A $400 allowance for books, supplies and miscellaneous expenses. The new law alters the cost components to be used for this program by deleting the "actual cost" restriction and mandating a series of expanded discretionary allowances.

These regulations establish general rules for determining a student's cost components while maintaining the critical element of institutional discretion intended by Congress.

All cost of attendance components are determined on the basis of an academic year. However that determination must be adjusted to take into account a student's enrollment status and the period of the award and/or loan for purposes of all title IV programs except the Pell Grant Program. Because of the manner in which the Pell Grant Program is administered, all costs for that program are determined on the basis of a full-time student for a full academic year.

Reflecting the Education Amendments of 1980, these regulations include a provision which allows the financial aid administrator to adjust an individual student's need determination only for the NDSL, CW–S and SEOG Programs.

A. The following is a discussion of the major cost of attendance provisions in these regulations:

1. *Tuition and fees:* In accordance with the Education Amendments of 1980 which discuss the "tuition and fees normally assessed a full-time student," institutions may determine the tuition and fee component of a student's total cost of attendance in either of two ways. The institution may use the actual amount charged to a student for an academic year or it may use an average amount charged to full-time students for an academic year. The latter method eliminates the need for an institution to determine the exact amount charged to each student. However, this provision does not prohibit an institution which elects to calculate an average tuition and fee charge from using actual amounts for individual students whose charges vary greatly from the average.

If an institution chooses to use average charges, the institution must establish a separate average charge for undergraduate, graduate and professional students for the GSL, NDSL and CWS programs which include such students.

Also, if an institution establishes its tuition and fee charges on a residency requirement basis (for example, In and Out-of-State) and it elects to calculate an average tuition and fee charge, it must determine a separate average charge for each residency-based classification. This provision is intended to provide the most equitable treatment for students at institutions whose residency-based tuition and fee charges vary widely.

In addition, an institution may, but is not required to, determine a separate average charge for any other classification upon which it bases tuition and fees, such as separate programs or discrete schools within an institution.

2. *Room and board:* Reflecting the Education Amendments of 1980, these regulations categorize room and board allowances by four types of students.

a. For a student who has no dependents and lives with his or her parent(s), the allowance is set at the $1,100 minimum contained in the new law.

b. For a student who has no dependents and lives in institutionally owned or operated housing whether or not the student contracts with the institution for board, an institution has the option of either determining a standard allowance based on the average amount charged to most students for an academic year, as with tuition and fees, or using a student's actual room and board charges.

c. For a student who has no dependents and does not live with his or her parent(s) or in institutionally owned or operated housing, the institution determines a standard room and board allowance for an academic year. This

category includes students who contract with the institution for board but do not live in institutionally owned or operated housing.

d. For students with dependents, the institution determines an allowance for room and board for an academic year based on the expenses incurred by the student and his or her dependents.

3. *Miscellaneous allowances:* Reflecting the Education Amendments of 1980, the following series of three institutionally determined allowances are provided in these regulations. This is a significant change from the $400 allowance for books, supplies and miscellaneous expenses previously used in determining the Basic (Pell) Grant cost of attendance.

a. A reasonable allowance for books and supplies for an academic year.

b. A reasonable allowance for transportation for an academic year. This allowance may include the cost of travel between the student's residence and the institution and that of travel required for the completion of a course of study.

c. An allowance for miscellaneous personal expenses.

4. *Allowances for special circumstances:* The Education Amendments of 1980 establish several components for use in determining the cost of attendance when certain circumstances exist.

a. If a student is enrolled in a formal program of study outside the United States which is normally included in his or her academic program, a reasonable allowance determined by the institution is included for expenses related to study abroad (for example, travel costs to and from the foreign place of study).

b. For those students with dependent children, a reasonable allowance determined by the institution is included for expenses related to child care.

c. A reasonable allowance determined by the institution on an individual basis is included for expenses related to a student's handicap. However, as mandated by the new law, any expenses provided for by any other assisting agency or program must be excluded from this allowance. These regulations also provide that documentation of any such assistance be made a part of the student's financial aid records. On July 22, 1979, a memorandum was issued jointly by the Commissioner of Education and the Commissioner of Rehabilitation Services which established guidelines for use by State Vocational Rehabilitation Agencies and State Associations of Student Financial Aid Administrators in developing an agreement within each State for the improved coordination of financial assistance for handicapped students. In the light of the Education Amendments of 1980 and these regulations, that memorandum is being revised to emphasize that the State-level agreements should contain policies which reflect coordination of financial aid administrators and Vocational Rehabilitation agencies at the time a handicapped student's budget is being developed, before the making of title IV awards.

The definition of "handicapped" used in connection with the cost of attendance is taken from the definition set out in section 602(1) of the Education of the Handicapped Act.

5. *Correspondence study programs:* As under current regulations, the cost of attendance component for a student enrolled in a correspondence study program includes actual tuition and fees for an academic year. It further includes a room and board allowance for the period of required residential training which is to be determined in the same manner as for students who are not enrolled in a correspondence study program. In addition to those components, this section provides for two other allowances mandated in the new law for students in such programs: if required for completion of the course, a reasonable allowance determined by the institution for books and supplies for an academic year, and a reasonable allowance determined by the institution for travel between the student's residence and the institution while fulfilling a required period of residential training.

6. *Attendance costs in unusal circumstances:* Concerning title IV attendance costs for students whose program length exceeds an academic year at institutions using clock hours, these regulations provide that tuition and fee charges be prorated for the length of the academic year, as under the current Pell Grant program regulations, and added to all other general attendance costs.

B. The following three sections are to be used only in determining the cost of attendance for the Pell Grant Program in unusual circumstances:

1. A new section is included in these regulations concerning attendance costs for students whose program length is less than an academic year at institutions using clock hours. Under this provision, the tuition and fee charges are projected to the length of an academic year. This is done by multiplying the tuition and fee charge for the program by the following fraction:

Clock hours in the academic year ÷ clock hours in the program

The purpose of this section is to provide consistency in the determination of tuition and fee charges for the Pell Grant Program. Currently, students enrolled in programs whose length is less than an academic year are the only group whose tuition and fees cost component is based on less than an academic year's charges which creates an inequitable cost of attendance determination for those students.

2. For students who are incarcerated and for whom at least one-half room and board expenses are provided, the cost components include tuition and fees, an allowance for books and supplies and if applicable, an allowance for transportation and handicap expenses (all determined in the same manner as for non-incarcerated students).

The cost components for students who are incarcerated and for whom less than one-half room and board expenses are provided parallel general attendance costs.

c. As under current regulations, students enrolled at the U.S. Armed Forces academies are considered to have no cost of attendance.

II. The Department of Education currently has in effect regulations which provide that a Guaranteed Student Loan, National Direct Student Loan or National Defense Student Loan which is discharged in bankruptcy is considered in default for purposes of student eligibility for additional assistance (Pell Grant, 34 CFR 690.75(g)(3); NDSL, 34 CFR 674.2 and 674.9(h); CWS, 34 CFR 675.9(h); SEOG, 34 CFR 676.9(h); and GSL, 677.201(c)(3)). A person who is in default on such a loan is not eligible for additional student assistance at the same school which the student was attending with the proceeds of the discharged loan.

However, under the new Bankruptcy Code student loans are nondischargeable within the initial five years of actual repayment, except in cases of undue hardship (11 U.S.C. 523(a)(8)). Therefore, the need for an additional regulatory prohibition has decreased, and its retention may give the appearance of being punitive and contrary to the spirit if not the letter of the Bankruptcy Code.

Consequently, these regulations eliminate the eligibility restriction of title IV assistance for those students who have previously discharged their title IV loan indebtedness in bankruptcy.

This change applies to the Pell Grant Program, the National Direct Student Loan Program, the College Work-Study, the Supplemental Educational

Opportunity Grant Program, and the Guaranteed Student Loan Program.

Waiver of Notice of Proposed Rulemaking

The regulatory changes reflect the provision of the Education Amendments of 1980 which mandates the cost of attendance components to be used for all title IV student financial assistance programs. The Secretary wishes to give the program community as much advance notice as possible of these provisions so that student financial assistance awards may be packaged timely in preparation of the 1981–82 award year.

Accordingly, the Secretary finds that publication of a proposed rule in this instance would be unnecessary, impracticable and contrary to the public interest within the meaning of 5 U.S.C. 533(b), and is publishing these rules as final regulations.

Invitation To Comment

The public is particularly invited to comment on the following:

(1) The advisability of setting a specific dollar limitation on the cost of attendance allowance for miscellaneous personal expenses and on what dollar amount is a reasonable maximum, as well as the types of expenses which may be included in this allowance.

(2) The types of expenses to be included in the cost of attendance allowance for expenses related to dependent child care and the advisability of limiting the allowance to those expenses.

(3) Ways of reducing any regulatory burdens imposed by these regulations.

Interested persons are invited to submit comments and recommendations regarding these regulations. Written comments and recommendations may be sent to the address given at the beginning of this preamble. All comments must be received on or before the 60th day after publication of this document.

All comments submitted in response to these regulations will be available for public inspection, during and after the comment period, in Room 4316, Regional Office Building 3, 7th and D Streets, S.W., Washington, D.C., between the hours of 8:30 a.m. and 4:00 p.m. Monday through Friday of each week except Federal holidays.

Regulatory Flexibility Act Analysis

The Regulatory Flexibility Act (Pub. L. 96–354, enacted September 19, 1980) requires each Federal agency to prepare an initial regulatory flexibility analysis and a final regulatory flexibility analysis for each regulation that—

(1) Is published as a notice of proposed rulemaking after January 1, 1981, and

(2) Has a significant economic impact on a substantial number of small entities (small businesses, small organizations, or small governmental jurisdictions).

Because the Department has not yet established its own definitions of "small organization" and "small governmental jurisdiction", as contemplated by the Act, it is not possible to prepare a full initial regulatory flexibility analysis at this time. Further, since the regulations in this document are required by statute to be published in final no later than May 31, 1981, it is impracticable to delay publication while the necessary definitions are being developed. As noted elsewhere in this preamble, it was impracticable to take public comments before publishing these regulations as final. For the same reasons, it was impracticable to delay the regulations while an initial regulatory flexibility analysis was prepared. In these circumstances, the Regulatory Flexibility Act permits a waiver or delay of the initial regulatory flexibility analysis. If it is determined that these regulations are subject to that Act, the Secretary will prepare the necessary analyses at a later date.

As an interim measure, this document, to the maxium extent possible, includes information of the kind comtemplated by the Regulatory Flexibility Act, including the reasons for the regulations, the objectives and legal basis for the regulations, and any significant issues and alternatives for consideration by the public. To assist the Department in determining whether the Regulatory Flexibility Act applies to these regulations, and in complying with Act's requirements, public comment is especially invited on the following matters:

(1) The number and kind of small entities (small businesses, small organizations, or small governmental jurisdictions) affected by the regulations;

(2) The reporting, recordkeeping, and compliance burdens imposed by the regulations on small entities;

(3) The type of professional skills necessary for preparation of any reports or records required by the regulations;

(4) Any Federal rules that may duplicate, overlap, or conflict with the regulations;

(5) Any significant alternatives that would accomplish the purposes of the applicable statute but would minimize any significant economic impact of the regulations on small entities. The Secretary is particularly interested in suggestions on alternatives such as the following:

- The establishment of differing reporting or compliance requirements or timetables that take into account the resources available to small entities.
- The clarification, consolidation, or simplification of compliance and reporting requirements for small entities.
- The use of performance rather than design standards.
- An exemption for small entities from coverage of part of all of the regulations.

Assessment of Educational Impact

The Department particularly requests comments on whether the regulations in this document would require transmission of information that is already being gathered by or is available from any other agency or authority of the United States.

Citation of Legal Authority

A citation of statutory or other legal authority is placed in parentheses on the line following each substantive provision of these proposed regulations.

Dated: January 13, 1981.

Shirley M. Hufstedler,

Secretary of Education.

(Catalogue of Federal Domestic Assistance Numbers: Pell Grant Program 84.063, National Direct Student Loan Program, 84.038, College Work-Study Program, 84.033, Supplemental Educational Opportunity Grant Program, 84.007, Guaranteed Student Loan Program, 84.032, Parent Loans for Undergraduate Students Program, 84.032)

PART 674—NATIONAL DIRECT STUDENT LOAN PROGRAM

34 CFR Part 674 National Direct Student Loan Program is amended as follows:

§ 674.2 [Amended]

1. Section 674.2 is amended as follows:

In § 674.2, the definition for *default or in default* is revised in (c) by deleting "Except as provided in § 674.9" and capitalizing the next word so that (c) reads as follows: "The Secretary considers a loan discharged in bankruptcy not to be in default."

§ 674.9 [Amended]

2. Section 674.9 is amended as follows:

In § 674.9(g) the sentence is revised to read as follows:

* * * * *

"(g) *Bankruptcy.* The Secretary does not consider a loan made under the National Defense Student Loan, National Direct Student Loan, Guaranteed Student Loan, or Parent Loans for Undergraduate Students Program that is discharged in

bankruptcy to be in default for purposes of this section.

3. Section 674.11 is revised to read as follows:

§ 674.11 Allowable Costs of Attendance

(a) *General.* (1) Except as provided in paragraphs (d) and (e) of this section, a student's cost of attendance means—

(i) The tuition and fees charged to a full-time student for an academic year by the institution he or she is attending as determined under paragraph (b) of this section;

(ii) An allowance for room and board expenses for an academic year, as determined under paragraph (c) of this section;

(iii) A reasonable allowance determined by the institution for books and supplies for an academic year;

(iv) A reasonable allowance determined by the institution for transportation for an academic year. This allowance may include—

(A) The cost of travel between the student's residence and the institution; and

(B) The cost of travel required for completion of a course of study;

(v) A reasonable allowance determined by the institution for miscellaneous personal expenses for an academic year;

(vi) A reasonable allowance determined by the institution for an academic year for expenses related to study abroad for students enrolled in an academic program which normally includes a formal program of study outside the United States;

(vii) A reasonable allowance determined by the institution for expenses for an academic year related to child care for a student's dependent children; and

(viii) A reasonable allowance determined by the institution for a handicapped student's expenses for an academic year related to his or her handicap, if these expenses are not provided for by any other assisting agency or program. This allowance may include expenses related to special services, transportation, equipment and supplies.

(2) If another agency or program provides assistance for any expenses related to a student's handicap, thereby reducing the student's costs, the institution shall document such assistance as part of the student's financial aid record.

(3) For purposes of this section, a handicapped student is a student who meets the definition contained in section 602(1) of the Education of the Handicapped Act. Accordingly, a handicapped student is a student who is mentally retarded, hard of hearing, deaf, speech impaired, visually handicapped, seriously emotionally disturbed, or orthopedically impaired, or is otherwise health impaired or has specific learning disabilities which require special education and related services.

(4) The institution shall take into account when determining a student's cost of attendance—

(i) The period for which financial assistance is awarded; and

(ii) Whether the student is enrolled on a full-time or less than full-time basis.

(20 U.S.C. 1088)

(b) *Tuition and fees.* (1) An institution shall determine the tuition and fees charged a full-time student by calculating—

(i) The actual amount charged the full-time student for tuition and fees for an academic year; or

(ii) The average amount it charges full-time students for tuition and fees for an academic year. If the institution selects this option, it must determine an average cost for each of the following categories of students:

(A) Undergraduate students;

(B) Graduate students; and

(C) Professional students.

(2) If an institution establishes its tuition and fee charges on a residency requirement basis (e.g. In-State and Out-of-State) and elects to calculated an average tuition and fee charge, it shall establish a separate average charge for each different residency based classification.

(3) An institution may determine a separate average charge for any other distinct classification upon which it bases tuition and fee charges.

(4) An institution shall determine the tuition and fees charged a less than full-time student by—

(i) Calculating the actual amount it charges the student for tuition and fees for an academic year; or

(ii) Reducing the amount it calculated under paragraphs (b) (1), (2), or (3) of this section to reflect the less than full-time enrollment of that student.

(20 U.S.C. 1088)

(c) *Room and board.* (1) The institution shall calculate a student's room and board allowance as follows—

(i) For a student who has no dependents and lives with his or her parent(s), an allowance of $1,100;

(ii) For a student who has no dependents and lives in institutionally owned or operated housing—

(A) The actual amount charged the student for room and board for an academic year; or

(B) A standard allowance based on the average amount it charges most of its student residents for room and board for an academic year;

(iii) For a student who has no dependents and does not live with his or her parent(s) or in institutionally owned or operated housing, a standard allowance determined by the institution for room and board for an academic year; or

(iv) For a student who has dependents, an allowance determined by the institution for room and board for an academic year based upon expenses incurred by the student and his or her dependent(s).

(2) For purposes of this section, a spouse is considered a dependent.

(20 U.S.C. 1088)

(d) *Attendance costs for students in correspondence study programs.* The cost of attendance for a student enrolled in a correspondence study program means—

(1) Actual tuition and fees charged to the student for an academic year;

(2) A reasonable allowance determined by the institution for books and supplies for an academic year, if required for the completion of the program; and

(3) If incurred in fulfilling a required period of residential training, expenses for—

(i) Room and board; and

(ii) Travel between the student's residence and the institution.

(20 U.S.C. 1088)

(e) *Attendance costs for students whose program length exceeds the academic year at institutions using clock hours.* The cost of attendance for a student enrolled in an institution measuring progress in clock hours who is charged tuition and fees for a program whose length exceeds the length of the academic year at the institution, is determined by adding—

(1) Tuition and fees × clock hours in the academic year ÷ clock hours in the program plus

(2) Room and board and other applicable allowances determined under paragraphs (a) and (c) of this section.

(f) *Adjustments.* The institution may, in individual cases, adjust a student's cost of attendance if the cost of attendance calculated under paragraphs (a) through (e) of this section is not a reasonable approximation of the student's actual costs.

(20 U.S.C. 1088(e))

(g) *Required documentation.* An institution must be able to justify and document the cost of attendance figures established under this section.

(20 U.S.C. 1088)

PART 675—COLLEGE WORK-STUDY AND JOB LOCATION AND DEVELOPMENT PROGRAM

34 CFR Part 675 College Work Study Program is amended as follows:

* * * * *

§ 675.9 [Amended]

1. Section 675.9 is amended as follows:

In § 675.9(g) the sentence is revised to read as follows:

*(g) *Bankruptcy.* The Secretary does not consider a loan made under the National Defense Student Loan, National Direct Student Loan, Guaranteed Student Loan, or Parent Loans for Undergraduate Students Program that is discharged in bankruptcy to be in default for purposes of this section.

2. Section 675.11 is revised to read as follows:

§ 675.11 Allowable costs of attendance.

(a) *General.* (1) Except as provided in paragraphs (d) and (e) of this section, a student's cost of attendance means—

(i) The tuition and fees charged to a full-time student for an academic year by the institution he or she is attending as determined under paragraph (b) of this section;

(ii) An allowance for room and board expenses for an academic year, as determined under paragraph (c) of this section;

(iii) A reasonable allowance determined by the institution for books and supplies for an academic year;

(iv) A reasonable allowance determined by the institution for transportation for an academic year. This allowance may include—

(A) The cost of travel between the student's residence and the institution; and

(B) The cost of travel required for completion of a course of study;

(v) A reasonable allowance determined by the institution for miscellaneous personal expenses for an academic year;

(vi) A reasonable allowance determined by the institution for an academic year for expenses related to study abroad for students enrolled in an academic program which normally includes a formal program of study outside the United States;

(vii) A reasonable allowance determined by the institution for expenses for an academic year related to child care for a student's dependent children; and

(viii) A reasonable allowance determined by the institution for a handicapped student's expenses for an academic year related to his or her handicap, if these expenses are not provided for by any other assisting agency or program. This allowance may include expenses related to special services, transportation, equipment and supplies.

(2) If another agency or program provides assistance for any expenses related to a student's handicap, thereby reducing the student's costs, the institution shall document such assistance as part of the student's financial aid record.

(3) For purposes of this section, a handicapped student is a student who meets the definition contained in section 602(1) of the Education of the Handicapped Act. Accordingly, a handicapped student is a student who is mentally retarded, hard of hearing, deaf, speech impaired, visually handicapped, seriously emotionally disturbed, or orthopedically impaired, or is otherwise health impaired or has specific learning disabilities which require special education and related services.

(4) The institution shall take into account when determining a student's cost of attendance—

(i) The period for which financial assistance is awarded; and

(ii) Whether the student is enrolled on a full-time or less than full-time basis.

(20 U.S.C. 1089)

(b) *Tuition and fees.* (1) An institution shall determine the tuition and fees charged a full-time student by calculating—

(i) The actual amount charged the full-time student for tuition and fees for an academic year; or

(ii) The average amount it charges full-time students for tuition and fees for an academic year. If the institution selects this option, it must determine an average cost for each of the following categories of students:

(A) Undergraduate students;

(B) Graduate student; and

(C) Professional students.

(2) If an institution establishes its tuition and fee charges on a residency requirement basis (e.g. In-State and Out-of-State) and elects to calculate an average tuition and fee charge, it shall establish a separate average charge for each different residency based classification.

(3) An institution may determine a separate average charge for any other distinct classification upon which it bases tuition and fee charges.

(4)An institution shall determine the tuition and fees charged a less than full-time student by—

(i) Calculating the actual amount it charges the student for tuition and fees for an academic year; or

(ii) Reducing the amount it calculated under paragraphs (b)(1), (2), or (3) of this section to reflect the less than full-time enrollment of that student.

(20 U.S.C. 1089)

(c) *Room and board.* (1) The institution shall calculate a student's room and board allowance as follows—

(i) For a student who has no dependents and lives with his or her parent(s), an allowance of $1,100;

(ii) For a student who has no dependents and lives in institutionally owned or operated housing—

(A) The actual amount charged the student for room and board for an academic year; or

(B) A standard allowance based on the average amount it charges most of its student residents for room and board for an academic year;

(iii) For a student who has no dependents and does not live with his or her parent(s) or in institutionally owned or operated housing, a standard allowance determined by the institution for room and board for an academic year; or

(iv) For a student who has dependents, an allowance determined by the institution for room and board for an academic year based upon expenses incurred by the student and his or her dependent(s).

(2) For purposes of this section, a spouse is considered a dependent.

(20 U.S.C. 1089)

(d) *Attendance costs for students in correspondence study programs.* The cost of attendance for a student enrolled in a correspondence study program means—

(1) Actual tuition and fees charged to the student for an academic year;

(2) A reasonable allowance determined by the institution for books and supplies for an academic year, if required for the completion of the program; and

(3) If incurred in fulfilling a required period of residential training, expenses for—

(i) Room and board; and

(ii) Travel between the student's residence and the institution.

(20 U.S.C. 1089)

(e) *Attendance costs for students whose program length exceeds the academic year at institutions using clock hours.* The cost of attendance for a student enrolled in an institution measuring progress in clock hours who is charged tuition and fees for a program whose length exceeds the length of the academic year at the institution, is determined by adding—

(1) Tuition and fees × clock hours in the academic year ÷ clock hours in the program plus

(2) Room and board and other applicable allowances determined under paragraphs (a) and (c) of this section.

(f) *Adjustments.* The institution may, in individual cases, adjust a student's cost of attendance if the cost of attendance calculated under paragraphs (a) through (e) of this section is not a reasonable approximation of the student's actual costs.

(20 U.S.C. 1089(c))

(g) *Required documentation.* An institution must be able to justify and document the cost of attendance figures established under this section.

(20 U.S.C. 1089)

PART 676—SUPPLEMENTAL EDUCATIONAL OPPORTUNITY GRANT PROGRAM

34 CFR Part 676 Supplemental Educational Opportunity Grant Program is amended as follows:

§ 676.9 [Amended]

1. Section 676.9 is amended as follows:

In § 676.9(g) the sentence is revised to read as follows:

* * * * *

"(g) *Bankruptcy.* The Secretary does not consider a loan made under the National Defense Student Loan, National Direct Student Loan, Guaranteed Student Loan, or Parent Loans for Undergraduate Student Program that is discharged in bankruptcy to be in default for purposes of this section.

2. Section 676.11 is revised to read as follows:

§ 676.11 Allowable cost of attendance.

(a) *General.* (1) Except as provided in paragraphs (d) and (e) of this section, a student's cost of attendance means—

(i) The tuition and fees charged to a full-time student for an academic year by the institution he or she is attending as determined under paragraph (b) of this section;

(ii) An allowance for room and board expenses for an academic year, as determined under paragraph (c) of this section;

(iii) A reasonable allowance determined by the institution for books and supplies for an academic year;

(iv) A reasonable allowance determined by the institution for transportation for an academic year. This allowance may include—

(A) The cost of travel between the student's residence and the institution; and

(B) The cost of travel required for completion of a course of study;

(v) A reasonable allowance determined by the institution for miscellaneous personal expenses for an academic year;

(vi) A reasonable allowance determined by the institution for an academic year for expenses related to study abroad for students enrolled in an academic program which normally includes a formal program of study outside the United States;

(vii) A reasonable allowance determined by the institution for expenses for an academic year related to child care for a student's dependent children; and

(viii) A reasonable allowance determined by the institution for a handicapped student's expenses for an academic year related to his or her handicap, if these expenses are not provided for by any other assisting agency or program. This allowance may include expenses related to special services, transportation, equipment and supplies.

(2) If another agency or program provides assistance for any expenses related to a student's handicap, thereby reducing the student's costs, the institution shall document such assistance as part of the student's financial aid record.

(3) For purposes of this section, a handicapped student is a student who meets the definition contained in section 602(1) of the Education of the Handicapped Act. Accordingly, a handicapped student is a student who is mentally retarded, hard of hearing, deaf, speech impaired, visually handicapped, seriously emotionally disturbed, or orthopedically impaired, or is otherwise health impaired or has specific learning disabilities which require special education and related services.

(4) The institution shall take into account when determining a student's cost of attendance—

(i) The period for which financial assistance is awarded; and

(ii) Whether the student is enrolled on a full-time or less than full-time basis.

(20 U.S.C. 1089)

(b) *Tuition and fees.* (1) An institution shall determine the tuition and fees charged a full-time student by calculating—

(i) The actual amount charged the full-time student for tuition and fees for an academic year; or

(ii) The average amount it charges full-time students for tuition and fees for an academic year.

(2) If an institution establishes its tuition and fee charges on a residency requirement basis (e.g. In-State and Out-of-State) and elects to calculate an average tuition and fee charge, it shall establish a separate average charge for each different residency based classification.

(3) An institution may determine a separate average charge for any other distinct classification upon which it bases tuition and fee charges.

(4) An institution shall determine the tuition and fees charged a less than full-time student by—

(i) Calculating the actual amount it charges the student for tuition and fees for an academic year; or

(ii) Reducing the amount it calculated under paragraphs (b) (1), (2), or (3) of this section to reflect the less than full-time enrollment of that student.

(20 U.S.C. 1089)

(c) *Room and board.* (1) The institution shall calculate a student's room and board allowance as follows—

(i) For a student who has no dependents and lives with his or her parent(s), an allowance of $1,100;

(ii) For a student who has no dependents and lives in institutionally owned or operated housing—

(A) The actual amount charged the student for room and board for an academic year; or

(B) A standard allowance based on the average amount it charges most of its student residents for room and board for an academic year;

(iii) For a student who has no dependents and does not live with his or her parent(s) or in institutionally owned or operated housing, a standard allowance determined by the institution for room and board for an academic year; or

(iv) For a student who has dependents, an allowance determined by the institution for room and board for an academic year based upon expenses incurred by the student and his or her dependent(s).

(2) For purposes of this section, a spouse is considered a dependent.

(20 U.S.C. 1089)

(d) *Attendance costs for students in correspondence study programs.* The cost of attendance for a student enrolled in a correspondence study program means—

(1) Actual tuition and fees charged to the student for an academic year;

(2) A reasonable allowance determined by the institution for books and supplies for an academic year, if required for the completion of the program; and

(3) If incurred in fulfilling a required period of residential training, expenses for—

(i) Room and board; and

(ii) Travel between the student's residence and the institution.

(20 U.S.C. 1089)

(e) *Attendance costs for students whose program length exceeds the academic year at institutions using clock hours.* The cost of attendance for a student enrolled in an institution measuring progress in clock hours who is charged tuition and fees for a program whose length exceeds the length of the academic year at the institution, is determined by adding—

(1) Tuition and fees × clock hours in the academic year ÷ clock hours in the program plus

(2) Room and board and other applicable allowances determined under paragraphs (a) and (c) of this section.

(f) *Adjustments.* The institution may, in individual cases, adjust a student's cost of attendance if the cost of attendance calculated under paragraphs (a) through (e) of this section is not a reasonable approximation of the student's actual costs.

(20 U.S.C. 1089(e))

(g) *Required documentation.* An institution must be able to justify and document the cost of attendance figures established under this section.

(20 U.S.C. 1089)

PART 682—GUARANTEED STUDENT LOAN PROGRAM

34 CFR Part 682 Guaranteed Student Loan Program is amended as follows:

1. In § 682.200, the definition of the term "Estimated cost of attendance" is revised and inserted in correct alphabetical order as follows:

§ 682.200 General definitions.

* * * * *

Allowable Costs of Attendance

(a) *General.* (1) Except as provided in paragraphs (d) and (e), a student's cost of attendance means—

(i) The tuition and fees charged to a full-time student for an academic year by the institution he or she is attending as determined under paragraph (b);

(ii) An allowance for room and board expenses for an academic year, as determined under paragraph (c);

(iii) A reasonable allowance determined by the institution for books and supplies for an academic year;

(iv) A reasonable allowance determined by the institution for transportation for an academic year. This allowance may include—

(A) The cost of travel between the student's residence and the institution; and

(B) The cost of travel required for completion of a course of study;

(v) A reasonable allowance determined by the institution for miscellaneous personal expenses for an academic year;

(vi) A reasonable allowance determined by the institution for an academic year for expenses related to study abroad for students enrolled in an academic program which normally includes a formal program of study outside the United States;

(vii) A reasonable allowance determined by the institution for expenses for an academic year related to child care for a student's dependent children; and

(viii) A reasonable allowance determined by the institution for a handicapped student's expenses for an academic year related to his or her handicap, if these expenses are not provided for by any other assisting agency or program. This allowance may include expenses related to special services, transportation, equipment and supplies.

(2) If another agency or program provides assistance for any expenses related to a student's handicap, thereby reducing the student's costs, the institution shall document such assistance as part of the student's financial aid record.

(3) For purposes of this section, a handicapped student is a student who meets the definition contained in section 602(1) of the Education of the Handicapped Act. Accordingly, a handicapped student is a student who is mentally retarded, hard of hearing, deaf, speech impaired, visually handicapped, seriously emotionally disturbed, or orthopedically impaired, or is otherwise health impaired or has specific learning disabilities which require special education and related services.

(4) The institution shall take into account when determining a student's cost of attendance—

(i) The period for which the loan is intended; and

(ii) Whether the student is enrolled on a full-time or less than full-time basis.

(20 U.S.C. 1089)

(b) *Tuition and fees.* (1) An institution shall determine the tuition and fees charged a full-time student by calculating—

(i) The actual amount charged the full-time student for tuition and fees for an academic year; or

(ii) The average amount it charges full-time students for tuition and fees for an academic year. If the institution selects this option, it must determine an average cost for each of the following categories of students:

(A) Undergraduate students;

(B) Graduate students; and

(C) Professional students.

(2) If an institution establishes its tuition and fee charges on a residency requirement basis (e.g. In-State and Out-of-State) and elects to calculate an average tuition and fee charge, it shall establish a separate average charge for each different residency based classification.

(3) An institution may determine a separate average charge for any other distinct classification upon which it bases tuition and fee charges.

(4) An institution shall determine the tuition and fees charged a less than full-time student by—

(i) Calculating the actual amount it charges the student for tuition and fees for an academic year; or

(ii) Reducing the amount it calculated under paragraphs (b) (1), (2), or (3) of this section to reflect the less than full-time enrollment of that student.

(20 U.S.C. 1089)

(c) *Room and board.* (1) The institution shall calculate a student's room and board allowance as follows—

(i) For a student who has no dependents and lives with his or her parent(s), an allowance of $1,100;

(ii) For a student who has no dependents and lives in institutionally owned or operated housing—

(A) The actual amount charged the student for room and board for an academic year; or

(B) A standard allowance based on the average amount it charges most of its student residents for room and board for an academic year;

(iii) For a student who has no dependents and does not live with his or her parent(s) or in institutionally owned or operated housing, a standard allowance determined by the institution for room and board for an academic year; or

(iv) For a student who has dependents, an allowance determined by the institution for room and board for an academic year based upon expenses incurred by the student and his or her dependent(s).

(2) For purposes of this section, a spouse is considered a dependent.

(d) *Attendance costs for students in correspondence study programs.* The cost of attendance for a student enrolled in a correspondence study program means—

(1) Actual tuition and fees charged to the student for an academic year;

(2) A reasonable allowance determined by the institution for books and supplies for an academic year, if required for the completion of the program; and

(3) If incurred in fulfilling a required period of residential training, expenses for—

(i) Room and board; and

(ii) Travel between the student's residence and the institution.

(20 U.S.C. 1089)

(e) *Attendance costs for students whose program length exceeds the academic year at institutions using clock hours.* The cost of attendance for a student enrolled in an institution measuring progress in clock hours who is charged tuition and fees for a program whose length exceeds the length of the academic year at the institution, is determined by adding—

(1) Tuition and fees × clock hours in the academic year ÷ clock hours in the program plus

(2) Room and board and other applicable allowances determined under paragraphs (a) and (c).

(f) *Required documentation.* An institution must be able to justify and document the cost of attendance figures established under this section.

(20 U.S.C. 1089)

2. In § 682.201, paragraph (c)(3) is revised to read as follows:

§ 682.201 Eligible student.

* * * * *

(c) * * *

(3) The Commissioner does not consider a loan made under the National Defense Student Loan, National Direct Student Loan, Guaranteed Student Loan, or Parent Loans for Undergraduate Students Program that is discharged in bankruptcy to be in default for purposes of this section.

* * * * *

PART 683—PARENT LOANS FOR UNDERGRADUATE STUDENT PROGRAM

34 CFR Part 683 Parent Loans for Undergraduate Students Program is amended as follows:

1. In § 683.10, the definition of the term "Estimated cost of attendance" is revised and inserted in correct alphabetical order as follows:

§ 683.10 General definitions.

* * * * *

Allowable Cost of Attendance

(a) *General.* (1) Except as provided in paragraphs (d) and (e), a student's cost of attendance means—

(i) The tuition and fees charged to a full-time student for an academic year by the institution he or she is attending as determined under paragraph (b);

(ii) An allowance for room and board expenses for an academic year, as determined under paragraph (c);

(iii) A reasonable allowance determined by the institution for books and supplies for an academic year;

(iv) A reasonable allowance determined by the institution for transportation for an academic year. This allowance may include—

(A) The cost of travel between the student's residence and the institution; and

(B) The cost of travel required for completion of a course of study;

(v) A reasonable allowance determined by the institution for miscellaneous personal expenses for an academic year;

(vi) A reasonable allowance determined by the institution for an academic year for expenses related to study abroad for students enrolled in an academic program which normally includes a formal program of study outside the United States;

(vii) A reasonable allowance determined by the institution for expenses for an academic year related to child care for a student's dependent children; and

(viii) A reasonable allowance determined by the institution for a handicapped student's expenses for an academic year related to his or her handicap, if these expenses are not provided for by any other assisting agency or program. This allowance may include expenses related to special services, transportation, equipment and supplies.

(2) If another agency or program provides assistance for any expenses related to a student's handicap, thereby reducing the student's costs, the institution shall document such assistance as part of the student's financial aid record.

(3) For purposes of this section, a handicapped student is a student who meets the definition contained in section 602(1) of the Education of the Handicapped Act. Accordingly, a handicapped student is a student who is mentally retarded, hard of hearing, deaf, speech impaired, visually handicapped, seriously emotionally disturbed, or orthopedically impaired, or is otherwise health impaired or has specific learning disabilities which require special education and related services.

(4) The institution shall take into account when determining a student's cost of attendance—

(i) The period for which the loan is intended; and

(ii) Whether the student is enrolled on a full-time or less than full-time basis.

(20 U.S.C. 1089)

(b) *Tuition and fees.* (1) An institution shall determine the tuition and fees charged a full-time student by calculating—

(i) The actual amount charged the full-time student for tuition and fees for an academic year; or

(ii) The average amount it charges full-time students for tuition and fees for an academic year.

(2) If an institution establishes its tuition and fee charges on a residency requirement basis (e.g., In-State and Out-of-State) and elects to calculate an average tuition and fee charge, it shall establish a separate average charge for each different residency based classification.

(3) An institution may determine a separate average charge for any other distinct classification upon which it bases tuition and fee charges.

(4) An institution shall determine the tuition and fees charged a less than full-time student by—

(i) Calculating the actual amount it charges the student for tuition and fees for an academic year; or

(ii) Reducing the amount it calculated under paragraphs (b)(1), (2) or (3) of this section to reflect the less than full-time enrollment of that student.

(20 U.S.C. 1089)

(c) *Room and board.* (1) The institution shall calculate a student's room and board allowance as follows—

(i) For a student who has no dependents and lives with his or her parent(s), an allowance of $1,100;

(ii) For a student who has no dependents and lives in institutionally owned or operated housing—

(A) The acutal amount charged the student for room and board for an academic year; or

(B) A standard allowance based on the average amount it charges most of its student residents for room and board for an academic year;

(iii) For a student who has no dependents and does not live with his or her parent(s) or in institutionally owned or operated housing, a standard allowance determined by the institution for room and board for an academic year; or

(iv) For a student who has dependents, an allowance determined by the institution for room and board for an academic year based upon expenses incurred by the student and his or her dependent(s).

(2) For purposes of this section, a spouse is considered a dependent.

(20 U.S.C. 1089)

(d) *Attendance costs for students in correspondence study programs.* The cost of attendance for a student enrolled in a correspondence study program means—

(1) Actual tuition and fees charged to the student for an academic year;

(2) A reasonable allowance determined by the institution for books and supplies for an academic year, if required for the completion of the program; and

(3) If incurred in fulfilling a required period of residential training, expenses for—

(i) Room and board; and

(ii) Travel between the student's residence and the institution.

(20 U.S.C. 1089)

(e) *Attendance costs for students whose program length exceeds the academic year at institutions using clock hours.* The cost of attendance for a student enrolled in an institution measuring progress in clock hours who is charged tuition and fees for a program whose length exceeds the length of the academic year at the institution, is determined by adding—

(1) Tuition and fees × clock hours in the academic year ÷ clock hours in the program plus

(2) Room and board and other applicable allowances determined under paragraphs (a) and (c).

(f) *Required documentation.* An institution must be able to justify and document the cost of attendance figures established under this section.

(20 U.S.C. 1089)

PART 690—PELL GRANT PROGRAM

34 CFR Part 690 Pell Grant Program is amended as follows:

Subpart E—Cost of Attendance

Sec.

690.51 Allowable costs of attendance—general.
690.52 Tuition and fees.
690.53 Room and board.
690.54 Attendance costs for students in correspondence study programs.
690.55 Attendance costs for students whose program length exceeds the academic year at institutions using clock hours.
690.56 Attendance costs for students whose program length is less than the academic year at institutions using clock hours.
690.57 Attendance costs for incarcerated students.
690.58 Attendance cost for students at U.S. Armed Forces Academies.

1. Subpart E is revised to read as follows:

Subpart E—Cost of Attendance

§ 690.51 Allowable costs of attendance—general.

(a) Except as provided in §§ 690.54–690.58, a student's cost of attendance means—

(1) The tuition and fees charged to a full-time student for an academic year by the institution he or she is attending as determined under § 690.52;

(2) An allowance for room and board expenses for an academic year, as determined under § 690.53;

(3) A reasonable allowance determined by the institution for books and supplies for an academic year;

(4) A reasonable allowance determined by the institution for transportation for an academic year. This allowance may include—

(i) The cost of travel between the student's residence and the institution; and

(ii) The cost of travel required for completion of a course of study;

(5) A reasonable allowance determined by the institution for miscellaneous personal expenses for an academic year;

(6) A reasonable allowance determined by the institution for an academic year for expenses related to study abroad for students enrolled in an academic program which normally includes a formal program of study outside the United States;

(7) A reasonable allowance determined by the institution for expenses for an academic year related to child care for a student's dependent children; and

(8) A reasonable allowance determined by the institution for a handicapped student's expenses for an academic year related to his or her handicap, if these expenses are not provided for by any other assisting agency or program. This allowance may include expenses related to special services, transportation, equipment and supplies.

(b) If another agency or program provides assistance for any expenses related to a student's handicap, thereby reducing the student's costs, the institution shall document such assistance as part of the student's financial aid record.

(c) For purposes of this section, a handicapped student is a student who meets the definition contained in section 602(1) of the Education of the Handicapped Act. Accordingly, a handicapped student is a student who is mentally retarded, hard of hearing, deaf, speech impaired, visually handicapped, seriously emotionally disturbed, or orthopedically impaired, or is otherwise health impaired or has specific learning disabilities which require special education and related services.

(d) An institution must be able to justify and document the cost of attendance figures established under this subpart.

(20 U.S.C. 1089)

§ 690.52 Tuition and fees.

(a) An institution shall determine the tuition and fees charged a full-time student by calculating—

(1) The actual amount charged the full-time undergraduate student for tuition and fees for an academic year; or

(2) The average amount it charges full-time undergraduate students for tuition and fees for an academic year.

(b) If an institution establishes its tuition and fee charges on a residency requirement basis (e.g. In-State and Out-of-State) and elects to calculate an average tuition and fee charge, it shall establish a separate average charge for each different residency based classification.

(c) An institution may determine a separate average charge for any other distinct classification upon which it bases tuition and fee charges.

(20 U.S.C. 1089)

§ 690.53 Room and board.

(a) The institution shall calculate a student's room and board allowance as follows—

(1) For a student who has no dependents and lives with his or her parent(s), an allowance of $1,100;

(2) For a student who has no dependents and lives in institutionally owned or operated housing—

(i) The actual amount charged the student for room and board for an academic year, or

(ii) A standard allowance based on the average amount it charges most of its student residents for room and board for an academic year;

(3) For a student who has no dependents and does not live with his or her parent(s) or in institutionally owned or operated housing, a standard allowance determined by the institution for room and board for an academic year; or

(4) For a student who has dependents, an allowance determined by the institution for room and board for an academic year based upon expenses incurred by the student and his or her dependent(s).

(b) For purposes of this section, a spouse is considered a dependent.

(20 U.S.C. 1089)

§ 690.54 Attendance costs for students in correspondence study programs.

The cost of attendance for a student enrolled in a correspondence study program means—

(a) Actual tuition and fees charged to the student for an academic year;

(b) A reasonable allowance determined by the institution for books and supplies for an academic year, if required for the completion of the program; and

(c) If incurred in fulfilling a required period of residential training, expenses for—

(1) Room and board; and

(2) Travel between the student's residence and the institution.

(20 U.S.C. 1088)

§ 690.55 Attendance costs for students whose program length exceeds the academic year at institutions using clock hours.

The cost of attendance for a student enrolled in an institution measuring progress in clock hours who is charged tuition and fees for a program whose length exceeds the length of the academic year at the institution, is determined by adding—

$$\text{(a) Tuition and fees} \times \frac{\text{clock hours in the academic year}}{\text{clock hours in the program}}$$

and

(b) Room and board and other applicable allowances determined under §§ 690.51 and 690.53.

(20 U.S.C. 1088)

§ 690.56 Attendance costs for students whose program length is less than the academic year at institutions using clock hours.

The cost of attendance for a student enrolled in an institution measuring progress in clock hours who is charged tuition and fees for a program whose length is less than the length of the academic year at the institution is determined by adding—

(a) Tuition and fees × clock hours in the academic year ÷ clock hours in the program

and

(b) Room and board and other applicable allowances determined under §§ 690.51 and 690.53.

(20 U.S.C. 1070a and 1088)

§ 690.57 Attendance costs for incarcerated students.

(a) The cost of attendance for a student who is incarcerated and for whom at least one-half of his or her room and board expenses is provided includes—

(1) Tuition and fees as determined under § 690.52; and

(2) All applicable allowances as determined under § 690.51(a) (3), (4), and (8).

(b) The cost of attendance for a student who is incarcerated and for whom less than one-half of his or her room and board expenses is provided is the same as that allowed for a student who is not incarcerated.

(20 U.S.C. 1070a and 1088)

§ 690.58 Attendance cost for students at U.S. Armed Forces academies.

A student enrolled at the U.S. Military Academy at West Point, the U.S. Naval Academy, the U.S.C. Air Force Academy or the U.S. Coast Guard Academy is considered to have no cost of attendance.

(20 U.S.C. 1070a and 1088)

2. In Subpart G, § 690.75, paragraph (g)(3) is revised to read as follows:

§ 690.75 Determination of eligibility for payment.

* * * * *

(g) * * *

(3) The Secretary does not consider a loan made under the National Defense Student Loan, National Direct Student Loan, Guaranteed Student Loan, or Parent Loans for Undergraduate Students Program which is discharged in bankruptcy to be in default for purposes of this section.

* * * * *

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Part VIII

Department of Transportation

Urban Mass Transportation Administration

Maintenance Requirements; Advance Notice of Proposed Rulemaking

DEPARTMENT OF TRANSPORTATION

Urban Mass Transportation Administration

49 CFR Part 635

[Docket No. 80-N]

Maintenance Requirements

AGENCY: Urban Mass Transportation Administration, DOT.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Urban Mass Transportation Administration (UMTA) is proposing a policy that will insure that each mass transit operator maintains facilities and equipment purchased with UMTA funds consistent with practices necessary to provide adequately for safety, comfort and preservation and expansion of transit service. UMTA is seeking public comment to assist in the development of maintenance guidelines and procedures.

DATE: Comments must be received by May 22, 1981.

ADDRESS: Comments must be submitted to UMTA Docket No. 80-N, 400 7th Street, SW., Washington, D.C. 20590. All comments and suggestions received will be available for examination in room 9320 at the above address between 8:30 a.m. and 5:00 p.m., Monday through Friday. Receipt of comments will be acknowledged by UMTA if a self-addressed, stamped postcard is included with the comment.

FOR FURTHER INFORMATION CONTACT: Charlotte Adams, Office of Program Analysis, (202) 472-2397.

SUPPLEMENTARY INFORMATION: All comments received before the expiration of the comment period will be considered in the development of guidelines and procedures. Comments received after the expiration of the comment period will be considered to the extent feasible.

The Administrator has determined that the proposed action is significant under the criteria in the DOT Order for Improving Government Regulations (44 FR 11042, February 26, 1979) since it concerns a matter on which there may be substantial controversy and since it initiates a substantial change in policy.

A draft Regulatory Evaluation has been prepared and has been placed in the public docket, and is available at the address above.

Discussion

The Urban Mass Transportation Administration is proposing a policy that will insure that each mass transit operator maintains facilities and equipment purchased with UMTA funds consistent with practices necessary to provide adequately for safety, comfort, and preservation and expansion of transit sevice. This policy will be applicable to all funds administered for the maintenance and expanison of mass transportation systems by UMTA discretionary Grant funds (Section 3 (49 U.S.C. 1602)); Formula Grant funds (Section 5 (49 U.S.C. 1604)); Section 16(b)(2) funds (49 U.S.C. 1612(b)(2)); Interstate Transfer funds (23 U.S.C. 103) and Urban System funds (23 U.S.C. 142).

Federal investments in the capital and operating cost of transit equipment and facilities are substantial, totalling several billion dollars annually. The use of public transit depends largely upon its ability to provide efficient and reliable service. Efficiency and reliability are functions of the type and level of maintenance performed. Systematic maintenance practices by transit operators have proven effective in reducing service interruptions and in ensuring the useful life and operating expectancy of vehicles and equipment.

Although maintenance procedures impose time and cost burdens on transit operations, UMTA believes such an investment in preventive maintenance practices reduces the likelihood of costly replacement of facilities or equipment before they have reached the end of their useful life or costly repairs that could have been prevented if maintenance practices had been employed. UMTA recognizes the importance of the interrelationship of maintenance, transit reliability and the expense of maintaining vehicle and equipment. Proper maintenance demands a commitment by transit operators to secure the necessary financial and manpower resources often not sought because of immediate operating needs, and limited budgets. UMTA recognizes the difficulties faced by transit operators in establishing maintenance as a local priority and wishes to provide assistance to transit operators in this important area. Because we do not have the benefit, as yet, of systematic analyses of the relationship between maintenance practices and vehicles performance, no simple standard procedure will guarantee improvement in maintenance practices. The Federal government does, however, have a strong interest in ensuring that federal funds available for mass transportation assistance are used prudently and with maximum effectiveness. Therefore UMTA will begin to emphasize the importance of maintenance through this ANPRM, and its intent to identify and evaluate opportunities for improvement in maintenance practices and to initiate needed actions.

Section 116 of the Surface Transportation Assistance Act of 1978, Pub. L. 95-599, 92 Stat. 2689, requires State certification and Federal oversight for maintenance of Interstate highways. Although there is no similar statutory requirement for Federal oversight of maintenance of transit facilities and equipment, both Section 3(A)(1)(D) and Section 5(d)(1) of the Urban Mass Transportation Act, as amended, provide the Secretary with the authority to subject grants and loans "to such terms, conditions, requirements and provisions as the Secretary determines necessary or appropriate." In addition, Section 5(d)(2) provides the Secretary with the authority to "issue such regulations as he deems necessary to administer this subsection * * * including requirements for improving the efficiency of transit services." These sections provide UMTA with the authority to require adequate maintenance for rail rolling stock, buses, and related transit equipment and facilities. As further support of bus maintenance in particular, the House Committee on Public Works and Transportation indicated in the legislative history to the 1978 Act, House Report No. 1485, dated August 11, 1978, that fourth tier formula funds may "be used to purchase bus equipment needed to maintain the usefulness of the buses pruchase." In addition, OMB Circular A-102, Attanchment N, Prescribes uniform property management standards for grantees of Federal agencies requiring in Section (d)(5) that "adequate maintenance procedures shall be implemented to keep the property in good condition."

The pressure for transit capacity, and the Federal Government's interest in ensuring that federal funds available for mass transportation assistance be used prudently and in a productive manner all necessitate increased attention to transit maintenance practices. UMTA wishes, however, to proceed thoughtfully in the development of alternative strategies for improved maintenance practices. Public comments are requested to assist in the development of future maintenance guidelines and procedures.

Vehicle reliability, therefore total system reliability, varies greatly because of the disparity in operator maintenance practices throughout the country and the many inherent variables in local situations. Manufacturers,

however, do provide either maintenance manuals or standards for the warranty period and/or useful life of vehicles, equipment, and facilities.

Assumptions

Because a systematic evaluation of the tradeoffs between reliability, vehicle availability and maintenance costs as a basis of proof of benefit to operators in terms of reduction in overall operating costs has not been established, it is necessary that assumptions be made regarding maintenance practices at all levels. These assumptions are:

1. There is a perceived cost savings resulting from adequate maintenance practices since service life, reliability and availability of equipment and facilities are increased.

2. Proper maintenance practices postpone and perhaps reduce the need for costly capital investments in new equipment.

3. The actual tradeoffs between reliability and maintenance costs vary from property to property. There is no standard definition of "adequate" maintenance as variables such as climate and road conditions necessitate the need for flexible maintenance practices.

4. A Federal policy which would require transit operators to institute routine maintenance practices would:

a. Provide the motivation for increased attention and allocation of local dollars for maintenance activities;

b. Increase performance and useful life of equipment and facilities;

c. Minimize replacement costs;

d. Result in cost savings for both Federal and local interests;

e. Require enforcement.

In the interest of making all transit operators and the general public aware of the issues to be considered by UMTA in developing a long term policy on maintenance, we specifically request comments on the following alternative requirements, the discussion of compliance, and the discussion of sanctions:

Alternative Maintenance Requirements

The alternatives outlined below are not mutually exclusive. Many could be combined depending upon the direction that evolves. It should be noted that the alternatives encompass various "innovative regulatory techniques" such as use of performance standards; use of voluntary standards; and tailoring of the standards to suit the particular characteristics of the grantee (size of the transit property, geographic location, and weather conditions). These techniques should be considered in commenting on the alternatives. The advantages and disadvantages listed for each alternative represent only our initial analysis. We invite commentors to provide additional advantages and disadvantages.

1. Reinforce UMTA's current authority by specifically requiring maintenance as a condition for UMTA assistance.

Advantages

a. Easy to implement.

b. Allows flexibility in implementation.

c. Accomodates local variables regarding maintenance needs and capabilities.

Disadvantages

a. Provides no uniform or consistent application of the policy because of the wide variety of interpretations of "adequate maintenance."

b. Provides no method of evaluation or monitoring.

c. Compliance is not defined, leading to possible confusion as to when sanctions might be applied.

2. Require grantees to develop and implement a maintenance plan for all vehicles, equipment, and fixed facilities. This plan would be based upon published manufacturers' equipment standards, or these standards and practices combined with an operator's judgment and experience which would result in maintenance practices designed for a specific operation. This plan would cover the warranty period and the stated service life of the equipment and facilities. UMTA would review and approve the plan and ensure compliance through on-site inspections or other means. UMTA also would require that maintenance records be kept.

Advantages

a. Through systematic reviews of the plans, UMTA could ensure some level of uniformity and consistency in maintenance practices among similar properties by comparing various maintenance plans with performance.

b. Provide flexibility in maintenance practices by allowing operators to develop individual maintenance plans.

Disadvantages

a. UMTA would need additional staff and perhaps different expertise to review maintenance plans or conduct inspections.

b. Development of such plans or recordkeeping may be perceived as costly and a paperwork burden.

c. Would not ensure any uniformity or consistency in application of maintenance practices.

3. Require grantees to develop and implement a maintenance plan for all vehicles, equipment, and fixed facilities. This plan would cover the warranty period and the stated service life of the equipment and facilities. UMTA would evaluate the adequacy of the plan by compering it to the published minimum maintenance standards established by UMTA, on-site inspections, etc. UMTA also would require that maintenance records be kept.

Advantages

a. UMTA would have a standard or criterion against which to evaluate maintenance plans for each property and grantees would have guidelines for the development of such plans.

b. UMTA would be able to ensure consistency and uniformity among maintenance plans developed and maintenance practices.

c. Would provide UMTA with more direct involvement in operators' maintenance practices.

d. Would ensure protection of Federal investment.

Disadvantages

a. Would require additional expertise and staff resources to develop standards and monitor compliance.

b. May be perceived as unwarranted and improper Federal intervention in industry practices.

c. Could encourage adherence to a lower level of maintenance activity.

d. Does not account for variables in local conditions.

e. Could result in Federal Government assuming responsibility for equipment failures.

4. Require grantees to develop and implement a maintenance plan for all vehicles, equipment and fixed facilities. UMTA would require that the plan be made available for review upon request only.

Advantages

a. Provide flexibility in maintenance practices by allowing operators to develop individual maintenance plans.

b. Would not require additional UMTA staff or expertise to ensure compliance.

Disadvantages

a. UMTA would have no standard or criterion against which to evaluate the maintenance plans.

b. Would not ensure national consistency and uniformity in development of plans or application of maintenance practices.

c. Would not necessarily ensure protection of Federal investment.

d. Would not necessarily result in improved maintenance practices.

5. As part of the bid specification, require manufacturers to provide maintenance schedules to grantees for all facilities and equipment for their entire useful life, as do bus manufacturers, and require that these schedules be implemented.

Advantages

a. Minimum amount of involvement by UMTA.

b. Places responsibility for maintenance on grantee and manufacturers.

c. Easy to implement.

d. If a cost is attached to various maintenance activities, it could be used as part of life cycle costing procurement.

Disadvantages

a. Because the manufacturers' primary goal is to produce, the impact and usefulness of manufacturers' maintenance recommendations may be questionable.

b. UMTA would have no way of assessing the usefulness of such schedules except over time by comparing them with performance.

c. May impose a burden on manufacturers who do not recommend maintenance practices to develop such.

d. Manufacturers who do not or choose not to issue maintenance schedules may lose business.

6. Set aside a percentage of Section 5 funds to be used for maintenance activities and/or maintenance training and require that grantees use a percentage of each fiscal year's Section 5 apportionment for these activities.

Advantages

a. Would be easy to track.

b. Would provide visibility for such an emphasis.

c. Such funds also could be used to develop training or information-sharing workshops or courses for transit operators.

Disadvantages

a. Might not result in a satisfactory level of maintenance.

b. Would be difficult, if not impossible, to develop a basis for earmarking Section 5 funds or ensuring equitable distribution of funds among grantees.

c. Would not reflect grantees needs therefore might not have the desired effect.

d. UMTA would have no way of assessing the appropriateness of impact of the training provided or maintenance practices.

e. Earmarking funds by grantee or area may result in a reduction in amount expended on that activity. Could become a ceiling, rather than a floor.

f. Would open the way for earmarking funds for other "priority" activities, a policy discouraged in the past.

7. Establish a formal policy stating that UMTA will not replace vehicles or equipment prior to the end of the manufacturer's specified useful life unless extraordinary conditions warrant replacement before such time.

Advantages

a. Avoids UMTA involvement in specific maintenance requirements.

b. Provides grantees maximum flexibility to maintain vehicles and equipment as they deem appropriate.

c. May provide incentive to manufacturers to produce better quality products or provide improved guidance on maintenance practices.

Disavantages

a. May result in manufacturers recommending a reduced useful life.

b. May result in products of lesser quality or reduced attention by manufacturers to recommended maintenance practices.

c. May not be possible for manufacturer to determine "useful life" for all facilities and equipment.

d. Would put UMTA in position of refusing to replace failed equipment, thereby causing disruption of transit service.

e. Does not account for local variations in climate, terrain, service use, which affect useful life.

8. Initiate maintenance studies in the areas of maintenance planning, manuals, recordkeeping and actual maintenance practices.

Advantages

a. Would provide the cost data to support various levels of bus maintenance practices and resultant performance levels.

b. Would provide additional basis for developing guidance.

Disadvantages

a. May be difficult to obtain appropriate data with which to analyze cost effectiveness of various levels of maintenance.

Compliance

UMTA could impose one or more methods for ensuring grantee compliance with a maintenance requirement.

1. Do the minimum, essentially alternative No. 1.

2. Annual grantee certification to UMTA stating that grantee is in compliance with the chosen maintenance requirement.

3. Review of grantee maintenance records.

4. On-site inspections of grantee maintenance practices. These methods have associated impacts which should be considered in assessing the practicality of their implementation. For instance, on-site inspections and review of grantee maintenance records by UMTA may require additional UMTA staff and such involvement may be perceived as unwarranted Federal involvement in daily transit operations; depending upon the level required, recordkeeping may be considered a costly, time-consuming, paperwork burden.

Sanctions

UMTA could impose a variety of sanctions fro non-compliance with the chosen maintenance requirement depending upon the content of that requirement. Types and time limits for sanctions could vary depending upon the specifics of individual cases in question. Sanctions could include:

1. Submission of a corrective action plan if maintenance practices are found deficient.

2. A requirement that funds be used for the express purpose of correcting deficiencies within a specified time period.

3. Denial or suspension of operating assistance or capital assistance for replacement facilities or equipment or fleet expansion.

The applicability of each sanction to a specific operator's problem should be considered carefully in order to ensure its usefulness and practicality in achieving the desired goal of the chosen maintenance requirement. Withholding Section 5 operating assistance would have the desired immediate impact but also would deny the very funds needed to correct the maintenance deficiency cited. Witholding capital assistance would have a less immediate and perhaps less harmful impact but is an equally undesirable sanction. Regardless of the sanction chosen, UMTA would ensure a clear understanding of the intent of the policy and a clearly defined procedure for due process through which this policy would be implemented.

Dated: January 15, 1981.

Theodore C. Lutz

Administrator.

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January 21, 1981

Part IX

Department of Agriculture

Food and Nutrition Service

Commodity Supplemental Food Program

DEPARTMENT OF AGRICULTURE

7 CFR Part 247

Commodity Supplemental Food Program

AGENCY: Food and Nutrition Service, USDA.

ACTION: Final rule.

SUMMARY: These final regulations set forth several changes in the requirements for the Commodity Supplemental Food Program (CSFP). The major changes include: revision of § 247.4 on Donation of Supplemental Foods to conform with Part 250 language on claims and losses; new requirements for the State Plan, local agency selections, and certification procedures; permitting medical equipment for nutrition assessments to be an allowable administrative cost; and standards for administrative appeal of State agency decisions. These changes, revisions and additions are intended to improve program effectiveness and will improve service to needy individuals applying for and receiving commodity supplemental foods.

EFFECTIVE DATE: Except for the provisions of § 247.10(b), which prescribe the State agency administrative funding formula, the regulations are effective February 20, 1981. State and local agencies must implement all provisions, except the provision of § 247.10(b) no later than June 1, 1981. (The provisions of § 247.7(g), limiting certification periods for eligible postpartum and breastfeeding women and infants and children to a six months duration, shall be implemented for all new certifications starting no later than the first day of the first month beginning 120 days after publication. Participants who are already certified for longer than six months at that time need not have their current certification periods shortened). The provisions of § 247.10(b) relating to the State agency administrative funding formula shall be effective beginning in fiscal year 1982.

FOR FURTHER INFORMATION CONTACT: Barbara Sandoval, Director, Supplemental Food Programs Division, U.S. Department of Agriculture, Washington, D.C. 20250 (202) 447-8206. The final impact statement describing the options considered in developing this final rule and the impact of implementing each option is available on request from the above named individual.

SUPPLEMENTAL INFORMATION: On March 7, 1980, a set of interim regulations for the Commodity Supplemental Food Program were published in the Federal Register (45 FR 15062). The provisions of the regulations concerning administrative funds were made effective April 1, 1980. The other provisions of the regulations were made effective June 5, 1980, to allow an adequate period to meet the new requirements. The major changes: (1) modified the health services definition to require that local agencies maintain the same level of health services as were provided prior to March 3, 1978, while any remaining local agencies were encouraged to develop health service linkages and, at a minimum, advise participants of the importance of health care and where to obtain such services; (2) revised the administrative funding formula to base the administrative grant on 15 percent of total funds appropriated for commodities in order to provide States with a more stable allocation; (3) allowed State agencies to charge transportation costs to local agencies; and (4) clarified the certification procedure.

In response to the March 7, 1980, interim rules the Department received 24 comment letters from Regional offices, State agencies, local agencies, the general public and interested groups. The comments received and the actions taken by the Department are discussed below.

§ 247.1 *General Purpose and Scope*

No comments were received on this section and the interim rule has been published as final regulations.

§ 247.2 *Definitions*

Seven commenters opposed the new definition of a local agency which required local agencies who had arrangements with health service institutions prior to March 3, 1978, to maintain them at the same level effective prior to that date, while the few other local agencies were encouraged to develop health service linkages and required to advise participants of the importance of health care and where to obtain such services. The commenters stated that all agencies should have to provide health services. The Department strongly supports the maintenance of existing health service linkages for the benefit of participants. As explained in the March 7, 1980 rulemaking, a requirement that every local agency itself be able to make health services available is not possible, however, without causing severe disruption (and even possible termination) of the program in a few areas. The definition in the interim rulemaking required that all agencies providing health services maintain these services, while mandating that others must, at a minimum, educate participants on the importance of health care and direct them to health care providers. This approach provides a link with health care to the maximum extent feasible, and is therefore maintained in the final rule.

§ 247.3 *Administration*

No comments were received on this section and the provisions are unchanged from those in the previous regulations.

§ 247.4 *Donation of Supplemental Foods*

A revision has been made to this section to clarify the State agency's liability to FNS for supplemental foods that are lost or destroyed. In addition, relative to this section, several comments were received concerning the food package although it was not a part of the interim regulations. Fourteen commenters requested that the food package be included in the regulations. The Department feels that including the food package in the regulations would not be feasible because the purchase of commodities are subject to market fluctuation. On occasion, the Department may not be able to get every food item if the purchase price is prohibitive or available quantities are low. In this case, FNS notifies the State agency to substitute equivalent items. This issue will, however, be addressed further under a separate instruction.

§ 247.5 *State Plan*

Four new requirements have been added to this section to increase the efficiency and effectiveness of Program operations. Approximately twelve commenters recommended that the State plan should include plans for program expansion; a section on outreach; a detailed description of the manner in which foods are distributed to each local agency and from the local agency to participants; provisions for public hearings; and procedures to local agencies for reporting, processing and resolving complaints about supplemental foods. The Department will require States to incude in their State plan:

(a) Any plans for requesting Program expansion or major redistribution of caseloads within the State and any plans for conducting outreach in order to reach maximum caseload. (This does not mean, of course, that any local agency must expand, but only that it must include any plans it may have to request an expansion.) The Department feels that including this information in

the State plan will provide an indication of each State's plans for Program operation for the year. This information will be in keeping with the Department's intent to tighten monitoring of caseload assignments and participation to assure the most efficient utilization of available Program funds.

(b) A detailed description of the manner in which foods are distributed to each local agency and to participants by the local agency. Since the ultimate purpose of CSFP is to provide supplemental foods to the participants, the Department feels an efficient food distribution system is essential. It is desirable to include in the Plan a description of the systems to be used to distribute supplemental foods within the State, to the local agencies, and from local agencies to participants. A flow chart showing movement of the foods from entry into the State until issuance to participants would be a desirable addition to the State Plan. A description of the flow chart will help provide a useful, overall picture of Program administration in the State.

(c) A list of plans to involve local agencies, participants and other interested parties in the development of the State plan for the next fiscal year. The Department agrees with commenters that local agency and public participation in developing State plans is essential to the success of the Program and would allow for the sharing of Program development responsibility.

(d) A description of procedures required of local agencies for reporting, processing and resolving complaints about supplemental foods.

§ 247.6 Selection of Local Agency

Seven commenters responded to this section. One commenter specifically suggested that the entire section be revised because it did not have any provisions for a deadline for decisions by the State agency regarding action on an application. This section has been revised to expand the rights of local agency applicants. States will be required to evaluate local agency applications within 30 days after receipt of the application and provide written approval or denial of the application. In addition, if an application is denied the State agency will advise the agency of the reason for the denial in writing and the right to appeal. A requirement has also been added that the State agency must maintain a record of the name and address of all agencies who submit an application for program operation when there are no funds available to serve the area. These applicants also must be notified by the State agency when funds become available.

§ 247.7 Certification

Four commenters opposed the provision of the interim regulations that allowed local agencies to utilize nutritional need as an eligibility requirement, but did not require them to do so. These four commenters thought it should be required. Three commenters supported the interim regulations, stating that many community based organizations would be unable to provide nutritional examinations. The Department believes that in addition to receiving the supplemental foods, ongoing health care is vital in further ensuring good health for Program participants. Furthermore, since some local agencies have always used nutritional need as an eligibility requirement, the regulations will allow, but not require, State agencies to require a nutritional need determination for potential participants. All local agencies will be required to advise each participant of the importance of participating in ongoing routine health care and of where health service facilities providing such health care for low-income persons are located.

One commenter recommended that there be an area or county residency requirement. The Department agrees that a residency requirement is desirable. The State agency may determine a service area for any local agency and may require that an applicant be residing within the service area at the time of application. However, the State agency may not impose any durational or fixed residency requirements, i.e., participants who frequently move may participate so long as they reside within the service area at the time that they apply. For example, migrants entering a CSFP service area will be considered as meeting the residency requirement. The Department believes that States should be allowed flexibility in setting service areas to ensure uniformity with service areas for other Federal, State and local public health or welfare programs.

Three commenters requested that the regulations specify what should be done when maximum caseload has been reached. They suggested that a waiting list be established to determine the number of potential participants not being served and to be used to notify applicants if slots become available. Procedures to use in certifying applicants when agencies reach maximum participation level have been added to the final regulations. Local agencies will be required to establish a priority system based on categorical eligibility. Pregnant and breastfeeding women and infants will be served first, then children ages 1–3 second, children ages 4–5 third and postpartum women last. Local agencies who perform nutritional risk screening may modify the priority system to include nutritional risk criteria with FNS approval. The Department believes that a priority system is desirable to ensure that when vacancies occur after a local agency has reached its maximum participation level, those persons in greatest need are served first.

Two commenters asked that we stipulate qualifications for persons who determine applicant eligibility. It was recommended that such persons be limited to health professionals or persons designated by a health professional. It was further suggested that we clarify the meaning of "such other personnel the local agency may designate" to issue prescriptions for food. The Department feels that State and local agency flexibility should be maintained in this area, and that a restrictive federal regulatory requirement is not necessary. Therefore, personnel who issue prescriptions for supplemental foods will remain at the discretion of the State or local agency.

The notification portion of this section has been revised to improve program management. Local agencies will be required to inform applicants during the certification procedure of the right to a fair hearing. Persons found ineligible for the Program during the certification visit will be advised in writing of their ineligibility and of the right to a fair hearing, and the reasons for ineligibility will be documented and retained at the local agency. A person found ineligible for the Program at any time during the certification period will be advised in writing 15 days before termination of eligibility of the reasons for ineligibility and of the right to a fair hearing. Each participant will be notified at least 15 days before the expiration of the certification period that eligibility for the Program is about to expire. Each participant will be given an explanation of how the food delivery system in the local agency operates. Finally, each participant will be advised of the types of health services available, where they are located, how they may be obtained and why they may be useful. The Department believes that the State or local agency has the obligation to ensure that all applicants are given adequate information concerning their program rights and responsibilities.

Six commenters opposed the allowance of yearly certifications. They believed that 12 month certification

periods would de-emphasize health care, and that certification periods should not exceed 6 months in order to conduct frequent nutrition education contacts and to better monitor participants' dietary and health habits so appropriate changes can be made on a timely basis. The Department agrees with commenters that 6 month certification periods will ensure that efficient and effective services are provided to all participants as well as ensure that participants gain maximum benefits from the Program. Therefore, this section will be modified to require that certification periods do not exceed 6 months in length. Most local agencies already assign certification periods of no more than 6 months.

Regarding dual participation and disqualification, one commenter felt that the participant should have the choice of which Program she will remain in. The Department feels that this decision should remain at the State or local agency's discretion. Therefore, this section will remain as it is.

Two commenters felt infants and children should be exempt from disqualification because they are not responsible for parents' fraud. The Department feels that although there is merit in keeping infants and children in the Program, there is no way to ensure that Program abusers are providing the supplemental foods to the child. In addition, as areas reach maximum caseload and have eligible individuals waiting to participate, if dependents of Program abusers are not disqualified, they will continue to occupy caseload slots while eligible infants and children are kept on waiting lists. The Department feels it is inequitable to allow this. Therefore, the provision for disqualification of participants regardless of age will be retained.

§ 247.8 Nutrition Education

Four commenters felt the term "nutrition information" was more appropriate than nutrition education since administrative funds are too limited to provide nutrition education. They felt that information on basic food groups and shopping tips as well as recipes could easily be made available through leaflets, pamphlets, etc., at food distribution sites. However, the Department believes one of the main objectives of the CSFP is to provide nutrition education to improve the nutrition and dietary habits of the target population. These objectives can be met through emphasizing the relationship of proper nutrition to the total concept of good health, with special emphasis on the nutritional needs of the participants and by assisting participants in obtaining a positive change in food habits so that improved nutritional status can be assured. In addition, Pub. L. 95-113 specifically authorizes administrative funds for nutrition education for program participants. Therefore, the term "nutrition education" remains in the final rules.

In addition, a provision in this section has been changed to allow food demonstrations for nutrition education purposes where food recipients are not all program participants, parents or caretakers of participants, provided the majority of people receiving food as part of the food demonstration are program participants.

§ 247.9 Financial Management Systems

There were no comments received on this section and the provisions are unchanged from those in the previous regulations.

§ 247.10 Administrative Funding

Twelve commenters expressed their views on the new funding formula which bases the administrative funds grant on 15 percent of the total monies appropriated for the Program. Two commenters supported the new formula and ten were opposed to it. Some of the objections were: it does not allow for expansion; FNS should not set a limit on the percentage of administrative funds to be used by the State agency; the formula does not consider economies of scale; and States are provided insufficient funds to carry out all program requirements. Based on the comments and the Department's experience with the formula, the Department has made two modifications in the formula. First in order to more accurately reflect current participation levels and administrative funding needs, the formula will be based on the State agency's average participation for the most recent three months for which data are available, rather than on the past twelve months. By using 12 months' data, those States where growth has taken place can get insufficient funds, while those States where programs have declined can receive excess funds. The final rules retain the provision of the interim rules that allows FNS to adjust the participation figures used in the computations if the Department believes the participation data for the last three months does not accurately reflect a State's operations for the coming fiscal year, such as when a State agency plans to start or terminate a program during the coming year.

The second change in the final rules is an increase in the maximum amount of the annual administrative grant that States are allowed to retain at the State level. The interim rules retained the provision originally issued in an earlier interim rule on March 3, 1978, that allowed State agencies to retain up to percent of the first $50,000 of the State's total administrative grant, plus 10 percent of the next $100,000 and 5 percent of the next $100,000 after that. This produced a maximum grant at the State level of $22,500. The Department believes that the maximum amount which State agencies should be allowed to retain needs to be increased to take account of inflation since 1978. Therefore, the final rules allow State agencies to retain $30,000 rather than $22,500. The new formula permits State agencies to retain 15 percent of the first $50,000 in the overall State grant, 10 percent of the next $100,000 and 5 percent of the next $250,000 after that.

This new formula is not inequitable to local agencies. Their administrative grant levels have been rising with inflation each year, since overall administrative grants are tied to the cost of the commodities distributed in the program.

The Department would like to note that the March 7, 1980, interim rules earlier provided some relief to State agencies by allowing them to retain a larger proportion of the State grant, with FNS approval, when the State provides warehousing services and by allowing State agencies to charge local agencies for reasonable transportation costs.

Other than these changes, the administrative funding formula remains the same as the March 7, 1980, interim rules. This formula has the advantage of ensuring that all available administrative funds are actually distributed to States, and that State and local agencies know the amount of administrative funds they will receive at the beginning of the fiscal year, so that they can plan in advance.

Since administrative grants for fiscal year 1981 were allocated at the start of the current fiscal year and State and local agencies have planned accordingly, the new provisions of this final rule relating to State administrative grants will become effective on October 1, 1981, at the beginning of the 1982 fiscal year.

§ 247.11 Administrative Costs

Part of this section has been revised to allow medical equipment to be purchased with administrative funds. The Department feels that medical equipment used for nutritional assessments should be an allowable administrative cost. The medical equipment would include centrifuges, measuring boards, skin fold calipers,

spectrophotometers, hemoglobinometers, hematofluorometers, scales and expendable medical supplies used in nutritional assessments. FNS specifications for allowable limits for the costs of these items are available. These specifications were developed with the aid of the Center for Disease Control.

§§ 247.12–247.19

No comments were received on these sections which include Program income, Records and reports, Procurement and property management standards, Audits, Investigations, Claims, Closeout procedures, and Nondiscrimination.

§ 247.20 Fair Hearing Procedures for Participants

It has been brought to the Department's attention that some State agencies have a standard hearing procedure that is used in cases of appeal for all programs administered by the State agency. In such cases, the Department feels it would be appropriate for those agencies to use their standard hearing procedure in instances of appeal of State or local agency actions with FNS approval. The final regulations so provide.

§ 247.21 Management Evaluation and Reviews

No comments were received on this section. However, the Department feels that States should have the capability of reconciling prescription redemptions to the issuance and certification records. This is an item which States may want to check during monitoring visits.

§ 247.22 Administrative Appeal of State Agency Decisions

Two commenters felt that local agencies should be able to appeal State agency actions affecting them adversely. The Department agreed with commenters and has added a new section to the regulations to provide a hearing procedure whereby a local agency adversely affected by a State agency action may appeal the action. The right to appeal shall be granted when the local agency's application to participate is denied, when participation is terminated, when a contract is not renewed by the State agency or when any other adverse action is taken which affects local agency participation. The adverse action shall be postponed until a hearing decision is reached. In conjunction with promoting equal and fair rights, the Department firmly believes local agencies should be afforded the right to appeal a decision with which they disagree.

§ 247.23 Miscellaneous Provisions

No comments were received on this section and the provisions are unchanged from those in the previous regulations.

Implementation

Because of changes made in such areas as notification requirements, appeal rights, use of a priority system, and the requirement for limiting certification periods (for participants other than pregnant women) to six months, the final rules allow State agencies 120 days to implement their provisions. The provisions affecting the State administrative funding formula take effect on October 1, 1981.

This final action has been reviewed under USDA procedures established in the Secretary's memorandum 1955 to implement Executive Order 12044, and has been classified as "not significant."

7 CFR Part 247 is revised to read as follows:

PART 247—COMMODITY SUPPLEMENTAL FOOD PROGRAM

Sec.

247.1 General purpose and scope.
247.2 Definitions.
247.3 Administration.
247.4 Donation of supplemental foods.
247.5 State agency plan of program operation and administration.
247.6 Selection of local agencies.
247.7 Certification.
247.8 Nutrition education.
247.9 Financial management systems.
247.10 Administrative funding.
247.11 Administrative costs.
247.12 Program income.
247.13 Records and reports.
247.14 Procurement and property management standards.
247.15 Audits.
247.16 Investigations.
247.17 Claims.
247.18 Closeout procedures.
247.19 Nondiscrimination.
247.20 Fair hearing procedure.
247.21 Management evaluation and review.
247.22 Administrative appeal of State agency decisions.
247.23 Miscellaneous provisions.

Authority: Food and Agriculture Act of 1977, Public Law 95–113, Section 5, 91 Stat. 980 et seq.

§ 247.1 General purpose and scope.

This part specifies the policies and prescribes the regulations for the Commodity Supplemental Food Program (CSFP) under which women, infants and children in low-income groups, vulnerable to malnutrition, may obtain supplemental nutritious foods donated by the U.S. Department of Agriculture. The purpose of the Program is to provide supplemental foods and nutrition education to eligible persons through State or local agencies.

§ 247.2 Definitions.

For the purpose of this part and of all contracts, guidelines, instructions, forms, and other related documents, the term:

"Administrative costs" means those direct and indirect costs, identified under FMC 74–4, which State and local agencies determine to be necessary to support Program operations. Such costs are further addressed in § 247.11.

"A–90" means Office of Management and Budget Circular A–90 which provides guidance for the coordinated development and operation of information systems.

"A–95" means Office of Management and Budget Circular A–95 which sets forth procedures for evaluation, review and coordination of Federal and federally assisted programs and projects.

"A–102" means Office of Management and Budget Circular A–102 which sets forth uniform administrative requirements for grants-in-aid to State and local governments and federally recognized Indian tribal governments.

"A–110" means Office of Management and Budget Circular A–110 which sets forth uniform administrative requirements for grants to, and other agreements with, institutions of higher education, hospitals, and other quasi-public and private non-profit organizations.

"Breastfeeding women" means women up to one year postpartum who are breastfeeding their infants.

"Categorical ineligibility" means persons who do not meet the definition of pregnant women, breastfeeding women, postpartum women, or infants or children.

"Certification" means the use of criteria and procedures to assess and document each applicant's eligibility for the Program.

"Children" means persons who are at least one year of age but have not reached their sixth birthday.

"Department" means the U.S. Department of Agriculture.

"Distributing agency" means an agency which has entered into an agreement with a State agency and with the Department for the distribution of commodities under 7 CFR Part 250, Subchapter B—Food Distribution Regulations.

"Dual participation" means simultaneous participation by an individual in the CSFP in more than one local agency or clinic, or simultaneous participation in the CSFP and in the Special Supplemental Food Program for

Women, Infants and Children (WIC) 7 CFR Part 246.

"Fiscal year" means the Federal fiscal year covering the period of 12 calendar months beginning October 1 of any calendar year and ending September 30 of the following year.

"FMC 74–4" means Federal Management Circular 74–4, which sets forth principles for determining costs applicable to grants and contracts with State and local governments.

"FNS" means the Food and Nutrition Service of the U.S. Department of Agriculture.

"Infants" means persons under one year of age.

"Local agency" means a public or private nonprofit agency which enters into an agreement with the State agency to administer the Program at the local level. A local agency determines the eligibility of applicants, distributes supplemental foods and provides nutrition education to low-income persons, either directly or through another agency with which it has entered into a written agreement in accordance with § 247.6. In addition, existing local agencies are required to maintain the health ties at the same level that were effective prior to March 3, 1976.

All other local agencies are encouraged to develop health services linkages and, at a minimum, are required to advise participants of the importance of health care and where low-income persons can obtain such services. The term local agency includes an IHS service unit, an Indian tribe, band or group recognized by the Department of the Interior, or an intertribal council or group that is an authorized representative of Indian tribes, bands or groups recognized by the Department of the Interior.

"Nonprofit agency" means a private agency which is exempt from income tax under the Internal Revenue Code of 1954, as amended.

"Participants" means pregnant women, breastfeeding women, postpartum women, infants and children who are receiving supplemental foods under the Program.

"Participation" means the number of persons who have received supplemental foods through the Program in the reporting period.

"Postpartum women" means women up to 12 months after termination of pregnancy.

"Pregnant women" means women determined to have one or more embryos or fetuses in utero.

"Program" means the Commodity Supplemental Food Program (CSFP) of the Food and Nutrition Service of the U.S. Department of Agriculture.

"Secretary" means the Secretary of the U.S. Department of Agriculture.

"SFPD" means the Supplemental Food Programs Division of the Food and Nutrition Service of the U.S. Department of Agriculture.

"State" means any of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Trust Territory of the Pacific Islands and the Northern Mariana Islands.

"State agency" means the agency of a State designated by the State to administer the Program; or an Indian tribe, band or group recognized by the Department of the Interior; or an Intertribal council or group recognized by the Department of the Interior and which has an ongoing relationship with Indian tribes, bands or groups for other purposes and has contracted with them to administer the Program; or the appropriate area office of the Indian Health Service of the Department of Health and Human Services.

"State Agency Plan of Program Operation and Administration (State Plan)" means the document which, as required by § 247.5 describes the manner in which the State agency intends to implement and operate all aspects of Program administration within its jurisdiction.

"Supplemental foods" means foods donated by the Department for use by eligible persons in low-income groups who are vulnerable to malnutrition.

"WIC Program" means the Special Supplemental Food Program for Women, Infants and Children (7 CFR Part 246).

§ 247.3 Administration.

(a) *Delegation of Authority to FNS.* Within the Department, FNS shall act on behalf of the Department in the administration of the Program. Within FNS, SFPD and the Regional Offices are responsible for Program administration. FNS will provide assistance to State and local agencies and evaluate all levels of Program operations to assure that the goals of the Program are achieved in the most effective and efficient manner possible.

(b) *Delegation of authority to State agency.* The State agency is responsible for all operations under the Program within its jurisdiction and shall administer the Program in accordance with the requirements of this part, FMC 74–4, A–90, A–95, A–102, A–110, and 7 CFR Part 250 Subchapter B where applicable. The State agency shall provide guidance to local agencies on all aspects of Program operations. If distribution of supplemental foods or other Program operations at the State level are performed by an agency of the State other than the State agency, the State agency shall enter into a written agreement with the other agency. The agreement shall outline the responsibilities of each agency under the Program and shall be included in the State Plan. In addition, when a State agency enters into an agreement with a distributing agency, the distributing agency still must enter into a separate agreement with the Department as required by 7 CFR Part 250 Subchapter B, Food Distribution.

(c) *Agreement and State Plan.* Each State agency desiring to administer the Program shall annually submit a State Plan and enter into a written agreement with the Department for the administration of the Program in the jurisdiction of the State agency in accordance with the provisions of this part.

(d) *Delegation of authority to local agency.* The local agency shall provide Program benefits to participants in the most effective and efficient manner, and shall comply with this part and the Satte Plan.

§ 247.4 Donation of supplemental foods.

The Department shall donate supplemental foods for use in the Program in accordance with the terms and conditions of this part and with the terms and conditions applicable to distributing agencies under 7 CFR Part 250 Subchapter B, Food Distribution Regulations, as long as these provisions are not inconsistent with this part. The State agency is strictly liable to FNS for losses of supplemental foods donated by the Department and shall safeguard items from theft, spoilage, other damage or destruction or other loss. If supplemental foods donated by the Department are lost through any cause, prior to issuance to the participant, the State agency shall provide replacement in kind or submit payment to FNS in accordance with Section 250.6(m) under 7 CFR Part 250 Subchapter B, Food Distribution regulations.

§ 247.5 State agency plan of program operation and administration.

(a) *Requirements.* By August 15 each year the State agency shall submit to FNS for approval a State Plan for the following fiscal year. FNS shall provide written approval or denial of a completed State Plan or amendment within 30 days of receipt. Within 15 days after FNS receives an incomplete submission, FNS shall notify the State agency that additional information is needed to complete the Plan. Any disapproval shall be accompanied by a

statement of the reasons for the disapproval. Approval of the Plan by FNS is a prerequisite to the payment of funds to the State agency for Program administration and the delivery of commodities. The Plan and all amendments shall be signed by the Chief Officer of the State agency or equivalent. Portions of the State Plan which do not change from year to year need not be resubmitted. However, the State agency shall provide the title of the section(s) that remain unchanged as well as the year of the last Plan in which the section was submitted. The State Plan shall provide the following:

(1) The names and addresses of each local agency (i) which have an agreement with the State agency for Program administration; and (ii) the name and address of each certification, food distribution and storage site under the jurisdiction of the local agency.

(2) The specific income criteria and nutritional risk criteria (if used) to be used in certifying persons as being in need of supplemental foods and the period of time covered by certifications in each local agency.

(3) A description of any plans for requesting program expansion or major redistribution of caseloads within the State during the fiscal year.

(4) A description of any plans for conducting outreach to reach maximum caseload.

(5) The plan for nutrition education services for the fiscal year. The nutrition education portion of the State Plan shall include an evaluation component which includes a systematic procedure for participants' input.

(6) A detailed description of the manner in which foods are distributed to each local agency and to participants by the local agency.

(7) A description of the manner in which the State agency plans to monitor each local agency.

(8) A description of plans to involve local agencies, participants and other interested parties in the development of the State Plan for the next fiscal year.

(9) A description of how the financial management system will provide an accurate, current and complete disclosure of the financial status of the State's Program including an accurate accounting of all administrative funds received and expended.

A plan for the detection of dual participation within the jurisdiction of the State agency. In States where the CSFP and either an Indian State agency for CSFP or a WIC Program State agency operate in the same area, a copy of the written agreement between the State agencies for the detection and prevention of dual participation must be submitted.

(11) Procedures developed in accordance with Section 250.6(u) and provided to local agencies for reporting, processing and resolving complaints about supplemental foods.

(12) A description of the audit procedures, including: (i) A description of the scope and frequency of audits of the State agency and local agencies and a delineation of the procedures used that assure audit examinations of the CSF Program at reasonable frequency. Audit agency guidelines for selecting a sample of grant programs for audits should be addressed; (ii) A description of the audit organization in sufficient detail to demonstrate the independence of the audit organization; and (iii) The number of local agencies in which the CSF Program was included in the audit in the last four full quarters, and the number of local agency audits planned for the coming fiscal year which include examinations of the CSF Program.

(13) A description of the procedures used to comply with the nondiscrimination requirements of Title VI of the Civil Rights Act of 1964, the FNS Civil Rights Instruction 113-2 and with 7 CFR Part 15, including racial and ethnic participation data collection, public notification procedures and the annual civil rights compliance review process.

(14) A description of the fair hearing procedures for participants.

(b) *Submission of local agency information.* Local agencies under the State agency's jurisdiction may be required to submit information, similar to the preceding requirements, to the State agency for its use in assuring compliance with this section.

(c) *Submission to Governor.* Annually, by June 30, all State agencies, except Indian State agencies, shall submit the State Plan to the Governor, or a delegated authority, for comment as required by Circular A-95 (38 FR 32874) issued by the Office of Management and Budget, September 13, 1973. A period of 45 days from the date the Governor receives the State Plan shall be afforded for comment. The Governor's comments shall be submitted to FNS with the State Plan. If the Governor makes no comment, a statement to that effect shall be attached to the State Plan. Amendments to the State Plan need not be submitted to the Governor unless there is a significant change. Indian State agencies are encouraged to consult areawide Federal planning offices in the development of their State Plan.

(d) *Amendments.* At any time the State agency may amend the State Plan. The State agency shall submit the amendments to FNS for approval.

(e) *Retention of copy.* A copy of the approved State Plan shall be kept on file at the State agency for public inspection.

§ 247.6 Selection of local agencies.

(a) *Application of local agencies.* The State agency shall require each agency which desires approval as a local agency to submit a written application which contains sufficient information to enable the State agency to make a determination as to the eligibility of that agency. If the State agency and the local agency are the same, this requirement does not apply. The State agency shall notify the agency of the approval or disapproval of its application within 30 days of receipt of the agency's application. If the application is denied the State agency shall advise the agency of the reasons for the denial in writing and the right to appeal as set forth in Section 247.22 of this part. When an agency submits an application and there are no funds to serve the area, the applicant agency shall be notified within 30 days of receipt of the application that there are currently no funds available for Program initiation or expansion. The State agency shall return the application and maintain a record of the name and address of the applicant agency. The potential agency whose application was returned shall be notified by the State agency when funds become available. The State agency may approve the application of a local agency in an area already served by the Program or a WIC program only if a new local agency is necessary to serve the full extent of need in that area or population. If the State agency approves the operation of a new local agency in an area already served by an existing Program or a WIC Program, documentation which indicates the need for both local agencies in that area shall be maintained on file at the State agency for FNS review and evaluation.

(b) *Agreements between State and local agencies.* (1) State agencies shall enter into agreements with local agencies which are approved to participate in the Program. If the State agency and the local agency are the same, this requirement does not apply. Copies of the agreement shall be kept on file at both the State and local agency for purposes of review and audit. Such agreements shall be in writing and shall contain the following: (i) An assurance that local agencies will comply with all the fiscal and operational requirements prescribed by the State agency as required by this part; (ii) An assurance that local agencies will provide nutrition education as required by this part; (iii)

For those local agencies in existence prior to March 3, 1978, an assurance that they will continue arrangements with health service providers for the provision of services to Program participants at least at the level that existed on March 2, 1979, and for other local agencies, an assurance that they will advise participants of the importance of health care and where low-income persons can obtain such care; (iv) An assurance that issuance of supplemental food is in accordance with this part and FNS food package instructions; (v) A statement that local agencies are responsible to the State agency for any loss resulting from improper or negligent issuance by them of prescriptions for supplemental foods; (vi) A statement that local agencies are responsible to the State agency for any Program losses caused by other agencies which have entered into agreements with the local agency; (vii) The names and address of each certification, food distribution and storage site under the jurisdiction of the local agency; and (viii) An assurance that the local agencies will maintain accurate and complete records with respect to their activities under the Program and retain such records for a period of 3 years following the date of submission of the final expenditure report for the period to which the report pertains.

(c) *Agreements between local agencies and other agencies.* A local agency which cannot fulfill one or more of these requirements shall enter into written agreement with another agency(s) in order to comply with these requirements. The written agreement shall state the Program responsibilities of the other agency, shall be approved by the State agency, and shall be on file at both the State agency and local agency. State agency approval of agreements with applicant agencies shall be accomplished during the application process.

§ 247.7 Certification.

(a) *Eligibility requirements.* To be certified as eligible to receive supplemental foods under the Program, each applicant shall meet the following requirements:

(1) Categorical eligibility as an infant, child, or pregnant, postpartum or breastfeeding woman;

(2) Eligibility for local benefits under existing Federal, State or local food, health or welfare programs for low-income persons;

(3) At the State agency's discretion, be determined by a physician, a staff member of the local agency or his or her designee to be at nutritional risk; and

(4) Meet a residency requirement if one is established by the State agency. The State agency may determine a service area for any local agency, and may require that an applicant be residing within the service area at the time of application to be eligible for the Program. However, the State agency may not impose any durational or fixed residency requirements. For example, migrant and seasonal farmworkers entering a CSFP service area shall be considered as meeting the residency requirement.

(b) *Processing standards.* (1) When there are no funds available to provide program benefits, the local agency shall maintain waiting lists of individuals who visit the local agency to apply for the Program. To enable the local agency to contact the individuals when caseload space becomes available, these waiting lists shall include the name of the applicant, the date placed on the waiting list, an address or phone number of the applicant and the applicant's status, i.e., pregnant, breastfeeding, child's age. Individuals shall be notified of their placement on a waiting list within 20 days after they visit the local agency during clinic office hours to request Program benefits.

(2) The following priorities based on categorical eligibility shall be applied when vacancies occur to ensure that persons in greatest need are served first. (i) Pregnant and breastfeeding women and infants will be served first; (ii) Children ages 1–3 second; (iii) Children ages 4–5 third; and (iv) Postpartum women last. Local agencies may elect to use income as a subcategory within the priority system. Local agencies who perform nutritional screening may adapt the priority system to meet their needs with FNS approval. When maximum caseload has not been reached, the local agency shall either certify the applicant or notify the applicant of ineligibility for the Program within 20 days of the applicant's first visit to the local agency to apply for participation in the Program. A person who is determined to be eligible shall receive supplemental foods within 10 days of notification of eligibility.

(c) *Issuance of supplemental foods.* Participants shall be issued prescriptions for supplemental foods by personnel of the local agency or by such other personnel as the local agency may designate. The local agency may choose to issue either a one month supply of supplemental foods each month or a two month supply of supplemental foods every other month. However, local agencies which choose to issue a two month supply every other month shall inform participants that they may still receive one month's supply if they so request.

(d) *Certification forms.* All certification data for each applicant shall be recorded on a certification form. At a minimum the information on the form shall include the following:

(1) The person's name and address.

(2) The date of initial visit to apply for participation and the date of the certification or denial.

(3) The criteria used to determine the person's eligibility or ineligibility and the signature and title of the persons making the eligibility determination.

(4) The following statement shall be located directly above the applicant's signature line and shall be read by or to the applicant, or the applicant's parent or caretaker, before the application is signed:

"This certification form is being completed in connection with the receipt of Federal assistance. Program officials may verify information on this form. I am aware that deliberate misrepresentation may subject me to prosecution under applicable State and Federal statutes. I have been advised of my rights and obligations under the Program. I certify that the information I have provided for my eligibility determination is correct to the best of my knowledge."

(e) *Applicant's rights.* The following sentences shall be read by, or read to, the applicant or the applicant's parent or caretaker at the time of certification. When a significant proportion of the population served by a local agency is composed of non-English or limited English speaking persons who speak the same language, the sentences shall be stated to such persons in a language they understand:

(1) Standards for participation in the Program are the same for everyone regardless of race, color, or national origin.

(2) You may appeal any decision made by the local agency regarding your denial or termination from the Program.

(3) If your application is approved, the local agency will make nutrition education available to you and you are encouraged to participate.

(f) *Notification requirements.* The following responsibilities shall be performed by the State or local agency:

(1) Each applicant shall be informed during the certification procedure of the right to a fair hearing and of the illegality of participation in the Commodity Supplemental Food Program in more than one local agency, or simultaneous participation in the Commodity Supplemental Food Program and in the WIC Program.

(2) A person found ineligible for the Program during a certification visit shall

be advised in writing of the ineligibility and of the right to a fair hearing in accordance with the provisions in § 247.20. The reasons for ineligibility shall be properly documented and shall be retained on file at the local agency.

(3) A person found ineligible for the Program at any time during the certification period shall be advised in writing 15 days before termination of eligibility of the reasons for ineligibility and of the right to a fair hearing.

(4) Each participant shall be notified at least 15 days before the expiration of each certification period that eligibility for the Program is about to expire.

(5) Each participant shall receive an explanation of how the food delivery system in the local agency operates.

(6) Each participant shall be advised of the importance of participating in ongoing routine health care, the types of health services available, where they are located and how they may be obtained.

(g) *Certification periods.* Eligible pregnant women shall be certified for the duration of their pregnancy and for 6 weeks postpartum. Eligible postpartum or breastfeeding women and eligible infants and children shall be certified at the time of their entrance into the Program and at intervals prescribed by the State agency, provided such intervals do not exceed 6 months in length. Program benefits may be continued until the end of the month in which categorical ineligibility begins, for example, until the end of the month in which a child reaches the sixth birthday.

(h) *Restrictions.* The following restrictions shall be observed by State agencies:

(1) Participants shall not be required to make any payments in money, materials or services for, or in connection with, the receipt of supplemental foods. Also, they shall not be solicited in connection with the receipt of supplemental foods for voluntary cash contributions for any purpose.

(2) Distribution of supplemental foods shall not be used as a means for furthering the political interest of any person or party.

(i) *Transfer of certification.* Each State agency shall ensure issuance of a verification of certification form to every participant who intends to relocate during the certification period. The State agency shall require the local agencies under its jurisdiction to accept verification of certification forms from participants who have been participating in the Program or the WIC Program in another local agency within or outside of the jurisdiction of the State agency. The verification of certification is valid until the certification period expires, and shall be accepted as proof of eligibility for Program benefits. However, if the receiving local agency has waiting lists for participation, the transferring participant shall be placed on the list ahead of all waiting applicants. The verification of certification shall include the name of the participant, the date the certification was performed, the date the certification period expires, the signature and printed or typed name of the local agency official in the originating jurisdiction, the name and address of the certifying local agency and an identification number or some other means of accountability. The verification of certification form shall be uniform throughout the jurisdiction of the State agency.

(j) *Dual participation.* The State agency shall be responsible for the following:

(1) In conjunction with the local agency, the detection and prevention of dual participation within each local agency and between local agencies. As part of the certification process, applicants shall be informed of the illegality of simultaneous participation in the WIC Program and this Program or of simultaneous participation in more than one CSFP.

(2) In areas where a local agency serves the same area as an Indian State agency or WIC Program, the CSFP State agency for the Program or the WIC State agency shall agree to a plan for the detection and prevention of dual participation. The agreement must be in writing and must be made prior to operation within the same area.

(3) Participants found committing dual participation shall be terminated from one of the Programs immediately and shall be notified of termination from the other program as specified in § 247.7.

(4) At certification the local agency shall check the identification of each participant. For a child participant, an immunization record, birth certificate, or other records that local agency personnel consider adequate identification shall be acceptable. Also, when issuing supplemental foods, the local agency shall check the identification of each participant or the indentity of the adult responsible for picking up the food for a child participant.

(k) *Disqualification.* (1) The State agency may disqualify applicants and participants from Program participation for a period not to exceed 3 months if it is established by the State or local agency that the applicant, participant, parent, or caretaker fraudulently applied for and/or obtained Program benefits. However, if the person who determined the participant's eligibility determines that a serious health risk will result from disqualification from the Program and the participant is currently eligible, the disqualification shall be waived. In addition, participants may request a fair hearing, as specified in § 247.20, to contest a disqualification.

(2) For Program purposes, fraud includes, but is not limited to, the following actions if they are taken knowingly, willfully and deceitfully:

(i) Making false statements orally or in writing in order to obtain benefits to which the individual would not otherwise be eligible;

(ii) Concealing information in order to obtain benefits to which the individual is not eligible;

(iii) Altering Program documents for the purpose of receiving increased benefits to which the individual is not eligible or for the purpose of transferring benefits to an unauthorized individual;

(iv) Using supplemental foods in an unauthorized manner, such as trading or selling the foods; or

(v) Committing dual participation.

§ 247.9 Nutrition education.

(a) *General.* Nutrition education shall be thoroughly integrated into Program operations. Nutrition education shall be designed to be easily understood by individual participants and shall bear a practical relationship to their nutritional needs and household situations.

(b) *Goals.* Nutrition education shall be based on the following two broad goals:

(1) To emphasize the relationship of proper nutrition to the total concept of good health, with special emphasis on the nutritional needs of pregnant, postpartum, and breastfeeding women, infants and children under 6 years of age; and

(2) To assistant participants in obtaining a positive change in food habits, resulting in improved nutritional status and in the prevention of nutrition related problems through maximum use of the supplemental and other nutritious foods. This use is to be within the context of ethnic, cultural and geographic preferences. Consideration should also be given to tailoring nutrition education to meet any limitations experienced by groups of participants, such as lack of running water, lack of electricity, and limited cooking or refrigeration facilities.

(c) *State agency responsibilities.* The State agency shall ensure that the local agency fully performs its responsibilities as set forth in paragraph (d) of this section. The State agency shall also ensure that an evaluation procedure is maintained to determine the effectiveness of the nutrition education.

Such evaluation procedure shall include a systematic procedure for participant input and may be conducted directly by State and local agencies or by contract for such services, so long as the evaluation is directed by a nutritionist or other professional determined by the State agency to be qualified to perform the evaluation procedure.

(d) *Local agency responsibilities.* (1) The local agency shall make nutrition education available to all adult participants and to parents or guardians of infant and child participants. Where appropriate, nutrition education for child participants is encouraged.

(2) The local agency shall direct Program funds for nutrition education to the benefit of participants and local agency staff members involved in nutrition education, in accordance with this part.

(3) The local agency shall conduct or arrange for nutrition education in a manner consistent with the nutrition education portion of the State Plan.

(4) The local agency shall include the following subject matter in the instruction given to participants:

(i) An explanation of the importance of the consumption of the supplemental foods by the participant for whom they are prescribed rather than by other family members;

(ii) Reference to any special nutritional needs of participants and ways to provide adequate diets;

(iii) An explanation of the Program as a supplemental rather than a total food program;

(iv) Information on the use of the supplemental foods and on the nutritional value of these foods;

(v) Information on the benefits of breastfeeding; and

(vi) An explanation of the importance of health care.

(e) *Food demonstrations.* Any food demonstrations using supplemental foods shall be conducted by the State or local agency solely in conjunction with nutrition education and primarily for participants under the Program. Supplemental foods may not be used for outreach, refreshments for participants, or any other such purpose. Supplemental foods may not be provided to any other community agency or facility for any purpose whatsoever, unless such agency has entered into a signed written agreement with the State or local agency to provide nutrition education services under the Program.

§ 247.9 Financial management systems.

(a) *Disclosure of expenditures.* The State agency shall maintain a financial management system which provides accurate, current and complete disclosure of the financial status of the Program. This shall include an accounting for all property and other assets and all Program funds received and expended each fiscal year.

(b) *Reports.* The State agency shall maintain its financial and donated food accounts in a manner sufficient to permit the preparation of the reports required in § 247.12.

(c) *Record of expenditures.* The State agency shall maintain records which adequately identify the source and use of funds expended for Program activities. These records shall contain, but are not limited to, information pertaining to authorization, receipt of funds, obligations, unobligated balances, assets, liabilities, outlays and income.

(d) *Payment of costs.* The State agency shall implement procedures which ensure prompt and accurate payment of allowable costs, and ensure the allowability and allocation of costs in accordance with the cost principles and standard provisions of this part, and FMC 74–4.

(e) *Identification of obligated funds.* The State agency shall implement procedures which accurately identify obligated Program funds at the time obligations are made.

(f) *Resolutions of audit findings.* The State agency shall implement procedures which ensure timely and appropriate resolution of claims and other matters resulting from audit findings and recommendations.

(g) *Letters of Credit.* All administrative funds made available under this section shall be provided to participating State agencies by means of issuance of Letters of Credit unless other funding arrangements are made with FNS. If at the end of the fiscal year, funds authorized by a Letter of Credit issued to any State agency exceed obligations, FNS shall reduce the amount of the Letter of Credit by the unobligated portion.

(h) *Payments.* Letters of Credit shall be issued to the appropriate Regional Disbursing Office in favor of the State agency. The State agency shall obtain funds needed through presentation by designated officials of a payment voucher on the Letter of Credit in accordance with procedures prescribed by FNS and consistent with the U.S. Treasury Department Circular 1075.

(i) *Transfer of cash.* The State agency shall have controls to minimize the time elapsing between receipt of Federal funds from the U.S. Department of Treasury and the disbursement of these funds for Program costs. In the Letter of Credit system, the State agency shall make drawdowns from the U.S. Department of Treasury's Regional Disbursing Office as close as possible to the time of the actual disbursement of funds. Advances made by the State agency to local agencies shall also conform to these same standards.

(j) *Local agency financial management.* The State agency shall ensure that all local agencies develop and implement a financial management system consistent with the requirements prescribed by the State agency pursuant to the requirements of this section.

§ 247.10 Administrative funding.

(a) *General.* This section prescribes the policies and procedures for payment by FNS of funds for administrative costs to participating State agencies and disbursements by State agencies to local agencies. The funds shall be paid to State agencies as specified in Section 247.9, Financial Management Systems. As a prerequisite to the receipt of such funds each fiscal year, the State agency shall have executed a written agreement with the Department and shall have received FNS approval of its State Plan.

(b) *State agency funding.* Funds for total State administrative costs for each year shall be allocated by FNS based on 15 percent of the annual appropriation available for the purchase of commodities. Each State agency shall receive its proportionate share of the administrative funds based on its percentage of the total average participation reported (up to the authorized caseload level) for the latest 3 months for which data is available prior to the beginning of a fiscal year. FNS shall determine the specific amount due each State agency by: (1) Dividing each State's average participation by the total average participation; and (2) multiplying the result by the administrative funds appropriated to derive an annual grant level which will be distributed to each State on a quarterly basis. FNS shall reserve the right to adjust participation figures used in the computation process upward or downward to ensure adequate funds are allocated when the Department believes that the participation level reported will not reflect future plans for operation, such as when a State agency plans to start or terminate the Program during the year, or when a State agency's participation has increased or decreased significantly in recent months. Participation of new State agencies during the course of the fiscal year will depend on the availability of funds. FNS shall use caseload assignments to ensure that funds appropriated are not exceeded. FNS reserves the right to periodically recover and redistribute unspent administrative funds. To ensure that State agencies can properly budget

for program operations, FNS guarantees that 75 percent of each State agency's total annual grant level will be protected from further recoveries during the current fiscal year. The State agency may retain a percentage of the grant for State level use, based on the following formula: 15 percent of the first $50,000; plus 10 percent of the next $100,000; plus 5 percent of the next $250,000. The State agency may retain a maximum amount of $30,000 annually for its administrative expenditures. However, if the State agency provides warehousing services, FNS approval may be requested at the beginning of the applicable fiscal year for funds greater than those allowed under the formula; provided, the State agency can document the need and ensure that the increase will not impose undue hardship on local agencies. The remaining funds and any unused funds at the State level shall be distributed to the local agencies.

(c) *Local agency funding.* The State agency, in providing administrative funds to local agencies, shall apportion such funds among the local agencies on the basis of their respective needs so as to ensure that those local agencies evidencing higher administrative costs, while demonstrating prudent management and fiscal controls, receive a greater portion of the administrative funds.

§ 247.11 Administrative costs.

(a) *General.* Funds provided to State and local agencies may be used to cover administrative costs identified under FMC 74–4 which State agencies determine to be necessary to carry out the Program within their jurisdiction.

(b) *Allowable costs.* The following costs are specifically identified as illustrative of costs allowable under the Program:

(1) The cost of certification procedures including:

(i) Laboratory fees incurred for tests conducted to determine the eligibility of persons to participate in the Program;

(ii) Expendable medical supplies necessary to determine the eligibility of persons to participate in the Program; and

(iii) Centrifuges, measuring boards, skin fold calipers, spectrophotometers, hematofluorometers, hemoglobinometers, and scales used for determining the eligibility of persons, provided that expenditure limits will be set by FNS for each piece of equipment and expenditures which exceed the limits shall receive prior approval by the FNS Regional Office.

(2) The cost of nutrition education services provided to participants and parents and guardians of participants, and used for training local agency staff members;

(3) The cost of transporting food and of administering the food distribution system;

(4) The cost of interpreters and translators for Program materials;

(5) The cost of outreach services;

(6) The cost of audits and fair hearings;

(7) General administration of the State and local agencies including, but not limited to, personnel, warehousing, and insurance;

(8) The cost of monitoring and reviewing Program operations; and

(9) The cost of transportation for participants to and from the local agency when the local agency has determined and documented the need for such assistance.

(c) *Restrictions on Allowable Costs.* The following costs are allowable only with the prior approval of FNS.

(1) Automatic Data Processing equipment and system purchases whether by outright purchase, rental-purchase agreement or other method of purchase;

(2) Capital expenditures over $2,500.00 such as the cost of facilities, equipment, other capital assets and any repairs that materially increase the value or useful life of capital assets, provided that any subsequent sale of real or personal properties, purchased in whole or in part with Program funds, shall be used to reimburse FNS in an amount computed by applying to the sale proceeds the percentage of FNS participation in the original acquisition costs;

(3) Occupancy of space under rental-purchase or a lease with option to purchase agreements;

(4) Equipment rental costs where the agreement provides for rental-purchase or a lease with option to purchase; and

(5) Management studies performed by agencies or departments other than the State or local agency or those performed by outside consultants under contract with the State or local agency.

(d) *Unallowable costs.* Expenditures by a State agency or local agencies which result in costs that may not be applicable to the Program objectives are "unallowable costs." A State agency's system for financial management shall identify such unallowable costs. In addition to unallowable costs identified in FMC 74–4 the following are specifically unallowable costs for reimbursement by FNS:

(1) Costs incurred for rearrangement and alteration of facilities not required specifically for the program;

(2) Actual losses which could have been covered by permissible insurance (through an approved self-insurance program or otherwise).

§ 247.12 Program income.

Program income means gross income the State agency or local agencies earn from grant supported activities, with the exception of income from the sale of property as specified in Section 247.11(c)(2). Program income earned during the agreement period shall be retained by the State agency in accordance with the provisions of A–102, Attachment E and used to further Program objectives; except that interest earned on Program funds at the State or local levels shall be used in accordance with the provisions of A–102, Attachment E. A State agency's financial management system shall provide guidelines to assure that: income earned is recorded as individual transactions within the accounting records in conformance with generally accepted accounting principles for recording expenditures and revenues; and specifically earmarked Program income is used for the purpose(s) intended.

§ 247.13 Records and reports.

(a) *Recordkeeping requirements.* Each State agency shall, in accordance with Section 250.6(r), maintain accurate and complete records with respect to the receipt, disposal, and inventory of supplemental foods, including the determination made as to liability for any improper distribution or use of, or loss of, or damage to, such foods and the result obtained from the pursuit of claims arising in favor of the State agency. Accurate and complete records shall also be maintained with respect to the receipt and disbursement of administrative funds. State agencies shall require all local agencies to maintain accurate and complete records with respect to the receipt, disposal and inventory of supplemental foods and with respect to receipt and disbursement of administrative funds. All records required by this section shall be retained for a period of 3 years following the date of submission of the annual expenditure report for the period to which the reports pertain. All records, except medical case records of participants (unless they are the only source of certification data), shall be available during normal business hours for representatives of the Department and the General Accounting Office of the United States to inspect, audit, and copy. Any reports resulting from such examinations shall not divulge names of individuals.

(b) *Financial reports.* All financial data shall be submitted quarterly on the

S.F. 269(WIC/CSFP) and/or the S.F. 272 for State agencies on the check payment system.

(c) *Participation and Food Distribution reports.* Participation and Food Distribution reports FNS–153 and FNS–155 shall be submitted as required by FNS, at a frequency prescribed by FNS. Annually, a physical inventory of all foods at each storage and distribution site is required to be submitted to FNS at a date specified by FNS.

(d) *Civil rights.* Each local agency participating under the Program shall submit a report of racial and ethnic participation data FNS–191, at a frequency prescribed by FNS.

(e) *Audit acceptability of reports.* To be acceptable for audit purposes, all financial and Program performance reports shall be traceable to source documentation.

(f) *Certification of reports.* Financial and Program reports shall be certified as to their completeness and accuracy by the person given that responsibility by the State agency.

(g) *Use of reports.* FNS shall use State agency reports to measure progress in achieving objectives set forth in the State Plan. If it is determined, through review of State agency reports, Program or financial analysis, or an audit, that a State agency is not operating according to its State Plan, FNS may request additional information and take other appropriate actions.

§ 247.14 Procurement and property management standards.

(a) *requirements.* State and local agencies shall comply with the requirements of Circular A–102, Attachment O for procurement of equipment and other services with Program funds. These requirements are adopted by FNS to ensure that such materials and services are obtained for the Program in an effective manner and in compliance with the provisions of applicable law and executive orders.

(b) *Contractual responsibilities.* The standards contained in Circulars A–80, A–102 and A–110, where applicable, do not relieve the State or local agency of the responsibilities arising under its contracts. The State agency is the responsible authority, without recourse to FNS, regarding the settlement and satisfaction of all contractual and administrative issues arising out of procurements entered into in connection with the Program. This includes, but is not limited to: disputes, claims, protests of awards, source evaluation, or other matters of a contractual nature. Matters concerning violation of law are to be referred to such local, State or Federal authority as may have proper jurisdiction.

(c) *State regulations.* The State or local agency may use its own procurement regulations which reflect applicable State and local regulations, provided that procurements made with Program funds adhere to the standards set forth in Circulars A–80, A–102 and Circular A–110, where applicable.

(d) *Property acquired with Program funds.* State and local agencies shall observe the standards prescribed in A–102, Attachment N, and A–110, Attachment N, where applicable, in their utilization and disposition of property acquired in whole or in part with Program funds.

§ 247.15 Audits.

(a) *Federal access to information.* The Secretary, the Comptroller General of the United States, or any of their duly authorized representatives, or State auditors shall have access to any books, documents, papers, and records of the State and local agencies and their contractors, for the purpose of making surveys, audits, examinations, excerpts, and transcripts.

(b) *State agency response.* The State agency may take exception to particular audit findings and recommendations. The State agency shall submit a response or statement to FNS as to the action taken or planned regarding the findings. A proposed corrective action plan developed and submitted by the State agency shall include specific time frames for its implementation and for completion of the correction of deficiencies and problems leading to the deficiencies.

(c) *Corrective action.* FNS shall determine whether Program deficiencies have been adequately corrected. If additional corrective action is necessary, FNS shall schedule a followup review, allowing a reasonable time for such corrective action to be taken.

(d) *State sponsored audits.* (1) Each State agency shall provide for an independent audit of the financial operations of the State agency and local agencies. Audits may be conducted by State and local government audit staffs, State licensed public accountants who were licensed on or before December 31, 1970, or by Certified Public Accountants and audit firms under contract to the State or local agencies. Audits shall conform to: "The Standards of Audit of Governmental Organizations, Program Activities and Functions," issued by the Comptroller General of the United States (Reprint 1974, for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402); the "Guidelines for Financial and Compliance Audits of Federally Assisted Programs," issued by the U.S. General Accounting Office, October 1978 (for sale by the U.S. General Accounting Office, Distribution Section, Room 1518, 441 G Street, N.W., Washington, D.C. 20013); any compliance supplements approved by OMB; and generally accepted auditing standards established by the American Institute of Certified Public Accountants. An audit shall be used to determine whether:

(i) Financial operations are properly conducted;

(ii) The financial reports are fairly presented;

(iii) The State or local agency has complied with applicable laws, regulations, and administrative requirements pertaining to financial management; and

(iv) Proper inventory controls (physical and paper) are being maintained.

(2) The State agency shall conduct audits in accordance with the provisions of A–102, Attachment P. Audits of the State agency and the local agencies under the State agency's jurisdiction shall be performed in a representative sample of grant program audit examinations during each audit cycle which occurs, not less frequency than once every two years. In some audit cycles, a grant program or programs other than this Program may be audited. However, audits of the Program shall be performed at intervals frequent enough to ensure consistency with good Program management. Also, at any time, the Department, FNS or the State agency may at its discretion audit a Program if an audit appears to be warranted. If FNS in the course of Program reviews of State agency operations finds that the efficiency and effectiveness of the State agency's financial management system is in question, FNS may request the State agency to include the Program in the sample for the next audit examination.

(3) Each State agency shall make all State or local agency sponsored audit reports of Program operations under its jurisdiction available for the Department's review upon request. The cost of these audits shall be considered a part of administrative costs and funded from either State or local agency administrative funds.

§ 247.16 Investigations.

(a) *Authority.* The Department may make an investigation of any allegation of noncompliance with this part. The investigation may include, where appropriate, a review of pertinent

practices and policies of any State or local agency, the circumstances under which the possible noncompliance with this part occurred, and other factors relevant to a determination as to whether the State or local agency has failed to comply with the requirements of this part.

(b) *Confidentiality.* No State or local agency, participant, or other person shall intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege under this part because the individual has made a complaint or formal allegation, or testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this part. The identity of every complainant shall be kept confidential except to the extent necessary to carry out the purpose of this part, including the conduct of any investigation, hearing, or judicial proceeding.

§ 247.17 Claims.

If FNS determines through a review of the State agency's reports, program or financial analysis, monitoring, audit, or otherwise, that any Program funds provided to a State agency for administrative purposes were, through State agency or local agency negligence or fraud, misused or otherwise diverted from Program purposes, a claim shall be made by FNS against the State agency, and the State agency shall pay promptly to FNS a sum equal to the amount of the administrative funds so misused or diverted. Further, if FNS determines that any part of the money received by a State agency was lost as a result of thefts, embezzlements, or unexplained causes, the State agency shall, on demand by FNS, pay to FNS a sum equal to the amount of the money so lost. Claims for losses or misuse of supplemental foods shall be handled in accordance with Section 250.6(m) 7 CFR Part 250—Subchapter B—Food Distribution. The State agency shall have full opportunity to submit evidence, explanations or information concerning alleged instances of noncompliance or diversion before a final determination is made in such cases.

§ 247.18 Closeout procedures.

(a) *Fiscal year closeout reports.* State agencies shall submit preliminary and final closeout reports for each fiscal year or part thereof. All obligations shall be liquidated before final closure of a fiscal year grant. Obligations shall be reported for the fiscal year in which they occur State agencies shall:

(1) Submit to FNS, within 30 days after the end of the fiscal year, preliminary financial reports which show cumulative actual expenditures and obligations for the fiscal year, or part thereof, for which Program funds were made available; and

(2) Submit to FNS, within 90 days after the end of the fiscal year, final fiscal year closeout reports.

(b) *Revised closeout reports.* Revised closeout reports may be submitted at any time. However, FNS shall not be responsible for reimbursing unpaid obligations later than one year after the close of the fiscal year in which they were incurred.

(c) *Grant closeout procedures.* When grants to State agencies are terminated, the following closeout procedures for the Program shall be performed in accordance with OMB Circular A-102.

(1) *Termination for cause.* FNS may terminate a State agency's participation under the Program, in whole or in part, whenever FNS determines that the State agency has failed to comply with the conditions prescribed in this part. FNS shall promptly notify the State agency in writing of the termination and the reasons for the termination, including the effective date. A State agency shall terminate a local agency's participation under the Program by written notice whenever it is determined by FNS or the State agency that the local agency has failed to comply with the requirements of the Program. When a State agency's participation under the Program is terminated for cause, any payments made to the State agency, or any recoveries by FNS from the State agency, shall be in conformance with the legal rights and liabilities of the parties.

(2) *Termination for convenience.* FNS or the State agency may terminate the State agency's participation under the Program, in whole or in part, when both parties agree that continuation under the Program would not produce beneficial results commensurate with the further expenditure of funds. The State agency or the local agency may terminate the local agency's participation, in whole or in part, under the same conditions. The two parties shall agree upon the termination conditions, including the effective date thereof and, in the case of partial termination, the portion to be terminated. The State agency shall not incur new obligations for the terminated portion after the effective date, and shall cancel as many outstanding obligations as possible. FNS shall allow full credit to the State agency for the Federal share of the noncancellable obligations, properly incurred by the State agency prior to termination.

§ 247.19 Nondiscrimination.

(a) *Requirement.* The State agency shall comply with the requirements of Title VI of the Civil Rights Act of 1964, the FNS Civil Rights Instruction 113-2 and the Department's regulations concerning nondiscrimination (7 CFR Part 15), including requirements of racial and ethnic participation data collection, public notification of the nondiscrimination policy, and annual reviews of each local agency to assure compliance with such policy, to the end that no person shall, on the grounds of race, color or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under the Program.

(b) *Non-English materials and staff.* Where a significant proportion of the population of the area served by a local agency is composed of non-English or limited English speaking persons who speak the same language, the State agency shall take action to assure that Program information, except certification forms, is provided to such persons in the appropriate language orally and in writing. The State agency shall ensure that there are bilingual staff members or interpreters available to serve these persons.

(c) *Complaints.* Complaints of discrimination filed by applicants or participants shall be referred to the Director, Supplemental Food Programs Division, Food and Nutrition Service, U.S.D.A., Washington, D.C. 20250.

§ 247.20 Fair hearing procedures.

(a) *Availability of hearings.* The State agency shall provide a hearing procedure through which any individual may appeal a State or local agency action which results in the denial or termination of benefits to the individual. The State agency shall conform to Program hearing procedures as outlined in this section at all times unless the State has an alternate hearing procedure whereby participants can appeal State or local agency actions. This alternate procedure may be used with FNS approval.

(b) *Notification of appeal rights.* At the time of application each applicant shall be informed of the right to a fair hearing.

At the time of denial or termination of benefits, each individual shall be informed in writing of the right to a fair hearing, of the method by which a hearing may be requested, and that any positions or arguments on behalf of the individual may be presented personally or by a representative such as a relative, friend, legal counsel or other spokesperson. Such notification is not

required at the expiration of a certification period.

(c) *Request for hearing.* A request for a hearing is defined as any clear expression by the individual or the individual's parent, guardian or other representative, that an opportunity to present its case to a higher authority is desired. The State or local agency shall not limit or interfere with the individual's freedom to request a hearing.

(d) *Time limit for request.* The State or local agency shall provide individuals a reasonable period of time to request fair hearings. Such time limit shall not be less than 60 days from the date the agency mails or gives the applicant or participant the notice of adverse action to deny or terminate benefits, as required in § 247.7(f)(2).

(e) *Denial or dismissal of request.* A request for a hearing shall not be denied or dismissed unless:

(1) The request is not received within the time limit set by the State agency in accordance with paragraph (d) of this section.

(2) The request is withdrawn in writing by the applicant or a writing by the applicant or a representative.

(3) The applicant or representative fails, without good cause, to appear at the scheduled hearing.

(f) *Continuation of benefits.* Participants who appeal the termination of benefits within the 15 day advance adverse notice period provided by § 247.7(f)(2) shall continue to receive Program benefits until the hearing official reaches a decision. Applicants who are denied benefits at initial certification or at subsequent certifications may appeal the denial but shall not receive benefits while awaiting the hearing.

(g) *Rules of procedure.* The State and local agency shall process each request for a hearing under uniform rules of procedure. The uniform rules of procedure shall be available for public inspection and copying. At a minimum, the uniform rules of procedure shall include: the time limits for requesting and conducting a hearing; all advance notice requirements; the rules of conduct at the hearing; and the rights and responsibilities of the applicant. The procedures shall not be unduly complex or legalistic and the applicant's background shall be taken into consideration.

(h) *Hearing official.* Hearings shall be conducted by an impartial official who does not have any personal stake or involvement in the decision and who was not directly involved in the initial determination of the action being contested. The hearing official shall:

(1) Administer oaths or affirmations if required by the State;

(2) Ensure that all relevant issues are considered;

(3) Request, receive and make part of the hearing record all evidence determined necessary to decide the issues being raised;

(4) Regulate the conduct and course of the hearing consistent with due process to ensure an orderly hearing;

(5) Render a hearing decision which will resolve the dispute.

(i) *Conduct of the hearing.* The hearing shall be accessible to the applicant. The State or local agency shall provide the applicant with a minimum of 10 days advance written notice of time and place of the hearing and shall enclose the rules of procedure. The State and local agency shall also provide the applicant or representative an opportunity to:

(1) Examine, prior to and during hearing, the documents and records presented to support the decision under appeal;

(2) Be assisted or represented by an attorney or other persons;

(3) Bring witnesses;

(4) Advance arguments without undue interference;

(5) Question or refute any testimony or evidence, including an opportunity to confront and cross-examine adverse witnesses; and

(6) Submit evidence to establish all pertinent facts and circumstances in the case.

(j) *Hearing decisions.* (1) Decisions of the hearing official shall comply with Federal law or regulations and shall be based on facts in the hearing record. The verbatim transcript or recording of testimony and exhibits, or an official report containing the substance of what transpired at the hearing, together with all papers and requests filed in the proceeding shall constitute the exclusive record for a final decision by the hearing official. This record shall be retained in accordance with § 247.13. This record shall also be available, for copying and inspection, to the appellant or representative at any reasonable time.

(2) A decision by the hearing official shall be binding on the local agency and shall summarize the facts of the case, specify the reasons for the decision, and identify the supporting evidence and the pertinent regulations. The decision shall become a part of the record.

(3) Within 45 days of the request for the hearing, the applicant or representative shall be notified in writing of the decision and the reasons for the decision in accordance with paragraph (j)(2) of this section. Also, if the decision is in the favor of the applicant and benefits were denied, benefits shall begin within this 45-day time period. If the decision is in favor of the agency, as soon as administratively feasible any continued benefits shall be terminated as decided by the hearing official.

(4) All State and local agency hearing records and decisions shall be available for public inspection and copying, subject to the disclosure safeguards provided in § 247.22(d), and provided the names and addresses of participants and other members of the public are kept confidential.

(k) *Judicial review.* If a State level decision upholds the agency action, the State agency shall explain any available State review of the decision and any State rehearing process. If neither are available or have been exhausted, the State agency shall explain the right to pursue judicial review of the decision.

§ 247.21 Management evaluation and reviews.

(a) *General.* FNS and each State agency shall establish a management evaluation system in order to assess the accomplishment of Program objectives as provided under these regulations, the State Plan, and the written agreement with the Department. FNS will provide assistance to States in discharging this responsibility, and will establish standards and procedures to determine how well the objectives of this part are being accomplished.

(b) *Responsibilities of FNS.* FNS shall establish evaluation procedures to determine whether State agencies carry out the purposes and provisions of this part, the State Plan, and the written agreement with the Department. As a part of the evaluation procedure, FNS shall review audits performed by the State agency to ensure that the Program at both the State and local levels has been included in audit examinations at a reasonable frequency. These evaluations shall include a review of each State agency, including on-site reviews of selected local agencies. These evaluations will measure the State agency's progress toward meeting the objective outlined in its State Plan and compliance with these regulations.

(c) *Responsibilities of State agencies.* The State agency is responsible for meeting the following requirements:

(1) The State agency shall establish evaluation and review procedures and document the results of such procedures. The procedures shall include, but not be limited to:

(i) Annual monitoring of the operation of all local agencies to evaluate certification procedures, management, nutrition education, civil rights

compliance, food storage, inventory accountability, and financial management systems. However, more frequent reviews may be performed as the State agency deems necessary. The State agency shall provide a continuing evaluation of each local agency through on-site reviews of the local agency, reviews of local agency reports including inventory reports, reviews of storage facilities and safeguards for supplemental foods.

(ii) Instituting the necessary followup procedures to correct identified problem areas.

(2) On its own initiative or when required by FNS, the State agency shall provide special reports on Program activities, and take positive action to correct deficiencies in Program operations.

(3) The State agency shall require that local agencies establish Program review procedures to be used in reviewing their own operations and those of subsidiaries or contractors.

§ 247.22 Administrative Appeal of State Agency Decisions

(a) *Requirements.* The State agency shall provide a hearing procedure whereby a local agency adversely affected by a State action may appeal the action. The right to appeal shall be granted when the local agency's application to participate is denied, when participation is terminated, when a contract is not renewed by the State agency or when any other adverse action which affects participation is taken. The adverse action shall be postponed until a hearing decision is reached.

(b) *Procedure.* The State agency hearing procedure shall at a minimum provide the local agency:

(1) Adequate advance notice of the time and place of the hearing to provide all parties involved sufficient time to prepare for the hearing;

(2) The opportunity to present its case;

(3) The opportunity to confront and cross-examine adverse witnesses;

(4) The opportunity to be represented by counsel, if desired;

(5) The opportunity to review the case record prior to the hearing;

(6) An impartial decision maker, whose decision as to the validity of the State or local agency's action shall rest solely on the evidence presented at the hearing and the statutory and regulatory provisions governing the Program. The basis for the decision shall be stated in writing, although it need not amount to a full opinion or contain formal finding of fact and conclusions of law; and

(7) Written notification of the decision concerning the appeal, within 60 days from the date of the request for a hearing.

§ 247.23 Miscellaneous provisions.

(a) *No aid reduction.* The value of benefits or assistance available under the Program shall not be considered as income to or resources of participants or their families for any purpose under Federal, State or local laws, including, but not limited to, laws relating to taxation, welfare and public assistance programs.

(b) *Statistical information.* FNS reserves the right to use information obtained under the Program in a summary, statistical or other form which does not identify particular individuals. FNS may require the State or local agencies to supply data and other information collected under the Program in a form that does not identify particular individuals, to enable the Secretary or the State agencies to evaluate the effect of food intervention upon low-income individuals determined to be eligible for Program benefits.

(c) *Confidentiality.* Each State agency shall restrict the use or disclosure of information obtained from Program applicants or participants to persons directly connected with the administration or enforcement of the Program.

(d) *Public information.* Any person who wishes information, assistance, records or other public material shall request such information from the State agency, or from the FNS Regional Office serving the appropriate State as listed below:

(1) Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont: U.S. Department of Agriculture, FNS, New England Region, 33 North Avenue, Burlington, Massachusetts 01803.

(2) Delaware, District of Columbia, Maryland, New Jersey, New York, Pennsylvania, Puerto Rico, Virginia, Virgin Islands, West Virginia: U.S. Department of Agriculture, FNS, Mid-Atlantic Region, One Vahlsing Center, Robbinsville, New Jersey 08691.

(3) Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee: U.S. Department of Agriculture, FNS, Southeast Region, 1100 Spring Street, NW, Atlanta, Georgia 30309.

(4) Illinois, Indiana, Michigan, Minnesota, Ohio, Wisconsin: U.S. Department of Agriculture, FNS, Midwest Region, 536 South Clark Street, Chicago, Illinois 60605.

(5) Arkansas, Louisiana, New Mexico, Oklahoma, Texas: U.S. Department of Agriculture, FNS, Southwest Region, 1100 Commerce Street, Room 5-C-30, Dallas, Texas 75242.

(6) Colorado, Iowa, Kansas, Missouri, Montana, Nebraska, North Dakota, South Dakota, Utah, Wyoming: U.S. Department of Agriculture, FNS, Mountain Plains Region, 2420 West 26th Avenue, Room 430-D, Denver, Colorado 80211.

(7) Alaska, American Samoa, Arizona, California, Guam, Hawaii, Idaho, Nevada, Oregon, Trust Territory of the Pacific Islands, Washington: U.S. Department of Agriculture, FNS, Western Region, 550 Kearney Street, Room 400, San Francisco, California 94108.

Note.—The reporting and/or recordkeeping requirements contained herein have been cleared by the Office of Management and Budget in accordance with the Federal Reports Act of 1942.

(Catalog of Federal Domestic Assistance, Program No. 10.565, National Archive Reference Service.)

Dated: January 15, 1981.

Carol Tucker Foreman,

Assistant Secretary for Food and Consumer Services.

[FR Doc. 81-2367 Filed 1-19-81; 8:45 am]

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federal register

Wednesday
January 21, 1981

Part X

Department of Health and Human Services

Public Health Service

Requirements for a Health Maintenance Organization; Final Regulations

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

42 CFR Part 110

Requirements for a Health Maintenance Organization

AGENCY: Public Health Service, HHS.

ACTION: Final regulations.

SUMMARY: These regulations amend the requirements for the operation of federally qualified health maintenance organizations (HMOs) regarding the disclosure of information by HMOs to members, potential members, and employers. These amendments are made to coordinate the requirements of the Employee Retirement Income Security Act of 1974 (ERISA) and Title XIII of the Public Health Service Act (the Act) so as to avoid any duplicative or otherwise unnecessary requirements that might result from the interaction of these laws.

EFFECTIVE DATE: These regulations are effective on February 20, 1981.

FOR FURTHER INFORMATION CONTACT: Howard R. Veit, Director, Office of Health Maintenance Organizations, Park Building—3rd Floor, 12420 Parklawn Drive, Rockville, Maryland 20857, 301/443–4100.

SUPPLEMENTARY INFORMATION: On June 22, 1979, a Notice of Proposed Rulemaking was published in the Federal Register (44 FR 36884–5) proposing to amend the Department's existing rules regarding the organization and operation of federally qualified HMOs. That document proposed to add new provisions to 42 CFR 110.108(c) which would require federally qualified HMOs to disclose clearly (1) certain information similar to that required by the Department of Labor's (DOL) ERISA regulations, 29 CFR Parts 2520, 2560, and (2) information about the financial condition of the HMO. Specifically, proposed § 110.108(c)(1) required a written description of an HMO's benefits, coverage, procedures for obtaining benefits, circumstances under which benefits may be denied, rates, grievance procedures, service area, location, hours of service, and general description of participating providers.

The NPRM also proposed to amend § 110.108 by adding a new paragraph (s) that would require HMOs to provide each employer (or designee or plan administrator) offering the option of enrolling in an HMO the information which is necessary to satisfy its reporting and disclosure obligations under ERISA as they apply to those HMOs.

The Notice invited interested persons to submit written comments, suggestions, or objections on or before August 21, 1979. Nine organizations submitted timely comments, and five comments were received shortly after the end of the comment period. All comments were considered in developing these final regulations. Those comments received which (1) related to matters outside the jurisdiction of the Department or (2) requested clarification of matters that the Secretary has determined can be explained in this preamble to the final regulations were not incorporated in the final regulations. The following is a summary of the comments received:

Seven commenters requested that qualified HMOs not be considered either as an employee benefit plan or as a benefit under the employer's plan for ERISA purposes. Because this matter falls within the jurisdiction of DOL, which administers ERISA, the Secretary sent copies of the letters containing comments received on this NPRM to that Department. The Secretary notes that DOL has responded to this issue elsewhere in this edition of the Federal Register.

Two commenters objected to the requirement that HMOs disclose rates. One objected to the required disclosure of grievance procedures. The Secretary notes that these requirements have been in effect since October 18, 1974, and HMOs have not reported any difficulty in complying with them; therefore, they have not been changed in the final regulation.

One commenter questioned what was meant by "a general description of providers" in the proposed regulation at § 110.108(c)(1). The Department has revised the regulation to specify that the type of information which must be disclosed about the providers associated with the HMO is as follows: If the HMO provides health services through an individual practice association(s): The number of member physicians by specialty, and a listing of the hospitals where HMO members will receive basic and supplemental health services; if the HMO provides health services other than through an individual practice association, the HMO must provide for each ambulatory care facility, the facility's address, days and hours of operation, the number of physicians by specialty, and a listing of the hospitals where HMO members will receive basic and supplemental health services.

In response to five commenters requesting clarification as to what an HMO must disclose with respect to its financial condition under § 110.108(c), the Secretary has revised § 110.108(c) to specify that the HMO must provide at least the following most recently audited information about its financial condition: current assets, other assets, total assets; current liabilities, long term liabilities, and net worth.

Two commenters felt the disclosure of eligibility requirements for members was burdensome. The Secretary does not agree with this view. While an employer ordinarily determines the eligibility of its employees, and their dependents for health benefits, in order for the subscriber to make an informed choice, it is necessary for an HMO to disclose any restrictions the HMO (as opposed to the employer) has on eligibility (e.g., maximum age for unmarried dependents). On the other hand, one commenter felt that the entire contract for benefits should be disclosed. The Secretary believes that to require this would be burdensome to the HMO (given that the contract would be available upon request to the plan administrator—see the explanatory statement accompanying the DOL regulation in this edition of the Federal Register) and of minimal value in explaining the coverage to be provided by the HMO. Therefore, the proposed regulation has not been changed in this regard.

Two commenters suggested that State licensed HMOs, as well as federally qualified HMOs, should be required to follow the disclosure provisions of this section of the regulations. The Secretary cannot accept this suggestion because the jurisdiction of the Department under Title XIII of the Act and these regulations extends only to federally qualified HMOs.

The Assistant Secretary for Health of the Department of Health and Human Services, with the approval of the Secretary of Health and Human Services, amends 42 CFR 110.108 as set forth below.

(Sec. 215, 58 Stat. 690 (42 U.S.C. 216); sec. 1301–1318, as amended, 92 Stat. 2131–2141 (42 U.S.C. 300e–300e–17))

Dated: January 5, 1981.

Julius B. Richmond,

Assistant Secretary for Health.

Approved: January 14, 1981.

Patricia Roberts Harris,

Secretary.

Subpart A—Requirements for a Health Maintenance Organization

§ 110.108 [Amended]

1. In § 110.108, paragraph (c) is revised to read as follows:

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(c)(1) *Full and fair disclosure.* Each HMO shall prepare a written description of the items listed below. This description shall be written so that it can be easily understood by the average person who might enroll in the HMO. The description of benefits and coverage (items in paragraph (c)(1) (i) and (ii) of this section, respectively, below) may be in general terms if reference is made to a detailed statement of benefits and coverage which is available without cost to any person to whom the opportunity for enrollment in the HMO is offered or who has enrolled in the HMO. Upon request made directly to the HMO or the plan administrator (as that term is defined under the Employee Retirement Income Security Act of 1974, "ERISA") of a health benefits plan which includes the HMO option, the HMO shall provide the description to any person who is a participant or beneficiary of the plan and who is eligible to elect the HMO option. The items to be included in the written description are the HMO's:

(i) Benefits (including limitations and exclusions);

(ii) Coverage (including a statement of conditions on eligibility for benefits);

(iii) Procedures to be followed in obtaining benefits and a description of circumstances under which benefits may be denied;

(iv) Rates;

(v) Grievance procedures;

(vi) Service area;

(vii) Participating providers:

(A) If the HMO provides health services through an individual practice association(s), the HMO shall provide the number of member physicians by specialty, and a listing of the hospitals where HMO members will receive basic and supplemental health services; and

(B) If the HMO provides health services other than through an individual practice association, the HMO shall provide for each ambulatory care facility, the facility's address, days and hours of operation, and the number of physicians by specialty, and a listing of the hospitals where HMO members will receive basic and supplemental health services; and

(viii) Financial condition to include at least the following most recently audited information: Current assets, other assets, total assets; current liabilities, long term liabilities; and net worth.

(2) *Broadly representative enrollment.* After providing the written description referred to in paragraph (c)(1) of this section, each HMO shall offer enrollment to persons who are broadly representative of the various age, social, and income groups within its service area. In the case of an HMO which has a medically underserved population located in its service area, not more than 75 percent of the HMO members may be enrolled from the medically underserved population unless the area in which that population resides is also a rural area.

* * * * *

§ 110.108 [Amended]

2. In § 110.108, a new paragraph (s) is added as follows:

* * * * *

(s) *Reporting and Disclosure under ERISA.* Each HMO shall provide each employer or designee (as those terms are defined in § 110.801 of this part) or plan administrator (as that term is defined under the Employee Retirement Income Security Act of 1974, "ERISA") including the HMO option in its employees' health benefits plan, upon request, the information which is necessary to satisfy its reporting and disclosure obligations under ERISA insofar as that HMO is involved.

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federal register

Wednesday
January 21, 1981

Part XI

Department of State

Office of the Secretary

Hostage Relief

DEPARTMENT OF STATE

Office of the Secretary

[SD-167]

22 CFR Parts 1, 2, 3, and 4

Hostage Relief

AGENCY: Department of State.

ACTION: Proposed rule.

SUMMARY: The Department of State, upon authorization by the President, proposes to issue regulations providing for assistance to American hostages and members of their families and households. The authority for this assistance is the Hostage Relief Act of 1980 (Public Law 96-449, 94 Stat. 1967). This Act requires that the Secretary of State determine who are hostages, and members of the family and households of hostages, for various purposes of Title I and II of the Act.

Part 1 of the proposed regulations describes the process for such determinations. Part 2 deals with the extension of certain provisions of the Soldiers' and Sailors' Civil Relief Act (50 U.S.C. App. 501, et seq.) to American Hostages in Iran and elsewhere. Part 3 deals with medical benefits, and Part 4 with educational assistance.

While the Act also contains in Title II various tax relief provisions, the Treasury Department considers these provisions self-executing and therefore no additional regulatory material is necessary at this time with regard to the tax provisions.

DATE: Comments must be received on or before March 23, 1981.

ADDRESS: Send written comments to: the Assistant Secretary for Administration, Department of State, Washington, D.C. 20520 (202) 632-1725.

FOR FURTHER INFORMATION CONTACT: Walter F. Weiss (202) 632-1492.

SUPPLEMENTARY INFORMATION: Under the Hostage Relief Act, the Secretary of State identifies in the Federal Register, from time to time, any hostile action which results in captive status under sections 101(4) and 205(c)(1) of the Act. The Secretary of State also determines, under sections 101(1)(B), 205(c)(2) and 205(f) of the Act, whether citizens or resident aliens of the U.S. who are in captive status are eligible for benefits under the Act.

Benefits under the Act are available to Government civil service and uniformed service personnel, and to others determined to have been rendering service to the United States similar to Government personnel. Benefits are also available to members of the family and households of hostages. Determinations will be made on a case-by-case basis as provided in the regulations.

Any person may apply for such a determination to be made on their own behalf or on behalf of a person believed to be in captive status as defined by the Act, or to be otherwise entitled to benefits under this Act. Information on how to apply is set forth in § 1.2 of the proposed regulation.

The present Soldiers' and Sailors' Civil Relief Act was enacted in 1940 (Title 50 United States Code, Appendix, sections 501 et seq.). The purpose of the Act is to protect certain rights of persons during their term of military service, when they are not in a position to effectively deal with their rights. Generally, the method of the Civil Relief Act is to authorize a court to postpone certain proceedings and transactions, or to avoid the application of certain penalties or damage claims, until a person returns from military service, or when the court determines that a person is in a position to reasonably respond to protect their rights and interests, and where deemed necessary, to provide for adequate representation of such persons during their absence.

The majority of the benefit provisions of the Soldiers' and Sailors' Civil Relief Act have been extended under this Act to hostages. Certain of those provisions have been excluded under Sec. 105 of the Hostage Relief Act as inapplicable, or in some cases in order to allow further consideration.

There is nothing in the Soldiers' and Sailors' Relief Act which relieves a person from the payment of debts or other obligations which may have been incurred. It is only when a person's ability to meet obligations has been impaired becaused of military service, or circumstances covered by the Hostage Relief Act, that relief may be afforded. The extent to which relief is afforded generally is left to the discretion of the appropriate court in the United States.

The intention in drafting the regulations in Parts 3 and 4 is to provide the maximum benefits provided by the Hostage Relief Act and at the same time to avoid duplication of benefits available under other programs. For example, a person eligible for educational benefits under chapters 35 and 31 of Title 38 of the United States Code (Veteran's Administration programs) would have to utilize those programs, and would be able to apply to the Hostage Relief program only for benefits different in amount or duration, if authorized under the latter law.

The medical benefits provided for in Part 3 are medical and health care at U.S. Government expense, and payment of other expenses related to such care, for any illness or injury determined to be caused or materially aggravated by the hostage situation. Applications for benefits are to be submitted to the Office of Medical Services of the Department of State which will determine eligibility and extent of benefits.

The education benefits provided for in Part 4 for hostages or certain family members are modeled after those available under programs administered by the Veteran's Administration. Since the Hostage Relief Act permits more extended benefits in special circumstances, the regulations provide a process for determining when such extended assistance will be authorized.

Accordingly, it is hereby proposed, under the authority of the Hostage Relief Act of 1980 (Public Law 96-449) and section 4 of the Act of May 26, 1949 (22 United States Code, Sec. 2658) to add the following new Subchapter P, Parts 1 through 4, to title 22 of the Code of Federal Regulations.

Ben H. Read,

Under Secretary of State for Management.

January 16, 1981.

SUBCHAPTER P—HOSTAGE RELIEF

Parts

1 General.

Sec.
2 Application of Soldiers' and Sailors' Civil Relief Act.
3 Medical benefits.
4 Educational benefits.

PART 1—GENERAL

Sec.
1.1 Declaration of hostile action.
1.2 Application for determination of eligibility.
1.3 Definitions.
1.4 Notification of eligible persons.
1.5 Relationships among agencies.
1.6 Effective date.

Authority: Hostage Relief Act of 1980 (Pub. L. 96-449) and Sec. 4 of Act of 1949 (22 U.S.C. 2658).

§ 1.1 Declaration of hostile action.

(a) The Secretary of State from time to time shall declare when and where individuals in the civil or uniformed services of the United States, or a citizen or resident alien of the United States rendering personal services to the United States abroad similar to the service of a civil officer or employee of the United States, have been placed in captive status because of hostile action abroad directed against the United States and occurring or continuing between November 4, 1979, and such date as may be delcared by the President under section 101(2)(A) of the Hostage Relief Act of 1980 (Public Law 96-449, hereafter "the Act") or January 1, 1983, whichever is later. Each such declaration shall be published in the Federal Register.

(b) The Secretary of State upon his or her own initiative, or upon application under § 1.2, shall determine which individuals in captive status as so declared shall be considered hostages eligible for benefits under the Act. The Secretary shall also determine who is eligible under the Act for benefits as a member of a family or household of a hostage. The determination of the Secretary shall be final, but any interested person may request reconsideration on the basis of information not considered at the time of original determination. The criteria for determination are set forth in sections 101 and 205 of the Act, and in these regulations.

§ 1.2 Application for determination of eligibility.

(a) Any person who believes that they or other persons known to them are either hostages as defined in the Act, or members of the family or household of hostages as defined in § 1.3(1), or a child eligible for benefits under Part 4, may apply for benefits under this subchapter for themselves, or on behalf of others entitled thereto.

(b) The application shall be in writing, should contain all identifying and other pertinent data available to the person applying about the person or persons claimed to be eligible, and should be addressed to the Assistant Secretary of State for Administration, Department of State, Washington, D.C. 20520. Applications may be filed at any time after publication of a declaration under § 1.1(a) in the Federal Register, and during the period of its validity, or within 60 days after release from captivity. Later filing may be considered when in the opinion of the Secretary of State there is good cause for the late filing.

§ 1.3 Definitions.

When used in this subchapter, unless otherwise specified, the terms—

(a) "Family Member" means (1) a spouse, (2) an unmarried dependent child including a step-child or adopted child, (3) a person designated in official records or determined by the agency head or designee thereof to be a dependent, or (4) other persons such as parents, parents-in-law, persons who stand in the place of a spouse or parents, or other members of a household when fully justified by the circumstances of the hostage situation, as determined by the Secretary of State.

(b) "Agency head" means the head of an agency as defined in the Act (or successor agency) employing an individual determined to be an American hostage. The Secretary of State is the agency head with respect to any hostage not employed by an agency.

(c) "Principal" means the hostage whose captivity forms the basis for benefits under this subchapter for a family member.

§ 1.4 Notification of eligible persons.

The Assistant Secretary of State for Administration shall be responsible for notifying each individual determined to be eligible for benefits under the Act or, if that person is not available, a representative or Family Member of the hostage.

§ 1.5 Relationships among agencies.

(a) The Assistant Secretary of State for Administration shall promptly inform the head of any agency whenever and employee (including a member of the Armed Forces) in that agency, or Family Member of such employee, is determined to be eligible for benefits under this subchapter.

(b) In accordance with inter-agency agreements between the Department of State and relevant agencies—

(1) The Veterans Administration will periodically bill the Department of State for expenses it pays for each eligible person under Part 4 of this subchapter plus the administrative costs of carrying out its reponsibilities under this part.

(2) The Department of State will, on a periodic basis, determine the cost fo services and benefits it provides to all eligible persons under this subchapter and bill each agency for the costs attributable to Principals (and Family Members) in or acting on behalf of the agency plus a proportionate share of related administrative expenses.

§ 1.6 Effective date.

This subchapter is effective as of November 4, 1979. Reimbursement may be made for expenses approved under this subchapter for services rendered on or after such date.

PART 2—APPLICATION OF SOLDIERS' AND SAILORS' CIVIL RELIEF ACT

Sec.
2.1 Eligibility for benefits.
2.2 Applicable benefits.
2.3 Description of benefits.
2.4 Administration of benefits.

Authority: Hostage Relief Act of 1980 (Pub. L. 96-449) and Sec. 4 of Act of 1949 (22 U.S.C. 2658).

§ 2.1 Eligibility for benefits.

A person designated as a hostage under Part 1 of this subchapter, other than a member of the Armed Forces covered by the provisions of the Soldiers' and Sailors' Civil Relief Act of 1940, shall be eligible for benefits under this Part.

§ 2.2 Applicable benefits.

(a) Eligible persons are entitled to the benefits provided by the Soliders' and Sailors' Civil Relief Act of 1940 (50 U.S.C. App. 501, et seq.), including the benefits provided by section 701 (50 U.S.C. App. 591) notwithstanding paragraph (c) thereof, but excluding the benefits provided by sections 104, 105, 106, 400 through 408, 501 through 512, and 514 (50 U.S.C. App. 514, 515, 516, 540 through 548, 561 through 572, and 574).

(b) In applying such Act for purposes of this section—

(1) The term "person in the military service" is deemed to include any such American hostage;

(2) The term "period of military service" is deemed to include the period during which such American hostage is in a captive status;

(3) References therein to the Secretary of the Army, the Secretary of the Navy, the Adjutant General of the Army, the Chief of Naval Personnel, and the Commandant, United States Marine Corps, or other officials of government are deemed to be references to the Secretary of State; and

(4) The term "dependents" shall, to the extent permissible by law, be construed to include "Family Members" as defined in section 101 of the Hostage Relief Act.

§ 2.3 Description of benefits.

The following material is included to assist persons affected, by providing a brief description of some of the provisions of the Civil Relief Act. Note that not all of the sections applicable to hostage have been included here. References to sections herein are references to the Civil Relief Act of 1940, as amended, followed by references in parenthese to the same section in the United States Code.

(a) *Guarantors, endorsers.* Section 103 (50 U.S.C. App. 513) provides that whenever a hostage is granted relief from the enforcement of an obligation, a court, in its discretion, may grant the same relief to guarantors and endorsers of the obligaiton. Amendments extend relief to accoummodation makers and others primarily or secondarily liable on an obligation, and to sureties on a criminal bail bond. They provide, on certain conditions, that the benefits of the section with reference to persons primarily or secondarily liable on an obligation may be waived in writing.

(b) *Written Agreements.* Section 107 (50 U.S.C. App. 517) provides that nothing contained in the Act shall prevent hostages from making certain arrangements with respect to their contracts and obligations, but requires that such arrangements be in writing.

(c) *Protection in Court.* Section 200 (50 U.S.C. App. 520) provides that if a hostage is made defendant in a court action and is unable to appear in court, the court shall appoint an attorney to represent the hostage and protect the hostage's interests. Further, if a judgment is rendered against the hostage, an opportunity to reopen the case and present a defense, if meritorious, may be permitted within 90 days after release.

(d) *Court Postponement.* Section 201 (50 U.S.C. App. 521) authorizes a court to postpone any court proceedings if a hostage is a party thereto and is unable to participate by reason of being a captive.

(e) *Relief Against Penalties.* Section 202 (50 U.S.C. App. 522) provides for relief against fines or penalties when a court proceeding involving a hostage is postponed, or when the fine or penalties are incurred for failure to perform any obligation. In the latter case, relief depends upon whether the hostage's ability to pay or perform is materially affected by being held captive.

(f) *Postponement of Action.* Section 203 (50 U.S.C. App. 523) authorizes a court to postpone or vacate the execution of any judgment, attachment or garnishment.

(g) *Period of Postponement.* Section 204 (50 U.S.C. App. 524) authorizes a court to postpone proceedings for the period of capitivity, and for 3 months thereafter, or any part thereof.

(h) *Extended Time Limits.* Section 205 (50 U.S.C. App. 525) excludes the period of captivity fom computing time under existing or future statutes of limitation. Amendments extend relief to include actions before administrative agencies, and provide that the period of captivity shall not be included in the period for redemption of real property sold to enforce any obligation, tax, or assessment. Section 207 excludes application of section 205 to any period of limitation prescribed by or under the internal revenue laws of the United States.

(i) *Interest Rates.* Section 206 (50 U.S.C. App. 526) provides that interest on the obligations of hostages shall not exceed a specified per centurm per annum, unless the court determines that ability to pay greater interest is not affected by being held captive.

(j) *Misuse of Benefits.* Section 600 (50 U.S.C. App. 580) provides against transfers made with intent to delay the just enforcement of a civil right by taking advantage of the Act.

(k) *Further Relief.* Section 700 (50 U.S.C. App. 590) provides that a person, during a period of captivity or 6 months thereafter, may apply to a court for relief with respect to obligations incurred prior to captivity, or any tax or assessment whether falling due prior to or during the period of captivity. The court may, on certain conditions, stay the enforcement of such obligations.

(l) *Stay of Eviction.* Section 300 (50 U.S.C. App. 530) provides that a hostage's dependents shall not be evicted from their dwelling if the rental is $150 or less per month, except upon leave of a court. If it is proved that inability to pay rent is a result of being in captivity, the court is authorized to stay eviction proceedings for not longer than 3 months. An amendment extends relief to owners of the premises with respect to payments on mortgage and taxes.

(m) *Contract and Mortgage Obligations.* As provided by sections 301 and 302 of the Act (50 U.S.C. App. 531 and 532), as amended, contracts for the purchase of real and personal property, which originated prior to the period of captivity, may not be rescinded, terminated, or foreclosed, or the property repossessed, except as provided in section 107 (50 U.S.C. App. 517), unless by an order of a court. The mentioned sections give the court wide discretionary powers to make such disposition of the particular case as may be equitable in order to conserve the interests of both the hostage and the creditor. The cited sections further provide that the court may stay the proceedings for the period of captivity and 3 months thereafter, if in its opinion the ability of the hostage to perform the obligation is materially affected by reason of captivity. Section 303 (50 U.S.C. App. 533) provides that the court may appoint appraisers and, based upon their report, order such sum as may be just, if any, paid to hostages or their dependents, as a condition to foreclosing a mortgage, resuming possession of property, and rescinding or terminating a contract.

(n) *Termination of a Lease.* Section 304 (50 U.S.C. App. 534) provides, in general, that a lease covering premises occupied for dwelling, business, or agricultural purpose, executed by persons who subsequently become hostages, may be terminated by a notice in writing given to the lessor, subject to such action as may be taken by a court on application of the lessor. Termination of a lease providing for monthly payment of rent shall not be effective until 30 days after the first date on which the next rental payment is due, and, in the case of other leases, on the last day of the month following the month when the notice is served.

(o) *Assignment of Life Insurance Policy.* Section 305 (50 U.S.C. App. 535) provides that the assignee of a life insurance policy assigned as security, other than the insurer in connection with a policy loan, except upon certain conditions, shall not exercise any right with respect to the assignment during the period of captivity of the insured and one year thereafter, unless upon order of a court.

(p) *Storage Lien.* Section 305 (50 U.S.C. App. 535) provides that a lien for storage of personal property may not be foreclosed except upon court order. The court may stay proceedings or make other just disposition.

(q) *Extension of Benefits to Dependents,* Section 306 (50 U.S.C. App. 536) extends the benefits to section 300 through 305 to dependents of a hostage.

(r) *Real and Personal Property Taxes.* Section 500 (50 U.S.C. App. 560) forbids sale of property, except upon court leave, to enforce collection of taxes or assessments (other than taxes on income) on personal property or real property owned and occupied by the hostage or dependents thereof at the commencement of captivity and still

occupied by the hostage's dependents or employees. The court may stay proceedings for a period not more than 6 months after termination of captivity. When by law such property may be sold to enforce collection, the hostage will have the right to redeem it within 6 months after termination of captivity. Unpaid taxes or assessments bear interest at 6 percent.

(s) *Income Taxes.* Section 513 provides for deferment of payment of income taxes. However, section 204 of the Hostage Relief Act of 1980 provides for deferment and certain other relief, and should be referred to in order to determine statutory tax benefits in addition to those in section 513 of the Civil Relief Act.

(t) *Certification of Hostage.* Section 601 provides that a certificate signed by the agency head shall be prima facie evidence that the person named has been a hostage during the period specified in the certification.

(u) *Interlocutory Orders.* Section 602 (50 U.S.C. App. 582) provides that a court may revoke an interlocutory order it has issued pursuant to any provision of the Soldiers' and Sailors' Civil Relief Act of 1940.

(v) *Power of Attorney.* Section 701 (50 U.S.C. App. 591) provides that certain powers of attorney executed by a hostage which expire by their terms after the person was captured shall be automatically extended for the period of captivity. Exceptions are made with respect to powers of attorney which by their terms clearly indicate they are to expire on the date specified irrespective of hostage status. (Section 701 applies to American hostages notwithstanding paragraph (c) thereof which states that it applies only to powers of attorney issued during the "Vietnam era".)

§ 2.4 Administration of benefits.

(a) The Assistant Secretary of State for Administration will issue certifications or other documents when required for purposes of the Civil Relief Act.

(b) The Assistant Secretary of State shall whenever possible promptly inform the chief legal officer of each State in which hostages maintain residence of all persons determined to be hostages eligible for assistance under this subpart.

PART 3—MEDICAL BENEFITS

Sec.
3.1 Eligibility for benefits.
3.2 Applicable benefits.
3.3 Administration of benefits.
3.4 Disputes.

Authority: Hostage Relief Act of 1980 (Pub. L. 96-449) and Sec. 4 of the Act of 1949 (22 U.S.C. 2658).

§ 3.1 Eligibility for benefits.

A person designated as a hostage or Family Member of a hostage under Part 1 of this subchapter shall be eligible for benefits under this Part.

§ 3.2 Applicable benefits.

A person eligible for benefits under this Part shall be eligible for authorized medical and health care at U.S. Government expense, and for payment of other authorized expenses related to such care or for obtaining such care for any illness or injury which is determined by the Secretary of State to be caused or materially aggravated by the hostage situation, to the extent that such care may not—

(a) Be provided or paid for under any other Government health or medical program, including, but not limited to, the programs administered by the Secretary of Defense, the Secretary of Labor and the Administrator of Veterans Affairs; or

(b) Be entitled to reimbursement by any private or Government health insurance or comparable plan.

§ 3.3 Administration of benefits.

(a) An eligible person, who desires medical or health care under this Part or any person acting on behalf thereof, shall submit an application to the Office of Medical Services, Department of State, Washington, D.C. 20520 (hereafter in this Part referred to as the "Office"). The applicant shall supply all relevant information, including insurance information, requested by the Director of the Office. An eligible person may also submit claims to the Office for payment for emergency care when there is not time to obtain prior authorization as prescribed by this paragraph, and for payment for care received prior to or ongoing on the effective date of these regulations.

(b) The Office shall evaluate all requests for care and claims for reimbursement and determine, on behalf of the Secretary of State, whether the care in question is authorized under section 3.2 of this Part. The Office will authorize care, or payment for care when it determines the criteria of such section are met. Authorization shall include a determination as to the necessity and reasonableness of medical or health care.

(c) The Office will refer applicants eligible for benefits under other Government health programs to the Government agency administering those programs. Any portion of authorized care not provided or paid for under another Government program will be reimbursed under this Part.

(d) Eligible persons may obtain authorized care from any licensed facility or health care provider of their choice approved by the Office. To the extent possible, the Office will attempt to arrange for authorized care to be provided in a Government facility at no cost to the patient.

(e) Authorized care provided by a private facility or halth care provider will be paid or reimbursed under this Part to the extent that the Office determines that costs do not exceed reasonable and customary charges for similar care in the locality.

(f) All bills for authorized medical or health care covered by insurance shall be submitted to the patient's insurance carrier for payment prior to submission to the Office for payment of the balance authorized by this Part. The Office will request the health care providers to bill the insurance carrier and the Department of State for authorized care, rather than the patient.

(g) Eligible persons will be reimbursed by the Office for authorized travel to obtain an evaluation of their claim under paragraph (b) and for other authorized travel to obtain medical or health care authorized by this Part.

§ 3.4 Disputes.

Any dispute between the Office and eligible persons concerning (a) whether medical or health care is required in a given case, (b) whether required care is incident to the hostage taking, or (c) whether the cost for any authorized care is reasonable and customary, shall be referred to the Medical Director, Department of State and the Foreign Service for a determination. If the person bringing the claim is not satisfied with the decision of the Medical Director, the dispute shall be referred to a medical board composed of three physicians, one appointed by the Medical Director, one by the eligible person and the third by the first two members. A majority decision by the board shall be binding on all parties.

PART 4—EDUCATIONAL BENEFITS

Sec.
4.1 Eligibility for benefits.
4.2 Applicable family benefits.
4.3 Applicable benefits for hostages.
4.4 Administration of benefits.
4.5 Maximum limitation on benefits.

Authority: Hostage Relief Act of 1980 (Pub. L. 96-449) and Sec. 4 of Act of 1949 (22 U.S.C. 2658).

§ 4.1 Eligibility for benefits.

(a) A spouse or unmarried dependent child aged 18 or above of a hostage as

determined under Part 1 of this subchapter shall be eligible for benefits under § 4.2 of this Part. (certain limitations apply however to persons eligible for direct assistance through other programs of the Veterans Administration under chapter 35 of title 38, United States Code).

(b) A Principal (see definition in § 1.3) designated as a hostage under Part 1 of this subchapter, who intends to change jobs or careers because of the hostage experience and who desires additional training for this purpose, shall be eligible for benefits under § 4.3 of this Part unless such person is eligible for comparable benefits under title 38 of the United States Code as determined by the Administrator of the Veterans Administration.

§ 4.2 Applicable family benefits.

(a) An eligible spouse or child shall be paid (by advancement or reimbursement) for expenses incurred for subsistence, tuition, fees, supplies, books, and equipment, and other educational expenses, while attending an educational or training institution approved in accordance with procedures established by the Veteranss Administration, which shall be comparable to procedures established pursuant to chapters 35 and 36 of title 38 U.S.C.

(b) Except as provided in paragraph (c) or (d herein), payments shall be available under this subsection for an eligible spouse or child for education or training which occurs—

(1) 90 days after the Principal is placed in a captive status, and

(i) Through the end of any semester or quarter which begins before the date on which the Principal ceases to be in a captive status, or

(ii) If the educational or training institution is not operated on a semester or quarter system, the earlier of the end of any cours which began before such date or the end of the twelve-week period following that date.

(c) In special circumstances and within the limitation of § 4.5, the Secretary of State may, under the criteria and procedures set forth in § 4.4, approve payments for education or training under this subsection which occurs after the date determined under paragraph (b) above.

(d) In the event a Principal dies and the death is determined by the Secretary of State to be incident to that individual being a hostage, payments shall be available under this subsection for education or training of a spouse or child of the Principal which occurs after the date of death, up to the maximum that may be authorized under § 4.5.

§ 4.3 Applicable benefits for hostages.

(a) When authorized by the Secretary of State a Principal, following released from captivity, shall be paid (by advancement or reimbursement) for expenses incurred for subsistence, tuition, fees, supplies, books and equipment, and other educational expenses, while attending an educational or training institution approved in accordance with procedures established by the Veterans Administration comparable to procedures established pursuant to chapters 35 and 36 of title 38 U.S.C. Payments shall be available under this subsection for education or training which occurs on or before—

(1) The end of any semester or quarter (as appropriate) which begins before the date which is 10 years after the day on which the Principal ceases to be in a captive status, or

(2) If the educational or training institution is not operated on a semester or quarter system, the earlier of the end of any course which began before such date or the end of the twelve-week period following that date.

(b) A person eligible for benefits under this subsection shall not be required to separate from Government service in order to undertake the training or education, but while in Government service, may only receive such training or education during off-duty hours or during periods of approved leave.

§ 4.4 Administration of benefits.

(a) Any person desiring benefits under this Part shall apply in writing to the Assistant Secretary of State for Administration, Department of State, Washington, D.C. 20520. The application shall specify the benefits desired and the basis of eligiblity for those benefits. The Secretary of State shall make determinations of eligibility for benefits under this Part, and shall forward approved applications to the Veterans Administration and advise the applicant of the name and address of the office in the Veterans Administration that will counsel the eligible persons on how to obtain the benefits that have been approved. Persons whose applications are disapproved shall be advised of the reasons for the disapproval.

(b) The Veterans Administration shall provide the same level and kind of assistance, including payments (by advancement or reimbursement) for authorized expenses up to the same maximium amounts, to spouses and children of hostages, and to Principals following their release from captivity as it does to eligible spouses and children of veterans and to eligible veterans, respectively, under chapters 35 and 36 of title 38, United States Code. The Veterans Administration shall, following consultation with the Secretary of State and under procedures it has established to administer section 1724 of title 38, United States Code, discontinue assistance for any individual whose conduct or progress is unsatisfactory under standards consistent with those established pursuant to such section 1724.

(c) An Advisory Board shall be established to advise on eligibility for benefits under paragraphs (c) and (d) of § 4.2 and under § 4.3. The Board shall be composed of the Assistant Secretary of State for Administration as Chairperson, the Director of the Office of Medical Services of the Department of State, the Executive Director of the regional bureau of the Department of State in whose region the relevant hostile action occurred, the Director of Personnel or other designee of the applicable employing agency, and a representative of the Veterans Administration designated by the Administrator.

(d) If an application is received from a spouse or child for extended training under § 4.2(c), the Secretary of the ——— shall determine with the advice of the Advisory Board whether the Principal, following release from captivity, is incapacitated by the hostage experience to the extent that (1) he or she has not returned to full-time active duty and is unlikely to be able to resume the normal duties of his or her position or career, or (2) in the event of a separation from Government service, a comparable position or career, for at least six months from the date the Principal is released from captivity. If the Secretary makes such a determination, he or she may approve, within the limits of § 4.5, an application under § 4.2(c) for up to one year of education or training. If the Principal remains incapacitated, the Secretary may approve additional training or education up to the maximum authorized under § 4.5.

§ 4.5 Maximum limitation on benefits.

(a) In no event may assistance be provided under this Part for any individual for a period in excess of 45 months, or the equivalent thereof in part-time education or training.

(b) The eligibility of a spouse for benefits under paragraph (c) or (d) of § 4.2 shall expire on a date which is 10 years after the date of the release of the hostage, or the death of the hostage, respective. The eligibility of a dependent child for benefits under such paragraphs (c) and (d) shall expire on the twenty-sixth birthday of such child or on such later date as determined by the Administrator of the Veterans Administration, as would be applicable if section 1712 of title 38, United States Code, were applicable.

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federal register

Wednesday
January 21, 1981

Part XII

Office of Management and Budget

Budget Rescissions and Deferrals

OFFICE OF MANAGEMENT AND BUDGET

Budget Rescission and Deferrals

To the Congress of the United States:

In accordance with the Impoundment Control Act of 1974, I herewith propose 33 new rescissions of budget authority previously provided by the Congress, totalling $1,142.4 million. In addition, I am reporting 15 new deferrals totalling $1,429.9 million and revisions to three previously-reported deferrals totalling $4.4 million.

The rescission proposals affect programs of the Department of Commerce, Education, Energy, Health and Human Services, and Housing and Urban Development as well as the Community Services Administration, the Federal Mine Safety and Health Services Administration, the Federal Mine Safety and Health Review Commission, the Federal payment to the Postal Service Fund, and the Tennessee Valley Authority. The deferrals affect programs of the Departments of Commerce, Defense, Energy, Interior, Justice, Labor, and State, as well as the intelligence community staff, the National Consumer Cooperative Bank, the Pennsylvania Avenue Development Corporation, and the Small Business Administration.

The details of each rescission proposal and deferral are contained in the attached reports.

Jimmy Carter

The White House,
January 15, 1981.

BILLING CODE 3110-01-M

CONTENTS OF SPECIAL MESSAGE
(In thousands of dollars)

Item	Rescission #	Budget Authority
Department of Commerce		
National Oceanic and Atmospheric Administration		
Alcohol, Drug Abuse and Mental Health Administration		
Alcohol, drug abuse, and mental health	R81-26	67,140
Health Resources Administration		
Health resources	R81-27	78,483
Human Development Services		
Human development services	R81-28	10,000

CONTENTS OF SPECIAL MESSAGE
(In thousands of dollars)

Rescission #	Item	Budget Authority
	Department of Commerce	
	National Oceanic and Atmospheric Administration	
R81-1	Operations, research, and facilities	30,497
	National Telecommunications and Information Admin.	
R81-2	Public telecommunications facilities, planning and construction	4,000
	Department of Education	
	Office of Elementary and Secondary Education	
R81-3	School assistance in federally affected areas	145,000
R81-4	Elementary and secondary education	52,150
	Office of Vocational and Adult Education	
R81-5	Vocational and adult education	11,862
	Office of Postsecondary Education	
R81-6	Student loan insurance	78,728
R81-7	Higher and continuing education	30,969
	Department of Energy	
	Energy programs	
R81-8	Energy supply, research and development - operating expenses	25,028
R81-9	Energy supply, research and development - plant and capital equipment	3,653
R81-10	Fossil energy research and development	23,430
R81-11	Energy conservation	47,820
	Department of Health and Human Services	
	Health Services Administration	
R81-12	Health services	8,057
	Centers for Disease Control	
R81-13	Preventive health services	27,037
	National Institutes of Health	
R81-14	National Cancer Institute	13,363
R81-15	National Heart, Lung, and Blood Institute	10,324
R81-16	National Institute of Dental Research	302
R81-17	National Institute of Arthritis, Metabolism, and Digestive Diseases	3,232
R81-18	National Institute of Neurological and Communicative Disorders and Stroke	2,031
R81-19	National Institute of Child Health and Human Development	3,295
R81-20	National Eye Institute	2,353
R81-21	National Institute of Environmental Health Sciences	3,256
R81-22	National Institute of Aging	588
R81-23	Research Resources	10,561
R81-24	National Library of Medicine	341
R81-25	Office of the Director	300

Rescission #	Item	Budget Authority
	Alcohol, Drug Abuse and Mental Health Administration	
R81-26	Alcohol, drug abuse, and mental health	67,140
	Health Resources Administration	
R81-27	Health resources	78,683
	Human Development Services	
R81-28	Human development services	10,000
	Department of Housing and Urban Development	
	Housing Programs	
R81-29	Congregate services program	10,000
	Other Independent Agencies	
	Community Services Administration	
R81-30	Community services program	6,000
	Federal Mine Safety and Health Review Commission	
R81-31	Salaries and expenses	163
	Postal Service	
R81-32	Payment to the Postal Service Fund	250,000
	Tennessee Valley Authority	
R81-33	Tennessee Valley Authority Fund	177,000
	Subtotal, rescission proposals	1,162,391

Deferral #	Item	Budget Authority
	Department of Commerce	
	General Administration	
D81-34	Participation in United States Expositions	3,051
D81-27	Department of Defense - Military	
	Shipbuilding and Conversion, Navy	1,123,000
D81-28	Family Housing, Defense	1,998
	Department of Defense - Civil	
D81-9A	Wildlife Conservation, all services	814
	Department of Energy	
	Atomic Energy Defense Activities	
D81-29	Atomic energy defense activities, operating expenses	5,000
D81-30	Atomic energy defense activities, plant and capital equipment	12,000
	Energy Programs	
D81-31	Energy supply, research and development - operating expenses	23,060
D81-32	Energy supply, research and development - plant and capital equipment	3,690
D81-33	Fossil energy construction	42,000
D81-34	Energy Conservation	10,450
	Department of the Interior	
	U.S. Geological survey	
D81-35	Exploration of national petroleum reserve in Alaska	10,710

Deferral #	Item	Budget Authority
	Department of Justice	
	Federal Prison System	
081-16A	Buildings and facilities	19,000
	Department of Labor	
	Employment and Training Administration	
081-36	Employment and training assistance	76,699
	Department of State	
081-37	United States Emergency Refugee and Migration Assistance Fund	15,000
	Other Independent Agencies	
081-38	Intelligence Community Staff	2,000
	National Consumer Cooperative Bank	
081-39	Self-help development fund	13,133
	Pennsylvania Avenue Development Corporation	
081-40	Land acquisition and development	30,696
	Small Business Administration	
081-41	Business loan and investment fund	37,500
	Subtotal, deferrals	1,653,595
	Total, rescission proposals and deferrals	2,393,986

SUMMARY OF SPECIAL MESSAGES
FOR FY 1981
(in thousands of dollars)

	Rescissions	Deferrals
Third special message:		
New items	1,142,391	1,429,930
Change to amounts previously submitted	———	4,386
Effect of third special message	1,142,391	1,434,316
Previous special messages	———	4,236,134a
Total amount proposed in special messages	1,142,391	5,670,450 a/

a/ This amount represents budget authority except for $10,696 thousand involving the deferral of outlays only (081-19A).

Rescission Proposal No: 081-1

PROPOSED RESCISSION OF BUDGET AUTHORITY
Report Pursuant to Section 1012 of P.L. 93-344

Agency Department of Commerce	New budget authority (P.L. 96-536) $ 774,367,000
Bureau National Oceanic and Atmospheric Administration	Other budgetary resources 11,850,041
Appropriation title & symbol	Total budgetary resources [illegible]
Operations, Research, and Facilities 13X1450	Amount proposed for rescission $ 30,493,000
OMB identification code: 13-1450-5-1-306	Legal authority (in addition to sec. 1012): ☒ Antideficiency Act ☐ Other
Grant program ☐ Yes ☒ No	
Type of account or fund: ☐ Annual ☐ Multiple-year (expiration date) ☒ No-year	Type of budget authority: ☒ Appropriation ☐ Contract authority ☐ Other

Justification: In accordance with the President's policy of fiscal restraint, a rescission is proposed to reduce or eliminate spending for various low priority programs in the National Oceanic and Atmospheric Administration (NOAA). These programs proposed for rescission were added to the NOAA budget above the amounts requested by the President. The programs and amounts involved are as follows:

Salmon tagging with lasers - Studies to determine two continent of origin of selected species of salmon. The study is not considered essential to the fishery data analysis program. ($800,000)

Conversion of Pacific Region Headquarters, NWS to an administrative office - The proposed action involves the consolidation of managerial and administrative functions. The proposed consolidation would have no impact on the provisions of weather services to the public and will save the Federal Government both personnel and funding. ($348,000)

Chesapeake instrumentation - Statements made in the Conference Report on the Department's 1981 appropriation bill indicated that these funds were to be used to lay up the NOAA underwater habitat, Hydrolab. However, funds to operate the Hydrolab in 1981 were restored by Conference action. Consequently, funds provided for lay up are unnecessary. ($100,000)

Pascagoula fisheries laboratory expansion and expansion - These funds would improve the laboratory facilities and provide additional space. Improvements made to the facility through reprogramming in 1980 are felt to be adequate. ($630,000)

Flood program - These funds would provide for installation, testing, and evaluation of a prototype flash flood warning system of Appalachian counties, which includes the Big Sandy River Basin. Proceeding with installation of equipment in the Big Sandy River Basin is inconsistent with existing National Weather Service plans. The effects of the ongoing program should be evaluated before expanding the effort. Adequate funds are available

081-1

Outlay Effects: (in millions of dollars)

	1981 Outlay Estimate		Outlay Savings		
	Without Rescission	With Rescission	1981	1982	1983
Budget authority	774.4	743.9	30.5		
Outlays	750.5	720.0	30.5	10.7	3.0

Flood program - These funds would provide for installation, testing, and evaluation of a prototype flash flood warning system of Appalachian counties, which includes the Big Sandy River Basin. Proceeding with installation of equipment in the Big Sandy River Basin is inconsistent with existing National Weather Service plans. The effects of the ongoing program should be evaluated before expanding the effort. Adequate funds are available currently for this. ($329,000)

Purchase of local warning radars - The proposed action includes deletion of funds to purchase radars for Tupelo, Arizona; and Savannah, Georgia. The purchase of these radars is unnecessary since each of these areas is adequately covered by other network radars. ($1,843,000)

NOAA Undersea Research Program - The proposed action reduces funds for three new regional undersea research programs. The effect of reducing these regional programs in 1981 would not be significant. ($500,000)

Anadromous grants - The reduction of $2,000,000 will maintain the program at its 1980 level in 1981. A significant impact on anadromous fish resources is not expected through deletion of these funds. ($2,000,000)

Campeche Oil Spill - The proposed action would reduce the level of funding for the assessment of the social, environmental, and economic damage resulting from the IXTOC-1 oil spill. The impact of the reduced level of funding is minimal due to the length of elapsed time since the spill occurred. ($300,000)

Striped bass - The proposed action would reduce the scope of the studies regarding the causes of the decline in striped bass stocks. The effect of this reduction would result in the termination of these studies as FY 1980 funds are used up. ($750,000)

Vessel Buy-Back Program - This program will assist in alleviating some of the intense fishing pressure on salmon resources in the northwest by reducing the number of available vessels/licenses. Implementation of the buy-back program at a reduced level will not have an adverse effect on the overall program due to the likely time required to initiate the program. Additionally, states are expected to provide a 50% matching share, reducing the need for Federal funds. ($10,000,000)

Additional programs are recommended for rescission from the funding transferred from the Promote and Develop Fishery Products and Research Pertaining to American Fisheries appropriation. This proposed action would delete funds above the President's request for the following programs: Marine resources monitoring, assessment and prediction $3,173,000; Commercial fisheries grants to states $2,500,000; Regional Fishery Management Councils of $500,000; Restore and enhance fisheries in the Columbia River $1,100,000; additional base fisheries programs $2,400,000; and Sea Grant increase for marine education $3,000,000. Since these funds are part of the uncommitted balance in the Promote and Develop appropriation, the rescission of the funding would not affect the funding of continuing fishery programs. Additional funds in these areas are not required to carry out effective programs in 1981.

Estimated Effects: The rescission of these funds would reduce Federal spending for fiscal years 1981 and 1982, without hampering the carrying out of NOAA's overall mission.

Outlay Effects: (in millions of dollars)

1981 Outlay Estimate		Outlay Savings			
Without Rescission	With Rescission	1980	1981	1982	1983
775.1	757.8	17.3	15.2	—	—

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Operations, Research, and Facilities

Of the funds provided for "National Oceanic and Atmospheric Administration, Operations, research, and facilities" by P.L. 96-536, $30,493,000 are rescinded

Rescission Proposal No: 881-2

PROPOSED RESCISSION OF BUDGET AUTHORITY
Report Pursuant to Section 1012 of P.L. 93-344

Agency Department of Commerce Bureau National Telecommunications and Information Administration	New budget authority (P.L. 95-567) $ 25,705,000 Other budgetary resources 11,510 Total budgetary resources [illegible]
Appropriation title & symbol Public Telecommunications Facilities, Planning and Construction 13X0551	Amount proposed for rescission $ 4,000,000
OMB identification code: 13-0551-0-1-503 Grant program ☐ Yes ☐ No	Legal authority (in addition to sec. 1012): ☐ Antideficiency Act ☐ Other
Type of account or fund: ☐ Annual ☐ Multiple-year _____ (expiration date) ☒ No-year	Type of budget authority: ☒ Appropriation ☐ Contract authority ☐ Other

Justification: The public telecommunications facilities program provides grants for planning and construction of noncommercial telecommunications facilities to help extend and improve the delivery of public telecommunications services. In support of the President's policy of fiscal restraint, a rescission of $4 million is proposed to return the Public Telecommunications Facilities program to the level requested by the President in the 1981 Budget.

Estimated Effects: Although the specific demand by States for these funds in 1981 is not known, it is anticipated that this rescission will have no significant impact on the NTIA's ability to meet the "start-up and extension" requirements of the Telecommunications Financing Act of 1978.

Outlay Effects: (in millions of dollars)

1981 Outlay Estimate Without Rescission	1981 Outlay Estimate With Rescission	Outlay Savings 1981	1982	1983	1984
21.8	21.6	0.4	2.0	1.6	—

881-3

DEPARTMENT OF COMMERCE
National Telecommunications and Information Administration
Public Telecommunications Facilities, Planning & Construction

Of the funds provided for "National Telecommunications and Information Administration, Public telecommunications facilities, planning and construction" by P.L. 96-536, $4,000,000 are rescinded.

Rescission Proposal No: 881-3

PROPOSED RESCISSION OF BUDGET AUTHORITY
Report Pursuant to Section 1012 of P.L. 93-344

Agency Department of Education Bureau Office of Elementary & Secondary Education	New budget authority (P.L. 96-536) $ 740,000,000 Other budgetary resources -0- Total budgetary resources 740,000,000
Appropriation title & symbol School Assistance in Federally Affected Areas 9110102	Amount proposed for rescission $ 148,000,000
OMB identification code: 91-0102- -1-501 Grant program ☒ Yes ☐ No	Legal authority (in addition to sec. 1012) ☐ Antideficiency Act ☐ Other
Type of account or fund: ☒ Annual ☐ Multiple-year _____ (expiration date) ☐ No-year	Type of budget authority: ☒ Appropriation ☐ Contract authority ☐ Other

Justification:

The Impact Aid Maintenance and Operations program provides assistance to local educational agencies that have been adversely affected by the loss of revenues due to nontaxable lands defined as Federal property within their boundaries. Section 2 of Title 1 of the Act of September 30, 1950, as amended, provides assistance to school districts that have suffered a partial loss of tax base due to certain U.S. acquisitions of real property. Section 3 of the Act provides payments to assist school districts to finance the cost of educating children who reside and/or whose parents work on Federal property or are in the uniformed services.

Since school districts receiving aid under this program have been overcompensated for the effects of the Federal burden, a rescission is proposed that will limit payments to school districts under sections 2 and 3 to 75 percent of the amounts paid in 1980.

Estimated Effects:

The proposed rescission will provide payments for all eligible applicants (estimated at 4059 for 1981) for all eligible children (estimated to be 2,234,000 in 1980). By making payments at 75 percent of the amount appropriated for 1980, a savings of $148 million from the Continuing Resolution level of $740 million for the Maintenance and Operations program will be realized.

881-3

Outlay Effects: (in millions of dollars)

1981 Outlay Estimate

Without Rescission	With Rescission	Outlay Savings 1981	1982	1983	1984

Rescission Proposal No: 881-4

PROPOSED RESCISSION OF BUDGET AUTHORITY
Report Pursuant to Section 1012 of P.L. 93-344

Agency Department of Education Bureau Office of Elementary and Secondary Education	New budget authority (P.L. 96-536) $ 3,838,098,000 Other budgetary resources Total budgetary resources
Appropriation title & symbol	Amount proposed for rescission
OMB identification code: Grant program ☐ Yes ☐ No	Legal authority (in addition to sec. 1012) ☐ Antideficiency Act ☐ Other
Type of account or fund: ☐ Annual ☐ Multiple-year _____ (expiration date) ☐ No-year	Type of budget authority: ☐ Appropriation ☐ Contract authority ☐ Other

The proposed rescission will provide payments for all eligible applicants (estimated at 4059 for 1981) for all eligible children (estimated to be 2,234,000 in 1980). By making payments at 75 percent of the amount appropriated for 1980, a savings of $148 million from the Continuing Resolution level of $760 million for the Maintenance and Operations program will be realized.

RES1-3

Outlay Effects: (in millions of dollars)

1981 Outlay Estimate

Without Rescission	With Rescission	Outlay Savings: 1981	1982	1983	1984
903.9	770.7	133.2	14.1	.7	—

RES1-3

DEPARTMENT OF EDUCATION

Office of Elementary and Secondary Education

School Assistance in Federally Affected Areas

Of the funds provided for "School Assistance in Federally Affected Areas" for fiscal year 1981 in Public Law 96-536, $148,000,000 are rescinded: Provided that the payments under sections 2 and 3 shall not exceed 75 per centum of the amounts paid to local education agencies under those sections for fiscal year 1980: Provided further, That the last two sentences of section 5(c) of the Act of September 30, 1950, shall not apply to the allocations and payments provided for in this Act.

Rescission Proposal No: RES1-4

PROPOSED RESCISSION OF BUDGET AUTHORITY

Report Pursuant to Section 1012 of P.L. 93-344

Agency Department of Education	New budget authority (P.L. 96-536) $3,838,090,000
Bureau Office of Elementary and Secondary Education	Other budgetary resources
Appropriation title & symbol: Elementary and Secondary Education 9110100	Total budgetary resources 3,838,090,000
	Amount proposed for rescission $52,150,000
CFDA identification code: 91-0100-5-1-501	Legal authority (in addition to sec. 1012): ☐ Antideficiency Act ☐ Other
Grant program ☒ Yes ☐ No	
Type of account or fund: ☒ Annual ☒ Multiple-year September 30, 1982 (expiration date) ☐ No-year	Type of budget authority: ☒ Appropriation ☐ Contract authority ☐ Other

Justification:

Improving Legal Education Practice (Title IV-C) provides grants to State educational agencies to support local educational agencies' efforts at developing and implementing innovative solutions to a variety of educational problems.

Strengthening State Educational Agency Management (Title V-B) provides grants to State educational agencies to apply effective management practices to a variety of educational issues and to improve State leadership and services for elementary and secondary education programs, including the coordination of Federal programs, in each of the States.

Rescissions of $41,400,000 of the funds appropriated for Improving Local Educational Practice and $5,000,000 of the funds appropriated for Strengthening State Educational Agency Management are proposed because neither is, in a time of fiscal restraint, a high priority program. The projects supported by Title V-B are not necessarily targeted to national needs or national priority populations; Title V-B grants represent additional Federal funds devoted to administration.

Territorial Assistance provides general aid to education in the Virgin Islands and assists teacher training in Guam, American Samoa, the Northern Mariana Islands and the Trust Territory of the Pacific Islands.

A rescission of the $5,000,000 appropriated is proposed because sufficient funds are available from statutory set-asides in programs such as ESEA Title I, Title IV-C and Education for the Handicapped and from a variety of discretionary programs to meet the general needs addressed by these programs. Also under the consolidated grant program established by P.L. 95-134, the Insular Areas have enhanced opportunities to target currently available Federal funds on their most urgent needs.

Eilender Fellowships provides a grant to the Close-Up Foundation to fund fellowships for economically disadvantaged secondary school youth and their teachers. These students and teachers spend one week in Washington attending seminars on current issues and meeting with leaders from the three branches of government.

A rescission of $750,000 is proposed because local organizations have demonstrated their capacity to support the Foundation's activities independent of federal funding.

Territorial assistance:

Title IV-C and Title V-B. Rescinding $41,600,000 from Title IV-C will reduce the number of local education agency projects by 1,600 leaving a total of 2,600. The proposed rescission of $5,000,000 from Title V-B will cut the number of State education activities supported by 61. A total of 444 will remain.

Territorial assistance and Eilender Fellowships. Rescinding $750,000 of the funds appropriated for Eilender Fellowships would eliminate approximately 1500 fellowships. Rescinding the funds appropriated for Territorial Assistance would eliminate $5,000,000 of what is essentially general aid.

Outlay Effect: (in millions of dollars)

1981 Outlay Estimate		Outlay Savings			
Without Rescission	With Rescission	1981	1982	1983	1984
3,376.2	3,370.2	6.0	39.6	8.8	—

DEPARTMENT OF EDUCATION

Office of Elementary and Secondary Education

Elementary and Secondary Education

Of the funds appropriated for "Elementary and Secondary Education" in Public Law 96-536 for fiscal year 1981, $41,600,000 of the amount appropriated for title IV, part C and $5,000,000 of the amount appropriated for title V, part B of the Elementary and Secondary Education Act and $5,000,000 appropriated for sections 1525 and 1575 of the Education Amendments of 1978; and $750,000 of the amount appropriated for Public Law 95-561 are rescinded. Provided, That notwithstanding the provision of sections 403(c)(2) and 583(c), some of the funds appropriated for title IV, part C of the Elementary and Secondary Education Act may be expended for the purpose of title V, part B of the Elementary and Secondary Education Act.

Rescission Proposal No: 881-5

PROPOSED RESCISSION OF BUDGET AUTHORITY

Report Pursuant to Section 1012 of P.L. 93-344

Agency Department of Education	New budget authority (P.L. 96-536) $ 28,617,000
Bureau Office of Vocational and Adult Education	Other budgetary resources $
Appropriation title & symbol: Vocational and Adult Education 1910400	Total budgetary resources 28,617,000
	Amount proposed for rescission $ 11,862,000
OMB identification code: 91-0400-0-1-501	Legal authority (in addition to sec. 1012): ☒ Antideficiency Act ☐ Other
Grant program ☒ Yes ☐ No	
Type of account or fund: ☒ Annual ☐ Multiple-year (expiration date) ☐ No-year	Type of budget authority: ☒ Appropriation ☐ Contract authority ☐ Other

Justification:

The Career Education Incentive program provides primarily formula based matching funds to State education agencies for developing career awareness and career education within existing education programs and curricula. There is a seven and one-half percent funds set-aside for aid to outlying areas and discretionary activities including information-dissemination, model projects and evaluations. The rescission request will reduce the program from $15 million to $10 million and is requested because it is expected that States will utilize more of their own resources in continuing career education programs.

The Community Schools program authorizes grants, both discretionary and State formula, to support the use of public schools as centers operated jointly by a local education agency and a community service for the coordinated delivery of educational and social services to the community. The 1981 Continuing Resolution provides $10 million to make formula grants to State education agencies to pay the Federal share of the cost of planning, establishing, expanding and operating community education programs.

A rescission is proposed in order to fund the discretionary grants portion of the program at the level of $3,138,000. Funding the discretionary programs rather than the formula program targets scarce budgetary resources to areas that have, or are prepared to start, community schools programs.

Estimated Effects:

The effect of the Federal decrease of $5 million in the Career Education Incentive program will be to reduce formula grants to States and outlying areas from $14,025,000 from which 17 States would receive the statutory minimum grant of $125,000 to $9,350,000, from which 30 States would receive the minimum grant of $125,000. Funding for discretionary activities

Rescission Proposal No: 881-6

PROPOSED RESCISSION OF BUDGET AUTHORITY

Report Pursuant to Section 1012 of P.L. 93-344

Agency Department of Education	New budget authority (P.L. 96-536) $ 2,312,479,000*
Bureau	Other budgetary resources $
Appropriation title & symbol: Education for the Handicapped 1910500	Total budgetary resources
	Amount proposed for rescission $ 1,000,000
OMB identification code: 91-0500-0-1-501	Legal authority (in addition to sec. 1012): ☒ Antideficiency Act ☐ Other
Grant program ☒ Yes ☐ No	
Type of account or fund: ☒ Annual ☐ Multiple-year (expiration date) ☐ No-year	Type of budget authority: ☒ Appropriation ☐ Contract authority ☐ Other

Estimated Effects:

The effect of the Federal decrease of $5 million in the Career Education Incentive program will be to reduce formula grants to States and outlying areas from $14,029,000 from which 17 States would receive the statutory minimum grant of $125,000 to $9,390,000, from which 30 States would receive the minimum grant of $125,000. Funding for discretionary activities would be reduced from $975,000 to $630,000. The number of discretionary activities would not decrease but the average cost would.

The proposed Community Schools rescission will change the $10 million formula grant program to State education agencies in all the States, the District of Columbia, Puerto Rico and the Outlying Areas to a discretionary grant program. These discretionary grants will be made to local education agencies (approximately 25), to nonprofit agencies (approximately 6), State education agencies (approximately 25), and institutions of higher education (approximately 6).

Outlay Effects: (in millions of dollars)

1981 Outlay Estimate		Outlay Savings			
Without Rescission	With Rescission	1981	1982	1983	1985
33.1	33.6	1.5	7.2	2.0	1.1

DEPARTMENT OF EDUCATION

Office of Vocational and Adult Education

Vocational and Adult Education

Of the funds appropriated for "Vocational and Adult Education" by Public Law 96-536 for fiscal year 1981, $9,000,000 of the amount appropriated for the purposes of carrying out the Career Education Incentive Act and $5,962,000 of the amount appropriated for the purposes of carrying out title VIII, section 809, of the Elementary and Secondary Education Act are rescinded. Provided, that the $3,130,000 remaining for title VIII of the Elementary Education Act shall be used for the purposes of carrying out sections 806, 810, and 811 of that Act.

Rescission Proposal No: ED1-6

PROPOSED RESCISSION OF BUDGET AUTHORITY

Report Pursuant to Section 1012 of P.L. 93-344

Agency: Department of Education	New budget authority (P.L. 96-536): $2,312,479,000*
Bureau: Office of Postsecondary Education	Other budgetary resources: $10,816,000
Appropriation title & symbol: Student Loan Insurance Fund 91X0230	Total budgetary resources: 2,323,295,000
	Amount proposed for rescission: $78,728,000
OMB identification code: 91-0230-5-1-502	Legal authority (in addition to sec. 1012): ☐ Antideficiency Act ☐ Other
Grant program: ☐ Yes ☒ No	
Type of account or fund: ☐ Annual ☐ Multiple-year ____ (expiration date) ☒ No-year	Type of budget authority: ☒ Appropriation ☐ Contract authority ☐ Other

Justification: This program insures and subsidizes student and parent borrowing for postsecondary educational costs from commercial and other lenders. Since enactment of the Middle Income Student Assistance Act loan volumes and program costs have increased annually to the point where associated Federal costs would now consume a major percentage of the education budget.

This rescission is being sought in order to better target Federal subsidies and to emphasize the traditional role of the family in meeting postsecondary educational costs. The rescission is accompanied by appropriation language which changes the benefits for new loans thereby reducing program costs. These changes would: (a) limit student loan amounts to "remaining need"; (educational costs minus other aid and expected family contribution); (b) eliminate the in-school interest subsidy on student loans (allowing lenders to add the accruing interest to the student's loan obligation); (c) extend eligibility for parent loans to parents of dependent graduate students and spouses of independent students; (d) eliminate the Federal special allowance payment to lenders on parent loans; (e) allow lenders to set the parent loan interest rate (up to the Treasury Bill rate for 91 day notes plus 3.5 percent); and, (f) allow an up to 20 year repayment period on parent loans. These changes are also contained in the 1982 budget.

* Represents an estimate of funds expected to be required for this program under an indefinite appropriation provided by P.L. 96-536.

The proposed program changes are estimated to reduce full program costs by $157 million and continuing resolution costs by $79 million in 1981. Enactment of the rescission appropriation language provides $58 million for activities not authorized under the continuing resolution. Savings to the Federal Government accrue over the life of the loans made under these changes and much of the reduction in cost occurs in later years. The requested rescission assumes that these program changes will be effective only for the last quarter of fiscal year 1981. Earlier enactment would result in greater savings.

The chart below shows the fiscal impact of the rescission request:

Guaranteed Student Loan Subsidies
(dollars in thousands)

	Continuing Resolution	Full Program Costs	With Proposed Program Changes	Change from Continuing Resolution Levels
Federal insurance claims	107,783	107,783	107,783	--
Federal reinsurance claims	232,809	232,809	234,809	+2,000
Interest benefits	654,751	654,751	546,751	-108,000
Special Allowance	1,460,228	1,460,228	1,437,228	-23,000
Death and Disability	14,080	14,080	16,080	+2,000
Bankruptcy	14,132	14,132	13,132	-1,000
Primary guarantee agency allowance	--	30,321	27,321	+27,321
Supplemental guarantee agency allowance	--	27,961	24,961	+24,961
Institutional allowance	36,642	36,642	33,642	-3,000
Allowances to agency reserves	2,500	2,500	2,500	--
Total Obligations	2,523,295	2,581,567	2,444,667	-78,728
Collections and other adjustments			-210,816	
Appropriation needed			2,233,751	

Estimated Effect: This rescission proposal will better target Federal subsidies and emphasize the traditional role of the family in meeting postsecondary educational costs. If this proposal were not made, loan volume in 1981 would be an estimated $7,185 million. This rescission would reduce estimated 1981 loan volume by $2,085 million to $5,100 million. Even with the rescission, 1981 loan volume is estimated to be $350 million over the $4,750 million loan volume of fiscal year 1980.

Outlay Effect:

(in millions)

1981 Outlay Estimate		Outlay Savings			
Without Rescission	Rescission	1981	1982	1983	1984
2,068.8	2,007.8	59.0	19.7	--	--

DEPARTMENT OF EDUCATION

Office of Postsecondary Education

Student Loan Insurance Fund

Notwithstanding any other provision of law, $2,233,751,000 shall be available during 1981 for program activities under this head: Provided that, notwithstanding provisions of the Higher Education Act, any loans to students under the Guaranteed Student Loan Program shall be limited to estimated educational costs minus other financial assistance for the loan period and expected family contribution (as determined using a need analysis method approved by the Secretary of Education); the parents of dependent graduate students and the spouses of independent students shall be eligible to borrow funds under the same terms as the parents of dependent undergraduate students; and the interest on loans to parents or spouses shall be set by the Secretary, but shall not exceed the average of the bond equivalent rates of the ninety-one day Treasury bills auctioned during the last three months completed prior to the making of a loan plus 3.5 percentage, and the repayment period on these loans may be extended by the lender to 15 years: Provided, that no Federal interest benefits shall be paid on behalf of borrowers of any loans made under the Guaranteed Student Loan Program; no Federal special allowance shall be paid to lenders on loans to parents or spouses under this program.

Rescission Proposal No: 881-7

PROPOSED RESCISSION OF BUDGET AUTHORITY
Report Pursuant to Section 1012 of P.L. 93-344

Agency: Department of Education	
Bureau:	New budget authority (P.L. 96-536) $ 410,863,315
Account: Public Service and Mining Fellowships	

Public Service and Mining Fellowships program support grants to institutions of higher education to provide fellowship assistance for graduate education leading to a career in public service or in the mineral industry. Fellowships are awarded to students on the basis of financial need and academic merit.

Rescission Proposal No: 881-7

PROPOSED RESCISSION OF BUDGET AUTHORITY
Report Pursuant to Section 1012 of P.L. 93-344

Agency: Department of Education	New budget authority (P.L. 96-536): $ 410,863,315
Bureau: Office of Postsecondary Education	Other budgetary resources: 16,961,872
Appropriation title & symbol: Higher and Continuing Education 9110201	Total budgetary resources: 427,825,187
	Amount proposed for rescission: $ 30,989,000
OMB identification code: 91-0201-3-1-502	Legal authority (in addition to sec. 1012): ☐ Antideficiency Act
Great program: ☒ Yes ☐ No	☐ Other
Type of account or fund: ☒ Annual ☐ Multiple-year (expiration date) ☐ No-year	Type of budget authority: ☒ Appropriation ☐ Contract authority ☐ Other

Justification:	Amount Proposed for Rescission
Educational Outreach Title I, Part B of the Higher Education Act, is a new authority designed to increase access to postsecondary education for adults and non-traditional learners. This new authority includes a ten percent set aside for Federal discretionary grants. The remainder of the funds are distributed to the States on a formula basis for Comprehensive Statewide Planning, Information Services, and Continuing Education. Funds are also provided to the States for administration of the programs. All funds, except the State administration funds, are proposed for rescission because postsecondary planning, information services and continuing education are viewed as areas of State and institutional responsibility. State administration funds will be used to close out the old University Community Service and Continuing Education program.	$12,000,000
Veterans Cost of Instruction program provides grants to postsecondary institutions to encourage recruitment of, and special service to, eligible veterans. The number of veterans enrolled in postsecondary education has been declining in recent years. The institutions should now be able to provide services to the smaller number of veterans through their traditional counseling, tutoring and other service programs on campus.	$13,039,000
Public Service and Mining Fellowships program support grants to institutions of higher education to provide fellowship assistance for students obtaining advanced training for a career in public service and for students of exceptional ability who are undertaking advanced training in domestic mining and mineral fuel conservation. Funds are proposed for rescission because there already is a substantial number of qualified persons to fill public service jobs and the attractive financial rewards associated with jobs in mining-related fields have served as a significant incentive in encouraging students to enter this field of study.	$3,150,000
Law School Clinical Experience programs support demonstrations of training programs in clinical legal experience. Funds are proposed for rescission because the Federal objective of demonstrating the value of clinical experience in the education and training of law students has been met.	$3,000,000
Total proposed for rescission	$30,989,000

Estimated Effects: The rescission of $12,000,000 in funds appropriated for the Educational Outreach programs will eliminate approximately 25 Federal discretionary grants for continuing education as well as formula grants to the 57 States and territories for comprehensive planning, information services, and continuing education.

The rescission of $13,039,000 appropriated for Veterans Cost of Instruction will eliminate grants to approximately 1,025 institutions of higher education that provide services to an estimated 330,000 enrolled veterans.

The rescission of $3,150,000 appropriated for Public Service and Mining Fellowships will eliminate approximately 230 Public Service fellowships and 137 Mining fellowships.

The rescission of $3,000,000 appropriated for Law School Clinical Experience will eliminate approximately 60 demonstration project awards, none of which would go to schools where the concept of clinical legal education has already been demonstrated with Federal funds in 1978, 1979, and/or 1980.

Outlay Effects: (in millions of dollars)

1981 Outlay Estimate		Outlay Savings			
Without Rescission	With Rescission	1981	1982	1983	1984
559.1	554.7	4.4	25.3	5.3	----

881-7

DEPARTMENT OF EDUCATION

Office of Postsecondary Education

Higher and Continuing Education

[redacted]

Rescission Proposal No: 881-8

PROPOSED RESCISSION OF BUDGET AUTHORITY
Report Pursuant to Section 1012 of P.L. 93-344

Agency Department of Energy	New budget authority (P.L. 96-367 /96-536) $1,298,784,000
Bureau Energy Programs	Other budgetary resources 131,325,000
Appropriation title & symbol	Total budgetary resources 2,430,279,000
89X0224 Energy Supply Research and Development-Operating Expenses	Amount proposed for rescission $ 25,026,000
OMB identification code: 89-0224-3-1-271	Legal authority (in addition to sec. 1012): ☐ Antideficiency Act ☐ Other
Grant program ☐ Yes ☒ No	
Type of account or fund: ☐ Annual ☐ Multiple-year (expiration date) ☒ No-year	Type of budget authority: ☒ Appropriation ☐ Contract authority ☐ Other

Justification

The high temperature gas reactor (HTGR) program is a developed technology. A consortium of utilities has been interested in continuing development of this technology. However, since 1978, the consortium has been unable to obtain a commitment for major cost-sharing for a large plant. Latest indications are that it will take Federal support of $350 million over seven years before the utilities would be ready to decide to order the HTGR. This risk of Federal dollars is too great when compared to an essentially zero risk on the part of the private sector. Therefore, a rescission is proposed to withdraw Federal support from this program in 1981.

Estimated Effects

This rescission will terminate the high temperature reactor program immediately.

Outlay Effect: (in millions of dollars)

1981 Outlay Estimate Without Rescission	1981 Outlay Estimate With Rescission	Outlay Savings 1981	1982	1983	1984
2,377.1	2,353.1	24.0	1.0	---	---

881-8

DEPARTMENT OF ENERGY

ENERGY SUPPLY, RESEARCH AND DEVELOPMENT ACTIVITIES

Operating Expenses

Of the funds appropriated under this head in P.L. 96-367, making appropriations for energy and water development, $25,026,000 are rescinded.

Rescission Proposal No: 881-9

PROPOSED RESCISSION OF BUDGET AUTHORITY
Report Pursuant to Section 1012 of P.L. 93-344

Agency Department of Energy	New budget authority (P.L. 96-367) $83,287,000
Bureau Energy Programs	Other budgetary resources 82,202,000
Appropriation title & symbol	Total budgetary resources 165,489,000
Energy Supply, Research and Development Plant and Capital Equipment 89X0224.40	Amount proposed for rescission $ 3,650,000
OMB identification code: 89-0224-3-1-271	Legal authority (in addition to sec. 1012): ☐ Antideficiency Act ☐ Other
Grant program ☐ Yes ☒ No	
Type of account or fund: ☐ Annual ☐ Multiple-year (expiration date) ☒ No-year	Type of budget authority: ☒ Appropriation ☐ Contract authority ☐ Other

Justification

Funds totalling $2.5 million provided for the construction of a facility to produce ethanol from biomass are proposed for rescission. In light of the loan guarantee program for ethanol-producing facilities, the construction of this facility with Government funds is no longer necessary.

In addition, supporting capital equipment funds totalling $1,150,000 for the High Temperature Gas Reactor (HTGR) are proposed for rescission in conjunction with the proposal to terminate activities in the operating account.

Estimated Effect

In light of the availability of loan guarantee awards for construction of ethanol facilities in excess of $1 billion, the effect of rescinding funds for the alcohol fuel facility will be minimal.

The HTGR rescission will stop purchases of capital equipment consistent with the immediate termination of the program.

Outlay Effects: (in millions of dollars)

1981 Outlay Estimate Without Rescission	1981 Outlay Estimate With Rescission	Outlay Savings 1981	1982	1983	1984
427.5	422.9	3.6	0	0	0

881-9

DEPARTMENT OF ENERGY

Energy Supply, Research and Development

Plant and Capital Equipment

Of the funds appropriated under this head in P.L. 96-367, making appropriations for energy and water development, $3,650,000 are rescinded.

Rescission Proposal No: 881-10

PROPOSED RESCISSION OF BUDGET AUTHORITY
Report Pursuant to Section 1012 of P.L. 93-344

Agency Department of Energy	New budget authority $711,426,000

881-10

Atmospheric Fluidized Bed (AFB). The proposed rescission will have a minimal effect on the overall AFB combustion program. It is proposed that funds required under contractual terms for eventual dismantling of the facility ($1.2M) be redirected from within the AFB program.

Of the funds appropriated under this head in P.L. 96-367, unless appropriations for energy and water development, $15,000,000 are rescinded.

Of the funds appropriated under this head in P.L. 96-367, unless appropriations for energy and water development, $15,000,000 are rescinded.

Rescission Proposal No: 881-10

PROPOSED RESCISSION OF BUDGET AUTHORITY

Report Pursuant to Section 1012 of P.L. 93-344

Agency: Department of Energy Bureau: Energy Programs	New budget authority (P.L. 96-514): $711,426,000 Other budgetary resources: 31,019,111 Total budgetary resources: 742,484,111
Appropriation title & symbol: Fossil Energy Research and Development 89X0213	Amount proposed for rescission: $ 25,480,000
OMB identification code: 89-0213-5-1-271 Grant program: ☐ Yes ☒ No	Legal authority (in addition to sec. 1012): ☒ Antideficiency Act ☐ Other
Type of account or fund: ☐ Annual ☐ Multiple-year (expiration date) ☒ No-year	Type of budget authority: ☒ Appropriation ☐ Contract authority ☐ Other

Justification

Coal Gasification. Funds are proposed for rescission that were intended to finance an unsolicited proposal submitted by the Texas Gas Transmission Corporation and the Commonwealth of Kentucky for a phase zero design study relative to the Hygas demonstration project. The department is currently pursuing an aggressive program to demonstrate the production of high-Btu pipeline gas from coal with two competing designs (CONOCO and ICGS).

Atmospheric Fluidized Bed. Funds are proposed for rescission that were intended to finance operation of the Rivesville 20Mw atmospheric fluidized bed (AFB) boiler, since it has served its purpose in identifying problem areas in fluidized bed technology. Based on the successful performance of this first 20 Mw unit and a subsequent demonstration plant, it is expected that several utilities will be ready to commit to installation of AFB boilers. TVA efforts reflect more modern designs and thus obviate the need for further data from the Rivesville facility.

Coal oil mixtures. Funds are proposed for rescission in the area of Coal Oil Mixtures. The successful application of Coal Oil Mixture Technology has already been demonstrated in past and current DOE and industry projects. Applications for additional demonstrations should be made under the alternate fuels programs and the Synthetic Fuels Corporation.

Estimated Effects

Coal Gasification. Since the Department already is vigorously pursuing a high-Btu demonstration program via the pipeline gas competition and the completion of a Hygas design, the effects of the proposed rescission would be minimal to overall program objectives.

881-10

Atmospheric Fluidized Bed (AFB). The proposed rescission will have a minimal effect on the overall AFB combustion program. It is proposed that funds required under contractual terms for eventual dismantling of the facility ($1.2M) be redirected from within the AFB program.

Coal Oil Mixtures. The effect of the proposed rescission is that additional Coal Oil Mixture demonstration projects would not be initiated during FY 1981. The additional data to be gained through DOE efforts, that of providing specific conversion and operating data to the general public for encouraging and supporting ERA mandated near-term technology, would have minimal value. This is because only marginal areas of technical risk remain for Coal Oil Mixtures.

Outlay Effects (in millions and tenths):

1981 Outlay Estimate		Outlay Savings			
Without Rescission	With Rescission	1981	1982	1983	1984
17.75	-0-	17.75	7.7	-0-	-0-

881-10

DEPARTMENT OF ENERGY
FOSSIL ENERGY RESEARCH AND DEVELOPMENT

Of the funds provided under this head for fiscal year 1981 in Public Law 96-514, $25,480,000 are rescinded.

Rescission Proposal No: R81-11

PROPOSED RESCISSION OF BUDGET AUTHORITY
Report Pursuant to Section 1012 of P.L. 93-344

Agency Department of Energy	New budget authority (P.L. 96-514 A.) $ 892,107,000
Bureau Energy Programs	Other budgetary resources 93,405,000
Appropriation title & symbol	Total budgetary resources 985,512,000
Energy Conservation 89-0215	Amount proposed for rescission $ 47,000,000
OMB identification code: 89-0215-0-1-999	Legal authority (in addition to sec. 1012): ☐ Antideficiency Act ☐ Other
Grant program ☐ Yes ☒ No	
Type of account or fund: ☐ Annual ☐ Multiple-year (expiration date) ☒ No-year	Type of budget authority: ☒ Appropriation ☐ Contract authority ☐ Other

Justification:

Funding is proposed for rescission in the Transportation Energy Conservation Program ($12 million) and the Industrial Energy Conservation Program ($36.0 million).

One rescission in the Transportation Energy Conservation Program is proposed to eliminate contract funding for development of a third automotive gas turbine engine ($7 million). Two separate engine development efforts are already underway, and it is unlikely that a third contractor team could ultimately become competitive due to the time lag from which a third team would be starting. The proposed rescission would have no impact on the development of the two on-going project teams. A second rescission in the Transportation Energy Conservation Program is proposed to eliminate funding of a second Stirling engine contractor ($5 million). The Department of Energy has been supporting an automotive Stirling contractor for several years and their on-going engine program is well established. Funds in the FY 1981 budget were to have initiated a second Stirling engine contractor focusing on component development. However, Stirling engine component development is currently being pursued by DOE's Energy Conversion and Utilitization Technologies Program. Therefore, an additional Stirling contractor appears unnecessary.

The rescission in the Industrial Energy Conservation Program is proposed for ferrocoke and coke pelletizing projects ($17.0 million) and projects ($18 million) in the waste energy reduction, process efficiency, cogeneration, and implementation and deployment programs. The proposed rescission of the ferrocoke and coke pelletizing projects will have no major impact on energy conservation since these projects involve questionable energy savings. The other projects in the areas of waste energy reduction, process efficiency, cogeneration, and implementation and deployment would have accomplished lesser energy savings per Federal dollar invested than those projects which will be undertaken in FY 1981 with the remaining $53.0 million in the Industrial Conservation program.

R81-11

2

These proposed rescissions in FY 1981 are consistent with the FY 1982 budget request, which includes no funds for these projects.

Estimated Effects:

These rescissions will achieve a savings of $47.0 million by eliminating projects in the Transportation Energy and Industrial Energy Conservation Programs.

Outlays Effects: (In millions of dollars)

1981 Outlay Estimate		Outlays Savings			
Without Rescission	With Rescission	1981	1982	1983	1984
782.2	734.4	17.8	18.0	12.0	0

R81-11

Department of Energy
Energy Conservation

Of the funds appropriated under this head in P.L. 96-514, making appropriations for the Department of the Interior and Related Agencies 1981, and in P.L. 96-126, making appropriations for the Department of the Interior and Related Agencies 1980, $7,000,000 are rescinded.

Rescission Proposal No: R 81-12

PROPOSED RESCISSION OF BUDGET AUTHORITY
Report Pursuant to Section 1012 of P.L. 93-344

Agency Department of Health and Human Services	New budget authority (P.L. 96-536) $ 1,588,277,000
Bureau Health Services Administration	Other budgetary resources 0
Appropriation title & symbol	Total budgetary resources 1,588,277,000
Health Services 75-0350	Amount proposed for rescission $ 4,000,000
OMB identification code: 75-0350-0-1-551	Legal authority (in addition to sec. 1012): ☐ Antideficiency Act ☐ Other
Grant program ☒ Yes ☐ No	
Type of account or fund: ☐ Annual ☐ Multiple-year (expiration date) ☒ No-year	Type of budget authority: ☒ Appropriation ☐ Contract authority ☐ Other

R 81-12

Estimated effects:

The phase-out of the $4 million home health agency grant program will eliminate support for 45 service grants and 21 training

Rescission Proposal No: R 81-12

PROPOSED RESCISSION OF BUDGET AUTHORITY
Report Pursuant to Section 1012 of P.L. 93-344

Agency Department of Health and Human Services	New budget authority (P.L. 96-536) $ 1,688,777,000
Bureau Health Services Administration	Other budgetary resources 30,776,000
Appropriation title & symbol: Health Services - 7516350	Total budgetary resources 1,118,688,000
	Amount proposed for rescission $ 8,057,000 1/
OMB identification code: 75-0350-5-1-551	Legal authority (in addition to sec. 1012): ☐ Antideficiency Act ☐ Other
Grant program ☒ Yes ☐ No	
Type of account or fund: ☒ Annual ☐ Multiple-year _____ (expiration date) ☐ No-year	Type of budget authority: ☒ Appropriation ☐ Contract authority ☐ Other

Justification:

The programs covered by this rescission proposal are the home health services grant program, the Maternal and Child Health (MCH) training program, and the MCH research program.

The Administration is proposing to accelerate the phase-out of the $4 million home health agency start-up grant program. This phase-out was first proposed in the President's 1981 budget. There are already over 3,000 home health agencies operating in the U.S. today so that continued support of the small, marginal program is no longer justified. Moreover, Medicare and Medicaid home health reimbursement--$947 million in 1980--is much more important to the maintenance of home health agencies than this small grant program.

The MCH training and research programs rescission of $4.057 million represents the first phase of a transfer of these responsibilities to the Health Resources Administration and the National Center for Health Services Research respectively where they can be more effectively performed.

1/ An additional $1.9 million for MCH training and research and $4 million for PHS Act Title X family planning are planned to be proposed for rescission if additional 1981 funding is provided for these programs after the present continuing resolution expires on June 5, 1981.

R 81-12

Estimated effects:

The phase-out of the $4 million home health agency grant program will eliminate support for 45 service grants and 21 training grants. These grants were designed strictly for start-up costs with the bulk of Federal support for operating costs scheduled to come from Medicare and Medicaid so that the small amount lost per project--$60,000--should be easily recouped from other sources.

The partial rescission of the MCH training and research programs--$4 million out of the $25.5 million available for these programs under the continuing resolution--will reduce training slots from 6,956 to 6,250 and research grants from 50 to 33.

Outlay Effects: (in millions of dollars)

1981 Outlay Estimate		Outlay Savings			
Without Rescission	With Rescission	1981	1982	1983	1984
1,270.6	1,267.9	2.7	5.4	--	--

R 81-12

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Services Administration
Health Services

Of the funds provided for "Health Services" for fiscal year 1981 in P.L. 96-536, $8,057,000 are rescinded.

Rescission Proposal No: 881-13

PROPOSED RESCISSION OF BUDGET AUTHORITY
Report Pursuant to Section 1012 of P.L. 93-344

Agency Department of Health and Human Services	New budget authority (P.L. 96-536) $ 298,427,000
Bureau Centers for Disease Control	Other budgetary resources 20,000,000
Appropriation title & symbol: Preventive Health Services 75X0943	Total budgetary resources 279,427,000
	Amount proposed for rescission $ 27,000,000
CFS identification code: 75-0943-5-1-550	Legal authority (in addition to sec. 1012): ☐ Antideficiency Act ☐ Other
Grant program ☒ Yes ☐ No	
Type of account or fund: ☒ Annual ☐ Multiple-year (expiration date) ☐ No-year	Type of budget authority: ☒ Appropriation ☐ Contract authority ☐ Other

Justification

The proposed rescission affects health incentive 314(d) grants provided to State health authorities for public health services. These grants constitute a relatively small share of the total State and local expenditures for public health. Their use is flexible enough to include support services such as public health laboratories in addition to the provision of direct preventive health services. The increased availability of other funding mechanisms has diminished the role of health incentive grants to States as a means of supporting public health activities.

The health incentive grant funds are not essential to accomplishment of public health goals. Taken together with other rescissions being proposed by the President, this action will contribute substantially to reducing Federal outlays and helping to minimize Federal borrowing and its impact on the rate of inflation.

881-13

Estimated Effects:

The effect of this rescission is to eliminate a Federal share in the cost of public health programs for which State and local health agencies have the primary authority.

The proposed rescission would eliminate funding for health incentive grants used primarily for non-institutional personal health services. In FY 1978, grant recipients used only 0.9 percent of the total funds available which represents 1.5 percent of their total public health expenditures. Other funding mechanisms such as Maternal and Child Health, Family Planning and High Blood Pressure Control provide grant assistance to State and local health authorities.

This proposal also affects programs in tuberculosis control, laboratory support for epidemiologic investigation of outbreaks, radiological health and local health departments. Technical assistance will continue to be provided in these areas.

Outlay Effects: (in millions of dollars)

1981 Outlay Estimate 1/		Outlay Savings			
Without Rescission	With Rescission	1981	1982	1983	1984
299.3	287.1	12.2	10.2	4.6	--

1/ Assumes extension of the level of funding provided by P.L. 96-536 for the entire fiscal year.

881-13

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Preventive Health Services

Of the funds provided for "Preventive Health Services" for fiscal year 1981 in P.L. 96-536, $27,000,000 are rescinded.

Rescission Proposal No: 881-14

PROPOSED RESCISSION OF BUDGET AUTHORITY
Report Pursuant to Section 1012 of P.L. 93-344

Agency Department of Health and Human Services	New budget authority (P.L. 96-536) $ 726,785,000
Bureau National Institutes of Health	100,000

881-14

Training.--National Research Service Awards will be reduced by $2,339,000. This will result in a reduction of 25 individual awards and 13 institutional awards, resulting in 114 fewer trainees or their annual equivalent being supported. The rescission amount represents a 3% reduction in research training awards. The rescission amount

Rescission Proposal No: 81-14

PROPOSED RESCISSION OF BUDGET AUTHORITY

Report Pursuant to Section 1012 of P.L. 93-344

Agency Department of Health and Human Services	New budget authority (P.L. 96-536) $ 784,788,000
Bureau National Institutes of Health	Other budgetary resources 100,000
Appropriation title & symbol: National Cancer Institute 7510040	Total budgetary resources 784,888,000
	Amount proposed for rescission $ 13,565,000
OMB identification code: 75-0849-0-1-550	Legal authority (in addition to sec. 1012): ☐ Antideficiency Act ☐ Other
Grant program ☒ Yes ☐ No	
Type of account or fund: ☒ Annual ☐ Multiple-year (expiration date) ☐ No-year	Type of budget authority: ☒ Appropriation ☐ Contract authority ☐ Other

Justification: Of the funds provided by the Congress in excess of the President's request, a rescission of $13,565,000 is proposed. This proposal is intended to help control funding for health research, while allowing growth in selected mechanisms of support for the activities of this agency. The rescission will not affect continuation of the Administration's policy of support for 9,000 new and competing research project grants annually.

Programmatic Effects:

Task Forces and Clinical Trials.--Reductions include decreases in Cancer Task Forces, and Clinical Cooperative Groups totalling $1,388,000. The Cancer Task Forces, which fund the organ site program, will be reduced by four awards. The revised funding level for both Clinical Cooperative research and the Task Forces would be $90,739,000. The Clinical Cooperative Group Program will be reduced by nineteen awards. Cancer Task Forces support a planned and integrated research effort enlarged toward cancer at a specific site. These site-specific projects are established if cancer in a particular organ site poses a substantial problem in terms of incidence and mortality. Clinical Cooperative Groups support clinical trials and evaluations of the efficacy of the various forms of cancer therapy, and constitute a major national resource for safe controlled research involving patients.

Cancer Centers.--Support for Cancer Centers will be reduced by $1,996,000 or 2% to a revised level of $70,035,000. At this level, all existing 58 centers will continue to receive support. These centers serve as focal points for basic and clinical research activities, and for education, training and community outreach.

Training.--National Research Service Awards will be reduced by $2,550,000. This will result in a reduction of 25 individual awards and 13 institutional awards, resulting in 114 fewer trainees or their annual equivalent being supported. The rescission amount represents a 9% reduction in research training support. The revised level for training support would be $26.6 million.

Research and Development Contracts.--Contracts will be reduced by $3,322,000 or 12 contracts. This reduction includes a decrease in support available for chemo-prevention activities, involving studies of retinoids, analogues of vitamin A, which appear to have the ability to prevent the development of certain forms of invasive cancer. Also affected are certain epidemiological studies to identify specific carcinogens responsible for certain cancers. It will be necessary to curtail research efforts to characterize and evaluate new biological response modifiers as they are identified. The revised funding level would be $205.1 million.

Intramural Research.--The intramural research program which gives research scientists the opportunity for basic and applied research and clinical investigation to solve major health problems, will be reduced by $1,000,000 through reduced purchases of equipment and biological and chemical resources for research. The revised level for intramural activities would be $162.9 million.

Cancer Control.--The Cancer Control Program will be reduced by $2,000,000 precluding new project starts and reducing some ongoing projects. The revised funding level for the program would be $34.3 million. This program is concerned with the entire health care continuum, and includes prevention, screening, diagnosis, pretreatment evaluation, treatment, rehabilitation and continuing care activities.

Construction.--Funds for construction will be reduced by $1,300,000 which will entail some delay in completion of modernization and upgrading of existing facilities. With the rescission the revised funding level would be $3.5 million.

Outlay Effects: (in millions of dollars)

1981 Outlay Estimate Without Rescission	1981 Outlay Estimate With Rescission	Outlay Savings 1981	1982	1983	1984
996.2	993.0	6.2	7.3	---	---

81-14

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Cancer Institute

Of the funds provided for "National Cancer Institute" for fiscal year 1981 in P.L. 96-536, $13,565,000 are rescinded.

Rescission Proposal No: 81-15

PROPOSED RESCISSION OF BUDGET AUTHORITY
Report Pursuant to Section 1012 of P.L. 93-344

Agency Department of Health and Human Services	New budget authority (P.L. 96-536) $406,281,000
Bureau National Institutes of Health	Other budgetary resources 165,000
Appropriation title & symbol	Total budgetary resources [illegible]
National Heart, Lung, & Blood Institute 7515072	Amount proposed for rescission $ 10,324,000
OMB identification code: 75-0672-3-1-551	Legal authority (in addition to sec. 1012): ☐ Antideficiency Act ☐ Other
Grant program ☒ Yes ☐ No	
Type of account or fund: ☒ Annual ☐ Multiple-year (expiration date) ☐ No-year	Type of budget authority: ☒ Appropriation ☐ Contract authority ☐ Other

Justification: Of the funds provided by the Congress in excess of the President's request, a rescission of $10,324,000 is proposed. This proposal is intended to help control funding for health research, while allowing growth in selected mechanisms of support for the activities of this agency. The rescission will not affect continuation of the Administration's policy of support for 5,000 new and competing research project grants annually.

ESTIMATED EFFECTS: The proposed rescission is $10,324,000 and would affect the following:

Research Centers: Research centers would be individually negotiated downward to achieve an overall centers' reduction of 5 percent, or a savings of $3,272,000. The revised funding level would be $62.2 million.

Research Career Awards: This program would be scaled down from supporting an estimated 335 investigators to supporting an estimated 321, a savings of $600,000. The revised program level would be $13 million.

Research Evaluation - Research evaluation grants would be reduced by $100,000.

Training: Training programs would be reduced to support a projected 1,612 trainees, a reduction of 35. The reduction would total $716,000 with the revised level being $34.2 million.

R&D Contracts: Existing research and development contracts would be renegotiated to achieve a 7 percent reduction. The Multicenter Investigation of Limitation of Infarct Size (MILIS), a clinical trial now in its recruitment and intervention phase, would be incrementally funded for six months, rather than the normal twelve month award period. The reduction in contracts would total $2,830,000, with the revised program level being $66.7 million.

Intramural Research - A reduction of $2,300,000 or 5 percent, would result in reducing the purchase of scientific equipment. The revised funding level would be $43.6 million.

Direct Operations - A reduction of $300,000 is proposed. The revised funding level would be $27.6 million.

Outlay Effects: (in millions of dollars)

1981 Outlay Estimate		Outlay Savings			
Without Rescission	With Rescission	1981	1982	1983	1984
317.4	313.8	3.9	6.4	—	—

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Heart, Lung, and Blood Institute

Of the funds provided for "National Heart, Lung, and Blood Institute" for fiscal year 1981 in P.L. 96-536, $10,324,000 are rescinded.

Rescission Proposal No: 81-16

PROPOSED RESCISSION OF BUDGET AUTHORITY
Report Pursuant to Section 1012 of P.L. 93-344

Agency Department of Health and Human Services	New budget authority (P.L. 96-536) $1,321,000
Bureau National Institutes of Health	Other budgetary resources [illegible]
Appropriation title & symbol	Total budgetary resources [illegible]
National Institute of Dental Research 7515073	Amount proposed for rescission $ 1,321,000
OMB identification code: 75-0673-3-1-551	Legal authority (in addition to sec. 1012): ☐ Antideficiency Act ☐ Other
Grant program ☒ Yes ☐ No	
Type of account or fund: ☒ Annual ☐ Multiple-year (expiration date) ☐ No-year	Type of budget authority: ☒ Appropriation ☐ Contract authority ☐ Other

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institute of Dental Research

Rescission Proposal No: 881-16

PROPOSED RESCISSION OF BUDGET AUTHORITY

Report Pursuant to Section 1012 of P.L. 93-344

Agency: Department of Health and Human Services	New budget authority (P.L. 96-536) $1,393,000
Bureau: National Institutes of Health	Other budgetary resources 125,000
Appropriation title & symbol: National Institute of Dental Research 7510873	Total budgetary resources $1,478,000
	Amount proposed for rescission $ 302,000
OMB identification code: 75-0873-0-1-550	Legal authority (in addition to sec. 1012): ☐ Antideficiency Act ☐ Other
Grant program: ☒ Yes ☐ No	
Type of account or fund: ☒ Annual ☐ Multiple-year (expiration date) ☐ No-year	Type of budget authority: ☒ Appropriation ☐ Contract authority ☐ Other

Justification: Of the funds provided by the Congress in excess of the President's request, a rescission of $302,000 is proposed. This proposal is intended to help control funding for health research, while allowing growth in selected mechanisms of support for the activities of this agency. The rescission will not affect continuation of the Administration's policy of support for 9,000 new and competing research project grants annually.

Estimated effects:

Training Program. A reduction of $302,000 in the National Research Service Awards program will result in the decrease of three competing institutional awards. The revised funding level would be $4,371,000.

Outlay effects: (in millions of dollars)

1981 Outlay Estimate		Outlay Savings			
Without Rescission	With Rescission	1981	1982	1983	1984
68.5	64.3	.2	.1	—	—

881-16

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institute of Dental Research

Of the funds provided for "National Institute of Dental Research" for fiscal year 1981 in P.L. 96-536, $302,000 are rescinded.

Rescission Proposal No: 881-17

PROPOSED RESCISSION OF BUDGET AUTHORITY
Report Pursuant to Section 1012 of P.L. 93-344

Agency: Department of Health and Human Services	New budget authority (P.L. 96-514): $288,760,000
Bureau: National Institutes of Health	Other budgetary resources:
Appropriation title & symbol: National Institute of Arthritis, Metabolism and Digestive Diseases 7510804	Total budgetary resources: 288,760,000
	Amount proposed for rescission: $3,232,000
OMB identification code: 75-0804-0-1-130	Legal authority (in addition to sec. 1012): ☐ Antideficiency Act ☐ Other
Grant program: ☒ Yes ☐ No	
Type of account or fund: ☒ Annual ☐ Multiple-year (expiration date) ☐ No-year	Type of budget authority: ☒ Appropriation ☐ Contract authority ☐ Other

Justification: Of the funds provided by the Congress in excess of the President's request, a rescission of $3,232,000 is proposed. This proposal is intended to help control funding for health research, while allowing growth in selected mechanisms of support for the activities of this agency. The rescission will not affect continuation of the Administration's policy of support for 8,000 new and competing research project grants annually.

Estimated Effects:

Research Centers. A reduction of $430,000 is proposed which would result in the funding of one less clinical nutrition research center. The revised funding level for the research centers program would be $20.5 million.

Research Careers. The rescission would reduce by $1,441,000 the research careers program with a resulting decrease of 35 career researcher awards. The revised funding level for this program would be $9.3 million.

Training. Research training support would be decreased by $1,361,000 with 56 fewer individual training awards being supported. Total revised funding for training activities would be $9.2 million.

881-17

Outlay Effects: (in millions of dollars)

1981 Outlay Estimate		Outlay Savings			
Without Rescission	With Rescission	1981	1982	1983	1984
334.5	331.7	0.8	2.4	—	—

881-17

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institute of Arthritis, Metabolism, and Digestive Diseases

Rescission Proposal No: 881-18

PROPOSED RESCISSION OF BUDGET AUTHORITY
Report Pursuant to Section 1012 of P.L. 93-344

Agency: Department of Health and Human Services	New budget authority: $ 188,864,000
Bureau: National Institutes of Health	Other budgetary resources:
Appropriation title & symbol: National Institute of Arthritis, Metabolism and Digestive Diseases 7510804	Total budgetary resources: 188,864,000
	Amount proposed for rescission: $ 1,441,000
OMB identification code: 75-0804-0-1-130	Legal authority (in addition to sec. 1012): ☐ Antideficiency Act ☐ Other
Grant program: ☒ Yes ☐ No	
Type of account or fund: ☒ Annual ☐ Multiple-year (expiration date) ☐ No-year	Type of budget authority: ☒ Appropriation ☐ Contract authority ☐ Other

881-17

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institute of Arthritis, Metabolism, and Digestive Diseases

Of the funds provided for "National Institute of Arthritis, Metabolism, and Digestive Diseases" for fiscal year 1981 in P.L. 96-536, $3,232,000 are rescinded.

Rescission Proposal No: 881-18

PROPOSED RESCISSION OF BUDGET AUTHORITY

Report Pursuant to Section 1012 of P.L. 93-344

Agency: Department of Health and Human Services	New budget authority (P.L. 96-536): $ 195,564,000
Bureau: National Institutes of Health	Other budgetary resources: 69,000
Appropriation title & symbol: National Institute of Neurological and Communicative Disorders and Stroke 7510086	Total budgetary resources: 195,633,000
	Amount proposed for rescission: $ 2,031,000
BEA identification code: 75-0886-0-1-550	Legal authority (in addition to sec. 1012): ☐ Antideficiency Act ☐ Other
Grant program: ☒ Yes ☐ No	
Type of account or fund: ☒ Annual ☐ Multiple-year (expiration date) ☐ No-year	Type of budget authority: ☒ Appropriation ☐ Contract authority ☐ Other

Justification: Of the funds provided by the Congress in excess of the President's request, a rescission of $2,031,000 is proposed. This proposal is intended to help control funding for health research, while allowing growth in selected mechanisms of support for the activities of this agency. The rescission will not affect continuation of the Administration's policy of support for 5,000 new and competing research project grants annually.

Estimated Effects:

Research Programs. The reduction of $944,000 will delay the full implementation of the Positron Emission Tomography (PETT) initiative including purchase of peripheral equipment. Development of the planned communicative disorders clinical branch will be delayed or postponed. Further development of brain tumor research would be delayed, including development of tumor models and the evaluation of long-term effects of brain tumors and rehabilitation of patients. The revised funding level would be $34.3 million.

Direct Operations. The reduction of $200,000 will defer completion of the microfiche of data records for the collaborative perinatal study. Support of workshops and conferences on hearing, speech, and language disorders would be delayed or postponed. The revised funding level would be $12.9 million.

Research Management. The reduction of $125,000 would delay the final phase of computer programming and data entry for the Institute's newly developed program information system. This system would provide data for budget and program planning, and for inquiries regarding support of the Institute's research programs. The revised funding level would be $2.2 millio

Research and Development Contracts. The reduction of $763,000 would eliminate a study of the endocrinological parameters (hormone production) in experimental anticonvulsant drugs. A new stroke clinical research program would not be initiated. This contract would determine the availability and efficacy of advanced care and treatment of stroke patients through controlled clinical trials and relevant clinical research. A clinical trial on the pharmacologic prevention of post-traumatic epilepsy would be reduced to one-third of the requirements or not funded at all. The revised funding level for research and development contracts would be $15.6 million.

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1981 Outlay Estimate		Outlay Savings			
Without Rescission	With Rescission	1981	1982	1983	1984
$238.6	$224.2	$11.3	+.7	—	—

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institute of Neurological and Communicative Disorders and Stroke

Of the funds provided for "National Institute of Neurological and Communicative Disorders and Stroke" for fiscal year 1981 in P.L. 96-536, $7,031,000 are rescinded.

Rescission Proposal No: RS1-19

PROPOSED RESCISSION OF BUDGET AUTHORITY
Report Pursuant to Section 1012 of P.L. 93-344

Agency: Department of Health and Human Services	New budget authority (P.L. 96-536) $ 161,887,000
Bureau: National Institutes of Health	
Account: National Institute of Neurological and Communicative Disorders and Stroke	Amount proposed for rescission $ 7,031,000

Outlay Effects: (In millions of dollars)

1981 Outlay Estimate		Outlay Savings			
Without Rescission	With Rescission	1981	1982	1983	1984
$238.6	$224.2	$11.3	+.7	—	—

Rescission Proposal No: 81-19

PROPOSED RESCISSION OF BUDGET AUTHORITY

Report Pursuant to Section 1012 of P.L. 93-344

Agency: Department of Health and Human Services

Bureau: National Institutes of Health

Appropriation title & symbol:

National Institutes of Child Health and Human Development - 7510844

New budget authority (P.L. 96-536): $ 161,887,000

Other budgetary resources: 10,000

Total budgetary resources: 161,897,000

Amount proposed for rescission: $ 3,285,000

OMB identification code: 75-0844-0-1-550

Grant program: ☒ Yes ☐ No

Type of account or fund:
- ☒ Annual
- ☐ Multiple-year _____ (expiration date)
- ☐ No-year

Legal authority (in addition to sec. 1012):
- ☐ Antideficiency Act
- ☐ Other _____

Type of budget authority:
- ☒ Appropriation
- ☐ Contract authority
- ☐ Other _____

Justification: Of the funds provided by the Congress in excess of the President's request, a rescission of $3,285,000 is proposed. This proposal is intended to help control funding for health research, while allowing growth in selected mechanisms of support for the activities of this agency. The rescission will not affect continuation of the Administration's policy of support for 5,000 new and competing research project grants annually.

Estimated Effects:

Research Centers. A reduction of $750,000 is proposed which would decrease the level of support for several centers. Total revised budget for the centers program would be $24.7 million. Even with the funding reduction, the Institute would not reduce the number of center grants planned of 46. This would be an increase of 5 grants from 1980.

Other Research. A reduction of $280,000 will result in a decrease of seven research career development awards in FY 1981. The revised funding level would be $2.7 million.

Research and Development Contracts. There will be a reduction of 20 contracts and $1,752,000. The reductions would occur in population research studies concerning new contraceptives, contraceptive safety, and behavioral examinations of the high adolescent pregnancy rates. Also studies in maternal and infant nutrition, management of diabetic pregnancies and mental retardation and developmental disabilities would be affected. The revised funding level for contract studies would be $21.6 million.

Intramural Research. A reduction of $324,000 will result in deferring or elimination of purchases for equipment and other services, resulting in a revised program level of $23.3 million.

81-19

Outlay Effects: (in millions of dollars)

1981 Outlay Estimate		Outlay Savings			
Without Rescission	With Rescission	1981	1982	1983	1984
234.2	232.8	1.3	1.9	—	—

RR1-19

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institute of Child Health and Human Development

Of the funds provided for "National Institute of Child Health and Human Development" for fiscal year 1981 in P.L. 96-536, $2,283,000 are rescinded.

Rescission Proposal No: RR1-19

PROPOSED RESCISSION OF BUDGET AUTHORITY

Report Pursuant to Section 1012 of P.L. 93-344

Agency: Department of Health and Human Services	New budget authority (P.L. 96-536): $ 87,242,000
Bureau: National Institutes of Health	Other budgetary resources: 60,000
Appropriation title & symbol: National Eye Institute - 7510087	Total budgetary resources: 87,302,000
	Amount proposed for rescission: $ 2,283,000
OMB identification code: 75-0887-0-1-550	Legal authority (in addition to sec. 1012): ☐ Antideficiency Act ☐ Other
Grant program: ☒ Yes ☐ No	
Type of account or fund: ☒ Annual ☐ Multiple-year (expiration date) ☐ No-year	Type of budget authority: ☒ Appropriation ☐ Contract authority ☐ Other

Justification: Of the funds provided by the Congress in excess of the President's request, a rescission of $2,283,000 is proposed. This proposal is intended to help control funding for health research, while allowing growth in selected mechanisms of support for the activities of this agency. The rescission will not affect continuation of the Administration's policy of support for 8,000 new and competing research project grants annually.

Estimated Effects:

R&D Contracts. A reduction of $1,500,000 in contract studies is proposed. This would result in delaying the Visual Activity Impairment Study. Total revised funding for contract activities would be $4.3 million.

Direct Operations. Reductions of $200,000 are proposed which would be used to initiate efforts to coordinate the dissemination of clinical research findings in the community. Total revised funding for the direct operations activity would be $3.2 million.

Intramural. A decrease of $648,000 is proposed. The purchase of some equipment for the Ambulatory Care Research Facility will be delayed. Total revised funding for intramural research support would be $11.4 million.

RR1-20

Outlay Effects: (in millions of dollars)

1981 Outlay Estimate		Outlay Savings			
Without Rescission	With Rescission	1981	1982	1983	1984

RR1-20

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Eye Institute

Outlay Changes (in millions of dollars)

1981 Outlay Estimate		Outlay Savings			
Without Rescission	With Rescission	1981	1982	1983	1984
104.1	103.1	1.0	1.3	—	—

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Eye Institute

Of the funds provided for "National Eye Institute" for fiscal year 1981 in P.L. 96-536, $2,353,000 are rescinded.

Rescission Proposal No: 981-21

PROPOSED RESCISSION OF BUDGET AUTHORITY
Report Pursuant to Section 1012 of P.L. 93-344

Agency: Department of Health and Human Services	New budget authority (P.L. 96-536): $ 20,946,000
Bureau: National Institutes of Health	Other budgetary resources: 5,613,000
Appropriation title & symbol: National Institutes of Environmental Health Sciences - 7510981	Total budgetary resources: 26,559,000
	Amount proposed for rescission: $ 3,258,000
OMB identification code: 75-0883-0-1-550	Legal authority (in addition to sec. 1012): ☐ Antideficiency Act ☐ Other
Grant program: ☒ Yes ☐ No	
Type of account or fund: ☒ Annual ☐ Multiple-year (expiration date) ☐ No-year	Type of budget authority: ☒ Appropriation ☐ Contract authority ☐ Other

Justification: Of the funds provided by the Congress in excess of the President's request, a rescission of $3,258,000 is proposed. This proposal is intended to help control funding for health research, while allowing growth in selected mechanisms of support for the activities of this agency. The rescission will not affect continuation of the Administration's policy of support for 5,000 new and competing research project grants annually.

Estimated Effects:

Research Centers: A reduction of $548,000 is proposed for the support of Environmental Health Sciences Centers and Marine and Freshwater Biomedical Research Centers. The revised funding level for the centers program would be $9.9 million. There would be no reduction in the number of centers supported (18) with decreases being negotiated downward among ongoing Centers to achieve the savings.

Research Evaluation. A reduction of $100,000 is proposed for research evaluation grants.

Research & Development Contracts. A decrease of $1,434,000 will affect the number of new contract-supported testing procedures awarded for the National Toxicology Program (NTP). The revised funding level for NTP would be $6.9 million.

Intramural. A decrease of $1,186,000, the entire amount added by Congress over the President's budget request for this activity, is proposed. The reduction would result in the delay or elimination of purchases for laboratory supplies, materials and large scientific equipment. The revised funding level for intramural research would be $13.9 million.

981-21

Outlay Effects: (in millions of dollars)

1981 Outlay Estimate		Outlay Savings			
Without Reduction	With Reduction	1981	1982	1983	1984
20.8	20.1	.7	1.6	—	—

981-21

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institute of Environmental Health Sciences

Rescission Proposal No: 981-22

PROPOSED RESCISSION OF BUDGET AUTHORITY
Report Pursuant to Section 1012 of P.L. 93-344

Agency: Department of Health and Human Services	New budget authority (P.L. 96-536): $ 21,688,000

281-21

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institute of Environmental Health Sciences

Of the funds provided for "National Institute of Environmental Health Sciences" for fiscal year 1981 in P.L. 96-536, $3,238,000 are rescinded.

Rescission Proposal No: 281-22

PROPOSED RESCISSION OF BUDGET AUTHORITY

Report Pursuant to Section 1012 of P.L. 93-344

Agency: Department of Health and Human Services	New budget authority (P.L. 96-536): $ 34,920,000
Bureau: National Institutes of Health	Other budgetary resources: 100,000
Appropriation title & symbol: National Institute on Aging 7510843	Total budgetary resources: 35,020,000
	Amount proposed for rescission: $ 588,000
OMB identification code: 75-0843-3-1-550	Legal authority (in addition to sec. 1012): ☐ Antideficiency Act ☐ Other
Grant program: ☒ Yes ☐ No	
Type of account or fund: ☒ Annual ☐ Multiple-year (expiration date) ☐ No-year	Type of budget authority: ☒ Appropriation ☐ Contract authority ☐ Other

Justification: Of the funds provided by the Congress in excess of the President's request, a rescission of $588,000 is proposed. This proposal is intended to help control funding for health research, while allowing growth in selected mechanisms of support for the activities of this agency. The rescission will not affect continuation of the Administration's policy of support for 5,000 new and competing research project grants annually.

Estimated Effects:

Research Projects. A reduction of $294,000 is proposed in the Geriatric Medicine and Dentistry Academic Awards program. The revised funding for research projects, other than the investigator initiated grants, is $1.3 million.

Personnel/Direct Operations/Program Management. A total of $294,000 is proposed for rescission. This would result in the elimination of at least one scientific conference or workshop ($25,000) and reduce the rate at which vacancies are filled in the Baltimore Longitudinal Study ($279,000). The revised funding level in these three activities would be $10.7 million.

Outlay Effects: (in millions of dollars)

1981 Outlay Estimate		Outlay Savings			
Budget Resolution	This Rescission	1981	1982	1983	1984
69.0	68.8	.2	.4	—	—

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institute on Aging

Of the funds provided for "National Institute on Aging" for fiscal year 1981 in P.L. 96-536, $588,000 are rescinded.

Rescission Proposal No: R81-23

PROPOSED RESCISSION OF BUDGET AUTHORITY

Report Pursuant to Section 1012 of P.L. 93-344

Agency: Department of Health and Human Services	New budget authority (P.L. 96-536): $128,778,000
Bureau: National Institutes of Health	Other budgetary resources: 7,300,000
Appropriation title & symbol: Research Resources - 75X0848	Total budgetary resources: 136,169,000
	Amount proposed for rescission: $ 10,861,000
OMB identification code: 75-0848-0-1-550	Legal authority (in addition to sec. 1012): ☐ Antideficiency Act ☐ Other _____
Grant program: ☒ Yes ☐ No	
Type of account or fund: ☒ Annual ☐ Multiple-year _____ (expiration date) ☐ No-year	Type of budget authority: ☒ Appropriation ☐ Contract authority ☐ Other _____

Justification: Of the funds provided by the Congress in excess of the President's request, a rescission of $10,861,000 is proposed. This proposal is intended to help control funding for health research, while allowing growth in selected mechanisms of support for the activities of this agency. The rescission will not affect continuation of the Administration's policy of support for 5,000 new and competing research project grants annually.

Estimated Effects:

Research Centers. A reduction of $4,228,000 is proposed for support of research centers. Included in this decrease is $1,740,000 for general clinical research centers resulting in 4 fewer centers receiving awards. Biotechnology research centers would be decreased by $3,044,000, with a reduction of seven awards. Animal resource grants would be decreased by $441,000 eliminating three awards. Total revised funding for the centers program activity would be $69.3 million.

Biotechnology Research Grants. A reduction of $1,811,000 is proposed resulting in a decrease of three grants.

Minority Biomedical Support. A reduction of $2,035,000 is proposed which would result in the award of ten fewer grants. Total revised funding would be $16.8 million.

Biomedical Research Support. A reduction of $1,004,000 is proposed. Since the funds are distributed to all eligible institutions on a formula basis, the decrease would result in slight reductions among all recipients. Total revised funding level is $47.1 million.

R&D Contracts. Contract supported activities would decrease by $756,000 with seven fewer awards. The revised funding level for the contract program would be $2.9 million.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Research Resources

R&D Contracts. Contract supported activities would decrease by $796,000 with seven fewer awards. The revised funding level for the contract program would be $2.9 million.

Outlay Effects: (in millions of dollars)

1981 Outlay Estimate		Outlay Savings			
Without Rescission	With Rescission	1981	1982	1983	1984
158.8	154.3	4.5	6.1	—	—

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Research Resources

Of the funds provided for "Research Resources" for fiscal year 1981 in P.L. 96-536, $10,561,000 are rescinded.

Rescission Proposal No: 981-24

981.24

PROPOSED RESCISSION OF BUDGET AUTHORITY
Report Pursuant to Section 1012 of P.L. 93-344

Agency Department of Health and Human Services	New budget authority (P.L. 96-536) $11,381,000
Bureau National Institutes of Health	Other budgetary resources 2,400,000
Appropriation title & symbol	Total budgetary resources 14,781,000
National Library of Medicine 7510407	Amount proposed for rescission $ 341,000
OMB identification code: 75-0807-0-1-550	Legal authority (in addition to sec. 1012): ☐ Antideficiency Act ☐ Other
Grant program ☒ Yes ☐ No	
Type of account or fund: ☒ Annual ☐ Multiple-year (expiration date) ☐ No-year	Type of budget authority: ☒ Appropriation ☐ Contract authority ☐ Other

Justification: Of the funds provided by the Congress in excess of the President's request, a rescission of $341,000 is proposed. This proposal is intended to help control funding for health research, while allowing growth in selected mechanisms of support for the activities of this agency. The rescission will not affect continuation of the Administration's policy of support for 5,000 new and competing research project grants annually.

Estimated Effects:

Intramural Program. A reduction of $341,000 in the intramural program will result in a decrease in funds available for the Toxicology Information Program, delaying further development of the Chemical Data Bases Directory and the Chemical Structure and Nomenclature System.

Outlay Effects: (in millions of dollars)

1981 Outlay Estimate		Outlay Savings			
Without Rescission	With Rescission	1981	1982	1983	1984
47.0	46.8	0.2	0.1	—	—

DEPARTMENT OF HEALTH AND HUMAN SERVICES
National Library of Medicine

Of the funds provided for "National Library of Medicine" for fiscal year 1981 in P.L. 96-536, $341,000 are rescinded.

Rescission Proposal No: 981-25

PROPOSED RESCISSION OF BUDGET AUTHORITY
Report Pursuant to Section 1012 of P.L. 93-344

Agency Department of Health and Human Services	New budget authority (P.L. 96-536) $36,226,000
Bureau National Institutes of Health	Other budgetary resources 2,400,000
Appropriation title & symbol	Total budgetary resources 38,626,000
National Institute of Mental Health 7510507	Amount proposed for rescission $ 1,000,000
OMB identification code: 75-0807-0-1-550	Legal authority (in addition to sec. 1012): ☐ Antideficiency Act ☐ Other
Grant program ☒ Yes ☐ No	
Type of account or fund: ☒ Annual ☐ Multiple-year (expiration date) ☐ No-year	Type of budget authority: ☒ Appropriation ☐ Contract authority ☐ Other

Justification: Of the funds provided by the Congress in excess of the President's request, a rescission of $1,000,000 is proposed. This proposal is intended to help control funding for health research, while allowing growth in selected mechanisms of support for the activities of this agency. The rescission will not affect continuation of the Administration's policy of support for 5,000 new and competing research project grants annually.

Estimated Effects:

Intramural Program. A reduction of $1,000,000 in the intramural program will result in a decrease in funds available for the Toxicology Information Program, delaying further development of the Chemical Data Bases Directory and the Chemical Structure and Nomenclature System.

Outlay Effects: (in millions of dollars)

1981 Outlay Estimate		Outlay Savings			
Without Rescission	With Rescission	1981	1982	1983	1984
47.0	46.8	0.2	0.1	—	—

Rescission Proposal No: 981-26

PROPOSED RESCISSION OF BUDGET AUTHORITY
Report Pursuant to Section 1012 of P.L. 93-344

Agency Department of Health and Human Services	New budget authority (P.L. 96-536) $36,226,000
Bureau National Institutes of Health	Other budgetary resources 2,400,000
Appropriation title & symbol	Total budgetary resources 38,626,000
National Cancer Institute 7510607	Amount proposed for rescission $ 1,000,000
OMB identification code: 75-0807-0-1-550	Legal authority (in addition to sec. 1012): ☐ Antideficiency Act ☐ Other
Grant program ☒ Yes ☐ No	
Type of account or fund: ☒ Annual ☐ Multiple-year (expiration date) ☐ No-year	Type of budget authority: ☒ Appropriation ☐ Contract authority ☐ Other

Rescission Proposal No: 801-25

PROPOSED RESCISSION OF BUDGET AUTHORITY
Report Pursuant to Section 1012 of P.L. 93-344

Agency Department of Health and Human Services	New budget authority (P.L. 96-536) $ 36,128,000
Bureau National Institutes of Health	Other budgetary resources 3,189,000
Appropriation title & symbol: Office of the Director - 7510046	Total budgetary resources 39,317,000
	Amount proposed for rescission $ 360,000
OMB identification code: 75-0846-0-1-550	Legal authority (in addition to sec. 1012): ☐ Antideficiency Act ☐ Other
Grant program ☐ Yes ☒ No	
Type of account or fund: ☒ Annual ☐ Multiple-year ____ (expiration date) ☐ No-year	Type of budget authority: ☒ Appropriation ☐ Contract authority ☐ Other

Justification:

Of the funds provided by the Congress in excess of the President's request, a rescission of $360,000 is proposed. This proposal is intended to help control funding for health research, while allowing growth in selected mechanisms of support for the activities of this agency. The rescission will not affect continuation of the Administration's policy of support for 5,000 new and competing research project grants annually.

Estimated Effects:

The proposed rescission will affect the funds available to the organizational components of the Office of the Director for personnel services. Fewer temporaries will be hired and there will be a reduction in overtime. In addition, there will be a $40,000 reduction in contract funds.

Outlay Effects: (in millions of dollars)

1981 Outlay Estimate		Outlay Savings			
Without Rescission	With Rescission	1981	1982	1983	1984
20.8	20.5	.4	—	—	—

801-25

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Director

Of the funds provided for "Office of the Director" for fiscal year [illegible], $360,000 are rescinded.

Rescission Proposal No: 801-26

PROPOSED RESCISSION OF BUDGET AUTHORITY
Report Pursuant to Section 1012 of P.L. 93-344

Agency Department of Health and Human Services	New budget authority (P.L. 96-536) $788,857,000
Bureau Alcohol, Drug Abuse and Mental Health Admin.	Other budgetary resources —
Appropriation title & symbol: Alcohol, Drug Abuse, and Mental Health 7811961	Total budgetary resources 788,857,000
	Amount proposed for rescission $ 57,140,000
OMB identification code: 75-1361-0-1-550	Legal authority (in addition to sec. 1012): ☐ Antideficiency Act ☐ Other
Grant program ☒ Yes ☐ No	
Type of account or fund: ☒ Annual ☐ Multiple-year ____ (expiration date) ☐ No-year	Type of budget authority: ☒ Appropriation ☐ Contract authority ☐ Other

JUSTIFICATION:

The figure of $67,140,000 includes $21,382,000 for the Drug Abuse Formula Grants to States Program and $45,878,000 for the Alcoholism Formula Grants to States Program. This rescission reflects the Administration policy that the States support a larger share of their alcoholism and drug abuse programs.

Estimated Effects:

In both areas, the States have recently been successful in providing state support for overall management, training, prevention, and some services programs. It is expected that the States will continue to maintain support for all projects formerly funded under the formula programs which are of high State priority.

Outlay Effects: (in millions of dollars)

1981 Outlay Estimate 1/		Outlay Savings			
Without Rescission	With Rescission	1981	1982	1983	1984
1,066.8	1,009.9	7.6	42.8	—	—

1/ Outlay estimates are for the entire year and include the effect of a follow-on rescission proposal of $9.4 million planned if the funding level provided by P.L.96-536 is extended for the remainder of FY 1981.

801-26

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Alcohol, Drug Abuse and Mental Health

Of the funds provided for "Alcohol, Drug Abuse and Mental Health" for fiscal year 1981 in P.L. 96-536, [illegible] $57,140,000 are rescinded.

Rescission Proposal No: R 81-27

PROPOSED RESCISSION OF BUDGET AUTHORITY
Report Pursuant to Section 1012 of P.L. 93-344

Agency Department of Health and Human Services	New budget authority (P.L. 96-536) $491,634,000
Bureau Health Resources Administration	Other budgetary resources 2,741,000
Appropriation title & symbol: Health Resources 75X0712	Total budgetary resources 494,375,000
	Amount proposed for rescission $70,663,000 1/
OMB identification code: 75-0712-0-1-550	Legal authority (in addition to sec. 1012): ☐ Antideficiency Act ☐ Other
Grant program ☒ Yes ☐ No	
Type of account or fund: ☒ Annual ☐ Multiple-year (expiration date) ☐ No-year	Type of budget authority: ☒ Appropriation ☐ Contract authority ☐ Other

Justification:

The programs funded by this appropriation seek to maintain and expand the supply of health professionals in the United States.

During the 1960's and 1970's, the supply of health professionals has increased dramatically, primarily as a result of Federal subsidies to expanded numbers of health professions students and training programs. The current supply of health professionals is adequate and an oversupply for most specialties is now predicted prior to 1990. In recognition of these trends, a rescission of $70.7 million is proposed for 1981 for funds provided under the continuing resolution. This rescission proposal also reflects the policy of placing Federal emphasis on service-connected loan and scholarship programs such as: National Health Service Corps Scholarships and Health Professions Loan Repayment, and relying on Department of Education programs for general student assistance.

Estimated Effects:

Health Professions Education--Start Up (-$1,788,000)

A rescission of $1.8 million is proposed for the Start-up program. The purpose of Start-up grants is to provide support to new schools of medicine, osteopathy, dentistry, public health, veterinary medicine, optometry, pharmacy or podiatry so that they may accelerate the beginning date of instruction or substantially increase enrollments. Because of a current and growing oversupply of physicians and other health professionals, increasing the capacity of health professions institutions is no longer a desirable objective.

The remaining 0.9 million has been approved for reprogramming to the financial distress program to provide additional support to Meharry Medical College. The rescission would result in the elimination of support for 4 projects which would have received continuation grants in 1981.

Allied Health--Special Projects Grants and Contracts (-$4,200,000)

A rescission of $4.2 million is proposed. This program provides grants and contracts to assist eligible entities in meeting costs of projects to establish regional or State systems for improved coordination, training and credentialling of allied health personnel.

The revised funding level of $1.0 million would support 13 continuation awards, 1 contract and 12 cooperative agreements (MEDMIC) at a reduced rate. This represents a reduction of 9 continuation projects and 47 new awards from the number which could be supported by the amount currently available in 1981.

Allied Health--Advanced Traineeships (-$1,500,000)

A rescission of $1.5 million is proposed in training grants for allied health professionals. This program provides grants to public or nonprofit institutions, organizations, or agencies for the support of both long and short-term advanced traineeship programs at the post professional level. Support for 42 projects and 175 long-term and 1,313 short-term training slots would be eliminated as a result of the rescission.

Health Professions Education--Nurse Traineeships (-$13,000,000)

A rescission of $13 million is proposed for Nurse Traineeships. The purpose of this program is to provide support to eligible public or non-profit institutions who then make traineeship awards to individual professional nurses who are pursuing advanced educational preparation. The rescission would eliminate support for 125 grants.

Student Assistance-Health Professions Student Loans (-$12,500,000)

A rescission of $12.5 million is proposed for the Health Professions Student Loans Program. The remaining $4 million is proposed for reprogramming to the Health Professions Loan Repayment program. The purpose of the Student Loans program is to provide long-term, seven percent interest loans up to $2,500 per year, plus tuition, to health professions students (HCOB/VOPP). These loan funds are given to schools who then make awards to students. The total reduction of $16.5 million from the Health Professions Student Loan program would eliminate support to 311 schools which would have provided loans to 11,000 additional students.

Special Educational Programs--Health Professions Educational Improvement and Development Projects (-$4,500,000)

A rescission of $4.5 million is proposed. This program provides

Dental Extenders (-$1,000,000)

A rescission of $1.0 million is proposed for the Expanded Function Dental Auxiliary (EFDA) program. This program provides additional training to dental hygienists and dental assistants to qualify them to

Special Educational Programs--Health Professions Educational Improvement and Development Projects (-$4,500,000)

A rescission of $4.5 million is proposed. This program provides funds for the planning, development, demonstration, and evaluation of targeted health manpower activities such as those emphasizing humanistic medicine, environmental and occupational health, health manpower development, special problems of aging, human nutrition, and development of regional systems of continuing education and preventive medicine. Support for 35 projects in these areas would be eliminated.

Special Educational Programs--Emergency Medical Training (-$3,000,000)

A rescission of $3.0 million is proposed for this program. The program provides grants and contracts for the training of physicians and other health professionals in life-saving techniques under emergency situations.

The rescission assumes State, local and private resources will finance the training of emergency medical personnel. The training is of short duration and is provided essentially to meet local needs. Support for 22 projects, 2 contracts and training for 6,468 emergency medical services personnel would be eliminated as a result of the proposed rescission.

Health Professions Education Nursing Capitation Grants (-$24,000,000) and Advanced Nurse Training (-$8,243,000)

A rescission of $32.2 million is proposed for institutional support for nursing schools.

Nursing supply problems that may exist in certain geographic and specialty areas are not directly related to the existing capacity of nursing schools, which is adequate to meet overall needs. Consequently, these funds are not necessary for addressing national priorities with respect to nursing. This reduction would result in 1,130 schools not receiving support through formula funding (486 Baccalaureate, 502 Associate Degree and 142 Diploma) and would eliminate 21 current Advanced Nurse Training awards.

General Dentistry Residencies and Training (-$4,030,000)

A rescission of $4.1 million is proposed for general dentistry residencies and training. This program provides grants to plan, develop, and implement programs to provide dental residents with advanced skills in the general practice of dentistry. The rescission would eliminate funding in 1981 for 14 continuation and 28 new projects assisting 240 students. Both this and the following rescission proposal specifically reflect the Administration's assessment that the current supply of dental health professionals is adequate.

Dental Extenders (-$1,900,000)

A rescission of $1.9 million is proposed for the Expanded Function Dental Auxiliary (EFDA) program. This program provides additional training to dental hygienists and dental assistants to qualify them to perform newly-delegated functions formerly performed by dentists. The amount proposed for rescission would have supported 7 continuation and 17 new projects assisting approximately 1,121 students and faculty.

Outlay Effects: (in millions of dollars)

1981 Outlay Estimate 1/		Outlay Savings			
Without Rescission	With Rescission	1981	1982	1983	1984
641.8	634.4	7.4	36.0	21.1	8.4

1/ An additional amount is planned to be proposed for rescission if additional 1981 funding is provided for Health Resources after the present continuing resolution expires on June 5, 1981 as follows:

Interdisciplinary training	--	$ 4,000,000
Advanced nurse training	--	3,000,000
Nursing scholarships	--	9,000,000
Health professions capitation	--	71,870,000
Total		$87,870,000

2/ Assumes extension of the level of funding provided by P.L. 96-536 for the entire fiscal year.

R81-2*

DEPARTMENT OF HEALTH AND HUMAN SERVICES
Health Resources Administration
Health Resources

Of the funds provided for Health Resources for fiscal year 1981 in P.L. 96-536, $78,683,000 are rescinded: Provided, that the funds appropriated under this head in P.L. 96-536 for carrying out Title VII of the Public Health Service Act shall be available notwithstanding the limitations of Section 736(g).

Rescission Proposal No: 881-28

PROPOSED RESCISSION OF BUDGET AUTHORITY

Report Pursuant to Section 1012 of P.L. 93-344

Agency: Health and Human Services	New budget authority (through P.L. 96-536): $ 185,250,000
Bureau: Human Development Services	Other budgetary resources:
Appropriation title & symbol: Human Development Services (Administration on Aging - Social Services & Centers) 75X1636	Total budgetary resources: [illegible]
	Amount proposed for rescission: $ 10,000,000
OMB identification code: 75-1636-0-1-999	Legal authority (in addition to sec. 1012): ☐ Antideficiency Act ☐ Other
Grant program: ☒ Yes ☐ No	
Type of account or fund: ☒ Annual ☐ Multiple-year (expiration date) ☐ No-year	Type of budget authority: ☒ Appropriation ☐ Contract authority ☐ Other

Justification: The Human Development appropriation includes programs for the Aging which have as their primary purpose the improvement of the quality of services to the elderly population. Within the aging programs, a rescission of $10 million is proposed in FY 1981 for social services and senior centers consistent with the President's 1981 budget request.

Estimated Effects: The amount appropriated under the continuing resolution (P.L. 96-536) includes $10,000,000 in excess of the President's 1981 budget request. Under the Older Americans Act Amendments of 1978, States were required to complete a transfer of social service activities previously funded under the Act's nutrition title to the social services title. Additional funds were provided in fiscal year 1980 to effect this transfer. Because there is no current programmatic need for additional funds in 1981, no adverse programmatic effects are anticipated from this action.

Outlay Effects: (In millions of dollars)

1981 Outlay Estimate		Outlay Savings		
Without Rescission	With Rescission	1981	1982	1983
213.7	213.0	0.7	6.3	—

881-28

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Human Development Services
Human Development Services

Of the funds provided for "Human Development Services" for fiscal year 1981 in P.L. 96-536, $10,000,000 of budget authority and $10,000,000 of outlays are rescinded.

Rescission Proposal No: 881-29

PROPOSED RESCISSION OF BUDGET AUTHORITY

Report Pursuant to Section 1012 of P.L. 93-344

Agency: Department of Housing & Urban Development	New budget authority (P.L. 96-536): $ 10,000,000
Bureau: Housing Programs	Other budgetary resources:
Appropriation title & symbol: Congregate Services Program 865/40178, 880/40178 and 881/40178	Total budgetary resources:
	Amount proposed for rescission: $ 10,000,000
OMB identification code: 86-0178-0-1-604	Legal authority (in addition to sec. 1012): ☐ Antideficiency Act ☐ Other
Grant program: ☒ Yes ☐ No	
Type of account or fund: ☐ Annual ☒ Multiple-year 9/30/84 (expiration date) ☐ No-year	Type of budget authority: ☒ Appropriation ☐ Contract authority ☐ Other

Justification

This program is currently being operated as a demonstration program out of funds appropriated for fiscal years 1979 and 1980. Funds appropriated for 1981 are not required to carry out the evaluation of this program now being conducted.

Estimated Effects

The 1981 appropriation now proposed for rescission would have provided meal services and some supportive services to an estimated 700 elderly residents of public housing and housing for the elderly or handicapped. However, such services may also be available through other Federal social service programs as well as social service agencies of States and local governments. The proposed rescission will have no effect on the evaluation of this program now being conducted by the Office of Policy Development and Research of the Department of Housing and Urban Development.

Outlay Effects: (In millions of dollars)

1981 Outlay Estimate		Outlay Savings			
Without Rescission	With Rescission	1981	1982	1983	1984
3.0	3.0	—	1.0	1.0	3.0

881-29

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Congregate Services Program

Of the funds appropriated under this head in the Department of Housing and Urban Development Independent Agencies Appropriation Act, 1981, $10,000,000 are rescinded.

Rescission Proposal No: 881-30

PROPOSED RESCISSION OF BUDGET AUTHORITY

Report Pursuant to Section 1012 of P.L. 93-344

Agency: Community Services Administration	New budget authority: $ 6,000,000
Bureau: Community Action	Other budgetary resources:
Appropriation title & symbol: Community Services Administration 75X1644	Total budgetary resources:
	Amount proposed for rescission: $ 6,000,000
OMB identification code: 75-1644-0-1-506	Legal authority (in addition to sec. 1012): ☐ Antideficiency Act ☐ Other
Grant program: ☒ Yes ☐ No	
Type of account or fund: ☒ Annual ☐ Multiple-year (expiration date) ☐ No-year	Type of budget authority: ☒ Appropriation ☐ Contract authority ☐ Other

Justification: The Community Services Administration appropriation includes programs for the poor which have as their primary purpose the improvement of the quality of services to the poor population. Within the poor programs, a rescission of $6 million is proposed in FY 1981 for social services and senior centers consistent with the President's 1981 budget request.

Estimated Effects: The amount appropriated under the continuing resolution (P.L. 96-536) includes $6,000,000 in excess of the President's 1981 budget request. Under the Older Americans Act Amendments of 1978, States were required to complete a transfer of social service activities previously funded under the Act's nutrition title to the social services title. Additional funds were provided in fiscal year 1980 to effect this transfer. Because there is no current programmatic need for additional funds in 1981, no adverse programmatic effects are anticipated from this action.

Outlay Effects: (In millions of dollars)

1981 Outlay Estimate		Outlay Savings		
Without Rescission	With Rescission	1981	1982	1983
128.0	127.8	0.2	3.8	—

881-30

COMMUNITY SERVICES ADMINISTRATION

Community Action

Of the funds provided for "Community Services Administration" for fiscal year 1981 in P.L. 96-536, $6,000,000 of budget authority and $6,000,000 of outlays are rescinded.

Rescission Proposal No: 881-31

PROPOSED RESCISSION OF BUDGET AUTHORITY

Report Pursuant to Section 1012 of P.L. 93-344

Agency: Federal Mine Safety and Health	New budget authority: $ 3,140,000
Bureau: Mine Safety and Health	Other budgetary resources:
Appropriation title & symbol: Mine Safety and Health 75X0105	Total budgetary resources:
	Amount proposed for rescission: $ 3,140,000
OMB identification code: 75-0105-0-1-554	Legal authority (in addition to sec. 1012): ☐ Antideficiency Act ☐ Other
Grant program: ☐ Yes ☒ No	
Type of account or fund: ☒ Annual ☐ Multiple-year (expiration date) ☐ No-year	Type of budget authority: ☒ Appropriation ☐ Contract authority ☐ Other

Justification: The Federal Mine Safety and Health appropriation includes funds for the Mine Safety and Health Education and Training Activities. A rescission of $3,140,000 is proposed in FY 1981 consistent with the President's 1981 budget request.

Estimated Effects: The amount appropriated under the continuing resolution (P.L. 96-536) includes $3,140,000 in excess of the President's 1981 budget request. Because there is no current programmatic need for additional funds in 1981, no adverse programmatic effects are anticipated from this action.

Outlay Effects: (In millions of dollars)

1981 Outlay Estimate		Outlay Savings		
Without Rescission	With Rescission	1981	1982	1983
118.0	117.8	0.2	2.9	—

881-31

FEDERAL MINE SAFETY AND HEALTH

Mine Safety and Health

Of the funds provided for "Federal Mine Safety and Health" for fiscal year 1981 in P.L. 96-536, $3,140,000 of budget authority and $3,140,000 of outlays are rescinded.

Of the funds provided for "Human Development Services" for fiscal year 1981 in P.L. 96-536, making further continuing appropriations for the fiscal year 1981, $10,000,000 are rescinded.

Of the funds appropriated under this head in the Department of Health and Human Services Consolidated Operating Appropriations Act, 1981, $10,000,000 are rescinded.

Rescission Proposal No: 881-30

PROPOSED RESCISSION OF BUDGET AUTHORITY
Report Pursuant to Section 1012 of P.L. 93-344

Agency: Community Services Administration	New budget authority (P.L. 96-536): $6,000,000
Bureau: Community Services Program	Other budgetary resources: ---
Appropriation title & symbol: Community Services Program 8110000	Total budgetary resources: 6,000,000
	Amount proposed for rescission: $6,000,000
OMB identification code: 81-0500-0-1-999	Legal authority (in addition to sec. 1012): ☐ Antideficiency Act ☐ Other
Grant program: ☒ Yes ☐ No	
Type of account or fund: ☒ Annual ☐ Multiple-year ____ (expiration date) ☐ No-year	Type of budget authority: ☒ Appropriation ☐ Contract authority ☐ Other

Justification: The National Youth Sports Program duplicates activities and programs sponsored by other Federal agencies and State and local governments. Further, the program does not contribute to CSA's primary objective of assisting low income families to achieve economic self-sufficiency. Therefore, the program is not recommended for continuation in 1981.

Estimated Effects: This rescission proposal would result in cancellation of this program in 1981.

Outlay Effects: (in millions of dollars)

1981 Outlay Estimate		Outlay Savings			
Without Rescission	With Rescission	1981	1982	1983	1984
138.8	134.8	4.0	2.0	---	---

881-30

Community Services Program

Of the funds provided for the "National Youth Sports Program" for fiscal year 1981 in P.L. 96-536, making further continuing appropriations for the fiscal year 1981, $8,000,000 are rescinded.

Rescission Proposal No: 881-31

PROPOSED RESCISSION OF BUDGET AUTHORITY
Report Pursuant to Section 1012 of P.L. 93-344

Agency: Federal Mine Safety and Health Review Commission	New budget authority (P.L. 96-536): $3,140,000
Bureau:	Other budgetary resources: ---
Appropriation title & symbol: Salaries and Expenses 95:2000	Total budgetary resources: 3,140,000
	Amount proposed for rescission: 163,000
OMB identification code: 95-2000-0-1-554	Legal authority (in addition to sec. 1012): ☒ Antideficiency Act ☐ Other
Grant program: ☐ Yes ☒ No	
Type of account or fund: ☒ Annual ☐ Multiple-year ____ (expiration date) ☐ No-year	Type of budget authority: ☐ Appropriation ☐ Contract authority ☐ Other

Justification:

This appropriation provides for adjudication of contested Labor Department enforcement actions under the Federal Mine Safety and Health Amendments Act of 1977.

The Commission's workload depends on the number of citations issued by the Mine Safety and Health Administration (MSHA). Since the number of MSHA citations is expected to decline in 1981, a reduction in the Commission's workload is expected. Therefore, the Commission requires a lower employment level to accomplish this workload within its acceptable time limits. This rescission is proposed as a reserve for savings in accordance with the Antideficiency Act (31 USC 665).

Estimated Effects:

Should these funds not be rescinded, they will lapse at the end of fiscal 1981, and this reduction would not adversely affect program requirements.

Outlay Effects:

No outlay savings will result from this proposal since the funds will lapse if they are not rescinded.

881-31

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

Salaries and Expenses

Of the amount provided for "Federal Mine Safety and Health Review Commission, Salaries and Expenses" for fiscal year 1981 in P.L. 96-536, making further continuing appropriations for fiscal year 1981, $163,000 are rescinded.

Rescission Proposal No: 81-32

PROPOSED RESCISSION OF BUDGET AUTHORITY
Report Pursuant to Section 1012 of P.L. 93-344

Agency: United States Postal Service	New budget authority (P.L. 96-536 ___): $ 1,593,212,000
Bureau:	Other budgetary resources: ___
Appropriation title & symbol: Payment to Postal Service Fund 18X1001	Total budgetary resources: 1,593,212,000
	Amount proposed for rescission: $ 250,000,000
OMB identification code: 18-1001-0-1-372	Legal authority (in addition to sec. 1012): ☐ Antideficiency Act ☐ Other ___
Grant program: ☐ Yes ☒ No	
Type of account or fund: ☐ Annual ☐ Multiple-year ___ (expiration date) ☒ No-year	Type of budget authority: ☒ Appropriation ☐ Contract authority ☐ Other ___

Justification: This rescission represents a $250,000,000 reduction in the public service subsidy. The reduction was recommended by the President in the March,1980 Budget Revisions.

Estimated Effects: Prior to the President's $250,000,000 reduction recommendation, the Postmaster General, in testimony before the Committee on the Post Office, (March 26, 1980) stated that it would be possible for the Postal Service to withstand a $250,000,000 reduction in the Postal Service subsidy. In effecting this cut, the Postal Service would realize increased productivity and operational efficiencies. In accordance with the Postal Reorganization Act of 1970 (P.L. 93-328) no funds are being withheld pending congressional action on this rescission proposal.

Outlay Effects: Since the appropriation is made to the fund the rescission would result in a corresponding decrease in the total fund amount by the Department of the Treasury.

(in millions of dollars)

1981 Outlay Estimate		Outlay Savings			
Without Rescission	With Rescission	1981	1982	1983	1984
1,590	1,343	250	---	---	---

881-32

POSTAL SERVICE

Payment to the Postal Service Fund

Of the funds made available for the Federal payment to the Postal Service Fund by P.L. 96-536, unless further continuing appropriations for the fiscal year 1981, $250,000,000 are rescinded.

Rescission Proposal No: 81-33

PROPOSED RESCISSION OF BUDGET AUTHORITY
Report Pursuant to Section 1012 of P.L. 93-344

Agency: Tennessee Valley Authority	New budget authority (P.L. 96-367 ___): $87,563,000
Bureau:	Other budgetary resources: 87,304,000
Appropriation title & symbol: Payment to the Tennessee Valley Authority Fund 64 x 4110	Total budgetary resources: 174,867,000
	Amount proposed for rescission: $177,000,000
OMB identification code: 64-4110-0-3-999	Legal authority (in addition to sec. 1012): ☒ Antideficiency Act ☐ Other ___
Grant program: ☐ Yes ☒ No	
Type of account or fund: ☐ Annual ☐ Multiple-year ___ (expiration date) ☒ No-year	Type of budget authority: ☒ Appropriation ☐ Contract authority ☐ Other ___

Justification: An estimate of $177,000,000 of the total appropriations for fiscal years 1980-1981 of $210,000,000 provided for the Coal Gasification Demonstration Project is proposed for rescission. The amount is proposed for rescission primarily because of its limited technological benefit and high cost as follows:

- The project, from a technology standpoint, is unnecessary, i.e., current plans are to utilize a proven technology which is already in use in 28 sites throughout the world;
- The plant and estimated operational costs, including environmental requirements, are quite high (estimates are now up to $4 billion for construction alone) and appear to be uneconomic from the viewpoint of product marketability;
- Operation of the plant is predicated on construction of a pipeline to connect with an existing gas system. This cost has not been factored into the project nor has TVA sponsored any planning for this aspect of the project;
- The project overlaps Department of Energy responsibilities and projects which are not only underway but also utilize a more advanced and probably more economic technology than that proposed by TVA.

Estimated Effects: The effect of this rescission would be to terminate this project. Preliminary work on the project would be halted. The effect on the delivery date for a coal gasification demonstration project would not be adversely affected because of the Department of Energy's activities in this area that include the Memphis project and the Great Plains Coal Gasification Project, both projects utilizing a more advanced and probably more economic technology.

881-33

Outlay Effects: (in millions of dollars)

1981 Outlay Estimate		Outlay Savings			
Without Rescission	With Rescission	1981	1982	1983	1984
2,327.0	2,170.5	46.5	50.0	50.0	30.5

881-33

TENNESSEE VALLEY AUTHORITY

Tennessee Valley Authority Fund

Of the funds appropriated under this head in P.L. 96-367 making appropriations

Deferral No: DEF-36

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

Agency: Department of Commerce	New budget authority: $ ___

D81-33

TENNESSEE VALLEY AUTHORITY

Tennessee Valley Authority Fund

Of the funds appropriated under this head in P.L. 96-367 making appropriations for Energy and Water Development and in P.L. 96-304 making supplemental appropriations for Energy and Water Development, $177,000,000 are rescinded.

D81-3A

SUPPLEMENTARY REPORT

Report Pursuant to Section 1014(c) of Public Law 93-344

This report updates Deferral No. D81-3 transmitted to the Congress on October 1, 1980 and printed as House Document No. 96-373.

This revision to a deferral of Department of Commerce Knoxville Exposition funds increases the amount previously reported as deferred from $2,867,000 to $3,060,775. This increase of $193,775 is attributable to an adjustment in unobligated balances brought forward on October 1, 1980. The adjustment was necessary because the actual amount of unobligated balances brought forward was $1,044,000 higher than had been originally estimated. The remaining $860,225 has been made available for obligation.

Deferral No: D81-3A

DEFERRAL OF BUDGET AUTHORITY

Report Pursuant to Section 1013 of P.L. 93-344

Agency: Department of Commerce	New budget authority (P.L. ____): $ ____
Bureau: General Administration	Other budgetary resources: 19,688,000*
Appropriation title & symbol: Participation in United States Expositions 1/ 130/41806	Total budgetary resources: 19,688,000*
	Amount to be deferred: Part of year: $ -0-
	Entire year: $ 3,060,775*
OMB identification code: 13-1805-0-1-376	Legal authority (in addition to sec. 1013): ☒ Antideficiency Act
Grant program: ☐ Yes ☒ No	☐ Other ____
Type of account or fund: ☐ Annual ☒ Multiple-year September 30, 1984 (expiration date) ☐ No-year	Type of budget authority: ☒ Appropriation ☐ Contract authority ☐ Other ____

Justification: * The Supplemental Appropriations and Rescission Act, 1980 (P.L. 96-304) provided $20,800,000 in funds for necessary expenses for designing, constructing, and operating a Federal Pavilion at the Knoxville International Energy Exposition. The funds were designated to remain available through fiscal year 1984. Of the $19,688,000 remaining available, $17,749,225 is intended for obligation in FY 1981, and $3,060,775 is deferred for use in fiscal years 1982-1984.

This deferral action is consistent with the congressional intent to provide multi-year funding for the total cost of this program and is taken under the provisions of the Antideficiency Act (31 U.S.C. 665).

Estimated Effect: This deferral has no programmatic or budgetary effects because the funds would not be used if made available.

Outlay Effect: This deferral has no effect on outlays.

1/ This account was the subject of a similar deferral in FY 1980 (D80-73).

* Revised from previous report.

Deferral No: 981-27

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

Agency Department of Defense-Military	New budget authority (P.L. 96-527) $7,483,000,000
Bureau	Other budgetary resources 2,000,000
Appropriation title & symbol	Total budgetary resources 7,485,000,000
Shipbuilding and Conversion, Navy 1/ 171/51611	Amount to be deferred: Part of year $ — Entire year 1,125,000,000
OMB identification code: 17-1611-0-1-051	Legal authority (in addition to sec. 1013): ☒ Antideficiency Act ☐ Other
Grant program ☐ Yes ☒ No	Type of budget authority: ☐ Appropriation ☐ Contract authority ☐ Other
Type of account or fund: ☐ Annual ☒ Multiple-year September 30, 1982 (expiration date) ☐ No-year	

Justification: These funds are planned to be deferred through September 30, 1981. Due to the long period of time required to build ships, the Congress makes appropriations available for five-year periods.

Since these funds are, by law, made available beyond the current year, they are not fully apportioned in the current year. The unapportioned amount is withheld and released as the program develops and additional funds are required. The amounts deferred are to be released contingent upon the development of program needs that arise in current and future years.

Prudent financial management requires the deferral of these funds that could not be used effectively during the current year even if made available for obligation.

The above multiple-year funds are currently being deferred under provisions of the Antideficiency Act (31 U.S.C. 665) which authorizes the establishment of reserves for contingencies.

Estimated Effects: Deferral of $1,125,000,000 will have no programmatic or budgetary effect since the funds could not be obligated at this time if made available.

Outlay Effects: This deferral action has no effect on outlays.

1/ This account was the subject of two deferrals during 1980, 980-41 and 980-58.15A.

Deferral No: 981-28

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

Agency Department of Defense - Military	New budget authority (P.L. ——) $ —
Bureau	Other budgetary resources 8,843,723
Appropriation title & symbol	Total budgetary resources 8,843,723
Family Housing, Defense 970/46701*	Amount to be deferred: Part of year $ — Entire year 1,992,000
OMB identification code: 97-0701-0-1-051	Legal authority (in addition to sec. 1013): ☒ Antideficiency Act ☐ Other
Grant program ☐ Yes ☒ No	Type of budget authority: ☒ Appropriation ☐ Contract authority ☐ Other
Type of account or fund: ☐ Annual ☒ Multiple-year September 30, 1981 (expiration date) ☐ No-year	

Justification

These funds were appropriated in 1980 for debt payment in the family housing program. Proceeds from the sales of surplus family housing facilities have resulted in unprogrammed balances in the Family Housing account. The 1982 Budget proposes the reappropriation of these currently excess funds in 1982 in the amount of $1,992,000. These funds are deferred pending completion of congressional action on the 1982 Budget request.

Budgetary Effect

Deferral of these funds will have no programmatic or budgetary effect on the debt payment program since sufficient funds are available to pay the principal and interest on outstanding loans.

Outlay Effect

This deferral action has no effect on outlays.

* This account was the subject of a similar deferral in fiscal year 1980 (980-42) and its fiscal year 1981 (981-6).

981-9A

SUPPLEMENTARY REPORT
Report Pursuant to Section 1014(c) of Public Law 93-344

Deferral No: 981-9A

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

Agency Department of Defense - Civil	New budget authority(16 U.S.C. § 512,000*
Bureau Forest Service	Other budgetary resources —
Appropriation title & symbol	Total budgetary resources 512,000
Forest Roads and Trails 12X1106	Amount to be deferred: Part of year $ — Entire year 512,000
OMB identification code: 12-1106-0-1-302	Legal authority (in addition to sec. 1013): ☒ Antideficiency Act ☐ Other
Grant program ☐ Yes ☒ No	Type of budget authority: ☒ Appropriation ☐ Contract authority ☐ Other
Type of account or fund: ☐ Annual ☒ Multiple-year September 30, 1982 (expiration date) ☐ No-year	

D81-9A

SUPPLEMENTARY REPORT

Report Pursuant to Section 1014(e) of Public Law 93-344

This report updates Deferral No. D81-9 transmitted to the Congress on October 1, 1980, and printed as House Document No. 96-373.

This revision to a deferral of Department of Defense wildlife conservation funds increases the amount originally reported as deferred from $666,615 to $813,618. This increase of $147,003 is attributable to an adjustment in unobligated balances brought forward on October 1, 1980. The adjustment was necessary because the actual amount of unobligated balances brought forward was $147,003 higher than previously estimated.

Deferral No: D81-9A

REFERRAL OF BUDGET AUTHORITY

Report Pursuant to Section 1013 of P.L. 93-344

Agency: Department of Defense - Civil	New budget authority (16 U.S.C. 670 f (a)): $912,000*
Bureau: *	Other budgetary resources: 813,618*
Appropriation title & symbol: See coverage section below	Total budgetary resources: 1,725,618*
	Amount to be deferred: Part of year: $0; Entire year: 813,618*
OMB identification code: See coverage section below	Legal authority (in addition to sec. 1013): [X] Antideficiency Act; [ ] Other
Grant program: [ ] Yes [X] No	
Type of account or fund: [ ] Annual; [ ] Multiple-year (expiration date); [X] No-year	Type of budget authority: [X] Appropriation; [ ] Contract authority; [ ] Other

Coverage * 1/

Appropriation Title	Symbol	OMB Identification Code	Amount Deferred
Wildlife Conservation, Army	21x5095,	21-1300-0-1-303	$690,053
Wildlife Conservation, Navy	17x5095,	17-1501-0-1-303	122,713
Wildlife Conservation, Air Force	57x5095,	57-1502-0-1-303	52,852
			$813,618

Justification*

These are permanent appropriations. The budgetary resources consist of anticipated receipts and unobligated balances generated from hunting and fishing fees collected on military reservations, pursuant to 16 U.S.C. 670. They may be used only in accordance with the purpose of the law--to carry out a program of natural resource conservation.

Since apportionments have been made for all known program requirements, prudent financial management requires the deferral of the balance of the funds, which could not be used effectively during the current year even if made available for obligation. These funds are being deferred under the provisions of the Antideficiency Act (31 U.S.C. 665). Full apportionment is not requested by the Services because (1) installations may be accumulating funds over a period of time to fund a major project, and (2) there is a seasonal relationship between the collection of fees and their subsequent expenditure. Most of the fees are collected during the winter and spring months, while most of the program work is performed during the summer and fall months. This necessitates that funds collected in a prior year be deferred in order to be available to finance the program during the summer and fall months. Additional amounts will be apportioned if program requirements are identified.

D81-9A

Estimated Effect

This deferral has no programmatic or budgetary effect because the funds could not be obligated if made available.

Outlay Effect

This deferral action has no effect on outlays.

* Revised from previous report.

1/ These accounts were the subject of a similar deferral during fiscal year 1980 (D80-68A).

Deferral No: D81-19

DEFERRAL OF BUDGET AUTHORITY

Report Pursuant to Section 1013 of P.L. 93-344

Agency: Department of Energy	New budget authority (P.L. 96-367 & P.L. 96-369): $2,917,321,000
Bureau:	Other budgetary resources: 705,797,250
Appropriation title & symbol: Atomic Energy Defense Activities, Operating Expenses 89X0220	Total budgetary resources: 3,623,118,250
	Amount to be deferred: Part of year: $; Entire year: 5,000,000
OMB identification code: 89-0220-0-1-053	Legal authority (in addition to sec. 1013): [X] Antideficiency Act [ ] Other
Grant program: [ ] Yes [X] No	Type of budget authority: [X] Appropriation [ ] Contract authority [ ] Other
Type of account or fund: [ ] Annual [ ] Multiple-year (expiration date) [X] No-year	

Justification

An Administration decision to place an emphasis on a long term approach towards the resolution of existing technical issues pertaining to the disposal of defense nuclear wastes, and to accomplish these objectives within available budgetary resources.

Estimated Effect

A deferral of $4,000,000 will occur in Defense Nuclear Waste/Long Term Waste Management Technology activities, and a deferral of $1,000,000 will occur in Defense Nuclear Waste/Terminal Storage activities, for a total of $5,000,000. This will result in a deferral of long-term waste management technology program activities including processes for the immobilization of transuranic wastes, and technology development in support of low level wastes. Some technical support for the Waste Isolation Pilot Plant (WIPP) terminal storage activities in New Mexico would be deferred.

Estimated Outlay Effects

This deferral will shift an estimated $5.0 million in outlays from fiscal year 1981 to fiscal year 1982.

Deferral No: D81-20

DEFERRAL OF BUDGET AUTHORITY

Report Pursuant to Section 1013 of P.L. 93-344

Agency: Department of Energy	New budget authority (P.L. 96-367 & P.L. 96-369): $ 565,305,000
Bureau:	Other budgetary resources: 109,783,000
Appropriation title & symbol: Atomic Energy Defense Activities, Plant and Capital Equipment 89X0221	Total budgetary resources: 675,088,000
	Amount to be deferred: Part of year: $; Entire year: 12,000,000
OMB identification code: 89-0221-0-1-053	Legal authority (in addition to sec. 1013): [X] Antideficiency Act [ ] Other
Grant program: [ ] Yes [X] No	Type of budget authority: [X] Appropriation [ ] Contract authority [ ] Other
Type of account or fund: [ ] Annual [ ] Multiple-year (expiration date) [X] No-year	

Justification

An Administration decision was to proceed with the Waste Isolation Pilot Plant (WIPP) construction project in New Mexico and to reserve the New Mexico site as a potential site for a future waste repository.

Estimated Effect

Defers $12M of FY 1981 plant and capital equipment funding for the WIPP project into FY 1982. Unobligated FY 1980 funds for the WIPP project will be available for site protection and characterization in FY 1981. The requested FY 1981 deferral will be available in FY 1982 for these same purposes.

Estimated Outlay Effects

This deferral will shift an estimated $12.0 million in outlays from fiscal year 1981 to fiscal year 1982.

Deferral No: D81-21

DEFERRAL OF BUDGET AUTHORITY

Report Pursuant to Section 1013 of P.L. 93-344

Agency: Department of Energy	New budget authority (P.L. [illegible]): $ 2,344,734,000
Bureau: Energy Programs	Other budgetary resources: 476,398,000
Appropriation title & symbol: Uranium Enrichment Activities, Operating Expenses 89X0218	Total budgetary resources: 2,821,132,000
	Amount to be deferred: Part of year: $; Entire year: 5,000,000
OMB identification code: 89-0218-0-1-053	Legal authority (in addition to sec. 1013): [X] Antideficiency Act [ ] Other
Grant program: [ ] Yes [X] No	Type of budget authority: [X] Appropriation [ ] Contract authority [ ] Other
Type of account or fund: [ ] Annual [ ] Multiple-year (expiration date) [X] No-year	

Justification

An Administration decision to place an emphasis on a long term approach towards the resolution of existing technical issues pertaining to the disposal of defense nuclear wastes, and to accomplish these objectives within available budgetary resources.

Estimated Effect

A deferral of $4,000,000 will occur in Defense Nuclear Waste/Long Term Waste Management Technology activities, and a deferral of $1,000,000 will occur in Defense Nuclear Waste/Terminal Storage activities, for a total of $5,000,000. This will result in a deferral of long-term waste management technology program activities including processes for the immobilization of transuranic wastes, and technology development in support of low level wastes. Some technical support for the Waste Isolation Pilot Plant (WIPP) terminal storage activities in New Mexico would be deferred.

Estimated Outlay Effects

This deferral will shift an estimated $5.0 million in outlays from fiscal year 1981 to fiscal year 1982.

Deferral No: D81-22

DEFERRAL OF BUDGET AUTHORITY

Report Pursuant to Section 1013 of P.L. 93-344

Agency: Department of Energy	New budget authority ([illegible]): $483,867,000
Bureau: Energy Programs	Other budgetary resources: 109,783,000
Appropriation title & symbol: Uranium Enrichment Activities, Plant and Capital Equipment 89X0219	Total budgetary resources: 593,650,000
	Amount to be deferred: Part of year: $; Entire year: 12,000,000
OMB identification code: 89-0219-0-1-053	Legal authority (in addition to sec. 1013): [X] Antideficiency Act [ ] Other
Grant program: [ ] Yes [X] No	Type of budget authority: [X] Appropriation [ ] Contract authority [ ] Other
Type of account or fund: [ ] Annual [ ] Multiple-year (expiration date) [X] No-year	

Justification

An Administration decision was to proceed with the Waste Isolation Pilot Plant (WIPP) construction project in New Mexico and to reserve the New Mexico site as a potential site for a future waste repository.

Estimated Effect

Defers $12M of FY 1981 plant and capital equipment funding for the WIPP project into FY 1982. Unobligated FY 1980 funds for the WIPP project will be available for site protection and characterization in FY 1981. The requested FY 1981 deferral will be available in FY 1982 for these same purposes.

Estimated Outlay Effects

This deferral will shift an estimated $12.0 million in outlays from fiscal year 1981 to fiscal year 1982.

Deferral No: 81-21

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

Agency: Department of Energy	New budget authority (P.L. [illegible]): $ 2,268,734,000
Bureau: Energy Programs	Other budgetary resources: 476,598,000
Appropriation title & symbol: Energy Supply Research and Development Activities, Operating Expenses 89X0224	Total budgetary resources: 2,473,236,000
	Amount to be deferred: Part of year: $ -0-
	Entire year: 23,860,000
OMB identification code: 89-0224-0-1-271	Legal authority (in addition to sec. 1013): ☐ Antideficiency Act ☐ Other
Grant program: ☐ Yes ☒ No	
Type of account or fund: ☐ Annual ☐ Multiple-year (expiration date) ☒ No-year	Type of budget authority: ☒ Appropriation ☐ Contract authority ☐ Other

Justification:

$16.1 million is deferred in the Nuclear Fission program, reflecting a Presidential decision to place an emphasis on a long term approach towards the resolution of existing technical issues pertaining to disposal of commercial nuclear wastes, and to accomplish these objectives within available budgetary resources. A deferral of $18,000,000 would occur in Commercial Nuclear Waste Terminal Isolation Research and Development activities, and a deferral of $1,100,000 would occur in Commercial Nuclear Waste/Waste Treatment Technology activities.

Also, in order to help limit Federal spending in accordance with the President's policy of fiscal restraint, $1.8 million in funds for the Energy Storage program and $6.0 million in funds for the Solar Energy program are deferred for the remainder of this fiscal year.

Estimated Effects:

The deferral in the Nuclear Fission program primarily reduces the recent rate of growth in R&D pertaining to commercial waste disposal, and also stretches out some disposal site investigation activities, to a modest extent.

Because of the magnitude of the funds involved, the Energy Storage and Solar Energy deferral actions are not expected to have any significant effect on program objectives.

Outlay Effects:

This deferral action will have the effect of shifting $23.8 million to FY 1981 outlays from FY 1982.

Deferral No: 81-22

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

Agency: Department of Energy	New budget authority (P.L. [illegible]): ($83,937,000)
Bureau: Energy Programs	Other budgetary resources: 44,472,000
Appropriation title & symbol: Energy Supply, Research and Development Activities, Plant and Capital Equipment 89X0225	Total budgetary resources: 427,928,000
	Amount to be deferred: Part of year: $ -0-
	Entire year: 3,000,000
OMB identification code: 89-0225-0-1-271	Legal authority (in addition to sec. 1013): ☐ Antideficiency Act ☐ Other
Grant program: ☐ Yes ☒ No	
Type of account or fund: ☐ Annual ☐ Multiple-year (expiration date) ☒ No-year	Type of budget authority: ☒ Appropriation ☐ Contract authority ☐ Other

Justification:

A decision to reduce the level of support for the Commercial Nuclear Waste Terminal Repository activities funded through the Energy Supply Research and Development Activities Operating Expenses account decreases requirements for supporting capital equipment that is funded through this account. Therefore, $1.9 million is deferred in the Nuclear Fission program.

Also, in order to help limit Federal spending in accordance with the President's policy of fiscal restraint, additional funds totaling $1.8 million are deferred for the remainder of this fiscal year out of this account. This amount includes $1.7 million for solar energy capital equipment purchases and $0.1 million for construction of the Solar Energy Research Institute.

Estimated Effects:

In the Nuclear Fission program, this reduction in requirements for supporting capital equipment will not adversely impact other plant and capital equipment activities.

Because of the magnitude of the funds involved, the solar deferral action is not expected to have any significant effect on program objectives.

Outlay Effects:

This deferral action will have the effect of shifting $2.7 million to FY 1981 outlays from FY 1982.

Deferral No: 981-33

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

Agency: Department of Energy	New budget authority (P.L. 96-514): $423,300,000
Bureau: Energy Programs	Other budgetary resources: 162,645,023
Appropriation title & symbol: Fossil Energy Construction 89X0214	Total budgetary resources: 585,945,023
	Amount to be deferred: Part of year: -0- / Entire year: 42,000,000
CFS identification code: 89-0214-0-1-271	Legal authority (in addition to sec. 1013): ☐ Antideficiency Act ☐ Other
Grant program: ☐ Yes ☒ No	
Type of account or fund: ☐ Annual ☐ Multiple-year _____ (expiration date) ☒ No-year	Type of budget authority: ☒ Appropriation ☐ Contract authority ☐ Other

Justification

Funds are proposed for deferral on the grounds that proceeding with the second High-Btu demonstration project (77-1-b) will eliminate project competition between CONOCO and ICRA on the first High-Btu demonstration and reduce Government's ability to obtain satisfactory cost sharing and other business arrangements with the industrial partners.

Estimated Effects

It is planned to release these funds at the time the project proposals are reviewed and a project selected. If this occurs in FY 1981 there will be little impact on the work by the contractors. Should additional funds be required prior to this selection to maintain design terms, the required amounts would be proposed for release.

Outlay Effects

This deferral will shift $42.0 million in outlays from fiscal year 1981 to fiscal year 1982.

Deferral No: 981-34

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

Agency: Department of Energy	New budget authority (P.L. 96-514): $810,102,000
Bureau: Energy Programs	Other budgetary resources: 23,898,000
Appropriation title & symbol: Energy Conservation 89X0215	Total budgetary resources: 834,000,000
	Amount to be deferred: Part of year: -0- / Entire year: 10,400,000
CFS identification code: 89-0215-0-1-999	Legal authority (in addition to sec. 1013): ☐ Antideficiency Act ☐ Other
Grant program: ☒ Yes ☐ No	
Type of account or fund: ☐ Annual ☐ Multiple-year _____ (expiration date) ☒ No-year	Type of budget authority: ☒ Appropriation ☐ Contract authority ☐ Other

Justification:

In order to help insure Federal spending is accordance with the President's policy of fiscal restraint, funds totalling $10.4 million for various energy conservation programs are deferred for the remainder of this fiscal year. FY 1981 obligations will be delayed until early FY 1982 for the Buildings and Community Systems Program ($1.6 million), Transportation Energy Conservation ($1.5 million), Multi-Sector ($0.3 million), and Energy Impact Assistance ($7.0 million).

Estimated Effects:

This deferral is slightly more than a 1% delay in program activity. It will have no significant impact on major program objectives of conserving energy.

Outlay Effects:

This deferral will have the effect of shifting $10.4 million in outlays from FY 1981 into FY 1982.

Deferral No: 981-35

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

Agency: Department of the Interior	New budget authority (P.L. 96-514): $1,000,000
Bureau: Bureau of Land Management	Other budgetary resources: 0
Appropriation title & symbol: Payments to States from Receipts, Mineral Leasing 14X5105	Total budgetary resources: 1,000,000
	Amount to be deferred: Part of year: -0- / Entire year: 1,000,000
CFS identification code: 14-5105-0-2-306	Legal authority (in addition to sec. 1013): ☐ Antideficiency Act ☐ Other
Grant program: ☐ Yes ☒ No	
Type of account or fund: ☐ Annual ☐ Multiple-year _____ (expiration date) ☒ No-year	Type of budget authority: ☒ Appropriation ☐ Contract authority ☐ Other

Justification:

Payments to States from Receipts, Mineral Leasing, are made from receipts collected from the sale of coal, oil, gas, and other minerals leased from the public domain. Payments are made to States in which the leased lands are located. Payments are made in the following fiscal year after receipts are collected. Payments to States for FY 1981 are estimated at $1,000,000 based on receipts collected in FY 1980. Actual receipts collected in FY 1980 were $1,000,000 less than estimated. Therefore, payments to States for FY 1981 are deferred.

Estimated Effects:

None. Payments to States for FY 1981 will be made in FY 1982 when receipts collected in FY 1981 are available.

Outlay Effects:

This deferral will have the effect of shifting $1,000,000 in outlays from FY 1981 into FY 1982.

In light of industry's demonstrated interest and the accelerated leasing schedule, the Administration anticipates that early exploration and development will take

Deferral No: 81-35

DEFERRAL OF BUDGET AUTHORITY

Report Pursuant to Section 1013 of P.L. 93-344

Agency: Department of the Interior	New budget authority (P.L. ____): $ 107,601,000
Bureau: U.S. Geological Survey	Other budgetary resources: 26,007,207
Appropriation title & symbol: Exploration of National Petroleum Reserve in Alaska 14X0805	Total budgetary resources: 133,608,207
OMB identification code: 14-0805-0-1-271	Amount to be deferred: Part of year: $ 7,940,000
Grant program: ☐ Yes ☒ No	Entire year: 2,730,000
Type of account or fund: ☐ Annual ☐ Multiple-year _____ (expiration date) ☒ No-year	Legal authority (in addition to sec. 1013): ☐ Antideficiency Act ☐ Other _____
	Type of budget authority: ☒ Appropriation ☐ Contract authority ☐ Other _____

Justification: Public Law 96-514, making appropriations for the Department of the Interior and related agencies, 1981, provided $105.5 million for petroleum exploration activities of the Geological Survey in the National Petroleum Reserve in Alaska (NPRA). Of the $105.5 million appropriated, $10.7 million was provided to prepare for a FY 1982 drilling program. Of this amount, $7,940,000 is deferred until April 30, 1981 and $2,730,000 is deferred for the remainder of this fiscal year. The deferred funds are needed to cover the costs of completing the exploration program on the two wells begun in FY 1980, and the four wells to be drilled in FY 1981, now finished.

After the FY 1981 exploration season is complete, 20 exploratory wells will have been drilled and over 13,000 line miles of seismic surveys will have been collected and interpreted under the exploration program. The entire Reserve is now covered with a reconnaissance seismic grid and all of the 16 indicated petroleum plays have been penetrated by at least one test well. The drilling and seismic data collected by this program are available for public distribution.

Congress clearly expressed its intent to expedite leasing in NPRA by inclusion in the FY 1981 Interior and related agencies appropriations bill language authorizing private exploration and drilling in NPRA. It is estimated that the first lease sale can perhaps be held as early as December 1981. In addition, several private industry firms have applied for a total of six permits to collect seismic data on the Reserve in FY 1981. Some permits have been issued and the remaining permits should be issued shortly. The Department is actively soliciting additional applications for geophysical exploration and has issued a call for nominations.

81-35

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In light of industry's demonstrated interest and the accelerated leasing schedule, the Administration anticipates that early exploration and development will take place in NPRA-A by private industry. Private exploration activities will start in January 1981 with the issuing of geophysical permits. This will provide for an overlap in FY 1981 between the government funded exploration program and the private exploration program. This shifting of responsibility for oil and gas exploration and development to private industry is good public policy, fiscally prudent in that it could result in savings to the public of up to $125 million in fiscal 1982 alone.

Estimated Effects: This deferral action will permit the orderly termination of the government drilling program in FY 1981 with funds currently appropriated. It will preclude drilling any additional wells in FY 1982. Total obligations will not be affected. Terminating the program in FY 1981, rather than commencing after a FY 1982 drilling program, will avoid 1982 expenditures of up to approximately $125.0 million.

Outlay Effect: This deferral action will have the effect of shifting $2,730,000 in outlays from FY 1981 into 1982.

81-16A

SUPPLEMENTARY REPORT

Report pursuant to Section 1014(c) of Public Law 93-344.

This report revises Deferral No. 81-16 transmitted to the Congress on October 1, 1980, and printed on House Document No. 96-373.

The current deferral for the Federal Prison System's Buildings and Facilities account is $27,894,000, an increase of $4,000,000 over the amount previously deferred. This increase is attributable to (a) changes in obligational plans for the Phoenix Federal Correctional Institution which is now being cancelled, and (b) unobligated balances actually carried forward from 1980 which were $540,000, higher than previously estimated.

Deferral No: 081-16A

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

Agency Department of Justice	New budget authority (P.L. 96-536) $ 2,953,000
Bureau Federal Prison System	Other budgetary resources 40,237,419
Appropriation title & symbol	Total budgetary resources 43,079,419
Buildings and Facilities 15X1003 1/	Amount to be deferred: Part of year $ 19,000,000
	Entire year
OMB identification code: 15-1003-0-1-753	Legal authority (in addition to sec. 1013): ☐ Antideficiency Act ☐ Other
Grant program ☐ Yes ☒ No	
Type of account or fund: ☐ Annual ☐ Multiple-year (expiration date) ☒ No-year	Type of budget authority: ☒ Appropriation ☐ Contract authority ☐ Other

Justification: This appropriation finances planning, acquisition of sites, and construction of new penal and correctional facilities as well as construction, remodeling and equipping of buildings and facilities at existing penal and correctional institutions. Projects are undertaken to reduce overcrowding, close old and antiquated penitentiaries and provide a safe and humane environment for staff and inmates. These funds were appropriated in the Departments of State, Justice and Commerce, the Judiciary and Related Agencies Appropriation Act of 1980 and previous years.

A decision has been made to cancel construction of the Phoenix Federal Correctional Institution. Funds intended for this purpose ($10.5 million) as well as funds remaining from previous cancellations ($1.3 million) are deferred pending congressional approval and enactment of a transfer of these funds to help offset supplemental program requirements and increased pay costs in various other Department of Justice accounts.

Estimated Effects: The effect of this deferral is to preserve these funds pending congressional action on the transfer proposal.

Outlay Effect: This deferral action has no effect on outlays.

1/ This account was also the subject of a deferral in FY 1980 (080-178).

Deferral No: 081-36

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

Agency Department of Labor	New budget authority (P.L. 96-536) $1,997,344,000
Bureau Employment and Training Administration	Other budgetary resources 196,380,244
Appropriation title & symbol	Total budgetary resources 2,193,724,244
Employment and Training Assistance 16X0174 1/	Amount to be deferred: Part of year 0
	Entire year 576,699,000
OMB identification code: 16-0174-0-1-504	Legal authority (in addition to sec. 1013): ☐ Antideficiency Act ☐ Other
Grant program ☒ Yes ☐ No	
Type of account or fund: ☐ Annual ☒ Multiple-year 9/30/82 (expiration date) ☐ No-year	Type of budget authority: ☒ Appropriation ☐ Contract authority ☐ Other

Note: If the financing levels provided by the Continuing Resolution (PL 96-536) were to be continued beyond June 5, 1981, an additional $36,903,000 would be deferred.

Justification

As part of the effort to minimize budget deficits in fiscal years 1981 and 1982, it has been decided to phase out the Young Adult Conservation Corps program by the end of 1982, starting now, and to reduce the 1981 Summer Youth Employment Program to a participant level closer to that actually achieved in 1979 and 1980. The Young Adult Conservation Corps program is being phased out because it is extremely costly per year of service and because it does not primarily serve disadvantaged youth most in need. The phase-out will be accomplished by not enrolling any new participants. The summer program funding is being reduced because the 1979 and 1980 programs appear to have substantially met the seasonal need of disadvantaged youth for summer part-time jobs.

Estimated effects

In the Young Adult Conservation Corps program, 1981 enrollment would average 15,400, compared to the 19,700 financed by the continuing resolution.

Deferral No: 081-37

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

Estimated effects

In the Young Adult Conservation Corps program, 1981 enrollment would average 16,400, compared to the 19,700 financed by the continuing resolution. Enrollment at the end of 1981 would be 11,200 instead of 19,900. In the summer program, the estimated range of part-time work opportunities would be 800,000 to 900,000, compared to the 850,000-950,000 range financed by the continuing resolution. The actual number of 1979 enrollees was 865,000; 1980 enrollment is estimated at 839,000.

Outlay effects (in thousands of dollars)

Current outlay estimate for 1981:

Without deferral	7,400,370
With deferral	7,400,000
1981 outlay savings	370 1/

1/ This account was the subject of a deferral in FY 1980 (D80-57).

2/ This amount relates to the outlay savings expected for all of FY 1981 if the Congress maintains the funding level provided in P.L.96-536 for the entire fiscal year.

DEFERRAL OF BUDGET AUTHORITY

Report Pursuant to Section 1013 of P.L. 93-344

Agency Department of State	New budget authority (P.L. 96-536) $15,000,000
Bureau	Other budgetary resources 8,807,496
Appropriation title & symbol	Total budgetary resources 23,807,496
United States Emergency Refugee and Migration Assistance Fund, Executive 1/ 1120040	Amount to be deferred: Part of year $15,000,000
	Entire year
OMB identification code: 11-0040-0-1-151	Legal authority (in addition to sec. 1013): ☒ Antideficiency Act
Grant program ☐ Yes ☐ No	☐ Other
Type of account or fund: ☐ Annual ☐ Multiple-year (expiration date) ☒ No-year	Type of budget authority: ☒ Appropriation ☐ Contract authority ☐ Other

Justification: Section 501(a) of the Foreign Relations Authorization Act, 1976, (Public Law 94-141) and Section 414 (b)(1) of the Refugee Act of 1980 (Public Law 96-212) amended section 2(c) of the Refugee and Migration Assistance Act of 1962 (22 U.S.C. 2601) by authorizing a fund not to exceed $50 million to enable the President to provide emergency assistance for unexpected urgent refugee and migration needs.

By Executive Order No. 11922 of June 16, 1976, the President allocated all funds appropriated to him for the Emergency Fund to the Secretary of State but reserved to himself the determination of assistance to be furnished and the designation of refugees to be assisted by the Fund.

Funds totalling $15 million were made available pursuant to the Continuing Resolution (P.L. 96-536) These funds have been deferred consonant with the President's authority set out in Executive Order No. 11922 and to achieve the most economical use of appropriations. It is anticipated that reapportionments may be made case-by-case as the President determines assistance to be furnished and designates refugees to be assisted by the Fund.

This deferral notice is taken in accordance with the Antideficiency Act (31 U.S.C. 665).

Programmatic Effect: There are no programmatic or budgetary effects resulting from this deferral.

Outlay Effect: No effect on outlays results from this deferral action.

1/ This account was the subject of a similar deferral during FY 1980. (D80-18A).

Deferral No: 081-38

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

Agency: Intelligence Community Staff	New budget authority (P.L. 96-527): $17,824,000
Bureau:	Other budgetary resources: ---
Appropriation title & symbol: Intelligence Community Staff 0104/050	Total budgetary resources: 17,824,000
	Amount to be deferred: Part of year: $9,000,000
	Entire year:
OMB identification code: 95-0400-0-1-054	Legal authority (in addition to sec. 1013): [X] Antideficiency Act
Grant program: [ ] Yes [X] No	[ ] Other
Type of account or fund: [X] Annual [ ] Multiple-year (expiration date) [ ] No-year	Type of budget authority: [X] Appropriation [ ] Contract authority [ ] Other

Justification:

These funds were appropriated to the Intelligence Community Staff with specific congressional guidance that they may not be obligated for the purpose for which they were requested, but may be used as a source for reprogramming for other needs. The funds are deferred in line with congressional intent until alternative uses for these funds are identified.

Estimated Effects:

Since it is anticipated that these funds will be reprogrammed for other uses, this deferral action will have no programmatic effect.

Outlay Effects:

This deferral action has no effect on outlays.

Deferral No: 081-39

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

Agency: National Consumer Cooperative Bank	New budget authority (P.L. 96-526): $26,190,000
Bureau:	Other budgetary resources: 10,900,000
Appropriation title & symbol: Self-Help Development Fund 280/10201 281/20201	Total budgetary resources: 36,090,000
	Amount to be deferred: Part of year: $
	Entire year: 13,133,000
OMB identification code: 28-0201-0-1-376	Legal authority (in addition to sec. 1013): [X] Antideficiency Act
Grant program: [ ] Yes [X] No	[ ] Other
Type of account or fund: [ ] Annual [X] Multiple-year 9/30/81 1/ and 9/30/82 (expiration date) [ ] No-year	Type of budget authority: [X] Appropriation [ ] Contract authority [ ] Other

Justification: These funds were provided by the Department of Housing and Urban Development - Independent Agencies Appropriation Act, 1980 (P.L. 96-526) for capitalization of the Self-Help Development Fund. Because the Fund is beginning operations later than expected, a reduced level of lending is expected during 1981. The deferral of $13.1 million to fiscal year 1981 reflects this later-than-expected start.

This deferral action is taken in accordance with the Antideficiency Act (31 U.S. C. 665).

Estimated Effect: This deferral has no programmatic or budgetary effect because the funds would not be obligated if made available.

Outlay Effect: This deferral action has no effect on outlays.

1/ None of these funds is deferred.

Deferral No: 081-40

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

Deferral No: 081- 41

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

Deferral No: 381-40

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

Agency: Pennsylvania Avenue Development Corporation	New budget authority (P.L. 95-514): $ 15,000,000
Bureau:	Other budgetary resources: 43,895,323
Appropriation title & symbol: Land Acquisition and Development Fund 42X4084	Total budgetary resources: 58,895,323
	Amount to be deferred: Part of year: $ 30,895,323
	Entire year:
OMB identification code: 42-4084-0-3-451	Legal authority (in addition to sec. 1013): ☐ Antideficiency Act
Grant program: ☐ Yes ☒ No	☐ Other
Type of account or fund: ☐ Annual ☐ Multiple-year (expiration date) ☒ No-year	Type of budget authority: ☐ Appropriation ☐ Contract authority ☒ Other: Borrowing

Justification: The land acquisition and development project for the eastern sector of the Pennsylvania Avenue Development plan (cost of the FBI headquarters building) is being reevaluated. The study is designed to determine if it is feasible to construct residential housing within the Pennsylvania Avenue Development area in downtown Washington, D.C. The change in property values and demand for space that has occurred since the development of the 1974 plan makes this study desirable.

Estimated Effects: The Corporation presently is refraining from all actions that would unduly restrict options during the preliminary stages of the study. This deferral action will postpone new design and construction activity for the eastern sector of the Pennsylvania Avenue Development Project.

Outlay Effects: This deferral has the effect of shifting $20.0 million in FY 1981 outlays into FY 1982 and $10.8 million in outlays from FY 1982 into 1983.

Deferral No: 381-41

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 96-344

Agency: Small Business Administration	New budget authority (P.L. 96-536): $ 609,000,000
Bureau:	Other budgetary resources: 532,228,096
Appropriation title & symbol: Business Loan and Investment Fund 73X4154	Total budgetary resources: 1,141,228,096
	Amount to be deferred: Part of year: $ ---
	Entire year: 57,900,000
OMB identification code: 73-4154-0-3-376	Legal authority (in addition to sec. 1013): ☐ Antideficiency Act
Grant program: ☐ Yes ☒ No	☐ Other
Type of account or fund: ☐ Annual ☐ Multiple-year (expiration date) ☒ No-year	Type of budget authority: ☒ Appropriation ☐ Contract authority ☐ Other

Justification: The resolution providing further continuing appropriations for fiscal year 1981 (P.L. 96-536) provided $609 million 1981 as a capital appropriation for the Business and Investment Fund. This amount would fund the direct loan program at a level that is $57.5 million higher than the level proposed by the President. Since these additional funds are not needed to provide an adequate program level in FY 1981, they are deferred for the remainder of this fiscal year and will be used for program requirements in FY 1982.

Estimated Effects: The effect of this deferral will be to reduce SBA's 1981 direct business loan activity by approximately 14 percent. The effects of this reduction should be mitigated, however, since guaranteed loan levels will increase by 14 percent.

Outlay Effect (in millions of dollars):

1981 Outlay Estimate		Outlay Savings			
Without deferral	With deferral	1981	1982	1983	1984
600.0	559.7	-40.3	-17.2	---	---

[FR Doc. 81-2260 Filed 1-19-81; 10:17 am]
BILLING CODE 3195-01-C

federal register

Wednesday
January 21, 1981

Part XIII

Department of Defense

Office of the Secretary

Privacy Act of 1974; Annual Publication of Systems of Records

V. 44 / No. 13 / JAN. 2, 1979

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AGENCY: D

SUMMARY:
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DEPARTMENT OF DEFENSE

Privacy Act Issuances; Annual Recompilation of System Notices

AGENCY: Department of Defense (DoD).

SUMMARY: Section 5 U.S.C. 552a(e)(4) of the Privacy Act of 1974 (Pub. L. 93–579) requires each Federal Agency to annually publish notice of the existence and character of certain records they maintain. The DoD notices were published last year in the Federal Register at FR Doc. 79–37052 (44 FR 73702), December 17, 1979 and were incorporated by the Office of the Federal Register into "Privacy Act Issuances—1979 Compilation." The purpose of this document is to update the notices published on December 17, 1979 and to publish in full those record systems that have been added or amended since then. The following Components have either opted to completely republish or are required to completely republish as they amended all of their records systems during the year:

U.S. Navy
U.S. Marine Corps
Defense Investigative Service
Defense Mapping Agency
Defense Intelligence Agency
National Security Agency
Defense Nuclear Agency

All other Components are publishing complete systems notices only for all new and amended systems and lists reflecting the identities of systems deleted since the December 17, 1979 publication as well as lists of the identities of all unchanged systems.

DATES: This document fulfills the annual notice requirement of the Privacy Act of 1974; (5 U.S.C. 552a(e)(4)).

FOR FURTHER INFORMATION CONTACT: Lt. Col. William C. Goforth, USAF; Staff Executive, Defense Privacy Board, Room 816, Pomponio Plaza Building, 1735 N. Lynn Street, Arlington, VA 22209 telephone (202) 694–3027.

SUPPLEMENTARY INFORMATION: The Department of Defense published its annual recompilation of system notices at FR Doc. 79–37052 (44 FR 73702) December 17, 1979. Notices concerning systems of records within the Department which deleted, added or amended system notices appearing in that document have been published in the Federal Register at:

FR Doc. 79–36400 (44 FR 67703) November 27, 1979
FR Doc. 79–36964 (44 FR 68946) November 30, 1979
FR Doc. 79–36796 (44 FR 68947) November 30, 1979
FR Doc. 79–36912 (44 FR 75446) December 20, 1979
FR Doc. 80–594 (45 FR 1658) January 8, 1980
FR Doc. 80–596 (45 FR 1660) January 8, 1980
FR Doc. 80–595 (45 FR 1662) January 8, 1980
FR Doc. 80–2008 (45 FR 5514) January 23, 1980
FR Doc. 80–4470 (45 FR 9316) February 12, 1980
FR Doc. 80–5162 (45 FR 10840) February 19, 1980
FR Doc. 80–5420 (45 FR 11523) February 21, 1980
FR Doc. 80–6232 (45 FR 13181) February 28, 1980
FR Doc. 80–6233 (45 FR 13182) February 28, 1980
FR Doc. 80–6599 (45 FR 13794) March 3, 1980
FR Doc. 80–7517 (45 FR 15804) March 11, 1980
FR Doc. 80–8135 (45 FR 17056) March 17, 1980
FR Doc. 80–8307 (45 FR 17827) March 19, 1980
FR Doc. 80–8533 (45 FR 20992) March 31, 1980
FR Doc. 80–10014 (45 FR 21673) April 2, 1980
FR Doc. 80–13709 (45 FR 29385) May 2, 1980
FR Doc. 80–14965 (45 FR 32037) May 15, 1980
FR Doc. 80–15428 (45 FR 33577) May 20, 1980
FR Doc. 80–15427 (45 FR 33579) May 20, 1980
FR Doc. 80–15479 (45 FR 34034) May 21, 1980
FR Doc. 80–15774 (45 FR 34951) May 22, 1980
FR Doc. 80–15775 (45 FR 34956) May 23, 1980
FR Doc. 80–16549 (45 FR 37254) June 2, 1980
FR Doc. 80–17286 (45 FR 38088) June 6, 1980
FR Doc. 80–18213 (45 FR 41049) June 17, 1980
FR Doc. 80–18501 (45 FR 41478) June 19, 1980
FR Doc. 80–19603 (45 FR 43841) June 30, 1980
FR Doc. 80–20130 (45 FR 54613) July 7, 1980
FR Doc. 80–20317 (45 FR 45038) July 8, 1980
FR Doc. 80–20779 (45 FR 46842) July 11, 1980
FR Doc. 80–21847 (45 FR 49936) July 22, 1980
FR Doc. 80–23111 (45 FR 50661) July 31, 1980
FR Doc. 80–22755 (45 FR 51124) July 31, 1980
FR Doc. 80–23574 (45 FR 51674) August 5, 1980
FR Doc. 80–23575 (45 FR 51680) August 5, 1980
FR Doc. 80–24237 (45 FR 53508) August 12, 1980
FR Doc. 80–24703 (45 FR 54398) August 15, 1980
FR Doc. 80–25327 (45 FR 55506) August 20, 1980
FR Doc. 80–25328 (45 FR 55508) August 20, 1980
FR Doc. 80–25325 (45 FR 55516) August 20, 1980
FR Doc. 80–26397 (45 FR 57514) August 28, 1980
FR Doc. 80–26398 (45 FR 57515) August 28, 1980
FR Doc. 80–26399 (45 FR 57518) August 28, 1980
FR Doc. 80–28059 (45 FR 58646) September 4, 1980
FR Doc. 80–28060 (45 FR 58651) September 4, 1980
FR Doc. 80–27242 (45 FR 58933) September 5, 1980
FR Doc. 80–27978 (45 FR 59938) September 11, 1980
FR Doc. 80–29171 (45 FR 62871) September 22, 1980
FR Doc. 80–29170 (45 FR 62874) September 22, 1980
FR Doc. 80–29172 (45 FR 62876) September 22, 1980
FR Doc. 80–29169 (45 FR 62879) September 22, 1980
FR Doc. 80–29774 (45 FR 57514) September 26, 1980
FR Doc. 80–30761 (45 FR 65648) October 3, 1980
FR Doc. 80–32460 (45 FR 68998) October 17, 1980
FR Doc. 80–32462 (45 FR 69282) October 20, 1980
FR Doc. 80–32461 (45 FR 69280) October 20, 1980
FR Doc. 80–32715 (45 FR 69837) October 21, 1980
FR Doc. 80–33133 (45 FR 70298) October 23, 1980
FR Doc. 80–33134 (45 FR 70301) October 23, 1980
FR Doc. 80–33683 (45 FR 71412) October 28, 1980
FR Doc. 80–34705 (45 FR 73728) November 6, 1980
FR Doc. 80–35625 (45 FR 75734) November 17, 1980
FR Doc. 80–35629 (45 FR 75737) November 17, 1980
FR Doc. 80–36278 (45 FR 76720) November 20, 1980
FR Doc. 80–36277 (45 FR 76713) November 20, 1980
FR Doc. 80–36774 (45 FR 76748) November 25, 1980
FR Doc. 80–36773 (45 FR 76748) November 25, 1980
FR Doc. 80–36775 (45 FR 76747) November 25, 1980
FR Doc. 80–37122 (45 FR 79527) December 1, 1980
FR Doc. 80–37239 (45 FR 79877) December 2, 1980
FR Doc. 80–37241 (45 FR 79875) December 2, 1980
FR Doc. 80–37416 (45 FR 80165) December 3, 1980
FR Doc. 80–37980 (45 FR 80868) December 8, 1980
FR Doc. 80–37982 (45 FR 80869) December 8, 1980

AVAILABILITY OF 1979 COMPILATION: "Privacy Act Issuances—1979 Compilation" is available from Regional Depository Libraries at 50 locations around the country and can be examined at these libraries free of charge. The 1979 Compilation is also available at the General Services Administration Federal Information Centers, which are located at 30 central points around the country and may be examined at the central headquarters of the Department of Defense Components. It is also available for purchase from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402. Upon request, the Office of the Federal Register will furnish a photocopy of the full text of a particular records system published in the 1979 Compilation for a nomal fee.

M. S. Healy,
OSD Federal Register Liaison Officer, Washington, Headquarters Services, Department of Defense.
January 6, 1981.

BILLING CODE 3810-70-M

DEPARTMENT OF THE ARMY

Deleted Systems

AFAI-1

System Name:

Federal Acquisition Personnel Information System

AFAI-2

System Name:

Individual Credentialing Services Program

A0007.02aDAPC

System Name:

Information Personnel Files

A0102.02aDARCOM

System Name:

Office Personnel Register Files

A0102.04bNGB

System Name:

Supervisor's Record of Technician Employment (NGB)

A0225.06aTRADOC

System Name:

Resource Accounting System

A0225.06cDACS

System Name:

Management of Army ADP

A0314.17aDAAG

System Name:

Individual Transaction Files (Customer Orders)

A0316.10DAIG

System Name:

Program Management and Review System (PROMARS)

A0508.09DAPE

System Name:

FBI Criminal-Type Reporting Files

A0708.03bDAPC

System Name:

Office General Reference/ Information/Personnel File

A0708.21bDACA

System Name:

Statement of Employment Files

A0711.02aDAPE

System Name:

Personnel Research Survey Questionnaire and Test Records

A0719.01aDAPE

System Name:

BOQ (Background Opinion Questionnaire)

A0719.01bDAPE

System Name:

Attitude Surveys

A0720.04bDAPE

System Name:

Individual Correctional Treatment Files

A0723.02aUSAREUR

System Name:

AYA Registration Files

A0807.09aDAPE

System Name:

Grievances and Appeals Under Negotiated Grievance Procedure

A0810.10aDAEN

System Name:

Military Construction Training Files

A0810.15AMC

System Name:

Training Summary

A0812.04DAPE

System Name:

NAF Complaint Appeal and Grievance Case Files

A0915.03DASG

System Name:

Temperature, Pulse, and Respiration Files

A0916.06DASG

System Name:

Installation X-ray Index Files

A0917.07DASG

System Name:

Clinical Psychology Individual Case Files

A0917.08DASG

System Name:

Social Work Individual Case Files

A0902.02aDASG

System Name:

Civilian Consultation Service Case Files

A0920.02bDASG

System Name:

Military Consultation Service Case Files

A0920.04DASG

System Name:

American Red Cross Consultation Service Case Files

A0921.01aDASG

System Name:

Army Medical X-ray Film Files

A0921.08DASG

System Name:

Patient Treatment X-ray Films

A0926.01DASG

System Name:

Dental Health Record Files

A0926.02DASG

System Name:

Military Dental Files

A0926.03DASG

System Name:

Civilian Dental Files

A0926.05DASG

System Name:

American Red Cross Dental Files

A0927.01DASG

System Name:

Extra Oral Dental X-ray Files

A0929.04aDASG

System Name:

Animal Death Certificate Files

A1001.07bDAPE

System Name:

Training Performance Rating (TPR)

A1001.07dUSAREUR

System Name:

Training Management System

A1001.08aMTMC

System Name:

Computer Directed Training System (CDTS)

A1008.05aUSAMSSA

System Name:

SMART (System to Manage AMSSA Required Training)

A1011.04bDAMO

System Name:

Delphi Evaluation

A1012.01dAMC

System Name:

Student Selection Files

A1012.03rUSACSC

System Name:

Training/Development records USACSC Military Personnel

A1012.04bTRADOC

System Name:

Resident Student Record System (RSR)

A1012.04cDAPE

System Name:

Correspondence School Academic Data File

A1012.04dDAPE

System Name:

Resident Student Electives Assignment File

A1012.04eDAPE

System Name:

Resident Student Evaluation System File

A1012.04fDAPE

System Name:

Resident Student Biographical Data Base

A1012.04gDAPE

System Name:

Resident Section Assignment File

A1012.10aDASG

System Name:

AMEDD Training Application Status Record

A1014.07bDAPE

System Name:

Correspondence School Basic Data File

A1417.02DALO

System Name:

Authorized Supply Representative Card Files

A1417.03DALO

System Name:

Authorized Supply Representatives Card Register Files

Unchanged Systems

AAFES0207.02

System Name:

Customer Comments, Complaints, & Direct Line Files

AAFES0306.03

System Name:

Debriefing Acknowledgment Files

AAFES0306.04

System Name:

Classified Material Access Files

AAFES0306.12

System Name:

Personnel Security Case Files

AAFES0306.13

System Name:

Personnel Security Status Files

AAFES0307.01

System Name:

Carpooling Program

AAFES0401.04

System Name:

Official Personnel Folders (OPF)

AAFES0401.05

System Name:

Employee Service Record Card Files

AAFES0401.11

System Name:

Personnel Records Maintained at Supervisory Level

AAFES0403.01

System Name:

Application for Employment Files

AAFES0403.04

System Name:

College Recruitment Files

AAFES0403.05

System Name:

Employee Examination Records

AAFES0403.06

System Name:

Reference and Pre-employment Credit Files

AAFES0403.11

System Name:

Personnel Clearance Records

AAFES0403.12

System Name:

Oversea Processing Records

AAFES0404.01

System Name:

Incentive Awards Case Files

AAFES0404.03

System Name:

Award Control Files

AAFES0404.04

System Name:

Award Ceremony Files

AAFES0405.03

System Name:

Personnel Appeals and Grievances

AAFES0405.05

System Name:

Statement of Employment and Financial Interests

AAFES0405.07

System Name:

Retirement Assistance Files

AAFES0405.11

System Name:

Individual Health Records

AAFES0405.15

System Name:

Retirement Extension Files

AAFES0406.12a

System Name:

Skills Bank File (Employee Skills Survey)

AAFES0406.12b

System Name:

Employee Career Development Plan File

AAFES0408.05

System Name:

Individual Trainee Files

AAFES0408.08

System Name:

Trainee Card Index

AAFES0408.14

System Name:

Tuition Assistance Case Files

AAFES0408.15

System Name:

Correspondence Course Files

AAFES0409.01

System Name:

AAFES Accident Report

AAFES0410.01

System Name:

Employee Travel Files

AAFES0410.04

System Name:

Passport Files

AAFES0501.01

System Name:

AAFES No-Notice Evaluation Report File

AAFES0501.04

System Name:

Universal Annual Photograph Files

AAFES0505.02

System Name:

IO Biographical Files

AAFES0602.01

System Name:

Claims v. AAFES

AAFES0602.04a

System Name:

Litigation Initiated by AAFES

AAFES0602.04b

System Name:

Litigation Against AAFES Employees and/or AAFES

AAFES0604.02

System Name:

Unfair Labor Practice Claim/Charges Files

AAFES0702.01

System Name:

Paid Disbursement Files

AAFES0702.22

System Name:

Check-Cashing Privilege Suspense Files

AAFES0702.23

System Name:

Check-Cashing Privilege Files

AAFES0702.23b

System Name:

Dishonored Check Files

AAFES0702.34

System Name:

Accounts Receivable Files

AAFES0702.43

System Name:

Travel Advance Register Files

AAFES0702.44

System Name:

Travel Advance—Trial Balance Files

AAFES0703.01

System Name:

AAFES Time Sheets

AAFES0703.02

System Name:

Payroll Allotment Files

AAFES0703.03

System Name:

United States Savings Bond Register Files

AAFES0703.05

System Name:

Personnel Action/Discrepancy Notice Files

AAFES0703.07

System Name:

Payroll Register Files

AAFES0703.09

System Name:

Employer's Copy of Income Tax Withheld

AAFES0703.10

System Name:

Employer's Quarterly Federal Tax Return Files

AAFES0703.11

System Name:

Wage and Separation Information Report Files

AAFES0703.12

System Name:

Payroll Adjustment Files

AAFES0703.13

System Name:

Levy and Garnishment Files

AAFES0703.14

System Name:

Payroll Report Files

AAFES0704.04

System Name:

Group Insurance Card Files

AAFES0704.05

System Name:

Retirement Card Files

AAFES0704.06

System Name:

Group Insurance Printout Files

AAFES0704.07

System Name:

Fidelity Bond Files

AAFES0704.08

System Name:

Accidental Death & Dismemberment Administrative Files

AAFES0704.09

System Name:

Personal Property Claim Files

AAFES0704.10

System Name:

Insurance Claims Files—Workmen's Compensation

AAFES0704.11

System Name:

Short/Long Term Disability Files

AAFES0704.12

System Name:

Miscellaneous Employee Claim Files

AAFES0704.13

System Name:

Annuity Eligibility Files

AAFES0704.14

System Name:

Waiver of Premium Files

AAFES0704.15

System Name:

Individual Retirement Files

AAFES0704.18

System Name:

Paid Death Claim Files

AAFES0803.01

System Name:

AAFES Incident Record

AAFES0903.06a

System Name:

Systems Magnetic Tape Files

AAFES0903.06c

System Name:

Systems Magnetic Tape Files

AAFES0903.06d

System Name:

Personal Property Transfer System

AAFES0903.06e

System Name:

Personal Profile

AAFES0903.06f

System Name:

Personnel Management Information System (PMIS)

AAFES1100.31

System Name:

Personal Data Card

AAFES1203.03

System Name:

Appointment of Contracting Officers

AAFES1204.07

System Name:

Customers' Merchandise Returned for Repair or Replacement

AAFES1300.01

System Name:

Progression Analysis Report (PAR)

AAFES1504.02

System Name:

Personal Property Shipment Files

AAFES1504.03

System Name:

Personal Property Storage Files

AAFES1504.04

System Name:

Carrier/Contractor Management Files

AAFES1609.03

System Name:

AAFES Catalog System (ACS)

A0101.20aAMC

System Name:

Classified Matter Inventory Reporting Files

A0102.03aDAAG

System Name:

Office Personnel Locator/ Organizational Rosters

A0102.06aDAAG

System Name:

Army Community Service (ACS) Volunteer Record

A0102.08bMTMC

System Name:

Casualty Control Card

A0124.06aUSAREC

System Name:

Recruiter Assignment Report

A0201.06aDACS

System Name:

Central Files, Office of the Chief of Staff

A0201.06cOSA

System Name:

Central Files, Office, Secretary of the Army (SAAA)

A022101aOSA

System Name:

Committee Management Files

A0224.04DAIG

System Name:

Inspector General Investigative Files

A0224.05aDAIG

System Name:

Inspector General Complaint Files

A0225.01aDAPE

System Name:

Military Police Management Information System (MPMIS)— Correctional Reporting System (CRS)

A0225.01bDAPE

System Name:

Carpool Information/Registration System

A0225.06bDACS

System Name:

MISO Management (TWV)

A0225.06cDACS

System Name:

Management of Army ADP

A0225.07aDACS

System Name:

Teleprocessing Customer Identification System

A0225.09aAMC

System Name:

Computer Technology Files

A0225.09bDARCOM

System Name:

Visual Information System (VIS) Utilization

A0225.11aDAAG

System Name:

Master Index (NMI)

A0225.11eDAPC

System Name:

Enlisted Master File (EMF)

A0225.11gDAPC

System Name:

Recruit Quota System (Request)

A0225.11iDAPC

System Name:

Enlisted Evaluation System

A0225.11kDACS

System Name:

Computer Users Information System

A0225.11lDACS

System Name:

Consultant Reference System

A0225.12aDACS

System Name:

Data Processing Installation Control System

A0228.01DAMH

System Name:

Historian's Background Material

A0228.03DAMH

System Name:

Historical Inquiry Files

A0228.04aDAMH

System Name:

Historical Photographic Files

A0228.11DAAG

System Name:

Memorialization Board Files

A0301.07aDAAG

System Name:

Army Club Membership Registration System

A0301.08aDACA

System Name:

Military and Civilian Waiver Files

A0301.08bDACA

System Name:

Contractor Indebtedness Files

A0302.03aDACA

System Name:

Subsidiary Ledger Files (Accounts Receivable)

A0302.06aDAIG

System Name:

Travel Advance Accounting System (TAAS)

A0302.06bDACA

System Name:

Absentee Apprehension/Reward/ Expenses Payment System

A0305.05aDACA

System Name:

Travel Payment System

A0305.08aDACA

System Name:

Military Pay System-Active Army (Manual)

A0305.10aDACA

System Name:

Joint Uniform Military Pay System-Active Army (JUMPS-AA)

A0305.10bDACA

System Name:

Joint Uniform Military Pay System-Reserve Components-Army

A0305.10cDACA

System Name:

Joint Uniform Military Pay System-Retired Pay

A0305.10dDACA

System Name:

Health Program Pay and Reimbursement System

A0305.11aDAPE

System Name:

USMA Cadet Pay and Accounts System

A0306.01aDACA

System Name:

Civilian Employee Pay System

A0306.02aDACA

System Name:

Nonappropriated Fund Employee Pay System

A0306.05aDAAG

System Name:

Resource Management and Cost Accounting Files

A0314.08aDAAG

System Name:

Check Cashing Privilege Files

A0314.09aDACA

System Name:

Nonappropriated Fund Accounts Receivable System

A0314.24DAAG

System Name:

Nonappropriated Fund Employee Insurance Files

A0314.03aDAAG

System Name:

Nonappropriated Fund Instrumentality Membership Files

A0319.04DACA

System Name:

Validation Files

A0319.06DACA

System Name:

Household Goods Shipment Excess Cost Collection Files

A0319.07DACA

System Name:

Federal Housing Administration (FHA) Mortgage Payment Insurance Files

A0319.10DACA

System Name:

Conversion Files

A0319.11DACA

System Name:

Disbursing Office Establishment and Appointment Files

A0319.13DACA

System Name:

Bankruptcy Processing Files

A0319.14DACA

System Name:

Pecuniary Charge Appeal Files

A0320.01aDAEN

System Name:

Corps of Engineers Management Information Sytem Files

A0401.02bDAAG

System Name:

Mailing List for Army Newspapers/ Periodicals

A0401.07aOSA

System Name:

Media Contact Files

A0401.07bOSA

System Name:

Medal of Honor Recipient Files (Vietnam Era)

A0401.06DAJA

System Name:

Prosecutorial Files

A0402.01aDAJA

System Name:

General Legal Files

A0402.05aDAPE

System Name:

Employment and Financial Interest Statement Files

A0402.06DAJA

System Name:

Legal Assistance Case Files

A0402.07DAJA

System Name:

Legal Assistance Interview Record Files

A0403.01aDAJA

System Name:

U.S. Army Claims Service Management Information System (USARCS MISO)

A0403.06DAJA

System Name:

Tort Claim Files

A0403.16DAJA

System Name:

Army Property Claim Files

A0403.17DAJA

System Name:

Medical Expense Claim Files

A0403.18DAAG

System Name:

Claims Back-up File

A0404.06aDAPE

System Name:

USMA Legal Files on Military and Civilian Personnel

A0405.02DAJA

System Name:

Foreign Jurisdiction Case Files

A405.04DAJA

System Name:

Foreign Jurisdiction Reporting Files

A0406.01aDAJA

System Name:

Patent, Copyright, Trademark, and Proprietary Data Files

A0406.01bUSAREUR

System Name:

Civil Process Case Files and Reference Files

A0407.01aDAJA

System Name:

Patent, Copyright, and Trademark Soliciting Files

A0408.01aDAJA

System Name:

Patent, Copyright, and Data License Proffers, Infringement Claims, and Litigation Files

A0410.01DAJA

System Name:

Litigation Case Files

A0410.04DAJA

System Name:

Judicial Information Release File

A0411.03bDAAG

System Name:

Congressional Correspondence Files

A0411.03cOSA

System Name:

Congressional Inquiry File

A0411.08aOSA

System Name:

Biographical Files of Members of Congress

A0412.01aDAAG

System Name:

Funeral Plans

A0412.05aOSA

System Name:

Press Interest Reference Files

A0412.07DAJA

System Name:

Witness Appearance Files

A0412.14aOSA

System Name:

Biography Files

A042.18aOSA

System Name:

Correspondence (Civilian Aides to the Secretary of the Army)

A0501.02aDAMO

System Name:

Security Issues Symposium

A0501.06eUSACIDC

System Name:

Informant Register

A0501.10DAMI

System Name:

Counterintelligence Research File System (CIRFS)

A0502.03aDAMI

System Name:

Intelligence Collection Files

A0502.03bDAMI

System Name:

Technical Surveillance Index

A0502.08aDAMI

System Name:

Badge and Credential Files

A0502.10aDAMI

System Name:

USAINSCOM Investigative Files System

A0503.03aDAMI

System Name:

Department of the Army Operational Support Activities Files

A0503.08aDAMI

System Name:

Counterintelligence Operations Files

A0506.01fDAMI

System Name:

Personnel Security Clearance Information Files

A0506.01jUSAREUR

System Name:

Employee Screening Program/ Installation Access Files

A0506.04USACIDC

System Name:

US Army Criminal Investigation Fund Vouchers

A0506.07aUSACIDC

System Name:

Criminal Investigation Accreditation Files

A0506.11aUSACIDC

System Name:

Criminal Investigation and Crime Laboratory Files

A0506.11bUSACIDC

System Name:

Criminal Information Reports and Cross Index Card Files

A0506.11cUSACIDC

System Name:

Special Agent Evaluation Files

A0506.16aDAPE

System Name:

Absentee Case Files

A0506.17aDAPE

System Name:

Military Policy (MP) Reporting Files

A0506.17bUSARJ

System Name:

Blackmarket Monitoring Files

A0506.17cUSARJ

System Name:

Transfer of POV Files

A0506.24aDAPE

System Name:

Serious Incident Reporting Files

A0506.25aUSACIDC

System Name:

Index to Criminal Investigative Case Files

A0509.02aDAAG

System Name:

Security Badge/Identification Card Files

A0509.03aDAPE

System Name:

Trophy Firearm Registration

A0509.04aDAAG

System Name:

Rod and Gun Clubs, Posts, Camps and Stations

A0509.05aTRADOC

System Name:

Camper Trailer Registration Card File

A0509.06aDAPE

System Name:

Registration and Permit Files

A0509.09aDAPE

System Name:

Traffic Law Enforcement Files

A0509.18aDAAG

System Name:

Solicitation Ban List Files

A0509.18bDAPE

System Name:

Expelled or Barred Person Files

A0509.19aDAPE

System Name:

Military Police Investigator Certification Files

A0509.19bUSAREUR

System Name:

US Army, Europe (USAREUR) Motor Vehicle Registry Files

A0509.21aDAPE

System Name:

Local Criminal Information Files

A0601.06aDAAG

System Name:

Club Management Personnel Files

A0603.05aDALO

System Name:

Manpower Utilization Reporting System

A0606.07aDAPE

System Name:

Safety Award Files

A0607.01bDAPE

System Name:

Accident and Incident Case Files; Army Safety Management Information System

A0608.04aDASG

System Name:

Radiation Incident Case Files

A0609.01aDASG

System Name:

Individual Radiation Protection Files

A0611.05aDAAG

System Name:

Individual Gravesite Reservation Files

A0614.01aNGB

System Name:

Equal Opportunity Investigative Files

A0614.03aDAPE

System Name:

Race Relations/Equal Opportunity & Complaint Files

A0701.01aDAPC

System Name:

Classification, Reclassification, Utilization of Soldiers

A0701.02aDAPC

System Name:

Qualitative Management Program (QMP) Appeal File

A0701.02cDAPC

System Name:

Separation Transaction Control/ Records Transfer System

A0701.02eDAPC

System Name:

Military Personnel Management Reports

A0701.02fDAPC

System Name:

Selective/Variable Reenlistment Bonuses

A0701.02gDAPC

System Name:

Dependents of Military Personnel/US Citizen Employees

A0701.07bAMC

System Name:

Retirement Services Control Reference Paper Files

A0701.07cDAPC

System Name:

Enlisted Evaluation System/Report

A0701.07dUSAREC

System Name:

High School Folder (Lead List)

A0701.08DAAG

System Name:

Clemency Project

A0702.03aUSAREC

System Name:

Enlistment Eligibility Files

A0702.04aDAAR

System Name:

OCS Waiver Requests

A0702.04bDAPC

System Name:

Eligibility Determination Files

A0702.08aDASG

System Name:

Army Medical Procurement Applicant Files

A0703.01DAPC

System Name:

Military Personnel Action File

A0703.02aDAPE

System Name:

United States (US) Military Academy Entrance Examination Result Files

A0703.04aDAPC

System Name:

ROTC Member File.

A0703.05aDAPC

System Name:

ROTC Cadet Application Files

A0703.06bDAPC

System Name:

Officer Candidate School (OCS) Application File

A0703.07aDAPE

System Name:

Officer Availability and Civil School Management System

A0703.08aDAPE

System Name:

Officer Personnel Information Files

A0703.09aDAPE

System Name:

Evaluation Files on Cadets and Potential Instructors

A0704.03aDAPE

System Name:

Accelerated Promotion/Early Discharge Report

A0704.04DASG

System Name:

Medical and Dental Registrant Case Files

A0704.06aUSAREC

System Name:

Recruiting Prospect Card Files

A0704.06bTRADOC

System Name:

Army Reserve Officers' Training Corps (ROTC) LEADS Referral Card System

A0704.09aUSAREC

System Name:

Center of Influence Card Files (USAREC Form 125)

A0704.06bDAPE

System Name:

University of Hawaii Army ROTC Alumni

A0704.10aUSAREC

System Name:

Recruiter Malpractice Files

A0704.10bMEPCOM

System Name:

ASVAB Institutional Test Scoring and Reporting System

A0704.11aUSAREC

System Name:

Recruiter Identification Report

A0706.02DAAG

System Name:

Departure Clearance Files

A0706.06aUSAREC

System Name:

Armed Forces Examining and Entrance Station (AFEES) Reporting System

A0707.05DAAG

System Name:

Privilege Card Application Files

A0708.02cDAPC

System Name:

Officer Personnel Management Information System (OPMIS)

A0708.03aDAPE

System Name:

Special Review Board (SRB) Appeal Case Summary File

A0708.05DAAG

System Name:

Emergency Data Files

A0708.06aDAPC

System Name:

Project Managers Development Program (PMDP)

A0708.07DAPE

System Name:

Unfavorable Information Files

A0708.08aDAPC

System Name:

Career Management Individual Files

A0708.08bUSAREC

System Name:

Rapid Electric Ad Coupon Transmission (REACT)

A0708.13aDAIG

System Name:

Inspector General Management Information System

A0708.13cDAPC

System Name:

Foreign Area Officer (FAO) Training

A0708.013dDAPC

System Name:

Enlisted Linguist Data Base (ELDB)

A0708.16aUSREDCOM

System Name:

Military Personnel Data File, USREDCOM

A0708.17bDASG

System Name:

Contract Surgeon Personnel Files

A0708.18aDAAG

System Name:

Line of Duty Investigations

A0708.19aOSA

System Name:

Correction Case Folders

A0708.20DAAG

System Name:

Philippine Army Files

A0709.01aDAPE

System Name:

United States Military Academy Candidate Files

A0709.03aDAPE

System Name:

United States Military Academy Cadet Files

A0709.03bDAPE

System Name:

United States Corps of Cadets Personnel Records

A0709.03cDAPE

System Name:

Admission and Registrar Mailback Card

A0709.05aDAPE

System Name:

Physical Profile

A0709.06aDAPE

System Name:

Alumni Affairs & Gifts Program Division Donor Data System

A0709.07aDAPE

System Name:

Cadet Academic Management Information System

A0709.08aDAPE

System Name:

Cadet Counseling File

A0709.09aDAPE

System Name:

Biographical Card File

A0709.10aDAPE

System Name:

Athletic Pointer File

A0709.11aDAPE

System Name:

United States Military Academy Cadet Record Card

A0709.12aDAPE

System Name:

USMA Admissions Participant Roster and File

A0710.02DAJA

System Name:

JAGC Reserve Components Officer Personnel Records

A0710.05DAAG

System Name:

Career Management Files of Dual Component Personnel

A0710.09DAAG

System Name:

Personnel Management/Action Working Files

A0713.09aTRADOC

System Name:

Skill Qualification Test (SQT)

A0714.02aDAPC

System Name:

Military Personnel Assignment Files

A0714.02dDAPC

System Name:

Central Transient Account System (CTAS)

A0714.02fDAPC

System Name:

Army Military Central Registry System

A0714.04aDAPC

System Name:

Branch Transfer/Detail Files

A0714.06aHSC

System Name:

Army Medical Department Personnel Management and Manpower Control System

A0714.06cDASG

System Name:

AMEDD Personnel Management System

A0715.01aDAPC

System Name:

Personnel Data Card

A0715.06aDAPC

System Name:

Field Military Personnel Information System—SIDPERS

A0715.07bAMC

System Name:

Computerized Time Accounting System (STAS)

A0715.07cUSFK

System Name:

Command Unique Personnel Information Data System (CUPIDS)

A0716.04aDAAG

System Name:

Military Personnel Register Files

A0718.06DAAG

System Name:

World War I Awards and Decorations Card File

A0721.11aDAPE

System Name:

Individual Correctional Treatment Files

A0722.05aDACH

System Name:

Chaplain Counseling/Interview Files

A0722.06aDACH

System Name:

Religious Census, Education & Registration Files

A0722.07aDACH

System Name:

Religious Education Directors

A0723.01DAAG

System Name:

Entertainment Case Files

A0723.03aDAPE

System Name:

Civilian Season Ticket Holders File

A0723.06bDAPE

System Name:

Army Athletic Association Membership File

A0723.06cDACS

System Name:

Pentagon Officers' Athletic Center Membership File

A0723.09aDAAG

System Name:

Recreation Services Program Files

A0725.01aDAAG

System Name:

Child Care Centers—Registration Files

A0725.01bDAAG

System Name:

Financial Management Planning and Counseling

A0725.01cDAPC

System Name:

Personnel Actions—Personal Affairs

A0725.01dDAAG

System Name:

Personal Affairs Army Community Service Assistance File

A0725.06aDAAG

System Name:

Army Emergency Relief Transaction File

A0725.07aDAAG

System Name:

Commercial Business Solicitation Files

A0726.04aDAAG

System Name:

Casualty Case Files

A0726.04bDAAG

System Name:

Report of Casualty, Department of Defense (DD) Form 1300

A0726.06DAAG

System Name:

Casualty Information System (CIS)

A0727.01DAPC

System Name:

Misconduct/Unfitness/Unsuitability Discharge Board Proceedings File

A0727.05aOSA

System Name:

Army Council of Review Boards Files

A0727.05bDAPE

System Name:

DOD Discharge Review Program (Special)

A0727.06aDAPC

System Name:

Temporary Disability Retirement Master List (TDRL)

A0728.01DAAG

System Name:

Retired Personnel Data File

A0802.01aNGB

System Name:

Technician Personnel Management Information System

A0807.05aDPE

System Name:

NAF Personnel Records

A0807.14aDAPE

System Name:

Department of the Army Civilian Personnel Systems

A0808.01aAMC

System Name:

Hazardous Devices Course Graduates

A0810.01aAMC

System Name:

Educational Development/Contractor Personnel

A0810.09DAEN

System Name:

Contract Training File

A0811.05aAMC

System Name:

Civilian Attorney/Patent Adviser Career Files

A0811.05bDAEN

System Name:

Occupational Inventory Files

A0811.06DAPE

System Name:

Referral Program for NAF Employees

A0914.02aDAPE

System Name:

Labor Management Relations Records System

A0903.07DASG

System Name:

Entrance Medical Examination Files

A0904.01aHSC

System Name:

Medical Care Inquiry Files

A0905.03USAREUR

System Name:

Claims Inventory of Active Claims for Medical Care Under CHAMPUS

A0905.04USAREUR

System Name:

Cross Reference List Report of Claims for CHAMPUS

A0906.01DASG

System Name:

Medical Review Files

A0906.02DASG

System Name:

Mental Competency Review Files

A0906.03DASG

System Name:

Medical Classification Files

A0907.02DASG

System Name:

USA Reserve Officer Training Corps (ROTC) Medical Examination Files

A0907.04DASG

System Name:

United States Military Academy (USMA) Medical Qualifications Files

A0909.01DASG

System Name:

Patient Accountability Files

A0909.05DASG

System Name:

Control Card Files

A0910.02DASG

System Name:

Patient Trust Fund and Baggage Files

A0910.06DASG

System Name:

Medical Services Account Files

A0911.05DASG

System Name:

Individual Patient Diet Files (DA Form 2924)

A0912.01aDASG

System Name:

Medical Staff Credentials File

A0912.01bDASG

System Name:

Professional Consultant Control Files

A0912.01cDASG

System Name:

Professional Personnel Information File

A0913.02aDASG

System Name:

Medical Prescription Files

A0914.02aDASG

System Name:

Pathology Consultation Record Files

A0914.04.aDASG

System Name:

Clinical Investigation Record System

A0914.05DASG

System Name:

Blood Donor Files

A0915.01aDASG

System Name:

Nursing Service Schedule Files

A0915.01bDASG

System Name:

Nursing Service Personnel Data and Schedule Files

A0915.02DASG

System Name:

Patient Condition Reporting File

A0915.07DASG

System Name:

Medical Facility Individual Reporting Files

A0916.02aDASG

System Name:

Medical Treatment Indices

A0917.05DASG

System Name:

Spectacle Issue and Receipt Files

A0917.10aDAAG

System Name:

Child Protection Case Management Files

A0918.05DASG

System Name:

Tuberculosis Registry

A0922.01aDASG

System Name:

Occupational Health and Tuberculosis Control System

A0923.01aDASG

System Name:

Individual Safety and Health System

A0924.01DASG

System Name:

Health Nursing Case Files

A0924.02DASG

System Name:

Family Index Files

A0924.04DASG

System Name:

School Health Files

A0925.04aDASG

System Name:

Prosthetic Case Files

A1001.02aTRADOC

System Name:

MASSTER OSUT Individual Basic Training Survey

A1001.07aDAMO

System Name:

Student Research Report Index

A1001.09bDAMO

System Name:

Student Reference Files

A1002.02aTRADOC

System Name:

Assessment of Tank Crew Training

A1002.05aDAPC

System Name:

Enlisted Training Base (ACT)

A1004.03aTRADOC

System Name:

ROTC Financial Assistance (Scholarship) Application File

A1010.03aDAMO

System Name:

National Security Seminar (NSS) Guest Reference File

A1010.07aTRADOC

System Name:

Army School Files

A1010.07bAMC

System Name:

AMC School Files

A1010.07cDAMO

System Name:

Representative of Carlisle and Vicinity

A1010.07dDAMO

System Name:

Biographic Files

A1011.04aDAPE

System Name:

USMA Institutional Research Survey File

A1012.01bDAPE

System Name:

USMAPS Admissions File

A1012.02aDAPC

System Name:

Language School Files

A1012.03aTRADOC

System Name:

Army School Student Files

A1012.03dAMC

System Name:

AMC School Student Files

A1012.03cDAPE

System Name:

USMAPS Academic Files

A1012.03dTRADOC

System Name:

TRADOC Educational Data System (TREDS–ARS)

A1012.03eTRADOC

System Name:

TRADOC Educational Data System (TREDS–NRI)

A1012.03fDASG

System Name:

Army School Student Files, Physicial Therapy Program

A1012.03gDASG

System Name:

Academy of Health Sciences, Student Affiliated Academic Records

A1012.03hDASG

System Name:

Academy of Health Sciences-Nonresident Instruction Files

A1012.03iDLI

System Name:

Standardized Student Records System

A1012.03jHSC

System Name:

Army School Student Files

A1012.03kUSAREUR

System Name:

Individual Academic Record Files

A1012.03lDAAG

System Name:

Reserve Officer Training Corps-Active Duty Training

A1012.03mDAMO

System Name:

United States Army War College Graduate Directory File

A1012.03nTRADOC

System Name:

Nonresident Instruction Automated System (NRIAS)

A1012.03oDAMO

System Name:

US Army War College Cooperative Degree Program Files

A1012.03pDAMO

System Name:

USAWC Individual Student Counseling Records

A1012.03qHSC

System Name:

Resident Instruction & Support Files

A1012.04aDAPE

System Name:

USMAPS Training Files

A1012.04hTRADOC

System Name:

Grade Calculator System

A1012.09aDASG

System Name:

House Staff Evaluation Report File

A1012.11aDASG

System Name:

Continuing Medical Education Course Attendance Files

A1013.01DAPC

System Name:

Civilian School Files

A1013.02aDASG

System Name:

Long Term Civilian Training Student Contract Files

A1013.04aDASG

System Name:

Residency, Subspecialty and Fellowship Training

A1013.05aDASG

System Name:

US Army Graduate Medical Education Trainee Card File

A1014.06aDAAG

System Name:

College Equivalency Evaluation

A1014.07aDAAG

System Name:

Enrollment Application Files

A1014.08aDAAG

System Name:

General Educational Development (GED) Individual Record

A1014.08bDAAG

System Name:

GED Reference Papers/Participation Education Program

A1014.08cDAAG

System Name:

College Transcript Registry System

A1014.10aDAAG

System Name:

Army Apprenticeship Program Participation Files

A1015.01aDAAG

System Name:

Dependent Children School Program Files

A1015.06DAAG

System Name:

School Employee File

A1019.03FORSCOM

System Name:

US Army Marksmanship Unit Data System (AMUDS)

A1101.07aDAMO

System Name:

Telephone Directories

A1101.08aUSACC

System Name:

Operation of Private Radio Station/ Citizen Band Radio

A1106.04USACC

System Name:

MARS Member Files

A1107.17DAMO

System Name:

Photographer Identification Files

A1107.20aDAMO

System Name:

Photographic Caption Files

A1107.21aDAMO

System Name:

Still Picture Files (Personalities/ Categories)

A1106.05aDAAG

System Name:

Postal Personnel Designation Files

A1106.16aDAAG

System Name:

Postal Directory Files

A1106.18DAAG

System Name:

Standing Delivery Order Files

A1111.01aDAPC

System Name:

Individual Flight Record File

A1111.02DAMO

System Name:

Flight Examination Files

A1111.14aUSACC

System Name:

Flight Regulation Violation Files

A1111.16aUSACC

System Name:

Controller Training and Proficiency Record Files

A1201.02aMTMC

System Name:

Transportation Administrative Files

A1201.02bMTMC

System Name:

Discrepancy in Shipment Report (DISREP)

A1201.07aUSAREUR

System Name:

Passenger Reservation Reference Paper Files

A1201.07bMTMC

System Name:

Transportation Reference Paper Files

A1201.07cMTMC

System Name:

Surface Cargo Export System (SURS)

A1201.07eMTMC

System Name:

Surface Retrograde Cargo Accountability/Control System

A1201.07eMTMC

System Name:

Terminal Management System-TOLS, CARDPAC, PRELODGE

A1201.07fMTMC

System Name:

Mechanized Export Traffic System (METS)

A1201.08aTRADOC

System Name:

Marine Personnel Qualifications/ Record of Service Files

A1202.15aUSAREUR

System Name:

Statistical Files-Household Goods and Baggage System

A1203.14aMTMC

System Name:

Bill of Lading Files

A1203.14aMTMC

System Name:

Prepaid Inbound Bill of Lading Files

A1203.18aMTMC

System Name:

Household Shipment Bill of Lading Files

A1203.19aAMC

System Name:

Household Shipment Contract Files

A1203.19cMTMC

System Name:

Household Shipment Contract Files

A1203.19dMTMC

System Name:

Household Shipment Contract/ Nontemporary Storage Files

A1203.20aMTMC

System Name:

Household Shipment Reimbursement Files

A1203.27aMTMC

System Name:

Privately Owned Vehicle Shipment Files

A1205.16aDAAG

System Name:

Passport Files

A1205.17aDALO

System Name:

Passenger Warrant Files

A1205.19aDALO

System Name:

Baggage Inspection and Clearance Files

A1205.20aDALO

System Name:

Local Transportation Authorization Files

A1205.27aDALO

System Name:

Bus Pass File

A1205.30aDAAG

System Name:

Individual Travel Files

A1205.30bMTMC

System Name:

Individual Travel Files

A1207.06aDAPE

System Name:

Operator's Examination & Qualification Record Files

A1207.06bUSAREUR

System Name:

Government Equipment Operator Permit Files

A1207.09aUSAREUR

System Name:

School Bus System (SBS)

A1301.07aAMC

System Name:

Alphabetical Listing of Scientists

A1301.07bAMC

System Name:

Food Taste Test Panel Reference Files

A1301.07cAMC

System Name:

Visiting Scientist Research Associates Reference Files

A1302.15aDAJA

System Name:

Unsolicited Proposal Files

A1304.08aDASG

System Name:

Immunity Booster Files

A1304.21aDASG

System Name:

Sandfly Fever Files

A1401.07aAMC

System Name:

Resumes for Non-Government Technical Personnel

A1401.08aDAAG

System Name:

Alphabetical Library Borrowers' File

A1402.16DAJA

System Name:

Procurement Misconduct Files (Fraud Cases)

A1402.20aUSAREUR

System Name:

Procurement Management Information System Europe

A1403.30aDAAG

System Name:

Commercial Entertainment Transaction Records

A1405.01AMC

System Name:

Contractor Personnel Files

A1416.05DALO

System Name:

Property Officer Designation Files

A1416.16DALO

System Name:

Hand Receipt Files

A1416.20DALO

System Name:

Personal Property Accounting Files

A1416.34DALO

System Name:

Personal Clothing Record Files

A1420.08aAMC

System Name:

Equipment Operator Permit Files

A1420.08AMC

System Name:

Equipment Operator Permit Register Files

A1427.01aDALO

System Name:

Laundry and Dry Cleaning Accounting Files

A1434.10AMC

System Name:

Small Arms Sales Record Files

A1501.07aDAEN

System Name:

Users' Profile System

A1503.08aDAEN

System Name:

Resettlement Files

A1504.06aDAEN

System Name:

Real Estate Outgrants

A1506.02aDAEN

System Name:

Homeowners Assistance Case Files

A1509.11aDAEN

System Name:

Integrated Facilities System (IFS)

A1511.01aDAEN

System Name:

Army Housing Information Management System (HIMS)

A1522.10aDAEN

System Name:

Reservoir Permit Files

A1522.15aDAEN

System Name:

General Permit Files

A1524.11DAEN

System Name:

Violation Warning Files

New and Altered Systems

See System Notices Below.

BILLING CODE 3710-08-M

Defense Mapping Agency

The Defense Mapping Agency is republishing all of their system notices. See System Notices below.

Defense Civil Preparedness Agency

This agency has been discontinued and its functions and mission transferred to the Federal Emergency Management Agency. All Defense Civil Preparedness systems of records have been discontinued and the records transferred to the Federal Emergency Management Agency.

OFFICE OF THE SECRETARY

Deleted Systems

DCOMP SP02

System Name:

Industrial Personnel Security Clearance Case Files

DCOMP SP03

System Name:

Administrative Files on Active Psychiatric Consultants to DoD

DCOMP SP04

System Name:

Motions for Discovery of Electronic Surveillance Files

DOCHA 08

System Name:

DoD Health Services Enrollment/ Eligibility System

DMRA&L 16.0

System Name:

Retired Personnel Master File

DMRA&L 12.0

System Name:

Reserve Components Common Personnel Data System (RCCPDS)

DISA 01

System Name:

ISA Telephone Directory

DISA 02

System Name:

ISA Locator File

DISA 03

System Name:

Organizational Personnel Files and 201 Files

Unchanged Sys

DAE 01

System Name:

Office Social Card

DAE 02

System Name:

03-3 and 03- Files. 03-1b Co

DAS 01

System Name:

Defense Aud Information Sy DATSD 01

System Name:

Files of Pers Presidential Su

DATSD 02

System Name:

Files of Perio Assessments o Management P

DATSD 03

System Name:

Files of Perso career Employ

DCOMP 01

System Name:

Personnel Ro

DCOMP MS01

System Name:

Training Rec

DCOMP MS03

System Name:

Personnel Re

DCOMP MS04

System Name:

Civilian Pay T Report

DCOMP MS05

System Name:

Request for C

DCOMP MS06

System Name:

Time and Att

DCOMP MS07

System Name:

Classified Co SD 411

Unchanged Systems

DAE 01

System Name:

Office Social Roaster and Locator Card

DAE 02

System Name:

03-3 and 03-4 Individual Personnel Files. 03-1b Consultants Files

DAS 01

System Name:

Defense Audit Management Information System (DAS/MIS)

DATSD 01

System Name:

Files of Personnel Evaluated for Presidential Support Duties

DATSD 02

System Name:

Files of Periodic Management Assessments of Certain Key Management Personnel and in OSD

DATSD 03

System Name:

Files of Personnel Evaluated for Non-career Employment in DoD

DCOMP 01

System Name:

Personnel Roster

DCOMP MS01

System Name:

Training Records

DCOMP MS03

System Name:

Personnel Records

DCOMP MS04

System Name:

Civilian Pay Time and Attendance Report

DCOMP MS05

System Name:

Request for Overtime Authorization

DCOMP MS06

System Name:

Time and Attendance Report

DCOMP MS07

System Name:

Classified Container Custodian Data SD 411

DCOMP MS08

System Name:

List of Personnel and Security Clearances

DCOMP PB01

System Name:

Personnel File/Biography

DCOMP PB02

System Name:

Personnel Roster

DCOMP PB03

System Name:

Personnel Roster

DCOMP PB04

System Name:

Personnel Roster

DGC 02

System Name:

Private Relief Legislation File

DGC 03

System Name:

General Administrative File

DHA 04

System Name:

Variable Incentive Pay for Medical Officers—Data Management System

DLA 01

System Name:

Security Clearance File

DLA 02

System Name:

Biographic Data File

DMRA&L 01.0

System Name:

Teacher Correspondence Files

DMRA&L 02.0

System Name:

Teacher Application Files

DMRA&L 06.0

System Name:

Department of Defense Priority Placement Program (STOPPER LIST)

DMRA&L 07.0

System Name:

Department of Defense Overseas Employment Program

DMRA&L 09.0

System Name:

Defense Race Relations Institute (DRRI) Student File

DMRA&L 10.0

System Name:

Equal Opportunity Complaint File

DMRA&L 15.0

System Name:

Reports of Defense-Related Employment

DMRA&L 18.0

System Name:

Administrative Files (MRA&L)

DOCHA 01

System Name:

Health Benefits File

DOCHA 02

System Name:

AR 340-18-9 Medical Care Inquiry Files

DOCHA 03

System Name:

Health Benefits Preapproval Files

DOCHA 04

System Name:

AR 340-18-4 Legal Opinion Files

DOCHA 05

System Name:

Health Facilities File

DOCHA 06

System Name:

AR 340-18-9 Policy and Precedent Files

DOCHA 07

System Name:

Medical Claim History Files

DPA DCR.A01

System Name:

Joint Civilian Orientation Conference Files

DPA DDLA02

System Name:

Biography File

DPA DDL.B03

System Name:

Portrait-Photograph File

DPA DDLC04

System Name:

Case Files

DPA DFOI.A05

System Name:

Freedom of Information Program Case Files

DPA DSR.A06

System Name:

Security Review Index File

DPA DXA.A07

System Name:

Personnel Files

DPA DXA.B06

System Name:

Contact Files

DPA DXA.C09

System Name:

Public Correspondence Files

DPA DXA.D10

System Name:

Privacy Act Request for Access Files

DSMC-01

System Name:

Defense Systems Management College (DSMC) Personnel Information Files

DSMC-02

System Name:

Defense Systems Management College (DSMC) Student Files

DSMC-03

System Name:

Defense Systems Management College (DSMC) Track Record System

DSMC-04

System Name:

Defense Systems Management College (DSMC) Academic Analysis System

DSMC-05

System Name:

Biographical Record System

DSMC-06

System Name:

Defense Systems Management College (DSMC) Mailing List

DUSDRE 02

System Name:

OUSDRE Personnel Administration Files

DWHS BF01

System Name:

Travel Files

DWHS CD01

System Name:

OSD General Correspondence Files

DWHS CD02

System Name:

Cable Division Personnel Administration Files

DWHS P02

System Name:

Job Opportunity Announcements

DWHS P03

System Name:

DoD Program for Stability of Civilian Employment

DWHS P04

System Name:

Reduction-in-Force Case Files

DWHS P05

System Name:

Roster of When Actually Employed Employees

DWHS P06

System Name:

DoD-Wide Civilian Career Program for Comptroller/Financial Management Personnel

DWHS P07

System Name:

Incentive Awards Records

DWHS P08

System Name:

Worker's Compensation-on-the-Job Injuries Report File

DWHS P09

System Name:

Computer Data Base

DWHS P10

System Name:

Training File

DWHS P12

System Name:

Executive Development Programs File

DWHS P13

System Name:

Management Intern File

DWHS P14

System Name:

Blood Donor Files

DWHS P17

System Name:

Assignments Folders

DWHS P18

System Name:

The Office of the Secretary of Defense Identification Badge Suspense Card System

DWHS P19

System Name:

General/Flag Officer Files

DWHS P20

System Name:

Report of Personnel Assigned Outside Department of Defense

DWHS P21

System Name:

Duty Status Cards

DWHS P22

System Name:

General/Flag Officer Roster

DWHS P23

System Name:

Roster of Military Personnel

DWHS P25

System Name:

Overseas Staffing Files

DWHS P26

System Name:

Protective Services Files

DWHS P27

System Name:

Pentagon Building Pass Application File

DWHS P28

System Name:

The Office of the Secretary of Defense Clearance File

DWHS P29

System Name:

Employee Assistance Program Case Record Systems

DWHS P30

System Name:

Labor Management Relations Records Systems

DWHS P32

System Name:

Standard of Conduct Inquiry File

DWHS P33

System Name:

Statements of Affiliations and Financial Interests File

DWHS P34

System Name:

Non-career Personnel Job Files

DWHS P36

System Name:

Award Records for Military-Office of the Secretary of Defense (OSD) Personnel

New and Altered Systems

See System Notices below.

Defense Advanced Research Projects Agency

The Defense Advanced Research Agency must republish all of their system notices. See System Notices below.

BILLING CODE 3810-70-M

DEPARTMENT OF THE AIR FORCE

Deleted Systems

F01001 OQFJXTA

System Name:

Office Projects/Studies (Behavioral Service Program)

F01001 OQKRSMA

System Name:

Academic Completion Record

F01101 OKPNQSC

System Name:

Individual Weight Loss Record

F01101 OUJCGJA

System Name:

Career Development Graduates Historical Roster/Course Enrollees

F01102 OBXQPCA

System Name:

Student Information Cards

F01102 OIACYVB

System Name:

Locator Personnel Data

F01102 OMUHHZA

System Name:

Air Force Office of Information/OI Personnel Background Record

F01102 OUMCBVB

System Name:

Visual Aid

F03004 OSGHLNA

System Name:

Group Scheduling Listing

F03501 DPMVO 1

System Name:

Effectiveness/Performance Reporting System

F03501 06SCEYA

System Name:

Air Force Audit Agency (AFAA) Personnel Electronic Evaluation, Reporting System (PEERS)

F03501 06SCEYC

System Name:

AFAA Management Information System—Career File

F03501 OCGBUZB

System Name:

Informational Personnel Records

F03501 OJ DP A

System Name:

Officer Status File

F03504 OYUEBLC

System Name:

Air Traffic Control (ATC) Personnel Reporting

F03504 OKPNQSB

System Name:

Air University (AU) Advanced Degree Application

F03504 OKPNQSC

System Name:

Officer Assignment Files

F03504 BOSSGBPB

System Name:

Palace Chase Assignment Applications

F03506 DPMYA

System Name:

Military Service Inventory Research Program

F04002 OBXQPCB

System Name:

Temporary Quarters Subsistence Expense

F04501 OIACYVA

System Name:

Air Force Reserve Applications

F05001 AFSS A

System Name:

Training Summaries Graduation Roster/Course Enrollees

F05001 OMUHHZB

System Name:

Air Force Reserve Medical School Tour Allocations

F05001 OSGHLNE

System Name:

Combat Intelligence Crew Training Record

F05002 OSGHLNA

System Name:

Training Work Sheet (GRF Form 36)

F05002 OYUEBLB

System Name:

Air Traffic Control (ATC) Certification Documentation

F05002 OUJCGJB

System Name:

Training Progress Student Data Records

F05101 OQKRSMA

System Name:

Aircrew Instruction Records (Flying Training Records)

F05101 OQKRSMB

System Name:

Training Aids Usage (Simulator Student Training Records)

F06002 OJMPLSA

System Name:

Research and Development (R&D) Projects Records

F11101 OUMCBVA

System Name:

Military Justice Administration

F16003 SGH A

System Name:

OASIS (Outpatient Appointment Scheduling Information System)

F16003 SGHB B

System Name:

Admission and Disposition System

F17101 SGHB B

System Name:

Medical Recommendation for Flying Duty

F17721 DPMSN B

System Name:

Employee's Quarterly Federal Tax Return

F21101 OUMCBVA

System Name:

Family Services Volunteer of the Year

F21301 OJ DP D

System Name:

Predischarge Education Program Certifying Officers

Unchanged Systems

F00401 O5HCHLA

System Name:

For Cause Separations of Personnel with Duty and Travel Restrictions (PCS/DTR)

F01001 AFA A

System Name:

Cadet Administrative Records

F01001 CVAE A

System Name:

Secretary of the Air Force Historical Records

F01001 DAYYT A

System Name:

Unusual and Incoherent Translation Material

F01001 OBXQPCP

System Name:

Planning and Resource Management Information System

F01001 REPX A

System Name:

Inquiries (Presidential, Congressional)

F01001 SAFPC A

System Name:

Air Force Discharge Review Board Retain Files

F01001 OCGBUZA

System Name:

Individual Weight Control File

F01001 OJ DP F

System Name:

Drug Abuse Ledger

F01001 OJDJDBB

System Name:

Administrative Discharge Information Summary

F01001 OJMPLSA

System Name:

Instructor of the Month Records

F01001 OKPNQSA

System Name:

Potential Faculty Rating System

F01001 OQVDYDA

System Name:

Correspondence, Message and Project Files (Civil Reserve Air Fleet Personnel)

F01001 05HCHLC

System Name:

Air Force Attache Record System

F01001 05HCHLD

System Name:

USAF Prisoner of War (PW) Debriefing Files

F01002 OQVDYDA

System Name:

Military Airlift Command (MAC) Dishonored Check Program

F01101 DAYYT A

System Name:

Operational Reference File

F01101 DPXJ B

System Name:

Record of Air Force Personnel Assigned Outside the Department of Defense

F01101 DPXJC C

System Name:

USAF Reconstitution Requirements for Office of JCS and SHQ USAF

F01101 PRES A

System Name:

Check Cashing Privilege Files

F01101 OJ TTSB

System Name:

Graduate Evaluation Master File

F01101 OKPNQSA

System Name:

Air Force Reserve Officer Training Corps (AFROTC) Membership System

F01101 OKPNQSB

System Name:

Four Year Reserve Officer Training Corps (AFROTC) Scholarship Program Files

F01101 OKPNQSD

System Name:

Air Force Reserve Officer Training Corps (AFROTC) Guest Lecture Files

F01101 OSAWUBB

System Name:

Source Support—Control Data

F01101 02 ALSB

System Name:

Complaints and Inquiries

F01102 DAYX A

System Name:

Base, Unit, and Organizational Military and Civilian Personnel Locator Files

F01102 LLI A

System Name:

Microfilm Records Congressional/Executive Inquiries

F01102 SGA B

System Name:

Medical Service Corps Personnel Files

F01102 SGPC C

System Name:

Professional Inquiry Records System

F01102 SGPS D

System Name:

Files of Waiver From Flying Duty (WAVR FILE)

F01102 SGPS F

System Name:

High Level Inquiry File

F01102 SGV A

System Name:

Veterinary Personnel Files

F01102 OMUHHZB

System Name:

General/Colonel Status Board

F01102 ORKNMDA

System Name:

General Colonel Personnel Data Action Report

F01102 02 ALSB

System Name:

File Designati
Requests

F01103 OBXQPC

System Name:

Faculty Biogra

F01103XOBXQP

System Name:

Class Committ

F01201 DAD A

System Name:

Privacy Act Re

F016301SGV A

System Name:

Veterinary Rec

F02503 DPCXP A

System Name:

Committee Ma

F02503 NB A

System Name:

Biographical In

F02503 OJ DP A

System Name:

Commander Se

F02503 OJ DP B

System Name:

Brigadier Gene
Results

F03001 JALA A

System Name:

Confidential St
Employment and

F03001 SPI A

System Name:

Duty and Trave
Notification Lette

F03001 OCGBUZ

System Name:

Drug/Alcohol A
Files

F03001 OJMPLSC

System Name:

Drug Abuse Co

F03002 SPO A

System Name:

Documentation
Entry Authority

F01102 02 ALSB

System Name:

File Designation, Drug Abuse, Waiver Requests

F01103 OBXQPCC

System Name:

Faculty Biographical Sketch

F01103XOBXQPCD

System Name:

Class Committee Products

F01201 DAD A

System Name:

Privacy Act Request File

F016301SGV A

System Name:

Veterinary Records

F02503 DPCXP A

System Name:

Committee Management Records

F02503 NB A

System Name:

Biographical Information File

F02503 OJ DP A

System Name:

Commander Selection File

F02503 OJ DP B

System Name:

Brigadier General Screening Board Results

F03001 JALA A

System Name:

Confidential Statement of Employment and Financial Interest

F03001 SPI A

System Name:

Duty and Travel Restriction Notification Letters

F03001 OCGBUZA

System Name:

Drug/Alcohol Abuse Control Case Files

F03001 OJMPLSC

System Name:

Drug Abuse Control Case Files

F03002 SPO A

System Name:

Documentation for Identification and Entry Authority

F03003 DPMSACB

System Name:

Deceased Service Member's Dependent File

F03003 DPMSACC

System Name:

Indebtedness, Nonsupport, Paternity

F03003 DPMSC A

System Name:

Casualty Files

F03003 XOXXX

System Name:

Next of Kin Inquiries Civilian MIA/PWs

F03004 AFDPMDA

System Name:

Contingency Planning Support Capability (CPSC)-Data Systems Designator (DSD) A349

F03004 SGPA A

System Name:

USAF Aerospace Medicine Personnel Career Information System

F03004 SGPA B

System Name:

Bioenvironmental Engineer Personnel Career Informatioon System

F03004 SGPA C

System Name:

Aerospace Physiology Personnel Career Information System

F03004 OEACYVA

System Name:

Military Personnel Expense Distribution Listing

F03004 OJ RSSA

System Name:

Processing and Classification of Enlistees (PACE)

F03004 OJ RSSB

System Name:

Enlistee Quality Control Monitoring System E818

F03004 OQVDYDA

System Name:

Military Airlift Command (MAC) Special Executive Development

F03004 OTMUHJK

System Name:

Base Automated Mobility System (BAMS) Personnel Extract Tape

F03004 OBXQPCAB

System Name:

Military Personnel Administrative Records

F030041 OHAJXFA

System Name:

Air force Systems Command (AFSC) Personnel Resource Management System

F030041 OHAJXFB

System Name:

Potential Program Managers Tracking System (PPMTS)

F030041 OHAJXFC

System Name:

Air Force System Command Personnel Data Retrieval System

F03005 PRENC A

System Name:

Equal Opportunity in Off-Base Housing

F03005 PRENC B

System Name:

Off-Base Housing Referral Service

F03007 OQPTFLB

System Name:

Visiting Officer Quarters-Transient Airman Quarters Reservation

F03403 DPMSP A

System Name:

Nonappropriated Fund (AF NAF) Employee Insurance and Benefits System File

F03403 OJ SSFK

System Name:

Kindergarten Student File

F03501 AFDPO U

System Name:

Office File

F03501 AFREP T

System Name:

Personnel Files on General Officers and Colonels Assigned to General Officer Position

F03501 ASGPS R

System Name:

Medical Opinions on Board for Correction of Air Force Military Records Cases (BCMR)

F03501 DPMAKEI

System Name:

Absentee and Deserter Information Files

F03501 DPMAOK

System Name:

Officer Effectiveness Report (OER)/ Airman Performance Report (APR) Appeal Case Files

F03501 DPMAR

System Name:

Disability/Non-Disability Retirements Records

F03501 DPMDRAB

System Name:

Correction of Military Record Card

F03501 DPMHCL

System Name:

Chaplain Applicant Processing Folder

F03501 DPMSG M

System Name:

Health Education Records

F03501 DPMSG N

System Name:

Application for Appointment and Extended Active Duty Files

F03501 DPMSG O

System Name:

Medical Officer Personnel Utilization Records

F03501 DPMYR R

System Name:

Statutory Tour Program

F03501 DPPPS S

System Name:

United States Air Force (USAF) Airman Retraining Program

F03501 HC A

System Name:

Chaplain Personnel Record

F03501 HC B

System Name:

Chaplin Information Sheet

F03501 MPC A

System Name:

Civilian/Military Service Review Board Card

F03501 REP A

System Name:

Personnel Files on Statutory Tour Officers

F03501 REP B

System Name:

Files on AF Reserve General Officers; Colonels Assigned to General Officer Positions

F03501 SAFCB A

System Name:

Military Records Processed by the Air Force Correction Board

F03501 SAFOI B

System Name:

Mobilization Augmentee Training Folders

F03501 SAM A

System Name:

USAFAM Personnel Information File

F03501 SGPC M

System Name:

Physician Personnel Files

F03501 OCGBUZA

System Name:

Informational Personnel Training Records

F03501 OJ DP B

System Name:

Status of Ineffective Recruiter

F03501 OKPNQSC

System Name:

AFJROTC Instructor Records System

F03501 OMUHHZB

System Name:

Curriculum Vitae

F03501 OQAGGNA

System Name:

Informational Personnel Records

F03501 OTKWRDC

System Name:

Informational Personnel Records

F03501 OTMUHJA

System Name:

Informational Personnel Records (OI Personnel Background)

F03501 OUMCBVA

System Name:

Geographically Separated Unit Copy Officer Effectiveness & Airman Performance Report

F03501 05HCHLH

System Name:

Reserve Management and Mobilization System (RMAMS)

F03501 06SCEYB

System Name:

Informal Airman/Reserve Information Record

F03501 06SCEYD

System Name:

Air Force Audit Agency Office Personnel File

F03501 06SCEYE

System Name:

Air Force Audit Agency Office File

F03501 07YLNGA

System Name:

Informational Personnel Records

F03501 07YLNGB

System Name:

Internal Personnel Data System

F03501AOSSGBP

System Name:

Education and Training Fact Sheets

F03501BOSBAYEYA

System Name:

Request for Clinical Privilege at USAF Hospital Beale

F03501BOSPCZPB

System Name:

Navigator Background Information

F03501FSFPC A

System Name:

Air Force Discharge Review Board Original Case Files

F03501XOBXQPCB

System Name:

Prospective Instructor Files

F03501XOOTAYZA

System Name:

Management Control System (MCS)

F03501OBXQPCAB

System Name:

Admissions and Registrar Records

F035012OSSGBPA

System Name:

Information Officer Background Record

F03502 AFA A

System Name:

Cadet Management System

F03502 DPMMB A

System Name:

Selective Reenlistment Consideration

F03502 DPMMB B

System Name:

Request for Variable Reenlistment Bonus (VRB) and/or Advance Payment of VRB

F03502 OBXQPCB

System Name:

Cadet Personnel Records System

F03502 OBXQPCC

System Name:

Cadet Personnel Records System

F03502 OBXQPCD

System Name:

Master Cadet Personnel Record (RR)/ Historical

F03502 OBXQPCE

System Name:

Master Cadet Personnel Record (RR)/ Active, Directorate of Cadet Records

F03502 OMUHHZA

System Name:

Manning Specialist Evaluation

F03502 O7YLNGA

System Name:

Career Development Folder

F03503 ATC A

System Name:

Recruiting Research and Analysis System

F03503 ATC RSL

System Name:

Basic Trainee Interview Record

F03503 ATC RSM

System Name:

Recruiting Activities Management Support System (RAMSS)

F03504 AA A

System Name:

Secretary of the Air Force Military Personnel Administration

F03504 DPM A

System Name:

Relocation Preparation Project Folders

F03504 DPMHC B

System Name:

Assignment Action File

F03504 DPMRA C

System Name:

Airmen Utilization Records System

F03504 DPMRO D

System Name:

Officer Utilization Records System

F03504 DPMYCOF

System Name:

Incoming Clearance Record

F03504 XOXXE A

System Name:

Air Force Advisory Personnel in Latin America

F03504 OJMPLSB

System Name:

Classification Screening Records

F03504 OJMPLSC

System Name:

Assessments Screening Records

F03504 OJMPLSD

System Name:

Redline Control Report

F03504 OSPCZPA

System Name:

Bomber Mobilization Recovery Roster

F03504 OTMUNJD

System Name:

PCS Funds Control Log

F03504AAFSS S

System Name:

Office Personnel Data Information Files

F03504XOXOXASA

System Name:

Officer Effectiveness Report Data Card

F03505 DPMAO A

System Name:

Unfavorable Information Files (UIFs)

F03506 DPMAW A

System Name:

Air Force Personnel Test 851, Test Answer Cards

F03507 DPMAJDA

System Name:

Flying Status Branch File

F03507 SGPA A

System Name:

Application for Advanced Aeronautical Rating File (Senior and Chief Flight Surgeon)

F03507 OJ DP A

System Name:

Flying Evaluation Board (FEB) File

F03508 DPMAW M

System Name:

Historical Airman Promotion Master Test File (MTF)

F03508DPMAW

System Name:

Airman Promotion Historical Records

F03509AOSSGBPA

System Name:

Administrative Discharge File

F04001 DPCX A

System Name:

Non-Appropriated Fund (NAF) Civilian Personnel Records

F04001 06SCEYA

System Name:

Merit Promotion File

F04001 1PTAYZC

System Name:

Civilian Pay-Personnel-Manpower (Paperman)–E205

F04002 DPCMS A

System Name:

Civilian Personnel Applicant Supply Files

F04002 DPCMS B

System Name:

Civilian Personnel Test Score Record

F04002 DPCMS C

System Name:

Job Element Questionnaires for Civilian Trades and Labor Occupations

F04002 DPCMS D

System Name:

Civilian Personnel Occupational and Suitability Employment Examinations

F04002 OMUHHZA

System Name:

Air Reserve Technician (ART) Officer Selection Folders

F04002 OMUHHZB

System Name:

Air Reserve Technician Data System

F04003 DPCMT A

System Name:

Training and Employee Development Record Systems

F04003 08SCEYB

System Name:

Long-Term Full-Time Training File

F04004 DPCE E

System Name:

Civilian Personnel Performance Awards and Outstanding Performance Ratings

F04004 DPCE C

System Name:

Labor Management Relations Records Systems

F04004 DPCMS A

System Name:

Employee Assistance Program Case Record Systems

F04008 AA A

System Name:

Civilian Personnel Files

F04008 DPCE A

System Name:

Supervisor's Record of Civilian Employees

F04501 DPMMP A

System Name:

Educational Delay Board Findings

F04501 OI A

System Name:

Air National Guard Information Personnel Background File

F04501 OKPNQSA

System Name:

Cadet Records

F04501 OKPNQSB

System Name:

Air Force ROTC Field Training Administration System

F04501 OKPNQSC

System Name:

AFROTC Field Training Assignment System

F04501 OKPNQSD

System Name:

Flight Instruction Program (FIP)

F04501 XOMUHHZA

System Name:

Reserve Medical Service Corps Officer Appointments

F05001 AFA A

System Name:

Faculty Academic Records

F05001 SAFOI B

System Name:

Information Officer Short Course Eligibility File

F05001 OBXQPBB

System Name:

USAF Academy Cadet/Nominee/ Applicants Athletic Records

F05001 OJ DP A

System Name:

Faculty Board Ledger

F05001 OMUHHZA

System Name:

Undergraduate Pilot and Navigator Training

F05001 OQKRSMA

System Name:

Training Instructors (Academic Instructor Improvement/Evaluation)

F05001 OSGHLNG

System Name:

Officers Electronic Warfare Officer (EWO) Training Record

F05001 OSGHLNH

System Name:

Missile Procedures Training (MPT) Accomplishment

F05001 OSSZDTA

System Name:

Nursing Skill Inventory

F05001 O8SCEYA

System Name:

Advanced Degree File

F05001 O8SCEYB

System Name:

Air Force Audit Agency Office Training File

F05001 AOGHLNB

System Name:

Upgrade Training Missile Procedures Training (MPT) Critique Form

F05002 ATC A

System Name:

Maintenance Management Automated Training System NMATS

F05002 DPPE A

System Name:

Education Services Program Records (Individual)

F05002 OI A

System Name:

Graduates of Air Force Short Course in Communication (Oklahoma University)

F05002 OJ DOZB

System Name:

Individual Academic Records—Survival Training Students

F05002 OJ TTPA

System Name:

Technical Training Course Management Information System

F05002 OKPNQSA

System Name:

Air University Academic Records

F05002 OKPNQSB

System Name:

Student Record Folder

F05002 OOJUBJB

System Name:

Maintenance Management Information and Control System (MMICS)

F05002 OQSCEYA

System Name:

Training Progress (Permanent Student Record)

F05002 OQVDYDA

System Name:

Unit Training Program

F05002 OTMUHJA

System Name:

Student Record File

F05002 OUJCGJA

System Name:

Training Progress

F05002 OUMCBVA

System Name:

Defense Language Institute Student History

F05002 07YLNGA

System Name:

United States Air Force Special Investigations School Individual Academic Records

F05004 OQKRSMA

System Name:

Training Systems Research and Development Materials

F05101 ADC A

System Name:

Aircrew Training Records, Aerospace Defense Command (ADCOM)

F05101 OJMPLSA

System Name:

Flying Training Records

F05101 OTMUHJA

System Name:

Tactical Air Command Automated Flying Training Management System

F05101AOSSGBPA

System Name:

Aircrew Resource Management System (SACARMS)/Aircrew Qualification Report

F05301 DPP A

System Name:

Air Force Academy Appointment and Separation Records

F05302 OBXQPCB

System Name:

Air Force Academy Candidate System

F05303 OBXQPCAB

System Name:

Preparatory School Records

F06003 ANGBXOB

System Name:

Progress Report, Undergraduate Pilot Training

F06005 XOOFF A

System Name:

Air Force Operations Resource Management Systems (AFORMS)

F06604 AFLC A

System Name:

Maintenance Labor Distribution and Cost System

F06606 SAC A

System Name:

ICBM Maintenance Standardization and Evaluation Program

F06606 OOJUBJB

System Name:

Maintenance Management Information and Control System MMICS

F06606 OOJUBJC

System Name:

Exception Time Accounting (ETA) System (GOO1A)

F06711 AFSC A

System Name:

Equipment Maintenance Management Program (EMMP)

F06711 LGYPS A

System Name:

Personal Clothing and Equipment Record

F06711 OOJUBJA

System Name:

Tool Kit Control Card

F07001 OEACYVA

System Name:

Accounts Payable Records

F07503 AA A

System Name:

Office, Secretary of Air Force Travel Files

F075031 LGTT A

System Name:

Personal Property Movement Records

F075031 OOJUBJH

System Name:

Household Goods Nontemporary Storage Accounts System (NOTEMPS)

F07601 MAC A

System Name:

Passenger Reservation and Movement System

F07702 LGTN A

System Name:

Motor Vehicle Operators' Records

F08001 OHMASIS

System Name:

Research and Development Planning and Programming Records

F8002 OJMPLSA

System Name:

Research and Development (R&D) Projects Records

F08003 OBXQPCA

System Name:

Minnesota Multiphase Personality Inventory Research Program

F08003 OHCNBCA

System Name:

Aeromedical Reseach DATA

F08003 OHMPLSA

System Name:

Personnel Research Laboratory Historical Data Base File

F09503 OJMPLSA

System Name:

Sound Recordings

F10010 AFCS A

System Name:

Military Affiliate Radio System (MARS) Member Records

F11001 AJA

System Name:

Judge Advocate Personnel Records

F11001 IGQ A

System Name:

Inspector General Records Freedom of Information Act

F11001 JACA H

System Name:

Legal Assistance Administration

F11001 JACL F

System Name:

Freedom of Information Act Appeals

F11001 JAG A

System Name:

Litigation Records (Except Patents)

F11001 SAFPC B

System Name:

Air Force Discharge Review Board Case Control/Locator Cards

F11001 OEACTVA

System Name:

Legal Administration Records of the Staff Judge Advocate

F11001AJACI A

System Name:

USAF Foreign Criminal Jurisdiction Cases

F11001XOMUHHZA

System Name:

Reserve Judge Advocate Training Report

F11002 AJACP

System Name:

Invention, Patent Application and Patent Application Security, and Patent Files

F11002 JACP C

System Name:

Patent Infringement and Litigation Records

F11101 AJAJM

System Name:

Court-Martial and Article 15 Records

F11101 OSPCZPA

System Name:

Military Justice Administration

F11101XJAJM C

System Name:

Automated Military Justice Analysis and Management System (AMJAMS)

F11201 JACC A

System Name:

Claims Administrative Management Program (CAMP) E064

F11201 JACC E

System Name:

Claims Records

F12001 DPX B

System Name:

Investigation/Complaint Files

F12001 IGQ A

System Name:

Inspector General Records

F12301 02SCEYA

System Name:

United States Air Force (USAF) Inspection Scheduling System

F12401 07YLNGA

System Name:

Badge and Credentials

F12401 07YLNGB

System Name:

Investigative Applicant Processing Records

F12404 07YLNGA

System Name:

Investigative Support Records

F12408 07YLNGA

System Name:

Security and Related Investigative Records

F12408 07YLGNA

System Name:

Counterintelligence Operations and Collection Records

F12410 07YLNGA

System Name:

Criminal Records

F12501 ASPP

System Name:

Firearms Authorization and Safety Records

F12501 SPO D

System Name:

Provisional Pass

F12501 SPO E

System Name:

Registration Records (Excluding Private Vehicle Records)

F12501 SPO F

System Name:

Notification Letters to Persons Barred From Entry to Air Force Installations

F12501 SPO G

System Name:

Complaint/Incident Reports

F12501 SPO H

System Name:

Serious Incident Reports

F12501 SPO I

System Name:

Incident Investigation Files

F12501 SPO J

System Name:

Traffic Accident and Violation Reports

F12501 OQVDYDC

System Name:

Field Interview Card

F12501 02 ALSB

System Name:

Temporary Private Vehicle Impoundment Record

F12501XSPP B

System Name:

Pickup or Restriction Order

F12503 SPO A

System Name:

Vehicle Administration Records

F12503 02 ALSB

System Name:

Bicycle Registration File

F12503 02 ALSC

System Name:

Storage and Special Permits for Recreational and Utility Trailers

F12701 OJ IGYA

System Name:

Air Training Command Aircraft Accident Board Resources List

F12701 02SCEYA

System Name:

Safety Education File

F12702 02SCEYA

System Name:

Aircraft Accidents and Incidents Computer File

F12702 02SCEYB

System Name:

Human Factors in Aircraft Accident/Incident Computer File

F12702 02SCEYC

System Name:

United States Air Force (USAF) Ground Accident Fatality File

F14001 OSGHLNA

System Name:

Bachelor Airmen's Quarters (BAQ) Temporary Issue Receipt

F16001 SGPC A

System Name:

Medical Professional Staffing Records

F16001 SGPS A

System Name:

Aircrew Standards Case File

F16002 SGPS

System Name:

Retirements System

F16003 ASGH

System Name:

Air Force Cl Automation Sy

F16003 OSPC2

System Name:

Laboratory

F16003 02 ALS

System Name:

Chain of Cu

F16006 ASGPA

System Name:

USAF Heari System

F16006 SGPC

System Name:

Central Med

F16007 SGPA

System Name:

Drug Abuse System

F16101 SGPA

System Name:

Medical Rec Duty

F16101 OSSGB

System Name:

Aerospace M Recommendati

F16102 SGPA

System Name:

Air Force Ae Training Progra

F16102 SGPA E

System Name:

USAF Compr Operation

F16104 SGPA

System Name:

USAF Maste Registry

F16201 SGD A

System Name:

Dental Healt

F16002 SGPS B

System Name:

Retirements/Separations Records System

F16003 ASGH R

System Name:

Air Force Clinical Laboratory Automation Systems (AFCLAS)

F16003 OSPCZPA

System Name:

Laboratory Course Phase II

F16003 02 ALSA

System Name:

Chain of Custody Receipt

F16006 ASGPA R

System Name:

USAF Hearing Conservation Record System

F16006 SGPC A

System Name:

Central Medical Registry Files

F16007 SGPA A

System Name:

Drug Abuse Rehabilitation Report System

F16101 SGPA A

System Name:

Medical Recommendation for Flying Duty

F16101 OSSGBPA

System Name:

Aerospace Medicine Program Medical Recommendation Missile Duty

F16102 SGPA A

System Name:

Air Force Aerospace Physiology Training Programs

F16102 SGPA B

System Name:

USAF Compression Chamber Operation

F16104 SGPA A

System Name:

USAF Master Radiation Exposure Registry

F16201 SGD A

System Name:

Dental Health Records

F16202 SGD A

System Name:

Dental Personnel Actions

F16202 SGD B

System Name:

Dental Professional Activities

F16401 GHXO S

System Name:

Patient Evacuation Manifest

F16802 CSGH R

System Name:

MAMS–R (Medical Administrative Management System—Revision)

F16802 SGHB B

System Name:

Casualties in Southeast Asia

F16802 SGPC A

System Name:

Child Advocacy Case Files

F16802 ORKNMDA

System Name:

Civilian Health/Medical Program of Uniformed Services (CHAMPUS) Case Claim Files

F16803 ASGHB R

System Name:

Patient Index and Locator System

F16803 SGH A

System Name:

OASIS (Outpatient Appointment Scheduling Information System)

F16803 RSGHXO B

System Name:

Air Force Blood Program

F16804 SGHB A

System Name:

Clinical Records and Related Documents

F16806 SGHB A

System Name:

Inpatient Data System

F16808 SGHC A

System Name:

Medical Service Accounts

F16810 SGN A

System Name:

Nursing Service Records

F17101 SGHB A

System Name:

Automated Inpatient Data System

F17101 SGHB B

System Name:

Medical Recommendation for Flying Duty

F17101 OHZHTVA

System Name:

Manhour Accounting System (MAS)

F17101 OHZHTVD

System Name:

Management Oriented Personnel System (MOP)

F17101 OJNTMUA

System Name:

Behavioral Automated Research System (BARS) (B–3500)

F17101 OOJUBJA

System Name:

Planning and Resources Management Information System

F17101 OUMCBVA

System Name:

Military Personnel Management System

F17101 OOHAJXFA

System Name:

Personnel Data Used for Management Engineering (ME) Program Manning Purposes

F17501 08SCEYA

System Name:

Air Force Audit Agency Management Information System—Report File

F17501 O8SCEYB

System Name:

Internal Audit and Control Records

F17602 OEACYVA

System Name:

Nonappropriated Funds Standard Payroll System

F17603 AA A

System Name:

Accounts Receivable

F17603 HC

System Name:

Chaplain Fund Service Contract File

F17603 OYUEBLA

System Name:

Individual Earning Data

F17607 DPMS

System Name:

Nonappropriated Fund Instrumentalities (NAFIs) Financial System

F17701 NGBJA A

System Name:

Confidential Statement of Employment and Financial Interest

F17701 OBXQPCA

System Name:

Cadet Accounting and Finance System

F17705 OEACYVA

System Name:

Accounting and Finance Officer Accounts and Substantiating Documents

F17707 OEACYVA

System Name:

Loss of Funds Case Files

F17708 OEACYVA

System Name:

Claims Case File—Corrected Military Pay and Allowances

F17708 OEACYVB

System Name:

Claims Case File—Missing in Action Data

F17708 OEACYVC

System Name:

Claims Case File—Death Gratuity Records

F17709 OEACYVA

System Name:

Reports of Survey

F17718 OEACYVA

System Name:

Account Receivable Records Maintained by Accounting & Finance

F17720 SGHC A

System Name:

Control Logs

F17720 OCGBUZA

System Name:

Control Log for Civilian Medical Care

F17721 ADPMSNA

System Name:

Employee Group Life and Health Insurance Plan

F17721 02 ALSA

System Name:

Civilian Pay—Control Data

F17722 OEACYVA

System Name:

Accrued Military Pay System, Discontinued (AMPS 360/390)

F17722 OEACYVC

System Name:

Military Pay Records

F17722 OEACYVD

System Name:

Uniformed Services Savings Deposit Program (USSDP)

F17724 OKPNQSA

System Name:

Air Force ROTC Cadet Pay System

F17726 OEACYVA

System Name:

Pay and Allotment Records

F17730 OEACYVA

System Name:

Joint Uniform Military Pay System (JUMPS)

F17734 OEACYVA

System Name:

United States Air Force Retired Pay System

F17801 OHFREZA

System Name:

Rome Air Development Center (RADC) Manpower Resources Expenditure System

F17801 OHZHTVA

System Name:

Integrated Management Information and Control System (IMICS)

F17801OKPNQSA

System Name:

Student Questionnaire

F17802XOOTAYZM

System Name:

Personnel Cost Accounting System (PCAS)

F18201 DAC A

System Name:

Air Force Postal Directory File

F18202 HC A

System Name:

Current Official Active Duty Chaplains Mailing List

F19001 AA AB

System Name:

Public Affairs References

F19001 OI A

System Name:

Official Biographies

F19001 OI B

System Name:

Biographies of Officers and Key Civilians Assigned to SAF/OI

F19001 OI AB

System Name:

Official Biographies

F19001 SAFOI

System Name:

Special Events Planning-Protocol

F19001 OSLWRCA

System Name:

Special Events Planning-Protocol Roster

F20002 05HCHLA

System Name:

Operations Security File for Foreign Intelligence Collection Activities

F20002 05HCHLB

System Name:

DIA Source Administration Program for Foreign Intelligence Collection Activities

F20002 05HCHLC

System Name:

Events and Installation File

F20002 05HCHLD

System Name:

Master Alpha Resource List (MARLA)

F20501 SPI A

System Name:

Request for Access to Classified Information by Historical Researchers

F20501 OUMCBVA

System Name:

Compartmented Intelligence Access Roster

F20503 DAI A

System Name:

Personnel Security Case Files

F20503 DAI C

System Name:

Presidential Support Files

F20505 AFIS A

System Name:

Sensitive Compartmented Information Personnel Security Records

F20505 SPI A

System Name:

Personnel Security Clearance Investigation Records

F20505 SPI B

System Name:

Personnel Security Access Records

F20505 SPI C

System Name:

Special Security Files

F20505 PQVDYA

System Name:

Clearance Certificate Records

F20505 OUMCBVA

System Name:

Security Records Behavioral Data Reports

F21001 ESC A

System Name:

Historical Research and Retrieval System (HORRS)

F21101 OUMCBVA

System Name:

Family Services Volunteer of Year

F21201OBXQPCAB

System Name:

Library/Special Collections Records

F21208XOBXQPCE

System Name:

Library Authorized Patron File

F21301 DPMSS A

System Name:

Air Force Educational Assistance Loans

F21301 OJ DP A

System Name:

Completion of Courses/Degrees Under Operation Bootstrap

F21301 OJ DP C

System Name:

Education Service Test Control Officers

F21306 OSPCZPA

System Name:

Individual Class Record Form

F21401 OKPNQSA

System Name:

Pupil Registration and Cumulative Record Cards

F21401 ORKNMDA

System Name:

Personnel Movement Program

F26501 AFA A

System Name:

Cadet Chaplain Records

F26501 HC A

System Name:

Non-Chaplain Ecclesiastical Endorsement Files

F26501 HC B

System Name:

Chaplain Personnel Roster

F26501 HC C

System Name:

Directory of Active Duty and Retired Chaplains

F26501 02 ALSA

System Name:

Religious Education Registration and Attendance Records

F26501XHC A

System Name:

Records on Baptisms, Marriages and Funerals by Air Force Chaplains

F40 17 FZHTVA

System Name:

Air Force Logistics Command (AFLC) Supergrade Information File

F90001 DAYY A

System Name:

Annual Outstanding Air Force Administration and Executive Support Awards

F90001 DPMSAAB

System Name:

Military Decorations

F90001 OKPNQSA

System Name:

Air University Outstanding Junior Officer of the Year

F90001 OTMUHJA

System Name:

Special Awards File

F90001 OUMCBVA

System Name:

Outstanding Airman of Year

F90001XOBXQPCA

System Name:

Cadet Awards Files

F90001XRDE A

System Name:

Harold Brown Award

F90001XRDE B

System Name:

USAF Research and Development Award

F900012 MPC A

System Name:

Suggestions, Inventions, Scientific Achievements

New or Altered systems

See System Notices below.

BILLING CODE 3910-01-M

NATIONAL SECURITY AGENCY

The National Security Agency must republish in their entirety all of their system notices. See System Notices below.

DEFENSE NUCLEAR AGENCY

The Defense Nuclear Agency is republishing all of their system notices. See System Notices below.

ORGANIZATION OF THE JOINT CHIEFS OF STAFF

Deleted Systems

None

Unchanged Systems

JOJCS002MILPERS

System Name:

OJCS Medals and Awards Files and Reports System; Microfilmed Historical Awards.

JOJCS001MILPERS

System Name:

Military Personnel Files

JOJCS003SMP

System Name:

Directorate Administrative Services Management Information System (DASMIS).

JOJCS004SECDIV

System Name:

Personnel Security File, Security Division, DAS.

NEW OR ALTERED SYSTEMS

None

BILLING CODE 3810-70-M

DEFENSE COMMUNICATIONS AGENCY

Deleted Systems

None

Unchanged Systems

KCIV.01

System Name:

Records Relating to DCA Transactions under the Privacy Act of 1974

KDCE.01

System Name:

Visit Notification/Clearance Verification Records NR501–11

KDCE.02

System Name:

Parking Permit Control Files 501–07

KDCE.03

System Name:

DA Form 727 Classified Container Information File 503–02

KDEC.01

System Name:

Vehicle Registration

KDEC.02

System Name:

Authorization To Sign for Classified Material List

KDEC.03

System Name:

Classified Material Receipt Authorization List

KDEC.04

System Name:

Authority To Review/Sign for Classified Messages at 1918 Communications Center

KDEC.05

System Name:

Access Listing to Classified Material (NATO)

KDEC.06

System Name:

Nominations/Enrollments for Training Courses

KDEC.07

System Name:

601–11 Duty Rosters

KDEC.08

System Name:

101–06 Request and Authorization for Temporary Duty Travel

KEUR.02

System Name:

DCA Form 605, Personnel Data Sheet

KEUR.03

System Name:

Incident Report File

KEUR.04

System Name:

Security Clearance File

KEUR.05

System Name:

Classified Container Information Forms

KEUR.08

System Name:

Travel Order and Voucher File

KEUR.09

System Name:

NONCOMBATANT Information Card, AEZ Form 6–106

KEUR.10

System Name:

Personnel File

KMIN.01

System Name:

Minority Identification File List

KNCS.01

System Name:

National Communications Systems Continuity of Operations Plan (NCS COOP)

KNCS.02

System Name:

National Communications System (NCS) Plan for Emergencies and Major Disasters

KNCS.03

System Name:

National Communications System Emergency Action Group (NEAG)

KPAC.01

System Name:

Classified Container Information Form DA 727

KPAC.02

System Name:

Authorization to Sign for Classified Material Lists

KPAC.03

System Name:

420–20 Permanent Change of Station and Temporary Duty Travel Order File

KPAC.04

System Name:

Time and Attendance Cards and Labor Distribution Cards

KPAC.05

System Name:

403–03 Injury Records

KSPT.01

System Name:

Military Personnel Management/ Assignment Files

KSPT.02

System Name:

Vehicle Parking Registration Card

KWHC.01

System Name:

Agency Training File System

KWHC.02

System Name:

Military Personnel Files System

KWHC.03

System Name:

Personnel Locator File System

KWHC.04

System Name:

Military Financial File System

KWHC.05

System Name:

Personnel Information System

KWHC.06

System Name:

Personnel Se

KWHC.07

System Name:

Agency Acce

K105.01

System Name:

206.10 Confid Employment an

K107.01

System Name:

Investigation Discrimination

K232.01

System Name:

Travel Order

K232.02

System Name:

Injury Record

K240.01

System Name:

Personnel Sec Dossier File (PS

K240.02

System Name:

Sensitive Co Posn/Pers Acc

K240.03

System Name:

Clearance Ca Communication Personnel

K240.04

System Name:

Identification

K240.05

System Name:

Visitor Clears

K240.06

System Name:

Classified Co Form (DA 727)

K240.07

System Name:

Vehicle and P

K240.08

System Name:

Security Viol

KWHC.08

System Name:

Personnel Security Files

KWHC.07

System Name:

Agency Access/Pass File System

K105.01

System Name:

208.10 Confidential Statement of Employment and Financial Interest

K107.01

System Name:

Investigation of Complaint of Discrimination

K232.01

System Name:

Travel Orders Records System

K232.02

System Name:

Injury Record File

K240.01

System Name:

Personnel Security Investigative Dossier File (PSIDF)

K240.02

System Name:

Sensitive Compartmented Info (SCI) Posn/Pers Accountability System

K240.03

System Name:

Clearance Card File for Defense Communications Agency (DCA) Personnel

K240.04

System Name:

Identification Badge System

K240.05

System Name:

Visitor Clearance File

K240.06

System Name:

Classified Container Information on Form (DA 727)

K240.07

System Name:

Vehicle and Parking Registration Card

K240.08

System Name:

Security Violation Case File

K660.01

System Name:

303–41–42 Claims Files, Requests for Waiver of Pay and Allowances

K700.01

System Name:

Employee-Management Relations and Services Files

K700.02

System Name:

Civilian Awards Program File

K700.03

System Name:

Personnel Management Information System (PERMIS)

K700.035

System Name:

602–11 Active Application Files (Applicant Supply Files)

K700.04

System Name:

Priority Reassignment Eligibles File

K700.05

System Name:

Executive Level Position Files

K700.06

System Name:

Report of Defense-Related Employment

K700.07

System Name:

Employee Record File

K700.08

System Name:

USAF Career Motivation Program

K700.09

System Name:

603–02 Service Record Card Files

K700.10

System Name:

603–08 Annual Classification Maintenance Review File

K700.11

System Name:

602–18 Promotion Register and Record Files

K700.12

System Name:

602–10 Civil Service Certificate Files

K700.13

System Name:

602–26 Retention Register Files (Reduction-in-Force)

K700.15

System Name:

603–05 Chronological Journal Files

K700.16

System Name:

Classification Appeals File

K700.17

System Name:

603–01 Official Personnel Folder Files (Standard Form 66)

K890.01

System Name:

Freedom of Information Act File (FOIA)

K890.02

System Name:

Navy Officers Service Record

K890.03

System Name:

Awards Case History File

K890.04

System Name:

Military Personnel Management/ Assignment Files

K890.05

System Name:

Overseas Rotation Program Files

K890.06

System Name:

Card File for Forwarding Mail of Departed Personnel

K890.07

System Name:

Education, Training, and Career Development Data System

KEUR.07

System Name:

Postal Directory File

New or Altered Systems

None

[BILLING CODE 3710-01-M]

DEFENSE INTELLIGENCE AGENCY

The Defense Intelligency Agency must republish all of their system notices. See System Notices below.

[BILLING CODE 3810-70-M]

UNITED STATES MARINE CORPS

The United States Marine Corps is republishing all of their system notices. See System Notices below.

DEPARTMENT OF THE NAVY

The Department of Navy is republishing all of their system notices. See System Notices below.

BILLING CODE 3810-71-M

DEFENSE CONTRACT AUDIT AGENCY

Deleted Systems

None

Unchanged Systems

RDCAA 152.13

System Name:

Notifications of Visits

RDCAA 152.17

System Name:

Security Status Master List

RDCAA 152.2

System Name:

Personnel Security Data Files

RDCAA 152.3

System Name:

Reports of Personnel Security Investigations

RDCAA 152.4

System Name:

Personnel Security Adjudication File

RDCAA 152.5

System Name:

Notification of Security Determinations

RDCAA 152.6

System Name:

Regional Security Clearance Request Files

RDCAA 152.7

System Name:

Clearance Certification

RDCAA 160.5

System Name:

Travel Orders

RDCAA 240.1

System Name:

Cross Reference Index to Legal Opinions

RDCAA 240.2

System Name:

Statements of Employment and Financial Interest

RDCAA 240.3

System Name:

Legal Opinions

RDCAA 240.5

System Name:

Standards of Conduct, Conflict of Interest

RDCAA 260.4

System Name:

White House Correspondence

RDCAA 260.5

System Name:

Congressional Committee Correspondence

RDCAA 260.6

System Name:

Congressional Correspondence

RDCAA 311.3

System Name:

Applicant Supply File Index

RDCAA 311.4

System Name:

Applicant Correspondence

RDCAA 315.10

System Name:

Executive Development Program

RDCAA 315.11

System Name:

Career Files

RDCAA 322.7

System Name:

Students and Instructors

RDCAA 347.2

System Name:

Labor Management Relations Case Files

RDCAA 358.1

System Name:

General EEO Files

RDCAA 358.21

System Name:

EEO Complaints Resolved by DCAA

RDCAA 358.22

System Name:

EEO Cases Resolved by CSC

RDCAA 358.23

System Name:

Other Copies of EEO Complaint Case Files

RDCAA 358.24

System Name:

EEO Background Documents Not Included in Case Files

RDCAA 358.3

System Name:

Grievance & Appeal Files

RDCAA 371.1

System Name:

Name Files

RDCAA 371.13

System Name:

Official Personnel Folders

RDCAA 371.2

System Name:

Supervisor Personnel Records

RDCAA 371.5

System Name:

Locator Records

RDCAA 371.7

System Name:

Service Record File

RDCAA 371.8

System Name:

Inactive Service Records

RDCAA 440.2

System Name:

Time and Attendance Reports

RDCAA 502.6

System Name:

Freedom of Information Administrative Appeals

RDCAA 503.5

System Name:

Privacy Act Administrative Appeals

RDCAA 575.4

System Name:

Postal Directory

RDCAA 590.8

System Name:

DCAA Management Information System (MIS)

RDCAA 590.9

System Name:

DCAA Automated Personnel Inventory System (APIS)

New or Altered Systems

None

BILLING CODE 3810-70-M

DEFENSE LOGISTICS AGENCY

Deleted Systems

S334.05DLA-K

System Name:

Civilian Personnel Administration Career Program

S334.10DLA-KT1

System Name:

Central Inventory, Comptroller/ Financial Management Career Program

S339.10DLA-C

System Name:

Auditor Profile

Unchanged Systems

S111.11DCRA-AA

System Name:

Atlanta Personnel Data Bank System

S111.11DCRT-E

System Name:

Defense Contract Administration Services Region (DCASR) Dallas Personnel Data Bank

S111.11DDTC-R

System Name:

Civilian Personnel Data Bank

S111.11DESC-KER

System Name:

Civilian Personnel and Manpower Control System

S111.11DLA-K

System Name:

Rotation of Employees From Foreign Areas and the Canal Zone

S111.11DLA-KP

System Name:

Bye-Bye Retirement System

S111.11DLA-KS

System Name:

Official Records for Host Enrollee Programs

S111.11DLA-XA

System Name:

Personnel/Roster/Locator Files

S120.05DLA-K

System Name:

Schedule and Record of Overtime Assignment and Request

S120.05DLA-KP

System Name:

Supervisors' Records and Reports of Employee Attendance and Leave

S150.20DLA-T

System Name:

Security Violations Files

S153.01DLA-T

System Name:

Personnel Security Files

S153.20DLA-T

System Name:

Personnel Security Clearance Status CAPSTONE

S155.05 1DLA-NS

System Name:

Enrollment, Registration and Course Completion Record

S155.05 2DLA-NS

System Name:

Guest Instructor Introduction Card

S155.53DLA-NS

System Name:

Industrial Personnel Security Clearance File

*S160.50DLA-T

System Name:

Criminal Incidents/Investigations File

S161.20DLA-T

System Name:

Vistors and Vehicle Temporary Passes and Permits File

S161.25DLA-T

System Name:

Individual Access Files

S161.30DLA-T

System Name:

Motor Vehicle Registration Files

S161.40DLA-T

System Name:

Vehicle Accident Investigation Files

S161.50DLA-T

System Name:

Traffic Violations File

S161.60DLA-T

System Name:

Seizure and Disposition of Property Records

S161.70DLA-T

System Name:

Firearms Registration Records

S162.60DLA-T

System Name:

Police Force Records

S214.10DCRN-MA

System Name:

Emergency Transportation of Essential Personnel

S214.20DLA-L

System Name:

Emergency Assignment and Training Records

S233.10DLA-K

System Name:

Work Assignment, Performance, and Productivity Records and Reporting Systems

S233.20DLA-L

System Name:

Data Processing Project Control Assignment and Machine Utilization

S243.30DLA-K

System Name:

Complaints

S252.50DLA-G

System Name:

Claims & Litigation, Other Than Contractual

S253.10DLA-G

System Name:

Invention Disclosures

S253.30DLA-G 1

System Name:

Royalties

S253.30DLA-G 2

System Name:

Patent Licenses and Assignments

S253.40DLA–G

System Name:

Patent Infringement

S255.01DLA–G

System Name:

Fraud & Irregularities

S257.10DLA–G

System Name:

Standards of Conduct

S259.05DLA–G

System Name:

Legal Assistance

S270.10DLA–K

System Name:

Request for Assistance and Information

S270.30DLA–B

System Name:

Biography File

S322.15DLA–M

System Name:

Information Military Personnel Records

S322.35DLA–M

System Name:

Officer/Enlisted Evaluation Report File and File Summary

S322.45DLA–M

System Name:

Military Personnel Data Bank System

S322.70DLA–M

System Name:

Reserve Affairs

S330.15DPSC–G

System Name:

Authorization File

S330.50DPSC

System Name:

Defense Personnel Support Center (DPSC) Civilian Personnel File

S330.60DCRT–E–Z

System Name:

Dallas Internal Personnel Management Information System (DIPMIS)

S332.01DLA–KS

System Name:

Employment Inquiries

S333.10DLA–G

System Name:

Attorney Personal Information and Applicant Files

S335.01DLA–K

System Name:

Training and Employee Development Record System

S335.80DLA–Q

System Name:

Quality Assurance Staff Development Program

S336.10DCRS–F

System Name:

336.10 Personnel Cost Forecast System

S336.60DLA–KM

System Name:

Position Classification Appeals

S337.01DLA–K

System Name:

Labor Management Relations Records Systems

S337.25DLA–K

System Name:

Employee Relations Under Negotiated Grievance Procedures

S339.10DLA–K

System Name:

Headquarters Defense Logistics Agency (HQ DLA) Automated Civilian Personnel Data Bank System

S339.50DLA–K

System Name:

Supervisors' Personnel Records

S339.50DSAO–S

System Name:

DSAO Staff Information File

S352.10DLA–K

System Name:

Nominations for Awards

S370.20DLA–KH

System Name:

Individual Accident Case Files

S380.01DLA–K

System Name:

Employee Assistance Program Case Record Systems

S380.20DLA–K

System Name:

Civilian Medical Case Files

S390.01DLA–KS

System Name:

Grievance Examiners and Equal Employment Opportunity Investigators Program

S390.05DCRB–M

System Name:

Boston Equal Employment Opportunity (EEO) Skills Bank

S431.15DLA–C

System Name:

Travel Record

S434.15DLA–C

System Name:

Automated Payroll Cost and Personnel System (APCAPS)

S434.15DLA–KP

System Name:

Automated Payroll, Cost and Personnel System (APCAPS) Personnel Subsystem

S434.20DLA–C

System Name:

Mechanization of Contract Administration Services—1B Payroll (MOCAS 1B)

S434.87DLA–C

System Name:

Debt Records for Individuals

S491.10DLA–M

System Name:

Nonappropriated Fund (NAF) Membership Records

S493.10DLA–K

System Name:

Official Personnel Folders for Non-Appropriated Fund Employees

S672.70DLA–X

System Name:

Dependents Travel

S690.10DLA–W

System Name:

Individual Vehicle Operators File

S810.50DLA–P–1

System Name:

Contracting Officer Files

S850.10DLA–Q–1

System Name:

Quality Assurance Activity Certification Report

S850.10DLA–Q–2

System Name:

Monthly Quality Assurance Activity Report by Person

S868.15 DPSC

System Name:

Manufacturing Payroll System; Weekly Piece Work

New or Altered Systems

See System Notices below.

BILLING CODE 3810-01-M

Defense Investigative Services

The Defense Investigative Service must republish all of their system notices. See System notices below.

UNIFORM SERVICES UNIVERSITY OF THE HEALTH SCIENCES

Deleted Systems

None

Unchanged Systems

WUSU02

System Name:

Uniformed Services University of the Health Sciences (USUHS) Payroll System

WUSU04

System Name:

Uniformed Services University of the Health Sciences (USUHS) Applicant Record System

New or Altered Systems

See System Notices below.

BILLING CODE 3810-70-M

UNITED STATES ARMY

REQUESTING RECORDS

Records are retrieved by name or by some other personal identifier. It is therefore especially important for expeditious service when requesting a record that particular attention be provided to the Notification and/or Access Procedures of the particular record system involved so as to furnish the required personal identifiers, or any other pertinent personal information as may be required, to locate and retrieve the record.

BLANKET ROUTINE USES

Certain blanket 'routine uses' of the records have been established, that are applicable to every record system maintained within the Department of Defense, unless specifically stated otherwise within a particular record system. These additional blanket routine uses of the records are published below, only once in the interest of simplicity, economy and to avoid redundancy, before the individual record system notices begin rather than repeating them in every individual record system.

ROUTINE USE - LAW ENFORCEMENT

In the event that a system of records maintained by this component to carry out its functions indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute, or by regulation, rule or order issued pursuant thereto, the relevant records in the system of records may be referred, as a routine use, to the appropriate agency, whether federal, state, local or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, rule, regulation or order issued pursuant thereto.

ROUTINE USE - DISCLOSURE WHEN REQUESTING INFORMATION

A record from a system of records maintained by this component may be disclosed as a routine use to a federal, state or local agency maintaining civil, criminal or other relevant enforcement information or other pertinent information, such as current licenses, if necessary to obtain information relevant to a component decision concerning the hiring or retention of an employee, the issuance of a security clearance, the letting of a contract, or the issuance of a license, grant or other benefit.

ROUTINE USE - DISCLOSURE OF REQUESTED INFORMATION

A record from a system of records maintained by this component may be disclosed to a federal agency, in response to its request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

ROUTINE USE - CONGRESSIONAL INQUIRIES

Disclosure from a system of records maintained by this component may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

ROUTINE USE WITHIN THE DEPARTMENT OF DEFENSE

A record from a system of records maintained by this component may be disclosed as a routine use to other components of the Department of Defense if necessary and relevant for the performance of a lawful function such as, but not limited to, personnel actions, personnel security actions and criminal investigations of the Component requesting the record.

ROUTINE USE - PRIVATE RELIEF LEGISLATION

Relevant information contained in all systems of records of the Department of Defense published on or before August 22, 1975, will be disclosed to the Office of Management and Budget in connection with the review of private relief legislation as set forth in OMB Circular A-19 at any stage of the legislative coordination and clearance process as set forth in that Circular.

ROUTINE USE - DISCLOSURES REQUIRED BY INTERNATIONAL AGREEMENTS

A record from a system of records maintained by this Component may be disclosed to foreign law enforcement, security, investigatory, or administrative authorities in order to comply with requirements imposed by, or to claim rights conferred in international agreements and arrangements including those regulating the stationing and status in foreign countries of Department of Defense military and civilian personnel.

ROUTINE USE - DISCLOSURE TO STATE AND LOCAL TAXING AUTHORITIES

Any information normally contained in IRS Form W-2 which is maintained in a record from a system of records maintained by this Component may be disclosed to State and local taxing authorities with which the Secretary of the Treasury has entered into agreements pursuant to Title 5, U.S.Code, Sections 5516, 5517, 5520, and only to those State and local taxing authorities for which an employee or military member is or was subject to tax regardless of whether tax is or was withheld. This routine use is in accordance with Treasury Fiscal Requirements Manual Bulletin Nr. 76-07.

ROUTINE USE - DISCLOSURE TO THE OFFICE OF PERSONNEL MANAGEMENT

A record from a system of records subject to the Privacy Act and maintained by this component may be disclosed to the Office of Personnel Management concerning information on pay and leave, benefits, retirement deductions, and any other information necessary for the Office of Personnel Management to carry out its legally authorized Government-wide personnel management functions and studies.

ROUTINE USE - DISCLOSURE OF INFORMATION TO NARS (GSA)

A record from a system of records maintained by this component may be disclosed as a routine use to the National Archives and Records Service of the General Services Administration in records management inspections conducted under authority of 44 U.S.C. 2904 and 2906.

ROUTINE USE - DISCLOSURE TO DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

All systems of records relating to compensation, employment or retirement, or extracts therefrom, maintained by this Component may be disclosed as a routine use to the Department of Health, Education, and Welfare for the purpose of comparing such record with records of programs administered by and in the possession of the Department of Health, Education, and Welfare in order to verify information where such verification is required by law or regulation or to identify violations or potential violations of law, whether criminal, civil, or regulatory, and whether arising by general statute or particular program statute, or by regulation, rule, or order issued pursuant thereto.

AAFES1609.02

System name:

1609.02 AAFES Customer Service

System location:

Headquarters, Army and Air Force Exchange Service (AAFES), Dallas, TX; Headquarters, AAFES-Pacific; Headquarters, AAFES-Europe, and all continental United States and oversea Exchange regions, area exchanges, post and base exchanges, and satellites within the AAFES system. Addresses are listed in the Directory of the Department of the Army, appearing in the Annual Compilation of System Notices, published in the Federal Register.

Categories of individuals covered by the system:

All AAFES customers who elect to purchase merchandise on a time payment, layaway, or special order basis, or who need purchase adjustments or refunds.

Categories of records in the system:

File contains copies of active layaway tickets, requests for refunds, special order forms, requests for special order procurement, special order logs, cash receipts vouchers, and repair vouchers.

Authority for maintenance of the system:

Title 10 U.S.C., Sections 3012 and 8012.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

To record customer transactions/payments for layaways and special orders; to determine payment status before finalizing these transactions; to identify layaway account delinquencies and prepare customer reminder notices; to prepare and mail refunds to customers on cancelled layaways or special orders; and to process purchase refunds and repair orders.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Paper records in file boxes/cabinets.

Retrievability:

By last name of customer, document control number, and/or due date.

Safeguards:

Records are maintained in areas accessible to authorized personnel only. Layaway, special order, cash receipts, and refund vouchers are prenumbered and logged as used or retired.

Retention and disposal:

Cancelled or completed layaway tickets: Held in file for 6 months after cancellation or delivery of merchandise, then destroyed.
Purchase orders: Retained for 2 years, then destroyed.
Refund vouchers: Retained for 6 years, then destroyed.
Returned merchandise slips: Retained for 6 years, then destroyed.
Cash receipts vouchers: Retained for 3 years, then destroyed.

System manager(s) and address:

Director, Merchandising Division Headquarters, Army and Air Force Exchange Service, Dallas, TX 75222.

Notification procedure:

Information may be obtained from:
Commander
Headquarters, Army and Air Force Exchange Service
ATTN: MR-O
Dallas, TX 75222
Telephone: Area Code 214/330-2653.

Record access procedures:

Requests from individuals should be addressed to: Commander, Headquarters, Army and Air Force Exchange Service, ATTN: MR-O, Dallas, TX 75222, and should contain customer's full name, current address and telephone number, Army and Air Force Exchange Service activity at which transaction was initiated, date of transaction, and control number of document involved.

Neither instructions nor provisions for personal visits are provided at this time.

Contesting record procedures:

The agency's rules for access to records and for contesting contents and appealing initial determinations may be obtained from the SYSMANAGER.

Record source categories:

Information is furnished by the customer.

Systems exempted from certain provisions of the act:

None.

A0102.02aDAAG

System name:

102.02 Office Business Visitor Files

System location:

Segments may be maintained at Headquarters, Department of the Army, staff and field operating agencies, commands, installation and supporting activities.

Categories of individuals covered by the system:

Any visitor who represents a person, firm, corporation, academic institution or other enterprise involved in business transactions with the Army.

Categories of records in the system:

Files contain forms which reflect the individual's name, name and address of firm represented, person/office visited, purpose of visit, and the status of individual as regards past or present affiliation with the Department of Defense.

Authority for maintenance of the system:

Title 10 U.S.C., Section 3012.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

To provide information to those officials of the Army responsible for monitoring/controlling visitor's status and determining purpose of visit so as to preclude conflict of interest.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Paper records in file folders.

Retrievability:

By name of visitor.

Safeguards:

Records are maintained in file cabinets with access limited to Division and Branch Chiefs having primary interest.

Retention and disposal:

Retained for 1 year after which records are destroyed.

System manager(s) and address:

The Adjutant General, Headquarters, Department of the Army, Washington, DC 20314.

Notification procedure:

Information may be obtained from the commander/supervisor maintaining the information.

Record access procedures:

Requests should be addressed to appropriate commander or supervisor. Official mailing addresses are in the Directory of United States Army Addresses following the annual compilation of Army system notices published in the Federal Register.

Contesting record procedures:

The Army's rules for access to records and for contesting contents and appealing initial determinations may be obtained from the SYSMANAGER.

Record source categories:

Information is obtained from the individual.

Systems exempted from certain provisions of the act:

None.

A0102.04aDAPE

System name:

102.04 Supervisor/Manager Employee Records

System location:

Department of the Army: Offices of supervisors/managers of the functional elements of an Army activity, installation, or agency.

National Guard Bureau: Office of the State Adjutant General, ATTN: Technician Personnel Office, of each State, Puerto Rico, Virgin Islands, and the District of Columbia.

Categories of individuals covered by the system:

Any civilian employee/NG technician (both appropriated and non-appropriated fund) who is employed within the specific organizational element.

Categories of records in the system:

Files contain copies of documents pertaining to the administration of individual civilian/NG technician employees which are duplicated in, or are generated in support of actions recorded in, the Official Personnel Folder, or related personnel files maintained in the civilian/NG technician personnel office. The records in this file contain information about an individual relating to birth date; social security number; veteran's preference; tenure; past and present salaries grades, and position titles; letters of commendation, reprimand, charges, and decision on charges; personnel action, including but not limited to, appointment, reassignment, demotion, detail, promotion, transfer, and separation; training; performance ratings, data documenting the reasons for personnel actions or decisions made about an individual; and awards.

Authority for maintenance of the system:

Title 5 U.S.C., Sections 301, 1302, 2951, 4118, 4308, and 4506; EO 1056, September 13, 1954; and Title 32 U.S.C., Section 709.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Information in these records is used for reference or to support supervisory/managerial actions required in the conduct of official civilian personnel management business; by the Office of Personnel Management in the conduct of its responsibilities; to Justice Department, Department of Labor, or other Federal agencies or judiciary bodies in the conduct of official business.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Paper records in folders, Kardex files.

Retrievability:

Alphabetically, by surname.

Safeguards:

Filed in either locked files or in secured locations. Access limited to management/supervisory officials of the assigned employees, clerical personnel maintaining the files, and to persons to whom the subject individual has given written permission.

Retention and disposal:

When an employee leaves the activity through transfer or other separation, the Supervisior/Manager Employee Records File will immediately be forwarded to the civilian/technician personnel office maintaining the Official Personnel Folder (OPF). There it will be screened to insure that it contains no documents that should be permanently filed in the OPF other than exact duplicates of papers already so filed. The Supervisor/Manager Employee Folder and its contents will then be destroyed. National Guard technicians' records are destroyed 60 days after separation date.

System manager(s) and address:

The Deputy Chief of Staff for Personnel, Department of the Army, The Pentagon, Washington, DC 20310.

Notification procedure:

Information may be obtained from the individual's supervisor/manager.

Record access procedures:

Requests, verbal or written, should be addressed to the individual's supervisor or manager.

Contesting record procedures:

The Army's rules for access to records and for contesting contents and appealing initial determinations may be obtained from Headquarters, Department of the Army (DAPE-HRE), Washington, DC 20310.

Record source categories:

From the supervisor/manager by documenting facts or statements of judgments; copies of records maintained in the civilian/technician personnel office or information obtained from same records.

Systems exempted from certain provisions of the act:

None.

A0102.13DAPC

System name:

102.13 Office Military Personnel Files

System location:

Decentralized segments of this file exist wherever unit and staff office administration of military personnel is authorized, whether active Army, Army Reserves, or National Guard; e.g., company, battery, troop detachment, branch, division, subordinate/major command, Headquarters, Department of the Army/National Guard Bureau.

Categories of individuals covered by the system:

Military personnel and, in some instances, their dependents, who are supervised and/or administered within the respective organizational element enumerated in System Location above.

Categories of records in the system:

Records include documents/papers pertaining to the individual relating to day-to-day administration/supervision. Files may include matters pertaining to appointment, promotion, reduction, reassignment, transfer, special duty, reclassification, orders, sponsors, indebtedness, leave, enlistment waivers, statement of service, bonus, evaluations, insurance, applications for outside employment, line of duty determinations, academic transcripts and individual training reports and instructor evaluations, retirement papers, voting, survivor benefits options, applications to boards and follow-on actions, and related administrative matters.

Authority for maintenance of the system:

Title 5 U.S.C., Section 301; Title 10 U.S.C., Section 3012.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

To provide commanders a general reference file of information supporting day-to-day operations and administration as pertains to the assigned/attached service member.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Paper records in file folders, index cards, microfiche.

Retrievability:

Alphabetical, by name.

Safeguards:

Records are retained in file containers, locked desks, cabinets, or rooms accessible only to authorized personnel.

Retention and disposal:

Records are destroyed 1 year after transfer/separation of the member.

System manager(s) and address:

Head of Army/National Guard office or organizational element where member is assigned.

Notification procedure:

Information may be obtained from the commander of unit to which individual is assigned.

Record access procedures:

Requests should be addressed to the SYSMANAGER. Written requests should include individual's full name, social security number, and rank/grade. For personal visits, individual must provide military identification card.

Contesting record procedures:

The Army's rules for access to records and contesting contents and appealing initial determinations are contained in Army Regulation 340-21 (32 CFR Part 505).

Record source categories:

Copies of records/documents contained in the Military Personnel Records Jacket, Official Military Personnel File, and correspondence originated by member or from sources relating to subjects in which member may be involved.

Systems exempted from certain provisions of the act:

None.

A0225.11bDAAG

System name:

225.11 The USA Individual Ready, Standby and Retired Reserve Personnel Information System.

System location:

Automated Equipment Division, Systems Support Directorate, United States (US) Army Reserve Components Personnel and Administration Center (USARCPAC), ATTN: AGUZ-SSD, 9700 Page Boulevard, St Louis, MO 63132.

Categories of individuals covered by the system:

All members of the US Army Reserve who are not assigned to a Reserve unit and not serving on extended active duty in an enlisted reserve status.

Categories of records in the system:

Record contains personal and military status and qualifications data.

Authority for maintenance of the system:

Title 10 U.S.C., Section 275.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

US Army Reserve Components Personnel Center, Department of the Army staff and command agencies, and Department of Defense and components thereof: The data records are primarily used to select qualified members for assignment to active Army units and mobilized reserve component units in the event of mobilization during a national emergency. Record is also used to support day-to-day personnel management and administration. Specifically, these uses include: selecting qualified personnel for potential assignment to reserve units based on military occupational specialty, grade, and geographical location; selecting and ordering individuals to military active duty training; identifying personnel for promotion consideration; identifying individuals not qualified for retention in the reserve; issuing annual statements of retirement credits; printing statements of total retirement credits; and publishing orders directing personnel actions and training.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Computer magnetic tapes and disks.

Retrievability:

Filed numerically, social security number (SSN) ascending.

Safeguards:

Computer located in building which has entrance controlled by Federal Protective Officers. An ID badge is required to enter building and a different floor badge is required to enter the floor. The tape and disk library is a fireproof vault with a safe combination door

plus a steel bar key-locked door. The functional and systems directors approve production requests for both one-time and recurring information.

Retention and disposal:

Records are maintained for six years after completion of statutory or contractual reserve commitment.

System manager(s) and address:

Commander, US Army Reserve Components Personnel and Administration Center, 9700 Page Boulevard, St Louis, MO 63132.

Notification procedure:

Information may be obtained from:
Commander, USARCPAC
9700 Page Boulevard, St Louis, MO 63132
Telephone: Area Code 314/263-7763

Record access procedures:

Requests from individuals should be addressed to: Commander, US Army Reserve Components Personnel and Administration Center, 9700 Page Boulevard, St Louis, MO 63132

Written requests from individuals should contain full name, SSN and address.

For personal visits the individual should provide some acceptable identification such as a driver's license.

Contesting record procedures:

The Army's rules for access to records and for contesting contents and appealing initial determinations may be obtained from the SYSMANAGER.

Record source categories:

Official Military Personnel File and Military Personnel Records Jacket.

Systems exempted from certain provisions of the act:

None

A0225.11fDAPC

System name:

225.11 Enlisted Year Group Management File/RETAIN

System location:

Department of the Army (DA), United States Army Military Personnel Center (DAPC-EP), Hoffman Building I, 2461 Eisenhower Avenue, Alexandria, VA 22331.

Categories of individuals covered by the system:

Active duty members of the US Army in enlisted grades of E1 through E9 and former military personnel who are applicants for enlistment.

Categories of records in the system:

AUTOMATED: File contains control number, reclassification/ enlistment action, type of enlistment, social security number (SSN), pay grade, race, sex, basic active service date, estimated termination of service, reenlistment date, civilian education, career management field, primary military occupational specialty (PMOS), PMOS evaluation score, new career management file (CMF), new PMOS, date of award of new PMOS, source of new PMOS, personnel charged to school code, status of application, assignment code, date of last status change, current location, year group; name, Security Investigation Status (SIS), terms reenlisted, basic pay entry date, promotional status (MOS), special skill identifier, additional skill identifier.

MANUAL: File contains name, control number, reclassification/ enlistment action, type of enlistment, SSN, pay grade, race, sex, basic active service date, estimated termination of service, Armed Forces Qualification Test Score, civilian education, promotion list status, reenlistment bonus status, security clearance, marital status, reenlistment date, physical profile status with code, career counselor with location, pay entry basic date, current/last overseas area, date eligible to return from overseas, date departed United States, waiver required, citizenship status, aptitude area scores, school/assignments requested, assignment confirmation, orders information.

Authority for maintenance of the system:

Title 5 U.S.C., Section 301.
Title 10 U.S.C.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

DA: Records are used for personnel management, year group management, and manpower management.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Records are stored on computer magnetic tapes and disk and as paper records in file folders.

Retrievability:

Normal access is by name, SSN, control number or other individual characteristics.

Safeguards:

Physical security devices, guards, computer hardware and software safeguard features and personnel clearances for individuals working with the system.

Retention and disposal:

Computer tapes are cut off annually, and are retained up to 5 years; hard copy files are cut off annually and retained up to 2 years.

System manager(s) and address:

Commander, United States Army Military Personnel Center, 200 Stovall Street, Alexandria, VA 22332.

Notification procedure:

Information may be obtained from: Headquarters, Department of the Army, US Army Military Personnel Center (DAPC-EP), Hoffman Bldg. I, 2461 Eisenhower Avenue, Alexandria, VA 22331.

Record access procedures:

Written requests for information should contain the full name of the requester, SSN, current or former military status and appropriate return address.

Personal visits may be made to the United States Army Military Personnel Center; individuals should be able to provide their military service identification and DD Form 2A for active duty personnel, or other commonly acceptable means of identification used in normal transaction of business.

Contesting record procedures:

The Army's rules for access to records and for contesting contents and appealing initial determinations may be obtained from SYSMANAGER, ATTN: DAPC-MSO.

Record source categories:

Information is obtained from the applicant, DA personnel records, computer reports, and from other DA organizations and stations.

Systems exempted from certain provisions of the act:

None

A0239.01DAAG

System name:

202.08 Request for Information Files

System location:

These records exist at Headquarters, Department of the Army, staff and field operating agencies, major commands, installations and activities receiving requests to access records pursuant to the Freedom of Information Act or to declassify documents pursuant to Executive Order 12065. They also exist in offices of Initial Denial Authorities (enumerated in Army Regulation 340-17) when an individual's request is denied; upon appeal of that denial, record is maintained in the Secretary of the Army's Office of General Counsel. Official mailing addresses are in the DOD Directory following the Annual Compilation of system notices appearing at 44 FR 74011 on December 17, 1979.

Categories of individuals covered by the system:

Any individual who requests an Army record under the Freedom of Information Act or requests mandatory review of a classified document pursuant to Executive Order 12065.

Categories of records in the system:

File contains individual's request; related processing papers; correspondence between the office of receipt, records custodians, Army staff offices and other government agencies; retained copies of classified or other exempt materials; and other selective documents.

Authority for maintenance of the system:

Title 5 U.S.C., Section 552: Freedom of Information Act as amended by Pub. L. 93-502; Executive Order 12065.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

To control administrative processing of requests for information either pursuant to the Freedom of Information Act or to Executive Order 12065, including appeals from denials.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Paper records in file folders

Retrievability:

Files alphabetically by last name of requestor.

Safeguards:

Records are maintained in areas accessible only to authorized personnel that are properly trained.

Retention and disposal:

Records reflecting granted requests are destroyed after 2 years. When requests have been denied, records are retained for 5 years except that if appeals result, records are retained until 4 years after final denial by the Army or 3 years after final adjudication by the courts, whichever is later.

System manager(s) and address:

The Adjutant General, Headquarters, Department of the Army, Washington DC 20310

Notification procedure:

Requests should be addressed to the custodian of the record sought; if unknown, write to: HQDA (DAAG-AMR-S), Room GA-082, Forrestal Building, Washington DC 20310, telephone: 202/693-1847.

Record access procedures:

Written requests should be addressed to the office that processed the initial inquiry or access request. Individual may obtain assistance from the System Manager.

Personal visits may be made to the office maintaining the records upon presentation of acceptable identification such as driver's license, and furnishing verbal information that can be verified.

Contesting record procedures:

The Army's rules for access to records and for contesting contents and appealing initial determinations are contained in Army Regulation 340-21(32 CFR Part 505).

Record source categories:

From the individual requestor, Department of Army organizations, other Department of Defense components, and other Federal, state, and local government agencies.

Systems exempted from certain provisions of the act:

The majority of records in this system are not exempt. Copies of documents residing in the office of an Initial Denial Authority having a law enforcement mission which fall within (j)(2) are exempt from the following provisions of Title 5 U.S.C., section 552a: (c)(3), (d), (e)(1), (e)(2), (e)(3), (e)(4)(G), (e)(4)(H), (e)(5), (e)(8), (f), and (g). Copies of documents maintained by other Initial Denial Authorities not having a law enforcement mission which fall within 5 U.S.C., section 552a (k)(1) through (k)(7) are exempt from the following provisions of Title 5 U.S.C., section 552a: (c) (3), (d), (e)(1), (e)(4)(G), (e)(4)(H), and (f).

A0240.01DAAG

System name:

201.08 Privacy Case Files

System location:

These records exist at Headquarters, Department of the Army, staff and field operating agencies, major commands, installations and activities receiving Privacy Act requests. They also exist in offices of Access and Amendment Refusal Authorities (enumerated in Army Regulation 340-21) when an individual's request to access and/or amend his/her record is denied; upon appeal of that denial, record is maintained by the DA Privacy Review Board. Official mailing addresses are in the DOD Directory following the Annual Compilation of system notices appearing at 44 FR 74011 on December 17, 1979.

Categories of individuals covered by the system:

Individuals who request information concerning themselves which is in the custody of the Department of the Army, including requests to amend such records pursuant to Title 5, U.S.C. section 552a(d) (Privacy Act of 1974).

Categories of records in the system:

Documents which notify requestors of the existence of records on them, providing or refusing access to or amendment of records, acting on appeals or refusals to provide access to or amend records, and providing or developing information for use in litigation. Included are requests; approval and refusal actions; appeals and actions on appeals, including DA Privacy Review Board minutes and actions; coordination actions; copies of the requested and amended/unamended records; statements of disagreement; and related documents.

Authority for maintenance of the system:

Title 10 U.S.C., Section 3012; Title 5 U.S.C., Section 552a.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Files are used to process and coordinate individual requests for access, and amendment of personal records; to process and record appeals on denials of requests for access or amendment to personal records by the individual against agency rulings; and to ensure timely response to requestors.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Paper records in file holders.

Retrievability:

By name of requestor on whom the records pertain.

Safeguards:

Records are accessed by custodian of the record system and by persons responsible for servicing the record system in performance of their official duties who are properly screened and cleared. Records are stored in locked cabinets or rooms.

Retention and disposal:

Offices of Access and Amendment Refusal Authorities: Approved requests, unappealed refusals and refusals fully overruled by appellate authorities: Destroy after 4 years; refusals upheld in whole or in part by appellate authorities: destroyed after 10 years, provided legal proceedings are completed.

Offices of appellate authorities: Appeals adjudicated fully in favor of requestor: destroyed after 4 years. Appeals refused in full or in part: destroyed after 10 years provided legal proceedings are completed.

Other offices: Destroyed after 4 years.

System manager(s) and address:

The Adjutant General, Headquarters, Department of the Army, ATTN: DAAG-AMR-R, Washington, DC 20310.

Notification procedure:

Requests should be addressed to the custodian of the record sought; if unknown, write to: HQDA (DAAG-AMR-R), 1000 Independence Avenue, SW, Washington, DC 20310, telephone: 202/693-0973.

Record access procedures:

Written requests should be addressed to the office that processed the initial inquiry, access request, or amendment request. Individual may obtain assistance from the System Manager.

Personal visits may be made to the office maintaining the records upon presentation of acceptable identification such as driver's license, employee identification card, and furnishing verbal information that can be verified from individual's case file.

Contesting record procedures:

The Army's rules for access to records and for contesting contents and appealing initial determinations are contained in Army Regulation 340-21(32 CFR Part 505).

Record source categories:

From the individual requestor, Department of Army organizations, other Department of Defense components, and other Federal, state, and local government agencies.

Systems exempted from certain provisions of the act:

The majority of records in this system are not exempt. Copies of documents residing in the office of an Access and Amendment Refusal Authority having a law enforcement mission which fall within (j)(2) are exempt from the following provisions of Title 5 U.S.C., section 552a: (c)(3), (d), (e)(1), (e)(2), (e)(3), (e)(4)(G), (e)(4)(H), (e)(5), (e)(8), (f) and (g). Copies of documents maintained by the DA Privacy Review Board and by those Access and Amendment Refusal Authorities not having a law enforcement mission which fall within 5 U.S.C., section 552a (k)(1) through (k)(7) are exempt from the following provisions of Title 5 U.S.C., section 552a: (c)(3), (d), (e)(1), (e)(4)(G), (e)(4)(H), and (f).

A0506.05DAAG

System name:

506.05 Diplomatic Immunity Roster

System location:

Washington National Records Center, General Services Administration, Suitland, MD 20409.

Categories of individuals covered by the system:

Any member who was assigned to any of the following units which were stationed in Thailand: 7th Radio Relay Field Station; 6924 Security Squadron; Navy Detachment, Radio Relay Field Station; 4802 Joint Liaison Detachment; 17th DAR Squadron; Postal Courier Region, AI16, Det 1, 1983th Communications Squadron;

6201 Aerospace Support Squadron; Department of Defense (DOD) Special Representative, Thailand; General Electric, Kokha.

Categories of records in the system:

File contains individual's name, social security number (SSN) and organization.

Authority for maintenance of the system:

Title 10 U.S.C., Section 3012.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Records are used only to answer inquiries.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

IBM card stock and rosters in file folders.

Retrievability:

Filed alphabetically by last name of individual.

Safeguards:

Building employs security guards. Records are maintained in storage areas accessible only to authorized personnel.

Retention and disposal:

Normal disposition procedures were preempted by imposition of a DOD moratorium. At the present time, these records will be retained indefinitely.

System manager(s) and address:

The Adjutant General, Headquarters, Department of the Army, Washington, DC 20314.

Notification procedure:

Information may be obtained from HQDA (DAAG-AMR-S), Room GA-080, Forrestal Building, Washington, DC 20314, telephone: Area Code 202/693-1845.

Record access procedures:

Requests should be submitted to The Adjutant General, HQDA (DAAG-AMR-S), Washington, DC 20314. Requesters should furnish their full name and any information that would readily identify the record sought. Personal visits are not permitted.

Contesting record procedures:

The Army's rules for access to records and for contesting contents and appealing initial determinations are contained in Army Regulation 340-21 (32 CFR Part 505).

Record source categories:

Messages and other written communications from the individual units requesting members' addition or deletion from the roster.

Systems exempted from certain provisions of the act:

None

A0909.19cDAAG

System name:

509.19 Vehicle Registration File

System location:

Washington National Records Center, General Services Administration, Suitland, MD 20409.

Categories of individuals covered by the system:

Any US Government Personnel who resided in Thailand and who was required to register vehicles under USMACTHAI Regulation 1-13.

Categories of records in the system:

The file contains information related to importing, local purchase, and vehicle registration with the Royal Thai Government.

Authority for maintenance of the system:

Title 10 U.S.C., Section 3012.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Records are used only to answer inquiries.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Vehicle Registration File is a card file. Privately Owned Vehicle(s) (POV) records are in file folders. Files of the various categories of POV are on computer printouts.

Retrievability:

All records are filed alphabetically. In addition, the files on the categories of POV are also retrieved by license plate number.

Safeguards:

Building employs security guards. Records are maintained in storage areas accessible only to authorized personnel.

Retention and disposal:

Normal disposition procedures were preempted by imposition of a Department of Defense moratorium. At the present time, these records will be retained indefinitely.

System manager(s) and address:

The Adjutant General, Headquarters, Department of the Army, Washington, DC 20314.

Notification procedure:

Information may be obtained from HQDA (DAAG-AMR-S), Room GA-080, Forrestal Building, Washington, DC 20314; telphone: Area Code 202/693-1845.

Record access procedures:

Requests should be submitted to The Adjutant General, HQDA (DAAG-AMR-S), Washington, DC 20314. Requesters should furnish their full name and any information that would readily identify the record sought. Personal visits are not permitted.

Contesting record procedures:

The Army's rules for access to records and for contesting contents and appealing initial determinations are contained in Army Regulation 340-21(32 CFR Part 505).

Record source categories:

Information is obtained from individuals and messages.

Systems exempted from certain provisions of the act:

None

A0909.20aDAAG

System name:

509.20 Ration Control/Commissary/Cosmetic Purchase File

System location:

Washington National Records Center, General Services Administration, Suitland, MD 20409.

Categories of individuals covered by the system:

Individuals who made purchases in Thailand Regional Exchange (TRE) facilities.

Categories of records in the system:

Major Item Ration Control Printout: The master file was used to produce listing on an 'as required' basis of all major TRE purchases made by an individual.

Commissary Printout: Used to produce a listing of individuals who overspent their monthly dollar amount in the commissary.

PX, Commissary, Class VI Questionnaire File: Used to issue ration control cards on a semiannual basis; record all requests for supplemental purchases, items under control of the MACT Form 120, and major household applicance purchases.

PACEX Catalog Purchase File: Used to produce a listing of all items purchased by an individual from PACEX on an 'as required' basis.

Ration Control Registers: Used for control of MACT Forms 36S, 36D, 36U, 81 and 57.

Duty-Free Inspection File: Used to provide information on proper disposition of duty-free merchandise.

Authority for maintenance of the system:

Title 10 U.S.C., Section 3012.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Records are used only to answer inquiries.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Records are in file folders and on computer printouts in file cabinets within a Government secured building.

Retrievability:

Information on the printouts is retrived by social security number (SSN), and by Ration Control Unit Number. Information on PX, Commissary, Class VI file is retrived by name and unit. Information on Duty-Free Inspection File is retrived by name.

Safeguards:

Building employs security guards. Records are maintained in storage areas accessible only to authorized personnel.

Retention and disposal:

Normal disposition procedures were preempted by imposition of a Department of Defense moratorium. At the present time, these records will be retained indefinitely.

System manager(s) and address:

The Adjutant General, Headquarters, Department of the Army, Washington, DC 20314.

Notification procedure:

Information may be obtained from HQDA (DAAG-AMR-S), Room GA-080, Forrestal Building, Washington, DC 20314; telephone: Area Code 202/693-1845.

Record access procedures:

Requests should be submitted to The Adjutant General, HQDA (DAAG-AMR-S), Washington, DC 20314. Requesters should furnish their full name and any information that would readily identify the record sought. Personal visits are not permitted.

Contesting record procedures:

The Army's rules for access to records and for contesting contents and appealing initial determinations are contained in Army Regulation 340-21 (32 CFR Part 505).

Record source categories:

Applications and related forms from individuals who requested ration control privileges in Thailand.

Systems exempted from certain provisions of the act:

None

A0509.20bDAAG

System name:

509.20 Alphabetical Roster (Thailand)

System location:

Washington National Records Center, General Services Administration, Suitland, MD 20409.

Categories of individuals covered by the system:

Military and civilian US National personnel who were assigned to USMACTHAI/JUSMAGTHAI and the US Embassy, Thailand, who were authorized duty-free privileges by the Thai Government.

Categories of records in the system:

File consists of punched cards prepared from paper forms. Multiple copies of the entire system are produced by photo-offset process. The information stored includes: name, rank or grade, social security number (SSN), branch of service, duty section, date of rank (if military), number of dependents in Thailand, date eligible to return from overseas, duty phone number, quarters phone number, wife's first name (if in Thailand), individual's date of birth, and local address.

Authority for maintenance of the system:

Title 5 U.S.C., Section 301.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Records are used only to answer inquiries.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Punch cards in card files; printed paper rosters in booklet form.

Retrievability:

Category (military or civilian), then alphabetically by last name of individual.

Safeguards:

Building employs security guards. Records are maintained in storage areas accessible only to authorized personnel.

Retention and disposal:

Normal disposition procedures were preempted by imposition of a Department of Defense moratorium. At the present time, these records will be retained indefinitely.

System manager(s) and address:

The Adjutant General, Headquarters, Department of the Army, Washington, DC 20314.

Notification procedure:

Information may be obtained from HQDA (DAAG-AMR-S), Room GA-080, Forrestal Building, Washington, DC 20314; telephone: Area Code 202/693-1845.

Record access procedures:

Requests should be submitted to The Adjutant General, HQDA (DAAG-AMR-S), Washington, DC 20314. Requesters should furnish their full name and any information that would readily identify the record sought. Personal visits are not permitted.

Contesting record procedures:

The Army's rules for access to records and for contesting contents and appealing initial determinations are contained in Army Regulation 340-21 (32 CFR Part 505).

Record source categories:

Individual concerned and official records of the individual.

Systems exempted from certain provisions of the act:

None

A0708.01aDAPC

System name:

708.01 Military Personnel Records Jacket Files (MPRJ)

System location:

United States Army Reserve Components Personnel and Administration Center (RCPAC), each Army command/organization/detachment, and each Army Reserve command/organization/detachment.

Categories of individuals covered by the system:

Enlisted, warrant officers, and commissioned officers on active duty in the United States (US) Army; enlisted, warrant officers, commissioned officers of the US Army Reserve in active reserve (non-unit or unit) status; all living retired persons; commissioned/warrant officers separated after 30 June 1917 and enlisted personnel separated after 31 October 1912.

Categories of records in the system:

Files contain qualification record; emergency data record; enlistment record and related service agreement/extension/active duty orders; military occupational specialty (MOS) evaluation data report; group life insurance election; record of induction; security questionnaire; transfer/discharge report; license application; language proficiency questionnaire; police record check; current declaration of parent/guardian; statement of personal history; identification card application; Veterans Administration (VA) compensation forms and related papers; security clearance; certificate/determination; airborne jump record; dependent medical care statement and related forms; training and experience records; Department of Defense (DOD) summary sheet for review of conscientious objector; oath of extension of enlistment; survivor benefit plan election certificate; efficiency report; application/ nomination for assignment; achievement certificates; summarized record of proceeding, record of proceeding and appellate or other supplementary actions, Article 15 (Title 10 U.S.C., Section 815); weight control record; personnel screening and evaluation record; individual statement relating to removal from temporary disability retired list; change of name statements; enlistment statement application/approval/disapproval/ classification/removal for discharge/identification as conscientious objector; requests for appointment; affidavits relating retention beyond expiration of term of service; prior service enlistment documents; certificate barring reenlistment; waivers for enlistment; physical evaluation board letters/election/summaries/status of conditions; authority to change name/birth date; statement of military service; record brief (SIDPERS); letters of failure to complete Army school; certificate of completion of Army school; MOS classification board proceedings; award of MOS; waiver of right to deferment; agreement for noncombatant duty; citation of award; correspondence relating to badges, medals, and unit awards; correspondence/ authorizations/orders regarding foreign decorations; correspondence regarding Medal of Honor and certification to VA; letters of appreciation/commendation; recommendations/approvals/declinations/ board proceedings/announcement relating to promotion/reduction; correspondence/letters/administrative reprimands/censures/admonitions relating to apprehensions/confinement/discipline; letters of sympathy relating to a deceased member; dependent travel and movement of household goods and acknowledgement of restriction; document and orders relating to National Guard status; adverse suitability information; personal indebtedness correspondence and related papers; statement of involuntary retirement; orders/revocations/amendments/indorsements/ extracts relating to active duty/awards/change data/court martial/ discharge/enlistment/reenlistment/MOS award/proficiency pay/promotion/ reduction/release/retirement/temporary duty; individual flight records/ physical examination records/aviator flight record/instrument certification papers/application for identification cards/other training/ proficiency/evaluation forms, records, and papers; other correspondence/ letters/documents/papers relating to duty status/leave/pass/organizational entitlements. Correspondence among the (1) United States Army Military Personnel Center (MILPERCEN), (2) service member, (3) Army Staff offices, (4) Army commands, (5) other Federal agencies, and (6) general public to commander or service member.

Authority for maintenance of the system:

Title 5 U.S.C., Section 301; Title 10 U.S.C.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Army command or US Army Reserve command of assignment/ station/ location of the Army or Army Reserve service member: To provide day-to-day administration, training, qualification, reenlistment, discharge, and related matters pertaining to individual's military service; to publish officer registers/rosters as authorized by Title 10 U.S.C., Section 122.

Inquiries are received for information, documents, papers, and records which are provided to the requester to enable the agency to adjudicate claims, perform investigative actions, support criminal cases, state determinations, research, security clearance, citizenship, location and other related uses consistent with the functional and statutory responsibility of the agency.

Agencies using files are: Central Intelligence Agency; Department of Agriculture; Department of Commerce; Department of Health, Education and Welfare; Department of Housing and Urban Development; Department of Interior; Department of Labor; Department of State; Department of Transportation; Department of Treasury; American Battle Monuments Commission; Atomic Energy Commission; Civil Aeronautics Board; Federal Communications Commission; Federal Aviation Administration; VA; US Postal Service; Office of Personnel Management; Selective Service System; DOD agencies, elements and military departments; Social Security Administration; Defense agencies of the North Atlantic Treaty Organization, and military commands thereof (i.e., Supreme Headquarters Allied Powers Europe (SHAPE) and its subordinate commands of Allied Forces, Northern (AFNORTH), Central (AFCENT), Central Army Group (CENTAG), Southern (AFSOUTH), and Allied Land Forces Southeast Europe (LANDSOUTHEAST); State, county and city welfare organizations when information is required to conduct business of the agency concerned; penal institutions when the individual is a patient or an inmate; and State, county and city probation/parole and pardon officers for use in presentencing or parole investigations; correspondence with next-of-kin in accordance with Army Regulation 630-10; and other elements of the Federal Government in accordance with their respective authority and responsibility.

Patriotic societies incorporated under the provisions of Title 36 U.S.C. in consonance with their respective corporate mission when their use of records or information is in furtherance of the welfare, morale, or mission of the service members of the Army.

Record of the identity, diagnosis, prognosis, or treatment of any client/patient, irrespective of whether or when he/she ceases to be a client/patient, maintained in connection with the performance of any alcohol or drug abuse prevention and treatment function conducted, regulated, or directly or indirectly assisted by any department or agency of the United States, shall, except as provided therein, be confidential and be disclosed only for the purposes and under the circumstances expressly authorized in Title 21 U.S.C., Section 1175 and Title 42 U.S.C., Section 4582. These statutes take precedence over the Privacy Act of 1974 in regard to accessibility of such records except to the individual to whom the record pertains. Blanket 'routine uses' identified in 44 FR 73728 do not apply to these records.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Paper records in record jacket folder.

Retrievability:

Records accessed by name.

Safeguards:

Records maintained in areas accessible only to authorized personnel; transferred from station to station in personal possession of individual concerned or by US mail.

Retention and disposal:

Permanent

System manager(s) and address:

Commander, United States Army Military Personnel Center, 200 Stovall Street, Alexandria, VA 22332.

Notification procedure:

Information may be obtained from the commander of the organization to which the service member is assigned; for retired and non-unit reserve personnel, information may be obtained from the United States Army Reserve Components Personnel and Administration Center, 9700 Page Avenue St Louis, MO 63132; for separated and deceased personnel, notify the National Personnel Records Center, General Services Administration, 9700 Page Avenue St Louis, MO 63132.

Record access procedures:

Written requests for information should include the full name, service identification number, branch of service of an officer, and current address. Visits should be made to the Consolidated Military Personnel Activity (COMPACT) or the Military Personnel Office (MILPO) of the organization/station of the service member concerned or the United States Army Reserve Components Personnel and Administration Center.

For personal visits, the requester should provide acceptable identification, i.e., military identification card or other identification normally acceptable in the transaction of business.

Contesting record procedures:

The Army's rules for access to records and for contesting contents and appealing initial determinations may be obtained from Headquarters, Department of the Army (DAPC-MSO), 200 Stovall Street, Alexandria, VA 22332.

Record source categories:

Letters, statements, forms, records and related papers originating with the service member; generated by Army Staff offices, Army commands, other Federal agencies in accordance with their respective functional or statutory requirements; and by the general public or the commander of service member when such papers relate to the service status of the individual.

Systems exempted from certain provisions of the act:

None

A0708.01bNGB

System name:

708.01 Army National Guard Automated Personnel Reporting System

System location:

Primary System: National Guard Computer Center, National Guard Bureau, Columbia Building, 5611 Columbia Pike, Falls Church, VA 22041.

Decentralized Segments: Offices of the Adjutants General of all States, Puerto Rico, the Virgin Islands, and the District of Columbia and units of the Army National Guard (ANG) not on active duty.

Categories of individuals covered by the system:

Each individual who is a member of the ANG in a commissioned officer, warrant officer or enlisted status.

Categories of records in the system:

File contains items of data relating to individual's service which have been extracted from his/her military records or computed from the information contained therein. The records from which the data are extracted are: military personnel records jacket; financial records data folder; health records; statement of service; qualification record; group life insurance election; application for appointment; enlistment records; medical examination; active duty report; record of retirement points; notification of eligibility for retired pay at age 60; voluntary reduction; academic report; officer evaluation report; transcript of military record; oath of enlistment extension; temporary disability record; change of name; statement for enlistment; acknowledgement of service requirements; report of proceedings of physical fitness board; report of proceedings of physical review board; birth certificate; citizenship statement and status; record of security clearance; educational constructive credit; educational transcript; flight record; Federal recognition orders; special orders; recommendation for promotion; notification of non-selection for promotion; miscellaneous correspondence documents and other military orders relating to military service including information pertaining to dependents, interservice actions, intraservice actions, assignments, details, military qualifications, determinations, reliefs, component, branch of service, military awards, pay entitlements, releases, transfers, and other military service data.

Authority for maintenance of the system:

Title 10 U.S.C., Section 275; Title 32 U.S.C.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Department of Defense and Department of the Army (DA) (to include United States Army Forces Command (FORSCOM) and United States Army Reserve Components Personnel and Administration Center (RCPAC)): To provide feeder information necessary to enable computation of the monthly pay for each member of the ANG who is paid by the Joint Military Pay System for Reserve Components of the Army; to provide suspense information to assure completion of individual personnel actions required by Federal stat-

ute at the expiration of specified periods of time. These actions are: removal from an active status upon completion of maximum periods of service or attainment of maximum ages; to provide lists of female personnel to facilitate selection of individuals for specialized assignments in connection with ANG activities; to provide lists of military chaplains and chaplains' assistants to facilitate the selection of individuals for specialized duties or training.

Record of the identity, diagnosis, prognosis, or treatment of any client/patient, irrespective of whether or when he/she ceases to be a client/patient, maintained in connection with the performance of any alcohol or drug abuse prevention and treatment function conducted, regulated, or directly or indirectly assisted by any department or agency of the United States, shall, except as provided therein, be confidential and be disclosed only for the purposes and under the circumstances expressly authorized in Title 21 U.S.C., Section 1175 and Title 42 U.S.C., Section 4582. These statutes take precedence over the Privacy Act of 1974 in regard to accessibility of such records except to the individual to whom the record pertains. Blanket 'routine uses' identified in 44 FR 73728 do not apply to these records.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Magnetic computer tape.

Retrievability:

By name, social security number or automatic data processing parameter.

Safeguards:

Access to data storage area and distribution of printouts are controlled. Approval of functional manager must be obtained before data may be retrieved or distributed.

Retention and disposal:

Data retained in file until updated or service of individual is terminated. In case of enlisted personnel the data are destroyed 1 month after individual is separated from the ANG. In the case of commissioned officers and warrant officers, the data are retained indefinitely in separate file.

System manager(s) and address:

Chief, National Guard Bureau, The Pentagon, Washington, DC 20310.

Notification procedure:

Information may be obtained from: Chief, Army Personnel Division, National Guard Bureau, The Pentagon, Washington DC 20310.

Record access procedures:

Written requests for information should contain full name of individual, service identification number, current military status and appropriate return address.

Contesting record procedures:

The Army's rules for access to records and for contesting contents and appealing initial determinations may be obtained from the SYS-MANAGER.

Record source categories:

Enlistment, appointment, or commission related forms pertaining to the individual having a current or former military status; academic, training, or qualification records acquired prior to or during military service; correspondence, forms, records, documents and other related papers originating in or collected by Department of the Army Staff agencies and commands; other Federal departmental agencies, administrations, Federal separate agencies, commissions, boards, service, or authority; State and local governmental entities; civilian education and training institutions; and members of the public when such information directly concerns the military service member.

Systems exempted from certain provisions of the act:

None

A0708.01cNGB

System name:

708.01 Military Personnel Records Jacket (MPRJ) (NGB)

System location:

Each National Guard Armory in all states, Puerto Rico, the Virgin Islands, and the District of Columbia.

Categories of individuals covered by the system:

Enlisted personnel, warrant officers, and commissioned officers who are members of the Army National Guard (ANG) not on active duty.

Categories of records in the system:

Files contain qualification record; emergency data record; enlistment record and related service agreement/extension/active duty orders; military occupational specialty (MOS) evaluation data report; group life insurance election; record of induction; security questionnaire; transfer/discharge report; license application; language proficiency questionnaire; police record check; current declaration of parent/guardian; statement of personal history; identification card application; Veterans Administration (VA) compensation forms and related papers; security clearance; certificate/determination; airborne jump record; dependent medical care statement and related forms; training and experience records; Department of Defense (DOD) summary sheet for review of conscientious objector; oath of extension of enlistment; survivor benefit plan election certificate; efficiency report; application/nomination for assignment; achievement certificates; summarized record of proceeding, record of proceeding and appellate or other supplementary actions, Article 15 (Title 10 U.S.C., Section 815); weight control record; personnel screening and evaluation record; individual statement relating to removal from temporary disability retired list; change of name statements; enlistment statement application/approval/ disapproval/classification/removal for discharge/identification as conscientious objector; requests for appointment; affidavits relating retention beyond expiration of term of service; prior service enlistment documents; certificate barring reenlistment; waivers for enlistment; physical evaluation board letters/election/summaries/status of conditions; authority to change name/birth date; statement of military service; record brief; letters of failure to complete Army school; certificate of completion of Army school; MOS classification board proceedings; award of MOS; waiver of right to deferment; agreement for noncombatant duty; citation of award; correspondence relating to badges, medals, and unit awards; correspondence/authorizations/orders regarding foreign decorations; correspondence regarding Medal of Honor and certification to VA; letters of appreciation/ commendation; recommendations/approvals/ declinations/board proceedings/announcements relating to promotion/reduction; correspondence/letters/administrative reprimands/ censures/ admonitions relating to apprehensions/confinement/discipline; letters of sympathy relating to a deceased member; dependent travel and movement of household goods and acknowledgment of restriction; document and orders relating to National Guard status; adverse suitability information; personal indebtedness correspondence and related papers; statement of involuntary retirement; orders/revocations/amendments/ extracts relating to active duty/awards/change data/court martial/discharge/enlistment-reenlistment/MOS award/ proficiency pay/promotion/reduction/release/retirement/temporary duty; individual flight records/physical examination records/aviator flight record/instrument certification papers/application for identification cards, other training/proficiency/evaluation forms, records, and papers; other correspondence/letters/ documents/papers relating to duty status/leave/pass/organizational entitlements. Correspondence between the (1) United States Army Military Personnel Center (MILPERCEN), (2) service member, (3) Army staff offices, (4) Army commands, (5) other Federal agencies, and (6) general public to commander or service member.

Authority for maintenance of the system:

Title 5 U.S.C., Section 301; Title 10 U.S.C., Sections 275 and 3012; and Title 32 U.S.C.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Army command, United States Army Reserve Command or ANG Command of assignment/station/location of the Army, Army Reserve or ANG service member: To provide day-to-day administration, training, qualification, reenlistment, discharge, and related matters pertaining to individual's military service; to publish officer registers/rosters as authorized by Title 10 U.S.C., Section 122.

Inquiries are received for information, documents, papers, and records which are provided to the requester to enable the agency to adjudicate claims, perform investigative actions, support criminal cases, state determinations, research, security clearance, citizenship, location and other related uses consistent with the functional and statutory responsibility of the agency. Agencies using files are: Central Intelligence Agency; Department of Agriculture; Department of Commerce; Department of Health, Education and Welfare; Department of Housing and Urban Development; Department of Interior; Department of Labor; Department of State; Department of Transportation; Department of Treasury; American Battle Monuments Commission; Atomic Energy Commission; Civil Aeronautics Board; Federal Communications Commission: Federal Aviation Administration; VA; US Postal Service; Office of Personnel Management; Selective Service System; DOD agencies, elements and military departments; Social Security Administration; Other elements of the Federal Government in accordance with their respective authority and responsibility.

Record of the identity, diagnosis, prognosis, or treatment of any client/patient, irrespective of whether or when he/she ceases to be a client/patient, maintained in connection with the performance of any alcohol or drug abuse prevention and treatment function conducted, regulated, or directly or indirectly assisted by any department or agency of the United States, shall, except as provided therein, be confidential and be disclosed only for the purposes and under the circumstances expressly authorized in Title 21 U.S.C., Section 1175 and Title 42 U.S.C., Section 4582. These statutes take precedence over the Privacy Act of 1974 in regard to accessibility of such records except to the individual to whom the record pertains. Blanket 'routine uses' identified in 44 FR 73728 do not apply to these records.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Paper records in record jacket folder.

Retrievability:

Records accessed by name.

Safeguards:

Records maintained in areas accessible only to authorized personnel; transferred from station to station in personal possession of individual concerned or by US mail.

Retention and disposal:

Data retained in file until updated or service of individual is terminated. Following separation, record reverts to State status, not subject to the Privacy Act, and is retained indefinitely in appropriate State depository.

System manager(s) and address:

Chief, National Guard Bureau, The Pentagon, Washington, DC 20310.

Notification procedure:

Information may be obtained from the Commander of the unit to which the ANG member is assigned; for retired and separated personnel information may be obtained from the Office of the Adjutant General of each State, Puerto Rico, the Virgin Islands, or the District of Columbia as appropriate.

Record access procedures:

Written requests for information should include the full name, service identification number, current military status, and current return address. For personal visits the requester should provide acceptable identification, i.e., military identification card or other identification normally acceptable in the transaction of business.

Contesting record procedures:

The Army's rules for access to records and for contesting contents and appealing initial determinations may be obtained from Chief, National Guard Bureau, The Pentagon, Washington, DC 20310.

Record source categories:

Letters, statements, forms, records, and related papers originating with the service member; generated by Army staff offices, Army commands, other Federal agencies in accordance with their respective functional or statutory requirements; and by the general public or the commander of service member when such papers relate to the service status of the individual.

Systems exempted from certain provisions of the act:

None

A0708.02aDAPC

System name:

708.02 Official Military Personnel File

System location:

Primary System: Personnel Information Systems Directorate, United States Army Military Personnel Center (MILPERCEN).

Decentralized Segments: United States Army Enlisted Records and Evaluation Center; United States Army Reserve Components Personnel and Administration Center (RCPAC); and National Personnel Records Center (NPRC), General Services Administration (GSA).

Categories of individuals covered by the system:

Each individual on active duty in the United States Army in enlisted, appointed or commissioned status; or in a United States Army or Army of the United States (AUS) retired status; each individual not on active duty who has a reserve status in an enlisted, appointed or commissioned status, or in a retired reserve status; and each individual who was an enlisted, appointed, or commissioned member of the United States Army and who was completely separated by discharge, death, or other termination of his/her military status.

Categories of records in the system:

File contains individual records including enlistment contract; Veterans Administration (VA) laws; physical evaluation board proceedings; military occupational specialty data report; statement of service; qualification record; group life insurance election; emergency data form; application for appointment; qualification/evaluation report; oath of office; medical examination; security questionnaire; application for retired pay; application for correction of military records; application for active duty; transfer or discharge report; active duty report; voluntary reduction; line of duty and misconduct determinations; discharge or separation reviews; police record checks; consent/declaration of parent/guardian; Army Reserve Officers Training Corps (ROTC) supplemental agreement; award recommendations; academic reports; casualty reports; United States field medical card; retirement points, deferment; preinduction processing and commissioning data; transcripts of military records; summary sheets review of conscientious objector; election of options; oath of enlistment extension; survivor benefit plans; efficiency reports; records of proceeding, Title 10 U.S.C., Section 815 appellate action; determination of moral eligibility; waiver of disqualifications; temporary disability record; change of name; statements for enlistment; acknowledgements of service requirements; retired benefits; application for review of physical evaluation board and disability board; appointments; designations; evaluations; extensions; birth certificates; photographs; citizenship statements and status; educational constructive credit; educational transcripts; flight status board reviews; assignment agreements/limitations/waivers/election/and travel; efficiency appeals; promotion/reduction recommendations/approvals/ declinations/announcements/notifications/reconsiderations/worksheets/ elections/letters of notification to deferred officers/and promotion passover notifications; absence without leave and desertion records; Federal Bureau of Investigation reports; Social Security Administration (SSA) correspondence; miscellaneous correspondence, documents, and military orders relating to military service including information pertaining to dependents, interservice action, inservice details, determinations, reliefs, component; awards, pay entitlements, releases, transfers, and other military service data.

Authority for maintenance of the system:

Title 5 U.S.C., Section 301.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Department of the Army (DA): To maintain, use, collect, and disseminate information with respect to an individual holding a military status or former military status, including regular reserve, retired, former member separated, or deceased. Information pertains to individual's former, current, and subsequent to active duty status relating to birth; citizenship; parentage; home of record; education; training; dependents; travel; language proficiency; former and current association; brotherhood, memberships and related affiliations with organizations and like collective elements which service member divulges as having meaning, substance, or significance to his/her military service status; assignment history; and other related military experiences, qualification, training, preferences, restriction, and status actions.

Department of State: To issue passport/visa; to document persona-non-grata status, attache assignments, and related administration of personnel assigned and performing duty with the State Department.

Department of Treasury: To issue bonds; to collect and record incoming taxes.

Department of Defense (DOD): To authorize and consummate interdepartmental actions relating to interservice requirements pertaining to the Army, Navy, Air Force, and Coast Guard when the Coast Guard is operational under DOD.

Department of Justice: To file fingerprints; to perform intelligence function.

Department of Agriculture: To coordinate interdepartmental functions related to education conducted by the Department of Agriculture's advanced education element.

Department of Labor: To accomplish actions required under Federal Employees Compensation Act.

Department of Health, Education and Welfare: To provide services authorized by medical, health, and related functions authorzied by Title 10 U.S.C., Sections 1074 thru 1079.

Atomic Energy Commission: To accomplish requirements incident to Nuclear Accident/Incident Control Officer functions.

American Red Cross: To accomplish coordination and complete service functions including blood donor programs and emergency investigative support and notifications.

Civil Aeronautics Board: Flight qualifications, certification and license actions relating to inservice pilots.

Federal Aviation Agency: To accomplish aviation and air service actions involving inservice aviators.

GSA: For records storage and archival services and for printing of directories and related material which includes personal data.

US Postal Service: To accomplish postal service authorization involving postal officers and mail clerk authorizations.

VA: To provide information relating to benefits, pensions, inservice loans, insurance, and appropriate hospital support.

Bureau of Immigration and Naturalization: To comply with statutes relating to inservice alien registration, and annual residence/location.

Office of the President of the United States of America: To exchange required information relating to White House Fellows, regular Army promotions, aides, and related support functions staffed by Army members.

Federal Maritime Commission: To obtain licenses for military members accredited as captain, mate, and harbor master for duty as Transportation Corps warrant officer.

Each of the several States, and United States possessions: To support state bonus applications; to fulfill income tax requirements appropriate to the service member's home of record; to record name changes in state bureaus of vital statistics; and for National Guard affairs.

Civilian educational and training institutions: To accomplish student registration, tuition support, Graduate Record Examination (GRE) tests requirement, and related school requirements incident to inservice education programs in compliance with Title 10 U.S.C., Chapters 102 and 103.

SSA: To obtain or verify social security number (SSN); to transmit Federal Insurance Compensation Act deductions made from inservice members' wages.

Department of Transportation: To coordinate and exchange necessary information pertaining to interservice relationships between United States Coast Guard (USCG) and United States Army when service members perform duty with the USCG elements or training activities.

Civil authorities: For compliance with Title 10 U.S.C., Section 814.

Department of the Air Force: To administer personnel support for individual Army members assigned for duty with the Air Force.

Department of the Navy: To administer personnel support for individual Army members assigned for duty with the Navy or Marine Corps.

United States International Communication Agency: To receive military and medical record information in conjunction with investigations of applicants for sensitive positions under the provisions of Executive Order 10450.

Record of the identity, diagnosis, prognosis, or treatment of any client/patient, irrespective of whether or when he/she ceases to be a client/patient, maintained in connection with the performance of any alcohol or drug abuse prevention and treatment function conducted, regulated, or directly or indirectly assisted by any department or agency of the United States, shall, except as provided therein, be confidential and be disclosed only for the purposes and under the circumstances expressly authorized in Title 21 U.S.C., Section 1175 and Title 42 U.S.C., Section 4582. These statutes take precedence over the Privacy Act of 1974, in regard to accessibility of such records except to the individual to whom the record pertains. Blanket 'routine uses' identified in 44 FR 72728 do not apply to these records.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Microfiche in plastic carriers stored randomly in electro-mechanical storage/retrieval devices. Temporary files consist of paper records in file folder/jacket; selected data automated for management facility in a perishable manner on tapes, disks, cards, and other computer media.

Retrievability:

Filed alphabetically by last name; automated data retrievable by name, SSN, or automatic data processing (ADP) parameter; reserve component, retired, and deceased persons' records accessed by SSN terminal digit sequence.

Safeguards:

Records maintained in areas accessible only to authorized personnel; automated media protected by authorized password system for access terminals, controlled access to operation rooms, and controlled output distribution.

Retention and disposal:

Microfiche and paper records are permanent. They are retained in active file until termination of service, held in inactive file in accordance with retention and retirement schedule and subsequently retired to NPRC.

System manager(s) and address:

Commander, United States Army Military Personnel Center, 200 Stovall Street, Alexandria, VA 22332.

Notification procedure:

Information may be obtained from:

Following address should be used for inquiries on records of commissioned or warrant officers (including members of Reserve Components) serving on active duty:

Commander
United States Army Military Personnel Center
ATTN: Personnel Information Systems Directorate
Hoffman Building II
200 Stovall Street
Alexandria, VA 22332
Telephone: Area Code 202/325-9606

Following address should be used for inquiries on records of enlisted members (including members of Reserve Components) serving on active duty:

Commander
United States Army Enlisted Records and Evaluation Center
Ft. Benjamin Harrison, IN 46249
Telephone: Area Code 317/542-3361

Following address should be used for inquiries on records of Commissioned officers or warrant officers in a reserve status not on active duty; or Army enlisted reservists not on active duty; or members of the National Guard who performed active duty, or commissioned officers, warrant officers, or enlisted members in a retired status:

Commander
United States Army Reserve Components
Personnel and Administration Center
9700 Page Avenue
St. Louis, MO 63132
Telephone: Area Code 314/268-7770

Following address should be used for inquiries on records of commissioned officers and warrant officers who were completely separated from the service after 30 June 1917 or enlisted members who were completely separated after 31 October 1912:

Commander
National Personnel Records Center
General Services Administration
9700 Page Avenue
St. Louis, MO 63132
Telephone: Area Code 314/268-7262.

Record access procedures:

Written requests for information should contain full name of individual, service identification number, current or former military status, and appropriate return address.

Personal visits may be made to the appropriate location based on the individual's status; individual should be able to provide commonly acceptable identification, such as driver's license, employment identification card, and give some verbal information relative to his/her current or former military status.

Contesting record procedures:

The Army's rules for access to records and for contesting contents and appealing initial determinations may be obtained from Headquarters, Department of the Army (DAPC-MSO), 200 Stovall Street, Alexandria, VA 22332.

Record source categories:

Enlistment, appointment, or commission related forms pertaining to the individual having a current or former military status; academic, training or qualification records acquired prior to or during military service; correspondence, forms, records, documents and other related papers originating in or collected by DA staff agencies and commands; other Federal departmental agencies, administrations, Federal separate agencies, commissions, boards, service, or authority; state and local governmental entities; civilian education and training institutions; and members of the public when such information obtained directly concerns the military service member.

Systems exempted from certain provisions of the act:

None

A0708.02bNGB

System name:

708.02 Official Military Personnel File (Army National Guard)

System location:

Army National Guard Personnel Center, National Guard Bureau, Columbia Pike Office Building, 5600 Columbia Pike, Falls Church, VA 22041.

Categories of individuals covered by the system:

Each commissioned officer or warrant officer in the Army National Guard not on active duty.

Categories of records in the system:

File contains individual records including enlistment contract; Veterans Administration (VA) laws; physical evaluation board proceedings; military occupational specialty report; statement of service; qualification record; group life insurance election; emergency data form; application for appointment; qualification/evaluation report; oath of office; medical examination; security questionnaire; application for retired pay; application for correction of military records; application for active duty; transfer or discharge report; active duty report; voluntary reduction; line of duty and misconduct determinations; discharge or separation reviews; police record checks; consent/declaration of parent/guardian; Army Reserve Officers Training Corps (ROTC) supplemental agreement; award recommendations; academic reports; casualty reports; United States (US) field medical card; retirement points; deferment; preinduction processing and commissioning data transcripts of military records; summary sheets of conscientious objector; election of options; oath of enlistment extensions; survivor benefit plans; efficiency reports; records of proceeding, Title 10 U.S.C., Section 815 and appellate actions; determination of moral eligibility; waiver of disqualifications; temporary disability record; change of name; statements for enlistment; acknowledgments of service requirements; retired benefits; application for review of physical evaluation board and disability board; appointments; designations; evaluations; birth certificates; photographs; citizenship statements and status; educational constructive credit; educational transcripts; flight status board reviews; assignment agreements/limitations/ waivers/election and travel; efficiency appeals; promotion/reduction recommendations/approvals/declinations/announcements/notifications/reconsiderations/worksheets; elections/letters of notification to deferred officers and promotion passover notifications; absence without leave and desertion records; Federal Bureau of Investigation reports; Social Security Administration (SSA) correspondence; miscellaneous correspondence, documents, and military orders relating to military service including information pertaining to dependents, interservice actions, inservice details, determinations, reliefs, component; awards, pay entitlements, releases, transfers, and other military service data.

Authority for maintenance of the system: Title 5 U.S.C., Section 301; Title 10, U.S.C., Sections 275 and 3012; and Title 32 U.S.C.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Department of the Army (DA): To maintain, use, collect, and disseminate information with respect to an individual holding a military status or former military status, including regular reserve, retired, and former member separated. Information pertains to individual's former, current, and subsequent to active duty status relating to birth; citizenship; parentage; home of record; education; training; dependents; travel; language proficiency; former and current association; brotherhood, memberships, and related affiliations with organizations and like collective elements which service member divulges as having meaning, substance, or significance to his/her military service status; assignment history, and other related military experiences, qualifications, training, preferences, restriction, and status actions.

Department of State: To issue passport/visa; to document persona-non-grata status, attache assignments, and related administration of personnel assigned and performing duty with the State Department.

Department of Defense (DOD): To authorize and consummate interdepartmental actions relating to interservice requirements pertaining to the Army, Navy, Air Force, and Coast Guard when the Coast Guard is operational under DOD.

Department of Justice: To file fingerprint cards; to perform intelligence function.

Department of Labor: To accomplish actions required under Federal Employees Compensation Act.

Department of Health, Education and Welfare: To provide services authorized by medical, health, and related functions authorized by Title 10 U.S.C., Sections 1074-1079.

Atomic Energy Commission: To accomplish requirements incident to Nuclear Accident/Incident Control Officer functions.

American Red Cross: To accomplish coordination and complete service functions including blood donor programs and emergency investigative support and notifications.

Civil Aeronautics Board: Flight qualifications, certification and license actions relating to inservice pilots.

Federal Aviation Agency: To accomplish aviation and air service actions involving inservice aviators.

General Services Administration: For records storage, archival services, and for printing of directories and related material which includes personal data.

US Postal Service: To accomplish postal service authorization involving postal officers and mail clerk authorizations.

VA: To provide information relating to benefits, pensions, inservice loans, insurance, and appropriate hospital support.

Bureau of Immigration and Naturalization: To comply with statutes relating to inservice alien registration, and annual residence/locations.

Office of the President of the United States of America: To exchange required information relating to White House Fellows, regular Army promotions, aides, and related support functions staffed by Army members.

Federal Maritime Commission: To obtain licenses for military members accredited as captain, mate, and harbor master for duty as Transportation Corps warrant officer.

Each State and US possessions: To support state bonus applications; to fulfill income tax requirements appropriate to the service member's home of record; to record name changes in state bureaus of vital statistics; and for National Guard affairs.

Civilian educational and training institutions: To accomplish student registration, tuition support, Graduate Record Examination (GRE) tests requirement, and related school requirements incident to inservice education programs in compliance with Title 10 U.S.C., Chapters 102 and 103.

SSA: To obtain or verify social security numbers (SSN); to transmit Federal Insurance Compensation Act deductions made from inservice members' wages.

Department of Transportation: To coordinate and exchange necessary information pertaining to interservice relationships between US Coast Guard and US Army when service members perform duty with the US Coast Guard elements or training activities.

Civil Authorities: For compliance with Title 10 U.S.C., Section 814.

Department of the Air Force: To administer personnel support for individual Army members assigned for duty with the Air Force.

Department of the Navy: To administer personnel support for individual Army members assigned for duty with the Navy or Marine Corps.

Record of the identity, diagnosis, prognosis, or treatment of any client/patient, irrespective of whe/shether or when he ceases to be a client/patient, maintained in connection with the performance of any alcohol or drug abuse prevention and treatment function conducted, regulated, or directly or indirectly assisted by any department or agency of the United States, shall, except as provided therein, be confidential and be disclosed only for the purposes and under the circumstances expressly authorized in Title 21 U.S.C., Section 1175 and Title 42 U.S.C., Section 4582. These statutes take precedence over the Privacy Act of 1974, in regard to accessibility of such records except to the individual to whom the record pertains. Blanket 'routine-uses' identified in 44FR73728 do not apply to these records.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Paper records in file folder/jacket; selected data automated for management facility in a perishable manner on tapes, disks, cards, and other computer media.

Retrievability:

Filed alphabetically by last name; automated data retrievable by name, SSN, or automatic data processing (ADP) parameter.

Safeguards:

Records maintained in areas accessible only to authorized personnel; automated media protected by authorized password system for access terminals, controlled access to operation rooms, and controlled output distribution.

Retention and disposal:

Paper records are permanent. They are retained in active file until termination of service or transfer to the US Army Reserve, at which time records are transferred to the custody of the Commander, US Army Reserve Components Personnel and Administration Center.

System manager(s) and address:

Chief, National Guard Bureau, The Pentagon, Washington, DC 20310

Notification procedure:

Information may be obtained from:

Army National Guard Personnel Center,
Columbia Pike Office Building
Falls Church, VA 22041
Telephone: Area Code 202/756-1210.

Record access procedures:

Written requests for information should contain full name of individual, service identification number, current or former military status and appropriate return address.

Personal visits may be made to the appropriate location based on the individual's status; individual should be able to provide commonly acceptable identification, such as driver's license, employment identification card, and give some verbal information relative to his/her current or former military status.

Contesting record procedures:

The Army's rules for access to records and for contesting contents and appealing initial determinations may be obtained from Chief, National Guard Bureau, The Pentagon, Washington, DC 20310.

Record source categories:

Enlistment, appointment, or commission related forms pertaining to the individual having a current or former military status; academic, training or qualification records acquired prior to or during military service; correspondence, forms, documents and other related papers originating in or collected by DA Staff agencies and commands; other Federal departmental agencies, administrations, Federal separate agencies, commissions, boards, service, or authority; state and local governmental entities; civilian education and training institutions; and members of the public when such information obtained directly concerns the military service member.

Systems exempted from certain provisions of the act:

None

A0708.21aTRADOC

System name:

708.21 TCATA Personnel Information System

System location:

Office of the Deputy Chief of Staff, Personnel and Administration, Personnel Branch, Headquarters (HQ) TRADOC Combined Arms Test Activity (TCATA), ATCAT-SPT-AGA, Ft Hood, TX 76544.

Categories of individuals covered by the system:

Officers, warrant Officers, enlisted personnel, and Department of the Army civilians currently assigned or attached to HQ TCATA

Categories of records in the system:

Files contain automated records on individuals to include first and last name, middle initial, social security number; rank or grade and step; control specialty; date of rank; basic pay entry date; component; branch; date assigned to TCATA; flight status; Primary Military Occupational Specialty/General Schedule Series; organization location by paragraph and line number; office phone; liaison office; marital status; spouse; home phone; present address; city code; legal residence; loss code and date; special qualifications; highest military schooling; latest evaluation date; source of commission; civilian education level and major; background experience; language code; additionally awarded military occupational specialties.

Authority for maintenance of the system:

Title 44 U.S.C., Section 3101.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

To provide Commander, TCATA with the ability to effectively manage personnel resources by furnishing real time information pertaining to individuals' qualifications and status through use of the following rosters: alphabetical qualification, officers by branch, majors and higher, all personnel by grade and birthdate, military occupational specialty, military personnel by the city in which they live, slotting and departing personnel; organizational directory, and telephone directory of GS-7's and above. Data provides bases for reports generated on an 'as required' basis in response to specific management queries.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Magnetic disk.

Retrievability:

SSN and name.

Safeguards:

Automated media protected by authorized password system for access terminals, controlled access to operation rooms, and restricted output distribution.

Retention and disposal:

Records destroyed upon departure of person.

System manager(s) and address:

Chief, Personnel Branch, ATCAT-SPT-AGA, Headquarters TRADOC Combined Arms Test Activity, Ft Hood, TX 76544.

Notification procedure:

Information may be obtained from the SYSMANAGER.

Record access procedures:

Information may be obtained from the SYSMANAGER.

Contesting record procedures:

The Army's rules for access to records and for contesting contents and appealing initial determinations are contained in AR 340-21 (32 CFR Part 505).

Record source categories:

Individual interviewed, Military Personnel Records, Employee Record Cards, TDY Orders and TDY Vouchers.

Systems exempted from certain provisions of the act:

None

A0710.10DAAG

System name:

710.10 Reserve Personnel Information Reporting System

System location:

Decentralized Segments: Commander, First United States Army, Ft George G. Meade, MD 20755; Commander, Fifth United States Army, Ft Sam Houston, TX 78234; Commander, Sixth United States Army, Presidio of San Francisco, CA 94129; Commander, United States Army Western Command. (WESTCOM), Ft. Shafter, HI96858; Ft. Richardson, AK 99505; Chief, United States Army Reserve (USAR) Affairs, Europe, APO New York 09245. Commander, 172d Infantry Brigade Alaska, Each Army Headquarters (HQ) maintains the records pertaining to its geographical area.

Centralized User: Systems Support Directorate, United States Army Reserve Components Personnel and Administration Center (RCPAC), 9700 Page Boulevard, St. Louis, MO 63132.

Categories of individuals covered by the system:

All individuals currently assigned to a USAR unit.

Categories of records in the system:

File contains identification data, including name, social security number (SSN); current assignment data, including unit identification code grade, and occupational specialty; retirement data, including number of retirement points and years of satisfactory military service; and other selected data which serve in the administration and reporting of the individual, including security clearance, date entered military service, date of last promotion, date military obligation expires, sex, race and civilian occupation.

Authority for maintenance of the system:

Title 10 U.S.C., Section 275.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

File is maintained at each Army Command HQ for the administration of USAR unit personnel. Administration includes control of promotions, transfers, and other day-to-day actions in addition to maintaining unit readiness which includes identifying training needs and assuring that needs are filled on a continuing basis.

A copy of each Army file is sent to RCPAC on a monthly basis for reporting purposes. Statistical reports are prepared at RCPAC for use by various Department of the Army (DA) and Department of Defense Staff agencies. The main users of this report are: Office of Chief, Army Reserve; HQ, United States Army Forces Command; HQ, Continental United States (CONUS) Armies, Office of the Chief of Chaplains, and Office of the Deputy Chief of Staff for Personnel (DCSPER). Uses include: strength accounting, budgeting, readiness in case of mobilization of reserve units, and forecasting of future needs based upon expected attrition. In addition, the Command Involvement Program (CIP) computer system inspects the personal data contained in each record and reports percentage of accuracy and completeness to the unit commander and his/her superiors.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

File is stored on computer magnetic tapes and in air- conditioned libraries.

Retrievability:

File is sequenced by SSN within unit identification code. To retrieve an individual's record, an authorized requester must enter

SSN, five characters of last name, unit identification code, military personnel class (indicates individual is an officer, warrant officer or enlisted), and a particular code identifying the transaction as a record request.

Safeguards:

Tape files are stored on tape racks in reel number sequence in a restricted library within the computer room complex which is a restricted area. In addition, the building housing the computer room is restricted to authorized personnel.

Retention and disposal:

A record is retained for the duration of the reservist's unit assignment.

CONUS: The current tape file and the two previous tape files are retained at any given time.

OVERSEAS: Record files are retained for historical data reporting as follows: 4 years for reports for months of March, June, and December; 6 years for the report month of September; and 2 years for all other report months.

System manager(s) and address:

Deputy Chief of Staff for Personnel, The Pentagon, Washington, DC 20310.

Notification procedure:

To ascertain if the tape file contains data on a particular individual, the individual should write or visit the Headquarters of the Continental United States Army area in which his/her unit is located.

Record access procedures:

To request access to the information contained on this tape file, the individual should write or visit the Headquarters of the Continental United States Army in which his/her unit is located.

Contesting record procedures:

The Army's rules for access to records and for contesting contents and appealing initial determinations may be obtained from the SYS-MANAGER, ATTN: DAPE-PBP.

Record source categories:

Data are extracted from the following sources:

Correspondence from Reservist; National ZIP Code Directory; DA Form 1383, Statement of Retirement Points; Release From Active Duty Orders; DA Form 873, Certificate of Clearance and/or Security Determination; DA Form 1379, USAR Unit Record of Reserve Training; Promotion Orders; Assignment Orders; Language Proficiency Questionnaire; DA Form 268, Report for Suspension of Favorable Personnel Actions; DA Form 67-7, US Army Officer Efficiency Report; DA Form 1506, Statement of Service; National Guard Bureau Form 23, Retirement Credits Record; Department of Defense (DD) Form 4, Enlistment Contract Armed Forces of the US; DD Form 47, Record of Induction; DA Form 61, Application for Appointment; DA Form 2, 2-1, Qualification Record; DA Form 3725, Army Reserve Status and Address Verification Questionnaire; Dictionary of Occupational Titles; DA Form 3726, 3726-1, Ready Reserve Service Agreement; DD Form 214, Armed Forces of the US Report of Transfer or Discharge; Standard Form 88, Report of Medical Examination.

Systems exempted from certain provisions of the act:

None.

A0718.01DAPC

System name:

718.01 Military Award Case File

System location:

Primary System: United States Army Military Personnel Center (MILPERCEN), 200 Stovall Street, Alexandria, VA 22332.

Decentralized Segments: Each Army command delegated authority for approval of an award.

Categories of individuals covered by the system:

Military personnel on active duty, members of reserve components, United States (US) civilians serving with US Army in a combat zone, and deceased former members of the US Army.

Categories of records in the system:

Files contain recommendation for award; endorsements; transmittals; letters; memoranda; award board approvals/disapprovals; citation texts pertaining to the specific individual and award; Department of the Army (DA) letter orders/general orders; related papers supporting the recommendation; correspondence among (1) MILPERCEN, (2) service member, (3) Army Staff offices, (4) Army commands, (5) and individuals having knowledge/information relative to the service member concerned or the act or achievement stated in the recommendation.

Authority for maintenance of the system:

Title 10 U.S.C., Chapters 57 and 357; Title 5 U.S.C., Section 301.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Each Army command having authority for action for a specific award: To accomplish review; to authorize the award; to maintain the award case file of approved and disapproved recommendations.

MILPERCEN: To act as the Army element for Headquarters, Department of the Army (HQDA); to accomplish the review and to authorize the award of those awards/decorations which are not delegated or within the scope of authority of a subordinate element of the Army; to maintain the award case file of approved and disapproved recommendations.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Paper records in file folder.

Retrievability:

Records accessed by name.

Safeguards:

Records maintained in areas accessible only to authorized individuals.

Retention and disposal:

Approved wartime or combat activities military award case files are retained permanently; approved case files for all other periods are destroyed after one year.

Disapproved military award case files are destroyed after six years.

System manager(s) and address:

Commander, United States Army Military Personnel Center, 200 Stovall Street, Alexandria, VA 22332.

Notification procedure:

Information may be obtained from United States Army Military Personnel Center, 200 Stovall Street, Alexandria, VA 22332.

Record access procedures:

Written requests for information should include the full name, service identification number, grade and branch of service, name of award, and current address. Visits should be made to the organization/station of the service member or to the United States Army Military Personnel Center.

For personal visits, the visitor should be able to provide acceptable identification, i.e., military identification normally acceptable in the transaction of business.

Contesting record procedures:

The Army's rules for contesting contents and appealing initial determination may be obtained from HQDA (DAPC-MSS), 200 Stovall Street, Alexandria, VA 22332.

Record source categories:

Recommendation for award (DA Form 638) with supporting records, forms, statements, letters, and related papers originated by persons other than the awardee and other individuals having information useful in making an award determination.

Systems exempted from certain provisions of the act:

None

A0720.04aDAPE

System name:

720.04 Individual Correctional Treatment Files

System location:

Records are located at installation detention/Army confinement and correctional facilities, to include the US Army Retraining Brigade, Ft Riley, Kansas. Major commands, whose addresses are in the appendix to Army systems of records, will provide location assistance.

Categories of individuals covered by the system:

Any military member confined at an Army confinement or correctional facility as a result of, or pending, trial by courts-martial.

Categories of records in the system:

Documents and items of information relating to the administration of individual military prisoners in US Army confinement or correctional facilities; court-martial/confinement/release orders; records of disciplinary actions of a judicial or nonjudicial nature; military police reports; prisoner identification records; medical examination reports; requests/receipts for health and comfort supplies; clothing and equipment issue records; mail records and forms authorizing correspondence; individual prisoner utilization records; interview requests/coun-

seling records; fingerprint cards; parolee agreements; inspection records on prisoners in segregation; documents reflecting custodianship of prisoner's personal funds and property; correspondence/orders concerning individual's past, present, or future duty assignments; documents concerning progress and training of confinees; and personal history data to include name, sex, social security number, date of birth, race, marital status, educational level, military rank levels and qualifications, skills test scores, and data relating to seperation from service.

Authority for maintenance of the system:

Title 10 U.S.C., Sections 951 - 953.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

By Confinement/Correctional Facility Commander: To determine: initial custody classifications, when custody elevation is appropriate, work assignments, educational needs; to gauge prisoner's adjustment to confinement; to identify areas of particular concern to individual prisoners, and to determine individual's potential for future duty performance. Records may provide statistical data for research projects and managerial studies/reports concerning effectiveness of confinement/correctional programs.

Portions disclosed to Departments of Justice, Defense, and Army Staff agencies and commands; state and local criminal justice agencies established by law. Disclosure to law enforcement and investigatory agencies is for investigation and possible criminal prosecution, civil court actions or regulatory order. Disclosure to confinement/correctional system agencies is for use in the administration of correctional programs to include custody classification; employment, training and educational assignments; treatment programs; clemency, restoration to duty and parole actions; verifications of military offenders' criminal records, employment records and social histories.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Paper records in file folders, punch cards, magnetic tapes and disks.

Retrievability:

Alphabetically by prisoner's surname.

Safeguards:

Confinement facilities are secured. Records are maintained in areas accessible only to authorized personnel who are properly screened, cleared and trained. Automated segments are further protected by controlled system procedures and code numbers.

Retention and disposal:

Manual records on individual prisoners are destroyed 4 years after release of prisoner from confinement. Automated records used to provide statistical or managerial purposes are retained indefinitely; however, individually identifiable data are purged within 4 years of prisoner's release. (NOTE: Transfer of a prisoner from one confinement/correctional facility to another is not construed as release from confinement; upon transfer to another such facility, individual's record accompanies him.)

System manager(s) and address:

The Deputy Chief of Staff for Personnel, Headquarters, Department of the Army, Washington, DC 20310.

Notification procedure:

Information may be obtained by writing to the commander of the confinement/correctional facility, or to the System Manager.

Record access procedures:

Individuals desiring access to their records may write to the Commander of the confinement/correctional facility where a prisoner, furnishing full name, SSN, present home address and approximate dates of confinement. Request must bear signature of the individual whose record it is.

Contesting record procedures:

The Army's rules for access to records and for contesting contents and appealing initial determinations are contained in Army Regulation 340-21 (32 CFR Part 505).

Record source categories:

Subjects, witnesses, victims, Military Police and US Army Criminal Investigation Command personnel and special agents, informants, various Department of Defense, Federal, state and local investigative and law enforcement agencies, departments or agencies of foreign governments; and any other individuals or organizations which may supply pertinent information.

Systems exempted from certain provisions of the act:

Portions of this system which fall within 5 U.S.C. 552a(j)(2) are exempt from the following provisions of Title 5 U.S.C., Section 552a: (c)(3), (c)(4), (d), (e)(2), (e)(3), (e)(4)(G), (e)(4)(H), (e)(5), (e)(8), (f), and (g).

A0722.02DACH

System name:

722.02 Baptism, Marriage, and Funeral Files

System location:

Primary System: Office, Chief of Chaplains, Department of the Army, ATTN: DACH-AMW, Washington, DC 20310. Records from 1917 - 1952 are in the National Archives; records from 1953 - 1977 are in the Washington National Records Center (WNRC), Washington, DC 20409, and the Office, Chief of Chaplains.

Categories of individuals covered by the system:

Any service member, dependent of service member, authorized civilian personnel, and retired service member for whom an Army chaplain has performed a baptism, marriage, or funeral at an Army installation.

Categories of records in the system:

Files contain individual records of baptism, marriage, and funeral as submitted by the officiating Army chaplain. Records of baptism, marriage, and funeral for the period 1917 - 1955 are reported by the officiating chaplain on a Chaplains Monthly Report. Information may also be provided by religious denominational headquarters offices.

Authority for maintenance of the system:

Title 10 U.S.C., Section 3547.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

For personal use of service members, their dependents, and authorized civilain personnel.

Army Mutual Aid Association: To provide proof of marriage for insurance purposes.

Baptism records provide age proof when birth records are unavailable.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Chaplains Monthly Reports for period 1917 - 1952 are on file in paper record form at WNRC. Records of baptism, marriage, and funeral for period 1952 - 1975 are retained in the Office, Chief of Chaplains and are reproduced from roll microfilm. Paper records are on file in Office, Chief of Chaplains for period January 1976 - October 1977 pending microfilming.

Retrievability:

Filed alphabetically by last name. Records of marriage are filed alphabetically by last name of groom. Records of funeral are filed alphabetically by last name of deceased person.

Safeguards:

Building employs security guards at all times.

Retention and disposal:

Records dated 1953 - 1977 are retained for 50 years. System of maintenance of these records was discontined 1 October 1977.

System manager(s) and address:

The Office, Chief of Chaplains, Headquarters, Department of the Army, The Pentagon, Washington, DC 20310.

Notification procedure:

Information may be obtained from:
Headquarters, Department of the Army (DACH-AMW)
Room 1E-417
The Pentagon
Washington, DC 20310
Telephone: Area Code 202/695-1107.

Record access procedures:

Requests from individuals should be addressed to: Headquarters, Department of the Army (DACH-AMW), Room 1E-417, The Pentagon, Washington, DC 20310.

Written requests for information should specify type of record requested.

Baptism: Full name of person baptized; approximate date; names of parents (maiden name of mother); name of chaplain, if known; and place of baptism.

Marriage: Full name of groom and maiden name of bride; approximate date; name of installation at which marriage was performed; and name of chaplain, if known.

Funeral: Name of deceased person, year of death, and name of next-of-kin.

Requester may visit Office, Chief of Chaplains, Room 1E-417, The Pentagon, Washington, DC 20310 with proof of identity for his/her own record or that of his/her dependent, and sign a receipt for same.

Contesting record procedures:

The Army's rules for access to records and for contesting contents and appealing initial determinations by the individual concerned may be obtained from the SYSMANAGER.

Record source categories:

Records created by Army chaplains and authorized civilian clergy-persons who perform pastoral duties for service personnel and their dependents, and authorized civilian personnel, and submit the same to the Office, Chief of Chaplains.

Systems exempted from certain provisions of the act:

None.

A0807.01DAAG

System name:

807.01 MCT USAR Technician System

System location:

Primary System: Systems Support Directorate, United States Army Reserve Components Personnel and Administration Center (RCPAC) (Field Operating Agency of The Adjutant General's Office, Department of the Army (DA)), 9700 Page Boulevard, St Louis, MO 63132.

Decentralized Segments: Deputy Chief of Staff for Personnel (DCSPER) and DA Staff Agencies and commands.

Categories of individuals covered by the system:

Any person who is currently employed as a United States Army Reserve (USAR) Technician.

Categories of records in the system:

File contains personnel identification data to include name and social security number (SSN) and work status data concerning job category, grade, assigned work station and location. If personnel are members of the USAR, data on reserve assignment and reserve grade are also carried.

Authority for maintenance of the system:

Title 10 U.S.C., Section 275.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

RCPAC: Receive raw input data from USAR Commands, maintain the centralized data processing system and produces and distributes reports to the users. Is the computer processing agency; does not utilize or dispense data to other than officially designated agencies.

USAR Commands: To obtain current management data to administer to technicians assigned within their command.

DCSPER: To monitor and provide policy guidance and budget planning for the program.

Other DA Staff agencies and commands: To provide data for inclusion in training and mobilization plans.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Stored as computer tape and paper printout.

Retrievability:

Sequenced numerically by SSN.

Safeguards:

Security guards limit access to the RCPAC. Magnetic tape files are maintained in a library by reel numbers; access to a specific file must be determined by responsible scheduling personnel. In addition, basic file characteristics must be programmed into access programs before individual data records can be referenced.

Access to hard copy listings is limited to employed personnel with a job related need-to-know requirement at the DCSPER, USAR Commands, and other DA Staff agencies and commands.

Retention and disposal:

The automatic data processing system at the RCPAC requires records to be maintained on an evolutionary schedule; a record is created upon hiring and is eliminated when employment is terminated. Tape files are retained for 60 days; tape files are retained in a tape library through 3 processing cycles, a creation cycle, for use as the current file in the next creation cycle and then as the emergency back-up file.

Printed reports/listings are maintained at the DCSPER, USAR Commands, and other DA Staff agencies and commands until superseded by the next edition.

System manager(s) and address:

Deputy Chief of Staff for Personnel (DAPE-MPO), Headquarters Department of the Army, The Pentagon, Washington, DC 20310.

Notification procedure:

Information may be obtained from:

Deputy Chief of Staff for Personnel (DAPE-MPO),
Room 2B-718,
The Pentagon
Washington, DC 20310;
Telephone: Area Code 202/695-3837.

Record access procedures:

Requests from individuals should be addressed to: Headquarters, Department of the Army, Deputy Chief of Staff for Personnel, ATTN: DAPE-MPO, Washington, DC 20310.

Requests should contain the full name and SSN of the individual; current address and telephone number; and a clear, concise request statement.

Personal visits are limited to the USAR Command having jurisdiction over the unit by whom the technician is employed. Acceptable identifying documents, such as driver's license, Reserve identification card, or other document that can be verified against record, are required.

Contesting record procedures:

The Army's rules for access to records and for contesting contents and appealing initial determinations may be obtained from the SYSMANAGER, ATTN: DAPE-MPO.

Record source categories:

Data coded on DA Forms 3615-R, Strength and Utilization of USAR Technicians, are transmitted by DA Form 200 from the employing USAR command to RCPAC via the United States Postal Service. Processed data are returned to authorized agencies by reports.

Systems exempted from certain provisions of the act:

None

A0812.03DAPE

System name:

812.03 Grievance Records

System location:

Records are located in the servicing civilian personnel offices for each Army activity or installation.

Categories of individuals covered by the system:

Current or former employees of the Department of the Army who have submitted grievances in accordance with part 771 of the regulations of the Office of Personnel Management (5 CFR 771) or through a negotiated grievance procedure.

Categories of records in the system:

Records relating to grievances filed by Army employees under part 771 of regulations issued by the Office of Personnel Management. The case file contains all documents related to the grievance, including statements of witnesses, reports of interviews and hearings, examiner's findings and recommendations, a copy of the original and final decisions, and related correspondence and exhibits. The system includes files and records of internal grievance and arbitration systems established through negotiations with recognized labor organizations.

Authority for maintenance of the system:

5 U.S.C., 1302, 3301, 3302, E.O. 10577, 3 CFR 1954-1958 Comp., p. 218, E.O. 10987, 3 CFR 1959-1963 Comp., p. 519, agency employees, for personal relief in a matter of concern or dissatisfaction which is subject to the control of agency management.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

These records and information in these records may be used:

To disclose pertinent information to the appropriate Federal, state, or local agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order, where the agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

To disclose information to any source from which additional information is requested in the course of processing a grievance, to the extent necessary to identify the individual, inform the source of the purpose(s) of the request, and identify the type of information requested.

To disclose information to a Federal agency, in response to its request, in connection with the hiring or retention of an employee, the issuing of a security clearance, the conducting of a security or suitability investigation of an individual, the classifying of jobs, the letting of a contract, or the issuance of a license, grant, or other

benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

To provide information to a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of that individual.

To disclose information to another Federal agency or to a court when the Government is party to a judicial proceeding before the court.

By the National Archives and Records Service (General Services Administration) in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

By the Department of the Army or by the Office of Personnel Management in the production of summary descriptive statistics and analytical studies in support of the function for which the records are collected and maintained, or for related work force studies. While published statistics and studies do not contain individual identifiers, in some instances the selection of elements of data included in the study may be structured in such a way as to make the data individually identifiable by inference.

To disclose information to officials of the Merit Systems Protection Board, including the Office of the Special Counsel; the Federal Labor Relations Authority and its General Counsel, or the Equal Employment Opportunity Commission when requested in performance of their authorized duties.

To disclose, in response to a request for discovery or for appearance of a witness, information that is relevant to the subject matter involved in spending judicial or administrative proceeding.

To provide information to officials of labor organizations reorganized under the Civil Service Reform Act when relevant and necessary to their duties of exclusive representation concerning personnel policies, practices, and matters affecting work conditions.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Maintained in file folders.

Retrievability:

By the names of the individuals on whom the records are maintained. (Records may also be filed by bargaining unit.)

Safeguards:

Records are maintained in lockable metal filing cabinets to which only authorized personnel have access.

Retention and disposal:

These records are destroyed 7 years after closing of the case. Disposal is by shredding or burning.

System manager(s) and address:

Director of Civilian Personnel, Office of the Deputy Chief of Staff for Personnel, Room 2C-631, The Pentagon, Washington, DC 20310.

Notification procedure:

It is required that individuals submitting grievances be provided a copy of the record under the grievance process. They may, however, contact the Army personnel or designated office where the action was processed regarding the existence of such records on them. They must furnish the following information for their records to be located and identified: name, date of birth, approximate date of closing the case and kind of action taken, organization and activity where employed at time grievance was initiated.

Record access procedures:

It is required that individuals submitting grievances be provided a copy of the record under the grievance process. However, after the action has been closed, an individual may request access to the official copy of the grievance filed by contacting the personnel or designated office where the action was processed.

Individuals must provide the following information for their records to be located and identified: name, date of birth, approximate date of closing of the case and kind of action taken, organization and activity where employed at time grievance was initiated.

Individuals requesting access must also follow the Privacy Act regulations of the Office of Personnel Management regarding access to records and verification of identity (5 CFR 297.203 or 297.201).

Contesting record procedures:

Review of requests from individuals seeking amendment of their records which have been the subject of a judicial or quasi-judicial action will be limited in scope. Review of amendment requests of these records will be restricted to determining if the record accurately documents the action of the Army's ruling on the case, and will not include a review of the merits of the action, determination, or finding.

Individuals wishing to request amendment to their records to correct factual errors should contact their servicing civilian personnel office. Individuals must furnish the following information for their records to be located and identified: name, date of birth, approximate date of closing of the case and kind of action taken, organization and activity where employed at time grievance was initiated.

Individuals requesting amendment must also follow the Privacy Act regulations of the Office of Personnel Management regarding amendment to the records and verfication of identity (5 CFR 297.208 and 297.201).

Record source categories:

Information in this system of records is provided: by the individual on whom the record is maintained, by testimony of witnesses, by officials of the Department of the Army, from related correspondence, from organizations, or persons.

Systems exempted from certain provisions of the act:

None.

A0902.07aDASG

System name:

902.07 Medical Regulating Files

System location:

Primary System: Armed Services Medical Regulating Office (ASMRO), Office of the Surgeon General, Department of the Army (DA), Washington, DC, 20310.

Decentralized Segments: United States (US) Government medical treatment facilities, evacuation units and medical regulating offices.

Categories of individuals covered by the system:

Any patient requiring transfer to another medical treatment facility who is reported to ASMRO by US Government medical treatment facilities for designation of the receiving medical facility.

Categories of records in the system:

File contains information reported by the transferring medical treatment facility and includes, but is not limited to, patient identity, service affiliation and grade or status, sex, medical diagnoses, medical condition, special procedures or requirements needed, medical specialties required, administrative considerations, personal considerations, the patient's home town and/or duty station and other information having an effect on the transfer.

Authority for maintenance of the system:

Title 5 U.S.C., Section 301.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

ASMRO: To properly determine the appropriate medical treatment facility to which the reported patient will be transferred; to notify the reporting US Government medical treatment facility of the transfer destination; to notify the receiving medical treatment facility of the transfer; to notify evacuation units, medical regulating offices and other government offices for official reasons; to evaluate the effectiveness of reported information; to establish further the specific needs of the reported patient; for statistical purposes; and when required by law and official purposes.

US Government medical treatment facilities, evacuation units and medical regulating offices for official purposes concerned with, but not limited to, the transfer of the patient.

Record of the identity, diagnosis, prognosis, or treatment of any client/patient, irrespective of whether or when he ceases to be a client/patient, maintained in connection with the performance of any alcohol or drug abuse prevention and treatment function conducted, regulated, or directly or indirectly assisted by any department or agency of the United States, shall, except as provided therein, be confidential and be disclosed only for the purposes and under the circumstances expressly authorized in Title 21 U.S.C., Section 1175 and Title 42 U.S.C., Section 4582. These statutes take precedence over the Privacy Act of 1974, in regard to accessibility of such records except to the individual to whom the record pertains. Blanket 'routine uses' identified in 44 FR 73728 do not apply to these records.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Paper records in file folders and on index cards.

Retrievability:

File alphabetically and by ASMRO control number.

Safeguards:

Buildings employ security guards. Records are maintained in areas accessible only to authorized personnel who are properly screened and trained.

Retention and disposal:

Destroyed 1 year following the end of the calendar year in which the patient was reported to ASMRO.

System manager(s) and address:

Director, ASMRO, Office of the Surgeon General, DA, Room 1E641, The Pentagon, Washington DC 20310; Commanders of US Government medical treatment facilities, evacuation units and medical regulating offices.

Notification procedure:

Information may be obtained from SYSMANAGER or from the patient administrator of US Government medical treatment facilities reporting patient to ASMRO.

Written requests should include full name of patient, rank or status and parent service, approximate date of transfer, medical treatment facility from which transferred and current address of the individual making request.

For personal visits, requester must provide acceptable identification such as military identification card, social security card or driver's license.

Record access procedures:

Requests from individuals should be addressed to Director, ASMRO, Office of The Surgeon General, DA, Room 1E641, The Pentagon, Washington DC 20310, telephone: Area Code 202/695-9118, or to Patient Administrator at US Government medical treatment facilities reporting patients to ASMRO. The official mailing addresses are in the Department of Defense directory in the appendix to Army system notices.

Contesting record procedures:

The Army's rules for access to records and for contesting contents and appealing initial determinations are contained in Army Regulation 340-21 (32 CFR Part 505).

Record source categories:

Information provided by transferring and receiving medical treatment facilities, medical regulating offices, evacuation offices, and other US Government offices, agencies and commands having information bearing on a patient transfer.

Systems exempted from certain provisions of the act:

None

A0905.05DAAG

System name:

905.05 Active Claims for Medical Care Provided under CHAMPUS File

System location:

Washington National Records Center, General Services Administration, Suitland, MD 20409.

Categories of individuals covered by the system:

All eligible CHAMPUS beneficiaries, i.e., retired members of the Uniformed Services who are not entitled to hospital insurance benefits under social security, spouses and children of retired or deceased service members, and spouses and children of active duty members residing both with and apart from duty member.

Categories of records in the system:

File contains documents relating to medical care obtained by CHAMPUS beneficiaries from civilian sources at US government expense. Included are forms completed by military and civilian medical treatment facilities and practitioners, billings received from civilian sources, forms completed by the patient or sponsor, and related documents.

Authority for maintenance of the system:

Dependents Medical Act, Title 10, U.S.C., Sections 1079-1087, as amended by the Military Benefits Amendments of 1966 (Public Law 89-614).

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Records are used only to answer inquiries.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Paper records in file folders.

Retrievability:

Filed alphabetically by CHAMPUS case number and year.

Safeguards:

Building employs security guards. Records are maintained in storage areas accessible only to authorized personnel.

Retention and disposal:

Normal disposition procedures were preempted by imposition of a Department of Defense moratorium. At the present time, these records will be retained indefinitely.

System manager(s) and address:

The Adjutant General, Headquarters, Department of the Army, Washington, DC 20314.

Notification procedure:

Information may be obtained from HQDA (DAAG-AMR-S), Room GA-080, Forrestal Building, Washington, DC 20314; telephone: Area Code 202/693-1845.

Record access procedures:

Requests should be submitted to The Adjutant General, HQDA (DAAG-AMR-S), Washington, DC 20314. Requesters should furnish their full name and any information that would readily identify the record sought. Personal visits are not permitted.

Contesting record procedures:

The Army's rules for access to records and for contesting contents and appealing initial determinations are contained in Army Regulation 340-21 (32 CFR Part 505).

Record source categories:

Applications by beneficiaries of CHAMPUS and information from medical facilities or physicians that have provided prior medical care.

Systems exempted from certain provisions of the act:

None

A0906.04aDASG

System name:

906.04 Medical Evaluation Files

System location:

Primary System: Army Medical Department (AMEDD) medical facilities convening a medical board.

Decentralized Segments: United States Army Physical Evaluation Boards and United States Army Physical Disability Agency (USAPDA).

Categories of individuals covered by the system:

Army members whose medical fitness for continued service has been questioned either by the member or his/her commander.

Categories of records in the system:

File contains documents reflecting determination by a board of medical fitness for continued Army active service. Includes medical board proceedings and related documents.

Authority for maintenance of the system:

Title 5 U.S.C., Section 301; Title 10 U.S.C., Section 1071; and Title 10 U.S.C., Section 1201, Chapter 61.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Medical Board: To determine medical fitness for continued Army active service.

Physical Evaluation Board (PEB): To review medical board findings when required and to determine if the individual should be discharged, temporarily or permanently retired for disability, or retained for active service.

USAPDA: Record of cases considered, adjudications, reviews determinations, and dispositions. To respond to inquiries received from a member, other Government agency, or other authorized recipient of requested information. Information in computer form consists of profile data, resume of board action and results, maintained primarily for statistical reports. No decisions about members are made from automated data.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Paper records in file folders.

USAPDA: Paper records in file folders and magnetic diskettes. Magnetic diskettes contain personal information on members, certain codes of specific type of injuries for research study purposes, and Veterans Administration Schedule for Rating Disability Diagnostic Codes only. Paper files are the PEB proceedings describing the medical problem, and findings, recommendations, and adjudicative decision.

Retrievability:

Filed chronologically by name.

USAPDA: Paper files, filed chronologically by name and fiscal year on 5" x 8" file cards. Retrieval from magnetic diskettes files can be accomplished by PRO program or a DFU load program.

Safeguards:

Rooms are secured by locked doors when not in use. Records are maintained in areas accessible only to authorized personnel who are properly screened and trained.

USAPDA: In addition to the preceding, operation of data processing equipment and magnetic tapes are limited strictly to authorized personnel. Computer has key lock and key is controlled. Magnetic diskettes are stored and controlled to ensure that they do not result in unauthorized disclosure of personal information.

Retention and disposal:

Medical Boards: Retained for 5 years and destroyed.

PEBs: Retained for 2 years or until discontinued, whichever occurs first.

USAPDA: Retained for 5 years and destroyed.

System manager(s) and address:

The Surgeon General, Headquarters, Department of the Army, The Pentagon, Washington, DC 20310.

Notification procedure:

Information may be obtained by written request to:

HQDA (DASG-AOM)
Room 2D453
The Pentagon
Washington, DC 20310

Record access procedure:

Requests should be addressed to: Office of The Surgeon General, Headquarters, Department of the Army, (DASG-AOM), Room 2D453, The Pentagon, Washington, DC 20310.

All requests should be written, since files are not stored in Headquarters, Department of the Army. If telephone conversation is desired, at the expense of the inquirer, area code and telephone number should be furnished.

Personal visits by the individual requesting access may be arranged only with the official assigned to respond to a written request.

Contesting record procedures:

The Army's rules for access to records and for contesting contents and appealing initial determination may be obtained from the official responding to a written request.

Record source categories:

Interview with the individual; medical records on the individual; and reports of medical boards and PEBs.

Systems exempted from certain provisions of the act:

None

A0917.01aDASG

System name:

917.01 Health Care and Medical Treatment Record System

System location:

Army Medical Department facilities/activities at addresses listed in the Directory of United States Army Addresses following the annual compilation of Army system notices published in the Federal Register.

Categories of individuals covered by the system:

Military members of the Armed Forces (both active and inactive); dependents; civilian employees of the Department of Defense; members of the United States Coast Guard, Public Health Service, and Coast and Geodetic Survey; cadets and midshipmen of the military academies; employees of the American National Red Cross; and other categories of individuals who receive medical treatment at Army Medical Department facilities/activities.

Categories of records in the system:

Medical records (of a permanent nature) used to document health; psychological and mental hygiene consultation and evaluation; medical/dental care and treatment for any health or medical condition provided an eligible individual on an inpatient and/or outpatient status to include but not limited to: health; clinical (inpatient); outpatient; dental; consultation; and procurement and separation x-ray record files. Subsidiary medical records (of a temporary nature) are also maintained to support records relating to treatment/observation of individuals. Such records include but are not limited to: social work case files and patient treatment x-ray and index files.

Authority for maintenance of the system:

Title 5 U.S.C., Section 301; Title 10 U.S.C., Sections 1071-1085; Title 44 U.S.C., Section 3101; and Title 50 U.S.C., Supplement IV, Appendix 454, as amended.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Department of the Army: To provide health care and medical treatment of individuals identified in the Individual-Category of this system of records. Information may also be used for research studies; compilation of statistical data and management reports; implementing preventive medicine, dentistry, and communicable disease control programs; adjudicating claims and determining benefits; evaluating care rendered; determining professional certification and hospital accreditation; and determining suitability of persons for service or assignment.

Department of Defense: To provide medical care to those categories of individuals covered by this record system; and to conduct analyses and research studies.

Veterans Administration: To adjudicate veterans' claims and provide medical care to Army members.

National Research Council, National Academy of Sciences, National Institute of Health, and similar institutions for authorized health research in the interest of the Federal Government and the public. When not essential for longitudinal studies, patient identification data shall be eliminated from records used for research studies. Facilities/activities releasing such records shall maintain a list of all such research organizations and an accounting disclosure of records released thereto.

Local and state government and agencies for compliance with local laws and regulations governing control of communicable diseases, preventive medicine and safety, child abuse, and other public health and welfare programs.

Records of identity, diagnosis, prognosis, or treatment of any client/patient, irrespective of whether or when he/she ceases to be a client/patient, maintained in connection with the performance of any alcohol or drug abuse prevention and treatment function conducted, regulated, or directly or indirectly assisted by any department or agency of the United States, shall, except as provided therein, be confidential and be disclosed only for the purposes and under the circumstances expressly authorized in Title 21 U.S.C., Section 1175 and Title 42 U.S.C., Section 4582. These statutes take precedence over the Privacy Act of 1974 in regard to accessibility of such records except to the individual to whom the record pertains. Blanket 'routine uses' identified in 44 FR 73728 do not apply to these records.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Paper records in file folders; visible card files; microfiche; cassettes; punched cards; computer printouts and magnetic tapes and disks; and x-ray film preservers.

Retrievability:

By last name or social security number (SSN) of patient or sponsor.

Safeguards:

Records are maintained in buildings which employ security guards and are accessed only by authorized personnel having an official need-to-know. Automated segments are protectd by controlled system passwords governing access to data.

Retention and disposal:

Medical records of a permanent nature (as defined in Record-Category) are retained as follows:

Military Health/Dental and Procurement/Separation X-ray Records: Permanent; Clinical (inpatient), Outpatient, Dental, and Consultation Record Files - Military members: Destroyed after 50 years (Records pertaining to United States Military Academy (USMA) cadets are withdrawn and retired to the Surgeon, USMA, West Point, NY 10996.); Civilians and Foreign Nationals: Destroyed after 25 years; American Red Cross personnel: Withdrawn and forwaded to the American National Red Cross.

All medical records (except the Military Health/Dental Records which are active while individual is on active duty then retired with individual's Military Personnel Records Jacket and the Procurement/Separation X-ray Records which are forwarded to the National Personnel Records Center (NPRC) on an accumulation basis) are retained in an active file while treatment is provided and subsequently held for a period of one to five years following treatment before being retired to the NPRC.

Subsidiary medical records, of a temporary nature (as defined in Record-Category), are normally not retained long beyond termination of treatment; however, supporting documents determined to

have significant documentation value to patient care and treatment are incorporated into the appropriate permanent record file.

System manager(s) and address:

The Surgeon General, Headquarters, Department of the Army, The Pentagon, Washington, DC 20310.

Notification procedure:

Information may be obtained from the medical facility where treatment was proveded (for military and civilian records); Medical Officer, American National Red Cross, 18th and D Streets, NW, Washington, DC 20006 (for American National Red Cross employees).

Record access procedures:

Written requests should contain requester's full name, SSN, and current address/telephone number. Requests for information concerning inpatient treatment, furnish the name of the hospital and year of treatment.

Personal visits may be made to the medical facility where treatment was provided or to the American National Red Cross (whichever is appropriate). Individuals must provide personal identification such as a valid driver's license or military/civilian identification card.

Contesting record procedures:

The Army's rules for access to records and for contesting contents and appealing initial determinations are contained in Army Regulation 340-21 (32 CFR Part 505).

Record source categories:

Personal interviews and history statements from the individuals; abstracts or copies of pertinent medical records; examination records of intelligence, personality, achievement, and aptitude; reports from attending and previous physicians and other medical personnel regarding the results of physical, dental, and mental examinations, treatment, evaluation, consultation, laboratory, x-ray and special studies and research conducted to provide health care and medical treatment, and similar or related documents.

Systems exempted from certain provisions of the act:

None

A0917.09aDASG

System name:

917.09 Alcohol and Drug Abuse Rehabilitation Files

System location:

Alcohol and Drug Abuse Prevention and Control Program (ADAPCP) rehabilitation/counseling facilities (e.g., halfway houses, rap centers) at installation level.

Categories of individuals covered by the system:

Any individual who is diagnosed as an alcohol drug abuser by a physician and subsequently enrolled in the ADAPCP.

Categories of records in the system:

File contains client intake and follow-up records, initial interview forms, psychosocial histories, counselor observations and impressions of client's behavior and rehabilitation progress, copies of medical consultation and laboratory procedures performed, results of biochemical urinalysis for drug abuse, and similar or related documents.

Authority for maintenance of the system:

Title V, Public Law 92-129; Section 413, Public Law 92-255.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Blanket 'routine uses' identified in 44 FR 73728 do not apply to this system of records.

Records of identity, diagnosis, prognosis, or treatment of any client/patient, irrespective of whether or when he/she ceases to be a client/patient, maintained in connection with the performance of any alcohol or drug abuse prevention and treatment function conducted, regulated, or directly or indirectly assisted by any department or agency of the United States, shall, except as provided therein be confidential and be disclosed only for the purposes and under the circumstances expressely authorized in Title 21 U.S.C., Section 1175, as amended by 88 Stat. 137, and Title 42 U.S.C., Section 4582, as amended by 88 Stat. 131. These statutes take precedence over the Privacy Act of 1974, in regard to accessibility of such records except to the individual to whom the record pertains.

Within the Armed Forces or within those components of the Veterans Administration furnishing health care to veterans or between such components and the Armed Forces.

To medical personnel outside the Armed Forces to the extent necessary to meet a bona fide medical emergency.

To Government personnel for the purpose of obtaining benefits to which the patient is entitled.

To qualified personnel for the purpose of conducting scientific research, management or financial audits, or program evaluation, but such personnel may not identify, directly or indirectly, any individual patient in any report of such research, audit or evaluation, or otherwise disclose identities in any manner.

To a court of competent jurisdiction upon authorization by an appropriate order after showing good cause therefor. In assessing good cause, the court shall weigh the public interest and the need for disclosure against the injury to the patient, to the physician-patient relationship, and to the treatment services. Upon the granting of such order, the court, in determining the extent to which any disclosure of all or any part of any record is necessary, shall impose appropriate safeguards against unauthorized disclosure.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Paper records maintained in file folders.

Retrievability:

Filed alphabetically by last name and maintained in ADAPCP facilities for 1 year following termination of treatment. Selected forms are transferred to the service member's health record.

Safeguards:

Files and records are maintained in central storage areas in locked file cabinets. Access is limited only to authorized individuals.

Retention and disposal:

Records maintained in ADAPCP facilities are destroyed 1 year after termination of the case.

System manager(s) and address:

The Surgeon General, Department of the Army, The Pentagon, Washington, DC 20310; Commanders of medical department activities.

Notification procedure:

Information may be obtained from Commander of medical center or medical department activity at installation where treatment for alcohol/drug abuse was obtained.

Record access procedures:

Requests from individuals should be addressed to: Commander, medical center or medical department activity at installation where treatment was received; or Headquarters, Department of the Army (DASG-HCA), Room 2C468, The Pentagon, Washington, DC 20310.

Written requests for information should contain the full name of the individual, social security number, year of birth, current address, and telephone number. Visits are limited to Alcohol and Drug Abuse Prevention and Control Program facilities, medical center or medical department activity; and Alcohol and Drug Policy Office (DASG-HCA), The Pentagon, Washington, DC 20310.

For personal visits, the individual should be able to give sufficient identification and provide some verbal information that can be verified from his/her file.

Contesting record procedures:

The Army's policy for gaining access to records and for contesting contents and appealing initial determinations may be obtained from the SYSMANAGER.

Record source categories:

Interviews, personal history statements, abstracts or copies of pertinent medical records, abstracts from personnel records, results of tests, physician's notes, observations of client's behavior, related notes, papers, and forms from counselor and/or clinical director.

Systems exempted from certain provisions of the act:

None

A0929.02aDASG

System name:

929.02 Privately Owned Animal Record Files

System location:

Veterinarian service at medical facilities on Army installations and activities. Official mailing addresses are in the Directory of United States Army addresses following the annual compilation of Army system notices published in the Federal Register.

Categories of individuals covered by the system:

Persons whose privately owned animals receive veterinary care.

Categories of records in the system:

Record contains name, home address, and telephone number of animal's owner; treatment of animal; and related information.

Authority for maintenance of the system:

Title 10 U.S.C., Sections 133, 1071 thru 1087, 5031 and 8012.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

To record registration, vaccination, and/or treatment of animals; to compile statistical data; and to identify animals registered with the Veterinary Animal Disease Prevention and Control Facility in connection with the Veterinary Prevention Medicine and Zoonotic Disease Control Program.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Paper records.

Retrievability:

Alphabetically by the animal owner's last name.

Safeguards:

Records are maintained in buildings which are locked when unattended, and are accessed only by authorized personnel having an official need-to-know.

Retention and disposal:

Destroyed within 6 months of death of the animal, expiration of rabies vaccination, or transfer of owner.

System manager(s) and address:

The Surgeon General, Headquarters, Department of the Army, The Pentagon, Washington, DC 20310.

Notification procedure:

Information may be obtained from the veterinary facility where the animal was treated or euthanized.

Record access procedures:

Written requests should contain the animal owner's full name, home address, and telephone number; and the animal's rabies vaccination number. Personal visits may be made to the veterinary facility where animal was treated. Owner must provide personal identification such as a valid military identification card or driver's license.

Contesting record procedures:

The Army's rules for access to records and for contesting contents and appealing initial determinations are contained in Army Regulation 340-21 (32 CFR Part 505).

Record source categories:

Animal owner, veterinarian reports, and similar or related documents.

Systems exempted from certain provisions of the act:

None

A1001.06aDAAG

System name:

1001.06 Office Personnel Training Files

System location:

Maintained by officials designated to administer agency training programs at Headquarters, Department of the Army staff, field operating agencies, major commands, installations, and activities. Official mailing addresses are in the Directory of United States Army Addresses following the annual compilation of Army system notices published in the Federal Register.

Categories of individuals covered by the system:

Military and civilian personnel employed by the Army who have been selected or scheduled for, or have recently completed training related to functional responsibilities of the office to which assigned or are in furtherance of individual's career development.

Categories of records in the system:

Records pertain to the scheduling and follow-up of military and civilian training courses. Documents include (a) annual projection of individual training necessary to maximize personal career development goals and mission accomplishment; (b) tuition, personnel and travel costs; (c) course name and training facility at which offered; and (d) personal data including name, rank/grade, social security number (SSN), security clearance, resume of educational background to include academic achievements, on-the-job and formal classroom training, and related management reports.

Authority for maintenance of the system:

Title 10 U.S.C., Section 3012.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

To provide management and individuals with reports of training completion, courses scheduled to be taken, and related required actions.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Paper records in file folders; computer magnetic tapes and disks.

Retrievability:

By name and/or SSN.

Safeguards:

All records are maintained in secured buildings, in either file cabinets or areas accessible only to authorized persons having a need-to-know. Computer rooms are accessible only by authorized personnel through controlled access. Computer software precludes unauthorized access to the file by use of a system password and system lockout procedures.

Retention and disposal:

Records are destroyed after 1 year or when no longer required.

System manager(s) and address:

Commander of organization/activity maintaining the record.

Notification procedure:

Information may be obtained from the SYSMANAGER

Record access procedures:

Requests should be addressed to appropriate commander/training officer/supervisor. Written requests should include full name of individual and SSN. For personal visits, individual must provide acceptable identification, such as driver's license, military or civilian identification card.

Contesting record procedures:

The Army's rules for access to records and for contesting contents and appealing initial determinations are contained in Army Regulation 340-21 (32 CFR Part 505).

Record source categories:

Individual applying for training, his/her supervisor, agency training officer, or from office personnel files.

Systems exempted from certain provisions of the act:

None.

A1012.04aDAMO

System name:

1012.04 NDU Student Data Files

System location:

National Defense University (NDU), Ft. Leslie J. McNair, Washington, DC 20319.

Categories of individuals covered by the system:

Resident/non-resident students enrolled at courses of instruction at NDU including the Industrial College of the Armed Forces (ICAF) and the National War College (NWC).

Categories of records in the system:

Records contain name, date of birth, social security number (SSN), student number, grade/rank, branch of service or civilian agency, years of Federal service, biographical data, course/section assignment, prior eduction, and academic and other related management data.

Authority for maintenance of the system:

Title 10 U.S.C., Section 3012.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

NDU officials: To confirm attendance eligibility; to monitor student progress; to produce record of grades and achievements; to prepare assignment rosters; to provide management and statistical summaries and reports; and to compile class yearbooks.

Student transcripts may be disclosed to other educational institutions.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Paper records in file folders; computer magnetic tapes, disks, and printouts.

Retrievability:

By SSN or student identification number.

Safeguards:

Records are maintained in buildings which employ security guards and are accessed only by authorized personnel having an official need-to-know. Automated records employ software passwords; magnetic tapes are protected by user identification and manual controls.

Computer room is controlled by card key system requiring positive identification and authorization.

Retention and disposal:

Individual and class academic records are destroyed after 40 years. Records pertaining to extension courses are held indefinitely before being retired to the National Personnel Records Center, St. Louis, MO. Individual training records are destroyed annually; management reports are destroyed when no longer needed.

System manager(s) and address:

President, National Defense University, Ft. Leslie J. McNair, Washington, DC 20319.

Notification procedure:

Students may apply to the National Defense University, Ft. Leslie J. McNair, Washington, DC 20319; telephone: Area Code 202/693-8475.

Record access procedures:

Written requests should contain requester's full name, current address, social security number, and date of enrollment and/or completion/graduation.

Personal visits may be made to the National Defense University at Ft. Leslie J. McNair. Individuals must provide personal identification such as a valid driver's license or military or civilian identification card.

Contesting record procedures:

The Army's rules for access to records and for contesting contents and appealing initial determinations are contained in Army Regulation 340-21 (32 CFR Part 505).

Record source categories:

Applications for enrollment and biographical resumes from applicants, faculty evaluations and reports, and transcripts from educational institutions.

Systems exempted from certain provisions of the act:

None.

A1012.04aTRADOC

System name:

1012.04 Grade Calculator System

System location:

Director of Automation (ATZLSW-DOA), United States Army Command and General Staff College (USACGSC), Ft Leavenworth, KS 66027.

Categories of individuals covered by the system:

Any officer, United States or Allied, enrolled in the USACGSC resident program.

Categories of records in the system:

System contains personal data on resident students (i.e., name, rank, social security number (SSN); administrative data (i.e., counselor, class section); and academic data (i.e., courses, course grades).

Authority for maintenance of the system:

Title 10 U.S.C., Section 3012.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Records are used to schedule resident students for courses in the USACGSC curriculum; to process grades and other academic related information; to record and translate tests, subcourse and course grades; and, at year end, to prepare school transcripts. Records are used also to prepare rosters and labels for use by the USACGSC departments and other Ft Leavenworth activities. Records serve to track resident student progress throughout the academic year by preparation of various reports and by interactive terminal query.

The automated grading examination system (GRADEX) constitutes a subsystem of this file in that it provides the capability to grade and perform item analysis on various tests given to resident students on MARK SENSE forms.

The student information system constitutes a second subsystem of the file providing the ability to identify students who possess certain skills. This assists in the assignment of students to projects and as assistant instructors. Information collected is printed on reports and is also retrievable by interactive terminal query.

The models and simulation system and the geography of Asia system constitutes a third subsystem of the file providing the capability to administer tests interactively using computer terminals.

The automated student housing assignment system constitutes a fourth subsystem of the file providing the ability to assign students to quarters prior to their arrival.

The user name password system constitutes a fifth subsystem of the file providing the ability to assign computer passwords to students for their use throughout the academic year.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Computer disks.

Retrievability:

By SSN, student exam code or computer user name.

Safeguards:

Computer programs are kept in locked cabinets and, after normal duty hours, the building is secured by guards. Computer access is controlled by passwords which are periodically changed. Access to the computer programs is further restricted by additional passwords which are also changed periodically. Data files are maintained in a secure environment restricted to authorized employees.

Retention and disposal:

Records are destroyed at the completion of an academic year except that educational transcripts become part of an individual's Official Military Personnel File.

System manager(s) and address:

Directory of Automation, United States Army Command and General Staff College, Ft Leavenworth, KS 66027.

Notification procedure:

Information may be obtained from: Commandant, United States Army Command and General Staff College, ATTN: Directory of Automation, Bell Hall, Ft Leavenworth, KS 66027; telephone: Area Code 913/684-2498.

Record access procedures:

Requests should be addressed to: Commandant, United States Army Command and General Staff College, ATTN: ATZLSW-DOA, Ft Leavenworth, KS 66027.

Contesting record procedures:

The Army's rules for access to records and for contesting contents and appealing initial determinations are contained in Army Regulation 340-21 (32 CFR Part 505).

Record source categories:

Personal data and enrollment information are obtained from the students at the time they complete enrollment and from Department of the Army orders. Grades, class section number, and academic information are obtained from the USACGSC academic departments. Data for the GRADEX system are obtained from the MARK SENSE cards completed by the students and information extracted from the Grade Calculator System.

Systems exempted from certain provisions of the act:

None.

A1306.01DAPE

System name:

1306.01 Behavioral and Social Sciences Research Project Files

System location:

Army Research Institute (ARI) for the Behavioral and Social Sciences, ATTN: PERI-ZA, Room 6E22, 5001 Eisenhower Avenue, Alexandria, VA 22333.

Decentralized locations: ARI Field Units located at: Ft Sill, OK 73503; Ft Benjamin Harrison, IN 46216; HQ USAREUR, c/o ODCSPER, APO NY 09403; Ft Benning, GA 31905; Ft Bliss, TX 79916; Ft Hood, TX 76544; Ft Knox, KY 40121; Ft Leavenworth, KS 66027; Presidio of Monterey, CA 93940; Ft Rucker, AL 36360; and/or Scientific Coordination Offices located at: US Army R&S Group (Europe), APO NY 09510; Ft Monroe, VA 23651; and Ft McPherson, GA 30330.

Categories of individuals covered by the system:

All officer, warrant officer, and enlisted military personnel, including Army Reserves and National Guard.

Categories of records in the system:

Records include questionnaire type data relating to service member's preservice education, work experience and social environment/culture, learning ability, physical performance, combat readiness, discipline, motivation, attitude about Army life, and measures of individual and organizational adjustments. May also include test results from Armed Services Vocational Aptitude Battery and Skill Qualification Tests.

Authority for maintenance of the system:

Title 10 U.S.C., Section 4503.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Information in this system is used by the Army Research Institute for the Behavioral and Social Sciences to research human factors inherent in the recruitment, selection, classification, assignment, evaluation, and training of military personnel. Information derived from individually identifiable records is used also to enhance readiness effectiveness of the Army in that it provides a basis for developing personnel management methods, training devices, and testing of weapons methods and systems aimed at improved group performance. No decisions affecting an indivadal's rights or benefits are made using these research records.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Paper records in file folders, punch cards, and magnetic tape.

Retrievability:

By name and/or social security number.

Safeguards:

Buildings employ security guards. Access to records is limited to authorized personnel having an official need-to-know. Automated segments are protected by controlled system procedures and code numbers governing access.

Retention and disposal:

Records are retained at the appropriate research office identified under 'System location' until completion of final report, after which they are destroyed.

System manager(s) and address:

Deputy Chief of Staff for Personnel, Headquarters, Department of the Army, Washington, DC 20310.

Notification procedure:

Individuals wishing to inquire if this system contains information about them should contact the SYSMANAGER indicated above.

Record access procedures:

Written requests from individuals should be addressed to Commander, Army Research Institute for Behavioral and Social Sciences if testing has been concluded; otherwise to appropriate field unit or Scientific Coordination Office. Individuals must furnish the following information: full name, social security number, current address, and subject area and year of testing.

Contesting record procedures:

The Army's rules for access to records and for contesting contents and appealing initial determinations are contained in Army Regulation 340-21 (32 CFR Part 505).

Record source categories:

From the individual, his/her peers, or, in the case of ratings and evaluations, from supervisors.

Systems exempted from certain provisions of the act:

None.

BILLING CODE 3710-08-M

DEFENSE MAPPING AGENCY

REQUESTING RECORDS

Records are retrieved by name or by some other personal identifier. It is therefore especially important for expeditious service when requesting a record that particular attention be provided to the Notification and/or Access Procedures of the particular record system involved so as to furnish the required personal identifiers, or any other pertinent personal information as may be required, to locate and retrieve the record.

BLANKET ROUTINE USES

Certain blanket 'routine uses' of the records have been established, that are applicable to every record system maintained within the Department of Defense, unless specifically stated otherwise within a particular record system. These additional blanket routine uses of the records are published below, only once in the interest of simplicity, economy and to avoid redundancy, before the individual record system notices begin rather than repeating them in every individual record system.

ROUTINE USE - LAW ENFORCEMENT

In the event that a system of records maintained by this component to carry out its functions indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute, or by regulation, rule or order issued pursuant thereto, the relevant records in the system of records may be referred, as a routine use, to the appropriate agency, whether federal, state, local or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, rule, regulation or order issued pursuant thereto.

ROUTINE USE - DISCLOSURE WHEN REQUESTING INFORMATION

A record from a system of records maintained by this component may be disclosed as a routine use to a federal, state or local agency maintaining civil, criminal or other relevant enforcement information or other pertinent information, such as current licenses, if necessary to obtain information relevant to a component decision concerning the hiring or retention of an employee, the issuance of a security clearance, the letting of a contract, or the issuance of a license, grant or other benefit.

ROUTINE USE - DISCLOSURE OF REQUESTED INFORMATION

A record from a system of records maintained by this component may be disclosed to a federal agency, in response to its request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

ROUTINE USE - CONGRESSIONAL INQUIRIES

Disclosure from a system of records maintained by this component may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

ROUTINE USE WITHIN THE DEPARTMENT OF DEFENSE

A record from a system of records maintained by this component may be disclosed as a routine use to other components of the Department of Defense if necessary and relevant for the performance of a lawful function such as, but not limited to, personnel actions, personnel security actions and criminal investigations of the Component requesting the record.

ROUTINE USE - PRIVATE RELIEF LEGISLATION

Relevant information contained in all systems of records of the Department of Defense published on or before August 22, 1975, will be disclosed to the Office of Management and Budget in connection with the review of private relief legislation as set forth in OMB Circular A-19 at any stage of the legislative coordination and clearance process as set forth in that Circular.

ROUTINE USE - DISCLOSURES REQUIRED BY INTERNATIONAL AGREEMENTS

A record from a system of records maintained by this Component may be disclosed to foreign law enforcement, security, investigatory, or administrative authorities in order to comply with requirements imposed by, or to claim rights conferred in international agreements and arrangements including those regulating the stationing and status in foreign countries of Department of Defense military and civilian personnel.

ROUTINE USE - DISCLOSURE TO STATE AND LOCAL TAXING AUTHORITIES

Any information normally contained in IRS Form W-2 which is maintained in a record from a system of records maintained by this Component may be disclosed to State and local taxing authorities with which the Secretary of the Treasury has entered into agreements pursuant to Title 5, U.S.Code, Sections 5516, 5517, 5520, and only to those State and local taxing authorities for which an employee or military member is or was subject to tax regardless of whether tax is or was withheld. This routine use is in accordance with Treasury Fiscal Requirements Manual Bulletin Nr. 76-07.

ROUTINE USE - DISCLOSURE TO THE OFFICE OF PERSONNEL MANAGEMENT

A record from a system of records subject to the Privacy Act and maintained by this component may be disclosed to the Office of Personnel Management concerning information on pay and leave, benefits, retirement deductions, and any other information necessary for the Office of Personnel Management to carry out its legally authorized Government-wide personnel management functions and studies.

ROUTINE USE - DISCLOSURE OF INFORMATION TO NARS (GSA)

A record from a system of records maintained by this component may be disclosed as a routine use to the National Archives and Records Service of the General Services Administration in records management inspections conducted under authority of 44 U.S.C. 2904 and 2906.

ROUTINE USE - DISCLOSURE TO DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

All systems of records relating to compensation, employment or retirement, or extracts therefrom, maintained by this Component may be disclosed as a routine use to the Department of Health, Education, and Welfare for the purpose of comparing such record with records of programs administered by and in the possession of the Department of Health, Education, and Welfare in order to verify information where such verification is required by law or regulation or to identify violations or potential violations of law, whether criminal, civil, or regulatory, and whether arising by general statute or particular program statute, or by regulation, rule, or order issued pursuant thereto.

B0102-01 HQHTASID

System name:

102-01 Office General Personnel Files

System location:

DMA Headquarters (HQ), DMA Hydrographic/Topographic Center (HT), DMA Aerospace Center(A), Defense Mapping School(S), Inter American Geodetic Survey(I), Office of Distribution Services (D). Staff Offices, Departments, Division and Branch Offices, all Components. See DMA Directory for complete address listing.

Categories of individuals covered by the system:

Employees of DMA Civilian and Military

Categories of records in the system:

Consist of copies of and papers relating to time and attendance reports, leave reports, overtime work, work attendance, holidays, athletic events, employee unions, medical services, training, duty assignments, emergency information and similar data on related subjects. List of individuals authorized to receive these services will also be included.

Authority for maintenance of the system:

Executive Order 10561, 9/15/54; Designating Official Personnel Folders in Government Agencies as Records of the Office of Personnel Management (OPM) and Prescribing Regulations Relating to the Establishment, Maintenance and Transfer thereof.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Supervisory personnel in their day-to-day personnel actions for; promotion, adverse actions, training and other related actions. File subject to civil service review.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Paper record in file folders and/or Kardex book.

Retrievability:

Filed alphabetically by last name of employee

Safeguards:

Buildings or facilities employ security guards. Records are maintained in areas accessible only to authorized personnel that are properly screened, cleared, and trained.

Retention and disposal:

Temporary records. Destroy after 1 year or on discontinuance, whichever is first.

System manager(s) and address:

Defense Mapping Agency, ATTN: Personnel Office, Building 56, U.S. Naval Observatory, Washington, D.C. 20305, TELEPHONE: Area Code 202/254-4066

Notification procedure:

Information may be obtained from DMA Directory

Record access procedure:

Requests from individuals should be addressed to appropriate organization of address list.

Written requests for information should contain the full name of the individual current address and telephone number, social security number. Visits are limited to normal working hours.

For personal visits the individual should be able to provide some acceptable identification, that is, drivers license, employing office's identification card, and give some verbal information that could be verified.

Contesting record procedure:

The Agencys rules for contesting contents and appealing initial determination may be obtained from: System Manager.

Record source categories:

Copies of papers relative to time and attendance reports, overtime work, work attendance, leave reports, holidays, athletic events, employee unions, medical services, training and related subjects.

Systems exempted from certain provisions of the act:

NONE

B0102-03 HQHTASI

System name:

102-03 Office Personnel Locator Files

System location:

DMA Headquarters (HQ), DMA Hydrographic/Topographic Center (HT), DMA Aerospace Center(A), Defense Mapping School(S), Inter American Geodetic Survey(I). Staff Offices, Departments, Division and Branch Offices, all Components. See DMA Directory for complete address listing.

Categories of individuals covered by the system:

Personnel currently employed or assigned at DMA

Categories of records in the system:

Documents reflecting the name, address, telephone number, and similar data for each person.

Authority for maintenance of the system:

E.O. 10561 9/15/57; Designating Official Personnel Folders in Government Agencies as Records of the Office of Personnel Management (OPM) and Prescribing Regulations Relating to the Establishment, Maintenance and Transfer thereof.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Supervisory Personnel - Used to record personal information and Military Career Progression and maintained on file to notify appropriate agencies and officials in case of emergencies.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Paper record in file folders and/or Kardex book.

Retrievability:

Filed alphabetically by last name of employee

Safeguards:

Buildings or facilities employs security guards. Records are maintained in areas accessible only to authorized personnel that are properly screened, cleared and trained.

Retention and disposal:

Temporary records. Destroy on separation or transfer of the individual or preparation of a new list.

System manager(s) and address:

Defense Mapping Agency, ATTN: Personnel Office, Building 56, U.S. Naval Observatory, Washington, D.C. 20305, TELEPHONE: Area Code 202/254-4066

Notification procedure:

Information may be obtained from Above.

Record access procedure:

Requests from individuals should be addressed to system manager.

Written requests for information should contain the full name of the individual current address and telephone number, social security number. Visits are limited to normal working hours.

For personal visits, the individual should be able to provide some acceptable identification, that is, drivers license, employing office's identification card, and give some verbal information that could be verified.

Contesting record procedures:

The Agencys rules for contesting contents and appealing initial determination may be obtained from System Manager

Record source categories:

Information received from employee and other personnel records.

Systems exempted from certain provisions of the act:

NONE

B0102-08 HQHTASID

System name:

102-08 Office Personnel Information Files

System location:

DMA Headquarters (HQ), DMA Hydrographic/Topographic Center (HT), DMA Aerospace Center(A), Defense Mapping School(S), Inter American Geodetic Survey(I), Office of Distribution Services (D). Staff Offices, Departments, Division and Branch Offices, all Components. See DMA Directory for complete address listing.

Categories of individuals covered by the system:

Employees of DMA Civilian and Military

Categories of records in the system:

Supervisory copies of personnel matters that are duplicated in or which are not appropriate for inclusion in the Official Personnel Folder: for example, copies of papers relating to injuries, appreciation and commendation, training received, performance appraisals and assigned responsibilities or off-duty information.

Authority for maintenance of the system:

EO 10561 - 9/15/54, Designating Official Personnel Folders in Government Agencies as Records of the CSC and Prescribing Regulations Relating to the Establishment, Maintenance, and Transfer Thereof. 44 U.S.C. 3101

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Supervisory personnel record used for performance ratings and similar uses, appreciation, commendation, career development and responsibilities of employees. Record may be subject to CSC inspection.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Paper record in file folders and/or Kardex book.

Retrievability:

Filed alphabetically by last name of employee

Safeguards:

Buildings and Facilities employ security guards. Records are maintained in areas accessible only to authorized personnel that are properly screened, cleared and trained.

Retention and disposal:

Records are temporary, review at end of calendar year and destroy documents which have been superseded or are no longer applicable.

System manager(s) and address:

Defense Mapping Agency, ATTN: Personnel Office, Building 56, U.S. Naval Observatory, Washington, D.C. 20305, TELEPHONE: Area Code 202/254-4066

Notification procedure:

Information may be obtained from Above.

Record access procedures:

Requests from individuals should be addressed to system manager.

Written requests for information should contain the full name of the individual, current address and telephone number, social security number, and organizational element where employed. Visits are limited to normal working hours.

For personal visits, the individual should be able to provide some acceptable identification, that is drivers license, employing office's identification card, and give some verbal information that could be verified.

Contesting record procedures:

The Agencys rules for contesting contents and appealing initial determination may be obtained from System Manager.

Record source categories:

Information summarized from existing records and current entries by supervisors.

Systems exempted from certain provisions of the act:

NONE

B0210-06 HQHTASI

System name:

210-06 Inspector General Investigative Files

System location:

Office of the Inspector General - DMA Headquarters (HQ), DMA Hydrographic/Topographic Center (HT), DMA Aerospace Center (A), Defense Mapping School (S), Inter American Geodetic Survey (I). - See DMA Directory for complete address listing.

Categories of individuals covered by the system:

Any individual, military or civilian assigned to, employed by or having reason to do official business with the Defense Mapping Agency or one of its employees.

Categories of records in the system:

Investigative Files consist of written inquiries or investigative reports pertaining to complaints, possible violations or improper procedures pertaining to DMA personnel, procedures, policies or programs.

Authority for maintenance of the system:

44 U.S.C. 3101, Records Management by Federal Agencies.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Inspector General and Command Officials - to analyze and evaluate the effectiveness and efficiency of DMA policies, programs and procedures.

Complaints, inquires or investigations are used to initiate proper corrective action if the allegation is proven to be true in fact.

Security - Personnel - Supervisors - Used as basis for corrective actions.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Files are considered official in nature and are made available only to the Inspector General and Command officials.

Storage:

Paper records are stored in file folders and secured in safe-file cabinets.

Retrievability:

Alphabetically by last name or subject matter

Safeguards:

Building, facilities employ security guards and alarms. Records are maintained in areas accessible only to authorized personnel that are properly screened cleared and trained.

Retention and disposal:

Files accumulated in the Office of the Inspector General as permanent. Cut off on completion of Investigation.

System manager(s) and address:

Inspector General, Headquarters, Defense Mapping Agency, Bldg 56, U.S. Naval Observatory, Washington, D.C. 20305

Notification procedure:

Information may be obtained from above.

Record access procedures:

Requests from individuals should be addressed to system manager.

Written requests for information should contain the full name of the indivdual current address and telephone number, social security number.

For personal visits the individual should be able to provide some acceptable identification, that is, drivers license, employing office's identification card, and give some verbal information that could be verified

Contesting record procedures:

The Agency rules for contesting contents and appealing initial determinations may be obtained from System Manager.

Record source categories:

Inspector General Investigative reports are the written results of IG Inquiries or Investigation of written or oral allegations from complaints.

Systems exempted from certain provisions of the act:

NONE

B0210-07 HQHTASI

System name:

210-07 Inspector General Complaint Files

System location:

Office of the Inspector Generals - DMA Headquarters (HQ), DMA Hydrographic/Topographic Center (HT), DMA Aerospace Center (A), Defense Mapping School (S), Inter American Geodetic Survey (I). - See DMA Directory for complete address listing.

Categories of individuals covered by the system:

Any individual, military or civilian assigned to, employed by or having reason to do official business with the Defense Mapping Agency or one of its employees.

Categories of records in the system:

File contains letters or memorandums received by the Defense Mapping Agency wherein someone has complained about DMA personnel, programs, policies and/or procedures.

Authority for maintenance of the system:

44 U.S.C. 3101, 3102 - Records management by Federal Agencies

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Inspector General and Command officials - As a basis to conduct an inquiry or investigation of the complaint and to initiate proper corrective action if justified.

Security, Personnel, Supervisors - as a basis for corrective action

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Files are considered official in nature and are made available only to the Inspector General and Command officials.

Storage:

Paper records are stored in file folders and secured in safe-file cabinets.

Retrievability:

Alphabetically by last name of individual or by subject.

Safeguards:

Buildings, facilities located on guarded military installations. Records are maintained in areas accessible only to authorized personnel that are properly screened, cleared, and trained.

Retention and disposal:

Temporary Record. Destroy one year after completion and close of case.

System manager(s) and address:

Inspector General, Headquarters Defense Mapping Agency, Bldg 56, U.S. Naval Observatory, Washington, D. C. 20305.

Notification procedure:

Information may be obtained from System Manager.

Record access procedures:

Request from individual should be addressed to System Manager.

Written requests for information should contain the full name of the individual, current address and telephone number.

For personal visits, the individual should be able to provide some acceptable identification, that is, drivers license, etc., and some verbal information.

Contesting record procedures:

The Agencies' rules for contesting contents and appealing initial determinations may be obtained from System Manager.

Record source categories:

Source of Inspector General Complaint files are letters or memorandums received by HQ DMA from military or civilian.

Systems exempted from certain provisions of the act:

NONE

B0228-04 HT

System name:

AR 228-04 Historical Photographic Files

System location:

Public Affairs office of DMAHTC - See DMA Directory for complete address.

Decentralized Segments - Records Holding Area, Records Management Division of DMAHTC

Categories of individuals covered by the system:

Commanding Officers; civilian employees (staff organization) VIP visitors; awards, suggestions, sports, retirement ceremonies.

Categories of records in the system:

Photographs and negatives of

Authority for maintenance of the system:

5 U.S.C. 301 - Departmental Regulations

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Public Affairs Office - Furnish copies of photographs to organizations that requested photographs to be taken

Records Holding Area - Researchers and Historians - To obtain the background information regarding events, ceremonies, awards, sports, retirements at DMATC for input to newspapers, magazine articles.

Release to News Media for Public Relations and Community Affairs Matters.

Organizers of testimonials, banquets and parties.

Supervisors - Recognize accomplishments and publications.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Prints and negatives filed in cabinets.

Retrievability:

Filed by name and/or event

Safeguards:

Buildings, facilities employ security guards. Records are maintained in areas accessible only to authorized personnel that are properly screened, cleared and trained.

Retention and disposal:

Records are Permanent. Records will be retired to Washington National Records Center on discontinuance of the installation.

System manager(s) and address:

DMA Hydrographic/Topographic Center, ATTN: Public Affairs Office, Room 152, Erskine Hall, 6500 Brookes Lane, Washington, D.C. 20315, TELEPHONE: Area Code 202/227-2007

Notification procedure:

Information may be obtained from above.

Record access procedures:

Requests from individuals should be addressed to system manager.

Written requests for information should contain the full name of the individual current address and telephone number, social security number.

For personal visits the individual should be able to provide some acceptable identification, that is, drivers license, employing office's identification card and give some verbal information that could be verified

Contesting record procedures:

The Agency's rules for contesting contents and appealing initial determinations may be obtained from System Manager

Record source categories:

Photographs taken at awards ceremonies; Sporting events; retirement parties.

Systems exempted from certain provisions of the act:

NONE

B0228-10 HT

System name:

AR 228-10 Installation Historical Files

System location:

Public Affairs Office of DMAHTC - See DMA Directory for complete address.

Decentralized Segments - Records Management Division - Records Holding Area of DMAHTC

Categories of individuals covered by the system:

Individuals who have given speeches or written an article for a magazine or newspaper.

Categories of records in the system:

Copies of Speeches and articles for magazine or newspapers

Authority for maintenance of the system:

5 U.S.C. 301 - Departmental Regulations

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Historian - To furnish background Information on the history of the installations.

Public Affairs Office and Records Management Division - to obtain up-to-date information on all speeches, articles for magazines and newspapers published or given by an individual of DMAHTC.

Released to News Media for Public Relations and Community Affairs.

Organizers of testimonials, banquets and supervisors to recognize accomplishments and publications.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Paper records in file folders.

Retrievability:

Files retrieved alphabetically by name of individual.

Safeguards:

Buildings, facilities employs security guards. Records are maintained in areas accessible only to authorized personnel that are properly screened, cleared and trained.

Retention and disposal:

This is a permanent record. Retired from Records Holding Area.

System manager(s) and address:

DMA Hydrographic/Topographic Center, ATTN: Public Affairs Office, Room 152, Erskine Hall, 6500 Brookes Lane, Washington, D.C. 20315, TELEPHONE: Area Code 202/227-2007

Notification procedure:

Information may be obtained from Above.

Record access procedures:

Requests from individuals should be addressed to system manager.

Written requests for information should contain the full name of the individual current address and telephone number, social security number.

For personal visits the individual should be able to provide some acceptable identification, that is, drivers license, employing office's identification card, and give some verbal information that could be verified.

Contesting record procedures:

The Agencies' rules for contesting contents and appealing initial determinations may be obtained from System Manager.

Record source categories:

Employee copies of speeches; newspapers; magazines, photographs and related publications.

Systems exempted from certain provisions of the act:

NONE

B0302-21 HTA

System name:

302-21 Record of Travel Payments

System location:

DMA Hydrographic/Topographic Center (HT), DMA Aerospace Center(A). Office of the Comptroller, Pay and Travel Branch. See DMA Directory for complete address listing.

Categories of individuals covered by the system:

Any employee of Defense Mapping Agency reimbursed for Travel.

Categories of records in the system:

Card file containing information used to reflect travel allowance payments made to individuals.

Authority for maintenance of the system:

5 U.S.C. 5707; Travel and subsistence Expenses-Regulations.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Cards used to reflect travel allowance payments made to employees.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Paper record in file folders and/or Kardex book.

Retrievability:

Filed alphabetically by last name of employee.

Safeguards:

Buildings or facilities employ security guards. Records are maintained in areas accessible only to authorized personnel that are properly screened, cleared, and trained.

Retention and disposal:

Records are temporary. Cutoff on separation of employee, Inactive three years then destroyed.

System manager(s) and address:

Defense Mapping Agency, ATTN: Finance and Accounting Office, Building 56, U.S. Naval Observatory, Washington, D.C. 20305, TELEPHONE: Area Code 202/254-4466

Notification procedure:

Information may be obtained from above.

Record access procedures:

Requests from individuals should be addressed to system manager.

Written requests for information should contain the full name of the individual, current address and telephone number, and the travel number of visit, place visited and date on all correspondence received from this office. Visits are limited to normal working hours.

For personal visits, the individual should be able to provide some acceptable identification, that is, drivers license, employing office's identification card, and give some verbal information that could be verified with his 'case' folder.

Contesting record procedures:

The Agencys rules for contesting contents and appealing initial determination may be obtained from System Manager.

Record source categories:

Travel orders and vouchers

Systems exempted from certain provisions of the act:

NONE

B0303-01 A

System name:

303-01 Individual Pay Record Files

System location:

DMA Aerospace Center(A). See DMA Directory for complete address listing.

Categories of individuals covered by the system:

Civilian pay record file contains magnetic tape. Created and updated by the use of time and attendance cards, address cards, savings bond forms, taxation documents, insurance documents, allotment documents, Standard Form 50.

Printout of Payroll

Categories of records in the system:

Record of pay data and related information pertaining to DMA employees.

Authority for maintenance of the system:

31 U.S.C. 66a - Accounting and Auditing - Duties of Agency Heads; Information and Controls to be Covered

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Personal data is collected for the purpose of establishing, maintaining and administering the employee's authorized pay and leave.

User of information is the Central Payroll Office and Civilian Personnel Directorate.

This information is used for the computation of bi-weekly earnings, pay deductions, and net pay due to the employee. The system further identifies rate of pay and authorized deductions as well as sick and annual leave accumulation, usage and balances. System further provides a master tape listing, civilian payroll master tape, and to the employee the system provides a bi-weekly leave and earnings statement and civilian employee paycheck.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Paper record in file folders and/or Kardex book.

Retrievability:

Filed alphabetically by last name of employee

Safeguards:

Buildings or facilities employ security guards. Records are maintained in areas accessible only to authorized personnel that are properly screened, cleared, and trained.

Retention and disposal:

Tapes are retained in tape library, and are updated each pay period.

Printouts maintained and retained in current files are (CFA) and are forwarded in annual blocks to the National Personnel Records Center, GSA, 111 Winnebago Street, St. Louis, MO 63118, 18 months after close of the calendar year or within 90 days after receipt of audit completion letter, whichever is first.

System manager(s) and address:

Director, DMA Aerospace Center, ATTN: Director of Civilian Personnel See DMA Directory for complete address listing.

Notification procedure:

Information may be obtained from Above.

Record access procedure:

Requests from individuals should be addressed to system manager. Written requests for information should contain the full name of the individuals current address and telephone number, and the Case (Control) number that appears with the office symbol, on all correspondence received from this office

For personal visits, the individual should be able to provide some acceptable identification, that is, drivers license, employing office's identification card, and give some verbal information that could be verified

Contesting record procedure:

The Agency's rules for contesting contents and appealing initial determination may be obtained from System Manager.

Record source categories:

Time and attendance cards, savings bond forms and similar withholding requests of the employee.

Systems exempted from certain provisions of the act:

NONE

B0303-02 HTA

System name:

303-02 Compensation Data Request Files

System location:

Finance Accounting of DMA Hydrographic/Topographic Center (HT) and Aerospace Center (A). See DMA Directory for complete address listing.

Categories of individuals covered by the system:

All civilian employees requesting compensation.

Categories of records in the system:

Correspondence relating to Federal Employee Compensation claims.

Authority for maintenance of the system:

21 USC 1175

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

To record documents and correspondence on employees who have been injured on the job, received treatment from a medical facility, and filed a claim for compensation.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Paper records in file folders.

Retrievability:

Filed alphabetically by employee last name.

Safeguards:

Buildings and facilities employ security guards. Records are maintained in areas accessible only to authorized personnel that are properly screened, cleared, and trained.

Retention and disposal:

Temporary record. Destroyed after 2 years.

System manager(s) and address:

Defense Mapping Agency, ATTN: Finance and Accounting, Building 56, U.S. Naval Observatory, Washington, D.C. 20305, TELEPHONE: Area Code 202/254-4466

Notification procedure:

Information may be obtained from above.

Record access procedure:

Requests from individuals should be addressed to System Manager Written requests for information should contain the full name of the individual, current address and telephone number, and social security number. Visits are limited to normal working hours.

For personal visits, the individual should be able to provide some acceptable identification; that is, driver's license, employing office's identification card, and give some verbal information that could be verified.

Contesting record procedure:

The Department's rules for contesting contents and appealing initial determinations may be obtained from System Manager.

Record source categories:

Requests from individuals for information, notice of determination and refusal of work offer. Request for claims of compensation.

Systems exempted from certain provisions of the act:

NONE

B0303-03 HTA

System name:

303-03 Individual Retirement Record Control Files

System location:

Primary System - Office of Personnel Management (OPM), Retirement Bureau, Washington, D.C. 20315

Decentralized Segments - Personnel Office, DMA Hydrographic/Topographic Center and DMA Aerospace Center.

Categories of individuals covered by the system:

Any civilian employee of DMA who has retired from government service.

Categories of records in the system:

File contains employee's application for retirement from the Federal Service including documentation concerning physical disability retirement.

Authority for maintenance of the system:

E.O. 10561 - 'Designating Official Personnel Folders in Government Agencies as Records of OPM and Prescribing Regulations Relating to the Establishment, Maintenance, and Transfer Thereof' - 9/15/54

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

To take follow-up action or answer questions from the retiree, survivors, OPM, and health and life insurance carriers.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Paper record in file folders and/or Kardex book.

Retrievability:

Filed alphabetically by last name of employee

Safeguards:

Buildings or facilities employ security guards. Records are maintained in areas accessible only to authorized personnel that are properly screened, cleared, and trained.

Retention and disposal:

Temporary - Retain in active file. Destroy after 4 years.

System manager(s) and address:

Defense Mapping Agency, ATTN: Personnel Office, Building 56, U.S. Naval Observatory, Washington, D.C. 20305, TELEPHONE: Area Code 202/254-4066

Notification procedure:

Information may be obtained from above.

Record access procedure:

Requests from individuals should be addressed to system manager. Requests from individuals should be addressed to the appropriate organization as indicated in address list. Written requests for information should contain the full name of the individual, current address and telephone number and social security number. Visits are limited to normal working hours. For personal visits the individual should be able to provide some acceptable identification, that is, drivers license, employing office's identification card, and give some verbal information that could be verified.

Contesting record procedure:

The Agency's rules for contesting contents and appealing initial determination may be obtained from System Manager.

Record source categories:

Application for retirement from Federal Service, and related documentation.

Systems exempted from certain provisions of the act:

NONE

B0303-04 A

System name:

303-04 Leave Record Files

System location:

Primary System. Director of Civilian Personnel (POX), DMA Aerospace Center. See DMA Directory for complete address listing.

Categories of individuals covered by the system:

All civilian employees of DMA.

Categories of records in the system:

Record of official annual accumulation and use of employee's leave.

Authority for maintenance of the system:

21 USC 1175

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Director of Civilian Personnel to record employee requests for documentation.

Employee - reference for accumulation of leave.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Magnetic tapes and printouts.

Retrievability:

Files are by payroll block number, organization, and name.

Safeguards:

Buildings and facilities employ security guards. Records are maintained in areas accessible only to authorized personnel that are properly screened, cleared, and trained.

Retention and disposal:

Final Leave Record - Temporary Record. Destroy 10 years after separation of individual.

Other Leave Record: Destroy after 4 years or 90 days after receipt of audit completion letter.

System manager(s) and address:

Defense Mapping Agency, ATTN: Personnel Office, Building 56, U.S. Naval Observatory, Washington, D.C. 20305, TELEPHONE: Area Code 202/254-4066.

Notification procedure:

Information may be obtained from above.

Record access procedures:

Requests from individuals should be addressed to System Manager.

Written requests for information should contain the full name of the individual, current address and telephone number, and social security number. Visits are limited to normal working hours.

For personal visits, the individual should be able to provide some acceptable identification; that is, driver's license, employing office's identification card, and give some verbal information that could be verified.

Contesting record procedures:

The Department's rules for contesting contents and appealing initial determinations may be obtained from System Manager.

Record source categories:

Time and attendance cards initialed by employee. Accumulation and use of leave.

Systems exempted from certain provisions of the act:

NONE

B0303-21 HTA

System name:

303-21 Decedent Claim Files

System location:

Personnel Office - DMA Hydrographic/Topographic Center (HT) and Aerospace Center (A). See DMA Directory for complete address listing.

Categories of individuals covered by the system:

All civilian employees of DMA Hydrographic/Topographic Center or DMA Aerospace Center.

Categories of records in the system:

Death separation - FE Form 6, SF 1153, SF 2800, and other allied papers and correspondence.

Authority for maintenance of the system:

21 USC 1175

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Purpose of this file is to document the death of a career employee. Users are: Personnel Office to maintain/ascertain that documents are in file for employees who have been separated due to death.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Paper records in file folder.

Retrievability:

Alphabetically by employee last name.

Safeguards:

Buildings and facilities employ security guards. Records are maintained in areas accessible only to authorized personnel that are properly screened, cleared, and trained.

Retention and disposal:

Temporary record. Destroyed after 10 years.

System manager(s) and address:

Defense Mapping Agency, ATTN: Personnel Office, Building 56, U.S. Naval Observatory, Washington, D.C. 20305, TELEPHONE: Area Code 202/254-4066

Notification procedure:

Information may be obtained from above.

Record access procedures:

Requests from individuals should be addressed to System Manager.

Written requests for information should contain the full name of the individual, current address and telephone number, and social security number. Visits are limited to normal working hours.

For personal visits, the individual should be able to provide some acceptable identification; that is, driver's license, employing office's identification card, and give some verbal information that could be verified.

Contesting record procedures:

The Department's rules for contesting contents and appealing initial determinations may be obtained from System Manager.

Record source categories:

Copies of vouchers with supporting documents, letters/claims from decedents.

Systems exempted from certain provisions of the act:

NONE

B0401-02 HQHTA

System name:

401-02 Statements of Employment and Financial Interest and Ethics Act Files

System location:

Office of the General Counsel, HQ DMA, Office of the Counsel, DMAHTC and DMAAC. See DMA Directory for complete address listing.

Categories of individuals covered by the system:

DD 1555 -Defense Mapping Agency civilian personnel classified at GS-13 or above, and military officers serving in the grade of 0-5 or above, whose duties require the exercise of judgment in making Government decisions in regard to monitoring grants or subsidies; contracting and procurement; auditing; or other activities having a significant economic impact on the interests of any non-Federal enterprise.

Special Government Employees of the Defense Mapping Agency serving as advisors or consultants.

SF 278 - DMA civilian personnel classified at GS-16 or above of the General Schedule prescribed by 5 U.S.C. Section 5332 and military officers serving in grades of 07 or above and the DMA designated Agency Ethics Official.

Categories of records in the system:

Files include SF 278's - Executive Personnel Financial Disclosure Report and DD 1555's - Confidential Statement of Employment and Financial Interests containing information as to outside employment, financial interests and creditors. Such forms are filed by individuals upon employment and renewed annually. Copies of the individual's current position description. Signed statements of the individual concerned stating that none of the interests listed constitute a conflict of interest with respect to the duties of his present position. Correspondence indicating review and the resolution of any conflicts disclosed.

Authority for maintenance of the system:

Part IV, Executive Order 11222, 'Prescribing Standards of Ethical Conduct for Government Officers and Employees' (as amended). Ethics in Government Act of 1978 (PL 95-521), 5 C.F.R. Section 734.603.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Individual's Supervisor (superior officer or official responsible for signing military evaluation reports or civilian performance ratings)--to determine the existence of, and, if possible, to resolve, any real or apparent conflict between the personal financial interests of the individual concerned and the performance of his services for the Government.

Agency Legal Counsel--to (1) review the individual's statement and the supervisor's evaluation thereof for legal sufficiency, (2) to assist in the resolution of any conflicts disclosed in such statements, and (3) to maintain and safeguard the confidentiality of all such statements.

Directors of Defense Mapping Agency Components and Heads of Defense Mapping Agency Headquarters Major Staff Elements--for review, comment and appropriate action with respect to resolution of any real or apparent conflicts disclosed by the statement of an individual.

The Director, Defense Mapping Agency or the Staff Director of Personnel (as designee)--to review and take action on any conflicts not previously resolved.

Department of Justice--for possible use in investigation/prosecution of fraud or other violation of conflict of interest laws.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Paper records in file folders.

Retrievability:

Filed alphabetically by last name of employee.

Safeguards:

Buildings in which files maintained are not open to general public and are guarded on 24-hour basis. Records are maintained in combination safes and are accessible after completion of review only to Agency Counsel. Each submission and subsequent annual renewals are kept in individual, sealed manila envelopes to prevent unauthorized disclosures.

Retention and disposal:

These are temporary records. DD Form 1555 of each employee is maintained until his death, retirement or separation from the Defense Mapping Agency and for six (6) years thereafter at which time it is destroyed. SF 278 is retained six years from date of submission.

System manager(s) and address:

General Counsel, DMA Headquarters, Building 56, US Naval Observatory, Washington, D.C. 20305.

Notification procedure:

Information may be obtained from:

General Counsel, DMA Headquarters, Building 56, US Naval Observatory, Washington, DC. 20305, telephone 202 254-4431.

Counsel Defense Mapping Agency Hydrographic/Topographic Center, Washington, D.C. 20315, telephone 202 227-2268.

Counsel Defense Mapping Agency Aerospace Center, St. Louis Air Force Station, Missouri 63118, telephone 314 268-4501.

Record access procedures:

Requests from individuals should be addressed to: General Counsel, DMA Headquarters Building 56, U.S. Naval Observatory, Washington, D.C. 20305.

Written requests for information should contain the full name and current address and telephone number of the individual. Visits will be arranged through the General Counsel, Headquarters DMA.

For personal visits, the individual should be able to provide some acceptable identification, such as a drivers license or an employer's identification card, and be prepared to provide some verbal information that can be verified with his file.

Contesting record procedures:

The Defense Mapping Agency's rules for access to records and for contesting contents and appealing initial determinations by the individual concerned may be obtained from the SYSMANAGER.

Record source categories:

Statements and related documents are obtained from the individual concerned.

Systems exempted from certain provisions of the act:

NONE

B0401-03 HQHTA

System name:

401-03 Legal Assistance Case Files

System location:

Office of General Counsel, DMA Headquarters (HQ), and Office of General Counsel DMA Hydrographic/Topographic Center (HT), and Aerospace Center (A). See DMA Directory for complete address listing.

Categories of individuals covered by the system:

Military personnel assigned to DMA who request legal assistance

Categories of records in the system:

Files contain legal opinions of the counsel regarding personal matters of an individual. Also copies of document prepared on behalf of the individual.

Authority for maintenance of the system:

44 U.S.C. 3101; - Records Management by Federal Agencies

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Office of General Counsel - for consultation with individual involved, and for reference and precedent value.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Paper record in file folders and/or Kardex

Retrievability:

Filed alphabetically by last name of employee

Safeguards:

Buildings or facilities employ security guards. Records are maintained in areas accessible only to authorized personnel that are properly screened, cleared, and trained.

Retention and disposal:

This record is a temporary record. Records are destroyed one year after completion of the case. Selected opinions and correspondence withdrawn for use as precedent may be held until no longer required for reference.

System manager(s) and address:

Defense Mapping Agency, ATTN: General Counsel, Building 56, U.S. Naval Observatory, Washington, D.C. 20305, TELEPHONE: Area Code 202/254-4431

Notification procedure:

Information may be obtained from above.

Record access procedures:

Requests from individuals should be addressed to system manager.

Requests from individuals should be addressed to the appropriate organization as indicated in address list. Written requests for information should contain the full name of the individual, current address and telephone number and social security number. Visits are limited to normal working hours. For personal visits the individual should be able to provide some acceptable identification, that is, drivers license, employing office's identification card, and give some verbal information that could be verified.

Contesting record procedures:

The Agencys rules for contesting contents and appealing initial determination may be obtained from System Manager.

Record source categories:

Request from military individual for legal opinion on a personal matter, opinions of council and documents prepared by council.

Systems exempted from certain provisions of the act:

NONE

B0402-05 HQHTA

System name:

402-05 Legal Claims File

System location:

Primary System - Office of General Counsel, DMA Headquarters (HQ), DMA Hydrographic/Topographic Center (HT), and DMA Aerospace Center (A) - See DMA Directory for complete address listing.

Decentralized Segments - National Washington Record Center, GSA, 4205 Suitland Road, Suitland, Maryland 20409, Department of Army, Judge Advocate General, Pentagon, Washington, D.C.

Categories of individuals covered by the system:

DMA personnel having a claim against the Government for loss, damage, or destruction of personal property.

Any individual filing a tort claim against DMA for damages, loss or destruction of property and for personal injury or death resulting from negligence or wrongful act or omission of acts by DMA personnel and individuals against whom the Agency has legal claim.

Categories of records in the system:

File contains individual's claims, related correspondence and processing papers, investigative reports, recommendations of the investigators and opinions of Counsel.

Authority for maintenance of the system:

44 U.S.C. 3101; - Records Management by Federal Agencies
28 U.S.C., Section 2671-2680, Federal Torts Claims Act.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Office of Counsel - Preliminary investigation and legal opinions for recommendation to high authority for further disposition of claim and in the case of Agency claims, for attempted settlement and/or litigation.

National Washington Records Center - To store and maintain inactive records; The Department of Justice in event of Litigation or designated local government representatives who have delegated authority to investigate and/or settle claims.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Paper record in file folders and/or Kardex book.

Retrievability:

Filed alphabetically by last name of employee or by case name.

Safeguards:

Buildings or facilities employ security guards. Records are maintained in areas accessible only to authorized personnel that are properly screened, cleared, and trained.

Retention and disposal:

Approved claims and agency claims - 10 year record, COFF on final action, inactive for one year, transfer to records holding area, hold nine years and destroy. Disapproved claims and claims involving personal injury or a minor, COFF on final action, hold one year inactive, transfer to records holding area, hold one year and transfer to Washington National Records Center. Hold 23 years and destroy.

System manager(s) and address:

Defense Mapping Agency, ATTN: General Counsel, Building 56, U.S. Naval Observatory, Washington, D.C. 20305, TELEPHONE: Area Code 202/254-4431

Notification procedure:

Information may be obtained from above.

Record access procedures:

Requests from individuals should be addressed to system manager. Written requests for information should contain the full name of the individual, current address and telephone number and social security number. Visits are limited to normal working hours. For personal visits the individual should be able to provide some acceptable identification, that is, drivers license, employing office's identification card, and give some verbal information that could be verified.

Contesting record procedures:

The Agencys rules for contesting contents and appealing initial determination may be obtained from System Manager.

Record source categories:

Related forms, correspondence, investigative reports and information gathered in anticipation of litigation, and opinions of Counsel.

Systems exempted from certain provisions of the act:

NONE

B0407-03 HQHTASID

System name:

407-03 Congressional Correspondence Files (Civilian Personnel-Congressional Inquiries)

System location:

Personnel Offices - See DMA Directory for complete address listing.

Categories of individuals covered by the system:

Any employee who has written their Congressman or Senator regarding their employment with the Agency

Categories of records in the system:

Includes employee's letter to Congressman or Senator, referral letter from Congressman's/Senator's Office to the Agency, documents related to the matter, Agency reply to Congressman/Senator

Authority for maintenance of the system:

5 USC 2954 - Information to Committee of Congress on Requests

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Information is used to investigate and attempt to resolve employee problems conveyed to their Congressman/Senator
Officials of the Congressman's/Senator's Office
Personnel Office
Supervisors

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Paper records in file folders

Retrievability:

Filed alphabetically by last name of employee

Safeguards:

Buildings or facilities employ security guards. Records are maintained in areas accessible only to authorized personnel that are properly screened, cleared, and trained

Retention and disposal:

Temporary Record - destroy after five years

System manager(s) and address:

Defense Mapping Agency, ATTN: Personnel Office, Building 56, U.S. Naval Observatory, Washington, D.C. 20305, TELEPHONE: Area Code 202/254-4066

Notification procedure:

Information may be obtained from above.

Record access procedures:

Requests from individuals should be addressed to system manager. Requests from individuals should be addressed to the appropriate organization as indicated in address list. Written requests for information should contain the full name of the individual, current address and telephone number and social security number. Visits are limited to normal working hours. For personal visits the individual should be able to provide some acceptable identification, that is, drivers license, employing office's identification card, and give some verbal information that could be verified.

Contesting record procedures:

The Agency's rules for contesting contents and appealing initial determination may be obtained from System Manager.

Record source categories:

Correspondence and Internal Memos originated by Employees, Congressman, Senator, Personnel Office and Supervisors

Systems exempted from certain provisions of the act:

NONE

B0408-11 HQHTASI

System name:

408-11 Biography Files

System location:

Public Affairs Officer, See DMA Directory for complete address

Categories of individuals covered by the system:

All top management and other key personnel of DMA

Categories of records in the system:

Biographies; photographs; newspaper clippings and related documents pertaining to leading military and civilian personalities

Authority for maintenance of the system:

44 USC 3101 - Records Management by Federal Agencies

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Public Affairs Office - for release on public relations and community affairs matters

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Paper record in file folders and/or Kardex book

Retrievability:

Filed alphabetically by last name of employee

Safeguards:

Buildings or facilities employ security guards. Records are maintained in areas accessible only to authorized personnel that are properly screened, cleared, and trained

Retention and disposal:

Record is Permanent. Destroy two years after transfer, separation or death of the individual concerned

System manager(s) and address:

Defense Mapping Agency, ATTN: Public Affairs Officer, Building 56, U.S. Naval Observatory, Washington, D.C. 20305, TELEPHONE: Area Code 202/254-4140

Notification procedure:

Information may be obtained from above.

Record access procedures:

Requests from individuals should be addressed to system manager.

Written requests for information should contain the full name of the individuals current address and telephone number, and the Case (Control) number that appears with the office symbol, on all correspondence received from this office

For personal visits, the individual should be able to provide some acceptable identification, that is, drivers license, employing office's identification card, and give some verbal information that could be verified

Contesting record procedures:

The Agencys' rules for contesting contents and appealing initial determination may be obtained from System Manager.

Record source categories:

Biographical data furnished by individual

Systems exempted from certain provisions of the act:

NONE

B0502-03 HQHTA

System name:

502-03 Master Billet/Access Record

System location:

Primary System - Special Security/Activities Division, Department of Computer Services, DMA Hydrographic/Topographic Center. Decentralized segments - HQ DMA, DMA Aerospace Center. See DMA Directory for complete address listing.

Categories of individuals covered by the system:

All DMA employees and contractor personnel who have been granted a security clearance or indoctrinated for access to Sensitive Compartmented Information (SCI) and all personnel being considered for DMA employment. In addition, employees of other government agencies are included for the period during which their security clearance or SCI access status is permanently certified to DMA.

Categories of records in the system:

File may contain for an individual the following: name, rank/grade, military component or civilian status, social security number, SCI billet number and title, security clearance, SCI accesses authorized and held, date Background Investigation completed, date indoctrinated or debriefed, date and state of birth, DMA badge number and expiration date, and whether an authorized courier of SCI material.

Authority for maintenance of the system:

E.O. 12065, National Security Information, 28 June 1978.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Records are used by DMA security personnel to identify and verify personnel granted security clearances or authorized access to SCI. Purpose of verification and identification is to control access to secure areas for use of classified information; for periodic reindoctrination (rebriefing) of employees for SCI access; for periodic security education and training; and for control and reissue of identification badges.

Information is also used to certify personnel SCI access status to other government agencies and to the Defense Intelligence Agency for updating the Security Management Information System.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Policies and practices for storing, retrieving, accessing, retaining and disposing of records in the system.

Storage:

Records are stored in computer memory core for retrieval through visual display terminals and line printers.

Retrievability:

Files are retrieved by name and at least one other personal identifier, such as a date of birth, place of birth, social security number or military service number. Files may also be retrieved by billet number and/or DMA security badge number.

Safeguards:

Secured in alarmed vault in guarded building. Vault accessible only to properly cleared, authorized personnel. Transmission of system data between DMA Components is by Secure (encrypted) circuit.

Retention and disposal:

Active records only are maintained. Records of personnel debriefed for SCI access are dumped on a debrief tape which is printed as an alphabetical listing cumulatively each month for one year, then the tape is erased. Old printed listing is destroyed when replaced by new printed listing (weekly).

System manager(s) and address:

Director, Defense Mapping Agency, ATTN: Special Security Office, Building 56, U.S. Naval Observatory, Washington, D.C., 20305, telephone 202-254-4603.

Notification procedure:

Information may be obtained from Defense Mapping Agency, ATTN: Special Security Office, Building 56, U.S. Naval Observatory, Washington, D.C., 20305, telephone 202-254-4603.

Record access procedures:

Requests from individuals should be addressed to above. Written requests for information should contain the full name of the individual, social security number, current address and telephone number. For personal visits, the individual should be able to furnish personal identification containing his/her full name, social security number, phyfical description, photograph, and signature.

Contesting record procedures:

The agency's rules for access to records and for contesting contents and appealing initial determinations by the individual concerned may be obtained from the Defense Mapping Agency, ATTN: Special Security Office, Building 56, U.S. Naval Observatory, Washington, D.C., 20305, telephone 202-254-4603.

Record source categories:

Information is supplied by the individual concerned through completion of the Personal History Statement DD398. The bases for billet entries are security clearance or access approval messages or correspondence from the Defense Intelligence Agency; bases for incumbent entries are indoctrination oaths executed by incumbents at time of indoctrination.

Systems exempted from certain provisions of the act:

NONE

B0502-03-2 HQHTASI

System name:

502-03 Classified Material Access Files

System location:

Primary System - Security Offices - DMA Headquarters (HQ), DMA Hydrographic/Topographic Center (HT), DMA Aerospace Center (A), Defense Mapping School (S), and Inter American Geodetic Survey (I).

Decentralized Segments - Requesting offices at DMA and organizations requiring the access authorization. See DMA Directory for complete address listing.

DIA, JCS

Categories of individuals covered by the system:

Individuals authorized to have access to classified files

Categories of records in the system:

Documents reifecting authorization to have access to classified material. They include forms containing individual's name, and signature, classification of files concerned, information desired, and signature of an official authorizing access.

Authority for maintenance of the system:

Executive Order 12065, National Security Information, June 28, 1978.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Security Office - Check of authorized individuals for access to classified material and guard authorization.

Requesting DMA organizations - to gain approval for employees to have access to perform their duty.

Requiring DMA and other Agencies - to allow employees the right to use classified information.

DIA - to verify who has been granted authority to Special Security information.

JCS - to verify who has been granted authority to use JCS papers.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Paper record in file folders and/or Kardex book.

Retrievability:

File alphabetically by last name or grade of individual requiring access

Safeguards:

Buildings or facilities employ security guards. Records are maintained in areas accessible only to authorized personnel that are properly screened, cleared, and trained.

Retention and disposal:

Temporary Record - Destroy on transfer, reassignment, or separation of the individual.

System manager(s) and address:

Defense Mapping Agency, ATTN: Security Office, Building 56, U.S. Naval Observatory, Washington, D.C. 20305, TELEPHONE: Area Code 202/254-441

Notification procedure:

Information may be obtained from above.

Record access procedures:

Requests from individuals should be addressed to system manager.

Requests from individuals should be addressed to the appropriate organization as indicated in address list. Written requests for information should contain the full name of the individual, current address and telephone number and social security number. Visits are limited to normal working hours. For personal visits the individual should be able to provide some acceptable identification, that is, drivers license, employing office's identification card, and give some verbal information that could be verified.

Contesting record procedures:

The Agencys rules for contesting contents and appealing initial deter- mination may be obtained from System Manager.

Record source categories:

Report of investigating agency that conducted the background investigation.

Systems exempted from certain provisions of the act:

NONE

B0502-15 HQHTASI

System name:

502-15 Security Compromise Case Files

System location:

Primary System - Security Offices - DMA Headquarters (HQ), DMA Hydrographic/Topographic Center (HT), DMA Aerospace Center (A), Defense Mapping School (S), and Inter American Geodetic Survey (I). See DMA Directory for complete address listing

Decentralized Segments - Dept. of Justice and FBI on felonies cases.

Categories of individuals covered by the system:

DMA personnel security violation

Categories of records in the system:

Documents relating to investigations of alleged security violations, such as missing documents, unauthorized disclosure of information, unattended open security containers, documents not properly safeguarded and matters of a similar nature.

Authority for maintenance of the system:

Executive Order 12065, National Security Information, June 28, 1978.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Security Office - Conduct security investigations. Supervisors on a need to know basis and as a quick reference system on security violations.

Dept. of Justice and FBI - for advise on felony cases.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Paper record in file folders and/or Kardex book.

Retrievability:

Filed alphabetically by last name of employee

Safeguards:

Buildings or facilities employ security guards. Records are maintained in areas accessible only to authorized personnel that are properly screened, cleared, and trained.

Retention and disposal:

Temporary Record - Destroy two years after completion of final corrective or disciplinary action, except that records of violations of a sufficiently serious nature to be classed as felonies are permanent.

System manager(s) and address:

Defense Mapping Agency, ATTN: Security Office, Building 56, U.S. Naval Observatory, Washington, D.C. 20305, TELEPHONE: Area Code 202/254-4411

Notification procedure:

Information may be obtained from System Manager.

Record access procedures:

Requests from individuals should be addressed to system manager.

Requests from individuals should be addressed to the appropriate organization as indicated in address list. Written requests for information should contain the full name of the individual, current address and telephone number and social security number. Visits are limited to normal working hours. For personal visits the individual should be able to provide some acceptable identification, that is, drivers license, employing office's identification card, and give some verbal information that could be verified.

Contesting record procedures:

The Agency's rules for contesting contents and appealing initial determination may be obtained from: System Manager.

Record source categories:

Reporting organization or official

Systems exempted from certain provisions of the act:

NONE

B0503-02 HTASI

System name:

503-02 Security Identification Accountability Files

System location:

Security Offices - DMA Hydrographic/Topographic Center (HT), DMA Aerospace Center (A), Defense Mapping School (S), and Inter American Geodetic Survey (I). - See DMA Directory for complete address.

Categories of individuals covered by the system:

Any Civilian employee

Categories of records in the system:

File contains the application, supporting materials and the number of the identification badges.

Authority for maintenance of the system:

E.O. 12065, National Security Information, June 28, 1978.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

To identify persons to whom badges are issued.
Purpose - Maintain accountability for identification cards.
Users - Supervisor, Personnel and Security Offices

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Paper records kept in file folders by No. also in desk type cabinet.

Retrievability:

Filed Alphabetically by name.

Safeguards:

Buildings, facilities employ security guards. Records are maintained in areas accessible only to authorized personnel that are properly screened, cleared and trained.

Retention and disposal:

Temporary Record-Transfer to Records Holding Area after last card or badge number entered has been accounted for. Hold for three years and destroy.

System manager(s) and address:

Defense Mapping Agency, ATTN: Security Office, Building 56, U.S. Naval Observatory, Washington, D.C. 20305, TELEPHONE: Area Code 202/254-4411

Notification procedure:

Information may be obtained from above.

Record access procedures:

Requests from individuals should be address to system manager

Written requests for information should contain the full name of the individual, current address and telephone number and the case (Control) number that appears with the office symbol, on all correspondence received from this office.

For personal visits, the individual should be able to provide some acceptable identification, that is, drivers license, employing office's identification card and give some verbal information that could be verified with his 'case' folder.

Contesting record procedures:

The agency's rules for contesting contents and appealing initial determinations may be obtained from System Manager

Record source categories:

Individual's badge request, personnel forms and investigatory findings.

Systems exempted from certain provisions of the act:

NONE

B0303-03 HTA

System name:

303-03 Firearms Authorization Files

System location:

DMA Hydrographic/Topographic Center (HT) and DMA Aerospace Center (A). See DMA Directory for complete address listing.

Categories of individuals covered by the system:

Security guards that have been issued firearms and ammunitions

Categories of records in the system:

Documents authorizing DMA civilian guards to carry firearms. Included are firearms authorization cards and related papers.

Authority for maintenance of the system: 50 U.S.C. 61; Arms and Ammunition issued to protect public property; reimbursement of Department of Army.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Collateral Security Division-Serves as a record for weapons serial numbers and firearms authorization cards issued to each Security Police.

Available to Federal and State local law enforcing agency as required by current laws and regulations.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Paper record in file folders and/or Kardex book.

Retrievability:

Filed alphabetically by last name of employee

Safeguards:

Buildings or facilities employ security guards. Records are maintained in areas accessible only to authorized personnel that are properly screened, cleared, and trained.

Retention and disposal:

Temporary Record, Destroy upon expiration of authorization.

System manager(s) and address:

Defense Mapping Agency, ATTN: Security Office, Building 56, U.S. Naval Observatory, Washington, D.C. 20305, TELEPHONE: Area Code 202/254-4411

Notification procedure:

Information may be obtained from above.

Record access procedures:

Requests from individuals should be addressed to system manager.

Requests from individuals should be addressed to the appropriate organization as indicated in address list.

Written requests for information should contain the full name of the individual, current address and telephone number, and social security number. Visits are limited to normal working hours.

For personal visits the individual should be able to provide some acceptable identification, that is, drivers license, employing office's identification card, and give some verbal information that could be verified.

Contesting record procedures:

The Agencys rules for contesting contents and appealing initial determination may be obtained from System Manager.

Record source categories:

Weapon serial number, and authorization of issue authorization card issued.

Systems exempted from certain provisions of the act:

NONE

B0303-04 HQHTASI

System name:

303-04 Parking Permit Control Files

System location:

Security Offices of Components - See DMA Directory for complete address

Categories of individuals covered by the system:

Individuals who have been issued parking Permits or cited for violations.

Categories of records in the system:

Documents relating to the allotment of parking spaces, recording of violations by holders of parking permits.

Authority for maintenance of the system:

50 U.S.C. 797; Internal Security - Security Regulations and Orders; Penalty for Violation, and Delegations, Promulgation by President.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Security Office - Issue of spaces and recording of violators.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Paper records kept in file folders and desk type pull-out shelves.

Retrievability:

Filed by name alphabetically

Safeguards:

Buildings and Facilities employ security guards. Records are maintained in areas accessible only to authorized personnel that are properly screened, cleared, and trained.

Retention and disposal:

Temporary-Record. Destroy on Transfer or separation of parking permit holder, or when permit is superseded or revoked.

System manager(s) and address:

Defense Mapping Agency, ATTN: Administration Office, Building 56, U.S. Naval Observatory, Washington, D.C. 20305, TELEPHONE: Area Code 202/254-4401

Notification procedure:

Information may be obtained from above.

Record access procedures:

Requests from individuals should be addressed to System Manager.

Written requests for information should contain the full name of the individual, current address, and telephone number, and social security number.

For personal visits the individual should be able to provide some acceptable identification, that is, driver's license, employing office's identification card, and give some verbal information that could be verified on employment.

Contesting record procedures:

The Agencies' rules for contesting contents and appealing initial determinations may be obtained from System Manager.

Record source categories:

Individuals requests for permits, copies of tickets issued.

Systems exempted from certain provisions of the act:

NONE

B0303-05 HQHTASI

System name:

303-05 Vehicle Registration and Driver Record File

System location:

DMA Headquarters (HQ), DMA Hydrographic/Topographic Center (HT), DMA Aerospace Center (A), Defense Mapping School (S), and Inter American Geodetic Survey (I). - See DMA Directory for complete address.

Categories of individuals covered by the system:

Any person privileged to operate a motor vehicle on a military instal- lation and who has been involved in a chargeable traffic accident or whose commission of a moving traffic violation has been verified.

Categories of records in the system:

File contains a record of issuance of decal and of all traffic offenses/ incidents and actions.

Authority for maintenance of the system: 50 U.S.C. 797; Internal Security - Security Regulations and Orders; Penalty for Violation.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Security Office, to record all traffic offenses/incidents and action taken. State and Local Law Enforcement Agency for vehicle identifications.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

8"x5" paper cards in card file cabinet

Retrievability:

Filed alphabetically by last name of employee

Safeguards:

Buildings or facilities employ security guards. Records are maintained in areas accessible only to authorized personnel that are properly screened, cleared, and trained.

Retention and disposal: Destroy one year after revocation or expiration.

System manager(s) and address:

Defense Mapping Agency, ATTN: Security Office, Building 56, U.S. Naval Observatory, Washington, D.C. 20305, TELEPHONE: Area Code 202/254-4411

Notification procedure:

Information may be obtained from above.

Record access procedures:

Requests from individuals should be addressed to system manager.

Requests from individuals should be addressed to the appropriate organization as indicated in address list. Written requests for information should contain the full name of the individual, current address and telephone number and social security number. Visits are limited to normal working hours.

For personal visits, the individual should be able to provide some acceptable identification and also some information that would verify his need to know.

Contesting record procedures:

The Agencys rules for contesting contents and appealing initial determination may be obtained from System Manager.

Record source categories:

Report of traffic violation from Security police.

Systems exempted from certain provisions of the act:

NONE

[illegible]03-09 HQHTASI

System name:

503-09 Key Accountability Files

System location:

Security Office, DMA Headquarters (HQ), DMA Hydrographic/Topographic Center (HT), DMA Aerospace Center (A), Defense Mapping School (S), and Inter American Geodetic Survey (I). - See DMA Directory for complete address.

Categories of individuals covered by the system:

Individuals with keys to a secure area.

Categories of records in the system:

Documentation relating to the issue, return and accountability for keys to secure areas.

Authority for maintenance of the system:

E.O. 12065, National Security Information, June 28, 1978. Information and Material. 3/10/72

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Security Police - Periodic Inspections, reissuance of keys after locks have been changed.

Personnel - Reference checks on individuals with keys to secure areas.

Supervisors - Reference checks and daily use for information purposes.

OSD and DIA - Investigation of loss or destruction of secure area.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Paper Records in file folders

Retrievability:

Filed Alphabetically by name

Safeguards:

Buildings, facilities employ security guards. Records are maintained in areas accessible only to authorized personnel that are properly screened, cleared and trained.

Retention and disposal:

Temporary Record - Transfer to holding area, hold three (3) years then destroy.

System manager(s) and address:

Defense Mapping Agency, ATTN: Security Office, Building 56, U.S. Naval Observatory, Washington, D.C. 20305, TELEPHONE: Area Code 202/254-4411

Notification procedure:

Information may be obtained from above.

Record access procedures:

Requests from individuals should contain the full name of the individual, current address and telephone number, social security number.

For personal visits the individual should be able to provide some acceptable identification, that is, drivers' license, employing office's identification card, and give some verbal information that could be verified.

Contesting record procedures:

The Agencies' rules for contesting contents and appealing initial determination s may be obtained from System Manager.

Record source categories:

Individual's key requests, personnel forms and investigatory findings.

Systems exempted from certain provisions of the act:

NONE

[illegible]04-01 HQHTA

System name:

504-01 Personnel Special Security Files

System location:

Special Security/Activities Division - DMA Headquarters (HQ), DMA Hydrographic/Topographic Center (HT), DMA Aerospace Center (A) - See DMA Directory for complete address

Categories of individuals covered by the system: ES

DMA Military or civilian employees who have been assigned to positions that require access to Sensitive Compartmented Information (SCI).

Categories of records in the system:

Files consist of Special Security Office (SSO) security indoctrination and termination oaths; clearance and access certification messages; SSO security violation investigative reports if applicable.

Authority for maintenance of the system:

E.O. 12065, National Security Information, June 28, 1978. 3/10/72

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

To provide central file repository for all SSO security forms pertaining to the individual.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Paper records in file folders

Retrievability:

Filed alphabetically by last name of file subject.

Safeguards:

Buildings, facilities employ security guards. Records are maintained in areas accessible only to authorized personnel that are properly screened, cleared and trained.

Retention and disposal:

Retained in active file during period subject is assigned to or employed by DMA, retained in inactive file for one year following reassignment or termination of employment, then destroyed.

System manager(s) and address:

See Defense Mapping Agency, ATTN: Special Security Office, Building 56, U.S. Naval Observatory, Washington, D.C. 20305, TELEPHONE: Area Code 202/254-4603

Notification procedure:

Information may be obtained from above.

Record access procedures:

Requests from individuals should be addressed to system manager.

Written requests for information should contain the full name of the individual current address and telephone number, social security number.

For personal visits the individual should be able to provide some acceptable identification, that is, drivers license, employing office's identification card and give some verbal information that could be verified.

Contesting record procedures:

The Agency's rules for contesting contents and appealing initial determination may be obtained from System Manager.

Record source categories:

Information obtained from such sources as review of birth records; education records; credit and former employment records; interviews of named and developed references; check of local police and FBI files & check of subversive files.

System exempted from certain provisions of the act:

Parts of this system may be exempt under 5 U.S.C. 522a (j) or (k), as applicable. For additional information, contact the System Manager.

B0504-01-2 HQHTASH

System name:

504-01 Personnel Security Files

System location:

Primary System - Security Office, DMA Headquarters (HQ), DMA Hydrographic/Topographic Center (HT), DMA Aerospace Center (A), Defense Mapping School (S), Inter American Geodetic Survey (I). See DMA Directory for complete address.

Decentralized Segments - Cross reference index cards (i.e., Badge Requests Cards, Identification Cards, Guard Desk Rolodex Identification Cards) with extracts of information contained in primary files are maintained on file in Security Office of each DMA element.

Categories of individuals covered by the system:

Those military, civilian, and industrial personnel who are assigned to, employed by DMA; whose official duties, responsibilities and/or contracts require that they have access to classified defense information which has been entrusted to or is under the Defense Mapping Agency.

Categories of records in the system:

File Contains individual's certificate of clearance indicating level of access individual is cleared for, date clearance was issued, type of investigation conducted, date investigation was completed and identification of agency that conducted the investigation. Additionally, contained in the file are; copy of Statement of Personal History (DD Form 398), individual's certification that he/she has read and understands both the Department of Defense and Agency security directives and instructions regarding the protection of classified defense information; individual certification that he/she understands responsibilities for protection of North Atlantic Treaty Organization (NATO), material to a lesser extent some files will contain individuals certification that he/she has been briefed for access to NATO Top Secret (COSMIC); NATO Top Secret Restricted Data (ATOMAL); Single Integrated Operational Plan (SIOP); Extremely Sensitive Information (ESI); Atomic Energy Commission, Restricted Data (RD); and Atomic Energy Commission, Critical Nuclear Weapons Design Information (CNWDI).

Authority for maintenance of the system:

EO 12065, National Security Information, June 28, 1978. Classification and Declassification of National Security Information and Material - 3/10/72

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

DMA SO - This information is maintained as a means to insure that each and every individual assigned to, employed by or contracting with the HQ DMA has been cleared for the level of access to classified information that is necessary for accomplishment of his official duties. These records further insure that each individual is made aware of his responsibilities regarding the protection and safe guarding of any classified information entrusted to him.

Other Governmental Agencies - Information regarding any individual's clearance and level of access. This enables DMA personnel to conduct official business requiring security clearance, with other governmental agencies.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Paper records in file folders

Retrievability:

Alphabetically by name of individual

Safeguards:

Buildings are located on guarded government installation with security guards and alarms. Records are maintained in areas accessible only to authorized personnel that are properly screened, cleared and trained.

Retention and disposal:

Records are maintained in an active status only for the period of time that the individual is actually assigned to, employed by or contracting with DMA. When the individual terminates his association with DMA, the records are maintained in an inactive status for the period of one year and then destroyed.

System manager(s) and address:

SDefense Mapping Agency, ATTN: Security Office, Building 56, U.S. Naval Observatory, Washington, D.C. 20305, TELEPHONE: Area Code 202/254-4411

Notification procedure:

Information may be obtained from above.

Record access procedures:

Requests from individuals should be addressed to System Manager. Written requests for information should contain the full name of the individual, current address and telephone number, social security number.

For personal visits the individual should be able to provide some acceptable identification, that is, driver's license, employing office's identification card, and give some verbal information that could be verified.

Contesting record procedures:

The agencies' rules for contesting contents and appealing initial determinations may be obtained from System Manager.

Record source categories:

Individual's certificate of clearance originates in HQ DMA Special Security Office (SSO) based on notification of personnel investigation by either the Office of Personnel Management or the Defense Investigative Agency. Certification of clearance for military personnel will be certified by the individuals' parent service. Much of the routine information in these records such as name, date and place of birth, etc., is obtained during the individual's initial processing which is usually accomplished on his first duty day. Other information such as type of investigation, date of investigation, etc., is obtained from such investigating agencies as the OPM, Defense Investigative Service (DIS), etc. The records are updated as new information is received regarding the individual's clearance and access.

Systems exempted from certain provisions of the act:

NONE

B0504-01-3 HQHTA

System name:

504-01 Personnel Security Investigative Files

System location:

Primary System - Security Offices, DMA Headquarters (HQ), DMA Hydrographic/Topographic Center (HT), DMA Aerospace Center (A) - See DMA Directory for complete address.

Categories of individuals covered by the system:

Those military and civilian personnel who are assigned to or employed by the Defense Mapping Agency and whose duties require access to classified defense information and who have therefore been investigated under the provisions of Department of Defense regulations.

Categories of records in the system:

Files consist of two parts, one part subject two exemption of 552a(K)(5) from review one part available for review. Part (1) Exempted consists of National Agency Checks with Written Inquiries (NACI); Background Investigations (BI) Special Background Investigations (SBI); Bring-up Investigations (BU). Part (2) Available for review consists of National Agency Checks (NAC).

Authority for maintenance of the system:

EO 12065, National Security Information, June 28, 1978.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Defense Mapping Agency - to determine eligibility for access to classified defense information and to conduct continuing Security Program

Defense Intelligence Agency - to determine eligibility for access to Sensitive Compartmented Information, applicable to Special Security Office access.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Paper records in file folders.

Retrievability:

Filed alphabetically by last name of file subject.

Safeguards:

Buildings, facilities employ security guards. Records are maintained in areas accessible only to authorized personnel that are properly screened, cleared and trained.

Retention and disposal:

Retained in active file during period subject is assigned to or employed by DMA, retained in inactive file for one year following termination of subject's assignment or employment, then destroyed.

System manager(s) and address:

Defense Mapping Agency, ATTN: Security Office, Building 56, U.S. Naval Observatory, Washington, D.C. 20305, TELEPHONE: Area Code 202/254-4411

Notification procedure:

Information may be obtained from above.

Record access procedures:

Requests from individuals should be addressed to System Manager.

Written requests for information should contain the full name of the individual current address and telephone number, and the Case (Control) number that appears with the office symbol, on all correspondence received from this office.

For personal visits, the individual should be able to provide some acceptable identification, that is, drivers license, employing office's identification card, and give some verbal information that could be verified.

Contesting record procedures:

The Agencies' rules for contesting contents and appealing initial determinations may be obtained from System Manager.

Record source categories:

Investigations are originated based on applicant's application for employment Source of information are inquiries of birth, education, local police, federal police agency files, credit, neighborhood, personal references, etc.

Systems exempted from certain provisions of the act:

Parts of this system may be exempt under 5 U.S.C. 522a (j) or (k), as applicable. For additional information, contact the Systems Manager.

B0601-01 HQHTASI

System name:

601-01 Civilian Personnel Program Reporting Files (Master File Printout)

System location:

Personnel Offices, See DMA Directory for Complete Address Listing

Categories of individuals covered by the system:

Any individual employed by the Agency.

Categories of records in the system:

File contains Name, Social Security Number, Date of Birth, Sex, Service Computation Date, Location, Job Title, Grade, Series, Step, Salary, Life Insurance, Health Benefits, Organization Code, Nature and Date of Last Action Tak en, Veteran's Preference, Retirement Deductions, Type of Appointment, Master Tapes, etc.

Authority for maintenance of the system:

Executive Order 10561. Designating Official Personnel Folders in Government Agencies as Records of the CSC and Prescribing Regulations Relating to the Establishment, Maintenance and Transfer Thereof; 9/15/54

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

To provide consolidated source of pertinent information on employees for internal requests for information and internal reports. Provides records of information transmitted to OPM Central Personnel Data File. Available to the Office of Personnel Management (OPM).

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Computer Printout paper

Retrievability:

By organization, grade level, alpha by name

Safeguards:

Buildings/facilities employ security guards. Records are maintained in areas accessible only to authorized personnel that are properly screened, cleared and trained.

Retention and disposal:

Temporary. Destroy after six months.

System manager(s) and address:

Defense Mapping Agency, ATTN: Personnel Office, Building 56, U.S. Naval Observatory, Washington, D.C. 20305, TELEPHONE: Area Code 202/254-4066

Notification procedure:

Information may be obtained from above.

Record access procedures:

Requests from individuals should be addressed to system manager.

Requests from individuals should be addressed to the appropriate organization as indicated in address list. Written requests for information should contain the full name of the individual, current address and telephone number and social security number. Visits are limited to normal working hours. For personal visits the individual should be able to provide some acceptable identification, that is, drivers license, employing office's identification card, and give some verbal information that could be verified.

Contesting record procedures:

The Agencys rules for contesting contents and appealing initial deter- mination may be obtained from System Manager.

Record source categories:

Digest of Information from existing Personnel Files.

Systems exempted from certain provisions of the act:

NONE

B0601-01-2 HTA

System name:

601-01 Civilian Personnel Program Reporting Files (Employee Retirement Record)

System location:

Primary System - Personnel Office, See DMA Directory for complete address listing

Decentralized Segments - Department of Computer Services

Categories of individuals covered by the system:

Any individual employed by DMA Hydrographic/Topographic Center who is qualified for retirement

Categories of records in the system:

Contains names of employees eligible for optional retirement within next five years. Contains name, job title, earliest retirement date, Date of Birth, Service Computation Date, Pay Plan, Grade, Step, Series, Organization Code.

Authority for maintenance of the system:

Executive Order 10561

Designating Official Personnel Folders in Government Agencies as Records of the OPM and Prescribing Regulations Relating to the Establishment, Maintenance and Transfer Thereof; 9/15/54

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Supervisory management planning purposes and personal benefit of individuals concerned- Available to the Office of Personnel Management (OPM).

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Computer printout and tape

Retrievability:

By organization, alpha by last name

Safeguards:

Building facilities employ security guards. Records are maintained in areas accessible only to authorized personnel that are properly screened, cleared, and trained.

Retention and disposal:

Printout
Temporary - Destroy after five years
Tape - updated periodically

System manager(s) and address:

DMA Hydrographic/Topographic Center, ATTN: Personnel Office, Room 170, Erskine Hall, 6500 Brookes Lane, Washington, D.C. 20315, TELEPHONE: Area Code 202/227-2116

Notification procedure:

Information may be obtained from above.

Record access procedures:

Requests from individuals should be addressed to system manager.

Requests from individuals should be addressed to the appropriate organization as indicated in address list. Written requests for information should contain the full name of the individual, current address and telephone number and social security number. Visits are limited to normal working hours. For personal visits the individual should be able to provide some acceptable identification, that is, drivers license,

employing office's identification card, and give some verbal information that could be verified.

Contesting record procedures:

The Agencys rules for contesting contents and appealing initial determination may be obtained from System Manager.

Record source categories:

Personnel Master File computer tape in Department of Computer Services

Systems exempted from certain provisions of the act:

NONE

D8601-01-3 A

System name:

601-01 Personnel Assistance Files

System location:

DMAAC Civilian Personnel Office. See DMA Directory for complete address listing.

Categories of individuals covered by the system:

Aerospace Center personnel discussions with the Personnel Office.

Categories of records in the system:

File contains memorandums for record concerning Planned Assistance Visits.

Authority for maintenance of the system:

21 USC 1175

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

The purpose of the file is to record employee's visits to Personnel Office and discussions with Personnel Office personnel concerning their questions, advice, or complaints.

User is the Personnel Office staff.

User utilizes the information to keep records of employees' visits and have a record of discussions concerning employee questions, advice, or complaints.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Papers and memorandums.

Retrievability:

Filed categorized by Directorates, Staff Agencies, and Departments, and then filed alphabetically by employee last name after that.

Safeguards:

Facility employs security guards. Records are locked in file cabinets by division secretary's desk when not in use. Records are maintained in areas accessible only to authorized personnel that are properly screened, cleared, and trained.

Retention and disposal:

Temporary record. Destroyed after 5 years.

System manager(s) and address:

DMAAC Director of Civilian Personnel. See DMA Directory for complete address listing.

Notification procedure:

Information may be obtained from above.

Record access procedures:

Requests from individuals should be addressed to System Manager

Written requests for information should contain the full name of the individual, current address and telephone number, and social security number. Visits are limited to normal working hours.

For personal visits, the individual should be able to provide some acceptable identification; that is, driver's license, employing office's identification card, and give some verbal information that could be verified.

Contesting record procedures:

The Agency's rules for contesting contents and appealing initial determination may be obtained from the System Manager.

Record source categories:

Backup material on employee visits to Personnel Office.

Systems exempted from certain provisions of the act:

NONE

D8601-03 HQ/HTASI

System name:

601-03 Personnel Data System - Civilian (PDS-C)

System location:

Civilian Personnel Offices - See DMA Directory for complete address listing.

Categories of individuals covered by the system:

Current and former DMA civilian employees.

Categories of records in the system:

Civilian employment information including authorization for position, personnel data, suspense information; position control information; projected information and historical information; civilian education and training data; performance appraisal, ratings, evaluation of potential; civilian historical files covering job experience, training and transactions; civilian awards information, merit promotion plan work files; career programs files for such functional areas as procurement, logistics, civilian personnel, etc., civilian separation and retirement data for reports and to determine eligibility; adverse and disciplinary data for statistical analysis and employee assistance; stand-along file, as for complaints, enrollee programs; extract files from which to produce statistical reports in hard copy, or for immediate access display on remote computer terminals; miscellaneous files.

Authority for maintenance of the system:

5U.S. Code 301 and 44 U.S. Code 3101.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

To provide automated system support to DMA officials at all levels from that part of the Office of Personnel Management (OPM) required personnel management and records keeping system that pertains to evaluation, authorization and position control, pay, position management, staffing skills inventory, career management, training, retirement, employee services, rights and benefits, merit promotions, demotions, reductions in force, complaints resolution, labor management relations, and the suspensing and processing of personnel actions; to provide for transmission of such records between employing activities within the Defense Mapping Agency; to provide reports to the OPM; to provide reports of military reserve status to other armed services for contingency planning; to obtain statistical data on the work force to fulfill internal and external report requirements and to provide DMA offices with information needed to plan for and evaluate manpower, budget and civilian personnel programs, to provide minority group designator codes to the OPM's automated data file, to provide the Office of the Assistant Secretary of Defense, Manpower Reserve Affairs and Logistics, with data to assess the effectiveness of the program for employment of women in executive level positions; to provide data to DMA officials to facilitate the assessment of the DMA Affirmative Action Plan for minorities and women; to obtain listings of employees by function or area for locator and inventory purposes; disclosed to officials of labor organizations recognized under Executive Order 11491, as amended, when relevant and necessary to their duties of exclusive representation concerning personnel policies and practices and matters affecting working conditions.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Maintained in visible file binders/cabinets, card files, computer magnetic tapes, disks or drums, computer paper printouts, microfiche.

Retrievability:

Filed by name, Social Security Account Number (SSAN), other identification number or system identifier. The primary individual record identifier in APDS-C is SSAN. There is the added capability of selecting an individual's record or certain preformatted information by SSAN on an immediate basis using a teletype or cathode ray tube display device.

Safeguards:

Records are accessed by custodian(s) of the record system. Records are accessed by person(s) responsible for servicing the record system in performance of their official duties. Records are accessed by authorized personnel who are properly screened and cleared for need-to-know. Records are stored in security file containers/cabinets. Records are stored in safes. Records are stored in vaults. Records are stored in locked cabinets or rooms. Records are protected by guards. Records are controlled by computer system software.

Retention and disposal:

Analog output products are retained in office files until superseded, obsolete, no longer needed for reference, or inactivated. They are then destroyed by tearing into pieces, shredding, pulping, macerating, or burning. Data stored digitally within system is retained only for the period required to satisfy recurring processing requirements and/or historical requirements. The Notification of Personnel Action,

Standard Form 50, is disposed of as directed by the OPM, work files and records such as the employee career brief, position survey work sheet, retention register work sheet, alphabetic and social security account number locator files, and personnel and position control register are destroyed after use by tearing into pieces, shredding, macerating, or burning; work sheets pertaining to qualification and retention registers are disposed of as directed by the OPM; transitory files such as pending files, and recovery files are destroyed after use by degaussing; files and records retrieved through general retrieval systems are destroyed after use by tearing into pieces, shredding, pulping, macerating, or burning. The separated employee file retains employee information at time of separation for five years after which the employee's record is destroyed by degaussing.

System manager(s) and address:

Defense Mapping Agency, ATTN: Personnel Office, Building 56, Naval Observatory, Washington, D.C. 20305, TELEPHONE: Area Code 202/254-4066

Notification procedure:

Information may be obtained from above.

Record access procedures:

Requests from individuals should be addressed to above.

Written requests for information should contain the full name of the individual, Social Security Number, current address and telephone number.

For personal visits, the individual should be able to furnish personal identification containing his/her full name, Social Security Number, physical description, photograph and signature.

Contesting record procedures:

The Agency rules for contesting contents and appealing initial determination may be obtained from System Manager.

Record source categories:

Digest of information from existing Personnel Files and management/employee source documents.

Systems exempted from certain provisions of the act:

NONE

B0602-06 A

System name:

602-06 Differential and Allowance Files

System location:

Civilian Personnel (POX), DMAAC, 8900 South Broadway, St. Louis, Mo. 63125

Categories of individuals covered by the system:

Aerospace Center civilian employees serving overseas; rated eligible for foreign post differential and allowance.

Categories of records in the system:

File contains copies of DD Form 1351-2, memorandums and letters concerning differential and allowances.

Authority for maintenance of the system:

21 USC 1175

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Purpose of file is to record documentation (memorandums and letters) of employee's eligibility for foreign post differential, foreign quarters, and post allowance.

Users of the information are the Personnel Office staff members. User utilizes the file as a reference folder for future transactions of similar nature.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Paper records in file folders.

Retrievability:

Filed alphabetically by employee last name.

Safeguards:

Buildings and facilities employ security guards. Records are maintained in areas accessible only to authorized personnel that are properly screened, cleared, and trained.

Retention and disposal:

Files are retained and maintained in Current Files Area (CFA). Temporary Record - Destroyed upon separation of employee.

System manager(s) and address:

Director of Civilian Personnel (POX). See DMA Directory.

Notification procedure:

Information may be obtained from System Manager.

Record access procedures:

Requests from individuals should be addressed to: See System Manager.

Written requests for information should contain the full name of the individual, current address and telephone number, and social security number. Visits are limited to normal working hours.

For personal visits, the individual should be able to provide some acceptable identification; that is, driver's license, employing office's identification card, and give some verbal information that could be verified.

Contesting record procedures:

The Department's rules for contesting contents and appealing initial determinations may be obtained from System Manager.

Record source categories:

Foreign allowance application, grant, and reports.

Systems exempted from certain provisions of the act:

NONE

B0604-03 HQHTASI

System name:

604-03 Active Application Files (Applicant Supply Files)

System location:

Primary System - DMA Personnel Offices. See DMA Directory for complete address listing.

Categories of individuals covered by the system:

Individual job applicants

Categories of records in the system:

File contains rated applications for positions of Clerk-Typists or Clerk-Steno, test results

Authority for maintenance of the system:

5 U.S.C. Section 3301; Examination, certification and Appointment - Civil Service; Generally

Executive Order 10577 - Amending the Civil Service Rules and Authorizing a New Appointment System for the Competitive Service; 11/23/54

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Used by Personnel Office to fill position vacancies for Clerk-Typist and Clerk-Steno positions up to GS-4 level, exchange with other organizations, such as NIH, subject to periodical inspection by the Office of Personnel Management.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Paper record in file folders and file cabinets

Retrievability:

Filed alphabetically by last name of employee

Safeguards:

Buildings or facilities employ security guards. Records are maintained in areas accessible only to authorized personnel that are properly screened, cleared, and trained.

Retention and disposal:

Temporary. Destroy after two years

System manager(s) and address:

Defense Mapping Agency, ATTN: Personnel Office, Building 56, U.S. Naval Observatory, Washington, D.C. 20305, TELEPHONE: Area Code 202/254-4066

Notification procedure:

Information may be obtained from above.

Record access procedures:

Requests from individuals should be addressed to system manager. Requests from individuals should be addressed to the appropriate organization as indicated in address list. Written requests for information should contain the full name of the individual, current address and telephone number and social security number. Visits are limited to normal working hours. For personal visits the individual should be able to provide some acceptable identification, that is, drivers license, employing office's identification card, and give some verbal information that could be verified.

Contesting record procedures:

The Department's rules for contesting contests and appealing initial determination may be obtained from System Manager.

Record source categories:

Applications and tests completed by job applicants

Systems exempted from certain provisions of the act:

NONE

B0604-04 HTA

System name:

604-04 Pending Application Files

System location:

Civilian Personnel Offices - DMA Hydrographic/Topographic Center (HT) and DMA Aerospace Center (A) See DMA Directory for complete address listing.

Categories of individuals covered by the system:

All civilian personnel concerned.

Categories of records in the system:

Record of personnel applying for positions with DMA whose application is pending due to lack of qualifications, declining or not available for appointment. Applicants for whom there are adequate OPM registers.

Authority for maintenance of the system:

21 USC 1175

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Used to document individual's consideration for appointment.

Personnel Office, concerned employees, employee representatives, and authorized inspectors of the Office of Personnel Management.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Paper records in file folders.

Retrievability:

Filed alphabetically by employee last name.

Safeguards:

Buildings and facilities employ security guards. Records are maintained in areas accessible only to authorized personnel that are properly screened, cleared, and trained.

Retention and disposal:

Temporary record. Destroy in CFA after 2 years or on receipt of OPM inspection report.

System manager(s) and address:

Defense Mapping Agency, ATTN: Personnel Office, Building 56, U.S. Naval Observatory, Washington, D.C. 20305, TELEPHONE: Area Code 202/254-4066

Notification procedure:

Information may be obtained from above.

Record access procedures:

Request from individuals should be addressed to System Manager

Written requests for information should contain the full name of the individual, current address and telephone number, and social security number. Visits are limited to normal working hours.

For personal visits, the individual should be able to provide some acceptable identification; that is, driver's license, employing office's identification card, and give some verbal information that could be verified.

Contesting record procedures:

The Department's rules for contesting contents and appealing initial determinations may be obtained from System Manager.

Record source categories:

Applications from individuals concerned--qualification statements.

Systems exempted from certain provisions of the act:

NONE

B0605-01 HQHTASID

System name:

605-01 Equal Employment Opportunity Reporting Files

System location:

Primary System - Staff Offices, Department, Division and Branch Offices, All Components. See DMA Directory for complete address listing.

Decentralized Segment - Components and organizations of DMA

Categories of individuals covered by the system:

All civilian employees of DMA and Components

Categories of records in the system:

Social security number, statistical by organization/minority designation

Authority for maintenance of the system:

Executive Order 11478, 8/2/64; Equal Employment Opportunity in the Federal Government.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Used by the Equal Employment Opportunity Office only to identify minorities and for statistical purposes. Can be subject to submission to OPM for inspection or central EEO office - counselors investigators have access to files.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Computer magnetic tapes, vertical file cards and computer paper printouts.

Retrievability:

Social Security Number

Safeguards:

Information available only to Equal Employment Opportunity Office. Information kept in locked cabinets.

Retention and disposal:

Destroy after five years.

System manager(s) and address:

Defense Mapping Agency, ATTN: Personnel Office, Building 56, U.S. Naval Observatory, Washington, D.C. 20305, TELEPHONE: Area Code 202/254-4066

Notification procedure:

Information may be obtained from above.

Record access procedures:

Requests from individuals should be addressed to system manager.

Requests from individuals should be addressed to the appropriate organization as indicated in address list. Written requests for information should contain the full name of the individual, current address and telephone number and social security number. Visits are limited to normal working hours. For personal visits the individual should be able to provide some acceptable identification, that is, drivers license, employing office's identification card, and give some verbal information that could be verified.

Contesting record procedures:

The Agencys rules for contesting contents and appealing initial determination may be obtained from System Manager.

Record source categories:

Existing Personnel Records

Systems exempted from certain provisions of the act:

NONE

B0605-03 HQHTASID

System name:

605-03 Equal Employment Opportunity Complaint Case Files

System location:

DMA and Component organizational EEO Office
see DMA Directory for complete Address Listing

Categories of individuals covered by the system:

Any employee who files a complaint of discrimination

Categories of records in the system:

All documents pertaining to specific complaints of discrimination.

Authority for maintenance of the system:

Executive Order 11478, 8/8/69; Equal Employment Opportunity in the Federal Government.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

EEO Office - to process complaints; counselors have access;

Personnel Office - to concur or non-concur with proposed disposition

Office of Counsel - formal investigation; Complainant's designated Representative

HQ DMA - to concur or non-concur with proposed decision

Office of Personnel Management - appeal from initial agency decision; Department of Justice in event of litigation.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Paper records in folders in barred containers

Retrievability:

By name of complainant

Safeguards:

Buildings or facilities employ security guards. Records are maintained in areas accessible only to authorized personnel that are properly screened, cleared, and trained.

Retention and disposal:

Components - maintained until final decision
Temporary Record - destroyed after five years
HQ DMA - permanent

System manager(s) and address: Defense Mapping Agency, ATTN: Personnel Office, Building 56, U.S. Naval Observatory, Washington, D.C. 20305, TELEPHONE: Area Code 202/254-4066

Notification procedure:

Information may be obtained from above.

Record access procedures:

Requests from individuals should be addressed to system manager
Requests from individuals should be addressed to the appropriate organization as indicated in address list. Written requests for information should contain the full name of the individual, current address and telephone number and social security number. Visits are limited to normal working hours. For personal visits the individual should be able to provide some acceptable identification, that is, drivers license, employing office's identification card, and give some verbal information that could be verified.

Contesting record procedures:

The Agencys rules for contesting contents and appealing initial determination may be obtained from System Manager.

Record source categories:

Complaints, transmittal letters, investigative data and summaries, hearing transcripts, finding of fact statements, final disposition reports, acceptance statements, withdrawl notices, and similar or related documents.

Systems exempted from certain provisions of the act:

NONE

B0606-01 HQHTASI

System name:

606-01 Official Personnel Folder Files

System location:

Primary System - DMA Headquarters (HQ), DMA Hydrographic/ Topographic Center (HT), DMA Aerospace Center (A), Defense Mapping School (S), Inter American Geodetic Survey (I) - See DMA Directory for complete address listing.
Decentralized Segments - National Personnel Records Center, St. Louis, MO

Categories of individuals covered by the system:

All civilian employees
Indebtedness - Allegations of indebtedness made by creditors to Personnel Office requesting help

Categories of records in the system:

File contain documentation of all official personnel action taken on an employee regarding Federal service including verification of military service.
Indebtedness - copies of court judgements, responses to claim and counseling records

Authority for maintenance of the system:

Executive Order 10561 9/15/54 Designating Government Agencies as Records of the Office of Personnel Management and Prescribing Regulations Relating to the Establishment, Maintenance and Transfer thereof.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Personnel Office - serves as the official personnel record of an employee's Federal Service
Supervisory - Merit Promotion Plan
National Personnel Records Center, St. Louis, MO. - to give information to individuals concerned after retirement or separation from government service.
Any regulatory authority such as OPM
Indebtedness - counseling, possible use in court proceedings, supervisors and personnel for disciplinary actions

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Paper records in file folders

Retrievability:

Alphabetically by last name

Safeguards:

Buildings or facilities employ security guards. Records are maintained in areas accessible only to authorized personnel that are properly screened, cleared, and trained.

Retention and disposal:

Temporary Record - retained in active file until employee seperates. Upon separation from Federal Service, file sent to National Personnel Records Center. Upon transfer to another Agency, file is sent to Agency's personnel office. Destroyed at NPRC after 75 years after date of birth.
Indebtedness - destroyed upon separation of individual.

System manager(s) and address:

Defense Mapping Agency, ATTN: Personnel Office, Building 56, U.S. Naval Observatory, Washington, D.C. 20305, TELEPHONE: Area Code 202/254-4066

Notification procedure:

Information may be obtained from above.

Record access procedures:

Requests from individuals should be addressed to System Manager.
Requests from individuals should be addressed to the appropriate organization as indicated in address list. Written requests for information should contain the full name of the individual, current address and telephone number and social security number. Visits are limited to normal working hours. For personal visits the individual should be able to provide some acceptable identification, that is, drivers license, employing office's identification card, and give some verbal information that could be verified.

Contesting record procedures:

The Agency's rules for contesting contents and appealing initial determination may be obtained from System Manager

Record source categories:

Personnel forms completed by employee and Personnel Office regarding Federal employment.
Personnel Office - notification of personnel action, pay changes, change of address, change of health benefits and life insurance, letters of reprimand, verification of military service, educational transcripts. Documents generated by Civil Service Commission such as test scores, notices of ratings.
Indebtedness - official court judgements or court orders. Employees responses and creditors requests for help.

Systems exempted from certain provisions of the act:

NONE

B0606-02 HQHTASI

System name:

606-02 Employee Service Record File

System location:

Primary System - Personnel Office and each organizational field activity
Decentralized Segments - Records Holding Area, Records Management Division (For HT files only) - See DMA Directory for complete address

Categories of individuals covered by the system:

Any individual employed by HQ,HT,A,I

Categories of records in the system:

Card contains a summary of all personnel actions on SF-50's or pay change actions during employment of the individual concerned.
Log and disposition contains name, social security number, date of birth, when and where official Personnel Folder was sent from Personnel Office

Authority for maintenance of the system:

Executive Order 10561, 'Designating Official Personnel Folders in Government Agencies as Records of the Office of Personnel Management and Prescribing Regulations Relating to the Establishment, Maintenance, and Transfer Thereof; 9/15/54

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Personnel - Card index control of personnel actions on employees and organizational control, updated
Supervisory - Statistical Purposes
Log - used by Personnel to verify employee
Records Holding Area, Records Management Division - to furnish certain information (Permanent or Temporary; Salary; How long

employed; Date of birth) to other Government agencies, commercial or credit organizations, verification of employment, reasons for leaving, birth date, date of employment, information to be given to FBI, OPM on dates of employment.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Card (SF 7) and Log Book

Retrievability:

Card by organization, grade level, alphabetically by name. Log - by date

Safeguards:

Building/facility employs security guards. Records are maintained in areas accessible only to authorized personnel that are properly screened, cleared, and trained.

Retention and disposal:

Temporary Record. Card (SF 7) - COFF inactive files every five years. Transfer to Records Holding Area five years after cut off. Destroy in Records Holding Area after ten years. Log - retained in Personnel, destroyed after 15 years.

System manager(s) and address:

Defense Mapping Agency, ATTN: Personnel Office, Building 56, U.S. Naval Observatory, Washington, D.C. 20305, TELEPHONE: Area Code 202/254-4066

Notification procedure:

Information may be obtained from above.

Record access procedures:

Requests from individuals should be addressed to system manager.

Written requests for information should contain the full name of the individuals current address and telephone number, and the Case (Control) number that appears with the office symbol, on all correspondence received from this office

For personal visits, the individual should be able to provide some acceptable identification, that is, drivers license, employing office's identification card and give some verbal information that could be verified

Contesting record procedures:

The Agencys' rules for contesting contents and appealing initial determination may be obtained from: System Manager.

Record source categories:

Card Entries - Supervisory - SF 52 action, pay actions, performance appraisals

Personnel and OPM Automatic Pay Actions

Log - Personnel Clerk entries

Systems exempted from certain provisions of the act:

NONE

B0606-03 HQHTA

System name:

606-03 Expert and Consultant Data Files

System location:

Personnel Offices - See DMA Directory for complete address listing.

Categories of individuals covered by the system:

Any individual employed as an expert or consultant with DMA

Categories of records in the system:

Employment and education history, salary data, statement of duties or functions proposed for the expert/consultant.

Authority for maintenance of the system:

5 U.S.C. 3101 - Authority for Employment

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

The purpose of collecting the information is to evaluate the merits of proposed appointments of consultants/experts and to meet OPM requirements to maintain such records.

The information is used to obtain final approval by DMA/DOD on proposed appointments of experts/consultants.

Supervisors, Personnel, OSD officials, OPM.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Paper records in file folders.

Retrievability:

Alphabetically by name.

Safeguards:

Buildings or facilities employ security guards. Records are maintained in areas accessible only to authorized personnel that are properly screened, cleared and trained.

Retention and disposal:

Temporary. Destroy 2 years after separation of employee.

System manager(s) and address:

Defense Mapping Agency, ATTN: Personnel Office, Building 56, U.S. Naval Observatory, Washington, D.C. 20305, TELEPHONE: Area Code 202/254-4066

Notification procedure:

Information may be obtained from above.

Record access procedures:

Requests from individuals should be addressed to system manager.

Written requests for information should contain the full name of the individuals current address and telephone number, and the Case (Control) number that appears with the office symbol, on all correspondence received from this office

For personal visits, the individual should be able to provide some acceptable identification, that is, drivers license, employing office's identification card, and give some verbal information that could be verified

Contesting record procedures:

The Agency's rules for contesting contents and appealing initial determination may be obtained from System Manager.

Record source categories:

Personnel actions recorded for supervisory records.

Systems exempted from certain provisions of the act:

NONE

B0606-05 HQHTASI

System name:

606-05 Adverse Action Files

System location:

Personnel Offices DMA. See DMA Directory for complete address listing.

Categories of individuals covered by the system:

All civilian employees who have had adverse action taken against them.

Categories of records in the system:

Copies of notice of proposed adverse action, the material relied on by the Agency to support the reasons in that notice, any answer made by the employee and the notice of decision.

Authority for maintenance of the system:

E.O. 11491 - 'Labor Management Relations in the Federal services' - 10/31/69

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

To maintain records on adverse actions for use in employee appeals or grievances and as documentation in further adverse actions against an employee, information from file could be used in appeal cases to the Office of Personnel Management, can be used by both counsel and union in cases of representation.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Paper records in file folders

Retrievability:

Filed alphabetically by last name of employee

Safeguards:

Buildings or facilities employ security guards. Records are maintained in areas accessible only to authorized personnel that are properly screened, cleared, and trained.

Retention and disposal:

This is a temporary record. Destroy after 10 years unless employee appeals; in which case, transfer to File No. 680-03 (Appeals and Grievances)

System manager(s) and address:

Defense Mapping Agency, ATTN: Personnel Office, Building 56, U.S. Naval Observatory, Washington, D.C. 20305, TELEPHONE: Area Code 202/254-4066

Notification procedure:

Information may be obtained from above.

Record access procedures:

Requests from individuals should be addressed to system manager

Requests from individuals should be addressed to the appropriate organization as indicated in address list. Written requests for information should contain the full name of the individual, current address and telephone number and social security number. Visits are limited to normal working hours. For personal visits the individual should be able to provide some acceptable identification, that is, drivers license, employing office's identification card, and give some verbal information that could be verified.

Contesting record procedures:

The Agency's rules for contesting contents and appealing initial determination may be obtained from System Manager.

Record source categories: All documents related to adverse actions, such as removal, suspension, furlough without pay, and reduction in rank or pay for cause other than reduction-in-force. Notices of proposed action, employee's reply, statement of witness, notice of decision, and similar documents.

Systems exempted from certain provisions of the act:

NONE

DMA 607-01 HQSTAFF

System name:

607-01 Personnel Locator Files (Alpha Listing)

System location:

Primary Personnel Offices - See DMA Directory for complete listing.

Decentralized Segments - Computer Services - DMA Hydrographic/Topographic Center (HT) and DMA Aerospace Center (A).

Categories of individuals covered by the system:

Any civilian individual employed by DMA

Categories of records in the system:

Alphabetical file contains name, job title, job number, social security number, date of birth, service computation date, pay plan, grade, step, series, organization code.

Social Security Listing - Contains social security number and name.

Authority for maintenance of the system:

5 U.S.C. 7301 - Regulation of Conduct - Presidential Regulations

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Alpha listing - To locate employees by organization and job title and perform certain internal reports and internal requests for information within the Personnel Office within the Agency. .

Social Security Number Listing - To locate an employee when social security number only is known. Used when working with error listings sent by the Office of Personnel Management Central Personnel Data File.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Computer Printout Paper

Retrievability:

Alphabetically by last name
Social Security Number

Safeguards:

Building/Facility employ security guards. Records are maintained in areas accessible only to authorized personnel that are properly screened, cleared, and trained.

Retention and disposal:

Alphabetical Listing - Temporary - Destroy after 6 months.
Social Security Number Listing

System manager(s) and address:

Defense Mapping Agency, ATTN: Personnel Office, Building 56, U.S. Naval Observatory, Washington, D.C. 20305, TELEPHONE: Area Code 202/254-4066

Notification procedure:

Information may be obtained from above.

Record access procedures:

Requests from individuals should be addressed to system manager.

Written requests for information should contain the full name of the individuals current address and telephone number, and the Case (Control) number that appears with the office symbol, on all correspondence received from this office

For personal visits, the individual should be able to provide some acceptable identification, that is, drivers license, employing office's identification card, and give some verbal information that could be verified

Contesting record procedures:

The Agency's rules for contesting contents and appealing initial determination may be obtained from System Manager.

Record source categories:

Personnel Master File Computer Tape located in Department of Computer Services
Personnel Master File - Tab run

Systems exempted from certain provisions of the act:

NONE

DMA 607-03 HQSTAFF

System name:

607-03 Chronological Journal Files

System location:

Personnel Offices - DMA Hydrographic/Topographic Center (HT) and DMA Aerospace Center (A). See DMA Directory for complete address listing.

Categories of individuals covered by the system:

Any civilian employee of the Agency who has a personnel action pertaining to him.

Categories of records in the system:

Contains all personnel actions for which an SF 50, Notification of Personnel Action is required.

Authority for maintenance of the system:

E.O. 10561 - "Designating Official Personnel Folders in Government Agencies as Records of the OPM and Prescribing Regulations Relating to the Establishment, Maintenance and Transfer Thereof" 9/15/54

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Monthly strength reports - Internal, DoD and the Office of Personnel Management (OPM).

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Paper file of SF 50 in file folders

Retrievability:

By date, organization, alphabetical by name

Safeguards:

Buildings or facilities employ security guards. Records are maintained in areas accessible only to authorized personnel that are properly screened, cleared, and trained.

Retention and disposal:

Temporary. Destroy after 2 years in current files area

System manager(s) and address:

Defense Mapping Agency, ATTN: Personnel Office Building 56, U.S. Naval Observatory, Washington, D.C. 20305 TELEPHONE: Area Code 202/254-4066

Notification procedure:

Information may be obtained from above.

Record access procedures:

Requests from individuals should be addressed to system manager.

Requests from individuals should be addressed to the appropriate organization as indicated in address list. Written requests for information should contain the full name of the individual, current address and telephone number and social security number. Visits are limited to normal working hours. For personal visits the individual should be able to provide some acceptable identification, that is, drivers license, employing office's identification card, and give some verbal information that could be verified.

Contesting record procedures:

The Agency's rules for contesting contents and appealing initial determination may be obtained from System Manager.

Record source categories:

Typed from SF 52, Request for Personnel Action from either management or the Personnel Office.

Systems exempted from certain provisions of the act:

NONE

D0608-06 HQHTASI

System name:

608-06 Civilian Training Files

System location:

Civilian Personnel Offices - See DMA Directory for complete address

Categories of individuals covered by the system:

Any civilian employee receiving training in Government and non-government facilities

Categories of records in the system:

Central Personnel Data Reports; Career Plans for certain Executives and Managers, GS-13 and above; Documents reflecting nominations, enrollment, registration, records of training and related material; contract training in non-government and government facilities.

Authority for maintenance of the system:

Executive Order 11348, - Providing for Further Training of Government Employees; 4/22/67

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Civilian Personnel Office - for reporting training
OPM for review
Supervisory Personnel - access to file for review

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Paper records in file folders

Retrievability:

Appropriate folder by name of individual, social security number and type of training

Safeguards:

Buildings or facilities employ security guards. Records are maintained in areas accessible only to authorized personnel that are properly screened, cleared, and trained

Retention and disposal:

Training reports files are destroyed after five years; contract files are destroyed 3 years after completion of training or upon expiration of obligated service agreement; all other training records are reviewed annually and the portion pertaining to individuals no longer employed with the Agency are destroyed.

System manager(s) and address:

Defense Mapping Agency, ATTN: Personnel Office, Building 56, U.S. Naval Observatory, Washington, D.C. 20305, TELEPHONE: Area Code 202/254-4066

Notification procedure:

Information may be obtained from System Manager

Record access procedures:

Requests from individuals should be addressed to system manager. Written requests for information should contain the full name of the individuals current address and telephone number, and the Case (Control) number that appears with the office symbol, on all correspondence received from this office

For personal visits, the individual should be able to provide some acceptable identification, that is, drivers license, employing office's identification card, and give some verbal information that could be verified.

Contesting record procedures:

The Agencys' rules for contesting contents and appealing initial determination may be obtained from System Manager.

Record source categories:

Individuals, interagency - professional institutions

Systems exempted from certain provisions of the act:

NONE

D0609-01 HQHTASI

System name:

609-01 Referral and Selection Files

System location:

Personnel Offices - See DMA Directory for complete address

Categories of individuals covered by the system:

All applicants for positions

Categories of records in the system:

Contains position vacancy announcements and records of persons applying, their ratings and the persons referred and selected for the vacancy

Authority for maintenance of the system:

Executive Order 10577 - Amending the Civil Service Rules and Authorizing a New Appointment System for Competitive Service; 11/23/54

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

To maintain a record of employees selected under the Civilian Personnel Office, Promotion Panel, EEO, Personnel, OPM

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Envelopes in file cabinets

Retrievability: By vacancy announcement number

Safeguards:

Buildings or facilities employ security guards. Records are maintained in areas accessible only to authorized personnel that are properly screened, cleared, and trained

Retention and disposal:

Temporary - destroy after two years

System manager(s) and address:

Defense Mapping Agency, ATTN: Personnel Office, Building 56, U.S. Naval Observatory, Washington, D.C. 20305, TELEPHONE: Area Code 202/254-4066

Notification procedure:

Information may be obtained from above.

Record access procedures:

Requests from individuals should be addressed to system manager. Written requests for information should contain the full name of the individuals current address and telephone number, and the Case (Control) number that appears with the office symbol, on all correspondence received from this office

For personnel visits, the individual should be able to provide some acceptable identification, that is, drivers license, employing office's identification card, and give some verbal information that could be verified

Contesting record procedures:

The Agency's rules for contesting contents and appealing initial determination may be obtained from System Manager.

Record source categories:

Information is provided by employee, their supervisor, and the selecting official

Systems exempted from certain provisions of the act:

NONE

D0609-05 A

System name:

609-05 Occupational Inventory Files

System location:

Primary System - DMAAC Civilian Personnel - See DMA Directory for complete address listing.

Decentralized Segments - All Directorates, Staff Agencies and Departments of DMAAC, St. Louis, MO.

Categories of individuals covered by the system:

Employee concerned, supervisor and Personnel Office

Categories of records in the system:

Record contains information on qualifications, availability, appraisals, and other data on persons registered in specific career fields (DMAHTC Fm 1405 POP-5 and 1405 pop-4)

Authority for maintenance of the system:

5, E.O. 10577 - Amending the Civil Service Rules and Authorizing a new Appointment System for Competitive Services, 11/23/54

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Information is utilized to provide numerical appraisal of employee's current performance.

Category of users are civilian employees, supervisors and Personnel Office.

Specific use, the user utilizes the information to provide numerical appraisal of employee's current performance and potentials for middle and high level managerial and executive positions, and potential for general schedule nonsupervisory positions.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Paper records in file folders.

Retrievability:

Filed alphabetically be last name according to position level.

Safeguards:

Facility employs security guards on a continuous basis. Records are maintained in area accessible only to authorized personnel. Records are stored in locked file cabinets.

Retention and disposal:

Primary System - Forms are maintained and retained in current files area (CFA). Forms are destroyed 2 years after individual is no longer eligible for consideration.

System manager(s) and address:

Office of Civilian Personnel (POP), DMAAC, 8900 South Broadway, St. Louis, MO 63125 TELEPHONE: Area Code 304/268-8334

Notification procedure:

Information may be obtained from above.

Record access procedures:

Request should be addressed to system manager.

Written requests for information should contain the full name of the individual, current address, telephone number and social security number. Visits are limited to normal working hours. For personal visits the individual should be able to provide some acceptable identification, that is, drivers license, employing office's identification card, and give some verbal information that could be verified.

Contesting record procedures:

The Agency's rules for access to records and for containing contents and appealing initial determinations by the individual concerned may be obtained from the SYSMANAGER.

Record source categories:

Employee, Supervisor, Personnel Office, DMAAC Fm 1405 POP-5 and 1405 POP-4

Systems exempted from certain provisions of the act:

NONE

B0609-07 HQHTAI

System name:

609-07 Individual Overseas Employment Referral Files

System location:

Personnel Offices - DMA Headquarters (HQ), DMA Hydrographic/Topographic Center (HT), DMA Aerospace Center (A) - See DMA Directory for complete address

Categories of individuals covered by the system:

Any individual registered in the Overseas Employment Referral Program

Categories of records in the system:

File contains documents on employees registered in Overseas Employment Referral Program. Includes application, name, skills, grade levels, locations, for which registered, offers received and action taken, correspondence with registrant, date dropped from system and reasons.

Authority for maintenance of the system:

5 U.S.C. 301 - Authority for Employment

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Place employees in automated Overseas Employment Program
Any agency employing personnel overseas
Supervisors
Personnel Office

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Paper records in file folders

Retrievability:

Alphabetically by last name

Safeguards:

Buildings or facilities employ security guards. Records are maintained in areas accessible only to authorized personnel that are properly screened, cleared, and trained.

Retention and disposal:

Temporary - Destroy 2 years after individual is dropped from system.

System manager(s) and address:

Defense Mapping Agency, ATTN: Personnel Office, Building 56, U.S. Naval Observatory, Washington, D.C. 20305, TELEPHONE: Area Code 202/254-4066

Notification procedure:

Information may be obtained from above.

Record access procedures:

Requests from individuals should be addressed to system manager.

Requests from individuals should be addressed to the appropriate organization as indicated in address list. Written requests for information should contain the full name of the individual, current address and telephone number and social security number. Visits are limited to normal working hours. For personal visits the individual should be able to provide some acceptable identification, that is, drivers license, employing office's identification card, and give some verbal information that could be verified.

Contesting record procedures:

The Agencys rules for contesting contents and appealing initial determination may be obtained from System Manager.

Record source categories:

Form completed by employee with advice of personnel representatives.

Systems exempted from certain provisions of the act:

NONE

B0609-09 A

System name:

609-09 Occupational Qualification List Files

System location:

DMAAC Comptroller and Director Civilian Personnel. See DMA Directory for complete address listing.

Categories of individuals covered by the system:

Concerned civilian mathematicians, physicists, cartographers, and other scientific personnel employed at DMAAC.

Categories of records in the system:

File contains work and educational history, and training

Authority for maintenance of the system:

5 U.S.C. 301-Authority for Employment

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Purpose of tape is to collect information concerning selected educational backgrounds, mathematicians, physicists, cartographers, and other scientific personnel.

User - Civilian Personnel Directorate (PO)

User utilizes the files to determine employee skills for merit promotion consideration

Promotion Panels (Ad-Hoc)

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Magnetic tape, paper cards and paper computer printout.

Retrievability:

Filed by reel number and within mechanized listings arranged alphabetically within organizational location and grade.

Safeguards:

Buildings or facilities employ security guards. Records are maintained in areas accessible only to authorized personnel that are properly screened, cleared, and trained.

Retention and disposal:

Tape is retained in tape library and is updated by input cards. The input cards and printouts are destroyed when superseded or upon separation of employee

System manager(s) and address:

DMAAC Director of Civilian Personnel. See DMA Directory for complete address listing.

Notification procedure:

Information may be obtained from above.

Record access procedures:

Requests from individuals should be addressed to system manager.

Requests from individuals should be addressed to the appropriate organization as indicated in address list. Written requests for informa-

tion should contain the full name of the individual, current address and telephone number and social security number. Visits are limited to normal working hours. For personal visits the individual should be able to provide some acceptable identification, that is, drivers license, employing office's identification card, and give some verbal information that could be verified.

Contesting record procedures:

The Agencys rules for contesting contents and appealing initial determination may be obtained from System Manager.

Record source categories:

Civilian Personnel Office and supervisor

Systems exempted from certain provisions of the act:

NONE

D0609-11 HQHTA

System name:

609-11 Repromotion Eligibility Files

System location:

Personnel Office - DMA Headquarters (HA) DMA Hydrographic/ Topographic Center (HT) DMA Aerospace Center (A) - See DMA Directory for complete address.

Categories of individuals covered by the system:

Any individual demoted without personal cause and eligible for placement to former or higher grade.

Categories of records in the system:

Contains documents on employees demoted without personal cause and eligible for placement in former or higher grade. Included are lists or cards recording names, title, grade, and position for which employee meets minimum qualification requirements.

Authority for maintenance of the system:

5 U.S.C. 3101 - Authority for Employment and E.O. 10577 - Amending the Civil Service Rules and authorizing a new appointment system for competition service.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Internal users, uses and purposes - Personnel Office; Supervisors; Selecting Officials. Personnel Office to advise and assist supervisors and selecting officials in determining if a downgraded employee meets minimum qualification requirements for a vacant position. External users, uses and purposes - None.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Paper records in file folders, computer printouts, or cardex files.

Retrievability:

Filed alphabetically by job title, competitive level code, name of employee.

Safeguards:

Buildings or facilities employ security guards. Records are maintained in locked containers in areas accessible only to authorized personnel that are properly screened, cleared and trained.

Retention and disposal:

Temporary record. Destroy when employee is placed in former or higher grade.

System manager(s) and address:

Defense Mapping Agency, ATTN: Personnel Office, Building 56, U.S. Naval Observatory, Washington, D.C. 20305, TELEPHONE: Area Code 202/254-4066

Notification procedure:

Information may be obtained from above.

Record access procedures:

Request from individuals should be addressed to System Manager. Written requests for information should contain the full name of the individual current address and telephone number, social security number. Visits are limited to normal working hours.

For personal visits the individual should be able to provide some acceptable identification; that is, driver's license, employing office's identification card, and give some verbal information that could be verified.

Contesting record procedures:

The Agency's rules for contesting contents and appealing initial determinations may be obtained from System Manager.

Record source categories:

Information pertaining to individuals in the systems either supplied by the individual, or extracted from the official Personnel.

Systems exempted from certain provisions of the act:

NONE

D0610-01 HQHTASI

System name:

610-01 Hours of Work Files

System location:

Personnel Offices - See DMA Directory for complete address

Categories of individuals covered by the system:

Employees who request change in hours of work.

Categories of records in the system:

Contains employees name, reason for desiring change in work hours, decisions to approve or disapprove.

Supervisors, Personnel Office, Office of Comptroller

Authority for maintenance of the system:

5 U.S.C. 7301 - Regulation of Conduct - Presidential Regulations

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Used to show changes in hours of work of individuals.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Paper records in file folders.

Retrievability:

Alphabetically by name

Safeguards:

Buildings or facilities employ security guards. Records are maintained in areas accessible only to authorized personnel that are properly screened, cleared and trained.

Retention and disposal:

Destroy one year after no longer effective

System manager(s) and address:

Defense Mapping Agency, ATTN: Personnel Office, Building 56, U.S. Naval Observatory, Washington, D.C. 20305, TELEPHONE: Area Code 202/254-4066

Notification procedure:

Information may be obtained from above.

Record access procedures:

Requests from individuals should be addressed to system manager. Written requests for information should contain the full name of the individuals current address and telephone number, and the Case (Control) number that appears with the office symbol, on all correspondence received from this office

For personal visits, the individual should be able to provide some acceptable identification, that is, drivers license, employing office's identification card, and give some verbal information that could be verified

Contesting record procedures:

The Agency's rules for contesting contents and appealing initial determination may be obtained from System Manager.

Record source categories:

Individuals originating request review of approval or disapproval by supervisor.

Systems exempted from certain provisions of the act:

NONE

D0610-03 HQHTASID

System name:

610-03 Appeals Files

System location:

DMA Headquarters (HQ), DMA Hydrographic/Topographic Center (HT), DMA Aerospace Center (A), Inter American Geodetic Survey (I), Office of Distribution Services (D). - See DMA Directory for complete address.

Categories of individuals covered by the system:

All civilian employees who file an appeal to a removal, suspension for more than 30 days, furlough and reduction in rank or pay.

Categories of records in the system:

File contain copies of; notice of proposed action, supporting evidence, employee reply, notice of decision, record of when a hearing is held

Authority for maintenance of the system:

Executive Order 11787 - Revoking Executive Order No. 10987, Relating to Agency Systems for Appeals from Adverse Actions 5 USC 7512, 7701

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Maintained for use in appeal proceedings.
Personnel Office
Employee Representative
Supervisors
Hearing Officer
Office of Personnel Management.
Equal Employment Opportunity

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Paper records in file folders and magnetic tapes

Retrievability:

Filed alphabetically by last name of employee.

Safeguards:

buildings or facilities employ security guards. Records are maintained in areas accessible only to authorized personnel that are properly screened, cleared, and trained

Retention and disposal:

Destroy in current files area after seven years unless appeal is still pending.

System manager(s) and address:

Defense Mapping Agency, ATTN: Personnel Office, Building 56, U.S. Naval Observatory, Washington, D.C. 20305, TELEPHONE: Area Code 202/254-4066

Notification procedure:

Information may be obtained from above.

Record access procedures:

Requests from individuals should be addressed to system manager. Requests from individuals should be addressed to the appropriate organization as indicated in address list. Written requests for information should contain the full name of the individual, current address and telephone number and social security number. Visits are limited to normal working hours. For personal visits the individual should be able to provide some acceptable identification, that is, drivers license, employing offices identification card, and give some verbal information that could be verified.

Contesting record procedures:

The Agencys rules for contesting contents and appealing initial determination may be obtained from System Manager.

Record source categories:

Supervisors, employee, witnesses.

Systems exempted from certain provisions of the act:

NONE

B0610-03-2 HQHTASID

System name:

610-03 Grievance Files

System location:

Civilian Personnel Offices - See DMA Directory for complete address

Categories of individuals covered by the system:

All civilian employees who have filed a grievance.

Categories of records in the system:

File contains correspondence relative to grievance, investigation report, decision by management at various steps of procedure, supporting evidence, Hearing record, Examiners Report, Grievance decision.

Authority for maintenance of the system:

5 U.S.C. 1302, 3301, 3302
Executive Order 10491 as amended

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

To evaluate the merits of employee grievances and to make decisions on grievances

Personnel Office, Employee Representative, Supervisors Grievance Examiner, Office of Personnel Management, Equal Employment Opportunity Officer, Local Union Officials

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Paper Records in file folder - magnetic tape recording when a hearing is held

Retrievability:

Filed alphabetically by last name of employee.

Safeguards:

Buildings or facilities employ security guards. Records are maintained in areas accessible only to authorized personnel that are properly screened, cleared, and trained.

Retention and disposal:

Temporary Record - destroy after seven years unless appeals are pending

System manager(s) and address:

Defense Mapping Agency, ATTN: Personnel Office, Building 56, U.S. Naval Observatory, Washington, D.C. 20305, TELEPHONE: Area Code 202/254-4066

Notification procedure:

Information may be obtained from above.

Record access procedures:

Requests from individuals should be addressed to system manager. Requests from individuals should be addressed to the appropriate organization as indicated in address list. Written requests for information should contain the full name of the individual, current address and telephone number and social security number. Visits are limited to normal working hours. For personal visits the individual should be able to provide some acceptable identification, that is, drivers license, employing office's identification card, and give some verbal information that could be verified.

Contesting record procedures:

The Agency's rules for contesting contents and appealing initial determination may be obtained from System Manager.

Record source categories:

Supervisors, employee, witnesses and grievance examiners

Systems exempted from certain provisions of the act:

NONE

B0611-01 HTAI

System name:

611-01 Reduction in Force Card Files

System location:

Civilian Personnel Offices - See DMA Directory for complete address

Categories of individuals covered by the system:

All civilian employees at Agency

Categories of records in the system:

File contains reduction-in-force data; including name of employee, date, position, grade, last performance rating, competitive level code and similar information

Authority for maintenance of the system:

5 USC 3502; Order of Retention

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

To construct retention register in event of reduction in force
Employees, Union Officials, Personnel, Supervisors

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Paper cards in card boxes

Retrievability:

Alphabetically by job title, competitive level code, name of employee

Safeguards:

Buildings or facilities employ security guards. Records are maintained in areas accessible only to authorized personnel that are properly screened, cleared, and trained

Retention and disposal:

Temporary - destroy upon separation of employee or upon updating

System manager(s) and address:

Defense Mapping Agency, ATTN: Personnel Office, Building 56, U.S. Naval Observatory, Washington, D.C. 20305, TELEPHONE: Area Code 202/254-4066

Notification procedure:

Information may be obtained from above.

Record access procedures:

Requests from individuals should be addressed to system manager. Requests from individuals should be addressed to the appropriate organization as indicated in address list. Written requests for information should contain the full name of the individual, current address and telephone number and social security number. Visits are limited to normal working hours. For personal visits the individual should be able to provide some acceptable identification, that is, drivers license, employing office's identification card, and give some verbal information that could be verified.

Contesting record procedures:

The Agencys' rules for contesting contents and appealing initial determination may be obtained from System Manager.

Record source categories:

Official Personnel Folder and SF 7, Service Record Card

Systems exempted from certain provisions of the act:

NONE

B0611-03 HTAI

System name:

611-03 Retention Register Files

System location:

Personnel Offices - See DMA Directory for complete address Listing.

Categories of individuals covered by the system:

All civilian employees at Agency

Categories of records in the system:

File contains retention groups of employees according to tenure, length of service, performance ratings and veterans preference

Authority for maintenance of the system: 5 USC 3502; order of Retention

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

To determine ranking of employees in the event of reduction-in-force

Employees, Union officials, Personnel, Supervisors

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Paper records in file folders

Retrievability:

By competitive level code - individual name

Safeguards:

Buildings or facilities employ security guards. Records are maintained in areas accessible only to authorized personnel that are properly screened, cleared, and trained

Retention and disposal:

Temporary - destroy after two years unless appeals are pending

System manager(s) and address:

Defense Mapping Agency, ATTN: Personnel Office, Building 56, U.S. Naval Observatory, Washington, D.C. 20305, TELEPHONE: Area Code 202/254-4066

Notification procedure:

Information may be obtained from above.

Record access procedures:

Requests from individuals should be addressed to system manager. Requests from individuals should be addressed to the appropriate organization as indicated in address list. Written requests for information should contain the full name of the individual, current address and telephone number and social security number. Visits are limited to normal working hours. For personal visits the individual should be able to provide some acceptable identification, that is, drivers license, employing office's identification card, and give some verbal information that could be verified.

Contesting record procedures:

The Agencys' rules for contesting contents and appealing initial determination may be obtained from System Manager

Record source categories:

Reduction-in-Force Card Files - Official Personnel Folder - Service Record Card (SF 7)

Systems exempted from certain provisions of the act:

NONE

B0612-01 HQHTASI

System name:

612-01 Basic Labor Relations Files

System location:

Personnel Offices - See DMA Directory for complete address listing

Categories of individuals covered by the system:

Civilian Employees who file grievances under negotiated grievance procedure.

Categories of records in the system:

File contains correspondence relative to grievance, decisions by supervisors at various steps of procedure and report of arbitrator when abitration is requested.

Authority for maintenance of the system:

E.O. 11491 as amended. - Labor Management Relations in the Federal Service; 10/31/69

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

To resolve labor management disputes

Supervisors, Personnel Office, Union representatives, arbitrator, Federal Labor Relations Counsel, DoD.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Paper Records in file folders

Retrievability:

Alphabetically by name

Safeguards:

Buildings or facility employ security guards. Records are maintained in areas accessible only to authorized personnel that are properly screened, cleared and trained.

Retention and disposal:

Temporary Record. Destroyed after 7 years unless appeals are pending.

System manager(s) and address:

Defense Mapping Agency, ATTN: Personnel Office, Building 56, U.S. Naval Observatory, Washington, D.C. 20305, TELEPHONE: Area Code 202/254-4066

Notification procedure:

Information may be obtained from above.

Record access procedures:

Requests from individuals should be addressed to system manager. Written requests for information should contain the full name of the individuals current address and telephone number, and the Case (Control) number that appears with the office symbol, on all correspondence received from this office

For personal visits, the individual should be able to provide some acceptable identification, that is, drivers license, employing office's identification card, and give some verbal information that could be verified

Contesting record procedures:

The Agency's rules for contesting contents and appealing initial determination may be obtained from System Manager.

Record source categories:

Supervisor, Labor Organizations, Employee, Arbitrator, Witnesses.

Systems exempted from certain provisions of the act:

NONE

B0613-05 HQHTASID

System name:

613-05 Incentive Awards

System location:

Civilian Personnel Offices - See DMA Directory for complete address

Categories of individuals covered by the system:

All civilian employees who have submitted a beneficial suggestion. Civilian employees who have been recommended for an award.

Categories of records in the system:

Documents related to submitting, evaluating, and approving or disapproving each award; includes suggestion and performance awards

Authority for maintenance of the system:

5 U.S.C. Section 4502, 4503, 4504 and 4506; Incentive Awards

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Used as a basis for awarding employees

Suggestions - save money, increase efficiency, improve morale

Statistical Reports containing number of awards, amount of money saved

Employees (originate), Supervisors or official who evaluate suggestions, Incentive Awards Boards, Personnel Office, Office of Personnel Management.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Paper records in file folders

Retrievability:

Filed by Fiscal Year. Suggestion - sequential numerical code

Performance Awards - individuals name, alphabetical

Safeguards:

Stored in locked file cabinet

Retention and disposal:

Temporary Record - destroy two years after final action

System manager(s) and address:

Defense Mapping Agency, ATTN: Personnel Office, Building 56, U.S. Naval Observatory, Washington, D.C. 20305, TELEPHONE: Area Code 202/254-4066

Notification procedure:

Information may be obtained from above.

Record access procedures:

Requests from individuals should be addressed to system manager.

Requests from individuals should be addressed to the appropriate organization as indicated in address list. Written requests for information should contain the full name of the individual, current address and telephone number and social security number. Visits are limited to normal working hours. For personal visits the individual should be able to provide some acceptable identification, that is, drivers license, employing office's identification card, and give some verbal information that could be verified.

Contesting record procedures:

The Agencys' rules for contesting contents and appealing initial determination may be obtained from System Manager.

Record source categories:

Suggestions received from employees, Suggestion Evaluations and Performance awards received from supervisors.

Systems exempted from certain provisions of the act:

NONE

B0614-01 HT

System name:

614-01 Official Records (Military) Files and Extracts

System location:

Military Personnel Office, DMAHTC - See DMA Directory for complete address.

Categories of individuals covered by the system:

Military Personnel assigned to DMA

Categories of records in the system:

Navy-Documents as required by Bureau of Naval Personnel Manual (BUPERSMAN) NAVPERS 15791B.

Army-Documents as required by Army Regulation 640.10

Enlisted and Officer personnel folders - co

Statement of Military History, Qualification Records.

Authority for maintenance of the system:

44 U.S.C. 301

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Heads of major staff elements to determine the acceptability of an individual nominated by the parent service for a DMA Position.

For Review by appropriate DMA Officials responsible for the preparation of efficiency/fitness/effectiveness reports and award recommendations.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Paper records in file folders

Retrievability:

Alphabetically by name of individual

Safeguards:

Buildings, facilities employ security guards. Records are maintained in areas accessible only to authorized personnel that are properly screened, cleared and trained.

Retention and disposal:

Permanent Record. Retained until departure of individual DMA, MPRJ handcarried to transfer point by individual upon separation from the service and subsequently retired to National Records Center (Military Records) 9700 Page Boulevard, St. Louis, MO 63132.

System manager(s) and address:

Defense Mapping Agency, ATTN: Personnel Office, Building 56, U.S. Naval Observatory, Washington, D.C. 20305, TELEPHONE: Area Code 202/254-4066

Notification procedure:

Information may be obtained from above.

Record access procedures:

Requests from individuals should be addressed to System Manager

Written requests for information should contain the full name of the individual current address and telephone number, service number on all correspondence received from this office. Visits are limited to normal working hours.

For personal visits, the individual should be able to provide some acceptable identification, that is, drivers license, employing office's identification cards, and give some verbal information that could be verified.

Contesting record procedures:

The Department's rules for contesting contents and appealing initial determinations may be obtained from System Manager.

Record source categories:

Information is obtained from the individual's Service Military Personnel Center, the individual's rating official within the DMA and the individual concerned.

Systems exempted from certain provisions of the act:

NONE

B0614-02 HTA

System name:

614-02 Military Services Administrative Record Files

System location:

Directorate of Administration, DMAAC; Military Personnel Division, DMAHTC. See DMA Directory for complete mailing address.

Categories of individuals covered by the system:

Military Personnel assigned to DMA Hydrographic/Topographic Center and DMA Aerospace Center.

Categories of records in the system:

File contains letters, memorandums, emergency data, and assignment actions.

Authority for maintenance of the system:

21 USC 1175

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

The purpose of collecting the information is to maintain information to act as a liaison between individual, DMA, and Servicing CBPO's.

User of the collected information is the Commander, Military Personnel Division, and the individual.

User utilizes the collected information to have available information when needed on assigned military personnel.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Paper records in file folders.

Retrievability:

Filed alphabetically by employee last name.

Safeguards:

Buildings and facilities employ security guards. Records are maintained in areas accessible only to authorized personnel that are properly screened, cleared, and trained.

Retention and disposal:

Destroy in accordance with parent service directives.

System manager(s) and address:

Director of Civilian Personnel (POX). See DMA Directory

Notification procedure:

Information may be obtained from System Manager

Record access procedures:

Requests from individuals should be addressed to System Manager. Written requests for information should contain the full name of the individual, current address and telephone number, and social security number. Visits are limited to normal working hours.

For personal visits, the individual should be able to provide some acceptable identification; that is, driver's license, employing office's identification card, and give some verbal information that could be verified.

Contesting record procedures:

The Agency's rules for access to records and for contesting contents and appealing initial determinations by the individual concerned may be obtained from the SYSMANAGER.

Record source categories:

Leave records, finance documents, transmittals, personnel rosters, physical examinations, personnel actions, locator cards, trip reports, copies of orders/reassignments.

Systems exempted from certain provisions of the act:

NONE

B0615-07 HQHTASI

System name:

615-07 Safety Awards Files

System location:

Logistic Offices. See DMA Directory for complete address listing.

Categories of individuals covered by the system:

Any DMA Driver

Categories of records in the system:

File contains list of the names of drivers who have received safe driver awards. All correspondence between the Safety Office and the National Safety Council

Authority for maintenance of the system:

5 U.S.C. 4503 - Agency Awards

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Safety Office - used to document and present safe driver awards

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Paper records in file folders

Retrievability:

Filed alphabetically by name

Safeguards:

Buildings and facilities employ security guards. Records are maintained in areas accessible only to authorized personnel that are properly screened, cleared and trained

Retention and disposal:

Temporary record, held for two years and destroyed.

System manager(s) and address:

Defense Mapping Agency, ATTN: Logistics Office, Building 56, U.S. Naval Observatory, Washington, D.C. 20305, TELEPHONE: Area Code 202/254-4475

Notification procedure:

Information may be obtained from above.

Record access procedures:

Requests from individuals should be addressed to system manager. Written requests for information should contain the full name of the individuals current address and telephone number, and the Case (Control) number that appears with the office symbol, on all correspondence received from this office.

For personal visits, the individual should be able to provide some acceptable identification, that is, drivers license, employing office's identification card, and give some verbal information that could be verified

Contesting record procedures:

The Agency's rules for contesting contents and appealing initial determination may be obtained from System Manager.

Record source categories:

Driver record of the individual.

Systems exempted from certain provisions of the act:

NONE

B0615-11 HQHTASID

System name:

615-11 Accidental Injury/Death Reporting Records Files

System location:

Safety Offices of DMA - See DMA Directory for complete address listing.

Categories of individuals covered by the system:

DMA employees injured as a result of accident

Categories of records in the system:

Files contain necessary forms and records and reports of accident and injuries

Authority for maintenance of the system:

29 USC 668 - Occupational Safety and Health Programs of Federal Agencies

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Safety Office - for reporting all injuries of persons assigned to DMA for preparation of statistical reports to other required activities

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Paper record in file folders and/or Kardex

Retrievability:

Filed alphabetically by last name of employee

Safeguards:

Buildings or facilities employ security guards. Records are maintained in areas accessible only to authorized personnel that are properly screened, cleared, and trained

Retention and disposal:

Records is temporary-CUT OFF end of each year; Inactive one year; Transfer to Records Holding Area; Destroy after five years

System manager(s) and address:

Defense Mapping Agency, ATTN: Facilities Engineering Office, Building 56, U.S. Naval Observatory, Washington, D.C. 20305, TELEPHONE: Area Code 202/254-4477

Notification procedure:

Information may be obtained from above System Manager

Record access procedures:

Requests from individuals should be addressed to system manager. Requests from individuals should be addressed to the appropriate organization as indicated in address list. Written requests for information should contain the full name of the individual, current address and telephone number and social security number. Visits are limited to normal working hours. For personal visits the individual should be able to provide some acceptable identification, that is, drivers license, employing office's identification card, and give some verbal information that could be verified.

Contesting record procedures:

The Agency's rules for contesting contents and appealing initial determination may be obtained from System Manager.

Record source categories:

Information made available by the employee and the supervisor

Systems exempted from certain provisions of the act:

NONE

B0901-04 HTA

System name:

901-04 Civilian Employee Health Clinic Record

System location:

Primary System - Civilian Employee Health Clinic - DMA Hydrographic/Topographic Center (HT) and DMA Aerospace Center (A) - See DMA Directory for complete address

Categories of individuals covered by the system:

Any individual employed by DMA Hydrographic/Topographic Center (HT) and Aerospace Center (A) and any individual employed by other Government agencies housed in the DMAHTC/DMAAC complexes

Categories of records in the system:

File contains information on treatment of employee received at dispensary at HTC and AC

Authority for maintenance of the system:

5 USC 7901 - Health Service Programs; 5 U.S.C. 8103 - Compensation for Injuries - Medical Services and Initial Medical and Other Benefits

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Civilian Employee Health Clinics - to maintain medical records of individuals receiving treatment at the clinic for illness/injury while on duty

Family Doctor will have full access to the information

Supervisors may inquire to record of injury

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

5x8 card files in cabinet

Retrievability:

Filed alphabetically by last name of employee

Safeguards:

Buildings or facilities employ security guards. Records are maintained in areas accessible only to authorized personnel that are properly screened, cleared, and trained

Retention and disposal:

Hydrographic/Topographic Center - destroy 25 years after separation of individual, upon transfer of employee transfer to gaining organization

Aerospace Center - on transfer of individual, record is transferred to gaining organization. On separation record is returned to National Personnel Records Center (NPRC) with the individuals official Personnel Folder

System manager(s) and address:

DMA Hydrographic/Topographic Center, ATTN: Personnel Office, Room 132-A, Erskine Hall, 6500 Brookes Lane, Washington, D.C. 20315, TELEPHONE: Area Code 202/227-2116CPO DMAAC. See DMA Directory for complete address.

Notification procedure:

Information may be obtained from above.

Record access procedures:

Requests from individuals should be addressed to system manager. Written requests for information should contain the full name of the individuals current address and telephone number, and the Case (Control) number that appears with the office symbol, on all correspondence received from this office.

For personal visits, the individual should be able to provide some acceptable identification, that is, drivers license, employing office's identification card, and give some verbal information that could be verified.

Contesting record procedures:

The Agency's rules for contesting contents and appealing initial determination may be obtained from System Manager.

Record source categories:

Entry of information by attending nurse. Record of treatment.

Systems exempted from certain provisions of the act:

NONE

B0901-06 HTAS

System name:

901-06 Blood Donors Files

System location:

Civilian Personnel Office - See DMA Directory for complete address

Categories of individuals covered by the system:

All civilian employees who have donated blood

Categories of records in the system:

File contains cards with names, dates and amount of blood donated.

Authority for maintenance of the system:

5 U.S.C. Section 7901; Health Service Programs

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Uses are for awarding employees with certificates and pins.
Personnel Office, Supervisors, blood collectors

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

cards

Retrievability:

Filed alphabetically by last name of employee

Safeguards:

Buildings or facilities employ security guards. Records are maintained in areas accessible only to authorized personnel that are properly screened, cleared, and trained

Retention and disposal:

Destroy when employee is separated from Agency

System manager(s) and address:

Defense Mapping Agency, ATTN: Personnel Office, Building 56, U.S. Naval Observatory, Washington, D.C. 20305, TELEPHONE: Area Code 202/254-4066

Notification procedure:

Information may be obtained from above.

Record access procedures:

Requests from individuals should be addressed to system manager. Requests from individuals should be addressed to the appropriate organization as indicated in address list. Written requests for information should contain the full name of the individual, current address and telephone number and social security number. Visits are limited to normal working hours. For personal visits the individual should be able to provide some acceptable identification, that is, drivers license, employing office's identification card, and give some verbal information that could be verified.

Contesting record procedures:

The Agencys' rules for contesting contents and appealing initial determination may be obtained from System Manager.

Record source categories:

Information received from collecting Agency

Systems exempted from certain provisions of the act:

NONE

B0901-07 HQHTAI

System name:

901-07 Alcoholism and Drug Abuse Files

System location:

Civilian Personnel Offices - See DMA Directory for complete address listing.

Categories of individuals covered by the system:

All civilian employees who have contacted program counselor requesting assistance.

Categories of records in the system:

File contains counseling interview notes, medical documents, therapy/treatment referral notes.

Authority for maintenance of the system:

21 USC 1175

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

To help employees with alcohol or drug problems
Medical Officer - diagnose problem
Counselor - to give advise and management

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Paper records in file folders

Retrievability:

Filed chronologically by number; names deleted, but are known by counselor.

Safeguards:

Buildings or facilities employ security guards. Records are maintained in areas accessible only to authorized personnel that are properly screened, cleared, and trained

Retention and disposal:

Temporary - destroy when no longer needed or upon separation of employee

System manager(s) and address:

Defense Mapping Agency, ATTN: Personnel Office, Building 56, U.S. Naval Observatory, Washington, D.C. 20305, TELEPHONE: Area Code 202/254-4066

Notification procedure:

Information may be obtained from above.

Record access procedures:

Requests from individuals should be addressed to system manager. Requests from individuals should be addressed to the appropriate organization as indicated in address list. Written requests for information should contain the full name of the individual, current address and telephone number and social security number. Visits are limited to normal working hours. For personal visits the individual should be able to provide some acceptable identification, that is, drivers license, employing office's identification card, and give some verbal information that could be verified.

Contesting record procedures:

The Agency's rules for contesting contents and appealing initial determination may be obtained from System Manager.

Record source categories:

Employee interviews and medical reports
Employee or relatives

Systems exempted from certain provisions of the act:

NONE

B1001-09 S

System name:

1001-09 School Reporting Files

System location:

Defense Mapping School(S). Staff Offices, Departments, Division and Branch Offices, all Components. See DMA Directory for complete address listing.

Categories of individuals covered by the system:

Military personnel and civilian personnel attending courses of instruction at DMS.

Categories of records in the system:

Enrollment records, release of students, graduates, failure of students, class rosters.

Authority for maintenance of the system:

E.O. 11348

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Used for military assignments, monitor career progression and changes of courses of instruction in the event it is recommended and required.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Paper records in file folders and/or Kardex book.

Retrievability:

Filed alphabetically by last name of employee

Safeguards:

Buildings or facilities employ security guards. Records are maintained in areas accessible only to authorized personnel that are properly screened, cleared, and trained.

Retention and disposal:

CUTOFF at end of calendar year, held additional year, retired to Records Holding Area, held an additional year and destroyed.

System manager(s) and address:

DMA Defense Mapping School, ATTN: Office of Administration and Records, Fort Belvoir, Virginia 22060, TELEPHONE: Area Code 703/664-1983

Notification procedure:

Information may be obtained from above.

Record access procedures:

Requests from individuals should be addressed to system manager. Written requests for information should contain the full name of the individual, current address and telephone number, social security number, dates of attendance and name of course.

For personal visits, the individual should be able to provide some acceptable identification, that is, military identification card, driver's license, proof of social security identification and give some verbal information that could be verified with individual's record.

Contesting record procedures:

The Agencys rules for contesting contents and appealing initial determination may be obtained from System Manager.

Record source categories:

Scheduled courses of instruction, class leaders, class instructors, academic division chiefs.

Systems exempted from certain provisions of the act:

NONE

B1001-11 S

System name:

1001-11 Faculty Development Program Files

System location:

Defense Mapping School(S). Staff Offices, Departments, Division and Branch offices, all Components. See DMA Directory for complete address listing.

Categories of individuals covered by the system:

Assigned military personnel and civilian employees at DMS.

Categories of records in the system:

Files consist of record of qualifications, experience, effectiveness, and comparable information, evaluation forms, biographical data and similar documents.

Authority for maintenance of the system:

E.O. 11348/4/22/67; Providing for the further Training of Government Employees

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Used by management for retention of potential instructors, assigned instructors and staff, selection of guest speakers, determining need for additional training.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Paper records in file folders and/or Kardex book.

Retrievability:

Filed alphabetically by last name of employee

Safeguards:

Buildings or facilities employ security guards. Records are maintained in areas accessible only to authorized personnel that are properly screened, cleared, and trained.

Retention and disposal:

CUTOFF end of year, held additional year current files area, transferred Records Holding Area, held additional two years, then destroyed.

System manager(s) and address:

DMA Defense Mapping School, ATTN: Office of Administration and Records, Fort Belvoir, Virginia 22060, TELEPHONE: Area Code 703/664-1983

Notification procedure:

Information may be obtained from above.

Record access procedures:

Requests from individuals should be addressed to system manager. Written requests for information should contain the full name of the individual, current address and telephone number, social security number, dates of assignment or employment and name of supervisor.

For personal visits, the individual should be able to provide some acceptable identification, that is, military identification card, driver's license, proof of social security identification, and give some verbal information that could be verified with individual's record.

Contesting record procedures:

The Agencys rules for contesting contents and appealing initial determination may be obtained from System Manager.

Record source categories:

Records initiated during course of instruction, by instructors, academic division and branch chiefs.

Systems exempted from certain provisions of the act:

NONE

B1002-02 S

System name:

1002-02 School Faculty Board Review Files

System location:

Defense Mapping School(S). Staff Offices, Departments, Division and Branch Offices, all Components. See DMA Directory for complete address listing.

Categories of individuals covered by the system:

Military and civilian personnel attending courses of instruction at DMS.

Categories of records in the system:

Files consist of class standing, ratings, classification and proficiency of students. Minutes of faculty board meetings and related documents.

Authority for maintenance of the system:

E.O. 11348/22/67; Providing for the Further Training of Government Employees.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Used to provide information on individual students, class standings, rating and proficiency. Available to Promotion Panels in the Office of Personnel Management.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Paper records in file folders and/or Kardex book.

Retrievability:

Filed alphabetically by last name of employee

Safeguards:

Buildings or facilities employ security guards. Records are maintained in areas accessible only to authorized personnel that are properly screened, cleared, and trained.

Retention and disposal:

CUTOFF at end of year, held one year and then destroyed.

System manager(s) and address:

DMA Defense Mapping School, ATTN: Office of Administration and Records, Fort Belvoir, Virginia 22060, TELEPHONE: Area Code 703/664-1983

Notification procedure:

Information may be obtained from above.

Record access procedures:

Requests from individuals should be addressed to system manager.

Written requests for information should contain the full name of the individual, current address and telephone number, social security number, dates of attendance and name of course of instruction.

For personal visits, the individual should be able to provide some acceptable identification, that is, military identification card, driver's license, proof of social security identification, and give some verbal information that could be verified with individual's record.

Contesting record procedures:

The Agencys rules for contesting contents and appealing initial determination may be obtained from System Manager.

Record source categories:

Faculty review board, instructors, chiefs of divisions and branches of courses of instruction and individual student.

Systems exempted from certain provisions of the act:

NONE

B1002-06 S

System name:

1002-06 Individual Academic Record Files

System location:

Defense Mapping School(S). Staff Offices, Departments, Division and Branch Offices, all Components. See DMA Directory for complete address listing.

Categories of individuals covered by the system:

Military and civilian personnel attending courses of instruction at DMS.

Categories of records in the system:

Files consist of documents indicating course of attendance, length of each course, extent of completion of course, results thereof, aptitudes and personal qualities and documents relating to extension courses.

Authority for maintenance of the system:

E.O. 11348/22/67;Providing for the Further Training of Government Employees. 4/22/67; Providing for the Further Training of Government Employees.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Used for determining qualifications to base a determination on students potentiality and to revise students cirriculum.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Paper records in file folders and/or Kardex book.

Retrievability:

Filed alphabetically by last name of employee.

Safeguards:

Buildings or facilities employ security guards. Records are maintained in areas accessible only to authorized personnel that are properly screened, cleared and trained.

Retention and disposal:

Reference files CUTOFF end of course, held one year, then destroyed. Feeder information submitted to United States Army Engineer School Fort Belvoir, Virginia 22060 who has operational control of DMS and who retains SYSNAME for a longer retention period and disposition.

System manager(s) and address:

DMA Defense Mapping School, ATTN: Office of Administration and Records, Fort Belvoir, Virginia 22060, TELEPHONE: Area Code 703/664-1983

Notification procedure:

Information may be obtained from above.

Record access procedures:

Requests from individuals should be addressed to system manager.

Written requests for information should contain the full name of the individual, current address and telephone number, social security number, dates of attendance and name of course of instruction.

For personal visits, the individual should be able to provide some acceptable identification, that is, military identification card, driver's license, proof of social security identification, and give some verbal infor- mation that could be verified with individual's record.

Contesting record procedures:

The Agencys rules for contesting contents and appealing initial determination may be obtained from Systems Manager. the SYSMANAGER.

Record source categories:

Individuals, class leaders, class instructors, academic divisions and branch chiefs.

Systems exempted from certain provisions of the act:

NONE

B1002-07 S

System name:

1002-07 Collateral Individual Training Record Files

System location:

Defense Mapping School(S). Staff Offices, Departments, Division and Branch Offices, all Components. See DMA Directory for complete address listing.

Categories of individuals covered by the system:

Military and civilian personnel attending course of instruction at DMS.

Categories of records in the system:

Files consist of training records of individuals and posted to basic individual academic training record files or long term records, absentee reports, delinquency reports, registration forms, examination papers and similar or related documents.

Authority for maintenance of the system:

E.O. 11348/22/67;Providing for the Further Training of Government Employees.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Used to record attendance at classes, progress of students, information for counselling individuals when required and recommending specific remedial action.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Paper records in file folders and/or Kardex book.

Retrievability:

Filed alphabetically by last name of employee

Safeguards:

Buildings or facilities employ security guards. Records are maintained in areas accessible only to authorized personnel that are properly screened, cleared, and trained.

Retention and disposal:

Destroyed on graduation or elimination of individual or on completion of course of instruction, whichever applies

System manager(s) and address:

DMA Defense Mapping School, ATTN: Office of Administration and Records, Fort Belvoir, Virginia 22060, TELEPHONE: Area Code 703/664-1983

Notification procedure:

Information may be obtained from above.

Record access procedures:

Requests from individuals should be addressed to system manager.

Requests from individuals should be addressed to the appropriate organization as indicated in address list. Written requests for information should contain the full name of the individual, current address and telephone number and social security number. Visits are limited to normal working hours.

For personal visits, the individual should be able to provide some acceptable identification, that is, military identification, driver's license, proof of social security identification and give some verbal information that could be verified with individual's record.

Contesting record procedures:

The Agencys rules for contesting contents and appealing initial determination may be obtained from System Manager.

Record source categories:

Individual students, class leaders, class instructors, academic divisions and branch chiefs.

Systems exempted from certain provisions of the act:

NONE

B1202-17 HTA

System name:

1202-17 Contracting Officer Designation Files

System location:

Contracting Offices - DMA Hydrographic/Topographic Center (HT) and DMA Aerospace Center (A) - See DMA Directory for complete mailing address

Categories of individuals covered by the system:

Employee designated Contracting Officer and Contracting Officer Representative at DMA

Categories of records in the system:

Documents reflecting the designation and recission of Contracting Officers and Contracting Officers representative which includes the specific procurement authorities delegated

Authority for maintenance of the system:

44 USC 3101 - Records Management by Federal Agencies

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Documents showing individual designated as contracting officers or Contracting Officers Representatives (COR).

Data includes limitations or restrictions on authority

Data includes background information on 'COR' for use in other contracts

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Paper record in file folders and/or Kardex book

Retrievability:

Filed alphabetically by last name of employee

Safeguards:

Buildings or facilities employ security guards. Records are maintained in areas accessible only to authorized personnel that are properly screened, cleared, and trained

Retention and disposal:

Temporary Record. Cut off upon recession or termination and placed in an inactive file area for one year. Transferred to Records Holding Area and held for five years and then destroyed

System manager(s) and address:

Defense Mapping Agency, ATTN: Logistics Office, Building 56, U.S. Naval Observatory, Washington, D.C. 20305, TELEPHONE: Area Code 202/254-4475

Notification procedure:

Information may be obtained from above.

Record access procedures:

Requests from individuals should be addressed to system manager.

Written requests for information should contain the full name of the individuals current address and telephone number, and the Case (Control) number that appears with the office symbol, on all correspondence received from this office

For personal visits, the individual should be able to provide some acceptable identification, that is, drivers license, employing office's identification card, and give some verbal information that could be verified

Contesting record procedures:

The Agency's rules for contesting contents and appealing initial determination may be obtained from System Manager.

Record source categories:

Certificate of Appointment and background information on education, DD Form 1539, and specific information on procurement authorities delegated

Systems exempted from certain provisions of the act:

NONE

B1205-05 HTA

System name:

1205-05 Property Officer Designation Files

System location:

Property Officers of DMAHTC and DMAAC - See DMA Directory for complete address

Categories of individuals covered by the system:

Employees designated Property Officers who have property accounts for their organizations, and have been issued an account number.

Categories of records in the system:

Forms and/or memorandums designating property officers. Included are letters of appointment and revocation.

Authority for maintenance of the system:

40 U.S.C. 486; Management and Disposal of Government Property

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Memorandums or forms showing who or which individual is authorized custodian for equipment for the various organizations within the Agency. Name of individual grade and organization are shown on this document.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Paper records in file folders

Retrievability:

By individual's account number and organization.

Safeguards:

Buildings, facility employ security guards. Records are maintained in areas accessible only to authorized personnel that are properly screened, cleared and trained.

Retention and disposal:

Temporary Record - Destroyed in the active office two years after termination of appointment.

System manager(s) and address:

Defense Mapping Agency, ATTN: Logistics Office, Building 56, U.S. Naval Observatory, Washington, D.C. 20305, TELEPHONE: Area Code 202/254-4475

Notification procedure:

Information may be obtained from above.

Record access procedures:

Requests from individuals should be addressed to system manager.

Written requests for information should contain the full name of the individual current address and telephone number, social security number.

For personal visits the individual should be able to provide some acceptable identification, that is, drivers license, employing office's identification card, and some verbal information that could be verified.

Contesting record procedures:

The Agencies' rules for contesting contents and appealing initial determinations may be obtained from System Manager.

Record source categories:

Internal correspondence designating responsible property accounting individuals

Systems exempted from certain provisions of the act:

NONE

B1205-23 HTASID

System name:

1205-23 Report of Survey Files

System location:

DMA Hydrographic/Topographic Center (HT), DMA Aerospace Center (A), Defense Mapping School (S), and Inter American Geodetic Survey (I), Office of Distribution Services (D). - See DMA Directory for complete address listing.

Categories of individuals covered by the system:

DMA personnel that have loss, damage, or destroyed accountable Government property

Categories of records in the system:

Files consist of reports that describe the circumstances concerning loss, damage or destruction of Government property

Authority for maintenance of the system:

40 USC 486 ; Management and Disposal of Federal Property - Policies, Regulation and Delegations; Promulgation by President

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Logistics Officer - determine responsibility and recommend appropriate action be taken as to pecuniary liability

Director final decision on payment

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Paper record in file folders and/or Kardex book

Retrievability:

Filed by assigned control number of individual.

Safeguards:

Buildings or facilities employ security guards. Records are maintained in areas accessible only to authorized personnel that are properly screened, cleared, and trained

Retention and disposal:

Cutoff end of year, held one year, transferred Records Holding Area, held two years, then destroyed

System manager(s) and address:

Defense Mapping Agency, ATTN: Logistics Office, Building 56, U.S. Naval Observatory, Washington, D.C. 20305, TELEPHONE: Area Code 202/254-4475

Notification procedure:

Information may be obtained from above.

Record access procedures:

Requests from individuals should be addressed to system manager.

Written requests for information should contain the full name of the individuals current address and telephone number, and the Case (Control) number that appears with the office symbol, on all correspondence received from this office

For personal visits, the individual should be able to provide some acceptable identification, that is, drivers license, employing office's identification card, and give some verbal information that could be verified

Contesting record procedures:

The Agency's rules for contesting contents and appealing initial determination may be obtained from System Manager.

Record source categories:

Report of lost damaged or destroyed property

Systems exempted from certain provisions of the act:

NONE

B1206-02 HTA

System name:

1206-02 Self Service Store Authorization Card Files

System location:

Logistics Office - DMA Hydrographic/Topographic Center (HT), DMA Aerospace Center (A) - See DMA Directory for complete address

Categories of individuals covered by the system:

DMA personnel authorized self-service store cards.

Categories of records in the system:

Cards identifying individuals as authorized self-service store representatives, requests for issuance of cards, correspondence concerning lost and found cards and related documents.

Authority for maintenance of the system:

40 U.S.C. 486; Management and Disposal of Federal Property.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Indicates individuals authorized to sign/receipt for supplies in a designated activity.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Card file and file cabinets

Retrievability:

By account number and organization, alphabetical by last name

Safeguards:

Buildings and Facility employ security guards. Reports are maintained in areas accessible only to authorized personnel that are properly screened, cleared and trained.

Retention and disposal:

Temporary Record. Held in active file until expiration of card or change of individual; held two years and destroyed.

System manager(s) and address:

Defense Mapping Agency, ATTN: Logistics Office, Building 56, U.S. Naval Observatory, Washington, D.C. 20305, TELEPHONE: Area Code 202/254-4475

Notification procedure:

Information may be obtained from above.

Record access procedures:

Requests from individuals should be addressed to System Manager.

Written requests for information should contain the full name of the individual, current address and telephone number, social security number.

For personal visits the individual should be able to provide some acceptable identification, that is, drivers' license, employing office's identification card, and give some verbal information that could be used to verify employment.

Contesting record procedures:

The Agencies' rules for contesting contents and appealing initial determinations may be obtained from System Manager.

Record source categories:

Memorandums, cards, forms designating an individual authorization to sign for supplies received from the self-service store.

Systems exempted from certain provisions of the act:

NONE

B1208-06 HTA

System name:

1208-06 Motor Vehicle Operator's Permits and Qualifications Files

System location:

Primary System - Motor Pool, DMA Hydrographic/Topographic Center (HT) and DMA Aerospace Center (A) - See DMA Directory for complete address

Decentralized Segments - Official Personnel Folder; Personnel Records (Civilian) Center - St. Louis, MO.

Categories of individuals covered by the system:

All DMA employees qualified and issued a motor vehicle operators permit.

Categories of records in the system:

Contains information on employee qualification record and cards and logs in regards to permits issued to individuals authorized to operate Government equipment.

Authority for maintenance of the system:

40 U.S.C. 491; Management and Disposal of Federal Property-Motor Vehicle Pools and Transportation Systems.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Motor Pool used as a record of scores on tests, such as: eye examinations, reaction examinations; and as a quick reference on an individual having a license to operate a Government Vehicle.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Rotary Card file and Log Book

Retrievability:

ROTARY Card File - By last name of individual

Log Book - By number of permit

Safeguards:

Building, Facility employs security guards. Records are maintained in areas accessible only to authorized personnel that are properly screened, cleared and trained.

Retention and disposal:

Temporary Record - Permit is a three year record - Destroyed in the Motor Pool

Permanent Record - Qualification Record - kept in active office until separation or transfer of individual concerned, then transferred to Personnel Office for incorporation into the Official Personnel Folder.

System manager(s) and address:

Defense Mapping Agency, ATTN: Logistics Office, Building 56, U.S. Naval Observatory, Washington, D.C. 20305, TELEPHONE: Area Code 202/254-4475

Notification procedure:

Information may be obtained from above.

Record access procedures:

Requests from individuals should be addressed to System Manager.

Written requests for information should contain the full name of the individual current address and telephone number, social security number.

For personal visits the individual should be able to provide some acceptable identification, that is, drivers' license, employing office's identification card, and give some verbal information that could be verified.

Contesting record procedures:

The Agencies' rules for contesting contents and appealing initial determination may be obtained from System Manager.

Record source categories:

Qualification records consisting of scores on tests.

Systems exempted from certain provisions of the act:

NONE

B1211-03 HQHTAI

System name:

1211-03 Passport Files

System location:

Primary System - DMA Headquarters (HQ), DMA Hydrographic/Topographic Center (HT), DMA Aerospace Center (A), Inter American Geodetic Survey (I) See DMA Directory for complete address

Decentralized Segment - State Department (Passports)

Categories of individuals covered by the system:

Individuals traveling overseas on official government orders.

Categories of records in the system:

Documents relating passports and visas for DMA personnel, including their dependents. Included are requests and receipts for passports, transmittal letters, control cards, and related documents.

Authority for maintenance of the system:

44 U.S.C. 3101; Records Management by Federal Agencies.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Used by personnel travel in processing for travel orders.

Used by individuals of DMA and their dependents for travel purposes.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

File folders - paper records in locked cabinets.

Retrievability:

By name of individual - Alphabetically

Safeguards:

Buildings, facility employ security guards. Records are maintained in areas accessible only to authorized personnel that are properly screened, cleared and trained.

Retention and disposal:

Temporary Record - Held in active office until separation or transfer of individual.

Transferred to State Department upon transfer or separation of individual.

System manager(s) and address:

Defense Mapping Agency, ATTN: Administration Office, Building 56, U.S. Naval Observatory, Washington, D.C. 20305, TELEPHONE: Area Code 202/254-4401

Notification procedure:

Information may be obtained from above.

Record access procedures:

Requests from individuals should be addressed to System Manager.

Written requests for information should contain the full name of the individual, current address and telephone number, social security number.

For personal visits the individual should be able to provide some acceptable identification, that is, drivers' license, employing office's identification card, and give some verbal information that could verify employment.

Contesting record procedures:

The Agencies' rules for contesting contents and appealing initial determination should be obtained from System Manager.

Record source categories:

Requests and receipt for passports and visas.

Systems exempted from certain provisions of the act:

NONE

B1211-07 HQHTASDI

System name:

1211-07 Individual Government Transportation Files

System location:

Primary System - Travel Office - DMA Headquarters (HQ), DMA Hydrographic/Topographic Center (HT), DMA Aerospace Center (A) - See DMA Directory for complete address listing.

Decentralized Segments - Records Management, Records Holding Areas

Categories of individuals covered by the system:

DMA employees authorized government travel.

Categories of records in the system:

Travel orders and other pertinent correspondence and related documents, and copies of issued and canceled transportation requests, transportation certificates, MAC transportation authorizations.

Authority for maintenance of the system:

44 U.S.C. 3101; Records Management by Federal Agencies, 45 U.S.C. 5707 - Travel and Subetance Expense Regulation.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Used to officially designate Transportation Officer, Assistants and Agents. Used to record authorization for travel, issue orders, make travel arrangements and prepare vouchers for reimbursement.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Paper Records in file folders

Retrievability:

Alphabetical by name on individual folders or by TR number in case of group travel.

Safeguards:

Buildings, facility employ security guards. Records are maintained in locked cabinets and areas accessible only to authorized personnel that are properly screened, cleared and trained.

Retention and disposal:

Temporary Record. Travel Office holds for one year, transfers to Records Holding Area, held for three (3) years and then destroyed.

System manager(s) and address:

Defense Mapping Agency, ATTN: Administration Office, Building 56, U.S. Naval Observatory, Washington, D.C. 20305, TELEPHONE: Area Code 202/254-4425

Notification procedure:

Information may be obtained from above.

Record access procedures:

Requests from individuals should be addressed to System Manager.

Written requests for information should contain the full name of the individual, current address, and telephone number, social security number.

Personal visits - the individual should be able to provide some acceptable identification, that is, drivers' license, employing office's identification card, and give some verbal information that could verify employment.

Contesting record procedures:

The Agencies' rules for contesting contents and appealing initial determinations may be obtained from System Manager.

Record source categories:

Folders contain various amounts of information on issued and cancelled transportation requests, transportation certificates, travel orders and related data on overseas employees, DMA employees and invitational orders.

Systems exempted from certain provisions of the act:

NONE

OFFICE OF THE SECRETARY OF DEFENSE

REQUESTING RECORDS

Records are retrieved by name or by some other personal identifier. It is therefore especially important for expeditious service when requesting a record that particular attention be provided to the Notification and/or Access Procedures of the particular record system involved so as to furnish the required personal identifiers, or any other pertinent personal information as may be required, to locate and retrieve the record.

BLANKET ROUTINE USES

Certain blanket 'routine uses' of the records have been established, that are applicable to every record system maintained within the Department of Defense, unless specifically stated otherwise within a particular record system. These additional blanket routine uses of the records are published below, only once in the interest of simplicity, economy and to avoid redundancy, before the individual record system notices begin rather than repeating them in every individual record system.

ROUTINE USE - LAW ENFORCEMENT

In the event that a system of records maintained by this component to carry out its functions indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute, or by regulation, rule or order issued pursuant thereto, the relevant records in the system of records may be referred, as a routine use, to the appropriate agency, whether federal, state, local or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, rule, regulation or order issued pursuant thereto.

ROUTINE USE - DISCLOSURE WHEN REQUESTING INFORMATION

A record from a system of records maintained by this component may be disclosed as a routine use to a federal, state or local agency maintaining civil, criminal or other relevant enforcement information or other pertinent information, such as current licenses, if necessary to obtain information relevant to a component decision concerning the hiring or retention of an employee, the issuance of a security clearance, the letting of a contract, or the issuance of a license, grant or other benefit.

ROUTINE USE - DISCLOSURE OF REQUESTED INFORMATION

A record from a system of records maintained by this component may be disclosed to a federal agency, in response to its request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

ROUTINE USE - CONGRESSIONAL INQUIRIES

Disclosure from a system of records maintained by this component may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

ROUTINE USE WITHIN THE DEPARTMENT OF DEFENSE

A record from a system of records maintained by this component may be disclosed as a routine use to other components of the Department of Defense if necessary and relevant for the performance of a lawful function such as, but not limited to, personnel actions, personnel security actions and criminal investigations of the Component requesting the record.

ROUTINE USE - PRIVATE RELIEF LEGISLATION

Relevant information contained in all systems of records of the Department of Defense published on or before August 22, 1975, will be disclosed to the Office of Management and Budget in connection with the review of private relief legislation as set forth in OMB Circular A-19 at any stage of the legislative coordination and clearance process as set forth in that Circular.

ROUTINE USE - DISCLOSURES REQUIRED BY INTERNATIONAL AGREEMENTS

A record from a system of records maintained by this Component may be disclosed to foreign law enforcement, security, investigatory, or administrative authorities in order to comply with requirements imposed by, or to claim rights conferred in international agreements and arrangements including those regulating the stationing and status in foreign countries of Department of Defense military and civilian personnel.

ROUTINE USE - DISCLOSURE TO STATE AND LOCAL TAXING AUTHORITIES

Any information normally contained in IRS Form W-2 which is maintained in a record from a system of records maintained by this Component may be disclosed to State and local taxing authorities with which the Secretary of the Treasury has entered into agreements pursuant to Title 5, U.S.Code, Sections 5516, 5517, 5520, and only to those State and local taxing authorities for which an employee or military member is or was subject to tax regardless of whether tax is or was withheld. This routine use is in accordance with Treasury Fiscal Requirements Manual Bulletin Nr. 76-07.

ROUTINE USE - DISCLOSURE TO THE OFFICE OF PERSONNEL MANAGEMENT

A record from a system of records subject to the Privacy Act and maintained by this component may be disclosed to the Office of Personnel Management concerning information on pay and leave, benefits, retirement deductions, and any other information necessary for the Office of Personnel Management to carry out its legally authorized Government-wide personnel management functions and studies.

ROUTINE USE - DISCLOSURE OF INFORMATION TO NARS (GSA)

A record from a system of records maintained by this component may be disclosed as a routine use to the National Archives and Records Service of the General Services Administration in records management inspections conducted under authority of 44 U.S.C. 2904 and 2906.

ROUTINE USE - DISCLOSURE TO DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

All systems of records relating to compensation, employment or retirement, or extracts therefrom, maintained by this Component may be disclosed as a routine use to the Department of Health, Education, and Welfare for the purpose of comparing such record with records of programs administered by and in the possession of the Department of Health, Education, and Welfare in order to verify information where such verification is required by law or regulation or to identify violations or potential violations of law, whether criminal, civil, or regulatory, and whether arising by general statute or particular program statute, or by regulation, rule, or order issued pursuant thereto.

DCOMP MS02

System name:

Personnel Leave Schedule.

System location:

Primary System-ODASD(Management Systems).
Decentralized Segments-Four MS Directorates.

Categories of individuals covered by the system:

All personnel in ODASD(MS).

Categories of records in the system:

Files contain names and dates of anticipated future leave.

Authority for maintenance of the system:

Title 10, United States Code, Section 136.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

INTERNAL USERS, USES, AND PURPOSES

Information is used by the DASD, his Principal Assistant and Directors, for leave administration within the management responsibilities of the DASD(MS).

EXTERNAL USERS, USES, AND PURPOSES

See Office of the Secretary of Defense (OSD) Blanket Routine Uses at the head of this Component's published system notices.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

The records are maintained in the Office of the Directors or by the secretary of the Director. Copies are often provided to all personnel concerned.

Retrievability:

Records are retrieved by name.

Safeguards:

Records are kept in desk of Director or his secretary except in one Division and one Directorate which posts on wall in secretary's office.

Retention and disposal:

Files are discarded when no longer useful.

System manager(s) and address:

The DASD(Management Systems), Room 3E831, Pentagon, Washington, D.C. 20301.

Notification procedure:

Information may be obtained from:

DASD(MS)
Room 3E831
Pentagon
Washington, D.C. 20301
Telephone: 202-695-3424

Record access procedures:

Requests from personnel should be addressed to his immediate supervisor.

Contesting record procedures:

The Agency's rules for access to records and for contesting contents and appealing initial determinations by the individual concerned are contained in 32 CFR 286b and OSD Administrative Instruction No. 81.

Record source categories:

Roster of employees and employee response to request for vacation dates.

Systems exempted from certain provisions of the act:

None.

DCOMP M511

System name:

List of Female Employees of OSD/OJCS.

System location:

Primary System-Federal Women's Program Coordinator, Room 4B922, Pentagon, maintained in automated form - Army Data Center.

Decentralized Segment-Director of Personnel and Security, Washington Headquarters Services (WHS), Department of Defense, Room 3B347, Pentagon, Washington, D. C. 20301.

Categories of individuals covered by the system:

All civilian female employees of OSD/OJCS.

Categories of records in the system:

File is extract of Civilian Personnel Data File and contains organization identification, employee name, Social Security Number (SSN), Series, Grade, Time Basis, Position Title.

Authority for maintenance of the system:

Executive Order 11246/11375, 'Equal Employment Opportunity,' as amended by EO 11478, 'Equal Employment Opportunities in the Federal Government.'

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

INTERNAL USERS, USES, AND PURPOSES

Used by Directorate for Personnel and Security, Washington Headquarters Services (WHS), Department of Defense, to mail information on Federal Women's Program to OSD/OJCS Women Employees. Used by Federal Women's Program Coordinator to locate personnel to recommend to them training and employment opportunities.

EXTERNAL USERS, USES, AND PURPOSES

See Office of the Secretary of Defense (OSD) Blanket Routine Uses at the head of this Component's published system notices.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Automated list in Federal Women's Program Coordinator Office. Automated tape in Army Data Center.

Retrievability:

Listed by organization.

Safeguards:

List is kept under lock. Only available to Federal Women's Program Coordinator.

Retention and disposal:

Record is new. Revised lists are provided, as required.

System manager(s) and address:

OSD/OJCS Federal Women's Program Coordinator, Room 4B922, Pentagon, Washington, D.C. 20301.

Notification procedure:

Information may be obtained from:

OSD/OJCS Federal Women's Program Coordinator
Room 4B922
Pentagon
Washington, D. C. 20301

Record access procedures:

Written requests for information should contain the full name of the individual, organization assignment and Social Security Number (SSN). Visits are limited to Room 4B922, Pentagon, Washington, D. C. 20301. For personal visits the individual should provide DoD identification prior to access.

Contesting record procedures:

The Agency's rules for access to records and for contesting contents and appealing initial determinations by the individual concerned are contained in 32 CFR 286b and OSD Administrative Instruction No. 81.

Record source categories:

The Central Personnel Data File prescribed by the Office of Personnel Management.

Systems exempted from certain provisions of the act:

None.

DGC 03

System name:

General Administrative File

System location:

Primary System - Office of the General Counsel, Office of the Secretary of Defense, Pentagon, Washington, D.C. 20301.

Categories of individuals covered by the system:

Individuals who have had certain incidents in their lives come within the purview of the Office of the General Counsel, Office of the Secretary of Defense.

Categories of records in the system:

General administrative files of the Office of the General Counsel, Office of the Secretary of Defense, which are used in the performance of the functions of the office. Some of the cases concern individuals and contain information about them. Such cases are filed by the individual's name as these cases relate to the legal problems of the Department of Defense.

Authority for maintenance of the system:

Title 10, U.S. Code, Section 137.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Purpose of the files is to provide information for attorneys in the Office of the General Counsel to aid in solving the various legal problems for the Secretary of Defense.

INTERNAL USERS, USES, AND PURPOSES

Routine use of the files is by the attorneys in the Office of the General Counsel, Office of the Secretary of Defense, and DoD Components.

EXTERNAL USERS, USES, AND PURPOSES

See Office of the Secretary of Defense (OSD) Blanket Routine Uses at the head of the Component's published system notices.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Paper records in file folders.

Retrievability:

Filed by subject.

Safeguards:

Stored in metal filing cabinets and metal safes depending on classification.

Retention and disposal:

Files are retained as long as there is an office interest in the case then they are destroyed or retired to the Federal Records Center, Suitland, Maryland.

System manager(s) and address:

Deputy General Counsel, Office of the Secretary of Defense, Room 3E980, Pentagon, Washington, D.C. 20301.

Notification procedure:

Written request for information should be addressed to the System Manager, Deputy General Counsel, Room 3E980, Pentagon, Washington D.C. 20301. Valid proof of identity is required as well as the pertinent dates and subject matters which causes the individual's involvement with the office.

Record access procedures:

Procedures for gaining access by an individual to his records may be obtained from the following:

Office of the Assistant General Counsel (Manpower, Health & Public Affairs)
Room 3E977
Pentagon
Washington, D.C.
Telephone: 202-697-9657

Contesting record procedures:

The Agency's rules for access to record and for contesting contents and appealing initial determinations by the individual concerned are contained in 32 CFR 286b and OSD Administrative Instruction NO. 81.

Record source categories:

Information contained in general administrative files is obtained from various sources including correspondence, investigations performed by other agencies and general administrative records of the Department of Defense.

Systems exempted from certain provisions of the act:

Parts of this records system may be exempt under Title 5 of the U.S. Code, sections 552a(k)(2), (k)(3) and (k)(5) as applicable. The Office of the Secretary of Defense rules are set forth at 32 CFR Part 286a (OSD Administrative Instruction 81).

DGC 04

System name:

Industrial Personnel Security Clearance Case Files.

System location:

Primary System and Decentralized Segments-Active case files, Directorate for Industrial Security Clearance Review (DISCR), Office of the Assistant General Counsel for Fiscal Matters, OAGC(FM), Office of the General Counsel (OGC), Department of Defense (DoD), Pentagon, Washington, D.C. 20301.

Inactive case files, U.S. Army Investigative Records Repository, Fort Meade, Maryland 20755.

Categories of individuals covered by the system:

Government contractor employees whose industrial security clearance cases were referred to the OAGC(FM), DISCR, for adjudication under Executive Order 10865, as amended by Executive Order 10909, as implemented by DoD Directive 5220.6; these cases pertain only to the individuals who cannot be granted clearance by the Defense Industrial Security Clearance Office (DISCO), Defense Logistics Agency (DLA), Columbus, Ohio.

Categories of records in the system:

Alphabetical card index files for identification and location of case files within the DISCR.

Individual case files include general correspondence relating to case, investigative reports prepared by various investigative agencies conducting security clearance investigations, DISCO referral recommendation, determinations of the Screening Board, Examiners and the Appeal Board, DISCR, with implementing documents, including but not limited to, Statement of Reasons (SOR) issued to individual, his answer to the SOR, transcripts of hearings and exhibits.

DISCR case correspondence files maintained by case number, including case correspondence initiated by DISCR, with individuals, employers, attorneys, congressmen and investigative agencies.

Additionally, correspondence files include copies of Screening Board determinations and Appeal Board determinations from July 1967 to date in order to furnish an index and register of administrative determinations under the Freedom of Information Act (FOIA), Pub. L. 93-502, Section 552a(2)(C) of Title 5, United States Code.

All final decisions in cases arising under DoD Directive 5220.6, since 1967, are published and indexed for public perusal. Names of applicants, witnesses, sources of information, etc., and identifying information, relative to those persons are deleted from these records to protect the privacy of persons involved.

DISCR Reader Files including DISCR-initiated correspondence, Screening Board determinations and Appeal Board determinations.

Decentralized Reader File segments of copies of Examiner's determinations and Appeal Board determinations to Department Counsel's Office and Screening Board, DISCR.

Chronological correspondence file of letters from assigned trial counsel to individuals, attorneys or counsel, and other Federal offices for hearing arrangements.

Authority for maintenance of the system:

Executive Order 10865, 'Safeguarding Classified Information Within Industry,' dated February 20, 1960, as amended by Executive Order 10909, dated January 17, 1961; and DoD Directive 5220.6, 'Industrial Personnel Security Clearance Program' dated December 20, 1976.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

The purpose and use of this record system are to determine whether it is clearly consistent with the national interest to grant or continue an individual's access to classified information.

INTERNAL USERS, USES, AND PURPOSES

DISCO, DLA, initiates investigation at request of employer and may grant but not deny clearance.

OAGC(FM), DISCR, determines individual's eligibility for security clearance and notifies the individual, and DISCO, DLA, of final decision.

U.S. Army, JAG, U.S. Army, Claims Services, Ft. Meade, Maryland 20755 in cases where claims for reimbursement are requested by an applicant.

EXTERNAL USERS, USES, AND PURPOSES

Department of Justice in cases where individual seeks Federal court review of adverse administration determinations under the Industrial Security Clearance Program.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

File folders, vertical file cards.

Retrievability:

Active files alphabetically by name or by case number.

Inactive files by individual's name, date and place of birth, and Social Security Number (SSN).

Safeguards:

Records are stored in security combination lock file containers accessible only to DISCR authorized personnel.

Retention and disposal:

Destroyed 25 years after file is no longer active.

Primary alphabetical card index files are retained permanently in Central Office, DISCR, Alphabetical Index Cards for case control purposes in suboffices, i.e., Screening Board, Department Counsel's Office and Appeal Board are retained during active processing of cases and then destroyed.

All Reader Files are destroyed within 60 days of issue.

System manager(s) and address:

The Assistant General Counsel for Fiscal Matters, AGC(FM), Directorate for Industrial Security Clearance Review (DISCR), Pentagon, Washington, D.C. 20301.

Notification procedure:

Information may be obtained from: OAGC(FM), DISCR, Room 3D282, Pentagon, Washington, D.C. 20301. Telephone: 202-697-8350.

Record access procedures:

Requests from individuals should be addressed to OAGC(FM), DISCR, Room 3D282, Pentagon, Washington, D.C. 20301.

Written requests should include the individual's full name, date and place of birth, Social Security Number (SSN), and notarized signature.

The records requested and available, subject to statutory exemptions, may be made available to the record subject for review at the following locations:

Directorate for Industrial Security Clearance Review (DISCR), Office of the General Counsel, DoD, Room 3D282, Pentagon, Washington, D.C. 20301.

Administrative Director, Eastern Hearing Office, DISCR, Office of the General Counsel, DoD, 26 Federal Plaza, Room 36-112, New York, New York 10007.

Administrative Director, Western Hearing Office, DISCR, Office of the General Counsel, DoD, 9920 S. LaCienega Blvd., Suite 1026, Inglewood, California 90301.

Fees for copies must be borne by the record subject or his authorized representative requesting the review of the records.

Contesting record procedures:

The Agency's rules for access to records and for contesting contents and appealing initial determinations by the individual concerned are contained in 32 CFR 286b and OSD Administrative Instruction No. 81.

Record source categories:

Defense Investigative Service (DIS); Office of the Secretary of Defense (OSD); Defense Industrial Security Clearance Office (DISCO), Defense Logistics Agency (DLA); U.S. Army Investigative Records Repository; record subjects; attorneys or representatives.

Systems exempted from certain provisions of the act:

Parts of this record system may be exempt under 5 U.S.C. 552a(k)(5).

DGC 85

System name:

Administrative Files on Active Psychiatric Consultants to Department of Defense (DOD).

System location:

Directorate for Industrial Security Clearance Review (DISCR), Office of the Assistant General Counsel for Fiscal Matters, OAGC(FM), Office of the General Counsel, DoD.

Categories of individuals covered by the system:

Psychiatric consultants who have entered into agreement with the Department of Defense to conduct psychiatric examination of individuals applying for industrial security clearance for access to classified information required in the performance of their work for classified Government contractors.

Categories of records in the system:

Records filed alphabetically by last name of psychiatrist, consisting of correspondence concerning agreement to conduct psychiatric examinations requested by the Government; and initiation and confirmation of security clearance issued to psychiatrists.

Current list of active DoD psychiatric consultants.

Alphabetical card index file for identification and address of active psychiatric consultants.

Authority for maintenance of the system:

DoD Directive 5220.6, 'Industrial Personnel Security Clearance Program,' December 20, 1976; Executive Order 10865, February 20, 1960; and Executive Order 10909, January 17, 1961.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

The purpose of this system is to maintain a record of active psychiatric consultants available to conduct psychiatric examinations of individual applicants for industrial personnel security clearance in convenient geographical areas.

INTERNAL USERS, USES, AND PURPOSES

Psychiatric consultants having active professional service agreements with and having been granted security clearance by the Department of Defense (DoD) are used by DISCR, OAGC(FM), and Defense Industrial Security Clearance Office (DISCO), Defense Logistics Agency (DLA), in processing requests for industrial personnel security clearance of individuals.

EXTERNAL USERS, USES, AND PURPOSES:

See Office of the Secretary of Defense (OSD) Blanket Routine Uses at the head of this Component's published system notices.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Paper records in file folders, vertical file cards.

Retrievability:

Alphabetically by surname.

Safeguards:

Records are stored in security combination lock file cabinets accessible only to DISCR authorized personnel.

Retention and disposal:

Destroy six months after agreement between consultant and DoD has been terminated.

System manager(s) and address:

The Assistant General Counsel for Fiscal Matters, AGC(FM), Directorate for Industrial Security Clearance Review, Pentagon, Washington, D.C. 20301.

Notification procedure:

Information may be obtained from: OAGC(FM), DISCR, Room 3D282, Pentagon, Washington, D.C. 20301. Telephone: 202-697-8350.

Record access procedures:

Requests from individuals should be addressed to OAGC(FM), DISCR, Room 3D282, Pentagon, Washington, D.C. 20301.

Written requests should include the individual's full name, date and place of birth, and notarized signature.

The records requested may be made available to individuals for review at the following location: DISCR, OAGC(FM), Room 3D282, Pentagon, Washington, D.C. 20301.

Contesting record procedures:

The Agency's rules for access to records and for contesting contents and appealing initial determinations by the individual concerned are contained in 32 CFR 286b and OSD Administrative Instruction No. 81.

Record source categories:

Copy of Letter of Consent (for security clearance), DISCO Form 560, and correspondence with individual psychiatrists.

Systems exempted from certain provisions of the act:

None.

DMRAAL 03.0

System name:

Employer Support File (PLEDGE).

System location:

Primary Location: National Guard Computer Center, 5600 Columbia Pike, Falls Church, Va. 22041.

Hardcopy roster located at: National Committee for Employer Support of the Guard and Reserve, Room 900, 1117 North 19th Street, Arlington, Va. 22209.

Categories of individuals covered by the system:

Self employed individuals, individuals heading companies bearing their names, the pledging officials representing various companies, or staff directors who have pledged to support the National Guard and Reserve Components.

Categories of records in the system:

Name, address, geographic location, size, and business of pledging company.

Authority for maintenance of the system:

10 USC 136.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

The purpose of the file is to assist in informing the public and encouraging employers to support the Guard and Reserve.

INTERNAL USERS, USES, AND PURPOSES

National Committee for Employer Support of the Guard and Reserve; used to answer inquiries from employers or prospective employees of companies concerning whether a company has pledged to support the Guard and Reserve; used by members of the state committees for employer support to assist Guard and Reserve members who are experiencing difficulties with companies that have pledged; used as a screening tool to prevent resolicitation of support from employers who have already pledged; used to supply state level organizations' lists of companies in states which have pledged; used to prepare speech and press release material mentioning companies that have pledged.

Any individual records in the system may be transferred to any component of the Department of Defense having a need-to-know in the performance of official business.

EXTERNAL USERS, USES, AND PURPOSES

Records may be disclosed to law enforcement or investigatory authorities for investigation and possible criminal prosecution, and civil court action, or regulatory order.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Magnetic computer tape.

Retrievability:

Retrieved by company name, geographic location, or type of business.

Safeguards:

Primary location is a TOP SECRET facility.

Hardcopy output is accessible to authorized personnel only during working hours; room is locked after hours and building has security guards.

Retention and disposal:

Records are permanent.

System manager(s) and address:

Chairman, National Committee for Employer Support of the Guard and Reserve, Room 900, 1117 North 19th Street, Arlington, Va. 22209.

Notification procedure:

Information may be obtained from:

Chairman, National Committee for Employer Support of the Guard and Reserve
Room 900
1117 North 19th Street
Arlington, Virginia 22209
Telephone: 202-697-6902

Record access procedures:

Requests for information should be addressed to: Chairman, National Committee for Employer Support of the Guard and Reserve, Room 900, 1117 North 19th Street, Arlington, Va. 22209.

Written requests should contain the name of the individual and/or employer, current mailing address and telephone number.

For personal visits, the individual should be able to provide some acceptable identification such as driver's license.

Contesting record procedures:

The Agency's rules for access to records and for contesting contents and appealing initial determinations by the individual concerned are contained in 32 CFR 286b and OSD Administrative Instruction No. 81.

Record source categories:

Information is supplied by employers who have pledged, from Dunn and Bradstreet, and from Census Data.

Systems exempted from certain provisions of the act:

None.

DMRA&L 17.0

System name:

DoD Teacher Back Pay Project.

System location:

DoD Office of Dependents Schools, 2461 Eisenhower Avenue, Alexandria, Virginia 22331.

Categories of individuals covered by the system:

All former DoD Overseas Dependents School teachers who are paid under Public Law 89-391, dated April 14, 1966.

Categories of records in the system:

System is comprised of names, Social Security Numbers, and Dates of birth of former DoD overseas teachers, and information extracted from their Official Personnel Records which will effect computation of their retroactive pay; and current addresses of former teachers.

Authority for maintenance of the system:

Court Decision in the case called Virginia J. March et al, v. United States of America (Civil Action 3437-70, U.S. District Court, District of Columbia, June 30, 1975) on intent of Public Law 89-391, dated April 14, 1966.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

INTERNAL USERS, USES, AND PURPOSES

Used by Office of Dependents Schools Back Pay Project workers to compute back pay as it applies to individual teacher; prepare necessary updating for individual's Official Personnel Record, life insurance entitlement, where applicable; prepare reports to individual teachers, Treasury, Social Security, Office of Personnel Management, attorneys for the teachers, and General Accounting Office. Addresses will be made for mailing purposes.

EXTERNAL USERS, USES, AND PURPOSES

See Office of the Secretary of Defense (OSD) Blanket Routine Uses at the head of this Component's published system notices.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Computer tapes, computer printouts.

Retrievability:

Social Security Number (SSN) and name.

Safeguards:

All records are stored under strict control, maintained in spaces normally accessible only to authorized personnel, in cabinets in locked room.

Retention and disposal:

Records will be maintained in this office until all requirements of the judgment and will be destroyed when they are no longer useful.

System manager(s) and address:

Director, DoD Office of Dependents Schools, Office of the Assistant Secretary of Defense (Manpower, Reserve Affairs and Logistics).

Notification procedure:

Requests by correspondence should be addressed to Director, DoD Office of Dependents Schools, Attn: Back Pay Project, 2461 Eisenhower Avenue, Room 148, Alexandria, Va. 22331. Telephone: 202-325-0660. Letter should contain the full name and signature of the requester.

Record access procedures:

Requests from individuals should be addressed to same address as stated in the 'Notification procedure:', above.

Contesting record procedures:

The Agency's rules for access to records and for contesting contents and appealing initial determinations by the individual concerned are contained in 32 CFR 286b and OSD Administrative Instruction No. 81.

Record source categories:

Official Personnel Records obtained from Federal Records Center and other agencies currently employing individuals concerned.

Systems exempted from certain provisions of the act:

None.

DMRA&L 19.0

System name:

Automated Career Management System (ACMS) DD-M(AR)1456.

System location:

DoD Centralized Referral Activity, 1507 Wilmington Pike, Dayton, Ohio 45444.

Categories of individuals covered by the system:

All Department of Defense civilian career program employees GS-5 or higher and former employees; and DoD Senior Executive Service Candidates.

Categories of records in the system:

Name, home and work addresses, Social Security Number (SSN), educational background, work experience, grade and salary, occupation, age, special qualifications, awards, military reserve status, and supervisory appraisals.

Authority for maintenance of the system:

Title 5, United States Code, Sections 301 and 302, which authorize Agency Heads to: establish civilian personnel management programs; maintain files and records necessary to operate such programs; and delegate civilian personnel management authorities to subordinate officials.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

This system provides a list of eligible candidates qualified to fill position vacancies normally at GS-13 and higher grade levels and to provide information for program analyses and management.

INTERNAL USERS, USES, AND PURPOSES

All DoD Civilian Personnel Offices and the DoD Components serviced by these offices are required to submit job vacancies to designated occupation series against Automated Career Management System (ACMS), for the generation of a list with resumes of qualified candidates for consideration by a selection panel and others.

Office of the Deputy Assistant Secretary of Defense (Civilian Personnel Policy)-Used for statistical analyses of civilian work force, and management and evaluation of specific employment programs within the Department of Defense.

Any individual records contained in the system may be transferred to any component of the Department of Defense having the need-to-know in the performance of official business.

EXTERNAL USERS, USES, AND PURPOSES

See Office of the Secretary of Defense (OSD) Blanket Routine Uses at the head of this Component's published system notices.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Disc packs.

Retrievability:

Retrievable by occupation, Social Security Number (SSN), name, specific skills, educational background, or training background.

Safeguards:

The location is identified as a secure area; access is through electrically controlled doors and cypher locks; disc packs are stored in a vault when not in use.

Retention and disposal:

Active records are maintained up to one year after termination of the individual's employment with the Department of Defense, or upon notification that the individual no longer is employed in a position for which registration is required. Inactive records of personnel are retained indefinitely.

System manager(s) and address:

Director of Staffing and Career Management, Office of the Deputy Assistant Secretary of Defense (Civilian Personnel Policy), Room 3D264, Pentagon, Washington, D.C. 20301. Telephone: 202-697-3402.

Notification procedure:

Information may be obtained from the System Manager.

Record access procedures:

Written requests from individuals should be addressed to Director, Centralized Referral Activity, DoD-CRA-R, 1507 Wilmington Pike, Dayton, Ohio 45444.

For personal visits, the individual should be able to provide some acceptable form of identification, such as a driver's license.

Contesting record procedures:

The Agency's rules for access to records and for contesting contents and appealing initial determinations by the individual concerned are contained in 32 CFR 286b and OSD Administrative Instruction No. 81.

Record source categories:

Data are obtained from records subjects, from their official personnel folders, and from supervisory appraisals.

Systems exempted from certain provisions of the act:

None.

DMRAAL 20.0

System name:

DoD Centralized Applicant Supply System (CASS).

System location:

Office of the Centralized Referral Activity, 1507 Wilmington Pike, Dayton, Ohio 45444.

Categories of individuals covered by the system:

All eligible current and former Federal civilian employees.

Categories of records in the system:

Name, home and work addresses, Social Security Number (SSN), educational background, work experience, grade and salary, occupation, age, special qualifications, and awards.

Authority for maintenance of the system:

Title 5, United States Code, Sections 301 and 302, which authorize Agency Heads to: establish civilian personnel management programs; maintain files and records necessary to operate such programs; and delegate civilian personnel management authorities to subordinate officials.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

This system provides a list of eligible candidates qualified to fill position vacancies and to provide information for program analyses and management.

INTERNAL USERS, USES, AND PURPOSES

All DoD Civilian Personnel Offices and the DoD Components serviced by these offices and required by Office of Personnel Management Regulations to provide consideration to the applicants for placement in job vacancies for which qualified internal applicants are not available.

Any individual records contained in this system may be transferred to any component of the Department of Defense having the need-to-know in the performance of official business.

EXTERNAL USERS, USES, AND PURPOSES

See Office of the Secretary of Defense (OSD) Blanket Routine Uses at the head of this Component's published system notices.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Disc packs are stored in a vault when not in use.

Retrievability:

Retrievable by occupation, Social Security Number (SSN), name, and specific skills.

Safeguards:

The computer facility has been designated as a controlled area. Personnel requesting access to the controlled area are positively identified via installed closed circuit television system prior to admittance. Positive identification is by personal recognition and presentation of identification credential with photograph.

Perimeter doors are of hollow metal construction. Glass inserts are limited to authorized entrances and are screened with security mesh wire. All hinge pins are welded/brazed to prevent removal. A perimeter intrusion alarm system is used to monitor all exterior perimeter doors to the computer room. The alarm system is monitored from within the boundary of the controlled area. Closed circuit television cameras cover authorized pedestrian entrances to the computer facility.

Admission to the computer area is by RUSCARD lock release of the doors. Admission to the main computer room is by RUSCARD IDEK lock release. The computer facility is divided into five compartments or levels. The RUSCARDS are issued based on the individual's need to conduct regular or recurring business within the specific level.

A Halon 1301 Fire Extinguishing System is installed in the main computer room and tape vault. It is a safe and effective fire extinguishing agent that is used in Class A, B and C fires. Halon 1301 is a vapor that works chemically to stop combustion and does not leave water, foam, powder or other residue behind.

Customers or users of the system will number in excess of 700. No user will have access to other than his share of the total inventory which will amount to an extremely small fraction of the total inventory.

Data will be provided the user in the form of microfiche. The microfiche itself and containers will carry eye legible warnings which will read 'Personal Data-Privacy Act of 1974.' Strict administrative controls will be maintained regarding access to the data contained on the microfiche. Microfiche plates will be destroyed by burning, melting, chemical decomposition, pulping, pulverizing, shredding, or mutilation sufficient to preclude recognition or reconstruction of the information.

A command security check has been done. A risk analysis will be completed within six months.

Retention and disposal:

Active records are maintained at least one year or until notification that the individual is no longer available for placement assistance. Inactive records of personnel are retained indefinitely.

System manager(s) and address:

Director of Staffing and Career Management, Office of the Deputy Assistant Secretary of Defense (Civilian Personnel Policy), Office of the Assistant Secretary of Defense (Manpower, Reserve Affairs and Logistics), Room 3D281, Washington, D.C. 20301. Telephone 202-697-3402.

Notification procedure:

Information may be obtained from the System Manager.

Record access procedures:

Written requests from individuals should be addressed to Director, Office of the Centralized Referral Activity, 1507 Wilmington Pike, Dayton, Ohio 45444.

For personal visits, the individual should be able to provide some acceptable form of identification, such as a driver's license.

Contesting record procedures:

The Agency's rules for access to records and for contesting contents and appealing initial determinations by the individual concerned are contained in 32 CFR 286b and OSD Administrative Instruction No. 81.

Record source categories:

Data are obtained from record subjects.

Systems exempted from certain provisions of the act:

None.

DMRA&L 21.0

System name:

Department of Defense Dependents Schools (DoDDS) Grievance Records.

System location:

Office of Dependents Schools, 2461 Eisenhower Avenue, Room 120, Alexandria, Virginia 22331; six regional offices located in London, England; Wiesbaden, Germany; Karlsruhe, Germany; Madrid, Spain; Okinawa, Japan; and Panama; in principals' offices of DoDDS schools; and at the servicing civilian personnel offices at various military installations.

Categories of individuals covered by the system:

Current or former Federal employees who have submitted grievances in accordance with 5 USC 2302, and 5 USC 7121, or a negotiated procedure.

Categories of records in the system:

This system contains records relating to grievances filed by DoD Dependents Schools (DoDDS) employees under 5 USC 2302, and 5 USC 7121. These case files contain all documents related to the grievances, including statements of witnesses, reports of interviews and hearings, examiner's findings and recommendtions, a copy of the original and final decision, and related correspondence and exhibits. This system includes files and records of internal grievance and arbitration systems that DoDDS may establish through negotiations with recognized labor organizations.

Authority for maintenance of the system:

5 USC 2302, and 5 USC 7121.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

INTERNAL USERS, USES, AND PURPOSES

This information is used by the DoDDS in the creation and maintenance of records of summary descriptive statistics and analytical studies in support of the function for which the records are collected and maintained, or for related work force studies. While published statistics and studies do not contain individual identifiers, in some instances the selection of elements of data included in the study may be structured in such a way as to make the data individually identifiable by reference.

EXTERNAL USERS, USES, AND PURPOSES

These records and information in these records are used:

a. To disclose pertinent information to the appropriate Federal, state, or local agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

b. To disclose information to any source from which additional information is requested in the course of processing a grievance, to the extent necessary to identify the individual, inform the source of the purpose(s) of the request, and identify the type of information requested.

c. To disclose information to a Federal agency, in response to its request, in connection with the hiring or retention of an employee; the issuance of a security clearance; the conducting of a security or suitability investigation of an individual; the classifying of jobs; the letting of a contract, or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information is relevant and necessary to requesting the Agency's decision on the matter.

d. To provide information to a congressional office from the record of a individual, in response to an inquiry from that congressional office, made at the request of that individual.

e. To disclose information to another Federal agency or to a court when the Government is party to a judicial proceeding before the court.

f. By the National Archives and Records Services (General Services Administration) in records management inspections conducted under authority of 44 USC 2906.

g. To disclose information to officials of the Merit Systems Protection Board, including the Office of the Special Counsel, the Federal Labor Relations Authority and its General Counsel; or the Equal Employment Opportunity Commission, when requested in performance of their authorized duties.

h. To disclose in response to a request for discovery or for appearance of a witness, information that is relevant to the subject matter involved in a pending judicial or administrative proceeding.

i. To provide information to officials of labor organizations reorganized under the Civil Service Reform Act when relevant and necessary to their duties, exclusive representation concerning personnel policies, practices, and matters affecting work conditions.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Paper records maintained in file folders.

Retrievability:

These records are retrieved by the names of the individuals on whom the records are maintained, by case number, and by subject matter of the grievance.

Safeguards:

These records are maintained in locked metal file cabinets, with access only to authorized DoDDS employees and servicing civilian personnel offices.

Retention and disposal:

These records are disposed of not sooner than 3 years after closing of the case. Disposal is by shredding or burning.

System manager(s) and address:

Mr. Paul Wolfe, Chief, Management Employee Relations Branch, Personnel Division, Office of Dependents Schools, 2461 Eisenhower Avenue, Room 120, Alexandria, Virginia 22331, telephone: 202-325-0690.

Notification procedure:

Information may be obtained from the System Manager.

Record access procedures:

Request for access to records may be obtained from the System Manager.

Contesting record procedures:

The Agency's rules for access to records and for contesting contents and appealing initial determinations by the individual concerned are contained in 32 CFR 286b and OSD Administrative Instruction No. 81.

Record source categories:

Information in this system of records is provided:

a. By the individual on whom the record is maintained.
b. By testimony of witnesses.
c. By Agency officials.
d. From related correspondence from organizations or persons.

Systems exempted from certain provisions of the act:

None.

DOCHA 09

System name:

Civilian Health and Medical Program of the Uniformed Services (OCHAMPUS) Grievance Records.

System location:

Personnel Office, Office of Civilian Health and Medical Program of the Uniformed Services (OCHAMPUS), Department of Defense, Fitzsimons Army Medical Center, Aurora, Colorado 80045.

Categories of individuals covered by the system:

Current or former Federal employees who have submitted grievances in accordance with 5 USC 2302, and 5 USC 7121, or a negotiated procedure.

Categories of records in the system:

The system contains records relating to grievances filed by Office of CHAMPUS employees under 5 USC 2302, and 5 USC 7121. These case files contain all documents related to the grievances, including statements of witnesses, reports of interviews and hearings, examiner's findings and recommendations, a copy of the original and final decision, and related correspondence and exhibits. This system includes files and records of internal grievance and arbitration systems that OCHAMPUS may establish through negotiations with recognized labor organizations.

Authority for maintenance of the system:

5 USC 2302, and 5 USC 7121.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

INTERNAL USERS, USES, AND PURPOSES

This information is used by the Office of CHAMPUS in the creation and maintenance of records of summary descriptive statistics and analytical studies in support of the function for which the records are collected and maintained, or for related work force studies.

While published statistics and studies do not contain individual identifiers, in some instances the selection of elements of data included in the study may be structured in such a way as to make the data individually identifiable by reference.

EXTERNAL USERS, USES, AND PURPOSES

These records and information in these records are used:

a. To disclose pertinent information to the appropriate Federal, state, or local agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

b. To disclose information to any source from which additional information is requested in the course of processing a grievance, to the extent necessary to identify the individual, inform the source of the purpose(s) of the request, and identify the type of information requested.

c. To disclose information to a Federal agency, in response to its request, in connection with the hiring or retention of an employee; the issuance of a security clearance; the conducting of a security or suitability investigation of an individual; the classifying of jobs; the letting of a contract, or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information is relevant and necessary to requesting the Agency's decision on the matter.

d. To provide information to a congressional office from the record of an individual, in response to an inquiry from that congressional office, made at the request of that individual.

e. To disclose information to another Federal agency or to a court when the Government is party to a judicial proceeding before the court.

f. By the National Archives and Records Service (General Services Administration) in records management inspections conducted under authority of 44 USC 2906.

g. To disclose information to officials of the Merit Systems Protection Board, including the Office of the Special Counsel; the Federal Labor Relations Authority and its General Counsel; or the Equal Employment Opportunity Commission, when requested in performance of their authorized duties.

h. To disclose in response to a request for discovery or for appearance of a witness, information that is relevant to the subject matter involved in a pending judicial or administrative proceeding.

i. To provide information to officials of labor organizations reorganized under the Civil Service Reform Act when relevant and necessary to their duties, exclusive representation concerning personnel policies, practices, and matters affecting work conditions.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Paper records maintained in file folders.

Retrievability:

These records are retrieved by the names of the individuals on whom the records are maintained.

Safeguards:

These records are maintained in locked metal file cabinets, with access only to authorized OCHAMPUS Personnel Office employees.

Retention and disposal:

These records are disposed of not sooner than three years after closing of the case. Disposal is by shredding or burning.

System manager(s) and address:

Mr. James D. Netterfield, Personnel Office, Office of Civilian Health and Medical Program of the Uniformed Services, Department of Defense, Aurora, Colorado 80045, telephone: 303-341-8800.

Notification procedure:

Information may be obtained from the System Manager.

Record access procedures:

Request for access to records may be obtained from the System Manager.

Contesting record procedures:

The Agency's rules for access to records and for contesting contents and appealing initial determinations by the individual concerned are contained in 32 CFR 286b and OSD Administrative Instruction No. 81.

Record source categories:

Information in this system of records is provided:

a. By the individual on whom the record is maintained.

b. By testimony of witnesses.

c. By Agency officials.

d. From related correspondence from organizations or persons.

Systems exempted from certain provisions of the act:

None.

DPA DSR.B 11

System name:

Mandatory Declassification Review Files.

System location:

Primary system - Directorate for Freedom of Information and Security Review, Office of Assistant Secretary of Defense (Public Affairs).

Decentralized segments - Under Secretaries of Defense, Assistant Secretaries of Defense, Assistants to the Secretary of Defense, or equivalent, the Organization of the Joint Chiefs of Staff, and other activities assigned to the Office of the Secretary of Defense for administrative support.

Categories of individuals covered by the system:

Any person (or records repository) who makes a request to the Office of the Secretary of Defense or activities assigned to Office of the Secretary of Defense for administrative support for the Mandatory Declassification Review of Records under Executive Order 12065 (Sections 3-5). That aspect of the Executive Order pertaining to the systematic review of classified Defense documents is acted upon by the Records Administrator, Office of the Secretary of Defense, Room 5C315, Pentagon, Washington, D.C. 20301. Overall responsibility for the Department of Defense Information Security Program rests with the Deputy Under Secretary for Policy Review.

Categories of records in the system:

Name, firm, address of requester, identification of records requested, dates and summaries of action taken, and documents for establishing collectable fees and processing costs to the Government.

Names, titles, or positions of each person primarily responsible for an initial or final denial on appeal of a request for declassification of a record.

Authority for maintenance of the system:

Executive Order 12065, 'National Security Information,' June 28, 1978, as amended.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

INTERNAL USERS, USES, AND PURPOSES

Primary system and decentralized segments are used by officials in the locations described above to: (a) administratively control requests to ensure compliance with Executive Order 12065 and DoD Regulation 5200.1-R, 'Information Security Program Regulation,' December 1978; and (b) research historical data on release of records so as to facilitate conformity to subsequent actions.

Primary system is used also for developing annual report data required by Executive Order 12065, and other management data such as, but not limited to, number of requests; type of category of records requested; average processing time; average cost to requester; percentage of denials and number of denials by exemption; and for computing processing costs to the Government.

EXTERNAL USERS, USES, AND PURPOSES

See Office of the Secretary of Defense (OSD) Blanket Routine Uses at the head of this Component's published system notices.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Computer magnetic disks, computer paper printouts, index file cards, and paper records in file folders.

Retrievability:

Filed by request number and retrieved by name, subject material (including date), request number using conventional indices, referring agency, or any combination of fields.

Safeguards:

Paper records are maintained in security containers with access only to officials whose access is based on requirements of assigned duties.

Computer access is by verification of identification code; one for search and another for maintenance.

Retention and disposal:

Files that grant access to records are held in current status for two years after the end of the calendar year in which created, then destroyed.

Files pertaining to denials of requests are destroyed 5 years after final determination. Appeals are retained for 3 years after final determination.

System manager(s) and address:

Assistant Secretary of Defense (Public Affairs), Pentagon, Washington, D.C. 20301.

Notification procedure:

Information may be obtained from: Director, Freedom of Information and Security Review Office, Assistant Secretary of Defense (Public Affairs), Room 2C757, Pentagon, Washington, D.C. 20301. Telephone: 202-697-1180.

Record access procedures:

Requests from individuals should be addressed to the above office and should include full name and address.

Personal visits are restricted to Room 2C757. Individuals should be able to present acceptable identificaiton, that is, driver's license or comparable identity card.

Contesting record procedures:

The Agency's rules for access to records and for contesting contents and appealing initial determinations by the individual concerned are contained in 32 CFR 286b and OSD Administrative Instruction No.81.

Record source categories:

Requests for Mandatory Declassification Review and subsequent release of records originated from individuals under Executive Order 12065, and subsequent data provided by form and memorandum by officials who hold the requested records, act upon the request, or who are involved in legal action stemming from action taken.

Systems exempted from certain provisions of the act:

None.

DPA&E 02

System name:

Administrative Files for Program Analysis and Evaluation (OASD(PA&E)).

System location:

Office of the Assistant Secretary of Defense (Program Analysis and Evaluation) (OASD(PA&E)), Pentagon, Washington, D.C. 20301.

Categories of individuals covered by the system:

All current and former military and civilian personnel employed by or assigned to PA&E since 1965.

Current and some past applicants or prospects for civilian or military jobs.

Some contractor personnel.

Other Department of Defense (DoD) or outside personnel currently or previously assigned, or under consideration, to provide support or work with PA&E.

Categories of records in the system:

System contains individual application forms; biographical data; employment history; professional and military experience; schooling and academic records; performance effectiveness data; honors; awards and decorations; security forms; security clearances; security violations; publications; training and career development information; telephone rosters; certain financial interest and medical history data; information used to evaluate individuals for employment, promotion, reassignment, training, retention and awards; job descriptions; letters of commendation or appreciation; earnings and leave statements; overtime pay records; travel orders; certain travel vouchers; retirement application papers; tenure data; next employment information; savings bond and Combined Federal Campaign (CFC) data (current year only); and miscellaneous personnel and administrative data of like nature.

Authority for maintenance of the system:

Title 10, United States Code, Section 136.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

INTERNAL USERS, USES, AND PURPOSES

OASD(PA&E) - To evaluate current and prospective employees; to locate former personnel and prospects; to analyze professional staff background; to make decisions on hiring, promotion, training, awards, or disciplinary actions; to make comparative analyses of personnel data such as turnover rates, awards, academic degrees, average age, travel, and overtime; to determine level of security access permissible; to evaluate conformance with standards of conduct rules; to evaluate contractor capabilities; to provide information on current or former personnel to authorized investigators and potential outside employers; to make campaign reports; to evaluate effectiveness of PA&E personnel operations; to input selected data to computer system; to perform computer analyses of the data; and to prepare reports, rosters and statistical data.

EXTERNAL USERS, USES, AND PURPOSES

See Office of the Secretary of Defense (OSD) Blanket Routine Uses at the head of this Component's published system notices.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Paper records in file folders.
Biography book.
Computer disks.
Computer paper printouts.
Microfiche.
Charts.

Retrievability:

Information accessed by last name of individual.

Individual user codes and passwords required to access information stored in computer.

Safeguards:

Building employs security guards.

Sensitive manually stored data kept in locked cabinets or safes and may be accessed only by authorized personnel.

Computer stored data is kept in a secure computer facility and may be accessed only by authorized, properly trained personnel who have access codes and passwords.

Retention and disposal:

Records on current and former personnel are permanent. Travel orders, overtime authorizations and similar fiscal records are kept for three years. Applicant files are screened about once a year and information outdated or no longer needed is destroyed. Campaign data for other than current year is destroyed annually.

System manager(s) and address:

Assistant Secretary of Defense (Program Analysis and Evaluation), Room 2D321, Pentagon, Washington, D.C. 20301.

Notification procedure:

Information may be obtained from:
OASD(PA&E), Assistant for Management
Room 2D321
Pentagon
Washington, D.C. 20301
Telephone: 202-697-9189.

Record access procedures:

Requests from individuals should be addressed to: OASD(PA&E), Assistant for Management, Room 2D321, Pentagon, Washington, D.C. 20301.

Written requests must contain full name and identification of the individual. Visitors may be required to provide identification.

Contesting record procedures:

The Agency's rules for access to records and for contesting contents and appealing initial determinations by the individual concerned are contained in 32 CFR 286b and OSD Administrative Instruction No. 81.

Record source categories:

Current and previous employers, instructors, associates and contacts; DoD civilian and military personnel offices; DoD security offices; DoD payroll, travel and fiscal offices; Office of Personnel Management; contractors; Air Force Data Services Center (AFDSC); PA&E personnel; educational institutions; and financial institutions.

Systems exempted from certain provisions of the act:

None.

DUSDP 01

System name:

Office of the Under Secretary of Defense for Policy (OUSDP) Telephone Directory.

System location:

Primary System - Office of the Assistant for Administration, Office of the Under Secretary of Defense for Policy (OUSDP), Room 4D840, Pentagon, Washington, D.C. 20301.

Categories of individuals covered by the system:

All military and civilian employees of the Office of the Under Secretary of Defense for Policy (OUSDP), which include personnel from the following offices:

Assistant Secretary of Defense (International Security Affairs)
Defense Security Assistance Agency
Deputy Under Secretary of Defense for Policy Planning
Deputy Under Secretary of Defense for Policy Review
Director for Net Assessment
Deputy Advisor for NATO Affairs

Categories of records in the system:

Directory contains employees' names, office and home phone numbers by organizational element and room number.

Authority for maintenance of the system:

Title 5, United States Code (Annotated), Section 301; and the Federal Personnel Manual, Chapter 293.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

INTERNAL USERS, USES, AND PURPOSES
Used by all Office of the Under Secretary of Defense for Policy (OUSDP) employees for telephone locator service.
EXTERNAL USERS, USES, AND PURPOSES
Telephone reference service.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

The Directory is stored in a locked file cabinet.

Retrievability:

Listed alphabetically by name and organization.

Safeguards:

Room is secured after duty hours. Building employs security guards.

Retention and disposal:

The Directory is reissued periodically. Obsolete copies are destroyed when the Directory is reissued.

System manager(s) and address:

Under Secretary of Defense for Policy (USDP), Pentagon, Washington, D.C. 20301.

Notification procedure:

Information may be obtained from:
OUSDP
Room 4D840
Pentagon
Washington, D.C. 20301
Telephone: 202-697-8126

Record access procedures:

Requests from individuals should be addressed to the address noted in the 'Notification procedures:' listed above.
Written requests for information should contain the full name of the individual, current address and telephone number.

Contesting record procedures:

The Agency's rules for access to records and for contesting contents and appealing initial determinations by the individual concerned are contained in 32 CFR 286b and OSD Administrative Instruction No. 81.

Record source categories:

Information is supplied by the individuals listed.

Systems exempted from certain provisions of the act:

None.

DUSDP 02

System name:

Office of the Under Secretary of Defense for Policy (OUSDP) Locator File.

System location:

Primary System - Office of the Assistant for Administration, Office of the Under Secretary of Defense for Policy (OUSDP), Room 4D840, Pentagon, Washington, D.C. 20301.

Categories of individuals covered by the system:

All military and civilian employees of the Office of the Under Secretary of Defense for Policy (OUSDP), which include personnel from the following offices:
Assistant Secretary of Defense (International Security Affairs)
Defense Security Assistance Agency
Deputy Under Secretary of Defense for Policy Planning
Deputy Under Secretary of Defense for Policy Review
Director for Net Assessment
Deputy Advisor for NATO Affairs

Categories of records in the system:

Contains employee names; grades, Social Security Number (SSN); years of service; date and place of birth; home address; home phone number; marital status; number of dependents; security clearance; date of clearance; date reported; reserve status; mobilization designation; and office room and phone number; date of departure and forwarding address.

Authority for maintenance of the system:

Title 5, United States Code (Annotated), Section 301; and Federal Personnel Manual, Chapter 293.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

INTERNAL USERS, USES, AND PURPOSES
Internal locator use for administrative purposes. Routine use by personnel within the Office of the Assistant for Administration, OUSDP.
EXTERNAL USERS, USES, AND PURPOSES
None.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Card file box - kept in locked safe.

Retrievability:

Filed alphabetically by last name of employee.

Safeguards:

Building employs security guards. Records are maintained in areas with controlled access to authorized personnel only.

Retention and disposal:

Locator file is retained permanently.

System manager(s) and address:

Under Secretary of Defense for Policy (USDP), Pentagon, Washington, D.C. 20301.

Notification procedure:

Information may be obtained from:
OUSDP
Room 4D840
Pentagon
Washington, D.C. 20301
Telephone: 202-697-8126

Record access procedures:

Requests from individuals should be addressed to the address noted in 'Notification procedure:' listed above.
Written requests for information should contain the full name of the individual, current address and telephone number.

Contesting record procedures:

The Agency's rules for access to records and for contesting contents and appealing initial determinations by the individual concerned are contained in 32 CFR 286b and OSD Administrative Instruction No. 81.

Record source categories:

Information is supplied by the individual listed.

Systems exempted from certain provisions of the act:

None.

DUSDP 03

System name:

Office of the Under Secretary of Defense (OUSDP) Organizational Personnel Files.

System location:

Office of the Assistant for Administration, Office of the Under Secretary of Defense for Policy (OUSDP), Room 4D840, Pentagon, Washington, D.C. 20301.

Categories of individuals covered by the system:

All military and civilian employees of the Office of the Under Secretary of Defense for Policy (OUSDP), which include personnel from the following offices:
Assistant Secretary of Defense (International Security Affairs)
Defense Security Assistance Agency
Deputy Under Secretary of Defense for Policy Planning
Deputy Under Secretary of Defense for Policy Review
Director for Net Assessment
Deputy Advisor for NATO Affairs

Categories of records in the system:

Contains individual assignment orders and copies of other personnel actions affecting named individual.

Authority for maintenance of the system:

Title 5, United States Code (Annotated), Section 301; and Federal Personnel Manual, Chapter 293.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

INTERNAL USERS, USES, AND PURPOSES

Administrative personnel management use. Routine use by personnel within the Office of the Assistant for Administration, OUSDP.

EXTERNAL USERS, USES, AND PURPOSES

None.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Paper records in file folders.

Retrievability:

Filed alphabetically by last name of employee.

Safeguards:

Building security guards, Mosler safe, controlled access to authorized personnel.

Retention and disposal:

Permanent while assigned to OUSDP, then in inactive file for one year.

System manager(s) and address:

Under Secretary of Defense for Policy (USDP), Pentagon, Washington, D.C. 20301.

Notification procedure:

Information may be obtained from:

OUSDP
Room 4D840
Pentagon
Washington, D.C. 20301.
Telephone: 202-697-8126

Record access procedures:

Requests from individuals should be addressed to the address noted in 'Notification procedure:' listed above.

Written requests for information should contain the full name of the individual, current address and telephone number.

Contesting record procedures:

The Agency's rules for access to records and for contesting contents and appealing initial determinations by the individual concerned are contained in 32 CFR 286b and OSD Administrative Instruction No. 81.

Record source categories:

Military Services; OSD Military Personnel; Office of Personnel Management; OSD Civilian Personnel; and State Department.

Systems exempted from certain provisions of the act:

None.

DUSDPR 01

System name:

DoD Motions for Discovery of Electronic Surveillance Files.

System location:

Primary System-Counterintelligence and Investigative Programs Directorate, Office of the Deputy Under Secretary of Defense for Policy Review, Room 3C290, Pentagon, Washington, D. C. 20301.

Categories of individuals covered by the system:

Those individuals and/or organizations on which the Department of Justice has requested information upon which to base their reply to court-approved motions for discovery of electronic surveillance.

Categories of records in the system:

Chronological listing for identification and location of files. Individual case files to include original and subsequent requests from the Department of Justice; file copy of memorandum to the DoD Components directing search of their records, indices, etc.; copies of DoD Components' responses to the Office of the Secretary of Defense (OSD), and copies of OSD's responses to the Department of Justice.

Authority for maintenance of the system:

Title 28, United States Code, Section 516, 'Conduct of Litigation Reserved to Department of Justice'.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

INTERNAL USERS, USES, AND PURPOSES

Preparation of response to Department of Justice, as well as any subsequent inquiries from that office.

EXTERNAL USERS, USES, AND PURPOSES

Department of Justice's response to court-approved motion for discovery.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Paper records in file folders.

Retrievability:

Filed by year by case name.

Safeguards:

Records are stored in security combination lock file containers accessible only by Counterintelligence and Investigative Programs Directorate personnel.

Retention and disposal:

Records are permanent. They are retained in active file until end of calendar year to which project is completed, held one additional year in inactive file and subsequently retired to Washington National Records Center (WNRC).

System manager(s) and address:

Director, Counterintelligence and Investigative Programs, Office of the Deputy Under Secretary of Defense for Policy Review, Pentagon, Washington, D. C. 20301.

Notification procedure:

Information may be obtained from:

Office of the Director
Counterintelligence and Investigative Programs
Office of the Deputy Under Secretary of Defense for Policy Review
Room 3C290
Pentagon
Washington, D. C. 20301
Telephone: 202-697-9678.

Record access procedures:

Requests from individuals should be addressed to:

Director, Counterintelligence and Investigative Programs
Office of the Deputy Under Secretary of Defense for Policy Review
Room 3C290
Pentagon
Washington, D. C. 20301.

Written requests for information should contain the full name of the individual, date and place of birth, Social Security Number (SSN), and notarized signature.

The records requested may be made available to individuals for review at the following location: Office of the Director, Counterintelligence and Investigative Programs, Office of the Deputy Under Secretary of Defense for Policy Review, Room 3C290, Pentagon, Washington, D. C. 20301.

Contesting record procedures:

The Agency's rules for access to records and for contesting contents and appealing initial determinations by the individual concerned are contained in 32 CFR 286b and OSD Administrative Instruction No. 81.

Record source categories:

Department of Justice formal written inquiries, and internal correspondence necessary to gather information to make replies to such inquiries.

Systems exempted from certain provisions of the act:

None.

DUSDPR 02

System name:

Special Personnel Security Cases.

System location:

Security Plans and Programs Directorate, Office of the Deputy Under Secretary of Defense (Policy Review), ODUSD(PR), Washington, D.C. 20301.

Categories of individuals covered by the system:

Individuals affiliated with the DoD, upon whom an investigation has been conducted by a Department of Defense (DoD) Component investigative organization authorized to conduct personnel security investigations; other investigative organizations of the Federal Government; or individuals who have been the subject of a DoD Component personnel security determination, or who have had access to DoD classified information, whenever the investigation, personnel security determination, or access involves unique circumstances having special significance with respect to DoD personnel security

policy. Also, individuals for whom waivers have been granted from specific provisions of the Industrial Security Regulation (5220.22-R) and/or Industrial Security Manual (5220.22-M).

Categories of records in the system:

Statements of personal history; investigative reports; adjudicative findings; intra-office memoranda; policy interpretations; memoranda recommending courses of action; legal opinions, etc.

Authority for maintenance of the system:

Title 5, United States Code, Section 301.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

INTERNAL USERS, USES, AND PURPOSES

This system will be used as basis for Security Plans and Programs Directorate staff access to determine the need for overall personnel security policy revision or adjustment; to ensure that component personnel security determinations are consistent with DoD personnel security program policy; to assure that personnel security investigations conducted by the Defense Investigative Service (DIS), the National Security Agency (NSA), and the Military Departments are in compliance with DoD personnel security investigative policy; and to provide precedents for use in determining whether to grant waivers of the provisions of the Industrial Security Regulation and/or Industrial Security Manual.

EXTERNAL USERS, USES, AND PURPOSES

See Office of the Secretary of Defense (OSD) Blanket Routine Uses at the head of this Component's published system notices.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Paper records are in file folders.

Retrievability:

Records are filed alphabetically by last name of the subject of the investigation or personnel security determination having special significance with respect to DoD personnel security policy. Also, records are filed alphabetically by last name of the personnel for whom waivers have been granted under the Industrial Security Program.

Safeguards:

Records are stored in security combination lock file containers, and are accessible only by Security Plans and Programs personnel who are properly cleared and who are the official authorized users.

Retention and disposal:

Routine investigations are destroyed 15 years after the date of the last action. Those involving significant incidents are destroyed 25 years after the date of the last action.

System manager(s) and address:

Director, Security Plans and Programs Directorate, Office of the Deputy Under Secretary of Defense (Policy Review), Pentagon, Washington, D.C. 20301.

Notification procedure:

Information may be obtained from:

Office of the Deputy Under Secretay of Defense (Policy Review)
Security Plans and Programs Directorate
Room 3C277, Pentagon, Washington, D.C. 20301
Telephone: 202-697-3969

Record access procedures:

Requests from individuals should be addressed to:

Office of the Deputy Under Secretary of Defense (Policy Review)
Security Plans and Programs Directorate
Room 3C277, Pentagon, Washington, D.C. 20301

Written requests for information should contain the full name of the individual, date and place of birth, Social Security Number (SSN), and notarized signature.

The records requested may be made available to individuals for review at the following location:

Security Plans and Programs Directorate, ODUSD (PR)
Room 3C271, Pentagon
Washington, D.C. 20301

Contesting record procedures:

The Agency's rules for access to records and for contesting contents and appealing initial determinations by the individual concerned are contained in 32 CFR 286b and OSD Administrative Instruction No. 81.

Record source categories:

Information is obtained from record subjects; Federal Bureau of Investigation; Office of the Secretary of Defense; Organization of the Joint Chiefs of Staff; DoD Defense Agencies; and the Military Departments, including investigative reports, inter and intra Department memoranda and letters, case analyses, memoranda for the record, and other correspondence related to the cases.

Systems exempted from certain provisions of the act:

Parts of this record system may be exempt under 5 U.S.C. 552a(k)(5).

DUSDRE 03

System name:

Investor's File, Office Under Secretary of Defense (Research and Engineering).

System location:

Office of the Under Secretary of Defense for Research and Engineering (OUSDRE), Office, Secretary of Defense, Room 3E1006, Pentagon, Washington, D.C. 20301.

Categories of individuals covered by the system:

All persons who have submitted inventions, ideas, and proposals for consideration by Department of Defense.

Categories of records in the system:

These files contain correspondence with individuals concerning their inventions, ideas, and proposals submitted to the Department of Defense; evaluations by Government employees of those inventions, ideas, and proposals.

Authority for maintenance of the system:

10 USC 133.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

INTERNAL USERS, USES, ANG PURPOSES

The information in this file is primarily collected to give consideration to the inventions, ideas, and proposals submitted by the public. These files are used to reply to correspondence and inquiries from the public and other Government agencies. The information contained in these files is used by the staff of OUSDRE.

EXTERNAL USERS, USES, AND PURPOSES

See Office of the Secretary of Defense (OSD) Blanket Routine Uses at the head of this Component's published system notices.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Paper records in file folders.

Retrievability:

Filed alphabetically by last name.

Safeguards:

Building guards and locked file containers. Records are maintained in areas accessible only to authorized personnel.

Retention and disposal:

Retained in active files for a period of five years and then transferred to the Washington National Records Center, Suitland, Maryland 20409.

System manager(s) and address:

Director, Program Control and Administration, Office of the Secretary of Defense, Washington, D.C. 20301.

Notification procedure:

Information may be obtained from:

Director, Program Control and Administration
Room 3E1031, Pentagon
Washington, D.C. 20301
Telephone: 202-697-4994.

Written requests for information should contain the full name of the individual, current address and telephone number and any other information which would help in identifying the desired information.

For personal visits, the individual must be able to provide acceptable identification, that is, driver's license, employing office's identification card, and give verbal information that could be verified with his 'case folder'.

Record access procedures:

Requests should be addressed to SYSMANAGER as shown above.

Contesting record procedures:

The Agency's rules for access to records and for contesting contents and appealing initial determinations by the individual concerned are contained in 32 CFR 286b and OSD Administrative Instruction No. 81.

Record source categories:

Information is provided by individuals who send their inventions, ideas, and proposals to the Department of Defense and Government employees who evaluate the inventions, ideas, and proposals.

Systems exempted from certain provisions of the act:

None.

DUSDRE 04

System name:

Requests for Two-Year Foreign Residence Waiver Files.

System location:

Security Policy and Review Division-Office of the Director, Program Control and Administration, Office of the Under Secretary of Defense for Research and Engineering, Office of the Secretary of Defense.

Categories of individuals covered by the system:

Any foreigner applying for a Waiver of Foreign Residency.

Categories of records in the system:

Files contain requests for waiver of foreign residency.

Authority for maintenance of the system:

Mutual Educational and Cultural Exchange Act of 1961 (75 Stat. 535).

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

INTERNAL USERS, USES, AND PURPOSES

Security Policy and Review Division-To evaluate requests for waivers.

EXTERNAL USERS, USES, AND PURPOSES

See Office of the Secretary of Defense (OSD) Blanket Routine Uses at the head of this Component's published system notices.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Paper records in file folders.

Retrievability:

Filed alphabetically by last name of individual.

Safeguards:

Building guards and locked file containers. Records are maintained in an area accessible only to authorized personnel.

Retention and disposal:

Records are permanent. Retained in active file for ten years.

System manager(s) and address:

Director, Program Control and Administration, OUSDRE, Office of the Secretary of Defense, Pentagon, Washington, D.C. 20301.

Notification procedure:

Information may be obtained from:
Security Policy and Review Division
Room 3D1014
Pentagon
Washington, D.C. 20301
Telephone: 202-697-3459

Record access procedures:

Requests from individuals should be addressed to: Under Secretary of Defense for Research and Engineering, Office of the Secretary of Defense, Pentagon, Washington, D.C. 20301.

Written requests for information should contain full name of individual, current address and telephone number and approximate date of waiver request.

For personal visits individual should be able to provide appropriate identification.

Contesting record procedures:

The Agency's rules for access to records and for contesting contents and appealing initial determinations by the individual concerned are contained in 32 CFR 286b and OSD Administrative Instruction No. 81.

Record source categories:

Application and related correspondence from sponsor and individual requesting waiver.

Systems exempted from certain provisions of the act:

None.

DWHS IO&R01

System name:

Combat Area Casualties.

System location:

Directorate for Information Operations and Reports, Washington Headquarters Services, Pentagon, Washington, D.C. 20301.

Categories of individuals covered by the system:

Names of all military personnel who were killed, missing, captured, or interned in Southeast Asia.

Categories of records in the system:

Files contain a completed Report of Casualty (DD Form 1300).

Authority for maintenance of the system:

Executive Order 11216, 3 CFR 301 (1964-1965 Compilation), 'Designation of Vietnam and Waters Adjacent Thereto as a Combat Zone for the Purposes of Section 112 of the Internal Revenue Code of 1954,' approved April 24, 1965.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

INTERNAL USERS, USES, AND PURPOSES

The purpose of this system of records is to compile a list of all military personnel who were killed, missing, captured, or interned in Southeast Asia. This list is used by the Office of the Assistant Secretary of Defense (International Security Affairs) (OASD(ISA)), the Defense Intelligence Agency (DIA), and other OSD activities.

EXTERNAL USERS, USES, AND PURPOSES

To the Veterans Administration - listing the name, Social Security Number (SSN), and rank of all former prisoners-of-war of the Vietnam conflict for the purpose of conducting comprehensive studies of the disability compensation awarded to and the health care needs of veterans. To any public or private person for statistical purposes. The name, grade, date of birth only are released on those who are currently missing, captured, or interned.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

DD 1300s are filed in file reference order by service, country of occurrence.

Retrievability:

Data may be retrieved by name or file reference number.

Safeguards:

All information is maintained in locked safes.

Retention and disposal:

Records are permanent. Automatic Data Processing (ADP) files will be made available to National Archives when no longer required by Office of the Secretary of Defense (OSD).

System manager(s) and address:

Director of Information Operations and Reports, Washington Headquarters Services, Pentagon, Washington, D. C. 20301.

Notification procedure:

Information may be obtained from:
Director of Information Operations and Reports
Washington Headquarters Services
Department of Defense
Room 4B938
Pentagon
Washington, D. C. 20301
Telephone: 202-697-6107

Record access procedures:

Requests should be addressed to the System Manager.

Contesting record procedures:

The Agency's rules for access to records and for contesting contents and appealing initial determinations by the individual concerned are contained in 32 CFR 286b and OSD Administrative Instruction No. 81.

Record source categories:

The source of this information is the serviceman's casualty section.

Systems exempted from certain provisions of the act:

None.

DWHS IO&R02

System name:

Noncombat Area Casualties.

System location:

Directorate for Information Operations and Reports (DIOR), Washington Headquarters Services, Pentagon, Washington, D.C. 20301.

Categories of individuals covered by the system:

Names of all U.S. military personnel on active duty who die or become missing or captured in a noncombat area after October 1, 1979.

Categories of records in the system:

Records consist of personal data, e.g., name, rank, Social Security Number (SSN), military service, home of record, date of birth, race, sex, marital status, and cause of death. Automated data will be further substantiated by a complete Report of Casualty (DD Form 1300), which will be submitted for each record in the file.

Authority for maintenance of the system:

Department of Defense Directive 5110.4, "Washington Headquarters Services," October 1, 1977; and Department of Defense Instruction 7730.60, "U.S. Military Personnel Casualties in Noncombat Areas," September 27, 1979.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

INTERNAL USERS, USES, AND PURPOSES

The purposes of this system of records are to:

Compile a list of all military personnel who die or become missing or captured by cause of casualty. This list is used by the Office of the Assistant Secretary of Defense (Health Affairs) (OASD(HA)), Office of the Assistant Secretary of Defense (Manpower, Reserve Affairs and Logistics) (OASD(MRA&L)), and other OSD activities; and

Automate data currently being reported in a manual format.

EXTERNAL USERS, USES, AND PURPOSES

Provide statistical data to the U.S. Congress on request; and

Provide statistical data to the general public when requested.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

DD-1300s are stored in file reference order by service.

Hardcopy files are stored at the Pentagon and computer files are stored on magnetic tape and disk at the WHS/DIOR Computer Center in the Pentagon, Washington, D.C. The remote terminal retains no data.

Retrievability:

Data may be retrieved by name, file reference number, or Social Security Number (SSN).

Safeguards:

Current hardcopy records, e.g., DD-1300s and EAM cards, prior to processing for computer storage, are retained in a locked file located in a limited access area in the Pentagon. Only data currently required by Department of Defense Directive 1300.4 and DoD Instruction 7730.60 are maintained in the automated data file.

The computer facility is operated by the Washington Headquarters Services (WHS), the Pentagon, Washington, D.C. The computer hardware, disks, tapes, and other materials are secured in a controlled and guarded area in the Pentagon. Access is via access list, escort, or controlled remote terminal to the unclassified computer. Access for all system users is password controlled.

All access to the WHS/DIOR computer is via user identification and sign-on password from six (6) terminals connected by hardwire, leased lines and dial-in lines. Computer software ensures that only properly identified users can access the Privacy Act files on this system. Passwords are changed periodically or upon departure of individuals knowing them.

The on-line system will be implemented on a DEC PDP-15 computer, in the software environment of an Operating System, Data Management, and Software and Development System designed and developed by the Defense Advanced Research Projects Agency (DARPA), a Department of Defense Agency. The Data Management System (DMS) operates in a dedicated mode with no other applications operating at the same time. In addition to the sign-on password, DMS allows a user to access only those specific files authorized that user. Only personnel concerned with the day-to-day maintenance of the resident files will be given the password and user identification information needed to access to all fields in the data base. Any combination of fields and data within fields can be used to select individual records.

The computer site is adequately secure for storage of unclassified data. The terminals to be used are located in a limited access area where observation and use by unauthorized individuals can be prevented.

Retention and disposal:

Records are permanent.

System manager(s) and address:

Director of Information Operations and Reports, Washington Headquarters Services, Pentagon, Washington, D.C. 20301.

Notification procedure:

Information may be obtained from: Director of Information Operations and Reports, Washington Headquarters Services, Department of Defense, Room 4B938, Pentagon, Washington, D.C. 20301. Telephone: 202-697-8237.

Record access procedures:

Requests should be addressed to the System Manager.

Contesting record procedures:

The Agency's rules for access to records and for contesting contents and appealing initial determinations by the individual concerned are contained in 32 CFR 286b and OSD Administrative Instruction No. 81.

Record source categories:

The source of this information is the servicemen's casualty section.

Systems exempted from certain provisions of the act:

None.

DWHS P01

System name:

Senior Executive Service (SES) and Equivalent Executive Level Files.

System location:

Directorate for Personnel and Security, Washington Headquarters Services (WHS), Department of Defense, Room 3B347, Pentagon, Washington, D.C. 20301.

Categories of individuals covered by the system:

Any individual who is currently in, was recommended for, or has held an executive position in the Office of the Secretary of Defense (OSD), OSD field activities, the Organization of the Joint Chiefs of Staff, the U.S. Court of Military Appeals, the U.S. Mission to NATO, the NATO International Staff, the NATO Support Group, and the Defense Agencies.

Categories of records in the system:

File contains both approved and disapproved cases. File also contains copy of individual's SF-171, position description, position evaluation statement, organization chart, Office of Personnel Management (OPM) Form 1390, SF-161, or 161A, correspondence, and other selected documents.

Authority for maintenance of the system:

Title 5, United States Code, Section 301.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

INTERNAL USERS, USES, AND PURPOSES

Records provide information necessary for carrying out the SES personnel and position management functions. The Office of Secretary of Defense (OSD), OSD field activities, the Organization of the Joint Chiefs of Staff (OJCS), the U.S. Court of Military Appeals (COMA), the U.S. Mission to NATO, the NATO International Staff, the NATO Support Group, and the Defense Agencies are part of routine use.

EXTERNAL USERS, USES, AND PURPOSES

The Office of Personnel Management (OPM) uses the information necessary for the OPM to carry out its Government-wide personnel functions.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Paper records in file folders in metal file cabinets.

Retrievability:

Filed by organization, and then alphabetically by name.

Safeguards:

Access is granted only to personnel and management officials having a need-to-know. Building employs guards. Records are maintained in an area accessible only to authorized personnel.

Retention and disposal:

Files maintained indefinitely.

System manager(s) and address:

Director for Personnel and Security, WHS, Room 3B347, Pentagon, Washington, D.C. 20301.

Notification procedure:

Information may be obtained from:

Directorate for Personnel and Security

Washington Headquarters Services (WHS)
Room 3B347
Pentagon
Washington, D.C. 20301
Telephone: 202-697-4211.

Record access procedures:

Requests from individuals should be addressed to the above System Manager.

Contesting record procedures:

The Agency's rules for access to records and for contesting contents and appealing initial determinations by the individual concerned are contained in 32 CFR 286b and OSD Administrative Instruction No. 81.

Record source categories:

SF-171 from individual, other material obtained from personnel offices and statements from management officials.

Systems exempted from certain provisions of the act:

None.

DWHS P37

System name:

Grievance Records.

System location:

Directorate for Personnel and Security, Washington Headquarters Services (WHS), Department of Defense, Room 3B347, Pentagon, Washington, D.C. 20301.

Categories of individuals covered by the system:

Current or former Federal employees who have submitted grievances in accordance with 5 USC 2302, and 5 USC 7121, or a negotiated procedure.

Categories of records in the system:

The system contains records relating to grievances filed by Office of the Secretary of Defense (OSD) employees under 5 USC 2302, and 5 USC 7121. These case files contain all documents related to the grievances, including statements of witnesses, reports of interviews and hearings, examiner's findings and recommendations, a copy of the original and final decision, and related correspondence and exhibits. This system includes files and records of internal grievance and arbitration systems that OSD may establish through negotiations with recognized labor organizations.

Authority for maintenance of the system:

5 USC 2302, and 5 USC 7121.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

INTERNAL USERS, USES, AND PURPOSES

This information is used by the Office of the Secretary of Defense (OSD) in the creation and maintenance of records of summary descriptive statistics and analytical studies in support of the function for which the records are collected and maintained, or for related work force studies. While published statistics and studies do not contain individual identifiers, in some instances the selection of elements of data included in the study may be structured in such a way as to make the data individually identifiable by reference.

EXTERNAL USERS, USES, AND PURPOSES

These records and information in these records are used:

a. To disclose pertinent information to the appropriate Federal, state, or local agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

b. To disclose information to any source from which additional information is requested in the course of processing a grievance, to the extent necessary to identify the individual, inform the source of the purpose(s) of the request, and identify the type of information requested.

c. To disclose information to a Federal agency, in response to its request, in connection with the hiring or retention of an employee; the issuance of a security clearance; the conducting of a security or suitability investigation of an individual; the classifying of jobs; the letting of a contract, or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information is relevant and necessary to requesting the Agency's decision on the matter.

d. To provide information to a congressional office from the record of an individual, in response to an inquiry from that congressional office, made at the request of that individual.

e. To disclose information to another Federal agency or to a court when the Government is party to a judicial proceeding before the court.

f. By the National Archives and Records Service (General Services Administration) in records management inspections conducted under authority of 44 U.S.C. 2906.

g. To disclose information to officials of the Merit Systems Protection Board, including the Office of the Special Counsel; the Federal Labor Relations Authority and its General Counsel; or the Equal Employment Opportunity Commission, when requested in performance of their authorized duties.

h. To disclose in response to a request for discovery or for appearance of a witness, information that is relevant to the subject matter involved in a pending judicial or administrative proceeding.

i. To provide information to officials of labor organizations reorganized under the Civil Service Reform Act when relevant and necessary to their duties, exclusive representation concerning personnel policies, practices, and matters affecting work conditions.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Paper records maintained in file folders.

Retrievability:

These records are retrieved by the names of the individuals on whom the records are maintained.

Safeguards:

These records are maintained in locked metal file cabinets, with access only to authorized OSD Personnel employees.

Retention and disposal:

These records are disposed of 3 years after closing of the case. Disposal is by shredding or burning.

System manager(s) and address:

Director for Personnel and Security, Washington Headquarters Services (WHS), Department of Defense, Room 3B347, Pentagon, Washington, D.C. 20301.

Notification procedure:

Information may be obtained from Directorate for Personnel and Security, Washington Headquarters Services (WHS), Department of Defense, Room 3B347, Pentagon, Washington, D.C. 20301. Telephone: 202-697-3305.

Record access procedures:

Request for access to records may be obtained from the SYSMANGER.

Contesting record procedures:

The Agency's rules for access to records and for contesting contents and appealing initial determinations by the individual concerned are contained in 32 CFR 286b and OSD Administrative Instruction No. 81.

Record source categories:

Information in this system of records is provided:

a. By the individual on whom the record is maintained.
b. By testimony of witnesses.
c. By Agency officials.
d. From related correspondence from organizations or persons.

Systems exempted from certain provisions of the act:

None.

DWHS SPM001

System name:

Application for Pentagon Parking Permit.

System location:

DoD Parking Control Office, Directorate for Space Management and Services, Washington Headquarters Services, and the Air Force Data Services Center, Department of Defense, Pentagon, Washington, D.C. 20301.

Categories of individuals covered by the system:

Parking applications received from employees of the Department of Defense and pay parking record/receipt forms from DoD and other Federal employees.

Categories of records in the system:

File includes DD Form 1199, Application for Pentagon Parking Permit, DD Form 1200, Pentagon Parking Permit Replacement/Re-Use of Space Request, and DD Form 2213, Parking Record/Receipt.

Authority for maintenance of the system:

Federal Property and Administrative Services Act of 1949, 63 Stat. 377, as amended.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

The purpose of this system is to assign parking to eligible Department of Defense personnel, and to record monthly payments of parking fees.

INTERNAL USERS, USES, AND PURPOSES

To be used by DoD Parking Control Office to assign parking to eligible DoD personnel at the Pentagon and Federal Building 2.

EXTERNAL USERS, USES, AND PURPOSES

See Office of the Secretary of Defense (OSD) Blanket Routine Uses at the head of this Component's published system notices.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Card records in card file, computer magnetic tapes, disks and video screens.

Retrievability:

Filed alphabetically by permit number.

Safeguards:

Under direct control of the DoD Parking Control Office. Office is locked and guarded. Computer media residents are stored in controlled areas. Dial-up computer terminal access is controlled by user passwords that are periodically changed.

Retention and disposal:

Records are kept on active applicants and destroyed when they depart Department of Defense.

System manager(s) and address:

Director, Space Management and Services, Washington Headquarters Services, Department of Defense, Pentagon, Washington, D.C. 20301.

Notification procedure:

Information may be obtained from:
Director, Space Management and Services
Washington Headquarters Services
Department of Defense
Room 3C345, Pentagon
Washington, D.C. 20301
Telephone: 202-697-7241

Record access procedures:

Requests from individuals should be addressed to: Director, Space Management and Services, Washington Headquarters Services, Department of Defense, Room 3C345, Pentagon, Washington, D.C. 20301.

Written requests for information should contain the full name of the individual and the name of the employing Component.

For personal visits, the individual should be able to provide some acceptable identification, that is, driver's license or DoD building pass. The computer system has the facility to access all data stored in the data base. Central Parking Control has exclusive access to the data base and controls updating the files.

Contesting record procedures:

The Agency's rules for access to records and for contesting contents and appealing initial determinations by the individual concerned are contained in 32 CFR 286b and OSD Administrative Instruction No. 81

Record source categories:

Application for Pentagon Parking Permit, DD Form 1199, and related forms.

Systems exempted from certain provisions of the act:

None.

DWHS SPM002

System name:

Pentagon and Federal Building 2 Carpool Locator.

System location:

Primary System - Air Froce Data Services Center.

Decentralized Segments - DoD Parking Control Office, Directorate for Space Management and Services, Washington Headquarters Services, Department of Defense, Pentagon, Washington, D.C. 20301.

Office of the DoD Building Administrator, Directorate for Space Management and Services, Washington Headquarters Services, Department of Defense, Federal Building 2, Washington, D.C. 20301.

Categories of individuals covered by the system:

All Department of Defense (DoD) and other personnel who participate in Pentagon and Federal Building 2 carpools.

Categories of records in the system:

Name of individual, DoD Component Code, home address, working hours, Pentagon or Federal Building 2 office room number, office phone number, map coordinate of home address.

Authority for maintenance of the system:

Federal Property and Administrative Services Act of 1949, 63 Stat. 377, as amended.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

This system assigns and administers allocated carpool parking spaces at the Pentagon and Federal Building 2; and provides Pentagon and Federal Building 2 carpoolers with the names of potential prospects who live near him/her.

INTERNAL USERS, USES, AND PURPOSES

DoD Parking Control Office and the Office of the Building Administrator, Federal Building 2 - To assign and administer allocated carpool parking spaces at the Pentagon and Federal Building 2.

Air Force Data Services Center - To provide a printout to each individual in the system which lists other participants who live near him/her who are potential carpool prospects, and to provide a complete printout of all participants to the DoD Parking Control Office and the General Services Administration (GSA).

Individuals - To contact other participants on either his/her individual printout or area card, or the DoD Parking Control Office's complete printout to determine their interest in carpooling.

EXTERNAL USERS, USES, AND PURPOSES

General Services Administration - To carpool data in area-wide system when and if implemented.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Computer magnetic tapes, disks and paper printouts for the Pentagon building carpools. Manual storage within self-help carpool locator board for Federal Building 2 participants.

Retrievability:

Information is accessed and retrieved by name and home address map grid for Pentagon building participants. Information is manually accessed and retrieved from cards in map grids for Federal Building 2 participants.

Safeguards:

Pentagon - All participants have access to the data, which is under direct control of the DoD Parking Control Office. Office is locked and guarded. Computer media resident at the Air Force Data Services Center is stored in controlled areas. Dial-up computer terminal access is controlled by user passwords that are periodically changed.

Federal Building 2 - All participants have access to the data. Building has security guards. System is maintained in an area secured during nonworking hours and within close view of security officers.

Retention and disposal:

Data is retained only on active participants. Records of personnel removed from the Pentagon Carpool Locator shall be kept one to three months and then destroyed. Records of personnel removed from the Federal Building 2 carpool locator shall be destroyed upon removal.

System manager(s) and address:

Director, Space Management and Services, Washington Headquarters Services, Department of Defense, Pentagon, Washington, D.C. 20301.

Notification procedure:

Information may be obtained from:
Director, Space Management and Services
Washington Headquarters Services
Department of Defense
Room 3C345, Pentagon
Washington, D.C. 20301
Telephone: 202-697-7241

Record access procedures:

Requests from individuals should be addressed to: Director, Space Management and Services, Washington Headquarters Services, Department of Defense, Room 3C345, Pentagon, Washington, D.C. 20301.

Written requests for information should contain the full name of the individual, current address and telephone number.

For personal visits, the individual should be able to provide some acceptable identification, that is, driver's license or DoD building pass.

The computer system has the facility to access all data stored in the data base. Central Parking Control has exclusive access to the data base and controls updating the files.

Contesting record procedures:

The Agency's rules for access to records and for contesting contents and appealing initial determinations by the individual concerned are contained in 32 CFR 286b and OSD Administrative Instruction No. 81.

Record source categories:

Carpool Locator Card (DD Form 2170).

Systems exempted from certain provisions of the act:

None.

DEFENSE ADVANCED RESEARCH PROJECT AGENCY

REQUESTING RECORDS

Records are retrieved by name or by some other personal identifier. It is therefore especially important for expeditious service when requesting a record that particular attention be provided to the Notification and/or Access Procedures of the particular record system involved so as to furnish the required personal identifiers, or any other pertinent personal information as may be required, to locate and retrieve the record.

BLANKET ROUTINE USES

Certain blanket 'routine uses' of the records have been established, that are applicable to every record system maintained within the Department of Defense, unless specifically stated otherwise within a particular record system. These additional blanket routine uses of the records are published below, only once in the interest of simplicity, economy and to avoid redundancy, before the individual record system notices begin rather than repeating them in every individual record system.

ROUTINE USE - LAW ENFORCEMENT

In the event that a system of records maintained by this component to carry out its functions indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute, or by regulation, rule or order issued pursuant thereto, the relevant records in the system of records may be referred, as a routine use, to the appropriate agency, whether federal, state, local or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, rule, regulation or order issued pursuant thereto.

ROUTINE USE - DISCLOSURE WHEN REQUESTING INFORMATION

A record from a system of records maintained by this component may be disclosed as a routine use to a federal, state or local agency maintaining civil, criminal or other relevant enforcement information or other pertinent information, such as current licenses, if necessary to obtain information relevant to a component decision concerning the hiring or retention of an employee, the issuance of a security clearance, the letting of a contract, or the issuance of a license, grant or other benefit.

ROUTINE USE - DISCLOSURE OF REQUESTED INFORMATION

A record from a system of records maintained by this component may be disclosed to a federal agency, in response to its request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

ROUTINE USE - CONGRESSIONAL INQUIRIES

Disclosure from a system of records maintained by this component may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

ROUTINE USE WITHIN THE DEPARTMENT OF DEFENSE

A record from a system of records maintained by this component may be disclosed as a routine use to other components of the Department of Defense if necessary and relevant for the performance of a lawful function such as, but not limited to, personnel actions, personnel security actions and criminal investigations of the Component requesting the record.

ROUTINE USE - PRIVATE RELIEF LEGISLATION

Relevant information contained in all systems of records of the Department of Defense published on or before August 22, 1975, will be disclosed to the Office of Management and Budget in connection with the review of private relief legislation as set forth in OMB Circular A-19 at any stage of the legislative coordination and clearance process as set forth in that Circular.

ROUTINE USE - DISCLOSURES REQUIRED BY INTERNATIONAL AGREEMENTS

A record from a system of records maintained by this Component may be disclosed to foreign law enforcement, security, investigatory, or administrative authorities in order to comply with requirements imposed by, or to claim rights conferred in international agreements and arrangements including those regulating the stationing and status in foreign countries of Department of Defense military and civilian personnel.

ROUTINE USE - DISCLOSURE TO STATE AND LOCAL TAXING AUTHORITIES

Any information normally contained in IRS Form W-2 which is maintained in a record from a system of records maintained by this Component may be disclosed to State and local taxing authorities with which the Secretary of the Treasury has entered into agreements pursuant to Title 5, U.S.Code, Sections 5516, 5517, 5520, and only to those State and local taxing authorities for which an employee or military member is or was subject to tax regardless of whether tax is or was withheld. This routine use is in accordance with Treasury Fiscal Requirements Manual Bulletin Nr. 76-07.

ROUTINE USE - DISCLOSURE TO THE OFFICE OF PERSONNEL MANAGEMENT

A record from a system of records subject to the Privacy Act and maintained by this component may be disclosed to the Office of Personnel Management concerning information on pay and leave, benefits, retirement deductions, and any other information necessary for the Office of Personnel Management to carry out its legally authorized Government-wide personnel management functions and studies.

ROUTINE USE - DISCLOSURE OF INFORMATION TO NARS (GSA)

A record from a system of records maintained by this component may be disclosed as a routine use to the National Archives and Records Service of the General Services Administration in records management inspections conducted under authority of 44 U.S.C. 2904 and 2906.

ROUTINE USE - DISCLOSURE TO DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

All systems of records relating to compensation, employment or retirement, or extracts therefrom, maintained by this Component may be disclosed as a routine use to the Department of Health, Education, and Welfare for the purpose of comparing such record with records of programs administered by and in the possession of the Department of Health, Education, and Welfare in order to verify information where such verification is required by law or regulation or to identify violations or potential violations of law, whether criminal, civil, or regulatory, and whether arising by general statute or particular program statute, or by regulation, rule, or order issued pursuant thereto.

E DARPA 001

System name:

Travel File.

System location:

Administrative Services Office, Defense Advanced Research Projects Agency (DARPA), 1400 Wilson Boulevard, Arlington, Va. 22209.

Categories of individuals covered by the system:

All DARPA employees, military and civilian, who make one or more TDY trips for DARPA. Selected Government employees who visit DARPA on official business at DARPA's expense and certain nonGovernment personnel traveling on Invitational Travel Orders for DARPA.

Categories of records in the system:

Traveler's name, office, days authorized, travel date, estimated cost, (other), airlines ticket costs and status.

Authority for maintenance of the system:

Title 5, United States Code, Section 301; Department of Defense Directive 5105.41, 'Defense Advanced Research Projects Agency (DARPA)', June 8, 1978.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

INTERNAL USERS, USES, AND PURPOSES

Used by the Director and Deputy Directors, Assistant Directors, Staff Assistants, Project Officers, and Personnel and Administrative Officers, DARPA - Internal management administrative and budgetary needs. Provides daily, weekly and monthly status reports to top management officials concerning status of travel funds.

EXTERNAL USERS, USES, AND PURPOSES

None.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Computer paper printouts, paper records and correspondence in file folders, also, magnetic disc.

Retrievability:

Accessed by last name, by office, or by any of the data files listed in 'Categories of records in the system:'.

Safeguards:

Paper copies are maintained in areas accessible only to authorized personnel. Building employs security guards. File access is available to authorized personnel who have been assigned system passwords.

Retention and disposal:

Paper files will be destroyed by burning or pulping immediately after they have served their purposes or after 2 years, whichever occurs first. There are no plans to retire or destroy Automatic Data Processing (ADP) files.

System manager(s) and address:

Administrative Officer, DARPA, 1400 Wilson Boulevard, Arlington, Va. 22209.

Notification procedure:

Information may be obtained from:
Administrative Officer, DARPA
Room 607, Architect Building
1400 Wilson Boulevard
Arlington, Va. 22209
Telephone: 202-694-3032

Record access procedures:

Requests from individuals should be addressed to: Administrative Officer, DARPA, 1400 Wilson Boulevard, Arlington, Va. 22209.

Written requests for information should contain the full name of the individual, the period for which the information is required and specific categories of information required.

For personal visits, the individual should be able to provide DoD Identification Card.

Contesting record procedures:

The Agency's rules for access to records and for contesting contents and appealing initial determinations by the individual concerned are contained in 32 CFR 286b and OSD Administrative Instruction No. 81.

Record source categories:

DARPA Special Orders (TDY, Invitational, PCS, etc.). Travel Vouchers as submitted by travelers and as returned by the local finance offices.

Systems exempted from certain provisions of the act:

None.

E DARPA 002

System name:

Biographical Sketch.

System location:

Manpower Office, Defense Advanced Research Projects Agency (DARPA), 1400 Wilson Boulevard, Arlington, Va. 22209.

Categories of individuals covered by the system:

All DARPA current and past employees, military and civilian.

Categories of records in the system:

Biographical sketch contains name, Date of Birth (DOB), home address, home phone; Service Computation Date (SCD), DARPA reporting date, DARPA project office, room number, office phone, position title and grade; experience; education, degree/year and field; awards or special achievements; spouse's name; remarks. Additional data for military personnel includes temporary rank/grade, permanent rank/grade; professional training received within past three years.

Authority for maintenance of the system:

Title 5, United States Code, Section 301; Department of Defense Directive 5105.41, 'Defense Advanced Research Projects Agency (DARPA)', June 8, 1978.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

INTERNAL USERS, USES, AND PURPOSES

Used by the Director and Deputy Directors, Assistant Directors, Staff Assistants, Project Officers, and Personnel and Manpower Officers, DARPA - To update management with a concise sketch of DARPA employees, when needed for award ceremonies or interviews.

EXTERNAL USERS, USES, AND PURPOSES

None.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Biographical sketches are in employee's file folder.

Retrievability:

Accessed by last name.

Safeguards:

Combination lock file cabinets. Material is maintained in areas accessible only to authorized personnel. Building employs security guards.

Retention and disposal:

Records are maintained while employee is with DARPA; records are destroyed by burning 2 years after employee has left DARPA.

System manager(s) and address:

Manpower Officer, Defense Advanced Research Projects Agency (DARPA), 1400 Wilson Boulevard, Arlington, Va. 22209.

Notification procedure:

Information may be obtained from:
Manpower Officer, DARPA
Room 605, Architect Building
1400 Wilson Boulevard
Arlington, Va. 22209
Telephone: 202-694-3077

Record access procedures:

Requests from individuals should be addressed to: Manpower Officer, DARPA, 1400 Wilson Boulevard, Arlington, Va. 22209.

Written requests for information should contain the full name of the individual, his project office, and period employed in DARPA.

For personal visits, the individual first needs to identify himself as a DARPA employee.

Contesting record procedures:

The Agency's rules for access to records and for contesting contents and appealing initial determinations by the individual concerned are contained in 32 CFR 286b and OSD Administrative Instruction No. 81.

Record source categories:

Information is provided by individuals concerned.

Systems exempted from certain provisions of the act:

None.

E DARPA 004

System name:

DARPA Personnel.

System location:

Manpower Office, Defense Advanced Research Projects Agency (DARPA), 1400 Wilson Boulevard, Arlington, Va. 22209.

Categories of individuals covered by the system:

Current and former DARPA employees, civilian and military, consultants, and part-time employees.

Categories of records in the system:

File contains individual's Biographical Data: Name, Prename, Date of Birth (DOB), Age, Education; Classification Data: Job Series, Job Title, Position Description Number, Salary; Grade Data: Grade Type, Grade Step, DARPA Promotion, Last Within Grade Increase (WGI), Next Within Grade Increase (WGI); Office of Personnel Management Data: Service Computation Date (SCD), Years in Government; DARPA Data: Project, Civilian-Military Professional Support, Project Number, Entered on Duty (EOD) DARPA: Left DARPA, Years in DARPA; Military Data: Rank, Service, Reassignment Due, Slot Rank, DARPA Award, Date of Rank, Position Description; Review Data: Clearance, Current Office Assignment Data, Eligibility for Retirement; Remarks; Mailing Data: Title, Name, Spouse's Name, Street, City, State, Zip Code, Home Phone; Office Data: Name, Office Phone, Room, Division.

Authority for maintenance of the system:

Title 5, United States Code, Section 301; Department of Defense Directive 5105.41, "Defense Advanced Research Projects Agency (DARPA)", June 8, 1977.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

INTERNAL USERS, USES, AND PURPOSES

Used by the Director and Deputy Directors, Assistant Directors, Staff Assistants, Project Officers, and Personnel and Manpower Officers, DARPA. Information in different combinations is used for monthly manpower counts, staffing balance for civilian vs. military, professional vs. clerical, grade and salary count. Individual organizational configuration only is available to appropriate Office Directors for their managerial needs.

EXTERNAL USERS, USES, AND PURPOSES

None.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Magnetic disk, computer paper printouts, paper records, and correspondence in file folders.

Retrievability:

Data is retrievable by last name as well as by any of the data fields listed in "Categories of records in the system:".

Safeguards:

Access to total file limited by password, building employs security guards. Files are maintained in combination lock file cabinets and in areas accessible only to authorized personnel that are properly screened and trained.

Retention and disposal:

Files are permanent. There are no plans to retire or destroy Automatic Data Processing (ADP) files. Paper files are destroyed immediately after serving the purpose for which prepared.

System manager(s) and address:

Manpower Officer, DARPA, 1400 Wilson Boulevard, Arlington, Va. 22209.

Notification procedure:

Information may be obtained from:
Manpower Officer, DARPA
Room 605, Architect Building
1400 Wilson Boulevard
Arlington, Va. 22209
Telephone: 202-694-3077

Record access procedures:

Requests from individuals should be addressed to: Manpower Officer, DARPA, 1400 Wilson Boulevard, Arlington, Va. 22209.

Written requests for information should contain the full name of the individual, the DARPA office assigned to currently or previously and the period of employment with DARPA.

For personal visits, the individual should be able to provide some acceptable identification, such as DARPA pass, DoD pass, or verbal information that could be verified in his file.

Contesting record procedures:

The Agency's rules for access to records and for contesting contents and appealing initial determinations by the individual concerned are contained in 32 CFR 286b and OSD Administrative Instruction No. 81.

Record source categories:

Information is provided by individuals concerned.

Systems exempted from certain provisions of the act:

None.

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UNITED STATES AIR FORCE

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ROUTINE USE - LAW ENFORCEMENT

In the event that a system of records maintained by this component to carry out its functions indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute, or by regulation, rule or order issued pursuant thereto, the relevant records in the system of records may be referred, as a routine use, to the appropriate agency, whether federal, state, local or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, rule, regulation or order issued pursuant thereto.

ROUTINE USE - DISCLOSURE WHEN REQUESTING INFORMATION

A record from a system of records maintained by this component may be disclosed as a routine use to a federal, state or local agency maintaining civil, criminal or other relevant enforcement information or other pertinent information, such as current licenses, if necessary to obtain information relevant to a component decision concerning the hiring or retention of an employee, the issuance of a security clearance, the letting of a contract, or the issuance of a license, grant or other benefit.

ROUTINE USE - DISCLOSURE OF REQUESTED INFORMATION

A record from a system of records maintained by this component may be disclosed to a federal agency, in response to its request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

ROUTINE USE - CONGRESSIONAL INQUIRIES

Disclosure from a system of records maintained by this component may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

ROUTINE USE WITHIN THE DEPARTMENT OF DEFENSE

A record from a system of records maintained by this component may be disclosed as a routine use to other components of the Department of Defense if necessary and relevant for the performance of a lawful function such as, but not limited to, personnel actions, personnel security actions and criminal investigations of the Component requesting the record.

ROUTINE USE - PRIVATE RELIEF LEGISLATION

Relevant information contained in all systems of records of the Department of Defense published on or before August 22, 1975, will be disclosed to the Office of Management and Budget in connection

with the review of private relief legislation as set forth in OMB Circular A-19 at any stage of the legislative coordination and clearance process as set forth in that Circular.

ROUTINE USE - DISCLOSURES REQUIRED BY INTERNATIONAL AGREEMENTS

A record from a system of records maintained by this Component may be disclosed to foreign law enforcement, security, investigatory, or administrative authorities in order to comply with requirements imposed by, or to claim rights conferred in international agreements and arrangements including those regulating the stationing and status in foreign countries of Department of Defense military and civilian personnel.

ROUTINE USE - DISCLOSURE TO STATE AND LOCAL TAXING AUTHORITIES

Any information normally contained in IRS Form W-2 which is maintained in a record from a system of records maintained by this Component may be disclosed to State and local taxing authorities with which the Secretary of the Treasury has entered into agreements pursuant to Title 5, U.S.Code, Sections 5516, 5517, 5520, and only to those State and local taxing authorities for which an employee or military member is or was subject to tax regardless of whether tax is or was withheld. This routine use is in accordance with Treasury Fiscal Requirements Manual Bulletin Nr. 76-07.

ROUTINE USE - DISCLOSURE TO THE OFFICE OF PERSONNEL MANAGEMENT

A record from a system of records subject to the Privacy Act and maintained by this component may be disclosed to the Office of Personnel Management concerning information on pay and leave, benefits, retirement deductions, and any other information necessary for the Office of Personnel Management to carry out its legally authorized Government-wide personnel management functions and studies.

ROUTINE USE - DISCLOSURE OF INFORMATION TO NARS (GSA)

A record from a system of records maintained by this component may be disclosed as a routine use to the National Archives and Records Service of the General Services Administration in records management inspections conducted under authority of 44 U.S.C. 2904 and 2906.

ROUTINE USE - DISCLOSURE TO DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

All systems of records relating to compensation, employment or retirement, or extracts therefrom, maintained by this Component may be disclosed as a routine use to the Department of Health, Education, and Welfare for the purpose of comparing such record with records of programs administered by and in the possession of the Department of Health, Education, and Welfare in order to verify information where such verification is required by law or regulation or to identify violations or potential violations of law, whether criminal, civil, or regulatory, and whether arising by general statute or particular program statute, or by regulation, rule, or order issued pursuant thereto.

F01003 01ACYVA

System name:

01003-01ACYVA Background Material.

System location:

Air Reserve Personnel Center, Denver, CO 80280.

Categories of individuals covered by the system:

Air Force Reserve personnel.

Categories of records in the system:

Letter request for orders, amendments, including justification on files on special authorizations when required by order publishing activity.

Authority for maintenance of the system:

10 USC 1162.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Information on form is utilized for publication of discharge orders used by military personnel and AF civilian employees within the office and verify that discharge orders were published.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Maintained in card files.

Retrievability:

Filed by Name, Social Security Number (SSN) or by other identification number or system identifier.

Safeguards:

Records are accessed by person(s) responsible for servicing the record system in performance of their official duties. Records are stored in locked cabinets or rooms.

Retention and disposal:

Retained in office files for 1 year after annual cut-off, then destroyed by tearing into pieces, shredding, pulping, macerating, or burning.

System manager(s) and address:

Commander, Air Reserve Personnel Center (ARPC), Denver, CO 80280.

Notification procedure:

Requests from individuals should be addressed to the Documentation Management Officer, ARPC/DADP, Denver, Colorado 80280. Written requests for information should contain full name, SSN, current mailing address and, if known, the case (control) number on correspondence received from ARPC. Records may be reviewed in the Records Review Room, Air Reserve Personnel Center, Denver, Colorado between 8:00 am and 3:00 pm on normal work days. Visitors wishing to see their records should provide a current Reserve. identification card and/or driving license and some verbal information that could verify the person's SSN at time of discharge.

Record access procedures:

Individual can obtain assistance in gaining access from the Documentation Management Officer, ARPC/DADP, Denver CO 80280; telephone (303) 394-6667.

Contesting record procedures:

The Air Force's rules for access to records and for contesting and appealing initial determinations by the individual concerned may be obtained from the Systems Manager.

Record source categories:

Information obtained from medical institutions, police and investigating officers, witnesses and source documents (such as reports) prepared on behalf of the Air Force by boards, committees, panels, auditors, and so forth.

Systems exempted from certain provisions of the act:

NONE

F01102 AF A

System name:

01102-AF-A Congressional and Other High Level Inquiries.

System location:

At Air Force Manpower and Personnel Center, Major Commands, Separate Operating Agencies and Consolidated Base Personnel Offices (CBPOs) at Air Force installations. Official mailing addresses are in the Department of Defense directory in the appendix to the Air Force's systems notice.

Categories of individuals covered by the system:

Air Force military personnel serving on active duty, in the Air Force Reserve, or retired or discharged from the Air Force. Civilian personnel currently or formerly employed by the Air Force. Personnel attending Air Force training institutions or undergoing training under Air Force sponsorship.

Categories of records in the system:

Background information and information reflecting Air Force policies and procedures; copies of inquiries received from the Office of the President, Members of Congress and other high level sources requesting information by or on behalf of a constituent; copies of replies to such inquiries including transmittal media used en route from and to the Air Force Office of Legislative Liaison (SAF/LL).

Authority for maintenance of the system:

10 USC 8012, Secretary of the Air Force; power and duties; delegation by; and 10 USC 8032, general

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Information pertinent to the inquiry is forwarded to SAF/LL for preparation of the reply to the high level requester. In some instances, response may be direct to the requester without referral through SAF/LL; however, when required by directive, copies of such responses are furnishedbe used in responding to subsequent

inquiries concerning the same individual. The record system mayto determine trends on the nature of complaints and questions and for statistical purposes.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Maintained in visible file binders/cabinets.

Retrievability:

Filed by name.

Safeguards:

Records are accessed by the custodian of the record system and by persons responsible for servicingin performance of their official duties who are properly cleared for need-to-know. Records are stored in securely file containers/cabinets, locked cabinets or rooms.

Retention and disposal:

Retained for 2 years after end of year in which case was closed, then destroyed by tearing into pieces, shredding, macerating, pulping or burning.

System manager(s) and address:

Deputy Chief of Staff/Personnel, Headquarters United States Air Force; commanders of major air commands, numbered air forces or comparable level activities.

Notification procedure:

Requests from individuals must contain reasonable particulars about the subject in question and should be addressed to the respective system manager.

Record access procedures:

Individual can obtain assistance in gaining access from the respective system manager. Individual's request must contain reasonable identifying particulars about the subject in question.

Contesting record procedures:

The Air Force's rules for access to records and for contesting and appealing initial determinationsby the individual concerned may be obtained from the Systems Manager.

Record source categories:

Information provided by major command or consolidated base personnel office personnel, manual or supersonnel records, Air Force policies and procedures, copies of inquiries, congressional/high level officials'/constituents' comments or requests and Air Force replies thereto

Systems exempted from certain provisions of the act:

None.

F01102 ARPC A

System name:

01102-ARPC-A Locator or Personnel Data

System location:

At Air Reserve Personnel Center, Denver CO 80280.

Categories of individuals covered by the system:

Air Force Reserve and Air National Guard personnel. Retired and former Air Force military personnel. ARPC civilian personnel. Air Force active duty military personnel.

Categories of records in the system:

Cards, forms, ledgers, record request, computer listings containing individual's name or names, Social Security Number (SSN), Air Force service number, grade, reserve status, present and former address, record of employer, parent and other relative of reservist or personnel data. Veterans Administration claim number, education institutes reservist attended, school affiliations. Correspondence to and from Federal agencies and employers trying to establish current address of reservists; vouchers for medical service, final payment of medical service bills, medical action required; notes indicating if individual is authorized to earn point credit; and other personnel data. Documents which contain a summary of action taken or to be taken.

Authority for maintenance of the system:

10 USC 267, Ready Reserve; Standby Reserve; Retired Reserve: placement and status of members; 10 USC 268, Ready Reserve: Training requirements; 10 USC 271, Ready Reserve: continuous screening; 10 USC 273, Standby Reserve: composition, inactive status list; 10 USC 275, Personnel records; 10 USC 278, Dissemination of Information; 10 USC 279, Training Reports; 10 USC 8012, Secretary of the Air Force: powers and duties, delegation by; 10 USC 591, Reserve components: qualifications; 10 USC 592, Commissioned officer grades; 10 USC 593, Commissioned officer: appointment, how made, term; 10 USC 594, Commissioned officers: original appointment limitation. Routine uses of records maintained in the system, including

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Used to control records distribution, to record location of record, actions taken or/to be taken, used to manage individual's records, to answer inquiries from individual and Air Force units to which individuals are assigned or are to be assigned or other agencies with a need to know of action taken, verify if author of a letter, was a member/or is a member of reserve and what his or her SSN should be, search for good address and stop computer mail from going to bad address, refer for administrative discharge action on reservist that cannot be located, advise reservist or civilian of reserve matters or center actions, provide comprehensive record of all medical actions taken by Surgeon's Office and record authorization for physical examinations at Government expense or no expense and record voucher number, preparing point credit authorization and forwarding authenticated point credit forms to servicing personnel office.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Maintained in file folders, in note books/binders, in visible file binders/cabinets, in card files, on paper tape and on computer cards.

Retrievability:

Filed by Name, by Social Security Number (SSN), by Military Service Number, by other identification number or system identifier and/or voucher number, school affiliation, by Air Force Service Number, or by last address of Reservist.

Safeguards:

Records are accessed by custodian of the record system and by person(s) responsible for servicing the record system in performance of their official duties who are properly screened and cleared for need-to-know. Records are protected by guards.

Retention and disposal:

Retained in office files until superseded, obsolete, no longer needed for reference, or on inactivation, then destroyed by tearing into pieces, shredding, pulping, or macerating.

System manager(s) and address:

Commander Air Reserve Personnel Center (ARPC), Denver CO 80280.

Notification procedure:

Request from individual should be addressed to Documentation Management Officer, ARPC/DADF, Denver CO 80280. Written request for information should contain full name of individual, SSN (Social Security Number), current address, and the case (control) number shown on correspondence received from Center. Records may be reviewed in records review room ARPC, Denver CO 80280, between 8:00 A.M. and 3:00 P.M. on normal work days. For personal visits, the individual should provide current Reserve I.D. card and/or drivers license and give some verbal information that could verify his/her military records such as place of birth, reserve status.

Record access procedures:

Individual can obtain assistance in gaining access from Documentation Management Officer, ARPC/DADP, Denver, CO 80280, telephone (303) 394-4667.

Contesting record procedures:

The Air Force's rules for access to records and for contesting and appealing initial determinations by the individual concerned may be obtained from the Systems Manager.

Record source categories:

Extract from individual records, individual advance personnel data computer system. For address information secured from last recorded employer, postmaster of city of last recorded address, telephone information operator at last city of good address, parents of reservist, other relatives of reservist, Veterans Administration if reservist has a claim number listed in master personnel record, college or university reservist attended, Selective Service Boards, Internal Revenue Service, public utilities or any other lead that may be found in the master personnel record of the reservist, military pay records at Air Force Accounting and Finance Center, Lowry AFB, Denver CO 80279, log books and from Consolidated Base Personnel Offices. Medical information is also secured from medical facilities, physicians, medical specialists.

Systems exempted from certain provisions of the act:

NONE

F01102 DPXVH F

System name:

01102 DPXVH F Congressional Inquiries.

System location:

Headquarters United States Air Force, Washington DC 20330 and Office of the Secretary of the Air Force Office of Legislative Liaison Congressional Inquiry Division, Washington, DC (HQ USAF/SAF/LL, Washington, DC 20330).

Categories of individuals covered by the system:

The categories of individuals on whom records are maintained: All personnel, military and civilian, who submitted a request for assistance or information to a Congressional member, the White House, Inspector General (IG), or other high level persons during the current calendar year concerning Air Force policy and/or procedures on housing.

Categories of records in the system:

Original (or copy) of individual's request for assistance or information, transmittal cover letter from the Office of the Secretary of the Air Force, Legislative Liason (SAF/LL), coordination copy of proposed response furnished to SAF/LL, and background information.

Authority for maintenance of the system:

10 U.S.C., 8012 and 8032; 44 U.S.C., 3101.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

The information in the record system is collected to provide the information requested by the individual and pertains only to that individual request. The information collected is then forwarded to SAF/LL for use in providing a response. Such information may be utilized to provide answers to requests for similar information or to provide further information in response to a follow-up inquiry on behalf of the same individual. This information is provided the Congress and is furnished through the offices of the Department of the Air Force.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Maintained in visible file binders/cabinets.

Retrievability:

Filed by Name.

Safeguards:

Records are accessed by custodian of the record system and by person(s) responsible for servicing the record system in performance of their official duties who are properly screened and cleared for need-to-know. Records are stored in locked cabinets or rooms.

Retention and disposal:

Retained for one year after end of year in which the case was closed, transferred to a staging area for one additional year, then destroyed by tearing into pieces, shredding, pulping, macerating, or burning.

System manager(s) and address:

Director, Housing and Services, Air Force Engineering and Services Center, Tyndall AFB, FL 32403.

Notification procedure:

Requests from individuals should be addressed to the Systems Manager.

Record access procedure:

Individual can obtain assistance in gaining access from the Systems Manager.

Contesting record procedures:

The Air Force's rules for access to records and for contesting and appealing initial determinations by the individual concerned may be obtained from the Systems Manager.

Record source categories:

Air Force policy and procedures; responses to inquiries from members of Congress, the White House, Inspector General and other high level agencies; copies of responses generated thereto.

Systems exempted from certain provisions of the act:

NONE

F01102 SAC A

System name:

Logistic Personnel Management System.

System location:

Deputy Commander for Maintenance or Deputy Commander for Resources (at Air Force installations) wisCommand (SAC) and Deputy Chief of Staff for Logistics at Strategic Air Command Headquarters. Officiare in the Department of Defense directory in the appendix to the Air Force's systems notice.

Categories of individuals covered by the system:

Strategic Air Command personnel assigned to logistics or maintenance duties.

Categories of records in the system:

Files related to qualifications, experience, education, and degree of security clearance of logisti

Authority for maintenance of the system:

10 U.S.C. 8012, Secretary of the Air Force: Power and duties; delegation by.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

To develop a record source on logistics personnel at unit level in order to determine overall job qand historical data for analysis by unit and MAJCOM. Files will provide a source of data to help determine future training requirements, protection capab

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Manually manipulated file folders.

Retrievability:

Retrieved by name or weapon system to which individual is assigned.

Safeguards:

Records are accessed by custodian of unit files and by personnel responsible for servicing the recoof official duties. File folders are stored in locked rooms or drawers.

Retention and disposal:

Files are destroyed when superseded, or on reassignment from Strategic Air Command or separation of

System manager(s) and address:

Deputy Chief of Staff, Logistics, Headquarters Strategic Air Command and Deputy Commander MaintenanDeputy Commander Resources, at Strategic Air Command base or organization.

Notification procedure:

Deputy Chief of Staff Logistics, Deputy Commander Maintenance, or Deputy Commander Resources. Requests to determine existence of record should include full name, grade and approximate dates individual was assigned to Strategic Air Command logistics or maintenance organization after 1

Record access procedure:

Access to manual files is controlled by Deputy Chief of Staff, Logistics, at Headquarters StrategicDeputy Commander Resources at each Strategic Air Command organization.

Contesting record procedure:

The Air Force's rules for access to records and for contesting and appealing initial determination may be obtained from the system manager.

Record source categories:

Information obtained from individual.

Systems exempted from certain provisions of the act:

None.

F01201 0QPTFLA

System name:

01201 0QPTFLA Information Requests-Freedom of Information Act.

System location:

Air Force installations.

Categories of individuals covered by the system:

All persons who have requested documents under the provisions of the Freedom of Information Act.

Categories of records in the system:

Administration of release of information to the public.

Authority for maintenance of the system:

5 U.S.C. 552.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

To control administrative processing of requests for information used by freedom of information manager.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Maintained in file folders.

Retrievability:

Filed by Name.

Safeguards:

Records are accessed by custodian of the record system. Records are stored in locked cabinets or rooms.

Retention and disposal:

Retained in office files for one year after annual cut-off, transferred to a staging area for two additional years, then destroyed by tearing into pieces, shredding, pulping, macerating, or burning.

System manager(s) and address:

Director of Administration, Headquarters United States Air Force.

Notification procedure:

Contact the Chief central base administration at each Air Force Installation.

Record access procedures:

Contact the Chief of central base administration at each Air Force installation.

Contesting record procedures:

The Air Force's rules for access to records and for contesting and appealing initial determinations by the individual concerned may be obtained from the Systems Manager.

Record source categories:

Freedom of information manager as result of requests for information from members of public.

Systems exempted from certain provisions of the act:

NONE

F01201X01ACYVA

System name:

01201X01ACYVA Fee Case File

System location:

Air Reserve Personnel Center, Denver, CO 80280.

Categories of individuals covered by the system:

Air Force Reserve and Air National Guard personnel.

Categories of records in the system:

Copies of general correspondence, chargeable case control, and public voucher for refunds involving collection of fees for reproduction of documents from an Air Force reserve or Air National Guard members master personnel record at the request or authorization of the member for release to himself/or herself or approved agencies.

Authority for maintenance of the system:

10 USC 8012

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Purpose is for suspense and control to insure chargeable fees are collected and to verify action completed.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Maintained in file folders.

Retrievability:

Filed by Name and Social Security Number (SSN).

Safeguards:

Records are accessed by custodian of the record system and by person(s) responsible for servicing the record system in performance of their official duties who are properly screened and cleared for need-to-know. Records are stored in safes.

Retention and disposal:

Filed for two years then destroyed by tearing, pulping, or burning.

System manager(s) and address:

Commander Air Reserve Personnel Center (ARPC), Denver, CO 80280.

Notification procedure:

Requests from individuals should be addressed to the Documentation Management Officer, ARPC/DADP, Denver, Colorado 80280. Written requests for information should contain full name, SSN, current mailing address and, if known, the case (control number on correspondence received from ARPC. Records may be reviewed in the Records Review Room, Air Reserve Personnel Center, Denver, Colorado between 8:00 am and 3:00 pm on normal work days. Visitors wishing to see their records should provide a current Reserve identification card and/or driving license and some verbal information that could verify the person's SSN at time of discharge.

Record access procedures:

Individual can obtain assistance in gaining access from the Documentation Management Officer, ARPC/DADP, Denver, CO 80280, telephone (303) 394-4667.

Contesting record procedures:

The Air Force's rules for access to records and for contesting and appealing initial determinations by the individual concerned may be obtained from the Systems Manager.

Record source categories:

Information from other military agencies and the National Personnel Records Center, St. Louis, MO 63132.

Systems exempted from certain provisions of the act:

NONE

F02501 01ACYVA

System name:

02501-01ACYVA Manpower Standards Study Reports.

System location:

Air Reserve Personnel Center, Denver, CO 80280.

Categories of individuals covered by the system:

Air Force active duty military personnel. Air Force civilian employees.

Categories of records in the system:

Workload and man hour record

Authority for maintenance of the system:

31 USC sections 18, 18a and 18b.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

To collect manhour and workload data for the purpose of comparing work accomplished to the standard and to expected to be done, to identify excessive workload buildups and to determine individual employee performance.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Maintained on computer magnetic tapes and on computer paper printouts.

Retrievability:

Filed by Social Security Number (SSN).

Safeguards:

Records are accessed by custodian of the record system and by person(s) responsible for servicing the record system in performance of their official duties who are properly screened and cleared for need-to-know. Records are protected by guards.

Retention and disposal:

Retained in office files for three months after monthly cut-off, then destroyed by tearing into pieces, shredding, pulping, macerating, or burning.

System manager(s) and address:

Commander Air Reserve Personnel Center (ARPC), Denver, CO 80280.

Notification procedure:

Requests from individuals should be addressed to the Documentation Management Officer, ARPC/DADP, Denver, Colorado 80280. Written requests for information should contain full name, SSN, current mailing address and, if known, the case (control) number on correspondence received from ARPC. Records may be reviewed in the Records Review Room, Air Reserve Personnel Center, Denver, Colorado between 8:00 am and 3:00 pm on normal work days. Visitors wishing to see their records should provide a current Reserve identification card and/or driving license and some verbal information that could verify the person's SSN at time of discharge.

Record access procedures:

Individual can obtain assistance in gaining access from Documentation Management Officer, ARPC/DADP CO, 80280, telephone (303) 394-4667.

Contesting record procedures:

The Air Force's rules for access to records and for contesting and appealing initial determinations by the individual concerned may be obtained from the Systems Manager.

Record source categories:

Information collected from individual.

Systems exempted from certain provisions of the act:

NONE

F03001 SAC A

System name:

03001 SAC A Drug Rehabilitation Action Management Information System.

System location:

At servicing Air Force (AF) installation Social Actions Offices, Consolidated Base Personnel Offices, Strategic Air Command Headquarters, SAC Drug Rehabilitation Center and Air Force Manpower and Personnel Center. Official mailing addresses are in the Department of Defense directory in the appendix to the Air Force's systems notice.

Categories of individuals covered by the system:

Air Force active duty military personnel who are identified as drug abusers.

Categories of records in the system:

As a minimum, the system contains computerized data and manual files related to drug abuse identification, category of abuse, acceptance of treatment, and subsequent personnel actions.

Authority for maintenance of the system:

5 U.S.C. 301, Departmental regulations; and 10 U.S.C. 8074, Commands: territorial organization.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

To identify and track a person's acceptance/declination and progress in the Strategic Air Command drug rehabilitation program and ultimate disposition (retained on active duty, separated, demoted, etc). Those authorized to have access to the files are base and command level social actions staffs, drug rehabilitation instructors, and selected command staff personnel. The files are used to maintain information on drug abusers, to measure the success of program objectives, to substantiate personnel actions, provide analysis reports to concerned managers and to support separation actions.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Computer disk/tape files and manual file folders.

Retrievability:

Filed by name, by other identification number or system identifier.

Safeguards:

Records are accessed by custodian of the record system and by person(s) responsible for servicing the record system in performance of their official duties who are properly screened and cleared for need-to-know. The computer file is secured on computer disk/tape by computer operations personnel. Manual file folders are stored in security file containers/cabinet safes.

Retention and disposal:

Computerized and manual files will be retained for two years from the date of identification of drug abuse, then disposed of in accordance with AFM 12-50.

System manager(s) and address:

Deputy Chief of Personnel, Strategic Air Command, SAC Drug Rehabilitation Center, McConnell AFB KS 67221, and base level Social Actions Offices.

Notification procedure:

Chief, Social Action, Strategic Air Command Headquarters for Computer Files or Det 1, 3902 ASW/CC/ McConnell AFB KS 67221, and base level Social Actions Offices for manual files. Requests to determine existence of record on file should include full name, grade, and unit of assignment. Personal visit proof of identification requires full name and possession of Department of Defense (DD Form 2AF) Armed Forces Identification Card, or driver's license and personrecognition of counselor.

Record access procedures:

Access to computer files is controlled by Chief of Social Actions, Headquarters Strategic Air Command. Access to manual files is controlled by Det 1, 3902 ABW/CC, McConnell AFB KS 67221 and by base level Chief, Social Actions Office.

Chief of Social Actions, Strategic Air Command Headquarters, Det 1, 3902 ABW/CC, McConnel AFB KS 67

Contesting record procedures:

The Air Force's rules for access to records and for contesting and appealing initial determinations by the individual concerned may be obtained from the Systems Manager.

Record source categories:

Information obtained from medical institution, personnel records, individuals.

Systems exempted from certain provisions of the act:

NONE

F03001 DPXVV A

System name:

03001-DPXVV-A File Designation, Drug Abuse, Waiver Requests.

System location:

Directorate of Student Resources, USAF Recruiting Service, Air Training Command, Randolph Air Force Base, Texas 78148 (ATC/RSS, Randolph AFB TX 78148); 3700 Personnel Processing Group, Lackland AFB, Texas 78236 (3700 PPG, Lackland AFB, Texas 78236); USAF Recruiting Service Detachment Headquarters; USAF Recruiting Service Offices; Deputy Chief of Staff, Education, Headquarters Air University, Maxwell AFB, Alabama 36112) (AU/ED, Maxwell AFB AL 36112); Directorate of Senior Programs, Headquarters Air Force Reserve Officer Training Corps (AFROTC), Maxwell AFB, Alabama 36112 (AFROTC/SD, Maxwell AFB, Alabama 36112); AFROTC Detachments; Directorate of Admissions and Registrar, United States Air Force Academy, USAF Academy, Colorado 80840 (USAFA/RR, USAF Academy, Colorado 80840);

Categories of individuals covered by the system:

Applicants for enlistment or commissioning who have a history of pre-service drug abuse and who have requested a waiver of their disqualification.

Categories of records in the system:

A Copy of the USAF Drug Abuse Certificate and Drug Abuse Circumstances, Recommendation of Intermediate commands, and cover letter containing HQ USAF decision on waiver request are maintained

Authority for maintenance of the system:

10 USC 504 and 44 USC 3101

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

This record is not released outside the Air Force. Records are maintained for future reference in the case of further inquiries relative to approval or disapproval of the request for waiver of pre-service drug abuse.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Maintained in visible file binders/cabinets.

Retrievability:

Filed by Name and Social Security Number (SSN).

Safeguards:

Records are accessed by custodian of the record system and by person(s) responsible for servicing the record system in performance of their official duties who are properly screened and cleared for need-to-know. Records are stored in safes and locked cabinets or rooms.

Retention and disposal:

After action on the request, the paper record is filed in secured file cabinets, retained for no more than six months, and destroyed by tearing into pieces.

System manager(s) and address:

Deputy Chief of Staff/Personnel, Headquarters United States Air Force.

Notification procedure:

Requests from individuals should be addressed to the Systems Manager.

Record access procedures:

Requests from individuals should be addressed to the system's manager

Contesting record procedures:

The Air Force's rules for access to records and for contesting and appealing initial determinations by the individual concerned may be obtained from the Systems Manager.

Record source categories:

Records maintained in the system are provided by either Air Training Command, Air University, or the USAF Academy.

Systems exempted from certain provisions of the act:

NONE

F03001XOBXQPCB

System name:

03001XOBXQPCB Military, Leadership, and Basic Cadet Training Order of Merit System.

System location:

United States Air Force Academy, USAF Academy CO 80840.

Categories of individuals covered by the system:

Air Force Academy cadets.

Categories of records in the system:

Military Order of Merit System consists of AFCW Form 1, Cadet Performance Report, Work Sheet, Cadet Military Rating, Computer produced rosters listing final Military Order of Merit standing, Leadership Order of Merit. System consists of computer produced roster listing final Leadership Order of Merit standing. Basic Cadet Training Order of Merit standings, attendance and course grades.

Authority for maintenance of the system:

44 U.S.C. 3101.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Used as an input in determining Military, Leadership, and Basic Cadet Training Order of Merit standing. Used to record results from Military Order of Merit and Leadership Order of Merit worksheet for computer processing, and to record final Military, Leadership and Basic Cadet Training Order of Merit standing. Used to record Basic Cadet Training attendance and course grade data.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Maintained in note books/binders and on computer paper printouts.

Retrievability:

Filed by Name and Military Service Number.

Safeguards:

Records are accessed by person(s) responsible for servicing the record system in performance of their official duties who are properly screened and cleared for need-to-know. Records are stored in locked cabinets or rooms.

Retention and disposal:

Retained in office files until superseded, obsolete, no longer needed for reference, or on inactivation, then destroyed by tearing into pieces, shredding, pulping, macerating, or burning.

System manager(s) and address:

Commandant of Cadets, USAF Academy CO 80840.

Notification procedure:

See Exemption

Record access procedures:

See Exemption

Contesting record procedures:

The Air Force's rules for access to records and for contesting and appealing initial determinations by the individual concerned may be obtained from the Systems Manager.

Record source categories:

See Exemption.

Systems exempted from certain provisions of the act:

Parts of this system may be exempt under 5 U.S.C. 552a (j) or (k), as applicable. For additional information, contact the Systems Manager.

F03001X0IACYVB

System name:

03001X0IACYVB Inquiries on the Reserve Program.

System location:

At Air Reserve Personnel Center (ARPC), Denver, Co 80280.

Categories of individuals covered by the system:

Air Force active duty officer and enlisted personnel. Air Force civilian employees. Air Force Reserve and Air National Guard personnel. Retired Air Force military personnel. Civilians.

Categories of records in the system:

Letters from active, reserve military personnel and civilians requesting assignment, vacancy search action in the Air Force reserve program.

Authority for maintenance of the system:

10 USC 8012

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

ARPC personnel answer questions on the reserve program and/or try to locate vacancies.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Maintained in file folders.

Retrievability:

Filed by Name and Social Security Number (SSN).

Safeguards:

Records are accessed by custodian of the record system and by person(s) responsible for servicing the record system in performance of their official duties. Records are protected by guards.

Retention and disposal:

Retained in office files until superseded, obsolete, no longer needed for reference, or on inactivation, then destroyed by tearing into pieces, shredding, pulping, macerating, or burning.

System manager(s) and address:

Commander Air Reserve Personnel Center (ARPC), Denver, CO 80280.

Notification procedure:

Requests from individuals should be addressed to the Documentation Management Officer, ARPC/DADP, Denver, Colorado 80280. Written requests for information should contain full name, SSN, current mailing address and, if known, the case (control) number on correspondence received from ARPC. Records may be reviewed in the Records Review Room, Air Reserve Personnel Center, Denver, Colorado between 8:00 am and 3:00 pm on normal work days. Visitors wishing to see their records should provide a current Reserve identification card and/or driving license and some verbal information that could verify his/her inquiry.

Record access procedures:

Individual can obtain assistance in gaining access from the Documentation Management Officer ARPC/DADP, Denver CO 80280, telephone (303) 394-4667.

Contesting record procedures:

The Air Force's rules for access to records and for contesting and appealing initial determinations by the individual concerned may be obtained from the Systems Manager.

Record source categories:

Information from individual.

Systems exempted from certain provisions of the act:

NONE

F03002 0IACYVA

System name:

03002-0IACYVA Applications for Identification (ID) Cards.

System location:

Air Reserve Personnel Center, Denver, CO 80280.

Categories of individuals covered by the system:

Air Force Reserve personnel.

Categories of records in the system:

Applications for ID cards and discharge orders.

Authority for maintenance of the system:

18 USC 499, 506 and 701.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Purpose is to suspend pending receipt of ID card or correspondence from reservist advising of prior disposition of identification card.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Maintained in file folders.

Retrievability:

Filed by Name and by Social Security Number (SSN).

Safeguards:

Records are accessed by custodian of the record system and by person(s) responsible for servicing the record system in performance of their official duties who are properly screened and cleared for need-to-know. Records are protected by guards.

Retention and disposal:

Destroy when notified that credential has been returned to issuing activity by tearing into pieces, shredding, pulping, macerating, or burning.

System manager(s) and address:

Commander Air Reserve Personnel Center (ARPC), Denver, CO 80280.

Notification procedure:

Requests from individuals should be addressed to the Documentation Management Officer, ARPC/DADP, Denver, Colorado 80280. Written requests for information should contain full name, SSN, current mailing address and, if known, the case (control) number on correspondence received from ARPC. Records may be reviewed in the Records Review Room, Air Reserve Personnel Center, Denver, Colorado between 8:00 am and 3:00 pm on normal work days. Visitors wishing to see their records should provide a current Reserve identification card and/or driving license and some verbal information that could verify the person's SSN at time of discharge.

Record access procedures:

Individuals can obtain assistance in gaining access from the Documentation Management Officer, ARPC/DADP, Denver, Colorado 80280; telephone (303) 394-4667.

Contesting record procedures:

The Air Force's rules for access to records and for contesting and appealing initial determinations by the individual concerned may be obtained from the Systems Manager.

Record source categories:

Information is extracted from master personnel record when individual is discharged from the Air Force Reserve.

Systems exempted from certain provisions of the act:

NONE

F03004 AFDPMDB

System name:

03004-AFDPMDB Advanced Personnel Data System (APDS).

System location:

Headquarters United States Air Force, Washington DC 20330. Air Force Manpower and Personnel Center, Randolph Air Force Base, TX 78148. Air Reserve Personnel Center, Denver, CO 80280. Headquarters of the major commands and separate operating agencies and at consolidated base personnel offices, at central civilian personnel offices (CCPOs) and at consolidated reserve personnel offices. Official mailing addresses are in the Department of Defense directory in the appendix to the Air Force's systems notice. The Central Data Processing facility for APDS is operated by the Directorate of Personnel Data Systems, Asst DCS/Personnel for Military Personnel, Headquarters USAF, Randolph AFB, TX, 78148. Remote terminals located within this Air Force Manpower and Personnel Center (AFMPC) complex permit authorized users access to the central data base. In addition, remote terminals located at Headquarters of the following major commands provide direct access to the Central Data Base at Randolph AFB for update and retrieval of data: Hq Air Training Command/DPD, Randolph AFB, TX 78148; Hq Strategic Air Command/DPD, Offutt AFB, NE 68113; Hq Tactical Air Command/DPD, Langley AFB, VA 23365; Hq Air Force Logistics Command/DPM, Wright Patterson AFB OH 45433; Hq Air Force Systems Command/DPD, Andrews AFB, MD 20331; Hq Air University/DPD, Maxwell AFB, AL 38112. Hq Military Airlift Command/DPD, Scott AFB, Il 62225; Hq USAF Electronic Security Command/DPD, San Antonio, TX 78243; Hq Air Force Communications Command/DPD, Scott AFB, IL 62225; Hq Air Force Reserve/DPD, Robins AFB, GA 31098; Hq Pacific Air Force/DPD, APO San Francisco 96553; HQ United States Air Force Europe/DPD, APO New York 09012; HQ Alaskan Air Command/DElmendorf AFB, AK 99506. Certain Air Force Staff Agencies, Separate Operating Activities and other specialized activities are provided remote access to the Central Data Base as required to discharge their respective functions. Remote terminals to support these requirements are found at the following locations: HQ USAF/Surgeon General, HQ USAF/Judge Advocate, HQ USAF/Director of Civilian Personnel, Washington DC 20314; The Pentagon, (HQ USAF/Director of Personnel Plans, HQ USAF/Director of Personnel Programs/HQ USAF/Reserve Personnel Division, National Guard Bureau/Air Personnel Division, HQ USAF/Assistant for Colonels' Assignments) Washington DC 20330; Air Force Intelligence Service, Air Reserve Personnel Ce/Director of Personnel Systems, Denver CO 80280; Hq Air Force Reserve, Robins AFB, GA 31098; United States Air Force Academy, Colorado Springs, CO 80840; Air Force Accounting and Finance Center, Lowry AFB, Denver, CO 80279; Air Force Office of Special Investigations, Washington, DC 20330; Air Force Data Automation Agency, Gunter AFS, AL 36114; Air Force Audit Agency, Norton AFB, CA 92409; Air Force Inspection and Safety Center, Norton AFB, CA 92409; Air Force Technical Evaluation Center, Kirtland AFB, NM 87117; and Headquarters United States Air Force, Pentagon, Washington, DC 20330; Washington Area Automated Data Processing Support Office/DPMDQ, Bolling AFB, DC 20332; Hq Air Training Command, Directorate of Student Resources, and Deputy Chief of Staff for Recruiting Service, Randolph AFB, TX 78148; Office of Civilian Personnel Operations, Randolph AFB, TX 78148; Consolidated Base Personnel Offices (CBPOs) and CCPOs located at selected Air Force Bases around th world maintain computer data bases on persons for whom they have a servicing responsibility. In addition, CBPOs and CCPOs can request - by mail or the DOD Automatic Digital Network (AUTODIN) data from the Central Data Base at Randolph AFB, TX. CBPOs and CCPOs do not have direct remote access to the Central Data Base. Official mailing addresses of CBPOs and CCPOs are in the DOD directory in the appendix to this systems notice. The three APDS processing echelons (Base, Major Command, and Hq USAF) are linked into one vertical system. The CBPOs are linked into major Command and HQ USAF via AUTODIN. Major Commands are linked into HQ USAF via AUTODIN and telecommunications network. Data items are updated by the office and at the level having primary responsibility for the item in question. Data may be retrieved by the office and at the level having a validated requirement for access to it.

Categories of individuals covered by the system:

Air Force active duty and retired military personnel. Air Force Reserve and Air National Guard personnel. Air Force Academy cadets. Air Force Civilian Employees. Certain surviving dependents of deceased members of the US Air Force and predecessor organizations; potential Air Force enlistees; candidates for commission enrolled in college level Air Force Reserve Officer Training Corps Programs; Deceased members of the Air Force and predecessor organizations; Separated members of the US Air Force, the Air National Guard (ANG) and Air Force Reserve (USAFR); ANG and USAFR Technicians; Prospective, pending, current, and former Air Force civilian employees, except Air National Guard Technicians and nonappropriated fund employees-current and former civilian employees from other Governmental agencies that are serviced at CCPOs may be incat the option of servicing CCPO.

Categories of records in the system:

The principal digital record maintained at each APDS operating level is the master personnel record, which contains the following categories of information: 1. Accession data pertaining to an individual's entry into the Air Force (place of enlistment source of commission, home of record, date of enlistment, place from which ordered to EAD). 2. Education and training data, describing the level and type of education and training, civilian or military (academic education level, major academic specialty, professional specialty courses completed, professional military education received). 3. Utilization data used in assigning and reassigning the individual, determining skill qualifications, awarding Air Force Specialty Codes, determining duty location and job assignment, screening/selecting individual for overseas assignment, performing strength accounting processes, etc. (Primary Air Force Specialty code, Duty and Control Air Force Specialty Code, personnel accounting symbol, duty location, up to 24 previous duty assignments, aeronautical rating, date departed last duty station, short tour return date, reserve section, current/last overseas tour). 4. Evaluation Data on members of the Air Force during their career (Officer Effectiveness Report dates and ratings, Airman Performance Report dates and ratings, results of various qualification tests, an 'Unfavorable Information' indicator, and Drug and Alcohol Abuse data). 5. Promotion Data including promotion history, current grade and/or selection for promotion (current grade, date of rank and effective date; up to 10 previous grades, dates of rank and effective dates; projected temporary grade, key 'service dates'). 6. Compensation data - although APDS does not deal directly with paying Air Force members, military pay is largely predicated on personnel data maintained in APDS and provided to the Air Force Accounting and Finance Center (AFAFC) as described in ROUTINE USES below (pay date, Aviation Service Code, sex, grade, proficiency pay status. 7. Sustentation data - information deal-

ing with programs provided or actions taken to improve the life, personal growth and morale of Air Force members (awards and decorations, marital status, number of dependents, religious denomination of member and spouse, race relations education). 8. Separation and retirements data, which identifies an individual's eligibility for and reason for separation (date of separation, mandatory retirement date, projected or actual separation program designator and character of discharge). At the central processing site (AFMPC), other subsidiary files or processes are operated which are integral parts of APDS: 1. Procurement Management Information System (PROMIS) is an automated system designed to enable the USAF to exercise effective management and control of the personnel procurement personnel required to meet the total scheduled manpower requirements necessary to accomplish the Air Force mission. The system provides the recruiter with job requirement data such as necessary test scores, Air Force Specialty Code, sex, date of enlistment; and the recruiter enters personal data on the applicant - SSN, name, date of birth, etc. - to reserve the job for him or her. 2. Career Airman Reenlistment Reservation System (CAREERS) is a selective reenlistment process that manages and controls the numbers by skill of first-term airmen that can enter the career force to meet established objectives for accomplishing the Air Force mission. A Centralized data bank contains the actual number, by quarter, for each Air Force Specialty Code (AFSC) that can be allowed to reenlist during that period. The individual requests reenlistment by stating his eligibility (AFSC, grade, active military service time, etc). If a vacancy exists, a reservation - by name, SSN, etc - will be made and issued to the CBPO processing the reenlistment. 3. Airmen Accessions provides the process to capture a new enlistee's initial personal data (entire personnel record) to establish a personnel data record and gain it to the Master Personnel File of the Air Force. The initial record data is captured through the established interface with the Processing and Classification of Enlistees System (PACE) at Basic Military Training, Lackland AFB for non-prior service; for prior service enlistees the basic data (Name, SSN, DOE, Grade, etc) is input directly by USAF Recruiting Service and updated and completed by the initial gaining CBPO. 4. Officer Accessions is the process whereby each of the various Air Force sources of commissioning (AF Academy, AFROTC, Officer Training School, etc.) project their graduates in advance allowing management to select by skill, academic specialty, etc which and how many will be called to active duty when, by entering into the record an initial assignment and projected entry onto Active Duty date. On that date the individual's record is accessed to the active Master Personnel File of the Air Force. 5. Technical Training Management Information System (TRAMIS) is a system dealing with the Technical Training activities controlled by Air Training Command. The purpose of the system is to integrate the training program, quota control and student accounting into the personnel data system. TRAMIS consists of numerous files which constitute 'quota banks' of available training spaces, in specific courses, projected for future use based on estimated training requirements. Files include such data as: Course Identification Numbers, Class Start and Graduation Dates, Length of Training, Weapon System Identification, Training Priority Designators, Responsible Training Centers, Trainee Names, SSN (and other pertinent personnel data) on individuals scheduled to attend classes. 6. Training Pipeline Management Information System (TRAPMIS) is an automated quota allocating system which deals with specialized combat aircrew training and aircrew survival training. Its files constitute a 'quota bank' against which training requirements are matched and satisfied and through which trainees are scheduled in 'pipeline' fashion to accommodate the individual's scheduled geographical movement from school to school to end assignment. Files contain data concerning the courses monitored as well as Names, SSN's and other pertinent personnel data on members being trained. 7. Air Force Institute of Technology (AFIT) Quota Bank File reflects program quotas by academic specialty for each fiscal year (current plus two future fiscal years, plus the past fiscal year programs for historical purposes). Also, this file reflects the total number of quotas for each academic specialty. Officer assignment transactions process against the AFIT Quota Bank file to reflect the fill of AFIT Quotas. Examples of data maintained are: Academic Specialty, Program Level, Fiscal Year, Name of Incumbent selected, projected, filling AFIT Quota. 8. Job File is derived from the Authorization Record and is accessible by Position Number. Resource managers can use the Job File to validate authorizations by Position Number for assignment actions and also to make job offers to individual officers. Internal sequencing within the Job File occurs based upon Resource Managers update transactions. Data in the file includes: Position Number, Duty AFSC, Functional Account Code, Program Element, Location, and name of incumbent. 9. Casualty subsystem is composed of transactions which may be input at Headquarters Air Force and/or CBPOs to report death or serious illness of members from all components. A special file is maintained in the system to record information on individuals who have died. Basic identification data and unique data such as country of occurrence, date of incident, casualty group, aircraft involved in the incident and military status are recorded and maintained in this file. 10. Awards/Decorations are recorded and maintained on all component personnel in the headquarters Air Force master files. All approved decorations are input at CBPOs whereas disapproved decorations are input at MAJCOM/HAF. A decorations statistical file is built at AFMPC which reflects an aggregation of approvals/disapprovals by category of decoration. This file does not contain any individually identifiable data. All individually identifiable data on decorations is maintained in the Master Personnel File. Such information as the type of decoration, awarding authority, special order number and date of award are identified in an individual's record. Seven occurrences for all decorations are stored; however only specific data on the last decoration of a particular type is maintained. 11. Point Credit Accounting and Reporting System (PCARS). This system is an Air National Guard/Air Force Reserve Unique supported by APDS. Its basic purpose is to maintain and account for retirement/retention points accrued as a result of participating in Drills/ Training. The system stores basic personal identification data which is associated with a calender of points, earned by participation in the Reserve program. Each year an individuals record is closed and point totals are accumulated in history, and a point earning statement is provided the individual and various records custodians. 12. Human Reliability/Personnel Reliability File: This file is maintained at Headquarters Air Force in support of AFM 35-98 and AFR 35-99. It is not part of the Master Personnel Files but a free standing file which is updated by transactions from CBPOs. The file was established to specifically identify individuals who have become permanently disqualified under the provisions of the above regulations. A record is maintained on each disqualified individual which includes basic identification data, service component, Personnel/Human reliability status and date, and reason for disqualification. 13. Variable Incentive Pay (VIP) File for medical officers: Contains about 125 character record on all Air Force physicians and is specifically used to identify whether the individual is participating in the Continuation Pay or Variable Incentive Pay programs. Update to this file is provided by the Surgeon (AFMPC), the Air Force Accounting and Finance Center and directly from changes to the Master Personnel File. Besides basic identification data an individual's record includes source of appointment, graduate medical location status, amount of VIP or Continuation Pay and the dates of authorization and the dates and reason for separation. 15. Weighted Airman Promotion System: (a) The Test Scoring and Reporting Subsystem (TSRS) provides for: identifying at the CBPO individuals eligible for testing; providing output to the Base Test Control Officer and the CBPO to control, monitor, and operate WAPS testing functions; editing and scoring WAPS test answer cards at AFMPC; providing output for maintaining historical and analytical files at AFMPC and the Human Resources Laboratory (HRL) and includes the central identification at AFMPC of individuals eligible for testing. (b) The Personnel Data Reporting Subsystem (PDRS) provides for: identifying promotion eligibles at AFMPC; verifying these eligibles and selection promotion data; merging test and weighted promotion data at AFMPC to effect promotion scoring, assigning the promotion objective and aligning selectees in promotion priority sequence; maintaining projections on promotion selectees at AFMPC, MAJCOM, and the CBPO; updating these projections monthly; creating output products to monitor the flow of data in the system; maintaining promotion historical and analytical files and reports at AFMPC. (c) Basically, identification data along with time in grade, test scores, decoration information, time in service, and airman performance report history is used to support this program. 16. Retired Personnel Data System (RPDS) is made up of four files - Retired Officer Management File and Retired Airman Management File containing records on members in retired status and the Retired Officer and Airman Loss Files containing records on former retirees who have been lost from rolls, usually through death. The RPDS is used to produce address listings for the Retired Newsletter and Policy letter, statistical reports for budgeting, to manage the Advancement Program, the Temporary Disability Retired List, Age 59 rosters for ARPC, General Officer roster, and statistical digest data for management analysis functions. Data is extracted from the master files upon retirement from Active Duty or Reserves. Data includes: Name, SSN, Grade data, service data, Education data, Retirement data and address. 17. Separated Officer File contains historical information on officers who leave the Air Force via separation, retirement, or death. Copies are sent to Human Resources Lab and Washington offices for research purposes. The data comprises the Master Personnel Record in its entirety and is captured 30 to 60 days after separation from the Air Force. 18. Airman Gain/loss File includes data extracted from the Airman Master file when accession and separation (gains and

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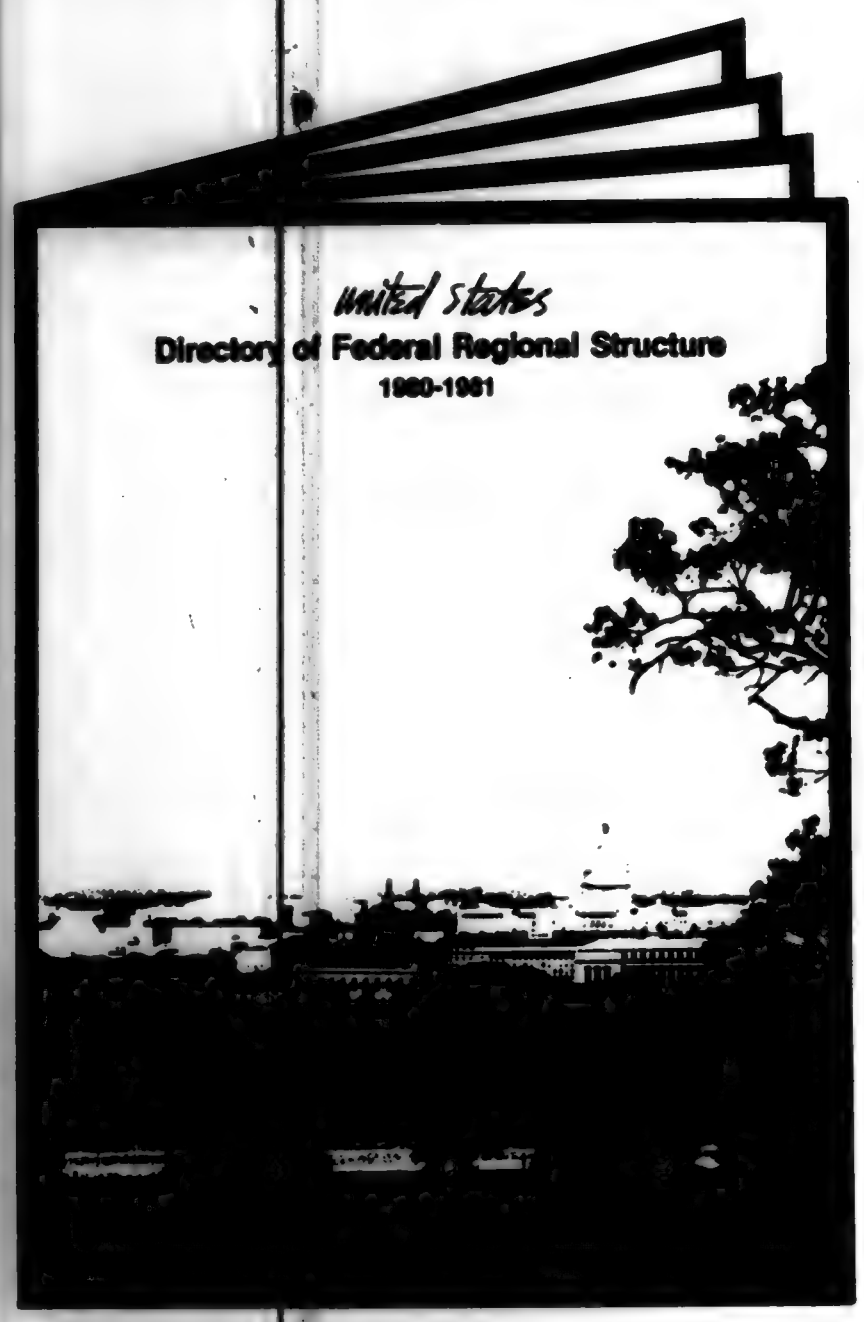

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Part XIII—Continued

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losses) occur. This file, like the Separated Officer File, is used for historical reports regarding strength changes. Data includes Name, SSN, and other data that reflects strength, i.e., promotions, reassignment data, specialty codes, etc. 19. Officer and Airman Separation Subsystem is used to process, track, approve, disapprove and project separations from the Air Force and transfers between components of the Air Force. This subsystem uses the Active, Guard, and Reserve MPFs. Data includes that specifically related to separations, e.g., Date of Separation, Separation Program Designator, waivers, etc. 20. The Retirements Subsystem is used to process and track applications for and approval/ disapproval and projections of retirements. This subsystem uses the Master Files for Active Duty and Reserve officers and airmen. Data specifically related to retirements includes application data, date of separation, waiver codes, disapproval reason codes, Separation Program Designator, Title 10 United States Code section, etc. 21. Retired Orders Log is a computer produced retirement orders routine. Orders are automatically produced when approval, verification of service dates, and physical clearance have been entered in system. The orders log contains data found in administrative orders for retirement, including name, SSN, grade, order number, effective dates, etc. The log is used to control assignment of order number, and as a cross-reference between orders, revocations, and amendments. 22. General Officer Subsystem of APDS contains data extracted from the Master Personnel File and language qualification data and assignment history data maintained by the Assistant for General Officer matters. A record is maintained on each general officer and general officer selectee. The general officer files are updated monthly and is used to produce products used in the selection/identification of general officers for applicable assignments. 23. Officer Structure Simulation Model (OSSM) provides officer force descriptions in various formats for existing, predictive or manipulated structures. It functions as a planning tool against which policy options can be applied so as to determine the impact of such policy decisions. The OSSM input records contain individual identifiable data from the Master Personnel Record, but all output is statistical. 24. Widow's File is maintained on magnetic tape and updated by the Office of Primary Responsibility. When required, address labels and listings are produced by employing selected APDS utility programs. The address labels are used to forward the Retired Newsletter to widows of active duty and retired personnel. The listings are used for management control of the program. Contained in the file are the name, address, and SSN of the widow. Additionally, the deceased sponsor's name, SSN, date of death, and status at time of death are maintained. 25. Historical Files are files with a retention period of 365 days or more. They consist of copies of active master files, and are used primarily for aggregation and analysis of statistical data, although individual records may be accessed to meet ad hoc requirements. 26. Miscellaneous files, records, and processes are a number of work files, inactive files with a less-than-365-day retention period, intermediate records, and processes relating to statistical compilations, computer operation, quality control and problem diagnosis. Although they may contain individual-identifying data, they do so only as a function of system operation, and are not used in making decisions about people. 27. Civilian employment information including authorization for position, personnel data, suspense information; position control information; projected information and historical information; civilian education and training data; performance appraisal, ratings, evaluations of potential; civilian historical files covering job experience, training and transactions; civilian awards information; merit promotion plan work files; career programs files for such functional areas as procurement, logistics, civilian personnel, etc., civilian separation and retirement data for reports and to determine eligibility; adverse and disciplinary data for statistical analysis and employee assistance; stand alone files, as for complaints, enrollee programs; extract files from which to produce statistical reports in hard copy, or for immediate access display on remote computer terminals; miscellaneous files, as described in item 26, above.

Authority for maintenance of the system:

10 USC, Chapter 11, Reserve Components, Section 265 - policies and regulations: participation of reserve officers in preparation and administration; 269 - Ready reserve: placement in; transfer from; 275 - Personnel records; 278 - Dissemination of information. 10 USC Chapter 13, The Militia, Section 279 - Training Reports. 10 USC, Capter 31, Enlistments, Sections 504 - Persons not qualified; 505 - Regular components: qualifications, term, grade; 506 - Regular components: extension of enlistments during war; 507 - Extension of enlistment for members needing medical care or hospitalization; 508 - Reenlistment: qualifications; 509 - Voluntary extension of enlistments: periods and benefits; 510 - Reserve components: qualifications; 511 - Reserve components: terms; 512 - Reserve components: transfers. 10 USC Chapter 33, Appointments in Regular Components, Section 564 - Warrant officers: effect of second failure of promotion. 10 USC Chapter 35, Appointments in Reserve Officers, Section 593 - Commissioned officers: appointment, how made; term. 10 USC Chapter 37, General Service Requirements, Section 651 - Members: required service. 10 USC Chapter 39, Active Duty, Sections 671 - Members not to be assigned outside US before completing training; and 673 - Ready reserve. 10 USC Chapter 47, Uniform Code of Military Justice, Sections 835 - Art. 35. Service of Charges; 837 - Art. 37. Unlawfully influencing action of court; 885 - Art. 85. Desertion; 886 - Art. 86. Absence without leave; 887 - Art. 87. Missing movement; 972 - Enlisted members: required to make up time lost. 10 USC Chapter 51, Reserve Components: standards and procedures for retention and promotion, Section 1005 - Commissioned officers: retention until completion of required service. 10 USC Chapter 59, Seperation, Sections 1163 - Reserve components: members; limitations on separation; 1164 - Warrant officers; separation for age; 1166 - Regular warrant officers: elimination for unfitness or unsatisfactory performance. 10 USC Chapter 61, Retirement - Physical disability. 10 USC Chapter 63, Retirement for Age, Section 1263 - Age 62: Warrant officers. 10 USC Chapter 65, Retirement for Length of Service, Sections 1293 - Twenty years or more: warrant officers; 1305 - Thirty years or more: regular warrant officers. 10 USC Chapter 67, Retired pay, Sections 1331 - Computation of years of service in determining entitlement to retired pay; 1332 - Age and service requirements; 1333 - Computation of years of service in computing retired pay. 10 USC Chapter 79, Correction of Military Records. 10 USC Chapter 165, Accountability and responsibility, Section 2771 - Final settlement of accounts: deceased members. 10 USC Chapter 803, Department of the Air Force, Section 8012 - Secretary of the Air Force: powers and duties: delegation by: compensation. 10 USC Chapter 805, The Air Staff, Sections 8032 - General duties; and Section 8033 - Reserve components of Air Force; policies and regulations for government for government of: functions of National Guard Bureau with respect to Air National Guard. 10 USC Chapter 831, Strength, Section 8224 - Air National Guard of the United States. 10 USC Chapter 833, Enlistments, Sections 8251 - Definition; 8252 - Temporary enlistments; 8253 - Air Force: persons not qualified; 8256 - Regular Air Force: qualifications, term, grade; 8257 - Regular Air Force: aviation cadets: qualifications, grade limitations; 8258 - Regular Air Force; reenlistment after service as an officer; 8259 - Air Force Reserve: transfer from Air National Guard of United States; 8260 - Air Force Reserve: transfer to upon withdrawal as member of Air National Guard; 8261 - Air National Guard of United States; 8262 - Extension of enlistment for members needing medical care or hospitalization; 8263 - Voluntary extension of enlistment. 10 USC Chapter 835, Appointments in the Regular Air Force, Sections 8284 - Commissioned officers: appointment, how made; 8285 - Commissioned officers: original appointment: qualifications; 8296 - Promotion lists: promotion-list officer defined; determination of place upon transfer or promotion; 8297 - Selection boards; 8303 - commissioned officers: effect of failure of promotion to captain, major, or lieutenant colonel. 10 USC Chapter 837, Sections 8360 - Commissioned officers: promotion service; 8362 - Commissioned officers: selection boards; 8363 - Commissioned officers: selection boards; general procedures; 8366 - Commissioned officers: promotion to captain, major or lieutenant colonel; 8376 - Commissioned officers: promotion when serving in temporary grade higher than reserve grade. 10 USC Chapter 839, Temporary Appointments, Sections 8442 - Commissioned officers; regular and reserve components: appointment in higher grade; 8447 - Appointments in commissioned grade: how made; how terminated. 10 USC Chapter 841, Active Duty, Section 8496 - Air National Guard of United States: commissioned officers; duty in National Guard Bureau. 10 USC Chapter 853, Rights and benefits, Section 8691 - Flying officer rating: qualifications. 10 USC Chapter 857, Decorations and Awards, Sections 8741 - Medal of Honor: award; 8742 Distinguished service cross: award; 8743 - Distinguished service medal: award; 8746 - Silver star: award; 8749 - Distinguished flying cross: award; limitations; 8751 - Service medals: issue, replacement; availability of appropriations. 10 USC Chapter 859, Separation, Sections 8786- Officer considered for removal: voluntary retirement or honorable discharge; severance benefits;8796 - Officers considered for removal: retirement or discharge. 10 USC Chapter 863, Separation or Transfer to Retired Reserve, sections 8846 - Deferred Officers; 8848 - 28 years: reserve first lieutenants, captains, majors, and lieutenant colonels; 8851 - Thirty years or five years in grade: reserve colonels and brigadier generals; 8852 - Thirty-five years or five years in grade: reserve major generals; 8853 - Computation of years of service. 10 USC Chapter 865, Retirement for Age, Sections 8883 - Age 60; regular commissioned officers below major general; 8884 - Age 60: regular major generals whose retirement has been deferred; 8885 - Age 62: regular major generals; 8886 - regular major generals whose retirement has been deferred. 10 USC Chapter 867, Retirement for Length of Service, Sections 8911 - Twenty years or more; regular or reserve commissioned officers; 8913 - Twenty years or more: de-

ferred officers not recommended for promotion; 8914 - twenty to thirty years: regular enlisted members; 8915 - Twenty-five years: female majors except those designated under section 8067(a)-(d) or (g)-(i) of this title; 8916 - twenty-eight years: promotion-list lieutenant colonels; 8917 - Thirty years or more: regular enlisted members; 8918 - Thirty years or more: regular commissioned officers; 8921 - Thirty years or five years in grade: promotion-list colonels; 8922 - Thirty years or five years in grade: regular brigadier generals; 8923 - Thirty-five years or five years in grade: regular major generals; 8924 - Forty years or more: Air Force officers. 10 USC Chapter 901, Training generally, Sections 9301 - Members of Air Force: detail as students, observers and investigators at educational institutions, industrial plants, and hospitals; and 9302 - Enlisted members of Air Force: schools. 10 USC Chapter 903, United States Air Force Academy, Sections 9342 - Cadet: appointment; numbers, territorial distribution; 9344 - Selection of persons from Canada and American Republics; 9345 - Selection of Filipinos. 32 USC Chapter 1, Organization, sections 102 - General policy; and 104 - units: location; organization; command. 32 USC Chapter 3, Personnel, Section 307 - Federal recognition of officers: examination, certification of eligibility. 32 USC Chapter 7, Services, supplies, etc., Section 709 - Caretakers and clerks. 37 USC Chapter 3, Basic Pay, Section 308 - Special pay: reenlistment bonus; 313 - Special pay: medical officers who execute active duty agreements. 37 USC Chapter 7, Allowances, Section 407 - Travel and transportation allowances: dislocation allowance. 37 USC Chapter 10. For civilian employees-5 US Code 301 and 44 US Code 3101.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

The Air Force operates what is essentially a centralized personnel management system in an environment that is widely dispersed geographically and encompasses a population that is quite diverse in terms of qualifications, experience, military status and needs. There are three major centers of Air Force personnel management: Washington, D.C., where most major policy and long-range planning/programming decisions are made; the Air Force Manpower and Personnel Center at Randolph AFB, Tx., which performs most personnel operations-type functions for the active duty components of the force; and the Air Reserve Personnel Center at Denver Co., which performs certain operational functions for the Reserve components of the force. Offices at Major Command Headquarters, State Adjutant General, and Air Force Bases perform operational tasks pertaining to the population for which they are responsible. The structure of the Air Force and its personnel management system, the composition of the force, and the Air Force's stated objective of treating its people as individuals, i.e., giving due consideration to their desires, needs and goals, demand a dynamic data system that is capable of supporting the varying needs of the personnel managers at each echelon and operating locations. It is to this purpose that the data in the Advanced Personnel Data System is collected, maintained, and used. A. ROUTINE USES WITHIN THE AIR FORCE - INTERNAL TO THE PERSONNEL COMMUNITY: HQ USAF, WASHINGTON, DC: Deputy Chief of Staff, Personnel and his immediate staff; Director of Personnel Plans; Director of Personnel Programs; Assistant for General Officer Matters; Assistant for Colonel Assignments; Reserve Personnel Division; Air National Guard Personnel Division; and The Surgeon General, the Chief of AF Chaplains and the Staff Judge Advocate, each of which perform certain Personnel functions within their area of responsibility. Data from the central data base at the AFMPC is furnished Washington area agencies by retrieval from the computer at Randolph via remote access devices and by provision of recurring products containing required management information, including computer tape files which are used as input to unique systems with which APDS interfaces. Although most of the data is used by policy makers to develop long-term plans and programs and track progress toward established goals, some individual data is provided/retrieved to support actions taken on certain categories of persons managed by offices in the headquarters e.g. General Officers, Colonels, Air National Guard personnel, etc. AIR FORCE MANPOWER AND PERSONNEL CENTER (AFMPC), RANDOLPH AFB, TX. Personnel managers at AFMPC use the data in APDS to make decisions on individual actions to be taken in areas such as personnel procurement, education and training, classification, assignment, career development, evaluation, promotion, compensation, casualty and personal affairs, separation and retirement. AIR RESERVE PERSONNEL CENTER (ARPC), DENVER, COLORADO. Personnel managers at ARPC perform many of the same functions for the Reserve components of the Air Force as the managers at AFMPC perform for the active duty force. As with the Washington area, ARPC obtains data from the central data base at AFMPC by retrieval through remote terminals and recurring output products containing information necessary to their management processes. MAJOR COMMAND HEADQUARTERS. Major command headquarters personnel operations are supported by the standard content of APDS records provided them by AFMPC. In addition, there is provided in the APDS record an 'add-on area' which the commands are authorized to use for the storage of data which will assist them in fulfilling unique personnel management requirements generated by their mission, structure, geographical location, etc. The standard functions performed fall generally under the same classifications as those in AFMPC, e.g., assignment, classification, separation, etc. Non-standard usages include provisions of unique aircrew data, production of specially-tailored name listing, control of theatre oriented training, etc. Some commands use APDS data - both standard and add-on as input to unique command systems, which are seperately described in the Federal Register. CONSOLIDATED BASE PERSONNEL OFFICES (CBPO). CBPOs, which represent the base-level aspect of APDS, are the prime point of system-to-people interface. Supplied with a standard data base and system, CBPOs provide personnel management support to commanders and supervisors on a daily basis. Acting on receipt of data from higher headquarters, primarily by means of transactions processed through APDS, they notify people of selection for reassignment, promotion, approval/disapproval of requests for separation and retirement, and similar personnel actions. When certain events occur on an individual at the local level, e.g., volunteer for overseas duty, reduction in grade, change in marital status, application for retirement, etc., the CBPO enters transactions into the vertical system to transmit the requisite information to other management levels and update the automated records resident at those levels. CBPOs too are allotted an 'add-on' area in the computer record which they use to support local management unique requirements such as local training scheduling, unique locator listing, urinalysis testing scheduling, etc. B. ROUTINE USES WITHIN THE AIR FORCE - EXTERNAL TO THE PERSONNEL COMMUNITY 1. HEADQUARTERS USAF/AFMPC INTERFACES: Automated interfaces exist between the APDS central site files and the following systems of other functions: a. The Flight Records Data System (FRDS) maintained by the Air Force Inspection and Safety Center (AFISC) at Norton AFB, CA. (1) Certain personnel identification data on rated officers is transferred monthly to the FRDS. This data flow creates the basic identifying data in the FRDS, insures compatability with the APDS, and precludes duplicative data collection and input generation by the AFISC. (2) Update of the personnel data to the FRDS generates return flow of flying hour data which is used at AFMPC for rated resource distribution management. b. The Master Military Pay Account (MMPA), is the Joint Uniform Military Pay System (JUMPS) centralized pay file maintained by the Air Force Accounting and Finance Center (AFAFC) at Denver, CO. The APDS transfers certain pay related data as changes occur to update the MMPA, e.g., promotions, accessions, separations/retirements, name, SSN, grade. These data provide criteria for the AFAFC to determine specific pay entitlements. c. The AFAFC maintains a separate pay system for Air National Guard and Air Force Reserve personnel called the Air Reserve Pay and Allowances System (ARPAS). (1) APDS outputs certain pay related data to ARPAS as changes occur, e.g., retirements/ separations, promotions, name, SSN, grade. These data form the criteria for the AFAFC to determine specific Reserve pay entitlements. (2) ARPAS outputs data which affect accumulated point credits for Air National Guard/ Reserve participation to AFMPC for update of the Point Credit Accounting and Reporting System (PCARS), a component of APDS. PCARS also receives monthly input from Hq Air University which updates point credits as a result of completing an Extension Courses Institute correspondence program. d. AFAFC provides data on Variable Incentive Pay (VIP) for Medical Officers which is used to update a special control file within APDS and produce necessary reports for management of the VIP program. e. Air Training Command operates a system called PACE (Processing and Classification of Enlistees) at Lackland AFB TX. From that system data is fed to AFMPC to initially establish the APDS record on an Air Force enlistee. f. On a monthly basis, copies of the APDS master Personnel File are provided to the Human Resources Laboratory at Brooks AFB, TX, where they are used as a statistical data base for research purposes. g. On a quarterly basis, AFMPC provides the USAF School of Aerospace Medicine with data concerning name, SSN and changes in base and command of assignment of flying personnel. The data reflects significant medical problems in the flying population. h. A complete printout of APDS data pertaining to an individual is included in his Master Personnel Record when it is forwarded to National Personnel Records Center. i. APDS data is provided to the Contingency Planning Support Capability (CPSC) at six major command headquarters: Tactical Air Command, Strategic Air Command, Military Airlift Command, Air Force Communications Command, United States Air Forces, Europe, and Pacific Air Forces. A record

identifiable by individual's name and SSN provides contingency and/or manning assistance temporary duty (TDY) being performed by the individual. Record is destroyed upon completion of the TDY. Statistical records (gross statistics by skill and unit) are also generated for CPSC from APDS providing force availability estimates. CPSC is described separately in the Federal Register. 2. BASE LEVEL (CBPO) INTERFACES: Certain interfaces have been established at base level to pass data from one functional system to another. The particular mode of interface depends on the needs of the receiving function and the capabilities of the system to produce the necessary data: a. The Flight Management Data System (FMDS) receives an automated flow of selected personnel data on flying personnel as changes occur. This data consists primarily of assignment data and service dates which the base flight manager uses to determine appropriate category of aviation duty which is reflected by designation of an Aviation Service Code. The FMDS outputs aviation service data as changes occur to the BLMPS. These data subsequently flow to the APDS central site files at AFMPC so it is available for resource management decisions. b. The Medical Administration Management System (MAMS), currently being developed and tested, will receive flow of selected assignment data as changes occur for personnel assigned to medical activities. MAMS will use these data to align assigned personnel with various cost accounting work centers within the medical activity and thus be able to track manpower expenditure by sub-activities. c. The Automated Vehicle Operator Record (AVOR) is being developed to support motor vehicle operator management. Approximately 115 characters of vehicle operator data will be incorporated into the BLMPS data base during FY76 for both military and civilian personnel authorized to operate government motor vehicles and selected personnel data items (basic identification data) will be authorized for access by the vehicle operator managers. The base Chief of Transportation will be responsible for accuracy of this data and will be the responsible official for actions associated with the Privacy Act of 1974. d. Monthly, a magnetic tape is extracted from BLMPS containing selected assignment data on all assigned personnel. This tape is transferred to the base Accounting and Finance Office for input into the Accounting Operations System. This system uses these data to derive aggregate base manpower cost data. e. A procedure is designed into BLMPS to output selected background data in a pre-defined printed format for personnel being administered military justice. This output is initiated upon notification by the base legal office. The data is forwarded to the major command where it is input into the Automated Military Analysis and Management System (AMJAMS). f. The BLIMPS output (on an event-oriented basis) pay-affecting transactions such as certain promotions, accessions, and assignments/reassignments, to AFAFC, where the data is entered into the JUMPS. C. ROUTINE USES EXTERNAL TO THE AIR FORCE, TO THE OFFICE OF THE SECRETARY OF DEFENSE (OSD). Individual information is provided to offices in OSD on a recurring basis to support top-level management requirements within the Department of Defense. Examples are the DOD Recruiter File to the Assistant Secretary for Manpower and Reserve Affairs (M&RA), a magnetic tape extract of military personnel records (RCS: DDM(SA)1221) to M&RA, input to the Reserve Component Common Personnel Data System to M&RA, and the Post Career Data File to M&RA. 2. TO OTHER DEFENSE AGENCIES. APDS supports other components of DOD by provision of individual data in support of programs operated by those agencies. Examples are the Selected Officer List to the Defense Intelligence Agency for use in monitoring a classified training program and the Defense System Management School (DSMS) Track Record System to DSMS for use in evaluating the performance of graduates of that institution. An extract file on Air National Guard Technicians is provided the National Guard Computer Center. 3. OTHER GOVERNMENT/QUASI-GOVERNMENT AGENCIES. Information used in analyzing officer/airman retention is provided RAND Corporation. Data on prior service personnel with military service obligations is forwarded to the National Security Agency. Lists of officers selected for promotion and/or appointment in the Regular Air Force are sent to the Office of the President and/or the Congress of the United States for review and confirmation. Certain other personnel information is provided these and other government agencies upon request when such data is required in the performance of official duties. Selected personnel data is provided foreign governments, US governmental agencies, and other Uniformed Services on USAF personnel assigned or attached to them for duty. Examples: the government of Canada, Federal Aviation Administration, US Army, Navy, etc.) 4. LITIGATION. Information from APDS may be used in litigation in the event that the United States, its officers, or its employees are involved in the litigation. 5. MISCELLANEOUS. Lists of individuals selected for promotion or appointment, who are being reassigned, who die, or who are retiring are provided to unofficial publications such as the Air Force Times, along with other information of interest to the general Air Force public. Information from APDS support a world-wide locator system which responds to queries as to the location of individuals in the Air Force. Material for preparing mailing labels is furnished commercial publishing or mailing firms working under contract to the Air Force who print or mail quasi-official publications to specified portions of the Air Force population, e.g., retired personnel, widows, etc. Locator information pertinent to personnel on active duty may be furnished to a recognized welfare agency such as the American Red Cross or the Air Force Aid Society. For civilian personnel--to provide automated system support to Air Force officials at all levels from that part of the Office of Personnel Management required personnel management and records keeping system that pertains to evaluation, authorization and position control, position management, staffing skills inventory, career management, training, retirement, employee services, rights and benefits, merit promotion, demotions, reductions in force, complaints resolution, labor management relations, and the suspensions and processing of personnel actions; to provide for transmission of such records between employing activities within the Department of Defense - to provide individual records and reports to OPM; to provide information required by OPM for the transfer between federal activities; to provide reports of military reserve status to other armed services for contingency planning - to obtain statistical data on the work force to fulfill internal and external report requirements and to provide Air Force offices with information needed to plan for and evaluate manpower, budget and civilian personnel programs - to provide minority group designator codes to the Office of Personnel Management's automated data file - to provide the Office of the Assistant Secretary of Defense Manpower and Reserve Affairs with data to access the effectiveness of the program for employment of women in executive level positions - to obtain listings of employees by function or area for locator and inventory purposes by Air Force offices - to assess the effect or probable impact of personnel program changes by simulation and modeling exercises - to obtain employee duty locations and other employee data for personnel program management purposes - to obtain employee duty locations and other information releasable under OPM rules and the Freedom of Information Act to respond to request from Air Force offices, other Federal agencies and the public - to provide individual records to other components of the Department of Defense in the conduct of their official personnel management program responsibilities - to provide records to law enforcement or insauthorities for investigation and possible criminal prosecution, civil court action, or regulatory order - to provide records to OPM for file reconciliation and maintenance purposes - and to provide information to employee unions as required by negotiated contracts.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Maintained in visible file binders/cabinets, card files, on computer magnetic tapes, disks or computer paper printouts or microfiche.

Retrievability:

Filed by name, Social Security Number (SSN) or other identification number or system identifier. The primary individual record identifier in APDS is SSN. Some files are sequenced and retrieved from by other identifiers; for instance, the assignment action record is identified by an assignment action number. Additionally, at each echelon there exists computer programs to permit extraction of data from the system by constructing an inquiry containing parameters against which to match and select records. As an example, an inquiry can be written to select all Captains who are F-15 pilots, married, stationed at Randolph AFB, who possess a master's degree in Business Administration; then display name, SSN, number of dependents and duty location. There is the added capability of selecting an individual's record or certain pre-formatted information by SSN on an immediate basis using a teletype or cathode ray tube display device. High-speed line printers located in the Washington DC area, at Major Command Headquarters, and at ARPC permit the tvvolume products to and for the use of Personnel managers at those locations.

Safeguards:

Records are accessed by custodian of the record system and by person(s) responsible for servicing the record system in the performance of their official duties where authorized, and properly screened and cleared for need-to-know, and by commanders of medical centers and hospitals. Records are stored in security file containers/cabinets, safes, vaults and locked cabinets or rooms. Records are protected by guards. Records are controlled by personnel screening visitor registers and computer system software.

Retention and disposal:

Retained in office files until superseded, obsolete, no longer needed for reference, or on inactivation, then destroyed by tearing into pieces, shredding, pulping, macerating, or burning. Preceding retention statement applies to Analog output products of the Advanced Personnel Data System. Data stored digitally within system is retained only for the period required to satisfy recurring processing requirements and/or historical requirements. Files with a retention period of 364 days or less are automatically released at the end of their specified retention period. 'Permanent history' files are retained for 10 years. Files 365 or more days old are defined as 'historical files' and are not automatically released. Retention periods for categories of APDS files are as follows: If cycle in which a program or series of programs creating output is daily, and the created magnetic tape file will be used for processing of next daily, then the retention will be not greater than 10 days. If cycle in which a program or series of programs creating output is daily, and the created magnetic tape file will be used for processing of next daily, which is also used for processing of weekly runs, then the retention will be not greater than 20 days. If cycle in which a program or series of programs creating output is daily, and the created magnetic tape file will be used for processing of next weekly, then the retention will be not greater than 20 days. If cycle in which a program or series of programs creating output is daily, and the created magnetic tape file will be used for processing of next weekly, which is also used for processing of monthly runs, then the retention will be not greater than 30 days. If cycle in which a program or series of programs creating output is weekly, and the created magnetic tape file will be used for processing of next weekly, then the retention will be not greater than 20 days. If cycle in which a program or series of programs creating output is weekly, and the created magnetic tape file will be used for processing of next weekly, which is also used for processing of monthly runs, then the retention will be not greater than 30 days. If cycle in which a program or series of programs creating output is monthly, and the created magnetic tape file will be used for processing of next monthly, then the retention will be not greater than 30 days. If cycle in which a program or series of programs creating output is monthly, and the created magnetic tape file will be used for processing of next monthly, which is also used for processing of quarterly runs, then the retention will be not greater than 90 days. If cycle in which a program or series of programs creating output is monthly, and the created magnetic tape file will be used for processing of next monthly, which is also used for processing of Semi-Annual run, then the retention will be not greater than 190 days. If cycle in which a program or series of programs creating output is monthly, which is also used for processing of annual runs, then the retention will be not greater than 365 days. If cycle in which a program or series of programs creating output is monthly, and the created magnetic tape file will be used for processing of next monthly, which is also used for processing of permanent history, then the retention will be not greater than 999 days. If cycle in which a program or series of programs creating output is quarterly, and the created magnetic tape file will be used for processing of next quarterly, then the retention will be not greater than 90 days. If cycle in which a program or series of programs creating output is quarterly, and the created magnetic tape file will be used for processing of next quarterly, which is also used for processing of semi-annual run, then the retention will be not greater than 190 days. If cycle in which a program or series of programs creating output is quarterly, and the created magnetic tape file will be used for processing of next quarterly, which is also used for processing of annual runs, then the retention will be not greater than 365 days. If cycle in which a program or series of programs creating output is quarterly, and the created magnetic tape file will be used for processing of next quarterly, which is also used for processing of permanent history, then the retention will be not greater than 999 days. If cycle in which a program or series of programs creating output is semi-annual, and the created magnetic tape file will be used for processing of next semi-annual, then the retention will be not greater than 190 days. If cycle in which a program or series of programs creating output is semi-annual, and the created magnetic tape file will be used for processing of next semi-annual, which is also used for processing of annual runs, then the retention will be not greater than 365 days. If created magnetic tape file will be used for processing of permanent history, then the retention will be not greater than 999 days. If cycle in which a program or series of programs creating output is annual, and the created magnetic tape file will be used for processing of next annual, then the retention will be not greater than 365 days. If cycle in which a program or series of programs creating output is annual, and the created magnetic tape file will be used for processing of next annual, which is also used for processing of permanent history, then the retention will be not greater than 999 days. If the program or series of programs creating output is a one time run, and the file will be used for processing as required, then the retention will be lowest possible retention commensurate to job completion. If the program or series of programs creating output is compile card image or SOLT tapes, and the created magnetic tape file will be used for processing as required runs, then the retention will be not greater than 90 days maximum. If cycle in which a program or series of programs creating output is as required runs, and the created magnetic tape file will be used for processing as required, the retention will be lowest possible retention commensurate to job completion. If the program or series of programs creating output is test files, and the created magnetic tape file will be used for processing as required, then the retention will be not greater than 30 days. If the program or series of programs creating output is print/punch backup and the created magnetic tape file will be used for processing as required, then the retention will be not greater than 10 days. In addition, for civilian personnel at base level (CCPO), master personnel files for prospective employees are transferred to the active file upon appointment of the employee or in the event the employee is not appointed and will no longer be considered a candidate for appointment, are destroyed by degaussing-master personnel files for active employees are transferred to the separated employee history file where they are retained for three years subsequent to separation and then destroyed by degaussing. The notification of personnel action - Standard Form 50 - is disposed of as directed by OPM - work files and records such as the employee career brief, position survey work sheet, retention register work sheet, alphabetic and Social Security Number locator files, and personnel and position control register are destroyed after use by tearing into pieces, shredding, pulping, macerating, or burning-work sheets pertaining to qualification and retention registers are disposed of as directed by OPM - transitory files such as pending files, and recovery files are destroyed after use by degaussing-files and records retrieved through general retrieval systems are destroyed after use by tearing into pieces, shredding, pulping, macerating, or burning. Those records at AF Manpower and Personnel Center for the end of each fiscal year quarter are retained for five years before destroying by deletion - the separated employee file retains employee information at time of separation for five years after which the employee's record is destroyed by degaussing.

System manager(s) and address:

Deputy Chief of Staff/Personnel, Headquarters United States Air Force. Subordinate system managers are: A. Director of Personnel Data Systems, Assistant Deputy Chief of Staff for Personnel for Military Personnel, Air Force Manpower and Personnel Center (AFMPC), Randolph AFB, TX, 78148. He is responsible for overall APDS design, maintenance and operation, and is designated the Automated Data Processing System Manager for all Air Force personnel data system. B. The Director of Personnel Data Systems at each Major Command headquarters for systems operated at that level. C. The Chief, CBPO, at Air Force installations for systems operated at that level. D. The Civilian Personnel officer at Air Force installations for civilian systems operated at that level.

Notification procedure:

Requests from individuals for notification as to whether the system contains a record on them should be addressed to the system manager of the operating level with which they are concerned. Persons submitting such a request, either personally or in writing, must provide SSN, name, and military status (active, ANG/USAFR, retired, etc. ANG members not on extended active duty may submit such requests to the appropriate State Adjutant General or the Chief of the servicing ANG CBPO. USAFR personnel not on extended active duty may submit such requests to ARPC, Deaver, CO, 80280 or, if unit assigned, to the Chief of the servicing CBPO or Consolidated Reserve Personnel Office. Personal visits to obtain notification may be made to the Military Records Review Room, Air Force Manpower and Personnel Center, Randolph AFB, TX 78148, the Military Records Review Room, Air Reserve Personnel Center, Denver CO 80280; The Office of the Director, National Personnel Records Center (NPRC), 111 Winnebago St., St. Louis, MO, 63118; the office of the Director of Personnel Data Systems at the appropriate major command headquarters; or the office of the Chief of his servicing CBPO. Identification will be based on presentation of DD Form 2AF, Military Identification Card. Air Force civilian employees must provide SSN, full name, previous names if any, last date and location of Air Force civilian employment if not currently employed by the Air Force - current employees should submit such requests to their CCPO - former employees of the Air Force should submit such requests to the CCPO for the last Air Force installation at which they were employed. Authorizations for a person other than the data subject to have access to an individual's records must be based on a notarized statement signed by the data subject.

Record access procedures:

Assistance in gaining access to his records will be provided the individual by the appropriate subordinate system manager at AFMPC, ARPC, NPRC, major command or CBPO/CRPO/CCPO.

Contesting record procedures:

The Air Force's rules for access to records and for contesting and appealing initial determinations by the individual concerned may be obtained from the Systems Manager.

Record source categories:

Information obtained from educational institutions, medical institutions, automated system interfaces, police and investigating officers, the bureau of motor vehicles, a state or local government and source documents (such as reports) prepared on behalf of the Air Force by boards, committees, panels, auditors, and so forth.

Systems exempted from certain provisions of the act:

NONE

F03004 ARPC A

System name:

03004-ARPC-A Point Credit Accounting Record System (PCARS).

System location:

At Air Reserve Personnel Center, Denver, CO 80280. At Air National Guard and Air Force Reserve activities. Official mailing addresses are in the Department of Defense directory in the appendix to the Air Force's systems notice. At Air Force Manpower and Personnel Center, Randolph Air Force Base, Texas 78148.

Categories of individuals covered by the system:

Air Force Reserve and National Guard Personnel.

Categories of records in the system:

Correspondence, orders; forms; and reports which include identifying personnel data including name, SSN, address, grade, and retirement/retention date; record of retirement points and service earned prior to and record of points earned, by type duty, for the current retirement year. Reports include automated listings, processed transactions, rejected transactions, accession transactions, point summary lists, statistical reports, individual point summary reports, and input lists for participation verification.

Authority for maintenance of the system:

10 USC 1331, Age and service requirement; 10 USC 1332, Computation of years of service in determining entitlement to retired pay; and 10 USC 1333, Computation of years of service in computing retired pay.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Used to maintain accurate listings of transactions processed to active reserve force member's point credit account, to reconcile strength of the Air National Guard and Air Force Reserve members between the various mechanized accounting systems, to identify new members of the Air Force Reserve and Air National Guard; to certify accuracy and completeness of transactions manually submitted to the point record as required by Air Force audit requirements, to advise member and reserve managers of the member's participation in reserve affairs, for promotion evaluation considerations, and for determination of retirement eligibility.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Maintained in visible file binders/cabinets, on computer tape, and paper printouts.

Retrievability:

Filed by name and by Social Security Number (SSN).

Safeguards:

Records are accessed by custodian of the record system and by person(s) responsible for servicing the record system in performance of their official duties who are properly screened and cleared for need-to-know. Records are protected by guards.

Retention and disposal:

Documents not required for inclusion in military personnel record system are retained in office files until superseded, obsolete, no longer needed for reference, or after 16 months, whichever is sooner, then destroyed by tearing into pieces, shredding, pulping, or macerating.

System manager(s) and address:

Commander Air Reserve Personnel Center (ARPC), Denver, CO 80280.

Notification procedure:

Request from individual should be addressed to the Documentation Management Officer, ARPC/ DADP, Denver, CO 80280. Written request for information should contain full name of individual, SSN (Social Security Number), current address and the case control number shown on correspondence received from center. Records may be reviewed in records review room ARPC, Denver, CO 80280, between 8:00 A.M. and 3:00 P.M. on normal work days. For personal visits, the individual should provide current reserve ID card and/or drivers license and give some verbal information that could verify his/her reserve assignment.

Record access procedures:

Individual can obtain assistance in gaining access from Documentation Management Officer, ARPC/DADP, Denver, CO 80280, telephone (303) 394-4667.

Contesting record procedures:

The Air Force's rules for access to records and for contesting and appealing initial determinations by the individual concerned may be obtained from the Systems Manager.

Record source categories:

Information from master personnel record and authorized point credit documents obtained from automated system interfaces.

Systems exempted from certain provisions of the act:

NONE

F03005 PRENC C

System name:

03005-PRENC-C Base Housing Management.

System location:

Headquarters United States Air Force, Washington DC 20330. Headquarters of major commands and at all levels down to and including Air Force installations.

Categories of individuals covered by the system:

Categories of individuals on whom records are maintained: All Military members desiring base family housing and eligible Department of Defense (DOD) civilian employees.

Categories of records in the system:

Categories of records and description of data maintained in system: Application for and Assignment to Military Family Housing, contains the following data: Name, address, rank, Social Security Account Number (SSN), service data, family composition, and other information such as health problems. Other supporting documents-quarters condition inspection reports, assignment orders, etc.

Authority for maintenance of the system:

10 U.S.C. 8012.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Used to apply for family housing and provide information upon which eligibility can be determined. Used by base housing officials to respond to Congressional, Inspector General, and other inquiries on an individual basis pertaining to family member's housing situation.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Maintained in visible file binders/cabinets, computer and computer output products.

Retrievability:

Filed by Name.

Safeguards:

Records are accessed by custodian of the record system and by person(s) responsible for servicing the record system in performance of their official duties who are properly screened and cleared for need-to-know. Records are stored in locked cabinets or rooms. Records are controlled by personnel screening.

Retention and disposal:

Advance applications are retained by losing activity and destroyed after six months. Applications received by gaining activities are destroyed one year after termination of quarters. Applications are destroyed by tearing, burning, pulping, shredding or macerating. Supporting records are destroyed when no longer needed.

System manager(s) and address:

Deputy Chief of Staff/Programs and Resources, Headquarters United States Air Force, Washington, DC

Notification procedure:

Requests from individuals should be addressed to the Systems Manager. Individuals may contact agency officials at the Base Hous-

ing Office at the installation at which he completed the applicable form or the installation which will be providing military family housing.

Record access procedures:

Same procedures as for notification above.

Contesting record procedures:

The Air Force's rules for access to records and for contesting and appealing initial determinations by the individual concerned may be obtained from the Systems Manager.

Record source categories:

Information obtain from individual's voluntary application.

Systems exempted from certain provisions of the act:

NONE

F03005 02 ALSA

System name:

03005 02 ALSA On/Off-Base Housing Records.

System location:

Air Force installations.

Categories of individuals covered by the system:

Military members seeking advance applications for housing both incoming and outgoing.

Categories of records in the system:

Record contains Quarters Condition Inspection Report, Real Property Maintenance Request, and Application for and assignment to military housing.

Authority for maintenance of the system:

10 U.S.C. 9775, Quarters Assignment Guidance.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

To record pertinent data required to assign and terminate family housing, report noted deficiencies in area of housing occupants responsibility, status of waiting list, and listing of personnel occupying quarters.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Maintained in file folders, computer and computer output products and in card files.

Retrievability:

Filed by other identification number or system identifier.

Safeguards:

Records are accessed by person(s) responsible for servicing the record system in performance of their official duties.

Retention and disposal:

Retained in office files until reassignment or separation, then destroyed by tearing into pieces, shredding, pulping, macerating, or burning.

System manager(s) and address:

Deputy Chief of Staff/Systems and Logistics, Headquarters United States Air Force, Washington DC 20

Notification procedure:

Requests from individuals should be addressed to the Systems Manager. Send full name.

Record access procedures:

Individual can obtain assistance in gaining access from the Systems Manager.

Contesting record procedures:

The Air Force's rules for access to records and for contesting and appealing initial determinations by the individual concerned may be obtained from the Systems Manager.

Record source categories:

Information derived from member's Permanent Change of Station Orders, Quad Leaders reports, and any other information voluntarily given by each applicant.

Systems exempted from certain provisions of the act:

NONE

F03501 AFDPG O

System name:

03501-AFDPG-0 General Officer Personnel Data System.

System location:

Headquarters United States Air Force, Washington DC 20330. Air Reserve Personnel Center, Denver, CO 80280.

Categories of individuals covered by the system:

Active Duty/Air National Guard/Reserve General Officers

Categories of records in the system:

Promotion board data, effectiveness reports, 'Career Brief' data and cards, Officers Personnel Record, Photos, Award/Decoration citations, biographies, letters of appreciation,retirement letters, dependent data, promotion orders, assignment orders, assignment preference data , demotion data, frocking letters, case studies, training points sum (Air National Guard/Reserve only), language data, and education data; and USAFR and Colonels filing General Officer position listings.

Authority for maintenance of the system:

10 USC 8012, 8032 and 8034; 44 USC 3101.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Promotions, assignment nominations/worksheets, retirements, congressional inquiries/responses, statistical analysis, force structure policies and history and strength history, career administration/planning, career profiles, Memorandums for Record affecting actions taken on general officers, vacancy lists, array of general officers by temporary/permanent grade and mandatory retirement date, seniority lists, retirement lists, personnel information is disclosed as directed to agencies within Office of the Secretary of Defense and Office of Management and Budget, The Office of the President and The Congress.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Maintained in visible file binders/cabinets/safes.

Retrievability:

Most records are retrieved by last name and/or grade. Case studies, statistical analyses, promotion board results, congressional inquiries and responses are retrieved by topic by year of action.

Safeguards:

Access to these records is given only to the Chief of Staff, Deputy Chief of Staff/Personnel, Assistant for General Officer Matters, Chief of Air Force Reserve, Chief National Guard Bureau, and Air Reserve Personnel Center/Director of Reserve Record/DPFR; and RAND Corporation, and the assigned officers/noncommissioned officers and civilian and clerical help, totaling approximately 20 people. Security procedures, equivalent to the security required for Confidential and Secret data, are employed.

Retention and disposal:

Records are maintained until retirement of the officer involved. Case studies, statistical analyses, promotion board results, promotion ballots, vacancy lists, spread sheets, seniority lists, retirement lists have been maintained since their respective creation.

System manager(s) and address:

Deputy Chief of Staff/Personnel, Headquarters United States Air Force.

Notification procedure:

Requests from individuals should be addressed to the Systems Manager. An individual's full name Social Security Number active duty grade will be needed to process written requests. An individual may visit the Pentagon, Room 4E212, the Office of Assistant for General Officer Matters, Headquarters United States Air Force (HQ USAF/DPG), to obtain the information. A requester must present his Military Identification Card when appearing in person and requesting personal information. When requesting personal information in writing, the requester must have his request notarized.

Record access procedures:

Individual can obtain assistance in gaining access from the Systems Manager. Most records will be released upon request; however any record the release of which is questionable in the view of the Assistant for General Officer Matters, will be cleared for release by the HQ USAF DCS Personnel before it is finally released to the individual.

Contesting record procedures:

The Air Force's rules for access to records and for contesting and appealing initial determinations by the individual concerned may be obtained from the Systems Manager.

Record source categories:

Personnel Data Base, Member, Inspector General Investigations.

Systems exempted from certain provisions of the act:

NONE

F03501 AFDPG Z

System name:

03501-AFDPG-Z General Officer Personnel Data System.

System location:

Headquarters United States Air Force, Washington DC 20330. Air Force Manpower and Personnel Center, Randolph Air Force Base, TX 78148. Air Reserve Personnel Center, Denver, CO 80280.

Categories of individuals covered by the system:

Retired Active Duty General Officers and Retired Air National Guard (ANG)/Reserve General Officers.

Categories of records in the system:

Promotion Board Data; 'Career Brief' Data/Cards; Forms 11; Photographs; Biographies; Retirement Letters; Dependent Data; Education Data; Promotion Orders; Assignment Orders; Demotion Data; Frocking Letters; Case Studies; Language Data.

Authority for maintenance of the system:

10 USC, Chapter 805, The Air Staff, Section 8032.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Individual Queries; Precedent Actions; Statistical Analyses of Historical Nature; Assignment Nominations/Worksheets; Congressional Inquiries and Responses; Memorandums for Record Affecting Actions Taken on General Officers; Career Profiles; Vacancy Lists; Array of General Officers by Temporary/Permanent Grade and Mandatory Retirement Date; Seniority Lists; Retirement Lists.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Maintained in visible file binders/cabinets card files.

Retrievability:

Most records are retrieved by last name and/or grade. Case studies, statistical analyses, promotion board results, Congressional inquiries and responses are retrieved by topic by year of action.

Safeguards:

Access to these records is given only to the Chief of Staff, Deputy Chief of Staff (DCS)/Personnel, Assistant for General Officer Matters, Chief of Air Force Reserve, Chief National Guard Bureau, and Rand Corporation, and the assigned officers/Noncommissioned Officers (NCOs) and civilian and clerical help, totaling approximately 20 people. Assistant for General Officer Matters (DPG), Manpower and Personnel Center/Records Maintenance Branch (MPC/DPMDRR) and Air Reserve Personnel Center/Director of Personnel Actions (ARPC/DPAAR) are the only offices in the Air Force where this data could be maintained. Security procedures employed by DPG are equivalent to the security required for Confidential and Secret data.

Retention and disposal:

Retired 4-star General Officer records are maintained indefinitely; Retired 1, 2 and 3-star General Officer records are retained for 3 years, reviewed to determine if there are any materials of historical value which warrant indefinite retention - if not, they are destroyed by tearing into pieces, shredding, pulping or macerating.

System manager(s) and address:

Deputy Chief of Staff/Personnel, Headquarters United States Air Force.

Notification procedure:

Requests from individuals should be addressed to the Systems Manager. An individual's full name Social Security Number (SSN) active duty grade will be needed to process written requests. An individual may visit the Pentagon, Room 4E212, The Office of the Assistant for General Officer Matters, to obtain the information. A requester must present Military Identification (ID) card when appearing in person and requesting information. When requesting personal information in writing, the requester must have request notarized.

Record access procedures:

An individual may obtain access to records by either writing Headquarters United States Air Force/Assistant for General Officer Matters (HQ USAF/DPG) - The Pentagon or by appearing in person and requesting the information. Most records will be released upon request; however, any record, the release of which is questionable in the view of the Assistant for General Officer Matters, will be cleared for release by the HQ USAF/DCS Personnel before it is finally released to the individual.

Contesting record procedures:

The Air Force's rules for access to records and for contesting and appealing initial determinations by the individual concerned may be obtained from the Systems Manager.

Record source categories:

Personnel Data Base; Member; Inspector General (IG) Investigations.

Systems exempted from certain provisions of the act:

NONE

F03501 ARPC A

System name:

03501-ARPC-A Informational Personnel Records.

System location:

At Air Reserve Personnel Center, Denver, CO 80280.

Categories of individuals covered by the system:

Air Force Reserve and Air National Guard personnel. Retired and former Air Force military personnel.

Categories of records in the system:

Documents pertaining to individual, that are not authorized for inclusion in other military personnel record systems.

Authority for maintenance of the system:

10 USC 274 Retired Reserve; 10 USC 275 Reserve personnel; 10 USC 2001 Reserve components; 10 USC 8012 Secretary of the Air Force: Powers and Duties; Delegation.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Determining eligibility for retirement related action, status of active duty tour, position occupied; training reports; answering correspondence/telephone inquiries; mobilization; updating and/or changing information in computer and/or individual reservist record.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Maintained in file folders and in card files.

Retrievability:

Filed by name and by Social Security Number (SSN).

Safeguards:

Records are accessed by the custodian of the record system and by person(s) responsible for servicing the record system in performance of their official duties who are properly screened and cleared for need-to-know. Records are protected by guards.

Retention and disposal:

Retain in office files until inactivation, reassignment or separation; or one year after annual cut-off, then destroy by tearing into pieces, shredding, pulping, or macerating.

System manager(s) and address:

Commander Air Reserve Personnel Center (ARPC), Denver, CO 80280.

Notification procedure:

Request from individual should be addressed to the Documentation Officer, AFPC/DADP, Denver, CO 80280. Written request for information should contain full name of individual, SSN (social security number), current address and the case (control) number shown on correspondence received from center. Records may be reviewed in Records Review Room ARPC, Denver, CO 80280, between 8:00 A.M. and 3:00 P.M. on normal work days. For personal visits, the individual should provide current Reserve ID Card and/or drivers license and give some verbal information that could verify his/her retirement date, date of birth, or reserve status.

Record access procedures:

Individual can obtain assistance in gaining access from Command Documentation Manager, ARPC/DADP, Denver, CO 80280, telephone (303) 394-4667.

Contesting record procedures:

The Air Force's rules for access to records and for contesting and appealing initial determinations by the individual concerned may be obtained from the Systems Manager.

Record source categories:

Information supplied by individual as relates to but not limited to application for retirement, military orders, personal data; statement of military service from other military components; correspondence from serving Consolidated Base Personnel Office/ Consolidated Reserve Personnel Office and Major Command units. Information from source documents prepared on behalf of the Air Force Advance Personnel Data System.

Systems exempted from certain provisions of the act:
NONE

F03501 ARPC B

System name:
03501-ARPC-B Biographical File.

System location:
At Air Reserve Personnel Center, Denver, CO 80280, Ecclesiastical endorsing agencies if appropriate.

Categories of individuals covered by the system:
Air Force Reserve personnel assigned to but not limited to the Air Reserve Information Squadron (ARIS), Chaplain (HC) and Surgeon (SG) programs.

Categories of records in the system:
Biographies provided by members, correspondence, orders and/or forms containing information as to individual name, rank, social security number, service dates, date of birth, unit assignments, civilian employment, military and civilian education, military and civilian experience, program specialties, hobbies, and names of family members, religion of chaplains, professional expertise and appointments, membership in professional societies, civic activities and state of licensure.

Authority for maintenance of the system:
10 USC 262 Purpose; 10 USC 8067 Designation: Officers to perform certain professional functions.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:
To select information, chaplains, legal, medical field reserve officer personnel for special duties according to specific expertise required. Chaplain records are used by Chaplains Office personnel, medical reservist records are used to provide the ARPC/SG, Surgeon General, Major Command surgeons, USAF/RE, and Reserve Regions an in-depth personal history of Reservist Medical Officer. Used to provide overview of skill resources available in ARIS Program. Allow selection of members best qualified to meet specific program requirements and task assignments.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:
Maintained in file folders and in note books/binders.

Retrievability:
Filed by name.

Safeguards:
Records are accessed by custodian of the record system and by person(s) responsible for servicing the record system in performance of their official duties, and by commanders medical centers and hospitals. Records are protected by guards.

Retention and disposal:
Retained in office files until superseded, obsolete, no longer needed for reference, or on inactivation, then destroyed by tearing into pieces, shredding, pulping, or macerating.

System manager(s) and address:
Commander Air Reserve Personnel Center (ARPC), Denver, CO 80280.

Notification procedure:
Request from individual should be addressed to Documentation Management Officer ARPC/DADP, Denver, CO 80280. Written request for information should contain full name of individual, SSN (social security number), current address and the case (control) number shown on correspondence received from Center. Records may be reviewed in Records Review Room ARPC, Denver, CO 80280, between 8:00 A.M. and 3:00 P.M. on normal work days. For personal visits, the individual should provide current Reserve ID Card and/or drivers license and give some verbal information that could verify his/her military personnel record, his/her religion if in the Chaplain program.

Record access procedures:
Individual can obtain assistance in gaining access from the Documentation Management Officer, ARPC/DADP, Denver, CO 80280, telephone (303) 394-6667.

Contesting record procedures:
The Air Force's rules for access to records and for contesting and appealing initial determinations by the individual concerned may be obtained from the Systems Manager.

Record source categories:
Provided by individual Reservist.

Systems exempted from certain provisions of the act:
NONE

F03501 ARPC C

System name:
03501-ARPC-C Personnel Management Records.

System location:
At Air Reserve Personnel Center, Denver CO 80280; Headquarters United States Air Force, Washington DC 20330; United States Air Force Academy, CO 80840; major commands and major subordinate commands. Official mailing addresses are in the Department of Defense directory in the appendix to the Air Force's systems notice.

Categories of individuals covered by the system:
Air Force Reserve Personnel and civilian/active military applicants to Air Force Reserve.

Categories of records in the system:
Officer and airman assignment files which includes correspondence, memos, completed forms, messages and vacancy authorization data for assignment approvals, disapprovals, waivers, manning assistance, discharges, screening data, orders, evaluation reports, documents changing training category, personal data, photographs, chaplain ecclesiastical endorsement, record of security clearance, miscellaneous correspondence to and from individual; case file of reserve personnel placed on active duty containing copies of special and reserve orders, correspondence, documents complete with information used for travel overseas; assignment instructions; list of actions taken by technician; board actions on involuntary Airmen; certified receipts acknowledgement of receipt of special orders card.

Authority for maintenance of the system:
10 USC 275 Personnel Records, 10 USC 672 Reserve Components generally, 10 USC 673 Ready Reserve and Executive Order 11366, 4 Aug 67, 10 USC Chapter 103 Senior Reserve Officer: Training Corps, 10 USC 262 Purpose, and 10 USC 8067 Designation: Officers to perform certain professional functions.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:
Used to determine eligibility/suitability for assignment/reassignment with the Air Force Reserve; to make determinations on discharges or mobilization, deferments, fulfillment of statutory requirements, voluntary and involuntary order to extended active duty (EAD) and temporary release. These include but are not limited to members participating in the Air Reserve Information Squadron (ARIS), Chaplain, Judge Advocate, Surgeon General Program. Records maintained as a historical file. Used as a reference file to answer inquiries from Reservist and Air Force personnel requiring information on the Reservist being recalled to active duty, to send gaining active units additional copies as requested, used as substantiating documents to show all action was taken in accordance to prescribing directives. Information on personnel in the ARIS, Chaplain, Judge Advocate, Surgeon General and other Officer management programs is used by personnel responsible for program in order to assist Reservist in their careers.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:
Maintained in file folders/note books/binders and in visible file binders/cabinets.

Retrievability:
Filed by name, by Social Security Number (SSN), and ascending AFSC order, rank and name.

Safeguards:
Records are accessed by person(s) responsible for servicing the records system in performance of their official duties and by custodian of the record system. Records controlled by personnel screening and are protected by guards.

Retention and disposal:
Retained in office files until superseded, obsolete, no longer needed for reference, or on inactivation, then destroyed by tearing into pieces, shredding, pulping, or macerating.

System manager(s) and address:
Commander Air Reserve Personnel Center (ARPC) is responsible for records at ARPC in Denver, CO. Individuals included in above records systems should deal directly with agency official of respective location to exercise their rights under the act.

Notification procedure:

Request from individual should be addressed to the Documentation Management Officer ARPC/DADP, Denver CO 80280. Written requests for information should contain full name of individual, SSN (Social Security Number), current address and the case (control) number shown on correspondence received from Center. Records may be reviewed in Records Review Room ARPC, Denver CO 80280, between 8:00 a.m. and 3:00 p.m. on normal work days. For personal visits, the individual should provide current Reserve ID card and/or driver's license and give some verbal information that could verify his/her identity from the records.

Record access procedures:

Individual can obtain assistance in gaining access from the Documentation Management Officer, ARPC/DADP, CO 80280, telephone (303) 394-4667.

Contesting record procedures:

The Air Force's rules for access to records and for contesting and appealing initial determinations by the individual concerned may be obtained from the Systems Manager.

Record source categories:

Information from the individual requesting assignment or making the inquiry, master personnel record, correspondence and orders, annual survey and advance personnel data system, instructions from Air Force Military Personnel Center, Randolph Air Force Base, San Antonio, TX 78148, instructions and board actions from Air Force and Reserve, DPAA Robins Air Force Base, Warner Robins, GA 31093 and Air Force Training Corps/SDAA, Maxwell Air Force Base, Montgomery, Alabama 36112 and the National Guard Bureau, Washington DC 20310, and other Air Command, instructions from Headquarters/JAEC, Washington DC 20314.

Systems exempted from certain provisions of the act:

NONE

F03501 DP 3

System name:

03501 DP 3 Unit Assigned Personnel Information File.

System location:

Air Force Units. Headquarters United States Air Force and major command headquarters. Headquarters of major commands and at all levels down to and including Air Force installations.

Categories of individuals covered by the system:

Active duty military personnel. Air Force Reserve and Air National Guard personnel.

Categories of records in the system:

File copies of separation actions, newcomers briefing letters, line of duty determinations, assignment actions, retirement actions, in and out processing checklists, promotion orders, credit union authorization, disciplinary actions, favorable/unfavorable communications, record of counselings, appointment notification letters, duty status changes, applications for off duty employment, applications and allocations for school training, professional military and civilian education data, private weapons storage records, locator information including names of dependents, home address, phone number, training and experience data, special recognition nominations, other personnel documents, and records of training

Authority for maintenance of the system:

10 U.S.C. 8012.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Provides information to unit commanders/supervisors for required actions related to personnel administration and counseling, promotion, training, separation, retirement, reenlistment, medical examination, testing, assignment, sponsor program, duty rosters, and off duty activities.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Maintained in file folders, note books/binders, and card files.

Retrievability:

Filed by Name and Social Security Number (SSN).

Safeguards:

Records are accessed by custodian of the record system and by person(s) responsible for servicing the record system in performance of their official duties who are properly screened and cleared for need-to-know. Records are stored in locked cabinets or rooms.

Retention and disposal:

Retained in office files until reassignment or separation; most records are transient in nature and are maintained only as long as required to fulfill their management purpose or until superseded, then given to the individual or destroyed by shredding, pulping, macerating or burning.

System manager(s) and address:

Deputy Chief of Staff/Personnel, Headquarters United States Air Force, Washington D.C. 20330.

Notification procedure:

Inquiries from individuals should be addressed to the respective unit commander or supervisor who maintains the records in order to exercise their rights under the Act.

Record access procedures:

Requests from individuals should be addressed to the respective unit commander or supervisor who maintains the records in order to exercise their rights under the Act. Mailing addresses are contained in the Department of Defense Directory in the appendix to the Air Force's Systems Notice.

Contesting record procedures:

The Air Force's rules for access to records and for contesting and appealing initial determinations by the individual concerned may be obtained from the Systems Manager.

Record source categories:

Information obtained from the individual concerned, financial institutions, educational institutionemployees, medical institutions, police and investigating officers, bureau of motor vehicles, witnesses, reports prepared on behalf of the agency, standard Air Force forms, personnel management actions, extracts from the Advanced Personnel Data System (ADPS) and records of personal actions submitted to or originated within the organization.

Systems exempted from certain provisions of the act:

NONE

F03501 DPMAK J

System name:

03501 DPMAK J Separation Case Files (Officer and Airman).

System location:

Air Force Military Personnel Center, Randolph Air Force Base, TX 78148. National Personnel Records Center, Military Personnel Records, 9700 Page Boulevard, St. Louis, MO 63132. Duplicate copies may be retained temporarily at each level requiring review or action on the case.

Categories of individuals covered by the system:

Officers and airmen who have requested voluntary separation or who have been recommended for involuntary separation. Individuals who, under P.L. 95-202, Sec 401, have requested review of service performed with the Army Air Force or U.S. Air Force to determine if such service was equivalent to 'active duty' for purposes of laws administered by the Veteran's Administration.

Categories of records in the system:

Member's application, or letter from commander initiating separation action with indorsements, supporting documents, and record of final action taken. If congressional inquiry involved, request for information and reply provided is also filed by those offices involved.

Authority for maintenance of the system:

11 U.S.C. Chapter 59, Separations and 38 U.S.C., Veteran's Benefits.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

The original copy is retained as a permanent record of action taken. The duplicate copies are retained to provide a temporary record of actions being taken for responding to inquiries concerning the status of a particular case. Occasionally, a case file is retained as a precedence file for later reference in revising separation directives.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Maintained in visible file binders/cabinets.

Retrievability:

Filed by Name. At National Personnel Records Center. Cases are filed with Master Personnel Records. Transitory copies are filed alphabetically by general subject categories, i.e., involuntary officer separations, involuntary airmen separations, etc.

Safeguards:

Records are accessed by custodian of the record system and by person(s) responsible for servicing the record system in performance

of their official duties who are properly screened and cleared for need-to-know. Records are stored in locked cabinets or rooms. File cabinets and power files are secured during non-duty hours.

Retention and disposal:

Master copies are retained permanently. Temporary files are disposed of within three years after final action is taken. Files are disposed of by shredding.

System manager(s) and address:

Assistant Deputy Chief of Staff Personnel for Military Personnel, Randolph Air Force Base, Texas 78148.

Notification procedure:

Requests from individuals should be addressed to the Systems Manager.

Record access procedures:

Individual can obtain assistance in gaining access from the Systems Manager.

Contesting record procedures:

The Air Force's rules for access to records and for contesting and appealing initial determinations by the individual concerned may be obtained from the Systems Manager.

Record source categories:

Member's application, or correspondence from unit commander's initiating separation action.

Systems exempted from certain provisions of the act:

NONE

F03501 DPMDQIA

System name:

03501-DPMDQIA, Military Personnel Records System.

System location:

Headquarters United States Air Force, Washington DC 20330. Air Force Manpower and Personnel Center, Randolph Air Force Base, TX 78148. Air Reserve Personnel Center, Denver, CO 80280. National Personnel Records Center, Military Personnel Records, 9700 Page Boulevard, St. Louis, MO 63132. Headquarters of the major commands and separate operating agencies. At consolidated base personnel offices and other installation units. At State Adjutant General Office of each respective State, District of Columbia or Commonwealth of Puerto Rico. At Air Force Reserve and Air National guard units, official mailing addresses are in the Department of Defense Directory in the Appendix to the Air Force's Systems Notice.

Categories of individuals covered by the system:

Air Force active duty military personnel. Officer Correspondence and Miscellaneous Document Group (C&M) at Air Force Military Personnel Center (AFMPC); Headquarters United States Air Force (HQ USAF) Selection Record Group (SR) at HQ USAF Assistant for General Officer Matters; Retired Air Force general officers. Master Personnel Record Group (MPeRGp) at AFMPC; active duty colonels at HQ USAF, Assistant for Senior Officer Management, C&M at AFMPC Air Force active duty officer personnel. MPeRGp at AFMPC Officer Command Selection Record Group (OCSR) at the respective major command or separate operating agency, Field Record Group (FRGp) at the respective Air Force base of assignment/servicing Consolidated Base Personnel Office (CBPO); Air Force active duty enlisted personnel. MPeRGp at AFMPC, FRGp at respective servicing CBPO, Senior Noncommissioned Officer (NCO) Selection Folder at the respective servicing CBPO; personnel in Temporary Disability Retired List (TDRL) status, Missing in Action (MIA), Prisoner of War (POW), Dropped From Rolls (DFR), MPeRGp at AFMPC; Reserve officers MPeRGp at Air Reserve Personnel Center (ARPC), OCSR at the respective Air Force (AF) major command (MAJCOM) when applicable, FRGp at the respective unit of assignment or servicing CBPO or Consolidated Reserve Personnel Office (CRPO); Reserve airmen MPeRGp at ARPC, FRGp at the respective unit of assignment or servicing CBPO/CRPO; Air National Guard (ANGUS) officers MPeRGp at ARPC, OCSRat the respective State Adjutant General Office, FRGp at the respective unit of assignment, ANGUS airmen MPerGp at the respective State Adjutant General Office FRGp at the respective unit of assignment; Retired Air Force military personnel; Discharged personnel MPerGp at National Personnel Records Center (NPRC); Air Force Academy cadets MPerGp at unit of assignment CBPO.

Categories of records in the system:

Substantiating documentation such as forms, certificates, administrative orders and correspondence pertaining to appointment as a commissioned officer, warrant officer, Regular AF, AF Reserve or ANGUS; enlistment/reenlistment/extension of enlistment; assignment Permanent Change of Station (PCS)/Temporary Duty (TDY); promotion/demotion; identification card requests; casualty; duty status changes - Absent Without Leave (AWOL)/MIA/POW/Missing/Deserter; military test administration/results; service dates; separation; discharge; retirement; security; training, Precision Measurement Equipment (PME), On The Job Training (OJT), Technical, General Military Training (GMT), commissioning, driver; academic education; performance/effectiveness reports; records corrections - formal/informal; medical or dental treatment/examination; flying/rated status administration; extended active duty; emergency data; line of duty determinations; human/personnel reliability; career counseling; records transmittal; AF reserve administration; Air National Guard administration; board proceedings; personnel history statements; Veterans Administration compensations; disciplinary actions; record extracts; locator information; personal clothing/equipment items; passport; classification; grade data; Career Reserve applications/cancellations; traffic safety; Unit Military Training; travel voucher for TDY to Republic of Vietnam; dependent data; professional achievements; Geneva Convention cards; drug abuse; Federal Insurance; travel and duty restrictions; Conscientious Objector status; decorations and awards; badges; Favorable Communications (colonels only); Inter-Service transfers; pay and allowances; combat duty; leave; photographs; Advanced Personnel Data System products.

Authority for maintenance of the system:

44 USC 3101: Records Management by Federal Agencies; Records Management by agency heads; general duties; E.O. 9397.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

In addition to satisfying the Title 44 requirement for records retention, Military Personnel Records are utilized at all levels of Air Force personnel management within the agency for actions/processes related to procurement, education and training, classification, assignment, career development, evaluation, promotion, compensation, sustentation, separation and retirement. Military Personnel Records are routinely utilized outside the Air Force for actions/processes related to assignment or transfer to other services or joint service organizations; compensation claims submitted to Veterans Administration Regional Offices; dependents and survivors requesting issuance or determination of eligibility for identification card privileges; Civilian Health and Medical Program of the Uniformed Services (CHAMPUS) eligibility and benefits requests - copies are provided to CHAMPUS, Denver, Colorado; Immigration and Naturalization - copies are provided to respective local Immigration Office; Unemployment Compensation Requests - verification of service related information provided to State Unemployment Compensation (UCX) Office; Vietnam State Bonus - information provided to respective local State offices; Civil Service requests for verification of military service for benefits; leave or Reduction in Force (RIF) purposes - copies provided to local Civilian Personnel Office; National Cemetary Burial/Headstone cases - copies provided to Superintendent National Cemetary, Army Quartermaster Corps, Virginia; Worldwide locator inquiries - response provided to legitimate requests in accordance with the Freedom of Information Act; Dual compensation cases involving former officers - provided to establish Civil Service employee tenure and leave accrual rate; Social Security Retirement Credit Verification - verification of service data provided to substantiate applicant's credit for Social Security compensation; Soldiers and Sailors Civil Relief Act requests - verification of service - related information provided to State courts in civil actions; Litigation - in event the United States, its officers or employees are involved. Changes in member's official records regarding name, Social Security Account Number, date or place of birth or home of record - required information provided to Director of Selective Service, Federal Bureau of Investigation, and Personnel Research Division of the Air Force Human Resources Laboratory at Lackland Air Force Base, Texas. Secretary of the Air Force Legislative Liaison releases when authorized by individual concerned. US Department of Agriculture for investigative and audit procedures US Department of the Treasury for Secret Service investigations, Coast Guard Activities Bureaus of Customs, Narcotics, Engraving and Printing and Internal Revenue Service for official activities; US State Department, Federal Aviation Agency for background investigations of employment applicants; Central Intelligence Agency for Investigations, US Postal Service for Official Postal Inspector Duties, General Services Administration for Investigation of Incumbent Employees; Department of Justice for Investigations conducted by the Federal Bureau of Investigation and Immigraton and Naturalization Small Business Administration for Investigations concerning Loans, National Security Agency Review of Records for Security Investigations United States Information Agency for Review of Records for Background Investigations. United States Civil Service Commission to conduct investigations either by personal investigations or written inquiry to determine suitability, eligibility, or qualifications of individuals for Federal

employment, Federal contracts, or access to classified information or restricted areas. Separation information provided to the Veteran's Administration and Selective Service Agencies. American National Red Cross - information to local Red Cross offices for emergency assistance to military members, dependents, relatives or other persons if conditions are compelling. Drug Enforcement Administration. Department of Labor: Bureau of Employees' compensation - medical information for claims of civilian employees formerly in military services; Employment and Training Administration - verification of service-related information for unemployment compensation claims; Labor Management Services Administration for investigations of possible violations of labor laws and pre-employment investigations; National Research Council - for medical research purposes; U.S. Soldiers' and Airman's Home - service information to determine eligibility.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Maintained in file folders placed in metal file containers or on open shelves. Microfiche placed in rotary power files; computer disk resident data file consists of Social Security Number (SSN) and disk location of the associated image record which includes document data describing document type, date, location, and number of pages in each document.

Retrievability:

Information in the system is retrieved by last name, first name, middle initial and Social Security Number (SSN). Records stored at National Personnel Records Center Center are retrieved by registry number, last name, first name, middle initial and SSN. Information can be displayed via closed circuit television subsystem, produced on a duplicate microfiche, or paper reproduction.

Safeguards:

The prescribing directive for the Military Personnel Records System requires those records to be stored (after duty hours) in a locked building, room or filing cabinets. Access is specifically limited to those personnel designated by the Consolidated Base Personnel Office (CBPO) Chief and those provisions for access and release of information contained in Air Force Regulation 31-6.

Retention and disposal:

Users who are granted access to the microfiche files are screened by computer software. Those documents designated as Temporary in the prescribing directive remain in the records until their obsolescence (superseded, member terminates status, or retires) when they are removed and provided to the individual data subject. Those documents designated as Permanent remain in the military personnel records system permanently and are retired with the master personnel record group.

System manager(s) and address:

Assistant Deputy Chief of Staff Personnel for Military Personnel, Randolph Air Force Base, Texas 78148 is the official responsible for the system of records. Individuals in categories included above may deal directly with agency officials at the respective records location to exercise their rights under the Act.

Notification procedure:

The individual data subject may be notified that a record exists on him by submitting a request to or appearing in person at the responsible official's office or the respective repository for records for personnel in particular category during normal duty hours any day except Saturday, Sunday or national and local holidays. The Saturday and Sunday exception does not apply to Reserve and National Guard units during periods of training. Response to written requests will be provided not later than ten days following receipt of request. The System Manager has the right to waive these requirements for personnel located in areas designated as Hostile Fire Pay areas.

Record access procedures:

The same written notification or personal visit procedures which apply to notification also apply to access.

Contesting record procedures:

The Air Force's rules for access to records and for contesting and appealing initial determinations by the individual concerned may be obtained from the Systems Manager.

Record source categories:

Sources of information contained in the system include data subject's applications, requests, personal history statements, supervisors' evaluations, correspondence generated within the agency in the conduct of official business, medical treatment records, educational institutions, civil authorities, other service departments, and interface with the Advanced Personnel Data System.

Systems exempted from certain provisions of the act:

NONE

F03501 MPC B

System name:

03501-MPC-B Effectiveness/Performance Reporting Systems.

System location:

Headquarters, United States Air Force, Washington D.C. 20330; Air Force Manpower and Personnel Center, Randolph Air Force Base, TX 78148; National Personnel Records Center, Military Personnel Records, 9700 Page Boulevard, St. Louis, MO 63118; headquarters of the major commands and separate operating agencies; consolidated base personnel offices; each State Adjutant General Office; Reserve and Air National Guard units, and the Human Resources Laboratory, Lackland Air Force Base, TX. Official mailing addresses are in the Department of Defense directory in the appendix to the Air Force's systems notice.

Categories of individuals covered by the system:

Military Personnel Only. Officer: applies to active duty/Air National Guard/Air Force Reserve Personnel serving in grades Warrant Officer (W-1) through Colonel (0-6). Airmen: applies to active duty personnel in grades Airman Basic (E-1) through Chief Master Sergeant (E-9), and to Air Force Reserve personnel in grades Staff Sergeant (E-5) through Chief Master Sergeant (E-9).

Categories of records in the system:

Lieutenant Colonel Promotion Potential Evaluation Forms; Colonel Promotion Recommendation Report; Officer Effectiveness Report; Education/Training Report; Airman Performance Report; Technical Sergeant (TSGT), Staff Sergeant, and Sergeant (SGT) Performance Report; Chief Master Sergeant (CMSGT), Senior Master Sergeant (SMSGT), and Master Sergeant (MSGT) Performance Report; Description of Data Contained Therein: Name; Social Security Number (SSN); Active and Permanent Grades; Specialty Data; Organization location and Personnel Accounting Symbol (PAS); Period of Report; Number of days of supervision; Performance EvalEstimates of Potential; Comments Regarding Ratings; Officer Effectiveness Report (OER) Notice Contains: Rater Name; Rater SSN (only if USAF officer); Rater Organization; Rater Office Symbol; Rater Duty Phone Number; Ratee Name, Ratee SSN; Ratee Organization; Period of Report; Length of Rater's Supervision; Reason for Report; Ratee Duty Air Force Specialty Code (DAFSC); Ratee Primary Air Force Specialty Code (PAFSC); Ratee Second Air Force Specialty Code (2 AFSC); Ratee Temporary Grade; Ratee Permanent Grade; Ratee Aeronautical Rating; Ratee Aviation Service Code; Ratee Job Level; Ratee Command Level; Ratee Management Level; Ratee Duty Title; Effective Date of Duty Title; Ratee PAS; Rater PAS; Rater Aeronautical Rating; Rater Aviation Service Code; Rater Job Level; Rater Command Level; Rater Management Level; Additional Rater or Reviewer Name; Additional Rater or Reviewer Organization; Date Rater Forwarded Report to Additional Rater or Reviewer. Reviewer Message Contains: Reviewer Name; Reviewer SSN; Reviewer Grade; Reviewer Organization; Number of reports for which the reviewer was so designated; Number of reports, by rating, which the reviewer signed; Number of reports escalated for signature; SSN of ratee on reports escalated for signature; Number of reports escalated to reviewer for signature; SSN of ratee on reports escalated to reviewer for signature. Rater name; Rater SSN (only if US military); Rater Organization; Rater office symbol; Ratee name; Ratee grade; Ratee SSN; Ratee organization; Ratee PAS Code; Period of report; Length of supervision; Reason for report; Ratee's primary, duty and control AFSCs; Rater job level, management level, command level and duty title; Ratee effective date of duty; Ratee reserve/warrant commission; unfavorable information file (UIF) identifier.

Authority for maintenance of the system:

Title 44, United States Code (USC), Public Printing and Documents, Chapter 31, Records Management by Federal Agencies, Section 3101; and Title 10, USC, Armed Forces, Chapter 33, Appointments in Regular Components, Section 564.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Uses Include: Documentation of effectiveness/duty performance history; Promotion selection; school selection; assignment selection; reduction-in-force; control roster; reenlistment; separation; research/statistical analysis; other appropriate personnel actions. Users include: supervisor; commander; major command; Headquarters USAF; other Military Services. OER/APR notices are used to: provide notification to a rater that an OER/APR is due; provide the rater with information necessary to complete portions of the evaluation report form; raters may be either Military or civilians within or outside the

Department of Defense ; and source document to provide the CBPO the capability of tracing a missing report.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Maintained in visible file binders/cabinets.

Retrievability:

Filed by Name.

Safeguards:

Records are accessed by custodian of the record system and by person(s) responsible for servicing the record system in performance of their official duties who are properly screened and cleared for need-to-know. Records are stored in locked cabinets or rooms.

Retention and disposal:

Copies of performance reports are retained until separation or retirement. At separation/retirement, data subject is presented with field and command record copies of his/her reports. The Headquarters Air Force (HAF) copy is a permanent record that is forwarded to the National Personnel Records Center, Saint Louis, Missouri. In the event member has a Reserve commitment, HAF copy is sent to Air Reserve Personnel Center (ARPC), York Street, Denver, Colorado. However, the following exceptions apply: Officers Field Record: Remove and give to individual when promoted to Colonel, when separated or retired. Destroy when voided by action of the Officer Personnel Records Review Board. When voided by action of the Air Force (AF) Board for Correction of Military Records, forward all copies of report to Headquarters United States Air Force (HQ USAF) when directed. Command Record: The command custodian will destroy the reports when voided by action of Officer Personnel Records Review Board. When voided by action of the AF Board for Correction of Military Records, forward all copies of report to HQ USAF when directed. HAF Record: Remove reports voided by action of the Officer Personnel Records Review Board from the selection folder and file in the board recorder's office until destroyed by tearing into pieces, shredding, pulping, macerating or burning. Remove reports voided by action of the AF Board for Correction of Military Records from selection folder and submit to Board's Secretariat with duplicate and triplicate copies, for custody and disposition. Active duty: airmen grades E-3 through E-6: Airmen Performance Reports (APRs) on separation or retirement are forwarded to the National Personnel Records Center, Saint Louis, Missouri unless data subject holds a reserve obligation - in which case they are forwarded to ARPC. Grades E-7/8: Duplicate copies, those retained in promotion selection folders, are returned at separation or retirement. Permanent copy (field record) is forwarded to the National Personnel Records Center or to ARPC if data subject holds a reserve obligation. Non-EAD USAFR airmen: Air Force Reserve Forces Non-commissioned Officers Performance Report; upon separation, retirement or assignment to a non-participating reserve status, they are forwarded to ARPC for file in the master personnel record and disposed of as a part of that record. Effectiveness/Performance Report Notices are destroyed when their purpose has been served as they are used as control measures in the creation of effectiveness reports.

System manager(s) and address:

Deputy Chief of Staff/Manpower and Personnel, Headquarters United States Air Force, Washington DC 2and Chief of Air Force Reserve, Headquarters United States Air Force, Washington, DC 20330.

Notification procedure:

Requests from individuals should be addressed to the systems manager.

Record access procedures:

Individual can obtain assistance in gaining access from the Systems Manager. Mailing addresses are in the Department of Defense directory in the appendix to the Air Force's systems notice.

Contesting record procedures:

The Air Force's rules for access to records and for contesting and appealing initial determinations by the individual concerned may be obtained from the Systems Manager.

Record source categories:

The basis of the ratings is observed on-the-job or education/training performance progression of the individual. Further, evaluation reports may have as an additional source of information, Letters of Evaluation which may be supplied and used for periods of duty performed away from the normal reporting official.

Systems exempted from certain provisions of the act:

Parts of this system may be exempt under 5 U.S.C. 552a (j) or (k), as applicable. For additional information, contact the Systems Manager.

F03501 SAM A

System name:

03501 SAM USAFSAM Personnel Information File.

System location:

Aerospace Medical Division, Brooks AFB, TX 78235.

Categories of individuals covered by the system:

Military and civilian personnel assigned to or scheduled for assignment to the staff USAF School of Aerospace Medicine.

Categories of records in the system:

Name; date of birth; service dates; grade; salary; promotion and step increase dates; occupational series; position to which assigned; supervisory appointment; professional/scientific status; educational level; awards won; publications; handicap status.

Authority for maintenance of the system:

10 U.S.C. 8012, Secretary of the Air Force: powers and duties; delegation by.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Provides data to the Commander and his immediate staff for utilization of assigned personnel, and for position management.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Maintained on computer magnetic disks or computer paper printouts.

Retrievability:

Normally, data is retrieved by use of non-personal information, such as organizational unit, occupational series, grade, or other workforce characteristics, but may be retrieved by name or position member.

Safeguards:

(1) Records are accessed by the records custodian or by other persons responsible for servicing the records system in performance of their official duties. (2) Records are controlled by personnel screening and by computer system software.

Retention and disposal:

Computer printouts are destroyed after use by tearing into pieces, shredding, pulping, macerating or burning. Upon reassignment or separation, information in the computer file relating to the individual is deleted from the data base.

System manager(s) and address:

Chief, Research and Development Plans Branch, Technical Services Division, USAFSAM, AMD, Brooks AFB, TX 78235.

Notification procedure:

Requests from individuals should be addressed to the Systems Manager.

Record access procedures:

Individual can obtain assistance in gaining access from the Systems Manager.

Contesting record procedures:

The Air Force's rules for access to records and for contesting and appealing initial determinations by the individual concerned may be obtained from the System Manager.

Record source categories:

Information will be obtained from base personnel records, managers and supervisors of individuals and the individuals themselves.

Systems exempted from certain provisions of the act:

NONE

F03501 0IACYVG

System name:

03501-0IACYVG Correction of Military Records of Officers and Airmen.

System location:

Air Reserve Personnel Center, Denver, CO 80280.

Categories of individuals covered by the system:

Air Force Reserve personnel and Air National Guard personnel.

Categories of records in the system:

case files containing letters from individual reservist requesting correction of military record, related documents and replies to reservist.

Authority for maintenance of the system:

10 USC 275, Personnel Records.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Used by Office Managers and Section supervisors and technicians to process correction of reserve records when requested. Base files are sent to Manpower and Personnel Center for final action

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Maintained in file folders.

Retrievability:

Filed by Name and Social Security Number (SSN).

Safeguards:

Records are accessed by custodian of the record system and by person(s) responsible for servicing the record system in performance of their official duties who are properly screened and cleared for need-to-know. Records are stored in locked cabinets or rooms, protected by guards and controlled by personnel screening.

Retention and disposal:

Retained in office files until superseded, obsolete, no longer needed for reference, or on inactivation, then destroyed by tearing into pieces, shredding, pulping, macerating, or burning.

System manager(s) and address:

Commander Air Reserve Personnel Center (ARPC), Denver CO 80280.

Notification procedure:

Requests from individuals should be addressed to the Documentation Management Officer, ARPC/DADP, Denver, Colorado 80280. Written requests for information should contain full name, SSN, current mailing address and, if known, the case (control) number on correspondence received from ARPC. Records may be reviewed in the Records Review Room, Air Reserve Personnel Center, Denver, Colorado between 8:00 am and 3:00 pm on normal work days. Visitors wishing to see their records should provide a current Reserve identification card and/or driving license and some verbal information that could verify the person's SSN at time of discharge.

Record access procedures:

Individuals can obtain assistance in gaining access from the Documentation Management Officer, ARPC/DADP, Denver, Colorado 80280; telephone (303) 394-4667.

Contesting record procedures:

The Air Force's rules for access to records and for contesting and appealing initial determinations by the individual concerned may be obtained from the Systems Manager.

Record source categories:

from personnel records

Systems exempted from certain provisions of the act:

NONE

F03501 0KPNQSD

System name:

03501 0KPNQSD Air Force Junior ROTC (AFJROTC) Instructor/Applicant System.

System location:

AFROTC/JRI Headquarters Air University, Maxwell Air Force Base, AL 36112.

Categories of individuals covered by the system:

AFJROTC Instructors/applicants.

Categories of records in the system:

AFJROTC Address Form; (two pages), Application for AFJROTC Instructor Duty; AFROTC Application Form, Processing Checklist; Applicant Evaluation Forms; Applicant Interview Record; last 10 Airmen Performance Reports or Officer Effectiveness Reports or summary of last 10 reports which includes period of supervision and overall evaluation; letter requesting Defense Central Index of Investigation (DCII) name check; photograph; Report of Separation from Active Duty; Retirement Order; Commander's Recommendation (for noncommissioned officers on active duty only); miscellaneous correspondence such as resume and letter of recommendation; copy of Air Force retirement physical and Physical Evaluation Board Findings if applicant is retired with 30 or more disability; copy of Veterans Administration (VA) Form Letter, Medical Forms from VA, if applicant is retired with 30 or more disability awarded by Veterans Administration; letter requesting medical evaluation of AFJROTC instructor applicants for personnel retired with 30 or more disability; Letter Verifying Dependents; Instructor Preference Card; Instructor Intent Letter; Contract Data Cards; Termination Letters; Outstanding Instructor Certificate; Certification Certificates.

Authority for maintenance of the system:

PL 88-647.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Used to evaluate applicant qualifications for employment as AFJROTC instructors. Name, rank and address of applicant furnished to school when nominated for employment. Information is furnished the authority performing the DCII name check.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Maintained in file folders, and on computers and computer products.

Retrievability:

Filed by Name, Social Security Number (SSN), and grade

Safeguards:

Records are accessed by custodian of the record system and by person(s) responsible for servicing the record system in performance of their official duties. Records are controlled by computer system software. Building locked after duty hours.

Retention and disposal:

Retained in office files until superseded, obsolete, no longer needed for reference, or on inactivation, then destroyed by tearing into pieces, shredding, pulping, macerating, or burning.

System manager(s) and address:

Chief, instructor management division, AFROTC/JRI, Maxwell Air Force Base, AL 36112.

Notification procedure:

Requests from individuals should be addressed to the Systems Manager. Individuals who write for information must furnish name grade, social security number and address. Visitors must show armed forces identification card and an additional source of positive identification.

Record access procedures:

Individual can obtain assistance in gaining access from the Systems Manager.

Contesting record procedures:

The Air Force's rules for access to records and for contesting and appealing initial determinations by the individual concerned may be obtained from the Systems Manager.

Record source categories:

Information obtained from previous employers, financial institutions, educational institutions, police and investigating officers, the bureau of motor vehicles, a state or local government, witnesses, source documents (such as reports) prepared on behalf of the Air Force by boards, committees, panels, auditors, and so forth.

Systems exempted from certain provisions of the act:

NONE

F03501 0MUHHZA

System name:

03501-0MUHHZA Personnel Interview Record.

System location:

915 Tactical Fighter Group, Homestead Air Force Base, FL 33030; 452 AREFW, March Air Force Base, CA 92508; 446 Military Airlift Wing (MAW) Assoc McChord Air Force Base, WA 98438; 459 TAW Andrews Air Force Base, MD 20331; 445 MAW Assoc Norton Air Force Base, CA 92409; 442 TAW Richards Gebaur Air Force Base, MO 64030; Det 307 301 Tactical Fighter Wing Tinker Air Force Base, OK 73145; 439 TAW Westover Air Force Base, MA 01022; 512 MAW Associate Dover Air Force Base, DE 1901; Det 508 301TFW Hill Air Force Base, UT 84406; 440 TAW Gen Billy Mitchell Fld WI 53207; 910 Tactical Fighter Group (TFG) Youngstown MAP OH 44473; 911 TAG GTR Pittsburgh IAP-PA 15231; 913 TAG Willow Grove Airport PA 19090; 908 TAG Maxwell Air Force Base, AL 36112; 514 MAW Assoc McGuire Air Force Base, NJ 08641; 914 TAG Niagara Falls MAP NY; 917 TFG

Barksdale Air Force Base, LA 71110; 919 TAG Eglin Air Force Base, FL 32542; 920 TAG Keesler Air Force Base, MS 39534; 924 TAG Ellington Air Force Base, TX 77209; 94 TAW Dobbins Air Force Base, GA 30060; 301 TFW Carswell Air Force Base, TX 76127; 926 TAG United States Naval Air Station New Orleans LA 70037; 940 AREFG, Mather AFB, CO 95655; 934 TAG Minneapolis St Paul IAP MN 55417; 928 TAG Chicago Ohare IAP IL 60666; 932 TAG Scott Air Force Base, IL 62225; 302 TAW Rickenbacker Air Force Base, OH 43217; 315 MAW Assoc Charleston Air Force Base, SC 29404; 349 MAW Assoc Travis Air Force Base, CA 94535; 403 TAW Selfridge Air Force Base, MI 48045; 433 TAW Kelly Air Force Base, TX 78241; 434 TFW Grissom Air Force Base, IN 46970

Categories of individuals covered by the system:

All USAF Reserve non prior service & prior service applicants.

Categories of records in the system:

Data on military and civilian history for interviewing and tentatively qualifying a prospect.

Authority for maintenance of the system:

10 USC 8012

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Used for interviewing.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Maintained on roll microfilm.

Retrievability:

Filed by Name and by Social Security Number (SSN).

Safeguards:

Records are accessed by custodian of the record system.

Retention and disposal:

Retained in office files until reassignment or separation, then destroyed by tearing into pieces, shredding, pulping, macerating, or burning.

System manager(s) and address:

AFRES/RS, Robins AFB, GA 31098

Notification procedure:

Requests from individuals should be addressed to the Systems Manager.

Record access procedures:

Individual can obtain assistance in gaining access from the Systems Manager.

Contesting record procedures:

The Air Force's rules for access to records and for contesting and appealing initial determinations by the individual concerned may be obtained from the Systems Manager.

Record source categories:

Individual.

Systems exempted from certain provisions of the act:

NONE

F03501X01ACYVA

System name:

03501X01ACYVA Reserve Supplement Officer (RSO) Case File.

System location:

Air Reserve Personnel Center, Denver, CO 80280.

Categories of individuals covered by the system:

Air Force active duty officer personnel and enlisted personnel. Air Force civilian employees. Air Force Reserve and Air National Guard personnel.

Categories of records in the system:

Documents pertaining to requisition, assignment, reassignment, separation, or TDY assignment request, work sheet, orders, amendments, notification of receipt of application solicitation letter.

Authority for maintenance of the system:

10 USC 269.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Used by the military and civilian personnel of the reserve supplement officer assignment branch; information is disclosed to Consolidated Base Personnel Office and other branches within the Air Reserve Personnel Center to insure proper information is maintained on the individual for assignment.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Maintained in file folders.

Retrievability:

Filed by Name and Social Security Number (SSN).

Safeguards:

Records are accessed by custodian of the record system and by person(s) responsible for servicing the record system in performance of their official duties who are properly screened and cleared for need-to-know. Records are protected by guards.

Retention and disposal:

Retained in office files until superseded, obsolete, no longer needed for reference, or on inactivation, then destroyed by tearing into pieces, shredding, pulping, macerating, or burning.

System manager(s) and address:

Commander Air Reserve Personnel Center (ARPC) Denver, CO 80280.

Notification procedure:

Requests from individuals should be addressed to the Documentation Management Officer, ARPC/DADP, Denver, Colorado 80280. Written requests for information should contain full name, SSN, current mailing address and, if known, the case (control) number on correspondence received from ARPC. Records may be reviewed in the Records Review Room, Air Reserve Personnel Center, Denver, Colorado between 8:00 am and 3:00 pm on normal work days. Visitors wishing to see their records should provide a current Reserve identification card and/or driving license and some verbal information that could verify the person's SSN at time of discharge.

Record access procedures:

Individuals can obtain assistance in gaining access from the Documentation Management Officer, ARPC/DADP, Denver, Colorado 80280; telephone (303) 394-4667.

Contesting record procedures:

The Air Force's rules for access to records and for contesting and appealing initial determinations by the individual concerned may be obtained from the Systems Manager.

Record source categories:

Major commands, personnel records, Air Reserve units.

Systems exempted from certain provisions of the act:

NONE

F03501X01ACYVB

System name:

03501X01ACYVB Application for Separation from the Regular AF to AF Reserve/Air National Guard.

System location:

Air Reserve Personnel Center, Denver, CO 80280.

Categories of individuals covered by the system:

Air Force active duty officer and enlisted personnel. Air Force civilian employees. Air Force Reserve and Air National Guard personnel.

Categories of records in the system:

Application concerning separation from the Regular Air Force to the Air Force Reserve/Air National Guard, documents pertaining to requisition, assignments, reassignment, separation and declination

Authority for maintenance of the system:

10 USC 269.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

To help in obtaining a position in the Air Reserve forces. Used by Regular Air Force, Air Reservist, Air National Guard and civilian personnel to facilitate finding a position for reservists.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Maintained in file folders.

Retrievability:

Filed by Name and Social Security Number (SSN).

Safeguards:

Records are accessed by custodian of the record system and by person(s) responsible for servicing the record system in performance of their official duties who are properly screened and cleared for need-to-know. Records are protected by guards.

Retention and disposal:

Retained in office files until superseded, obsolete, no longer needed for reference, or on inactivation, then destroyed by tearing into pieces, shredding, pulping, macerating, or burning.

System manager(s) and address:

Commander, Air Reserve Personnel Center (ARPC), Denver, CO 80280.

Notification procedure:

Requests from individuals should be addressed to the Documentation Management Officer, AFPC/DADP, Denver, Colorado 80280. Written requests for information should contain full name, SSN, current mailing address and, if known, the case (control) number on correspondence received from ARPC. Records may be reviewed in the Records Review Room, Air Reserve Personnel Center, Denver, Colorado between 8:00 am and 3:00 pm on normal work days. Visitors wishing to see their records should provide a current Reserve identification card and/or driving license and some verbal information that could verify his/her application/declination or orders.

Record access procedures:

Individuals can obtain assistance in gaining access from the Documentation Management Officer, AFPC/DADP, Denver, Colorado 80280; telephone (303) 394-4667.

Contesting record procedures:

The Air Force's rules for access to records and for contesting and appealing initial determinations by the individual concerned may be obtained from the Systems Manager.

Record source categories:

Major commands, Consolidated Base Personnel Office, Consolidated Reserve Personnel Office.

Systems exempted from certain provisions of the act:

NONE

F03501X0IACYVD

System name:

03501X0IACYVD Servicemen's Group Life Insurance (SGLI) Entitlement Case Files.

System location:

Air Reserve Personnel Center, Denver, CO 80205.

Categories of individuals covered by the system:

Air Force Reserve and Air National Guard personnel.

Categories of records in the system:

Copies of correspondence, casualty reports, record of emergency data, SGLI election, death order, death Certificate, Air Force Accounting And Finance Center (AFAFC) verification of premium payments.

Authority for maintenance of the system:

38 USC 765-776.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Purpose is to determine if an individual qualified for SGLI coverage, applied and paid for premiums for SGLI coverage and to report this information to office of SGLI, Newark NJ for processing insurance claims.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Maintained in file folders and card files.

Retrievability:

Filed by Name and Social Security Number (SSN).

Safeguards:

Records are accessed by custodian of the record system and by person(s) responsible for servicing the record system in performance of their official duties who are properly screened and cleared for need-to-know. Records are protected by guards and controlled by personnel screening.

Retention and disposal:

Retained in office files until superseded, obsolete, no longer needed for reference, or on inactivation, then destroyed by tearing into pieces, shredding, pulping, macerating, or burning.

System manager(s) and address:

Commander Air Reserve Personnel Center (ARPC), Denver, CO 80280.

Notification procedure:

Requests from individuals should be addressed to the Documentation Management Officer, ARPC/DADP, Denver, CO 80280. Written requests for information should contain full name, SSN, current mailing address and, if known, the case (control) number on correspondence received from ARPC. Records may be reviewed in the Records Review Room, Air Reserve Personnel Center, Denver, CO between 8:00 am and 3:00 pm on normal work days. Visitors wishing to see their records should provide a current Reserve identification card and/or driving license and some verbal information that could verify the person's identification.

Record access procedures:

Individuals can obtain assistance in gaining access from the Documentation Management Officer, ARPC/DADP, Denver, CO 80280; telephone (303) 394-4667.

Contesting record procedures:

The Air Force's rules for access to records and for contesting and appealing initial determinations by the individual concerned may be obtained from the Systems Manager.

Record source categories:

Information from notification of death and documents pertinent to death and SGLI coverage obtained from other military branches, public health records, next of kin, or civilian organizations.

Systems exempted from certain provisions of the act:

NONE

F03503 DPMMP A

System name:

03503 DPMMP A Air Force Enlistment/Commissioning Records System.

System location:

Records System is maintained at recruiting offices and Armed Forces Examining and Entrance Stations (AFEES), Liaison Noncommissioned Officer (NCO) offices in all states.

Categories of individuals covered by the system:

Applicants for enlistment or commissioning programs.

Categories of records in the system:

Individual's application, personal interview record (PIR) and supporting documents containing name, social security number, finger prints, historical background, education, medical history, physical status, employment, religious preferences (optional), marital and dependency status, linguistic abilities, aptitude and mental test results, parental consent for minors.

Authority for maintenance of the system:

44 U.S.C. 3101; and 10 U.S.C. Chapter 31 - Enlistments, Sections 504 thru 512

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Information is collected by recruiters to determine enlistment/commissioning eligibility, and process qualified applicants. Personnel managers use as hard copy documentation of data entered in Advanced Personnel Data Systems (APDS). Personnel managers also use certain documents to determine classification and assignment actions after enlistment. All documents are source documents in determining benefits/ entitlements.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Maintained in visible file binders/cabinets.

Retrievability:

Filed by Name.

Safeguards:

Records are accessed by custodian of the record system and by person(s) responsible for servicing the record system in performance of their official duties who are properly screened and cleared for need-to-know. Records are stored in locked cabinets or rooms.

Retention and disposal:

Files of applicants not enlisted are retained in the local recruiting office and destroyed after two years. Records of enlistees that are not forwarded to Master and Unit Personnel Records files are destroyed after two years, by tearing into pieces, burning, shreding, macerating or pulping.

System manager(s) and address:

Assistant Deputy Chief of Staff Personnel for Military Personnel, Randolph Air Force Base, Texas

Notification procedure:

Individuals may contact agency officials at respective recruiting office locations

Record access procedures:

Same procedure as notification above.

Contesting record procedures:

The Air Force's rules for access to records and for contesting and appealing initial determinations by the individual concerned may be obtained from the Systems Manager.

Record source categories:

Individual provides through written application or personal interview.

Systems exempted from certain provisions of the act:

NONE

F03503 0MUHHZA

System name:

03503-0MUHHZA Reserve Manning Report.

System location:

14 AF(R)/RS, Dobbins AFB, GA 30060; 10 AF(R)/RS, Bergstrom AFB, TX 78743; and 4 AF(R)/RS, McClellan AFB, CA 95652.

Categories of individuals covered by the system:

Manning specialists.

Categories of records in the system:

Data pertaining to nonprior and prior enlistments and accessions.

Authority for maintenance of the system:

10 USC 8012.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Standardize statistical data.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Maintained in file folders.

Retrievability:

Filed by Name. Filed by Social Security Number (SSN).

Safeguards:

Records are accessed by person(s) responsible for servicing the record system in performance of their official duties.

Retention and disposal:

Retained in office files for 2 years after annual cut-off, then destroyed by tearing into pieces, shredding, pulping, macerating, or burning.

System manager(s) and address:

HQ AFRES/RS, Robins AFB GA 31098.

Notification procedure:

Requests from individuals should be addressed to the parent Region/RS

Record access procedures:

Individual can obtain assistance in gaining access from the parent Region/RS.

Contesting record procedures:

The Air Force's rules for access to records and for contesting and appealing initial determinations by the individual concerned may be obtained from the Systems Manager.

Record source categories:

Department of Defense (DD) Form 4, Department of Defense Form 1644 Interservice Transfer.

Systems exempted from certain provisions of the act:

NONE

F03504 DPMHC A

System name:

03504-DPMHC-A Chaplain Personnel Action Folder.

System location:

Headquarters United States Air Force, Washington DC 20330.

Categories of individuals covered by the system:

Active Duty Chaplains.

Categories of records in the system:

This is a grouping of information for each United States Air Force (USAF) chaplain. Items of information in these folders included the following: current official photograph, current career brief, summary of education, Officer Career Objective Statement, Chaplain Services Personnel Evaluation, copy of chaplain's Ecclesiastical Endorsement, copy of Appointment orders, copy of initial Extended Active Duty Orders, Application for Extended Active Duty with the United States Air Force USAF, Application for Appointment as Reserve of the Air Force, student information sheets prepared while attending USAF Chaplain School Courses, copies of assignment action documents, correspondence between the chaplains and Headquarters USAF/Chief of Chaplains and requests for special personnel actions and dispositions curtailments, etc.

Authority for maintenance of the system:

10 USC 8012 and 8032.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

The documents maintained in these folders are utilized by the Resource Manager in Headquarters United States Air Force/Chief of Chaplains, Personnel Division for assignment selection of chaplains. Because of the necessity to insure an equitable denominational spread of chaplains on an installation and to insure the proper placement of specially qualified chaplains, it is necessary to maintain current information on each chaplain. Records may be disclosed to endorsing agents concerning the qualifications of their chaplains for continued duty as representatives of their denominations.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Maintained in visible file binders/cabinets.

Retrievability:

Filed by Name.

Safeguards:

Records are accessed by custodian of the record system, and by person(s) responsible for servicing the record system in performance of their official duties who are properly screened and cleared for need-to-know. Records are stored in locked cabinets or rooms.

Retention and disposal:

Retained for 2 years after separation then destroyed by macerating or burning.

System manager(s) and address:

Chief of Chaplains, Headquarters United States Air Force.

Notification procedure:

Requests from individuals should be addressed to the Systems Manager.

Record access procedures:

Individual can obtain assistance in gaining access from the Systems Manager.

Contesting record procedures:

The Air Force's rules for access to records and for contesting and appealing initial determinations by the individual concerned may be obtained from the Systems Manager.

Record source categories:

Member's personnel action requests/preferences and information retrieved from the Advanced Personnel Data System (ADPS).

Systems exempted from certain provisions of the act:

NONE

F03504 OYUEBLA

System name:

03504 OYUEBLA Training status Code.

System location:

At Headquarters of Air Force Communications Service (DCS/personnel), Scott AFB IL 62225.

Categories of individuals covered by the system:

Air Force active duty enlisted personnel.

Categories of records in the system:

Contains career training data, name and social security number (SSN) of individuals selected for reassignment to Air Force Communications Service (AFCS) units overseas.

Authority for maintenance of the system:

44 USC 3101.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Used to monitor the training qualifications of individuals who are selected for reassignment overseas to determine if specialized training

is required enroute or if individual is presently qualified for the assignment. Also used to indicate if a training quota has been received when specialized training is required.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Maintained on computer magnetic tapes and on computer paper printouts.

Retrievability:

Retrievability based on training status code or record status indicating individual selected for reassignment. Computerized.

Safeguards:

Records are accessed by person(s) responsible for servicing the record system in performance of their official duties. Records are stored in locked cabinets or rooms.

Retention and disposal:

Retained in office files until superseded, obsolete, no longer needed for reference, or on inactivation, then destroyed by tearing into pieces, shredding, pulping, macerating, or burning. Also destroyed by degaussing.

System manager(s) and address:

Technical Training Branch Directorate of Personnel Headquarters AFCS, Scott AFB, IL 62225.

Notification procedure:

Requests from individuals should be addressed to the Systems Manager.

Record access procedures:

Individual can obtain assistance in gaining access from the Systems Manager.

Contesting record procedures:

The Air Force's rules for access to records and for contesting and appealing initial determinations by the individual concerned may be obtained from the Systems Manager.

Record source categories:

Information obtained from automated system interfaces.

Systems exempted from certain provisions of the act:

NONE

F03504 OYUEBLB

System name:

03504 OYUEBLB Commander Identification.

System location:

At Headquarters Air Force Communications Service (DCS/p), Scott AFB IL 62225.

Categories of individuals covered by the system:

Air Force active duty military personnel.

Categories of records in the system:

Individuals currently performing duty as a commander and personnel selected by area commanders as possible/potential commanders.

Authority for maintenance of the system:

44 USC 3101.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Used to monitor the assignment and replacement of unit Commanders in Air Force Communications Service (AFCS).

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Maintained on computer magnetic tapes and computer paper printouts.

Retrievability:

Retrievability based on presence of commander identification code. Computerized.

Safeguards:

Records are accessed by person(s) responsible for servicing the record system in performance of their official duties. Records are stored in locked cabinets or rooms.

Retention and disposal:

Retained in office files until superseded, obsolete, no longer needed for reference, or on inactivation, then destroyed by tearing into pieces, shredding, pulping, macerating, or burning. Also destroyed by degaussing.

System manager(s) and address:

Director of Assignments Directorate of Personnel Headquarters AFCS, Scott AFB IL 62225.

Notification procedure:

Requests from individuals should be addressed to the Systems Manager.

Record access procedure:

Individual can obtain assistance in gaining access from the Systems Manager.

Contesting record procedures:

The Air Force's rules for access to records and for contesting and appealing initial determinations by the individual concerned may be obtained from the Systems Manager.

Record source categories:

Information obtained from automated system interfaces.

Systems exempted from certain provisions of the act:

NONE

F03504 01ACYVA

System name:

03504-01ACYVA Data Change/Suspense Notification.

System location:

Air Reserve Personnel Center, Denver, CO 80280.

Categories of individuals covered by the system:

Air Force Reserve personnel.

Categories of records in the system:

Correspondence and forms used to record discrepancies or changes.

Authority for maintenance of the system:

10 USC 275 personnel records.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

To resolve discrepancies detected during annual records review.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Maintained in file folders.

Retrievability:

Filed by Name, Social Security Number (SSN) or other identification number or system identifier.

Safeguards:

Records are accessed by person(s) responsible for servicing the record system in performance of their official duties. Records are protected by guards.

Retention and disposal:

Retained in office files for 1 year after annual cut-off, then destroyed by tearing into pieces, shredding, pulping, macerating, or burning.

System manager(s) and address:

Commander Air Reserve Personnel Center (ARPC), Denver, CO 80280.

Notification procedure:

Requests from individuals should be addressed to the Documentation Management Officer, ARPC/DADP, Denver, CO 80280. Written requests for information should contain full name, SSN, current mailing address and, if known, the case (control) number on correspondence received from ARPC. Records may be reviewed in the Records Review Room, Air Reserve Personnel Center, Denver, CO between 8:00 am and 3:00 pm on normal work days. Visitors wishing to see their records should provide a current Reserve identification card and/or driving license and some verbal information that could verify the person's identification.

Record access procedures:

Individuals can obtain assistance in gaining access from the Documentation Management Officer, ARPC/DADP, Denver, CO 80280; telephone (303) 394-4667.

Contesting record procedures:

The Air Force's rules for access to records and for contesting and appealing initial determinations by the individual concerned may be obtained from the Systems Manager.

Record source categories:

Information from source documents prepared on behalf of the Air Force Advance Personnel Data System or supplied by Reservist.

Systems exempted from certain provisions of the act:

NONE

F03505 DPMAO B

System name:

03505-DPMAO-B Personnel Action File (Digest File).

System location:

Air Force Military Personnel Center, Randolph Air Force Base, TX 78148 for active and Air Reserve Personnel Center, Denver CO 80280 for nonactive duty USAFR officers.

Categories of individuals covered by the system:

Air Force active duty officer personnel and nonactive duty USAFR officers.

Categories of records in the system:

Composed largely of summaries/extracts or notices of the Air Force Office of Special Investigations (AFOSI) Reports of Investigation (ROIs). The system may also contain other official records or documents which reflect relevant derogatory information about officers, e.g., notice of involuntary separation proceedings, notice of Special Security File, reports of AWOL/Desertion status, administrative inquiries and investigations, Inspector General (IG) reports, and reports of violations of public trust in contract, procurement, and other matters. Additionally, a file will contain a statement regarding the subject matter from the officer if one is made, plus any comments and recommendations by the member's commander. Finally, a Digest File will contain copies of documentation used to notify the individual and the commander of the file and a record of the Officer Personnel Records Review Board (OPRRB) decision to retain the file. The system of records also includes letters of notification when digest files are destroyed.

Authority for maintenance of the system:

10 USC 8012.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Digest Files are reviewed by career management officials and Central Selection Boards at AFMPC or ARPC, as appropriate, to insure the propriety of personnel decisions finalized at those levels regarding promotion, assignment, mobilization, recall to extended active duty, selection, utilization and separation. The purpose of such review is to insure that individual career management decisions enhance the quality of professionalism in the Air Force.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Maintained in visible file binders/cabinets.

Retrievability:

Filed alphabetically by name.

Safeguards:

Records are accessed by persons responsible for servicing the record system and by other personnel whose names appear on an authorized access list indicating they have a need to know in the performance of their official duties. Records are stored in locked cabinets.

Retention and disposal:

Disposition is pending approval under 44 U.S.C. 3303(3).

System manager(s) and address:

Chief, Special Control and Records Review Group (AFMPC/DPMAO), Randolph AFB TX 78148 for active duty officers and Commander, Air Reserve Personnel Center (ARPC), Denver CO 80280 for non-active duty USAFR officers.

Notification procedure:

Requests from individuals should be addressed to the Systems Manager. Written requests should contain the member's full name, rank, and SSN. Information may also be obtained by personal visit with the appropriate Systems Requests from individuals should be addressed to the Chief, Special Control and Records Review Group (AFMPC/DPMAO), Randolph AFB TX 78148 for active duty officers or the Documentation Management Officer (ARPC/DADP), Denver CO 80280 for nonactive duty USAFR officers. Written request(s) for information should contain full name of individual, rank and SSN (Social Security Number). Nonactive duty USAFR officers should also include current address and the case (control) number shown on any correspondence received from the Center. Information may be obtained by active duty officers by personal visit with the System Manager upon verification of the identification data required for written requests. Nonactive duty USAFR officers may review records in Records Review Room (2-B18-2) ARPC, Denver CO 80280, between 8:00 A.M. and 3:00 P.M. on normal work days. For personal visits, the individual should provide current Reserve ID cards and/or drivers license and present some verbal information that could verify their identity from their record.

Record access procedures:

Individuals can obtain access to their own Digest Files by following the procedures described above.

Contesting record procedures:

The Air Force's rules for access to records and for contesting and appealing initial determinations by the individual concerned may be obtained from the Systems Manager.

Record source categories:

Digest File information is obtained from AFOSI, Commanders, Consolidated Base Personnel Offices, FBI, MAJCOMs, HQ USAF/IG and from official records, reports or documents prepared on behalf of the Air Force by boards, committees, panels, and investigating officers.

Systems exempted from certain provisions of the act:

NONE

F03505 0IACYVA

System name:

03505-0IACYVA Unfavorable Information Files (UIFS) on Officers and Airmen.

System location:

Air Reserve Personnel Center, Denver, CO 80280.

Categories of individuals covered by the system:

Air Force Reserve personnel.

Categories of records in the system:

Records of punishment under article 15, Uniform Code of Military Justice for written admonition or reprimand not pursuant to article 15 or sentences of court martial, results of court martials, convictions, letters of indebtedness, a reported failure to support dependents, civil and military law enforcement reports resulting in a finding of guilty, judicial or administrative, except for minor traffic violations.

Authority for maintenance of the system:

10 USC 262.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Reviewed in connection with promotion consideration, selection for schools, assignment, and all personnel actions used by active duty personnel and AF civilian employees for all personnel actions.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Maintained in file folders.

Retrievability:

Filed by Name, Social Security Number (SSN) or by other identification number or system identifier.

Safeguards:

Records are accessed by person(s) responsible for servicing the record system in performance of their official duties. Records are stored in safes.

Retention and disposal:

Retained for 1 year after date of reprimand, or 1 year from date of unfavorable correspondence not related to administrative reprimands, or until member reenlists, separates, retires or dies, and then destroyed by tearing into pieces, shredding, pulping, macerating or burning.

System manager(s) and address:

Commander Air Reserve Personnel Center (ARPC), Denver, Co 80280.

Notification procedure:

Requests from individuals should be addressed to the Documentation Management Officer, ARPC/DADP, Denver, CO 80280. Written requests for information should contain full name, SSN, current mailing address and, if known, the case (control) number on correspondence received from ARPC. Records may be reviewed in the Records Review Room, Air Reserve Personnel Center, Denver, CO between 8:00 am and 3:00 pm on normal work days. Visitors wishing to see their records should provide a current Reserve identification card and/or driving license and some verbal information that could verify the person's identification.

Record access procedures:

Individuals can obtain assistance in gaining access from the Documentation Management Officer, ARPC/DADP, Denver, CO 80280; telephone (303) 394-4667.

Contesting record procedures:

The Air Force's rules for access to records and for contesting and appealing initial determinations by the individual concerned may be obtained from the Systems Manager.

Record source categories:

Information obtained from police and investigating officers, from state or local governments, from witnesses or from source documents (such as reports) prepared on behalf of the Air Force by boards, committees, panels, auditors, and so forth.

Systems exempted from certain provisions of the act:

NONE

F03506 0KPNQSA

System name:

03506 0KPNQSA Air Force Reserve Officer Training Corps Qualifying Test Scoring System.

System location:

AFROTC/RRUR, Maxwell Air Force Base, AL 36112, and portion pertaining to each AFROTC detachment located at the respective detachment. Official mailing addresses of the detachments are in the Department of Defense Directory in the appendix to the Air Force's system notice.

Categories of individuals covered by the system:

Air Forces applicants testing at Air Forces detachments.

Categories of records in the system:

Name, detachment, date of test, test scores, social security number, air science year, number of test administrations, institution category, race, sex, marital status, education level, and program applying for.

Authority for maintenance of the system:

10 USC Chapter 103; Military Selective Service Act of 1967, Section 6, (50 USC 456); and 10 USC 8012.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Scores are used against criteria for entrance into AFROTC, and as a measure of quality. Scores are entered in cadet records.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Maintained in file folders, visible file binders/cabinets, and computer magnetic tapes and computer paper printouts.

Retrievability:

Filed by Name, Social Security Number (SSN), location of test administration and date of testing.

Safeguards:

Records are accessed by person(s) responsible for servicing the record system in performance of their official duties. Records are controlled by computer system software. Buildings are secured after duty hours.

Retention and disposal:

AFROTC/RRUR will maintain records of scores attained on tests administered at AFROTC detachments for a period of six years. Records are destroyed by tearing into pieces, maceration, burning or degaussing. Air Force Human Resources Laboratory, Brooks Air Force Base, TX 78235 is official repository for permanent record of all AFOQT scores.

System manager(s) and address:

Chief, Resource Systems and AFOQT Branch, AFROTC/RRUR. Air Force Base, AL 36112.

Notification procedure:

Requests from individuals should be addressed to the Systems Manager. Requests should include full name, SSN, location of test administration, and date of testing.

Record access procedures:

Individual can obtain assistance in gaining access from the Systems Manager.

Contesting record procedures:

The Air Force's rules for access to records and for contesting and appealing initial determinations by the individual concerned may be obtained from the Systems Manager.

Record source categories:

Individual's knowledge of subject being tested.

Systems exempted from certain provisions of the act:

NONE

F03507 0IACYVA

System name:

03507-0IACYVA Flying Status Actions.

System location:

Air Reserve Personnel Center, Denver, CO 80280.

Categories of individuals covered by the system:

Air Force Reserve and Air National Guard personnel.

Categories of records in the system:

Correspondence and related documents pertaining to request for suspension, nonrated officer utilization, aeronautical rating data documents that pertain to aeronautical ratings or suspensions and request for update of the uniform officer record and applications for other flying status/actions.

Authority for maintenance of the system:

10 USC 275.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

To track each action taken until computer action is complete; reservist is informed and file copy is in master personnel record.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Maintained in file folders.

Retrievability:

Filed by Name, Social Security Number (SSN) or other identification number or system identifier.

Safeguards:

Records are accessed by person(s) responsible for servicing the record system in performance of their official duties. Records are protected by guards. Records are accessed by custodian of the record system.

Retention and disposal:

Retained in office files for one year after annual cut-off, then destroyed by tearing into pieces, shredding, pulping, macerating, or burning.

System manager(s) and address:

Commander Air Reserve Personnel Center (ARPC), Denver, CO 80280.

Notification procedure:

Requests from individuals should be addressed to the Documentation Management Officer, ARPC/DADP, Denver, CO 80280. Written requests for information should contain full name, SSN, current mailing address and, if known, the case (control) number on correspondence received from ARPC. Records may be reviewed in the Records Review Room, Air Reserve Personnel Center, Denver, CO between 8:00 am and 3:00 pm on normal work days. Visitors wishing to see their records should provide a current Reserve identification card and/or driving license and some verbal information that could verify the person's identification.

Record access procedures:

Individuals can obtain assistance in gaining access from the Documentation Management Officer, ARPC/DADP, Denver, CO 80280; telephone (303) 394-4667.

Contesting record procedures:

The Air Force's rules for access to records and for contesting and appealing initial determinations by the individual concerned may be obtained from the Systems Manager.

Record source categories:

information from source documents prepared on behalf of the Air Force advanced personnel data system or supplied by reservist.

Systems exempted from certain provisions of the act:

NONE

F03508 DPMAJBA

System name:

03508 DPMAJBA Recorder's Roster.

System location:

Air Force Manpower and Personnel Center, Randolph Air Force Base, TX 78148. Washington National Records Center, Washington DC 20409.

Categories of individuals covered by the system:

Records are maintained on all Air Force officers and E-7's and E-8's who are eligible for promotion consideration and officers considered for Regular Air Force appointment and Reserve Officers considered for involuntary separation, and any other special board directed by the Secretary of the Air Force or the Chief of Staff.

Categories of records in the system:

Listing containing record number,ber, name, social security number, date of rotor, program controlcomponent, promotion category, select/non-select status, FOR OFFICIAL USE ONLY statement and name and year of board.

Authority for maintenance of the system:

The records are maintained to support selection boards convened under the authority of 10 U.S.C. 8297, 8285, 8442.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

These records are used to determine whether individuals were considered by the convening board.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Maintained in visible file binders/cabinets.

Retrievability:

Records are accessed by identification of board of consideration and then by inverted social security number of subject by promotion category.

Safeguards:

Records are accessed by authorized personnel who are properly screened and cleared for need-to-know. Records are stored in locked cabinets or rooms.

Retention and disposal:

The records are retained in the Selection Board Secretariat for four calendar years and then retired to the National Archives, Washington, D.C.

System manager(s) and address:

Assistant Deputy Chief of Staff, Personnel for Military Personnel, Randolph Air Force Base, Texas 78148.

Notification procedure:

Requests from individuals should be addressed to the Systems Manager.

Record access procedures:

Individual can obtain assistance in gaining access from the Systems Manager. Request must include name grade Social Security Number, board identification, promotion category, and zone of consideration as applicable.

Contesting record procedures:

The Air Force's rules for access to records and for contesting and appealing initial determinations by the individual concerned may be obtained from the Systems Manager.

Record source categories:

The information in these records is extracted from the Selection Board Support File, and from data compiled from individual board member inputs.

Systems exempted from certain provisions of the act:

NONE

F03508 01ACYVA

System name:

03508-01ACYVA Officer Promotions.

System location:

Air Reserve Personnel Center, Denver, CO 80280. Washington National Records Center, Washington, DC 20409.

Categories of individuals covered by the system:

Air Force active duty officer personnel. Air Force Reserve and Air National Guard personnel.

Categories of records in the system:

Proceedings, findings and related documents such as rosters, board membership and board support and orders announcing promotion.

Authority for maintenance of the system:

10 USC 8362, 8366, 8367, 8371, Commissioned Officer selection board procedures.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Used by promotion division personnel in preparation for promotion boards and by the actual promotion board when convened.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Maintained in file folders and in note books/binders.

Retrievability:

Filed by Name, Social Security Number (SSN), or other identification number or system identifier.

Safeguards:

Records are accessed by custodian of the record system, and by person(s) responsible for servicing the record system in performance of their official duties who are properly screened and cleared for need-to-know. Records are stored in locked cabinets or rooms, protected by guards, and controlled by personnel screening.

Retention and disposal:

Retained in office files for 2 years after annual cut-off, then retired to Washington National Records Center, Washington DC 20409, for permanent retention.

System manager(s) and address:

Commander Air Reserve Personnel Center (ARPC).

Notification procedure:

Requests from individual should be addressed to Command Documentation Officer ARPC/DAD, Denver CO 80280. Written request for information should contain full name of individual, SSN (Social Security Number). Current address and the case (control) number shown on correspondence received from center. Records may be reviewed in records review room ARPC, Denver, CO 80280, between 8:00 am and 3:00 pm on normal work days. For personal visits, the individual should provide current reserve i.d. card and/or drivers license and give some verbal information that could verify his/her record.

Record access procedures:

Individual can obtain assistance in gaining access from command documentation manager, ARPC/DAD, Denver, CO 80280, telephone area code (303) 394-4667.

Contesting record procedures:

The Air Force's rules for access to records and for contesting and appealing initial determinations by the individual concerned may be obtained from the Systems Manager.

Record source categories:

Information obtained from source documents (such as reports) prepared on behalf of the Air Force by boards, committees, panels, auditors, and so forth.

Systems exempted from certain provisions of the act:

NONE

F03508 01ACYVB

System name:

03508-01ACYVB Air Force Reserve Airman Demotions.

System location:

Air Reserve Personnel Center, Denver, CO 80280.

Categories of individuals covered by the system:

Air Force Reserve personnel.

Categories of records in the system:

Documents and rosters relating to a weighted airman selection system and case files for reserve Airmen who were demoted.

Authority for maintenance of the system:

10 USC 275 personnel records.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Monitor and process promotion actions by office personnel, and for research of related documents.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Maintained in file folders/ note books/binders.

Retrievability:

Filed by Name, Social Security Number (SSN) or by other identification number or system identifier.

Safeguards:

Records are accessed by custodian of the record system and person(s) responsible for servicing the record system in performance of their official duties who are properly screened and cleared for need-to-know. Records are stored in locked cabinets or rooms, protected by guards and controlled by personnel screening.

Retention and disposal:

Retained in office files for three months after monthly cut-off, then destroyed by tearing into pieces, shredding, pulping, macerating, or burning.

System manager(s) and address:

Commander Air Reserve Personnel Center (ARPC), Denver, CO 80280.

Notification procedure:

Requests from individuals should be addressed to the Documentation Management Officer, ARPC/DADP, Denver, CO 80280. Written requests for information should contain full name, SSN, current mailing address and, if known, the case (control) number on correspondence received from ARPC. Records may be reviewed in the Records Review Room, Air Reserve Personnel Center, Denver, CO between 8:00 am and 3:00 pm on normal work days. Visitors wishing to see their records should provide a current Reserve identification card and/or driving license and some verbal information that could verify the person's identification.

Record access procedures:

Individuals can obtain assistance in gaining access from the Documentation Management Officer, ARPC/DADP, Denver, CO 80280; telephone (303) 394-4667.

Contesting record procedures:

The Air Force's rules for access to records and for contesting and appealing initial determinations by the individual concerned may be obtained from the Systems Manager.

Record source categories:

From master personnel records and computer products, automated system interfaces and source documents (such as reports) prepared on behalf of the Air Force by boards, committees, panels, auditors, and so forth.

Systems exempted from certain provisions of the act:

NONE

F03509 01ACYVA

System name:

03509-01ACYVA Requests for Discharge From the Air Force Reserve.

System location:

Air Reserve Personnel Center, Denver, CO 80280, (all Reserve personnel other than unit assigned); Headquarters Air Force Reserve, Robins AFB GA 3 31098, (AFRES unit assigned Reserve Personnel).

Categories of individuals covered by the system:

Air Force Reserve personnel.

Categories of records in the system:

Applications and other documents related to discharge or separation by reason of dependency or hardship or for the convenience of the government.

Authority for maintenance of the system:

10 USC 1074 Personnel Records.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

To maintain tracking of each action taken until computer action is complete, reservist is informed and file copy is in Master Personnel Record.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Maintained in file folders.

Retrievability:

Filed by Name, Social Security Number (SSN) or by other identification number or system identifier.

Safeguards:

Records are accessed by person(s) responsible for servicing the record system in performance of their official duties. Records are protected by guards and stored in locked cabinets or rooms.

Retention and disposal:

Retained in office files for one year after annual cut-off, then destroyed by tearing into pieces, shredding, pulping, macerating, or burning. Hq AFRES forwards copies of actions resulting in discharge to the Air Reserve Personnel Center, Denver CO 80280 for inclusion in the individual's Master Personnel Record Group.

System manager(s) and address:

Commander Air Reserve Personnel Center (ARPC), Denver, CO 80280; Vice Commander, Headquarters Air Force Reserve, Robins AFB, GA 31098.

Notification procedure:

Requests from individuals should be addressed to the Documentation Management Officer, ARPC/DAD, Denver, CO 80280 (non-unit assigned personnel) or the Chief, Personnel Actions Division, HQ AFRES/DPAA, Robins AFB, GA 3 01098 (AFRES unit assigned personnel). Written requests for information should contain full name, SSN, current mailing address and, if known, the case (control) number on correspondence received from ARPC or HQ AFRES. Records may be reviewed in the Records Review Room, Air Reserve Personnel Center, (ARPC), Building 444, Lowry AFB, CO between 8:00 am and 3:00 pm on normal work days or Headquarters Air Force Reserve, DPAA, Building 210, Robins AFB, GA between 8:00 am and 4:45 pm on normal work days. Visitors wishing to see their records should provide a current Reserve identification card and/or driving license and some verbal information that could verify the person's identification.

Record access procedures:

Individuals can obtain assistance in gaining access from the Documentation Management Officer, ARPC/DADP, Denver, CO 80280; telephone (303) 394-4667 (Non-Unit Personnel), or (AFRES/DPAA), Bldg 210, HQ AFRES, Robins AFB, GA 31098; telephone (912) 926-3107, Unit Assigned Personnel).

Contesting record procedures:

The Air Force's rules for access to records and for contesting and appealing initial determinations by the individual concerned may be obtained from the Systems Manager.

Record source categories:

Information from source documents prepared on behalf of the advanced personnel data system or supplied by reservist.

Systems exempted from certain provisions of the act:

NONE

F03509 01ACYVB

System name:

03509-01ACYVB Administrative Discharge for Cause on Reserve Personnel.

System location:

Air Reserve Personnel Center, Denver, CO 80280.

Categories of individuals covered by the system:

Air Force Reserve personnel.

Categories of records in the system:

Board proceedings, board waiver, recommendations, and other records which result in discharge.

Authority for maintenance of the system:

10 USC 1162.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

To effect the administrative separation of officer members of the United States Air Force Reserve (USAFR) from their appointment as reserve Officers and to effect the administrative separation of enlisted members of the USAFR from their enlistment as reserve members.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Maintained in file folders.

Retrievability:

Filed by Name and by Social Security Number (SSN) or by other identification number or system identifier.

Safeguards:

Records are accessed by person(s) responsible for servicing the record system in performance of their official duties. Records are stored in safes.

Retention and disposal:

Retained in office files until discharged then forwarded for inclusion in the Individual's military personnel record in the National Personnel Record Center 9700 Page Blvd St Louis, MO 63132 for permanent storage.

System manager(s) and address:

Commander Air Reserve Personnel Center (ARPC), Denver, CO 80280.

Notification procedure:

Requests from individuals should be addressed to the Documentation Management Officer, ARPC/DADP, Denver, CO 80280. Written requests for information should contain full name, SSN, current mailing address and, if known, the case (control) number on correspondence received from ARPC. Records may be reviewed in the Records Review Room, Air Reserve Personnel Center, Denver, CO between 8:00 am and 3:00 pm on normal work days. Visitors wishing to see their records should provide a current Reserve identification card and/or driving license and some verbal information that could verify the person's identification.

Record access procedures:

Individuals can obtain assistance in gaining access from the Documentation Management Officer, ARPC/DADP, Denver, CO 80280; telephone (303) 394-4667.

Contesting record procedures:

The Air Force's rules for access to records and for contesting and appealing initial determinations by the individual concerned may be obtained from the Systems Manager.

Record source categories:

Information obtained from medical institutions, police and investigating officers and from witnesses.

Systems exempted from certain provisions of the act:

NONE

F04501 ARPC A

System name:

04501-ARPC A Air Force Reserve Application.

System location:

At Air Reserve Personnel Center, Denver CO 80280.

Categories of individuals covered by the system:

Air Force active duty personnel, civilian employees and former employees, Air Force Reserve and Air National Guard personnel, dependents of military personnel.

Categories of records in the system:

Copies of application for appointment as reserve of the Air Force and comparable forms, correspondence, and related papers. Applications for extended active duty (EAD) including correspondence and related papers.

Authority for maintenance of the system:

10 USC 275 Personnel Records, 10 USC 672 Reserve Components General, 10 USC 8358 Commissioned Officers original appointment; service credit, 10 USC 8359 Commission Officers original appointment; determination of grade.

Routine uses of records maintained in the system, including categories of users and the purpose of such uses:

To determine if individual qualifies for appointment or commissioning in the Reserve of the Air Force or voluntary entry on EAD and qualifications, if any, for an Air Force Speciality Code (AFSC). Medical applications are forwarded for approval to AFMPC/SG, Randolph AFB, TX 78148.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Maintained in card files and file folders.

Retrievability:

Filed by Social Security Number (SSN), by name, or case control number.

Safeguards:

Records are accessed by custodian of the record system and by person(s) responsible for servicing the record system in performance of their official duties who are properly screened and cleared for need-to-know. Records are protected by guards.

Retention and disposal:

Destroy one year after approval or one year after individual declines appointment. Applications for EAD are destroyed after one year or when superseded, obsolete and no longer needed for reference or inactivation whichever is sooner. Documents destroyed by tearing, shredding, macerating, or pulping.

System manager(s) and address:

Commander Air Reserve Personnel Center (ARPC), Denver, CO 80280.

Notification procedure:

Request from individual should be addressed to the Documentation Management Officer, ARPC/DADP, Denver, CO 80280. Written request for information should contain full name of individual, Social Security Number (SSN), current address and the case control number shown on any correspondence received from center. Records may be reviewed in records review room ARPC, Denver, CO 80280, between 8:00 A.M. and 3:00 P.M. on normal work days. For personal visits, the individual should provide current Reserve ID Card and/or drivers license and give some verbal information that could verify his/her identification, such as is on an application for a reserve appointment or EAD.

Record access procedures:

Individual can obtain assistance in gaining access from Documentation Management Officer, ARPC/DADP, Denver, CO 80280, telephone (303) 394-4667.

Contesting record procedures:

The Air Force's rules for access to records and for contesting and appealing initial determinations by the individual concerned may be obtained from the Systems Manager.

Record source categories:

Information from individual applying for appointment in the reserve, applications for extended active duty, and statement of military who served Navy or Marine Corps.

Systems exempted from certain provisions of the act:

NONE

F04501 01ACYVC

System name:

04501-01ACYVC Professional Officer Course(POC) and Financial Assistance Program Cadets.

System location:

Air Reserve Personnel Center, Denver, CO 80280.

Categories of individuals covered by the system:

Air Force Reserve personnel.

Categories of records in the system:

Copies of transmittal letters for disenrolled Air Force Reserve Officer Training Corps (AFROTC) cadets to be discharged.

Authority for maintenance of the system:

10 USC 2104 and 2107.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

To determine if AFROTC cadets were identified for discharge due to disenrollment and the date identified. To provide historical data on number discharged.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Maintained in visible file binders/cabinets.

Retrievability:

Filed by Name and Social Security Number (SSN).

Safeguards:

Records are accessed by custodian of the record system and by person(s) responsible for servicing the record system in performance of their official duties. Records are stored in security file containers/cabinets and protected by guards.

Retention and disposal:

Retained in office files for one year after annual cut-off, then destroyed by tearing into pieces, shredding, pulping, macerating, or burning.

System manager(s) and address:

Commander Air Reserve Personnel Center (ARPC), Denver, CO 80280.

Notification procedure:

Requests from individuals should be addressed to the Documentation Management Officer, ARPC/DADP, Denver, CO 80280. Written requests for information should contain full name, SSN, current mailing address and, if known, the case (control) number on correspondence received from ARPC. Records may be reviewed in the Records Review Room, Air Reserve Personnel Center, Denver, Colorado between 8:00 am and 3:00 pm on normal work days. Visitors wishing to see their records should provide a current Reserve identification card and/or driving license and some verbal information that could verify the person's identification.

Record access procedures:

Individuals can obtain assistance in gaining access from the Documentation Management Officer, ARPC/DADP, Denver, CO 80280; telephone (303) 394-4667.

Contesting record procedures:

The Air Force's rules for access to records and for contesting and appealing initial determinations by the individual concerned may be obtained from the Systems Manager.

Record source categories:

Information obtained from individual reservists, from educational institutions and from source documents (such as reports) prepared on behalf of the Air Force by boards, committees, panels, auditors, and so forth.

Systems exempted from certain provisions of the act:

NONE

F04501X01ACYVA

System name:

04501X01ACYVA Air Force Service Data of Employees and Relatives.

System location:

Air Reserve Personnel Center, Denver, CO 80280.

Categories of individuals covered by the system:

Air Force Reserve and Air National Guard personnel.

Categories of records in the system:

Personal data of active duty military personnel and civilian employees or a relative of either who are assigned to the Air Reserve Personnel Center, Members of the Air Force Reserve or Air National Guard.

Authority for maintenance of the system:

10 USC 275.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Information is used to identify a master personnel record and place it in a more secure file to which access is limited. When completed, the form is maintained and used by the records maintenance division (DPFR) Air Reserve Personnel Center.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Maintained in card files.

Retrievability:

Filed by Social Security Number (SSN).

Safeguards:

Records are accessed by custodian of the record system and by person(s) responsible for servicing the record system in performance of their official duties. Records are stored in locked cabinets or rooms.

Retention and disposal:

Retained in office files until superseded, obsolete, no longer needed for reference, or on inactivation, then destroyed by tearing into pieces, shredding, pulping, macerating, or burning.

System manager(s) and address:

Commander Air Reserve Personnel Center (ARPC), Denver, CO 80280.

Notification procedure:

Requests from individuals should be addressed to the Documentation Management Officer, ARPC/DADP, Denver, CO 80280. Written requests for information should contain full name, SSN, current mailing address and, if known, the case (control) number on correspondence received from ARPC. Records may be reviewed in the Records Review Room, air Reserve Personnel Center, Denver, CO between 8:00 am and 3:00 pm on normal work days. Visitors wishing to see their records should provide a current Reserve identification card and/or driving license and some verbal information that could verify the person's identification.

Record access procedures:

Individuals can obtain assistance in gaining access from the Documentation Management Officer, ARPC/DADP, Denver, CO 80280; telephone (303) 394-4667.

Contesting record procedures:

The Air Force's rules for access to records and for contesting and appealing initial determinations by the individual concerned may be obtained from the Systems Manager.

Record source categories:

Information from individual, member or relative.

Systems exempted from certain provisions of the act:

NONE

F04501X01ACYVD

System name:

04501X01ACYVD Air Force Reserve Officer Training Corps (AFROTC) Contract Violators.

System location:

Air Reserve Personnel Center, Denver, CO 80280.

Categories of individuals covered by the system:

Air Force Reserve personnel.

Categories of records in the system:

Cards reflecting incoming referrals annotated with name, Social Security Number (SSN), address and resume of actions taken

Authority for maintenance of the system:

10 USC 2107 Financial assistance program.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

To control and account for AFROTC contract violator cases. Used by military personnel technicians for central accounting of AFROTC contract violator.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Maintained in card files.

Retrievability:

Filed by Name and Social Security Number (SSN).

Safeguards:

Records are accessed by custodian of the record system and by person(s) responsible for servicing the record system in performance of their official duties.

Retention and disposal:

Retained in office files until superseded, obsolete, no longer needed for reference, or on inactivation, then destroyed by tearing into pieces, shredding, pulping, macerating, or burning.

System manager(s) and address:

Commander Air Reserve Personnel Center (ARPC), Denver, CO 80280.

Notification procedure:

Requests from individuals should be addressed to the Documentation Management Officer, ARPC/DADP, Denver, CO 80280. Written requests for information should contain full name, SSN, current mailing address and, if known, the case (control) number on correspondence received from ARPC. Records may be reviewed in the records Review Room, Air Reserve Personnel Center, Denver, CO between 8:00 am and 3:00 pm on normal work days. Visitors wishing to see their records should provide a current Reserve identification card and/or driving license and some verbal information that could verify the person's identification.

Record access procedures:

Individuals can obtain assistance in gaining access from the Documentation Management Officer, ARPC/DADP, Denver, CO 80280; telephone (303) 394-4667.

Contesting record procedures:

The Air Force's rules for access to records and for contesting and appealing initial determinations by the individual concerned may be obtained from the Systems Manager.

Record source categories:

Information from Commandant AFROTC, Maxwell AFB, Alabama 36112.

Systems exempted from certain provisions of the act:

NONE

F04501X01ACYVE

System name:

04501X01ACYVE Involuntary Recall.

System location:

Air Reserve Personnel Center, Denver, CO 80280.

Categories of individuals covered by the system:

Air Force Reserve personnel.

Categories of records in the system:

Documents consist of listings of incoming referrals with name, Social Security Number (SSN), line number and resume of actions taken.

Authority for maintenance of the system:

10 USC 8012

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

To control and account for involuntary recall of nonparticipating Airmen. Used for control by military personnel technicians.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Maintained in note books/binders.

Retrievability:

Filed by name, Social Security Number (SSN) and line number.

Safeguards:

Records are accessed by person(s) responsible for servicing the record system in performance of their official duties. Records are stored in locked cabinets or rooms.

Retention and disposal:

Retained in office files until superseded, obsolete, no longer needed for reference, or on inactivation, then destroyed by tearing into pieces, shredding, pulping, macerating, or burning.

System manager(s) and address:

Commander Air Reserve Personnel Center (ARPC) Denver, CO 80280.

Notification procedure:

Requests from individuals should be addressed to the Documentation Management Officer, ARPC/DADP, Denver, CO 80280. Written requests for information should contain full name, SSN, current mailing address and, if known, the case (control) number on correspondence received from ARPC. Records may be reviewed in the Records Review Room, Air Reserve Personnel Center, Denver, CO between 8:00 am and 3:00 pm on normal work days. Visitors wishing to see their records should provide a current Reserve identification card and/or driving license and some verbal information that could verify the person's identification.

Record access procedures:

Individuals can obtain assistance in gaining access from the Documentation Management Officer, ARPC/DADP, Denver, CO 80280; telephone (303) 394-4667.

Contesting record procedures:

The Air Force's rules for access to records and for contesting and appealing initial determinations by the individual concerned may be obtained from the Systems Manager.

Record source categories:

Information from the National Guard Bureau, Wash, DC, 20310. Headquarters Air Force Reserve/DPAA Robins AFB Georgia 31098. ARPC/DPEM, Denver, CO 80280.

Systems exempted from certain provisions of the act:

NONE

F04502 0IACYVA

System name:

04502-0IACYVA Inactive Duty Training, Extension Course Institute (ECI) Training.

System location:

Air Reserve Personnel Center, Denver, CO 80280.

Categories of individuals covered by the system:

Authorization for inactive duty training, authorization for individual inactive duty training (for nonpay status only; for pay status authorization). Certificate of completion issued on completion of volume of a course.

Categories of records in the system:

Point credit source documents maintained on active air force reserve member.

Authority for maintenance of the system:

10 USC 1331, 1332 and 1333.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

The record shows the completion of each volume of a correspondence course by a reservist and shows training performed for either paid or nonpaid status. Record is used by military personnel clerks to audit a reservist point credit account. It is used as a cross check to insure accuracy of the reservists yearly point credit account as it pertains to his pay account.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Maintained in visible file binders/cabinets.

Retrievability:

Filed by Name and Social Security Number (SSN).

Safeguards:

Records are accessed by custodian of the record system and by person(s) responsible for servicing the record system in performance of their official duties who are properly screened and cleared for need-to-know and protected by guards.

Retention and disposal:

Inactive duty training documents are destroyed after 5 years. ECI certificates (duplicates) are destroyed six months after reservist receives his copy.

System manager(s) and address:

Commander Air Reserve Personnel Center (ARPC), Denver, CO 80280.

Notification procedure:

Requests from individuals should be addressed to the Documentation Management Officer, ARPC/DADP, Denver, CO 80280. Written requests for information should contain full name, SSN, current mailing address and, if known, the case (control) number on correspondence received from ARPC. Records may be reviewed in the Records Review Room, Air Reserve Personnel Center, Denver, CO between 8:00 am and 3:00 pm on normal work days. Visitors wishing to see their records should provide a current Reserve identification card and/or driving license and some verbal information that could verify the person's identification.

Record access procedures:

Individuals can obtain assistance in gaining access from the Documentation Management Officer, ARPC/DADP, Denver, CO 80280; telephone (303) 394-4667.

Contesting record procedures:

The Air Force's rules for access to records and for contesting and appealing initial determinations by the individual concerned may be obtained from the Systems Manager.

Record source categories:

Information from individual reservist, Air National Guard and Air Force Reserve unit.

Systems exempted from certain provisions of the act:

NONE

F05001 0IACYVA

System name:

05001-0IACYVA Professional Military Education (PME).

System location:

Air Reserve Personnel Center, Denver, CO 80280.

Categories of individuals covered by the system:

Air Force Reserve personnel.

Categories of records in the system:

Records concerning school (pme) quotas, school selection boards results selecting a reservist to attend a pme course.

Authority for maintenance of the system:

10 USC 262.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Used to monitor, manage and comply with the requirements to fulfill the quotas allocated to reservist by the office of primary responsibility at ARPC.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Maintained in file folders/note books/binders.

Retrievability:

Filed by Name, Social Security Number (SSN) or by other identification number or system identifier.

Safeguards:

Records are accessed by custodian of the record system and by person(s) responsible for servicing the record system in performance of their official duties who are properly screened and cleared for need-to-know. Records are stored in locked cabinets or rooms, protected by guards, and controlled by personnel screening.

Retention and disposal:

Retained in office files for one year after annual cut-off, then destroyed by tearing into pieces, shredding, pulping, macerating, or burning.

System manager(s) and address:

Commander Air Reserve Personnel Center (ARPC), Denver, CO 80280.

Notification procedure:

Requests from individuals should be addressed to the Documentation Management Officer, ARPC/DADP, Denver, CO 80280. Written requests for information should contain full name, SSN; current mailing address and, if known, the case (control) number on correspondence received from ARPC. Records may be reviewed in the Records Review Room, Air Reserve Personnel Center, Denver, CO between 8:00 am and 3:00 pm on normal work days. Visitors wishing to see their records should provide a current Reserve identification card and/or driving license and some verbal information that could verify the person's identification.

Record access procedures:

Individuals can obtain assistance in gaining access from the Documentation Management Officer, ARPC/DADP, Denver, CO 80280; telephone (303) 394-4667.

Contesting record procedures:

The Air Force's rules for access to records and for contesting and appealing initial determinations by the individual concerned may be obtained from the Systems Manager.

Record source categories:

Information from master personnel record and individuals application.

Systems exempted from certain provisions of the act:

NONE

F05002 ATC TTS

System name:

05002 ATC TTS Student Record of Training.

System location:

All Technical Training Centers of Air Training Command (ATC); Field Training Detachments of ATC and the 3750 Technical Training Group/TTS, Sheppard AFB TX 76311; Officer Training School, Lackland AFB TX 78236; Community College of the Air Force, Lackland AFB TX 78236; United States Air Force School of Applied Cryptologic Scien(USAFSACS), Goodfellow AFB TX 76903; and the Washington National Records Center, Washington DC 20409. Official mailing addresses are in the Department of Defense directory in the appendix to the Air Force's system notices.

Categories of individuals covered by the system:

Active duty military personnel and civilian employees, Air Force Reserve and Air National Guard personnel, foreign nationals, and retired Air Force military personnel who have attended a training course conducted by an ATC activity. Employees of Air Force contractors receiving training at USAF schools.

Categories of records in the system:

Records of individual training and education, subjects studied, reading proficiency training, hours, final grades, and graduation data.

Authority for maintenance of the system:

10 USC 8012, Secretary of the Air Force: powers and duties; delegation by and Executive Order 9397, 22 November 1943, Number System for Accounts Relating to individual persons.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Record individual attendance, achievement and special training progress. To evaluate student's potential for commissioning and need for remedial reaching. Used by FTDs to determine student eligibility to receive certificate of training, and by the Community College of the Air Force to grant college credits for successful completion of the course.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Maintained in file folders.

Retrievability:

Filed by name, SSN, course number, and graduation month and year.

Safeguards:

Records are accessed by the custodian of the record system and by person(s) responsible for servicing the record system in performance of their official duties. Records are stored in locked cabinets and rooms.

Retention and disposal:

Record of individual hours and final grades - held one year, then destroyed; source, support, and control data basic trainee records and special training records - retained for six months after monthly cutoff, then destroyed; Nelson Denny Reading Test Answer Sheets - retained for the class duration, then destroyed; Officer Training School Student Training Summaries maintained for two years after cutoff, then destroyed; Field Training Student Attendance and Rating Records - retained at Sheppard AFB TX 76311 for two years then retired to the Washington National Records Center for an additional 28 years, then destroyed; Student Record of Training - retained at the local ATC Center for two years then retired to the Washington National Records Center for an additional 28 years, then destroyed; Training Progress Reading Proficiency Case Files - destroyed three months after class/course completion. All of the above records are destroyed by tearing into pieces, shredding, pulping, macerating, or burning.

System manager(s) and address:

Deputy Chief of Staff for Technical Training, Standards and Evaluation Directorate, Randolph AFB TX 78148 (for other than classes/courses completed at ATC Field Training Detachments & Officer Training School). The 3750 Technical Training Group/TTS for classes/ courses conducted by ATC Field Training Detachments and the Commander, Officer Training School for OTS student records; and the 3480 Technical Training Group/TTR for classes/courseconducted at Goodfellow AFB, TX 76903. Official mailing addresses are in the Department of Defense directory in the appendix to the Air Force's system notices.

Notification procedure:

Contact Training Department at the Air Force base where the training was conducted for ATC technical training center courses; 3750 Technical Training Group/TTS, Sheppard AFB TX 76311, for classes/ courses completed at an ATC Field Training Detachment; and Officer Training School/CC, Lackland AFB TX 78236, for OTS student records and 3480 Technical Training Group/TTR, Goodfellow AFBfor courses taught at that base. Full Name, Social Security Number, Course Number or Title and Dates of Attendance is required. For personal visits, identification card or driver's license is acceptable proof of identity.

Record access procedures:

Individuals can obtain assistance in gaining access from the system manager for OTS student records and classes/courses completed at an ATC Field Training Detachment or from the systems manager in the training department at the Air Force base in ATC where training was conducted.

Contesting record procedures:

The Air Force's rules for access to records and for contesting and appealing initial determinations by the individual concerned may be obtained from the Systems Manager.

Record source categories:

Training Center Organizational Directory; Enlistment Records; Basic Military Training Records; Score from Nelson Denny Reading Test; Internal Testing and Instructor/Peer Observation; Information obtained from source documents (such as reports) prepared on behalf of the Air Force by boards, committees, panels, auditors, and so forth.

Systems exempted from certain provisions of the act:

NONE

F05002 OYUEBLA

System name:

05002 OYUEBLA Air Traffic Control (ATC) Certification Documentation.

System location:

Headquarters of major commands and at all levels down to and including Air Force installations.

Categories of individuals covered by the system:

Air Force active duty military personnel. Air Force Reserve and Air National Guard personnel.

Categories of records in the system:

Reflects individual by name and Social Security Number (SSN), certificate number, military status (active duty, reserve, or air guard), requested action (issue, release, or cancellation of certificate), and justification. Contains documentation compiled by requesting unit to justify withdrawal of certification. May include evaluation by medical authorities, legal, Office of Special Investigation results, and statements by supervisory personnel and co-workers. Contains copies of performance reports and unfavorable information files. Includes headquarters staff evaluation.

Authority for maintenance of the system:

10 USC 8012.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Documentation used to evaluate request for withdrawal of ATC certification. Permits immediate access to name, SSN, certificate number, date of issuance, and category of service. A master roster is maintained at Headquarters AFCS and the units maintain individual certificate information in the individual's training record.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Maintained in file folders note books/binders and on computer paper printouts.

Retrievability:

Filed by Name

Safeguards:

Records are accessed by custodian of the record system and by person(s) responsible for servicing the record system in performance of their official duties who are properly screened and cleared for need-to-know. Records are stored in locked cabinets or rooms. Records are controlled by computer system software.

Retention and disposal:

Retained for one year after end of year in which the case was closed, transferred to a staging area for one additional year, then destroyed by tearing into pieces, shredding, pulping, macerating, or burning.

System manager(s) and address:

Deputy Chief of Staff Flight and Airspace Management at Headquarters Air Force Communications Service, Scott AFB IL 62225, and Air Traffic Control Operationunit level.

Notification procedure:

Requests from individuals should be addressed to the Systems Manager.

Record access procedures:

Individual can obtain assistance in gaining access from the Systems Manager. Mailing addresses are in the Department of Defense directory in the appendix to the Air Force's systems notice.

Contesting record procedures:

The Air Force's rules for access to records and for contesting and appealing initial determinations by the individual concerned may be obtained from the Systems Manager.

Record source categories:

Information obtained from source documents (such as reports) prepared on behalf of the Air Force by boards, committees, panels, auditors, and so forth. Information obtained from medical institutions, trade associations, police and investigating officers, state and local governments, and witnesses.

Systems exempted from certain provisions of the act:

NONE

F05002 OYUEBLC

System name:

05002 OYUEBLC Air Traffic Control Rating and Training Program Documentation.

System location:

Air Force installations, Air National Guard activities, and Air Force Reserve units. Addresses are in the appendix to the Air Force's systems notice.

Categories of individuals covered by the system:

Air Force active duty military personnel. Air Force Reserve and Air National Guard personnel.

Categories of records in the system:

Air Traffic Controller evaluation record; Air Traffic Control (ATC)/weather certification and rating record; 1631 Training Evaluation Report; special task certification and recurring training record; on-the-job training record-continuation sheet

Authority for maintenance of the system:

10 USC 8012

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Used to document progression of individuals in the upgrade training program, provide estimated upgrade date to fully qualified Officer Air Force Specialty Code (AFSC), provide data base for determining program revisions, identify fast/slow progressors, permit trainee comments on program curriculum and operation, and identify deficient areas in previous technical training which impacted on individual's performance during upgrade training. Record of position certifications and facility ratings and weather certifications, documenting special ATC training, and training problems.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Maintained in file folders/ note books/binders.

Retrievability:

Filed by Name.

Safeguards:

Records are accessed by custodian of the record system and by person(s) responsible for servicing the record system in performance of their official duties who are properly screened and cleared for need-to-know. Records are stored in locked cabinets or rooms.

Retention and disposal:

Given to the individual concerned when no longer valid or the individual is no longer performing ATC duties, or torn into pieces, pulped, burned, shredded or macerated.

System manager(s) and address:

Deputy Chief of Staff, Air Traffic Services, Scott AFB IL 62225; ATC Operations Officers at all other levels.

Notification procedure:

Requests from individuals should be addressed to the Systems Manager.

Record access procedures:

Individual can obtain assistance in gaining access from the Systems Manager. Mailing addresses are in the Department of Defense directory in the appendix to the Air Force's systems notice.

Contesting record procedures:

The Air Force's rules for access to records and for contesting and appealing initial determinations by the individual concerned may be obtained from the Systems Manager.

Record source categories:

Information obtained from witnesses. Information obtained from source documents (such as reports) prepared on behalf of the Air Force by boards, committees, panels, auditors, and so forth.

Systems exempted from certain provisions of the act:

NONE

F05002 OYUEBLD

System name:

05002 OYUEBLD Student Record.

System location:

1872 School Squadron, Air Force Communications Service (AFCS), Keesler AFB MS 39534.

Categories of individuals covered by the system:

Active Duty Air Force enlisted personnel and Air National Guard personnel.

Categories of records in the system:

Student record which reflects individual's academic standing; student evaluation; reading laboratory progress record; record of individual counseling; Non-Commissioned Officer (NCO) Academy student roster.

Authority for maintenance of the system:

10 USC 8012.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Used to record student progress for each academic class for the AFCS NCO Academy and AFCS NCO Leadership School; reflects written examination scores, communications skills, instructor evaluations; reflects individual's reading laboratory progress; provides record of individual counseling; is a roster of students.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Maintained in file folders and card files.

Retrievability:

Filed by student name.

Safeguards:

Records are accessed by custodian of the record system and by person(s) responsible for servicing the record system in performance of their official duties who are properly screened and cleared for need-to-know. Records are stored in locked cabinets or rooms.

Retention and disposal:

Some retained in office files for one year after the end of the year the individual completes or discontinues a training course, transferred to staging area for nine additional years, then destroyed by tearing into pieces, shredding, pulping, macerating, or burning. All other records are retained in office files until graduation or elimination of the student from training, then destroyed by tearing into pieces, shredding, pulping, macerating, or burning.

System manager(s) and address:

NCO in charge of administration, 1872 School Squadron (AFCS), Keesler AFB MS 39534.

Notification procedure:

Requests from individuals should be addressed to the Systems Manager.

Record access procedures:

Individual can obtain assistance in gaining access from the Systems Manager.

Contesting record procedures:

The Air Force's rules for access to records and for contesting and appealing initial determinations by the individual concerned may be obtained from the Systems Manager.

Record source categories:

Information obtained from educational institutions. and Chief Training and Education Division Directorate of Personnel Programs, Deputy Chief of Staff for Personnel, Headquarters AFCS.

Systems exempted from certain provisions of the act:

NONE

F05002 OYUEBLE

System name:

05002 OYUEBLE Individual Academic Training Record.

System location:

C-E Systems Evaluation Training School, Deputy Chief of Staff, Operations, HQ AFCS, Scott AFB IL 62225.

Categories of individuals covered by the system:

Active duty military personnel. Air Force Reserve and Air National Guard personnel. Army National Guard and Department of Defense civilian personnel who are electronics engineers, communications engineers, radio relay equipment maintenance personnel, technical control personnel, and such other individuals who might apply for this training.

Categories of records in the system:

Personnel index; absentee report; class pre-graduation/graduation roster; attendance record; record of individual training

Authority for maintenance of the system:

10 USC 8012.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

To record emergency data and course completion information. To report student absences to the Commandant of the school. Provides student class composition and list of graduating students to the Deputy Chief of Staff for Operations (DCS/Operations), HQ AFCS. An attendance record. Reflects student academic progress.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Maintained in file folders and card files.

Retrievability:

Filed by student name.

Safeguards:

Records are accessed by custodian of the record system and by person(s) responsible for servicing the record system in performance of their official duties. Stored in file cabinet.

Retention and disposal:

Some retained in office files until appropriate table/ rule is published in AFM 12-50. All other records retained in office file until graduation or elimination of the student from training then destroyed by tearing into pieces, shredding, pulping, macerating, or burning.

System manager(s) and address:

Commandant, C-E Systems Evaluation Training School, DCS/ Operations, HQ AFCS, Scott AFB IL 62225.

Notification procedure:

Requests from individuals should be addressed to the Systems Manager.

Record access procedures:

Individual can obtain assistance in gaining access from the Systems Manager.

Contesting record procedures:

The Air Force's rules for access to records and for contesting and appealing initial determinations by the individual concerned may be obtained from the Systems Manager.

Record source categories:

Information from instructor.

Systems exempted from certain provisions of the act:

NONE

F05002 SAC A

System name:

05002 SAC A SAC Operations Personnel Training Management System.

System location:

At Air Force (AF) installations, Deputy Commander for Missile Operations within the Strategic Air Command (SAC) and Deputy Chief of Staff, Director of Missile Operations at SAC Headquarters.

Categories of individuals covered by the system:

Strategic Air Command military personnel assigned to missile operations.

Categories of records in the system:

The system contains computerized data and manual files related to training/evaluation accomplishment, crew number, type training/ evaluation, discrepancies poted, evaluation scores, name, rank, date of birth, unit assigned, date of separation, date arrived station.

Authority for maintenance of the system:

10 USC 8012, Secretary of the Air Force: powers and duties; delegation by.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

To develop a record source of operations personnel, at unit level, in order to determine overall job qualifications, capabilities, and historical data for analysis by unit and Major Air Command personnel responsible for maintaining a training program. The files will provide a source of data to help insure weapon system currency and future training requirements.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Computer magnetic tapes computer printouts, and manual file folders.

Retrievability:

Retrieved by name or unique system identification number.

Safeguards:

Records are accessed by custodian of unit files and by personnel responsible for servicing the record system in performance of official duties. The computer file is maintained on computer disc/tape by computer operations personnel. This computer file is kept in locked rooms or drawers.

Retention and disposal:

Computerized and manual files are destroyed when superseded, or on reassignment from missile operations duties or separation of the individual. Destruction of manual files is accomplished by burning, shredding, tearing, pulping or macerating. Computer tapes are destroyed by overwriting within 30 days after member is reassigned, transferred or separat

System manager(s) and address:

Deputy Chief of Staff, Director of Missile Operations, Strategic Air Command, Offutt AFB, NE 68113 Strategic Air Command missile bases, the Deputy Commander for Operations.

Notification procedure:

Information as to whether the record system contains information on an individual may be obtained from Director of Missile Operations, Strategic Air Command, Offutt AFB, NE 68113, telephone (402) 29should be able to provide sufficient proof of identity such as name, social security number, duty stplace of employment, or other information verifiable in the record itself.

Record access procedures:

Access to files is controlled and must be authorized by Deputy Chief of Staff, Director of Missile Operations or at organizational level by the Deputy Commander for Operations. Requests from individuals should be addressed to the Missile Wing Deputy Commander for Operations or his representative.

Contesting record procedures:

The Air Force rules for access to records and for contesting and appealing initial determination byindividual concerned may be obtained from the systems manager.

Record source categories:

Information obtained from source documents (such as reports) prepared on behalf of the Air Force by boards, committees, panels, instructors/evaluators and individual's performance during training/evaluation.

Systems exempted from certain provisions of the act:

None.

F05002X0J ED A

System name:

05002X0J-ED-A Community College of the Air Force Student Record System.

System location:

The system is centrally administered by the Community College of the Air Force (ATC/ED) Maxwell AFB, AL 36112. Computer processing for the system is furnished by the San Antonio Data Services Center (SADSC) 8630 Broadway San Antonio, TX 78217. Microfiche for the system are created by the USAF Electronic Security Command (HQ ESC/DADS) Kelly Air Force Base, TX 78243.

Categories of individuals covered by the system:

The system may have a record for any person who has a Social Security Number and who has since 1 January 1968 completed a formal course of instruction conducted Air Force schools identified in the current Community College of the Air Force General Catalog. (Note: Such courses do not include pre-commissioning courses and courses conducted exclusively for officers or their civilian cThe system also includes records reflecting Air Force courses completed before 1968 and other educational accomplishments for persons who as enlisted members of the Air Force registered in programs of study leading to credentials awarded by the college. (Note: Both here and where appropriate below, the general term Air Force should be understood as including the regular Air Force, the Air Force Reserve, and the Air National Guard.)

Categories of records in the system:

The college originates and maintains individual academic records and, where necessary to serve Airmen registered in study programs leading to credentials awarded by the college, maintains a variety of source or substantiating records such as copies of registration applications and document control records derived from such applications; civilian college transcripts; college level examination progcopies of educational records originated by other Air Force and non-Air Force agencies external to the college (such as the Federal Aviation Agency, the United States Armed Forces Institute, and the Defense Activity for Non-Support); copies of a variety of Air Force personnel records (such as documents derived from master records maintained by the USAF Military Personnel Center and microfiche records of locator data); and records of credentials awarded to graduates, is necessary to manage the day-to-day operations and to plan development of the record system. The college also maintains copies and related records of communications from, to, or regarding persons interested in the college, its educational programs, its student record system, and related matters. Copies of and statistical records derived from individual responses to surveys, questionnaires, and similar instruments authorized by HQ USAF may also be maintained as needed for managerial evaluation and planning by officers of the college.

Authority for maintenance of the system:

44 USC 3101.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Records originated in the system serve the purpose of documenting, in terms of credit awarded or acthe college, individual educational accomplishments which satisfy curricular requirements of study programs leading to credentials offered by the college. Transcripts of records originated in the college are at the written request of persons concerned furnished to any recipient(s) designated in such requests. Such recipients typically include Air Force Education Services Centers, other offices wherever Air Force personnel are stationed, educational institutions, and potential or current employers. CCAF transcripts and coriginated in the college are typically used to support educational and occupational counselling, pladmission to other colleges, and related individual affairs. Other disclosures of personal records originated in or maintained by the college may without the knocconsent of persons concerned be made to Air Force officers, enlisted personnel, and civilian employees directly involved in administering or supporting the educational programs offered or records managed by the college; other Air Force officers, enlisted personnel, and civilian employees who provide educational and related services to Air Force personnel; officers and employees of other agencies as may be necessary to comply with proper requests for recoFreedom of Information Act (Title 5 U.S. Code 552, as amended by Public Law 93-502); and to officers and employees of other agencies as may be necessary to overcome extended interruptions in nprocessing (which agencies may include the Veterans Administration, Trinity University, and the UnitAssociation). Similar incidental disclosures of information recorded in the system may be made to employees of civilian contractors engaged by the Air Force to provide services which directly or indirectly support the record system. Contractors thus engaged at this time are Rothe Development INC, Support Contractors INC, Fred Clark Electric Contractors INC, International Business Machines CORP, Storage Technology CORP, TELEX Computer Products INC, ITEL Computer Products INC, SORBUS INC, Cambridge Memories INC, Xerox CORP, Nashua INC, COMDISCO INC, Sperry-Univac CORP, Burroughs CORP, Honeywell INC, General Kinetics INC, American Telephone and Telegraph CO, Southwestern Bell Telephone CO, Stromberg-Datagraphix INC, and Minnesota Mining and Manufacturing CO.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Permanent student records are maintained on and reproduced as necessary from microfiche created by computer processing. Microfiche are maintained in special filing stands and in special three-ring binders. Computer records are maintained on and as necessary reproduced from magnetic media (tape and disk) ware filed in special cabinets and racks in a library facility. Paper records are maintained in file folders, card files, and conventional cabinets, and in special binders and cabinets designed for computer listings.

Retrievability:

Computer records are retrievable by a combination of Social Security Number (SSN) and certain letters of last name. Microfiche records are retrievable by SSN exclusively. Paper records are retrievable by either SSN or name. Note as may be necessary to support managerial studies by the college staff, computer records may also be retrieved in groups where such records bear common information.

Safeguards:

Records maintained in the college are normally disclosed only upon written request from the persons whose records are to be disclosed or upon written request from an Air Force officer or employee responsible to provide educational or related services to Air Force personnel. Disclosures to non-Air Force agencies not requested by the persons whose records are to be disclosed are made only with consent of an officer of the college and as consistent with the Privacy Act of 1974 and the Freedom of Information Act. Except for disclosures within the college as may be necessary to its operations, requests by telephone and other unwritten means will not be honored unless in the judgment of a responsible member of the collis a member or employee of the Air Force acting on behalf of, or is, the person whose record is requested. Special care is exercised to ensure complete identification of the requestor, the person whose record is to be disclosed, and intended use. Other systematic safeguards to ensure integrity of records include secure storage of successive generations of computer master files, existence and long term retention in other Air Force agencies of records which would be needed to rebuild the entire system in the event of catastrophe, and traditional measures to ensure the security of Air Force facilities. All records in the system are during duty hours attended by responsible Air Force personnel and during non-duty hours stored in locked facilities under constant or periodic surveillance by Air Force security police or guards.

Retention and disposal:

Retained in office files until superseded, obsolete, no longer needed for reference, or on inactivation, then destroyed by tearing into pieces, shredding, pulping, macerating, or burning. specific rules for retention of permanent microfiche and corresponding magnetic tape records have not yet been determined. It is anticipated that such recorretained for not less than 30 and not more than 50 years beyond the latest entries on each such record. Transitory computer records

(such as input transaction records and records on successive generations of master files) are typically retained only so long as they may be useful, which may be as little as 48 hours or as much as 60 days. Active master file records are by their nature evolutionary and are typically retired within 180 days of a person:s separation or retirement or 5 years after thon a given record. (The last rule applies to persons who were not enlisted Air Force members when the last entries on their records were made.) Paper records maintained to serve students registered in study programs are retained so long as a registrant remains active in his or her program. Such records are destroyed 1 year after a registrant completes his or her study program or 3 years after the most recent communication from an airman whose program has not been completed. Other records are typically retained only so long as they may serve a useful purpose, which is typically between 30 and 90 days. No rule has yet been defined for retaining records which verify awards of credentials by the college, but it is expected that such records will need be archival.

System manager(s) and address:

Senior official responsible for policies and procedures which govern the system: Deputy Chief of Staff/Personnel, Headquarters United States Air Force. System Manager: President, Community College of the Air Force (CCAF/CC) Maxwell AFB, AL 36112.

Notification procedure:

Persons who have not registered in the college should address inquiries regarding records maintained by the college to Chief, Student Records Branch (CCAF/RRR) Maxwell AFB, AL 36112. Persons who have registered in the college may address inquiries as above or to Chief, Careers Division (CCAF/AY), also at Maxwell AFB. Such inquiries will need include the full name (and former names if appropriate), SSN, and birthdate of the inquirer, and should include a full return address (including zip code). Visits to the college are welcomed, and visitors seeking information about personal records should first visit the Office of the Registrar.

Record access procedures:

Individual can obtain assistance in gaining access from the Systems Manager. and from addresses listed above.

Contesting record procedures:

The Air Force's rules for access to records and for contesting and appealing initial determinations by the individual concerned may be obtained from the Systems Manager.

Record source categories:

Information obtained from educational institutions. Information obtained from automated system interfaces. and from source documents submitted to the college by or at the request of individuals concerned, or by other Air Force agencies acting on behalf of individuals concerned.

Systems exempted from certain provisions of the act:

NONE

F05101 MAC A

System name:

05101 MAC A Air Crew Instruction Records.

System location:

1550 Aircrew Training and Test Wing, Kirtland Air Force Base, New Mexico 87117; 314 Tactical Airlift Wing, Deputy Commander for Operations, Little Rock Air Force Base, Arkansas 72076.

Categories of individuals covered by the system:

Students and instructors undergoing training; students who completed academic training.

Categories of records in the system:

Academic completion records, flying training records, training aids usage records and simulator student training records.

Authority for maintenance of the system:

10 USC 8012, Secretary of the Air Force: powers and duties; delegation by.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

To report student performance and completion of academic training.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Maintained in file folders.

Retrievability:

Filed by name and date of completion of training.

Safeguards:

Records are accessed by custodian of the record system and by person(s) responsible for servicing the record system in performance of their official duties who are properly screened and cleared for need-to-know. Records are stored in locked cabinets or rooms.

Retention and disposal:

Training summaries are destroyed after one year. Training aids activity case files are destroyed when purpose has been served or after three years, whichever is sooner. Training system research and development material is destroyed when superseded, obsolete, or no longer needed, whichever is sooner. Training aids usage documents are destroyed three months after completion of training phase, provided required flying time is posted on individual flight records. Destruction is by tearing into pieces, shredding, pulping, macerating, or burning.

System manager(s) and address:

Deputy Commander for Operations, 1550 Aircrew Training and Test Wing, Kirtland AFB, New Mexico 87117.

Notification procedure:

Requests from individuals should be directed to the systems manager.

Record access procedures:

Individual can obtain assistance in gaining access from the Systems Manager.

Contesting record procedures:

The Air Force's rules for access to records and for contesting and appealing initial determinations by the individual concerned may be obtained from the Systems Manager.

Record source categories:

Information obtained from the individuals, from instructors, instructor supervisors, and personnel involved in the evaluation and analysis of training effectiveness, and from special orders and messages.

Systems exempted from certain provisions of the act:

NONE

F05101 OJ DOTB

System name:

05101 OJ DOTB Flying Training Records - Student.

System location:

Headquarters Air Training Command, Randolph AFB TX; Washington National Records Center, Washington DC 20409; ATC Pilot and Navigator Training Wings; Official mailing addresses are in Department of Defense directory in the appendix to the USAF systems notice.

Categories of individuals covered by the system:

Students entered into Undergraduate Pilot and Navigator training.

Categories of records in the system:

Complete record of training including class number, flying and academic course completed, flying hours, whether graduated or eliminated and date, reasons for elimination, Faculty Board Proceedings, student's performance in each category of training, including grades, evaluations and performance documentation; background information including name, grade, SSAN, source of commission, college, subject matter, etc; past training unit of assignment; class standing prior to 31 Dec 74; progress records on minority students.

Authority for maintenance of the system:

44 U.S.C. 3101, 10 U.S.C. 8012, and Executive Order 93-97 22 Nov 1943.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Document and record student performance; provide background information; report to Air National Guard/Air Force Reserve and other Air Force training units on qualifications of graduates; analyze student performance in following training for the purpose of evaluating training and revising course content; also used to monitor student performance by source of entry, education level, and minority status; record and document Faculty Board proceedings.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Maintained in file folders. Maintained in note books/binders. Maintained in card files. Maintained on computer and computer products.

Retrievability:

Filed by Name. Filed by Social Security Account Number (SSAN). Filed by other identification number or system identifier.

Safeguards:

Records are accessed by custodian of the record system. Records are accessed by person(s) responsible for servicing the record system in performance of their official duties. Records are accessed by authorized personnel who are properly screened and cleared for need-to-know. Records are stored in locked cabinets or rooms.

Retention and disposal:

Student grade books are destroyed three months after completion of training; Summary Training Records are retained in office files for two years, then retired to Washington National Records Center, Washington, DC, for eight years; other records are retained in office files until superseded, obsolete, no longer needed for reference or on inactivation. Faculty Board Records are retained for one year. Destruction is by tearing into pieces, shredding, pulping, macerating, or burning.

System manager(s) and address:

Deputy Chief of Staff Operations, Air Training Command, Randolph AFB, TX 78148.

Notification procedure:

Requests from individuals should be addressed to the Systems Manager.

Record access procedures:

Individual can obtain assistance in gaining access from the Systems Manager.

Contesting record procedures:

The Air Force's rules for access to records and for contesting and appealing initial determinations by the individual concerned may be obtained from the Systems Manager.

Record source categories:

Information comes from source documents such as grade sheets, written examinations, and flight examinations; from reports by instructors and students, and from the individual, automated system interfaces.

Systems exempted from certain provisions of the act:

NONE

F05301XOBXQPCB

System name:

05301XOBXQPCB Educational Research Data Base

System location:

United States Air Force Academy, USAF Academy CO 80840.

Categories of individuals covered by the system:

Active, retired and separated Air Force officers who received their commissions through the USAF Academy.

Categories of records in the system:

High school, college and USAF career information including military performance, academic performance, certain medical, disciplinary and personal facts.

Authority for maintenance of the system:

10 USC 8012

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Purpose of System: To provide readily available information on Academy graduates. Category of Users: Faculty and staff. Specific Use: Used to complete various analyses and inquiries concerning how Academy graduates are competing with their contemporaries.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Maintained on computer magnetic tapes.

Retrievability:

Filed by Name. Filed by Social Security Number (SSN), Military Service Number and date of birth.

Safeguards:

Records are accessed by custodian of the record system, and by authorized personnel who are properly screened and cleared for need-to-know. Records are stored in locked cabinets or rooms.

Retention and disposal:

Retained in office files until superseded, obsolete, no longer needed for reference, or on inactivation, then destroyed by tearing into pieces, shredding, pulping, macerating, or burning.

System manager(s) and address:

Director of Admissions and Registrar, United States Air Force Academy, CO 80840

Notification procedure:

Requests from individuals should be addressed to the Systems Manager.

Record access procedures:

Individual can obtain assistance in gaining access from the Systems Manager.

Contesting record procedures:

The Air Force's rules for access to records and for contesting and appealing initial determinations by the individual concerned may be obtained from the Systems Manager.

Record source categories:

Information obtained from educational institutions, medical institutions, automated system interfaces, and source documents (such as reports) prepared on behalf of the Air Force by boards, committees, panels, auditors, and so forth.

Systems exempted from certain provisions of the act:

NONE

F11001 SAFPC A

System name:

11001-SAFPC-A Air Force Discharge Review Board Voting Cards.

System location:

Office of the Secretary of the Air Force, Washington DC 20330.

Categories of individuals covered by the system:

Former Air Force Personnel who submit applications for review of discharge/separation/dismissal.

Categories of records in the system:

Voting cards.

Authority for maintenance of the system:

10 USC 1553 - Review of Discharge or Dismissal.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Used by the Air Force Discharge Review Board to record votes of board members on individual cases.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Maintained in card files.

Retrievability:

Filed by Name, Social Security Number (SSN) or Military Service Number.

Safeguards:

Records are accessed by custodian of the record system, by person(s) responsible for servicing the record system in performance of their official duties who are properly screened and cleared for need-to-know. Records are stored in locked cabinets or rooms.

Retention and disposal:

Retained in office files for one year from date of hearing and then destroyed by burning or shredding.

System manager(s) and address:

Director, Secretary of the Air Force Personnel Council, Washington, DC 20330.

Notification procedure:

Requests from individuals should be addressed to the Systems Manager. Written requests should contain the full name service number and social security account number of the requester. Personal visits may be made to room 920, Commonwealth Building, 1300 Wilson Blvd, Arlington, VA. Personal visitors must supply full name service number, social security account number and some form of identification such as driver's license, credit cards, etc.

Record access procedures:

Individual can obtain assistance in gaining access from the Systems Manager.

Contesting record procedures:

The Air Force's rules for access to records and for contesting and appealing initial determinations by the individual concerned may be obtained from the Systems Manager.

Record source categories:

Individual's military personnel record.

Systems exempted from certain provisions of the act:

NONE

F12502 SPP A

System name:

12502-SPP—A Correction Records.

System location:

Headquarters United States Air Force, Washington DC 20330. Air Force Accounting and Finance Center, Denver, CO 80279. Air Force Manpower and Personnel Center, Randolph Air Force Base, TX 78148. Air Reserve Personnel Center, Denver, CO 80280. National Personnel Records Center, Civilian Personnel Records, 111 Winnebago Street, St. Louis, MO 63118. National Personnel Records Center, Military Personnel Records, 9700 Page Boulevard, St. Louis, MO 63132. Washington National Records Center, Washington DC 20409. Maintained by the Chief of Security Police and Staff Judge Advocate at the installation where the individual was last assigned, Commander 3320th Retraining Group, Lowry AFB, Co., Commandant United States Disciplinary Barracks (USDB), Leavenworth, KS and the Office of the Secretary of the Air Force Personnel Council, Pentagon, Washington, D.C.

Categories of individuals covered by the system:

Records are maintained on any individual who was placed in confinement at an installation, assigned to the 3320th Retraining Group or the USDB for purposes of retraining or confinement, placed in a federal prison system as the result of criminal conviction, or spent time in the correctional custody program at any Air Force installation.

Categories of records in the system:

System includes prisoner personnel records consisting of confinement orders, release orders, personal history records, medical examiners report, request and receipt for health and comfort supplies, recommendations for disciplinary action, inspection records, requests for interview and evaluation reports; corrections officers records including personal deposit fund records and related documents, disciplinary books, correction facility blotters and visitor registers; prisoner records consisting of daily strength records, and reports of escaped and returned from escaped prisoners; prisoner classification summaries; retrainee test records and correctional custody case files consisting of disciplinary punishment letters, evaluation of individual and personal history, and records pertaining to any clemency/ parole actions.

Authority for maintenance of the system:

44 USC 3301 and 10 USC 8012.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Purpose of these records is to maintain a life file on the individual as a prisoner or correctional custodee on an installation, or as a retrainee at the 3320th Retraining Group or when an Air Force prisoner serving a sentence in a federal prison. Routine uses of the records are to establish background for either disciplinary or good conduct action as well as general administration uses of the records concerning health and welfare of the individual, as well as clemency and parole actions. Any individual record or part thereof can be transferred to any component of the Department of Defense or the Department of Justice, as well as civilian agencies such as law enforcement agencies, or law firms as a basis for consideration of civil action either against or on behalf of the individual.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Maintained in file folders, in note books/binders, in card files, on computer paper printouts, on roll microfilm and on microfiche. Maintained as photographs.

Retrievability:

Filed by Name, Social Security Number (SSN) and fingerprint classification.

Safeguards:

Records are accessed by custodian of the record system and by person(s) responsible for servicing the record system in performance of their official duties. Records are stored in locked cabinets or rooms and controlled by visitor registers.

Retention and disposal:

Depending on the type of record within the system, it is either destroyed after release of the prisoner/custodee/retrainee, maintained for one year after the release of the individual, or retained in the files at the facility in which the individual was confined for two years, after which time the record is either destroyed or transferred to a staging area for two additional years, then either retired to the Washington National Records Center, Washington DC 20409, for permanent retention or destroyed by tearing into pieces, shredding pulping, macerating, or burning. Records pertaining to clemency/ parole actions are retained for 5 years after final action, then destroyed by burning and shredding.

System manager(s) and address:

Chief of Security Police, Kirtland AFB, NM 87117. The Judge Advocate General, Headquarters United States Air Force. Unit commander at the individual's last assignment; the commander of the 3320th Retraining Group, Lowry AFB, Colorado; Installation Chief of Security Police, Commandant USDB, Chairman Air Force Clemency and Parole Board.

Notification procedure:

Requests from individuals should be addressed to the Systems Manager. Installation Chief of Security Police, Installation Staff Judge Advocate Commander of unit to which individual was last assigned, or the Commander, 3320th Retraining Group. Records of clemency and parole actions are maintained by the Office of the Secretary of the Air Force Personnel Council and the Commandant USDB. Requestors should provide full name and proof of identity. When visiting, requestor will be required to provide proof of identity.

Record access procedures:

Individual can obtain assistance in gaining access from the Systems Manager. Mailing addresses are in the Department of Defense directory in the appendix to the Air Force's systems notice.

Contesting record procedures:

The Air Force's rules for access to records and for contesting and appealing initial determinations by the individual concerned may be obtained from the Systems Manager.

Record source categories:

Information obtained from financial institutions, medical institutions, police and investigating officers, state or local governments, witnesses or source documents (such as reports) prepared on behalf of the Air Force by boards, committees, panels, auditors, and so forth.

Systems exempted from certain provisions of the act:

NONE

F16001 AFA A

System name:

16001-AFA-A Cadet Hospital/Clinic Records.

System location:

At USAF Academy CO 80840.

Categories of individuals covered by the system:

AF Academy Cadets.

Categories of records in the system:

Daily roster of cadets hospitalized and report of cadet visits to the cadet clinic.

Authority for maintenance of the system:

10 USC 8012, Secretary of the Air Force: powers and duties; delegation by.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

(1) Information collected for purpose of notifying concerned individuals of status of cadets hospitalized. Users include: Superintendent, Commandant of Cadets and Hospital Commander. Information used to provide Superintendent daily report of number and status of cadets hospitalized; provide Hospital Commander and staff daily report of status of cadets hospitalized; provide Commandant and staff daily report of number and status of cadets hospitalized; provide information to Air Officer Commanding so that he may notify parents as required when their child is hospitalized more than three days; concerned personnel can note trends in hospitalization in terms of numbers of cadets hospitalized, length of hospital stay, and nature of medical problems being treated. (2) Report of visits to cadet clinics; record the time a cadet enters the clinic, what his complaint is and explanation of excusals and time he exited the clinic. Distribution of this info is made to Cadet Wing Airmanships Division, Athletics and individual concerned. Cadet Wing Airmanships Division uses it to monitor cadet activity for ground safety program. Athletics uses to monitor excusals from physical education and to evaluate injury rates. The individual uses it to justify time away from classes.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Maintained in file folders.

Retrievability:

Filed by name.

Safeguards:

(1) Records are accessed by the custodian, person(s) responsible for servicing the record system, and authorized personnel who are properly screened and have a need-to-know. Records are stored in locked cabinets or rooms. (2) Clinic copy is under the direct control of Non-Commissioned Officer in Charge (NCOIC) of Administrative Services. Distribution is made only to acknowledged representatives of Cadet Wing Airmanship Division and Athletics.

Retention and disposal:

(1) Retained in office files for one year after annual cut-off then destroyed by tearing into pieces, shredding, pulping, macerating, or burning. (2) Retained in office files for three months or until purpose has been served, whichever is sooner; then destroyed by tearing into pieces, shredding, pulping, macerating, or burning.

System manager(s) and address:

Commander, USAF Academy Hospital, USAF Academy, CO 80840.

Notification procedure:

Requests should be addressed to the Registrar, USAF Academy Hospital Cadet Liaison, and should include full name, and date of hospital admission.

Record access procedure:

Individual can obtain assistance in gaining access from the System Manager.

Contesting record procedure:

The Air Force's rules for access to records and for contesting and appealing initial determinations by the individual concerned may be obtained from the Systems Manager.

Record source categories:

Information obtained from medical institutions, the individual, a physical and/or medical technicians.

Systems exempted from certain provisions of the act:

NONE

F16002 SGPS A

System name:

16002-SGPS-A Department of Defense Medical Examination Review Board Medical Examination Files

System location:

Department of Defense Medical Examination Review Board (DODMERB) US Air Force Academy CO 80840.

Categories of individuals covered by the system:

All applicants to the five service academies or the Four Year Reserve Officer Training Corps (ROTC) Scholarship Program and Uniform University of Health Sciences.

Categories of records in the system:

The record system is maintained in three forms: The original hard copy report of Medical Examination, Report of medical history, narrative summary and any associated civilian forms or tests that may have been accomplished; may also contain personal correspondence between the DODMERB and the applicant and/or parental/guardian consultation concerning applicant's medical history or status; the second portion is microform copy of the hard copy file; the third portion is in computer storage.

Authority for maintenance of the system:

10 USC 133.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

The paper copy is used to determine medical acceptability for one or more of the service academies or the ROTC and/or USUHS. The microform portion is used for historical retrieval of previous actions; The computer form is used to advise the program managers of initial medical status and update actions on an applicant. Statistical summaries are extracted from the computer bank. Consultations concerning medical conditions may be necessary with parent/guardian to clarify/explain applicant's medical status. Examinations may be accomplished by military medical facilities personnel, civilian contract agents of the government and/or private physicians.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Stored in file folders, microfilm jackets and on computer disks or tapes.

Retrievability:

Filed by Name and by Social Security Number (SSN).

Safeguards:

Records are accessed by person(s) responsible for servicing the record system in performance of their official duties. Records are stored in locked cabinets or rooms and controlled by computer system software.

Retention and disposal:

Paper copy is destroyed at end of current year cycle, microfilm copy is kept five years and computer storage file is kept for two years following end of cycle. Destruction is by tearing into pieces, shredding, pulping, macerating or burning except for computer media which is degaussed or overwritten.

System manager(s) and address:

Department of Defense Medical Examination Review Board, US Air Force Academy CO 80840.

Notification procedure:

Requests from individuals should be addressed to the Systems Manager.

Record access procedure:

Individual can obtain assistance in gaining access from the Systems Manager.

Contesting record procedure:

The Air Force's rules for access to records and for contesting and appealing initial determinations by the individual concerned may be obtained from the Systems Manager.

Record source categories:

Information obtained from medical institutions.

Systems exempted from certain provisions of the act:

NONE

F16002 01ACYVA

System name:

16002-01ACYVA Physical Examination Reports Suspense File.

System location:

Air Reserve Personnel Center, Denver, CO 80280.

Categories of individuals covered by the system:

Air Force Reserve personnel.

Categories of records in the system:

Incomplete reports of physical examinations, correspondence to and from reservists/individuals.

Authority for maintenance of the system:

10 USC 275.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Information in files is used to provide control of reservists/individual medical status.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Maintained in file folders.

Retrievability:

Filed by Name and Social Security Number (SSN).

Safeguards:

Records are accessed by custodian of the record system, by person(s) responsible for servicing the record system in performance of their official duties and by commanders of medical centers and hospitals. Records are protected by guards.

Retention and disposal:

Filed in the individual personnel records maintained at ARPC.

System manager(s) and address:

Commander Air Reserve Personnel Center (ARPC), Denver, CO 80280.

Notification procedure:

Requests from individuals should be addressed to the Documentation Management Officer, ARPC/DADP, Denver, Colorado 80280. Written requests for information should contain full name, SSN, current mailing address and, if known, the case (control) number on correspondence received from ARPC. Records may be reviewed in the Records Review Room, Air Reserve Personnel Center, Denver, Colorado between 8:00 am and 3:00 pm on normal work days. Visitors wishing to see their records should provide a current Re-

serve identification card and/or driving license and some verbal information that could verify the person's identification.

Record access procedures:

Individuals can obtain assistance in gaining access from the Documentation Management Officer, ARPC/DADP, Denver, Colorado 80280; telephone (303) 394-4667.

Contesting record procedures:

The Air Force's rules for access to records and for contesting and appealing initial determinations by the individual concerned may be obtained from the Systems Manager.

Record source categories:

Information from examining facilities, physicians (military and civilian, and summary of physicians evaluation.

Systems exempted from certain provisions of the act:

NONE

F16802 0RKNMDA

System name:

16802 0RKNMDA Civilian Health/Medical Program of Uniformed Services (CHAMPUS) Case Claim Files.

System location:

Commander Third Air Division USAF Clinic Andersen (Registrar) APO 96334. (For all of Guam (basic program)). USAF Hosp Clark (Registrar), APO 96274 (For all of Phillipines, Thailand, Taiwan (basic program)). USAF Hospital Yokota (Registrar), APO 96328 (For Kanto Plains, Hakata all of Korea (basic program)). USAF Hosp Misawa (Registrar), APO 96519 (For Misawa and Chitose (basic program)). USAF Clinic Kadena (Registrar), APO 96239 (For all of Okinawa (basic program)) The remainder of Air Force claims in Pacific Air Force(PACAF) command area, along with Air Force claims from India, Sri Lanka, Pakistan Nepal, and Afghanistan are processed and filed by Commander in Chief Pacific Air Forces (CINCPACAF) (SCAMP), APO San Francisco 96553 (basic program and entire handicapped program for command).

Categories of individuals covered by the system:

Dependents of Air Force personnel, retired Air Force military personnel, dependents of retired and deceased AF personnel.

Categories of records in the system:

Medical reports. invoices and receipts for treatment.

Authority for maintenance of the system:

10 U.S.C. 1071-1087.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

For determination if claim is authorized for payment, for screening against duplicate payments for same service, serves as auditable records to support computations of amount of payments made to claimants. Categories of users are: physicians for diagnosis, hospital administrative personnel for determining if care is authorized and to compute amount to be paid, accounting and finance office for supporting documents to support payment of claims, auditors to determine if payment computations were made in accordance with directives.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Maintained in file folders.

Retrievability:

Filed by Name.

Safeguards:

Records are accessed by person(s) responsible for servicing the record system in performance of their official duties who are properly screened and cleared for need-to-know. Records are accessed by commanders of medical centers and hospitals. Records are stored in locked cabinets or rooms.

Retention and disposal:

Records are kept on a fiscal year basis and are brought forward to current year if they are still active. Records are cut off at end of fiscal year and destroyed after 5 years by tearing into pieces,shredding,pulping,macerating,or burning signed requests from individual concerned must be forwarded to office of record. Request should include full name of individual and full name of sponsor and his social security account number. with Air Force claims from India, Sri Lanka, Pakistan, Nepal, and Afghanistan is processed and filed by CINCPACAF surgeon general, APO San Francisco 96553 basic program and entire handicapped program for the command.

System manager(s) and address:

Commander Third Air Division USAF Clinic Andersen (Registrar) APO San Francisco 96334. (All of Guam (basic program)). USAF Hosp Clark (Registrar) APO San Francisco 96274. (All of Phillipines, Thailand Taiwan (basic program)). USAF Hospital Yokota (Registrar), APO San Francisco 96328. (Kanto Plains, Hakata, all of Korea (basic program)). USAF Hosp Misawa (Registrar), APO San Francisco 96519. (Misawa and Chitose (basic program)). USAF clinic Kadena (Registrar), APO 96239. (All of Okinawa (basic program)). CINCPACAF (SCAMP) APO San Francisco 96553 for the remainder of Air Force claims in Pacific Command a

Notification procedure:

Requests from individuals should be addressed to the Systems Manager.

Record access procedures:

Individual can obtain assistance in gaining access from the Systems Manager. Mailing addresses are in the Department of Defense directory in the appendix to the Air Force's systems notice.

Contesting record procedures:

The Air Force's rules for access to records and for contesting and appealing initial determinations by the individual concerned may be obtained from the Systems Manager.

Record source categories:

Physicians, hospitals, dentists, clinics, pharmacy, commercial medical supply houses, other providers of medical associated care.

Systems exempted from certain provisions of the act:

NONE

F16805 ASGHB R

System name:

16805-ASGHB-R Health and Outpatient Records.

System location:

Air Force Manpower and Personnel Center, Randolph Air Force Base, TX 78148. Air Reserve Personnel Center, Denver, CO 80280. United States Air Force Academy, CO 80840. National Personnel Records Center, Civilian Personnel Records, 111 Winnebago Street, St. Louis, MO 63118. National Personnel Records Center, Military Personnel Records, 9700 Page Boulevard, St. Louis, MO 63132. Air Force hospitals, medical centers and clinics. Consolidated flight record custodians at Air Force installations. Air National Guard activities. Air Force Reserve units. Official mailing addresses are in the Department of Defense directory in the appendix to the Air Force's systems notice. Other authorized medical units servicing military personnel and/or their dependents, such as National Aeronautics and Space Administration, Embassies, Federal Aviation Agency, Public Health Service, Veterans Administration.

Categories of individuals covered by the system:

All personnel authorized to receive medical care in an Air Force facility.

Categories of records in the system:

Chronological record of all care received in military medical facilities. This is primarily a record of all treatment received on an outpatient basis with supporting documentation such as laboratory and x-ray reports; the record also includes copies of cover sheets and summaries of each period of hospitalization the patient has had. Certain administrative forms which concern medical conditions, such as Line of Duty Determinations, Physical Profiles, Medical Recommendation for Flying Duty are also included. To provide ready accessibility to the records, an alphabetical name file is maintained.

Authority for maintenance of the system:

10 USC 133 and 8012.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Used as chronological record of patient's health while authorized care in a military medical facility. Used by patient or legal representative for further medical care, legal purposes, other uses such as insurance requests or compensation claims as specifically authorized by the patient. Used by physician for further medical care of patient, research, teaching, legal purposes. Used by other Patient Care Providers within the hospital for further medical care of the patient, research, teaching, legal purposes. Used by hospital and medical staff for evaluation of medical staff performance in the medical care rendered; medical research; teaching; hospital accreditation; preparation of statistical reports; reporting communicable diseases and other conditions required by law to federal and state agencies; legal purposes. Used by Army-Navy-VeteranAdministration-Public Health Service-any other hospital, clinic etc for further medical care of the patient if currently undergoing treatment there. Used by attorneys and courts for litigation purposes (record is released only upon receipt of the

patients' signed authorization or a court order). Used by insurance companies - requires the patients' writtenconsent for release. Used for establishing insurance benefits or payment of benefits. Used by otheAir Force Agencies - such as Central Tumor Registry which maintains files on all patients in whom a malignancy has been diagnosed; Office of Special Investigations when required for an investigation they are conducting; Judge Advocate General for litigation purposes. Used by other Federal and State Agencies - such as Veterans Administration and Department of Labor (Workmens Compensation) for adjudication of claims; reporting communicable disease or other conditions required by law. Other persons or agencies as specifically authorized by the patient.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Maintained in file folders, in card files and in machine - readable form.

Retrievability:

Filed by Name. Filed by Social Security Number (SSN) or by Military Service Number.

Safeguards:

Records are accessed by custodian of the record system and by person(s) responsible for servicing the record system in performance of their official duties who are properly screened and cleared for need-to-know, and by commanders of medical centers and hospitals. Records are stored in locked cabinets or rooms and controlled by personnel screening.

Retention and disposal:

Records for military personnel are retained for 50 years after date of last document; for all others, 25 years. While on active duty, the Health Record of a US military member is maintained at the medical unit at which the person receives treatment. On separation, or retirement, records are forwarded to National Personnel Records Center/ Military Personnel Records (NPRC/MPR) or other designated depository, such as Air Reserve Personnel Center if reservist; to appropriate state National Guard unit, if National Guard member; to appropriate Veterans Administration Regional Office if VA Claim has been filed. Records of other personnel may be handcarried or mailed to the next military medical facility at which treatment will be received, or the records are retained at the treating facility for a minimum of 1 year after date of last treatment then retired to NPRC or other designated depository, such as, but not limited to, Commandant (PM) US Coast Guard, Washington DC 20226 for Coast Guard active duty members; Medical Director, American Red Cross, Washington DC 20006 for Red Cross Personnel. (Records at NPRC are destroyed by burning or shredding).

System manager(s) and address:

The Surgeon General, Headquarters United States Air Force. Chief of Air Force Reserve, Headquarters United States Air Force. Director of Air National Guard, Headquarters United States Air Force. Commanders of medical centers hospitals clinics medical aid stations; Commander, Manpower and Personnel Center; Director National Personnel Record Center (military) 9700 Page Blvd, St Louis, MO 63132; Director, National Personnel Record Center (civilian), 111 Winnebago St., St Louis, MO 63118. Individuals who have records responsibility at all other authorized medical units servicing military personnel and their dependents.

Notification procedure:

Requests from individuals should be addressed to the Systems Manager.

Record access procedures:

Individual can obtain assistance in gaining access from the Systems Manager. Mailing addresses are in the Department of Defense directory in the appendix to the Air Force's systems notice.

Contesting record procedures:

The Air Force's rules for access to records and for contesting and appealing initial determinations by the individual concerned may be obtained from the Systems Manager.

Record source categories:

Physicians and other patient care providers such as nurses, dietitians, physicians assistants, etc. Administrative forms filed in the records will be completed by appropriate official, military or civilian.

Systems exempted from certain provisions of the act:

NONE

F17101 SG A

System name:

17101 SG A Automated Medical/Dental Record System

System location:

At Air Force medical centers, hospitals and clinics, major command headquarters and separate operating agency headquarters, Air Force Data Service Center, Air Force Medical Service Center, USAF School of Aerospace Medicine, and USAF School of Health Care Sciences. Official mailing addresses are in the Department of Defense directory in the appendix of the Air Force's Systems notice.

Categories of individuals covered by the system:

Any individual who is hospitalized in, is dead on arrival at, or has received medical or dental care at an Air Force medical treatment facility. Individuals who have received medical care at other DOD or civilian medical facilities but whose records are maintained at or processed by Air Force medical facilities. Any military active duty member who is on an excused- from-duty status, on quarters, on subsistence elsewhere, on convalescent leave, meets Medical Evaluation Board (MEB) or a Physical Evaluation Board (PEB) on an outpatient basis or who is hospitalized in a non-federal hospital and for whom an Air Force medical facility has assumed administrative responsibility. Any individual who has undergone medical or dental examinations at any Air Force medical facility (or who has undergone medical examinations at other medical facilities and whose records are maintained or processed by the Air Force), e.g., preemployment examinations and food handlers examinations, or who has otherwise had medical or dental tests performed at any Air Force medical facility.

Categories of records in the system:

Files consist of automated records of treatment received and medical/dental tests performed on an inpatient/outpatient basis in military medical treatment facilities and of military members treated in civilian facilities. These records may include radiographic images and reports, electrocardiographic tracings and reports, laboratory test results and reports, blood gas analysis reports, occupational health records, dental radiographic reports and records, automated cardiac catheterization data and reports, physical examination reports, patient administration and scheduling reports, pharmacy prescriptions and reports, food service reports, hearing conservation tests, cardiovascular fitness examinations and reports, reports of medical waivers granted for flight duty, and other inpatient and outpatient data and reports. They may contain information relating to medical/dental examinations and treatments, innoculations, appointment and scheduling information, and other medical and/or dental information. Subsystems of the Automated Medical/Dental Data System include: Air Force Clinical Laboratory Automation System (AFCLAS)/TRILAB I; Automated Cardiac Catheterization Laboratory System (ACCLS); Computer Assisted Practice of Cardiology (CAPOC) System; DATA STAT Pharmacy System (Formerly PROHECA); Occupational Health and Safety System; Patient Appointment and Scheduling System (PAS); Tri-Laboratory System (TRILAB); Tri-Pharmacy System; Tri-Radiology System (TRIRAD); Health Evaluation and Risk Tabulation (HEART).

Authority for maintenance of the system:

10 USC Chapter 55, Medical and Dental Care.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Used in a record of patient's medical/dental health, diagnosis, and treatment and disposition while authorized care. Used to help determine individual's qualification for duty, for security clearances and for assignments. Used by an individual or his legal representative for further medical care, legal purposes, or other uses such as insurance requests or compensation claims when specifically authorized by the patient. Used by physicians/dentists and other health care providers for further care of the patient, research, teaching, and legal purposes. Used by medical treatment facility staff for evaluation of staff performance in the care rendered; for preparation of statistical reports; for reporting communicable diseases and other conditions required by law to federal and state agencies; for legal purposes. Used by Army, Navy, Veterans Administration, Public Health Service or civilian hospitals for continued medical care of the patient. Used by attorneys and courts for legal purposes --record is released only upon receipt of the signed authorization of the individual (or his legal guardian) or an order from a court of competent jurisdiction. Used by insurance companies, (only with the patient's written consent for release); for arbitrating insurance claims. Used by other Federal agencies such as Veterans Administration and Department of Labor (Workmen's Compensation) for adjudication of claims; for reporting communicable diseases or other conditions required by law. Used to provide input to other DOD medical records systems including the Clinical Records and Related Documents System (F16804 SGHB A), the Health and Outpatient Records System (F16805 ASGHB R), the

Dental Health Records System (F16201 SGD A) and other DOD agencies (e.g., Army and Navy) when such agency is normally by the primary source or repository of medical information about the individual. This system may provide information to the Automated Inpatient Data System (F17101 SGHB A) and to the Medical Recommendation For Flying Duty System (F1701 SGHB B).

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Data maintained primarily on magnetic tape or disks. May also be maintained: in file folders, on computer paper printouts or punched cards, on roll microfilm or microfiche.

Retrievability:

Filed by Social Security Number (SSN) of the individual or his/her sponsor in combination with the Family Member Prefix (FMP). The FMP describes the relationship of the patient to his sponsor, e.g., second oldest dependent child, spouse, self, etc. May also be retrieved by the individual's name or by other identification or system number such as inpatient register number, laboratory accession number, or pharmacy prescription number.

Safeguards:

Records are accessed by medical records custodians or other person(s) responsible for maintaining the record system in performance of their official duties, by commanders of Air Force medical treatment facilities or by personnel authorized by the medical records custodian(s), i.e., administrative employees, Peer Review and Utilization Review committees, etc. Records are controlled by computer system software including the use of pass words or other user identification system, and by limiting physical access to the computer and computer terminals. Except when under direct physical control of authorized individuals, records will be stored in locked rooms or in locked cabinets. Records are accessed by authorized personnel who are properly screened and cleared for a need to know.

Retention and disposal:

Computer files are retained for variable lengths of time depending upon the type of information involved and the size and mission of the medical treatment facility. Retention time may vary from one day to ten years. Records are disposed of by erasure of the magnetic computer records and destruction of the computer related worksheets on paper, film, or other media by tearing, shredding, pulping, burning or other destructive methods. Identical medical/dental information may be retained for longer periods of time in other medical records systems (such as inpatient or outpatient charts), including the 'Health and Outpatient Records System' (F16805, ASGHB R), the 'Clinical Records and Related Documents System' (F16804 SGHB A), and 'Dental Health Records' (F16201 SGD A).

System manager(s) and address:

Major command and separate operating agency headquarters and Air Force Medical Service Center, commanders of USAF medical centers, hospitals, and clinics, USAF School of Health Care Sciences, Aerospace Medical Division, Brooks AFB, Texas, and the USAF School of Aerospace Medicine, Brooks AFB, Texas. Official mailing addresses are in the Department of Defense directory in the appendix to the Air Force Systems notice.

Notification procedure:

Requests from individuals should be directed to the Systems Manager. Requests should include complete name (including maiden name), sponsor's name, Social Security Number or Service Number of person through whom eligibility is established, category of record desired, year in which treatment was provided, whether treatment was inpatient or outpatient. If the individual establishes eligibility through a sponsor other than self, the request should include the relationship to the sponsor, e.g., spouse, second oldest child, parent, etc.

Record access procedures:

Address requests to systems manager. Official mailing addresses are in the Department of Defense Directory in the appendix to the Department of Air Force's systems notice.

Contesting record procedures:

The Air Force's rules for access to records and for contesting and appealing initial determinations by the individual concerned may be obtained from the Systems Manager.

Record source categories:

Information is obtained directly from the individual whenever practical and possible, from other individuals when necessary, e.g., when the patient is a child or is in coma, from other medical institutions, from automated systems interfaces, from medical records, and from patient interactions with physicians and other health care providers.

Systems exempted from certain provisions of the act:

NONE

F17701 OBXQPCA

System name:

17701 OBXQPCA Cadet Accounting and Finance, System.

System location:

United States Air Force Academy, USAF Academy CO 80840. Air Force Accounting and Finance Center, Lowry AFB, Denver, CO 80279.

Categories of individuals covered by the system:

-Air Force Academy cadets.

Categories of records in the system:

Individual computerized files containing pay data for all USAF Academy Cadets including Establishment/Change in Personal Checking Account, Monthly Report of Contingency Fund Status, Contingency Fund Loan Request, Cadet Pay Order, Document Control Log, Recapitulation of Cadet Pay Account, Cadet Pay Authorization, Cadet Pay Monthly Statement, Cadet Pay Record, Payment/Collection Vouchers, Separation Control Log, Electronic Data Processing Sheets, Microfilm Files, Cadet Pay Disk File, Quarterly FICA Report, Transmittal Letter.

Authority for maintenance of the system:

10 U.S.C. 9331, 9334, 9342, 9350; 37 U.S.C., 201.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

The purpose for which the information in the system is collected is to accumulate cadet pay entitlements (basic pay and subsistence), deductions (federal tax, social security, insurance premiums) in order to properly monitor the payments disbursed to the Air Force Cadet Wing (TAFCW). The only category of user is the Accounting and Finance Office, Cadet Pay Section and Paying and Collection Section. The specific uses of the information include determining the correct monthly net pay to be disbursed to each cadet, preparing TD Forms W2 for the Internal Revenue Service, reporting deductions for the Federal Insurance Contribution Act to the Social Security Administration, charging the cadets for clothing issues and miscellaneous charges from authorized USAF Academy sources, and the reporting of all expenditures to the Air Force Accounting and Finance Center.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Maintained in file folders, in visible file binders/cabinets, in card files, on computer magnetic tapes, on disks or drums, on computer paper printouts, on roll microfilm.

Retrievability:

Filed by Military Service Number or other identification number or system identifier.

Safeguards:

Records are accessed by custodian of the record system and by person(s) responsible for servicing the record system in performance of their official duties who are properly screened and cleared for need-to-know. Records are stored in locked cabinets or rooms.

Retention and disposal:

The original copy of Cadet Pay Record, Cadet Pay Order, Substantiating Pay Documents and Transmittal Letter are forwarded to AFAFC, Lowry AFB, Denver, CO 80279. A microfilm copy of the Cadet Pay Record is maintained by USAF Academy Finance, Cadet Pay Section, USAF Academy, CO 80840, and is destroyed 4 years after graduation by cutting into pieces. Copies of Cadet Pay Orders, substantiating pay documents and posting media records are retained 1 year after annual cutoff in current files area and forwarded to the USAF Academy Staging Area for 2 additional years. Document Control Records are destroyed 90 days after close of FY to which they pertain. W-2 listings, quarterly FICA reports and CPTTF interest distribution records are retained by Cadet Pay Section 6 years after CY to which they pertain. Audit registers are destroyed after 9 months. Financial statements, schedules and supporting data is destroyed after 4 years. Pay inquiries are destroyed after 2 years. All destruction is accomplished by tearing into pieces.

System manager(s) and address:

Director of Accounting and Finance, United States Air Force Academy, Colorado, 80840.

Notification procedure:

Requests from individuals should be addressed to the system manager.

Record access procedures:

Individual can obtain assistance in gaining access from the Systems Manager.

Contesting record procedures:

The Air Force's rules for access to records and for contesting and appealing initial determinations by the individual concerned may be obtained from the Systems Manager.

Record source categories:

Information obtained from source documents (such as reports) prepared on behalf of the Air Force by boards, committees, panels, auditors, and so forth.

Systems exempted from certain provisions of the act:

NONE

F17708 0EACYVD

System name:

17708 0EACYVD Indebtedness and claims.

System location:

Air Force Accounting and Finance Center, Lowry AFB, Denver, CO 80279. Denver Federal Archives and Record Center Bldg 48 Denver Federal Center, Denver, Colorado 80225.

Categories of individuals covered by the system:

Active duty military personnel. Air Force civilian employees. Former Air Force civilian employees. Air Force Reserve and Air National Guard personnel. Retired Air Force military personnel. Air Force Academy cadets. Dependents of military personnel. Exchange Officers. Foreign nationals.

Categories of records in the system:

Records of current and former military members and civilian employees pay accounts showing entitlements, deductions, payments made, and any indebtedness resulting from deductions and payments exceeding entitlements. These records include, but are not limited to, individual military pay records, substantiating documents such as military pay orders, pay adjustment authorizations, military master pay account printout from Joint Uniform Military Pay System (JUMPS), records of travel payments, financial record data folders, miscellaneous vouchers, personal financial records, credit reports, promissory notes, individual financial statements, and correspondence. Applications for waiver of erroneous payments or for remission of indebtedness with supporting documents, including but not limited to, statements of financial status (personal income and expenses), statements of commanders, statements of Accounting and Finance Officers, correspondence with members and employees. Claims of individuals requesting additional payments for services rendered with supporting documents including, but not limited to, time and attendance reports, leave and earnings statements, travel orders, travel vouchers, statements of non-availability of quarters and mess, paid receipts, and correspondence with members and employees. Delinquent accounts receivable from base Accounting and Finance Officers including, but not limited to, returned checks, medical services billings, collection records, and summaries of the Air Force Office of Special Investigation and Federal Bureau of Investigation reports. Reports from probate courts regarding estates of deceased debtors. Reports from bankruptcy courts regarding claims of the US against debtors.

Authority for maintenance of the system:

31 USC 951-953; 10 USC 2774; 10 USC 9837 (d); 5 USC 5584; 12 USC 1715m.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

The information is collected to determine eligibility for waiver of erroneous payments and remission of indebtedness or additional payments for services rendered. Also, information is required to attempt collection of all claims of the United States for money or property arising out of the activities of the United States Air Force. Data necessary to identify the individual involved is disclosed to commercial credit agencies whenever a financial status report is requested for use in the administration of the Federal Claims Collection Act. Claims of the United States may be compromised, terminated, or suspended when warranted by information collected. The records are used by, but not limited to, Air Force Accounting and Finance Center (AFAFC) Director of Accounting and Finance and Deputy Director of Accounting and Finance (HQ USAF/ACF), Assistant Secretary of the Air Force for Manpower and Reserve Personnel (SAF/MR), United States Air Force Comptroller (HQ USAF/AC), and the Comptroller General. AFAFC/CC uses the information to make final determinations or recommendations to SAF/MR, HQ USAF/AC, or the Comptroller General; to furnish legal advice to operating officials; to establish debts and respond to letters received from individuals. After action is completed, files are closed and filed in individual records. SAF/MR, HQ USAF/AC and the Comptroller General use the files for making final determinations. Disclosures made pursuant to the Freedom of Information Act. Disclosures to the Department of Justice for criminal prosecution, civil litigation or investigation.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Maintained in file folders and in machine - readable form.

Retrievability:

Filed by Name.

Safeguards:

Records are accessed by custodian of the record system and by person(s) responsible for servicing the record system in performance of their official duties who are properly screened and cleared for need-to-know. Records are stored in security file containers/cabinets, protected by guards and controlled by personnel screening and visitor registers.

Retention and disposal:

Retained in office files for one year after annual cut-off, transferred to the Denver Federal Archives and Record Center for nine additional years, and then sold to salvage paper companies to be destroyed by shredding, tearing, macerating, pulping or burning.

System manager(s) and address:

Comptroller of the Air Force, Headquarters United States Air Force. Director Accounting and Finance United States Air Force (USAF).

Notification procedure:

Information as to whether the record system contains information on an individual may be obtained from AFAFC/DAD, Denver, CO 80279, telephone (303) 320-7553. Requester should be able to provide sufficient proof of identity, such as name, Social Security Number, military status, duty station or place of employment, or other information verifiable from the record itself.

Record access procedures:

Requests from individuals should be addressed to AFAFC/DAD, Denver, CO 80279, telephone (303) 320-7553. Requester should be able to provide sufficient proof of identity, such as name, Social Security Number, military status, duty station or place of employment, or other information verifiable from the record itself.

Contesting record procedures:

The Air Force's rules for access to records and for contesting and appealing initial determinations by the individual concerned may be obtained from the Systems Manager.

Record source categories:

Information obtained from financial and medical institutions; automated system interfaces; police and investigating officers; the public media; a state or local government; and source documents (such as reports) prepared on behalf of the Air Force by boards, committees, panels, auditors, and so forth; credit bureaus; Bureau of Employees Compensation, Veterans Administration; Social Security; Internal Revenue Service; Federal Housing Administration; health insurance companies; U.S. Army Finance and Accounting Center; Navy Finance Center; Base Accounting and Finance Officers, Major Commands; Comptroller General; and correspondence with individual concerned or his representative.

Systems exempted from certain provisions of the act:

NONE

F17720 0EACYVA

System name:

17720 0EACYVA Travel Records

System location:

Air Force Accounting and Finance Center, Lowry AFB, Denver, CO 80279. accounting and finance offices at Air Force bases the addresses of which are listed in the Department of Defense directory in the appendix to the Air Force system notice; and at the Denver Federal Archives and Records Center, Denver Federal Center, Bldg 48, Denver, CO, 80225.

Categories of individuals covered by the system:

Active duty military personnel. Air Force civilian employees and former employees. Air Force Reserve and Air National Guard per-

sonnel. Retired Air Force military personnel. Air Force Academy nominees/applicants/cadets. Senior and Junior Air Force Reserve Officers. Dependents of military personnel. Foreign Nationals residing in the United States. Exchange Officers. Any other individual in receipt of competent travel orders.

Categories of records in the system:

Documents include but are not limited to travel vouchers and subvouchers; travel allowance payment lists; travel voucher or subvoucher continuation sheets; vouchers and claims for dependent travel and dislocation or trailer allowance; certificate of government quarters and mess; multiple travel payments list; travel payment card; requests for fiscal information concerning transportation requests, bills of lading, and meal tickets; public vouchers for fees and mileage of witnesses; claims for reimbursement for expenditures on official business; claims for fees and mileage of witness; certifications for travel under classified orders; travel card envelopes; statements of adverse effect-utilization of government facilities; and correspondence relating to the above subject matter.

Authority for maintenance of the system:

37 USC 404-412; 5 USC 2105, 2106, 5561, 5564, 5701-5708, 5721-5730, and 5742.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

The purposes for which information in the system is collected include but are not limited to paying travel entitlements and supporting the payment of travel entitlements to military and civilian personnel. Uses made of the records by the paying Accounting and Finance Office, other Air Force and Dept of Defense components include but are not limited to the following: payment of advances; payment of per diem at temporary duty stations; settlement payments upon completion of travel; payment of mileage upon separation or release from active duty; consolidation of payments; payment of dependents: travel; payment of dislocation or trailer allowance; to support a traveler's entitlement to a specific rate of per diem; to list multiple payments for travel and temporary duty performed under like conditions and circumstances; as a control record of all travel payments made to an individual; to query the United States Army Finance and Accounting Center for information contained on transportation requests, bills of lading, and meal tickets; payment of fees and allowances to civilian witnesses who are not U.S. Government employees; payment of expenses incurred within and around duty stations; supports the travel voucher in lieu of classified orders; updates leave records. Other users and specific uses made by them include but are not limited to Accounting and Finance Officers, who use travel records to pay travel entitlements to military and civilian personnel who perform official travel; traffic management Officers, who use travel records to support the issuance of transportation requests and to support the movement of household goods or house trailer; Internal Revenue Service, which receives and records information concerning the payment of travel allowances which are subject to federal income tax; the Civil Service Commission which uses the records for personnel management functions; General Accounting Office (GAO), which uses travel records for auditing activities and for the settlement of questionable travel claims; Office of Special Investigation, United States Air Force (OSI), which uses travel records in the investigation of suspected fraud cases; Air Force Audit Agency (AFAA), which uses travel records in performing routine audit activities; Department of Justice (disclosures for criminal prosecution, civil litigation or investigation); and disclosures made pursuant to the Freedom of Information Act.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Maintained in file folders, note books/binders, visible file binders/cabinets, card files, and at A

Retrievability:

Filed by Name, Social Security Number (SSN) or by other identification number or system identifier.

Safeguards:

Records are accessed by custodian of the record system and by person(s) responsible for servicing the record system in performance of their official duties who are properly screened and cleared for need-to-know. Records are stored in security file containers/cabinets, safes, vaults, and locked cabinets or rooms. Records are protected by guards. Records are controlled by personnel screening and by visitor registers, and by computer software in the case of machine readable records.

Retention and disposal:

The original voucher and related supporting documents are stored at the Air Force Accounting and Finance Center, Denver, CO, for 18 months and then moved to the Denver Federal Archives and Records Center for 4 years and 9 months after which they are sold to salvage companies for destruction by shredding. Copies of the original voucher and related supporting documents are maintained by field accounting and finance offices for 3 years and then destroyed by burning, shredding, tearing, pulping or macerating. Computer tapes are destro

System manager(s) and address:

Comptroller of the Air Force, Headquarters United States Air Force. Director Accounting and Finance United States Air Force (USAF). At base level the system manager is the local Accounting and Finance Officer.

Notification procedure:

Information as to whether the record system contains information on an individual may be obtained from AFAFC/DAD, Lowry AFB, Denver, CO 80279, telephone (303) 320-7553. Requester should be able to provide sufficient proof of identity, such as name, social security number, duty station, place of employment, and specify the accounting and disbursing station number, voucher number, date of voucher, or other information verifiable in the record itself.

Record access procedures:

Request from individuals should be addressed to AFAFC/DAD, Lowry AFB, Denver, CO 80279, telephone (303) 320-7553. Requester should be able to provide sufficient proof of identity, such as name, social security number, duty station, place of employment, and specify the accounting and disbursing station number, voucher number, date of voucher, or other information verifiable from the record itself.

Contesting record procedures:

The Air Force's rules for access to records and for contesting and appealing initial determinations by the individual concerned may be obtained from the Systems Manager.

Record source categories:

Information is acquired from but not limited to the individual traveler; related voucher documents such as those described above in the description of categories of records; Office of the Judge Advocate; the Comptroller; General Accounting Office; Congress; Accounting and Finance Officers; Traffic Management Officers; Consolidated Base Personnel Officers; the Air Force Accounting and Finance Center; and other Air Force and Department of Defense components.

Systems exempted from certain provisions of the act:

NONE

F17721 0EACYVA

System name:

17721 0EACYVA Civilian Pay Records.

System location:

Air National Guard activities. Accounting and Finance Offices at Air Force bases. Air Force Reserve units. Addresses are in the appendix to the Air Force's systems notice. Addresses of geographically dispersed units may be obtained by reference to Air Force components listed in the Department of Defense directory in the appendix to the Air Force notice.

Categories of individuals covered by the system:

Air Force civilian employees.

Categories of records in the system:

Individual pay records; individual leave records; source documents for posting leave and attendance; individual retirement deduction records; source documents maintained in connection with retirement deduction records and control files thereon; wage and separation information files; health benefit records; income tax withholding records; allowance and differential eligibility files, such as, but not limited to clothing allowances and night rate differentials; withholding and deduction authorization files, such as, but not limited to federal income tax withholding, insurance and retirement deductions; accounting document files; input data posting media, such as, but not limited to time and attendance cards and reports and personnel actions affecting pay; accounting and statistical reports and computer edit listings; claims and waivers affecting pay; control logs and collection/disbursement vouchers; listings for administrative purposes, such as, but not limited to health insurance, life insurance, bonds, locator files and checks to financial institutions; correspondence with the Civilian Personnel Office, dependents, attorneys, survivors, insurance companies, financial institutions, other governmental agencies and others; leave and earnings statements; travel records; and separa-

tion documents; official correspondence; federal, state and tax reports and/or tapes; forms covering pay changes and deductions, and documentation pertaining to garnishment of wages.

Authority for maintenance of the system:

5 U.S.C. Chapters 53, 55 and 81.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

The records are used to accurately compute individual employee's pay entitlements and to withhold required and authorized deductions and issue payroll checks for amounts due. Output products are forwarded as required to other subject matter areas to ensure accurate accounting and recording of pay to civilian employees. These records and related products are also used to verify and balance in the civilian pay office and other applicable subject matter areas and to report information to recipients, other government, and nongovernment agencies. Such recipients and agencies include, but are not limited to, the individual employee; banks which credit the employee's account if the employee has requested his check to be sent to the bank; financial organizations which credit the employee's account if the employee has requested a savings allotment; other approved organizations which an employee has designated for an allotment; computer and accounting service centfinancial organizations designated by individuals to receive monies due them; Federal Reserve Banks under procedures specified in 31 CFR 210 for Federal recurring payments by means other than check; health benefit carriers to ensure proper credit for the employee authorized health benefit deductions; employee organizations for which the employee has requested a dues deduction (reasons for nondeduction of dues will be benefit deductions; disclosed to officials of labor organizations recognized under Executive Orders 11636 and 11491, as amended, when relevant and necessary to their duties of exclusive representation concerning personnel policies, practices and matters affecting working conditions (including disclosure of reasons for nondeduction of dues, if applicable); the US Treasury, which maintains cash accountability; the Internal Revenue Service for recording withholding and social security information; the Social Security Administration and Civil Service Commission which credits the employee's account for Federal Insurance Contributions Act or Civil Service Retirement withheld; State revenue departments which credit employee's state tax withholding; State employment agencies which require wage information to determine eligibility for unemployment compensation benefits of former employees; city revenue departments of appropriate cities which credit employees for city tax withheld; any agency or component thereof that needs the information for proper accounting of funds, such as, but not limited to, for-others listings; Civil Service Commission for assistance in resolving complaints, grievances, etc. In the event of suspected fraud or other irregularity, data may be released to the Federal Bureau of Investigation, Office of Special Investigations, United States Air Force, or other investigating agencies for investigation and possible civil action or criminal prosecution. Data may also be released to a court of competent jurisdiction for court action. Disclosures are made to the Department of Justice for criminal prosecution, civil litigation, or investigation. Information is also supplied to the Civil Service Commission for computation of Civil service retirement annuity. Records are also used for extraction or compilation of data and reports for management studies and statistical analyses for use internally or externally as required by the Department of Defense or other Government agencies.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Maintained in file folders, in note books/binders, in visible file binders/cabinets, in card files, on computer magnetic tapes, disks or drums, on computer paper printouts, on roll microfilm, on microfiche, and in microfilm jackets.

Retrievability:

Filed by Name, Social Security Number (SSN), Civilian Payroll Number, Vehicle Registration or License Number, or other identification number or system identifier.

Safeguards:

Records are accessed by custodian of the record system and by person(s) responsible for servicing the record system in performance of their official duties who are properly screened and cleared for need-to-know. Records are stored in locked cabinets or rooms, protected by guards, and controlled by personnel screening, visitor registers, and computer system software.

Retention and disposal:

Records are retained for periods ranging up to 56 years.

System manager(s) and address:

Comptroller of the Air Force, Headquarters United States Air Force. Director of Accounting and Finance United States Air Force (USAF); and commanders of Air Force installations.

Notification procedure:

Information as to whether the record system contains information on an individual may be obtained from AFAFC/DAD, Lowry AFB, Denver, CO 80279 telephone (303) 320-7553. Information pertaining to geographically dispersed elements of the record system maybe obtained from Documentation Managers at the applicable Air Force component listed in the Department of Defense directory in the appendix to Air Force system notice. Requester should be able to provide sufficient proof of identity, such as name, social security number, drivers license, civilian identity card, duty station or place of employment or other information verifiable from the record itself.

Record access procedures:

Requests from individuals should be addressed to AFAFC/DAD, Lowry AFB, Denver, CO 80279, telephone (303) 320-7553. Information pertaining to geographically dispersed elements of the record system maybe obtained from Documentation Managers at the applicable Air Force component listed in the Department of Defense directory in the Air Force system notice. Requester should be able to provide sufficient proof of identity, such as name, social security number, drivers license civilian identity card, duty station or place of employment, or other information verifiable from the record itself.

Contesting record procedures:

The Air Force's rules for access to records and for contesting and appealing initial determinations by the individual concerned may be obtained from the Systems Manager.

Record source categories:

Information obtained from previous employers from financial institutions, from medical institutions, from automated system interfaces, from a state or local government, from source documents (such as reports) prepared on behalf of the Air Force by boards, committees, panels, auditors, and so forth, and from other Department of Defense components and other federal agencies such as, but not limited to Social Security Administration, Internal Revenue Service, State Revenue Departments, Department of the Army, Navy or State Department. Correspondence with attorneys, dependents, survivors or guardians may also furnish data for the system.

Systems exempted from certain provisions of the act:

NONE

F17725 0EACYVA

System name:

17725-0EACYVA Air Reserve Pay and Allowance System (ARPAS).

System location:

Primary system location: Air Force Accounting and Finance Center, Lowry AFB, Denver CO 80279; decentralized supporting segments are located at: Air Force Manpower and Personnel Center, Randolph Air Force Base, TX 78148. Air Reserve Personnel Center, Denver, CO 80280. National Personnel Records Center, Military Personnel Records, 9700 Page Boulevard, St. Louis, MO 63132. Air National Guard activities and Air Force Reserve units. Accounting and Finance Offices at Air Force bases Servicing individual Air Reserve Forces members. Official mailing addresses are in the Department of Defense directory in the appendix to the Air Force's systems notices, Denver Federal Archives and Record Center, Bldg 48, Denver Federal Center, Denver, CO 80225; and records Center annex GSA, p.o. Box 141, Neosho, MO 64850 (system back- up storage).

Categories of individuals covered by the system:

Active Air Reserve Forces members in a military pay status and Dependents of military personnel except Air Reserve Forces members on extended active duty and members of the Air Force Reserve Officer Training Corps.

Categories of records in the system:

Military pay account computer records and supporting documentations relating to Air Reserve Forces military pay and allowance entitlements, deductions, and collections. Military pay computer records, including but not limited to, master individual pay account files (containing essential check and member identification data, military pay entitlement and allowance data, accounting data, tax withholding rate and amount data, collection and indebtedness data, and performance data); wage and tax withholding records; records of Air Reserve Forces calendar day performance; check issue, control and cancellations records; transaction input, system reject, and system

recycle records; disbursement and collection report records; accounting report records; and other generated records supporting, substantiating, or authorizing Air Reserve Forces military pay and allowance entitlement, deduction, or collection actions. Military pay documentation records include, but are not limited to, travel orders, requests and performance records; active military duty performance records; statements of tours or performance of military duty; payroll attendance lists and rosters; document records establishing, supporting, reducing, or cancelling entitlements to basic pay; special compensations (such as medical, dental, veterinary, and optometry); special pays (such as foreign duty, hostile fire); allowances (such as basic allowance for subsistence, basic allowance for quarters, family separations, clothing maintenance and monetary allowances); incentive pays; and other entitlements in accordance with the Department of Defense Pay and Allowance Entitlement Manual; certificates and statements changing address, name, military assignment, and other individual data necessary to identify and provide accurate and timely Air Reserve Forces military pay and performance credit; allotment start, stop, or change records; declarations of benefits and waivers; military pay and personnel orders; medical certifications and determinations; death and disability documents; check issuing and cancellation records and schedules; payroll vouchers; money lists and accounting records; pay adjustment authorization records; system input certifications; member indebtedness and tax levy documentation; earnings statements; employees wage and tax reports and statements; casual payment authorization and control logs; punch card transcripts; and other documentation supporting, authorizing, or substantiating Air Reserve Forces military pay and allowance entitlement, deduction, or collection. Inquiry files, sundry lists, reports, letters, correspondence, and rosters including, but not limited to, Congressional inquiries, Internal Revenue Service notices and reports, state tax and insurance reports, Social Security Administration reports, Veterans Administration reports, inter-Department of Defense requests, treasury reports, and health education and institution inquiries.

Authority for maintenance of the system:

37 USC 101 et. Seq.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Information is collected in the system to ensure accurate and timely military pay and allowances to supported Air Reserve Forces members; provide timely, complete master individual pay account review; document and account for Air Reserve Force military pay and allowance disbursements and collections; and provide account inquiry research response capability. Records are utilized to determine net military pay and allowances check issues to Air Reserve Force members; to verify and account for system input transactions; to identify, correct, and collect overpayments; to establish, control, and collect member collection and indebtedness notices and levies; to maintain complete accounting records for Air Reserve Forces military pay and allowance disbursements, collections, refunds, and reimbursement actions; and to provide internal and external managers with statistical and monetary reports. Other users of system record data include such Air Force components as Headquarters US Air Force, Major Air Force Commands, Air Force installations, Air National Guard and Air Force Reserve Consolidated Base Personnel Offices and Consolidated Reserve Personnel Offices, Air National Guard Base Comptrollers, and ARPAS payroll offices. Other users and uses include, but are not limited to, record transfers to components of the Department of Defense for system transaction validity and accuracy audit, accounting, and documentation utilization; other federal agencies such as the Internal Revenue Service for wage and tax withholding reporting, accounting, tax audits or levies; Social Security Administration for wage and tax withholding reporting, accounting, or tax audit; Civil Service Commission for personnel management functions; Comptroller General and the General Accounting Office for system transaction validity and accuracy audits; Veterans Administration for compensation and waiver reporting and audits, life insurance accounting, disbursement and benefit determinations; US Federal Courts for legal proceedings; Federal, State, or local Governmental agencies for reports and accounting utilization; state and local governments for tax and welfare information; educational institutions for verifying scholarship qualifications and performance; charitable institutions and military associations to render recognition for meritorious service; and financial institutions for deposits (checks to banks) and credit references. Pay data is released to computer and accounting service centers upon request of financial organizations designated by individuals to receive money due them. Pay data is also released to Federal Reserve Banks under procedures specified in 31 CFR 210 for Federal recurring payments by means other than by checks. Disclosure made pursuant to the Freedom of Information Act. Disclosures to the Department of Justice for criminal prosecution, civil litigation or investigation. The American Red Cross and Air Force Aid Society use this information to determine needs of a member of his or her dependents in emergency situations.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Maintained in file folders/ in note books/binders/ visible file binders/cabinets/card files on computer magnetic tapes and computer paper printouts, on roll microfilm and microfiche.

Retrievability:

Filed by Name and Social Security Number (SSN).

Safeguards:

Records are accessed by custodian of the record system and by person(s) responsible for servicing the record system in performance of their official duties who are properly screened and cleared for need-to-know. Records are stored in security file containers/cabinets/safes/ vaults, protected by guards, and controlled by personnel screening, visitor registers and computer system software requiring special random input entry identifiers.

Retention and disposal:

The system contains differing types of records subject to varied retention of from 6 months to 56 years. Records are retired to the Denver Federal Archives and Record Center, and also are stored at the Records Center annex GSA at Neosho, MO for back-up storage. Final destruction of records is by sale to a salvage company for shredding.

System manager(s) and address:

Comptroller of the Air Force, Headquarters United States Air Force; Director Accounting and Finance United States Air Force (USAF); managers for geographically dispersed supporting elements to the system are Chief of Air Force Reserve, Headquarters United States Air Force. Director of Air National Guard, Headquarters United States Air Force. Accounting and Finance Officers, Consolidated Base Personnel Officers, Air National Guard Base Comptrollers, Consolidated Reserve Personnel Officers, ARPAS Payroll Officers, and designated representatives thereof.

Notification procedure:

Information as to whether the record system contains information on an individual may be obtained from AFAFC/DAD, Lowry AFB,, Denver, CO 80279, telephone (303) 320-7553. Information pertaining to geographically dispersed elements of the record system may be obtained from Documentation Managers at the applicable Air Force component listed in the Department of Defense Directory in the appendix to the Air Force system notice. Requesters should be able to provide sufficient proof of identity, such as name, social security number, military status, last Air Reserve Forces unit of assignment, duty status or place of employment, or other information verifiable from the system record itself.

Record access procedures:

Requests from individuals should be addressed to AFAFC/DAD, Lowry AFB, Denver, CO 80279, telephone (303) 320-7553. Information pertaining to geographically dispersed elements of the record system may be obtained from Documentation Managers at the Air Force component listed in the Department of Defense Directory in the appendix to the Air Force system notice. Requesters should be able to provide sufficient proof of identity, such as name, social security number, military status, last Air Reserve Force unit of assignment, duty status, or place of employment, or other information verifiable from the system record itself.

Contesting record procedures:

The Air Force's rules for access to records and for contesting and appealing initial determinations by the individual concerned may be obtained from the Systems Manager.

Record source categories:

Record system sources for information include, but are not limited to, the following: Headquarters USAF, Air Force Major Commands and Air Force installations, Consolidated Base Personnel Offices and Consolidated Reserve Personnel Offices, Air National Guard Base Comptrollers, ARPAS Payroll Offices, other DoD components; the Internal Revenue Service, Social Security Administration, Veterans Administration, and other federal agencies; financial institutions, educational institutions, medical institutions, automated system interfaces, and state and local agencies.

Systems exempted from certain provisions of the act:

NONE

F17726 0EACYVA

System name:

17726 0EACYVA Pay and Allotment Records.

System location:

At Air Force Accounting and Finance Center, Denver CO 80279, and at Denver Federal Archives and Record Center, Building 48, Denver Federal Center, Denver, CO, 80225.

Categories of individuals covered by the system:

Air Force active duty officer and enlisted personnel. Air Force Reserve and Air National Guard personnel. Retired Air Force military personnel. Air Force Academy cadets.

Categories of records in the system:

Applications for Basic Allowance for Quarters (BAQ); request for dependency determinations for benefits; copies of marriage certificates, birth certificates, annulments, divorce decrees and adoption papers; certificate of residence forms; allotment documents (starts, changes and stops); special pay authorizations; copies of allotment vouchers; change of address forms; parent dependency affidavits; correspondence between the Air Force Accounting and Finance Center (AFAFC) and members and their dependents pertaining to allotments (pay information) and determinations of dependency; Comptroller General decisions; General Accounting Office opinions; Judge Advocate General opinions and interpretative memoranda; Air Force Office Special Investigation (OSI) reports, interpretative memoranda from plans and systems (XS) at AFAFC; status request from office of civilian health and medical program of the uniformed services (CHAMPUS) regarding medical care for children over age 21; correspondence with state and local agencies; American Red Cross; and other material related to dependency determination and eligibility of dependents for pay and allowance purposes and benefits.

Authority for maintenance of the system:

37 USC 401; 37 USC 403 and 10 USC 1072.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Records are used to; make determinations of dependency and or relationship eligibility entitlement to pay allowances for parents, stepchildren and adopted children who have income in their own right, illegitimate children and all cases where relationship or dependency is questionable; make determinations of dependency and or eligibility entitlement to benefits for parents, parents-in-law, illegitimate children and children over age 21. Copies of affidavits, documents, related correspondence and/or information contained therein may be furnished to the service member, the claimed dependent and/or the person who furnish such information. Copies of affidavits, statements and related correspondence may be furnished OSI to verify information submitted by or in behalf of the claimed dependent. Copies of records may on occasion be furnished to Internal Revenue Service (IRS), Social Security Administration (SSA), Civil Service Commission, and the Veterans Administration (VA), and to state and local agencies for their own determinations for any obligations, benefits and privileges that come under their jurisdiction. Notify other services (Army, Navy, Marine Corps, Coast Guard) on approvals of BAQ in behalf of parents and illegitimate children to prevent duplicate claims. Notify the American Red Cross of status of claims to inform the member and/or their dependents. On occasion may send or disclose information to the Comptroller General for advance opinions. On occasion may disclose information to members of Congress on request. On occasion may disclose information to the Air Force Aid Society.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Maintained in file folders.

Retrievability:

Filed by Name, Social Security Number (SSN), or Military Service Number.

Safeguards:

Records are accessed by custodian of the record system and by person(s) responsible for servicing the record system in performance of their official duties who are properly screened and cleared for need-to-know. Records are stored in security file containers/cabinets, protected by guards and controlled by personnel screening and visitor registers.

Retention and disposal:

records for members who have been separated from the service are purged annually and retired to the Federal Archives and Records Center at Denver Federal Center with one exception, records for which claims are received and/or a dependency determination is made after separation, are retained at the AFAFC for six years after last determination and then sent to the Denver Federal Record Center. Records are destroyed six years after members separation from the service or last determination, whichever is latest. Destruction is accomplished by sale to a salvage Co. for shredding,tearing or burning.

System manager(s) and address:

Comptroller of the Air Force, Headquarters United States Air Force. Director Accounting and Finance United States Air Force Wash DC 20330. (USAF).

Notification procedure:

Information as to whether the record system contains information on an individual may be obtained from AFAFC/DAD, Denver CO 80279, telephone (303) 320-7553. The requester should be able to provide sufficient proof of identity, such as name, social security number, service number, military status, duty station or place of employment.

Record access procedure:

Request from individuals should be addressed to AFAFC/DAD, Denver CO 80279, telephone (303) 320-7553. The requester should be able to provide sufficient proof of identity, such as name, social security number, service number, military status, duty station or place of employment.

Contesting record procedure:

The Air Force's rules for access to records and for contesting and appealing initial determinations by the individual concerned may be obtained from the Systems Manager.

Record source categories:

Information obtained from previous employers, financial and medical institutions, automated system interfaces, police and investigating officers, a state or local government, source documents (such as reports) prepared on behalf of the Air Force by boards, committees, panels, auditors, and so forth; applications and correspondence from members for dependency determination, COLA, and medical care; correspondence from parents, guardians and custodians of dependents, attorneys and the American Red Cross pertaining to dependency determination and support of dependents; information from other components of the Department of Defense.

Systems exempted from certain provisions of the act:

NONE

F17734 0EACYVA

System name:

17734 0EACYVA United States Air Force Retired Pay System.

System location:

Air Force Accounting and Finance Center, Lowry AFB Denver CO 80279. Federal Archives and Records Center, building 48, Denver Federal Center, Denver, Colorado 80225. Records center annex, GSA, P.O. Box 141, Neosho, Missouri 64850 (back up storage only). Air Reserve Personnel Center and Personal Affairs offices at Air Force installations. Official mailing addresses are in the Department of Defense Directory in the Appendix to the Air Force's systems notice.

Categories of individuals covered by the system:

Air Force active duty officer and enlisted personnel. Air Force Reserve and Air National Guard personnel. Retired Air Force military personnel. Dependents and survivors of military personnel.

Categories of records in the system:

Records include, but are not limited to, retired pay and annuitant pay master files with supporting documentation relating to entitlements, deductions, collections and allotments. Supporting documents include but are not limited to the following Retirement Orders, retirement pay orders, gross pay statements, statements of employment, employees: withholding exemption certificates, records of emergency data, retired pay allotment authorizations, retirees: United States savings bond authorizations, Air Reserve Forces retirement credit summaries, divorce decrees, computation of retired pay, death certificates, claims for unpaid pay and allowances of deceased members, marriage certificates, adoption papers, guardian papers, birth certificates, election certificates for retired servicemen: family protection plan (RSFPP), election certificates for survivor benefit plan (SBP), documents pertaining to status of children: schooling, and income tax withholding statements. Also included are listings of bonds, allotments, retired pay and annuitant pay checks, debts owed the government and direct remittances made by retirees for the costs of the RSFPP and SBP plans, records from dependents of retired military personnel, correspondence related to retirement entitlements such as reports from hospitals and medical review boards, print-outs of members: active duty military pay accounts from the joint uniform military pay system.

Authority for maintenance of the system:

10 U.S.C. Chapters 61, 63, 65, 67, 69, 71, 73 and 79; 5 USC Chapter 83. 37 U.S.C. 101 et. Seq.; 38 USC 410

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

The purpose of these records is to accurately and timely pay the retired members of the Air Force and their survivors; provide members periodic statements of pay; document and account for all disbursements and collections; and to respond to inquiries concerning the retiree and annuitant accounts. Records are used to establish, maintain and close retiree and annuitant pay accounts and prepare related reports; compute retired and annuitant pay and initiate actions for monthly pay and allotment transactions; casualty cases are established upon the death of a member and arrears of pay are computed and disbursed to survivors; upon the death of a retired member, RSFPP and/or SBP accounts are established and survival annuities are paid. Users of system record data include Headquarters US Air Force and the USAF Military Personnel Center for routine and special reports which are generally statistical in nature, but occasionally include lists of retirees with related pay data. Other users include, but are not limited to, any component of the Department of Defense for inquiries, audit and document utilization; other federal agencies such as the Internal Revenue Service for normal wage and tax withholding reporting, accounting, tax audits and levies; Comptroller General and the General Accounting Office for legal interpretations and audits. Disclosures are made to the Department of Justice for criminal prosecution, civil litigation or investigation; disclosures are made to the Veteran's Administration regarding establishments, changes and discontinuances of VA compensation to retirees and annuitants; disclosures are made to the Social Security Administration regarding wages and Federal Insurance Contributions Act Tax withholding; information is furnished the American Red Cross and the Air Force Aid Society for their use in assisting retirees and their survivors; disclosures are made pursuant to the Freedom of Information Act. Information is supplied to state and local governments for use as follow-up data in welfare cases and for tax purposes. Also, there is an automated interface with the joint uniform military pay system for data used to compute annuitant payments; checks are sent to banks for credit to the retiree:s and annuitant:s accounts including payments made under the Electronics Fund Transfer System (EFTS) transmitted through the Federal Reserve System; and allotments are mailed to other financial institutions for uses such as insurance premiums and loan repayments release of data to computer and accounting service centers upon the request of a financial organization designated by individuals to receive monies due them; pay data is also released to Federal Reserve Banks under procedures specified in 31 CFR 210 for Federal recurring payments by means other than check. Information is also supplied to the Civil Service Commission when a retiree waives his military retired pay in order to use his military service for computing his Civil Service Retirement Annuity. Records are also used for extraction or compilation of statistical data and reports for management studies and statistical analyses for use internally or externally as required by Department of Defense or by other Government agencies. Information is supplied to the courts regarding retiree pay in garnishment cases. Disclosures are also made to attorneys, law firms, and other parties acting as executors or administrators of retirees estates and information is provided to trustees of mentally incompetent members and guardians of survivors (children).

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Maintained in file folders/note books/binders/visible file binders/cabinets/card files, computer magnetic tapes and paper printouts, and on roll microfilm and microfiche.

Retrievability:

Filed by Name, Social Security Number (SSN) or Military Service Number.

Safeguards:

Records are accessed by custodian of the record system and by person(s) responsible for servicing the record system in performance of their official duties who are properly screened and cleared for need-to-know. Records are stored in security file containers/cabinets/vaults/ locked cabinets or rooms, protected by guards, and controlled by personnel screening, visitor registers and computer system software.

Retention and disposal:

the system contains differing types of records subject to varied periods of retention up to 56 years. Final destruction of records is by shredding. Records are maintained in the retired pay division office while active, and then retired to the Denver Federal Archives and Records Center. Duplicate records are maintained at the records center annex at Neosho, Missouri for storage. Destruction is accomplished by shredding or burning.

System manager(s) and address:

Comptroller of the Air Force, Headquarters United States Air Force. Director of Accounting and Finance United States Air Force Washington DC 20330 (USAF). Assistant Deputy Chief of Staff Personnel for Military Personnel, Randolph Air Force Base, TX 78148 for Survivor Benefit Plans Briefing records and spouse notification letters.

Notification procedure:

Information as to whether the record system contains information on an individual may be obtained from AFAFC/DAD, Lowry AFB, Denver, CO 80279, telephone (303) 320-7553. The requester should be able to provide sufficient proof of identity, such as name, social security number, duty station or place of employment, military status, military grade or other information verifiable from the record itself. For Survivor Benefits Plans Briefing records and spouse notification data, contact the Systems Manager specified in the preceding category or Personal Affairs officials at the servicing Air Force installation. Official mailing addresses are in the Department of Defense directory in the appendix to the Air Force's systems notices.

Record access procedures:

Requests from individuals should be addressed to AFAFC/DAD, Lowry AFB, Denver, CO 80279, telephone (303) 320-7553. The requester should be able to provide sufficient proof of identity, such as name, social security number, duty station or place of employment, military status, military grade or other information verifiable from the record itself.

Contesting record procedures:

The Air Force's rules for access to records and for contesting and appealing initial determinations by the individual concerned may be obtained from the Systems Manager.

Record source categories:

Information obtained from previous employers, financial, educational, and medical institutions, automated system interfaces, a state or local government, source documents (such as reports) prepared on behalf of the Air Force by boards, committees, panels, auditors, and so forth. Also record sources include but are not limited to, the following members: survivors, trustees of mentally incompetent members, guardians of survivors (children), private law firms which are executors of estates in casualty cases, the Military Personnel Center at Randolph Air Force Base, Texas, and other government agencies such as the Veterans Administration and the Social Security Administration. Information also obtained from the individual.

Systems exempted from certain provisions of the act:

NONE

F17801 OJ RS A

System name:

17801-OJ-RS-A Lead Management System (LMS).

System location:

Air Force Opportunity Center (AFOC) (Duties of this Center are performed by a civilian contractor who is engaged by the Air Force to provide lead fulfillment services to Headquarters, United States Air Force Recruiting Service, Randolph AFB TX 78148. Location depends on the contractor.

Categories of individuals covered by the system:

Respondents to United States Air Force Recruiting Service advertisements and referrals made by active duty military personnel, retired military personnel and Air Force civilian employees.

Categories of records in the system:

Respondent's inquiry record containing name, address, date of birth, sex, telephone number, advertising medium, recruiting program in which interested, and source of referral, including name and Air Force base assigned. Recruiter contact records containing success of contract efforts, reason for not contacting, how contact was made, confirmation of educational level, qualification of individual and status of individual.

Authority for maintenance of the system:

10 U.S.C. 503 and E.O. 9397.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

The contractor fulfills requests from respondents for information about the Air Force and notifies appropriate recruiting activities of respondent's interest. Contractor develops statistical summaries

which are used by USAF Recruiting Service to evaluate the effectiveness of the advertising and referral programs.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Maintained on computer and computer products.

Retrievability:

Filed by name.

Safeguards:

Records are accessed by custodian and by persons responsible for servicing the system.

Retention and disposal:

Retained by contractor at the AFOC for two years, then destroyed. HQ USAF Recruiting Service computer paper printouts retained for 60 days, then destroyed. Subordinate recruiting activities files retained for one year after final follow up action is complete, then destroyed.

System manager(s) and address:

Director, Advertising, USAF Recruiting Service, Randolph AFB TX 78148.

Notification procedure:

Requests from individuals should be addressed to the Systems Manager.

Record access procedures:

Individuals can obtain assistance in gaining access from the Systems Manager.

Contesting record procedures:

The Air Force's rules for access to records and for contesting and appealing initial determinations by the individual concerned may be obtained from the Systems Manager.

Record source categories:

Individual respondent and automated system interfaces.

Systems exempted from certain provisions of the act:

NONE

F21081 ESC A

System name:

Historical Research and Retrieval System (HORRS).

System location:

Command Historical Office, Headquarters Electronic Security Command (HQ ESC), San Antonio, TX 78243

Categories of individuals covered by the system:

Military and civilian members of ESC, including active, retired, and deceased personnel. Primarily, names of key personnel, such as commanders, operations officers, and other staff personnel mentioned in command histories and special studies, are filed in this system and are retrievable by name.

Categories of records in the system:

Coded abstracts of command history items or extracts from other documents retained for historical purposes. Will include name, rank, unit assigned, position occupied, and any historically noteworthy achievements of individuals reflected in the document from which information was extracted.

Authority for maintenance of the system:

10 U.S.C. 8012, Secretary of the Air Force: powers and duties; delegation by.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Research reference file used by HQ ESC Historical Office to satisfy requests for Air Force Special Intelligence (SI) historical information received from individuals within the DOD and other government agencies. Information is also used as research material for preparing special studies and monographs, and to answer requests for information under the Freedom of Information Act.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Maintained in bound, paper copies; jacketed microfiche; and computer magnetic tapes, discs, and com

Retrievability:

Filed by name.

Safeguards:

Records are accessed by custodian of the record system and by persons responsible for servicing therecord system in performance of their official duties who are properly screened and cleared for need-to-know. Records are stored in security file containers. The computer file is kept in a locke

Retention and disposal:

Microfiche and paper copies of records, including ADP products, are retained in office files until longer needed for reference, then destroyed by burning or pulping. Computer tapes are destroyed by

System manager(s) and address:

Command Historian, HQ ESC/HO, San Antonio, TX 78243.

Notification procedure:

Information as to whether the record system contains information on an individual may be obtained from the System Manager.

Record access procedures:

Individuals can obtain assistance in gaining access from the Systems Manager.

Contesting record procedures:

The Air Force's rules for access to records and for contesting and appealing initial determinationsby the individual concerned may be obtained from the System Manager.

Record source categories:

Information is obtained from command histories, special studies, monographs, end-of-tour reports, oral histories, and other reference material.

Systems exempted from certain provisions of the act:

None.

DEPARTMENT OF THE AIR FORCE ADDRESS DIRECTORY

OFFICE OF THE SECRETARY OF THE AIR FORCE

and

HEADQUARTERS UNITED STATES AIR FORCE

(Located Within the Washington, DC area)

Office of the Secretary of the Air Force
Washington, D.C. 20330

Assistant Secretary of the Air Force
(Financial Management)
Washington, D.C. 20330

Assistant Secretary of the Air Force
(Research and Development & Logistics)
Washington, D.C. 20330

Assistant Secretary of the Air Force
(Manpower, Reserve Affairs & Installations)
Washington, D.C. 20330

Administrative Assistant to the
Secretary of the Air Force
Washington, D.C. 20330

General Counsel Department of the Air Force
Washington, D.C. 20330

Office of the Secretary of the Air Force
Director, Legislative Liaison
Washington, D.C. 20330

Office of the Secretary of the Air Force
Director, Office of Public Affairs
Washington, D.C. 20330

Office of the Secretary of the Air Force
Director, Office of Space Systems
Washington, D.C. 20330

Chief of Staff
United States Air Force
Washington, D.C. 20330

Vice Chief of Staff
United States Air Force
Washington, D.C. 20330

Assistant Vice Chief of Staff
United States Air Force
Washington, D.C. 20330

Chief Scientist
United States Air Force
Washington, D.C. 20330

Surgeon General
United States Air Force
Washington, D.C. 20330

Inspector General of the Air Force
Washington, D.C. 20330

The Judge Advocate General
United States Air Force
Washington, D.C. 20330

Assistant Chief of Staff, Intelligence
United States Air Force
Washington, D.C. 20330

Chief, National Guard Bureau
Washington, D.C. 20330

Chief, Air Force Reserve
Washington, D.C. 20330

Assistant Chief of Staff, Studies and Analysis
United States Air Force
Washington, D.C. 20330

Chief of Chaplains
United States Air Force
Washington, D.C. 20330

Director of Administration
United States Air Force
Washington, D.C. 20330

Comptroller of the Air Force
Washington, D.C. 20330

Assistant Chief of Staff, Communications and Computer Resources
United States Air Force
Washington, D.C. 20330

Chief, Office of Air Force History
United States Air Force
Washington, D.C. 20330

Chief, Security Police
United States Air Force
Washington, D.C. 20330

Deputy Chief of Staff, Personnel
United States Air Force
Washington, D.C. 20330

Deputy Chief of Staff, Programs and Evaluation
United States Air Force
Washington, D.C. 20330

Deputy Chief of Staff, Operations Plans and Readiness
United States Air Force
Washington, D.C. 20330

Deputy Chief of Staff, Research, Development & Acquisition
United States Air Force
Washington, D.C. 20330

Deputy Chief of Staff, Logistics and Engineering
United States Air Force
Washington, D.C. 20330

OFFICE OF THE SECRETARY OF THE AIR FORCE
and
HEADQUARTERS UNITED STATES AIR FORCE
(Located Outside the Washington, DC area)

Assistant DCS/Personnel - Military Personnel
Randolph Air Force Base, TX 78148

Auditor General
Norton Air Force Base, CA 92409

Deputy Inspector General for Inspection & Safety
Norton Air Force Base, CA 92409

Director of Accounting & Finance
Denver, CO 80279

MAJOR COMMANDS, SEPARATE OPERATING AGENCIES
and
DIRECT REPORTING UNITS

Aerospace Defense Center
Peterson Air Force Base, CO 80914

Air Force Accounting and Finance Center
Denver, CO 80279

Air Force Audit Agency
Norton Air Force Base, CA 92409

Air Force Combat Operations Staff
The Pentagon
Washington DC 20330

Air Force Communications Command
Scott Air Force Base, IL 62225

Air Force Commissary Service
Kelly Air Force Base, TX 78241

Air Force Engineering and Services Center
Kelly Air Force Base, TX 78241

Air Force Inspection and Safety Center
Norton Air Force Base, CA 92409

Air Force Intelligence Service
Bolling Air Force Base, DC 20332

Air Force Logistics Command
Wright-Patterson Air Force Base, OH 45433

Air Force Manpower and Personnel Center
Randolph Air Force Base, TX 78148

Air Force Medical Service Center
Brooks Air Force Base, TX 78235

Air Force Office of Special Investigations
Washington, DC 20314

Air Force Reserve
Robins Air Force Base, GA 31098

Air Force Service Information and News Center
Kelly Air Force Base, TX 78241

Air Force Systems Command
Andrews Air Force Base, DC 20334

Air Force Test and Evaluation Center
Kirtland Air Force Base, NM 87117

Air National Guard Support Center
Andrews Air Force Base, MD 20334

Air Reserve Personnel Center
Denver, CO 80280

Air Training Command
Randolph Air Force Base, TX 78148

Electronic Security Command
San Antonio, TX 78243

Alaskan Air Command
Elmendorf AFB AK 99506

Commander-in-Chief
United States Air Forces Europe
APO New York 09012

Commander-in-Chief
Pacific Air Forces
Hickam AFB HI 96853

Commander-in-Chief
Strategic Air Command
Offutt Air Force Base, NE 68113

Commander-in-Chief
Military Airlift Command
Scott Air Force Base, IL 62225

Tactical Air Command
Langley Air Force Base, VA 23665

United States Air Force Academy
USAF Academy, CO 80840

1947 Administrative Support Group
Washington, DC 20330

AIR FORCE OFFICE OF SPECIAL INVESTIGATIONS
(Districts and Detachments)

Air Force Office of Special Investigations
Washington DC 20314

AFOSI District 1
Pease Air Force Base, NH 03801

AFOSI Detachment 102
Hanscom Air Force Base, MA 01731

AFOSI Detachment 106
Loring Air Force Base, ME 04751

AFOSI Detachment 109
Griffiss Air Force Base, NY 13441

AFOSI Detachment 110
Hancock Field, NY 13225

AFOSI Detachment 111
Plattsburgh Air Force Base, NY 12903

AFOSI District 4
Andrews Air Force Base, DC 20331

AFOSI Detachment 403
Dover Air Force Base, DE 19901

AFOSI Detachment 411
Bolling Air Force Base, DC 20332

AFOSI Detachment 412
26 Federal Plaza, Room 1759
New York, NY 10007

AFOSI Detachment 413
McGuire Air Force Base, NJ 08641

AFOSI Detachment 414
Ft George G. Meade, MD 20755

AFOSI District 5
Wright-Patterson Air Force Base, OH 45433

AFOSI Detachment 507
Selfridge Air National Guard Base, MI 48045

AFOSI Detachment 509
Wurtsmith Air Force Base, MI 48753

AFOSI Detachment 512
K I Sawyer Air Force Base, MI 49843

AFOSI Detachment 515
Grissom Air Force Base, IN 46971

AFOSI Detachment 516
Scott Air Force Base, IL 62225

AFOSI Detachment 518
Newark AFS, OH 32925

AFOSI District 7
Patrick Air Force Base, FL 32925

AFOSI Detachment 707
Homestead Air Force Base, FL 33039

AFOSI Detachment 709
MacDill Air Force Base, FL 33608

AFOSI Detachment 710
Eglin Air Force Base, FL 32542

AFOSI Detachment 711
Tyndall Air Force Base, FL 32403

AFOSI Detachment 712
Robins Air Force Base, GA 31098

AFOSI Detachment 716
Eglin Air Force Auxiliary Field 9, FL 32544

AFOSI Detachment 717
Moody Air Force Base, GA 31601

AFOSI District 8
Maxwell Air Force Base, AL 36112

AFOSI Detachment 810
England Air Force Base, LA 71301

AFOSI Detachment 811
Columbus Air Force Base, MS 39701

AFOSI Detachment 812
Keesler Air Force Base, MS 39534

AFOSI Detachment 813
Little Rock Air Force Base, AR 72076

AFOSI Detachment 814
Blytheville Air Force Base, AR 72315

AFOSI Detachment 815
Barksdale Air Force Base, LA 71110

AFOSI District 10
San Antonio Air Force Station,
Box 8678, Wainwright
San Antonio TX 78208

AFOSI Detachment 1001
Bergstrom Air Force Base, TX 78743

AFOSI Detachment 1008
Goodfellow Air Force Base, TX 76901

AFOSI Detachment 1012
Lackland Air Force Base, TX 78236

AFOSI Detachment 1014
Laughlin Air Force Base, TX 78840

AFOSI Detachment 1015
Randolph Air Force Base, TX 78148

AFOSI Detachment 1016
Kelly Air Force Base, TX 78241

AFOSI Detachment 1018
Brooks Air Force Base, TX 78235

AFOSI District 11
Tinker Air Force Base, OK 73145

AFOSI Detachment 1101
Altus Air Force Base, OK 73521

AFOSI Detachment 1108
Carswell Air Force Base, TX 76127

AFOSI Detachment 1110
Dyess Air Force Base, TX 79607

AFOSI Detachment 1114
Sheppard Air Force Base, TX 76311

AFOSI Detachment 1117
Reese Air Force Base, TX 79489

AFOSI District 13
Offutt Air Force Base, NE 68113

AFOSI Detachment 1302
Ellsworth Air Force Base, SD 57706

AFOSI Detachment 1306
Bldg 1218
McConnell Air Force Base, KS 67221

AFOSI Detachment 1312
Minot Air Force Base, ND 58705

AFOSI Detachment 1313
Grand Forks Air Force Base, ND 58205

AFOSI Detachment 1314
Whiteman Air Force Base, MO 65305

AFOSI Detachment 1315

Duluth IAP MN 55814

AFOSI District 14
Lowry Air Force Base, CO 80230

AFOSI Detachment 1401
Peterson Air Force Base, CO 80914

AFOSI Detachment 1402
F E Warren Air Force Base, WY 82001

AFOSI Detachment 1404
Hill Air Force Base, UT 84406

AFOSI Detachment 1405
USAF Academy, CO 80840

AFOSI District 17
Kirtland Air Force Base, NM 87117

AFOSI Detachment 1702
PO Box 609
Main Post Office
Clovis, NM 88101

AFOSI Detachment 1703
PO Box 15003
Tucson, AZ 85708

AFOSI Detachment 1704
PO Box 548
Holloman Air Force Base, NM 88330

AFOSI Detachment 1705
Luke Air Force Base, AZ 85309

AFOSI Detachment 1707
Williams Air Force Base, AZ 85224

AFOSI District 18
Norton Air Force Base, CA 92409

AFOSI Detachment 1801
Edwards Air Force Base, CA 93523

AFOSI Detachment 1802
George Air Force Base, CA 92392

AFOSI Detachment 1803
March Air Force Base, CA 92508

AFOSI Detachment 1810
Vandenberg Air Force Base, CA 93437

AFOSI Detachment 1811
PO Box 92960
Worldway Postal Center
Los Angeles, CA 90009

AFOSI Detachment 1812
Nellis Air Force Base, NV 89191

AFOSI District 19
Travis Air Force Base, CA 94535

AFOSI Detachment 1901
Beale Air Force Base, CA 95903

AFOSI Detachment 1902
Castle Air Force Base, CA 95342

AFOSI Detachment 1904
Mather Air Force Base, CA 95655

AFOSI Detachment 1905
McClellan Air Force Base, CA 95652

AFOSI Detachment 1910
Treasure Island, CA 94130

AFOSI District 20
McChord Air Force Base, WA 98438

AFOSI Detachment 2001
Fairchild Air Force Base, WA 99011

AFOSI Detachment 2006
Malmstrom Air Force Base, MT 59402

AFOSI Detachment 2007
Mt Home Air Force Base, ID 83648

AFOSI Detachment 2009
Kingsley Field, OR 97601

AFOSI District 21
Langley Air Force Base, VA 23665

AFOSI Detachment 2101
Pope Air Force Base, NC 28308

AFOSI Detachment 2102
Shaw Air Force Base, SC 29152

AFOSI Detachment 2103
Charleston Air Force Base, SC 29404

AFOSI Detachment 2104
Seymour Johnson Air Force Base, NC 27531

AFOSI Detachment 2105
Myrtle Beach Air Force Base, SC 29577

AFOSI District 30
APO Miami 09020

AFOSI District 41
APO San Francisco 96334

AFOSI District 42
APO San Francisco 96274

AFOSI Detachment 4201
APO San Francisco 96528

AFOSI District 43
APO San Francisco 96239

AFOSI District 44 Hickam AFB HI 96853

AFOSI District 45
APO San Francisco 96301

AFOSI Detachment 4502
APO San Francisco 96264

AFOSI Detachment 4506
APO San Francisco 96570

AFOSI District 46
APO San Francisco 96328

AFOSI Detachment 4606
APO San Francisco 96519

AFOSI District 62
APO New York 09120

AFOSI Detachment 6201
PO Box 42
FPO New York 09510

AFOSI Detachment 6202
APO New York 09179

AFOSI Detachment 6203
APO New York 09194

AFOSI Detachment 6204
APO New York 09238

AFOSI Detachment 6205
APO New York 09755

AFOSI Detachment 6206
APO New York 09193

AFOSI Detachment 6207
APO New York 09127

AFOSI District 65
APO New York 09794

AFOSI Detachment 6502
APO New York 09240

AFOSI Detachment 6505
APO New York 09794

AFOSI Detachment 6506
FPO New York 09520

AFOSI District 68
APO New York 09283

AFOSI Detachment 6801
APO New York 09286

AFOSI Detachment 6802
APO New York 09406

AFOSI District 70
APO New York 09332

AFOSI Detachment 7010
APO New York 09057

AFOSI Detachment 7011
APO New York 09132

AFOSI Detachment 7013
APO New York 09154

AFOSI Detachment 7014
APO New York 09109

AFOSI Detachment 7024
APO New York 09012

AFOSI Detachment 7028
APO New York 09611

AFOSI Detachment 7029
Box 245
APO New York 09080

AFOSI Detachment 7030
APO New York 09292

AFOSI Detachment 7031
APO New York 09460

AFOSI Detachment 7032
APO New York 09130

AFOSI Detachment 7033
APO New York 09123

AFOSI Detachment 7034
APO New York 09669

AFOSI District 71
APO New York 09223

AFOSI Detachment 7101
APO New York 09291

AFOSI District 72
PO Box 2200
APO New York 09205

AFOSI Detachment 7201
PO Box 2200
APO New York 09205

AFOSI District 81
APO Seattle 98742

AFOSI Detachment 8101
APO Seattle 98737

AIR FORCE RESERVE OFFICERS TRAINING CORPS UNITS

HQ, Air Force Reserve Officers Training Corps
Maxwell Air Force Base AL, 36112

AFROTC Detachment 5
Auburn University
Auburn, AL 36830

AFROTC Detachment 10
University of Alabama
University, AL 35486

AFROTC Detachment 12
Samford University
Birmingham, AL 35209

AFROTC Detachment 15
Tuskegee Institute
Tuskegee, AL 36083

AFROTC Detachment 17
Troy State University
Troy, AL 36081

AFROTC Detachment 19
Alabama State University
Montgomery, AL 36101

AFROTC Detachment 20
University of Arizona
Tucson, AZ 85721

AFROTC Detachment 25
Arizona State University
Tempe, AZ 85281

AFROTC Detachment 27
Northern Arizona University
Flagstaf, AZ 86001

AFROTC Detachment 30
University of Arkansas
Fayetteville, AR 72701

AFROTC Detachment 35
California State University Fresno
Fresno, CA 93710

AFROTC Detachment 40
Loyola University of Los Angeles
Los Angeles, CA 90045

AFROTC Detachment 45
California State University San Jose
San Jose, CA 95114

AFROTC Detachment 55
University of California at Los Angeles
Los Angeles, CA 90024

AFROTC Detachment 60
University of Southern Calif
Los Angeles, CA 90007

AFROTC Detachment 75
California State University San Diego
San Diego, CA 92115

AFROTC Detachment 80
California State University San Francisco
San Francisco, CA 94132

AFROTC Detachment 85
University of California
Berkeley, CA 94720

AFROTC Detachment 90
Colorado State University
Ft Collins, CO 80521

AFROTC Detachment 100
University of Northern Colorado
Greeley, CO 80631

AFROTC Detachment 105
University of Colorado
Boulder, CO 80302

AFROTC Detachment 115
University of Connecticut
Storrs, CT 06268

AFROTC Detachment 130
Howard University
Wash, DC 20001

AFROTC Detachment 145
Florida State University
Tallahassee, FL 32306

AFROTC Detachment 150
University of Florida
Gainesville, FL 32601

AFROTC Detachment 155
University of Miami
Coral Gables, FL 33124

AFROTC Detachment 157
Embry-Riddle Aeronautical University
Daytona Beach, FL 32015

AFROTC Detachment 159
Florida Technological University
Orlando, FL 32816

AFROTC Detachment 160
University of Georgia
Athens, GA 30601

AFROTC Detachment 165
Georgia Institute of Technology
Atlanta, GA 30332

AFROTC Detachment 172
Valdosta State College
Valdosta, GA 31601

AFROTC Detachment 175
University of Hawaii

Honolulu, HI 96822

AFROTC Detachment 190
University of Illinois
Champaign, IL 61820

AFROTC Detachment 195
Illinois Institute of Technology
Chicago, IL 60616

AFROTC Detachment 205
Southern Illinois University
Carbondale, IL 62901

AFROTC Detachment 206
Southern Illinois University at Edwardsville
Edwardsville, IL 62025

AFROTC Detachment 207
Parks College of St Louis
Cahokia, IL 62206

AFROTC Detachment 215
Indiana University
Bloomington, IN 47401

AFROTC Detachment 220
Purdue University
Lafayette, IN 47906

AFROTC Detachment 225
University of Notre Dame
Notre, Dame IN 46556

AFROTC Detachment 240
University of Evansville
Evansville, IN 47704

AFROTC Detachment 250
Iowa State University
Ames, IA 50010

AFROTC Detachment 255
State University of Iowa
Iowa City, IA 52240

AFROTC Detachment 270
Kansas State University
Manhattan, KS 66504

AFROTC Detachment 280
University of Kansas
Lawrence, KS 66044

AFROTC Detachment 285
Washburn University of Topeka
Topeka, KS 66621

AFROTC Detachment 290
University of Kentucky
Lexington, KY 40506

AFROTC Detachment 295
University of Louisville
Louisville, KY 40208

AFROTC Detachment 305
Louisiana Polytechnic Institute
Ruston, LA 71270

AFROTC Detachment 310
Louisiana State University & A&M College
Baton Rouge, LA 70803

AFROTC Detachment 311
Grambling College
Grambling, LA 71245

AFROTC Detachment 315
University of Southwestern Louisiana
Lafayette, LA 70501

AFROTC Detachment 320
Tulane University
New Orleans, LA 70118

AFROTC Detachment 330
University of Maryland
College Park, MD 20742

AFROTC Detachment 330A
University of Maryland, Eastern Shore
Prince Anne, MD 21853

AFROTC Detachment 340
College of the Holy Cross
Worcester, MA 01610

AFROTC Detachment 345
Lowell Technological Institute
Lowell, MA 01854

AFROTC Detachment 365
Massachusetts Institute of Technology
Cambridge, MA 02139

AFROTC Detachment 370
University of Massachusetts
Amherst, MA 01002

AFROTC Detachment 380
Michigan State University
East Lansing, MI 48823

AFROTC Detachment 390
University of Michigan
Ann Arbor, MI 48104

AFROTC Detachment 400
Michigan Technological University
Houghton, MI 49931

AFROTC Detachment 410
College of St Thomas
St Paul, MN 55101

AFROTC Detachment 415
University of Minnesota
Minneapolis, MN 55455

AFROTC Detachment 420
University of Minnesota

Duluth, MN 55812

AFROTC Detachment 425
Mississippi State University
State College, MS 39762

AFROTC Detachment 430
University of Mississippi
University MS 38677

AFROTC Detachment 432
University of Southern Mississippi
Hattisburg, MS 39401

AFROTC Detachment 434
Mississippi Valley State College
Itta Bena, MS 38941

AFROTC Detachment 437
Southeast Missouri State College
Cape Girardeau, MO 63701

AFROTC Detachment 440
University of Missouri
Columbia, MO 65201

AFROTC Detachment 450
Montana State University
Bozeman, MT 59715

AFROTC Detachment 465
University of Nebraska
Lincoln, NE 68508

AFROTC Detachment 470
University of Nebraska at Omaha
Omaha, NE 68101

AFROTC Detachment 475
University of New Hampshire
Durham, NH 03824

AFROTC Detachment 485
Rutgers The State University
New Brunswick, NJ 08903

AFROTC Detachment 490
Newark College of Engineering
Newark, NJ 07102

AFROTC Detachment 495
Stevens Institute of Technology
Hoboken, NJ 07030

AFROTC Detachment 505
New Mexico State University
Las Cruces, NM 88001

AFROTC Detachment 510
University of New Mexico
Albuquerque, NM 87106

AFROTC Detachment 520
Cornell University
Ithaca, NY 14850

AFROTC Detachment 535
Syracuse University
Syracuse, NY 13210

AFROTC Detachment 550
Rensselaer Polytechnic Institute
Troy, NY 12181

AFROTC Detachment 560
Manhattan College
Bronx, NY 10471

AFROTC Detachment 585
Duke University
Durham, NC 27706

AFROTC Detachment 590
University of North Carolina
Chapel Hill, NC 27514

AFROTC Detachment 595
North Carolina State University
Raleigh, NC 27606

AFROTC Detachment 600
East Carolina University, PO Box 2766
Greenville, NC 27834

AFROTC Detachment 605
North Carolina A & T State University
Greensboro, NC 27411

AFROTC Detachment 607
Fayetteville State University
Fayetteville, NC 28301

AFROTC Detachment 610
North Dakota State University of A & AS
Fargo, ND 58103

AFROTC Detachment 615
University of North Dakota
Grand Forks, ND 58201

AFROTC Detachment 620
Bowling Green State University
Bowling, Green OH 43402

AFROTC Detachment 630
Kent State University
Kent, OH 44240

AFROTC Detachment 640
Miami University
Oxford, OH 45056

AFROTC Detachment 645
Ohio State University
Columbus, OH 43210

AFROTC Detachment 646
Capital University
Columbus, OH 43209

AFROTC Detachment 650
Ohio University

Athens, OH 45701

AFROTC Detachment 660
University of Akron
Akron, OH 44304

AFROTC Detachment 665
University of Cincinnati
Cincinnati, OH 45221

AFROTC Detachment 670
Oklahoma State University
Stillwater, OK 74074

AFROTC Detachment 675
University of Oklahoma
Norman, OK 73069

AFROTC Detachment 685
Oregon State University
Corvallis, OR 97331

AFROTC Detachment 690
University of Oregon
Eugene, OR 97403

AFROTC Detachment 695
University of Portland
Portland, OR 97203

AFROTC Detachment 715
Lehigh University
Bethlehem, PA 18015

AFROTC Detachment 720
Pennsylvania State University
University Park, PA 16802

AFROTC Detachment 730
University of Pittsburgh
Pittsburgh, PA 15213

AFROTC Detachment 745
Grove City College
Grove City, PA 16127

AFROTC Detachment 752
Wilkes College
Wilkes Barre, PA 18703

AFROTC Detachment 755
University of Puerto Rico
Rio Piedras, PR 00931

AFROTC Detachment 756
University of Puerto Rico
Mayagnez, PR 00708

AFROTC Detachment 765
The Citadel
Charleston, SC 29409

AFROTC Detachment 770
Clemson University
Clemson, SC 29631

AFROTC Detachment 772
Baptist College at Charleston
Charleston, SC 29411

AFROTC Detachment 775
University of South Carolina
Columbia, SC 29208

AFROTC Detachment 780
South Dakota State University
Brookings, SD 57006

AFROTC Detachment 785
Memphis State University
Memphis, TN 38111

AFROTC Detachment 790
Tennessee Agricultural &
Industrial State University
Nashville, TN 37203

AFROTC Detachment 800
University of Tennessee
Knoxville, TN 37916

AFROTC Detachment 805
Texas A&M University
College Sta, TX 77840

AFROTC Detachment 810
Baylor University
Waco, TX 76703

AFROTC Detachment 820
Texas Technological College
Lubbock, TX 79409

AFROTC Detachment 825
University of Texas
Austin, TX 78712

AFROTC Detachment 830
East Texas State College
Commerce, TX 75429

AFROTC Detachment 835
North Texas State College
Denton, TX 76203

AFROTC Detachment 837
Pan American University
Edinburg, TX 78539

AFROTC Detachment 840
Southwest Texas State College
San Marcos, TX 78666

AFROTC Detachment 842
Lamar State University of Technology
Beaumont, TX 77710

AFROTC Detachment 845
Texas Christian University
Ft Worth, TX 76129

AFROTC Detachment 847

Angelo State University
San Angelo, TX 76901

AFROTC Detachment 850
University of Utah
Salt Lake, City UT 84112

AFROTC Detachment 855
Brigham Young University
Provo, UT 84601

AFROTC Detachment 860
Utah State University
Logan, UT 84321

AFROTC Detachment 862
Southern Utah State College
Cedar City, UT 84720

AFROTC Detachment 865
St Michael's College
Winooski, VT 05404

AFROTC Detachment 867
Norwich University
Northfield, VT 05663

AFROTC Detachment 875
Virginia Polytechnic Institute
Blacksburg, VA 24061

AFROTC Detachment 880
Virginia Military Institute
Lexington, VA 24450

AFROTC Detachment 890
University of Virginia
Charlottesville, VA 22903

AFROTC Detachment 895
Central Washington State College
Ellensburg, WA 98926

AFROTC Detachment 900
University of Puget Sound
Tacoma, WA 98416

AFROTC Detachment 905
Washington State University
Pullman, WA 99163

AFROTC Detachment 910
University of Washington
Seattle, WA 98105

AFROTC Detachment 915
West Virginia University
Morgantown, WV 26506

AFROTC Detachment 925
University of Wisconsin
Madison, WI 53706

AFROTC Detachment 930
Wisconsin State College
Superior, WI 54880

AFROTC Detachment 940
University of Wyoming
Laramie, WY 82070

AIR NATIONAL GUARD STATE HEADQUARTERS

Headquarters, Alabama Air National Guard
PO Box 1311
Montgomery, AL 36102

Headquarters, Alaska Air National Guard
610 MacKay Bldg, 338 Denali Street
Anchorage, AK 99501

Headquarters, Arizona Air National Guard
5636 E McDowell Rd
Phoenix, AZ 85008

Headquarters, Arkansas Air National Guard
Little Rock Air Force Base, AR 72076

Headquarters, California Air National Guard
PO Box 214405
Sacramento, CA 95821

Headquarters, Colorado Air National Guard
Buckley Air National Guard Base
Aurora, CO 80010

Headquarters, Connecticut Air National Guard
Bradley Field
Windsor Locks, CT 06096

Headquarters, Delaware Air National Guard
Greater Wilmington Airport
New Castle, DE 19720

Headquarters, District of Columbia Air National Guard
2001 E Capitol Street
National Guard Armory
Washington, DC 20003

Headquarters, Florida Air National Guard
State Arsenal
St Augustine, FL 32084

Headquarters, Georgia Air National Guard
PO Box 4839
Atlanta, GA 30302

Headquarters, Hawaii Air National Guard
Ft Ruger
Honolulu, HI 96816

State of Idaho
Military Division
Headquarters, Idaho Air National Guard
PO Box 45
Boise, ID 83707

Headquarters, Illinois Air National Guard
PO Box 66486
Chicago-O'Hare International Airport, IL 60666

Headquarters, Indiana Air National Guard
Stout Field
Indianapolis, IN 46241

Headquarters, Iowa Air National Guard
PO Box 616
Des Moines, IA 50303

Headquarters, Kansas Air National Guard
535 Kansas Avenue
Topeka, KS 66603

Headquarters, Kentucky Air National Guard
Boone Center
Frankfort, KY 40601

Headquarters, Louisiana Air National Guard
Jackson Barracks
New Orleans, LA 70146

Headquarters, Maine Air National Guard
Camp Keyes
Augusta, ME 04330

Headquarters, Maryland Air National Guard
Fifth Regiment Armory
Baltimore, MD 21201

Headquarters, Massachusetts Air National Guard
Otis Air Force Base, MA 02542

Headquarters, Michigan Air National Guard
PO Box 210
Lansing, MI 48901

Headquarters, Minnesota Air National Guard
State Capitol
St Paul, MN 55101

Headquarters, Mississippi Air National Guard
PO Box 5027, Fondren Station
Jackson, MS 39216

Headquarters, Missouri Air National Guard
1717 Industrial Ave
Jefferson City, MO 65101

Headquarters, Montana Air National Guard
State Arsenal
Helena, MT 59601

Headquarters, Nebraska Air National Guard
Air National Guard Base
Lincoln, NE 68524

Headquarters, Nevada Air National Guard
PO Box 1120
Carson City, NV 89701

Headquarters, New Hampshire Air National Guard
State Military Reservation
Airport Road
Concord, NH 03301

Headquarters, New Jersey Air National Guard
108 Tactical Fighter Wing
McGuire Air Force Base, NJ 08641

Headquarters, New Mexico Air National Guard
PO Box 551
Albuquerque, NM 87103

Headquarters, New York Air National Guard
Westchester Co Municipal Airport
White Plains, NY 10604

Headquarters, North Carolina Air National Guard
Douglas Municipal Airport
Charlotte, NC 28219

Headquarters, North Dakota Air National Guard
Box 1817
Bismarck, ND 58501

Headquarters, Ohio Air National Guard
PO Box 660
Worthington, OH 43085

Headquarters, Oklahoma Air National Guard
3501 Military Circle, NE
Oklahoma City, OK 73111

Headquarters, Oregon Air National Guard
Portland International Airport, OR 97218

Headquarters, Pennsylvania Air National Guard
c/o Dept of Military Affairs
Annville, PA 17003

Headquarters, Puerto Rico Air National Guard
PO Box 3786
San Juan, PR 00904

Headquarters, Rhode Island Air National Guard
Theodore F Green Municipal Airport
Warwick, RI 02886

Headquarters, South Carolina Air National Guard
McEntire Air National Guard Base
Eastover, SC 29044

Headquarters, South Dakota Air National Guard
Joe Foss Field
Sioux Falls, SD 57104

The Adjutant General, Tennessee
Attn: Air Section
National Guard Armory
Sidco Drive
Nashville, TN 37204

Headquarters, Texas Air National Guard
PO Box 5218
Austin, TX 78703

Headquarters, Utah Air National Guard
PO Box 16087
Salt Lake City, UT 84116

Headquarters, Vermont Air National Guard
Camp Johnson
Winooski, VT 05404

Headquarters, Virginia Air National Guard
Byrd Field
Sandston, VA 23150

Headquarters, Washington Air National Guard
Camp Murray
Tacoma, WA 98430

Headquarters, West Virginia Air National Guard
Kanawha Airport
Charleston, WV 25311

Headquarters, Wisconsin Air National Guard
PO Box 328
Madison, WI 53701

Headquarters, Wyoming Air National Guard
PO Box 2268
Cheyenne, WY 82001

AIR NATIONAL GUARD BASES, STATIONS, AIRPORTS, AND INSTALLATIONS

ALABAMA
Birmingham Municipal Airport, AL 35217
Martin Air National Guard Station, AL 35954
Dannelly Field, AL 36105
Hall Air National Guard Station, AL 36301

ALASKA
Kulis Air National Guard Base, AK 99502

ARIZONA
Sky Harbor Municipal Airport, AZ 85034
Tucson International Airport, AZ 85706

ARKANSAS
Ft Smith Municipal Airport, AR 72901
Little Rock Air National Guard Annex, AR 72076

CALIFORNIA
Costa Mesa Air National Guard Station, CA 92627
Fresno Air National Guard Base, CA 93727
Hayward Municipal Airport, CA 94543
Ontario International Airport, CA 91761
Van Nuys Airport, CA 91409

COLORADO
Buckley Air National Guard Base, CO 80010

CONNECTICUT
Bradley Air National Guard Base, CT 06096
Orange Air National Guard Communications Station, CT 06477

DELAWARE
Greater Wilmington Airport, DE 19720

FLORIDA
Jacksonville International Airport, FL 32229

GEORGIA
Dobbins Air National Guard Annex, GA 30060
Lewis B Wilson Airport, GA 31206
Savannah Municipal Airport, GA 31402

HAWAII
Hickam Air National Guard Annex, HI 96853

IDAHO
Boise Air Terminal, ID 83701

ILLINOIS
Capital Municipal Airport, IL 62705
Greater Peoria Airport, IL 61607

INDIANA
Ft Wayne Municipal Airport, IN 46809
Hulman Field, IN 47803
Stout Field (Air National Guard), IN 46241

IOWA
Des Moines Municipal Airport, IA 50321
Ft Dodge, IA 50501
Sioux City Municipal Airport, IA 51054

KANSAS
Forbes Air National Guard Annex, KS 66620
McConnell Air National Guard Annex, KS 67221

KENTUCKY
Standiford Field, KY 40213

LOUISIANA
Hammond Air National Guard Communications Station, LA 70401
New Orleans Air National Guard Annex, LA 70146

MAINE
Bangor International Airport, ME 04401
South Portland Air National Guard Station, ME 04106

MARYLAND
Andrews Air National Guard Annex, DC 20331
Glenn L. Martin State Airport, MD 21220

MASSACHUSETTS
Barnes Municipal Airport, MA 01085
Otis Air National Guard Annex, MA 02542
Wellesley Air National Guard Station, MA 02181
Worcester Air National Guard Station, MA 01605

MICHIGAN
Phelps/Collins Airport, MI 49707
Selfridge Air National Guard Base, MI 48045
W K Kellogg Regional Airport, MI 49016

MINNESOTA
Duluth Air National Guard Base, MN 55814

MISSISSIPPI
Allen C. Thompson Field, MS 39205
Gulfport Municipal Airport, MS 39501
Key Field, MS 39301

MISSOURI
Jefferson Barracks Air National Guard Station, St Louis, MO 63125
Lambert/St Louis Municipal Airport, MO 63145
Rosecrans Memorial Airport, MO 64503

MONTANA
Great Falls International Airport, MT 59401

NEBRASKA
Lincoln Air National Guard Annex, NE 68524

NEVADA
Reno Municipal Airport, NV 98502

NEW HAMPSHIRE
Pease Air National Guard Annex, NH 03801

NEW JERSEY
Atlantic City Airport (Air National Guard), NJ 08405
McGuire Air National Guard Annex, NJ 08641

NEW MEXICO
Kirtland Air National Guard Annex, NM 87103

NEW YORK
Roslyn Air National Guard Station, NY 11576
Schenectady Airport, NY 12301
Suffolk County Airport, NY 11978
Westchester County Municipal Airport, NY 10604

NORTH CAROLINA
Badin Air National Guard Station, NC 28009
Douglas Municipal Airport, NC 28208
Wadesboro Air National Guard Station, NC 28170

NORTH DAKOTA
Hector Field, ND 58102

OHIO
Blue Ash Air National Guard Station OH, 45242
Camp Perry Air National Guard Station,
Port Clinton, OH 43452
Mansfield Lahm Airport, OH 44901
Springfield Municipal Airport, OH 45501
Toledo Express Airport, OH 43558

OKLAHOMA
Tulsa International Airport, OK 74115
Will Rogers World Airport, OK 73159

OREGON
Portland International Airport, OR 97218

PENNSYLVANIA
Greater Pittsburgh Air National Guard Base, PA 15231
Harrisburg International Airport (Air National Guard),
Middletown, PA 17057
Willow Grove Air National Guard Annex, PA 19090

PUERTO RICO
Puerto Rico International Airport (Air National Guard),
San Juan, PR 00904

RHODE ISLAND
Cranston Air National Guard Station, RI 02910
Theodore F Green Municipal Airport, RI 02886

SOUTH CAROLINA
McEntire Air National Guard Base, SC 29044

SOUTH DAKOTA
Joe Foss Field, SD 57104

TENNESSEE
Alcoa Air National Guard Station, TN 37701
Lovell Field, TN 37421
McGhee Tyson Airport, TN 37901
Memphis Metropolitan Airport, TN 38118
Nashville Metropolitan Airport, TN 37217

TEXAS
Ellington Air Force Base, TX 77030
Garland Air National Guard Station, TX 75040
Hensley Field Airport, Dallas, TX 75211
Kelly Air National Guard Annex, TX 78241
La Porte Air National Guard Station, TX 77571
Nederland Air National Guard Station, TX 77627

UTAH
Salt Lake City International Airport, UT 84116

VERMONT
Burlington International Airport, VT 05401

VIRGINIA
Byrd Field, VA 23150

WASHINGTON
Bellingham Municipal Airport, WA 98225
Camp Murray Army Installation, WA 98430
Four Lakes Communication Station, WA 99004
Seattle Air National Guard Base, WA 98108
Spokane Air National Guard Annex, WA 98219

WEST VIRGINIA
Eastern West Virginia Regional Airport, WV 25401
Kanawha County Airport, WV 25311

WISCONSIN
General Mitchell Air National Guard Base, WI 53207
Truax Field, WI 53701
Volk Field Air National Guard Base, WI 54618

WYOMING
Cheyenne Municipal Airport, WY 82001

AIR UNIVERSITY ACTIVITIES AND SCHOOLS

Air Force Advisory Group
Medical Field Service School
Fort Sam Houston, TX 78234

Air Force Liaison Officer
US Military Academy
West Point, NY 10996

Air Force Representative
US Marine Corps Educational Center
US Marine Corps Schools
Quantico, VA 22134

Air Force Representative
US Naval Academy
Annapolis, MD 21402

Air University Review
Maxwell Air Force Base, AL 36112

Detachment 12 3825 Support Group (Academy)
Armed Forces Staff College
Norfolk, VA 23511

Senior Air Force Representative
US Army Air Defense School
Box 9188

Fort Bliss, TX 79906

Senior Air Force Representative
Command & Staff Department
US Army Armor School
Fort Knox, KY 40121

Senior Air Force Representative
US Army Artillery & Missile School
Fort Sill, OK 73504

Senior Air Force Representative
US Army CBR Weapons
Orientation Course
Dugway, UT 84022

Senior Air Force Representative
US Army Chemical Corps School
Fort McClellan, AL 36205

Senior Air Force Representative
US Army Command & General Staff College
Fort Leavenworth, KS 66027

Senior Air Force Representative
US Army Engineer School
Fort Belvoir, VA 22060

Senior Air Force Representative
US Army Infantry School
Fort Benning, GA 31905

Senior Air Force Representative
Joint Services Liaison Office
US Army Intelligence Center & School
Fort Huachuca, AZ 85613

Senior Air Force Representative
US Army JFK Center for Special Warfare (Airborne)
Ft Bragg, NC 28307

Senior Air Force Representative
US Army Logistics Management Center
Ft Lee, VA 23801

Senior Air Force Representative
US Army Quartermaster School
Fort Lee, VA 23801

Senior Air Force Representative
Officers Section
US Army Signal School
Fort Monmouth, NJ 07703

Senior Air Force Representative
US Army Transportation School
Fort Eustis, VA 23606

Senior Air Force Representative
US Army War College
Carlisle Barracks, PA 17013

Senior Air Force Representative
Industrial College of the Armed Forces
Fort McNair
Washington, DC 20315

Senior Air Force Representative
The National War College
Washington, DC 20315

Senior Air Force Advisor
US Naval War College
Newport, RI 02844

Senior Air Force Representative
Naval Amphibious School
US Naval Amphibious Base
Coronado San Diego, CA 92155

Senior Air Force Representative Code 6408
Navy Management Systems Center
Naval Post Graduate School
Monterey, CA 93940

Academic Instructor & Foreign Officer School
Maxwell Air Force Base, AL 36112

Air Force Chaplain School
Maxwell Air Force Base, AL 36112

Air Force Judge Advocate General School
Maxwell AFB AL 36112

Air Command & Staff College
Maxwell Air Force Base, AL 36112

Air Force Institute of Technology
Wright-Patterson Air Force Base, OH 45433

Air University Library
Maxwell Air Force Base, AL 36112

Air War College
Maxwell Air Force Base, AL 36112

Civil Engineering School
Wright-Patterson Air Force Base, OH 45433

Extension Course Institute
Gunter Air Force Station, AL 36118

School of Systems & Logistics
Wright-Patterson Air Force Base, OH 45433

Squadron Officers School
Maxwell Air Force Base, AL 36112

USAF Senior Non-Commissioned Officer Academy
Gunter Air Force Station, AL 36114

AREAS

European Communications Area
APO New York 09012

Northern Communications Area
Griffiss Air Force Base, New York 13441

Pacific Communications Area Hickam AFB HI 96853

Royal Air Force Welford Ammo Storage Area
APO New York 09607

Southern Communications Area
Oklahoma City Air Force Station, OK 73145

Strategic Communications Area
Offutt AFB NE 68113

Tactical Communications Area
Langley Air Force Base, VA 23665

CENTERS

Aerospace Defense Center
Cheyenne Mountain Complex, CO 80914

Aerospace Guidance & Meteorology Center
Newark Air Force Station, OH 43055

Air Force Systems Command
Scientific & Technical Liaison Office
Ames Research Center (NASA)
Moffett Field, CA 94035

Air Force Systems Command
Scientific & Technical Liaison Office
Langley Research Center (NASA)
Langley Air Force Base, VA 23665

Air Force Systems Command
Scientific & Technical Liaison Office
Lewis Research Center (NASA)
21000 Brookpark Road
Cleveland, OH 44135

Air Force Systems Command
Scientific & Technical Liaison Office
Naval Weapons Center
China Lake, CA 93555

Air Force Systems Command
Scientific & Technical Liaison Office
Royal Trust Tower - Suite 2607
Post Office Box 348
Toronto, Ontario, Canada
M5K 1K7

Air Defense Weapons Center
Tyndall Air Force Base, FL 32403

Air Force Civil Engineering Center
Tyndall Air Force Base, FL 32401

Air Force Communications Security Center
San Antonio, TX 78243

Air Force Contract Maintenance Center
Wright-Patterson Air Force Base, OH 45433

Air Force Data Services Center
Washington, DC 20330

Air Force Data Systems Design Center
Gunter Air Force Station, AL 36114

Air Force Electronic Warfare Center
San Antonio TX 78243

Air Force Flight Test Center
Edwards Air Force Base, CA 93523

Air Force Logistics Management Center
Maxwell AFB, AL 36112

Air Force Military Training Center
Lackland Air Force Base, TX 78236

Air Force Technical Applications Center
Patrick Air Force Base, FL 32925

Albert F Simpson Historical Research Center
Maxwell Air Force Base, AL 36112

Armament Development & Test Center
Eglin Air Force Base, FL 32542

Arnold Engineering Development Center
Arnold Air Force Station, TN 37389

Automated Weather Network Management Center
Carswell AFB, TX 76127

Chanute Technical Training Center
Chanute Air Force Base, IL 61868

Communications Computer Programming Center
Tinker Air Force Base, OK 73145

Federal Computer Performance Evaluation & Simulation Center
Washington, DC 20330

Keesler Technical Training Center
Keesler Air Force Base, MS 39534

Leadership & Management Development Center
Maxwell Air Force Base, AL 36112

Lowry Technical Training Center
Lowry Air Force Base, CO 80230

Military Aircraft Storage & Disposition Center
Davis-Monthan Air Force Base, AZ 85707

National Personnel Records Center/Civilian Personnel Records-Air Force
111 Winnebago St
St Louis, MO 63118

National Personnel Records Center/Military Personnel Records-Air Force
9700 Page Blvd
St Louis, MO 63132

Ogden Air Logistics Center
Hill Air Force Base, UT 84406

Oklahoma City Air Logistics Center

Tinker Air Force Base, OK 73145

Rome Air Development Center
Griffiss Air Force Base, NY 13441

Sacramento Air Logistics Center
McClellan Air Force Base, CA 95652

San Antonio Air Logistics Center
Kelly Air Force Base, TX 78241

San Antonio Procurement Center
Kelly Air Force Base, TX 78241

Sheppard Technical Training Center
Sheppard Air Force Base, TX 76311

Space and Missile Test Center
Vandenberg Air Force Base, CA 93437

USAF Airlift Center
Pope AFB, NC 28308

USAF Environmental Technical Applications Center
Scott Air Force Base, IL 62225

USAF Home Town News Center
Tinker Air Force Base, OK 73145

USAF Instrument Flight Center
Randolph Air Force Base, TX 78148

USAF Occupational Measurement Center
Lackland Training Annex, TX 78236

USAF Skill Center
Kirtland Air Force Base, NM 87115

USAF Tactical Air Warfare Center
Eglin Air Force Base, FL 32542

USAF Tactical Fighter Weapons Center
Nellis Air Force Base, NV 89191

USAFE Procurement Center
APO New York 09332

Warner Robins Air Logistics Center
Robins Air Force Base, GA 31098

LABORATORIES

Air Force Aero-Propulsion Laboratory
Wright-Patterson Air Force Base, OH 45433

Air Force Armament Laboratory
Eglin Air Force Base, FL 32542

Air Force Avionics Laboratory
Wright-Patterson Air Force Base, OH 45433

Air Force Flight Dynamics Laboratory
Wright-Patterson Air Force Base, OH 45433

Air Force Geophysics Laboratories
Hanscom Air Force Base, MA 01731

Air Force Human Resources Laboratory
Brooks Air Force Base, TX 78235

Air Force Materials Laboratory
Wright-Patterson Air Force Base, OH 45433

Air Force Rocket Propulsion Laboratory
Edwards Air Force Base, CA 93523

Air Force Weapons Laboratory
Kirtland Air Force Base, NM 87117

Air Force Wright Aeronautical Laboratories
Wright-Patterson Air Force Base, OH 45433

Alaskan Precision Measurement
Equipment Laboratory
APO Seattle 98742

Operations Training Support Laboratory
Carswell Air Force Base, TX 76127

The Frank J Seiler Research Laboratory
USAF Academy, CO 80840

USAF Occupational and Environmental Health Laboratory
Brooks AFB TX 78235

MEDICAL FACILITIES

MEDICAL CENTERS

David Grant USAF Medical Center
Travis Air Force Base, CA 94535

Malcolm Grow USAF Medical Center
Andrews Air Force Base, DC 20331

Wilford Hall USAF Medical Center
Lackland Air Force Base, TX 78236

USAF Medical Center Keesler
Keesler Air Force Base, MS 39534

USAF Medical Center Scott
Scott Air Force Base, IL 62225

USAF Medical Center Wright-Patterson
Wright-Patterson Air Force Base, OH 45433

USAF Regional Medical Center Clark
APO San Francisco 96274

REGIONAL HOSPITALS

Ehrling Bergquist USAF Regional Hospital
Offutt Air Force Base, NE 68113

USAF Regional Hospital Carswell
Carswell Air Force Base, TX 76127

USAF Regional Hospital Eglin
Eglin Air Force Base, FL 32542

USAF Regional Hospital MacDill
MacDill Air Force Base, FL 33608

USAF Regional Hospital March
March Air Force Base, CA 92508

USAF Regional Hospital Maxwell
Maxwell Air Force Base, AL 36112

USAF Regional Hospital Minot
Minot Air Force Base, ND 58705

USAF Regional Hospital Shaw
Shaw Air Force Base, SC 29152

USAF Regional Hospital Sheppard
Sheppard Air Force Base, TX 76311

USAF HOSPITALS

USAF Academy Hospital
USAF Academy, CO 80840

USAF Hospital Altus
Altus Air Force Base, OK 73521

USAF Hospital Athens
APO New York 09223

USAF Hospital Barksdale
Barksdale Air Force Base, LA 71110

USAF Hospital Beale
Beale Air Force Base, CA 95903

USAF Hospital Bergstrom
Bergstrom Air Force Base, TX 78743

USAF Hospital Bitburg
APO New York 09132

USAF Hospital Blytheville
Blytheville Air Force Base, AR 72315

USAF Hospital Cannon
Cannon Air Force Base, NM 88101

USAF Hospital Castle
Castle Air Force Base, CA 95342

USAF Hospital Chanute
Chanute Air Force Base, IL 61868

USAF Hospital Columbus
Columbus Air Force Base, MS 39701

USAF Hospital Davis-Monthan
Davis-Monthan Air Force Base, AZ 85707

USAF Hospital Dover
Dover Air Force Base, DE 19901

USAF Hospital Dyess
Dyess Air Force Base, TX 79607

USAF Hospital Edwards
Edwards Air Force Base, CA 93523

USAF Hospital Ellsworth
Ellsworth Air Force Base, SD 57706

USAF Hospital Elmendorf Elmendorf AFB AK 99506

USAF Hospital England
England Air Force Base, LA 71301

USAF Hospital Fairchild
Fairchild Air Force Base, WA 99011

USAF Hospital F E Warren
F E Warren Air Force Base, WY 82001

USAF Hospital George
George Air Force Base, CA 92392

USAF Hospital Grand Forks
Grand Forks Air Force Base, ND 58201

USAF Hospital Griffiss
Griffiss Air Force Base, NY 13441

USAF Hospital Hahn
APO New York 09109

USAF Hospital Hill
Hill Air Force Base, UT 84406

USAF Hospital Holloman
Holloman Air Force Base, NM 88330

USAF Hospital Homestead
Homestead Air Force Base, FL 33039

USAF Hospital Iraklion
APO New York 09291

USAF Hospital Kincheloe
Kincheloe Air Force Base, MI 49788

USAF Hospital Kirtland
Kirtland Air Force Base, NM 87115

USAF Hospital K I Sawyer
K I Sawyer Air Force Base, MI 49843

USAF Hospital Kunsan
APO San Francisco 96264

USAF Hospital Lajes
APO New York 09406

USAF Hospital Lakenheath
APO New York 09179

USAF Hospital Langley
Langley Air Force Base, VA 23665

USAF Hospital Laughlin
Laughlin Air Force Base, TX 78840

USAF Hospital Little Rock
Little Rock Air Force Base, AR 72076

USAF Hospital Loring
Loring Air Force Base, ME 04751

USAF Hospital Luke
Luke Air Force Base, AZ 85309

USAF Hospital Malmstrom
Malmstrom Air Force Base, MT 59402

USAF Hospital Mather
Mather Air Force Base, CA 95655

USAF Hospital McConnell
McConnell Air Force Base, KS 67221

USAF Hospital Misawa
APO San Francisco 96519

USAF Hospital Moody
Moody Air Force Base, GA 31601

USAF Hospital Mt Home
Mt Home Air Force Base, ID 83648

USAF Hospital Myrtle Beach
Myrtle Beach Air Force Base, SC 29577

USAF Hospital Nellis
Nellis Air Force Base, NV 89110

USAF Hospital Osan
APO San Francisco 96570

USAF Hospital Patrick
Patrick Air Force Base, FL 32925

USAF Hospital Pease
Pease Air Force Base, NH 03801

USAF Hospital Plattsburgh
Plattsburgh Air Force Base, NY 12903

USAF Hospital Reese
Reese Air Force Base, TX 79489

USAF Hospital Robins
Robins Air Force Base, GA 31098

USAF Hospital Seymour Johnson
Seymour Johnson Air Force Base, NC 27531

USAF Hospital Tinker
Tinker Air Force Base, OK 73145

USAF Hospital Torrejon
APO New York 09283

USAF Hospital Tyndall
Tyndall Air Force Base, FL 32403

USAF Hospital Upper Heyford
APO New York 09194

USAF Hospital Vandenberg
Vandenberg Air Force Base, CA 93437

USAF Hospital Webb
Webb Air Force Base, TX 79720

USAF Hospital Whiteman
Whiteman Air Force Base, MO 65301

USAF Hospital Wiesbaden
APO New York 09220

USAF Hospital Williams
Williams Air Force Base, AZ 85224

USAF Hospital Wurtsmith
Wurtsmith Air Force Base, MI 48753

USAF Hospital Yokota
APO San Francisco 96328

USAF CLINICS

USAF Clinic Alconbury
APO New York 09238

USAF Clinic Andersen
APO San Francisco 96334

USAF Clinic Aviano
APO New York 09293

USAF Clinic Bentwaters
APO New York 09755

USAF Clinic Brooks
Brooks Air Force Base, TX 78235

USAF Clinic Camp New Amsterdam
APO New York 09292

USAF Clinic Charleston
Charleston Air Force Base, SC 29404

USAF Clinic Chicksands
APO New York 09193

USAF Clinic Craig
Craig Air Force Base, AL 36701

USAF Clinic Duluth
Duluth International Airport MN 55814

USAF Clinic Eielson
APO Seattle 98737

USAF Clinic Goodfellow
Goodfellow Air Force Base, TX 76901

USAF Clinic Grissom
Grissom Air Force Base, IN 46971

USAF Clinic Hancock
Hancock Field NY 13225

USAF Clinic Hanscom
Hanscom AFB, MA 01731

USAF Clinic Hickam Hickam AFB HI 96853

USAF Clinic Howard
APO New York 09020

USAF Clinic Kadena
APO San Francisco 96239

USAF Clinic Kelly
Kelly Air Force Base, TX 78241

USAF Clinic Los Angeles
PO Box 92960
Worldway Postal Center
Los Angeles CA 90009

USAF Clinic Lowry
Lowry Air Force Base, CO 80230

USAF Clinic McChord
McChord Air Force Base, WA 98438

USAF Clinic McClellan
McClellan Air Force Base, CA 95652

USAF Clinic McGuire
McGuire Air Force Base, NJ 08641

USAF Clinic Norton
Norton Air Force Base, CA 92409

USAF Clinic Peterson
Peterson Air Force Base, CO 80914

USAF Clinic Pope
Pope Air Force Base, NC 28308

USAF Clinic Ramstein
APO New York 09012

USAF Clinic Randolph
Randolph Air Force Base, TX 78148

USAF Clinic Rhein-Main
APO New York 09057

USAF Clinic San Vito Dei Normanni
APO New York 09240

USAF Clinic Sembach
APO New York 09130

USAF Clinic Spangdahlem
APO New York 09123

USAF Clinic Taegu
APO San Francisco 96213

USAF Clinic Vance
Vance Air Force Base, OK 73701

USAF Clinic Zaragoza
APO New York 09286

USAF Clinic Zweibrucken
APO New York 09860

TACTICAL HOSPITALS

20 Tactical Hospital
APO New York 09194

23 Tactical Hospital
England Air Force Base, LA 71301

26 Tactical Hospital
APO New York 09860

35 Tactical Hospital
George Air Force Base, CA 92392

36 Tactical Hospital
APO New York 09132

48 Tactical Hospital
APO New York 09179

49 Tactical Hospital
Holloman Air Force Base, NM 88330

50 Tactical Hospital
APO New York 09109

58 Tactical Hospital
Luke Air Force Base, AZ 85309

94 Tactical Hospital
Dobbins Air Force Base, GA 30060

301 Tactical Hospital
Carswell Air Force Base, TX 76127

302 Tactical Hospital

Rickenbacker Air Force Base, OH 43217

354 Tactical Hospital
Myrtle Beach Air Force Base, SC 29577

363 Tactical Hospital
Shaw Air Force Base, SC 29152

401 Tactical Hospital
APO New York 09283

403 Tactical Hospital
Selfridge ANG Base, MI 48045

433 Tactical Hospital
Kelly Air Force Base, TX 78241

434 Tactical Hospital
Grissom Air Force Base, IN 46971

439 Tactical Hospital
Westover Air Force Base, MA 01022

440 Tactical Hospital
Gen Billy Mitchell Fld
300 E College Ave
Milwaukee, WI 53207

442 Tactical Hospital
Richards-Gebaur Air Force Base, MO 64030

452 Tactical Hospital
March Air Force Base, CA 92508

459 Tactical Hospital
Andrews AFB DC 20331

601 Tactical Hospital
APO New York 09130

655 Tactical Hospital
APO San Francisco 96328

656 Tactical Hospital
APO San Francisco 96432

657 Tactical Hospital
APO San Francisco 96432

837 Tactical Hospital
Mt Home Air Force Base, ID 83648

TACTICAL CLINICS

908 Tactical Clinic
Maxwell Air Force Base, AL 36112

910 Tactical Clinic
Youngstown Municipal Airport, OH 44473

911 Tactical Clinic
Greater Pittsburgh International Airport, PA 15231

913 Tactical Clinic
Willow Grove Air Reserve Facility, PA 19090

914 Tactical Clinic
Niagara Falls International Airport, NY 14304

915 Tactical Clinic
Homestead AFB FL 33039

917 Tactical Clinic
Barksdale Air Force Base, LA 71110

919 Tactical Clinic
Eglin AF Auxiliary Field 3, FL 32542

920 Tactical Clinic
Keesler Air Force Base, MS 39534

924 Tactical Clinic
Bergstrom Air Force Base, TX 78743

926 Tactical Clinic
New Orleans Naval Air Station, LA 70037

928 Tactical Clinic
Chicago-O'Hare International Airport, IL 60666

934 Tactical Clinic
Minneapolis-St Paul International Airport, MN 55417

940 Tactical Clinic
McClellan Air Force Base, CA 95652

MISCELLANEOUS AGENCIES

Air Force Audit Agency (Acquisition/Logistics Systems Directorate)
Building 288
Wright-Patterson Air Force Base, OH 45433

Air Force Audit Agency (Service-Wide Systems Directorate)
Building 3802, Stop 22
Andrews Air Force Base, DC 20331

Air Force Central Notice to Airmen Facility
Carswell Air Force Base, TX 76127

Air Force Computer Acquisition Office
Hanscom Air Force Base, MA 01731

Air Force Medical Material Field Office,
Frederick, MD 21701

Air Force Museum
Wright-Patterson Air Force Base, OH 45433

Air Force Office of Scientific Research
Bolling Air Force Base, DC 20332

Air Force Satellite Control Facility
PO Box 92960, Worldway Postal Center
Los Angeles, CA 90009

Air Force Services Office
2800 South 20th St, Philadelphia, PA 19101

Air Forces Iceland
Fleet Post Office New York 09571

Air Weather Service
Scott Air Force Base, IL 62225

Armed Forces Vocational Testing Group
Randolph Air Force Base, TX 78148

Army and Air Force Exchange Service
Dallas, TX 75222

Army and Air Force Exchange and Motion Picture Service
Washington, DC 20310

Clear Missile Early Warning Station
Clear Alaska
APO Seattle 98704

Community College of the Air Force
Lackland Training Annex, TX 78236

Director of Nuclear Surety
Kirtland Air Force Base, NM 87117

Inter-American Air Force Academy
APO New York 09825

Office of Civilian Personnel Operations
Randolph Air Force Base, TX 78148

Office of Civilian Personnel Operations (Appellate Division)
Federal Building
Room A617
727 E Durango Blvd
San Antonio, TX 78206

Office of Civilian Personnel Operations (Personnel Development Branch)
Building 322
Gunter Air Force Station, AL 36114

Office of Civilian Personnel Operations (DOD Zone Coordination)
Robins Air Force Base, GA 31098

Space and Missile Systems Organization
PO Box 92960, Worldway Postal Center
Los Angeles, CA 90009

Strategic Air Combat Operations Staff
Offutt Air Force Base, NE 68113

Tactical Air Combat Operations Staff
Langley Air Force Base, VA 23665

USAF Band
Bolling Air Force Base, DC 20332

USAF Central Audio-Visual Library
Norton Air Force Base, CA 92409

USAF Cryptologic Depot
San Antonio, TX 78243

USAF Frequency Management Office
Washington, DC 20330

USAF Recruiting Service
Randolph Air Force Base, TX 78148

USAF Special Operations Force
Eglin Air Force Base, FL 32542

NAMED DIVISIONS

Aeronautical Systems Division
Wright-Patterson Air Force Base, OH 45433

Aerospace Medical Division
Brooks Air Force Base, TX 78235

Air Force Acquisition Logistics Division
Wright-Patterson Air Force Base, OH 45433

Air Force Contract Management Division
Kirtland Air Force Base, NM 87117

Electronic Systems Division
Hanscom Air Force Base, MA 01731

Foreign Technology Division
Wright-Patterson Air Force Base, OH 45433

USAF Southern Air Division
APO New York 09825

NUMBERED AIR DIVISIONS

3 Air Division
APO San Francisco 96334

4 Air Division
F E Warren Air Force Base, WY 82001

12 Air Division
Dyess Air Force Base, TX 79607

14 Air Division
Beale Air Force Base, CA 95903

19 Air Division
Carswell Air Force Base, TX 76127

20 Air Division
Ft Lee Air Force Station, VA 23801

21 Air Division
Hancock Field, NY 13225

23 Air Division
Duluth International Airport, MN 55814

24 Air Division
Malmstrom Air Force Base, MT 59402

25 Air Division
McChord Air Force Base, WA 98438

26 Air Division
Luke Air Force Base, AZ 85309

40 Air Division
Wurtsmith Air Force Base, MI 48753

42 Air Division
Blytheville Air Force Base, AR 72315

45 Air Division
Pease Air Force Base, NH 03801

47 Air Division
Fairchild Air Force Base, WA 99011

57 Air Division
Minot Air Force Base, ND 58705

313 Air Division
APO San Francisco 96239

314 Air Division
APO San Francisco 96570

326 Air Division
APO San Francisco 96515

839 Air Division
Pope Air Force Base, NC 28308

NUMBERED AIR FORCES

3 Air Force, APO New York 09127

4 Air Force (Reserve)
McClellan Air Force Base, CA 95652

5 Air Force, APO San Francisco 96328

8 Air Force, Barksdale Air Force Base, LA 71110

9 Air Force, Shaw Air Force Base, SC 29152

10 Air Force (Reserve)
Bergstrom Air Force Base, TX 78743

12 Air Force, Bergstrom Air Force Base, TX 78743

13 Air Force, APO San Francisco 96274

14 Air Force (Reserve)
Dobbins Air Force Base, GA 30060

15 Air Force, March Air Force Base, CA 92508

16 Air Force, APO New York 09283

17 Air Force, APO New York 09130

21 Air Force, McGuire Air Force Base, NJ 08641

22 Air Force, Travis Air Force Base, CA 94535

PLANT REPRESENTATIVE OFFICES

Air Force Plant Representative Office
Aerojet-General Corporation
PO Box 15846
Sacramento, CA 95813

Air Force Plant Representative Office
The Boeing Company
PO Box 3707
Seattle, WA 98124

Air Force Plant Representative Office
Chemical Systems Division
PO Box 358
Sunnyvale, CA 94088

Air Force Plant Representative Office
Fairchild Republic Company
Farmingdale, NY 11735

Air Force Plant Representative Office
General Dynamics/Fort Worth Division
PO Box 371
Fort Worth, TX 76101

Air Force Plant Representative Office
General Electric Company
Cincinnati, OH 45215

Air Force Plant Representative Office
General Electric
Lynn, MA 01910

Air Force Plant Representative Office
General Electric Company, Re-Entry & Environment
Systems Division & Space Division
PO Box 8555
Philadelphia, PA 19101

Air Force Plant Representative Office
Hughes Aircraft Company
Culver City, CA 90230

Air Force Plant Representative Office
Lockheed Missile & Space Company
Space Systems Division
PO Box 504
Sunnyvale, CA 94088

Air Force Plant Representative Office
Lockheed-Georgia Company
Marietta, GA 30060

Air Force Plant Representative Office
Martin Marietta Aerospace, Denver Division
PO Box 179
Denver, CO 80201

Air Force Plant Representative Office
McDonnell Douglas Corporation

PO Box 516
St Louis, MO 63166

Air Force Plant Representative Office
Northrop Corporation
Hawthorne, CA 90250

Air Force Plant Representative Office
Rockwell International Corporation, Electronics Ops
3370 Miraloma Avenue
Anaheim, CA 92803

Air Force Plant Representative Office
Rockwell International Corporation, B-1 Division
Los Angeles International Airport, CA 90009

Air Force Plant Representative Office
Rockwell International Corporation, Rocketdyne Div
Canoga Park, CA 91304

Air Force Plant Representative Office
Thiokol Corporation
PO Box 524, MS-250
Brigham City, UT 84302

Air Force Plant Representative Office
TRW Defense & Space Systems Group
One Space Park
Redondo Beach, CA 90278

Air Force Plant Representative Office
Westinghouse Electric Corporation
Defense Electronics Systems Center
PO Box 1693
Baltimore, MD 21203

Air Force Plant Representative Office
Pratt & Whitney Aircraft Group
East Hartford, CT 06108

Air Force Plant Representative Office
Pratt & Whitney Aircraft Group
Government Products Division
PO Box 2691
West Palm Beach, FL 33402

REGIONS

Air Force Audit Agency(Eastern Region)
Langley Air Force Base, VA 23665

Air Force Audit Agency(Western Region)
Norton Air Force Base, CA 92409

Alaskan Aerospace Defense Command Region
APO Seattle 98742

USAF Regional Civil Engineer--Central Region
Main Tower Bldg
1200 Main Street
Dallas, TX 75202

USAF Regional Civil Engineer--Eastern Region
526 Title Building
Atlanta, GA 30303

USAF Regional Civil Engineer--Western Region
630 Sansome Street
San Francisco, CA 94111

USAFE Purchasing Region - United Kingdom
APO New York 09179

SCHOOLS (SPECIAL TRAINING)

Basic Military Training School USAF
Lackland Air Force Base, TX 78236

Non-Commissioned Officers Academy
Leadership School
Kirtland Air Force Base, NM 87117

Officer Training School USAF
Lackland Air Force Base, TX 78236

School of Health Care Sciences USAF
Sheppard Air Force Base, TX 76311

USAF Academy Preparatory School
USAF Academy, CO 80840

USAF Air Ground Operations School
Eglin AF Aux Fld 9, FL 32544

USAF Instrument Pilot Instructor School
Randolph Air Force Base, TX 78148

USAF Interceptor Weapons School
Tyndall Air Force Base, FL 32401

USAF School of Aerospace Medicine
Brooks Air Force Base, TX 78235

USAF Technical Training School, Chanute
Chanute Air Force Base, IL 61868

USAF Technical Training School, Keesler
Keesler Air Force Base, MS 39534

USAF Technical Training School, Lackland
Lackland Air Force Base, TX 78236

USAF Technical Training School, Lowry
Lowry Air Force Base, CO 80230

USAF Technical Training School, Sheppard
Sheppard Air Force Base, TX 76311

USAF School of Applied Cryptologic Sciences
Goodfellow Air Force Base, TX 76901

USAF Special Investigations School
Washington, DC 20314

USAF Special Operations School
Eglin Air Force Auxiliary Field 9, FL 32544

USAF Survival & Special Training School
Fairchild Air Force Base, WA 99011

USAF Test Pilot School
Edwards Air Force Base, CA 93523

USAF Tropic Survival School
APO New York 09825

AIR FORCE BASES, STATIONS, AND AIRPORTS
(States, Territories, and Foreign Countries)

ALABAMA
Craig Air Force Base, AL 36701
Dauphin Island Air Force Station, AL 36528
Gunter Air Force Station, AL 36114
Maxwell Air Force Base, AL 36112

ALASKA
Campion Air Force Station, APO Seattle 98703
Cape Lisburne Air Force Station, APO Seattle 98716
Cape Newenham Air Force Station, APO Seattle 98745
Cape Romanzof Air Force Station, APO Seattle 98706
Cold Bay Air Force Station, APO Seattle 98711
Eielson Air Force Base, AK 99702
Elmendorf Air Force Base, AK 99506
Ft Yukon Air Force Station, APO Seattle 98710
Galena Airport, APO Seattle 98723
Indian Mt Air Force Station, APO Seattle 98748
King Salmon Airport, APO Seattle 98713
Kotzebue Air Force Station, APO Seattle 98709
Murphy Dome Air Force Station, APO Seattle 98750
Shemya Air Force Base, APO Seattle 98736
Sparrevohn Air Force Station, APO Seattle 98746
Tatalina Air Force Station, APO Seattle 98747
Tin City Air Force Station, APO Seattle 98715

ARIZONA
Davis-Monthan Air Force Base, AZ 85707
Luke Air Force Base, AZ 85309
Williams Air Force Base, AZ 85224

ARKANSAS
Blytheville Air Force Base, AR 72315
Little Rock Air Force Base, AR 72076

CALIFORNIA
Almaden Air Force Station, CA 95042
Beale Air Force Base, CA 95903
Boron Air Force Station, CA 93516
Cambria Air Force Station, CA 93428
Castle Air Force Base, CA 95342
Edwards Air Force Base, CA 93523
George Air Force Base, CA 92392
Hamilton Air Force Base, CA 94934
Klamath Air Force Station, CA 95548
Los Angeles Air Force Station, CA 90009
March Air Force Base, CA 92508
Mather Air Force Base, CA 95655
McClellan Air Force Base, CA 95652
Mill Valley Air Force Station, CA 94941
Mount Laguna Air Force Station, CA 92048
Norton Air Force Base, CA 92409
Pillar Point Air Force Station, CA 94019
Point Arena Air Force Station, CA 95468
Sunnyvale Air Force Station, CA 94086
Travis Air Force Base, CA 94535
Vandenberg Air Force Base, CA 93437

COLORADO
Ent Air Force Base, CO 80912
Lowry Air Force Base, CO 80230
Peterson Air Force Base, CO 80914

DELAWARE
Dover Air Force Base, DE 19901

DISTRICT OF COLUMBIA
Bolling Air Force Base, DC 20332

FLORIDA
Cape Canaveral Air Force Station, FL 32925
Eglin Air Force Base, FL 32542
Homestead Air Force Base, FL 33039
MacDill Air Force Base, FL 33608
McCoy Air Force Base, FL 32812
Patrick Air Force Base, FL 32925
Tyndall Air Force Base, FL 32403

GEORGIA
Dobbins Air Force Base, GA 30060
Moody Air Force Base, GA 31601
Robins Air Force Base, GA 31098

GUAM
Andersen Air Force Base, APO San Francisco 96334

HAWAII
Bellows Air Force Station, HI 96853
Wheeler Air Force Base, APO San Francisco 96515

IDAHO
Mt Home Air Force Base, ID 83648

ILLINOIS
Chanute Air Force Base, IL 61868
Chicago-O'Hare International Airport, IL 60666
Scott Air Force Base, IL 62225

INDIANA
Grissom Air Force Base, IN 46971

KANSAS
McConnell Air Force Base, KS 67221

LOUISIANA
Barksdale Air Force Base, LA 71110
England Air Force Base, LA 71301
Lake Charles Air Force Station, LA 70601

MAINE
Bucks Harbor Air Force Station, ME 04618
Caswell Air Force Station, ME 04750
Charleston Air Force Station, ME 04422
Loring Air Force Base, ME 04751

MARYLAND
Andrews Air Force Base, MD 20331

MASSACHUSETTS
Hanscom Air Force Base, MA 01731
North Truro Air Force Station, MA 02652
Westover Air Force Base, MA 01022

MICHIGAN
Calumet Air Force Station, MI 49913
Empire Air Force Station, MI 49630
K I Sawyer Air Force Base, MI 49843
Kincheloe Air Force Base, MI 49788
Port Austin Air Force Station, MI 48467
Sault Sainte Marie Air Force Station, MI 49783
Wurtsmith Air Force Base, MI 48753

MINNESOTA
Baudette Air Force Station, MN 56623

Finland Air Force Station, MN 55603
Minneapolis-St Paul International Airport, MN 55417

MISSISSIPPI
Columbus Air Force Base, MS 39701
Keesler Air Force Base, MS 39534

MISSOURI
Whiteman Air Force Base, MO 65301

MONTANA
Fortuna Air Force Station, MT 59275
Glasgow Air Force Base, MT 59231
Havre Air Force Station, MT 59501
Kalispell Air Force Station, MT 59922
Lewistown Air Force Station, MT 59457
Malmstrom Air Force Base, MT 59402
Opheim Air Force Station, MT 59250

NEBRASKA
Offutt Air Force Base, NE 68113

NEVADA
Indian Springs Air Force Auxiliary Field
Indian Springs, NV 89018
Nellis Air Force Base, NV 89191
Tonopah Air Force Station, NV 89049

NEW HAMPSHIRE
Pease Air Force Base, NH 03801

NEW JERSEY
Gibbsboro Air Force Station, NJ 08026
McGuire Air Force Base, NJ 08641

NEW MEXICO
Cannon Air Force Base, NM 88101
Holloman Air Force Base, NM 88330
Kirtland Air Force Base, NM 87117

NEW YORK
Griffiss Air Force Base, NY 13441
Hancock Field, NY 13225
Lockport Air Force Station, NY 14094
Montauk Air Force Station, NY 11954
Niagara Falls International Airport, NY 14304
Plattsburgh Air Force Base, NY 12903
Saratoga Air Force Station, NY 12866
Watertown Air Force Station, NY 13601

NORTH CAROLINA
Ft Fisher Air Force Station, NC 28449
Pope Air Force Base, NC 28308
Roanoke Rapids Air Force Station, NC 27870
Seymour Johnson Air Force Base, NC 27531

NORTH DAKOTA
Finley Air Force Station, ND 58230
Grand Forks Air Force Base, ND 58201
Minot Air Force Base, ND 58705
Minot Air Force Station, Max ND 58759

OHIO
Clinton County Airport, OH 45177
Gentile Air Force Station, OH 45444
Newark Air Force Station, OH 43055
Rickenbacker Air Force Base, OH 43217
Wright-Patterson Air Force Base, OH 45433
Youngstown Municipal Airport, OH 44473

OKLAHOMA
Altus Air Force Base, OK 73521
Oklahoma City Air Force Station, OK 73145
Tinker Air Force Base, OK 73145
Vance Air Force Base, OK 73701

OREGON
Burns Air Force Station, OR 97720
Keno Air Force Station, OR 97601
Kingsley Field, OR 97601
Mount Hebo Air Force Station, OR 97122
North Bend Air Force Station, OR 97459

PENNSYLVANIA
Beaton Air Force Station, PA 17814

SOUTH CAROLINA
Aiken Air Force Station, SC 29801
Charleston Air Force Base, SC 29404
Myrtle Beach Air Force Base, SC 29577
Shaw Air Force Base, SC 29152

SOUTH DAKOTA
Ellsworth Air Force Base, SD 57706

TENNESSEE
Arnold Air Force Station, TN 37389

TEXAS
Bergstrom Air Force Base, TX 78743
Brooks Air Force Base, TX 78235
Carswell Air Force Base, TX 76127
Dyess Air Force Base, TX 79607
Goodfellow Air Force Base, TX 76901
Kelly Air Force Base, TX 78241
Lackland Air Force Base, TX 78236
Laredo Air Force Base, TX 78040
Laughlin Air Force Base, TX 78840
Randolph Air Force Base, TX 78148
Reese Air Force Base, TX 79489
San Antonio Air Force Station, TX 78208
Sheppard Air Force Base, TX 76311
Webb Air Force Base, TX 79720

UTAH
Hill Air Force Base, UT 84406

VERMONT
St Albans Air Force Station, VT 05478

VIRGINIA
Bedford Air Force Station, VA 24523
Cape Charles Air Force Station, VA 23310
Ft Lee Air Force Station, VA 23801
Langley Air Force Base, VA 23665

WAKE ISLAND
Wake Island Air Force Base, APO San Francisco 96501

WASHINGTON
Blaine Air Force Station, WA 98230
Fairchild Air Force Base, WA 99011
Makah Air Force Station, WA 98357
McChord Air Force Base, WA 98438
Othello Air Force Station, WA 99344

WISCONSIN
Antigo Air Force Station, WI 54409
General Billy Mitchell Field, 300 E. College Ave, Milwaukee, WI 53207

Osceola Air Force Station, WI 54020

WYOMING
F E Warren Air Force Base, WY 82001

FOREIGN COUNTRIES

AUSTRALIA
Woomera Air Station, APO San Francisco 96287

AZORES
Lajes Field, APO New York 09406

BELGIUM
Kleine Brogel Air Base, APO New York 09667

GERMANY
Bitburg Air Base, APO New York 09132
Hahn Air Base, APO New York 09109
Lindsey Air Station, APO New York 09633
Ramstein Air Base, APO New York 09012
Rhein-Main Air Base, APO New York 09057
Sembach Air Base, APO New York 09130
Spangdahlem Air Base, APO New York 09123
Stuttgart Airfield, APO New York 09131
Tempelhof Central Airport, APO New York 09611
Zweibrucken Air Base, APO New York 09860

GREECE
Hellenikon Air Base, APO New York 09223
Iraklion Air Station, APO New York 09291

GREENLAND
Sondrestrom Air Base, APO New York 09121
Thule Air Base, APO New York 09023

ITALY
Aviano Air Base, APO New York 09293
San Vito Dei Normanni Air Sta, APO New York 09240

JAPAN
Kadena Air Base, APO San Francisco 96239
Misawa Air Base, APO San Francisco 96519
Naha Air Base, APO San Francisco 96235
Tachikawa Air Base, APO San Francisco 96323
Yokota Air Base, APO San Francisco 96328

KOREA
Kimpo Air Base, APO San Francisco 96276
Kunsan Air Base, APO San Francisco 96264
Kwangju Air Base, APO San Francisco 96324
Osan Air Base, APO San Francisco 96570
Taegu Air Base, APO San Francisco 96213

NETHERLANDS
Camp New Amsterdam Air Base, APO New York 09292

NORWAY
Kolnes Air Base, APO New York 09085

PANAMA
Albrook Air Force Station, APO New York 09825
Howard Air Force Base, APO New York 09020

PHILIPPINES
Clark Air Base, APO San Francisco 96274
John Hay Air Base, APO San Francisco 96298
Wallace Air Station, APO San Francisco 96277

SPAIN
Moron Air Base, APO New York 09282
Torrejon Air Base, APO New York 09283

TURKEY
Ankara Air Station, APO New York 09254
Diyarbakir Air Station, APO New York 09294
Erhac Malatya Air Base, APO New York 09051
Eskisehir Air Base, APO New York 09254
Incirlik Air Base, APO New York 09289
Istanbul Air Station, APO New York 09380
Karamursel Air Station, APO New York 09324

UNITED KINGDOM
RAF Alconbury, APO New York 09238
RAF Bentwaters, APO New York 09755
RAF Chicksands, APO New York 09193
RAF Croughton, APO New York 09378
RAF Lakenheath, APO New York 09179
RAF Mildenhall, APO New York 09127
RAF Upper Heyford, APO New York 09194
RAF Wethersfield, APO New York 09120
RAF Woodbridge, APO New York 09405

BILLING CODE 3910-01-M

NATIONAL SECURITY AGENCY

REQUESTING RECORDS

Records are retrieved by name or by some other personal identifier. It is therefore especially important for expeditious service when requesting a record that particular attention be provided to the Notification and/or Access Procedures of the particular record system involved so as to furnish the required personal identifiers, or any other pertinent personal information as may be required, to locate and retrieve the record.

BLANKET ROUTINE USES

Certain blanket 'routine uses' of the records have been established, that are applicable to every record system maintained within the Department of Defense, unless specifically stated otherwise within a particular record system. These additional blanket routine uses of the records are published below, only once in the interest of simplicity, economy and to avoid redundancy, before the individual record system notices begin rather than repeating them in every individual record system.

ROUTINE USE - LAW ENFORCEMENT

In the event that a system of records maintained by this component to carry out its functions indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute, or by regulation, rule or order issued pursuant thereto, the relevant records in the system of records may be referred, as a routine use, to the appropriate agency, whether federal, state, local or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, rule, regulation or order issued pursuant thereto.

ROUTINE USE - DISCLOSURE WHEN REQUESTING INFORMATION

A record from a system of records maintained by this component may be disclosed as a routine use to a federal, state or local agency maintaining civil, criminal or other relevant enforcement information or other pertinent information, such as current licenses, if necessary to obtain information relevant to a component decision concerning the hiring or retention of an employee, the issuance of a security clearance, the letting of a contract, or the issuance of a license, grant or other benefit.

ROUTINE USE - DISCLOSURE OF REQUESTED INFORMATION

A record from a system of records maintained by this component may be disclosed to a federal agency, in response to its request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the infor-

mation is relevant and necessary to the requesting agency's decision on the matter.

ROUTINE USE - CONGRESSIONAL INQUIRIES

Disclosure from a system of records maintained by this component may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

ROUTINE USE WITHIN THE DEPARTMENT OF DEFENSE

A record from a system of records maintained by this component may be disclosed as a routine use to other components of the Department of Defense if necessary and relevant for the performance of a lawful function such as, but not limited to, personnel actions, personnel security actions and criminal investigations of the Component requesting the record.

ROUTINE USE - PRIVATE RELIEF LEGISLATION

Relevant information contained in all systems of records of the Department of Defense published on or before August 22, 1975, will be disclosed to the Office of Management and Budget in connection with the review of private relief legislation as set forth in OMB Circular A-19 at any stage of the legislative coordination and clearance process as set forth in that Circular.

ROUTINE USE - DISCLOSURES REQUIRED BY INTERNATIONAL AGREEMENTS

A record from a system of records maintained by this Component may be disclosed to foreign law enforcement, security, investigatory, or administrative authorities in order to comply with requirements imposed by, or to claim rights conferred in international agreements and arrangements including those regulating the stationing and status in foreign countries of Department of Defense military and civilian personnel.

ROUTINE USE - DISCLOSURE TO STATE AND LOCAL TAXING AUTHORITIES

Any information normally contained in IRS Form W-2 which is maintained in a record from a system of records maintained by this Component may be disclosed to State and local taxing authorities with which the Secretary of the Treasury has entered into agreements pursuant to Title 5, U.S.Code, Sections 5516, 5517, 5520, and only to those State and local taxing authorities for which an employee or military member is or was subject to tax regardless of whether tax is or was withheld. This routine use is in accordance with Treasury Fiscal Requirements Manual Bulletin Nr. 76-07.

ROUTINE USE - DISCLOSURE TO THE OFFICE OF PERSONNEL MANAGEMENT

A record from a system of records subject to the Privacy Act and maintained by this component may be disclosed to the Office of Personnel Management concerning information on pay and leave, benefits, retirement deductions, and any other information necessary for the Office of Personnel Management to carry out its legally authorized Government-wide personnel management functions and studies.

ROUTINE USE - DISCLOSURE OF INFORMATION TO NARS (GSA)

A record from a system of records maintained by this component may be disclosed as a routine use to the National Archives and Records Service of the General Services Administration in records management inspections conducted under authority of 44 U.S.C. 2904 and 2906.

ROUTINE USE - DISCLOSURE TO DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

All systems of records relating to compensation, employment or retirement, or extracts therefrom, maintained by this Component may be disclosed as a routine use to the Department of Health, Education, and Welfare for the purpose of comparing such record with records of programs administered by and in the possession of the Department of Health, Education, and Welfare in order to verify information where such verification is required by law or regulation or to identify violations or potential violations of law, whether criminal, civil, or regulatory, and whether arising by general statute or particular program statute, or by regulation, rule, or order issued pursuant thereto.

GNSA01

System name:

NSA/CSS Access, Authority and Release of Information File

System location:

Primary System - National Security Agency/Central Security Service, Ft. George G. Meade, Md. 20755.

Decentralized Segments - Each staff, line, contract and field element as appropriate.

Categories of individuals covered by the system:

NSA/CSS civilian employees, personnel under contract or appointment and military assignees.

Categories of records in the system:

File may consist of authorizations to obtain keys; authorizations for access to specific sensitive information or areas; delegation of responsibility to authorize or request specific action, work projects or access; notification to report for duty in event of hazardous weather or other emergency; authorizations to officially release various types of communications; assignments to special activities; assignments as Agency representatives to department or other government committees, boards, task groups; assignments to special tasks in event of technical or national emergencies; assignments to duties as fire, safety, security officers, Combined Federal Campaign and blood donation workers; and assignments to other special or volunteer duties or activities.

Authority for maintenance of the system:

Public Law 86-36, Public Law 88-290, 18 U.S.C. section 798, E.O. 12065.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

The purpose of this file is to provide a means to rapidly determine who may have access to information or keys; who is required to report for duty in special circumstances, who has been authorized to release official communications; who has been assigned additional special tasks, voluntary duties or other duties. The file and its segments are used by each authorized staff, line, contract and field officer, employee or assignee to make determinations as noted in the purposes above. Where required, specific information from this file may be made available to appropriate investigatory authorities engaged in national security or criminal investigations or to national defense and intelligence authorities or other governmental entities with respect to specific assignments or when emergency action is required.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Paper records in file folders, paper cards in file boxes, magnetic tapes, disks and other computer storage media, computer listings, microfilm.

Retrievability:

By name.

Safeguards:

For paper, computer listing, cards and microfilm - Secure limited access facilities, within those facilities secure limited access rooms and within those rooms lockable containers. Access to information is limited to authorized individuals only. For machine records stored on magnetic tape, disk or other computer storage media within the computer processing area-additional secure limited access facilities, specific processing requests from authorized persons only, specific authority to access stored records and delivery to authorized persons only. Where data elements are derived from the Personnel Security File-remote terminal inhibitions are in force with respect to access to complete file or data relating to persons not assigned to requesting organization using a remote terminal. Remote terminals are secured, are available to authorized persons only, and certain password and other identifying information available to authorized users only is required. Terminals are not available outside of headquarters area locations.

Retention and disposal:

Retained until individual is no longer authorized access or release authority or assigned to specific additional duties. Computer files are purged and updated to reflect current status.

System manager(s) and address:

Director, NSA.

Notification procedure:

Requests from individual for notification shall be in writing addressed to the Chief, Office of Policy, National Security Agency/Central Security Service, Ft. George G. Meade, Md. 20755.

Record access procedures:

Requests from individuals for access shall be in writing addressed to the Chief, Office of Policy, National Security Agency/Central Security Service, Ft. George G. Meade, Md. 20755.

Contesting record procedures:

The NSA/CSS rules for contesting contents and appealing initial determinations may be obtained by written request addressed to the Chief, Office of Policy, National Security Agency/Central Security Service, Ft. George G. Meade, Md. 20755.

Record source categories:

Applications and related forms requesting access, appointment or authorization, notifications of same, personnel records, personnel security records, and other sources as appropriate and required.

Systems exempted from certain provisions of the act:

Individual records in this file may be exempt pursuant to 5 U.S.C., section 552a (k) (1) and (k) (5). For additional information see agency rules contained in 32 CFR Part 299a.

GNSA02

System name:

NSA/CSS Applicants

System location:

National Security Agency/Central Security Service, Ft. George G. Meade, Md. 20755.

Categories of individuals covered by the system:

Applicants for employment with NSA/CSS.

Categories of records in the system:

File contains forms, documents and correspondence providing personal and qualifications information submitted by individual applicants, educational institutions, past employers, references. Records include processing items, status reports, test results, interview reports, reports of reviewing organizations and other related information.

Authority for maintenance of the system:

Public Law 86-36, Public Law 88-290, E.O. 10450, and 5 U.S.C. and appropriate implementing Office of Personnel Management directives in the Federal Personnel Manual.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

The purpose of this file is to support the recruitment, selection, hire and placement of applicants. The file is used to document applicant processing, as a basis for selection decisions by individual agency elements and the personnel organization, and such other related uses as required. The users of this file include those staff, line, contract and field officers and employees as authorized and appropriate. In addition, files may be made available to the Office of Personnel Management, Freedom of Information Act and Privacy Act authorities, Department of Defense and other governmental entities as required and appropriate.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Paper in file folders, cards in containers, logs, computer listings, computer magnetic tape, disks and other computer storage media, microfilm.

Retrievability:

By name, social security number, and other appropriate data elements.

Safeguards:

For paper, computer printouts and microfilm - Secure limited access facilities, within those facilities secure limited access rooms and within those rooms lockable containers. Access to information is limited to those individuals specifically authorized and granted access by the Deputy Director for Management Services. For machine records stored on magnetic tape, disk or other computer storage media within the computer processing area-additional secure limited access facilities, specific processing requests accepted from authorized persons only. Remote terminal inhibitions are in force with respect to access to computerized file or data relating to persons not assigned to the organization using a remote terminal. Remote terminals are secured, are available to authorized persons only, and certain password and other identifying information available to authorized users only is required. Terminals are not available outside of headquarters area locations.

Retention and disposal:

For applicants who are subsequently hired, records are transferred to Personnel File or destroyed as appropriate. For applicants not hired, record are retained for a period not to exceed one year unless employment requirements necessitate retention for a longer period.

System manager(s) and address:

Director, NSA.

Notification procedure:

Requests from individuals for notification shall be in writing addressed to the Chief, Office of Policy, National Security Agency/Central Security Service, Ft. George G. Meade, Md. 20755.

Record access procedures:

Requests from individuals for access shall be in writing addressed to the Chief, Office of Policy, National Security Agency/Central Security Service, Ft. George G. Meade, Md. 20755.

Contesting record procedures:

The NSA/CSS rules for contesting contents and appealing initial determinations may be obtained by written request addressed to the Chief, Office of Policy, National Security Agency/Central Security Service, Ft. George G. Meade, Md. 20755.

Record source categories:

Applicant, educational institutions, references, former employers including other governmental entities, interviewing and reviewing individuals including possible gaining organization, security and medical authorities and other sources as relevant and appropriate.

Systems exempted from certain provisions of the act:

Individual records in this file may be exempt pursuant to 5 U.S.C., section 552a (k) (1) and (k) (5). For additional information see agency rules contained in 32 CFR Part 299a.

GNSA03

System name:

NSA/CSS Correspondence, Cases, Complaints, Visitors, Requests

System location:

Primary System - National Security Agency/Central Security Service, Ft. George G. Meade, Md. 20755.

Decentralized Segments - Each staff, line, contract and field element as authorized and appropriate.

Categories of individuals covered by the system:

Persons calling or corresponding with NSA/CSS concerning congressional inquiries; job opportunities; Freedom of Information and Privacy Act requests; other information requests, suggestions or comments; registering complaints; requesting appropriate security clearance and permission to visit; requesting or requiring information relating to litigation or anticipated litigation; and employees or assignees registering complaints or requesting information with respect to Equal Employment Opportunities; requesting inquiry or investigation by the Inspector General; requesting advice, opinions, or assistance from the General Counsel or provided to the General Counsel with respect to conflict of interest issues.

Categories of records in the system:

File contains correspondence from and to individuals, documents and memoranda related to the response, written material developed during or in anticipation of litigation or investigation of inquiries, complaints or grievances, written material developed in response to a request for advice or opinion from an individual, written material required by law, executive order, and regulations with respect to Equal Employment Opportunity investigations, Inspector General investigations, judicial branch subpoenas, orders and related actions.

Authority for maintenance of the system:

Public Law 86-36, Public Law 88-290, 5 U.S.C. section 552, Public Law 92-261, Public Law 93-259, Executive Order 10450, Executive Order 11222, Executive Order 11478, and Executive Order 12065.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

The purpose of this file is to provide a record of the official responses and determinations of NSA/CSS to various inquiries for information, complaints, official actions of other governmental agencies and branches. The users of these files are those staff, line, contract and field officers, employees and assignees delegated the responsibility to respond on behalf of the Director, NSA, to such inquiries and complaints. The files are used to carry out the purpose set forth above, to provide an information base to be used in responding to the various reporting requirements levied by the Public Laws and Executive Orders cited in the authorities section of this notice. Information in the file may be used to provide reports in summary or statistical form to the Department of Defense, Office of Personnel

Management, Office of Equal Employment Opportunity, Congress and those committees or subcommittees of the Congress having jurisdiction over matters covered by individual reports. Certain files may be provided to the General Counsel, Department of Defense, the Department of Justice, other appropriate governmental agencies and the judical branch where litigation or anticipated civil or criminal litigation is involved or where sensitive national security investigations related to protection of intelligence sources or methods are involved.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Paper records in file folders.

Retrievability:

By name, case, or subject and within subject by name.

Safeguards:

Secure limited access facilities and within those facilities individual limited access offices. Files are stored in lockable containers and are only made available to individuals specifically authorized access or required to respond and individuals affected by actions taken or complaints received. Files related to sensitive investigations by the Equal Employment Opportunity Office, the Inspector General and General Counsel are additionally protected pursuant to appropriate statutes, executive orders or regulations and attorney-client privilege. In some cases records are sealed pursuant to sensitivity of subject matter or specific court order.

Retention and disposal:

Records are retained on-site indefinitely.

System manager(s) and address:

Director, NSA.

Notification procedure:

Requests from individuals for notification shall be in writing addressed to the Chief, Office of Policy, National Security Agency/Central Security Service, Ft. George G. Meade, Md. 20755.

Record access procedures:

Requests from individuals for access shall be in writing addressed to the Chief, Office of Policy, National Security Agency/Central Security Service, Ft. George G. Meade, Md. 20755.

Contesting record procedures:

The NSA/CSS rules for contesting contents and appealing initial determinations may be obtained by written request addressed to the Chief, Office of Policy, National Security Agency/Central Security Service, Ft. George G. Meade, Md. 20755.

Record source categories: Individual correspondence, written materials developed in response to inquiries from executive branch departments and agencies, judicial branch elements, Congress, Congressional committees, individual Congressmen, other government and private entities as appropriate, and other sources as appropriate and required.

Systems exempted from certain provisions of the act:

Individual records in this file may be exempt pursuant to 5 U.S.C., section 552a (k) (1), (k) (2), (k) (4), and (k) (5). For additional information, see agency rules contained in 32 CFR Part 299a.

GNSA04

System name:

NSA/CSS Cryptologic Reserve Mobilization Designee List

System location:

Primary System - National Security Agency/Central Security Service, Ft. George G. Meade, Md. 20755.

Decentralized Segments - Appropriate staff and line elements.

Categories of individuals covered by the system:

Inactive duty military reservists assigned to NSA/CSS mobilization positions.

Categories of records in the system:

Record consists of a computer listing of NSA/CSS reserve mobilization requirements.

Authority for maintenance of the system:

Public Law 86-36 and Title 10, U.S.C.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

To maintain Tables of Distribution on mobilization requirements by military service, military job code, billet title, number of billets, mobilization duty location, training sponsor, and any special clearance requirements of the billet, and to provide a system of identifying mobilization designees with billets for training assignments.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Computer listings, computer magnetic tapes, disks and other computer storage media.

Retrievability:

By name and mobilization designee requirements.

Safeguards:

Secure limited access facilities and within those facilities lockable containers. Records are accessible only to authorized personnel.

Retention and disposal:

Records are permanent. They are reviewed annually for changes in requirements. Superseded records are destroyed when no longer useful for reference purposes.

System manager(s) and address:

Director, NSA.

Notification procedure:

Requests from individuals for notification shall be in writing addressed to the Chief, Office of Policy, National Security Agency/Central Security Service, Ft. George G. Meade, Md. 20755.

Record access procedures:

Requests from individuals for access shall be in writing addressed to the Chief, Office of Policy, National Security Agency/Central Security Service, Ft. George G. Meade, Md. 20755.

Contesting record procedures:

The NSA/CSS rules for contesting contents and appealing initial determinations may be obtained by written request addressed to the Chief, Office of Policy, National Security Agency/Central Security Service, Ft. George G. Meade, Md. 20755.

Record source categories:

Individual's parent service.

Systems exempted from certain provisions of the act:

Individual records in this file may be exempt pursuant to 5 U.S.C., section 552a (k) (1) and (k) (5). For additional information see agency rules contained in 32 CFR 299a.

GNSA05

System name:

NSA/CSS Equal Employment Opportunity Data

System location:

National Security Agency/Central Security Service, Ft. George G. Meade, Md. 20755.

Categories of individuals covered by the system:

NSA/CSS civilian personnel and personnel under contract.

Categories of records in the system:

File contains civilian personal data and Agency organizational data to include job title, grade, date of birth, training, date of last promotion, educational attainments, social security number, time of service, personnel codes, organization assignment.

Authority for maintenance of the system:

Public Law 92-261, Public Law 93-259, Public Law 86-36, Executive Order 11478, Chapter 713 of the Federal Personnel Manual.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Purpose of this file is to ensure compliance with cited authorities with respect to equal employment opportunities. Users of the file are those staff, line, contract and field officers and employees specifically authorized by law, regulation, delegation of responsibility, and grant of access by the NSA Equal Employment Opportunity Director. The file is used to compile those studies, research, statistics and reports necessary to insure compliance with cited authorities. Reports, summaries and statistics may be made available to the Department of Defense, Office of Equal Employment Opportunity, Congress, Office of Personnel Management, Department of Justice and judicial branch elements as required by cited authorities, requested pursuant to those authorities or ordered by specific judicial branch order.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Magnetic tape, disk or other computer storage media, computer listings, paper in file folders.

Retrievability:

By name, social security number, and specific subject matter data elements.

Safeguards:

For paper, computer printouts and microfilm - Secure limited access facilities, within those facilities secure limited access rooms and within those rooms lockable containers. Access to information is limited to those individuals specifically authorized and granted access by EEO Director. For machine records stored on magnetic tape, disk or other computer storage media within the computer processing area-additional secure limited access facilities, specific processing requests from authorized persons only, specific authority to access stored records and delivery to authorized persons only. Where data elements are derived from the Personnel System, remote terminal inhibitions are in force with respect to access to complete file or data relating to persons not assigned to requesting organization using a remote terminal. Remote terminals are secure, are available to authorized persons only, and certain password and other identifying information available to authorized users only is required. Terminals are not available outside of headquarters area locations.

Retention and disposal:

File is routinely updated and old data disposed of as required. Individual data is subject to retention and disposal requirements specified for records contained in the Personnel System.

System manager(s) and address:

Director of Equal Employment Opportunity, National Security Agency/Central Security Service, Ft. George G. Meade, Md. 20755.

Notification procedure:

Requests from individuals for notification shall be in writing addressed to the Chief, Office of Policy, National Security Agency/Central Security Service, Ft. George G. Meade, Md. 20755.

Record access procedures:

Requests from individuals for access shall be in writing addressed to the Chief, Office of Policy, National Security Agency/Central Security Service, Ft. George G. Meade,Md. 20755.

Contesting record procedures:

The NSA/CSS rules for contesting contents and appealing initial determinations may be obtained by written request addressed to the Chief, Office of Policy, National Security Agency/Central Security Service, Ft. George G. Meade, Md. 20755.

Record source categories:

Individuals themselves, organizational elements, personnel file, and other sources as appropriate and required.

Systems exempted from certain provisions of the act:

Individual records and data elements in this file may be exempt pursuant to 5 U.S.C., section 552a (k) (1), (k) (2), and (k) (4). For additional information see agency rules contained in 32 CFR Part 299a.

GNSA06

System name:

NSA/CSS Health, Medical and Safety Files

System location:

Primary System - National Security Agency/Central Security Service, Fort George G. Meade, Md. 20755.

Decentralized Segments - Each staff, line, contract and field element as appropriate.

Categories of individuals covered by the system:

NSA/CSS civilian employees, military assignees, applicants, retirees, building concessionaires, assigned GSA employees, certain contract employees, visitors requiring emergency treatment, in certain cases members of employees' families with prior approval of the employee, blood donors, designated Health and Safety Officers.

Categories of records in the system:

File may consist of completed medical questionnaires, results of physical examinations and laboratory tests, records of medical treatment and services, x-rays, notices of injury, forms and correspondence including exchanges with Department of Labor related to injury and subsequent claims, correspondence with personal physician, NSA/CSS Medical Center reports, safety reports, absence and attendance records, medical evaluations, fitness for duty reports, 'Log of Federal Occupational Injuries and Illnesses,' results of psychological assessment testing and interviews, psychiatric examination results and related reports, forms and notes, lists of blood donors.

Authority for maintenance of the system:

Public Law 86-36, and Federal Employees Compensation Act of September 7, 1916, as amended, 5 U.S.C. and Office of Personnel Management implementation thereof as contained in Federal Personnel Manual. In addition, the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment, and Rehabilitation Act of 1970, as amended (42 U.S.C. section 4582) and subchapter A of Chapter I, 42, CFR, Executive Order 11807, Executive Order 9397, 29 CFR 1960 and Department of Defense Instruction 1000.19.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

To determine fitness for hiring, continued employment or assignment and reassignment; to process accident and compensation claims; correct hazardous conditions; determine eligibility for disability retirement; record names of blood donors. When required, specific information from these files may be made available to the Department of Labor in those cases involving compensation claims and, with the permission of the individual, to other medical personnel or the American Red Cross for additional examination, treatment, counseling or other medical purpose; Freedom of Information and Privacy Act authorities as appropriate; and to other governmental entities as required and appropriate. Alcohol abuse patient records used in accordance with cited statute and regulations.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Paper records in file folders, magnetic tape, disk or other computer storage media, computer listings.

Retrievability:

By name, social security number and specific subject matter data elements.

Safeguards:

Secure, limited access facilities and within these facilities lockable containers. Records are accessible only to authorized personnel. For machine records stored on magnetic tape, disk or other computer storage within the computer processing area-additional secure limited access facilities, specific processing requests from authorized persons only, specific authority to access stored records and delivery to authorized persons only. Remote terminals are secured, are available to authorized person only, and certain password and other identifying information available to authorized users only is required. Terminals are not available outside of specific security offices at headquarters area locations.

Retention and disposal:

Medical files and records on traumatic injury and occupational disease are transferred to official personnel folder upon separation; traumatic injury and occupational disease correspondence on civilian employees and retirees is retained indefinitely. Applicant medical files are retained for no more than one year or until date designated to individual; files on military assignees are forwarded to parent service upon reassignment from NSA/CSS; all other medical case files are destroyed upon termination of association with NSA/CSS. Psychological files on applicants are retained for no more than one year or until date designated to individual; all other files are retained for four years after end of individual's association with NSA/CSS. Decentralized segments are either transferred with employee or assignee, or retained for a period after separation as appropriate but not to exceed three years and are then destroyed. Alcohol abuse patient records retained and disposed of pursuant to cited statute and regulations.

System manager(s) and address:

Director, NSA.

Notification procedure:

Requests from individuals for notification shall be in writing addressed to the Chief, Office of Policy, National Security Agency/Central Security Service, Fort George G. Meade, Md. 20755.

Record access procedures:

Requests from individuals for access shall be in writing addressed to the Chief, Office of Policy, National Security Agency/Central Security Service, Ft. George G. Meade, Md. 20755.

Contesting record procedures:

The NSA/CSS rules for contesting contents and appealing initial determinations may be obtained by written request addressed to the Chief, Office of Policy, National Security Agency/Central Security Service, Ft. George G. Meade, Md. 20755.

Record source categories:

Applicants, employees, assignees, official personnel folders, NSA Safety Officers and records, witnesses to accidents and injuries, medical and administrative personnel, blood donor personnel, members of employee's family with employee's permission and other sources as appropriate and required.

Systems exempted from certain provisions of the act:

Individual records in this file may be exempt pursuant to 5 U.S.C., section 552a (k) (1), (k) (4), (k) (5) and (k) (6) and may also be subject to certain special access procedures established pursuant to 5 U.S.C., section 552a, subsection (f) (3). For additional information, see agency rules contained in 32 CFR Part 299a.

GNSA07

System name:

NSA/CSS Motor Vehicles and Carpools

System location:

Primary System - National Security Agency/Central Security Service, Ft. George G. Meade, Md. 20755.

Decentralized Segments - Each non-headquarters facility and field element as appropriate and required.

Categories of individuals covered by the system:

NSA/CSS civilian employees, military assignees, other governmental employees or personnel under contract granted extended temporary or permanent access to an NSA/CSS facility.

Categories of records in the system:

File may consist of machine-readable or regular paper cards, carpool or other transportation survey results, annotated machine listings, post motor vehicle violation reports, stolen vehicle reports, or other forms and correspondence related to parking privileges, transportation needs, local (parking lot) parking enforcement procedures, vehicle abuse and other related matters as appropriate and required.

Authority for maintenance of the system:

40 U.S.C., section 318a-b; 50 U.S.C. section 797; Title 4 CFR Part 232, Appendix B; and Title 41 CFR Part 101-20.111 et seq.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

The purpose of this file is to provide data necessary to enforce parking lot regulations, to assist employees with respect to vehicle abuse and stolen vehicles, provide carpool assistance, assure availability of adequate transportation and parking facilities and other related matters. The uses of the file are to verify vehicle ownership, determine allocation of parking privileges, ensure the maintenance of adequate and safe parking areas, develop statistics with respect to parking and transportation requirements, encourage formation of carpools or other multiple-user transportation arrangements, provide a directory of potential participants in carpools or other multiple-user transportation arrangements and other related uses as appropriate and required. The users of the file are those authorized line, staff, contract and field element officers and employees; any employee, assignee or other individual working at an NSA/CSS facility interested in forming or joining a carpool or other multiple-user transportation arrangement; local civil and military law enforcement personnel as required and appropriate. Statistical data or selected individual data limited to name, address and telephone number may be made available to commercial or private transportation entities where the individuals have indicated a desire to use or join a multiple-user transportation arrangement, supervisory and other reviewing authorities in cases of parking privilege abuses, and other related users as required and appropriate.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Paper records in file folders, machine-readable and other cards in appropriate containers, magnetic tape, disk or appropriate containers, magnetic tape, disk or other computer storage media, computer listings.

Retrievability:

By name, motor vehicle identifier.

Safeguards:

For paper, cards and computer listings - Secure limited access facilities, within those facilities secure limited access rooms and within those rooms lockable containers as appropriate. Access is limited to authorized users. For machine records stored on magnetic tape, disk or other computer storage media within the computer processing area-additional secure limited access facilities, specific processing requests accepted from authorized persons only, specific authority to access stored records and delivery granted to authorized persons only.

Retention and disposal:

File is routinely updated and old data disposed of as required. Individual data is subject to retention and disposal requirements specified for records contained in the Personnel System.

System manager(s) and address:

Director, NSA.

Notification procedure:

Requests from individuals for notification shall be in writing addressed to the Chief, Office of Policy, National Security Agency/Central Security Service, Ft. George G. Meade, Md. 20755.

Record access procedures:

Requests from individuals for access shall be in writing addressed to the Chief, Office of Policy, National Security Agency/Central Security Service, Ft. George G. Meade, Md. 20755.

Contesting record procedures:

The NSA/CSS rules for contesting contents and appealing initial determinations may be obtained by written request addressed to the Chief, Office of Policy, National Security Agency/Central Security Service, Ft. George G.Meade, Md. 20755.

Record source categories:

Data provided by individuals, authorities in charge of parking facilities, local civil and military law enforcement entities and other related sources as appropriate and required.

Systems exempted from certain provisions of the act:

Individual records and data elements in this file may be exempt pursuant to 5 U.S.C., section 552a (k) (1). For additional information see agency rules contained in 32 CFR Part 299a.

GNSA08

System name:

NSA/CSS Payroll and Claims

System location:

Primary System - National Security Agency/Central Security Service, Ft. George G. Meade, Md. 20755.

Decentralized Segments - Each staff, line, contract and field element as appropriate.

Categories of individuals covered by the system:

NSA/CSS civilian employees and applicants, military assignees, contractors, reemployed annuitants, personnel under contract.

Categories of records in the system:

File may consist of records on time and attendance; overtime; shift and holiday work; absent without leave reports; payroll deductions, allotments and allowances; requests for leave; payments for travel performed in connection with permanent change of station, temporary duty, invitations, interviews, pre-employment interviews and initial entry on duty. Also included are Pay Adjustment Authorizations (DD Form 139) and Case Collection Vouchers (DD Form 1131) and, in connection with pay claims, waivers, requests for waivers, documents, correspondence, background data, recommendations and decisions.

Authority for maintenance of the system:

Public Law 86-36; 31 U.S.C., section 66a, 951-53; 50 U.S.C. App. section 2160; Titles 5 and 37 of the U.S.C.; Titles 2, 4, 5, and 6 GAO Manual.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

To maintain effective control over and accountability for all funds; to provide accounting data to support the NSA/CSS budget request and control the execution of the budget; provide financial information required by the Office of Management and Budget; provide financial information for NSA/CSS management purposes; provide for the input of permanent change data and the output of such data as leave without pay, reconciliation of files, periodic step increases, mass pay changes and changes in leave categories; investigate, review, discuss and recommend and implement decisions on pay claims waivers. When required, specific information from this file may be made available to other governmental entities in connection with Social Security deductions, unemployment compensation claims, job-related injury and death benefits, tax audit and collections, and other related claims or actions.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Paper records in file folders; file cards; computer paper printouts; machine-readable cards; computer magnetic tapes, disks and other computer storage media.

Retrievability:

By name, social security number.

Safeguards:

For paper, computer printouts and microfilm - Secure limited access facilities, within those facilities secure limited access rooms

and within those rooms lockable containers. Access to information is limited to authorized individuals. For machine records stored on magnetic tape, disk or other computer storage media within the computer processing area-additional secure limited access facilities, specific processing requests from authorized persons only, specific authority to access stored records and delivery to authorized persons only. Remote terminals are secured, are available to authorized persons only, and certain password and other identifying information available to authorized users only is required. Terminals are not available outside of headquarters area locations.

Retention and disposal:

Records are reviewed annually and retired or destroyed as appropriate. Permanent records are retired to the St. Louis Federal Records Center after completion of audit. Computer records are purged and updated consistent with these retention policies.

System manager(s) and address:

Director, NSA.

Notification procedure:

Requests from individuals for notification shall be in writing addressed to the Chief, Office of Policy, National Security Agency/Central Security Service, Ft. George G. Meade, Md. 20755.

Record access procedures:

Requests from individuals for access shall be in writing addressed to the Chief, Office of Policy, National Security Agency/Central Security Service, Ft. George G. Meade, Md. 20755.

Contesting record procedures:

The NSA/CSS rules for contesting contents and appealing initial determinations may be obtained by written request addressed to the Chief, Office of Policy, National Security Agency/Central Security Service, Ft. George G. Meade, Md. 20755.

Record source categories:

Forms, cards, requests and other documentation submitted by individuals, supervisors, claims officers, Personnel File data, Time, Attendance and Access File data, and other sources as appropriate and required.

Systems exempted from certain provisions of the act:

Individual records in this file may be exempt pursuant to 5 U.S.C., section 552a (k) (1) and (k) (2). For additional information see agency rules contained in 32 CFR Part 299a.

GNSA09

System name:

NSA/CSS Personnel File

System location:

Primary System - National Security Agency/Central Security Service, Ft. George G. Meade, Md. 20755.

Decentralized Segments - Each staff, line, contract and field element and supervisor as authorized and appropriate.

Categories of individuals covered by the system:

Civilian employees, personnel under contract, military assignees, dependents of NSA/CSS personnel assigned to field elements, individuals integrated into the cryptologic career development program, custodial and commercial services personnel.

Categories of records in the system:

File contains personnel papers and forms including but not limited to applications, transcripts, correspondence, notices of personnel action, performance appraisals, personnel summaries, professionalization documentation and correspondence, training forms, temporary duty, letters of reprimand, employee record card, special assignment documentation, letters of commendation, promotion documentation, field assignment preference, requests for transfers, permanent change of station, passport, transportation, official orders, awards, suggestions, pictures, complaints, separation, retirement, time utilization, scholarship/fellowship or other school appointments, military service, reserve status, military check in/out sheets, military orders, security appraisal, career battery and other test results, language capability, military personnel utilization survey, work experience, notes and memoranda on individual aspects of performance, productivity and suitability, information on individual eligibility to serve on various boards and committees, emergency loan records, other information relevant to personnel management, housing information where required.

Authority for maintenance of the system:

Public Law 86-36, 5 U.S.C. and certain implementing Office of Personnel Management regulations in the Federal Personnel Manual; 10 U.S.C., section 1124; 44 U.S.C., section 3101; 34 CFR 232, Appendix B; 41 CFR 101-20.111 and Executive Order 11222.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

The purpose of this file is to support the personnel management program; personnel training and career development; personnel planning, staffing and counseling; administration and personnel supervision; workforce study and analysis; manpower requirements studies; emergency loan program; and training curricula planning and research. The uses of the file are to implement the purposes cited and provide management at all levels with the documentation and tools necessary for effective personnel management and supervision. Information may also be used to verify present or former NSA/CSS employment to gaining employers or to financial institutions when individual has applied for credit. The users are those staff, line, contract and field officers, employees, and assignees authorized to maintain or have access to personnel data or some decentralized segment thereof. In addition, officers and employees of elements engaged in security and training, Freedom of Information or Privacy Act actions, Inspector General, General Counsel, Equal Employment Opportunity, audit or review, medical and psychological or other appropriate functions may be authorized access as required in the performance of their duties. Individual files or portions thereof may be made available to hearing examiners, the judicial branch, the Office of Personnel Management, the Department of Defense or other gaining government organization as required and appropriate.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Paper records in file folders, file cards, machine-readable cards, computer printouts, computer magnetic tapes, disks and other computer storage media, and microfilm.

Retrievability:

By name, social security number and other items of relevant information.

Safeguards:

For paper, computer printouts and microfilm - Secure limited access facilities, within those facilities secure limited access rooms and within those rooms lockable containers. Access to information is limited to those individuals authorized and responsible for personnel management or supervision. For records stored on magnetic tape, disk or other computer storage media within the computer processing area-additional secure limited access facilities, specific processing requests accepted from authorized persons only, specific authority to access stored records and delivery granted to authorized persons only. Where data elements are derived from the Personnel File, remote terminal inhibitions are in force with respect to access to complete file or data relating to persons not assigned to requesting organization using a remote terminal. Remote terminals are secured, are available to authorized persons only, and certain password and other identifying information available to authorized users only is required.

Retention and disposal:

Primary System - Those forms, notices, reports and memoranda considered to be of permanent value or required by law or regulation to be preserved are retained for the period of employment or assignment and then forwarded to the gaining organization or retained indefinitely. If the action is separation or retirement, these items are forwarded to the Office of Personnel Management or retired to the Federal Records Center at St. Louis as appropriate. Those items considered to be relevant for a temporary period only are retained for that period and either transferred with the employee or assignee or destroyed either when they are no longer relevant or at time of separation or retirement. Computerized portion is purged and updated as appropriate. Personnel summary, training, testing and post activity segments retained permanently. All other portions deleted at end of tenure.

Decentralized System - Files are transferred to gaining organization or destroyed upon separation as appropriate. Computer listings of personnel assigned to an organization are destroyed upon receipt of updated listings.

System manager(s) and address:

Director, NSA.

Notification procedure:

Requests from individuals for notification shall be in writing addressed to the Chief, Office of Policy, National Security Agency/Central Security Service, Ft. George G. Meade, Md. 20755.

Record access procedures:

Requests from individuals for access shall be in writing addressed to the Chief, Office of Policy, National Security Agency/Central Security Service, Ft. George G. Meade, Md. 20755.

Contesting record procedures:

The NSA/CSS rules for contesting contents and appealing initial determinations may be obtained by written request addressed to the Chief, Office of Policy, National Security Agency/Central Security Service, Ft. George G. Meade, Md. 20755.

Record source categories:

Forms used to collect and process individual for employment, access or assignment, forms and memoranda used to request personnel actions, training awards, professionalization, transfers, promotion, organization and supervisor reports and requests, educational institutions, references, Office of Personnel Management and other governmental entities as appropriate, and other sources as appropriate and required.

Systems exempted from certain provisions of the act:

Individual records in this file may be exempt pursuant to 5 U.S.C. section 552a (k) (1), (k) (4), (k) (5), and (k) (6). For additional information see agency rules contained in 32 CFR Part 299a.

GNSA10

System name:

NSA/CSS Personnel Security File

System location:

Primary System - National Security Agency/Central Security Service, Ft. George G. Meade, Md. 20755.

Decentralized Segments - Each staff, line, contract and field element as appropriate.

Categories of individuals covered by the system:

Applicants for employment with NSA/CSS; civilian employees; personnel under contract; military assignees; members of advisory groups; consultants; experts; other military personnel; federal employees; employees of contractors, and employees of services and other individuals who require access to NSA/CSS facilities or information.

Categories of records in the system:

File Folder - Photograph, fingerprint data, statement of personal history, agreements with respect to specific security processing procedures, security processing forms and records, investigative reports, incident and complaint reports, unsolicited information when relevant, reports by domestic law enforcement agencies when relevant, clearance data, access authorization, foreign travel data, security secrecy agreements, separation and retirement data and other information as required and relevant. Computer File - contains data elements representing a summary and index of the file folder data to include personal identifying data, relevant security processing data, clearance and access data, separation and retirement data.

Authority for maintenance of the system:

Public Law 88-290; Public Law 86-36; 18 U.S.C., section 798; 50 U.S.C., section 403 (d)(3); Executive Orders 10450, 10865 and 12065.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Purpose of this file is to insure compliance with cited authorities. Users of this file and its segments are limited to properly authorized staff, line, contract and field element officers, employees or assignees. The file is used to carry out the purpose cited and in determinations with respect to employment, access, assignment and reassignment, assignment to a board of appraisal or management promotion, foreign official and unofficial travel, and other personnel actions where security represents a relevant and valid element of the determination. In addition, files or portions thereof may be made available to the Defense Investigative Service, military investigative services, other appropriate entities, Department of Justice, governmental elements involved in National Agency checks, members and staff of the Defense Investigative Review Council as appropriate with their inspection authorities, Department of Defense General Counsel and Director of Central Intelligence and his General Counsel in the event of litigation or anticipated litigation with respect to unauthorized disclosures of classified intelligence or intelligence sources and methods and related court actions, other government agencies and private contractors requiring clearance status information and authorized to receive same, judicial branch elements pursuant to specific court orders or with respect to litigation, elements of the Department of Defense involved in administration of the Industrial Security Program, the Office of Personnel Management as required, and public law enforcement authorities when a specific breach of criminal statutes is involved. In addition, other government agencies or private contractors may be informed of information developed by NSA which bears on an assignee's or affiliate's status at the NSA with respect to security considerations.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage: Magnetic tape, disk or other computer storage media, computer paper printouts, paper in file folders, microfilm.

Retrievability:

By name or unique number assigned individual.

Safeguards:

For paper, computer printouts and microfilm - Secure limited access facilities, within those facilities secure limited access rooms and within those rooms lockable containers. Access to information is limited to authorized individuals. For machine records stored on magnetic tape, disk or other computer storage media within the computer processing area-additional secure limited access facilities, specific processing requests accepted from authorized persons only, specific authority to access stored records and delivery granted to authorized persons only. Remote terminals are secured, are available to authorized persons only, and certain password and other identifying information available to authorized users only is required. Terminals are not available outside of specific security offices at headquarters area locations.

Retention and disposal:

Files on individuals assigned, employed, or granted access to NSA/CSS information or facilities - retained for a minimum of 30 years after last security action reflected in the file, then destroyed. Files initiated on individuals requesting employment, assignment or access but never completed due to non-employment, non-assignment or withdrawal or denial of grant of access are destroyed within one year. Computer records are purged and updated consistent with these retention policies.

System manager(s) and address:

Director, NSA.

Notification procedure:

Requests from individuals for notification shall be in writing addressed to the Chief, Office of Policy, National Security Agency/Central Security Service, Ft. George G. Meade, Md. 20755.

Record access procedures:

Requests from individuals for access shall be in writing addressed to the Chief, Office of Policy, National Security Agency/Central Security Service, Ft. George G. Meade, Md. 20755.

Contesting record procedures:

The NSA/CSS rules for contesting contents and appealing initial determinations may be obtained by written request addressed to the Chief, Office of Policy, National Security Agency/Central Security Service, Ft. George G. Meade, Md. 20755.

Record source categories:

Data provided by individual during employment and security processing; data provided by investigative service processing individual's background; data provided by references, educational institutions and other sources named by individual or developed during background investigation; unsolicited data from any source where relevant; data provided by the Office of Personnel Management and other agencies, departments, and governmental elements involved in the conduct of National Agency checks; the Federal Bureau of Investigation; data developed by appropriate governmental elements in the course of a national security investigation or investigation into alleged violations of criminal statutes related to unauthorized disclosures of intelligence or protection of intelligence sources and methods; documents furnished by agency element sponsoring individual for access to specific classified information.

Systems exempted from certain provisions of the act:

Individual records in this file may be exempt pursuant to 5 U.S.C., section 552a (k) (1), (k) (2) and (k) (5). For additional information see agency rules contained in 32 CFR 299a.

GNSA11

System name:

NSA/CSS Time, Attendance and Absence

System location:

Primary System - National Security Agency/Central Security Service, Ft. George G. Meade, Md. 20755.

Decentralized Segments - Each staff, line, contract, and field element as authorized and appropriate.

Categories of individuals covered by the system:

NSA/CSS civilian employees, personnel under contract and military assignees.

Categories of records in the system:

File contains request forms, time cards, authorization forms, notifications, locator cards and other correspondence or revisions thereof related to actions concerning time, attendance, absence, annual leave,

sick leave, leave without pay, advance leave, administrative leave, exemplary use of leave, unauthorized leave and absences and other related matters.

Authority for maintenance of the system:

Public Law 86-36; Public Law 88-290, section 113 of the Budget and Accounting Procedures Act of 1950, as amended; 31 U.S.C., section 66a.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

The purpose of these files is to provide a means of accounting for all time, attendances and absences of NSA/CSS civilian employees, contract employees and military assignees. The users of these files are those staff, line, contract and field officers, employees, and assignees authorized to account for or investigate employee time, attendance and absence. The files may be used to make performance, payroll, personnel and security determinations. Where required, specific information from these files may be made available to appropriate investigatory authorities engaged in national security or criminal investigations, hearing examiners and other authorized individuals with respect to grievances or adverse actions, and to those agencies identified in the NSA/CSS System of Records named 'Payroll and Claims' as necessary to document payroll actions.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Paper records in file folders, file cards, machine-readable cards, computer printouts, computer magnetic tapes, disks and other computer storage media, and microfilm.

Retrievability:

May be retrieved by name and in some cases social security number.

Safeguards:

For paper, cards, printouts and microfilm - Secure limited-access facilities, within those facilities secure limited access rooms and within those rooms lockable containers as appropriate. Access by authorized individuals only. Current time cards are not secured with respect to individual employees within immediate working element. For machine-readable cards, computer magnetic tapes and disks and other computer storage media within the computer processing area additional secure limited-access facilities, specific processing requests from authorized persons only, specific authority to access stored cards, tapes or disk files.

Retention and disposal:

Primary System - Records are reviewed annually and retired or destroyed as appropriate. Permanent records are retired to the St. Louis Federal Records Center after completion of audit. Computer records are purged and updated consistent with these retention policies.

Decentralized Segments - Records are temporary, are retained for the period the individual is assigned to an element, or disposed of as appropriate. Time cards and other appropriate forms for pay and leave purposes are forwarded each pay period to the payroll office.

System manager(s) and address:

Director, NSA.

Notification procedure:

Requests from individuals for notification shall be in writing addressed to the Chief, Office of Policy, National Security Agency/Central Security Service, Ft. George G. Meade, Md. 20755.

Record access procedures:

Requests from individuals for access shall be in writing addressed to the Chief, Office of Policy, National Security Agency/Central Security Service, Ft. George G. Meade,Md. 20755.

Contesting record procedures:

The NSA/CSS rules for contesting contents and appealing initial determinations may be obtained by written request addressed to the Chief, Office of Policy, National Security Agency/Central Security Service, Ft. George G. Meade, Md. 20755.

Record source categories:

Time cards, request forms and related correspondence from individual employees and assignees, authorizations and notifications from authorizing officers, correspondence from supervisory personnel and investigating officers with respect to abuses of leave and attendance or unauthorized leave and absences, other records or reports related to either exemplary use of leave or abusive use of leave, and other sources as appropriate and required.

Systems exempted from certain provisions of the act:

Individual records in this file may be exempt pursuant to 5 U.S.C., section 552a (k) (1). For additional information see agency rules contained in 32 CFR Part 299a.

GNSA12

System name:

NSA/CSS Training

System location:

Primary System-National Security Agency/Central Security Service, Ft. George G. Meade, Md. 20755.

Decentralized Segments-Each staff, line, contract and field element as authorized and appropriate.

Categories of individuals covered by the system:

NSA/CSS employees, personnel under contract, military assignees and other government employees, designees and military personnel as required and appropriate who attend courses or receive training by or under NSA/CSS sponsorship.

Categories of records in the system:

File contains forms, correspondence, memoranda, student and instructor surveys, requests and other information related to testing and training; tests and test results; test grades, course grades and other student and instructor evaluations; course and class rosters, rosters of individuals by specialty; attendance and time utilization reports for students and instructors; biographical sketches where required and appropriate; course and training histories; other course research and evaluation data; student disciplinary actions and complaints; waiver requests and responses; selected personal data including education level and scholastic achievements; course and training cost data where appropriate; reimbursement and service agreements where appropriate; and other records related to civilian and military training as required and appropriate.

Authority for maintenance of the system:

5 U.S.C., Chapter 41, Executive Order 11348, Office of Personnel Management implementing directives as contained in the Federal Personnel Manual, Public Law 86-36.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

The purpose of this file is to provide documentation concerning military cryptolinguist resources and individual training, develop training requirements, refine training methods and techniques, provide individual career and training counseling. The users of this file are those staff, line, contract and field officers, employees and assignees as authorized and appropriate. In addition, portions of these files are incorporated in the Personnel File, are made available to management and supervisory personnel and to other governmental entities as required and appropriate. The file is used to carry out the purposes cited above, perform certain statistical analyses related to training and reports concerning training, and may be used to assist in the evaluation of an individual's performance, readiness for promotion, potential for career development, assignments requiring special qualifications, and other actions as appropriate.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Paper records in file folders, card files, binders, computer punch cards, computer listings, computer magnetic tapes, disks and other computer storage media, microfilm.

Retrievability:

By name or social security number.

Safeguards:

For paper, computer printouts and microfilm - Secure limited access facilities, within those facilities secure limited access rooms and within those rooms lockable containers as appropriate. Access to information is limited to authorized individuals only. For machine records stored on magnetic tape, disk or other computer storage media within the computer processing area-additional secure limited access facilities, specific processing requests accepted from authorized persons only, specific authority to access stored records and delivery granted to authorized persons only. Where data elements are derived from the Personnel System, remote terminal inhibitions are in force with respect to access to complete file or data relating to persons not assigned to requesting organization using a remote terminal. Remote terminals are secured, available to authorized persons only, and certain password and other identifying information available to authorized users only is required. Terminals are not available outside of headquarters area locations.

Retention and disposal:

Primary System - Records are reviewed annually and retained or destroyed as appropriate. Copies of items of significance with respect to the individual are included in the Personnel File and retention is in accordance with the retention policies for that system. Items used as the basis of statistical studies or other research efforts may be retained indefinitely. Computer listings and records are purged and updated as required and appropriate. Decentralized System - Records are reviewed annually and retained or destroyed as appropriate. Individual's file may be transferred to gaining organization if appropriate. Computer listings and records are purged and updated as required and appropriate.

System manager(s) and address:

Director, NSA.

Notification procedure:

Requests from individuals for notification shall be in writing addressed to the Chief, Office of Policy, National Security Agency/Central Security Service, Ft. George G. Meade, Md. 20755.

Record access procedures:

Requests from individuals for access shall be in writing addressed to the Chief, Office of Policy, National Security Agency/Central Security Service, Ft. George G. Meade, Md. 20755.

Contesting record procedures:

The NSA/CSS rules for contesting contents and appealing initial determinations may be obtained by written request addressed to the Chief, Office of Policy, National Security Agency/Central Security Service, Ft. George G. Meade, Md. 20755.

Record source categories:

Individual, supervisors, training counselors, instructors and other training personnel; other governmental entities nominating individuals for training; other training and educational institutions; Personnel File, and other sources as required and appropriate.

Systems exempted from certain provisions of the act:

Individual records in this file may be exempt pursuant to 5 U.S.C., section 552a (k) (1), (k) (5) and (k) (6). For additional information see agency rules contained in 32 CFR 299a.

GNSA13

System name:

NSA/CSS Archival Records

System location:

Primary System-National Security Agency/Central Security Service, FT. George G. Meade, Md. 20755.

Decentralized Segments-Each staff, line, contract and field element as authorized and appropriate.

Categories of individuals covered by the system:

Individuals who have contributed to the cryptographic archives and individuals who are significant to the history of signals intelligence.

Categories of records in the system:

Records include organizational files, correspondence, tape recorded interviews, forms, documents, reports, films, magnetic tapes, microfiche and other related items of cryptologic archival interest, most of which are 20 or more years old and have been adjudged to be permanent U.S. Government records not yet declassified.

Authority for maintenance of the system:

Public Law 90-260, Public Law 81-754, Public Law 86-36, 5 U.S.C. section 552, Executive Order 12065 and Executive Order 12036.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

To enable the historian to locate source materials; to permit systematic review of classified records; to facilitate access to retired records; and to provide a source from which response to public queries for NSA/CSS records can be more expeditiously handled and, if possible, declassified.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Hard copy, microforms, magnetic tape, magnetic disk and pictures.

Retrievability:

Generally by subject matter as to that material furnished by an individual or about an individual significant to the history of cryptography, by name, or other unique identifier significant to the subject matter and the individual.

Safeguards:

Secure limited access facilities and within those facilities containers appropriate to the level of classification of particular records.

Retention and disposal:

Records are permanent, are reviewed periodically for declassification, and copies of records declassified are transferred to the National Archives and Records Service of the General Services Administration.

System manager(s) and address:

Director, NSA.

Notification procedure:

Requests from individuals for notification shall be in writing addressed to the Chief, Office of Policy, National Security Agency/Central Security Service, Ft. George G. Meade, Md. 20755.

Record access procedures:

Requests from individuals for access shall be in writing addressed to the Chief, Office of Policy, National Security Agency/Central Security Service, Ft. George G. Meade, Md. 20755.

Contesting record procedures:

The NSA/CSS rules for contesting contents and appealing initial determinations may be obtained by written request addressed to the Chief, Office of Policy, National Security Agency/Central Security Service, Ft. George G. Meade, Md. 20755.

Record source categories: Individual contributors and operational administrative files; other sources as appropriate.

Systems exempted from certain provisions of the act:

Parts of this system may be exempt under 5 U.S.C., section 552a (k) (1) and (k) (4). For additional information, see agency rules contained in 32 CFR Part 299a.

DEFENSE NUCLEAR AGENCY

REQUESTING RECORDS

Records are retrieved by name or by some other personal identifier. It is therefore especially important for expeditious service when requesting a record that particular attention be provided to the Notification and/or Access Procedures of the particular record system involved so as to furnish the required personal identifiers, or any other pertinent personal information as may be required, to locate and retrieve the record.

BLANKET ROUTINE USES

Certain blanket 'routine uses' of the records have been established, that are applicable to every record system maintained within the Department of Defense, unless specifically stated otherwise within a particular record system. These additional blanket routine uses of the records are published below, only once in the interest of simplicity, economy and to avoid redundancy, before the individual record system notices begin rather than repeating them in every individual record system.

ROUTINE USE - LAW ENFORCEMENT

In the event that a system of records maintained by this component to carry out its functions indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute, or by regulation, rule or order issued pursuant thereto, the relevant records in the system of records may be referred, as a routine use, to the appropriate agency, whether federal, state, local or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, rule, regulation or order issued pursuant thereto.

ROUTINE USE - DISCLOSURE WHEN REQUESTING INFORMATION

A record from a system of records maintained by this component may be disclosed as a routine use to a federal, state or local agency maintaining civil, criminal or other relevant enforcement information or other pertinent information, such as current licenses, if necessary to obtain information relevant to a component decision concerning the hiring or retention of an employee, the issuance of a security clearance, the letting of a contract, or the issuance of a license, grant or other benefit.

ROUTINE USE - DISCLOSURE OF REQUESTED INFORMATION

A record from a system of records maintained by this component may be disclosed to a federal agency, in response to its request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

ROUTINE USE - CONGRESSIONAL INQUIRIES

Disclosure from a system of records maintained by this component may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

ROUTINE USE WITHIN THE DEPARTMENT OF DEFENSE

A record from a system of records maintained by this component may be disclosed as a routine use to other components of the Department of Defense if necessary and relevant for the performance of a lawful function such as, but not limited to, personnel actions, personnel security actions and criminal investigations of the Component requesting the record.

ROUTINE USE - PRIVATE RELIEF LEGISLATION

Relevant information contained in all systems of records of the Department of Defense published on or before August 22, 1975, will be disclosed to the Office of Management and Budget in connection with the review of private relief legislation as set forth in OMB Circular A-19 at any stage of the legislative coordination and clearance process as set forth in that Circular.

ROUTINE USE - DISCLOSURES REQUIRED BY INTERNATIONAL AGREEMENTS

A record from a system of records maintained by this Component may be disclosed to foreign law enforcement, security, investigatory, or administrative authorities in order to comply with requirements imposed by, or to claim rights conferred in international agreements and arrangements including those regulating the stationing and status in foreign countries of Department of Defense military and civilian personnel.

ROUTINE USE - DISCLOSURE TO STATE AND LOCAL TAXING AUTHORITIES

Any information normally contained in IRS Form W-2 which is maintained in a record from a system of records maintained by this Component may be disclosed to State and local taxing authorities with which the Secretary of the Treasury has entered into agreements pursuant to Title 5, U.S.Code, Sections 5516, 5517, 5520, and only to those State and local taxing authorities for which an employee or military member is or was subject to tax regardless of whether tax is or was withheld. This routine use is in accordance with Treasury Fiscal Requirements Manual Bulletin Nr. 76-07.

ROUTINE USE - DISCLOSURE TO THE OFFICE OF PERSONNEL MANAGEMENT

A record from a system of records subject to the Privacy Act and maintained by this component may be disclosed to the Office of Personnel Management concerning information on pay and leave, benefits, retirement deductions, and any other information necessary for the Office of Personnel Management to carry out its legally authorized Government-wide personnel management functions and studies.

ROUTINE USE - DISCLOSURE OF INFORMATION TO NARS (GSA)

A record from a system of records maintained by this component may be disclosed as a routine use to the National Archives and Records Service of the General Services Administration in records management inspections conducted under authority of 44 U.S.C. 2904 and 2906.

ROUTINE USE - DISCLOSURE TO DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

All systems of records relating to compensation, employment or retirement, or extracts therefrom, maintained by this Component may be disclosed as a routine use to the Department of Health, Education, and Welfare for the purpose of comparing such record with records of programs administered by and in the possession of the Department of Health, Education, and Welfare in order to verify information where such verification is required by law or regulation or to identify violations or potential violations of law, whether criminal, civil, or regulatory, and whether arising by general statute or particular program statute, or by regulation, rule, or order issued pursuant thereto.

HDNA 002

System name:

DNA002 Employee Relations

System location:

Civilian Personnel Office, Defense Nuclear Agency, Washington, D. C., 20305, Routing Symbol: PACV. Also at the following subordinate commands: Civilian Personnel Office, Bldg 2023A, Kirtland AFB, New Mexico, 87115; and Civilian Personnel Office, Armed Forces Radiobiology Research Institute, Bethesda, Maryland, 20014, Bldg 42, located on the grounds of the National Naval Medical Center.

Categories of individuals covered by the system:

Civilian employees paid from appropriated funds serving under career, career-conditional, temporary and excepted service appointments on whom discipline, grievances, and complaints records exist.

Discrimination complaints of civilian employees, paid from appropriated and non-appropriated funds, applicants for employment and former employees in appropriated and non-appropriated positions. Management Operation Record system consisting of manual file maintained by immediate supervisors and high level managers concerning employee performance, capability, informal discipline, attendance, leave and tardiness, work assignments, and similar work related employee records.

Categories of records in the system:

Manual files, maintained in paper folders, contain copies of documents and information pertaining to discipline, grievances, complaints, and appeals.

Authority for maintenance of the system:

Executive Order 9830, Amending the Civil Service Rules and Providing for Federal Personnel Administration; 4 USC 1302, 3301, 3302; Executive Order 10577, Amending the Civil Service Rules and Authorizing a New Appointment System for the Competitive System. PL 92-261, The Equal Employment Opportunity Act of 1972; PL 93-259, Extension of Age Discrimination in Employment Act of 1967; 5 USC 7512; Executive Order 11491, Labor-Management Relations in the Federal Service.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Officials of the Defense Nuclear Agency in the performance of their official duties related to the management of civilian employees in the processing, administration, and adjudication of discipline, grievances, complaints, appeals, litigation, and program evaluation.

Representatives of the United States Civil Service Commission on matters relating to the inspection, survey, audit or evaluation of civilian personnel management programs or personnel actions, or such other matters under the jurisdiction of the Commission. Appeals officers and complaints examiners of the Federal Employee Appeals Authority for the purpose of conducting hearings in connection with employees' appeals from adverse actions and formal discrimination complaints. The Comptroller General or any of his authorized representatives, in the course of the performance of duties of the General Accounting Office relating to the civilian manpower management programs. The Attorney General of the United States or his authorized representatives in connection with litigation, law enforcement or other matters under the direct jurisdiction of the Department of Justice or carried out as the legal representative of the Executive Branch agencies. The Senate or the House of Representatives of the United States or any member, committee or subcommittee of joint committees on matters within their jurisdiction relating to the above programs.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Records are stored in paper folders.

Retrievability:

Filed alphabetically by last name of individual.

Safeguards:

Buildings employ security guards. Records are maintained in locked security containers accessible only to personnel who are properly screened, cleared and trained.

Retention and disposal:

Records are destroyed upon separation of the employee from the agency or in accordance with appropriate record disposal schedule.

System manager(s) and address:

Civilian Personnel Officer, Defense Nuclear Agency, Washington, D. C., 20305, for Headquarters, Defense Nuclear Agency; Chief, Civilian Personnel, Armed Forces Radiobiology Research Institute, Bethesda, Maryland, 20014, for Armed Forces Radiobiology Research Institute; Civilian Personnel Officer, Kirtland AFB, New Mexico, 87115, for Field Command, Defense Nuclear Agency.

Notification procedure:

Information may be obtained from: Civilian Personnel Officer, Defense Nuclear Agency, Washington, D. C., 20305, Telephone: Area Code 202-325-7592 for Headquarters, Defense Nuclear Agency; Chief, Civilian Personnel, Armed Forces Radiobiology Research Institute, Bethesda, Maryland, 20014, Telephone: Area Code 301-295-1047, for Armed Forces Radiobiology Research Institute; or Civilian Personnel Officer, Bldg 2023A, Kirtland AFB, New Mexico, 87115, Telephone: Area Code 505-264-9253, for Field Command, Defense Nuclear Agency. The letter should contain the full name and signature of the requester and the approximate period of time, by date, during which the case record was developed.

Record access procedures:

Requests from individuals should be addressed to same address as stated in the notification section above.

Contesting record procedures:

The agency's rules for access to records and for contesting contents and appealing initial determinations by the individual concerned may be obtained from the SYSMANAGER.

Record source categories:

Supervisors or other appointed officials designated for this purpose.

Systems exempted from certain provisions of the act:

None

HDNA 003

System name:

Labor Management Relations Records Systems

System location:

Civilian Personnel Office, Defense Nuclear Agency, Washington, D. C., 20305, Routing Symbol: PACV. Also at the following subordinate commands: Civilian Personnel Office, Bldg 2023A, Kirtland AFB, New Mexico, 87115; and Civilian Personnel Office, Armed Forces Radiobiology Research Institute, Bethesda, Maryland, 20014, Bldg 42, located on the grounds of the National Naval Medical Center.

Categories of individuals covered by the system:

Civilian employees paid from appropriated and non-appropriated funds, who are involved in a grievance which has been referred to an arbitrator for resolution; union officials, union stewards; and representatives.

Categories of records in the system:

Manual files, maintained in paper folders, filed by type of case and case number (not individual). Folder contains all information pertaining to a specific arbitration case of specific Unfair Labor Practice with whom Defense Nuclear Agency has dealings; subordinate elements maintain manual roster of local union officials and union stewards.

Authority for maintenance of the system:

Executive Order 11491, as amended, 'Labor-Management Relations in the Federal Service.'

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Officials and employees of the Defense Nuclear Agency in the performance of their official duties related to the Labor-Management Relations Program, e.g., administration/implementation of arbitration awards, interpretation of the Executive Order through 3rd party case decisions; national consultation and other dealings with the recognized unions; Representatives of the U. S. Civil Service Commission on matters relating to the inspection, survey, audit, or evaluation of Civilian Personnel Management Programs; the Comptroller General or any of his authorized representatives, in the course of the performance of duties of the General Accounting Office relating to the Labor Management Relations Program; Officials and employees of other components of the Department of Defense in the performance of their official duties related to the administration of the Labor-Management Relations Program; a duly appointed hearing examiner or arbitrator for the purpose of conducting a hearing in connection with an employee's grievance.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Manual records are stored in paper folders.

Retrievability:

Manual records are retrieved by case subject, case number, and/or individual employee names.

Safeguards:

All manual files are accessible only to authorized personnel having a need to know.

Retention and disposal:

Case files are permanently maintained. Union official rosters are normally destroyed after a new roster has been established.

System manager(s) and address:

Civilian Personnel Officer, Defense Nuclear Agency, Washington, D. C., 20305, for Headquarters, Defense Nuclear Agency; Chief, Civilian Personnel, Armed Forces Radiobiology Research Institute, Bethesda, Maryland, 20014, for Armed Forces Radiobiology Research Institute; Civilian Personnel Officer, Kirtland AFB, New Mexico, 87115, for Field Command, Defense Nuclear Agency.

Notification procedure:

Information may be obtained from: Civilian Personnel Officer, Defense Nuclear Agency, Washington, D. C., 20305, Telephone: Area Code 202-325-7592 for Headquarters, Defense Nuclear Agency; Chief, Civilian Personnel, Armed Forces Radiobiology Research Institute, Bethesda, Maryland, 20014, Telephone: Area Code 301-295-1047, for Armed Forces Radiobiology Research Institute; or Civilian Personnel Officer, Bldg 2023A, Kirtland AFB, New Mexico, 87115, Telephone: Area Code 505-264-9253, for Field Command, Defense Nuclear Agency. The letter should contain the full name and signature of the requester and the approximate period of time, by date, during which the case record was developed.

Record access procedures:

Requests from individuals should be addressed to same address as stated in the notification section above.

Contesting record procedures:

The agency's rules for access to records and for contesting contents and appealing initial determinations by the individual concerned may be obtained from the SYSMANAGER.

Record source categories:

Civilian personnel offices; arbitrator's office; union headquarters offices.

Systems exempted from certain provisions of the act:

None

HDNA 412-14

System name:

412-14 Biography Files

System location:

Public Affairs Office, Defense Nuclear Agency, Washington, D. C., 20305, Routing Symbol: PAO.

Categories of individuals covered by the system:

Senior military officers of the Army, Air Force, Navy and Marines who hold positions within the chain of command or heads of major headquarters within the services that may on occasion interface with Defense Nuclear Agency and/or its components. Civilians who are senior officials within the Department of Defense/Government agencies within the chain of command or department heads that may on occasion interface with Defense Nuclear Agency and/or its components.

Categories of records in the system:

Brief biographical data (sometimes including photographs), obtained on a voluntary basis with data approved by the individual.

Authority for maintenance of the system:

5 USC 301, 302 Public Law 89-554, 6 September 1966.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

To maintain current biographies on key Defense Nuclear Agency personnel for use in routine requests and news releases. To maintain current biographies on key DoD personnel, civilian contractors, or

civilians with which the agency or its personnel come in contact in the completion of their mission. Releasable to media, individuals, businesses and any other public or private requester.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Paper records in file folders.

Retrievability:

Filed alphabetically by last name.

Safeguards:

All files are in GSA 4-drawer safes with combination locks. Building is under 24-hour GSA guard system. Records are maintained in office only accessible to authorized personnel that are properly screened, cleared and trained.

Retention and disposal:

Files are retained in active file until retirement, transfer, separation, or death of the individual concerned or on discontinuance of office at which time they are destroyed.

System manager(s) and address:

Public Affairs Officer, Defense Nuclear Agency, Washington, D. C., 20305.

Notification procedure:

Information may be obtained from Public Affairs Office, Defense Nuclear Agency, Washington, D. C., 20305, telephone 202-325-7091.

Record access procedures:

Records are open to the public upon demand. Written requests should be addressed to Defense Nuclear Agency, ATTN: Public Affairs Office, Washington, D. C., 20305. Written requests for information should contain the full name of the individual. Visits can be arranged by the Public Affairs Office.

Contesting record procedures:

The agency's rules for access to records and for contesting contents and appealing initial determinations by the individual concerned may be obtained from the SYSMANAGER.

Record source categories:

Biographical data voluntarily submitted by individual personally.

Systems exempted from certain provisions of the act:

NONE

HDNA001

System name:

Employee Assistance Program Case Record Systems

System location:

Biomedical Effects Office, Occupational Health Unit, Defense Nuclear Agency, Washington, D.3 00000 20305. Also at the following subordinate commands: Civilian Personnel Office, Bldg. 2023A, Kirtland AFB, New Mexico 87115, and Civilian Personnel Office, Armed Forces Radiobiology Research Institute, Bethesda, Maryland 20014, Bldg. 42, located on the grounds of the Nation1300000 Naval Medical Center.

Categories of individuals covered by the system:

All civilian employees in appropriated and non-appropriated fund activities who are referre4000000 by management for, or voluntarily request, counseling assistance.

Categories of records in the system:

Case records on employees which are maintained by counselors, supervisors, and civilian personnel offices and consist of information on condition, current status, and progress of employees or dependents who have alcohol, drug, emotional, or other job performance problems 000000

Authority for maintenance of the system:

Drug Abuse Office and Treatment Act of 1972, as amended by Public Law 93-282 (21 USC 1175); Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment, and Rehabilitation Act of 1970, as amended by Public Law 93-282 (42 USC 4582); Subchapter A of Chapter I, Title 42, Code of Federal Regulations; Chapter 43 of Title 5 USC.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Used by the counselor in the execution of the counseling function as it applies to the individual employee. With specific written authority of the employee selected information may be provided to and used by other counselors or medical personnel research personnel, employers, representatives such as legal counsel, and to other agencies or individuals when disclosure is to the employee's benefit, such as for processing retirement applications 000000

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Case records are stored in paper file folders.

Retrievability:

Filed alphabetically by last name of individual.

Safeguards:

Buildings employ security guards. Records are maintained in locked security containers accessible only to personnel who are properly screened, cleared and trained.

Retention and disposal:

Records are purged of identifying information within five years after termination of counse3957000 or destroyed when they are no longer useful.

System manager(s) and address:

Occupational Health Nurse, Occupational Health Unit, Biomedical Effects Office, Defense Nuclear Agency, Washington, DC 20305, for Headquarters Defense Nuclear Agency: Chief, Civilian Personnel, Armed Forces Radiobiology Research Institute, Bethesda, Maryland, 20014, for Armed Forces Radiobiology Research Institute; Civilian Personnel Officer, Kirtland AFB, New Mexico 87115, for Field Command, Defense Nuclear Agency.

Notification procedure:

Information may be obtained from: Occupational Health Nurse, Occupational Health Unit, Biomedical Effects Office, Defense Nuclear Agency, Washington, DC 20305, Telephone: Area Code 202 325-7073 for Headquarters, Defense Nuclear Agency; Chief, Civilian Personnel, Armed Forces Radiobiology Research Institute, Bethesda, Maryland 20014, Telephone: Area Code 301 295-1047, for Armed Forces Radiobiology Research Institute; or Civilian Personnel Officer, Bldg. 2023A, Kirtland AFB, New Mexico 87115, Telephone: Area Code 505 264-9253, for Field Command, Defense Nuclear Agency. The letter should contain the full name and signature of t8500000 requester and the approximate period of time, by date, during which the case record was developed.

Record access procedures:

Requests from individuals should be addressed to same address as stated in the notification section above.

Contesting record procedures:

The agency's rules for access to records and for contesting contents and appealing initial determinations by the individual concerned may be obtained from the SYSMANAGER.

Record source categories:

Counselors, other officials, individuals or practitioners, and other agencies both in and outside of Government.

Systems exempted from certain provisions of the act:

None

HDNA005

System name:

MANPOWER/PERSONNEL MANAGEMENT SYSTEM

System location:

Personnel Administraton Directorate
Defense Nuclear Agency
Washington DC 20305
Routing Symbol: OAPA
Also at the following subordinate commands:
Civilian Personnel Office
Bldg 2023A
Kirtland AFB, NM 87115
Civilian Personnel Office
Armed Forces Radiobiology Research Institute
Bethesda Maryland 20014
Bldg 42 located on the grounds of the National Naval Medical Center
Also supervisor maintained files at all three locations

Categories of individuals covered by the system:

Any individual, military or civilian, employed by DNA.

Categories of records in the system:

File contains following information on all personnel assigned to DNA: Social Security Number; Agency; Employee Name; Birth Date; Veteran's Preference; Tenure Group; Service Computation Date; Federal Employees Group Life Insurance; Retirement Code; Nature of Action Code; Effective Date of Action; Position Number;

Pay Plan; Occupation Code; Functional Classification Code; Grade; Step; Pay Basis; Salary; Supervisory Position; Location Code/Duty Station; Position Occupied; Work Schedule; Pay Rate Determinant; Special Program Identification Code; Sex; Citizen Status; Date Entered Present Grade; Date Entered Present Step; Separation Date; Reason for Separation (Quit Code); Cost Center; Academic Discipline; Career Conditional Appointment Date (Conversion to Career); Education Level; Degree Date; Purpose of Training; Type of Training; Source of Training; Special Interest; Direct Cost; Indirect Cost; Date of Completion; On-Duty Hours; Off Duty Hours; JTD Paragraph Number; JTD Line Number; Competitive Level; Military Service Retirement Date; Uniformed Service; Service Commissioned (military); Service Pay Grade (rank); Agency Sub element Code; Submitting Office Number; Retired Military Code; Bureau; Unit Identification Code; Program Element Code; Civil Function Code; Guard/Reserve Technician; Appropriation Code; Active/ Inactive Strength Designation; Work Center Code; Projected Vacancy Date; Targeted Grade; Position Title; Date of Last Equivalent Increase; Fair Labor Standards Act Designator; Health Benefits Enrollment Code; Type and Date of Incentive Award; Personal Title of Employee; Civil Service or other Legal Authority; Employing Office Name; Date Probationary Period Begins; Performance Rating; Due Date for Future Action; Position Tenure; Leave Category; Average Grade by Command Element; Personnel Authorized; Projected Personnel Requirements; Special Experience Identifiers; Rotational Position Identification; Additional Duties; Office Titles; Manpower Track; Facility; Arm of Service; Branch of Service; Date of Rank; Primary/Alternate Specialty; Control Specialty; Last OER/EER; Basic Pay Entry Date; Basic Active Service Date; Date of Arrival; Projected Date of Departure; Security; Marital Status; Spouse's Name; Dependents; Address (Nr and Street, City, State, Zip Code); Phones (Home and Duty); Handicap Code; Minority Group Designator.

Authority for maintenance of the system:

5U.S.C. 301, 302, 4103, Pub. L. 89-554, September 6, 1966.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

INTERNAL

Assigned personnel in the agency will compile and consolidate reports relating to manpower authorizations/assigned strengths and monitor personnel actions and programs as required by management officials within the agency. Users include Headquarters, Field Command and AFRRI personnel.

Officials and employees of the Defense Nuclear Agency in the performance of their official duties related to the management of civilian and military employee programs, including the design, development, maintenance and operation of the manual and automated system of record keeping and reporting; screening and selection of candidates for centrally administered training programs or promotions; administration of grievances, appeals, complaints, or litigation involv ing equal opportunity or disclosure of records. Preparation and publication of personnel rosters to facilitate communications/ contact for official, social or emergency purposes.

Officials and employees of other Department of Defense Components upon request in the perfor mance of their official duties related to the screening and selection of candidates for programs sponsored by their organization.

A duly appointed Hearing Examiner or Arbitrator for the purpose of conducting a hearing in connection with an employee's grievance involving disclosure of records or equal opportunity matters. An arbitrator who is given a contract pursuant to a negotiated labor agreement to hear an employee's grievance involving the disclosure of records of the DNA training or employee development records system.

EXTERNAL

Representatives of the Office of Personnel Management/Merit Systems Protection Board on matters relating to the inspection, survey, audit or evaluation of the civilian programs or such other matters under the jurisdiction of the OPM.

The Comptroller General or any of his authorized representatives in the course of performance of duties of the General Accounting Office relating to civilian programs.

The Attorney General of the United States or his authorized representatives in connection with litigation, law enforcement, or other matters under the direct jurisdiction of the Department of Justice or carried out as the legal representative of the Executive Branch agencies.

Officials and employees of other agencies of the Executive Branch of government upon request in the performance of their official duties related to the screening and selection of candidates for programs sponsored by their organization.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Automated records are stored on magnetic tapes, discs, computer printouts, and on punched cards. Manual records are stored in paper file folders, card file boxes, and paper rosters.

Retrievability:

Automated records are retrieved by social security number. Manual Records are retrieved by employee's last name. Handicap Code and Minority Group Designators are available for access only by the Director and the EEO Officer.

Safeguards: The computer facility and terminal are located in restricted areas accessible only to authorized personnel that are properly screened, cleared, and trained. Manual records and computer printouts are available only to authorized personnel having a need to know. Building employs security guards and is protected by intrusion alarm system.

Retention and disposal:

Computer magnetic tapes are permanent. Manual records are maintained on a fiscal year basis and are retained for varying periods from 1 to 5 fiscal years after which they are destroyed in accordance with appropriate record disposal schedules.

System manager(s) and address:

Director, Personnel/Administration Directorate - Headquarters, Defense Nuclear Agency Washington, DC 20305 - Telephone: 202-325-7047.

Notification procedure:

Information may be obtained from System Manager. The letter should contain the full name and signature of the requester and the approximate period of time, by date, during which the case record was developed.

Record access procedures:

Requests should be addressed to System Manager. Written requests for information should contain the full name of individual. For personal visits, the individual should provide military or civilian identification card.

Contesting record procedures:

The agency's rules for contesting contents and appealing initial determinations are contained in DNA Instruction 5400.11 (32 CFR Part 291a). Additional information may be obtained from the System Manager.

Record source categories:

Information extracted from military and civilian personnel records, Joint Manpower Program docu ment, security division, and voluntarily submitted by individual.

Systems exempted from certain provisions of the act:

None.

HDNA006

System name:

DNA Employees Occupational Health Program Records System

System location:

Biomedical Effects Office, Occupational Health Unit, Defense Nuclear Agency, Washington, DC 20305, Routing Symbol BA/HU.

Categories of individuals covered by the system:

Any individual, military or civilian employed by DNA and OSA employees assigned to the buil4957 00

Categories of records in the system:

File contains a variety of records relating to an employee's participation in the DNA Occup1000000 tional Health Program. Information which may be included in this system are the employees a145 000 SSN, date of birth, weight, height, blood pressure, medical history, blood type, nature of injury or complaint, type of treatment/ medication received, immunizations, examination findi5720000 and laboratory findings, exposure to occupational hazards.

Authority for maintenance of the system:

5 U.S.C. 7901 et seq., Pub.L. 79-658.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

INTERNAL USERS, USES, AND PURPOSES

Authorized medical personnel in connection with the performance of their official duties.

EXTERNAL USERS, USES, AND PURPOSES

The Office of Personnel Management Merit Systems Protection Board (including its Office of 3850000 Special Counsel), Equal Em-

ployment Opportunity Commission, and the Federal Labor Relations Authority (including the General Counsel of the Authority and the Federal Service Impasses Panel) in carrying out their functions.

The Department of Labor in connection with a claim filed by an employee for compensation fo9000000 a job-related injury or disease.

Disclosure may be made to a private medical physician from the record of an individual in response to an inquiry from the office of the physician made at the request of that individua13 0000

Disclosure may be made to a congressional office from the record of an individual in respon2500000 to an inquiry from the congressional office made at the request of that individual.

In the event of litigation where one of the parties is (a) the Agency, any component of the Agency, or any employee of the Agency in his or her official capacity; (b) the United States where the Agency determines that the claim, if successful is likely to directly affect the operations of the Agency or any of its components; or (c) any Agency employee in his or her individual capacity where the Justice Department has agreed to represent such employee, the Agency may disclose such records as it deems desirable or necessary to the Department of Justice to enable that Department to effectively represent such party provided such disclosu9500000 is compatible with the purpose for which the records were collected.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Records are stored in paper file folders and card file boxes.

Retrievability:

Records are manually retrieved either by last name or the terminal digit filing system.

Safeguards:

During the employment of the individual, medical records are maintained in files located in a secured room with access limited to those whose official duties require access.

Retention and disposal:

Records are retained until the individual leaves the Agency. If they have no long term val45 0000 they are destroyed at this time. If they have continuing value, they may be combined with t8500000 Official Personnel Folder which is forwarded to the Federal Personnel Records Center or to t8500000 new employing agency, as appropriate.

System manager(s) and address:

Occupational Health Nurse, Biomedical Effects Office, Occupational Health Unit, Headquarter2 00000 Defense Nuclear Agency, Washington DC 20305, Telephone: 202-325-7073.

Notification procedure:

Information may be obtained from System Manager. The letter should contain the full name a5400000 signature of the requester and the approximate period of time, by date, during which the exa5000000 record was developed.

Record access procedures:

Requests should be addressed to System Manager. Written request for information should con tain the full name of requester. For personal visits, the individual should provide militar8000000 or civilian identification card.

Contesting record procedures:

The agency's rules for contesting contents and appealing initial determinations are contain5400000 in DNA Instruction 5400.11 (32 CFR Part 291a). Additional information may be obtained from the System Manager.

Record source categories:

Information in this system of records is: (1) supplied directly by the individual, or (2) derived from information supplied by the individual, or (3) supplied by the medical officer or nurse providing treatment or medication, or (4) supplied by the individual's private physician.

Systems exempted from certain provisions of the act:

None.

HDNA007

System name:

Security Operations System

System location:

Intelligence/Security Directorate (OAIS), Headquarters, Defense Nuclear Agency, Washington, D.C. 20305. Also at the following subordinate commands: Security Division (FCSS), Field Command Defense Nuclear Agency, Kirtland AFB, Albuquerque, New Mexico 87115; and Armed Force2000000 Radiobiology Research Institute, Bethesda, Maryland 20014.

Categories of individuals covered by the system:

All military and civilian personnel assigned to, or employed by HQ, Defense Nuclear Agency (DNA), Field Command, Defense Nuclear Agency (FCDNA), and the Armed Forces Radiobiology Rese1938000 Institute (AFRRI). Other U.S. Government personnel, U.S. Government contractors, foreign go5595000 ment representatives, and visitors from foreign countries.

Categories of records in the system:

System contains following information on individuals (not all information is appropriate to0133000 categories of individuals covered by the system):

Name; Social Security Account Number; Date and Place of Birth; Height, Weight; Hair/Eye col69 0000 Citizenship; Grade/Rank; Service; Organization; Security Clearance; Date of Clearance; Basis 000000 Special Accesses; Courier Authorization; Continuous Access Roster Expiration Date; Expiratio5000000 Date; Badge Number; Contracting Officer's Representative; Contracting Officer's Organization 000000 Special Intelligence Access; Expiration Date; Agency; Billet Number; List of Badges/Passes Issued; List of Keys Issued; Conference Title; Conference Dates; Location. Department of De6552500 Form 398, 'Statement of Personal History;' Reports of Investigation; Security Incident Files 000000 Visit Requests; Conference Rosters; Clearance and Special Access Rosters; picture and identi fication cards; correspondence concerning adjudication/passing of clearances.

Authority for maintenance of the system:

Executive Order 10450, 'Security Requirements for Government Employment,' 27 April 1953 as amended by Executive Orders 10491, 10531, 10548, 10550, 11605, and 11785. Executive Order 12065, 'National Security Information,' dated 28 June 1978. Section 21 of the Internal Security Act of 1950 (Pub.L. 831). Section 145 of the Atomic Energy Act of 1954, as amended by Pub.L. 83-703, 42 USC 2165.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

INTERNAL USERS, USES, AND PURPOSES

Officials and employees of the DNA, FCDNA, and AFRRI in the performance of their official duties related to determining the eligibility of individuals for access to classified inform1000000 tion.

Guard personnel assigned to the DNA, FCDNA and AFRRI in the performance of their official duties related to determining the eligibility of individuals for access to buildings, facilities, or conferences over which DNA has security responsibility.

EXTERNAL USERS, USES, AND PURPOSES

Officials and employees of other Department of Defense Components, U.S. Government contract692 000 and other U.S. Government organizations in the performance of their official duties related 3600000 the screening and selection of individuals for security clearances and/or special access authorizations; access to facilities; or attendance at conferences.

Officials of U.S. Government investigatory agencies in the performance of their official du3952000 relating to law enforcement.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Automated records are stored on magnetic tapes, discs, computer printouts, and or punched c1942 00 Manual records are stored in paper file folders, card files, and paper rosters.

Retrievability:

Automated records are retrieved by individual's last name, conference title, and by type of badge issued. Manual records are retrieved by individual's last name, organization, or subj5330000 file.

Safeguards:

The computer facility and terminals are located in restricted areas accessible only to authorized personnel. Manual records and computer printouts are available only to authorize4000000 persons with an official need to know. Buildings employ security guards and/or intrusion detection systems.

Retention and disposal:

Computer records on individuals are erased upon termination of an individual's affiliation 6938000 the DNA, FCDNA, or AFRRI. Personnel security files are destroyed within thirty days from th5000000 date of termination of an individuals employment, assignment or affiliation with DNA, FCDNA 6900000 AFRRI. Manual records or conference attendees, visitors, and visit certifications to other agencies are maintained for two years and destroyed. Security incident

files are retained f6900000 two years unless they concern compromise of classified information, in which case they may b5000000 retained permanently.

System manager(s) and address:

Director, Intelligence/Security Directorate, Defense Nuclear Agency, Washington, D.C. 20305 000000 for DNA and AFRRI. Chief, Security Division, Field Command, Defense Nuclear Agency, Kirtlan4000000 AFB, NM 87115.

Notification procedure:

Information may be obtained from: Director, Intelligence/Security Directorate, Defense Nuclear Agency, Washington, D.C. 20305, Telephone: Area Code (202) 325-7086 for DNA and AFR99 0000 or Chief, Security Division, Field Command, Defense Nuclear Agency, Kirtland AFB, NM 87115; Telephone: Area Code (505) 264-1423, for FCDNA.

Record access procedures:

Requests for information should be addressed to: Director, Intelligence/Security Directora35 0000 Defense Nuclear Agency, Washington, D.C. 20305, for DNA and AFRRI, or Chief, Security Divisi65 0000 Field Command, Defense Nuclear Agency, Kirtland AFB, NM 87115 for FCDNA. Written requests f6900000 information should contain the full name, home address, social security number, date and pla3500000 of birth. For personal visits, the individual must be able to provide identification showin7000000 full name, date and place of birth, and social security number.

Contesting record procedures:

The Agency's rules for contesting contents and appealing initial determinations are contain5400000 in DNA Instruction 5400.11 (32 CFR Part 291a).

Record source categories:

Information extracted from military and civilian personnel records, investigative files, an4000000 voluntarily submitted by individual.

Systems exempted from certain provisions of the act:

Part of this system may be exempt under 5 U.S.C. 552a (k)(5) as applicable. The exemption rule for the system is contained in Title 32, Code of Federal Regulations, Part 291a, as amended.

HDNA609-02

System name:

Personnel Radiation Exposure Records

System location:

Decentralized system. Primary location: Safety Department, Bldg. 42, Rooms 1420 and 1422, Armed Forces Radiobiology Research Institute (AFRRI), Defense Nuclear Agency, Bethesda, Maryland 20014, on the grounds of the National Naval Medical Center. Other locations are rooms 3113 and 2147 of the AFRRI; and room 1418, Bldg. 364, Field Command, Defense Nuclear Agency (FCDNA), Kirtland Air Force Base, Albuquerque, New Mexico 87115; and Office of the Commander, Enewetak Atoll, Marshall Islands.

Categories of individuals covered by the system:

All employees, contractors, visitors or anyone else who is known to enter the AFRRI building. At FCDNA, all DNA employees who work in a position, the duties of which might result in exposure to radiation. At Enewetak, all individuals who work or visit the Atoll other than transient air crews and air passengers who do not leave the aircraft. Uniformed Services University of the Health Sciences, all employees, students, visitors, contractors or anyone else known to enter a radiation environ ment at Uniform Service University of the Health Sciences (USUHS).

Categories of records in the system:

For employees at AFRRI, FCDNA, and USUHS file contains personal information con sisting of name, social security number, date of birth, current and previous radia tion exposure, history and places of employment and when exposures occurred. For others, at AFRRI, FCDNA and USUHS file contains name, social security number, date of birth, current employer, citizenship, and current exposure history. For all, at AFRRI, FCDNA and USUHS information on pregnancy and pacemaker. Enewetak files will contain personal information consisting of name, social security number, date of birth, current and previous radiation exposure history, areas visited or worked, dates of arrival and departure, and citizenship. At AFRRI, for current employees, information on date-on-board, assigned department, sex, date of departure, bio assay, grade/rank, work phone and room number.

Authority for maintenance of the system:

Atomic Energy Act of 1954, 42 USC 2013, Military Construction Appropriation Act of 1977 (P.L. 94-367) and DNA OPLAN 600-77, 'Cleanup of Enewetak Atoll'.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

INTERNAL

To document the degree of exposure to radiation experienced by an individual; to measure quality of the radiation protection program. At AFRRI, name, grade/rank, department, room number and work phone will be used to print a current roster of personnel, for internal use in contacting personnel for official purposes.

EXTERNAL

To support legal or medical claims for or against the government; to provide exposure history to subsequent employers; to provide history to requesting individuals.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

At AFRRI: 5' by 7' cards filed at reception desk, room 3113, 8' by 10 1/2' paper filed in rooms 1420 and 1422. Automated records are stored on magnetic tapes (for backup), disks in room 2436 and computer printouts in room 1422. At FCDNA, 8' by 10 1/2' papers are filed in a metal file cabinet in Bldg. 364. At Enewetak: 5' by 7' cards filed in a metal file cabinet in the Enewetak Commander's office.

Retrievability:

Alphabetical by last name of individual. Automated records are selectable retrievable on all fields within the record.

Safeguards:

AFRRI - Kept in a controlled access building which is protected by an instrusion alarm system. Card, paper forms and printouts are further secured in a locked cabinet. These files, when placed on a computer system, are protected by a user identification code (UIC) and password. Access is restricted to only those persons appointed by the SYSMANAGER to whom he has given the 'UIC-Password' combination. The password is changed periodically by the SYSMANAGER.

FCDNA - Controlled access building which is protected by an intrusion alarm system.

Enewetak - Locked and secured in Enewetak Commander's office.

Retention and disposal:

For employees - permanently. For visitors - retired after two years to record holding area for permanent retention. For foreign visitors, records are sent to State Depart ment for retention. All Enewetak records will be maintained permanently.

System manager(s) and address:

AFRRI and USUHS - Chairman, Safety Department, Armed Forces Radiobiology Research Institute, Bethesda, MD 20014.

Field Command, DNA and Enewetak Atoll, MI - Health Physicist, Logistics Directorate, Field Command, Defense Nuclear Agency, Albuquerque, NM 87115.

Notification procedure:

Requests should be addressed to the SYSMANAGER.

Record access procedures:

Individual can obtain assistance in gaining access from the SYSMANAGER.

Contesting record procedures:

The Agency's rules for contesting contents and appealing initial determinations may be obtained from SYSMANAGER.

Record source categories:

AFRRI, FCDNA, and USUHS information voluntarily submitted by individual. Enewetak information is required to be submitted by individual. Additional information added as data is collected.

Systems exempted from certain provisions of the act:

None.

HDNA609-03

System name:

Personnel Exposed to Radiation from Atmospheric Nuclear Tests

System location:

Biomedical Effects Office, Defense Nuclear Agency, Washington, DC 20305.

Categories of individuals covered by the system:

All DoD and DoD affiliated personnel military and civilian, who participated in the United States Government atmospheric nuclear test programs in the Pacific and at the Nevada Test Site.

Categories of records in the system:

Personal information consisting of name, rank, service number, social security number, last known or current address, dates of test participation, exposure data, and unit of assignment 000000

Authority for maintenance of the system:

Atomic Energy Act of 1954, 42 U.S.C. 2013 and Tasking Memorandum from Office of the Secreta9000000 of Defense to the Director, Defense Nuclear Agency dated 28 Jan 78, Subject: DoD Personnel Participation in Atmospheric Nuclear Weapons Testing.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Department of Defense Components-For the purpose of preparing histories of atmospheric nuclear test participation and for use in litigation between test participants or their representatives and the Department of Defense.

Defense Nuclear Agency Contractors-For the purpose of assisting DoD components in preparati6000000 of histories of atmospheric nuclear test participation and responding to the inquiries and concerns of individuals who may have participated in the test programs and/or their representatives.

National Research Council and the Center for Disease Control-For the limited purpose of conducting epidemiological studies of the effects of ionizing radiation from the atmospheric nuclear weapons tests on DoD participants in those tests.

Department of Energy-For the limited purpose of identifying AEC and AEC-contractor personne3000000 exposed to ionizing radiation during nuclear testing and for conducting epidemiological Studies of radiation effects of individuals so identified; and for use in litigation between the DoD and any of the individuals so identified.

Department of Transportation-For the limited purpose of identifying DOT and DOT-affiliated personnel exposed to ionizing radiation during nuclear testing and for use in litigation between the DOT and any of the individuals so identified.

Veterans Administration-For use in litigation between the VA and individuals and/or their representatives who are alleging service-connected disabilities as a result of said exposure 000000

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Paper records in file folders; computer magnetic tape disks and printouts in secure compute9000000 facility.

Retrievability:

Paper records in file folders and on computer magnetic tape disks and printouts are retriev5400000 by name and SSAN.

Safeguards:

Paper records are filed in folders stored in locked security safes. Mag tapes stored in vault in the computer area.

Retention and disposal:

Paper records are retained until information is transferred to magnetic tapes, then destroy54 0000 Magnetic-tapes and disks are retained indefinitely.

System manager(s) and address:

Assistant to the Director, Biomedical Effects, Defense Nuclear Agency, Washington, DC 20305 000000

Notification procedure:

Information may be obtained from the SYSMANAGER.

Record access procedures:

Requests should be addressed to the SYSMANAGER.

Contesting record procedures:

Requests from individuals should be addressed to the same address as stated in the notifica3965000 section above.

Record source categories:

From DNA Form 10, searches of DoD records by other DoD components, and from individuals voluntarily contacting DNA by phone or mail.

Systems exempted from certain provisions of the act:

None.

DEFENSE INTELLIGENCE AGENCY

REQUESTING RECORDS

Records are retrieved by name or by some other personal identifier. It is therefore especially important for expeditious service when requesting a record that particular attention be provided to the Notification and/or Access Procedures of the particular record system involved so as to furnish the required personal identifiers, or any other pertinent personal information as may be required, to locate and retrieve the record.

BLANKET ROUTINE USES

Certain blanket 'routine uses' of the records have been established, that are applicable to every record system maintained within the Department of Defense, unless specifically stated otherwise within a particular record system. These additional blanket routine uses of the records are published below, only once in the interest of simplicity, economy and to avoid redundancy, before the individual record system notices begin rather than repeating them in every individual record system.

ROUTINE USE - LAW ENFORCEMENT

In the event that a system of records maintained by this component to carry out its functions indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute, or by regulation, rule or order issued pursuant thereto, the relevant records in the system of records may be referred, as a routine use, to the appropriate agency, whether federal, state, local or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, rule, regulation or order issued pursuant thereto.

ROUTINE USE - DISCLOSURE WHEN REQUESTING INFORMATION

A record from a system of records maintained by this component may be disclosed as a routine use to a federal, state or local agency maintaining civil, criminal or other relevant enforcement information or other pertinent information, such as current licenses, if necessary to obtain information relevant to a component decision concerning the hiring or retention of an employee, the issuance of a security clearance, the letting of a contract, or the issuance of a license, grant or other benefit.

ROUTINE USE - DISCLOSURE OF REQUESTED INFORMATION

A record from a system of records maintained by this component may be disclosed to a federal agency, in response to its request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

ROUTINE USE - CONGRESSIONAL INQUIRIES

Disclosure from a system of records maintained by this component may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

ROUTINE USE WITHIN THE DEPARTMENT OF DEFENSE

A record from a system of records maintained by this component may be disclosed as a routine use to other components of the Department of Defense if necessary and relevant for the performance of a lawful function such as, but not limited to, personnel actions, personnel security actions and criminal investigations of the Component requesting the record.

ROUTINE USE - PRIVATE RELIEF LEGISLATION

Relevant information contained in all systems of records of the Department of Defense published on or before August 22, 1975, will be disclosed to the Office of Management and Budget in connection with the review of private relief legislation as set forth in OMB Circular A-19 at any stage of the legislative coordination and clearance process as set forth in that Circular.

ROUTINE USE - DISCLOSURES REQUIRED BY INTERNATIONAL AGREEMENTS

A record from a system of records maintained by this Component may be disclosed to foreign law enforcement, security, investigatory, or administrative authorities in order to comply with requirements imposed by, or to claim rights conferred in international agreements and arrangements including those regulating the stationing and status in foreign countries of Department of Defense military and civilian personnel.

ROUTINE USE - DISCLOSURE TO STATE AND LOCAL TAXING AUTHORITIES

Any information normally contained in IRS Form W-2 which is maintained in a record from a system of records maintained by this Component may be disclosed to State and local taxing authorities with which the Secretary of the Treasury has entered into agreements pursuant to Title 5, U.S.Code, Sections 5516, 5517, 5520, and only to those State and local taxing authorities for which an employee or military member is or was subject to tax regardless of whether tax is or was withheld. This routine use is in accordance with Treasury Fiscal Requirements Manual Bulletin Nr. 76-07.

ROUTINE USE - DISCLOSURE TO THE OFFICE OF PERSONNEL MANAGEMENT

A record from a system of records subject to the Privacy Act and maintained by this component may be disclosed to the Office of Personnel Management concerning information on pay and leave, benefits, retirement deductions, and any other information necessary for the Office of Personnel Management to carry out its legally authorized Government-wide personnel management functions and studies.

ROUTINE USE - DISCLOSURE OF INFORMATION TO NARS (GSA)

A record from a system of records maintained by this component may be disclosed as a routine use to the National Archives and Records Service of the General Services Administration in records management inspections conducted under authority of 44 U.S.C. 2904 and 2906.

ROUTINE USE - DISCLOSURE TO DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

All systems of records relating to compensation, employment or retirement, or extracts therefrom, maintained by this Component may be disclosed as a routine use to the Department of Health, Education, and Welfare for the purpose of comparing such record with records of programs administered by and in the possession of the Department of Health, Education, and Welfare in order to verify information where such verification is required by law or regulation or to identify violations or potential violations of law, whether criminal, civil, or regulatory, and whether arising by general statute or particular program statute, or by regulation, rule, or order issued pursuant thereto.

L DIA 0005

System name:

Personnel Management Information System (PMIS).

System location:

Defense Intelligence Agency, Washington, D.C. 20301.

Categories of individuals covered by the system:

Current and former military and civilian employees of DIA.

Categories of records in the system:

This system consists of a variety of personnel, security, education, training and financial employment related records.

Authority for maintenance of the system:

Pursuant to the authority contained in the National Security Act of 1947, 10 U.S.C. 133 d, the Secretary of Defense issued Department of Defense Directive 5105.21 of August 1, 1961, super seded by Department of Defense Directive 5105.21 of May 19, 1977, creating the Defense Intel ligence Agency as a separate Agency of the Department of Defense under his direction and herein charged the Agency's Director with the responsibility for the maintenance of necessary and appropriate records.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Records are used by staff, administrative and operating officials to: prepare individual administrative transactions; make decisions on the rights, benefits, entitlements and the utilization of individuals; provide a data source for the productions of reports, statistical surveys, rosters, documentation and studies required for the orderly personnel administration with DIA. Information will be disclosed to such other federal agencies, state and local governments, as may have a legitimate use for such information and which agrees to apply appropriate safeguards to protect data so provided and which is consistent with the conditions or reasonable expectations of use and disclosure under which the information was provided, collected or obtained.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Automated, maintained on magnetic tape and manual in paper files and microfilms.

Retrievability:

By name or social security account number.

Safeguards:

Records are maintained in a building protected by security guards and are stored in vaults, safes or locked cabinets and are accessible only to authorized personnel who are properly screened, cleared and trained in the protection of privacy information.

Retention and disposal:

Paper files are destroyed when employment with the Agency ceases. Microfilm records are destroyed when replaced with an updated film and magnetic tape files are retained indefi nitely as a permanent record.

System manager(s) and address:

Assistant Deputy Director for Personnel, Defense Intelligence Agency, Washington, D.C. 20301.

Notification procedure:

To obtain information as to whether this system of records contains information pertaining to yourself, you must submit a written request to: Secretariat, Defense Intelligence Agency, Washington, D.C. 20301. You must include in your request: your full name, current address, telephone number and social security account number or date of birth. Requests can be mailed to address indicated above or personally delivered to room 3E215, Pentagon, Washington, D.C.

Record access procedures:

All requests for copies of records pertaining to yourself must be in writing. You must include in your requests: your full name, current address, telephone number and social security account number or date of birth. Also, you should state that whatever cost is involved is acceptable or acceptable up to a specified limit. Requests can be mailed to: Secretariat, Defense Intelligence Agency, Washington, D.C. 20301, or personally delivered to room 3E215, Pentagon, Washington, D.C.

Contesting record procedures:

An individual who disagrees with the Agency's initial determination, with respect to his or her request, may file a request for administrative review of that determination. Requests are to be in writing and made within 30 days of the date of notification of the initial determina tion. The requester shall provide a statement setting forth the reasons for his or her dis agreement with the initial determination and provide such additional material to support his or her appeal. Requests can be mailed to: Secretariat, Defense Intelligence Agency, Washing ton, D.C. 20301, or personally delivered to room 3E215, Pentagon, Washington, D.C.

Record source categories:

Agency officials, employees, educational institutions and other government agencies.

Systems exempted from certain provisions of the act:

None

L DIA 0010

System name:

Requests for Information

System location:

Defense Intelligence Agency, Washington, D.C. 20301.

Categories of individuals covered by the system:

Individuals who make requests to DIA for information.

Categories of records in the system:

Correspondence from requester, and documents related to the receipt, processing and final disposition of the request.

Authority for maintenance of the system:

Pursuant to the authority contained in the National Security Act of 1947, 10 U.S.C. 133 d, the Secretary of Defense issued Department of Defense Directive 5105.21 of August 1, 1961, super- seded by Department of Defense Directive 5105.21 of May 19, 1977, creating the Defense Intel- ligence Agency as a separate Agency of the Department of Defense under his direction and herein charged the Agency's Director with the responsibility for the maintenance of necessary and appropriate records.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

To provide information for compiling reports required by public disclosure statutes and to assist the Department of Justice in preparation of the Agency's defense in any law suit arising under these statutes.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Manual in paper files.

Retrievability:

By name.

Safeguards:

Records are maintained in a building protected by security guards and are stored in vaults, safes or locked cabinets and are accessible only to authorized personnel who are properly screened, cleared and trained in the protection of privacy information.

Retention and disposal:

Granted access: destroy 2 years after date of agency reply. Denied access, but no appeals by requester: destroy 5 years after date of agency reply. Contested records: destroy 4 years after final denial by agency, or 3 years after final adjudications by courts, whichever is later.

System manager(s) and address:

Assistant Deputy Director for Support and Services, Defense Intelligence Agency, Washington, D.C. 20301.

Notification procedure:

To obtain information as to whether this system of records contains information pertaining to yourself, you must submit a written request to: Secretariat, Defense Intelligence Agency, Washington, D.C. 20301. You must include in your request: your full name, current address, telephone number and social security account number or date of birth. Requests can be mailed to address indicated above or personally delivered to room 3E215, Pentagon, Washington, D.C.

Record access procedures:

All requests for copies of records pertaining to yourself must be in writing. You must include in your requests: your full name, current address, telephone number and social security account number or date of birth. Also, you should state that whatever cost is involved is acceptable or acceptable up to a specified limit. Requests can be mailed to: Secretariat, Defense Intelligence Agency, Washington, D.C. 20301, or personally delivered to room 3E215, Pentagon, Washington, D.C.

Contesting record procedures:

An individual who disagrees with the Agency's initial determination, with respect to his or her request, may file a request for administrative review of that determination. Requests are to be in writing and made within 30 days of the date of notification of the initial determina- tion. The requester shall provide a statement setting forth the reasons for his or her dis- agreement with the initial determination and provide such additional material to support his or her appeal. Requests can be mailed to: Secretariat, Defense Intelligence Agency, Washing- ton, D.C. 20301, or personally delivered to room 3E215, Pentagon, Washington, D.C.

Record source categories:

Individual requesters and agency officials.

Systems exempted from certain provisions of the act:

None

L DIA 0011

System name:

Student Information Files

System location:

Defense Intelligence Agency, Washington, D.C. 20301.

Categories of individuals covered by the system:

Current and former students of the Defense Intelligence School.

Categories of records in the system:

Student's biographic data and administrative/academic documents related to the student's enrollment.

Authority for maintenance of the system:

Pursuant to the authority contained in the National Security Act of 1947, 10 U.S.C. 133 (), the Secretary of Defense issued Department of Defense Directive 5105.21 of August 1, 1961, super- seded by Department of Defense Directive 5105.21 of May 19, 1977, creating the Defense Intel- ligence Agency as a separate Agency of the Department of Defense under his direction and herein charged the Agency's Director with the responsibility for the maintenance of necessary and appropriate records.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Information is used to document, monitor, manage, and administer the student's performance at the School and to provide verification of training accomplished to federal agencies, military departments and educational institutions when requested.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Automated on magnetic disc and tape and manual in paper files.

Retrievability:

By name.

Safeguards:

Records are maintained in a building protected by security guards and are stored in vaults, safes or locked cabinets and are accessible only to authorized personnel who are properly screened, cleared and trained in the protection of privacy information.

Retention and disposal:

Registration cards are held 5 years and then retired to the Washington National Record Center.

System manager(s) and address:

Commandant, Defense Intelligence School, Washington, D.C. 20301.

Notification procedure:

To obtain information as to whether this system of records contains information pertaining to yourself, you must submit a written request to: Secretariat, Defense Intelligence Agency, Washington, D.C. 20301. You must include in your request: your full name, current address, telephone number and social security account number or date of birth. Requests can be mailed to address indicated above or personally delivered to room 3E215, Pentagon, Washington, D.C.

Record access procedures:

All requests for copies of records pertaining to yourself must be in writing. You must include in your requests: your full name, current address, telephone number and social security account number or date of birth. Also, you should state that whatever cost is involved is acceptable or acceptable up to a specified limit. Requests can be mailed to: Secretariat, Defense Intelligence Agency, Washington, D.C. 20301, or personally delivered to room 3E215, Pentagon, Washington, D.C.

Contesting record procedures:

An individual who disagrees with the Agency's initial determination, with respect to his or her request, may file a request for administrative review of that determination. Requests are to be in writing and made within 30 days of the date of notification of the initial determina- tion. The requester shall provide a statement setting forth the reasons for his or her dis- agreement with the initial determination and provide such additional material to support his or her appeal. Requests can be mailed to: Secretariat, Defense Intelligence Agency, Washing- ton, D.C. 20301, or personally delivered to room 3E215, Pentagon, Washington, D.C.

Record source categories:

Individual, parent service, educational institutions, previous employees and other federal agencies.

Systems exempted from certain provisions of the act:

None

L DIA 0014

System name:

Employee Grievance Files

System location:

Defense Intelligence Agency, Washington, D.C. 20301.

Categories of individuals covered by the system:

Current and former civilian employees of DIA who have submitted grievances in accordance with DIAR 22-12.

Categories of records in the system:

Files contain all records and documents relating to grievances filed by Agency employees to include statements of witnesses, reports of inter views and hearings and examiner's findings, recommendations, decisions and related correspondence or exhibits.

Authority for maintenance of the system:

Pursuant to the authority contained in the National Security Act of 1947, 10 U.S.C. 133 d, the Secretary of Defense issued Department of Defense Directive 5105.21 creating the Defense Intelligence Agency as a separate Agency of the Department of Defense under his direction and herein charged the Agency's Director with the responsibility for the maintenance of necessary and appropriate records.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

These records and information in these records may be used: to disclose information to any source from which additional information is requested in the course of processing a grievance to the extent necessary to identify the individual, inform the source of the purpose(s) of the request and identify the type of information requested; to another Federal agency or to a court when the Government is party to a judicial proceeding before the court; by the Agency in the production of summary descriptive statistics, analytical studies and training in support of the function for which the records are collected and maintained or for related work force studies; to officials of the Merit Systems Protection Board including the Office of the Special Counsel, or the Equal Employment Opportunity Commission when requested in performance of their authorized duties; to disclose in response to a request for discovery or for appearance of a witness, information that is relevant to the subject matter involved in a pending judicial or administrative proceeding.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Manual in paper files.

Retrievability:

By name.

Safeguards:

Records are maintained in a building protected by security guards and are stored in vaults, safes or locked cabinets and are accessible only to authorized personnel who are properly screened, cleared and trained in the protection of privacy information.

Retention and disposal:

Record is destroyed 3 years after closing of the case.

System manager(s) and address:

Deputy Assistant Director for Personnel, Defense Intelligence Agency, Washington, D.C. 20301.

Notification procedure:

To obtain information as to whether this system of records contains information pertaining to yourself, you must submit a written request to: CAO (PA 1974), Defense Intelligence Agency, Washington, D.C. 20301. You must include in your request: your full name, current address, telephone number and social security account number or date of birth. Requests can be mailed to address indicated above or personally delivered to room 3E223, Pentagon, Washington, D.C.

Record access procedures:

All requests for copies of records pertaining to yourself must be in writing. You must include in your requests: your full name, current address, telephone number and social security account number or date of birth. Also, you should state that whatever cost is involved is acceptable or acceptable up to a specific limit. Requests can be mailed to: CAO (PA 1974), Defense Intelligence Agency, Washington, D.C. 20301, or personally delivered to room 2E223, Pentagon, Washington, D.C.

Contesting record procedures:

An individual who disagrees with the Agency's initial determination, with respect to his or her request, may file a request for administrative review of that determination. Requests are to be in writing and made within 30 days of the date of notification of the initial determination. The requester shall provide a statement setting forth the reasons for his or her disagreement with the initial determination and provide such additional material to support his or her appeal. Requests can be mailed to: CAO (PA 1974), Defense Intelligence Agency, Washington, D.C. 20301, or personally delivered to room 3E223, Pentagon, Washington, D.C.

Record source categories:

By the individual, testimony of witnesses, Agency officials and from related correspondence from organizations or persons.

Systems exempted from certain provisions of the act:

None

L DIA 0015

System name:

Biographic Sketch

System location:

Defense Intelligence Agency, Washington, D.C. 20301.

Categories of individuals covered by the system:

Individuals who interface with the DIA on a fee or non-fee basis.

Categories of records in the system:

Contains biographic data to include name, date and place of birth, educational background, lists of published works or notable achievements in the intelligence scientific or academic community, intelligence experience, etc.

Authority for maintenance of the system:

Pursuant to the authority contained in the National Security Act of 1947, 10 U.S.C. 133 d, the Secretary of Defense issued Department of Defense Directive 5105.21 of August 1, 1961, superseded by Department of Defense Directive 5105.21 of May 19, 1977, creating the Defense Intelligence Agency as a separate Agency of the Department of Defense under his direction and herein charged the Agency's Director with the responsibility for the maintenance of necessary and appropriate records.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

To establish an individual's bona fide as a noted authority in a specialized area for the purposes of utilizing that expertise to fill a gap in the Defense Intelligence Agency's resources. Information will be disclosed to such other federal agencies, state and local governments, as may have a legitimate use for such information and which agrees to apply appropriate safeguards to protect data so provided and which is consistent with the conditions or reasonable expectations of use and disclosure under which the information was provided, collected or obtained.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Manual in paper files.

Retrievability:

By name.

Safeguards:

Records are maintained in a building protected by security guards and are stored in vaults, safes or locked cabinets and are accessible only to authorized personnel who are properly screened, cleared and trained in the protection of privacy information.

Retention and disposal:

Permanent records are retired to the Washington National Record Center and other material destroyed when no longer required.

System manager(s) and address:

Assistant Deputy Director for Support and Services, Defense Intelligence Agency, Washington, D.C. 20301.

Notification procedure:

To obtain information as to whether this system of records contains information pertaining to yourself, you must submit a written request to: Secretariat, Defense Intelligence Agency, Washington, D.C. 20301. You must include in your request: your full name, current address, telephone number and social security account number or date of birth. Requests can be mailed to address indicated above or personally delivered to room 3E215, Pentagon, Washington, D.C.

Record access procedures:

All requests for copies of records pertaining to yourself must be in writing. You must include in your requests: your full name, current address, telephone number and social security account number or date of birth. Also, you should state that whatever cost is involved is acceptable or acceptable up to a specified limit. Requests can be mailed to: Secretariat, Defense Intelligence Agency, Washington, D.C. 20301, or personally delivered to room 3E215, Pentagon, Washington, D.C.

Contesting record procedures:

An individual who disagrees with the Agency's initial determination, with respect to his or her request, may file a request for administrative review of that determination. Requests are to be in writing and made within 30 days of the date of notification of the initial determination. The requester shall provide a statement setting forth the reasons for his or her disagreement with the initial determination and provide such additional material to support his or her

appeal. Requests can be mailed to: Secretariat, Defense Intelligence Agency, Washing- ton, D.C. 20301, or personally delivered to room 3E215, Pentagon, Washington, D.C.

Record source categories:

Individual, academic institutions or the individual's employer.

Systems exempted from certain provisions of the act:

None

L DIA 0140

System name:

Passports and Visas

System location:

Defense Intelligence Agency, Washington, D.C. 20301.

Categories of individuals covered by the system:

All DIA personnel requiring passports.

Categories of records in the system:

Files containing passports and related correspondence.

Authority for maintenance of the system:

Pursuant to the authority contained in the National Security Act of 1947, 10 U.S.C. 133 d, the Secretary of Defense issued Department of Defense Directive 5105.21 of August 1, 1961, super- seded by Department of Defense Directive 5105.21 of May 19, 1977, creating the Defense Intel- ligence Agency as a separate Agency of the Department of Defense under his direction and herein charged the Agency's Director with the responsibility for the maintenance of necessary and appropriate records.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

To obtain and safekeep official passports until needed for travel and to obtain necessary visas from appropriate Embassies. Notify individuals to reapply when passports expire and to return passports to the Department of State upon departure of the individual from DIA.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Manual in paper files.

Retrievability:

By name.

Safeguards:

Records are maintained in a building protected by security guards and are stored in vaults, safes or locked cabinets and are accessible only to authorized personnel who are properly screened, cleared and trained in the protection of privacy information.

Retention and disposal:

Passports are returned to Department of State upon departure of the individual from DIA.

System manager(s) and address:

Assistant Deputy Director for Support and Services, Defense Intelligence Agency, Washing- ton, D.C. 20301.

Notification procedure:

To obtain information as to whether this system of records contains information pertaining to yourself, you must submit a written request to: Secretariat, Defense Intelligence Agency, Washington, D.C. 20301. You must include in your request: your full name, current address, telephone number and social security account number or date of birth. Requests can be mailed to address indicated above or personally delivered to room 3E215, Pentagon, Washington, D.C.

Record access procedures:

All requests for copies of records pertaining to yourself must be in writing. You must include in your requests: your full name, current address, telephone number and social security account number or date of birth. Also, you should state that whatever cost is involved is acceptable or acceptable up to a specified limit. Requests can be mailed to: Secretariat, Defense Intelligence Agency, Washington, D.C. 20301, or personally delivered to room 3E215, Pentagon, Washington, D.C.

Contesting record procedures:

An individual who disagrees with the Agency's initial determination, with respect to his or her request, may file a request for administrative review of that determination. Requests are to be in writing and made within 30 days of the date of notification of the initial determina- tion. The requester shall provide a statement setting forth the reasons for his or her dis- agreement with the initial determination and provide such additional material to support his or her appeal. Requests can be mailed to: Secretariat, Defense Intelligence Agency, Washing- ton, D.C. 20301, or personally delivered to room 3E215, Pentagon, Washington, D.C.

Record source categories:

Individual applicant and Department of State, Passport Office.

Systems exempted from certain provisions of the act:

None

L DIA 0209

System name:

Litigation and Disposition Documentation.

System location:

Defense Intelligence Agency, Washington, D.C. 20301.

Categories of individuals covered by the system:

Files involving legal and administrative matters involving individuals.

Categories of records in the system:

Correspondence or legal documentation relating to individuals.

Authority for maintenance of the system:

Pursuant to the authority contained in the National Security Act of 1947, 10 U.S.C. 133 d, the Secretary of Defense issued Department of Defense Directive 5105.21 of August 1, 1961, super- seded by Department of Defense Directive 5105.21 of May 19, 1977, creating the Defense Intel- ligence Agency as a separate Agency of the Department of Defense under his direction and herein charged the Agency's Director with the responsibility for the maintenance of necessary and appropriate records.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Used in connection with litigation by, disciplinary and administrative action against or in the disposition of claims and benefits of individuals both civilian and military. Will be provided to the Department of Justice, the Civil Service Commission and various branches of the military services as may be necessary or required in the disposition of an individual case.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Manual in paper files.

Retrievability:

By name.

Safeguards:

Records are maintained in a building protected by security guards and are stored in vaults, safes or locked cabinets and are accessible only to authorized personnel who are properly screened, cleared and trained in the protection of privacy information.

Retention and disposal:

Records are destroyed when no longer needed.

System manager(s) and address:

Office of the General Counsel, Defense Intelligence Agency, Washington, D.C. 20301.

Notification procedure:

To obtain information as to whether this system of records contains information pertaining to yourself, you must submit a written request to: Secretariat, Defense Intelligence Agency, Washington, D.C. 20301. You must include in your request: your full name, current address, telephone number and social security account number or date of birth. Requests can be mailed to address indicated above or personally delivered to room 3E215, Pentagon, Washington, D.C.

Record access procedures:

All requests for copies of records pertaining to yourself must be in writing. You must include in your requests: your full name, current address, telephone number and social security account number or date of birth. Also, you should state that whatever cost is involved is acceptable or acceptable up to a specified limit. Requests can be mailed to: Secretariat, Defense Intelligence Agency, Washington, D.C. 20301, or personally delivered to room 3E215, Pentagon, Washington, D.C.

Contesting record procedures:

An individual who disagrees with the Agency's initial determination, with respect to his or her request, may file a request for administrative review of that determination. Requests are to be in writing and made within 30 days of the date of notification of the

initial determina- tion. The requester shall provide a statement setting forth the reasons for his or her dis- agreement with the initial determination and provide such additional material to support his or her appeal. Requests can be mailed to: Secretariat, Defense Intelligence Agency, Washing- ton, D.C. 20301, or personally delivered to room 3E215, Pentagon, Washington, D.C.

Record source categories:

Other offices within the Defense Intelligence Agency and the Department of Defense, the individual involved and other departments and agencies of the Executive Branch.

Systems exempted from certain provisions of the act:

None

L DIA 0271

System name:

Investigations and Complaints

System location:

Defense Intelligence Agency, Washington, D.C. 20301.

Categories of individuals covered by the system:

Current and former civilian and military personnel who filed a complaint acted upon by the Inspector General, DIA, or who were the subject of an Inspector General, DIA, investigation or inquiry.

Categories of records in the system:

Documents relating to the organization, planning and execution of internal/external investi- gations and records created as a result of investigations conducted by the Office of the Inspector General, including reports of investigations, records of action taken and supporting papers. These files include investigations of both organizational elements and individuals.

Authority for maintenance of the system:

Pursuant to the authority contained in the National Security Act of 1947, 10 U.S.C. 133 d, the Secretary of Defense issued Department of Defense Directive 5105.21 of August 1, 1961, super- seded by Department of Defense Directive 5105.21 of May 19, 1977, creating the Defense Intel- ligence Agency as a separate Agency of the Department of Defense under his direction and herein charged the Agency's Director with the responsibility for the maintenance of necessary and appropriate records. Executive Order 12036, United States Intelligence Activities, January 24, 1978. Executive Order 11652, Classification and Declassification of National Security Informa- tion and Material, March 8, 1972.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Records are used as a basis for recommending actions to the Command Element and other DIA elements. Depending upon the nature of the information it may be passed to appropriate elements within the Department of Defense, the Department of State, Department of Justice, Central Intelligence Agency and to other appropriate government agencies.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Manual in paper files.

Retrievability:

By name.

Safeguards:

Records are maintained in a building protected by security guards and are stored in vaults, safes or locked cabinets and are accessible only to authorized personnel who are properly screened, cleared and trained in the protection of privacy information.

Retention and disposal:

Records are held in current files for 5 years after completion and adjudicated of all actions. Retired to the Washington National Record Center and destroyed after 10 years.

System manager(s) and address:

Inspector General's Office, Defense Intelligence Agency, Washington, D.C. 20301.

Notification procedure:

To obtain information as to whether this system of records contains information pertaining to yourself, you must submit a written request to: Secretariat, Defense Intelligence Agency, Washington, D.C. 20301. You must include in your request: your full name, current address, telephone number and social security account number or date of birth. Requests can be mailed to address indicated above or personally delivered to room 3E215, Pentagon, Washington, D.C.

Record access procedures:

All requests for copies of records pertaining to yourself must be in writing. You must include in your requests: your full name, current address, telephone number and social security account number or date of birth. Also, you should state that whatever cost is involved is acceptable or acceptable up to a specified limit. Requests can be mailed to: Secretariat, Defense Intelligence Agency, Washington, D.C. 20301, or personally delivered to room 3E215, Pentagon, Washington, D.C.

Contesting record procedures:

An individual who disagrees with the Agency's initial determination, with respect to his or her request, may file a request for administrative review of that determination. Requests are to be in writing and made within 30 days of the date of notification of the initial determina- tion. The requester shall provide a statement setting forth the reasons for his or her dis- agreement with the initial determination and provide such additional material to support his or her appeal. Requests can be mailed to: Secretariat, Defense Intelligence Agency, Washing- ton, D.C. 20301, or personally delivered to room 3E215, Pentagon, Washington, D.C.

Record source categories:

Individuals interviewed in connection with an investigation.

Systems exempted from certain provisions of the act:

Parts of this system may be exempt under Title 5. U.S.C., 552a, subsections k(2), k(5) or k(7). For additional information see agency rules contained in (32 CFR Part 292a).

L DIA 0330

System name:

Civilian Payroll, Leave and Travel Disbursement

System location:

Defense Intelligence Agency, Washington, D.C. 20301.

Categories of individuals covered by the system:

Current and former civilian personnel of the DIA.

Categories of records in the system:

This system consists of records which document and support employee related transactions in the area of pay compensation, claims for reimbursement, leave entitlement, statutory and administrative deductions, settlement of debts and documents designating certifying officials.

Authority for maintenance of the system:

Pursuant to the authority contained in the National Security Act of 1947, 10 U.S.C. 133 d, the Secretary of Defense issued Department of Defense Directive 5105.21 of August 1, 1961, super- seded by Department of Defense Directive 5105.21 of May 19, 1977, creating the Defense Intel- ligence Agency as a separate Agency of the Department of Defense under his direction and herein charged the Agency's Director with the responsibility for the maintenance of necessary and appropriate records.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Records are used by Agency personnel and the U.S. Army Military District of Washington Finance and Accounting Office to: compute, make and record individual employee's payment transactions; determine leave entitlements; record and remit deductions for the Civil Service Commission Retire- ment System and the Social Security Fund; determine entitlements for reimbursement of travel and other expenses for official business; report tax information to federal, state and local taxing authorities as required by statute and to remit and record such transactions; record and remit deductions for life and health insurance and such other deductions as required or authorized by the individual; be used as a basis for the settlement of pay or debt disputes; provide such verification as required by statute or administrative directive.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Manual in paper files.

Retrievability:

By name.

Safeguards:

Records are maintained in a building protected by security guards and are stored in vaults, safes or locked cabinets and are accessible only to authorized personnel who are properly screened, cleared and trained in the protection of privacy information.

Retention and disposal:

Permanent records are cut off each fiscal year and held for 2 years and then retired to the Washington National Record Center. Temporary records are destroyed in 4 years or 2 years after a General Account Office audit.

System manager(s) and address:

Deputy Comptroller, Defense Intelligence Agency, Washington, D.C. 20301.

Notification procedure:

To obtain information as to whether this system of records contains information pertaining to yourself, you must submit a written request to: Secretariat, Defense Intelligence Agency, Washington, D.C. 20301. You must include in your request: your full name, current address, telephone number and social security account number or date of birth. Requests can be mailed to address indicated above or personally delivered to room 3E215, Pentagon, Washington, D.C.

Record access procedures:

All requests for copies of records pertaining to yourself must be in writing. You must include in your requests: your full name, current address, telephone number and social security account number or date of birth. Also, you should state that whatever cost is involved is acceptable or acceptable up to a specified limit. Requests can be mailed to: Secretariat, Defense Intelligence Agency, Washington, D.C. 20301, or personally delivered to room 3E215, Pentagon, Washington, D.C.

Contesting record procedures:

An individual who disagrees with the Agency's initial determination, with respect to his or her request, may file a request for administrative review of that determination. Requests are to be in writing and made within 30 days of the date of notification of the initial determina- tion. The requester shall provide a statement setting forth the reasons for his or her dis- agreement with the initial determination and provide such additional material to support his or her appeal. Requests can be mailed to: Secretariat, Defense Intelligence Agency, Washing- ton, D.C. 20301, or personally delivered to room 3E215, Pentagon, Washington, D.C.

Record source categories:

Data is supplied from a number of sources including the individual concerned, MDW Army Finance Office and agency officials.

Systems exempted from certain provisions of the act:

None

L DIA 0435

System name:

DIA Awards File

System location:

Defense Intelligence Agency, Washington, D.C. 20301.

Categories of individuals covered by the system:

Military personnel recommended for an award while assigned to DIA.

Categories of records in the system:

This file contains supporting documents for the awards nomination and the results of actions or recommendations of endorsing and approving officials.

Authority for maintenance of the system:

Pursuant to the authority contained in the National Security Act of 1947, 10 U.S.C. 133 d, the Secretary of Defense issued Department of Defense Directive 5105.21 of August 1, 1961, super- seded by Department of Defense Directive 5105.21 of May 19, 1977, creating the Defense Intel- ligence Agency as a separate Agency of the Department of Defense under his direction and herein charged the Agency's Director with the responsibility for the maintenance of necessary and appropriate records.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Records are used to obtain the approval for the awarding of the decoration and for the compila- tion of required statistical data and may be provided to the Military Departments when appro- priate.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Manual in paper files.

Retrievability:

By name.

Safeguards:

Records are maintained in a building protected by security guards and are stored in vaults, safes or locked cabinets and are accessible only to authorized personnel who are properly screened, cleared and trained in the protection of privacy information.

Retention and disposal:

They are maintained for approximately 2 years within the Agency and then retired to the Washington National Record Center.

System manager(s) and address:

Assistant Deputy Director for Personnel, Defense Intelligence Agency, Washington, D.C. 20301.

Notification procedure:

To obtain information as to whether this system of records contains information pertaining to yourself, you must submit a written request to: Secretariat, Defense Intelligence Agency, Washington, D.C. 20301. You must include in your request: your full name, current address, telephone number and social security account number or date of birth. Requests can be mailed to address indicated above or personally delivered to room 3E215, Pentagon, Washington, D.C.

Record access procedures:

All requests for copies of records pertaining to yourself must be in writing. You must include in your requests: your full name, current address, telephone number and social security account number or date of birth. Also, you should state that whatever cost is involved is acceptable or acceptable up to a specified limit. Requests can be mailed to: Secretariat, Defense Intelligence Agency, Washington, D.C. 20301, or personally delivered to room 3E215, Pentagon, Washington, D.C.

Contesting record procedures:

An individual who disagrees with the Agency's initial determination, with respect to his or her request, may file a request for administrative review of that determination. Requests are to be in writing and made within 30 days of the date of notification of the initial determina- tion. The requester shall provide a statement setting forth the reasons for his or her dis- agreement with the initial determination and provide such additional material to support his or her appeal. Requests can be mailed to: Secretariat, Defense Intelligence Agency, Washing- ton, D.C. 20301, or personally delivered to room 3E215, Pentagon, Washington, D.C.

Record source categories:

Agency officials, parent service and personnel records.

Systems exempted from certain provisions of the act:

None

L DIA 0480

System name:

Reserve Training Records

System location:

Defense Intelligence Agency, Washington, D.C. 20301.

Categories of individuals covered by the system:

Military Reserve personnel who have performed active duty training with the DIA or cor- responded with the DIA regarding reserve matters.

Categories of records in the system:

Files contains correspondence with the reservist and documentation related to the reservist periods of active duty with DIA.

Authority for maintenance of the system:

Pursuant to the authority contained in the National Security Act of 1947, 10 U.S.C. 133 d, the Secretary of Defense issued Department of Defense Directive 5105.21 of August 1, 1961, super- seded by Department of Defense Directive 5105.21 of May 19, 1977, creating the Defense Intel- ligence Agency as a separate Agency of the Department of Defense under his direction and herein charged the Agency's Director with the responsibility for the maintenance of necessary and appropriate records.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Records are used by agency officials for the administrative, control and utilization of reservists and may be provided to the Military Departments when appropriate.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Manual in paper files.

Retrievability:

By name.

Safeguards:

Records are maintained in a building protected by security guards and are stored in vaults, safes or locked cabinets and are accessible only to authorized personnel who are properly screened, cleared and trained in the protection of privacy information.

Retention and disposal:

Records are destroyed 1 year after reservists becomes inactive.

System manager(s) and address:

Assistant Deputy Director for Personnel, Defense Intelligence Agency, Washington, D.C. 20301.

Notification procedure:

To obtain information as to whether this system of records contains information pertaining to yourself, you must submit a written request to: Secretariat, Defense Intelligence Agency, Washington, D.C. 20301. You must include in your request: your full name, current address, telephone number and social security account number or date of birth. Requests can be mailed to address indicated above or personally delivered to room 3E215, Pentagon, Washington, D.C.

Record access procedures:

All requests for copies of records pertaining to yourself must be in writing. You must include in your requests: your full name, current address, telephone number and social security account number or date of birth. Also, you should state that whatever cost is involved is acceptable or acceptable up to a specified limit. Requests can be mailed to: Secretariat, Defense Intelligence Agency, Washington, D.C. 20301, or personally delivered to room 3E215, Pentagon, Washington, D.C.

Contesting record procedures:

An individual who disagrees with the Agency's initial determination, with respect to his or her request, may file a request for administrative review of that determination. Requests are to be in writing and made within 30 days of the date of notification of the initial determina- tion. The requester shall provide a statement setting forth the reasons for his or her dis- agreement with the initial determination and provide such additional material to support his or her appeal. Requests can be mailed to: Secretariat, Defense Intelligence Agency, Washing- ton, D.C. 20301, or personally delivered to room 3E215, Pentagon, Washington, D.C.

Record source categories:

Individual reservists requesting assignment and or active duty training, agency officials and parent service of reservists.

Systems exempted from certain provisions of the act:

None

L DIA 0590

System name:

Defense Intelligence Special Career Automated System (DISCAS).

System location:

Defense Intelligence Agency, Washington, D.C. 20301.

Categories of individuals covered by the system:

DoD civilian positions and employee grades GS-05 and above in the GS-0132 intelligence series, scientific and technical series and other related professional series which are assigned to an organizational component performing an intelligence functions. Crypto- logic personnel and those enrolled in the National Security Agency (NSA) career system are excluded.

Categories of records in the system:

Data on employment history, qualification and skills and performance appraisals.

Authority for maintenance of the system:

Pursuant to the authority contained in the National Security Act of 1947, 10 U.S.C. 133 d, the Secretary of Defense issued Department of Defense Directive 5105.21 of August 1, 1961, super- seded by Department of Defense Directive 5105.21 of May 19, 1977, creating the Defense Intel- ligence Agency as a separate Agency of the Department of Defense under his direction and herein charged the Agency's Director with the responsibility for the maintenance of necessary and appropriate records.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

The Defense Intelligence Special Career Automated System Activity (DISCASA) forwards inquiries to employees regarding their availability for specific position vacancies when requested by the DoD component. DISCASA furnishes referral listings of DoD eligibles to appropriate offi- cials and managers for particular vacancy selection. DISCASA periodically furnishes copies of individual employee records for review and update by employees or servicing civilian person- nel offices. DISCASA will maintain files and records for historical or user research purposes such as annual reports for DoD components or management information furnished to appropriate DoD users.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Automated, maintained on magnetic tape and manual in paper files.

Retrievability:

By name or social security account number.

Safeguards:

Records are maintained in a building protected by security guards and are stored in vaults, safes or locked cabinets and are accessible only to authorized personnel who are properly screened, cleared and trained in the protection of privacy information.

Retention and disposal:

Records are temporary. They are retained until the employee concludes his DoD intelligence career at which time they are retired to an inactive file for 1 year and then destroyed.

System manager(s) and address:

Assistant Deputy Director for Personnel, Defense Intelligence Agency, Washington, D.C. 20301.

Notification procedure:

To obtain information as to whether this system of records contains information pertaining to yourself, you must submit a written request to: Secretariat, Defense Intelligence Agency, Washington, D.C. 20301. You must include in your request: your full name, current address, telephone number and social security account number or date of birth. Requests can be mailed to address indicated above or personally delivered to room 3E215, Pentagon, Washington, D.C.

Record access procedures:

All requests for copies of records pertaining to yourself must be in writing. You must include in your requests: your full name, current address, telephone number and social security account number or date of birth. Also, you should state that whatever cost is involved is acceptable or acceptable up to a specified limit. Requests can be mailed to: Secretariat, Defense Intelligence Agency, Washington, D.C. 20301, or personally delivered to room 3E215, Pentagon, Washington, D.C.

Contesting record procedures:

An individual who disagrees with the Agency's initial determination, with respect to his or her request, may file a request for administrative review of that determination. Requests are to be in writing and made within 30 days of the date of notification of the initial determina- tion. The requester shall provide a statement setting forth the reasons for his or her dis- agreement with the initial determination and provide such additional material to support his or her appeal. Requests can be mailed to: Secretariat, Defense Intelligence Agency, Washing- ton, D.C. 20301, or personally delivered to room 3E215, Pentagon, Washington, D.C.

Record source categories:

Source data for DISCASA is provided by the employees, the employee's supervisor and the servicing civilian personnel office.

Systems exempted from certain provisions of the act:

None

L DIA 0660

System name:

Security Files

System location:

Defense Intelligence Agency, Washington, D.C. 20301.

Categories of individuals covered by the system:

Military/civilian applicants and nominees to DIA; current and former DIA and Defense Attache System personnel; and other DoD-affiliated personnel under the security cognizance of DIA.

Categories of records in the system:

Records associated with personnel security functions; nomination notices, statement of per- sonal history, indoctrination/debriefing statements, secrecy agreements, certificates of clearance, adjudication memoranda and supporting documentation and in-house investigations, security violations, identification badge records, retrieval indices, clearance status records; and access control records.

Authority for maintenance of the system:

Pursuant to the authority contained in the National Security Act of 1947, 10 U.S.C. 133 d, the Secretary of Defense issued Department of Defense Directive 5105.21 of August 1, 1961, super- seded by Department of Defense Directive 5105.21 of May 19, 1977, creating the Defense Intel- ligence Agency as a separate Agency of the Department of Defense under his direction and herein charged the Agency's Director with the responsibility for the maintenance of necessary and appropriate records.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

To perform all administrative functions necessary to determine initial and continued eligi- bility for and control of access to classified information in DIA facilities and those elements mandated to the Director, DIA, for Sensitive Compartmented Information access. Information will be disclosed to such other federal agencies, state and local governments, as may have a legitimate use for such information and which agrees to apply appropriate safeguards to pro- tect data so provided and which is consistent with the conditions or reasonable expectations of use and disclosure under which the information was provided, collected or obtained.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Automated on magnetic tape and manual in paper files.

Retrievability:

By name.

Safeguards:

Records are maintained in a building protected by security guards and are stored in vaults, safes or locked cabinets and are accessible only to authorized personnel who are properly screened, cleared and trained in the protection of privacy information.

Retention and disposal:

Files on military and civilian applicants who are not assigned or hired by DIA are maintained up to 1 year and then destroyed. Personnel security dossiers are retained until the individual's association with DIA or access to SI/SAO information ceases and are then destroyed.

System manager(s) and address:

Assistant Deputy Director for Security Services, Defense Intelligence Agency, Washington, D.C. 20301.

Notification procedure:

To obtain information as to whether this system of records contains information pertaining to yourself, you must submit a written request to: Secretariat, Defense Intelligence Agency, Washington, D.C. 20301. You must include in your request: your full name, current address, telephone number and social security account number or date of birth. Requests can be mailed to address indicated above or personally delivered to room 3E215, Pentagon, Washington, D.C.

Record access procedures:

All requests for copies of records pertaining to yourself must be in writing. You must include in your requests: your full name, current address, telephone number and social security account number or date of birth. Also, you should state that whatever cost is involved is acceptable or acceptable up to a specified limit. Requests can be mailed to: Secretariat, Defense Intelligence Agency, Washington, D.C. 20301, or personally delivered to room 3E215, Pentagon, Washington, D.C.

Contesting record procedures:

An individual who disagrees with the Agency's initial determination, with respect to his or her request, may file a request for administrative review of that determination. Requests are to be in writing and made within 30 days of the date of notification of the initial determina- tion. The requester shall provide a statement setting forth the reasons for his or her dis- agreement with the initial determination and provide such additional material to support his or her appeal. Requests can be mailed to: Secretariat, Defense Intelligence Agency, Washing- ton, D.C. 20301, or personally delivered to room 3E215, Pentagon, Washington, D.C.

Record source categories:

By the individual, other federal agencies, firms contracted to the DoD and agency officials.

Systems exempted from certain provisions of the act:

Parts of this system may be exempt under Title 5. U.S.C., 552a, subsections k(2) and k(5). For additional information see agency rules contained in (32 CFR Part 292a).

L DIA 0800

System name:

Operation Record System

System location:

Defense Intelligence Agency, Washington, D.C. 20301.

Categories of individuals covered by the system:

Individuals involved in foreign intelligence and/or training activities conducted by the Department of Defense; who are of interest either because of their actual, apparent, or potential use.

Categories of records in the system:

Categories of records include operational, biographic, policy, management, training, and administrative matters related to the foreign intelligence activities of the Department of Defense.

Authority for maintenance of the system:

Pursuant to the authority contained in the National Security Act of 1947, 10 U.S.C. 133 d, the Secretary of Defense issued Department of Defense Directive 5105.21 of August 1, 1961, super- seded by Department of Defense Directive 5105.21 of May 19, 1977, creating the Defense Intel- ligence Agency as a separate Agency of the Department of Defense under his direction and herein charged the Agency's Director with the responsibility for the maintenance of necessary and appropriate records. Executive Order 12036, United States Intelligence Activities, January 24, 1978.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

To provide information within the Department of Defense and other federal agencies for the conduct of foreign intelligence operations and to provide staff management over foreign intel- ligence training conducted by the Department of Defense.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Automated on magnetic tapes and discs, microfilm and operture cards and manual in paper files.

Retrievability:

By name.

Safeguards:

Records are maintained in a building protected by security guards and are stored in vaults, safes or locked cabinets and are accessible only to authorized personnel who are properly screened, cleared and trained in the protection of privacy information.

Retention and disposal:

Permanent records are retired to the Washington National Record Center upon completion of the project and temporary records are destroyed.

System manager(s) and address:

Deputy Director for Collection Operations, Defense Intelligence Agency, Washington, D.C. 20301.

Notification procedure:

To obtain information as to whether this system of records contains information pertaining to yourself, you must submit a written request to: Secretariat, Defense Intelligence Agency, Washington, D.C. 20301. You must include in your request: your full name, current address, telephone number and social security account number or date of birth. Requests can be mailed to address indicated above or personally delivered to room 3E215, Pentagon, Washington, D.C.

Record access procedures:

All requests for copies of records pertaining to yourself must be in writing. You must include in your requests: your full name, current address, telephone number and social security account number or date of birth. Also, you should state that whatever cost is involved is acceptable or acceptable up to a specified limit. Requests can be mailed to: Secretariat, Defense Intelligence Agency, Washington, D.C. 20301, or personally delivered to room 3E215, Pentagon, Washington, D.C.

Contesting record procedures:

An individual who disagrees with the Agency's initial determination, with respect to his or her request, may file a request for administrative review of that determination. Requests are to be in writing and made within 30 days of the date of notification of the initial determina- tion. The requester shall provide a statement setting forth the reasons for his or her dis- agreement with the initial determination and provide such additional material to support his or her appeal. Requests can be mailed to: Secretariat, Defense Intelligence

Agency, Washing- ton, D.C. 20301, or personally delivered to room 3E215, Pentagon, Washington, D.C.

Record source categories:

Other Department of Defense components, federal agencies, foreign sources, overt publication, and private citizens.

Systems exempted from certain provisions of the act:

None

L DIA 0001

System name:

Defense Attache System Personnel Information File.

System location:

Defense Intelligence Agency, Washington, D.C. 20301.

Categories of individuals covered by the system:

Military and civilian personnel and their dependents, nominated for assignment to the Defense Attache System.

Categories of records in the system:

This system consists of a variety of personnel and directory data, security access, education, training, financial and health information related to the individual's assign- ment with the Defense Attache System.

Authority for maintenance of the system:

Pursuant to the authority contained in the National Security Act of 1947, 10 U.S.C. 133 d, the Secretary of Defense issued Department of Defense Directive 5105.21 of August 1, 1961, super- seded by Department of Defense Directive 5105.21 of May 19, 1977, creating the Defense Intel- ligence Agency as a separate Agency of the Department of Defense under his direction and herein charged the Agency's Director with the responsibility for the maintenance of necessary and appropriate records.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Records are used by staff, administrative and operating officials to: prepare individual administrative transactions; make decisions on the rights, benefits entitlements and the utilization of individuals; provide a data source for the production of reports, statistical surveys, rosters, documentation and studies required for the orderly personnel administration within the Defense Attache System. Information may be provided to host country, Department of State, Central Intelligence Agency, Department of Justice and the Department of Treasury.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Automated on magnetic tape and manual in paper files and cards.

Retrievability:

By name.

Safeguards:

Records are maintained in a building protected by security guards and are stored in vaults, safes or locked cabinets and are accessible only to authorized personnel who are properly screened, cleared and trained in the protection of privacy information.

Retention and disposal:

Records are maintained for 1 year beyond the individual's tour completion date and then destroyed.

System manager(s) and address:

Assistant Deputy Director for Personnel, Defense Intelligence Agency, Washington, D.C. 20301.

Notification procedure:

To obtain information as to whether this system of records contains information pertaining to yourself, you must submit a written request to: Secretariat, Defense Intelligence Agency, Washington, D.C. 20301. You must include in your request: your full name, current address, telephone number and social security account number or date of birth. Requests can be mailed to address indicated above or personally delivered to room 3E215, Pentagon, Washington, D.C.

Record access procedures:

All requests for copies of records pertaining to yourself must be in writing. You must include in your requests: your full name, current address, telephone number and social security account number or date of birth. Also, you should state that whatever cost is involved is acceptable or acceptable up to a specified limit. Requests can be mailed to: Secretariat, Defense Intelligence Agency, Washington, D.C. 20301, or personally delivered to room 3E215, Pentagon, Washington, D.C.

Contesting record procedures:

An individual who disagrees with the Agency's initial determination, with respect to his or her request, may file a request for administrative review of that determination. Requests are to be in writing and made within 30 days of the date of notification of the initial determina- tion. The requester shall provide a statement setting forth the reasons for his or her dis- agreement with the initial determination and provide such additional material to support his or her appeal. Requests can be mailed to: Secretariat, Defense Intelligence Agency, Washing- ton, D.C. 20301, or personally delivered to room 3E215, Pentagon, Washington, D.C.

Record source categories:

Parent service of individual, immediate supervisor on station, agency officials and Ambassa- dors.

Systems exempted from certain provisions of the act:

None

L DIA 0013

System name:

Bibliographic Data Index System

System location:

Defense Intelligence Agency, Washington, D.C. 20301.

Categories of individuals covered by the system:

Individuals who have published works of general interest to the Agency, and individuals involved in foreign intelligence activities.

Categories of records in the system:

An index of names of authors, title of published works, subject matter of writing and the location of source documents of open source literature and intelligence reports.

Authority for maintenance of the system:

Pursuant to the authority contained in the National Security Act of 1947, 10 U.S.C. 133 d, the Secretary of Defense issued Department of Defense Directive 5105.21 of August 1, 1961, super- seded by Department of Defense Directive 5105.21 of May 19, 1977, creating the Defense Intel- ligence Agency as a separate Agency of the Department of Defense under his direction and herein charged the Agency's Director with the responsibility for the maintenance of necessary and appropriate records.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Serves as a traditional library reference service for open source literature and intelligence reports. Information is used by agency officials, other federal agencies and contract person- nel to do research on intelligence subjects related to foreign intelligence activities.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Automated on magnetic tape and disc.

Retrievability:

By name

Safeguards:

Records are maintained in a building protected by security guards and are stored in vaults, safes or locked cabinets and are accessible only to authorized personnel who are properly screened, cleared and trained in the protection of privacy information.

Retention and disposal:

Open source literature is destroyed once material is out dated. Intelligence reports are retained for 2 years and retired to the Washington National Record Center for permanent retention

System manager(s) and address:

Assistant Deputy Director for Support and Services, Defense Intelligence Agency, Washing- ton, D.C. 20301.

Notification procedure:

To obtain information as to whether this system of records contains information pertaining to yourself, you must submit a written request to: Secretariat, Defense Intelligence Agency, Washington, D.C. 20301. You must include in your request: your full name, current address, telephone number and social security account number or date of birth. Requests can be mailed to address indicated above or personally delivered to room 3E215, Pentagon, Washington, D.C.

Record access procedures:

All requests for copies of records pertaining to yourself must be in writing. You must include in your requests: your full name, current

address, telephone number and social security account number or date of birth. Also, you should state that whatever cost is involved is acceptable or acceptable up to a specified limit. Requests can be mailed to: Secretariat, Defense Intelligence Agency, Washington, D.C. 20301, or personally delivered to room 3E215, Pentagon, Washington, D.C.

Contesting record procedures:

An individual who disagrees with the Agency's initial determination, with respect to his or her request, may file a request for administrative review of that determination. Requests are to be in writing and made within 30 days of the date of notification of the initial determina- tion. The requester shall provide a statement setting forth the reasons for his or her dis- agreement with the initial determination and provide such additional material to support his or her appeal. Requests can be mailed to: Secretariat, Defense Intelligence Agency, Washing- ton, D.C. 20301, or personally delivered to room 3E215, Pentagon, Washington, D.C.

Record source categories:

DoD, other intelligence agencies, educational institutions, federal agencies, research institutions, foreign governments and open source literature.

Systems exempted from certain provisions of the act:

None

L DIA 0819

System name:

DIA Financial Management

System location:

Defense Intelligence Agency, Washington, D.C. 20301.

Categories of individuals covered by the system:

Current and former civilian and military employees of DIA.

Categories of records in the system:

Claims for reimbursement for expenses on official business. Documents supporting claims of indebtedness to the United States Government. Applications for the waiver of erroneous payment or for remission of indebtedness. Correspondence from civilian employees related to financial transactions.

Authority for maintenance of the system:

Pursuant to the authority contained in the National Security Act of 1947, 10 U.S.C. 133 d, the Secretary of Defense issued Department of Defense Directive 5105.21 of August 1, 1961, super- seded by Department of Defense Directive 5105.21 of May 19, 1977, creating the Defense Intel- ligence Agency as a separate Agency of the Department of Defense under his direction and herein charged the Agency's Director with the responsibility for the maintenance of necessary and appropriate records.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Information is used to determine eligibility for waiver of erroneous payment and remission of indebtedness. To support claims of the United States Government for the collection of erro- neous payments made. Use to determine entitlements for reimbursements of expenditures on official business and to support payment. To process employee's claims of payroll problems and to forward checks and bonds to former employees. Information will be disclosed to the Department of Justice, General Accounting Office, and the Department of Treasury.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Manual in paper files and cards.

Retrievability:

By name

Safeguards:

Records are maintained in a building protected by security guards and are stored in vaults, safes or locked cabinets and are accessible only to authorized personnel who are properly screened, cleared and trained in the protection of privacy information.

Retention and disposal:

Permanent records are cut off each fiscal year and held for 2 years and then retired to the Washington National Record Center. Temporary records are destroyed in 4 years or 2 years after a General Accountant Office audit.

System manager(s) and address:

Deputy Comptroller, Defense Intelligence Agency, Washington, D.C. 20301.

Notification procedure:

To obtain information as to whether this system of records contains information pertaining to yourself, you must submit a written request to: Secretariat, Defense Intelligence Agency, Washington, D.C. 20301. You must include in your request: your full name, current address, telephone number and social security account number or date of birth. Requests can be mailed to address indicated above or personally delivered to room 3E215, Pentagon, Washington, D.C.

Record access procedures:

All requests for copies of records pertaining to yourself must be in writing. You must include in your requests: your full name, current address, telephone number and social security account number or date of birth. Also, you should state that whatever cost is involved is acceptable or acceptable up to a specified limit. Requests can be mailed to: Secretariat, Defense Intelligence Agency, Washington, D.C. 20301, or personally delivered to room 3E215, Pentagon, Washington, D.C.

Contesting record procedures:

An individual who disagrees with the Agency's initial determination, with respect to his or her request, may file a request for administrative review of that determination. Requests are to be in writing and made within 30 days of the date of notification of the initial determina- tion. The requester shall provide a statement setting forth the reasons for his or her dis- agreement with the initial determination and provide such additional material to support his or her appeal. Requests can be mailed to: Secretariat, Defense Intelligence Agency, Washing- ton, D.C. 20301, or personally delivered to room 3E215, Pentagon, Washington, D.C.

Record source categories:

Data is supplied from a number of sources including the individual concerned, the U.S. Army Finance Office and agency officials.

Systems exempted from certain provisions of the act:

None

L DIA 1728

System name:

DIA Prisoner of War Intelligence Analysis and Debriefing Files

System location:

Defense Intelligence Agency, Washington, D.C. 20301.

Categories of individuals covered by the system:

All U.S. personnel previously held prisoner of war (PW) or detained in Southeast Asia from 1961 to date and returned to U.S. control; and U.S. personnel released from detention in the People's Republic of China since 170. All U.S. personnel considered missing in action (MIA) or killed in action (KIA) and bodies not recovered.

Categories of records in the system:

Narrative of loss incident, identification data, casualty report; intelligence reports pos- sibly identifying subjects; portions of official debriefing; and/or debriefing summaries.

Authority for maintenance of the system:

Pursuant to the authority contained in the National Security Act of 1947, 10 U.S.C. 133 d, the Secretary of Defense issued Department of Defense Directive 5105.21 of August 1, 1961, super- seded by Department of Defense Directive 5105.21 of May 19, 1977, creating the Defense Intel- ligence Agency as a separate Agency of the Department of Defense under his direction and herein charged the Agency's Director with the responsibility for the maintenance of necessary and appropriate records.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

As background for analytical purposes, the evaluation of intelligence reports pertaining to U.S. personnel PW/MIA; in preparation of special studies and appraisals; to provide responses to queries for PW intelligence from the JCS, OASD (ISA), the Department of State, Central Intelligence Agency, the Military Service, and other federal agencies with a need-to-know; to assist the military service intelligence and casualty offices in the determination of status of their personnel; to provide guidance to the Joint Casualty Resolution Center to assist in planning for the recovery of remains of U.S. personnel not accounted for.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Automated on magnetic tapes and manual in paper files.

Retrievability:

By name.

Safeguards:

Records are maintained in a building protected by security guards and are stored in vaults, safes or locked cabinets and are accessible only to authorized personnel who are properly screened, cleared and trained in the protection of privacy information.

Retention and disposal:

Records will be retired to the Washington National Record Center upon disposition of all cases and will be destroyed 15 years subsequent.

System manager(s) and address:

Deputy Director for Intelligence Research, Defense Intelligence Agency, Washington, D.C. 20301.

Notification procedure:

To obtain information as to whether this system of records contains information pertaining to yourself, you must submit a written request to: Secretariat, Defense Intelligence Agency, Washington, D.C. 20301. You must include in your request: your full name, current address, telephone number and social security account number or date of birth. Requests can be mailed to address indicated above or personally delivered to room 3E215, Pentagon, Washington, D.C.

Record access procedures:

All requests for copies of records pertaining to yourself must be in writing. You must include in your requests: your full name, current address, telephone number and social security account number or date of birth. Also, you should state that whatever cost is involved is acceptable or acceptable up to a specified limit. Requests can be mailed to: Secretariat, Defense Intelligence Agency, Washington, D.C. 20301, or personally delivered to room 3E215, Pentagon, Washington, D.C.

Contesting record procedures:

An individual who disagrees with the Agency's initial determination, with respect to his or her request, may file a request for administrative review of that determination. Requests are to be in writing and made within 30 days of the date of notification of the initial determina- tion. The requester shall provide a statement setting forth the reasons for his or her dis- agreement with the initial determination and provide such additional material to support his or her appeal. Requests can be mailed to: Secretariat, Defense Intelligence Agency, Washing- ton, D.C. 20301, or personally delivered to room 3E215, Pentagon, Washington, D.C.

Record source categories:

Parent military services; intelligence reports prepared by elements of the Defense Intelli- gence Agency, the military services and the Central Intelligence Agency; the Department of State; Foreign Broadcast Information Service reports; newspapers; magazines; television and radio.

Systems exempted from certain provisions of the act:

None

BILLING CODE 3810-70-M

UNITED STATES MARINE CORPS

REQUESTING RECORDS

Records are retrieved by name or by some other personal identifier. It is therefore especially important for expeditious service when requesting a record that particular attention be provided to the Notification and/or Access Procedures of the particular record system involved so as to furnish the required personal identifiers, or any other pertinent personal information as may be required, to locate and retrieve the record.

BLANKET ROUTINE USES

Certain blanket 'routine uses' of the records have been established, that are applicable to every record system maintained within the Department of Defense, unless specifically stated otherwise within a particular record system. These additional blanket routine uses of the records are published below, only once in the interest of simplicity, economy and to avoid redundancy, before the individual record system notices begin rather than repeating them in every individual record system.

ROUTINE USE - LAW ENFORCEMENT

In the event that a system of records maintained by this component to carry out its functions indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute, or by regulation, rule or order issued pursuant thereto, the relevant records in the system of records may be referred, as a routine use, to the appropriate agency, whether federal, state, local or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, rule, regulation or order issued pursuant thereto.

ROUTINE USE - DISCLOSURE WHEN REQUESTING INFORMATION

A record from a system of records maintained by this component may be disclosed as a routine use to a federal, state or local agency maintaining civil, criminal or other relevant enforcement information or other pertinent information, such as current licenses, if necessary to obtain information relevant to a component decision concerning the hiring or retention of an employee, the issuance of a security clearance, the letting of a contract, or the issuance of a license, grant or other benefit.

ROUTINE USE - DISCLOSURE OF REQUESTED INFORMATION

A record from a system of records maintained by this component may be disclosed to a federal agency, in response to its request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

ROUTINE USE - CONGRESSIONAL INQUIRIES

Disclosure from a system of records maintained by this component may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

ROUTINE USE WITHIN THE DEPARTMENT OF DEFENSE

A record from a system of records maintained by this component may be disclosed as a routine use to other components of the Department of Defense if necessary and relevant for the performance of a lawful function such as, but not limited to, personnel actions, personnel security actions and criminal investigations of the Component requesting the record.

ROUTINE USE - PRIVATE RELIEF LEGISLATION

Relevant information contained in all systems of records of the Department of Defense published on or before August 22, 1975, will be disclosed to the Office of Management and Budget in connection with the review of private relief legislation as set forth in OMB Circular A-19 at any stage of the legislative coordination and clearance process as set forth in that Circular.

ROUTINE USE - DISCLOSURES REQUIRED BY INTERNATIONAL AGREEMENTS

A record from a system of records maintained by this Component may be disclosed to foreign law enforcement, security, investigatory, or administrative authorities in order to comply with requirements imposed by, or to claim rights conferred in international agreements and arrangements including those regulating the stationing and status in foreign countries of Department of Defense military and civilian personnel.

ROUTINE USE - DISCLOSURE TO STATE AND LOCAL TAXING AUTHORITIES

Any information normally contained in IRS Form W-2 which is maintained in a record from a system of records maintained by this Component may be disclosed to State and local taxing authorities with which the Secretary of the Treasury has entered into agreements pursuant to Title 5, U.S.Code, Sections 5516, 5517, 5520, and only to those State and local taxing authorities for which an employee or military member is or was subject to tax regardless of whether tax is or was withheld. This routine use is in accordance with Treasury Fiscal Requirements Manual Bulletin Nr. 76-07.

ROUTINE USE - DISCLOSURE TO THE OFFICE OF PERSONNEL MANAGEMENT

A record from a system of records subject to the Privacy Act and maintained by this component may be disclosed to the Office of Personnel Management concerning information on pay and leave,

benefits, retirement deductions, and any other information necessary for the Office of Personnel Management to carry out its legally authorized Government-wide personnel management functions and studies.

ROUTINE USE - DISCLOSURE OF INFORMATION TO NARS (GSA)

A record from a system of records maintained by this component may be disclosed as a routine use to the National Archives and Records Service of the General Services Administration in records management inspections conducted under authority of 44 U.S.C. 2904 and 2906.

ROUTINE USE - DISCLOSURE TO DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

All systems of records relating to compensation, employment or retirement, or extracts therefrom, maintained by this Component may be disclosed as a routine use to the Department of Health, Education, and Welfare for the purpose of comparing such record with records of programs administered by and in the possession of the Department of Health, Education, and Welfare in order to verify information where such verification is required by law or regulation or to identify violations or potential violations of law, whether criminal, civil, or regulatory, and whether arising by general statute or particular program statute, or by regulation, rule, or order issued pursuant thereto.

MAA00001

System name:

Flight Readiness Evaluation Data System (FREDS)

System location:

Primary System - The Commandant of the Marine Corps, Headquarters, U S Marine Corps, Washington, D C 20380

Decentralized Segments - Marine Corps organizations having FREDS capability (or requirement or related information). Addresses are as shown in the Navy Standard Distribution List (OPNAV 09B3-107).

Categories of individuals covered by the system:

All active Marine Corps Air Crewmembers (Naval Aviators/Naval Flight Officers and Enlisted Crewmembers)

Categories of records in the system:

File contains personal identifying information such as name, rank, social security number, organization etc., and specific information with regard to aviation qualifications.

Authority for maintenance of the system:

Title 5, U S Code 301

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Headquarters, U S Marine Corps and Marine Corps command, activities and organizations - By officials and employees of the Marine Corps in the administration and management of Marine Corps Air Crewmember assets as required in the performance of official duties.

Department of Defense and its Components - By officials and employees of the Department in the performance of their official duties.

The Attorney General of the U S - By officials and employees of the Office of the Attorney General in connection with litigation, law enforcement or other matters under the direct jurisdiction of the Department of Justice or as carried out as the legal representative of the Executive Branch agencies.

Courts - By officials of duly established local, state and federal courts as a result of court order pertaining to matters properly within the purview of said court.

Congress of the U S - By the Senate or the House of Representative of the U S or any Committee or subcommittee thereof, any joint committee of Congress or subcommittee of joint committee on matters within their jurisdiction requiring disclosure of the files.

The Comptroller General of the U S - By the Comptroller General or any of his authorized representatives in the course of the performance of duties of the General Accounting Office relating to the Marine Corps.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

On magnetic tape

Retrievability:

By social security number of the individual addressed

Safeguards:

Tapes are stored in limited access areas and handled by personnel that are properly trained in working with personal information.

Retention and disposal:

File is maintained on individual as long as he is in an active flight status, information pertaining to individual so removed is erased from tape.

System manager(s) and address:

The Commandant of the Marine Corps, Headquarters, U S Marine Corps, Washington, D C 20380

Notification procedure:

Information may be obtained from the individual command to which an individual is assigned for duty. Addresses of individual commands are as listed in the Navy Standard Distribution List (OPNAV PO9B3-107).

Record access procedures:

Written requests from individuals should be addressed to the Commanding Officer of the aviation unit to which they are assigned for duty. Addresses are shown in the Navy Standard Distribution List.

Personnel not permanently assigned to an aviation command may request information from the Commandant of the Marine Corps (Code AA), Headquarters, U S Marine Corps Washington, D C 20380.

Written requests should include name, and social security number.

For personal visits the individual should be able to provide personal identification, such as valid military identification card, drivers license, etc.

Contesting record procedures:

The Marine Corps rules for contesting contents and appealing initial determinations may be obtained from the SYSMANAGER

Record source categories:

The primary source is the individual, However the individual's commanding officer or the commanding officer's designated individual fulfills certain criteria.

Systems exempted from certain provisions of the act:

None

MAA00002

System name:

Marine Corps Aircrew Performance/Qualification Information

System location:

The Commandant of the Marine Corps, Headquarters, U S Marine Corps, Washington, D C 20380

Categories of individuals covered by the system:

Marine Corps aeronautically designated personnel (Naval Aviators, Naval Flight Officers, and aircrew members) who have been the subject of medical qualification, flight pay entitlement, and/or Flight Status Selection Board (FSSB) correspondence.

Categories of records in the system:

The file contains information on medical qualification, flight pay entitlements, and/or FSSB correspondence and the background data addressing such correspondence.

Authority for maintenance of the system:

Title 5, U S Code 301

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Headquarters, U S Marine Corps and Marine Corps commands, activities and organizations - By officials and employees of the Marine Corps in the execution of their assigned duties with respect to the administration and management of Marine Corps aeronautically designated personnel.

Department of Defense and its Components - By officials and employees of the Department in the performance of their official duties.

The Attorney General of the U S - By officials and employees of the Office of the Attorney General in connection with litigation, law enforcement or other matters under the direct jurisdiction of the Department of Justice or as carried out as the legal representative of the Executive Branch agencies.

Courts - By officials of duly established local, state and federal courts as a result of court order pertaining to matters properly within the purview of said court.

Congress of the U S - By the Senate or the House of Representatives of the U S or any Committee or subcommittee thereof, any

joint committee of Congress or subcommittee of joint committee on matters within their jurisdiction requiring disclosure of the files.

The Comptroller General of the U S - By the Comptroller General or any of his authorized representatives in the course of the performance of duties of the General Accounting Office relating to the Marine Corps.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Information is contained on paper records in file folders.

Retrievability:

Information is retrieved alphabetically by the last name of the individual concerned.

Safeguards:

Building containing files employs 24 hour security guards. Offices containing files are locked after working hours and personnel handling records do so only on a 'need-to-know' basis. Such personnel are trained and screened for dependability. Material that could be considered 'career-sensitive' is retained in a safe.

Retention and disposal:

Files are permanent. They are retained in active file until it is determined they are no longer required, then transferred to Marine Corps Central Files for historical deposit.

System manager(s) and address:

The Commandant of the Marine Corps, Headquarters, U S Marine Corps, Washington, D C 20380

Notification procedure:

Information may be obtained from:
The Commandant of the Marine Corps (Code AA)
Headquarters, U S Marine Corps
Washington, D C 20380
Telephone: Area Code 202/694-1391

Record access procedures:

Written requests from the individual should be addressed to the Commandant of the Marine Corps (Code AAZ), Headquarters, U S Marine Corps, Washington, D C 20380 and should contain the full name, social security number and signature.

For personal visits the individual should provide valid identification such as military identification card, Department of Defense building pass, drivers license, or other type identification that includes picture and signature. In the absence of such identification, the individual must provide sufficient data to insure that the individual is the subject of the inquiry.

Contesting record procedures:

The Marine Corps rules for contesting contents and appealing initial determinations may be obtained from the SYSMANAGER

Record source categories:

Information is obtained from official reports, boards, inquiries and requests. Information is also obtained from the review of Naval Aviator/Naval Flight Officer Reporting Management System (NANFORMS) data.

Systems exempted from certain provisions of the act:

None

MAA00003

System name:

Naval Aviator/Naval Flight Officer Reporting Management System (NANFORMS)

System location:

The Commandant of the Marine Corps, Headquarters, U S Marine Corps Washington, D. C. 20380.

Categories of individuals covered by the system:

All Marine Corps aeronautically designated officer personnel (Naval Aviators, Naval Flight Officers and Officer Navigators)

Categories of records in the system:

File contains a summary of individual flight experience by fiscal year and type of aircraft in addition to rank, military occupation specialty and current duty assignment.

Authority for maintenance of the system:

Title 5, U. S. Code 301

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Headquarters, U S Marine Corps and Marine Corps commands, activities and organization - By officials and employees of the Marine Corps in connection with their assigned duties.

Department of Defense and its Components - By officials and employees of the Department in the performance of their official duties.

The Attorney General of the U. S. - By officials and employees of the Office of the attorney General in connection with litigation, law enforcement or other matters under the direct jurisdiction of the Department of Justice or as carried out as the legal representative of the Executive Branch agencies.

Courts - By officials of duly established local, state and federal courts as a result of court order pertaining to matters properly within the purview of said court.

Congress of the U. S. - By the Senate or the House of Representatives of the U. S. or any Committee or subcommittee thereof, any joint committee of Congress or subcommittee of joint committee on matters within their jurisdiction requiring disclosure of the files.

The Comptroller General of the U. S. - By the Comptroller General or any of his authorized representatives in the course of the performance of duties of the General Accounting Office relating to the Marine Corps.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Information is stored on magnetic tape

Retrievability:

Information is retrieved by social security number.

Safeguards:

Building employs security guards. Records are maintained in areas accessible only to authorized personnel that are properly trained and screened.

Retention and disposal:

Records are permanent. Older files are stored in Marine Corps Central Files System.

System manager(s) and address:

The Commandant of the Marine Corps, Headquarters, U S Marine Corps, Washington, D. C. 20380.

Notification procedure:

Information may be obtained from:
The Commandant of the Marine Corps (Code AAZ)
Headquarters, U S Marine Corps
Washington, D. C. 20380
Telephone: Area Code 202/694-1391

Record access procedures:

Requests from individuals should contain the full name, social security number and signature of the individual.

For personal visits, the individual should be able to provide some valid personal identification such as military identification card, Department of Defense Building Pass, drivers license, etc. In the absence of the above identification, the individual will be asked to provide sufficient data to insure that he is the subject of the inquiry.

Contesting record procedures:

The Marine Corps rules for contesting contents and appealing initial determinations may be obtained from the SYSMANAGER

Record source categories:

Information contained in the records is obtained from the Department of the Navy-wide Individual Flight Activity Reporting System (IFARS) AND FROM THE Manpower Management System (MMS).

Systems exempted from certain provisions of the act:

None

MFD00001

System name:

Automated Leave and Pay System (ALPS)

System location:

Primary System - The Commandant of the Marine Corps, Headquarters, U S Marine Corps, Washington, D C 20380
Decentralized System - Major Marine Corps Commands

Categories of individuals covered by the system:

all Marine Corps Civilian Employees at Major Marine Corps Commands

Categories of records in the system:

Pay and Leave Records of Marine Corps Civilian Employees

Authority for maintenance of the system:

Title 5, U S Code 301

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Headquarters, U S Marine Corps; and Marine Corps commands, activities, and organizations - To administer and manage all pay and leave matters for individual civilian employees.

Department of Defense and its Components - By officials and employees of the Department in the performance of their official duties.

The Attorney General of the U S - By officials and employees of the Office of the Attorney General in connection with litigation, law enforcement or other matters under the direct jurisdiction of the Department of Justice or as carried out as the legal representative of the Executive Branch agencies.

Courts - By officials of duly established local, state and federal courts as a result of court order pertaining to matters properly within the purview of said court.

Congress of the U S - By the Senate or the House of Representatives of the U S or any Committee or subcommittee thereof, any joint committee of Congress or subcommittee of joint committee on matters within their jurisdiction requiring disclosure of the files.

The Comptroller General of the U S - By the Comptroller General or any of his authorized representatives in the course of the performance of duties of the General Accounting Office relating to the Marine Corps.

The Internal Revenue Service - By officials and employees of the Internal Revenue Service in connection with such matters relating to their official duties.

State and local governmental agencies - By officials and employees of State and local governmental agencies in connection with such matters relating to their official duties.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Magnetic Tape or Disk

Retrievability:

Employee Badge Number or SSN

Safeguards:

Restricted Access to Areas where Maintained

Retention and disposal:

Permanent File

System manager(s) and address:

The Commandant of the Marine Corps (Code FD), Headquarters, U S Marine Corps, Washington, D C 20380

Notification procedure:

Information may be obtained from the Marine Corps installation or activity at which the individual is employed.

Record access procedures:

Requests from individuals should be addressed to the commanding officer at which the individual is employed. Addresses of Marine Corps installations, activities, and organizations are listed in the Navy Standard Distribution List (OPNAV P09B3-107). Written requests should contain full name, social security number or employee badge number, and signature of the individual concerned.

Personal visits may be made to the appropriate installation, activity or organization during the normal work week between the hours of 8:00AM-4:30PM. For personal visit the individual should be able to provide valid personal identification such as employee badge, drivers license, medicare card, etc.

Contesting record procedures:

The Agency's Rules for Access to Records and for Contesting Contents and Appealing Initial Determinations by the individual concerned may be obtained from the Sysmanager

Record source categories:

Application and related forms provided by the employee in matters relating to his/her employment. Employment data to include time cards, standard pay increases, leave, etc. provided by the employer or its official representative. Data such as tax rates, employee benefit information etc. provided by appropriate federal, state or local governmental agencies or their designated representatives. Information from courts, and attorney having to do with employee wages entitlements and benefits.

Systems exempted from certain provisions of the act:

None.

MFD00002

System name:

PRIMARY MANAGEMENT EFFORTS (PRIME)/OPERATIONS SUBSYSTEM

System location:

Primary System - The Commandant of the Marine Corps, Headquarters, U S Marine Corps, Washington, D C 20380.

Decentralized System - Major Marine Corps Commands

Categories of individuals covered by the system:

All Marine Corps Civilian Employees and Selected Military Personnel at Major Marine Corps Commands

Categories of records in the system:

Labor Distribution Records

Authority for maintenance of the system:

Title 5, U S Code 301

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Headquarters, U S Marine Corps and Marine Corps commands, activities and organizations - By officials and employees of the Marine Corps in matters regarding their assigned duties.

Department of Defense and its Components - By officials and employees of the Department in the performance of their official duties.

The Attorney General of the U S - By officials and employees of the Office of the Attorney General in connection with litigation, law enforcement or other matters under the direct jurisdiction of the Department of Justice or as carried out as the legal representative of the Executive Branch agencies.

Courts - By officials of duly established local, state and federal courts as a result of court order pertaining to matters properly within the purview of said court.

Congress of the U S - By the Senate or the House of Representatives of the U S or any Committee or subcommittee thereof, any joint committee of Congress or subcommittee of joint committee on matters within their jurisdiction requiring disclosure of the files.

The Comptroller General of the U S - By the Comptroller General or any of his authorized representatives in the course of the performance of duties of the General Accounting Office relating to the Marine Corps.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Magnetic Tape or Disk

Retrievability:

Employee Badge Number or social security number

Safeguards:

Restricted Access to Areas where Maintained

Retention and disposal:

Permanent Record. Completely Deleted upon Termination of Employee

System manager(s) and address:

The Commandant of the Marine Corps, Headquarters, U S Marine Corps, Washington, D C 20380

Notification procedure:

Information may be obtained from:

The Commandant of the Marine Corps (Code FD)
Headquarters, U S Marine Corps
Washington, D C 20380
Telephone: Area Code 202/694-1080

Record access procedures:

Request from individuals should be addressed to the individual's employing activity. Activity addresses are as shown in the Navy Standard Distribution List (OPNAV 09B3-107).

Written requests should contain the individual's full name, social security number, employee number (if applicable) and signature.

For personal visits, the individual should provide sufficient identification to insure the individual is the subject of the inquiry.

Contesting record procedures:

The agency's rules for access to records and for contesting contents and appealing initial determinations by the individual concerned may be obtained from the SYSMANAGER

Record source categories:

Employing activity of the individual

Systems exempted from certain provisions of the act:

None

MFD00003

System name:

Joint Uniform Military Pay System/Manpower Management System (JUMPS/MMS)

System location:

Primary System - Marine Corps Central Design and Programming Activity, 1500 East 95th Street, Kansas City, Missouri 64131; Marine Corps Finance Center, 1500 East 95th Street, Kansas City, Missouri 64197.

Decentralized Segments - There are nine Satellite/Command Data Processing Installations (SDPI/CDPI) which maintain files with similar records at the following locations: SDPI 02, Marine Corps Base, Camp Lejeune, NC 28542; SDPI 03, Marine Corps Base, Camp Pendleton, CA 92055; SDPI 06, FMF Pacific, FPO San Francisco, CA 96610; SDPI 09, Headquarters U S Marine Corps, Washington, D C 20380; SDPI 11, Marine Corps Recruit Depot, Parris Island, SC 29905; SDPI 15, Marine Corps Recruit Depot, San Diego, CA 92140; CDPI 17, Marine Corps Base, Quantico, VA 22134; SDPI 27, Marine Corps Base, Camp S. D. Butler, FPO Seattle, WA 98773; First Marine Brigade, FPO San Francisco, CA 96615; SDPI 16, Marine Corps Finance Center, 1500 East 95th Street, Kansas City, Missouri 64197.

Categories of individuals covered by the system:

All Marine Corps military personnel on active duty for 31 days or longer, certain civilians and other service personnel who have attended formal Marine Corps schools.

Categories of records in the system:

File contains personnel and pay data which includes: Name, grade, SSN, date of birth, citizenship, marital status, home of record, dependents information, record of emergency data, enlistment contract or officer acceptance form identification, duty status, population group, sex, ethnic group, duty infor- mation, duty station/personnel assignment and unit information, security investi- gation, military pay record data such as information contained on the Leave and Earnings Statement which may include base pay/allowances/allotments/bond authorization, health care coverage, special pay and bonus data, Federal and State Withholding/Income Tax Data, Federal Indemnity Compensation Act Tax With- holding Data, Serviceman's Group Life Insurance Deductions, leave account, wage and tax summaries, separation document code, test scores/information, language proficiency, military/civilian/off-duty education, training information, awards, combat tour information, aviation/pilot/flying time data, lineal precedence number, limited duty officer/warrant officer footnote, TAD data, power of attorney, moral code, conduct and proficiency marks, years in service, promotional data.

Authority for maintenance of the system:

Title 10 and 37, U S Code Section 5031 and 5201

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Internal:

Headquarters, U. S. Marine Corps and Marine Corps commands, activities and organizations - By officials and employees of the Marine Corps in the performance of their assigned duties in matters relating to a Marine's automated personnel and/or pay record.

Department of Defense and its components - By officials and employees of the Department in the performance of their official duties.

External:

The Attorney General of the U S - By officials and employees of the Office of the Attorney General in connection with litigation, law enforcement or other matters under the direct jurisdiction of the Department of Justice or as carried out as the legal representative of the Executive Branch agencies.

Courts - By officials of duly established local, state and federal courts as a result of court order pertaining to matters properly within the purview of said court.

Congress of the U S - By the Senate or the House of Representatives of the U S or any committee or subcommittee thereof, any joint committee of Congress or subcommittee of joint committee on matters within their jurisdiction requiring disclosure of the files.

The Comptroller General of the U S - By the Comptroller General or any of his authorized representatives in the course of the performance of duties of the General Accounting Office relating to the Marine Corps.

By officials and employees of the American Red Cross and the Navy Relief Society in the performance of their duties. Access will be limited to those portions of the member's record required to effectively assist the member.

Federal, state and local government agencies - By officials and employees of federal, state and local government through official request for information with respect to law enforcement, investigatory procedures, criminal prosecution, civil court action and regulatory order.

To provide information to another agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States which has been authorized by law to conduct law enforcement activities pursuant to a request that the agency initiate criminal or civil action against an individual on behalf of the U. S. Marine Corps, the Department of the Navy, or the Department of Defense.

To provide information to individuals pursuant to a request for assistance in a criminal or civil action against a member of the U. S. Marine Corps, by the U. S. Marine Corps, the Department of the Navy, or the Department of Defense.

Department of Health and Human Services (DHHS) - Disclosure of the name, rank or grade, and social security account number of each Marine Corps active duty military member to the Inspector General of DHHS for the specific purpose of comparison with appropriate rolls reflecting recipients of Aid to Families with Dependent Children (AFDC).

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Data is recorded on magnetic records and discs, punch cards, computer printouts, microform, file folders, and other documents.

Retrievability:

The data contained in magnetic records can be displayed on cathode-ray tubes, it can be computer printed on paper, and it can be converted to microform for information retrieval; the data in the supporting file folders and other manual records is retrieved manually. Computerized and conventional indices are required to retrieve individual records from the system. Normally, all types of records are retrieved by Social Security Number and name.

Safeguards:

Building management employs security guards; building is locked nights and holidays. Authorized personnel may enter and leave the building during nonworking hours but must sign in and out. Records are maintained in areas accessible only to authorized personnel that are properly screened, cleared and trained.

Access to personal information is limited to authorized personnel with a need-to-know. Access is restricted to specific applications programs, records, and files to which personnel have a specific and recorded need-to-know. Online data sets (both tape and disc) pertaining to personal information are password protected, areas are controlled and access lists are used. The files are also protected at a level appropriate to the type of information being processed.

Retention and disposal:

Magnetic records are maintained on all military personnel and certain civilians while they are in service or employed by the service and for a period of 6 months after separation. Paper and film records are maintained for a period of 10 years after the final transaction, then they are destroyed. End calendar and fiscal year 'snapshots' of the MMS data base are maintained indefinitely in magnetic form at Headquarters, U. S. Marine Corps.

System manager(s) and address:

Commandant of the Marine Corps, Codes FD/MP, Headquarters U S Marine Corps, Washington, D C 20380.

Notification procedure:

Requests from individuals for information concerning pay related matters should be addressed to the Commandant of the Marine Corps (Code FD). Requests from individuals for information concerning personnel matters should be addressed to the Commandant of the Marine Corps (Code MP).

Requesting individual must supply full name and Social Security Number.

The requester may visit the Marine Corps Finance Center, 1500 East Bannister Road, Kansas City, Missouri 64197 to obtain information on whether the system contains records pertaining to him or her.

In order to personally visit the above address and obtain information, individuals must present a military identification card, a driver's license, or other suitable proof of identity.

Record access procedures:

Information on JUMPS may be obtained from the member's local disbursing officer. Information on MMS may be obtained from the member's immediate commanding officer. Requests for information from persons no longer in service should be signed by the person requesting the information. Dates of service, Social Security Number, and full name of requester should be printed or typed on the request.

It should be sent to the Marine Corps Finance Center, 1500 East 95th Street, Kansas City, Missouri 64197.

Contesting record procedures:

The agency's rules for access to records and for contesting contents and appealing initial determinations by the individual concerned may be obtained from the SYSMANAGER.

Record source categories:

Recruiting offices, disbursing offices, administrative offices, and the individual are the principle sources of the information contained in the JUMPS/MMS record for that person.

Systems exempted from certain provisions of the act:

None

MFD00004

System name:

Bond and Allotment (B&A) System

System location:

Marine Corps Central Design and Programming Activity (MCCDPA), 1500 East 95th Street, Kansas City, Missouri 64131; Marine Corps Finance Center, Kansas City, Missouri 64197.

Categories of individuals covered by the system:

The allotment system contains all active allotments and limited (12 months) stop history for each active duty, retired, and Fleet Marine Corps Reserve (FMCR) member who authorized an allotment from his pay and allowances.

Categories of records in the system:

The allotment file contains allotments authorized by the Marines concerned, as provided under instructions issued by the Secretary of Defense.

The B&A automated system is made up of records which contain the following fields (data elements and data sets): Identification Number (Social Security Number (SSN)); Initials of Name (Last, First, Middle); Rank/Category; Last Name and Suffix; Last Pay Date; First Pay Date; Work Date; Amount; Term (in months); Account/Policy Number; Authority/Date/Remark; Bond Owner Name; Bond Owner SSN; Co-owner Beneficiary Flag; Co-owner or Beneficiary Name; Co-owner or Beneficiary SSN; Authority/Date/Remark; Name of Recipient; Street Address/Post Office Box; City and State/Country; Geographic Code (City, State/Country); Zip Code.

Authority for maintenance of the system:

Title 37, U S Code. The authority for continuing deduction for garnishment of pay is outlined in section 459 of Public Law 93-647.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

The purpose of the system is to provide for the payment of allotments and for the issuance, cancellation, of U S Treasury checks and savings bonds as authorized by appropriate directives. The data obtained from the system provides for the control and ultimate disposition of all treasury checks and savings bonds prepared. Allows for the collection of appropriate data, to render an accurate accounting of public funds expended or collected as required by the Navy Comptroller Manual. The allotment file is utilized by the Joint Uniform Military Pay System/ Manpower Management System (JUMPS/MMS) and Retired Pay systems to calculate the monies due active duty, retired, and FMCR members of the U S Marine Corps.

The allotment class, dollar value, and allotee are displayed on the JUMPS Leave and Earnings Statement (LES) as issued. Copies of the LES are distributed as follows:

Original (white) - Disbursing Officer (DO) having custody of the Personal Financial Record.
Duplicate (yellow) - furnished the Marine concerned.
Triplicate (pink) - furnished the Commanding Officer (CO) for retention on the Marine's service record.
For permanent record retention purposes, one copy will be filed at the MCFC in microform.
The total dollar value of active allotments is furnished each retired and FMCR Marine each time a new statement of his account card is prepared.

Verification and/or information concerning a specific allotment may be released (as requested) to the following:

Marine concerned.
Marine's CO
Marine's DO
Recipient of the allotment.
Treasury Department.
Federal Reserve Bank.
Federal Bureau of Investigation.
Naval Audit Service.
General Accounting Office.
Postal Inspectors.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Data is recorded on magnetic records, punch cards, computer printouts, microform, file folders, and other documents.

Retrievability:

The data contained in magnetic records can be displayed on cathode-ray tubes, it can be computer printed on paper, and it can be converted to microform for information retrieval; the data in the supporting file folders and other manual records is retrieved manually. Normally all types of records are retrieved by SSN and name.

Safeguards:

The Centralized Pay Division is locked during nonduty hours, as well as the building being under security guard protection. Files within the division are accessible only to authorized personnel.

Retention and disposal:

Magnetic records are maintained by MCCDPA on all active allotments during the life of the allotment and for a period of 12 months after the allotment has been stopped. Paper and microform files relating to the Centralized Pay Division files are disposed of as directed by SECNAVINST P5212.53.

System manager(s) and address:

Commandant of the Marine Corps (Code FD), Headquarters, U S Marine Corps, Washington, D C 20380.

Notification procedure:

Individual requests for information should be addressed to the Marine Corps Finance Center, Centralized Pay Division (Code CPA), Kansas City, Missouri 64197.

Requests for information must contain member's SSN, name, military service number (if applicable), and any other pertinent data concerning the information desired.

A person may visit any Marine Corps disbursing office to find out if the system contains records pertaining to him or her.

For personal visits the requester must present a military identification card or copy of an Armed Forces of United States Report of Separation from Active Duty (DD Form 214 (MC)) for separated personnel.

Record access procedures:

Information may be obtained from the Marine Corps Finance Center, Centralized Pay Division (Code CPA), 1500 East 95th Street, Kansas City, Missouri 64197. Written Requests must contain name and SSN. For personal visits, valid personal identification is required.

Contesting record procedures:

The agency's rules for access to records and for contesting contents and appealing initial determinations by individual concerned may be obtained from the SYSMANAGER.

Information pertaining to an individual who has active allotments is affected by unit diary input concerning name, or SSN changes, and to ensure allotments are stopped when a Marine is reported to be discharged or in a desertion status. Also, member's status codes are changed by unit diary or Retired Pay input when the Marine is transferred to the FMCR or Retired List.

Record source categories:

The input of data from allotment/bond authorizations, other scannable documents, magnetic tapes received from the Satellite Data Processing Installations, and computer interfaces with the JUMPS/MMS and the Retired Pay systems are the principle sources of the information contained in the B&A automated system.

Systems exempted from certain provisions of the act:

None

MFD00005

System name:

Retired Pay/Personnel System (RPPS)

System location:

Marine Corps Central Design and Programming Activity, 1500 East 95th Street, Kansas City, Missouri 64131; Marine Corps Finance Center, 1500 East 95th Street, Kansas City, Missouri 64197.

Categories of individuals covered by the system:

Pay account folders for retired Marine Corps members, Fleet Marine Corps Reservists (FMCR), and survivors of deceased retired and FMCR members, who are entitled to retired pay, retainer pay, and survivor annuities.

Categories of records in the system:

The RPPS automated system of records contains the following fields (data elements and data sets): Retired/Retainer Date; Retainer Date; Pay Change; Information Status; Social Security Number (SSN) and Last, First, and Middle Initial (Key); Deletion Date; SSN; Retired Category Code; Member's Name; Pay Entry Base Date; Service for Pay; Active Service; Other Military Service Number (MSN); Prior MSN/SSN/Key; Rank Code; Race Code; Sex Code; Disability Percent; Heroism Pay; Pay Table Code; Recomputation Age; Retirement Laws; Functional Account Number; Ranks; Birthdates; Pay Delete/ Suspense Code; Retired Serviceman's Family Protection Pay; Reserve Retirement Credit Points; Allotment Data; Withholding Tax Data; Wage and Tax Summaries; Gross Pay; Taxable Pay; Withholding Tax; Dependency Indemnity Compensation; Pension Act of 1944 (Veterans Administration (VA) Waiver); Pension Act of 1964 (Dual Compensation G1); Retired Serviceman's Family Protection Plan; Survivor Benefit Plan; Social Security; Scheduled Collections; Net Pay; Special Handling Code (Check Delivery); Accumulated Summaries; Home Mailing Address; Check Mailing Address; Pay Distribution; Last Change Posted; Date Member Eligible to Retire; Date Arrived Continental United States Without Dependents; Primary Military Occupational Specialty; Districts; Highest Rank Held Satisfactorily; Service Prior to 1 July 1949; Service After 1 July 1949; Active Duty After Transfer to Fleet/ Retired Rolls; Date Next Physical Year and Month; VA Disease Codes; Department of Defense Disease Codes; Nearest Hospital (See Table 9); Personnel Accounting Separation - Designator; Earnings Statement Flag; Disability Pay; Change of Address Flag; Last Time Processed by Update-Extractor; SSN Validation; Remarks Area; One-Time Credit/Checkage; Scheduled Collection; Veterans Administration Claim Number; Tower Amendment Code.

Used for extraction or compilation of statistical data and reports for management studies and statistical analyses for use internally or externally as required by Department of Defense or by government agencies.

Authority for maintenance of the system:

Title 5, U S Code 301

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Computation of retired pay, retainer pay, and survivor annuity accounts, perform audit of accounts, reply to correspondence, etc.

Creation of printed reports, records, checks, microforms, magnetic files, etc., based on information available in the system. This output is used by various departments of the Marine Corps for pay, personnel, audit, and other purposes. Some of this information is made available to authorized local, state, and Federal agencies.

Displaying all or part of any selected record on a cathode-ray tube for research, audit, update, and similar purposes.

Used for extraction or compilation of statistical data and reports for management studies and statistical analyses for use internally or externally as required by Department of Defense or by government agencies.

By officials and employees of the American Red Cross and the Navy Relief Society in the performance of their duties. Access will be limited to those portions of the member's record required to effectively assist the member.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Data is recorded on magnetic records, punch cards, computer printouts, microform, file folders, and other documents.

Retrievability:

The data contained in magnetic records can be displayed on cathode-ray tubes, it can be computer printed on paper, and it can be converted to microform for information retrieval; the data in the supporting file folders and other manual records is retrieved manually. Normally all types of records are retrieved by SSN and name.

Safeguards:

Building management employees security guards; building is locked nights and holidays. Authorized personnel may enter and leave the building during nonworking hours, but must sign in and out.

Retention and disposal:

Magnetic records are maintained on all persons who are eligible for retired pay, retainer pay, and survivor annuities while they are alive and for a period of 6 months after that person dies or ceases to be eligible. Paper and film records are maintained for a period of 10 years after the final transaction.

System manager(s) and address:

Commandant of the Marine Corps (Code FD), Headquarters, U S Marine Corps, Washington, D C 20380.

Notification procedure:

Requests from individuals for information should be referred to the SYSMANAGER.

Requesting individual must supply full name and SSN

The requester may visit the Marine Corps Finance Center, 1500 East 95th Street, Kansas City, Missouri 64197, to obtain information on whether the system contains records pertaining to him or her.

In order to personally visit the above address and obtain information, individuals must present a military identification card, a driver's license, or other suitable proof of identity.

Record access procedures:

Requests for information relative to the RPPS automated system should be signed by the person requesting the information. Dates of service, SSN, and full name of requester should be printed or typed on the request. It should be sent to the SYSMANAGER.

Contesting record procedures:

The agency's rules for access to records for contesting contents and appealing initial determinations by the individual concerned may be obtained from the SYSMANAGER

Record source categories:

Documents and correspondence received from Headquarters, U S Marine Corps, the Veterans Administration, the member, changes in laws, etc. are the principle sources of information contained in the RPPS automated system.

Systems exempted from certain provisions of the act:

None

MFD00006

System name:

Centralized Automated Reserve Pay System (CAREPAY)

System location:

Marine Corps Central Design and Programming Activity (MCCDPA), 1500 East 95th Street, Kansas City, Missouri 64131; Marine Corps Finance Center, 1500 East 95th Street, Kansas City, Missouri 64197.

Categories of individuals covered by the system:

Members of Organized Marine Corps Reserve Units who are active Reservists (Class II) and perform a maximum of 48 paid drills and 14 days Annual Training Duty per year.

Categories of records in the system:

File contains information to process payment to active reservists which include: Name, SSN, grade, unit information, pay group, administrative duty pay, number of drills performed/authorized, basic pay, aviation crew member drills, number of tax exemptions, tax withheld, taxable pay, Federal Insurance Contributions Act Withheld, taxable and non-taxable credit/ checkage, gross and net pay, dates of active duty, Serviceman's Group Life Insurance Premium Selection.

Authority for maintenance of the system:

Titles 10 and 37, U S Code

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Central Accounts Division clerks and analysts use these data to process payments and to answer inquiries concerning payments, received from Marine Reservists, Internal Revenue Service, Welfare agencies, and the Commandant of the Marine Corps.

Examination Division clerks use these data to verify proper payment and to process old pay inquiries.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Data are recorded on magnetic records, punch cards, computer printouts, microform, file folders, and other documents.

Retrievability:

The data contained in magnetic records can be computer printed on paper and it can be converted to microform for information retrieval; the data in the supporting file folders and other manual records are retrieved manually. Normally all types of records are retrieved by SSN/Name/ Reporting Unit Code.

Safeguards:

Building employs security guards. Records are maintained in areas accessible only to personnel working there and are kept in file desks made for that purpose for 6 months and in DIBOLD vertical file for

12 months after which they are transferred to the Examination Division.

Retention and disposal:

Magnetic records are maintained by MCASC on all active Reservists; they are retained for a period of 4 months after the individual Marine ceases to be active.

Paper and microform records are held for 4 years, 6 months at the Center, thereafter they are retired to a Federal Records Center in accordance with Secretary of the Navy Instruction P5212.5.

System manager(s) and address:

Commandant of the Marine Corps (Code FD), Headquarters, U S Marine Corps, Washington, D C 20380.

Notification procedure:

Requests from individuals for information should be referred to the SYSMANAGER.

Requesting individual must supply full name and SSN.

The requester may visit the Marine Corps Finance Center, 1500 95th Street, Kansas City, Missouri 64197, to obtain information on whether the system contains records pertaining to him or her.

In order to personally visit the above address and obtain information, individuals must present a military identification card, a driver's license, or other suitable proof of identity.

Record access procedures:

Requests for information relative to CAREPAY should be signed by the person requesting the information. Dates of service, SSN, and full name of requester should be printed or typed on the request. It should be sent to the SYSMANAGER.

Contesting record procedures:

The agency's rules for access to records and for contesting contents and appealing initial determinations by individuals concerned may be obtained from the SYSMANAGER.

Record source categories:

Organized Marine Corps Reserve Units, Internal Revenue Service, Individual Marine.

Systems exempted from certain provisions of the act:

None

MFD00007

System name:

Examination Division Records System

System location:

Marine Corps Finance Center, Examination Division, Kansas City, Missouri 64197

Federal Records Center, National Archives and Records Service, 2301 East Bannister Road, Kansas City, Missouri 64131

Washington National Records Center, Washington, D C 20409

National Personnel Records Center, 9700 Page Boulevard, St. Louis, Missouri 63132

Categories of individuals covered by the system:

Marines serving on active duty, personnel on the Marine Corps Retired List, Fleet Marine Corps reservists, personnel discharged or separated from active duty, active and inactive Reserve personnel, deceased personnel, and Marine Corps disbursing officers concerning shortage of disbursing accounts.

Categories of records in the system:

Unit Diaries - A chronological record of daily personnel events and history of active Marine Corps activities and organized Marine Corps Reserve Units.

Substantiating Vouchers - Supporting documents to substantiate pay adjustment items entered on military pay accounts.

Military Payrolls - An accounting and record of appropriated funds disbursed for military pay by name, social security number, amount of payment, and check number or signature of member for cash payments.

Financial Returns - Travel vouchers, collection vouchers, public vouchers for services other than personal, and civilian payrolls.

Military Pay Cases of Separated Personnel - A history of individual pay accounts from date of entry on active duty through date of separation, including, as appropriate, replies to congressional inquiries; correspondence in connection with requests for remission and/or waiver of indebtedness; individual claims for pay and allowances including claims for travel allowances and responses thereto; records of participation in the Uniformed Services Savings Deposit Program, including personnel declared to be in a missing-in-action status; information surrounding the circumstances of a former member separated in an overpaid status, thus being indebted to the United States Government; cases contain substantiating documents such as military pay records, leave and earnings statements, documents relating to Board for Correction of Naval Records, and other records and vouchers to substantiate responses to all inquiries and payment or disapproval of claims.

Annual Separations Listings - An annual record of separation showing social security number, initials, type of separation, and the effective date of separation of Marines discharged, retired, transferred to the Fleet Marine Corps Reserve, and deceased.

Annual Reserve Tax Listings - A record showing income tax information of Class II Reserve personnel.

Microfilm of Annual Wage and Tax Information of Active Duty Personnel - Contains cumulative totals of taxable pay earned and taxes withheld, social security wages and taxes withheld.

Microfilm of Quarterly Social Security Wage Data - Contains social security number, name, and amount of wages reported to the Social Security Administration on a quarterly basis.

Microfilm of Master Allotment File - Contains information concerning the allotment status of active Marines, such as start and stop dates, allotment purpose codes, money amount of allotments, and name and address of allottee.

Microfiche and Microfilm of Field and Alpha Locators - A record of personnel data of Marines on active duty, listed numerically by social security number and alphabetically by name.

Microfiche of Marine Corps Officers Lineal List - A record of Marine Corps officers on active duty showing social security number, name, rank, date of rank, permanent rank, date of birth, date first commissioned, and pay entry base date.

Active Military Pay Cases - A file of each Marine on active duty containing military pay records opened semiannually prior to 1 July 1973 and related miscellaneous pay documents.

Reserve Personnel Military Pay Cases - A history of individual pay accounts of Class II and Class III Reserve personnel ordered to temporary active duty under individual duty orders, including pay accounts of personnel attending the Platoon Leaders class.

Centralized Automated Reserve Pay System (CAREPAY) - Files of pay data compiled by the Central Accounts Division in support of payments made to Class II reservists assigned to Organized Marine Corps Reserve units containing drill reports, unit diaries, promotion warrants, certificates for performance of hazardous duty, pay adjustment authorizations, active duty for training orders, pension certificates, token payment payrolls, adjustment and consolidated final settlement payrolls, and other miscellaneous documents to substantiate payments to Reserve personnel.

Uniformed Services Savings Deposit Accounts of Personnel Declared Missing In Action - A record of deposits and withdrawals of Marine Corps personnel in a missing-in-action status containing member's name, social security number, balance of deposits, and name and address of the designated beneficiary to whom monies are disbursed.

Federal Housing Administration (FHA) Files - Files contain social security number, name, FHA account number, due date of insurance premiums, and record of bills and payments.

U S Treasury Department, Internal Revenue Service Form 941c - A record effecting adjustment of social security wages, previously reported or nonreported, containing the member's name, social security number, military pay group, period covered, and the monetary amount of adjustment.

Marine Corps Disbursing Officers Shortage Accounts - File contains accountability of losses, letters, and vouchers pertaining thereto.

Indebtedness Cases - Files contain the debtor's name, social security number, current mailing address, the reason for indebtedness and correspondence relating thereto, personal financial information provided by the debtor, receipts of payments, control book, cash record, debt ledger, collection agent's ledger, collection vouchers, personal information provided by credit bureau reports, indebtedness record card, debt control card, accountability statements, complete military pay accounts, General Accounting Office inquiries, General Accounting Office Notices of Exception, legal notices pertaining to bankruptcy, tax certificates, and other miscellaneous substantiating records and vouchers relating to the indebtedness.

Authority for maintenance of the system:

Unit Diaries - Section 25, Title 6, General Accounting Office Manual; Marine Corps Order P7220.31; SECNAVINST P5212.5B

Annual Separation Listings - Standing operating procedures used for reference and research purposes.

Annual Reserve Tax Listings - Marine Corps Order 7220.17D; standing operating procedures.

Microfilm of Annual Wage and Tax Information of Active Duty Personnel - Standing operating procedures used for reference and research purposes.

Microfilm of Quarterly Social Security Wage Data - Standing operating procedures used for reference and research purposes.

Microfilm of Master Allotment File - Standing operating procedures used for reference and research purposes.

Microfiche and Microfilm of Field and Alpha Locators - Standing operating procedures used for reference and research purposes.

Microfiche of Marine Corps Officers Lineal List - Standing operating procedures used for reference and research purposes.

Active Military Pay Cases. Section 25, Title 6, General Accounting Office Manual; Military Pay Procedures Manual.

Reserve Personnel Military Pay Cases. Section 25, Title 6, General Accounting Office Manual; Military Pay Procedures Manual.

Centralized Automated Reserve Pay System (CAREPAY) - Section 25, Title 6, General Accounting Office Manual; Military Pay Procedures Manual, Marine Corps Order 7220.17D.

Uniformed Services Savings Deposit Accounts of Personnel Declared Missing in Action - Department of Defense Pay and Entitlements Manual.

Federal Housing Administration (FHA) Files - Department of Defense Directive 1338.4 of 20 July 1971 and SECNAVINST 1741.4D

U S Treasury Department, Internal Revenue Service Form 941c, Internal Revenue Service Code.

Marine Corps Disbursing Officers Shortage Accounts - Navy Comptroller Manual.

Indebtedness Cases - Federal Claims Collection Act of 1966, 80 Stat. 309.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Records are collected for the purpose of accounting for appropriated funds disbursed by authorized appointed agents; processing claims for and against the United States Government; auditing by the General Accounting Office; holding area for disbursing records until subsequent disposition of records is effected.

Military and civilian personnel assigned to, and employed by, the Marine Corps Finance Center in pursuance of official duties, and the General Accounting Office.

Accountability of appropriated funds; processing claims for and against the United States Government; processing requests for remission and/or waiver of indebtedness; pursuing collection action against former Marine Corps personnel who are indebted to the United States Government; processing wage and tax adjustments to the Internal Revenue Service and the Social Security Administration; investigating individual pay accounts and related documents to determine monies due claimant or to substantiate an indebtedness previously established in response to written and telephonic congressional inquiries received on behalf of active and former members of the Marine Corps; administering the Federal Housing Administration and home mortgage insurance programs; administering the Uniformed Services Savings Deposit Program for missing in action personnel; extracting fiscal data for budgetary purposes and submitting fiscal reports to Headquarters, U S Marine Corps; extracting, reporting, and paying Federal income taxes and social security taxes to the Internal Revenue Service; extracting and reporting wages paid subject to social security tax to the Social Security Administration on an individual basis; processing and adjudicating travel claims, both individual and dependent travel; researching and collecting information incident to inquiries received from Federal Government agencies, State and county government and agencies, Department of the Navy and Marine Corps activities, other branches of the Armed Forces, and interested individual parties having authorized access to the records.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Unit Diaries. Paper records in folders.

Substantiating Vouchers. Paper records in folders.

Military Payrolls. Paper records in folders.

Financial Returns. Paper records in folders.

Military Pay Cases of Separated Personnel. Paper records in folders.

Annual Separation Listings. Paper records in hardback binders.

Annual Reserve Tax Listings. Paper records in hardback binders.

Microfilm of Annual Wage and Tax Information of Active Duty Personnel. Reel type microfilm of 100 foot capacity.

Microfilm of Quarterly Social Security Wage Data. Reel type microfilm of 100 foot capacity.

Microfiche and Microfilm of Field and Alpha Locators. 4 by 6 inch microfiche sheets and reel type microfilm of 100 foot capacity.

Microfiche of Marine Corps Officers Lineal List. 4 by 6 inch microfiche sheets.

Active Military Pay Cases. Paper records in folders.

Centralized Automated Reserve Pay System (CAREPAY). Paper records in folders.

Uniformed Services Savings Deposit Accounts of Personnel Declared Missing In Action. Paper records in folders.

Federal Housing Administration (FHA) Files. Paper records in folders.

U S Treasury Department, Internal Revenue Service Forms 941c. Paper records in folders.

Indebtedness Cases. Paper records in folders and reel type microfilm of 100 foot capacity.

Retrievability:

Unit Diaries. Filed by the reporting unit code number and month in which the diary was prepared.

Substantiating Vouchers. Filed by the fourth terminal digit of the member's social security number within the disbursing officer's symbol number and the month in which the pay change was effected.

Military Payrolls. Filed by the disbursing officer's voucher number, each payee identified by name and social security number.

Financial Returns. Filed by the disbursing officer's voucher number in the month in which payment was disbursed.

Military Pay Cases of Separated Personnel. Filed by the fourth terminal digit of the member's social security number.

Annual Separation Listings. A mechanized listing, in numerical sequence by the fourth terminal digit of the social security number, filed by the calendar year in which a member was separated from active duty.

Annual Reserve Tax Listings. A mechanized listing in alphabetical sequence and filed by the calendar year in which the wage data applies.

Microfilm of Annual Wage and Tax Information of Active Duty Personnel. A microfilm listing in numerical sequence by the first three digits of the social security number and filed by the calendar year in which the tax data applies.

Microfilm of Quarterly Social Security Wage Data. A microfilm listing in numerical sequence by the first three digits of the social security number and filed by the quarter within the calendar year in which the wages were earned.

Microfilm of Master Allotment File. A microfilm listing in numerical and alphabetical sequence and filed by the month in which the allotment data applies.

Microfiche and Microfilm of Field and Alpha Locators. Microfiche and reel microfilm in both numerical and alphabetical sequence and filed according to the effective date of issue.

Microfiche of Marine Corps Officers Lineal List. A microfiche listing in alphabetical and control number sequence according to rank, and filed according to the effective date of issue.

Active Military Pay Cases. Filed in numerical sequence by the fourth terminal digit of the member's social security number.

Reserve Personnel Military Pay Cases. Filed in numerical sequence by the fourth terminal digit of the member's social security number.

Centralized Automated Reserve Pay System (CAREPAY). Filed by the reporting unit code number and chronologically by the month in which the CAREPAY records were prepared.

Uniformed Services Savings Deposit Accounts of Personnel Declared Missing In Action. Filed alphabetically by the member's surname.

Federal Housing Administration (FHA) Files. Filed in numerical sequence by the Federal Housing Administration case number by due month and pay group; i.e., officers and enlisted.

U S Treasury Department, Internal Revenue Service Forms 941c. Filed by reporting period and applicable pay group.

Marine Corps Disbursing Officers Shortage Accounts. Filed by the disbursing officer's symbol number and name.

Indebtedness Cases. Filed in alphabetical sequence

Safeguards:

Federal Protective Security Guards. Records are maintained in areas not normally accessible to other than authorized personnel.

Retention and disposal:

Unit Diaries. Retained in the Examination Division, Records Services Branch, for 18 months; then transferred to the Federal Records Center and destroyed after a total retention period of 4 years in accordance with General Accounting Office instructions.

Substantiating Vouchers. Retained in the JUMPS Division, Records and Files Branch, until microfilmed; then forwarded to the Examination Division, Records Services Branch, and retained for 18 months; then transferred to the Federal Records Center and destroyed after a total retention period of 10 years in accordance with General Accounting Office instructions.

Military Payrolls. Retained in the Examination Division, Financial Accounts Branch, for 1 month after receipt; then forwarded to the Records Services Branch and retained for 18 months; then transferred to the Federal Records Center and destroyed after a total retention period of 10 years in accordance with General Accounting Office instructions.

Financial Returns. Retained in the Examination Division, Financial Accounts Branch, for 1 month after receipt; then forwarded to the Records Services Branch for a retention period of 4 months; then transferred to the Federal Records Center and destroyed after a total retention period of 10 years in accordance with General Accounting Office instructions.

Military Pay Cases of Separated Personnel. Retained in the Examination Division, Claims and Separations Branch, for 18 months following end of the calendar year in which the member was released from active duty, then released to the Records Services Branch for transfer to the Federal Records Center and destroyed after a total retention period of 10 years in accordance with General Accounting Office instructions.

Annual Separation Listings. Retained in the Examination Division, Records Services Branch, for 10 years or until such time as the corresponding military pay cases are destroyed.

Annual Reserve Tax Listings. Retained in the Examinations Division, Records Services Branch, until no longer useful; then destroyed.

Microfilm of Annual Wage and Tax Information of Active Duty Personnel. Retained in the Examination Division, Records Services Branch, until no longer useful; then destroyed.

Microfilm of Quarterly Social Security Wage Data. Retained in the Examination Division, Records Services Branch, indefinitely.

Microfilm of Master Allotment File. Retained in the Examination Division, Records Services Branch, until no longer useful; then destroyed.

Microfiche and Microfilm of Field and Alpha Locators. Retained in the Examination Division, Records Services Branch, indefinitely.

Microfiche of Marine Corps Officers Lineal List. Retained in the Examination Division, Records Services Branch, until new listing is received; then destroyed.

Active Military Pay Cases. Retained in the Examination Division, Pay Record Audit Branch, until such time as member is released from active duty; then released to the Claims and Separations Branch and ultimate transfer to the Federal Records Center.

Reserve Personnel Military Pay Cases. Retained in the Examination Division, Pay Record Audit Branch, for 3 fiscal years; then transferred to the Federal Records Center and destroyed after a total retention period of 10 years in accordance with General Accounting Office instructions.

Centralized Automated Reserve Pay System (CAREPAY). Retained in the Examination Division, Pay Record Audit Branch, for 3 fiscal years; then transferred to the Federal Records Center and destroyed after a total retention period of 10 years in accordance with General Accounting Office instructions.

Uniformed Services Savings Deposit Accounts of Personnel Declared Missing In Action. Retained in the Examination Division, General Audit Branch, until such time as the account is closed; then filed in the member's military pay case and held until the case is transferred to the Federal Records Center.

Federal Housing Administration (FHA) Files. Retained in the Examination Division, General Audit Branch, for 3 years following termination of the member's entitlement; then filed in the member's military pay case and held until the case is transferred to the Federal Records Center.

U S Treasury Department, Internal Revenue Service Forms 941c. Retained in the Examination Division, Financial Accounts Branch, for four years following the date the 941c was prepared; then destroyed.

Marine Corps Disbursing Officers Shortage Accounts. Retained in the Examination Division, Financial Accounts Branch, for two years after final settlement; then destroyed.

Indebtedness Cases. Retained in the Examination Division, Settlements Branch, until case is closed or declared uncollectible; then transfer the uncollectible cases to the General Accounting Office or to the member's service record book according to the disposition of each particular case. Record of Indebtedness cards are reduced to microfilm annually and retained indefinitely.

System manager(s) and address:

Commandant of the Marine Corps (Code FDD).
Marine Corps Finance Center.
General Accounting Office.

Notification procedure:

Information may be obtained from:
Commanding Officer
Marine Corps Finance Center
Examination Division
Kansas City, Missouri 64197
Telephone: Area Code 816-926-7853

Individual will be required to furnish name, social security number, duty status, and type of information or records required.

Same as notification.

Name, social security number, military identification card, or other appropriate identification.

Record access procedures:

Same as notification.

Contesting record procedures:

The agency's rules for access to records and for contesting contents and appealing initial determinations by the individual concerned may be obtained from the system manager.

Record source categories:

Marine Corps activities having the responsibility of collecting data and preparing reports and documents; Headquarters U S Marine Corps; credit unions; credit bureaus; insurance companies; courts; and financial institutions.

Systems exempted from certain provisions of the act:

None

MFD00009

System name:

Pay Vouchers for Marine Corps Junior Reserve Officer Training Course Instructors

System location:

All Marine Corps District Headquarters.

Categories of individuals covered by the system:

Retired Marines in the Marine Corps Junior Reserve Officer Training Course Instructor Program.

Categories of records in the system:

Files contain individual name, rank, social security number, unit to which assigned, requests for payment of salaries.

Authority for maintenance of the system:

Title 5, U S Code 301

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Marine Corps Junior Reserve Officer Training Course Officer and administrative and fiscal personnel for evaluation and processing for payment.

Officials and employees of the Naval Service and General Accounting Office in the execution of their official duties in relation to inspections, investigations, legal action.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Paper records in file folders stored in filing cabinets.

Retrievability:

Alphabetically by last name, and school to which assigned.

Safeguards:

Access limited to Marine Corps Junior Reserve Officer Training Course, administrative and fiscal personnel required to process payment requests and payments. After working hours the office and building are locked. A guard is located in the general vicinity.

Retention and disposal:

Files are retained for three years and then destroyed.

System manager(s) and address:

Marine Corps Junior Reserve Officer Training Course Officer Marine Corps Districts.

Notification procedure:

Write or visit SYSMANAGER of Marine Corps District in which school is located. Provide full name, social security number, and military status. Proof of identity may be established by military identification card or DD-214 and drivers license.

Record access procedures:

The agency's rules for access to records may be obtained from the SYSMANAGER

Contesting record procedures:

The rules for access to records and for contesting contents and appealing initial determinations by the individual concerned may be obtained from the SYSMANAGER

Record source categories:

Senior Marine Instructor of Marine Corps Junior Reserve Training Course unit of which instructor is a member.

Systems exempted from certain provisions of the act:

None

MFD00010

System name:

Per Diem and Travel Payment System

System location:

Primary System-Disbursing Offices, Marine Corps Posts and Stations

Categories of individuals covered by the system:

All Marine Corps civilian and military personnel receiving travel advances or making settlement of travel claims to the local Disbursing Office.

Categories of records in the system:

Completed travel claims with documentation cross-referenced to individuals.

Authority for maintenance of the system:

Title 5, U S Code 301

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Marine Corps disbursing employees for cross-reference between individual and disbursement of funds for reimbursement in the performance of official travel.

Headquarters, U S Marine Corps and Marine Corps commands, activities and organizations - By officials and employees of the Marine Corps in matters regarding their assigned duties.

Department of Defense and its Components - By officials and employees of the Department in the performance of their official duties.

The Attorney General of the U S - By officials and employees of the Office of the Attorney General in connection with litigation, law enforcement or other matters under the direct jurisdiction of the Department of Justice or as carried out as the legal representative of the Executive Branch Agencies.

Courts - By officials of duly established local, state and federal courts as a result of court order pertaining to matters properly within the purview of said court.

Congress of the U S - By the Senate or the House of Representatives of the U S or any Committee or subcommittee thereof, any joint committee of Congress or subcommittee of joint committee on matters within their jurisdiction requiring disclosure of the files.

The Comptroller General of the U S - By the Comptroller General or any of his authorized representatives in the course of the performance of duties of the General Accounting Office relating to the Marine Corps.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Card file.

Retrievability:

Employee name, social security number or badge number.

Safeguards:

Card file is maintained and used by specific clerks within travel section of the Disbursing Office. After working hours, office is locked in a building with controlled access by armed guards.

Retention and disposal:

Data is maintained until individual departs the area and all travel advances have been settled.

System manager(s) and address:

Disbursing Officer

Notification procedure:

Information may be obtained from:

Disbursing Offices, Marine Corps Posts and Stations

Record access procedures:

Signed written requests should contain the full name of the individual and social security number or badge number and addressed to the address listed under NOTIFICATION above.

Contesting record procedures:

The agency's rules for access to records and for contesting contents and appealing initial determination by the individual concerned may be obtained from the SYSMANAGER

Record source categories:

Travel orders and disbursing documents.

Systems exempted from certain provisions of the act:

None

MHD00001

System name:

Biographical Files

System location:

Reference Section (Code HDR), History & Museums Division, Headquarters, U S Marine Corps, Washington, D C 20380 and all major Marine Corps commands and districts.

Categories of individuals covered by the system:

Marine Corps General Officers and those Marines considered as being or having been newsworthy.

Categories of records in the system:

File contains biographical sketches, press releases and media clippings.

Authority for maintenance of the system:

Title 5, U S Code 301

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Headquarters, U S Marine Corps commands, activities and organizations By officials and employees in connection with their official duties.

Department of Defense and its Components - By officials and employees of the Office of the Attorney General in connection with litigation, law enforcement or other matters under the direct jurisdiction of the Department of Justice or as carried out as the legal representative of the Executive Branch agencies.

Courts - By officials of duly established local, state and federal courts as a result of court order pertaining to matters properly within the purview of said court.

Congress of the U S - By the Senate or the House of Representatives of the U S or any Committee or subcommittee thereof, any joint committee of Congress or subcommittee of joint committee on matters within their jurisdiction requiring disclosure of the files.

The Comptroller General of the U S - By the Comptroller General or any of his authorized representatives in the course of the performance of duties of the General Accounting Officer relating to the Marine Corps.

Historical researchers-to determine accuracy of facts and provide background for correspondence and studies.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Paper records in file folders, microfiche, and photographs.

Retrievability:

Filed alphabetically by last name of subject.

Safeguards:

Building employs security guards. Files within a vault accessible only to authorized personnel who are screened and registered prior to being granted access.

Retention and disposal:

Files are permanent

System manager(s) and address:

The Commandant of the Marine Corps, Headquarters, U S Marine Corps, Washington, D C 20380

Notification procedure:

Information may be obtained from:

The Commandant of the Marine Corps (Code HD)
Headquarters, U S Marine Corps
Room 3129, Reference Section Head
Navy Annex (Federal Office Building #2)
Washington, D C 20380
Telephone: Area Code 202/694-1481/1473

Record access procedures:

Requests from individuals should be addressed to: The Commandant of the Marine Corps (Code HDR), Headquarters U S Marine Corps, Washington, D C 20380

Written requests for information should contain the full name of the individual.

For personal visits, the individual should be able to provide some acceptable identification.

Contesting record procedures:

The agency's rules for access to records and for contesting contents and appealing initial determinations by the individual concerned may be obtained from the SYSMANAGER

Record source categories:

Newspapers, magazines, Marine Corps press releases and biographical sketches.

Systems exempted from certain provisions of the act:

None

MHD00006

System name:

Register/Lineal Lists

System location:

The Commandant of the Marine Corps, Headquarters, U S Marine Corps, Washington, D C 20380

Categories of individuals covered by the system:

Lists of all active duty and retired officers from 1800 to present.

Categories of records in the system:

Bound volume of listings which include individual's name, rank.

Authority for maintenance of the system:

Title 5, U S Code 301

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Historical Researchers - To determine authority of dates, names and ranks of personnel.

Headquarters, U S Marine Corps and Marine Corps commands, activities and organizations - By officials and employees of the Marine Corps in the execution of their assigned duties.

Department of Defense and its Components - By officials and employees of the Department in the performance of their official duties.

The Attorney General of the U S - By officials and employees of the Office of the Attorney General in connection with litigation, law enforcement or other matters under the direct jurisdiction of the Department of Justice or as carried out as the legal representatives of the Executive Branch agencies.

Courts - By officials of duly established local, state and federal courts as a result of court order pertaining to matters properly within the purview of said court.

Congress of the U S - By the Senate or the House of Representatives of the U S or any Committee or subcommittee thereof, any joint committee of Congress or subcommittee of joint committee on matters within their jurisdiction requiring disclosure of the files.

The Comptroller General of the U S - By the Comptroller General or any of his authorized representatives in the course of the performance of duties of the General Accounting Office relating to the Marine Corps.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Bound volumes retained in library

Retrievability:

Yearly volume listed alphabetically within ranks.

Safeguards:

Building employs security guards. Files within a vault accessible only to authorized personnel who are screened and registered prior to being granted access.

Retention and disposal:

Files are permanent

System manager(s) and address:

The Commandant of the Marine Corps, Headquarters, U S Marine Corps, Washington, D C 20380

Notification procedure:

Information may be obtained from:

The Commandant of the Marine Corps (Code HD)
Headquarters, U S Marine Corps
Room 3129, Reference Section Head
Navy Annex
Washington, D C 20380
Telephone: Area Code 202/694-1481/1473

Record access procedures:

Requests from individuals should be addressed to: Commandant of the Marine Corps (Code HDR), Headquarters, U S Marine Corps, Washington, D C 20380

Written requests for information should contain the full name of the individual.

For personal visits the individual should be able to provide some acceptable identification.

Contesting record procedures:

The agency's rules for access to records and for contesting contents and appealing initial determinations by the individual concerned may be obtained from the SYSMANAGER.

Record source categories:

Internal Publication

Systems exempted from certain provisions of the act:

None

MIL00001

System name:

Assignment and Occupancy of Family Housing Records

System location:

System is organizationally decentralized. Records are maintained at Marine Corps installations with family housing.

Categories of individuals covered by the system:

File contains individual's application, assignment to and occupancy history of family housing. Records include, but are not limited to information from the Manpower Management System and the Joint Uniform Military Pay System.

Categories of records in the system:

File contains individual's application and assignment to and occupancy history of family housing.

Authority for maintenance of the system:

Title 5, U S Code 301

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Installation Family Housing Offices - To obtain information in order to determine type of quarters to which individual's are to be assigned; to make assignments and to personnel who are assigned to quarters.

Department of Defense and its Components - By officials and employees of the Department in the performance of their official duties.

The Attorney General of the U S - By officials and employees of the Office of the Attorney General in connection with litigation, law enforcement or other matters under the direct jurisdiction of the Department of Justice or as carried out as the legal representative of the Executive Branch agencies.

Courts - By officials of duly established local, state and federal courts as a result of court order pertaining to matters properly within the purview of said court.

Congress of the U S - By the Senate or the House of Representatives of the U S or any Committee or subcommittee thereof, any joint committee of Congress or subcommittee of joint committee on matters within their jurisdiction requiring disclosure of the files.

The Comptroller General of the U S - By the Comptroller General or any of his authorized representatives in the course of the performance of duties of the General Accounting Office relating to the Marine Corps.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Paper records in file folders and on file cards.

Retrievability:

Filed alphabetically by last name of housing occupant and in order of position on waiting list.

Safeguards:

Records are maintained in areas accessible only to authorized personnel; waiting lists are maintained for public inspection.

Retention and disposal:

Records are permanent. They are retained in active file during time that personnel is residing in quarters, retained in a quarters record jacket after termination of occupancy.

System manager(s) and address:

The Commandant of the Marine Corps, Headquarters, U S Marine Corps, (Code LF) Washington, D C 20380

Notification procedure:

Information may be obtained from: The Commanding Officer of the Marine Corps Installation from which family housing has been requested, assigned or vacated. Mailing addresses are as shown in the Navy Standard Distribution List (OPNAV P09B3-107).

Record access procedures:

Requests for information from individuals should be addressed to the Commanding Officer of the Marine Corps installation(s) at which the individual applied for or occupied family housing. Such requests should include name, social security number, quarters number if known, and dates of period addressed in the inquiry. Installation addresses are as reported by the Navy Standard Distribution List.

Personal visits may be made to the installation in questions any normal work day between 8:00 AM-4:30 PM. For personal visits the individual should be able to provide valid personal identification

Contesting record procedures:

The agency's rules for access to records and for contesting contents and appealing initial determinations by the individual concerned may be obtained from the SYSMANAGER

Record source categories:

Application from individual seeking family housing, Marine Corps Manpower Management System; Joint Uniform Military Pay System.

Systems exempted from certain provisions of the act:

NONE

MIL00002

System name:

Bachelor Housing Registration Records System

System location:

Each Bachelor Officer Quarters/Bachelor Staff Quarters (BOQ/BSQ) assigned registration responsibilities.

Categories of individuals covered by the system:

Military and civilian personnel who are current and former residents of BOQ's and BSQ's.

Categories of records in the system:

Contains personal identifying information, arrival/departure dates; type of orders; monetary allowance information; BOQ/BSQ and room identification.

Authority for maintenance of the system:

Title 5, U S Code 301

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

The purpose is to provide adequate records for management of Bachelor housing. Used by office personnel to maintain a record of occupancy. By auditors to verify occupancy. By other military and DOD officials when required in the execution of their official duties.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Paper cards, file folders, status boards, etc.

Retrievability:

Alphabetically by name and social security number.

Safeguards:

Stored in locked office during nonworking hours or when office is not manned. Access on a need to know basis only for official purposes.

Retention and disposal:

Retained for four years; then destroyed.

System manager(s) and address:

Decentralized. The local commander is responsible for management of BOQ's and BSQ's.

Notification procedure:

Requests shall be addressed to the SYSMANAGER Requestor must be able to provide appropriate identifying information.

Record access procedures:

Rules for access may be obtained from the SYSMANAGER

Contesting record procedures:

Rules for contesting contents may be obtained from the SYSMANAGER.

Record source categories:

BOQ/BSQ office personnel and information from individual who fills out registration card.

Systems exempted from certain provisions of the act:

None

MIL00003

System name:

Laundry Charge Accounts Records

System location:

Marine Corps activities with laundry facilities.

Categories of individuals covered by the system:

Individuals who have applied for Laundry charge accounts.

Categories of records in the system:

Name, rank, unit, social security number, quarters address and telephone number, date and ticket number of laundry service and amount charged.

Authority for maintenance of the system:

Title 5, U S Code 301

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Accounting purposes.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

In paper records in file folders.

Retrievability:

By name.

Safeguards:

Records are maintained in locked filing cabinets within locked offices of buildings. Records are accessible only to persons whose performance require it.

Retention and disposal:

Five years and then destroy.

System manager(s) and address:

Decentralized. Laundry charge accounts managed under the Commanding General of each activity which has a laundry.

Notification procedure:

Correspondence pertaining to records maintained by the laundry. Contact the Commanding General of the Marine Corps activity in question.

Record access procedures:

Information may be obtained from the SYSMANAGER.

Contesting record procedures:

The agency's rules for access to records and for contesting contents and appealing initial determinations by the individual concerned may be obtained from the SYSMANAGER

Record source categories:

Individuals

Systems exempted from certain provisions of the act:

None

MIL00004

System name:

Personal Property Program

System location:

All Marine Corps Bases and Federal Record Centers

Categories of individuals covered by the system:

All military personnel having shipped or stored personal property or privately owned automobiles.

Categories of records in the system:

File contains individual's applications for shipment and/or storage, related shipping documents and records of delivery and payment.

DD 619 (Statement of Accessorial Services Performed)
DD 828 (Motor Vehicle Shipment Application)
DD1100 (Household Goods Storage Record)
DD1101 (Household Goods Storage information)
DD1252 (Owner's U S Customs Declaration and Entry and Inspecting Officer's Certificate)
DD1299 (Application for shipment and/or storage of Personal Property)
DD1671 (Reweight of Household Goods)
DD1780 (Report of Carrier Services Personal Property Shipment)
DD1781 (Property Owners Report on Carriers Report)
DD1797 (Personal Property Counseling Checklist)
DD1799 (Member's report on Carrier Performance - Mobile Homes)
DD1800 (Mobile Home Shipment Inspection at Destination)
DD1841 (Schedule of Property Damages)
DD1842 (Claim for Personal Property against the United States)
DD1845 (Demand on Carrier/Contractor)

Authority for maintenance of the system:

DOD Regulation 4500.34 'Personal Property Traffic Management Regulation'
JAG Manual

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Traffic Management Offices and applicable Finance Center for effecting, coordinating and payment of personal property shipment and storage.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Paper records in file folders.

Retrievability:

Filed alphabetically by last name of member.

Safeguards:

Records are maintained in areas accessible only to authorized personnel that are properly cleared and trained

Retention and disposal:

Records are permanent. They are retained in active file until end of calendar year in which transaction was effected, held additionally in inactive file indefinitely.

System manager(s) and address:

Assistant Secretary of Defense (Installations and Logistics (ASD (I&L)) Washington, D C

Notification procedure:

Information may be obtained from:
Commandant of the Marine Corps (Code LFS-2)
Headquarters, U S Marine Corps
Washington, D C 20380
Telephone: 224-1067

Record access procedures:

Request from individuals should be addressed to Commandant of the Marine Corps (LFS-2), Headquarters, U S Marine Corps, Washington, D C 20380

Written request for information should contain the full name of individual, SSN, current address and telephone number.

For personal visits, the individual should be able to provide acceptable identification and give some verbal information that could be verified with his 'case' folder.

Contesting record procedures:

The agency's rules for access to records and for contesting contents and appealing initial determinations by the individual concerned may be obtained from the SYSMANAGER

Record source categories:

Application and related forms from the individual requesting access; notification of personal clearance from the SYSMANAGER research note/documents from records custodians.

Systems exempted from certain provisions of the act:

None

MIL00005

System name:

Passenger Transportation Program

System location:

All Marine Corps Bases

Categories of individuals covered by the system:

Military personnel and their dependents, DOD civilian employees and their dependents, and other individuals furnished transportation via commercial transportation resources and Department of Defense single manager transportation resources.

Categories of records in the system:

File contains copies of passenger transportation procurement documents issued, copies of official travel orders supporting the issuances; applications for transportation of dependents, port call requests and confirmations; copies of endorsements to orders indicating transportation issuances; requests and authorizations for space available MAC transportation.

SF 1169 United States of America Transportation Request
DD 652 Uniformed Services Meal Ticket
DD 884 Application for Transportation for Dependents
DD 1287 Request for Commercial Transportation
DD 1341 Report of Commercial Carrier Passenger Service
DD 1482 Military Airlift Command (MAC) Transportation Authorization.

Authority for maintenance of the system:

MCO P4600.14A (joint) Military Traffic Management Regulation (Promulgates policy and procedures applicable to performance of traffic management functions within the CONUS)

DOD 4515.13-R Air Transportation Eligibility (Policy and procedures applicable to movement via DOD owned and controlled airlift)

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Traffic Management Offices and Applicable Finance Center for effecting coordination and payment of passenger transportation charges by commercial transportation and Military Airlift Command (MAC) resources.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Paper records in file folders.

Retrievability:

Passenger Transportation Procurement documents filed by serial number preprinted on the documents.

Other documents filed in alphabetical order by last name of member.

Safeguards:

Records are maintained in areas accessible only to authorized personnel that are properly cleared and trained.

Retention and disposal:

Copies of transportation procurement documents held by issuing office for period of 4 years, after which they are destroyed. Other records retained in active fields until end of calendar year in which transaction was effected, held additionally in inactive file indefinitely.

System manager(s) and address:

Commander, Military Traffic Management Command, Washington, D C (Travel via commercial transportation within CONUS)

Commander, Military Airlift Command, Scott AFB, IL (International travel via DOD owned and controlled airlift)

Notification procedure:

Information may be obtained from:
Commandant of the Marine Corps (Code LFS-2)
Headquarters, U S Marine Corps
Washington, D C 20380
Telephone 224-1781

Record access procedures:

Request from individuals should be addressed to Commandant of the Marine Corps, (Code LFS-2), Headquarters, U S Marine Corps, Washington, D C 20380

Written request for information should contain the full name of the individual, SSN, current address and telephone number.

For personal visits, the individual should be able to provide acceptable identification and give some verbal information relating to commercial transportation furnished or Military Airlift Command (MAC) transportation arrangements on a space required or space available basis.

Contesting record procedures:

The agency's rules for access to records and for contesting contents and appealing initial determinations by the individuals concerned may be obtained from the SYSMANAGER.

Record source categories:

Application and related forms from the individual requesting access; notification of personal clearance from the SYSMANAGER research notes/documents from records custodians.

Systems exempted from certain provisions of the act:

None

MIL00006

System name:

Dealer's Record of Sale of Rifle or Pistol, State of California

System location:

Each Marine Corps Activity in California

Categories of individuals covered by the system:

Authorized Marine Corps Exchange patrons who purchase a rifle or pistol from the Exchange.

Categories of records in the system:

Individual identifying information including height, weight, color of hair and eyes, if purchaser is a citizen, if the purchaser has been convicted of a felony, or if the purchaser is addicted to use of narcotics, the individual's occupation, and descent.

Authority for maintenance of the system:

Title 5, U S Code 301

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Used by Marine Corps Exchange personnel for record keeping purposes, one copy is sent to the State of California in Sacramento, California and to the local Sheriff's office.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

In paper records in file folders.

Retrievability:

By name

Safeguards:

Records are maintained in locked filing cabinets within locked offices of buildings. Records are accessible only to authorized personnel only.

Retention and disposal:

Records are maintained for five years and then destroyed.

System manager(s) and address:

Decentralized. System managed by local commanders.

Notification procedure:

Correspondence pertaining to records maintained by local commands may be addressed to the Commanding Officer of the activity concerned.

Record access procedures:

Information may be obtained from the SYSMANAGER

Contesting record procedures:

The agency's rules for access to records and for contesting contents and appealing initial determinations by the individual concerned may be obtained from the SYSMANAGER

Record source categories:

Individuals

Systems exempted from certain provisions of the act:

None

MIL00007

System name:

Marine Corps Exchange Service Station Work Orders

System location:

Marine Corps activities with exchanges operating a service station.

Categories of individuals covered by the system:

Authorized Marine Corps Exchange patrons who avail themselves of automobile servicing.

Categories of records in the system:

Individual identifying information, vehicle description, speedometer reading.

Authority for maintenance of the system:

Title 5, U S Code 301

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Used by Marine Corps Exchange service station personnel for normal business purposes.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

In paper records in file folders.

Retrievability:

By name

Safeguards:

Records are maintained in locked filing cabinets within locked offices of buildings. Records are accessible only to persons whose performance require it.

Retention and disposal:

Work orders are retained for one year and then destroyed.

System manager(s) and address:

Local commander. See Directory of Department of the Navy mailing addresses.

Notification procedure:

Correspondence pertaining to records may be addressed to the Commanding General or Commanding Officer of the activity concerned.

Record access procedures:

Information may be obtained from SYSMANAGER

Contesting record procedures:

The agency's rules for access to records and for contesting contents and appealing initial determinations by the individual concerned may be obtained from the SYSMANAGER

Record source categories:

Individuals

Systems exempted from certain provisions of the act:

None

MIL00008

System name:

Cigarettes Sales Abuse File

System location:

Marine Corps Exchange, Headquarters Battalion (Code 200), Marine Corps Supply Acitivity, Phila., Pa. 19146

Categories of individuals covered by the system:

Records cigarette purchases by PX patrons who are buying large quantities of cigarettes over a period of time.

Categories of records in the system:

Contains name, social security number and record of amount of cigarettes purchased, date and sales person's initials.

Authority for maintenance of the system:

Local SOP

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Available to determine a pattern of abuse of cigarette exchange privileges. Available to Exchange Officer, adjutant, Headquarters Battalion, Marine Corps Supply Activity, Phila. Pa., state investigative officials.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Index cards in file folders.

Retrievability:

By name

Safeguards:

Only one copy made and maintained in Exchange records.

Retention and disposal:

Six months

System manager(s) and address:

Exchange Officer, Headquarters Battalion (Code 200), Marine Corps Supply Activity, Phila., Pa. 19146

Notification procedure:

Information may be obtained from:
Exchange Officer, Marine Corps Exchange 2 21
Marine Corps Supply Activity
Phila., Pa. 19146

Record access procedures:

Individual requests should be addressed to: Commanding Officer, Headquarters Battalion (Code 200), Marine Corps Supply Acitivity, Phila., Pa. 19146

Contesting record procedures:

The agency's rules for access to records and for contesting contents and appealing initial determinations by the individual concerned may be obtained from the SYSMANAGER.

Record source categories:

Marine Corps Exchange sales personnel

Systems exempted from certain provisions of the act:

None

MIL00009

System name:

Fire Arms Transaction Record

System location:

Marine Corps Activities with Exchanges selling fire arms

Categories of individuals covered by the system:

Authorized Marine Corps Exchange patrons who purchase fire arms from the Exchange.

Categories of records in the system:

Individual identifying information, including age, height, weight, date and place of birth, race, description of fire arm, certificate by individual that he has never been convicted of a felony, that he is not a fugitive from justice, not addicted to the use of drugs, not adjudi-

cated to be a mental defective or committed to a mental institution, that he's not been discharged from the armed forces under dishonorable conditions, that he is not an illegal alien and that he hasn't renounced his citizenship. Information from documents used to provide individual's identification.

Authority for maintenance of the system:

Title 5, U. S. Code 301

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Used by Marine Corps Exchange personnel for record keeping purposes, and a copy is sent to the local law enforcement personnel for their information.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

In paper records in file folders

Retrievability:

By name

Safeguards:

Records are maintained in locked filing cabinets within locked offices of buildings. Records are accessible only to authorized personnel only

Retention and disposal:

Records are maintained for five years and then destroyed.

System manager(s) and address:

Decentralized system managed by local Commanders.

Notification procedure:

Correspondence pertaining to records maintained by local Commands may be addressed to the Commanding Officer of the activity in question.

Record access procedures:

Information may be obtained from SYSMANAGER

Contesting record procedures:

The agency's rules for access to records and for contesting contents and appealing initial determinations by the individual concerned may be obtained from the SYSMANAGER

Record source categories:

Individuals.

Systems exempted from certain provisions of the act:

None.

MIL00010

System name:

Customer Service Records/Special Accounts

System location:

Local Marine Corps Exchange Office

Categories of individuals covered by the system:

The contents of these files are a compilation of all records required in the administration of special accounts.

Categories of records in the system:

Records are manually prepared files containing data used in accounting for merchandise not normally in stock and has been ordered by authorized patrons or deferred payment plans.

Authority for maintenance of the system:

Title 5, U S Code 301

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Used by management and clerical personnel for normal business purposes including accounting for sales and inventory control.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

In paper records in file folders.

Retrievability:

Filed alphabetically by patron's last name

Safeguards:

Records are maintained in locked filing cabinets within locked offices of buildings. Records are accessible to authorized personnel only.

Retention and disposal:

Records are maintained for five years and then destroyed.

System manager(s) and address:

Decentralized System managed by local Commanders.

Notification procedure:

Correspondence pertaining to records maintained by local commands may be addressed to the Commanding Officer of the activity in question

Record access procedures:

Information may be obtained from SYSMANAGER

Contesting record procedures:

The agency's rules for access to records and for contesting contents and appealing initial determinations by the individual concerned may be obtained from the SYSMANAGER

Record source categories:

Individuals.

Systems exempted from certain provisions of the act:

None.

MIL00011

System name:

MDSVEN Vendor Directory

System location:

All Marine Corps commands which operate a Marine Corps Exchange.

Categories of individuals covered by the system:

All vendors' names and addresses actively engaged in business with the local exchange.

Categories of records in the system:

File contains vendor names and addresses; freight information, delivery and discount terms for remittance and payment

Authority for maintenance of the system:

Title 10, U. S. Code 7601

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Purchasing Activity - To obtain addresses for ordering, freight and delivery information, discount terms, etc.; required for entry on Purchase Orders

Accounting Activity - To obtain billing and remittance addresses

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Mechanized print-outs and computer discettes

Retrievability:

Filed in computer and/or discettes by permanently assigned 6 digit file numbers

Safeguards:

Records are maintained in areas accessible only to authorized personnel on a need-to-know basis.

Retention and disposal:

Records are permanent; updated as necessary. Held until vendor is no longer actively engaged in business with Exchange, then record is eliminated and/or cleaned off diskette.

System manager(s) and address:

Decentralized system managed by local commanders. See Directory of Department of the Navy mailing addresses.

Notification procedure:

Correspondence pertaining to records maintained by local commands may be addressed to the Commanding Officer of the activity concerned.

Record access procedures:

Information may be obtained by contacting SYSMANAGER

Requests should contain the full name of the requester and the basis of the request.

Contesting record procedures:

The agency's rules for access to records and for contesting contents and appealing initial determination by the individual concerned may be obtained by contacting the SYSMANAGER.

Record source categories:

Notification from applicable vendors, correspondence and agreements originating between vendor and Exchange Procurement Activity.

Systems exempted from certain provisions of the act:

None

MIL00012

System name:

Standard Licensing Procedures For Operators of Military Motor Vehicles

System location:

All Marine Corps motor vehicle licensing facilities.

Categories of individuals covered by the system:

Military and DOD civilian employees required to operate a government-owned/or controlled motor vehicle including nonappropriated fund vehicles.

Categories of records in the system:

Files contain information on each individual's driving experience, who applies for a Government Operators Permit to include traffic accidents involved in, any refusal, suspension or revocation of State Operator's License, all violations of traffic regulations (other than overtime parking) for which he has been found guilty, misrepresentation or failure to report these, and results of physical examinations.

DD Form 1360 - Operators Qualifications and Record of Licensing, Examination and Performance
NAVFAC 9-11240/10 - Application for Motor Vehicle Operators Permit
SF 47 - Physical Fitness Inquiry for Motor Vehicle Operators
NAVFAC 9-11240/11 - Checklist and Scoresheet for Road Test in Traffic
SF 46 - U S Government Motor Vehicle Operator's Identification Card
Dot Form HS 1047 - Request for Search of National Drivers Register
Dot Form 1054 - Report of Inquiry Searched

Authority for maintenance of the system:

Title 5, U S Code 301

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Motor vehicles licensing procedures used to determine the qualification of personnel requesting motor vehicle operator's I D cards

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Paper records in file folders.

Retrievability:

Filed in alphabetical order by last name of applicant

Safeguards:

Records are maintained in areas accessible only to authorized personnel

Retention and disposal:

Copies are normally held for 3 years and are then destroyed.

System manager(s) and address:

Deputy Chief of Staff for Installations and Logistics, Headquarters, U S Marine Corps, Washington, D C
Decentralized system managed by local commands.

Notification procedure:

Information may be obtained from:
Headquarters, U S Marine Corps (Code LME)
Room 400
Commonwealth Building
Arlington, VA 22209
Telephone: Area Code 202/695-3460

Correspondence pertaining to records maintained by local commands may be addressed to the commanding officer of the activity in question. See Directory of Department of the Navy Mailing Addresses.

Record access procedures:

Requests from individuals should be addressed to Commandant of the Marine Corps (Code LME), Headquarters, U S Marine Corps, Washington, D C 20380; SYSMANAGER of activity concerned.

Contesting record procedures:

The agency's rules for access to records and for contesting contents and appealing initial determinations by the individual concerned may be obtained from the SYSMANAGER

Record source categories:

Individual information is taken from NAVMC 10964, Licensing application, civil authorities, Provost Marshal's office, service record, organization commanders.

Systems exempted from certain provisions of the act:

None

MIL00013

System name:

Individual Uniform Clothing Records

System location:

All Marine Corps activities, but records limited to individuals having received clothing through that activity.

Categories of individuals covered by the system:

Personnel of the Marine Corps, Marine Corps Reserve, Navy Corpsmen authorized to wear Marine Corps uniforms, candidates of officer procurement programs of the Marine Corps (including Marine option NROTC), former Marines authorized to purchase Marine Corps uniforms from Marine Corps clothing stocks.

Categories of records in the system:

Files contain listings of individual uniform clothing issued in-kind and clothing sold to individuals on a cash basis, mail-order basis or pay checkage basis.

NAVMC 604 - Individual Clothing Requisition and Issue Slip (Men's)
NAVMC 604b - Individual Clothing Requisition and Issue Slip (Women's)
NAVMC 604a - Transmittal of Clothing Issue Slips
NAVMC 10710 - Men's Individual Clothing Request
NAVMC 10711 - Women's Individual Clothing Request
NAVMC 631 - Individual Clothing Record (Men's)
NAVMC 631a - Individual Clothing Record (Women's)
DD Form 358 - Special Measurement Blank - Clothing - Men's
DD Form 1111 - Armed Forces Measurement Blank - Special Sized Clothing - Women's
DD Form 150 - Special Measurement Blank for Special Measurement/ Orthopedic Boots and Shoes
DD Form 1348 - DOD Single Line Item Requisition System Document (Manual)
SF 344 - GSA Multi-use Standard Requisitioning/Issue System Document
Naval messages/speedletters when used in lieu of routine MILSTRIP procedures.

Authority for maintenance of the system:

Executive Order 10113 of 24 February 1950

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

To substantiate supply accounting records for clothing issued or sold from Marine Corps stocks to individuals, and when sales are made on a pay checkage basis, to substantiate pay checkage action under the Joint Uniform Military Pay System (JUMPS)

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Paper records in file folders

Retrievability:

May be filed for retrieval by either name or SSN, or when used as a substantiating document for issues/sales at a retail clothing outlet, files are primarily in transaction document number sequence.

Safeguards:

Records are maintained in areas accessible only to authorized personnel.

Retention and disposal:

Three years when used to substantiate issues under the clothing Monetary Allowance System.

As required when used to substantiate financial/pay checkage transactions.

Until individual uniform clothing items issued in kind to members of the Marine Corps Reserve are recovered upon separation.

Three years following detachment from duty for which an issue of supplementary uniforms was authorized.

System manager(s) and address:

Decentralized system - managed by local command.

Notification procedure:

Information may be obtained from:
Commandant of the Marine Corps (Code LMP)
Room 378
Commonwealth Building
Arlington, Virginia 22209
Telephone Area Code: 202/694-1775

Correspondence pertaining to records maintained by local commands may be addressed to the commanding officer of the activity in

question. See Directory of Department of the Navy Mailing Addresses.

Information required from requester:

Full name
SSN
Military status
Current address
Specifics of information desired

Record access procedures:

Requests from individuals should be addressed to: Commandant of the Marine Corps (Code LMP), Headquarters, U S Marine Corps, Washington, D C 20380

Contesting record procedures:

The agency's rules for access to records and for contesting contents and appealing initial determinations by the individual concerned may be obtained from the SYSMANAGER.

Record source categories:

Individual information, Joint Uniform Military Pay System/ Manpower Management System (JUMPS/MMS).

Systems exempted from certain provisions of the act:

None

MIL00014

System name:

Exchange Privilege Authorization Log

System location:

Organized Marine Corps Reserve units.

Categories of individuals covered by the system:

Any member of the Organized Marine Corps Reserve unit who becomes eligible for exchange privileges as a result of attending drills with that unit in accordance with current regulations.

Categories of records in the system:

Log contains a list by name of individuals who are issued exchange privilege authorization letters. The list is maintained on a quarterly basis.

Authority for maintenance of the system:

Title 5, U S Code 301

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

By the Commanding Officer/Inspector-Instructor of Reserve Units to keep a record of personnel who were authorized to use the exchange during each fiscal quarter. Exchange personnel - letters are utilized to verify authority of Reserve to utilize exchange services.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Papers bound log book on paper - letters issued to individual Reserves.

Retrievability:

Alphabetically by last name for each fiscal quarter. Personnel who join during the quarter are added to the list as they become eligible for exchange privileges.

Safeguards:

The log is maintained in an area accessible only to authorized personnel. This area is locked during non-working hours.

After working hours the office and building are locked. A guard is located in the general vicinity.

Retention and disposal:

The log will be destroyed one year from the end of the calendar year for which entries are made.

System manager(s) and address:

Inspector-Instructor of Organized Marine Corps Reserve unit.

Notification procedure:

Write or visit SYSMANAGER. Provide full name, social security number, and military status. Proof of identity may be established by military identification card or DD-214 and drivers license.

Record access procedures:

The agency's rules for access to records may be obtained from the SYSMANAGER

Contesting record procedures:

The agency's rules for access to records and for contesting contents and appealing initial determinations by the individual concerned may be obtained from the SYSMANAGER

Record source categories:

Monthly drill attendance records of Organized Marine Corps Reserve unit.

Systems exempted from certain provisions of the act:

None

MIL00015

System name:

Housing Referral Services Records System

System location:

All Marine Corps installations with housing referral offices.

Categories of individuals covered by the system:

All military personnel reporting to an installation who will be residing off base desirous of seeking off base housing.

Categories of records in the system:

Information is collected on DD Form 1668 from all military personnel reporting to a housing referral office as pertains to name, grade, branch of service, organization and location, local address, housing needs, e.g. rental/sale, number of bedrooms, furnished/unfurnished, price range, etc., number of dependents, male or female, and age. A list of housing referral services provided and identification of member of racial or ethnic minority groups. Individuals provided referral assistance must in turn provide notification of housing selection by use of DD Form 1670 which includes such information as type of housing selected, e.g., location, temporary/permanent, rental/sale, cost, number of bedrooms, media through which housing was found, e.g., housing referral, realtor, newspaper, etc., and satisfaction with selection, e.g., too small, too far, discrimination encountered, and satisfaction with housing referral services provided.

Authority for maintenance of the system:

Title 5, U S Code 301

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Referral offices use data to assist and counsel individuals in locating suitable housing off base, used for follow-up purposes when written notification from individual is not provided as to ultimate location of housing, used for purposes of reporting statistics on field activity housing referral services, used to follow up on availability of rental unit subsequent to occupant's receipt of PCS orders, and follow up regarding tenant/landlord complaints.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

File folders

Retrievability:

By individual's name.

Safeguards:

Housing files within the housing referral or housing office, used solely within the housing organization and protected by military installation's security measures. Individual may upon request, have access to all such data.

Retention and disposal:

Data is retained until individual's tour is completed and subsequently disposed of according to local records disposition instructions.

System manager(s) and address:

Commandant of the Marine Corps (Code LFF-3), Headquarters, U S Marine Corps, Washington, D C 20380.

Notification procedure:

Records are maintained by housing referral offices at the Marine Corps activity responsible for providing referral services for military personnel in the area. Individual may request access to records upon proof of identity (ID card).

Record access procedures:

The agency's rules for access to records may be obtained from installation family housing office.

Contesting record procedures:

The agency's rules for contesting contents and appealing initial determinations by the individual concerned may be obtained from the installation family housing office.

Record source categories:

Data collected from each applicable individual.

Systems exempted from certain provisions of the act:

None

MIL00016

System name:

Depot Maintenance Management Subsystem (DMMS)

System location:

Marine Corps Logistics Support Base, Atlantic, Albany, Georgia 31704
Marine Corps Logistics Support Base, Pacific, Barstow, California 92311

Categories of individuals covered by the system:

Any military or civilian employee of USMC Depot Maintenance Activities

Categories of records in the system:

System contains individual's Personal History File, Labor Distribution Reports, Time and Attendance Reports and Payroll Reports

Authority for maintenance of the system:

Title 5, U S Code 301

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Marine Corps Logistics Support Bases - To provide payroll support and cost accounting
Congress of the United States
Naval Audit Service - To obtain audit trails for cost accounting
DOD Departments and agencies
USMC staff agencies and commands - To review cost accounting and financial management procedures, to monitor labor distribution
Federal, state, and local tax agencies
General Accounting Office
Treasury Department
Department of Justice

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Computer magnetic tapes and disks, computer paper printouts and microfiche.

Retrievability:

Filed by employee badge number

Safeguards:

Buildings have security personnel. Records are maintained in areas accessible to authorized personnel that are properly screened.

Retention and disposal:

Records are maintained until end of calendar year in which employee has worked. At the end of one year, the computer magnetic tapes and disks are erased and paper printouts are destroyed by shredding. Microfiche is destroyed by burning.

System manager(s) and address:

Commandant of the Marine Corps (Code LMM), Headquarters, U S Marine Corps, Washington, D C 20380
Director, DMA, Marine Corps Logistics Support Base, Atlantic, Albany, Georgia
Director, DMA, Marine Corps Logistics Support Base, Pacific, Barstow, California

Notification procedure:

Information may be obtained from:
Commandant of the Marine Corps (Code LMM), Headquarters, U S Marine Corps Washington, D C 20380
CG, Marine Corps Logistics Support Base, Atlantic, Albany, Georgia 31704
CG, Marine Corps Logistics Support Base, Pacific, Barstow, California 92311

Record access procedures:

Requests from individuals should be addressed to the Commanding General, Marine Corps Logistics Support Base, Atlantic, Albany, Georgia 31704 or Commanding General, Marine Corps Logistics Support Base, Pacific, Barstow, California 92311.

Written requests for information should contain the full name of the individual, current address, telephone number.

For personal visits, the individual should be able to provide some acceptable identification, i.e., driver's license, social security card, etc.

Contesting record procedures:

The agency's rules for access to records and for contesting contents and appealing initial determinations by the individual concerned may be obtained from the SYSMANAGER

Record source categories:

Automated system interfaces

Application and related forms from the individual requesting employment.

Systems exempted from certain provisions of the act:

None

MIL00017

System name:

Transportation Data Financial Management System (TDFMS)

System location:

Commanding General (Code A470), Marine Corps Logistics Support Base, Atlantic, Albany, Georgia 31704

Categories of individuals covered by the system:

All Marine Corps active duty, reserve, and retired personnel, federal Civil Service employees of the Marine Corps and their dependents.

Categories of records in the system:

The TDFMS Master Files consist of a complete automated record for all Marine Corps active duty, reserve and retired personnel, federal Civil Service employees of the Marine Corps and their dependents concerning the movement of household goods, personal effects and passenger or personnel transportation by rail, bus, air or other means involving expenditures of Marine Corps funds.

Authority for maintenance of the system:

Title 37, U S Code/Title 10, U S Code and Marine Corps Orders within the 4600 Series.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Headquarters, U S Marine Corps, Marine Corps activities for analysis and research for budget forecasting; audit, verification, certification of O&MMC, Stock Fund, Reserve, Procurement, MPMC expenditure of Marine Corps funds; identifying movement of material by weight, commodity within areas by FY historical data of commodity movements, related cost, budget forecasting, validation, and special studies.

Marine Corps Supply Center to monitor and certify for payment transportation charges concerning the movement of personal property and personnel and to initiate collection/reimbursement action for cost incurred that exceeds entitlements.

Department of Defense and its components - By officials and employees of the Department in the performance of their offical duties.

The Attorney General of the U S - By officals and employees of the Office of the Attorney General in connection with litigation, law enforcement or other matters under the direct jurisdiction of the Department of Justice or as carried out as the legal representative of the Executive Branch Agencies.

Courts - By officials of duly established local, state and federal courts as a result of court order pertaining to matters properly within the purview of said court.

Congress of the U S - The Senate or the House of Representatives of the U S or any Committee or subcommittee thereof, any joint committee of Congress or subcommittee of joint committee on matters within their jurisdiction requiring disclosure of the Files.

The Comptroller General of the U S - By the Comptroller or any of his authorized representatives in the course of the performance of duties of the General Accounting Office relating to the Marine Corps.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Computer magnetic tapes and discs, computer printouts, microfiche and microfilm.

Retrievability:

Information is accessed and retrieved by name, social security number, etc. Conventional and computerized indices are required to retrieve individual records from the system.

Safeguards:

Records are maintained in areas accessible only to authorized personnel that are properly screened, cleared and trained.

Retention and disposal:

Records are maintained until statute of limitations has expired and/or litigation is concluded.

System manager(s) and address:

The Commandant of the Marine Corps (Code LFS), Headquarters, U S Marine Corps, Washington, D C 20380.

Notification procedure:

Information may be obtained from:

Commanding General (Code A470)
Marine Corps Logistics Support Base, Atlantic
Albany, Georgia 31704
Telephone: Area Code 912/439-5674/5675/5676/5677

Record access procedures:

Written requests from individuals should be addressed to the address listed under the heading LOCATION.

Written requests for information should contain social security number, full name and current address, Government Bill of Lading number (if known), date of shipment or move of household goods.

For personal visits, the individual should be able to provide positive personal identification, such as valid military identification card, drivers license, etc.

Contesting record procedures:

The rules for access to records and for contesting contents and appealing initial determinations by the individual concerned may be obtained from the SYSMANAGER.

Record source categories:

Government and commercial carriers.
Installation Transportation Officers.
Authorized order writing activities.
Paying or disbursing officers.
Marine Corps Manpower Management System

Systems exempted from certain provisions of the act:

None

MIL00018

System name:

Organization Clothing Control File

System location:

Depot Property Control Branch, Marine Corps Recruit Depots

Categories of individuals covered by the system:

Drill Instructors, Marksmanship Instructors, Women Marine Special Subject Instructors and Band members.

Categories of records in the system:

Combined Individual Clothing Requisition and Issue Slip NAVMC 604 Form.

Authority for maintenance of the system:

Title 5, U S Code 301

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

To maintain records of organizational clothing issued to authorized personnel until items have been returned.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Paper records in file folders

Retrievability:

Filed alphabetically by last name of Marine concerned.

Safeguards:

Records are maintained in filing cabinet in a locked building.

Retention and disposal:

Records are maintained until items of organizational clothing are returned.

System manager(s) and address:

Commanding General, Marine Corps Recruit Depots

Notification procedure:

Information may be obtained from:
Depot Supply Officer
Depot Service and Supply Department
Marine Corps Recruit Depot
Parris Island, South Carolina 29905 or San Diego, California 92140

Record access procedures:

Requests from individuals should be addressed to: Depot Supply Officer, Depot Services and Supply Department, Marine Corps Recruit Depot, Parris Island, SC 29905 or San Diego, CA 92140.

Written requests for information should contain the full name, social security number and current address of the individual concerned.

For personal visits, the individual should be able to provide a military identification card.

Contesting record procedures:

The Depot's rules for access to records and for contesting contents and appealing initial determinations by the individual concerned may be obtained from the SYSMANAGER.

Record source categories:

Provided by the authorized individual's request NAVMC 604 to be issued items of Organizational Clothing.

Systems exempted from certain provisions of the act:

None

MIL00019

System name:

Equipment and Weapons Receipt or Custody Files

System location:

System is decentralized. Records are maintained at Marine Corps commands, organizations, or activities that issue said equipment or weapons.

Categories of individuals covered by the system:

System contains name, rank, social security number, unit address, and date.

Categories of records in the system:

This file contains name; rank, social security number, itemized list of equipment issued, date issued, and possibly unit and section/Department to which assigned.

Authority for maintenance of the system:

Title 5, U S Code 301

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

This system is used to identify individuals who have Government property in their possession.

Officials and employees of the Naval Service and General Accounting Office in the execution of their official duties in relation to inspections, investigations, legal action.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Paper records in binder, file folder, box, vertical card file, or index cards.

Retrievability:

Records are filed alphabetically by name.

Safeguards:

After working hours, the office and building are locked. A guard is located in the general vicinity.

Retention and disposal:

These records are destroyed upon the return of the property listed.

System manager(s) and address:

Commanding Officer of the activity.

Notification procedure:

Write or visit SYSMANAGER Provide full name, social security number, and military status. Proof of identity may be established by military identification card or DD 214 and drivers license.

Record access procedures:

The agency's rules for access to records may be obtained from the SYSMANAGER

Contesting record procedures:

The agency's rules for access to records and for contesting contents and appealing initial determinations by the individual concerned may be obtained from the SYSMANAGER

Record source categories:

Information is entered by visual certification of property, issued and identification presented by individual.

Systems exempted from certain provisions of the act:

None

MIL00021

System name:

Working Files, Division Supply Sections and Wing Supply Sections

System location:

Division Supply Section, Regiments, Battalions, Separate Companies

Wing Supply Sections, Groups, Separate Squadrons

Categories of individuals covered by the system:

Personnel responsible for government property, reimbursing government for damages/loss of property.

Categories of records in the system:

Equipment Custody Records (ECR) - This file contains the date, voucher number, remarks, quantity, signature, control number, description and unit.

Memorandum Receipt for Individual/Garrison Equipment (IMR) - This file includes the name, grade, SSN, date, organization, signature and unit.

Memorandum Receipt for Individual Weapons and Accessories - This file includes the name, grade, SSN, organization, signature and unit.

Personal Effects Log - This file includes the date, name, SSN, grade and signature.

Letter of Appointment/Authorization - These files include the date, name, grade, SSN, description of duties/authorizations and sample signature.

Voucher Files - Cash Collection - This file includes the name, grade, SSN, unit, description of sales and signature.

Voucher Files - Investigations - This file includes the name, grade, SSN of investigating officer and signature.

Investigation Log/File - This listing contains the investigation number, investigating officer, subject, serial number, date investigation received, date sent to unit for correction (if applicable), due date to be returned and remarks. File also contains a copy of the investigation.

Special Order Clothing - This file cincludes the name, rank, SSN, mag number, individual unit, and remarks regarding receipt of clothing.

Base Property Log - Contains a list of names of personnel who have lost and paid for government property.

Serialized Blank Forms Register - Contains a listing of personnel by name who issue/receive serialized blank forms.

Quarterly Inventory of Sets, Chests and Kits - Contains a file of inventories made on contents of sets, chests and kits including the name, rank and SSN of the individual inventorying property.

Authority for maintenance of the system:

Title 5, U. S Code 301

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Division Supply Section and Wing Supply Section - By officials in the execution of their assigned duties in reviewing proper maintenance and accountability of government property by units.

Regiments, Battalions, Separate Companies, Groups, Separate Squadrons - For supply/S-4 personnel to obtain information pertaining to personnel responsible for government property and/or administering supply functions.

Inspectors from higher headquarters (i.e., FMFPac: Inspecting General (IG) Team, FSMAO) - By officials in the execution of their assigned duties in reviewing proper maintenance and accountability of government property by units.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

ECR - Vertical file cards

IMR; Individual Weapons and Accessories, Special Clothing - card file

Personal Effects; Investigation; Base Property Log; Serialized Blank Forms Register-Log Book

Letters of Appointment/Authorization; Voucher Files, investigations; Quarterly inventories of Sets, Chests and Kits - paper records in file folders.

Retrievability:

ECR - files by unit or responsible officer

IMR; Individual Weapons and Accessories; Special Clothing - filed alphabetically by name

Personal Effects, Investigation Log; Letter of Appointment/Authorization; Voucher Files; Base Property Log; Serialized Blank Form Register; Quarterly Inventory of Sets, Chests and Kits - as it occurs by name.

Safeguards:

IMR; Individual Weapons and Accessories Records - maintained in secured area within armories accessible only to personnel authorized to be in the area.

ECR; Personal Effects Log; Letters of Authority; Voucher Files; Investigations; Special Clothing; Base Property Log; Serialized Blank Forms Register; Quarterly Inventory of Sets, Chests and Kits - Personnel within supply/S-4 sections authorized access, no special safeguard implemented.

Retention and disposal:

ECR; IMR; Weapons Custody Records; Special Clothing retain until accountable balance is zero.

Personal Effects Log; Quarterly Inventory of Sets, Chests and Kits - one year.

Letters of Appointment/Authorization - five (5) years.

Voucher Files; Investigation Log; Base Property Log; Serialized Blank Forms Register - two years.

All files may be destroyed after being maintained the required timeframe.

Investigations - Two years after the end of the fiscal year in which the investigation was completed.

System manager(s) and address:

Division Supply Officers, Marine Corps Division; Wing Supply Officers, Marine Corps Aircraft Wings. See Directory of Department of the Navy Activities for mailing address.

Notification procedure:

Apply to SYSMANAGER

Record access procedures:

Rules for access may be obtained from SYSMANAGER

Written requests for information should contain the full name, grade and SSN of the individual as well as the unit to which he is/was attached which would reflect information pertaining to him.

Contesting record procedures:

The agency's rules for access to records and for contesting contents and appealing initial determinations by the individual concerned may be obtained from the SYSMANAGER

Record source categories:

Individual and/or individual's SRB or OQR or other listing unit may have which contains required information.

Incoming messages for Special Order Clothing.

Base Locator.

Completed investigations submitted.

Systems exempted from certain provisions of the act:

None

MIL00022

System name:

Delinquent Clothing Alteration List

System location:

System is decentralized. Records are maintained at Marine Corps Commands, organizations, or activities that alter clothing.

Categories of individuals covered by the system:

List of personnel who have failed to pick up altered clothing.

Categories of records in the system:

Contains an alphabetical listing of personnel who have failed to pick up clothing which has been altered for them.

Authority for maintenance of the system:

Title 5, U.S. Code 301

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Clothing Branch Officer in Charge to notify the respective Commanding Officers of personnel listed, that uniforms have been altered and need to be picked up.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Cards/File Folders

Retrievability:

Alphabetical by unit assigned.

Safeguards:

After working hours, the office and building are locked. Guards are located in the general vicinity.

Retention and disposal:

Maintained for two years, then destroyed.

System manager(s) and address:

Clothing Officer of the activity concerned.

Notification procedure:

Information may be obtained from the individual command to which an individual is assigned for duty. Addresses of individual commands are listed in the Navy Standard Distribution List (OPNAV P09B3-107).

Record access procedures:

Written requests from individuals should be addressed to the Commanding Officer of the activity concerned. Activity addresses are as reported in the Navy Standard Distribution List.

Written requests should include name and social security number. Personal visits may be made to the installation in question.

Contesting record procedures:

The Marine Corps rules for appealing may be obtained from the SYSMANAGER.

Record source categories:

Cards filled out by personnel when leaving clothing for alteration.

Systems exempted from certain provisions of the act:

None

MIN00001

System name:

Personnel Security Eligibility and Access Information System

System location:

Primary system - Headquarters, U S Marine Corps, Washington, D C 20380.

Secondary system - Local activity to which individual is assigned (See List of Marine Corps Activities, MCO P5400.6).

Categories of individuals covered by the system:

Members of the U S Marine Corps and Marine Corps Reserve, former members, applicants for enlistment or commissioning, Marine Corps civilian employees, and other persons whose status or position effects the security, order, or discipline of the Marine Corps.

Categories of records in the system:

Files contain reports of personnel security investigations, criminal investigations, counterintelligence investigations, correspondence, records and information pertinent to an individual's acceptance and retention, personnel security clearance and access, assignment to personnel reliability programs and other high risk or compartmented information programs requiring personnel quality control.

Authority for maintenance of the system:

Title 5, U S Code 301

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Officials and employees of the U S Marine Corps in the performance of their official duties related to personnel security eligibility and access.

The Comptroller General or any of his authorized representatives, upon request, in the course of the performance of duties of the General Accounting Office.

Attorney General of the United States or his authorized representatives in connection with litigation, law enforcement or other matters under the jurisdiction of the Department of Justice or carried out as the legal representative of the Executive Branch agencies.

State and local government agencies in the performance of their official duties.

Officials and employees of the Department of the Navy in the performance of their official duties.

Official employees of the Department of Defense in the performance of their official duties.

Officials and employees of other agencies of the Executive Branch of the government, upon request, in the performance of their official duties.

Senate or the House of Representatives of the United States or any committee or subcommittee thereof, requiring disclosure of the files or records of individuals covered by this system.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Paper records in file folders and index cards. Some information in contained in automated files or on computer tapes.

Retrievability:

Filed alphabetically by last name of individual or by social security number.

Safeguards:

Stored in locked safes or cabinets. File areas are accessible only to authorized persons who are properly screened, cleared, and trained.

Retention and disposal:

Records and portions thereof vary in period of time retained. Records are retained and disposed of in accordance with Department regulations.

System manager(s) and address:

Commandant of the Marine Corps, Headquarters, U S Marine Corps, Washington, D C 20380.

Decentralized system managed by local command.

Notification procedure:

Requests by correspondence should be addressed to Commandant of the Marine Corps (Attn: Privacy Act Coordinator), Headquarters, U S Marine Corps, Washington, D C 20380 or in accordance with the list of Marine Corps activities. The letter should contain full name, social security number, rank/rate/civilian status, address and notarized signature of the requester. The individual may visit Headquarters, U S Marine Corps, Arlington Annex (FOB #2), Washington, D. C. for assistance with records located in that building or any Marine Corps activity for access to locally maintained records. Prior written notification of personal visits are required to ensure that all parts of the records will be available at the time of the visit. Proof of identity will be required and will consist of a military identification card, driver's license or similar picture-bearing identification.

Record access procedures:

The agency's rules for access to records may be obtained from the SYSMANAGER.

Contesting record procedures:

The agency's rules for contesting contents and appealing initial determinations by the individual concerned may be obtained from the SYSMANAGER.

Record source categories:

Officials and employees of the U S Marine Corps, Departments of the Navy and Defense and other departments and agencies of the Executive Branch of government, and components thereof, in performance of their official duties and as specified by current instructions and regulations promulgated by competent authority. Civilian and military investigative reports. Federal, state and local court documents. Fingerprint cards. Official correspondence concerning individual.

Systems exempted from certain provisions of the act:

Parts of this system may be exempt under Title 5, U S Code 552 a(j) or (k), as applicable. For additional information contact the SYSMANAGER.

MIN00002

System name:

POW/MIA Intelligence Analysis and Debrief Files

System location:

Primary system - Headquarters, U. S. Marine Corps, Washington, D. C. 20380. Major Marine Corps commands maintain derivative files.

Categories of individuals covered by the system:

Members of the U. S. Marine Corps or Marine Corps Reserve either currently or previously held prisoner of war (POW), detained by hostile forces or declared missing in action (MIA).

Categories of records in the system:

Narrative of loss incident; investigations regarding loss incident; casualty reports; intelligence reports possibly identifying subject; articles, statements, lists and photographs published in the world news media or broadcast over hostile public radio; portions of official debriefings or debriefing summaries; and analytical evaluation of information contained in file.

Authority for maintenance of the system:

Title 5, U. S. Code 301 Departmental Regulations

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Officials and employees of the U. S. Marine Corps in the performance of their official duties related to POW/MIA's.

Officials and employees of the other services and Department of Defense in the performance of their official duties related to POW/MIA's.

Senate or the House of Representatives of the United States or any committees or subcommittees thereof, requiring disclosure of the files or records of individuals covered by this system.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Paper records in file folders; photographs, film and tape recordings.

Retrievability:

Filed alphabetically by last name of individual.

Safeguards:

Secured in GSA approved security containers within locked office spaces. Access is granted only to those authorized persons who are properly cleared and having a need-to-know.

Retention and disposal:

Records maintained within Marine Corps Intelligence Division as long as individual's status remains POW/MIA. Record is retired to Marine Corps Historical Division 2 years after return to U. S. control or when status is changed to KIA/KIA-BNR.

System manager(s) and address:

Commandant of the Marine Corps, Code INTC, Headquarters, U. S. Marine Corps, Washington, D. C. 20380.

Notification procedure:

Apply to SYSMANAGER.

Record access procedures:

Rules for access may be obtained from SYSMANAGER.

Contesting record procedures:

The agency's rules for contesting contents and appealing initial determinations by the individual concerned may be obtained from the SYSMANAGER.

Record source categories:

Other records of the activity; investigators; witnesses; correspondents; intelligence reports from the services, Defense Intelligence Agency, Central Intelligence Agency, State Department and other government agencies; Foreign Broadcast Information Service; newspapers, magazines; television; radio; and movies.

Systems exempted from certain provisions of the act:

None

MIS00001

System name:

Personnel Management Subsystem, RESOURCE CONTROL SYSTEM (RCS)

System location:

Primary System - The Commandant of the Marine Corps, Headquarters, U S Marine Corps, Washington, D C 20380.

Decentralized Segments - all data processing activities to which the individual is attached. See organizational elements of the U. S. Marine Corps as listed in the Directory of the Department of the Navy Mailing Addresses.

Categories of individuals covered by the system:

All Marine Corps officer, enlisted and civilian personnel at Commands with data processing installations.

Categories of records in the system:

File contains name, rank/grade, MOS, billet description, training, skills, T/O line numbers, date of next fitness report/performance rating, and position description number.

Authority for maintenance of the system:

Title 5, U S Code 301

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Blanket 'routine uses' identified in the annual republication of Marine Corps systems of records in the Federal Register apply to this system of records.

Headquarters, U. S. Marine Corps commands, activities and organizations - To officials and employees at the data processing installations in the performance of official duties for the purposes of managing, planning, and administrative control.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Magnetic tape or disk.

Retrievability:

By a key number assigned to an individual.

Safeguards:

Restricted access to areas where maintained.

Retention and disposal:

File is maintained on individual as long as he is in a data processing activity. Information pertaining to individual so removed is erased from tape.

System manager(s) and address:

The Commandant of the Marine Corps, Washington, D C 20380.

Notification procedure:

Information may be obtained from the individual Command to which an individual is assigned for duty. See the organizational elements of the U. S. Marine Corps listed in the Directory of the Department of the Navy Mailing Addresses.

Record access procedures:

Written requests from individuals should be addressed to the Commanding Officer of the activity at which the data processing installation to which he is attached or located. Installation addresses are as reported in the Directory of the Department of the Navy Mailing Addresses.

Written requests should include name and social security number.

Personal visits may be made to the installation in question during any normal workday between the hours of 8:00 am - 4:30 pm. For personal visits, the individual should have valid personal identification.

Contesting record procedures:

The Marine Corps rules for contesting contents and appealing initial determinations may be obtained from the SYSMANAGER

Record source categories:

The individual concerned, the individual's commanding officer, or other staff elements of Headquarters, Marine Corps.

Systems exempted from certain provisions of the act:

None

MJA00001

System name:

Business Complaint File

System location:

Tri-Command Legal Assistance Office, Marine Corps Base, Camp Lejeune, North Carolina 28542.

Categories of individuals covered by the system:

Businesses which have generated complaints by clients at Legal Assistance Office.

Categories of records in the system:

Affidavits of individuals involved in incidents which give rise to such complaints.

Authority for maintenance of the system:

Title 5, U. S. Code 301

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Used by Legal Assistance Officers to resolve problem locally or forwarded to the North Carolina Attorney General's Office and/or Armed Forces Disciplinary Control Board as appropriate for settlement of complaint.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Paper records in file folders.

Retrievability:

Arranged by type business and alphabetically by name of business within types. Requires conventional indices for retrievability.

Safeguards:

Maintained in locked building.

Retention and disposal:

Maintained locally so long as file is active, or two years if inactive. Not transferred. Destroyed by discard in military trash system.

System manager(s) and address:

Commanding General (Attn: Tri-Command Legal), Marine Corps Base, Camp Lejeune, North Carolina 28542. Telephone: Area Code 919/451-3218.

Notification procedure:

Requests for information should be addressed to the Systems Manager. Requester may also visit office. Military ID card or other suitable identification will be required.

Record access procedures:

Rules for access may be obtained from the SYSMANAGER

Contesting record procedures:

The agency's rules for access to records and for contesting contents and appealing initial determinations by the individual concerned may be obtained from the SYSMANAGER

Record source categories:

Individual complainants.

Systems exempted from certain provisions of the act:

None

MJA00002

System name:

Staff Judge Advocate Working Papers

System location:

Commanding General, Marine Corps Development and Education Command, Marine Corps Base, Quantico, Virginia 22134

Categories of individuals covered by the system:

Persons appealing Article 15 punishment and traffic court rulings; persons referred to a court-martial; persons awaiting special and general court-martial; persons confined at the Correctional Facility in excess of 30 days; lawyers assigned to be on call for a given period; officers punished under Article 15, UCMJ; and persons selected to sit as members of a court-martial.

Categories of records in the system:

File contains information relating to nonjudicial punishment appeals, the reason for the appeal and the response of the officer appealed; traffic court appeals; counsel assignments to individual referred to a court-martial; weekly case listings including type of offense, counsel assigned and dates per- taining to each case; excess 30 day pretrial confinement letters including the approval/disapproval by the CG for extending the period of confinement; duty lawyer roster; officers' punishments including offense, punishment and statement of desire to appeal or not; weekly docket list; and court-martial members questionnaire including age, duty assignment, summary of past duties, marital status, children, and matters pertaining to past schooling and assignments.

Authority for maintenance of the system:

Title 10, U. S. Code 801, et. seq.; Title 5, U S Code 301

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Staff Judge Advocates Office, Marine Corps Development and Education Command - to prepare SJA's advice to officer appealed to in appeals of nonjudicial punishments; to monitor the fairness of traffic court proceedings; to determine which counsel is assigned to each court-martial case; to inform members of MCDEC with a need to know the status of individual court-martial cases; to expedite cases where individuals have been confined in excess of 30 days; to provide a list of duty counsels for Base security organizations; to keep track of the status of pending cases; and to determine which persons selected to sit as members of a court-martial counsel may wish to challenge.

Marine Corps Commands - by officials and employees of the Marine Corps in the execution of their official duties.

Department of Defense and its Components - by officials and employees of the Department in the performance of their official duties.

The Attorney General of the U. S. - by officials and employees of the Office of the Attorney General in connection with litigation, law enforcement or other matters under the direct jurisdiction of the Department of Justice or as carried out as the legal representative of the Executive Branch agencies.

Courts - by officials of duly established local, state and federal courts as a result of court order pertaining to matters properly within the purview of said court.

Congress of the U.S. - by the Senate or the House of Representatives of the U.S. or any committee or subcommittee thereof, any joint committee of Congress or subcommittee of joint committee on matters within their jurisdiction requiring disclosure of the files of the system.

The Comptroller General of the U.S. - by the Comptroller General or any of his authorized representatives in the course of the performance of duties of the General Accounting Office.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

File folders and card files.

Retrievability:

Alphabetically

Safeguards:

Kept behind locked doors with security guard in building at night.

Retention and disposal:

Most records are retained for two years. Duty lawyer rosters and weekly docket lists are retained for one year. All records are destroyed at the end of the retention period.

System manager(s) and address:

Commanding General, Marine Corps Development and Education Command.

Notification procedure:

Information may be obtained from:

Commanding General
Marine Corps Development and Education Command (Code B 052)
Marine Corps Base
Quantico, Virginia 22134
Telephone: Area Code 703/640-2776

Record access procedures:

Requests from an individual may be addressed to: Commanding General, Marine Corps Development and Education Command (Code B 052), Marine Corps Base, Quantico, Virginia 22134.

Written request for information should contain the full name and grade of the individual.

Contesting record procedures:

The agency's rules for contesting contents and appealing initial determinations by the individual concerned may be obtained from the SYSMANAGER.

Record source categories:

Individuals

Systems exempted from certain provisions of the act:

None

MJA00003

System name:

Magistrate Court Case Files

System location:

All Marine Corps activities.

Categories of individuals covered by the system:

Civilians pending and tried by the assigned Federal magistrate for crimes committed on military reservation.

Categories of records in the system:

Investigative reports, complaints, summons and warrants.

Authority for maintenance of the system:

Title 18, U S Code 3041; Title 5, U S Code 301

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Military Prosecutor for preparation of cases for trial by military prosecutor.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Paper records in file folders.

Retrievability:

Filed alphabetically by name. Conventional indices are required for retrieval.

Safeguards:

Maintained in file cabinet in locked building.

Retention and disposal:

Retained and destroyed in accordance with SECNAVINST 5212.5B.

System manager(s) and address:

Commanding officer of activity concerned. See Directory of Department of Navy Mailing Addresses.

Notification procedure:

Individual is personally served with a subpoena and is shown the file. Requires name for entry.

Record access procedures:

Contact SYSMANAGER.

Contesting record procedures:

The agency's rules for access to records and for contesting contents and appealing initial determination by the individual concerned may be obtained from the SYSMANAGER.

Record source categories:

Law enforcement reports, bad check transmittal letters from Government agencies.

Systems exempted from certain provisions of the act:

None

MJA00004

System name:

In-Hands of Civil Authorities Case File

System location:

All Marine Corps activities.

Categories of individuals covered by the system:

All military personnel who are in hands of civil authorities or have charges pending against them by civil authorities.

Categories of records in the system:

Civil court documents, advice to respondent, health statements/certificates and supporting documents pertaining to individual's status.

Authority for maintenance of the system:

Title 10, U S Code 814; Title 5, U S Code 301

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Working file utilized in administrative processing of individuals in hands of civil authorities. Used by command personnel in the execution of their official duties in processing individual for report of misconduct and discharge proceedings in accordance with Marine Corps Separation Manual.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Paper records in file folders.

Retrievability:

Filed alphabetically by last name of individual by calendar year in which processing is completed.

Safeguards:

Records are stored in metal file cabinets in Base Adjutant's office in Building #1, where full-time security is maintained during off-duty hours. Accessible only to authorized personnel in the execution of their official duties.

Retention and disposal:

On discharged personnel, record incorporated into administrative discharge file. Others retained for two years after completion of calendar year in which processed, then destroyed in accordance with the Navy and Marine Corps Records Disposal Manual.

System manager(s) and address:

Commanding officer of activity concerned. See Directory of Department of Navy Mailing Addresses.

Notification procedure:

Requests should be addressed to the SYSMANAGER. Requester must be able to provide satisfactory identifying information.

Record access procedures:

Rules for access may be obtained from the SYSMANAGER.

Contesting record procedures:

The agency's rules for access to records and for contesting contents and appealing initial determinations by the individual concerned may be obtained from the SYSMANAGER.

Record source categories:

Service records, health records, civil court documents, law enforcement personnel and various DOD Agencies.

Systems exempted from certain provisions of the act:

None

MJA00005

System name:

Financial Assistance/Indebtedness Files

System location:

All Marine Corps activities.

Categories of individuals covered by the system:

Marines identified as owing debts and/or having dependents requiring financial aid.

Categories of records in the system:

File contains name, rank, social security number, military occupational specialty, component, marital and dependency status and supporting documents pertaining to indebtedness and/or financial assistance required.

Authority for maintenance of the system:

Title 10, U. S. Code; Title 5, U S Code 301

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Working file once inquiry initiated. Used by command personnel in the execution of their official duties of processing inquiry. Once processing is completed, record is filed in command office of record official correspondence file.

Policies and practicls for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Paper records in file folders.

Retrievability:

Chronologically by date of response.

Safeguards:

File accessible only to authorized personnel in the execution of their official duties. Maintained is locked building with full time duty personnel present during non-working hours.

Retention and disposal:

Retained for two years and disposed of in accordance with Navy Marine Corps Records Disposal Instructions.

System manager(s) and address:

Commanding officer of activity concerned. See Directory of Department of Navy Mailing Addresses.

Notification procedure:

Requests should be addressed to the SYSMANAGER. Requester must be able to provide satisfactory identifying information.

Record access procedures:

Rules for access may be obtained from the SYSMANAGER.

Contesting record procedures:

The agency's rules for access to records and for contesting contents and appealing initial determinations by the individual concerned may be obtained from the SYSMANAGER.

Record source categories:

Previous and current commanders, private individuals and agencies.

Systems exempted from certain provisions of the act:

None

MJA00006

System name:

2nd Marine Aircraft Wing General Correspondence Files for Legal Administration

System location:

Office of the Wing Staff Judge Advocate, 2nd Marine Aircraft Wing, Cherry Point, North Carolina 28533

Categories of individuals covered by the system:

File contains information on individuals who have appealed nonjudicial punishment, individuals who have been recommended for administrative discharge whose cases have been reviewed by Staff Judge Advocate, individuals who have been served with civil process, correspondence from civilian and military agencies or persons requesting assistance in the completion of legal related problems on individuals. Individuals is defined to mean military personnel assigned to 2nd Marine Aircraft Wing.

Categories of records in the system:

Files contain the name, rank, social security number, unit, and all data applicable to a person's appeal of nonjudicial punishment, the Staff Judge Advocate's review of administrative discharge recommendations, copies of process served on military personnel by civilian authorities, and correspondence relating to information in the files.

Authority for maintenance of the system:

Title 5, U. S. Code 301; Title 10, U S Code 801 et. seq.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Staff Judge Advocate, 2nd Marine Aircraft Wing and his representatives in the execution of assigned duties.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Paper records in file folders.

Retrievability:

Files are filed alphabetically.

Safeguards:

Files are maintained in file cabinets within locked office space during nonworking hours.

Duty personnel perform security checks throughout the building during nonworking hours.

During working hours assigned office personnel are within the immediate area of the files.

Retention and disposal:

Files are maintained two years from the date of final action.

System manager(s) and address:

Staff Judge Advocate, 2nd Marine Aircraft Wing, Marine Corps Air Station, Cherry Point, North Carolina 28533

Notification procedure:

Information may be obtained from:
Staff Judge Advocate
Staff Code 17
Marine Corps Air Station
Cherry Point, North Carolina 28533
Telephone: 919/466-2444

Record access procedures:

Request from individuals should be addressed to: Staff Judge Advocate Staff Code 17, Marine Corps Air Station, Cherry Point, North Carolina 28533

Written requests for information should contain the full name of the individual, social security number, and reason for requesting the information.

For personal visits the individual must be either in appropriate uniform or present adequate identification.

Contesting record procedures:

The agency's rules for access to records and for contesting contents and appealing initial determinations by the individual concerned may be obtained from the SYSMANAGER.

Record source categories:

Individuals
Service record book
Medical Records
Investigative files of CID, NIS, FBI, Military Commands.

Systems exempted from certain provisions of the act:

None

MJA00007

System name:

Delivery Agreement

System location:

All Marine Corps Activities at Legal Office or Office of the Staff Judge Advocate

Categories of individuals covered by the system:

Marines arrested under criminal warrant by civilian authorities

Categories of records in the system:

Written agreement releasing the Marine to civilian authorities. Form contains the nature of the civilian charges for which the Marine is being arrested

Authority for maintenance of the system:

Title 10, U. S. Code 814; Title 5, U. S. Code 301

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Notification to activity that one of its members has been arrested by civilian authorities and also notifying the activity of the nature of the charges. This form also notifies the peace officer involved of his obligations to transport the military individual from and back to the military installation.

Basis for preparing requisite personnel records necessitated by arrest and taking personnel actions occasioned thereby.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

File folders in respective case record Staff Judge Advocate Office

Retrievability:

Alphabetical

Safeguards:

Limited number are distributed and all are considered FOR OFFICIAL USE ONLY

Retention and disposal:

2 years

System manager(s) and address:

Staff Judge Advocate/Legal Officer, Local Marine Corps Activity

Notification procedure:

Information may be obtained from:
Staff Judge Advocate/Legal Officer
Local Marine Corps Activity

If local activity concerned is not known, contact the Director, Judge Advocate Division, Headquarters, U S Marine Corps, Washington, D. C. 20380

Record access procedures:

Requests should be addressed to the Legal Office/Office of Staff Judge Advocate, Local Marine Corps Activity

Contesting record procedures:

The SYSMANAGER should be contacted for rules governing individual cases

Record source categories:

Warrant for arrest presented by arresting civil authority

Systems exempted from certain provisions of the act:

None

MJA00008

System name:

Letters of Indebtedness/Credit Inquiry

System location:

All Marine Corps activities.

Categories of individuals covered by the system:

File on all Marines who receive letters of indebtedness

Categories of records in the system:

All correspondence and findings pertaining to the letter in question.

Authority for maintenance of the system:

Title 5, U. S. Code 301

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Maintain a record of credit inquiries and alledged letters of indebtedness received from various firms and individuals, to conduct an investigation to determine validity prior to taking final action. Available to Personnel Officer, Legal Officer, and Commanding Officer, Headquarters Battalion.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Individual file folders

Retrievability:

By name and date

Safeguards:

Maintained in Headquarters files

Retention and disposal:

One year

System manager(s) and address:

Commanding officer of activity concerned. See Directory of Department of Navy Mailing Addresses.

Notification procedure:

Information may be obtained from:
Commanding Officer, Headquarters Battalion (Code 200)
Marine Corps Supply Activity
Philadelhpia, Pennsylvania 19146

Record access procedures:

Requests from individuals should be addressed to: Commanding Officer, Headquarters Battalion (Code 200), Marine Corps Supply Activity, Philadelphia, Pennsylvania 19146

Contesting record procedures:

The agency's rules for access to records and for contesting contents and appealing initial determination by the individual concerned may be obtained from the SYSMANAGER.

Record source categories:

Complaintant, other investigating officials and individual concerned

Systems exempted from certain provisions of the act:

None

MJA00009

System name:

Marine Corps Command Legal Files

System location:

All Marine Corps commands whose commander has the authority to convene a special court-martial (See Title 10, U S Code 826 and List of Activities in the Directory of Department of the Navy Activities).

Categories of individuals covered by the system:

Civilian employees of the Department of Defense or guests who have visited Marine Corps installations who have allegedly committed criminal offenses aboard a military installation or whose conduct has been subject to investigation.

Any Marine or Navy service member who is the subject of the disciplinary action under the provisions of the Uniform Code of Military Justice (Title 10, U S Code 801,); who has been the subject of administrative discharge action pursuant to the provisions of Marine Corps Order P1900.16); or who has been the subject of an investigation (JAG Manual investigations) convened pursuant to the provisions of the Uniform Code of Military Justice or the Manual of the Judge Advocate General (JAG Instruction 5800.7) or any other type of investigation or inquiry.

Categories of records in the system:

Records of disciplinary proceedings, including courts-martial records and records of non-judicial punishments with supporting documents, military justice management information pre-post trial (e.g., courts-martial docketing logs, reports of cases tried, etc.), pre-disciplinary inquiries and investigations and documentation pertaining to post-hearing/trial review, clemency action, appellate leave or other personnel action related to or resulting from courts-martial, JAG Manual investigations pertaining to claims, line of duty misconduct determinations, command irregularities, and unusual incidents or accidents with supporting documentation and post-investigation review and actions. Inquiries made into incidents or situations which result in disbarment of an individual or firm from entry upon a military installation, referral to base traffic court or civilian, federal, state or local judicial or law enforcement authorities. Recommendations for administrative discharge with supporting documentation, including records of any hearing held and any review or other action taken with respect to the discharge recommendations.

Authority for maintenance of the system:

Title 5, U S Code 301; Title 10, U S Code 801, et. seq.; Title 18, U S Code 382

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Serves as a command historical file

In the case of courts-martial records serves as a public record.

Serves as the basis for taking appropriate action with respect to incidents which have been investigated or have been the subject of disciplinary action.

Serves as a source of information for military, federal other law enforcement authorities for taking action.

Serves as a management system for the military justice activities.

Members of Congress, officials of the Department of Defense, civilian law enforcement officials, General Accounting Office, other federal state or local agencies in the execution of their official duties in relation to inspections, investigations, legal action and administrative action.

Serves as a source from which information is provided to host foreign country officials re criminal activities by American nationals in foreign countries.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Paper records in file folders.

Retrievability:

Files by name of service member involved or chronologically with cross-reference to individual involved.

Safeguards:

Records are kept in either locked cabinets or guarded or locked buildings.

Retention and disposal:

Two years or as provided in the Manual of the Judge Advocate General (JAG Instruction 5800.7).

System manager(s) and address:

Commanding officer of the unit concerned. See Directory of Department of the Navy Activities for addresses. If unit not known, information may be obtained from Director, Judge Advocate Division, Headquarters, U S Marine Corps, Washington, D C 20380.

Notification procedure:

Write or visit SYSMANAGER. If unit concerned cannot be determined, information may be sought from Director, Judge Advocate Division, Headquarters, U S Marine Corps, Washington, D C 20380. Provide full name, social security number and military status. Proof of identity may be established by military identification card or DD-214 and driver's license.

Record access procedures:

The agency's rules for access to records may be obtained from the SYSMANAGER.

Contesting record procedures:

The agency's rules for contest may be obtained from the SYSMANAGER.

Record source categories:

Individual concerned, witnesses to the incident in question or parties concerned therewith, officer investigating the incident, documents or items of real evidence, documents pertaining to the review, action or authorities charged with making a review or taking action.

Systems exempted from certain provisions of the act:

None

MJA00010

System name:

Unit Punishment Book

System location:

All U S Marine Corps and U S Marine Corps Reserve units, whose commander has nonjudicial punishment authority (See 10, U S Code 815)

Categories of individuals covered by the system:

Any enlisted Marine who is charged with a violation of the Uniform Code of Military Justice.

Categories of records in the system:

File contains name, rank, social security number, military occupational specialty and unit of the individual, brief summary of the alleged offense including date, time and place. Acknowledgement of rights under Article 31, Uniform Code of Military Justice, and right to demand trial by Courts-Martial by the individual, record of specific punishment awarded or remarks as to disposition of charge. If punishment was awarded the individual will also acknowledge, in writing, his right to appeal.

Authority for maintenance of the system:

Title 10, U S Code 815; Title 5, U S Code 301

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Referral sheet for evaluation of conduct. To provide a command historical record of nonjudicial punishments. To complete statistics on disciplinary trends. Officials and employees of the Naval Service, Department of Defense, members of congress and General Accounting Office in the execution of their official duties in relation to inspections, investigations, legal action.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Paper records in loose leaf binder.

Retrievability:

Alphabetically by last name and by year.

Safeguards:

Access limited to those with a need-to-know. Records kept in a locked cabinet or in a room which is locked.

Retention and disposal:

3 years, destroyed by burning at end of period.

System manager(s) and address:

Unit Commanders of U S Marine Corps or U S Marine Reserve units authorized to administer nonjudicial punishment.

Notification procedure:

Write or visit SYSMANAGER. If unit imposing punishment cannot be determined, information may be sought from Director, Judge Advocate Division, Headquarters, U S Marine Corps, Washington, D C 20380. Provide full name, social security number, and military status. Proof of identity may be established by military identification card or DD 214 and driver's license.

Record access procedures:

The agency's rules for access to records may be obtained from the SYSMANAGER

Contesting record procedures:

The agency's rules for access to records and for contesting contents and appealing initial determinations by the individual concerned may be obtained from the SYSMANAGER

Record source categories:

Verbal or written charge from individual subject to Uniform Code of Military Justice. Service record book of individual, Nonjudicial punishment hearing.

Systems exempted from certain provisions of the act:

None

MJA00011

System name:

Delinquent Mail Order Account System

System location:

Women's Clothing Outlet, Depot Service and Supply Department, Marine Corps Recruit Depot, Parris Island, South Carolina 29905
On accounts delinquent in excess of ninety days to Headquarters, U S Marine Corps (Code JAM) Collection Agent

Categories of individuals covered by the system:

Any Women Marine who purchases clothing until payment has been completed or payment is delinquent in excess of ninety days.

Categories of records in the system:

File contains information extracted from the Women's Individual Clothing Request (NAVMC 10711)

Authority for maintenance of the system:

Title 5, U S Code 301

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

To ensure prompt payment of Mail Order Clothing.
To establish delinquent account follow-up

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Records maintained in computer for a period of ninety days after date of shipment. Record then passed to Headquarters, U S Marine Corps (Code JAM).

Retrievability:

Bill number
Individual's name

Safeguards:

Records maintained in computer and can only be requested by authorized personnel.

Retention and disposal:

Records are maintained until payment completed but not to exceed a ninety day period after date of shipment. Then by Headquarters, U S Marine Corps (Code JAM) until indebtedness is satisfied.

System manager(s) and address:

Commanding General, Marine Corps Recruit Depot, Parris Island, South Carolina 29905

Notification procedure:

Information may be obtained from:
Women Marine's Clothing Outlet
Depot Service and Supply Department
Marine Corps Recruit Depot
Parris Island, South Carolina 29905

Record access procedures:

Written requests for information should contain the full name of the individual, social security number, current address.
For personal visits, the individual should be able to provide a military identification card.

Contesting record procedures:

The Department's rules for access to records and for contesting contents and appealing initial determinations by the individual concerned may be obtained from the SYSMANAGER

Record source categories:

Individual submits mail order for articles of uniform clothing, provides name, SSN, mail address, item of clothing desired.

Systems exempted from certain provisions of the act:

None

MJA00012

System name:

Individual Accounts of Mail Order Clothing (bill file)

System location:

Clothing Section (MAU), Direct Support Stock Control Branch, Materiel Division, Marine Corps Logistics Support Base, Atlantic, Albany, Georgia 31704

Categories of individuals covered by the system:

File pertains to all Marine Corps personnel, active, reserve and retired who have a requirement and are authorized clothing, textiles and other related supplies.

Categories of records in the system:

Record includes individual's name, rank, SSN, military address, bill number, dollar amount of the shipment, shipping date and zip code.

Authority for maintenance of the system:

NAVCOMPT Manual, Part C, Collection and Reporting of Debts Due the United States.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Marine Corps Logistics Support Base, Atlantic, Albany, Georgia. To facilitate in a mechanized atmosphere the collection of information necessary to provide the capability of continued follow up on funds owed and due the U S Government through daily billing, cross referencing and processing of mail order clothing individual accounts.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Data is stored on magnetic tapes and computer paper printouts.

Retrievability:

Data can be retrieved by account number, name and social security number.

Safeguards:

Computer printouts and source documents are retained in a single office accessible only to authorized personnel. Employees are properly trained in safeguarding information of a personal nature.

Retention and disposal:

Computer records are retained until the bills are satisfied. Computer printouts and source documents are retained for a period of five years. Destruction of records is by mutilation.

System manager(s) and address:

Commanding General, Marine Corps Logistics Support Base, Atlantic Albany, Georgia 31704.

Notification procedure:

Information may be obtained from:
Clothing Section (MAU), Direct Support Stock Control Branch, Materiel Division
Marine Corps Logistics Support Base, Atlantic
Albany, Georgia 31704
Telephone: Area Code 912/439 5837

Record access procedures:

Written requests from individuals should be addressed to Clothing Section (MAU), Direct Stock Control Branch, Materiel Division, Marine Corps Logistics Support Base, Atlantic, Albany, Georgia 31704.

Contesting record procedures:

The agency's rules for access to records, contesting contents and appealing initial determination by the individual concerned may be obtained from the SYSMANAGER

Record source categories:

Accounting records of the Clothing Section, Direct Support Stock Control Branch, Marine Corps Logistics Support Base, Atlantic, Albany, Georgia, supplemented with information from the employing activity of the individual.

Systems exempted from certain provisions of the act:

None

MJA00013

System name:

Dishonored Personal Check Records and Withdrawal of Check Cashing Privileges Lists

System location:

Each Appropriated and Non-Appropriated Fund Activity having authority to accept personal checks from authorized patrons. Located at Headquarters, U S Marine Corps and each major Marine Corps installation listed in MCO P5400.6G.

Categories of individuals covered by the system:

All military personnel, active and retired; their authorized dependents and dependents of deceased military retirees; Marine Corps Exchange employees.

Categories of records in the system:

File Bulletins containing name, rank, social security number and expiration date of restriction of privileges and related correspondence.

Authority for maintenance of the system:

Title 5, U S Code 301; Title 18, U S Code 13; Title 10, U S Code 801, et. seq.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

The purpose is to protect the activity from unnecessary losses and advise Commanders when a bad check offense has been committed by a patron. Used by Marine Corps employees tasked with verifying the information and authorized to cash checks as part of their official duties. Used also to notify Commanders of their personnel who have cashed bad checks. Used by Commanders to take action (administrative or criminal) deemed necessary in the exercise of their official responsibilities. Information there from may be provided to federal, state or local law enforcement agencies.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Stored in Rolodex or other appropriate file in check cashing area. Published Bulletin is stored in directives system of organizations.

Retrievability:

Alphabetical by name and social security number.

Safeguards:

Access limited. Secured in locked building during nonworking hours.

Retention and disposal:

Destroyed when privileges are restored at the expiration of specified periods made known to the individual at the time privileges are revoked.

System manager(s) and address:

Commanding Officer of activity concerned. See Directory of Department of the Navy Mailing Addresses.

Notification procedure:

Inquire in person at the individual check cashing activity or to the SYSMANAGER.

Record access procedures:

Rules for access can be provided by the SYSMANAGER.

Contesting record procedures:

The agency's rules for access to records and for contesting contents and appealing initial determinations by the individual concerned may be obtained from the SYSMANAGER.

Record source categories:

Bad checks returned from the bank; notification from other Commands, Federal Bureau of Investigation, Naval Investigative Service or other state, local or Federal investigative agencies or Treasury Department.

Systems exempted from certain provisions of the act:

None

MJA00014

System name:

File of Confidential Statements of Employment and Financial Interests

System location:

The Director, Judge Advocate Division, Headquarters, U S Marine Corps, Washington, D C 20380

Categories of individuals covered by the system:

Senior Marine Corps officers whose fitness reports are written by the Commandant of the Marine Corps and who are required to file confidential statements of 'Employment and Financial Interests' (DD Form 1555) in accordance with DOD Directive 5500.7 of 8 August 1967.

Categories of records in the system:

The file contains copies of the 'Confidential Statements of Employment and Financial Interests' (DD Form 1555), reviews thereof, and related correspondence.

Authority for maintenance of the system:

Title 5, U S Code 301

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

The forms are reviewed in the office of the Director, Judge Advocate Division for conflict of interest and then are kept on file along with any correspondence generated thereby for the purpose of insuring that the information relating to potential conflict of interest on the part of senior Marine Corps officers is available to the Commandant of the Marine Corps or his designees, GAO, and federal law enforcement officials.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

File folder.

Retrievability:

Alphabetical

Safeguards:

The access to the files is limited.
The files are kept in a locked safe during non business hours.

Retention and disposal:

PerSecNav Disposal Manual

System manager(s) and address:

The Director, Judge Advocate Division, Headquarters, U S Marine Corps, Washington, D C 20380.

Notification procedure:

Information may be obtained from:
Director Judge Advocate Division
Headquarters, U S Marine Corps (Code JA)
Washington, D C 20380
Telephone: Area Code 202/694-2737.

Record access procedures:

Request from individuals should be addressed to: Commandant of the Marine Corps, Headquarters, U S Marine Corps (Code JA), Washington, D C 20380.

Written requests for information should contain the full name and grade of the individual concerned.

Contesting record procedures:

The rules for contesting contests and appealing inicial determinations by the individual concerned may be obtained from the SYSMANAGER.

Record source categories:

DD Form 1555 submitted by individual concerned and correspondence from and to SYSMANAGER.

Systems exempted from certain provisions of the act:

None

MJA00015

System name:

Indebtedness Correspondence Record

System location:

The Director, Judge Advocate Division, Headquarters, U S Marine Corps, Washington, D C 20380.

Categories of individuals covered by the system:

Alphabetical card file of all Marine's with respect to whom indebtedness correspondence has been received at Headquarters, U S Marine Corps.

Categories of records in the system:

The file contains the individuals name, rank, service number, date the letter of indebtedness was received, date action is taken with respect to the name of the company from whom the letter is received and any relevant followup data.

Authority for maintenance of the system:

Title 5, U S Code 301

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

File is used purpose of maintaining a record of correspondence received regarding indebtedness case of Marine Corps personnel and a record of the action taken by this Headquarters with respect thereto.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Card File.

Retrievability:

Alphabetical

Safeguards:

The access to the cards is limited.
The card file is kept in a locked room during non business hours.

Retention and disposal:

PerSecNavDisposalManual

System manager(s) and address:

The Director, Judge Advocate Division, Headquarters, U S Marine Corps, Washington, D C 20380.

Notification procedure:

Information may be obtained from:
Director, Judge Advocate Division
Headquarters, U S Marine Corps (Code JA)
Washington, D C 20380
Telephone: Area Code 202/694-2737.

Record access procedures:

Request from individuals should be addressed to: Commandant of the Marine Corps, Headquarters, U S Marine Corps (Code JA), Washington, D C 20380.

Written requests for information should contain the full name and grade of the individual concerned.

Contesting record procedures:

The agencies rules for contesting contents and appealing initial determination by the individual concerned may be obtained from the SYSMANAGER

Record source categories:

Individual and commercial creditors.

Systems exempted from certain provisions of the act:

None

MJA00016

System name:

Judge Advocate Division 'D' Files

System location:

The Director, Judge Advocate Division, Headquarters, U S Marine Corps, Washington, D C 20380

Categories of individuals covered by the system:

All Marine Corps Judge Advocates currently on active duty, in a reserve capacity and those individuals who have been selected for accession into the Marine Corps as Judge Advocates or who are in the training cycle to become Judge Advocates.

Categories of records in the system:

The file contains correspondence from the Judge Advocates and prospective Judge Advocates regarding requests for personnel actions such as transfer, school assignment, etc. Additionally, the file contains information pertaining to judge advocate qualifications such as schooling results, commendatory matter and derogatory matter which bears on the assignment and other personnel matters relating to judge advocates.

Authority for maintenance of the system:

Title 5, U S Code 301

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

The personnel of the Judge Advocate Division, officer and civilian alike as well as Marine Corps personnel responsible for assignment and other personnel actions respecting Judge advocates utilize the material contained in this file for the purpose of making decisions with respect to personnel actions pertaining to judge advocates.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

File folders.

Retrievability:

Alphabetical

Safeguards:

Access is limited.
The records are kept in file cabinets within a locked room.

Retention and disposal:

PerSecNavRecordsDisposalManual

System manager(s) and address:

The Director, Judge Advocate Division, Headquarters, U S Marine Corps, Washington, D C 20380.

Notification procedure:

Information may be obtained from:
Director, Judge Advocate Division
Headquarters, U S Marine Corps (Code JA)
Washington, D C 20380
Telephone: Area Code 202/694-2737

Record access procedures:

Requests from individuals should be addressed to: Director, Judge Advocate Division, Headquarters, U S Marine Corps (Code JA), Washington, D C 20380.

Written requests should contain the full name and grade of the individual.

Contesting record procedures:

The agencies rules for contesting contents and appealing initial determinations by the individuals concerned may be obtained from the SYSMANAGER

Record source categories:

Individuals.
Service records of the individuals involved.
Staff Judge Advocates and Commanders of the individuals involved.
Schools from which the individuals have obtained their graduate or undergraduate degrees or currently in residence.

Systems exempted from certain provisions of the act:

None

MJA00017

System name:

Correspondence Branch, JA Division, HQMC Correspondence Control Files

System location:

The Commandant of the Marine Corps (Code JAC), Headquarters, U S Marine Corps, Washington, D C 20380.

Categories of individuals covered by the system:

Marines or former Marines who have been the subject of correspondence from a member of Congress, a high level official in the Federal executive branch, parents of such an individual, individual Marines or members of the general public which correspondence concerns legal matters.

Categories of records in the system:

File contains the incoming correspondence, backup material used to respond to the correspondence, notes of the action officer and reply correspondence.

Authority for maintenance of the system:

Title 5, U S Code 301

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Officers, enlisted men and civilian personnel of the Marine Corps and other DOD agencies who are interested in determining the history of and action taken with respect to a problem addressed in incoming correspondence category above.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

File folders.

Retrievability:

Alphabetical by name of correspondent or name of Marine or former Marine who is the subject of the correspondence.

Safeguards:

Limited access on a need to know basis.
Maintained in a locked room.

Retention and disposal:

PerSecNavRecordsDisposalManual

System manager(s) and address:

The Director, Judge Advocate Division, Headquarters, U S Marine Corps, Washington, D C 20380.

Notification procedure:

Information may be obtained from:
Director, Judge Advocate Division
Headquarters, U S Marine Corps (Code JAC)
Washington, D C 20380
Telephone: Area Code 202/694-2737

Record access procedures:

Requests from individuals should be addressed to Director, Judge Advocate Division, Headquarters, U S Marine Corps (Code JAC), Washington, D C 20380.

Written requests for information should contain the full name and grade of the individual.

Contesting record procedures:

The agencies rules for contesting contents and appealing initial determinations by the individual concerned may be obtained from the SYSMANAGER.

Record source categories:

Drafter of incoming correspondence.

Service records of the Marine concerning whom correspondence is written.

Information furnished from the command of the Marine concerned.

Information furnished from other involved Marine Commands or individuals.

Systems exempted from certain provisions of the act:

None

MJA00018

System name:

Performance File

System location:

The Director, Judge Advocate Division, Headquarters, U S Marine Corps, Washington, D C 20380.

Categories of individuals covered by the system:

The file pertains to all members of the Marine Corps on active duty or in a reserve status who are under investigation, indictment, or in the process of a criminal proceeding by military or civilian authorities.

Categories of records in the system:

The file contains information pertaining to civilian and military criminal matters including investigative reports, documents indicating court proceedings have begun and/or are in progress and post trial or investigative matters. Material is kept only until the procedure is finalized whether by conviction, acquittal, dismissal of the matter or by it's being dropped.

Authority for maintenance of the system:

Title 5, U S Code 301

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Headquarters, U S Marine Corps personnel utilize this file in personnel management decisions. Such as determining the propriety of assignments, transfers of individuals or determining whether an individual who has been selected for promotion should be promoted or whether that promotion should be withheld during the pendency of the criminal proceeding.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

File folders.

Retrievability:

Alphabetical

Safeguards:

Access is limited.

The file folders are stored in the file cabinets which are stored in a locked room during non business hours.

Retention and disposal:

PerSecNavRecordsDisposalManual

System manager(s) and address:

The Director Judge Advocate Division, Headquarters, U S Marine Corps, Washington, D C 20380.

Notification procedure:

Information may be obtained from:
Director Judge Advocate Division
Headquarters, U S Marine Corps (Code JA)
Washington, D C 20380
Telephone: Area Code 202-694-2737

Record access procedures:

Requests from individuals should be addressed to Director Judge Advocate Division, Headquarters, U S Marine Corps (Code JA), Washington, D C 20380.

Written requests for information should contain the full name and grade of the individual.

Contesting record procedures:

The agencies rules for contesting contents and appealing initial determinations by the individual concerned may be obtained from the SYSMANAGER

Record source categories:

Investigative records of arrest from civilian law enforcement sources.

Records of indictment or conviction from civilian law enforcement or judicial agencies.

Records of appellate and other post trial procedures received from civilian law enforcement and judicial agencies.

Records indicating apprehension or investigation by military authorities received from individuals command or other military agencies, law enforcement or command.

Records of court-martial, pre court-martial and post court-martial activities relating to the individual received from the individuals command.

Records of administrative eliminative processes conducted by military authorities received from the individual's command.

Systems exempted from certain provisions of the act:

None

MMC00002

System name:

Working Files, Inspection Division, Headquarters, U S Marine Corps

System location:

Headquarters, U S Marine Corps, Washington, D C 20380

Categories of individuals covered by the system:

Members of the U S Marine Corps and Marine Corps Reserve; former members of the Marine Corps and Marine Corps Reserve; retired and temporarily retired members of the Marine Corps and Marine Corps Reserve; and members of the Fleet Marine Corps Reserve.

Military personnel

Dependents of Marines and other family members with respect to matters pertaining to the individual Marine or former Marine.

Categories of records in the system:

File contains information pertaining to identification, recruitment, enlistment, prior service, assignment, location addresses, promotions, reductions in rank, performance of duty, discipline, offenses and punishments under the Uniform Code of Military Justice, courts-martial, personal history, investigations, police and court records, civil arrests and convictions, official correspondence (includes internal Marine Corps and Department of the Navy correspondence, as well as correspondence with the Executive and Legislative branches of the federal government) and other correspondence (includes correspondence from Marines, their dependents and families, attorneys, doctors, educators, clergymen and members of the general public whether addressed directly to the Marine Corps or via third parties (president, congressmen, etc.))

Authority for maintenance of the system:

Title 5, U S Code 301

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Inspection Division, Headquarters, U S Marine Corps. To facilitate and expedite responses to inquiries and correspondence from members of Congress, military personnel, and members of the general public. Such inquiries and correspondence routinely relate to allegations pertaining to request mast, maltreatment at Recruit Depots, and harassment.

Marine Corps commands. By officials and employees of the Marine Corps in the execution of their official duties as relates to the preparation of information upon which to base replies to members of Congress, Secretary of the Navy, relatives and members of the general public.

Department of Defense and its Components. By officials and employees of the Department in the performance of their official duties in connection with military personnel management.

Congress of the U S By the Senate or the House of Representatives of the U S or any Committee or subcommittee thereof on matters within their jurisdiction requiring disclosure of the files of the system.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Paper files as represented by card files and file folders. Files are stored in five drawer filing cabinets.

Retrievability:

Files are accessed and retrieved by the name and card file number.

Safeguards:

Building where files are stored and maintained employs 24 hour security guards. Records are further stored in areas of controlled access and handled by personnel with a need-to-know in the execution of their official duties.

Retention and disposal:

Congressional, military and civilian inquiry files are retained three years, then destroyed.

System manager(s) and address:

The Commandant of the Marine Corps, Headquarters, U S. Marine Corps, Washington, D C 20380.

Notification procedure:

Information may be obtained from:

The Commandant of the Marine Corps (Code IGA)
Headquarters, U S Marine Corps
Washington, D C 20380
Telephone: Area Code 202/694-1324

Record access procedures:

Requests from individuals desiring information may be addressed to: The Commandant of the Marine Corps (Code IGA), Headquarters, U S Marine Corps, Washington, D C 20380. However, final determination as to whether any information will be released or made available will be controlled by the SYSMANAGER.

Written requests for information should contain the full name of the individual and his social security number or former military service number. The following information will also be helpful in locating some records: Military rank and occupational specialty, dates and places of service, and any special correspondence previously received or sent.

For personal visits, an individual may visit the Inspection Division, Headquarters, U S Marine Corps, Federal Building #2, Washington, D C 20380. However, final determination as to whether any information will be released or made available will be controlled by the SYSMANAGER.

For personal visits, the individual should be able to provide personal identification to include valid military or dependent identification card or two valid civilian items of identification, such as driver's license, social security card, medicare card, etc.

Contesting record procedures:

The Marine Corps rules for contesting contents and appealing initial determinations may be obtained from the Commandant of the Marine Corps (Code IG), Headquarters, U S Marine Corps Washington, D C 20380.

Record source categories:

Information in the system is obtained from the Marine Corps Manpower Management System; the Joint Uniform Military Pay System; Marine Corps Military Personnel Records to include the Service Record Book and Officer Qualification Record; Military Medical Records; Staff elements and subdivisions of Headquarters, U S Marine Corps; Marine Corps field commands, organizations and activities; other components of the Department of Defense; Agencies of Federal, State and local government; private citizens provided as character references by the individual; investigations related to disciplinary proceedings; and correspondence of private citizens addressed directly to the Marine Corps or via third parties such as members of Congress and other governmental agencies.

Systems exempted from certain provisions of the act:

None

MMC00003

System name:

Activity Check In/Check Out File

System location:

May be located at any U S Marine Corps or U S Marine Corps Reserve activity.

Categories of individuals covered by the system:

All members of the activity.

Categories of records in the system:

Date reported and verification of check-in - check-out procedure.

Authority for maintenance of the system:

Title 5, U S Code 301

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Command, administrative and supply personnel to ensure individuals are appropriately entered with all unit records and as a safeguard against unit members being discharged or transferred without turning in property belonging to this unit or without being dropped from appropriate unit records.

Officials and employees of the Naval Service and General Accounting Office in the execution of their official duties in relation to inspections, investigations, legal action.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

On paper in files or on clipboard.

Retrievability:

Alphabetically by last name.

Safeguards:

Access limited to activity personnel in the performance of their official duties.

After working hours the office and building are locked. A guard is located in the general vicinity.

Retention and disposal:

Retained for 6 months after action has been completed.

System manager(s) and address:

Activity commander.

Notification procedure:

Write or visit SYSMANAGER. Provide full name, social security number, and military status. Proof of identity may be established by military identification card or DD-214 and driver's license.

Record access procedures:

The agency's rules for access to records may be obtained from the SYSMANAGER.

Contesting record procedures:

The agency's rules for access to records and for contesting contents and appealing initial determinations by the individual concerned may be obtained from the SYSMANAGER.

Record source categories:

Service records.

Systems exempted from certain provisions of the act:

None

MMC00004

System name:

Adjutant Services Section Discharge Working Files

System location:

Adjutant Services Section, Marine Corps activities

Categories of individuals covered by the system:

Members and former members of the Marine Corps and Marine Corps Reserve. Some information about dependents and other members of families or former families of Marine Corps personnel may be included in files pertaining to the Marine. Inquiries from the general public, whether addressed directly to Base or received via a third party, may be retained together with information obtained in the course of completing required action or in preparing a response.

Categories of records in the system:

Files contain information pertaining to identification; prior service; location and addresses; prior and present marital status, dissolution of prior marriages, birth and death status, adoption of children, financial responsibility, child support, medical information, personal financial records, residence, basic allowance for quarters, leave and liberty, financial assistance, extensions of emergency leave, medical bills and determinations of dependency status as pertain to hardship discharges; investigative reports, prior and present disciplinary status, financial responsibility, conduct and personal history, medical information, police reports, correction of naval records, veterans rights, benefits and privileges, preseparation counseling and civil readjustment as they pertain to unsuitability, unfitness and misconduct discharges; financial status, college acceptance and residence as they pertain to early separation to attend college or trade school; religious beliefs and practices pertaining to applications for conscientious objector status; official correspondence (includes correspondence with Marine Corps commands and organizations, other Armed Services, the White House, members of Congress, Department of Defense, and other agencies of federal, state and local governments); other correspondence (including correspondence from Marines, their families, attorneys, doctors, clergymen, administrators/executors/guardians of estates, American Red Cross and other welfare agencies and the general public, whether addressed directly to the Marine Corps or via third parties); internal routing and processing of discharge matters; and records of interviews and telephone conversations.

Authority for maintenance of the system:

Title 5, U. S. Code 301

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

To facilitate administration of programs concerning the discharge or separation of Marines; correction of naval records; veterans rights, benefits and privileges; support of dependents; personal affairs, welfare and family assistance; preseparation counseling and civil readjustment.

To facilitate preparation and maintain a record of discharge processing and other communications from staff sections within Base Headquarters; Marine Corps commands and organizations; other Armed Services; the White House, Members of Congress; Department of Defense; other agencies of federal, state and local governments; Marines, their families, attorneys, doctors, clergymen, administrators/executors/guardians of estates; American Red Cross, and other welfare agencies and the general public.

To provide a record of decisions and actions taken.

By officials and employees of the Marine Corps and Marine Corps Reserve in the performance of their official duties in the administration of programs relating to the discharge matters cited above.

By officials and employees of the Department of the Navy, Department of Defense, and other government agencies in the performance of their official duties related to discharge and separation processing.

By government agencies or private organizations under Government contract to perform analytical and historical research pertaining to discharges and separations.

By intelligence and other Government agencies assisting in the investigation of deserters and absentees.

By Marines, former Marines, their next of kin, or persons or organizations designated by them in writing for whatever purpose access to the record is desired.

Information obtained, developed, or processed by the Base Discharge Section in performing functions related to this record system may be entered into the Marine Corps Manpower Management System and the Marine Corps Military Personnel Records System.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Paper records in file folders and card files stored in filing cabinets, shelves, tables and desks.

Retrievability:

Files are accessed and retrieved by individual. Identification of individual is by name and social security number.

Safeguards:

Building is located in base area with area guard. Outside and inside doors are locked after working hours and patrolled by Duty NCO. Access to information contained in the files is limited to officials and employees of Base Headquarters acting in their official capacity upon demonstration of a need-to-know.

Retention and disposal:

Files are retained two years and destroyed.

System manager(s) and address:

Commanding Officer of activity concerned. See Directory of Department of the Navy mailing addresses.

Notification procedure:

Correspondence pertaining to files maintained should be addressed to the Sysmanager

Correspondence should contain the full name, social security number and signature of the requester. The individual may visit the above location for review of files. Proof of identification may consist of the active, reserve, retired or dependent identification card, the Armed Forces Report of Transfer or Discharge (DD-214), discharge certificate, driver's license, social security card or by providing such other data sufficient to ensure the individual is the subject of the inquiry.

Record access procedures:

Information may be obtained from the Sysmanager.

Contesting record procedures:

The section's rules for access to files and for contesting and appealing initial determination by the individual concerned may be obtained from the SYSMANAGER.

Record source categories:

Marine Corps Manpower Management System
Joint Uniform Military Pay System
Marine Corps Military Personnel Records System
Marine Corps Deserter Inquiry File
Staff agencies and subdivisions of Headquarters, U S Marine Corps
Marine Corps commands and organizations
Other agencies of federal, state and local governments
Educational institutions
Medical reports and psychiatric evaluations
Financial institutions and other commercial enterprises
Civil courts and law enforcement agencies
Correspondence and telephone calls from private citizens initiated directly to the Marine Corps or via the U. S. Congress and other agencies
Investigative Reports
American Red Cross and similar welfare agencies

Systems exempted from certain provisions of the act:

None.

MMC00005

System name:

Insurance Files

System location:

Marine Corps Activities

Categories of individuals covered by the system:

Insurance salesman requesting authority to do business at Marine Corps Activities

Categories of records in the system:

A record of the certification of authority to solicit insurance, mutual funds, investment plans, and securities

Authority for maintenance of the system:

Title 5, U. S. Code 301

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Used by Insurance Officer to maintain control of insurance sales in accordance with SECNAVINST 1740. ; Provide reference to agents who have requested authority to do business at Marine Corps activities and the disposition of such requests including any information in support of denial of such authorizations.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Paper records in file folders.

Retrievability:

Files in alphabetical order by company name. Conventional indices are required for retrieval.

Safeguards:

Maintained in locked building.

Retention and disposal:

Maintained as long as active. If inactive, disposed of after two years by discard into military trash system. Not transferred.

System manager(s) and address:

Local Commanding Officers

Notification procedure:

Address requests to SYSMANAGER or visit the office; Military ID or other suitable identification is required.

Record access procedures:

An individual can call for an appointment with the activity insurance representative for personal assistance or forward a written request for the required information.

Contesting record procedures:

The agency's rules for access to records and for contesting contents and appealing initial determinations by the individual concerned may be obtained from the SYSMANAGER.

Record source categories:

Information is supplied by the insurance companies and salesman involved.

Systems exempted from certain provisions of the act:

None

MMC00007

System name:

Inspection of government property assigned to individual

System location:

Organizational elements of the U.S. Marine Corps as listed in the Directory of Department of the Navy activities mailing addresses.

Categories of individuals covered by the system:

Inspection of Government Property

Categories of records in the system:

Name, badge number, and government property assigned to individual

Authority for maintenance of the system:

Title 5, U. S. Code 301

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

To show loss or deterioration of clothing and equipment

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

File

Retrievability:

Name

Safeguards:

Building locked at night - locked cabinet

Retention and disposal:

Until separation

System manager(s) and address:

Commanding Officer of the activity in question. See Directory of Department of the Navy activities mailing addresses.

Notification procedure:

Information may be obtained from the Sysmanager

Record access procedures:

Written requests from the individual should be addressed to the Sysmanager.

Written requests for information should contain the full name of the individual and his social security number or former military service number. The following information will also be helpful in locating some records: Military rank and occupational specialty, dates and places of service, and any special correspondence previously received or sent.

For personal visits, the individual should be able to provide personal identification to include valid military or dependent identification card or two valid civilian items of identification such as driver's license, social security card, medicare card, etc.

Contesting record procedures:

The Marine Corps rules for contesting contents and appealing initial determination may be obtained from the SYSMANAGER.

Record source categories:

Inspection of property and clothing

Systems exempted from certain provisions of the act:

None

MMC00008

System name:

Message Release/Pickup Authorization File

System location:

Marine Corps activities

Categories of individuals covered by the system:

All personnel authorized to release/pickup message traffic.

Categories of records in the system:

OPNAV Form 2160-5 (Message Release/Pickup Authorization)

Authority for maintenance of the system:

Title 5, U S Code 301

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

To allow Comm Center personnel to determine who is authorized to release/pickup messages for the commands; used to compare specimen signature on card with the signature on the message to be released; used by Comm Center employees in the execution of their assigned duties.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Cards are filed in a card file within the Communication Center

Retrievability:

Alphabetically by name.

Safeguards:

Located in a secure space within the Comm Center, which is manned on a 24-hour basis.

Retention and disposal:

Retained until individual is replaced or authorization is revoked by proper authority; then destroyed by burning or shredding.

System manager(s) and address:

Local commanding officers. See Directory of Department of the Navy mailing addresses.

Notification procedure:

Request information from the SYSMANAGER.

Record access procedures:

Rules for access may be obtained from the SYSMANAGER.

Contesting record procedures:

The agency's rules for access to records and for contesting contents and appealing initial determinations by the individual concerned may be obtained from the SYSMANAGER.

Record source categories:

Organizations, departments, sections authorized to release/pickup messages for the command.

Systems exempted from certain provisions of the act:

None

MMC00009

System name:

Narrative Biographical Data with Photos (NAVMC Form 10573)

System location:

Primary System - Headquarters, U S Marine Corps, Washington, D C 20380. All Marine Corps commands and districts maintain derivative files.

Categories of individuals covered by the system:

Marine Corps active duty, reserve, and retired general officers and active duty colonels who submit biographical data with photographs in accordance with existing directives.

Categories of records in the system:

Files contain standard biographical information as listed on NAVMC Form 10573 to include: personal identification, personal data, education background, military history, medals and decorations, combat, and chronology of Marine Corps service. A current photograph accompanies the file.

Authority for maintenance of the system:

Title 5, U S Code 301

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Headquarters, U S Marine Corps and Marine Corps commands, activities and organizations - To make routine news releases such as assignments and promotions; to provide background data in response to news media queries; to provide background information on the individual officer prior to speaking engagements or appearances at public events in which the officer is scheduled to appear; to provide internal release of information as required.

Department of Defense and its components - By officials and employees of the Department in the performance of their official duties.

Congress of the U S - By the Senate or the House of Representatives of the U S or any committee or subcommittee thereof, any joint committee of Congress or subcommittee of joint committee on matters within their jurisdiction requiring disclosure of the files.

The Comptroller General of the U S - By the Comptroller General or any of his authorized representatives in the course of the performance of duties of the General Accounting Office relating to the Marine Corps.

News Media - To provide biographical information in response to query.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Paper records in file folders.

Retrievability:

Filed alphabetically by last name of officer.

Safeguards:

Buildings employ security guards. Records are maintained in areas accessible only to authorized personnel that are properly screened, cleared, and trained.

Retention and disposal:

Biographical information is maintained on all general officers while on active duty. When a general officer retires, the biographical data is retained for five years after the date of the individual officer's retirement and retained by the Historical Division (Code HD), Headquarters, U S Marine Corps, Washington, D C 20380.

Biographical files are maintained on colonels while on active duty. Upon retirement of the officer, colonel biographical files are retained

by Historical Division (Code HD), Headquarters, U S Marine Corps, Washingotn, D C 20380.

System manager(s) and address:

The Commandant of the Marine Corps, Headquarters, U S Marine Corps, Washington, D C 20380 or commander of unit holding file.

Notification procedure:

Requests from individuals should be addressed to the Commandant of the Marine Corps (Code PAC), Headquarters, U S Marine Corps, Washington, D C 20380.

Written requests to determine whether or not the system contains a record about an individual should contain the full name of the general officer or colonel concerned.

Visits are limited to Division of Information (Code PAC), Headquarters, U S Marine Corps, Washington, D C 20380.

For personal visits, the individual should be able to provide some acceptable identification, such as a military identification card, and give some verbal information that could be verified with his 'case' folder.

Record access procedures:

Information may be obtained from the Commandant of the Marine Corps and the commander of the unit holding the file.

Contesting record procedures:

The agency's rules for access to records and for contesting contents and appealing initial determinations by the individual concerned may be obtained from the SYSMANAGER.

Record source categories:

Biographical data provided by the individual general/colonel and from personnel files.

Systems exempted from certain provisions of the act:

None

MMN00001

System name:

Absentee Processing and Deserter Inquiry File

System location:

Primary System - Absentee and Deserter Section, Manpower Plans and Policy Division, Manpower Department (Code MP), Headquarters, U. S. Marine Corps, Washington, D.C. 20380.

Decentralized Segments - U. S. Marine Corps commands to which the absentee or deserter is assigned for duty or administration of official records. See the organizational elements of the U. S. Marine Corps as listed in the Director of the Department of the Navy Mailing Addresses.

Categories of individuals covered by the system:

Marine Corps Absentees and deserters; Marines in hands of civil authorities foreign and domestic; Marines who fail to comply with orders to new duty stations; suspected and convicted absentees and deserters who have returned to military control.

Categories of records in the system:

File contains personal identification data, parent command, notations of arrests, nature and dispositions of crimanal charges, and other pertinent information which is necessary to monitor, control and identify absentees and deserters.

Authority for maintenance of the system:

Title 5, U S Code 301

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Internal:

Headquarters, U. S. Marine Corps, Marine Corps commands, activities, and organizations - To coordinate the identification, apprehension and return of Marine absentees and deserters in accordance with current regulations. To record and monitor deserter/ absentee cases entered into the National Crime Information Center's Wanted Persons File; to monitor and assign absentees upon their return to military control; to ensure that absentees are formally charged in accordance with the Uniform Code of Military Justice prior to expiration of the Statute of Limitations; to monitor Marine absentees and deserters believed to be located in foreign countries; to monitor Marines who have failed to comply with permanent change of station (PCS) orders or orders to travel and report without escort; to insure correspondence pertaining to absentees and deserters received by the Marine Corps is processed in a timely manner; to insure that appropriate action is taken within the Manpower Management System to join or drop absentees to desertion; to provide periodic management reports concerning absentees and deserters as directed by higher authority.

External:

The Department of Defense - To coordinate with the other components of the Department of Defense as may be required to report, identify, apprehend and return Marine absentees and deserters to Marine Corps control.

Comptroller General of the U S - To respond to the Comptroller General or any of his authorized representatives in the course of the performance of duties of the General Accounting Office relating to Marine Corps Manpower Management Programs.

The Attorney General of the U S - To coordinate with the Attorney General or his authorized representatives in connection with litigation, law enforcement or other matters under the direct jurisdiction of the Department of Justice as carred out as the legal representative of the Executive Branch.

Civilian Law Enforcement Agencies - To coordinate with appropriate federal, state, and local law enforcement agencies as may be required to report, identify, apprehend and return Marine absentees and deserters to Marine Corps control.

Courts - To respond to court orders in connection with matters before a court.

Congress of the United States - To respond to inquiries of the Senate or the House of Representatives of the United States or any committee or subcommittee thereof or any joint committee or joint subcommittee of the Congress on matters within their jurisdiction as may be requested of the Marine Corps.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Records are stored on magnetic tapes and disks, microform and file folders.

Retrievability:

Records may be accessed by name and social security number.

Safeguards:

Building employs security guards. Computer terminals and records are located in areas accessible only to authorized personnel that are properly screened, cleared and trained. Use of terminals requires knowledge of passwords.

Retention and disposal:

Records vary in the period of time retained. Records on magnetic tapes and disks are destroyed by erasing after disposition of the individual's case. Paper records are maintained only as long as necessary to transfer information to the official personnel record, then they are destroyed.

System manager(s) and address:

The Commandant of the Marine Corps (Code MP), Headquarters, U S Marine Corps, Washington, D C 20380

Notification procedure:

Information may be obtained from:

The Commandant of the Marine Corps (Code MP)
Headquarters, U S Marine Corps
Washington, D C 20380
Telephone: Area Code 202/694-2927

Record access procedures:

Requests from individuals should be addressed to: The Commandant of the Marine Corps (Code MP), Headquarters, U S Marine Corps, Federal Office Building #2, Washington, D C 20380.

Written requests for information should contain the full name of the individual, date and place of birth, social security number and signature.

For personal visits, the individual should be able to provide military identification card, driver's license or other type of identification bearing picture or signature or by providing verbal data sufficient to insure that the individual is the subject of the inquiry.

Contesting record procedures:

The rules for contesting contents and appealing initial determinations may be obtained from the Commandant of the Marine Corps (Code JA), Headquarters, U S Marine Corps, Washington, D C 20380

Record source categories:

Information in the system is obtained from the Marine Corps Military Personnel Records; from the individual's commanding officer, officer-in-charge, federal, state and local law enforcement agencies, lawyers, judges, Members of Congress, relatives of the individual and private citizens, the Veteran's Administration and the individuals themselves.

Systems exempted from certain provisions of the act:

None.

MMN00002

System name:

Listing of Retired Marine Corps Personnel

System location:

The Commandant of the Marine Corps
Headquarters, U S Marine Corps
Washington, D C 20380

Categories of individuals covered by the system:

All retired members of the Marine Corps, including those former Marines in the receipt of disability benefits from the Veteran's Administration.

Categories of records in the system:

The system is a microfiche listing derived from automated sources, depicting the retiree's name, Social Security Number, grade, mailing address and retirement component code.

Authority for maintenance of the system:

Title 10, U S Code Section 5201

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Officials and employees of the Marine Corps - For making necessary identification of retired members in the performance of their official duties related to retirement and veterans affairs programs, benefits, entitlements, transportation, hospitalization, education, dependent affairs, etc.

Department of Defense and its Components - By officials and employees of the Department in the performance of their official duties.

The Attorney General of the U S - By officials and employees of the Office of the Attorney General in connection with litigation, law enforcement or other matters under the direct jurisdiction of the Department of Justice or as carried out as the legal representative of the Executive Branch agencies.

Courts - By officials of duly established local, state and federal courts as a result of court order pertaining to matters properly with the purview of said court.

Congress of the U S - By the Senate or House of Representatives of the U S or any committee or subcommittee thereof, any joint committee of Congress or subcommittee of joint committee on matters within their jurisdiction requiring disclosure of the files.

The Comptroller General of the U S - By the Comptroller General or any of his authorized representatives in the course of the performance of duties of the General Accounting Office relating to the Marine Corps.

Leatherneck Magazine and Marine Corps Gazette - For maintaining their mailing lists of subscribers to these semi-official, professional publications.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Controlled distribution microfiche listing. Stock copies maintained in locked room.

Retrievability:

Listings in alphabetical order, with officer personnel listed separate from enlisted personnel.

Safeguards:

Building employs security guards. Distribution is strictly controlled.

Retention and disposal:

Destroyed upon being superceded by updated monthly listing.

System manager(s) and address:

Commandant of the Marine Corps, Headquarters, U S Marine Corps, Washington, D C 20380

Notification procedure:

Request by correspondence should be addressed to the Commandant of the Marine Corps (Code MS), Headquarters, U S Marine Corps, Washington, D C 20380. The letter should contain the full name, Social Security Number and signature of the requester.

The individual may visit Headquarters, U S Marine Corps, Columbia Pike & Arlington Ridge Road, Arlington, Virginia, Room 1206. Proof of identification may consist of his active, reserve or retired identification card, his Armed Forces Report of Transfer or Discharge (DD214), his discharge certificate, his driver's license or by providing such other data sufficient to insure that the individual is the subject of the inquiry.

Record access procedures:

Information may be obtained from:

Commandant of the Marine Corps
Headquarters, U S Marine Corps
Columbia Pike & Arlington Ridge Road
Arlington, Virginia 20380
Telephone Area Code 202/694-1043

Contesting record procedures:

The agency's rules for access to records and for contesting contents and appealing initial determinations by the individual concerned may be obtained from the SYSMANAGER.

Record source categories:

Staff agencies and subdivisions of Headquarters, U S Marine Corps
Veterans Administration

Systems exempted from certain provisions of the act:

None

MMN00004

System name:

Marine Corps Club Records

System location:

Decentralized Segments - Records maintained by Marine Corps Clubs at organizational elements of the Marine Corps as listed in the Directory of the Department of the Navy Mailing Addresses.

Categories of individuals covered by the system:

Officer personnel who elect officer club membership, staff noncommissioned officer personnel who elect staff noncommissioned officer club membership and patrons of consolidated package stores who purchase alcoholic beverages.

Categories of records in the system:

File contains nonstandardized, locally produced record listing name, grade, social security number, military address, duty telephone number and dependent information.

Alcoholic purchase records contain name, grade, social security number, and the alcoholic beverage purchased by type, name brand, and quantity.

Authority for maintenance of the system:

Title 5, U S Code 301

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Marine Corps clubs and mess management personnel routinely use personal information for billing of customers and forwarding of club related informational material to its members.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

All information of a personal nature is recorded and stored in cabinet drawers or other record keeping devices.

Retrievability:

Is by name and/or social security number.

Safeguards:

Include normal security afforded unclassified file materials.

Retention and disposal:

Data on club membership is retained as long as the member is active and disposed of when membership is terminated. Data on alcoholic purchases is retained for a period as specified by the local command, but in no case for a period in excess of two years from date of purchase.

System manager(s) and address:

Decentralized - The local commanding officer is responsible for the operation of clubs aboard his base/activity.

Notification procedure:

Request by correspondence should be addressed to the commanding officer of the activity having custody of the records.

Record access procedures:

Rules of access may be obtained from the SYSMANAGER

Contesting record procedures:

The agency's rules for access to records and for contesting contents and appealing initial determinations by the individual concerned may be obtained from the SYSMANAGER.

Record source categories:

Data collected from each applicable individual.

Systems exempted from certain provisions of the act:

None

MMN00005

System name:

Marine Corps Education Program Applicant/Participant Information File

System location:

Primary system - Headquarters, U S Marine Corps (Code OTTI), Washington, D C 20380.

Secondary system - Local activity or command to which individual is assigned (See list of activities in Navy Standard Distribution List OPNAV PO9B3-107).

Categories of individuals covered by the system:

Marine Corps personnel who have submitted written applications for participation in full-time, tuition assistance, off-duty, PREP, or other voluntary education programs.

Categories of records in the system:

File contains copies of individual's applications for participation in an education program; copies of correspondence between the Marine Corps, the individual and academic institutions involved; copies of academic transcripts; miscellaneous academic records and correspondence; test results; previous enrollments and disenrollments; and educational qualification data addressing the individual concerned.

Authority for maintenance of the system:

Title 5, U S Code 301

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Headquarters, U S Marine Corps and Marine Corps commands, activities and organizations - By officials and employees of the Marine Corps in matters relating to their assigned duties in connection with educational and vocational counseling, recommendation, evaluation, selection and assignment. Also in the management and control of various educational and vocational programs attended by Marine Corps personnel.

Department of Defense and it's Components - By officials and employees of the Department in the performance of their official duties.

Courts - By officials of duly established local, state and federal courts as a result of court order pertaining to matters properly within the purview of said court.

Congress of the U S - By the Senate or the House of Representatives of the U S or any Committee or subcommittee thereof, any joint committee of Congress or subcommittee of joint committee on matters within their jurisdiction requiring disclosure of the files.

The Comptroller General of the U S - By the Comptroller General or any of his authorized representatives in the course of the performance of duties of the General Accounting Office relating to the Marine Corps.

Educational Institutions - By officials and employees of those educational institutions to which the individual applies or which the Marine Corps contracts with, to provide full-time, off-duty or other educational programs.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Paper files as represented by card files, listings, log books, computer printouts, rosters and file folders stored in filing cabinets.

Retrievability:

Filed alphabetically by last name; by educational institution, educational program or unit of assignment. Cross referenced by SSN

Safeguards:

Records are maintained in limited access working areas and are made available to persons other than the individual addressed only on a strict 'need-to-know' basis. After duty hours storage areas are locked.

Retention and disposal:

Records are maintained a maximum of three years and then destroyed. In instances where individual completes a program in less than three years, with no incurred service obligation, records are destroyed on program completion or transfer of individual from command maintaining record.

System manager(s) and address:

Commandant of the Marine Corps, Headquarters, U S Marine Corps, Washington, D C 20380

Notification procedure:

Information may be obtained from:
Commandant of the Marine Corps
Headquarters, U S Marine Corps (Code OTTI)
Washington, D C 20380
Telephone: Area Code 202/694-2109

Record access procedures:

Requests from individuals should be addressed to the commander of the activity to which they are assigned for duty. Activity addresses are contained in the Navy Standard Distribution List (OPNAV PO9B3-107).

Requests from individuals who have made written application for the Special Education Program (SEP), Advanced Degree Program (ADP), Funded Legal Education Program (FLEP), College Degree Program (CDP), Marine Enlisted Commissioning Education Program (MECEP), Navy Enlisted Scientific Education Program (NESEP), Staff NCO Degree Completion Program (SNCODCP), or Marine Associate Degree Completion Program (MADCOP) should be addressed to the Commandant of the Marine Corps, Headquarters, U S Marine Corps (Code OTTI), Washington, D C 20380.

Written requests for information should contain name of the individual, current address and telephone number, and the academic program originally requested or in which participated.

For personal visits, the individual should provide personal identification.

Contesting record procedures:

Rules for access to records and for contesting contents by the individual concerned may be obtained from the SYSMANAGER

Record source categories:

Application and related documents including correspondence from the individual requesting an education program; correspondence originating in the Educational Services Branch or other Headquarters Marine Corps Staff Agencies; academic transcripts from educational institutions; and educational selection board results.

Systems exempted from certain provisions of the act:

None

MMN00006

System name:

Marine Corps Military Personnel Records (OQR/SRB)

System location:

PRIMARY SYSTEM - The Commandant of the Marine Corps, Headquarters, U S Marine Corps, Washington, D C 20380

Decentralized Segments - Custody of the commanding officer of the organization to which the Marine officer or enlisted individual is assigned for duty or administration of official records (OQR/SRB).

Decentralized Segments - National Personnel Records Center, 9700 Page Blvd., St. Louis, Missouri 63132

Categories of individuals covered by the system:

Headquarters, U S Marine Corps official military personnel records on Marine officers consist of a copy of the appointment acceptance and record and all supporting documents furnished by the officer and generated by Marine Corps procurement procedures necessary to evaluate the individual for a commission in the Marine Corps or Marine Corps Reserve. The system comprises non-automated records reflecting information pertaining to a Marine officer's identification, personal history, marital and dependency status, education, aptitude testing, training, previous employment, records of civil offenses and arrests, appraisals of performance and potential, awards, duty assignments, military orders, security clearances, promotion warrants, official photographs, official correspondence, physical examinations, psychiatric evaluations, record of courts-martial, martial and other disciplinary matters, and other data needed in managing the officer personnel of the Marine Corps and Marine Corps Reserve.

Headquarters, U S Marine Corps official military personnel records on enlisted Marines consist of a duplicate enlistment contract or induction record and all supporting documents furnished by the enlisted Marine or generated by the Marine Corps recruiting procedures necessary to evaluate and approve the Marine for enlistment in the Marine Corps or Marine Corps Reserve. The system comprises non-automated records reflecting information pertaining to an enlisted Marine's identification, personal history, marital and dependency status, education, aptitude testing, training, previous employment, records of civil offenses and arrests, appraisals of performance and potential, awards, duty assignments, military orders, security clearances, promotion warrants, official photographs, official correspondence, physical examinations, psychiatric evaluations, record of courts-martial and other disciplinary matters, and other data needed in managing the enlisted personnel of the Marine Corps and Marine Corps Reserve.

Officer Qualification Record (OQR) is a field record of a Marine Officer which accompanies the officer throughout the various assignments of service with the Marine Corps or Marine Corps Reserve. Maintenance and custody of the OQR rests with the commanding

officer of the organization to which the Marine officer is assigned for duty or administration of records. This record consists of the original appointment acceptance and record and non-automated records reflecting information pertaining to the officer's identification, marital and dependency status, education, aptitude testing, training, awards, chronological duty assignments, military orders and memoranda, security clearance, promotions, official photographs, official correspondence, prior separation documents (DD Form 214), leave and earnings statements, periodic print-outs of automated record contents, records of courts-martial and other disciplinary matters and any local orders or memoranda necessary for utilization of the Marine officer's background and experience in accomplishing the mission of the command.

Enlisted Service Record Book (SRB) is a field record of an enlisted Marine which accompanies the enlisted Marine throughout the various assignments of service with the Marine Corps or Marine Corps Reserve, maintenance and custody of the SRB rests with the commanding officer of the organization to which the enlisted Marine is assigned for duty or administration of records. This record consists of the original enlistment contract or record of induction and non-automated records furnished by the enlisted Marine or the recruiting procedures in effecting the enlistment or induction of the Marine. This record reflects information pertaining to the Marine's identification, marital and dependency status, education, aptitude testing, training, awards, chronological duty assignments, duty and conduct evaluations, security clearance, promotions, official photographs, official correspondence, prior separation documents (DD Form 214), Leave and Earnings statements, periodic print-outs of automated record content, courts-martial and other disciplinary matters, any other local military orders or memoranda necessary for the utilization of the Marine's background and experience in accomplishing the mission of the command.

Categories of records in the system:

Headquarters, U S Marine Corps, Official Military Personnel Records on Marine officers and enlisted are retained and maintained at Headquarters, U S Marine Corps, Washington, D C 20380 from acceptance/enlistment/induction to complete severance from the Marine Corps and the Marine Corps Reserve by retirement or discharge.

OQR/SRB's are retained and maintained by the commanding officer of the Marine Corps or Marine Corps Reserve field command to which the Marine is assigned.

Authority for maintenance of the system:

Title 5, U S Code 301

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Officials and employees of the Marine Corps and Marine Corps Reserve in the performance of their official duties relating to management of personnel resources; screening and Selection for promotion, training and educational programs; administration of appeals, grievances, discipline, litigations and investigations adjudication of claims, benefits and entitlements; administration and management of retirement and veterans affairs programs; and, the providing of requested information from the records to the Veterans Administration, Social Security Administration, Selective Service System, National Guard, Public Health Service (HEW), U. S. Coast Guard, Immigration and Naturalization Service, Treasury Department, Department of Labor, Department of State, General Accounting Office and State Bonus Bureaus in connection with such functions as processing and adjudication of claims, updating of records, administration of work programs, processing naturalization proceedings and verification of eligibility and entitlement to various benefits and programs.

Officials and employees of other components of DoD in the performance of their official duties relating to screening and selection of members for interservice transfer; procedures for appeals for correction of service records; reviews of discharges from the service; physical evaluations; research analyses; litigations and investigations; clemency and awards reviews and evaluations.

By representatives of the Office of Personnel Management in with evaluation of prospective federal employees.

By court order in connection with matters before a federal, state or municipal court.

By the Comptroller General or his representatives in the course of the performance of duties relating to decisions or procedures by the General Accounting Office on manpower management programs.

By agents of the Federal Bureau of Investigation, Secret Service and office of Naval Intelligence in connection with matters under the jurisdiction of these investigative bodies upon presentation of credentials.

By private organization under government contract to perform random analytical research into specific aspects of military personnel management and administrative procedures.

By investigative, security and law enforcement agents of federal agencies who have submitted written requests for access to Marine Corps military personnel records with justification thereof as pertaining to the conduct of government business under their respective jurisdictions and providing the names of specified agents having a need for such access.

By state and county law enforcement bodies processing applications for employment, when applicants have given written authorization for access to respective military personnel records.

By officials and employees of the National Personnel Records Center, 9700 Page Boulevard, St. Louis, Missouri 63132 acting as agent for Headquarters, U S Marine Corps in storage and processing of Marine Corps maintained by that center.

By a Marine or former Marine or such individual(s) designated by him/her in writing for whatever purpose access to or release of their respective records is desired.

By the White House, Secretary of Defense, Secretary of the Navy, and members of Congress in response to inquiries regarding individual Marines.

To provide information to another agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States which has been authorized by law to conduct law enforcement activities pursuant to a request that the agency or instrumentality initiate criminal or civil action against an individual on behalf of the U S Marine Corps, the Department of the Navy, or the Department of Defense.

To provide information to individuals pursuant to a request for assistance in a criminal or civil action against a member of the U S Marine Corps, by the U S Marine Corps, the Department of the Navy, or the Department of Defense.

By officials and employees of the American Red Cross and Navy Relief Society in the performance of their duties. Access will be limited to those portions of the member's record required to effectively assist the member.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Records are stored on paper in file folders and on microfiche.

Retrievability:

The records maintained at Headquarters, U S Marine Corps (all active and reserve officer records, all temporary disability retired records, all active and organized reserve and Fleet Marine Corps reserve enlisted records of personnel joined/transferred to these components subsequent to 30 June 1974, all former Commandants, all living retired officers (who served in a General Officer grade, records of all personnel separated/retired four months or less) are retrieved by Social Security Number (SSN) and name. Except for OQR's and SRB's of participating members, all other categories of Marine Corps military personnel records are maintained at the National Personnel Records center, St. Louis, Missouri. Those retired to St. Louis prior to 1 January 1964 and/or those with military service numbers (MSN) below 1800000 are retrieved by MSN and name. All other Marine Corps records retired to St. Louis are accessed by MSN and/or SSN, name and are assigned a Registry Number. These records are retrieved by Registry Number.

Safeguards:

Buildings employs security guards, records are maintained in areas accessible only to authorized personnel that are properly screened, cleared and trained.

Retention and disposal:

Records are permanent. Records maintained at Headquarters, U S Marine Corps are transferred to the National Personnel Records Center, 9700 Page Boulevard, St. Louis, Missouri 63132 four months after separation, placement on the Permanent Disability Retired List, retirement, retirement from Fleet Marine Corps Reserve, death of an officer who served in a General Officer grade and former Marines no longer considered of newsworth status.

System manager(s) and address:

Commandant of the Marine Corps, Headquarters, U S Marine Corps, Washington, D C 20380

Notification procedure:

Correspondence pertaining to records maintained by Headquarters, U S Marine Corps should be addressed to:

Commandant of the Marine Corps (Code MS)
Headquarters, U S Marine Corps
Washington, D C 20380

Telephone: Area Code 202/694-1043

Correspondence pertaining to records maintained by National Personnel Records Center should be addressed to:

Director, National Personnel Records Center
9700 Page Boulevard
St. Louis, Missouri 63132
Telephone: Area Code 314/268-7155

Correspondence pertaining to OQR and SRB records maintained by the respective commanding officers should be addressed to the command concerned as is shown in the Standard Navy Distribution List - Part 1 (OPNAV P09B3-107)

Correspondence should contain the full name, Social Security Number and signature of the requester. The individual may visit any of the above activities for review of records. Proof of identification may consist of his active, reserve or retired identification card, his Armed Forces Report of Transfer or Discharge (DD Form 214), his discharge certificate, his driver's license or by providing such other data sufficient to insure that the individual is the subject of the inquiry.

Record access procedures:

Information may be obtained from:

Commandant of the Marine Corps (Code MS)
Headquarters, U S Marine Corps
Columbia Pike & Arlington Ridge Road
Arlington, Virginia 20380
Telephone: Area Code 202/694-1043

Contesting record procedures:

The agency's rules for access to records and for contesting contents and appealing initial determinations by the individual concerned may be obtained from the SYSMANAGER.

Record source categories:

Staff agencies and subdivisions of Headquarters, U S Marine Corps
Marine Corps commands and organizations
other agencies of federal, state, and local governments
Medical reports
Correspondence from financial and other commercial enterprises
Correspondence and records of educational institutions
Correspondence of private citizens addressed directly to the Marine Corps or via the U S Congress and other agencies
Investigations to determine suitability for enlistment, security clearances, and special assignments
Investigations related to disciplinary proceedings

Systems exempted from certain provisions of the act:

None

MMN00007

System name:

Marine Corps Motion Picture/Instructional Television (ITV) Archives

System location:

Motion Picture and TV Archives, Marine Corps Development and Education Command, Quantico, Virginia

Categories of individuals covered by the system:

Personnel who have been photographed while participating in Marine Corps related events.

Categories of records in the system:

The archives contains motion picture photography and videotape footage documenting Marine Corps related events.

Authority for maintenance of the system:

Title 5, U S Code 301

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Material contained in the archives is used for Marine Corps reports, education programs, public information, training programs, recruiting purposes, and for general release to the public. Material is available to other DOD and Federal agencies.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Films and videotapes are stored on film racks in film vaults.

Retrievability:

Personnel identified in the films and videotapes are listed alphabetically in an index system.

Safeguards:

Film vaults are locked when not in use. Only authorized personnel have access. During non-working hours, rooms and buildings containing the films and videotapes are locked.

Retention and disposal:

Films and videotapes are maintained indefinitely.

System manager(s) and address:

Commandant of the Marine Corps, Headquarters, U S Marine Corps, Washington, D C 20380

Notification procedure:

Information may be obtained from:

Commandant of the Marine Corps (Code HD)
Headquarters, U. S Marine Corps
washington, D C 20380
Telephone: Area Code 202/433-3027

Record access procedures:

Requests should be addressed to: Commandant of the Marine Corps (Code HD), Headquarters, U S Marine Corps, Washington, D C 20380

Written requests should contain full name of the individual, current address and telephone number.

For personal visits, the individual concerned should contact the Director of History and Museums Division, (Code HD), Headquarters, U S Marine Corps, Washington, D C 20380, Telephone: Area Code: 202-433-2616

Contesting record procedures:

Rules for access to records and for contesting contents by the individual concerned may be obtained from the SYSMANAGER

Record source categories:

Material within the archives is from Marine Corps Field Motion Picture and ITV Facilities.

Systems exempted from certain provisions of the act:

None

MMN00008

System name:

Marine Corps Still Photographic Archives

System location:

Director of History and Museums Division (Code HD), Headquarters, U. S. Marine Corps, Building 159E, Washington Navy Yard, Washington, D C 20380

Decentralized system - organizational elements of the U. S. Marine Corps maintaining still photographic files.

Categories of individuals covered by the system:

Personnel who have been photographed while participating in Marine Corps related events.

Categories of records in the system:

The Archives contains documentary photography of Marine Corps related events.

Authority for maintenance of the system:

Title 5, U S Code 301

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Material contained in the archives is used for Marine Corps reports, education programs, manuals, public information, training programs, recruiting purposes, and for general release to the public. Material is available to other DOD and Federal agencies.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Photographic records are maintained in large Dibold file machines.

Retrievability:

Personnel identified in the photographic records are listed alphabetically in an index system.

Safeguards:

Photographic records are maintained in large Dibold file machines which are locked when not in use. Only authorized personnel have access. During non-working hours, rooms containing the records are locked.

Retention and disposal:

A 25-year archives is maintained. Older records are trans- ferred to the National Archives, Washington, D C

System manager(s) and address:

Commandant of the Marine Corps, Headquarters, U S Marine Corps, Washington, D C 20380

Decentralized systems managed by local commands.

Notification procedure:

Information may be obtained from:

Commandant of the Marine Corps (Code HD)
Headquarters, U S Marine Corps
Washington, D C 20380
Telephone: Area Code 202/433-3027

Record access procedures:

Requests should be addressed to: Commandant of the Marine Corps (Code HD), Headquarters, U S Marine Corps, Washington, D C 20380

Written requests should contain full name of the individual, current address and telephone number.

For personal visits the individual should proceed to: Washington Navy Yard, Building 159E, Washington, D C

Contesting record procedures:

Rules for access to records and for contesting contents by the individual concerned may be obtained from the SYSMANAGER

Record source categories:

All material within the archives is from either Marine Corps Field Photographic Facilities or from Private donations.

Systems exempted from certain provisions of the act:

None

MMN00009

System name:

Military Police Information System (MILPINS)

System location:

Decentralized segments - commands within area of jurisdiction.

Categories of individuals covered by the system:

Files contain information concerning both military personnel and civilians who have come in contact with the Military Police as Victims, Suspects, or Witnesses to incidents, complaints reported to the Provost Marshal.

Categories of records in the system:

Incident/Complaints reported to the Installation Provost Marshal and all subjects listed on Field Interviews/Reports by the Military Police. Index cards containing name, social security number, address, offense charges, location of offense/incident, date, time, blotter entry number, military policy report number and disposition of case.

Authority for maintenance of the system:

Chapters 5, 6 and 7 of the Manual for Courts-Martial and Title 10, U S Code

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Headquarters, U S Marine Corps and Marine Corps commands, activities and organizations - By officials and employees of the Marine Corps in connection with their assigned duties.

Department of Defense and its Components - By officials and employees of the Department in the performance of their official duties.

The Attorney General of the U S - By officials and employees of the Office of the Attorney General in connection with litigation, law enforcement or other matters under the direct jurisdiction of the Department of Justice or as carried out as the legal representative of the Executive Branch agencies.

Courts - By officials of duly established local, state and federal courts as a result of court order pertaining to matters properly within the purview of said court.

Congress of the U S - By the Senate or the House of Representatives of the U S or any Committee or subcommittee thereof, any joint committee of Congress or subcommittee of joint committee on matters within their jurisdiction requiring disclosure of the files.

The Comptroller General of the U S - By the Comptroller General or any of his authorized representatives in the course of the performance of duties of the General Accounting Office relating to the Marine Corps.

To provide information to another agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States which has been authorized by law to conduct law enforcement activities pursuant to a request that the agency or instrumentality initiate criminal or civil action against an individual on behalf of the U S Marine Corps, the Department of the Navy, or the Department of Defense.

To provide information to individuals pursuant to a request for assistance in a criminal or civil action against a member of the U S Marine Corps, by the U S Marine Corps, the Department of the Navy, or the Department of Defense.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Computer magnetic tapes and index cards in metal files.

Retrievability:

Filed by full name or social security number (SSN)

Safeguards:

Records are maintained in area accessible only to authorized personnel that are properly screened, cleared and trained. Files can only be retrieved by the Director or Assistant Director, Automated Services Center by utilizing an assigned code number.

Retention and disposal:

Two years and then purged

System manager(s) and address:

Installation Provost Marshal of activity concerned.

Notification procedure:

Information may be obtained from:
Installation Provost Marshal of activity concerned.

Record access procedures:

Requests from individuals should be addressed to Provost Marshal of activity concerned.

Written requests for information should contain the full name of the individual, social security number, date and place of birth.

For visits, the individual should report to Provost Marshal of the respective installation.

Contesting record procedures:

The rules for contesting contents and appealing initial determinations may be obtained from the SYSMANAGER.

Record source categories:

Military Police Blotters and Field Interview Cards.

Systems exempted from certain provisions of the act:

None

MMN00010

System name:

Personnel Services Working Files

System location:

All Marine Corps activities.

Categories of individuals covered by the system:

Members and former members of the Marine Corps and Marine Corps Reserve; permanently and temporarily retired members of the Marine Corps and Marine Corps Reserve; members of the Fleet Marine Corps Reserve; Federal civil service employees of the Marine Corps; and dependents, survivors or appointed agents of the foregoing. Some information about dependents and other members of families or former families of Marine Corps personnel may be included in files pertaining to the Marine. Inquiries from the general public, whether addressed directly to HQMC or received via a third party, may be retained together with information obtained in the course of completing required action or in preparing a response.

Categories of records in the system:

Files contain information pertaining to identification; prior service; location and addresses; decedent affairs; military honors at funerals; recovery of remains; casualty notification; condolence letters to next of kin; transportation, passports and visas for next of kin of casualties medically warranted overseas; missing persons; prisoners of war; reserve disability benefits; casualty statistics; certification of eligibility for award of Purple Heart Medal; death benefits and annuity payments; official reports of casualty; certification of life insurance coverage; investigative reports; travel of dependents; reports and death certificates substantiating casualty status; intelligence reports concerning missing and captured members; prior and present marital status; dissolution of prior marriages; birth, marriage and death certificates; adopting of children; financial responsibility; child support; claims of non-support; personal health and welfare reports; alien marriages; conduct and personal history as it pertains to marriage and its responsibilities; medical information; garnishment of pay; powers of attorney; personal financial records; police and fire reports; records of emergency data; medical care; use of exchanges, commissaries and theatres; recovery of invalid dependent identification and privilege cards; correction of naval records; defense related employment; veterans rights, benefits and privileges; awards, recommendations and/or issuances; Survivor Benefit Plan; preseparation counseling; civil readjustment; Retired Serviceman's Family Protection Plan; residence; basic allowance for quarters; leave and liberty; financial assistance; extensions of emergency leave; in service FHA mortgage insurance loans; reimbursement for damage to or loss of personal property; transportation of household goods; claims against the government; lost, damaged or abandoned property; medical bills; determinations of dependency status; claims against commercial carriers, insurers, and

contractors; dependent identification and privilege cards; official correspondence (includes correspondence with Marine Corps commands and organizations, other Armed Services, the White House, members of Congress, Department of Defense, and other agencies of federal, state and local government); other correspondence (including correspondence from Marines, their families, attorneys, doctors, lawyers, clergymen, administrators/executors/guardians of estates, American Red Cross and other welfare agencies and the general public, whether addressed directly to the Marine Corps or via third parties); internal routing and processing of personal affairs matters; and records of interviews and telephonic conversations.

Authority for maintenance of the system:

Title 10, U. S. Code 1071-1087, 1441-1455, 1475-1488, 2771, 6148a, b, and d; Title 31, U. S. Code 240-243; Title 37, U. S. Code 401 and 551, et. seq.; Title 38, U. S. Code 765-770, 2021-2026; Title 42, U. S. Code 659; Title 50, U. S. Code 1436 and E O 11016; Title 5, U S Code 301

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

To facilitate administration of programs concerning the personal welfare of Marines and their dependents and/or survivors to include decedent affairs; casualty reporting and notification of next of kin; transportation of household goods; travel of dependents; missing and captured personnel; reserve disability benefits; casualty statistics; death benefits and annuity payments; official reports of casualty; determination of dependency status for the purpose of travel, basic allowance for quarters and Uniformed Services identification and Privilege Card entitlement; the granting of privileges for medical care, use of commissaries, exchanges and theatres; issuance and recovery of identification cards; correction of naval records; garnishment of pay; defense related employment; veterans rights, benefits and privileges; adjudication of claims against the government; support of dependents; personal affairs, welfare and family assistance; presepartion counseling and civil readjustment; display of recognition for individual accomplishments.

To facilitate preparation and maintain a record of responses to inquiries and other communications from staff sections within Headquarters, U. S. Marine Corps, Marine Corps commands and organizations, other Armed Services, the White House, members of Congress, Department of Defense, other agencies of federal, state and local governments; Marines, their families, attorneys, doctors, lawyers, clergymen, administrators/executors/ guardians of estates, American Red Cross, and other welfare agencies and the general public.

To provide a record of decisions and actions taken.

By officials and employees of the Marine Corps and Marine Corps Reserve in the performance of their official duties in the administration of programs relating to the personal affairs matters cited above.

By officials and employees of the Department of the Navy, Department of Defense, and other geovernment agencies in the performance of their official duties related to the determination of entitlement to compensations, annuities, government insurance, and other rights, benefits and privileges.

By government agencies or private organizations under government contract to perform analytical and historical research pertaining to casualties.

By intelligence and other government agencies assisting in the investigation of circumstances of casualty and in accounting for personnel who are deceased (body not recovered), missing, captured, or detained.

By Marines, former Marines, their next of kin (in cases of death only), or persons or organizations designated by them in writing for whatever purpose access to the record is desired.

Information obtained, developed, or processed in performing functions related to this record system may be entered into the Marine Corps Manpower Management System and the Marine Corps Military Personnel Records System.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Paper records in file folders, vertical strip files, microfiche and card files stored in filing cabinets, shelves, tables and desks.

Retrievability:

Files are accessed and retrieved by subject matter and by individual. Identification of individual is by name or social security number.

Safeguards:

Building is located in controlled access area with security guards on 24 hour duty. Access to information contained in the files is limited to officials and employees of Headquarters, U. S. Marine Corps acting in their official capacity upon demonstration of a need-to-know basis. Records held by field activities are maintained in areas accessible only to authorized personnel that are properly screened, cleared and trained. Locked and/or guarded offices.

Retention and disposal:

Files are retained for differing lengths of time, depending upon the purpose of the information contained therein. Death benefit data are retained for five years and then destroyed; records of emergency data are retained until the Marine's death or separation from active duty or the active reserves; Department of Defense Reports of Casualty are retained for such period as deemed necessary, and then transferred to the Historical Division, Headquarters, U. S. Marine Corps; casualty statistics and rosters, and statistical reports are retained for such period as deemed necessary and then transferred to Historical Division, Headquarters, U. S. Marine Corps or destroyed as deemed appropriate; missing and captured personnel data and unusual miscellaneous casualty topics data are retained for such period as deemed necessary and then destroyed; files concerning dependency determination are retained for one year and then destroyed; files concerning veterans rights, benefits and privileges are retained indefinitely or until the member and all eligible survivors are deceased; files concerning correction of naval records are destroyed upon completion of action; files regarding adjudication of claims against the government are retained for six months and then destroyed; files containing information which could be considered to be of a derogatory nature are disposed of as directed by competent authority; all other files are retained for three years and then destroyed.

System manager(s) and address:

Commandant of the Marine Corps, Headquarters, U. S. Marine Corps, Washington, D C. 20380.

Notification procedure:

Correspondence pertaining to files maintained should be addressed to:

Commandant of the Marine Corps (Code MS)
Headquarters, U. S. Marine Corps
Washington, D C 20380
Telephone: Area Code 202-694-3143

Correspondence should contain the full name, social security number and signature of the requester. The individual may visit the above location for review of files. Proof of identification may consist of the active, reserve, retired or dependent identification card, the Armed Forces Report of Transfer or Discharge (DD-214), discharge certificate, driver's license, social security card, or by providing such other data sufficient to ensure the individual is the subject of the inquiry.

Record access procedures:

Information may be obtained from:

Commandant of the Marine Corps (Code MS)
Henderson Hall, Building No. 4, Room 109A
Arlington, Virginia 22214
Telephone: Area Code 202-694-3143

Contesting record procedures:

The agency's rules for access to files and for contesting and appealing initial determination by the individual concerned may be obtained from the SYSMANAGER.

Record source categories:

Marine Corps Manpower Management System
Joint Uniform Military Pay System
Marine Corps Military Personnel Records System
Marine Corps Deserter Inquiry File
Staff agencies and subdivisions of Headquarters, U. S. Marine Corps
Marine Corps commands and organizations
Other agencies of federal, state, and local governments
Educational institutions
Medical reports and psychiatric evaluations
Financial institutions and other commercial enterprises
Civil courts and law enforcement agencies
Correspondence and telephone calls from private citizens initiated directly to the Marine Corps or via the U. S. Congress and other agencies.
Investigative reports
American Red Cross and similar welfare agencies
Veterans' Administration

Systems exempted from certain provisions of the act:

None

MMN00011

System name:

Source Data Automated Fitness Report System (SDAFRS)

System location:

Personnel Management Division, Manpower Department, Headquarters, U S Marine Corps, Washington, D C 20380

Categories of individuals covered by the system:

Former, present and future U S Marine Corps active duty and organized Reserve Commissioned and Non-Commissioned Officers in the rank of Sergeant and above.

Categories of records in the system:

System contains automated records created through optical scan of Marine Corps Fitness Reports, which are evaluations of duties performed and the manner of such performance. Fitness reports represent a comprehensive portrayal of the professional qualifications, personal traits and characteristics and individual potential. Fitness reports include narrative comments, numerical grading and comparison with those peers rated by the commanding officer or other reporting senior of the individual addressed. Fitness reports contain personal identification such as name, rank, social security number, location and number of dependents, etc. in addition to individual evaluation data.

Authority for maintenance of the system:

Title 5, U S Code 301

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Headquarters, U S Marine Corps - By officials and employees of the Marine Corps in the performance of their official duties related to the management of Marine Corps personnel through screening and selection of individuals for promotion, duty assignment, career counseling and the administration of the personnel management system.

Marine Corps Commands -To allow commanders to identify skills and experience of Marines due to report for duty with the commands during the forthcoming fiscal year.

Department of Defense and its Components - By officials and employees of the Department in the performance of their official duties in connection with military personnel management, appeals and litigations related thereto.

The Attorney General of the U S - By officials and employees of the Office of the Attorney General in connection with litigation, law enforcement or other matters under the direct jurisdiction of the Department of Justice or as carried out as the legal representative of the Executive Branch agencies.

Courts - By officials of duly established local, state and federal courts as a result of court order pertaining to matters properly within the purview of said court.

Congress of the U S - By the Senate or the House of Representatives of the U S or any committee or subcommittee thereof, any joint committee of Congress or subcommittee of Joint committee on matters within their jurisdiction requiring disclosure of the files of the fitness report system.

The Comptroller General of the U S - By the Comptroller General or any of his authorized representatives in the course of the performance of duties of the General Accounting Office relating to the Marine Corps Manpower Management System.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Paper original of fitness report is exposed to SDAFRS scanning and then transferred to the personnel file jacket of the individual concerned and stored within the Marine Corps Military Personnel Records Sysem.

Automated records are stored on magnetic tape

Retrievability:

Paper original of fitness report is accessed by a combination of last name and social security number.

Automated records (magnetic tapes) are accessed by social security number.

Safeguards:

Building housing computer employs 24 hour security guards. Access to terminal is limited to authorized personnel on a need- to-know basis. Distribution of printouts of information from the system is restricted to authorized persons in the performance of their assigned duties and destroyed after use.

Retention and disposal:

Records, both paper and tape, are permanent. Paper records are stored in the Marine Corps Military Personnel Records System. Tape records are removed from the active file to a historical file for retention according to appropriate magnetic record retention policies.

System manager(s) and address:

The Commandant of the Marine Corps, Headquarters, U S Marine Corps, Washington, D C 20380

Notification procedure:

Information may be obtained from:
The Commandant of the Marine Corps (Code MM)
Headquarters, U S Marine Corps
Washington, D C 20380
Telephone: Area Code 202/694-3122

Record access procedures:

Requests from individuals should be addressed to: Commandant of the Marine Corps (Code MM), Headquarters, U S Marine Corps, Washington, D. C. 20380

Written requests for information should contain the individual's name, social security number, signature and the dates covered by the report(s) in question.

Personal visits may be made to Manpower Department, Headquarters, U S Marine Corps, Federal Office Building #2, Washington, D C 20380. For personal visits the individual should be able to provide personal identification to include valid military identification or two valid civilian items of identification such as driver's license, social security card, medicare card, etc.

Contesting record procedures:

The Marine Corps rules for contesting contents and appealing initial determinations may be obtained from the Commandant of the Marine Corps (Code M), Headquarters, U S Marine Corps, Washington, D C 20380

Record source categories:

Each officer and noncommissioned officer in the rank of sergeant and above provides the personal information on the fitness report form. The form is then submitted to the commanding officer or immediate superior (reporting senior) for completion of the evaluation portion of the form and fowarding to Headquarters, U S Marine Corps, Washington, D C 20380

Systems exempted from certain provisions of the act:

None

MMN00013

System name:

Personnel Management Working Files

System location:

All Marine Corps activities.

Categories of individuals covered by the system:

Members of the U S Marine Corps and Marine Corps Reserve; former members of the Marine Corps and Marine Corps Reserve; retired and temporarily retired members of the Marine Corps and Marine Corps Reserve; members of the Fleet Marine Corps Reserve; and applicants for entry into the Marine Corps or Marine Corps Reserve.

Military personnel, federal employees, and dependents who apply through the Marine Corps for no-fee passports for official travel to countries requiring a passport.

Dependents of Marines and other family members with respect to matters pertaining to the individual Marine, former Marine or applicant.

Members of other services assigned to or serving with the Marine Corps.

Categories of records in the system:

File contains informaton pertaining to identification, recruitment, enlistment, commissioning, prior service, reenlistment or extension of enlistment, lateral occupational movement, civilian employment, letters of reference, education, training, career counselling, religious preference as provided by the individual, qualifications, intelligence and aptitude testing, classification, assignment, location addresses, promotions, reductions in rank, proficiency, conduct, performance of duty, discipline, offenses and punishments under the Uniform Code of Military Conduct, courts-martial, personal history, investigations, security clearances, police and court records, civil arrests and convictions, birth and marriage certificates, divorce and other decrees, financial responsibility and letters of indebtedness, marital status, dependents, families' citizenships, passports and visas, travel and travel orders, leave records, transportation of dependents and household goods, pay records, claims against the government, decorations and awards, commendations, medical records to include psychiatric evaluations, disability proceedings, separation and retirement, official correspondence (includes internal Marine Corps and Department of the Navy correspondence, as well as correspondence with the Executive, Legislative, and Judicial Branches of federal, state and local government) and other correspondence (includes correspondence from Marines, their dependents and families, attorneys, doctors, educators,

clergymen and members of the general public whether addressed directly to the Marine Corps or via third parties, (president, congressmen, etc.), personnel who apply to express a grievance through personal interviews with the Commanding General via the chains of command as authorized by Article 1107.1, U S Navy Regulations (Request Mast), personal counselling.)

Authority for maintenance of the system:

Title 5, U S Code 301

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Headquarters, U S Marine Corps - To facilitate personnel management actions and decisions related to recruitment, enlistment, commissioning, testing, training, classification, assignment, transfer (including humanitarian), travel order issuance, passport application, promotion, reenlistment, retention on active duty, augmentation from reserve to regular status, recovery of absentees and deserters, investigations, correction of records, dependency status, disability proceedings, separation (including hardship discharge), transfer to the Fleet Marine Corps Reserve and retirement.

Marine Corps commands, organizations, districts, and units - By officials and employees of the Marine Corps in the execution of their official duties related to personnel management actions and decisions in support of pursuit of actions cited above. Such actions can include administration of requests, appeals, grievances, discipline and litigations; administration of benefits and entitlements; management and administration of retirement and veteran's affairs programs; responses to inquiries and correspondence; and the counseling of individual Marines regarding such matters as their performance records, career opportunities and personal concerns.

Department of Defense and its Components - By officials and employees of the Department in the performance of their official duties in connection with military personnel management, appeals and litigations related thereto.

The Attorney General of the U S - By officials and employees of the Office of the Attorney General in connection with litigation, law enforcement or other matters under the direct jurisdiction of the Department of Justice or as carried out as the legal representative of the Executive Branch agencies.

Courts - By officials of duly established local, state and federal courts as a result of court orders pertaining to matters properly within the purview of said court.

Congress of the U S - By the Senate or the House of Representatives of the U S or any committee or subcommittee thereof, any joint committee of Congress or subcommittee of joint committee on matters within their jurisdiction requiring disclosure of the files of the system.

The Comptroller General of the U S - By the Comptroller General or any of his authorized representatives in the course of the performance of duties of the General Accounting Office relating to the Marine Corps Manpower Management System.

To provide information to another agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States which has been authorized by law to conduct law enforcement activities pursuant to a request that the agency or instrumentality initiate criminal or civil action against an individual on behalf of the U S Marine Corps, the Department of the Navy, or the Department of Defense.

To provide information to individuals pursuant to a request for assistance in a criminal or civil action against a member of the U S Marine Corps, by the U S Marine Corps, the Department of the Navy, or the Department of Defense.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Paper files as represented by card files, strip files, microfiche computer printouts from the Manpower Management System or the Joint Uniform Military Pay System and file folders. Files are stored in filing cabinets, on shelves and on tables in controlled access areas.

Retrievability:

Files are accessed and retrieved by subject and by the name and social security number.

Safeguards:

In compliance with the specified requirements for security of FOUO material.

Retention and disposal:

Files are retained for differing lengths of time, depending upon the purpose of the information contained therein. Promotion data is retained three years, then transferred to Historical Division, Headquarters, U S Marine Corps. Passport data is retained six years, then destroyed. Enlisted assignment data is retained two years, then destroyed. Certain officer assignment data is destroyed when the officer is released from active duty. Disability retirement data is retained two years from the date of removal of the individual from the Temporarily Disability Retirement List, then destroyed. Retirement correspondence is retained for one year following individual's retirement. Retirement files are retained until the individual's death. Personal counselling records are maintained one year, career counselling records are maintained within the individual's official records. All other files are retained three years, then destroyed.

System manager(s) and address:

Local commanding officer.

Notification procedure:

Information may be obtained from the Commandant of the Marine Corps (Code MM), Headquarters, U S Marine Corps, Washington, D C 20380, the current command, the last duty station, or applicable activity.

Additional information concerning personnel assigned to Occupational Field 55 (Band) may be obtained from the Commandant of the Marine Corps (Code MPC), Headquarters, U. S. Marine Corps, Washington, D. C. 20380 Telephone: Area Code 202/694-4154.

Record access procedures:

Requests from individual's may be addressed to the Commandant of the Marine Corps (Code MM), Headquarters, U S Marine Corps, Washington, D C , the current command or last duty station.

Written requests for information should contain the full name of the individual and his social security number or former military service number. The following information will also be helpful in locating some records: military rank and occupational specialty, dates and places of service, and any special correspondence previously received or sent.

For personal visits, the individual may visit the Personnel Management Division, Headquarters, U S Marine Corps, Federal Office Building #2, Washington, D C 20380 or Marine Corps commands and districts.

For personal visits, the individual should be able to provide personal identification to include valid military or dependent identification card or two valid civilian items of identification such as driver's license, social security card, medicare card, etc.

Contesting record procedures:

The Marine Corps rules for contesting contents and appealing initial determinations may be obtained from Commandant of the the Marine Corps (Code M), Headquarters, U S Marine Corps, Washington, D C 20380

Record source categories:

Information in the system is obtained from the Marine Corps Manpower Management System; the Joint Uniform Military Pay System; Marine Corps Military Personnel Records to include the Service Record Book and Officer Qualification Record; Military Medical Records; Marine Corps Deserter Inquiry File; staff elements and subdivisions of Headquarters, U S Marine Corps; Marine Corps field commands, organizations, and activities; other components of the Department of Defense; agencies of federal, state, and local government, to include: civil courts and law enforcement, previous employers; financial institutions and commercial enterprises; educational institutions; private citizens provided as character references by the individual; investigations related to disciplinary proceedings; and correspondence of private citizens addressed directly to the Marine Corps or via third parties such as members of Congress and other governmental agencies.

Systems exempted from certain provisions of the act:

NONE

MMN00014

System name:

Work Measurement Labor Distribution Cards

System location:

All Marine Corps activities

Categories of individuals covered by the system:

Marine Corps employees, civilian, military and occasional summer hires funded by state and local programs

Categories of records in the system:

Labor distribution cards which have been prepared by either the concerned individual or the supervisor to record the number of hours worked, the number of units produced by the employee, the function of the employee during that time, and the job number of the job. Also, the system contains summarizations of said card and computer input and output relative to said card.

Authority for maintenance of the system:

Title 10, U. S. Code 124; 133

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

To provide an input data base for daily labor on all individuals assigned to work organizations designated as part of the work measurement labor distribution system or to provide a data base for systems implementation testing.

Work Section Supervisors - Compiled reports by individual are prepared for the work section supervisor who verifies that each of the assigned employees either reported the required number of hours or entered appropriate corrections.

Work Measurement System - Integrates the data by individual to prepare productivity reports, statistical costs and budget workload information which is used primarily for local reports and to provide data for manpower requirements programs, both locally and at Headquarters, U. S. Marine Corps.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Labor distribution cards are processed to capture the source data. The input cards are then filed in nonsequential order pending completion of the report cycle. Punch cards or their successor equivalent will be input into a computer program to prepare the work center list by individual.

Punch cards may be summarized on noncomputerized lists by individual. Such lists may be kept by the employees' supervisor.

Retrievability:

The information identified by individual is available only from the lists maintained by the work center supervisor within one year of the work week in question.

Safeguards:

The alphabetical listings are maintained by each work center supervisor.

Retention and disposal:

Lists are destroyed one year after the subject work week.

System manager(s) and address:

Commanding officer of activity.

Notification procedure:

Information may be obtain from the SYSMANAGER.

Record access procedures:

Written requests from individuals should be addressed to the SYSMANAGER. Requests should include name of employee, work center number, and work week for which data is requested. Personal visits and telephone calls should be made directly to the employee's work center supervisor.

Contesting record procedures:

The information on the list is only that which was submitted by the employee and should be corrected during the work month. After that time, the manhours are entered on local and Headquarters reports and no corrective action is possible.

Record source categories:

No particular format required for request.

Systems exempted from certain provisions of the act:

None.

MMN00016

System name:

Accident and Injury Reporting System

System location:

Organizational elements of the U S Marine Corps as listed in the Directory of the Department of the Navy Activities.

Categories of individuals covered by the system:

Military or civilian employees who are involved in accidents which result in lost time, government or private property damage or destruction and personnel injury or death.

Categories of records in the system:

Name, rank, social security number, type of accident, degree of injury, days lost, date of injury, date returned to work, date and time of death (if a fatality), and all other factors concerning such accidents and injuries.

Reports include consolidated accident injury report, accident injury report, and report of motor vehicle accident.

Authority for maintenance of the system:

Title 5, U S Code 301

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Providing reporting information to higher headquarters in the computation of accident injury rates, consolidated accident report by separate category, motor vehicle accident-injury rates.

For utilization in the establishment of safety program, identification of unsafe working conditions and such other areas which prove a danger to personnel and/or property.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

File folder, card files, punched cards, magnetic tape, and display boards

Retrievability:

Name, SSN

Safeguards:

Access provided on a need-to-know basis only. Locked and/or guarded office.

Retention and disposal:

Five years - disposal per SECNAV Records Disposal Manual.

System manager(s) and address:

Commanding Officer of the activity in question. See Directory of Department of the Navy Mailing Addresses.

Notification procedure:

Apply to SYSMANAGER.

Record access procedures:

The agency's rules for access to records may be obtained from the SYSMANAGER.

Contesting record procedures:

The agency's rules for contesting contents and appealing initial determinations by the individual concerned may be obtained from the SYSMANAGER.

Record source categories:

Individual concerned, military police traffic accident investigation reports, accident injury reports, other records of the activity, witness, and other correspondents.

Systems exempted from certain provisions of the act:

None

MMN00017

System name:

Armory Access and Individual Weapons Assignments

System location:

Organizational elements of the U S Marine Corps as listed in the Directory of Department of the Navy Activities.

Categories of individuals covered by the system:

All personnel assigned government weapons.
All personnel authorized access to individual armories.

Categories of records in the system:

Records depict name of individual, type of weapon assigned, serial number of that weapon, accessories in the individual's possession, condition of the weapon and accessories, and individual's signature acknowledging receipt.

Name, rank, social security number of personnel authorized access to individual armories.

Authority for maintenance of the system:

Title 5, U S Code 301

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Weapons accountability, management and control of all U S Government weapons/accessories issued to personnel.

Control of personnel authorized access to armory spaces in the official execution of their duties.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

File folders, cards, punched cards, magnetic tapes.

Retrievability:

Records retained by name or weapons serial numbers.

Safeguards:

Access rosters and personnel weapons assignments are provided on a need-to-know basis only. Locked and/or guarded office.

Retention and disposal:

As established by SYSMANAGER per SECNAV Records Disposal Manual.

System manager(s) and address:

Commanding Officer of the activity in question. See Directory of Department of the Navy Mailing Addresses.

Notification procedure:

Apply to SYSMANAGER.

Record access procedures:

The agency's rules for access to records may be obtained from the SYSMANAGER.

Contesting record procedures:

The agency's rules for contesting contents and appealing initial determinations by the individual concerned may be obtained from the SYSMANAGER.

Record source categories:

Individual concerned, other records of the activity.

Systems exempted from certain provisions of the act:

None

MMN00018

System name:

Base Security Incident Reporting System

System location:

Organizational elements of the U S Marine Corps as listed in the Directory of the Department of the Navy Activities.

Categories of individuals covered by the system:

Individual involved in or witnessing or reporting incidents requiring the attention of base security or law enforcement personnel.

Categories of records in the system:

Incident/complaint reports; witness statements; stolen property reports; military police investigator's report; military police motor vehicle accident and injury report; military police alert cards; military police property custody forms, tags, and disposition of evidence letters; military police field interview cards; military police desk blotter; use of force reports; traffic violation records; driving record reports; traffic court files; citations to appear before U S Magistrate; criminal investigation reports; civil court case records; minor offense report; uniform violation report; narcotics reports; polygraphy examinations; letters of warning/eviction from base housing; letters of warning/barring from federal reservation; Armed Forces police reports; suspect photographic files; child abuse files; juvenile case files; valuable property receipt; vehicle impound files and vehicle towing reports; suspension of driving privileges and revocation letters; assignment to absentee/deserter escort duty; informant list; Master Crime index card; evidence record file; military police log/journal; breathalyzer report; criminal investigation file; and any other such report received by military police personnel in the official execution of their duties.

Authority for maintenance of the system:

Title 5, U S Code 301

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

For law enforcement purposes by duly authorized personnel of the U S Marine Corps, Department of Defense and its related components, representatives of the U S Congress or any committee or subcommittee thereof on matters within their jurisdiction requiring disclosure of such files, or officials of federal investigative agencies in the performance of their official duties.

Provide evidence in uniform court of military justice and Title 18, U S Code 1382 proceedings and such related criminal investigations as are required.

Provide to local, state, and federal investigative agencies or court officials such information that properly falls within their purview requiring further investigation or court action.

Used by command legal personnel in the prosecution of military offenses and other administrative actions.

Support insurance claims and civil litigation.

Provide basis for revocation of base driving privileges.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

File folders, card files, punched cards, metal filing cabinets, magnetic tapes.

Retrievability:

Name, Social security number, case number, organization

Safeguards:

Access provided on a need-to-know basis only. Locked and/or guarded office.

Retention and disposal:

As established by SYSMANAGER per SECNAV Records Disposal Manual.

System manager(s) and address:

Commanding Officer of the activity in question. See Directory of Department of the Navy Mailing Addresses.

Notification procedure:

Apply to SYSMANAGER.

Record access procedures:

The agency's rules for access to records may be obtained from the SYSMANAGER.

Contesting record procedures:

The agency's rules for contesting contents and appealing initial determinations by the individual concerned may be obtained from the SYSMANAGER.

Record source categories:

Individual concerned, other records of the activity, investigators, witnesses, correspondents.

Systems exempted from certain provisions of the act:

Parts of this system may be exempt under Title 5, U S Code 552 a (J) (2) as applicable, for additional information, contact the SYSMANGER.

MMN00019

System name:

Drug/Alcohol Abuse Reporting Program

System location:

Primary System - Headquarters, U. S. Marine Corps, Washington, D. C. 20380. Decentralized Segments - Navy Drug rehabilitation Centers, Navy and Marine Corps Counseling and Assistance Centers, Navy Regional Medical Centers, Navy Alcohol Rehabilitation Drydocks, Naval Health Research Center, Navy Correction centers and local activities to which an individual is assigned. (See Directory of Department of the Navy Mailing Addresses).

Categories of individuals covered by the system:

All military personnel who have been tested for, identified, evaluated, apprehended, or rehabilitated for drug or alcohol abuse or who have been granted drug abuse exemption; or who are seeking assistance in drug or alcohol abuse programs.

All military personnel who have been granted drug abuse exemption.

All military personnel who are seeking assistance in drug or alcohol abuse programs.

Categories of records in the system:

Drug abuse identification/rehabilitation statistical reports, alcohol abuse identification/rehabilitation statistical reports, grant of drug exemption report, request for disposition on drug dependent personnel, grant of exemption/ rehabilitation case file to include medical evaluations, counselor evaluations, monthly progress reports, alcoholism education roster, and such correspondence or messages sent or sent by SYSMANAGER pertaining to the individual concerned. Urinanalysis specimen control register and military police drug/alcohol related offense reports.

Authority for maintenance of the system:

Title V, P.L. 92-129; Section 413, P.L. 92-255.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Blanket 'routine uses' identified in the annual republication of Marine Corps systems or records in the Federal Register do not apply to this system of records.

Records of identity, diagnosis, prognosis, or treatment of any client/patient, maintained in connection with the performance of any alcohol or drug abuse prevention and treatment function conducted, regulated, or directly or indirectly assisted by any department or agency of the United States, shall, except as provided therein, be confidential and disclosed only for the purposes and under the circum- stances expressly authorized in Title 21, U.S.C., Section 1175, as amended by 88 Stat. 137, and Title 42 U.S.C., Section 4582, as amended by 88 Stat. 131. These statutes take precedence over the Privacy Act of 1974, in regard to accessibility of such records except to the individual to whom the record pertains.

To authorized personnel of the Marine Corps who in the official execution of their duties require such information in order to manage the drug/alcohol abuse programs.

Within the Armed Forces or within those components of the Veterans Administration furnishing health care to veterans or between such components and the Armed Forces.

To medical personnel outside the Armed Forces to the extent necessary to meet a bona fide medical emergency.

To Government personnel for the purpose of obtaining benefits to which the patient is entitled.

To qualified personnel for the prupose of conducting scientific research, management or financial audits, or program evaluation, but such personnel may not identify, directly or indirectly, any individual patient in any report of such research, audit or evaluation, or otherwise disclose identities in any manner.

To a court of competent jurisdiction upon authorization by an appropriate order after showing good cause therefore. In assessing good cause, the court shall weigh the public interest and the need for disclosure against the injury to the patient, to the physician-patient relationship, and to the treatment services. Upon the grantin of such order, the court, in determining the extent to which any disclosure of all or any part of any record is necessary, shall impose appropriate safeguards against unauthorized disclosure.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

File folders, card files, punched cards, magnetic tapes.

Retrievability:

Name, social security number, case number. When names and social security numbers are removed, data is aggregated for use in research, management information, and planning.

Safeguards:

Records are maintained in areas accessible only to authorized personnel who are properly screened, cleared, and trained.

Retention and disposal:

Paper files are maintained for two years, then destroyed. Records stored on magnetic tapes are maintained indefinitely.

System manager(s) and address:

Commandant of the Marine Corps, (Code MPH), Headquarters, U. S. Marine Corps, Washington, D. C. 20380.

Notification procedure:

Written requests should be addressed to the Commandant of the Marine Corps (Code MPH), Headquarters, U. S. Marine Corps, Washington, D. C. 20380. Requests must contain full name, social security number, military status, address and signature of requester. (Those inquiring about records at Confinement Centers must have their signature notarized, if not confined at time of request.) Individuals may visit the Commandant of the Marine Corps, (Code MPH), located in the Arlington Annex (FOB-2), Columbia Pike and Arlington Ridge Road, Arlington, VA, for assistance with records at that location; individuals may also visit local activities concerned (See Directory of Department of the Navy Mailing Addresses). Individuals must provide proof of identification such as military identification card, driver's license, or other picture-bearing identification.

Record access procedures:

Rules for access may be obtained from the SYSMANAGER.

Contesting record procedures:

The agency's rules for contesting contents and appealing initial determinations by the individual concerned may be obtained from the SYSMANAGER.

Record source categories:

Individual concerned, other records of the activity, medical personnel, military police or other correspondences.

Systems exempted from certain provisions of the act:

None.

MMN00020

System name:

Pet Registration

System location:

Organizational elements of the U S Marine Corps as listed in the Directory of Department of the Navy Activities.

Categories of individuals covered by the system:

Owners of pets residing on Naval reservations.
Owners of pets in quarantine as the result of biting complaints
Owners of pets whose pet is subject of nuisance complaints

Categories of records in the system:

Owners name, social security number, address and description of pet, tag number, vaccination and registration information.
Record of complaints for vicious animals or bites.
Record of complaints for nuisance pets

Authority for maintenance of the system:

Title 5, U S Code 301; Departmental Regulations, Federal, State, and Local Regulations, as applicable.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

To provide for registration of pets to ensure appropriate innoculations in compliance with federal, state, and local laws.
Assist in the identification of rightful owners.
Identity dangerous pets and provide for quarantine of those animals suspected of biting.
Identify those pets which pose a nuisance to others and/or a health or safety hazard.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

File folders, card files, punched cards, magnetic tapes.

Retrievability:

Name, social security number, case number

Safeguards:

Access provided on a need-to-know basis only. Locked and/or guarded office.

Retention and disposal:

As established by SYSMANAGER per SECNAV Records Disposal Manual.

System manager(s) and address:

Commanding Officer of the activity in question. See Directory of Department of the Navy Mailing Addresses.

Notification procedure:

Apply to SYSMANAGER

Record access procedures:

The agency's rules for access to records may be obtained from the SYSMANAGER.

Contesting record procedures:

The agency's rules for contesting contents and appealing initial determinations by the individual concerned may be obtained from the SYSMANAGER.

Record source categories:

Veterinary records and statements provided by pet owners, bit victims, military police, animal shelter, hospital personnel.

Systems exempted from certain provisions of the act:

None

MMN00021

System name:

Weapons Registration

System location:

Organizational elements of the U S Marine Corps as listed in the Directory of Department of the Navy Activities.

Categories of individuals covered by the system:

All individuals, military or civilian, registered firearms or other weapons with Provost Marshal.
All individuals who purchase a firearm or weapon at authorized exchange activities.
Any individual who resides in government quarters who possesses privately owned firearms.

Categories of records in the system:

Weapon registration cards, weapon permit cards, notification to commanding officers of failure to register a firearm purchased at authorized exchanges, exchange notification or firearm purchase. Such records showing name, rank, social security number, organization, physical location of subject weapon, weapon description and such other identifiable items required to comply with all federal state, and local weapons registration ordinances.

Authority for maintenance of the system:

Title 5, U S Code 301; Departmental regulations; federal, state and local regulations as applicable.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

To assure proper control of all firearms/weapons introduced onboard Naval reservations and to monitor the purchase and disposition of firearms/weapons onboard Naval reservations/Marine Corps installations.

To provide local, state, and federal law enforcement officials information as required in their execution of official duties.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

File folders, card files, punched cards, magnetic tapes.

Retrievability:

Name, social security number, organization, caliber and gage of weapon

Safeguards:

Access provided on a need-to-know basis only. Locked and/or guarded offices.

Retention and disposal:

As established by SYSMANAGER per SECNAV Records Disposal Manual.

System manager(s) and address:

Commanding Officer of the activity in question. See Directory of Department of the Navy Mailing Addresses.

Notification procedure:

Apply to SYSMANAGER.

Record access procedures:

The agency's rules for access to records may be obtained from the SYSMANAGER.

Contesting record procedures:

The agency's rules for contesting contents and appealing initial determinations by the individual concerned may be obtained from the SYSMANAGER.

Record source categories:

Individual concerned, other records of activity, investigators, witnesses and correspondents.

Systems exempted from certain provisions of the act:

None

MMN00022

System name:

Vehicle Control System

System location:

Organizational elements of the U S Marine Corps as listed in the Directory of Department of the Navy Activities.

Categories of individuals covered by the system:

All individuals that have motor vehicles, boats, or trailers registered at a particular Naval installation on either a permanent or temporary basis.

All individuals who apply for a Government Motor Vehicle Operator's license.

All individuals who possess a Government Motor Vehicle Operator's license with authority to operate government motor vehicles.

Categories of records in the system:

File contains records of each individual who has registered a vehicle on the installation concerned to include decal data, insurance information, state of registration and identification. File also contains notations of traffic violations, citations, suspensions, applications for government vehicle operator's I.D. card, operator qualifications and record licensing examination and performance, record of failures to qualify for Government Motor Vehicle Operator's permit, record of government motor vehicle and other vehicle accidents, information on student driver training, and identification for parking control.

Records of traffic violations, citations and suspensions

For government motor vehicle operators: Application for vehicle operator's I D card: Operator qualifications and record of licensing examination and performance, record of failures Government Motor Vehicle Operator's permit, record of issue of SF-46, Record of Government Motor Vehicle accidents, standard Form 91 accident report, record of SF46 suspensions/ revocations, record of MOJT student driver's training.

Identification of parking control

Authority for maintenance of the system:

Title 5, U S Code 301

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Internal:

Headquarters, U. S. Marine Corps commands, activities and organizations - for car pool locator service, vehicle registration, parking control, insurance information, verification and identification of vehicles. Records aon official government drivers relating to their ability to operate a motor vehicle are used to manage a safe and responsive motor transport organization. Certain information is used to conduct accident prevention programs, revoke or suspend government motor vehicle permits and in disciplinary proceedings.

To provide records on individual government drivers as it relates to their ability in operating a motor vehicle in order for official personnel to manage a safe and responsive motor transport organization. Such information used in conducting accident prevention programs, changing occupations and revoking or suspending government motor vehicle permits, disciplinary proceedings.

To assist federal, state, and local law enforcement agencies in the official execution of their duties when disclosure of such records is warranted.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

File folders, card files, punched cards, magnetic tapes.

Retrievability:

Name, social security number, case number, organization, decal number, state license plate number, vehicle description.

Safeguards:

Records are maintained in areas accessible only to authorized personnel. Areas are locked during sonduty hours and buildings are protected by security guards.

Retention and disposal:

Records are maintained for one year after transfer or separation from the installation concerned. p aper records are then destroyed and records on magnetic tapes are erased.

System manager(s) and address:

Commanding Officer of the activity in question. See Directory of Department of the Navy Mailing Addresses.

Notification procedure:

Information may be obtained from the system manager. written requests should contain full name and social security number. individuals visiting the installation concerned should provide proper identification such as military identification, driver's license or other suitable identification.

Record access procedures:

Requests for acess should be addressed to the system manager. written requests should contain full name and social security number. 2individuals visiting the installation should provide proper identification.

Contesting record procedures:

The agency's rules for contesting contents and appealing initial determinations by the individual concerned may be obtained from the SYSMANAGER.

Record source categories:

Individual concerned, other records of the activity, investigators, witnesses, correspondents.

Systems exempted from certain provisions of the act:

None.

MMN00023

System name:

Prisoner Records

System location:

Organizational elements of the U S Marine Corps as listed in the Directory of Department of the Navy Activities.

Categories of individuals covered by the system:

All military personnel who are confined in a detailed, adjudged or sentenced status.

Categories of records in the system:

Information contained in the Manpower Management System data base, personal history to include civilian and military legal status, confinement progress reports and medical related information. Such other records as: Prisoner Conduct Record, Prisoner Confinement and Release Order, Prisoner Request for Restoration or Clemency, Prisoner Waiver of Restoration or Clemency, Court Martial Progress Report, Prisoner Identification Badge, Prisoner Data Card, Work and Training Report, Mail and Visiting List, Segregation Data Card, Prisoner Refusal to Eat Report, Prisoner Initial Contact Sheet, Prisoner Personal History, Prisoner Spot Evaluation Report, Counselor Continuation Sheet, Disciplinary Report, Prisoner Request Form, Prisoner Request for Funds Form, Prisoner Request for Pastoral Counseling, Prisoner Visiting Officer Form, Telephone and/or Visit Authorization Form, Receipt for Deposit Form, Prisoner Credit

Chit, Prisoner Identification Form, Clothing/Health and Comfort Inventory Form, Work Program Request, Library Card, Psychiatric Evaluation and Medical Reports.

Authority for maintenance of the system:

Title 5, U S Code 301

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Internal:

Headquarters, U. S. Marine Corps, Marine Corps Commands, activities, and organizations -

To provide an all inclusive file on each individual prisoner to assist facility staff personnel in the evaluation, assignment to programs, assignment of custodial classification, providing psychiatric and medical treatment, provide a proper mixture of individual and group counseling, in the preparation of the prisoner for offense free military service or to prepare him for his future adjustment to civilian life. Routinely used by local correctional personnel in the day-to-day management of prisoners within established programs, by medical personnel, local commanders and higher headquarters in the management and implementation of correctional programs.

Department of Defense and its components - By officials and employees of the Department of Defense in the performance of their official duties.

External:

Congress of the U S - By the Senate or House of Representatives of the U S or any committee or subcommittee thereof on matters within their jurisdiction requiring disclosure of the files.

The Comptroller General of the U S - By the Comptroller General or any of his authorized representatives in the course of the performance of the duties of the General Accounting Office relating to the Marine Corps.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

File folders, card files, punched cards, magnetic tapes.

Retrievability:

Name, social security number, case number, organization.

Safeguards:

Records are maintained in areas accessible only to authorized personnel. Areas are locked during nonduty hours and buildings are protected by security guards.

Retention and disposal:

Records are maintained at varying lengths of time. Paper records are destroyed at the end of the appropriate retention period and magnetic tapes are erased.

System manager(s) and address:

Commanding Officer of the activity in question. See Directory of Department of the Navy Mailing Addresses.

Notification procedure:

Information may be obtained from the system manager. Written requests should contain full name and social security number. Individuals visiting the installation concerned should provide proper identification such as military identification, driver's license or other suitable identification.

Record access procedures:

Requests for access should be addressed to the system manager. Written requests should contain full name and social security number. Individuals visiting the installation concerned should provide proper identification.

Contesting record procedures:

The agency's rules for contesting contents and appealing initial determinations by the individual concerned may be obtained from the SYSMANAGER.

Record source categories:

Individual concerned, other records of the activity, investigators, witnesses, correspondents.

Systems exempted from certain provisions of the act:

None.

MMN00027

System name:

Marine Corps Military Personnel Records Access Files

System location:

The Commandant of the Marine Corps, Headquarters, U S Marine Corps, Washington, D C 20380

Categories of individuals covered by the system:

All officials and employees of the Department of Defense authorized to draw Marine Corps military personnel records and, except for agents of Secret Service, Federal Bureau of Investigation and Naval Investigative Service which agents are granted access by presentation of credentials, all designated, justified and approved law enforcement/investigative personnel of other Federal agencies permitted access to Marine Corps military personnel records at Headquarters, U S Marine Corps only.

Categories of records in the system:

Authorization cards submitted by officials of HQMC and DOD granting individual authority to order Headquarters, U. S Marine Corps official military personnel records.

Authority for maintenance of the system:

Title 5, U S Code 301

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Officials and employees of Headquarters, U S Marine Corps. For controlling, monitoring and for providing a ready reference to personnel authorized to draw and/or review Marine Corps military personnel records.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Looseleaf Binder and Card Index Files

Retrievability:

Alphabetical and by Agency

Safeguards:

Building employs security guards.

Retention and disposal:

Destroyed upon cancellation of access authorization.

System manager(s) and address:

Commandant of the Marine Corps, Headquarters, U S Marine Corps, Washington, D C 20380

Notification procedure:

Request by correspondence should be addressed to the Commandant of the Marine Corps (Code MSRB), Headquarters, U S Marine Corps, Washington, D C 20380. The letter should contain the full name, social security number and signature of the requester.

The individual may visit Headquarters, U S Marine Corps, Washington, D C., Room 1206. Proof of identification may consist of his active, reserve or retired identification card, his Armed Forces Report of Transfer or Discharge (DD214), his discharge certificate, his driver's license or by providing such other data sufficient to insure that the individual is the subject of the inquiry.

Record access procedures:

Information may be obtained from:

Commandant of the Marine Corps
Headquarters, U S Marine Corps (Code MSRB)
Washington, D C 20380
Telephone Area Code 202/694-1043

Contesting record procedures:

The agency's rules for access to records and for contesting contents and appealing initial determinations by the individual concerned may be obtained from the SYSMANAGER.

Record source categories:

Staff agencies and subdivisions of Headquarters, U S Marine Corps.

Other staff agencies of the Department of Defense.

Law enforcement/investigative divisions of other Federal agencies.

Systems exempted from certain provisions of the act:

None

MMN00032

System name:

Personal History Card File

System location:

Provost Marshal's Office, Marine Corps Base, Camp Lejeune, North Carolina 28542.

Categories of individuals covered by the system:

All individuals, both military and civilian, employed aboard Marine Corps Base, Camp Lejeune, North Carolina.

Categories of records in the system:

Personal History Card (MCBul 12290). Contains personal identifying information and where employed.

Authority for maintenance of the system:

Title 5, U S Code 301

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Used by officials and employees of Marine Corps and Navy Commands, activities, and organizations in connection with their assigned duties. To provide a rapid locator of employees at their work site for law enforcement purposes. Also used to issue Civilian Identification Cards to employees.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Paper records filed in metal card trays.

Retrievability:

Filed alphabetically by name.

Safeguards:

Records are maintained in a secure area accessible only to authorized personnel. The File Room is under constant surveillance during working hours and is locked after working hours.

Retention and disposal:

Records are retained until the card expires, then destroyed by burning.

System manager(s) and address:

Commanding General (Attn: Provost Marshal), Marine Corps Base, Camp Lejeune, North Carolina 28542. Telephone: Area Code 919/451-2455.

Notification procedure:

Inquiries by individuals will be answered upon satisfactory identification of the requester to the SYSMANAGER

Record access procedures:

Rules for access may be obtained from the SYSMANAGER.

Contesting record procedures:

The agency's rules for access to records and for contesting contents and appealing initial determinations by the individuals concerned may be obtained from the SYSMANAGER .

Record source categories:

Military and civilian personnel employed aboard Marine Corps Base, Camp Lejeune, North Carolina; Provost Marshal administrative personnel.

Systems exempted from certain provisions of the act:

None

MMN00034

System name:

Personnel Procurement Working Files

System location:

Headquarters, U S Marine Corps
Personnel Procurement Branch, Marine Corps Districts
Recruiting Stations
Officer Selection Offices
Organized Marine Corps Reserve units
U S Marine Corps recruiting substations
Inspector-Instructor staffs

Categories of individuals covered by the system:

Civilians and prior service individuals who are prospective applicants for enlistment in the Marine Corps, Marine Corps Reserve or a Marine Officer program, individuals on which a written waiver for enlistment has been requested; Platoon Leader Class Candidates receiving financial assistance while attending college; all individuals applying for various officer programs; Marine Corps Reserve enlistees who are serving on their 6 months active duty prior to return to Organized Marine Corps Reserve unit maintaining their record; Personnel enlisted in the Marine Corps Reserve assigned to a formal school upon enlistment; Secondary school students who participated in the Marine Corps Youth Physical Fitness meet held annually in Washington, D C , and the coach fielding each team; Any individual recommended for enlistment in the Marine Corps by a recruiting officer even though the applicant does not meet the enlistment requirements set forth in current guidance as set forth by the Commandant of the Marine Corps.

Categories of records in the system:

All files contain Name (Last, First, Middle, (maiden, if any), Jr., Sr.), social security number, home of record. Files relating specifically to enlistment or officer procurement contain citizenship, sex, race, ethnic group, present address, marital status, number of dependents, date of birth, religious preference, highest grade completed, selective service system data, foreign language and skill, driver's license information, mental and aptitude test results, medical examination result, delayed enlistment program information, accession data, educational experience, citizenship verification, history of prior military service, names of relatives to include date and place of birth, present address and citizenship, listing of commercial life insurance policies and number, relatives and alien friends living in foreign countries to include name and relationship, age, occupation, address and citizenship, all previous residences since 10th birthday, previous employment record to include company name and address, job title and supervisor's name, data concerning previous employment by foreign governments, prior membership in youth programs, history of foreign travel. Declarations from the individual concerning; previous rejection by the Armed Forces of the United States, conscientious objector status, previous deserter status, retired pay, disability allowance, or severence pay or a pension from the Government of the United States, status as an only child; understandings by the applicant; date of interview and name, organization, title of interviewer; history of prior use of drugs except as prescribed by a licensed physician; prior intentional sniffing of glue, hairspray or other chemical fumes; prior use, purchase, possession or sale of illegal or controlled drugs except as prescribed by a licensed physician; marital status and dependency; membership in groups for purpose of unlawful overthrow of the Government; history and record of involvement with police or judicial authorities; parental/guardian consent for enlistment; enlistment options; current income; whether own, buying, or renting present residence; outstanding debts to include total amounts and monthly payments; status of savings account and checking account; spouses' employment and monthly income; police checks; character references; record of prior service; court documents; marriage certificates; birth certificates; record of medical examination; record of medical history; medical consultations statement of personal history; divorce decrees; death certificates; photographs; high school diploma; college diploma; grade transcript; General Educational Development certificates of High School equivalency; sole surviving son statements; statement of understanding; wife's consent form; applications for General Educational Development certificates of High School equivalency. Files relating to Marine Corps Reserve personnel on active duty contain information pertaining to name, social security number, sex, unit of assignment, home of record, education, Armed Services Vocational Aptitude Battery Test scores, vision, military occupational specialty training information, Quota Serial Number, training authorized.

Authority for maintenance of the system:

Title 5, U. S Code 301

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

By officials and employees of the Marine Corps in the execution of their official duties with regard to personnel procurement and problems which develop as a result thereof; maintained to assist recruiters and Officer Selection Officers in contacting possible applicants for the Marine Corps.

Officials and employees of the Naval Service and General Accounting Office in the execution of their official duties in relation to inspections, investigations, legal action.

Reserve Unit commander and administrative personnel, to monitor return of enlistee to unit and provide information on anticipated unit strength and status; To make available emergency data information.

Recruiting Station and Inspector-Instructor Staff Personnel in their assigned duties.

To provide Headquarters, U S Marine Corps information on those individuals attending the Marine Corps Youth Physical Fitness national championship.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Paper records in file folder. Records are maintained in areas accessible only to authorized personnel.

Retrievability:

Individuals listed in alphabetical order according to program.

Safeguards:

Access is limited to Reserve unit command, recruiting, and administrative personnel and law enforcement or Federal agents upon presentation of proper credentials.

After working hours the office and building are locked.

Retention and disposal:

Maintained for two years or until prospect, applicant, candidate or reservist changes status.

System manager(s) and address:

Commander of unit holding file.

Notification procedure:

Write or visit SYSMANAGER Provide full name, social security number, and military status. Proof of identity may be established by military identification card or DD-214 and driver's license.

Record access procedures:

The agency's rules for access to records may be obtained from the SYSMANAGER.

Contesting record procedures:

The agency's rules for access to records and for contesting contents and appealing initial determinations by the Individual concerned may be obtained from the SYSMANAGER.

Record source categories:

High School Lists, DD 214's, Prospect interviews/Referrals, Local Newspapers, Youth Fitness programs, individual contacts, Marine Corps officials.

Systems exempted from certain provisions of the act:

None

MMN00035

System name:

Truth Teller/Static Listings

System location:

The Commandant of the Marine Corps
Headquarters, U S Marine Corps
Washington, D C 20380

Categories of individuals covered by the system:

All present and former members of the U S Marine Corps

Categories of records in the system:

The system comprises non-automated records of basic information (Name, Military Service Number/Social Security Number, Pay Entry Base Date, Home of Record (State and County) and Date of Birth) pertaining to all individuals who ever served in the U S Marine Corps.

Authority for maintenance of the system:

Title 10, U S Code Section 5201

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Officials and employees of Headquarters, U S Marine Corps for making necessary identification of members and former members of the U S Marine Corps in connection with official business and in response to inquiries received at the Headquarters.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

File Folders, Binders and Microfilm Cartridges

Retrievability:

Name, Military Service Number and Social Security Number

Safeguards:

Records maintained in locked room. Building employs security guards.

Retention and disposal:

Permanent

System manager(s) and address:

Commandant of the Marine Corps, Headquarters, U S Marine Corps, Washington, D C 20380

Notification procedure:

Request by correspondence should be addressed to the Commandant of the Marine Corps (Code MSRB), Headquarters, U S Marine Corps, Washington, D C 20380. The letter should contain the full name, social security number and signature of the requester.

The individual may visit Headquarters, U S Marine Corps, Columbia Pike and Arlington Ridge Road, Arlington, Virginia, room 1206. Proof of identification may consist of his active, reserve or retired identification card, his Armed Forces Report of Transfer or Discharge (DD214), his discharge certificate, his driver's license or by providing such other data sufficient to insure that the individual is the subject of the inquiry.

Record access procedures:

Information may be obtained from:
Commandant of the Marine Corps (Code MSRB)
Headquarters, U S Marine Corps
Washington, D C 20380
Telephone Area Code 202/694-1043

Contesting record procedures:

The agency's rules for access to records and for contesting contents and appealing initial determinations by the individual concerned may be obtained from the SYSMANAGER.

Record source categories:

Enlistment and Officer Acceptance Contracts

Systems exempted from certain provisions of the act:

None

MMN00036

System name:

Identification Card Control

System location:

All United States Marine Corps units.

Categories of individuals covered by the system:

Regular and Reserve Marines including retired and disability retired and their dependents who have been issued an Identification Card.

Categories of records in the system:

Log book contains name, rank, social security number, and card number, issue date, expiration date, signature of person card issued to and signature of issuing person.

Authority for maintenance of the system:

Title 5, U S Code 301

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

To maintain accountability for serialized Identification Cards.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

These records are kept in a log book.

Retrievability:

By type card, chronologically by date also retrievable by name.

Safeguards:

The log books are stored in a locked container in a location which is locked after working hours. A guard is located in the general area.

Retention and disposal:

Two years from date of closing entry.

System manager(s) and address:

Unit Commanders.

Notification procedure:

Write or visit SYSMANAGER Provide full name, social security number, and military status. Proof of identity may be established by military identification card or DD 214 and driver's license.

Record access procedures:

The agency's rules for access to records may be obtained from the SYSMANAGER

Contesting record procedures:

The agency's rules for access to records and for contesting contents and appealing initial determinations by the individual concerned may be obtained from the SYSMANAGER

Record source categories:

Officers Qualification Record/Service Record Book of individual application for dependents priviledge card, correspondence from Headquarters, U S Marine Corps.

Systems exempted from certain provisions of the act:

None

MMN00037

System name:

Library Patron File

System location:

System is decentralized - maintained at Marine Corps commands, organizations and activities having libraries.

Categories of individuals covered by the system:

All active, reserve and retired military personnel, their dependents, and others who are entitled to use and borrow material from Marine Corps libraries.

Categories of records in the system:

The library patron file may contain the following information pertinent to each individual: name; rank; social security number;

organization and organization address and phone number; home address and home phone number; names and ages of dependents; title of materials borrowed; date borrowed; date due; date returned; and notation of monetary settlement if borrowed material was lost or damaged.

Authority for maintenance of the system:

Title 5, U S Code 301

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Headquarters, U S Marine Corps and Marine Corps commands, activities and organizations - By officials and employees of the Marine Corps in connection with their assigned duties.

Department of Defense and it's Components - By officials and employees of the Department in the performance of their official duties.

The Attorney General of the U S - By officials and employees of the Office of the Attorney General in connection with litigation, law enforcement or other matters under the direct jurisdiction of the Department of Justice or as carried out as the legal representative of the Executive Branch agencies.

Courts - By officials of duly established local, state and federal courts as a result of court order pertaining to matters properly within the purview of said court.

Congress of the U S - By the Senate or the House of Representatives of the U S or any Committee or subcommittee thereof, any joint committee of Congress or subcommittee of joint committee on matters within their jurisdiction requiring disclosure of the files.

The Comptroller General of the U S - By the Comptroller General or any of his authorized representatives in the course of the performance of duties of the General Accounting Office relating to the Marine Corps.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Card Files.

Retrievability:

File alphabetically by last name of patron.

Safeguards:

Library is locked when not in use. Only authorized personnel have access to records during working hours.

Retention and disposal:

Records are maintained for up to seven years, based on library usage. After retention period records are destroyed.

System manager(s) and address:

The Commandant of the Marine Corps, Headquarters, U S Marine Corps, Washington, D C 20380.

Notification procedure:

Information may be obtained from the library in question; addresses are as contained in the Navy Standard Distribution List (OPNAV PO9B3-107).

Record access procedures:

Requests from individuals should be addressed to the commander of the Marine Corps command, organization or activity that maintains the library in question.

Written requests for information should contain the full name of the individual, social security number, organization to which assigned when library facility utilized, and current address.

For personal visits the individual should be able to provide acceptable personal identification during normal hours of library operation.

Contesting record procedures:

The agency's rules for access to records and for contesting contents and appealing initial determinations by the individual concerned may be obtained from the SYSMANAGER

Record source categories:

Information is obtained from individual concerned, library director and library staff.

Systems exempted from certain provisions of the act:

None

MMN00038

System name:

Amateur Radio Operator's File

System location:

Marine Corps activities

Categories of individuals covered by the system:

All amateur radio operators who operate at Marine Corps activities.

Categories of records in the system:

File contains name, Federal Communications Center license number, operating frequency, type of equipment and home address.

Authority for maintenance of the system:

Title 5, U S Code 301

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Communications Center personnel - To ensure proper radio management at Marine Corps activities

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

3x5 card in metal file box.

Retrievability:

Alphabetical

Safeguards:

Security area.

Retention and disposal:

Destroyed upon departure from Marine Corps activity

System manager(s) and address:

Commanding Officer of activity concerned. See Directory of Department of the Navy mailing addresses.

Notification procedure:

Information may be obtained from:
Commanding Officer of activity concerned.

Record access procedures:

Requests from individuals should be addressed to the Sysmanager.

Written requests for information should contain the full name and grade of the individual.

For personal visit, the individual should be able to provide valid personal identification such as an employee badge, driver's license, medicare card, etc.

Contesting record procedures:

The Marine Corps rules for contesting and appealing initial determinations may be obtained from the SYSMANAGER.

Record source categories:

Individual

Systems exempted from certain provisions of the act:

None

MMN00039

System name:

Amateur/Citizen Band Radio Operation Request and Authorization File

System location:

Communication Electronics Office, Marine Corps activities

Categories of individuals covered by the system:

All personnel who desire to operate amateur/citizen band radios at Marine Corps installations.

Categories of records in the system:

(Amateur/Citizen Band Radio Operation Request and Authorization Form).

Authority for maintenance of the system:

Title 5, U S Code 301

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Provides authorization for personnel to operate amateur/citizen band radio and provides controls for the use of these radios. Used by requestor as authorization to operate. Used by CEO as record of authorization.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Papers filed in three-ring binder.

Retrievability:

Numerically by card number.

Safeguards:

Located in a secure area that is manned on a 24-hour basis.

Retention and disposal:

Retained for one (1) year and if not renewed, the form is destroyed by burning or shredding.

System manager(s) and address:

Commanding Officer of activity in question. See Directory of Department of the Navy mailing addresses.

Notification procedure:

Request information from SYSMANAGER

Record access procedures:

Rules for access may be obtained from SYSMANAGER.

Contesting record procedures:

The agency's rules for access to records and for contesting contents and appealing initial determinations by the individual concerned may be obtained from the SYSMANAGER.

Record source categories:

Individual requester and Communication Electronics Officer.

Systems exempted from certain provisions of the act:

None

MMN00040

System name:

Individual Training Records/Files for Training Related Matters

System location:

System is decentralized - maintained at all Marine Corps commands, organizations and activities, Regular and Reserve.

Categories of individuals covered by the system:

All military personnel assigned, attached to or serving with a Marine Corps command, activity or organization to include recruit training, formal military schools, operational units and training facilities.

Categories of records in the system:

The individual training record may contain the following information pertinent to each individual: name, rank, social security number, age, sex, military occupational specialty or specialties, date joined unit, date of end of active service, date of birth, proficiency and conduct scores, physical fitness test scores, rifle and pistol qualification scores, gas mask size, blood type, leadership proficiency, military school and correspondence course records and results, special training qualifications, weight and physical characteristics, medical record extracts addressing weight control and physical fitness, human relations training experience, troop information exposure, general military subject test results, water survival qualification, instructor qualifications, specialized equipment qualification, personal counseling records, foreign language qualifications, inspection results, etc.

In the case of recruit training, special data as reflects remedial training, counseling, weakness or excellence, recruit questionnaires and reading evaluations may be included.

For personnel attending formal schools, evaluation information and data reflecting successful completion or termination for cause may be included.

Authority for maintenance of the system:

Title 5, U S Code 301

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Headquarters Marine Corps and Marine Corps commands, activities and organizations - By officials and employees of the Marine Corps in connection with their assigned duties.

Department of Defense and it's Components - By officials and employees of the Department in the performance of their official duties.

The Attorney General of the U S - By officials and employees of the Office of the Attorney General in connection with litigation, law enforcement or other matters under the direct jurisdiction of the Department of Justice or as carried out as the legal representative of the Executive Branch agencies.

Courts - By officials of duly established local, state and federal courts as a result of court order pertaining to matters properly within the purview of said court.

Congress of the U S - By the Senate or the House of Representatives of the U S or any Committee or subcommittee thereof, any joint committee of Congress or subcommittee of joint committee on matters within their jurisdiction requiring disclosure of the files.

The Comptroller General of the U S - By the Comptroller General or any of his authorized representatives in the course of the performance of duties of the General Accounting Office relating to the Marine Corps.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Paper records in file folders, loose-leaf notebooks and card index files.

Retrievability:

Files are retrievable by name and cross filed by social security number.

Safeguards:

Records are retained in controlled access areas and handled by trained and cleared personnel on a strict 'need-to-know' basis.

Retention and disposal:

Files are retained during the period the individual is assigned to the activity maintaining the record. Upon transfer of the individual concerned, records are transferred with the individual or destroyed.

In the case of Drill instructor or Recruit records, records are maintained for four years after departure of individual, then destroyed.

System manager(s) and address:

The Commandant of the Marine Corps, Headquarters, U S Marine Corps, Washington, D C 20380.

Notification procedure:

Information may be obtained from the commander of the Marine Corps command, organization or activity to which the individual is assigned for duty or training.

Record access procedures:

Requests from individuals should be addressed to the commander of the command, organization or activity to which assigned for duty or training. Addresses are as contained in the Navy Standard Distribution List (OPNAV PO9B3-107).

Written requests should contain name, rank, social security number and dates assigned to the activity addressed. In cases where individual attended a formal school, name of course and course number should be included if available.

Personal visits may be made to the activity in question any normal work day between 8:00 a.m. - 4:30 p.m. For personal visits individual should be able to provide valid personal identification.

Contesting record procedures:

The agency's rules for access to records and for contesting and appealing initial determinations by the individual concerned may be obtained from the SYSMANAGER.

Record source categories:

Training performance, evaluations, on-the-job performance evaluations, individual and instructor evaluations, Individual Service Records, Manpower Management System, test and inspection results and training correspondence addressing individual concerned.

Systems exempted from certain provisions of the act:

None

MMN00041

System name:

Non-Appropriated Fund (NAF) Employee and Applicant Personnel Records

System location:

Marine Corps commands employing NAF personnel

Categories of individuals covered by the system:

Personnel, to include off-duty military personnel, applying to or hired by Marine Corps commands which salaries are paid with NAF.

Categories of records in the system:

Records may contain any of the following documents and information on NAF employees - name, home address, home and office telephone number, social security number, employee application, personal history statement, reference data, education, work experience, photograph, work permit, union participation, date of birth, emergency contact information, employee number, military grade (if applicable), job description, job assignment, application for group insurance and retirement plans (or signed waiver), leave and pay data, performance reviews, reports of physical examinations, reports of accident/traffic violations, warning notices of excessive absence and tardiness, reports of grievances hearings/disciplinary action, record of court attendance, certified copy of completed military orders for any annual duty tours with recognized military Reserve organizations, security clearance data, bad debt notices, employment compensation documents, commendations and awards, separation information, and official correspondence.

Authority for maintenance of the system:

Title 5, U. S. Code 301

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Marine Corps commands - By officials and employees of respective commands in the execution of assigned duties pertaining to management and administration of NAF personnel resources to include employment acceptability, assignments, pay, promotion, performance evaluations, security, growth potential, leave, awards, benefits and entitlements, disciplinary and grievance proceedings, appeals, discrimination complaints, retirement, separation, terminations, physical evaluations and audits.

By court order in connection with matters before a federal, state or municipal court.

By agents of the Federal Bureau of Investigation, Secret Service and Naval Investigative Service in connection with matters under the jurisdication of these investigative bodies upon presentation of credentials.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Paper records in file folders and binders and magnetic tape.

Retrievability:

Alphabetically and by social security number

Safeguards:

Respective commands employ one or more safeguards such as locked containers, locked rooms, locked buildings, access by authorized personnel only, and employment of security guards.

Retention and disposal:

Records are maintained for period of employment plus two years. Records of employees transferring to another NAF activity are transferred to the new activity. Records of separated employees are transferred to the National Personnel Records Center, 111 Winnebago Street, St. Louis, Missouri 63118.

System manager(s) and address:

Commandant of the Marine Corps, Headquarters, U. S. Marine Corps, Washington, D C. 20380.

Notification procedure:

Information may be obtained from the command at which the individual is employed. Addresses are as listed in the Navy Standard Distribution List (OPNAV PO9B3-107).

Record access procedures:

Individuals may visit or request information by correspondence to the command as listed in the Navy Standard Distribution List (OPNAV PO9B3-107).

Written requests for information should contain the full name of the requester, his social security number and his signature.

For personal visits, the individual will be required to provide such proof of identification as his driver's license, his active, reserve or retired identification card, his Armed Forces Report of Transfer or Discharge (DD From 214) or such other data sufficient to insure that the individual is the subject of the inquiry.

Contesting record procedures:

The agency's rules for access to records and for contesting contents and appealing initial determinations by the individual concerned may be obtained from the SYSMANAGER.

Record source categories:

Employee applications, personal interviews, former employers and supervisors, investigative and law enforcement agencies, originators of correspondence, employee references, schools, physicians and employing command.

Systems exempted from certain provisions of the act:

None

MMN00042

System name:

Marine Corps Locator Files

System location:

System is decentralized - maintained at Marine Corps commands, organizations and activities.

Categories of individuals covered by the system:

A Locator File of Assigned Military and Civilian Personnel

Categories of records in the system:

Locator files may contain any of the following information on Officer, Enlisted and Civilian personnel assigned to respective commands, organizations and activities of the Marine Corps: name, rank/grade, date of rank, selection for promotion, social scurity number, billet title, lineal number, Table of Organization line number, home address and telephone number, office code, room number and telephone number, new mailing address of transferred personnel, prior mailing address of newly assigned personnel, marital status, name of spouse, names of children, name and address of next of kin, Military Occupational Specialty, date of birth, pay entry base date, expiration of active service date, home state, educational background, state where admitted to bar, identification badge number, payroll number, government vehicle drivers license date, rotation tour date, overseas control date, date reported to respective command, organization or activity, occupation address and telephone number for inactive reserves and security clearance data.

Authority for maintenance of the system:

Title 5, U S Code 301

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Marine Corps Commands, Organizations and Activities - By officials and employees of respective commands, organizations and activities in the execution of assigned duties such as mail and employee directory services, social, official and semi-official functions, emergency recall functions, mail distribution, employee welfare functions, dissemination of information, ceremonial functions, and duty rosters.

Department of Defense and it's Components - By officials and employees of the Department in the performance of their official duties.

Congress of the U S - By the Senate or the House of Representatives of the U S or any Committee or subcommittee thereof, any joint committee of Congress or subcommittee of joint committee on matters within their jurisdiction requiring disclosure of the files.

The Comptroller General of the U S - By the Comptroller General or any of his authorized representatives in the course of the performance of duties of the General Accounting Office relating to the Marine Corps.

U S Postal Service - By duly designated Postal Officials pertaining to matters properly within the purview of the U S Postal Service.

The Attorney General of the U S - By officials and employees of the Office of the Attorney General in connection with litigation, law enforcement or other matters under the direct jurisdiction of the Department of Justice or as carried out as the legal representative of the Executive Branch agencies.

Courts - By officials of duly established local, state and federal courts as a result of court order pertaining to matters properly within the purview of said court.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Books, cards, rosters, strip files, file folders, loose leaf binders, log books, embossed plates, microfilm/fiche or magnetic records and discs.

Retrievability:

The data contained on magnetic records can be displayed on cathode-ray tubes, computer printed on paper, and converted to microform for information retrieval; the data in file folders and other documents is retrieved manually. Normally, all types of records are retrieved by Social Security Number and name.

Safeguards:

Marine Corps commands, organizations and activities employ one or more safeguards such as limited controlled distribution, employment of security guards, accessibility by authorized personnel only, locked containers, locked rooms or locked building.

Retention and disposal:

Permanent. Updated as required.

System manager(s) and address:

The Commandant of the Marine Corps, Headquarters, U S Marine Corps, Washington, D C 20380.

Notification procedure:

Information may be obtained from the individual command, organization or activity to which individuals are assigned for duty. Addresses are as listed in the Navy Standard Distribution List (OPNAV PO9B3-107).

Record access procedures:

Individuals may visit or request information by correspondence to the individual command, organization or activity as listed in the Navy Standard Distribution List (OPNAV PO9B3-107).

Written requests for information should contain the full name of the requester, his Social Security Number and his signature.

For personal visits, the individual will be required to provide such proof of identification as his drivers license, his active, reserve or retired identification card, his Armed Forces Report of Transfer or

Discharge (DD Form 214) or such other data sufficient to insure that the individual is the subject of the inquiry.

Contesting record procedures:

The agency's rules for access to records and for contesting contents and appealing initial determinations by the individual concerned may be obtained from the SYSMANAGER.

Record source categories:

Service Record Book, Officer Qualification Record, Manpower Management System, Reserve Personnel Management Information System, Unit Diaries, Combined Lineal Lists of active duty and reserve commissioned and Warrant Officers, Tables of Organization, Official Orders, Civilian Personnel records, other Marine Corps activites, and individuals concerned.

Systems exempted from certain provisions of the act:

None

MMN00043

System name:

Marine Corps Recreation Property Records and Facilities

System location:

Marine Corps activities maintaining recreation files.

Categories of individuals covered by the system:

Authorized personnel to utilize special services facilities

Categories of records in the system:

Usage data records on each activity

Authority for maintenance of the system:

Title 5, U. S. Code 301

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

By management personnel to record usage.

Marine Corps activities and organization - By Marine Corps officials and employees in executing their assigned duties.

Department of Defense and its components - By officials and employees of the Department in the performance of their official duties.

Congress of the U. S. - By the Senate or the House of Representatives of the U. S. or any committee or subcommittee of joint committee on matters within their jurisdiction requiring disclosure of the files.

The Comptroller General of the U. S. - By the Comptroller General or any of his authorized representatives in the course of the performance of duties of the General Accounting Office relating to the Marine Corps.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

In paper records in file folders.
Card files and usage logs.

Retrievability:

Alphabetical by name for property records.
By activity usage logs.

Safeguards:

Records are maintained in a metal file in the recreation property compound and athletic/recreation office. During non-operating hours, the activity is locked.

Retention and disposal:

Usage logs are maintained for one to four years.
Until equipment is returned or recreation fund is reimbursed.

System manager(s) and address:

Local Commanding Officers. See Directory of Department of the Navy mailing addresses.

Notification procedure:

Local Commander.

Record access procedures:

Information may be obtained from local Commander.

Contesting record procedures:

The Marine Corps rules for contesting and appealing initial determinations may be obtained from the Sysmanager.

Record source categories:

Individual activities, individuals, ID cards

Systems exempted from certain provisions of the act:

None

MMN00044

System name:

Equal Opportunity Information and Support System

System location:

Commandant of the Marine Corps (Code MPH), Headquarters, U. S. Marine Corps, Washington, D. C. 20380 and all Marine Corps activities.

See organizational elements of the U. S. Marine Corps as listed in the Directory of the Department of the Navy Activities.

Categories of individuals covered by the system:

Marine Corps military personnel who submit complaints of discrimination and Marine Corps military personnel who are under formal or informal investigation as a result of complaints of discrimination.

Categories of records in the system:

Correspondence and records compiled pursuant to the processing of a complaint concerning discrimination, incident data, endorsements and recommendations, formal and informal investigations concerning aspects of equal opportunity.

Authority for maintenance of the system:

Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. section 2000e-16(b) and (c).

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Officials and employees of the U. S. Marine Corps in the performance of their official duties related to equal opportunity matters.

The Attorney General of the United States or his authorized representatives in connection with litigation, law enforcement, or other matters under the direct jurisdiction of the Department of Justice or carried out as the legal representative of the Executive Branch agencies.

Officials and employees of other components of the Department of Defense in the performance of their official duties related to equal opportunity matters.

Officials and employees of other Departments and Agencies of the Executive Branch of government, upon request, in the performance of their official duties related to equal opportunity matters.

The Senate or the House of Representatives of the United States or any committee or subcommittee thereof, any joint committee of Congress or any subcommittee of joint committees on matters within their jurisdiction requiring disclosure of the files of Marine Corps military personnel. When required by Federal Statute, by Executive Order, or by treaty, personnel record information will be disclosed to the individual, organization, or governmental agency as necessary.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Paper files and file folders.

Retrievability:

Files are retrieved alphabetically by name of the complainant or by the name of the individual who is the subject of the complaint.

Safeguards:

Files are stored in filing cabinets. After normal working hours, rooms are locked. Building is located in controlled access area with security guards on 24 hour duty. Access to files is limited to officials and employees of Headquarters, U. S. Marine Corps acting in their official capacity on a need-to-know basis. Files held by field activities are maintained in areas accessible only to authorized personnel that are properly trained.

Retention and disposal:

Records disposed of two years after administrative closing of the case.

System manager(s) and address:

Commandant of the Marine Corps (Code MPH), Attn: Equal Opportunity Officer, Headquarters, U. S. Marine Corps, Washington, D. C. 20380, telephone 202-694-2895.

Notification procedure:

Correspondence pertaining to files maintained should be addressed to: Commandant of the Marine Corps (Code MPH), Headquarters, U. S. Marine Corps, Washington, D. C. 20380.

Written request for information should contain the individual's name, social security number, and signature.

Personal visits may be made to Headquarters, U. S. Marine Corps (Code MPH), Columbia Pike and Arlington Ridge Road, Arlington, Virginia 22214. Individuals should be able to provide personal identification to include valid military identification or two valid civilian

items of identification such as driver's license, passport, credit cards, etc.

Record access procedures:

Requests should be addressed to the System Manager.

Contesting record procedures:

The agency's rules for contesting contents and appealing initial determination by the individual are contained in SECNAVINST 5211.5A and 32 C.F.R. section 701.1 et. seq. Additional information may be obtained from the System Manager.

Record source categories:

Individual concerned, other systems, investigations, witnesses and correspondents.

Systems exempted from certain provisions of the act:

None

MMN00045

System name:

Automated Systematic Recruiting Support System (ASRSS)

System location:

The system will be operated at each Recruiting Station, District Headquarters, and Marine Corps Recruit Depot within the Marine Corps. See organizational elements of the U. S. Marine Corps as listed in the Directory of the Department of the Navy Activities.

Categories of individuals covered by the system:

All Marine Corps Regular and Reserve recruits.

Categories of records in the system:

File contains information voluntarily provided by recruits as contained on the Application for Enlistment - Armed Forces of the United States.

Authority for maintenance of the system:

Title 10, U. S. Code 301, Departmental Regulations

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Marine Corps Recruiting Stations - Ensure that a member of the Delayed Entry Pool is shipped to Marine Corps Recruit Depot on the appropriate date. Ensure that recruits are not retained in the Delayed Entry Pool longer than the authorized period. Give proper credit, e.g., Meritorious Appointment to Private First Class, to recruits who have referred other enlistees to the Marine Corps. Keep track of recruits who successfully complete recruit training for subsequent assistance as recruiter aides while on recruit leave.

Marine Corps District Headquarters - Monitor the status of accessions by category, e.g., Mental Group; losses from the Delayed Entry Program recruiter performance by 'waiver code.'

Marine Corps Recruit Depot - Ensure that those recruits shipped from various recruiting stations and Armed Forces Examining and Entrance Stations (AFEES) arrive at the Marine Corps Recruit Depot on schedule. Trace recruiter malpractice allegations to the proper source.

Headquarters, U. S. Marine Corps - Monitor accessions by program option/guarantee. Match total accessions throughout the country to demographic data available through the Recruit Market Network. Track Reserve accessions by Reserve unit, Military Occupational Specialty (MOS), and availability for active service training. Respond to Congressional inquiries on individual cases in a timely, accurate manner.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

The file will be stored via on-line magnetic disk with backup on magnetic tape. Backup audit trail record will be available at the point-of-entry.

Retrievability:

Standard reports and ad hoc retrievals are generated from remote terminals using a data base management system. Additionally, updates and record browsing may be accomplished in the interactive mode through keying Social Security Number.

Safeguards:

Records are maintained in areas accessible only to authorized personnel that are properly screened, cleared, and trained.

'Hard copy' or paper output from the system is stored in locked containers.

System software contains user passwords to lock out unauthorized access.

Software contains partitions to limit access to appropriate organizational level.

Retention and disposal:

On-line magnetic records will be maintained for one year after completion of recruit training. Records are then retired to a 'history file' where they will be retained for a period of four (4) years and then destroyed.

System manager(s) and address:

Commandant of the Marine Corps (Attn: Deputy Chief of Staff for Manpower), Headquarters, U. S. Marine Corps, Washington, D. C. 20380.

Notification procedure:

Requests from individuals for information concerning their ASRSS records should be addressed to the Commandant of the Marine Corps (Code MPI-40), U. S. Marine Corps, Washington, D. C. 20380. Requesting individual should supply full name and Social Security Number.

The requester may also visit any Marine Corps Recruiting Station to determine whether ASRSS contains records pertaining to him or her. In order to personally visit a Recruiting Station and obtain information, individuals must present proper identification such as military identification, if a service member, driver's license, or some other suitable proof of identity.

Record access procedures:

The agency's rules for access to records may be obtained from the system manager.

Contesting record procedures:

The agency's rules for contesting contents and appealing initial determination by the individual concerned may be obtained from the system manager.

Record source categories:

The Recruiting Station, Marine Corps Recruit Depot, and the individual recruit are the sources of the information contained in the ASRSS record for that person.

Systems exempted from certain provisions of the act:

None

MMN00046

System name:

Recruit Incident System

System location:

Marine Corps Recruit Depot, Parris Island, South Carolina 29905 and Marine Corps Recruit Depot, San Diego, California 92140.

Categories of individuals covered by the system:

All Marine Corps military personnel who have violated recruit training standard operating procedures.

Categories of records in the system:

Identifying information consisting of name, grade, last four digits of social security number, unit, date of offense, source of allegation, type of action, date of action, type of abuse, charges and description of charges, and whether or not individual is relieved of duties.

Authority for maintenance of the system:

Title 5, U. S. Code 301, Departmental Regulations

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Marine Corps Recruit Depots at Parris Island, South Carolina and San Diego, California to keep track of those drill instructors who abuse recruits, and to prepare monthly report to the Commandant of the Marine Corps.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

The file is stored in hard back binders and on magnetic tapes and discs.

Retrievability:

Records retrieved by name or last four digits of social security number.

Safeguards:

Records are maintained in areas accessible only to authorized personnel properly cleared and trained. Paper output from the system is stored in locked containers and building is locked during non-working hours. System software contains user passwords to lock out unauthorized access.

Retention and disposal:

Information in hard back binders maintained three years from the recruit incident and then destroyed. Magnetic tape and disc data sets

are maintained one year from the recruit incident and then tapes and discs are cleared of all information.

System manager(s) and address:

Depot Instructor, Marine Corps Recruit Depot, Parris Island, South Carolina 29905 and Depot Inspector, Marine Corps Recruit Depot, San Diego, California 92140.

Notification procedure:

Information may be obtained from the SYSMANAGER.

Record access procedures:

Requests should be addressed to the SYSMANAGER.

Contesting record procedures:

The agency's rules for contesting contents and appealing initial determination by the individual are contained in SECNAVINST 5211.5A and 32 C.F.R. section 701.1 et.seq. Additional information may be obtained from the SYSMANAGER.

Record source categories:

Information obtained from courts-martial or office hours proceedings.

Systems exempted from certain provisions of the act:

None.

MMT00001

System name:

Dependent (Title 6) Schools Records System

System location:

Dependent (Title 6) Schools located at Marine Corps installations.

Categories of individuals covered by the system:

All students enrolled in Dependent (Title 6) Schools location at Marine Corps installations.

Categories of records in the system:

System consists of individual student records, master schedule, student schedule, student class lists, student scheduling cards, etc. Information consists of student academic performance, attendance, discipline, activities, aptitude, health and emergency record data to properly administer and assist the student while enrolled in the particular school or school system.

Authority for maintenance of the system:

Title 5, U.S. Code and Title 6 U.S. Code

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Officials and employees of the Dependent (Title 6) School and school systems in the execution of their assigned duties.

Marine Corps - By officials and employees of the Marine Corps in the execution of their assigned duties.

Other Federal Agencies - By officials and employees of other Federal Agencies in the execution of their assigned duties as such duties pertain to Dependent (Title 6) Schools.

State and Local Education Agencies - By officials and employees of state and local education agencies in the execution of their official duties as such duties pertain to Dependent (Title 6) Schools.

Courts - By officials and employees of local, state, and federal courts as dictated by court order.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Records are stored in file folders, machine workable cards, and other Data Processing mediums.

Retrievability:

Information is retrieved by student name or student number.

Safeguards:

Records are maintained in areas accessible only to authorized personnel and handled by personnel who have been cleared and trained in handling of personnel information.

Retention and disposal:

Records are maintained during the period of student enrollment and for a period of up to three years after student departure from the rolls of the school. Records are then destroyed or retired to the Army Records Center, St Louis, Missouri.

System manager(s) and address:

Superintendent of the school system in which the particular student is enrolled.

Notification procedure:

Information may be obtained from the particular school or school system in which the student is enrolled: Commanding General (Attn: Supt Depn Scol) Marine Corps Base, Quantico, Virginia 22134; Commanding General, (Attn: Supt Depn Scol), Marine Corps Base, Camp Lejeune, North Carolina 28542; Commanding Officer, (Attn: Supt Depn Scol), Marine Corps Air Station, Beaufort, South Carolina

Record access procedures:

The rules for access to records may be obtained from the appropriate Sysmanager.

Contesting record procedures:

Rules for contesting the contents of records and appealing initial determinations by the individual concerned may be obtained from the appropriate Sysmanager.

Record source categories:

Information is obtained from individual concerned, his teachers, administrators, and other professional health and educational personnel.

Systems exempted from certain provisions of the act:

None

MMT00002

System name:

Marine Corps Institute Correspondence Training Records System

System location:

Marine Corps Institute, Box 1775, Washington, D. C. 20013

Categories of individuals covered by the system:

All enrollees in Marine Corps Institute correspondence courses.

Categories of records in the system:

Records contain information for identifying enrollees, their addresses, their progress in the course of study, and the results of their final examinations.

Authority for maintenance of the system:

Title 5, U. S. Code 301

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Headquarters, U. S. Marine Corps and Marine Corps commands, activities, and organizations for use by officials and employees of the Marine Corps in matters relating to their assigned duties.

Upon request and with the consent of the individual concerned, transcripts of course completions are provided to academic institutions for evaluation for academic credit.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

File folders, microfiche, magnetic tape, and magnetic disks.

Retrievability:

Name and SSN.

Safeguards:

Access provided on a need to know basis only. During non-working hours, the doors to the Institute are locked.

Retention and disposal:

Retained indefinitely.

System manager(s) and address:

Student Services Officer, Marine Corps Institute, Marine Barracks, Box 1775, Washington, D. C. 20013

Notification procedure:

Apply in writing to SYSMANAGER. Provide full name, social security number or service number, date of completion or enrollment, course number, and course title.

Record access procedures:

The agency's rules for access to records may be obtained from the SYSMANAGER.

Contesting record procedures:

The agency's rules for contesting contents and appealing initial determination by the individual concerned may be obtained from the SYSMANAGER.

Record source categories:

Information in the system is obtained from enrollment applications and subsequent forms submitted by the enrollee, from the individual's commanding officer, from the Marine Corps Manpower Management System, and from Marine Corps Automated Services Center, Kansas City.

Systems exempted from certain provisions of the act:

None

MRS00001

System name:

Reserve Personnel Management Information System (REPMIS)

System location:

Primary System - Marine Corps Automated Services Center, 1500 East Bannister Road, Kansas City, Missouri 64131

Decentralized Segments - Input to the system is limited to the unit diary submission of the Marine Corps Reserve unit to which the individual is assigned for administration. Output from the system is available at the following locations: Department of Defense, Headquarters, U S Marine Corps, 4th Marine Division, 4th Marine Aircraft Wing, 6th Marine Corps District Headquarters and the Marine Corps Reserve unit to which the individual is assigned. Addresses of each Distribution List (OPNAV-PO9B3-107).

Categories of individuals covered by the system:

Marine Corps Reservists in the Selected, Individual Ready, Standby, and Fleet Marine Corps Reserve categories.

Categories of records in the system:

File contains the master personnel records to include personal identification, education, training, military occupational specialties, contractual agreements, and other data required for effective personnel management and administration.

Authority for maintenance of the system:

Title 5, U S Code 301

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Headquarters, U S Marine Corps and Marine Corps commands, activities and organizations - By officials and employees of the Marine Corps in the execution of their official duties.

Department of Defense and its Components - By officials and employees of the Department in the performance of their official duties.

The Attorney General of the U S - By officials and employees of the Office of the Attorney General in connection with litigation, law enforcement or other matters under the direct jurisdiction of the Department of Justice or as carried out as the legal representative of the Executive Branch agencies.

Courts - By officials of duly established local, state and federal courts as a result of court order pertaining to matters properly within the purview of said court.

Congress of the U S - By the Senate or the House of Representatives of the U S or any Committee or subcommittee thereof, any joint committee of Congress or subcommittee of joint committee on matters within their jurisdiction requiring disclosure of the files.

The Comptroller General of the U S - By the Comptroller General or any of his authorized representatives in the course of the performance of duties of the General Accounting Office relating to the Marine Corps.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Information is contained on magnetic tapes and disks.

Retrievability:

Information is retrieved by social security number

Safeguards:

Records are maintained in facilities accessible only to authorized personnel that are properly screened, and trained.

Retention and disposal:

Records are retained for six months after separation of the individual Marine reservist. After six months, records are destroyed except for an historical listing of separations which is recorded on microfiche for permanent retention at the Marine Corps Reserve Forces Administrative Activity, Kansas City Missouri.

System manager(s) and address:

The Commandant of the Marine Corps, Headquarters, U S Marine Corps, Washington, D C 20380.

Notification procedure:

Information may be obtained from:
The Commandant of the Marine Corps (Code RES)
Headquarters, U S Marine Corps
Federal Office Building #2
Washington, D C 20380
Telephone: Area Code 202/694-1842

Record access procedures:

Requests from individuals should be addressed to: The Commandant of the Marine Corps (Code RES), Headquarters, U S Marine Corps, Washington, D C 20380

Written requests for information should contain the individual's full name, social security number and signature.

For personal visits, the individual should be able to provide some acceptable identification such as military identification card, driver's license or other type of identification bearing picture and signature to insure the individual is the subject of the inquiry.

Contesting record procedures:

The Marine Corps rules for contesting contents and appealing initial determinations may be obtained from the SYSMANAGER.

Record source categories:

The individual having administrative responsibility for the Marine.
The Marine Corps Reserve Forces Administrative Activity.
Authorized personnel of Headquarters, U S Marine Corps.
Systems interface with active force joint uniform military pay system/manpower management system.
Educational Institutions.

Systems exempted from certain provisions of the act:

None

MRS00003

System name:

Employment Referral Questionnaire for Members of Reserve Units

System location:

May be retained by all Inspector-Instructor Staffs.

Categories of individuals covered by the system:

All Reservists who desire assistance in obtaining civilian employment.

Categories of records in the system:

Resume on each individual which may include member's sex, age, social security number, education, past civilian employment, past military experience, present civilian employment, type of employment desired, type driver's license, preferred location of employment, present address and marital status.

Authority for maintenance of the system:

Title 5, U S Code 301

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

May be used by members of the reserve unit and the Inspector-Instructor Staff to assist in finding civilian employment for the requesting member.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

May be on paper or cards in binder or file folder.

Retrievability:

Alphabetically by last name, may also be by type employment desired, area employment desired in, rank or age.

Safeguards:

After working hours the office and building are locked. A guard is located in the general vicinity.

Retention and disposal:

One year after employment is found or member is transferred or discharged.

System manager(s) and address:

Inspector-Instructor.

Notification procedure:

Write or visit SYSMANAGER Provide full name, social security number, and military status. Proof of identity may be established by military identification card or DD-214 and driver's license.

Record access procedures:

The agency's rules for access to records may be obtained from the SYSMANAGER.

Contesting record procedures:

The agency's rules for access to records and for contesting contents and appealing initial determinations by the individual concerned may be obtained from the SYSMANAGER.

Record source categories:

Application form from individual requesting assistance and service records.

Systems exempted from certain provisions of the act:

None

MRS00004

System name:

Individual Drill Attendance and Retirement Transaction Card (IDART) File

System location:

All Organized Marine Corps Reserve Units and Marine Corps Reserve Administrative Activity, Kansas City, Missouri.

Categories of individuals covered by the system:

Maintained on all members of the reserve unit.

Categories of records in the system:

Individual's name, rank, social security number, pay entry base date, expiration of reserve contract, a record of drill attendance for the current calender year, by month, and retirement points awarded.

Authority for maintenance of the system:

Title 5, U S Code 301

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Unit command and administrative personnel. Maintain records of the drill attendance and reserve retirement credit points awarded members of the unit.

Officials and employees of the Naval Service and General Accounting Office in the execution of their official duties in relation to inspections, investigations, legal action.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

File cards in box in metal file cabinet.

Retrievability:

Alphabetically by last name.

Safeguards:

File maintained in a locked metal file cabinet.

After working hours the office and building are locked. A guard is located in the general vicinity.

Retention and disposal:

Annual cards are retired in January following the year for which the card is maintained. Cards are kept for three years after retirement and then burned. Upon transfer of a reservist, the IDART is transferred with the service record book.

System manager(s) and address:

Headquarters, U S Marine Corps, Commanding Officer and Inspector Instructor of Organized Marine Corps Reserve unit.

Notification procedure:

Write or visit Inspector-Instructor or Commanding Officer of the Organized Marine Corps Reserve Unit concerned. Provide full name, social security number, and military status. Proof of identity may be established by military identification card or DD-214 and driver's license.

Record access procedures:

Write or call in person to the Inspector-Instructor or Commanding Officer of the Organized Marine Corps Reserve Unit concerned.

Contesting record procedures:

The agency's rules for access to records and for contesting contents and appealing initial determinations by the individual concerned may be obtained from the SYSMANAGER

Record source categories:

Service records and unit attendance rosters.

Systems exempted from certain provisions of the act:

None

MTE00001

System name:

Telephone Billing/Accounting File

System location:

All Marine Corps activities maintaining telephone accounts.

Categories of individuals covered by the system:

All military personnel, civilian contractors, concessions, and Marine Corps sponsored activities that are provided unofficial government telephone service.

Categories of records in the system:

Files contain name, social security number, grade, military address, telephone number assigned to individuals in the system, civilian contractor's business address and business telephone numbers, ledger of itemized telephone service charges and payments, receipted bills, requests for service, account number, addressograph plate, cash collection vouchers for telephone deposits, and routine correspondence.

Authority for maintenance of the system:

Title 10, U.S. Code

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Information in the system is used by Marine Corps activities to show amounts owed and paid for telephone service on a monthly basis. Information is also used by Marine Corps activities to provide telephone directory service for residents of government quarters to include printing and distribution of a quarters telephone directory and allow telephone operators/base locator to provide quarters telephone numbers upon request except for unlisted numbers. Other uses include management of telephone number assignments, and a listing of delinquent accounts.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Paper cards are maintained in filing cabinets and KARDEX files or in file folders.

Retrievability:

Information accessed and retrieved by name, address or telphone number.

Safeguards:

Records are maintained in an area accessible only to authorized personnel and are under constant supervision. The building is locked during non-working hours and someone is on duty 24 hours a day.

Retention and disposal:

Records remain active until individual leaves the Marine Corps activity concerned. Records are then transferred to an inactive file for four years and then destroyed.

System manager(s) and address:

Commanding Officer of activity concerned. See Directory of Department of the Navy mailing addresses.

Notification procedure:

Information may be obtained from the individual command to which an individual is assigned for duty. Addresses of individual commands are listed in the Navy Standard Distribution List (OPNAV P09B-107).

Record access procedures:

Written requests from individuals should be addressed to the Commanding Officer of the activity concerned. Activity addresses are as reported in the Navy Standard Distribution List.

Written requests should include name and social security number and address.

For personal visits, the individual should be able to provide the proper military or civilian identification.

Contesting record procedures:

The rules for access to records and for contesting contents and appealing initial determination by the individual may be obtained from the Sysmanager.

Record source categories:

Application of the individual desiring telephone service in government housing aboard the activity.

Systems exempted from certain provisions of the act:

None

BILLING CODE 3810-71-M

UNITED STATES NAVY

REQUESTING RECORDS

Records are retrieved by name or by some other personal identifier. It is therefore especially important for expeditious service when requesting a record that particular attention be provided to the Notification and/or Access Procedures of the particular record system involved so as to furnish the required personal identifiers, or any other pertinent personal information as may be required, to locate and retrieve the record.

BLANKET ROUTINE USES

Certain blanket 'routine uses' of the records have been established, that are applicable to every record system maintained within the Department of Defense, unless specifically stated otherwise within a

particular record system. These additional blanket routine uses of the records are published below, only once in the interest of simplicity, economy and to avoid redundancy, before the individual record system notices begin rather than repeating them in every individual record system.

ROUTINE USE - LAW ENFORCEMENT

In the event that a system of records maintained by this component to carry out its functions indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute, or by regulation, rule or order issued pursuant thereto, the relevant records in the system of records may be referred, as a routine use, to the appropriate agency, whether federal, state, local or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, rule, regulation or order issued pursuant thereto.

ROUTINE USE - DISCLOSURE WHEN REQUESTING INFORMATION

A record from a system of records maintained by this component may be disclosed as a routine use to a federal, state or local agency maintaining civil, criminal or other relevant enforcement information or other pertinent information, such as current licenses, if necessary to obtain information relevant to a component decision concerning the hiring or retention of an employee, the issuance of a security clearance, the letting of a contract, or the issuance of a license, grant or other benefit.

ROUTINE USE - DISCLOSURE OF REQUESTED INFORMATION

A record from a system of records maintained by this component may be disclosed to a federal agency, in response to its request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

ROUTINE USE - CONGRESSIONAL INQUIRIES

Disclosure from a system of records maintained by this component may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

ROUTINE USE WITHIN THE DEPARTMENT OF DEFENSE

A record from a system of records maintained by this component may be disclosed as a routine use to other components of the Department of Defense if necessary and relevant for the performance of a lawful function such as, but not limited to, personnel actions, personnel security actions and criminal investigations of the Component requesting the record.

ROUTINE USE - PRIVATE RELIEF LEGISLATION

Relevant information contained in all systems of records of the Department of Defense published on or before August 22, 1975, will be disclosed to the Office of Management and Budget in connection with the review of private relief legislation as set forth in OMB Circular A-19 at any stage of the legislative coordination and clearance process as set forth in that Circular.

ROUTINE USE - DISCLOSURES REQUIRED BY INTERNATIONAL AGREEMENTS

A record from a system of records maintained by this Component may be disclosed to foreign law enforcement, security, investigatory, or administrative authorities in order to comply with requirements imposed by, or to claim rights conferred in international agreements and arrangements including those regulating the stationing and status in foreign countries of Department of Defense military and civilian personnel.

ROUTINE USE - DISCLOSURE TO STATE AND LOCAL TAXING AUTHORITIES

Any information normally contained in IRS Form W-2 which is maintained in a record from a system of records maintained by this Component may be disclosed to State and local taxing authorities with which the Secretary of the Treasury has entered into agreements pursuant to Title 5, U.S.Code, Sections 5516, 5517, 5520, and only to those State and local taxing authorities for which an employee or military member is or was subject to tax regardless of whether tax is or was withheld. This routine use is in accordance with Treasury Fiscal Requirements Manual Bulletin Nr. 76-07.

ROUTINE USE - DISCLOSURE TO THE OFFICE OF PERSONNEL MANAGEMENT

A record from a system of records subject to the Privacy Act and maintained by this component may be disclosed to the Office of Personnel Management concerning information on pay and leave, benefits, retirement deductions, and any other information necessary for the Office of Personnel Management to carry out its legally authorized Government-wide personnel management functions and studies.

ROUTINE USE - DISCLOSURE OF INFORMATION TO NARS (GSA)

A record from a system of records maintained by this component may be disclosed as a routine use to the National Archives and Records Service of the General Services Administration in records management inspections conducted under authority of 44 U.S.C. 2904 and 2906.

ROUTINE USE - DISCLOSURE TO DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

All systems of records relating to compensation, employment or retirement, or extracts therefrom, maintained by this Component may be disclosed as a routine use to the Department of Health, Education, and Welfare for the purpose of comparing such record with records of programs administered by and in the possession of the Department of Health, Education, and Welfare in order to verify information where such verification is required by law or regulation or to identify violations or potential violations of law, whether criminal, civil, or regulatory, and whether arising by general statute or particular program statute, or by regulation, rule, or order issued pursuant thereto.

N00011 C01

System name:

Correspondence files

System location:

Organizational elements of the Department of the Navy as indicated in the directory of Department of the Navy mailing addresses.

Categories of individuals covered by the system:

These are files kept by subject, name of correspondent (Congressman, contractor, other member of public, etc.,) or name of recipient.

Categories of records in the system:

Incoming and outgoing correspondence and related material.

Authority for maintenance of the system:

5 USC 301 Departmental Regulations

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Used to 'follow-up' on previous correspondence, for reference purposes, to assure consistency of policy, and for other official Navy business.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

File folders, card files, punched cards, magnetic tape.

Retrievability:

Name, SSAN, Case Number, organization.

Safeguards:

Access provided on a need to know basis only. Locked and/or guarded office.

Retention and disposal:

Per SECNAV Records Disposal Manual.

System manager(s) and address:

Commanding officer of the activity in question. See directory of Department of the Navy mailing addresses.

Notification procedure:

Apply to System Manager.

Record access procedures:

The agency's rules for access to records may be obtained from the System Manager.

Contesting record procedures:

The agency's rules for contesting contents and appealing initial determinations by the individual concerned may be obtained from the System Manager.

Record source categories:

Individual concerned, other records of the activity, investigators, witnesses, correspondents.

Systems exempted from certain provisions of the act:

None

N00011 C02

System name:

Vehicle Control System

System location:

Organizational elements of the Department of the Navy as indicated in the directory of Department of the Navy mailing addresses.

Categories of individuals covered by the system:

All individuals that have vehicles registered at a particular Navy installation; and all individuals who apply for Government Motor Vehicle Operator's License.

Categories of records in the system:

Alphabetical file of each individual who have vehicles registered or who have applied for a Government Motor Vehicle Operator's License. Files kept by month, individual's name, date of birth, SSN, height, weight, hair and eye color, place of employment, driving record, license number, etc.

Authority for maintenance of the system:

5 USC 301 Departmental Regulations

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Used as a car pool locator, vehicle registration, parking control system, insurance verification system to verify issue of license when individual has lost his or her operator's card, and may be referred to by security or safety officials to determine individual's previous driving record.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

File folders, card files, punched cards, magnetic tape.

Retrievability:

Name, SSAN, Case number, organization.

Safeguards:

Access provided on a need to know basis only. Locked and/or guarded office.

Retention and disposal:

Per SECNAV Records Disposal Manual.

System manager(s) and address:

Commanding officer of the activity in question. See directory of Department of the Navy mailing addresses.

Notification procedure:

Apply to System Manager.

Record access procedures:

The agency's rules for access to records may be obtained from the System Manager.

Contesting record procedures:

The agency's rules for contesting contents and appealing initial determinations by the individual concerned may be obtained from the System Manager.

Record source categories:

Individual concerned, other records of the activity, investigators witnesses, correspondents.

Systems exempted from certain provisions of the act:

None

N00011 C03

System name:

Special Membership Listing of the Organizational Recreation Association

System location:

Organizational elements of the Department of the Navy as indicated in the directory of Department of the Navy mailing addresses.

Categories of individuals covered by the system:

This file records the name of all members who join the particular ship or activity recreation association. Also crossfiled by number of membership card.

Categories of records in the system:

This record lists the names, internal codes, room and telephone numbers of each membership card and dates purchased.

Authority for maintenance of the system:

5 USC 301 Departmental Regulations

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

To indicate income from sale of membership cards; to provide an audit trial for the auditors; and to confirm membership, upon request.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

File folders, card files, punched cards, magnetic tape.

Retrievability:

Name, SSAN, Case number, organization.

Safeguards:

Access provided on a need to know basis only. Locked and/or guarded office.

Retention and disposal:

Per SECNAV Records Disposal Manual.

System manager(s) and address:

Commanding officer of the activity in question. See directory of Department of the Navy mailing addresses.

Notification procedure:

Apply to System Manager.

Record access procedures:

The agency's rules for access to records may be obtained from the System Manager.

Contesting record procedures:

The agency's rules for contesting contents and appealing initial determinations by the individual concerned may be obtained from the System Manager.

Record source categories:

Individual concern, other records of the activity, investigators, witnesses, correspondents.

Systems exempted from certain provisions of the act:

None

N00011 C04

System name:

Organization Locator and Social Roster

System location:

Organizational elements of the Department of the Navy as indicated in the directory of Department of the Navy mailing addresses.

Categories of individuals covered by the system:

Military and civilian personnel attached to the activity; also may include military and civilian personnel of the Department of Defense and other government agencies; may also include family members and guests of military and civilian personnel; other invitees.

Categories of records in the system:

Manual or mechanized records. Includes information such as names, addresses, telephone numbers; official titles or positions and organizations; invitations, acceptances, regrets, protocol, and other information associated with attendents at functions. Locator records of personnel attached to the organization.

Authority for maintenance of the system:

5 USC 301 Departmental Regulations

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

For locating individuals on routine and emergency matters. Often used for mail distribution, for forwarding addresses, and as a recall list. Also, may be used as a social roster for social reference for various official and non-official functions.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

File folders, card files, punched cards, magnetic tape, and similar record formats.

Retrievability:

Name, SSAN, number, organization, function.

Safeguards:

Access provided on a need to know basis.

Retention and disposal:

Per SECNAV Records Disposal Manual.

System manager(s) and address:

Commanding officer of the activity in question. See directory of Department of the Navy mailing addresses.

Notification procedure:

Apply to System Manager.

Record access procedures:

The agency's rules for access to record may be obtained from the System Manager.

Contesting record procedures:

The agency's rules for contesting contents and appealing initial determinations by the individual concerned may be obtained from the System Manager.

Record source categories:

Individual concerned, other records of the activity, correspondents, directories and official publications.

Systems exempted from certain provisions of the act:

None

N00011 J01

System name:

Administrative Personnel Management System

System location:

Organizational elements of the Department of the Navy as indicated in the directory of Department of the Navy mailing addresses.

Categories of individuals covered by the system:

Assigned civilians, military, and contract employees.

Categories of records in the system:

Identification, location, routine and emergency assignments, functional responsibilities, clearance, educational and experience characteristics, grade or rank/rate, travel, and other data needed for personnel, line, and security management.

Authority for maintenance of the system:

5 USC 301 Departmental Regulations.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Preparation of rosters and locators, contact with appropriate personnel in emergencies, continuity of operations planning and execution, determination of clearance for access control, budget and manpower control, minority and occupation statistics, labor costing, customer billing, watch bill preparation, civilian grade control, and similar administrative uses requiring personnel information.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

File folders, card files, punched cards, magnetic tape, microform.

Retrievability:

Name, SSAN, Case number, organization.

Safeguards:

Access provided on a need to know basis only. Locked and/or guarded office.

Retention and disposal:

Per SECNAV Records Disposal Manual.

System manager(s) and address:

Commanding officer of the activity in question. See directory of Department of the Navy mailing addresses.

Notification procedure:

Apply to System Manager.

Record access procedures:

The agency's rules for access to records may be obtained from the System Manager.

Contesting record procedures:

The agency's rules for contesting contents and appealing initial determinations by the individual concerned may be obtained from the System Manager.

Record source categories:

Individual concerned, other records of the activity, investigators, witnesses, correspondents.

Systems exempted from certain provisions of the act:

None

N00011 J010

System name:

Navy and Marine Corps Exchange and Commissary Sales Control and Security Files

System location:

Organizational elements of the Department of the Navy as listed in the directory of Department of the Navy mailing addresses.

Categories of individuals covered by the system:

Customers, employees, and guests at Navy and Marine Corps Exchanges and Commissaries, including individuals making large dollar volume purchases and contract purchases; individuals having requested adjustments or made claims; individuals having previously passed bad checks or been apprehended for shoplifting.

Categories of records in the system:

Sales and contract records; lists, logs, or card records of individuals; claims and adjustment records; large volume purchase records; mail orders, and customer special order records, customer list; correspondence. Records of complaints and investigations of regulatory and criminal violations.

Authority for maintenance of the system:

5 U.S.C. 301 Departmental Regulations.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Sales control and prevention and detection of abuse of privileges. Determine responsibility when there are violations of regulations or criminal statutes. Information may be: Provided to local, state, or federal organizations, including the Naval Investigative Service and to the Federal Bureau of Investigation for further investigation or prosecution; used by command legal personnel for prosecution of military offenses and other administrative action; provided to the Department of Justice in support of civil litigation; provided to officials of other federal agencies in connection with the performance of their official duties related to personnel administration.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Automated records may be stored on magnetic tape, discs, drums, and punched cards. Manual records may be stored in file folders or microform, in file cabinets or other containers.

Retrievability:

Automated and manual records may be retrieved by social security account number and/or name.

Safeguards:

Access is provided on a need-to-know basis, only. Automated records are located in restricted areas accessible only to authorized persons. Manual records and computer printouts are maintained in locked or controlled access areas.

Retention and disposal:

Records are retained or disposed of in accordance with SECNAVINST 5212.5B, Disposal of Navy and Marine Corps Records.

System manager(s) and address:

Commanding officer of the activity in question. See directory of Department of the Navy mailing addresses.

Notification procedure:

Apply to system manager.

Record access procedures:

The agency's rules for access to records may be obtained from the System Manager.

Contesting record procedures:

The agency's rules for contesting contents and appealing initial determination by the individual concerned may be obtained from the System Manager.

Record source categories:

Individuals concerned, other records of the activity concerned, other records of activity investigators, witnesses, correspondents.

Systems exempted from certain provisions of the act:

Parts of this system may be exempt under 5 U.S.C. 552a(j) or (k), as applicable. For additional information, contact the system manager.

N00011 J011

System name:

Safety Equipment Needs, Issues, Authorizations

System location:

Organizational elements of the Department of the Navy as listed in the directory of Department of the Navy mailing addresses.

Categories of individuals covered by the system:

Personnel whose work requires them to wear, or are issued, protective clothing or equipment, including prescription safety lenses.

Categories of records in the system:

Listings, cards, and other records of individuals requiring, authorized, or issued prescription or other safety equipment.

Authority for maintenance of the system:

5 U.S.C. 301, Departmental Regulations.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

By safety department personnel to determine who needs, is eligible, or has been authorized or issued prescription or other safety equipment for protection.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Card index files, file folders in file drawers, or microform.

Retrievability:

By name or date of authorization or issue.

Safeguards:

Controlled access space or locked rooms; personnel screening.

Retention and disposal:

Secretary of the Navy Instruction 5212.5B, Disposal of Navy and Marine Corps Records.

System manager(s) and address:

Commanding officer of the activity in question. See directory of Department of the Navy mailing addresses.

Notification procedure:

Apply to System Manager.

Record access procedures:

The agency's rules for access may be obtained from the System Manager.

Contesting record procedures:

The agency's rules for contesting access may be obtained from the System Manager.

Record source categories:

Individuals to whom the records pertain.

Systems exempted from certain provisions of the act:

None.

N00011 J02

System name:

Access control system

System location:

Organizational elements of the Department of the Navy as indicated in the directory of Department of the Navy mailing addresses.

Categories of individuals covered by the system:

Individuals considered or seeking consideration for access to space under the control of the Department of the Navy.

Categories of records in the system:

Visit requests for permission to transact commercial business, barring lists and letters of exclusion, badge and pass issuance records.

Authority for maintenance of the system:

5 USC 301 Departmental Regulations.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Maintenance of all aspects of proper access control, replacement of lost badges, retrieval of passes upon separation, maintenance of visitor statistics and background information.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

File folders, card files, punched cards, magnetic tape.

Retrievability:

Name, SSAN, Case number, organization.

Safeguards:

Access provided on a need to know basis only. Locked and/or guarded office.

Retention and disposal:

Per SECNAV Records Disposal Manual.

System manager(s) and address:

Commanding officer of the activity in question. See directory of Department of the Navy mailing addresses.

Notification procedure:

Apply to System Manager.

Record access procedures:

The agency's rules for access to records may be obtained from the System Manager.

Contesting record procedures:

The agency's rules for contesting contents and appealing initial determinations by the individual concerned may be obtained from the System Manager.

Record source categories:

Individual concerned, other records of the activity, investigators, witnesses, correspondents.

Systems exempted from certain provisions of the act:

None

N00011 J03

System name:

Security Incident System

System location:

Organizational elements of the Department of the Navy as indicated in the directory of Department of the Navy mailing addresses.

Categories of individuals covered by the system:

Individuals involved in or witnessing incidents requiring the attention of base, station, or activity security personnel.

Categories of records in the system:

Incident/complaint report, investigator's report, military magistrate's records, confinement records, traffic accident and violation records, traffic court file, citations to appear before U. S. Magistrate.

Authority for maintenance of the system:

5 USC 301 Departmental Regulations

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Evidence in Uniform Court of Military Justice and Title 18 USC 1382 Proceedings; Criminal investigation; provided to state or federal law enforcement agencies including Naval Investigative Service, Defense Investigative Service, and Federal Bureau of Investigation for further criminal investigation or court action; used by command legal personnel for prosecution of military offenses and other administrative action; support of insurance claims and civil litigation, revocation of base, station, or activity driving privileges.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

File folders, card files, punched cards, magnetic tape.

Retrievability:

Name, SSAN, Case number, organization.

Safeguards:

Access provided on a need to know basis only. Locked and/or guarded office.

Retention and disposal:

Per SECNAV Records Disposal Manual.

System manager(s) and address:

Commanding officer of the activity in question. See directory of Department of the Navy mailing addresses.

Notification procedure:

Apply to System Manager.

Record access procedures:

The agency's rules for access to records may be obtained from the System Manager.

Contesting record procedures:

The agency's rules for contesting contents and appealing initial determinations by the individual concerned may be obtained from the System Manager.

Record source categories:

Individual concerned, other records of the activity, investigators, witnesses, correspondents.

Systems exempted from certain provisions of the act:

Parts of this system may be exempt under 5 U.S.C. 552 a (j) or (k), as applicable. For additional information contact the System Manager.

N00011 J04

System name:

Weapons Registration

System location:

Organizational elements of the Department of the Navy as indicated in the directory of Department of the Navy mailing addresses.

Categories of individuals covered by the system:

Individuals registering firearms or other weapons with station security officers.

Categories of records in the system:

Weapon registration records, weapon permit records.

Authority for maintenance of the system:

5 USC 301 Departmental Regulations

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

To assure proper control of weapons on Naval installations and to monitor and control purchase and disposition of weapons.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

File folders, card files, punched cards, magnetic tape.

Retrievability:

Name, SSAN, Case number, organization.

Safeguards:

Access provided on a need to know basis only. Locked and/or guarded office.

Retention and disposal:

Per SECNAV Records Disposal Manual.

System manager(s) and address:

Commanding officer of the activity in question. See directory of Department of the Navy mailing addresses.

Notification procedure:

Apply to System Manager.

Record access procedures:

The agency's rules for access to records may be obtained from the System Manager.

Contesting record procedures:

The agency's rules for contesting contents and appealing initial determinations by the individual concerned may be obtained from the System Manager.

Record source categories:

Individual concerned, other records of activity, investigators, witnesses, correspondents.

Systems exempted from certain provisions of the act:

None

N00011 J05

System name:

Security inspection and violation system

System location:

Organizational elements of the Department of the Navy as indicated in the directory of Department of the Navy mailing addresses.

Categories of individuals covered by the system:

Individuals involved in security violations.

Categories of records in the system:

Security violation reports, security inspection reports.

Authority for maintenance of the system:

5 USC 301 Departmental Regulations

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Used to identify problem areas in security indoctrination, alert command management officials to areas which present larger than normal security problems and identify personnel who are cited as responsible for non-compliance with procedures.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

File folders, card files, punched cards, magnetic tape.

Retrievability:

Name, SSAN, Case number, organization.

Safeguards:

Access provided on a need to know basis only. Locked and/or guarded office.

Retention and disposal:

Per SECNAV Records Disposal Manual.

System manager(s) and address:

Commanding officer of the activity in question. See directory of Department of the Navy mailing addresses.

Notification procedure:

Apply to System Manager.

Record access procedures:

The agency's rules for access to records may be obtained from the System Manager.

Contesting record procedures:

The agency's rules for contesting contents and appealing initial determinations by the individual concerned may be obtained from the System Manager.

Record source categories:

Individual concerned, other records of the activity, investigators, witnesses, correspondents.

Systems exempted from certain provisions of the act:

None

N00011 J06

System name:

Blood Donor Program Files

System location:

Organizational elements of the Department of the Navy as indicated in the directory of Department of the Navy mailing addresses.

Categories of individuals covered by the system:

Personnel donating blood or seeking replacement of blood.

Categories of records in the system:

Blood donation records. Blood replacement requirement records.

Authority for maintenance of the system:

5 USC 301 Departmental Regulations

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Emergency blood request by blood type, recognition and identification of donors, and replacement of blood provided to cover individuals. Records are available to American Red Cross.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

File folders, card files, punched cards, magnetic tape.

Retrievability:

Name, SSAN, Case number, organization.

Safeguards:

Access provided on a need to know basis only. Locked and/or guarded office.

Retention and disposal:

Per SECNAV Records Disposal Manual.

System manager(s) and address:

Commanding officer of the activity in question. See directory of Department of the Navy mailing addresses.

Notification procedure:

Apply to System Manager.

Record access procedures:

The agency's rules for access to records may be obtained from the System Manager.

Contesting record procedures:

The agency's rules for contesting contents and appealing initial determinations by the individual concerned may be obtained from the System Manager.

Record source categories:

American Red Cross, blood donors, hospitals, persons seeking replacement of blood.

Systems exempted from certain provisions of the act:

None

N00011 J07

System name:

Combined Federal Campaign/Navy Relief Society

System location:

Organizational elements of the Department of the Navy as indicated in the directory of Department of the Navy activities.

Categories of individuals covered by the system:

All assigned personnel.

Categories of records in the system:

Extracts from payroll systems and administrative personnel management systems. Contributor cards.

Authority for maintenance of the system:

Executive Order 10927

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Management of combined federal campaign fund drive of CFC records. Management of navy relief society fund drive of NRS records. Data released to respective campaign coordinators.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

File folders, card files, punched cards, magnetic tape.

Retrievability:

Name, SSAN, Case number, organization.

Safeguards:

Access provided on a need to know basis only. Locked and/or guarded office.

Retention and disposal:

Records are maintained for one year or completion of next equivalent campaign and then destroyed.

System manager(s) and address:

Commanding officer of the activity in question. See directory of Department of the Navy mailing addresses.

Notification procedure:

Apply to System Manager.

Record access procedures:

The agency's rules for access to records may be obtained from the System Manager.

Contesting record procedures:

The agency's rules for contesting contents and appealing initial determinations by the individual concerned may be obtained from the System Manager.

Record source categories:

Payroll files, administrative personnel files, contributors.

Systems exempted from certain provisions of the act:

None

N00011 J08

System name:

Pet Registration

System location:

Organizational elements of the Department of the Navy as indicated in the directory of Department of the Navy mailing addresses.

Categories of individuals covered by the system:

Owners of pets residing on Naval property.

Categories of records in the system:

Owner's name and pet tag.

Authority for maintenance of the system:

5 USC 301 Departmental Regulations

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

To provide for registration of pets to ensure appropriate innoculations and assist in the identification of rightful owners.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

File folders, card files, punched cards, magnetic tape.

Retrievability:

Name, SSAN, Case number, organization.

Safeguards:

Access provided on a need to know basis only. Locked and/or guarded office.

Retention and disposal:

Per SECNAV Records Disposal Manual.

System manager(s) and address:

Commanding officer of the activity in question. See directory of Department of the Navy mailing addresses.

Notification procedure:

Apply to System Manager.

Record access procedures:

The agency's rules for access to records may be obtained from the System Manager.

Contesting record procedures:

The agency's rules for contesting contents and appealing initial determinations by the individual concerned may be obtained from the System Manager.

Record source categories:

Veterinary records and statements provided by pet owners.

Systems exempted from certain provisions of the act:

None

N00011 J09

System name:

Administrative Civilian Personnel Management System

System location:

Organizational elements of the Department of the Navy as indicated in the directory of Department of the Navy activities.

Categories of individuals covered by the system:

Civilian employees, including intermittents and consultants, and applicants for civilian employment.

Categories of records in the system:

Identification, location, routine and emergency assignements, clearance, educational and experience characteristics, travel, retention group, grade and series, retirement category, pending actions, awards, property custody, personnel action dates, physical handicaps and health data, veterans preference, mutual aid association membership, union membership, qualifications, and other data needed for personnel, line, and security management.

Authority for maintenance of the system:

5 USC 301 Departmental Regulations

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Preparation of rosters and locators; contact with appropriate personnel in emergencies; determination of clearance for access control; budget and manpower control; minority, employment, and occupation statistics; labor costing; projection of retirement losses; control of personnel actions; employment verification to requesting banking, rental, and credit organizations; travel claim control; name change location; checklist prior to leaving activity; payment of mutual aid association benefits; employee assessment; training management; qualifications determinations; and similar administrative uses requiring personnel information. Used by Navy officials who have need of the information in the performance of their duties and by representatives of the Civil Service Commission, the Comptroller General, the General Services Administration, the Attorney General, labor organizations with exclusive recognition, the Senate and the House of Representatives and their committees and subcommittees, and arbitrators and hearing examiners for grievances and appeals. In some cases, contractors are used in processing this data.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

File folders, card files, punched cards, magnetic tape, magnetic disc.

Retrievability:

Name, SSAN, Case number, organization.

Safeguards:

Access provided on a need to know basis only. Locked and/or guarded office.

Retention and disposal:

Per SECNAV Records Disposal Manual.

System manager(s) and address:

Commanding officer of the activity in question. See directory of Department of the Navy mailing addresses.

Notification procedure:

Apply to System Manager.

Record access procedures:

The agency's rules for access to records may be obtained from the System Manager.

Contesting record procedures:

The agency's rules for contesting contents and appealing initial determinations by the individual concerned may be obtained from the System Manager.

Record source categories:

Individual, employment papers, other records of the organization, official personnel jackets, supervisors, official travel orders, educational institutions, applications.

Systems exempted from certain provisions of the act:

None

N00013

System name:

Automated Claims Information System (ACIS)

System location:

Office of the Judge Advocate General, Department of the Navy, 200 Stovall Street, Alexandria, Va 22332.

Categories of individuals covered by the system:

All individuals who have filed claims against the Department of the Navy under the Federal Tort Claims Act, the Foreign Claims Act, Military Claims Act, the 'Nonscope' Claims Act, Legislative Reorganization Act, or Military and Civilian Employees' Claims Act. All individuals who have filed claims with the U.S. Postal Service for loss or damage to mailed matter, and which claims have been paid by the U.S. Postal Service and thereafter forwarded for reimbursement by the Department of the Navy pursuant to 39 U.S.C. 712. All individuals who have asserted claims or instituted suits under the Public Vessels Act and Suits in Admiralty Act against the Department of the Navy in the name of the United States and all individuals who have instituted suits against third parties who have impleaded the Department of the Navy in the name of the United States. All individuals against whom the Navy has claims sounding in tort, and all individuals who are in the military or are dependents of military members and have been provided medical care by a Naval medical facility for injuries resulting from such tortious conduct. All common carriers against whom recovery has been sought by the Department of the Navy.

Categories of records in the system:

Individual's name, social security number, office processing the claim, dollar amount of claim, dollar amount paid, type of claim, type of property damage, type of personal injury, date of incident that caused the claim, date the claim was presented to the Navy, date payment was made or claim was closed, amount claimed against individual, amount received from individual, location of incident, and government bill of lading (if applicable).

Authority for maintenance of the system:

Federal Tort Claims Act (28 U.S.C. 1346(b), 2671-2680); 32 CFR 750.30-750.49; Medical Care Recovery Act(42 U.S.C. 2651-53); Federal Claims Collection Act (31 U.S.C. 951-53); 32 CFR 757.1-757.21; Foreign Claims Act (10 U.S.C. 2734); 32 CFR 753.1-753.29; Military Claims Act (10 U.S.C. 2733); 32 CFR 750.50-750.59; 'Nonscope' Claims Act (10 U.S.C. 2737); 32CFR 750.60-750.69; mILITARY AND cIVILIAN Employees Claims Act (31 U.S.C. 240-243); 32 CFR 751.0-751.3; Legislative Reorganization Act (10 U.S.C. 1552); Admiralty Claims Act (10 U.S.C. 7622); 39 U.S.C. 712; 5 U.S.C. 30; 5 U.S.C. 301; 44 U.S.C. 3101; and 31 U.S.C. 231.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

The officials and employees of the Department of the Navy in the performance of their official duties related to monitoring the current status of the Navy claims program. The officials and employees of the Military Traffic Management Command in the performance of their official duties related to the management of the Department of Defense personal property movement and storage program. The system will be used to report contingent liability to the government accounting office to satisfy requirements of the GAO Policy and Procedures Manual. The cognizant U.S. Attorney and/or officials and employees of the Department of Justice who are charged with responsibility for either initiating civil actions or defending civil actions arising under the aforementioned claims statutes, and for prosecuting civil or criminal cases under the False Claims Act (31 U.S.C. 231).

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Records are maintained on magnetic disk, magnetic tape, and hard copy forms.

Retrievability:

ACIS users obtain information by means of either a query or a request for a standard report. Data may be indexed by any data item although the primary search keys are the name or social security number.

Safeguards:

Access to building is protected by uniformed guards requiring positive identification for admission after hours. The system is protected by the following software features; user account number and password sign-on, data base authority, set and item authority for list, add, delete and update.

Retention and disposal:

An individual's record is retained on disk and will be available for on-line access for three years after the close of the individual's claim. The record will be transferred to magnetic tape after three years and will be utilized in a batch processing mode. After ten years, the record will be erased from the tape.

System manager(s) and address:

Head, Claims Defense Program, Office of the Judge Advocate General, Department of the Navy, 200 Stovall Street, Alexandria, Va 22332.

Notification procedure:

Information should be obtained from the System MANAGER. rEQUESTING INDIVIDUALS SHOULD specify their full names. Visitors should be able to identify themselves by any commonly recognized evidence of identity. Written requests must be signed by the requesting individual.

Record access procedures:

The agency's rules for access to records may be obtained from the System Manager.

Contesting record procedures:

The agency's rules for contesting contents and appealing initial determinations by the individual concerned may be obtained from the system manager.

Record source categories:

Information in this system comes from the individual to whom it applies and from offices processing claims.

Systems exempted from certain provisions of the act:

None.

N00013 A

System name:

JAG Manual Investigative Records

System location:

Office of the Judge Advocate General (Code 21) Department of the Navy 200 Stovall St, Alexandria, Va 22332

Categories of individuals covered by the system:

Any individual who participated in, who was involved in, who incurred an injury, disease, or death in, who was intoxicated (drugs or alcohol) during, before, or after, or who had an interest in any accident, incident, transaction, or situation involving or affecting the Department of the Navy, naval personnel, or any procedure, operation, material, or design involving the Department of the Navy.

Categories of records in the system:

The records contain all documented evidence relevant to the item under investigation, together with an investigating officer's report, which makes findings of fact and expresses opinions and recommendations, the reviewing authority's actions which either approved or modified the investigating officer's report or returned the entire record for further investigation or remedial action to perfect the record, and, the results of hearings afforded persons who incurred injuries and diseases, to allow them to explain or rebut adverse information in the record. The Judge Advocate General's correspondence to locate and obtain required investigations is also included in the record. Some records contain only a field command's explanation as to why investigation is not required, together with documents pertinent to this lack of requirement. Some records con-

tain only an accident, injury, or death report, prepared for the Department of the Navy by the Army, Air Force, Coast Guard, or other agency under reciprocal agreements, in situations where the Navy or Marine Corps could not conduct the investigation.

Authority for maintenance of the system:

Requirement that enlisted men make up time lost due to misconduct or abuse of alcohol or drugs (10 U.S.C. 972(5)); retirement or separation for physical disability (10 U.S.C. 1201-1221); Executive Order 11476, Manual for Court-Martial, par. 133b; Uniform Code of Military Justice, 10 U.S.C. 815, 832, 869, 873, 935, 936, and 938-940; Military Claims Act (10 U.S.C. 2733); Foreign Claims Act (10 U.S.C. 3724, 2734a, 2734b); Emergency payment of claims (10 U.S.C. 2736); Non-scope claims (10 U.S.C. 2737); Duties of Secretary of the Navy (10 U.S.C. 5031); Duties of the Office of the Chief of Naval Operations (10 U.S.C. 5081-5082, 5085-5088); Duties of the Bureaus and Offices of the Department of the Navy and duties of the Judge Advocate General (10 U.S.C. 5131-5153); Duties of the Commandant of the Marine Corps (U.S.C. 5201); Reservist's disability and death benefits (10 U.S.C. 6148); Requirement of exemplary conduct (10 U.S.C. 5947); Promotion of accident and occupational safety by Secretary of the Navy (10 U.S.C. 7205); Admiralty claims (10 U.S.C. 7622-23); Public Vessels Act (46 U.S.C. 781-790); Suits in Admiralty Act (46 U.S.C. 741-752); Admiralty Extension Act (46 U.S.C. 740); Transportation Safety Act (49 U.S.C. 1901); Federal Tort Claims Act (28 U.S.C. 1346, 2671-2680); Financial liability of accountable officers (31 U.S.C. 82, 89-92); Military Personnel and Civilian Employee's Claims Act of 1964, as amended (31 U.S.C. 240243); Federal Claim Collection Acts (31 U.S.C. 71-75, 951-953); Forfeiture of pay for time lost due to incapacitation caused by alcohol or drug use (37 U.S.C. 802); Eligibility for certain veterans benefits (38 U.S.C. 105); Postal claims (39 U.S.C. 712); Medical Care Recovery Act (42 U.S.C. 2651-2653); General authority to maintain records (5 U.S.C. 301); Records management by agency heads (44 U.S.C. 3101).

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

JAG Manual Investigative Records are used internally within the Department of the Navy as bases for evaluating procedures operations, material, and designs with a view to improving the efficiency and safety of the Department of the Navy; determinations concerning status of personnel regarding disability benefits, entitlements to pay during periods of disability, severance pay, retirement pay, increases of pay for longevity, survivors' benefits, and involuntary extensions of enlistments, dates of expiration of active obligated service and accrual of annual leave; determinations concerning relief of accountable personnel from liability for losses of public funds or property; determinations pertaining to disciplinary or punitive action and evaluation of petitions, grievances, and complaints; adjudication, pursuit, or defense of claims for or against the Government; and public information releases. Records of such investigations are routinely furnished to the Veterans Administration for use in determinations concerning entitlements to veterans and survivors' benefits; to Servicemen's Group Life Insurance administrators for determinations concerning payment of life insurance proceeds; to the U.S. General Accounting Office for purposes of determinations concerning relief of accountable personnel from liability for losses of public funds and related fiscal matters; to the Department of Justice for use in litigation involving the Government; to agents and authorized representatives of persons involved in the incident, for use in legal or administrative matters; to contractors for use in connection with settlement, adjudication, or defense of claims by or against the Government, and for use in design and evaluation of products, services, and systems; to agencies of the Federal, State, or local law enforcement authorities, court authorities, administrative authorities, and regulatory authorities, for use in connection with civilian and military criminal, civil, administrative, and regulatory proceedings and actions. Additionally, these records may be furnished to other components of the Department of Defense in connection with the above-stated purposes.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Paper documents stapled together (with real evidence, if any, attached) in paper file folders and stored in metal file cabinets, on shelves, and in cardboard boxes.

Retrievability:

Records are filed by calendar year groupings by surname of individual, bureau number of aircraft, name of ship, hull number of unnamed watercraft, or vehicle number of Government vehicles. Incidents are topically cross-referenced.

Safeguards:

Files are maintained in file cabinets and other storage devices under the control of authorized personnel during working hours; the office spaces in which the file cabinets and storage devices are located are locked outside official working hours.

Retention and disposal:

The records are retained permanently. All naval activities which prepare JAG Manual Investigative Records, or which are intermediate addressees, typically retain duplicate copies in local files for a two-year period.

System manager(s) and address:

Assistant Judge Advocate General (Civil Law) Office of the Judge Advocate General, Department of the Navy, 200 Stovall St., Alexandria, Va. 22332

Notification procedure:

Information may be obtained by written request to the system manager. The request must contain the following: (a) an adequate description of the individual about whom the record is retained (e.g., full name, date of birth, etc.); (b) the calendar year to be searched, and the approximate date of the incident which was the subject of the investigation; (c) a signed and notarized statement of the identity of the requester; (d) the present mailing address of the requester, including ZIP code; (e) the present day-time telephone number of the requester, including area code; (f) the request must be signed by the individual. No telephone inquiries will be processed.

Record access procedures:

Requests from individuals for access should be addressed to the system manager. The request must include a signed and notarized statement of identity. Personal visits may be made to: Office of the Judge Advocate General (code 21) Investigations Division Room 8s23 Hoffman Bldg II 200 Stovall Street Alexandria, Va 22332

Contesting record procedures:

The agency's rules for access to records and for contesting contents and appealing initial determinations by the individual concerned may be obtained from the system manager.

Record source categories:

Records of JAG Manual Investigations are compilations of evidence, information, and data concerning the circumstances of incidents, accidents, events, transactions, and situations, prepared by administrative fact-finding bodies for utilization by proper authorities in making determinations, decisions, or evaluations relating to the matters under investigation. Records may contain: (1) testimony or statements of individuals who are parties to the investigations, witnesses, and others having pertinent knowledge concerning matters under investigation; (2) documentary evidence, typically including records and reports of military or Federal, State, or foreign, civilian law-enforcement investigative, judicial, or corrections authorities; medical records and reports, investigations and accident and injury reports prepared by Federal, State, or foreign governmental agencies or other organizations or persons; court records and other public records; official logs and other official naval records; letters and correspondence; personnel, pay, and medical records; financial records, receipts, and cost estimates; publications, and other pertinent documents and writings; (3) pertinent real evidence; and (4) pertinent demonstrative evidence.

Systems exempted from certain provisions of the act:

None.

N00013 O

System name:

Roster, Naval Reserve Law Companies

System location:

Office of the Judge Advocate General (Code 62) Department of the Navy, 200 Stovall St., Alexandria, Va 22332

Categories of individuals covered by the system:

Listing of law program officers in Naval districts having cognizance over Reserve affairs; listing of Naval Legal Service Offices; listing of the staff of the Director, Naval Reserve Law Programs; listing of Naval Reserve Law Company commanding officers; and listing of members of the law companies.

Categories of records in the system:

Roster contains names and locations of personnel associated with Naval Reserve Law Programs; names of members of law companies, social security number, rank, home and office addresses, name of spouse, and telephone numbers.

Authority for maintenance of the system:

10 USC 806

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

The roster is issued for the purpose of facilitating and promoting liaison between Naval Reserve Law Companies, law program officers, the Director, Naval Reserve Law Programs, and his staff, and the Navy's legal assistance program. It is an essential publication for use by legal assistance officers throughout the Navy. It apprises Naval Reserve officers of the locations of Reserve units in order that they may participate in the reserve law programs. These rosters may be furnished to other components of the Department of Defense.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

File folders

Retrievability:

By names of members and location of Reserve units.

Safeguards:

Records are maintained under the control of authorized personnel during working hours; the office space in which the rosters are maintained is locked outside official working hours.

Retention and disposal:

Rosters are retained for approximately two years and destroyed when a new edition is published.

System manager(s) and address:

Assistant Judge Advocate General (Civil Law) Office of the Judge Advocate General Department of the Navy, 200 Stovall St., Alexandria, Va. 22332

Notification procedure:

Information may be obtained from the System Manager. Written requests must be signed by the requesting individual.

Record access procedures:

Requests from individuals should be addressed to the System Manager. Personal visits may be made to: Reserve Personnel Division Office of the Judge Advocate Room 9s05 Hoffman Bldg II 200 Stovall St. Alexandria, Va. 22332

Contesting record procedures:

The agency's rules for access to records and for contesting contents and appealing initial determinations by the individual concerned may be obtained from the SYSMANAGER

Record source categories:

Information is received from Reserve officers who participate in the Naval Reserve Law Programs.

Systems exempted from certain provisions of the act:

None

N00013 1

System name:

General court-martial records of trial.

System location:

Office of the Judge Advocate General (code 20), Department of the Navy, 200 Stovall St., Alexandria, Va. 22332. Records, three years old or older, are stored at the Federal Records Center, Suitland, Maryland 20409.

Categories of individuals covered by the system:

Active duty Navy and Marine Corps personnel tried by general court-martial.

Categories of records in the system:

General court-martial records of trial.

Authority for maintenance of the system:

10 USC 865 and 5 USC 301.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Public Record.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

File folders.

Retrievability:

Files are kept by Navy court-martial number and each case is cross-referenced by an index card which is filed in alphabetical order according to the last name of the individual concerned.

Safeguards:

Files are maintained in file cabinets under the control of authorized personnel during working hours; the office space in which the file cabinets are located is locked outside official working hours.

Retention and disposal:

Records are maintained in office for three years and then forwarded to the Federal Records Center, Suitland, Maryland 20409 for storage.

System manager(s) and address:

Assistant Judge Advocate General (Civil Law), Office of the Judge Advocate General, Department of the Navy, 200 Stovall St., Alexandria, Va. 22332.

Notification procedure:

Information may be obtained by written request which adequately identifies the system of records and the individual about whom the record is kept (i.e., full name and date of trial of individual concerned). The written request must be signed by the requesting individual. Personal visits may be made to the Military Justice Division, Office of the Judge Advocate General, Department of the Navy, Room 9s09, Hoffman Bldg, 200 Stovall St., Alexandria, Va. 22332. Individuals making such visits should be able to provide some acceptable identification, e.g., Armed Forces identification card, driver's license, etc.

Record access procedures:

The agency's rules for access to records may be obtained from the system manager.

Contesting record procedures:

The agency's rules for contesting contents and appealing initial determinations by the individual concerned may be obtained from the system manager.

Record source categories:

Proceedings by a general court-martial.

Systems exempted from certain provisions of the act:

NONE

N00013 11

System name:

Determinations on Origins of Disabilities For Which Military Members Have Retired

System location:

Office of the Judge Advocate General (code 12), Department of the Navy, 200 Stovall St., Alexandria, Va. 22332.

Categories of individuals covered by the system:

Retired or former members of the Navy or Marine Corps who have been placed on the Temporary Disability Retired List or Permanent Disability Retired List and who have subsequently obtained or applied for Federal civilian employment.

Categories of records in the system:

Requests originated by individuals concerned or any federal agencies employing such individuals; Bureau of Medicine and Surgery historical narratives and opinions concerning the origins of disabilities of individuals on whom determinations have been requested; copies of Judge Advocate General determinations; and related correspondence.

Authority for maintenance of the system:

5 U.S.C. 3502(a), 6303(a), 8332(c);
5 U.S.C. 301;
44 U.S.C. 3101.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Information is used as the basis for determinations concerning the eligibility of individuals of the above-described category to certain benefits connected with Federal civilian employment available to those disabled in combat with enemies of the United States or having disabilities caused by instrumentalities of war during periods of war. Determinations are rendered, upon request, to any Federal agencies employing members who retired from the naval service for disability. The information may be furnished to other components of the Department of Defense.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Records are maintained in file folders.

Retrievability:

By name of individual.

Safeguards:

Files are maintained in file cabinets under the control of authorized personnel during working hours; the office space in which the file cabinets are located is locked outside official working hours.

Retention and disposal:

Records are permanent and are retained indefinitely in the Office of the Judge Advocate General.

System manager(s) and address:

Assistant Judge Advocate General (Civil Law), Office of the Judge Advocate General, Department of the Navy, 200 Stovall St., Alexandria, Va. 22332.

Notification procedure:

Information may be obtained by written request to the System Manager stating the full name of the individual concerned and the approximate date on which relief was requested. Written request must be signed by the requesting individual. Visits may be made to: Civil Affairs Division (Code 12) Office of the Judge Advocate General Room 9n11, Hoffman Bldg II, 200 Stovall St., Alexandria, Va. 22332

Armed forces identification card or state driver's license is required for identification.

Record access procedures:

The agency's rules for access to records may be obtained from the System Manager.

Contesting record procedures:

The agency's rules for access to records and for contesting contents and appealing initial determinations by the individual concerned may be obtained from the System Manager.

Record source categories:

Employment information in the system is submitted by the individuals concerned or the Federal agencies employing them. Medical information in the system is obtained from the individuals' medical records, physical evaluation board records, and service records.

Systems exempted from certain provisions of the act:

NONE

N00013 12

System name:

Relief of Accountable Personnel From Liability For Losses of Public Funds

System location:

Office of the Judge Advocate General (code 12), Department of the Navy, 200 Stovall St., Alexandria, Va. 22332

Categories of individuals covered by the system:

Accountable Navy and Marine Corps military and civilian disbursing personnel and collection agents who request relief from liability for losses of public funds in their custody.

Categories of records in the system:

Copies of requests submitted by individuals of the above-stated category for grant of relief from liability, together with information voluntarily furnished by the affected individuals concerning the circumstances of losses of funds in their custody, and additional information derived from investigatory and audit reports and comments of forwarding endorsers concerning circumstances of losses.

Authority for maintenance of the system:

31 U.S.C. 95a., 82a-1, 82a-2;
5 U.S.C. 301
44 U.S.C. 3101

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Information is used as the basis for determinations within the Department of the Navy and the U.S. General Accounting Office as to whether the circumstances of particular losses of public funds warrant granting accountable individuals' requests for relief from liability. This information may be furnished to other components of the Department of Defense.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Records are maintained in file folders.

Retrievability:

By name of individual requesting relief.

Safeguards:

Files are maintained in file cabinets under the control of personnel during working hours; the office space in which the file cabinets are located is locked outside official working hours.

Retention and disposal:

Records are permanent and are retained indefinitely in the Office of the Judge Advocate General. However, after three years, name indexes are destroyed, eliminating the capability for retrieval by the names of individuals. Thereafter, they are retrievable only by topical indexes arranged according to the legal issues involved.

System manager(s) and address:

Assistant Judge Advocate General (Civil Law), Office of the Judge Advocate General, Department of the Navy, 200 Stovall St., Alexandria, Va. 22332

Notification procedure:

Information may be obtained by written request to the system manager stating the full name of the individual concerned and the approximate date on which relief was requested. Written requests must be signed by the requesting individual. visits may be made to: Civil Affairs Division (code 12), Office of the Judge Advocate General, Room 9n11, Hoffman Bldg II, 200 Stovall St., Alexandria, Va. 22332. Armed forces identification card or state driver's license is required for identification.

Record access procedures:

The agency's rules for access to records may be obtained from the system manager.

Contesting record procedures:

The agency's rules for access to records and for contesting contents and appealing initial determinations by the individual concerned may be obtained from the system manager.

Record source categories:

Information in the system is furnished partly by the individual requesting relief, and is supplemented by reports of Department of the Navy audits and investigations pertaining to the particular losses of funds involved. Additional amplifying information is typically furnished by officers forwarding requests to the Secretary of the Navy.

Systems exempted from certain provisions of the act:

NONE.

N00013 13

System name:

Conflicts of interest and employment activities.

System location:

Office of the Judge Advocate General (code 12), Department of the Navy, 200 Stovall St., Alexandria, Va. 22332.

Categories of individuals covered by the system:

Active duty, reserve, or retired military personnel and present and former civilian employees of the Navy or Marine Corps who, by reason of their own inquiries or inquiries or complaints of Department of the Navy or other Federal officials or other appropriate persons, have been the subject of correspondence with the Judge Advocate General concerning the legality of outside Federal, State, or private employment or financial interests, dual Federal employment, post-retirement employment, defense related employment, or foreign employment; acceptance of gifts, gratuities. or benefits from Government contractors, foreign governments, or other sources, or other possible violations of Federal conflicts-of-interest or standards-of-conduct laws or regulations.

Categories of records in the system:

Correspondence from, to, or concerning, individuals of the above stated category regarding thier current, past, or prospective outside Federal, State, or private employment; defense-related employment; post-retirement employment; foreign employment; dual Federal employment; acceptance of gifts, gratuities, or benefits from Government contractors, foreign governments, or other questionable sources; or other possible violations of conflicts-of-interest or standards-of-conduct laws or regulations. Additionally, such records sometimes include copies of statements of employment submitted by retired military personnel to the Navy Finance Center and referred to the Judge Advocate General for review and further action, and copies of investigative reports concerning suspected violations of pertinent laws or regulations.

Authority for maintenance of the system:

5 U.S.C. 3326, 5532; 10 U.S.C. 973, 974, 1032, 6223;
18 U.S.C. 202, 203, 205, 207, 209, 219, 281, 283;
37 U.S.C. 801;
U.S. Const., Art. I, 9, cl 8;
5 U.S.C. 301;
44 U.S.C. 3101.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Information is used as the basis for advisory opinions on the legality of employment activities, financial interests, and the related conflicts-of-interest and standards-of-conduct questions described above. Information may be furnished to other components of the Department of Defense, the U.S. General Accounting Office, the Department of Justice, and the Civil Service Commission in instances of suspected violations of pertinent laws or regulations.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Records are maintained in file folders.

Retrievability:

By name of individual.

Safeguards:

Files are maintained in file cabinets under the immediate control of authorized personnel during working hours; the office space in which the file cabinets are located is locked outside official working hours.

Retention and disposal:

Records are permanent and are retained indefinitely in the Office of the Judge Advocate General. However, after five years, name indexes are destroyed, eliminating the capability for retrieval by the names of individuals. Thereafter, they are retrievable only by topical indexes arranged according to the legal issues involved.

System manager(s) and address:

Assistant Judge Advocate General (Civil Law), Office of the Judge Advocate General, Department of the Navy, 200 Stovall St., Alexandria, Va., 22332

Notification procedure:

Information may be obtained by written request to the system manager stating the full name of the individual concerned. Written requests must be signed by the requesting individual. Visits may be made to: Civil Affairs Division (code 12), Office of the Judge Advocate General, Room 9n11, Hoffman Bldg II, 200 Stovall St., Alexandria, Va. 22332. Armed forces identification card or state driver's license is required for identification.

Record access procedures:

The agency's rules for access to records may be obtained from the system manager.

Contesting record procedures:

The agency's rules for access to records and for contesting contents and appealing initial determinations by the individual concerned may be obtained from the sstem manager.

Record source categories:

Information in the system is furnished by the individual and is supplemented by correspondence from Federal officials; current, past, and prospective employers; other interested persons regarding possible conflicts of interest and employment activities; and by investigations pertaining to particular suspected violations. Additional information in the form of statements of employment is forwarded by officers of the Navy Finance Center to the Judge Advocate General for review and further action.

Systems exempted from certain provisions of the act:

NONE.

N00013 17

System name:

Summary courts-martial and non-bad conduct discharge courts-martial--navy and marine corps

System location:

Records are retained for two years after final action by appropriate officers having supervisory authority over shore activities. Records are retained for three months after final action by appropriate officers having supervisory authority over fleet activities, including Fleet Air Wings and Fleet Marine Forces. After the two years or three month retention period, as appropriate, the records are transferred to the National Personnel Records Center, GSA (Military Personnel Records), 9700 Page Boulevard, St. Louis, Missouri 63132.

Categories of individuals covered by the system:

Navy and Marine Corps enlisted personnel tried by summary courtmartial or by special court-martial which did not result in a bad conduct discharge.

Categories of records in the system:

Summary court-martial and non-bad conduct discharge special court-martial records of trial.

Authority for maintenance of the system:

10 U.S.C. 865, 5 U.S.C. 301, and Executive Order No. 11476 of June 19, 1969, as amended by Executive Order No. 11835 of January 27, 1975, paragraph 96b (manual for courts-martial, 1969 (rev.))

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Public record.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

File folders.

Retrievability:

Type of court-martial, date, command which convened the court-martial, name of individual defendant, and command which completed the supervisory authority's action.

Safeguards:

Files are maintained in file cabinets and other storage devices under the control of authorized personnel during working hours; the office space in which the file cabinets and storage devices are located is locked outside official working hours.

Retention and disposal:

Records are retained for two years after final action by officers having supervisory authority over shore activities, and for three months by officers having supervisory authority over fleet activities. At the termination of the appropriate retention period, records are forwarded for storage to the National Personnel Records Center, GSA (Military Personnel Records), 9700 Page Boulevard, St. Louis, Missouri 63132. Records are destroyed 15 years after final action has been taken.

System manager(s) and address:

Assistant Judge Advocate General (Civil Law), Office of the Judge Advocate General, Department of the Navy, 200 Stovall St., Alexandria, Va. 22332

Notification procedure:

Information may be obtained from the Deputy Assistant Judge Advocate General (military justice), Office of the Judge Advocate General, Department of the Navy, 200 Stovall St., Alexandria, Va. 22332., by written request including the full name of the individual concerned, the type of court-martial (summary or special), the name of the command which held the court-martial, and the date of the court-martial proceedings. Written requests must be signed by the requesting individual. Personal visits may be made to the Military Justice Division, Office of the Judge Advocate General, Room 9s09, Hoffman Bldg II, 200 Stovall St., Alexandria, Va., 22332. Individuals making such visits should be able to provide some acceptable identification, e.g. armed forces identification cards, driver's license, etc.

Record access procedures:

The agency's rules for access to records may be obtained from the system manager.

Contesting record procedures:

The agency's rules for contesting contents and appealing initial determinations by the individual concerned may be obtained from the system manager.

Record source categories:

Proceedings of summary courts-martial and special courts-martial which did not result in a bad conduct discharge.

Systems exempted from certain provisions of the act:

None.

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System name:

Special courts-martial resulting in bad conduct discharges or concerning commissioned officers.

System location:

Office of the Judge Advocate General (code 20), Department of the Navy, 200 Stovall st., Alexandria, Va. 22332. Records, three years old or older, are stored at the Federal Records Center, Suitland, Maryland 20409.

Categories of individuals covered by the system:

Navy and Marine Corps personnel tried by special court-martial and awarded a bad conduct discharge, and all Navy and Marine Corps commissioned officers tried by special court-martial.

Categories of records in the system:

Special court-martial which resulted in a bad conduct discharge, or involving commissioned officers.

Authority for maintenance of the system:

10 U.S.C. 865, 5 U.S.C. 301 and Executive Order No. 11476 of June 19, 1969, as amended by Executive Order No. 11835 of January 27, 1975, paragraph 5-6b (manual for courts-martial, 1969 (rev.))

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Public Record.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

File folders.

Retrievability:

Files are kept by Navy court-martial number and each case is cross-referenced by an index card which is filed in alphabetical order according to the last name of the individual concerned.

Safeguards:

Files are maintained in file cabinets and other storage devices under the control of authorized personnel during working hours; the office space in which the file cabinets and storage devices are located is locked outside official working hours.

Retention and disposal:

Records are maintained in office for three years and then forwarded to the Federal Records Center, Suitland, Maryland 20409 for storage.

System manager(s) and address:

Assistant Judge Advocate General (Civil Law), Office of the Judge Advocate General, Department of the Navy, 200 Stovall St, Alexandria, Va. 22332.

Notification procedure:

Information may be obtained from the Deputy Assistant Judge Advocate General (military justice), Office of the Judge Advocate General, Department of the Navy, 200 Stovall St., Alexandria, Va. 22332, by written request stating full name, and date of trial of the individual concerned. Written requests must be signed by the requesting individual. Personal visits may be made to the Military Justice Division, Office of the Judge Advocate General, Room 9s09, Hoffman Bldg II, 200 Stovall St., Alexandria, Va. 22332. Individuals making such visits should be able to provide some acceptable identification, e.g. armed forces identification card, driver's license, etc.

Record access procedures:

The agency's rules for access to records may be obtained from the system manager.

Contesting record procedures:

The agency's rules for contesting contents and appealing initial determinations by the individual concerned may be obtained from the system manager.

Record source categories:

Special court-martial proceedings.

Systems exempted from certain provisions of the act:

NONE.

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System name:

Article 138 Complaint of Wrongs

System location:

Office of the Judge Advocate General (Code 20), Department of the Navy, 200 Stovall St., Alexandria, Va. 22332. Complaints, three years old or older, are stored at the Federal Records Center, Suitland, Maryland 20409.

Categories of individuals covered by the system:

Active duty Navy and Marine Corps personnel who have submitted complaints of wrong pursuant to Article 138, UCMJ, which have been forwarded to the Secretary of the Navy for final review of the complaint and the proceedings had thereon.

Categories of records in the system:

The complaint and all proceedings had thereon.

Authority for maintenance of the system:

Article 138, Uniform Code of Military Justice, (10 U.S.C. 938).

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

No routine use after complaint is resolved.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

File folders.

Retrievability:

Files are kept in alphabetical order according to last name of the individual concerned.

Safeguards:

Files are maintained in file cabinets and other storage devices under control of authorized personnel during working hours; the office spaces in which the file cabinets and storage devices are located is locked outside office working hours.

Retention and disposal:

Complaints are maintained in office for three years and then forwarded to the Federal Records Center, Suitland, Maryland 20409 for storage.

System manager(s) and address:

Assistant Judge Advocate General (Civil Law), Office of the Judge Advocate General, Department of the Navy, 200 Stovall St., Alexandria, Va. 22332.

Notification procedure:

Information may be obtained from the Deputy Assistant Judge Advocate General (Military Justice), Office of the Judge Advocate General, Department of the Navy, 200 Stovall St., Alexandria, Va. 22332. Information may be obtained by written request to the Judge Advocate General stating full name and the approximate date the complaint was submitted for review if known. Written requests must be signed by the requesting individual. Personal visits may be made to the Military Justice Division, Office of the Judge Advocate General, Room 9s09, Hoffman Bldg II, 200 Stovall St, Alexandria, Va. 22332. Individuals making such visits should be able to provide some acceptable identification, e.g. armed forces identification card, driver's license, etc.

Record access procedures:

The agency's rules for access to records may be obtained from the system manager.

Contesting record procedures:

The agency's rules for contesting contents and appealing initial determinations by the individual concerned may be obtained from the system manager.

Record source categories:

The records are comprised of the following source materials: (1) complaint of wrongs; (2) results of examination into complaint of wrongs by the general court-martial authority; and (3) final review action by the Secretary of the Navy.

Systems exempted from certain provisions of the act:

None.

N00013 4

System name:

Article 69 Petitions

System location:

Office of the Judge Advocate General General (code 20), Department of the Navy, 200 Stovall St., Alexandria, Va. 22332. Petitions three years old or older are stored at the Federal Records Center, Suitland, Maryland 20409.

Categories of individuals covered by the system:

Navy and Marine Corps personnel who were tried by courts-martial which were not reviewed by the Navy Court of Military Review and when such service member has petitioned the Judge Advocate General pursuant to Article 69, Uniform Code of Military Justice, for review.

Categories of records in the system:

Files contain individual service member's petition together with all forwarding endorsements and copy of action taken by the Judge Advocate General with supporting memorandum.

Authority for maintenance of the system:

Article 69, Uniform Code of Military Justice (10 USC 869).

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Public record.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

File folders.

Retrievability:

Records are maintained in chronological calendar order with alphabetical cross-referencing system.

Safeguards:

Files are maintained in file cabinets and other storage devices under the control of authorized personnel during working hours; the office spaces in which the file cabinets and storage devices are located is locked outside official working hours.

Retention and disposal:

Records are maintained in office for three years and then forwarded to the Federal Records Center, Suitland, Maryland 20409 for storage.

System manager(s) and address:

Assistant Judge Advocate General (Civil Law), Office of the Judge Advocate General, Department of the Navy, 200 Stovall St., Alexandria, Va. 22332.

Notification procedure:

Information may be obtained from the Deputy Assistant Judge Advocate General (military justice), Office of the Judge Advocate General, Department of the Navy, 200 Stovall St., Alexandria, Va. 22332. Information may be obtained by written request to the Judge Advocate General stating full name of the individual concerned. Written requests must be signed by the requesting individual. Personal visits may be made to the Military Justice Division, Office of the Judge Advocate General, Room 9s09, Hoffman Bldg II, 200 Stovall St., Alexandria, Va. 22332. Individuals making such visits should be able to provide some acceptable identification, e.g. Armed Forces identification card, driver's license, etc.

Record access procedures:

The agency's rules for access to records may be obtained from the system manager.

Contesting record procedures:

The agency's rules for contesting contents and appealing initial determinations by the individual concerned may be obtained from the System Manager.

Record source categories:

The records comprise the following source materials: (1) petitions for relief, (2) forwarding endorsements thereon by petitioner's commanding officer and convening/supervisory authorities of court-martial (above information is omitted if petitioner is former service member), and (3) action of the Judge Advocate General on petition.

Systems exempted from certain provisions of the act:

None.

N00013 5

System name:

Court-martial statistics.

System location:

Magnetic tape held at Naval Command Systems Support Activity, Production Code 60.1, room 4002, building 196, Washington Navy Yard, Washington, D.C. 20360. Source document (NAVJAG 5813/1) held in Promulgation and Statistics Branch, Office of the Judge Advocate General, Department of the Navy, 200 Stovall St., Alexandria, Va. 22332.

Categories of individuals covered by the system:

Navy and Marine Corps personnel tried by general courts-martial and by special courts-martial when the special court-martial sentence as finally approved includes a punitive discharge.

Categories of records in the system:

Court-martial information on special courts-martial if sentence as finally approved includes a punitive discharge and all general courts-martial including name, social security number, pleas, convening authority action, supervisory authority action, and Court of Military Review action. Information available from 1970 to present only.

Authority for maintenance of the system:

5 USC 301

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Provide statistical information on general and bad conduct discharge special courts-martial to governmental, public, and private organizations and individuals.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Magnetic tape and source documents (NAVJAG 5813/1) if file folders.

Retrievability:

Name and social security number or Navy court-martial number.

Safeguards:

Tapes stored in secret vault. Without project code number, tape can neither be read nor added to. Only person who has code number is Project Code Officer. Source documents are filed in file cabinets which are located in an office which is under observation during working hours and is locked at night. The office is located in a secure building which is surrounded by a guarded fence. The building is guarded 24 hours a day, and admission is allowed only to personnel on official business and authorized visitors.

Retention and disposal:

Idefinite.

System manager(s) and address:

Assistant Judge Advocate General (Civil Law), Office of the Judge Advocate General, Department of the Navy, 200 Stovall St, Alexandria, Va. 22332.

Notification procedure:

Information may be obtained from the Deputy Assistant Judge Advocate General (military justice), Office of the Judge Advocate General, Department of the Navy, 200 Stovall St., Alexandria, Va. 22332. Information may be obtained by written request to the Judge Advocate General stating full name, date of trial (if known), date of discharge and type of discharge of the individual concerned. Written requests must be signed by the requesting individual. Personal visits may be made to: The Military Justice Division, Office of the Judge Advocate General, Room 9s09, Hoffman Bldg II, 200 Stovall St., Alexandria, Va. 22332. Individuals must be able to provide some acceptable identification, e.g. Armed Forces identification card, driver's license, etc.

Record access procedures:

The agency's rules for access to records may be obtained from the system manager.

Contesting record procedures:

The agency's rules for contesting contents and appealing initial determinations by the individual concerned may be obtained from the system manager.

Record source categories:

Form NAVJAG (Navy Judge Advocate General) 5813/1.

Systems exempted from certain provisions of the act:

None.

N00013 6

System name:

Ethics file.

System location:

Office of the Judge Advocate General (code 20), Department of the Navy, 200 Stovall St., Alexandria, Va. 22332.

Categories of individuals covered by the system:

Civilian and military lawyers authorized to practice before a court-martial or Navy Court of Military Review and who by their personal or professional conduct have demonstrated that they are so lacking in competency, integrity or ethical or moral character as to be unacceptable as counsel before a court-martial or Navy Court of Military Review.

Categories of records in the system:

Reports of investigation, correspondence, and court papers relating to the complaint brought against attorneys.

Authority for maintenance of the system:

Manual of the Judge Advocate General, section 0142, and 5 USC 301.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

No routine use after file is closed. The information may be furnished to other Department of Defense components and State and Federal governmental organizations before they are closed.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

File folders.

Retrievability:

Files are kept in alphabetical order according to the last name of the attorney concerned.

Safeguards:

Files are maintained in file cabinets and other storage devices under the control of authorized personnel during working hours; the

office space in which the file cabinets and storage devices are located is locked outside official working hours.

Retention and disposal:

Records are maintained in office for two years and then forwarded to the Federal Records Center, Suitland, Maryland 20409 for storage.

System manager(s) and address:

Assistant Judge Advocate General (Civil Law), Office of the Judge Advocate General, Department of the Navy, 200 Stovall St., Alexandria, Va. 22332.

Notification procedure:

Information may be obtained from the Deputy Assistant Judge Advocate General (military justice), Office of the Judge Advocate General, Department of the Navy, 200 Stovall St., Alexandria, Va. 22332. Information may be obtained by written request to the Judge Advocate General stating full name of the individual concerned. Written requests must be signed by the requesting individual. Personal visits may be made to the Military Justice Division, Office of the Judge Advocate General, Room 9s09, Hoffman Bldg II, 200 Stovall St., Alexandria, Va. 22332. Individuals making such visits should be able to provide some acceptable identification, e.g. Armed Forces identification card, driver's license, etc.

Record access procedures:

The agency's rules for access to records may be obtained from the system manager.

Contesting record procedures:

The agency's rules for contesting contents and appealing initial determinations by the individual concerned may be obtained from the system manager.

Record source categories:

Correspondence from military judges, staff judge advocates, judge advocates, and other military personnel; correspondence from the Judge Advocates General of other branches of the Armed Forces; investigative reports from Naval Investigative Service offices; correspondence and copies of court papers from civilian authorities.

Systems exempted from certain provisions of the act:

None.

N00013 7

System name:

Litigation Case File

System location:

Office of the Judge Advocate General, Department of the Navy, 200 Stovall St., Alexandria, Va. 22332.

Categories of individuals covered by the system:

All those individuals who have brought suit against, or have been involved in litigation with the United States or its officers or employees concerning matters related to the Department of the Navy, in the Federal Civil Court System, excepting those cases arising in admiralty, or patent, under the Federal Tort Claims Act, and all matters under the responsibility of the General Counsel's Office.

Categories of records in the system:

All pleadings, motions, briefs, orders, decisions, memoranda, opinions, supporting documentation and related materials involved in representing the United States Navy and Marine Corps in the Federal Court System.

Authority for maintenance of the system:

5 U.S.C. 301, 10 U.S.C. 5148, and 44 U.S.C. 3101.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

The collected information is used to defend the Department of the NAVY IN CIVIL suits filed against it in the Federal Court System. Routine users of the information, in addition to the Litigation Division, Office of the Judge Advocate General of the Navy, are the Department of Justice and the United States Attorneys offices assigned to the particular case.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Maintained in file folders.

Retrievability:

Retrievable by last name of the litigant.

Safeguards:

Records are maintained in file cabinets accessible only to persons responsible for servicing the record system in performing their official duties.

Retention and disposal:

Retained in office files for two years, then retired to Washington National Records Center, Washington, D.C. 20409; detroy 10 years after final action, on the case.

System manager(s) and address:

Judge Advocate General, Department of the Navy, 200 Stovall St., Alexandria, Va. 22332.

Notification procedure:

Information may be obtained from the system manager.

Record access procedures:

Access is not permitted to this system. See 5 U.S.C.C 552a (d) (5).

Contesting record procedures:

The Navy's rules for access to records and for contesting and appealing initial determinations by the individual concerned may be obtained from the system manager.

Record source categories:

Navy Military Personnel Records Center, St. Louis; Department of Justice, opposing counsel.

Systems exempted from certain provisions of the act: None.

N00013B

System name:

Article 73 petitions for new trial.

System location:

Office of the Judge Advocate General (code 20), Department of the Navy, 200 Stovall St., Alexandria, Va. 22332.

Categories of individuals covered by the system:

Navy and Marine Corps personnel who submitted petitions for new trial to the Judge Advocate General within two years after approval of their court-martial sentence by the convening authority but after their case had been reviewed by the Navy Court of Military Review or Court of Military Appeals, if appropriate.

Categories of records in the system:

The petition for new trial, the forwarding endorsements if the petition was submitted via the chain of command, and the action of the Judge Advocate General on the petition.

Authority for maintenance of the system:

Article 73, Uniform Code of Military Justice, (10 U.S.C. 873).

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

No routine use after action taken on petition.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

File folders.

Retrievability:

Files are kept in alphabetical order according to the last name of the individual concerned.

Safeguards:

Files are maintained in file cabinets and other storage devices under the control of authorized personnel durng working hours; the office space in which the file cabinets and storage devices are located is locked outside official working hours.

Retention and disposal:

Records are maintained in office for two years and then forwarded to the Federal Records Center, Suitland, Maryland 20409 for storage.

System manager(s) and address:

Assistant Judge Advocate General (Civil Law), Office of the Judge Advocate General, Department of the Navy, 200 Stovall St., Alexandria, Va. 22332.

Notification procedure:

Information may be obtained from the Deputy Assistant Judge Advocate General (Military Justice), Office of the Judge Advocate General, Department of the Navy, 200 Stovall St., Alexandria, Va. 22332. Information may be obtained by written request stating full name of the individual concerned. Written requests must be signed by the requesting individual. Personal visits may be made to the Military Justice Division, Office of the Judge Advocate General, Room 9s09, Hoffman Bldg II, 200 Stovall St., Alexandria, Va. 22332. Individuals should have the following items of identification: drivers license or military identification card.

Record access procedures:

The agency's rules for access to records may be obtained from the system manager.

Contesting record procedures:

The agency's rules for contesting contents and appealing initial determinations by the individual concerned may be obtained from the system manager.

Record source categories:

The records are comprised of the following source materials: (1) petitions for new trial; (2) forwarding endorsements thereon by petitioner's commanding officer and convening/supervisory authorities of court-martial (above information is omitted if petitioner is former service member); and (3) action of the Judge Advocate General on petitions.

Systems exempted from certain provisions of the act:

None.

N00013C

System name:

Legal Assistance Card Files

System location:

Typically maintained at Naval Legal Service Offices, the Naval Legal Service Branch Offices, and any command with a legal assistance office.

Categories of individuals covered by the system:

Authorized military and civilian personnel and dependents who have sought legal assistance from a legal assistance office established within the Department of the Navy.

Categories of records in the system:

Legal assistance card files typically contain client identification information, e.g., name, address, duty station, telephone numbers, etc., client description of legal problem, attorney classification of problem, and attorney time expended.

Authority for maintenance of the system:

5 U.S.C. 301; Manual of the Judge Advocate General, 1914; 44 U.S.C. 3101

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Time-accounting data is extracted from the card files for preparation of periodic legal assistance statistical reports; legal assistance attorneys refer to the card files to ascertain previous progress achieved toward disposition of the case. There are no other uses. Internal users are limited to legal assistance attorneys and assigned clerical personnel.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Pre-printed cards stored in file cabinets.

Retrievability:

Filed alphabetically by name of client.

Safeguards:

Cards are maintained in file cabinets or other storage devices under the control of authorized personnel during working hours; the office space in which the file cabinets and storage devices are located is locked outside of official working hours.

Retention and disposal:

Two years after disposition of the case or until the closing of the legal assistance office, then destroyed.

System manager(s) and address:

Assistant Judge Advocate General (Civil Law), Office of the Judge Advocate General, Department of the Navy, 200 Stovall St., Alexandria, Va. 22332.

Notification procedure:

Information may be obtained by written request which adequately identifies the system of records and the individual about whom the record is kept (i.e. full name, etc.); the written request must be signed by the requesting individual.

Record access procedures:

Requests from individuals should be addressed to the system manager. Written requests for access should contain the full name of the individual, current address and telephone number, and the serial code of any prior correspondence received from this office pertaining to the request. For personal visits, the individual should be able to provide some acceptable identification, e.g., driver's license, etc., and give some verbal information that could be verified in the file.

Contesting record procedures:

The agency's rules for contesting contents and appealing initial determinations may be obtained from the system manager.

Record source categories:

Basic information contained in the card files is provided by the client; information concerning the ultimate disposition of the case and time expended by the attorney is provided by the attorney.

Systems exempted from certain provisions of the act:

NONE

N00013D

System name:

Federal Tort Claims Files

System location:

Office of the Judge Advocate General, Offices of the Commandants of the Naval Districts, Naval Legal Service Offices, all overseas commands with a Navy Judge Advocate General Corps Officer or a Marine Corps judge advocate attached, and the Federal Records Center, Suitland, Maryland. Local commands with which claims under the Federal Tort Claims Act are initially filed typically retain copies of such claims and accompanying files. Official mailing addresses of these locations are included in the Department of Defense Directory in the appendix to this notice.

Categories of individuals covered by the system:

Any individuals who have filed claims against the Navy under the Federal Tort Claims Act.

Categories of records in the system:

The files may contain claims filed, correspondence, investigative reports, accident reports, medical and dental records, x-rays, allied reports (such as local police investigations, etc.), photographs drawings, legal memoranda, opinions of experts, and court documents.

Authority for maintenance of the system:

Federal Tort Claims Act (28 U.S.C. 1346(b), 2671-2680); 32 C.F.R. 750.30-750.49; 5 U.S.C. 301; 44 U.S.C. 3101.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

The files are used to evaluate claims for purposes of adjudication and litigation. The files are used by contractors in those cases in which they indemnify the United States. The files are provided to the Department of Justice to defend suits brought against the United States and may be furnished to other components of the Department of Defense. The files or portions thereof may be furnished to the claimant or his authorized representative, and for those claims for which payment is determined proper, the files or portions thereof may be provided to the Congress, the Department of Treasury, the Office of Management and Budget, and the General Accounting Office.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Paper records in file folders stored in file cabinets or other storage devices.

Retrievability:

Filed alphabetically by name of claimant.

Safeguards:

Files are maintained in file cabinets and other storage devices under the control of authorized personnel during working hours; the office space in which the file cabinets and storage devices are located is locked outside official working hours.

Retention and disposal:

Minimum-one year; maximum-permanent; typically files located in the Office of the Judge Advocate General are transferred to the Federal Records Center, Suitland, Maryland, three years after disposition of the case.

System manager(s) and address:

Assistant Judge Advocate General (Civil Law), Office of the Judge Advocate General Department of the Navy, 200 Stovall St., Alexandria, Va., 22332.

Notification procedure:

Information may be obtained from the System Manager. Requesting individuals should specify their full names. Visitors should be able to identify themselves by any commonly recognized evidence of identity. Written requests must be signed by the requesting individual.

Record access procedures:

Requests from individuals should be addressed to the System Manager. Written requests for access should contain the full name of the individual, current address and telephone number, and the serial code of any prior correspondence received from this office pertaining to

the request. For personal visits, the individual should be able to provide some acceptable identification, e.g. driver's license, etc., and give some verbal information that could be verified in the file.

Contesting record procedures:

The agency's rules for contesting contents and appealing initial determinations may be obtained from the System Manager.

Record source categories:

The sources of information contained in the files include the following: x-rays and medical and dental records from civilian and military doctors and medical facilities; investigative reports of accidents from military and municipal police agencies; reports of circumstances of incidents from operators of Government vehicles and equipment; witnesses; correspondence from claimants and their attorneys and insurance companies, state insurance commissions, United States Attorneys, and various other Government agencies with information concerning the claim.

Systems exempted from certain provisions of the act:

NONE

N00013E

System name:

Affirmative Claims Files

System location:

Office of the Judge Advocate General, Offices of the Commandants of the Naval districts; Naval Legal Service Offices, and Branch Offices of the Officers in Charge of U.S. Sending State Offices; overseas commands with a Navy or Marine Corps judge advocate attached; the Federal Records Center, Suitland, Maryland; and such other offices of officers as may be designated by the Judge Advocate General. Official mailing addresses of these locations are included in the Department of Defense Directory in the appendix of this notice.

Categories of individuals covered by the system:

All individuals against whom the Navy has claims sounding in tort, and all individuals who are in the military or are dependents of military members and have been provided medical care by a Naval medical facility for injuries resulting from such tortious conduct.

Categories of records in the system:

The files contain reports of injuries to individuals entitled to care at Navy expense, reports of damage to Navy property, x-rays, medical and dental records of treatment, and statements of charges therefor, military and municipal police and individual's reports of accidents, investigative reports, correspondence, legal research, and opinions.

Authority for maintenance of the system:

Medical Care Recovery Act (42 U.S.C. 2651-53); Federal Claims Collection Act (31 U.S.C. 951-53); 32 C.F.R. 757.1-757.21; 5 U.S.C. 301; 44 U.S.C. 3101.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

These records are used to futher efforts to collect such claims without litigation, for preparing litigation reports to the Department of Justice, and for use in civil litigation by the Department of Justice. In addition, the files may be furnished to insurance companies to support claims by documenting injuries or diseases for which treatment was provided at Government expense and to civilian attorneys representing the injured parties and the Government's interests. Finally, the files may be furnished to other components of the Department of Defense.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Paper records in file folder stored in file cabinets or other storage device.

Retrievability:

Filed alphabetically by name of the individual.

Safeguards:

Files are maintained in file cabinets and other storage devices under the control of authorized personnel during working hours; the office space in which the file cabinets and storage devices are located is locked outside of official working hours.

Retention and disposal:

Minimum-one year; maximum-permanent; typically files located in the Office of the Judge Advocate General are transferred to the Federal Records Center, Suitland, Maryland, three years after disposition of the case.

System manager(s) and address:

Assistant Judge Advocate General (Civil Law), Office of the Judge Advocate General, Department of the Navy, 200 Stovall St., Alexandria, Va. 22332.

Notification procedure:

Information may be obtained from the system manager. Requesting individuals should specify their full names. Visitors should be able to identify themselves by any commonly recognized evidence of identity. Written requests must be signed by the requesting individual.

Record access procedures:

Requests from individuals should be addressed to the System Manager. Written requests for access should contain the full name of the individual, current address and telephone number, and the serial code of any prior correspondence received from this office pertaining to the request. For personal visits, the individual should be able to provide some acceptable identification, e.g. driver's license, etc., and give some verbal information that could be verified in the file.

Contesting record procedures:

The agency's rule for contesting contents and appealing initial determinations may be obtained from the System Manager.

Record source categories:

The sources of information contained in these files includes: military and local police reports, line of duty investigations, commercial credit and asset reports, questionnaires completed by accident victims, x-rays, medical and dental records of treatment and statements of charges therefor from civilian and military doctors and medical facilities; correspondence; and witnesses.

Systems exempted from certain provisions of the act:

None

N00013F

System name:

Foreign Claim Files

System location:

Office of the Judge Advocate General; United States Sending State Office for Italy; United States Sending State Office for Australia; Naval Missions (including the office of the naval section of military missions); Military Assistance Advisory Groups (including the Offices of Chiefs, Naval Section, Military Assistance Advisory Groups); Office of the Naval Advisory to Argentina; naval attaches; any command which has appointed a Foreign Claims Commission; and the Federal Records Center, Suitland, Maryland. Local commands, with which claims under the Foreign Claims Act are initially filed and which do not have or choose to appoint a Foreign Claims Commission, typically retain copies of such claims and accompanying files. Official mailing addresses of these locations are included in the Department of Defense directory in the appendix to this notice.

Categories of individuals covered by the system:

All individuals who have filed claims against the Department of the Navy under the Foreign Claims Act.

Categories of records in the system:

The files may contain claims filed, correspondence, investigative reports, accident reports, medical and dental records, x-rays, allied reports (such as foreign police investigations, etc.), photographs, drawings, legal memoranda, opinions of experts, and court documents.

Authority for maintenance of the system:

Foreign Claims Act (10 U.S.C. 2734); 32 C.F.R. 753.1-753.29; 5 U.S.C. 301; 44 U.S.C. 3101

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

The files are used to adjudicate claims and to evaluate and decide reconsiderations of denials of claims. The files may be furnished to other components of the Department of Defense and the Department of Justice to defend unauthorized suits brought against the United States under the Foreign Claims Act. In addition, the files or portions thereof may be furnished to the claimant or his authorized representative. For those claims for which payment is determined proper, the files or portions thereof may be provided to Congress, the Department of Treasury, the Office of Management and Budget, and the General Accounting Office.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Paper records in file folders stored in file cabinets or other storage devices.

Retrievability:

Filed alphabetically by name of claimant.

Safeguards:

Files are maintained in file cabinets and other storage devices under the control of authorized personnel during working hours; the office space in which the file cabinets and storage devices are located is locked outside official working hours.

Retention and disposal:

Minimum-one year; maximum-permanent; typically files located in the Office of the Judge Advocate General are transferred to the Federal Records Center, Suitland, Maryland, three years after disposition of the case.

System manager(s) and address:

Assistant Judge Advocate General (Civil Law), Office of the Judge Advocate General, Department of the Navy, 200 Stovall St., Alexandria, Va., 22332.

Notification procedure:

Information may be obtained from the System Manager. Requesting individuals should specify their full names. Visitors should be able to identify themselves by any commonly recognized evidence of identity. Written requests must be signed by the requesting individual.

Record access procedures:

Requests from individuals should be addressed to the System Manager. Written requests for access should contain the full name of the individual, current address and telephone number, and the serial code of any prior correspondence received from this office pertaining to the request. For personal visits, the individual should be able to provide some acceptable identification, e.g. driver's license, etc., and give some verbal information that could be verified in the file.

Contesting record procedures:

The agency's rules for contesting contents and appealing initial determinations may be obtained from the System Manager.

Record source categories:

The sources of information contained in the files includes: x-rays, medical records, and dental records; investigative reports from military and foreign police agencies; reports of circumstances of incidents from operators of Government vehicles and equipment; witnesses; correspondence from claimants, their attorneys, and insurance companies.

Systems exempted from certain provisions of the act:

None

N00013G

System name:

Military Claims Files

System location:

Office of the Judge Advocate General, Offices of the Commandants of the Naval Districts, Naval Legal Service Offices and Branch Offices, overseas commands with a Navy or Marine Corps judge advocate attached, and the Federal Records Center, Suitland, Maryland. Local commands, with which claims under the Military Claims Act are initially filed, typically retain copies of such claims and accompanying files. Official mailing addresses of these locations are included in the Department of Defense directory in the appendix of this notice.

Categories of individuals covered by the system:

All individuals who have filed claims under the Military Claims Act against the Department of the Navy.

Categories of records in the system:

The files may contain claims filed, correspondence, investigative reports, accident reports, medical and dental records, x-rays, allied reports (such as local police investigations, etc.), photographs, drawings, legal memoranda, opinions of experts, and court documents.

Authority for maintenance of the system:

Military Claims Act (10 U.S.C. 2733); 32 C.F.R. 750.50-750.59; 5 U.S.C. 301; 44 U.S.C. 3101

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

The files are used to evaluate claims for purposes of adjudication. The files are also used by contractors in those cases in which they indemnify the Government. The files may be furnished to other components of the Department of Defense, and to the Department of Justice to defend unauthorized suits brought against the United States under the military claims act. Additionally, the files or portions thereof may be furnished to the claimant or his authorized representative. For those claims for which payment is determined proper, the files or portions thereof may be provided to the Congress, the Department of Treasury, the Office of Management and Budget, and the General Accounting Office.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Paper records in file folders stored in file cabinets or other storage devices

Retrievability:

Filed alphabetically by name of claimant

Safeguards:

Files are maintained in file cabinets or other storage devices under the control of authorized personnel during working hours; the office space in which the file cabinets and storage devices are located is locked outside official working hours.

Retention and disposal:

Minimum-one year; maximum-permanent; typically files located in the Office of the Judge Advocate General are transferred to the Federal Records Center, Suitland, Maryland, three years after disposition of the case.

System manager(s) and address:

Assistant Judge Advocate General (civil law), Office of the Judge Advocate General, Department of the Navy, 200 Stovall St., Alexandria, Va. 22332.

Notification procedure:

Information may be obtained from the system manager. Requesting individuals should specify their full names. Visitors should be able to identify themselves by any commonly recognized evidence of identity. Written requests must be signed by the requesting individual.

Record access procedures:

Requests from individuals should be addressed to the system manager. Written requests for access should contain the full name of the individual, current address and telephone number, and the serial code of any prior correspondence received from this office pertaining to the request. For personal visits, the individual should be able to provide some acceptable identification, e.g. driver's license, etc., and give some verbal information that could be verified in the file.

Contesting record procedures:

The agency's rule for contesting contents and appealing initial determinations may be obtained from the system manager.

Record source categories:

The sources of information contained in the files include the following: x-rays, medical and dental records from civilian and military doctors and medical facilities; investigative reports of accidents from military and municipal police agencies; reports of circumstances of incidents from operators of Government vehicles and equipment; witnesses; correspondence from claimants, their attorneys, insurance companies, state commissions, United States Attorneys, and various other Government agencies with information concerning the claim.

Systems exempted from certain provisions of the act:

NONE

N00013H

System name:

'Nonscope' Claims Files

System location:

Office of the Judge Advocate General, Naval Legal Service Offices, and Branch Offices, overseas commands with a Navy or Marine Corps judge advocate attached, and the Federal Records Center, Suitland, Maryland. Local commands, with which claims under the 'Nonscope' Claims Act are initially filed, typically retain copies of such claims and accompanying files. Official mailing addresses of these locations are included in the Department of Navy directory of mailing addresses.

Categories of individuals covered by the system:

All individuals who have filed claims under the 'Nonscope' Claims Act against the Department of the Navy.

Categories of records in the system:

The files may contain claims filed, correspondence, investigative reports, accident reports, medical and dental records, x-rays, allied reports, photographs, drawings, opinions of experts, legal memoranda, and court documents.

Authority for maintenance of the system:

'Nonscope' Claims Act (10 U.S.C. 2737); 32 C.F.R. 750.60-750.69; 5 U.S.C. 301; 44 U.S.C. 3101

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

The files are used to evaluate claims for purposes of adjudication. The files are provided to the Department of Justice to defend unauthorized suits brought against the United States under the 'Nonscope' Claims Act. In addition, files or portions thereof may be furnished to the claimant or his authorized representative and to other components of the Department of Defense.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Paper records in file folders stored in file cabinets or other storage devices

Retrievability:

Filed alphabetically by name of claimant

Safeguards:

Files are maintained in file cabinets or other storage devices under the control of authorized personnel during working hours; the office space in which the file cabinets and storage devices are located is locked outside official working hours.

Retention and disposal:

Minimum-one year; maximum-permanent; typically files located in the Office of the Judge Advocate General are transferred to the Federal Records Center, Suitland, Maryland, three years after disposition of the case.

System manager(s) and address:

Assistant Judge Advocate General (Civil Law), Office of the Judge Advocate General, Department of the Navy, 200 Stovall St., Alexandria, Va. 22332.

Notification procedure:

Information may be obtained from the system manager. Requesting individuals should specify their full names. Visitors should be able to identify themselves by any commonly recognized evidence of identity. Written requests must be signed by the requesting individual.

Record access procedures:

Requests from individuals should be addressed to the system manager. Written requests for access should contain the full name of the individual, current address and telephone number, and the serial code of any prior correspondence received from this office pertaining to the request. For personal visits, the individual should be able to provide some acceptable identification, e.g. driver's license, etc., and give some verbal information that could be verified in the file.

Contesting record procedures:

The Agency's rules for contesting contents and appealing initial determinations may be obtained from the system manager.

Record source categories:

The sources of information contained in the files include the following: x-rays, medical and dental records from civilian and military doctors and medical facilities; investigative reports of accidents from military and municipal police agencies; reports of circumstances of incidents from operators of Government vehicles; witnesses; correspondence from claimants, their attorneys, insurance companies, state insurance commissions, United States Attorneys, and various other Government agencies with information concerning the claim; commercial credit and asset reports; and questionnaires completed by accident victims.

Systems exempted from certain provisions of the act:

None

N00013I

System name:

Military Personnel and Civilian Employees' Claims

System location:

Offices of the Judge Advocate General; Naval Legal Service Offices; offices of the Commandants of the Naval Districts; Naval Legal Service Branch Offices; the Federal Records Center, Suitland, Maryland; naval activities where there are officers specifically designated by the Judge Advocate General to adjudicate personnel claims. Official mailing addresses of these locations are included in the Department of the Navy Directory of mailing addresses.

Categories of individuals covered by the system:

All individuals who have filed claims against the Department of the Navy under the Military Personnel and Civilian Employees' Claims Act and all common carriers against whom recovery has been sought by the Department of the Navy.

Categories of records in the system:

The files may contain claims filed, correspondence, investigative reports, copies of order, copies of insurance policies, Government bills of lading, copies of Powers of Attorney, estimates of loss or damage, inventories, demands on carriers for reimbursement, correspondence, and legal memoranda.

Authority for maintenance of the system:

Military Personnel and Civilian Employees' Claims Act (31 U.S.C. 240-243); 32 C.F.R. 751.0-751.30; 5 U.S.C. 301; 44 U.S.C. 3101.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

The files are used to evaluate claims for purposes of adjudication, reimbursement for the Department of the Navy from common carriers, warehousemen, contractors, or insurers who are responsible for loss or damage to personal property of individual claimants. Additionally, the files are provided to the Department of Justice to defend unauthorized suits against the United States under the Military Personnel and Civilian Employees' Claims Act. Finally, the files may be furnished to the claimant or his authorized representative and to other components of the Department of Defense.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Paper records in file folders stored in file cabinets or other storage devices.

Retrievability:

Filed alphabetically by name of claimant and name of common carrier, warehousemen, contractors, and insurers.

Safeguards:

Files are maintained in file cabinets or other storage devices under the control of authorized personnel during working hours; the office space in which file cabinets and storage devices are located is locked outside of working hours.

Retention and disposal:

Minimum-one year; maximum-permanent; typically Files located in the Office of the Judge Advocate General are transferred to the Federal Records Center, Suitland, Maryland three years after disposition of the case.

System manager(s) and address:

Assistant Judge Advocate General (Civil Law), Office of the Judge Advocate General, Department of the Navy, 200 Stovall St., Alexandria, Va. 22332.

Notification procedure:

Information may be obtained from the system manager. Requesting individuals should specify their full names. Visitors should be able to identify themselves by any commonly recognized evidence of identity. Written requests must be signed by requesting individual.

Record access procedures:

Requests from individuals should be addressed to the system manager. Written requests for access should contain the full name of the individual, current address and telephone number, and the serial code of any prior correspondence received from this office pertaining to the request. For personal visits, the individual should be able to provide some acceptable identification, e.g. driver's license, etc., and give some verbal information that could be verified in the file.

Contesting record procedures:

The agency's rules for contesting contents and appealing initial determinations may be obtained from the system manager.

Record source categories:

Information contained in the file is initially provided by the claimant and witnesses, after which the personal property divisions contribute investigative reports. The carrier may contribute information, and in some cases an investigative report is furnished by a military member's command or by an investigative agency. Adjudicated amounts allowed for the claim are provided by the adjudicating authority.

Systems exempted from certain provisions of the act:

None

N00013J

System name:

Admiralty Claims Files

System location:

Office of the Judge Advocate General; Office of the Commander-in-Chief, United States Naval Forces, Europe; Office of the Commander, Sixth Fleet; and the Federal Records Center, Suitland, Maryland. Local commands with which claims under the Public

Vessels Act and the Suits in Admiralty Act are initially filed, typically retain copies of such claims and accompanying files. Official mailing addresses of these locations are included in the Department of the Navy directory of mailing addresses.

Categories of individuals covered by the system:

All individuals who have asserted claims or instituted suits under the Public Vessels Act and Suits in Admiralty Act against the Department of the Navy in the name of the United States and all individuals who have instituted suits against third parties who have impleaded the Department of the Navy in the name of the United States.

Categories of records in the system:

The files may contain claims filed, correspondence, investigative reports, accident reports, medical and dental records, x-rays, allied reports (such as local police investigations, etc.), photographs, drawings, legal memoranda, opinions of experts, and court documents.

Authority for maintenance of the system:

Admiralty Claims Act (10 U.S.C. 7622); 5 U.S.C. 301; 44 U.S.C. 3101

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Officials and employees of the Department of the Navy use these files in the performance of their official duties related to the administrative evaluation and settlement of admiralty claims asserted against the Navy. Additionally, these files are provided to the Department of Justice to defend civil maritime suits brought against the United States. Finally, these files may be furnished to other components of the Department of Defense.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Paper records in file folders stored in file cabinets or other storage devices

Retrievability:

Filed alphabetically by name of claimant

Safeguards:

Files are maintained in file cabinets or other storage devices under the control of authorized personnel during working hours; the office space in which the file cabinets and storage devices are located is locked outside of official working hours.

Retention and disposal:

Records are retained in active files until each claim is settled or litigation resulting therefrom has been concluded. Thereafter, the files are maintained within the office for two years and then retired to the Federal Records Center, Suitland, Maryland.

System manager(s) and address:

Assistant Judge Advocate General (Civil Law), Office of the Judge Advocate General, Department of the Navy, 200 Stovall St., Alexandria, Va. 22332.

Notification procedure:

Information may be obtained from the system manager. Requesting individuals should specify their full names. Visitors should be able to identify themselves by any commonly recognized evidence of identity. Written requests must be signed by the requesting individual.

Record access procedures:

Requests from individuals should be addressed to the system manager. Written requests for access should contain the full name of the individual, current address and telephone number, and the serial code of any prior correspondence received from this office pertaining to the request. For personal visits, the individual should be able to provide some acceptable identification, e.g., driver's license, etc., and give some verbal information that could be verified in the file.

Contesting record procedures:

The agency's rules for contesting contents and appealing initial determinations may be obtained from the system manager.

Record source categories:

The sources of information contained in the files include the following: x-rays, medical and dental records from civilian and military doctors and medical facilities; investigative reports; witnesses; and correspondence from claimants and their representatives.

Systems exempted from certain provisions of the act:

None

N00013L

System name:

U.S. Postal Service Indemnity Claims Files

System location:

Office of the Judge Advocate General (code 15), Department of the Navy, 200 Stovall St., Alexandria, Va. 22332 and the Federal Records Center, Suitland, Md. 20409

Categories of individuals covered by the system:

All persons who have filed claims with the U. S. Postal Service for loss or damage to mailed matter, and which claims have been paid by the U. S. Postal Service and thereafter forwarded for reimbursement by the Department of the Navy pursuant to 39 U.S.C. 712.

Categories of records in the system:

Files may contain claims, substantiating documents, Navy investigative reports (and allied reports such as U. S. Postal Service investigative reports, legal memoranda, and correspondence.

Authority for maintenance of the system:

39 U.S.C. 712; 5 U.S.C. 30; 44 U.S.C. 3101

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

The files are used to evaluate requests for reimbursement by the U. S. Postal Service for payment on claims for loss or damage to mailed matter. The files may be furnished to other components of the Department of Defense and the Department of Justice.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Paper records in file folders stored in file cabinets or other storage devices.

Retrievability:

Filed alphabetically by name of claimant.

Safeguards:

Files are maintained in file cabinets or other storage devices under the control of authorized personnel during working hours; the office space in which the file cabinets and storage devices are located is locked outside of working hours.

Retention and disposal:

Minimum-one year; maximum-permanent; typically files located in the Office of the Judge Advocate General are transferred to the Federal Records Center, Suitland, Maryland, three years after disposition of the case.

System manager(s) and address:

Assistant Judge Advocate General (Civil Law), Office of the Judge Advocate General, Department of the Navy, 200 Stovall St., Alexandria, Va. 22332.

Notification procedure:

Information may be obtained from the system manager. Requesting individuals should specify only their full names. Visitors should be able to identify themselves by any commonly recognized evidence of identity. Written requests must be signed by requesting individual.

Record access procedures:

Requests from individuals should be addressed to the system manager. Written requests for access should contain the full name of the individual, current address, and telephone number, and the serial code of any prior correspondence received from this office pertaining to the request. For personal visits, the should be able to provide some acceptable identification, e.g. driver's license, etc., and give some verbal information that could be verified in the file.

Contesting record procedures:

The agency's rules for contesting contents and appealing initial determinations may be obtained from the system manager.

Record source categories:

The information in U. S. Postal Service Indemnity Claims Files may consist of claims filed, substantiating documents, Navy investigative reports, (and allied reports such as U. S. Postal Service investigative reports), legal memoranda, and correspondence.

Systems exempted from certain provisions of the act:

None

N00013M

System name:

Military Justice correspondence file

System location:

Office of the Judge Advocate General (code 20), Department of the Navy, 200 Stovall St., Alexandria, Va. 22332.

Categories of individuals covered by the system:

Active duty, retired, and discharged Navy and Marine Corps personnel who were the subject of military justice proceedings.

Categories of records in the system:

File contains copy of incoming correspondence, all background material necessary to answer the correspondence and copies of letters replying to the correspondence.

Authority for maintenance of the system:

5 USC 301

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Files may be furnished to other components of the Department of Defense.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

File folders.

Retrievability:

Correspondence is kept in alphabetical order according to the last name of the individual who is the subject of the correspondence.

Safeguards:

Files are maintained in file cabinets and other storage devices under the control of authorized personnel during working hours; the office space in which the file cabinets and storage devices are located is locked outside official working hours.

Retention and disposal:

Records are maintained in office for two years and then forwarded to the Federal Records Center, Suitland, Maryland 20409 for storage.

System manager(s) and address:

Assistant Judge Advocate General (Civil Law), Office of the Judge Advocate General, Department of the Navy, 200 Stovall St., Alexandria, Va. 22332.

Notification procedure:

Information may be obtained from the Deputy Assistant Judge Advocate General (military justice), Office of the Judge Advocate General, Department of the Navy, 200 Stovall St., Alexandria, Va. 22332. Information may be obtained by written request to the Judge Advocate General stating full name of the individual concerned. Written requests must be signed by the requesting individual. Personal visits may be made to the Military Justice Division, Office of the Judge Advocate General, Room 9s09, Hoffman Bldg II, 200 Stovall St., Alexandria, Va. 22332. Individuals making such visits should be able to provide some acceptable identification, e.g. Armed Forces' identification card, driver's license, etc.

Record access procedures:

The agency's rules for access to records may be obtained from the system manager.

Contesting record procedures:

The agency's rules for contesting contents and appealing initial determinations by the individual concerned may be obtained from the system manager.

Record source categories:

Records of trial and correspondence from commands and agencies involved in the matter which is the subject of the correspondence.

Systems exempted from certain provisions of the act:

NONE.

N00013N

System name:

Personal injury and illness reports on civilian and govt-service seaman employed on MSC ships

System location:

Office of the Judge Advocate General (code 11), Department of the Navy, 200 Stovall St., Alexandria, Va. 22332.

Categories of individuals covered by the system:

Injured civilian seamen and government service seamen employed by the Military Sealift Command or its contract operators for service on board MSC ships.

Categories of records in the system:

System consists of preliminary personal injury and illness reports on civilian seamen and government service seamen employed by the Military Sealift Command or its contract operators.

Authority for maintenance of the system:

Admiralty Claims Act (10 U.S.C. 7622); 5 U.S.C. 301; 44 U.S.C. 3101

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Officials and employees of the Department of the Navy in their performance of their official duties related to the administrative evaluation and settlement of subsequently submitted admiralty claims asserted against the Navy. Additionally, these reports may later be provided to the Department of Justice for defense of civil maritime suits brought against the United States. Finally, these reports may be furnished to other components of the Department of Defense.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Paper records in file folders stored in file cabinets

Retrievability:

Filed by name of injured seaman listed under each particular MSC ship by date of injury.

Safeguards:

Files are maintained in file cabinets under the control of authorized personnel during working hours; the office space in which the file cabinets are located is locked outside official working hours.

Retention and disposal:

Reports are maintained in personal injury report file folders for a period of two years from the date of particular injury or illness and are, thereafter, destroyed at the local office level.

System manager(s) and address:

Assistant Judge Advocate General (Civil Law), Office of the Judge Advocate General, Department of the Navy, 200 Stovall St., Alexandria, Va. 22332.

Notification procedure:

Information may be obtained from the system manager. Requesting individuals should specify their full names. Visitors should be able to identify themselves by any commonly recognized evidence of identity. Written requests must be signed by the requesting individual.

Record access procedures:

Requests from individuals should be addressed to the system manager. Written requests for access should contain the full name of the individual, current address and telephone number, and the serial code of any prior correspondence received from this office pertaining to the request. For personal visits, the individual should be able to provide some acceptable identification, e.g., driver's license, etc., and give some verbal information that could be verified in the file.

Contesting record procedures:

The agency's rules for contesting contents and appealing determinations may be obtained from the system manager.

Record source categories:

Masters of Military Sealift Command ships; witnesses; medical and dental forms; and investigative reports.

Systems exempted from certain provisions of the act:

None

N00013P

System name:

Reservists reporting for active duty for training, background questionnaires

System location:

Office of the Judge Advocate General (code 62), Department of the Navy, 200 Stovall St., Alexandria, Va. 22332.

Categories of individuals covered by the system:

Officers reporting for duty in the Office of the Judge Advocate General

Categories of records in the system:

Name, designator, rank, unit to which attached, law school attended, year admitted to practice and State or Territory where admitted, and employment.

Authority for maintenance of the system:

10 USC 806

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

To assist the Judge Advocate General in the assignment of officers. The files may be furnished to other components of the Department of Defense.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

File folders, stored in a file cabinet.

Retrievability:

By officer's name.

Safeguards:

Files are maintained in file cabinets under the control of authorized personnel during working hours; the office space in which the cabinets are located is locked outside of official working hours.

Retention and disposal:

Records are retained for two months and then destroyed.

System manager(s) and address:

Assistant Judge Advocate General (Civil Law), Office of the Judge Advocate General, Department of the Navy, 200 Stovall St., Alexandria, Va. 22332.

Notification procedure:

Information may be obtained from the system manager. Written requests must be signed by the requesting individual. For personal visits, the individual should be able to provide some acceptable identification, e.g., Armed Forces identification card, driver's license, etc.

Record access procedures:

Requests should be addressed to the system manager.

Contesting record procedures:

The agency's rules for access to records and for contesting contents and appealing initial determinations by the individual concerned may be obtained from the system manager.

Record source categories:

Information is received from Reserve officers who participate in the Naval Reserve Law Programs.

Systems exempted from certain provisions of the act:

NONE

N00013Q

System name:

Naval Reserve Law Program Officer Personnel Information

System location:

Office of the Judge Advocate General (code 62), Department of the Navy, 200 Stovall St., Alexandria, Va. 22332.

Categories of individuals covered by the system:

Applicants applying for appointment or transfer to Judge Advocate General's Corps of the Naval Reserve.

Categories of records in the system:

Furnishes information as to applicant's qualifications and intentions to affiliate in Naval Reserve Law Program.

Authority for maintenance of the system:

10 USC 806

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Office use required for personnel management of Reserve Law Program. Use is required to assist in determining applicant's qualification for appointment in the Judge General's Corps. These files may be furnished to other components of the Department of Defense.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

File folders, stored in a file cabinet

Retrievability:

By officer's name

Safeguards:

Files are maintained in file cabinets under the control of authorized personnel during working hours; the office space in which the file cabinets are located is locked outside official working hours.

Retention and disposal:

Records are maintained for two years and then destroyed.

System manager(s) and address:

Assistant Judge Advocate General (Civil Law), Office of the Judge Advocate General, Department of the Navy, 200 Stovall St., Alexandria, Va. 22332.

Notification procedure:

Information may be obtained from the: Office of the Judge Advocate General (Code 62), Department of the Navy, Room 9s05, Hoffman Bldg II, 200 Stovall St., Alexandria, Va. 22332. Written requests must be signed by the requesting individual, and for personal visits, the individual should be able to provide some acceptable identification, e.g. Armed Forces identification card, driver's license, etc.

Record access procedures:

Requests should be addressed to: Judge Advocate General (Code 62), Department of the Navy, 200 Stovall St., Alexandria, Va. 22332.

Contesting record procedures:

The agency's rules for access to records and for contesting contents and appealing initial determinations by the individual concerned may be obtained from the system manager.

Record source categories:

Information is received from applicants who are applying for appointment in the Judge Advocate Generals' Corps or from reserve officers requesting transfer to the system manager.

Systems exempted from certain provisions of the act:

None

N00013S

System name:

Directory of Retired Regular and Reserve Judge Advocates

System location:

Office of the Judge Advocate General (Code 61) Department of the Navy, 200 Stovall St., Alexandria, Va. 22332.

Categories of individuals covered by the system:

Retired Officers of the Judge Advocate General's Corps

Categories of records in the system:

Name, SSAN, Designator, address, rank, retirement date.

Authority for maintenance of the system:

10 USC 5806

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

To utilize/assign retired Judge Advocate Generals' Corps Officers to Official Navy Selection Boards involving Judge Advocate Generals' Corps Personnel and to facilitate location of lawyers throughout the world with naval experience, which may be utilized by the Naval Service. These records may be furnished to other components of the Department of Defense.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Computer paper printouts

Retrievability:

Computer paper printouts requested from the Bureau of Naval Personnel. Retirees are shown alphabetically by rank.

Safeguards:

Records are maintained in file cabinets and other storage devices under the control of authorized personnel during working hours; the office space in which the file cabinets and storage devices are located is locked outside official working hours.

Retention and disposal:

Records not kept after person is deceased.

System manager(s) and address:

Assistant Judge Advocate General (Civil Law), Office of the Judge Advocate General, Department of the Navy, 200 Stovall St., Alexandria, Va. 22332.

Notification procedure:

Information may be obtained from the system manager. Written requests must be signed by the requesting individual. For personal visits, the requesting individual should be able to provide some acceptable identification, e.g. Armed Forces identification card, driver's license, etc.

Record access procedures:

Requests from individuals should be addressed to the system manager.

Contesting record procedures:

The Agency's rules for access to records and for contesting and appealing initial determinations by the individual concerned may be obtained from the system manager.

Record source categories:

Information received from records held by the Bureau of Naval Personnel.

Systems exempted from certain provisions of the act:

None.

N00013T

System name:

Office of the Judge Advocate General, Reporting Questionnaire

System location:

Office of the Judge Advocate General, (Code 61), Department of the Navy, 200 Stovall St., Alexandria, Va. 22332.

Categories of individuals covered by the system:

Officers reporting for duty in the Office of the Judge Advocate General.

Categories of records in the system:

Name, SSAN, designator, rank, date of rank, branch of service, place and date of birth, dependents, wife's name, height, weight, eye and hair color, home address and telephone number, date reported, date detached, previous duty station and mode of travel.

Authority for maintenance of the system:

10 USC 806

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

To assist Judge Advocate General in assignment of officers within the Office of the Judge Advocate General and, until recently, this information was also used to assist Officers in obtaining identification cards for themselves and their dependents. These records may be furnished to other components of the Department of Defense.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Paper records kept in a folder alphabetically, stored in a file cabinet.

Retrievability:

By officer's name.

Safeguards:

Records are maintained in a file cabinet under the control of authorized personnel during working hours; and the office space in which the cabinet is located is locked outside official working hours.

Retention and disposal:

Records are destroyed when the officer is transferred from the Office of the Judge Advocate General.

System manager(s) and address:

Assistant Judge Advocate General (Civil Law), Office of the Judge Advocate General, Department of the Navy, 200 Stovall St., Alexandria, Va. 22332.

Notification procedure:

Information may be obtained from the system manager. Written requests must be signed by the requesting individual. For personal visits, the requesting individual should be able to provide some acceptable identification e.g. Armed Forces identification card, driver's license, etc.

Record access procedures:

Requests from individuals should be addressed to the system manager.

Contesting record procedures:

The agency's rules for access to records and for contesting contents and appealing initial determinations by the individual concerned may be obtained from the system manager.

Record source categories:

Information submitted by the officer upon his reporting for duty in the Office of the Judge Advocate General.

Systems exempted from certain provisions of the act:

None.

N00013X

System name:

Fiduciary Affairs Records

System location:

Office of the Judge Advocate General (code 12), Department of the Navy, 200 Stovall St., Alexandria, Va. 22332.

Categories of individuals covered by the system:

All active duty, fleet reserve, and retired members of the Navy and Marine Corps who have been medically determined to be mentally incapable of managing their financial affairs, their appointed or prospective trustees, and members' next-of-kin.

Categories of records in the system:

The system contains proceedings of medical boards, documentation indicating the origin of the mental incapability, the name(s) and address(es) of the individual's next-of-kin, the disability retirement index, a copy of the interview(s) of prospective trustee(s), the appointment of the approved trustee, authority to pay the individual's retirement pay to the approved trustee, the instructions of duties and responsibilities to the trustee, annual trustee accounting reports, copy of the trustee's surety bond, a copy of the affidavit executed by the trustee to obtain the surety bond, miscellaneous correspondence relating to the trustee's duties and responsibilities, annual approvals of the trustee account, discharge(s) of trustee, release(s) of surety, periodic physical examinations, medical records, and related correspondence.

Authority for maintenance of the system:

5 U.S.C. 301; 37 U.S.C. 601-604; 44 U.S.C. 3101

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

This information is maintained for the purpose of providing nonjudicial financial management of military pay and allowances payable to active duty, fleet reserve, and retired Navy and Marine Corps members for the period during which they are medically determined to be mentally incapable of managing their financial affairs. This information may be furnished to the Department of Justice when there is reason to suspect financial mismanagement and no satisfactory settlement with the surety can be reached, and may be furnished to the Veterans Administration in connection with programs administered by that agency.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Papers records in file folders stored in file cabinets or other storage devices.

Retrievability:

By name of the member or by name of the trustee.

Safeguards:

Files are maintained in file cabinets and other storage devices under the control of authorized personnel during working hours; the office space in which the file cabinets and storage devices are located is locked outside official working hours.

Retention and disposal:

Indefinitely; however, after the death of a member, his files are typically transferred to the Federal Records Center, Suitland, Maryland, 20409.

System manager(s) and address:

Assistant Judge Advocate General (Civil Law) Office of the Judge Advocate General Department of the Navy 200 Stovall St., Alexandria, Va. 22332.

Notification procedure:

Information may be obtained by written request which adequately identifies the system of records and the individual about whom the record is kept (i.e. full name); written requests must be signed by the requesting individual.

Record access procedures:

The agency's rules for access to records may be obtained from the system manager.

Contesting record procedures:

The agency's rules for contesting contents and appealing initial determinations by the individual concerned may be obtained from the system manager.

Record source categories:

Components within the Department of the Navy, medical doctors, approved trustees, prospective trustees, surety companies, and Veterans Administration.

Systems exempted from certain provisions of the act:

None.

N0001310

System name:

Physical disability evaluation proceedings

System location:

Director, Naval Council of Personnel Boards, 801 N. Randolph St., Arlington, Va. 22203.

Categories of individuals covered by the system:

All Navy and Marine Corps personnel who have been considered by a Physical Evaluation Board for separation or retirement by reason of physical disability (including those found fit for duty by such boards).

Categories of records in the system:

File contains medical board reports; statements of findings of physical evaluation boards; medical reports from Veterans Administration and civilian medical facilities; copies of military health records; copies of JAG Manual investigations; copies of prior actions taken in the case; transcripts of physical evaluation board hearings; rebuttals submitted by the party; intra and interagency correspondence concerning the case; correspondence from and to the party, members of Congress, attorneys, and other interested parties; and documents concerning the appointment of trustees for mentally incompetent service members.

Authority for maintenance of the system:

10 U.S.C. 1216 and 10 U.S.C. 5148

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Department of the Navy - Used by personnel in the performance of their official duties to determine fitness for duty or eligibility for separation or retirement due to physical disability of Navy and Marine Corps personnel, by establishing the existence of disability, the degree of disability, and the circumstances under which the disability was incurred.

Veterans Administration - To verify information of service connected disabilities in order to evaluate applications for veterans' benefits.

Office of the Judge Advocate General - Used by personnel in the performance of their official duties relating to legal review of disability evaluation proceedings; response to official inquiries concerning the disability evaluation proceedings of particular service personnel; to obtain information in order to initiate claims against third parties for recovery of medical expenses under the Medical Care Recovery Act (42 U.S.C. 2651-53); and to obtain information on personnel determined to be mentally incompetent to handle their own financial affairs, in order to appoint trustees to receive their retired pay. In addition, the information may be furnished to other components of the Department of Defense.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Paper records in file folders

Retrievability:

Filed by year of initial disability processing, and alphabetically by name within that year. Veterans Administration To verify information of service connected disabilities in order to evaluate applications for veterans' benefits.

Safeguards:

Files are maintained in file cabinets or other storage devices under the control of authorized personnel during working hours; the office space in which the file cabinets and storage devices are located is locked outside official working hours.

Retention and disposal:

Records are permanent. They are retained by the Naval Council of Personnel Boards for six years. After that time, they are sent to the Federal Records Center, Suitland, Maryland.

System manager(s) and address:

Director, Naval Council of Personnel Boards, 801 N. Randolph st., Arlington, Va. 22203.

Notification procedure:

Information may be obtained from the Naval Council of Personnel Boards, 801 N. Randolph St., Arlington, Va. 22203.

Written requests for information should contain the full name of the individual, military grade or rate, and date of birth. Written requests must be signed by the requesting individual.

For personal visits, the individual should be able to provide some acceptable identification, such as a military identification card (active duty or retired) or a driver's license.

Record access procedures:

Requests from individuals should be addressed to: The Naval Council of Personnel Boards, 801 N. Randolph St., Arlington, Va. 22203.

Contesting record procedures:

The agency's rules for contesting contents and appealing initial determinations by the individual concerned may be obtained from the System Manager.

Record source categories:

Military medical boards and medical facilities; Veterans Administration and civilian medical facilities; Physical Evaluation Boards and other activities of the Office of Naval Disability Evaluation; the Bureau of Medicine and Surgery; the Fiduciary Affairs Section; Navy and Marine Corps local command activities; other activities of the Department of Defense; and correspondence from private counsel and other interested persons.

Systems exempted from certain provisions of the act:

NONE

N0001314

System name:

JAG Corps Officer Personnel Information

System location:

Office of the Judge Advocate General (code 61), Department of the Navy, 200 Stovall St., Alexandria, Va. 22332.

Categories of individuals covered by the system:

Active Duty Officers in the Judge Advocate General's Corps, Active Duty Officers in the Law Education and Excess Leave Programs

Categories of records in the system:

Name, date of birth, social security account number, USN/USNR, designator, rank, state bar membership and year admitted, wife's name, no. of dependents, lineal listing by year group, duty assignment, arrival and rotation dates, release date if applicable

Authority for maintenance of the system:

10 USC 806

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Office use required for personnel management of Navy JAG Corps personnel as the Judge Advocate General is statutorily required to make recommendation on the assignment of all active duty JAG Corps officers. Use is required to determine qualifications of an officer to receive a JAG Corps designation and to be certified as a trial or defense counsel. Use is further required to determine the rotation dates and release from active duty dates of JAG Corps officers as well as the date new officers will be available for duty. This information is then utilized to prepare JAG Corps strength plans for submission to OPNAV. Use is also required to obtain an officer's preference for duty assignment as well as eligibility for consideration for postgraduate education and overseas assignments. Certain of this information is promulgated to all active-duty JAG Corps officers in a semiannual publication known as the Directory of Navy Judge Advocates. The information is promulgated for informational purposes so that officers can determine what positions (billets) might be available should they desire rotation. Additionally, the information may be furnished to other components of the Department of Defense.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Computer strips kept on a strip file (wheel) and paper records kept in a folder identified by the officer's name kept in file cabinets.

Retrievability:

By officer's name, folders are filed alphabetically.

Safeguards:

Records are maintained in the Office of the Judge Advocate General personnel office under the control of authorized personnel during working hours; the office space in which the storage devices containing the records is locked outside official working hours.

Retention and disposal:

Upon release from active duty, records are kept three years and then destroyed. Upon retirement from active duty, records are maintained indefinitely.

System manager(s) and address:

Assistant Judge Advocate General (Civil Law), Office of the Judge Advocate General, Department of the Navy, 200 Stovall St., Alexandria, Va. 22332.

Notification procedure:

Information may be obtained from: Judge Advocate General (code 61), Department of the Navy, Room 9s25, Hoffman Bldg II, 200 Stovall St., Alexandria, Va. 22332, Telephone: (202)325-9830

Written requests must be signed by the requesting individual. For personal visits, the requesting individual should be able to provide some acceptable identification, e.g. Armed Forces identification card, driver's license, etc.

Record access procedures:

Requests from individuals should be addressed to: Judge Advocate General (code 61), Department of the Navy, 200 Stovall St., Alexandria, Va. 22332.

Personnel visits may be made to the JAG Personnel Office, Room 9s25, Hoffman Bldg II, 200 Stovall St., Alexandria, Va. 22332.

Contesting record procedures:

The agency's rules for access to records and for contesting contents and appealing initial determinations by the individual concerned may be obtained from the System Manager.

Record source categories:

Information submitted by the officer upon his successful completion of law school and admission to the bar, orders to active duty and subsequent transfer orders, computer strips provided by the Bureau of Naval Personnel on all active duty officers.

Systems exempted from certain provisions of the act:

NONE

N00014ONR300-1

System name:

Patent, Invention, Trademark, Copyright and Royalty Files

System location:

Office of Naval Research, 800 North Quincy Street, Arlington, VA, 22217

Categories of individuals covered by the system:

Inventors and patent owners of inventions in which Government has an interest or which Department of the Navy has evaluated; copyright owners of works in which Government has an interest; and claimants or parties in administrative proceedings or litigation with the Government involving patents, copyrights or trademarks.

Categories of records in the system:

Invention disclosures; disposition of rights in inventions of Government employees; patent applications and patented files; patent licenses and assignments; patent secrecy orders; copyright licenses and assignments; patent and copyright royalty matters; administrative claims and litigation with the Government involving patents, copyrights and trademarks including private relief legislation involving these matters; and documents and correspondence relating to the foregoing.

Authority for maintenance of the system:

10 USC 5151

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Used by Navy patent personnel to determine rights of the Government and employees in employee inventions; to file and prosecute patent applications; to publish invention disclosures for public information and defensive purposes; to provide evidence and record of Government interest in or under patents or applications for patents; to provide evidence and record of patent and copyright licensing and assignment; to determine action or recommended action regarding disposition of claims or litigation; and to recommend Government employee incentive awards. Used by other Navy/Marine Corps commands to determine Government interest in inventions; to permit utilization of inventions; and to support employee incentive awards. Used by U.S. Patent and Trademark Office to determine respective rights of the Government and employee-inventors; by the Commissioner of Patents and Trademarks, as well as Navy patent personnel, to administer Patent Secrecy responsibilities; by Federal Council for Science and Technology as a source of statistical data for an annual report on Government patent policy; by the General Accounting Office to conduct audits and perform other statutory functions. Information is transmitted to the U.S. Patent and Trademark Office and appropriate foreign government offices for prosecution of patent applications; the U.S. Patent and Trademark Office and the U.S. Copyright Office to evidence legal interests in patent and copyright licenses and assignments; the National Technical Information Service for publication of inventions available for licensing; non-governmental personnel (including contractors and prospective contractors) having an identified interest in particular inventions and Government rights therein, in infringement of particular patents or copyrights, or in allowance of royalties on contracts; and the Congress in the form of reports on particular bills for private relief and reports of action on Congressional and constituent requests. Government agencies involved in claims or litigation, including the Department of Justice, have access to prosecute and defend cases. All Government agencies have access to license records. Parties involved in particular licensing arrangements have access to specific files involved.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Paper records in file folders and card files.

Retrievability:

Subject matter; Navy patent case number; name of inventor, patentee, copyright owner, claimant or correspondent.

Safeguards:

Maintained in safes and file cabinets in controlled spaces accessible only by authorized personnel who are properly instructed in the permissible use of the information.

Retention and disposal:

Maintained indefinitely but records are transferred to Federal Records Center two years after completed action on case to which record relates.

System manager(s) and address:

Assistant Chief for Patents, Code 300, Office of Naval Research, Arlington, VA, 22217

Notification procedure:

Direct information requests to system manager.

Record access procedures:

The Agency's rules for access to records may be obtained from the system manager.

Contesting record procedures:

The agency's rules for contesting contents and appealing initial determinations by the individual concerned may be obtained from the system manager.

Record source categories:

Information obtained from individual inventor, patent or copyright owner, claimant, licensor or licensee, or from U.S. Patent and Trademark Office, or from U.S. Copyright Office. Information on Government employee-inventors or copyright owners may be obtained from Government personnel records and from Government supervisors.

Systems exempted from certain provisions of the act:

NONE

N00014ONR400-1

System name:

Principal Investigator Record of Active Contracts

System location:

Office of Naval Research, Code 400r1, Arlington, Virginia 22217

Categories of individuals covered by the system:

Names of principal investigators with active contracts in ONR with Asst. Chief for Research and Asst. Chief for Technology

Categories of records in the system:

3 x 5 index cards arranged alphabetically by principal investigators' names

Authority for maintenance of the system:

5 USC 301, Departmental Regulations

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Used to: (A) Determine whether an individual has a contract with the Office of Naval Research, (B) Cross-reference identifying information on technical supports. The record is used by personnel in the immediate office.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

3 x 5 index cards arranged alphabetically in an open metal tray

Retrievability:

Name

Safeguards:

Locked file cabinets

Retention and disposal:

Maintained as long as contract is on-going; when contract expires, cards are put in office waste basket

System manager(s) and address:

Asst. Chief for Research Office of Naval Research, Arlington, VA. 22217

Notification procedure:

Inquiries should be made in writing or by telephone to Office of Naval Research (Code 400r1), Arlington, VA. 22217 Phone: 202-692-4108

Record access procedures:

The agency's rules for access to records may be obtained from the systems manager

Contesting record procedures:

The agency's rules for contesting contents and appealing initial determination by the individual concerned may be obtained from the system manager

Record source categories:

Procurement request for contract work

Systems exempted from certain provisions of the act:

None

N00014ONR723-1

System name:

Naval Research Reserve Program Personnel Accounting System

System location:

Office of Naval Research 800 North Quincy st. Arlington, VA 22217

Categories of individuals covered by the system:

Research reserve personnel, officer and enlisted

Categories of records in the system:

Military identification information, including Naval Officer Billet Codes, plus professional qualifications information, including education and occupation

Authority for maintenance of the system:

5 USC 301

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Mobilization planning, active duty for training order endorsements, preparation of Quarterly Reserve Status Report on Readiness of Reserve for the Chief of Naval Research (CNR), Research Reserve Annual Report for CNR

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Punched cards, printouts, printed forms (NAVSO 1080/2 and 1080/2A)

Retrievability:

Name, rank, designator, NOBC's, education, major subject, First Navy qualification, first job function, reserve unit affiliation

Safeguards:

Records kept in controlled access building, controlled computer spaces, file cabinets in limited access offices

Retention and disposal:

Physically destroyed annualy when new questionnaire forms are received

System manager(s) and address: Research Reserve Coordinator, Code 723 Office of Naval Research Arlington, VA 22217

Notification procedure: Write to SYSMANAGER, giving full name, rank, SSN. Visit Office at above address, showing Naval Research ID Card.

Record access procedures:

The Agency's rules for access to records may be obtained from the System Manager

Contesting record procedures:

The Agency's rules for contesting contents and appealing initial determinations by the individual concerned may be obtained from the System Manager.

Record source categories:

Qualifications Questionnaire Naval Reserve Research Program, NAVSO form 1080/2

Systems exempted from certain provisions of the act:

None

N00015.080101

System name:

Reserve Personnel History File

System location:

Naval Intelligence Command 2461 Eisenhower Avenue Alexandria, Virginia 22331

Categories of individuals covered by the system:

All officers and enlisted personnel of the Naval Reserve Intelligence Program and applicants for affiliation with the program.

Categories of records in the system:

File contains information relating to the individual's residence history, education, professional qualifications, occupational history, foreign country travel and knowledge, foreign language capabilities, history of active military duty assignments and military reserve active duty training and background investigation information.

Authority for maintenance of the system:

National Security Act of 1947, as amended; 5 U.S.C. 301 Departmental Regulations; 10 U.S.C. 503 Department of the Navy 10 U.S.C. 6011 Departmental Regulations; 44 USC 3101, Records Management by Federal Agencies;

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

The Reserve Personnel History File is maintained for the purposes of determining qualifications for members of the Naval Reserve Intelligence Program and providing a personnel management device for career development programs, manpower and personnel requirements for program activities assignment of support projects of the reserve program, and mobilization planning requirements. This information may be provided to the department of Defense and components therof for research, analysis, evaluation and utilization of the information and for such other matters as may be necessary to fulfill the responsibilities of the Department of Defense and the components therof. By other appropriate federal agencies who may require the information to fulfil such agencies' legal responsibilities.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Computerized magnetic tapes; microform; some records may be maintained in file folders.

Retrievability:

The file can be accessed for each file element or any combination therof

Safeguards:

GSA approved security containers located in controlled access spaces.

Retention and disposal:

Records Disposal Manual, Secretary of the Navy Instruction 5212.5B.

System manager(s) and address:

Commander, Naval Intelligence Command 2461 Eisenhower Avenue Alexandria, Virginia 22331

Notification procedure:

Information may be obtained by written request to the System Manager, giving full name, residence address and date and place of birth. A notarized statement may be required for identity verification.

Record access procedures:

The Agency's rules for access to records may be obtained from the System Manager.

Contesting record procedures:

The Agency's rules for contesting contents and appealing initial determinations by the individual concerned may be obtained from the System Manager.

Record source categories:

Reserve Personnel History File data submitted by the individual; background investigation reports from the Naval Investigative Service.

Systems exempted from certain provisions of the act:

NONE

N00015.L1000

System name:

Naval Intelligence Management Information System (NIMIS)

System location:

Naval Intelligence Support Center, 4301 Suitland Road, Washington, D.C. 20390.

Categories of individuals covered by the system:

Military and federal employees of the Commander, Naval Intelligence Command and subordinate commands thereof.

Categories of records in the system:

File contains a record of tasking to various components of the Office of Naval Intelligence and the Naval Intelligence Command, including a record of workhours expended on those tasks by each individual involved.

Authority for maintenance of the system:

Title 5, USC 301.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Information derived from this system is used by the Office of Naval Intelligence and its components; for research analysis, developing and evaluating plans, policies, procedures, and related matters. The information is also used for the purpose of measuring intelligence production against budgeted programs and goals; for purposes of maintaining a record of intelligencetaskings and projects assigned to the Office of Naval Intelligence and its components including the current status; for historical and statistical purposes; including use of summary data as the basis for various reports; and for such other matters as may be necessary to fulfill the responsibilities of ONI and components thereof; the Director of Central Intelligence; United States Foreign Intelligence Board; and other appropriate federal agencies requiring the information to fulfill legal responsibilities.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Magnetic disk with backup on magnetic tape. Maintained in controlled access areas.

Retrievability:

Files are accessed and retrieved by a project number and/or by social security number or a locally assigned number.

Safeguards:

In compliance with the specified requirements for classified matter and are accessable to authorized personnel with proper security clearance and need for access.

Retention and disposal:

Records are maintained by fiscal year and are destroyed after 5 years.

System manager(s) and address:

Commander, Naval Intelligence Command, Building #1, Federal Complex, Suitland, Maryland 20390.

Notification procedure:

A person can determine whether the system contains information pertaining to that individual by making a written request to the system manager. The written request should contain full name, social security number, current residence address and telephone number.

Record access procedures:

Written requests to the system manager requesting rules for access to records.

Contesting record procedures:

The Office of Naval Intelligence rules for contesting contents and appealing determinations may be obtained from the systems manager.

Record source categories:

Workhour inputs are obtained from each individual on a weekly basis.

Systems exempted from certain provisions of the act:

Some information contained in this system of records is classified and exempt from access pursuant to provisions of 5 USC 522a(k)(1). Access will be granted to those portions of the record which: (1) are determined to be unclassified at the time access is requested, and (2) are reasonably segregative from exempt portions.

N00015.00K1

System name:

Special Intelligence Personnel Access File

System location:

Naval Intelligence Command, 2461 Eisenhower Avenue, Alexandria, Va. 22331

Categories of individuals covered by the system:

All civilian and military personnel of the Department of the Navy and contractors and consultants of the Department of the Navy.

Categories of records in the system:

Records pertaining to the eligibility of Department of the Navy personnel (civilian, military, contractor and consultant) to be granted access to Special Intelligence which include documents of nomination, personal history statements, background investigation date and character, narrative memoranda of background investigation, eligibility documents for access to special intelligence, proof of indoctrination and debriefings as applicable and record of hazardous activity restrictions assigned.

Authority for maintenance of the system:

National Security Act of 1947, as amended; 5 U.S.C. 301, Departmental regulations; 10 U.S.C. 503, Department of the Navy; 10 U.S.C. 6011, Navy Regulations; 44 U.S.C. 3101, Records Management by federal agencies; Executive Order 11652, classification and declassification of National Security Information and Material.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

The Special Intelligence Personnel Access File is maintained for the purpose of permitting a determination of an individual's eligibility for access to Special Intelligence information. This information may be provided to the Department of Defense and all its components, the Central Intelligence Agency, the Federal Bureau of Investigation, the National Security Agency, the Energy Research and Development Administration, the United States Treasury Department, the Department of State, and to any other Federal agency establishing a need to know for the performance of their assigned responsibilities.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Active files consist of paper records in file folders and computerized tapes. Inactive files are retained on microfiche.

Retrievability:

Records are filed alphabetically by last name of the individual.

Safeguards:

GSA approved containers located in controlled access spaces.

Retention and disposal:

Records are retained indefinitely. Inactive files are retained on microfiche.

System manager(s) and address:

Commander, Naval Intelligence Command, 2461 Eisenhower Avenue, Alexandria, Virginia 22331

Notification procedure:

Information may be obtained by written request to the system manager, giving full name, residence address and date and place of birth. A notarized statement may be required for identity verification.

Record access procedures:

The agency's rules for access to records may be obtained from the system manager.

Contesting record procedures:

The agency's rules for contesting contents and appealing initial determinations by the individual concerned may be obtained from the system manager.

Record source categories:

Personal History Statement and related forms from the individual. Access forms and documents prepared by the system manager. Correspondence between system manager and activities requesting access status.

Systems exempted from certain provisions of the act:

Parts of this system may be exempt under 5 U.S.C. 552 a (j) or (k), as applicable. For additional information contact the System Manager.

N00015.00K2

System name:

Naval Attache Files

System location:

Naval Intelligence Command, 2461 Eisenhower Avenue, Alexandria, Virginia 22331

Categories of individuals covered by the system:

U.S. Navy and Marine Corps Officers nominated and/or assigned to duty in the Defense Attache System (DAS)

Categories of records in the system:

File contains records concerning the service and personal history of officers nominated and/or assigned to duty in the DAS and their dependents.

Authority for maintenance of the system:

National Security Act of 1974, as amended; 5 USC 301, Departmental regulations; 10 USC 503, Department of the Navy; 10 USC 6011, Navy Regulations; 44 USC 3101, Records Management by federal agencies; United States Navy Regulations, 1973 Executive Order 11652, Classification and declassification of National Security Information and Material

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

By offices of the Navy, DOD and State to determine suitability of personnel for security clearances and assignment to the DAS.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Paper files in folders stored in standard GSA safes.

Retrievability:

By name of officer.

Safeguards:

Records are stored in a controlled access area and are accessible only to a very limited number of authorized personnel with proper security clearance and demonstrated need for access.

Retention and disposal:

Records are opened on individuals when first nominated for attache duty, and retained until six months after completion of attache duty.

System manager(s) and address:

Commander, Naval Intelligence Command, 2461 Eisenhower Avenue, Alexandria, Virginia 22331

Notification procedure:

Information may be obtained by written request to the system manager, giving full name, residence address, and date and place of birth. A notarized statement may be required for identity verification.

Record access procedures:

The agency's rules for access to records may be obtained from the system manager.

Contesting record procedures:

The agency's rules for contesting contents and appealing initial determinations by the individual concerned may be obtained from the system manager.

Record source categories:

Data is gained from the subjects of the file, BUPERS and Headquarters Marine Corps files of subject's fitness reports, DIS/NIS background, investigations and other sources who are familiar with the subject.

Systems exempted from certain provisions of the act:

Parts of this system may be exempt under 5 USC 552a (K) (1), as applicable. For additional information consult the system manager.

N00015.050102

System name:

Intelligence Reserve Personnel Management File

System location:

Naval Intelligence Command, 2461 Eisenhower Avenue, Alexandria, Va. 22331

Categories of individuals covered by the system:

All officers and enlisted personnel of the Naval Reserve Intelligence Program

Categories of records in the system:

File contains information relating to the individual's residence history, education, professional qualifications, occupational history, foreign country travel and knowledge, foreign language capabilities, history of active military duty assignments and military reserve active duty training, background investigation information, qualifications for active military duty assignments and military promotions,

Authority for maintenance of the system:

National Security Act of 1947, as amended; 5 U.S.C. 301, Departmental regulations; 10 U.S.C. 503, Department of the Navy; 10 U.S.C. 6011, Navy Regulations; 44 U.S.C. 3101, Records Management by federal agencies;

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

These files are maintained for the purposes of determining qualifications for members of the Naval Reserve Intelligence Program and providing a personnel management device for career development programs, manpower and personnel requirements for program activities, assignment of support projects of the reserve program, and mobilization planning requirements. This information may be provided to the Department of Defense and components thereof for research, analysis, evaluation and utilization of the information and for such other matters as may be necessary to fulfill the responsibilities of the Department of Defense and the components thereof. By other appropriate federal agencies who may require the information to fulfill such agencies' legal responsibilities.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Paper records in file folders

Retrievability:

Alphabetically by last name.

Safeguards:

GSA approved security containers located in controlled access spaces.

Retention and disposal:

Records are retained indefinitely

System manager(s) and address:

Commander, Naval Intelligence Command 2461 Eisenhower Avenue, Alexandria, Virginia 22331

Notification procedure: Information may be obtained by written request to the System Manager, giving full name, residence address and date and place of birth. A notarized statement may be required for identity verification.

Record access procedures:

The agency's rules for access to records may be obtained from the System Manager

Contesting record procedures:

The agency's rules for contesting contents and appealing initial determinations by the individual concerned may be obtained from the System Manager

Record source categories:

Reserve Personnel History File data submitted by the individual; correspondence regarding individual's military and civilian qualifications; letters from the Department of the Navy regarding promotions.

Systems exempted from certain provisions of the act:

None

N00018 01

System name:

Medical Department Professional/Technical Personnel Development

System location:

Bureau of Medicine and Surgery, Navy Department, Washington, D.C. 20372; individual's duty station or reserve unit (mailing addresses are listed in the Navy directory in the appendix to the Component System Notice); Military Sealift Command, Navy Department, Washington, D.C. 20390; National Personnel Records Center, 9700 Page Blvd., St. Louis, Missouri 63132; National Personnel Records Center, 111 Winnebago St., St. Louis, Missouri 63118; Bureau of Medicine and Surgery managed education and training activities (mailing addresses are listed in the Navy directory in the appendix to the Component System Notice); various colleges and universities affiliated with BUMED managed education and training activities.

Categories of individuals covered by the system:

Navy (military and civilian) health care personnel; applicants to student status in Navy Aerospace Medicine, Navy Aerospace Physiology and Navy Aerospace Experimental Psychology; Navy (military and civilian) personnel qualified as divers or involved in other professional/specialty/technical training; Navy (military and civilian) personnel exposed to occupational/environmental hazards; distinguished/noted civilian physicians in capacity of lecturer/consultant.

Categories of records in the system:

Personal and demographic data; education, training, professional, specialty, and technical accomplishments/qualifications; credentialing programs; surgical and surgical support team personnel listings; assignments history, projected rotation date, projected release from active duty date, active duty obligation, officer preference card, and variable incentive pay/continuation pay selection data; Hospital Corps education and training history and grades received, commanding officer's performance evaluation, and recommendations; periodic and total lifetime accumulated exposure to occupational/environmental hazards; curricula vitae of civilian consultants.

Authority for maintenance of the system:

Title 10, U.S.C.; 5 U.S.C. 301; Title 10, CFR Part 20, Standards for Protection Against Radiation.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Military and civilian employees of BUMED and BUMED managed education and training activities in the performance of their official duties related to procurement, assignments, professional/specialty/technical training, credentialing, promotion, and all other aspects of health care personnel management; career development; evaluation of candidates for position of lecturer/consultant; mobilization, planning, and verfication of reserve service; surgical team contingency planning; management of physical standards; maintenance of safe occupational/environmental protection standards.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Automated records stored on disc, tape, punched cards, and machine listings. Manual records stored in card files and folders in filing cabinets.

Retrievability:

Manual records retrieved by full name, SSN, file numbers, program title or locator card. Automated records retrieved by key to any data field.

Safeguards:

Records maintained in monitored or controlled access rooms or areas; public access to the records is not permitted; computer hardware is located in supervised areas; access is controlled by password or other user code system; utilization reviews ensure that the system is not violated. Access is restricted to personnel having a need for the record in the performance of their duties. Buildings/rooms locked outside regular working hours.

Retention and disposal:

Medical Department personnel professional development and training records; Headquarters, BUMED records-retained at BUMED for duration of member's service, then retired to NPRC, St. Louis for 10 year retention; BUMED field activities-retained 5 years, then destroyed.

Radiation exposure records; personnel exceeding exposure limits-retained at BUMED 50 years, then destroyed; all others-retained 5 years, then destroyed.

Surgical support team records; Headquarters, BUMED-destroyed upon termination of active duty service; BUMED field activities-destroyed upon termination of duty at the Medical Department facility.

Curricula vitae of lecturers/consultants-destroyed upon termination of status at the Medical Department facility.

System manager(s) and address:

Chief, Bureau of Medicine and Surgery, Navy Department, Washington, D.C. 20372; Director, National Personnel Records Center, 9700 Page Boulevard, St. Louis, Missouri 63132; Director, National Personnel Records Center, 111 Winnebago Street, St. Louis, Missouri 63118; commanding officers of naval activities, ships and stations.

Notification procedure:

Offices where requester may visit to obtain information of records pertaining to the individual; Potomac Annex, 23rd and E Street, N.W., Washington, D.C.; Navy medical centers and hospitals; other Navy health care facilities; and BUMED managed education and training facilities.

The individual should present proof of identification such as an I.D. card, drivers license, or other type of identification bearing signature and photograph.

Written requests may be addressed as follows:

Active duty Navy members or civilian employees presently working for the Navy should address requests to the commanding officer of the facility or ship where they are stationed or employed. Mailing addresses are in the Department of Defense directory in the appendix to the Component's Systems Notices.

Former members of the Navy should address requests to Director, National Personnel Records Center, 9700 Page Boulevard, St. Louis, Missouri 63132.

Former civilian employees of the navy should address requests to Director, National Personnel Records Center, 111 Winnebago Street, St. Louis, Mo. 63118.

All written requests should contain full name, rank, SSN, file number (if any), and designator.

Record access procedures:

The agency's rules for access to records may be obtained from the systems manager.

Contesting record procedures:

The agency's rules for contesting and appealing initial determinations by the individual concerned may be obtained from the systems manager.

Record source categories:

Military Headquarters, offices and commands; education institutions at training hospitals; boards, colleges and associations of professional licensure and medical specialties; personnel records; information submitted by the individual; automated system interface.

Systems exempted from certain provisions of the act:

None.

N06018 03

System name:

Health Care Treatment Record System

System location:

Service medical (health and dental) records for active duty and reserve, Navy and Marine Corps Personnel. Retained at the individual's duty station or reserve unit. (Mailing addresses are listed in the Navy Directory in the appendix in the component system notice.) Bureau of Naval Personnel, Navy Department Washington, DC; Naval Reserve Personnel Center, 4400 Dauphine Street, New Orleans, Louisiana 70149; Headquarters Marine Corps, Navy Department, Washington, DC 20380; Marine Corps Reserve Forces Administrative Activity, Class III, 1500 E. Bannister Road, Kansas City, Missouri 64131; National Personnel Records Center, 9700 Page Boulevard, St. Louis, Missouri 63132. Inpatient treatment records for active duty military, dependents, retired military and dependents, civilian employees, VA beneficiaries and humanitarian. Naval Regional Medical Centers and Naval Hospitals; National Personnel Records Center, 9700 Page Boulevard, St. Louis, Missouri 63132. Outpatient treatment records for dependents of active duty military, retired military and their dependents, civilian employees, VA beneficiaries and humanitarian. Naval Regional Medical Centers and Naval Hospitals, and Clinics (Dispensaries); National Personnel Records Center, 111 Winnebago Street, St. Louis, Missouri 63118; National Personnel Records Center, 9700 Page Boulevard, St. Louis, Missouri 63132. Subsidiary record files of the health care treatment record system are located at Naval Medical Data Services Center, Bethesda, Maryland; Regional Data Service Centers; Naval Environmental Health Center, Norfolk, Virginia; and other approved locations for conducting research studies.

Categories of individuals covered by the system:

Navy, Marine Corps, other military personnel, dependents, retired military personnel and dependents, civilian employees, VA beneficiaries and humanitarian.

Categories of records in the system:

Service medical (health and dental) records for active duty and reserve, Navy and Marine Corps: system is made up of records pertaining to the member or former member's medical history; physical, dental and mental examinations; consultation; innoculations; outpatient treatment, including laboratory and x-ray reports; report of medical boards; summaries of periods of hospitalization, dental evaluation and treatment, reports of exposure to environmental and radiation hazards, results of special diagnostics and clinical studies; recommendations regarding requests for waivers of established physical standards.

Inpatient and outpatient treatment records: file contains a multiplicity of prescribed forms documenting health evaluations, medical/dental care and treatment for any health or medical condition or problem provided an eligible individual on an outpatient and/or inpatient status. The records contain history and physical examinations or health evaluation, reports of exposure to ionizing radiation, consultation reports and medical care and treatment provided, including procedures utilized such as surgery, drugs, dietary, x-ray laboratory, nursing notes, physical therapy and other specialty care applicable to the medical diagnosis or conditions found. The records also contain patients demographic data, family health history data, length of inpatient stay, disease nomenclature, discharge summary of inpatient care. Documentation of health history, diagnosis, care and treatment provided and the recording thereof conform with the standards prescribed by the joint commission on accreditation of hospital. In addition to, and based on individual medical record files, there are subsidiary records such as registers of patients; patient health care, medical board and death statistics; environmental health data; operating room schedules, tumor registers; appointment registers; sick call and treatment logs; x-ray files; laboratory files and logs; pharmacy records; EKG's; EEG's; neuropsychiatric evaluations; physical therapy records; other patient evaluation records, etc.

Authority for maintenance of the system:

10 USC 5131 (as amended), 10 USC 5132, 44 USC 3101, 5 USC 301.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Officials and employees of the Department of the Navy (and members of the National Red Cross in Navy Health Care Facilities) in the performance of their official duties relating to the health and medical treatment of those categories of individuals covered by this record system; determining physical qualifications and suitability of candidates for various programs; personnel assignment; adjudicating claims and appeals before the council of personnel boards, and the Board for Correction of Naval Records; rendering opinions regarding members' physical fitness for continued naval service; litigation involving medical care provided those categories of individuals covered by this record system; performance of research studies and compilation of

statistical data; implementing preventive medicine, dentistry, and communicable disease control programs. Officials and employees of other components of the Department of Defense in the performance of their official duties relating to determining the physical qualifications of applicants; in providing medical care to those categories of individual covered by this record system; and in the conduct of analyses and research studies.

Officials and employees of the Veterans Administration in the performance of their official duties relating to the adjudication of veterans claims and in providing medical care to members of the Naval Service. The Attorney General of the United States or his authorized representatives in connection with litigation, law enforcement, or other matters under the direct jurisdiction of the Department of Justice or carried out as the legal representative of the executive branch agencies.

Officials and employees of other departments and agencies of the Executive Branch of Government upon request in the performance of their official duties related to review of the physical qualifications and medical history of applicants and employees who are covered by this record system and for the conduct of research studies. Private organizations (including education institution) and individuals for authorized health research in the interest of the Federal Government and the public. When not considered mandatory, patient identification data shall be eliminated from records used for research studies. Parent activities releasing such records shall maintain a list of all such research organizations and records released thereto.

Officials and employees of the National Research Council in cooperative studies of the National History of Disease; of prognosis and of epidemiology. Each study in which the records of members and former members of the Naval Service are used must be approved by the Surgeon General of the Navy.

Officials and employees of local and state governments and agencies in the performance of their official duties pursuant to the laws and regulations governing and local control of communicable diseases, preventive medicine and safety programs, child abuse and other public health and welfare programs. Authorized surveying bodies for professional certification and accreditations.

When required by federal statute, by executive order, or by treaty, medical record information will be disclosed to the individual, organization, or government agency, as necessary. Drug/Alcohol and Family Advocacy Information maintained in connection with Abuse Prevention Programs shall be disclosed only in accordance with the applicable statues, 21 U.S.C. 1175, 42 U.S.C. 4582, and 5 U.S.C. 552.

Records will not be further released by routine users with prior approval of the SYSMANAGER.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Service medical (health and dental) records for active duty and reserve, Navy and Marine Corps:

Records are stored in file folders, microform, on magnetic tape, punched cards, machine listings, discs, and other computerized or machine readable media.

Inpatient and outpatient treament records. These records originate at any Navy Medical Treatment Facility where the individual comes for medical care and treatment. The inpatient treatment records are retained for 2 years from date of last treatment at the activity and then sent to the National Personnel Records Center, St. Louis, Missouri. Outpatient treatment records are transferred for continuity of care and treatment to other medical activities upon change of station by the service member. Outpatient files, upon 2 years from date of last treatment are transferred to the National Personnel Records Center.

Inpatient and outpatient treatment records are maintained in mechanized lists, file folders, microform, and on magnetic tape, discs, punched cards, and other computerized or machine readable media. Inpatient treatment records are filed numerically by hospital register numbers. The alphabetical patient register serves as the locator media. Outpatient treatment records are filed by the Military Member's SSN with an alphabetical card or mechanized list or other record as the locator media. Medical x-rays are filed by a sequential numbering system in manual or mechanized format with an alphabetical name locator.

Retrievability:

Service medical (health and dental) records for active duty and reserve, Navy and Marine Corps Members.

Records retired to the National Personnel Records Center, St. Louis, Missouri, prior to 1971 are retrieved by name and service or file number. After that date, records are retrieved by name and social security number. Records retired to the National Personnel Records Center, St. Louis, Missouri prior to 1971 are retrieved by name and service or file number, after that date records are retrieved by name and social security number.

Inpatient and outpatient treatment records.

Records are retrieved by manual or automated locator media (alpha name cards, logs, listings, tapes, etc.).

Safeguards:

Records are maintained in various kinds of filing equipment in specific monitored or controlled access rooms or areas; public access is not permitted. Computer terminals are located in supervised areas; access is controlled by password or other user code system; utilization reviews ensure that the system is not violated. Access is restricted to personnel having a need for the record in providing further medical care or in support of administrative/clerical functions. Records are controlled by a charge-out system to clinical and other authorized personnel.

Retention and disposal:

Health care treatment records are retained, retired, and disposed of in accordance with SECNAVINST 5212.5 series, disposal of Navy and Marine Corps Records.

System manager(s) and address:

Service medical (health and dental) records for active duty and reserve, Navy and Marine Corps: Chief, Bureau of Medicine and Surgery, Navy Department, Washington, D.C. 20372; Commanding Officers, Naval Activities, Ships, and Stations, Director, National Personnel Records Center, 9700 Page Boulevard, St. Louis, Missouri 64131.

Inpatient and outpatient treatment records: Chief, Bureau of Medicine and Surgery, Navy Department, Washington, D.C. 20372; Commanding Officer, Naval Medical Centers and Hospitals or activities having Clinics; Director, National Personnel Records Center, St. Louis, Missouri 63118.

Notification procedure:

Service medical (health and dental) records for active duty and reserve; Navy and Marine Corps Members;

Requests for information from active duty Navy and Marine Corps personnel and drilling members of the Navy and Marine Corps Reserves should be addressed to the individual's commanding officer. Official mailing addresses are in the Department of Defense Directory in the appendix to the component's system notice. Inactive Naval Reservists should address requests for information to the Naval Reserve Personnel Center, 4400 Dauphine Street, New Orleans, Louisiana 70149. Marine Reservist's should address request for information to Marine Corps Reserve Forces Administrative Activity, Class III, 1500 E. Bannister Road, Kansas City, Missouri 64131.

Former members who have no further reserve or active duty obligations should address requests for information to director, National Personnel Records Center (Navy Reference Branch), 9700 Page Boulevard, St. Louis, Missouri 63132.

All written requests should contain the full name and social security, account number of the individual, his signature, and in those cases where his period of service ended before 1971, his service or file number. In requesting records for personnel who served before 1964, information provided to the National Personnel Records Center should also include date and place of birth and dates of periods of active Naval service. Active duty Navy and Marine Corps personnel including drilling members of the reserves may visit the medical department of the activity to which attached. Inactive Naval Reservists whose tour of active duty ended after 1 July 1972 may visit the Naval Reserve Personnel Center, 4400 Dauphine Street, New Orleans,Louisiana. Marine Reservists whose tour of active duty ended after 1 July 1972 and who have a continual reserve obligation may visit the Marine Corps Reserve Forces Administration Activity, Class III, 1500 E. Bannister Road, Kansas City, Missouri. Former members with no further obligation and reservists whose tour of active duty ended prior to 1 July 1972 may visit the National Personnel Records Center, 9700 Page Boulevard, St. Louis, Missouri. Proof of identification in the case of active duty, retired and reserve personnel will consist of the Armed Forces of the U.S. Identification Card or by other types of identification bearing picture and signature. Former members may provide drivers license or other types of identification bearing picture and signature.

Inpatient and outpatient treatment records:

(Care/treatment-within 2 years) Commanding Officer of the Naval Regional Medical Center or hospital where the individual was treated.

(More than 2 years) Director, National Personnel Records Center, 111 Winnebago Street, St. Louis, Missouri 63118 or Director, National Personnel Records Center, 9700 Page Boulevard, St. Louis, Missouri 63132.

Provide the following data: full name, service number, status, or SSN of sponsor, date(s) of treatment or period of hospitalization, address at time of medical treament, if known.

Office where requster may visit to obtain information of records pertaining to the individual.

Regional Medical Center or Hospital
Chief, Patient Affairs Service
Chief, Outpatient Service
Officer-in-charge other Navy Medical Facility

Full name, date and place of birth, ID card or drivers license, or other identification to sufficiently identify the individual with the medical records held by the treatment facility must be presented.

Record access procedures:

Sysmanager - service medical (health and dental) records for active duty and reserve, Navy and Marine Corps; requests from individuals should be addressed to Chief, Bureau of Medicine and Surgery, (Code 3111), Navy Department, Washington, DC 20372.

Contesting record procedures:

The agency's rules for access to records and for contesting contents and appealing initial determination by the individual concerning may be obtained from the SYSMANAGER.

Record source categories:

Reports from attending and previous physicians and other medical personnel regarding the results of physical, dental and mental examinations, treatment, evaluation, consultation, laboratory, x-ray and special studies conducted to provide health care to the individual or to determine the individuals physical and dental qualification.

Systems exempted from certain provisions of the act:

None

N00018 04

System name:

Decedent Affairs Records System

System location:

Bureau of Medicine and Surgery (Code 73), 23d and E Sts, NW, Washington, D. C. 20372 Commandants of Naval Districts CO Naval Medical Treatment Facilities

Categories of individuals covered by the system:

Deceased individuals for whom the Department of the Navy is responsible

Categories of records in the system:

Reports concerning casualty, status, transportation of remains, requests for special escorts and our responses, disposition instructions, acknowledgements to next of kin; pertinent data, medals and awards, preparation and identification of remains reports, escort orders and debriefing forms, death certificates, some autopsy reports, DD Forms 1300 (Reports of Casualty); correspondence pertaining thereto; and adjudication copies and paid vouchers and statistical data excerpted from decedent affairs files

Authority for maintenance of the system:

Title 5, US Code 103a and b; Title 10, Sections 1481-1488, US Code; Executive Orders 8557, 30 Sep 40 and 10209 of 1 Feb 51; 44 US Code 3101

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

PURPOSE
To facilitate and monitor return of remains and associated benefits
CATEGORIES OF USERS
Department of Navy and families of decedents
SPECIFIC USES
Verification of eligibility for benefits; provision of information to families of decedents concerning identification, care and return of remains, causes of death and payment of allowances

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Paper records in file folders Statistical data on magnetic tape

Retrievability:

Filed alphabetically according to name of decedent by fiscal year of date of death – Name, social security (or serial) number, date of death

Safeguards:

Locked building and guard during non-duty hours; personnel screening during duty hours

Retention and disposal:

Permanent - Records are accumulated chronologically and filed alphabetically by fiscal year; held three years and retired to the Federal Records Center for permanent retention under control of this Bureau

System manager(s) and address:

Chief, Bureau of Medicine and Surgery Commandants of Naval Districts Commanding Officers, Medical Treatment Facilities

Notification procedure:

Address inquiries to the systems manager Inquiry must include name of decedent, military status at time of death, SSAN and/or service number, and date of death Requestor may visit Bureau of Medicine and Surgery (Code 73), 23d and E Streets, NW, Washington, D. C. 20372

Record access procedures:

The agency's rules for access to records may be obtained from the systems manager

Contesting record procedures:

The agency's rules for contesting contents and appealing initial determinations by the individual concerned may be obtained from the SYSMANAGER

Record source categories:

Reports submitted by field commands and next of kin as required by regulations and directives pertaining to the decedent affairs program

Systems exempted from certain provisions of the act:

NONE

N00018 05

System name:

Uncollectible Accounts

System location:

Primary System - Chief, Bureau of Medicine and Surgery, Navy Department, Washington, D. C. 20372. Decentralized Segments - Naval Hospitals and Medical Centers which provide services or perform work giving rise to such accounts receivable. (Mailing addresses are listed in the directory of Department of the Navy mailing addressesin the Appendix to the Component System Notice.)

Categories of individuals covered by the system:

Any individual incurring indebtedness to the United States by receiving health care treatment or examination services funded by the Navy Medical Department. Coverage also includes sponsors and other persons responsible for the debts of such persons.

Categories of records in the system:

The types of records in the system include Request for Recovery of CHAMPUS Funds (CHAMPUS Form 11); letter reports of uncollectible accounts receivable; substantiating documents such as Supplies and/or Services provided by Civilian Hospitals (DA Form 1863-1), Services and/or Supplies provided by Civilian Sources (except Hospitals) (DA Form 1863-2), Explanation of Benefits forms, physicians' and hospitals' statements of services and charges, payment receipts, admission documents, and correspondence relating to collection attempts or attempts to ascertain elligibility status or patient category; records of payments received; records of transmittal of accounts to investigative organizations, the Department of Justice, and/or the General Accounting Office; and records suspending or terminating collection action or effecting compromise settlement agreements.

Authority for maintenance of the system:

31 USC 191-195, 227, and 952 (also known as the Federal Claims Collection Act of 1966); 10 USC 1078-179; and 37 USC 702, 705, and 1007.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Information in the system is collected to facilitate the recovery of amounts owed the United States. Users of the information includes field and bureau collection agents. The information is used to determine amounts owed, methods to be employed to effect recovery, and whether or not the claim can be compromised or collection action thereon terminated or suspended. In rare and exceptional cases an account file is referred to the Navy Investigative Service Office, the Department of Justice, or the General Accounting Office. Any individual records in the system might be transferred to any component of the DOD.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Paper records in file folders and reading files. Index cards (3'x5').

Retrievability:

Filed alphabetically by last name of debtor within the fiscal year in which indebtedness was incurred. Summary records filed by medical treatment facility.

Safeguards:

Records are maintained in areas accessible only to authorized personnel that are properly screened and trained.

Retention and disposal:

Records are retained in active file until collection action has been completed, compromised, suspended, or terminated. They are held in inactive file until statute of limitations has run and then destroyed.

System manager(s) and address:

Chief, Bureau of Medicine and Surgery, Navy Department, Washington, D. C. 20372 and Commanding Officers of Medical Treatment Facilities under the Command of the Chief, Bureau of Medicine and Surgery.

Notification procedure:

Information may be obtained from the Chief, Bureau of Medicine and Surgery. Requests should provide the full name of the debtor, the military or dependency status of the debtor, and the location and approximate dates of treatment or examination. The requestor may visit the Comptroller, Bureau of Medicine and Surgery, 23rd and 'E' Streets, N. W., Washington, D. C. to obtain information on whether or not the system contains records pertaining to him or her. A valid driver's license and/or military ID card will be considered adequate proof of identity.

Record access procedures:

The agency's rules for access to records may be obtained from the system manager.

Contesting record procedures:

The agency's rules for access to records and for contesting contents and appealing initial determinations by the individual concerned may be obtained from the system manager.

Record source categories:

Medical Treatment Facilities providing services which resulted in indebtedness to the United States, OCHAMPUS Denver, U. S. Postal Service, Military Locator Services, State Departments of Motor Vehicles, any component of the DOD, the Department of Justice, the General Accounting Office, retail credit associations, financial institutions, current or previous employers, educational institutions, trade associations, automated system interfaces, local law enforcement agencies, the Department of Health, Education, and Welfare, the Internal Revenue Service, and the Civil Service Commission.

Systems exempted from certain provisions of the act:

NONE

N00018 10

System name:

Family Advocacy Program System

System location:

Central Registry -- Chief, Bureau of Medicine and Surgery, Navy Department, Washington, D. C. 20372. Individual Case Files -- Naval Regional Medical Centers, naval hospitals and clinics (formerly dispensaries), and duty stations of the military sponsors. (Mailing addresses of duty stations are listed in the DOD directory in the Appendix to the Component System Notice.)

Categories of individuals covered by the system:

All beneficiaries entitled to care at Navy medical and dental facilities whose abuse or neglect is brought to the attention of appropriate authorities, and all persons suspected of abusing or neglecting such beneficiaries.

Categories of records in the system:

Medical records of suspected and confirmed cases of family member abuse or neglect, also, investigative reports, correspondence, family advocacy committee reports, follow-up and evaluative reports, and any other supportive data assembled relevant to individual family advocacy program files.

Authority for maintenance of the system:

5 U.S.C. 301, 10 U.S.C. 5132, and 44 U.S.C. 3101.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Officials and employees duties relating to health and medical treatment of members and former members of the uniformed services, civilians, and dependents receiving medical care under Navy auspices; determining qualifications and suitability of Navy and Marine Corps personnel for various programs, duty assignments, and fitness for continued military service; and performance of research studies of compilation of statistical data.

Officials and employees of other components of the Department of Defense and other Departments and agencies and the Executive Branch of government, in the performance of their official duties relating to the coordination of family advocacy programs, medical care, and researchconcerning family member abuse and neglect.

The Attorney General of the United States or his authorized representatives, in connection with litigation or other matters under the direct jurisdiction of the Department of Justice or carried out as the legal representative of the Executive Branch agencies.

Federal, state or local government agencies when it is deemed appropriate to utilize civilian resources in the counseling and treatment of individuals or families involved in abuse or neglect or when it is deemed appropriate or necessary to refer a case to civilian authorities for civil or criminal law enforcement.

Authorized officials and employees of the National Academy of Sciences, and private organizations and individuals for authorized health research in the interest of the federal government and the public; and authorized surveying bodies for professional certification and accreditation. government and the public; and authorized surveying bodies for professional certification and accreditation.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Records may be stored in file folders, microfilm, magnetic tape, punched cards, machine lists, discs, and other computerized or machine readable media.

Retrievability:

Records are retrieved through indices and cross indices of all individuals and relevant incident data. Types of indices used include, but are not limited to: names, social security numbers, and types of incidents.

Safeguards:

Records are maintained in various kinds of filing equipment in specified monitored or controlled access rooms or areas. Public access is not permitted. Records are accessible only to authorized personnel who are properly screened and trained, and on a need-to-know basis, only.

Computer terminals are located in supervised areas, with access controlled by password or other user code system.

Retention and disposal:

Family advocacy case records are maintained at the activity having cognizance of the case for a period of 5 years and are then destroyed. Central registry records are permanently retained under the control of the Bureau of Medicine and Surgery.

System manager(s) and address:

Central Registery -- Chief, Bureau of Medicine and Surgery, Navy Department, Washington, D.C. 20372, -- and commanding officers of medical treatment facilities under the command of the Chief, Bureau of Medicine and Surgery, where the treatment and reporting occurred.

Notification procedure:

Informational requests should be directed to the cognizant system manager(s). Requests should contain the full name of the individual and social security number of the military or civilian sponsor or guardian, date and place of treament, and alleged reporting of incident. The requester may visit the office of the Chief, Bureau of Medicine and Surgery, 23rd and 'E' Streets, N.W., Washington, D.C. and the commading officers of the individual medical treatment facilities to obtain information on whether or not the system contains records pertaining to hime or her. Armed Forces I.D. card or other type of identification bearing the picture and signature of the requested will be considered adequate proof of identity.

Record access procedures:

The agency's rules for access to records may be obtained from the system manager.

Contesting record procedures:

The agency's rules for contesting contents and appealing initial determinations by the individual concerned may be obtained from the system manager.

Record source categories:

Reports from physicians and othe medical department personnel regarding the results of physical, dental, mental, and other examinations, treatment, evaluation, consultation, laboratory, x-ray, and special studies; reports and information from other sources, including

educational institutions, medical institutions, law enforcement agencies, public and private health and welfare agencies, and witnesses.

Systems exempted from certain provisions of the act:

Part of this system may be exempt under 5 U.S.C. 552a(k) (2) and (5), as applicable. For additional information, contact the system manager(s).

N00022 NONAPACTSUPSYS

System name:

Nonappropriated Fund Activity Information Support System

System location:

Bureau of Naval Personnel, Navy Department, Washington, D. C. 20370; and local nonappropriated Fund Activities under the cognizance of the Chief of Naval Personnel.

Categories of individuals covered by the system:

Individuals authorized under current regulations to use Commissioned Officers Messes (open), Chief Petty Officer Messes, Petty Officer First and Second Class Messes, Enlisted Men's Clubs, Consolidated Package Stores, Special Services facilities, and other Non-Appropriated Fund Activities under the cognizance of the Chief of Naval Personnel.

Categories of records in the system:

Correspondence, records, membership applications, membership and user listings of Nonappropriated Fund Activity facilities, accounts receivable records, bad check listings, investigatory reports involving abuse of facilities, required for management of Nonappropriated Fund Activities under the cognizance Chief of Naval Personnel.

Authority for maintenance of the system:

5 USC 301 Departmental Regulations

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Officials and employees of the Department of the Navy in the performance of their duties related to the management, supervision and administration of Nonappropriated Fund Activities under the cognizance of the Chief of Naval Personnel. The Comptroller General or any of his authorized representatives, upon request, in the course of the performance of duties of the General Accounting Office related to the management, supervision, and administration of Nonappropriated Fund Activities under the cognizance of the Chief of Naval Personnel.

Officials and employees of other components of the Department of Defense in the performance of their official duties related to the management, supervision and administration of Nonappropriated Fund Activities under the cognizance of the Chief of Naval Personnel.

The Attorney General of the United States or his authorized representatives in connection with litigation, law enforcement, or other matters under the direct jurisdiction of the Department of Justice or carried out as the legal representatives of the Executive Branch Agencies.

The Senate or the House of Representatives of the United States or any committees or sub committees thereof on matters within their jurisdiction requiring disclosure of the files or records of persons covered by this system.

Such Civilian Contractors and their employees as are or may be operating in accordance with an approved, official contract with the U.S. Government. When required by Federal statute, by Executive order, or by treaty, personnel record information will be disclosed to the individual, organization, or governmental agency as necessary.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Automated records may be stored on magnetic tapes, disc, drums and on punched cards.

Manual records may be stored in paper file folders, microfiche or microfilm.

Retrievability:

Primarily by Name, and/or Social Security Number/Membership Number.

Safeguards:

Computer and punched card processing facilities are located in restricted areas accessible only to authorized persons that are properly screened, cleared and trained.

Manual records and computer printouts are available only to authorized personnel having a need to know.

Retention and disposal:

Records are retained or disposed of in accordance with SECNAVINST P5212.5B, subj: Disposal of Navy and Marine Corps Records, or Departmental Instructions.

System manager(s) and address:

Chief of Naval Personnel, Navy Department, Washington, D. C. 20370

Notification procedure:

Requests by correspondence should be addressed to: Chief of Naval Personnel (Attn: Privacy Act Coordinator), Navy Department, 20370; or to the Head of the local Nonappropriated Fund Activity concerned. The letter should contain full name, social security account number, status, address, and signature of the requestor.

The individual may visit the Chief of Naval Personnel, Washington, D. C. 20370 (Arlington Annex, FOB #2), Rm. 1066 for assistance with records located in that building; or the individual may visit the local activity concerned for access to locally maintained records. Proof of identification will consist of Military Identification Card for persons having such cards, or other picture-bearing identification.

Record access procedures:

The Agency's rules for access to records may be obtained from SYSMANAGER.

Contesting record procedures:

The Agency's rules for contesting contents and appealing initial determinations by the individual concerned may be obtained from the SYSMANAGER.

Record source categories:

Officals and employees of the Department of the Navy, Department of Defense, and components thereof, in performance of their official duties and as specified by current Instructions and Regulations promulgated by competent authority; general correspondence concerning the individual.

Systems exempted from certain provisions of the act:

None

N00022.81

System name:

Personnel Security Eligibility information System

System location:

Primary System-Bureau of Naval Personnel, Navy Department, Washington, D.C. 20370

Secondary System-local activity to which individual is assigned (see Directory of the Department of the Navy Mailing Addresses)

Categories of individuals covered by the system:

Members of the U.S. Navy and Naval Reserve, former members, and applicants for enlistment or commissioning.

Categories of records in the system:

Files contain reports of personnel security investigations, criminal investigations, and counterintelligence investigations, usually brief excerpts only; correspondence, records and information pertinent to an individual's eligibility for acceptance and retention, personnel security clearance, assignment to the Nuclear Weapon Personnel Reliability Program or other 'high risk' program requiring personnel quality control.

Authority for maintenance of the system:

5 USC 301 Departmental Regulations

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Officials and employees of the Department of the Navy in the performance of their official duties related to personnel security eligibility;

The Comptroller General or any of his authorized representatives, upon request, in the course of the performance of duties of the General Accounting Office relating to personnel security eligibility.

Attorney General of the United States or his authorized representatives in connection with litigation, law enforcement or other matters under the jurisdiction of the Department of Justice or carried out as the legal representative of the Executive Branch agencies;

State and Local government agencies in the performance of their official duties related to personnel security eligibility;

Officials and employees of the Department of Defense in the performance of their duties related to personnel security eligibility;

Officials and employees of other agencies of the Executive Branch of the government, upon request, in the performance of their duties related to personnel security eligibility;

Senate or the House of Representatives of the United States or any committees or subcommittees thereof, requiring disclosure of the files or records of individuals covered by this system. When required by

Federal statute, by Executive order, or by treaty, personnel record information will be disclosed to the individual, organization, or governmental agency as necessary.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Paper records in file folders and index cards. Some information from the paper records is contained in an automated file.

Retrievability:

Filed alphabetically by last name of individual. Automated files are by social security account number.

Safeguards:

Stored in locked safes and cabinets. File areas are accesible only to authorized persons who are properly screened, cleared, and trained.

Retention and disposal:

Records and portions thereof vary in period of time retained; records are retained and disposed of in accordance with Department Regulations.

System manager(s) and address:

Chief of Naval Personnel, Navy Department, Washington, D.C. 20370

Notification procedure:

Requests by correspondence should be addressed to Chief of Naval Personnel, (Attn: Privacy Act Coordinator), Navy Department, Washington, D.C. 20370; or in accordance with the Directory of the Department of the Navy Mailing Adresses (i.e., local activities). The letter should contain full name, social security account number, rank/rate/civilian status, address and notarized signature of the requestor. The individual may visit the Chief of Naval Personnel, Arlington Annex, (FOB#2) Washington, D.C., Rm. 1066, for assistance with records located in that building; or the individual may visit the local activity to which attached for access to locally maintained records. Prior written notification of personal visits is required to ensure that all parts of the record will be available at the time of the visit. Proof of identify will be required and will consist of a military identification card for persons having such cards and picture-bearing identification.

Record access procedures:

The agency's rules for access to records may be obtained from the SYSMANAGER.

Contesting record procedures:

The agency's rules for contesting contents and appealing inital determinations by the individual concerned may be obtained from the SYSMANAGER.

Record source categories:

Officials and employees of the Department of the Navy, Department of Defense, and other Departments and Agencies of the Executives Branch of government, and components thereof, in performance of their official duties and as specified by current instruction and regulations promulgated by competent authority; civilian and military investigative reports; federal state and local court doucments; fingerprint cards; official correspondence concerning individual.

Systems exempted from certain provisions of the act:

Parts of this system may be exempt under 5 U.S.C. 552 a (j) or (k), as applicable. For additional information contact the System Manager.

N00022.02

System name:

Navy Personnel Evaluation System

System location:

Bureau of Naval Personnel, Navy Department, Washington, D.C. 20370

Categories of individuals covered by the system:

All members of the U.S. Navy including Regular, Reserve, Active Duty, Inactive Duty, Fleet Reserve and Retired.

Categories of records in the system:

Correspondence and investigatory material containing information pertinent to member's retention, assignment or separation.

Authority for maintenance of the system:

5 USC 301. Departmental Regulations.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Officials and employees of the Department of the Navy in the performance of their official duties related to personnel administration of Navy members; Officials and employees of the Department of Defense and its other components in the performance of their official duties related to personnel administration.

The Attorney General of the United States or his authorized representatives in connection with litigation, law enforcement, or other matters under the jurisdiction of the Department of Justice or carried out as the legal representative of the Executive Branch agencies;

The Secretary of Health, Education and Welfare, and the Director, Veterans Administration, and Director, Selective Service Administration and their officials and employees in connection with notification and assistance in obtaining benefits by members and former members;

Officials and employees of other Departments and agencies of the Executive Branch of government upon request, in the performance of their official duties related to personnel administration;

Such civilian contractors as are or may be operating in accordance with an approved, official contract with the U.S. Government; The Senate or the House of Representatives of the United States or any committees or subcommittees therof, requiring disclosure of the files or records of individuals covered by this system;

Officials and employees of the General Accounting Office upon request in the performance of their official duties relating to personnel administration. State and local government agencies in the performance of their official duties related to personnel administration. When required by Federal statute, by Executive order, or by treaty, personnel record information will be disclosed to the individual, organization, or governmental agency as necessary.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Paper records in file folders and index cards. Some information from the paper records is automated.

Retrievability:

Filed alphabetically by last name or by Social Security Account Number.

Safeguards:

Stored in locked safes and cabinets in buildings that employ security guards. File areas are accesible only to authorized persons who are properly screened, cleared and trained.

Retention and disposal:

Records are maintained as long as member has any affiliation with the Naval service and for five years thereafter and are then destroyed.

System manager(s) and address:

Chief of Naval Personnel, Navy Department, Washington, D.C. 20370

Notification procedure:

Requests by correspondence should be addressed to Chief of Naval Personnel (Attn: Privacy Act Coordinator), Navy Department, Washington, D.C. 20370. The letter should contain full name, social security account number, rank/ rate/civilian status, address and notarized signature of the requestor. The individual may visit the Chief of Naval Personnel, Arlington Annex, Washington, D.C. (FOB#2) Rm. 1066, for assistance with records located in that building. Prior written notification of personal visits is required to ensure that all parts of the record will be available at the time of the visit. Proof of identity will be required and will consist of a military identification card for persons having such cards and picture-bearing identification.

Record access procedures:

The agency's ruls for access to records may be obtained from the system manager.

Contesting record procedures:

The agency's rules for contesting contents and appealing initial determinations by the individual concerned may be obtained from the system manager.

Record source categories:

Civilian and military investigative reports; reports of federal and state civilian court actions and criminal proceedings; general correspondence concerning and individual; officials and employees of the Department of the Navy, Department of Defense and Components therof, in performance of their official duties and as specified by current Instructions and Regulations promulgated by competent authority.

Systems exempted from certain provisions of the act:

Parts of this system may be exempt under 5 U.S.C. 552 a (j) or (k), as applicable. For additional information contact the System Manager.

N00023CASINFOSUPPSYS

System name:

Casualty Information Support System

System location:

Primary System-Chief of Naval Personnel, Navy Department, Washington, D.C. 20370 and local activity to which individual is assigned (see Directory of the Department of the Navy Mailing Addresses); Washington National Records Center, Suitland, Maryland.

Categories of individuals covered by the system:

All Navy military personnel who are reported missing, missing in Action, Prisoner of War or otherwise detained by armed force; deceased in either an active or inactive duty status; reported ill/injured in either active duty, fleet reserve, or retired status.

Categories of records in the system:

Correspondence, reports, and records in both automated and non-automated form concerning circumstances of casualty, next-of-kin data, survivor benefit information, personal and service data, and casualty program data.

Authority for maintenance of the system:

Title 5 USC 301 Departmental Regulations

Routine uses of records maintained in the system, including categories of users and the purpose of such uses:

Officials and employees of the Department of the Navy in performance of their official duties related to casualty program management and responding to inquiries from survivors of Navy military personnel.

Officials and employees of other components of the Department of Defense in the performance of their official duties related to Casualty Program Management.

Secretary of Health Education and Welfare and the Director of the Veterans Administration and their officials and employees in connection with eligibility, notification and assistance in obtaining benefits due.

The Senate or the House of Representatives of the United States or any committee or subcommittee of joint committees on matters within their jurisdiction requiring disclosure of the casualty files of Navy members.

Nongovernment Agencies - To assist in settlement of member's affairs. The comptroller General or any of his authorized representatives, upon request, in the course of the performance of duties of the General Accounting Office relating to the Navy's Casualty and Survivor's Benefit Program.

The Attorney General of the United States or his authorized representatives in connection with litigation, law enforcement, or other matters under the direct jurisdiction of the department of justice or carried out as the legal representative of the Executive Branch agencies.

Officials and employees of state and local government agencies in connection with eligibiliy, notification and assistance in obtaining benefits due. When required by Federal statute, by Executive order, or by treaty, personnel record information will be disclosed to the individual, organization, or governmental agency as necessary.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Automated records may be stored on magnetic tapes, disc, drums and on punched cards.

Manual records may be stored in paper files, microfiche or microfilm.

Retrievability:

Records may be retrieved by name and/or social security account number.

Safeguards:

Computer and punched card processing facilities are located in restricted areas accessible only to authorized persons that are properly screened, trained, and cleared.

Manual records and computer printouts are available only to authorized personnel having a need to know.

Retention and disposal:

Files are retained and disposed of in accordance with SECNAVINST P5212.5B, subj: Disposal of Navy and Marine Corps Records, or in accordance with Department Regulations.

System manager(s) and address:

Chief of Naval Personnel, Navy Department, Washington, D.C. 20370.

Notification procedure:

Requests by correspondence should be addressed to: Chief of Naval Personnel, (Attn: Privacy Act Coordinator), Navy Department, Washington, D.C. 20370; or, in accordance with the Directory of the Department of the Navy Mailing Addresses (i.e., local activities). The letter should contain full name, social security account number (and/or enlisted service number/officer file number), rank/rate, military status, date of casualty and status at time of casualty, and signature of the requestor. The individual may visit the Chief of Naval Personnel, Arlington Annex (FOB#2), RM 1066, Washington, D.C. for assistance with records located in that building; or the individual may visit the local activity for access to locally maintained records. Proof of identification will consist of Military Identification Card for persons having such cards, or other picture-bearing identification.

Record access procedures:

The Agency's rule for access to records may be obtained from the system manager.

Contesting record procedures:

The Agency's rules for contesting contents and appealing initial determinations by the individual concerned may be obtained from the system manager.

Record source categories:

Officials and employees of the Department of the Navy, Department of Defense, Public Health Service, Veterans Administration, and components thereof, in performance of their official duties as specified by current Instructions and Regulations promulgated by competent authority; casualty reports may also be received from state and local agencies, Hospitals and other agencies having knowledge of casualties to Navy personnel; general correspondence concerning member.

Systems exempted from certain provisions of the act:

None

N00022CIVEMPNAF

System name:

Record System for Civilian Employees of Nonappropriated Fund (NAF) Activities

System location:

Primary System-Bureau of Naval Personnel, Washington, D.C. 20370; and local activity to which individual is assigned (see Directory of the Department of the Navy Mailing Addresses); National Personnel Records Center, St. Louis, Missouri 63132.

Categories of individuals covered by the system:

Civilian employees of Nonappropriated Fund Activities under the cognizance of the Chief of Naval Personnel.

Categories of records in the system:

Correspondence and records pertaining to performance, employment, pay, classification, security clearance, personnel actions, medical, insurance, retirement, tax withholding information, exemptions, unemployment compensation, employee profile, education, benefits, discipline and administration of nonappropriated fund civilian personnel.

Authority for maintenance of the system:

5 USC 301. Department Regulations
Public Law 92-392
Fair Labor Standards Act, as amended

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Officials and employees of the Department of the Navy in the performance of their official duties related to the management, supervision and administration of nonappropriated fund civilian personnel.

Officials and employees of other components of the Department of Defense in the performance of their official duties related to the management, supervision and administration of nonappropriated fund civilian personnel.

The Attorney General of the United States or his authorized representatives in connection with litigation, law enforcement, or other matters under the direct jurisdiction of the Department of Justice or carried out as the legal representative of the Executive Branch Agencies.

The Comptroller General or any of his authorized representatives, upon request, in the course of the performance of duties of the General Accounting Office relating to management, supervision and administration of Nonappropriated Fund civilian personnel.

The Senate or the House of Representatives of the United States or any committee or subcommittee thereof, on matters within their jurisdiction requiring disclosure of the files or records of Nonappropriated Fund civilian personnel. Such civilian contractors and their employees are or may be operating in accordance with an approved, official contract with the U.S. Government. When required by Federal statute, by Executive order, or by treaty, personnel record information will be disclosed to the individual, organization, or governmental agency as necessary.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Automated records may be stored on magnetic tapes, disc, drums and on punched cards.

Manual records may be stored in paper file folders, mirofiche, or microfilm.

Retrievability:

Records may be retrieved by name, social security account number and/or activity number.

Safeguards:

Computer and punched card progessing facilities are located in restricted areas accessible only to authorized persons that are properly screened, cleared and trained.

Manual records and computer printouts are available only to authorized personnel having a need to know.

Retention and disposal:

Records are retained or disposed of in accordance with SECNAVINST P5212.5b, subj: Disposal of Navy and Marine Corps Records, or Departmental Regulations.

System manager(s) and address:

Chief of Naval Personnel, Department of the Navy, Washington, D.C. 20370

Notification procedure:

Requests by correspondence should be addressed to: Chief of Naval Personnel, (Attn: Privacy Act Coordinator), Navy Department, Washington, D.C. 20370; or, in accordance with the Directory of the Department of the Navy Mailing Addresses (i.e., local activities).

The letter should contain full name, social security number, activity at which employed, and signature of the requestor.

The individual may visit the Chief of Naval Personnel, Arlington Annex (FOB#2), Rm 1066, Washington, D.C. for assistance with records located in that building; or the individual may visit the local activity to which attached for access to locally maintained records.

Record access procedures:

The Agency's rules for access to records may be obtained from the system manager.

Contesting record procedures:

The Agency's rules for contesting contents and appealing initial determinations by the individual concerned may be obtained from the system manager.

Record source categories:

Officials and employees of the Department of the Navy and Department of Defense in the performance of their official duties and as specified by current Instructions and Regulations promulgated by competent authority; previous employers; educational institutions; employment agencies; civilian and military investigative reports; general correspondence concerning individual.

Systems exempted from certain provisions of the act:

None

N00022CIVPERSADMSYS

System name:

Civilian Personnel Administrative Services Record System

System location:

Bureau of Naval Personnel, Navy Department, Washington, D. C. 20370

Categories of individuals covered by the system:

Civilian employees and former employees of the Bureau of Naval Personnel and the Naval Personnel Program Support Activity.

Categories of records in the system:

Correspondence and records concerning personal identification, directory and locator services, vehicle parking, security, disaster control, community relations (blood donor, etc.) employee recreation programs temporary duty travel, employee applications, nominations, training, violations of rules, appointments to duties or offices, security, and other personal action records.

Authority for maintenance of the system:

5 USC 301 Departmental Regulations

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Officials and employees of the Department of the Navy other components of the Department of Defense in the performance of their official duties related to the management, supervisor and administration of civilian employees of the Bureau of Naval Personnel Program Support Activity.

The Comptroller General or any of his authorized representatives, upon, request, in the course of the performance of duties of the General Accounting Office relating to the management, supervision, and supervision of civilian employees of the Bureau of Naval Personnel and the Naval Personnel Program Support Activity.

The Attorney General of the United States or his authorized representatives in connection with litigation, law enforcement, or other matters under the direct jurisdiction of the Department of Justice or carried out as the legal representative of the Executive Branch agencies.

The Senate or House of Representatives of the United States or any committee or subcommittee thereof, on matters within their jurisdiction requiring disclosure of the files or records of civilian personnel covered by this system. Such civilian contractors and their employees as are or may be operating in accordance with an approved, official contract with the U. S. Government. When required by Federal statute, by Executive order, or by treaty, personnel record information will be disclosed to the individual, organization, or governmental agency as necessary.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Paper records in file folders or card files

Retrievability:

Filed alphabetically by last name of subject

Safeguards:

Access to records restricted to those who have a need to know. The small amount of classified information is maintained in approved security containers.

Retention and disposal:

Records are retained and disposed of in accordance with Departmental regulations.

System manager(s) and address:

Chief of Naval Personnel, Navy Department, Washington, D. C. 20370

Notification procedure:

Requests by correspondence should be addressed to: Chief of Naval Personnel (Attn: Privacy Act Coordinator), Navy Department, Washington, D. C. 20370; letter should contain full name, social security account number, civilian status (currently employed or previously employed), system of records to which access is desired, and signature of the requestor. The individual may also visit the Chief of Naval Personnel, Arlington Annex (FOB #2), Rm 2066, Washington, D. C. Proof of identification will be by picture-bearing identification or other positive personal identification.

Record access procedures:

The agency's rules for access to records may be obtained from the SYSMANAGER.

Contesting record procedures:

The agency's rules for contesting contents and appealing initial determinations by the individual concerned may be obtained from the SYSMANAGER.

Record source categories:

From supervisor of subject, from Civil Service Commission, from Naval Investigative Service, BUPERS Duty Officer, BUPERS Security Manager, BUPERS Classified Clearance Officers, from Assistant Chief of Naval Personnel for Performance and Security, from BUPERS employee personnel records, from Headquarters, U. S. Marine Corps, from American Red Cross.

Systems exempted from certain provisions of the act:

None

N00022ENLDEVDISTSYS

System name:

Enlisted Development and Distribution Support System

System location:

Primary System-Bureau of Naval Personnel, Navy Department, Washington, D.C. 20370 Secondary System-Enlisted Personnel Management Center, New Orleans, Louisiana 70159 and Naval Reserve Personnel Center, Naval Support Activity (East Bank), Bldg. 603, New Orleans, Louisiana 70159

Categories of individuals covered by the system:

All Navy enlisted personnel: active, inactive, reserve, fleet reserve, and retired.

Categories of records in the system:

Correspondence and records in both automated and non-automated form concerning classification, assignment, distribution, advancement, performance, retention, reenlistment, separation, training, education, morale, personal affairs, benefits, entitlements, and administration of Navy military personnel.

Authority for maintenance of the system:

5 USC 301 Departmental Regulations

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Officials and employees of the Department of the Navy in the performance of their official duties to initiate, develop, implement, and carry out policies pertaining to enlisted personnel assignment, placement, retention, career enhancement and motivation, and other career related matters, in order to meet manpower allocations and requirements.

The Attorney General of the United States or his authorized representatives in connection with litigation, law enforcement, or other matters under the direct jurisdiction of the Department of Justice or carried out as the legal representative of the Executive Branch agencies. Officials and employees of other components of the Department of Defense in the performance of their official duties related to the management and administration of Navy enlisted personnel in order to meet manpower allocations and requirements.

Officials and employees of other Departments and Agencies of the Executive Branch of government, upon request, in the performance of their official duties related to the management and administration of Navy enlisted personnel in order to meet manpower allocations and requirements.

The Senate of the House of Representatives of the United States or any Committee or subcommittee thereof on matters within their jurisdiction requiring disclosure of the files or records of Navy military personnel.

Such civilian contractors and their employees as are or may be operating in accordance with an approved, official contract with the U.S. Government. When required by Federal statute, by Executive order, or by treaty, personnel record information will be disclosed to the individual, organization, or governmental agency as necessary.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Automated records may be stored on magnetic tapes, disc, drums, and on punched cards.

Manual records may be stored in paper file folders, microfiche or microfilm.

Retrievability:

Automated records may be retrieved by social security account number and/or name.

Manual records may be retrieved by name, social security account number, or enlisted service number.

Safeguards:

Computer and punched card processing facilities and terminals are located in restricted areas accessible only to authorized persons that are properly screened, cleared and trained.

Manual records and computer printouts are available only to authorized personnel having a need to know.

Retention and disposal:

Records are retained or disposed of in accordance with SECNAVINST P5212.5B, subj: Disposal of Navy and Marine Corps Records.

System manager(s) and address:

The Chief of Naval Personnel, Navy Department, Washington, D.C. 20370

Notification procedure:

Requests by correspondence should be addressed to: Chief of Naval Personnel (Attn: Privacy Act Coordinator), Navy Department, Washington, D.C. 20370; or, for Training and Administration of Reserve personnel only, to Commanding Officer, (Attn: Privacy Act Coordinator) Naval Reserve Personnel Center, Naval Support Activity (East Bank), Bldg. 603, New Orleans, Louisiana 70159. The letter should contain full name, social security account number (and/or enlisted service number), rate, military status, and signature of the requestor. The individual may visit the Chief of Naval Personnel, Arlington Annex (FOB #2), Rm. 1066, Washington, D.C. for assistance with records located in that building; or Training and Administration of Reserve personnel may visit the Commanding Officer (Privacy Act Coordinator), Naval Support Activity (East Bank), Bldg. 603, New Orleans, Louisiana 70159. Proof of identification will consist of Military Identification Card for persons having such cards, or other picture-bearing identification.

Record access procedures:

The Agency's rules for access to ecords may be obtained from SYSMANAGER.

Contesting record procedures:

The Agency's rules for contesting contents and appealing initial determinations by the individual concerned may be obtained from the SYSMANAGER.

Record source categories:

Officials and employees of the Department of the Navy, Department of Defense, and components thereof, in performance of their official duties and as specified by current Instructions and Regulations promulgated by competent authority; general correspondence concerning the individual; official records of professional qualifications; Navy Relief and American Red Cross requests for verification of status; Educational institutions.

Systems exempted from certain provisions of the act:

None

N00022ENLMAUSESYS

System name:

Enlisted Master File Automated System

System location:

Bureau of Naval Personnel, Navy Department, Washington, D. C. 20370; Personnel Management Information Center, New Orleans, LA 70159; Naval Reserve Personnel Center, New Orleans, LA 70159

Categories of individuals covered by the system:

All Navy Enlisted Personnel: Active and Inactive

Categories of records in the system:

Computer file contains data concerning enlisted assignment, planning, programming, accounting, promotions, career development, procurement, education, training, retirement, performance, security, personal data, qualifications, programming, and enlisted reserve drill data. The system also contains Activity Personnel Diaries, personnel accounting documents, Reserve Unit Drill reports and other personnel transaction documents necessary to maintain file accuracy and currency; and all computer extracts, microform, and printed reports therefrom.

Authority for maintenance of the system:

5 USC 301 Departmental Regulations

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Officials and employees of the Department of the Navy in the performance of their official duties related to the Navy's military management program of Navy enlisted personnel and the operation of personnel affairs and functions; the design, development, maintenance and operation of the automated system of records.

Comptroller General or any of his authorized representatives, upon request, in the course of the performance of duties of the General Accounting Office relating to the management, supervision, and administration of Navy enlisted personnel.

The Attorney General of the United States or his authorized representatives in connection with litigation, law enforcement, or other matters under the direct jurisdiction of the Department of Justice or carried out as the legal representative of the Executive Branch agencies.

Officials and employees of other components of the Department of Defense in the performance of their official duties related to the management, supervision and administration of Navy enlisted personnel and the operation of personnel affairs and functions.

Officials and employees of other Departments and Agencies of the Executive Branch of government, upon request, in the performance of their official duties related to the management, supervision and administration of Navy enlisted personnel and the operation of personnel affairs and functions. The Senate or the House of Representatives of the United States or any committee or subcommittee therof,

on matters within their jurisdiction requiring disclosure of the files or records of Navy enlisted personnel.

Such civilian contractors and their employees as are or may be operating in accordance with an approved, official contract with the U. S. Government. When required by Federal statute, by Executive order, or by treaty, personnel record information will be disclosed to the individual, organization, or governmental agency as necessary.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Automated records are stored on magnetic tapes, disks, drums and on punched cards.

Printed reports and other related documents supporting the system are stored in authorized areas only.

Retrievability:

Automated records are retrieved by Social Security Account Number.

Safeguards:

Within the computer center, controls have been established to desseminate computer output over the counter only to authorized users. Specific procedures are also in force for the disposal of computer output. Output material in the sensitive category, i.e., inadvertant or unauthorized disclosure will result in harm, embarrassment, inconvience or unfairness to the individual, will be shredded. Computer files are kept in a secure, continuously manned area and are accessible only to authorized computer operators, programmers, enlisted managment, placement, and distributing personnel who are directed to respond to valid, official requests for data. These accesses are controlled and monitored by the Security System.

Retention and disposal:

Automated records are retained in accordance with MAPMIS manual (periods range from 1 month to permanent).

System manager(s) and address:

Chief of Naval Personnel, Navy Department, Washington, D. C. 20370

Notification procedure:

Requests by correspondence from active duty enlisted personnel shall be addressed to : Chief of Naval Personnel (Attn: Privacy Act Coordinator), Navy Department, Washington, D. C. 20370; requests by correspondence from inactive duty and reserve personnel shall be addressed to: Commanding Officer, Naval Reserve Personnel Center (Attn: Privacy Act Coordinator), New Orleans, La 70159; request shall contain full name, social security account number, rank, status, and signature of requestor.

Record access procedures:

The Agency's rules for access to records may be obtained from SYSMANAGER.

Contesting record procedures:

The Agency's rules for contesting contents and appealing initial determinations by the individual concerned may be obtained from the SYSMANAGER.

Record source categories:

Officials and employees of the Department of the Navy and Department of Defense and Components thereof in performance of their office duties and as specified by current instructions and regulations promulgated by competent authority; educational institutions.

Systems exempted from certain provisions of the act:

None

N00022EQOPPINFOSYS

System name:

Equal Opportunity Information and Support System

System location:

Primary System-Bureau of Naval Personnel, Navy Department, Washington, D. C. 20370; and local activity to which individual is attached (see Directory of the Department of the Navy Mailing Addresses).

Secondary System-Department of the Navy Activities in the Chain of Command between the local activity and the Headquarters level (see Directory of the Department of the Navy Mailing Addresses).

Categories of individuals covered by the system:

Navy personnel who are involved in formal or informal investigations involving aspects of equal opportunity; and/or who have initiated, or were the subject of correspondence concerning aspects of equal opportunity.

Categories of records in the system:

Correspondence and records concerning incident data, endorsements and recommedations, formal and informal investigations concerning aspects of equal opportunity.

Authority for maintenance of the system:

5 USC 301 DEPARTMENTAL REGULATIONS

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Officials and employees of the Department of the Navy in the performance of their official duties related to equal opportunity matters.

The Attorney General of the United States or his authorized representatives in connection with litigation, law enforcement, or other matters under the direct jurisdiction of the Department of Justice or carried out as the legal representative of the Executive Branch agencies.

Officials and employees of other components of the Department of Defense in the performance of their official duties related to equal opportunity matters.

Officials and employees of other Departments and Agencies of the Executive Branch of government, upon request, in the performance of their official duties related to equal opportunity matters.

The Senate or the House of Representatives of the United States or any Committee or subcommittee thereof, any joint committee of Congress or any subcommittee of joint committees on matters within their jurisdiction requiring disclosure of the files or records of Navy military personnel. When required by Federal statute, by Executive order, or by treaty, personnel record information will be disclosed to the individual, organization, or governmental agency as necessary.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Paper records in file folders.

Retrievability:

Filed alphabetically by last name of individual concerned.

Safeguards:

Records maintained in areas accessible only to authorized personnel on a need to know basis.

Retention and disposal:

Records disposed of after two years in accordance with SECNAVINST P5212.5B, 'Disposal of Navy and Marine Corps Records'; or in accordance with Departmental Regulations.

System manager(s) and address:

Chief of Naval Personnel, Navy Department, Washington, D.C. 20370.

Notification procedure:

Requests by correspondence should be addressed to: Chief of Naval Personnel (Attn: Privacy Act Coordinator), Washington, D.C. 20370; or, in accordance with the Directory of the Department of the Navy Mailing Addresses (i.e., local activities). The letter should contain full name, social security account number, rank/rate, military status, and signature of the requestor.

The individual may visit the Chief of Naval Personnel, Arlington Annex (FB#2), Rm. 1066 Washington D.C. for assistance with records located in that building; or the individual may visit the local activity to which attached for access to locally maintained records. Proof of identification will consist of Military Identification Card for persons having such cards, or other picture-bearing identification.

Record access procedures:

The Agency's rules for access to records may be obtained from SYSMANAGER.

Contesting record procedures:

The Agency's rules for contesting contents and appealing initial determinations by the individual concerned may be obtained from the SYSMANAGER.

Record source categories:

Officials and employees of the Department of the Navy, Department of Defense, and components thereof, in performance of their official duties and as specified by current instructions and Regulations promulgated by competent authority; federal, state, and local court documents; military investigatory reports; general correspondence concerning individual.

Systems exempted from certain provisions of the act:

Parts of this system may be exempt under 5 U.S.C. 552 a (j) or (k), as applicable. For additional information contact the System Manager.

N00022NAVHOMRESINFSY

System name:

Naval Home Resident Information System

System location:

Primary System-Governor, U.S. Naval Home, 24th and Grays Ferry Avenue, Philadelphia Pennsylvania 19146 Secondary System-National Personnel Records Center, St. Louis, Missouri 63132

Categories of individuals covered by the system:

Residents of the Naval Home (current, discharged and deceased).

Categories of records in the system:

Correspondence and records concerning application for admission and supporting documents, personnel data, service data, personal affairs, administrative records covering period of residence.

Authority for maintenance of the system:

5 USC 301 Departmental Regulations
24 USC 17

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Officials and employees of the Department of the Navy, generally, and the Naval Home, specifically, in the performance of their official duties related to the management, supervision, and administration of the Naval Home.

The Comptroller General or any his authorized representatives, upon request, in the performance of duties of the General Accounting Office related to the management, supervision, and administration of the Naval Home.

Officials and employees of the Veterans Administration in the performance of their duties related to eligibility, notification and assistance in obtaining benefits by residents of the Naval Home.

The Attorney General of the United States or his authorized representatives in connection with litigation, law enforcement, or other matters under the direct jurisdiction of the Department of Justice or carried out as the legal representative of the Executive Branch agencies. When required by Federal statute, by Executive order, or by treaty, personnel record information will be disclosed to the individual, organization, or governmental agency as necessary.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Manual records may be stored in paper file folders, and/or vertical card files.

Retrievability:

Records may be retrieved by name.

Safeguards:

All file folders and cards of residents are locked in file cabinets and are available only to authorized persons having a need to know.

Retention and disposal:

Records are maintained at Naval Home for life of Resident and for 10 years after death or discharge or Resident; thereafter, records are retained at the National Personnel Records Center, St. Louis, Missouri.

System manager(s) and address:

Governor, U.S. Naval Home, 24th and Grays Ferry Avenue, Philadelphia, Pa 19146.

Notification procedure:

Requests by correspondence should be addressed to : Governor, U.S. Naval Home, 24th and Grays Ferry Avenue, Philadelphia, Pa 19146. The letter should contain full name, social security account number (and/or enlisted service number/officer file number), rank/rate, and signature of requestor. The individual may visit the Governor, U.S. Naval Home for assistance with record located in that building. Proof of identification will consist of Military Identification Card.

Record access procedures:

The Agency's rules for access to records may be obtained from SYSMANAGER.

Contesting record procedures:

The Agency's rules for contesting contents and appealing initial determinations by the individual concerned may be obtained from the SYSMANAGER.

Record source categories:

Officials and employees of the Department of the Navy, Department of Defense, and Veteran's Administration in the performance of their official duties and as specified by current Instructions and Regulations promulgated by competent authority; general correspondence concerning the individual.

Systems exempted from certain provisions of the act:

None

N00022OFFDEVDISTSYS

System name:

Naval Officer Development and Distribution Support System

System location:

Bureau of Naval Personnel, Navy Department, Washington, D.C. 20370

Categories of individuals covered by the system:

All Naval officers on active duty; all Naval Reserve officers requesting recall to active duty.

Categories of records in the system:

Correspondence and personnel records in both automated and non-automated form concerning classification, qualifications, assignment, placement, career development, education, training, recall, release from active duty and management of Naval officers.

Authority for maintenance of the system:

5 USC 301 Departmental Regulations
10 USC 5504 Lineal List
10 USC 5706 Promotion Selection List

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: Officials and employees of the Department of the Navy in the performance of their official duties related to the classification, qualifications, assignment, placement, career development, education, training, recall and release of officer personnel in order to meet manpower allocations and requirements.

The Comptroller General or any of his authorized representatives, upon request, in the course of the performance of duties of the General Accounting Office relating to the Navy's military manpower allocations and requirements.

The Attorney General of the United States or his authorized representatives in connection with litigation, law enforcement, or other matters under the direct jurisdiction of the Department of Justice or carried out as the legal representive of the Executive Branch agencies. Officials and employees of other components of the Department of Defense in the performance of their official duties related to the management and administration of Naval officer personnel in order to meet manpower allocations and requirements.

Officials and employees of other Departments and Agencies of the Executive Branch of government, upon request, in the performance of their official duties related to the management and administration of Naval officer personnel in order to meet manpower allocations and requirements.

The Senate or the House of Representatives of the United States or any Committee or subcommittee therof, any joint committee of Congress or any subcommittee of joint committees on matters within their jurisdiction requiring disclosure of the files or records of Navy military personnel.

Such Civilian Contractors and their employees as are or may be operating in accordance with an approved, official contract with the U. S. Government. When required by Federal statute, by Executive order, or by treaty, personnel record information will be disclosed to the individual, organization, or governmental agency as necessary.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Automated records may be stored on magnetice tapes, disc, drums and on punched cards.

Manual records may be stored in paper file folders, microfiche or microfilm.

Retrievability:

Automated records may be retrieved by social security account number and/or name.

Manual records may be retrieved by name or social security account number.

Safeguards:

Computer and punched card processing facilities and terminals are located in restricted areas accessible only to authorized persons that are properly screened, cleared and trained.

Manual records and computer printouts are available only to authorized personnel having a need to know.

Retention and disposal:

Records are generally maintained until superseded, or for a period of two years or until release from active duty and disposed of by burning or shredding.

System manager(s) and address:

Chief of Naval Personnel, Navy Department, Washingtonm, D.C. 20370

Notification procedure:

Requests by correspondence should be addressed to: Chief of Naval Personnel (Attn: Privacy Act Coordinator) Navy Department, Washington, D.C. 20370. The letter should contain full name, rank, social security account number, designator, address and signature. The individual may visit the Chief of Naval Personnel, Arlington Annex (POB #2) Rm. 1066 Washington, D.C. for assistance. Advance notification is requested for personal visits. Proof of identification will consist of military identification card.

Record access procedures:

The Agency's rules for access to records may be obtained from SYSMANAGER.

Contesting record procedures:

The Agency's rules for contesting contents and appealing initial determinations by the individual concerned may be obtained from SYSMANAGER.

Record source categories:

Personnel Service jackets; records of the officer promotion system; officials and employees of the Department of the Navy, Department of Defense, and components thereof, in performance of their official duties and as specified by current instructions and regulations promulgated by competent authority; education institutions; official records of professional qualifications; general correspondence concerning the individual.

Systems exempted from certain provisions of the act:

None

N00022OFFMAUSTSYS

System name:

Officer Master File Automated System

System location:

Bureau of Naval Personnel, Navy Department, Washington, D.C. 20370; Personnel Management Information Center, New Orleans, LA 70159; Naval Reserve Personnel Center, New Orleans, LA 70159

Categories of individuals covered by the system:

All Naval Officers; commissioned, warrant, active, inactive; officer candidates, and Naval Reserve Officer Training Corps personnel.

Categories of records in the system: Computer file contains data concerning officer assignment, planning, accounting, promotions, career development, procurement, education, training, retirement, performance, security, personal data, qualifications, programming, and Reserve Officer drill data. System also contains activity Personnel Diaries, personnel accounting documents, Reserve Unit Drill Reports and other personnel transaction documents necessary to maintain file accuracy and currency; and all computer file extracts, microform and printed reports therefrom.

Authority for maintenance of the system:

Title 5 USC 301 Departmental Regulations

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Officials and employees of the Department of the Navy in the performance of their official duties related to the management, supervision, and administration of Navy officer personnel and the operation of personnel affairs and functions; the design, development, maintenance and operation of the automated system of records.

The Comptroller General or any of his authorized representatives, upon request, in the course of the performance of duties of the General Accounting Office relating to the Navy's military manpower management program. The Attorney General of the United States or his authorized representatives in connection with litigation, law enforcement, or other matters under the direct jurisdiction of the Department of Justice or carried out as the legal representative of the Executvie Branch agencies.

Officials and employees of other components of the Department of Defense in the performance of their official duties related to the management, supervision and administration of Navy officer personnel and the operation of personnel affairs and functions.

Officials and employees of other Departments and Agencies of the Executive Branch of government, upon request, in the performance of their official duties related to the management, supervision and administration of Navy officer personnel and the operation of personnel affairs and functions. The Senate or the House of Representatives of the United States or any committee or subcommittee thereof, on matters within their jurisdiction requiring disclosure of the files or records of Navy officer personnel.

Such Civilain Contractors and their employees as are or may be operating in accordance with an approved, official contract with the U.S. Government. When required by Federal statute, by Executive order, or by treaty, personnel record information will be disclosed to the individual, organization, or governmental agency as necessary.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Automated Records are stored on magnetic tapes, disks, drums and on punched cards. Printed reports and other paper documents supporting the system are stored in authorized personnel areas only.

Retrievability:

Automated records are retrieved by Social Security Account number.

Safeguards:

Within the computer center, controls have been established to disseminate computer output over the counter only to authorized users. Specific procedures are also in force for the disposal of computer output. Output material in the sensitive category, i.e., inadvertent or unauthorized disclosure that would result in harm, embarrassment, inconvenience or unfairness to the indivisual, will be shredded. Computer files are kept in a secure, continuously manned area and are distributing personnel who are directed to respond to valid, official request for data. These accesses are controlled and monitored by the Security System.

Retention and disposal:

Records are retained in accordance with MAPMIS Manual (periods range from 1 month to permanent).

System manager(s) and address:

Chief of Naval Personnel, Department of the Navy, Washington, D.C. 20370.

Notification procedure:

Active duty Navy Officers/Officer Candidates shall request by correspondence addressed to: Chief of Naval Personnel (Attn: Privacy Act Coordinator) Navy Department, Washington, D.C. 20370. Naval Reserve and retired officers shall request by correspondence from commanding officer, Naval Reserve Personnel Center, New Orleans, LA 70159. Requests shall contain full name, Social Security Account Number, rank, status, address and signature of the requestor.

Record access procedures:

The Agency's rules for access to records may be obtained from SYSMANAGER.

Contesting record procedures:

The Agency's rules for contesting contents and appealing initial determinations by the individual concerned may be obtained from the SYSMANAGER.

Record source categories:

Officials and employees of the Department of the Navy, Department of Defense and components therof, in performance of their official duties and as specified by current Instructions and Regulation promulgated by competent authority; official records of professional qualifications; Educational institutions.

Systems exempted from certain provisions of the act:

None

N00022OFFPROMSYS

System name:

Officer Promotion System

System location:

Bureau of Naval Personnel, Navy Department, Washington D.C. 20370; and Reporting Seniors (see Directory of the Department of the Navy Mailing Addresses); Federal Records Storage Centers; National Archives.

Categories of individuals covered by the system:

All officers on active duty; all reserve officers on inactive duty.

Categories of records in the system:

Fitness Report Jacket, Selection Board Jacket, Officer Summary Record. Promotion History Cards, and other records concerning fitness and qualifications of officers and related to promotion requirements.

Authority for maintenance of the system:

5 USC 301 Departmental Regulations
10 USC 543 Selection Boards
10 USC 33, 545, 549 Promotions

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Officials and employees of the Department of the Navy in the performance of their official duties related to the selection of officers for promotion in the U.S. Navy.

The Comptroller General or any of his authorized representatives, upon request, in the course of the performance of duties of the General Accounting Office relating to the Navy's Officer Promotion System and records contained therin.

The Attorney General of the United States or his authorized representatives in connection with litigation, law enforcement, or other matters under the direct jurisdiction of the Department of Justice or carried out as the legal representative of the Executive Branch Agencies.

Officials and employees of other components of the Department of Defense in the performance of their official duties related to the Navy's Officer Promotion System and records contained therin.

Officials and employees of other Departments and Agencies of the Executive Branch of the Government, upon request, in the performance of their official duties related to the Navy's Officer Promotion System and the records contained therein.

The Senate or the House of Representatives of the United States or any committee or subcommittee therof, any joint committee of Congress or any subcommittee of joint committees on matters within their jurisdiction requiring disclosure of the files or records of Naval Officers. Such Civilian Contractors and their employees as are or may be operating in accordance with an approved, official contract with the U.S. Government. When required by Federal statute, by Executive order, or by treaty, personnel record information will be disclosed to the individual, organization, or governmental agency as necessary.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Automated records may be stored on magnetic tape, discs or on punched cards.

Manual records may be stored in paper file folders, microfiche or microfilm.

Retrievability:

Automated records may be retrieved by social security account number. Manual records may be retrieved by social security account number and/or officer file number, and name.

Safeguards:

Computer and punched card processing facilities and terminals are located in restricted areas accessible only to authorized persons that are properly screened, cleared and trained.

Manual records and computer printouts are available only to authorized personnel having a need to know.

Retention and disposal:

Records are retained or disposed of in accordance with SECNAVINST P5212.5B, subj: Disposal of Navy and Marine Corps Records.

System manager(s) and address:

Chief of Naval Personnel, Navy Department, Washington, D.C. 20370

Notification procedure:

Requests by correspondence should be addressed to: Chief of Naval Personnel (Attn: Privacy Act Coordinator), Navy Department, Washington, D.C. 20370; or to Reporting Seniors (see Directory of the Department of the Navy Mailing Addresses). The letter should contain full name, social security account number, (or officer file number), rank, military status, address and signature of the requestor.

The individual may visit the Chief of Naval Personnel, Arlington Annex, (FOB#2), Rm. 1066, Washington, D.C. for assistance with records located in that building; or the individual may visit the Reporting Senior for records maintained by that individual. Proof of identification will consist of Military Identification Card.

Record access procedures:

The Agency's rules for access to records may be obtained from SYSMANAGER.

Contesting record procedures:

The Agency's rules for contesting contents and appealing initial determinations by the individual concerned may be obtained from the SYSMANAGER.

Record source categories:

Officials and employees of the Department of the Navy, Department of Defense, other Departments and Agencies of the Executive Branch of the Government, and components therof, in the performance of their official duties as specified by current Instructions and Regulations promulgated by competent authority; educational institutions; federal, state and local court documents; general correspondence concerning the individual;official records of professional qualifications.

Systems exempted from certain provisions of the act:

Parts of this system may be exempt under 5 U.S.C. 552 a (j) or (k), as applicable. For additional information contact the System Manager.

N00022PERSCOMSOLPRSY

System name:

Personal Commercial Affairs Solicitation Privilege File System

System location:

Primary System-Chief of Naval Personnel, Navy Department, Washington, D.C. 20370.

Secondary System-Local Navy Activities involved in the Personal Commercial Affairs Solicitation Privilege System (see Directory of the Department of the Navy Mailing Addresses).

Categories of individuals covered by the system:

Individuals who are authorized Personal Commercial Affairs Solicitation Authorization concerning solicitation privileges on board military installations.

Categories of records in the system:

Correspondence and records concerning letter of application for solicitation privileges, letters of accreditation, violation incident data, denial data, appeal data, and other supporting documents.

Authority for maintenance of the system:

Title 5 USC 301 Departmental Regulations

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Officials and employees of the Department of the Navy in the performance of their official duties related to Commercial Affairs Solicitation matters.

Officials and employees of other components of the Department of Defense in the performance of their official duties related to Commercial Affairs Solicitation matters.

The Senate or the House of Representatives of the United States or any committee or subcommittees on matters within their jurisdiction requiring disclosure of files of persons affected.

State and local agencies in performance of their official duties related to agent qualifications.

The Attorney General of the United States or his authorized representatives in connection with litigation, law enforcement, or other matters under the direct jurisdiction of the Department of Justice or carried out as the legal representative of the Executive Branch agencies.

Private firms whose agents have been banned may request verification of the status of agents. When required by Federal statute, by Executive order , or by treaty, personnel record information will be disclosed to the individual, organization, or governmental agency as necessary.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Manual records may be stored in paper file folders.

Retrievability:

Records are retrieved by name of agent or agency.

Safeguards:

Records are accessible only to authorized personnel having a need to know.

Retention and disposal:

Files are retained and disposed of in accordance with SECNAVINST P5212.5B, subj: Disposal of Navy and Marine Corps Records, or Departmental Regulations.

System manager(s) and address:

Chief of Naval Personnel, Navy Department, Washington, D.C. 20370

Notification procedure:

Requests by correspondence should be addressed to: Chief of Naval Personnel (Attn: Privacy Act Coordinator), Navy Department, Washington, D.C. 20370; or in accordance with the Directory

of the Department of the Navy Mailing Addresses (i.e., local activities). The letter should contain full name, social security number of the applicant, firm represented, and dates or time period in question, and signature of the requestor. The individual may visit the Chief of Naval Personnel, Arlington Annex (POB#2), Rm 1066, Washington, D.C. for assistance with records located in that building; or the individual may visit the local activity for access to records maintained locally. Proof of identification will consist of picture-bearing identification.

Record access procedures:

The Agency's rules for access to records may be obtained from SYSMANAGER.

Contesting record procedures:

The Agency's rules for contesting contents and appealing initial determinations by the individual concerning may be obtained from the SYSMANAGER.

Record source categories:

Officials and employees of the Department of the Navy, Department of Defense, and components thereof, in performance of their official duties as specified by current Instructions and Regulations promulgated by competent authority; State and local agencies in the performance of their official duties related to agent qualifications; investigatory records; general correspondence concerning individual agents.

Systems exempted from certain provisions of the act:

None

N08022PERSERVDEPSERVS

System name:

Personal Services and Dependents Services Support System

System location:

Primary System-Bureau of Naval Personnel, Navy Department, Washington, D.C. 20370; Navy Family Allowance Activity, Anthony J. Celebrezze Federal Building, Room 967, Cleveland, Ohio 44199; local activity to which individual is assigned (see Directory of the Department of the Navy Mailing Addresses).

Secondary System-Department of the Navy Activities in the Chain of Command between the local activity and the Headquarters level (see Directory of the Department of the Navy Mailing Addresses).

Categories of individuals covered by the system:

All Navy military personnel: officers, enlisted, active, inactive, reserve, fleet reserve, retired, midshipmen, officer candidates, Naval Reserve Officer Training Corps personnel, and their dependents.

Categories of records in the system:

Applications, forms, correspondence and supporting documents and other personnel records concerning entitlements, benefits, basic allowance for quarters, waiver of indebtedness, travel allowances, morale, and personal affairs.

Authority for maintenance of the system:

5 USC 301. Departmental Regulations
10 USC 6161
10 USC 2774 as added by Public Law 92-453

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Officials and employees of the Department of the Navy and other components of the Department of Defense in the performance of their official duties related to the management, supervision, and administration of personal services, benefits and entitlements for Navy members and their dependents.

The Comptroller General or any of his authorized representatives, upon request, in the course of the performance of duties of the General Accounting Office related to management, supervision and administration of personal services, benefits and entitlements for Navy members and their dependents.

Officials and employees of the Veterans' Administration in the performance of their official duties related to eligibility, notification and assistance in obtaining benefits by members and former members of the Navy.

The Senate or the House of Representatives of the United States or any Committee or subcommittee thereof, any joint committee of Congress or any subcommittee of joint committees on matters within their jurisdiction requiring disclosure of the files or records of Navy military personnel and their dependents.

Officials and employees of Navy Relief and the American Red Cross in the performance of their duties related to assistance of the members, their dependents and relatives.

State and local agencies in performance of their official duties related to assistance of the members and their dependents.

Non-government agencies only to assist members and their dependents. When required by Federal statute, by Executive order, or by treaty, personnel record information will be disclosed to the individual, organization, or governmental agency as necessary.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Automated records may be stored on magnetic tapes, disc, drums and on punched cards.

Manual records may be stored in paper file folders.

Retrievability:

Records may be retrieved by name, social security account number or enlisted service number/officer file number of member; or name of dependent.

Safeguards:

Computer and punched cards processing facilities are located in restricted areas accessible only to authorized persons that are properly screened, cleared and trained.

Manual records and computer printouts are available only to authorized personnel having a need to know.

Retention and disposal:

Records are retained or disposed of in accordance with SECNAVINST P5212.5B, subj: Disposal of Navy and Marine Corps Records.

System manager(s) and address:

Chief of Naval Personnel, Navy Department, Washington, D.C. 20370.

Notification procedure:

Requests by correspondence should be addressed to: Chief of Naval Personnel (Attn: Privacy Act Coordinator), Navy Department, Washington, D.C. 20370; or in accordance with the Directory of the Department of the Navy Mailing Addresses (i.e., local activities). The letter should contain full name, social security account number (and/or enlisted service number/officer file number), rank/rate, military status, or name of the dependent, name of sponsor, sponsor's social security account number, and signature of the requestor.

The individual may visit the Chief of Naval Personnel, Arlington Annex (POB#2), Room 1066, Washington, D.C. for assistance with records located in that building; or the individual may visit the local activity for access to locally maintained records. Proof of identification will consist of Military Identification Card for persons having such cards, or other picture-bearing identification.

Record access procedures:

The Agency's rules for access to records may be obtained from SYSMANAGER.

Contesting record procedures:

The Agency's rules for contesting contents and appealing initial determinations by the individual concerned may be obtained from the SYSMANAGER.

Record source categories:

Officials and employees of the Department of the Navy and the Department of Defense in performance of their official duties and as specified by current Instructions and Regulations promulgated by competent authority; educational institutions; federal, state, and local court documents; general correspondence relative to individual; officials and employees of Navy Relief, the American Red Cross, Veterans Administration and other agencies in the performance of their official duties.

Systems exempted from certain provisions of the act:

None

N08022PERSRECSYS

System name:

Navy Personnel Records System

System location:

Primary System-Bureau of Naval Personnel, Navy Department, Washington, D.C. 20370; Naval Reserve Personnel Center, Naval Support Activity (East Bank), Bldg. 603, New Orleans, LA 70159; and local activity to which individual is assigned (see Directory of the Department of the Navy Mailing Addresses).

Secondary System-Department of the Navy Activities in the Chain of Command between the local activity and the Headquarters level (see Directory of the Department of the Navy Mailing Addresses); Federal Records Storage Centers; National Archives.

Categories of individuals covered by the system:

All Navy military personnel: officers, enlisted, active, inactive, reserve, fleet reserve, retired, midshipmen, officer candidates, and Naval Reserve Officer Training Corps personnel.

Categories of records in the system:

Personnel Service Jackets and Service Records, correspondence and records in both automated and non-automated form concerning classification, assignment, distribution, promotion, advancement, performance, recruiting, retention, reenlistment, separation, training, education, morale, personal affairs, benefits, entitlements, discipline and administration of Navy military personnel.

Authority for maintenance of the system:

5 USC 301 Departmental Regulations

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Officials and employees of the Department of the Navy in the performance of their official duties related to the management, supervision, and administration of Navy military personnel and the operation of personnel affairs and functions; the design, development, maintenance and operation of the manual and automated system of records.

The Comptroller General or any of his authorized representatives, upon request, in the course of the performance of duties of the General Accounting Office relating to the Navy's military manpower management program.

The Attorney General of the United States or his authorized representatives in connection with litigation, law enforcement, or other matters under the direct jurisdiction of the Department of Justice or carried out as the legal representative of the Executive Branch agencies. State, local, and foreign (within Status of Forces agreements) law enforcement agencies or their authorized representatives in connection with litigation, law enforcement, or other matters under the jurisdiction of such agencies.

Officials and employees of other components of the Department of Defense in the performance of their official duties related to the management, supervision and administration of military personnel and the operation of personnel affairs and functions.

Officials and employees of other Departments and Agencies of the Executive Branch of government, upon request, in the performance of their official duties related to the management, supervision and administration of military personnel and the operation of personnel affairs and functions.

Officials and employees of the National Research Council in Cooperative Studies of the National History of Disease; of Prognosis and of Epidemiology. Each study in which the records of members and former members of the Naval Service are used must be approved by the Chief of Naval Personnel.

Officials and employees of the Department of Health, Education and Welfare, Veterans' Administration, and Selective Service Administration in the performance of their official duties related to eligibility, notification and assistance in obtaining benefits by members and former members of the Navy. The Senate of the House of Representatives of the United States or any Committee or subcommittee thereof, any joint committee of Congress or any subcommittee of joint committees on matters within their jurisdiction requiring disclosure of the files or records of Navy military personnel. Officials and employees of Navy Relief and the American Red Cross in the performance of their duties related to assistance of the members and their dependents and relatives.

Duly appointed Family Ombudsmen in the performance of their duties related to the assistance of the members and their families.

State and local agencies in performance of their official duties related to verification of status for determination of eligibility for Veterans' Bonuses and other benefits and entitlements.

Such Civilian Contractors and their employees as are or may be operating in accordance with an approved, official contract with the U.S. Government. When required by Federal statute, by Executive order, or by treaty, personnel record information will be disclosed to the individual, organization, or governmental agency as necessary.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Automated records may be stored on magnetic tapes, disc, drums and on punched cards.

Manual records may be stored in paper file folders, microfiche or microfilm.

Retrievability:

Automated records may be retrieved by social security account number and/or name.

Manual records may be retrieved by name, social security account number, enlisted service number, or officer file number.

Safeguards:

Computer and punched card processing facilities and terminals are located in restricted areas accessible only to authorized persons that are properly screened, cleared and trained.

Manual records and computer printouts are available only to authorized personnel having a need to know.

Retention and disposal:

Records are retained or disposed of in accordance with SECNAVINST P5212.5 , subj: Disposal of Navy and Marine Corps Records.

System manager(s) and address:

Chief of Naval Personnel, Washington, D.C. 20370; Commanding Officers, Officers in Charge, and Heads of Department of the Navy activities as listed in the Directory of the Department of the Navy Mailing Addresses.

Notification procedure:

Requests by correspondence should be addressed to: Commander, Naval Military Personnel Command (ATTN: pRIVACY aCT cOORDINATOR), nAVY dEPARTMENT, wASHINGTON, d.c. 20370. or, in accordance with the Directory of the Department of the Navy Mailing Addresses (i.e., local activities). The letter should contain full name, social security account number (and/or enlisted service number/officer file number), rank/rate, designator, military status, address, and signature of the requestor.

The individual may visit the Commander, Naval Military Personnel Command, Arlington Annex (FOB 2), Washington, D.C., for assistance with records located in that building; or the individual may visit the local activity to which attached for access to locally maintained records. Proof of identification will consist of Military Identification Card for persons having such cards, or other picture-bearing identification.

Record access procedures:

The Agency's rules for access to records may be obtained from SYSMANAGER.

Contesting record procedures:

The Agency's rules for contesting contents and appealing initial determinations by the individual concerned may be obtained from the SYSMANAGER.

Record source categories:

Officials and employees of the Department of the Navy, Department of Defense, and components thereof, in performance of their official duties and as specified by current instructions and Regulations promulgated by competent authority; educational institutions; federal, state, and local court documents; civilian and military investigatory reports; general correspondence concerning the individual; official records of professional qualifications; Navy Relief and American Red Cross requests for verification of status.

Systems exempted from certain provisions of the act:

Parts of this system may be exempt under 5 U.S.C. 552a (k) (1) and (5), as applicable. For additional information contact the System Manager.

N00022PERSREHSUPPSYS

System name:

Navy Personnel Rehabilitation Support System

System location:

Primary System-Naval Military Personnel Command, Navy Department, Washington, D.C. 20370;

Decentralized segments-Navy Drug Rehabilitation Centers, Navy Alcohol and Drug Information System Processing Office, Navy Alcohol Rehabilitation Centers, Naval Regional Medical Centers, Navy Counseling and Assistance Centers, Navy Alcohol Rehabilitation Drydocks, Naval Health Research Center, Navy Corrections Centers; and local activities to which an individual is assigned (see Directory of Department of the Navy Mailing Addresses).

Categories of individuals covered by the system:

Navy personnel (officers and enlisted) who have been identified as drug or alcohol abusers, or who have undergone counseling and rehabilitation for drug or alcohol abuse in Navy Drug or Alcohol rehabilitation facilities; personnel who work part-time helping alcoholics; active duty navy recovered alcoholics who voluntarily help their commands develop alcoholism prevention programs; navy personnel convicted by court martial and sentenced to confinement; or who were in pre-trial confinement; spouses and significant others (this includes parents, live-togethers, and other non-spouses who play an important part in the alcoholic's/drug abuser's life) who have undergone counseling and rehabilitation in navy drug or alcohol rehabilitation centers, who themselves participate in counseling or treatment programs at such facilities and civilians authorized by the

Secretary of the Navy for treatment at a military facility for rehabilitation purposes.

Categories of records in the system:

Correspondence and records in both automated and non-automated form concerning interview appraisals, personnel, service, biographical, educational, evaluation and testing, performance, and drug and alcohol rehabilitation program data. Correspondence and records in both automated and non-automated form concerning those in confinement containing offense, legal, service, health, personal, evaluation and classification, discipline and conduct, work and training data, interview appraisals, inventories of confinement personnel management data.

Authority for maintenance of the system:

Title V, Public Law 92-129; Section 413; Public Law 92-255

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Blanket 'routine uses' identified in the yearly recompilation do not apply to this system of records.

Records of identity, diagnosis, prognosis, or treatment of any client/patient, irrespective of whether or when he/she ceases to be client/patient, maintained in connection with the performance of any alcohol or drug abuse prevention and treatment function conducted, regulated, or directly or indirectly assisted by any department or agency of the United States, shall, except as provided therein, be confidential and be disclosed only for the purposes and under the circumstances expressly authorized in Title 21 U.S.C. Section 1175, as amended by 88 Stat. 137, and Title 42 U.S.C., Section 4582, as amended by 88 Stat. 131. These statutes take precedence over the Privacy Act of 1974, in regard to accessibility of such records except to the individual to whom the record pertains.

Within the Armed Forces or within those components of the Veterans Administration furnishing health care to veterans or between such components and the Armed Forces.

To medical personnel outside the Armed Forces to the extent necessary to meet a bona fide medical emergency.

To Government personnel for the purpose of obtaining benefits to which the patient is entitled.

To qualified personnel for the purpose of conducting scientific research, management or financial audits, or program evaluation, but such personnel may not identify, directly or indirectly, any individual patient in any report of such research, audit or evaluation, or otherwise disclose identities in any manner.

To a court of competent jurisdiction upon authorization by an appropriate order after showing good cause therefore. In assessing good cause, the court shall weigh the public interest and the need for disclosure against the injury to the patient, to the physician-patient relationship, and to the treatment services. Upon the granting of such order, the court, in determining the extent to which any disclosure of all or any part of any record is necessary, shall impose appropriate safeguards against unauthorized disclosure.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Automated records may be stored on magnetic tapes, disc, drums or on punched cards.

Manual records may be stored in paper file folders, microfiche or microfilm.

Retrievability:

Manual records may be retrieved by name and social security number. Automated records may be retrieved by social security number. Computer programs associated with automated records maintained in this system allow for names and social security numbers to be removed while leaving other data elements intact. When the name and social security number is removed, data is aggregated for use in research, management information and planning.

Safeguards:

Computer and punched card processing facilities are located in restricted areas accessible only to authorized persons that are properly screened, cleared and trained.

Manual records and computer printouts are available only to authorized personnel having a need to know.

Retention and disposal:

Manual records are maintained for two years and automated records are maintained indefinitely.

System manager(s) and address:

Chief of Naval Personnel, Navy Department, Washington, D.C. 20370

Notification procedure:

Written requests should be addressed to activity to which the individual received treatment or to the Chief of Naval Personnel, Navy Annex, Washington, D.C. 20370. Requests must contain full name, social security account number, military status, address and signature of requester. (Those inquiring about records at Confinement Centers must have their signature notarized, if not confined at the time of the request.) The individual may visit the Chief of Naval Personnel, Arlington Annex (FOB-2) for assistance with records located in the Naval Military Personnel Command; the individual may also visit local activities concerned (see Directory of Department of the Navy mailing addresses). Proof identification will consist of military identification card for persons having such cards, or other picture-bearing identification.

Record access procedures:

The Agency's rules for access to records may be obtained from the SYSMANAGER.

Contesting record procedures:

The Agency's rules for contesting contents and appealing initial determinations by the individual concerned may be obtained from the SYSMANAGER.

Record source categories:

Officials and employees of the Department of the Navy, Department of Defense, and components thereof, in performance of their official duties and as specified by current instructions and Regulations promulgated by competent authority; notes and documents from Service Jackets and Records; federal, state and local court documents; general correspondence concerning the individual.

Systems exempted from certain provisions of the act:

None

N00612ERSTRANSYS

System name:

Personnel Transportation System

System location:

Military Traffic Office & East Coast Passenger Control Point, Bureau of Naval Personnel, Navy Department, Washington, D.C. 20370.

District Passenger Transportation Office & West Coast Passenger Control Point, Headquarters, TWELFTH Naval District, Treasure Island, San Francisco, California 92132.

District Passenger Transportation Office & Alaskan Passenger Control Point, Naval Support Activity, Seattle, Washington 98115.

District Passenger Transportation Offices, all other Naval District Headquarters.

Overseas Area Travel Coordinators at U. S. Naval Activities, United Kingdom; U. S. Naval Activities, Spain; Headquarters, U. S. Fleet Air Mediterranean; U. S. Naval Support Activity, Naples, Italy; Headquarters, Middle East Force; U. S. Naval Station, Keflavik, Iceland; U. S. Naval Air Facility, Lajes, Azores; Naval Station, Argentina, Newfoundland; Naval Base, Guantanamo Bay, Cuba; Headquarters, TENTH Naval District; Headquarters, FIFTEENTH Naval District; Headquarters, U. S. Naval Forces, Marianas; Headquarters, U. S. Naval Forces, Philippines; Headquarters, U. S. Naval Forces, Japan; and Naval Communication Station Harold E. Holt, Exmouth, Western Australia (See Directory of the Department of the Navy Mailing Addresses).

And local activities (See Directory of the Department of the Navy Mailing Addresses).

Categories of individuals covered by the system:

Navy military personnel, midshipmen, retired Navy members, civilian employees of the Navy, dependents of the foregoing, and other civilians authorized through Navy commands to travel at Government expense.

Categories of records in the system:

Applications for travel and, where applicable, for passports and visas; requests for extension of 12-month limit on travel by retired member to home of record; supporting documents; correspondence, and approvals/disapprovals relating to the above records; travel arrangements in response to above applications.

Authority for maintenance of the system:

37 USC 404 Travel & Transportation Allowances--General
5 USC 5701 et seq Travel, Transportation & Subsistence

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Officials and employees of the Department of the Navy, Department of Defense and components thereof in the performance of their official duties related to the determining of eligibility for transporta-

tion, the authorizing or denying of transportation, and otherwise managing the personnel transportation system.

Officials and employees of other departments and agencies of the Executive Branch of government, upon request, in the performance of their official duties related to the provision of transportation; diplomatic, official, and other no-cost passports; and visas to subject individuals.

Foreign embassies, legations, and consular offices--to determine eligibility for visas to respective countries, if visa is required.

The Comptroller General or any of his authorized representatives, upon request, in the course of the performance of duties of the General Accounting Office relating to the control of travel costs.

The Attorney General of the United States or his authorized representatives in connection with litigation, law enforcement, or other matters under the direct jurisdiction of the Department of Justice or carried out as the legal representative of the Executive Branch agencies.

The Senate or the House of Representatives of the United States or any committee or subcommittee thereof on matters within their jurisdiction requiring disclosure of files or records of individuals covered by this system of records.

Commercial Carriers-providing transportation to individuals whose applications are processed through this system of records.

Such civilian contractors and their employees as are or may be operating in accordance with an approved official contract with the U. S. Government. When required by Federal statute, by Executive order, or by treaty, personnel record information will be disclosed to the individual, organization, or governmental agency as necessary.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Automated records may be stored on magnetic tapes, disc, drums, and on punched cards. Manual records in file folders or file-card boxes, microfiche or microfilm.

Retrievability:

Automated records may be retrieved by social security account number and/or name. Manual records are filed alphabetically by name of applicant; applications for dependents filed by name of sponsor.

Safeguards:

Records are available only to authorized personnel having a need to know.

Retention and disposal:

Records are retained or disposed of in accordance with SECNAVINST P5212.5B, subj: Disposal of Navy and Marine Corps Records, or in accordance with Departmental regulations.

System manager(s) and address:

Chief of Naval Personnel, Navy Department, Washington, D.C. 20370

Notification procedure:

Requests by correspondence should be addressed to the local activity where the request for transportation was initiated (see Directory of the Department of the Navy Mailing Addresses), and/or to intermediate activities (if applicable) (see Directory of the Department of the Navy Mailing Addresses, or to the Chief of Naval Personnel (Attn: Privacy Act Coordinator), Navy Department, Washington, D.C. 20370. The letter should contain full name, social security account number, address and signature of the requester. The individual may visit the activities and commands listed under LOCATION for assistance with the records maintained at the respective locations. Proof of identification will consist of Military Identification Card for persons having such cards. Others must present other positive personal identification, preferably picture-bearing.

Record access procedures:

The agency's rules for access to records may be obtained from SYSMANAGER.

Contesting record procedures:

The agency's rules for contesting contents and appealing initial determinations by the individual concerned may be obtained from the SYSMANAGER.

Record source categories:

Officials and employees of the Department of the Navy, Department of Defense, State Department and other agencies of the Executive Branch and components thereof, in the performance of their official duties and as specified by current Instructions and Regulations promulgated by competent authority; foreign embassies, legations, and consular offices reporting approval/disapproval of visas; and carriers reporting on provision of transportation.

Systems exempted from certain provisions of the act:

None

N00823

System name:

Personal Property Program

System location:

All Navy Personal Property Counseling and Shipping Offices and Federal Records Centers (mailing addresses are listed in the Navy directory in the appendix to the Component System Notice).

Categories of individuals covered by the system:

DOD and other federal departmental military personnel and their dependents and civilian employees and their dependents having applied for and shipped and/or stored personal property, privately owned automobiles and mobile homes.

Categories of records in the system:

File contains individual's applications for shipment and/or storage related shipping documents and records of delivery, payment, and inspection of personal property. Forms maintained include: DD 619 Statement of Accessorial Services Performed; DD 1100 Household Good Storage Record; SF 1103 U.S. Government Bill of Lading; DD 1252 U.S. Customs Declaration for Personal Property Shipments (Part I); DD 1252-1 U.S. Customs Declaration for Personal Property Shipments (Part II); DD 1299 Application for Shipment and/or Storage of Personal Property; DD 1671 Reweight of Personal Property; DD 1780 Report of Carrier Services Personal Property Shipment; DD 1781 Customer Satisfaction Report; DD 1797 Personal Property Counseling Checklist; DD 1799 Member's Report on Carrier Performance- Mobile Homes; DD 1800 Mobile Home Shipment Inspection at Destination; DD 1841 Government Inspection Report; DD 1842 Claim for Personal Property Against the United States; DD 1845 Schedule of Property.

Authority for maintenance of the system:

5 U.S.C. 5724; DOD Regulation 4500.43; DOD Regulation 4500.34-R; 'personal Property Traffic Management Regulation;' JAG Manual; NAVSUP Publication 490; 'Transportation of Personal Property.'

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Navy Personal Property Shipping Offices applicable finance centers and the Navy Material Transportation Office for effecting, coordinating and payment of personal property shipment and storage.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Paper records in file folders.

Retrievability:

Filed alphabetically by last name of member.

Safeguards:

Records are maintained in monitored or controlled areas accessible only to authorized personnel that are properly cleared and trained. Buildings-rooms locked outside regular working hours.

Retention and disposal:

Records are retained in Personal Property Office files for a period of four years, then forwarded to Federal Record Centers and/or General Accounting Office for indefinite retention.

System manager(s) and address:

Commander, Naval Supply Systems Command (Code 05), Washington, D.C. 20376.

Notification procedure:

Written requests may be addressed to the appropriate Navy personal property shipping office concerned (mailing addresses are listed in the Navy directory in the component system notice). Individuals should provide proof of identity, full name, rank, dates of shipment-storage, etc.

Record access procedures:

The agency's rules for access to records may be obtained from the Commander, Naval Supply Systems Commands (Code 05), Washington, D.C. 20376.

Contesting record procedures:

The agency's rules for contesting contents of records and appealing initial determinations by the individual concerned may be obtained from the system manager.

Record source categories:

Application and related forms submitted by the individual concerned.

Systems exempted from certain provisions of the act:

None.

N00025 FAMHSGASSIGNSY

System name:

Family Housing Assignment Application System

System location:

All Navy activities with family housing assets.

Categories of individuals covered by the system:

All military and civilian personnel eligible for or interested in occupying Navy family housing.

Categories of records in the system:

All applicants for family housing provide information to housing office at next duty assignment pertaining to personal data, e.g., name, address, rank/rate, social security number/service number, length of service, time remaining on active duty, data of rank, etc.; dependency data, e.g., total number in family, spouse, age and sex of dependents, etc.; and other pertinent housing information, e.g., last assignment, months involuntarily separated, special health problems, etc.

Authority for maintenance of the system:

5 USC 301 Departmental Regulations

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

All Navy family housing offices use data to determine individual's eligibility for family housing and notification for subsequent assignment to family housing or granting a waiver to allow occupancy of private housing. Data is used to determine and list individual's name on appropriate housing waiting list.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

File Folders

Retrievability:

By individual's name.

Safeguards:

Housing files within the housing office, used solely within the housing organization and protected by military installation's security measures. Individual may, upon request, have access to housing application form.

Retention and disposal:

Data is retained until termination of housing occupancy and subsequently disposed of according to local records disposition instructions.

System manager(s) and address:

Bureau of Naval Personnel, PERS-71, 1000 North Glebe Road, Arlington, Virginia 20370

Notification procedure:

Records are maintained by housing office at the Navy activity responsible for management of assets from data specifically provided by individual on DD Form 1646, Application for and Assignment to Military Family Housing. Individual may request access to such data upon proof of identity (ID card).

Record access procedures:

The agency's rules for access t records may be obtained from installation family housing office.

Contesting record procedures:

The agency's rules for contesting contents and appealing initial determinations by the individual concerned may be obtained from the installation family housing office.

Record source categories:

Data collected from each applicable individual.

Systems exempted from certain provisions of the act:

None

N00025 FAMHSGROMTSUSY

System name:

Family Housing Requirements Survey Record Systems

System location:

Military installations with family housing offices

Categories of individuals covered by the system:

Officer and enlisted personnel and only key and essential civilian personnel.

Categories of records in the system:

Non-individual oriented input documents that reflect local housing assets; family housing survey questionnaires indicating family size, individual preference for housing, housing cost, and indication as to suitability of housing for need of individual.

Authority for maintenance of the system:

5 USC 301 Department Regulations

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Information is used to determine the housing requirement for the location to support proposed family housing construction, leasing, mobile home spaces and other military construction programs submitted for OSD support and Congressional approval.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Magnetic tape and file folders

Retrievability:

Social Security Number.

Safeguards:

Housing files used solely within housing office; tape files used solely within data processing system; and protected by the military installation's security measures.

Retention and disposal:

Held three years and destroyed.

System manager(s) and address:

Overall policy official: Naval Facilities Engineering Command, 200 Stovall Street, Alexandria, Virginia 22332. Subordinate record holders of questionnaires: family housing office at military installation.

Notification procedure:

Contact housing office of installation at which individual was assigned when the individual completed the family housing questionnaire.

Record access procedures:

The agency's rules for access to records may be obtained from the installaton family housing office.

Contesting record procedures:

The agency's rules for contesting contents and appealing initial determinations by the individual concerned may be obtained from the installation family housing office.

Record source categories:

Data collected from each applicable individual.

Systems exempted from certain provisions of the act:

NONE

N00025 HSGREFSVCSYS

System name:

Housing Referral Services Records System

System location:

All Navy installations with housing referral offices

Categories of individuals covered by the system:

All military personnel reporting to an installation who will be residing off-base desirous of seeking off-base housing.

Categories of records in the system:

Information is collected on DD Form 1668 from all military personnel reporting to a housing referral office as pertains to name, grade, branch of service, organization and location, local address; housing need, e.g., rental/sale, number of bedrooms, furnished/unfurnished, price range, etc.; number of dependents, male or female, and age; a list of housing referral services provided; and identification of member of racial or ethnic minority groups. Individuals provided referral assistance must in turn provide notification of housing selection by use of DD Form 1670 which includes such information as type of housing selected, e.g., location, temporary/permanent, rental/sale, cost, number of bedrooms; media through which housing was found, e.g., housing referral, realtor, newspaper, etc.; and satisfaction with selection, e.g., too small, too far; discrimination encountered; and satisfaction with housing referral services provided.

Authority for maintenance of the system:

5 USC 301 Department Regulations

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Referral offices use data to assist and counsel individuals in locating suitable housing off-base, used for follow-up purposes when wit-

ten notification from individual is not provided as to ultimate location of housing; used for purposes of reporting statistics on field activity housing referral services; used to follow-up on availability of rental unit subsequent to occupant's receipt of PCS orders; and follow-up regarding tenant/landlord complaints.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

File Folders

Retrievability:

By individual's name

Safeguards:

Housing files within the housing referral or housing office, used solely within the housing organization and protected by military installation's security measures. Individual may upon request, have access to all such data.

Retention and disposal:

Data is retained until individual's tour is completed and subsequently disposed of according to local records disposition instructions.

System manager(s) and address:

Naval Facilities Engineering Command (Code 08), 200 Stovall Street, Alexandria, Virginia 22332

Notification procedure:

Records are maintained by housing referral offices at the Navy activity responsible for providing referral services for military personnel in the area. Individual may request access to records upon proof of identify (ID card).

Record access procedures:

The agency's rules for access to records may be obtained from installation family housing office.

Contesting record procedures:

The agency's rules for contesting contents and appealing initial determinations by the individual concerned may be obtained from the installation family housing office.

Record source categories:

Data collected from each applicable individual.

Systems exempted from certain provisions of the act:

NONE

N00025 MILFAMHOUSSUBT

System name:

Family Housing Mock Utility Billing System

System location:

Ten test sites: Pacific Missile Test Center, Point Mugu, California; Construction Battalions Center, Port Hueneme, California; Public Works Center, Great Lakes, Illinois; Marine Corps Development and Education Command, Quantico, Virginia; Fort Eustis, Virginia; Fort Gordon, Georgia; Marine Corps Air Station, Beaufort, South Carolina; Little Rock Air Force Base, Arkansas; Cannon Air Force Base, New Mexico; Yuma Proving Grounds, Arizona; Central Processing Site: Harry Diamond Laboratories, White Oak, Maryland.

Categories of individuals covered by the system:

Military and Civilian personnel occupying housing units selected at the ten test sites.

Categories of records in the system:

This system is to produce mock utility bills and management reports on the usage of gas, fuel oil, electricity, steam, propane, and hot water heat for a representative cross section of approximately 10,000 military family housing units. Information as to name, address, rank/rate, number of dependents; house phone number, account number and utility consumption will be maintained for a 15 month period.

Authority for maintenance of the system:

Public Law 95-82 (Military Construction Authorization Act, 1978); 5 U. S. C. 301 Department Regulations.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Information is used to determine the feasibility of metering utility consumption in military family housing. Officials and employees of the Department of the Navy, Department of Defense and components thereof in the performance of their official duties related to the measuring of energy consumption in military family housing units. The Senate or the House of Representatives of the United States or any committee or subcommittee thereof on matters within their jurisdiction requiring disclosure of files or records of individuals covered by this system of records.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Magnetic tape, disk, punched card, and file folders.

Storage:

Account number

Retrievability:

Housing files are used solely within housing office; magnetic tape, punched card, and disk files used solely within the security measures.

Safeguards:

Held 5 years and destroyed by authority SECNAVINST P5212.5B, para. 11300.

Retention and disposal:

Naval Facilities Engineering Command 200 Stovall Street Alexandria, Va 22332

System manager(s) and address:

Records are maintained by the housing office at the service activities participating in the test. Individual may request access to such data upon presenting proof of identity (ID) card.

Notification procedure:

The agency's rules for access to records may be obtained from the installation family housing office.

Record access procedures:

The agency's rules for contesting contents and appealing initial determinations by the individual concerned may be obtained from the system manager.

Contesting record procedures:

Data collected from each individual and utility consumption data obtained from monthly meter readings.

Record source categories:

None

Systems exempted from certain provisions of the act:

None

N00025 5TAHSGREC

System name:

Station Housing Records

System location:

All Navy installations with housing inventories and/or housing management responsibilities.

Categories of individuals covered by the system:

All military personnel desiring housing or temporary lodging, and eligible DOD civilian employees.

Categories of records in the system:

All records and data collected and maintained regarding individual housing or lodging needs; occupancy; furnishings inventory; housing condition reports; assignment and termination of housing; damage assessment; occupant and landlord relations and complaints; maintenance and repairs; waiting lists; inspections; quarters cost data; Congressional and Inspector General inquiries and responses; Servicemen's Mortgage Insurance Premiums payments; individual cost data for establishing and maintaining housing allowances; eligibility for homeowners' assistance; and entitlement for basic allowances for quarters (BAQ).

Authority for maintenance of the system:

5 USC 301 Departmental Regulations

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Information secured, maintained, and essential for over-all operation and maintenance of the Navy housing program and servicing of personnel eligible for Navy family housing, temporary lodging, or services.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

File folders, card files; microform; or, if automated, on punched cards, magnetic tape, etc.

Retrievability:

By individual's name or building and unit number.

Safeguards:

Housing files within the housing office, used solely with the housing organization and offices providing support to housing office, and

protected by military installation's security measures. Individual may, upon request, have access to such data.

Retention and disposal:

Retained in office files until termination of occupancy, obsolete, no longer needed for reference, or disposal of associated housing unit(s).

System manager(s) and address:

Appropriate Navy installation responsible for Navy housing inventory or housing support.

Notification procedure:

Records are maintained by housing office at Navy installation responsible for management of assets or providing housing support. Individual may request access to such data upon proof of identity (ID card).

Record access procedures:

Installation rules for access to records may be obtained from installation housing office.

Contesting record procedures:

The installation rules for contesting contents and appealing initial determinations by the individual concerned may be obtained from the installation system manager.

Record source categories:

Data reported by or collected from occupants of housing or personnel provided housing support.

Systems exempted from certain provisions of the act:

None

N00028 PROP ACCT REC

System name:

Property Accountability Records

System location:

At all activities

Categories of individuals covered by the system:

Any Department of the Navy employee (military or civilian) receiving government property for which he must sign a receipt.

Categories of records in the system:

The receipts maintained are any of the following: logbooks, property passes, custody chits, charge tickets, sign out cards, tool tickets, sign out forms, photographs, charge cards, or any other statement of individual accountability for receipt of government property.

Authority for maintenance of the system:

5 USC 301

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

The receipts will be used normally and properly to identify individuals to whom government property has been issued. Internal use of the receipts will generally be by the local official accountable for control of government property. Receipts so maintained may be referred to law enforcement authorities as appropriate.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

The receipts may be maintained in any of the following formats: logbooks, property passes, custody chits, charge tickets, sign out cards, tool tickets, sign out forms, photographs, charge out cards or any other statement of individual accountability for receipt of government property.

Retrievability:

Retrievability may be by any of the following: name, badge number, tool number, property serial number, or any other locally determined method of property receipt accountability.

Safeguards:

The receipts are unclassified.

Retention and disposal:

Retention of receipts for property is at the discretion of the local activity responsible for the property being issued.

System manager(s) and address:

Overall policy official: no designated official The system manager is the commanding officer or officer in charge of the activity where the property accountability records are maintained.

Notification procedure:

Individuals seeking to determine whether system records contain information pertaining to them may do so by making application to the commanding officer or officer in charge of the activity where the receipts are located. Individuals making application must have a Department of the Navy approved identification card.

Record access procedures:

The agency's rules for access to records may be obtained from the system manager.

Contesting record procedures:

The agency's rules for contesting contents and appealing initial determinations by the individual concerned may be obtained from the system manager.

Record source categories:

Information is collected directly from the subject individual.

Systems exempted from certain provisions of the act:

NONE

N00030 DASO CREW EVAL

System name:

Fleet Ballistic Missile Submarine Demo and Shakedown Operation Crew Evaluation

System location:

Director, Strategic Systems Projects (PM-1) Department of the Navy Washington, D.C. 20376

Categories of individuals covered by the system:

Officer and enlisted personnel in responsible positions within the Weapons and Navigation Department of both crews of a fleet ballistic missile submarine undergoing Demonstration and Shakedown Operations

Categories of records in the system:

Memorandum report to file

Authority for maintenance of the system:

5 USC 301

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Preparation of Certification for Deployment messages by Director, Strategic Systems Projects and Commander Submarine Group Six and development of follow-on training programs

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

File holders

Retrievability:

Ship and crew designators

Safeguards:

Access restricted to Assistant for Weapons System Operation and Evaluation staff, Strategic Systems Project Office and Commander Submarine Group Six staff. Vault storage.

Retention and disposal:

Maintained for at least two years then destroyed by shredding

System manager(s) and address:

Director, Strategic Systems Projects Department of the Navy Washington, D.C. 20376

Notification procedure:

All inquires should be directed to the Privacy Act Coordinator:
Deputy Director, Strategic Systems Projects
Department of the Navy
Washington, D.C. 20376
and should indicate full name, military status, time period and ship undergoing Demonstration and Shakedown Operations, and billet held.

Record access procedures:

The agency's rules for access to records may be obtained from the system manager.

Contesting record procedures:

The agency's rules for contesting contents and appealing initial determinations by the individual concerned may be obtained from the system manager.

Record source categories:

Observation of Demonstration and Shakedown Operation team and questionnaire filled out by ship's personnel

Systems exempted from certain provisions of the act:

NONE

N00033 MISCH

System name:

MSC/NCSORG Reserve Personnel Record

System location:

Commander, Military Sealift Command, Department of the Navy, Washington, D.C. 20390

Categories of individuals covered by the system:

Naval Reserve personnel in the MSC/NCSORG Reserve Program

Categories of records in the system:

Name, rank, social security number, designator, date of birth, home address and phone, active duty training, correspondence courses, education, active military service, civilian employment experience.

Authority for maintenance of the system:

5 U.S.C. 301, Departmental Regulations

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

The information in the system provides pertinent biographical information and data to be used by the program sponsor for the management, supervision and administration of the MSC/NCSORG program.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Data cards or similar record.

Retrievability:

By name

Safeguards:

Records are kept within COMSC Naval Reserve Division Office. No one authorized access outside of Naval Reserve Division personnel. Building employs security guards.

Retention and disposal:

Records are retained indefinitely.

System manager(s) and address:

Commander, Military Sealift Command. Department of the Navy. Washington, D.C. 20390

Notification procedure:

Information may be obtained from System Manager. Written requests for information should contain full name of the individual, military grade or rate, and date of birth. For personal visits, the individual should be able to provide some acceptable means of identification.

Record access procedures:

The agency's rules for access to records may be obtained from the system manager.

Contesting record procedures:

The agency's rules for contesting contents and appealing initial determinations by the individual concerned may be obtained from the systems manager.

Record source categories:

Information is submitted by the individual concerned.

Systems exempted from certain provisions of the act:

None

N00034 AFHPSP

System name:

Armed Forces Health Professional Scholarship System

System location:

Commanding Officer Navy Finance Center Anthony J. Celebrezze Federal Building Cleveland, Ohio 44199

Categories of individuals covered by the system:

AFHSP students until graduation

Categories of records in the system:

Personnel and entitlement data necessary for pay computation

Authority for maintenance of the system:

Public Law 92-426

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Preparation of checks, leave and earnings statements, and financial reports. Data may be released to various government agencies such as to the Department of the Treasury, Social Security Administration, and Veterans Administration when needed to provide payment or service to member. To the American Red Cross, Navy Relief Society and U.S.O. for personal assistance to the member.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Magnetic tape and file folders

Retrievability: Social security account number and member name

Safeguards:

Guards, personnel screening, and requestor codes

Retention and disposal:

Destroyed ten years after member's graduation

System manager(s) and address:

Commanding Officer Navy Finance Center Anthony J. Celebrezze Federal Office Building Cleveland, Ohio 44199

Notification procedure:

Individuals may write to system manager at above address. Information request must contain Navy member's full name, military status, and social security number. Requestor may visit above address and must have military identification card or valid state driver's license and social security card as positive proof of identity.

Record access procedures:

The agency's rules for access to records may be obtained from the system manager.

Contesting record procedures:

The agency's rules for contesting contents and appealing initial determinations by the individual concerned may be obtained from the system manager.

Record source categories:

Disbursing Officer, Reserve members, BUPERS, and BUMED

Systems exempted from certain provisions of the act:

None

N00034 EMPSTATS REG

System name:

Statements of Employment (Regular Retired Officers)

System location:

Commanding Officer, Navy Finance Center Anthony J Celebrezze, Federal Building, Cleveland, Ohio 44199 and Marine Corps Finance Center Kansas City, Missouri 64197

Categories of individuals covered by the system:

All Navy and Marine Corps Regular retired officers who have filed a Statement of Employment (DD Form 1357).

Categories of records in the system:

The information is typically contained in the individual's pay account file and occasionally accompanied by correspondence from, to, or concerning individuals in the above-stated category.

Authority for maintenance of the system:

5 U.S.C. 301, 3326; 18 U.S.C. 207, 281, 283; 37 U.S.C. 801; 44 U.S.C. 3101; U.S. Const., Art. I, 9, CL. 8.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

The information is used to determine whether the retiree has or may have a conflict of interest or is engaging in proscribed post-retirement employment activities. In some cases, the information is provided to the Judge Advocate General to serve as bases for advisory opinions on the legality and possible penal and civil consequences of post-retirement employment activities and related conflicts-of-interests and standards-of-conduct questions. In addition, the information may be furnished to other components of the Department of Defense, the U.S. General Accounting Office, Department of the Treasury, the Civil Service Commission, the Department of Justice, and other law enforcement and investigatory agencies in instances of suspected violations of pertinent laws or regulations, and the Department of Labor.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Records are maintained in file folders.

Retrievability:

By name or social security number of the individual concerned.

Safeguards:

Files are maintained in file cabinets under the control of authorized personnel during working hours; the office space in which the file cabinets are located is locked outside of official working hours.

Retention and disposal:

Records are maintained at the above-stated locations for up to two years after the death of the individual concerned, at which time they are transferred to the Federal Records Center, Mechanicsburg, Pennsylvania, in the case of Navy personnel, and to the Federal Records Center, Kansas City, Missouri in the case of Marine Corps personnel.

System manager(s) and address:

For Navy Regular retired officers:
Comptroller of the Navy
Navy Department
Washington, D.C. 20350

For Marine Corps Regular retired officers:
Commanding Officer
Marine Corps Finance Center
1500 East Bannister Road
Kansas City, Missouri 64197

Notification procedure:

Information may be obtained by written request which adequately identifies the system of records and the individual about whom the record is kept (i.e., full name and social security number); the written request must be signed by the requesting individual.

Record access procedures:

The agency's rules for access to records may be obtained from the System Manager for Marine Corps and the Navy Finance Center for Navy.

Contesting record procedures:

The agency's rules for contesting contents and appealing initial determinations by the individual concerned may be obtained from the System Manager for Marine Corps and the Navy Finance Center for Navy.

Record source categories:

The information is obtained from the individual to whom the record pertains.

Systems exempted from certain provisions of the act:

None.

N09034 FHA PAYMENTS

System name:

FEDERAL HOUSING ADMINISTRATION MORTGAGE INSURANCE SYSTEM

System location:

Commanding Officer Navy Finance Center Anthony J. Celebrezze Federal Building Cleveland, Ohio 44199

Categories of individuals covered by the system:

Navy members who have home mortgages through FHA.

Categories of records in the system:

Payments made to FHA for insurance payments credited to members.

Authority for maintenance of the system:

5 USC 301 Departmental Regulations

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Records in this system are used within the Navy Finance Center to calculate payments for FHA and to reconcile any discrepancies in accounts. Data may be provided to Finance Centers of the other services, and to the Department of the Treasury when address is needed for issuance of check.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

File folders

Retrievability:

Social security number and member's name

Safeguards:

Guards, personnel screening and requestor codes

Retention and disposal:

Destroyed one year after death or discharge of member

System manager(s) and address:

Commanding Officer, Navy Finance Center, Anthony J. Celebrezze Federal Building, Cleveland, Ohio 44199

Notification procedure:

Individuals may write to members at above address. Information request must contain Navy member's full name and social security number. Requester may visit above address and must have military identification card or valid state driver's license and social security card as proof of identity.

Record access procedures:

The agency's rules for access to records may be obtained from the system manager.

Contesting record procedures:

The agency's rules for contesting contents and appealing initial determinations by the individual concerned may be obtained from the system manager.

Record source categories:

FHA, member, field disbursing officers

Systems exempted from certain provisions of the act:

None

N09034 NFC ACCTS REC

System name:

Accounts Receivable System

System location:

Commanding Officer, Navy Finance Center, Anthony J. Celebrezze Federal Building, Cleveland, Ohio 44199

Categories of individuals covered by the system:

Individuals who have been paid more funds by the Department of the Navy than to which they were legally entitled.

Categories of records in the system:

Documentation which established overpayment status, financial status affidavit, payment record, credit reference, and miscellaneous correspondence to and from the individual.

Authority for maintenance of the system:

80 Stat 308 and 88 Stat 393, Federal Claims Collection Act of 1966 (P.L. 89-508)

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Records will be used to determine and record payment plan and to determine whether debt should be compromised, suspended or collection action terminated. If payment is not made and circumstances warrant, records may be released to the General Accounting Office and the Department of Justice for collection action. Data on individuals with delinquent accounts may be given to credit bureaus in accordance with the General Accounting Office regulations.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

File folders, magnetic tape, disc, microfiche

Retrievability:

Social security number and individual's name

Safeguards:

Personnel screening, requester codes

Retention and disposal:

Files of accounts which are paid in full will be maintained for 3 years after final payment. Other files will be maintained for 6 years after termination of collection action.

System manager(s) and address:

Commanding Officer, Navy Finance Center, Anthony J. Celebrezze Federal Building, Cleveland, Ohio 44199

Notification procedure:

Individuals may write to the system manager at the above address. Information request must contain individual's full name and should include the Social Security number.

Record access procedures:

The agency's rules for access to records may be obtained from the system manager.

Contesting record procedures:

The agency's rules for contesting contents and appealing initial determinations by the individual concerned may be obtained from the system manager.

Record source categories:

Disbursing officers, credit bureaus, the individual, Internal Revenue Service, Postmasters, Veterans Administration, Bureau of Motor Vehicles.

Systems exempted from certain provisions of the act:

None

N00034 NPC RET PAY

System name:

Retired Pay System

System location:

Commanding Officer Navy Finance Center Anthony J. Celebrezze Federal Building Cleveland, Ohio 44199

Categories of individuals covered by the system:

Uniformed Navy Retired and Retainer Accounts; retirees electing Retired Servicemans Family Protection Plan or Survivor's Benefit Program, survivor of retirees receiving SBP or Minimum Income Widow Payments; National Oceanic and Atmospheric Administration Retirees.

Categories of records in the system:

They are used for extraction or compilation of statistical data and reports for management studies and statistical analyses for use internally or externally as required by Department of Defense or by other Government agencies.

Authority for maintenance of the system:

Title 10 U.S. Code Subtitle C

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Records in this system are used for extraction or compilation of statistical data and reports for management studies and statistical analyses, for use internally or externally as required by the Department of Defense or by other Government agencies. They are used within the Navy Finance Center to compute retirement payments and to investigate and reconcile any underpayments, overpayments, or claims. Data may be released to the Internal Revenue Service and state and local taxing authorities; the Social Security Administration, the Civil Service Commission, and the Veterans' Administration when retirement payments received may have an impact upon payments issued by those agencies; the Department of the Treasury for issuance of checks; the courts upon receipt of court orders; and the designated beneficiaries of deceased members. To the American Red Cross, Navy Relief Society, and U.S.O. for personal assistance to the member, and to the Department of Labor.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Magnetic tape and file folders

Retrievability:

Social security number and member's name

Safeguards:

Guards, personnel screening, requestor codes

Retention and disposal:

Kept for ten years then forwarded to safekeeping; NOAA accounts dropped upon retirees death.

System manager(s) and address:

Commanding Officer Navy Finance Center Anthony J. Celebrezze Federal Building Cleveland, Ohio 44199

Notification procedure:

Individuals may write to system manager at above address. Information request must contain Navy member's full name and social security number.

Record access procedures:

The agency's rules for access to records may be obtained from the system manager.

Contesting record procedures:

The agency's rules for contesting contents and appealing initial determinations by the individual concerned may be obtained from the system manager.

Record source categories:

Field Disbursing Officers, BUPERS, Individual members, Veterans Administration, IRS.

Systems exempted from certain provisions of the act:

None

N00034 NRDP PAY SYS

System name:

Reserve Pay System

System location:

Commanding Officer Navy Finance Center Anthony J. Celebrezze Federal Building Cleveland, Ohio 44199

Categories of individuals covered by the system:

Active reservists drilling in pay units

Categories of records in the system:

Performance entitlements, monthly and yearly pay, and personnel data needed for pay computation and issuance

Authority for maintenance of the system:

10 U.S. Code Chapter 11

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

These records are used within the Navy Finance Center by military pay adjudicators for the purposes of issuing checks and earning statements, investigating claims and overpayments, and for preparation of financial reports. Data contained in records may be released to BUPERS, various field activities, and other Department of Defense activities to assist these activities to update, verify, or correct their records; the Internal Revenue Service and state or local tax authorities for use in computing or resolving member's tax liability; the Social Security Administration to determine member's coverage under that program; the Department of the Treasury for issuance of checks; the Veterans' Administration or to the Navy Family Allowance Activity, when needed to process cases in the courts upon court order; the designated beneficiaries of deceased members. To the American Red Cross, Navy Relief Society, and U.S.O. for personal assistance to the member.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Magnetic tape and file folders

Retrievability:

Social security number and name

Safeguards:

Guards, personnel screening, requestor codes

Retention and disposal:

Microfilm record kept indefinitely in safekeeping

System manager(s) and address:

Commanding Officer Navy Finance Center Anthony J. Celebrezze Federal Building Cleveland, Ohio 44199

Notification procedure:

Individuals may write to system manager at above address. Information request must contain Navy member's full name and social security number.

Record access procedures:

The agency's rules for access to records may be obtained from the system manager.

Contesting record procedures:

The agency's rules for contesting contents and appealing initial determinations by the individual concerned may be obtained from the system manager.

Record source categories:

Disbursing Officers, individual members, BUPERS, and IRS.

Systems exempted from certain provisions of the act:

None

N00034 NROTC

System name:

Naval Reserve Officer Training Corps Pay System

System location:

Commanding Officer Navy Finance Center Anthony J. Celebrezze Federal Building Cleveland, Ohio 44199

Categories of individuals covered by the system:

NROTC students until time of commissioning

Categories of records in the system:

Personnel and entitlement data necessary for computation of pay entitlements.

Authority for maintenance of the system:

10 U. S. Code, Chapter 103 and Public Law 88-647.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

The records are used within the Navy Finance Center by military pay adjudicators for the purposes of issuing checks and earnings statements, investigating claims and overpayments, and for preparation of financial reports. Data contained in records may be released to BUPERS, various field activities and other Department of Defense activities to assist these activities to update, verify, or correct

their records, or process cases; to the Internal Revenue Service and state or local tax authorities for their use in computing or resolving member's tax liability; to the Social Security Administration to determine member's coverage under that program; to the Department of the Treasury when needed for issuance of check; to the Veteran's Administration or to the Navy Family Allowance Activity, to process cases; to the courts upon court order; to the designated beneficiaries of deceased members, etc. To the American Red Cross, Navy Relief Society, and U.S.O. for personal assistance to the member.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Magnetic tape and file folders

Retrievability:

Social Security account number and member name

Safeguards:

Guards, personnel screening, requestor codes

Retention and disposal:

Original shipped to safekeeping for permanent retention.

System manager(s) and address:

Commanding Officer Navy Finance Center Anthony J. Celebrezze Federal Building Cleveland, Ohio 44199

Notification procedure:

Individuals may write to system manager at above address. Information request must contain Navy member's full name, military status, and social security account number. Requestor may visit above address and must have military identification card or valid state driver's license and social security card as positive proof of identity.

Record access procedures:

The agency's rules for access to records may be obtained from the system manager.

Contesting record procedures:

The agency's rules for contesting contents and appealing initial determinations by the individual concerned may be obtained from the system manager.

Record source categories:

Disbursing Officer, Member, BUPERS, CNETO, and IRS.

Systems exempted from certain provisions of the act:

NONE

N00034 SAV-DEP-SYS

System name:

Savings Deposit

System location:

Commanding Officer Navy Finance Center Anthony J. Celebrezze Federal Building Cleveland, Ohio 44199

Categories of individuals covered by the system:

Navy members still declared missing in action in the Vietnam conflict.

Categories of records in the system:

Members records reflecting account balances

Authority for maintenance of the system:

Public Law 89-538

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Records in this system are used for crediting of interest and clearing of account upon termination. Records will be furnished to Navy Family Allowance Activity and other Department of Defense agencies servicing families of persons still having active accounts; to the Internal Revenue Service upon termination of account.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Magnetic tape and file folders

Retrievability:

Social security number and member name

Safeguards:

Guards, personnel screening, and specific requestor codes

Retention and disposal:

Upon closing of account, records are shipped to FRC and destroyed after two years.

System manager(s) and address:

Commanding Officer Navy Finance Center Anthony J. Celebrezze Federal Building Cleveland, Ohio 44199

Notification procedure:

Individuals may write to system manager at above address. Only the member or executor or beneficiary of estate will be provided information. Individual's name and social security number are required. Persons wishing to view records in person must report to the Navy Family Allowance Activity, Room 967, Anthony J. Celebrezze Federal Building, Cleveland, Ohio 44199.

Record access procedures:

The agency's rules for access to records may be obtained from the system manager.

Contesting record procedures:

The agency's rules for contesting contents and appealing initial determinations by the individual concerned may be obtained from the system manager.

Record source categories:

Member's initial request, adjudicators in Central Accounts Department.

Systems exempted from certain provisions of the act:

NONE

N00034 13

System name:

Slot Machine Winnings

System location:

Decentralized, maintained at Navy and Marine Corps overseas bases, where slot machines are not in violation of U.S. laws, status of forces or local agreements. A list is available from:

NAVY
Chief of Naval Personnel (Pers-7)
Bureau of Naval Personnel
Washington, D.C. 20370

MARINE CORPS
Commandant of the Marine Corps (MSMS)
Washington, D.C. 22214

Categories of individuals covered by the system:

Individual U.S. citizens 18 years of age and older who are paid monies for winnings associated with slot machine jackpots.

Categories of records in the system:

Jackpot payout control sheet indicating individual name, grade, SSAN, duty station, dates and amounts of jackpot monies paid are maintained at each location.

Authority for maintenance of the system:

5 USC 301 Departmental Regulations

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

To account for and control monies paid to individual winners of slot machines jackpots and as a basis for IRS Form 1099 reporting on individuals whose winnings are six hundred dollars or more during a calendar year.

USER: Navy and Marine Corps shore activities where slot machines have been approved by the Chief of Naval Personnel or the Commandant of the Marine Corps.

USES: Provides a means of paying, recording, accounting for, reporting, and controlling expenditures associated with slot machine jackpots.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Records maintained in file cabinets located in a secure area.

Retrievability:

Individual control sheets. Individual IRS Form 1099 by name and SSAN.

Safeguards:

Records are kept in occupied rooms which are locked during non-working hours.

Retention and disposal:

Records are maintained on site for 3 years and then shipped to the Federal Records Center in accordance with SECNAVINST 5212.5 series.

System manager(s) and address:

Overall policy and procedures for the slot machine operation are contained in NAVSO P-3518, 3519, 3520, 3521, BUPERINST 10150.2B and MCO P-174613B. A list of system managers by activity

is available from the Chief of Naval Personnel (Pers-7) for Navy managers and the Commandant of the Marine Corps (MSMS) for Marine Corps managers.

Notification procedure:

Individuals are notified via IRS Form 1099 if their jackpot winnings are six hundred dollars or more in a calendar year. An individual can contact the applicable systems manager on matters concerning their jackpot winnings.

Record access procedures:

Individuals have access to information applicable to their individual jackpot winnings. Officials such as IRS, Auditor and etc. have access to information applicable to all jackpot winners. Access is through the system manager.

Contesting record procedures:

The agency's rules for contesting contents and appealing initial determination by the individual concerned may be obtained from the system manager.

Record source categories:

Daily jackpot payout sheets.

Systems exempted from certain provisions of the act:

NONE

N00034 14

System name:

Bingo Winners

System location:

Decentralized, maintained at individual Navy or Marine Corps bases where bingo is authorized and played. A list is available from:

NAVY
Chief of Naval Personnel (Pers-7)
Bureau of Naval Personnel
Washington, D.C. 20370

MARINE CORPS
Commandant of the Marine Corps (MSMS)
Washington, D.C. 22214

Categories of individuals covered by the system:

Individuals who are paid monies or prizes for winnings associated with bingo.

Categories of records in the system:

Bingo payout control sheet indicating individual name, SSAN, duty station, dates and amounts or items won are maintained at each location.

Authority for maintenance of the system:

5 USC 301 Departmental Regulations

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

To account for and control monies and items of merchandise paid to individual winners of bingo games and as a basis for IRS Form 1099 reporting on individuals whose winnings are six hundred dollars or more during a calender year.

USES: Provides a means of paying, recording, accounting for reporting and controlling expenditures and merchandise inventories associated with bingo games.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Records maintained in file cabinets located in a secure area

Retrievability:

Individual control sheets. Individual IRS Form 1099 by name and SSAN.

Safeguards:

Records are kept in occupied rooms which are locked during non-working hours.

Retention and disposal:

Records are maintained on site for 3 years and then shipped to Federal Records Center in accordance with SECNAVINST 5212.5 series.

System manager(s) and address:

Overall policy and procedures for the bingo operation are contained in NAVSO P-3518, 3519, 3520, 3521, BUPERSINST 1710.11 and MCO P-1746[illegible]B. A list of systems managers is available from Chief of Naval Personnel (Pers-7) for Navy managers and the Commandant of the Marine Corps (MSMS) for Marine Corps managers.

Notification procedure:

Individuals are notified via IRS Form 1099 if their bingo winnings are six hundred dollars (monetary value) or more in a calendar year. An individual can contact the applicable systems manager on matters concerning their bingo winnings.

Record access procedures:

Individuals have access to information applicable to their individual bingo winnings. Officials such as IRS, Auditor and etc. have access to information applicable to all bingo winners. Access is through the systems managers.

Contesting record procedures:

The agency's rules for contesting contents and appealing initial determinations by the individual concerned may be obtained from the system manager.

Record source categories:

Bingo payout control sheet.

Systems exempted from certain provisions of the act:

NONE

N0003401

System name:

Civilian Pay System

System location:

Decentralized, maintained by 125 Navy and Marine Corps civilian payroll offices; a list is available from:

Commander
Navy Accounting and Finance Center (NAFC-42)
Washington, D.C. 20376

Categories of individuals covered by the system:

All civilian employees who are employed by Navy and Marine Corps Activities and are paid from appropriated funds

Categories of records in the system:

Individual civilian pay records, retirement records and leave records, applications for leave; overtime authorizations; subetantiating documents such as personnel action forms effecting new appointments, separations, promotions, demotions, and deduction changes; Internal Revenue Service Form W-4; State and City tax information; authorizations for deductions, i.e., savings bonds, group life insurance, health benefits, overpayments, indebtedness to the Government; court orders for garnishment of wages for child support and alimony payments; allotments, i.e., union dues, charity contributions, savings allotments, special allotments for overseas employees; tax levies; claims; award payments; special pay; allowances and differentials, and case files which contain requests for waiver of erroneous payment of pay for civilian employees.

Authority for maintenance of the system:

5 USC301 Departmental Regulations

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Purpose: To pay all Navy and Marine Corps civilian employees, maintain leave and retirement records and to record, report and account for government expenditures for personal services.

User: Navy and Marine Corps civilian payroll offices

Uses: Provides a means of paying, recording and accounting for government expenditures for personal services of Navy and Marine Corps civilian employees; provides time and attendance information to individual employees and management; provides audit trails for GAO, Navy Area Audit, and internal audit procedures; provides federal, state, and city tax information to appropriate authorities; provides retirement information and monies to CSC for computation to annunities; provides other data to CSC as required for special studies. To the Treasury Department in connection with check issuance, the Veterans Administration in regard to Disability or Severance Pay Entitlement, the Social Security Administration for FICA Wage reporting; the Internal Revenue Service and state and local tax authorities for computing or resolving tax liability. To state employment agencies which require wage information to determine eligibility for unemployment compensation benefits of former employees.

To provide to financial organizations lists of those employees who make deposits and the amount of the deposit to each financial organization. To provide officials of labor organizations recognized under Executive Order 11491, as amended, with information as to the identity of employees contributing dues each pay period and the amount of dues withheld from each contributor. To provide information to the General Accounting Office on those requests for waiver of overpayments of pay which are forwarded to them for adjudication.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Automated records are stored on magnetic tapes, disc, microfilm/microfiche and punched cards. Manual records on manual card files and in file folders.

Retrievability:

By name, social security number, or locally assigned identification number.

Safeguards:

Locked fireproof cabinets for retirement records. Metal cabinets for manual payroll and leave records within locked rooms. The computer facility and terminal are located in restricted areas accessible only to authorized persons that are properly screened, cleared and trained. Manual records and computer printouts are available only to personnel engaged in payroll processing, auditors, investigative officials and management personnel.

Retention and disposal:

Payroll records are maintained on-site for 2 years after completion of on-site audits by GAO; if no on-site audit is performed, retain records on-site for 4 years, then shipped to Federal Record Center where they are retained for 56 years.

Leave Records - same as above, except held by Federal Record Center for 10 years.

Retirement Registers - same as above, except are destroyed rather than sent to Federal Record Center. Retirement records are maintained until employee separates; if he goes to another Navy or Marine Corps activity, retirement records are sent to that activity; if he goes to another agency or separates, sent to CSC.

System manager(s) and address:

Overall policy and procedure for the Civilian Payroll System are established by the Commander, Navy Accounting and Finance Center, Washington, D.C. 20376. A list of the system managers by payroll activity is available from Navy Accounting and Finance Center (NAFC-42).

Notification procedure:

Civilian employees can directly contact the system manager of his payroll activity. If unknown, the inquiry should be submitted to the Commander, Navy Accounting and Finance Center, address above. Requestor should provide full name, social security number, identification number, if applicable, activity where employed and information desired. An individual can visit his payroll office on any matter concerning his pay.

Record access procedures:

Employees have access to their individual pay, leave and retirement records. The agency's rules for access to records may be obtained from the system manager.

Contesting record procedures:

The agency's rules for contesting contents and appealing initial determination by the individual concerned may be obtained from the system manager.

Record source categories:

Standard Form 50's (Personnel actions), time and attendance records, applications for leave and overtime authorizations, retirement records, federal state and tax forms, deduction authorizations, allotment authorizations, court orders for garnishment of wages for child support and alimony payments.

Systems exempted from certain provisions of the act:

None

N0003402

System name:

Bond Accounting

System location:

Decentralized, maintained by Issuing Agents for Savings Bonds; a list is available from:

Commander
Navy Accounting and Finance Center (NCF-123)
Washington, D.C. 20376

Categories of individuals covered by the system:

Civilian and Military Personnel of the Department of the Navy including contract employees who meet the requirement for ownership of savings bonds as outlined in Treasury Department Circular No. 530 as amended.

Categories of records in the system:

Files contain individual application and related records - The Bond Record File - Master Bond Record Card Control Account - The Master Control Account - Activity Subcontrol Accounts - Refund Subcontrol - Transfer Journal.

Authority for maintenance of the system:

5 USC 301 Departmental Regulations

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Purpose: To issue U. S. Savings Bonds
User: Issuing Agents for Savings Bonds
Uses: Provide audit trail on Requisition, Control, and Issuing of Bonds -

Maintenance of accounts - Accounting for funds - Financial Reports and Returns - Miscellaneous provisions.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Metal file cabinets equipped with a locking device - Paper records in metal filing cabinets - Microfilm.

Retrievability:

Retrieved by name, social security number or payroll number. From the Federal Reserve Bank by numerical sequence by serial number shown on bond issued stub.

Safeguards:

Locked cabinets, with building or military base security. Access authorized to personnel engaged in payroll processing, disbursing, supervisory or management personnel, and auditors. Bond subscribers are authorized to receive information on their own records.

Retention and disposal:

Records are maintained for one year. Records are then forwarded to a Federal Records Center.

System manager(s) and address:

Commander Navy Accounting and Finance Center (NCF-123) Washington, D.C. 20376 Procedures are prescribed in Comptroller of the Navy Manual (NAVSO P-1000). For decentralized locations where individuals may deal directly, addresses are available from the SYSMANAGER.

Notification procedure:

Information may be obtained by contacting the Bond Issuing Office responsible for issuing bond if known. If unknown the inquiry should be submitted to Commander, Navy Accounting and Finance Center, NCF-123, Washington, D.C 20376. Requester should provide full name, social security number or payroll number, current address when requesting information. An individual is permitted to visit any Bond Issuing Agent Office for information and will be required to provide identification such as identification card (i.e., DOD Building Pass).

Record access procedures:

The Agency's rule for access to records may be obtained from the system manager.

Contesting record procedures:

The Agency's rules for contesting contents and appealing initial determinations by the individual concerned may be obtained from the system manager.

Record source categories:

Request for Bonds are filed by individuals who provide information on themselves. Other records are generated from the original request.

Systems exempted from certain provisions of the act:

None

N0003404

System name:

Joint Uniform Military Pay System (JUMPS)

System location:

(Decentralized) Navy and Marine Corps disbursing offices, Navy Finance offices, Navy Regional Finance Centers, and Navy Finance Center which are identified in appendix B of Volume IV, Navy Comptroller Manual andaddresses which are contained in the directory of Department of the Navy mailing addresses.

Categories of individuals covered by the system:

All Navy personnel on active duty

Categories of records in the system:

Individual Leave and Earnings Statement, Personal Financial Record, substantiating documents authorizing credits and deductions of pay entitlements and withholding of Federal income tax and Service Group Life Insurance, Internal Revenue Forms (W-2) reporting

Federal income tax withheld and Federal Insurance Contribution Acts, military money list, pay receipts, check and distribution lists, allotment documents locator files, absentee and deserter lists, miscellaneous correspondence requesting or providing pay information, commanding officers leave lists, micro-film and microfiche records.

Authority for maintenance of the system:

Titles 10 and 37 U.S.C.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Officials and employees, military and civilian, of the Department of the Navy in the performance of their official duties relating to the maintenance and distribution of Leave and Earnings Statements and the determination and audit of pay entitlements, computing, paying and reporting payments, determining budgets and appropriation requirements, commencing and terminating allotments, determining amounts subject to fines, forfeitures or detentions of pay in connection with non-judicial punishment and courts martial, distribution of pay checks. The Comptroller General or any of his authorized representatives in the course of the performance of duties of the General Accounting Office in the audit and determinations relating to military pay entitlements, expenditures and accounting procedures; to the Treasury Department in connection with check issuance, the Veterans Administration in regard to Disability or Severance Pay Entitlement, the Social Security Administration for FICA Wage reporting; the Internal Revenue Service and state and local tax authorities for computing or resolving tax liability. To the American Red Cross, Navy Relief Society, and U.S.O. for personal assistance to the member.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Personal Financial Records containing Leave and Earnings Statements, which are paper records, are stored in wooden or metal boxes or cabinets. Copies of Leave and Earnings Statements and supporting documents are stored in file folders and cabinets or on micro-film or microfiche. Automated records are stored on magnetic tapes, discs and punched cards.

Retrievability:

Automated records are retrieved by social security and name while locally maintained records and documents are retrieved by last name.

Safeguards:

Outside of normal working hours Personal Financial Records with Leave and Earnings Statements are secured in safes, vaults or locked cabinets. Substantiating documents and microfilmed records are retained in unlocked cabinets. All of the mentioned records are also within locked rooms or buildings.

Retention and disposal:

Personal Financial Records containing the six most recent Leave and Earnings Statements are retained by the disbursing office serving the command to which the member is assigned. Copies of substantiating documents are retained by the local command for four years after the period covered by the account at which time they are forwarded to the Federal Records Center. A central automated file is maintained for all active duty Navy personnel at the Navy Finance Center, Cleveland. Following a member's separation or retirement from the Navy, the member's Personal Financial Record is forwarded to the central site, Navy Finance Center, Cleveland, where it is retained for approximately two months pending individual claims and is then forwarded to the Federal Records Center. The members Master Pay Account is retained at the central site for six months following a member's separation or retirement at which time it is purged from the computer file, microfilmed and forwarded to the Federal Records Center. Substantiating documents are microfilmed and retained at the central site for an indefinite period while the paper copy is forwarded to the Federal Records Center after two months.

System manager(s) and address:

Comptroller of the Navy, Chief of Naval Personnel, Commander Navy Accounting and Finance Center, Commanding Officer Navy Finance Center, Commanding Officers of Navy Regional Finance Centers, Officers in Charge of Navy Finance Offices and Commanding Officers of activities with disbursing officers.

Notification procedure:

Individuals can be informed of any records maintained within the system by identifying themselves to the local command disbursing officer. The member may identify himself by presenting his military identification card. Former members may request information from the Navy Finance Center, Cleveland.

Record access procedures:

Individuals, properly identified, may request any information pertaining to his pay from his local disbursing officer. If the requested information is not available locally, the disbursing officer will obtain the information from other sources, i.e. member's previous duty stations or the Navy Finance Center, Cleveland.

Contesting record procedures:

The agency's rules for access to records and for contesting contents and appealing initial determinations by individuals concerned may be obtained from the SYSMANGER.

Record source categories:

Department of Defense Military Pay and Allowances Entitlements Manual, Navy and Marine Corps Military Pay Procedures Manual, Navy Pay and Personnel Procedure Manual, Bureau of Naval Personnel Manual and the individuals service record and Bureau of Naval Personnel Manpower and Personnel Management Information System (MAPMIS).

Systems exempted from certain provisions of the act:

None

N0003408

System name:

Midshipman Pay System

System location:

Primary - Superintendent, Naval Academy, Annapolis, MD 21402; decentralized segments - Commanding Officer, Navy Regional Finance Center, Washington, D.C. 20371, Commanding Officer, Navy Finance Center, Cleveland, OH 44199, and Chief of Naval Personnel (Code H-13), Navy Department, Washington, D.C. 20370.

Categories of individuals covered by the system:

Midshipmen of the U.S. Naval Academy, Annapolis, Maryland.

Categories of records in the system:

The system contains automatic data processing pay accounts of all Naval Academy Midshipmen. Document flow is controlled by use of a Midshipmen Payroll Change form. Controls over the system are maintained by use of a Midshipmen Payroll Control Register. Input source documents include (1) letter authority from the Superintendent to the Midshipmen Pay Offices to open the pay (2) documents to substantiate credits of advances for initial clothing and equipment issues, commuted rations, refunds for clothing turn-in, and discharge payments (3) letters from the Commandant of Midshipmen to the Midshipmen Pay Officer containing listings of names and amounts to the checked for personnel services (4) documents to substantiate checkages for liquidation of clothing and equipment advances, store bills of midshipmen subscriptions to magazines, musical concerts, etc., and (5) required deductions for Federal Tax and FICA Tax. Output documents include printouts of (1) Midshipmen Monthly Pay Accounts (2) Midshipmen Debit and Credit Explanation Register and (3) Midshipmen Yearly Pay Account. Payroll money lists which substantiate payments made and travel payment vouchers are also in files. Monthly financial returns are submitted to the Navy Regional Finance Center, Washington, D.C. for consolidation with the accounts of that office and are then forwarded to the Navy Finance Center Cleveland, Ohio in accordance with procedures prescribed in NAVCOMPT Manual, par. 048090. Copies, of the financial returns are therefore, on file in these offices. In addition, copies of documents supporting Federal Income and FICA Taxes withheld are forwarded to the Chief of Naval Personnel (Code H-13).

Authority for maintenance of the system:

National Security Act Amendments of 1949 (10 U.S.C. 5060).

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Purpose - To accurately and efficiently maintain the pay accounts of Naval Academy Midshipmen. Category of users - Midshipmen Pay Officers Navy Regional Finance Center, Washington, D.C., Navy Finance Center, Cleveland, Ohio, Chief of Naval Personnel, Internal Revenue Service, and Social Security Administration. Specific uses - To pay and account for payments and collections of Naval Academy Midshipmen which are charged to the annual appropriation Military Personnel, Navy and administered by the chief of naval personnel. To the American Red Cross, Navy Relief Society, and U.S.O. for personal assistance to the member.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Midshipmen Pay Office - Computer print-outs. ADP Office - Computer magnetic tapes.

Retrievability:

Retrieved by Alfa Codes assigned to each midshipmen.

Safeguards:

Only Midshipmen Disbursing Office personnel are authorized access to records of that office. Only the computer operations are authorized access to the computer tapes. The computer area is restricted and computer tapes are locked in fireproof safes when not in use.

Retention and disposal:

Pay information on the computer tapes is retained for 30 days and the tapes are then reused. Tapes containing Federal Income Tax and FICA Tax information are retained for 1 year until the required reports are rendered. The tapes are then reused. Retained copies of Midshipmen Pay Office forms are disposed of as follows: 1. Midshipmen Payroll Control Register - retain for 2 years and destroy. 2. Midshipmen Payroll Change - retain for 6 months and destroy. 3. Midshipmen Monthly Pay Account - retain for 4 years, from admission of each class through month following its graduation and destroy. 4. Midshipmen Debit and Credit Explanation Register - same as 3, above. 5. Midshipmen Yearly Pay Account - same as 3, above. Other disbursing records and financial returns are retained 4 years follow period covered by the account and transferred to the Federal Records Center in accordance with SECNAV Instruction P5212.5b.

System manager(s) and address:

Overall policy and procedurs - Comptroller of the Navy; primary - Superintendent, Naval Academy; decentralized segments - Commanding Officer, Navy Regional Finance Center, Washington, D.C., Commanding Officer, Navy Finance Center, Cleveland, Ohio and Chief of Naval Personnel (Code H-13) Washington, D.C.

Notification procedure:

Individuals can be informed of any records maintained in the system by identifying themselves to Midshipmen Pay Office. Members must present his identification card to obtain requested information.

Record access procedures:

Midshipmen are issued a monthly earnings statement. All information concerning credits and checkages of pay and allowances are contained in the statement. Additional required information relative to miscellaneous changes reflected on the statement may be obtained from the individual Academy activity which reported the changes to the Midshipmen Pay Office upon presentation of his identification card.

Contesting record procedures:

The agency's rules for access to records and for contesting contents and appealing initial determinations by the individuals concerned may be obtained from the SYSMANAGER.

Record source categories:

Members service record on file in the Midshipmen Personnel Office and those documents contained in RECORD-CATEGORY, above.

Systems exempted from certain provisions of the act:

NONE

N0003411

System name:

Travel Pay System

System location:

Decentralized, maintained by Navy disbursing offices; a list is available from:

Commander
Navy Accounting and Finance Center (NCF-3)
Washington, D.C. 20376

Categories of individuals covered by the system:

Any person, government or private, who submits a request for payment of a travel advance or travel claim to a Navy disbursing office.

Categories of records in the system:

Public vouchers; substantiating documents such as travel orders and expense receipts; card file or log book utilized to control receipt and disposition of travel claims; suspense files, pay adjustment authorizations, and payroll checkages utilized for control and follow-up on travel advances; and correspondence relating thereto.

Authority for maintenance of the system:

5 USC 301 Departmental Regulations

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Purpose: To reimburse travelers for travel expenses and to record, account, and report for government funds. User: Navy disbursing offices. Uses: Provide an historic file and audit trail for travel payments made by the Navy; provide a means to respond to inquiries from travelers on status of claims; control travel advances to insure liquidation; provide a means to record, account, and report travel expenditures; provide a means for collection in cases of overadvances; provide disclosure to law enforcement or investigatory authorities.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Paper records in file folders; index cards or log books.

Retrievability:

Retrieved by disbursing office voucher number for paid advances and claims; retrieved by name for card index file or log book. Information in disbursing office voucher file can be retrieved by name through search process if travel dates and/or travel claim submission date is known.

Safeguards:

Locked cabinets or rooms, with building or military base security. Access authorized to personnel engaged in travel claim processing, supervisory or management personnel, and inspectors, auditors, investigators. Travelers are authorized access to their own travel records; fund administrators are authorized access to records pertaining to their own funds.

Retention and disposal:

Records are maintained for four years. Records may be moved to a regional Federal Records Center depending on local storage capability. No standard means for destruction exists.

System manager(s) and address:

Department of Defense Per Diem, Travel, and Transportation Allowance Committee prescribes regulations in the Joint Travel Regulations; records maintained are prescribed by the Comptroller of the Navy in its Manual (NAVSO P-1000); a list of Navy disbursing offices is maintained by the Commander, Navy Accounting and Finance Center (NCF-3), Washington, D.C. 20376.

Notification procedure:

If the individual is a traveler and knows the location of the Navy disbursing office processing his/her travel claim, direct contact with that office is sufficient. If unknown, or the inquirer is not a traveler, the inquiry should be submitted to the Commander, Navy Accounting and Finance Center, address above. Requestor should provide full name, social security number, whether military or civilian, and, if possible, disbursing office voucher number, dates of travel, and date and location of travel claim or travel advance submission. An individual is permitted to visit any Navy disbursing office to which he/she has submitted an advance or claim. Military identification card or civilian identification such as driver's license is sufficient.

Record access procedures:

The agency's rules for access to records may be obtained from the system manager.

Contesting record procedures:

The agency's rules for contesting contents and appealing initial determination by the individual concerned may be obtained from the system manager.

Record source categories:

Travel advances and travel claims are filed by individuals who provide information on themselves. Supporting documentation is obtained from employing commands, service providers (e.g., taxis for receipts), and Navy disbursing offices.

Systems exempted from certain provisions of the act:

NONE

N0003412

System name:

Commercial Invoice Payments History System

System location:

Decentralized, maintained by Navy disbursing offices; a list is available from:

Commander
Navy Accounting and Finance Center (NCF-5)
Washington, D.C. 20376

Categories of individuals covered by the system:

Any individual, government or private, who submits a request for payment to Navy disbursing offices for goods and/or services rendered.

Categories of records in the system:

Public vouchers; substantiating documents such as invoices, receipt documents, inspection reports, procurement instruments, contract index files, assignment documents, machine listings, government bills of lading, transportation requests, meal tickets; magnetic tape, disk files, roll microfilm, microfiche; and related correspondence files.

Authority for maintenance of the system:

5 USC 301 Department Regulations

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Purpose: To provide a record of all disbursements made on commercial invoices by Navy disbursing offices. User: Navy disbursing offices. Uses: Provides an audit trail of commercial invoice payments made by the Navy; provides a means to respond to inquiries from individuals on status of invoices and contracts; provides a means of detecting and precluding duplicate payments; provides disclosure to law enforcement and investigatory authorities.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Paper records in file folders; computer magnetic tapes; roll microfilm, microfiche.

Retrievability:

Retrieved by disbursing office voucher number for paid invoices; retrieved by procurement instrument identification number for contractors by contract index cards; retrieved by name of individual from machine listings. Information in disbursing office voucher file and microfilm/microfiche can be retrieved by name through search process if billing/submission date is known.

Safeguards:

Locked cabinets or rooms, with building or military base security. Access authorized to designated personnel engaged in commercial invoice processing, supervisory or management personnel, and inspectors, auditors, investigators. Individuals are authorized access to their own payment history file; fund administrators are authorized access to records pertaining to their own funds.

Retention and disposal:

Records are maintained for four years. Records may be moved to a regional Federal Records Center depending on local storage capability. No standard means for destruction exists.

System manager(s) and address:

Commercial invoice payment history requirements are prescribed by the Comptroller of the Navy in its Manual (NAVSO P-1000); a list of Navy disbursing offices authorized to pay invoices can be obtained from the Commander, Navy Accounting and Finance Center (NCF-5), Washington D.C. 20376.

Notification procedure:

If the individual knows the location of the Navy disbursing office holding his/her invoice payment history, direct contact with that office is sufficient. If location is unknown, the inquiry should be directed to the Commander, Navy Accounting and Finance Center, address above. Inquirer should provide full name, social security number, whether military or civilain, contract or purchase order number and, if possible, disbursing office voucher number, invoice date, number and amount. An individual is permitted to visit any Navy disbursing office to which he/she has submitted an invoice for payment. Identification should include military identification card, civilian identification such as driver's license and company or agency affiliation. Access to classified contracts requires confirmation of security clearance and need to know.

Record access procedures:

The agency's rules for access to records may be obtained from the system manager.

Contesting record procedures:

The agency's rules for contesting contents and appealing initial determination by the individual concerned may be obtained from the system manager.

Record source categories:

Commercial invoices are filed by individuals who provide information on themselves. Supporting documentation is obtained from employing company, material/service providers and receivers and Navy disbursing offices.

Systems exempted from certain provisions of the act:

NONE

N0003415

System name:

Losses of Public Funds File

System location:

Navy Accounting and Finance Center, Code NAFC-73, Washington, DC 20376

Categories of individuals covered by the system:

Disbursing personnel who are entrusted with public funds and who incur losses of the public funds entrusted to them.

Categories of records in the system:

Alphabetized folders containing reports of losses of public funds, reports of investigations into losses of public funds, requests for relief of liability for losses of public funds and related correspondence.

Authority for maintenance of the system:

31 USC 95a, 82a-1, and 82a-2

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Maintaining documentation relative to losses of public funds by accountable disbursing personnel. Used by the following individuals for the purpose of processing documentation relative to losses of public funds: Commanding Officer, Executive Director; Director, Functional Systems Department; Director, General Systems Division and other specified individuals within the General Systems Division. Inform individuals of their rights to repay losses or to submit requests for relief of liability; maintain records of investigations conducted; approval of requests for relief of liability for losses of less than

500;recommendations to the Secretary of the Navy on all denials and all losses of

500 or more; and control over liquidation of losses by relief or by collection action.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

File folders and control log

Retrievability:

Name of accountable disbursing individual in whose custody the public funds were entrusted when the losses occured.

Safeguards:

Maintained in General Services approved Class 3, Security Cabinet equipped with a Type II, three tumbler combination lock accessible only to authorized individuals.

Retention and disposal:

Transferred to Federal Records one year following liquidation of the loss.

System manager(s) and address:

Commanding Officer, Navy Accounting and Finance Center, Code NAFC-73, Washington, DC 20376

Notification procedure:

Correspondence only

Record access procedures:

The agency's rule for access to records may be obtained from the system manager.

Contesting record procedures:

The agency's rule for contesting contents and appealing initial determinations by the individual concerned may be obtained from the system manager.

Record source categories:

Messages, letters, and reports of investigations into losses of public funds received from: accountable disbursing personnel, commanding officers of Navy and Marine Corps activities at which disbursing offices are located, officers appointed to conduct Judge Advocate General Manual investigations, Commanding Officer, Naval Investigative Service, Commandant of the Marine Corps, and Secretary of the Navy.

Systems exempted from certain provisions of the act:

None

N00037 CNM (MAT 09G1)

System name:

Investigatory (Fraud) System

System location:

Chief of Naval Material, Navy Department, Washington, D.C. 20360

Categories of individuals covered by the system:

Individuals suspected of fraud, convicted of fraud in Navy procurement, individuals suspected of being involved in theft of Government property, conflict of interest in matters relative to Navy procurement.

Names of individuals involved in areas of possible criminal misconduct pertaining to procurement and related matters within the cognizance of CNM.

Categories of records in the system:

1. Administrative memoranda
2. Investigative report summaries
3. Report of disciplinary action taken
4. Card index file, containing only the name and file number. It is used for report retrieval purposes.
5. Pertinent public court records.

Authority for maintenance of the system:

Title 5, U.S. Code, Section 301

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Uses are to disseminate information on procurement fraud and related matters to the officials in the Department of the Navy to assure that they are notified in fraud cases. To request official investigations, audits, to respond to congressional inquiries and to request reports of final action taken. Internal users are subordinate officials to the CNM, CNO, SECNAV and ASN. Documents furnished to Department of Justice to be used in prosecutive actions. Reports are also used in connection with debarment/ suspension actions and require notification D/A, AF, DSA, GSA, Defense Nuclear Agency, MARCORPS and DCAA.

Referrals to NIS (law enforcement)

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

File folders, index cards.

Retrievability:

By name and ssn; by case name, type of crime and command.

Safeguards:

Access is limited to MAT 09G personnel. Files are stored in a locked bar cabinet. The area is sight controlled during normal work hours and locked during non duty hours. Building access is controlled during security hours by a Security Force, which also conducts roving patrols of the building. There is no possibility that the computer can be accessed from outside the controlled area.

Retention and disposal:

Files are kept for three years after final action is taken.

System manager(s) and address:

Chief of Naval Material Deputy Inspector General (Investigations) NAVMAT 09G1 Crystal Plaza Bldg. #5, Rm 422 Washington D.C. 20360

Notification procedure:

Written request to:
Chief of Naval Material
ATTN: Deputy IG (Investigations)
MAT 09G1, CP #5, Rm 422
Washington, D.C. 20360 giving full name, address, social security number and business affiliation.
Requester may visit, after written visit notification,
Chief of Naval Material
Deputy IG (Investigations)
MAT 09G1, CP #5, Rm 422
Washington, D.C. 20360 between the hours of 0900-1500.
Requestor must show proof of identity consisting of drivers license or ID containing photograph, Military ID card, etc.

Record access procedures:

The Agency's rules for access to records may be obtained from the System Manager.

Contesting record procedures:

The Agencies Rules for contesting contents and appealing initial determinations by the individual concerned may be obtained from the System Manager.

Record source categories:

Law enforcement investigative reports, Audit Reports, Inspection reports, credit reports and complainants.

Systems exempted from certain provisions of the act:

Parts of this system may be exempt under 5 U.S.C. 552a (k) (1); (2) and (5), as applicable. For additional information contact the System Manager.

N00039 CONTFLDSERV

System name:

Contract Field Service File

System location:

Commander Naval Electronic Systems Command Washington, D.C. 20360

Categories of individuals covered by the system:

Contractor representatives (engineers/technicians)

Categories of records in the system:

NAVELEX 4603 maintains a contractor field engineer file system by name and company. The only personal information contained in these files are security clearance information (degree, date cleared, by whom), date and place of birth, and social security number. Contract services requests and authorizations.

Authority for maintenance of the system:

5 USC 301, Departmental Regulation

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

The information in the system is used for notifying ships, shipyards, supships, other Navy activities and some contractor plants of reporting engineers security information for tech assists. Internal users other than 4603 are cognizant engineers.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

File folders.

Retrievability:

The files are filed by company and name.

Safeguards:

The files are located in a locked cabinet. When the cabinet is open, personnel is in the room at all times. Normally no other people have access to these files. The only ones that could have access based upon a need to know are the cognizant engineers and the contractor representatives may review their own personal jacket. ELEX 4603 personnel must remove records from cabinets.

Retention and disposal:

The records are retained as long as the engineer is employed by the company, then the records are transferred to Archives for the standard retention period.

System manager(s) and address:

Contract Services Coordinator, ELEX 4603

Notification procedure:

Request must be made to system manager ELEX 4603. Requestor must provide full name, social security number and photo identification.

Record access procedures:

The agency's rules for access to records may be obtained from the system manager.

Contesting record procedures:

The agency's rules for contesting contents and appealing initial determinations by the individual concerned may be obtained from the system manager.

Record source categories:

The source of information is from the contractor representatives (engineers/ technicians) employers.

Systems exempted from certain provisions of the act:

None

N00060 CUBEX

System name:

List of Cuban Exile Families at U.S. Naval Base Guantanamo Bay, Cuba

System location:

Commander in Chief, U. S. Atlantic Fleet (N94), Norfolk, Virginia 23511

Categories of individuals covered by the system:

Navy civilian employees at U.S. Naval Base Guantanamo Bay, Cuba, who are Cuban exiles.

Categories of records in the system:

Listing contains:
(a) Name of Head of Household
(b) Number of Dependents
(c) Age of Head of Household

(d) Data on who possesses an alien registration card
(e) Date when head of household and dependents depart GITMO.
(f) Destination of departing exiles. U.S. or third country
(g) Information copy of miscellaneous information provided by COMNAVBASE GITMO to Health, Education and Welfare, and Naturalization and Immigration Service for relocation arrangements and assistance. (This information being provided under Provisions of Privacy Act by HEW.)

Authority for maintenance of the system:

5 USC 301

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Users - CINCLANTFLT, COMNAVBASE GITMO, NAS GITMO, NAVSTA GITMO, CNO, HEW, Immigration and Naturalization Service

Uses - Ascertain base loading and requirements for relocation of aging alien work force for relocation to U.S. or third country; determination of who holds ARC's and to encourage those without ARC's to obtain same to facilitate departure from GITMO, and statistical purposes. Once a Cuban exile enters U.S. as an alien, information is retained as to location in u.S. All entries are used by CINCLANTFLT primarily for statistical and planning purposes related to above. NOTE: When these non-citizens enter U.S. as aliens, they fall under the Privacy Act.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

File Folders

Retrievability:

Manual effort by Head of Household name

Safeguards:

Files located in controlled area, in locked safe. Access based on need to know - official use only.

Retention and disposal:

Records will be maintained as long as there are Cuban exiles at Guantanamo Bay, Cuba. When all exiles have departed or situation changes between U.S. and Cuba, files may be destroyed depending on situation.

System manager(s) and address:

Financial Management Officer, Shore Activities Readiness Division, CINCLANTFLT, Norfolk, Virginia 23511

Notification procedure:

Letters of inquiry should be addressed to Sysmanager noted above and contain sufficient information to identify sender. Information should include employment dates of head of household while employed at GITMO, activity employed by, ARC number and names and location of dependents.

Personal Visit - Personal contacts with Cuban exiles not normally envisioned. However, any personal contacts with Sysmanager will be at CINCLANTFLT Compound, Building 3 North, Room 206. Provide adequate identification such as drivers license, ARC and be prepared to answer same questions required by letter inquiry.

Record access procedures:

The agency's rules for access to records may be obtained from the System Manager.

Contesting record procedures:

The agency's rules for contesting contents and appealing initial determinations by the individual concerned may be obtained from the System Manager.

Record source categories:

Source of information derived from official civilian personnel folders and direct query of Cuban exiles. Information provided CINCLANTFLT by COMNAVBASE, GITMO.

Systems exempted from certain provisions of the act:

NONE

N00062 INSGEN

System name:

Naval Educational Development

System location:

Chief of Naval Education and Training Naval Air Station Pensacola, FL 32508

Categories of individuals covered by the system:

Formal/Informal investigations, inquiries conducted as directed by CNET and higher authority

Categories of records in the system:

Reports of investigations, inquiries

Authority for maintenance of the system:

5 USC 301

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Results reported to requesting authority. Files are then stored until time for disposal in accordance with Records Disposal Instructions

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

File folders

Retrievability:

Name, grade, title, position

Safeguards:

Stowed in 3-tumbler safe; access to authorized personnel only

Retention and disposal:

Per Records Disposal Instructions

System manager(s) and address:

Staff Inspector General and his immediate staff

Notification procedure:

Information is available to individuals but is restricted to the extent that the source of the information is not revealed.

Record access procedures:

The agency's rules for access to records may be obtained from the system manager.

Contesting record procedures:

The agency's rules for contesting contents and appealing initial determination by the individual concerned may be obtained from the system manager.

Record source categories:

Multitude of sources as determined by the scope of the investigation, inquiry.

Systems exempted from certain provisions of the act:

NONE

N00062 LOBR 1130

System name:

Low Quality Recruiting Report (CNET Report 1130-1)

System location:

Commander, Naval Recruiting Command 4015 Wilson Blvd Arlington, Va 22203

Categories of individuals covered by the system:

Reports of enlisted performance

Categories of records in the system:

Reports of performance

Authority for maintenance of the system:

5 USC 301

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Used by the Navy Recruiting Command and the Chief of Naval Education and Training, Chief of Naval Technical Training, and the Recruit Training Center to evaluate the quality of recruits with a view towards improvement of recruitment and training.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

File Folder

Retrievability:

Random filing by submitting activity

Safeguards:

Maintained in locked safe in controlled building

Retention and disposal:

Two years

System manager(s) and address:

Commander Navy Recruiting Command

Notification procedure:

By individual request upon presentation of letter or identification. Must provide program and name.

Record access procedures:

The agency's rules for access to records may be obtained from the System Manager

Contesting record procedures:

The agency's rules for contesting contents and appealing initial determinations by the individual concerned may be obtained from the System Manager.

Record source categories:

Service Record entries, Commanding Officers performance evaluations

Systems exempted from certain provisions of the act:

None

N00062 NEDRECS

System name:

Naval Educational Development Records.

System location:

Chief of Naval Education and Training Naval Air Station Pensacola, FL 32508

Categories of individuals covered by the system:

Applications, participants, graduates and staff of officer acquisition. professional development, Navy Youth, dependents' education (Atlantic), and Non-Traditional Education Support programs.

Categories of records in the system:

Applications, biographical information, student records and reports of performance, graduation, and disenrollment.

Authority for maintenance of the system:

5 USC 301

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Used by Naval Educational Development staff members, selection boards, Bureau of Naval Personnel and Navy media for selection, student monitoring, and utilization of graduates.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

File folders and punched cards.

Retrievability:

Name and SSN

Safeguards:

Locked buildings and access only to authorized personnel.

Retention and disposal:

Per SECNAV Records Disposal Manual

System manager(s) and address:

Director of Naval Educational Development (See location section)

Notification procedure:

By individual request upon presentation of letter of identification. Must provide program and name.

Record access procedures:

The agency's rules for access to records may be obtained from the system manager.

Contesting record procedures:

The agency's rules for contesting contents and appealing initial determinations by the individual concerned may be obtained from the system manager.

Record source categories:

Individual applications, selection board proceedings, transcripts, and correspondence.

Systems exempted from certain provisions of the act:

None

N00062 NROTC

System name:

NROTC Educational Development Records

System location:

Chief of Naval Education and Training Naval Air Station Pensacola, FL 32508

Categories of individuals covered by the system:

NROTC Scholarship Candidate Placement Records, NROTC Student Attrition Records, NROTC Student Jackets, Applications for NROTC Program, Commanding Officers and Executive Officers of NROTC units.

Categories of records in the system:

Information concerning students selected as principal and alternate candidates for NROTC scholarship. Contains name, SSN, address, telephone number, academic scores, medical qualification, race, and sex.

Reports of disenrollment, appointment to commissioned status, and non- selection as an applicant for the NROTC program.

Student records containing enlistment contract, service agreement, officer candidate training application, evidence of citizenship, birth certificate, reports of medical qualification, aptitude for naval service evaluations, academic records, personal history information, report of security clearances granted, special request, and action of boards concerning these special request.

Application file consisting of officer candidate training request, service agreement, report of medical qualification, evidence of citizenship, personal history, interviewers' appraisal sheets, and academic records.

Officer Biography Sheet (NAVPERS 979)

Authority for maintenance of the system:

5 USC 301

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Assignment of scholarship selectees to various NROTC hosted institutions.

Provides reference to individuals's attrition from the NROTC program.

Provides program manager with information to determine students eligibility for continuation in program and eventual commissioning as naval officer. Information also used by Chief of Naval Personnel, Commander Navy Recruiting Command and Commandant of the Marine Corps.

Determine applicants eligibility for enrollment in NROTC program.

Assistance in preparing Fitness Reports, award recommendations, TAD assignments in conjunction with summer training and preparing background information for Flag and high government official visits to the NROTC unit.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

File folders, index cards, and notebook.

Retrievability:

Name, SSN, and NROTC unit.

Safeguards:

Secured room and building. Access to information to authorized personnel only.

Retention and disposal:

Per SECNAV Records Disposal Manual.

System manager(s) and address:

NROTC, CNET, NAS, Pensacola, FL.

Notification procedure:

Call or write system manager listed above.

Record access procedures:

The agency's rules for access to records may be obtained from the system manager.

Contesting record procedures:

The agency's rules for contesting contents and appealing initial determinations by the individual concerned may be obtained from the system manager.

Record source categories:

Individual concerned, CHNAVPERS, COMNAVCRUITCOM, and NROTC unit.

Systems exempted from certain provisions of the act:

None

N00063CDP

System name:

Career Development Program for Communicators

System location:

Commander Naval Telecommunications Command Naval Telecommunications Command (NAVTELCOM) Headquarters 4401 Massachusetts Avenue, N.W. Washington, D.C. 20390

Categories of individuals covered by the system:

Navy civilian employees of NAVTELCOM in GS-393 series

Categories of records in the system:

Questionnaire completed by employees giving name, duty, work and education experience, birth date, grade level, telephone number (work)

Authority for maintenance of the system:

5 USC 301, Departmental regulations

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

By system managers of NAVTELCOM for implementing and managing the Career Development Program, Navy Office of Civilian Manpower Management similarly; Defense Department similarly; Civil Service Commission similarly;

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Paper records in file folders

Retrievability:

Name

Safeguards:

Safes and vaults

Retention and disposal:

Records destroyed by burning upon separation of employee

System manager(s) and address:

Commander Naval Telecommunications Command 4401 Massachusetts Avenue, N.W. Washington, D.C. 20390 Civilian Manpower Coordinator, NAVTELCOM, same address

Notification procedure:

Provide name to Civilian Manpower Coordinator, address above, Room 138, with routine ID card, driver's license, etc.

Record access procedures:

The agency's rules for access to records may be obtained from the system manager.

Contesting record procedures:

The agency's rules for contesting contents and appealing initial determination by the individual concerned may be obtained from the system manager.

Record source categories:

Questionnaire completed by employee

Systems exempted from certain provisions of the act:

None

N00063FTAR

System name:

Field Training Assistance Representatives (FTAR) File

System location:

Commander Naval Telecommunications Command Naval Telecommunications Command (NAVTELCOM) Headquarters 4401 Massachusetts Avenue, N.W., Washington, D.C. 20390

Categories of individuals covered by the system:

Civilian employees of NAVTELCOM especially designated to provide technical training assistance to NAVTELCOM field activities.

Categories of records in the system:

Name, grade, position, duty station, reports of training conducted, evaluations of performance, schedules of employment, work and education history, official correspondence from field commanding officers.

Authority for maintenance of the system:

5 USC 301 Departmental Regulations

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Used by NAVTELCOM executives in managing FTAR program, for up-dating FTAR training, reassigning FTARs.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Paper records in file folders

Retrievability:

Name

Safeguards:

Safes and vaults

Retention and disposal:

Retained indefinitely for historical purposes.

System manager(s) and address:

Commander Naval Telecommunications Command 4401 Massachusetts Avenue, N.W., Washington, D.C. 20390 Director Resources, NAVTELCOM, same address

Notification procedure:

Provide name to Director Resources, address above, Room 139, with routine ID card, drivers license, etc.

Record access procedures:

The agency's rules for access to records may be obtained from the System Manager.

Contesting record procedures:

The agency's rules for contesting contents and appealing initial determinations by the individual concerned may be obtained from the System Manager.

Record source categories:

Applications for employment, official civilian personnel jacket, official Navy orders to temporary duty, official correspondence from employee and field commanding officers

Systems exempted from certain provisions of the act:

None

N00063NCB9PS

System name:

Personnel Information System

System location:

Commander Naval Telecommunications Command Naval Telecommunications Command Headquarters 4401 Massachusetts Avenue Washington D.C. 20390

Categories of individuals covered by the system:

Military and civilian employees

Categories of records in the system:

Civilian Records; Military Personnel Records; Personnel Security Information

Authority for maintenance of the system:

5 USC 301 Departmental Regulations

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Ready source of information on Headquarters personnel regarding billets, position titles, security clearances, etc. Used internally only for administrative purposes

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Magnetic Tape and Punched Cards

Retrievability:

Name

Safeguards:

Safes and vaults

Retention and disposal:

Information on an individual is scrubbed from system within 60 days following termination of employment with Headquarters

System manager(s) and address:

Director Administration Headquarters Naval Telecommunications Command 4401 Massachusetts Avenue Washington D.C. 20390

Notification procedure:

By contacting System Manager at above address. Requestor should provide full name and dates employed by Headquarters Naval Telecommunications Command. Requestor may visit the Headquarters to determine whether the system contains records pertaining to him. Usual identification, such as a valid driver's license, military ID card, etc., will be accepted as proof of identity.

Record access procedures:

The agency's rules for access to records may be obtained from the System Manager.

Contesting record procedures:

The agency's rules for contesting contents and appealing initial determinations by the individual concerned may be obtained from the System Manager.

Record source categories:

Applications for employment, military personnel records, reports of results of Background Investigations, National Agency Checks, etc.

Systems exempted from certain provisions of the act:

None

N00069NSGAGNPAC01

System name:

Professional Qualifications Records (PQR's)

System location:

Commander, Naval Security Group Command, 3801 Nebraska Avenue, N.W., Washington, D.C. 20390

Categories of individuals covered by the system:

Any civilian or military employee of the Naval cryptologic community who applies for Professionalization

Categories of records in the system:

File contains individual's Professional Qualifications Record, which is a summary of the individual's education, training, experience, and awards. It also contains evaluations of the PQR made by the appropriate Career Panel.

Authority for maintenance of the system:

5 USC 301 Departmental Regulations

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Civilian Personnel Office - To determine whether individual is a suitable aspirant for Professionalization and whether revisions and/or updates are necessary. National Security Agency - To determine whether the PQR shows that the individual meets all the necessary requirements for Professionalization.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Paper records in file folders

Retrievability:

Filed alphabetically by last name of individual aspirant

Safeguards:

Building employs security guards. Access to Civilian Personnel Office limited to personnel with proper clearances. Files kept in combination safe.

Retention and disposal:

Records are permanent. The authority provides a continuing requirement for the records.

System manager(s) and address:

Commander, Naval Security Group Command, 3801 Nebraska Avenue, N.W., Washington, D.C. 20390

Notification procedure:

Send request to SYSMANAGER. Request should include full name, DPOB, military status, SSAN (if you voluntarily include it) or service number. Visits for the purpose of obtaining information must be submitted in writing to Command, Naval Security Group Command, 3801 Nebraska Avenue, N.W., Washington, D.C. 20390, who will advise of time/date/place for viewing records or will advise whether system contains records pertaining to the requester. Scheduled visitors must be prepared to present adequate proof of identification - i.e. - combination of full name, DPOB, parent(s) name, drivers license, medicare card, military I.D. card if applicable.

Record access procedures:

The agency's rules for access to records may be obtained from the SYSMANAGER

Contesting record procedures:

The agency's rules for contesting contents and appealing initial determinations by the individual concerned may be obtained from the SYSMANAGER

Record source categories:

Information is provided by individual aspirant. PQR may include transcripts provided to individual by educational institutions.

Systems exempted from certain provisions of the act:

NONE

N00069NSGHG11PAC01

System name:

NAVAL RESERVE SECURITY GROUP PERSONNEL RECORDS

System location:

Commander, Naval Security Group Command Naval Security Group Headquarters 3801 Nebraska Avenue, NW, Washington D.C. 20390

Categories of individuals covered by the system:

Naval Reserve Security Group Personnel

Categories of records in the system:

System comprises records reflecting information pertaining to reservist's ACDUTRA (Active Duty for Training); miscellaneous personnel actions, i.e., in-training status for change of rank/ designator/ rate; clearance certificate; congratulatory letters to officers upon promotion; history of past ACDUTRA performed; correspondence courses completed; old data cards and clearance eligibility letters

Authority for maintenance of the system:

5 USC 301 DEPARTMENTAL REGULATIONS

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Reserve Personnel Support Branch - to verify: past active duty and ACDUTRA performed; currency of clearance status; mobilization assignment; civilian skills acquired

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Paper-records in file folders

Retrievability:

Filed alphabetically by last name of reservist

Safeguards:

Buildings employ security guards. Records are maintained in areas accessible only to authorized personnel who are properly screened, cleared and trained

Retention and disposal:

Records are retained in active file until reservist has fulfilled drilling obligation or upon discharge or transfer to stand-by reserve

System manager(s) and address:

Commander, Naval Security Group Command Naval Security Group Headquarters 3801 Nebraska Avenue, NW, Washington D.C. 20390

Notification procedure:

a. Send request to SYSMANAGER

b. Full name, DPOB, military status, SSAN (if you will voluntarily include it) or service number

c. Visits for the purpose of obtaining information must be submitted in writing to Commander, Naval Security Group Command, 3801 Nebraska Avenue, NW, Washington D.C., 20390, who will advise of time/date/place for viewing records or will advise whether system contains records pertaining to the requestor

d. Scheduled visitors must be prepared to present adequate proof of identification - i.e., combination of full name, DPOB, parent(s) name, driver's license, medicare card, military I.D. card, if applicable

Record access procedures:

The Agency's rules for access to records may be obtained from the System Manager

Contesting record procedures:

The Agency's rules for contesting contents and appealing initial determinations by the individual concerned may be obtained from the System Manager

Record source categories:

District Officers for Naval Reserve Security Group Commanding Officers of Naval Reserve Security Group Divisions Commanding Officer, Naval Technical Training Center, Pensacola, FL

Systems exempted from certain provisions of the act:

NONE

N00069NSGHG12PAC01

System name:

Naval Security Group Personnel Security/Access Files

System location:

The central record system is located at:

Commander, Naval Security Group Command
3801 Nebraska Ave., N.W.,
Washington, D.C. 20390

Duplicates of portions of records may be held by other Naval and Marine Corps activities served by a Naval Security Group Special Security Officer. Records pertaining to Naval and Marine Corps military personnel who were considered but not selected for assignment to the Naval Security Group while undergoing recruit training are located at one of the following locations:

Resident in Charge
Naval Security Group Field Office
Bldg 848

Marine Corp Recruit Depot
Parris Island, South Carolina 29905
Resident in Charge
Naval Security Group Field Office
Naval Administrative Command
Naval Training Center, Bldg 1411, Room 112
Great Lakes, Illinois 60088
Resident in Charge
Naval Security Group Field Office
U.S. Naval Training Center
San Diego, California 92133
Resident in Charge
Naval Security Group Field Office
Naval Training Center
Orlando, Florida 32813

Categories of individuals covered by the system:

Naval and Marine Corps military and civilian personnel assigned to or employed by the Naval Security Group, including the Reserve components thereof, or who have been considered for such assignment or employment.

Categories of records in the system:

The file may contain personal history information, investigative reports, security suitability reports, incident reports, and other data pertinent to determination of eligibility for access to Special Intelligence (SI) information, including the decisions made in each case. The file also contains records of authorized access to classified information.

Authority for maintenance of the system:

E.O. 10450 Eisenhower Security Programs
E.O. 11652 Classification and Declassification of National Security Information and Material

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Information is collected and used by SI security personnel for the purposes of determining the individual's eligibility for access to SI information, of maintaining a record of the degree(s) to which access to SI has been authorized, and of determining the extent, if any, to which controls must be exercised to prevent the compromise of SI through hostile foreign intelligence activity. Information may be disseminated outside the Department of the Navy to the National Security Agency, Defense Intelligence Agency, Army Security Agency, Air Force Security Service, Central Intelligence Agency, White House Communications Agency and/or the Defense Industrial Security Clearance Office for the purpose of determining the individual's eligibility for access to classified information under the user Agency's cognizance. Information may be disseminated to the Defense Investigative Service and Naval Investigative Service for the purpose of conducting investigations on which to base SI eligibility decisions. The access record portion of the system may be made available to the Director of Central Intelligence to maintain an index of personnel who have been granted access to certain sensitive intelligence programs.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

File folders and magnetic tape.

Retrievability:

By name and date/place of birth.

Safeguards:

Approved security areas with alarms and guards. Access is limited to assigned personnel who have been found eligible for access to SI and received specific instruction in the handling, security, and dissemination policy of information in the files.

Retention and disposal:

Central record system retained for thirty years after last action. Records held at Naval Security Group Field Offices forwarded to central system after two years. Records retained in central record system and destroyed by burning, shredding, degaussing or chemical destruction at end of retention period.

System manager(s) and address:

Commander, Naval Security Group Command 3801 Nebraska Ave., N.W. Washington, D.C. 20390

Notification procedure:

a. Send request to SYSMANAGER
b. Full name, date and place of birth, military status, social security number (if voluntarily included) or service number.

c. Visits for the purpose of obtaining information must be submitted in writing to Commander, Naval Security Group Command, 3801 Nebraska Ave., N.W., Washington, D.C. 20390 who will advise of time/date/place for viewing records or will advise whether system contains records pertaining to the requester.

d. Scheduled visitors must be prepared to present adequate proof of identification-i.e.-combination of full name, date and place of birth, parent(s) name, drivers license, medicare card, military identification card if applicable.

Record access procedures:

The Agency's rules for access to records may be obtained from the SYSMANAGER.

Contesting record procedures:

The Agency's rules for contesting contents and appealing initial determinations by the individual concerned may be obtained from the SYSMANAGER.

Record source categories:

In addition to information furnished by the individual himself, files contain information furnished by federal investigative agencies, other SI security organizations, and reports submitted by Naval Security Group Special Security Officer. Files also include administrative correspondence among associated personnel and security offices of the executive branch.

Systems exempted from certain provisions of the act:

Parts of this system may be exempt under 5 U.S.C. 552 a (j) or (k), as applicable. For additional information contact the System Manager.

N00069NSGHG13PAC01

System name:

Personnel Resources Information System for Management (PRISM)

System location:

Commander, Naval Security Group Command Naval Security Group Headquarters 3801 Nebraska Avenue, NW, Washington, D. C. 20390

Categories of individuals covered by the system:

Active duty Navy and Marine Corps personnel and Naval and Marine Corps Reserve personnel affiliated with the Naval Security Group. Also civilian personnel holding a NAVSECGRU clearance.

Categories of records in the system:

System comprises automated records reflecting information pertaining to the pesonnel identification, location, current duties, professional qualifications and experiences, education, rotation data, personal information (marital status, dependents, home of record) and career information (dates of expiration of enlistment, release from active duty and security clearance data)

Authority for maintenance of the system:

5 USC 301 DEPARTMENTAL REGULATIONS

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Military and civilian personnel of the Naval Security Group Headquarters in the performance of their official duties relating to the planning and management of NAVSECGRU personnel resources. Regularly produced management reports are used to determine: adequacy of the personnel manning posture (quantitatively and qualitatively) at NAVSECGRU field activities; trends concerning levels of various NAVSECGRU personnel skills; trends in enlistments, reenlistments, training quotas, retirements; also, data base is often queried for one-time, non-routine information to satisfy priority requirements. Personnel of the Bureau of Naval Personnel use the system regularly to assist in meeting authorized NSG personnel requirements and identification of NSG training requirements. Civilian and Military officials of the National Security Agency use overall NAVSECGRU population distribution to assess adequacy of personnel levels and skills in meeting national cryptologic requirements. NAVSECGRU Area Directors in Atlantic, Pacific and European Commands in order to determine manning and skill posture within their respective theaters. Officials of NAVSECGRU field stations world-wide in order to determine numbers and skills of personnel ordered to report for duty. Officials of Naval Technical Center Pensacola Florida for purpose of mailing advancement examinations and other training materials.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Records are stored on magnetic tapes, discs, punched cards, microfiche and computer paper printouts.

Retrievability:

Records are retrieved by name, social security number, skill codes, duty stations, career information (dates of enlistment, expected release), education, rating and paygrade.

Safeguards:

The computer facility and terminal are located in restricted areas accessible only to authorized persons that are properly screened, cleared and trained. Records and computer printouts are available only to authorized personnel having a need to know.

Retention and disposal:

Computer magnetic tapes are erased three months after they are created. Punched cards are converted to magnetic tape and destroyed. Microfiche and paper printouts are retained 3 years or until superseded.

System manager(s) and address:

Commander, Naval Security Group Command Naval Security Group Headquarters 3801 Nebraska Avenue, NW, Washington, D.C. 20390

Notification procedure:

Send request to SYSMANAGER. Full name, DPOB, military status, SSAN (if you will voluntarily include it) or service number.

Visits for the purpose of obtaining information must be submitted in writing to Commander, Naval Security Group Command, 3801 Nebraska Avenue, NW, Washington, D.C. 20390, who will advise of time/date/place for viewing records or will advise whether system contains records pertaining to the requestor. Scheduled visitors must be prepared to present adequate proof of identification - i.e., combination of full name, DPOB, parent(s) name, driver's license, medicare card, military I.D. card, if applicable.

Record access procedures:

The Agency's rules for access to records may be obtained from the System Manager.

Contesting record procedures:

The Agency's rules for contesting content and appealing initial determination by the individual concerned may be obtained from the System Manager.

Record source categories:

Chief of Naval Personnel MAPMIS (Manpower Management Information System) ADP file; Naval Security Group field sites; Naval Security Group Field Office Representatives.

Systems exempted from certain provisions of the act:

None

N00159 D-3/01

System name:

Seismic survey list of companies involved in outer continental shelf.

System location:

Commandant, THIRD Naval District Flushing and Washington Aves. Brooklyn, NY 11251

Categories of individuals covered by the system:

Contact personnel of each company for information on survey or drilling activity.

Categories of records in the system:

Correspondence file

Authority for maintenance of the system:

5 USC 301

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Contact with individual companies for scheduling and coordination.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

File folders

Retrievability:

Name

Safeguards:

Safes

Retention and disposal:

Maintained as long as activity is going on, then burned.

System manager(s) and address:

Air Operations/Oceanographic Officer

Notification procedure:

Refer to systemanager

Record access procedures:

The agency's rules for access to records may be obtained from the system manager.

Contesting record procedures:

The agency's rules for contesting contents and appealing initial determinations by the individual concerned may be obtained from the system manager.

Record source categories:

Department of Interior files.

Systems exempted from certain provisions of the act:

None

N00164 01

System name:

Employee Explosives Certification Program

System location:

Organization elements of the Department of the Navy as listed in the directory of Department of the Navy mailing addresses.

Categories of individuals covered by the system:

All personnel involved in the process or evolutions of explosives operations

Categories of records in the system:

Individual certifying document and combined register of all employees certified

Authority for maintenance of the system:

5 USC 301 Departmental Regulations

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

To record the names of all employees and their qualifications to work in certain categories of explosives operations

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

File folder, punched cards

Retrievability:

SSN, Name

Safeguards:

Personnel escort required

Retention and disposal:

Permanent, unless employee terminates or is no longer involved in explosives processes. Document returned to employee's department for routine disposal after deletion from program

System manager(s) and address:

Commanding officer or head of the organization in question. See directory of Department of Navy mailing addresses.

Notification procedure:

Individuals may inspect personnel certifying documents at local activity to which individual assigned. Requesters must be escorted and provide identification for inspection of their personnel records.

Record access procedures:

The agency rules for access to records may be obtained from the System Manager

Contesting record procedures:

The agency's rules for contesting contents and appealing initial determinations by the individual concerned may be obtained from the System Manager

Record source categories:

Personnel files, previous supervisors

Systems exempted from certain provisions of the act:

None

N00173 DEC10-ADPBUD

System name:

ADP Budget

System location:

Director Naval Research Laboratory Washington, D.C. 20375

Categories of individuals covered by the system:

Employees and former employees of the Naval Research Laboratory who by the definitions contained in SECNAVINST 5238.1A of 15 Feb 1973 are reportable for purposes of Resource Accounting in Data Processing related activities.

Categories of records in the system:

Contains name, pay number, grade, step, salary related data, man-years of effort (either actual or projected) salary related data and changes in pay status (either actual or projected) which would affect salary costs.

Authority for maintenance of the system:

5USC 301 Departmental Regulations

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Data is used by managers of computer oriented organizations to formulate Budgets for inclusion in the Automatic Data Processing Program Reporting System - Resource Accounting (Dept. of the Navy).

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

File Folders and magnetic disc

Retrievability:

Pay number.

Safeguards:

Locked cabinets, personnel screening, (need to know) visitor controls, computer systems software including password protection.

Retention and disposal:

Routinely discarded after three years.

System manager(s) and address:

ADP Coordinator, Code 4014 Director, Naval Research Laboratory, Washington, D. C. 20375

Notification procedure:

A written request to the SYSMANAGER at the above address providing the individual's full name, current address and telephone numbers, dates of employment, organization code(s) and pertinent occupational series code. Determination of record may be made in the Research Program Office, Computation Center, or Office of Comptroller. A drivers license or other recognized form of identification bearing the individuals signature and current address will be required of visitors.

Record access procedures:

The Agency's rules for access to records may be obtained from the system manager.

Contesting record procedures:

The Agency's rules for contesting contents and appealing initial determinations by the individual concerned may be obtained from the system manager.

Record source categories:

Personnel records

Systems exempted from certain provisions of the act:

None

N00173 1200-S

System name:

Listing of Personnel - Sensitive Compartmented Information

System location:

Director, Naval Research Laboratory, Washington, D. C. 20375

Categories of individuals covered by the system:

Individuals indoctrinated for access to compartmented information.

Categories of records in the system:

Name, affiliation, billet description, clearances authorized, clearances held, rank, Social Security Number, Background Investigation date, date of birth, place of birth, date of marriage, place of marriage.

Authority for maintenance of the system:

5 USC 301

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Used to determine authorization for access to compartmented information. Internal users are Branch Heads, Division Superintendents, Director and Associate Directors of Research and Special Security Office.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Magnetic Tape

Retrievability:

Name, Social Security Number, affiliation, assigned billet number

Safeguards:

Three combination security container and/or vault.

Retention and disposal:

Records maintained as long as individual authorized access; changed as changes occur.

Magnetic tape erased as required.

System manager(s) and address:

Special Security Officer, Naval Research Laboratory, Washington, D. C. 20375

Notification procedure:

Letter to System Manager at above address giving full name, Social Security Number, and affiliation, or visit to NRL Special Security Office with NRL pass as identification

Record access procedures:

The agency's rules for access to records may be obtained from the System Manager.

Contesting record procedures:

The agency's rules for contesting contents and appealing initial determinations by the individual concerned may be obtained from the System Manager.

Record source categories:

All information obtained from individuals and indoctrination documents.

Systems exempted from certain provisions of the act:

None

N00173 265

System name:

Sight Conservation Program

System location:

Director, Naval Research Laboratory, Washington, D.C. 20375

Categories of individuals covered by the system:

Employees wearing glasses whose work requires the use of safety glasses.

Categories of records in the system:

Eyewear prescriptions and pertinent information on special fitting requirements.

Authority for maintenance of the system:

5 USC 301, Departmental Regulations

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Records of eyewear prescriptions used by contract optometrist in connection with periodic examinations and by Safety Office personnel.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

File folders.

Retrievability:

Name.

Safeguards:

Office door locked at night.

Retention and disposal:

Retained as long as employee is on program. When he leaves NRL or changes job and does not qualify for program, his file is destroyed by tearing it up.

System manager(s) and address:

Head, Safety Office, Naval Research Laboratory, Building 222, Room 188.

Notification procedure:

Verbal request to system manager, with some proof of identity, such as driver's license or ID card.

Record access procedures:

The agency's rules for access to records may be obtained from the system manager.

Contesting record procedures:

The agency's rules for contesting contents and appealing initial determinations by the individual concerned may be obtained from the system manager.

Record source categories:

Optometrist's measurements.

Systems exempted from certain provisions of the act:

None.

N00173 03004

System name:

Staff Judge Advocate's Memorandum File

System location:

Commandant, FOURTH Naval District
Naval Base
Philadelphia, Pa. 19112

Categories of individuals covered by the system:

Any Naval or Marine Corps personnel facing disciplinary or administrative action requiring the personal attention of Commandant, FOURTH Naval District.

Categories of records in the system:

Memoranda of Staff Judge Advocate, FOURTH Naval District

Authority for maintenance of the system:

5 USC 301

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

(1) To provide Commandant, FOURTH Naval District with legal opinions of Staff Judge Advocate on disciplinary and administrative matters.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Filing folders

Retrievability:

Name and date of advice

Safeguards:

During working hours under custody of Legalman. During non-working hours, building secured by Base Police.

Retention and disposal:

Indefinite

System manager(s) and address:

Staff Judge Advocate, FOURTH Naval District
Naval Base
Philadelphia, Pa. 19112

Notification procedure:

Write letter to Systems Manager at above address which includes (1) name and address of requestor, (2) military status of requestor, (3) social security number of requestor, (4) subject matter of request.

In case of personal visit, the requestor must provide (1) military identification card, or (2) social security card. The office is located at Room 103, Building 6, Naval Base, Philadelphia, Pa.

Record access procedures:

The Agency's rules for access to records may be obtained from Systems Manager

Contesting record procedures:

The Agency's rules for contesting contents and appealing initial determination by the individual concerned may be obtained from the Systems Manager.

Record source categories:

Staff Judge Advocate's opinions

Systems exempted from certain provisions of the act:

None

N00250 CHK/DEBT-LIST

System name:

Bad Checks and Indebtedness Lists

System location:

Commander, Navy Resale and Services Support Office, 3rd Ave. and 29th St., Brooklyn, NY 11232 (for all Navy Exchanges) Commissary Store operations as listed in the directory of Department of the Navy mailing addresses.

Categories of individuals covered by the system:

Patrons of Navy exchanges and Commissary Stores who have passed checks which have proven bad; recruits who have open accounts wth Navy exchanges; patrons who have made C.O.D. mail order transactions and those patrons who make authorized charge or credit purchases where their accounts are maintained on the basis of an identifying particular such as name, social security number or service number.

Categories of records in the system:

Bad Check System (including: Returned Check Ledger; Returned Check Report; copies of returned checks; bank advice relative to the returned check or checks; correspondence relative to attempt by the Navy exchange or Commissary Store to locate the patron and/or obtain payment; a printed report of names of those persons who have not made full restitution promptly, or who have had two or more checks returned through their own fault or negligence) Accounts Receivable Ledger, detailed by patron; COD Sales Ledger;

Authority for maintenance of the system:

5 USC 301 and 10 USC 5031

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Used by Department of the Navy's personnel in the performance of their official duties to record receipt of bad checks from patrons; to monitor and avoid undue losses because of continued passing of bad checks. This system also contains information regarding the correspondence issued in an effort to recover losses. A bad check list is locally and centrally. This information is issued to all cashiers, exchange and commissary officers. The Accounts Receivable ledgers are used to properly record credit sales and the payment of these accounts.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

The media in which these records are maintained vary, but include: magnetic tape; printed reports; file folders; file cards;

Retrievability:

Name and social security number

Safeguards:

Locked file cabinets; supervised office spaces; supervised computer tape library which is accessable only through the computer center (entry to the computer center is controlled by a combination lock known by authorized personnel only).

Retention and disposal:

Navy exchange records retention standards are contained in the 'Disposal of Navy and Marine Corps Records, Part II, chapters 4 and 5 and/or the Navy Exchange Manual.

System manager(s) and address:

Policy Official Commander Navy Resale and Services Support Office 3rd Ave. and 29th St. Brooklyn, Ny. 11232

Record Holder Director, Treasury Division (TD) Navy Resale and Services Support Office 3rd Ave. and 29th St. Brooklyn, Ny. 11232

Notification procedure:

Written contact may be made by addressing inquiries to: Commander Navy Resale and Services Support Office 3rd Ave. and 29th St. Brooklyn, Ny. 11232

In the initial inquiry the requester must provide full name, social security number, activity where they had their dealings. A list of other offices the requester may visit will be provided after initial contact is made at the office listed above. At the time of a personal visit, requesters must provide the following proof of identity containing the requester's signature.

Record access procedures:

The agency's rules for access to records may be obtained from the system manager.

Contesting record procedures:

The agency's rules for contesting contents and appealing initial determinations by the individual concerned may be obtained from the system manager.

Record source categories:

The individual; the bank involved and the activity sales records.

Systems exempted from certain provisions of the act:

None

N00250 FIDELITY BOND

System name:

Commercial Fidelity Bond Insurance Claims

System location:

Commander, Navy Resale and Services Support Office, 3rd Ave. & 29th St. Brooklyn, NY 11232 (for all Navy Exchanges).

Categories of individuals covered by the system:

Civilian and military personnel assigned to Navy exchanges, who the duly constituted authority (usually a Board of Investigation appointed by the base Commanding Officer) has established to be guilty of a dishonest act which has resulted in a loss of money, securities or other property, real or personal, for which the exchange is legally liable.

Categories of records in the system:

Equipment Loss Reports, Cash and/or Merchandise Loss Reports from Navy exchanges, including correspondence relating to losses.

Authority for maintenance of the system:

5USC 301 and 10 USC 5031

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Used by Department of the Navy personnel in the performance of their duties, to provide information, as required, to the insurance carrier (fidelity Bond Underwriter) for appropriate coverage, as well as to render appropriate assistance in processing insurance claims.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

The media in which these records are maintained varies but includes file folders and ledgers.

Retrievability:

Name, payroll number, service number, activity.

Safeguards:

Locked file cabinets; locked offices which when open are supervised by appropriate personnel; security guards.

Retention and disposal:

Records are retained for three years after settlement and then retired to the Federal Records Center, St. Louis, Mo.

System manager(s) and address:

Commander Navy Resale and Services Support Office 3rd Ave. and 29th St., Brooklyn, NY 11232

Notification procedure:

Written contact may be made by addressing inquiries to: Commander Navy Resale and Services Support Office 3rd Ave. and 29th St. Brooklyn, Ny. 11232

In the initial inquiry the requestor must provide full name, payroll or military service number and activity where they had their dealings. A list of other offices the requestor may visit will be provided after initial contact is made at the office listed above. At the time of a personal visit, requestors must provide proof of identity containing the requester's signature.

Record access procedures:

The agency's rules for access to records may be obtained from the system manager.

Contesting record procedures:

The agency's rules for contesting contents and appealing initial determinstions by the individual concerned may be obtained from the system manager.

Record source categories:

The individual; the insurance underwriter; audit reports; investigatory reports and/or activity loss records.

Systems exempted from certain provisions of the act:

None

N00250 IR-PERS-RECORD

System name:

Industrial Relations Personnel Records

System location:

Commander, Navy Resale and Services Support Office, 3rd Ave. and 29th St., Brooklyn, NY 11232 (for all Navy Exchanges) Commissary Stores operations as listed in the directory of Department of the Navy mailing addresses.

Categories of individuals covered by the system:

Civilian Employees, former civilian employees and applicants for employment with the Navy Resale and Services Support Office and Navy Exchanges located worldwide.

Categories of records in the system:

Personnel jackets (including: Personnel Information Questionnaire; Personnel Action; Certificate of Medical Examination; Indoctrination Checklist; Designation of beneficiary; death benefit; completed leave records; report of accident; cash register overage/shortage records; notice of excessive absence and tardiness, and warnings; report of hearings and recommendations relative to employee grievances; report of all disciplinary action; Certified record of court attendance; Certified copy of completed military orders for any annual duty tours with recognized reserve organizations; Employee job description; Examination papers and tests, if any; Evidence of date of birth, where required; Security Investigation Data, where required; Official work performance rating; Official letters of recommendations; Designation of Beneficiary for Unpaid Compensation; Reference check records; applicant files; tuition assistance records; grievance/appeal records; employee profiles; personnel security information (including: National Agency Checks and Naval Investigative Service reports); Travel requests, travel allowance and claims record; Transportation Agreements; employee affidavit; Priviledge Card Application and listing;

Authority for maintenance of the system:

5 USC 301 and 10 USC 5031.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Used by Department of the Navy personnel in the performance of their duties as follows: retention of forms necessary to properly record the employment history of each employee, reflecting performance of employees which may be used by selecting officials in choosing employees for promotion or transfer; for verification of employment; to provide a record of travel performed and verification that the employee received proper remuneration for the travel performeded; to insure employees receive timely consideration in the processing of work appraisals and salary increases;

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

The media in which these records are maintained vary, but include: file folders; magnetic tapes; punch cards; rolodex files; cardex files; ledgers; and printed reports.

Retrievability:

Name and/or social security number; employee job number; employee payroll number.

Safeguards:

Locked file cabinets; safes; locked offices which are supervised by appropriate personnel, when open; supervised computer tape library which is accessible only through the Computer Center (entry to computer center is controlled by a combination lock known by authorized personnel only); security guards.

Retention and disposal:

Current employee records remain on file at the appropriate personnel offices; records on former employees are retained for one year and then forwarded to the Federal Records Center, St. Louis, Mo. for retention of permanent papers and destruction of temporary papers, applicant files are retained for one year, except that applications from those over 40 years old are retained for two years.

System manager(s) and address:

Policy Official Commander Navy Resale and Services Support Office 3rd Ave. and 29th St. Brooklyn, Ny. 11232

Record Holder Manager, Recruitment and Employment (IRD3) Navy Resale and Services Support Office 3rd Ave and 29th St. Brooklyn, Ny. 11232

Individual record holders within the central system may be contacted through the central system record holder.

Notification procedure:

Written contact may be made by addressing inquiries to: Commander Navy Resale and Services Support Office 3rd Ave. and 29th St. Brooklyn, Ny. 11232

In initial inquiry, the requester must provide full name, social security number, activity where last employed or where last application for employment was filed. A list of other offices the requester may visit will be provided after initial contact is made at the office listed above. At the time of a personal visit, requester must provide proof of identity containing the requester's signature.

Record access procedures:

The agency's rules for access to records may be obtained from the system manager

Contesting record procedures:

The agency's rules for contesting contents and appealing initial determinations by the individual concerned may be obtained from the system manager.

Record source categories:

The employee; former employers; educational institutions; supervisors of employees; applicants; applicants previous employers; Naval Investigative Service; Federal Bureau of Investigation.

Systems exempted from certain provisions of the act:

Parts of this system may be exempt under 5 U.S.C. 552 a (j) or (k), as applicable. For additional information contact the System Manager.

N00250 LAYAWAYS

System name:

Layaway Sales Records

System location:

Commands, Navy Resale and Services Support Office, 3rd ave. and 29th Street, Brooklyn, NY 11232 (for all Navy exchanges)

Categories of individuals covered by the system:

Patrons of Navy exchanges who buy goods on a layaway

Categories of records in the system:

Layaway Tickets and layaway patron lists

Authority for maintenance of the system:

5USC301 and 10USC5031

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Used by Department of the Navy personnel in the performance of their duties to record the selection of layaway merchandise, record payments, verify merchandise pick-up and perform sales audit.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Paper records in file folders include layaway tickets and layaway patron lists.

Retrievability:

Name, address, service number or exchange permit number

Safeguards:

Locked file cabinets, supervised records space

Retention and disposal:

Destroyed after two years per Navy Exchange Manual

System manager(s) and address:

Policy Official Commander Navy Resale and Services Support Office 3rd Ave. and 29th St. Brooklyn, Ny. 11232

Record Holder Director, Controller Division (CD) Navy Resale and Services Support Office 3rd Ave. and 29th St. Brooklyn, Ny. 11232

Individual record holders within the central system may be contacted through the central system record holder.

Notification procedure:

Written contact may be made by addressing inquiries to: Commander Navy Resale and Services Support Office 3rd Ave. and 29th St. Brooklyn, Ny. 11232

In the initial inquiry, the requester must provide full name, social security number, activity where layaway sales were transacted. A list of other offices the requester may visit will be provided after initial contact at the office listed above. At the time of personal visit, requesters must provide proof of identity containing the requester's signature.

Record access procedures:

The agency's rules for access to records may be obtained from the system manager.

Contesting record procedures:

The agency's rules for contesting and appealing initial determinations by the individual concerned may be obtained from the system manager.

Record source categories:

The individual

Systems exempted from certain provisions of the act:

None

N00250 MILITARY-MISYS

System name:

Resale System Military Management Information System

System location: Commander Navy Resale and Services Support Office 3rd Avenue and 29th Street Brooklyn, NY 11232

Categories of individuals covered by the system:

Present and past military officer and key enlisted personnel assigned to the Navy Resale System.

Categories of records in the system:

Management Information System (including: Name; rank or rate; social security number; designation date of rank; date reported; rotation date; educational level; lineal number; dependency status) Card file on officers assigned (including: dates in navy resale system; location of assignments) Correspondence folder with Officer and senior enlisted personnel (containing: preference of assignment; biographical information; and orders)

Authority for maintenance of the system:

5USC301 and 10USC5031

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Used by Department of the Navy Personnel in the performance of their official duties related to determining recommended replacements for key military personnel; recommending actions to the officer, personnel division, Navy Systems Command; and keeping a record of orders and pertinent correspondence with individual personnel.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

The media in which these records are maintained vary, but include: Magnetic tape; printed reports; card files and file folders.

Retrievability:

Name: rank or rating, social security number

Safeguards:

Locked file cabinets; locked archives; supervised office spaces and supervised computer tape library which is accessible only through the computer center (entry to computer center is controlled by a combination lock known by authorized personnel only).

Retention and disposal:

Navy exchange records retention standards are contained in the "Disposal of Navy and Marine Corps Records, Part II Chapters 4 and 5 and/or the Navy Exchange Manual.

System manager(s) and address:

Policy Official Commander Navy Resale and Services Support Office 3rd Ave. and 29th St. Brooklyn, Ny. 11232

Record Holder Director, Office of Military Personnal (OMP) Navy Resale and Service Support Office 3rd Ave. and 29th St. Brooklyn, Ny. 11232

Notification procedure:

Written contact may be made by addressing inquiries to: Commander Navy Resale and Services Support Office 3rd Ave. and 29th St. Brooklyn, Ny. 11232

In the initial inquiry, the requester must provide full name, social security number and military duty status. At the time of a personal visit, the requester must provide proof of identity containing the requester's signature.

Record access procedures:

The agency's rules for access to records may be obtained from the system manager.

Contesting record procedures:

The agency's rules for contestng contents and appealing initial determinations by the individual concerned may be obtained from the system manager.

Record source categories:

U.S. Navy Manpower Information System; the Bureau of Personnel Navy); the individual; the individual's superior officer.

Systems exempted from certain provisions of the act:

None

N00250 PAY&BENEFITS

System name:

Payroll and Employee Benefits Records

System location:

Commander, Navy Resale and Services Support Office, 3rd Ave. and 29th St., Brooklyn, NY 11232 (for all Navy Exchanges) Commissory Store Operations as listed in the directory of Department of the Navy mailing addresses.

Categories of individuals covered by the system:

Civilian employees and former civilian employees with the Navy Resale and Services Support Office and Navy Exchanges located world-wide. (Payroll and benefits information) Civilian employees and former civilian employees of Coast Guard exchanges, clubs and messes and US Navy civilian employees.

Categories of records in the system:

Distribution reports; tax reports; leave accrual reports; earnings records cards, payroll registers; insurance records and reports regarding property damage, personal injury or death, group life, disability, medical and retirement plan; payroll savings authorization; record of payroll savings; overtime authorization; Treasury Department tax withholding exemption certificate.

Authority for maintenance of the system:

5 USC 301 and 10 USC 5031

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Used by Department of the Navy personnel in the performance of their duties as follows: to calculate pay; prepare checks for distribution; prepare deduction registers; leave records; to submit federal and state tax reports; to record contributions to benefit plans; to process all insurance claims; to provide information as required to the insurance carriers and U.S. Department of Labor, Bureau of Employees Compensation; to calculate retirement benefits upon request of employee;

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

The media in which these records are maintained vary, but include: Magnetic tape files; card files; file folders; ledgers; and printed reports.

Retrievability:

Name and/or social security number; employee job number; employee payroll number.

Safeguards:

Locked file cabinets; safes; locked offices which are supervised by appropriate personnel, when open; security guards; supervised computer tape library which is accessable only through the computer center (entry to computer center is controlled by a combination lock known by authorized personnel only).

Retention and disposal:

Navy exchange records retention standards are contained in the 'Disposal of Navy and Marine Corps Records, Part II, Chapters 4 and 5.' and/or the Navy Exchange Manual.

System manager(s) and address:

Policy Official Commander Navy Resale and Services Support Office 3rd Ave. and 29th St. Brooklyn, Ny. 11232

Record Holder Risk Manager Navy Resale and Services Support Office 3rd Ave and 29th St Brooklyn, Ny. 11232

Individual record holders within the central system may be contacted through the central system record holder.

Notification procedure:

Written contact may be made by addressing inquiries to: Commander Navy Resale and Services Support Office 3rd Ave. and 29th St. Brooklyn, Ny 11232

In the initial inquiry the requester must provide full name, social security number, activity where last employed. A list of other offices the requester may visit will be provided after initial contact is made at the office listed above. At the time of a personal visit, requesters must provide proof of identity containing the requester's signature.

Record access procedures:

The agency's rules for access to records may be obtained from the system manager.

Contesting record procedures:

The agency's rules for contesting contents and appealing initial determinations by the individual concerned may be obtained from the system manager.

Record source categories:

The employee or former employee; payroll department; the employee's supervisor and the employee's physician or insurance carrier's physician.

Systems exempted from certain provisions of the act:

NONE

N06286NAVLODGE RECORD

System name:

Navy Lodge Records

System location:

Commander, Navy Resale and Services Support Office, 3rd Ave. and 29th St., Brooklyn, NY 11232 (for all Navy Exchanges)

Categories of individuals covered by the system:

Patrons and guests authorized lodging at a Navy exchange Navy Lodge.

Categories of records in the system:

Reservation request; guest registration card; navy lodge guest folio.

Authority for maintenance of the system:

5 USC 301 and 10 USC 5031

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Used by the Department of the Navy personnel in the performance of their duties to: a record of reservations to insure orderly room assignment and avoid improper booking; record registration and payment of account; verify proper usage by eligible patrons; cash control; gathering of occupancy data; determine occupancy breakdown; rental and furnishings accountability.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

The media in which these records are maintained vary, but include: folio card; ledger; Guest Registration Cards; and local copies and reports of central system reports.

Retrievability:

Name; service number; social security number

Safeguards:

Supervised offices; locked files

Retention and disposal:

Navy exchange records retention standards are contained in the 'Disposal of Navy and Marine Corps Records, Part II, chapters 4 and 5 and the Navy Exchange Manual. Local reservation request forms are destroyed 1 month after the actual date of check-in.

System manager(s) and address:

Policy Official Commander Navy Resale and Services Support Office 3rd Ave. and 29th St. Brooklyn, Ny. 11232

Record Holder Manager, Personalized Services (SMD4) Navy Resale and Services Support Office 3rd Ave. and 29th St. Brooklyn, Ny. 11232

Individual record holders within the central system may be contacted through the central system record holder.

Notification procedure:

Written contact may be made by addressing inquiries to: Commander Navy Resale and Services Support Office 3rd Ave. and 29th St. Brooklyn, Ny. 11232

In the initial inquiry the requester must provide full name, social security number, service number and location of the last Navy Lodge where they had dealings. A list of other offices the requester may visit will be provided after initial contact is made with the office listed above. At the time of a personal visit, requesters must provide proof of identity containing the requester's signature.

Record access procedures:

The agency's rules for access to records may be obtained from the system manager.

Contesting record procedures:

The agency's rules for contesting contents and appealing initial determinations by the individual concerned may be obtained from the system manager.

Record source categories:

The individual patron and the charges he or she incurred during a visit at the Navy Lodge.

Systems exempted from certain provisions of the act:

None

N00251 007

System name:

Legal Office Litigation/Correspondence Files

System location:

Commander, Puget Sound Naval Shipyard, Bremerton, WA 98314

Categories of individuals covered by the system:

Criminal and civil plaintiffs/defendants involved in litigation against or involving Puget Sound Naval Shipyard

Categories of records in the system:

Statements, affidavits, correspondence, briefs, petitions, court records involving litigation and related matters

Authority for maintenance of the system:

Title 28, USC; Executive Order 10561; 5 USC 301; 10 USC 801-940

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Preparation of correspondence, litigation material

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

File cabinets

Retrievability:

Case citation, name of individual

Safeguards:

Locked in executive spaces

Retention and disposal:

Most are retained permanently, others disposed of in accordance with Defense Disposal Manual

System manager(s) and address:

Commander, Puget Sound Naval Shipyard, Bremerton, WA 98314, or Legal Officer (Code 107), Puget Sound Naval Shipyard

Notification procedure:

Direct inquiry to SYSMANAGER, providing name, rank/rate/shop or badge number and social security number

Record access procedures:

The agency's rules for access to records may be obtained from the system manager

Contesting record procedures:

The agency's rules for contesting contents and appealing initial determination by the individual concerned may be obtained from the system manager

Record source categories:

Court records, personal interviews and statements, departmental records, State and Federal records, police reports and complaints, general correspondence

Systems exempted from certain provisions of the act:

Parts of this system may be exempt under 5 U.S.C. 552 a (j) or (k), as applicable. For additional information contact the System Manager.

N00251 000

System name:

Puget Sound Naval Shipyard, Navy Exchange Tobacco Sales

System location:

Commander, Puget Sound Naval Shipyard, Bremerton, WA 98314

Categories of individuals covered by the system:

Authorized patrons of facility

Categories of records in the system:

Purchaser's name, serial number, duty station or home address, date, item and quantity of purchase

Authority for maintenance of the system:

5 USC 301

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Review for possibility of resale

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Batch files by date

Retrievability:

Name

Safeguards:

File cabinet in locked office

Retention and disposal:

4 Months - disposed through commercial disposal facilities

System manager(s) and address:

Commander, Puget Sound Naval Shipyard, Bremerton, WA 98314 and Navy Exchange Officer

Notification procedure:

Direct inquiry to SYSMANAGER, providing name and approximate date of purchase

Record access procedures:

The agency's rules for access to records may be obtained from the system manager.

Contesting record procedures:

The agency's rules for contesting contents and appealing initial determination by the individual concerned may be obtained from the system manager.

Record source categories:

Information provided by the individual.

Systems exempted from certain provisions of the act:

None

N00344 BP 714003

System name:

Youth Activities Association Membership Record

System location:

Commanding Officer Naval Air Station FPO San Francisco, CA 96611

Categories of individuals covered by the system:

All eligible applicants for membership in non-appropriated fund recreational activities for youths

Categories of records in the system:

Membership cards (5 in. x 7 in.) recording personal data provided by individual applicants

Authority for maintenance of the system:

5 USC 301, Departmental Regulations

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Information used exclusively by Military Services Department to record membership status in th youth association, to verify the youth's eligibility for participation in youth activities, to identify and aid in the location of a youth's sponsor in the event of emergencies, and to verify sponsor's agreement to provide volunteer assistance in furtherance of youth activities

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Card file

Retrievability:

By sponsor's name

Safeguards:

Card file is in Military Services Office, marked for official use only, office is locked after normal working hours

Retention and disposal:

Kept until membership status terminates and then destroyed

System manager(s) and address:

Military Services Officer Naval Air Station FPO San Francisco, CA 96611

Notification procedure:

Individual inquiries to be made in person at SYSMANAGER address above. Requestor to provide full name and military status; proof of identity to be made by presentation of military identification card or valid driver's license.

Record access procedures:

The agency's rules for access to records may be obtained from the system manager.

Contesting record procedures:

The agency's rules for contesting contents and appealing initial determinations by the individual concerned may be obtained from the system manager.

Record source categories:

Individual applicants provide all information

Systems exempted from certain provisions of the act:

None

N00600-1NAVTIS

System name:

Navscols/Tis, USMC Aviation Training Supsys

System location:

Schools and other training activities or similar organizational elements of the Department of the Navy and Marine Corps as listed in the directory of Department of Navy activities.

Categories of individuals covered by the system:

Records of present, former, and prospective students at Navy and Marine Corps schools and other training activities or associated educational institution of Navy sponsored programs; instructors, staff and support personnel; participants associated with activities of the

Naval Education and Training Command, including the Navy Campus for Achievement and other training programs; tutorial and tutorial volunteer programs; dependents' schooling.

Categories of records in the system:

Schools and personnel training programs administration and evaluation records. Such records as basic identification records i.e., social security number, name, sex, date of birth, personnel records i.e., rank/rate/grade, branch of service, billet, expiration of active obligated service, professional records i.e., Navy enlisted classification, military occupational specialty for Marines, subspecialty codes, test scores, basic test battery scores, and Navy advancement test scores. Educational records i.e., education levels, service and civilian schools attended, degrees, majors, personnel assignment data, course achievement data, class grades, class standing, and attrition categories. Academic/training records, manual and mechanized, and other records of educational and professional accomplishment.

Authority for maintenance of the system:

5 USC 301

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Schools and training programs administration and evaluation. Student performance, progression and prediction; instructors performance; organizational and administrative control. Internal Navy users are Chief of Naval Personnel, Naval Education and Training Command Activities Staff Personnel and the Commandant of the Marine Corps and his designated officials in the performance of their duties relating to aviation training/assignments. Type commanders; Health/Science Education Training Center; Chief, Bureau of Medicine and Surgery; Commander Naval Recruiting Command, and to other Department of the Navy officials in the performance of personnel training functions. Information may be used to determine course and training demands, requirement, and achievements; analyze student groups or courses; provide academic and performance evaluation in response to official inquiries; guidance and counseling of students; preparation of required reports, and for other training administration and planning purposes. Internal users are staff and faculty. Information is provided to officials of the Department of Defense on 'need-to-know' basis in the performance of their official duties; and for reporting to other government agencies, such as HEW. It may be provided to such civilian contractors and their employees as are or may be operating in accordance with an approved official contract with the U.S. Government.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Records are stored in microform or in file folders, card files, file drawers, cabinets, or other filing equipment. Automated records may be stored on magnetic tape, discs, punched cards, etc.

Retrievability:

Social security number and name

Safeguards:

Access is provided on a 'need-to-know' basis and to authorized personnel only. Records are maintained in controlled access rooms or areas. Data is limited to personnel training associated information. Computer terminal access is controlled by terminal identification and the password or similar system. Terminal identification is positive and maintained by control points. Physical access to terminals is restricted to specifically authorized individuals. Password authorization, assignment and monitoring are the responsibility of the functional managers. Information provided via batch processing is of a predetermined and rigidly formatted nature. Output is controlled by the functional managers who also control the distribution of output.

Retention and disposal:

Records disposal manual.

System manager(s) and address:

The commanding officer of the activity in question. See the directory of Navy and Marine Corps activities mailing addresses.

Notification procedure:

Apply to system manager. Requestor should provide his full name, social security number, military or civilian duty status, if applicable, and other data when appropriate, such as graduation date. Visitors should present drivers license, military or Navy civilian employment identification card, or other similar identification.

Record access procedures:

The agency's rules for access to records may be obtained from the system manager.

Contesting record procedures:

The agency's rules for contesting contents and appealing initial determinations by the individual concerned may be obtained from the system manager.

Record source categories:

Individuals, schools and educational institutions, Chief of Naval Personnel, staff of Naval Education and Training Command and other activities and the Commandant of the Marine corps; instructor personnel; and commander, Naval Recruiting Command.

Systems exempted from certain provisions of the act:

None

N0329A NAVJAG 5813-1

System name:

Court-Martial Case Report

System location:

Chief, Navy-Marine Corps Trial Judiciary, Washington Navy Yard, Washington, D.C. 20374

Categories of individuals covered by the system:

All individuals having appeared before a special or general court-martial within the preceding two fiscal years.

Categories of records in the system:

The recording of the Article violation of the UCMJ, the plea, the finding, the sentence and other related information concerning the trial.

Authority for maintenance of the system:

5 USC 301, Departmental Regulations

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Used to formulate status reports provided to JAG when directed by him to do so.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Stored in file folders by circuit and fiscal year

Retrievability:

By name or case number

Safeguards:

Personnel screening, visitor control

Retention and disposal:

Two fiscal years. They are not moved to Record Centers but are disposed of after two fiscal years in the same manner as all other unclassified material, i.e., general destruction.

System manager(s) and address:

Circuit Military Judge
ATLANTIC Judicial Circuit
Navy-Marine Corps Trial Judiciary
Washington Navy Yard
Washington, D.C. 20374

Notification procedure:

Write to address listed under SYSMANAGER. Provide full name, branch of service, military status, where stationed when tried, and when tried

Record access procedures:

The agency's rules for access to records may be obtained from the system manager

Contesting record procedures:

The agency's rules for contesting contents and appealing initial determinations by the individual concerned may be obtained from the system manager

Record source categories:

Military Judge of respective individual's court-martial

Systems exempted from certain provisions of the act:

NONE

N99191 POW DEBRIEFS

System name:

Summary debriefs of former Prisoners of War.

System location:

Fleet Aviation Specialized Operational Training Group, Pacific Fleet, Naval Air Station, North Island, San Diego, California 92135

Categories of individuals covered by the system:

Former Prisoners of War in Southeast Asia.

Categories of records in the system:

Synopsis of captivity experiences as summarized by debriefers.

Authority for maintenance of the system:

5 USC 301

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Background information on captivity experiences, resistance techniques, and survival aspects including indoctrination, interrogation, PW organization, communications, medical/isolation conditions and facilities for use in training program. Users are school instructors/managers.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

File folders.

Retrievability:

Name.

Safeguards:

Need to know certification, locked room, limited access building with visitor control, GSA Approved Security Container.

Retention and disposal:

Held indefinitely in support of training.

System manager(s) and address:

Commander, Naval Intelligence Command, Naval Intelligence Command Headquarters, 2461 Eisenhower Avenue, Alexandria, Virginia 22331.

Notification procedure:

Commanding Officer of military personnel submit visit request (OPNAV Form 5521-27) to Commanding Officer, Fleet Aviation Specialized Operational Training Group, Pacific Fleet, Naval Air Station, North Island, San Diego, California 92135. Civilian personnel submit request to System Manager.

Record access procedures:

The Agency's rules for access to records may be obtained from the System Manager.

Contesting record procedures:

The Agency's rules for contesting contents and appealing initial determination by the individual concerned may be obtained from the System Manager.

Record source categories:

Debriefing sessions with individual concerned.

Systems exempted from certain provisions of the act:

Parts of this system may be exempt under 5 U.S.C. 552 a (j) or (k), as applicable. For additional information contact the System Manager.

N09520 CMIS

System name:

Court-Martial Index and Summary

System location:

Commander Light Attack Wing, U. S. Pacific Fleet, Naval Air Station, Lemoore, California 93245

Categories of individuals covered by the system:

Every accused tried by court-martial convened by a subordinate command

Categories of records in the system:

A card which summarizes the pertinent information from a record of trial such as name, rate, charges, pleas, findings, sentence, convening and supervisory authorities actions.

Authority for maintenance of the system:

5 USC 301 Departmental Regulations

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Summarize records of trial for reviewing officers and provide an alphabetical index for locating filed records.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

5' X 7' index cards

Retrievability:

Name

Safeguards:

Maintained in manned room which is locked during non-working hours.

Retention and disposal:

Maintained for five years. Destroyed by burning.

System manager(s) and address:

Staff Judge Advocate, Commander Light Attack Wing, U. S. Pacific Fleet, Naval Air Station, Lemoore, California 93245

Notification procedure:

Information can be obtained by writing SYSMANAGER or visiting his office and providing full name, Social Security Account Number and year of court-martial. Military ID card or driver's license will be sufficient for visitors.

Record access procedures:

The Agency's rules for access to records may be obtained from the system manager.

Contesting record procedures:

The Agency's rules for contesting contents and appealing initial determinations by the individual concerned may be obtained from the system manager.

Record source categories:

Record

Systems exempted from certain provisions of the act:

None

N01070-01

System name:

Correction Board Case Files System.

System location:

Board for Correction of Naval Records, Department of the Navy, Washington, D.C. 20370; decentralized segments located in the Naval Military Personnel Command, Headquarters, U.S. Marine Corps, and the individual military personnel record of the service member concerned.

Categories of individuals covered by the system:

Any member or former member of the U.S. Navy or Marine Corps who has applied for the correction of his/her naval record.

Categories of records in the system:

Records consist of file cards with basic information and computer records derived therefrom, case files containing records of board proceedings, material submitted for correction and supporting documentation, correspondence and transcripts of board formal hearings. The basic case information and computer records derived therefrom include the following: rank; social security number/service number; docket number; date application received; subject category; subject category description; examiner's initials; date examiner assigned; branch of service; board decision; date of board decision; date decision promised if interested members of Congress; date case forwarded to the Secretary of the Navy; lineal number of officer applicant; officer designated; date officer case forwarded to Naval Military Personnel Command/Commandant of the Marine Corps; date officer case returned from Naval Military Personnel Command/Commandant of the Marine Corps; date advisory opinion requested; identity of advisor's organization; date advisory opinion received; date service record ordered; date medical record ordered; date court-martial record ordered; date confinement record order; date Navy Discharge Review Board record ordered; date other record ordered; date service record received; date medical record received; date court-martial record received; date confinement record received; date Navy Discharge Review Board record received; date other record received; number of Navy applications received; number of Marine Corps applications received; total number of Navy and Marine Corps applications received; percent of total to grand total; total number of Navy discharge cases; total number Marine Corps discharge cases; Navy grant count; Navy deny count; Navy modify count; Marine grant; Marine deny count; Marine modify count.

Authority for maintenance of the system:

Section 1552, Title 10 United States Code; Part 723 Title 32 Code of Federal Regulations.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Internal:

Board for Correction of Naval Records-To review applicant's naval record to determine the existence of alleged error or injustice and to recommend appropriate corrective action when warranted-to report its findings, conclusions and recommendations to the Secretary of the Navy in appropriate cases-to respond to inquiries from applicants, their counsel and members of Congress.

Naval Military Personnel Command-To provide advisory opinions in case involving present and former Navy personnel, to correct records of present and former Navy personnel in accordance with approved Board decisions.

Bureau of Medicine and Surgery-To provide advisory opinions on medical matters.

Naval Council of Personnel Board/Office of Naval Disability Evaluation- To provide advisory opinions on medical matters.

Headquarters, United States Marine Corps-To provide advisory opinions in cases involving present and former Marine Corps personnel, to correct records of present and former Marine Corps personnel in accordance with approved correction Board decisions.

Litigation Division, Office of the Judge Advocate General, Department of the Navy- To prepare legal briefs and answers to complaints against the Department of the Navy, etc.

External:

Department of Justice-to defend law suits instituted against the Department of the Navy in cases involving applications to the Board for Correction of Naval Records.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Records are maintained as paper and microfiche records in file folders, and manually retrieved file cards.

Retrievability:

Records are filed alphabetically, by the last name of the applicant and are cross filed by docket number, and service or social security account numbers.

Safeguards:

Access to building is protected by uniformed security officers requiring positive identification; for admission after hours, records are maintained in areas accessible only to authorized personnel.

Retention and disposal:

All file cards are permanently retained by the agency. Case files are permanent. They are retained in the active files for three years and then retired to the Washington National Records Center, Suitland, Maryland.

System manager(s) and address:

Executive Director, Board for Correction of Naval Records, Department of the Navy, Washington, D.C. 20370.

Notification procedure:

Information should be obtained from the systems manager. Requesting individuals should specify a full name, and social security account numbers or service numbers. Visitors should be able to provide proper identity, such as a drivers license. Written requests must be signed by a requester or his/her legal representative.

Record access procedures:

Information may be obtained from the Board for Correction of Naval Records, Department of the Navy, Washington, D.C. 20370 by providing name, military status, branch of service and social security number. Current address and telephone numbers should be included. Personal visits may be made only to the Board for Correction of Naval Records, Arlington Annex, Columbia Pike and Southgate Road, Arlington, Virginia. For personal visits, identification will be required.

Contesting record procedures:

The agency's rules for contesting contents of records and appealing initial determinations by the individual concerned may be obtained from the systems manager.

Record source categories:

All official Naval records, Veteran's ADMINISTRATION AND POLICE AND LAW enforcement records.

Systems exempted from certain provisions of the act:

None.

N30460(STUDENT)

System name:

Legal Diary

System location:

Naval Air Technical Training Center, Lakehurst, New Jersey 08733

Categories of individuals covered by the system:

The Legal Diary contains chronological summaries of events/dispositions of individuals, both staff and student, which cause other than routine actions to be taken by the Legal Division of the Administrative Department, Naval Air Technical Training Center, Lakehurst, New Jersey.

Categories of records in the system:

The Legal Diary is composed of 8 1/2' X 11 1/2' pages on which the following information is recorded: rate, name of individual, branch of service, social security number, and summarized chain of events and dispositions in the case of the individual related to discipline and/or legal assistance.

Authority for maintenance of the system:

5 USC 301 Departmental Regulations

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

The Legal Diary is utilized to document legal actions, current and past, and aids in briefing the Commanding Officer, NATTCL with a view toward proper disposition of current cases. Past (closed) cases retained on file are utilized for providing precedence for current cases, and answering higher authority with regard to inquiry of past cases handled.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

File Folders

Retrievability:

Chronological

Safeguards:

Locked room

Retention and disposal:

Two years

System manager(s) and address:

Legal Assistance Referral Officer, NATTCL

Notification procedure:

Apply to System Manager.

Record access procedures:

The Agency's rules for access to records may be obtained from the system manager.

Contesting record procedures:

The Agency's rules for contesting contents and appealing initial determinations by the individual concerned may be obtained from the system manager.

Record source categories:

Police Department/Court records, military security records, credit organizations, service record entries, military/civilian hospitals.

Systems exempted from certain provisions of the act:

None

N30971 STAEMP/FININ

System name:

Statements of Employment and Financial Interest

System location:

Organizational elements of the Department of the Navy as listed in the directory of Department of the Navy activities.

Categories of individuals covered by the system:

Persons filing DD 1555 or DD 1555-1

Categories of records in the system:

DD 1555 or DD 1555-1 and supplemental lists or reports.

Authority for maintenance of the system:

5 USC 301 Departmental Regulations and E.O. 11222.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

For supervisors and counselors to determine whether the employee has or may have a conflict of interest. For law enforcement and investigatory agencies, such as the Naval Investigative Service, Federal Bureau of Investigation, and Department of Justice, to handle violations.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

File folders and card files.

Retrievability:

Name.

Safeguards:

Safe or locked file cabinet accessible to authorized personnel only.

Retention and disposal:

Per SECNAV Records Disposal Manual.

System manager(s) and address:

Commanding Officer or head of the organization in question. See directory of Department of the Navy mailing addresses.

Notification procedure:

Apply to System Manager.

Record access procedures:

The agency's rules for access to records may be obtained from the System Manager.

Contesting record procedures:

The agency's rules for contesting contents and appealing initial determinations by the individual concerned may be obtained from the System Manager.

Record source categories:

Individual concerned, his supervisor, and the counselor.

Systems exempted from certain provisions of the act:

None

N30640 NATTCL 1080/1

System name:

Students Awaiting Legal, Medical Action Account

System location:

Naval Air Technical Training Center, Lakehurst, New Jersey 08733

Categories of individuals covered by the system:

a. The student locator card file contains specific data on all student personnel assigned to NATTCL, whether or not they successfully completed training. A dead file is maintained after the student is transferred.

b. The 'Others' File is a list of all students on board that are not enrolled in class. Categories include: disciplinary, medical, and administrative (awaiting orders, port calls, passports, humanitarian requests, administrative discharge).

Categories of records in the system:

a. The student locator card file is composed of 4' X 6' cards on which the following is recorded: Name, previous command, rate, branch of service, date of transfer, new duty station and command, estimated date of arrival, standard transfer order number, and rate upon departure.

b. The following information is included on students listed in the 'Others' file: date of hold, type of hold, estimated period of hold, work assignment, parent command notification, date re-enrolled, availability submission (used to notify Chief of Naval Personnel of member's availability for transfer), date orders or discharge authorization received, date transferred, and remarks.

Authority for maintenance of the system:

5 USC 301

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

a. The file is used routinely to verify date of departure; to determine, in conjunction with the next duty station, if member is an unauthorized absentee; to verify attendance and/or completion of training; to answer requests by parents who do not know the school or class which member is attending; for forwarding official correspondence.

b. This file is utilized to maintain accountability of all students not enrolled in class to ensure the appropriate administrative actions are completed in a timely manner ensuring minimum delay in the training pipeline. The file is utilized daily by the Student Control Office and is routed periodically to the Commanding Officer via the Personnel Officer, Administrative Officer, and Executive Officer.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

a. Index card drawer
b. File Folders

Retrievability:

a. Name
b. Name, Rate, Social Security Number

Safeguards:

a. Locked room
b. Maintained in locked room - accessibility is limited to the Student Control Office personnel, Personnel Officer, Administrative Officer, Legal Officer, Executive Officer, and Commanding Officer.

Retention and disposal:

a. Two years
b. Two years

System manager(s) and address:

a. Personnel Office Supervisor
b. Personnel Office Supervisor

Notification procedure:

a. The file is available to members upon proper identification.

b. The file does not contain information beneficial to the individual; however, with proper identification any student can review the form pertaining to himself. This may be accomplished by presentation of military I.D. Card to a responsible petty officer in the Student Control Office.

Record access procedures:

The Agency's rules for access to records may be obtained from the system manager.

Contesting record procedures:

The Agency's rules for contesting contents and appealing initial determinations by the individual concerned may be obtained from the system manager.

Record source categories:

a. Official documents such as orders, assignment directives, and service records.

b. Sources of information are: NATTCL School, Medical Authorities, Legal Officer, Transfer Section of Personnel Office, Drug Exemption Officer, NATTCL Duty Office.

Systems exempted from certain provisions of the act:

None

N31600.WHSP

System name:

White House Support Program

System location:

White House Liaison Office, Office of the Secretary of the Navy, Department of the Navy, Washington, DC 20350.

Categories of individuals covered by the system:

All Navy and Marine Corps military and civilian personnel and contractor employees who have been nominated by their employing activities for assignment to Presidential support duties.

Categories of records in the system:

Personnel records, correspondence, and other documents and records in both automated and nonautomated form concerning classification, security clearances, assignment, training, and other qualifications relating to suitability for Presidential support duties.

Authority for maintenance of the system:

5 U.S.C. 301

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Officials and employees of the Department of the Navy, other components of the Department of Defense, and Executive Office of the President in the performance of their official duties related to personnel administration and the evaluation and nomination of individuals for assignment to Presidential support duties; officials and employees of other federal agencies and offices, upon request, in the performance of their official duties related to the provision of Presidential support and protection; the Attorney General of the United States or his authorized representatives in connection with litigation, law enforcement or other matters under the direct jurisdiction of the Department of Justice or carried out as the legal representative of the Executive Branch agencies. General use and purpose: To insure that only those individuals most suitably qualified are assigned to duty in Presidential support activities.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Automated records may be stored on magnetic tapes, disc drums, and on punched cards. Manual records may be stored in file folders, or microforms.

Retrievability:

Manual Records: By name if individual has been nominated and not yet approved. By OSD approval date if individual has been approved, and by employing activity removal date if an individual is removed from assignment for cause. Automated records may be retrieved by name, social security number, and control number.

Safeguards:

Records are afforded appropriate protection at all times, stored in locked rooms and locked file cabinets, and are accessible only to

authorized personnel who have a definite need to know and who are properly screened, cleared, and trained.

Retention and disposal:

Records are retained or disposed of in accordance with SECNAVINST P5212.5B, subj: Disposal of Navy and Marine Corps records.

System manager(s) and address:

Administrative Aide to the Secretary of the Navy, Navy Department, Washington, D.C. 20350

Notification procedure:

Requests from individuals by correspondence should be addressed to the Office of the Administrative Aide to the Secretary of the Navy, Navy Department, Washington, D.C. 20350. Visits are limited to the Office of the Administrative Aide to the Secretary of the Navy. Written requests should contain the full name of the individual and his social security number. For personal visits, the individual should be able to provide some acceptable identification, that is, driver's license, etc.

Record access procedures:

The agency's rules for access to records may be obtained from the system manager.

Contesting record procedures:

The agency's rules for contesting contents and appealing initial determinations by the individual concerned may be obtained from the system manager.

Record source categories:

Officials and employees of the Department of the Navy and other Department of Defense components; federal, state, and local court documents; civilian and military investigative reports; general correspondence concerning the individual; and federal and state agency records.

Systems exempted from certain provisions of the act:

Parts of this system may be exempt under 5 U.S.C. 552a (k)(1), (2), (3) and (5), as applicable. For additional information, contact the System Manager.

N31706NC&PB

System name:

Naval Clemency and Parole Board files

System location:

Naval Clemency and Parole Board, Room 729, Ballston Tower #2, 801 North Randolph Street, Arlington, Va. 22203

Categories of individuals covered by the system:

Members or former members of the Navy or Marine Corps whose cases have been or are being considered by the Naval Clemency and Parole Board.

Categories of records in the system:

The file contains individual applications for clemency or parole, reports and recommendations thereon indicating progress in confinement or while awaiting completion of appellate review if not confined, or on parole; correspondence between the individual or his counsel and the Naval Clemency and Parole Board or other Navy offices; other correspondence concerning the case; the court-martial order and staff Judge Advocate's review; and a summarized record of the proceedings of the Board.

Authority for maintenance of the system:

10 U.S.C. 874(a), 952-954

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

The file is used in conjunction with periodic review of the member's or former member's case to determine whether or not clemency or parole is warranted. The file is referred to in answering inquiries from the member or former member or their counsels. The file is referred to by the Navy Discharge Review Board and the Board for Correction of Naval Records in conjunction with their subsequent review of applications from members or former members. The file is also used by counsel in connection with representation of members or former members before the Naval Clemency and Parole Board.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Paper records in file folders.

Retrievability:

Folders are filed by name and social security number or service number.

Safeguards:

Files are kept within the Naval Clemency and Parole Board administrative office. Access during business hours is controlled by Board personnel. The office is locked at the close of business; the building in which the office is located employs security guards.

Retention and disposal:

Files are permanent. They are retained in the Naval Clemency and Parole Board's administrative office until all portions of the sentence have been completed and the discharge has been executed. After that the folders are sent to Washington National Records Center, 4025 Suitland Road, Suitland, MD. 20023

System manager(s) and address:

Director, Navy Council of Personnel Boards, Department of the Navy, 801 North Randolph Street, Arlington, Va. 22203

Notification procedure:

Information may be obtained from the Naval Clemency and Parole Board, Room 905, 801 North Randolph Street, Arlington Va. 22203, Telephone 202/692-4592

Record access procedures:

The agency's rules for access to records may be obtained from the system manager.

Contesting record procedures:

The agency's rules for contesting contents and appealing initial determinations by the individual concerned may be obtained from the system manager.

Record source categories:

Information contained in the file is obtained from the member or former member or from those acting in their behalf, from confinement facilities, from military commands and offices, from personnel service records and medical records, and from civilian law enforcement agencies or individuals.

Systems exempted from certain provisions of the act:

Portions of this system may be exempt under 5 U.S.C. 552a(j) or (k), as applicable. For additional information contact the system manager.

N31706NDRB

System name:

Navy Discharge Review Board Proceedings.

System location:

Navy Discharge Review Board, Room 1132, Ballston Tower 2, 801 North Randolph Street, Arlington, Va. 22203

Categories of individuals covered by the system:

Former Navy and Marine Corps personnel who have submitted applications for review of discharge or dismissal pursuant to 10 USC 1553, or whose discharge or dismissal has been or is being reviewed by the Navy Discharge Review Board, on its own motion, or pursuant to an application by a deceased former member's next of kin.

Categories of records in the system:

The file contains the former member's application for review of discharge or separation, any supporting documents submitted therewith, copies of correspondence between the former member or his counsel and the Navy Discharge Review Board and other correspondence concerning the case, and a summarized record of proceedings before the Board.

Authority for maintenance of the system:

10 USC 1553

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

The file is used in conjunction with the consideration of the former member's, application for review of discharge or dismissal and any subsequent application by the member. The file is referred to in answering inquiries from the former member or counsel regarding the action taken in the former member's case. The file is referred to by the Board for Correction of Naval Records in conjunction with its review of any subsequent application by the former member for a correction of records relative to the former member's discharge or dismissal. The file is used by counsel for the former member, and by accredited representatives of veterans' organizations recognized by the Administrator of Veterans' Affairs under 38 U.S.C. 3402 and duly designated by the former member as his or her representative before the Navy Discharge Review Board.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Paper records in file folders; plastic recording disks and recording cassettes.

Retrievability:

The records are filed by name, by social security number, and by service number.

Safeguards:

Files are kept within the Navy Discharge Review Board's administrative office. Access during business hours is controlled by Board personnel. The office is locked at the close of business; the building in which the office is located employs security guards.

Retention and disposal:

Files are permanent. They are retained in the Navy Discharge Review Board's administrative office for two years. After that time, they are sent to the Federal Records Center, Suitland, Maryland

System manager(s) and address:

Director, Navy Council of Personnel Boards, Department of the Navy, 801 North Randolph Street, Arlington, Va. 22203

Notification procedure:

Information may be obtained from the Navy Discharge Review Board, Room 1132, 801 North Randolph Street, Arlington, Va. 22203. Telephone 202/692-4991

Record access procedures:

The agency's rules for access to records may be obtained from the system manager.

Contesting record procedures:

The agency's rules for contesting contents and appealing initial determinations by the individual concerned may be obtained from the system manager.

Record source categories:

Information contained in the files is obtained from the former member or those acting on the former member's behalf, from military personnel and medical records, and from records of law enforcement investigations.

Systems exempted from certain provisions of the act:

NONE

N57043 NAVMAR4065

System name:

Commissary/Exchange Control Program

System location:

Commander in Chief Pacific Representative, Guam and the Trust Territory of the Pacific Islands, FPO San Francisco 96630

Categories of individuals covered by the system:

All authorized commissary and exchange patrons on Guam.

Categories of records in the system:

Automated master tape, purchase amounts, abuser notification letters, and high value merchandise purchased.

Authority for maintenance of the system:

5 USC 301 Departmental Regulations

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Quarterly review by authorized personnel to identify potential abusers

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Master tape, punched cards, readout lists, file folders on purchase entries and abuser letters

Retrievability:

Social security account number

Safeguards:

Maintained in file cabinet in locked office spaces

Retention and disposal:

Names maintained on master tape and deleted three months after last purchase for commissary purchases; names maintained on master tape and deleted two years after initial purchase for exchange purchases.

System manager(s) and address:

Commander in Chief Pacific Representative, Guam and the Trust Territory of the Pacific Islands

Notification procedure:

Apply to the system manager.

Record access procedures:

The agency rules for access to records may be obtained from the system manager.

Contesting record procedures:

The agency's rules for contesting contents and appealing initial determinations by the individual concerned may be obtained from the system manager.

Record source categories:

Individual to whom records pertain.

Systems exempted from certain provisions of the act:

None

N68258 002

System name:

Welfare and Recreation Ticket Selection Program

System location:

Commander, Long Beach Naval Shipyard, Long Beach, CA 90801

Categories of individuals covered by the system:

All On-Board Employees of the Command

Categories of records in the system:

Name, Shop, Badge, Date won, Signature

Authority for maintenance of the system:

5 USC 301

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

To award tickets to employees on a random basis.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Computer print-outs

Retrievability:

By random sequence number indexed to Name, Shop and Badge No.

Safeguards:

Stored in a locked cabinet in the Industrial Relations Department

Retention and disposal:

Until every employee has been awarded tickets.

System manager(s) and address:

Commander, Long Beach Naval Shipyard, Long Beach, CA 90801

Notification procedure:

Direct inquiry to the SYSMANAGER, providing Shop, Badge and Name

Record access procedures:

The Agency's rules for access to records may be obtained from the SYSMANAGER.

Contesting record procedures:

The agency's rules for contesting contents and appealing initial determinations by the individual concerned may be obtained from the SYSMANAGER.

Record source categories:

Payroll Master File.

Systems exempted from certain provisions of the act:

None

N68530 1

System name:

BIBLIOGRAPHY

System location:

Naval Weapons Center; China Lake, Ca. 93555

Categories of individuals covered by the system:

Employees of the NWC who have authored local or open literature publications or who have been granted patents or a notice of allowability for a patent.

Categories of records in the system:

Publications and patents of activity employees with a summary of its content.

Authority for maintenance of the system:

5 USC 301

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Primary use is as a technical reference document for scientific and engineering literature published by the Naval Weapons Center. Users

are headquarters officers, other DOD laboratories in all three services, and private industry scientific research and development organizations.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Official, bound publication

Retrievability:

Name of author or inventor, subject of publication or patent, or number of publication or patent.

Safeguards:

Document is kept in locked, secured area. Individuals allowed access based on showing of need to know and proper security clearance.

Retention and disposal:

Indefinitely.

System manager(s) and address:

Head, Informatia Department, Naval Weapons Center, China Lake, California 93555.

Notification procedure:

Individuals can determine whether the system contains records pertaining to them by contacting the system manager or visiting that office. Activity security badge will constitute proof of identity.

Record access procedures:

The Agency's rules for access to records may be obtained from the System Manager.

Contesting record procedures:

The Agency's rules for contesting contents and appealing initial determinations by the individual concerned may be obtained from the System Manager.

Record source categories:

The authors listed and the departments in which they are employed.

Systems exempted from certain provisions of the act:

None

N61339 WA1144

System name:

Design of Training Systems Data Base - Instructor File

System location:

Commanding Officer Fleet Training Center Norfolk, VA 23511

Categories of individuals covered by the system:

The system contains records on each instructor assigned to the Fleet Training Center, Norfolk, Virginia.

Categories of records in the system:

The Instructor File contains the following information: Instructor Number, Name, Initials, Rate/Rating, Assigned Department, Reporting Date, Month/ Year Rotation Date, Contact Hours Available.

Authority for maintenance of the system:

5 USC 301, Departmental Regulations

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

The information contained in the instructor file is used in a Research and Development effort to determine the feasibility of the application of mathematical models at the Fleet Training Center, Norfolk, Virginia for the management and control of instructor resources. The internal users of this system are the Fleet Training Center, Norfolk, VA., and the Training Analysis and Evaluation Group, Orlando, Florida. The system was developed under contract by the International Business Machines Corporation, 7900 N. Astronaut Boulevard, Cape Canaveral, Florida.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Magnetic Disc

Retrievability:

Instructor Number

Safeguards:

Sign-on procedures on computer terminal with guarded password to prevent unauthorized access.

Retention and disposal:

The instructor records are maintained to support a feasibility study under a research and development contract. The contract ends in September 1975 with maintenance of the files continued until 1976. If the results of the study prove the feasibility of the approach the system would be appropriately modified and become operational. Otherwise, the system records would be effectively destroyed. Records have been effectively maintained from February 1975.

System manager(s) and address:

Policy Official
Director
Training Analysis and Evaluation Group
Orlando, Florida 32813

Record Holder
Commanding Officer
Fleet Training Center
Norfolk, Virginia

Notification procedure:

Individuals can determine whether the system contains records pertaining to them by writing the SYSMANAGER indicated, giving full name, instructor number, and service time attached to the Fleet Training Center, Norfolk, VA as an instructor. Personal visits to the SYSMANAGER require the same information.

Record access procedures:

The agency's rules for access to records may be obtained from the system manager.

Contesting record procedures:

The agency's rules for contesting contents and appealing initial determinations by the individual concerned may be obtained from the SYSMANAGER.

Record source categories:

Officer Master File System, Enlisted Master File System, Navy Intergrated Training and Resources Administration System.

Systems exempted from certain provisions of the act:

None

N61581 LOGISTICS

System name:

Otsu Prision health and comfort items

System location:

Commander Fleet Activities, FPO Seattle 98762

Categories of individuals covered by the system:

Individuals who have been imprisoned under Japanese Law and Jurisdiction for various offenses.

Categories of records in the system:

Record of requests for, receipt of, and issues to of individuals imprisoned in Otsu Prison located in Yokosuka, Japan.

Authority for maintenance of the system:

5 USC 301, Departmental Regulations.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Used for billing armed services, other than Navy and Marine Corps for items of health and comfort issued to their personnel imprisoned. Billing is prepared in accordance with existing interservice support agreements (ISSAS). Additionally, file used to answer complaints in instances where prisoners contend they are not supported properly.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

File folder.

Retrievability:

Alphabetically by surname. New individual files instituted with arrival of individual in prison. Previous files retrieved to semi-active for one year and thereafter destroyed without report.

Safeguards:

Files maintained in locked file cabinet in locked office.

Retention and disposal:

Destroyed without report after two years.

System manager(s) and address:

Commander Fleet Activities, FPO Seattle 98762

Notification procedure:

Requests from individuals should be addressed to the SYSMANAGER listed above and provide, as a minimum, the following information: rank/ rate, full name, branch of service, social security number. Files maintained in logistics within command and requestors may visit this office for review of their files during normal working

hours. Proof of identification limited to Armed Forces Identification Cards or Passports.

Record access procedures:

The agency's rule for access to record may be obtained from the System Manager.

Contesting record procedures:

The agency's rules for contesting contents and appealing initial determinations by the individual concerned may be obtained from the System Manager.

Record source categories:

Prison Officials.

Systems exempted from certain provisions of the act:

None.

N62585 RATION PERMITS

System name:

Ration Card, Luxury Permit Record Cards.

System location:

Commander, U.S. Naval Activities, United Kingdom, Box 60, FPO NY 09510

Categories of individuals covered by the system:

Officer, Enlisted and civilian component personnel

Categories of records in the system:

Ration Card/Luxury Permit holders are entered on a 5'X8' color coded cards, which are contained in boxes and maintained alphabetically. Ration Cards/Luxury Permit are registered in log, showing name of individual and number of Ration Card/Luxury Permit issued.

Authority for maintenance of the system:

5 USC 301 Departmental Regulations

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

The purposes of the maintenance of records are (1) to establish strict control over persons entitled to acquire tax-free ration items; (2) to ensure entitled personnel do not obtain more than one ration card/luxury permit, and (3) for the purposes of inspection by officers of Her Majesty's Commissioners of Customs and Excise, United Kingdom, with whom Ration Card and Luxury Permits program was originally negotiated by the U.S. military authorities. Access to records is available to accredited members of the Naval Investigative Service Office upon request.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

All Ration Card/Luxury Permit records maintained on 5'X8' cards filed and listed in numerical order in logs.

Retrievability:

Name

Safeguards:

Records held in file cabinets in space maintained by Enlisted Personnel Office during working hours and locked after working hours.

Retention and disposal:

All records maintained for duration of tour of personnel concerned. Thereafter destroyed when ration card/luxury card destroyed.

System manager(s) and address:

Commander, U.S. Naval Activities, United Kingdom, Box 60, FPO NY 09510

Notification procedure:

Personnel presenting a valid military identification card or Department of Defense identification card at this office, can obtain viewing of all records pertaining to themselves. No procedures exist for providing this type of information by mail, nor is it normally required by individuals.

Record access procedures:

The agency's rules for access to records may be obtained from the System Manager.

Contesting record procedures:

The agency's rules for contesting contents and appealing initial determinations by the individual concerned may be obtained from the System Manager.

Record source categories:

Not applicable

Systems exempted from certain provisions of the act:

NONE

N62585POV/GAS RECORDS

System name:

Privately-owned Tax-free Vehicle Record Cards. Tax-free Gasoline Record Cards.

System location:

Commander, U. S. Naval Activities, UK, FPO NEW YORK 09510

Categories of individuals covered by the system:

Officers, enlisted and civilian component personnel.

Categories of records in the system:

Privately-owned tax/free vehicles and owners are entered on typewritten 8" x 5" white cards, which are contained in boxes and maintained alphabetically. Gasoline coupon records are maintained on individually-completed green 8" x 5" cards (3AF FORM 43) AND FILED ALPHABETICALLY. Ld. windscreen stickers registered in log, showing name of individual and sticker number allocated.

Authority for maintenance of the system:

5 USC 301 Departmental Regulations

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

The purposes of the maintenance of records are (1) to establish strict control over persons entitled to acquire tax-free vehicles; (2) to ensure entitled personnel do not obtain gasoline coupons in excess of their entitlement, and (3) for purposes of inspection by officers of Her Majesty's Commissioners of Customs and Excise, United Kingdon, with whom the tax free vehicle and gasoline program was originally negotiated by the U. S. military authorities. Access to records is available to accredited members of the Naval Investigative Services Office upon request.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

All vehicle and gasoline records maintained on 8" by 5" cards. I. D. Stickers listed numerically in register.

Retrievability:

Name.

Safeguards:

Records held in file cabinets in space maintained by Law Center personnel when unsecured and locked when not so monitored.

Retention and disposal:

All records maintained for duration of tour of personnel concerned. Thereafter destroyed when vehicle shipped out of the country or scrapped. Gas coupon records destroyed upon turn-in of unused coupons on departure of personnel.

System manager(s) and address:

Commander, U. S. Naval Activities, UK (Staff Judge Advocate)

Notification procedure:

Individuals presenting a valid military identification card or Department of Defense identification at the Office of the Staff Judge Advocate, U. S. Naval Activities, U. K., can obtain viewing of all records pertaining to themselves. No procedures exist for providing this type of information by mail, nor is it normally required by individuals.

Record access procedures:

The agency's rules for access to records may be obtained from the system manager.

Contesting record procedures:

The agency's rules for contesting contents and appealing initial determinations by the individual concerned may be obtained from the system manager.

Record source categories:

Application by member.

Systems exempted from certain provisions of the act:

NONE

N62685-01

System name:

Naval Audit Personnel Development System

System location:

Naval Audit Service Headquarters, P.O. Box 1206, Falls Church, Virginia, 22041

Categories of individuals covered by the system:

All personnel employed by the Naval Audit Service.

Categories of records in the system:

Employee audit experience and historical career development data.

Authority for maintenance of the system:

5 USC 301 Departmental Regulations

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Audit task assignment and future career development; forecasting talent requirements.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Magnetic tape

Retrievability:

Name, SSN

Safeguards:

Computer System Software; code word access.

Retention and disposal:

Records retained until employee retires, is deceased, or leaves Audit Service for other employment; record is then destroyed.

System manager(s) and address:

Director, Naval Audit Service is overall policy official; Director, Education and Training Division has direct control; Naval Audit Service HQ, Falls Church, Va 22041

Notification procedure:

Apply to System Manager

Record access procedures:

The agency's rules for access to records may be obtained from the System Manager.

Contesting record procedures:

The agency's rules for contesting contents and appealing initial determinations by the individual concerned may be obtained from the System Manager.

Record source categories:

Individual concerned. Standard civilian personnel files.

Systems exempted from certain provisions of the act:

None

N62769 02

System name:

Individual Merchandise Control Record

System location: Merchandise Control Offices:

U. S.Naval Station, Subic Bay, RP
U. S.Naval Air Station, Cubi Point, RP
U. S. Naval Communications Station Philippines, San Miguel, RP, and 3D Combat Support Group, Clark Air Base, RP.

Categories of individuals covered by the system:

Individual records are maintained on each person issued a ration card for purchasing purposes at the various bases in the Philippines.

Categories of records in the system:

Purchases of individuals while attached for duty and authorized to buy items during their tenure in the Philippines.

Authority for maintenance of the system:

Military Bases Agreement and subsequent exchange of notes between the Governments of the United States of America and the Republic of the Philippines.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Used by Department of the Navy personnel in their duties related to: monitoring the purchases of individuals to insure they are not over expending their purchase limitations or abusing their tax-free privileges afforded them, plus, identify any possible blackmarketeering.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

File folders

Retrievability:

Name

Safeguards:

Only authorized employees allowed access to files, locked cabinets.

Retention and disposal:

If no violations during tour - destroyed immediately upon detachment; if minor violations - destroyed after three months of detachment; if permanent revocation of privileges involved - record kept indefinitely.

System manager(s) and address:

Merchandise Control Officers, U.S.Naval Station, Subic Bay; U.S.Naval Air Station, Cubi Point; U.S. Naval Communications Station Phil, San Miguel, RP, and 3D Combat Support Group, Clark Air Base, RP.

Notification procedure:

Individual must fill out merchandise control information form upon requesting a ration card be issued. Info provided merchandise control officers. Requester must provide merchandise control officer with his name, rank/rate/GS rating, marital status, number of dependents, age of dependents, name of parent command attached to in the Philippines, social security number, name of dependents; individual can visit merchandise control office applicable to their command for record maintenance. Military ID card required.

Record access procedures:

The Agency's rules for access to records may be obtained from the System Manager.

Contesting record procedures:

The Agency's rules for contesting contents and appealing initial determinations by the individual concerned may be obtained from the System Manager.

Record source categories:

Personal data of individual and dependents

Systems exempted from certain provisions of the act:

None

N62769 03

System name:

International Legal Hold Files

System location:

U.S. Naval Legal Offices in a foreign country.

Categories of individuals covered by the system:

Military personnel, members of civilian component and their dependents who have had criminal charges lodged against them in a foreign country.

Categories of records in the system:

Computerized summaries and card files containing copies of legal documents received and filed relative to the case, statements, affidavits, handwritten notes, and other miscellaneous data about the particular case.

Authority for maintenance of the system:

5 USC 301

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Used by foreign civilian attorneys in representing the accused, by the accused's military advisor in seeking an expeditious settlement of the case; by supervisory personnel in the performance of their official duties when monitoring the legal hold status of the individuals involved; and by authorized officials in the Department of Defense for required reports. reports.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Records are maintained on magnetic tape, file folders and file cards.

Retrievability:

Files are retrieved by name and ssn.

Safeguards:

Only personnel in international law department are authorized access. Building is kept locked when not occupied.

Retention and disposal:

For computerized and manual records-retain on tape until the final outcome of each case, whether it be by final adjudication or out of court settlement and then destroyed.

System manager(s) and address:

Commanding Officer or head of the organization in question. See directory of Department of the Navy mailing addresses.

Notification procedure:

Requester can write to the system manager giving name, rate and service number. Military ID or any standard ID showing applicant's photo shall be sufficient for personal visits.

Record access procedures:

The Agency's rules for access to records may be obtained from the System Manager.

Contesting record procedures:

The Agency's rules for contesting contents and appealing initial determinations by the individual concerned may be obtained from the System Manager.

Record source categories:

Foreign judicial system, accused, attorneys representing accused, military legal advisor, Provost Marshal's office, subject's commanding officer, witnesses, and the complainant.

Systems exempted from certain provisions of the act:

None

N63110 ATJ

System name:

Aviation Training Jacket

System location:

The Aviation Training Jacket accompanies the individual student to each Naval Air Command as he progresses in the training program. Upon completion or termination of training, the Aviation Training Jacket is forwarded to the following command:

Chief of Naval Air Training
Naval Air Station
Corpus Christi, TX, 78419

Categories of individuals covered by the system:

All naval aviators, naval flight officers, naval flight surgeons, aviation warrant officers, and precommissioning training for aviation maintenance duty and aviation intelligence officers. This includes records in the above categories for individuals who do not complete prescribed training.

Categories of records in the system:

Aviation flight training, practical and academic grade scores, including pre-training aviation test battery scores.

Authority for maintenance of the system:

5 USC 301, DEPARTMENTAL REGULATIONS

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Evaluation of individual training progress and evaluation of training systems including studies and statistical analysis of training matters within the Naval Air Training Command. Summaries of training provided to other Naval commands where further training is required. Academic transcripts provided to educational institutions upon individual request.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

File folders in metal filing cabinets.

Retrievability:

Name and date of designation, completion or termination of training.

Safeguards:

Access is restricted to the individual or those who maintain training records and those who are directly involved with the individual's training or evaluation. The file cabinets containing the jackets are in command areas under normal military 24 hour security measures.

Retention and disposal:

Retained at the Chief of Naval Air Training headquarters for six months, then transferred to the Federal Records Center, East Point, GA. Retained for 75 years (SECNAVINST 5212.5B).

System manager(s) and address:

Chief of Naval Air Training, Naval Air Station, Corpus Christi, TX 78419

Notification procedure:

The individual is informed that the Aviation Training Jacket is being maintained and has ready access to it during training. After training, he can submit written request to the system manager listed above and must provide name, social security number or officer file number, and date of completion or termination of training. Personal visitors can provide proof of identity by military identification card, active or retired, or driver's license and some record of naval service.

Record access procedures:

The agency's rules for access to records may be obtained from the system manager.

Contesting record procedures:

The agency's rules for contesting contents and appealing initial determinations by the individual concerned may be obtained from the system manager.

Record source categories:

Prior educational experience, flight grades, academic grades supporting flight training, physical fitness/survival/swimming proficiency, aviation physiology training and qualifications, and birth certificate.

Systems exempted from certain provisions of the act:

None

N63110 FIST

System name:

Flight Instruction Standardization and Training (FIST) Jacket

System location:

The FIST jacket is located at the various Naval Air Training Commands where the individual may be assigned. The following command can be contacted to determine the location of any specific command. Chief of Naval Air Training Naval Air Station Corpus Christi, TX 78419

Categories of individuals covered by the system:

All naval aviators and naval flight officers assigned to duty as instructors within the Naval Air Training Command.

Categories of records in the system:

A record of flight instruction standardization and training required of naval aviators and naval flight officers assigned duty as instructors.

Authority for maintenance of the system:

5 USC 301, Departmental regulations

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Scheduling of training flights. Qualification and designation as a flight instructor. Initial qualification and re-designation in type aircraft to instruct. Used by Commanding Officers and training personnel of the command to which the individual is assigned. Administration of the FIST Program.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

File folders in metal file cabinets.

Retrievability:

Name, rank, and social security number.

Safeguards:

Access is restricted to the individual, his commanding officer, or those involved in maintaining training records. The file cabinets containing the jackets are in command areas under normal military 24 hour security measures.

Retention and disposal:

Jackets are retained in the individual's command until detachment, at which time it is given to the individual.

System manager(s) and address:

Chief of Naval Air Training, Naval Air Station, Corpus Christi, TX 78419

Notification procedure:

The individual is informed that the FIST jacket is being maintained, participates in its development and, additionally, is required to review the jacket with his instructor periodically.

Record access procedures:

The agency's rules for access to records may be obtained from the system manager.

Contesting record procedures:

The agency's rules for contesting content and appealing initial determinations by the individual concerned may be obtained from the system manager.

Record source categories:

Academic tests Flight performance evaluation Check flight evaluation Instructor's evaluation Command determinations Personal input

Systems exempted from certain provisions of the act:

None

N63116 MASTER FILE

System name:

Naval Health Research Center Date File

System location:

Naval Health Research Center, San Diego, California 92152

Categories of individuals covered by the system:

Navy and Marine personnel on active duty since 1960 to date. Civilians taking part in Operation Deep Freeze, 1964 to date.

Categories of records in the system:

Extracts of information from official medical and personnel records as well as information dealing with biographical, attitudes, and questions relating to health patterns during active service.

Authority for maintenance of the system:

5 USC 301

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Users are military and civilian research personnel of this command. Inquiries are answered from the Bureau of Medicine and Surgery and The Naval Medical Research and Development Command, as well as other medical research activities in the Department of Navy relative to the types and frequency of illnesses in Navy and Marine Corps personnel.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Prinicpal medium is magnetic tape with file and punch card back-up as required.

Retrievability:

Retrievability is by Social Security number or service number as appropriate for military and former military personnel. Civilians are by name only.

Safeguards:

Access to Information on magnetic tape is restricted to authorized personnel only by means of a password.

Retention and disposal:

Since the information in this file is used to study longitudinal health patterns, and as a basis for comparison of changes in health patterns over long periods of time, they are most carefully maintained. As information is transferred from research forms to magnetic tape, those forms and the punch cards resulting from them are destroyed as the need for maintenance of a back-up capability no longer exists. The spaces occupied by this command are in military compounds with limited access and established security patrols.

System manager(s) and address:

Head, Programming Branch, Naval Health Research Center, San Diego, California 92152.

Notification procedure:

Navy and Marine Corps personnel and former serving members must provide a social security number or service number as appropriate, give the branch of service, and years of active duty. Civilians in Operation Deep Freeze must identify themselves by full name and the year in which they wintered over.

Record access procedures:

The agency's rules for contesting contents and appealing initial determinations by the individual concerned may be obtained from the system manager.

Contesting record procedures:

The agency's rules for contesting contents and appealing initial determinations by the individual concerned may be obtained from the System Manager.

Record source categories:

Information is derived from (a) Medical Treatment Record Systems, including medical, dental, health records, inpatient treatment records and outpatient treatment records, (b) Personnel Records System and Personnel Rehabilitation Support System, (c) Enlisted Master File, (d) information provided by the members themselves on a volunteer basis in response to specific research questionnairs and forms, and (e) information provided by the members' peers and superiors.

Systems exempted from certain provisions of the act:

None.

N63116 POW/MIA FILE

System name:

pow/mia captivity studies

System location:

Naval Health Research Center, Center for Prisoner of War Studies, San Diego, California 92152

Categories of individuals covered by the system:

Files are maintained by Code on all military and civilian returned prisoners of war, and on the families of military POW/MIAs, civilian POWs and military KIAs.

Categories of records in the system:

Files consist of intelligence debriefing material, microfilm and microfiche copies of medical records, X-rays, dental and somatotype photographs, newspaper clippings, individual and family research questionnaires.

Authority for maintenance of the system:

5 USC 301

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Files are converted to group statistics and are used for research into the effects of the captivity experience on the man and his family and for recommending changes in training and improved health care delivery services, as well as for professional publications.

Professional Staff, Center for Prisoner of War Studies; Research Staff, Naval Aerospace Medical Institute, Pensacola, Florida; Research Staff, Brooke Army Medical Center, San Antonio, Texas.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Files consist of file folders, magnetic and video tapes, key-punched IBM cards, computer tapes, microfiche and microfilm.

Retrievability:

Files are retrieved by code number.

Safeguards:

Files are maintained by code in locked file cabinets within a vault with 24-hour sensor security. There is personal screening of all visitors, and building is in a classified area. Only professional research personnel with security clearance are given access to file codes.

Retention and disposal:

The files will be maintained as long as there is an ongoing program of captivity research; with destruction of codes when files are closed.

System manager(s) and address:

Head, Environment Stress Branch, CPWS

Notification procedure:

Write: Director, Center for Prisoner of War Studies, Naval Health Research Center, San Diego, Ca. 92152, providing full name, military or civilian status, POW status, security clearance, and service affiliation.

Record access procedures:

The Agency's rules for access to records may be obtained from the System's manager.

Contesting record procedures:

The Agency's rules for contesting contents and appealing initial determinations by the individual concerned may be obtained from the System Manager.

Record source categories:

All information contained in files was obtained through personal interviews with returned POWs, families of POW/MIA/KIA/civilian POWs, through intelligence debriefings at time of repatriation, newspapers and periodicals, and from materials supplied by the Department of the Army (Office of the Surgeon General and Army Intelligence); Department of the Navy (Bureau of Medicine and Surgery and Naval Intelligence); and Marine Corps Headquarters.

Systems exempted from certain provisions of the act:

None.

N63285 ADMIN

System name:

Administrative Files System

System location:

Naval Investigative Service (NIS) Headquarters 2461 Eisenhower Avenue, Alexandria, Va. 22331

Decentralized Segments - Naval Investigative Service Offices (NISOs) retain duplicate copies of certain segments of the administrative files. Addresses of these offices are included in the directory of Department of the Navy mailing list.

Categories of individuals covered by the system:

Past and present civilian, military and foreign national personnel assigned world-wide NIS.

Categories of records in the system:

Personnel Management System - an automated management information and statistical system containing all needed items of personnel information.

Special Agent Career Development Files - a compendium of Civil Service Performance Evaluation and Ratings and all correspondence unique to the NIS Special Agent, including annual physical examinations, which has a bearing on world-wide assignability, promotion and general career assessment.

Weapons Inventory File - an automated file containing the credential number, badge, weapons and handcuffs assigned to each NIS criminal investigator.

Personnel Security Clearance File - an automated file containing the classified material access level and date of last security clearance for assigned civilian and military personnel of NIS.

Personnel Utilization Data File - an automated file designed to provide statistical information regarding the manner by which available NIS manhours are expended in the execution of its assigned investigative and counterintelligence mission. The file is formed by the submission (monthly) of individual manhour diaries. All assigned personnel input to this system; their manhours are categorized by function.

Freedom of Information and Privacy Requests File. Records relating to requests for information pursuant to the Freedom of Information Act and the Privacy Act of 1974, and responses thereto. Duplicate copies are also retained by the Naval Intelligence Command, 2461 Eisenhower Avenue, Alexandria, Va. 22331.

Authority for maintenance of the system:

5 U.S.C. 301; Departmental Regulations

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

The Personnel Management System is used in preparation of virtually all personnel documents and personnel statistical studies. It provides such information as the average grade, the total number and composition of personnel at each NIS component and the past assignments of personnel. It is used on a daily basis by personnel technicians and management level personnel in the formation and execution of staffing actions for the various NIS components, informal verification of employee's tenure and the compilation of necessary statistical studies.

Special Agent Career Development Files - The information in these files is used for within-agency decisions regarding reassignment, promotion, career training and long-range development. They form within-agency repository for both adverse and favorable documents regarding Special Agents. The files have a long-range fiction - that of forming the basis for law enforcement retirement service certification. Though part of the file is duplicated in the Official File maintained by the Civilian Personnel Office, the Special Agent Career Development file is considered priviledged information and its contents are not released outside NIS. Within NIS, the files are maintained and controlled exclusively within the Career Services Division, NIS Headquarters and by assigned personnel to that Division. The files are released for review only to senior management personnel of NIS.

Weapons Inventory File - used to identify and inventory credentials, weapons, badges and handcuffs issued to authorized NIS personnel.

Personnel Security Clearance File - used to informally verify and authenticate security clearances issued to NIS personnel. The file has a daily working purpose of acting as a check sheet for the updating of security clearances. It further is the file referred to when the director, NIS, is required to certify th access level of certain assigned NIS personnel to other Navy commands as well as civilian contractors.

Personnel Utilization Data File - a statistical file from which an indepth analyses of manhour expenditures are surveyed. The file is highly automated and used exclusively within NIS. The various analyses drawn from the file are used to modify the staffing levels at various NIS components based on actual work level. It further provides a tool to NIS management to gauge the efficiency of all components by comparing their workload with the amount of manhours available.

The records in this system are referred, as appropriate to authorized governmental units, such as Office of Civilian Manpower Management and Civil Service Commission, making various personnel determinations, e.g., retirement, awards, disciplinary action; to law enforcement personnel conducting criminal or suitability investigations; to DoD components, other agencies or industrial firms requiring confirmation of security clearance level; to higher authority for statistical purposes; limited response to credit queries; and medical records to personal physicians.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

The Personnel Management System, Weapons Inventory File, Personnel Security Clearance File and the Personnel Utilization Data File are stored on magnetic tape in an automated system. The Personnel Management System is composed of visible file cards and computer paper printouts; the Personnel Security Clearance File is composed of computer paper printouts and associated Department of Defense security certification documents, the latter being filed in individual file folders; the Weapons Inventory File and the Personnel Utilization Data File are composed of computer paper printouts only.

The Special Agent Career Development files are composed exclusively of paper records in file folders.

Retrievability:

Information is accessed and retrieved by name only in the Special Agent Career Development File. The Weapons Inventory File is queried by either name only or by item number (i.e., badge, credential, weapon, handcuff serial number).

The Personnel Management System is accessed by name and SSAN; retrieval is by individual data characteristic such as GS-grade level, duty-station, special qualifications, language qualifications or it my be retrieved by name only or in conjection with the SSAN.

The Personnel Utilization Data File is normally accessed and retrieved by location and functional category of employment (i.e., Special Agent, clerical, etc.). The capability exists, however, to retrieve by SSAN. The Personnel Security Clearance File is a subordinate file to the Personnel Management System. Accession is by name and SSAN. Retrieval is accomplished by computer paper printout in both alphabetical and duty-station formats.

Safeguards:

All files in this system are protected by limited, controlled access, safes, and locked cabinets and doors. Further, visitor control and secure computer software measures (where applicable) are utilized.

Retention and disposal:

Personnel indexed in the Personnel Management System and the Personnel Security Clearance File are deleted from the magnetic tape data storage upon termination of employment. Residual paper records are retained from two to five years.

Personnel indexed in the Weapons Inventory File are deleted at such time as assigned equipment is returned and accounted for. Residual paper printouts are destroyed at least semi-annually.

The Special Agent Career Development Files are semi-permanent and are retained, at least in essential skeletal format, indefinitely.

System manager(s) and address:

Director, Naval Investigative Service, 2461 Eisenhower Avenue, Alexandria, Va. 22331.

Notification procedure:

Requests from individuals should be addressed to the System Manager, above. Individuals submitting requests should provide their full name, date of birth, SSAN and dates of employment or assignment with NIS.

In the case of personal visits, individuals requesting access to files in this system will be required to present reasonable proof of identity to minimally include a drivers' license or similar document at least one of which must bear a current photograph and be able to provide (orally) some element of unique identifying data such as name of spouse or a past duty-station with NIS.

Record access procedures:

Access to files in this system may be gained by written notification or personal visit to the Naval Investigative Service Headquarters at the location specified above. Requests should be directed to the Information and Privacy Coordinator.

Contesting record procedures: The agency's rule for access to records and for contesting contents and appealing initial determinations by the individual concerned may be obtained from the system manager.

Record source categories:

In the case of Personnel Management System and the Personnel Utilization Data System, the individual employee is the prime source of information both for initial access to the files as well as periodic update. The Personnel Security Clearance File information is obtained as a sub-file to the Personnel Management System. The information for the Weapons Inventory File is obtained from personnel charged with the issuance of various items inventoried therein (with verification by the personnel to whom the items are issued.)

Information for the Special Agent Career Development File is recieved from the individuals supervisors, from various Naval Commands and other Federal and State agencies with whom the Special Agent has had professional contact and from the individual himself. Also, this file contains copies of each physical examination required annually of assigned civilian Special Agents.

Systems exempted from certain provisions of the act:

None.

N63285 01

System name:

NIS Investigative Files System

System location:

Primary System-NIS Records Management Division Administration Department, NIS Headquarters, Hoffman Building, 2461 Eisenhower Ave., Alexandria, Va. 22331.

Decentralized Segments - Naval Investigative Service Offices (NISOs) retain copies of certain segments of the investigative files, and related documentation for up to one year. Addresses of these offices are included in the directory of Department of the Navy mailing addresses. Naval Investigative Service Resident Agencies retain copies of investigative reports during pendency and for 90 days thereafter. They also retain evidence custody cards on persons from whom evidence was seized. The number and location of these Resident Agencies are subject to change in order to meet the requirements of the Department of the Navy. Current location may be obtained from Naval Investigative Service Headquarters.

Categories of individuals covered by the system:

Persons in the following categories who require access to classified defense information prior to August 1972: Active and inactive members of the naval service, civilian personnel employed by the Department of the Navy (DoN), industrial and contractor personnel, civilian personnel being considered for sensitive positions, boards, conferences, etc., civilian personnel who worked or resided overseas, Red Cross personnel. Civilian and military personnel accused, suspected or victims of felonious type offenses, or lesser offenses impacting on the good order, discipline, morale or security of the DoN. Civilian personnel seeking access to or seeking to conduct or operate any business or other function aboard a DoN installation, facility or ship. Civilian or military personnel involved in the loss, compromise or unauthorized disclosure of classified material/information. Civilian and military personnel who were of counterintelligence interest to the DoN.

Categories of records in the system:

Categories of records in the system: Official Reports of Investigation (ROI) prepared by NIS or other military, federal, state, local or foreign law enforcement or investigative body on either hard copy or microfilm. NIS Information reports (NIRs). NIRs document information received by NIS which is of interest to the naval services or other law enforcement or investigative bodies. The information may be of criminal, counterintelligence or general investigative interest.

General Administration Reports (GEN). The investigative purpose of the GEN is to report the results of pre-employment inquiries on applicants for positions as Special Agents with NIS.

Investigative summaries, memoranda for the files and correspondence relating to specific cases and contained in the individual dossier.

Polygraph Data. A listing of persons who submitted to polygraph examination by NIS examiners. The data includes the examinee's name, location and results of the examination and the identity of the examiner.

Case Control and Management documents which serve as the basis for controlling and guiding the investigative activity.

Records identifying confidential sources and contacts with them.

Index to persons reported by 'Name Only'.

Wiretap Data Records. Automated listing of persons who were subjects of wiretapping or eavesdropping operations.

Case Control and Narcotics Data Records. Automated records used only for statistical purposes in accounting for productivity, manhours expenditures; various statistical data concerning narcotics usage and used solely for statistical purposes.

Modus Operandi Files.

Screening Board Reports. These reports set forth the results of oral examination of applicants for a position as a Special Agent with the NIS.

Authority for maintenance of the system:

5 U.S.C. 301
44 U.S.C. 3101
47 U.S.C. 605

Executive Memorandum of 26 June 1939; Investigations of espionage, counterespionage and sabotage matters.

Executive Order 12036; United States Intelligence Activities; Secnavinst 5520.3, criminal and security investigations and related activities within the Dept of the Navy; DOD Dir 5210.8, policy on investigation and clearance of DOD Personnel for access to defense information; DOD Dir 5210.9, military personnel security program; DOD Dir 5200.26, defense investigative program: DOD Dir 5200.27, acquisition of information concerning persons and organizations not affiliated with the Dept of Defense; and DOD Dir 5200.24, telephone interception and eavesdropping.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

The information in this system is (was) collected to meet the investigative, counterintelligence and security responsibilites of the DoN. This includes personnel security, internal security, criminal and other law enforcement matters all of which are essential to the effective operation of the department.

The records in this system are used to make determinations of; suitability for access or continued access to classified information, suitability for employment or assignment, suitability for access to military installations or industrial firms engaged in government projects/contracts, suitability for awards or similar benefits; referral to other law enforcement or investigatory authorities for law enforcement purposes; use in current law enforcement investigation of any type including applicants; use in judicial or adjudicative proceedings including litigation or in accordance with a court order; insurance claims including workmens compensation; provide protective services under the DoD Distinguished Visitor Protection Program and to assist the U.S. Secret Service in meeting its responsibilities; Congressional interest including the General Accounting Office; respond to the Freedom of Information and Privacy Acts; use for public affairs or publicity purposes such as wanted persons, etc.; referral of matters under their cognizance to federal, state or local law enforcement authorities including criminal prosecution, civil court action or regulatory order; disclosure to federal intelligence/counterintelligence agencies of matters under their purview disclosure to foreign government organizations of criminal and counterintelligence information necessary for the prosecution of justice, or for mutual security and protection; advising higher authorities and naval commands of important developments impacting on security, good order or discipline; reporting of statistical data to naval commands and higher authority; disclosure to the National Archives; use by other investigative unit (federal, state or local) for whom the investigation was conducted; release to defense counsel, disclosure in course of acquiring the information, input into the Defense Central Index of Investigations; disclosure to victims of crimes to the extent necessary to pursue civil and criminal remedies.

Users of the records in this system include employees of the NIS who require access for operational, administrative or supervisory purposes; DoD criminal investigative, investigative and intelligence units; federal, state and local units engaged in criminal investigative, investigative and intelligence activities; federal regulatory agencies with investigative units, DOD components making suitability determinations; federal, state or local judicial or adjudicative bodies; Congressional bodies, including the General Accounting Office who require access within the scope of their jurisdiction for those authorized purposes enumerated above to the extent that those purposes are within the scope of their authority. Commercial insurance companies in those instances in which they have a legitimate interest in the results of the investigation, but only to that extent and provided an invasion of privacy is not involved.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Paper records in file folders, on cards and on microfilm. Automated records on magnetic tape.

Retrievability:

NIS permanent files are filed by terminal digit number. In order to locate the file it is necessary to query the Defense Central Index of Investigations (DCII) computer using the name of the subject and at least one other personnel identifier such as date of birth, place of birth, social security number or military service number. Files may also be retrieved by a case control number assigned at the time the investigation is initiated. Copies of the files in the NISOs and Resident Agencies are retrieved by name.

Safeguards:

NIS investigative files (permanent and temporary) are maintained and stored in open shelves and filing cabinets located in secured areas accessible only to authorized personnel. Dated files are retired to the Washington National Records Center where retrieval is restricted to NIS authorized personnel.

Retention and disposal:

Retention of completed NIS Investigative files on Personnel Security Investigations (PSI's) is authorized for 15 years unless adverse information is developed, in which case they may be retained for 25 years. PSI files on persons considered for affiliation with DOD will be destroyed within one year if the affiliation is not consummated. Special Agent applicant records are retained for one year if the applicant declines offer of employment and five years if the applicant is rejected for employment. Criminal files are retained for 25 years. Major investigations of a counterintelligence/security nature, of espionage or sabotage, may be retained permanently. Certain of the above records, when found to have possible historical value, may be offered to the National Archives for continued retention. Counterintelligence records on persons not affiliated with DOD must be destroyed within 90 days or one year under criteria set forth in DOD Directive 5200.27, unless retention is required by law or specifically approved by the Secretary of the Navy. Files retained in the NISO's and resident agencies are temporary and are destroyed after 90 days or one year, as appropriate.

System manager(s) and address:

The Director, Naval Investigative Service has ultimate responsibility for all NIS file holdings. Management of NIS permanent files is the direct responsibility of the Assistant Director for Administration. NISO Commanding Officers are responsible for files retained in their NISO subordinate Resident Agencies.

Notification procedure:

All requests relative to the retention and/or releasability of NIS investigative files should be addressed to the Director, Naval Investigative Service, 2461 Eisenhower Avenue, Alexandria, Va. 22331. Requests must contain the full name of the individual and at least one additional personal identifier such as date and place of birth, social security number or military service number. Personal visits by requesters should be confined to the Naval Investigative Service headquarters at the above address. It should be borne in mind that the vagaries of the automated indexing system might preclude a same day response. Persons submitting written requests must properly establish their identity to the satisfaction of the NIS. Where a question exists a signed, notarized statement or other certified form of identification will be required. Individuals appearing in person may present proof of identification in the form of military ID card, valid driver's license, or other suitable form of identification bearing a photograph and signature. Attorneys or other persons acting on behalf of a subject of a record must provide a notarized authorization from the subject of the record.

Record access procedures:

Individuals may make inquiries relative to NIS records maintained on them thru the NIS Information and Privacy Coordinator Naval Investigative Service Headquarters, at the address specified in the previous paragraph.

Contesting record procedures:

The Agency's rules for access to records and for contesting contents and appealing initial determinations by the individual concerned may be obtained from the SYSMANAGER.

Record source categories:

See EXEMPTION.

Systems exempted from certain provisions of the act:

Parts of this system may be exempt under 5 U.S.C. 552 A (J)(2) and (K)(1), (K)(3), (K)(4), (K)(5), and (K)(6) as applicable. For additional information, contact the System Manager.

N63285 03

System name:

Defense Central Index of Investigations (DCII)

System location:

Central Facility:
Defense Investigative Service (DIS)
Data Handling Services Division, D0930
Fort Holabird
Baltimore, Maryland 21203

Remote Terminal Locations: (This is a co-owned index system shared by DIS and the military service investigative agencies).
Crime Records Directorate
US Army Criminal Investigations Command
2301 Chesapeake Avenue
Baltimore, Maryland 21222

Remote Terminal Location:
Air Force Office of Special Investigations/SUD
Forrestal Building
Washington, D.C. 20314

Remote Terminal Location:
Naval Investigative Service Headquarters
Hoffman Building #1
2461 Eisenhower Avenue
Attn: Code 30
Alexandria, Virginia 22331 (NIS)

Remote Terminal Location:
Defense Industrial Security Clearance Office
P.O. Box 2499
Columbus, Ohio 43216 (DISCO)

Remote Terminal Location:
US Army Investigative Records Repository
Building 4452
Fort Meade, Maryland 20755

Remote Terminal Location:
DIS Special Investigations Center
Forrestal Building
Washington, D.C. 20314

Remote Terminal Location:
DIS National Agency Check Center, D0700
Fort Holabird
Baltimore, Maryland 21203

Remote Terminal Location:
DIS Personnel Investigations Control Center, D0600
Fort Holabird
Baltimore, Maryland 20203

Remote Terminal Location:
DIS Investigative Files Division, D0960
Fort Holabird
Baltimore, Maryland 21203

Categories of individuals covered by the system:

Any person described as a subject, a victim, or a cross-reference in an investigation completed by or for a DoD investigative element when that investigation is retained by the element and the name is submitted for central indexing.

Categories of records in the system:

Composed of locator references to investigations conducted by or for DoD investigative elements and retained by them. Index records contain the name and other personal identifying information on individuals who were indexed.

Reference to an investigation maintained by one of the investigative records repositories. It identifies the individual by name and personal identifiers, the custodian of the file, the year indexed and the number used by the repository to locate the file.

A record input by either Army investigative activities or DIS reflecting the existence of an investigation in progress. It identifies the subject individual by name and personal identifiers, the location of the open investigation, the year indexed and the number used to locate the investigative file.

Record of a National Agency Check (NAC) investigation in progress. It identifies the subject individual by name, personal identifiers, the case number, the category of the requester of the NAC, and the type of NAC being run.

A record of completed favorable national agency checks (e.g., no records). It identifies the individual by name and personal identifiers, the date the NAC was completed and the agencies that were checked.

Composed of names of persons referenced in files who are not fully identified, but about whom sufficient information exists that meets retrieval criteria. It identifies the individuals by name, custodian agency of the file, year of the index, and the number used by the repository to locate the file. Positive identification is impossible from the index and may well be impossible from the case file itself.

Authority for maintenance of the system:

5 U.S.C. 301 Departmental Regulations
44 U.S.C. 3101 Records Management

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

File tracing information is collected and maintained in the indices so that authorized users may determine the existence and location of DoD investigative records.

NAC history information is maintained for authorized users in granting clearances or access to defense installation, entry into military service or employment in sensitive civilian positions.

Activities listed under the LOCATION caption are the principal users and (with the exception of DISCO) the file custodians. Listed terminal holders (with the exception of DISCO) may release general DCII information to:

Other DoD investigative elements, DoD agencies and elements of the Military Departments designated by the departments.

Accredited representatives of the Secretary of Defense and the Joint Chiefs of Staff.

Accredited Federal criminal and civil law enforcement agencies including those responsible for conducting their own investigations as to the suitability for employment or access of current or potential employees formerly affiliated with the DoD.

State and local criminal law enforcement agencies.

Other accredited Federal agencies serviced by the Civil Service Commission but with a need to evaluate the suitability of potential employees formerly affiliated with the DoD.

Congress, including the Government Accounting Office.

The AUTODIN system which transmits formatted data over telecommunications circuits facilitates the collection of transactions from contributors to update the index and to disseminate index information to the requesters.

The Defense Case Control System (DCCS) and the National Agency Check Control System (NCCS) which are described separately in this notice.

It should be noted that information contained in the system is regarded as the property of the submitting activities. DIS can neither monitor, nor assume responsibility for the propriety or accuracy of all the data in the system.

Transfer of information from this records system to other DoD components is regarded as a routine intra-agency use under the provisions of 5 U.S.C. 552a3(b)(1). The use of the DCII to refer inquiries to other DoD elements, where there is no release of DCII information itself is not deemed to require an accounting.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Master Index data is maintained in direct access storage devices, disk and data cell. It is also contained on magnetic tape for continuity of operations purposes to permit processing at alternate locations in the event of computer failure.

Name Only Index data is maintained on magnetic tape and microfiche. Each contributor is provided his portion on a quarterly basis.

Retrievability:

Master Index records are accessed through name and at least one personal identifier (PID). Personal identifiers are: date of birth, place of birth, social security number and the last four (4) digits of military service number. Inquiries may enter the system in card form or by being keyed in at remote terminals. A non-standard retrieval capability also exists which permits retrieval without PID, or on parts of a name, and produces references to all individuals by that name. It should be noted that in many cases, the subject's SSAN is necessary to make a positive identification.

Name Only Index records are accessed through the name or some portion thereof. Records are retrieved based on an exact match with the name submitted. Inquiries may enter the system only in card form.

Safeguards:

Generalized validation is provided in batch retrieval through program edits to prevent unauthorized access.

User terminals with access to the Master Index are located in controlled access areas. Access to the system is limited to specified time of the day. Terminals are connected via dedicated data circuits which prevent access from standard dial-up telephones.

Activities must be a part of DoD and accredited on the basis of authorized requirements before a new terminal is established or before batch requests will be honored and processed. Terminal holders and activities authorized to batch process requests are responsible for the authority and need to know of individuals and agencies on behalf of which they search the index.

The computer room is located within a building controlled by security personnel at all times. Identification badges are required for entrance. Access to the computer room is controlled by a combination lock on the entrance. Critical backup files are stored in locked fireproof data safes.

Retention and disposal:

Retained for as long as files are retained. When the record repository disposes of the file, they are responsible for deleting all index tracings pertaining thereto, in accordance with established procedures. Processing of a deletion transaction flags the computer record which precludes it being given out thereafter. Such flagged records are eliminated from the system during periodic file restructuring procedures.

Open Case Tracings. Retained for as long as the investigation is open. When the investigation is completed, the contributor replaces the open case tracing with a file tracing as described above.

NAC History Tracings. Retained for a period of four (4) years from the date of completion and then automatically deleted unless specific action is taken sooner to delete the record. Should a subsequent favorable NAC be completed, the entering of a new history record will delete the first history record.

NAC Pending Tracings. Retained until completion of the NAC at which time they are replaced by a NAC History or file tracing, unless deleted sooner by the originator.

System manager(s) and address:

Director, Defense Investigative Service, Washington, D.C. 20314

Notification procedure:

Identity of Official:
Assistant for Information
Defense Investigative Service (D0020)
Washington, D.C. 20314.

Information Required: Full name and all maiden and alias names under which files may be maintained and personal identifiers listed under RETRIEVABILITY. Note, Social Security Account Numbers may be necessary for positive identification of certain records.

Office Which May be Visited:
DIS Information Office
1000 Independence Avenue
Washington, D.C. 20314.

Proof of Identity: Check of personal documents.

Record access procedures:

Access may be obtained through the Information Office at the address previously listed.

Contesting record procedures:

The agency's rules for access to records, contesting contents and appealing initial determinations by the subject individual may be obtained from the Assistant for Information, at the above address.

Record source categories:

DoD investigative elements identical with those listed under the LOCATION caption excluding DISCO, and additionally:

Defense Supply Agency
ATTN: DSAH-T Cameron Station
Alexandria, Virginia 22310

Director of Security, National Security Agency, ATTN: M-552 Fort Meade, Maryland 20775

Assistant Chief of Staff of Intelligence, Department of the Army, ATTN: Counterintelligence Division, Washington, D.C. 20315 (ACSI)

Systems exempted from certain provisions of the act:

None

N63393 F0013BA013

System name:

Aviation Medical Officer's Report

System location:

Commander, Naval Safety Center, Naval Air Station, Norfolk, VA 23511 Subordinate/Type Commands/Levels

Categories of individuals covered by the system:

Military personnel involved in, contributing to or injured in a Navy or Marine aircraft mishap.

Categories of records in the system:

Reports of Naval aircraft mishaps submitted by the reporting custodian. Findings and conclusions of the Aircraft Accident Board. Medical Officer's Report. Search and Rescue Report. Life Change Questionnaire. Naval Safety Center investigative reports. JAG manual investigations.

Authority for maintenance of the system:

5 USC 301 Departmental Regulations

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Aviation Medical Officer's Report records are selected and reviewed by Naval Safety Center analysts to identify problem areas and determine, whenever possible, mechanical systems/malfunctions or human errors that may have caused or contributed to a particular mishap in order that appropriate measures can be effected to prevent recurrence. Records and summary data are provided only to those echelons within the Navy which are directly involved in flight safety and the study of trends associated therewith. In those mishap cases where the type aircraft is common to other military services, applicable trend analyses and summary data is usually provided to the respective service. Similarly, if the type aircraft involved in a mishap is common to civil aviation, summary information is provided to appropriate government agencies. Whenever and to whomever re-

leased, the information is given with the explicit understanding that it will be used exclusively in the furtherance of improved safety in aircraft and accident prevention efforts.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Magnetic tape. (Central location) Cardex File. (Subordinate Commands)

Retrievability:

Any of the data elements such as model aircraft, damage, date, accident type, cause factors, degree of injury, ejection results or pilot's social security number are used to retrieve individual records.

Safeguards:

A limited number of data processing personnel have access to the computer facility and to the magnetic tape files and computer programs. All requests for information received from activities or for purposes not directly related to flight safety must be approved by the Commander, Naval Safety Center or his designated representative.

Retention and disposal:

Magnetic tape files contains all available records and are never purged. Reports are not transferred to a record center.

System manager(s) and address:

Director of Aviation Safety, Naval Safety Center, NAS, Norfolk, VA 23511

Notification procedure:

Apply to System Manager.

Record access procedures:

The agency's rules for access to records may be obtained from the System Manager.

Contesting record procedures:

The agency's rules for contesting contents and appealing initial determinations by the individual concerned may be obtained from the System Manager.

Record source categories:

Aircraft reporting custodians, chain of command, Judge Advocate General, commanding officer, squadron personnel, relatives, acquaintances and Naval Safety Center analysts.

Systems exempted from certain provisions of the act:

None.

N63393 F0015BA054

System name:

Aircraft Mishap

System location:

Commander, Naval Safety Center, Naval Air Station, Norfolk, VA 23511 Subordinate/Type Commands/Levels

Categories of individuals covered by the system:

Designated Naval aviators, Naval flight officers, crew members and maintenance personnel involved in or contributing to a Navy or Marine aircraft accident, incident or ground accident.

Categories of records in the system:

Reports of Naval aircraft mishaps submitted by the reporting custodian. Findings and conclusions of the Aircraft Accident Board. Naval Safety Center investigative reports. JAG manual investigations.

Authority for maintenance of the system:

5 USC 301 Departmental Regulations

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Aviation mishap records are selected and reviewed by, Naval Safety Center analysts to identify problem areas and determine, whenever possible, mechanical systems/malfunctions or human errors that may have caused or contributed to a particular mishap in order that appropriate measures can be effected to prevent recurrence. Records and summary data are provided only to those echelons within the Navy which are directly involved in flight safety and the study of trends associated therewith. In those mishap cases where the type aircraft is common to other military services applicable trend analyses and summary data is usually provided to the respective service. Similarly, if the type aircraft involved in a mishap is common to civil aviation, summary information is provided to appropriate government agencies. Whenever and to whomever released, the information is given with the explicit understanding that it will be used exclusively in the furtherance of improved safety in aircraft and accident prevention efforts.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Magnetic tape. (Central Location) Cardex File. (Subordinate Commands)

Retrievability:

Any of the data elements such as command, model aircraft, damage, date, location, accident type, cause factors or pilot's social security number are used to retrieve individual records.

Safeguards:

A limited number of data processing personnel have access to the computer facility and to the magnetic tape files and computer programs. All requests for information received from activities or for purposes not directly related to flight safety must be approved by the Commander, Naval Safety Center or his designated representative.

Retention and disposal:

Magnetic tape files contain all available records and are never purged. Reports are not transferred to a record center.

System manager(s) and address:

Director of Aviation Safety, Naval Safety Center, NAS, Norfolk, VA 23511

Notification procedure:

Individuals may write the System Manager giving full name, address, military status and social security number in order to determine if the system contains any records pertaining to them. Personal visitors will be required to produce military or comparable civilian identification cards.

Record access procedures:

The agency's rules for access to records may be obtained from the System Manager.

Contesting record procedures:

The agency's rules for contesting contents and appealing initial determinations by the individual concerned may be obtained from the System Manager.

Record source categories:

Aircraft reporting custodian, aircraft accident boards, chain of command, Judge Advocate General and Naval Safety Center analysts.

Systems exempted from certain provisions of the act:

None.

N63393 F0024CA171

System name:

Diving Log

System location:

Commander, Naval Safety Center, Naval Air Station, Norfolk, VA 23511

Categories of individuals covered by the system:

All Navy military and civilian employees of the Navy involved in diving or exposed to a hyperbaric environment.

Categories of records in the system:

Diving Log Report.

Authority for maintenance of the system:

5 USC 301 Departmental Regulations

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Reports summarizing diving activity are furnished to the commanding officer for individuals attached to the unit and are used to monitor experience levels associated with types of dives, equipment usage and requalification requirements. Individual records are also used to evaluate the diving program at specific activities and to determine if manning level, experience and operational requirements are consistent with an effective safety program. Pertinent individual records or statistical summaries prepared by Naval Safety Center analysts are also provided to all echelons within the Navy having a responsibility for the diving program and to Chief of Naval Personnel, Comptroller of the Navy, General Accounting Office, Naval Audit Service or other activities having responsibility for the administration or control of personnel assignments and hazardous duty payments.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Magnetic tape.

Retrievability:

Records may be selected based on any of the data elements contained in the file such as diver's social security number, organization unit, type of dive and equipment used.

Safeguards:

A limited number of data processing personnel have access to the computer facility and to the magnetic tape files and computer programs. All requests for information received from activities or for purposes not directly related to the diving program must be approved by the Commander, Naval Safety Center or his designated representative.

Retention and disposal:

Magnetic tape files contain all available records and are never purged. Reports are not transferred to a record center.

System manager(s) and address:

Director of Submarine Safety Programs, Naval Safety Center, NAS, Norfolk, VA 23511

Notification procedure:

Individuals may write the System Manager giving full name, address, military status and social security number in order to determine if the system contains any records pertaining to them. Personal visitors will be required to produce military or comparable civilian identification cards.

Record access procedures:

The agency's rules for access to records may be obtained from the System Manager.

Contesting record procedures:

The agency's rules for contesting contents and appealing initial determinations by the individual concerned may be obtained from the System Manager.

Record source categories:

Commanding Officer of naval units conducting diving or hyperbaric exposure incident to diving.

Systems exempted from certain provisions of the act:

None.

N63393 F0024CA174

System name:

Diving Accidents and Injuries

System location:

Commander, Naval Safety Center, Naval Air Station, Norfolk, VA. 23511

Categories of individuals covered by the system:

All Navy military and civilian employees of the Navy involved in an accident or who are injured while engaged in diving or exposed to a hyperbaric environment.

Categories of records in the system:

Diving Accident/Injury Report. Personnel Casualty Report. JAG manual investigation.

Authority for maintenance of the system:

5 USC 301 Departmental Regulations

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Records of diving accidents and injuries are evaluated by Naval Safety Center analysts to determine existence of problem areas and to detect trends. The records are correlated with the diving log reports and used as a basis for recommending changes in operating procedure, equipment, decompression schedules and training requirements. Individual reports and compilations of accidents and injuries are routinely furnished to activities within the Navy having responsibility for diving safety. Reports are also furnished to Government or private research institutions engaged in studies relating to the prevention or treatment of diving injuries or the design and usage of underwater equipment.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Magnetic tape.

Retrievability:

Any of the data elements such as diver's social security number, type of accident, depth and purpose of dive, degree of injury and treatment provided are used to retrieve individual records.

Safeguards:

A limited number of data processing personnel have access to the computer facility and to the magnetic tape files and computer programs. All requests for information received from activities or for purposes not directly related to diving safety must be approved by the Commander, Naval Safety Center or his designated representative.

Retention and disposal:

Magnetic tape files contain all available records and are never purged. Reports are not transferred to a record center.

System manager(s) and address:

Director of Submarine Safety, Naval Safety Center, NAS, Norfolk, Va. 23511

Notification procedure:

Individuals may write the System Manager giving full name, address, military status and social security number in order to determine if the system contains any records pertaining to them. Personal visitors will be required to produce military or comparable civilian identification cards.

Record access procedures:

The agency's rules for access to records may be obtained from the System Manager.

Contesting record procedures:

The agency's rules for contesting contents and appealing initial determinations by the individual concerned may be obtained from the System Manager.

Record source categories:

Commanding Officer of naval units conducting diving or hyperbaric exposure incident to diving. Office of the Judge Advocate General. Chief, Bureau of Medicine and Surgery.

Systems exempted from certain provisions of the act:

NONE

N63393 F0025AA041

System name:

Occupational Injury and Illness

System location:

Commander, Naval Safety Center, Naval Air Station, Norfolk, VA 23511 (Central) Subordinate Type Commands/Ship/Naval Units

Categories of individuals covered by the system:

Navy military personnel who sustain an injury or occupational illness and Navy civilian personnel who sustain an occupational illness or injury resulting in one or more days of lost time.

Categories of records in the system:

Accidental Injury/Death Reports. Personnel Casualty Reports. Hospital Admission Reports. JAG manual investigations.

Authority for maintenance of the system:

5 USC 301 Departmental Regulations

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Accidental injury records are used to compile a variety of statistical reports which are routinely published or prepared at the request of Navy forces afloat and shore activities. Individual injury reports are selected and reviewed by Naval Safety Center analysts in order to detect problem areas relating to operating procedure, training and equipment usage and malfunction. Results of these studies which may include individual injury reports are provided to commanding officers and to all echelons within the Navy having responsibility for the allocation of resources or the implementation of the Safety Program. Individual injury records are correlated with data contained in other personnel files in order to detect unfavorable trends within an activity and to recommend appropriate corrective measures. Individual records and statistical summaries are provided on request to all Government activities having a legitimate need for such information. Individual records and summary data are provided to contractors and research activities in connection with projects either funded by or deemed potentially valuable to the Department of the Navy.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Magnetic tape. (Central location) File Folders/cardex (subordinate commands)

Retrievability:

Any of the data elements such as social security number, command or unit identification code, degree of injury, location, equipment malfunction and cause factors are used to select individual records.

Safeguards:

A limited number of data processing personnel have access to the computer facility and to the magnetic tape files and computer programs. All requests for information received from activities or for purposes not within the routine usage criteria must be approved by the Commander, Naval Safety Center or his designated representative.

Retention and disposal:

Magnetic tape files contain all available records and are never purged. Reports are not transferred to a record center.

System manager(s) and address:

Director of Occupational Safety, Health and Support Programs, Naval Safety Center, NAS, Norfolk, VA 23511

Notification procedure:

Individuals may write the System Manager giving full name, address, military status and social security number in order to determine if the system contains any records pertaining to them. Personal visitors will be required to produce military or comparable civilian identification cards.

Record access procedures:

The agency's rules for access to records may be obtained from the System Manager.

Contesting record procedures:

The agency's rules for contesting contents and appealing initial determinations by the individual concerned may be obtained from the System Manager.

Record source categories:

Commanding officers of Forces Afloat and Shore activities, Judge Advocate General and Chief, Bureau of Medicine and Surgery.

Systems exempted from certain provisions of the act:

None.

N63393 F0026EA033

System name:

Motor Vehicle Accidents and Injuries

System location:

Commander, Naval Safety Center, Naval Air Station, Norfolk, VA 23511 Subordinate/Type Commands/Levels

Categories of individuals covered by the system:

Navy military personnel regardless of duty status who are injured as a result of a motor vehicle accident or are the operator of one of the vehicles involved in such an accident. Navy military and civilian personnel who are involved in a Government motor vehicle accident or a private motor vehicle accident on Navy property. Navy civilian employees who are injured in a motor vehicle accident during the course of their official duties.

Categories of records in the system:

Motor Vehicle Accident Report. Personnel Casualty and Death Report, Hospital Admission Reports and JAG manual investigations.

Authority for maintenance of the system:

5 USC 301 Departmental Regulations

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Motor vehicle accident records are used to compile statistics which are given wide dissemination within the Navy. Compilations of motor vehicle accident records for particular commands, activities and units are furnished on request to assist in the development of an effective safety program at all levels within the Navy. Accident records of individuals assigned to specific units or records of individuals involved in multiple accidents are provided to commanding officers. Motor vehicle accident records are correlated with data contained in other accident/injury or training files. The significance of this data is evaluated by Naval Safety Center analysts and summary information, specific individual records or composite records provided to all echelons within the Navy having a responsibility for motor vehicle safety. Individual records and statistical summaries are provided on request to all Government activities having a legitimate need for such information.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Magnetic tape. (Central location) File folders/cardex (subordinate commands)

Retrievability:

Any of the data elements such as individual social security number, activity or unit identification, cause factors and degree of injury are used to retrieve individual records.

Safeguards:

A limited number of data processing personnel have access to the computer facility and to the magnetic tape files and computer programs. All requests for information which are not included in the routine usage criteria must be approved by the Commander, Naval Safety Center or his designated representative.

Retention and disposal:

Magnetic tape files contain all available records and are never purged. Original documents are destroyed when no longer required. Reports are not transferred to a record center.

System manager(s) and address:

Director of Occupational Safety, Health, and Support Programs, Naval Safety Center, NAS, Norfolk, VA 23511

Notification procedure:

Individuals may write the System Manager giving full name, address, military status and social security number in order to determine if the system contains any records pertaining to them. Personal visitors will be required to produce military or comparable civilian identification cards.

Record access procedures:

The agency's rules for access to records may be obtained from the System Manager.

Contesting record procedures:

The agency's rules for contesting contents and appealing initial determinations by the individual concerned may be obtained from the System Manager.

Record source categories:

Commanding officers of Forces Afloat and Shore activities, Judge Advocate General and Chief, Bureau of Medicine and Surgery.

Systems exempted from certain provisions of the act:

None.

N63393 F0048BA111

System name:

Individual Flight Activity Report

System location:

Commander, Naval Safety Center, Naval Air Station, Norfolk, VA 23511

Categories of individuals covered by the system:

All aeronautically designated commissioned Navy and Marine Officers assigned as crew members in the operation of an aircraft in accordance with the direction of competent authority.

Categories of records in the system:

Reports of each flight submitted by the custodian of the aircraft. Total flight activity survey reports and annual flight activity reports.

Authority for maintenance of the system:

5 USC 301 Departmental Regulations

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Flight activity data for specific individuals or categories of aviators is correlated with aircraft mishap data. This information is analyzed in order to determine the relationship between various categories and combinations of flight experience and accident involvement. Results of these studies are provided to all echelons within the Navy and Marine Corps having responsibility for flight operations, pilot training and allocation of resources to and within the aviation program. An annual summary of flight activity by model aircraft is provided to each reporting individual for his verification and personnel records. Upon request, a detailed by flight report for a specified time frame is also provided. Records are also provided to Chief of Naval Personnel for promotional screening, detailing and compliance with minimum standards. Summaries of flight activity for Marine Corps personnel are provided to the Commandant of the Marine Corps. Records of specific pilots or categories of pilots are provided to contractors, if required, for projects either funded by or deemed potentially valuable to the Department of the Navy. When requested, records are provided to the General Accounting Office, to the Naval Audit Service and to offices or committees authorized by Congress to investigate certain phases of the Naval Aviation Program.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Magnetic tape.

Retrievability:

Any of the data elements such as pilot's social security number, model aircraft, squadron and specific flight experience may be used to retrieve individual records.

Safeguards:

A limited number of data processing personnel have access to the computer facility and to the magnetic tape files and computer programs. All requests for information which are not included in the routine usage criteria must be approved by the Commander, Naval Safety Center or his designated representative.

Retention and disposal:

Magnetic tape files contain all available records and are never purged. Reports are not transferred to a record center.

System manager(s) and address:

Director of Aviation Safety Programs, Naval Safety Center, NAS, Norfolk, VA 23511

Notification procedure:

Individuals may write the System Manager giving full name, address, military status and social security number in order to determine if the system contains any records pertaining to them. Personal visitors will be required to produce military or comparable civilian identification cards.

Record access procedures:

The agency's rules for access to records may be obtained from the System Manager.

Contesting record procedures:

The agency's rules for contesting contents and appealing initial determinations by the individual concerned may be obtained from the System Manager.

Record source categories:

Aircraft reporting custodian, Navy and Marine Corps pilots.

Systems exempted from certain provisions of the act:

None.

N63395 10140.IF

System name:

USAREUR/USAFE Ration Card

System location:

U.S. Naval Radio Station, FPO New York 09516.

Categories of individuals covered by the system:

USN personnel and their dependent wives and children over 18 years of age, who are stationed at U.S. Naval Radio Station, FPO New York 09516.

Categories of records in the system:

File sheet with members name, rate, serial no., and organization assigned. Also if member is single or married.

Authority for maintenance of the system:

5 USC 301, Departmental Regulations

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Reference as to who is holding a ration card.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

File folders.

Retrievability:

Name.

Safeguards:

Locked safe in Admin Office and a 24 hour security watch.

Retention and disposal:

Records are maintained as long as member retains ration card. After transfer records are burned.

System manager(s) and address:

Commanding Officer, U.S. Naval Radio Station, FPO New York 09516 is overall policy official with the Administrative Officer, U.S. Naval Radio Station, FPO New York 09516 as the subordinate holder.

Notification procedure:

Inquiries could be addressed to U.S. Naval Radio Station, FPO New York 09516, giving full name and social security number, and personal visitors must have valid military I.D. or, if no longer in the military, have other valid identification such as a driver's license. Visitors may come to the Administrative Office at the address given under SYSMANAGER.

Record access procedures:

The Agency's rules for access to records may be obtained from the system manager.

Contesting record procedures:

The Agency's rules for contesting contents and appealing initial determinations by the individual concerned may be obtained from the system manager.

Record source categories:

Applicable U.S. Serviceman.

Systems exempted from certain provisions of the act:

None.

N63395 11240.3E

System name:

File of Records of Acquisition, Transfer and Disposal of Privately Owned Vehicles

System location:

U.S. Naval Radio Station, FPO New York 09516

Categories of individuals covered by the system:

United States Navy personnel stationed at U.S. Naval Radio Station, FPO New York 09516 who own a concession vehicle in the United Kingdom.

Categories of records in the system:

Request for delivery of a motor vehicle without payment of duty, value added tax and car tax.

Authority for maintenance of the system:

5 USC 301 Departmental Regulations

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

For information on type of car, engine no., license no., year of car, make of car, base assigned, organization, soc. sec. no., and paygrade.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

File folders

Retrievability:

Name

Safeguards:

Locked safe in Admin Office with a 24 hour security watch.

Retention and disposal:

Records are maintaned as long as a person owns a concession vehicle in the United Kingdom. Records are burned as soon as vehicle is either shipped out of the U.K. or destroyed.

System manager(s) and address:

Commanding Officer, U.S. Naval Radio Station, FPO New York 09516 is overall policy official with the Administrative Officer, U.S. Naval Radio Station, FPO New York 09516 as the subordinate holder.

Notification procedure:

Inquiries should be addressed to U.S. Naval Radio Station, FPO New York 09516, giving full name and social security number. Visitors may come to the Administrative Office at the address given under SYSMANAGER and must have valid military I.D. or, if no longer in the military, have other valid identification such as a driver's license.

Record access procedures:

The Agency's rules for access to records may be obtained from the system manager.

Contesting record procedures:

The Agency's rules for contesting contents and appealing initial determinations by theindividual concernd may be obtained from th system manager.

Record source categories:

Applicable U.S. Serviceman

Systems exempted from certain provisions of the act:

None

N63425 SHELTER LIST

System name:

Military and Civilian Employee Dependents Hurricane Shelter Assignment List

System location:

Commanding Officer Naval Communication Station Key West Key West Florida 33040

Categories of individuals covered by the system:

Military personnel and civilian employees and their dependents who apply for assignment to naval communication station shelter

Categories of records in the system:

Record lists names, addresses, and phone numbers of military/civilian station personnel applying for shelter assignments for their families, together with names of dependent spouses, names and ages of dependent children, and whether or not requirement exists for station transportation to shelter.

Authority for maintenance of the system:

5 USC 301

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Used by Disaster Preparedness Officer in determining shelter logistics requirements and by Shelter Officer in mustering assigned dependents in shelter in case of hurricane.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

File folder

Retrievability:

Name

Safeguards:

File maintained in locked cabinet by Disaster Preparedness Officer.

Retention and disposal:

Maintained from May through April each year, disposed of by burning.

System manager(s) and address:

Disaster Preparedness Officer Naval Communication Station Key West Key West Florida 33040

Notification procedure:

Individual record entries are filled out by hand by station military/civilian sponsors desiring to register their families in command hurricane shelter. System contains no info other than entries provided by sponsors. Certified station sponsors may review/remove entry by phoning/visiting the Disaster Preparedness Officer, Naval Communications Station Key West.

Record access procedures:

The agency's rules for access to records may be obtained from the system manager.

Contesting record procedures:

The agency's rules for contesting contents and appealing initial determinations by the individual concerned may be obtained from the system manager.

Record source categories:

All entries to file are hand written forms filled in by military/civilian command sponsors requesting hurricane shelter for their families.

Systems exempted from certain provisions of the act:

None

N63427 AUTOIMPEXPREC

System name:

Record of Import and Export of Foreign Made Auto Vehicles into and out of Australia

System location:

U.S. Naval Communication Station FPO San Francisco 96680

Categories of individuals covered by the system:

Importers/exporters and purchasers of foreign made automobiles imported into Australia by U.S. personnel.

Categories of records in the system:

Copies of shipping and customs documents for automobiles imported into and exported from Australia.

Authority for maintenance of the system:

5 USC 301, Agreement between Australia and the United States of America concerning the status of United States forces in Australia and protocol to that agreement.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Supply Officer: to determine shipping and wharf handling requirements. Legal Officer: to monitor sale and/or export of foreign made vehicles imported into Australia by the U.S. personnel.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

File folder.

Retrievability:

Name.

Safeguards:

File cabinet, Entry by legal/personal property office personnel only.

Retention and disposal:

Duration of customs to duty bond. Destruction through burning.

System manager(s) and address:

Legal officer and personal propety supervisor.

Notification procedure:

Individual initates record and may request information. Legal Officer, Personal Property Supervisor, U.S. Naval Communication Station. Information requested must provide: full name, official title, purpose of inquiry. Offices to be visited: Legal Office and Personal Property Office, U.S. Naval Communication Station. Proof of identity: visual recognition or identification card.

Record access procedures:

The agency's rules for access to records may be obtained from the system manager.

Contesting record procedures:

The agency's rules for contesting contents and appealing initial determinations by the individual concerned may be obtained from the system manager.

Record source categories:

Information supplied by individual, copy of purchase documents.

Systems exempted from certain provisions of the act:

None.

N63427 COMWEALTHPASS

System name:

Commonwealth Pass Application Form

System location:

U.S. Naval Communciation Station FPO San Francisco 96680

Categories of individuals covered by the system:

All personnel requiring access to the Commonwealth property on which the Naval Communication Station is located.

Categories of records in the system:

Completed application forms for Commonwealth passes. Contains name, rank, organization, height, color of hair, color of eyes, date of birth and place of birth.

Authority for maintenance of the system:

5 USC 301 Arrangements for the use and occupation by the United States Navy of Commonwealth land and for associated matters.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Issuance of passes for entry to Naval Communication Station.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

File folders.

Retrievability:

Name.

Safeguards:

Locked cabinet - limited access.

Retention and disposal:

Duration of individual's stay in area. Destruction by burning.

System manager(s) and address:

Security Officer, U.S. Naval Communication Station.

Notification procedure:

Individual initiates record and may request information. Security Officer, U.S. Naval Communicaton Station, information requester must provide: full name, official title, purpose of inquiry. Office to be visited: Security Office, U.S. Naval Communication Station. Proof of identity: visual recognition or identification card.

Record access procedures:

The agency's rules for access to records may be obtained from the system manager.

Contesting record procedures:

The agency's rules for contesting contents and appealing initial determinations by the individual concerned may be obtained from the system manager.

Record source categories:

Information supplied by individual.

Systems exempted from certain provisions of the act:

None.

N63437 NEXSALESSLIP

System name:

Large purchases in Navy Exchange.

System location:

U.S. Naval Communication Station FPO San Francisco 96680

Categories of individuals covered by the system:

All authorized patrons of the Navy Exchange at this station.

Categories of records in the system:

Record copies of all receipts for articles valued at over ten U.S. dollars. lists purchaser, base pass number, noun name of article, value and intended use.

Authority for maintenance of the system:

5 USC 301, Technical Arrangement between United States Dept of the Navy and the Commonwealth of Australia Dept of Defence relating to commissaries at Northwest Cape in the State of Western Australia.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Legal Officer - control of disposal of articles purchased in station Navy Exchange. Security Officer - investigation into possible violation of govt to govt arrangements relating to commissaries in Australia. Criminal investigation in cases of wrongful appropriation and larceny.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

File folder.

Retrievability:

Name.

Safeguards:

Locked cabinet - limited access.

Retention and disposal:

For duration of member's tour at this station. Destruction through shredding and burning.

System manager(s) and address:

Security Officer, U.S. Naval Communication Station

Notification procedure:

Printed information on form - copy retained by individual. Security Officer, U.S. Naval Communication Station. Information requester must present: full name, official title and purpose of inquiry. Office to be visited: Security Office, U.S. Naval communication Station. Proof of idenity: visual recognition.

Record access procedures:

The agency's rules for access to records may be obtained from the system manager.

Contesting record procedures:

The agency's rules for contesting contents and appealing initial determinations by the individual concerned may be obtained from the system manager.

Record source categories:

Information supplied by purchaser and Navy Exchange.

Systems exempted from certain provisions of the act:

None.

N64168 NUC

System name:

Nuclear Program Interview and Screening

System location:

Naval Sea Systems Command (Code 08), Washington, D.C. 20362

Categories of individuals covered by the system:

Personnel interviewed or considered for assignment or retention in the Naval Nuclear Power Program

Categories of records in the system:

Interview appropriation folder, interview chronology, interview index card, Navy Enlisted Nuclear Program Technical Screening Sheets, Nuclear Propulsion Officer Candidate Records

Authority for maintenance of the system:

5 U.S.C. 301 Departmental Regulations

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Determine eligibility for Naval Nuclear Power Program, maintaining statistical and accounting records, and other administrative uses.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

File folders, loose leaf binders, and index card box

Retrievability:

Name, chronological, Navy rate (if applicable), Social Security Number, approximate date of screen

Safeguards:

Located in restricted area

Retention and disposal:

Indefinitely

System manager(s) and address:

Naval Sea Systems Command (Code 08), Washington, D.C. 20362

Notification procedure:

Contact System Manager; provide full name, Navy rate (if applicable), Social Security Number, Nuclear Power School Class or dates at attendance (if applicable) and proof thereof, dates of service or screening and proof thereof.

Record access procedures:

The agency's rules for access to records may be obtained from the System Manager

Contesting record procedures:

The agency's rules for contesting contents and appealing initial determinations by the individual concerned may be obtained from the System Manager.

Record source categories:

Individual; Bureau of Naval Personnel; U.S. Naval Academy; current and/or previous commands; Director, Division of Naval Reactors

Systems exempted from certain provisions of the act:

None

N64168 RADINJCLRDS

System name:

NAVSEA RADIATION INJURY CLAIM RECORDS

System location:

Naval Sea Systems Command Code 08 Washington, D.C. 20362

Categories of individuals covered by the system:

Individuals employed by the Navy and Navy contractors who have alleged radiation injury from radiation exposure associated with Naval Nuclear Propulsion plants.

Categories of records in the system:

Excerpts from personnel medical records, Navy field organization and Navy contractor work histories and Navy and Labor Department correspondence.

Authority for maintenance of the system:

5 USC 301, Departmental Regulations

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Technical evaluation of radiation injury compensation claims by NAVSEA RADIOLOGICAL CONTROL MANAGERS.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

File Folders

Retrievability:

Alphabetical by name

Safeguards:

Locked in safe and specific permission of custodian

Retention and disposal:

Indefinitely

System manager(s) and address:

Naval Sea Systems Command Code 08 Washington, D.C. 20362

Notification procedure:

Contact System Manager; Provide name, organization where employed at time of alleged injury and supporting evidence.

Record access procedures:

The agency's rules for access to records may be obtained from the System Manager.

Contesting record procedures:

The agency's rules for contesting contents and appealing initial determinations by the individual concerned may be obtained from the System Manager.

Record source categories:

Personnel medical records and Navy and contractor work histories.

Systems exempted from certain provisions of the act:

None

N64168 SEA TRIAL

System name:

Next of Kin Information for Sea Trial Riders

System location:

Naval Sea Systems Command Code 08 Washington, D.C. 20362

Categories of individuals covered by the system:

Individuals attending nuclear propulsion plant sea trials of Navy ships

Categories of records in the system:

Names and addresses of next of kin; name, Social Security Number and security clearance of individual

Authority for maintenance of the system:

5 USC 301, Departmental Regulations

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

To maintain information necessary for individuals to attend nuclear propulsion plant sea trials; Associate Director for Surface Ships and staff

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

3 x 5 index cards

Retrievability:

Alphabeticly by name

Safeguards:

Locked in 3-way combination safe in a restricted area

Retention and disposal:

Indefinitely

System manager(s) and address:

Naval Sea Systems Command Code 08 Washington, D.C. 20362

Notification procedure:

Contact System Manager; Provide name and social security number and identify sea trials attended

Record access procedures:

The agency's rules for access to records may be obtained from the System Manager.

Contesting record procedures:

The agency's rules for contesting contents and appealing initial determinations by the individual concerned may be obtained from the System Manager.

Record source categories:

From the individual

Systems exempted from certain provisions of the act:

None

N64223 NMRI

System name:

Kidney transplant histocompatibility study

System location:

Division of Biometry, Naval Medical Research Institute, National Naval Medical Center 20014

Categories of individuals covered by the system:

All individuals receiving kidney transplants between January 1, 1974 and December 31, 1976 from participating hospitals, except for certain hospitals with different dates of participation. A list of hospitals participating in the study may be obtained from the system manager.

Categories of records in the system:

Records of patients, past medical history, transplant operation and follow-up. Limited social information as required to evaluate rehabilitation.

Authority for maintenance of the system:

5 USC 301

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Summary reports and data not identifying patients by name are made available to National Institute of Arthritis and Infectious Diseases, the funding agency, and to participating hospitals.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Records are kept in file folders and on magnetic tape.

Retrievability:

Routine retrieval is by patient code number or hospital codes.

Safeguards:

Manual files are kept in locked spaces. Routinely used computer files contain no patient names. Access through the computer to names is limited to persons possessing appropriate access code words.

Retention and disposal:

Records will be maintained for statistical analysis so long as NIAID, the funding agency, desires.

System manager(s) and address:

Head, Division of Biometry

Notification procedure:

Patients may establish their inclusion in this study by asking the physician who performed the transplant.

Record access procedures:

The agency's rules for access to records may be obtained from the system manager.

Contesting record procedures:

The agency's rules for contesting contents, and appealing initial determination by the individual concerned may be obtained from the system manager.

Record source categories:

Hospitals performing transplants and patient's physician.

Systems exempted from certain provisions of the act:

None

N64468-EARB

System name:

Employee Grievances, Complaints, and Adverse Action Appeals.

System location:

Chairman Department of the Navy Employee Appeals Review Board Washington, D. C. 20360

Categories of individuals covered by the system:

Former and present civilian employees of the Department of the Navy, and applicants for employment with the Department of the Navy.

Categories of records in the system:

The case files contain background material on the act or situation complained of; the results of any investigation including affidavits and depositions; records of personnel actions involved; Official Personnel Folders; transcripts of hearings held; Examiners' reports of findings and recommended actions; advisory memoranda from OCMM, NAVCOMPT, CNO, BUPERS, CSC, DOD, SYSCOMS; SECNAV decisions; reports of actions taken by local activities; comments by EARB or local activities on appeals made to CSC; CSC decisions, Court decisions, Comptroller General decisions. Brief summaries of case files are maintained on index cards

Authority for maintenance of the system:

5 U.S.C. Sections 1301, 3301, 3302, 7151-7154, 7301, and 7701

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

This information is used by the EARB to adjudicate cases. SYSCOMS, OCMM, CAPSO-N and ROCMM-S are internal users for

informational/implementational purposes. CSC is the other Government agency using this information. Pursuant to s. 552a(b)(9) of Public Law 93-579, committees or subcommittees of either House of Congress are furnished the above information upon request. Individual members acting on behalf of the individual involved are supplied with copies of decisions and other appropriate background material. Grievants and appellants are furnished SECNAV decisions, with copies to their representatives. EEO complainants are furnished SECNAV decisions, with copies of the hearing transcripts and Examiners' reports; complainants' representatives are provided copies of SECNAV decisions. Activities involved are provided with copies of SECNAV decisions on grievances and appeals. Activities involved in EEO complaints are provided copies of SECNAV decisions, hearing transcripts, and Examiners' reports.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

File folders and index cards.

Retrievability:

Name

Safeguards:

Official Personnel Folders and classified material kept in locked safe. Other materials are kept in file cabinets in a secured building.

Retention and disposal:

Case files maintained for one year and sent to the GSA Federal Records Center and maintained for four years. Official Personnel Folders returned to activities after disposition of cases. CSC decisions and index cards are retained indefinitely.

System manager(s) and address:

Chairman, Department of the Navy Employee Appeals Review Board

Notification procedure:

Department of the Navy Employee Appeals Review Board, Washington, D. C. 20360. Must provide full name, employing office, and appropriate indentification card.

Record access procedures:

The Agency's rules for access to records may be obtained from System Manager.

Contesting record procedures:

The Agency's rules for contesting contents and appealing initial determinations by the individual concerned may be obtained from the System Manager.

Record source categories:

Employing activities, Civil Service Commission, OCMM.

Systems exempted from certain provisions of the act:

NONE

N64980 CONCESSION VEH

System name:

Duty Free Vehicle Log

System location:

Commanding Officer, U.S. Naval Aviation Weapons Facility, FPO New York 09515

Customs Officer, HMS Customs and Excise, Campbeltown, Argyll, Scotland

Categories of individuals covered by the system:

Individuals stationed aboard NAVAVNWPNSFAC Machrihanish who own vehicles purchased or imported into the United Kingdom duty free.

Categories of records in the system:

Single line entry on loose leafe pages listing: Name and rank/rate of individual; make, year and registration of vehicle; status (bought new in UK or imported) of vehicle; and date of purchase or importing.

Authority for maintenance of the system:

5USC301

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

To assist local customs officials to protect against the illegal transfer of duty-free vehicles to UK citizens.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

File folder

Retrievability:

Name

Safeguards:

The records are maintained in an office that is locked when not manned.

Retention and disposal:

Pen and ink changes are made to records until complete page must be retyped. Old pages are then destroyed by shredding or burning. Retention period dependent upon number of changes occuring. Method of disposal by local customs official unknown.

System manager(s) and address:

Commanding Officer, U.S. Naval Aviation Weapons Facility, FPO New York 09515

Notification procedure:

Individuals wishing to learn if records concerning them are still retained may contact the System Manager.

Record access procedures:

The agency's rules for access to records may be obtained from the System Manager.

Contesting record procedures:

The agency's rules for contesting contents and appealing initial determinations by the individual concerned may be obtained from the System Manager.

Record source categories:

Information is obtained from documents provided by the individual.

Systems exempted from certain provisions of the act:

None.

N64980GAS RATION FILE

System name:

Gasoline Ration System

System location:

Commanding Officer, U.S. Naval Aviation Weapons Facility, FPO New York 09515

Categories of individuals covered by the system:

All personnel stationed aboard NAVAVNWPNSFAC Machrihanish who own private vehicles and wish to purchase Navy Exchange Gasoline.

Categories of records in the system:

Record on each individual contains information on: vehicle description; dates of vehicle insurance, inspection and tax; United Kingdom address of individual and amount of gasoline allowed.

Authority for maintenance of the system:

5USC301

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Information is used by Transportation Officer to allocate ration coupons to authorized personnel.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Index cards in holder.

Retrievability:

Name

Safeguards:

Locked in combination safe in an office which is locked when unmanned. Only Transportation Officer knows combination to safe.

Retention and disposal:

Records are destroyed by shredding or burning approximately one year after transfer of individual.

System manager(s) and address:

Commanding Officer, U.S. Naval Aviation Weapons Facility, FPO New York 09515

Notification procedure:

Individuals wishing to ascertain if records concerning them are still retained may contact the System Manager.

Record access procedures:

The agency's rules for access to records may be obtained from the System Manager.

Contesting record procedures:

The agency's rules for contesting contents and appealing initial determinations by the individual concerned may be obtained from the System Manager.

Record source categories:

Information concerning vehicles, insurance, inspection and tax is copied from the appropriate document as provided by the individual. Other information is received from the individual directly.

Systems exempted from certain provisions of the act:

None.

N64980RATION PRMT LOG

System name:

Application for U.S. Navy Ration Permit

System location:

Commanding Officer, U.S. Naval Aviation Weapons Facility, FPO New York 09515

Categories of individuals covered by the system:

All personnel stationed at NAVAVNWPNSFAC Machrihanish desiring to utilize U.S. Navy Exchanges in the United Kingdom.

Categories of records in the system:

Record includes: Name, rank/rate, SSN, date of birth (if under 18), and marital status of serviceman; location, name, relationship, date of birth (if under 18) and ID card number of dependents.

Authority for maintenance of the system:

5USC301

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Used to prepare ration cards used in U.S. Military Exchanges in the U.K. and to maintain a record in case of loss of those cards.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Index cards in file box.

Retrievability:

Name

Safeguards:

Maintained in an office that is locked when unmanned.

Retention and disposal:

Cards are destroyed by shredding or burning upon transfer of serviceman.

System manager(s) and address:

Commanding Officer, U.S. Naval Aviation Weapons Facility, FPO New York 09515

Notification procedure:

Records are held only on personnel currently stationed at NAVAVNWPNSFAC Machrihanish who can enquire at the Administrative Office concerning the records.

Record access procedures:

The agency's rules for access to records may be obtained from the System Manager.

Contesting record procedures:

The agency's rules for contesting contents and appealing initial determinations by the individual concerned may be obtained from the System Manager.

Record source categories:

The information is provided by the serviceman.

Systems exempted from certain provisions of the act:

None

N65196 DODCI.01

System name:

DODCI Student Record System

System location:

Department of Defense Computer Institute, Washington Navy Yard, Washington, D.C. 20374.

Categories of individuals covered by the system:

All students who have completed a course of instruction presented by the Department of Defense Computer Institute: primarily DOD military and civilian personnel as regular students; personnel from other federal, state and local government agencies who have attended courses on a space available basis; military and civilian personnel from foreign governments who requested and were granted authority to attend courses; and personnel from private industry who are under direct contract to a DOD activity who sponsor their attendance.

Categories of records in the system:

Alphabetized card file of students who have attended DODCI courses. Record consists of name, military rank or rate, civilian grade, branch of service, DOD agency or activity and title of course attended. Also associated file of consolidated listing of students for each course offering arranged by DOD agency or activity and name.

Authority for maintenance of the system:

5 USC 301

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Records maintained by DODCI Registrar to respond to individuals requesting official verification of attendance to a specific course or response to students agency or activity requesting official record of training completed. Used to compile statistical data of student throughput, e.g., attendance by course, attendance by branch of service, composition of students by rank/rate/grade, branch of service, agency or activity. Statistical data is not compiled by name.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Alphabetic card file and file folders in file cabinet.

Retrievability:

Name and Course Title.

Safeguards:

Maintained in Administrative Office which is locked after normal working hours, accessible only to authorized office staff and Director or delegate on demand.

Retention and disposal:

Individual cards by student name and consolidated listing of students are retained indefinitely.

System manager(s) and address:

Registrar, DOD Computer Institute, Building 175, Washington Navy Yard, Washington, D.C. 20374.

Notification procedure:

By individual request upon presentation of letter or identification. Must provide course title and year of attendance.

Record access procedures:

The agency's rules for access to records may be obtained from the System Manager.

Contesting record procedures:

The agency's rules for contesting contents and appealing initial determinations by the individual concerned may be obtained from the System Manager.

Record source categories:

Enrollment and Registration Request for DOD Management Education and Training Program Courses (DD form 1556), and Course Listing of Students reviewed by Course Manager and Individual Students.

Systems exempted from certain provisions of the act:

None.

N65196 DODCI.02

System name:

DODCI Student/Faculty/Senior Staff Biography System

System location:

Department of Defense Computer Institute, Washington Navy Yard, Washington, D.C. 20374.

Categories of individuals covered by the system:

All faculty members, senior staff members, and guest lecturers currently instructing or managing at the DODCI. All students who are attending or who have completed a course of instructions presented by the Department of Defense Computer Institute: primarily DOD military and civilian personnel as regular students; personnel from other federal, state and local government agencies who have attended courses on a space available basis; military and civilian personnel from foreign governments who requested and were granted authority to attend courses; and personnel from private industry who are under direct contract to a DOD activity who sponsor their attendance.

Categories of records in the system:

Biographic summary forms individually submitted upon request by each DODCI faculty member, senior staff member, guest lecturer, or

student. Students record consists of name, rank or rate, civilian grade, organization and division, office phone number, current and previous job titles and positions, number of months with present job title, major duties of present job, formal education completed, objectives for attending DODCI course, computer-related and other technical training and experience, information on usage of computers in present position, influence and authority student has over design of computer-based systems including security and privacy aspects, extent involved in planning and design of teleprocessing systems. Faculty/senior staff record consists of name, rank or rate, current and previous job titles and positions, former major duties, formal education completed, computer-related and other technical training and experience.

Authority for maintenance of the system:

5 USC 301.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Information contained in the student biographical summaries is restricted to internal use within DODCI. Used by Course Managers and functional Department Head to evaluate education level, computer related work experience, and general computer background of DODCI students. Establishes student qualifications to attend a requested course and if course objectives have satisfied personal objectives of students for attending course. Statistical summarization of information contained therein provides basis for modification and revision to course content. Also serves as vehicle to place student into appropriate laboratory and seminar group in courses requiring such a breakout.

Information on faculty/senior staff members contained in the biographical summaries is provided to students as an attachment to their student notebooks. Records are used to identify faculty and senior staff members, areas of data processing and information management expertise for consultation purposes and as an expertise preamble to the next scheduled lecture.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

File folders in file cabinet.

Retrievability:

By name for faculty/senior staff members. Course title and name for students.

Safeguards:

Maintained in scheduling office (for students) and in the Reproduction Shop (for faculty/ members) which is locked after normal working hours, access controlled by systems manager and accessable only to authorized faculty members, Director of Administration, and Director or delegate on demand.

Retention and disposal:

All completed individual student biographical summaries attending a specific course are retained in a file folder marked by Course Title and Course Date. Individual student biographical summaries are retained by course for two fiscal years preceeding the fiscal year in progress. All individual faculty and senior staff biographical summaries are retained in a master file folder until no longer providing services to DODCI. Master file is reviewed periodically to maintain currency. Students receiving a course notebook can retain the included biographical records as well as the notebook.

System manager(s) and address:

Scheduling Officer, DOD Computer Institute, Building 175, Washington Navy Yard, Washington, D.C. 20374.

Notification procedure:

Students by individual request upon presentation of letter of identification. Must provide course title and year of attendance.

Record access procedures:

The agency's rules for access to records may be obtained from the System Manager.

Contesting record procedures:

The agency's rules for contesting contents and appealing initial determinations by the individual concerned may be obtained from the System Manager.

Record source categories:

Student Biography Forms are of DODCI origin and completed by each individual student. Forms are completed either the first day of the course or, in the case of certain specific courses, are mailed to the prospective student requesting return prior to commencement of the course.

Biographies are authorized by each faculty and senior staff member soon after arrival at DODCI. Guest lecturers are requested to voluntarily submit biographies for use in course notebooks. content is never changed, but in some cases selectively reduced in length so as not to exceed one page. Format and content are generated solely by DODCI member and are subjected only to editorial review.

Systems exempted from certain provisions of the act:

None.

N65196 DODCI.03

System name:

DODCI Course Evaluation System

System location:

Department of Defense Computer Institute, Washington Navy Yard, Washington, D.C. 20374.

Categories of individuals covered by the system:

All students who have completed a course of instruction presented by the Department of Defense Computer Institute: primarily DOD military and civilian personnel as regular students; personnel from other federal, state and local government agencies who have attended courses on a space available basis; military and civilian personnel from foreign governments who requested and were granted authority to attend courses; and personnel from private industry who are under direct contract to a DOD activity who sponsor their attendance.

Categories of records in the system:

Individual student evaluation of entire course and random sampling of specific lecture presentations. Includes objectives for attending course; statement concerning realization of personal objectives, numerical or qualitative rating of overall course, lab sessions and/or specific lectures; list of strengths and weaknesses of course; list of lecture subjects of particular benefit or of little use to student; list of lecture subjects which should be expanded or reduced in coverage; and list of topics not covered in course but should be included. Comments concerning course content, sequence, lecture presentation, teaching techniques, audio visual aids, physical facilities and administrative support are solicited and recorded. Categories are posed as questions with ample space to encourage written response of student opinion in a structured but non-restrictive format. These Course Evaluation Forms also contain hard core factual information, i.e., course title, course dates, student name, rank/rate/grade, branch of service, duty station or agency, and present job title.

Authority for maintenance of the system:

5 USC 301.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Use of the student evaluation forms and the information contained therein is restricted to internal use within DODCI. Used to evaluate course, lecture, teaching techniques and individual instructor effectiveness. Provides basis for modification and revision to course content and sequence and lecture content. Provides input to long range plan for course update, additions and revisions. Copy is provided to unit education offices upon request. Student evaluations of all attendees to a particular course are reviewed as a composite group by DODCI faculty members to determine problem areas, trends, and provides a continuous evaluation of course effectiveness.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

File folders in file cabinet.

Retrievability:

Course Title and Student Name.

Safeguards:

Maintained in Scheduling Office which is locked after normal working hours, access controlled by Systems Manager and accessible only to authorized faculty members. Director of Administration, and Director or delegate on demand.

Retention and disposal:

All completed individual evaluations of students attending a specific course are retained in a file folder marked by Course Title and Course Date. Individual student evaluation forms are retained by course for two fiscal years preceeding the fiscal year in progress.

System manager(s) and address:

Scheduling Officer, DOD Computer Institute, Building 175, Washington Navy Yard, Washington, D.C. 20374.

Notification procedure:

By individual request upon presentation of letter or identification. Must provide course title and year of attendance.

Record access procedures:

The agency's rules for access to records may be obtained from the System Manager.

Contesting record procedures:

The agency's rules for contesting contents and appealing initial determinations by the individual concerned may be obtained from the System Manager.

Record source categories:

Student Course Evaluation Forms are of DODCI origin and distributed in class and completed by each individual student.

Systems exempted from certain provisions of the act:

None.

N65196 DODCL04

System name:

DODCI Lecture-Instructor Inventory System.

System location:

Department of Defense Computer Institute, Building 175, Washington Navy Yard, Washington, D.C. 20374.

Categories of individuals covered by the system:

Current DODCI instructors.

Categories of records in the system:

Two disk files comprise the system of records. First master file contains instructor's name, functional group assignment code, projected date of departure; list of lectures instructor gives. Second master file contains lecture I.D., title, lecture primary, instructors giving the lecture.

Authority for maintenance of the system:

5 U.S.C. 301

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Provides the ability for functional managers to generate a list of instructors along with the associated lectures in which they are proficient or to specify a lecture title and determine which instructors are capable of presentation. This provides assistance in assigning instructors to course schedules, teams for on-site course presentations, determining lectures which are critical in flexibility of assignment, planning instructor assignments in the order of lecture priority.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Maintained on magnetic disks in a computer data base.

Retrievability:

Instructor's last name, lecture ID number, or functional group code.

Safeguards:

This system of records is maintained on magnetic disks in the computer operations center which is kept locked. Only the manager and assistant manager of the Computer Support office have access to the center during normal working hours and the security watch has access after hours. The mode of access to the computer-based system is via remote terminal and special passwords are required. Appropriate data base language commands (available only to authorized DODCI staff members) must be invoked to gain access to information in the system. Portions of the system can only be accessed by functional managers via controlled key work commands. An accounting log is maintained of all accesses to the system which contains identification of the user, log-on and off, station number, and date/time of last access.

Retention and disposal:

The system data base is retained indefinitely. Revisions are in continuous process, e.g., instructors' names being added upon arrival and deleted on departure, lecture titles added or deleted as they are developed or discontinued, lecture presentation capability expanded or deleted as appropriate.

System manager(s) and address:

Manager, Computer Support Office, DOD Computer Institute, Building 175, Washington, D.C. 20374.

Notification procedure:

DODCI faculty members are informed of existence and purpose of system. Individual instructors can request printout of information in system which pertains to them.

Record access procedures:

The Institutes rules for access to records may be obtained from the Systems Manager.

Contesting record procedures:

The Institute's rules for contesting contents and appealing initial determinations by the individual concerned can be obtained from the Systems Manager.

Record source categories:

DODCI functional managers maintain system and periodically revise data base by entering new data and deleting discontinued information. Additionally, the Systems Manager can enter information affecting printout format and contents.

Systems exempted from certain provisions of the act:

None.

N63372SA14102

System name:

Project Analysis and Control System (PAC)

System location:

Naval Material Command Support Activity, Data Processing Group, Washington, D. C. 20360

Categories of individuals covered by the system:

Civilian employees in the activity who work in the Computer Systems Analyst, Computer Specialist, Computer Programmer, and Computer Technician career Fields.

Categories of records in the system:

System comprises information required to provide status of NMCSA-DPG development projects and analysis to determine capability to meet target dates. Provides inventory of NMCSA, DPG Analysts, Programmers and Branch and Division workload status.

Authority for maintenance of the system:

Title 5, U.S.C., section 301

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Automatic Data Processing Development Workload Resources Planning and Control.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Automated records are stored on magnetic tape and magnetic discs. Input transcripts are filed for 30 days and destroyed.

Retrievability:

Automated records are entered, retrived and analyzed by Social Security Number. Manual Records are filed for 30 days and then destroyed.

Safeguards:

The computer facility is a secure area and only authorized personnel are allowed entry. Input records are filed in same area.

Retention and disposal:

This is a management system used for planning and controlling development resources. History file is maintained as long as desired. Active file is purged and updated weekly.

System manager(s) and address:

Data Processing Group Deputy Director for Systems, Naval Material Command Support Activity, Department of the Navy, Washington, D.C. 20360

Notification procedure:

Records in this system are all employees of the Data Processing Group Director. These employees are aware of the records in this system.

Record access procedures:

The agency's rules for access to records may be obtained from the System Manager.

Contesting record procedures:

The agency's rules for contesting contents and appealing initial determinations by the individual concerned may be obtained from the System Manager.

Record source categories:

Resources Control Branch, individual input.

Systems exempted from certain provisions of the act:

None

N65372SA53165

System name:

VGA Personnel and Manpower Information System (PERMIS).

System location:

Central Computer Facility - Naval Material Command Support Activity, Department of the Navy, Washington, D.C. 20360; Program Director - Civilian Personnel Group, Code SA-53E; ADP - Data Processing Group, Code SA-14.

Input-Ooutput Terminals - Naval Material Command, Washington, D.C. 20360; Naval Material Command Support Activity, Washington, D.C. 20360; Naval Air Systems Command, Washington, D.C. 20360; Naval Sea Systems Command, Washington, D.C. 20360; Naval Facilities Engineering Command, Arlington, Va. 22332; Naval Supply Systems Command, Washington, D.C. 20376; Naval Electronics Systems Command, Washington, D.C. 20360; Naval Ship Engineering Center, Hyattsville, MD 20782.

Categories of individuals covered by the system:

All civilian employees of the activity or activities provided personnel service by the Civilian Personnel Office of a Naval Activity with a PERMIS terminal;

All military personnel on active duty stationed at or assigned to an activity provided personnel service by the Civilian Personnel Office of a Naval Activity with a PERMIS terminal.

Categories of records in the system:

Individual military assignment-related automated records containing that data which is also used to produce the Officer Distribution Control Report (ODCR);

Individual civilian employee automated records, including personal job-related, military status, education, training, and related data; Computer outputs displaying information from PERMIS automated records; Microfiche of computer outputs displaying information from PERMIS automated records.

Punched cards containing PERMIS data; Optical scanning sheets containing leave data.

Authority for maintenance of the system:

Title 5, U.S.C., section 302, 'Delegation of authority to subordinate officials of head of agency for employment, direction, and general administration of personnel';

Title 5, U.S.C., section 301, (records and reports-custody, use and preservation);

Executive Order 9397, 'Numbering System for Federal Accounts Relating to Individual Persons';

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

For the purposes of increased effectiveness and efficiency by automating certain processes within the operating civilian personnel offices and providing management information: Officials and employees of activities serviced by the Civilian Personnel Office in the performance of their official duties related to management and administration of civilian personnel programs; the providing of staff support in the area of management, manpower, budget, administrative services, military manpower, Equal Employment Opportunity, and any other staff and line operations requiring the management of civilian personnel; the design, development, maintenance, and operation of the (manual and) automated systems of records; and administration of grievances, appeals, and litigation involving the disclosure of records of the PERMIS system. Officials and employees of other Naval activities in their request for pre-employment data, or in the processes involved in the transfer of an employee from a PERMIS-covered activity to one of those other activities; their performance of studies and tasks relative to leave held or taken by civilian employees; and their usage of data to manage Navy civilian manpower programs, and to provide civilian manpower reports and statistical data to the United States Civil Service Commission, Office of Management and Budget, etc.

Officials and employees of any component of the Department of Defense-Performance of their official duties.

Representatives of the Civil Service Commission - Matters relating to the inspection, survey, audit or evaluation of Navy civilian personnel management programs, or personnel actions, or such other matters under the jurisdiction of the Commission. The Comptroller General or any of his authorized representatives - Performance of duties of the General Accounting Office relating to the Navy's civilian manpower management programs.

The Attorney General of the United States or his authorized representatives - Litigation, law enforcement, or other matters under the direct jurisdiction of the Department of Justice, or carried out as the legal representative of the Executive Branch agencies. Officials and employees of other departments and agencies of the Executive branch of government - upon request, in the performance of their official duties.

Hearing Examiner or Arbitrator (duly appointed employee of another federal agency) - conduct a hearing in connection with an employee's appeal involving disclosure of records of the PERMIS system.

Arbitrator given a contract pursuant to a negotiated labor agreement - hear an employee's grievance involving disclosure of the records of the PERMIS system.

Senate or House of Representatives of the U.S. or any committee or sub-committee thereof, any joint committee of congress or subcommittee of joint committee - matters within their jurisdiction requiring disclosure of files or records of the PERMIS system.

Law enforcement or investigatory authorities - investigation and possible criminal prosecution, civil court action or regulatory order.

Marine Corps - produce microfiche from documents.

Department of the Army - optical scanning of documents and recording of data on magnetic tape.

DESCOMP INC (a contractor) and its employees - punch cards and key-to-disc recording of data from documents.

Chesapeake and Potomac Telephone Co (a contractor) and its employees - Telecommunication transmission of data between the central computer facility and the remote terminals.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Computer magnetic discs; computer magnetic tapes; computer magnetic cards; punched cards; computer paper printouts; microfiche; optical scanning sheets.

Retrievability:

Automated records are accessed and retrieved by social security account number, position number, military billet number, or by a combination of characteristics such as occupation code, grade, year of birth, and level of education.

Computerized indices are required to retrieve individual records from the automated system;

Microfiche are filed alphabetically by last name of employee; computer paper printouts are filed at random. Information can be retrieved from them by name, social security account number, or organization code.

Punched cards and optical scanning sheets are accessible by social security account number and name.

Safeguards:

The computer facility is located in a restricted area accessible only to authorized persons that are properly screened, cleared and trained.

Computer fail-safe systems software is employed to insure that only authorized personnel are able to obtain data via the terminals.

Computer printouts, microfiche, punched cards, and optical scanning sheets are available only to authorized personnel having a need to know.

Retention and disposal:

The records on punched paper cards, magnetic cards, and magnetic tapes are transferred to the magnetic discs, where they are maintained permanently;

The microfiche will be maintained as long as they provide useful information and will then be destroyed by mechanical or related means;

The computer paper printout and paper card output are maintained for relatively short periods of time, generally ranging from one day to three months, and are then recycled.

System manager(s) and address:

Commanding Officer, Naval Material Command Support Activity. Department of the Navy, Washington, D.C. 20360; and Civilian Personnel Offices.

Notification procedure:

Request from individuals should be addressed to the above system manager (SYSMANAGER); written request for information should contain the full name, address, and signature of the individual; the individual requester may visit the civilian personnel office of one of the activities listed under LOCATION. The street address for the Naval Material Command Support Activity is 4040 N. Fairfax Drive, Arlington, Virginia (note that this is an address for personal visits only; it is not acceptable as a mailing address); for personal visits, the individual must present as proof of identity his or her Department of Defense or Navy building pass or identification badge, or driver's license or other type of identification bearing a picture or signature, or other data sufficient to insure that the individual is the subject of the inquiry.

Record access procedures:

The agency's rules for access to records may be obtained from the system manager.

Contesting record procedures:

The agency's rules for contesting contents and appealing initial determinations by the individual concerned may be obtained from the system manager.

Record source categories:

Navy Civilian Personnel Offices; automated system interface (Navy military personnel); Navy manpower offices, Navy military personnel offices; supervisors, schools, and colleges.

Systems exempted from certain provisions of the act:

NONE

N66001 TECHAUTHIND

System name:

Technical Paper/Author Cross Index System

System location:

Commander, Naval Undersea Center, San Diego, California 92132

Categories of individuals covered by the system:

NUC personnel, past and present, who have authored unclassified technical papers.

Categories of records in the system:

Author's name, title of paper and administrative control number for the paper.

Authority for maintenance of the system:

5 USC 301, Departmental Regulations

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

To quickly locate a technical paper for a requestor if author is known and title is unknown. Requestors include Center technical and management personnel, and Center's technical writing/editing group.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Index card file

Retrievability:

Name

Safeguards:

Considered as normally accessible office record.

Retention and disposal:

Permanent

System manager(s) and address:

Public Affairs Officer, Naval Undersea Center, San Diego, California 92132

Notification procedure:

Individuals may visit or call office or system manager, identify themselves by giving their name, and obtain information concerning their records.

Record access procedures:

The agency's rules for access to records may be obtained from the System Manager.

Contesting record procedures:

The agency's rules for contesting contents and appealing initial determinations by the individual concerned may be obtained from the System Manager.

Record source categories:

Information obtained from technical papers when submitted to this office for public release.

Systems exempted from certain provisions of the act:

None

N66123 PRIVATE RELIEF

System name:

Private Relief Legislation

System location:

Office of Legislative Affairs
Department of the Navy
Pentagon, Room 5C831
Washington, D.C. 20350

Categories of individuals covered by the system:

Individuals concerning whom private legislation is introduced in the U.S. Congress.

Categories of records in the system:

Letters to Congressional Committees, expressing the views of the department concerning the legislation and records necessary to prepare the letters.

Authority for maintenance of the system:

5 U.S.C. 301, Departmental Regulations

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

File maintained to prepare for Congress the position of the department concerning the legislation. Routine disclosures are made to Congress; interested Navy, Marine Corps and DOD Components; OMB; and other interested executive agencies.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

File folders

Retrievability:

Name

Safeguards:

Access generally limited to personnel of the Office of Legislative Affairs. Stored in a locked office.

Retention and disposal:

Retained for at least 6 years or as long as the legislation is active if more than 6 years and then moved to Federal Records Center, GSA Accession Section, Washington, D.C. 20409

System manager(s) and address:

Chief of Legislative Affairs
Department of the Navy
Pentagon, Room 5C831
Washington, D.C. 20350

Notification procedure:

System Manager; Full name, term and session of Congress when bill introduced, bill number, sponsor of bill (if available); Office of Legislative Affairs, Department of the Navy, Pentagon, Washington, D.C. Driver's license or similar substitute.

Record access procedures:

The agency's rules for access to records may be obtained from the system manager.

Contesting record procedures:

The agency's rules for contesting contents and appealing initial determinations by the individual concerned may be obtained from the system manager.

Record source categories:

Member of Congress; individual about whom file is maintained and individuals from whom he solicits information; other Navy, Marine Corps, and DOD components; OMB; and other interested executive agencies.

Systems exempted from certain provisions of the act:

None

N66715.1RLPS

System name:

NAME/LEAD Processing System

System location:

Primary System, Navy Recruiting Command, 4015 Wilson Boulevard, Arlington, Virginia 22203

Categories of individuals covered by the system:

Individuals who have responded to Navy advertising, requested their names not be used in future Navy advertising, students throughout the country who may be qualified for enlistment, first-term enlistees on active duty in the U. S. Navy, veterans, enlisted discharged personnel.

Categories of records in the system:

Automated and non-automated form containing personal records and correspondence on both education, service, and Navy program information on potential Navy applicants.

Authority for maintenance of the system:

10 USC 5531; Section 133, 503, 504, 506, 510; 5 USC Sections 301, 302; 44 USC Sections 3101, 3702

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Navy recruiting officials and employees in the performance of their official duties in managing the recruitment of men and women for officer and enlisted programs in the regular and reserve components of the Navy.

The Comptroller General or any of his authorized representatives, upon request, in the course of performance of the duties of the general accounting office.

Officials and employees of the Department of Defense in the performance of their official duties.

Civilian contractors and their employees who manage automated and

Officials and employees of the Department of Transportation in the performance of their official duties. manual categories of records in accordance with an approved, official contract with the U. S. Government.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Automated records are maintained on disks, magnetic tape or on punched cards in a limited access area.

Computer print outs are stored in locked filing cabinets or file folders

Retrievability:

Information can be accessed by name, program and social security account number.

Safeguards:

Lists and files are handled with maximum security during processing and storage, and are accessible to routine users only and then only through a selected group of individuals charged with security of the lists. Files are stored in a limited access area and coded so that only several persons have both knowledge of the code and access to the files.

Retention and disposal:

A record is maintained of all outgoing automated responses, and disposed of in accordance with Departmental Regulations.

Compiled lists and commercial purchased lists are maintained for certain period of time depending on the usefulness and currentness of the information, and disposed of in accordance with Departmental Regulations.

System manager(s) and address:

Director, Recruiting Advertising Department, Navy Recruiting Command, 4015 Wilson Boulevard, Arlington, Virginia 22203

Notification procedure:

Requests should be addressed to: Director, Recruiting Advertising Department, Navy Recruiting Command, 4015 Wildon Boulevard, Arlington, Virginia 22203.

Requester is required to provide a full name, address, and signature.

Record access procedures:

The agency's rules for access to records may be obtained from the SYSMANAGER

Contesting record procedures:

The agency's rules for contesting contents and appealing initial determinations by the individual concerned may be obtained from the SYSMANAGER

Record source categories:

Parents, influentials, friends and associates of the subject of the records and officials and employees of the Department of the Navy, Department of Defense, and the Veterans Administration in the performance of their official duties and as specified by current Instructions and regulations promulgated by competent authority.

Systems exempted from certain provisions of the act:

None

N66715.20SAS

System name:

Officer Selection and Appointment System

System location:

Primary System - Navy Recruiting Command, 4015 Wilson Boulevard, Arlington, Virginia 22203 Decentralized segments - Headquarters, Navy Recruiting Activities and subsidiary offices; Armed Forces Entrance and examining Centers; Bureau of Naval Personnel; Bureau of Medicine and Surgery; National Personnel Records Centers; Naval Reserve Units; Naval Education and Training Activities; NROTC Units; Naval Sea Systems Command Headquarters; Naval Intelligence Command and subsidiary activities; Department of Defense Medical Examination Review Board.

Categories of individuals covered by the system:

Individuals who have made application for direct appointment to commissioned grade in the Regular Navy or Naval Reserve, applied for officer candidate program leading to commissioned status in the U.S. Naval Reserve, applied for a Navy/Marine Corps sponsored NROTC scholarship program or preparatory school program, applied for interservice transfer to Regular Navy or Naval Reserve.

Categories of records in the system:

Records and correspondence in both automated and non-automated form concerning any applicant's personal history, education, professional qualifications, physical qualifications, mental aptitude, character and interview appraisals, National Agency Checks and certifications of background investigations.

Authority for maintenance of the system:

Title 10, United States Code, Sections governing authority to appoint officers. 10 USC Sections 591, 600, 716, 2107, 2122, 5579, 5600. Merchant Marine Act of 1939 (as amended); Executive Orders 9397, 10450, 11652; 5 USC 301 Departmental Regulations.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Officials and employees of the Department of the Navy in the performance of their duties in managing and contributing to the recruitment of qualified men and women for officer programs in the regular and reserve components of the Navy.

Officials and employees of the Department of Defense in the performance of their official duties.

Officials and employees of the Department of Transportation in the performance of their official duties.

The Comptroller General or any of his authorized representatives, upon request, in the course of the performance of duties of the General Accounting Office relating to the management of quality military recruitment.

The Attorney General of the United States or his authorized representatives in connection with litigation, fraudulent enlistment or other matters under the jurisdiction of such agencies. Officials and employees of other Departments and agencies of the Executive Branch of government, upon request, in the performance of their official duties related to the management of quality military recruitment.

Officials and employees of the Veterans Administration and Selective Service Administration in the performance of their official duties related to enlistment and reenlistment eligibility and related benefits.

The Senate or the House of Representatives of the United States or any committee or subcommittee on matters within their jurisdiction requiring disclosure of files or records of personnel covered by this system.

Such civilian contractors and their employees as are or may be operating in accordance with an approved official contract with the U.S. Government.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Automated records are stored on magnetic tape; paper records are stored in file folders.

Retrievability:

Name and social security number applicant

Safeguards:

Records kept in file cabinets and offices locked after working hours. Based on requirements of user activity, some buildings have 24-hour security guards.

Retention and disposal:

Application records maintained six months; after six months, summary sheets maintained for 5 years at National Record Storage Center. NROTC application records kept for current year only. Correspondence files maintained for two years.

System manager(s) and address:

Commander, Navy Recruiting Command, 4015 Wilson Boulevard, Arlington, Virginia 22203

Notification procedure:

Requests by correspondence should be addressed to: Commander Naval Recruiting Command (Attn: Privacy Act Coordinator), 4015 Wilson Boulevard, Arlington, Va. 22203; or, Chief of Naval Reserve (Code 111C), New Orleans, Louisiana, 70146, or, to applicable Naval Recruiting District as listed under U.S. Government in white pages of telephone book. Letter should contain full name, address, social security account number and signature.

The individual may visit Commander, Navy Recruiting Command, 4015 Wilson Boulevard, Arlington, Va. 22203. Proof of identification will consist of picture-bearing or other official identification.

Record access procedures:

The agency's rules for access to records may be obtained from System Manager.

Contesting record procedures:

The agency's rules for contesting contents and appealing initial determinations by the individual concerned may be obtained from the System Manager.

Record source categories:

Navy Recruiting personnel and employees processing application; Medical personnel conducting physical examination and private physicians providing consultations or patient history; character and employer references named by applicants; educational institutions, staff and faculty members; Selective Service Commission local state, and Federal law enforcement agencies; prior to current military service record; members of Congress; Commanding Officer of Naval Unit, if active duty; Department of Navy offices charged with personnel security clearance functions. Other officials and employees of the Department of the Navy, Department of Defense, and components thereof, in the performance of their official duties and as specified by current instructions and regulations promulgated by competent authority.

Systems exempted from certain provisions of the act:

Parts of this system may be exempt under 5 U.S.C. 552 a (k)(1), (5), (6) and (7), as applicable. For additional information, contact the System Manager.

N66715.3RESS

System name:

Recruiting Enlisted Selection System

System location:

Primary System - Commander Navy Recruiting Command Decentralized Segments - Navy Recruiting Area Commanders, Navy Recruiting District Headquarters, Navy Recruiting 'A' Stations, Navy Recruiting Branch Stations, APEES.

Categories of individuals covered by the system:

Records and corespondence pertaining to prospective applicants, applicants for regular and reserve enlisted programs, and any other individuals who have initiated correspondence pertaining to enlistment in the United States Navy.

Categories of records in the system:

Records and correspondence in both automated and non-automated form concerning personal history, education, professional qualifications, mental aptitude, physical qualifications, character and interview appraisals, National Agency Checks and certifications, service performance and congressional or special interests.

Authority for maintenance of the system:

10 USC Sections 133, 275, 503, 504, 508, 510, 672, 1071 - 1087, 1168, 1169, 1475 - 1480, 1553, 5031; 5 USC 301 Departmental Regulations.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Officials and employees of the Department of the Navy in the performance of their duties in managing and contributing to the recruitment of qualified men and women for enlistment in the regular and reserve components of the Navy. The Comptroller General or any of his authorized representatives, upon request, in the course of the performance of duties of the General Accounting Office relating to the management of quality military recruitment.

Officials and employees of the Department of Defense in the performance of official duties.

Officials and employees of the Department of Transportation in carrying out their official duties.

The Attorney General of the United States or his authorized representatives in connection with litigation, fraudulent enlistment or other matters under the jurisdiction of such agencies. Officials and employees of other Departments and agencies of the Executive Branch of government, upon request, in the performance of their official duties related to the management of quality military recruitment.

Officials and employees of the Veterans Administration and Selective Service Administration in the performance of their official duties related to enlistment and reenlistment eligibility and related benefits.

The senate or the House of Representatives of the United States or any committee or subcommittee on matters within their jurisdiction requiring disclosure of files or records of personnel covered by this system.

Such civilian contractors and their employees as are or may be operating in accordance with an approved official contract with the U.S. Government.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Automated records are stored on magnetic tape; paper records are stored in file folders.

Retrievability:

Filed alphabetically by last name of subject

Safeguards:

Records are accesible only to authorized Navy recruiting personnel within and are handled with security procedures appropriate for documents classified 'For Official Use Only'

Retention and disposal:

Records are normally maintained for two years and then destroyed.

System manager(s) and address:

Commander, Navy Recruiting Command, 4015 Wilson Boulevard, Arlington, Virginia 22203

Notification procedure:

Requests by correspondence should be addressed to: Commander Naval Recruiting Command (Attn: Privacy Act Coordinator), 4015 Wilson Boulevard, Arlington, VA 22203; or, Chief of Naval Reserve (Code 111C), New Orleans, Louisiana, 70146, or, to applicable Naval Recruiting District as listed under U.S. Government in white pages of telephone book. Letter should contain full name, address, social security account number and signature.

The individual may visit Commander, Navy Recruiting Command, 4015 Wilson Boulevard, Arlington, VA 22203. Proof of identification will consist of picture-bearing or other official identification.

Record access procedures:

The agency's rules for access to records may be obtained from System Manager.

Contesting record procedures:

The agency's rules for contesting contents and appealing initial determinations by the individual concerned may be obtained from the System Manager.

Record source categories:

Navy Recruiting personnel and Administrative Staff; Medical Personnel conducting physical examinations and/or Private Physicians providing consultations or patient history; Character and Employer references; Educational institutions, Staff and Faculty members; Selective Service Commission; Local, State, and Federal Law enforcement agencies; prior or current military service records; Members of Congress.

Other officials and employees of the Department of the Navy, Department of Defense and components thereof, in the performance of their official duties and as specified by current instructions and regulations promulgated by competent authority.

Systems exempted from certain provisions of the act:

Parts of this system may be exempt under 5 U.S.C. 552 a (j) or (k), as applicable. For additional information contact the System Manager.

N66715.4RATS

System name:

Navy Recruiting Command Attrition Tracking System

System location:

Primary System - Recruiting Data Systems,Commander, Navy Recruiting Command, 4015 Wilson Boulevard, Arlington, Virginia 22203

Categories of individuals covered by the system:

Navy Enlisted Personnel who attrite during Basic Recruit Training

Categories of records in the system:

File consists of records and correspondence pertaining to individuals discharged at Navy Recruit Training Centers. Records include personal and service information, education, physical and mental qualifications and circumstances surrounding discharge.

Authority for maintenance of the system:

10 USC Sections 133, 275, 503, 504, 508, 510, 5031; 5 USC 301 Departmental Regulations.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Officials and employees of the Department of the Navy in the performance of their duties in managing and contributing to the components of the Navy.

Officials and employees of the Department of Defense in carrying out their official duties.

Officials and employees of the Department of Transportation in carrying out their official duties. carrying out their official duties.

The Comptroller General or any of his authorized representatives, upon request, in the course of the performance of duties of the General Accounting Office relating to the management of quality military recruitment.

The Attorney General of the United States or his authorized representatives in connection with litigation, fraudulent enlistment or other matters under the jurisdiction of such agencies. Officials and employees of other Departments and agencies of the Executive Branch of government, upon request, in the performance of their official duties related to the management of quality military recruitment.

Officials and employees of the Veterans Administration and Selective Service Administration in the performance of their official duties related to enlistment and reenlistment eligibility and related benefits.

The Senate or the House of Representatives of the United States or any committee or subcommittee on matters within their jurisdiction requiring disclosure of files or records of personnel covered by this system.

Such civilian contractors and their employees as are or may be operating in accordance with an approved official contract with the U. S. Government.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Manual Records stored in file cabinets in a secure government building. Automated records are maintained on magnetic tape.

Retrievability:

Info can be retrieved by Social Security Account Number, Navy Recruiting Area or District Recruit Training Center, Age, Education, Discharge Reason or Date of Discharge.

Safeguards:

Only authorized routine users are permitted access to the records. The Headquarters building in which the records are located has a 24-hour guard which prevents unauthorized access to the building.

Retention and disposal:

Records are maintained at Headquarters, Navy Recruiting Command for five years, and then destroyed. Records at Area and District Headquarters are retained for one year before being destroyed.

System manager(s) and address:

Director, Recruiting Data Systems, Navy Recruiting Command, 4015 Wilson Boulevard, Arlington, Virginia 22203 Telephone: 202-692-4089

Written requests for information should contain the full name, social security account number and location where individual was recruited, and signature.

Notification procedure:

Apply to System Manager.

Record access procedures:

The Agency's for access to records may be obtained from System Manager.

Contesting record procedures:

The Agency's rules for contesting contents and appealing initial determinations by the individual concerned may be obtained from the System Manager.

Record source categories:

Discharge Sections at Navy Recruit Training Commands Other officials and employees of the Department of the Navy, Department of Defense and components thereof, in the performance of their official duties and as specified by current instructions and regulations promulgated by competent authority.

Systems exempted from certain provisions of the act:

None

N06715.5RCSS

System name:

Navy Recruiting Support System

System location:

Headquarters, Navy Recruiting Command, 4015 Wilson Boulevard, Aarlington, Virginia 22203

Decentralized Segments-Navy Recruiting Areas; Navy Recruiting Districts; Navy Recruiting 'A' Stations; Navy Recruiting Branch Stations.

Categories of individuals covered by the system:

Students who have taken the Armed Forces Vocational Aptitude Battery; Naval Reserve officers nominated by District Commanding Officers for a collateral duty assignment as Recruiting District Assistance Council Chairmen (RDAC); Enlisted Personnel selected by local Navy Recruiter for participation in local Navy Recruiting effort; Community leaders and individuals who provide assistance to Navy Recruiters.

Categories of records in the system:

Name; Social Security Number; Address; Pertinent family information; Pertinent military information; Professional and education affiliations and experience.

Authority for maintenance of the system:

10 USC Sections 133, 503, 504, 508, 510, 5031; 5 USC 301 Departmental Regulations; 44 USC Sections 3101, 3702.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

To provide field recruiters with various vehicles of recruiting support; to familiarize Navy Recruiters with community leaders; to provide a thorough interface between the Navy and the community; to promote the Navy among the members of the civilian community; to provide educators with a measure of the vocational aptitude of their students through administration of the Armed Services Vocational Aptitude Battery; cultivate community awareness; to assign inactive Reserve officers to Recruiting support functions as Recruiting District Assistance Council Chairmen; to facilitate liaison with various business and social and education cultures in the community; obtain media support for the Navy Recruiting Command; Assist the local recruiter in anyway the recruiter feels necessary; to generate prospective applicants for the United States Navy. Enlisted/Officer Navy Recruiters; Navy Recruiting District Commanding Officers; Navy Recruiting Area Commanders; Navy Recruiting Headquarters staff personnel; Naval Reserve Officers filling official recruiting support functions.

Officials and employees of the Department of the Navy in the performance of their duties in managing and contributing to the recruitment of qualified men and women for officer programs in the regular and reserve components of the Navy.

Officials and employees of the Department of Defense in carrying out their official duties.

Officials and employees of the Department of Transportation in carrying out their official duties.

The Comptroller General or any of his authorized representatives, upon request, in the course of the performance of duties of the General Accounting Office relating to the management of quality military recruitment.

The Attorney General of the United States or his authorized representatives in connection with litigation, fraudulent enlistment or other matters under the jurisdiction of such agencies. Officials and employees of other Departments and agencies of the Executive Branch of government, upon request, in the performance of their official duties related to the management of quality military recruitment.

Officials and employees of the Veterans Administration and Selective Service Administration in the performance of their official duties related to enlistment and reenlistment eligibility and related benefits.

The Senate or the House of Representatives of the United States or any committee or subcommittee thereof on matters within their jurisdiction requiring disclosure of files or records of personnel covered by this system.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

File cabinets and magnetic tape

Retrievability:

Information can be accessed by name and social security number

Safeguards:

Lists and files are handled with discretion and accessible only to those personnel having a need to know.

Retention and disposal:

Records are retained for the tenure of the individual involved or in the case of high school Armed Services Vocational Aptitude Battery lists for a maximum two-year period or until information is no longer useful for recruiting support.

Magnetic tapes are degaussed; other manual files are shredded or burned when discarded.

System manager(s) and address:

Director, Recruiting Support Department, Navy Recruiting Command, 4015 Wilson Boulevard, Arlington, Virginia 22203

Notification procedure:

Information may be obtained from: Director, Recruiting Support Department, Navy Recruiting Command, 4015 Wilson Boulevard, Arlington, Virginia 22203 Telephone: 202/692-4795

Requester is required to supply full name, rank/rate (if applicable), address and social security number.

Record access procedures:

The agency's rules for access to records may be obtained from the System Manager.

Contesting record procedures:

The agency's rules for contesting contents and appealing initial determinations by the individual concerned may be obtained from the System Manager.

Record source categories:

Subject of the information; Field Recruiters; Area Commanders/ District Commanding Officers; Chief of Naval Personnel; Chief of Naval Reserve; District Commandants; Chief of Naval Education and Training; Vocational Testing Group; Recruit Training Commands; Service Schools Commands and other officials and employees in the Department of the Navy and other components of the Department of Defense in the performance of their officials duties and as specified by current instructions and regulations promulgated by competent authority.

Systems exempted from certain provisions of the act:

None

N68056 005

System name:

Legal Records System

System location:

Commanding Officer
Naval Regional Medical Center
San Diego, CA 92134

Categories of individuals covered by the system:

Patients, visitors, staff and employees of Naval Regional Medical Center, San Diego, CA 92134.

Categories of records in the system:

Incident reports and in-house investigations; records of Commanding Officer's Nonjudicial Punishment and appeals thereof; files of litigation and potential litigation.

Authority for maintenance of the system:

5 U.S.C. 301, Departmental Regulations; Federal Tort Claims Act; Medical Care Recovery Act; Article 15, UCMJ.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Some are protected by attorney-client relationship, and thus are not released without consent of client or used in any way other than original purpose. Incident reports used for internal administration of Medical Center (to correct errors and improve procedures) and to notify attorney of incidents having a potential for legal action. In-house investigations used to prepare for litigation. Records of NJP used in administering Article 15, UCMJ, punishment and for referral to Military Personnel System (for performance evaluation, administrative separation, etc.).

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

File folders, forms, letters.

Retrievability:

Name.

Safeguards:

Available to staff of Staff Judge Advocate (three persons) on a 'need to know' basis only. Otherwise, maintained in locked cabinets and/or in locked rooms.

Retention and disposal:

Retained as required; destroyed or moved to National Personnel Records Center, St. Louis, MO, as directed by Department Regulations.

System manager(s) and address:

Staff Judge Advocate
Naval Regional Medical Center
San Diego, CA 92134

Notification procedure:

Individuals can determine whether the system contains records pertaining to them by writing or visiting the System Manager and supplying full name, SSN, military status, approximate date of contact with system (if known).

Record access procedures:

The agency's rules for access to records may be obtained from the System Manager.

Contesting record procedures:

The agency's rules for contesting contents and appealing initial determination by the individual concerned may be obtained from the System Manager.

Record source categories:

Investigative reports (as from JAG Manual investigations, Office of Naval Intelligence reports, Security System, etc.), Military Personnel System, medical records, personal interviews, personal observation, reported by persons witnessing or knowing of incidents.

Systems exempted from certain provisions of the act:

Parts of this system may be exempt under 5 U.S.C. 552 a (j) or (k), as applicable. For additional information contact the System Manager.

N68142MHAS

System name:

Manhour Accounting System

System location:

Naval Education and Training Information Systems Activity Naval Air Station Pensacola, FL 32508

Categories of individuals covered by the system:

Active military and civilian personnel assigned to maintenance activities in the Naval Education Training Command

Categories of records in the system:

One type record which contains the following: Assigned organization code Work center code Name Grade code Pay rate Social Security Number NEC/MOS Labor Code Type Transaction Labor Code Hours assigned

Authority for maintenance of the system:

5 USC 301

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Master roster listing Work center labor code Work center labor utilization Grade code utilization Internal Navy Users are Naval Education Training Command Activities

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Punched cards, magnetic tape and flat paper

Retrievability:

Organization code Social Security number Work Center

Safeguards:

Files are stored in a limited access area. Information provided via batch processing is of a predetermined and strictly formatted nature.

Retention and disposal:

Individual personal data are retained only for that period of time that an individual is assigned to or is supporting a training evolution or activity. Upon departure of an individual, personal data are deleted from the records and history records are not maintained.

System manager(s) and address:

Chief of Naval Air Training Building #1 Naval Air Station Corpus Christi, TX 78319

Records Holder:
Commanding Officer
Naval Education and Training
Information Systems Activity
Naval Air Station
Pensacola, FL 32508

Notification procedure:

Individuals desiring information whether the system contains records pertaining to them should request that determination from the Records Holder listed under SYSMANAGER. The requester should provide his social security number and full name. The office of the Records Holder listed under SYSMANAGER may be visited for this determination but the requester must present his social security card and military identification card.

Record access procedures:

The Agency's rules for access to records may be obtained from the systems manager.

Contesting record procedures:

The Agency's rules for contesting contents and appealing initial determinations by the individual concerned may be obtained from the systems manager.

Record source categories:

Naval Air Training Command Activities and organizations

Systems exempted from certain provisions of the act:

None

N68142FDBA/SIPM

System name:

Personnel Data Base Application/Student Instructor Performance Module

System location:

Naval Education and Training Information Systems Activity Naval Air Station Pensacola, FL 32508

Categories of individuals covered by the system:

Students under instruction at Naval Air Training Command Activities Instructors at Naval Air Training Command Activities Staff and Base Support Personnel at Naval Air Training Command and Naval Air Training Command Activities

Categories of records in the system:

Basic Identification Records i.e., social security number, name, sex, date of birth. Personnel records i.e., rank/rate/grade, Branch of Service, Billet, Expiration of Active Obligated Service. Professional records i.e., Navy Enlisted Classification, Subspecialty Code, Test Scores. Educational Records i.e., Education Levels, Service and Civilian Schools attended, Degrees, majors. Location Records i.e., Duty Stations, Home addresses.

Authority for maintenance of the system:

5 USC 301

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Student performance, progression and prediction Instructors Performance Organizational and Administrative Control Internal Navy Uses are Chief of Naval Personnel, Naval Air Training Command staff personnel, and NAVAIRTRACOM Activities staff personnel

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Punched cards, magnetic tape, direct access storage devices and flat paper.

Retrievability:

Social Security Number, Name

Safeguards:

Data on file is protected as follows. On-line access is controlled by terminal identification and a password system. Terminal Identification is positive and maintained by a single control point. Physical access to terminals is restricted to specifically authorized individuals. Password authorization, assignment and monitoring are the responsibility of the functional managers. Information provided via batch processing is of a predetermined and rigidly formatted nature. Any output is controlled by the functional managers who also control the distribution of output.

Retention and disposal:

Individual personal data is retained only for that period of time that an individual is assigned to or is supporting a training evolution or activity. Upon departure of an individual, personal data is deleted from the records. History records are not maintained.

System manager(s) and address:

Chief of Naval Air Training Building #1 Naval Air Station Corpus Christi, TX 78319

Records Holder:

Commanding Officer
Naval Education and Training
Information Systems Activity
Naval Air Station
Pensacola, FL 32508

Notification procedure:

Individuals desiring information whether the system contains records pertaining to them should request that determination from the Records Holder listed under SYSMANAGER. The requester should provide his social security number, full name and present status, i.e., Military or Civilian. The office of the Records Holder listed under SYSMANAGER may be visited for this determination but the requester must present his social security card and military or Civilian identification card.

Record access procedures:

The Agency's rules for access to records may be obtained from the systems manager.

Contesting record procedures:

The Agency's rules for contesting contents and appealing initial determinations by the individual concerned may be obtained from the systems manager.

Record source categories:

Chief of Naval Personnel, Naval Air Training Command Activities staff and Instructors personnel, Educational Institutions, Individuals

Systems exempted from certain provisions of the act:

None

N68221 PERSRESCHSYSTM

System name:

Personnel Management and Training Research Statistical Data System

System location:

Commanding Officer
U. S. Navy Personnel Research and Development Center
San Diego, California 92152

Categories of individuals covered by the system:

U. S. Navy and Marine Corps Personnel and applicants thereto: Active duty, reserve, prior service, dependents, retired, and Department of the Navy civilians from 1951 to present. (Only samples of data from each category are on file, depending on research study.)

Categories of records in the system:

Performance, attitudinal, biographical, aptitude, vocational interest, demographic, physiological. Data in any file are limited, depending on purpose of the research study.

Authority for maintenance of the system:

5 USC 301 Departmental Regulations

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

The data are used solely by Navy Personnel Research and Development Center researchers who analyze them statistically to arrive at recommendations to management on such topics as: Comparison of different training methods, selection tests, equipment designs, or policies relating to improving race relations and decreasing drug abuse. In no case are the data used for other than statistical purposes; that is, the data are not used in making decisions affecting specific individuals as individuals.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Magnetic tapes, magnetic disk, punched cards, and coding

Retrievability:

Records are retrievable by name, social security number, or service/file numbers, but such identifying information is used only to permit collation of data for statistical analysis, and is not used for retrieval of individual records.

Safeguards:

Unauthorized access to records is controlled by: Security clearances for all Research Center and contractor personnel; physical security including a badge system for entry to the Center and a 24-hour guard maintained on a fenced compound; control of visitors; data bank users having special access codes; and, access limited to only designated personnel.

Retention and disposal:

Records are destroyed five years after termination of a research project. They are maintained within the confines of the Research Center. Destruction is accomplished by degaussing magnetic tapes and disks, and punched cards are recycled.

System manager(s) and address:

Director of Programs (Code 03PA)
U. S. Navy Personnel Research and Development Center
San Diego, California 92152

Notification procedure:

Research Center files are organized by research study. To determine if Center files contain information concerning himself, an individual would have to specify time and place of participation in the research, unit to which attached at the time, and descriptive information about the study so that appropriate data may be located. For further information, contact the System Manager.

Office to visit: Contact System Manager
Visitor Identification: System Manager will specify

Record access procedures:

The agency's rules for access to records may be obtained from the System Manager.

Contesting record procedures:

The agency's rules for contesting contents and appealing initial determinations by the individual concerned may be obtained from the System Manager.

Record source categories:

The source depends on purpose and nature of study: From the subjects themselves, educational institutions, supervisors, peers, instructors, spouses, and job sample tests.

Systems exempted from certain provisions of the act:

Parts of this system may be exempt under 5U.S.C. 552 a (j) or (k), as applicable. For additional information, contact the System Manager.

N68510

System name:

Sys Cmd Acctng/Monitoring of Projects (Scamp)

System location:

Navy Regional Data Automation Center (NARDAC), Washington Navy Yard, Building 196, Washington, D.C. 20374.

Categories of individuals covered by the system:

Current employees, assigned military personnel, contractor personnel and those separated within the current five fiscal years.

Categories of records in the system:

Individual's social security number, date of birth, home address, home telephone number, education level, sex, race or ethnic group. Other types of records integrated with personnel records include: (a) status of travel orders during the previous fiscal year; (b) vehicle identification for parking control purposes; (c) privacy log containing a history of accesses made to any of the privacy protected data; (d) record of personnel actions issued; (e) training data extracted from the Individual Development Plan (IDP); (f) history of all promotions associated with employment at NARDAC; (g) listing of security accesses; (h) manpower costs for all personnel distributed by project and task; and (i) data relating to projects or endeavors that individuals have work on. This data deals with costs and milestone monitoring.

Authority for maintenance of the system:

5 U.S.C. 301, 42 U.S.C. 2000e et seq., 44 U.S.C. 3101, Federal Personnel Manuals 293, 294, 295, 713.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Internal uses: Officials and employees of the Naval Data Automation Command (NAVDAC) and NARDAC in the performance of their duties relating to personnel management, project monitoring, and financial management.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Records are maintained on magnetic disk and on magnetic tape.

Retrievability:

SCAMP users obtain information by means of either a query or a request for a standard report. Personnel data may be indexed by any data item although the primary search key is the badge number.

Safeguards:

Access to building is protected by uniformed guards requiring positive identification for admission. The computer room where data is physically stored is protected by a cypher lock. The system is protected by user account number and password sign-on, data base authority, set and item authority for list, add, delete and update.

Retention and disposal:

An individual's Personnel Master Data Set record is retained in the data base as long as they are actively employed with the Command. The online personnel data set is purged of all records of separated personnel at the end of each fiscal year. Historical data may be kept for five years on separate tape files.

System manager(s) and address:

Department Head, Management Information Analysis Department (Code 208) NARDAC, Building 157, Washington Navy Yard, Washington, D.C. 20374.

Notification procedure:

Inquiries regarding the existence of records should be addressed to the system manager. Written requests should contain the full name and signature of the individual concerned and his/her social security number indicated on the letter. For personal visits, the individual should be able to provide some acceptable form of identification, i.e., driver's license, etc.

Record access procedures:

The agency's rules for access to records may be obtained from the System Manager.

Contesting record procedures:

The agency's rules for contesting contents and appealing initial determinations by the individual concerned may be obtained from the system manager.

Record source categories:

Information in this system comes from the individual to whom it applies, from security agencies to which application for clearances have been made, and from agencies' various administrative departments.

Systems exempted from certain provisions of the act:

None.

[illegible]-LQA

System name:

Living Quarters and Lodging Allowance

System location:

Overseas organizational elements of the Department of the Navy as indicated in the directory of Department of the Navy mailing addresses.

Categories of individuals covered by the system:

Appropriated and non-appropriated fund U.S. civilian employees eligible for allowance.

Categories of records in the system:

Employee's name, grade, address, rent and utility expenses, living quarters and lodging allowance, and name of family and/or members.

Authority for maintenance of the system:

Executive order number 10903 of 9 January 1961, executive order number 10970 of 27 October 1961, executive order number 10853 of 27 November 1959, and executive order number 10982 of 25 December 1961, as implemented by State Department regulation.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Used by civilian personnel office to record employee's living quarters or temporary lodging allowance entitlement. Other users include Naval Supply Depot Payroll Office, the employing office, disbursing office; Commander, Fleet Activities FPO Seattle 98762; and the U.S. Department of State.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

File folders.

Retrievability:

File folders maintained by surname.

Safeguards:

Personnel screening and visitor control.

Retention and disposal:

Files retained for a period of two years and then destroyed.

System manager(s) and address:

Overseas commanding officer of the activity in question. See directory of Department of the Navy mailing addresses.

Notification procedure:

A copy of living quarters allowance is provided to each employee.

Record access procedures:

The agency's rules for access to records may be obtained from the system manager.

Contesting record procedures:

The agency's rules for contesting contents and appealing initial determinations by the individual concerned may be obtained from the system manager.

Record source categories:

Official personnel files.

Systems exempted from certain provisions of the act:

None.

[illegible]-02

System name:

Supervisors Report of Potential to Perform and Reference Check Records System

System location:

Office of Civilian Manpower Management (OCMM), Regional Offices of Civilian Manpower Management (ROCMM's), Capital Area Personnel Services Office-Navy (CAPSO-N); and Navy Staff, headquarters, and field activities employing civilians. Mailing addresses are provided in the Department of the Navy Directory published in the Federal Register.

Categories of individuals covered by the system:

Navy civilian employees, paid from appropriated funds serving under career, career-conditional, or excepted appointments who have applied for vacant positions under the Recruitment, Employment and Internal Placement Record System or who are registered in the Navy Civilian Career Management Inventory and Referral System, or who may submit nominations and applications for training programs under the Training and Employee Development Record System.

Categories of records in the system:

System comprises manual records reflecting information pertaining to the supervisor's judgement as to employee's potential to perform work in other positions and the responses to inquiries constituting reference checks in merit promotion, career management, employment and other actions. This information is used for screening and selection of candidates for employment, referral in career programs, training programs, or placement programs. Manual files, maintained in paper folders, contain the employee's appraisal of potential forms and/or reference checks.

Authority for maintenance of the system:

Title 5, US Code 301, 'Departmental Regulations'

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Officials and employees of the Department of the Navy in the performance of their official duties related to the screening and selection of candidates for training programs, career programs, or placement programs; and administration of grievances, appeals and litigation involving the disclosure of records of potential and reference checks. Representatives of United States Civil Service Commission on matters relating to the inspection, survey, audit or evaluation of Navy civilian personnel management programs, or personnel actions, or such other matters under the jurisdiction of the Commission. The Comptroller General or any of his authorized representatives, in the course of the performance of duties of the General Accounting Office relating to the Navy's civilian manpower management programs. The Attorney General of the United States or his authorized representatives in connection with litigation, law enforcement, or other matters under the direct jurisdiction of the Department of Justice or carried out as the legal representative of the Executive Branch agencies. A duly appointed Hearing Examiner or Arbitrator (an employee of another Federal Agency) for the purpose of conducting a hearing in connection with an employee's grievance involving the disclosure of the records of the career porgram, training program or employment or placement program. An arbitrator who is given a contract pursuant to a negotiated labor agreement to hear an employee's grievance involving the disclosure of the records of the supervisor's report of potential to perform and the responses to reference checks. The Senate or the House of Representatives of the United States or any Committee or sub-committee thereof, any joint committee of Congress or subcommittee of joint committees on matters within their jurisdiction requiring disclosure of the supervisor's report of potential to perform and the responses to reference checks.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Manual records are stored in paper file folders.

Retrievability:

Manual records are filed by name.

Safeguards:

Manual records are available only to authorized personnel having a need to know.

Retention and disposal:

Potential and reference check records are destroyed after two years.

System manager(s) and address:

The Director of Civilian Manpower Management, and the heads of Navy Staff, Headquarters and field activities employing civilians. See EXEMPTION.

Notification procedure:

See EXEMPTION.

Record access procedures:

See EXEMPTION.

Contesting record procedures:

See EXEMPTION.

Record source categories:

See EXEMPTION.

Systems exempted from certain provisions of the act:

Parts of this system may be exempt under 5 U.S.C. 552 a (j) or (k), as applicable. For additional information contact the System Manager.

N96021-06

System name:

Navy Automated Civilian Manpower Information System (NACMIS)

System location:

Office of Civilian Manpower Management (OCMM), Department of the Navy and designated contractors; field divisions of Civilian Manpower Management; Capital Area Personnel Services Office - Navy (CAPSO-N); and Navy staff, headquarters and field activities employing civilians, and the Navy Command Systems Support Activity and its designated contractors. The addresses of the activities are furnished in the Department of the Navy directory published in the Federal Register.

Categories of individuals covered by the system:

Department of the Navy civilian employees paid from appropriated funds and Navy military personnel included in the automated training record segment of NACMIS.

Categories of records in the system:

The system comprises automated and non-automated records describing and identifying the employee (e.g., name, social security account number, sex, birth date, minority designator, citizenship, physical handicap code); the position occupied and the employee's qualifications; salary and salary basis; employee's status in relation to the position occupied and the organization to which assigned; tickler dates for impending changes in status; education and training records; previous military status; functional code; previous employment record; performance appraisal and other data needed for screening and selection of an employee; referral records; professional licenses and publications; and reason for position change or other action affecting the employee. The records are those found in the five modules of NACMIS which are: Training and Employee Development Record System/Training Requirements and Information Management System (TRIM); Personnel Automated Data System (PADS); Navy Civilian Career Management Inventory and Referral System; and local automated personnel Information System (LAPIS).

Authority for maintenance of the system:

5 USC 2951, Reports; 5 USC 301, Departmental Regulations; 5 USC 4103, Establishment of Training Programs; 5 USC 4118, Training; 5 USC 4115, Collection of Training Information; Executive Order 9397, Numbering System for Federal Accounts Relating to Individual Persons; Public Law 92-261, The Equal Employment Opportunity Act of 1972.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Officials and employees of the Department of the Navy in performance of their official duties related to the management and administration of the Department's civilian personnel and civilian manpower planning programs and in the design, development, maintenance and operation of the automated system of records; employees and officials of the Department of Defense where there exists a need-to-know in the performance of their official duties; employees and officials of the Civil Service Commission in the performance of their official duties. The Comptroller General or any of his authorized representatives, in the course of the performance of duties of the General Accounting Office. The Attorney General of the United States or his authorized representatives in connection with litigation, law enforcement, or other matters under the direct jurisdiction of the Department of Justice or carried out as the legal representative of Executive Branch agencies. Officials and employees of other departments and agencies of the Executive Branch of government upon request in the performance of their official duties related to the screening and selection of candidates for vacant positions. Representatives of the United States Department of Labor on matters relating to the inspection, survey, audit or evaluation of the Navy's apprentice training programs or on other such matters under the

jurisdiction of the Labor Department. Representatives of the Veterans Administration on matters relating to the inspection, survey, audit or evaluation of the Navy's apprentice and on-the-job training program. The Computer Systems Group Contractor (or other such contractor) and its employees for the purpose of card punch recording of data from employee personnel actions and training documents, or data collection forms and other documents. Employees and officials of the Naval Command Systems Support Activity and their designated contractors for the purpose of systems support. A duly appointed hearing examiner or arbitrator (an employee of another Federal agency) for the purpose of conducting a hearing in connection with an employee's grievance. An arbitrator who is given a contract pursuant to a negotiated labor agreement to hear an employee's grievance involving the disclosure of records. The Senate or the House of Representatives of the United States or any committee or sub-committee thereof, any joint committee of Congress or sub-committee of joint committees on matters within their jurisdiction requiring disclosure of the files or records of the Department's civilian personnel and manpower management program. An appointed complaints examiner for the purpose of conducting a hearing in connection with an employee's formal Equal Employment Opportunity (EEO) complaint. Officials and employees of schools and other institutions engaged to provide training. Employee unions when unions are authorized to canvas employees or at the time of a union election. Designated contractors of the Department of the Navy in performance of their duties with respect to equipment and system design, development, test and maintenance.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Automated records are stored on magnetic tape, disc, drum and punched cards and computer printouts. Manual records are stored in paper file folders.

Retrievability:

Information is retrieved by Social Security Account Number (SSAN), name, or by specific employee characteristics such as date of birth, grade, occupation, employing organization, tickler dates; a combination of data elements contained in the Training Requirements Information Management (TRIM) subsystem, on apprentice program master files; academic specialty or education level. Specific subgroups of employees may be identified through the use of computerized indices. Manual records are retrieved by name.

Safeguards:

The computer facility and terminal are accessible only to authorized persons that have been properly screened, cleared and trained. Manual and automated records and computer printouts are available only to authorized personnel having a need-to-know. In the case of EEO data, output from the central Office of Civilian Manpower Management file is authorized only by the Department of the Navy Director of Equal Employment Opportunity or his Deputy. Output from the activity minority census files must be authorized in writing by either the head of the activity or the activity's deputy EEO officer.

Retention and disposal:

For TRIM and the apprentice programs the computer magnetic tapes are permanent. Manual records are maintained on a fiscal year basis and are retained for varying periods from 1 to 5 fiscal years. For the Department of the Navy's centrally-administered programs, files on selected candidates are maintained for 3 years (from date selection process is completed). Records of non-selected candidates are retained only for that period of time sufficient to permit appropriate review (usually less than 60 days). For PADS, computer magnetic tapes are retained permanently. Magnetic discs are erased after use. Computer printouts are destroyed after 3 months. Input documents (NAVSO 12280/11) are destroyed after data is converted to machine readable form. Input punch cards are retained for 2 weeks. For career management computer magnetic tapes and discs are erased 5 years after they are created; manual records are destroyed 2 years after the employee has been dropped from the career inventory. Manual records are destroyed upon separation of the employee from the activity. For LAPIS, records are maintained in an active status until a separation action on an employee is completed. Historical records for LAPIS are maintained for a maximum of 5 years.

System manager(s) and address:

Director of Civilian Manpower Management, Office of Civilian Manpower Management, Department of the Navy and the commanding officers of the employee's activity.

Notification procedure:

Requests from individuals should be addressed to the SYSMANAGER or to the civilian personnel officer under his cognizance. Requests must be accompanied by the individual's full name, social security number and name of employing activity. Requestors may visit the civilian personnel office of the naval activity covered by the system to obtain information. In such case proof of identity will consist of full name, social security account number and a third positive identification such as driver's license, Navy building pass or identification badge, birth certificate, Medicare card, etc. Address of the activity is furnished in the Department of the Navy directory of mailing addresses published in the Federal Register.

Record access procedures:

The Agency's rules for access to records may be obtained from the system manager.

Contesting record procedures:

The Agency's rules for contesting contents and appealing initial determinations by the individual concerned may be obtained from the system manager.

Record source categories:

Categories of sources of records in the system are: the civilian personnel office of the employing activity; the payroll office; the security office of the employing activity; line managers, other designated officials and supervisors; the employee and persons named by the employee as references.

Systems exempted from certain provisions of the act:

None

N06021-07

System name:

Area Coordinator Information and Operation Files

System location:

Office of Civilian Manpower Management (OCMM), Regional Offices of Civilian Manpower Management (ROCMM's), Capital Area Personnel Services Office-Navy (CAPSO-N); and Navy Staff, headquarters, and field activities employing civilians. Mailing addresses are provided in the Department of the Navy Directory published in the Federal Register.

Categories of individuals covered by the system:

Civilian employees, paid from appropriated and non-appropriated funds, military personnel or private citizens affected by or involved in action of area coordination significance, and speakers, specialists and other interested participants.

Categories of records in the system:

System is composed of but not limited to records compiled in accordance with regulations, correspondence regarding status of EEO investigations, index file of program administration and interested participants including ad hocs, summaries compiled for budget administration, biographies of speakers or of key officials obtained from individual.

Authority for maintenance of the system:

Title 5, U.S.C. 301, Departmental Regulations.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Officials and employees of the Department of the Navy in the performance of their official duties related to the management of civilian employees or of special programs. Representatives of the United States Civil Service Commission on matters relating to the inspection, survey, audit or evaluation of Navy civilian personnel management programs, or personnel actions, or such other matters under the jurisdiction of the Commission. The Comptroller General or any of his authorized representatives, in the course of the performance of duties of the General Accounting Office relating to the Navy's civilian manpower management programs. The Attorney General of the United States or his authorized representatives in connection with litigation, law enforcement, or other matters under the direct jurisdiction of the Department of Justice or carried out as the legal representative of the Executive Branch agencies. Officials and employees of other components of the Department of Defense in the performance of their official duties related to the management of special programs or subject. Officials and employees of other Departments and agencies of the Executive Branch of government upon request in the performance of their official duties related to the special programs or subject. A duly appointed Hearing Examiner or Arbitrator (an employee of another Federal agency) for the purpose of conducting a hearing in connection with an employee's grievance. An arbitrator who is given a contract pursuant to a negotiated labor agreement to hear an employee's grievance. The Senate or the House of Representatives of the United States or any member, Committee

or sub-committee thereof, any joint committee to Congress or sub-committee of joint committees on matters within their jurisdiction requiring disclosure of the files or records.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Records are stored in paper file folders, list finders, index cards, or logs or other indexing systems.

Retrievability:

Records are retrieved by subject matter, or by name.

Safeguards:

Records are available only to authorized personnel having a need to know.

Retention and disposal:

Records are retained for varying lengths of time as required by local regulations; some records may be maintained indefinitely.

System manager(s) and address:

The Director of Civilian Manpower Management, and the heads of Navy Staff, Headquarters, and field activities employing civilians. Addresses are provided in the Department of the Navy directory published in the Federal Register.

Notification procedure:

Requests by correspondence or in person should be made to the Director of Civilian Manpower Management, or to the head of the nearest Navy activity or to the Navy activity with which the individual is employed or serves as a contact point or participates with in matters relating to the program of his interest. Correspondence should contain the full name, social security number and signature of the requestor. For personal visits, proof of identification will consist of a Department of Defense or Navy building pass or identification badge or drivers license or other types of identification bearing his signature or picture or by providing information which may be verified against the record. Addresses of these activities are in the directory of Department of the Navy mailing addresses.

Record access procedures:

The Agency's rules for access to records may be obtained from the System Manager.

Contesting record procedures:

The Agency's rules for contesting contents and appealing initial determinations may be obtained from the System Manager.

Record source categories:

Navy Civilian Personnel Offices and their representatives.

Systems exempted from certain provisions of the act:

NONE

N96021-21

System name:

Navy Civilian Career Management Inventory and Referral System

System location:

Office of Civilian Manpower Management (OCMM), Regional Offices of Civilian Manpower Management (ROCMM's), Capital Area Personnel Services Office-Navy (CAPSO-N); and Navy Staff, headquarters, and field activities employing civilians. Mailing addresses are provided in the Department of the Navy Directory published in the Federal Register.

Categories of individuals covered by the system:

Navy civilian employees, paid from appropriated funds serving under career or career-conditional appointments and occupying competitive service positions, who are registered in the career inventory system

Categories of records in the system:

System comprises automated and non-automated records reflecting information pertaining to the employee's identification, education, qualifications, training, abilities, current and previous employment, professional licenses, authored publications, and the appraisal of the employee's performance and potential by supervisors and by associates named by the employee, and other data needed for screening and selection of candidates for referral for vacant positions. The manual files, maintained in paper folders, contain the employee's registration document, appraisal forms, responses to reference inquiries, and a record of referrals.

Authority for maintenance of the system:

Title 5, USC 4103, 'Establishment of Training Programs' and Executive Order 9397, 'Numbering System for Federal Accounts Relating to Individual Persons'

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Officials and employees of the Department of the Navy in the performance of their official duties related to the management of civilian employee career programs; the design, development, maintenance, and operation of the manual and automated system of records; the screening and selection of candidates for vacant positions in the occupations and specialties covered by the inventories; and administration of grievance, appeals, and litigation involving the disclosure of records of the career management system. Representatives of the United States Civil Service Commission on matters relating to the inspection, survey, audit or evaluation of Navy civilian personnel management programs, or personnel actions, or such other matters under the jurisdiction of the Commission. The Comptroller General or any of his authorized representatives, in the course of the performance of duties of the General Accounting Office relating to the Navy's civilian manpower management programs. The Attorney General of the United States or his authorized representatives in connection with litigation, law enforcement, or other matters under the direct jurisdiction of the Department of Justice or carried out as the legal representative of the Executive Branch agencies. Officials and employees of other components of the Department of Defense in the performance of their official duties related to the screening and selection of candidates for vacant positions in the occupations and specialties covered by the inventories; or in the management of Department of Defensewide career programs. Officials and employees of other Departments and agencies of the Executive Branch of government upon request in the performance of their official duties related to the screening and selection of candidates for vacant positions in the occupations and specialties covered by the inventories. The Computer Systems Group Corporation (a contractor) and its employees for the purpose of card punch recording of data from employee registration forms and other documents. A duly appointed Hearing Examiner or Arbitrator (an employee of another Federal Agency) for the purpose of conducting a hearing in connection with an employee's grievance involving the disclosure of the records of the career management and referral system. An arbitrator who is given a contract pursuant to a negotiated labor agreement to hear an employee's grievance involving the disclosure of the records of the career management inventory and referral system. the Senate or the House of Representatives of the United States or any member, Committee or sub-committee thereof, any joint committee to Congress or sub-committee of joint committees on matters within their jurisdiction requiring disclosure of the files or records of the career management system.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Automated records are stored on magnetic tapes and discs and on punched cards. Manual records are stored in paper file folders.

Retrievability:

Automated records are retrieved by social security number and name, or by one, or a combination, of characteristics such as education level or academic speciality. Manual records are by last name.

Safeguards:

The computer facility and terminal are located in restricted areas accessible only to authorized persons that are properly screened, cleared and trained. Manual records and computer printouts are available only to authorized personnel having a need to know.

Retention and disposal:

Computer magnetic tapes and discs are erased 5 years after they are created. Manual records are destroyed 2 years after the employee has been dropped from the career inventory.

System manager(s) and address:

The Director of Civilian Manpower Management, and the heads of Navy Staff, Headquarters and field activities employing civilians.

Notification procedure:

Request by correspondence should be addressed to the Director of Civilian Manpower Management (Attn. Code 21) Department of the Navy, Washington, D.C. 20390. The letter should contain the full name and social security account number of the requester and his signature. The individual may visit the Navy Civilian Career Management Center (CCMC), Room 820, Crystal Plaza Building Number 5, 2211 Jefferson Davis Highway, Arlington, Virginia, or the Civilian Personnel Office of the Navy activity at which he is currently employed, or of the nearest Navy activity, which office will contact the CCMC by telephone, 202-692-1270, if no record is locally available. Proof of identification will consist of a Department of Defense (DOD) or Navy building pass, or identification badge or drivers

license, or by other types of identification bearing picture or signature, or by providing verbal information that could be verified with his career inventory record.

Record access procedures:

The agencies rules for access to records may be obtained from SYSMANAGER.

Contesting record procedures:

The agency's rules for contesting contents and appealing initial determinations by the individual concerned may be obtained from the SYSMANAGER.

Record source categories:

Navy civilian personnel offices; current and previous supervisors of the employee; current and previous associates of the employee named by the employee as references.

Systems exempted from certain provisions of the act:

NONE

N96021-26

System name:

Recruitment, Employment and Internal Placement

System location:

Office of Civilian Manpower Management (OCMM), Regional Offices of Civilian Manpower Management (ROCMM's), Capital Area Personnel Services Offices-Navy (CAPSO-N), and Navy Staff, headquarters, and field activities employing civilians. Mailing addresses are provided in the Department of the Navy Directory published in the Federal Register.

Categories of individuals covered by the system:

Current and former civilian employees of the Department of the Navy and individuals who may have applied for civilian positions with the Department of the Navy.

Categories of records in the system:

System comprised of automated and non-automated records, including correspondence, reflecting information pertaining to individual's identification, current and previous employment, related background information provided by the individual, education and training, appraisal of individual's performance (and records of potential obtained after September 27, 1975) by supervisors and by other associates, and other data needed for screening and selection, rating and ranking, of candidates for positions of merit promotion and continued employment with the Department of the Navy.

Authority for maintenance of the system:

Title 5, USC, Book I, Vol. B, Chapter 31 'Authority for Appointment', Chapter 33 'Examination, Selection and Placement', and Chapter 35 'Retention Preference, Restoration and Reemployment'. Executive Orders 10577 'Career Conditional Appointment System', 10774 'International Organizations', 10973 'Foreign Assistance', 11103 'Peace Corps Volunteers; employment of former', 11222 'Conduct of Employees and Conflicts of Interest', 11315 'Executive Assignment System', 11478 'Equal Employment Opportunity', 11521 'Transitional and Veterans Readjustment Appointments', 11552 'International Organizations', 11589 'Intergovernmental Personnel Act', 11695 'Stabilization of the Economy', 11701 'Employment of Veterans', 11813 'Cooperative Education'.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Officials and employees of the Department of the Navy in the performance of their official duties related to the recruitment, employment, merit promotion and internal placement, and non-disciplinary separation of civilian employees. Representatives of the United States Civil Service Commission on matters relating to the inspection, survey, audit or evaluation of Navy civilian personnel management programs, or personnel actions, or such other matters under the jurisdiction of the Commission. The Comptroller General or any of his authorized representatives, in the course of the performance of duties of General Accounting Office relating to the Navy's civilian manpower management programs. The Attorney General of the United States or his authorized representatives in connection with litigation, law enforcement or other matters under the direct jurisdiction of the Department of Justice or carried out as the legal representative of the Executive Branch agencies. Officials and employees of other component of the Department of Defense in the performance of their official duties related to recruitment, employment, internal placement, and non-disciplinary separations of civilian employees. Officials and employees of other Departments and agencies of the Executive Branch of government upon request in the performance of their official duties related to recruitment, employment, internal placement, and non-disciplinary separations of civilian employees. A duly appointed Hearing Examiner or Arbitrator (an employee of another Fereral agency) for the purpose of conducting a hearing in connection with an employee's grievance related to recruitment, employment, merit promotion, internal placement, and non-disciplinary separations. An arbitrator who is given a contract pursuant to the negotiated labor agreement to hear an employee's grievance involving the disclosure of records of employment, recruitment, merit promotion, internal placement, or non-disciplinary separation. The Senate or the House of Representatives of the United States or any member, Committee or subcommittee thereof, any joint committee of Congress or subcommittee of joint committees on matters within their jurisdiction requiring disclosure of the files or records of recruitment, employment, internal placement or non-disciplinary separations.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Automated records are stored on magnetic tapes and discs and on punched cards. Manual records are stored in paper file folders.

Retrievability:

Automated records are retrieved by Social Security number and name, or by one, or a combination, of characteristics such as education level, of academic speciality. Manual records are by last name.

Safeguards:

Automated and manual records are available only to authorized personnel having a need to know.

Retention and disposal:

Records are maintained from a minimum period of one year to, in some cases, permanent retention.

System manager(s) and address:

The Director of Civilian Manpower Management, and the heads of Navy Staff, Headquarters and field activities employing civilians.

Notification procedure:

Request by correspondence should be addressed to the Director of Civilian Manpower Management or the head of Navy Staff, Headquarters and field activities at which the individual is or was employed or to which he has submitted an application for employment. The letter should contain the full name and Social Security account number of the requester and his signature. The induvidual may visit the SYSMANAGER at the address which is provided in the Department of the Navy Directory published in the Federal Register. Proof of identification will consist of a Department of Defense (DOD) or Navy building pass, or identification badge or drivers license, or by other types of identification bearing picture or signature, or by providing verbal information that could be verfied with the individual's records

Record access procedures:

The agency's rules for access to records may be obtained from SYSMANAGER.

Contesting record procedures:

The agency's rules for contesting contents and appealing initial determinations by the individual concerned may be obtained from the SYSMANAGER.

Record source categories:

Navy civilain personnel offices; Navy recruiters; current and previous supervisors of the employee; current and previous associates of the employee named by employee as references; educational institutions; automated interface systems.

Systems exempted from certain provisions of the act:

NONE

N96021-261

System name:

Appraisals of Performance Record System

System location:

Office of Civilian Manpower Management (OCMM), Regional Offices of Civilian Manpower Management (ROCMM's), Capital Area Personnel Services Office-Navy (CAPSO-N); and Navy Staff, headquarters, and field activities employing civilians. Mailing addresses are provided in the Department of the Navy Directory published in the Federal Register.

Categories of individuals covered by the system:

Navy civilian employees, paid from appropriated funds, serving under career, career-conditional, and excepted appointments; except those employees exempt by the Civil Service Commission and OCMM.

Categories of records in the system:

System comprised of automated and non-automated records reflecting information pertaining to the employee's performance. Manual records of evaluations and ratings are maintained in the official personnel folder and other files and may be retained by the supervisor. Other files are maintained on appeals of ratings, correspondence on inquiries, warning letters, and supportive documentation on unsatisfactory and outstanding ratings.

Authority for maintenance of the system:

Title 5, USC 4302, 'Performance Rating Plans; Establishment of.'

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Officials and employees of the Department of the Navy in the performance of their official duties involving the membership in performance rating panels or rating and ranking panels for merit promotion purposes, for merit promotion selection purposes, for award purposes, adverse action purposes, or for appeals purposes, or for career program assignment purposes. Representatives of the United States Civil Service Commission acting as Chairman of the Statutory Review Board on appeals of performance ratings for purposes of reviewing case files, conducting hearings and rendering decisions. Representatives of the United States Civil Service Commission on matters relating to the inspection, survey, audit or evaluation of Navy civilian personnel management programs or such other matters under the jurisdiction of the Commission. The Comptroller General or any of his authorized representatives, in the course of the performance of duties of the General Accounting Office relating to the Navy's civilian personnel records. The Attorney General of the United States or his authorized representatives in connection with litigation, law enforcement, or other matters under the direct jurisdiction of the Department of Justice or carried out as the legal representative of the Executive Branch agencies. Computer System Contractors and their employees for purposes of automatic listings of performance ratings. A duly appointed Hearing Examiner for the purpose of conducting a hearing in connection with an employee's grievance involving the disclosure of the records pertaining to performance evaluation and rating. The Senate or the House of Representatives of the United States or any member, Committee or subcommittee thereof, any joint committee of Congress or subcommittee of joint committees on matters within their jurisdiction requiring disclosure of the files or records of the Appraisals fo Performance Record Systems. Officials and employees of other Components of the Department of Defense in the performance of their official duties related to the screening and selection of candidates for vacant positions. Officials and employees of other departments and agencies of the Executive Branch of government upon request in the performance of their official duties related to the screening and selection of candidates for vacant positions.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Automated records are stored on magnetic tapes and discs. Manual records and computer print-outs are retained in paper file folders.

Retrievability:

Manual records retained by name. Computer records are retrieved by Social Security number, payroll number, name, or other identifier.

Safeguards:

Manual and automated records are available only to authorized personnel having a need to know.

Retention and disposal:

Computer tapes and discs are erased after 5 years. Old computer print-outs are destroyed when the new print-outs are processed at the end of the performance rating period, which is on an annual basis. Manual records of satisfactory are retained for up to three years or longer when used for career management purposes. Outstanding and unsatisfactory ratings and supporting documents are retained permanently in the official personnel file or for a shorter period in other files.

System manager(s) and address:

The Director of Civilian Manpower Management, and the heads of Navy Staff, Headquarters and field activities employing civilians.

Notification procedure:

Request by correspondence should be addressed to the Director of Civilian Manpower Management or the head of Navy Staff, Headquarters and field activities at which the individual is or was employed or to which he has submitted an application for employment. The letter should contain the full name and social security account number of the requester and his signature. The individual may visit the SYSMANAGER at the address which is provided in the Department of the Navy Directory published in the Federal Register. Proof of identification will consist of a Department of Defence (DOD) or Navy building pass, or identification badge or drivers license, or by other types of identification bearing picture or signature, or by providing verbal information that could be verified with the individual's record.

Record access procedures:

The agency's rules for access to records may be obtained from SYSMANAGER.

Contesting record procedures:

The agency's rules for contesting contents and appealing initial determinations by the individual concerned may be obtained from the SYSMANAGER.

Record source categories:

Navy civilian personnel offices; Navy recruiters; current and previous supervisors of the employee; current and previous associates of the employee named by the employee as references.

Systems exempted from certain provisions of the act:

NONE

N96021-263

System name:

Tests and Examinations Record Systems

System location:

Office of Civilian Manpower Management (OCMM), Regional Offices of Civilian Manpower Management (ROCMM'S), Capital Area Personnel Services Office-Navy (CAPSO-N); and Navy staff, headquarters, and field activities employing civilians. Mailing addresses are provided in the Department of the Navy Directory published in the Federal Register.

Categories of individuals covered by the system:

All Navy Civilian employees, or applicants for civilian employment paid from appropriated funds, serving under career, career-conditional and excepted appointment and occupying competitive excepted service positions.

Categories of records in the system:

System consists of non-automated records reflecting information pertaining to the employee's scores on a written or performance test. Automated records of employees test scores are kept by some activities. Manual records of the test scores are maintained by the designated test control officers in activities providing testing services.

Authority for maintenance of the system:

Title 5, USC 3304A 'Noncompetitive Examinations'

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Officials and employees of the Department of the Navy in the performance of their official duties for merit promotion selection purposes, for placement, training and employee development purposes. Representatives of the United States Civil Service Commission on matters relating to inspection, survey, audit or evaluation of Navy civilian personnel test and measurement programs, personnel actions, or such other matters under the jurisdiction of the commission. The Comptroller General or any of this authorized representatives, in the course of the performance of duties of the General Accounting Office relating to the Navy's civilian personnel records. The Attorney General of the United States or his authorized representatives in connection with litigation, law enforcement, or other matters under the direct jurisdiction of the Department of Justice or carried out as the legal representative of the executive branch agencies. A duly appointed hearing examiner for the purpose of conducting a hearing in connection with an employee's grievance or complaint involving the disclosure of the records pertaining to performance on the tests. The Senate or the House of Representatives of the United States or any committee or subcommittee thereof, any joint committee of Congress or subcommittee of joint committees on matters within their jurisdiction requiring disclosure of the files or records of test and examinations. Officials and employees of other components of the Department of Defense in the performance of their official duties related to the selection of candidates for vacant positions. Officials and employees of other departments and agencies of the Executive Branch of Government upon request in the performance of their official duties related to the selection of candidates for vacant positions.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Manual records of test scores are retained in paper files folders. Automated records are on magnetic tapes, disks, or punched cards.

Retrievability:

Manual and automated records retrieved by the last name or social security number.

Safeguards:

Manual and automated records are available only to authorized personnel having a need to know.

Retention and disposal:

Manual and automated records of employee's test scores are retained for at least two years from the date of the test administration.

System manager(s) and address:

The Director of Civilian Manpower Management, and the heads of Navy staff, headquarters and field activities employing civilians.

Notification procedure:

Request by correspondence should be addressed to the Director of Civilian Manpower Management or the Head of Navy Staff, headquarters and field activities employing civilians. The letter should contain the full name and social security account number of the requester and his signature. The individual may visit the Sysmanager at the address which is provided in the Department of the Navy Directory published in the Federal Register. Proff of identification will consist of a Department of Defense (DOD) or Navy Building pass, or identification badge or drivers license, or by other types of identification bearing picture or signature, or by providing verbal information that could be verified with the individual's record.

Record access procedures:

The agency's rules for access to records may be obtained from Sysmanager.

Contesting record procedures:

The agency's rules for contesting contents and appealing initial determinations by the individual concerned may be obtained from the Sysmanager.

Record source categories:

Employee's performance on officially approved Navy or the U.S. Civil Service Commission written or performance tests.

Systems exempted from certain provisions of the act:

None.

N96021-41

System name:

Labor Management Relations Records System

System location:

Office of Civilian Manpower Management, Regional Offices of Civilian Manpower Management, Capital Area Personnel Services Office, Navy, and Navy Staff, Headquarters and Field Activities employing civilians. Mailing addresses are provided in the Department of the Navy Directory, published in the Federal Register.

Categories of individuals covered by the system:

Navy civilian employees paid from appropriated and non-appropriated funds, who are involved in a grievance which has been referred to an arbitrator for resolution; Navy civilian employees involved in the filing of an Unfair Labor Practice complaint which has been referred to the Assistant Secretary of Labor-Management Relations; union officials; union stewards; and representatives.

Categories of records in the system:

Records comprise: Manual files, maintained in paper folders, manually filed by type of case and case number (not individual). Folder contains all information pertaining to a specific arbitration case or specific Unfair Labor Practice with whom Navy has dealings; field activities maintain manual roster of local union officials and union stewards.

Authority for maintenance of the system:

Executive Order 11491, as amended 'Labor-Management Relations in the Federal Service.'

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Officials and employees of the Department of the Navy in the performance of their official duties related to the Labor-Management Relations Program, e.g.: Administration/implementation of arbitration awards; interpretation of the Executive Order through 3rd party case decisions; National Consultation and other dealings with recognized unions. Representatives of the U. S. Civil Service Commission on matters relating to the inspection, survey, audit, or evaluation of Navy Civilian Personnel Management Programs. The Comptroller General or any of his authorized representatives, in the course of the performance of duties of the General Accounting Office relating to the Navy's Labor Management Relations Program. Officials and employees of other components of the Department of Defense in the performance of their official duties related to the administration of the Labor- Management Relations Program. A duly appointed hearing examiner or arbitrator for the purpose of conducting a hearing in connection with an employee's grievance. An arbitrator who is given a contract pursuant to a negotiated labor agreement to hear an employee's grievance.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Manual records are stored in paper folders.

Retrievability:

Manual records are retrieved by case subject, case number, and/or individual employee names.

Safeguards:

All manual files are accessible only to authorized personnel having a need to know.

Retention and disposal:

Case files are permanently maintained. Union official rosters are normally destroyed after a new roster has been established.

System manager(s) and address:

The Director of Civilian Manpower Management, Department of the Navy, Washington, D. C. 20390.

Notification procedure:

Request by correspondence should be addressed to the Director of Civilian Manpower Management (Attn: Code 04), Department of the Navy, Washington, D. C. 20390; field activities.

Record access procedures:

The agency's rules for access to records may be obtained from SYSMANAGER.

Contesting record procedures:

The agency's rules for access to records and for contesting contents and appealing initial determinations by the individual concerned may be obtained from the SYSMANAGER.

Record source categories:

Navy civilian personnel offices; arbitrator's office; office of the Assistant Secretary of Labor for Labor-Management Relations; union headquarters offices.

Systems exempted from certain provisions of the act:

None

N96021-431

System name:

Employee Relations Including Discipline, Employee Grievances, Complaints, etc.

System location:

Chief of Naval Operations (OP-14), Naval Civilian Personnel Command (NCPC), NCPC Fields Divisions, Navy and Navy Staff Headquarters and Field Activities employing civilians. Mailing addresses are provided in the Department of the Navy Directory, published in the Federal Register.

Categories of individuals covered by the system:

Navy civilian employees, paid from appropriated funds serving under career, career-conditional, temporary and excepted service appointments on whom discipline, grievances, and complaints records exist. Discrimination complaints of Navy civilian employees, paid from appropriated and non-appropriated funds, applicants for employment and former employees in appropriated and non-appropriated positions. Appeals of Navy civilian employees paid frm appropriated funds. Filipino employee appeal case files ('Filipinos who are lawfully admitted residents.') Cases reviewed by CINCPAC under Filipino Employment Policy Instructions.

Categories of records in the system:

Manual files, maintained in paper folders, contain copies of documents and information pertaining to discipline, grievances, complaints, and appeals. Management operation record system consisting of manual file maintained by immediate supervisors and high level managers concerning employee performance, capability, informal discipline, attendance, leave and tardiness, work assignments, and similar work related employee records.

Authority for maintenance of the system:

Executive Order 9830, Amending the Civil Service Rules and Providing for federal personnel administration, amended by Executor

Order 10577 and Executive Order 12106; Executive Order 12107; 5 USC 1205,1206,1206,1302,3301,3302,7105,7512, relevant portions of the Civil Service Reform Act, P.L. 95-454; 42 U.S.C. Sec 2000e-116 et. seq.; Equal Employment Opportunity Act of 1972, P.L. 93-259, amendment to the Fair Labor Standards Act, 29 U.S.C. Sec 201, et. seq.; Age Discrimination and Employment Act, 29 U.S.C. Sec 633a; the Rehabilitation Act of 1978 as amended, 29 USC 791,794a.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Officials of the Department of the Navy in the performance of their official duties related to the management of civilian employees in the processing, administration, and adjudication of discipline, grievances, complaints, appeals, litigation, and program evaluation. Representatives of the United States Office of Personnel Management on matters relating to the inspection, survey, audit or evaluation of Navy civilian personnel management programs or personnel actions, or such other matters under the Jurisdiction of the Office of Personnel Management. Appeals officers and complaints examiners of the Merit Systems Protection Board and Equal Opportunity Commission for the purpose of conducting hearings in connection with employees appeals from adverse actions and formal discrimination complaints. The Comptroller General or any of his authorized representatives, in the course of the performance of duties of the General Accounting Office relating to the Navy's civilian manpower management programs. The Attorney General of the United States or his authorized representatves in connection with litigation, law enforcement, or other matters under the direct jurisdiction of the Department of Justice or carried out as the legal representative of the Executive Branch agencies. The Senate or the House of Representatives of the United States or any member, committee or subcommittee of joint committees on matters within their jurisdiction relating to the above programs. The records may also be used to disclose information to any source from which additional information is requested in the course of processing a grievance or appeal to the extent necessary to identify the individual, inform the source of the purpose(s) of the request and identify the type of information requested. The records may also be used to disclose information to a federal agency in response to it's request in connection with the hiring or retention of an employee, the issuance of a security clearance, the conducting of a security or suitability investigation of an individual, the classifying of jobs, the letting of a contract or the issuance of a license, grant or other benefit by the requesting agency, to the extent that the information is relevant and necessary. The records may be used by the National Archives and Records Service (General Services Administration) in records management inspection conducted under authority of 5 U.S.C. 2904 and 2906. The records may be used to disclose, in response to a request for discovery or for appearance of a witness, information that is relevant to the subject matter involved in the pending judicial or administrative proceeding. The records may also be used to provide information to officials of labor organizations recognized under the Civil Service Reform Act when relevant and necessary to their duties of exclusive representation concerning personnel policies, practices and matters affecting working conditions.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Manual records are stored in paper folders.

Retrievability:

Manual records are filed by last name.

Safeguards:

All records are stored under strict control, and are available only to authorized personnel having a need to know.

Retention and disposal:

Manual records are destroyed upon separation of the employee from the activity, or in accordance with appropriate record disposal schedule.

System manager(s) and address:

Chief of Naval Operations (OP-14), Department of the Navy, Washington, D.C. 20350.

Notification procedure:

Request of correspondence should be addressed to the Chief of Naval Operations (OP-14), Department of the Navy, Washington, D.C. 20350, commanding Officers or Heads of Navy Staff Headquarters and Field Activities. The letter should contain the full name, social security number, and signature of the requester. The individual may visit the Chief of Naval Operations (OP-14), Department of the Navy, Arlington Annex, Washington, D.C. or the navy activity at which he or she is employed. The addresses of these activities are provided in the Department of the Navy Directory, published in the Federal Register.

Record access procedures:

The agency's rules for access to records may be obtained from SYSMANAGER.

Contesting record procedures:

The agency's rules for contesting contents and appealing initial determinations by the individual concerned may be obtained from SYSMANAGER.

Record source categories:

Supervisors or other appointed officials designated for this purpose.

Systems exempted from certain provisions of the act:

NONE

N96021-433

System name:

Employee Assistance Program Case Record System

System location:

Office of Ciilian Manpower Management, Regional Offices of Civilian Manpower Management, Capital Area Personnel Services Office, Navy, and Navy Staff, Headquarters and Field Activities employing civilians. Mailing addresses are provided in the Department of the Navy Directory, published in the Federal Register.

Categories of individuals covered by the system:

All civilian employees in appropriated and non-appropriated fund activities who are referred by management for, or voluntarily request, counseling assistance.

Categories of records in the system:

System is comprised of case records on employees who are patients (counselees) which are maintained by individual counselors and consist of information on condition, current status, and progress of employees or dependents who have alcohol, drug, emotional, or other personal problems.

Authority for maintenance of the system:

Drug Abuse Office and Treatment Act of 1972, as amended by Public Law 93-282 (21 U.S.C. 1175); Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment, and Rehabilitation Act of 1970, as amended by Public Law 93-282 (42 U.S.C. 4582); Subchapter A of Chapter I, Title 42, Code of Federal Regulations.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Used by the Navy counselor in the execution of his counseling function as it applies to the individual patient (counselee). With specific, written authority of the patient, selected information may be provided to and used by other counselors or medical personnel, research personnel, employers, patient representatives such as legal counsel, and to other agencies or individuals when disclosure is to the patient's benefit, such as for processing retirement applications.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Case records are stored in paper file folders.

Retrievability:

By employee name or by locally assigned identifying number.

Safeguards:

All records are stored under strict control. They are maintained in spaces normally accessible only to authorized persons, normally in locked cabinets.

Retention and disposal:

Records are purged of patient identifying information within five years after termination of counseling.

System manager(s) and address:

The Director of Civilian Manpower Management and Employee Assistance Program Administrators at Department of the Navy Staff, headquarters and field activity levels.

Notification procedure:

Request by correspondence should be addressed to the Director of Civilian Manpower Management or to the appropriate Employee Assistance Program Administrator. The letter should contain the full name and signature of the requester and the approximate period of time, by date, during which the case record was developed.

Record access procedures:

The agency's rules for access to records may be obtained from the SYSMANAGER.

Contesting record procedures:

The agency's rules for contesting contents and appealing initial determinations by the individual concerned may be obtained from the SYSMANAGER.

Record source categories:

Counselors; other officials, individuals or practitioners; and other agencies both in and outside of Government.

Systems exempted from certain provisions of the act:

NONE

N06021-434

System name:

Suggestions and Awards Record System

System location:

Office of Civilian Manpower Management (OCMM), Regional Office of Civilian Manpower Management (ROCMM), Capital Area Personnel Services Office, Navy (CAPSO-N), and Navy Staff, headquarters and field activities. Addresses are provided in the Department of the Navy Directory published in the Federal Register.

Categories of individuals covered by the system:

Navy civilian employees paid from appropriated funds, military personnel on active duty, and private citizens who have received or have been nominated for Department of Navy, Department of Defense or Presidential awards.

Categories of records in the system:

Automated records contain data relating to Quality (Salary) Increases. Manual records contain information relating to Superior Performance, Special Achievements, Beneficial Suggestions, Inventions, Scientific Achievements, Navy honorary awards, such as Distinguished Civilian Service Award, non-Navy awards; e.g., Rockefeller Public Service Award and Civil Service League Awards. Records of awards to private citizens for contributions benefitting the Navy are also maintained.

Authority for maintenance of the system:

Section 4503 of Title 5, U.S. Code (Civilian cash awards), 10 USC 1124, P.L. 89-198 (Cash Awards for Suggestions, Inventions, and Scientific Achievements for Military Personnel).

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Officials and employees of the Department of the Navy in the performance of their official duties related to recognition of accomplishments and contributions by Navy Department personnel and related statistics. Representatives of the U.S. Civil Service Commission on matters relating to inspection, survey, audit or evaluation of Navy Incentive Awards Programs. The Comptroller General or any of his authorized representatives in the course of the performance of duties of the General Accounting Office relating to the Navy Incentive Awards Program. The Attorney General of the United States or his authorized representatives with respect to litigation or other matters under the jurisdiction of the Department of Justice or carried out as the legal representative of Executive Branch agencies. Officials and employees of the other components of the Department of Defense in performance of their official duties relating to matters of mutual concern with respect to the DOD Incentive Awards Programs. Officials and employees of other Departments and agencies of the Executive Branch of the Government in the performance of their official duties relating to matters of mutual concern regarding Incentive Systems Programs of the U.S. Government. A duly appointed Hearing Examiner or Arbitrator for the purpose of conducting a hearing in connection with an employee's grievance or complaints involving disclosure of the status or disposition of award claim or nominations. Any member or official representative of the Legislative Branch of U.S. Government on matters within their jurisdiction or in behalf of constituents involving disclosure of records of the Navy Incentive Awards Program.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Automated records are stored on magnetic tapes, discs, and/or on punched cards. Manual records are stored in paper file folders.

Retrievability:

Automated records are retrived by social security number and name, or by one, or a combination of characteristics, academic specialty. Manual records are by last name.

Safeguards:

The computer facility and terminal are located in restricted areas accessible only to authorized persons who are properly screened, cleared and trained. Manual records and computer printouts are available only to authorized personnel having a need to know.

Retention and disposal:

Computer tapes and discs are erased five years after they are created. Most manual records of Beneficial Suggestions are destroyed two years after the cases are closed. Others are retired in accordance with the appropriate activity records disposal schedule. Most honorary awards records are retained two to five years and sent to the Records Center or destroyed. Records of awards conferred by the Secretary of the Navy are retained indefinitely in OCMM for availability of information often requested by authorized sources.

System manager(s) and address:

The Director of Civilian Manpower Management, and the heads of Navy staff, headquarters and field activities. Addresses are provided in the Department of Navy Directory published in the Federal Register.

Notification procedure:

Request by correspondence should be addressed to the Director of Civilian Manpower Management or to the Head of Navy Staff, headquarters or field activity where the individual is or was employed. The letter should contain the full name and social security account number of the requester and his signature. The individual may visit OCMM, the Civilian Personnel Office of the Navy activity at which he is or was previously employed, or of the nearest Navy activity, which office will contact the Office of Civilian Manpower Management, if no record is locally available. Proof of identification will consist of a Department of Defense (DOD) or Navy building pass, or identification badge or driver's license, or by other types of identification bearing picture or signature, or by providing verbal information that could be verified.

Record access procedures:

The agency's rules for access to records may be obtained from SYSMANAGER.

Contesting record procedures:

The Department of the Navy's rules for access to records and for contesting contents and appealing initial determinations by the individual concerned may be obtained from the SYSMANAGER.

Record source categories:

Navy civilian personnel offices and current and previous supervisors of the employee.

Systems exempted from certain provisions of the act:

None

N06021-44A

System name:

Navy Central Clearance Group (NCCG) Records

System location:

Office of Civilian Manpower Management (Code 44), Department of the Navy, Washington, DC 20390

Categories of individuals covered by the system:

Incumbent and former civilian employees in and applicants for sensitive and nonsensitive positions at Department of the Navy appropriated fund activities.

Categories of records in the system:

The records are comprised of (1) reports and other investigative material and information developed by investigations conducted by Federal investigative agencies pursuant to statute and executive order; (2) reports of arrest, criminal activity and their disposition, (3) results of the review of the reports by the NCCG, including the security or suitability determination made on the case; (4) copies of correspondence regarding the case and/or reflecting the determination made by the NCCG; and (5) an index file card on each case.

Authority for maintenance of the system:

(1) Executive Order 10450 (as amended), 'Security Requirements for Government Employment'. (2) 5 USC 7532, 'Suspension and Removal'.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

The records are maintained (1) to meet the statutory requirements of 5 USC 7532 and E.O. 10450 which require the establishment and maintenance of an effective program to insure that the employment and retention in employment of any civilian officer or employee within the Department is clearly consistent with the interest of the national security and which require adjudication and readjudication of the information as appropriate, and (2) to have the material furnished by the Civil Service Commission readily available for return to the Commission upon request. Upon receipt of investigative re-

ports and security information on civilian employees and applicants, the NCCG reviews the material. The Office of Civilian Manpower Management (OCMM) Security Branch then transmits the material to the employing activity with a letter or stamped endorsement apprising the command of the security determination made by the NCCG. During the period that the reports and documents are at an activity, the material is under the custody of the activity's Security Manager. Following the review of the material by the activity's commanding officer or his designee, the material is (1) returned to the source from which received, if required, (2) retained until the employee is separated, or (3) destroyed if it is of no further value. If the employing activity determines that an adverse action against the employee is warranted based on information in the report, appropriate action in accordance with Civil Service Commission suitability procedures is initiated by the activity. In some cases the NCCG will make a suitability determination. Other users of the records may include members of Security Hearing Boards and officials and employees of the Department of the Navy in performance of their official duties related to the Department of the Navy Civilian Personnel Security Program.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Records are stored in file folders and on file cards

Retrievability:

Name (last, first, middle) and date of birth.

Safeguards:

Records maintained in GSA approved security containers accessible only to authorized employees of OCMM Security Branch who are properly screened and trained and who have proper security clearance.

Retention and disposal:

Records with the exception of the index file card are retained in active file until end of third calendar year following last entry and then retired to the Federal Records Center, Suitland, MD. Index cards are retained in active file until destroyed. Records are destroyed in accordance with GSA General Schedule 18.

System manager(s) and address:

The Director of Civilian Manpower Management, Department of the Navy, Washington, DC 20390.

Notification procedure:

Request should be by correspondence addressed to the Director of Civilian Manpower Management (Attn: Code 44), Department of the Navy, Washington, DC 20390. The letter should contain the full name, date and place of birth, and social security number of the requester and his signature.

Record access procedures:

The agency's rules for access to records may be obtained from SYSMANAGER.

Contesting record procedures:

The agency's rules for contesting contents and appealing initial determinations by the individual concerned may be obtained from SYSMANAGER.

Record source categories:

Investigation results and information provided by appropriate investigative agencies of the Federal Government.

Systems exempted from certain provisions of the act:

Parts of this system may be exempt under 5 U.S.C. 552 a (j) or (k), as applicable. For additional information contact the System Manager.

N96021-44B

System name:

Civilian Personnel Security Files

System location:

Department of the Navy Staff, Headquarters and Field Activities employing civilians in sensitive and nonsensitive positions. Official mailing addresses are provided in the Department of the Navy Directory published in the Federal Register.

Categories of individuals covered by the system:

Civilian employee, nonappropriated fund employees, contractor employees and visitors requiring base or activity access, and applicants under consideration for employment within the employing activity.

Categories of records in the system:

Files contain records and information appropriate to the activities civilian employee security program and may include certificates of personnel security clearances and source documents which identify the appropriate investigative basis for clearance eligibility, security access information, copies of requests for investigation, personal history and qualifications statements and other information provided by the employee, signed security briefing and debriefing statements, exception documents, copies of letters of reprimand or suspension, memorandums between the personnel officer or other officers and the security manager, final and interim reports of investigations completed, correspondence concerning personnel security matters, records of security orientation, education and training provided employees, internal security information, records of security violations, and information from law enforcement agencies, former employers and supervisors, references and schools attended.

Authority for maintenance of the system:

Executive Order 10450 (as amended), 'Security Requirements for Government employment' Internal Security Act 1950, 18 USC 1382, and Title 18 U.S. code.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

To provide an effective program to insure that the employment and retention in employment of any civilian officer or employee within the activity is clearly consistent with the interests of national security. To determine the investigative requirements for appointment and retention of civilian officers and employees. To provide information concerning the security clearance and degree of access granted each employee. To provide a basis by which an applicant or employee may be determined suitable for employment or retention in employment in sensitive or nonsensitive positions within the Federal civilain service. To provide a record of favorable security and suitability determinations made by the Navy Central Clearance Group, of favorable and unfavorable determinations made by the Secretary of the Navy and of suitability determinations made by the Civil Service Commission and the activity. Users include officials and employees of the Department of the Navy in the performance of their official duties related to the Department of the Navy Civilian Personnel Security Program.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Paper records in file folders and on file cards.

Retrievability:

Name (last, first, middle), date of birth, and social security number.

Safeguards:

Safekeeping and storage in accordance with the Department of the Navy Information Security Program Regulation, OPNAV 5510.1E, Chapter V.

Retention and disposal:

Records are retained during the employment of the employee at the activity, and during period applicants are being considered for employment, but may be disposed of at any time after serving their purpose. The records are disposed of upon separation (retirement, transfer, resignation, termination, etc.) of the employee. Disposal may be made by (1) return to the source from which received, if required, (2) forwarding to the Department of Defence activity to which an employee is transferred, or (3) destruction.

System manager(s) and address:

Commanding officers of Heads of Department of the Navy Staff, Headquarters and field activities employing civilians.

Notification procedure:

Request should be by correspondence addressed to the SYSMANAGER. The letter should contain the full name, date and place of birth, and social security number of the requester and his signature. Official mailing addresses are provided in the Department of the Navy Directory, published in the Federal Register. The employee may visit the Security Manger's Office of the activity at which she or he is employed.

Record access procedures:

The agency's rules for access may be obtained from SYSMANAGER.

Contesting record procedures:

The agency's rules for contesting contents and appealing initial determinations by the individual concerned may be obtained from SYSMANAGER.

Record source categories:

Investigation results and information provided by appropriate investigative agencies and the Office of Civilian Manpower Management.

Systems exempted from certain provisions of the act:

Parts of this system may be exempt under 5 U.S.C. 552 a (j) or (k), as applicable. For additional information contact the System Manager.

N96821-51

System name:

Job Evaluation, Position Classification, Job Grading, Position Management, etc.

System location:

Office of Civilian Manpower Management, Department of the Navy; Regional Offices of Civilian Manpower Management; Capital Area Personnel Servicing Office-Navy; and Navy Staff, Headquarters, and Field Activities employing civilians. Mailing addresses are provided in the Department of the Navy directory published in the Federal Register.

Categories of individuals covered by the system:

Civilian employees paid from appropriated and non-appropriated funds, serving in jobs and positions covered by Title 5, United States Code.

Categories of records in the system:

System is comprised of descriptions of duties and responsibilities constituting jobs and positions to which individual employees are assigned, evaluation statements regarding those jobs and positions, audit notes related to those jobs and positions, appeal decisions regarding those jobs and positions, and other miscellaneous information which relates to those jobs and positions. Files are maintained in loose leaf binders or paper folders which are filed by organizational location, occupational title, occupational code, and/or employee's name.

Authority for maintenance of the system:

Title 5, United States Code Sections 5101, 5106, 5107, 5108, 5110, 5112, 5113, 5346 Classification, Pay Rates and Systems

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Officials and employees of the Department of the Navy, the Department of Defense, and the Civil Service Commission in the performance of their duties related to recruitment, selection, retention, training, and promotion of employees, classification of positions and grading of jobs, adjudication of employee appeals, management of resources, determination of pay rates for employees, determination of benefits for employees, and other management related functions which involve the categorization of jobs, positions, or employees by the types of duties and responsibilities assigned and/or performed. Labor organization members and/or representatives involved in representation of employees in grievance and appeal cases. The Comptroller General of the United States or his representatives in the performance of duties related to the management of government operations. The Attorney General of the United States or his representatives in cases involving litigation, law enforcement, or other official matters. Hearing examiners and/or arbitrators during hearings regarding employee grievances. Members or committees of the Congress of the United States in cases wherein civilian employment matters are under study or investigation.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Records are stored in loose leaf binders or paer file folders.

Retrievability:

Records are retrieved by job or position title, job or position number, organizational location, job or position occupational code, and/or by employee name directly or through cross reference files maintained by other entities.

Safeguards:

Files are maintained in standard file cabinets or bookcases. Files are located in buildings or spaces which are locked to the public during non-working hours. Files are issued only on the basis of a demonstrated need to know.

Retention and disposal:

Files are maintained during the period of their currency and must be maintained for 2 years after positions or jobs are abolished or superseded.

System manager(s) and address:

The Director of Civilian Manpower Management and the heads of Navy Staff, Headquarters, and Field Activities employing civilians. Addresses are provided in the Department of the Navy directory published in the Federal Register.

Notification procedure:

Request by correspondence should be addressed to the Director of Civilian Manpower Management, Department of Navy, Washington, D.C. 20390, or the head of the concerned Navy Staff, Headquarters, or Field Activity of current or former employment. Mailing addresses for the concerned activities are provided in the Department of the Navy directory published in the Federal Register. Correspondence should contain the requester's name, job or position title, series and grade, organizational assignment, employing activity name and address, and official signature or witnessed mark. The individual requester may visit the Office of Civilian Manpower Management, 1735 North Lynn Street, Arlington Virginia, the various Regional Offices of Civilian Manpower Management, Navy Staff or Headquarters offices, or the Personnel Office of the Navy activity at which currently or formerly employed or of the nearest Navy activity to request information. The office contacted will contact the cognizant office by telephone if no record is locally available and the cognizant office can be identified. Addresses of activities and offices are provided in the Department of the Navy directory published in the Federal Register. Proof of identification will consist of a Department of Defense (DOD) or Navy building pass or identification badge, driver's license, or other type of identification bearing a photograph or signature or both, or by providing verbal information that can be verified by reference to the file information requested.

Record access procedures:

The agency's rules for access to records may be obtained from the system manager.

Contesting record procedures:

The agency's rules for contesting contents and appealing initial determinations by the individual concerned may be obtained from the system manager.

Record source categories:

Navy Civilain Personnel Offices and their representatives, current and previous supervisors and/or associates of the employee, employees' representatives, and other miscellaneous sources having knowledge of the employees' assigned duties and responsibilities, past and present.

Systems exempted from certain provisions of the act:

NONE

N96821-53

System name:

Health Programs, Insurance and Annuities

System location:

Office of Civilian Manpower Management, Heads of Navy Staff, Headquarters and Field Activities employing civilians. Mailing addresses are provided in the Department of the Navy directory published in the Federal Register.

Categories of individuals covered by the system:

Navy civilian employees who are injured while in the performance of duty.

Categories of records in the system:

Files consist of non-automated records concerning information pertaining to the employee's identification, address, injury or occupational disease, and attending physician's report.

Authority for maintenance of the system:

Title 5, U.S. Code 8120, Report of injury and 8121, Claim

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Officials and employees of the Department of the Navy and the Department of Labor in the performance of their official duties related to the processing of injury compensation claims. The Comptroller General, or any of his authorized representatives, in the performance of duties of the General Accounting Office with regard to claims arising from on-the-job injuries. The Justice Department in the event of litigation, insuring agencies, the Civil Service Commission, and beneficiaries, or their legal representatives, in connection with injury, health benefits, or life insurance claims.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Records are stored in paper file folders

Retrievability:

Records are retrieved by employee name directly.

Safeguards:

Records are available only to authorized personnel having a need to know.

Retention and disposal:

Manual records are kept indefinitely

System manager(s) and address:

The Director of Civilian Manpower Management, and the Heads of Navy Staff, Headquarters, and Field Activities employing civilians Addresses are provided in the Department of the Navy directory published in the Federal Register.

Notification procedure:

Request by correspondence should be addressed to the Director of Civilian Manpower Management, Department of the Navy, Washington, D.C. 20390, or the head of the concerned Navy Staff, Headquarters, of Field Activities. Mailing addresses for the concerned activities are provided in the Department of the Navy directory published in the Federal Register. Correspondence should contain the requestor's name, employing activity name and address, and official signature. The individual requestor may visit the Office of Civilian Manpower Management, 1735 North Lynn Street, Arlington, Virginia, Navy Staff or headquarters offices, or the Safety Office of the Navy activity at which currently or formerly employed.

Record access procedures:

The agency's rules for access to records may be obtained from the systems manager.

Contesting record procedures:

The agency's rules for contesting contents and appealing initial determinations by the individual concerned may be obtained from the systems manager.

Record source categories:

Navy safety offices.

Systems exempted from certain provisions of the act:

NONE

N96821-84

System name:

Travel Allowance Claims Record System

System location:

Office of Civilian Manpower Management, Department of the Navy; Regional Offices of Civilian Manpower Management; Capital Area Personnel Servicing Office-Navy; and Navy Staff, Headquarters, and Field Activities employing civilians. Mailing addresses are provided in the Department of the Navy directory published in the Federal Register.

Categories of individuals covered by the system:

Navy civilian employees, with or without compensation, or a new appointee to a position outside the continental United States, or to certain positions within the 50 States and the District of Columbia. When performing official travel at the expense of the Department of the Navy, employees of other Government departments and agencies.

Categories of records in the system: System comprises nonautomated records reflecting information pertaining to the employee's identification, travel authorizations including dates of travel, expense incurred, locations visited; movement of household goods including weight, method and cost of shipment; and number and identification of dependents.

Authority for maintenance of the system:

Chapter 57 of Title 5, United States Code, Travel, Transportation and Subsistence

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Officials and employees of the Department of the Navy in the performance of their official duties related to the authorization of official travel, reimbursement of expenses incurred by the travelers, and auditing of travel claims and payments made to travelers. The Comptroller General, or any of his authorized representatives, in the performance of duties of the General Accounting Officer relating to the review of supplemental travel claims and to other aspects of the Navy's civilian manpower management programs. The Department of Defense Per Diem, Travel and Transportation Allowance Committee in its review of requests for actual expense allowances. The Justice Department in the event of litigation.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Records are stored in paper file folders

Retrievability:

Records are retrieved by last name

Safeguards:

Records are maintained in file cabinets in buildings or spaces which are locked to the general public during non-working hours and are available only to authorized personnel having a need to know.

Retention and disposal:

Records are maintained indefinitely

System manager(s) and address:

The Director of Civilian Manpower Management and the heads of Navy Staff, Headquarters, and Field Activities employing civilians. Addresses are provided in the Department of the Navy directory published in the Federal Register.

Notification procedure:

Request by correspondence should be addressed to the civilian personnel office or comptroller department of the activity which issued the travel orders or processed the travel claim. The letter should contain the full name of the requester and his signature. The individual may visit the civilian personnel office of the Navy activity at which he is currently employed, or of the nearest Navy activity, which office will contact the appropriate civilian personnel office or comptroller department by telephone. Proof of identification will consist of a Department of Defense or Navy building pass or identification badge, or drivers license, or by other types of identification bearing picture or signature.

Record access procedures:

The agency's rules for access to records may be obtained from the system manager.

Contesting record procedures:

The agency's rules for contesting contents and appealing initial determinations by the individual concerned may be obtained from the system manager.

Record source categories:

Travel orders prepared by a transportation officer, travel claims submitted by the employee, and supervisors requiring the travel in connection with official duties.

Systems exempted from certain provisions of the act:

NONE

N96821-83

System name:

Personnel Automated Data System (PADS)

System location:

Office of Civilian Manpower Management (OCMM), Capital Area Personnel Services Office-Navy (CAPSO-N), Regional Offices of Civilian Manpower Management, and Navy Staff, Headquarters and Field activities employing civilians. Mailing addresses are provided in the Dept. of the Navy directory published in the Federal Register.

Categories of individuals covered by the system:

Navy civilian employees paid from appropriated funds. Covers all United States citizen direct hire employees (full time, part time, and intermittent pay basis) and Non-citizens who are direct hire employees paid from appropriated funds.

Categories of records in the system:

System comprises automated records reflecting information pertaining to the employee's identification and other items pertaining to the employee such as: name, unit identification code, sex, birthdate, citizenship code, minority group identifier, veterans preference code, type of appointment code, tenure code, service computation date, physical handicap code, retirement status code, federal employees group life insurance code, pay plan, occupation/series/grade/step, functional code, pay base, salary, location code, position occupied code, state apportionment code, uniformed service designation code, date of retirement from uniform service, uniformed service pay grade, workschedule code, pay rate determinant code, special program identifier code, supervisory position code, position status code, excepted appointment code, strength accounting status code, overseas transportation agreement code. The manual files maintained in paper folders contain the Individual Employee Data Collection NAVSO Form 12280/11, Notification of Personnel Action, Standard Form 50 as modified by the Navy, Payroll Change Slip, Standard Form 1126 and computer printouts.

Authority for maintenance of the system:

Title 5 USC 301 'Departmental Regulations'

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Officials and employees of the Department of the Navy in the performance of their official duties related to the management of the Navy direct hire employees paid from appropriated funds; the design, development, maintenance and operation of the automated system of records. The United States Civil Service Commission, as systems proponent for the Federal-wide Central Personnel Data File because the Navy Personnel Automated Data System is the central Navy-wide source of data to that system, and on matters relating to the inspection, survey, audits or evaluation of Navy civilian personnel management programs, or personnel actions, or such other matters under the jurisdiction of the Commission. The Comptroller General or any of his authorized representatives in the course of the performance of duties of the General Accounting Office relating to the Navy's civilian manpower management programs. The Attorney General of the United States or his authorized representatives in connection with litigation, law enforcement, or other matters under the direct jurisdiction of the Department of Justice or carried out as the legal representative of the Executive Branch agencies. Officials and employees of other components of the Department of Defense in the performance of their official duties related to the management of the Department of Defense civilian manpower management programs. Officials and employees of other Departments and agencies of the Executive Branch of government upon request in the performance of their official duties related to the management of civilian manpower management programs. The Computer Systems Group Corporation (a contractor) and its employees for the purpose of card punch recording of data from employee personnel action documents or data collection forms and other documents. The Senate or the House of Representatives of the United States or any member Committee or sub-committee therof, any joint committee of Congress or subcommittee of joint committees on matters within their jurisdiction requiring disclosure of the files or records of the Navy's civilian manpower management program.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Automated records are stored on magnetic tapes and discs and on punched cards and computer printouts. Manual records are stored in paper file folders.

Retrievability:

Automated records are retrieved by social security number, name, or by one, or a combination of data elements such as Submitting Office Number (SON), Unit Identification Code (UIC), Major Claimant Code, Occupational Series, Grade, etc.

Safeguards:

The computer facility and terminal are located in restricted areas accessible only to authorized persons that are properly screened, cleared and trained. Manual records and computer printouts are available only to authorized personnel having a need to know. Minority data outputs are authorized by the DON Director of EEO or his deputy.

Retention and disposal:

Computer magnetic tapes are retained permanently. Magnetic discs are erased after use. Computer printouts are destroyed after three months. Input documents (NAVSO 12280/11) are destroyed after data is converted to machine readable form. Input punch cards are retained for two weeks.

System manager(s) and address:

The Director of Civilian Manpower Management, and the Head of Navy Staff, Headquarters, and Field activities employing civilians.

Notification procedure:

Request by correspondence should be addressed to the Director of Civilian Manpower Management or the Head of Navy Staff, Headquarters or Navy Field activities where the individual is currently employed or was last employed. Mailing addresses are provided in the Department of the Navy directory, published in the Federal Register. The letter should contain the full name and social security account number of the requester and his signature. The individual may visit the Office of Civilian Manpower Management, Pomponio Plaza Building, 1735 N. Lynn Street, Arlington, VA, or the Civilian Personnel Office of the Navy activity at which he is currently employed, or of the nearest Navy activity, which office will contact the OCMM Code 62 by telephone 202-694-8535 if no record is locally available. Proof of identification will consist of a Department of Defense (DOD) or Navy building pass, or identification badge or drivers license, or by other types of identification bearing picture or signature, or by providing verbal information that could be verified with his career inventory record.

Record access procedures:

The agency's rules may be obtained from the SYSMANAGER.

Contesting record procedures:

The agency's rules for contesting contents and appealing initial determinations by the individual concerned may be obtained from the SYSMANAGER.

Record source categories:

Navy Civilian personnel offices

Systems exempted from certain provisions of the act:

None

N96021-63

System name:

Local Automated Personnel Information System (LAPIS)--Prototype.

System location:

The Office of Civilian Manpower Management, Dept of the Navy and contractors under agreement with OCMM. The Civilian Personnel Offices located at activities employing civilians The following activity in performance of system design, development and maintenance, Naval Command Systems Support Activity (NAVCOSSACT) and contractors under agreement with NAVCOSSACT. The addresses of the above are furnished in the Department of the Navy directory published in the Federal Register

Categories of individuals covered by the system:

All Navy and Marine Corps civilian employees paid from appropriated fund

Categories of records in the system:

The system contains automated records containing information describing and identifying the employee (e.g. name, sex, birth date, minority designator, citizenship, physical handicap code); the position he/she occupies and his/her qualifications; salary and salary basis; his/her status in relation to the position occupied and the organization to which assigned; tickler datas for impending changes in status; educational background; previous military status; and reason for position change or other action affecting the employee.

Authority for maintenance of the system:

Title 5, USC,2951 Reports; and 5 USC 301 Departmental Regulations.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

To support the production of all official records and reports pertaining to the employment of civilian appropriated fund employees employed by activities serviced by the participating civilian personnel offices. Users are: Employees and officials of the Department of the Navy and Department of Defense where there exists a need-to-know in the performance of their official duties; Employees and officials of the Civil Service Commission in the performance of their official duties; The Comptroller General or any of his authorized representatives, in the course of the performance of duties of the General Accounting Office relating to Navy's civilian manpower management programs; The Attorney General of the United States or his authorized representatives in connection with the litigation, law enforcement, or other matters under the direct jurisdiction of the Department of Justice or carried out as the legal representative of the Executive Branch agencies; A duly appointed Hearing Examiner or Arbitrator (an employee of another Federal Agency) for the purpose of conducting a hearing in connection with an employee's grievance; An arbitrator who is given a contract pursuant to a negotiated labor agreement to hear an employee's grievance; Employee unions when unions are authorized to canvas employees or at the time of a union election;

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

The automated records are stored on magnetic tape, disc, drum and punched cards.

Retrievability:

Information is accessed by Social Security Account Number (SSAN), name, or by specific employee characteristics such as date of birth, grade, occupation, employing organization and tickler dates. specific sub-groups of employees may be identified through the use of computerized indices.

Safeguards:

The computer facility and terminals are accessible only to authorized persons that have been properly screened, cleared and trained. Manual and automated records and computer printouts are available only to authorized personnel having a need-to-know.

Retention and disposal:

Records are maintained in an active status until a separation action on an employee is completed. Historical records are maintained for a maximum of five years.

System manager(s) and address:

Director of Civilian Manpower Management. Commanding Officers of the activities listed under LOCATION.

Notification procedure:

Requests from individuals should be addressed to the SYSMANAGER or to the Civilian Personnel Officer under his cognizance. Requests must be accompanied by the individual's full name, social security number and name of employing activity. Requesters may visit the Civilian Personnel Office of the Naval activity covered by the system to obtain information. In such case proof of identity will consist of full name, social security account number and a third positive identification such as drivers license, Navy building pass or identification badge, birth certificate, Medicare card, etc. Address of the activity is furnished in the department of the Navy Directory published in the Federal Register.

Record access procedures:

The Agency's rules for access to records may be obtained from the system manager.

Contesting record procedures:

The agency's rules for contesting contents and appealing initial determinations by the individual concerned may be obtained from the system manager.

Record source categories:

Categories of sources of records in the system are: the civilian personnel office; the payroll office; the security office of the employing activity; and the line managers and supervisors.

Systems exempted from certain provisions of the act:

NONE

N96021-64A

System name:

Computer Assisted Manpower Analyses System (CAMAS)

System location:

Office of Civilian Manpower Management (OCMM) and Navy Department staff, headquarters, and field activities employing civilians; mailing addresses are provided in the Navy Department directory published in the Federal Register.

Categories of individuals covered by the system:

Navy civilian employees paid from appropriated funds.

Categories of records in the system:

Files contain records from the Personnel Automated Data System (PADS) which contain job related data including individual identification, location information, and salary.

Authority for maintenance of the system:

Title 5 U.S.C. 301 Departmental Regulations

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Officials and employees of the Department of the Navy and contractor personnel in the performance of their official duties related to aggregate manpower planning, including calculating transition rates, forecasting number of retirements, and running models to determine the extent to which projected manpower requirements can be met.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Computer magnetic tape and drum.

Retrievability:

Accessed by social security number.

Safeguards:

Records are maintained in areas accessible only to authorized personnel.

Retention and disposal:

Records are permanent.

System manager(s) and address:

Director of Civilian Manpower Management, Department of the Navy, Washington, D.C. 20390.

Notification procedure:

Request by correspondence should be addressed to the Director of Civilian Manpower Management, Department of the Navy, Washington, D.C. 20390. Written requests for information must contain full name of the individual, current address and telephone number, and birth date and social security number. The individual may visit the OCMM at 1735 North Lynn Street, Arlington, Virginia. Proof of identification will consist of a Department of Defense (DOD) or Navy building pass, or identification badge or drivers license, or by other types of identification bearing picture or signature, or by providing verbal information that could be verified.

Record access procedures:

The agency's rules for access to records may be obtained from the system manager.

Contesting record procedures:

The agency's rules for contesting contents and appealing initial determinations by the individual concerned may be obtained from the system manager.

Record source categories:

Personnel Automated Data System (PADS)

Systems exempted from certain provisions of the act:

None

N96021-64B

System name:

Models for Organizational Design and Staffing (MODS)

System location:

Office of Civilian Manpower Management (OCMM) and Navy Department staff, Headquarters, and field activities employing civilians; also at contractor facilities; mailing addresses are provided in the Navy Department directory published in the Federal Register.

Categories of individuals covered by the system:

Navy civilian employees paid from appropriated funds.

Categories of records in the system:

Automated and manual files contain information on individual's proficiencies and knowledges as reported in self-evaluation questionnaires vouchered by the supervisor, as well as data on the requirements of specific jobs submitted by the supervisor.

Authority for maintenance of the system:

Title 5 U.S.C. 301 Departmental Regulations

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Officials and employees of the Department of the Navy in the performance of their official duties related to testing the operational usefulness of a multi-attribute assignment model in the areas of organizational design and staffing. Officials and employees of the Civil Service Commission in the performance of their official duties related to evaluation of civilian manpower programs. University of Texas faculty and students working under a contract relating to MODS to monitor progress of research study. Carnegie-Mellon University faculty and students working under Navy contract relating to MODS to assist in research project.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Computer magnetic tape and drum, and optical scanner forms and computer printouts.

Retrievability:

Accessed by social security number.

Safeguards:

Records are maintained in areas accessible only to authorized personnel.

Retention and disposal:

Records are retained so long as personnel continue to work at same activity.

System manager(s) and address:

Director of Civilian Manpower Management, Department of the Navy, Washington, D.C. 20390.

Notification procedure:

Request by correspondence should be addressed to the Director of Civilian Manpower Management, Department of the Navy, Washington, D.C. 20390 or to the head of the Navy activity at which the individual is or was employed. Written requests for information must contain full name of individual, current address and telephone number, and date of birth and social security number. The individual

may visit the OCMM at 1735 North Lynn Street, Arlington, Virginia, or the field activity at which he is or was formerly employed. Proof of identification will consist of a Department of Defense (DOD) or Navy building pass, or identification badge or drivers license, or by other types of identification bearing picture or signature, or by providing verbal information that could be verified

Record access procedures:

The agency's rules for access to records may be obtained from the system manager.

Contesting record procedures:

The agency's rules for contesting contents and appealing initial determinations by the individual concerned may be obtained from the system manager.

Record source categories:

First-line supervisors and personnel automated data system (PADS).

Systems exempted from certain provisions of the act:

None

N96021/23

System name:

Training and Employee Development Record System

System location:

Office of Civilian Manpower Management (OCMM), Regional Offices of Civilian Manpower Management (ROCMM's), Capital Area Personnel Services Office - Navy (CAPSO-N), and Navy Staff, headquarters and field activities employing civilians. Mailing addresses are provided in the Department of Navy directory published in the Federal Register.

Categories of individuals covered by the system:

Navy civilian employees, full-time and part-time, U.S. citizens and foreign national direct hires receiving training supported by the Federal Government, paid from appropriated funds. Navy military personnel may be included in the automated training information system, and non-appropriated funded personnel may be included in some of the stations' manual records

Categories of records in the system:

Under the Departments' Training Requirements and Information Management System (TRIM), or other locally developed systems, automated and nonautomated records are maintained reflecting information pertaining to the employees' identification, social security number, occupational status (series, grade level, and supervisory status), course identification, course length, category and purpose of training received, date on which training was completed, associated costs, pre-post test results, et.al. input documents for the system include, but is not limited to completed NAVSO Forms 12410/19 and /19A, Training Report, Authorization and Record, keypunched cards. The manual files are maintained in paper folders containing employee's registration and/or record of training documents. Under the Navy's Apprentice, on-the-job Training Program, and similar trainee intake programs, manual and automated records are maintained, reflecting information pertaining to subject employee's identification, date of birth, entrance date to program, dates and nature of personnel actions which occurred during fiscal year, student progress, and statistical data which effects the numbers of apprentices in training as of a given date. At OCMM, nomination forms and documents (non-automated) for the Department of the Navy's centrally-administered education and training programs are maintained. The manual files contain the candidate's nomination documents, training request, enrollment and registration and other documents related to training. Manual files are maintained at OCMM, the ROCMM's, CAPSO-N, and the several naval installations regarding courses conducted on their premises, or for which they sponsor, listing such things as completion dates, and course participants. Additionally, manual files are typically found at the field activities containing information regarding an employee's supervisory status, an indication as to whether or not he/she has participated in supervisory training. Files are often maintained regarding an employee's certification/recertification or demonstrated proficiency in one or more of the Navy's skills areas; an activity-wide annual training plan should also be maintained, as well as individual training plans. Files are also maintained regarding professional licenses held by station personnel.

Authority for maintenance of the system:

Title 5, USC 4103, 'Establishment of Training Programs,' Title 5, USC 4118, 'Training,' Title 5, USC 4115, 'Collection of Training Information' Agreement between the Department of the Navy and the Department of Labor, Bureau of Apprenticeship and Training, 'Registration of the Navy Apprentice Program' - June 1968

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Officials and employees of the Department of the Navy in the performance of their official duties related to the management of the Department's civilian employee training programs, the design, development, maintenance and operation of the manual and automated system of record keeping and reporting; the screening and selection of candidates for centrally-administered programs; and administration of grievance, appeals, complaints, and litigation involving the disclosure of records of the training programs. Representatives of the United States Civil Service Commission on matters relating to the inspection, survey, audit or evaluation of Navy civilian training programs, or such other matters under the jurisdiction of the Commission. The Comptroller General or any of his authorized representatives, in the course of the performance of duties of the General Accounting Office relating to the Navy's civilian training programs. The Attorney General of the United States or his authorized representatives in connection with litigation, law enforcement, or other matters under the direct jurisdiction of the Department of Justice or carried out as the legal representative of the Executive Branch agencies. Officials and employees of other components of the Department of Defense in the performance of their official duties related to the screening and selection of candidates for the service schools. Officials and employees of other departments and agencies of the Executive Branch of government upon request in the performance of their official duties related to the screening and selection of candidates for programs sponsored by their organization. Representatives of the United States Department of Labor on matters relating to the inspection, survey, audit or evaluation of the Navy's apprentice training programs or on other such matters under the jurisdiction of the Labor Department. Representatives of the Veterans Administration on matters relating to the inspection, survey, audit or evaluation of the Navy's apprentice and on-the-job training programs. The Computer Systems Group Contractor (or other such contractor) and its employees for the purpose of card punch recording of data from employee training documents. Employees and officials of the Naval Command Systems Support Activity, Washington Navy Yard for the purpose of systems support. A duly appointed Hearing Examiner or Arbitrator (an employee of another Federal Agency) for the purpose of conducting a hearing in connection with an employee's grievance involving the disclosure of the records of the Department's Training program. An arbitrator who is given a contract pursuant to a negotiated labor agreement to hear an employee's grievance involving the disclosure of the records of the Navy's Training and Employee Development Record system. The Senate or the House of Representatives of the United States or any member, Committee or subcommittee thereof, any joint committee of Congress or sub-committee of joint committees on matters within their jurisdiction requiring disclosure of the files or records of the Department's civilian training program. Colleges, schools, or other institutions engaged to provide training.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Automated records are stored on magnetic tapes, drums, computer printouts, and on punched cards. Manual records are stored in paper file folders.

Retrievability:

Automated records are retrieved by social security number and name, or by one, or a combination of data elements contained in the TRIM or apprentice program master files. Manual records are retrieved by employee last name, by course control information, or by training program title.

Safeguards:

The computer facility and terminal are located in restricted areas accessible only to authorized persons that are properly screened, cleared and trained. Manual records and computer printouts are available only to authorized personnel having a need to know.

Retention and disposal:

For TRIM and the apprentice programs the computer magnetics tapes are permanent. Manual records are maintained on a fiscal year basis and are retained for varying periods from one to five fiscal years. For the Department of the Navy's centrally-administered programs, files on selected candidates are maintained for five years (from date selection process is completed). Records of non-selected candidates are retained only for that period of time sufficient to permit appropriate review (usually less than 60 days). CAPSO-N, ROCMM, and activity records are maintained for varying periods.

System manager(s) and address:

The Director of Civilian Manpower Management, the Regional Offices of Civilian Manpower Management, Capital Area Personnel Services Office - Navy, and the heads of Navy staff, headquarters, and field activities employing civilian employees.

Notification procedure:

Request by correspondence should be addressed to the Director of Civilian Manpower Management, the Regional Offices of Civilian Manpower Management, the Capital Area Personnel Services Office - Navy, or Navy staffs, headquarters or field activities employing civilians. Mailing addresses are provided in the Department of the Navy directory published in the Federal Register. The letter should contain the full name and social security number of the requester and his signature. Proof of identification will consist of a Department of Defense (DOD) or Navy building pass, or identification badge, or driver's license, or by other types of identification bearing an employee picture and signature.

Record access procedures:

The agency's rules for access to records may be obtained from SYSMANAGER.

Contesting record procedures:

The agency's rules for contesting the contents and appealing initial determinations by the individual concerned may be obtained from the SYSMANAGER.

Record source categories:

Navy civilian personnel offices; current and previous supervisors of employees (when appraisals of performance/potential are used).

Systems exempted from certain provisions of the act:

NONE

DIRECTORY OF DEPARTMENT OF THE NAVY MAILING ADDRESSES

Assistance in obtaining any Navy mailing address not included in the following directory may be obtained from:

Chief of Naval Operations
(Op-09B1)
Navy Department
Washington DC 20350

Such assistance concerning any Marine Corps address may be obtained from:

Commandant of The Marine Corps
(Code M)
Washington DC 20380

ALASKA

Commanding Officer
Naval Arctic Research Laboratory
Barrow AK 99723

ARIZONA

Commanding Officer
Marine Corps Air Station
Yuma Arizona 85364

CALIFORNIA

Commanding Officer
Navy Space Systems Activity
PO Box 92960
Worldway Postal Center
Los Angeles CA 90009

Director
Navy Office of Information
Los Angeles Branch
11000 Wilshire Blvd Rm 10201
Los Angeles CA 90024

Commanding Officer
Marine Barracks
Naval Weapon Station
Seal Beach CA 90740

Commanding Officer
Naval Weapons Station
Seal Beach CA 90740

Supervisor of Shipbuilding
Conversion and Repair USN
Long Beach Naval Shipyard
Long Beach CA 90801

Commanding Officer
Naval Regional Medical Center
7500 Carson Street
Long Beach CA 90801

Officer in Charge
Naval Regional Procurement Office
Long Beach CA 90801

Officer in Charge
Navy Commissary Store Region
Long Beach CA 90801

Officer in Charge
Navy Finance Office
Naval Support Activity
Long Beach CA 90801

Military Sealift Command
Office Long Beach
Naval Support Activity
Long Beach CA 90801

Director Consolidated
Civilian Personnel Office
Naval Support Activity Los Angeles
Long Beach CA 90822

Commander
Long Beach Naval Shipyard
Long Beach CA 90822

Commanding Officer
Naval Regional Dental Center
Long Beach CA 90822

Commanding Officer
Naval Support Activity
Los Angeles-Long Beach
Long Beach CA 90822

Commanding Officer
Office of Naval Research
Branch Office
1030 East Green St
Pasadena CA 91101

Commanding Officer
Marine Barracks
Fallbrook Annex
Naval Weapons Station
Fallbrook CA 92028

Commanding Officer
Field Medical Service School
Marine Corps Base
Camp Pendleton CA 92055

Commanding General
I Marine Amphibious Force FMF
Camp Pendleton CA 92055

Commanding General
Marine Corps Base
Camp Pendleton CA 92055

Commanding Officer
Naval Regional Dental Center
Camp Pendleton CA 92055

Commanding Officer
Naval Regional Medical Center
Camp Pendleton CA 92055

Commanding General
1st Marine Division FMP
Camp Pendleton CA 92055

Commanding General
4th Marine Division FMF
US Marine Corps Reserve
Camp Pendleton CA 92055

Director Western Field Div
Office of Civilian Personnel
Western Field Division
Suite 1313 Charter Oil Bldg
San Diego CA 92101

Commanding Officer
Navy Submarine Support Facility
140 Sylvester Road
San Diego CA 92106

Director
Naval Audit Service
Western Region
1220 Pacific Highway

San Diego CA 92132
Commander
Naval Base
San Diego CA 92132
Commander
Naval Base San Francisco
Naval Base
San Diego CA 92132
Commanding Officer
Naval Education and
Trainig Support Center Pacific
Fleet Station Post Office Bldg
San Diego CA 92132
Commander
Naval Reserve Readiness Command
Region Nineteen
960 North Harbor Drive
San Diego CA 92132
Commanding Officer
Naval Supply Center
937 North Harbor Drive
San Diego CA 92132
Commanding Officer
Navy Manpower and Material
Analysis Center
Pacific
San Diego CA 92132
Commanding Officer
Navy Regional Finance Center
937 N Harbor Drive
San Diego CA 92132
Commanding Officer
U S Naval Communication
Station San Diego
937 N Harbor Drive
San Diego CA 92132
Commandant
11th Naval District
Naval Base
San Diego CA 92132
Commandant
12th Naval District
Naval Base
San Diego CA 92132
Commanding Officer
Human Resource Management Center,
San Diego
Naval Training Center
San Diego, CA 92133
Commanding Officer
Naval Administrative Command
Naval Training Center
San Diego CA 92133
Commander
Naval Training Center
San Diego CA 92133
Commanding Officer
Recruit Training Command
Naval Training Center
San Diego CA 92133
Commanding Officer
Service School Command
Naval Training Center
San Diego CA 92133
Commanding Officer
Naval Regional Medical Center
San Diego CA 92134
Commanding Officer
Naval School of Health Sciences
San Diego, CA 92134
Naval Air Systems
Command Representative
Pacific
Naval Air Station North Island
San Diego CA 92135
Commanding Officer
Enlisted Personnel
COMNAVAIRPAC/COMASWWINGPAC
Box 1300 NAS North Island
San Diego CA 92135
Officer in Charge
Fleet Aviation Accounting
Office Pacific
Naval Air Station North Island
San Diego CA 92135
Commanding Officer
Marine Barracks
Naval Air Station North Island
San Diego CA 92135
Commanding Officer
Naval Air Rework Facility
Naval Air Station North Island
San Diego CA 92135
Commanding Officer
Naval Air Station
North Island
San Diego CA 92135
Commanding Officer
Naval Weather Service Facility
Naval Air Station North Island
San Diego CA 92135
Commanding Officer
Pacific Fleet Data Processing
Service Center San Diego
Naval Air Station North Island
San Diego CA 92135
Commander Naval Air Force
US Pacific Fleet
Naval Air Station North Island
San Diego CA 92135
Director Consolidated
Civilian Personnel Office Code 12
PO Box 118 Naval Station
San Diego CA 92136
Supervisor of Shipbuilding
Conversion and Repair USN
Naval Station
Box 119
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Commanding Officer
Fleet Training Center
Naval Station
San Diego CA 92136
Commanding Officer
Naval Alcohol Rehabilitation Center
Naval Station
San Diego CA 92136
Officer in Charge
Naval Construction Battalion
Unit-405
San Diego CA 92136
Commanding Officer
Naval Development & Training Center
Naval Station Box 106
San Diego CA 92136
Officer in Charge
Naval Legal Service Office
Naval Station
San Diego CA 92136
Commanding Officer
Naval Regional Dental Center
San Diego CA 92136
Commanding Officer
Naval Station
San Diego Calif 92136
Officer in Charge
Navy Commissary Store Region
San Diego CA 92136
Officer in Charge
Navy Environmental and Preventive
Medicine Unit No 5
Naval Station, Box 143
San Diego CA 92136
Officer in Charge
Navy Exchange Service Center
Naval Station
San Diego CA 92136
Director
Navy Public Affairs Center
San Diego
Box 125 Naval Station
San Diego CA 92136
Commanding Officer
Navy Public Works Center
Naval Base
San Diego CA 92136

Director
Navy Publications and Printing
Service Western Division
Bldg 154 Naval Station
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Senior Member
Sub-Board of Inspection
and Survey Pacific
Building 116 Naval Station
San Diego CA 92136
Commanding Officer, Naval
Electronic Systems Engineering
Center, San Diego
PO Box 80337
San Diego CA 92138
Commanding Officer
Naval Investigative Service Office
San Diego
PO Box 80667
San Diego CA 92138
Commanding Officer
Naval Sea Support Center Pacific
PO Box 80548
San Diego CA 92138
Commanding General
Marine Corps Recruit Depot
San Diego CA 92140
Commanding Officer
Naval Air Station
Miramar
San Diego CA 92145
Commanding Officer
Naval Drug Rehabilitation Center
Naval Air Station, Miramar
San Diego CA 92145
Commanding Officer
Fleet Anti-Submarine Warfare
Training Center, Pacific
San Diego CA 92147
Commanding Officer
Fleet Combat Direction Systems
Support Activity San Diego
San Diego CA 92147
Commanding Officer
Fleet Combat Training Center
Pacific
San Diego CA 92147
Commanding Officer
Fleet Intelligence Training Center
Pacific
Bldg 5 Fleet ASW School
San Diego CA 92147
Director
Joint Tactical Air Control Systems/
Tactical Air Defense Systems
Interface Test Force
San Diego CA 92147
Commander Training Command
US Pacific Fleet
San Diego CA 92147
Commanding Officer
Naval Health Research Center
San Diego, CA 92152
Commander
Naval Ocean Systems Center
San Diego CA 92152
Commanding Officer
Navy Personnel Research and
Development Center
San Diego CA 92152
Commander Amphibious Group
Eastern Pacific
Naval Amphibious Base Coronado
San Diego CA 92155
Commanding Officer
Naval Amphibious Base Coronado
San Diego CA 92155
Commanding Officer
Naval Amphibious School
Coronado
San Diego CA 92155
Commander
Naval Surface Force
US Pacific Fleet
San Diego CA 92155
Commanding Officer
National Parachute Test Range
El Centro CA 92243
Commanding General
Force Troops
Fleet Marine Force Pacific
Marine Corps Base
Twentynine Palms CA 92278
Commanding General
Marine Corps Base
Twentynine Palms CA 92278
Commanding Officer
Marine Corps Logistics Support Base
Pacific
Barstow CA 92311
Commander
Marine Corps Air Bases Western Area
Marine Corps Air Station
El Toro, Santa Ana CA 92709
Commanding General
Marine Corps Air Station El Toro
Santa Ana CA 92709
Commanding General
3rd Marine Aircraft Wing
Marine Corps Air Station El Toro
Santa Ana CA 92709
Commanding Officer
Marine Corps Air Station
(Helicopter)
Santa Ana CA 92710
Commanding Officer
Naval Air Station
Point Mugu CA 93042
Commanding Officer
Naval Facility
San Nicolas Island
Point Mugu CA 93042
Commanding Officer
Navy Astronautics Group
Box 30
Point Mugu CA 93042
Commander
Pacific Missile Test Center
Point Mugu CA 93042
Commanding Officer
Naval Construction
Battalion Center
Port Hueneme CA 93043
Commanding Officer
Naval Construction Training Center
Port Hueneme CA 93043
Commanding Officer
Naval Hospital
Port Hueneme CA 93043
Officer in Charge
Naval Nuclear Power Unit
Port Hueneme CA 93043
Commanding Officer
Naval School
Civil Engineer Corps Officers
Port Hueneme CA 93043
Commanding Officer
Naval Ship Weapon Systems
Engineering Station
Port Hueneme CA 93043
Officer in Charge
Navy Finance Office
Port Hueneme CA 93043
Commanding Officer
Marine Barracks
Naval Air Station
Lemoore CA 93245
Commanding Officer
Naval Air Station
Lemoore CA 93245
Officer in Charge
Naval Construction Battalion
Unit 406
Naval Air Station
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Commanding Officer

Naval Hospital
Lemoore CA 93245
Officer in Charge
Naval Petroleum Reserves in California
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Tupman CA 93276
Commander
Naval Weapons Center
China Lake CA 93555
Commanding Officer
Naval Facility
Point Sur
Big Sur CA 93920
Director
Defense Resources Management Education Center
Naval Postgraduate School
Monterey, CA 93940
Commanding Officer
Fleet Numerical Weather Central
Monterey CA 93940
Director
Manpower Research and Data Analysis Center
Naval Postgraduate School
Monterey, CA 93940
Commanding Officer
Naval Environmental Prediction Research Facility
Monterey CA 93940
Superintendent
Naval Postgraduate School
Monterey CA 93940
Officer in Charge
Det Moffett Field Pacific Fleet Data Processing Service Center
Naval Air Station
Moffett Field CA 94035
Commanding Officer
Naval Air Station
Moffett Field CA 94035
Officer in Charge of
Construction Naval Facilities Engineering Command Contracts
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Commanding Officer
Marine Barracks
Naval Support Activity
Treasure Island
San Francisco CA 94130
Commanding Officer
Naval Investigative Service Office San Francisco
Bldg 7 Treasure Island
San Francisco CA 94130
Officer in Charge
Naval Legal Service Office
Naval Support Activity Treasure Is
Treasure Island
San Francisco CA 94130
Commanding Officer
Naval Regional Dental Center
San Francisco CA 94130
Commanding Officer
Naval Regional Medical Clinic
Treasure Island
San Francisco CA 94130
Commander
Naval Reserve Readiness Command Region Twenty Bldg 1 NAVSUPPACT
Treasure Island
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Commanding Officer
Naval Support Activity
Treasure Island
San Francisco CA 94130
Commanding Officer
Naval Technical Training Center
Treasure Island
San Francisco CA 94130
Commander
Navy Recruiting Area Eight
Naval Support Activity
Bldg 1 Treasure Island
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Commanding Officer
Navy Regional Finance Center
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Supervisor of Shipbuilding
Conversion and Repair USN
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Commanding Officer
Marine Barracks
Naval Air Station
Alameda CA 94501
Officer in Charge
Naval Air Logistic Control Office Eastern Pacific
Naval Air Station
Alameda CA 94501
Commanding Officer
Naval Air Rework Facility
Naval Air Station
Alameda CA 94501
Commanding Offier
Naval Air Station
Alameda Calif 94501
Officer in Charge
Naval Construction Battalion Unit 416
Naval Air Station
Alameda, CA 94501
Commanding Officer
Naval Weather Service Facility
Naval Air Station
Alameda CA 94501
Officer in Charge
Navy Disease Vector Ecology and Control Center
Naval Air Station
Alameda CA 94501
Commanding Officer
Pacific Fleet Data Processing Service Center Alameda
Naval Air Station
Alameda CA 94501
Commanding Officer
Marine Barracks
Naval Weapons Station
Concord CA 94520
Commanding Officer
Naval Weapons Station
Concord Calif 94520
Commanding Officer
Combat Systems Technical Schools Command
Mare Island
Vallejo CA 94592
Commanding Officer, Naval
Electronic Systems Engineering Center, Vallejo
Vallejo, CA 94592
Officer in Charge
Engineering Duty Officer School
Mare Island
Vallejo CA 94592
Commander
Mare Island Naval Shipyard

Vallejo CA 94592
Commanding Officer
Marine Barracks
Mare Island
Vallejo CA 94592
Commanding Officer
Naval Support Activity Mare Island
Vallejo CA 94592
Officer in Charge
Navy Commissary Store Region
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Commanding Officer
Navy Public Works Center
San Francisco Bay
P.O. Box 24003
Oakland CA 94623
Commander
Military Sealift Command Pacific
Oakland CA 94625
Officer in Charge
Naval Biosciences Laboratory
Naval Supply Center
Oakland CA 94625
Commanding Officer
Naval School Transportation
Management
Naval Supply Center
Oakland CA 94625
Commanding Officer
Naval Supply Center
Oakland CA 94625
Officer in Charge
Navy Regional Plant Equipment
Office
Naval Supply Center
Oakland CA 94625
Officer in Charge
Navy Resale System Offic
West Coast Branch
Naval Supply Center
Oakland CA 94625
Commanding Officer
Naval Regional Medical Center
Oakland CA 94627
Commanding Officer
Naval Communication Station
Stockton
Stockton CA 95203
Commanding Officer
Naval Security Group Activity
Skaggs Island
Sonoma CA 95476
Commanding Officer
Naval Facility Centerville Beach
Ferndale CA 95536
Commanding Officer
Naval Air Training Unit
Mather AFB
Sacramento CA 95655

COLORADO

Commanding Officer
Naval Unit
Lowry Air Force Base CO 80230

CONNECTICUT

Commanding Officer
Naval Nuclear Power Training Unit
Windsor CT 06095
Supervisor of Shipbuilding
Conversion and Repair USN
Groton CT 06340
Commanding Officer
Marine Barracks
Naval Submarine Base New London
Groton CT 06340
Officer in Charge
Naval Construction Battalion
Unit-414
Naval Submarine Base, New London
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Commanding Officer
Naval Submarine Base New London
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Commanding Officer
Naval Submarine Medical Center
Naval Submarine Base New London
Groton CT 06340
Commanding Officer
Naval Submarine Medical Research
Laboratory
Naval Submarine Base New London
Groton CT 06340
Commanding Officer
Naval Submarine School
Box 700
Groton CT 06340
Commanding Officer
Naval Submarine Support Facility
New London
Groton CT 06340
Officer in Charge
Navy Finance Office
Naval Submarine Base New London
Groton CT 06340

DELAWARE

Commanding Officer
Naval Facility
Lewes DE 19958

DISTRICT OF COLUMBIA

Director
Defense Printing Service
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Asst SECNAV for
Financial Management
Marine Aide
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Washington DC 20301
Director
Navy Courier Service Headquarters
Forrestal Bldg
Washington DC 20314
Director
Department of the Navy Automatic
Data Processing Management
Navy Department
Washington DC 20350
Director
Department of the Navy Program
Information Center
Navy Department
Washington DC 20350
Director
Navy Broadcasting Service
Department of the Navy
Washington DC 20350
Comptroller of the Navy
Navy Department
Washington DC 20350
Chief of Information
Navy Department
Washington DC 20350
Secretary of the Navy
Navy Department
Washington DC 20350
Chief of Legislative Affairs
Navy Department
Washington DC 20350
Under Secretary of the Navy
Navy Department
Washington DC 20350
Officer in Charge
Navy Internal Relations Activity

Navy Department
Washington DC 20350
Director
Office of Program Appraisal
Navy Department
Washington DC 20350
Chief of Naval Operations
Department of the Navy
Washington DC 20350
Asst Secretary of the Navy
(Financial Management)
Navy Department
Washington DC 20350
Asst Secretary of the Navy
(Manpower & Reserve Affairs)
Navy Department
Washington DC 20350
Asst Secretary of the Navy
(Research and Development)
Navy Department
Washington DC 20350
Commander
Anti-Submarine Warfare Systems
Projects Office
Washington DC 20360
Commander
Naval Electronic Systems Command
Naval Electronic Systems Command
Headquarters
Washington DC 20360
Commanding Officer
Naval Material Command Support
Activity
Washington DC 20360
General Counsel
Navy Department
Washington DC 20360
Chief of Naval Material
Navy Department
Washington DC 20360
Director
Office of Naval Petroleum and Oil
Shale Reserves
Navy Department
Washington DC 20360
Asst Secretary of the Navy
(Installation and Logistics)
Navy Department
Washington DC 20360
Commander
Naval Air Systems Command
Naval Air Systems Command
Headquarters
Washington DC 20361
Commander
Naval Sea Systems Command
Naval Sea Systems Command
Headquarters
Washington DC 20362
Commander
Naval Ship Engineering Center
Washington DC 20362
Commander
Naval Supply Systems Command
Naval Supply Systems Command
Headquarters
Washington DC 20362
Recorder
Board for Corrections of Naval
Records
Navy Department
Washington DC 20370
Senior Member
Board of Decorations and Medals
Arlington Annex Room 3028
Navy Department
Washington DC 20370
President
Board of Inspection
and Survey
Navy Department
Washington DC 20370
Commanding Officer
Naval Personnel Program
Support Activity
Room 1074 AA
Washington DC 20370
Chief of Naval Personnel
Navy Department
Washington DC 20370
Commanding Officer
Navy Regional Finance Center
Washington DC 20371
Chief
Bureau of Medicine and Surgery
Navy Department
Washington DC 20372
Commanding Officer
Fleet Weather Facility
Suitland
Navy Department
Washington, DC 20373
Commander
Naval Oceanographic Office
Washington, DC 20373
Commanding Officer
Chesapeake Division, Naval
Facilities Engineering Command
Washington Navy Yard
Washington, DC 20374
Director Consolidated
Civilian Personnel Office
Bldg 200 Washington Navy Yard
Washington DC 20374
Director
Department of Defense Computer
Institute
Washington Navy Yard
Washinton DC 20374
Director
Field Support Activity
Washington Navy Yard
Washington, DC 20374
Commanding Officer
Naval Administrative Unit
Bldg 146
Washington Navy Yard
Washington DC 20374
Commandant
Naval District Washington
Washington Navy Yard
Washington DC 20374
Director
Naval Historical Center
Washington Navy Yard
Washington DC 20374
Officer in Charge
Naval Legal Service Office
Washington Navy Yard
Washington DC 20374
Commanding Officer
Naval Photographic Center
Washington, DC 20374
Commander
Naval Reserve Readiness Command
Region Six
Washington Navy Yard
Washington DC 20374
Commanding Officer
Naval School Diving and
Salvage
Washington Navy Yard
Washington DC 20374
Director
Naval Weapons Engineering
Support Activity
Washington Navy Yard
Washington DC 20374
Officer in Charge
Navy Appellate Review Activity
Office of Judge Advocate General
Washington Navy Yard
Washington DC 20374
Officer in Charge
Navy Band
Washington Navy Yard

Washington DC 20374
Commanding Officer
Navy Food Service Systems Office
Washington Navy Yard
Washington DC 20374
Officer in Charge
Navy Recruiting Exhibit Center
Washington Navy Yard
Washington, DC 20374
Commanding Officer
Navy Regional Data Automation
Center Washington
Washington Navy Yard
Washington DC 20374
Officer in Charge
Navy Regional Procurement Office
Washington Navy Yard
Washington, DC 20374
Officer in Charge
Navy Tactical Doctrine Activity
Washington Navy Yard
Washington DC 20374
Chief
Navy-Marine Corps Trail Judicary
Washington Navy Yard
Washington DC 20374
Director, Navy Publication and
Printing Service
Management Office
Washington Navy Yard Bldg 157-3
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Commanding Officer
Naval Research Laboratory
Washington DC 20375
Commander
Navy Accounting and Finance Center
Navy Department
Washington DC 20376
Department of the Navy
Navy Automatic Data Processing
Selection Office
Washington DC 20376
Commandant of the Marine Corps
Navy Department
Washington DC 20380
Commanding Officer
Marine Barracks
8th and I Sts SE
Washington DC 20390
Commander
Military Sealift Command
Department of the Navy
Washington DC 20390
Commanding Officer
Naval Air Facility
Washington D C 20390
Commanding Officer
Naval Communication Unit Washington
Washington DC 20390
Commanding Officer
Naval Electronic Systems Security
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Commanding Officer
Naval Intelligence Support Center
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Superintendent
Naval Observatory
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Director
Naval Observatory Flagstaff Station
Care of Superintendant
Naval Observatory
Washington DC 20390
Director
Naval Observatory Time Service
Substation Care of Superintendent
Naval Observatory
Washington DC 20390
Naval Security Group Command
Naval Security Group Headquarters
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Commanding Officer
Naval Security Station
3801 Nebraska Ave NW
Washington DC 20390
Commander
Naval Telecommunications Command
4401 Massachusetts Ave N W
Washington DC 20390
Director of Civilian Personnel
Navy Department
Washington D C 20390
Director
Seasparrow Project Support Office
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Officer in Charge
Naval Support Unit State Department
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FLORIDA

Officer in Charge
Navy Fuel Depot
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Commanding Officer
Naval Air Rework Facility
Naval Air Station
Jacksonville FL 32212
Commanding Officer
Naval Air Station
Jacksonville FL 32212
Commanding Officer
Naval Alcohol Rehabilitation Center
Naval Air Station
Jacksonville, FL 32212
Commander
Naval Base
Jacksonville FL 32212
Officer in Charge
Naval Construction Battalion
Unit-410
Naval Air Station
Jacksonville FL 32212
Officer in Charge
Naval Legal Service Office
Naval Air Station
Jacksonville FL 32212
Commanding Officer
Naval Regional Dental Center
Jacksonville, FL 32212
Commander
Naval Reserve Readiness Command
Region Eight
Bldg 90 Naval AR Station
Jacksonville FL 32212
Commanding Officer
Naval Weather Service Facility
P O Box 85
Naval Air Station
Jacksonville FL 32212
Officer in Charge
Navy Commissary Store Region
Jacksonville FL 32212
Officer in Charge
Navy Disease Vector Ecology and
Control Center
Naval Air Station
Jacksonville FL 32212
Officer in Charge
Navy Finance Office
Naval Air Station
Box 79
Jacksonville FL 32212
Commanding Officer
Naval Regional Medical Center
Jacksonville FL 32214
Officer in Charge
Fleet Air Intelligence Support

Center Cecil
Naval Air Station
Cecil Field FL 32215
Commanding Officer
Marine Barracks
Naval Air Station
Cecil Field FL 32215
Commanding Officer
Naval Air Station
Cecil Field FL 32215
Supervisor of Shipbuilding
Conversion and Repair USN
Drawer T
Mayport Naval Station
Jacksonville FL 32228
Commanding Officer
Fleet Training Center
Naval Station
Mayport FL 32228
Commanding Officer
Naval Station
Mayport FL 32228
Commanding Officer
Navy Experimental Diving Unit
Panama City FL 32401
Commanding Officer
Naval Coastal Systems Laboratory
Panama City FL 32407
Chief of Naval Education
and Training
Naval Air Station
Pensacola FL 32508
Commanding Officer
Helicopter Combat Support Squadron
Sixteen
Naval Air Station
Pensacola FL 32508
Commanding Officer
Naval Acrospace Medical
Research Laboratory
Naval Air Station
Pensacola FL 32508
Commanding Officer
Naval Aerospace Medical Institute
Naval Air Station
Pensacola FL 32508
Commanding Officer
Naval Air Rework Facility
Building 604
Naval Air Station
Pensacola FL 32508
Commanding Officer
Naval Air Station
Pensacola FL 32508
Director
Naval Aviation Museum
Naval Air Station
Pensacola FL 32508
Commanding Officer
Naval Aviation Schools Command
Bldg 633 Naval Air Station
Pensacola FL 32508
Officer in Charge
Naval Construction Battalion
Unit 402
Naval Air Station
Pensacola FL 32508
Commanding Officer
Naval Education and Training
Information Systems Activity
Naval Air Station
Pensacola, FL 32508
Officer in Charge
Naval Legal Service Office
Naval Air Station
Pensacola, FL 32508
Commanding Officer
Naval Regional Dental Center
Pensacola, FL 32508
Commanding Officer
Naval Weather Service Facility
Naval Air Station
Pensacola FL 32508
Officer in Charge
Navy Commissary Store Region
Pensacola FL 32508
Commanding Officer
Navy Flight Demonstration Squadron
(Blue Angels)
Naval Air Station
Pensacola, FL 32508
Commanding Officer
Navy Public Works Center
Naval Air Station
Pensacola FL 32508
Commander
Training Air Wing Six
Naval Air Station
Pensacola FL 32508
Commanding Officer
Training Squadron Eight-Six
Naval Air Station
Pensacola FL 32508
Commanding Officer
Training Squadron Four
Naval Air Station
Pensacola FL 32508
Commanding Officer
Training Squadron Ten
Naval Air Station
Pensacola FL 32508
Director
Defense Activity for Non-Tradition
Education Support
Pensacola FL 32509
Superintendent
Dependents Education Office
Atlantic
Ellyson, Building 995
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Commanding Officer
Naval Education and Training
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Ellyson
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Chief of Naval Education and
Training Support
Pensacola FL 32509
Commanding Officer
Naval Technical Training Center
Corry Station
Pensacola FL 32511
Commanding Officer
Naval Aerospace and Regional
Medical Center
Pensacola FL 32512
Commanding Officer
Helicopter Training Squadron Eight
Naval Air Station Whiting Field
Milton FL 32570
Commanding Officer
Helicopter Training Squadron 18
Naval Air Station Whiting Field
Milton FL 32570
Commanding Officer
Naval Air Station
Whiting Field
Milton FL 32570
Commander
Training Air Wing Five
Naval Air Station Whiting Field
Milton FL 32570
Commanding Officer
Training Squadron Six
Naval Air Station Whiting Field
Milton FL 32570
Commanding Officer
Training Squadron Three
Naval Air Station Whiting Field
Milton FL 32570
Commanding Officer
Training Squadron Two
Naval Air Station Whiting Field
Milton FL 32570
Commanding Officer
Naval Administrative Command

Naval Training Center
Orlando FL 32813
Commanding Officer
Naval Nuclear Power School
Naval Training Center
Orlando FL 32813
Commanding Officer
Naval Regional Dental Center
Orlando FL 32813
Commanding Officer
Naval Regional Medical Center
Orlando FL 32813
Commander
Naval Training Center
Orlando FL 32813
Commanding Officer
Naval Training Equipment Center
Orlando FL 32813
Officer in Charge
Navy Finance Office
Orlando FL 32813
Commanding Officer
Recruit Training Command
Orlando FL 32813
Commanding Officer
Service School Command
Naval Training Center
Orlando FL 32813
Commanding Officer
Naval Ordnance Test Unit
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Military Sealift Command
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Commanding Officer
Naval Security Group Activity
Homestead FL 33039
Commanding Officer
Marine Barracks
Naval Air Station
Key West, FL 33040
Commanding Officer
Naval Air Station
Key West FL 33040
Commanding Officer
Naval Communication Unit
Key West FL 33040
Commanding Officer
Naval Hospital
Key West FL 33040
Officer in Charge
Navy Finance Office
Truman Annex
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Key West FL 33040

GEORGIA

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Albany Marine Corps Logistics
Support Base Atlantic
Albany GA 31704

HAWAII

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IDAHO

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Commanding Officer
Naval Nuclear Power Training Unit
PO Box 2751
Idaho Falls ID 83401

ILLINOIS

Commanding Officer
Naval Air Station
Glenview IL 60026
Commanding Officer
Naval Weather Service Facility
Glenview IL 60026
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Room 7 Bldg 3
Great Lakes IL 60088
Commanding Officer, Naval
Electronic Systems Engineering
Center, Great Lakes
Bldg 3209
Great Lakes IL 60088
Commanding Officer
Naval Administrative Command
Naval Training Center
Great Lakes IL 60088
Commander
Naval Base
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Officer in Charge
Naval Construction Battalion
Unit 401
Naval Training Center Bldg 3215
Great Lakes IL 60088
Commanding Officer
Naval Dental Research Institute
Naval Base
Great Lakes IL 60088
Commanding Officer
Naval Hospital Corps School
Great Lakes IL 60088
Officer in Charge
Naval Legal Service Office
Naval Training Center
Great Lakes IL 60088
Commanding Officer
Naval Regional Dental Center
Great Lakes IL 60088
Commanding Officer
Naval Regional Medical Center
Great Lakes IL 60088
Commander
Naval Reserve Readiness Command
Region Thirteen
Bldg 1 Naval Training Center
Great Lakes IL 60088
Commander
Naval Training Center
Great Lakes IL 60088
Officer in Charge
Navy Commissary Store Region
Great Lakes IL 60088
Commanding Officer

Navy Public Works Center
Bldg 1A
Great Lakes IL 60088
Commander
Navy Recruiting Area Five
Bldg 3
Great Lakes IL 60088
Commanding Officer
Navy Regional Finance Center
Bldg 122
Great Lakes IL 60088
Commanding Officer
Recruit Training Command
Naval Training Center
Great Lakes IL 60088
Commanding Officer
Service School Command
Bldg 520
Naval Training Center
Great Lakes IL 60088
Commanding Officer
Transient Personnel Unit
Naval Administrative Command
Naval Training Center
Great Lakes IL 60088
Commandant
9th Naval District
Building 1
Great Lakes IL 60088
Director
Navy Office of Information
Chicago Branch
536 South Clark St Room 252
Chicago IL 60605
Commanding Officer
Office of Naval Research
Branch Office
536 S Clark St
Chicago IL 60605

INDIANA

Commanding Officer
Naval Avionics Facility
21st and Arlington Avenue
Indianapolis IN 46218
Commanding Officer
Naval Weapons Support Center
Crane IN 47522

KENTUCKY

Commanding Officer
Naval Ordnance Station
Louisville KY 40214

LOUISIANA

Director Consolidated
Civilian Personnel Office
Naval Support Activity
New Orleans LA 70146
Supervisor of Shipbuilding
Conversion and Repair USN
New Orleans LA 70146
Commanding Officer
Marine Air Reserve Training Command
Naval Support Activity
4400 Dauphine St
New Orleans, LA 70146
Commander
Military Sealift Command
Gulf Sub-Area
4400 Dauphine St
New Orleans LA 70146
Commanding Officer
Naval Air Station
New Orleans LA 70146
Commanding Officer
Naval Regional Medical Center
New Orleans LA 70146
Commander
Naval Reserve Readiness Command
Region Ten
Bldg 11 Naval Support Activity
New Orleans LA 70146
Commanding Officer
Naval Reserve Support Office
New Orleans LA 70146
Commanding Officer
Naval Support Activity
New Orleans LA 70146
Officer in Charge
Navy Finance Office
New Orleans LA 70146
Chief of Naval Reserve
New Orleans LA 70146
Commandant
8th Naval District
Chief of Naval Reserve Hdqtrs
New Orleans LA 70146
Commanding Officer
Naval Reserve Personnel Center
New Orleans LA 70149
Commanding Officer
Enlisted Personnel
Management Center
New Orleans LA 70159
Commanding Officer
Naval Investigative Service Office
New Orleans
PO Box 6438
New Orleans LA 70174

MAINE

Commanding Officer
Marine Barracks
Naval Air Station
Brunswick ME 04011
Officer in Charge
Navy Commissary Store Region
Brunswick ME 04011
Commanding Officer
US Naval Air Station
Brunswick ME 04011
Supervisor of Shipbuilding
Conversion and Repair USN
574 Washington St
Bath ME 04530
Commanding Officer
Naval Communication Unit
Cutler East Machias ME 04630
Commanding Officer
Naval Security Group Activity
Winter Harbor ME 04693

MARYLAND

Commanding Officer
National Naval Dental Center
Bethesda MD 20014
Commanding Officer
National Naval Medical Center
Bethesda MD 20014
Commanding Officer
Naval Health Sciences Education and
Training Command
National Naval Medical Center
Bethesda, MD 20014
Commanding Officer
Naval Medical Data Service Center
National Naval Medical Center
Bethesda MD 20014
Commanding Officer
Naval Medical Research and
Development Command
National Naval Medical Center
Bethesda, MD 20014
Commanding Officer
Naval Medical Research Institute

National Naval Medical Center
Bethesda MD 20014
Commanding Officer
Naval School of Health Care
Administration
National Naval Medical Center
Bethesda MD 20014
Commander
David W. Taylor Naval Ship Research
and Development Center
Bethesda, MD 20084
Commanding Officer
Naval Explosive Ordnance
Disposal Facility
Indian Head MD 20640
Commanding Officer
Naval Ordnance Station
Indian Head MD 20640
Commanding Officer
Naval School
Explosive Ordnance Disposal
Naval Ordnance Station
Indian Head MD 20640
Commanding Officer
Naval Air Station
Patuxent River MD 20670
Commander
Naval Air Test Center
Patuxent River MD 20670
Commander
Naval Aviation Integrated Logistic
Support Center
Patuxent River MD 20670
Commanding Officer
Naval Hospital
Patuxent River MD 20670
Officer in Charge
Navy Commissary Store Region
Patuxent River MD 20670
Officer in Charge
Navy Special Services
Administrative Activity
Patuxent River MD 20670
Commanding Officer
Marine Barracks
Fort Meade MD 20755
Commanding Officer
Naval Security Group Activity
Fort George G Meade MD 20755
Commanding Officer
Navy Field Operational
Intelligence Office
Fort George G Meade MD 20755
Officer in Charge
Strategic Analysis Support Group
8621 Georgia Ave
Silver Spring MD 20910
Commanding Officer
Marine Barracks
Naval Station
Annapolis MD 21402
Superintendent
Naval Academy
Annapolis MD 21402
Officer in Charge
Naval Construction Battalion
Unit 403 Naval Academy
Annapolis MD 21402
Commanding Officer
Naval Hospital
Annapolis MD 21402
Commanding Officer
Naval Station
Annapolis MD 21402
Officer in Charge
Navy Liaison Group
Alternate Joint Communications
Center
Fort Ritchie MD 21719
Commanding Officer
Naval Support Facility
Box 277
Thurmont MD 21788

MASSACHUSETTS

Officer in Charge
Navy Clothing and Textile
Research Facility
21 Strathmore Road
Natick MA 01760
Officer in Charge
Naval Blood Research Laboratory
Talbot Bldg 82 East Concord St
Boston MA 02118
Director
Navy Office of Information
Boston Branch
575 Technology Square 8th Floor
Cambridge MA 02139
Commanding Officer
Naval Air Station
South Weymouth MA 02190
Supervisor of Shipbuilding
Conversion and Repair USN
Bldg 114 Section D
666 Summer St
Boston MA 02210
Commanding Officer
Office of Naval Research
Branch Office
495 Summer Street
Boston MA 02210

MICHIGAN

Commanding Officer
Naval Air Facility Detroit
MT Clemens MI 48043

MINNESOTA

Commander Naval Reserve
Readiness Command Region Sixteen
Bldg 715
Minn-St Paul International Airport
Minneapolis MN 55450

MISSISSIPPI

Commanding Officer
Naval Air Station
Meridian MS 39301
Commanding Officer
Naval Technical Training Center
Meridian, MS 39301
Commander
Training Air Wing One
Naval Air Station
Meridian MS 39301
Commanding Officer
Training Squadron Nine
Naval Air Station
Meridian MS 39301
Commanding Officer
Training Squadron Nineteen
Naval Air Station
Meridian MS 39301
Commanding Officer
Training Squadron Seven
Naval Air Station
Meridian MS 39301
Commanding Officer
Naval Construction
Battalion Center
Gulfport MS 39501
Commanding Officer
Naval Construction Training Center
Gulfport MS 39501
Governor
Naval Home
01800 East Beach Blvd
Gulfport MS 39501
Commanding Officer

Naval Ocean Research and
Development Activity
National Space Technology Labs
Bay St Louis MS 39520
Director
Naval Oceanography and Meteorology
National Space Technology
Laboratories
Bay St Louis MS 39520
Supervisor of Shipbuilding
Conversion and Repair USN
Pascagoula MS 39567

MISSOURI

Director
Marine Corps Automated
Services Center
1500 E Bannister Rd
Kansas City MO 64131
Director
Marine Corps Reserve Forces
Administrative Center
1500 East Bannister Road
Kansas City MO 64131
Commanding Officer
Marine Corps Finance Center
Kansas City MO 64197

NEVADA

Commanding Officer
Naval Air Station
Fallon NV 89406
Commanding Officer
Marine Barracks
Naval Ammunition Depot
Hawthorne NV 89415
Commanding Officer
Naval Ammunition Depot
Hawthorne NV 89415

NEW HAMPSHIRE

Commanding Officer
Marine Barracks
Portsmouth Naval Shipyard
Portsmouth, NH 03801
Commanding Officer
Naval Regional Medical Clinic
Portsmouth NH 03801
Commander
Portsmouth Naval Shipyard
Portsmouth NH 03801

NEW JERSEY

Commander
Military Sealift Command Atlantic
Military Ocean Terminal Bldg 42
Bayonne NJ 07002
Commanding Officer
Navy International Logistics
Control Office
Bayonne NJ 07002
Commanding Officer
Marine Barracks
Naval Weapons Station, Earle
Colts Neck NJ 07722
Commanding Officer
Naval Weapons Station Earle
Colts Neck NJ 07722
Director
Naval Audit Service Northeast Regio
Central Camden Parkade Bldg 215
30 North 5th Street
Camden NJ 08102
Commanding Officer
Naval Air Propulsion Test Center
Trenton NJ 08628
Commanding Officer
Naval Air Engineering Center
Lakehurst NJ 08733
Commanding Officer
Naval Air Technical Training Center
Naval Air Station
Lakehurst NJ 08733
Officer in Charge
Navy Branch Aviation Supply Office
Catapult and Arresting Gear
Naval Air Station
Lakehurst NJ 08733

NEW MEXICO

Commanding Officer
Naval Weapons Evaluation Facility
Kirkland Air Force Base
Albuquerque NM 87117
Commanding Officer
Naval Ordnance Missile
Test Facility
White Sands Missile
Range NM 88002

NEW YORK

Director
Navy Office of Information
New York Branch
663 Fifth Ave 3rd Floor
New York NY 10022
Commanding Officer
Navy Resale System Office
3rd Ave and 29th St
Brooklyn NY 11232
Counsel New York Branch
Office of the General Counsel
Department of the Navy
3rd Ave and 29th St
Brooklyn NY 11232
Director Consolidated
Civilian Personnel Office
Washington & Flushing Aves
Brooklyn NY 11251
Supervisor of Shipbuilding
Conversion and Repair USN
Flushing and Washington Aves
Brooklyn NY 11251
Commanding Officer
Naval Investigative Service Office
New York
Flushing-Washington Aves
Brooklyn NY 11251
Commanding Officer
Naval Support Activity
Flushing and Washington Aves.
Brooklyn NY 11251
Officer in Charge
Navy Motion Picture Service
Bldg 311 Flushing Ave
Brooklyn NY 11251
Officer in Charge
Fleet Post Office New York
182- 150th Ave
Jamaica NY 11413
Commanding Officer
Naval Nuclear Power Training Unit
PO Box 300
Ballston Spa NY 12020
Officer in Charge
Naval Administrative Unit
Scotia NY 12302
Commander
Naval Reserve Readiness Command
Region Two Bldg 1
Scotia NY 12302
Commander
Navy Recruiting Area One
Scotia NY 12302

NORTH CAROLINA

Commanding Officer
Naval Facility
Cape Hatteras
Buxton NC 27920
Commander
Joint Unconventional Warfare Task
Force Atlantic US Army JFK
Center for Special Warfare
Fort Braff NC 28307
Commander
Marine Corps Air Bases Eastern Area
Marine Corps Air Station
Cherry Point NC 28533
Commanding General
Marine Corps Air Station
Cherry Point NC 28533
Commanding Officer
Naval Air Rework Facility
Marine Corps Air Station
Cherry Point NC 28533
Commanding Officer
Naval Hospital
Cherry Point NC 28533
Commanding General
2nd Marine Aircraft Wing
Marine Corps Air Station
Cherry Point NC 28533
Commanding Officer
Marine Corps Air Station
(Helicopter)
New River
Jacksonville N C 28540
Commanding Officer
Field Medical Service School
Marine Corps Base
Camp Lejeune NC 28542
Commanding General
Force Troops Atlantic
2D Force Service Support Group FMF
Camp Lejeune NC 28542
Commanding General
Marine Corps Base
Camp Lejeune NC 28542
Commanding Officer
Naval Regional Dental Center
Camp Lejeune NC 28542
Commanding Officer
Naval Regional Medical Center
Camp Lejeune NC 28542
Commanding General
2nd Marine Division FMF
Camp Lejeune NC 28542

OHIO

Commander
Navy Recruiting Area Four
Columbus Federal Bldg Room 409
200 North High St
Columbus OH 43215
Director
Navy Family Allowance Activity
Anthony J. Celebrezze Federal Bldg.
1240 East 9th Street
Cleveland OH 44199
Commanding Officer
Navy Finance Center
Anthony J Celebrezze Federal Bldg
Cleveland OH 44199
Commander
Naval Reserve Readiness Command
Region Five Bldg 1033 USAAP
Ravenna OH 44266
Commanding Officer
Navy Environmental Health Center
3333 Vine St
Cincinnati OH 45220

PENNSYLVANIA

Commanding Officer
Navy Fleet Material Support Office
Mechanicsburg PA 17055
Commanding Officer
Ships Parts Control Center
Mechanicsburg PA 17055
Commander
Naval Air Development Center
Warminster PA 18974
Commanding Officer
Naval Air Facility
Warminster PA 18974
Commanding Officer
Naval Air Station
Willow Grove PA 19090
Commanding Officer
Naval Air Technical
Services Facility
700 Robbins Avenue
Philadelphia Penna 19111
Commanding Officer
Navy Aviation Supply Office
700 Robbins Avenue
Philadelphia PA 19111
Director
Navy Publications and Printing
Service, Northern Division
Bldg 4 Section D 700 Robbins Ave
Philadelphia PA 19111
Director Consolidated
Civilian Personnel Office
Bldg 75 Naval Base
Philadelphia PA 19112
Commanding Officer, Naval
Electronic Systems Engineering
Center, Philadelphia
Philadelphia, PA 19112
Commanding Officer
Marine Barracks
Philadelphia PA 19112
Commanding Officer
Naval Aviation Engineering Service
Unit
Philadelphia PA 19112
Commander
Naval Base
Philadelphia PA 19112
Commander
Naval Base Boston
Fourth Naval District Headquarters
Philadelphia PA 19112
Commander
Naval Base New York
Fourth Naval District Headquarters
Philadelphia PA 19112
Commander
Naval Damage Control
Training Center
Philadelphia PA 19112
Officer in Charge
Naval Legal Service Office
Naval Base
Philadelphia PA 19112
Officer in Charge
Naval Material Industrial
Resources Office
Bldg 537 2nd FL Naval Base
Philadelphia PA 19112
Commanding Officer
Naval Regional Dental Center
Philadelphia, PA 19112
Officer in Charge
Naval Regional Procurement Office
Philadelphia PA 19112
Commander
Naval Reserve Readiness Command
Region Four Bldg 662 Naval Base
Philadelphia PA 19112
Commanding Officer
Naval Support Activity
Philadelphia PA 19112

Officer in Charge
Navy Finance Office
Bldg 76 Naval Base
Philadelphia PA 19112
Commanding Officer
Northern Division
Naval Facilities Engineering Command
Philadelphia PA 19112
Director Northern Field Div
Office of Civilian Personnel
Northern Field Div
Bldg 4 Naval Base
Philadelphia PA 19112
Commander
Philadelphia Naval Shipyard
Philadelphia PA 19112
Commandant
1st Naval District
Fourth Naval District Headquarters
Philadelphia PA 19112
Commandant
3rd Naval District
Fourth Naval District Headquarters
Philadelphia PA 19112
Commandant
4th Naval District
Philadelphia PA 19112
Commanding Officer
Naval Publication and Forms Center
5801 Tabor Avenue
Philadelphia PA 19120
Commanding Officer
Naval Medical Material Support Command
3500 South Broad St
Philadelphia PA 19145
Commanding Officer
Naval Regional Medical Center
17th St and Pattison Ave
Philadelphia PA 19145

PUERTO RICO AND VIRGIN ISLANDS

Commanding Officer
Camp Garcia
Fleet Marine Force Atlantic
Vieques PR 00765

RHODE ISLAND

Commanding Officer
Marine Barracks
Naval Education & Training Center
Newport, RI 02840
Commander
Naval Education and Training Center
Newport RI 02840
Commanding Officer
Naval Justice School
Newport, RI 02840
Officer in Charge
Naval Legal Service Office
Naval Education and Training Center
Newport RI 02840
Commanding Officer
Naval Regional Dental Center
Newport RI 02840
Commanding Officer
Naval Regional Medical Center
Newport RI 02840
Commander
Naval Reserve Readiness Command
Region One Bldg 344
Naval Education and Training Center
Newport RI 02840
Commanding Officer
Naval Underwater Systems Center
Newport RI 02840
President
Naval War College
Newport RI 02840
Officer in Charge
Navy Commissary Store Region
Newport RI 02840
Officer in Charge
Navy Finance Office
Newport RI 02840
Commanding Officer
Surface Warfare Officers School Command
Newport RI 02840
Commanding Officer
Naval Construction Battalion Center
Davisville RI 02854

SOUTH CAROLINA

Commanding Officer
Naval Electronic Systems Engineering Center Room 512
Federal Bldg, 334 Meeting St
Charleston SC 29403
Commanding Officer
Atlantic Fleet Polaris Material Office
Naval Base
Charleston SC 29408
Commander
Charleston Naval Shipyard
Naval Base
Charleston, SC 29408
Supervisor of Shipbuilding
Conversion and Repair USN
Naval Base
Charleston SC 29408
Commanding Officer
Fleet and Mine Warfare Training Center
Naval Base
Charleston SC 29408
Commanding Officer
Marine Barracks
Naval Weapons Station
Charleston SC 29408
Commander
Mine Warfare Command
Charleston SC 29408
Commander
Naval Base
Charleston SC 29408
Officer in Charge
Naval Construction Battalion Unit-412
Naval Station Naval Base
Charleston SC 29408
Commanding Officer
Naval Investigative Service Office
Charleston
Naval Base
Charleston SC 29408
Officer in Charge
Naval Legal Service Office
Naval Base
Charleston SC 29408
Commanding Officer
Naval Regional Dental Center
Charleston SC 29408
Commanding Officer
Naval Regional Medical Center
Charleston SC 29408
Commander
Naval Reserve Readiness Command Region Seven
Naval Base
Charleston SC 29408
Commanding Officer
Naval Security Group Activity
Naval Base
Charleston SC 29408
Commanding Officer
Naval Station

Naval [illegible]
Charleston SC 29408
Commanding Officer
Naval Weapons Station
Charleston SC 29408
Officer in Charge
Navy Commissary Store Region
Charleston SC 29408
Officer in Charge
Navy Finance Office
Naval Base
Charleston SC 29408
Commanding Officer
Navy Fleet Ballistic Missile
Submarine Training Center
Naval Base
Charleston SC 29408
Director
Navy Publications and Printing
Service Southeast Division
Naval Base, Bldg 35
Charleston SC 29408
Commanding Officer
Polaris Missile Facility
Atlantic
Charleston SC 29408
Commandant
6th Naval District
Naval Base
Charleston SC 29408
Commanding Officer
Naval Supply Center
Charleston SC 29411
Commanding Officer
Southern Division Naval Facilities
Engineering Command
PO Box 10068
Charleston SC 29411
Commanding Officer
Marine Corps Air Station
Beaufort SC 29902
Commanding Officer
Naval Hospital
Beaufort SC 29902
Commanding General
Marine Corps Recruit Depot
Parris Island SC 29905
Commanding Officer
Naval Regional Dental Center
Parris Island SC 29905

TENNESSEE

Commander
Naval Reserve Readiness Command
Region Nine
Bldg E34 Naval Air Station Memphis
Millington TN 38045
Commanding Officer
Human Resource Management School
Naval Air Station Memphis
Millington TN 38054
Commanding Officer
Naval Air Maintenance Training
Group
Naval Air Station Memphis
Millington TN 38054
Commanding Officer
Naval Air Station Memphis
Millington TN 38054
Commanding Officer
Naval Air Technical Training
Center
NAS Memphis (85)
Millington TN 38054
Officer in Charge
Naval Construction Battalion
Unit 404
Naval Air Station Memphis
Millington TN 38054
Officer in Charge
Naval Legal Service Office
Naval Air Station Memphis
Millington TN 38054
Commanding Officer
Naval Regional Medical Center
Memphis
Millington TN 38054
Officer in Charge
Navy Commissary Store
Naval Air Station Memphis
Millington TN 38054
Chief of Naval
Technical Training
Naval Air Station
Memphis
Millington TN 38054

TEXAS

Director
Navy Office of Information
Dallas Branch Main Tower Bldg
1200 Main St Suite 230
Dallas TX 75202
Commanding Officer
Naval Air Station
Dallas TX 75211
Commander
Naval Reserve Readiness Command
Region Eleven
Bldg 11 Naval Air Station
Dallas TX 75211
Commander
Navy Recruiting Area Seven
1499 Regal Row
Dallas TX 75247
Commanding Officer
Naval Air Station
Chase Field
Beeville TX 78102
Commander
Training Air Wing Three
Naval Air Station Chase Field
Beeville TX 78102
Commanding Officer
Training Squadron Twenty-Five
Naval Air Station Chase Field
Beeville TX 78103
Commanding Officer
Training Squadron Twenty-Four
Naval Air Station Chase Field
Beeville TX 78103
Commanding Officer
Training Squadron Twenty-Six
Naval Air Station Chase Field
Beeville TX 78103
Commanding Officer
Naval Air Station
Kingsville TX 78363
Commander
Training Air Wing Two
Naval Air Station
Kingsville TX 78363
Commanding Officer
Training Squadron Twenty-One
Naval Air Station
Kingsville TX 78363
Commanding Officer
Training Squadron Twenty-Three
Naval Air Station
Kingsville TX 78363
Commanding Officer
Training Squadron Twenty-Two
Naval Air Station
Kingsville TX 78363
Commanding Officer
Naval Air Station
Corpus Christi TX 78419
Chief of Naval Air Training
Naval Air Station
Corpus Christi TX 78419
Officer in Charge
Naval Construction Battalion
Unit 407
Naval Air S
Corpus Chri
Officer in Cha
Naval Legal
Naval Air S
Corpus Chri
Commanding
Naval Regio
Corpus Chri
Officer in Cha
Navy Comm
Corpus Chri
Commander
Training Air
Naval Air S
Corpus Chri
Commanding
Training Squ
Naval Air S
Corpus Chri
Commanding
Training Squ
Naval Air S
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Commanding
Training Squ
Naval Air S
Corpus Chri

Director
Naval Audit
PO Box 120
Falls Church
Director
Naval Audit
PO Box 120
Falls Church
Commanding
Marine Corp
and Educati
Quantico VA
Commanding
Marine Corp
Quantico VA
Commanding
Naval Hospi
Quantico VA
Commanding
Human Reso
Washington
1000 North
Arlington V
Director
Capital Area
Office Navy
801 North R
Arlington V
Commander
Navy Recru
4015 Wilson
Arlington V
Officer in Cha
Headquarter
Mars Radio
8th Street an
Arlington V
Commanding
Headquarter
Headquarter
Henderson H
Arlington V
Commanding
Marine Secu
Headquarter
US Marine C
Arlington V
Chief of Naval
800 North Q
Arlington V

Unit 407
Naval Air Station
Corpus Christi TX 78419
Officer in Charge
Naval Legal Service Office
Naval Air Station
Corpus Christi TX 78419
Commanding Officer
Naval Regional Medical Center
Corpus Christi TX 78419
Officer in Charge
Navy Commissary Store Region
Corpus Christi TX 78419
Commander
Training Air Wing Four
Naval Air Station
Corpus Christi TX 78419
Commanding Officer
Training Squadron Thirty-One
Naval Air Station
Corpus Christi TX 78419
Commanding Officer
Training Squadron Twenty-Eight
Naval Air Station
Corpus Christi TX 78419
Commanding Officer
Training Squadron Twenty-Seven
Naval Air Station
Corpus Christi TX 78419

VIRGINIA

Director
Naval Audit Service Capital Region
PO Box 1206
Falls Church VA 22041
Director
Naval Audit Service Headquarters
PO Box 1206
Falls Church VA 22041
Commanding General
Marine Corp Development
and Education Command
Quantico VA 22134
Commanding Officer
Marine Corps Air Facility
Quantico VA 22134
Commanding Officer
Naval Hospital
Quantico VA 22134
Commanding Officer
Human Resource Management Center
Washington
1000 North Glebe Road
Arlington VA 22201
Director
Capital Area Personnel Services
Office Navy Department of the Navy
801 North Randolph St
Arlington VA 22203
Commander
Navy Recruiting Command
4015 Wilson Boulevard
Arlington VA 22203
Officer in Charge
Headquarters Navy-Marine Corps
Mars Radio Station Navy Service Ctr
8th Street and South Courthouse Rd
Arlington VA 22204
Commanding Officer
Headquarters Battalion
Headquarters US Marine Corps
Henderson Hall
Arlington VA 22214
Commanding Officer
Marine Security Guard Battalion
Headquarters (State Department)
US Marine Corps Henderson Hall
Arlington VA 22214
Chief of Naval Research
800 North Quincy St
Arlington VA 22217
Commanding Officer
Naval Administrative Services
Command Room 901
4660 Kenmore Avenue
Alexandria VA 22304
Commanding Officer
Navy Petroleum Office
Cameron Station
Alexandria VA 22314
Commander
Naval Intelligence Command
Naval Intelligence Command Hdqtrs
2461 Eisenhower Ave
Alexandria VA 22331
Commanding Officer
Naval Intelligence Process
System Support Activity
2461 Eisenhower Ave
Alexandria VA 22331
Director Naval Investigative
Service/Commanding Officer Naval
Investigative Service Headquarters
2461 Eisenhower Ave
Alexandria VA 22331
Commander
Naval Legal Service
Department of the Navy
200 Stovall Street
Alexandria VA 22332
Judge Advocate General
Navy Department
200 Stovall Street
Alexandria VA 22332
Oceanographer of the Navy
Hoffman II
200 Stovall Street
Alexandria VA 22332
Commander
Naval Facilities Engineering
Command NAVFACENGCOM Hdqtrs
200 Stovall Street
Alexandria VA 22332
Officer in Charge
of Construction Naval Facilities
Engineering Command Contracts
Bethesda, 200 Stovall St.
Alexandria, VA 22332
Commanding Officer
Naval Space Surveillance System
Dahlgren VA 22448
Commander
Naval Surface Weapons Center
Dahlgren VA 22448
Officer in Charge
Cheatham Annex
Naval Supply Center Norfolk
Williamsburg VA 23185
Commanding Officer
Naval Security Group Activity
Northwest
Chesapeake VA 23322
Director
Naval Audit Service Southeast Regio
5701 Thurston Ave
Virginia Beach VA 23455
Officer in Charge
Fleet Air Intelligence Support
Center Oceana
Naval Air Station Oceana
Virginia Beach VA 23460
Commanding Officer
Naval Air Station
Oceana
Virginia Beach VA 23460
Officer in Charge
Naval Construction Battalion
Unit-415
Naval Air Station, Oceana
Virginia Beach VA 23460
Officer in Charge
Central Test Site for Personnel and
Training Evaluation Program
Navy Guided Missiles School DamNeck

Virginia Beach VA 23461
Commanding Officer
Fleet Combat Direction Systems
Support Activity Dam Neck
Virginia Beach VA 23461
Commanding Officer
Fleet Combat Training Center
Atlantic
Dam Neck
Virginia Beach VA 23461
Commanding Officer
Naval Guided Missiles School
Dam Neck
Virginia Beach VA 23461
Commanding Officer
Human Resource Management Center,
Norfolk
5621-23 Tidewater Drive
Norfolk, VA 23509
Commanding Officer
Atlantic Command Operations Support
Facility
Naval Station
Norfolk VA 23511
Commander
Atlantic Division
Naval Facilities Engineering
Command
Norfolk VA 23511
Commanding Officer
Atlantic Fleet Data Processing
Service Center Norfolk
Norfolk VA 23511
Commanding Officer
Camp Elmore
Marine Corps
Norfolk VA 23511
Naval Air Systems
Command Representative
Atlantic
Naval Air Station
Norfolk VA 23511
Commanding Officer
Fleet Accounting and Disbursing
Center U S Atlantic Fleet
Building 132 Naval Station
Norfolk VA 23511
Commanding Officer
Fleet Anti-Submarine Warfare
Training Center, Atlantic
Naval Station
Norfolk, VA 23511
Director
Fleet Home Town News Center
Norfolk VA 23511
Commanding Officer
Fleet Intelligence Center
Europe and Atlantic
Norfolk VA 23511
Commanding Officer
Fleet Intelligence Training Center
Atlantic
Bldg N25A, Naval Station
Norfolk VA 23511
Commanding General
Fleet Marine Force Atlantic/
Commanding General Fleet Marine
Force Europe (Designate)
Norfolk VA 23511
Commanding Officer
Fleet Training Center
Norfolk VA 23511
Commanding Officer
Fleet Weather Central
McAdie Building (U-117)
Naval Air Station
Norfolk VA 23511
Commanding Officer
Marine Barracks
Norfolk VA 23511
Commanding Officer
Naval Administrative Command
Armed Forces Staff College
Norfolk VA 23511
Commanding Officer
Naval Air Rework Facility
Naval Air Station
Norfolk VA 23511
Commanding Officer
Naval Air Station
Norfolk VA 23511
Commanding Officer
Naval Alcohol Rehabilitation Center
Building J-50
Naval Station
Norfolk VA 23511
Commander
Naval Base
Norfolk VA 23511
Commanding Officer
Naval Communication Area Master
Station Lant
Norfolk VA 23511
Officer in Charge
Naval Construction Battalion
Unit-411
Naval Station
Norfolk VA 23511
Commanding Officer
Naval Education and Training
Support Center, Atlantic
Bldg Z-86, Naval Station
Norfolk VA 23511
Commanding Officer
Naval Investigative Service Office
Norfolk
Norfolk VA 23511
Officer in Charge
Naval Legal Service Office
Naval Base
Norfolk VA 23511
Commanding Officer
Naval Regional Dental Center
Norfolk VA 23511
Commander
Naval Safety Center
Naval Air Station
Norfolk VA 23511
Commanding Officer
Naval Station
Norfolk VA 23511
Commander
Naval Surface Force
US Atlantic Fleet
Norfolk VA 23511
Officer in Charge
Navy Environmental and
Preventive Medicine Unit No 2
Norfolk VA 23511
Commanding Officer
Navy Manpower and Material
Analysis Center
Atlantic
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Commanding Officer
Navy Material Transportation Office
Bldg Z-133
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Naval Station
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Commanding Officer
Navy Public Works Center
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Oceanographic System Atlantic
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Director Southern Field Div
Office of Civilian Personnel
Southern Field Division
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Norfolk VA 23511
Commander

Submarine Force
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Norfolk VA 23511
Commander in Chief
US Atlantic Fleet
Norfolk VA 23511
Commander Naval Air Force
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Commander Training Command
US Atlantic Fleet
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5th Naval District
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Sub-Board of Inspection
and Survey Atlantic
Naval Amphibious Base
Norfolk VA 23520
Commanding Officer
Naval Amphibious Base
Little Creek
Norfolk VA 23521
Commanding Officer
Naval Amphibious School
Little Creek
Naval Amphibious Base
Norfolk VA 23521
Officer in Charge
Navy Commissary Store Region
Norfolk VA 23521
Commanding Officer
School of Music
Naval Amphibious Base
Little Creek
Norfolk VA 23521
Supervisor of Shipbuilding
Conversion and Repair USN
Newport News Shipbuilding and
Drydock CO
Newport News VA 23607
Commanding Officer
Naval Ophthalmic Support and
Training Activity
Yorktown, VA 23690
Commanding Officer
Marine Barracks
Naval Weapons Station
Yorktown VA 23691
Officer in Charge
Naval Mine Engineering Facility
Yorktown VA 23691
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Naval Weapons Station
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Norfolk Naval Shipyard
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Portsmouth VA 23709
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Naval School Cryogenics Class C
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Commander
Naval Reserve Readiness Command
Region Twenty-Two Bldg 9
Naval Support Activity
Seattle WA 98115
Commanding Officer
Naval Support Activity
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Officer in Charge
Navy Commissary Store Region
Seattle WA 98115
Officer in Charge
Navy Finance Officer
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Commandant
13th Naval District
Seattle Wash 98115
Military Sealift
Command Office Seattle
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Officer in Charge
Naval Radio Station T
Jim Creek
Oso WA 98223
Commanding Officer
Marine Barracks
Naval Air Station Whidbey Island
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Naval Air Station
Whidbey Island
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Commanding Officer
Naval Regional Medical Center
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Naval Submarine Base Bangor
Baremerton WA 98315
Commanding Officer
Trident Training Facility
Bangor
Bremerton WA 98315
Commanding Officer
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Pacific Beach
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US Communication Station
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Force US Sixth Fleet
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Commanding Officer
Marine Barracks
FPO New York 09540
Commander
US Naval Activities Spain
FPO New York 09540
Commanding Officer
US Naval Communication
Station
FPO New York 09540
Commanding Officer
US Naval Hospital
FPO New York 09540
Commanding Officer
US Naval Station
FPO New York 09540
Officer in Charge
US Navy Commissary Store
FPO New York 09540
Commanding Officer
U S Naval Communication
Station
FPO New York 09542
Commanding Officer
Marine Barracks
FPO New York 09544
Officer in Charge
Navy Commissary Store Region
FPO New York 09544
Officer in Charge
US Naval Radio Station T
FPO New York 09546
Commander
Antilles Defense Command
FPO New York 09551
Commanding Officer
Atlantic Fleet Weapons
Training Facility
FPO New York 09551
Commander
Fleet Air Caribbean
FPO New York 09551
Commanding Officer
Marine Barracks
FPO New York 09551
Officer in Charge
US Commissary Store Region
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Commander
US Naval Base
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Commander
US Naval Forces Caribbean
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Commanding Officer

US Naval Hospital
FPO New York 09551
Commanding Officer
US Naval Station
FPO New York 09551
Commanding Officer
U.S. Naval Regional Dental Center
FPO New York 09551
Commanding Officer
US Naval Facility
FPO New York 09552
Commanding Officer
US Naval Facility
FPO New York 09553
Commanding Officer
U S Naval Communication
Station
FPO New York 09554
Commanding Officer
US Naval Security Group Activity
FPO New York 09555
Commanding Officer
US Naval Facility
FPO New York 09556
Commanding Officer
US Naval Facility
FPO New York 09558
Commanding Officer
Marine Barracks
FPO New York 09560
Commanding Officer
US Naval Air Station
FPO New York 09560
Commanding Officer
US Naval Facility
FPO New York 09560
Officer in Charge
US Navy Commissary Store
FPO New York 09560
Commander
Fleet Air Keflavik
FPO New York 09571
Commander
Iceland Defense Force
Box 1
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Commanding Officer
Marine Barracks
FPO New York 09571
Commanding Officer
Naval Security Group Activity
FPO New York 09571
Commanding Officer
U S Naval Facility
Box 7
FPO New York 09571
Commanding Officer
US Naval Communication
Station Box
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Commander
US Naval Forces Iceland
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Commanding Officer
US Naval Station
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Officer in Charge
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FPO New York 09571
Military Sealift
Command Office
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Commanding Officer
US Naval Communication Station
FPO New York 09580
Commanding Officer
US Naval Security Group
Activity
Box 5028
FPO New York 09584
Commanding Officer
Marine Barracks
FPO New York 09585
Commanding Officer
U S Naval Station
FPO New York 09585
Commanding Officer
Marine Barracks
FPO New York 09593
Commanding Officer
U S Naval Station
FPO New York 09593
Commanding Officer
US Naval Air Station
FPO New York 09593
Commander
US Naval Base
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FPO New York 09593
Commanding Officer
US Naval Hospital
FPO New York 09593
Commanding Officer
US Naval Security Group Activity
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Officer in Charge
US Navy Commissary Store
FPO New York 09593
Commanding Officer
U S Naval Facility
FPO New York 09597
Officer in Charge
US Navy Commissary Store
FPO New York 09597
Officer in Charge
US Sending State Office
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Commanding Officer
US Naval Security Group Activity
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Military Sealift
Command Office
APO San Francisco 96259
Military Sealift
Command Office
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Commanding Officer
Headquarters Support Activity
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Commanding Officer
US Naval Hospital
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Commanding Officer
US Naval Medical Research Unit No 2
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Officer in Charge
US Navy Commissary Store Region
APO San Francisco 96263
Commander
US Taiwan Defense Command
APO San Francisco 96263
Commanding Officer
U S Naval Security Group Activity
APO San Francisco 96274
Commander
U S Forces Korea
APO San Francisco 96301
Commander
US Naval Forces Korea
APO San Francisco 96301
Commander
US Forces Japan
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Commanding Officer
US Naval Security Group
Activity
Torii Station
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Naval Medical Admininistrative Unit

Tripler Army Medical Center
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Carrier Striking Force
Seventh Fleet
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Commander
Cruiser Destroyer Force
Seventh Fleet
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Commander
Seventh Fleet
FPO San Francisco 96601
Commander Amphibious Force
Seventh Fleet
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Commander
US Naval Support Force Antarctica
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Commanding General
III Marine Amphibious Force FMF
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Commanding General
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Fleet Marine Force Pacific
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Commanding Officer
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Commanding Officer
Naval Magazine
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Commanding Officer
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Commander
US Naval Base
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FPO Seattle 98762
Commanding Officer
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Commanding Officer
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FPO Seattle 98765
Commanding Officer
US Naval Regional Medical Center
FPO Seattle 98765
Commanding Officer
US Naval Ordnance Facility
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Western Pacific
U S Naval Air Facility
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US Naval Air Facility
FPO Seattle 98767
Commander Fleet Air
Western Pacific
FPO Seattle 98767
Commander Patrol and
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Commander
US Taiwan Patrol Force
Pacific Fleet
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Officer in Charge
US Navy Commissary Store
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Command Office
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Commander
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DEFENSE LOGISTICS AGENCY

REQUESTING RECORDS

Records are retrieved by name or by some other personal identifier. It is therefore especially important for expeditious service when

requesting a record that particular attention be provided to the Notification and/or Access Procedures of the particular record system involved so as to furnish the required personal identifiers, or any other pertinent personal information as may be required, to locate and retrieve the record.

BLANKET ROUTINE USES

Certain blanket 'routine uses' of the records have been established, that are applicable to every record system maintained within the Department of Defense, unless specifically stated otherwise within a particular record system. These additional blanket routine uses of the records are published below, only once in the interest of simplicity, economy and to avoid redundancy, before the individual record system notices begin rather than repeating them in every individual record system.

ROUTINE USE - LAW ENFORCEMENT

In the event that a system of records maintained by this component to carry out its functions indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute, or by regulation, rule or order issued pursuant thereto, the relevant records in the system of records may be referred, as a routine use, to the appropriate agency, whether federal, state, local or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, rule, regulation or order issued pursuant thereto.

ROUTINE USE - DISCLOSURE WHEN REQUESTING INFORMATION

A record from a system of records maintained by this component may be disclosed as a routine use to a federal, state or local agency maintaining civil, criminal or other relevant enforcement information or other pertinent information, such as current licenses, if necessary to obtain information relevant to a component decision concerning the hiring or retention of an employee, the issuance of a security clearance, the letting of a contract, or the issuance of a license, grant or other benefit.

ROUTINE USE - DISCLOSURE OF REQUESTED INFORMATION

A record from a system of records maintained by this component may be disclosed to a federal agency, in response to its request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

ROUTINE USE - CONGRESSIONAL INQUIRIES

Disclosure from a system of records maintained by this component may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

ROUTINE USE WITHIN THE DEPARTMENT OF DEFENSE

A record from a system of records maintained by this component may be disclosed as a routine use to other components of the Department of Defense if necessary and relevant for the performance of a lawful function such as, but not limited to, personnel actions, personnel security actions and criminal investigations of the Component requesting the record.

ROUTINE USE - PRIVATE RELIEF LEGISLATION

Relevant information contained in all systems of records of the Department of Defense published on or before August 22, 1975, will be disclosed to the Office of Management and Budget in connection with the review of private relief legislation as set forth in OMB Circular A-19 at any stage of the legislative coordination and clearance process as set forth in that Circular.

ROUTINE USE - DISCLOSURES REQUIRED BY INTERNATIONAL AGREEMENTS

A record from a system of records maintained by this Component may be disclosed to foreign law enforcement, security, investigatory, or administrative authorities in order to comply with requirements imposed by, or to claim rights conferred in international agreements and arrangements including those regulating the stationing and status in foreign countries of Department of Defense military and civilian personnel.

ROUTINE USE - DISCLOSURE TO STATE AND LOCAL TAXING AUTHORITIES

Any information normally contained in IRS Form W-2 which is maintained in a record from a system of records maintained by this Component may be disclosed to State and local taxing authorities with which the Secretary of the Treasury has entered into agreements pursuant to Title 5, U.S.Code, Sections 5516, 5517, 5520, and only to those State and local taxing authorities for which an employee or military member is or was subject to tax regardless of whether tax is or was withheld. This routine use is in accordance with Treasury Fiscal Requirements Manual Bulletin Nr. 76-07.

ROUTINE USE - DISCLOSURE TO THE OFFICE OF PERSONNEL MANAGEMENT

A record from a system of records subject to the Privacy Act and maintained by this component may be disclosed to the Office of Personnel Management concerning information on pay and leave, benefits, retirement deductions, and any other information necessary for the Office of Personnel Management to carry out its legally authorized Government-wide personnel management functions and studies.

ROUTINE USE - DISCLOSURE OF INFORMATION TO NARS (GSA)

A record from a system of records maintained by this component may be disclosed as a routine use to the National Archives and Records Service of the General Services Administration in records management inspections conducted under authority of 44 U.S.C. 2904 and 2906.

ROUTINE USE - DISCLOSURE TO DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

All systems of records relating to compensation, employment or retirement, or extracts therefrom, maintained by this Component may be disclosed as a routine use to the Department of Health, Education, and Welfare for the purpose of comparing such record with records of programs administered by and in the possession of the Department of Health, Education, and Welfare in order to verify information where such verification is required by law or regulation or to identify violations or potential violations of law, whether criminal, civil, or regulatory, and whether arising by general statute or particular program statute, or by regulation, rule, or order issued pursuant thereto.

S214.20DLA-L

System name:

214.20 Emergency Assignment and Training Records

System location:

Headquarters, Defense Logistics Agency (DLA) and all DLA field activities.

Categories of individuals covered by the system:

Present DLA civilian/military personnel who have volunteered for, or been designated to perform, some duty or assignment in time of emergency that is not regularly included in their present duties. Former personnel who have recently left the activity may also be included to the extent that the records have not yet been purged of their names.

Categories of records in the system:

Individuals' names, grades, Social Security Number, home address, organizational locations, titles, office and residential phone numbers, training as pertaining to emergency duties, authority to operate Government vehicles, emergency assignment, agreement to perform emergency duties, and similar information related to the emergency assignment.

Authority for maintenance of the system:

50 U.S.C., 402 through 405, National Security Act of 1947; 50 U.S.C., App. 2251, Federal Civil Defense Act of 1950; E.O. 10952, Assigning Civil Defense Responsibilities to the Secretary of Defense, E.O. 11490, Assigning Emergency Preparedness Functions to Federal Departments and Agencies.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

The records are used by the management and supervisory personnel of DLA in the day-to-day planning and management of emergency actions. These include emergency recall rosters, the war and emergency support plan, staffing of fallout shelters, physical security of the post or other premises, and similar purposes. The use might

involve emergencies of both a civil or military nature, in time of peace or war, and would also include natural as well as man-made disasters.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Paper records and card files.

Retrievability:

Accessed by organization, type of emergency assignment, or individual name.

Safeguards:

Maintained in areas accessible only to authorized DLA management and staff, and afforded appropriate protection at all times.

Retention and disposal:

Continuous updating/purging to reflect current information.

System manager(s) and address:

Chief, Command and Control Division, HQ,DLA; and commanders, DLA Primary Level Field Activities and subordinate field activities.

Notification procedure:

Written or personal requests should be directed to the SYSMANAGER.

Record access procedures:

Individuals should contact SYSMANAGER. Official mailing addresses are in the DoD directory in the appendix to the DLA systems notice. Written requests should include the requestor's full name, job title and name of organization where employed or formerly employed. For personal visits, employee should be able to provide some acceptable identification such as driver's license or employee identification badge.

Contesting record procedures:

The agency's rules for contesting contents and appealing initial determinations by the individual concerned may be obtained from the SYSMANAGER.

Record source categories:

Information contained in the system is obtained from the employee, official personnel records, and present and former supervisors.

Systems exempted from certain provisions of the act:

None.

S322.10DLA-LZ

System name:

322.10 Defense Manpower Data Center Data Base.

System location:

Primary location: W. R. Church Computer Center, Navy Postgraduate School, Monterey, CA 93940.

Back-up locations for processing: Air Force Data Services Center, Room 1D167, The Pentagon, Washington, D. C. 20330.

U. S. Army Management Systems Support Agency, Room BD972, The Pentagon, Washington, D. C. 20310.

National Military Command Systems Support Center, Room BE685, The Pentagon, Washington, D. C. 20331.

Back-up files maintained at two offices of the Defense Manpower Data Center, 7th Floor, 300 N. Washington St., Alexandria, VA 22314 and 2nd Floor, 550 Camino El Estero, Monterey, CA 93940.

Selected historic files are maintained at Air Force Data Services Center, Room 1D167, The Pentagon, Washington, D. C. pursuant to court order in IBM anti-trust case. These files will be withdrawn from current location when legally permissible.

Decentralized segments - military personnel centers of the services; selected civilian contractors with research contracts in manpower area; other Federal agencies.

Categories of individuals covered by the system:

All officers and enlisted personnel who served on active duty from July 1, 1968 and later; or who have been a member of a reserve component since July 1975; or are retired military; participants in Project 100,000 and Project Transition and the evaluation control groups for these programs; all individuals examined to determine eligibility for military service at an Armed Forces Entrance and Examinating Station from July 1, 1970, and later; DoD civilian employees or civilian employees separated since January 1, 1971; all veterans who have utilized Vietnam-era GI Bill education and training entitlements, who visited a State Employment Service office since July 1, 1971, or who participated in a Department of Labor special training program since July 1, 1971; all individuals who ever participated in an educational program sponsored by the U. S. Armed Forces Institute, all individuals who participated in the Armed Forces Vocational Aptitude Testing Programs at the high school level since September 1969, individuals who responded to various paid advertising campaigns seeking enlistment information since July 1, 1973; participants in the DHEW, Office of Education and Longitudinal Survey, individuals responding to Recruiting Advertisements since January 1978, individuals receiving Veterans Administration Disability Benefits or having entitlement to VA medical care.

Categories of records in the system:

Name, Service Number, Selective Service Number, Social Security Account Number, demographic information such as hometown, age, sex, race, and educational level; civilian occupational information, military personnel information such as rank, length of service, military occupation; aptitude scores, post-service education, training, and employment information for veterans; participation in various in-service education and training programs, military hospitalization records.

Authority for maintenance of the system:

10 U.S.C. 136.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

The purpose of the system of records is to provide a longitudinal statistical analysis capability for assessing military manpower trends and evaluation programs impacting of military personnel, potential enlistees, and veterans.

Defense Manpower Data Center - used to analyze accession patterns and trends, promotion and occupation patterns and trends, loss patterns and trends, qualification rates, effectiveness of recruiting programs, participation in education and training programs, force characteristics, post-service experiences of veterans, evaluation of military special pays and bonuses; evaluation of special programs affecting military personnel; to select sample population for surveys; to provide statistical data to OMB, GAO, the Military Services, DoD civilian contractors, educational institutions and other Federal agencies.

Personnel Research and Personnel Management activities of the Military Services - uses are same as those specified above.

Veterans Administration, Management Sciences Staff, Reports and Statistics Service, Office of the Comptroller - used to select sample for surveys asking veterans about the use of veterans benefits and satisfaction with VA services, and to validate eligibility for VA benefits.

Office of Research and Statistics, Social Security Administration - used for statistical analyses of impact of military service and use of GI Bill benefits on long term earning.

DoD Civilian Contractors - used by contractors performing research on manpower problems for statistical analyses.

Aggregate data and/or individual records in the record system may be transferred to other Federal agencies having legitimate use for such information and applying appropriate safeguards to protect data so provided.

Records may be disclosed to the Office Personnel Management (OPM) concerning pay, benefits, retirement deductions; and other information necessary for the OPM to carry out its Government-wide personnel management functions.

Any record contained in the system of records may be transferred to any other component of the Department of Defense having the need-to-know in the performance of official business.

Name and address information of former military personnel obtained from the Veterans Administration or the Military Department may be released to a number of DoD Components for use in attempting to recruit and reenlist prior service personnel through direct contact methods. These components are as follows: U. S. Army Recruiting Command; U. S. Army Forces Command; Navy Recruiting Command; Chief of Naval Personnel; Chief of Naval Reserve; U. S. Air Force Recruiting Service; U. S. Air Force Tactical Air Command; Headquarters Air Force Reserve; National Guard Bureau; Headquarters, U. S. Marine Corps; District Directors, U. S. Marine Corps; Commanding General 4th Marine Division; Commanding General, 4th Marine Air Wing; Commandant, U. S. Coast Guard.

Information on the name, rank, social security accounting number, duty station, birth date, retirement date, and retirement annuity may be disclosed to the Department of Health, Education, and Welfare (DHEW) for the following purposes:

To the Office of Education, DHEW, for the purpose of identifying individuals who appear to be in default on their guaranteed student loans so as to permit the DHEW to take action, where appropriate, to accelerate recoveries of defaulted loans.

To the Bureau of Supplemental Security Income, Social Security Administration, DHEW, in order to verify and adjust as necessary

payments made to active and retired military members under the Supplemental Security Income Program.

To the Office of the Inspector General, DHEW, for the purpose of identifying and investigating DoD employees (military and civilian) who may be improperly receiving funds under the Aid for Families of Dependent Children program.

To the Office of Child Support Enforcement Department of Health Education and Welfare, pursuant to PL93-647, for the purpose of assisting state child support enforcement offices in locating absent parents in order to establish and/or enforce child support obligations.

To the Director of the Selective Service System for use in wartime or emergency mobilization and for mobilization planning.

To the Veterans Administration for analysis of the costs to the individual of military service connected disabilities.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Magnetic computer tape.

Retrievability:

Retrievable by name, SSAN, age, occupation, or any other data element contained in system.

Safeguards:

Primary location - at W. R. Church Computer Center, tapes are stored in a locked cage in machine room, which is a controlled access area; tapes can be physically accessed only by computer center personnel and can be mounted for processing only if the appropriate security code is provided.

At back-up locations in Alexandria, VA and Monterey, CA tapes are stored in rooms protected with cypher locks, buildings are locked after hours, and only properly cleared and authorized personnel have access.

The Air Force Data Services Center, the U. S. Army Management Systems Support Agency, and the National Command Systems Support Center are all TOP SECRET facilities.

Retention and disposal:

Files constitute a historical data base and are permanent.

System manager(s) and address:

Deputy Chief, Defense Manpower Data Center (DMDC), 550 Camino El Estero, Monterey, CA 93940.

Notification procedure:

Information may be obtained from: Deputy Chief, Defense Manpower Data Center, 550 Camino El Estero, Monterey, CA 93940. Telephone: Area Code 408/646-2951.

Record access procedure:

Requests from individuals should be addressed to Deputy Chief, Defense Manpower Data Center (DMDC), 550 Camino El Estero, Monterey, CA 93940.

Written requests for information should contain the full name, Social Security Account Number, date of birth, and current address and telephone number of the individual.

For personal visits, the individual should be able to provide some acceptable identification such as driver's license, or military or other ID card.

Contesting record procedure:

The agency's rules for access to records and for contesting contents and appealing initial determinations by the individual concerned may be obtained from the SYSMANAGER.

Record source categories:

The Military Services, the Veterans Administration, the Office of Education of the Department of HEW, from individuals via survey questionnaires, the Department of Labor, the Office of Personnel Management.

Systems exempted from certain provisions of the act:

None.

S322.20DLA-LZ

System name:

Recruitment Eligible File (RECRUIT).

System location:

Primary location: W. R. Church Computer Center, Naval Postgraduate School, Monterey, CA 93940.

Back-up file: Department of Defense Manpower Data Center, 7th Floor, 300 N. Washington St., Alexandria, VA 22314.

Back-up file: Department of Defense Manpower Data Center, 5450 Camino El Estero, Monterey, CA 93940.

Categories of individuals covered by the system:

Former enlisted personnel of the military services who separated from active duty durint the immediately preceding forty-eight months.

Categories of records in the system:

Social Security Account Number, Name, Service, Date of Birth and Date of Separation.

Authority for maintenance of the system:

10 U. S. C. 136.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

The purpose of the system is to assist recruiters in reenlisting prior-service personnel.

Department of Defense Manpower Data Center, used to provide to recruiters in the military service and the Coast Guard information on individuals eligible for immediate reenlistment; for statistical analyses of prior-service reenlistment trends and of demographic characteristics of applicants for reenlistment; such analyses may require merging with other record systems.

Any individual records contained in the system might be transferred to any component of the Department of Defense having a need to know in the performance of official business.

Any record may be disclosed to law enforcement or investigatory authorities for investigation and possible criminal prosecution, civil court action, or regulatory order.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Most recent thirty-six months separation stored on magnetic disc; full forty-eight months stored on magnetic tape.

Retrievability:

Retrievable by Social Security Account Number.

Safeguards:

DISC File is protected by password access and hard-wire system.

Alexandria, Virginia location has tape storage areas in locked room accessible only to authorized personnel; building is locked after hours.

Monterey, California location has tape storage area in locked room accessible only to authorized personnel; building is locked after hours.

Recruiters making telephone inquiries must have valid recruiter identification and call back number.

Retention and disposal:

Records more than forty-eight months old are purged from the system.

System manager(s) and address:

Chief, On-Line Systems Division, Defense Manpower Data Center, 550 Camino El Estero, Monterey, California 93940.

Notification procedure:

Information may be obtained from: Manager, RECRUIT System, Defense Manpower Data Center, 550 Camino El Estero, Monterey, California 93940. Telephone: Area Code 408/375-4131.

Record access procedures:

Requests from individuals should be addressed to : Manager, RECRUIT System, Defense Manpower Data Center, 550 Camino El Estero, Monterey, California 93940.

Written request for information should contain the full name, current address, telephone number, Social Security Account Number, and date of separation of the individual.

For personal visits, the individual should be able to provide some acceptable identification such as driver's license.

Contesting record procedures:

The Agency's rules for access to records and for contesting contents and appealing initial determinations by the individual concerned may be obtained from the SYSTEM MANAGER.

Record source categories:

The data contained in the system are obtained from the Army, Navy, Air Force, Marine Corps, and Coast Guard.

Systems exempted from certain provisions of the act:

None.

S322.35DLA-LZ

System name:

322.35 Survey Data Base.

System location:

Primary location: W. R. Church Computer Center: Naval Postgraduate School, Monterey, CA 93940.

Decentralized locations for back-up files: Department of Defense, Defense Manpower Data Center, 7th Floor, 300 N. Washington St., Alexandria, VA 22314 and 2nd Floor, 550 Camino El Estero, Monterey, CA 93940.

Categories of individuals covered by the system:

Individuals who were selected at random for survey administration and who completed survey forms. Survey data is collected on a periodic basis. Current data were collected at selected Armed Forces Entrance and Examining Stations (AFEES), during September 1974, May 1975, or since January 1975; additional data were collected by Gilbert Youth Organization (civilian contractor) in nation-wide surveys during May or November 1973, or May or November 1974 and is part of the survey program of the recruiting market research program.

Categories of records in the system:

Social Security Account Number, and responses to survey items dealing with attitudes toward the military.

Authority for maintenance of the system:

10 U. S. C. 136.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

The purpose of the file is to sample attitudes toward enlistment in the military and determine reasons for enlistment decisions.

Manpower Data Center: Used to analyze trends in enlistment motivation, attitudes toward military service, attractiveness of various enlistment incentives; survey files are linked with military personnel inventory, gain and loss files to statistically relate survey data to later advancement, attritions, and reenlistment patterns.

Any individual record in the system may be transferred to any component of the Department of Defense having the need to know in the performance of official business.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Magnetic Computer Tape.

Retrievability:

Records can be retrieved by Service of accession, period of survey, race, sex, education level, or Social Security Account Number.

Safeguards:

Tapes stored at the primary location are kept in a locked storage cage in a controlled access area; tapes stored at the back-up locations are kept in locked storage areas in buildings which are locked after hours.

Retention and disposal:

Records are permanent, Survey answer sheets which are opscanned to create tape are destroyed after tape is created.

System manager(s) and address:

Chief, Defense Manpower Data Center, 300 N. Washington st., Alexandria, VA 22314.

Notification procedure:

Information may be obtained from Chief, Defense Manpower Data Center, 300 N. Washington St., 7th Floor, ALEXANDRIA, VA 22314. Telephone: Area Code 703/325-0490.

Record access procedures:

Requests from individuals should be addressed to: Chief, Defense Manpower Data Center, 300 N. Washington St., Alexandria, VA 22314.

Written requests for information should contain the full name, Social Security Account Number, and current 301address and telephone number of the individual. In addition, the approximate date and location where the survey was completed should be provided.

For personal visits, the individual should be able to provide some acceptable identification such as driver's license or military or other ID card.

Contesting record procedures:

The agency's rules for access to records and for contesting contents and appealing initial determinations by the individual concerned may be obtained from the SYSTEM MANAGER.

Record source categories:

The survey information is provided by the individual; additional data which are linked to survey data as described in the routine uses section, are obtained from the military services.

Systems exempted from certain provisions of the act:

None.

S322.08DLA-LZ

System name:

DoD Health Services Enrollment/Eligibility System (DEERS).

System location:

Primary location: W. R. Church Computer Center, Navy Postgraduate School, Monterey, CA 93940.

Decentralized segments - two eligibility centers to be maintained and operated by contractors (Monterey, CA and Alexandria, VA) and the Processing Center for Automation of DD 1172 Forms in Santa Barbara, CA.

Back-up files maintained at the Defense Manpower Data Center, 550 Camino El Estero, Monterey, CA 93940.

Categories of individuals covered by the system:

Active duty Armed Forces personnel and their dependents, retired Armed Forces personnel and their dependents, surviving dependents of deceased active duty or retired personnel; Coast Guard personnel and their dependents; Public Health Service (PHS) personnel (Commissioned Corps) and their dependents; and National Oceanic and Atmospheric Administration (NOAA) employees (Commissioned Corps) and their dependents.

Categories of records in the system:

File contains beneficiary's name, Service or Social Security Number of sponsor, enrollment number, relationship of beneficiary to sponsor, residence address of beneficiary (includes zip code), date of birth of beneficiary, sex of beneficiary, branch of service of sponsor, dates of eligibility, marital status and dates of beneficiary, number of dependents of sponsor, primary unit duty location of sponsor, race and ethnic origin of beneficiary, occupation of beneficiary, rank/pay grade of sponsor.

Authority for maintenance of the system:

Chapter IV, Title 10, United States Code, Section 136; 1969 Pub. L. 91-121, section 404(A)(2), 'Establishment of the Assistant Secretary of Defense for Health Affairs; the Presidentially Commissioned Department of Defense, Department of Health, Education and Welfare, Office of Management and Budget Report of the Health Care Study (completed December 1975)'; Memorandum, 'Establishment of DoD Health Council', dated December 28, 1976, and the DoD Appropriations Bill for FY 1976.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Internal users, uses, and purposes: Offices of the Surgeons General of the Army, Navy and Air Force for determinations of eligibility to receive health care benefits from the Uniformed Health Services Delivery System.

Office of Civilian Health and Medical Program of the Uniformed Services (OCHAMPUS), for determination of eligibility to receive health care benefits and to receive reimbursement for health care services claimed under CHAMPUS.

Office of the Assistant Secretary of Defense (Health Affairs) and the Offices of Surgeons General of the Army, Navy and Air Force, for the conduct of a health care studies and research on a longitudinal basis, and for planning, management and allocation of medical resources.

Offices of the Surgeons General of the Army, Navy and Air Force, and OCHAMPUS for dissemination of health care information.

External users, uses, and purposes: Department of Health, Education and Welfare; Veterans Administration; Federal Preparedness Agency and Commerce Department for the conduct of health care studies and for the planning and allocation of medical resources. The data will include summary data on ages, sex, residence, and other demographic parameters.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Records are maintained on magnetic tapes and discs housed in a controlled computer media library.

Retrievability:

Records about individuals are retrieved by an algorithm to be determined by contractor which uses name, enrollment number, Social Security Number, date of birth, rank and duty location as possible inputs. Retrievals are made on a summary basis by geographic characteristics and location and demographic characteristics. Information about individuals will not be distinguishable in such summary retrievals. Retrievals for the purposes of generating address lists for direct mail distribution of health care information may be made using selection criteria based on geographic and demographic keys.

Safeguards:

Computerized records are maintained in a controlled area accessible only to authorized personnel. Entry to these areas shall be restricted to those personnel with a valid requirement and authorization to enter. Physical entry shall be restricted by the use of locks, guards, administrative procedures(e.g., fire protection regulations). Exits used solely for emergency situations shall be secured to prevent unauthorized intrusion.

Personal data stored at a separate location for backup purposes shall be protected at least comparable to the protection provided at the primary location.

Requirements for protection of information are binding on contractors or their representative and are subject to the following minimum standards:

Restrict access to personal information to those who require the records in the performance of their official duties, and to the individual who is the subject of the record or authorized representative. Access to personal information shall be restricted by the use of passwords which are changed periodically.

Insure that all whose official duties require access to, or processing and maintenance of, personal information are trained in the proper safeguarding and use of such information.

Retention and disposal:

Computerized records on an individual are maintained as long as the individual is legally eligible to receive health care benefits from the Uniformed Health Sciences Delivery System. The records are maintained for two (2) years after termination of eligibility.

Records may be disposed of or destroyed only in accordance with DoD Component record management regulations which conform to the controlling disposition of such material as set forth in 44 U.S.C. 3301-3314. Non-record material containing personal information and other material of similar temporary nature, shall be destroyed as soon as its intended purpose has been served under procedures established by the Head of the DoD Component consistent with the following requirement. Such material shall be destroyed by tearing, burning, melting, chemical deposition, pulping, pulverizing, shredding, or mutilation sufficient to preclude recognition or reconstruction of the information.

System manager(s) and address:

Project Manager, DEERS, Defense Manpower Data Center, 550 Camino El Estero, Monterey, CA 93940.

Notification procedure:

Information may be obtained from: Project Manager, DEERS, Defense Manpower Data Center, 550 Camino El Estero, Monterey CA 93940.

Record access procedures:

Requests from individuals should be addressed to: Project Manager, DEERS, Defense Manpower Data Center, 550 Camino El Estero, Monterey, CA 93940, (408) 646-2951.

Written requests for the information should contain full name of individual and sponsor if applicable and other attributes required by previously mentioned search algorithm.

For personal visits the individual should be able to provide a data element required to satisfy the previously mentioned algorithm.

Identification should be corroborated with a driver's license or other positive identification.

Contesting record procedures:

The Agency's rules for access to records and for contesting contents and appealing initial determinations by the indjvidual concerned are contained in 32 CFR 286b and OSD Administrative Instruction No. 81.

Record source categories:

Personnel and financial pay systems of the Military Departments, the Coast Guard, the Public Health Service, the National Oceanic and Atmospheric Administration and other Federal Agencies having employees eligible for military medical care.

Systems exempted from certain provisions of the act:

None

S322.65DLA-LZ

System name:

Retired Personnel Master File.

System location:

Primary location: W. R. Church Computer Center, Navy Postgraduate School, Monterey, CA 93940.

Back-up locations for processing: Air Force Data Services Center, Room 1D167, The Pentagon, Washington, D. C. 20330.

U. S. Army Management Systems Support Agency, Room BD972, The Pentagon, Washington, D. C. 20310.

National Military Command Systems Support Center, Room BE685, The Pentagon, Washington, D. C. 20331.

Back-up files maintained at two offices of the Defense Manpower Data Center, 7th Floor, 300 N. Washington St., Alexandria, VA 22314 and 2nd Floor, 550 Camino El Estero, Monterey, CA 93940.

Selected historic files are maintained at Air Force Data Services Center, Room 1D167, The Pentagon, Washington, D. C. pursuant to court order in IBM anti-trust case. These files will be withdrawn from current location when legally permissible.

Decentralized segments - military personnel and finance centers of the services; selected civilian contractors with research contracts in manpower area; other Federal agencies.

Categories of individuals covered by the system:

All retired military personnel and survivor beneficiaries, and reservists drawing retainer pay.

Categories of records in the system:

SSAN, birth date, retirement date, pay grade at retirement, amount of retired, survivor, or retainer pay, type of retirement, date of death (in cases of survivor beneficiary records), pension and benefits system elected, Service, years of active service.

Authority for maintenance of the system:

10 USC 136

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Defense Manpower Data Center,. used for statistical purposes in estimating retired pay budgets, future retired pay budgets, future retired populations, trends in retirement rates, costs or increases in retired pay; answer Congressional inquiries. U. S. Civil Service Commission to identify accurately retired military personnel who are Federal civilian employees; any individual record in the system may be transferred to any component of the Department of Defense having need to know in performance of official business. Used for determining eligibility for military medical care and other benefits provided by the Department of Defense to retired personnel and survivors. Records may be disclosed to the Director, Selective Service System for use in wartime or emergency mobilization planning. Records may be disclosed to Department of Defense Components or to other Federal Agencies in order to identify individuals employed as Federal civilians who may be mobilized in the event of a national emergency.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Magnetic tape.

Retrievability:

Records can be retrieved by SSAN, Service, age, etc.

Safeguards:

Primary location - at W. R. Church Compter Center, tapes are stored in a locked cage in machine room, which is a controlled access area; tapes can be physically accessed only by computer center personnel and can be mounted for processing only if the appropriate security code is provided.

At back-up locations in Alexandria, VA and Monterey, CA tapes are stored in rooms protected with cyper locks, buildings are locked after hours, and only properly cleared and authorized personnel have access.

The Air Force Data Services Center, the U. S. Army Management Systems Support Agency, and the National Command Systems Support Center are all TOP SECRET facilities.

Retention and disposal:

Files constitute a historical data base and are permanent.

System manager(s) and address:

Deputy Chief, Defense Manpower Data Center, (DMDC), 550 Camino El Estero, Monterey CA 93940.

Notification procedure:

Information may be obtained from: Deputy Chief, Defense Manpower Data Center, 550 Camino El Estero, Monterey, CA 93940. Telephone (408) 646-2951.

Record access procedures:

Requests from individuals should be addressed to: Deputy Chief, Defense Manpower Data Center (DMDC), 550 Camino El Estero, Monterey, CA 93940. Written requests for information should contain the full name, SSAN, and current address and telephone number of the requester. For personal visits, the individual should be able to provide some acceptable identification such as driver's license or military or other ID card.

Contesting record procedures:

The Agency's rules for access to records and for contesting contents and appealing initial determinations by the individual concerned are contained in 32 CFR 286 b and OSD Administrative Instruction No. 81.

Record source categories:

The information is obtained from the Military Departments.

Systems exempted from certain provisions of the act:

None

S322.70DLA-LZ

System name:

Reserve Components Common Personnel Data System (RCCPDS)

System location:

Primary location: W. R. Church Computer Center, Navy Postgraduate School, Monterey, CA 93940.

Back-up locations for processing: Air Force Data Services Center, Room 1D167, The Pentagon, Washington, D. C. 20330.

U. S. Army Management Systems Support Agency, Room BD972, The Pentagon, Washington, D. C. 20310.

National Military Command Systems Support Center, Room BE685, The Pentagon, Washington, D. C. 20331.

Categories of individuals covered by the system:

Any individual currently and formerly a member of any Reserve or National Guard component, as defined in 10 USC 261, and retired reservists.

Categories of records in the system:

File contains individual's Social Security Account Number, component and other demographic and personal information such as race, sex, rank, age and length of service.

Authority for maintenance of the system:

10 USC 275/10 USC 136

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

The purpose of the file is to generate official statistics concerning Reserve Forces' strength, gains, losses and characteristics of the force.

Internal/External users, uses and purposes:

Office of the Deputy Assistant Secretary of Defense (Reserve Affairs) - used to generate and disseminate official statistics. Individual records are used to provide aggregate statistical data.

Defense Manpower Date Center - used to analyze accession patterns and trends, promotion and occupation patterns and trends, loss patterns and trends, qualification rates, effectiveness of recruiting programs, participation in education and training programs, force characteristics, evaluation of military special pays and bonuses; evaluation of special programs affecting military personnel; to select sample population for surveys; to provide statistical data to OMB, GAO, the Military Services, DoD civilian contractors, educational institutions and other Federal agencies.

Personnel Research and Personnel Management activities of the Military Services - uses are same as those specified above.

DoD Civilian Contractors - used by contractors performing research on manpower problems for statistical analyses.

Aggregate data and/or individual records in the record system may be transferred to other Federal agencies having legitimate use for such information and applying appropriate safeguards to protect data so provided.

Records may be disclosed to the Office of Personnel Management concerning pay, benefits, retirement deductions and identification of Federal Civilian employees who are subject to mobilization in the event of a national emergency.

Any record contained in the system of records may be transferred to any other component of the Department of Defense having the need-to-know in the performance of official business.

Records may be disclosed to the Director, Selective Service System upon official request.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Magnetic computer tape.

Retrievability:

Records are retrievable by component, rank, age, sex, location or other attribute including Social Security Account Number.

Safeguards:

The primary location is a controlled area. Magnetic computer tapes are stored in a locked cage in machine room, which is a controlled access area. Tapes can be physically accessed only by authorized computer center personnel and can be mounted for processing only if the appropriate security code is provided.

Retention and disposal:

Inventory files are current; quarterly history files for the master and transaction files are maintained on a permanent basis.

System manager(s) and address:

Special Assistant for Reserve Component Systems and Analysis Defense Manpower Data Center 300 N. Washington Street Alexandria, VA 22314

Notification procedure:

Information may be obtained from: Special Assistant for Reserve Component Systems and Analysis Defense Manpower Data Center 300 N. Washington Street Alexandria, VA 22314 Telephone: 202-325-0530

Record access procedures:

Requests from individuals should be addressed to system manager. Written requests for information should contain the intended use of the information together with the full name, Social Security Account Number, component and current address and telephone number of the individual.

For personal visits the individual should be able to provide some acceptable identification such as driver's license or military or other identification cards.

Contesting record procedures:

The Agency's rules for access to records and for contesting contents and appealing initial determinations by the individual concerned are contained in 32 CFR 286b and OSD Administrative Instruction No. 81.

Record source categories:

Data records are obtained from the seven Reserve components.

Systems exempted from certain provisions of the act:

None

S434.15DLA-C

System name:

434.15 Automated Payroll Cost and Personnel System (APCAPS)

System location:

Records maintained at Defense Logistics Agency (DLA) Centers and Depots.

Categories of individuals covered by the system:

Current and former civilian and military personnel who have been paid or costed by APCAPS.

Categories of records in the system:

Records are maintained in manual and mechanical files for all data which affect an employee's pay, deductions, employer contributions, leave, retirement, position status, or cost accumulation.

Authority for maintenance of the system:

10 U.S.C. 136, DoD Dir 5105.22

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Information is used in preparing payrolls, cost and manpower reports.

Information is used by: Agency supervisors and managers - to determine leave usage, manpower allocations and labor distribution. Supervisors and managers of agencies and activities other than DLA who receive payroll/cost accounting support from APCAPS - to determine leave usage, manpower allocations, labor distributions and costs.

Payroll office - to compute and control payroll and allocate labor costs.

Personnel office - to determine leave usage and changes that affect an employee's pay.

Security office - to determine location of employees.

Disbursing office - to determine the distribution of checks and bonds.

Financial Institutions - to determine disposition of net pay or allotments of pay.

Treasury Department - to determine registration of bonds and federal tax allocation.

Unions, charities, and insurance organizations - to determine participation in these organizations.

Office of Personnel Management - to determine status of employee and for disposition of retirement records.

State and local taxing authorities - to determine tax liability.

Non-government organizations - to verify employment and credit data furnished to financial institutions by the employee.

Bureau of Employment Compensation - to process employee disability claims.

State employment offices - to submit data for unemployment compensation.

Local courts - to determine the withholding of pay for garnishment of wages.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Microfilm, magnetic tape, disc pack, computer paper printouts, vertical file cards, paper records in file folders.

Retrievability:

Hardcopy documents are filed by payroll block and/or alphabetically by last name. Data stored on mechanized storage devices are retrieved by SSAN.

Safeguards:

Access to mechanical records is limited to authorized DLA data systems personnel. All other records are maintained in areas accessible only to agency personnel.

Retention and disposal:

Retention of data varies from 1 to 3 days for mechanical working files up to an employee's total length of service with an activity for permanent payroll information.

System manager(s) and address:

Comptroller, DLA.

Notification procedure:

Written or personal requests for information may be directed to the Chief, Payroll Branch, Accounting and Finance Division, Office of Comptroller at each DLA Center and depot.

Record access procedures:

Written requests must contain full name and social security account number of the employee. Employees making a personal request must present identification. Official mailing addresses are in the Department of Defense directory in the appendix to the DLA system of record notices.

Contesting record procedures:

The agency's rules for contesting contents and appealing initial determination by the individual concerned may be obtained from the SYSMANAGER.

Record source categories:

Employee's supervisors, civilian personnel office, military personnel office, financial institutions, local courts, military services or other government agencies.

Systems exempted from certain provisions of the act:

None.

S434.20DLA-C

System name:

434.20 Mechanization of Contract Administration Services - 1B Payroll (MOCAS 1B)

System location:

Records maintained at all Defense Contract Administration Service Regions (DCASRs) less Philadelphia (DCRP).

Categories of individuals covered by the system:

Current and former civilian personnel who have been paid by the DCASRs.

Categories of records in the system:

Records are maintained in manual and mechanical files for all data which affect an employee's pay, deductions, employer contributions, leave, retirement, or position status.

Authority for maintenance of the system:

10 U.S.C. 136, DoD Dir 5105.22.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Information is used in preparing payrolls.

Information is used by:

Agency supervisors and managers - to determine leave usage, manpower allocations and labor distribution.

Supervisors and managers of agencies and activities other than DLA who receive payroll/cost accounting support from MOCAS 1B - To determine leave usage, manpower allocations, labor distributions and costs.

Payroll office - to compute and control payroll.

Personnel office - to determine leave usage and changes that affect an employee's pay.

Security office - to determine location of employees.

Disbursing office - to determine the distribution of checks and bonds.

Financial Institutions - to determine disposition of net pay or allotments of pay.

Treasury Department - to determine registration of bonds and federal tax allocation.

Unions, charities, and insurance organizations - to deterimine participation in these organizations.

Office of Personnel Management - to determine status of employee and for disposition of retirement records.

State and local taxing authorities - to determine tax liability.

Non-government organizations - to verify employment and credit data furnished to financial institutions by the employee.

Bureau of Employment Compensation - to process employee disability claims.

State employment offices - to submit data for unemployment compensation.

Local courts - to determine the withholding of pay for garnishment of wages.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Microfilm, magnetic tape, disc pack, computer paper printouts, vertical file cards, paper records in file folders.

Retrievability:

Hardcopy documents are filed by payroll block and/or alphabetically by last name. Data stored on mechanized storage devices are retrieved by name, employee number or SSAN.

Safeguards:

Access to mechanical records is limited to authorized DLA data systems personnel. All other records are maintained in areas accessible only to agency personnel.

Retention and disposal:

Retention of data varies from 1 to 3 days for mechanical working files up to an employee's total length of service with an activity for permanent payroll information.

System manager(s) and address:

Comptroller, DLA.

Notification procedure:

Written or personal requests for information may be directed to the Chief, Payroll and Travel Branch, Accounting and Finance Division, Office of Systems and Financial Management at DCASRs.

Record access procedures:

Employees making a personal request for information must present indentification. Official mailing addresses are in the Department of Defense directory in the appendix to the DLA system of record notices. Written requests must contain the full name of the employee.

Contesting record procedures:

The agency's rules for contesting contents and appealing initial determination by the individual concerned may be obtained from the SYSMANAGER.

Record source categories:

Employee's supervisors, civilian personnel office, financial institutions, local courts, military services or other government agencies.

Systems exempted from certain provisions of the act:

None

S434.87DLA-C

System name:

434.87 Debt Records for Individuals

System location:

Primary System: - Accounting and Finance Division, Finance Systems Branch, Headquarters, Defense Logistics Agency (HQ DLA). Secondary System: DLA Primary Level Field Activies (PLFAs)

Categories of individuals covered by the system:

Current and former civilian and military personnel who are indebted to the U. S. Government.

Categories of records in the system:

Administrative reports with supporting documentation; employee's financial condition; personnel actions, and requests for waiver.

Authority for maintenance of the system:

31 U.S.C. 951-953 (Federal Claims Collection Act of 1966); Public Law 90-616; Public Law 92-453.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Information is used to collect monies owed the U. S. Government. Information is maintained to support case files; financial statements provide an understanding of individuals' financial condition with respect to request for deferment of payments. If debtors do not enter into satisfactory payment arrangements or demonstrate a legitimate dispute within a specific period, the debt will be reported to a commerical credit bureau. When debts are uncollectable, case files are forwarded to the U. S. General Accounting Office, Department of Justice, or a United States Attorney for further collection action.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Paper records in file folders.

Retrievability:

Filed alphabetically by employee name.

Safeguards:

Records are maintained in areas accessible only to office personnel.

Retention and disposal:

Records are destroyed ten years after all aspects of the case are closed. Collected in full claims are retained for six months and then destroyed. Claims terminated, compromised or waived are retained for three years and subsequently retired to Federal Records Center, held for remaining years and destroyed. Claims settled by U. S. General Accounting Office, retained one year after settlement and retired to Federal Records Center, held for remaining years and retired.

System manager(s) and address:

Chief, Finance Systems Branch, Accounting and Finance Division, Office of Comptroller, HQ DLA.

Notification procedure:

Written or personal requests for information may be directed to the SYSMANAGER.

Record access procedures:

Official mailing address is in the DoD Directory in the appendix to the DLA systems notice. Written requests from individuals should contain their full name, current address and telephone number. For personal visits, the individual should be able to provide acceptable identification, such as an employee badge or driver's license, etc.

Contesting record procedures:

The agency's rules for contesting contents and appealing initial determination by the individual concerned may be obtained from the SYSMANAGER.

Record source categories:

Primary Level Field Activities, civilian and military personnel offices.

Systems exempted from certain provisions of the act:

None

S690.01DISC-W

System name:

Car Pool Program in Participants File.

System location:

Primary System--Tapes are maintained in Office of Data Systems (DISC-A), Defense Industrial Supply Center, 700 Robbins Ave., Philadelphia, PA 19111. Paper records are maintained in the Office of the Comptroller (DISC- C), Directorate of Supply Operations (DISC-O), Directorate of Contracting and Production (DISC-P), and directorate of Technical Operations (DISC-S).

Categories of individuals covered by the system:

Civilian and military employees of DISC.

Categories of records in the system:

Personal information consisting of name, rank/grade, home address, organizational code, office telephone number and social security number.

Authority for maintenance of the system:

40 USC 486(c); CFR 101-20.117; DoD Directive 4170.10, Energy Conservation.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

To collect and maintain data from personnel for the purpose of forming car pools. Data collected is used to coordinate geographic locations of employees of employees' home addresses, to facilitate the establishment of car pools by computer car pool matching against grid/map, and to comply with the Energy Conservation Program.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Paper records in file folders, tapes, computer printouts.

Retrievability:

Retrieved from tape records by individual's Social Security Number. Computerized indices are used to retrieve individual records from the system. Paper records are retrieved by individual's name.

Safeguards:

Records are accessible only to authorized personnel and are maintained in locked cabinets or rooms.

Retention and disposal:

Records are destroyed upon preparation of new lists compiled from update data collected from personnel.

System manager(s) and address:

Director, Office of Data Systems (DISC-A), Defense Industrial Supply Center, Philadelphia, Pennsylvania 10111, telephone 215-697-2700.

Notification procedure:

Written or personal requests for information may be directed to the SYSMANAGER. Individuals must provide full name, and specific office in which employed.

Record access procedures:

Requests should contain full name, current address and telephone number of the individual. For personal visits, the individual should be able to provide some personal identification, e.g., drivers license, DLA identification card etc.

Contesting record procedures:

Rules for contesting contents may be obtained from the SYSMANAGER.

Record source categories:

Individual, upon applying for car pool matching, and when changes occur.

Systems exempted from certain provisions of the act:

NONE.

BILLING CODE 3810-01-M

DEFENSE INVESTIGATIVE SERVICE

REQUESTING RECORDS

Records are retrieved by name or by some other personal identifier. It is therefore especially important for expeditious service when requesting a record that particular attention be provided to the Notification and/or Access Procedures of the particular record system involved so as to furnish the required personal identifiers, or any other pertinent personal information as may be required, to locate and retrieve the record.

BLANKET ROUTINE USES

Certain blanket 'routine uses' of the records have been established, that are applicable to every record system maintained within the Department of Defense, unless specifically stated otherwise within a particular record system. These additional blanket routine uses of the records are published below, only once in the interest of simplicity, economy and to avoid redundancy, before the individual record system notices begin rather than repeating them in every individual record system.

ROUTINE USE - LAW ENFORCEMENT

In the event that a system of records maintained by this component to carry out its functions indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute, or by regulation, rule or order issued pursuant thereto, the relevant records in the system of records may be referred, as a routine use, to the appropriate agency, whether federal, state, local or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, rule, regulation or order issued pursuant thereto.

ROUTINE USE - DISCLOSURE WHEN REQUESTING INFORMATION

A record from a system of records maintained by this component may be disclosed as a routine use to a federal, state or local agency maintaining civil, criminal or other relevant enforcement information or other pertinent information, such as current licenses, if necessary to obtain information relevant to a component decision concerning the hiring or retention of an employee, the issuance of a security clearance, the letting of a contract, or the issuance of a license, grant or other benefit.

ROUTINE USE - DISCLOSURE OF REQUESTED INFORMATION

A record from a system of records maintained by this component may be disclosed to a federal agency, in response to its request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

ROUTINE USE - CONGRESSIONAL INQUIRIES

Disclosure from a system of records maintained by this component may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

ROUTINE USE WITHIN THE DEPARTMENT OF DEFENSE

A record from a system of records maintained by this component may be disclosed as a routine use to other components of the Department of Defense if necessary and relevant for the performance of a lawful function such as, but not limited to, personnel actions, personnel security actions and criminal investigations of the Component requesting the record.

ROUTINE USE - PRIVATE RELIEF LEGISLATION

Relevant information contained in all systems of records of the Department of Defense published on or before August 22, 1975, will be disclosed to the Office of Management and Budget in connection with the review of private relief legislation as set forth in OMB Circular A-19 at any stage of the legislative coordination and clearance process as set forth in that Circular.

ROUTINE USE - DISCLOSURES REQUIRED BY INTERNATIONAL AGREEMENTS

A record from a system of records maintained by this Component may be disclosed to foreign law enforcement, security, investigatory, or administrative authorities in order to comply with requirements imposed by, or to claim rights conferred in international agreements and arrangements including those regulating the stationing and status in foreign countries of Department of Defense military and civilian personnel.

ROUTINE USE - DISCLOSURE TO STATE AND LOCAL TAXING AUTHORITIES

Any information normally contained in IRS Form W-2 which is maintained in a record from a system of records maintained by this Component may be disclosed to State and local taxing authorities with which the Secretary of the Treasury has entered into agreements pursuant to Title 5, U.S.Code, Sections 5516, 5517, 5520, and only to those State and local taxing authorities for which an employee or military member is or was subject to tax regardless of whether tax is or was withheld. This routine use is in accordance with Treasury Fiscal Requirements Manual Bulletin Nr. 76-07.

ROUTINE USE - DISCLOSURE TO THE OFFICE OF PERSONNEL MANAGEMENT

A record from a system of records subject to the Privacy Act and maintained by this component may be disclosed to the Office of Personnel Management concerning information on pay and leave, benefits, retirement deductions, and any other information necessary for the Office of Personnel Management to carry out its legally authorized Government-wide personnel management functions and studies.

ROUTINE USE - DISCLOSURE OF INFORMATION TO NARS (GSA)

A record from a system of records maintained by this component may be disclosed as a routine use to the National Archives and Records Service of the General Services Administration in records management inspections conducted under authority of 44 U.S.C. 2904 and 2906.

ROUTINE USE - DISCLOSURE TO DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

All systems of records relating to compensation, employment or retirement, or extracts therefrom, maintained by this Component may be disclosed as a routine use to the Department of Health, Education, and Welfare for the purpose of comparing such record with records of programs administered by and in the possession of the Department of Health, Education, and Welfare in order to verify information where such verification is required by law or regulation or to identify violations or potential violations of law, whether criminal, civil, or regulatory, and whether arising by general statute or particular program statute, or by regulation, rule, or order issued pursuant thereto.

V1-01

System name:

V1-01 Privacy and Freedom of Information Request Records

System location:

Information and Legal Affairs Office, Defense Investigative Service, 1900 Half St., S. W., Washington, D. C. 20324.

Categories of individuals covered by the system:

Individuals who have submitted or were the subjects of requests under 5 U.S.C. 552 and 552a.

Categories of records in the system:

Copies of all correspondence with requesters or pertaining to requests for information released or withheld; summaries, and logs of actions taken regarding requests.

Authority for maintenance of the system:

5 U.S.C. 301, Departmental Regulations
5 U.S.C. 552 as amended by P. L. 93-502, Freedom of Information Act.
5 U.S.C. 552a (P.L. 93-579) Privacy Act of 1974.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Purposes for which information is maintained:
To permit responses to individual requests.
To document actions taken for agency use in subsequent requests, appeals, or litigation.
To provide a basis for reports required by the laws and implementing directives.
To correct or amend investigative or other records. Categories of Users and specific uses are: DIS Assistant for Information, action officers, legal and appeal officials for the uses described above.
Action officers of other agencies when coordination or referral is necessary for the purposes listed above.
DIS investigative control personnel when the release of information may have an impact on investigative activities, or where investigative activity is necessary to verify assertions of the requester, or obtain permission for release of identification of sources.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Paper records in file folders

Retrievability:

Information is retrieved by the name of the subject of the request.

Safeguards:

Records are maintained in security containers and only personnel who have a need to know the information are permitted access.

Retention and disposal:

A log entry is made and a file folder established upon the receipt of each request. Copies or summaries of key documents are retained for as long as released material is retained.

System manager(s) and address:

The DIS Assistant for Information at the address listed under location.

Notification procedure:

Requests should be addressed to the SYSMANAGER. The full and the approximate date of earlier requests are necessary for retrieval of information. Information and Legal Affairs Office, Defense Investigative Service, 1900 Half St., S. W., Washington, D. C. 20324 may be visited by personnel making inquiries regarding this system. A check of personal identification will be required of all visitors making inquiries for personal records.

Record access procedures:

Access may be obtained through the SYSMANAGER at the address previously listed.

Contesting record procedures:

The agency's rules for contesting contents and appealing initial determinations may be obtained from the SYSMANAGER.

Record source categories:

Information in this system is obtained from requesters, from other federal agencies with collateral interest in a request, and from records which were the subject of requests.

Systems exempted from certain provisions of the act:

Information in this system may identify all or portions of records previously withheld in accordance with the exemptions of 5 U.S.C. 552(b) or 5 U.S.C. 552a(j) or (k). Any such exemptions will continue on requests of this system submitted under the same law.

V1-02

System name:

V1-02 DIS Personnel Locator System

System location:

Primary System--Administrative Division, Director of Management and Resources, Defense Investigative Service, 1900 Half St., S. W., Washington, D. C. 20324.

Decentralized Segments - Field units including centers.

Categories of individuals covered by the system:

Military and civilian personnel assigned or attached to DIS.

Categories of records in the system:

Primary system contains DISHQ Form 4, DIS Locator Card. Field unit decentralized segments include DISHQ Form 4 or optional documents reflecting the required information.

Authority for maintenance of the system:

5 U.S.C. 301, DoD Directive 5105.42, and DIS Regulation 1-10.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Purpose:

Records are used to maintain a locator system of all personnel assigned to the Defense Investigative Service.

Users:

Records are used by administrative personnel and supervisors in headquarters and field units.

Uses:

To determine current assignment of DIS personnel.

As an aid in distributing communications addressed to individuals.

To make and to verify entries in required personnel rosters, directories, and listings subject to certain restrictions placed on the information by the individuals concerned.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Paper records.

Retrievability:

Filed alphabetically by last name.

Safeguards:

Filed in security containers or locked file cabinets, accessible only to authorized personnel that clearly have a need to know the information.

Retention and disposal:

Records remain in the active file until departure of the individual, when they are placed in the inactive file and destroyed after one year.

System manager(s) and address:

Administrative Division, Defense Investigative Service, 1900 Half St., S. W., Washington, D. C. 20324.

Notification procedure:

Information may be obtained from the primary system by contacting the SYSMANAGER. Information regarding decentralized segments may be obtained from the field unit maintaining portions of these records.

Record access procedures:

Access to any records maintained as a part of this system may be obtained from the DISHQ or field unit maintaining them.

Contesting record procedures:

While not considered applicable, DIS rules are described in DISR 28-4.

Record source categories:

Only the individual on whom records are maintained.

Systems exempted from certain provisions of the act:

None.

V2-01

System name:

V2-01 Inspector General Complaints

System location:

Inspector General, Defense Investigative Service, 1900 Half St., S. W., Washington, D. C. 20324.

Categories of individuals covered by the system:

Past and present civilian employees of the DIS and military personnel currently or formerly assigned to DIS for duty who have made a complaint, or requested assistance from the Inspector General, or whose complaint or request has been referred to the Inspector General for action, assistance or information.

Categories of records in the system:

Documents which have been provided by individual complainants in support of their requests, or which have been provided by others in support of, or in rebuttal to, these requests, such as: letters of reprimand, personal financial statements, medical records, promotion board actions, travel orders, personnel computer printouts, medical bills from civilian sources, accident reports, reports of survey, records of personnel actions, evaluation reports, efficiency reports, test results, courtesy letters, letters of appreciation or commendation, screening board actions, leave and earnings statements, movement orders for household goods.

Authority for maintenance of the system:

5USC301

DoD Dir 5105.42 (paragraph III B5, part VI), Charter for the Defense Investigative Service

DoD Dir 5200.26 (paragraph 5C2), Defense Investigative Program

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

The purpose for which information in the system is collected is the resolution of a complaint, the redress of a problem or to provide assistance.

The users are: members of Congress, DIS management officials, various service IG offices, various military personnel offices, boards, and record management offices.

The specific uses are: to correct records; take or recommend disciplinary action; reevaluate or rescind previous actions or decisions; conduct or recommend formal investigations or inquiries; provide assistance or guidelines in following prescribed procedures for specific problems; and to provide advice on how to obtain exception to policy.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Paper records in file folders

Retrievability:

Filed by name

Safeguards:

Building employs security guards. Files are contained in a locked file safe and accessible only to the IG staff. Information from this record system is made available to other officials only on a need to know basis.

Retention and disposal:

Destroyed after two years by pulping.

System manager(s) and address:

Inspector General, Defense Investigative Service, 1900 Half St., S. W., Washington, D. C. 20324.

Notification procedure:

Information may be obtained from: Information and Legal Affairs Office, Defense Investigative Service, 1900 Half St., S. W., Washington, D. C. 20324.

Record access procedures:

Requests from individuals should be addressed to: Defense Investigative Service, 1900 Half St., S. W., Washington, D. C. 20324.

Written requests for information should contain the full name of the individual, current address and telephone number, and the identity of the DIS element with which affiliated. Visits are limited to the Information and Legal Affairs Office.

For personal visits, a check of personal identification will be required.

Contesting record procedures:

The agency's rules for access to records and for contesting and appealing initial determinations by the individual concerned may be obtained from the Assistant for Information at the above listed address.

Record source categories:

DIS personnel office, consolidated civilian personnel offices, DIS comptroller, military personnel offices, military finance offices, military medical record repositories, DIS Investigative Files.

Systems exempted from certain provisions of the act:

None

V4-01

System name:

V4-01 Civilian Employee Personnel Records

System location:

Civilian Personnel Branch, Defense Investigative Service, P. O. Box 1211, Baltimore, MD 21203 , and Civilian Personnel Division, Defense Investigative Service, 1900 Half St., S. W., Washington, D. C. 20324.

Categories of individuals covered by the system:

Civilian employees of the Defense Investigative Service.

Categories of records in the system:

Permanent and temporary records pertaining to the individual's employment.

Authority for maintenance of the system:

Executive Order 10561
FPM Supplement 990-1, Book III, Parts 293 and 294
FPM Chapter 295
5USC301.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

USES

Individual's employment history; disclosure for verification of personnel information; details of employee qualifications; eligibility for proposed personnel actions or new employment.

USERS

Personnel specialists
Personnel clerks
DIS supervisors with a clear need for the information.
Accredited investigators with a clear need for the information.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Paper records in file folders, or
5 X 8 cards in card file drawers

Retrievability:

Filed alphabetically by last name of employee

Safeguards:

Buildings employ security guards. Records are maintained in locked file cabinets, accessible only to authorized personnel that are properly screened, cleared, and trained.

Retention and disposal:

Records are both permanent and temporary. Permanent records are transferred to the National Personnel Records Center when no longer required by the agency. Temporary records are destroyed when the file leaves the agency, or when utility of the record is no longer significant.

System manager(s) and address:

Civilian Personnel Officer, Defense Investigative Service, 1900 Half St., S. W., Washington, D. C. 20324 and Chief, Civilian Personnel Branch, P. O. Box 1211, Baltimore, MD 21203.

Notification procedure:

Information may be obtained from: SYSMANAGERS

Record access procedures:

Requests from individuals should be addressed to: SYSMANAGERS

Written requests for information should contain the full name of the requesting individual, current address and telephone number, if known, and the name of the individual that appears on the desired file. Visits are limited to: SYSMANAGERS offices

For personal visits, the individual should be able to provide some acceptable identification, i.e., driver's license or building pass.

Contesting record procedures:

The agency's rules for access to records and for contesting contents and appealing initial determination by the individual concerned may be obtained from the InSormation and Legal Affairs Office, Defense Investigative Service, 1900 Half St., S. W., Washington, D. C. 20324.

Record source categories:

Previous employers, references, supervisors, U.S. Veterans Administration, U.S. Civil Service Commission, DIS Civilian Personnel Office, DIS Security Officer, other Federal agencies.

Systems exempted from certain provisions of the act:

None

V4-02

System name:

V4-02 Optional Personnel Management Records (OPMR)

System location:

Primary System--Director of Personnel and Security, Defense Investigative Service, 1900 Half St., S. W., Washington, D. C. 20324 and Civilian Personnel Branch, Defense Investigative Service, P. O. Box 1211, Baltimore, MD 21203.

Decentralized Segments - Partial records are maintained at staff directorates, district headquarters, operational centers and field offices. (See DoD appendix for addresses.)

Categories of individuals covered by the system:

Military and civilian personnel assigned or attached to DIS and those being considered for assignment or employment.

Categories of records in the system:

File contains records which may include working documents, copies of correspondence and forms processed in anticipation of, or during, tour of duty with DIS that relate to assignment, security clearance, promotion, duty status, training, special duty, retirement, separation, reenlistment, performance appraisals, matters pertaining to military specialty qualification, manner of performance, morale and discipline, special personnel management and assignment factors and other personnel actions that affect the individual or his assignment with DIS. Qualification records, leave and financial documents, and award recommendations are also among the items that may be included in the records. Decentralized portions also contain emergency notification and locator information, security clearance data, individual workload and productivity measurement records (e.g., DIS Form 45) not necessarily retained by DISHQ Personnel Division activities.

Authority for maintenance of the system:

Executive Order 10561, 5 USC 301, DOD Directive 5105.42, Charter for the Defense Investigative Service (DIS), and other DIS, DOD and CSC directives on records maintenance and disposition

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

PURPOSES

Records are used in fulfilling military and civilian personnel management responsibilities in both field elements and DIS headquarters.

USERS

Records are used by directors, commanders and supervisors at the Field Office, District and DIS headquarters level.

Primary users are the Director of Personnel, the Civilian and Military Personnel Officers and their staffs, and the Director, DIS.

USES

To serve as basis for recommendations for employment, selection, assignment, promotion, awards, training, relief and disciplinary actions.

To record appraisals of performance and performance ratings.

To record reenlistment, retirement, separation and relief from active duty or employment.

To record information on qualifications, schooling, training, experience and career programs affecting personnel actions.

To record morale and disciplinary actions.

To document completed actions, as basis for responding to inquiries, and for use in substantiating and processing subsequent related personnel actions.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Paper records
Retrievability:
Filed alphabetically by last name
Safeguards:
Records filed in security containers or locked file cabinets, accessible only to authorized personnel that clearly have a need to know the information.
Retention and disposal:
Documents in each record are retained for one calendar year following year in which individual departed DIS and then destroyed, unless earlier destruction is prescribed. Manhour documents (DIS Form 45) are maintained for four months only.
System manager(s) and address:
Director of Personnel and Security, Defense Investigative Service, 1900 Half St., S. W., Washington, D. C. 20324.
Notification procedure:
Information may be obtained from: SYSMANAGER
Record access procedures:
Access to partial decentralized segments may be obtained from District/Field Office headquarters. Requests from an individual for information pertaining to himself from the centralized repository should be addressed to the SYSMANAGER at the above address.
Written requests for information should contain the full name of the individual, current address and telephone number, grade, SSN, unit and period of assignment with DIS. Visits should be made to the SYSMANAGER.
For personal visits, a check of personal identification will be required.
Contesting record procedures:
The agency's rules for access to records and for contesting contents and appealing initial determinations by the individual concerned may be obtained from the Information and Legal Affairs Office, 1900 Half St., S. W., Washington, D. C. 20324.
Record source categories:
Sources of information other than from the individual are servicing Civilian Personnel Offices (CPO), the Military Departments and the individual's commander or supervisor.
Systems exempted from certain provisions of the act:
None

V4-04

System name:
V4-04 Civilian Applicant Records
System location:
Civilian Personnel Division, Defense Investigative Service, 1900 Half St., S. W., Washington, D. C. 20324.
Civilian Personnel Branch, Defense Investigative Service, P. O. Box 1211, Baltimore, MD 21203.
Categories of individuals covered by the system:
Applicants for positions with the Defense Investigative Service.
Categories of records in the system:
Temporary record of applicants' stated interest in and/or qualifications for employemnt.
Authority for maintenance of the system:
FPM Chapter 333
FPM Chapter 332
5USC301
Routine uses of records maintained in the system, including categories of users and the purposes of such uses:
USES
Identification of applicants, and determination of eligibility for positions with DIS disclosure to other agencies for verification.
USERS
Personnel specialists of DIS and the CSC
Personnel clerks
Supervisors with a clear need for this information
Accredited investigators.
Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:
Storage:
Paper records in files, looseleaf binders
Paper files of 3 X 5 cards.
Retrievability:
Filed by type of position for which the applicant applied, or
Filed alphabetically by last name of applicant, or
Filed numerically by Sequential Control Number.
Safeguards:
Buildings employ security guards. Records are maintained in files, accessible only to authorized personnel that are properly screened, cleared, and trained.
Retention and disposal:
Records are temporary, and are destroyed in accordance with DIS Records Disposition Schedule.
System manager(s) and address:
Civilian Personnel Officer, Defense Investigative Service, 1900 Half St., S. W., Washington, D. C. 20324 and Chief, Civilian Personnel Branch, Defense Investigative Service, P. O. Box 1211, Baltimore, MD 21203.
Notification procedure:
Information may be obtained from: SYSMANAGERS
Record access procedures:
Requests from individuals should be addressed to: SYSMANAGERS
Written requests for information should contain the full name of the individual, current address and telephone number, and the name of the individual that appears on the desired file. Visits are limited to: SYSMANAGERS offices.
For personal visits, the individual should be able to provide some acceptable identification, eg., driver's license or building pass.
Contesting record procedures:
The agency's rules for access to records and for contesting contents and appealing initial determinations by the individual concerned may be obtained from the Information and Legal Affairs Office, Defense Investigative Service, 1900 Half St., S. W., Washington, D. C. 20324.
Record source categories:
Civilian Personnel Officers
Personnel clerks
Civilian personnel specialists
U.S. Civil Service Commission.
Subject Individual.
Systems exempted from certain provisions of the act:
None

V4-05

System name:
V4-05 Military Personnel Management Information System (MILPERS)
System location:
Director of Personnel and Security, Defense Investigative Service, 1900 Half St., S. W., Washington, D. C. 20324.
Categories of individuals covered by the system:
All military personnel currently assigned or attached to DIS and those projected for assignment.
Categories of records in the system:
File contains computer records consisting of: (a) Identification Data on the individual; (b) Assignment Data; (c) Duty Information; (d) Basic Personnel Data; (e) Personal Data; (f) Agent qualifications.
Authority for maintenance of the system:
DOD Directive 5105.42, Charter for the Defense Investigative Service.
5 USC 301
Routine uses of records maintained in the system, including categories of users and the purposes of such uses:
Personnel Managers in DIS: To monitor manning posture of DIS elements, statistical reporting, to respond to requests for personnel data from internal DIS, DOD and Congressional sources, determine qualification and eligibility for specific assignments, training or reassignments within DIS, locator reference, strength accountability, verification of manually prepared personnel actions.
Administrative Personnel in DIS: To prepare personnel actions, i.e., award recommendations, retirement applications, etc., as locator reference file, mail routing, for input of data to central file to produce consolidated reports for DISHQ staff elements.
Commanders/Supervisors in DIS: To monitor manning situation for unit under jurisdiction, determine qualification of personnel for special duty assignment or duty in selected areas, meet administrative reporting requirements.
DIS Security Officer: To monitor gains and losses to insure currency of files and security briefing/debriefing, determining periodic

revalidation requirements, respond to queries concerning security clearance or access information.

DIS Headquarters Staff: To make decisions on policy and procedural matters, determine agent qualifications, security access, and complete administrative actions.

In the event that records maintained in this system indicate a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule or order issued pursuant thereto, the relevant records in the system of records may be referred, as a routine use, to the appropriate agency, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, or rule, regulation or order issued pursuant thereto.

A record from this system of records may be disclosed to a federal agency, in response to its request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, or the granting of benefits by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Computer magnetic tape and paper output in folders or binders

Retrievability:

Filed by Social Security Number (SSN)

Safeguards:

Magnetic tape storage is within a secured area accessible only to authorized personnel.

Paper products are secured in cabinets and only personnel with a need to know are granted access to these documents.

Retention and disposal:

Magnetic tape records are retained on active file until individual's departure from DIS and then on historical file for 3 years. After 3 years, erased from computer file and output reports reflecting personnel data on the individual destroyed by shredding or chemical decomposition. Paper products are retained for one year following the departure of the individual.

System manager(s) and address:

Director of Personnel (D0150), Defense Investigative Service, 1000 Independence Ave. S.W., Washington, DC 20314

Notification procedure:

Information may be obtained from: SYSMANAGER

Record access procedures:

Access to partial decentralized segments may be obtained from District/Field Office headquarters. Requests from an individual for information pertaining to himself from the centralized repository should be addressed to the SYSMANAGER at the above address.

Written requests for information should contain the full name of the individual, current address and telephone number, grade, SSN, unit and period of assignment with DIS. Visits should be made to the office of the SYSMANAGER.

For personal visits, a check of personal identification will be required.

Contesting record procedures:

The agency's rules for access to records and for contesting contents and appealing initial determinations by the individual concerned may be obtained from the Information and Legal Affairs Office, Defense Investigative Service, 1900 Half St., S. W., Washington, D. C. 20324.

Record source categories:

Sources of information other than from the individual are Military Departments and the individual's commander or supervisor.

Systems exempted from certain provisions of the act:

None

V4-06

System name:

V4-06 Civilian Personnel Management Information System (CPMIS)

System location:

Primary System-Information Services Division (D0830), Personnel Investigations Center, P.O. Box 1211, Baltimore, MD 21203

Decentralized Segments-Civilian Personnel Division and various DIS Headquarters elements.

Categories of individuals covered by the system:

Civilian employees of the DIS.

Categories of records in the system:

Records consisting of: identification and employment data; special qualifications and other information found in the Official Personnel Record

Authority for maintenance of the system:

Title 5, United States Code
Section 301 (Agency Regulations)
Section 1302 (regulations)
Section 2951 (reports to the Commission)
Section 4118 (training)
Section 4308 (performance rating)
Section 4506 (incentive awards)
Sections 5113, 5115, and 5338 (classification)
Section 6311 (leave)
Sections 8334(f), 8342(b), 8343(a), and 8347 (retirement)
Section 8716 (life insurance)
Section 8913 (health insurance)
Civil Service Rules, sections 7.2, 5.1, 5.2 and 5.3
Executive Order 10561, September 13, 1954
Executive Order 9830, section 01.2(e) and (f), February 24, 1947 as amended
Executive Order 10800, section 2(d), January 15, 1959
Executive Order 10988, section 14, January 17, 1962
Executive Order 11222, section 405, May 8, 1965
Executive Order 11246, Section 104, September 24, 1965 as amended
DOD Directive 5105.42, Charter for the Defense Investigative Service

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Uses

CSC, DOD and internal reports on employment characteristics of civilian employees

The identification of personnel with selected characteristics or special qualifications.

Users

Personnel Specialists and Clerks.

DIS Commanders and supervisors with a need to know.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Computer magnetic tape and paper output in folders or binders.

Retrievability:

Filed by date of listing, organization of assignment, name or Social Security Number (SSN).

Safeguards:

Magnetic tape storage is within a secured area accessible only to authorized personnel.

Paper products are secured in cabinets and only personnel with a need to know are granted access to these documents. Personnel with access are properly screened, cleared and trained.

Retention and disposal:

Magnetic tape records and paper products of this system are retained until individual's departure from DIS and then on historical file for 90 days.

System manager(s) and address:

Civilian Personnel Officer, Defense Investigative Service, 1900 Half St., S. W., Washington, D. C. 20324.

Notification procedure:

Information may be obtained from: SYSMANAGER

Record access procedures:

Requests from individuals should be addressed to: SYSMANAGER

Written requests for information should contain the full name of the individual, current address and telephone number, and the name of the individual that appears on the desired listing. Visits are limited to SYSMANAGER or Civilian Personnel Branch (D0154), Bldg. 320, Fort Holabird, Baltimore Maryland

For personal visits, a check of personal identification will be required.

Contesting record procedures:

The agency's rules for access to records and for contesting contents and appealing initial determinations by the individual concerned may be obtained from the Information and Legal Affairs Office, Defense Investigative Service, 1900 Half St., S. W., Washington, D. C. 20324.

Record source categories:

Notifications of Personnel Action, SF-50 and 50a, Payroll Change Notices, SF1126, Personnel Qualifications Statements, SF-171 and certificates of training.

Systems exempted from certain provisions of the act:

None

V4-07

System name:

V4-07 Adverse Actions, Grievance Files and Administrative Appeals

System location:

Civilian Personnel Branch, Defense Investigative Service, P. O. Box 1211, Baltimore, MD 21203 and Civilian Personnel Division, Defense Investigative Service, 1900 Half St., S. W., Washington, D. C. 20324.

Categories of individuals covered by the system:

Affected civilian employees of the Defense Investigative Service

Categories of records in the system:

Notifications of Personnel Actions
Findings of inquiry into allegations of grievance or complaints

Authority for maintenance of the system:

FPM Chapter 751
FPM Chapter 752 and 5 U.S.C. 301.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

USES

Consideration by examiner and appellate levels of the specifics of each case within and outside of DIS.

In preparing the instant case and subsequent cases for consideration.

USERS

Personnel Specialists and clerks.
DIS and U.S. Civil Service Commission appellate personnel.
Management staff of DIS with a clearly demonstrable need to know specifics of the case.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Paper records in file folders

Retrievability:

Filed alphabetically with the Official Personnel Folder
Filed by functional code in personnel office files

Safeguards:

Buildings employ security guards. Records are maintained in file cabinets, accessible only to authorized personnel who are properly screened, cleared and trained.

Retention and disposal:

Records are both permanent and temporary. Permanent records are filed in the Official Personnel Folder. Temporary records are destroyed when the individual leaves DIS, or they are no longer needed. Individual records may be retained indefinitely in subjective reference files.

System manager(s) and address:

Civilian Personnel Officer, Defense Investigative Service, 1900 Half St., S. W., Washington, D. C. 20324 and Chief, Civilian Personnel Branch, Defense Investigative Service, P. O. Box 1211, Baltimore, MD 21203.

Notification procedure:

Information may be obtained from: SYSMANAGERS

Record access procedures:

Requests from individuals should be addressed to: SYSMANAGERS

Written requests for information should contain the full name of the individual, current address and telephone number, and the name of the individual that appears on the desired file. Visits are limited to SYSMANAGERS offices.

For personal visits, a check of personal identification will be required.

Contesting record procedures:

The agency's rules for access to records, contesting contents, and appealing initial determinations by the individual concerned may be obtained from the Information and Legal Affairs Office, Defense Investigative Service, 1900 Half St., S. W., Washington, D. C. 20324.

Record source categories:

Supervisors, complainants, investigators, appropriate law enforcement agencies, servicing civilian personnel offices, appellate agencies.

Systems exempted from certain provisions of the act:

None

V4-08

System name:

V4-08 EEO Complaints

System location:

Primary System Director of Personnel and Security, Defense Investigative Service, 1900 Half St., S. W., Washington, D. C. 20324 and Civilian Personnel Branch, Defense Investigative Service, P.O. Box 1211, Baltimore, MD 21203

Decentralized Segments - at Districts, DIS Headquarters and Centers by EEO Counselors

Categories of individuals covered by the system:

Persons involved in complaints and DIS civilian employees who have been officially counselled.

Categories of records in the system:

Temporary records pertaining to the individual's complaint of discrimination.

Authority for maintenance of the system:

FPM 713

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

USES

To determine effectiveness of EEO Program.
To determine validity of and trends in complaints.
As a basis for corrective action if a finding of discrimination is made.

USERS

EEO officials
Personnel Specialists and clerks
EEO Counselors at Headquarters, Centers and Districts

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Paper records in file folders

Retrievability:

Alphabetically by last name of complainant

Safeguards:

Records are maintained in locked file cabinets accessible only by authorized personnel that are properly screened, cleared and trained.

Retention and disposal:

Records are temporary and destroyed within two years following the resolution of the complainant. Primary system records may be retained in subjective reference files.

System manager(s) and address:

Director of Personnel and Security, Defense Investigative Service, 1900 Half St., S. W., Washington, D. C. 20324.

Notification procedure:

Information may be obtained from: SYSMANAGERS

Record access procedures:

Requests from individuals for access to centralized records should be addressed to Defense Investigative Service, Director of Personnel and Security, 1900 Half St., S. W., Washington, D. C. 20324.

Written requests for information should contain the full name of the individual, current address and telephone number, and the name of the individual that appears on the desired file. Visits are limited to Information and Legal Affairs Office, Defense Investigative Service, 1900 Half St., S. W., Washington, D. C. 20324.

For personal visits, a check of personal identification will be required.

Access to decentralized segments (counselling records) by individuals concerned may be obtained locally.

Contesting record procedures:

DIS rules for access to records and for contesting contents and appealing initial determinations by the individual concerned may be obtained from InSormation and Legal Affairs Office, Defense Investigative Service, 1900 Half St., S. W., Washington, D. C. 20324.

Record source categories:

Civilian employees of this agency

Systems exempted from certain provisions of the act:

None

V4-09

System name:

V4-09 Merit Promotion Plan Records

System location:

Civilian Personnel Branch, Defense Investigative Service, P. O. Box 1211, Baltimore, MD 21203 and Civilian Personnel Officer, Defense Investigative Service, 1900 Half St., S. W., Washington, D. C. 20324.

Categories of individuals covered by the system:

Civilians who have applied for certain vacancies within the Defense Investigative Service

Categories of records in the system:

Temporary records pertaining to the individual's consideration for promotion

Authority for maintenance of the system:

FPM Chapter 335

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

USES

To identify eligible candidates for specific promotion opportunities.

USERS

Personnel specialists and clerks of this agency.

Supervisors of this agency with interest in the particular promotion action

Accredited investigators with a clear need for the information.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Paper records in file folders

Retrievability:

Appraisals filed alphabetically by employees last name

Promotion panel computations filed by announcement number

Safeguards:

Buildings employ security guards. Records are maintained in locked cabinets, accessible only to authorized personnel that are properly screened, cleared and trained.

Retention and disposal:

Records are destroyed two years after the effective date of the establishment of the promotion register

System manager(s) and address:

Chief Personnel Officer, Defense Investigative Service, 1900 Half St., S. W., Washington, D. C. 20324 and Civilian Personnel Branch, P. O. Box 1211, Baltimore, MD 21203.

Notification procedure:

Information may be obtained from: SYSMANAGERS

Record access procedures:

Requests from individuals should be addressed to: SYSMANAGERS

Written requests for information should contain the full name of the individual, current address and telephone number, and the name of the individual that appears on the desired file. Visits are limited to SYSMANAGES offices.

For personal visits, a check of personal identification will be required.

Contesting record procedures:

The agency's rules for access to records and for contesting contents and appealing initial determinations by the individual concerned may be obtained from the Information and Legal Affairs Office, Defense Investigative Service, 1900 Half St., S. W., Washington, D. C. 20324.

Record source categories:

Evaluation of ranking panel members, supervisory appraisals, appraisal of potential by supervisor.

Systems exempted from certain provisions of the act:

None

V4-10

System name:

V4-10 Incentive Awards

System location:

Civilian Personnel Office, Defense Investigative Service, 1900 Half St., S. W., Washington, D. C. 20324.

Categories of individuals covered by the system:

Civilian and military personnel of the Defense Investigative Service or persons outside of DIS making suggestions relating to DIS functions.

Categories of records in the system:

Temporary records relating to proposed awards and suggestions.

Authority for maintenance of the system:

5 USC 301

FPM Chapter 451

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

USES

Records are used to provide basis for recommending action on proposed awards including but not limited to awards for length of service, quality step increases, sustained superior performance, special act and service, meritorious and exceptional service, outstanding performance, and similar awards.

USERS

Executive Secretary, Incentive Awards Committee, and committee members and coordinators of suggestions.

Personnel specialists and clerks

Accredited investigators of the U. S. Civil Service Commission

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Paper records in file folders

Retrievability:

Suggestions filed by number.

Award actions are filed alphabetically by last name of individual.

Safeguards:

Building employs security guards. Records are maintained in file cabinets, accessible only to authorized personnel that are properly trained, cleared and screened.

Retention and disposal:

Records are temporary and are destroyed when no longer required for a maximum of two years.

System manager(s) and address:

Civilian Personnel Office, Defense Investigative Service, 1900 Half St., S. W., Washington, D. C. 20324.

Notification procedure:

Information may be obtained from: SYSMANAGERS

Record access procedures:

Requests from individuals should be addressed to: SYSMANAGERS

Written requests for information should contain the full name of the individual, current address and telephone number, and the name of the individual that appears on the desired file. Visits are limited to SYSMANAGERS offices.

For personal visits a check of personal documents will be required.

Contesting record procedures:

The agency's rules for access to records and for contesting contents and appealing initial determinations by the individual concerned may be obtained from the Information and Legal Affairs Office, Defense Investigative Service, 1900 Half St., S. W., Washington, D. C. 20324.

Record source categories:

Reports of evaluating officials, committee determinations.

Systems exempted from certain provisions of the act:

None

V5-01

System name:

V5-01 Investigative Files System

System location:

Defense Investigative Service, Investigative Files Division, P. O. Box 1211, Baltimore, MD 21203 has primary control over the system and is responsible for the maintenance of completed investigative records. The Special Investigations Center, 1900 Half St., S. W., Washington, D. C. 20324 maintains limited categories of these records. DIS operational centers; District Offices; Field Offices; Resident Agencies and various DIS headquarters staff elements originate and have temporary control over portions of records.

Categories of individuals covered by the system:

Military personnel who are on active duty, applicants for enlistment or appointment and reservists and National Guardsmen; DoD civilian personnel who are paid from appropriated funds; industrial or

contractor personnel who are working in private industry in firms which have contracts involving access to classified DoD information or installations; Red Cross personnel and personnel paid from nonappropriated funds who have DoD affiliation; ROTC cadets; former military personnel; individuals residing on, having authorized official access to, or conducting or operating any business or other functions at any DoD installation or facility.

Individuals not affiliated with the Department of Defense when, during the previous year, their activities have directly threatened the functions, property or personnel of the DoD or they have engaged in, or conspired to engage in, criminal acts on DoD installations or directed at the DoD.

Categories of records in the system:

Official Reports of Investigations (ROI's) prepared by DIS or other DoD, Federal, state or local official investigative activities

DIS Information Summary Reports (ISR's) which record unsolicited information received by DIS concerning a person or incident which is of direct interest to other DoD components or Federal agencies. (When such information is received by DIS it is reported as it was received, without investigation or confirmation, by ISR and transmitted to the interested activity.)

Attachments to ROI's or ISR's including exhibits, subject or interviewee statements, police records, medical records, fingerprint cards, credit bureau reports, employment records, education records, release statements, summaries of or extracts from other similar records or reports.

Case control and management documents which are not reports of investigation, but that serve as the basis for investigation, or serve to guide and facilitate investigative activity, including documents providing the data to open and conduct the case, such as the Personnel Security Investigation Request; documents, initiated by the subject such as personnel history documents, and fingerprint records; and documents used in case management and control, such as release statements, case transfer forms, and documents directing the inquiry.

DIS file administration and management documents accounting for the disclosure, control and access to a file, such as warning sheets, separators, forwarding correspondence and accounting records required by 5 U.S.C. 552 and 552a.

Cross references to chronological correspondence files disclosing unfavorable and administrative action taken based on DIS investigations.

Authority for maintenance of the system:

Section 301 of 5 U.S.C. Departmental Regulations

Section 310 of 44 U.S.C. Records Management

Sections 2, 3, 4, 5, 6, 8 and 9, Executive Order 10450, Security Requirements for Government Employment.

Section 6(A), Executive Order 11652, Classification and Declassification of National Security Information and Material.

Sections III and V, DoD Directive 5105.42, Charter for the Defense Investigative Service.

Section IIIA, DoD Directive 5200.2b, Defense Investigative Program.

Section IV A and B, DoD Directive 5200.27, Acquisition of Information Concerning Persons and Organizations not Affiliated with the Department of Defense.

Section IX, DoD Directive 5210.7, Department of Defense Civilian Applicant and Employee Security Program.

Section I, DoD Directive 5210.8, Policy on Investigation and Clearance of DoD Personnel for Access to Classified Defense Information.

Section VII, DoD Directive 5210.9, Military Personnel Security Program

Section V A 2., DoD Instruction 5210.25, Security Acceptability of American National Red Cross Employees at Department of Defense Installations and Activities.

Section I, DoD Instruction 5210.26, Investigation of American National Red Cross Employees on Duty at Department of Defense Installations and Activities in the Zone of Interior.

Encl 3, paragraphs b 2 and 3, DoD Directive 5210.41, Security Criteria and Standards for Protecting Nuclear Weapons.

Section III, DoD Directive 5210.45, Personnel Security in the National Security Agency.

Section VII, DoD Directive 5210.55, Selection of Department of Defense Military and Civilian Personnel for Assignment to Presidential Support Activities.

Section IV, C, DoD Directive 5220.6, Industrial Personnel Security Clearance Program.

Section V B, DoD Instruction 5220.28, Application of Special Eligibility and Clearance Requirements in the SIOP-ESI Program for Contractor Employees.

Section I (a) and 2, Executive Order 10865, Safeguarding Classified Information Within Industry.

Section III, DoD Instruction 5030.34, Agreement between the Department of Defense concerning Protection of the President and Other Officials.

Paragraph 10, Director of Central Intelligence Directive No. 1/14, Uniform Personnel Security Standards and Practices Governing Access to Sensitive Compartmented Information C.

Section II, DSA Regulation 5705.2, Criminal Investigative Support to the Defense Supply Agency.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Purpose for which collected.

Personnel security investigative information is collected to insure that the acceptance or retention of persons to sensitive DoD positions, or granting individuals access to classified information, including those employed in defense industry, is clearly consistent with national security.

Criminal investigative information is collected on request to identify offenders, provide facts and evidence upon which to base prosecution and effect the recovery of property which has been wrongfully appropriated.

Information contained in ISR's (see description in RECORD-CATEGORY) regarding criminal, personnel security, counterintelligence, or intelligence matters, when received, is disseminated to appropriate Federal agencies or other DoD components.

Criminal and personnel security information is collected during reciprocal investigations conducted for other DoD and federal investigative elements (or in limited instances, criminal information for local, or state law enforcement agencies) for maintenance and use by the requesting activity.

Information regarding alleged security violations is collected on request to establish whether or not a compromise occured and to identify the personnel involved.

Criminal information received by DIS personnel in the course of their duties which is of direct interest to a local law enforcement agency and therefore furnished to that agency orally or by letter.

Users of DIS investigative information are:

(1) DIS personnel in the course of their official duties.

(2) Other accredited DOD investigative components, DOD agencies, elements of the Military Departments designated by the departments and representatives of the Secretary of Defense and the Joint Chiefs of Staff.

(3) Accredited Federal criminal and civil law enforcement and intelligence agencies.

(4) State and local official criminal law enforcement agencies.

(5) Other accredited federal agencies conducting investigations to evaluate suitability for employment or access to classified information.

(6) Congressional committees and the Government Accounting Office.

Specific uses of DIS investigative records are:

To determine the loyalty, suitability, eligibility, and general trustworthiness of individuals for access to Defense information and facilities by the first two categories of users, above.

To determine the eligibility and suitability of individuals for entry into and retention in the Armed Forces by the second category of users, above.

To provide information pertinent to the protection of persons under the provisions of 18 U.S.C. 3056, by the first three categories of users, above.

For use in criminal law enforcement investigations including statutory violations, counterintelligence, as well as counterespionage and other security matters by the first through fourth and the sixth categories of users, above.

In the event that records maintained in this system indicate a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule or order issued pursuant thereto, the relevant records in the system of records may be referred, as a routine use, to the appropriate agency charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, or rule, regulation or order issued pursuant thereto.

To provide information in judicial or adjudicative proceedings including litigation, or in accordance with a court order by the first three categories of users, above.

To make statistical evaluations of DIS investigative activities by the first, second and sixth categories of users, above.

To respond to Freedom of Information and Privacy Act access requests, by the first category of users, above.

To provide information in response to Inspector General, and EEO or other complaint investigations and Congressional inquiries by the first, second and sixth categories of users, above.

To determine the eligibility and suitability of an individual for personnel actions in the Armed Forces of the United States, as deemed appropriate by the second category of users, above.

A record such as identification data, from this system of records may be disclosed as a routine use to a federal, state local or foreign agency maintaining relevant information or to business enterprises to obtain employment records if necessary to obtain information relevant to an assigned investigation.

A record from this system of records may be disclosed to a federal agency, in response to its request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter by any agency of the first, second, third or fifth categories of users, above.

Transfers of information from this record system to other DoD components is a routine intra-agency use under the provisions of 5 U.S.C. 552a3(b)(1).

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Paper records in file folders, microfilm, magnetic tape or supplementary index cards.

Retrievability:

Investigations are centrally retrievable through the DIS Case Control System (DCCS) or the Defense Central Index of Investigations (DCII) systems described separately in this notice. Reciprocal investigations jurisdictions, may be retrieved only through a limited manual disclosure accounting system

Safeguards:

Completed investigative records are maintained and stored in power files, open shelves and filing cabinets which are housed in secured areas accessible only to authorized personnel who are properly screened and have a need to know. Information contained on magnetic tape is secured in the same manner as the DCII, described separately. Recipients of investigative information are responsible for safeguarding information within the guidelines provided by DIS.

Retention and disposal:

Retention of closed DIS investigative files is authorized for 30 years maximum, except as follows: (1) Files which have resulted in adverse action against an individual will be retained permanently, (2) Files developed on persons who are being considered for affiliation with the Department of Defense will be destroyed within one year if the affiliation is not completed. In cases involving a pre-appointment investigation, if the appointment is not made due to information developed by investigation, the file will be retained permanently. If the appointment is not made for some other reasons not related to the investigation, the file will be destroyed within one year; (3) Information within the purview of the Department of Defense Directive 5200.27, 'Acquisition of Information Concerning Persons and Organizations Not Affiliated with the Department of Defense', is destroyed within 90 days after acquisition by DIS unless its retention is required by law or unless its retention has been specifically authorized by the Secretary of Defense or through the Chairman, DIRC.

Generally, ISR's and reciprocal investigations are retained for only 60 days.

Partial duplicate records of personnel security investigations are retained for 60 days by DIS field elements. Partial duplicate records in criminal and special investigations are retained for one year.

System manager(s) and address:

Director, Defense Investigative Service, 1900 Half St., S. W., Washington, D. C. 20324.

Notification procedure:

Requests should be addressed to Information and Legal Affairs Office, Defense Investigative Service, 1900 Half St., S. W., Washington, D. C. 20324. The full name, date and place of birth, and social security account number are necessary for retrieval of information. More information or a notarized statement verifying the identity of requesters may be required. Information3and Legal Affairs Office, 1900 Half St., S. W., Washington, D. C. 20324 may be visited by personnel making inquiries regarding this system. A check of personal identification will be required of all visitors making such inquiries.

Record access procedures:

Access may be obtained through the Information Office at the address listed above.

Contesting record procedures:

DIS rules for contesting and appealing initial determinations may be obtained from the Assistant for Information at the address listed above

Record source categories:

Categories of sources of records.
Subjects of investigations.
Records of other DoD activities and components.
Federal, state, county and municipal records.
Employment Records of private business and industrial firms.
Educational and disciplinary records of schools, colleges, universities, technical and trade schools.
Hospital, clinic and other medical records.
Records of commercial enterprises such as real estate agencies, credit bureaus, loan companies, credit unions, banks and other financial institutions which maintain credit information on individuals, transportation companies, (airlines, railroad, etc.)
The interview of individuals who are thought to have knowledge of the subject's background and activities.
The interview of witnesses, victims and confidential sources.
The interview of any individuals deemed necessary to complete the DIS investigation.
Miscellaneous directories, rosters and correspondence.
Any other type of record deemed necessary to complete the DIS investigation.

Systems exempted from certain provisions of the act:

In accordance with subsection 3j(2) of the Act, information maintained by the Special Cases Division of DIS may be exempted from the provisions of subsections (c)(3) and (4); (d); (e)(1), (2) and (3); (e)(5) and (8); and (g). Information maintained by, or at the direction of, this unit includes criminal investigations for which the DIS has primary responsibility and certain ISR's and reciprocal investigations, and security or counterintelligence information which may be used in criminal prosecution. The withholding of this information will be to allow the DIS Special Cases Division, a criminal law enforcement component, to conduct effective investigations into alleged unlawful activity or crime conductive situations without jeopardizing such investigations. Knowledge of the investigations of the Special Cases Division could enable subjects to take actions to prevent detection of criminal activities, conceal evidence, or to escape prosecution. It could also lead to intimidation of or harm to sources, informants, witnesses and their families. Information from this system will be withheld only to the extent that its release would interfere with such investigations.

Under subsection 3k(1) of the Act, properly classified material contained in DIS investigatory files is exempt from the provisions of subsection (d). This exemption will protect information, the disclosure of which would have an adverse effect on the national defense or foreign policy.

Under subsection 3k(2) of the Act, other investigatory material including certain reciprocal investigations and counterintelligence information is exempt from subsection (c) (3), (d), (e) (4) (G,H andI) and (f) until such time as action is taken regarding allegations, and after that time only to the extent that the information would identify a confidential source who furnished information under an express promise that the identity of the source would be held in confidence (or prior to the effective date of the Act under an implied promise). This exemption will permit the DIS to conduct certain law enforcement investigations effectively and to protect the identities of sources who would not otherwise provide information.

Protective Service: Under subsection 3k(3) of the Act, DIS investigatory material maintained in connection with assisting the US Secret Service (USSS) to provide protective services to the President of the United States or other individuals pursuant to section 3056 of Title 18 is exempt from subsections (c) (3), (d), (e) (1), (e) (4), (g, h and i), and (f). This exemption provision will enable DIS to continue its support of the US Secret Service without compromising the effectiveness of either activity.

Under subsection 3k(5) of the Act, personnel security investigatory material from subsections (c) (3), (d) and (f), is exempt to the extent that the disclosure of such material would reveal the identity of a confidential source as described above. This exemption provision will allow DIS to collect information from certain sources who would otherwise be unwilling to provide information necessary to personnel security investigations.

V5-02

System name:

V5-02 Defense Central Index of Investigations (DCII)

System location:

Central Facility:

Information Services Division, Personnel Investigations Center, PO Box 1211, Baltimore, Maryland 21203.

Remote Terminal Locations:

Crime Records Directorate, US Army Criminal Investigations Command, 2301 Chesapeake Avenue, Baltimore, Maryland 21222 Air Force of Special Investigations, Bolling AFB, Washington, D. C. 20332.

Naval Investigative Service Headquarters, Hoffman Building #1, 2461 Eisenhower Avenue, ATTN: Code 30, Alexandria, Virginia 22331

Defense Industrial Security Clearance Office, P. O. Box 2499, Columbus, Ohio 43216 (DISCO)

US Army Investigative Records Repository, Building 4452, Fort Meade Maryland 20755 . DIS Personnel Investigations Center, P. O. Box 1211, Baltimore, MD 21203.

Categories of individuals covered by the system:

Any person described as a subject, a victim, or a cross-reference in an investigation completed by or for a DOD investigative organization when that investigation is retained by the organization and the name is submitted for central indexing.

Categories of records in the system:

DCII MASTER INDEX

Composed of locator references to investigations conducted by or for DOD investigative organizations and retained by them. Index records contain the name and other personal identifying information on individuals who were indexed.

FILE TRACING

Reference to an investigation maintained by one of the investigative records repositories. It identifies the individual by name and personal identifiers, the custodian of the file, the year indexed and the number used by the repository to locate the file.

OPEN CASE TRACING

A record input by either Army investigative activities or DIS reflecting the existence of an investigation in progress. It identifies the subject individual by name and personal identifiers, the location of the open investigation, the year indexed and the number used to locate the investigative file.

NAC PENDING TRACING

Record of a National Agency Check (NAC) investigation in progress. It identifies the subject individual by name, personal identifiers, the case number, the category of the requester of the NAC, and the type of NAC being run.

NAC HISTORY TRACING

A record of completed favorable, or incomplete, national agency checks. It identifies the individual by name and personal identifiers, the date the NAC was completed and the agencies that were checked.

DCII NAME ONLY INDEX (NOI)

Composed of names of persons who are referenced but not fully identified in investigative files. A Name Only Index record identifies the individual by name and lists the custodian agency of the file, year indexed and the number used by the repository to locate the file. Positive identification is impossible from the index and may well be impossible from the case file itself. DIS has placed no records in this index.

Authority for maintenance of the system:

5 U.S.C. 301 Departmental Regulations

44U.S.C. 3101 Records Management

Memorandum, Secretary of Defense, May 27, 1965

Memorandum, Secretary of Defense, December 3, 1965, subject: Establishment of a Central Index of DOD Investigations.

DOD Directive No. 5105.42, April 18, 1972, subject: Charter for Defense Investigative Service (DIS).

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

File tracing information is collected and maintained in the DCII so that authorized users may determine the existence and location of DOD investigative records.

NAC history information is maintained for authorized users in granting clearances, access to defense installations, entry into military service or employment in sensitive civilian positions.

Categories of users:

Components listed under the LOCATION caption are the principal users and (with the exception of DISCO) the file custodians. Listed terminal holders (with the exception of DISCO) may release general DCII information to users of their investigative records or listed in their investigative records systems descriptions in this register.

It should be noted that information contained in the system is regarded as the property of the submitting activities. DIS can neither monitor, nor assume responsibility for the propriety or accuracy of the data in the system, other than that portion belonging to DIS.

Transfer of information from this records system to other DOD components is a routine intra-agency use under the provisions of 5 U.S.C. 552a3(b)(1). The use of the DCII by terminal holders to advise requesters of the possible location of information, where there is no disclosure of personal information from the DCII, does not require an accounting.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Master Index data is maintained in direct access storage devices, disk and data cell. It is also contained on magnetic tape for continuity of operations purposes to permit processing at alternate locations in the event of computer failure.

Name Only Index data is maintained on magnetic tape and microfiche. Each contributor is provided his portion on a quarterly basis.

Retrievability:

Master Index records are accessed through name and at least one personal identifier (PID). Personal identifiers are: date of birth, place of birth, social security number and the last four (4) digits of military service number. Inquiries may enter the system in card form or by being keyed in at remote terminals. A non-standard retrieval capability also exists which permits retrieval without PID, or on parts of a name, and produces references to all individuals by that name. It should be noted that in many cases, the subject's SSAN is necessary to make a positive identification.

Name Only Index records are accessed through the name or some portion thereof. Records are retrieved based on an exact match with the name submitted. Inquiries may enter the system only in card form.

Safeguards:

Generalized validation is provided in batch retrieval through program edits to prevent unauthorized access.

User terminals with access to the Master Index are located in controlled access areas. Access to the system is limited to specified time of the day. Terminals are connected via dedicated data circuits which prevent access from standard dial-up telephones.

Activities must be a part of DOD and accredited on the basis of authorized requirements before a new terminal is established or before batch requests will be honored and processed. Terminal holders, and organizations authorized access by other means, are responsible for insuring that individuals and organizations to whom they disclose index information have appropriate authority and need to know.

The computer room is located within a building controlled by security personnel at all times. Identification badges are required for entrance. Access to the computer room is controlled by a combination lock on the entrance. Critical backup files are stored in locked fireproof data safes.

Retention and disposal:

Retained for as long as files are retained. When the record repository disposes of the file, they are responsible to delete all index tracings pertaining thereto, in accordance with established procedures. Processing of a deletion transaction flags the computer record which precludes it being given out thereafter. Such flagged records are eliminated from the system during periodic file restructuring procedures.

Open Case Tracings. Retained for as long as the investigation is open. When the investigation is completed, the contributor replaces the open case tracing with a file tracing as described above.

NAC History Tracings. Retained for a period of four (4) years from the date of completion and then automatically deleted unless specific action is sooner taken to delete the record. Should a subsequent favorable NAC be completed, the entering of a new history record will delete the first history record.

NAC Pending Tracings. Retained until completion of the NAC at which time they are replaced by a NAC History or file tracing, unless sooner deleted by the originator.

System manager(s) and address:

Director, Defense Investigative Service, 1900 Half St., S. W., Washington, D. C. 20324.

Notification procedure:

Information may be obtained from: Information and Legal Affairs Office, Defense Investigative Service, 1900 Half St., S. W., Washington, D. C. 20324.

Information Required: Full name and all maiden and alias names under which files may be maintained and personal identifiers listed

under RETRIEVABILITY. Note, Social Security Account Numbers may be necessary for positive identification of certain records.

Office Which May be Visited: Information an5 Legal Affairs Office, 1900 Half St., S. W., Washington, D. C. 20324.

Proof of Identity: Check of personal documents.

Record access procedures:

Access may be obtained through the Information Office at the address previously listed.

Contesting record procedures:

The agency's rules for access to records, contesting contents and appealing initial determinations by the subject individual may be obtained from the Assistant for Information, at the above address.

Record source categories:

DOD investigative organizations listed under the LOCATION caption, excluding DISCO, and additionally:

Defense Supply Agency, ATTN: DSAH-T Cameron Station, Alexandria, Virginia 22314.

Director of Security, National Security Agency, ATTN: M-552 Fort Meade, Maryland 20755

Assistant Chief of Staff of Intelligence, Department of the Army, ATTN: Counterintelligence Division, Washington, D. C. 20315 (ACSI)

Systems exempted from certain provisions of the act:

In accordance with Subsection 3(j)(2) of the Act, certain references from criminal law enforcement components contained in this system of index records may be exempted from the provisions of subsections (c)(3), (c)(4), (d) and (e)(8). this exemption will allow the contributing components to conduct effective investigations into alleged unlawful activity or crime conductive situations and use the DCII without jeopardizing such investigations. Knowledge of investigations by criminal law enforcement components would enable suspects and subjects to take actions to prevent detection of criminal activities, conceal evidence or to escape prosecution. It could also lead to intimidation of or harm to informants, witnesses, sources and their families. information from this system will be withheld only to the extent that its release would interfere with such investigations.

V5-03

System name:

V5-03 National Agency Check (NAC) Case Control System (NCCS)

System location:

Information Services Division (D0830) Personnel Investigations Center, P.O. Box 1211, Baltimore, Maryland 21203

Categories of individuals covered by the system:

Any person the subject of an active or recently completed National Agency Check conducted by DIS.

Categories of records in the system:

NCCS MASTER FILE

Composed of records of NAC's which are being conducted for DOD activities. Records contain the name and other personal identifying information, the type of NAC, requester category, and case number.

NCCS HISTORY FILE

Consists of records of completed NAC's. Records contain the name and other personal identifying information, the type of NAC, requester category, case number and date closed.

Authority for maintenance of the system:

5 U.S.C. 301, Departmental Regulation

44 U.S.C. 3101, Records Management

DOD Dir 5210.8, 15 February 1962, Policy on Investigation and Clearance of DOD Personnel for Access to Classified Defense Information.

DOD Directive 5105.42, 18 April 1972, Charter for the Defense Investigative Service (DIS).

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

PURPOSES FOR WHICH COLLECTED

The NCCS Master File records are retained to aid in case management and for the production of statistical reports.

The NCCS History File is used to obtain case management data and statistical reports.

CATEGORIES OF USERS

DIS Case Control Centers and the Defense Industrial Security Clearance Office

SPECIFIC USES

To determine the existence, location and status of the case file. Control of workload and prepare statistical reports.

AUTOMATED INTERFACES

The Defense Central Index of Investigations (DCII) System as described separately in this notice.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

The NCCS Master File is maintained on magnetic tape.

Retrievability:

Records may be accessed through name or case control number. Queries may enter the system in either card or tape form or indirectly through the DCII.

Safeguards:

As described in the DCII system description, this notice.

Retention and disposal:

Monthly history tapes are retained for two years.

System manager(s) and address:

Director, Defense Investigative Service, 1900 Half St., S. W., Washington, D. C. 20324.

Notification procedure:

Information may be obtained from: Information and Legal Affairs Office, Defense Investigative Service, 1900 Half St., S. W., Washington, D. C. 20324.

INFORMATION REQUIRED

Full name and all maiden or alias names under which files may be maintained.

Personal Identifiers which include date and place of birth, social security number, and last four digits of military service number.

OFFICES WHICH MAY BE VISITED Information and Legal Affairs Office, 1900 Half St., S. W., Washington, D. C. 20324.

PROOF OF IDENTITY

Routine check of personal documents.

Record access procedures:

Information Office at above address.

Contesting record procedures:

The agency's rules for access to records and for contesting contents and appealing initial determinations by the individual concerned may be obtained from the Assistant for Information at the address listed above.

Record source categories:

DIS Case Control Centers.

Systems exempted from certain provisions of the act:

None

V5-04

System name:

V5-04 Defense Case Control System (DCCS)

System location:

Information Services Division, (D0830), Personnel Investigation Center, P.O. Box 1211, Baltimore, Maryland 21203

Categories of individuals covered by the system:

Any person or activity the subject of an ongoing or recently completed Defense Investigative Service (DIS) investigation.

Categories of records in the system:

The DCCS Master file is composed of records of investigations which are being or have been conducted for DOD activities. personal identifying information on individuals who have been investigated. Records contain the name and other personal identifying information on individuals who are investigated.

The DCCS History File consists of records of investigations that have been closed. Records contain the name and other

The DCCS Investigative Assignment File (IAF) consists of records of leads assigned to DIS field elements for those investigations in progress as reflected in the DCCS Master file. Records contain the name, social security number, case control number, the investigative leads assigned and their status.

Authority for maintenance of the system:

5 U.S.C. 301, Departmental Regulations

44 U.S.C. 3101, Records Management

DOD Directive No. 5105.42, April 18, 1972, Charter for the Defense Investigative Service (DIS).

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

PURPOSES

The DCCS Master File contains open cases and cases closed during the prior 15 days to aid in case management and for the production of statistical reports.

The DCCS History File contains a record of all closed cases to obtain case management data and statistical reports.

The DCCS assignment files are used by DIS field elements to control local aspects of the investigation.

CATEGORIES OF USERS

DIS case control centers and field elements.

The Defense Industrial Security Clearance Office

SPECIFIC USES

To determine the existence, location and status of the cases.

To control workload and prepare statistical reports.

To inform federal agencies or requesters of investigations regarding the status of on-going cases.

AUTOMATED INTERFACES

The DCII System as described separately in this notice.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

The DCCS Master File in Direct Access Storage Devices (DASD). A copy of the Master File is also contained on magnetic tape for continuity of operations to permit processing at alternate locations in the event of computer failure.

The DCCS History File is contained in magnetic tape.

DCCS Investigative Assignment Files are retained in paper form.

Retrievability:

Master and History File Records are accessed primarily through the case control number. Records can also be accessed through Military Service Number or Social Security Number. Queries may enter the system in card form and from magnetic tape or indirectly through the DCII.

Lead assignment (IAF) data is retrievable by name of individual or case control number.

Safeguards:

For the Master and History Files as described in the DCII system description, this notice.

IAF documents.

Retention and disposal:

Monthly history tapes are retained for two years. IAF records are retained one year after completion of field leads.

System manager(s) and address:

Director, Defense Investigative Service, 1900 Half St., S. W., Washington, D. C. 20324.

Notification procedure:

Information may be obtained from: Information and Legal Affairs Office, Defense Investigative Service, Washington, D. C. 20324.

INFORMATION REQUIRED:

Full name and all maiden or alias names under which files may be maintained.

Personal Identifiers which include date and place of birth, social security number, and last four digits of military service number.

OFFICES WHICH MAY BE VISITED Information and Legal Affairs Office, Defense Investigative Service, 1900 Half St., S. W., Washington, D. C. 20324.

PROOF OF IDENTITY:

Routine check of personal documents.

Record access procedures:

Information Office, at above address.

Contesting record procedures:

The agency's rules for access to records and for contesting contents and appealing initial determinations by the individual concerned may be obtained from the Assistant for Information.

Record source categories:

DIS Case Control Centers

Systems exempted from certain provisions of the act:

In accordance with Subsection 3(j)(2) of the Act, certain references contained in this system of case control records may be exempted from the provisions of subsections (c)(3), (c)(4), (d) and (e)(8). This exemption will allow the DIS Special Cases Division, a criminal law enforcement component, to conduct effective investigations into alleged unlawful activity or crime conductive situations and use the DCCS without jeapordizing such investigations. Knowledge of the investigations of the Special Cases Divisions could enable subjects to take actions to prevent detection of criminal activitites, conceal evidence, or to escape prosecution. It could also lead to intimidation of or harm to sources, informants, witnesses and their families. Information from this system will be withheld only to the extent that its release would interfere with such investigations.

V5-05

System name:

V5-05 Subject and Reference Locator Records.

System location:

A decentralized system maintained by Defense Investigative Service field units.

Categories of individuals covered by the system:

Military personnel and civilian employees of the Department of Defense.

Categories of records in the system:

Personnel, locator, assignment rosters and housing records furnished by Army, Navy, Air Force and Marine Corps posts, bases and stations in the U.S. and Puerto Rico and retained for periods longer than they are retained by originating activities. Examples of such records are Army Locator/Organizational Rosters (A0102.03a DAAG) and Army Housing Files(A1511.01aDAPE).

Authority for maintenance of the system:

10 U.S.C. 133, E.O. 10450, E.O. 10865, DoD Directive 5105.42.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Records are maintained by DIS investigative elements for use in locating supervisors, coworkers and character references of subjects of DIS investigations and to identify or verify the locations and assignments of subjects when this information cannot be obtained through other local sources. Information from this system may be provided to law enforcement agencies for the same purposes.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Paper listings in files or binders, computer products, microfiche, index cards.

Retrievability:

By name and other identifying data.

Safeguards:

Maintained in locked cabinets or locked rooms and only DIS personnel have access.

Retention and disposal:

Records are retained for a maximum of five years.

System manager(s) and address:

Director, Defense Investigative Service, 1900 Half St., S. W., Washington, D. C. 20324.

Notification procedure:

Requests should be addressed to Information and Legal Affairs Office, Defense Investigative Service, 1900 Half St., S. W., Washington, D. C. 20324. The full name, date and place of birth, social security account number, military service numbers are required and the name and location of the post, base, or station and periods of assignment or employment so that a thorough search can be conducted. A notarized statement verifying the identity of requesters is required. Information and Legal Affairs Office, Defense Investigative Service, Washington, D. C. 20324 may be visited by personnel making inquiries regarding this system. A check of personal identification will be required of all visitors making such inquiries.

Record access procedures:

Access may be obtained through the Information Office at the address listed above.

Contesting record procedures:

DIS rules for access to records and for contesting and appealing initial determinations are contained in 32 CFR Part 298a and DIS Regulation 28-4.

Record source categories:

Military personnel offices, training schools and housing offices for installations.

Systems exempted from certain provisions of the act:

NONE

V6-01

System name:

V6-01 Personnel Security Files

System location:

Primary System— Defense Investigative Service, Security Division, 1900 Half St., S. W., Washington, D. C. 20324.

Decentralized System - Partial records are maintained at working locations as a part of the Optional Personnel Management Record System described separately in this notice.

Categories of individuals covered by the system:

Every DIS employee, civilian and military, without exception.

Categories of records in the system:

Individual's Certificate of Security Clearance, Security Briefing Statement, Certificates of Clearance from other Services, Defense Central Investigations Index (DCII) check results, summaries of adverse information, debriefing statements, and similar related documents varying in certain cases. Sufficient individual identifying data to confirm identities is also contained in this system.

Authority for maintenance of the system:

Requesting Agency, to the extent that the information is relevant and 5 U.S.C. 301 (Departmental Regulations) and DoD Directive 5210.7, Department of Defense Civilian Applicant and Employee Security Program and DoD Directive 5210.8, Policy on Investigations and Clearances of DoD Personnel for Access to Classified Defense Information.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Uses

Files are to provide a basis for granting security clearances.

Files are also used to provide information of security clearances for individuals attending official activities of other offices on classified matters.

They also are used to provide security clearances information to other governmental offices where change of employment is being considered.

In the event that records maintained in this system indicate a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule or order issued pursuant thereto, the relevant records in the system of records may be referred, as a routine use, to the appropriate agency, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, or rule, regulation or order issued pursuant thereto.

A record from this system of records may be disclosed as a 'routine use' to a federal, state or local agency maintaining civil, criminal or other relevant enforcement information or other pertinent information, such as employment records, if necessary to obtain information relevant to an agency decision concerning the hiring or retention of an employee, the issuance of a security clearance, or other benefit.

Users

Director of Personnel and his office.

DIS Security officer and his office.

All Supervisors, Commanders, and Office Chiefs, but only for confirming clearance level information.

Security officials of other DoD elements or governmental agencies when required for clearance verification or pre-employment consideration. consideration.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Individual files are established when an application for employment or assignment to the DIS is first received. As an investigation is completed and adjudicated, a clearance certificate is filed. If the file is unfavorable and the individual is not accepted, the file is placed in the 'dead' file section and retained for one year.

Storage:

Paper records in file folders.

Retrievability:

Filed alphabetically by last name.

Safeguards:

For the primary system building employs security guards (Federal Protective Service). Records are maintained in locked containers in areas accessible only to authorized personnel who have a need to know.

Retention and disposal:

Records are maintained for the period of time an individual is assigned to the DIS and for one year afterwards. Disposal is as classified waste.

System manager(s) and address:

Security Division, Defense Investigative Service, 1900 Half St., S. W., Washington, D. C. 20324.

Notification procedure:

Information regarding the primary system may be obtained from: Security Officer, Defense Investigative Service, 1900 Half St., S. W., Washington, D. C. 20324.

Record access procedures:

Access to the decentralized records may be obtained at any time. Requests for access to the primary system from individuals should be addressed to: Information and Legal Affairs Office, Defense Investigative Service, 1900 Half St., S. W., Washington, D. C. 20324.

Written requests for information should contain the full name of the individual, current address and telephone number. Visits are limited to Information and Legal Affairs Office, Defense Investigative Service, 1900 Half St., S. W., Washington, D. C. 20324.

For personal visits, a check of personal documents will be conducted.

Contesting record procedures:

The Agency's rules for contesting contents and appealing initial determinations may be obtained from the Assistant for Information Office at the above address.

Record source categories:

Application and related forms from the individual, summaries of information from background investigations of the individual.

Systems exempted from certain provisions of the act:

None

V6-02

System name:

V6-02 Special Compartmented Intelligence (SCI) Access file.

System location:

Security Division, Defense Investigative Service, 1900 Half St., S. W., Washington, D. C. 20324.

Categories of individuals covered by the system:

DIS personnel who have been granted Special Access to SCI information.

Categories of records in the system:

A roster is maintained of personnel holding access clearances and a certificate of clearance for each such individual.

Authority for maintenance of the system:

DIAM 50-1 (C).

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

USES

The SCI Access File is used to determine who in DIS has an SCI clearance.

Data is used also to monitor the program within DIS.

USERS

DIS Security Officer, and his office.

Chief, DIS Special Investigations Center, to determine SCI clearance for assignment of investigative duties entailing access.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

All data is maintained in one file folder. The roster is provided by DIA. Copies of clearance certificates are maintained for each individual having the special access. When a person is taken off this access and has been debriefed, this is noted in the file.

Storage:

Paper records in file folder.

Retrievability:

Roster is in alphabetical order; clearances are filed in chronological order.

Safeguards:

Files are maintained in an authorized security container within a locked room. The Federal Protective Service controls entrance to the building.

Retention and disposal:

Records are maintained for the period that the individual is granted the special access and then for one year thereafter.

System manager(s) and address:

Chief, Security Division (D0146), Defence Investigation Service, 1000 Independence Ave. S.W., Washington, DC 20314

Notification procedure:

Information may be obtained from: SYSMANAGER: Security Division, Defense Investigative Service, 1900 Half St., S. W., Washington, D. C. 20324.

Record access procedures:

Requests from individuals should be addressed to: Information and Legal Affairs Office, 1900 Half St., S. W., Washington, D. C. 20324.

Written requests for information should contain the full name of the individual, current address and telephone number. Visits are limited to Information and Legal Affairs Office, Defense Investigative Service, 1900 Half St., S. W., Washington, D. C. 20324.

Contesting record procedures:

The agency's rules for contesting contents and appealing initial determinations may be obtained from the Assistant for Information, at the above listed address

Record source categories:

Personnel Security File on the individual.

Systems exempted from certain provisions of the act:

None

V7-91

System name:

Enrollment, Registration and Course Completion Record.

System location:

Defense Industrial Security Institute (DISI) Richmond, Virginia 23297

Categories of individuals covered by the system:

Individuals who are scheduled or who have attended courses of instruction offered by the institute.

Categories of records in the system:

Information may include individual's name and other personal identifying and administrative data pertaining to attendance at the Institute to include employer, course completion, and other similar data.

Authority for maintenance of the system:

5 U. S. C. 301.
DoD Directive 5015.2, 17 September, 1980.
DoD Directive 5105.42 (Charter for Defense Investigative Service).
Executive Order 10865, 20 February 1960.
Executive Order 10909, 7 December 1966.
Defense Investigative Service Regulation 28-1, 1 August 1977.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Records are used to prepare class rosters and provide basic administrative information on attendees. Institute personnel are the primary users.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Records are maintained on index cards and computer diskettes.

Retrievability:

Records are filed alphabetically by last name.

Safeguards:

Records are maintained in file cabinets in a locked room, in areas accessible only to authorized personnel who have a need to know.

Retention and disposal:

Records are retained for ten (10) years.

System manager(s) and address:

Director for Industrial Security, Defense Investigative Service, 1900 Half St., S.W., Washington, DC 20324.

Notification procedure:

Information may be obtained from : SYSMANAGER.

Record access procedures:

Access to records may be obtained through the Office of Information and Legal Affairs, Defense Investigative Service, 1900 Half St., S. W., Washington, D. C. 20324, either by mail or personal visit.

For written requests, full name and social security account number are required, and the request must be accompanied by a notarized statement verifying the identity of the requester.

Personal visits should be made to the Information office at the above address. A check of personal identification will be required of all visitors making such inquiries.

Contesting record procedures:

The agency's rules for contesting records may be obtained from the Chief, Office of Information and Legal Affairs, at the above address.

Record source categories:

The employee, the employer and the Defense Industrial Security Institute.

Systems exempted from certain provisions of the act:

None.

V7-92

System name:

Guest/Instructor Identification Records.

System location:

Defense Industrial Security Institute (DISI) Richmond, Virginia 23297

Categories of individuals covered by the system:

Guest speakers and regularly assigned instructors.

Categories of records in the system:

Individual's name, position, biographical data and other background information.

Authority for maintenance of the system:

DoD Directive 5105.42 (Charter for Defense Investigative Service).
Executive Order 10865, 20 February 1960.
Executive Order 10909, 7 December 1960.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Introduction of speakers and instructors. Institute personnel are the primary users.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Paper records are located in file folders or index cards.

Retrievability:

Records are filed alphabetically by last name.

Safeguards:

Records are maintained in file cabinets within a locked room, in areas accessible only to authorized personnel who have a need to know.

Retention and disposal:

Records are reviewed annually with obsolete records destroyed by burning or other means which preclude reconstruction.

System manager(s) and address:

Director for Industrial Security, Defense Investigative Service, 1900 Half St., S. W., Washington, D. C. 20324.

Notification procedure:

Information may be obtained from: SYSMANAGER

Record access procedures:

Access to records may be obtained through the Office of Information and Legal Affairs, Defense Investigative Service, 1900 Half St., S. W., Washington, D. C. 20324, either by mail or personal visit.

For written requests, full name and social security account number are necessary for retrieval of information, and the request must be accompanied by a notarized statement verifying the identity of the requester.

Personal visits should be made to the Information office at the above address. A check of personal identification will be required of all visitors making such inquiries.

Contesting record procedures:

The agency's rules for contesting contents and appealing initial determinations may be obtained from the Chief, Office of Information and Legal Affairs, at the above address.

Record source categories:

The information is provided by the individual.

Systems exempted from certain provisions of the act:

None.

V8-01

System name:

Industrial Personnel Security Clearance File.

System location:

Defense Industrial Security Clearance Office, P. O. Box 2499, Columbus, Ohio 43216.

Categories of individuals covered by the system:

Employees and major stockholders of Government contractors of other DoD-affiliated personnel who have been issued, now possess, are in , or have been in process for personnel security clearances,

eligibility determinations, security assurances or NATO clearance documents.

Categories of records in the system:

The automated portion may include: individual's name and other personal identifying information; date and level of security clearance granted; date and type of investigation and investigatory agency; file or case number and location; sequential record of actions; and other information necessary to facilitate the security clearance process.

The manual portion may include: the clearance application, copy of the investigation, record of clearance, foreign clearance and travel information; clearance processing information, adverse information, and other internal and external correspondence and administration memoranda relative to the clearance.

Authority for maintenance of the system:

DoD Directive 5015.2, 17 September 1980.
DoD Directive 5105.42 (Charter for Defense Investigative Service).
DoD Directive 5210.8, 15 February 1962.
Executive Order 10865, 20 February 1960.
Executive Order 10909, 7 December 1966.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Purpose for which collected:

Records serve as a central repository on the eligibility determination of industrial personnel for access to classified information. The file serves as an administrative record, current record and repository for clearance related reports and information.

Categories of users:

DoD and government contractor employees involved in the personnel clearance process, and authorized Federal government agencies with a need to know.

Specific uses:

Record of authorizations for contractors to grant access to classified information providing the proper clearance level and need to know exists.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Automated records are maintained in computer disc packs, magnetic tapes, and associated data processing files. Manual records are on microfiche, index cards, and hard copy paper records maintained in file folders.

Retrievability:

Records are accessed by Social Security Number, manual records may also be accessed by name.

Safeguards:

Specific codes are required to access the automated records. Manual records are housed in a secured area accessible only to properly screened individuals who have the need to know.

Retention and disposal:

Retention is based on the circumstances of the particular record Automated records are retained 25 months following clearance termination. Retention of manual records is authorized for one year from the date of last clearance action for cases which are not referred for abjudication, or for five years from date of last clearance action for cases which are referred for abjudication.

Destruction is accomplished by degaussing, burning, or other means which preclude reconstruction.

System manager(s) and address:

Director for Industrial Security, Defense Investigative Service, 1900 Half St., S. W., Washington, D. C. 20324.

Notification procedure:

Information may be obtained from: SYSMANAGER

Record access procedures:

Access to records may be obtained through the Office of Information and Legal Affairs, Defense Investigative Service, 1900 Half St., S. W., Washington, DC 20324, either in person or by mail. For written requests, full name, date and place of birth, and social security account number are necessary for retrieval of information. More information may be required. A notarized statement verifying the identity of requester is required.

Personal visits should be made to the information office at the above address. A check of personal identification will be required of all visitors making such inquiries.

Contesting record procedures:

The agency's rules for contesting contents and appealing initial determinations may be obtained from the Chief, Office of Information and Legal Affairs, at the above address.

Record source categories:

Categories of sources of records.
Subjects of investigations.
Records of other DoD activities and components.
Federal, state, county, and municipal records.
Employment Records of private business and industrial firms.
Educational and disciplinary records of schools, colleges, universities, technical, and trade schools.
Hospital, clinic and other medical records.
Records of commercial enterprises such as real estate agencies, credit bureaus, loan companies, credit unions, banks and other financial institutions which maintain credit information on individuals, transportation companies, (airlines, railroad, etc.)
The interview of individuals who are thought to have knowledge of the subject's background and activities.
The interview of witnesses, victims and confidential sources.
The interview of any individuals deemed necessary to complete the DIS investigation.
Miscellaneous directories, rosters and correspondence.
Any other type of record deemed necessary to complete the DIS investigation.

Systems exempted from certain provisions of the act:

Under the provisions of 5 U. S. C. 552a(k)(5), of the Privacy Act of 1974, information contained in the records which would reveal the identity of the source who furnished information to the Government under an implied or expressed promise of confidentiality, is exempt from disclosure. This exemption will allow the collection of information from sources who would otherwise be unwilling to provide necessary information.

UNIFORMED SERVICES UNIVERSITY OF HEALTH SCIENCES

REQUESTING RECORDS

Records are retrieved by name or by some other personal identifier. It is therefore especially important for expeditious service when requesting a record that particular attention be provided to the Notification and/or Access Procedures of the particular record system involved so as to furnish the required personal identifiers, or any other pertinent personal information as may be required, to locate and retrieve the record.

BLANKET ROUTINE USES

Certain blanket 'routine uses' of the records have been established, that are applicable to every record system maintained within the Department of Defense, unless specifically stated otherwise within a particular record system. These additional blanket routine uses of the records are published below, only once in the interest of simplicity, economy and to avoid redundancy, before the individual record system notices begin rather than repeating them in every individual record system.

ROUTINE USE - LAW ENFORCEMENT

In the event that a system of records maintained by this component to carry out its functions indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute, or by regulation, rule or order issued pursuant thereto, the relevant records in the system of records may be referred, as a routine use, to the appropriate agency, whether federal, state, local or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, rule, regulation or order issued pursuant thereto.

ROUTINE USE - DISCLOSURE WHEN REQUESTING INFORMATION

A record from a system of records maintained by this component may be disclosed as a routine use to a federal, state or local agency maintaining civil, criminal or other relevant enforcement information or other pertinent information, such as current licenses, if necessary to obtain information relevant to a component decision concerning the hiring or retention of an employee, the issuance of a security

clearance, the letting of a contract, or the issuance of a license, grant or other benefit.

ROUTINE USE - DISCLOSURE OF REQUESTED INFORMATION

A record from a system of records maintained by this component may be disclosed to a federal agency, in response to its request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

ROUTINE USE - CONGRESSIONAL INQUIRIES

Disclosure from a system of records maintained by this component may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

ROUTINE USE WITHIN THE DEPARTMENT OF DEFENSE

A record from a system of records maintained by this component may be disclosed as a routine use to other components of the Department of Defense if necessary and relevant for the performance of a lawful function such as, but not limited to, personnel actions, personnel security actions and criminal investigations of the Component requesting the record.

ROUTINE USE - PRIVATE RELIEF LEGISLATION

Relevant information contained in all systems of records of the Department of Defense published on or before August 22, 1975, will be disclosed to the Office of Management and Budget in connection with the review of private relief legislation as set forth in OMB Circular A-19 at any stage of the legislative coordination and clearance process as set forth in that Circular.

ROUTINE USE - DISCLOSURES REQUIRED BY INTERNATIONAL AGREEMENTS

A record from a system of records maintained by this Component may be disclosed to foreign law enforcement, security, investigatory, or administrative authorities in order to comply with requirements imposed by, or to claim rights conferred in international agreements and arrangements including those regulating the stationing and status in foreign countries of Department of Defense military and civilian personnel.

ROUTINE USE - DISCLOSURE TO STATE AND LOCAL TAXING AUTHORITIES

Any information normally contained in IRS Form W-2 which is maintained in a record from a system of records maintained by this Component may be disclosed to State and local taxing authorities with which the Secretary of the Treasury has entered into agreements pursuant to Title 5, U.S.Code, Sections 5516, 5517, 5520, and only to those State and local taxing authorities for which an employee or military member is or was subject to tax regardless of whether tax is or was withheld. This routine use is in accordance with Treasury Fiscal Requirements Manual Bulletin Nr. 76-07.

ROUTINE USE - DISCLOSURE TO THE OFFICE OF PERSONNEL MANAGEMENT

A record from a system of records subject to the Privacy Act and maintained by this component may be disclosed to the Office of Personnel Management concerning information on pay and leave, benefits, retirement deductions, and any other information necessary for the Office of Personnel Management to carry out its legally authorized Government-wide personnel management functions and studies.

ROUTINE USE - DISCLOSURE OF INFORMATION TO NARS (GSA)

A record from a system of records maintained by this component may be disclosed as a routine use to the National Archives and Records Service of the General Services Administration in records management inspections conducted under authority of 44 U.S.C. 2904 and 2906.

ROUTINE USE - DISCLOSURE TO DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

All systems of records relating to compensation, employment or retirement, or extracts therefrom, maintained by this Component may be disclosed as a routine use to the Department of Health, Education, and Welfare for the purpose of comparing such record with records of programs administered by and in the possession of the Department of Health, Education, and Welfare in order to verify information where such verification is required by law or regulation or to identify violations or potential violations of law, whether criminal, civil, or regulatory, and whether arising by general statute or particular program statute, or by regulation, rule, or order issued pursuant thereto.

WUSUO1

System name:

Uniformed Services University of the Health Sciences (USUHS) Personnel files.

System location:

A central personnel record file will be maintained at USUHS Personnel/Manpower Directorate, 4301 Jones Bridge Road, Bethesda, Md. 20014. Copies of 171's and curriculum vitae's of applicants and employees will be maintained in the Personnel/Manpower Directorate by the Dean of the School of Medicine, and by the Department Chairperson, having a need for the information. A supplemental file consisting of summary data on each civilian employee will be stored in the computer at Bolling Air Force Base (AFB), Washington, D.C. 20332; for military personnel assigned to USUHS: at Walter Reed Army Medical Center (WRAMC) military personnel office, National Naval Medical Center (NNMC) military personnel office, Andrews Air Force Base (AFB) personnel office and at Public Health Service (PHS) personnel office, Parklawn Bldg., Rockville, Md. 20850. Home phone numbers of key personnel will be provided to other key personnel, and those of students to other students on a need-to-know basis, and only with the express permission of the individual concerned, for an emergency call system. Biographical information on students to be maintained in the Commandant's office.

Categories of individuals covered by the system:

Records will be maintained on all personnel assigned to USUHS full-time and part-time.

Categories of records in the system:

The type of information which will be maintained on employees is as follows: Identity and demographic information (e.g., Social Security Number (SSN), name, sex, address, birth date, minority status, etc.); Academic and experience background data consisting of: (1) Schools attended; (2) Degrees earned; (3) Work experience, awards, etc.; (4) Letters of reference, performance evaluation, etc.; (5) Time and attendance cards; and (6) Biographical data file.

Authority for maintenance of the system:

Title 10, United States Code, Section 136.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

INTERNAL USERS, USES, AND PURPOSES

The System will be used for documenting the work experience of applicants and USUHS personnel and for notification of key personnel in case of emergency during nonworking hours. Biographical data file will be used for providing background information on USUHS students to lecturers.

EXTERNAL USERS, USES, AND PURPOSES

See Office of the Secretary of Defense (OSD) Blanket Routine Uses at the head of this Component's published system notices.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Material stored in file folders at USUHS, supported by automated copies of pertinent data of each employee's folder which are maintained on magnetic tape and disk at USUHS Personnel/Manpower Directorate, Bethesda, Md. 20014.

Retrievability:

The system will be indexed by name and Social Security Number (SSN). Also, any combination of data in the file can be used to select individual data. Only Personnel/Manpower Directorate personnel will be provided with the password that allows access to the data, and those individuals are authorized access to all data in the file. Records will be available to: The individual concerned. Employees of USUHS on a need-to-know basis. Other agencies of the Government to satisfy requests for routine reports.

Safeguards:

The files will be maintained in securable file cabinets located in a limited access area at the University. The computer hardware, disks,

tapes and other material, are secured in locked cabinets in a controlled and guarded area. Access is via controlled dial-in and is password controlled.

Passwords are changed semiannually, or upon the departure of any person knowing the password.

The automated system is operated by USUHS Personnel/Manpower Directorate personnel and only those personnel will be given the password and user identification information needed to access the computer system. Those persons are authorized access to all fields in the data base. While the file is primarily indexed on Social Security Number (SSN), and name, any combination of fields and data within fields can be used to select individual records.

Retention and disposal:

Indefinite files that are retained while the individual is employed and then retired.

System manager(s) and address:

The personnel officer of the University will be the custodian of this file (business address: 4301 Jones Bridge Road, Bethesda, Md. 20014, telephone: 202-295-3080).

Notification procedure:

Inquiries regarding the personnel files should be directed to the System Manager.

Record access procedures:

Information on the procedures for gaining access to and contesting records will be furnished each employee by the Personnel Office upon entry on duty with USUHS.

Contesting record procedures:

The Agency's rules for access to records and for contesting contents and appealing initial determinations by the individual concerned are contained in 32 CFR 286b and OSD Administrative Instruction No. 81.

Record source categories:

Information contained in the file is furnished by the employee, supervisors and references supplied by the employee.

Systems exempted from certain provisions of the act:

None.

WUSUO3

System name:

Uniformed Services University of the Health Sciences (USUHS) Student Record System.

System location:

The file will be maintained in the Registrar's Office, USUHS, 4301 Jones Bridge Road, Bethesda, Maryland 20014.

Supplemental files consisting of student evaluation forms, grades, and course examinations pertaining to their department will be maintained in each department by departmental chairmen, as well as in the Registrar's Office.

Categories of individuals covered by the system:

Records will be maintained on all students who martriculate to the University.

Categories of records in the system:

Grade reports and instructor evaluations of performance/achievement; transcripts summarizing by course title, grade, and credit hours; records of awards, honors, or distinctions earned by students; and data carried forward from the Applicant File System, which includes records containing personal data, e.g., name, rank, Social Security Number (SSN), undergraduate school, academic degree(s), current addresses, course grades, and grade point average from undergraduate work and other information as furnished by nonGovernment agencies such as the American Medical College Admission Service which certifies all information prior to being submitted to the University.

Authority for maintenance of the system:

Public Law 92-426, Chapter 104, Section 2114.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

INTERNAL USERS, USES, AND PURPOSES

The system will be used for: recording internships, residencies, types of assignment and other career performance data on USUHS graduates; providing academic data to each student upon request, e.g., transcripts, individual course grades, grade point average, etc.; providing academic data within the Uniformed Services University of the Health Sciences for official use only purposes; and providing data to the respective Surgeons General when a specific and authorized need requires it.

EXTERNAL USERS, USES, AND PURPOSES

Academic data may be provided to other educational institutions upon the written request of a student.

For other external uses, see Uniformed Services University of the Health Sciences (USUHS) Blanket Routine Uses at the head of this Component's published system notices.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Paper records in file folders are stored at USUHS, supported by automated copies of subsets of each student's folder, which are maintained on magnetic tape and disk at the Air Force Data Services Center (AFDSC) in the Pentagon, Washington, D.C.

Retrievability:

The system will be indexed by name and Social Security Number (SSN). Also any combination of data in the file can be used to select individual records. Only personnel in the Office of the Registrar will be provided with the password that allows access to the data, and those individuals are authorized access to all data in the file.

Safeguards:

Current hardcopy records, prior to processing for computer storage are retained in a safe located in a limited access area at the University. The initial source of automated data on each student is transferred directly from the admission system, WUSU04, when each new class is admitted. Only data for enrolled students is transferred. Teaching facility, instructor, course, and grade information are entered by Registrar personnel as they are received. Transcripts, Course Rosters, and Grade reports are produced at the terminal upon request by the Registrar's personnel. Approval special requests for data can be supported by ad hoc inquiry. Any combinations of data can be used to select individual records for special processing.

The computer facility is operated by the Air Force Data Services Center, the Pentagon, Washington, D.C. The computer hardware, disks, tapes and other materials are secured in an alarmed controlled and guarded area. Access is via access list, escort, or controlled dial-in to the unclassified computers, located in the center. Dial-in access for all system users is password controlled.

All access to AFDSC computers is via user identification and sign-on password, whether from a hardwired terminal or dial-in terminal. Computer software ensures that only properly identified users can access the Privacy Act files on this system. Passwords are changed semiannually, or upon the departure of any person knowing the password.

Hardcopy files are stored at the University, and computer files are stored on magnetic tape and disc at the Air Force Data Services Center in the Pentagon, Washington, D.C. The remote terminal retains no data.

The automated system is operated by Data Base Management System. In addition to the sign-on password, this system allows a user to access only those specific files authorized that user. Only Registrar personnel will be given the password and identification information needed to access the computer system. Those persons are authorized access to all fields in the data base. While the file is primarily indexed on Social Security Number (SSN), and name, any combination of fields and data within fields can be used to select individual records.

Retention and disposal:

Records will be maintained permanently.

System manager(s) and address:

The Registrar, USUHS, 4301 Jones Bridge Road, Bethesda, Maryland 20014.

Notification procedure:

Information may be obtained from: Mr. Peter J. Stavish, Registrar, USUHS, Bethesda, Maryland 20014. Telephone: 202-295-2295/6.

Record access procedures:

Requests to review individual student's records may be made by telephone or visit to the Registrar's office, USUHS, 4301 Jones Bridge Road, Bethesda, Maryland 20014.

Written requests should include name, Social Security Number (SSN), and dates attended.

Contesting record procedures:

The Agency's rules for access to records and for contesting contents and appealing initial determinations by the individual concerned are contained in 32 CFR 286b and OSD Administrative Instruction No. 81.

Record source categories:

Information is furnished by instructor personnel; the individual concerned; the National Board of Medical Examiners; and the Applicant File System.

Systems exempted from certain provisions of the act:

None.

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federal register

Thursday
January 22, 1981

Highlights

Briefings on How To Use the Federal Register—For details on briefings in Washington, D.C., see announcement in the Reader Aids section at the end of this issue.

7162 **Identification of Subjects in Agency Regulations** Administrative Committee of the Federal Register issues final rule on new requirements; effective 2-23-81 (Part III of this issue)

6988 **Selective Service System** Selective Service System proposes that alternative service be required only after induction of persons into the armed forces has been authorized; comments by 3-31-81

7072 **Medicare** HHS/HCFA invites hospitals and medical centers to participate in a study of heart transplants; apply by 3-30-81

6950, 7048 **Grants—Community Action Programs** CSA revises income poverty guidelines effective 2-23-81, and waives non-Federal share requirement for National Paralegal Institute (2 documents)

7011 **Grants—Public Assistance Programs** HHS/Sec'y proposes to revise rules concerning preparation, submission and approval of State agency cost allocation plans (2 documents)

CONTINUED INSIDE

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Questions and requests for specific information may be directed to the telephone numbers listed under INFORMATION AND ASSISTANCE in the READER AIDS section of this issue.

Highlights

7075 **Grant Programs—Family Planning** HHS/HSA solicits applications by 4–1–81, for grants in the field of program implementation related to improved delivery of services

6949 **Child Welfare** HHS/Child Support Enforcement Office authorizes State agencies to use current rate of Federal matching to determine Federal share of collections; effective 1–22–81; comments by 3–23–81

7015, 7025 **Motor Vehicle Safety** DOT/NHTSA proposes establishment of new car crashworthiness performance ratings program and proposes new safety standard for passenger cars to protect pedestrians (2 documents)

6975 **Airports** DOT/FAA publishes letter to Congress concerning proposal to amend rules governing certification and operation of land airports

6982 **Surface Mining** Interior/SMO proposes to establish blasting standards to protect persons and property during coal mining operations; comments by 3–23–81

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DEPARTMEN

Agricultural M

7 CFR Part 90

[Navel Orange
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AGENCY: Agric
USDA.

ACTION: Final

SUMMARY: This
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January 16–22,

FOR FURTHER I
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SUPPLEMENTAR
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Rules and Regulations

Federal Register
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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each month.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 907

[Navel Orange Reg. 505, Amdt. 1; Navel Orange Reg. 506]

Navel Oranges Grown in Arizona and Designated Part of California; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This action establishes the quantity of fresh California-Arizona navel oranges that may be shipped to market during the period January 23–29, 1981, and increases the quantity of such oranges that may be so shipped during the period January 16–22, 1981. Such action is needed to provide for orderly marketing of fresh navel oranges for the periods specified due to the marketing situation confronting the orange industry.

DATES: This regulation becomes effective January 23, 1981, and the amendment is effective for the period January 16–22, 1981.

FOR FURTHER INFORMATION CONTACT: William J. Doyle, (202) 447–5975.

SUPPLEMENTARY INFORMATION: *Findings.* This regulation and amendment are issued under the marketing agreement, as amended, and Order No. 907, as amended (7 CFR Part 907), regulating the handling of navel oranges grown in Arizona and designated part of California. The agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). The action is based upon the recommendations and information submitted by the Navel Orange Administrative Committee and upon other available information. It is hereby found that this action will tend to effectuate the declared policy of the act.

This action is consistent with the marketing policy for 1980–81 which was designated significant under the procedures of Executive Order 12044. The marketing policy was recommended by the committee following discussion at a public meeting on October 14, 1980. A final impact analysis on the marketing policy is available from William J. Doyle, Acting Chief, Fruit Branch, F&V, AMS, USDA, Washington, D.C. 20250, telephone 202–447–5975.

The committee met again publicly on January 19, 1981, at Los Angeles, California, to consider the current and prospective conditions of supply and demand and recommended a quantity of navel oranges deemed advisable to be handled during the specified weeks. The committee reports the demand for navel oranges is good on all sizes and all grades.

It is further found that there is insufficient time between the date when information became available upon which this regulation and amendment are based and when the actions must be taken to warrant a 60-day comment period as recommended in E.O. 12044, and that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rulemaking, and postpone the effective date until 30 days after publication in the **Federal Register** (5 U.S.C. 553), and the amendment relieves restrictions on the handling of navel oranges. It is necessary to effectuate the declared purposes of the act to make these regulatory provisions effective as specified, and handlers have been apprised of such provisions and the effective time.

1. § 907.806 is added as follows:

§ 907.806 Navel Orange Regulation 506.

(a) The quantities of navel oranges grown in Arizona and California which may be handled during the period January 23, 1981, through January 29, 1981, are established as follows:
(1) District 1: 1,335,000 cartons;
(2) District 2: 135,000 cartons;
(3) District 3: Unlimited cartons;
(4) District 4: 30,000 cartons.

(b) As used in this section, "handle," "District 1," "District 2," "District 3," "District 4," and "carton" mean the same as defined in the marketing order.

2. Paragraphs (a)(1)–(4) in § 907.805 *Navel Orange Regulation 505* (46 FR 3493), are hereby revised to read:

§ 907.805 Navel Orange Regulation 505.

(a) * * *
(1) District 1: 1,513,000 cartons;
(2) District 2: 153,000 cartons;
(3) District 3: Unlimited cartons;
(4) District 4: 34,000 cartons.

* * * * *

(Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674)

Dated: January 21, 1981.

D. S. Kuryloski,
Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 81-2007 Filed 1-21-81; 11:41 am]
BILLING CODE 3410-02-M

Animal and Plant Health Inspection Service

9 CFR Part 82

Exotic Newcastle Disease; and Psittacosis or Ornithosis in Poultry; Areas Released From Quarantine

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: The purpose of this amendment is to release a portion of Cayahuga County in Ohio from areas quarantined because of exotic Newcastle disease. Surveillance activity indicates that exotic Newcastle disease no longer exists in the area quarantined.

EFFECTIVE DATE: January 15, 1981.

FOR FURTHER INFORMATION CONTACT: Dr. C. G. Mason, Chief, National Emergency Field Operations, Emergency Programs, Veterinary Services, USDA, 6505 Belcrest Road, Federal Building, Room 751, Hyattsville, MD 20782, 301–436–8073.

SUPPLEMENTARY INFORMATION: This amendment will exclude a portion of Cayahuga County in Ohio from the areas quarantined because of exotic Newcastle disease under the regulations in 9 CFR Part 82, as amended. Therefore, the restrictions pertaining to the interstate movement of poultry, mynah and psittacine birds, and birds of all other species under any form of confinement, and their carcasses and parts thereof, and certain other articles from quarantined areas, as contained in

9 CFR Part 82, as amended, will not apply to the excluded area.

Accordingly, Part 82, Title 9, Code of Federal Regulations, is hereby amended in the following respect:

§ 82.3 [Amended]

In § 82.3(a)(6), relating to the State of Ohio, paragraph (i) relating to the premises of Greene's Aviary, (Lorraine B. Greene), 1312 Richmond Road, Lyndhurst, Cayahoga County is removed.

(Sec. 4–7, 23 Stat. 32, as amended; secs. 1 and 2, 32 Stat. 791–792, as amended; secs. 1–4, 33 Stat. 1264, 1265, as amended; secs. 3 and 11, 76 Stat. 130, 132 [21 U.S.C. 111–113, 115, 117, 120, 125–126, 134b, 134f]; 37 FR 28464, 28477; 38 FR 19141)

This amendment relieves certain restrictions no longer deemed necessary to prevent the spread of exotic Newcastle disease, and must be made effective immediately to be of maximum benefit to affected persons. It does not appear that public participation in this rulemaking proceeding would make additional relevant information available to the Department.

Therefore, pursuant to the administrative procedure provisions in 5 U.S.C. 553, it is found upon good cause that notice and other public procedure with respect to this final rule are impracticable and contrary to the public interest and good cause is found for making this final rule effective less than 30 days after publication of this document in the Federal Register.

Further, this final rule has not been designated as "significant," and is being published in accordance with the emergency procedures in Executive Order 12044 and Secretary's Memorandum 1955. It has been determined by E. C. Sharman, Acting Assistant Deputy Administrator, Animal Health Programs, APHIS, VS, USDA, that the emergency nature of this final rule warrants publication without opportunity for prior public comment or preparation of an impact analysis statement at this time.

This final rule implements the regulations in Part 82. It will be scheduled for review in conjunction with the periodic review of the regulations in that Part required under the provisions of Executive Order 12044 and Secretary's Memorandum 1955.

Mr. James O. Lee, Jr., Acting Administrator of the Animal and Plant Health Inspection Service, has determined that this action will not have a significant economic impact on a substantial number of small entities because it removes the quarantine imposed due to exotic Newcastle disease concerning only one entity and, therefore, only has a significant economic impact on that one entity.

Done at Washington, D.C., this 15th day of January, 1981.

Pierre A. Chaloux,

Deputy Administrator, Veterinary Services.

[FR Doc. 81-2227 Filed 1-21-81; 8:45 am]

BILLING CODE 3410-34-M

DEPARTMENT OF ENERGY

10 CFR Part 903

Procedures for Public Participation in Power and Transmission Rate Adjustments and Extensions; Corrections

AGENCY: Department of Energy, Resource Applications.

ACTION: Corrections to Final regulations.

SUMMARY: Notice is given of Minor clarifying corrections to the Final regulations as published in the Federal Register on December 31, 1980 (45 FR 86976).

DATE: The corrections to the regulations are effective December 31, 1980.

FOR FURTHER INFORMATION CONTACT:

James A. Braxdale, Office of Power Marketing Coordination, Department of Energy, Room 3349, 12th and Pennsylvania Avenue, NW., Washington, DC 20461, (202) 633–8338

Richard K. Pelz, Office of General Counsel, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585 (202) 252–2918

SUPPLEMENTARY INFORMATION:

The corrections are as follows:

Preamble

1. Page 86977—First column:

In the penultimate paragraph, change the date of "December 31, 1981," to "December 31, 1980,".

Regulations

2. Page 86983—Third column:

In § 903.1(b), fifth and sixth lines, delete "these regulations become effective" and insert "December 31, 1980".

3. Page 86984—First column:

a. In § 903.2(e), first line, change "Major adjustment" to "Major rate adjustment".

b. In subsection (j), third and forth lines, delete "Bonneville Power Administration (BPA),".

4. Page 86984—Third column:

a. In § 903.13(4), third line, change "comment forum;" to "comment forum(s);"

b. In § 903.14, eighteenth line, which reads "other time as the administrator may," capitalize the first letter of the word "Administrator".

5. Page 86985—Third column:

In § 903.21(d), eighth line, which now reads "are confirmed and approved and placed", change to "are confirmed and approved on a final basis and placed".

6. Page 86986—Second column:

In § 903.23(b), at the end, delete "Q02". This symbol was added by the printer when published in the Federal Register.

Issued in Washington, D.C., January 16, 1981.

Ruth M. Davis,

Assistant Secretary, Resource Applications.

[FR Doc. 81-2212 Filed 1-21-81; 8:45 am]

BILLING CODE 6450-01-M

DEPARTMENT OF THE TREASURY

Comptroller of the Currency

12 CFR Part 9

[Docket No. 81–1]

Fiduciary Powers of National Banks and Collective Investment Funds

AGENCY: Comptroller of the Currency, Treasury.

ACTION: Final rule.

SUMMARY: The Office of the Comptroller of the Currency (OCC) has amended 12 CFR Part 9 to eliminate the requirement that registered transfer agents file amendments to their registration statement on Form TA–1 to reflect changes in previously filed information listing securities for which the institutions act as transfer agents. This amendment anticipates future action by the OCC, The Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation and the Securities and Exchange Commission to substantially reduce information required by Form TA–1. It is anticipated that the revised Form TA–1 will not require the detailed information concerning individual issues which is presently required and thus no amendment requirement will be necessary. The OCC has determined that it is appropriate to eliminate the amendment requirement at this time in order to reduce the burden on those transfer agents that would otherwise be required to file an amendment by January 30, 1981.

EFFECTIVE DATE: January 22, 1981.

FOR FURTHER INFORMATION CONTACT:

Dean E. Miller, Deputy Comptroller for Specialized Examinations, Office of the Comptroller of the Currency, Washington, D.C. 20219, (202) 447–1731.

SUPPLEMENTARY INFORMATION: 12 CFR 9.20(c) provides in pertinent part that:

Within thirty calendar days following the close of any calendar year * * * during which the information required by Item 7 of Form TA–1 becomes inaccurate, misleading or incomplete, the [registered transfer agent] shall file an amendment on Form TA–1 correcting the inaccurate, misleading or incomplete information.

The information required by Item 7 of Form TA–1 is shown on Schedule B of that form. Schedule B presently requires detailed information for each security issue serviced by the registrant as transfer agent, co-transfer agent, registrar, or co-registrar. This information consists of the name of the security, the type of security and class or series, the CUSIP number and the capacity in which the registrant acts on that issue. Schedule B also requires similar information for issues previously listed on Schedule B but no longer serviced by the registrant and for those situations in which the name of the issuer has changed or the capacity in which the registrant acts for the issuer has changed.

Staff of the OCC, the SEC and the other Federal bank regulatory agencies have agreed that the information presently required on Schedule B is too detailed. Staff of the agencies are near agreement on a revised Form TA–1 which would require only aggregate statistical information. It is expected that in early 1981 the SEC and the Federal bank regulatory agencies will adopt a revised Form TA–1 that will substantially reduce the information presently required.

The OCC has concluded that failure to revise 12 CFR 9.20(c) would result in an undue burden upon those national bank transfer agents that would be required to file amended Form TA–1 at a time when the OCC believes that the furnished information is unnecessary. Accordingly the OCC is amending 12 CFR 9.20(c) to eliminate the requirement to amend Form TA–1 within 30 calendar days of December 31 in order to update information presently required on Schedule B. Effective with this action, transfer agents may disregard the instruction on Form TA–1 that relates to the filing of this information (Instruction III–15).

Because this action facilitates the reduction of a reporting burden, the OCC for good cause finds that the notice and public procedure provisions of 5 U.S.C. 553 are unnecessary and that immediate implementation is in the public interest. Additionally, this amendment does not meet the Department of the Treasury criteria for a significant regulation.

Adoption of Amendment

12 CFR Part 9 is amended as follows:

1. The authority citation for Part 9 is as follows:

Authority: 12 U.S.C. 92a, 481, unless otherwise noted.

§ 9.20 [Amended.]

2. In § 9.20(c), the second sentence is removed.

Dated: January 15, 1981.

John G. Heimann,
Comptroller of the Currency.

[FR Doc. 81-2229 Filed 1-21-81; 8:45 am]
BILLING CODE 4810-33-M

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12 CFR Part 11

[Docket No. 81-2]

Securities Exchange Act Disclosure Rules

AGENCY: Comptroller of the Currency, Treasury.

ACTION: Final rules.

SUMMARY: The Office of the Comptroller of the Currency ("Office") is amending its securities disclosure rules ("Part 11 Regulations") promulgated under the Securities Exchange Act of 1934 ("Exchange Act"). The Part 11 Regulations are applicable to national banks and banks operating under the Code of Law of the District of Columbia (hereinafter collectively referred to as "national banks") having a class of securities registered under the Exchange Act. The amendments to the Part 11 Regulations concern, among other things, the regulation of tender offers, corporate governance, the furnishing of proxy voting advice, and insider securities purchases through dividend reimbursement plans.

EFFECTIVE DATE: January 22, 1981.

FOR FURTHER INFORMATION CONTACT: David G. Anderson, Attorney, Securities Disclosure Division, Office of the Comptroller of the Currency, 490 L'Enfant Plaza East, S.W., Washington, D.C. 20219, (202) 447–1854.

SUPPLEMENTARY INFORMATION: On November 17, 1980, the Office published for comment in the Federal Register (45 FR 75669) proposed amendments to the Part 11 Regulations ("November 1980 Proposals"). Interested persons were given until January 2, 1981 to submit comments regarding the proposed amendments. These proposed amendments, which were intended to conform the Part 11 Regulations to corresponding rules and regulations recently adopted by the Securities and Exchange Commission ("SEC") under the Exchange Act,[1] concerned the regulation of tender offers, corporate governance, insider securities purchases through dividend reinvestment plans, and the furnishing of proxy voting advice.

Section 12(i) of the Exchange Act (15 U.S.C. 78l(i)) requires the Office to issue regulations applicable to national banks having securities registered under Section 12(g) of the Exchange Act (15 U.S.C. 78l(g)) which must be substantially similar to those promulgated by the SEC under sections of the Exchange Act administered and enforced by the Office, unless the Office finds that the issuance of such rules or regulations is not necessary or appropriate in the public interest or for the protection of investors. Any such finding must be published in the Federal Register. In light of the requirements of Section 12(i) of the Exchange Act, and the public interest in timely promulgation of the foregoing amendments to the Part 11 Regulations, such amendments are effective on the date of publication in the Federal Register, in accordance with the provisions of section 553(d)(3) of the Administrative Procedure Act (5 U.S.C. 553(d)(3)).

In response to the November 1980 Proposals, the Office received five letters of comment. The Office has given careful consideration to the views expressed by the commentators, and, particularly in light of the requirements of Section 12(i), has decided to adopt the amendments to the Part 11 Regulations, as proposed, with certain technical changes. A discussion of the adopted amendments to the Part 11 Regulations, certain of the comments with respect thereto and the Office's responses is set forth below.

As a general matter, the amendments to the tender offer rules, contained in the Part 11 Regulations provide specific filing, delivery and disclosure requirements, optional dissemination provisions and additional substantive protections. In addition, certain anti-fraud rules applicable to any tender offer have been adopted. These rules are considered as necessary and appropriate in the public interest and for the protection of investors because of the impact of tender offers on securities markets and on control of national banks. The dynamic nature of tender offers and the need to provide a balance between the interests of the person

[1] *See* SEC Release Nos. 34–15944 (44 FR 38810, July 2, 1979), 34–16075 (44 FR 46738, August 8, 1979), 34–16112 (44 FR 49426, August 22, 1979), 34–16384 (44 FR 66784, November 21, 1979), 34–16484 (44 FR 70326, December 6, 1979), and 34–16833 (45 FR 33867, May 21, 1980).

making a tender offer and the management of the national bank, which is the subject of the tender offer, as well as to ensue adequate disclosure and substantive protections to shareholders making investment decisions, necessitated revision of the previous regulatory framework.

The amendments concerning corporate governance provide a conditional "safe harbor" exemption from applicable provisions of the federal securities laws which may impose liability for statements that contain or relate to projections made in filings with the Office or in annual reports to shareholders of national banks. In addition, these amendments require that shareholders be provided with a proxy card which contains certain additional information and which allows a degree of flexibility in voting on the matters referred to in the proxy card.

The amendment to the insider trading rules set forth in the Part 11 Regulations provides an exemption from Section 16 of the Exchange Act (15 U.S.C. 78p) for acquisitions of equity securities through dividend reinvestment plans. As discussed in detail below, the amendment enables directors, officers and ten percent beneficial shareholders (commonly referred to as "insiders") of national banks to participate in such plans on the same basis as other shareholders in that "short swing profits" realized by the insiders as a result of purchases of a national bank's securities through such a plan will no longer be recoverable by the national bank issuer.

The amendment concerning the furnishing of proxy voting advice exempts from the coverage of § 11.5 of the Part 11 Regulations (12 CFR 11.5) certain activities of professional financial advisors maintaining a business relationship with the recipient of such advice.

For the reasons articulated in the November 1980 Proposals, the Office determined not to propose amendments to the Part 11 Regulations relating to issuer tender offers and "going private" transactions which would correspond to amendments recently adopted by the SEC to its Exchange Act rules. Such transactions occur with insufficient frequency to justify formal regulations. The banking laws and the Office's supervisory powers thereunder make national banks with classes of securities registered under the Exchange Act subject to more extensive regulatory oversight than most issuers subject to SEC jurisdiction. Thus, instead of conforming the Part 11 Regulations to the SEC amendments, the Office intends generally to deny approval of any issuer tender offer or "going private" transaction unless the requirements of the SEC's relevant regulations are substantially satisfied.

The following provides a more specific discussion of the amendments to the Part 11 Regulations:

I. Amendments to Part 11 Regulations

A. Tender Offers

The tender offer rules, as amended, apply to tender offers on the following bases. If the tender offer is subject to Section 14(d)(1) of the Exchange Act (15 U.S.C. 78n(d)(1)), Sections 11.5(l)–(n) and (o) of the Part 11 Regulations (12 CFR 11.5(l)–(n) and (o), respectively) would apply. If the tender offer is not subject to Section 14(d)(1), only § 11.5.(o) of the Part 11 Regulations (12 CFR 11.5(o)) would apply. The operation of the rules is triggered by the commencement of the tender offer, defined in § 11.5(l)(3) of the Part 11 Regulations (12 CFR 11.5(l)(3)) as the date the tender offer is first published, sent or given to security holders.

As amended, the tender offer rules set forth four general categories of requirements: (1) Filing requirements; (2) dissemination requirements; (3) disclosure requirements; and (4) substantive provisions. The filing requirements regarding Form F–13 (Tender Offer Statement) 12 CFR 11.54) are set forth in 11.5(l)(7) of the Part 11 Regulations (12 CFR 11.5(l)(7)). This section also requires a bidder to hand-deliver the initial filing and any amendments thereto to the national bank, which is the subject of the tender offer, and under certain conditions to give telephonic notice of certain information and to mail copies to national securities exchanges and to the National Association of Securities Dealers, Inc. A competing bidder is required to hand-deliver the initial filing to any previous bidder whose tender offer for the same class of securities has not yet expired.

Section 11.5(l)(10) of the Part 11 Requirements (12 CFR 11.5(l)(10)) provides for three alternative methods of disseminating a cash tender offer to security holders of national banks: (1) Long-form publication; (2) summary publication; and (3) the use of shareholder lists and security position listings ("stockholder lists"). Summary publication and the use of stockholder lists, (pursuant to Section 11.5(m) (12 CFR 11.5(m)), must comply with Section 11.5(l)(10)(ii) and 11.5(l)(10(iii) (12 CFR 11.5(l)(10)(ii) and 12 CFR 11.5(l)(10)(iii), respectively).

Section 11.5(m) allows a bidder to disseminate its tender offer materials to security holders pursuant to stockholder lists. The subject national bank has the option to retain the stockholder lists and itself distribute the bidder's tender offer materials, or to furnish the stockholder lists to the bidder, in which case the bidder would distribute such materials.

Although the dissemination provisions of § 11.5(l)(10) are not mandatory, the disclosure requirements of Section 11.5(m)(8) (12 CFR 11.5(m)(8)) apply to *any* tender offer subject to Section 14(d) of the Exchange Act (15 U.S.C. 78n). The application of the disclosure requirements depend on whether the tender offer is published or transmitted to security holders by means of summary publication under § 11.5(l)(10)(ii) or through the use of stockholder lists pursuant to § 11.5(m).

Where a tender offer involves consideration consisting solely of cash or securities exempt from registration under Section 3 of the Securities Act of 1933 ("Securities Act") (15 U.S.C. 77c), or both, § 11.5(l)(10)–(12) and 11.5(m) operate together. Regardless of whether the subject bank effects the dissemination of the bidder's materials under § 11.5(m)(2) (12 CFR 11.5(m)(2)) or the subject national bank furnishes stockholder lists under § 11.5(m)(3) (12 CFR 11.5(m)(3)), tender offer materials have to include the disclosure required by § 11.5(m)(12)(i) of the Part 11 Regulations (12 CFR 11.5(m)(12)(i)).

Any tender offer is required to remain open for a minimum of twenty business days from the date of commencement and for ten business days from the date of any notice of increase in the offered consideration or soliciting dealers' fees. These periods operate concurrently. Thus, if the bidder increases the consideration within the first ten days of the offer, the separate ten-day period, running from the date of notice of the increase, would expire within the minimum twenty-day offering period.

The withdrawal rights set forth in § 11.5(n) of the Part 11 Regulations (12 CFR 11.5(n)) provide an initial withdrawal period of 15 business days. If a competing offer is made, an additional withdrawal period of ten days may be required. The additional time period, if required, runs concurrently with the initial period. Under § 11.5(n)(5) (12 CFR 11.5(n)(5)), the *pro rata* acceptance provisions of Section 14(d)(6) of the Exchange Act (15 U.S.C. 78n(d)(6)) may be extended so long as the minimum ten-day periods required under the Exchange Act are provided and the bidder's tender offer materials disseminated on the date of commencement of the offer disclose the different pro rata time periods. Section 11.5(o)(3) (12 CFR 11.5(o)(3)) requires

payment for, or the return of, the deposited securities promptly after the termination or withdrawal of the tender offer.

Under § 11.5(o)(5) of the Part 11 Regulations (12 CFR 11.5(o)(5)), the subject national bank must disclose and explain to security holders its position with respect to the tender offer within ten business days after the date the tender offer is first published or sent or given to security holders. The disclosure of such position, under § 11.5(n)(6) (12 CFR 11.5(n)(6)), requires the filing of Form F–14 (12 CFR 11.55) with the Office and delivery to certain designated persons.

B. Corporate Governance

As indicated above, the Office is adopting a number of amendments to the Part 11 Regulations regarding corporate governance issues. These amendments are described immediately below.

1. Sections 11.3(e) through 11.3(i) (12 CFR 11.3(e) through 11.3(i)) have been added to the Part 11 Regulations and provide a conditional "safe harbor" exemption from applicable provisions of federal securities laws which may impose liability for statements that contain or relate to projections made in filings with the Office or in annual reports to shareholders of national banks. The types of statements protected by such "safe harbor" exemptions are those contained in, or relating to:

a. Projections of certain financial items;

b. Management plans or objectives; and

c. Future economic performance included in management's discussion and analysis of the summary of earnings; and

d. Disclosed assumptions underlying or relating to these statements (if prepared with reasonable basis and disclosed in good faith).

Although this type of information is not presently required to be disclosed pursuant to the Part 11 Regulations, the "safe harbor" provisions are intended to further the goal of encouraging the disclosure of projections and forward-looking information.

2. Section 11.5 of the Part 11 Regulations, as amended, requires that shareholders be provided with a proxy card which (a) indicates whether the proxy is solicited on behalf of the issuer's board of directors, and (b) permits shareholders to vote for or against individual director nominees. The Office has also adopted an amendment requiring that shareholders be provided, under certain circumstances, with information concerning the votes cast for and against incumbent directors. Additionally, the amended rules require disclosure of the date by which shareholder proposals must be received in order to be included in a national bank's proxy statement for the subsequent year.

3. Section 11.5 has also been amended to provide that the requirements of such section generally do not apply to the furnishing of proxy voting advice by any person to any other person with whom the adviser has a business relationship. This amendment is designed to remove a possible impediment to the flow of information to shareholders from professional financial advisors who may be especially familiar with the affairs of national banks.

Commentators on the proposed rules suggested reconsideration or revision of proxy requirements and certain of the corporate governance proposals. First, it was suggested that the election of directors on an individual basis complicated the election process and would not enhance shareholder protection or their participation in corporate governance and, therefore, the proposal to that effect should be reconsidered. Second, a commentator suggested that the Office provide greater exemptive relief from the requirement to provide information concerning votes cast against incumbent directors (the proposal provided for a five percent threshold). Third, it was suggested that the Part 11 Regulations should not permit the inclusion in proxy materials of shareholder proposals unless a proposal had been submitted for inclusion in proxy materials by shareholders on one or more occasions in the preceding five years. Fourth, one commentator questioned the need for and effect of disclosure in proxy materials of the date by which shareholder proposals must be received by a national bank in order to be included in the proxy materials for the next annual meeting. Finally, one commentator voiced his general concern that the proxy requirements have become too complex and that adoption of the corporate governance proposals would make such requirements even more burdensome. The Office has considered carefully the foregoing comments. As a general matter, the comments (which are similar in nature to comments received by SEC) express concerns which are applicable to all issuers and do not raise issues which are peculiar to national banks. Accordingly, particularly in light of the requirements of Section 12(i) of the Exchange Act, the Office has decided not to adopt any of the revisions to the corporate governance proposals which were suggested by the commentators.

C. Insider Trading Exemption for Dividend Reinvestment Plans

The Office has amended the Part 11 Regulations by adding new § 11.6(j) thereto which exempts acquisitions under dividend reinvestment plans from the "short swing profits" provisions of Section 16(b) of the Exchange Act (15 U.S.C. 78p(b)).[1]

In recent years, many national banks have instituted dividend reinvestment plans for their shareholders. Typically, such plans enable shareholders to automatically reinvest cash dividends in additional shares on a periodic basis. Frequently, the price of additional shares is discounted and no brokerage commission or service fee is charged, as incentives to participate.

Insiders of a national bank are often confronted with the dilemma of being unable to sell any shares of the national bank as long as they acquire shares under the plan on a semiannual or more frequent basis without incurring liability for imputed trading profits under Section 16(b). That section provides that any profit resulting from a purchase and a sale or a sale and a purchase by an insider within a six-month period shall inure to the benefit of the national bank issuer.

Courts have interpreted Section 16(b) to require that a sale price be matched against the lowest purchase price occuring within six months before or after the date of such sale in order to determine whether a recoverable profit exists. Consequently, unless the market price is absolutely stable for a period of twelve months, or the insider sells at a time when the market price is lower than any acquisition price during the twelve-month period, at least one dividend reinvestment will probably exist at a price lower than the price at which the insider sold. In such a case, the insider would be liable to the national bank issuer for the difference between the market price at the time of sale and the acquisition price. New § 11.6(j) of the Part 11 Regulations is intended to alleviate such problems by

[1] One commentator suggested that an exemption from the "short swing profits" provisions of Section 16(b), similar to that now available to security acquisitions under a national bank's dividend reinvestment plan, should be provided with respect to employee stock purchase plans. The Office's rule proposal did not include a proposed exemption applicable to employee stock purchase plans. Therefore, an exemption for employee stock purchase plans cannot be adopted at this time. However, the Office intends to give further consideration to this commentator's suggestion.

exempting from Section 16(b) the acquisition of securities made pursuant to a plan providing for the regular reinvestment in such securities of dividends payable thereon or payable on the securities of the same national bank.

II. SEC Amendments Not Adopted

A. Issuer Tender Offers

As discussed in the November 1980 Proposals, on August 16, 1979, the SEC adopted a new Rule 13e–4 and Schedule 13E–4 under the Exchange Act (17 CFR 240.13e–4 and 240.13e–101, respectively) relating to tender and exchange offers by certain publicly-held issuers (and affiliates) for their own securities ("issuer tender offers"). The rule defines certain fraudulent, deceptive and manipulative acts or practices in connection with such offers, and prescribes filing, disclosure, dissemination and other requirements designed to prevent such acts and practices.

An issuer with a class of equity securities registered under the Exchange Act is required to file an Issuer Tender Offer Statement on Schedule 13E–4 with the SEC prior to, or as soon as practicable after, the date of commencement of the issuer tender offer which discloses, *inter alia*, (1) information concerning the entity filing the Schedule 13E–4; (2) the source and amount of funds or other consideration to be used to effect the transaction; (3) the purpose of the tender offer and any plans or proposals of the issuer (or affiliate) that would materially change the business, financial structure or board of directors of the issuer; (4) annual and interim financial information; and (5) copies of any tender offer materials which are published, sent or given to security holders and other exhibits.

The information required by Schedule 13E–4, or a fair and adequate summary thereof, must be disseminated to shareholders by certain prescribed means. Rule 13e–4 also includes requirements covering withdrawal rights, provisions for the *pro rata* acceptance of tendered securities, payment for tendered and accepted securities, and a "best price" provision, as well as other matters.

As noted above, the Office has determined not to amend the Part 11 Regulations to conform to the SEC's "issuer tender offer" rules. This Office has longstanding statutory authority under 12 U.S.C. 59 to approve any reduction in the amount of capital of a national bank, or the retirement of any part of the outstanding common or preferred capital stock of a national bank. Moreover, under 12 U.S.C. 63, any such transaction could not be effected through the purchase by a national bank of its own stock. Therefore, in lieu of adopting requirements substantially similar to Rule 13e–4 and Schedule 13E–4, the Office will review any application by a national bank (which has a class of securities registered under the Exchange Act) for a reduction in the amount of its capital or the retirement of any part of its equity securities to determine whether it would be appropriate to condition approval of the application upon compliance with any or all of the requirements of Rule 13e–4 and Schedule 13E–4.

B. "Going Private" Transactions

As indicated in the November 1980 Proposals, on August 2, 1979, the SEC adopted a new Rule 13e–3 and Schedule 13E–3 under the Exchange Act (17 CFR 240.13e–3 and 240.13e–100, respectively) relative to "going private" transactions by public companies and their affiliates. Such rule and schedule prohibit fraudulent, deceptive and manipulative acts or practices in connection with "going private" transactions and prescribe new filing, disclosure and dissemination requirements designed to prevent such acts and practices.

A "going private" transaction is defined by Rule 13e–3 as any transaction or series of transactions involving one or more of the following: (a) A purchase of any equity security by the issuer or an affiliate of the issuer; (b) a tender offer or request or invitation for tenders of any equity security made by the issuer of such class of securities or by an affiliate of such issuer; or (c) a solicitation of shareholder proxies or consents in connection with: (1) Any merger, consolidation, reclassification, reorganization, or similar corporate transaction between an issuer and an affiliate; (2) a sale of substantially all the assets of an issuer to an affiliate or group of affiliates; or (3) a reverse stock split involving the purchase of fractional interests.

Rule 13e–3 applies where any of the above-described transactions has a reasonable likelihood or a purpose of causing any class of the issuer's securities subject to Section 12(g) of the Exchange Act to be held by fewer than 300 persons, thereby allowing the issuer to terminate certain of its reporting obligations under the Exchange Act, or causing a class of the issuer's securities to be delisted on any national exchange or to be no longer quoted on an inter-dealer quotation system.

Issuers and their affiliates engaging in a Rule 13e–3 transaction must file a Transaction Statement on Schedule 13E–3 with the SEC which discloses, *inter alia*, (1) information concerning recent purchases by the issuer, and its affiliates, of the issuer's equity securities; (2) information concerning the entity filing the schedule; (3) the purpose of the Rule 13e–3 transaction; (4) a determination of the consideration to be paid for the securities; and (5) a statement concerning the fairness of the Rule 13e–3 transaction to unaffiliated shareholders. Most of the information contained in Schedule 13e–3 must be disclosed to shareholders by means of a proxy statement, registration statement, request for tenders or other disclosure document. Such disclosure must take place at least 20 days prior to the transaction in question.

The Office has determined not to amend the Part 11 Regulations to conform to the SEC's "going private" rules at this time. As discussed above with regard to "issuer tender offer" transactions, the supervisory powers exercised by the Office under the national banking laws subject national bank issuers with classes of equity securities registered pursuant to the Exchange Act to more extensive regulatory oversight than most issuers subject to SEC jurisdiction. Under the national banking laws, the Office must approve substantially all of the transactions involving national banks which would be subject to the "going private" regulations. Therefore, rather than adopting the SEC regulations, the Office generally intends to condition approval of any "going private" transaction to require substantial compliance with the provisions of Rule 13e–3 and Schedule 13E–3.

III. Possible Format Revision of Part 11 Regulations

As discussed in the November 1980 Proposals, the Office solicited comments regarding the desirability of proposing a comprehensive revision of the format of the Part 11 Regulations. Two persons commented on this subject. One commentator expressed the view that a revision of the existing format would not serve any useful purpose for banking personnel; the other commentator suggested that such a revision would untimately be beneficial. Although the Office has not determined to propose revision of the Part 11 format at this time, it intends to give further consideration to that possibility.

Amendments to 12 CFR Part 11.

12 CFR Part 11 is amended as follows:

1. The authority citation for Part 11 reads as follows:

(15 U.S.C. 78l, 78m, 78n, 78p, 78w)

2. 12 CFR 11.3 is amended by adding the paragraphs (e) through (i) as follows:

§ 11.3 Inspection and publication of information filed under the Act, notice of informal adjudications.

* * * * *

(e) A statement within the coverage of paragraph (f) of this section which is made by or on behalf of a bank filing any statement, report, or document under the Act or by an outside reviewer retained by the bank shall be deemed not to be a fraudulent statement (as defined in paragraph (h) of this section) unless it is shown that such statement was made or reaffirmed without a reasonable basis or was disclosed other than in good faith.

(f) Paragraph (e) applies to (1) a forward-looking statement (as defined in paragraph (g) of this section) made in a document filed with the Comptroller or in an annual report to shareholders meeting the requirements of 12 CFR 11.5(c), (2) a statement reaffirming the forward-looking statement referred to in paragraph (f)(1) subsequent to the date the document was filed or the annual report was made publicly available, or (3) a forward-looking statement made prior to the date the document was filed or the date the annual report was made publicly available if such forward-looking statement is affirmed in a filed document or annual report made publicly available within a reasonable time after the making of such forward-looking statement.

(g) For the purpose of this section, the term "forward-looking statement" shall mean and shall be limited to:

(1) A statement containing a projection of revenues, income (loss), earnings (loss) per share, capital expenditures, dividends, capital structure or other financial items;

(2) A statement of management's plans and objectives for future operations;

(3) A statement of future economic performance contained in management's discussion and analysis of the summary of earnings;

(4) Disclosed statements of the assumptions underlying or relating to any of the statements described in paragraph (g) (1), (2), or (3) of this section.

(h) For the purpose of this section the term "fraudulent statement" shall mean a statement which is an untrue statement of a material fact, a statement false or misleading with respect to any material fact, an omission to state a material fact necessary to make a statement not misleading, or which constitutes the employment of a manipulative, deceptive, or fraudulent device, contrivance, scheme, transaction, act, practice, course of business, or an artifice to defraud, as those terms are used in the Securities Act of 1934 or regulations promulgated thereunder.

(i) Notwithstanding any of the provisions of paragraphs (e) through (h) of this section, this rule shall apply only to forward-looking statements made by or on behalf of a bank, if, at the time such statements are made or reaffirmed, the bank is subject to the reporting requirements of the Securities Exchange Act of 1934 and has filed its most recent annual report with the Comptroller on Form F-2.

3. 12 CFR 11.5 is amended by revising paragraphs (d), (h), (l), and (m); by adding new paragraphs (b)(5), (e)(5), (n), and (o); by redesignating current paragraphs (n) and (o) as paragraphs (p) and (q), as follows:

§ 11.5 Proxies, proxy statements, and statements where management does not solicit proxies.

* * * * *

(b) *Exceptions.* The requirements of this § 11.5 shall not apply to the following:

* * * * *

(5) The furnishing of proxy voting advice by any person (the "advisor") to any other person with whom the advisor has a business relationship, if:

(i) The advisor renders financial advice in the ordinary course of his business;

(ii) The advisor discloses to the recipient of the advice any significant relationship with the bank or any of its affiliates, or a shareholder proponent of the matter on which advice is given, as well as any material interest of the advisor in such matter;

(iii) The advisor receives no special commission or remuneration for furnishing the proxy voting advice from any person other than a recipient of the advice and other persons who receive similar advice under this subsection; and

(iv) The proxy voting advice is not furnished on behalf of any person soliciting proxies or on behalf of a participant in an election subject to the provisions of § 11.5(l).

(v) Note.—The solicitations excepted by paragraphs (b)(1) and (b)(5) remain subject to the prohibitions against false and misleading statements in § 11.5(h).

* * * * *

(d) *Requirements as to proxy.* (1) The form of proxy (i) shall indicate in bold-face type whether or not the proxy is solicited on behalf of the bank's board of directors or, if provided other than by a majority of the board of directors, shall indicate in bold-face type the identity of the persons on whose behalf the solicitation is made, (ii) shall provide a specifically designated blank space for dating the proxy, and (iii) shall identify clearly and impartially each matter or group of related matters intended to be acted upon whether proposed by the bank or by security holders. No reference need be made, however, to matters as to which discretionary authority is conferred under paragraph (d)(4) of this section.

(2)(i) Means shall be provided in the form of proxy whereby the person solicited is afforded an opportunity to specify by boxes a choice between approval or disapproval of, or abstention with respect to, each matter or group of related matters referred to therein as intended to be acted upon, other than elections to office. A proxy may confer discretionary authority with respect to matters as to which a choice is not so specified by the security holder if the form of proxy states in bold-faced type how the shares represented by the proxy are intended to be voted in each such case.

(ii) A form or proxy which provides for the election of directors shall set forth the names of persons nominated for election as directors. Such form of proxy shall clearly provide any of the following means for security holders to withhold authority to vote for each nominee:

(A) A box opposite the name of each nominee which may be marked to indicate that authority to vote for such nominee is withheld; or

(B) An instruction in bold-face type which indicates that the security holder may withhold authority to vote for any nominee by lining through or otherwise striking out the name of any nominee; or

(C) Designated blank spaces in which the shareholder may enter the names of nominees with respect to whom the shareholder chooses to withhold authority to vote; or

(D) Any other similar means, provided that clear instructions are furnished indicating how the shareholder may withhold authority to vote for any nominee.

(iii) Such form of proxy also may provide a means for the security holder to grant authority to vote for the nominees set forth, as a group, provided that there is a similar means for the security holder to withhold authority to vote for such group of nominees. Any such form of proxy which is executed by the security holder in such manner as not to withhold authority to vote for the election of any nominee shall be deemed to grant such authority, provided that

the form of proxy so states in bold-face type.

(iv) Instructions. (A) Paragraph (d)(2)(ii) does not apply in the case of a merger, consolidation or other plan if the election of directors is an integral part of the plan.

(B) If applicable law gives legal effect to votes cast against a nominee, then in lieu of, or in addition to, providing a means for security holders to withhold authority to vote, the bank should provide a similar means for security holders to vote against each nominee.

(e) *Presentation of information in statement.* * * *

(5) All proxy statements shall disclose, under an appropriate caption, the date by which proposals of security holders intended to be presented at the next annual meeting must be received by the bank for inclusion in the bank's proxy statement and form of proxy relating to that meeting, such date to be calculated in accordance with the provisions of SEC Rule 14a–8(a)(3)(i). If the date of the next annual meeting is subsequently advanced by more than 30 calendar days or delayed by more than 90 days from the date of the annual meeting to which the proxy statement relates, the bank shall, in a timely manner, inform security holders of such change, and the date by which proposals of security holders must be received, by any means reasonably calculated to so inform them.

* * * * *

(h) *False or misleading statements.* (1) No solicitation or communication subject to this section shall be made by means of any statement, form of proxy, notice of meeting, or other communications, written or oral, containing any statement that, at the time and in the light of the circumstances under which it is made, is false or misleading with respect to any material fact, or that omits to state any material fact necessary in order to make the statements therein not false or misleading or necessary to correct any statement in any earlier communication with respect to the solicitation of a proxy for the same meeting or subject matter that has become false or misleading. Depending upon the particular circumstances, the following may be misleading within the meaning of this paragraph: Predictions as to specific future market values; material that directly or indirectly impugns character, integrity, or personal reputation, or directly or indirectly makes charges concerning improper, illegal, or immoral conduct or associations, without factual foundation; failure so to identify a statement, form of proxy, and other soliciting material as clearly to distinguish it from the soliciting material of any other person or persons soliciting for the same meeting or subject matter; claims made prior to a meeting regarding the results of a solicitation.

* * * * *

(l) *Tender Offers.* (1) No person, directly or indirectly by use of the mails or any means or instrumentality of interstate commerce or any facility of a national securities exchange or otherwise, shall make a tender offer for, or a request or invitation for tenders of, any class of equity security which is registered pursuant to Section 12 of the Act, or a national bank or a bank operating under the Code of Law for the District of Columbia, if, after consummation thereof, such person would, directly or indirectly, be the beneficial owner of more than 5 percent of such class, unless, on the date of the commencement of the tender offer such person has complied with the requirements of paragraph (l)(7) of this section. The definition of beneficial owner set forth in § 11.4(g)(4)(i) for the purposes of Section 13(d)(1) of the Act, shall apply also for purposes of Section 14(d)(1) of the Act.

(2) *Definitions.* Unless the context otherwise requires, all terms used in 12 CFR 11.5 (l), (m), (n) and (o) have the same meaning as in the Act and in 12 CFR 11.2 promulgated thereunder. In addition, for purposes of sections 14(d) and 14(e) of the Act and 12 CFR 11.5 (l), (m), (n) and (o), the following definitions apply:

(i) The term "bidder" means any person who makes a tender offer or on whose behalf a tender offer is made;

(ii) The term "subject bank" means any national bank or bank operating under the Code of Law for the District of Columbia which is the issuer of securities which are sought by a bidder pursuant to a tender offer;

(iii) The term "security holders" means holders of record and beneficial owners of securities which are the subject of a tender offer;

(iv) The term "beneficial owner" shall have the same meaning as that set forth in 12 CFR 11.4(g)(4)(i): *Provided, however,* That, except with respect to 12 CFR 11.5(l)(7) and (n)(9) and Item 6 of 12 CFR 11.54, the term shall not include a person who does not have or share investment power or who may be deemed to be a beneficial owner by virtue of his right to acquire beneficial ownership as set forth in 12 CFR 11.4(g)(4)(i).

(v) The term "tender offer material" means:

(A) The bidder's formal offer, including all the material terms and conditions of the tender offer and all amendments thereto;

(B) The related transmittal letter (whereby securities of the subject bank which are sought in the tender offer may be transmitted to the bidder or its depository) and all amendments thereto; and

(C) Press releases, advertisements, letters and other documents published by the bidder or sent or given by the bidder to security holders which, directly or indirectly, solicit, invite or request tenders of the securities being sought in the tender offer;

(vi) The term "business day" means any day, other than Saturday, Sunday or a federal holiday, and shall consist of the time period from 12:01 a.m. through 12:00 midnight Eastern time. In computing any time period under section 14(d)(5) or section 14(d)(6) of the Act or under 12 CFR 11, the date of the event which begins the running of such time period shall be included *except that* if such event occurs in other than a business day such period shall begin to run on and shall include the first business day thereafter; and

(vii) The term "security position listing" means, with respect to securities of any issuer held by a registered clearing agency in the name of the clearing agency or its nominee, a list of those participants in the clearing agency on whose behalf the clearing agency holds the issuer's securities and of the participants' respective positions in such securities as of a specified date.

(3) *Commencement.* A tender offer shall commence for the purposes of section 14(d) of the Act and the rules promulgated thereunder at 12:01 a.m. on the date when the first of the following events occurs:

(i) The long form publication of the tender offer is first published by the bidder pursuant to 12 CFR 11.5(l)(10)(i)

(ii) The summary advertisement of the tender offer is first published by the bidder pursuant to 12 CFR 11.5(l)(10)(ii)

(iii) The summary advertisement or the long form publication of the tender offer is first published by the bidder pursuant to 12 CFR 11.5(l)(10)(iii).

(iv) Definitive copies of a tender offer, in which the consideration offered by the bidder consists of securities registered pursuant to the Securities Act of 1933, are first published or sent or given by the bidder to security holders; or

(v) The tender offer is first published or sent or given to security holders by the bidder by any means not otherwise referred to in subparagraphs (3)(i) through (3)(iv) of this paragraph.

(4) *Public announcement.* A public announcement by a bidder through a press release, newspaper advertisement or public statement which includes the information at subdivision (iii) of this subparagraph with respect to a tender offer in which the consideration consists solely of cash and/or securities exempt from registration under section 3 of the Securities Act of 1933 shall be deemed to constitute the commencement of a tender offer under subparagraph (3)(v) of this paragraph *except that* such tender offer shall not be deemed to be first published or sent or given to security holders by the bidder under subparagraph (3)(v) of this paragraph on the date of such public announcement if within five business days of such public announcement, the bidder *either:*

(i) Makes a subsequent public announcement stating that the bidder has determined not to continue with such tender offer, in which event subparagraph (3)(v) of this paragraph shall not apply to the initial public announcement; or

(ii) Complies with 12 CFR 11.5(l)(7) and contemporaneously disseminates the disclosure required by paragraphs (m)(7)–(11) of this section to security holders pursuant to subparagraphs (l)(10)–(12) or otherwise in which event:

(A) The date of commencement of such tender offer under subparagraph (3) of this paragraph will be determined by the date the information required by paragraphs (m)(8)–(12) of this section is first published or sent or given to security holders pursuant to paragraphs (l)(10)–(12) of this section or otherwise; and

(B) Notwithstanding subparagraph (5)(ii)(A) of this paragraph, section 14(d)(7) of the Act shall be deemed to apply to such tender offer from the date of such public announcement.

(iii) The information referred to in subparagraph (5) of this paragraph is as follows:

(A) The identity of the bidder;

(B) The identity of the subject company; and

(C) The amount and class of securities being sought and the price or range of prices being offered therefor.

(5) *Announcements not resulting in commencement.* A public announcement by a bidder through a press release, newspaper advertisement or public statement which only discloses the information in subparagraphs (6)(i) through (6)(iii) of this paragraph concerning a tender offer in which the consideration consists solely of cash and/or securities exempt from registration under section 3 of the Securities Act of 1933 shall not be deemed to constitute the commencement of a tender offer under subparagraph (3)(v) of this paragraph.

(i) The identity of the bidder;

(ii) The identity of the subject company; and

(iii) A statement that the bidder intends to make a tender offer in the future for a class of equity securities of the subject bank which statement does not specify the amount of securities of such class to be sought or the consideration to be offered therefor.

(6) *Public Announcement.* A public announcement concerning a tender offer by a bidder through a press release, newspaper advertisement or public statement which states that the offering will be made only by means of a prospectus and discloses the name of the issuer and the title of the securities to be surrendered in exchange for the securities to be offered and the basis upon which the exchange may be made where the consideration consists solely or in part of securities to be registered under the Securities Act of 1933 shall not be deemed to constitute the commencement of a tender offer under subparagraph (3)(v) of this paragraph: *Provided,* That such bidder files a registration statement with respect to such securities promptly after such public announcement.

(7) *Filing and transmittal of tender offer statement.* No bidder shall make a tender offer if, after consummation thereof, such bidder would be the beneficial owner of more than 5 percent of the class of the subject company's securities for which the tender offer is made, unless as soon as practicable on the date of the commencement of the tender offer such bidder:

(i) Files with the Comptroller six copies of a Tender Offer Statement on Form F–13 (12 CFR 11.54), including all exhibits thereto;

(ii) Hand delivers a copy of such Form F–13, including all exhibits thereto:

(A) To the subject bank at its principal executive office; and

(B) To any other bidder, which has filed a Form F–13 with the Comptroller relating to a tender offer which has not yet terminated for the same class of securities of the subject bank, at such bidder's principal executive office or at the address of the person authorized to receive notices and communications (which is disclosed on the cover sheet of such other bidder's Form F–13);

(iii) Gives telephonic notice of the information required by paragraphs (m)(12)(ii) (A) and (B) of this section and mails by means of first class mail a copy of such Form F–13, including all exhibits thereto:

(A) To each national securities exchange where such class of the subject bank's securities is registered and listed for trading (which may be based upon information contained in the subject bank's most recent Annual Report on Form F–2 (12 CFR 11.42) filed with the Comptroller unless the bidder has reason to believe that such information is not current) which telephonic notice shall be made when practicable prior to the opening of each such exchange; and

(B) To the National Association of Securities Dealers, Inc. ("NASD") if such class of the subject bank's securities are authorized for quotation in the NASDAQ interdealer quotation system.

(8) *Additional materials.* The bidder shall file with the Comptroller six copies of any additional tender offer materials as an exhibit to the Form F–13 required by this section, and if a material change occurs in the information set forth in such Form F–13, six copies of an amendment to Form F–13 (each of which shall include all exhibits other than those required by Item 11(a) of Form F–13 disclosing such change and shall send a copy of such additional tender offer material or such amendment to the subject bank and to any exchange and/or the NASD, as required by subparagraph (7) of this paragraph, promptly but not later than the date such additional tender offer material or such change is first published, sent or given to security holders.

(9) *Certain announcements.* Notwithstanding the provisions of subparagraph (8) of this paragraph, if the additional tender offer material or an amendment to Form F–13 discloses only the number of shares deposited to date, and/or announces an extension of the time during which shares may be tendered, then the bidder may file such tender offer material or amendment and send a copy of such tender offer material or amendment to the subject bank, any exchange and/or the NASD, as required by subparagraph (7) of this paragraph, promptly after the date such tender offer material is first published or sent or given to security holders.

(10) *Materials deemed published or sent or given.* A tender offer in which the consideration consists solely of cash and/or securities exempt from registration under section 3 of the Securities Act of 1933 shall be deemed "published or sent or given to security holders" within the meaning of section 14(d)(1) of the Act if the bidder complies with all of the requirements of any one of the following subparagraphs: *Provided, however,* That any such tender offers may be published or sent or given to security holders by other methods, but with respect to summary publication, and the use of stockholder

lists and security position listings pursuant to paragraph (m), subparagraphs (10)(ii) and (10)(iii) of this section are exclusive.

(i) *Long-form publication.* The bidder makes adequate publication in a newspaper of long-form publication of the tender offer.

(ii) *Summary publication.* (A) The bidder makes adequate publication in a newspaper or newspapers of a summary advertisement of the tender offer; and

(B) Mails by first class mail or otherwise furnishes with reasonable promptness the bidder's tender offer materials to any security holder who requests such tender offer materials pursuant to the summary advertisement or otherwise.

(iii) *Use of stockholder lists and security position listings.* Any bidder using stockholder lists and security position listings pursuant to paragraphs (m)(1)–(7) shall comply with subparagraphs (10)(i) or (10)(ii) of this paragraph on or prior to the date of the bidder's request for such lists or listing pursuant to paragraph (m)(1) of this section.

(11) *Adequate publication.* Depending on the facts and circumstances involved, adequate publication of a tender offer pursuant to this section may require publication in a newspaper with a national circulation or may only require publication in a newspaper with metropolitan or regional circulation or may require publication in a combination thereof: *Provided, however,* That publication in all editions of a daily newspaper with a national circulation shall be deemed to constitute adequate publication.

(12) *Publication of changes.* If a tender offer had been published or sent or given to security holders by one or more of the methods enumerated in subparagraph (10) of this paragraph, a material change in the information published, sent or given to security holders shall be promptly disseminated to security holders in a manner reasonably designed to inform security holders of such change; *Provided, however,* That if the bidder has elected pursuant to paragraph (m)(6)(i) of this section to require the subject company to disseminate amendments disclosing material changes to the tender offer materials pursuant to subparagraphs (m)(1)–(7), the bidder shall disseminate material changes in the information published or sent or given to security holders at least pursuant to paragraphs (m)(1)–(7) of this section.

(13) *Restrictions on Control Persons.* When a person makes a tender offer for, or a request or invitation for tenders of, any class of equity securities of a bank registered pursuant to section 12 of the Act, and such person has filed a statement with the Comptroller of the Currency pursuant to this paragraph, any other person controlling, or controlled by or under common control with ("control person") the issuing bank shall not thereafter, during the period such tender offer, request or invitation continues, purchase any class of equity securities of the issuing bank unless:

(i) The control person has filed with the Comptroller of the Currency a statement containing the information specified below with respect to any proposed purchases:

(A) The title and amount of equity securities to be purchased, the names of the persons or classes of persons from whom, and the market in which, the securities are to be purchased, including the name of any exchange on which the purchase is to be made;

(B) The purpose for which the purchase is to be made and any plan or proposal for the disposition of such securities; and

(C) The source and amount of funds or other consideration used or to be used in making the purchases, and if any part of the purchase price or proposed purchase price is represented by funds or other consideration borrowed or otherwise obtained for the purpose of acquiring, holding, or trading the securites, a description of the transaction and the names of the parties thereto.

(ii) The control person has at any time within the past 6 months sent or given to the equity security holders of the issuing bank the substance of the information contained in the statement required by subparagraph (l)(13)(i) of this paragraph and a copy has been filed with the Comptroller of the Currency.

(14) *Permitted communications.* The following communications shall not be deemed to be requests or invitations for tenders:

(i) Offers to purchase securities made in connection with a distribution of securities permitted by Rules 10b–6, 10b–7 or 10b–8 under the Act as promulgated by the SEC;

(ii) The call or redemption of any security in accordance with the terms and conditions of the governing instruments;

(iii) Offers to purchase securities evidenced by a scrip certificate, order form or similar document which represents a fractional interest in a share of stock or similar security;

(iv) Offers to purchase securities pursuant to a statutory procedure for the purchase of dissenting shareholders' securities;

(v) The furnishing of information and advice regarding a tender offer to customers or clients by attorneys, banks, brokers, fiduciaries or investment advisers, who are not otherwise participating in the tender offer or solicitation, on the unsolicited request of a person or pursuant to a general contract for advice to the person to whom the information or advice is given;

(vi) A communication from a subject bank to its security holders which does no more than (A) identify a tender offer or request or invitation for tenders made by another person, (B) state that the management of the subject bank is studying the matter and will, on or before a specified date (which shall be not later than 10 days prior to the date specified in the offer, request or invitation, as the last date on which tenders will be accepted, or such shorter period as the Comptroller of the Currency may authorize) advise security holders as to the management's recommendation to accept or reject the offer, request or invitation, and (C) request security holders to defer making a determination as to whether or not they should accept or reject the offer, request or invitation until they have received the management's recommendation with repect thereto.

(m) *Obligations of the subject bank.* (1) Upon receipt by a subject bank at its principal executive offices of a bidder's written request, meeting the requirements of paragraph (m)(5) of this section, the subject bank shall comply with the following:

(i) The subject bank shall notify promptly transfer agents and any other person who will assist the subject in complying with the requirements of this paragraph of the receipt by the subject bank of a request by a bidder pursuant to this paragraph.

(ii) The subject bank shall promptly ascertain whether the most recently prepared stockholder list, written or otherwise, within the access of the subject bank was prepared as of a date earlier than ten business days before the date of the bidder's request and, if so, the subject bank shall promptly prepare or cause to be prepared a stockholder list as of the most recent practicable date which shall not be more than ten business days before the date of the bidder's request.

(iii) The subject bank shall make an election to comply and shall comply with all of the provisions of either subparagraph (2) or subparagraph (3) of this paragraph. The subject bank's election, once made, shall not be modified or revoked during the bidder's tender offer and extensions thereof.

(iv) No later than the second business day after the date of the bidder's

request, the subject bank shall orally notify the bidder, which notification shall be confirmed in writing, of the subject bank's election made pursuant to subparagraph (1)(iii) of this paragraph. Such notification shall indicate (A) the approximate number of security holders of the class of securities being sought by the bidder and, (B) if the subject bank elects to comply with subparagraph (2) of this paragraph, appropriate information concerning the location for delivery of the bidder's tender offer materials and the approximate direct costs incidental to the mailing to security holders of the bidder's tender offer materials computed in accordance with subparagraph (7)(i) of this paragraph.

(2) *Mailing of tender offer materials by the subject bank.* A subject bank which elects pursuant to subparagraph (1)(iii) of this paragraph to comply with the provisions of this paragraph shall perform the acts prescribed by the following subparagraphs.

(i) The subject bank shall promptly contact each participant named on the most recent security position listing of any clearing agency within the access of the subject bank and make inquiry of each such participant as to the approximate number of beneficial owners of the subject bank securities being sought in the tender offer held by each such participant.

(ii) No later than the third business day after delivery of the bidder's tender offer materials pursuant to subparagraph (7)(i) of this paragraph, the subject bank shall begin to mail or cause to be mailed by means of first class mail a copy of the bidder's tender offer materials to each person whose name appears as a record holder of the class of securities for which the offer is made on the most recent stockholder list referred to in subparagraph (2)(iii) of this paragraph. The subject bank shall use its best efforts to complete the mailing in a timely manner but in no event shall such mailings be completed in a substantially greater period of time than the subject bank would complete a mailing to security holders of its own materials relating to the tender offer.

(iii) No later then the third business day after the delivery of the bidder's tender offer materials pursuant to subparagraph (7)(i) of this paragraph, the subject bank shall begin to transmit or cause to be transmitted a sufficient number of sets of the bidder's tender offer materials to the participants named on the security position listings described in subparagraph (2)(i) of this paragraph. The subject bank shall use its best efforts to complete the transmittal in a timely manner but no event shall such transmittal be completed in a substantially greater period of time than the subject bank would complete a transmittal to such participants pursuant to security position listings or clearing agencies of its own material relating to the tender offer.

(iv) The subject bank shall promptly give oral notification to the bidder, which notification shall be confirmed in writing, of the commencement of the mailing pursuant to subparagraph (2)(ii) of this paragraph and of the transmittal pursuant to subparagraph (2)(iii) of this paragraph.

(v) During the tender offer and any extension thereof the subject bank shall use reasonable efforts to update the stockholder list and shall mail or cause to be mailed promptly following each update a copy of the bidder's tender offer materials (to the extent sufficient sets of such materials have been furnished by the bidder) to each person who has become a record holder since the later of (A) the date of preparation of the most recent stockholder list referred to in subparagraph (1)(ii) of this section or (B) the last preceding update.

(vi) If the bidder has elected pursuant to subparagraph (6)(i) of this paragraph to require the subject bank to disseminate amendments disclosing material changes to the tender offer materials pursuant to this paragraph, the subject bank, promptly following delivery of each such amendment, shall mail or cause to be mailed a copy of each such amendment to each record holder whose name appears on the shareholder list described in subparagraphs (1)(ii) and (2)(v) of this paragraph and shall transmit or cause to be transmitted sufficient copies of such amendment to each participant named on security position listings who received sets of the bidder's tender offer materials pursuant to subparagraph (2)(iii) of this paragraph.

(vii) The subject bank shall not include any communication other than the bidder's tender offer materials or amendments thereto in the envelopes or other containers furnished by the bidder.

(viii) Promptly following the termination of the tender offer, the subject bank shall reimburse the bidder the excess, if any, of the amounts advanced pursuant to subparagraph (6)(iii)(c) over the direct costs incidental to compliance by the subject bank and its agents in performing the acts required by this paragraph computed in accordance with subparagraph (7)(ii) of this paragraph.

(3) *Delivery of stockholder lists and security position listings.* A subject bank which elects pursuant to subparagraph (1)(iii) of this paragraph to comply with the provisions of this paragraph shall perform the acts prescribed by the following:

(i) No later than the third business day after the date of the bidder's request, the subject bank shall furnish to the bidder at the subject bank's principal executive office a copy of the names and addresses of the record holders on the most recent stockholder list referred to in subparagraph (1)(ii) of this paragraph and a copy of the names and addresses of participants identified on the most recent security position listing of any clearing agency which is within the access of the subject bank.

(ii) If the bidder has elected pursuant to subparagraph (6)(i) of this paragraph to require the subject bank to disseminate amendments disclosing material changes to the tender offer materials, the subject bank shall update the stockholder list by furnishing the bidder with the name and address of each record holder named on the stockholder list, and not previously furnished to the bidder, promptly after such information becomes available to the subject bank during the tender offer and any extensions thereof.

(4) *Liability of subject banks and others.* Neither the subject bank nor any affiliate or agent of the subject bank nor any clearing agency shall be:

(i) Deemed to have made a solicitation or recommendation respecting the tender offer within the meaning of section 14(d)(4) based solely upon the compliance or noncompliance by the subject bank or any affiliate or agent of the subject bank with one or more requirements of this section;

(ii) Liable under any provision of the Federal securities laws to the bidder or to any security holder based solely upon the inaccuracy of the current names or addresses on the stockholder list or security position listing, unless such inaccuracy results from a lack of reasonable care on the part of the subject bank or any affiliate or agent of the subject bank.

(iii) Deemed to be an "underwriter" within the meaning of section (2)(11) of the Securities Act of 1933 for any purpose of that Act or any rule or regulation promulgated thereunder based solely upon the compliance or noncompliance by the subject bank or any affiliate or agent of the subject bank with one or more of the requirements of this paragraph;

(iv) Liable under any provision of the Federal securities laws for the disclosure in the bidder's tender offer materials, including any amendment thereto, based solely upon the

compliance or noncompliance by the subject bank or any affiliate or agent of the subject bank with one or more of the requirements of this paragraph.

(5) *Content of the bidder's request.* The bidder's written request referred to in subparagraph (1) of this paragraph shall include the following:

(i) The identity of the bidder;

(ii) The title of the class of securities which is the subject of the bidder's tender offer;

(iii) A statement that the bidder is making a request to the subject bank pursuant to subparagraph (1) of this paragraph for the use of the stockholder list and security position listings for the purpose of disseminating a tender offer to security holders;

(iv) A statement that the bidder is aware of and will comply with the provisions of subparagraph (6) of this paragraph;

(v) A statement as to whether or not it has elected pursuant to subparagraph (6)(i) of this paragraph to disseminate amendments disclosing material changes to the tender offer materials pursuant to this paragraph; and

(vi) The name, address and telephone number of the person whom the subject bank shall contact pursuant to paragraph (m)(1)(iv) of this section.

(6) *Obligations of the bidder.* Any bidder who requires that a subject bank comply with the provisions of paragraph (m)(1) of this section, shall comply with the following:

(i) The bidder shall make an election whether or not to require the subject bank to disseminate amendments disclosing material changes to the tender offer materials pursuant to this paragraph, which election shall be included in the request referred to in paragraph (m)(1) of this section and shall not be revocable by the bidder during the tender offer and extensions thereof.

(ii) With respect to a tender offer subject to section 14(d)(1) of the Act in which the consideration consists solely of cash and/or securities exempt from registration under section 3 of the Securities Act of 1933, the bidder shall comply with the requirements of paragraph (l)(10)(ii) of this section.

(iii) If the subject bank elects to comply with subparagraph (2) of this paragraph,

(A) The bidder shall promptly deliver the tender offer materials after receipt of the notification from the subject bank, as provided in subparagraph (1)(iv) of this paragraph;

(B) The bidder shall promptly notify the subject bank of any amendment to the bidder's tender offer materials requiring compliance by the subject bank with subparagraph (2)(vi) of this paragraph and shall promptly deliver such amendment to the subject bank pursuant to subparagraph (7)(i) of this paragraph;

(C) The bidder shall advance to the subject bank an amount equal to the approximate cost of conducting mailings to security holders computed in accordance with subparagraph (7)(ii) of this paragraph;

(D) The bidder shall promptly reimburse the subject bank for the direct costs incidental to compliance by the subject bank and its agents in performing the act required by this section computed in accordance with subparagraph (7)(ii) of this paragraph which are in excess of the amount advanced pursuant to subparagraph (6)(iii)(c) of this paragraph and

(E) The bidder shall mail by means of first class mail or otherwise furnish with reasonable promptness the tender offer materials to any security holder who requests such materials.

(iv) If the subject bank elects to comply with subparagraph (3) of this paragraph:

(A) The subject bank shall use the stockholder and security position listings furnished to the bidder pursuant to subparagraph (3) of this paragraph exclusively in the dissemination of tender offer materials to security holders in connection with the bidder's tender offer and extensions thereof;

(B) The bidder shall return the stockholder lists and security position listings furnished to the bidder pursuant to subparagraph (3) of this paragraph promptly after the termination of the bidder's tender offer;

(C) The bidder shall accept, handle and return the stockholder lists and security position listings furnished to the bidder pursuant to subparagraph (3) of this paragraph to the subject bank on a confidential basis;

(D) The bidder shall not retain any stockholder list or security position listing furnished by the subject bank pursuant to subparagraph (3) of this paragraph, or any copy thereof, nor retain any information derived from any such list or listing or copy thereof after the termination of the bidder's tender offer;

(E) The bidder shall mail by means of first class mail, at its own expense, a copy of its tender offer materials to each person whose identity appears on the stockholder list as furnished and updated by the subject bank pursuant to subparagraphs (3)(i) and (3)(ii) of this paragraph;

(F) The bidder shall contact the participants named on the security position listing of any clearing agency, make inquiry of each participant as to the appropriate number of sets of tender offer materials required by each such participant, and furnish, at its own expense, sufficient sets of tender offer materials and any amendment thereto to each such participant for subsequent transmission to the beneficial owners of the securities being sought by the bidder;

(G) The bidder shall mail by means of first class mail or otherwise furnish with reasonable promptness the tender offer materials to any security holder who requests such materials; and

(H) The bidder shall promptly reimburse the subject bank for direct costs incidental to compliance by the subject bank and its agents in performing the acts required by this section computed in accordance with subparagraph (7)(ii) of this paragraph.

(7) *Delivery of materials, computation of direct costs.* (i) Whenever the bidder is required to deliver tender offer materials or amendments to tender offer materials, the bidder shall deliver to the subject bank at the location specified by the subject bank in its notice given pursuant to subparagraph (1)(iv) of this paragraph a number of sets of the materials or of the amendment, as the case may be, at least equal to the approximate number of security holders specified by the subject bank in such notice, together with appropriate envelopes or other containers therefor: *Provided, however,* That such delivery shall be deemed not to have been made unless the bidder has complied with subparagraph (6)(iii)(C) of this paragraph at the time the materials or amendments, as the case may be, are delivered.

(ii) The approximate direct cost of mailing the bidder's tender offer materials shall be computed by adding (A) the direct cost incidental to the mailing of the subject bank's last annual report to shareholders (excluding employee time), less the costs of preparation and printing of the report, and postage, plus (B) the amount of first class postage required to mail the bidder's tender offer materials. The approximate direct costs incidental to the mailing of the amendments to the bidder's tender offer materials shall be computed by adding (C) the estimated direct costs of preparing mailing labels, of updating shareholder lists and of third party handling charges plus (D) the amount of first class postage required to mail the bidder's amendment. Direct costs incidental to the mailing of the bidder's tender offer materials thereto when finally computed may include all reasonable charges paid by the subject bank to third parties for supplied or

services, including costs attendant to preparing shareholder lists, mailing labels, handling the bidder's materials, contacting participants named on security position listings and for postage, but shall exclude indirect costs, such as employee time which is devoted to either contesting or supporting the tender offer on behalf of the subject bank. The final billing for direct costs shall be accompanied by an appropriate accounting in reasonable detail.

(8) *Information required on date of commencement*—(i) *Long-form publication.* If a tender offer is published, sent or given to security holders on the date of commencement by means of long-form publication pursuant to paragraph (l)(10)(i), such long-form publication shall include the information required by subparagraph (12)(i) of this paragraph.

(ii) *Summary publication.* If a tender offer is published, sent or given to security holders on the date of commencement by means of summary publication pursuant to paragraph (l)(10)(ii):

(A) The summary advertisement shall contain and shall be limited to, the information required by subparagraph (12)(ii) of this paragraph; and

(B) The tender offer materials furnished by the bidder upon the request of any security holder shall include the information required by subparagraph (12)(i) of this paragraph.

(iii) *Use of stockholder lists and security position listings.* If a tender offer is published or sent or given to security holders on the date of commencement by the use of stockholder lists and security position listings pursuant to paragraph (l)(10)(iii) of this section,

(A) Either *(1)* the summary advertisement shall contain, and shall be limited to the information required by subparagraph (12)(ii) of this paragraph, or *(2)* if long form publication of the tender offer is made, such long form publication shall include the information required by subparagraph (12)(i) of this paragraph, and

(B) The tender offer materials transmitted to security holders pursuant to such lists and security position listings and furnished by the bidder upon the request of any security holder shall include the information required by subparagraph (12)(i) of this paragraph.

(iv) *Other tender offers.* If a tender offer is published or sent or given to security holders other than pursuant to paragraph (l) (10) of this section, the tender offer materials which are published or sent or given to security holders on the date of commencement of such offer shall include the information required by subparagraph (12)(i) of this paragraph.

(9) *Information required in summary advertisement made after commencement.* A summary advertisement published subsequent to the date of commencement of the tender offer shall include at least the information specified in subparagraphs (12)(i)(A)–(B) and (12)(ii)(D) of this paragraph.

(10) *Information required in other tender offer materials published after commencement.* Except for summary advertisements described in subparagraph (9) of this paragraph and tender offer materials described in subparagraphs (8)(ii)(B) and (8)(iii)(B) of this paragraph, additional tender offer materials published, sent or given to security holders subsequent to the date of commencement shall include the information required by subparagraphs (12)(i) and may omit any of the information required by subparagraphs (12)(i)(E)–(H) of this paragraph which has been previously furnished by the bidder in connection with the tender offer.

(11) *Material changes.* A material change in the information published or sent or given to security holders shall be promptly disclosed to security holders in additional tender offer materials.

(12) *Information to be included*—(i) *(Long-form publication and tender offer materials.* The information required to be disclosed by subparagraphs (8)(i), (8)(ii)(B), (8)(iii)(A)(2) and (8)(iv) of this paragraph shall include the following:

(A) The identity of the holder;

(B) The identity of the subject bank;

(C) The amount of a class of securities being sought and the type and amount of consideration being offered therefor;

(D) The scheduled expiration date of the tender offer, whether the tender offer may be extended and, if so, the procedures for extension of the tender offer;

(E) The exact dates prior to which, and after which, security holders who deposit their securities will have the right to withdraw their securities pursuant to section 14(d)(5) of the Act and paragraphs (n)(1)–(5) of this section and the manner in which shares will be accepted for payment and in which withdrawal may be effected;

(F) If the tender offer is for less than all the outstanding securities of a class of equity securities and the bidder is not obligated to purchase all of the securities tendered, the period or periods, and in the case of the period form the commencement of the offer, the date of the expiration of such period during which the securities will be taken up pro rata pursuant to Section 14(d)(6) of the Act or paragraph (n)(5) of this section and the present intention or plan of the bidder with respect to the tender offer in the event of an oversubscription by security holders;

(G) The disclosure required by Items 1(c); 2 (with respect to persons other than the bidder, excluding sub-items (b) and (d)); 3; 4; 5; 6; 7; 8; and 10 of Form F–13 (12 CFR 11.54) or a fair and adequate summary thereof: *Provided, however,* That negative responses to any such item or sub-item of Form F–13 need not be included; and

(H) The disclosure required by Item 9 of Form F–13 or a fair and adequate summary thereof. If the information required by Item 9 is summarized, appropriate instructions shall be included stating how complete financial information can be obtained.

(ii) *Summary publication.* The information required to be disclosed by subparagraphs (8)(ii)(A) and (8)(iii)(A) of this paragraph in a summary advertisement is as follows:

(A) The information required by subparagraph (12)(i) (A) through (E) of this paragraph;

(B) If the tender offer is for less than all the outstanding securities of a class of equity securities, a statement as to whether the purpose or one of the purposes of the tender offer is to acquire or influence control of the business of the subject bank;

(C) A statement that the information required by subparagraph (12)(i)(G) of this paragraph is incorporated by reference into the summary advertisement;

(D) Appropriate instructions as to how security holders may obtain promptly, at the bidder's expense, the bidder's tender offer materials; and

(E) In a tender offer published or sent or given to security holders by the use of stockholder lists and security position listings pursuant to paragraph (l)(10)(iii) of this section, a statement that a request is being made for such lists and listings and that tender offer materials will be mailed to record holders and will be furnished to brokers, banks and similar persons whose name appears or whose nominee appears on the list of stockholders or, if applicable, who are listed as participants in a clearing agency's security position listing for subsequent transmittal to beneficial owners of such securities.

(iii) *No transmittal letter.* Neither the initial summary advertisement not any subsequent summary advertisement shall include a transmittal letter (whereby securities of the subject bank which are sought in the tender offer may

be transmitted to the bidder or its depository) or any amendment thereto.

(n) *Additional withdrawal rights*—(1) *Rights.* In addition to the provisions of section 14(d)(5) of the Act, any person who has deposited securities pursuant to a tender offer has the right to withdraw any such securities during the following periods:

(i) At any time until the expiration of fifteen business days from the date of commencement of such tender offer; and

(ii) On the date and until the expiration of ten business days following the date of commencement of another bidder's tender offer other than pursuant to paragraph (l)(4) of this section for securities of the same class: *Provided,* That the bidder has received notice or otherwise has knowledge of the commencement of such other tender offer: *And, provided further,* That withdrawal may only be effected with respect to securities which have not been accepted for payment in the manner set forth in the bidder's tender offer prior to the date such other tender offer is first published, sent or given to security holders.

(2) *Computation of time periods.* The time periods for withdrawal rights pursuant to this section shall be computed on a concurrent, as opposed to a consecutive, basis.

(3) *Knowledge of competing offer.* For the purposes of this section, a bidder shall be presumed to have knowledge of another tender offer, as described in subparagraph (1)(ii) of this paragraph, on the date such bidder receives a copy of the Form F–13 (12 CFR 11.54) pursuant to paragraphs (l)(3)–(6) of this section from such other bidder.

(4) *Notice of withdrawal.* Notice of withdrawal pursuant to this paragraph shall be deemed to be timely upon the receipt by the bidder's depository of a written notice of withdrawal specifying the name(s) of the tendering stockholder(s), the number or amount of the securities to be withdrawn and the name(s) in which the certificate(s) is (are) registered, if different from that of the tendering security holder(s). A bidder may impose other reasonable requirements, including certificate numbers and a signed request for withdrawal accompanied by a signature guarantee, as conditions precedent to the physical release of withdrawn securities.

(5) *Exemption from statutory pro rata requirements.* The limited pro rata provisions of section 14(d)(6) of the Act shall not apply to any tender offer for less than all the outstanding securities of the class for which the tender offer is made to the extent that the bidder provides in the tender offer materials disseminated to security holders on the date of commencement of the tender offer that in the event more securities are deposited during the period(s) described in subdivisions (i) and/or (ii) of this subparagraph than the bidder is bound or willing to accept for payment, all securities deposited during such period(s) will be accepted for payment as nearly as practicable on a pro rata basis, disregarding fractions, according to the number of securities deposited by each depositor.

(i) Any period which exceeds ten days from the date of commencement of the tender offer.

(ii) Any period which exceeds ten days from the date that notice of an increase in the consideration offered is first published, sent or given to security holders.

(6) *Filing and transmittal of recommendation statement.* No solicitation or recommendation to security holders shall be made by any person described in subparagraph (9) of this paragraph with respect to a tender offer for such securities unless as soon as practicable on the earliest date such solicitation or recommendation is first published or sent or given to security holders such person complies with the following subparagraphs.

(i) Such person shall file with the Comptroller six copies of a Tender Offer Solicitation/Recommendation Statement on Form F–14 (12 CFR 11.55), including all exhibits thereto; and

(ii) If such person is either the subject bank or an affiliate of the subject bank,

(A) Such person shall hand deliver a copy of the Form F–14 to the bidder at its principal office or at the address of the person authorized to receive notices and communications (which is set forth on the cover sheet of the bidder's Form F–13 (12 CFR 11.54) filed with the Commission; and

(B) Such person shall give telephonic notice (which notice to the extent possible shall be given prior to the opening of the market) of the information required by Items 2 and 4(a) of Form F–14 and shall mail a copy of the Form to each national securities exchange where the class of securities is registered and listed for trading and if the class is authorized for quotation in the NASDAQ interdealer quotation system, to the National Association of Securities Dealers, Inc. ("NASD").

(iii) If such person is neither the subject bank nor an affiliate of the subject bank,

(a) Such person shall mail a copy of the schedule to the bidder at its principal office or at the address of the person authorized to receive notices and communications (which is set forth on the cover sheet of the bidder's Form F–13 (12 CFR 11.54) filed with the Comptroller), and

(B) Such person shall mail a copy of the Form to the subject bank at its principal office.

(7) *Amendments.* If any material change occurs in the information set forth in the Form F–14 (12 CFR 11.55) required by this section, the person who filed such Form F–14 shall:

(i) File with the Comptroller six copies of an amendment on Form F–14 disclosing such change promptly, but not later than the date such material is first published, sent or given to security holders; and

(ii) Promptly deliver copies and give notice of the amendment in the same manner as that specified in subparagraph (6)(ii) or subparagraph (6)(iii) of this paragraph, whichever is applicable; and

(iii) Promptly disclose and disseminate such change in a manner reasonably designed to inform security holders of such change.

(8) *Information required in solicitation or recommendation.* Any solicitation or recommendation to holders of a class of securities referred to in section 14(d)(1) of the Act with respect to a tender offer for such securities shall include the name of the person making such solicitation or recommendation and the information required by Items 1, 2, 3(b), 4, 6, 7 and 8 of Form F–14 or a fair and adequate summary thereof: *Provided, however,* that such solicitation or recommendation may omit any of such information previously furnished to security holders of such class of securities by such person with respect to such tender offer.

(9) *Applicability.* (i) Except as is provided in subparagraphs (9)(ii) and (10) of this paragraph, paragraphs (n)(6)–(11) of this section shall only apply to the following persons:

(A) The subject bank, any director, officer, employee, affiliate or subsidiary of the subject bank;

(B) Any record holder or beneficial owner of any security issued by the subject bank, by the bidder, or by any affiliate of either the subject bank or the bidder; and

(C) Any person who makes a solicitation or recommendation to security holders on behalf of any of the foregoing or on behalf of the bidder other than by means of a solicitation or recommendation to security holders which has been filed with the Comptroller pursuant to this paragraph or paragraphs (l)(7)–(9) of this section.

(ii) Notwithstanding subparagraph (9)(i) of this paragraph, paragraphs

(n)(6)–(11) of this section shall not apply to the following persons:

(A) A bidder who has filed a Form F–13 pursuant to paragraphs (l)(7)–(9) of this section;

(B) Attorneys, banks, brokers, fiduciaries or investment advisers who are not participating in a tender offer in more than a ministerial capacity and who furnish information and/or advice regarding such tender offer to their customers or clients on the unsolicited request of such customers or clients or solely pursuant to a contract or a relationship providing for advice to the customer or client to whom the information and/or advice is given.

(10) *Stop-look-and-listen communication.* Paragraphs (n)(6)–(11) of this section shall not apply to the subject bank with respect to a communication by the subject bank to its security holders which only:

(i) Identifies the tender offer by the bidder;

(ii) States that such tender offer is under consideration by the subject bank's board of directors and/or management;

(iii) States that on or before a specified date (which shall be no later than 10 business days from the date of commencement of such tender offer) the subject bank will advise such security holders of (A) whether the subject bank recommends acceptance or rejection of such tender offer; expresses no opinion and remains neutral toward such tender offer; or is unable to take a position with respect to such tender offer and (B) the reason(s) for the position taken by the subject bank with respect to the tender offer (including the inability to take a position); and

(iv) Requests such security holders to defer making a determination whether to accept or reject such tender offer until they have been advised of the subject bank's position with respect thereto pursuant to subparagraph (10)(iii) of this paragraph.

(11) *Statement of management's position.* A statement by the subject bank of its position with respect to a tender offer which is required to be published or sent or given to security holders pursuant to paragraph (o) of this section shall be deemed to constitute a solicitation or recommendation within the meaning of this section and section 14(d)(4) of the Act.

(o) *Unlawful tender offer practices.* As a means reasonably designed to prevent fraudulent, deceptive or manipulative acts or practices, no person who makes a tender offer shall:

(1) Hold such tender offer open for less than twenty business days from the date such tender offer is first published or sent or given to security holders.

(2) Increase the offered consideration or the dealer's soliciting fee to be given in a tender offer unless such tender offer remains open for at least ten business days from the date that notice of such increase is first published, sent or given to security holders.

(3) Fail to pay the consideration offered or return the securities deposited by or on behalf of security holders promptly after the termination or withdrawal of a tender offer;

(4) Extend the length of a tender offer without issuing a notice of such extension by press release or other public announcement, which notice shall include disclosure of the approximate number of securities deposited to date and shall be issued no later than the earlier of (i) 9:00 a.m. Eastern time, on the next business day after the scheduled expiration date of the offer or (ii), if the class of securities which is the subject of the tender offer is registered on one or more national securities exchanges, the first opening of any one of such exchanges on the next business day after the scheduled expiration date of the offer.

(5) *Position of subject bank.* As a means reasonably designed to prevent fraudulent, deceptive or manipulative acts or practices, the subject bank, no later than 10 business days from the date the tender offer is first published or sent or given, shall publish, send or give to security holders a statement disclosing that the subject bank:

(i) Recommends acceptance or rejection of the bidder's tender offer;

(ii) Expresses no opinion and is remaining neutral toward the bidder's tender offer; or

(iii) Is unable to take a position with respect to the bidder's tender offer. Such statement shall also include the reason(s) for the position (including the inability to take a position) disclosed therein.

(6) *Material change.* If any material change occurs in the disclosure required by paragraph (a) of this section, the subject bank shall promptly publish, send or give a statement disclosing such material change to security holders.

* * * * *

4. 12 CFR 11.8 is amended by adding a new paragraph (j) and redesignating the existing paragraphs (j) through (u) as paragraphs (k) through (v).

§ 11.8 "Insiders" securities transactions and reports under section 16 of this Act.

* * * * *

(j) Exemption for acquisitions under dividend reinvestment plans. Any acquisition of securities resulting from reinvestment of dividends or interest shall be exempt from section 16 if it is made pursuant to a plan providing for the regular reinvestment in such securities of dividends payable thereon or of dividends or interest payable on other securities of the same issue, *Provided,* That the plan is made available on the same terms to all holders of securities of the class on which the reinvestment dividends or interest are being paid.

* * * * *

5. 12 CFR 11.51 is amended by revising paragraph (c) in Item 5 and in Item 6 by adding paragraph (i) to read as follows:

§ 11.51 Form for proxy statement or statement where management does not solicit proxies (Form F–5).

* * * * *

Item 5—Voting Securities and Principal Holders Thereof

* * * * *

(c) If action is to be taken with respect to the election of directors and if the persons solicited have cumulative voting rights, (1) make a statement that they have such rights, (2) briefly describe such rights, (3) state briefly the conditions precedent to the exercise thereof, and (4) if discretionary authority to cumulate votes is solicited, so indicate.

* * * * *

Item 6—Directors

* * * * *

(i) Shares voted at last meeting. With respect to those classes of voting stock which participated in the election of directors at the most recent meeting at which directors were elected:

(1) State in an introductory paragraph the percentage of shares present at the meeting and voting or withholding authority to vote in the election of directors; and (2) disclose in tabular format following such introductory paragraph, the percentage of total shares cast for and withheld from the vote for or, where applicable, cast against each nominee. When groups of classes or series of classes vote together in the election of a director or directors, they shall be treated as a single class for the purpose of the preceding sentence.

Instructions. 1. Calculate the percentage of shares present at the meeting and voting or withholding authority to vote in the election of directors, referred to in paragraph (i)(1), by dividing the total shares cast for and withheld from the vote for or, where applicable, voted against, the director in respect of whom the highest aggregate number of shares was cast by the total number of shares outstanding which were eligible to vote as of the record date for the meeting.

2. No information need be given in response to Item 6(i) unless, with respect to any class of voting stock (or group of classes which voted together), 5 per cent or more of the total shares cast for and withheld from the vote for or, where applicable, cast against

any nominee were withheld from the vote for or cast against such nominee.

3. If a bank elects less than the entire board of directors annually, disclosure is required as to all directors if 5 per cent or more of the total shares cast for and withheld from, the vote for, or, where applicable, cast against any incumbent director were withheld from, or cast against the vote for such director at the meeting at which he was most recently elected.

4. No information need be given in response to Item 6(i) if the bank has previously furnished to its security holders a report of the results of the most recent meeting of security holders at which directors were elected which includes: (1) A description of each matter voted upon at the meeting and a statement of the percentage of the shares voting which were voted for and against each such matter, and (2) the information which would be called for by this Item 6(i). If a bank has previously furnished such results to its security holders, this fact should be set forth in the bank's cover letter accompanying the filing of preliminary proxy materials.

5. 12 CFR 11.53 is revised to read as follows:

§ 11.53 Solicitation/recommendation statement to be filed under Section 14(d)(4) of the Securities Exchange Act of 1934 (Form F–12).

Comptroller of the Currency Form,
Washington, D.C. 20219
Form F–12

Solicitation/Recommendation Statement Pursuant to Section 14(d)(4) of the Securities Exchange Act of 1934

(Amendment No. ——)
(Name of Subject Bank)——————
(Name of Person(s) Filing Statement)————
(Title of Class of Securities) ——————
(CUSIP Number of Class of Securities)
(Name, address and telephone number of person authorized to receive notice and communications on behalf of the person(s) filing statement.)

Instructions: Six copies of this statement, including all exhibits, should be filed with the Comptroller.

General Instructions: A. The items numbers and captions of the items shall be included but the text of the items is to be omitted. The answers to the items shall be so prepared as to indicate clearly the coverage of the items without referring to the text of the items. Answer every item. If an item is inapplicable or the answer is in the negative so state.

B. Information contained in exhibits to the statement may be incorporated by reference in answer or partial answer to any item or sub-item of the statement unless it would render such answer misleading, incomplete, unclear or confusing. Material incorporated by reference shall be clearly identified in the reference by page, paragraph, caption or otherwise. An express statement that the specified matter is incorporated by reference shall be made at the particular place in the statement where the information is required. A copy of any information or a copy of the pertinent pages of a document containing such information which is incorporated by reference shall be submitted with this statement as an exhibit and shall be deemed to be filed with the Comptroller for all purposes of the Act.

Item 1. Security and Subject Company

State the title of the class of equity securities to which this statement relates and the name and address of the principal executive offices of the subject bank.

Item 2. Tender Offer of the Bidder

Identify the tender offer to which this statement relates, the name of the bidder and the address of its principal executive offices or, if the bidder is a natural person, the bidder's residence or business address (which may be based on the bidder's Form F–13 (12 CFR 11.54) filed with the Comptroller).

Item 3. Identity and Background

(a) State the name and business address of the person filing this statement.

(b) If material, describe any contract, agreement, arrangement or understanding and any actual or potential conflict of interest between the person filing this statement or its affiliates and: (1) The subject bank, its executive officers, directors or affiliates; or (2) the bidder, its executive officers, directors or affiliates.

Instruction: If the person filing this statement is the subject bank and if the materiality requirement of Item 3(b) is applicable to any contract, agreement, arrangement or understanding between the subject bank or any affiliate of the subject bank and any executive officer or director of the subject bank, it shall not be necessary to include a description thereof in this statement, or in any solicitation or recommendation published, sent or given to security holders if such information, or information which does not differ materially from such information, has been disclosed in any proxy statement, report or other communication sent within one year of the filing date of this statement by the subject bank to the then holders of the securities and has been filed with the Comptroller: *Provided*, That this statement and the solicitation or recommendation published, sent or given to security holders shall contain specific reference to such proxy statement, report or other communication and that a copy of the pertinent portion(s) thereof is filed as an exhibit to this statement.

Item 4. The Solicitation or Recommendation

(a) State the nature of the solicitation or the recommendation. If this statement relates to a recommendation, state whether the person filing this statement is advising security holders of the securities being sought by the bidder to accept or reject the tender offer or to take other action with respect to the tender offer and, if so, furnish a description of such other action being recommended. If the person filing this statement is the subject bank and a recommendation is not being made, state whether the subject bank is either expressing no opinion and is remaining neutral toward the tender offer or is unable to take a position with respect to the tender offer.

(b) State the reason(s) for the position (including the inability to take a position) stated in (a) of this Item.

Instruction: Conclusory statements such as "The tender offer is in the best interest of shareholders," will not be considered sufficient disclosure in response to Item 4(b).

Item 5. Persons Retained, Employed or To Be Compensated

Identify any person or class of persons employed, retained or to be compensated by the person filing this statement or by any person on its behalf, to make solicitations or recommendations to security holders and describe briefly the terms of such employment, retainer or arrangement for compensation.

Item 6. Recent Transactions and Intent With Respect to Securities

(a) Describe any transaction in the securities referred to in Item 1 which was affected during the past 60 days by the person(s) named in response to Item 3(a) and by any executive officer, director, affiliate or subsidiary of such person(s).

(b) To the extent known by the person filing this statement, state whether the persons referred to in Item 6(a) presently intend to tender to the bidder, sell or hold securities of the class of securities being sought by the bidder which are held of record or beneficially owned by such persons.

Item 7. Certain Negotiations and Transactions by the Subject Bank

(a) If the person filing this statement is the subject bank, state whether or not any negotiation is being undertaken or is underway by the subject bank in response to the tender offer which relates to or would result in:

(1) An extraordinary transaction such as a merger or reorganization, involving the subject bank, or any subsidiary of the subject bank;

(2) A purchase, sale or transfer of a material amount of assets by the subject bank or any subsidiary of the subject bank;

(3) A tender offer for or other acquisition of securities by or of the subject bank; or

(4) Any material change in the present capitalization or dividend policy of the subject bank.

Instruction. If no agreement in principle has yet been reached, the possible terms of any transaction or the parties thereto need not be disclosed if in the opinion of the Board of Directors of the subject bank such disclosure would jeopardize continuation of such negotiations. In such event, disclosure that negotiations are being undertaken or are underway and are in the preliminary stages will be sufficient.

(b) Describe any transaction, board resolution, agreement in principle, or a signed contract in response to the tender offer, other than one described pursuant to Item 3(b) of this statement, which relates to or would result in one or more of the matters referred to in Item 7(a) (1), (2), (3) or (4).

Item 8. Additional Information To Be Furnished

Furnish such additional information, if any, as may be necessary to make the required

statements, in light of the circumstances under which they are made, not materially misleading.

Item 8. Material to be Filed as Exhibits

Furnish a copy of:

(a) Any written solicitation or recommendation which is published or sent or given to security holders in connection with the solicitation or recommendation referred to in Item 4.

(b) If any oral solicitation or recommendation to security holders is to be made by or on behalf of the person filing this statement, any written instruction, or other material which is furnished to the persons making the actual oral solicitation or recommendation for their use, directly or indirectly, in connection with the solicitation or recommendation.

(c) Any contract, agreement, arrangement or understanding described in Item 3(b) or the pertinent portion(s) of any proxy statement, report or other communication referred to in Item 3(b).

Signature. After reasonable inquiry and to the best of my knowledge and belief, I certify that the information set forth in this statement is true, complete and correct.

(Date) _____

(Signature) _____

(Name and Title) _____

Instruction. The original statement shall be signed by each person on whose behalf the statement is filed or his authorized representative. If the statement is signed on behalf of a person by his authorized representative (other than an executive officer of a corporation or bank or a general partner of a partnership), evidence of the representative's authority to sign on behalf of such person shall be filed with the statement. The name and any title of each person who signs the statement shall be typed or printed beneath his signature.

7. 12 CFR 11.54 is amended, under the heading "GENERAL INSTRUCTIONS", by revising paragraphs B and C, and under Item 6, by revising Instruction 2, as follows:

§ 11.54 Tender Offer Statement filed pursuant to section 14(d)(1) of the Securities Exchange Act of 1934, (Form F-13).

* * * * *

General Instructions

* * * * *

B. Information in exhibits to the statement may be incorporated by reference in answer or partial answer to any item or sub-item of the statement unless it would render such answer misleading, incomplete, unclear or confusing. Material incorporated by reference shall be clearly indentified in the reference by page, paragraph, caption or otherwise. An express statement that the specified matter is incorporated by reference shall be made at the particular place in the statement where the information is required. A copy of any information or a copy of the pertinent pages of a document containing such information which is incorporated by reference shall be submitted with this statement as an exhibit and shall be deemed to be filed with the Comptroller for all purposes of the Act.

C. If the statement is filed by a partnership, limited partnership, syndicate or other group, the information called for by Item 2-7, inclusive, shall be given with respect to: (i) each partner of such partnership; (ii) each partner who is denominated as a general partner or who functions as a general partner of such limited partnership; (iii) each member of such syndicate or group; and (iv) each person controlling such partner or member. If the statement is filed by a bank or corporation, or if a person referred to in (i), (ii), (iii) or (iv) of this Instruction is a bank or corporation, the information called for by the above mentioned items shall be given with respect to: (a) Each executive officer and director of such bank or corporation; (b) each person controlling such bank or corporation; and (c) each executive officer and director of any bank or corporation ultimately in control of such bank or corporation. A response to an item in the statement is required with respect to the bidder and to all other persons referred to in this instruction unless such item specifies to the contrary.

* * * * *

Item 6. Interest in Securities of the Subject Bank

* * * * *

Instructions

* * * * *

2. If the information required by Item 6(b) of this Form is available to the bidder at the time this statement is initially filed with the Comptroller pursuant to paragraph (l)(7)(i) (12 CFR 11.5 (l)(7)(i)), such information should be included in such initial filing. However, if such information is not available to the bidder at the time of such initial filing, it shall be filed with the Comptroller promptly but in no event later than two business days after the date of such filing and, if material, shall be disclosed in a manner reasonably designed to inform security holders. The procedure specified by this instruction is provided for the purpose of maintaining the confidentiality of the tender offer in order to avoid possible misuse of inside information.

* * * * *

§ 11.5 [Amended]

8. 12 CFR 11.5 is amended also in certain technical respects as follows:

(a) In § 11.5(a), by removing "the management of" from the second sentence thereof.

(b) In § 11.5(b)(1), by removing "the management of."

(c) In § 11.5(c)(1), by removing "of the management" where it first appears; by removing the word "management" where it appears thereafter in the first sentence and inserting the word "bank."

(d) In § 11.5(c)(6), by removing the word "Management's" and inserting "Bank's" in the first sentence; by removing "In the discretion of management" and inserting "In its discretion," in the second sentence.

(e) In § 11.5(c)(9)(ii), by removing the word "management" and inserting the word "bank's" in its place.

(f) In § 11.5(g)(1)(i), by removing "management" and inserting "bank" in its place.

(g) In § (g)(1)(ii), by removing "the management of".

(h) In § 11.5(g)(2)(ii), by removing the word "management" wherever it appears and inserting the word "bank" in its place.

(i) In § 11.5(g)(3), by removing "the management of" in the last sentence.

§ 11.51 [Amended]

9. 12 CFR 11.51 is amended also in certain technical respects as follows:

(a) In § 11.51 Item 3(a)(1), by removing the words "the management of," and "management" where they appear and inserting "the bank" in their place.

(b) In § 11.51 Item 4(a)(1), by removing the word "management" and inserting the words "the bank" in its place.

(c) In § 11.51 Item 4(a)(2), by removing the word "management" and inserting the words "the bank" in its place.

(d) In § 11.51 Item 6, by removing the word "management" in the introductory paragraph and inserting the words "the bank" in its place.

(e) In § 11.51 Item 6(e), by removing the words "with affiliates and others" from the heading. The new paragraph heading would read as follows:

(f) *Relationships.* * * *

(g) In § 11.51 Item 7, by removing the word "management" that appears in the last sentence of the introductory paragraph and inserting the word "bank" in its place.

The Comptroller of the Currency hereby amends 12 CFR Part 11 pursuant to Sections 3(b), 10(b), 13(d), 14(d), 14(e), 16, and 23(a) of the Exchange Act.

Dated: January 14, 1981.

John G. Heimann,

Comptroller of the Currency.

[FR Doc. 81-2338 Filed 1-19-81; 11:20 am]

BILLING CODE 4810-33-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 270

[Release No. IC-11551]

Certain Prima Facie Investment Companies

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Commission is adopting a "safe harbor" rule which deems

certain companies having more than 40 percent of their assets invested in investment securities not to be investment companies. The rule reflects previous Commission orders declaring such companies not to be investment companies or to be exempt from the Act. Adoption of the rule obviates the need for issuers to apply for, and the Commission to grant, such orders on a case-by-case basis.

EFFECTIVE DATE: January 22, 1981.

FOR FURTHER INFORMATION CONTACT: Arthur J. Brown, Special Counsel, (202) 272-2048, or Mark J. Mackey, Esq., (202) 272-3041, Investment Company Act Study Group, Division of Investment Management, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: The Commission today adopted rule 3a-1 [17 CFR 270.3a-1] under the Investment Company Act of 1940 [15 U.S.C. 80a-1 et seq.] ("Act") which deems certain companies meeting the statutory definition of the term "investment company" in section 3(a)(3) of the Act [15 U.S.C. 80a-3(a)(3)] not to be investment companies. The reasons for the Commission's proposing the rule were discussed thoroughly in Investment Company Act Release No. 10937 (Nov. 13, 1979), 44 FR 66906 ("Release No. 10937"). Persons interested in a more detailed discussion of the rule should refer to that release.

In response to its request for comments regarding the proposed rule, the Commission received letters from three commentators. Two of the commentators favored adoption of the rule, although one of these two commentators recommended certain modifications to the rule. The third commentator appeared to oppose the rule's adoption. Upon considering these recommendations, the Commission has determined to adopt the rule substantially as proposed.

One commentator believed that rule 3a-1 does not clearly state over what period of time an issuer's net income after taxes is to be measured.[1] The Commission notes that the release proposing rule 3a-1 refers to "present" income. Nevertheless, upon reconsidering this matter, the Commission believes it would be appropriate to define in more specific terms the period of time over which the issuer's net income after taxes is to be measured. Accordingly, the Commission has modified the proposed rule to require that the rule's income test be met for the last four fiscal quarters combined.

The commentator also believes that the treatment of income from certificates of deposit under rule 3a-1 is "ambiguous." In the release proposing rule 3a-1, the Commission noted that whether certificates of deposit are to be considered cash items or investment securities for purposes of determining whether an issuer holding them is an investment company under section 3(a)(3) depends, generally, on all the facts and circumstances.[2] The Commission also noted that, for purposes of determining compliance with the proposed rule, certificates of deposit typically should not be considered cash items absent convincing evidence of no investment intent.[3] The commentator objected to this approach apparently because of its lack of certainty. However, since for purposes of section 3(a)(3) a certificate of deposit is often an investment security rather than a cash item, it would be inappropriate categorically to treat income from all certificates of deposit as income solely from a cash item or solely from investment securities. Accordingly, the Commission has decided to retain this aspect of the rule as proposed.[4]

The same commentator, noting that an issuer relying on the rule would be required to make certain determinations, recommended that it be made clear that the Commission, its staff, or an interested third party could challenge the accuracy of such determinations in an appropriate proceeding.[5] The Commission emphasizes that the adoption of rule 3a-1 does not preclude such a challenge.

This commentator also noted that in some cases the nature of an issuer's business would be more accurately reflected by requiring the issuer to consolidate its financial statements with those of its majority-owned subsidiaries.[6] The Commission generally agrees.[7] However, proposed rule 3a-1 would not exclude an issuer from the definition of the term "investment company" set forth in section 3(a)(1) of the Act [15 U.S.C. 80a-3(a)(1)].[8] Therefore, the Commission does not believe that it is necessary or appropriate to modify the proposed rule to require an issuer to consolidate its financial statements with those of any majority-owned subsidiaries.[9] However,

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[1] Under proposed rule 3a-1, an issuer will be deemed not to be an investment company for purposes of section 3(a)(3) of the Act provided, *inter alia*, that no more than 45 percent of such issuer's net income after taxes is derived from certain securities.

[2] Release No. 10937, n. 4.

[3] Release No. 10937, n. 29.

[4] Of course, an issuer which is unsure whether it meets the rule's income test can submit, in a no-action request or an application for an order, the issue of how such income should be treated.

[5] The commentator noted as an example of such determinations that certain assets must be valued—for purposes of determining whether an issuer meets the rule's requirement that no more than 45% of the value of an issuers total assets consist of certain securities—at their fair value as determined in good faith by the board of directors of the issuer.

[6] Under the proposed rule, the issuer would only consolidate its financial statements with any wholly-owned subsidiaries. The Commission noted in its release proposing rule 3a-1 that section 3(a)(3) of the Act requires unconsolidated financial statements presumably because consolidation of an issuer with a subsidiary which is majority-owned, but not wholly-owned, would distort the relative value of the issuer's investment securities to its other assets. This distortion would occur since consolidation requires all the subsidiary's assets to be included on the issuer's balance sheet. See Release No. 10937 at n. 5.

[7] Indeed, in proposing rule 3a-1 the Commission noted that an issuer which transferred assets to an affiliated person primarily for the purpose of avoiding the Act would not be able to rely on the proposed rule. See Release No. 10937 at n. 22. Of course, this is not completely dispositive of the issue raised by the commentator since an issuer may have transferred assets to a majority-owned subsidiary primarily for bona fide business reasons.

[8] As proposed, the rule would deem certain companies not to be investment companies "[n]otwithstanding section 3(a)(3) of the Act." Moreover, the Commission stated in its release that the proposed rule would except "companies which are investment companies solely by virtue of the definition stated in section 3(a)(3) of the Act, only for that period during which they comply with the rule's standards. Companies meeting the statutory definition of the term 'investment company' set forth in sections 3(a)(1) and 3(a)(2) of the Act * * * would not be excluded from the Act's definition of investment company by the rule." See Release No. 10937 at text following n. 28.

[9] In its release proposing rule 3a-1, the Commission stated that: Since determining a company's primary engagement involves considering many factors, no specific guidelines can be established for concluding *in all conceivable circumstances* whether a company is an investment company. *As a general rule*, however, if a company has no more than 45 percent of its assets in—and derives no more than 45 percent of its income from—investment securities, it is primarily engaged in a business other than being an investment company. (Emphasis added.)

Release No. 10937 at text following n. 26.

Thus, a company could meet the requirements of the rule and yet nevertheless be primarily engaged in the business of investing, reinvesting or trading in securities. In addition to the situation described by the commentator, the Commission notes that an issuer which otherwise would have 45 percent of its assets consisting of investment securities could cause itself to become highly leveraged—for example, by purchasing real estate which was substantially covered by a mortgage—thus decreasing the percentage of the issuer's assets which are investment securities to below 45 percent of its total assets. However, as the Commission noted in the release proposing this rule, if the transaction was effected merely to avoid the Act, the issuer might be deemed an investment company as defined in section 3(a)(1) of the Act. Release No. 10937 at n. 5. Similarly, an issuer could invest exclusively in government securities thereby owning no investment securities, and yet still be an investment company as defined in section 3(a)(1) of the Act.

In this connection, the Commission notes that rule 3a-1 adopts the statistical approach employed by

to avoid any potential confusion which might arise concerning the nature and scope of the exclusion provided by the rule, the Commission has determined to state more clearly in the text of the rule that rule 3a–1 only excludes an issuer from the definition of the term "investment company" set forth in section 3(a)(3) of the Act.

Another commentator expressed concern that the proposed rule would prevent an issuer not meeting the rule's requirements from relying on section 3(b)(1) [15 U.S.C. 80a–3(b)(1)].[10] The commission emphasizes that an issuer not meeting the requirements of rule 3a–1 could nevertheless rely on section 3(b)(1) of the Act provided the standards of that section were independently met by the issuer.

Finally, upon its own reconsideration of the proposed rule, the Commission has decided upon two modifications. The first modification relates to the treatment of capital gains under the proposed rule. In the release proposing rule 3a–1, it was noted that whether capital gains should be considered investment income for purposes of the proposed rule depends upon whether the issuer relies upon such gains as a regular source of income.[11] Upon reconsidering this matter, the Commission believes that, on balance, an issuer should not be automatically exempted by rulemaking when its capital gain income, either alone or in conjunction with its other investment income, constitutes more that 45 percent of its total income. Therefore, we have decided that, for purposes of the rule, capital gains should be treated as investment income except in those cases where the gain is derived from the sale of a security described in rule 3a–1(a)(1)–(4).

The second modification related to the treatment under the rule of securities of majority-owned subsidiaries which are not investment companies solely by reason of the exclusion from the definition of the term "investment company" set forth in section 3(c)(1) of the Act [15 U.S.C. 80a–3(c)(1)].[12] As proposed, the rule did not treat such securities as investment securities. However, we concerned that an issuer might attempt to avoid the Act by transferring to such a subsidiary enough of its security holdings to reduce the percentage of its assets which are investment securities to below 45 percent of its total assets. Of course, such an issuer might be deemed to be an investment company under section 3(a)(1) of the Act.[13] Nevertheless, the Commission has decided to treat securities of these majority-owned subsidiaries as investment securities for purposes of the rule.

Final Rulemaking

Accordingly, rule 3a–1 excludes certain issuers from the definition of the term "investment company" set forth in section 3(a)(3) of the Act. An issuer which meets the definition of the term "investment company" set forth in section 3(a)(3) but which also meets the requirements of rule 3a–1 therefore will not be required to file an application for an order under section 3(b)(2) [15 U.S.C. 80a–3(b)(2)] declaring that the issuer is primarily engaged in a business other than that of investing, reinvesting, owning, holding or trading in securities. Of course, an issure which does not wish to (or cannot) rely on rule 3a–1, but which nevertheless meets the definition of investment company set forth in section 3(a)(3), may still file an application with the Commission for an order under section 3(b)(2), section 6(c) [15 U.S.C. 80a–6(c)], or both.

The relief provided by rule 3a–1 is conditioned, generally, on the company's having no more than 45 percent of the value (as defined in section 2(a)(41)(A) of the Act [15 U.S.C. 80a–2(a)(41)(A)]) of its total assets (exclusive of Government securities and cash items) consisting of, and receiving no more than 45 percent of its net income after taxes (for the last four fiscal quarters combined) from, securities other than: (1) Government securities; (2) securities issued by employees' securities companies; (3) securities issued by certain majority-owned subsidiaries of the issuer which are not investment companies; and (4) securities issued by certain controlled companies through which an issuer engages in a non-investment company business. These asset and income percentages are to be determined on an unconsolidated basis, except that the issuer shall consolidate its financial statements with any wholly-owned subsidiaries.

Authority, Effective Date

The Commission adopts rule 3a–1 pursuant to the provisions of section 6(c) and 38(a) [15 U.S.C. 80a–37(a)] of the Act. Because the rule excludes certain issuers from the Act, it is effective immediately.[14]

Text of Final Rulemaking

Part 270 of Chapter II of Title 17 of the Code of Federal Regulations is amended by adding § 270.3a–1 as follows:

PART 270—RULES AND REGULATIONS, INVESTMENT COMPANY ACT OF 1940

§ 270.3a–1 Certain prima facie investment companies.

Notwithstanding section 3(a)(3) of the Act, an issuer will be deemed not to be an investment company under the Act; *Provided*, That:

(a) No more than 45 percent of the value (as defined in section 2(a)(41) of the Act) of such issuer's total assets (exclusive of Government securities and cash items) consists of, and no more than 45 percent of such issuer's net income after taxes (for the last four fiscal quarters combined) is derived from, securites other than:

(1) Government securities;

(2) Securities issued by employees' securities companies;

(3) Securities issued by majority-owned subsidiaries of the issuer (other than subsidiaries relying on the exclusion from the definition of investment company in section 3(b)(3) or section 3(c)(1) of the Act) which are not investment companies; and

(4) Securities issued by companies:

(i) Which are controlled primarily by such issuer;

(ii) Through which such issuer engages in a business other than that of

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section 3(a)(3). However, several differences exist between that section and section 3(a)(1) of the Act. For example, section 3(a)(1) applies to companies which invest in any type of security, while section 3(a)(3) applies only to companies investing in "investment securities." Moreover, section 3(a)(3) requires unconsolidated financial statements and looks only to the assets of an issuer while section 3(a)(1) contains no such limitations.

[10] Section 3(b)(1) of the Act excludes from the definition of the term "investment company": any issuer primarily engaged, directly or through a wholly owned subsidiary or subsidiaries, in a business or businesses other than that of investing, reinvesting, owning, holding or trading in securities.

[11] We note that one commentator believes this standard to be "ambiguous."

[12] Section 3(c)(1) of the Act Provides, in part: Notwithstanding subsection (a) [of section 3] none of the following persons is an investment company within the meaning of this [Act]:

(1) Any issuer whose outstanding securities (other than short-term paper) are beneficially owned by but not than one hundred persons and which is not making and does not presently propose to make a public offering of its securities. For purposes of this paragraph:

(A) Beneficial ownership by a company shall be deemed to be beneficial ownership by one person, except that, if the company owns 10 per centum or more of the outstanding voting securities of the issuer, the beneficial ownership shall be deemed to be that of the holders of such company's outstanding securities (other than short-term paper) unless, as of the date of the most recent acquisition by such company of securities of that issuer, the value of all securities owned by such company of all issuers which are or would, but for the exception set forth in this subparagraph, be excluded from the definition of investment company solely by this paragraph, does not exceed 10 percentum of the value of the company's total assets" * * *.

[13] See text accompanying n. 9, supra.

[14] 5 U.S.C. 553(d)(1).

investing, reinvesting, owning, holding or trading in securities; and

(iii) Which are not investment companies;

(b) The issuer is not an investment company as defined in section 3(a)(1) or section 3(a)(2) of the Act and is not a special situation investment company; and

(c) The percentages described in paragraph (a) of this section are determined on an unconsolidated basis, except that the issuer shall consolidate its financial statements with the financial statements of any wholly-owned subsidiaries.

By the Commission.

George A. Fitzsimmons,

Secretary.

January 14, 1981.

[FR Doc. 81-2286 Filed 1-21-81; 8:45 am]

BILLING CODE 8010-01-M

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17 CFR Part 270

[Release No. IC-11552]

Transient Investment Companies

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Commission is adopting a rule which, subject to certain conditions, deems certain issuers not to be investment companies for purposes of the Investment Company Act of 1940 for a period not to exceed one year. The rule, which reflects previous no-action assurances in this area, excludes certain issuers—which otherwise would be considered investment companies because of unusual corporate occurrences—from complying with the Act.

EFFECTIVE DATE: January 22, 1981.

FOR FURTHER INFORMATION CONTACT: Artuhur J. Brown, Special Counsel, (202) 272-2048 or Mark J. Mackey, Esq., (202) 272-3041, Investment Company Act Study Group, Division of Investment Management, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: The Commission today adopted rule 3a-2 [17 CFR 270.3a-2] under the Investment Company Act of 1940 [15 U.S.C. 80a-1 et seq.] ("Act") to deem certain issuers, which otherwise would be transient investment companies, not to be investment companies for purposes of the Act. The reasons for the Commission's proposing rule 3a-2 were discussed thoroughly in Investment Company Act Release No. 10943 (Nov. 16, 1979), 44 FR 67152 ("Release No. 10943"). Persons interested in a more detailed discussion of the rule should refer to that release.

In response to its request for comments regarding the proposed rule, the Commission received five letters of comment. The commentators, with one apparent exception, favored the rule, although several commentators recommended modifications thereto. Upon considering these letters, the Commission has determined to adopt the rule with minor modifications.

Two commentators, noting that the rule requires certain action by the board of the directors of an issuer wishing to rely on the rule—and thus is implicitly available only to corporations—suggested that the rule be expanded to be made available to issuers other than those having a board of directors, such as partnerships and trusts.[1] The Commission notes that the term "director" is defined in the Act to mean, in part, "any director of a corporation or any person performing similar functions with respect to any organization, whether incorporated or unincorporated." Nevertheless, to avoid any potential confusion on this matter the Commission has decided to modify the language of the rule in a manner which will indicate more clearly that the rule is available to issuers (other than corporations) which have a governing body similar in nature to a board of directors.

One commentator questioned whether the requirement set forth in proposed rule 3a-2(a) that the issuer have a "bona fide intent to be engaged primarily by the termination of such [one year] period of time in a business other than that of investing, reinvesting, owning, holding or trading in securities" would be satisfied if an issuer intended to meet the requirements of rule 3a-1(a) [17 CFR 270.3a-1(a)] within a year after it began relying on rule 3a-2.[2] The Commission notes that rule 3a-1 excludes an issuer only from the definition of the term "investment company" set forth in section 3(a)(3) and does not constitute a determination by the Commission that a company meeting the rule's asset and income test is engaged primarily in a business other than that of investing, reinvesting, owning, holding or trading in securities. Therefore, an issuer's intent to meet the requirements of rule 3a-1(a) would not necessarily satisfy the requirements of proposed rule 3a-2(a), that is, would not necessarily constitute an intent on its part to be engaged primarily in a businesses other than that of being an investment company.[3]

One commentator was concerned that the proposed rule would become the exclusive method by which a transient investment company could avoid registration under the Act. The Commission emphasizes that the rule creates a "safe harbor" for transient investment companies and is not intended to preclude a company from seeking either a no-action assurance from the Commission's staff [4] or a Commission order of exemption.

Another commentator, noting that an issuer relying on the rule would be required to make certain determinations, recommended that it be made clear that the Commission, its staff, or an interested third party could challenge the accuracy of such determinations in an appropriate proceeding. The Commission emphasizes that the adoption of rule 3a-2 does not preclude such a challenge.

One commentator was concerned that an issuer which failed to file the notice required by the rule would retroactively lose the exclusionary relief in its entirety notwithstanding that all other requirements of the rule had been met.[5] Upon reconsidering this aspect of the

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[1] Paragraph (a)(1) of the proposed rule requires an issuer desiring to rely on the rule to have a *bona fide* intent (as evidenced by an appropriate resolution of its board of directors which has been recorded contemporaneously in its minute books) to be engaged in a business other than that of investing, reinvesting, owning, holding or trading in securities.

[2] Rule 3a-1 deems issuers meeting the statutory definition of the term "investment company" in section 3(a)(3) [15 U.S.C. 80a-3(a)(3)] not to be such companies, provided certain conditions are met. Rule 3a-1(a) requires, generally, that no more than 45 percent of the value of an issuer's total assets (exclusive of government securities and cash items) consists of, and no more than 45 percent of an issuer's net income after taxes is received from, securities other than government securities, securities issued by employees' securities companies, and securities issued by certain majority-owned subsidiaries and certain controlled companies of the issuer. See Investment Company Act Release No. 11551 (Jan. 14, 1981).

[3] For example, a start up company might invest substantially all its offering proceeds in government securities. If the company intended to continue to hold most of those securities a year later, it might not have the intent to be engaged primarily in a business other than investing, reinvesting, owning, holding or trading in securities even though it meets the requirements of rule 3a-1(a). For a more detailed discussion of the nature and scope of rule 3a-1, see Investment Company Act Release No. 11551 (Jan. 14, 1981).

[4] As a general rule, however, the Commission's staff is reluctant to provide no-action assurances in this area. The staff has taken this position, in part, because the decision whether to issue such a no-action assurance depends to a significant degree upon the company's intent, which is not easy to determine via the no-action procedure.

[5] Paragraph (a)(2) of the proposed rule provided, generally, if at the expiration of the period during which an issuer may rely on the rule, it is not engaged primarily in a business other than that of investing, reinvesting, owning, holding or trading in securities, it would be required to so notify within 10 calendar days the Director of the Commission's Division of Investment Management.

rule, the Commission has decided to delete the rule's notice requirement. Although the notice would serve a useful function by providing the Commission with the names of those companies which relied on the rule and were unable to become engaged primarily in a non-investment company business within the one year period provided by the rule, the Commission believes that, on balance, it would not be the most efficient allocation of its resources to have its staff review each such notice to determine whether the company is an unregistered investment company. Nevertheless, the Commission stresses that a company's inability to become engaged primarily in a non-investment company business within the rule's one year period would raise serious questions concerning the applicability of the Act to that company. The Commission expects that each such company will address these questions in the context of its own circumstances.

Another commentator recommended that the rule be amended to provide for the commencement of the one year period at the later of the time described in the proposal or at such time as an application, filed in good faith for an order pursuant to section 3(b)(2) [15 U.S.C. 80a-3(b)(2)], has been denied by the Commission or withdrawn by the applicant.[6] However, the Commission believes that the one year period should be measured from the time an issuer has the characteristics which would cause it to be defined as an investment company. The Commission does not believe it would be appropraite to allow an issuer to litigate its status in what may be a lengthy hearing procedure and then, if the application is denied, operate for an additional year without complying with the Act's disclosure and regulatory provisions. Accordingly, the Commission has decided to retain this aspect of the rule.

Finally, the Commission has modified the proposed rule to make it clearer that an issuer relying on the rule must intend to be engaged primarily in a non-investment company activity as soon as is reasonably possible,[7] in any event by the termination of the one year period an issuer may rely on the rule, and that the determination of whether an issuer has this intent will be based on all the facts and circumstances.[8]

Final Rulemaking

Rule 3a-2 deems an issuer not to be engaged in the business of investing, reinvesting, owning, holding or trading in securities for purposes of section 3(a)(1) [15 U.S.C. 80a-3(a)(1)] or 3(a)(3) of the Act [9] during a period of time not to exceed one year [10] provided, generally, that the issuer has a *bona fide* intent to be engaged primarily, as soon as is reasonably possible (in any event by the termination of such one year period of time), in a business other than that of investing, reinvesting, owning, holding or trading in securities, such intent to be evidenced by: (1) the company's business activities; and (2) an appropriate resolution of the issuer's board of directors, or by an appropriate action of the person or persons of similar status performing similar functions for any issuer not having a board of directors, which resolution or action has been recorded contemporaneously in the minute books or comparable documents. Finally, the rule provides that it may not be relied on by an issuer more frequently than once during any three-year period.

Authority, Effective Date

The Commission adopts rule 3a-2 pursuant to the provisions of sections 6(c) [15 U.S.C. 80a-6(c)] and 38(a) [15 U.S.C. 80a-37(a)] of the Act. Because the rule excludes certain issuers from the Act it is effective immediately.[11]

Text of Rule

Part 270 of Chapter II of Title 17 of the Code of Federal Regulations is amended by adding § 270.3a-2 to read as follows:

PART 270—RULES AND REGULATIONS, INVESTMENT COMPANY ACT OF 1940

§ 270.3a-2 Transient investment companies.

(a) For purposes of section 3(a)(1) and section 3(a)(3) of the Act, an issuer is deemed not to be engaged in the business of investing, reinvesting, owning, holding or trading in securities during a period of time not to exceed one year; *Provided*, That the issuer has a *bona fide* intent to be engaged primarily, as soon as is reasonably possible (in any event by the termination of such period of time), in a business other than that of investing, reinvesting, owning, holding or trading in securities, such intent to be evidenced by:

(1) The issuer's business activities; and

(2) An appropriate resolution of the issuer's board of directors, or by an appropriate action of the person or persons performing similar functions for any issuer not having a board of directors, which resolution or action has been recorded contemporaneously in its minute books or comparable documents.

(b) For purposes of this rule, the period of time described in paragraph (a) shall commence on the earlier of:

(1) The date on which an issuer owns securities and/or cash having a value exceeding 50 percent of the value of such issuer's total assets on either a consolidated or unconsolidated basis; or

(2) The date on which an issuer owns or proposes to acquire investment securities (as defined in section 3(a) of the Act) having a value exceeding 40 per centum of the value of such issuer's total assets (exclusive of Government securities and cash items) on an unconsolidated basis.

(c) No issuer may rely on this section more frequently than once during any three-year period.

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noted that real estate syndications and other tax shelters usually remain transient investment companies longer than other "start-up" companies because of the substantial amount of time needed to analyze, organize and purchase interests in a specific tax shelter. See Release No. 10863 at n. 8.

[6] Thus, for example, an issuer would not be deemed to have the requisite intent if, during the time it relied on the rule, the issuer actively invested and reinvested in securities and held itself out as being in the business of investing, reinvesting, and trading in securities, even if its directors passed a resolution satisfying the requirements of paragraph (a) of the rule.

[7] It should be noted that—regardless of the business in which an issuer actually is engaged primarily—an issuer which holds itself out as being engaged primarily in the business of investing, reinvesting or trading in securities would be an investment company under section 3(a)(1) of the Act. This rule, of course, would not affect such an issuer's status under the Act.

[8] Paragraph (b) of proposed rule 3a-2 provides that the one year period shall commence at the earlier of two dates. One date would be the date in which an issuer owns securities and/or cash having a value exceeding 50 percent of the value of such issuer's total assets. The alternative date would be the date on which an issuer owns or proposes to acquire certain investment securities representing greater than 40 percent of the issuer's total assets.

[9] Of course, the determination of what is "reasonably possible" will depend on all the facts and circumstances of each particular case, including the nature of the business in which the issuer intends to become primarily engaged. For example, in its release proposing rule 3a-2 the Commission

[10] The maximum one-year period of time for which the rule is available to an issuer is calculated from the earlier of two dates. One date is the date in which an issuer—such as a "start-up" enterprise which temporarily is engaged primarily in investment activities—owns securities and/or cash having a value exceeding 50 percent of the value of such issuer's total assets. The alternative date would be the date on which an issuer—such as a company having sold substantial operating assets, which intends temporarily to invest the proceeds pending the acquisition of new operating assets—owns or proposes to acquire certain investment securities representing greater than 40 percent of the issuer's total assets.

[11] 5 U.S.C. 553(d)(1).

By the Commission.
George A. Fitzsimmons,
Secretary.
January 14, 1981.
[FR Doc. 81-[illegible] Filed 1-21-81; 8:45 am]
BILLING CODE 8010-01-M

17 CFR Part 270

[Release No. IC-11[illegible]]

Certain Investment Companies Owned by Companies Which Are Not Investment Companies

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Commission is adopting a "safe harbor" rule under the Investment Company Act of 1940 to deem certain issuers having corporate parents as not being investment companies for purposes of the Act. The rule, which reflects previous orders of exemption and no-action assurances in this area, obviates the necessity for such issuers to seek, and the Commission to consider, such actions on a case by case basis.

EFFECTIVE DATE: January 22, 1981.

FOR FURTHER INFORMATION CONTACT:
Authur J. Brown, Special Counsel, (202) 272-2048
or
Mark J. Mackey, Esq., Investment Company Act Study Group, Division of Investment Management, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549 (202) 272-3041.

SUPPLEMENTARY INFORMATION: The Commission today adopted rule 3a-3 [17 CFR 270.3a-3] under the Investment Company Act of 1940 [15 U.S.C. 80a-1 et seq.] ("Act") to deem certain subsidiaries not be investment companies for purposes of the Act. The reasons for the Commission's proposing rule 3a-3 were discussed thoroughly in Investment Company Act Release No. 10944 (Nov. 16, 1979), 44 FR 67150 ("Release No. 10944"). Persons interested in a more detailed discussion of the rule should refer to that release.

In response to its request for comments regarding the proposed rule, the Commission received three letters of comment. Two commentators favored the Commission's adopting the rule, although one of the two commentators recommended certain modifications to the rule. One commentator appeared to oppose the rule's adoption. Upon considering these letters, the Commission has determined to adopt the rule as proposed.[1]

One commentator believe that the rule's condition that the parent company and its wholly-owned subsidiary have no more than 45 percent of their consolidated assets invested in, and receive no more than 45 percent of their consolidated net income after taxes from, certain investment securities is unnecessary to prevent circumvention of the Act since, under section 3(a)(1) of the Act [15 U.S.C. 80a-3(a)(1)], the parent and subsidiary company relationship could be collapsed and the totality of the corporate arrangements be deemed to be an investment company. The commentator suggested instead that the rule merely provide that the parent company must not be engaged "directly or indirectly through a wholly-owned subsidiary or subsidiaries" in the business of being an investment company. However, when the rule's asset and income test are not met the Commission believes that, on balance, the potential need for its review is increased to the point where it would be inappropriate by rulemaking to exclude automatically such an issuer from compliance with the Act. Accordingly, we have decided to retain this aspect of the rule as proposed.

Another commentator, noting that an issuer relying on the rule would be required to make certain determinations, recommended that it be made clear that the Commission, its staff, or an interested third party could challenge the accuracy of such determinations in an appropriate proceeding. The Commission emphasizes that the adoption of rule 3a-3 does not preclude such a challenge.

Final Rulemaking

Rule 3a-3 deems certain corporate subsidiaries [2] not to be investment companies for purposes of section 3(a)(1) and 3(a)(3) [15 U.S.C. 80a-3(a)(3)] of the Act [3] provided, generally, that the parent and its subsidiary have no more than 45 percent of their consolidated assets invested in, and receive no more than 45 percent of their consolidated net income after taxes from, investment securities. For purposes of the rule, securities of certain controlled companies through which the parent company engages in a business other than that of being an investment company would not be considered "investment securities."[4]

Authority, Effective Date

The Commission adopts rule 3a-3 pursuant to section 6(c) [15 U.S.C. 80a-6(c)] and section 38(a) [15 U.S.C. 80a-37(a)] of the Act. Because the rule excludes certain issuers from the Act it is effective immediately.[5]

Text of Rule

Part 270 of Chapter II of Title 17 of the Code of Federal Regulations is amended by adding § 270.3a-3 to read as follows:

PART 270—RULES AND REGULATIONS, INVESTMENT COMPANY ACT OF 1940

§ 270.3a-3 Certain investment companies owned by companies which are not investment companies.

Notwithstanding section 3(a)(1) or section 3(a)(3) of the Act, an issuer will be deemed not to be an investment company for purposes of the Act; *Provided,* That all of the outstanding securities of the issuer (other than short-term paper, directors' qualifying shares, and debt securities owned by the Small Business Administration) are directly or indirectly owned by a company which satisfies the conditions of paragraph (a) of rule 3a-1 (17 CFR 270.3a-1) under the Act and which is:

(a) A company that is not an investment company as defined in section 3(a) of the Act;

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[1] However, the Commission has changed the language of the rule to refer to the "conditions"—rather than the "requirements"—of rule 3a-1 [17 CFR 270.3a-1].

[2] These subsidiaries are companies which may not rely on the statutory exclusion from the definition of the term "investment company" found in section 3(b)(3) [15 U.S.C. 80a-3(b)(3)] solely by reason of their (1) having outstanding debt securities owned by the Small Business Administration; (2) being an investment company as defined under section 3(a)(1) of the Act; or (3) having a parent company which is not excepted from the definition of the term "investment company" by virtue of section 3(b)(1) or section 3(b)(2) [15 U.S.C. 80a-3(b)(1) and 80a-3(b)(2)], because the parent company is not, prima facie, an investment company under section 3(a)(3) of the Act or because the parent company relied on rule 3a-1 in lieu of applying for an order under section 3(b)(2).

[3] Notwithstanding that the rule excludes certain subsidiaries from the definition of investment company, the Commission can collapse the parent and subsidiary relationship and deem the totality of the corporate arrangement to be an investment company as defined in section 3(a)(1) of the Act. Release No. 10944 at n. 11.

[4] This condition is incorporated into rule 3a-3 by reference to paragraph (a) of rule 3a-1 which requires, generally, that a company have no more than 45 percent of the value of its total assets (exclusive of Government securities and cash items) consisting of, and receive no more than 45 percent of its net income after taxes from, securities other than Government securities, securities issued by employees' securities companies, and securities issued by certain majority-owned subsidiaries and certain controlled companies of such issuer. Moreover, paragraph (c) or rule 3a-1 provides that in determining this percentage an issuer shall consolidate its financial statements with those of any wholly-owned subsidiaries.

[5] 5 U.S.C. 553(d)(1).

(b) A company that is an investment company as defined in section 3(a)(3) of the Act, but which is excluded from the definition of the term "investment company" by section 3(b)(1) or 3(b)(2) of the Act; or

(c) A company that is deemed not to be an investment company for purposes of the Act by rule 3a–1.

By the Commission.

George A. Fitzsimmons,
Secretary.

January 14, 1981.

[FR Doc. 81-2014 Filed 1-21-81; 8:45 am]
BILLING CODE 6310-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 260

[Docket No. RM80-56; Order No. 121]

Order Revising Form No. 2 Annual Report of Natural Gas Companies (Class A and Class B)

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule.

SUMMARY: The Federal Energy Regulatory Commission (Commission) hereby revises Form No. 2, "Annual Report of Natural Gas Companies (Class A and Class B)" (18 CFR 260.1). The revisions reduce the number of schedules and data elements contained in the form, establish or alter threshold reporting levels in certain schedules, and change reporting instructions in several schedules. These modifications reduce the data elements in Form No. 2 by approximately 20%. The changes to Form No. 2 reflect the results of an ongoing validation program to eliminate the reporting of data which is not necessary to the Commission's regulatory responsibilities and, thereby, to reduce the reporting burdens of jurisdictional companies which file that information with the Commission.

EFFECTIVE DATE: January 9, 1981.

FOR FURTHER INFORMATION CONTACT:
James Kitchen/Elaine M. Dawson, Office of Chief Accountant, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Room 3408–N/3406–N, Washington, D.C. 20426, (202) 357–9212/357–9190
Randolph E. Mathura/Donald Champagny, Office of Producer and Pipeline Regulation, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Room 3100–N/5300–E, Washington, D.C. 20426, (202) 357–9066/357–8606.

Issued: January 9, 1981.

I. Background

Form No. 2, "Annual Report for Natural Gas Companies (Class A and Class B)" is prescribed by the Federal Energy Regulatory Commission (Commission) pursuant to sections 10(a) and 16 of the Natural Gas Act (15 U.S.C. 717–717w).[1] The information collected in Form No. 2 primarily includes general corporate information; summary financial data; balance sheet supporting data; income statement supporting data; and gas plant, sales, operating and statistical data.

On July 1, 1980, the Commission issued a Notice of Proposed Rulemaking (Notice) to revise Form No. 2 (45 43075, July 9, 1980). The revisions were proposed as part of the commission's ongoing effort to eliminate the reporting of information which is not needed for decisional purposes in the Commission's regulatory process. By eliminating the filing of information which is not needed by the Commission, the reporting burden of companies which file Form No. 2 with the Commission is reduced.

In the Notice, the Commission proposed to: eliminate the requirement for Certified Public Accountant certification on 15 of the 19 schedules presently requiring such certification, establish or revise threshold reporting levels on 13 of the schedules, revise the reporting instructions on 17 of the schedules, delete data from 10 schedules, and delete 33 schedules in their entirety. This was estimated to be a 19 percent reduction in the Commission-imposed reporting burden related to the Form No. 2.

In addition, the Commission specifically requested responses to five questions, which will be discussed in the next section. Pursuant to a request, the Commission extended the Form No. 2 rulemaking comment period until October 14, 1980 (45 FR 63001, September 23, 1980).

II. Summary of Comments and Changes to Form No. 2

In response to the proposed rulemaking, the Commission received thirty-nine comments. Of these, twenty-five were from natural gas companies which are required to file the report form, ten from state utility commissions, three from Certified Public Accountant firms, and one from a gas industry association.[2] The general reaction to the rulemaking was favorable. A number of changes were suggested by commenters, many of which have been incorporated into the Form No. 2, as discussed below and in the attached detailed discussion (Attachment A)[3] which responds to comments on a schedule-by-schedule basis. However, the Commission has not further discussed those schedules for which no comments had been submitted.

A. Responses to Specific Questions

The answers to five specific questions were requested by the Commission concerning the proposed revisions to the Form No. 2. The responses to these questions are analyzed sequentially.

1. (a) *Do the proposed revisions or eliminations of data affect any Commission or State regulatory functions?*

Of the ten state agencies which responded to the rulemaking, three indicated that revisions or eliminations to Form No. 2 would affect their regulatory responsibilities, five stated that revisions or eliminations would cause some partial effect on their responsibilities, one replied that there would be very little effect, and one claimed that the changes would have no effect.

1. (b) *Will State agencies now utilizing this report form in the exercise of their own regulatory responsibilities agree to reduce their reporting requirements concurrently?*

Thirty-one of the fifty states require Form No. 2, or some version of the Form

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[1] FERC Form No. 2 (Attachment C) is not being printed by the Federal Register. Copies of the Form No. 2 Final Rule, including all attachments, are available in the Commission's Office of Public Information. Blank copies of the form may be obtained from the Energy Information Administration.

[2] Interstate Natural Gas Association of America, Arthur Andersen & Co., Deloitte, Haskins & Sells, Price Waterhouse & Co., The Cincinnati Gas & Electric Company, Consolidated Gas Supply Corporation, East Tennessee Natural Gas (Tennessee), Iowa Illinois Gas and Electric Company, Iowa Power & Light Company, Iowa Public Service Company, Kansas Power and Light, Michigan Gas Storage Company, Michigan Wisconsin Pipe Line Company, Midwestern Gas Transmission (Tennessee), Natural Gas Pipeline Company of America, Northern Natural Gas Company, Northwest Pipeline Corporation, Orange & Rockland Utilities, Inc., Pacific Interstate Transmission Company, Pacific Gas and Electric Company, Panhandle Eastern Pipe Line Company, Public Service Company of Colorado, Public Service Electric and Gas Company, San Diego Gas & Electric, Southern Indiana Gas and Electric Company, Southern Natural Gas Company, Tennessee Gas Pipeline Company (Tennessee), Texas Gas Transmission Corporation, United Gas Pipe Line Company, California Public Utilities Commission, Colorado Public Utilities Commission, Georgia Public Service Commission, Maine Public Utilities Commission, Kansas State Corporation, Maine Public Utilities Commission, Michigan Department of Commerce, Minnesota Public Utilities Commission, New Jersey Department of Public Utilities; and New York Department of Public Service.

[3] Attachment B is a comparison table of old Form No. 2 schedules and revised Form No. 2 schedules.

No. 2 to be filed with them by natural gas companies within their jurisdiction.[4] Only ten of these thirty-one states responded to this rulemaking. Two said that they would probably continue to collect the data proposed for deletion in Form No. 2. Six indicated an interest in retaining at least a portion of the affected data. One state said that it would delete all of the data proposed for deletion. Finally, one state responded that it would collect the subject data only if it was specifically needed.

One state agency, and three jurisdictional companies which must file Form No. 2 with the Commission and also with a state agency identified a potential increase in reporting burden due to the Commission's deletion of information from Form No. 2 which was not also eliminated from the state requirements. One commenter alleged that the discontinuance of a reporting requirement by the Commission which is not also eliminated by its state agency only "shifts the reporting burden" from the Federal to the state level.

The Commission nevertheless believes it is in the public interest to delete information requirements from Form No. 2 even though that same data may, in some instances, continue to be collected by certain state agencies.[5] On the basis that only two state agencies may require all of the data proposed for deletion, and six others may require some of the data, the Commission cannot justify the retention of data which are not used in the Commission's decisionmaking process.[6] Retaining data not used by the Commission would penalize those companies which file Form No. 2 only with the Commission, and those companies whose state agency is revising its Form No. 2 requirements to correspond with the Commission's revisions. The burden in justifying the continued collection of the data will be at the state level.

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[4] Twenty-one states require the filing of the current Form No. 2; nine states require the filing of both Form No. 2 and a state report form; one state accepts Form No. 2 in lieu of its own report form.

[5] In the following schedule pages, the issue arose concerning the respective Form No. 2 reporting requirements of the Commission and state agencies. Since it is discussed above, this issue is not raised again in the discussions of the individual schedules (Attachment A): pp. 105, 110-111, 114, 115, 116, 118A, 204, 208, 207A, 208, 213, 214, 214A, 221, 224, 224A, 225, 230, 305, 306, 304, 305, 306, 351, 526-527, 529-532, 513, 515, 525, 526, 533A-533D, 535-536A, 542, 545-546B, 550-551, 553-553B, and 563.

[6] The Commission did not conduct a separate analysis of the regulatory needs of each state agency which requires a Form No. 2, nor did the Commission separately attempt to measure the magnitude of any increased burden due to the filing of two different forms by respondents. The comments filed by the state agencies in this docket were considered indicative of state Form No. 2 requirements and reporting burdens.

2. Is there any reason for continued collection of the data for the purposes of another Federal agency? Suggestions for the continued collection of data which have been proposed for elimination from the present Form No. 2 should identify the proper agency and the basis and purpose for its collection of the data.

One commenter stated that the Securities and Exchange Commission may use some of the data in Form No. 2 which has been proposed for deletion or amendment. The comment urged that the data should be collected and disseminated by a single agency "in the interest of efficient regulation." No Federal agencies responed to the Notice.

The information which has been eliminated from Form No. 2 was not specifically shown to be necessary to the operations of any Federal agency. Furthermore, in our view, it should not continue to be collected by the Commission only for the purpose of convenience, if it is not otherwise required in Commission regulatory processes.

3. What cost savings are likely to result from the proposed elimination of the CPA certifications?

The Commission proposed to delete the certification requirement by Certified Public Accountants (CPAs) from fifteen schedules and retain it for the four basic financial statements: Balance Sheet, Income Statement, Statement of Retained Earnings, and Statement of Change in Financial Position. Sixteen of the jurisdictional companies responded to the question and agreed that some cost savings would result from the elimination of these CPA certifications. Estimates varied greatly, however, with respect to the amount of savings. Two state agencies addressed the question and stated that they did not believe that any cost savings would result. Three CPA firms responded to the question, and all three indicated that a cost savings would probably be realized.

The Commission has deleted the certification requirement for the fifteen schedules because such deletions do not alter the validity of the form. The four basic financial statements are essentially summaries of information reported in detail elsewhere in the form, including the fifteen schedules. Certification of the fifteen schedules is, therefore, unnecessary since these schedules are reviewed in connection with the certification of the four basic statements.

One CPA firm recommended an alternative to the current certification statement which would be patterned after standards established in the American Institute of Certified Public Accountants, Statement on Auditing Standards No. 14, Special Reports.

However, the basic purpose of this rule is to eliminate unnecessary reporting. Changes in format and schedule revisions that require additional burden are beyond the scope of this effort. Nonetheless, the suggestion for an alternative certification statement will be taken under advisement for any future refinements to Form No. 2.

4. What are the merits of using a percentage of the year end account balance rather than a selected fixed dollar figure in establishing a threshold for "minor items"?

There was no consensus among the 14 responses to this question: seven suggested the use of a fixed dollar amount; four preferred use of a uniform percentage amount; and three others suggested some standardized combination of the two methods. Other commenters claimed that the thresholds on certain schedules were too high, too low, unnecessary, or that the thresholds should be conformed to the Form No. 1, "Annual Report for Electric Utilities, Licensees, and Others (Class A and Class B)."

All of the thresholds proposed in this proceeding were carefully established on a schedule-by-schedule basis according to the Commission's particular needs for details unique to each account or schedule page. In view of the lack of a preponderance of comments favoring a particular uniform threshold type or amount, the Commission, upon review of our requirements, has retained a schedule-by-schedule approach to setting thresholds. Moreover, we are unable to conform all thresholds to those in Form No. 1, because of differences in the Commission's regulation of gas and electric rates, which must be reflected in the reporting requirements.

Specific threshold issues which are peculiar to Form No. 2 pages 507, 524, 537, 540, 564, and 572–572A are discussed in the atached discussion of schedules (Attachment A).

5. What is the effect of deleting the INDEX from the back of the report form?

The majority of responses to this question favored the retention of the Index. Many commenters urged that it should be made more legible. The Commission agrees, and the Index has been retained and reprinted to enhance its usefulness.

B. Other General Issues

1. Differences in format between the proposed form No. 1 and form No. 2.

Several commenters who responded to the instant rulemaking raised issues with respect to a pending rulemaking at the Commission to revise Form No 1. Form No. 1 is the "Annual Report for Electric Utilities, Licensees and Others (Class A and Class B)" and is essentially the electric counterpart of Form No. 2. A Notice of Proposed Rulemaking to revise Form No. 1 was issued on July 10, 1980 (Docket No. RM80-55, 45 F.R. 47705, July 16, 1980). A Final Rule on Form No. 1 is expected in the near future, but any changes resulting from issuance of the Final Rule would only be effective for reports for calendar year 1981 reports and thereafter.[1]

Several schedules in Form No. 1 are currently identical or similar to Form No. 2 schedules. Companies which file both Form Nos. 1 and 2 with the Commission and/or with state agencies, have interchanged various pages in the forms, where possible, to avoid duplicate reports. Some commenters objected to certain proposed changes in Form No. 2 schedules, which were not made to the corresponding schedules in Form No. 1 and, conversely, to changes in Form No. 1 which did not appear in Form No. 2. Those companies which are required to complete both forms argued that common schedules of the forms should be treated similarly, so as to reduce their reporting burden.

The Commission has, wherever possible, made conforming changes to both forms,[2] including reorganizing and renumbering the pages. In many instances, however, the Commission found it necessary to require reports from jurisdictional gas companies which differ from those required from jurisdictional electric companies. The forms cannot be made identical for both gas and electric companies because the requirements differ pursuant to the distinct statutes and regulations prescribed for each of these types of operations. Furthermore, the Commission actually regulates a greater percentage of gas revenues (approximately 84 percent) than it does of the electric revenues (approximately 15 percent)—and this factor affects the type of reporting required. Specific issues which were raised in certain schedules with respect to the differences between Form Nos. 1 and 2 are examined in connection with the discussions of the particular schedules (Attachment A).

2. *Cost-benefit analysis.*

One commenter stated that a cost-benefit analysis should be considered with respect to the collection of data in Form No. 2. The commenter also suggested that an appropriate test could be developed by joint Commission/industry efforts.

We agree that cost/benefit analysis is an essential ingredient in weighing the need to collect data; however, it is not the sole criterion. The Commission must first consider which data are essential to its regulatory responsibilities, *i.e.*, data which are necessary and appropriate to the lawful administration of the various statutes which the Commission administers.

In the Commission's data-validation program, the following criterion for retaining data has been used: Is the information to be retained in a reporting requirement *essential* to the decision-making process at the Commission? Cost/benefit factors are considered; however, the need for decision-making support, and legal requirements for substantial evidence to justify Commission decisions, must be paramount.

III. Public Procedure and Effective Date

The Commission has complied with 5 U.S.C. 553 by having provided public notice and an opportunity to participate in this rulemaking. Adoption of this Final Rule, including the discussion of the individual schedules (Attachment A) will eliminate a requirement imposed on industries regulated by the Commission. Therefore, the Commission finds good cause to waive the 30-day requirement set forth in 5 U.S.C. 553(d) and to make the Final Rule effective immediately. Thus, Form No. 2 will be revised as of the date of issuance of this Final Rule, and the new Form No. 2 format shall apply to reports filed for and covering the 1980 calendar year and each year thereafter.

(Natural Gas Act, as amended, [15 U.S.C. 717–717w]; Department of Energy Organization Act, [42 U.S.C. 7101–7352]; E.O. 12009, 3 CFR 142 (1978).)

For the foregoing reasons, Form No. 2 is revised by the Commission as set forth in Attachment C of this Final Rule, and Part 260 of Chapter I, Title 18 of the Code of Federal Regulations is amended by the Commission, as set forth below, effective January 8, 1981.

By the Commission,
Kenneth F. Plumb,
Secretary.

1. Part 260—Statements and Reports (Schedules) is amended by revising § 260.1 in the Table of Contents and in the text of the regulations to read as follows:

PART 260—STATEMENTS AND REPORTS (SCHEDULES)

Sec.
260.1 FERC Form No. 2, Annual Report for Natural Gas Companies (Class A and Class B).

* * * * *

§ 260.1 FERC Form No. 2, Annual Report for Natural Gas Companies (Class A and Class B).

(a) The form of Annual Report of Natural Gas Companies (Class A and Class B), designated herein as FERC Form No. 2, is prescribed for the reporting year 1980 and thereafter.

(b) Each natural gas company, as defined in the Natural Gas Act (15 U.S.C. 717, et seq.) which is included in Class A or Class B as defined in the Commission's Uniform System of Accounts Prescribed for Natural Gas Companies Subject to the Provisions of the Natural Gas Act, shall prepare and file with the Commission for the calendar year beginning January 1, 1980, and for each calendar year thereafter, on or before April 30 following the close of such calendar year, an original and such number of conformed copies of the above-designated FERC Form No. 2 as are indicated in the general instructions set out in that form, all properly filled out and verified. One copy of such report should be retained by the respondent in its files. The conformed copies may be carbon copies, or other reproductions, if legible.

(c) This annual report contains the following:

Instructions for Filing the FERC Form No. 2
Identification
Attestation
List of Schedules
General Information
Control Over Respondent
Corporations Controlled by Respondent
Officers
Directors
Security Holders and Voting Powers
Important Changes During the Year
Comparative Balance Sheet
Statement of Income for the Year

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[1] In the Notice of Proposed Rulemaking, Form No. 1 changes were slated to become effective for 1980 calendar year reports. Pursuant to requests, however, the Commission has twice extended the comment period on that rulemaking, and has postponed the effective date for any changes to the Form No. 1 until the 1981 reporting year. (*See* 45 F.R. 63200, September 24, 1980, and 45 F.R. 70476, October 17, 1980).

[2] On November 12, 1980, the Commission issued an Order pursuant to a request to permit companies which are required to file both Form Nos. 1 and 2 with the Commission to file the current Form No. 2 for the 1980 reporting year (45 F.R. 76734, November 20, 1980). As mentioned in the text, any revisions to the Form No. 1 filing requirements will not take effect before the 1981 reporting period. This order provides a measure of relief for companies which file both forms since they have the option to submit Form Nos. 1 and 2 in their current formats, for this year's reports, rather than a *revised* Form No. 2 and an *unrevised* Form No. 1.

Statement of Retained Earnings for the Year
Statement of Changes in Financial Position
Notes to Financial Statements
Summary of Utility Plant and Accumulated Provisions for Depreciation, Amortization and Depletion
Gas Plant in Service
Gas Plant Leased to Others
Gas Plant Held for Future Use
Production Properties Held for Future Use
Construction Work in Progress—Gas
Construction Overheads—Gas
General Description of Construction Overhead Procedure
Accumulated Provision for Depreciation of Gas Utility Plant
Gas Stored
Nonutility Property
Accumulated Provision for Depreciation and Amortization of Nonutility Property
Investments
Investment in Subsidiary Companies
Gas Prepayments Under Purchase Agreements
Advances for Gas Prior to Initial Deliveries or Commission Certification
Prepayments
Extraordinary Property Losses
Preliminary Survey and Investigation Charges
Miscellaneous Deferred Debits
Accumulated Deferred Income Taxes (Account 190)
Capital Stock
Capital Stock Subscribed, Capital Stock Liability for Conversion, Premium on Capital Stock, and Installments Received on Capital Stock
Other Paid-In Capital
Discount on Capital Stock
Capital Stock Expense
Securities Issued or Assumed and Securities Refunded or Retired During the Year
Long-Term Debt
Unamortized Debt Expense, Premium and Discount on Long-Term Debt
Unamortized Loss and Gain on Reacquired Debt
Taxes Accrued, Prepaid and Charged during the Year
Reconciliation of Reported Net Income with Taxable Income for Federal Income Taxes
Investment Tax Credits Generated and Utilized
Accumulated Deferred Income Tax Credits
Miscellaneous Current and Accrued Liabilities
Other Deferred Credits
Undelivered Gas Obligations Under Sales Agreements
Accumulated Deferred Income Taxes—Accelerated Amortization Property (Account 281)
Accumulated Deferred Income Taxes—Other Property (Account 282)
Accumulated Deferred Income Taxes—Other (Account 283)
Gas Operating Revenues
Distribution Type Sales by States
Residential and Commercial Space Heating Customers
Interruptible, Off Peak, and Firm Sales to Distribution System Industrial Customers
Field and Main Line Industrial Sales of Natural Gas
Sales for Resale-Natural Gas
Revenue from Transportation of Gas of Others—Natural Gas
Sales of Products Extracted from Natural Gas
Revenues from Natural Gas Processed by Others
Gas Operation and Maintenance Expenses
Number of Gas Department Employees
Exploration and Development Expenses
Abandoned Leases
Gas Purchases
Exchange Gas Transactions
Gas Used in Utility Operations—Credit
Other Gas Supply Expenses
Transmission and Compression of Gas by Others
Miscellaneous General Expenses—Gas
Depreciation, Depletion, and Amortization of Gas Plant
Income from Utility Plant Leased to Others
Particulars Concerning Certain Income Deduction and Interest Charges Accounts
Regulatory Commission Expenses
Research, Development, and Demonstration Activities
Distribution of Salaries and Wages
Charges for Outside Professional and Other Consultative Services
Natural Gas Reserves and Land Acreage
Changes in Estimated Natural Gas Reserves
Changes in Estimated Hydrocarbon Reserves and Costs and Net Realizable Value
Natural Gas Production and Gathering Statistics
Products Extraction Operations—Natural Gas
Compressor Stations
Gas and Oil Wells
Field and Storage Lines
Gas Storage Projects
Transmission Lines
Liquefied Petroleum Gas Operations
Transmission System Peak Deliveries
Auxiliary Peaking Facilities
Gas Account—Natural Gas
System Maps
Index

Attachment A.—Discussion of Comments on Form No. 2 Schedules

Pages i–ii, General Instruction (new pages i–iv)

Several commenters found that the Form No. 2 filing deadline of the last day of the third month was difficult to meet. It was suggested that only the principal financial statements should be required by the current deadline, with the remaining portions to be filed one month later.

The Commission has agreed to change the filing date so that the entire Form No. 2 would be submitted by the end of the fourth month, i.e., April 30. This will satisfy requests of commenters without dividing the report form unnecessarily.

Another recommendation was to report dollar amounts in Form No. 2, rounded to the nearest thousand. One commenter, however, suggested that the rounding requirements should be made optional for each respondent. Apparently, rounding would be more of a detriment than a benefit to this company. The rounding would cause a duplication of efforts in instances where the amounts are also used in other reports which do not allow rounding.

The report will continue to require reporting on the basis of whole dollars because rounding to thousands would eliminate much of the monetary data reported by companies, particularly the smaller companies. Moreover, monetary amounts are currently maintained by all companies to the cent. Therefore, the current Form No. 2 reporting requirements for this type of information do not appear to be an additional burden, particularly in those instances where these same amounts are required in other reports that do not allow rounding to thousands. Finally, amounts in rate applications are rounded to the nearest dollar; the Form No. 2 amounts must be reported in a similar manner in order to properly establish a meaningful cross-reference between the Form No. 2 annual reports and the rate applications.

The General Instructions have also been amended, pursuant to several comments, to include the following clarification with respect to the application of thresholds: "When applying thresholds for determining significance for reporting purposes for Balance Sheet accounts, use balances at the end of the current reporting year; for Statement of Income accounts use current year amounts."

Page 101–101A, General Information (new page 101)

Several commenters suggested that the Commission eliminate from this schedule, Instruction No. 5, which requires details on each class of security of a respondent that is now registered, or that will be registered on a national securities exchange, and the amount of the security. The commenters argued that a similar reporting requirement has been proposed for elimination in part from the Form No. 1. Furthermore, the comments alleged that this data could be obtained from other sources, such as the Securities and Exchange Commission (SEC) Form 10–K, "Annual Report Pursuant to Section 13 or 15(d) of the Securities and Exchange Act of 1934." Other comments argued that Instruction No. 5 could be deleted from page 101 and an instruction to indicate the name of the exchange for each listed security could be inserted on page 211, Unamortized Debt Expense, Premium and Discount on Long-Term Debt; on page 215, Capital Stock; and on page 219, Long-Term Debt.

In response to these suggestions, the Commission has eliminated Instruction No. 5 from page 101. The requirement to identify the stock exchange has been inserted in the instructions on pages 215

and 219. It would be redundant to add this requirement to page 211 because the long-term debt data on page 219 will already contain securities exchange information. Alternately, if the stock exchange identification information is available to a respondent from the SEC Form 10–K Annual Report, the Commission will accept a specific reference to that document on pages 215 and 219, provided that the reporting period of the Form 10–K corresponds to that of the Form No. 2. The instructions on pages 215 and 219 have been modified accordingly.

Comments also suggested that the portion of Instruction No. 6 of page 101A, concerning the identification of independent accountants, is redundant to the CPA certification statement filed pursuant to Item No. 15 of the General Instructions. It was argued that any changes in an independent accounting firm employed since the previous annual report could be added to page 108, Important Changes During the Year.

We agree that it is unnecessary to repeat the name and address of the independent accounting firm pursuant to Instruction No. 6 on page 101A, since that information is already required on the Certification statement. However, the "changes in the accounting firm" portion of Instruction No. 6 is more appropriately retained in the General Information section since it is not the type of substantive "change" that is required to be reported on page 108. Thus, page 101 is amended to indicate a change in the principal accountant and page 101A has been entirely eliminated.

Page 102, Control Over Respondent (new page 102)

Three comments suggested the elimination of the last sentence on page 102 that requires the identification of companies which are also controlled by the organization that controls the respondent. They argued that this information is reported for jurisdictional companies on page 103, Corporations Controlled by Respondent, and is available to the Commission for nonjurisdictional companies in the SEC Form 10–K, Annual Report.

The information provided by the last sentence on this page is useful to the Commission in rate proceedings. To ease the reporting burden of respondent companies, however, the Commission will accept a specific reference to an SEC Form 10–K Annual Report from which the information required by the last sentence on page 102 can be derived, provided that the reporting period of the Form 10–K corresponds to that of the Form No. 2. Page 102 instructions have been modified accordingly. (In the event that a jurisdictional parent company does not have an appropriate Form 10–K reference, we will accept a specific reference to page 103 of a parent company's Form No. 2 which has the required information.)

Page 103, Corporations Controlled by Respondent (new page 103)

Commenters argued that page 103 duplicates information reported on page 203, Investment in Subsidiary Companies (Account 123.1), and also in the SEC Form 10–K Annual Report.

The Commission uses the information on page 103 in rate proceedings to allocate costs, and as a starting point, to analyze returns earned by jurisdictional operations of respondent companies. The information on page 203 is not a sufficient subetitute, because it lacks any description of the kind of business in which the controlled corporation is engaged. The Commission, however, will accept in lieu of the information presently reported on page 103, a specific reference on page 103 to an SEC Form 10–K Annual Report, provided that the reporting period of the Form 10–K corresponds to that of Form No. 2, Page 103 instructions have been modified accordingly.

Page 105, Directors (new page 105)

Two commenters argued against the regulatory need for information concerning the directors' term (columns (c) and (d)), the directors' meetings attended during the year (column (e)), and fees during the year (column (f)).

The data in columns (e) and (f) are used for comparison with data contained in rate increase applications, in order to test the reasonableness of the amounts contained in the applications. Columns (c) and (d), however, are unnecessary to this comparison and have been eliminated.

Pages 108–109, Important Changes During the Year (new pages 108 and 109)

One commenter involved in both gas and electric operations, suggested that the instructions on page 108 of Form Nos. 1 and 2 should be changed so that the pages would be essentially identical in each form. It was alleged that the changes would aid respondents who filed both Form No. 1 and Form No. 2. Thus, Instruction No. 6 on page 108 of Form No. 2 would be included on page 108 of Form No. 1. (Instruction No. 6 requires the estimated increase or decrease in annual revenue due to important rate changes.) Instruction No. 11 on page 108 of Form No. 1 would be added to page 108 of Form No. 2. (Instruction No. 11 requires a list of electric generating units placed in service during the year, the in-service date, location, and generating capacity.)

We concur in renumbering the instructions on page 108 of Form No. 2 to conform to the order of the instructions on page 108 of Form No. 1. The instructions on page 108 of each form will, therefore, be identical, with the following exceptions: Instruction No. 11 on page 108 of Form No. 2 now relates to gas operations only, while the corresponding instruction in Form No. 1 relates to electric operations only. Also, a new Instruction No. 12 has been added on page 108 of Form No. 2 which provides that a respondent may attach the notes from the annual stockholders report in lieu of filing data on pages 108–109. However, the stockholder's report notes, if attached, must include all of the information prescribed in each of the instructions on page 108. Finally, the addition of Instruction No. 6 from page 108 of Form No. 2 to page 108 of Form No. 1 is beyond the scope of this rulemaking; it will be discussed in the final rule to revise Form No. 1 (Docket No. RM80–55).

Pages 110–111, Comparative Balance Sheet (new pages 110–113), and Pages 114–116A, Statement of Income for the Year (new pages 114–117)

We concur in the commenters' recommendations that the "increase or (decrease)" data column shown on these schedules should be replaced by a requirement to list the amounts for the previous year. The report will then be comparative in nature and will conform to the standard format generally used in financial reporting. A change also has been made, as suggested, to Instruction No. 9 on page 115, to require an explanation of any difference from figures previously reported.

Page 112, Notes to Balance Sheet (new page 122–123)

One comment suggested that page 112, Notes to Balance Sheet, and the Notes to Statement of Income on page 114 should be combined since notes which apply to both of these financial statements cannot easily be reported separately.

We agree with the suggestion. Moreover, not only are pages 112, Notes to Balance Sheet, and the Notes to Statement of Income on pages 114, 115, and 116 combined, but also the Notes to Statement of Retained Earnings for the Year on page 117A and the Notes to Statement of Changes in Financial Position on page 119. Thus, the notes to all four of the basic financial statements will appear on the same pages for ease of reporting. These new pages have been entitled "Notes to Financial Statements"

and have been [illegible]ted on pages 122–123.

Page 201, Non-Utility Property (Account 121); and Accumulated Provisions for Depreciation and Amortization of Non-Utility Property (Account 122) (new page 215)

It was suggested that this schedule be eliminated since the amounts reported in the accounts are insignificant and the balance of each account appears on the Balance Sheet.

This schedule has been retained because the detail is used for both cost allocation and risk analysis.

Another comment urged that all items of property previously devoted to public service should be grouped together if the items are "minor".

These items are required to be reported separately because each unit of property which becomes or has been utility (*i.e.*, public service) property is considered in rate proceedings. Gains or losses from sales of each such item are then used in the evaluation of the company's profitability.

Page 202, Investments (Accounts 123, 124, and 136) (new page 218)

It was suggested that the requirement to report information concerning advance payments should be deleted from this page because the data can be obtained from page 210B, Advances for Gas Prior to Initial Deliveries or Commission Certification (Accounts 124, 166, 167).

We concur in the recommendations to revise the instructions to exclude advance payments from page 202.

Another commenter suggested deleting the schedule entirely. This is not feasible because each of the accounts comprising this schedule is used in rate proceedings to compare the dollar amount of a company's utility plant with the dollars of capital used to finance that plant. We must ensure that jurisdictional companies have an opportunity to recover their costs and that they earn a reasonable return on those investments over which we have jurisdiction and which provide the service to the public.

Page 203, Investments in Subsidiary Companies (new page 217)

One comment suggested the addition of a column for "Investments During the Current Year" as a cross-check to the information currently reported on this page. The inclusion of this data would not serve any genuine Commission need; therefore, this extra reporting burden has not been added.

Page 210, Prepayments (Account 165), Miscellaneous Current and Accrued Assets (Account 174), and Extraordinary Property Losses (Account 182) (new page 220)

Commenters recommended that this page be deleted in its entirety. It is alleged that prepayment information is already reported on pages 210A, Gas Prepayments Under Purchase Agreements, and on page 222, Taxes Accrued, Prepaid and Charged During the Year. Commenters suggested that this information could appear merely as a line item on the Balance Sheet (pages 110–111).

The Commission notes that Miscellaneous Current and Accrued Assets had been proposed for deletion in the Notice of Proposed Rulemaking, and is deleted herein. The remaining schedules, however, have been retained.

The Prepayments schedule is necessary because it provides a basis for testing the reasonableness of amounts reported in a rate application. The Extraordinary Property Losses schedule provides a ready analysis and status of losses and abandoned property which are used to determine the level of expenses to be allowed in rate proceedings.

The information in these schedules will not appear only as a line item on the balance sheet because the detail upon which the Commission depends for rate proceedings would be lost through such a summary.

Page 210B, Advances for Gas Prior to Initial Deliveries or Commission Certification (Accounts 124, 166, 167) (new page 219)

The current format of this schedule was objected to as cumbersome and an alternative format was suggested.

This proposed format would require information which is indentical to the current schedule, with one significant exception: The proposed format would require reporting of estimated repayment dates of advances for gas which are categorized into only two time periods: 1980 through 1981 and 1982 through 1984. The Commission currently requires the specific estimated repayment dates of all gas advances reported in Accounts 124, 166, or 167, to determine if respondents are complying with Commission orders concerning advance payments. The proposed format's provision for reporting within only two time frames would prohibit such Commission determinations. Therefore, the Commission has retained page 201B, in its current format.

Page 211, Unamortized Debt Expense, Premium and Discount on Long-Term Debt (Accounts 181, 225, 226) (new page 256); page 214B, Unamortized Loss and Gain on Reacquired Debt (Accounts 185, 257) (new page 257); and page 218, Long-Term Debt Accounts 211, 222, 223, 224) (new page 255)

Comments on this page were in either of two general categories: (a) Combine all three pages into a single schedule (alternative formats were suggested), or (b) delete part, or all of each of the schedules.

The first alternative (combine all three pages into a single schedule) is impractical, as it would result in a cumbersome schedule of two or three pages, even after restructuring. However, for greater ease in reporting, we have grouped the pages sequentially: Pages 255 (old page 218), 256 (old page 211) and 257 (old page 214B).

We also oppose the second alternative (delete the schedules, either in whole or in part) with two exceptions: On page 214B, two columns, Debits During Year (column (f)) and Credits During Year (column (g)) have been eliminated. The other information on page 214B, however, is closely related to data reported on both pages 211 and 219. The schedules, together, are important for risk analysis purposes.

Page 212, Preliminary Survey and Investigation Charges (Account 183) (new page 221); page 214, Miscellaneous Deferred Debits (Account 186) (new page 223); page 225, Other Deferred Credits (Account 253) (new page 266)

Comments stated that page 212 should be deleted in its entirety. Other commenters argued that pages 212, 214 and 225 require a temporary accumulation of the listed charges and should not be maintained in the present detail. It was suggested that only the following items should be retained on these pages: The Description (column (a)), and the Beginning and Ending Balances (columns (b) and (f)). Thus, Debits (column (c)), Credits (Accounts Charged) (column (d)), and Credits (Amount) (column (e)) would be deleted from pages 212 and 214; and Debits (Contra Account) (column (c)), Debit (Amount) (column (d)), and Credits (column (e)) would be deleted from page 225.

The continued reporting of these pages in the current format is necessary because they are the only source of this type of detailed data which are used to determine the proper disposition of each charge claimed in the rate process. The description and beginning and ending

balances do not provide this information.

The Commission concurs in the recommendation to delete the requirement to report the number of minor items below the established threshold level which are grouped.

Pages 214C-214D, Accumulated Deferred Income Taxes (Account 190) (new pages 224–225), and pages 227–227E, Accumulated Deferred Income Taxes (Accounts 281, 282, 283) (new pages 272–273)

Commenters alleged that the details on pages 214C–214D and 227–227E are duplicated in rate applications and are, therefore, unnecessary to the Form No. 2. Another suggestion was that only the Beginning and Ending Balances in each account for Electric, Gas, and Other, and for Federal, State and Local Taxes need be retained. One commenter argued that the provisions for Federal, State and Local Taxes could be deleted entirely from these schedules.

The Commission will continue to require the details concerning Accumulated Deferred Income Taxes on these pages. Rate application data cannot be substituted for these schedules, because those data reflect only beginning and ending balances while the schedules show major changes during the year and adjustment data. This information is required for ratemaking determinations.

However, we agree with a suggestion that data entries for Federal, State and Local Taxes should be deleted from pages 214C–214D, and such deletions have been made.

Commenters also questioned the need for Instruction No. 2 [1] on pages 227 and 227B since such information is excessive and of questionable value. The Commission agrees, and has deleted the instruction on both pages.

Page 218, Discount on Capital Stock, and Capital Stock Expense (New Page 253)

It was suggested that the Balance End of Year column (column (b)) for the Discount on Capital Stock account should be reported by class of stock rather than by class and series.

We have retained both the class and series identification. Both class and series of stock are necessary to the determination of the weighted cost of preferred stock, which is an essential component in the calculation of the overall cost of capital.

Pages 222 and 222A, Taxes Accrued, Prepaid and Charged During Year (Accounts 236, 165, 409.1, 409.2, 409.3, 439) (New Pages 258 and 259)

Comments suggested that Instruction No. 4 should be changed to require reporting by "kind of tax" rather than by "Federal, State and local." We concur and Instruction No. 4 is amended accordingly.

Comments also urged the elimination of Instruction No. 5 because it requires a manual work paper analysis that is difficult to prepare and because this information is available in other accounts. Instruction No. 5 requests all information to be reported by year in each of the categories, Federal, State or local, and by type of tax. In addition, a footnote is required to indicate each year examined by the Internal Revenue Service. We have eliminated from Instruction No. 5 that portion which requires reporting of the information covering more than one year which relates to Federal and State income taxes only, since our rate analyses are not predicated upon an actual income tax basis. The balance of Instruction No. 5 is retained, however, because the data is required for rate analyses.

Comments further suggested that Instruction No. 8, which requires the distribution of taxes, be eliminated because this information is too detailed to serve any practical purpose and should not be maintained only for auditing checks. It was suggested that this data could be checked when the company is audited. We will continue to require the distribution of taxes because establishing trends of distribution is a necessary tool for rate analysis purposes. Moreover, the expeditious completion of our rate analysis requires that the data be reported in Form No. 2.

Finally, comments indicated that the columnar splits between taxes charged, taxes paid, and adjustments of taxes charged are burdensome to complete and should be modified. We have continued the columnar splits since reports of the actual tax liability incurred for the year as well as the amount paid in taxes during the year are necessary for rate analysis purposes.

Page 224, Miscellaneous Current and Accrued Liabilities (Account 242) (New Page 285)

Comments urged that this schedule be eliminated because the amounts reported reflect items normally incurred by an ongoing business concern. The amounts could be summarized on the balance sheet as they are for page 204, Notes and Accounts Receivable, and page 221, Notes Payable.

The detailed information on pages 204 and 221 is not required for ratemaking purposes. Page 224, however, is required because it is the only source of detailed data which are use for determining the proper disposition of costs.

Page 228, Investment Tax Credits Generated and Utilized (New Pages 283–283), and Page 229, Accumulated Deferred Investment Tax Credits (Account 255) (New Page 284)

Some commenters recommended that page 228 be deleted because it was considered to be too complex and less relevant than page 229, which was originally proposed for deletion by the Commission. Upon reconsideration, we find that the two pages are both essential to the Commission's review of the nature and amount of any divergence between the rates of return we find to be just and reasonable, and the returns actually earned by jurisdictional companies.

Page 301, Income From Utility Plant Leased to Others (Accounts 412 and 413) (New Page 336); page 505, Gas Plant Leased to Others (Account 104) (New Page 207)

Comments stated that the information which appears on pages 301 and 505 should be deleted and the data on page 301 could then be included as a line item in the Statement of Income For the Year (pages 114–116A). Other commenters stated that Accounts 412 and 413 are rarely used and, if used, would report most of the data on the Statement of Income.

Both pages 301 and 505 are retained because the data reported thereon are integral to a company's investment which must be analyzed for ratemaking purposes. A single line item on the Statement of Income for revenues (Account 412) and one for expenses (Account 413) does not provide the necessary detail about each plant item leased.

One commenter suggested that retention of page 301 was an oversight since page 303, Particulars Concerning Other Income Accounts, which contains similar information, was proposed for

[1] Instruction No. 2 on page 227 requires (a) each certificate number and description of property, (b) total and amortizable cost of the property, (c) date of commencement of amortization for tax purposes, (d) "normal" description rate used in computing deferred tax, and (e) tax rate used to originally defer amounts and the tax rate during the year used to amortize previous deferrals.

Instruction No. 2 on page 227B requires (a) the general methods of liberalization used, estimated lives, classes of plant to which each method is applied and the date the method was adopted and (b) a table showing for each year, 1954 to date, the annual amounts of tax deferrals, and a statement as to whether the accounting for liberalized depreciation has been approved or directed by a state Commission.

deletion in the Notice of Proposed Rulemaking.

Not all the detail on page 308 was deleted—certain of the data which were needed were transferred to page 116, Statement of Income for the Year.

Page 304, Particulars Concerning Certain Income Deduction and Interest Charges Accounts (new page 337)

Comments suggested that this schedule should be deleted, and replaced by line items on the Income Statement (page 116A) for Donations (Account 426.1), Life Insurance (Account 426.2), Penalties (Account 426.3), Expenditures for Certain Civic, Political and Related Activities (Account 426.4), and Other Deductions (Account 426.5). They also stated that Miscellaneous Amortization (Account 425), Interest on Debt to Associated Companies (Account 430), and Other Interest Expense (Account 431) are already summarized as line items on page 116A, Statement of Income for the Year, and that this deletion would make the schedule consistent with the proposed deletion of page 303.

We have retained this page because the reporting of totals only for each account as line items on the Income Statement would not be sufficient since the Commission requires the detail of individual account items for rate analysis purposes.

We also do not agree that page 304 should be accorded the same treatment as page 303. Page 303 reports income data, which are not required for rate analysis purposes. This is because cost-of-service determinations are based upon Commission review of the respondents' *expenses*, rather than their *income*. Page 304 reports such expense data, the details of which are essential to the Commission's analysis process.

Page 353–353A, Regulatory Commission Expenses (new pages 350–351)

Suggestions for this schedule varied from deleting the entire page to deleting only certain columns therein. It was argued that regulatory commission expense data are already obtained through rate applications, are difficult to compile both by account and individual formal cases, and only the totals of such expenses need to be reported.

We have retained pages 353–353A in the current format because the information is vital to ratemaking determinations. Both state and Commission regulatory expenses must be evaluated to determine whether those expenses can be allowed in the cost-of-service. This information is not obtainable from a rate application.

Page 354; Charges for Outside Professional and Other Consultative Services (new page 357)

Many comments urged the elimination of this page as an unnecessary, time-consuming and burdensome requirement. Respondents allegedly compile the data on this page according to a "best effort." Another comment stated that the information reported in this schedule is available from rate applications and compliance audits.

The Commission has retained this schedule because it is used for the evaluation of proper expenditures by respondent companies in the ratemaking process. The information is reported in this schedule on an annual basis and can be used by the Commission to develop historical trends for such charges. We cannot readily derive this information from compliance audits and rate applications because such audits and applications cover only specific dates or time periods.

Pages 355–356, Distribution of Salaries and Wages (new pages 354–355)

One comment suggested that these pages be deleted because the information is unnecessary. Other comments urged that the Allocation of Payroll Charged Clearing Accounts (column (c)) and the Total Column (column (d)) should be deleted. It was also suggested that Clearing Accounts could be reported in column (a) before "Other Accounts" (line 77) on page 356, for those companies which do not allocate payroll charged to clearing accounts.

We have retained this schedule in its current format since the information reported therein is essential to the evaluation of labor costs allocated to operation and maintenance expenses in rate applications. Clearing accounts will not be reported before "Other Accounts" as suggested, since benefits resulting from this proposed change are insignificant and such change would be disruptive to reporting by a majority of the companies which do allocate payroll cost.

Pages 501–504, Gas Plant in Service (new pages 202–205)

Comments on this schedule suggested that columns (c) Additions, (d) Retirements, (e) Adjustments, and (f) Transfers be deleted, since this information duplicates that shown in statement C of a rate application. Other comments recommended that reporting be limited to functional categories, thus eliminating detail that allegedly serves no useful purpose.

We have retained the requirement for this information in its present format because it is an integral part of a rate analysis. Furthermore, since general rate increases are not necessarily filed every year by every company, as is the Form No. 2, Statement C is not a viable substitute for these columns.

Page 506, Gas Plant Held for Future Use (Account 105) (new page 208) and Page 506A, Production Properties Held for Future Use Account 105.1) (new page 209)

Commenters recommended two changes with respect to these pages: (1) That column (c), "Date Expected to be Used in Utility Service," be eliminated from both of these schedules, and (2) that the requirement in Instruction No. 1 to indicate number of items grouped below the established threshold, be deleted.

Adoption of the first recommendation will eliminate too much data needed by the Commission to carry out its ratemaking responsibilities. The date that properties are expected to be placed in service is needed to evaluate the prudency of an investment in ratemaking proceedings under sections 4 and 5 of the Natural Gas Act.

We do, however, concur with the second recommended change and, therefore, delete the requirement to report the number of minor items which are grouped.

Page 507, Construction Work in Progress and Construction Not Classified Gas (Accounts 106 and 107) (new page 210)

One commenter suggested a $1,000,000 threshold for the reporting of projects instead of the proposed $500,000, with minor projects being defined as a percentage. Another suggested a threshold of 5% of the Construction Work in Progress balance. The proposed threshold will be retained because too much information would be lost if a higher threshold were adopted.

Several commenters suggested that Column (d), Estimated Additional Cost of Project, be eliminated because this information is difficult to develop and not particularly reliable. We will, however, retain this column because it is needed to develop historical trends and to evaluate a company's growth. These considerations are necessary in the ratemaking process.

We do, however, agree with the suggestion to eliminate Completed Construction Not Classified (column (c)) from this schedule.

Page 514, Gas Operating Revenues (Account 400) (new page 301)

The Commission has concurred in a commenters' suggestion to delete columns on page 514 which show Increases or Decreases from the preceding year (columns (c) and (e)), and to substitute, therefore, a requirement to report the amounts from the previous annual report.

A suggestion was also made to delete Instruction No. 3 and the corresponding requirement for information about the average number of customers per month (columns (f) and (g)). We have retained this requirement because there have been recent significant changes overall in the number of gas customers of respondent companies. These changes can greatly affect the respondent's gas operating revenues and are, therefore, significant to the Commission's ratemaking process.

Another comment suggested that the footnote required by Instruction No. 3 [2] can be eliminated by revising the instruction to exclude the duplicate reporting of customers who have a multiclassification status. While we concur with the deletion of the footnote requirement, the balance of the instruction is retained because the information is necessary for rate analyses.

Pages 516–517, Sales of Natural Gas by Communities (new pages 302–303)

One respondent has suggested that the title for these pages—Sales of Natural Gas by Communities, would not be appropriate if the Commission's proposed changes are adopted. The suggested title change was "Direct Sales by States."

The Commission agrees that the title should be changed—however, the new title is "Distribution Type Sales by States." This schedule collects data related to direct sales made by a pipeline company acting as a distributor. Other direct sales are reported on page 519, Field and Main Line Industrial Sales of Natural Gas.

Another respondent suggested that pages 516–517 be deleted. We have retained the schedule, nonetheless. A detailed record of non-jurisdictional sales, which is provided on these pages and on page 519 is essential to establish sales and revenue collection trends for a pipeline's non-jurisdictional business.

[2] Instruction No. 3 provides that, if in column (f), a single residential or commercial customer is reported twice by virtue of receiving special service through separation meters, a footnote must be added to indicate the number of customers as counted.

Pages 521–522, Sales for Resale—Natural Gas (Account 483) (new pages (310–311)

Comments objected to retention of the following columns in this schedule: (1) Point of Delivery (column (b)), which allegedly provides less useful information than do Statement G of a rate application, and Schedule 4 of FERC Form No. 18; (2) Average Revenue per Mcf (column (f)), which is claimed to be unnecessary for financial or regulator purposes; (3) Sum of Monthly Billing Demands (column (g)), which is a summary of billing demands and is claimed to be available, both from tariffs and rate applications, and from Schedule 4 of Form No. 18; and (4) Information on Peak Day Delivery to Customers (columns (h), (i), and (j)), which allegedly should be reported at a time earlier than the Form No. 2 filing, to be of any practical value. Furthermore, comments noted that peak day delivery data have already been eliminated from Form No. 18.

We do not concur with these suggested deletions. We have determined that delivery point information is essential for rate design determinations. If not reported in the Form No. 2, delivery point information would only be available when companies file *major* rate increases. The Commission regulations do not require the filing of Statement G in the case of *minor* rate increase applications. Consequently, column (b) must be used for delivery point information.

Column (f) is used to test the reasonableness of the rate design procedure being used by the respondent and will also be retained.

Column (g) contains the number of Mcf actually used in computing the demand portion of a customer's bill (Instruction No. 6). This amount is not always equal to the "contract demand" (i.e., "maximum obligation") which can be found in the tariffs of the individual customers; thus, column (g) has been retained.

Columns (h), (i), and (j), when evaluated simultaneously, provide information about the relative use of the system by specific customers, which is integral to the rate process. These columns, therefore, have also been retained.

Although the peak day data have been eliminated from Form No. 18, this was done only to remove a duplication in the reporting of this information. Peak day data are essential to the Commission and are more appropriately reported on Form No. 2.

Page 524, Revenue From Transportation of Gas of Others-Natural Gas (Account 489) (new page 312)

Commenters argued that a report of the Distance Gas is Transported (column (b)) has no direct relationship to revenue, and should be deleted. To the contrary, we have found that a number of pipeline companies are currently using mileage as a basis for determining initial rates for transportation service. Consequently, the distance that gas is transported does have a relationship to revenues received, so column (b) has been retained.

Other commenters suggested that a threshold level of 1,000,000 Mcf of gas transported annually should be instituted. Specifically, transportation services of less than 1,000,000 Mcf annually would be grouped in the same manner as data reported on page 541, Transmission and Compression of Gas by Others. All services in excess of 1,000,000 Mcf would be reported separately.

We agree with the proposed threshold. However, the Notice of Proposed Rulemaking failed to provide for the grouping of minor items below the threshold on page 541. This modification has been made on both pages 524 and 541.

Finally, the Commission has included a requirement in this schedule to identify the specific Commission order or regulation under which the transportation of gas of others was performed. While this provision represents a slight additional burden to respondent companies, it is significant to the Commission in that it will enable us to monitor activity under various Commission regulations which facilitate the movement of gas on a national basis.

Page 525, Sales of Products Extracted from Natural Gas (Account 490) (new page 313)

Instruction No. 2 on page 525 permits the grouping of sales by kind of product extracted and requires that the number of purchasers who buy these grouped products be indicated. The comments suggest that the requirement to indicate the number of customers so grouped be eliminated.

This information is necessary to the independent evaluation of the data contained in rate applications, and will continue to be required.

Pages 527–532, Gas Operation and Maintenance Expenses (new pages 320–325), and page 532, Number of Gas Department Employees (new page 325)

The Commission concurs in the recommendation to delete from these pages the columns which require the reporting of increases or decreases from the preceding year, and to require instead the reporting of amounts from the previous year. The Commission also concurs in the suggestion to eliminate the summary schedule on page 532.

The detail of gas operation and maintenance expenses for the year reported on pages 527–532, as well as the number of gas department employees on page 532 was also recommended for deletion; to perform historical trend analyses of the respondent companies' operations and changes in labor force. This information is necessary to the classification and allocation of costs.

Pages 537, Exchange Gas Transactions (Account 806, Exchange Gas) (new page 328), and 538, Exchange Gas Accounting (Account 806, Exchange Gas) (new pages 328–329)

It was suggested that a 500,000 Mcf threshold be established for the minor transactions which are grouped in this schedule. We agree that a threshold should be established. However, a threshold of 100,000 Mcf for these transactions will be used since a 500,000 Mcf threshold would eliminate too much data.

Another comment stated that pages 537 and Part B of page 538 could be combined, by eliminating from page 537, Point of Receipt (column (b)), Point of Delivery (column (d)) and the instruction to accompany columns (b) and (d) (Instruction 2). It was claimed that this information is available in Commission certificate and rate filings, and can also be derived from the Commission Tariff Rate Schedules (identified in column (g) on page 537, and column (f) on Part B of page 538). An alternative format was also suggested for this page.

We have retained the requirement to report points of receipt and delivery because certificates, rates, and tariff filings do not provide adequate information concerning the *actual* points which are ultimately utilized to effect exchange transactions.

The Commission has adopted the alternative format suggested for this page—except that we have retained columns which report delivery and receipt point data, as discussed above.

Page 540, Other Gas Supply Expenses (Account 813) (new page 331)

It was suggested that a threshold level of $100,000 be established for this page and that the requirement to separately report maintenance expenses be eliminated because this account is not the type that would normally contain maintenance expenses.

A threshold level of $100,000 may eliminate much of the detail which is essential to the evaluation of Account No. 813 expenses in rate increase applications; therefore, no threshold will be established for this page.

The requirement to separately report maintenance expenses has also been retained. This requirement only affects those respondents who have such expenses to report; other companies, of course, will not be burdened by this requirement.

Page 541, Transmission and Compression of Gas by Others (Account 858) (new page 332)

The comments suggest the use of 1,000,000 Mcf as the threshold in this schedule instead of the proposed "1 Bcf," in order to be consistent with other threshold descriptions used throughout the Form No. 2. We concur.

Another comment suggested that Distance Transported (column (b)) should be deleted, because that information is difficult to obtain from the transporting pipeline. The Commission has retained column (b) for the same reasons discussed in connection with page 524, Revenues From Transportation of Gas to Others. Furthermore, the pipeline bearing the cost, as a matter of sound business policy, should know the service is being provided, including any distance of haul for which compensation is made.

Page 543, Miscellaneous General Expenses (Account 930.2) (Gas) (new page 333)

One commenter alleged that the information in this schedule duplicates data reported in a rate application, and should, therefore, be eliminated. This schedule has been retained, however, because the base period in rate applications, in many instances, does not coincide with the Form No. 2 reporting period, nor do all pipelines make annual rate change filings.

Pages 545–546B, Depreciation, Depletion and Amortization of Gas Plant (Account 403, 401.1, 404.2, 404.3, 405) (new pages 334–335)

It was suggested that Part B, Basis for Depletion and Amortization Charges, and Part C, Factors Used in Estimating Depreciation Charges should be deleted because they are used for auditing purposes only.

The Commission notes that Part B had already been proposed for deletion in the Notice of Proposed Rulemaking, and Part C, greatly reduced. Depreciation cannot be overlooked because it is a major component in the cost of services. Section 9 of the Natural Gas Act provides that: "Each natural gas company shall conform its depreciation and amortization accounts to the rates as ascertained, determined and fixed." Since there are no other sources of information, besides the Form No. 2, that show a company's depreciation rates on an annual basis, no further modifications have been made to this page.

Pages 552–553B, Natural Gas Production and Gathering Statistics (new page 506)

It was suggested that this schedule should be deleted in its entirety because the required information is obtainable from the Gas Plant in Service schedule (pages 501–504) and the Gas Operation and Maintenance Expense schedule (pages 527–532).

We have retained this schedule, as proposed in the Notice of Proposed Rulemaking, because the detailed production and gathering plant information requirements reported herein are not available separately for old (pre-1969) and new (post-1969) leases on pages 501–504 and pages 527–532.

Pages 556–557, Compressor Stations (new page 509)

Deletion of this schedule was suggested, or, in the alternative, the deletion of the requirements to report the number of employees (column (b)), plant cost (column (c)), the number, year of installation and horsepower capacity of driving units (columns (g)–(i)), and the number, year of installation and capacity of compressor units (columns (j)–(l)). It also alleged that this schedule is primarily statistical, and, therefore, should not be included in a financial report. Finally, it was alleged that adequate information on compressor stations is available in certificate filings.

Annual compressor station operation and related expense data are essential to overall plant evaluations and provide a record of operational changes that may occur, especially with regard to the flow of gas through the pipeline system.

However, upon review, we have determined that the non-operational data in columns (g) through (l) can be deleted. Columns (b) and (c) will be retained because they require the reporting of current data which are

essential to the Commission's evaluation of a plant's operation. The information reported in certificate filings is not necessarily submitted annually, and, therefore, is not a reliable source of current data.

Finally, the schedule cannot be eliminated simply because it collects statistical information. The Commission has no other source of summary statistical gas plant operating data—and we are reluctant to devise a new reporting requirement simply to collect the few statistical items in this form.

Page 558, Number of Gas and Oil Wells (new page 510)

It was recommended that this page be deleted because the level of detail required is irrelevant as a result of Commission Order No. 98, "Final Rule Governing Pricing of Pipeline Production Under the Natural Gas Act", (Docket No. RM80-6, issued August 4, 1980, 45 FR 53081, August 11, 1980).

The Commission has retained this schedule, notwithstanding Order 98, because this schedule provides historical data for an ongoing evaluation of the Commission pipeline production pricing policy. It is also used to evaluate the impact of pipeline-owned production in general rate change applications.

Page 564, Liquefied Petroleum Gas Operations (new page 515)

It was suggested that this page report insignificant data and should be eliminated; or, in the alternative, that a threshold should be applied for amounts reported therein.

This schedule is important in the valuation of the respondents' capability to produce liquefied petroleum gas. This gas can be used to meet firm residential customer requirements during particularly cold winters when natural gas is in short supply. Furthermore, we believe that any threshold level would have to be extremely low to include all affected respondents. Such a threshold would be artificial and would not measurably reduce the reporting burden. Therefore, we have not adopted a threshold for this schedule.

Pages 568–569, Gas Account—Natural Gas (new pages 518–519), and page 571, System Map (new page 520)

These schedules were criticized for collecting only statistical, rather than financial data, and were recommended for deletion.

The Commission has retained these pages because there is no separate statistical gas operations form for all pipelines.

These pages contain information necessary to develop operational trends which can be used in the rate process.

Futhermore, page 571 provides operational, as well as, statistical information. The system map is invaluable to the Commission in understanding the general locational and operational aspects of the respondents.

Pages 572–572A, Research, Development and Demonstration Activities (new pages 352–353)

This schedule was criticized for requiring too much detail for Commission needs. It was alleged that the Gas Research Institute (GRI) performs much of the research and development that was formerly performed by companies and associations, and can better supply information relative thereto, than can the respondent companies. This information was also claimed to be adequately reflected in rate application filings. Thus, it was suggested that the page should be eliminated. Another respondent suggested raising the threshold from $5,000 to $50,000.

We have retained this schedule in its current format because it includes the detail on numerous research projects other than those conducted by GRI. Rate application information is not interchangeable with this schedule because the schedule provides more detail than do rate applications, and it is reported to the Commission on a regular (*i.e.*, annual) basis.

The Commission has not raised the threshold because much of the significant data would be lost if the threshold were greater than $5,000.

Other comments suggested that only Classification (column (a)), Description (column (b)), and Costs Incurred Internally and Externally During the Year (columns (c) and (d)) should be retained, because the remaining columns (Amounts Charged in Current Year, and Unamortized Accumulations (columns (e) and (f)) are only used for audit purposes. In addition, Internal and External Cost data were alleged to be reflected separately in the classification column already; they could, therefore, be combined here.

We have retained the requirement to report all columns on pages 572–572A because of the importance of determining the disposition of these costs and to assure that they conform with the Commission rate treatment of a particular research and development project.

Finally, a separate listing of columns (c) and (d), Internal and External cost data is retained because no *duplicate* information is reported in the two columns.

Attachment B.—FERC Form No. 2 Revisions

BILLING CODE 6450-85-M

FERC FORM NO. 2 REVISIONS

Title	Old Schedule Page No.	New Schedule Page No.	Retained- As is *	Retained- Changed Threshold	Retained- Revised Instructions	Retained- Deleted Columns	Deleted Complete Schedule	Explanation
General Instructions	i-ii	i-iv			X			Instructions clarified and expanded. Reduced number of schedules requiring CPA certification to the four basic financial statements. Filing date now 4/30/--
General Information	101-101A	101			X			Instruction 5 deleted with reporting the name of the stock exchange moved to schedule page 250 and 256. Instruction 6 revised and renumbered as instruction 5.
Control Over Respondent	102	102			X			Option to allow reference to SEC 10-K filings.
Corporations Controlled by Respondent	103	103			X			Option to allow reference to SEC 10-K filings.
Officers	104	104	X					
Directors	105	105			X	X		Instruction 2 deleted per Order No. 57, Nov. 8, 1979. Deleted Columns (c) and (d).
Security Holders and Voting Powers	106-107	106-107	X					
Important Changes During the Year	108-109	108-109			X			Added instruction 12 to allow the attachment of notes from stockholder reports. Instructions renumbered.
Comparative Balance Sheet	110-111	110-113				X		Deleted column (a). Expanded to include reporting account balances previously grouped and detailed on schedule pages now deleted. Common with Form No. 1.
Notes to Financial Statements (was titled - Balance Sheet)	112	122-123			X			Revised title and instructions 1 and 6 to now include notes for the four basic financial statements.
Summary of Utility Plant and Accumulated Provisions for Depreciation, Amortiz.	113	200	X					
Statement of Income for the Year	114-116A	114-117			X			Deleted instruction 7. Accounts 415-418 amounts listed separately. Instructions revised to reflect the moving of the notes to the income statement to page 122. Increase/decrease columns revised to read "Previous year." Instruction 9 revised.
Statement of Retained Earnings for the Year	117-117A	118-119			X			Deleted reference to discontinued Form No. 9. Notes to be reported on schedule page 122.
Statement of Changes in Financial Position	118-119	120-121			X			Notes to be reported on schedule page 122.
Nonutility Property	201	215		X				Instruction 5 - Added to limit the reporting to (5% of the balance end of the year for Account 121).
Accumulated Provision for Depreciation and Amortization of Nonutility Property	201	215	X					
Investments	202	216			X			Instruction 4 revised to exclude Account 124 amounts, now reported on schedule page 219.
Investments in Subsidiary Companies	203	217	X					
Notes and Accounts Receivable	204	-					X	Moved beginning and end of year balances to page 110.
Accumulated Provision for Uncollectible Accounts - Cr.	204	-					X	
Receivables from Associated Companies	206	-					X	Moved beginning and end of year balances to page 110.
Material and Supplies	207	-					X	Moved beginning and end of year balances to page 110.
Gas Stored	207A	214			X			Deleted instruction 2 and details for lines 7-11. Revised to reflect the detail data previously required by instruction 2.
Production Fuel and Oil Stocks	209	-					X	
Prepayments	210	220			X			Deleted instruction 3 and lines 7-11, allowing miscellaneous prepayments to now be grouped.
Miscellaneous Current and Accrued Assets	210	-					X	
Extraordinary Property Losses	210	220	X					
Gas Prepayments Under Purchase Agreements	210A	218	X					

FERC FORM NO. 2 REVISIONS

Title	Old Schedule Page No.	New Schedule Page No.	Retained- As is *	Retained- Changed Threshold	Retained- Revised Instructions	Retained- Deleted Columns	Deleted Complete Schedule	Explanation
Advances for Gas Prior to Initial Deliveries or Commission Certification	210B	219	X					
Unamortized Debt Expense, Premium and Discount on Long-Term Debt	211	221			X			Instruction 1 revised to exclude Account 124 amounts, now reported on schedule page 219.
Extraordinary Property Losses	212	230			X			Instruction 1 revised to exclude Account 124 amounts, now reported on schedule page 219.
Unrecovered Plant and Regulatory Study Costs	213	230			X			Instruction 1 revised to exclude Account 124 amounts, now reported on schedule page 219.
Capital Stock	250-251	250-251			X			Instruction 5 deleted with reporting the name of the stock exchange moved to schedule page 250 and 256. Instruction 6 revised and renumbered as instruction 5.
Capital Stock Subscribed, Capital Stock Liability for Conversion, Premium on Capital Stock and Installments Received on Capital Stock	252	252	X					
Other Paid-in Capital	253	253	X					
Discount on Capital Stock	254	254	X					
Capital Stock Expense	254	254	X					
Securities Issued or Assumed and Securities Refunded or Retired During the Year	255	255	X					
Long-Term Debt	256-257	256-257			X			Instruction 5 deleted with reporting the name of the stock exchange moved to schedule page 250 and 256. Instruction 6 revised and renumbered as instruction 5.
Unamortized Premium on Long-Term Debt	258	258	X					
Unamortized Discount on Long-Term Debt - Dr.	258	258	X					
Taxes Accrued, Prepaid and Charged During Year	262-263	262-263			X			Instruction 4 revised to exclude Account 124 amounts, now reported on schedule page 219.
Accumulated Deferred Investment Tax Credits	264	266			X			Instruction 1 revised to exclude Account 124 amounts, now reported on schedule page 219.
Other Deferred Credits	269	269	X					
Accumulated Deferred Income Taxes - Accelerated Amortization Property	272-273	272-273			X			Instruction 1 revised to exclude Account 124 amounts, now reported on schedule page 219.
Accumulated Deferred Income Taxes - Other Property	274-275	274-275			X			Instruction 1 revised to exclude Account 124 amounts, now reported on schedule page 219.
Accumulated Deferred Income Taxes - Other	276-277	276-277			X			Instruction 1 revised to exclude Account 124 amounts, now reported on schedule page 219.
Other Regulatory Liabilities	278	278	X					
Electric Operating Revenues	300-301	300-301			X			Instruction 1 revised to exclude Account 124 amounts, now reported on schedule page 219.
Sales of Electricity by Rate Schedules	304	304	X					
Sales for Resale	305	305	X					
Electric Operation and Maintenance Expenses	320-323	320-323			X			Instruction 1 revised to exclude Account 124 amounts, now reported on schedule page 219.
Number of Electric Department Employees	323	323	X					
Purchased Power	326-327	326-327	X					
Transmission of Electricity for Others	328-330	328-330	X					
Transmission of Electricity by Others	331	331	X					
Miscellaneous General Expenses - Electric	335	335	X					
Depreciation and Amortization of Electric Plant	336-338	336-338			X			Instruction 1 revised to exclude Account 124 amounts, now reported on schedule page 219.
Particulars Concerning Certain Income Deduction and Interest Charges Accounts	340	340	X					
Regulatory Commission Expenses	350-351	350-351	X					
Research, Development and Demonstration Activities	352-353	352-353	X					
Distribution of Salaries and Wages	354-355	354-355	X					
Common Utility Plant and Expenses	356	356	X					
Gas Plant in Service	400-401	400-401			X			Instruction 1 revised to exclude Account 124 amounts, now reported on schedule page 219.
Gas Property and Capacity Leased from Others	402	402	X					
Gas Property and Capacity Leased to Others	403	403	X					
Gas Plant Held for Future Use	404	404	X					
Construction Work in Progress - Gas	405	405	X					
Gas Stored Underground - Noncurrent	406	406	X					
Nonutility Property	407	407	X					
Accumulated Provision for Depreciation and Amortization of Nonutility Property	407	407	X					
Gas Operating Revenues	408-409	408-409			X			Instruction 1 revised to exclude Account 124 amounts, now reported on schedule page 219.
Sales of Gas by Rate Schedules	410	410	X					
Sales for Resale	411	411	X					
Gas Operation and Maintenance Expenses	412-415	412-415			X			Instruction 1 revised to exclude Account 124 amounts, now reported on schedule page 219.
Number of Gas Department Employees	415	415	X					
Purchased Gas	416-417	416-417	X					
Exchange Gas	418	418	X					
Gas Transported for Others	419-420	419-420	X					
Natural Gas Processed by Others	421	421	X					
Miscellaneous General Expenses - Gas	425	425	X					
Depreciation, Depletion and Amortization of Gas Plant	426-428	426-428			X			Instruction 1 revised to exclude Account 124 amounts, now reported on schedule page 219.
Footnote Data	450	450	X					
Stockholders' Reports	-	104						Added to allow the attachment of stockholder reports.
Identification	-	101						Added to allow reporting of the name of the stock exchange moved to schedule page 250 and 256.
Nonutility Property	-	221						Added to allow reporting of Account 124 amounts.
Accumulated Provision for Depreciation and Amortization of Nonutility Property	-	221						Added to allow reporting of Account 124 amounts.
Investments	-	222						Added to allow reporting of Account 124 amounts.
Accumulated Deferred Income Taxes - Nonutility Property	-	234						Added to allow reporting of Account 124 amounts.
Accumulated Deferred Income Taxes - Other	-	234						Added to allow reporting of Account 124 amounts.
Other Regulatory Assets	-	232						Added to allow reporting of Account 124 amounts.
Miscellaneous Deferred Debits	-	233						Added to allow reporting of Account 124 amounts.
Accumulated Deferred Income Taxes - Accelerated Amortization Property	-	234						Added to allow reporting of Account 124 amounts.
Accumulated Deferred Income Taxes - Other Property	-	234						Added to allow reporting of Account 124 amounts.
Accumulated Deferred Income Taxes - Other	-	234						Added to allow reporting of Account 124 amounts.
Other Regulatory Liabilities	-	278						Added to allow reporting of Account 124 amounts.
Electric Operating Revenues	-	300-301						Added to allow reporting of Account 124 amounts.
Electric Operation and Maintenance Expenses	-	320-323						Added to allow reporting of Account 124 amounts.
Depreciation and Amortization of Electric Plant	-	336-338						Added to allow reporting of Account 124 amounts.
Gas Operating Revenues	-	408-409						Added to allow reporting of Account 124 amounts.
Gas Operation and Maintenance Expenses	-	412-415						Added to allow reporting of Account 124 amounts.
Depreciation, Depletion and Amortization of Gas Plant	-	426-428						Added to allow reporting of Account 124 amounts.

Extraordinary Property Losses	210	220	X					
Gas Prepayments Under Purchase Agreements	210A	218	X					

Title	Old Schedule Page No.	New Schedule Page No.	Retained- As is *	Retained- Changed Threshold	Retained- Revised Instructions	Retained- Deleted Columns	Deleted Complete Schedule	Explanation
Advances for Gas Prior to Initial Deliveries or Commission Certification	210A	219	X					
Unauthorized Debt Expense, Premium and Discount on Long-Term Debt	211	256	X					
Preliminary Survey and Investigation Charges	212	221		X				Instruction 3 - Added provisions for grouping -(less than $250,000) - deleted number of items so grouped.
Miscellaneous Deferred Debits	214	223		X				Instruction 3 - Added provisions for grouping -(less than $100,000) - deleted number of items so grouped.
Deferred Losses from Disposition of Utility Plant	214A	-					X	
Unamortized Loss and Gain on Reacquired Debt	214B	257				X		Deleted columns (f) and (g).
Accumulated Deferred Income Taxes (190)	214C-214D	224-225			X			Deleted lines 19-22, classification of total taxes.
Capital Stock	215	250			X			Added to Column (a) - Name of Exchange - Transferred from page 101, with reference to 10-K filings allowed.
Capital Stock Subscribed, Capital Stock Liability for Conversion, Premium on Capital Stock and Installments Received Received on Capital Stock	216	251	X					
Other Paid-in Capital	217	252	X					
Discount on Capital Stock	218	253	X					
Capital Stock Expense	218	253	X					
Long-Term Debt	219	255			X			Added to Column (a) - Name of Exchange - Transferred from page 101, with reference to 10-K filings allowed.
Securities Issued or Assumed and Securities Refunded or Retired During the Year	220	254	X					
Notes Payable	221	-					X	Moved beginning and end of year balances to schedule page 112.
Payables to Associated Companies	221	-					X	
Taxes Accrued, Prepaid and Charged During Year	222-222A	258-259			X			Instruction 4 - Deleted headings by Federal, State, and Local. Inst. 5 - now exclude federal and state income taxes by year.
Reconciliation of Reported Net Income with Taxable Income for Federal Income Taxes	223	261	X					
Miscellaneous Current and Accrued Liabilities	224	265		X				Instruction 3 - Added provisions for grouping -(less than $100,000).
Customer Advances for Construction	224	-					X	
Deferred Gains from Disposition of Utility Plant	224A	-					X	
Other Deferred Credits	225	266		X				Instruction 3 - Added provisions for grouping -(less than $100,000) - deleted number of items so grouped.
Undelivered Gas Obligations Under Sales Agreements	225A	267	X					
Operating Reserves	226	-					X	Moved beginning and end of year balances to schedule page 113.
Accumulated Deferred Income Taxes	227-227E	268-273			X			Delete instruction 2 for page 227 and 227B.
Investment Tax Credits Generated and Utilized	228	262-263	X					
Accumulated Deferred Investment Tax Credits	229	264	X					
Gains or Loss on Disposition of Property	300	-					X	
Income from Utility Plant Leased to Others	301	336	X					

* Data requirements retained with redesigned format.

Title	Old Schedule Page No.	New Schedule Page No.	Retained- As is *	Retained- Changed Threshold	Retained- Revised Instructions	Retained- Deleted Columns	Deleted Complete Schedule	Explanation
Particulars Concerning Certain Other Income Accounts	303	-					X	Moved account amounts for the year to schedule page 117, Statement of Income for the Year.
Particulars Concerning Certain Income Deduction and Interest Charges Accounts	304	337		X	X			Instruction 3 revised to allow grouping of items less than $10,000. Moved Account 426.4 (and title) to be included in first sentence of instruction 3.
Expenditures for Certain Civic, Political and Related Activities	305	-					X	Account 426.4 reporting moved to schedule page 337 with same details required by instruction 3.
Extraordinary Items	306	-					X	
Common Utility Plant and Expenses	351	-					X	
Regulatory Commission Expenses	353-353A	350-351		X				Instruction 6 - Added provisions for grouping -(less than $25,000).
Charges for Outside Professional and Consultative Services	354	357		X				Instruction 1 and 2 - Revised to report only items in excess of $25,000 for both Class A and Class B.
Distribution of Salaries and Wages	355-356	354-355	X					
Gas Plant in Service	501-504	202-205	X					
Gas Plant Leased to Others	505	207	X					
Gas Plant Held for Future Use	506	208		X				Revised instructions to raise threshold to $250,000. Deleted number of items to grouped.
Production Properties Held for Future Use	506A	209		X				Revised instructions to raise threshold to $250,000. Deleted number of items to grouped.
Construction Work in Progress and Completed Construction Not Classified-Gas	507	210		X		X		Instruction 4 - Added provisions for grouping minor items - (less than $500,000). Deleted Account 106.
Accumulated Provision for Depreciation of Gas Utility Plant	508	213	X					
Accumulated Provision for Amortization and Depletion of Gas Utility Plant: Producing Natural Gas Lands and Land Rights	509	-					X	
Underground Storage Land and Land Rights	510	-					X	
Other Gas Plant in Service, Gas Plant Leased to Others, and Gas Plant Held for Future Use	511	-					X	
Abandonment of Leases	512	-					X	
Gas Plant Acquisition Adjustments and Accumulated Provision for Amortization of Gas Plant Acquisition Adjustments	513	-					X	
Gas Operating Revenues	514	301			X			Increase/decrease columns (c), (e) and (g) revised to read "Previous Year." Instruction 3 revised.
Unauthorized Overrun Penalties and Waivers	515	-					X	
Sales of Natural Gas by Communities (New title) Distribution Type Sales by States	516-517	309-303			X	X		Revised title and instructions to report only volumes and operating revenues by State and Class of of Customers. Deleted columns (b), (c), (f), (i), (l) and (o).
Residential and Commercial Space Heating Customers	518	306	X					
Interruptible, Off Peak, and Firm Sales to Distribution System Industrial Customers	518	306	X					
Field and Main Line Industrial Sales of Natural Gas	519-520A	306-309	X					
Sales for Resale - Natural Gas	521-522	310-311	X					

* Data requirements retained with redesigned format.

Title	Old Schedule Page No.	New Schedule Page No.	Retained- As is *	Retained- Changed Threshold	Retained- Revised Instructions	Retained- Deleted Columns	Deleted Complete Schedule	Explanation
Independental Sales - Natural Gas	523	-						

Title	Old Schedule Page No.	New Schedule Page No.	Retained- As is *	Retained- Changed Threshold	Retained- Revised Instructions	Retained- Deleted Columns	Deleted Complete Schedule	Explanation
Indepartmental Sales - Natural Gas	523	-					X	
Rents from Gas Property and Interdepartmental Rents	523	-					X	
Revenue from Transportation of Gas of Others - Natural Gas	524	312		X	X			Established 1,000,000Mcf threshold for grouping. Instruction 3 - added Commission authorization.
Sales of Products Extracted from Natural Gas	525	313	X					
Revenues from Natural Gas Processed by Others	525	313	X					
Incidental Gasoline and Oil Sales and Other gas Revenues	526	-					X	
Gas Operation and Maintenance Expenses	527-532	320-325			X			Line numbers changed to reflect errata notice issued Sept. 9, 1980, RM79-14. Increase/decrease column (c) revised to "Previous Year." Summary deleted.
Number of Gas Department Employees	532	325	X					
Leased Rental Charged	533A-533D	-					X	
Exploration and Development Expenses	534	326	X					
Abandoned Leases	534	326	X					
Gas Purchases	535-536A	327			X	X		Revised instructions to reflect reporting by total for each account and retained only columns (k), (l), and (m).
Exchange Gas Transactions	537	328-329		X	X			Instruction 1 - Added provisions for grouping - (less than 100,000 Mcf). Redesigned to include data from 536. Merged with 537, columns (g), (j) of A, (e,e,j) of B.
Exchange Gas Accounting	536	* *						
Gas Used in Utility Operations - Credit	539	330	X		X	X		
Other Gas Supply Expenses	540	331	X					
Transmission and Compression of Gas by Others	541	332		X				Revised instructions and column headings to establish 1,000,000 Mcf (Dcf) threshold with larger amounts allowed to be grouped.
Franchise Requirements	542	-						
Miscellaneous General Expenses (Gas)	543	333		X			X	
Construction Overhead - Gas	543	211						Lines 6 and 8 revised to read $5,000, allowing lesser amounts to be grouped for other expenses.
General Description of Construction Overhead Procedure	544	212	X			X		Deleted column (d).
Depreciation, Depletion and Amortization of Gas Plant	545-548A	334-336			X	X		Revised instructions to reflect the deletion of Section B, page 546 and revisions to Section C to allow reporting by 5 functions in total and retaining only columns (b) and (g).
Natural Gas Reserves and Land Acreage	547-548	500-501	X					
Changes in Estimated Natural Gas Reserves	549	803	X					
Changes in Estimated Hydrocarbon Reserves and Costs	549A-549B	504-505	X					
Natural Gas Reserves Available from Purchase Agreements	550-551	-					X	
Natural Gas Production and Gathering Statistics	552-553B	506			X	X		Revised instructions to reflect the deletion of columns (f) through (w) - Production area details.
Products Extraction Operations - Natural Gas	554-555	507			X	X		Revised instructions to reflect the deletion of columns (c) through (j) - Details by plant.
Compressor Stations	554-557	509			X	X		Deleted columns (a) through (f) and instruction 4.

* Data requirements retained with redesigned format.

Title	Old Schedule Page No.	New Schedule Page No.	Retained- As is *	Retained- Changed Threshold	Retained- Revised Instructions	Retained- Deleted Columns	Deleted Complete Schedule	Explanation
Number of Gas and Oil Wells	558	510			X	-		Deleted Instruction 5 - regarding other than full ownership of wells disclosure.
Field and Storage Lines	559	511			X	X		Revised instructions to reflect the deletion of columns (c) through (g) - diameter of pipe.
Gas Storage	560-561B	512-513			X	X		Revised instructions to reflect the deletion of columns (c) through (t) - details by projects.
Transmission Lines	562	514			X	X		Revised instructions to reflect the deletion of columns (c) through (g) - diameter of pipe.
Manufactured Gas Production Statistics	563	-					X	
Liquefied Petroleum Gas Operations	564	515	X					
Transmission System Peak Deliveries	565	516	X					
Auxuliary Peaking Facilities	566	517	X					
Gas Account - Natural Gas	568-569	518-519	X					
Service Interruptions Occurring on the Pipeline System	570	-					X	
System Maps	571	520	X					
Research, Development and Demonstration Activities	572-572A	352-353	X					
Attestation	573	1			X			Redesigned and moved to schedule page 1.
Index	-	2	X					
Identification	Title Sheet	1	X					
List of Schedules	III-V	2-4	X					

* Data requirements retained with redesigned format.

[FR Doc. 01-2208 Filed 1-21-01; 8:45 am]
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18 CFR Part

[Docket No.

Interim Rul
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Procedure
Wells

January 15,
AGENCY: Fe
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SUMMARY: T
Gas Policy
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FOR FURTHER
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Counsel, F
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I. Introductio

In Subpart
Federal Ener

18 CFR Parts 271, 274

[Docket No. RM81-12]

Interim Rule Under Section 108 of the NGPA Concerning Temporary Pressure Buildup in Qualifying Stripper Wells

January 15, 1981.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Interim Rule.

SUMMARY: Section 108 of the Natural Gas Policy Act of 1978 (NGPA) establishes a maximum lawful price for natural gas from stripper wells, *i.e.*, wells that produce no more than 60 Mcf of natrual gas per production day during a specified 90 day production period. In this interim rule, the Federal Energy Regulatory Commission (Commission) is amending its regulations implementing section 108 to permit a producer whose well already qualifies for the section 108 stripper well price to continue to charge and collect that price when the well exceeds the 60 Mcf production rate due to pressure buildup during a temporary shut-in of the well. The rule establishes procedures under which a producer may seek a determination by the jurisdictional agency that excess production from a qualified stripper well is the result of a pressure buildup during a temporary shut-in. Such a determination, subject to Commission review, would permit the well to continue to qualify for the section 108 price.

DATES: The interim rule is effective January 15, 1981. Requests for a hearing are due on or before January 30, 1981. A public hearing, if held, will be announced by February 5, 1981. Comments are due on or before 4:30 p.m., February 20, 1981.

ADDRESS: Comments and requests for hearing should be submitted to: Office of the Secretary, 825 North Capitol Street, NE., Washington, D.C. 20426.

FOR FURTHER INFORMATION CONTRACT:

Carol Lane, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Room 4106-G, Washington, D.C. 20426 (202) 357-8317.

Susan Tomasky, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Room 8100, Washington, D.C. 20426 (202) 357-8164

I. Introduction

In Subpart H of its regulations, the Federal Energy Regulatory Commission [Commission] has established rules implementing section 108 of the Natural Gas Policy Act of 1978 (NGPA), which sets a maximum lawful price for natural gas from stripper wells. Generally, the NGPA defines a stripper well as one that produces no more than an average of 60 Mcf of natural gas per production day in the preceding 90-day production period. The Commission is adopting herein an interim rule amending §§ 271.804, 271.805, 271.806, and 274.206 of its regulations to provide a special rule governing temporary over-production from wells which have previously been determined to qualify as stripper wells.

II. Discussion

Section 108 of the NGPA provides that in order for a well to qualify as a stripper well it must produce an average of 60 Mcf or less of natural gas per production day during the preceding 90-day production period. A well which exceeds the 60 Mcf limit during any 90-day production period loses its stripper well status unless the increased production is shown to be the result of "recognized enhanced recovery techniques." *See* section 108(b)(2).

The Commission has also recognized another situation in which a well may exceed the 60 Mcf per production day limit without losing its stripper well status. Section 271.804(d) of the regulations provides that once a well qualifies as a stripper well, it may retain that status so long as production does not exceed 60 Mcf per production day on a yearly basis, if the well is determined to be "seasonally affected." This "seasonally affected" rule as promulgated in order to allow for cyclical variations in production which result from seasonal pressure differentials on a pipeline system. Without this rule, many stripper wells would have to go through disqualification and requalification procedures each year.

The Commission now finds that there exists another situation that is causing temporary disqualification and subsequent requalificafion of legitimate stripper wells, placing an undue administrative burden on producers, states, and the Commission. This situation arises when a well is required to be temporarily shut-in to permit, for example, pipeline or wellhead maintenance or repair. During the shut-in days, pressure builds up in the well bore. When the well is reopened to the line, gas is produced at a higher rate of production than that at which the well normally produces, and the shut-in days do not qualify as "production days" for purposes of determining the well's rate of production. (*See* § 271.805(d).) In such situations the well's average rate of production may exceed the 60 Mcf per production day limit for the relevant 90-day production period, and the well may be disqualified as a stripper. As soon as the pressure buildup is dissipated and the well returns to its normal rate of production, the producer must submit a new application for a determination that the well is a stripper well, file a Form 121, fulfill the interim collection filing requirements[1] and comply with all of the other requirements necessary to receive a well category determination and collect the maximum lawful price under the category.

The Commission believes that once a well has been determined to be a stripper well, short-term over-production resulting from temporary pressure buildups such as those described above should not cause the well to lose its legitimate stripper status. The Commission further believes that it is within the spirit and intent of section 108 to encourage continued production from marginal wells by removing undue administrative burdens which may result when a stripper well is disqualified as a result of temporary pressure buildup. Accordingly, the Commission is acting under its administrative and rulemaking authority set forth in section 501(a) of the NGPA to promulgate a rule that will provide for continuing qualification of stripper wells that experience temporary pressure buildups.

III. Summary of Regulations

Section 271.804 (Special rules) is being amended to add a rule which provides that a previously qualifying stripper well that produces gas in excess of an average of 60 Mcf per production day during any 90-day production period shall not be disqualified from stripper status if the jurisdictional agency finds that:

(A) The rate of production in excess of 60 Mcf per production day resulted solely from pressure buildup when the well was temporarily closed to the line;

(B) Total production for the relevant 90-day production period did not exceed 5400 Mcf;[2] and

(C) The well would have produced at a rate not exceeding 60 Mcf per production day during the relevant 90-

[1] Recently adopted modifications to the interim collection filing requirements applicable for stripper wells are set out fully in the Final Rule in Docket No. RM80-54, Amendment to Part 272 Regulations Under the Natural Gas Policy Act.

[2] The 5400 Mcf figure has been selected because it represents the maximum amount of gas that can be produced from a well during a 90-day production period if that well is to maintain its stripper well status, *i.e.*, 60 Mcf per day × 90 days = 5400 Mcf.

day production period had the well been continuously open to the line during that period.

Section 271.805 is amended to provide that if a well's production exceeds the 60 Mcf limit for any 90-day production period, the well operator may file with the jurisdictional agency a petition for a determination that the increased production is the result of temporary pressure buildup. The jurisdictional agency shall then make an affirmative or negative finding on the petition and forward such finding to the Commission for review. Sections 271.805 and 274.206 are amended to conform to this procedure.

IV. Effective Date

This interim rule relieves restrictions previously placed on applicants under the Commission's regulations. Accordingly, it is being made effective immediately. This rule shall not become final, however, until the Commission has had an opportunity to receive oral and written presentations of relevant data, views and arguments.

V. Public Procedure

A. Written Comments

Interested persons are invited to submit comments, data, views, or arguments with respect to this interim regulation. Comments should be submitted to the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, and should refer to Docket No. RM81-12. An original and 14 copies should be filed. All comments received prior to 4:30 p.m., February 20, 1981, will be considered by the Commission prior to promulgation of final regulations. All written submissions will be placed in the public file that has been established in this docket. This file is available for public inspection in the Commission's Division of Public Information, Room 1000, 825 North Capitol Street, NE., Washington, D.C., during regular business hours.

B. Public Hearing

Interested persons may request the opportunity for an oral presentation of their views at a public hearing. Requests for a hearing should be submitted no later than January 30, 1981, to the Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, and should reference Docket No. RM81-12. If a public hearing is held in this docket, the time and place will be announced by February 5, 1981.

(Natural Gas Policy Act of 1978, (15 U.S.C. 3301-3432); Department of Energy Organization Act, (42 U.S.C. 7101, *et seq.*); E.O. 12009, 42 FR 46267)

In consideration of the foregoing, the Commission amends Subpart H, Chapter I, Title 18, Code of Federal Regulations, on an interim basis, as set forth below, effective immediately.

By the Commission.

Lois D. Cashell,

Acting Secretary.

PART 271—CEILING PRICES

1. Section 271.804 is amended by adding new paragraph (e), to read as follows:

§ 271.804 Special rules.

* * * * *

(e) *Temporary pressure buildup in previously qualifying stripper wells.* (1) A previously qualifying stripper well which produces natural gas at a rate in excess of an average of 60 Mcf per production day during any 90-day production period shall not be disqualified if the jurisdictional agency finds pursuant to a petition filed under § 271.805 that:

(i) The rate of production in excess of 60 Mcf per production day is the result of pressure buildup which occurred when the well was temporarily shut-in;

(ii) Total production for the relevant 90-day production period did not exceed 5400 Mcf; and

(iii) Based on the well's production history and any other available data, the well could reasonably have been expected to produce at an average rate not exceeding 60 Mcf per production day during the relevant 90-day production period had the well been continuously open to the line during such period.

(2) A previously qualifying stripper well is a well which

(i) Has been determined by a jurisdictional agency to qualify as a stripper well pursuant to this subpart, and

(ii) Has not been disqualified prior to the 90-day production period in which the temporary pressure buildup occurs.

2. Section 271.805(b) is revised to read as follows:

§ 271.805 Continuing qualification.

* * * * *

(b) *Petition under § 271.806.* (1) The operator may file with the jurisdictional agency:

(i) A motion contesting a notice filed by a purchaser under paragraph (a) of this section;

(ii) A petition for a determination under § 271.806 that the increased production of natural gas is:

(A) The result of the application of an enhanced recovery technique;

(B) If the well has not been designated as seasonally affected, the result of seasonal fluctuations; or

(C) The result of pressure buildup which occurred when the well was temporarily shut-in.

(2) A petition or motion filed under paragraph (b)(1) of this section may be filed at any time after notice is given under paragraph (a) of this section. A copy of the petition or motion and of the notice required under paragraph (a)(1) of this section shall be provided to the Commission and to the purchaser.

3. Section 271.806 is amended by revising paragraph (a), to read as follows:

§ 271.806 Jurisdictional agency determination and Commission review.

(a) *Petition under §§ 271.804(d) and (e) and 271.805(a).* The jurisdictional agency shall treat the following petitions as if they were applications for initial determinations and shall comply with the applicable provisions of Subpart A of Part 274 of this chapter:

(1) Petitions to designate a well as seasonally affected pursuant to § 271.804(d);

(2) Petitions to determine that production is excess of an average of 60 Mcf per production day was due to,

(i) Use of recognized enhanced recovery techniques defined in § 271.803(a), or

(ii) Temporary pressure buildup pursuant to § 271.804(e).

* * * * *

PART 274—DETERMINATIONS BY JURISDICTIONAL AGENCIES

4. Section 274.206 is amended by adding a new paragraph (e), to read as follows:

§ 271.806 Stripper well natural gas.

* * * * *

(e) *Determination of increased production resulting from temporary pressure buildup.* For purposes of a determination under § 271.806(a) that excess production resulted from temporary pressure buildup in the well bore, the applicant shall file:

(1) The name and addresses of the applicant and purchaser(s);

(2) An identification of the well and accurate reference to,

(i) The original determination qualifying the well as a stripper well, and

(ii) The notice, if any, filed by a purchaser pursuant to § 271.805(a);

(3) The monthly production reports, tax records or billing statements for the 90-day production period in question or, if permitted by the jurisdictional

agency's filing requirements, summaries of such records or billing statements;

(4) A statement of the total production for the period in question, and the average production per production day;

(5) A statement of the number of days the well was shut-in and a description of the reason for the shut-in.

(6) Engineering, geological and/or production data to support a finding that the increased rate of production was the result of a pressure buildup which occurred when the well was shut-in.

(7) A statement, under oath, that to the best of his information, knowledge and belief,

(i) The well would have produced at an average rate not exceeding 60 Mcf per production day during the relevant 90-day production period had the well been continuously open to the line during such period,

(ii) The information supplied is true, and

(iii) The petition for this determination has been served on the jurisdictional agency, the Commission, and any purchaser.

(8) If the jurisdictional agency so requires, certified copies of records relied on by the applicant including copies of the agency's official files.

[FR Doc. 81-2259 Filed 1-21-81; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

Health Care Financing Administration

Office of Human Development Services

20 CFR Part 416

42 CFR Part 435

45 CFR Part 1396

Supplemental Security Income, Medicaid, and Social Security; Continuation of Benefits and Eligibility for Certain Severely Impaired Recipients Who Work

AGENCIES: Social Security Administration, Health Care Financing Administration, and Office of Human Development Services, HHS.

ACTION: Interim rule with request for comments.

SUMMARY: These interim regulations implement sections 201 (a) and (b) of Pub. L. 96-265, which provide for the continuation of Supplemental Security Income (SSI) benefits and eligibility for Medicaid and title XX social services for certain severely impaired SSI recipients who work. States which elect to do so may augment these benefits with State supplementary payments. Sections 201 (a) and (b) are effective for a 3-year period beginning January 1, 1981. The regulations will affect severely impaired SSI recipients who work and have earnings, including those whose earnings exceed the established substantial gainful activity (SGA) limits. As long as their earnings and other income do not exceed income limits prescribed in the SSI program (20 CFR Part 416, Subpart K) these individuals may receive special SSI cash benefits. If, because of their earnings, their income exceeds the income limits, they may still be eligible for Medicaid and title XX benefits if they meet certain conditions. SSI recipients who are blind are also covered under this latter provision.

DATES: These regulations are effective on an interim basis starting January 1, 1981. Your comments must be received on or before March 23, 1981, to be considered in establishing the final rule.

ADDRESSES: Send your written comments to the Commissioner of Social Security, Department of Health and Human Services, P.O. Box 1585, Baltimore, Maryland 21203. You may see copies of all comments we receive at the Washington Inquiries Section, Office of Governmental Affairs, Social Security Administration, Department of Health and Human Services, Room 1212, Switzer Building, 330 C Street, S.W., Washington, DC 20201.

FOR FURTHER INFORMATION CONTACT:

For SSI: Fred Miranda, Legal Assistant, Room 4234, West High Rise Building, 6401 Security Boulevard, Baltimore, Maryland 21235, (301) 594-7341.

For Medicaid: Richard Cody, Acting Director, Medicaid Eligibility, Room 416, East High Rise Building, Baltimore, Maryland 21235, (301) 594-9050.

For Title XX Program: Mrs. Johnnie V. Brooks, Room 722-E, Hubert H. Humphrey Building, Department of Health and Human Services, 200 Independence Avenue, S.W., Washington, D.C. 20201, (202) 472-4415.

SUPPLEMENTARY INFORMATION:

Present Law and Regulations Governing the SSI Program

Under present law, an individual who is severely impaired may qualify for SSI disability payments only if he or she "* * * is unable to do any substantial gainful activity (SGA) by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months." (See 20 CFR 416.905). Under current regulations (20 CFR 416.974), SGA is principally described in terms of dollar amounts of earnings above which an individual is presumed to be engaging in SGA. Earnings over this amount ($300 a month in 1980) are generally considered to show ability to do SGA and, other than during a period of trial work, are a basis for stopping SSI benefits. The trial work period (TWP) is a period of up to 9 months, which do not have to be consecutive, during which an individual may test his or her ability to work and still be considered disabled (20 CFR 416.992).

Problems Under Present Policies

In recent years there has been concern that the SSI disability program may actually discourage recipients from trying to go back to work. A severely impaired individual who becomes ineligible for SSI benefits may also lose Medicaid and title XX social services since eligibility for these programs is frequently tied to receipt of SSI benefits. While earnings will at least partially offset the loss of SSI cash benefits, Medicaid and title XX social services are rarely replaced. Thus, a severely impaired recipient who is thinking of going to work may decide not to rather than face a combined loss of benefits under SSI and other programs which more than offset the potential gain from earnings.

Provisions of New Law

Pub. L. 96-265, "The Social Security Disability Amendments of 1980," enacted on June 9, 1980, contains several work incentive provisions. Section 201(a) of Pub. L. 96-265 offers work incentives through a 3-year demonstration project. This demonstration project provides that an individual with a disabling impairment who loses eligibility for regular SSI benefits based on disability because he or she works and demonstrates the ability to perform SGA may become eligible for special SSI cash benefits. These benefits are computed in the same way as the regular SSI benefits payable to individuals who are disabled. They may be augmented by State supplementary payments if a State elects to do so.

An individual may qualify for these special SSI cash benefits if—

(1) In the month before the month for which eligibility is being determined, he or she was eligible for regular SSI benefits, special SSI cash benefits or State supplementary payments; and

(2) In the month for which eligibility is being determined, he or she is not eligible for regular SSI benefits based on disability because he or she works and demonstrates the ability to engage in SGA.

The special SSI cash benefits are payable for months through December 1983 so long as the individual continues to have a disabling impairment and to meet all other requirements for SSI eligibility.

An individual who receives special SSI cash benefits maintains his or her SSI recipient status for purposes of eligibility for Medicaid and title XX social services. Thus, the individual may be determined eligible for Medicaid and title XX services on the same basis as a person who receives regular SSI benefits.

If an individual's earnings and other income are great enough to reduce his or her Federal SSI benefits to zero, eligibility for the special SSI cash benefit ends. (State supplementary payments may continue depending on the amount of his or her income). However, even if cash benefits are stopped because of earnings, a severely impaired or blind individual (under 65 years of age) who was eligible for regular SSI benefits, special SSI cash benefits, or State supplementary payments in the month before the first month for which eligibility is being determined, may still acquire a special SSI eligibility status for purposes of Medicaid and title XX social services. This special eligibility status, under which the individual is considered a blind or disabled individual receiving SSI benefits, applies for months through December 1983 as long as the individual: (1) continues to be blind or have a disabling impairment; (2) except for earnings, continues to meet all the other requirements for SSI eligibility; (3) would be seriously inhibited from continuing to work by the termination of eligibility for Medicaid or title XX social services; and (4) has earnings that are not sufficient to provide a reasonable equivalent of the benefits (SSI, State supplementary payments, Medicaid and title XX social services) which would be available if he or she did not have those earnings.

The demonstration will produce information from which Congress can evaluate the effectiveness of the special benefits provisions in section 201(a) in promoting work by SSI recipients who are blind or have disabling impairments and consider any administrative problems that may arise. To facilitate this evaluation, the Social Security Administration is required to account separately for the funds that are spent in implementing sections 201 (a) and (b).

The Interim Regulations

These interim regulations describe the rules SSA will follow in implementing sections 201 (a) and (b) of Pub. L. 96-265. They explain the special SSI cash benefits that are available for severely impaired in individuals who work and demonstrate the ability to perform substantial gainful activity. They also describe the special SSI eligibility status that may apply to blind and severely impaired individuals who work and whose earnings cause him or her to have income that is too great to permit eligibility for SSI benefits, list the two criteria an individual must meet to receive the special benefits, and list the two additional criteria needed to acquire the special eligibility status. 20 CFR 416.261–416.262 discuss the special SSI cash benefits and explain when these benefits are payable. 20 CFR 416.264–416.269 provides similar information about the special SSI eligibility status under which an individual is considered a blind or disabled individual receiving SSI benefits for purposes of Medicaid and title XX social services. 20 CFR 416.266 explains that even though SSI payments have been stopped, an individual will continue to be considered an SSI recipient during the time it takes SSA to determine whether he or she qualifies for the special eligibility status. 20 CFR 416.268 specifically identifies the kinds of information SSA will have to obtain from other sources to determine whether an individual qualifies for the special eligibility status. 20 CFR 416.1402 explains that determinations of eligibility concerning the special SSI cash benefits and the special eligibility status are initial determinations subject to the same appeal procedures that apply to other SSI determinations. 20 CFR 416.2001 explains that a state which makes State supplementary payments has the option of making these payments to individuals who are eligible for the special SSI benefits.

When determining an individual's eligibility for the special SSI cash benefits and for the special SSI eligibility status, SSA will verfy that the individual continues to be blind or to have a disabling impairment (first criterion) by applying the rules in 20 CFR, Part 416, Subpart I (see 45 FR 55621). When determining whether an individual continues to meet all other requirements for SSI eligibility (second criterion), SSA will follow the rules in 20 CFR Part 416 Subpart B.

In determining whether the special SSI eligibility status applies SSA must also establish that the individual's ineligibility for SSI cash benefits is due to earnings from work which caused him or her to have excess income and that two additional criteria are met. The two additional criteria to be met for the special eligibility status are: (a) the individual's ability to continue working would be seriously inhibited by the termination of eligibility for Medicaid or title XX services (third criterion); and (b) the individual's earnings would be insufficient to provide a reasonable equivalent of benefits under title XVI (SSI), title XIX (Medicaid) and title XX (Social Services), which would be available to him or her in the absence of such earnings (fourth criterion).

To make a determination about the third criterion, SSA will first obtain a signed statement from the individual containing: (1) a description of services received under the Medicaid and title XX programs in the present month and in the previous 12 months, as well as the services he or she expects to need in the next 12 months; and (2) the names of the providers who have furnished services and the dates the services were provided. SSA will verify that services were provided when the statement shows that the individual has received Medicaid or title XX social services.

SSA will confirm the receipt of Medicaid services for the previous 12 months by obtaining information from the State Medicaid agency about the services received, dates of the services and amount paid for them. If the State Medicaid agency is unable to provide the information because it does not have an automated data processing system that is currently programmed to produce these data or if the information is not otherwise made available to SSA by the State, SSA will request the information from the appropriate Medicaid providers. The recipient may be required to assist in obtaining this information. Generally, SSA will accept recipient statements regarding the current month's use as well as expected use of Medicaid services.

SSA will confirm that title XX services were received by obtaining from the State title XX agency or provider, information concerning whether the individual is or was a recipient of title XX services for the previous 12 month period. As with Medicaid services, SSA will accept the recipient's statements with regard to the current month's use or future use of title XX services.

If past use can be established, or if there is no past use and the need for current services or future use of Medicaid or title XX services can be

established, the individual meets criterion three.

To determine if the fourth criterion is met, SSA will apply an initial screen based on a review of earnings. This will involve comparing the individual's gross earnings to a threshold amount. Briefly, the threshold amount (which is explained more fully later) is defined as the sum of the following:

(1) The minimum level of earnings for an individual with no other income, living in his or her own household, which will reduce that individual's SSI and State supplementary payments to zero;

(2) The average expenditures for Medicaid benefits for blind and disabled SSI recipients in the individual's State of residence; and

(3) The average expenditures for title XX social services for blind and disabled SSI recipients in the individual's State of residence.

SSA will base the gross earnings used in this comparison on the first quarter for which special eligibility status is being determined and on a projection for the next three quarters. Whenever possible, SSA will verify earnings by using documents in the individual's possession or through contacts with the individual's employer(s). If the individual's earnings are less than or equal to the threshold amount, he or she meets criterion four. If the earnings are greater than the threshold amount, the individual may still meet criterion four if SSA can establish that the actual sum of past medical and social services costs, together with the SSI and State supplementary amount described earlier in number one, are greater than his or her gross earnings. If the person's gross earnings are less than or equal to this amount, he or she meets criterion four. If they are greater, the person does not qualify for the special SSI eligibility status.

Explanation of the Threshold Amount

SSI and State Supplementary Amount

The first element of the threshold amount is the minimum level of earnings for an individual with no other income, living in his or her own household, which will reduce that individual's SSI and State supplementary payments to zero. The amount will vary from State to State depending upon the amount of any State supplementary payment. (The basic Federal SSI benefit is currently $238 a month or $2,856 for 12 months.)

For purposes of illustration, let us suppose that a State's supplementary payment to a person living in his or her own household equals $62 a month, or $744 for 12 months. In that case, the combined Federal and State benefit for 12 months would equal $3,600 ($744 + $2,856). To arrive at the amount of the first element used in the threshold we multiply the yearly benefit of $3,600 by 2 and add the yearly exclusions of $240 and $780 (See § 416.1112(c) (3) and (4)). In this example the first element of the threshold would be $8,220 for 12 months.

Adjusted Average Expenditures for Medicaid

The adjusted averages for Medicaid were obtained from information reported by the States for fiscal year (FY) 1977. Adjustments were made for the five States which did not report and all of the figures were adjusted for inflation (12% compounded annually). (States report this information on form HCFA 2082, *Statistical Report on Medical Care: Recipients' Payments and Services*, which was formerly form NCSS–2082).

Average Expenditures for Title XX

The title XX average recipient expenditures were obtained from service and unit cost information submitted by the States to the Office of Human Development Services (HDS) during Fiscal Year 1978, as part of the *Social Services Reporting Requirements*. Since Maryland and Alaska did not report, the national average of $664 was used for those States. This data is based on estimates and is highly variable; therefore, it will be utilized on a temporary basis only.

HDS is requesting that State title XX agencies make available to SSA their own average cost of services under title XX for their blind and disabled SSI population. Since this average cost can be developed from more recent (refined) financial data that is available at the State level, it will be more accurate than the estimates HDS has been able to develop from available, but less reliable, figures.

Rationale for the Threshold Amount Formula and Figures Used in that Formula

A threshold formula was developed as a means to implement criterion four for several reasons. It expedites the eligibility process by permitting a determination to be made without an individualized evaluation of the personal medical and social services expenses of every recipient who is being evaluated for special SSI eligibility. Also, in our view, it most closely approaches the Congressional intent in applying this criterion (as reflected in the House of Representatives Conference Report No. 96–944, page 50). This report makes clear that Congress intended that generally available State-by-State information be used in establishing reasonable income limits to carry our criterion four. Title XIX and XX agencies are the primary sources of this information.

Computations for the Medicaid and title XX figures are based on the most appropriate data available for use in light of the limited time we have to implement the program (which does not permit us to obtain additional figures on a State-by-State basis). We plan to use updated data when it becomes available. However, we welcome comments on the data we have used and on other approaches that might be used in determining the threshold figures.

Continuing Eligibility Under the Special Status Provision

Eligibility for the special SSI eligibility status will be reevaluated at least annually. The verification procedures for initial eligibility will be applied in these reevaluations.

Federal and State Responsibilities

Federal Responsibility

(1) If a blind or disabled individual is no longer eligible for a regular SSI benefit, a special SSI cash benefit, or a State supplementary payment (see 20 CFR 416.2001), SSA will automatically evaluate the person for the special SSI eligibility status. Until SSA makes this determination, eligibility for Medicaid and title XX benefits on the basis of SSI status will continue as though the person were receiving SSI benefits. Federal financial participation will be available to States for the costs of otherwise reimbursable Medicaid and title XX services provided to an individual during the time it takes SSA to make the special SSI eligibility status determination, since the individual will be presumed to meet the requirements of this special status until it is determined otherwise. Even if it is later determined that the individual was ineligible for the special eligibility status, Medicaid and title XX services provided to the individual during the period of presumed eligibility would be proper State expenditures and thus qualify for Federal matching funds. SSA will notify the State Medicaid and title XX agencies via the State Data Exchange (SDX) system both when special eligibility status is under evaluation and when a special eligibility status determination has been made.

(2) The Health Care Financing Administration (HCFA) will be responsible for making available to SSA information concerning the initial and updated threshold amount figures for

Medicaid that will be used under criterion four. The Office of Human Development Services (HDS) will be responsible for making available to SSA information concerning the title XX threshold amount figures to be used initially under criterion four.

State Responsibility

(1) State title XX agencies, as indicated previously, will be responsible for making available to SSA more recent and refined title XX threshold amount figures.

Also, State title XX agencies, upon request from SSA, will be responsible for supplying SSA with the total cost of social services for an individual. This will require that each State utilize its comprehensive services plan in making a list of social services available to blind and disabled SSI recipients. This list will have to be updated in conjunction with changes in service plans. For each of these services a State will compute a total estimated unit cost. The actual cost of social services provided to a particular blind or disabled individual on the basis of his or her SSI status will be computed by multiplying the number of times an individual received a particular service by the unit cost of that service. These figures will then be added to give the total actual cost. This information will then be submitted to SSA. We believe these requests will provide a minimum burden since we anticipate that there will be very few instances when such a request will be made. In some cases, the State agency will have to obtain information on services a client received from the provider agency in order to determine the actual total cost of social services for that client.

(2) State Medicaid agencies, upon request, will be responsible for supplying SSA with an individual's client profile of medical services (services and dates received, provider and amount paid) if they have automated systems which are currently programmed to produce such data.

(3) When SSA informs State Medicaid agencies of an individual's pending special SSI eligibility status, the Medicaid agencies will be expected to obtain up-to-date third party liability (TPL) information from the individual, his or her employer(s) or other available sources (See TPL requirements under 42 CFR Part 433, Subpart D). This is necessary for purposes of claims payment since it is likely that an individual may have obtained health insurance through recent employment, while the State's last TPL inquiry may have been made when the person first became eligible for SSI benefits.

(4) For purposes of determining Medicaid eligibility, States must consider an individual who is being evaluated for or has been granted the special SSI eligibility status as a blind or disabled person receiving SSI benefits.

Some States have elected the option under section 1902(f) of the Act of applying Medicaid eligibility requirements for aged, blind or disabled individuals that are more restrictive than those used under SSI. Those States must allow all blind and disabled individuals who have the special SSI eligibility status the same opportunity to establish Medicaid eligibility under the State's more restrictive criteria, as those actually receiving SSI.

Amendments to Title 42

HCFA has amended Medicaid regulations at 42 CFR 435.120 to indicate that individuals who are eligible for the special SSI status under section 1619(b) of the Act are to be considered individuals receiving SSI. In addition, HCFA has made two technical changes. The first is made in 42 CFR 435.3 to add the statutory basis for these regulations. The second amended the definition of "categorically needy" in 42 CFR 435.4 to include those individuals who are considered under section 1619(b) to meet the financial requirements for SSI.

Amendments to Title 45

Currently, under title XX the definition of SSI in 45 CFR 1396.1 means monthly cash payments made by the Social Security Administration or State supplementary payments to individuals who meet the requirements for those payments under title XVI (SSI) of the Act. These rules revise the definition of SSI under title XX so that those disabled and blind individuals who meet the conditions specified in section 1619(b) may retain their income maintenance status as SSI recipients for purposes of title XX.

Modifications to accommodate the expanded definition of SSI are found at 45 CFR 1396.1 (definitions), 1396.56 (fifty-percent rule), and 1396.60 (persons eligible and access to services).

Section 1396.1 now is modified to define SSI so that the blind and disabled individuals described in section 1619(b) of the Act are added to the category of SSI recipients. Section 1396.56 is revised to permit States to include the cost of services to those individuals in meeting the fifty percent rule. Section 1396.60 is amended to simply refer to "recipients of SSI benefits" as one of the categories of individuals that would be eligible for title XX on the basis of income maintenance status.

Reasons for Interim Regulations

The Health Care Financing Administration, the Office of Human Development Services and the Social Security Administration are issuing these rules as interim regulations in order to comply with the legislative mandate in section 201 of Pub. L. 96-265. Publication of a Notice of Proposed Rulemaking under the particular circumstances here would be impracticable and contrary to the public interest since the amendments are effective on January 1, 1981 and there would be insufficient time to publish both a notice of proposed rulemaking and a final regulation. These regulations are immediately needed to carry out the Congressional intent of section 1619 to expand the benefits available to severely impaired recipients. It is in the pubic interest to promptly have available and to be informed of the rules SSA is using to implement the provisions of section 1619. Accordingly, the proposed rulemaking procedures of the Administrative Procedure Act are waived under the authority of 5 U.S.C. 553(b)(B).

Reporting Requirements

The Department is required to submit to OMB for review and approval § 416.268 of these regulations. This section concerns the need for affected recipients to provide SSA information about Medicaid and title XX social services usage. We need this information so that we may determine whether these recipients qualify for special eligibility status for purposes of Medicaid and title XX social services. This section also concerns the need for States and medical providers to supply verifying information. We are submitting the section to OMB for approval. In the meantime we are requesting individuals from whom this information is needed, as well as States and medical providers, to voluntarily comply with the provision. The Department will publish a notice in the Federal Register when OMB has completed its review of this provision.

(Catalog of Federal Domestic Assistance Program No. 13.642, Social Services for Low Income and Public Assistance Recipients; No. 13.714, Medical Assistance Program; and No. 13.807, Supplemental Security Income Program)

Dated: January 8, 1981.
William J. Driver,
Commissioner of Social Security.
Howard Newman,
Administrator of Health Care Financing Administration.
Kathryn Moncion,
Acting Assistant Secretary for Human Development Services.

Approved: January 14, 1981.
Patricia Roberts Harris,
Secretary of Health and Human Services.

Title 20—Employees' Benefits

PART 416—SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND, AND DISABLED

Part 416 of Chapter III of Title 20 of the Code of Federal Regulations is amended as set forth below:

1. The authority citation for Part 416 reads as follows:

Authority: Sec. 1102, 1611, 1616, 1618, 1619, 1631 and 1634 of the Social Security Act as amended. Sec. 212 of Pub. L. 93-66, as amended; 49 Stat. 647 as amended, 86 Stat. 1468, 1474, 1475, and 1478, 90 Stat. 2001, 87 Stat. 155, and 94 Stat. 445; 42 U.S.C. 1302, 1382a, 1382g, 1383, 1383c, 1382h and 1396.

2. New §§ 416.260–416.269 are added to read as follows:

Benefits for Persons with Disabling Impairments Who Perform SGA

Sec.
416.260 General.

Special SSI Cash Benefits

416.261 What are special SSI cash benefits and when are they payable.
416.262 Eligibility requirements for special SSI cash benefits.
416.263 No additional application needed.
416.264 When does the "special SSI eligibility status" apply.
416.265 Eligibility requirements for the special SSI eligibility status.
416.266 Continuation of SSI status for Medicaid and title XX social services.

How We Establish Your Special SSI Eligibility Status

416.267 General.
416.268 What is done to determine if you must have Medicaid or title XX services in order to work.
416.269 What is done to determine whether your earnings are too low to provide comparable benefits and services you would receive in the absence of those earnings.

Benefits for Persons with Disabling Impairments Who Perform SGA

§ 416.260 General.

These regulations describe the rules for determining eligibility for special SSI cash benefits and for a special SSI eligibility status for a person who works despite a disabling impairment. These benefits and this status are available for a 3-year period beginning January 1, 1981 and ending December 31, 1983. Under these rules a person who works despite a disabling impairment may qualify for special SSI cash benefits as well as for Medicaid and title XX social services when his or her earnings exceed the established SGA limits described in § 416.974(b). Also, for purposes of determining eligibility or continuing eligibility for Medicaid and title XX social services, a blind or medically impaired person (no longer eligible for SSI benefits) who, except for earnings, would otherwise be eligible for SSI benefits may be eligible for a special SSI eligibility status under which he or she is considered a blind or disabled individual receiving SSI benefits. We explain the rules for eligibility for special SSI cash benefits in §§ 416.261–416.262. We explain the rules for acquiring the special SSI eligibility status in §§ 416.264–416.269.

Special SSI Cash Benefits

§ 416.261 What are special SSI cash benefits and when are they payable.

Special SSI cash benefits are benefits that we may pay you for months during January 1, 1981 through December 31, 1983, if you are not eligible for regular SSI benefits because you demonstrate the ability to engage in SGA. You must meet the eligibility requirements in § 416.262 in order to receive special SSI cash benefits. Special SSI cash benefits are not payable for any month in which your countable income exceeds the limits established for the SSI program (see Subpart K of this part). If you are eligible for special SSI cash benefits, we consider you to be a disabled individual receiving SSI benefits for purposes of eligibility for Medicaid and title XX social services. We compute the amount of special SSI cash benefits according to the rules in Subpart D of this part. If your State makes supplementary payments which we administer under a Federal-State agreement, and if your State elects to supplement the special SSI cash benefits, the rules in Subpart T of this part will apply to these payments.

§ 416.262 Eligibility requirements for special SSI cash benefits.

You are eligible for special SSI cash benefits if you meet the following requirements—

(a) In the month before the month for which we are determining your eligibility for special SSI cash benefits, you were eligible for regular SSI benefits, special SSI cash benefits, or State supplementary payments (See § 416.2001);

(b) You are not eligible for a regular SSI benefit in the month for which we are making the determination because you demonstrate the ability to perform SGA;

(c) You continue to have a disabling impairment; and

(d) You continue to meet all the non-disability requirements for eligibility for SSI benefits (see subpart B).

We will follow the rules in this subpart in determining your eligibility for special SSI cash benefits.

§ 416.263 No additional application needed.

We do not require you to apply for special cash benefits nor is it necessary for you to apply to have the special SSI eligibility status determined. We will make these determinations automatically.

§ 416.264 When does the "special SSI eligibility status" apply.

The special SSI eligibility status applies only for purposes of establishing or maintaining your eligibility for Medicaid or title XX social services. For these purposes we continue to "consider you to be a blind or disabled individual receiving SSI benefits" even though you are in fact no longer receiving SSI benefits. You must meet the eligibility requirements in § 416.265 in order to qualify for the special SSI eligibility status.

§ 416.265 Eligibility requirements for the special SSI eligibility status.

In order to be eligible for the special SSI eligibility status you must be under age 65 and, in the month before the first month for which we are making the special status determination, you must have been eligible to receive a regular SSI benefit, a special SSI cash benefit, or a State supplementary payment (see § 416.2001). Also we must establish that—

(a) You are blind or you continue to have a disabling impairment;

(b) Except for your earnings, you continue to meet all the non-disability requirements for eligibility for SSI benefits (see Subpart B);

(c) The termination of your eligibility for Medicaid or title XX social services would seriously inhibit your ability to continue working (see § 416.268); and

(d) Your earnings are not sufficient to allow you to provide yourself with a reasonable equivalent of the benefits (SSI benefits, State supplementary payments, Medicaid, and title XX social services) which would be available to you if you did not have those earnings (see § 416.269).

§ 416.268 Continuation of SSI status for Medicaid and title XX social services.

If we stop your benefits because of your earnings and you are potentially eligible for the special SSI eligibility status you will continue to be considered and SSI recipient for purposes of eligibility for Medicaid and title XX social services during the time it takes us to determine whether the special eligibility status applies to you.

How We Establish Your Special SSI Eligibility Status

§ 416.267 General.

We determine whether the special SSI eligibility status applies to you by verifying that you continue to be blind or have a disabling impairment by applying the rules in Subpart I of this part, and by following the rules in this subpart to determine whether you meet the requirements in § 416.265(b). If you do not meet these requirements we determine that the special eligibility status does not apply. If you meet these requirements, then we apply special rules to determine if you meet the requirements of § 416.265 (c) and (d). If for the period being evaluated, you meet all of the requirements in § 416.265 we determine that the special status applies to you.

§ 416.268 What is done to determine if you must have Medicaid or title XX services in order to work.

(a) *What we establish.* To determine that you need Medicaid or title XX services in order to continue to work we must establish either:

(1) that you are currently using or have used Medicaid or title XX services during the period which began 12 months before our first contact with you to discuss this use; or

(2) where there was no past use, that you expect to use these services within the next 12 months.

(b) *Statement about use of services.* We will ask you for a signed statement which:

(1) describes the types and dates of services you received under Medicaid and title XX in the present month and in the past 12 months;

(2) the types of services that you expect to receive in the next 12 months; and

(3) the names of the providers who furnished past services to you.

(c) *Verification of services.* We then verify what you tell us in your statement about past services through the agencies administering the title XX or Medicaid programs in your State or, as necessary, from providers of the services. If you have not used Medicaid or title XX services in the past 12 months, we accept your statement (unless we have evidence to the contrary) concerning your expected use of Medicaid and title XX services as the verification we need to establish that you need these services in order to work.

§ 416.269 What is done to determine whether your earnings are too low to provide comparable benefits and services you would receive in the absence of those earnings.

We must determine whether your earnings are too low to provide you with benefits and services comparable to the benefits and services you would receive if you did not have those earnings (see § 416.265(d)). In determining whether you meet this requirement, we compare your anticipated gross earnings, or a combination of anticipated and actual earnings (as appropriate) for the 12-month period beginning with the calendar quarter for which your special eligibility status is being determined to a threshold amount for your State of residence. This threshold amount consists of the sum of a 12-month period of three items, as follows:

(a) The amount of gross earnings after the exclusions in § 416.1112(c) (3) and (4) which equals the Federal SSI benefit and State supplementary payment for an individual living in his or her own household in the State where you reside. This amount will vary from State to State depending on the amount of the State supplementary payment;

(b) The average expenditures for Medicaid benefits for disabled cash recipients in your State of residence; and

(c) The average expenditures for title XX social services for blind and disabled SSI recipients in your State of residence.

You meet the requirements in § 416.265(d) if the comparison shows that your gross earnings are equal to or less than the applicable threshold amount for your State.

If our comparison shows that your gross earnings exceed the applicable threshold amount for your State we will establish (and use in a second comparison) the amount of the actual expenditures for Medicaid and title XX social services which you received during the appropriate 12-month period. If you have already completed the 12-month period for which we are determining your eligibility we will consider only the expenditures which apply to that period. In establishing the actual expenditures, we use both the information you provide in the signed statement required in § 416.268 and that which we obtain from the appropriate agencies and providers.

3. A new § 416.1332 is added to read as follows:

§ 416.1332 Termination of benefit for disabled individual: Exception.

Special SSI cash benefits (see § 416.261) will be payable in the period January 1, 1981 through December 31, 1983 if you meet eligibility requirements in § 416.262. These requirements apply if you, as a disabled recipient, are no longer eligible for regular SSI benefits because you demonstrate that you are able to engage in SGA.

4. Section 416.1402 is amended by revising paragraphs (f) and (g) and by adding paragraphs (h) and (i) to read as follows:

§ 416.1402 Administrative actions that are initial determinations.

* * * * *

(f) Imposing penalties for failing to report important information;

(g) Your drug addiction or alcoholism;

(h) Whether you are eligible for special SSI cash benefits under § 416.262; and

(i) Whether you are eligible for special SSI eligibility status under § 416.265.

5. Section 416.2001 is amended by adding paragraph (d) to read as follows:

§ 416.2001 State supplementary payments; general.

* * * * *

(d) *Supplementary payments for recipients of special SSI cash benfits.* A State which makes supplementary payments (regardless of whether they are mandatory or optional and whether the payments are federally administered), has the option of making those payments to individuals who receive cash benefits under section 1619(a) of the Act (see § 416.261), or who would be eligible to receive cash benefits except for their income.

6. Section 416.2112 is revised to read as follows:

§ 416.2112 Limitations as to individuals covered by agreement to determine eligibility for medical assistance.

Determinations of Medicaid eligibility under an agreement are limited to individuals (a) who have been determined to be eligible individuals under title XVI of the Act; or (b) who are receiving a State supplementary payment which is federally administered, or both (see § 416.2003 and § 416.2052 in connection with federally administered State supplementary payments); or (c) who are eligible to receive benefits under section 1619(a) of the Act or who we consider to be blind or disabled individuals receiving supplemental security income benefits as provided in

section 1619(b) of the Act (see § 416.260).

Title 42—Public Health

PART 435—ELIGIBILITY IN THE STATES AND DISTRICT OF COLUMBIA

Part 435 of Chapter IV of title 42 of the Code of Federal Regulations is amended as set forth below:

1. The authority citation for Part 435 reads as follows:

Authority: Sec. 1102, 1619(b) and 1902 of the Social Security Act (42 U.S.C. 1302, 1382h and 1396a).

2. Section 435.3 is amended by adding citation 1619(b) in numerical order to read as follows:

§ 435.3 Basis.

This part implements the following sections of the Act, which state eligibility requirements and standards:

1619(b) Benefits for blind individuals or those with disabling impairments whose income equals or exceeds a specific SSI limit.

* * * * *

3. Section 435.4 is amended by revising the definition of "categorically needy" to read as follows:

§ 435.4 Definitions and use of terms.

As used in this part—

* * * * *

"Categorically needy" means aged, blind or disabled individuals or families and children (1) who are otherwise eligible for Medicaid and who meet the financial eligibility requirements for AFDC, SSI, or an optional State supplement or are considered under section 1619(b) of the Act to be SSI recipients; or

(2) Whose categorical eligibility is protected by statute (e.g., persons receiving cost of living increases under § 435.135).

* * * * *

4. Section 435.120 is amended by revising paragraphs (a) and (b) and by adding a paragraph (c) to read as follows:

Mandatory Coverage of the Aged, Blind, and Disabled

§ 435.120 Individuals receiving SSI.

Except as allowed under § 435.121, the agency must provide Medicaid to aged, blind, and disabled individuals or couples who receive SSI, including—

(a) Individuals receiving SSI pending a final determination of blindness or disability;

(b) Individuals receiving SSI under an agreement with the Social Security Administration to dispose of resources that exceed the SSI dollar limits on resources; and

(c) From January 1, 1981 until December 31, 1983, individuals considered to be receiving SSI under 1619(b) of the Act (blind individuals or those with disabling impairments whose income equals or exceeds a specific SSI limit). (See 20 CFR 416.263–416.269 for determinations of eligibility under this provision.)

Title 45—Public Welfare

PART 1396—SOCIAL SERVICES PROGRAMS FOR INDIVIDUALS AND FAMILIES: TITLE XX OF THE SOCIAL SECURITY ACT

Part 1396 of Chapter XIII of Title 45 of the Code of Federal Regulations is amended as set forth below:

1. The authority citation for Part 1396 reads as follows:

Authority: Sec. 1102 of the Social Security Act as amended, Sec. 201(a) of Pub. L. 93–266; 405 Stat. 847 as amended, 94 Stat. 441; 42 U.S.C. 1302 and 1382h.

2. Section 1396.1 is amended by revising the definition of "SSI (Supplemental Security Income)" to read as follows:

§ 1396.1 Program definitions.

As used in this Part:

* * * * *

SSI (Supplemental Security Income) means the program authorized by title XVI of the Act to provide financial assistance to aged, blind, or disabled individuals under section 1611 or to disabled individuals under section 1619(a) of the Act. The definition includes State supplementary payments made under section 1616 of the Act or under section 212 of Pub. L. 93–66, and the special eligibility status available to certain blind or disabled individuals under section 1619(b) of the Act. Individuals who receive special SSI cash benefits or acquire the special eligibility status under section 1619 are deemed eligible for title XX on the basis of income maintenance status.

The provisions of section 1619 will expire on December 31, 1983.

* * * * *

3. Section 1396.56 is amended by revising paragraphs (a) introductory text, (a)(3), and (a)(4) to read as follows:

§ 1396.56 Fifty percent rule.

(a) As a minimum the State shall expend an amount of the aggregate expenditures (combined Federal and State) under the program equal to one-half of the Federal funds claimed on behalf of any or all of the individuals:

* * * * *

(3) Who receive SSI benefits, or are eligible to receive such benefits; or

(4) Whose income and resources are, or are eligible to be taken into account, in determining eligibility for SSI benefits, or

* * * * *

4. Section 1396.60 is amended by revising paragraph (b)(1)(iii) to read:

§ 1396.60 Persons eligible and access to services.

* * * * *

(b) * * *

(1) * * *

(iii) Recipients of SSI benefits.

* * * * *

[FR Doc. 81-2297 Filed 1-21-81; 8:45 am]

BILLING CODE 4110-07-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[T.D. 7783]

Income Tax; Taxable Years Beginning After Dec. 31, 1953; Application of Conventions Under Class Life Asset Depreciation Range System

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to the application of conventions under the Class Life Asset Depreciation Range system (CLADR system). The regulations affect certain persons who use the CLADR system for the year in which they begin doing business or holding depreciable property for the production of income.

DATE: The regulations are effective for property placed in service after November 14, 1979, other than depreciable property with respect to which substantial expenditures were paid or incurred prior to November 15, 1979.

FOR FURTHER INFORMATION CONTACT: Benedetta A. Kissel of the Legislation and Regulations Division, Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, D.C. 20224. Attention: CC:LR:T (202-566-3290, not a toll-free number).

Background

On November 15, 1979, the Federal Register published proposed amendments to the Income Tax Regulations (26 CFR Part 1) under section 167(m) of the Internal Revenue Code of 1954 (44 FR 65777). A public

hearing was held on March 27, 1980. After consideration of all comments regarding the proposed amendments, those amendments are adopted as revised by this Treasury decision.

Section 167(a) allows a depreciation deduction for 2 categories of property: property used in a trade or business and property held for the production of income. These amendments to the regulations make clear that no depreciation is allowed under the CLADR system for the period prior to the month in which a taxpayer begins engaging in a trade or business or holding depreciable property for the production of income. Thus, the period prior to that month will not be included in the taxable year for purposes of applying a CLADR convention. In general, a CLADR convention determines when eligible property will be deemed placed in service during the taxable year.

Certain changes have been made to the regulations as proposed as a result of written and oral comments.

The amendments as proposed required a determination of the exact day on which the taxpayer began conducting a trade or business or holding depreciable property for the production of income. The final regulations require the less difficult determination of the month in which the relevant event occurs.

The final regulations also clarify the phrase "engaging in a trade or business" in certain respects. In particular, the regulations provide that for purposes of applying the CLADR conventions, employees are not considered engaged in a trade or business by virtue of employment. In addition, persons engaging in *de minimis* amounts of business are not treated as engaging in a trade or business for purposes of applying the conventions with respect to certain assets.

The amendments were proposed to be effective for property placed in service after November 14, 1979. In response to comments, the final regulations provide an exception for depreciable property placed in service after November 14, 1979, if substantial expenditures were paid or incurred prior to November 15, 1979, with respect to such property. This effective date, which is based upon the date of publication of the notice of proposed rulemaking, is considered necessary to control abusive tax shelters.

Drafting Information

The principal author of these regulations is Benedetta A. Kissel of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations, both on matters of substance and style.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR Part 1 is amended as follows:

Section 1.167 (a)–11 is amended as follows:

1. Paragraph (c)(2)(iv) is amended by:

(a) Inserting "(*a*)" before the first sentence,

(b) Inserting "(*b*)" between the second and third sentences, and

(c) Deleting the last sentence and inserting instead new subdivisions (*c*), (*d*), and (*e*).

2. Paragraph (c)(4) is amended by adding new examples (7), (8), and (9).

§ 1.167(a)–11 Depreciation based on class lives and asset depreciation ranges for property placed in service after December 31, 1970.

* * * * *

(c) *Manner of determining allowances.* * * *

(2) *Conventions applied to additions and retirements.* * * *

(iv) *Rules of application.* * * *

(*c*) For purposes of this subparagraph, for property placed in service after November 14, 1979, other than depreciable property described in paragraph (c)(2)(iv)(*e*) of this section, the taxable year of the person placing such property in service does not include any month before the month in which the person begins engaging in a trade or business or holding depreciable property for the production of income.

(*d*) For purposes of paragraph (c)(2)(iv)(*c*) of this section, an employee is not considered engaged in a trade or business by virtue of employment. In addition, if a person engages in a small amount of trade or business activity for the purpose of obtaining a disproportionately large depreciation deduction for assets for the taxable year in which they are placed in service, and placing those assets in service represents a substantial increase in the person's level of business activity, then for purposes of depreciating those assets the person will not be treated as beginning a trade or business until the increased amount of business activity begins. For property held for the production of income, the principle of the preceding sentence applies.

(*e*) The rules in paragraph (c)(2)(iv) (*c*) and (*d*) of this section do not apply to depreciable property placed in service after November 14, 1979, with respect to which substantial expenditures were paid or incurred prior to November 15, 1979. For purposes of the preceding sentence, expenditures were paid or incurred prior to November 15, 1979. For purposes of the preceding sentence, expenditures will not be considered substantial unless they exceed the lesser of 30 percent of the final cost of the property or $10 million. Expenditures that are not includible in the basis of the depreciable property will be considered expenditures with respect to property if they are directly related to a specific project involving such property. For purposes of determining whether expenditures were paid or incurred prior to November 15, 1979, expenditures made by a person (transferor) other than the person placing the property in service (transferee) will be taken into account only if the basis of the property in the hands of the transferee is determined in whole or in part by reference to the basis in the hands of the transferor. The principle of the preceding sentence also applies if there are multiple transfers.

* * * * *

(4) *Examples.* * * *

Example (7). X, a calendar year corporation, is incorporated on July 1, 1978, and begins engaging in a trade or business in September 1979. X purchases asset A and places it in service on November 20, 1979. Substantial expenditures were not paid or incurred by X with respect to asset A prior to November 15, 1979. For purposes of applying the conventions under this section to determine depreciation for asset A, the 1979 taxable year is treated as consisting of 4 months. The first half of the taxable year ends on October 31, 1979, and the second half begins on November 1, 1979. X adopts the half-year convention. Asset A is treated as placed in service on November 1, 1979.

Example (8). On January 20, 1982, A, B, and C enter an agreement to form partnership P for the purpose of purchasing and leasing a ship to a third party, Z. P uses the calendar year as its taxable year. On December 15, 1982, P acquires the ship and leases it to Z. For purposes of applying the conventions, P begins its leasing business in December 1982, and its taxable year begins on December 1, 1982. Assuming that P elects to apply this section and adopts the modified half-year convention, P depreciates the ship placed in service in 1982 for the 1-month period beginning December 1, 1982, and ending December 31, 1982.

Example (9). A and B form partnership P on December 15, 1981, to conduct a business of leasing small aircraft. P uses the calendar year as its taxable year. On January 15, 1982, P acquires and places in service a $25,000 aircraft. P begins engaging in business with only one aircraft for the purpose of obtaining a disproportionately large depreciation deduction for aircraft that P plans to acquire at the end of the year. On December 10, 1982, P acquires and places in service 4 aircraft, the

total purchase price of which is $250,000. For purposes of applying the conventions to the aircraft acquired in December, P begins its leasing business in December 1982, and P's taxable year begins December 1, 1982, and ends December 31, 1982. Assuming that P elects to apply this section and adopts the modified half-year convention, P depreciates the aircraft placed in service in December 1982, for the 1-month period beginning December 1, 1982, and ending December 31, 1982. P depreciates the aircraft placed in service in January 1982, for the 12-month period beginning January 1, 1982, and ending December 31, 1982.

There is a need for immediate guidance with respect to the provisions contained in this Treasury decision. For this reason, it is found impracticable to issue it subject to the effective date limitation of subsection (d) of section 553 of Title 5 of the United States Code.

This Treasury decision is issued under the authority contained in sections 167(m) (85 Stat. 503, 26 U.S.C. 167(m)) and 7805 (68A Stat. 917, 26 U.S.C. 7805) of the Internal Revenue Code of 1954.

William E. Williams,

Acting Commissioner of Internal Revenue.

Approved: January 16, 1981

Emil M. Sunley,

Acting Assistant Secretary of the Treasury.

[FR Doc. 81-2204 Filed 1-16-81; 4:51 pm]

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26 CFR Part 1

[T.D. 7780]

Income Tax; Taxable Years Beginning After Dec. 31, 1953; Deduction for Contributions to Qualified Pension Trusts

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final regulations.

SUMMARY: This document provides final regulations relating principally to the deduction limitations on contributions to defined benefit pension plans. Changes in the applicable tax law were made by the Employee Retirement Income Security Act of 1974. These regulations provide necessary guidance to the public for compliance with the law, and affect all employers with defined benefit pension plans.

DATE: The regulations are generally effective for employers' taxable years beginning in 1976, but earlier (or later) in the case of some plans as provided by the Employee Retirement Income Security Act of 1974.

FOR FURTHER INFORMATION CONTACT: Joel Horowitz of the Employee Plans and Exempt Organizations Division, Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, D.C. 20224 (Attention: CC:LR:T) (202-566-6212).

SUPPLEMENTARY INFORMATION:

Background

On May 19, 1978, the Internal Revenue Service published proposed amendments to the Income Tax Regulations (26 CFR Part 1) under section 404(a) of the Internal Revenue Code of 1954 in the Federal Register, 43 FR 21695. The amendments were proposed to conform the regulations to section 1013(c) of the Employee Retirement Income Security Act of 1974 (88 Stat. 921). No public hearing was held. After consideration of all comments regarding the proposed amendments, those amendments are adopted, as revised, by this Treasury decision.

The amendments primarily provide rules for applying the minimum funding requirement as a deduction limitation under section 404(a)(1)(A)(i) and for amortizing past service costs and experience gains and losses over a 10-year period under the deduction limitation of section 404(a)(1)(A)(iii).

Technical Adjustments

The general and special rules for computing the deductible limit for a plan year are clarified in the final regulations. These clarifications identify how plan assets are to be adjusted for various purposes in computing the deductible limit under section 404(a)(1)(A) of the Code.

Timing for Computations and Interest Adjustments

In response to comments from the public, the final regulations contain provisions fixing the time for computing with interest normal cost and limit adjustments under section 404(a)(1)(A)(ii) and (iii). The computation date is the date as of which contributions are assumed to be made, and interest is computed at the valuation rate from the computation date to the earlier of two dates, the last day of the plan year used to compute the deductible limit for the taxable year or the last day of that taxable year. These provisions are in addition to those relating to the maintenance of 10-year amortization bases.

Change in Assumptions Under Aggregate Cost Method

The comments express confusion regarding the establishment under the aggregate cost method of a 10-year amortization base for changes in actuarial assumptions. The final regulations resolve this problem by excepting plans using the aggregate cost method from that requirement.

Establishment of 10-Year Amortization Base for Change in Funding Method

In response to the comments, the final regulations contain a provision for establishing a 10-year amortization base for an increase or decrease in accrued liability resulting from a change in funding method.

Maintenance of 10-Year Amortization Base

Many technical problems raised in the comments regarding the maintenance of 10-year amortization bases can be resolved by the fresh start alternative under the regulations. Therefore, the final regulations do not address these problems. However, the final regulations authorize the Commissioner to approve alternative allocation mechanisms.

New provisions have been added to the final regulations in response to comments requesting guidance regarding the treatment of interest adjustments.

Use of Unfunded Liability in Applying Fresh Start Alternative for Combining Bases or in Establishing Initial 10-Year Amortization Base

In response to the comments, reference to unfunded accrued liability has been deleted in the final regulations from provisions relating to the fresh start alternative and the initial 10-year amortization base. By now referring only to unfunded liability, the final regulations remove the inference that plans of the spread gain type must compute an unfunded accrued liability under a funding method of the immediate gain type to comply with these provisions.

Effect of Full Funding Limit on 10-Year Amortization Base

The regulations explicitly state that the deductible limits under section 404(a)(1)(A) are subject to the full funding limitation. In response to the comments, the final regulations make it clear that the full funding limitation is not computed independently of section 412 for this purpose.

Transitional Rule

Many comments object to the requirement in the transitional rule that, for taxable years beginning on or after January 1, 1979, a plan must retroactively establish 10-year amortization bases for prior years. These comments view the transitional rule as mandatory and exclusive.

In fact, the transitional rule is merely an alternative under the regulations to the fresh start option and to the

provision for establishing an initial 10-year amortization base for existing plans. The final regulations clearly reflect this fact. Under the final regulations, the transitional rule is available for employers' taxable years beginning before April 22, 1981. Under the proposed regulations, it would have been available only for employers' taxable years beginning before January 1, 1979.

Future Guidance

Comprehensive examples illustrating the application of the regulations will be published at a later date.

Also, regulations to be proposed at a later date will address additional issues relating to the deductibility of contributions to plans maintained by more than one employer and plans maintained by members of a controlled group of corporations.

Drafting Information

The principal author of this regulation was Thomas Rogan of the Employee Plans and Exempt Organizations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulation, both on matters of substance and style.

Adoption of Amendments to the Regulations

Accordingly, the proposed amendments to 26 CFR Part 1 are hereby adopted subject to the changes to § 1.404(a)–14 set forth below.

Paragraph 1. Paragraph (b)(2) of § 1.404(a)–14, as set forth in the notice of proposed rulemaking, is amended by adding "changes in funding method," after "changes in actuarial assumptions," in the second sentence.

Par. 2. The first sentence of paragraph (b)(3) is revised to read as follows:

§ 1.404(a)–14 Special rules in connection with the Employee Retirement Income Security Act of 1974.

* * * * *

(b) *Definitions.* * * *

* * * * *

(3) *Limit adjustment.* The term "limit adjustment" with respect to any 10-year amortization base is the lesser of—

(i) The level annual amount necessary to amortize the base over 10 years using the valuation rate, or

(ii) The unamortized balance of the base,

in each case using absolute values (solely for the purpose of determining which is the lesser). * * *

* * * * *

Par. 3. Paragraph (d) is revised to read as follows:

§ 1.404(a)–14 Special rules in connection with the Employee Retirement Income Security Act of 1974.

* * * * *

(d) *Computation of deductible limit for a plan year*—(1) *General rules.* The computation of the deductible limit for a plan year is based on the funding methods, actuarial assumptions, and benefit structure used for purposes of section 412, determined without regard to section 412(g) (relating to the alternative minimum funding standard), for the plan year. The method of valuing assets for purposes of section 404 must be the same method of valuing assets used for purposes of section 412.

(2) *Special adjustments of computations under section 412.* To apply the rules of this section (*i.e.*, rules regarding the computation of normal cost with aggregate type funding methods, unfunded liabilities, and the full funding limitation described in paragraph (k) of this section, where applicable) with respect to a given plan year in computing deductible limits under section 404(a)(1)(A), the following adjustments must be made:

(i) There must be excluded from the total assets of the plan the amount of any plan contribution for a plan year for which the plan was qualified under section 401(a), 403(a) or 405(a) that has not been previously deducted, even though that amount may have been credited to the funding standard account under section 412(b)(3). In the case of a plan using a spread gain funding method which maintains an unfunded liability (*e.g.*, the frozen initial liability method, but not the aggregate method), the amount described in the preceding sentence must be included in the unfunded liability of the plan.

(ii) There must be included in the total assets of the plan for a plan year the amount of any plan contribution that has been deducted with respect to a prior plan year, even though that amount is considered under section 412 to be contributed in a plan year subsequent to that prior plan year. In the case of a plan using a spread gain funding method which maintains an unfunded liability, the amount described in the preceding sentence must be excluded from the unfunded liability of the plan.

The special adjustments described in paragraph (d)(2) (i) and (ii) of this section apply on a year-by-year basis for purposes of section 404(a)(1)(A) only. Thus, the adjustments have no effect on the computation of the minimum funding requirement under section 412.

* * * * *

Par. 4. Paragraph (f) is revised to read as follows:

§ 1.404(a)–14 Special rules in connection with the Employee Retirement Income Security Act of 1974.

* * * * *

(f) *Special computation rules under section 404(a)(1)(A) (ii) and (iii)*—(1) *In general.* Subject to the full funding limitation described in paragraph (k) of this section, the deductible limit under section 404(a)(1)(A) (ii) and (iii) is the normal cost of the plan (determined in accordance with paragraph (d) of this section).

(2) *Adjustments in calculating limit under section 404(a)(1)(A)(iii).* In calculating the deductible limit under section 404(a)(1)(A)(iii), the normal cost of the plan is—

(i) Decreased by the limit adjustments to any unamortized bases required by paragraph (g) of this section, for example, bases that are due to a net experience gain, a change in actuarial assumptions, a change in funding method, or a plan provision or amendment which decreases the accrued liability of the plan, and

(ii) Increased by the limit adjustments of any unamortized 10-year amortization bases required by paragraph (g) or (j) of this section, for example, bases that are due to a net experience loss, a change in actuarial assumptions, a change in funding method, or a plan provision or amendment which increases the accrued liability.

(3) *Timing for computations and interest adjustments under section 404 (a)(1)(A) (ii) and (iii).* Regardless of the actual time when contributions are made to a plan, in computing the deductible limit under section 404 (a)(1)(A) (ii) or (iii) the normal cost and limit adjustments shall be computed as of the date when contributions are assumed to be made ("the computation date") and adjusted for interest at the valuation rate from the computation date to the earlier of—

(i) The last day of the plan year used to compute the deductible limit for the taxable year, or

(ii) The last day of that taxable year.

For additional provisions relating to the timing of computations and interest adjustments, see paragraph (h)(6) of this section (relating to the timing of computations and interest adjustments in the maintenance of 10-year amortization bases).

For taxable years beginning before April 22, 1981, computations under the preceding sentence may, as an

alternative, be based on prior published positions of the Internal Revenue Service under section 404(a).

(4) *Special limit under section 404(a)(1)(A)(ii).* If the deduction for the plan year is determined solely on the basis of section 404(a)(1)(A)(ii) (that is, without regard to clauses (i) or (iii)), the special limitation contained in section 404(a)(1)(A)(ii), regarding the unfunded cost with respect to any three individuals, applies, notwithstanding the rules contained in paragraphs (d)(2) and (f)(1) of this section.

* * * * *

Par. 5. Paragraph (g) is amended by revising subparagraph (2) and by adding a new subparagraph (4). These revised and added provisions read as follows:

§ 1.404(a)–14 Special rules in connection with the Employee Retirement Income Security Act of 1974.

* * * * *

(g) *Establishment of a 10-year amortization base.* * * *

(2) *Change in actuarial assumptions.* (i) If the creation of an amortization base is required under the rules of section 412(b)(2)(B)(v) or (3)(B)(iii) (as applied to the funding method used by the plan), a 10-year amortization base must be established at the time of a change in actuarial assumptions used to value plan liabilities. The amount of the base is the difference between the accrued liability calculated on the basis of the new assumptions and the accrued liability calculated on the basis of the old assumptions. Both computations of accrued liability are made as of the date of the change in assumptions.

(ii) A plan using a funding method of the spread gain type does not directly determine an accrued liability. If a plan using such a method is required under section 412(b)(2)(B)(v) or (3)(B)(iii) to create an amortization base, it must establish a base as described in paragraph (g)(2)(i) of this section for a change in actuarial assumptions by determining an accrued liability on the basis of another funding method (of the immediate gain type) that does determine an accrued liability. (The aggregate method is an example of a funding method that is not required under section 412(b)(2)(B)(v) or (3)(B)(iii) to create an amortization base.) The funding method chosen to determine the accrued liability of the plan in these cases must be the same method used to establish all other 10-year amortization bases maintained by the plan, if any. These bases must be maintained in accordance with paragraph (h) of this section.

* * * * *

(4) *Change in funding method.* If a change in funding method results in an increase or decrease in an unfunded liability required to be amortized under section 412, a 10-year base must be established equal to the increase or decrease in unfunded liability resulting from the change in funding method. The base must be maintained in accordance with paragraph (h) of this section.

* * * * *

Par. 6. Paragraph (h) is revised to read as follows:

§ 1.404(a)–14 Special rules in connection with the Employee Retirement Income Security Act of 1974.

* * * * *

(h) *Maintenance of 10-year amortization base*—(1) *In general.* Each time a 10-year amortization base is established, whether by a change in funding method, by plan amendment, by change in actuarial assumptions, or by experience gains and losses, the base must, except as provided in paragraph (i) of this section, be separately maintained in order to determine when the unamortized amount of the base is zero. The sum of the unamortized balances of all of the 10-year bases must equal the plan's unfunded liability with the adjustments described in paragraph (d) of this section, if applicable. When the unamortized amount of a base is zero, the deductible limit is no longer adjusted to reflect the amortization of the base.

(2) *First year's base.* See either paragraph (g) or paragraph (i) of this section for rules applicable with respect to the first year of a base.

(3) *Succeeding year's base.* For any plan year after the first year of a base, the unamortized amount of the base is equal to—

(i) The unamortized amount of the base as of the valuation date in the prior plan year, plus

(ii) Interest at the valuation rate from the valuation date in the prior plan year to the valuation date in the current plan year on the amount described in subdivision (i), minus

(iii) The contribution described in paragraph (h)(4) of this section with respect to the base for the prior plan year.

The valuation date is the date as of which plan liabilities are valued under section 412(c)(9). If such a valuation is performed less often than annually for purposes of section 412, bases must be adjusted for purposes of section 404 each year as of the date on which a section 412 valuation would be performed were it required on an annual basis. See paragraph (b)(3) of this section for the definition of valuation rate.

(4) *Contribution allocation with respect to each base.* A portion of the total contribution for the prior plan year is allocated to each base. Generally, this portion equals the product of—

(i) The total contribution described in paragraph (h)(6) of this section with respect to all bases, and

(ii) The ratio of the amount described in paragraph (b)(3)(i) of this section with respect to the base to the sum (using true rather than absolute values) of such amounts with respect to all remaining bases.

However, if the result of this computation with respect to a particular base exceeds the amount necessary to amortize such base fully, the smaller amount shall be deemed the contribution made with respect to such base. The unallocated excess with respect to a now fully amortized base shall be allocated among the other bases as indicated above.

(5) *Other allocation methods.* The Commissioner may authorize the use of methods other than the method described in paragraph (h)(4) of this section for allocating contributions to bases.

(6) *Total contribution for all bases.* The contribution with respect to all bases for the prior plan year (see paragraph (h)(3)(iii) of this section) is the difference between—

(i) The sum of (A) the total deduction (including a carryover deduction) for the prior year, (B) interest on the actual contributions for the prior year (whether or not deductible) at the valuation rate for the period between the dates as of which the contributions are credited under section 412 and the valuation date in the current plan year, and (C) interest on the carryover described in section 404(a)(1)(D) that is available at the beginning of the prior taxable year at the valuation rate for the period between the current and prior valuation dates, and

(ii) The normal cost for the prior plan year and interest on it at the valuation rate from the date as of which the normal cost is calculated to the current valuation date.

(7) *Effect of failure to contribute normal cost plus interest on unamortized amounts.* The failure to make a contribution at least equal to the sum of the normal cost plus interest on the unamortized amounts has the following effects under the preceding rules of this section—

(i) It does not create a new base.

(ii) It results in an increase in the unamortized amount of each base and

consequently extends the time before the base is fully amortized.

(iii) The limit adjustment for any base is not increased (in absolute terms) even if the unamortized amount computed under paragraph (h) of this section exceeds the initial 10-year amortization base. Thus, if the total unamortized amount of the plan's bases at the beginning of the plan year is $100,000 (which is also the unfunded liability of the plan), and a required $50,000 normal cost contribution is not made for the plan year, the following effects occur. The total unamortized balance of the plan's bases increases by the $50,000 normal cost for the year (adjusted for interest), plus interest on the $100,000 balance of the bases; and, because of that increase, it will take a longer period to amortize the remaining balance of the bases. (The annual amortization amount does not change.)

(6) *Required adjustment to a 10-year base limit adjustment if valuation rate changed.* If there is a change in the valuation rate, the limit adjustment for all unamortized 10-year amortization bases must be changed, in addition to establishing a new base as provided in paragraph (g)(2) of this section. The new limit adjustment for any base is the level amount necessary to amortize the unamortized amount of the base over the remaining amortization period using the new valuation rate. The remaining amortization period of the base is the number of years at the end of which the unamortized amount of the base would be zero if the contribution made with respect to that base equaled the limit adjustment each year. This calculation of the remaining period is made on the basis of the valuation rate used before the change. Both the remaining amortization period and the revised limit adjustment may be determined through the use of standard annuity tables. The remaining period may be computed in terms of fractional years, or it may be rounded off to a full year. The unamortized amount of the base as of the valuation date and the remaining amortization period of that base shall not be changed by any change in the valuation rate.

Par. 7. Paragraph (i) is amended by:

1. Inserting ", as of the date the combination is made," after "equals the sum" in subparagraph (2);

2. Inserting "year" in lieu of "number" in the last sentence of subparagraph (3);

3. Inserting "the unamortized amount of" after "the level amount necessary to amortize" in the first sentence of subparagraph (4); and

4. Deleting "accrued" in the first sentence, and inserting "paragraphs (d) and (f)" in lieu of "paragraph (d)" in the second sentence, of subparagraph (5).

Par. 8. Paragraph (j) is amended by deleting "accrued" from the second, third, seventh, and eighth sentences; removing "accrued plan" from the fifth sentence; and inserting "paragraphs (d) and (f)" in lieu of "paragraph (d)" in the second and eighth sentences of subparagraph (3).

Par. 9. Paragraph (k) is amended by inserting "section 412 and paragraphs (d), (e), and (f)" in lieu of "paragraph (d)" in the second sentence and by inserting "deductible contribution (including carryover)" in lieu of "contribution" in the third sentence.

Par. 10. Paragraphs (l) and (m) are revised to read as follows:

§ 1.404(a)–14 Special rules in connection with the Employee Retirement Income Security Act of 1974.

* * * * *

(l) *Transitional rules*—(1) *Plan years beginning before April 22, 1981.* In determining the deductible limit for plan years beginning before April 22, 1981, a contribution will be deductible under section 404(a)(1)(A) if the computation of the deductible limit is based on an interpretation of section 404(a)(1)(A) that is reasonable when considered with prior published positions of the Internal Revenue Service. A computation of the deductible limit may satisfy the preceding sentence even if it does not satisfy the rules contained in paragraphs (c) through (i) of this section.

(2) *Transitional approaches.* The deductible limit determined for the first plan year with respect to which a plan applies the rules contained in paragraphs (c) through (i) of this section must be computed using one of the following approaches—

(i) The plan (whether or not in existence before the effective date of section 404(a)) may apply the rules of paragraph (j) for establishing the initial base for an existing plan, treating 10-year bases (if any) as 10 percent bases in adding bases.

(ii) The plan may apply the fresh start alternative for combining bases under paragraph (i)(5).

(iii) The plan may retroactively establish 10-year amortization bases for years with respect to which section 404(a)(1)(A) and the rules of this section would have applied but for the transition rule contained in paragraph (l)(1) of this section. Contributions actually deducted are used in retroactively establishing and maintaining these bases under paragraph (h). However, a deduction already taken shall not be recomputed because of the retroactive establishment of a base.

(m) *Effective date of section 404 (a).* In the case of a plan which was in existence on January 1, 1974, section 404 (a) generally applies for contributions on account of taxable years of an employer ending with or within plan years beginning after December 31, 1974. In the case of a plan not in existence on January 1, 1974, section 404 (a) generally applies for contributions on account of taxable years of an employer ending with or within plan years beginning after September 4, 1974. See § 1.410 (a)–2 (c) for rules concerning the time of plan existence. See also § 1.410 (a)–2 (d), which provides that a plan in existence on January 1, 1974, may elect to have certain provisions, including the amendments to section 404 (a) contained in section 1013 of the Employee Retirement Income Security Act of 1974, apply to a plan year beginning after September 2, 1974, and before the otherwise applicable effective date contained in that section.

Par. 11. Paragraph (n) is removed.

This Treasury decision is issued under the authority contained in section 7805 of the Internal Revenue Code of 1954 (68A Stat. 917; 26 U.S.C. 7805).

Jerome Kurtz,
Commissioner of Internal Revenue.

Approved: January 19, 1981.

Donald C. Lubick,
Assistant Secretary of the Treasury.

Section 1.404(a)–14 is revised as follows:

§ 1.404(a)–14 Special rules in connection with the Employee Retirement Income Security Act of 1974.

(a) *Purpose of this section.* This section provides rules for determining the deductible limit under section 404(a)(1)(A) of the Internal Revenue Code of 1954 for defined benefit plans.

(b) *Definitions.* For purposes of this section—

(1) *Section 404(a).* The term "old section 404(a)" means section 404(a) as in effect on September 1, 1974. Any reference to section 404 without the designation "old" is a reference to section 404 as amended by the Employee Retirement Income Security Act of 1974.

(2) *Ten-year amortization base.* The term "10-year amortization base" means either the past service and other supplementary pension and annuity credits described in section 404(a)(1)(A)(iii) or any base established in accordance with paragraph (g) of this section. A plan may have several 10-year amortization bases to reflect different plan amendments, changes in

actuarial assumptions, changes in funding method, and experience gains and losses of previous years.

(3) *Limit adjustment.* The term "limit adjustment" with respect to any 10-year amortization base is the lesser of—

(i) The level annual amount necessary to amortize the base over 10 years using the valuation rate, or

(ii) The unamortized balance of the base,

in each case using absolute values (solely for the purpose of determining which is the lesser). To compute the level amortization amount, the base may be divided by the present value of an annuity of one dollar, obtained from standard annuity tables on the basis of a given interest rate (the valuation rate) and a known period (the amortization period).

(4) *Absolute value.* The term "absolute value" for any number is the value of that number, treating negative numbers as if they were positive numbers. For example, the absolute value of 5 is 5 and the absolute value of minus 3 is 3. On the other hand, the true value of minus 3 is minus 3. This term is relevant to the computation of the limit adjustment described in paragraph (b)(3) and the remaining amortization period of combined bases described in paragraph (i)(3) of this section.

(5) *Valuation rate.* The term "valuation rate" means the assumed interest rate used to value plan liabilities.

(c) *Use of plan in determining deductible limit for employer's taxable year.* Although the deductible limit applies for an employer's taxable year, the deductible limit is determined on the basis of a plan year. If the employer's taxable year coincides with the plan year, the deductible limit for the plan year that coincides with that year. If the employer's taxable year does not coincide with the plan year, the deductible limit under section 404(a)(1)(A) (i), (ii), or (iii) for a given taxable year of the employer is one of the following alternatives:

(1) The deductible limit determined for the plan year commencing within the taxable year.

(2) The deductible limit determined for the plan year ending within the taxable year, or

(3) A weighted average of alternatives (1) and (2). Such an average may be based, for example, upon the number of months of each plan year falling within the taxable year.

The employer must use the same alternative for each taxable year unless consent to change is obtained from the Commissioner under section 446 (e).

(d) *Computation of deductible limit for a plan year*—(1) *General rules.* The computation of the deductible limit for a plan year is based on the funding methods, actuarial assumptions, and benefit structure used for purposes of section 412, determined without regard to section 412(g) (relating to the alternative minimum funding standard), for the plan year. The method of valuing assets for purposes of section 404 must be the same method of valuing assets used for purposes of section 412.

(2) *Special adjustments of computations under section 412.* To apply the rules of this section (*i.e.*, rules regarding the computation of normal cost with aggregate type funding methods, unfunded liabilities, and the full funding limitation described in paragraph (k) of the section, where applicable) with respect to a given plan year in computing deductible limits under section 404 (a)(1)(A), the following adjustments must be made:

(i) There must be excluded from the total assets of the plan the amount of any plan contribution for a plan year for which the plan was qualified under section 401(a), 403(a) or 405(a) that has not been previously deducted, even though that amount may have been credited to the funding standard account under section 412(b)(3). In the case of a plan using a spread gain funding method which maintains an unfunded liability (*e.g.*, the frozen initial liability method, but not the aggregate method), the amount described in the preceding sentence must be included in the unfunded liability of the plan.

(ii) There must be included in the total assets of the plan for a plan year the amount of any plan contribution that has been deducted with respect to a prior plan year, even though that amount is considered under section 412 to be contributed in a plan year subsequent to that prior plan year. In the case of a plan using a spread gain funding method which does not maintain an unfunded liability, the amount described in the preceding sentence must be excluded from the unfunded liability of the plan.

The special adjustments described in paragraph (d)(2) (i) and (ii) of this section apply on a year-by-year basis for purposes of section 404(a)(1)(A) only. Thus, the adjustments have no effect on the computation of the minimum funding requirement under section 412.

(e) *Special computation rules under section 404(a)(1)(A)(i)*—(1) *In general.* For purposes of determining the deductible limit under section 404(a)(1)(A)(i), the deductible limit with respect to a plan year is the sum of—

(i) The amount required to satisfy the minimum funding standard of section 412(a) (determined without regard to section 412(g)) for the plan year and

(ii) An amount equal to the includible employer contributions.

The term "includible employer contributions" means employer contributions which were required by section 412 for the plan year immediately preceding such plan year, and which were not deductible under section 404(a) for the prior taxable year of the employer solely because they were not contributed during the prior taxable year (determine with regard to section 404(a)(6)).

(2) *Rule for an employer using alternative minimum funding standard account and computing its deduction under section 404(a)(1)(A)(i).* This paragraph (e)(2) applies if the minimum funding requirements for the plan are determined under the alternative minimum funding standard described in section 412(g) for both the current plan year and the immediately preceding plan year. In that case, the deductible limit under section 404(a)(1)(A)(i) (regarding the minimum funding requirement of section 412) for the current year is the sum of the amount determined under the rules of paragraph (e)(1) of this section.

(i) Plus the charge under section 412(b)(2)(D), and

(ii) Less the credit under section 412(b)(3)(D),

that would be required if in the current plan year the use of the alternative method were discontinued.

(f) *Special computation rules under section 404(a)(1)(A) (ii) and (iii)*—(1) *In general.* Subject to the full funding limitation described in paragraph (k) of this section, the deductible limit under section 404(a)(1)(A)(ii) and (iii) is the normal cost of the plan (determined in accordance with paragraph (d) of this section).

(2) *Adjustments in calculating limit under section 404 (a)(1)(A)(iii).* In calculating the deductible limit under section 404(a)(1)(A)(iii), the normal cost of the plan is—

(i) Decreased by the limit adjustments to any unamortized bases required by paragraph (g) of this section, for example, bases that are due to a net experience gain, a change in actuarial assumptions, a change in funding method, or a plan provision or amendment which decreases the accrued liability of the plan, and

(ii) Increased by the limit adjustments of any unamortized 10-year amortization bases required by paragraph (g) or (j) of this section, for example, bases that are due to a net experience loss, a change in

actuarial assumptions, a change in funding method, or a plan provision or amendment which increases the accrued liability.

(3) *Timing for computations and interest adjustments under section 404(a)(1)(A) (ii) and (iii).* Regardless of the actual time when contributions are made to a plan, in computing the deductible limit under section 404(a)(1)(A) (ii) and (iii) the normal cost and limit adjustments shall be computed as of the date when contributions are assumed to be made ("the computation date") and adjusted for interest at the valuation rate from the computation date to the earlier of—

(i) The last day of the plan year used to compute the deductible limit for the taxable year, or

(ii) The last day of that taxable year. For additional provisions relating to the timing of computations and interest adjustments, see paragraph (h)(6) of this section [relating to the timing of computations and interest adjustments in the maintenance of 10-year amortization bases]. For taxable years beginning before April 22, 1981, computations under the preceding sentence may, as an alternative, be based on prior published positions of the Internal Revenue Service under section 404(a).

(4) *Special limit under section 404(a)(1)(A)(ii).* If the deduction for the plan year is determined solely on the basis of section 404(a)(1)(A)(ii) (that is, without regard to clauses (i) or (iii)), the special limitation contained in section 404(a)(1)(A)(ii), regarding the unfunded cost with respect to any three individuals, applies, notwithstanding the rules contained in paragraphs (d)(2) and (f)(1) of this section.

(g) *Establishment of a 10-year amortization base.*—(1) *Experience gains and losses.* In the case of a plan valued by the use of a funding method which is an immediate gain type of funding method (and therefore separately amortizes rather than includes experience gains and losses as a part of the normal cost of the plan), a 10-year amortization base must be established in any plan year equal to the net experience gain or loss required under section 412 to be determined with respect to that plan year. The base is to be maintained in accordance with paragraph (h) of this section. Such a base must not be established if the deductible limit is determined by use of a funding method which is a spread gain type of funding method (under which experience gains and losses are spread over future periods as a part of the plan's normal cost). Examples of the immediate gain type of funding method are the unit credit method, entry age normal cost method, and the individual level premium cost method. Examples of the spread gain type of funding method are the aggregate cost method, frozen initial liability cost method, and the attained age normal cost method.

(2) *Change in actuarial assumptions.* (i) If the creation of an amortization base is required under the rules of section 412(b) (2)(B)(v) or (3)(B)(iii) (as applied to the funding method used by the plan), a 10-year amortization base must be established at the time of a change in actuarial assumptions used to value plan liabilities. The amount of the base is the difference between the accrued liability calculated on the basis of the new assumptions and the accrued liability calculated on the basis of the old assumptions. Both computations of accrued liability are made as of the date of the change in assumptions.

(ii) A plan using a funding method of the spread gain type does not directly determine an accrued liability. If a plan using such a method is required under section 412(b) (2)(B)(v) or (3)(B)(iii) to create an amortization base, it must establish a base as described in paragraph (g)(2)(i) of this section for a change in actuarial assumptions by determining an accrued liability on the basis of another funding method (of the immediate gain type) that does determine an accrued liability. (The aggregate method is an example of a funding method that is not required under section 412(b) (2)(B)(v) or (3)(B)(iii) to create an amortization base.) The funding method chosen to determine the accrued liability of the plan in these cases must be the same method used to establish all other 10-year amortization bases maintained by the plan, if any. These bases must be maintained in accordance with paragraph (h) of this section.

(3) *Past service or supplemental credits.* A 10-year base must be established when a plan is established or amended, if the creation of an amortizable base is required under the rules of section 412(b)(2)(B) (ii) or (iii), or (b)(3)(B)(i) (as applied to the funding method used by the plan). The amount of the base is the accrued liability arising from, or the decrease in accrued liability resulting from, the establishment or amendment of the plan. The base must be maintained in accordance with paragraph (h) of this section.

(4) *Change in funding method.* If a change in funding method results in an increase or decrease in an unfunded liability required to be amortized under section 412, a 10-year base must be established equal to the increase or decrease in unfunded liability resulting from the change in funding method. The base must be maintained in accordance with paragraph (h) of this section.

(h) *Maintenance of 10-year amortization base.*—(1) *In general.* Each time a 10-year amortization base is established, whether by a change in funding method, by plan amendment, by change in actuarial assumptions, or by experience gains and losses, the base must, except as provided in paragraph (i) of this section, be separately maintained in order to determine when the unamortized amount of the base is zero. The sum of the unamortized balances of all of the 10-year bases must equal the plan's unfunded liability with the adjustments described in paragraph (d) of this section, if applicable. When the unamortized amount of a base is zero, the deductible limit is no longer adjusted to reflect the amortization of the base.

(2) *First year's base.* See either paragraph (g) or paragraph (i) of this section for rules applicable with respect to the first year of a base.

(3) *Succeeding year's base.* For any plan year after the first year of a base, the unamortized amount of the base is equal to—

(i) The unamortized amount of the base as of the valuation date in the prior plan year, plus

(ii) Interest at the valuation rate from the valuation date in the prior plan year to the valuation date in the current plan year on the amount described in subdivision (i), minus

(iii) The contribution described in paragraph (h)(4) of this section with respect to the base for the prior plan year.

The valuation date is the date as of which plan liabilities are valued under section 412(c)(9). If such a valuation is performed less often than annually for purposes of section 412, bases must be adjusted for purposes of section 404 each year as of the date on which a section 412 valuation would be performed were it required on an annual basis. See paragraph (b)(3) of this section for the definition of valuation rate.

(4) *Contribution allocation with respect to each base.* A portion of the total contribution for the prior plan year is allocated to each base. Generally, this portion equals the product of—

(i) The total contribution described in paragraph (h)(6) of this section with respect to all bases, and

(ii) The ratio of the amount described in paragraph (b)(3)(i) of this section with respect to the base to the sum (using true rather than absolute values) of such

amounts with respect to all remaining bases.

However, if the result of this computation with respect to a particular base exceeds the amount necessary to amortize such base fully, the smaller amount shall be deemed the contribution made with respect to such base. The unallocated excess with respect to a now fully amortized base shall be allocated among the other bases as indicated above.

(5) *Other allocation methods.* The Commissioner may authorize the use of methods other than the method described in paragraph (h)(4) of this section for allocating contributions to bases.

(6) *Total contribution for all bases.* The contribution with respect to all bases for the prior plan year (see paragraph (h)(3)(iii) of this section) is the difference between—

(i) The sum of (A) the total deduction (including a carryover deduction) for the prior year, (B) interest on the actual contributions for the prior year (whether or not deductible) at the valuation rate for the period between the dates as of which the contributions are credited under section 412 and the valuation date in the current plan year, and (C) interest on the carryover described in section 404(a)(1)(D) that is available at the beginning of the prior taxable year at the valuation rate for the period between the current and prior valuation dates, and

(ii) The normal cost for the prior plan year and interest on it at the valuation rate from the date as of which the normal cost is calculated to the current valuation date.

(7) *Effect of failure to contribute normal cost plus interest on unamortized amounts.* The failure to make a contribution at least equal to the sum of the normal cost plus interest on the unamortized amounts has the following effects under the preceding rules of this section—

(i) It does not create a new base.

(ii) It results in an increase in the unamortized amount of each base and consequently extends the time before the base is fully amortized.

(iii) The limit adjustment for any base is not increased (in absolute terms) even if the unamortized amount computed under paragraph (h) of this section exceeds the initial 10-year amortization base. Thus, if the total unamortized amount of the plan's bases at the beginning of the plan year is $100,000 (which is also the unfunded liability of the plan), and a required $50,000 normal cost contribution is not made for the plan year, the following effects occur. The total unamortized balance of the plan's bases increases by the $50,000 normal cost for the year (adjusted for interest), plus interest on the $100,000 balance of the bases; and, because of that increase, it will take a longer period to amortize the remaining balance of the bases. (The annual amortization amount does not change.)

(8) *Required adjustment to a 10-year base limit adjustment if valuation rate changed.* If there is a change in the valuation rate, the limit adjustment for all unamortized 10-year amortization bases must be changed, in addition to establishing a new base as provided in paragraph (g)(2) of this section. The new limit adjustment for any base is the level amount necessary to amortize the unamortized amount of the base over the remaining amortization period using the new valuation rate. The remaining amortization period of the base is the number of years at the end of which the unamortized amount of the base would be zero if the contribution made with respect to that base equaled the limit adjustment each year. This calculation of the remaining period is made on the basis of the valuation rate used before the change. Both the remaining amortization period and the revised limit adjustment may be determined through the use of standard annuity tables. The remaining period may be computed in terms of fractional years, or it may be rounded off to a full year. The unamortized amount of the base as of the valuation date and the remaining amortization period of that base shall not be changed by any change in the valuation rate.

(i) *Combining bases*—(1) *General method.* For purposes of section 404 only, and not for purposes of section 412, different 10-year amortization bases may be combined into a single 10-year amortization base if such single base satisfies all of the requirements of paragraph (i) (2), (3), and (4) of this section at the time of the combining of the different bases.

(2) *Unamortized amount.* The unamortized amount of the single base equals the sum, as of the date the combination is made, of the unamortized amount of the bases being combined (treating negative bases as having negative unamortized amounts).

(3) *Remaining amortization period.* The remaining amortization period of the single base is equal to (i) the sum of the separate products of (A) the unamortized amount of each of these bases (using absolute values) and (B) its remaining amortization period, divided by (ii) the sum of the unamortized amounts of each of the bases (using absolute values). For purposes of this paragraph (i)(3), the remaining amortization period of each base being combined is that number of years at the end of which the unamortized amount of the base would be zero if the contribution made with respect to that base equaled the limit adjustment of that base in each year. This number may be determined through the use of standard annuity tables. The remaining amortization period described in this paragraph may be computed in terms of fractional years, or it may be rounded off to a whole year.

(4) *Limit Adjustment.* The limit adjustment for the single base is the level amount necessary to amortize the unamortized amount of the combined base over the remaining amortization period described in paragraph (i)(3) of this section, using the valuation rate. This amount may be determined through the use of standard annuity tables.

(5) *Fresh start alternative.* In lieu of combining different 10-year amortization bases, a plan may replace all existing bases with one new 10-year amortization base equal to the unfunded liability of the plan as of the time the new base is being established. This unfunded liability must be determined in accordance with the general rules of paragraphs (d) and (f) of this section. The unamortized amount of the base and the limit adjustment for the base will be determined as though the base were newly established.

(j) *Initial 10-year amortization base for existing plan*—(1) *In General.* In the case of a plan in existence before the effective date of section 404(a), the 10-year amortization base on the effective date of section 404(a) is the sum of all 10 percent bases existing immediately before section 404(a) became effective for the plan, determined under the rules of old section 404(a).

(2) *Limit adjustment.* The limit adjustment for the initial base is the lesser of the unamortized amount of such base or the sum of the amounts determined under paragraph (b)(3) of this section using the original balances of the remaining bases (under old section 404(a) rules) as the amount to be amortized.

(3) *Unamortized amount.* The employer may choose either to establish a single initial base reflecting both all prior 10-percent bases and the experience gain or loss for the immediately preceding actuarial period, or to establish a separate base for the

prior 10-percent bases and another for the experience gain or loss for the immediately preceding period. If the initial 10-year amortization base reflects the net experience gain or loss from the immediately preceding actuarial period, the unamortized amount of the initial base shall equal the total unfunded liability on the effective date of section 404(a) determined in accordance with the general rules of paragraphs (d) and (f) of this section. If, however, a separate base will be used to reflect that gain or loss, the unamortized amount of the initial base shall equal such unfunded liability on the effective date of section 404(a), reduced by the net experience loss or increased by the net experience gain for the immediately preceding actuarial period. In this case, a separate 10-year amortization base must be established on the effective date equal to the net experience gain or loss. Thus, if the effective date unfunded liability is $100,000 and an experience loss of $15,000 is recognized on that date, and if the loss is to be treated as a separate base, the unamortized balances of the two bases would be $85,000 and $15,000. If the unfunded liability were the same $100,000, but a gain of $15,000 instead of a loss were recognized on that date, the unamortized balances of the two bases would be $115,000 and a credit base of $15,000. In both cases, if only one 10-year base is to be established on the effective date, its unamortized balance would be $100,000 (the unfunded liability of the plan). See paragraphs (d) and (f) for rules for determining the unfunded liability of the plan.

(k) *Effect of full funding limit on 10-year-amortization bases.* The amount deductible under section 404(a)(1)(A) (i), (ii), or (iii) for a plan year may not exceed the full funding limitation for that year. See section 412 and paragraphs (d), (e), and (f) of this section for rules to be used in the computation of the full funding limitation. If the total deductible contribution (including carryover) for a plan year equals or exceeds the full funding limitation for the year, all 10-year amortization bases maintained by the plan will be considered fully amortized, and the deductible limit for subsequent plan years will not be adjusted to reflect the amortization of these bases.

(l) *Transitional rules*—(1) *Plan years beginning before April 22, 1981.* In determining the deductible limit for plan years beginning before April 22, 1981, a contribution will be deductible under section 404(a)(1)(A) if the computation of the deductible limit is based on an interpretation of section 404(a)(1)(A) that is reasonable when considered with prior published positions of the Internal Revenue Service. A computation of the deductible limit may satisfy the preceding sentence even if it does not satisfy the rules contained in paragraphs (c) through (i) of this section.

(2) *Transitional approaches.* The deductible limit determined for the first plan year with respect to which a plan applies the rules contained in paragraphs (c) through (i) of this section must be computed using one of the following approaches—

(i) The plan (whether or not in existence before the effective date of section 404(a)) may apply the rules of paragraph (j) for establishing the initial base for an existing plan, treating 10-year bases (if any) as 10 percent bases in adding bases.

(ii) The plan may apply the fresh start alternative for combining bases under paragraph (i)(5).

(iii) The plan may retroactively establish 10-year amortization bases for years with respect to which section 404(a)(1)(A) and the rules of this section would have applied but for the transition rule contained in paragraph (i)(1) of this section. Contributions actually deducted are used in retroactively establishing and maintaining these bases under paragraph (h). However, a deduction already taken shall not be recomputed because of the retroactive establishment of a base.

(m) *Effective date of section 404(a).* In the case of a plan which was in existence on January 1, 1974, section 404(a) generally applies for contributions on account of taxable years of an employer ending with or within plan years beginning after December 31, 1974. In the case of a plan not in existence on January 1, 1974, section 404(a) generally applies for contributions on account of taxable years of an employer ending with or within plan years beginning after September 4, 1974. See § 1.410(a)–2(c) for rules concerning the time of plan existence. See also § 1.410(a)–2(d), which provides that a plan in existence on January 1, 1974, may elect to have certain provisions, including the amendments to section 404(a) contained in section 1013 of the Employee Retirement Income Security Act of 1974, apply to a plan year beginning after September 2, 1974, and before the otherwise applicable effective date contained in that section.

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26 CFR Part 1

[T. D. 7766]

Income Tax; Taxable Years Beginning After December 31, 1963; LIFO Conformity Requirement

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final regulations.

SUMMARY: This document provides final regulations relating to the financial reporting conformity requirement incident to the use of the last-in, first-out (LIFO) method of inventory accounting. These regulations provide the public with guidance needed to comply with that requirement and affect taxpayers using the LIFO method for Federal income tax purposes.

DATES: Except as otherwise provided in the regulations, the regulations apply to taxable years beginning after December 31, 1963, and ending after August 16, 1954.

FOR FURTHER INFORMATION CONTACT: Geoffrey B. Lanning of the Legislation and Regulations Division, Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, D.C. 20224. Attention: CC:LR:T 202–566–3288, not a toll-free call.

SUPPLEMENTARY INFORMATION:

Background

On July 20, 1979, the Federal Register published proposed amendments to the Income Tax Regulations (26 CFR Part 1) under section 472 of the Internal Revenue Code of 1954, 44 FR 42717. The amendments were proposed to prescribe new rules for complying with the financial reporting conformity requirement required of taxpayers who use the last-in, first-out (LIFO) method of accounting for inventory for Federal income tax purposes. A public hearing on the proposed amendments was not requested and therefore none was held. After consideration of all comments regarding the proposed amendments, those amendments are adopted as revised by this Treasury decision. The preamble to the notice of proposed rulemaking summarizes and explains the proposed amendments. The remainder of this preamble discusses the major comments from the public and changes to the proposed regulations.

These regulations should not be construed as containing all the requirements of Federal or State government agencies relating to the disclosure of financial activities and disclosures permitted under these regulations may not be consistent with all the requirements of such agencies.

Public Comments and Changes to the Proposed Regulations

1. *Supplemental and explanatory disclosures.* The proposed regulations provided a new rule that permits the use of an inventory method other than LIFO to ascertain income information reported to creditors, shareholders, partners, etc. after July 17, 1979, if the information merely supplements or explains the taxpayer's primary presentation of financial income. Several commentators suggested that the new rule also should be applied to information reported before July 18, 1979. The Treasury decision modifies the effective date of the new rule to apply to all reports, whenever issued.

The proposed regulations provided different rules for determining whether information is supplemental or explanatory, depending on the way the information is disclosed. Some commentators suggested that the typical parts of an annual report should be used to illustrate the different types of disclosure. Other commentators suggested that the distinctions between the types of disclosure should be clarified. The Treasury decision clarifies the difference between supplements, appendices, and other reports and uses the typical parts of an annual report to illustrate these different types of disclosure.

Several commentators suggested that the requirement of clearly identifying supplemental or explanatory information in supplements, appendices, and other reports should be clarified. Some commentators suggested that the requirement of disclosing LIFO-based information in other reports be clarified. The Treasury decision clarifies these requirements.

Several commentators suggested that the status of unaudited or preliminary income statements should be clarified. The Treasury decision provides that such income statements are considered a primary presentation of financial income and may be supplemented or explained by the disclosure of non-LIFO income information.

2. *Disclosure of inventory values as an asset.* The proposed regulations provided that the use of an inventory method other than LIFO to ascertain the value of inventory for purposes of reporting such value on a balance sheet does not violate the conformity requirement. Numerous commentators suggested that the scope of this rule should be further clarified with respect to balance sheets prepared on a non-LIFO basis and the reconciliation of such balance sheets with LIFO-based income statements. The Treasury decision provides that the disclosure of non-LIFO inventory values as an asset of the taxpayer is permitted and that such a disclosure may be made on a taxpayer's balance sheet. However, balance sheet disclosures of non-LIFO income, profit, or loss for a taxable year, fiscal year, or other one-year period are not permitted under the exception for disclosure of inventory asset values. However, the Treasury decision provides that such income disclosures may be made in the form of a parenthetical disclosure or footnote disclosure on a taxpayer's balance sheet. In addition, the Treasury decision provides that non-LIFO income information may be disclosed on a balance sheet in a form other than parenthetical remarks or footnotes if the balance sheet is a supplemental balance sheet and the income disclosure is clearly identified as supplemental or explanatory.

3. *Internal management reports.* The proposed regulations provided that the disclosure of non-LIFO income information in internal management reports does not violate the LIFO conformity requirement. This Treasury decision retains this exception, but reserves the definition of "internal management report" for a notice of proposed rulemaking to be published in the future.

4. *Reports covering a 12-month period.* The proposed regulations provided that reports covering a 12-month period are subject to the LIFO conformity requirement. The Treasury decision revises this rule to apply to reports covering a one-year period other than a taxable year, including fiscal years such as 52–53 week years. Commentators suggested that the rule should be given only prospective effect. The Treasury decision retains the retroactive application of the rule. However, the Internal Revenue Service will not terminate a taxpayer's LIFO election for a conformity violation involving a report covering a one-year period other than a taxable year if the report was issued before January 22, 1981.

5. *Interim reports.* The proposed regulations provided that a series of credit statements or financial reports is considered a single statement or report covering a single period if the statements or reports are prepared using a single inventory method and can be combined to disclose income information for the period. One commentator suggested that the rule be given only prospective effect. The Treasury decision retains the retroactive application of this rule, but the Internal Revenue Service will not terminate a taxpayer's LIFO election for a conformity violation involving the issuance of a series of interim reports if the series of reports covers a taxable year and was issued before February 8, 1979, or covers a one-year period other than a taxable year and was issued before January 22, 1981.

6. *Market value.* Prior to amendment by this Treasury decision, the regulations § 1.472–2(e) provided that the LIFO conformity requirement is not violated if for financial reporting purposes the taxpayer uses market value in lieu of cost. The proposed regulations provided that this exception applies only if market value is lower than the LIFO cost assigned to items of inventory. Several commentators suggested that the new rule should be given only prospective effect. A few commentators suggested that the rule should not be adopted. Many commentators suggested that the new rule should be clarified with respect to its application to the "dollar-value" method of pricing inventories which does not account for inventories in terms of "items". The Treasury decision provides that for financial reporting purposes taxpayers may use the lower of LIFO cost or market method to value inventories and may not use market value in lieu of cost. The revised rule is given retroactive effect by the Treasury decision, but the Internal Revenue Service will not terminate a taxpayer's LIFO election for a conformity violation involving reports that use market value in lieu of cost if such reports were issued before January 22, 1981. However, this limited waiver for the use of market value in lieu of cost only applies to a method that consistently values inventory at market value. For example, the use of a method that values inventory at market value but not in excess of LIFO cost is not permitted under the waiver for market value in lieu of cost.

7. *New rules.* Comments were received recommending that LIFO conformity issues relating to book-tax differences in LIFO inventory values be addressed in regulations. The Treasury decision provides examples of book-tax differences in LIFO inventory values that can be disclosed without violating the conformity requirements. Generally, these differences are attributable to the use of different inventory costing methods for book and tax purposes, the use of different accounting practices or accounting methods (other than inventory identification methods) for book and tax purposes, and the different treatment of transactions for book and tax purposes.

8. *Other comments.* Other comments were received suggesting that additional conformity issues should be addressed. This Treasury decision does not address these issues because it was decided that the resolution of these issues in regulations would unduly lengthen and complicate the regulations.

Additional Information

These regulations are needed in order to provide the public with the necessary guidance to comply with the LIFO conformity requirement. The Service has considered the direct and indirect effects of these regulations and has determined that these regulations will reduce burdens on taxpayers. These regulations do not establish any new recordkeeping or reporting requirements. Evaluation of the effectiveness of the regulations after issuance will be based on comments received from offices within the Internal Revenue Service and the Treasury Department, other governmental agencies, State and local governments, and the public.

Drafting Information

The principal author of this regulation is Geoffrey B. Lanning the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing both the substance and style of the regulation.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR Part 1 is amended as follows:

Section 1.472–2(e) is revised to read as follows:

§ 1.472–2 Requirements incident to the adoption and use of LIFO inventory method.

* * * * *

(e) *LIFO conformity requirement*—(1) *In general.* The taxpayer must establish to the satisfaction of the Commissioner that the taxpayer, in ascertaining the income, profit, or loss for the taxable year for which the LIFO inventory method is first used, or for any subsequent taxable year, for credit purposes or for purposes of reports to shareholders, partners, or other proprietors, or to beneficiaries, has not used any inventory method other than that referred to in § 1.472–1 or at variance with the requirement referred to in § 1.472–2(c). See paragraph (e)(2) of this section for rules relating to the meaning of the term "taxable year" as used in this paragraph. The following are not considered at variance with the requirement of this paragraph:

(i) The taxpayer's use of an inventory method other than LIFO for purposes of ascertaining information reported as a supplement to or explanation of the taxpayer's primary presentation of the taxpayer's income, profit, or loss for a taxable year in credit statements or financial reports (including preliminary and unaudited financial reports). See paragraph (e)(3) of this section for rules relating to the reporting of supplemental and explanatory information ascertained by the use of an inventory method other than LIFO.

(ii) The taxpayer's use of an inventory method other than LIFO to ascertain the value of the taxpayer's inventory of goods on hand for purposes of reporting the value of such inventories as assets. See paragraph (e)(4) of this section for rules relating to such disclosures.

(iii) The taxpayer's use of an inventory method other than LIFO for purposes of ascertaining information reported in internal management reports. See paragraph (e)(5) of this section for rules relating to such reports.

(iv) The taxpayer's use of an inventory method other than LIFO for purposes of issuing reports or credit statements covering a period of operations that is less than the whole of a taxable year for which the LIFO method is used for Federal income tax purposes. See paragraph (e)(6) of this section for rules relating to series of interim reports.

(v) The taxpayer's use of the lower of LIFO cost or market method to value LIFO inventories for purposes of financial reports and credit statements. However, except as provided in paragraph (e)(7) of this section, a taxpayer may not use market value in lieu of cost to value inventories for purposes of financial reports or credit statements.

(vi) The taxpayer's use of a costing method or accounting method to ascertain income, profit, or loss for credit purposes or for purposes of financial reports if such costing method or accounting method is neither inconsistent with the inventory method referred to in § 1.472–1 nor at variance with the requirement referred to in § 1.472–2(c), regardless of whether such costing method or accounting method is used by the taxpayer for Federal income tax purposes. See paragraph (e)(8) of this section for examples of such costing methods and accounting methods.

(vii) For credit purposes or for purposes of financial reports, the taxpayer's treatment of inventories, after such inventories have been acquired in a transaction to which section 381 applies from a transferor that used the LIFO method with respect to such inventories, as if such inventories had the same acquisition dates and costs as in the hands of the transferor.

(viii) For credit purposes or for purposes of financial reports relating to a taxable year, the taxpayer's determination of income, profit, or loss for the taxable year by valuing inventories in accordance with the procedures described in section 472(b)(1) and (3), notwithstanding that such valuation differs from the valuation of inventories for Federal income tax purposes because the taxpayer either—

(A) Adopted such procedures for credit or financial reporting purposes beginning with an accounting period other than the taxable year for which the LIFO method was first used by the taxpayer for Federal income tax purposes, or

(B) With respect to such inventories treated a business combination for credit or financial reporting purposes in a manner different from the treatment of the business combination for Federal income tax purposes.

(2) *One-year periods other than a taxable year.* The rules of this paragraph relating to the determination of income, profit, or loss for a taxable year and credit statements or financial reports that cover a taxable year also apply to the determination of income, profit, or loss for a one-year period other than a taxable year and credit statements or financial reports that cover a one-year period other than a taxable year, but only if the one-year period both begins and ends in a taxable year or years for which the taxpayer uses the LIFO method for Federal income tax purposes. For example, the requirements of paragraph (e)(1) of this section apply to a taxpayer's determination of income for purposes of a credit statement that covers a 52-week fiscal year beginning and ending in a taxable year for which the taxpayer uses the LIFO method for Federal income tax purposes. Similarly, in the case of a calendar year taxpayer, the requirements of paragraph (e)(1) of this section apply to the taxpayer's determination of income for purposes of a credit statement that covers the period October 1, 1981, through September 30, 1982, if the taxpayer uses the LIFO method for Federal income tax purposes in taxable years 1981 and 1982. However, the Commissioner will waive any violation of the requirements of this paragraph in the case of a credit statement or financial report that covers a one-year period other than a taxable

year if the report was issued before January 22, 1981.

(3) *Supplemental and explanatory information*—(i) *Face of the income statement.* Information reported on the face of a taxpayer's financial income statement for a taxable year is not considered a supplement to or explanation of the taxpayer's primary presentation of the taxpayer's income, profit, or loss for the taxable year in credit statements or financial reports. For purposes of paragraph (e)(3) of this section, the face of an income statement does not include notes to the income statement presented on the same page as the income statement, but only if all notes to the financial income statement are presented together.

(ii) *Notes to the income statement.* Information reported in notes to a taxpayer's financial income statement is considered a supplement to or explanation of the taxpayer's primary presentation of income, profit, or loss for the period covered by the income statement if all notes to the financial income statement are presented together and if they accompany the income statement in a single report. If notes to an income statement are issued in a report that does not include the income statement, the question of whether the information reported therein is supplemental or explanatory is determined under the rules in paragraph (e)(3)(iv) of this section.

(iii) *Appendices and supplements to the income statement.* Information reported in an appendix or supplement to a taxpayer's financial income statement is considered a supplement to or explanation of the taxpayer's primary presentation of income, profit, or loss for the period covered by the income statement if the appendix or supplement accompanies the income statement in a single report and the information reported in the appendix or supplement is clearly identified as a supplement to or explanation of the taxpayer's primary presentation of income, profit, or loss as reported on the face of the taxpayer's income statement. If an appendix or supplement to an income statement is issued in a report that does not include the income statement, the question of whether the information reported therein is supplemental or explanatory is determined under the rules in paragraph (e)(3)(iv) of this section. For purposes of paragraph (e)(3)(iii) of this section, an appendix or supplement to an income statement includes written statements, schedules, and reports that are labelled supplements or appendices to the income statement. However, sections of an annual report such as those labelled "President's Letter", "Management's Analysis", "Statement of Changes in Financial Position", "Summary of Key Figures", and similar sections are reports described in paragraph (e)(3)(iv) of this section and are not considered "supplements or appendices to an income statement" within the meaning of paragraph (e)(3)(iii) of this section, regardless of whether such sections are also labelled as supplements or appendices. For purposes of paragraph (e)(3)(iii) of this section, information is considered to be clearly identified as a supplement to or explanation of the taxpayer's primary presentation of income, profit, or loss as reported on the face of the taxpayer's income statement if the information either—

(A) Is reported in an appendix or supplement that contains a general statement identifying all such supplemental or explanatory information;

(B) Is identified specifically as supplemental or explanatory by a statement immediately preceding or following the disclosure of the information;

(C) Is disclosed in the context of making a comparison to corresponding information disclosed both on the face of the taxpayer's income statement and in the supplement or appendix; or

(D) Is a disclosure of the effect on an item reported on the face of the taxpayer's income statement of having used the LIFO method.

For example, a restatement of cost of goods sold based on an inventory method other than LIFO is considered to be clearly identified as supplemental or explanatory information if the supplement or appendix containing the restatement contains a general statement that all information based on such inventory method is reported in the appendix or supplement as a supplement to or explanation of the taxpayer's primary presentation of income, profit, or loss as reported on the face of the taxpayer's income statement.

(iv) *Other reports; in general.* The rules of paragraph (e)(3) (iv), (v), and (vi) of this section apply to the following types of reports: news releases; letters to shareholders, partners, or other proprietors or beneficiaries; oral statements at press conferences, shareholders' meetings or securities analysts' meetings; sections of an annual report such as those labelled "President's Letter", "Management's Analysis", "Statement of Changes in Financial Position", "Summary of Key Figures", and similar sections; and reports other than a taxpayer's income statement or accompanying notes, appendices, or supplements. Information disclosed in such a report is considered a supplement to or explanation of the taxpayer's primary presentation of income, profit, or loss for the period covered by an income statement if the supplemental or explanatory information is clearly identified as a supplement to or explanation of the taxpayer's primary presentation of income, profit, or loss as reported on the face of the taxpayer's income statement and the specific item of information being explained or supplemented, such as the cost of goods sold, net income, or earnings per share ascertained using the LIFO method, is also reported in the other report.

(v) *Other reports; disclosure of non-LIFO income.* For purposes of paragraph (e)(3)(iv) of this section, supplemental or explanatory information is considered to have been clearly identified as such if it would be considered to have been clearly identified as such under the rules of paragraph (e)(3)(iii) of this section, relating to information reported in supplements or appendices to an income statement. For example, if at a securities analysts' meeting the following question is asked, "What would the reported earnings per share for the year have been if the FIFO method had been used to value inventories?", it would be permissible to respond "Reported earnings per share for the year were $6.00. If the company had used the FIFO method of value inventories this year and had computed earnings based upon the following assumptions, earnings per share would have been $6.20. FIFO earnings are based on the following assumptions:

"(A) The use of the same effective tax rate as used in computing LIFO earnings, and

"(B) All other conditions and assumptions remain the same, including—

"(*1*) The use of the LIFO method for Federal income tax purposes and

"(*2*) The investment of the tax savings resulting from such use of the LIFO method, the income from which is included in both LIFO and FIFO earnings.

(vi) *Other reports; disclosure of effect on income.* For purposes of paragraph (e)(3)(iv) of this section, if the only supplement to or explanation of a specific item is the effect on the item of having used LIFO instead of a method other than LIFO to value inventories, it is not necessary to also report the specific item. For example, if at a shareholders' meeting the question is asked, "What was the effect on reported earnings per share of not having used

FIFO to value inventories?", it would be permissible to respond "If earnings would have been computed on the basis of the following assumptions, the use of LIFO instead of FIFO to value inventories would have decreased reported earnings per share by $2.20. FIFO earnings are based on the following assumptions:

"(A) The use of the same effective tax rate as used in computing LIFO earnings, and

"(B) All other conditions and assumptions remain the same, including—

"(*1*) The use of the LIFO method for Federal income tax purposes and

"(*2*) The investment of the tax savings resulting from such use of the LIFO method, the income from which is included in both LIFO and FIFO earnings."

(4) *Inventory asset value disclosures.* Under paragraph (e)(1)(ii) of this section, the use of an inventory method other than LIFO to ascertain the value of the taxpayer's inventories for purposes of reporting the value of the inventories as assets is not considered the ascertainment of income, profit, or loss and therefore is not considered at variance with the requirement of paragraph (e)(1) of this section. Therefore, a taxpayer may disclose the value of inventories on a balance sheet using a method other than LIFO to identify the inventories, and such a disclosure will not be considered at variance with the requirement of paragraph (e)(1) of this section. However, the disclosure of income, profit, or loss for a taxable year on a balance sheet issued to creditors, shareholders, partners, other proprietors, or beneficiaries is considered at variance with the requirement of paragraph (e)(1) of this section if such income information is ascertained using an inventory method other than LIFO and such income information is for a taxable year for which the LIFO method is used for Federal income tax purposes. Therefore, a balance sheet that discloses the net worth of a taxpayer, determined as if income had been ascertained using an inventory method other than LIFO, may be at variance with the requirement of paragraph (e)(1) of this section if the disclosure of net worth is made in a manner that also discloses income, profit, or loss for a taxable year.

However, a disclosure of income, profit, or loss using an inventory method other than LIFO is not considered at variance with the requirement of paragraph (e)(1) of this section if the disclosure is made in the form of either a footnote to the balance sheet or a parenthetical disclosure on the face of the balance sheet. In addition, an income disclosure is not considered at variance with the requirement of paragraph (e)(1) of this section if the disclosure is made on the face of a supplemental balance sheet labelled as a supplement to the taxpayer's primary presentation of financial position, but only if, consistent with the rules of paragraph (e)(3) of this section, such a disclosure is clearly identified as a supplement to or explanation of the taxpayer's primary presentation of financial income as reported on the face of the taxpayer's income statement.

(5) *Internal management reports.* [Reserved]

(6) *Series of interim reports.* For purposes of paragraph (e)(1)(iv) of this section, a series of credit statements or financial reports is considered a single statement or report covering a period of operations if the statements or reports in the series are prepared using a single inventory method and can be combined to disclose the income, profit, or loss for the period. However, the Commissioner will waive any violation of the requirement of this paragraph in the case of a series of interim reports issued before February 6, 1978, that cover a taxable year, or a series of interim reports issued before January 22, 1981 that cover a one-year period other than a taxable year.

(7) *Market value.* The Commissioner will waive any violation of the requirement of this paragraph in the case of a taxpayer's use of market value in lieu of cost for a credit statement or financial report issued before January 22, 1981. However, the special rule of this (7) applies only to a taxpayer's use of market value in lieu of cost and does not apply to the use of a method of valuation such as market value in lieu of cost but not more than LIFO cost.

(8) *Use of different methods.* The following are examples of costing methods and accounting methods that are neither inconsistent with the inventory method referred to in § 1.472–1 nor at variance with the requirement of § 1.472–2(c) and which, under paragraph (e)(1)(vi) of this section, may be used to ascertain income, profit, or loss for credit purposes or for purposes of financial reports regardless of whether such method is also used by the taxpayer for Federal income tax purposes:

(i) Any method relating to the determination of which costs are includible in the computation of the cost of inventory under the full absorption inventory method.

(ii) Any method of establishing pools for inventory under the dollar-value LIFO inventory method.

(iii) Any method of determining the LIFO value of a dollar-value inventory pool, such as the double-extension method, the index method, and the link chain method.

(iv) Any method of determining or selecting a price index to be used with the index or link chain method of valuing inventory pools under the dollar-value LIFO inventory method.

(v) Any method permitted under § 1.472–8 for determining the current-year cost of closing inventory for purposes of using the dollar-value LIFO inventory method.

(vi) Any method permitted under § 1.472–2(d) for determining the cost of goods in excess of goods on hand at the beginning of the year for purposes of using a LIFO method other than the dollar-value LIFO method.

(vii) Any method relating to the classification of an item as inventory or a capital asset.

(viii) The use of an accounting period other than the period used for Federal income tax purposes.

(ix) The use of cost estimates.

(x) The use of actual cost of cut timber or the cost determined under section 631(a).

(xi) The use of inventory costs unreduced by any adjustment required by the application of section 108 and section 1017, relating to discharge of indebtedness.

(xii) The determination of the time when sales or purchases are accrued.

(xiii) The use of a method to allocate basis in the case of a business combination other than the method used for Federal income tax purposes.

(xiv) The treatment of transfers of inventory between affiliated corporations in a manner different from that required by § 1.1502–13.

(9) *Reconciliation of LIFO inventory values.* A taxpayer may be required to reconcile differences between the value of inventories maintained for credit or financial reporting purposes and for Federal income tax purposes in order to show that the taxpayer has satisfied the requirements of this paragraph.

This Treasury decision is issued under the authority contained in section 7805

of the Internal Revenue Code of 1954 (68A Stat. 917; 26 U.S.C. 7805).

Jerome Kurtz,

Commissioner of Internal Revenue.

Approved: January 13, 1981.

Donald C. Lubick,

Assistant Secretary of the Treasury.

[FR Doc. 81-2091 Filed 1-19-81; 8:45 am]

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26 CFR Part 1

[T.D. 7764]

Income Tax; Amortization of Experience Gains by Certain Pension Plans Funded by Group Deferred Annuity Contracts

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final regulations.

SUMMARY: This document provides final regulations relating to the determination of actuarial cost under the minimum funding standards. Changes in the applicable tax law were made by the Employee Retirement Income Security Act of 1974. The regulations provide the public with guidance needed to comply with that Act and apply only to defined benefit pension plans described in the regulations.

DATE: These regulations are generally effective for plan years beginning after May 22, 1981.

FOR FURTHER INFORMATION CONTACT: Jonathan P. Marget of the Employee Plans and Exempt Organizations Division, Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, D.C. 20224 (Attention: CC:LR:T) (202-566-3651) (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

On December 29, 1978, the Internal Revenue Service published proposed amendments to the Income Tax Regulations (26 CFR Part 1) under section 412(b)(3) of the Internal Revenue Code of 1954, 43 FR 60964. The amendments were proposed to conform the regulations to section 1013 of the Employee Retirement Income Security Act of 1974 (ERISA) (88 Stat. 914) and would also apply for purposes of section 302 of ERISA (88 Stat. 869).

A public hearing on the proposed amendments was held on February 21, 1980. After consideration of all the comments, both oral and written, regarding the proposed amendments, those amendments are adopted, as revised, by the Treasury decision.

General Explanation

Section 412 of the Internal Revenue Code of 1954 provides minimum funding requirements with respect to certain pension plans. These requirements include the maintenance of a minimum funding standard account. Annually under the account the normal cost of the plan and certain amortization amounts are charged and contributions to the plan and certain other amortization amounts are credited.

In general, this regulation contains specific rules regarding certain plans funded solely through a group deferred annuity contract. The regulation treats dividends, rate credits, and credits for forfeitures as an actuarial or experience gain for these plans, to be amortized over subsequent plan years through credits to the funding standard account under section 412(b)(3)(B)(ii).

Scope of Regulation

This regulation applies only to plans described in the text of the regulation. It does not apply to all plans funded with group deferred annuity contracts. Specifically, it does not apply to plans described in regulations under section 412(i), to plans providing future service benefits only, or to split-funded plans using group deferred annuities.

Regulations relating to split-funded plans may be proposed in the future.

Effect of Pre-ERISA Law

A number of comments noted that under pre-ERISA regulations for purposes of section 404 the type of gains to which this regulation applies were not required to be amortized, but were used to reduce future employer contributions. These comments suggested that it would be proper to characterize these gains as "an amount considered contributed by the employer" for purposes of section 412. As such, the gains would not be required to be amortized, and increases in the cost of plan administration would be avoided.

The position of the final regulation is unchanged from that of the proposal. In all cases under pre-ERISA law plans were permitted to recognize gains immediately. The requirement that gains be amortized when generated by group deferred annuity contracts used in the manner described in the regulation is consistent with the general requirement with respect to the treatment of gains under ERISA.

The amortization of experience gains is explicitly provided for in section 412. It is expected that final regulations under section 404 will also provide for the amortization of such gains as the general rule; see § 1.404 (a)-14 (g), proposed on May 18, 1978. Therefore, the impact of ERISA on the plans to which this regulation applies appears to be no greater than the impact of ERISA on other plans.

The regulations do not follow the suggestion of some comments that there be a *de minimis* rule permitting pre-ERISA treatment for small gains. There is no basis for prescribing a *de minimis* rule applicable only to plans described in this regulation. However, the regulation does not prohibit an actuary from minimizing plan costs by taking into account an interest assumption with respect to expected gains under the group deferred annuity contracts.

Prospective Effect

The comments indicated that misunderstandings of the impact of ERISA on existing practices have created significant compliance problems for certain plans. They suggested that, if the proposal is adopted, it be applied prospectively to ease the hardship caused by these problems. The regulation, as adopted, implements this suggestion.

Section Designation

This section of the regulations, as proposed, was designated as § 1.412(b)(3)-1. The regulation, as adopted, is designated as § 1.412(b)-2 to conform with the structure of regulations to be proposed under section 412(b) at a later date.

Drafting Information

The principal author of these regulations was Thomas F. Rogan of the Employee Plans and Exempt Organizations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations, both on matters of substance and style.

Adoption of amendments to the regulations

The Income Tax Regulations, 26 CFR Part 1, are amended by adding in the appropriate place the following new section:

§ 1.412(b)-2 Amortization of experience gains in connection with certain group deferred annuity contracts.

(a) *Experience gain treatment.* Dividends, rate credits, and credits for forfeitures arising in a plan described in paragraph (b) of this section are experience gains described in section 412(b)(3)(B)(ii) (relating to the amortization of experience gains.

(b) *Plan.* A plan is described in this paragraph (b) if—

(1) The plan is funded solely through a group deferred annuity contract,

(2) The annual single premium required under the contract for the purchase of the benefits accruing during the plan year is treated as the normal cost of the plan for that year, and

(3) The amount necessary to pay in equal annual installments, over the appropriate amortization period, an amount equal to the single premium necessary to provide all past service benefits not initially funded, together with interest thereon, is treated as the annual amortization amount determined under section 412(b)(2)(B) (i), (ii) or (iii).

(c) *Effective date.* This section applies for the first plan year to which section 412 applies that begins after May 22, 1981.

(Sec. 7805, Internal Revenue Code of 1954 (68A Stat. 917; (26 U.S.C. 7805)))

Jerome Kurtz,
Commissioner of Internal Revenue.

Approved: January 12, 1981.

Donald C. Lubick,
Assistant Secretary of the Treasury.

[FR Doc. 81-2122 Filed 1-19-81; 10:21 am]
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26 CFR Parts 1 and 7

[T.D. 7758]

Income Tax; Taxable Years Beginning After December 31, 1953 and Temporary Income Tax Regulations Under the Tax Reform Act of 1976; Election to Treat Outdoor Advertising Displays as Real Property

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to the involuntary conversion of real property. These final regulations provide rules relating to the making of an election to treat property that constitutes certain outdoor advertising displays as real property for income tax purposes. Changes to the applicable law were made by the Tax Reform Act of 1976. The regulations provide the guidance needed to make the election allowed by law.

DATES: The new regulations are effective for taxable years beginning after December 31, 1970.

FOR FURTHER INFORMATION CONTACT: Douglas W. Charnas of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, D.C. 20224 (Attn: CC:LR:T) (202-566-3297).

SUPPLEMENTARY INFORMATION:

Background

On December 11, 1979, proposed amendments to the Income Tax Regulations (26 CFR Part 1) and the Temporary Income Tax Regulations under the Tax Reform Act of 1976 (26 CFR Part 7) under section 1033 of the Internal Revenue Code of 1954 were published in the Federal Register (44 FR 71429) and (42 FR 1469), respectively. Those amendments were proposed to conform the regulations to section 2127 of the Tax Reform Act of 1976 (Pub. L. 94-455, 90 Stat. 1920). A public hearing was held on April 22, 1980. After consideration of all comments regarding the proposed amendments those amendments are adopted as revised by this Treasury decision.

Explanation of Provisions

Section 2127 of the Tax Reform Act of 1976 amended section 1033 to allow taxpayers an election to treat property that constitutes certain outdoor advertising displays as real property. In general, the election is available for taxable years beginning after December 31, 1970, including, in the case of an election made by July 21, 1981, taxable years which otherwise would be closed because the period for filing a claim for credit or refund has expired. No election may be made, however, with respect to any property for which (i) the investment credit under section 38 has been claimed, or (ii) an election of additional first-year depreciation allowance for small businesses under section 179 (a) is in effect.

Under the proposed regulations, the election was to be made by attaching a statement to the return (or amended return) for the first taxable year to which the election is to apply. Once made it was to be irrevocable without the consent of the Commissioner and it applied to all outdoor advertising displays of the taxpayer which may be made the subject of an election under section 1033(g)(3), including all outdoor advertising displays acquired or constructed by the taxpayer in a taxable year after the taxable year for which the election was made.

These final regulations supersede certain temporary regulations (26 CFR 7.0 (c)(6)) relating to the election.

Comments

Two comments on the notice of proposed rulemaking were received from the public. One comment requests that the regulations provide that, in the absence of an election to treat outdoor advertising displays as real property, such property will constitute personal property for purposes of chapter 1 of the Code. However, neither the statute nor its legislative history specifies that all outdoor advertising displays are to be treated as personal property in the absence of an election under section 1033 (g) (3). It appears that Congress enacted section 1033 (g) (3) merely to allow taxpayers to elect to continue to treat certain outdoor advertising displays as real property because the treatment of such displays became uncertain as a result of several court cases which held that billboards are tangible personal property (and not real property) for purposes of the investment credit. Accordingly, the regulations are silent on whether, in the absence of an election to treat outdoor advertising displays as real property, such property is considered tangible personal property for purposes of chapter 1 of the Code.

The other comment received from the public states that the notice of proposed rulemaking is incorrect in requiring a taxpayer to treat all currently owned outdoor advertising displays and all outdoor advertising displays acquired in the future as real property once the taxpayer elects to treat an involuntarily converted outdoor advertising display as real property. The comment states that the election should only apply to all qualifying outdoor advertising displays owned by the taxpayer at the time of the election. In the alternative, the comment requests that the regulations allow taxpayers to revoke elections made under the temporary regulations because taxpayers could not have reasonably anticipated that their elections would apply to all outdoor advertising displays acquired in the future.

There is no indication that section 1033(g)(3) was intended to allow taxpayers to treat qualifying outdoor advertising displays inconsistently. On the contrary, the committee reports make clear that an election, once made, applies to all qualifying outdoor advertising displays of the taxpayer. Accordingly, the final regulations do not modify the notice on this point.

However, because some taxpayers may have made elections erroneously believing that the election only applied to outdoor advertising displays owned by the taxpayer at the time of the election, the final regulations are modified to provide that taxpayers who made elections on or before December 11, 1979 (the date of publication of the notice), are allowed to revoke their election without the consent of the Commissioner provided certain requirements are met.

Drafting Information

The principal author of these regulations is Douglas W. Charnas of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the final regulations, both on matters of substance and style.

Adoption of amendments to the regulations.

Accordingly, the amendments to 26 CFR Part 1, published as a notice of proposed rulemaking in the Federal Register for December 11, 1979 (44 CFR 71429), and to 26 CFR Part 7, published as a temporary regulation in the Federal Register for January 7, 1977 (42 FR 1469), are hereby adopted as proposed, except that paragraph (b)(2) of § 1.1033(g)–1, as added by paragraph 4 of the notice of proposed rulemaking, is amended by revising the last two sentences of paragraph (b)(2)(i)(A), by adding a new sentence at the end of paragraph (b)(2)(i)(A), by revising the first sentence of paragraph (b)(2)(ii), and by adding at the end of paragraph (b)(2) a new subdivision (iii). These revised and added provisions read as set forth below:

§ 1.1033(g)–1 Condemnation of real property held for productive use in trade or business or for investment.

* * * * *

(b) *Election to treat outdoor advertising displays as real property.* * * *

(2) *Election*—(i) *Time and manner of making election*—(A) *In general.* * * * If a taxpayer makes an election (or revokes an election under subdivision (ii) or (iii) of this subparagrah (b)(2)) for a taxable year for which he or she has previously filed a return, the return for that taxable year and all other taxable years affected by the election (or revocation) must be amended to reflect any tax consequences of the election (or revocation). However, no return for a taxable year for which the period for filing a claim for credit or refund under section 6511 has expired may be amended to make any changes other than those resulting from the election (or revocation). In order for the election (or revocation) to be effective, the taxpayer must remit with the amended return any additional tax due resulting from the election (or revocation), notwithstanding the provisions of section 6212(c) or 6501 or the provisions of any other law or rule of law which would prevent assessment or collection of such tax.

* * * * *

(ii) *Revocation of election by Commissioner's consent.* Except as otherwise provided in paragraph (b)(2)(iii) of this section, an election under section 1033(g)(3) shall be irrevocable unless consent to revoke is obtained from the Commissioner. * * *

(iii) *Revocation where election was made on or before December 11, 1980.* In the case of an election made on or before December 11, 1979, the taxpayer may revoke such election provided such revocation is made not later than March 23, 1981. The request for revocation shall be made in conformity with the requirements of paragraph (b)(2)(ii); except that, in lieu of the information required by paragraph (b)(2)(ii)(E), the taxpayer shall state that the revocation is being made pursuant to this paragraph. In addition, the taxpayer must forward, with the statement of revocation, copies of his or her tax returns, including both the original return and any amended returns, for the taxable year in which the original election was made and for all subsequent years and must remit any additional tax due as a result of the revocation.

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This Treasury decision is issued under the authority contained in sections 1033 and 7805 of the Internal Revenue Code of 1954 (90 Stat. 1920, 26 U.S.C. 1033; 68A Stat. 917, 26 U.S.C. 7805).

William E. Williams,

Acting Commissioner of Internal Revenue.

Approved: January 9, 1981.

Donald C. Lubick,

Assistant Secretary of the Treasury.

PART 1—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

The amendments to 26 CFR Parts 1 and 7 are as follows:

§ 1.1033(a)–1 [Amended]

Paragraph 1. Paragraph (b) of § 1.1033(a)–1 is amended by removing "§ 1.1033(f)–1" and adding in lieu thereof "§ 1.1033(g)–1".

§ 1.1033(a)–2 [Amended]

Par. 2. Paragraph (c)(3) of § 1.1033(a)–2 is amended by removing "section 1033(F)(4)" and adding in lieu thereof "section 1033(G)(4)", and by removing "§ 1.1033(f)–1" and adding in lieu thereof "§ 1.1033(g)–1".

§ 1.1033(g)–1 Redesignated as § 1.1033(h)–1.

Par. 3. Section 1.1033(g)–1 is redesignated as § 1.1033(h)–1 and is amended by removing "§ 1.1033(f)–1" and adding in lieu thereof "§ 1.1033(g)–1".

Par. 4. Section 1.1033(f)–1 is redesignated as § 1.1033(g)–1 and is amended by redesignating paragraphs (b) and (c) as paragraphs (c) and (d) and by adding a new paragraph (b) to read as set forth below:

§ 1.1033(g)–1 Condemnation of real property held for productive use in trade or business or for investment.

* * * * *

(b) *Election to treat outdoor advertising displays as real property*—(1) *In general.* Under section 1033(g)(3) of the Code, a taxpayer may elect to treat property which constitutes an outdoor advertising display as real property for purposes of chapter 1 of the Code. The election is available for taxable years beginning after December 31, 1970. In the case of an election made on or before the 180th day after the date of publication of this notice of proposed rulemaking as a Treasury decision, the election is available whether or not the period for filing a claim for credit or refund under section 6511 has expired. No election may be made with respect to any property for which (i) the investment credit under section 38 has been claimed, or (ii) an election of additional first-year depreciation allowance for small business under section 179(a) is in effect. The election once made applies to all outdoor advertising displays of the taxpayer which may be made the subject of an election under this paragraph, including all outdoor advertising displays acquired or constructed by the taxpayer in a taxable year after the taxable year for which the election is made. The election applies with respect to dispositions during the taxable year for which made and all subsequent taxable years (unless an effective revocation is made pursuant to paragraph (b)(2)(ii)).

(2) *Election*—(i) *Time and manner of making election*—(A) *In general.* Unless otherwise provided in the return or in the instructions for a return for a taxable year, any election made under section 1033(g)(3) shall be made by attaching a statement to the return (or amended return if filed on or before the 180th day after the date of publication of this notice as a Treasury decision) for the first taxable year to which the election is to apply. Any election made under this paragraph must be made not later than the time, including extensions

thereof, prescribed by law for filing the income tax return for such taxable year or 180 days after the date of publication of this notice as a Treasury decision, whichever occurs last. If a taxpayer makes an election (or revokes an election under subdivision (ii) or (iii) of this subparagraph (b) (2)) for a taxable year for which he or she has previously filed a return, the return for that taxable year and all other taxable years affected by the election (or revocation) must be amended to reflect any tax consequences of the election (or revocation). However, no return for a taxable year for which the period for filing a claim for credit or refund under section 6511 has expired may be amended to make any changes other than those resulting from the election (or revocation). In order for the election (or revocation) to be effective, the taxpayer must remit with the amended return any additional tax due resulting from the election (or revocation), notwithstanding the provisions of section 6212(c) or 6501 or the provisions of any other law which would prevent assessment or collection of such tax.

(b) *Statement required when making election.* The statement required when making the election must clearly indicate that the election to treat outdoor advertising displays as real property is being made.

(ii) *Revocation of election by Commissioner's consent.* Except as otherwise provided in paragraph (b)(2)(iii) of this section, an election under section 1033(g)(3) shall be irrevocable unless consent to revoke is obtained from the Commissioner. In order to secure the Commissioner's consent to revoke an election, the taxpayer must file a request for revocation of election with the Commissioner of Internal Revenue, Washington, D.C. 20224. The request for revocation shall include—

(A) The taxpayer's name, address, and taxpayer identification number,

(B) The date on which and taxable year for which the election was made and the Internal Revenue Service office with which it was filed,

(C) Identification of all outdoor advertising displays of the taxpayer to which the revocation would apply (including the location, date of purchase, and adjusted basis in such property),

(D) The effective date desired for the revocation, and

(E) The reasons for requesting the revocation.

The Commissioner may require such other information as may be necessary in order to determine whether the requested revocation will be permitted. The Commissioner may prescribe administrative procedures (subject to such limitations, terms and conditions as he deems necessary) to obtain his consent to permit the taxpayer to revoke the election. The taxpayer may submit a request for revocation for any taxable year for which the period of limitations for filing a claim for credit or refund or overpayment of tax has not expired.

(iii) *Revocation where election was made on or before December 11, 1980.* In the case of an election made on or before December 11, 1979, the taxpayer may revoke such election provided such revocation is made not later than March 23, 1981. The request for revocation shall be made in conformity with the requirements of paragraph (b)(2)(ii), except that, in lieu of the information required by paragraph (b)(2)(ii)(E), the taxpayer shall state that the revocation is being made pursuant to this paragraph. In addition, the taxpayer must forward, with the statement of revocation, copies of his or her tax returns, including both the original return and any amended returns, for the taxable year in which the original election was made and for all subsequent years and must remit any additional tax due as a result of the revocation.

(3) *Definition of outdoor advertising display.* The term "outdoor advertising display" means a rigidly assembled sign, display, or device that constitutes, or is used to display, a commercial or other advertisement to the public and is permanently affixed to the ground or permanently atttached to a building or other inherently permanent structure. The term includes highway billboards affixed to the ground with wood or metal poles, pipes, or beams, with or without concrete footings.

(4) *Character of replacement property.* For purposes of section 1033(g), an interest in real property purchased as replacement property for a compulsorily or involuntarily converted outdoor advertising display (with respect to which an election under this section is in effect) shall be considered property of a like kind as the property converted even though a taxpayer's interest in the replacement property is different from the interest held in the property converted. Thus, for example, a fee simple interest in real estate acquired to replace a converted billboard and a 5-year leasehold interest in the real property on which the billboard was located qualifies as property of a like kind under this section.

PART 7—TEMPORARY INCOME TAX REGULATIONS UNDER THE TAX REFORM ACT OF 1976

Par. 5. Paragraph (c)(6) of § 7.0 is hereby removed.

[FR Doc. 81-2000 Filed 1-19-81; 8:45 am]
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26 CFR Parts 25 and 301

[T.D. 7757]

Gift Taxes; Gifts Made After December 31, 1954 and Procedure and Administration—Filing of Gift Tax Returns; Furnishing Statement Explaining Estate or Gift Valuation

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to the time for filing gift tax returns and for requesting a statement explaining valuation for estate, gift or generation-skipping transfer tax purposes. Changes to the applicable law were made by the Tax Reform Act of 1976 and the Act of December 29, 1979. The regulations would provide the public with the guidance needed to comply with those acts. In addition, this document contains an amendment to a regulation relating to the exercise of a general power of appointment.

DATES: The amendments are generally effective for gifts made after December 31, 1976.

FOR FURTHER INFORMATION CONTACT: Robert H. Waltuch of the Legislation and Regulations Division, Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, D.C. 20224, Attention: CC:LR:T, 202-566-3287, not a toll-free call.

SUPPLEMENTARY INFORMATION:

Background

On December 19, 1979, the Federal Register published proposed amendments to the Gift Tax Regulations (26 CFR Part 25) under sections 2514 and 6075(b) and to the Procedure and Administration Regulations (26 CFR Part 301) under section 7517 of the Internal Revenue Code of 1954 (Code) (44 FR 75185). These amendments were proposed to conform the regulations to section 2009(a)(2) and (b) of the Tax Reform Act of 1976 (90 Stat. 1891 and 1892) relating to the special rule for filing returns where gifts in a calendar quarter total $25,000 or less. In addition, the final regulations conform the regulations to section 8 of the Act of

December 29, 1979 (93 Stat. 1277), which provides that the due date for filing a gift tax return for the fourth calendar quarter or the calendar year is April 15 of the following calendar year. The amendments are issued under the authority contained in section 7805 of the Code (68A Stat. 917; 26 U.S.C. 7805). Section 25.2514–1 of the Gift Tax Regulations is also amended to clarify the effect of an exercise of a lifetime nongeneral power of appointment by a person when that person also has a lifetime general power of appointment over the same property.

Summary of Comments and Final Regulations

Exercise of General Power of Appointment

Under the proposed regulation, if a person had both a presently exercisable general power of appointment over all or a portion of a trust's corpus and a nongeneral power of appointment over the entire corpus of the same trust and the person exercised the nongeneral power, such an exercise resulted in the exercise of the general power.

Two comments were received regarding this proposed amendment. The first commentator was not in favor of making any change at all. However, if a change were to be made, the commentator believed that it should be made under paragraph (d) of § 25.2514–1 relating to the definition of exercise rather than under paragraph (c) of that section, relating to the definition of a general power of appointment. The second comment was in favor of the proposed amendment, but felt that the amendment was too broad. After carefully considering these comments, the final regulations have been revised by amending paragraph (d) and by narrowing its scope.

Under the final regulations, if a person has a presently exercisable general power of appointment over all or a portion of the corpus of a trust and a nongeneral power of appointment over all or a portion of the same trust the exercise of the nongeneral power is treated as the exercise of the general power to the extent that the amount of money or property subject to being transferred by the exercise of the general power has been reduced by the exercise of the nongeneral power.

Due Date for Gift Tax Returns

Two comments also addressed the proposed amendment to § 25.6075–1, relating to time for filing gift tax returns. The first commentator requested that the amendment be revised to make it clear that separate returns for each quarter must be filed. This change has not been made. However, the final regulations do make it clear that a return encompassing more than one quarter must meet all the requirements for a separate return had one been required for each quarter.

The second commentator requested that the effect of section 2513, relating to split gifts, be addressed in the final regulations and that § 25.2513–1(c) and (d) be revised. The effect of section 2513 is addressed in the final regulation. Under the final regulation, the effect of section 2513 is only taken into account for prior gifts if an irrevocable consent was made on a return required to be filed prior to the due date of the current return. Section 25.2513–1 (c) and (d) have not been revised because those paragraphs are correct as written. Section 6075(b) of the Code does not change the fact that a return is due for a particular quarter. It merely changes the date that the return is due.

Technical Amendment to 26 CFR Part 301

This Treasury decision also makes a technical amendment to § 301.6103 (l)(2)–(3)(a) of the Regulations on Procedure and Administration to relocate a misplaced sentence.

Drafting Information

The principal author of this regulation is Robert H. Waltuch of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations, both on matters of substance and style.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR Parts 25 and 301 are amended by adopting, subject to the following changes, the regulations proposed as a notice of proposed rulemaking published in the Federal Register on December 19, 1979 (44 FR 75185).

Paragraph 1. Paragraph 1 of the notice of proposed rulemaking is revised to read as follows:

Section 25.2514–1 is amended as follows:

(a) The last sentence of paragraph (c)(1) is revised to read as set forth below.

(b) Paragraph (d) is amended by adding four sentences after the last sentence in the paragraph to read as set forth below.

§ 25.2514–1 Transfers under power of appointment.

* * * * *

(c) *Definition of "general power of appointment".*—(1) *In general.* * * * The latter power is not a general power of appointment (but its exercise may result in the exercise of the former power; see paragraph (d) of this section).

* * * * *

(d) *Definition of "exercise."* * * * Furthermore, if a person holds both a presently exercisable general power of appointment and a presently exercisable nongeneral power of appointment over the same property, the exercise of the nongeneral power is considered the exercise of the general power only to the extent that immediately after the exercise of the nongeneral power the amount of money or property subject to being transferred by the exercise of the general power is decreased. For example, assume A has a noncumulative annual power to withdraw the greater of $5,000 or 5 percent of the value of a trust having a value of $300,000 and a lifetime nongeneral power to appoint all or a portion of the trust corpus to A's child or grandchildren. If A exercises the nongeneral power by appointing $150,000 to A's child, the exercise of the nongeneral power is treated as the exercise of the general power to the extent of $7,500 (maximum exercise of general power before the exercise of the nongeneral power, 5% of $300,000 or $15,000, less maximum exercise of the general power after the exercise of the nongeneral power, 5% of $150,000 or $7,500).

* * * * *

Par. 2. Section 25.6075–1 as set forth in paragraph 2 of the notice of proposed rulemaking is amended as follows:

(a) Paragraphs (a) and (b) are revised to read as set forth below.

(b) Paragraphs (c) and (d) are redesignated (d) and (e) respectively and a new paragraph (c) is added to read as set forth below.

§ 25.6075 Returns, time for filing gift tax returns for gifts made after December 31, 1978.

(a) *Due date for filing quarterly gift tax returns.*—(1) Except as provided in paragraph (b) of this section, a return required to be filed under section 6019 for the first, second, or third calendar quarter of any calendar year must be filed on or before the 15th day of the second month following the close of the calendar quarter in which the taxable gift was made.

(2) If a return is required to be filed under section 6019 for the fourth calendar quarter, then—

(i) For gifts made after December 31, 1978 and before January 1, 1979, the return must be filed on or before

February 15th following the close of the fourth calendar quarter, or

(ii) For gifts made on or after January 1, 1979, the return must be filed on or before April 15th following the close of the fourth calendar quarter.

(b) *Special rule.*—(1) If the total amount of taxable gifts [determined after the application of paragraph (c)(1) of this section, relating to split gifts] made by a person during a calendar quarter is $25,000 or less, the return required under section 6019 for that quarter must be filed on or before the date prescribed in paragraph (a)(1) of this section for filing the return for gifts made in the first subsequent calendar quarter (unless the first subsequent calendar quarter is the fourth calendar quarter in which case see paragraph (b)(2) of this section) in the calendar year in which the sum of—

(i) The taxable gifts made during such subsequent calendar quarter, plus

(ii) All other taxable gifts made in prior quarters of the calendar year for which no return has yet been required to be filed,

exceeds $25,000. The return must include transfers by gift (as required by section 6019 and the regulations under that section) made during such subsequent and prior quarters of the calendar year for which no return has yet been required to be filed and identify in which quarter such transfers were made. The return must meet all the requirements for a separate return as if a separate return had been made for each quarter in which a transfer by gift was made. This return will be treated as a separate return for each of the quarters identified on the return.

(2) If a return is not required to be filed under paragraph (b)(1) of this section, then—

(i) For gifts made after December 31, 1976 and before January 1, 1979, the return must be filed on or before February 15th following the close of the fourth calendar quarter, or

(ii) For gifts made on or after January 1, 1979, the return must be filed on or before April 15th following the close of the fourth calendar quarter.

The return must include all transfers by gift (as required under section 6019 and the regulations under that section) made during the calendar year for which no return has yet been required to be filed and identify in which quarter such transfers were made. The return must meet all the requirements for a separate return as if a separate return had been made for each quarter in which a transfer by gift was made. This return will be treated as a separate return for each of the quarters identified on the return.

(3) Under section 6075(b)(3), any extension of time granted a taxpayer for filing the return of income taxes imposed by subtitle A for any taxable year which is a calendar year shall be treated as an extension of time granted the taxpayer for filing any return under section 6019 which is due (under paragraphs (a)(2)(ii) and (b)(2)(ii) of this section) on or before April 15th following the close of the fourth calendar quarter. See also section 6081 and § 25.6081–1 for other rules relating to extensions of time for filing returns.

(4) See section 7503 and § 301.7503–1 for the due date of a return that falls on a Saturday, Sunday, or a legal holiday. As to additions to the tax for failure to file the return within the prescribed time, see section 6651 and § 301.6651–1.

(c) *Effect of section 2513.*—(1) In determining whether taxable gifts made during any calendar quarter exceed $25,000, and in determining whether taxable gifts made in the current calendar quarter and the preceding calendar quarters of the calendar year for which no return has yet been required to be filed exceed $25,000, the effect of section 2513 is not taken into account for any gifts made in the current or previous quarters for which a return is now being filed unless an irrevocable consent was made by either spouse on a return that was required to be filed prior to the due date of the current return. See § 25.2513–3 for the rules relating to when a consent becomes irrevocable.

(2) Paragraph (c)(1) of this section may be illustrated by the following examples:

Example (1). During the first quarter of 1980 A made taxable gifts of $17,000 ($20,000—$3,000 annual exclusion under section 2503 (b)) to D. During the second quarter A made another taxable gift of $10,000 to D. A's taxable gifts for the first two quarters are $27,000. Therefore, A is required to file a return for the first and second quarters on or before August 15, 1980. On that return A's wife, B, consented to the application of section 2513 (relating to split gifts) for the second quarter. Even though A split the second quarter gift with his wife, A's return is nevertheless required to be filed on or before August 15, 1980 because in determining whether taxable gifts exceed $25,000, the effect of section 2513 is only taken into account for the quarter in which an irrevocable consent was made on a return required to be filed before August 15, 1980.

Example (2). Assume the same facts as in Example (1). In addition, during the third quarter A made another taxable gift of $20,000 to D, and B made a taxable gift of $24,000 to D. B is required to file a return reporting the taxable gifts made during the second and third quarters on or before November 15, 1980 because B's total taxable gifts exceed $25,000 (second quarter gifts after taking section 2513 into account = ½ ($10,000) — $3,000 (annual exclusion under section 2503 (b)) = $2,000 plus a $24,000 gift in the third quarter). Even if A and B had consented to the application of section 2513 for the third quarter, B's return would nevertheless be due on or before November 15, 1980, because an irrevocable consent was not made on a return that was required to be filed prior to November 15, 1980. However, the effect of section 2513 is taken into account for the second quarter because an irrevocable consent was made on a return that was required to be filed prior to November 15, 1980.

Example (3). During the first quarter of 1980 A made taxable gifts of $37,000 to F ($30,000—$3,000 annual exclusion under section 2503 (b)). A is required to file a return on or before May 15, 1980. A fails to file a return until August 1, 1980. On that return B, A's spouse, consented to the application of section 2513. The consent on that return is irrevocable under § 25.2513–3. During the second quarter B made taxable gifts of $14,000 to F. A and B made no other gifts during 1980. B has made total taxable gifts of $28,000 ($12,000 for the first quarter and $14,000 for the second quarter). Therefore, B is required to file a return on or before August 15, 1980. Even if A and B had consented to the application of section 2513 for the second quarter, B's return is nevertheless due on or before August 15, 1980. Assuming no other gifts were made during the year, A's return reporting the second quarter split gift would be due on or before April 15, 1981.

Example (4). During the first quarter of 1980 A made taxable gifts of $30,000 to G. B, A's spouse, files a gift tax return on June 15, 1980 reporting that gift and both A and B signify their consent to the application of section 2513 on that return. In determining whether either spouse has exceeded the $25,000 amount for the remainder of 1980, the effect of section 2513 will be taken into account for the transfer by gift made in the first quarter.

* * * * *

Par. 3. Section 301.6103 (l) (2)–3 (a) of the Regulations on Procedure and Administration is amended by revising subparagraph (23) and the flush language following subparagraph (27). These revised provisions read as follows:

§ 301.6103 (l) (2)–3 Disclosure to Department of Labor and Pension Benefit Guaranty Corporation of certain returns and return information.

(a) *Disclosures following general requests.* * * *

(23) Copies of initial pleadings indicating that the Service intends to intervene in a civil action under section 502 (h) of the Act;

* * * * *

Return information disclosed under this paragraph includes the taxpayer identity information (as defined in section 6103(b)(6)) of the plan or trust, the name

and address of the sponsor and administrator of the plan or trustee of the trust, and the name and address of the person authorized to represent the plan or trust before the Service. Disclosure of returns or return information as provided by this paragraph will be made only following receipt by the Commissioner of Internal Revenue of an annual written request for such disclosure by the Administrator of Pension and Benefit Welfare Programs of the Department of Labor or the Executive Director of the Pension Benefit Guaranty Corporation describing the categories of returns or return information to be disclosed by the Service and the particular purpose for which the returns or return information is needed in the administration of title I or IV of the Act, and designating by title the officers and employees of the Department of Labor or such corporation to whom such disclosure is authorized.

Par. 4. Paragraph (a) of § 301.7517–1 as set forth in paragraph 3 of the notice of proposed rulemaking is revised to read as set forth below.

§ 301.7517–1 Furnishing on request of statement explaining estate or gift valuation.

(a) *In general.* Section 7517 requires the Service to furnish to a taxpayer, at the request of that taxpayer, a statement explaining the estate, gift or generation-skipping transfer valuation of any item contained on a return filed by the taxpayer as to which a determination or proposed determination of value has been made. The request must be filed no later than the latest time to file a claim for refund of the tax which is dependent on the value with respect to which the determination has been made. The request should be filed with the district director's office that has jurisdiction over the return of the taxpayer.

William E. Williams,

Acting Commissioner of Internal Revenue.

Approved: January 13, 1981.

Donald C. Lubick,

Assistance Secretary of the Treasury.

Paragraph 1. Section 25.2514–1 is amended as follows:

(a) The last sentence of paragraph (c)(1) is revised to read as set forth below.

(b) Paragraph (d) is amended by adding four sentences after the last sentence in the paragraph to read as set forth below.

§ 25.2514–1 Transfers under power of appointment.

* * * * *

(c) *Definition of "general power of appointment"—(1) In general.* * * * The later power is not a general power of appointment (but its exercise may result in the exercise of the former power; see paragraph (d) of this section).

* * * * *

(d) *Definition of "exercise."* * * * Furthermore, if a person holds both a presently exercisable general power of appointment and a presently exercisable nongeneral power of appointment over the same property, the exercise of the nongeneral power is considered the exercise of the general power only to the extent that immediately after the exercise of the nongeneral power the amount of money or property subject to being transferred by the exercise of the general power is decreased. For example, assume A has a noncumulative annual power to withdraw the greater of $5,000 or 5 percent of the value of a trust having a value of $300,000 and a lifetime nongeneral power to appoint all or a portion of the trust corpus to A's child or grandchildren. If A exercises the nongeneral power by appointing $150,000 to A's child, the exercise of the nongeneral power is treated as the exercise of the general power to the extent of $7,500 (maximum exercise of general power before the exercise of the nongeneral power, 5% of $300,000 or $15,000, less maximum exercise of the general power after the exercise of the nongeneral power, 5% of $150,000 or $7,500).

* * * * *

Par. 2. Sections 25.6075 and 25.6075–1 are removed and the following new section is added in lieu thereof.

§ 25.6075–1 Returns; time for filing gift tax returns for gifts made after December 31, 1976.

(a) *Due date for filing quarterly gift tax returns.*—(1) Except as provided in paragraph (b) of this section, a return required to be filed under section 6019 for the first, second, or third calendar quarter of any calendar year must be filed on or before the 15th day of the second month following the close of the calendar quarter in which the taxable gift was made.

(2) If a return is required to be filed under section 6019 for the fourth calendar quarter, then—

(i) For gifts made after December 31, 1976 and before January 1, 1979, the return must be filed on or before February 15th following the close of the fourth calendar quarter, or

(ii) For gifts made on or after January 1, 1979, the return must be filed on or before April 15th following the close of the fourth calendar quarter.

(b) *Special rule.*—(1) If the total amount of taxable gifts (determined after the application of paragraph (c)(1) of this section, relating to split gifts) made by a person during a calendar quarter is $25,000 or less, the return required under section 6019 for that quarter must be filed on or before the date prescribed in paragraph (a)(1) of this section for filing the return for gifts made in the first subsequent calendar quarter (unless the first subsequent calendar quarter is the fourth calendar quarter in which case see paragraph (b)(2) of this section) in the calendar year in which the sum of—

(i) The taxable gifts made during such subsequent calendar quarter, plus

(ii) All other taxable gifts made in prior quarters of the calendar year for which no return has yet been required to be filed,

exceeds $25,000. The return must include transfers by gift (as required by section 6019 and the regulations under that section) made during such subsequent and prior quarters of the calendar year for which no return has yet been required to be filed and identify in which quarter such transfers were made. The return must meet all the requirements for a separate return as if a separate return had been made for each quarter in which a transfer by gift was made. This return will be treated as a separate return for each of the quarters identified on the return.

(2) If a return is not required to be filed under paragraph (b)(1) of this section, then—

(i) For gifts made after December 31, 1976 and before January 1, 1979, the return must be filed on or before February 15th following the close of the fourth calendar quarter, or

(ii) For gifts made on or after January 1, 1979, the return must be filed on or before April 15th following the close of the fourth calendar quarter.

The return must include all transfers by gift (as required under section 6019 and the regulations under that section) made during the calendar year for which no return has yet been required to be filed and identify in which quarter such transfers were made. The return must meet all the requirements for a separate return as if a separate return had been made for each quarter in which a transfer by gift was made. This return will be treated as a separate return for each of the quarters identified on the return.

(3) Under section 6075(b)(3), any extension of time granted a taxpayer for filing the return of income taxes imposed by subtitle A for any taxable year which is a calendar year shall be

treated as an extension of time granted the taxpayer for filing any return under section 6019 which is due (under paragraphs (a)(2)(ii) and (b)(2)(ii) of this section) on or before April 15th following the close of the fourth calendar quarter. See also section 6081 and § 25.6081–1 for other rules relating to extensions of time for filing returns.

(4) See section 7503 and § 301.7503–1 for the due date of a return that falls on a Saturday, Sunday, or a legal holiday. As to additions to the tax for failure to file the return within the prescribed time, see section 6651 and § 301.6651–1.

(c) *Effect of section 2513.*—(1) In determining whether taxable gifts made during any calendar quarter exceed $25,000, and in determining whether taxable gifts made in the current calendar quarter and the preceding calendar quarters of the calendar year for which no return has yet been required to be filed exceed $25,000, the effect of section 2513 is not taken into account for any gifts made in the current or previous quarters for which a return is now being filed unless an irrevocable consent was made by either spouse on a return that was required to be filed prior to the due date of the current return. See § 25.2513–3 for the rules relating to when a consent becomes irrevocable.

(2) Paragraph (c)(1) of this section may be illustrated by the following examples:

Example (1). During the first quarter of 1980 A made taxable gifts of $17,000 ($30,000—$3,000 annual exclusion under section 2503(b)) to D. During the second quarter A made another taxable gift of $10,000 to D. A's taxable gifts for the first two quarters are $27,000. Therefore, A is required to file a return for the first and second quarters on or before August 15, 1980. On that return A's wife, B, consented to the application of section 2513 (relating to split gifts) for the second quarter. Even though A split the second quarter gift with his wife, A's return is nevertheless required to be filed on or before August 15, 1980 because in determining whether taxable gifts exceed $25,000, the effect of section 2513 is only taken into account for the quarter in which an irrevocable consent was made on a return required to be filed before August 15, 1980.

Example (2). Assume the same facts as in Example (1). In addition, during the third quarter A made another taxable gift of $20,000 to D, and B made a taxable gift of $24,000 to D. B is required to file a return reporting the taxable gifts made during the second and third quarters on or before November 15, 1980 because B's total taxable gifts exceed $25,000 (second quarter gifts after taking section 2513 into account = ½ ($10,000)—$3,000 (annual exclusion under section 2503(b)]—$1,000 plus a $24,000 gift in the third quarter). Even if A and B had consented to the application of section 2513 for the third quarter, B's return would nevertheless be due on or before November 15, 1980, because an irrevocable consent was not made on a return that was required to be filed prior to November 15, 1980. However, the effect of section 2513 is taken into account for the second quarter because an irrevocable consent was made on a return that was required to be filed prior to November 15, 1980.

Example (3). During the first quarter of 1980 A made taxable gifts of $27,000 to F ($30,000—$3,000 annual exclusion under section 2503(b)). A is required to file a return on or before May 15, 1980. A fails to file a return until August 1, 1980. On that return B, A's spouse, consented to the application of section 2513. The consent on that return is irrevocable under § 25.2513–2. During the second quarter B made taxable gifts of $14,000 to F. A and B made no other gifts during 1980. B has made total taxable gifts of $26,000 ($12,000 for the first quarter and $14,000 for the second quarter). Therefore, B is required to file a return on or before August 15, 1980. Even if A and B had consented to the application of section 2513 for the second quarter, B's return is nevertheless due on or before August 15, 1980. Assuming no other gifts were made during the year, A's return reporting the second quarter split gift would be due on or before April 15, 1981.

Example (4). During the first quarter of 1980 A made taxable gifts of $30,000 to C. B, A's spouse, files a gift tax return on June 15, 1980 reporting that gift and both A and B signify their consent to the application of section 2513 on that return. In determining whether either spouse has exceeded the $25,000 amount for the remainder of 1980, the effect of section 2513 will be taken into account for the transfer by gift made in the first quarter.

(d) *Nonresident not citizens of the United States.* In the case of a donor who is a nonresident not a citizen of the United States, paragraphs (a) and (b) of this section shall be applied by substituting "$12,500" for "$25,000" each place it appears. For rules relating to whether certain residents of possessions are considered nonresidents not citizens of the United States, see section 2501(c) and § 25.2501–1(d).

(e) *Effective date.* This section is effective for gifts made after December 31, 1978.

Par. 3. Section 301.6103(l)(2)–3(a) of the Regulations on Procedure and Administration is amended by revising subparagraph (23) and the flush language following subparagraph (27). These revised provisions read as follows:

§ 301.6103(l) (2)–3 Disclosure to Department of Labor and Pension Benefit Guaranty Corporation of certain returns and return information.

(a) *Disclosures following general requests.* * * *

(23) Copies of initial pleadings indicating that the Service intends to intervene in a civil action under section 502(h) of the Act;

* * * * *

Return information disclosed under this paragraph includes the taxpayer identity information (as defined in section 6103(b)(6)) of the plan or trust, the name and address of the sponsor and administrator of the plan or trustee of the trust, and the name and address of the person authorized to represent the plan or trust before the Service. Disclosure of returns or return information as provided by this paragraph will be made only following receipt by the Commissioner of Internal Revenue of an annual written request for such disclosure by the Administrator of Pension and Benefit Welfare Programs of the Department of Labor or the Executive Director of the Pension Benefit Guaranty Corporation describing the categories of returns or return information to be disclosed by the Service and the particular purpose for which the returns or return information is needed in the administration of title I or IV of the Act, and designating by title the officers and employees of the Department of Labor or such corporation to whom such disclosure is authorized.

Par. 4. A new § 301.7517–1 is added to read as set forth below.

§ 301.7517–1 Furnishing on request of statement explaining estate or gift valuation.

(a) *In general.* Section 7517 requires the Service to furnish to a taxpayer, at the request of that taxpayer, a statement explaining the estate, gift or generation-skipping transfer valuation of any item contained on a return filed by the taxpayer as to which a determination or proposed determination of value has been made. The request must be filed no later than the latest time to file a claim for refund of the tax which is dependent on the value with respect to which the determination has been made. The request should be filed with the district director's office that has jurisdiction over the return of the taxpayer.

(b) *Effective date*—(1) *Estates of decedents.* Section 7517 applies to estates of decedents dying after December 31, 1978.

(2) *Gifts.* Section 7517 applies to gifts made after December 31, 1978.

(3) *Generation-skipping transfer.* Section 7517 applies to any generation-skipping transfer subject to chapter 13.

[FR Doc. 81-2003 Filed 1-16-81; 8:45 am]
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26 CFR Part 54

[T.D. 7703]

Pension Excise Taxes; Excise Taxes on Excess Contributions to Plans Covering Self-Employed Individuals

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final regulation.

SUMMARY: This document provides a final regulation prescribing rules for determining when there are excess contributions to "H.R. 10" or "Keogh" plans, and imposing an excise tax upon the excess, if any. Changes to the applicable tax law were made by the Employee Retirement Income Security Act of 1974 (ERISA). This regulation provides necessary guidance to the public for compliance with the law and affects all employers maintaining these plans, that is, sole proprietorships and partnerships.

DATE: The regulation is effective for employer taxable years beginning on or after January 1, 1976.

FOR FURTHER INFORMATION CONTACT: Kirk F. Maldonado of the Employee Plans and Exempt Organizations Division, Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, D.C. 20224 (Attention: CC:LR:T) (202-566-3430) (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

On March 29, 1979, the Federal Register published a proposed amendment to the Pension Excise Tax Regulations (26 CFR Part 54) under section 4972 of the Internal Revenue Code of 1954 (44 FR 18700). The amendment was proposed to conform the regulations to section 2001(f)(1) of the Employee Retirement Income Security Act of 1974 (88 Stat. 955). A public hearing was neither requested nor held on this regulation. After consideration of all the comments received regarding the proposed amendment, the amendment is adopted as revised by this Treasury decision.

Applicability of Tax

Several commentators appear to have misunderstood the scope of the tax imposed by section 4972. The excise tax imposed by section 4972 applies to all excess contributions to plans benefiting self-employed individuals, regardless of whether the individual on whose behalf the contribution is made is self-employed or not. Thus, the tax applies to excess contributions made on behalf of common-law employees, if the plan provides benefits for an individual who is or was self-employed with respect to the plan.

Correcting Distributions

Several commentators questioned whether correcting distributions made during the taxable year reduce the amount of the excess contributions for that year for purposes of computing the tax imposed by section 4972. Section 4972(b)(1) provides that the amount of the excess contributions shall be "reduced by the sum of the correcting distributions . . . made in all prior taxable years." Thus, the regulation provides that the computation of excess contributions takes into account correcting distributions made in prior taxable years, but not those made during the taxable year.

This conclusion is consistent with the legislative history of section 4972. The Conference Committee report of ERISA states:

> The excess contribution may be eliminated (so as to stop the running of the tax) * * * by repayment of the excess contribution from the plan (which would reduce or eliminate the tax *for subsequent years).* (Emphasis added). H.R. Rep. No. 93-1280, 93d Cong., 2d Sess. 334 (1974).

Additionally, in contrast to prior law, section 4972(b)(3) does not permit, much less require, the income earned on an excess contribution to be included in a correcting distribution. Therefore, under section 4972, the income attributable to the excess contribution must remain in the plan.

Section 401(d)(4)(B) requires a plan to provide that no benefits in excess of contributions made by an owner-employee, as an employee, are to be paid to any owner-employee, except in the case of disability, prior to age 59½. This requirement only precludes a distribution to an owner-employee; it is not applicable to a correcting distribution made to the employer of the owner-employee. The proposed rule in § 54.4972-1(g)(1) has been amended to clarify that the only impermissible correcting distribution from a defined contribution plan is one made to an owner-employee prior to age 59½.

Date for Payment of the Tax

The tax imposed by section 4972 is to be paid at the time prescribed for filing Form 5330, Return of Initial Excise Taxes Related to Pension and Profit-Sharing Plans (Rev. March 1979), without regard for any filing extensions. The tax becomes due on that date so that interest will accrue on the tax between that filing date and the time the tax is actually paid.

Rollover Contributions

Several commentators have questioned whether the provisions of section 4972(c) apply to amounts contributed on behalf of owner-employees via a rollover contribution described in section 402(a)(5), 403(a)(4), 408(d)(3), or 409(b)(3)(C). Section 54.4972-1(d) has been amended to clarify that the provisions of section 4972(c) do not apply to these rollover contributions.

Drafting Information

The principal author of this regulation is Kirk F. Maldonado of the Employee Plans and Exempt Organizations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and the Treasury Department participated in developing these regulations, both on matters of substance and style.

Adoption of Amendment to the Regulations

Accordingly, the proposed amendment to 26 CFR Part 54 is hereby adopted, subject to the changes indicated below:

Paragraph 1. Paragraph (d) of § 54.4972-1 is revised by redesignating subparagraph (2) as subparagraph (3), and by adding a new subparagraph (2) to read as follows:

§ 54.4972-1 Tax on excess contributions to plans benefiting self-employed individuals.

* * * * *

(d) *Contributions by owner-employees*

* * *

(2) *Rollover amounts.* The provisions of section 4972 (c) and paragraph (d) of this section are not applicable to amounts contributed on behalf of an owner-employee in a rollover contribution described in section 402(a)(5), 403(a)(4), 408(d)(3), or 409(b)(3)(C).

* * * * *

Par. 2. The second to the last flush sentence of § 54.4972-1(g)(1) is revised by adding "to an owner-employee" before "prior to age 59½".

Par. 3. The first sentence of Example (1) of section 54.4972-1(g)(2) is revised by adding "who are over the age of 59½ and who are" after the words "A and B are owner-employees."

This Treasury decision is issued under the authority contained in section 7805

of the Internal Revenue Code of 1954 (68A Stat. 917; 26 U.S.C. 7805).

William E. Williams,
Acting Commissioner of Internal Revenue.

Approved: January 12, 1981.

Donald C. Lubick,
Assistant Secretary of the Treasury.

Section 54.4972–1 is revised as follows:

§ 54.4972–1 Tax on excess contributions to plans benefiting self-employed individuals.

(a) *In general.* Section 4972 imposes a tax of 6 percent on the amount of the excess contributions (as defined in section 4972 (b) and (c) of this section) under certain qualified plans (as defined in paragraph (b) of this section) for each taxable year beginning after December 31, 1975, of the employer who maintains such plan. Partnerships and sole proprietors are to report this tax by filing Form 5330 (or other designated form) and the tax is to be paid annually at the time prescribed for filing such return (determined without regard to any extension of time for filing).

(b) *Employers to whom section applies.* The tax under section 4972 is imposed on employers who maintain a qualified plan during their taxable year. For this purpose, the term "qualified plan" means a pension or profit-sharing plan which includes a trust described in section 401(a), an annuity plan described in section 403(a), or a bond purchase plan described in section 405(a). In addition to being a qualified plan, the plan must provide contributions or benefits for employees some or all of whom are employees within the meaning of section 401(c)(1). For this purpose, the plan does not have to provide contributions or benefits for employees who are employees within the meaning of section 401(c)(1) during the taxable year; it is sufficient that the plan so provided in a prior taxable year.

(c) *Excess contributions*—(1) *In general.* For a taxable year of an employer for purposes of section 4972 and this section, the term "excess contributions" means—

(i) The amount (if any) by which the sum of—

(A) The amount (if any) determined under section 4972(b)(2) and paragraph (d) of this section, plus

(B) The amount (if any) determined under section 4972(b)(3) and paragraph (e) of this section, plus

(C) The amount (if any) determined under section 4972(b)(4) and paragraph (f) of this section, exceeds

(ii) The amount (if any) of any correcting distributions (as defined in section 4972(b)(5) and paragraph (g) of this section) made in all prior taxable years beginning after December 31, 1975.

(2) *Contributions allocable to insurance.* For purposes of section 4972(b) and this section, the amount of any contribution made under the plan which is allocable to the purchase of life, accident, health, or other insurance is not taken into account. The amount of any contribution which is allocable to the cost of insurance protection is determined in accordance with the provisions of paragraph (g) of § 1.404(e)–1A and paragraph (b) of § 1.72–16.

(d) *Contributions by owner-employees*—(1) *General rule.* In the case of a plan which provides contributions or benefits for employees some or all of whom are owner-employees, within the meaning of section 401(c)(3), the amount determined under section 4972(b)(2) and this paragraph for the employer's taxable year is the amount computed separately with respect to each owner-employee equal to the sum of—

(i) The excess (if any) of

(A) The amount contributed under the plan by each owner-employee as an employee (that is, each owner-employee's contributions within the meaning of section 401(c)(5)(B)) for such taxable year of the employer, over

(B) The amount permitted under section 4972(c) and paragraph (h) of this section to be contributed by each owner-employee as an employee for such taxable year of the employer, and

(ii) The amount determined under section 4972(b)(2) and this paragraph for the immediately preceding taxable year of the employer, reduced by the excess (if any) of the amount described in subdivision (i)(B) of this subparagraph over the amount described in subdivision (i)(A) of this subparagraph for such taxable year of the employer.

(2) *Rollover amounts.* The provisions of section 4972 (c) and paragraph (d) of this section are not applicable to amounts contributed on behalf of an owner-employee in an rollover contribution described in section 402(a)(5), 403(a)(4), 408(d)(3), or 409(b)(3)(C).

(3) *Examples.* The provisions of this paragraph may be illustrated by the following examples:

Example (1).

(i) A and B are the only owner-employees covered under the X Employees' Trust. The X Partnership, the X Trust, and the X Plan all use the calendar year as their annual accounting period, at all relevant times. The amount determined under section 4972(b)(2) for 1975 is 0 because this section does not apply to contributions made for taxable years beginning before January 1, 1976. In calendar year 1976, A contributes $2,500 and B contributes $2,500 to the trust. The amount permitted to be contributed to the trust for 1976 with respect to A as an employee is $1,500 and with respect to B as an employee is $2,200.

(ii) The amount determined under this paragraph for 1976 with respect to A is $700, computed as follows: the sum of the excess of the amount contributed by A ($2,500) over the amount permitted to be contributed by A ($1,500), and the amount determined under this paragraph for A in 1975 (0).

(iii) The amount determined under this paragraph for 1976 with respect to B is $300, computed as follows: the sum of the excess of the amount contributed by B ($2,500) over the amount permitted to be contributed by B ($2,200), and the amount determined under this paragraph for B in 1975 (0).

(iv) The amount determined under section 4972(b)(2) and this paragraph for 1976 with respect to the employer, X Partnership, is $1,000, the sum of the amounts determined separately under this paragraph with respect to A ($700) and B ($300). The tax under section 4972 for 1976 on the X Partnership (assuming that no other events affecting the determination of the tax under section 4972 occur) is 6 percent of $1,000 or $60.

Example (2).

(i) Assume the facts stated in Example (1). In calendar year 1977, A contributes $1,500 and B contributes $2,300 to the trust. Assume that the amount permitted to be contributed to the trust for 1977, under section 4972(c) for A and B is $2,500 each.

(ii) The amount determined under this paragraph for 1977 with respect to A is 0, computed as follows: the sum of 0 (the excess of the amount contributed by A ($1,500) over the amount permitted to be contributed ($2,500)) and $700, the amount determined under this paragraph for A in 1976, reduced by $1,000 (the amount permitted to be contributed by A ($2,500) over the amount contributed by A ($1,500)).

(iii) The amount determined under this paragraph for 1977 with respect to B is $100, computed as follows: the sum of 0 (the excess of the amount contributed by B ($2,300) over the amount permitted to be contributed ($2,500)) and $300, the amount determined under this paragraph for B in 1976, reduced by $200 (the amount permitted to be contributed ($2,500) by B over the amount contributed by B ($2,300)).

(iv) The amount determined under section 4972(b) and this paragraph for 1977 with respect to the employer, X Partnership, is $100, the sum of the amounts determined separately under this paragraph with respect to A ($0) and B ($100). The tax imposed under section 4972 for 1977 on the X Partnership (assuming that no other events affecting the determination of the tax under section 4972 occur) is 6 percent of $100, or $6.

(e) *Defined benefit plans*—(1) *General rule.* In the case of a defined benefit plan (as defined in section 414(j)), the amount determined under section 4972(b)(3) and this paragraph for the taxable year of the employer is the amount contributed under the plan by the employer during the taxable year plus the amounts, if any, contributed by the employer during any prior taxable

year beginning after December 31, 1975, if—

(i) As of the close of the taxable year, the full funding limitation of the plan (determined under section 412(c)(7) and the regulations thereunder) is zero, and

(ii) Such amounts contributed have not been deductible by the employer for the taxable year or for any prior taxable year beginning after December 31, 1975.

See section 404 and the regulations thereunder for the determination of the amount deductible by the employer for the taxable year. If the amounts contributed by the employer exceed the amounts which have been deductible, the amount determined under this paragraph shall not exceed the amounts which have not been deductible. For purposes of this paragraph, the determination of both the amounts contributed and the amounts deductible by the employer for any relevant taxable year includes amounts contributed and deductible on behalf of any employee covered under the plan, including common-law employees and other self-employed individuals who are not owner-employees in addition to owner-employees. The determination of whether the full funding limitation is zero shall be made taking into account all the plan assets unreduced by any deduction carryover under section 404(a)(1)(D). The determination of whether the full funding limitation is zero as of the close of the employer's taxable year shall be made with respect to the plan year ending with or within the employer's taxable year. Consequently, if an employer whose taxable year is the calendar year establishes and maintains a defined benefit plan whose plan year begins on July 1 and ends on June 30, the full funding limitation for that plan will be determined with respect to the plan year ending on June 30 within the calendar taxable year including that June 30.

(2) *Illustration.* The provisions of this paragraph may be illustrated by the following example:

Example. (i) X Partnership ("X") adopts the Y Defined Benefit Plan ("Y Plan") on January 1, 1977. The taxable year of X is the calendar year. The Y Plan also has a calendar plan year. For 1977, $25,000 is contributed to the Y Plan by X. Assume that for 1977, (1) only $10,000 is deductible by X for 1977 under section 404 and (2) the full funding limitation of the Y Plan (determined under section 412(c)(7)) on December 31, 1977, is greater than zero. For 1978, X makes no additional contributions to the Y Plan. Assume that for 1978, (1) no amount is deductible by X under section 404 and (2) the full funding limitation of the Y Plan (determined under section 412(c)(7)) on December 31, 1978, is zero. The amount determined under section 4972(b)(3) and this paragraph for the 1978 taxable year is $15,000, computed as follows: the difference between (A) the sum of the amounts contributed by X for taxable year 1978 (0), and the amounts contributed by X for taxable year 1977 ($25,000) and (B) the sum of the amount deductible for taxable year 1978 (0) and the amount deductible for taxable year 1977 ($10,000). The tax imposed under section 4972 for 1978 on X (assuming that no other events affecting the determination of the tax under section 4972 occur) is 6 percent of $15,000 or $900.

(ii) For 1979, X makes no additional contributions to the Y Plan. Assume that for 1979, (1) the full funding limitation of the Y Plan determined under section 412(c)(7) is greater than zero. Assume further that $10,000 of the amounts contributed for 1977 is deductible by X for 1979 under section 404. There is no amount determined under section 4972(b)(3) and this paragraph for 1979 because the condition described in subparagraph (1)(i) of this paragraph is not satisfied.

(iii) For 1980, X makes no additional contributions to the Y Plan. Assume that for 1980, (1) no amount is deductible under section 404 and (2) the full funding limitation of the Y Plan (determined under section 412(c)(7)) on December 31, 1980, is zero. The amount determined under section 4972(b)(3) and this paragraph for the 1980 taxable year is $5,000, computed as follows: the difference between (A) $25,000, the sum of the amounts contributed by X for taxable years 1980 (0), 1979 (0), 1978 (0), and 1977 ($25,000) and (B) $20,000, the sum of the amounts deductible for taxable years 1980 (0), 1979 ($10,000), 1978 (0), and 1977 ($10,000). The tax imposed under section 4972 for 1980 on X (assuming that no other events affecting the determination of the tax under section 4972 occur) is 6 percent of $5,000, or $300.

(f) *Defined contribution plans*—(1) *General rule.* In the case of a defined contribution plan (as defined in section 414(i)), the amount determined under section 4972(b)(4) and this paragraph for the taxable year of the employer is equal to the portion of the amounts contributed under the plan by the employer during the taxable year plus the amounts contributed by the employer during any prior taxable year beginning after December 31, 1975, which has not been deductible by the employer for the taxable year or for any such prior taxable year. For purposes of this paragraph, the determination of both the amounts contributed and the amounts deductible by the employer for any relevant taxable year includes amounts contributed and deductible on behalf of any employee covered under the plan, including common-law employees and other self-employed individuals who are not owner-employees in addition to owner-employees.

(2) *Illustration.* The provisions of this paragraph may be illustrated by the following example:

Example. (i) The X Partnership ("X") adopts the Z Defined Contribution Plan and Trust ("Z Plan") on January 1, 1976. X's taxable year and the plan year of Z Plan are both calendar years. For 1976, X contributes $40,000, of which $30,000 is deductible under section 404 for taxable year 1976. The amount determined under section 4972(b)(4) and this paragraph for 1976 is $10,000 (the difference between (A) $40,000, the amount contributed by X for taxable year 1976 and (B) $30,000, the amount deductible for taxable year 1976).

(ii) For 1977, X contributes $25,000, and the amounts deductible by X under section 404 for taxable year 1977 is $30,000 ($5,000 for the contribution carryover from 1976 and $25,000 with respect to the 1977 contribution). The amount determined under section 4972(b)(4) and this paragraph for 1977 is $5,000, computed as follows: the difference between (A) $65,000, the sum of the amounts contributed by X for taxable year 1976 ($40,000) and the amounts contributed by X for taxable year 1977 ($25,000), and (B) $60,000, the sum of the amounts deductible for taxable year 1976 ($30,000) and the amounts deductible for taxable year 1977 ($30,000).

(g) *Correcting distribution*—(1) *General rule.* For purposes of section 4972(b) and this paragraph, the term "correcting distribution" means, for the taxable year of the employer, the sum of—

(i) In the case of a contribution made as an employee by an owner-employee, within the meaning of section 401(c)(3), to a defined benefit or defined contribution plan, the amount, or any part thereof, determined under section 4972(b)(2) and paragraph (d) of this section which is distributed to the owner-employee who contributed such amount to the plan;

(ii) In the case of a defined benefit plan, the amount, or any part thereof, determined under section 4972(b)(3) and paragraph (e) of this section which is distributed from the plan to the employer, and

(iii) In the case of a defined contribution plan, the amount, or any part thereof, determined under section 4972(b)(4) and paragraph (f) of this section which is distributed to (A) the employer or (B) to the employee for whom such amount was contributed.

If, for any employer taxable year in which a defined contribution plan is maintained, there is a correcting distribution to an employee which could be from amounts described in subparagraph (1)(i) and (iii) of this paragraph for such employee, then such correcting distribution shall be deemed to be made first from amounts described in such subparagraph (1)(i) and then from amounts described in such subparagraph (1)(iii) for purposes of this section and section 72. For the income tax treatment of such distributions to

employees, see section 72 and the regulations thereunder. Any such distributions to employees shall not be subject to the tax imposed by section 4975 nor result in the defined contribution plan failing to satisfy the exclusive benefit requirement of section 401(a), solely by reason of being a correcting distribution within the meaning of this paragraph. If, for any employer taxable year in which a defined benefit, or defined contribution plan is maintained, there is a correcting distribution described in subparagraph (1)(ii) or (iii) of this paragraph to the employer maintaining the plan, such distribution shall not be subject to the tax imposed by section 4975 nor result in the plan's failing to satisfy the exclusive benefit or the definitely determinable requirements under section 401(a). If, for any employer taxable year in which a money purchase pension plan is maintained, a correcting distribution described in subparagraph (1)(iii) of this paragraph is made to an employee who has not yet become eligible to receive retirement benefits under the plan, the qualification of the pension plan (and trust) under section 401(a) may be adversely affected. See § 1.401–1(b)(1)(i). A correcting distribution described in subparagraph (1)(iii) of this paragraph to an owner-employee prior to age 59½ must be precluded under the plan. See section 401(d)(4)(B).

(2) *Illustration.* The provisions of this paragraph may be illustrated by the following example:

Example. (i) A and B are owner-employees who are over the age of 59½ and who are covered under the X Employees' Defined Contribution Plan and Profit-Sharing Trust ("Plan Y"). The X Partnership ("X") and Plan Y are on calendar years. In calendar year 1976, A contributes $2,500 and B contributes $2,500 to Plan Y. The amount permitted to be contributed to Plan Y for 1976 with respect to A as an employee is $1,800 and with respect to B as an employee is $2,200. X contributes to Plan Y $5,000 on behalf of A and $5,000 on behalf of B. Of this amount, assume that $2,700 is deductible with respect to A and $3,300 is deductible with respect to B by X under section 404. The amount determined under section 4972(b)(2) and paragraph (d) of this section (the excess owner-employee contributions made by A and B to Plan Y) for taxable year 1976 is $1,000, computed as follows: the sum of (A) for A, $700, the difference between his own contributions ($2,500) and the amount permitted to be contributed by A ($1,800) and (B) for B, $300, the difference between his own contributions ($2,500) and the amount permitted to be contributed by B ($2,200). The amount determined under section 4972(b)(4) and paragraph (f) of this section (the excess contributions made by X to Plan Y) for taxable year 1976 is $4,000, computed as follows: the sum of (A) by X for A, $2,300, the difference between contributions by X ($5,000) and the amount deductible by X for A ($2,700) and (B) by X for B, $1,700, the difference between contributions by X for B ($5,000) and the amount deductible by X for B ($3,300). During 1976, there is no correcting distribution, within the meaning of section 4972 and this paragraph, because there are no distributions to A, B, or X.

(ii) Assume that, for taxable year 1977, the amounts determined under sections 4972(b)(2) and 4972(b)(4) remain the same as for taxable year 1976, that is, $1,000 ($700 for A and $300 for B) and $4,000 ($2,300 by X for A and $1,700 by X for B), respectively. Assume further that, in 1977, Plan Y distributes $3,000 to A and $1,000 to B. The amount determined under section 4972(b)(5) and this paragraph (the correcting distribution for Plan Y) for taxable year 1977 is $4,000, computed and attributed as follows: the sum of (A) $3,000 with respect to A, the amount of the distribution to A applied first to A's $700 amount described in subparagraph (1)(i) of this paragraph and next to A's $2,300 amount described in subparagraph (1)(iii) of this paragraph and (B) $1,000 with respect to B, the amount of the distribution to B applied first to B's $300 amount described in subparagraph (1)(i) of this paragraph and next to B's $1,700 amount described in subparagraph (1)(iii) of this paragraph. For purposes of computing the excess contributions for taxable year 1977, the correcting distribution of $4,000 would not be taken into account because only correcting distributions for prior year are considered. However, for taxable year 1978 the correcting distribution of $4,000 would be taken into account.

(iii) Assume that, for taxable year 1978, there are no additional amounts determined under sections 4972(b)(2) and 4972(b)(4) and that Plan Y distributes $900 to B. The amount determined under section 4972(b)(5) and this paragraph (the correcting distribution for Plan Y) for the 1978 taxable year is $900, computed and attributed as follows: the amount of the distribution to B, $900, applied to B's $1,000 amount described in subparagraph (1)(iii) of this paragraph. For purposes of computing the excess contributions for taxable year 1978, the correcting distribution of $900 would not be taken into account. However, for taxable year 1979, the correcting distribution of $900 would be taken into account.

(h) *Amount permitted to be contributed by owner-employee*—(1) *General rule.* Except as provided in subparagraph (2), for purposes of section 4972(b)(2) and paragraph (d), the amount permitted to be contributed under a plan by an owner-employee as an employee for any taxable year of the employer is the smallest of the following—

(i) $2,500;

(ii) 10 percent of the earned income (as defined in section 401(c)(2)) for such taxable year derived by the owner-employee from the trade or business with respect to which the plan is established, or

(iii) The amount of the contribution which would be contributed by the owner-employee (as an employee) if such contribution were made at the rate of contributions which is permitted to be made by employees who are not owner-employees during such taxable year.

(2) *Special rule.* In the case of a taxable year of the employer in which there are no employees other than owner-employees, the amount permitted to be contributed under a plan by an owner-employee (as an employee) is zero.

(i) *Special rules and cross references*—(1) *Time of contributions.* For purposes of this section, time of employer contributions made with respect to any taxable year shall take into account the rules specified in section 404(a)(6), relating to time when contributions deemed made.

(2) *Disallowance of deduction.* For disallowance of deduction for taxes paid under this section, see section 275(a)(6).

(3) *Certain annuity contracts.* For a special rule relating to owner-employee contributions for premiums on annuity, etc. contracts, see § 1.401(e)-4(a)

(4) *Disqualification for excess contributions.* For plan qualification requirements relating to excess contributions, see section 401(d)(5).

[FR Doc. 81-2368 Filed 1-20-81—8:31 am]
BILLING CODE 4830-01-M

DEPARTMENT OF COMMERCE

Patent and Trademark Office

37 CFR Part 2

Trademark Opposition and Cancellation Proceedings: Compulsory Counterclaims

AGENCY: Patent and Trademark Office (PTO), Department of Commerce.

ACTION: Final rule.

SUMMARY: This amendment of the rules of practice in trademark cases provides explicitly for compulsory counterclaims under stated conditions in opposition and cancellation proceedings before the Trademark Trial and Appeal Board in the Patent and Trademark Office. The amendment establishes the authority for a pre-existing practice which has been held on judicial review to be unauthorized by the existing rules.

EFFECTIVE DATE: April 1, 1981.

FOR FURTHER INFORMATION CONTACT: David J. Kera, Member, Trademark Trial and Appeal Board, Commissioner of Patents and Trademarks, Washington, D.C. 20231. 703–557–3551.

SUPPLEMENTARY INFORMATION: On April 18, 1979 notice was given in the Federal Register (44 FR 22676) of a proposal to amend two sections of Title 37 of the Code of Federal Regulations relating to trademark opposition and cancellation proceedings. Interested persons were invited to comment on the proposal by May 15, 1979. Twenty-six written letters and statements were submitted. Careful consideration has been given to all comments received, and the proposal is being adopted with certain changes.

The regulations adopted involve both sections that were proposed to be revised, amended or added—namely, §§ 2.106 and 2.114.

This amendment has been reviewed pursuant to Executive Order 12044 and found to have no major economic consequences and therefore does not require a regulatory analysis.

The text of the rules will be reproduced in the Patent and Trademark Office Official Gazette in about two months with additions indicated by arrows and deletions indicated by brackets to help readers identify the changes. The letters and written statements received and a summary and analysis of the comments are available for public inspection in Room 11E10, Crystal Plaza, Building 3, 2021 Jefferson Davis Highway, Arlington, Virginia.

Purpose of Rules

The purpose of the rules that are being adopted is to make it compulsory for a defendant to file a counterclaim for the cancellation of the registration pleaded by the plaintiff in an opposition or cancellation proceeding if the defendant wants to challenge the validity of the plaintiff's registration and if the grounds for a counterclaim exist when the answer to the notice of opposition or petition for cancellation is filed. When a defendant in an opposition or cancellation proceeding desires to eliminate the plaintiff's registration as a ground upon which the opposition or cancellation is based, a petition by the defendant to cancel the plaintiff's registration is mandatory because the validity of the plaintiff's registration cannot be questioned so long as it remains uncancelled.[1]

The effect of the rules is that if a counterclaim is not filed as provided by the rules, the applicant or respondent will thereafter be barred from seeking to cancel the registration pleaded by the opposer or cancellation petitioner in the prior proceeding on any ground which existed at the time when the answer was filed.

[1] See *Contour Chair-Lounge Co., Inc. v. The Englander Co., Inc.*, 199 USPQ 288 (CCPA 1983).

The rules that are being adopted avoid piecemeal litigation of a multiplicity of actions and counteractions relating to a single conflict or controversy. For instance, when the issue is likelihood of confusion and a question is raised whether the plaintiff's registration should remain on the register or should be cancelled, that question must be decided before there can be a determination of the issue whether the defendant's mark involved in an opposition proceeding should be registered or whether the defendant's registration involved in a cancellation proceeding should be cancelled.[2] To permit a defendant to litigate a first case to a decision, which by hypothesis the plaintiff would win, and thereafter permit the defendant to petition for the cancellation of the plaintiff's registration, would allow a proliferation of proceedings and would meanwhile result in the first plaintiff's registration remaining on the register when it might be an improper registration. If the party which was the defendant in the first case should win the second case and thereafter file a new application to register its mark, there would have been a substantial period of time when the register would not have reflected the true rights of the parties. This situation would be detrimental to the public, which searches the register and relies upon the rights recorded there when deciding upon the availability of new marks for adoption and use.[3] Since a claim of invalidity of a registration of a mark is logically related to the issue of enforceability of the registration in an opposition or cancellation proceeding, the consolidation in one proceeding of all claims determinable by the Patent and Trademark Office arising out of a particular conflict will avoid unnecessary delays and unnecessary proliferation of proceedings to decide what is a single controversy. By adopting the rules, the Office is taking steps to have the pleadings of the parties present the entire controversy at one time and to have discovery, trail, final briefs and oral argument in one proceeding instead of several. Both the parties and the public will benefit from the more efficient procedure established by the rules being adopted.

[2] See *King Candy Co. v. Eunice King's Kitchen, Inc.*, 182 USPQ 108 (CCPA 1974), where the Court held that the registered mark of even a subsequent user opposer must be considered in an opposition; cf. *Morehouse Mfg. Corp. v. J. Strickland & Co.*, 160 USPQ 715 (CCPA 1969), where, in an analogous situation, the Court said that the Board had taken the proper approach in first determining a cancellation petition by the plaintiff against the defendant's existing registration and then, after dismissing petition for cancellation, dismissed the opposition by the plaintiff against an application by the defendant for the registration of substantially the same mark for the same goods. The Court indicated that the issues in the cancellation had to be decided first because they were controlling.

[3] The public has an interest in the removal from the register of improvidently issued registrations. *Selfway, Inc. v. Travelers Petroleum, Inc.*, 166 USPQ 271 (CCPA, 1970).

Compulsory Counterclaims

Amended §§ 2.106(b) and 2.114(b) provide that an answer may contain any defense, including the affirmative defenses of unclean hands, laches, estoppel, acquiescence, fraud, mistake or prior judgment. When pleading special matters, the Federal Rules of Civil Procedure are to be followed. A reply to an affirmative defense need not be filed. However, a defense attacking the validity of any one or more of the registrations pleaded in the opposition or petition for cancellation is a compulsory counterclaim if grounds for such counterclaim exist at the time when the answer is filed. If grounds for a counterclaim are known to the applicant or respondent when the answer to the opposition or petition is filed, the counterclaim must be pleaded with or as part of the answer. If grounds for a counterclaim are learned during the course of the opposition or cancellation proceeding, the counterclaim must be pleaded promptly after the grounds therefor are learned. A counterclaim need not be filed, however, if it is the subject of another proceeding between the same parties or anyone in privity therewith.

Amended §§ 2.106(b) and 2.114(b) further provide that an attack on the validity of a registration pleaded by an opposer or petitioner will not be heard unless a counterclaim or separate proceeding is filed to seek the cancellation of such registration. A pleaded registration is a registration identified by number and date of issuance in an original notice of opposition or petition for cancellation, or in any amendment thereto made under Rule 15, FRCP. The provisions of §§ 2.111 through 2.115, inclusive, are applicable to counterclaims and a time, not less than thirty days, will be designated within which an answer to a counterclaim must be filed. Upon motion by a party, the times for pleading, discovery, testimony, briefs or oral argument will be reset or extended when necessary to enable a party fully to present or meet a counterclaim or separate petition for cancellation of a registration.

In response to some of the comments, §§ 2.106(b)(1) and 2.114(b)(1) have been changed by the inclusion of a sentence to make it clear that they are applicable only when a pleaded registration is

identified by number and date of issuance in an original or amended notice of opposition or petition for cancellation. Since a party may not rely on a proceeding being prosecuted by a stranger, §§ 2.106(b)(2)(i) and 2.114(b)(2)(i) have been modified from the version published for comment so as to state explicitly that the separate proceeding for the cancellation of an opposer's or cancellation petitioner's registration which would obviate the need for a counterclaim must be between the same parties or anyone in privity therewith. It should be noted that the Trademark Trial and Appeal Board has control over its docket so that a case may be suspended at the request of a party when a separate proceeding in a more advanced stage may render a case moot, thereby avoiding unnecessary litigation.

Two comments stated that there is no basis in the Trademark Act for the compulsory counterclaim rules in amended §§ 2.106(b)(2) and 2.114(b)(2). Several related comments were to the effect that these sections would operate to bar a claim against a plaintiff's registration prior to the time when such a claim would be barred by section 14 of the Act.

Initially, it should be noted that the presence of Rule 13(a) in the Federal Rules of Civil Procedure shows that there is no constitutional impediment to a compulsory counterclaim rule of procedure. Moreover, it is considered to be within the power of the Commissioner of Patents and Trademarks to adopt compulsory counterclaim rules, which are not inconsistent with any provision of the Trademark Act, as part of the rules and regulations for the conduct of proceedings in the Patent and Trademark Office, as authorized by section 41 of the Trademark Act.

Courts have long recognized that a compulsory counterclaim rule operates to compel a party to raise a claim at a time chosen by its opponent.[4] This necessarily means that a party may be compelled to raise a claim, or to lose it, long prior to the time when a statute of limitations would absolutely bar the claim. Sections 14(a) and (b) of the Trademark Act have been interpreted as a statute of limitations barring claims against certain registrations on particular grounds more than five years after a specified event (the issuance or republication of a registration under the Trademark Act of 1946) has occurred.[5]

As there is nothing inconsistent between a statute of limitations and a compulsory counterclaim rule, so there is nothing inconsistent between a statutory cause of action for which there is no statute of limitations (sections 14 (c), (d), and (e) of the Trademark Act) and a compulsory counterclaim rule insofar as there is a particular controversy involving particular marks and specified goods or services. The effect of amended §§ 2.106(b) and 2.114(b) is simply to require the timely assertion of a claim, if one exists, under sections 14 (c), (d), and (e) of the Trademark Act. If a plaintiff's registration is invalid, it is to the benefit of the public as well as to the defendant to have it promptly removed from the register, and it is to the advantage of the parties and the board to have the issue litigated in one case rather than in a protracted series of cases. Since there is no provision of the Trademark Act with which the compulsory counterclaim rules are inconsistent and the rules are for the conduct of proceedings under the Trademark Act, it is concluded that the Commissioner possesses the statutory authority under section 41 of the Trademark Act to adopt the rules.

Although one comment stated that amended §§ 2.106(b)(2)(i) and 2.114(b)(2)(i) are broader than the compulsory counterclaim rule of Rule 13(a), FRCP, it is the position of the Patent and Trademark Office that amended §§ 2.106(b)(2)(i) and 2.114(b)(2)(i) comport with the practice on compulsory counterclaims announced and followed by the Federal Courts in applying Rule 13(a), FRCP.[6] Assuming that the comment is meant to point out that the plaintiff's right to prevent or cancel a registration and the defendant's right to obtain or retain a registration do not arise out of the "transaction or occurrence that is the subject matter of the opposing party's claim" (the language in Rule 13(a), FRCP), the answer is that an inter partes proceeding before the Board is *sui generis* and the continued existence or not of the plaintiff's registration is inextricably involved in the determination of the defendant's right to obtain or to maintain a registration when the issue is likelihood of confusion.

The occasion for a counterclaim will typically arise in practice only when an opposer or a cancellation petitioner seeks to prevent or to cancel a registration of an applicant or a respondent on the ground that the defendant's mark is likely to cause confusion or mistake or to deceive within the meaning of section 2(d) of the Trademark Act. Certainly the defense that a registration pleaded by an opposer or cancellation petitioner is invalid and therefore cannot support the pleaded claim of damage is, at the very least, an offshoot of the same basic controversy between the parties and is the essence of an affirmative defense. By virtue of section 2(d), the plaintiff's registration and the defendant's entitlement to a registration are parts of the same transaction, i.e., the process of deciding whether the defendant has a right to obtain or retain a registration.[7]

The same analysis responds to the five comments that the first action and a counterclaim are not intimately related or do not arise out of the same factual situation. A pleaded registration is a substantive part of the evidentiary case on behalf of an opposer or cancellation petitioner who is prosecuting a proceeding based upon likelihood of confusion since, in an opposition, it must be considered regardless of the parties' dates of use and, in a cancellation, is evidence of continuous use since the filing date of the application which issued into the registration. An attack on the validity of the pleaded registration, which must be by means of a counterclaim or petition for cancellation, is thus a related branch of the same basic controversy, and, as such, it is properly a compulsory counterclaim. Furthermore, if the counterclaim or petition for cancellation is premised on allegations of likelihood of confusion and priority of use, as is often the situation, the same factual and legal issues are present in both the opposer's or cancellation petitioner's case and the applicant's or respondent's case; *a fortiori*, a counterclaim is properly compulsory. To argue from a defendant's side that it is involuntarily involved does not justify not having to prosecute a counterclaim if grounds for it exist. A person accused of trademark infringement in an action in a District Court is just as involuntarily involved and it would be anomalous if a claim against the plaintiff's registration in such a proceeding were not considered a compulsory counterclaim.

What has been said above answers the comment that there is no judicial economy in a compulsory counterclaim rule. Without such a rule the following

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[4] See *Martino's v. McDonald's System, Inc.*, 27 FR Serv 2d 831 (7th Cir. 1979).

[5] See *National Service Industries, Inc. v. Turtle Wax, Inc.*, 194 USPQ 66 (TTAB 1977).

[6] See *Martino's v. McDonald's System, Inc.*, *supra*, n. 4; *Plant v. Blazer Financial Services Inc. of Georgia*, 27 FR Serv 2d 955 (5th Cir. 1979); *Irrigation & Power Equipment, Inc., v. Machinery Specialties Pty., Ltd.*, 202 USPQ 12 (D. Colo. 1977); and *Lewis Manufacturing Co., Inc. v. Chisholm-Ryder Co., Inc.*, 27 FR Serv 2d 1169 (D. Pa. 1979).

[7] See *Webster's New Collegiate Dictionary* (1977) at 1239, which defines "transaction" as "an act, process or instance of transacting."

sequence of events could take place. An opposer could rely on a registration; the applicant could take no testimony; and the opposition would be decided in favor of the opposer. The applicant could then petition for cancellation of the opposer's registration on the ground of prior use. A defense of collateral estoppel raised by the initial opposer on the issue of priority would be met by the applicant with the argument that proof of priority of use in the opposition would have been irrelevant, citing *King Candy Co. v. Eunice King's Kitchen, Inc., supra,* n. 2, and therefore was not necessary to the determination of the opposition. A second proceeding would thus be litigated. Assuming applicant prevailed, presumably a second application would be filed. Thus the Office would have had to deal with two contested proceedings and two applications to determine rights that could have been ascertained on the basis of one application and one proceeding. An opposer which thought it had prevailed would discover that it had won a Pyrrhic—even a phantom—victory, and the register would have incorrectly reflected the rights of the parties, to the detriment of the public, for an extended period of time. To contend, in these circumstances, that the rule would not result in judicial, examining and public economy is to miss the point entirely.

Several comments stated that even under amended §§ 2.106(b) and 2.114(b), the Board cannot settle all of the potential issues between the parties because matters of infringement and unfair competition are for the courts to decide. It should be pointed out that the rules being adopted are designed to settle in one proceeding all of the issues determinable within the Patent and Trademark Office, arising from a particularized controversy involving specified marks and goods or services, which are ripe for litigation and adjudication. Obviously, issues outside the jurisdiction of the Board cannot be determined.

Amended §§ 2.106(b) and 2.114(b) do not impose a new and untried practice on the Trademark Trial and Appeal Board. On the contrary, a compulsory counterclaim rule was in effect and worked well from the date of the decision in *Outdoor Sports Industries, Inc. v. The Joseph & Feiss Co.*, 177 USPQ 535 (TTAB 1973), *petition denied*, 177 USPQ 533 (Comm'r. Pats 1973) to the date of the decision in *Endo Laboratories, Inc. v. Fredericks*, 197 USPQ 560 (TTAB 1977).[8] No objection to the practice from any source came to the Board's attention and no appeal from a decision applying the practice was prosecuted to an appellate decision except for *Thuron Industies, Inc., v. The Conrad-Pyle Co.*, 198 USPQ 403 (CCPA 1978), where the Court held that Rule 13(a), FRCP, did not support the Board's practice and that § 2.106(b), as then written, was a permissive rather than a mandatory rule. Nevertheless, during the five-year period in which a compulsory counterclaim practice was in effect, the Board did not experience any undue difficulty in discovery or motion practice, did not observe any unusual increase in the number of counterclaims that were filed and did not find that proceedings were made longer or more complicated by reason of the counterclaim practice. On the contrary, the Board's experience showed that the compulsory counterclaim practice resulted in a net saving of time and resources, thereby enabling the Board to function more efficiently and to serve the public interest more effectively.

Several comments stated that the compulsory counterclaim rules will provoke unnecessary conflicts or will make settlements more difficult to achieve. It is considered very unlikely that provisions for compulsory counterclaims will stimulate needless conflicts (by definition, a conflict exists before a counterclaim would be filed) or hamper attempts to reach a settlement. When parties have conflicting claims against each other, it is believed that both would have reason to explore the possibility of an amicable settlement which would obviate the need for litigation. However, in response to a suggestion received, it is considered inadvisable to quote or refer to the compulsory counterclaim rules in the Office letter notifying an applicant of an opposition or a respondent of a cancellation proceeding because that might be misinterpreted as a direction to file a counterclaim in every proceeding.

A few comments questioned the effect of amended §§ 2.106(b) and 2.114(b) on subsequent court litigation between the parties. These sections apply only to proceedings before the Trademark Trial and Appeal Board; they do not and could not affect the powers over registrations conferred upon the Federal Courts by section 37 of the Trademark Act. The Patent and Trademark Office cannot, of course, speculate on how courts may apply the doctrine of estoppel to claims which might have been, but were not, litigated in the Office. This and other questions remain to be answered by the evolution of case law after the amended rules become effective.

It is expected that in the original notice of opposition or petition for cancellation, an opposer or cancellation petitioner will identify by number and date of issuance each registration upon which it expects to rely. The deliberate withholding, until the testimony period of an opposer or cancellation petitioner, of the identification of the registration or registrations intended to be introduced in evidence in support of the claim of damage causes unwarranted surprise and prejudice to an applicant or respondent. Such a practice frustrates proper discovery and preparation for trial. The burden is upon an opposer or cancellation petitioner to present initially a pleading that gives fair notice of the case that an applicant or respondent must meet. The Federal Rules of Civil Procedure reject the approach that pleading is a game of skill.[9]

The Patent and Trademark Office recognizes that situations will arise where an opposer or cancellation petitioner will want to introduce a registration which was not originally pleaded. This may be done by a motion to amend the pleadings under Rule 15, FRCP, to add one or more registrations. When they are pleaded by number and date of issuance, amended §§ 2.106(b) and 2.114(b) will then apply to any added registration. It should be remembered that a long and unexplained delay in the filing of a motion to amend a notice of opposition or petition for cancellation, when there is no question of newly discovered evidence (as there would not be when a party is pleading its own registration), may render the amendment untimely if the defendant is thereby prejudiced.[10] It therefore behooves an opposer or cancellation petitioner to plead its registration by number and date of issuance, if not in the original notice of opposition or petition for cancellation, as soon as possible after the omission (or newly issued registration) comes to the opposer's or cancellation petitioner's attention. Amended §§ 2.106(b)(2)(iv) and 2.114(b)(2)(iv) provide sufficient flexibility to allow an applicant or respondent fair and adequate opportunity to plead, take discovery, and present evidence on a counterclaim

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[8] During this period, the following cases applied the compulsory counterclaim rule then in effect: *Textron, Inc. v. The Gillette Co.*, 180 USPQ 152 (TTAB 1973); *Kalitz v. Walter Kidde & Co.*, 185 USPQ 436 (TTAB 1975); *Delta Tire Corp. v. Sports Car Club of America, Inc.*, 185 USPQ 443 (TTAB 1975); and *Scovill Mfg. Co. v. Stocko Metallwarenfabriken Henkels und Sohn KG*, 188 USPQ 24 (TTAB 1975).

[9] See *Tiffany & Co. v. Columbia Industries, Inc.*, 172 USPQ 8 (CCPA 1972).

[10] See *Kroma Corp. v. JENAer Glaswerk Schott & Gen.*, 182 USPQ 579 (TTAB 1974).

on any available ground when an opposer or cancellation petitioner pleads a registration in an amended notice of opposition or petition for cancellation.

An opposer or cancellation petitioner may withdraw without prejudice a notice of opposition or a petition for cancellation before an answer is filed. See §§ 2.106(c) and 2.114(c). One comment inquired what would happen if the defendant failed to file an answer. When an applicant or respondent elects not to answer, the opposition or cancellation is decided as in a case of default. See §§ 2.106(a) and 2.114(a). If no answer of any kind is filed, there can be no counterclaim, which is, by definition, a pleading within an answer. If a party is willing to lose by default, there is a very high probability that there is no interest in the mark, at least for the goods or services identified in the application being opposed or in the registration sought to be cancelled.

One comment expressed concern that the premature destruction of the records of proceedings in the Patent and Trademark Office might impede or prevent a party from rebutting a contention that a compulsory counterclaim was not filed. There should be no apprehension that the destruction or loss of Office records would interfere with a just application of amended §§ 2.106(b) and 2.114(b). Every paper in every proceeding is either filed by or served upon every party. See §§ 2.105, 2.113 and 2.119(a). In every case, the decision or an order terminating the proceeding is served on every party through counsel or directly when there is no counsel. Thus, every party to a proceeding will have a complete record of the pleadings and the decision or order terminating a proceeding for future use as needed.

Several comments raised the question of the effect of amended §§ 2.106(b)(2)(i) and 2.114(b)(2)(i) in situations where the grounds for a counterclaim exist but are not known to a defendant. Several related comments indicated a lack of understanding of the difference between the existence of grounds for a counterclaim and knowledge of those grounds by a defendant. One comment stated that the author agreed with the proposed rules if they were limited to grounds the defendant knew or had reason to know, and one comment stated that the proposed rules should limit compulsory counterclaims to certain causes of action, e.g., likelihood of confusion combined with priority of use. Another comment was in favor of the adoption of the proposed rules provided that a counterclaim could be pleaded in an amended answer.

A distinction is made in amended §§ 2.106(b)(2)(i) and 2.114(b)(2)(i) between the time when a cause of action giving rise to a counterclaim must have matured for a counterclaim to be compulsory and the time when the counterclaim be pleaded. The cause of action must have matured by the date of filing of the answer to the notice of opposition or petition for cancellation in order for the counterclaim to be compulsory in that proceeding. Rule 13(a), FRCP, provides that "A pleading shall state as a counterclaim any claim which *at the time of serving the pleading* the pleader has against any opposing party * * *" (emphasis added). This indicates that there should be a date which sets a limit so that if a claim matures thereafter it is not a compulsoty counterclaim. The date of filing of the answer seems to be, in the context of proceedings before the Board, a fair limiting date. Thus, if a cause of action, such as abandonment,[11] does not exist until after the date of the answer, it is not a compulsory counterclaim. That is, if the cause of action for the cancellation of the plaintiff's pleaded registration has not matured by the date of filing of the answer, the filing of a counterclaim is permissive rather than mandatory.

It is recognized that the grounds for a counterclaim may remain unknown until after the initial anwer is filed. In certain situations the defendant will usually know the grounds, or at least have knowledge upon which a counterclaim could be pleaded in good faith on information and belief, before the answer is filed. These grounds include likelihood of confusion combined with priority of use, or mere descriptiveness of the plaintiff's alleged mark, or that the plaintiff's alleged mark is the common descriptive name of a product or service. In other situations, the grounds for a counterclaim may be learned by means of discovery or, in some instances, as a result of an opposer's or cancellation petitioner's evidence. Examples of such grounds are abandonment and, rarely, fraud. In the absence of a separate petition for cancellation previously filed by a party or anyone in privity therewith, the counterclaim must be filed as part of the answer (which means that the answer must be verified and the proper cancellation fee paid) if the grounds are known when the answer is filed. If grounds for cancellation are learned after the answer is filed, the counterclaim must be filed promptly (which is a flexible standard) after the grounds are learned if it is to be asserted. The counterclaim which is added by an amendment to the answer must be verified and accompanied by the proper fee. As amended §§ 2.106(b)(2)(i) and 2.114(b)(2)(i) make clear, any answer may be seasonably amended to plead a counterclaim when the grounds are learned after the original answer is filed.

A number of comments expressed concern that the rules will mandate or encourage speculative counterclaims which the defendant would hope to support by information learned through discovery. A related comment was that proceedings would become complicated and there would be no saving in time or expense. Several comments indicated that an applicant desiring a decision only on the single issue of the registrability of its mark would feel compelled to file a counterclaim.

An applicant or respondent is under an obligation to learn by discovery whether suspected possible grounds for a counterclaim in fact exist if it wants to be sure of the opportunity to file a counterclaim when the grounds existed as of the date of filing the answer. The amount of discovery required to learn of the possible existence of grounds for a counterclaim is not onerous, at least up to the point where an informed decision may be made whether or not to pursue the issue. However, speculative counterclaims should not be filed. Section 2.15 states that the signature of an attorney at law or other person representing a party to a proceeding to a paper filed by him, or the filing of any paper by him, constitutes a certificate that the paper has been read; that its filing is authorized; that to the best of his knowledge, information and belief there is good ground to support it; and that it is not interposed for delay. Rule 11, FRCP, contains language to the same effect and further provides that a pleading signed with intent to defeat the purpose of the rule may be stricken as sham and false.

An applicant or respondent is never under an absolute obligation to plead a counterclaim. If an applicant or respondent desires to have a proceeding which will determine only whether the applicant's or respondent's mark is likely to cause confusion, mistake or deception, the applicant or respondent may refrain from filing a counterclaim (assuming, of course, that there is a choice because the factual basis for a counterclaim is present). The effect of omitting a counterclaim for which the

[11] See *P.A.B. Produits et Appareils de Beaute* v. *Satinine Societa In Nome Collettivo di S.A. e.M. Uselline*, 196 USPQ 801 (CCPA 1978).

grounds exist will be that the applicant or respondent, after the case is terminated will thereafter be barred from petitioning to cancel the registration pleaded by the opposer or cancellation petitioner (i.e., the registration identified by number and date of issue in an original notice of opposition or petition for cancellation) on any ground that had matured when the original answer was filed in the first proceeding. This bar will be effective, however, only insofar as a second proceeding between the parties would involve the same mark and the same goods or services of the party (applicant or respondent in the first proceeding) as were the subject of the first proceeding.

Several comments raised the question of the effect of amended §§ 2.106(b) and 2.114(b) when there was no reason for the applicant or respondent to file a counterclaim in the first proceeding because there clearly was no likelihood of confusion, but a later application or registration by the same applicant or respondent, for a specifically different mark or for the same mark but different goods or services, presented a much closer question, and the applicant or respondent, when again met with an opposition or petition for cancellation by the same party relying upon the same registration as had been pleaded in the prior proceeding, would want to counterclaim for cancellation. As indicated previously, the rules that are being adopted have the objective of avoiding a relitigation of issues that could have been determined in a single proceeding. The intent of amended §§ 2.106(b) and 2.114(b) is to bar a later petition for cancellation of the pleaded registration only when the same conflict or controversy is sought to be relitigated. Thus, if a second proceeding concerns a mark or a description of goods or services different from those of the applicant or respondent in the first proceeding, other than trivial, frivolous, or immaterial changes, different issues are presented, the controversy is different, and the compulsory counterclaim rules would have no application; in this situation a petition or counterclaim for cancellation of the opposer's or cancellation petitioner's pleaded registration in a new proceeding would not be barred.

The situations where the compulsory counterclaim rules in amended §§ 2.106(b) and 2.114(b) are most likely to be invoked are those in which a cause of action for the cancellation of an opposer's or cancellation petitioner's registration arises from events or facts which have been concluded or fixed at a time which has passed. When a cause of action arises from a continuing state of facts, e.g., abandonment as a result of nonuse of a mark, or licensing without adequate control, or because a word has become a common descriptive name, it is conceivable that the compulsory counterclaim rules that are being adopted will be applicable very infrequently or not at all.

One comment stated that an applicant or respondent cannot properly plead damage from an opposer's or cancellation petitioner's registration until the Trademark Trial and Appeal Board or a court "reverses" the examiner's "holding" that a mark, as applied to its goods or services, does not so resemble a previously registered mark as to be likely to cause confusion. This comment misconstrued the decision in *Hyde Park Footwear Co., Inc. v. Hampshire Designers, Inc.*, 197 USPQ 639 (TTAB 1977). An applicant or respondent may consider itself to be damaged by the registration of an opposer's or cancellation petitioner's mark, and is therefore entitled to present evidence and to be heard, notwithstanding that the examiner, with only an application and a prior registration to consider, may have been of the opinion that confusion is unlikely. There is no requirement, and it would be unreasonable to impose one, that an applicant or respondent must await an unfavorable decision of the Board in an opposition or cancellation proceeding (thereby "reversing" the examiner) before the applicant or respondent could assert a likelihood of confusion as a basis for the standing necessary for a cancellation petition against an opposer's or petitioner's registration. Where a party can demonstrate a real interest in the proceeding, it has standing to petition for cancellation.[12]

Another comment suggested that the fee payable in connection with a cancellation be $25 regardless of the number of registrations sought to be cancelled by the counterclaimant. Section 31(a)(5) of the Trademark Act requires a fee of $25 on filing a petition for cancellation for each class. Since section 41 of the Trademark Act specifies that the rules and regulations promulgated by the Commissioner be not inconsistent with law, a single fee of $25 irrespective of the number of registrations or classes for which cancellation is sought cannot be established. However, as a practical matter, the fee for cancellation is usually a very small percentage of the total cost incurred. Even in the extremely rare case involving numerous pleaded registrations, the antagonists are generally prepared to expend a considerable sum to settle a wide-ranging dispute, and again the fee is a small percentage of the total expense. Thus, the statutory fee is not considered to be a reason not to adopt the compulsory counterclaim rules.

Amended §§ 2.106(b) and 2.114(b) are not applicable to concurrent use proceedings. In such proceedings, the applicant is the nominal plaintiff and only its concurrent use application is involved, so there is no registration against which the named excepted user (the nominal defendant in the proceeding) could counterclaim.

One comment suggested a rule change which was more extensive than the published proposal. After careful consideration, it was decided not to make the rules that are being adopted applicable to concurrent use proceedings or to interference proceedings. When a concurrent use applicant specifies another's application or registration as an exception to the applicant's right of exclusive use, the other party's application or registration is made a part of the concurrent use proceeding and the excepted applicant or registrant is made a party to the proceeding. See §§ 2.42 and 2.93. At the conclusion of the proceeding conducted by the Trademark Trial and Appeal Board pursuant to section 17 of the Trademark Act, the Commissioner may restrict the registration of a registered mark and may register the mark or marks for the person or persons entitled thereto, as the rights of the parties are established in the proceeding. See section 18 of the Trademark Act. Prior to the institution of a concurrent use proceeding, which is between or among the concurrent use applicant or applicants and persons named as excepted users, which include applicants and registrants specified as excepted users, a concurrent use application is published for opposition under section 12(a) of the Trademark Act. Upon publication under section 12(a), any person, including a person named in the application as an excepted user, who believes he may be damaged may file a notice of opposition.

If the opposition to a concurrent use application is prosecuted to a decision, the rights of the parties, including any rights determinable on a counterclaim under amended § 2.106(b), may be decided there. If the rights of the parties are determined in the concurrent use proceeding, section 18 of the Trademark Act authorizes the Commissioner to restrict an applicant's or an excepted

[12] *See Federated Foods, Inc. v. Fort Howard Paper Co.*, 192 USPQ 24 (CCPA 1976); and *Colonial v. Wadsworth*, 201 USPQ 289 (CCPA 1979).

user's application or registration in accordance with the findings and conclusions of the Board. Hence, there is no need to extend the compulsory counterclaim rules to concurrent use proceedings.

Interferences are declared only by the Commissioner and only upon petition showing extraordinary circumstances which would result in a party's being unduly prejudiced without an interference. See § 2.91(a). In practice, an interference is declared only when there are more than two pending applications for substantially the same mark for substantially the same goods or services and the applicant claiming the earliest date of first use is the junior applicant so that he would have to file and prosecute two or more oppositions successfully before his mark could be published for opposition. Since only applications are involved, there is no need for a compulsory counterclaim rule in interference proceedings. All of the rights of the parties will be determined in the interference proceeding.

Text of Rules Adopted

After consideration of the comments received and pursuant to the authority contained in section 1123 of Title 15 of the United States Code and section 6 of Title 35 of the United States Code, Part 2 of Title 37 of the Code of Federal Regulations is amended as set forth below.

1. In § 2.106 paragraph (b) is revised to read as follows:

§ 2.106 Answer.

* * * * *

(b)(1) An answer may contain any defense, including the affirmative defenses of unclean hands, laches, estoppel, acquiescence, fraud, mistake, or prior judgment. When pleading special matters, the Federal Rules of Civil Procedures shall be followed. A reply to an affirmative defense need not be filed. When a defense attacks the validity of a registration pleaded in the opposition, paragraph (b)(2) of this section shall govern. A pleaded registration is a registration identified by number and date of issuance in an original notice of opposition or in any amendment thereto made under Rule 15, FRCP.

(2)(i) A defense attacking the validity of any one or more of the registrations pleaded in the opposition shall be a compulsory counterclaim if grounds for such counterclaim exist at the time when the answer is filed. If grounds for a counterclaim are known to the applicant when the answer to the opposition is filed, the counterclaim shall be pleaded with or as part of the answer. If grounds for a counterclaim are learned during the course of the opposition proceeding, the counterclaim shall be pleaded promptly after the grounds therefor are learned. A counterclaim need not be filed if it is the subject of another proceeding between the same parties or anyone in privity therewith.

(ii) An attack on the validity of a registration pleaded by an opposer will not be heard unless a counterclaim or separate petition is filed to seek the cancellation of such registration.

(iii) The provisions of §§ 2.111 through 2.115, inclusive, shall be applicable to counterclaims. A time, not less than thirty days, will be designated within which an answer to the counterclaim must be filed.

(iv) The times for pleading, discovery, testimony, briefs or oral argument will be reset or extended when necessary, upon motion by a party, to enable a party fully to present or meet a counterclaim or separate petition for cancellation of a registration.

2. In § 2.114 paragraph (b) is revised to read as follows:

§ 2.114 Answer.

* * * * *

(b)(1) An answer may contain any defense, including the affirmative defenses of unclean hands, laches, estoppel, acquiescence, fraud, mistake, or prior judgment. When pleading special matters, the Federal Rules of Civil Procedure shall be followed. A reply to an affirmative defense need not be filed. When a defense attacks the validity of a registration pleaded in the petition, paragraph (b)(2) of this section shall govern. A pleaded registration is a registration identified by number and date of issuance in an original petition for cancellation or in any amendment thereto made under Rule 15, FRCP.

(2) (i) A defense attacking the validity of any one or more of the registrations pleaded in the petition shall be a compulsory counterclaim if grounds for such counterclaim exist at the time when the answer if filed. If grounds for a counterclaim are known to respondent when the answer to the petition is filed, the counterclaim shall be pleaded with or as part of the answer. If grounds for a counterclaim are learned during the course of the cancellation proceeding. The counterclaim shall be pleaded promptly after the grounds therefor are learned. A counterclaim need not be filed if it is the subject of another proceeding between the same parties or anyone in privity therewith.

(ii) An attack on the validity of a registration pleaded by a petitioner for cancellation will not be heard unless a counterclaim or separate petition if filed to seek the cancellation of such registration.

(iii) The provisions of §§ 2.111 through 2.115, inclusive, shall be applicable to counterclaims. A time, not less than thirty days, will be designated within which an answer to the counterclaim must be filed.

(iv) The times for pleading, discovery, testimony, briefs, or oral argument will be reset or extended when necessary, upon motion by a party, to enable a party fully to present or meet a counterclaim or separate petition for cancellation of a registration.

Dated: December 8, 1980.

Sidney A. Diamond,

Commissioner of Patents and Trademarks

Approved: January 9, 1981.

Jordan J. Baruch,

Assistant Secretary for Productivity, Technology and Innovation.

[FR Doc. 81-1870 Filed 1-21-81; 8:45 am]

BILLING CODE 3510-16-M

POSTAL SERVICE

39 CFR Part 111

Application Procedures for Special Bulk Third-Class Rates

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: This rule amends Chapter 6 of the Domestic Mail Manual to clarify the Postal Service's administrative practice concerning the application procedures for special (nonprofit) bulk third-class mail rates. It states with greater precision that a separate application for an authorization to mail at the special bulk third-class rates of postage must be filed at each post office where the mailer desires to deposit special rate mailings. The rule also clarifies that a refund of postage paid at the regular bulk third-class rates while a special rate application was pending will only be paid on mailings made at offices where an application was filed. In addition, the rule further clarifies that a cooperative mailing may be made by two or more nonprofit organizations only when each of the cooperating organizations is authorized to mail at the special bulk third-class rates at the post office where the cooperative mailing is deposited.

EFFECTIVE DATE: February 21, 1981.

FOR FURTHER INFORMATION CONTACT: Lynn M. Martin, Office of Mail Classification, (202) 245-4353.

SUPPLEMENTARY INFORMATION: On September 26, 1980, the Postal Service

published for comment in the Federal Register the proposed amendment to Chapter 6. Interested persons were invited to submit written comments concerning the proposed regulations. No comments were received. Accordingly, the Postal Service hereby adopts the following changes to the Domestic Mail Manual which is incorporated by reference in the Federal Register (39 CFR 111.1).

PART 623—SPECIAL BULK RATES

1. In Part 623, amend 623.1 to read as follows:

623.1 Authorization.

Only organizations which meet the requirements of 623.2 or 623.3 and which have received specific authorization from the Postal Service may mail eligible matter at the special bulk rates contained in Exhibit 611.2. (See application procedure in 642.) Before mailing at the special bulk rates, a mailer must be issued a special rate authorization. A separate authorization is required at each post office where special rate mailings are deposited.

2. In part 623, amend 623.52 to read as follows:

623.5 What may be mailed.

* * * * *

.52 Cooperative mailings may be made at the special bulk rates only when each of the cooperating organizations is individually authorized to mail at the special bulk rates at the post office where the mailing is deposited. Cooperative mailings containing any matter prepared by, in behalf of, or produced for an organization not itself authorized to mail at the special bulk rates at the post office where the mailing is deposited must be paid at the applicable regular rate. If customers disagree with a postmaster's decision that the regular rate of postage applies to a particular mailing, they may appeal the decision in accordance with 133. See Form 3602, *Statement of Mailing With Permit Imprints*, or Form 3602-Pc, *Statement of Mailing—Bulk Rates*, for the certifications required of special bulk rate mailers for mailings made under this section.

PART 641—ANNUAL FEE—BULK RATES

3. Amend 641 to read as follows:

641 Annual Fee—Bulk Rates.

An annual bulk mailing fee must be paid once each calendar year by or for any person or organization which mails at the regular or special bulk third-class rates at each post office where mailings will be deposited (see 612.1). Any person or organization which engages a business concern or other individual to mail for them must pay the fee. This fee is separate from the fee that must be paid for a permit to mail under the permit imprint system (see 145.2). The annual bulk mailing fee must be paid at or before the time of the first bulk rate mailing of each calendar year.

PART 642—APPLICATION TO MAIL AT THE SPECIAL BULK RATES

4. In 642.1 amend .11 to read as follows:

642.1 Application Procedures.

.11 *Filing.* An application for authorization on Form 3624, *Application To Mail at Special Bulk Third-Class Rates*, must be filed by the organization at each post office where the organization wishes to deposit mailings at the special bulk rates. The applicant must indicate on the application form the qualifying category or categories of organizations under which it seeks authorization. See 623.

5. In 642.4, amend .43 to read as follows:

642.4 Mailing While Application Pending.

* * * * *

.43 *Refund.* If an authorization to mail at special bulk rates is issued, the postmaster of the issuing office will refund to the mailer the postage paid at that office at the applicable regular bulk third-class rate in excess of the special rate since the effective date of the authorization.

Note.—No refunds will be made:

a. If the application is denied and no appeal is filed;

b. If postage was paid at first-class or single-piece third-class rates;

c. For the period prior to the effective date of the authorization; or

d. For mailings made at a post office at which a separate application was not filed.

(39 U.S.C. 401(2), 404(a)(2))

W. Allen Sanders,

Associate General Counsel, General Law and Administration.

[FR Doc. 81-2274 Filed 1-21-81; 8:45 am]

BILLING CODE 7710-12-M

ENVIRONMENTAL PROTECTION AGENCY

[A-1-FRL 1725-7]

40 CFR Part 52

Revision to the State Implementation Plan (SIP) for the State of Maine

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: Revisions to the State Implementation Plan (SIP) for the State of Maine were submitted to EPA on July 1, 1980 by the Commissioner of the Department of Environmental Protection. Those revisions included a comprehensive air quality monitoring plan intended to meet requirements of 40 CFR 58.

On September 17, 1980 the Regional Administrator published in the Federal Register (45 FR 61844) a Notice of Proposed Rulemaking for this revision to the Maine SIP, to approve the comprehensive air quality monitoring plan. No comments were received during the 30-day comment period. EPA is taking final action approving the revision.

EFFECTIVE DATE: These regulations take effect on February 23, 1981.

FOR FURTHER INFORMATION CONTACT: Donald P. Portsous, Air Section, EPA, Region I, 60 Westview Street, Lexington, Massachusetts 02173, (617) 861-6700.

SUPPLEMENTARY INFORMATION: On May 10, 1979 (44 FR 27558) pursuant to the requirements of Sections 110(a)(2)(C), 319, 313, and 127 of the Clean Air Act, EPA promulgated ambient air quality monitoring, data reporting, and surveillance provisions, establishing a new Part 58 in 40 CFR, entitled Ambient Air Quality Surveillance.

Maine has submitted a Comprehensive Air Quality Monitoring Plan designed to meet the requirements of Part 58. EPA has found that the Maine submittal meets the applicable regulations. EPA proposed approval of the Comprehensive Air Quality Monitoring Plan in a notice of proposed rulemaking (45 FR 61844). No comments were received during the 30-day comment period. EPA is now granting final approval of the Maine plan.

After evaluation of the state's submittal, the Administrator has determined that the Maine revision meets the requirements of the Clean Air Act and 40 CFR Part 58. Accordingly, this revision is approved as a revision to the Maine State Implementation Plan.

Under Section 307(b)(1) of the Clean Air Act, judicial review of this SIP revision is available *only* by the filing of a petition for review in the United States Court of Appeals for the appropriate circuit within 60 days of today. Under Section 307(b)(2) of the Clean Air Act, the requirements which are the subject of today's notice may *not* be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

Note.—Under Executive Order 12044, EPA is required to judge whether a regulation is "significant" and therefore subject to the procedural requirements of the Order or whether it may follow other specialized development procedures. EPA refers to these other regulations as "specialized". I have reviewed this regulation and determined that it is a specialized regulation not subject to the procedural requirements of Executive Order 12044.

(Section 110(a) and 301 of the Clean Air Act, as amended, 42 U.S.C. 7401 and 7601)

Dated: January 14, 1981.

Douglas M. Costle,

Administrator.

Note.—Incorporation by reference of the State Implementation Plan for the State of Maine was approved by the Director of the Federal Register on July 1, 1980.

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

Subpart U—Maine

Title 40, Part 52 of the Code of Federal Regulations is amended as follows:

Under § 52.1020, Identification of Plan, add Paragraph (c)(13) as shown below:

§ 52.1020

* * * * *

(c) * * *

(13) Revisions to Chapter 5—State Implementation Plan—Air Quality Surveillance, intended to meet requirements of 40 CFR 58, were submitted by the Commissioner of the Maine Department of Environmental Protection on July 1, 1980.

[FR Doc. 81-2199 Filed 1-21-81; 8:45 am]

BILLING CODE 6560-38-M

DEPARTMENT OF THE INTERIOR

Office of Hearings and Appeals

43 CFR Part 4

Special Rules Applicable to Surface Coal Mining Hearings and Appeals

AGENCY: Office of Hearings and Appeals, Department of the Interior.

ACTION: Final rule.

SUMMARY: This final rule changes the effective date of filing legal documents in adjudicative proceedings under the Surface Mining Control and Reclamation Act of 1977. This action is necessary so that delays in the mail will not cause parties to lose their legal rights. It permits filing to be effective upon mailing the document rather than on receipt of the document.

EFFECTIVE DATE: January 22, 1981.

FOR FURTHER INFORMATION CONTACT: Bruce R. Harris, Office of Hearings and Appeals, 4015 Wilson Blvd., Arlington, Virginia 22203 (703-557-9037).

SUPPLEMENTARY INFORMATION: 43 CFR 4.1107(g) concerns the effective filing date for documents filed with an administrative law judge, other than a document initiating a proceeding, and for all documents filed with the Board of Surface Mining and Reclamation Appeals. Presently, the regulation provides that the filing date is the date the document is received by the administrative law judge or the Board. Mail delays have resulted in the dismissal of several appeals by the Board for late filing. To alleviate this problem, 43 CFR 4.1107(g) is changed to make the effective filing date the date of mailing for a notice of appeal or petition for discretionary review filed with the Board, rather than the date of receipt. However, the date of receipt is retained for cases in which the Board has a regulatory deadline for issuing a decision—30 days from the filing of a perfected application under 43 CFR 4.1187(h) and within 60 days of the date the hearing record is closed by the administrative law judge under 43 CFR 4.1196. Language is added to place the burden of establishing the date of mailing on the person filing the document. A postmark will suffice as evidence of mailing; however, occasionally mail is delivered with an illegible postmark or no postmark at all. Therefore, filing parties are cautioned that the best evidence of the date of mailing is a certificate of mailing issued by the post office. In addition, a postage meter postmark will not be considered evidence of mailing since such meters may be adjusted to show a date other then the actual date of mailing. Proof that a document was properly addressed would also be required to establish the date of mailing; this can also be accomplished by obtaining a certificate of mailing.

Since 43 CFR 4.1107(g), as changed, relates only to notices of appeal and petitions for discretionary review filed with the Board, 43 CFR 4.1107(h) is added to establish the effective filing date for all other documents filed with the Board and for all documents, other than an initiating document, filed with an administrative law judge. The effective filing date for those documents is the date of mailing. The burden of establishing the date of mailing is on the person filing the document. The discussion above concerning establishing the date of mailing is applicable to this regulation also.

Note.—The Department of the Interior has determined that this document is not a significant rule and does not require a regulatory analysis under Exec. Order No. 12044 and 43 CFR Part 14.

Because these rules are not significant and are rules of Departmental procedure, they need not be and were not published in proposed form for public comment. 5 U.S.C. 553(b)(A), 43 CFR 14.5(d)(2). They shall be effective on the date of their publication because they do not substantially modify earlier procedures. 43 CFR 14.5(d)(4).

Dated: January 16, 1981.

Cecil D. Andrus,

Secretary of the Interior.

1. Section 4.1107(g) is revised to read:

§ 4.1107 Filing of documents.

* * * * *

(g) The effective filing date for a notice of appeal or a petition for discretionary review filed with the Board shall be the date of mailing or the date of personal delivery, except the effective filing date for a notice of appeal from a decision in an expedited review of a cessation order proceeding or from a decision in a suspension or revocation proceeding shall be the date of receipt of the document by the Board. The burden of establishing the date of mailing shall be on the person filing the document.

* * * * *

2. Section 4.1107(h) is added:

§ 4.1107 Filing of documents.

* * * * *

(h) The effective filing date for all other documents filed with an administrative law judge or with the Board shall be the date of mailing or personal delivery. The burden of establishing the date of mailing shall be on the person filing the document.

[FR Doc. 81-2200 Filed 1-21-81; 8:45 am]

BILLING CODE 4310-10-M

Bureau of Land Management

43 CFR Public Land Order 5797

[CA-275]

California; Partial Revocation of Reclamation Project Withdrawal

Correction

In FR Doc. 81-591 appearing on page 2046 in the issue of Thursday, January 8, 1981, third column under "Mount Diablo Meridian" land description, the complete description should read as follows:

T. 47 N., R. 3 E.,
Sec. 19, Lots 1, 2, 3, 4, and 5, and SE¼SE¼;
Sec. 20, Lots 1 and 2, fractional part of SW¼NE¼, E½NE¼, and NW¼SW¼;
Sec. 30, Lot 1 and NE¼NW¼.

BILLING CODE 1505-01-M

43 CFR Public Land Order 5806

[A-9528]

Arizona; Partial Revocation of Forest Service Administrative Site Withdrawal

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order partially revokes Executive Order No. 1398, issued August 15, 1911 which withdrew public lands for a Forest Service Administrative Site. Because of the Recreation and public Purposes lease currently upon the subject lands, they will remain closed to all forms of disposal except dispoal under the Recreation and Public Purposes Act.

EFFECTIVE DATE: January 22, 1981.

FOR FURTHER INFORMATION CONTACT: Mario L. Lopez, Arizona State Office, 602–261–4774.

By virtue of the authority vested in the Secretary of the Interior by Section 204(a) of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714, it is ordered as follows:

1. Executive Order No. 1398, issued on August 15, 1911, which set aside public lands for a Forest Service administrative site is hereby revoked so far as it affects the following described lands:

Gila and Salt River Meridian

T. 24 S., R. 14 E.,

Sec. 6, Lots 8 and 13 (formerly that portion of SE¼NE¼, NE¼SE¼ lying west of right-of-way for N.S. Interstate Highway 19).

The area described contains 42.77 acres in Santa Cruz County.

2. The above-described public lands are currently included in Recreation and Public Purposes Lease A–6629, issued to the Nogales Public Schools, under the Act of June 14, 1926, as amended (43 U.S.C. 869 et seq.), and are not subject to other appropriation or disposition under the public land laws, including the mining laws (30 U.S.C. Ch. 2), or the Mineral Materials Sales Act of July 31, 1947, as amended, (30 U.S.C. 601, 602)(1976), but will remain open to leasing under the mineral leasing laws.

3. Any rights and privileges in the form of easements and rights-of-way previously granted or established under the public land laws on the subject lands shall continue in full force and effect.

Guy R. Martin,

Assistant Secretary of the Interior.

January 15, 1981.

[FR Doc. 81-2268 Filed 1-21-81; 8:45 am]

BILLING CODE 4310-84-M

43 CFR Public Land Order 5809

[ORE 012261–A]

Oregon; Partial Revocation of Public Land Order No. 3165

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order revokes a public land order in part as to 289.28 acres of lands withdrawn for protection and preservation of scenic and recreation areas by the Bureau of Land Management. This action will restore part of the lands to the operation of the public land laws generally.

EFFECTIVE DATE: February 20, 1981.

FOR FURTHER INFORMATION CONTACT: Champ C. Vaughan, Jr., Oregon State Office, 503–231–6905.

By virtue of the authority contained in Section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714, it is ordered as follows:

1. Public Land Order No. 3165 of July 31, 1963, which withdrew certain lands for protection and preservation of scenic and recreation areas by the Bureau of Land Management is hereby revoked so far as it affects the following described lands:

Willamette Meridian

Revested Oregon and California Railroad Grant Land

T. 34 S., R. 8 W.,
Sec. 2, N½SW¼;
Sec. 3, Lots 1, 2, and S½NE¼;
Sec. 13, NE¼SE¼.

The area described aggregates 289.28 acres in Josephine County.

2. At 10 a.m., on February 20, 1981, subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law, the lands in Sections 2 and 13 will be open to such forms of disposition as may by law be made of revested Oregon and California Railroad Grant Land.

3. The lands in Section 3 remain segregated from operation of the public land laws generally by Power Site Reserve No. 728 of December 27, 1919, and Water Power Designation No. 14 of February 13, 1922. Lot 1 of Section 3 is also segregated from operation of the public land laws generally, including the United States mining laws and mineral leasing laws by Wild and Scenic Rivers Withdrawal, OR 4337–A.

4. The lands described in paragraph 1 except Lot 1 of Section 3 have been and continue to be open to entry and location under the United States mining laws and to applications and offers under the mineral leasing laws.

Inquiries concerning the lands should be addressed to the State Director, Bureau of Land Management, P.O. Box 2965, Portland, Oregon 97208.

Guy R. Martin,

Assistant Secretary of the Interior.

January 15, 1981.

[FR Doc. 81-2271 Filed 1-21-81; 8:45 am]

BILLING CODE 4310-84-M

43 CFR Public Land Order 5810

[OR-16881]

Oregon; Partial Revocation of National Forest Administrative Site Withdrawal

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order partially revokes the Secretarial Order of November 23, 1906, as to 80 acres of lands withdrawn for use by the Forest Service as a ranger station. This action will restore the lands to such forms of disposition as may by law be made of national forest lands.

EFFECTIVE DATE: February 20, 1981.

FOR FURTHER INFORMATION CONTACT: Champ C. Vaughan, Jr., Oregon State Office, 503–231–6905.

By virtue of the authority contained in Section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714, it is ordered as follows:

1. The Secretarial Order of November 23, 1906, which withdrew certain national forest lands for use by the Forest Service as a ranger station, is hereby revoked so far as it affects the following described lands:

Willamette Meridian

Wallowa-Whitman National Forest—Porcupine Administrative Site

T. 5 S., R. 37 E.,
Sec. 22, W½SE¼.

The area described contains 80 acres in Union County.

2. At 10 a.m., on February 20, 1981, the lands shall be open to such forms of disposition as may by law be made of national forest lands.

Guy R. Martin,

Assistant Secretary of the Interior.

January 15, 1981.

[FR Doc. 81-2269 Filed 1-21-81; 8:45 am]

BILLING CODE 4310-84-M

43 CFR Public Land Order 5811

[C-25945]

Colorado; Withdrawal of Lands for the Dolores Project

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order withdraws 963.06 acres of public land and 309.56 acres of national forest lands and reserves them for use by the Water and Power Resources Service in connection with the McPhee Dam and Reservoir, Dolores Project in Colorado.

EFFECTIVE DATE: January 22, 1981.

FOR FURTHER INFORMATION CONTACT: Alvah Q. Whitledge, Colorado State Office, 303–837–2535.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714, it is ordered as follows:

1. Subject to valid existing rights, the following described public lands, which are under the jurisdiction of the Secretary of the Interior, are hereby withdrawn from settlement, sale, location, or entry, under all of the general land laws, including the mining laws, 30 U.S.C. Ch. 2. The lands shall be reserved for use by the Water and Power Resources Service in connection with the McPhee Dam and Reservoir, Dolores Project, including, without limiting the generality of the preceding, the use of such lands to replace wildlife habitat inundated by the McPhee Reservoir and for recreational purposes.

New Mexico Principal Meridian

T. 38 N., R. 15 W.,
Sec. 18, lots 2 and 3, NE¼SW¼;
Sec. 19, SE¼NW¼, NE¼SW¼.
T. 38 N., R. 19 W.,
Sec. 2, lots 1 to 4 inclusive;
Sec. 11, S½N½;
Sec. 12, SW¼NE¼, S½NW¼, N½S½, SW¼SW¼, SE¼SE¼;
Sec. 13, W½NW¼.

The above described lands aggregate 963.06 acres in Montezuma County.

2. Subject to valid existing rights, the following described national forest lands, which are under the jurisdiction of the Secretary of Agriculture, are hereby withdrawn from location and entry under the mining laws, 30 U.S.C. Ch. 2, for use by the Water and Power Resources Service in connection with the McPhee Dam and Reservoir, Dolores Project:

San Juan National Forest

New Mexico Principal Meridian

T. 38 N., R. 15 W.,
Sec. 3, lot 2, E½NE¼SE¼, SW¼NE¼SE¼, SW¼SE¼;
Sec. 7, S½NE¼, E½SE¼;
Sec. 28, NW¼SW¼.

The above described lands aggregate 309.56 acres in Montezuma County.

The total area described contains 1,262.62 acres.

3. The withdrawal made by this order does not alter the applicability of those public land laws governing the use of the national forest lands described in paragraph 2 of this order under lease, license, or permit, or governing the disposal of their mineral or vegetative resources other than under the mining laws.

4. This withdrawal shall remain in effect for a period of 20 years from the date of this order.

Guy R. Martin,
Assistant Secretary of the Interior.
January 15, 1981.

[FR Doc. 81-2265 Filed 1-21-81; 8:45 am]
BILLING CODE 4310-84-M

43 CFR Public Land Order 5812

[OR-20289 (Wash)]

Washington; Revocation of Public Water Reserve No. 63

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order revokes an Executive Order which withdrew certain lands as a public water reserve. This action will restore 40 acres to operation of the public land laws generally, including nonmetalliferous mineral location under the mining laws.

EFFECTIVE DATE: February 20, 1981.

FOR FURTHER INFORMATION CONTACT: Champ C. Vaughan, Jr., Oregon State Office, 503–231–6905.

By virtue of the authority contained in Section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714, it is ordered as follows:

1. The Executive Order of April 30, 1919, which withdrew the following described public lands for a public water reserve is hereby revoked:

Willamette Meridian

Public Water Reserve No. 63

T. 25 N., R. 25 E.,
Sec. 35, SE¼SW¼.
T. 18 N., R. 28 E.,
Sec. 14.

The areas described aggregate 680 acres in Douglas and Adams Counties, Washington.

2. The lands in T. 18 N., R. 28 E., are withdrawn for the Columbia National Wildlife Refuge by Public Land Order 1706 of December 12, 1958, and Public Land Order 4964 of November 27, 1970, and remains segregated from the public land laws generally, including the United States mining laws.

3. At 10 a.m., on February 20, 1981, the land in T. 25 N., R. 25 E., shall be open to operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law. All valid applications received at or prior to 10 a.m., on February 20, 1981, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

4. At 10 a.m., on February 20, 1981, the land in T. 25 N., R. 25 E., will be open to nonmetalliferous mineral location under the United States mining laws. The land has been and continues to be open to metalliferous mineral location under the United States mining laws and to applications and offers under the mineral leasing laws.

Inquiries concerning the lands should be addressed to the State Director, Bureau of Land Management, P.O. Box 2965, Portland, Oregon 97208.

Guy R. Martin,
Assistant Secretary of the Interior.
January 15, 1981.

[FR Doc. 81-2270 Filed 1-21-81; 8:45 am]
BILLING CODE 4310-84-M

43 CFR Public Land Order 5813

[I-4789]

Partial Revocation of Reclamation Project Withdrawal

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order partially revokes two orders which withdrew lands for the Minidoka Reclamation Project. The land has been disposed of in accordance with the Act of March 31, 1950 (64 Stat. 39).

EFFECTIVE DATE: January 22, 1981.

FOR FURTHER INFORMATION CONTACT: Larry R. Lievsay, Idaho State Office, 208–334–1735.

By virtue of the authority contained in Section 204(a) of the Federal Land Policy and Management Act of 1976 (90 Stat. 2751; 43 U.S.C. 1714), it is ordered as follows:

1. The Secretarial Orders of November 17, 1902, and March 18, 1908, which withdrew lands for the Minidoka Reclamation Project, are hereby revoked

so far as they affect the following described land.

Boise Meridian

T. 8 S., R. 25 E.,
Sec. 12, SE¼SE¼.

The area described contains 40 acres in Minidoka County.

2. The land has been patented in accordance with the Act of March 31, 1960 (84 Stat. 39).

The land has been and continues to be open to applications and offers under the mineral leasing laws.

Guy R. Martin,
Assistant Secretary of the Interior.
January 15, 1981.
[FR Doc. 81-2307 Filed 1-21-81; 8:45 am]
BILLING CODE 4310-84-M

43 CFR Public Land Order 5814

[OR-12386]

Oregon; Revocation of Secretarial Order of April 25, 1939

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order revokes a Secretarial Order which withdrew 6.24 acres of land for use by the U.S. Army Corps of Engineers as a rock quarry site. This action will restore the land to operation of the public land laws generally, including the mining laws.

EFFECTIVE DATE: February 20, 1981.

FOR FURTHER INFORMATION CONTACT: Champ C. Vaughn, Jr., Oregon State Office, 503–231–6905.

By virtue of the authority contained in section 204(a) of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714, it is ordered as follows:

1. The Secretarial Order of April 25, 1939, which withdrew the following described land for use by the U.S. Army Corps of Engineers as a rock quarry site is hereby revoked:

Willamette Meridian

Siuslaw River Rock Quarry Site

T. 18 S., R. 10 W.,
Sec. 11, Lot 9.

The area described contains 6.24 acres in Lane County, Oregon.

2. At 10 a.m., on February 20, 1981, the land shall be open to operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law. All valid applications received at or prior to 10 a.m., on February 20, 1981 shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

3. At 10 a.m., on February 20, 1981, the land will be open to location under the United States mining laws. The land has been and continues to be open to applications and offers under the mineral leasing laws.

Inquiries concerning the land should be addressed to the State Director, Bureau of Land Management, P.O. Box 2965, Portland, Oregon 97208.

Guy R. Martin,
Assistant Secretary of the Interior.
January 15, 1981.
[FR Doc. 81-2304 Filed 1-21-81; 8:45 am]
BILLING CODE 4310-84-M

43 CFR Public Land Order 5815

[OR-22119 (Wash)]

Washington; Revocation of Executive Order No. 1713

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order revokes a withdrawal affecting 0.95 acres of land withdrawn for public purposes. The land will remain segregated from operation of the public land laws generally, including the mining laws, by a Recreation and Public Purposes Act classification.

EFFECTIVE DATE: January 22, 1981.

FOR FURTHER INFORMATION CONTACT: Champ C. Vaughan, Jr., Oregon State Office, 503–231–6905.

By virtue of the authority contained in Section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714, it is ordered as follows:

1. Executive Order No. 1713 of February 24, 1913, which withdrew the following described public land for public purposes is hereby revoked in its entirety:

Willamette Meridian

T. 37 N., R. 2 W.,
Sec. 16, Lot 5.

The area described contains 0.95 acres in San Juan County, Washington.

2. The public land described above has been and continues to be open to applications and offers under the mineral leasing laws, but remains segregated from operation of the public land laws generally, including the mining laws, by Recreation and Public Purposes Act classification WA 03675.

Inquiries concerning the land should be addressed to the State Director, Bureau of Land Management, P.O. Box 2965, Portland, Oregon 97208.

Guy R. Martin,
Assistant Secretary of the Interior.
January 15, 1981.
[FR Doc. 81-2305 Filed 1-21-81; 8:45 am]
BILLING CODE 4310-84-M

43 CFR Public Land Order 5816

[M-63777 (SD)]

South Dakota; Transfer of Jurisdiction; Modification of Public Land Order No. 2112

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order modifies PLO 2112 in that primary jurisdiction of the historic Fort Meade Cemetery and access road is transferred to the Veterans Administration.

EFFECTIVE DATE: January 22, 1981.

FOR FURTHER INFORMATION CONTACT: Dan Stark, Montana State Office, 406–657–6291.

By virtue of the authority contained in Section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714, it is ordered as follows:

1. Subject to valid existing rights, and all prior withdrawals, the following described Fish and Wildlife Coordination Act lands under the jurisdiction of the Secretary of Interior are hereby transferred to the Administrator of Veterans Affairs, Veterans Administration, and made a part of the National Cemetery System:

Black Hills Meridian, South Dakota.

T. 5 N., R. 5 E.,
Sec. 11, Metes and bounds tracts in Lot 3 described as follows:

Cemetery Tract

Commencing at the cor. of secs. 11, 12, 13, and 14, T. 5 N., R. 5 E., B.H.M., SD, thence N. 89°48' W., on the line bet. secs. 11 and 14, 1008.23 ft. dist., thence N., 0°12' E., normal to the line bet. secs. 11 and 14, 39.79 ft dist. to the point of beginning and corner No. 1:

From corner No. 1, by metes and bounds, N. 88°25'45" W., 147.54 ft., to corner No. 2; thence N. 01°34'22" W., 268.80 ft., to corner No. 3; thence N. 89°35'34" E., 175.73 ft., to corner No. 4; thence S. 45°37'23" E., 110.91 ft., to corner No. 5; thence S. 01°18'44" E., 145.08 ft., to corner No. 6; thence S. 53°57'27" W., 126.91 ft., to corner No. 1; the place of beginning.

The tract has an area of 1.51 acres.

Access Road Tract

Commencing at the cor. of secs. 11, 12, 13, and 14, T. 5 N., R. 5 E., B.H.M., SD, thence

N.-89°-58' W., on the line bet. secs. 11 and 14, 1205.83 ft. dist., thence N. 0°15' E., normal to the line bet. secs. 11 and 14, 29.79 ft. dist. to corner No. 1 of the Fort Meade Cemetery Tract, thence N. 89°25'45" W., on line 1-2 of the Fort Meade Cemetery Tract, 147.24 ft., dist. to corner No. 2, thence N. 01°34'22" W., on line 2-3 of the Fort Meade Cemetery Tract, 139.54 ft. dist. to the point of beginning and corner No. 1:

From corner No. 1, by metes and bounds, S. 84°20' W., 87.55 ft., to corner No. 2 and point of curve, thence along a 9°12'30" curve to the right having a radius of 621.82 ft., 83.51 ft. to corner No. 3 and point of tangency, thence N. 88°30' W., 82.94 ft., to corner No. 4, thence N. 24°28'21" W., 72.82 ft., to corner No. 5, thence S. 88°30' E., 82.82 ft., to corner No. 6 and points of curve, thence along a 10°18'00" curve to the left having a radius of 555.82 ft., 89.59 ft., to corner No. 7 and point of tangency, thence N. 84°28' E., 92.35 ft., to corner No. 8, on line 2-3 of the Fort Meade Cemetery Tract, thence S. 01°34'22" E., on line 22 of the Fort Meade Cemetery Tract, 88.16 ft., to corner No. 1, the place of beginning.

The tract has an area of 0.33 acres.

2. Effective on approval of this order, the lands described in paragraph 1 of this order shall become part of the National Cemetery System with perpetual administration under the National Cemeteries Act of 1973, 38 U.S.C. 1000 (1976).

3. The Fort Meade Cemetery has been identified on the National Register of Historic Places. Accordingly, actions that might affect the historical values of the cemetery may be taken only after consultation with and concurrence by the South Dakota State Historic Preservation Officer and the Advisory Council on Historic Preservation.

4. The lands remain withdrawn from all forms of appropriation under the public land laws, including the mining laws but not from leasing under the mineral leasing laws.

Guy R. Martin,

Assistant Secretary of the Interior.

January 15, 1981.

[FR Doc. 81-2272 Filed 1-21-81; 8:45 am]

BILLING CODE 4310-84-M

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43 CFR Public Land Order No. 5817

[OR-19469]

Oregon; Revocation of Executive Order No. 5864

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order revokes an Executive order which withdrew 40 acres as a lookout station for use by the Bureau of Land Management. This action will restore the lands to operation of the public land laws generally, including nonmetalliferous mineral location under the mining laws.

EFFECTIVE DATE: February 20, 1981.

FOR FURTHER INFORMATION CONTACT: Champ C. Vaughan, Jr., Oregon State Office, 503-231-6905.

By virtue of the authority contained in Section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714, it is ordered as follows:

1. Executive Order No. 5864 of June 23, 1932, which withdrew the following described public lands for use by the Bureau of Land Management as a lookout station, is hereby revoked:

Willamette Meridian

T. 1 S., R. 40 E.,
Sec. 22, NE¼NE¼.

The area described contains 40 acres in Union County.

2. At 10 a.m., on February 20, 1981, the lands shall be open to operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law. All valid applications received at or prior to 10 a.m., on February 20, 1981, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

3. At 10 a.m., on February 20, 1981, the lands will be open to nonmetalliferous mineral location under the United States mining laws. The lands have been and continues to be open to metalliferous mineral location under the United States mining laws and to applications and offers under the mineral leasing laws.

Inquiries concerning the lands should be addressed to the State Director, Bureau of Land Management, P.O. Box 2965, Portland, Oregon 97208.

Guy R. Martin,

Assistant Secretary of the Interior.

[FR Doc. 81-2269 Filed 1-21-81; 8:45 am]

BILLING CODE 4310-84-M

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43 CFR Public Land Order 5818

[ORE-016163-A]

Oregon; Partial Revocation of Public Land Order No. 3969

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order revokes a public land order in part as to 40 acres of lands withdrawn as recreation sites for use by the Bureau of Land Management. This action will restore the lands to operation of the mining laws.

EFFECTIVE DATE: February 20, 1981.

FOR FURTHER INFORMATION CONTACT: Champ C. Vaughan, Jr., Oregon State Office, 503-231-6905.

By virtue of the authority contained in Section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714, it is ordered as follows:

1. Public Land Order No. 3969 of November 12, 1965, which withdrew certain lands for use by the Bureau of Land Management as recreation sites is hereby revoked so far as it affects the following described lands:

Willamette Meridian

Revested Oregon and California Railroad Grant Land

T. 16 S., R. 7 W.,
Sec. 19, W½SE¼SW¼.
T. 19 S., R. 7 W.,
Sec. 19, N½SE¼NE¼.

The areas described aggregate 40 acres in Lane County.

2. At 10 a.m., on February 20, 1981, the lands will be open to location under the United States mining laws. The lands have been and continue to be open to applications and offers under the mineral leasing laws.

3. The lands remain segregated from operation of the public land laws generally by Power Site Reserve No. 650 of December 12, 1917, and Water Power Designation No. 14 of December 12, 1917.

Inquiries concerning the lands should be addressed to the State Director, Bureau of Land Management, P.O. Box 2965, Portland, Oregon 97208.

Guy R. Martin,

Assistant Secretary of the Interior.

January 15, 1981.

[FR Doc. 81-2268 Filed 1-21-81; 8:45 am]

BILLING CODE 4310-84-M

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43 CFR Public Land Order 5819

[ORE-016416]

Oregon; Revocation of Public Land Order No. 3837

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order revokes a public land order which withdrew 440 acres of land as a material site for use by the Bureau of Land Management. This action will restore the lands to operation of the public land laws generally, including the mining laws.

EFFECTIVE DATE: February 20, 1981.

FOR FURTHER INFORMATION CONTACT: Champ C. Vaughan, Jr., 503–231–6905, Oregon State Office.

By virtue of the authority contained in Section 204 of the Federal Land Policy and Management Act of October 21, 1976, 90 Stat. 2751; 43 U.S.C. 1714, it is ordered as follows:

1. Public Land Order No. 3837 of September 27, 1965, which withdrew the following described public land for use by the Bureau of Land Management as a material site is hereby revoked:

Willamette Meridian

Sugarloaf Mountain Material Site

T. 29 S., R. 12 W.,
Sec. 23, E½ and E½SW¼.
Sec. 24, SW¼SW¼.

The area described contains 440 acres in Coos County, Oregon.

2. At 10 a.m., on February 20, 1981, the E½ and E½SW¼ of Sec. 23 will be open to such forms of disposition as may by law be made of revested Oregon and California Railroad Grant Land, and the SW¼SW¼ of Sec. 24 will be open to operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law. All valid applications received at or prior to 10 a.m., on February 20, 1981, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

3. At 10 a.m., on February 20, 1981, the lands will be open to location under the United States mining laws. The lands have been and continue to be open to applications and offers under the mineral leasing laws.

Inquiries concerning the lands should be addressed to the State Director, Bureau of Land Management, P.O. Box 2965, Portland, Oregon, 97208.

Guy R. Martin,
Assistant Secretary of the Interior.
January 15, 1981.
[FR Doc. 81-2273 Filed 1-21-81; 8:45 am]
BILLING CODE 4310-84-M

43 CFR Public Land Order 5820

[OR 13498]

Oregon; Withdrawal of National Forest Land for Recreation and Administrative Site

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order withdraws 120 acres of land within the Umpqua National Forest from the mining laws for the Cow Creek Recreation and Administrative Site.

EFFECTIVE DATE: January 22, 1981.

FOR FURTHER INFORMATION CONTACT: Champ C. Vaughan, Jr., Oregon State Office, 503–231–6905.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751, 43 U.S.C. 1714, it is hereby ordered as follows:

1. Subject to valid existing rights, the following described national forest land, which is under the jurisdiction of the Secretary of Agriculture, is hereby withdrawn from location and entry under the mining laws, 30 U.S.C. Ch. 2, and reserved in support of Forest Service programs.

Willamette Meridian

Umpqua National Forest, Cow Creek Recreation and Administrative Site

T. 32 S., R. 3W.,
Sec. 8, N½NW¼ and N½S½NW¼.

The area described contains 120 acres in Douglas County, Oregon.

2. The withdrawal made by this order does not alter the applicability of those public land laws governing the use of the national forest lands under lease, license, or permit, or governing the disposal of their mineral or vegetative resources other than under the mining laws.

3. This withdrawal shall remain in effect for a period of 20 years from the date of this order.

Guy R. Martin,
Assistant Secretary of the Interior.
January 15, 1981.
[FR Doc. 81-2282 Filed 1-21-81; 8:45 am]
BILLING CODE 4310-84-M

43 CFR Public Land Order 5821

[M-36791]

Montana; Revocation of Public Land Order No. 1169

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order revokes PLO 1169, dated June 15, 1955, which withdrew 80 acres of public lands for use of the Department of the Air Force in connection with Glasgow Air Force Base, Montana. This action will restore the public lands to operation of the public land laws, generally including the mining and mineral leasing laws.

EFFECTIVE DATE: February 20, 1981.

FOR FURTHER INFORMATION CONTACT: Larry Koch, Montana State Office, 406–657–6291.

By virtue of the authority contained in Section 204(a) of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714, it is ordered as follows:

1. Public Land Order No. 1169 of June 15, 1955, which withdraw the following described public lands for use in connection with Glasgow Air Force Base is hereby revoked in its entirety:

Montana Principal Meridian

T. 31 N., R. 40 E.,
Sec. 35, E½NE¼.

The area described contains 80 acres in Valley County.

2. At 10 a.m., on February 20, 1981, the public lands described above shall be open to operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law. All valid applications received at or prior to 10 a.m., on February 20, 1981, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

3. The public lands described above will be open to applications and offers under the mineral leasing laws and to location under the United States mining laws at 10 a.m., on February 20, 1981.

Inquiries concerning the lands should be addressed to the Chief, Branch of Lands and Minerals Operations, Bureau of Land Management, P.O. Box 30157, Billings, Montana 59107.

Guy R. Martin,
Assistant Secretary of the Interior.
January 15, 1981.
[FR Doc. 81-2283 Filed 1-21-81; 8:45 am]
BILLING CODE 4310-84-M

43 CFR Public Land Order 5822

[OR-10576]

Oregon; Withdrawal of Lands for Diamond Craters Geologic Area

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order withdraws 1,6,056.18 acres of public lands from the operation of the general land laws including the mining laws, but not from leasing under the mineral leasing laws, for the protection and preservation of geologic and biological resources of exceptional scientific, educational, scenic, and recreational value.

EFFECTIVE DATE: January 22, 1981.

FOR FURTHER INFORMATION CONTACT:
Champ C. Vaughan, Jr., Oregon State Office, 503–231–6905.

By virtue of the authority contained in Section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751, 43 U.S.C. 1714, it is ordered as follows:

1. Subject to valid existing rights, the following described public lands which are under the jurisdiction of the Secretary of the Interior, are hereby withdrawn from settlement, sale, location, or entry under the general land laws, including the mining laws, 30 U.S.C. Ch. 2, but not from leasing under the mineral leasing laws, and reserved for the protection of their scientific research, educational, scenic, and recreational values.

Willamette Meridian

T. 28 S., R. 31 E.,
Sec. 24, E½NE¼, SW¼NE¼, SE¼NW¼, E½SW¼, and SE¼;
Sec. 25, E½NE¼, NW¼NE¼, NE¼NW¼, and NE¼SE¼.
T. 29 S., R. 31 E.,
Sec. 1, E½E½;
Sec. 12, NE¼NE¼.
T. 28 S., R. 32 E.,
Sec. 17;
Sec. 18, Lot 4, S½NE¼, SE¼SW¼, and SE¼;
Secs. 19 through 22, inclusive;
Sec. 23, SW¼ and S½SE¼;
Sec. 24, SW¼SW¼;
Sec. 25, NW¼NW¼, S½NW¼, and SW¼;
Secs. 26 through 35, inclusive.
T. 29 S., R. 32 E.,
Sec. 1, W½NW¼ and SW¼;
Secs. 2 through 6, inclusive;
Sec. 7, Lot 1, N½NE¼, and NE¼NW¼;
Sec. 8, N½, NE¼SW¼, N½SE¼ and SE¼SE¼;
Sec. 9;
Sec. 10, N½ and SW¼;
Sec. 11, W½NE¼ and NW¼;
Sec. 15, N½NW¼.

The areas described aggregate 16,656.18 acres in Harney County, Oregon.

2. The withdrawal made by this order does not alter the applicability of those public land laws governing the use of the lands under lease, license, or permit, or governing the disposal of their mineral or vegetative resources other than under the mining laws.

3. This withdrawal shall remain in effect for a period of 20 years from the date of this order.

Guy R. Martin,
Assistant Secretary of the Interior.
January 15, 1981.
[FR Doc. 81-2220 Filed 1-21-81; 8:45 am]
BILLING CODE 4310-84-M

43 CFR Public Land Order 5823

[OR-21726]

Oregon; Revocation of Recreational Withdrawal No. 41

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order revokes a Secretarial order which withdrew 80 acres of lands for protection of recreational values. This action permits restoration of the lands to operation of the mining laws provided appropriate rules and regulations are issued to allow mineral location on lands conveyed pursuant to the Recreation and Public Purposes Act.

EFFECTIVE DATE: January 21, 1981.

FOR FURTHER INFORMATION CONTACT:
Champ C. Vaughan, Jr., Oregon State Office, 503–231–6905.

By virtue of the authority contained in Section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714, it is ordered as follows:

1. The Secretarial Order of December 17, 1930, which withdrew the following described lands for protection of recreational values is hereby revoked:

Willamette Meridian

T. 33 S., R. 1 E.,
Sec. 33, S½NE¼.

The area described contains 80 acres in Jackson County.

2. The surface estate of the lands have been conveyed to the State of Oregon pursuant to the Recreation and Public Purposes Act of June 14, 1926, as amended (43 U.S.C. 869; 869–4); therefore, unless and until appropriate rules and regulations are issued, the lands will not be open to location under the United States mining laws. The lands have been and continue to be open to applications and offers under the mineral leasing laws.

Inquiries concerning the land should be addressed to the State Director, Bureau of Land Management, P.O. Box 2965, Portland, Oregon 97208.

Guy R. Martin,
Assistant Secretary of the Interior.
January 15, 1981.
[FR Doc. 81-2220 Filed 1-21-81; 8:45 am]
BILLING CODE 4310-84-M

43 CFR Public Land Order 5824

[OR-18287]

Revocation of Executive Order No. 5118

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order revokes an Executive order which withdrew 40 acres of public lands as a lookout station for use by the State of Oregon. This action will restore the lands to operation of the public land laws generally, including nonmetalliferous mineral location under the mining laws.

EFFECTIVE DATE: February 20, 1981.

FOR FURTHER INFORMATION CONTACT:
Champ C. Vaughan, Jr., Oregon State Office, 503–231–6905.

By virtue of the authority contained in Section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751, 43 U.S.C. 1714, it is ordered as follows:

1. Executive Order No. 5118 of May 16, 1929, which withdrew the following described public lands for use by the State of Oregon as a lookout station, is hereby revoked:

Willamette Meridian

Revested Oregon and California Railroad Grant Land

T. 29 S., R. 11 W.,
Sec. 21, SE¼SW¼.

The area described contains 40 acres in Coos County.

2. At 10 a.m., on February 20, 1981, subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law, the lands will be open to such forms of disposition as may by law be made of revested Oregon and California Railroad Grant Land.

3. At 10 a.m., on February 20, 1981, the lands will be open to nonmetalliferous mineral location under the United States mining laws. The lands have been and continue to be open to metalliferous mineral location under the United States mining laws and to applications and offers under the mineral leasing laws.

Inquiries concerning the lands should be addressed to the State Director, Bureau of Land Management, P.O. Box 2965, Portland, Oregon 97208.

Guy R. Martin,
Assistant Secretary of the Interior.
January 15, 1981.
[FR Doc. 81-2220 Filed 1-21-81; 8:45 am]
BILLING CODE 4310-84-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Child Support Enforcement

45 CFR Part 304

Determination of the Federal Share of Collections

AGENCY: Office of Child Support Enforcement (OCSE), HHS.

ACTION: Final Rule with comment period.

SUMMARY: This regulation authorizes State Child Support Enforcement agencies to use the current rate of Federal matching in their respective State AFDC programs as an optional method of determining the amount of each child support collection which may be applied as reimbursement of the Federal government's share of AFDC payments. Existing regulations at 45 CFR 304.20 require that such determinations be made according to the rate of Federal matching in each of the specific assistance payments being reimbursed. This rate of Federal matching is subject to periodic changes. Our present requirements thus create an administrative burden when States use child support collections to reimburse past assistance payments as required by Section 457(b) of the Social Security Act, because these payments have in many cases been made at a prior rate of Federal matching. This new optional procedure will therefore provide significant administrative benefits for States that choose to use it.

DATE: Effective date: January 22, 1981.

Comment Period: Consideration will be given to written comments or suggestions received on or before March 23, 1981. Agencies and organizations are requested to submit their comments in duplicate.

ADDRESS: Address comments to: Director, Office of Child Support Enforcement; Department of Health and Human Services; 6110 Executive Blvd., Suite 900; Rockville, Maryland, 20852; ATTN: Policy Branch. Comments will be available for public inspection Monday through Friday, 8:30 a.m. to 5:00 p.m., in Room 1010 of the Department's offices at the address above.

FOR FURTHER INFORMATION CONTACT: Eileen Brooks, (301) 443-5350.

SUPPLEMENTARY INFORMATION:

Federal Share of Collections

Section 457(b) of the Social Security Act requires that, from the amounts of child support collected by the State and retained as reimbursement for AFDC payments, the State must reimburse the Federal Government to the extent of its participation in the financing of the assistance payment. Existing regulations at 45 CFR 304.20 require States to distribute collections according to the rate of Federal matching in the specific AFDC payments that the child support collection is used to reimburse. Although the vast majority of the payments being reimbursed are in the current period, under existing OCSE policy States must nevertheless be able to calculate the Federal share of collections which are used to reimburse assistance payments made in the past when different rates of Federal matching in AFDC were in effect. This is an unnecessarily burdensome requirement given the infrequency of occurrence. The requirement is particularly burdensome in jurisdictions which calculate AFDC reimbursement under Section 403(a) of the Social Security Act. The AFDC reimbursement rate in these States may change as often as every month.

Because of the problems associated with existing policy, OCSE has decided to permit States the option of using the rate of Federal financial participation in the State's AFDC program in effect at the time of distribution as the basis for determining the Federal share of collections. Any potential effect on Federal or State shares of collections due to the slight changes over time in reimbursement rates is likely to be negligible. States choosing to reimburse the Federal government at current AFDC Federal matching rates will generate savings in both Federal and State administrative costs. The regulation has been given a new title, Determination of Federal share of collections, to more accurately reflect its content.

Statutory Authority

The Social Security Act at Section 457(b)(3)(A) requires that, of the amounts of child support collected by the States on behalf of AFDC children in excess of those amounts used to reimburse the current month's assistance payment, 457(b)(1), and those amounts paid to the family, 457(b)(2), the States must retain such excess amounts as reimbursement of prior months' assistance payments, "with appropriate reimbursement of the Federal Government to the extent of its participation in the financing" of the earlier assistance payments. We believe that this statutory language is sufficiently broad to permit OCSE to allow States the option of calculating the Federal share based on the current AFDC FFP rate.

Rulemaking

This amendment to the regulation is being published in final form. The Administrative Procedure Act, 5 U.S.C. 553(b)(B), provides that, if the Department for good cause finds that a notice of proposed rulemaking is unnecessary, impracticable or contrary to the public interest, it may dispense with the notice if it incorporates a brief statement in the final regulations of the reasons for doing so. The Department finds that there is good cause to dispense with public notice and comment with respect to this change because notice and comment prior to its adoption is unnecessary and impracticable for the reasons that follow. This amendment will provide the State IV-D agencies with an optional procedure which will simplify the administration of the IV-D program in those States which adopt it. It does not affect the substantive rights of individuals involved in the IV-D program. It places no new requirements upon the States, but rather, by providing an alternative which simplifies requirements that have proven burdensome to many States, it seeks to improve the efficiency of the Child Support Enforcement program. Prompt enactment of this change will allow States which choose this option to immediately realize the benefits of simplified distribution procedures. This change has been advocated by several States which are anxious to implement it as soon as possible.

This regulation is being made effective immediately upon publication because in providing an alternative method to determine the Federal share of collections it relieves a restriction on the way in which collections are distributed. Although the regulation has immediate effect, OCSE will give consideration to public comments received on or before March 23, 1981.

45 CFR Part 304 is amended by revising § 304.20 to read as follows:

§ 304.20 Determination of Federal share of collections.

(a) From the amounts of child support collected by the State and retained as reimbursement for AFDC payments, the State shall reimburse the Federal government to the extent of its participation in the financing of the AFDC payment. In computing the Federal share of child support collections, the State has two options:

(1) The State may use the AFDC FFP rate applicable to the period in which the assistance payment was made as follows:

(i) If the State uses the Federal medical assistance percentage under section 1118 of the Act, this percentage shall be used in computing the Federal share of collections.

(ii) If the State uses the computations in section 403(a) of the Act, the Federal share of collections shall be computed using the rate of Federal participation in the financing of:

(A) The individual assistance payment; or

(B) All of the assistance payments in the same month; or

(2) The State may use the current rate of AFDC FFP as follows:

(i) If the State uses the Federal medical assistance percentage under section 1118 of the Act, the percentage applicable at the time of distribution shall be used in computing the Federal share of collections.

(ii) If the State uses the computations in section 403(a) of the Act, the average rate of Federal participation in the financing of assistance payments during the immediately preceding quarter shall be used in computing the Federal share of collections.

(b) If an incentive payment is made to a jurisdiction under § 302.52 of this chapter for the enforcement and collection of support obligations, the payment shall be made from the Federal share of collections computed in paragraph (a) of this section.

(Sec. 1102 of the Social Security Act, 49 Stat. 647 (42 U.S.C. 1302))

(Catalog of Federal Domestic Assistance Program No. 13.679, Child Support Enforcement program)

Note.—The Office of Child Support Enforcement has determined that this document does not require preparation of a Regulatory Analysis as prescribed by Executive Order 12044.

Dated: December 22, 1980.

William J. Driver,

Director, Office of Child Support Enforcement.

Approved: January 14, 1981.

Patricia Roberts Harris,

Secretary.

[FR Doc. 81-2319 Filed 1-21-81; 8:45 am]

BILLING CODE 4110-07-M

COMMUNITY SERVICES ADMINISTRATION

45 CFR Part 1060

General Characteristics of Community Action Programs; CSA Income Poverty Guidelines (Revised)

AGENCY: Community Services Administration.

ACTION: Final rule.

SUMMARY: The Community Services Administration is revising its income poverty guidelines. The Economic Opportunity Act of 1964, as amended, requires at least annual revisions of the poverty guidelines for use by every agency administering programs under the Act in which the poverty guidelines are used to judge eligibility for participating in programs. These revisions assure that the income guidelines reflect the changes in the cost of living.

EFFECTIVE DATE: This rule is effective February 23, 1981.

FOR FURTHER INFORMATION CONTACT: Dr. Ernest F. Powers, Office of Policy, Planning & Evaluation, Community Services Administration, 1200 19th Street NW., Washington, D.C. 20506, Telephone: (202) 632-6630, Teletypewriter: (202) 254-6218.

SUPPLEMENTARY INFORMATION: The Community Services Administration revision of the updated poverty guidelines constitutes compliance with the legislatively mandated requirement of Section 624 of the Economic Opportunity Act of 1964, as amended. This revision is not significant according to Executive Order 12044 since the only change being made reflects the changes in the Consumer Price Index and is required by the previously mentioned Section of the EOA. The text defining "Income" and "A Farm Residence" remains unchanged. The policy regarding use of these guidelines is also unchanged by this revision.

This amendment to § 1060.2 revises the guidelines previously published in §§1060.2-1 and 1060.2-2.

Richard J. Rios,

Director.

45 CFR 1060.2-1 through 1060.2-2 is revised to read as follows:

Sec.
1060.2-1 Applicability.
1060.2-2 Policy.
Attachment.

Authority: Sec. 602, 78 Stat. 530 (42 U.S.C. 2942).

§ 1060.2-1 Applicability.

This subpart applies to all grants financially assisted under Titles II, IV and VII of the Economic Opportunity Act of 1964, as amended, if such assistance is administered by the Community Services Administration.

§ 1060.2-2 Policy.

(a) The attached income guidelines are to be used for all those CSA funded programs, whether administered by a grantee or delegate agency, which use CSA poverty income guidelines as admission standards. Any individual or family certified eligible for AFDC or SSI payments is automatically eligible for CSA programs services without the need to be separately certified through the application of the attached income guidelines. These guidelines do not supersede alternative standards of eligibility approved by CSA.

(b) The guidelines are also to be used in certain other instances where required by CSA as a definition of poverty, e.g., for purposes of data collection and for defining eligibility for allowances and reimbursements to board members. Agencies may wish to use these guidelines for other administrative and statistical purposes as appropriate.

(c) The attached guidelines are based upon Table 17 of the U.S. Bureau of the Census, *Current Population Reports*, Series P-60, No. 120, "Money Income and Poverty Status of Families and Persons in the United States: 1978" (Advance Report), U.S. Government Printing Office, Washington, D.C., November 1979; OMB letter to Director, CSA, dated April 11, 1980 and Department of Labor Press Release USDL-80-794 of December 23, 1980.

(d) The following definitions, from *"Current Population Reports"*, P-60, No. 91, Bureau of the Census, December 1973 have been adopted by CSA for use with the attached poverty guidelines.

(1) *Income.* Refers to total cash receipts before taxes from all sources. These include money wages and salaries before any deductions, but not including food or rent in lieu of wages. They include receipts from self-employment or from own farm or business after deductions for business or farm expenses. They include regular payments from public assistance, social security, unemployment and workman's compensation, strike benefits from union funds, veteran's benefits, training stipends, alimony, child support and military family allotments or other regular support from an absent family member or someone not living in the household; government employee pensions, private pensions and regular insurance or annuity payments; and income from dividends, interest, rents, royalties or income from estates and trusts. For eligibility purposes, income does not refer to the following money receipts: any assets drawn down as withdrawals from a bank, sale of property, house or car, tax refunds, gifts, one-time insurance payments or compensation for injury; also to be disregarded is non-cash income, such as the bonus value of food and fuel produced and consumed on farms and

the imputed value of rent from owner-occupied farm or non-farm housing.

(2) *A farm residence.* Is defined as any dwelling on a place of 10 acres or more with $50 or more annual sales of farm products raised there; or any place less than 10 acres having product sales of $250 or more.

Attachment

1981 Community Services Administration

Poverty Income Guidelines for all States Except Alaska and Hawaii

	Nonfarm family	Farm family
Size of family unit:		
1	$4,310	$3,690
2	5,830	4,780
3	6,970	5,930
4	8,110	7,100
5	9,730	8,270
6	11,110	9,440

For family units with more than 6 members, add $1,380 for each additional member in a nonfarm family, and $1,170 for each additional member in a farm family.

Poverty Guidelines for Alaska

	Nonfarm family	Farm family
Size of family unit:		
1	$5,380	$4,490
2	6,980	5,930
3	8,710	7,410
4	10,440	8,890
5	12,160	10,340
6	13,890	11,800

For family units with more than 6 members add $1,730 for each additional member in a nonfarm family and $1,460 for each additional member in a farm family.

Poverty Guidelines for Hawaii

	Nonfarm family	Farm family
Size of family unit:		
1	$4,940	$4,130
2	6,430	5,130
3	8,020	6,820
4	9,600	8,170
5	11,190	9,510
6	12,770	10,860

For family units with more than 6 members, add $1,590 for each additional member in nonfarm family, and $1,360 for each additional member in a farm family.

[FR Doc. 81-2121 Filed 1-21-81; 8:45 am]

BILLING CODE 6315-01-M

ACTION

45 CFR Part 1213

Action Cooperative Volunteer Program; Correction

AGENCY: ACTION.

ACTION: Final rule; correction.

SUMMARY: This document corrects a reference contained in final regulations concerning volunteers of the ACTION Cooperative Volunteer Program which were published March 7, 1975 (40 FR 10670 *et seq.*).

FOR FURTHER INFORMATION CONTACT: Louise E. Maillett, Assistant General Counsel, ACTION, 806 Connecticut Avenue, N.W., Washington, D.C. 20525, (202) 254-8855.

Accordingly, the following corrections are made to 45 CFR Part 1213:

1. In § 1213.5-5(a)(9), the reference to "Part 1212" is corrected to read "Part 1210".

2. In § 1213.5-5(d), the reference to "Part 1212" is corrected to read "Part 1210".

Secs. 121, 122, 402(12) and (14) and 420 of Pub. L. 93-113, 87 Stat. 395, 400, 401, 407 and 414)

Signed at Washington, D.C., this 14th day of January, 1981.

Sam Brown

Director of ACTION.

[FR Doc. 81-2220 Filed 1-21-81; 8:45 am]

BILLING CODE 6315-01-M

45 CFR Part 1232

Nondiscrimination on Basis of Handicap in Programs Receiving Federal Financial Assistance From ACTION; Correction

AGENCY: ACTION.

ACTION: Final rule; correction.

SUMMARY: This document corrects the alphabetical lettering within a section of the final regulations implementing Section 504 of the Rehabilitation Act of 1973 in programs receiving Federal financial assistance from ACTION. The final regulations were published on May 30, 1979 (44 FR 31018 *et seq.*).

FOR FURTHER INFORMATION CONTACT: Louise E. Maillett, Assistant General Counsel, ACTION, 806 Connecticut Avenue, NW., Washington, D.C. 20525, (202) 254-8855.

Accordingly, the following corrections are made to 45 CFR Part 1232:

1. Subsection "(j)" of § 1232.3 Definitions is corrected to read subsection "(i)".

2. Subsection "(k)" of § 1232.3 Definitions is corrected to read subsection "(j)".

3. Subsection "(l)" of § 1232.3 Definitions is corrected to read subsection "(k)".

4. Subsection "(m)" of § 1232.3 Definitions is corrected to read subsection "(l)".

(Sec. 504, Rehabilitation Act of 1973, Pub. L. 93-112, 87 Stat. 394 (29 U.S.C. 794), sec. 111(a), Rehabilitation Act Amendments of 1974, Pub. L. 93-516, 88 Stat. 1619 (29 U.S.C. 706); Rehabilitation Act Amendments of 1978, Pub. L. 95-602, 92 Stat. 2955; Sec. 406(14), Pub. L. 93-112, 87 Stat. 395).

Signed at Washington, D.C., this 14th day of January, 1981.

Sam Brown,

Director of ACTION.

[FR Doc. 81-2224 Filed 1-21-81; 8:45 am]

BILLING CODE 6315-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Ch. I

[CC Docket No. 79-245; FCC 80-776]

American Telephone and Telegraph Co.; Manual and Procedures for the Allocation of Costs

AGENCY: Federal Communications Commission.

ACTION: Final rule (report and order).

SUMMARY: This Report and Order sets forth a manual containing procedures to be followed by AT&T in allocating costs. The manual establishes reporting categories to which plant, expenses and other costs must be assigned as well as procedures to be used in the allocation. The purpose of the manual is to develop rates of return on investment for the reporting categories. These rates of return will be used as one measure of compliance of tariffed services with the requirements of the Communications Act.

DATES: Supplemental Notice will be issued for the purpose of exploring long range solutions to cost allocation problems. Dates for submitting comments will be issued in the Supplemental Notice. Filing dates established in the Notice of Proposed Rulemaking on long-term procedures (73 FCC 2d 1296) are therefore cancelled. The Interim Cost Allocation Manual is adopted effective January 6, 1981.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Albert Halprin, Policy and Program Planning Division, Common Carrier Bureau, Federal Communications Commission, Washington, D.C. 20554 (202-632-6342).

In the matter of American Telephone and Telegraph Co., Manual and Procedures for the Allocation of Costs, CC Docket No. 79-245. See also 45 FR 40121, July 9, 1980.

Report and Order

Adopted: December 18, 1980.

Released: January 9, 1981.

By the Commission: Commissioner Quello concurring in the result; Commissioner Jones absent.

Introduction

1. This proceeding was initiated through the issuance of a Notice of Inquiry in September 1979 [1] in which we sought comments on the proper approach to be used for the allocation of costs by the American Telephone and Telegraph Co. (AT&T) among the interstate services it offers or may offer in the future. Both the existing approach used by AT&T to implement the fully distributed costing technique prescribed in Docket 18128 [2] (FDC–7) and alternative approaches were the subject of comments. After review and careful consideration of the comments we developed a proposal for an interim cost allocation manual which was put forth for comments in a Notice of Proposed Rulemaking (Notice) issued in June, 1980.[3]

2. In the Notice, we reviewed the history and background of our attempts to determine the proper method of cost allocation for AT&T, a discussion which will not be repeated herein.[4] After considering the history of attempts to implement the FDC–7 methodology—a history which demonstrated both the unwieldiness of the methodology and the difficulties caused by the disparity between that method's assumptions about the nature of AT&T's investment decision and the realities of AT&T's plant provisioning approach—as well as suggestions to modify that approach, we concluded that for at least the immediate future the FDC–7 approach was impracticable, even if modified. Because of our desire to implement an allocation methodology which would be understandable and auditable and because of our obligation under an order of the United States Court of Appeals for the District of Columbia Circuit to adopt a cost allocation manual in December 1980,[5] we determined that an alternative approach was required.

3. We therefore considered the alternative approaches suggested by the comments. Two different alternatives were presented. The first, primarily endorsed by Southern Pacific Communications (SPC), Microwave Communications, Inc. (MCI), United States Transmission System (USTS), and Satellite Business Systems (SBS) and based upon a report prepared for them by Walter Hinchman Associates,[6] (Hinchman Proposal) was predicated upon an elaborate new system of record keeping—the Primary Allocation and Assignment Records (PAARs). This system was not, however, possible to implement in the short term. As an immediate measure the Hinchman proposal recommended the adoption of an "interim cost allocation manual whose primary if not sole purpose is the generation of valid experienced use and associated cost data through special studies." [7] While stating that the Commission should specify more valid, reliable and auditable procedures for the conduct of special studies, no specific methods to achieve this goal were proposed. In addition, while no direct reference to the cost generation process under the interim plan was made, the long-term Hinchman proposal would continue to rely on "built-up" costs which would then have to be reconciled with the revenue requirement assigned to the interstate jurisdiction through the separations process.

4. An alternative approach was proposed by Western Union in its comments filed in response to the Notice of Inquiry. Basically, Western Union proposed starting with the actual pool of costs (including, of course, the return element) which must be recovered through interstate operations and then dividing these costs among services on the basis of derived factors. While this procedure would, *inter alia*, eliminate the need for reconciling the pool of costs with the interstate revenue requirement, no specific suggestions for the factors to be used were put forth by the carrier, nor was any means for their development suggested.

5. After review of the comments, we proposed in the Notice to utilize existing, externally mandated systems of cost assignments for the allocation manual wherever possible. This would start with the separations process which determines the revenue requirement for interstate service. Costs would be assigned to three categories—MTS, WATS, and Private Line services. We stated in the Notice that, as soon as an access charge was prescribed, it will become the basis for the allocation of the costs of those services covered by the charge. In addition, direct assignment of costs was required wherever appropriate.

6. Comments and reply comments on the Notice were filed by AT&T; SPC; MCI; SBS; USTS; Ad Hoc Telecommunications Users Committee (Ad Hoc); Aeronautical Radio, Inc. and Air Transport Association of America, jointly (ARINC); American Broadcasting Cos., CBS Inc., and National Broadcasting Co., jointly (Networks); Independent Data Communications Manufacturers Association (IDCMA); and the American Hotel and Motel Association (AHMA). Initial comments only were filed by GTE Telenet Communications Corp. (Telenet); New York State Department of Public Service (NYPS); and Alascan, Inc. (Alascom). Reply Comments only were filed by the Telecommunications Committee of America (TCA). The National Data Corporation (NDC) filed an expression of interest.[8]

7. With the exception of AT&T, the initial comments did not deal with the specifics of, or make suggestions for the modification of, the interim proposal. Rather, they opposed the proposal on policy, legal, and constitutional grounds.[9] Many reply comments were also directed at AT&T's suggestions. We shall therefore consider these general objections initially, and then turn to the specific suggestions for modification of our proposal for an interim cost allocation manual.

Discussion

8. In evaluating the criticisms of our proposal to utilize jurisdictional separations results as a prime component of the interim cost allocation manual it is necessary to be mindful of the proper context for this task. We are obligated by order of the United States Court of Appeals to promulgate a manual on an expedited schedule. The proposal contained in the interim manual must be judged by two standards. First, it is an improvement over existing procedures and, second, it is superior to alternative proposals which can be implemented at this time. Nothing would be gained by attempting to judge the interim manual against an "ideal" standard of "proper allocation," even assuming such an ideal has meaning in an economic or theoretical sense and that it is attainable as a practical matter.

9. In analyzing the comments, it is also important to keep in mind that the parties commenting represent only a small fraction (albeit those with, perhaps, the largest direct financial

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[1] 73 FCC 2d 629.

[2] 91 FCC 2d 587, reconsideration of 84 FCC 2d 971, further reconsideration at 87 FCC 2d 1441.

[3] 78 FCC 2d 1290.

[4] See 78 FCC 2d at 1301–1308.

[5] Order of June 11, 1980, extended to early 1981 by Order of October 30, 1980, *MCI Telecommunications v FCC*, Docket No. 79–1119.

[6] Hinchman Proposal at p. 11.

[7] "Cost-of-Service Accounting and Pricing Procedures," originally submitted in CC Docket No. 78–196, the Uniform System of Accounts Inquiry.

[8] These comments are summarized in Appendix B.

[9] These oppositons ranged, however, from total antipathy to suggestions that, while representing a step in the right direction, the proposal was fatally flawed.

interests) of those affected by our decision in this case. When, for example, comments cite the "unanimity of opinion" that the separations process is fatally flawed because it utilizes a weighting factor ("SPF") to adjust interstate minutes for separation of non-traffic sensitive plant, we are mindful that many states, not parties to this proceeding, vigorously contest this notion.[10] We are also aware that users of MTS, who may well be the beneficiaries of this approach, will generally neither have the individual financial interest nor the expertise to participate.

10. In evaluating our decision in Docket No. 18128, the Court of Appeals stated that our responsibility is to "make a reasonable selection [of a methodology] from the available alternatives."[11] One aspect of the various comments critical of our interim proposal is that they fail to go beyond criticism and suggest modifications or alternative methods which are superior to our proposal. Apart from their expression of concern that the interim manual may become permanent or merely lead to another interim step, the parties generally do not focus on our view that an interim proposal must be capable of immediate implementation both to meet the mandate of the Court of Appeals and to rid ourselves of a system which, at this point, for the reasons suggested in the Notice, entails costs far outweighing any benefits.

11. A revised Method 7 has never been adopted by us and has never been well defined. No party has disagreed with, or substantively attempted to rebut, our tentative findings contained in the Notice that the existing procedures developed by AT&T are unacceptable. No party has specifically responded to our objections to the concept of trial balancing; to the wisdom of attempting to assign cost to individual services on an "historic" causation basis whereas AT&T builds plant only on the basis of overall forecasts; to the assignment of costs to different services which may not be technically discrete but are often marketing responses to consumer needs; and to our belief that a cost allocation system must promote, *inter alia*, network efficiency and flexibility in responding to rapidly changing technology and changing and flexible consumer desires. And no party has really challenged the finding of the Notice that, pending consideration of alternatives in the long-range phase of this docket, no alternative to our interim plan capable of immediate implementation exists.

12. Criticism of our proposal without indicating a better alternative for the present is, at least, internally consistent in the case of parties such an ARINC and USTS who believe that is is premature to prescribe a manual at this time and that further proceedings should be conducted before this takes place. We agree that further consideration of cost allocation procedures are necessary and for that reason we emphasize again, as we did in the Notice, that after finalizing the interim manual we intend to consider, fully, long-term approaches to allocation. We must recognize, however, both that we are under a mandate from the Court of Appeals to adopt an interm manual for the immediate future and that we do not start with a *tabula rasa*.

13. We turn then to a consideration of the general objections of our proposed interim manual. These are of five general types:

(1) That our decision to abandon FDC-7 methodology, for the present, is improper;

(2) That our use of separations results is illegal or otherwise inappropriate;

(3) That our use of separations results to assign costs to reporting categories is improper;

(4) That the interim manual's failure to obtain costs for specific services (particularly private line and 800 services) and its alleged total reliance on competition, resale or both as a subetitute for regulatory oversight is a fatal flaw; and

(5) That we "approached this problem as if it could be solved in isolation"[12] and did not consider the interdependence of the proposed interim manual to proceedings such as the Private Line Tariff Restructuring, USOA, Computer Inquiry II and Access Charge.

We consider below each of these objections *seriatim*

Departure From FDC 7

14. Our decision that FDC 7 methodology is not implementable at this time and that an alternative approach is necessary in the interim manual was condemned by some parties and supported by others. Carriers such as USTS and SBS indicate agreement with relying on a relative use approach. AT&T expresses no view on our movement from FDC 7. ARINC, however, stated in its comments (at pp. 8-9) that, "after more than a decade of proceedings to formulate the FDC 7 method, the Commission simply proposes to toss it aside without having given it a fair chance in the marketplace." SPC refers to the "15 or more years of decision making in which the FDC 7 methodology was accepted by the Commission, the Court and the public as a lawful process of cost allocation." (Reply Comments at p. 2). MCI states that "the Commission is preparing to abdicate its responsibilities under the Act by failing to implement the FDC 7 methodology * * *" (Reply at p. 4).[13]

15. These, and other similar comments, appear to be based on the assumption that a valid revised FDC 7 methodology which implements the principles of our Decision in Docket No. 18128 exists, or has at some time existed. We set forth in the Notice our view that no such methodology had yet been divised either in the form of AT&T's FDC 7 proposals or the manual proposed by Judge Miller and rejected by us as a possibility for immediate implementation in Docket No. 20814.[14] We also explained the basis for our belief that no modifications to the existing or proposed methods existed of which we are aware which would render them viable.

16. The question of whether a manageable FDC 7 system could be implemented was not considered in Docket No. 18128 and not addressed in the Final Decision in that docket. Method 7 was not the central focus during much of the 18128 proceeding and the "revised Method 7" methodology with which we have dealt over the past few years was never promulgated, but was left to working sessions to develop. Our experiences with the product of these working sessions, combined with changes in the direction of telecommunication regulation, have led us to the tentative view expressed in the Notice that no such system is practicable with the resources available to us. This is a case of a few years of experience with a specific methodology being more valuable in judging its usefulness than a decade of hearings largely focused on general principles.

17. Many parties refuse to face the reality that the only FDC 7 methodology capable of being utilized at this time is that implemented by AT&T, and found unacceptable. We noted in Docket 20814 that, "implementation of the ID (Miller) Manual at this time would require extensive time delays while AT&T developed data bases and information

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[10] NYPA, the only state participating, did not address contentions that jurisdictional separations force interstate users to subsidize intrastate ones.

[11] Aeronautical Radio slip opinion at p. 13.

[12] SBS Comments at p. 11.

[13] Some commentators have changed their view of the desirability of FDC 7 and the possibility of successfully implementing it. See, e.g., MCI Opposition to Petitions for Reconsideration in Docket No. 18128 at p. 4.

[14] 74 FCC 2d 1, 38.

gathering techniques to replace REDCAP, FELTCAP, DIL- studies, etc."[15] Other less detailed FDC 7 manuals proposed in that docket or in this proceeding would face similar extensive delays during which we would be left with nothing but the discredited AT&T approach. We stated in the Notice that, "no suggestions have been made which offer any hope of bringing the existing (i.e. AT&T) FDC 7 methodology under * * * control."[16] We believe that, for the present, this assertion has not been rebutted or seriously challenged. Suggestions for specific modifications or alternatives to existing FDC 7 methodologies have been few, most commenting parties seeming, instead, to prefer recommending that the Commission "do something" to make FDC 7 workable.[17]

18. For these reasons we continue to adhere to our tentative conclusion that FDC 7 does not offer a workable solution to the problem of allocating AT&T's costs, at least for the immediate future. While we set forth in the Notice our concerns about the viability of this approach for the long term[18], we make no judgment on that question at this time. Rather we will consider long term approaches in further proceedings in this docket. We note, however, as appears to be self-evident, that the mere length of earlier proceedings does not constitute good cause to continue this approach. We must make an independent decision as to whether FDC 7 is the proper solution given our present state of knowledge about it.

[15] 74 FCC 2d 393m. 123.

[16] 78 FCC 2d 1228.

[17] SPC, for example, submitted a section of the manual it proposed (along with USTS) in Docket No. 20814. It characterizes this section as containing *inter alia* "explicit constraints on the use of massive studies * * *." However, an examination of the SPC manual shows that the sole constraint (with respect to special studies used as inputs to the FDC 7 study) is that Bell provide a complete copy of the study upon request. Bell could follow alternative procedures if it could show that "providing a certain special study is extremely burdensome and will add little useful information to the FDC 7 process * * *." Whatever criticisms may be made of AT&T's approach to implementing FDC 7, it must be recognized that Bell has provided voluminous quantities of material in connection with its annual central submission. Presumably, if requested, AT&T would be willing to provide even more information. The problem is not one of availability. The difficulties lie in the quality of the data received and the need for such massive amounts of information that we are unable to audit such information or even review it in a timely fashion. Therefore, the explicit constraint suggested by SPC—that AT&T be required to provide any study utilized—would hardly be sufficient to transform existing FDC 7 procedures into a workable system. It would represent merely a continuation of the attempts to implement a system we have found unworkable, at least for the immediate future.

[18] 78 FCC 2d 1228–30.

Use of Separations for any Purpose

19. Many objections to the use of jurisdictional separations in connection with the allocation of costs for AT&T have been raised.[19] They include arguments that:

(1) Separations procedures do not result in "true costs" being assigned to the various jurisdictions;

(2) Separations does not allocate cost to individual services or rate elements and is not designed for, or intended to be used for, ratemaking;

(3) Separations results are substantially within the control of AT&T and are inauditable;

(4) Separations procedures violate the holding of the Supreme Court in *Smith v. Illinois Bell Telephone Co.*[20]

(5) Separations procedures are expected to change and a reliance on them will result in rate instability;

(6) Separations procedures violate the Fifth Amendment, Article I of the Constitution.

20. We view these objections as being of two types. First are those which involve any use of separations. Second are those which involve relying on separations for the assignment of costs to services. With respect to the former, we believe that parties either misconstrue our proposal or ignore the constraints within which we operate.

21. The existing method of separating plant used jointly or in common [21] for interstate and intrastate services has been in effect for 10 years. It was adopted after a Federal-State Joint Board met on the matter and is incorporated as Part 67 of our rules.[22] Existing separations procedures are binding on carriers, the states, and ourselves. All parties to this proceeding are well aware that the Commission does not have the power to unilaterally modify matters affecting jurisdictional separations. Any such matter must be referred to a Federal-State Joint Board, pursuant to Section 410(c) of the Communications Act.[23] There is virtually total agreement that the existing system of separating plant can and should be improved. We agree that problems with separations exist. (There is, of course, considerable disagreement in some areas about the type of improvements which are necessary.) A Federal-State Joint Board has already been convened in Docket 80–286 and has begun the task of formulating recommendations. This is the only action we may take to correct any deficiencies in existing separations procedures.

22. Until the Joint Board completes its task the existing separations process determines the interstate revenue requirement and the costs to be recovered by AT&T with respect to jointly used plant and associated costs and expenses. No proposal has been made, at least explicitly, which challenges the right of AT&T to recover this requirement through interstate operations. Any such proposal would be clearly unlawful as confiscatory.[24]

23. Proposals by parties that the difference between assigned costs and what these parties view as "true costs" not be assigned to services they utilize would merely shift costs to other interstate ratepayers. If it is improper for one interstate ratepayer, such as MCI, to pay this so-called "subsidy", it is at least as improper for other ratepayers, typically MTS customers, who have no more responsibility for the creation of the "subsidy" than MCI, to be forced to pay their share and MCI's as well.

24. All serious proposals for cost allocation, from the Hinchan Proposal to revised FDC 7 or FDC 1 approaches recognize that the total of costs allocated among interstate services will be determined by the separations process. Because the assignment of interstate costs will not be affected by any allocation plan we may adopt, any challenge to the interim manual based upon the complexity or inaccuracy of this assignment, the degree of control of AT&T over this process, or the unlawfulness or unconstitutionality of the assignment of these costs is not relevant to our tasks in this docket. We accept the amounts assigned interstate by separations as a given. Our task is merely to properly spread this amount among reporting categories.

25. Although we are not making a final determination with respect to jurisdictional separations questions that will be decided in Docket No. 80–286, we do not agree with parties who contend that any formula which assigns non-traffic sensitive costs to interstate on a basis other than unweighted minutes of use is improper, *even if* we accepted these contentions, our only recourse would be the convening of a Joint Board as we have done.[25] While we also

[19] Objections to the use of separations are raised by all parties' comments on the manual.

[20] 262 U.S. 133 (1930).

[21] Distinctions between these concepts are not made for separations purposes and they are used interchangeably herein.

[22] 26 FCC 2d 247.

[23] 47 U.S.C. 410.

[24] *FPC v. Hope Nat. Gas Co.* 320 U.S. 591 (1944); *Bluefield Water Works and Improv. Co. v. West Va. P.S.C.* 262 U.S. 679 (1923).

[25] We reject the notion that separating the costs of jointly used plant among jurisdictions is susceptible to such simple analyses as seem to be implied in some of the comments. That the process of

cannot agree with contentions that existing separations procedures for determining the interstate revenue requirement violate of *Smith*,[25] or unconstitutional,[27] even if we accepted these contentions our only recourse would be the convening of a Joint Board as we have done.

28. Existing separations procedures determine the interstate revenue requirement and, hence, the pool of costs to be allocated among interstate services. Problems which exist with either the methodology or with its implementation by Bell (or others) cannot be remedied in this docket. They are not lessened by suggestions to determine the so called "true costs" of interstate services through detailed records, unit costing or other means. Any approach must result in the same total of interstate costs—the total set by separations.

Use of Separations for Assignment of Costs to Reporting Categories

27. Apart from the use of the interstate revenue requirement, the interim manual only utilizes the separations process for the allocation of interstate costs to the message and private line categories. We have already made clear in this order that we recognize that problems exist in the separations process.[28] In deciding to rely on separations for the purpose of this division, we must weigh its benefits versus the benefits of other possible apptoaches. In the Notice, we stated that the advantages of utilizing separations are that it was more understandable, more verifiable and less subject to management discretion than AT&T's FDC methodology either as it existed at that time, or with any modifications which had been proposed.

28. While parties continue to attack the validity of the division between private line and message services made by separations, they have not demonstrated, or indeed attempted to demonstrate, that a superior alternative exists at this time. AT&T, which had earlier urged the continuation of its FDC 7 approach, with improvements, has indicated that the Notice "provides a basic framework with which (AT&T) can work to arrive at a cost allocation solution for the present." No other party has suggested how any system other than separations will produce, e.g., a 1980 central submission that is more understandable, more auditable and less subject to management discretion, than does the interim manual.

29. One (but not the only) problem in the separations process is that it appears to underallocate costs to the private line category because of residual techniques and because the SPF factor (which multiplies interstate use by more than three times) is applied only to message minutes and not to private line minutes. We are aware, however, based

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separating, and of allocating, jointly used plant is a highly complex one has long been recognized. *Groesbeck v. Duluth S.S. & A. R. Co.* 250 U.S. 607 (1919). The Supreme Court has explicitly held that, "allocation of costs is not a matter for the slide rule. It involves judgement on a myriad of facts. It has no claim to an exact science." *Colorado Interstate Gas Co. v. FPC* 324 U.D. 581, 585 (1946). Existing separations procedures involve judgments made by not just ourselves but by representatives of the states, as required by Congress. MCI's suggestion that we cannot presume separations to be lawful (Comments at p. 29) but must make an independent determination of this, is unpersuasive.

[25] The basic requirement set forth by the Supreme Court in this case is that the jurisdictional separation of commonly used plant must take account of the uses to which that plant is put. Specifically, the Court struck down a system which failed to assign to the interstate jurisdiction any responsibility for the exchange plant used in common for both interstate and intrastate services. The key holding of Smith was that: "While the difficulty in making an exact apportionment of the property is apparent, and extreme nicety is not required, only reasonable measures being essential, it is quite another matter to ignore altogether the actual uses to which the property is put." (282 U.S. 130–151.) MCI has argued that the requirement that only "reasonable measures" and not "extreme nicety" of the separation proposal are essential is based upon the fact that accurate cost allocation methods did not exist when the *Smith* decision was reached. MCI, and other parties, assume, without demonstrating, that such accurate methods do exist today. We are not convinced that the increasing sophistication of allocation methodology has surpassed, or perhaps even kept pace with, the increasing complexity of the integrated telecommunications network. More importantly, however, we view the *Smith* holding as being both required by and consistent with the generally held view that allocating the cost of non-traffic sensitive communication plant held in common or a fully distributed costing basis is from a strictly economic view, an abritrary process which cannot ignore policy considerations. Indeed, the Commission is required by Section 1 of the Communications Act to take into account a variety of considerations in our regulatory activities.

We are charged "to make available, so far as possible, to all the people of the United States a rapid, efficient, Nation-wide, and world-wide, wire and radio communication service with adequate facilities at reasonable charges" and, to consider both the national defense and the promotion of the safety of life and property through the use of wire and radio communication. The contention that the use of a multiplicative factor such as SPF for dividing non-traffic sensitive plant and assigning associated costs and expenses, renders the separations process unlawful, *per se*, is not persuasive. We likewise reject the argument that it is improper for us to presume that separations is lawful and the implication that, before utilizing it, we must make an independent determination of its legality. While we believe that modifications to the existing procedures should be made, and have convened a Federal-State Joint Board to this end, the fact remains that the separations procedure sets the interstate revenue requirement with respect to common plant and associated costs and expenses. Apart from the legal prohibition or our modifying or rejecting existing procedures in this proceeding, we believe that the expansion of this docket to include questions would excessively delay, or perhaps frustrate, our prescription of an interim cost allocation manual.

[27] The argument is made that jurisdictional separations result in the assignment of excessive costs to the interstate jurisdiction and that requiring consumers of such services to pay this so-called "subsidy" constitutes either the taking of property without compensation in violation of the Fifth Amendment or taxation in derogation of Congress' power under Article I of the Constitution. This argument is built upon the notion that plant used jointly for intrastate and interstate telecommunications service can and must be divided in such a way as to assign to each jurisdiction the true economic costs of the respective services. Specifically, several parties indicate that the use of the subscriber plant factor (SPF) contained in the Ozark Plan to weight interstate minutes of use for purposes of establishing a ratio (interstate minutes of use (adjusted by SPF) to intrastate minutes of use) for dividing jointly used plant results in the cross-subsidization of intrastate by interstate operations. This implies that the joint plant and associated cost and expenses used by different jurisdictions can be divided in a way that excludes policy considerations and is justifiable on a purely economic basis. At least insofar as each jurisdiction is assigned fully distributed costs, we are unconvinced of the validity of this position at least as regards non traffic sensitive plant. Even assuming, *arguendo*, that the amount assigned interstate is not identical to, for example, the amount that an "accurate" unit costing mechanism would build up for such costs, the question of how or whether this amount should be recovered through AT&T's interstate operations would remain.

As noted above, a refusal on our part to permit AT&T to recover its interstate requirement, established in accordance with law, would clearly be unlawful. On the other hand, no consumer of interstate service would be economically responsible for the "subsidy, and it would plainly be unsound for the specialized carriers, or any other class of customers, to be relieved of a "subsidy" burden that must be borne by interstate users generally. Any useful rates must not be unjust, unreasonable, or unreasonably discriminatory and specific rates have been struck down as violative of this principle which has long governed utility regulation. Moreover, we have not determined that such a subsidy element exists in the present separations formula. Even if a subsidy element did exist, we do not see this as raising constitutional questions. Regulatory agencies have, in appropriate circumstances, utilized explicit cross-subsidies for public purposes and these have never to our knowledge, been struck down as violative of the Fifth Amendment or Article I of the Constitution. (See, e.g., *U.S. v. Great Northern R. Co.* 343 U.S. 562 (1951); *U.S. v. Abilene and Southern R. Co.* 265 U.S. 234 (1924); *New England Divisions Case* 261 U.S. 184 (1922).) The Article 1 cases cited by MCI are simply not relevant to the situation with which we are dealing. Both *National Cable Television Ass'n v. U.S.* 415 U.S. 336 (1974) and *National Ass'n of Broadcasters v. FCC* 554 F.2d 1118 (1976) deal with the Commission's powers to levy fees, which are not involved in this proceeding. The case of *Brushaber v. Union Pacific RR*, 240 U.S. 1 (1915), denies a challenge to a graduated tax as being violative *per se* of the Fifth Amendment. The so called "Brushaber test" relied upon by MIC is based upon a proposition not even decided by the Court in that case. Following the quotation cited by MCI, the Court stated that, "none of the propositions relied upon [in this case] in the remotest degree presents such questions." 240 U.S. 25.

[28] While we expect that changes will result from the present Joint Board, separations will neither change so quickly nor so often as to make fears about "rate churning" valid.

upon AT&T's present WATS filing [20] and its comments in this docket,[20] that the interim manual will require an increase in private line rates. This increase will not be insubstantial and will, in fact, be somewhat larger than would have been required under the methodology prescribed in Docket 20814. Therefore, we believe that, at this point, the results of the manual may well constitute an appropriate resting place for the present, even though higher rates may ultimately be required if and when more precise cost information becomes available.[21]

30. We have noted above [22] that the concept of fully distributed "true costs" as applied to plant jointly used by different telecommunications services and subject to regulation by different jurisdictions requires the use of non-economic factors (i.e., "considerations of fairness, not mere mathematics").[23] We discussed in the Notice how the existing FDC 7 methodology, which develops costs from the bottom-up and then trial balances the totals to the interstate revenue requirement, results in continual disputes about the accuracy of the pre-trial balanced figures—disputes which we did not view as resolvable. As a result, the same criticisms concerning "true costs" which are leveled at our proposed interim manual were also directed at the FDC 7 methodology. So long as the sum total of costs allocated to services equals the interstate revenue requirement which includes separations results, this criticism cannot be completely eliminated. The aggregation of reporting categories is, at least in part, a recognition of the impracticality of assigning fully distributed "true costs" to individual services.

31. It is true that separations does not assign costs to individual services and hence—as the separations Manual itself makes clear—does not provide sufficient information to be used in assigning costs to individual services.[24] However, we have determined that, for annual reporting purposes, more aggregated reporting categories are preferable. We emphasize that we cannot and have not sought to use separations to obtain costs for individual services. As discussed below (at paras. 34–35), our use of aggregated reporting categories neither constitutes a waiver of the requirement to support individual tariff filings nor an intent on our part to abandon our responsibility to evaluate such filings. It reflects, instead, a belief on our part that the proposals before us for the allocation of costs to individual services or service elements do not produce information on which we can rely in evaluating filed tariffs. This, we note, is the view repeatedly urged upon us by virtually all of those parties who now criticize our abandonment of AT&T's unworkable version of the FDC 7 methodology.

32. In the same vein, we note that the criticism that separations results are too subject to control by AT&T to be used for cost allocation purposes was also raised against the FDC 7 process.[25] While we agree that the separations process can be improved, and, indeed, hope the recently convened Joint Board will make progress in this direction, we still believe that the outside scrutiny of separations by ourselves, state regulators, and other interested persons makes its split between message and private line categories less subject to management discretion than the massive FDC 7 studies which were annually presented to us. Once again no party has come close to demonstrating that any implementable alternative exists which is superior. Although we intend to explore long-range approaches in future proceedings in this docket, mere injunctions that we prescribe a "better" system do not constitute a viable choice for the immediate future.

33. We also disagree with those persons who claim that the volume of supporting materials filed with AT&T's recent WATS submission negates our argument that the separations-based interim manual is more auditable and manageable than the FDC 7 system. As AT&T notes in its Reply Comments (at p. 13, fn.), "the portion of the WATS filing which contains and documents the allocation of costs to the three reporting categories required by the proposed interim manual * * * consist of two books totalling about 700 pages." While we are making certain changes and clarifications in the proposed manual which will, we believe, further increase its manageability, we are satisfied that the proposal constitutes a significant step in the right direction.

Claimed Excessive Reliance on Competition and Resale

34. Although we recognize that the parties filing comments object to our proposal because of an asserted overreliance on competition, resale, and, other factors, a review of these comments reveals that, in many cases, there is a substantial misunderstanding of what we have proposed. The interim cost allocation manual proposed in the Notice required the allocation of investments, expenses, and revenues to three aggregated reporting categories.[26] Because we continue to believe that no proposal is before us which will properly, or even adequately, allocate costs to individual services or service elements,[27] we are declining to issue a prescription on how to achieve that end at this time. This inability is in no way reflective of a belief on our part that mere regulation of the rates of return of these broad reporting categories is sufficient to satisfy our regulatory responsibility. On the contrary, if a proper and manageable methodology can be developed for more detailed cost allocation, we certainly intend to consider it before prescribing a manual for the long term.

35. We have, on the other hand, stated many of our concerns about the inherent difficulties of implementing such an approach. Chief among these are the nature of AT&T's plant provisioning process, the high degree of fungibility of plant, the fact that many services offered under tariff by AT&T do not represent mutually exclusive offerings (in terms of technology) but are, instead, responses to customer desires, and our belief that the public interest is served by permitting Bell both to utilize its network with maximum efficiency and to be in a position to respond to future demands of the market.

36. These views will, we are sure, be commented on in the further proceedings to take place in this docket.

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[20] Transmittal No. 12255. AT&T comments pp. 18–19.

[20] Comments at p. 2. AT&T does propose modifications to our proposal, which are discussed below.

[21] In this regard we note that SPC, in its critical comments on the proposed interim manual, cites AT&T's transmittal letter accompanying the WATS filing in which AT&T indicates that, based upon the results of allocations in accordance with the proposed manual, private line rates result in a return below the authorized system level and that an increase in such rates is likely. SPC then states "this, of course, was the position of SPC and other affected carriers in the MTL proceeding, which resulted in no action by the Commission." (Comments at p. 26). The manual, therefore, produces a result which SPC has been advocating.

[22] See fn. 23.

[23] *Colorado Interstate Gas Co.* v. *FPC, supra*, at 609.

[24] We therefore recognize that, as NYPS indicates, broad aggregated studies will not be sufficient for all of our regulatory activities. Because we have rejected incremental pricing for selected services we will not be faced with a need to translate embedded into marginal costs as was NYPS.

[25] This finding is contained in the executive summary of the study of Jurisdictional Separations prepared by J. W. Wilson and Associates and submitted on September 30, 1980. This study focuses on the establishment of the interstate revenue requirement.

[26] For reasons explained below (paras 63–68, *infra*) we are adding a fourth reporting category for ENFIA.

[27] Although allocation to service elements has been suggested, such a level of detail was not required by our Order in Docket No. 18128, nor has it even been attempted.

However, in expressing these tentative views in the Notice we have not closed our eyes to the fact that, within the aggregate reporting categories, significant differences exist in the degree of competitiveness of the various services tariffed by AT&T. We agree with the Ad Hoc parties that utilizing our resources for oversight of those of Bell's tariffed services for which the least competition exists is important, but it is likewise important to ensure that Bell's services which face increasing competition not be unlawfully priced at levels which could stifle this development. Moreover, while we also agree that a valid, implementable system of cost allocation at a more refined level would be preferable to our announcement that we will consider tariffs on a case-by-case basis, we have found that no such system is available at present. Clearly, the need for case-by-case review of tariffs would not be lessened by prescription of a system which produces results on which we cannot rely. Indeed, the promulgation of useless or ineffective rules might impair our flexibility in handling future tariff filings which might appear to involve cross-subsidy or were otherwise anticompetitive.

37. The Networks argue that, "use of the separations process for cost allocation purposes is particularly detrimental to the determination of the cost of service for the radio and television program transmission services." [38] Because we have not prescribed methods for allocation of costs within the reporting categories, we believe that the criticism expressed by the Networks is not directed at our proposal, but, rather at AT&T's "restated FDC 7" methodology [39] which we disavow.

38. We also reject the contention that our proposal is based upon the assumption that because the private line category is small relative to the message categories, we are declining to regulate private line service. The relevance of the relative sizes of the categories is based upon the degree to which alternative private line services could be used as a source of cross-subsidy versus the degree to which message services (primarily MTS) could be used. While not denying that intraprivate line cross-subsidies, or intra-WATS cross-subsidies, represent concerns deserving attention, we believe that cross-subsidy between message and private line services has been, and continues to be, an even more serious concern. While various parties have submitted varying figures for the degree of penetration of the private line market, [40] it is quite clear that the private line services are more competitive, as a group, than message services. [41] We are continuing to take all appropriate steps to encourage the growth of competition. [42]

39. Our interim manual has focused on the potential for cross-subsidization from message service because, we believe, measures exist to deal with it. While the manual itself will not address the problem of cross-subsidy among private line services, we do not believe that any proposal for annual cost allocation is available which will adequately do so or which can allocate costs in an auditable and manageable manner to more disaggregated categories. This, and not relative size or importance, is the major reason for our failure to include a requirement for allocation to individual services in the interim manual. [43] Our concerns that individual tariffs are lawful are being addressed in other dockets and will be addressed in the further proceedings in this docket. [44]

40. Parties have also challenged our statement in the Notice that "AT&T can continue to file information from its demand translation/unit costing process in support of tariffs, with any and all improvements to the techniques it can implement." [45] They point to our expressed dissatisfaction with these methods and argue that their continued use is inconsistent with our own pronouncements. SPC, for example, states it is "completely at a loss to understand how the Commission can even suggest that methods which are unsuitable for disaggregating the costs of services for evaluating earnings ratios are nonetheless suitable to develop costs for ratemaking." [46]

41. SPC appears to mistake our statement for a finding that AT&T's submissions based on its demand translation-unit cost approach will necessarily be found to be adequate. While existing procedures have not been found to be sufficient, AT&T has indicated in this docket that it has made and continues to make improvements in its methodology. It is possible that AT&T may be able to adequately support its tariffs with such methods. Our point here is simply that we will make this determination only in the context of specific tariff filings. In addition, while we cannot prospectively approve AT&T's proposal set forth in its comments for private line tariff support on the basis of this record, AT&T is also free to file such materials as well. Here again, we will evaluate each such filing, and the adequacy of the support material, as it is made.

42. We recognize, as we did in the Notice, that all parties would prefer that this uncertainly be eliminated through a prescription of methodology (although the parties do not agree on the methodology). On the basis of the record before us, we are simply unable to grant preapproval to any proposal or to formulate a valid alternative we would be prepared to preapprove. In any event, we have great concern about whether any cost allocation mechanism can serve as a subetitute for rigorous case-by-case tariff review. At the very least, our experience with attempts to implement FDC 7 teaches us the value of reviewing the cost support for individual filings which result from a given methodology before determining that such a methodology can ensure that tariffs are just and reasonable.

43. In the Notice, we stated that each individual private line tariff would not be required to earn the interstate rate of return, but that the aggregated reporting category would have such a requirement. This statement was interpreted by some parties as a carte blanche to AT&T to set prices. To others it is tantamount to a finding that the cost of capital is not an essential part of the cost of providing a service. Neither of these positions is correct. The increased flexibility for AT&T which we proposed was the result of two factors. First, given the broad averaging techniques of the manual and our inability to prescribe or pre-approve a specific method of preparing tariff support materials, we believed a requirement that each service earn the exact interstate rate of return was inappropriate and probably unenforceable. Second, we are of the view that many private line services are interchangeable; that they are, in many instances, subject to a significant degree of actual or potential competition and that, under such circumstances, an

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[38] Networks Reply at p. 4.

[39] Networks Comments at p. 36.

[40] For 1978, Bell competitors (not including independent Telcos) are listed as having 13.8% of private line market revenues (SPC Comments at p. 22; Ad Hoc Comments at p. 13) or 12% (SBS Comments at p. 2). Bell has about 80% of total private line revenues.

[41] Total revenues percentages for all services for Bell competitors are shown as 1.8% (SPC at p. 34) or 2% (SBS at p. 3).

[42] See, e.g., our Authorization of Domestic Satellites, adopted December 4, 1980.

[43] We recognize that certain language in the Notice (e.g. para 6, 78 FCC 2d 1296) could have made this point more explicitly. The Notice did make clear, however, that any tariff filed by AT&T would be required to be just, reasonable and non-discriminatory as required by the Act and that "AT&T will continue to bear the burden of demonstrating the lawfulness of individual tariff filings." 78 FCC 2d 1315.

[44] See paras. 49–52, *infra*.

[45] 78 FCC 2d 1299.

[46] SPC Reply Comments at p. 21.

inflexible rate of return requirement for all services, including new or reconfigured ones, could stifle innovation and the satisfaction of customer demands. We hold to these general views.

44. We recognize, however, that these conditions, particularly the second, may apply to a greater or lesser extent to individual private line services. The degree of justification we will require for a deviation from the rate of return (in a given direction) will depend on the nature of a particular service. A tariff for a service for which substitutes do not exist (either from competitors or other Bell services) would require a heavy justification to be targeted to earn more than the system rate. On the other hand, a tariff for a service for which substitutes exist (from Bell or its competitors) at reasonable rates would not require the same justification (and presumably would be much less likely to be so priced). A tariff for a service which was the subject of developing competition and was earning less than the system rate would also be scrutinized closely. New AT&T tariffs for private line services, which Bell indicated in its comments will shortly be filed, must also provide understandable justification for differing rates of increase or for decreases.

45. We also intend to continue to vigorously pursue approaches other than cost allocation to prevent opportunities for cross-subsidization or the utilization of monopoly power to overprice services facing inelastic demand of customers or to preditorily price services to inhibit the development of competition and we intend to continue to seek to eliminate traditional regulation of those areas, such as customer premises equipment, in which competition can better serve the public interest than can those traditional approaches.

Inconsistency With Other Dockets

46. The interim cost allocation manual adopted today, as well as any future cost allocation manuals to be prescribed in the future, must be viewed in the context of actions we have taken to provide a regulatory framework for the development of telecommunications in an era of increasing competition. Several comments have faulted our proposal for its inability to insure that each tariffed service or service element offered by AT&T bears its "true costs," including identical return elements. We have explicitly rejected any system of regulation which will, through design or in effect, stifle the continued development of telecommunications offerings by carriers. We have, however, recognized that the current nature of the industry requires regulatory oversight both to protect against attempts to stifle competition and to protect customers of services offered on a monopoly or near monopoly basis. In order to meet these objectives, we are proceeding along several different paths in a coordinated manner. We recognize that excessive reliance cannot be placed on any one of these approaches to prevent cross-subsidization or extraction of monopoly rents. (In fact, we believe that excessive reliance on such matters as allocation of costs and related, automatic, pricing prescriptions would fail to meet our goal of encouraging innovation.) [47]

47. Rather, we have chosen a combination of approaches as the proper course to achieve our twin regulatory goals—encouraging the development of competition while protecting monopoly customers—with as much expedition and as little disruption as practicable. We have initiated a number of proceedings to move towards these goals—the elimination of barriers to resale and shared use of services; the proposed adoption of a building block private line tariff; the revision of separations procedures (in partnership with the states); the detariffing of appropriate portions of telecommunications offerings; the development of a more useful uniform system of accounts; and the elimination of unnecessary regulatory requirements, particularly for non-dominant carriers.

48. The separations-based approach contained in the interim manual is consistent with, and complements, our actions in these other dockets. Many of the negative comments submitted about the proposed manual seem to stem either from a desire, misplaced in our view, to solve all potential pricing problems in this docket or from a failure to recognize that the interim manual will build upon, not conflict with, our decisions in these companion dockets. For example, SPC complains that the manual will not develop prices for access to local distribution facilities. This is, of course, the subject of a different proceeding, in Docket 78-72. As we stated in the Notice we intend to rely herein upon the results of the *Access Charge* proceeding for the allocation of the exchange portion of interstate costs. [48] Similarly, many parties complain about the way in which plant is divided through the separations process. We have already initiated a joint Board which is currently attempting to make the necessary changes in separations. As we have already stated, such changes are not within our authority to require at this time. Changes made as a result of this joint Board will be reflected in the data filed pursuant to this manual.

49. Several commenters [49] have also expressed their views that our adoption of an interim manual along the lines proposed in the Notice would prevent, or render meaningless, our attempt to require a "building block" tariff for private line services. This perception is not only inaccurate but is based upon misconceptions about the bases for our actions in these dockets. We have indicated, both in the Notice and above, that many currently tariffed private line services are not based upon any different technical or cost characteristics of the offerings, but, instead, reflect AT&T's marketing views. Given this, and with the high degree of fungibility of plant used to offer these services, attempts to allocate costs to each service through FDC 7 methodology show no hope of becoming manageable. Moreover, requirements that each category earn the precise interstate rate of return could stifle innovation.

50. The development of a unified building block tariff for private line services containing discrete, mutually exclusive elements is not only consistent with our approach to cost allocation but, if properly implemented, is, in our view, a far superior method of protecting against unlawful discrimination against private line customers. In addition, insofar as the cost allocation manual requires the direct assignment of costs to the categories, it should be possible to utilize these costs for review of rates filed under such a building block tariff. We anticipate that the Uniform System of Accounts which is to be prescribed in Docket 78-196 will also aim at providing an auditable and useful basis for evaluating the relationship of costs to rates for the private line service elements.

51. In addition to these attempts to improve our ability to regulate rates, our

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[47] See, e.g. our discussion of the "Hinchman Proposal" at 78 FCC 2d 1330-1333.

[48] Indeed, MCI presents arguments in this proceeding directed at the legitimacy of our proposal for an access charge methodology made in CC Docket No. 78-72. It is appropriate to consider in this docket the propriety of utilizing an access charge for cost allocation purposes, as we proposed in the Notice. The specific mechanism for determining such charges is not, however, at issue in this docket, and we believe that no useful purpose would be served by consideration of the details of such a plan herein. Insofar as a lawful method of determining access charges is adopted in CC Docket No. 78-72 no party has set forth specific arguments as to why the results of such a procedure cannot lawfully or should not be used for cost allocation purposes.

[49] See, e.g. SBS comments at p. 5.

Orders in the *Second Computer Inquiry* and *Competitive Carrier Rulemaking* took significant steps to reduce traditional regulatory oversight of areas where regulation is no longer in the public interest. In following such a course we seek to bring the benefits of competition to consumers of these products and services, while, at the same time, lessening the need to apply imperfect techniques to allocate investment to a multitude of services.

52. While we hope to continue our progress in the future, we recognize that attempts to resolve all oversight matters in a single docket might well be so broad as to be doomed. Therefore, even if we were not under a mandate from the Court of Appeals to adopt a cost allocation manual with the utmost expedition, we would still feel such consolidation was inappropriate. Even without consolidation, however, we believe it will be possible, and we certainly intend to resolve all of these pending proceedings in a manner which recognizes their interdependence.

Proposed Modifications

53. AT&T has proposed several substantive (as well as a number of "housekeeping") modifications to our proposed interim cost manual. Apart from SBS (in its reply comments), AT&T is the only party to suggest modification rather than rejection of our proposal. The substantive suggestions of AT&T and of SBS are discussed below.

54. AT&T has proposed the following substantive changes to the proposed interim manual:

(1) That the requirement that each reporting category earn the prescribed interstate rate of return be modified to provide a "zone of reasonableness" around that rate;

(2) That interexchange circuit plant not be divided in accordance with separations procedures but be divided into line haul and circuit termination categories and then separately allocated on different bases;

(3) That changes be made in the Expense Section of the manual with respect to taxes, to General Department expenses, and to satellite rentals; and

(4) That a Separate Exchange Access reporting category be established.

In addition, Bell has indicated that the manual did not address the treatment of investment of all plant and has proposed modifications consistent with the proposed interim manual. SBS, in reply, also proposed certain changes to earth station investment.

55. We cannot accept AT&T's proposal that a "zone of reasonableness" be established around the prescribed interstate rate of return. Although AT&T has not suggested a specific range for this zone, it has expressed its belief that the 11.7% it calculated for WATS and the 11.1% it calculated for MTS in connection with its WATS filing should be considered as falling within this zone. Presumably, AT&T is proposing that no justification would be required for rates targeted to earn a return which differs from the prescribed interstate rate but which falls within the zone. Even apart from the theoretical problems which would flow from the prescription of such a zone (either specified or unspecified), the example chosen by AT&T demonstrates the undesirability of such an approach. Because of the small size of private line services relative to message services, the automatic allowance of rates of return above the system level for MTS and WATS might well result in the private line category continuing to earn a dramatically lower return than do message services. While we recognize the imprecision of the division of investment between message and private line, called for by the manual, it is our view that the result is to underallocate to private line services. It would aggravate, not ameliorate, this imprecision to establish a zone of reasonableness which would permit message rates to be targeted above the total interstate rate.

56. AT&T has proposed to depart from the use of separations-like techniques for allocating interexchange investment which we proposed in the Notice with respect to interstate interexchange circuit plant. AT&T proposes to treat line haul and circuit termination costs separately. The former would be allocated to message and private line categories on the basis of mileage; the latter would be allocated on the basis of a circuit count. The impact of this proposal would be to shift costs from longer haul to shorter haul services and is supported by parties who are consumers of long-haul services. It is opposed by AT&T's competitors.

57. Those approving the change note that separations ignores the difference in cost characteristics of long haul and short haul routes by allocating both line haul and circuit terminations on the basis of circuit miles. Those opposing this modification argue against making a single change in separations while retaining its broad averaging approach for other costs. They do not disagree that this proposal, in theory, is more accurate than the separations approach. SBS, for example states, "on the surface AT&T's suggestion seems a reasonable attempt to add greater cost causation to the ICM process. The problem with this suggestion is not the process so much as the result."[**] SBS notes that the effect of this change would be to shift costs from more competitive services to less competitive ones. USTS, moreover, challenges AT&T's ability to differentiate line haul from circuit termination investment in a manner which is auditable noting that accounts for such plant do not exist. AT&T has only indicated that data to implement this allocation can be developed through analyses of data used in separations and from Long Lines' records.

58. On balance we conclude that it would not be appropriate at this juncture to permit selective "corrections" (particularly those which have an unequal effect on services subject to differing degrees of competition) to the separations process based upon unidentified records. We agree with USTS that the question of departing from separations results is better left to the long-term phase of this proceeding. We also anticipate that this matter will be addressed when a Joint Board is convened to prescribe new separations procedures for interexchange plant.

59. AT&T proposes three substantive adjustments to the allocation of expenses. First, AT&T requests that net income rather than net operating revenues (as we had proposed) serve as the basis for allocating income taxes. AT&T justifies this by citing the cause and effect relationship between income and taxes. Our proposal was the result of concern about the assignment of negative taxes to private line services and the resulting assignment of tax expense to message services in excess of actual income taxes paid. A far better approach to this problem, however, is the requirement that each reporting category earn the interstate rate of return. This requirement is established herein, and AT&T has indicated its intent to file increases in private line tariffs. We are therefore making this change as requested by Bell.

60. AT&T's second suggested change would merely require that General Departments expense be allocated on the same basis as related costs. Bell argues that, because of the major restructuring of the Bell system which is beginning, there may be a number of changes in the General Departments which could require changes to the interim manual. Bell suggests that, as part of its annual cost allocation report, it would provide the specific practices used to implement the manual. We cannot accept this approach. We recognize the need to provide a

[**] SBS Reply Comments at p. 5.

mechanism for making both non-substantive and necessary changes to the interim manual and are establishing such a mechanism. The annual submission takes place six months after the close of the period to which it relates, and there is no reason why the procedures to be used to allocate General Department expenses should not be known, and the validity of any minor changes established, before and not after the submission is made.

61. The third change to the expense provisions of the proposed interim manual suggested by AT&T is the utilization of a different basis for allocating satellite rents. Bell proposes to allocate these rents based upon a count of eligible circuits rather than of circuits in use. SBS vigorously objects to this approach as being too subject to management discretion, particularly in the case of domestic satellites where eligible circuits are only defined as "longer-length circuits."[83] SBS offers a counterproposal for the allocation of satellite costs. It proposes to allocate all domestic satellite related costs, including book costs for earth station investment, on the basis of circuits in use. We will not make either change at this time. SBS' criticism of the AT&T approach appears valid. The counter-suggestion of SBS, which has not been subject to comment since it was made in reply, would require the assembling of book costs for domestic earth station investment, which are not presently found in the USOA in contrast to international satellite earth station investment, which is accounted for separately under the USOA. It is also susceptible to the same criticism as that raised against AT&T's proposal to change the allocation of interexchange investment. We do not believe that it would be desirable at this time, to modify existing USOA accounts so as to isolate one category of investment and allocate it in a detailed manner in contrast to the broad averaging of separations. We are not, therefore, changing our proposal for the allocation of satellite costs.

62. AT&T next proposes that an Exchange Access reporting category be established and that costs and revenues assigned to ENFIA be included in this category. While no party agreed with the proposed interim manual's assignment of ENFIA to the private line reporting category, the parties generally do not agree with Bell's approach either. Carriers oppose the separate reporting of ENFIA while private line users fear that the inclusion of private line access charges in a reporting category with ENFIA could present an opportunity for cross-subsidy between the various access charges.

63. We have already made clear our intention to develop equitable access charges in Docket 78-72. While we shall not prejudge our decision in the access charge proceeding herein, we believe it is appropriate to establish a separate reporting category for ENFIA access at this time. Obviously, we shall not impose a requirement that this category earn the system rate of return so long as ENFIA is provided at rates which are the product of negotiations. The establishment of appropriate rate levels for ENFIA access will result from the access charge proceeding. We do not believe that it is appropriate at this time to combine all access charges, some of which are clearly private line services, in a single reporting category.

64. Finally, AT&T was correct in noting that the proposed interim manual did not provide instructions for the allocation of certain non-exchange, non-interexchange investment. The interim manual we issue today remedies this. While we have adopted a different approach for switchboards than that contained in AT&T's comments, it is, like AT&T's suggestion, a separations-type approach. First, we require that all switching equipment be allocated on a mileage insensitive basis. Next, we adopt AT&T's suggestion that international satellite earth stations and associated depreciation and amortization accounts be allocated based on international satellite costs. A distributive ratio for MTS and WATS will be developed based on allocations of the exchange, switching equipment, international satellite, and interexchange allocations. This ratio will be used to allocate the remaining investment. While many of the allocation factors for specific accounts appear reasonable, the approach we are taking does not require such a disaggregation of investment, and we believe that the additional complexity which would result from the use of these factors is not warranted by any signficant improvements in results.

65. In addition, our proposal for allocating switching investment eliminates use of traffic units as an allocation factor for switchboards. As we learned in the WATS filing (See Volume 3-7, Book 1 of Revision to AT&T Tariff FCC No. 259), the use of this factor results in the allocation of 97.2% of total switchboard investment to MTS and only 2.8% to WATS. This reflects AT&T's assumption that practically the total demand for switchboard services should be the responsibility of the MTS users. We disagree with this assumption for the obvious reason that WATS customers require availability of switchboard services (e.g. long distance information), even though accessed through MTS, in order to make effective use of WATS. The fact that WATS users cannot access switchboard services directly reflects only the manner in which the company chooses to offer the service. Thus we are requiring that switchboards be allocated to MTS and WATS on the basis of dial equipment minutes of use (DEMs), as local dial switching equipment would be under AT&T's proposal. Toll dial switching equipment will be allocated to MTS and WATS on the basis of switched message minutes, as suggested by AT&T.

Manual

66. The interim cost allocation manual is similar to that proposed in the Notice. The only change to the investment section is the addition of specific rules for allocation of that investment not covered by the proposal, discussed above. The only substantive changes to the expense section are the changes to income tax allocation, discussed above, and a change in methods for allocating expenses associated with switchboard services. In the investment section, *supra*, we explained our rejection of the assumption that costs associated with switchboard services should be allocated almost exclusively to MTS. We view switchboard services as being demanded by WATS customers, even though the services must be accessed through MTS. Thus we are requiring that expenses associated with Accounts 624, 626, 627, 629, 630, 631 and 633 be allocated to MTS and WATS on the basis of relative subscriber line use. Public Telephone Expenses (Account 632), however, will continue to be allocated based on traffic units. We recognize that this may result in some overallocation of costs to WATS since some operating expenses (e.g. collect calls) might more appropriately be divided on a traffic unit basis while others (e.g. directory expenses) are more fairly dealt with by the SLU factor. If Bell can isolate these expenses, we believe a petition to modify the interim manual in accordance with the procedure we are establishing would be appropriate.

67. In order to eliminate any uncertainty about the proper method for allocating investment, we have included an example of the methodology to be followed, using the figures submitted by AT&T in the WATS filing. We are also providing a mechanism to permit modifications to the manual. Authority is delegated to the Chief, Common

[83] SBS Reply Comments at p. 8.

Carrier Bureau, to authorize non-substantive changes to the manual (e.g. renumbering of accounts)[53] without further proceedings. The Chief, Common Carrier Bureau, will also recommend the appropriate proceedings in response to petitions for substantive changes which are consonant with the policy we are adopting herein.

68. We stress, once again, that this manual is an interim one, which will be utilized until completion of the long-term phase of this docket. While we recognize that it is far from sophisticated, it represents the only approach which is an implementable alternative to AT&T's revised FDC 7 methodology. The results of the cost allocation manual will be the basis for determination of the rate of return of the reporting categories. Except for the ENFIA category,[54] the categories will be required to be targetted to earn the system rate of return. AT&T has already indicated its intent to file an increase in private line rates based on the results of the information compiled for the WATS filing. The WATS filing itself is being suspended and set for investigation. We believe that matters covering the implementation of a new tariff are best dealt with in the context of those proceedings. We are therefore not requiring the filing of a new WATS tariff by this Order. MTS customers, however, appear to be entitled to rates designed to earn the allowable system return in accordance with allocations done pursuant to this manual. This entitlement is overdue. We are therefore requiring that tariffs targetted to earn the system rate of return for the MTS and Private Line reporting categories be filed within four (4) months of the date of release of this Order.[54]

Other Matters

69. We turn to consideration of some miscellaneous points raised by the parties.

A. AHMA has requested that this proceeding be consolidated with the WATS tariff filing (transmittal No. 13555) because of the interdependence of the two proceedings. AHMA specifically indicates that decisions reached in this docket must affect our decision on the lawfulness of the proposed WATS tariff. While we recognize that there is a relationship between the two matters, such a relationship will exist between every tariff to be filed by AT&T and the annual reports filed pursuant to the cost allocation manual. As we have indicated both in the Notice and herein, the promulgation of this manual does not constitute a repeal of § 61.38 of our Regulations, and this section continues to govern the justification of tariffs. Furthermore, we are today suspending the WATS tariff and setting it for an investigation that should be conducted independently of further proceedings in this docket. While we are addressing both matters today, and doing so in a manner which recognizes their relationship, AHMA's motion is denied.

B. ARINC argues that the study conducted for it by Economics and Technology, Inc. (ETI) and submitted by ARINC with its reply comments to the Notice of Inquiry in this docket was not considered by us and that this constitutes a denial of due process. The ETI study was considered to be an integral part of the ARINC comments and hence was not listed separately in either the body of the Notice or in the Appendix summarizing the comments. The proposal contained in the ETI report was to improve the FDC 7 process through requiring the allocation of costs to more disaggregated elements to generate more usable information. It also called for the assignment of "additional capacity costs" more accurately than the present FDC 7 methodology, and for improvement of "trial balancing" through detailed procedures which identify the subsidy element in separations. This type of approach was considered and rejected as a viable short term approach in the Notice.

C. Alascom's filing addresses the question of the applicability or precedential effect of the determinations in this docket to itself. This interim manual does not constitute a prejudgment of any other issue before us or before the recently convened Joint Board. It is solely directed to the procedures to be followed by AT&T in allocating costs and is not binding on Alascom.

D. Several parties have argued that the Notice was violative of both the Administrative Procedure Act and Section 205 of the Communications Act because it required AT&T to file interim WATS rates based on the proposed manual before parties had an opportunity to comment upon the proposal contained in the Notice. We made clear in the Notice that this action was required by the June 11, 1980, Order of the Court of Appeals for the District of Columbia in *MCI Telecommunications, Inc.* v. *FCC*, Docket No. 79-118, an order by which we were bound. A failure on our part to require the filing of interim WATS rates based on the proposed interim manual would have been inconsistent with the Court of Appeals' Order. Moreover, because of our actions suspending the proposed WATS rates and requiring rates to be filed based on, *inter alia*, the cost allocation procedures of the interim manual contained herein, as a final order, the argument that due process was denied is not only incorrect but moot as well.

70. Parties differ on the potential usefulness of the working sessions on tariff support procedures to be used while the interim manual is in force. While we cannot be certain that these sessions will be helpful, neither are we prepared to say that we are sure they will not contribute to progress in this area. We are therefore directing the Chief, Common Carrier Bureau, to convene and to conduct such sessions in the near future, after public notice. The Chief, Common Carrier Bureau, is delegated authority to conduct the sessions for as long and in such a manner as he deems proper and to provide for discovery or other matters ancillary to these sessions which he may determine are warranted. The Chief, Common Carrier Bureau, is also authorized to require the filing of specific cost support materials, although such orders shall in no way bind the Commission in the review of tariffs.

Conclusion

71. We believe that the interim manual adopted here today satisfies—at least on an initial basis—our responsibility to adopt a workable manual for the allocation of costs by AT&T. That responsibility was defined by the Court of Appeals in *Aeronautical Radio, Inc.* v. *FCC* as making a reasonable selection from the available alternatives. Because of the Order of the Court in *MCI Telecommunications, Inc.* v. *FCC*, as well as the need to replace AT&T's revised FDC 7 methodology which has failed to produce lawful rates, we are obligated to make such a determination on an expedited schedule. We therefore determined that the most appropriate step was to adopt an interim manual which represented both an improvement over the existing FDC 7 methodology and the best proposal which could be implemented at the present time. We indicated that we would explore long range approaches to cost allocation—approaches which

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[53] We would not view such changes as constituting rules under the Administrative Procedure Act, 5 U.S.C. 551. In addition, while such changes will be published in the Federal Register, we do not believe that notice and public procedure thereon are necessary to the public interest.

[54] See para 66, *supra*.

[54] We expect to issue a new rate of return prescription in the near future in Docket No. 79-05. If the adoption renders this four month limit on the filing of new rates impracticable we shall modify the time accordingly.

might, for example, require information not presently existing—in further proceedings in this docket. We intend to issue a Supplemental Notice of Inquiry in this docket addressing these questions in the near future. This Supplemental Notice will include a schedule for the submission of comments. We will therefore not require the filing of comments on long term approaches in accordance with the schedule contained in the Notice.

72. While many of the parties who challenged the reliability of the data submitted for the past several years under the FDC 7 approach criticized our proposed interim manual, they did not attempt to present an alternative capable of implementation at this time. Indeed parties have argued that we should abandon our proposed interim manual and develop a better proposal without even attempting to demonstrate that the *status quo* is preferable to the interim cost allocation manual. In this regard we believe the statement of Justice Brandeis in *Groesbeck* v. *Duluth SS&A.R. Co.* 250 U.S. 607 (1919) is still appropriate. He stated that,

> experience teaches us that it is much easier to reject formulas (for the allocation of common costs) as being misleading than to find one apparently adequate.[25]

73. Suggestions such as that of SBS, endorsed by MCI, that cost allocation be based on the "building block" elements contemplated in Docket 79-246 are simply not relevant to the immediate problems we face. While this is a legitimate position for consideration in the long term phase of this docket, it is clearly of no help at the present time since the question of what constitutes the proper "building blocks" is in dispute in that docket and no decision has yet been issued.

74. Similarly, USTS' proposal for a 10 step approach to cost manual development including development of "cost allocations computer program and data base" subject to comment by all parties can be considered in the long-term phase of this proceeding. The question we face today however is whether the existing system of cost allocation, some other system of cost allocation before us, or our interim manual (or no manual) should be utilized pending development of a longer-term approach which all parties feel is necessary and to which we are committed. This question we address today, and this is the only question to which we find the interim manual adopted herein is the preferable answer.

[25] 250 U.S. 607, 614-15.

75. ARINC requests that we "withdraw the proposed interim manual and * * * recommit (ourselves) to the purpose of this proceeding—to prescribe a set of rules and procedures to be followed in allocating costs of service in accordance with the broad principles of Docket 18128".[26] ARINC neither demonstrates that this goal can be achieved at present nor responds to our criticisms of the prior methodologies. Although the effect of such an action would be to continue use of a system we have found unacceptable for the reasons set forth in the Notice, ARINC only requests that we prescribe an FDC 7 manual in accordance with its earlier comments in this docket, an approach we have already rejected.

76. We still recognize that our interim manual is both less ambitious than what we and others may have anticipated in this proceeding and far from perfect. We continue to believe that it is the most reasonable and indeed the only possible approach for the immediate future. Its issuance does not prejudge any of the issues to be explored in the long-term phase of this proceeding. Our experience in reviewing the recent WATS filing which included data based on the manual has both indicated the need for certain clarifications and confirmed our belief that the interim manual is more comprehensible, auditable, and manageable than the AT&T system it replaces.

77. Accordingly, pursuant to the provisions of Sections 1, 4 (i) and (j), 201–205, and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154 (i) and (j), 201–205, and 403 and Section 553 of the Administrative Procedures Act, 5 U.S.C. 553 it is ordered that the Interim Cost Allocation Manual attached as Appendix A is adopted.

78. It is further ordered, That within four (4) months of the date of release of this Order, AT&T shall file revised rate levels targeted to produce the prescribed interstate rate of return for the private line and MTS reporting categories established herein. AT&T shall file a reallocation of costs allocated to the WATS category within one (1) month of the date of release of this Order.

79. It is further ordered, that the Secretary shall cause this Report and Order to be published in the Federal Register.

Federal Communications Commission.
William J. Tricarico,
Secretary.

Appendix A—Cost Allocation Manual

This manual contains general instructions for allocating the annual investment and expense costs to the following reporting categories for AT&T.

Exchange Network Facilities for Interstate Access (ENFIA)
Private Line
Message Telecommunications Service (MTS)
Outward WATS and 800 Service (collectively, WATS)

For each of the reporting categories, an earnings ratio will be developed according to this formula:

$$\text{Earnings Ratio} = \frac{\text{Revenues minus (expenses and taxes)}}{\text{Gross investment minus reserves}}$$

These earnings ratios, plus supporting documents, will be filed with the Commission during June following the reporting year ("central submission"). These earnings ratios will be subject to final interpretation by the Commission.

The process for making changes to this manual shall be determined by the Chief, Common Carrier Bureau. Minor changes (such as changes in account names) may be made providing these changes are approved by the Chief, Common Carrier Bureau prior to filing of the central submission. Substantive changes, which may be requested by any party, will require appropriate procedures.

I. Investments and Reserves

Instructions in this section are to be used to allocate interstate investments and reserves to the reporting categories.

[26] ARINC reply comments at p. 3.

A. Bell Operating Companies (BOCs)

The final output of the Jurisdictional Separations Process (JSP) will be used as the definition of total BOC interstate private line investment and reserves and total BOC interstate message investment and reserves.[1] Investment and reserve amounts for ENFIA and other facilities provided to OCCs are derived from JSP data. Message investment will be grouped into exchange, interexchange

[1] The primary source for this information is currently provided by AT&T's Interstate Settlement Information System (ISIS) report. JSP results are adjusted for changes required in Docket 18128 Phase II. Additional adjustments are currently made (but subject to final determination by the Joint Board) for facilities provided to Other Common Carriers under contractual agreement and for facilities used to provide ENFIA.

and "other" categories, and allocated to MTS and WATS according to instructions described below. Those portions of exchange and interexchange investment associated with the switching function (Toll Dial Switching, Switchboards and Local Dial Switching) will be allocated separately as described below.

B. Long Lines Department

Using JSP principles, and Long Lines accounting records, investment and reserves for the Long Lines Department will be divided between private line and message categories. Message investments will be grouped into exchange, interexchange and "other" categories, to be used in further allocation to MTS and WATS. As with BOC investment, exchange and interexchange investment associated with the switching function will be allocated separately as described below.

C. Reporting Categories

ENFIA

This category will include investments and reserves for ENFIA. Investments and reserves are developed at this time from JSP data. Further delineation of service categories to be included in this reporting category, (to be called Exchange Access in the future) and of the definition of investment used for exchange access, will result from CC Docket No. 78-72.

Private Line

Private Line investments and reserves from the BOCs and Long Lines Department are to be added together to establish total private line investment and reserve amounts.

MTS and WATS

Investment and reserve amounts for the BOC and Long Lines message category, as developed above, will be added together and then allocated to MTS and WATS. Message telephone plant (defined here as Account 100.1 less private line investment, land, buildings, furniture and office equipment, and vehicles and other work equipment) will be identified as either exchange or interexchange. Toll Dial Switching, Switchboard and Local Dial Switching investment associated with exchange and interexchange will also be separately identified. Exchange plant amounts will be allocated to MTS and WATS on the basis of relative subscriber line minutes of use.[2] Interexchange plant amounts will be allocated between MTS and WATS based on network message minute miles. Toll Dial Switching investment will be allocated on the basis of switched message-minutes. Switchboards and Local Dial Switching investment will be allocated on the basis of dial equipment minutes. International satellite associated earth station investment (Account 100.5) and its associated depreciation and amortization account (Account 175) will be allocated on the basis of international satellite rents.

Exchange, interexchange, international satellite and switching telephone plant developed separately for MTS and WATS will be added together to form total message telephone plant amounts for MTS and WATS. The percentage which MTS and WATS telephone plant each makes of total message telephone plant (as defined above) will be used as a distributive ratio to allocate all remaining investment ("other") and reserve accounts between MTS and WATS.[3]

II. Expenses and Income—Description of FDC Methodologies

Procedures in this section are to be used to distribute all interstate expenses (600 series accounts) and income to the reporting categories. The term "attribution" denotes the existence of a direct link between the expense account and the reporting category. The term "allocation" means that a direct link does not exist, and that a method was chosen to approximate the causation of the expense by reporting category. The term "assigned costs" refers to the sum of all expenses and return and taxes on investment, other than unattributable investment and expense amounts.

[2] In developing the count of minutes of use for the allocation of exchange "non-traffic sensitive" plant, both the interstate originating and terminating WATS minutes of use shall be counted.

[3] Included in this remaining investment and reserves portions are the following accounts: Land and Buildings; Furniture and Office Equipment; Vehicles and Other Work Equipment; Telephone Plant under Construction; Property Held For Future Telephone Use; Satellite Earth Station Investment; Materials and Supplies; Customer Deposits; Organization, Franchise and Patent Rights; Depreciation Reserve and Accumulated Deferred Income Tax Reserve; Amortization Reserve; Earth Station Depreciation and Amortization Reserve; and, Cash Working Capital.

Expenses and Revenues—FDC Methods

Operating expense accounts		Allocation and attribution procedures
602.1-602.8	Repairs of Outside Plant (OSP)	Allocate to reporting categories based on associated OSP in service (Accounts 214 through 244). Allocate maintenance of overseas facilities to reporting categories based on the number of associated circuits in service.
603-01	Subscriber Line Testing	Subdivides into 3 parts (Station, OSP, and COE) in proportion to troubles found. (1) Allocate the station portion to reporting categories in proportion to station repair expense (see 603-01). (2) Allocate the OSP portion to reporting categories based on exchange OSP investment. (3) Allocate the COE portion to reporting categories based on the exchange COE investment.
603-02	Service Order Testing	Allocate to the public switched network (PSN) and private line reporting categories in proportion to service order activity subsequent to the initial installation. Then attribute the total amount for PSN services to the PSN reporting categories based on the distribution of exchange outside plant and exchange central office equipment investment.
603-04	Trunk Testing	Attribute circuit testing to reporting categories using an analysis of reported testing hours. Overseas testing allocated to reporting categories based on number of circuits in service. Allocate facilities testing to reporting categories based on associated interexchange (IX) plant in service.
604	COE Repairs	Attribute the Long Lines Service Engineering portions of Account 604 directly to the private line reporting category. Attribute 4-4ESS international generic program costs directly to MTS. Allocate the circuit rearrangements and change portions of Account 604-07 and Account 604-08 (less Long Lines Service Engineering) to reporting categories based on number of IX circuit sections. Allocate overseas facility terminal equipment maintenance to reporting categories based on associated number of circuits. Allocate the remainder of Account 604 to reporting categories based on associated COE plant in service.
605	Station Equipment Maintenance	Attribute Associated Company 605-01 (PI) and 605-07 (M) separately to reporting categories using the results of a continuing sample of installation and repair persons. These people will report their time (construction, removal, rearrangements and changes and repair) to reporting categories. Until such reported data are available allocate to reporting categories based on station equipment plant in service. Allocate Associated Company 605-04 (shop repairs) to reporting categories based on the station equipment plant in service. Allocate Long Lines Account 605 to reporting categories based on Long Lines station equipment plant in service (Accounts 231, 232, and 234).
606	Buildings and Grounds	Allocate to reporting categories based on investment in buildings (less general office and garage and storeroom space).
610	Maintaining Transmission Power	Allocate to reporting categories based on C.3E plant (Account 281) separately for domestic and overseas. Allocate to reporting categories based on combined Accounts 602 through 606 and 610.
608	Depreciation	Attribute to reporting categories based on the depreciable classes of plant in service using composite Associated Company and Long Lines depreciation rates. (Ocean cable depreciation is allocated separately based on the ocean plant in service in each category.)
609	Extraordinary Retirements	Attribute to reporting categories based on special analysis of accounting records.
613	Amortization of Intangible Property	Allocate to reporting categories based on assigned costs.
614	Amortization of Plant Acquisition Adjustments	Attribute to reporting categories based on special analysis of accounting records.

Expenses and Revenues—FCC Methods

Operating expense accounts	Allocation and attribution procedures
NOTE.—Accounts 621 through 623 are treated separately for the Associated Companies and Long Lines; except accounts allocated based on investment.	
621-01 General Traffic Supervision (Except Accounts 621-311 and 316).	Allocate to reporting categories based on Account 624 less 624-02 and 624-25.
621-311/316/05, 622-02/05, 624-05/626-02, 631-30, and 631-46 Business Services.	Attribute to reporting categories using data from a Business Service time reporting system.
621-03, 624-22, 626-07, and 631-07/47 Network Administration.	Allocate Accounts 621-491, 624-222, 624-422, and 624-622 (switching and line and number administration) to reporting categories based on toll dial switching equipment plant in service. Allocate Accounts 621-231 and 624-622 (traffic load data administration) to reporting categories based on toll dial switching and switched services IX central office equipment and CSP plant in service, excluding dedicated overseas IX central office equipment and outside plant. Allocate Accounts 624-722 (Trunk Administration) to reporting categories based on switched services IX central office equipment plant and CSP plant in service, excluding dedicated overseas IX central office equipment and outside plant. Allocate Accounts 621-691 (network administration staff) to reporting categories based on the combined attribution of Accounts 624-222, -622, and <-722. Allocate the remainder (training and other staff) of Account 621-30 based on the combined attribution of Accounts 621-231, -691, and -491. Allocate the remainder (supervision, training and other) of Accounts 624-22, 626-07, 691-07, and 631-47 based on the combined attribution of Accounts 624-222, -422, -622, and -722.
625-01 Service Observing	Allocate to reporting categories based on Account 624 less 624-22, and 624-25.
624 (Except Accounts 624-22 and 624-25) Operators Wages less Network Administration and Business Services.	Allocate Associated Company expenses to MTS and WATS on the basis of message minute miles. Allocate Long Lines expenses directly to private line and message. Allocate message amounts to MTS and WATS on the basis of relative subscriber line minutes of use.
626 Rest and Lunch Rooms	Attribute to reporting categories based on Account 624 less 624-22, and 624-25. (Network Administration and Business Services portions of these accounts are treated above.)
627 Operator's Employment and Training	Same as Account 626.
629 less -07 and -08 CO Stationery and Printing.	Same as Account 626.
630 CO House Service	Same as Account 626.
631 less -07, -08, -47, and -48 Miscellaneous CO Expenses.	Same as Account 626.
632 Public Telephone Expenses	Allocate Associated Company expenses to reporting categories based on traffic units. Attribute Long Lines expenses directly to MTS and Private Line.
635 Other	Same as Account 626.
640 General Commercial Administration	Allocate Associated Company expenses to reporting categories based on Associated Company Account 646. Attribute Long Lines Product Management expense directly to reporting categories. Remainder of Long Line Account 640 unattributable, allocate to service categories on Long Lines Account 646.
642 Advertising	Attribute Residence Sales, Long Distance Residence Sales and Long Distance Business sales to MTS. Business sales unattributable, allocate to reporting categories based on assigned costs. Remainder unattributable, allocate to reporting categories based on assigned costs.
643 Sales	Attribute to reporting categories using the results from a sales time reporting system.
644 Connecting Company Relations	Unattributable, allocate to reporting categories based on attribution of Independent Company Settlements.
645 Local Commercial Operations	Attribute Associated Company coin telephone collection (645-161/261) directly to MTS. Attribute remainder of Associated Company expenses to reporting categories using results of an analysis of commercial work measurement plan. Attribute Long Lines expenses to reporting categories using results from a sales time reporting system.
648 Public Telephone Commission	Attribute to MTS.
649 Directory	Attribute to MTS and WATS based on a count of MTS and Outward WATS messages.
650 Other Commercial Expenses	Allocate Associated Company expenses to reporting categories based on Associated Company Account 646. Long Lines expenses unattributable, allocate based on Long Lines Account 643.
661 Executive Department	Distribute to reporting categories based on assigned costs.
662 Accounting Department	Attribute Revenue Accounting to reporting categories based on analysis of work hours and functions from Associated Company Cost Analysis Measurement Plan (CAMP) and analysis of Long Lines Revenues Accounting Offices. Remainder unattributable, allocate to reporting categories based on assigned costs.
663 Treasury Department	Allocate to reporting categories based on assigned plant in service.
664 Law Department	Attribute overseas legal expenses to overseas services based on analysis of records. Attribute outside legal consultant fees and associated costs based on analysis of AT&T Form M Schedule 30. Allocate remainder to reporting categories based on assigned costs.
665 Other General Office Salaries and Expenses.	Allocate Personnel, Account 665-05, to reporting categories based on Maintenance, Traffic, Commercial and Revenue Accounting salaries. Allocate Long Lines Service Engineering expenses (Portion of 665-05) to the private line category. Attribute Account 665-05, Customer Services, to categories based on reported hours. Attribute Account 665-149, Central Office Planning and Engineering, based on toll dial switching equipment plant in service. Remainder unattributable, allocate to reporting categories based on assigned plant in service.
666-668 Insurance and Accidents and Damages.	Unattributable, allocate to reporting categories based on plant in service.

Expenses and Revenues—FDC Methods

Operating expense accounts	Allocation and attribution procedures
670 Earth Station Expenses	Allocate to reporting categories based on Account 100.5.
671 Operating Rents	Allocate circuit and miscellaneous rents to reporting categories based on interexchange OSP and circuit equipment and toll switching equipment plant in service.
	Allocate Long Lines rents paid to affiliates to reporting categories based on number of circuits.
	Attribute international satellite rents incurred for services that can only be provided on satellite facilities directly to reporting categories. Allocate remaining international satellite rents to reporting categories based on total international voice-grade circuits in use.
	Allocate domestic satellite rents to reporting categories based on domestic satellite circuits in use.
	Allocate building space rents to reporting categories based on the combined Accounts 642, 645, and Revenue Accounting portion of 692.
672 Relief and Pensions	Allocate to reporting categories based on Maintenance, Traffic, Commercial, and Revenue Accounting Salaries.
673 Telephone Franchise Requirement (dr)	Allocate based on the total investment in Account 100.1.
674 (and Long Lines Account 691) General Services and Licenses.	Allocate to reporting categories on bases consistent with the nature of the items of expense.
675 Other Expenses	Allocate to reporting categories based on plant in service.
676 Telephone Franchise Requirements (cr)	Allocate based on the total investment in Account 100.1.
677 Expenses Charged Construction (cb)	Same as Account 675.

Income Accounts—FDC Methods Subsection

Income accounts	Allocation and attribution procedures
Gross Operating Revenues (Accounts 500-516, 534).	Directly assign to reporting categories accounting records.
Earth Station Revenue (Account 522)	Allocate to reporting categories based on the allocation of international satellite rent expense.
Other Operating Revenues (Account 536)	Allocate based on gross operating revenues.
Uncollectibles (Account 530)	Attribute to reporting categories based on an analysis of accounting records.
Independent Company Settlements	Allocate based on the revenue account charged.
LL Settlements except Division of Revenue	Attribute based on the revenue account charged.
Miscellaneous Income Charges (Account 523)	Allocate based on plant in service (Account 100.1).
Interest on Customer Deposits (Account 336)	Allocate based on the total investment in Account 100.1

Taxes—FDC Methods

Type of tax— Allocation procedures	
Gross Receipts Taxes	Allocate based on the allocation of reporting category revenues.
Social Security Taxes (Account 307-08)	Allocate based on the apportionment of Maintenance, Traffic, Commercial, and Revenue Accounting salaries.
Ad Valorem Taxes (Account 307-01)	Allocate based on the allocation of plant in service (Account 100.1).
Income Adjustments for Income Tax Determination.	Allocate depreciation of capitalized items, Relief and Pensions, and Social Security Taxes capitalized based on plant in service (Account 100.1).
	Allocate Operating Fixed Charges based on the allocation of net investment.
State and Local Income Taxes (Account 307-09).	Allocate the actual tax incurred based on the state and local taxable income for each reporting category (net revenue less expenses, income charges, taxes excluding Federal Income Taxes, and income adjustments).
Amortization of Investment Credits	Allocate based on the allocation of plant in service (Account 100.1).
Federal Income Tax	Allocate to reporting categories by multiplying the statutory rate times the Federal taxable income for each reporting category (net revenue less expenses, income charges, other taxes, and income adjustments).

General Services and Licenses (Account 674 and LL Account 691)

Expense categories	Allocation basis
(1) Bell Telephone Laboratories Billing for Research and Systems Engineering:	
(A) Switching:	
(1) Business Communications Systems	PBX plant in service (Account 234).
(2) All other	COE switching plant in service.
(B) Transmission:	
(1) Ocean Cable	Ocean cable and associated COE Plant in service.
(2) Satellite Communications	Dowest rents.
(3) Waveguide Systems	IX plant in service.
(4) Other toll transmission	IX plant in service.
(5) Exchange transmission	Exchange plant in service.
(C) Station	Station equipment plant in service (Accounts 231 and 232).
(D) Outside plant	OSP in service, less ocean cable.
(E) General:	
(1) BIS	Assigned costs.
(2) Other	Assigned costs.
(F) Associated Work	Assigned costs.
(2) Network Planning and Design:	
(A) Central Office Planning and Design	COE plant in service.
(B) Distribution Services Planning and Design	Exchange OSP in service.
(C) Toll Transmission and Design	IX OSP+IX COE plant in service, excluding Overseas.
(D) Operator Services Planning and Design	Dial Equipment Minutes.
(E) All other	Plant in service.
(3) Network Services:	
(A) Central Office Operations and Engineering	COE plant in service.
(B) Distribution Operations and Engineering	Exchange OSP in service.
(C) Toll Transmission Operations and Engineering	IX OSP+IX COE plant in service, excluding Overseas.

General Services and Licenses (Account 674 and I.I. Account 691)

Expense categories	Allocation basis
(D) Operator Services Operations and Engineering	Dial Equipment Minutes.
(E) All other	Plant in service.
(4) Residence Marketing:	
(A) Customer Facilities	Station equipment plant in service (Accounts 231, 232, and 234).
(B) Customer Service	Accounts 640 and 645.
(5) Information Systems	Assigned costs.
(6) Directory & Public Services	Count of MTS and Outward Wats messages.
(7) Staff	Assigned costs.
(8) Business Marketing	Accounts 640 and 645.
(9) Business Services:	
(A) Business Services Strategy Division:	
(1) Customer Facilities	Station equipment plant in service (Accounts 231, 232, and 234).
(2) Customer Assistance	Account 640.
(B) Business Services Operations Division:	
(1) Customer Facilities	Station equipment plant in service (Accounts 231, 232, and 234).
(1) Customer Assistance	Account 640.
(10) Planning and Administration D	Assigned costs.
(11) Public Relations and Employee Information	Assigned costs.
(12) Human Resources	Maintenance, Traffic, Commercial, and Revenue Accounting salaries, combined.
(13) Labor Relations	Maintenance, Traffic, Commercial, and Revenue Accounting salaries, combined.
(14) Comptrollers	Assigned costs.
(15) Treasury	Plant in service.
(16) Tariffs and Costs	Gross revenues.
(17) Public Affairs	Assigned costs.
(18) State Regulatory Matters	Assigned costs.
(19) Federal Regulatory Matters	Assigned costs.
(20) Legal:	
(A) General Legal and Tax	Assigned costs.
(B) Patent Matters	Bell Laboratories Billing (see Item 1 above).
(C) Antitrust and MCI Docket	Assigned costs.
(21) Secretary	Assigned costs.
(22) Administrative Services	Assigned costs.
(23) Executive	Assigned costs.
(24) Operations Planning	Assigned costs.
(25) Provision for Service Pensions and Death Benefits	Results of 2 through 24 above.
(26) Other expenses	Results of 2 through 24 above.
(27) Taxes other than F.I.T.	Results of 2 through 24 above.
(28) Return Requirement (including related F.I.T. on net investment in the General Departments Account 101.1).	Results of 1 through 27 above.

Appendix B

Appendix B (SUMMARY OF COMMENTS) may be inspected on file in the Dockets Branch, Room 239, 1919 M St., NW., Washington, D.C. 20554.

Appendix C

Reporting Category Investment Calculations

This appendix provides an example of the proper calculation of reporting category investment amounts. The purpose of this appendix is to illustrate the methodology to be used to develop investment amounts utilizing the data submitted in AT&T's Revision to Wide Area Telecommunications Services, AT&T Tariff FCC No. 259, September 15, 1980. The Long Lines results, along with private line and message amounts for the Bell Operating Companies (which are provided by jurisdictional Separations), form the total amounts for the interstate private line and message categories. We show only Account 100.1 private line investments here. The remainder of the calculations, which is the focus of this Appendix, develope the split of message investment between MTS and WATS. Reference pages come from AT&T's WATS filing.

Staff Calculations of MTS and WATS Rate Base

[In thousands of dollars]

		Source/explanation [1]
I. Investment Aggregates		
Total 100.1	$35,841,687	Vol. 3-7, pp. 1-12.
Less Private Line 100.1	(5,990,146)	Vol. 3-7, pp. 1-12.
Total MSG 100.1	29,851,541	
Less nonplant 100.1 [2]	(4,394,320)	Vol. 3-7, pp. 5-14 and 5-25.
MSG plant 100.1	25,597,221	Final.
International Earth station 100.5	18,209	Vol. 3-7, pp. 5-12 and 5-23.
Total	25,615,430	

[1] Investment data were submitted by AT&T in its proposed revision to WATS (filed September 15, 1980).
[2] Nonplant is provided by lines 25 through 28 on pages 5-14 and 5-25. These amounts are multiplied by .998008857 to make the adjustment from preliminary to final data.

Investment data for message exchange and interexchange categories are derived from volume 3-7 (Book 2) pages 3-14 and 3-65. These figures are preliminary and are adjusted by .999999997 to account for AT&T's recent MR1 process (See Section 7 Book 2).

	Preliminary	Final
Exchange:		
Exchange	$12,779,949	$12,771,049
Switchboards+local dial switching	3,002,691	3,001,794
Interexchange:		
Interexchange	7,291,844	7,256,991
Toll dial switching	2,529,039	2,527,447
Total MSO	25,613,523	25,557,321
International Earth Station Investment		18,099
Total		25,615,420

II. Message Plant (100.1) Allocation to MTS and WATS:

A. Exchange:	
(1) Exchange plant (allocate on relative SLU): [1]	
MTS: 12,771,047 (.771) =	99,049,479
WATS: 12,771,049 (.229) =	2,924,570
Total	12,771,049
(2) Switchboards and local dial switching (DEM): [1]	
MTS: 3,001,794 (.782) =	2,347,379
WATS: 3,001,794 (.218) =	654,395
Total	3,001,794
B. Interexchange:	
(1) Interexchange plant (MMM):[1]	
MTS: 7,256,991 (.811) =	5,817,035
WATS: 7,256,991 (.189) =	1,370,155
Total	7,256,991
(2) Toll dial switching (switched MM):[1]	
MTS: 2,527,447 (.802) =	2,027,012
WATS: 2,527,447 (.198) =	500,435
Total	2,527,447

[1] See Volume 3-7, Book 1, Section 4 for source of SLU, DEM, MMM, and Switched MM.

	International satellite rent expense [11]
III. International Satellite Earth Stations:	
A. Earth Station Investment—Account 100.6:	
MTS	$18,099
WATS	0
Total	18,099
B. Depreciation and Amortization Reserve—Account 175 (see Section VI below):	
MTS	11,544
WATS	4
Total	11,548

		Composite ratios (percent)
IV. Summary of Message Telephone Plant (100.1) and International Satellite Earth Station Investment:		
MTS	$20,138,908	78.7
WATS	5,456,922	21.3
Total	25,615,420	100.0
V. Remaining Investment ("Other"):		
A. Nonplant 100.1 (Composite Ratios from II C above):		
MTS: 4,264,320 (.787) =		$3,434,725
WATS: 4,264,320 (.213) =		829,699
Total:		4,264,320
B. Remaining rate base accounts [2] (Composite ratios from II C above):		
MTS: 695,399 (.787) =		551,031
WATS: 695,399 (.213) =		104,338
Total		695,399

VI. Depreciation and amortization Reserve[3] (Composite ratios from II C above):

		International satellite	Total
MTS: 8,818,164 (.787)=	$6,939,895+	$11,544=	$6,951,439
WATS: 8,818,164 (.179)=	1,579,269+	4=	1,579,273
Total	8,818,164	11,548	8,829,712

	MTS	WATS
VII. Final Summary:		
100.1 Plant-in-service	30,153,906	5,488,522
100.1 Nonplant	3,434,720	929,600
Remaining rate base	681,061	164,356
Total investment	34,272,688	6,572,480
Less reserves	(6,951,439)	(1,579,273)
Net investment	17,321,250	4,994,177

[1] See Vol. 3-7, Book 1, pages 1-14 and 1-15.
[2] See Vol. 3-7, Book 2, pp. 5-12 and 5-23.
[3] See Vol. 3-7, Book 2, pp. 5-21 and 5-22.

BILLING CODE 6712-01-M

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Investment and Reserves

[FR Doc. 81-2127 Filed 1-21-

BILLING CODE 6712-01-C

Appendix D

Investments and Reserves Flowchart

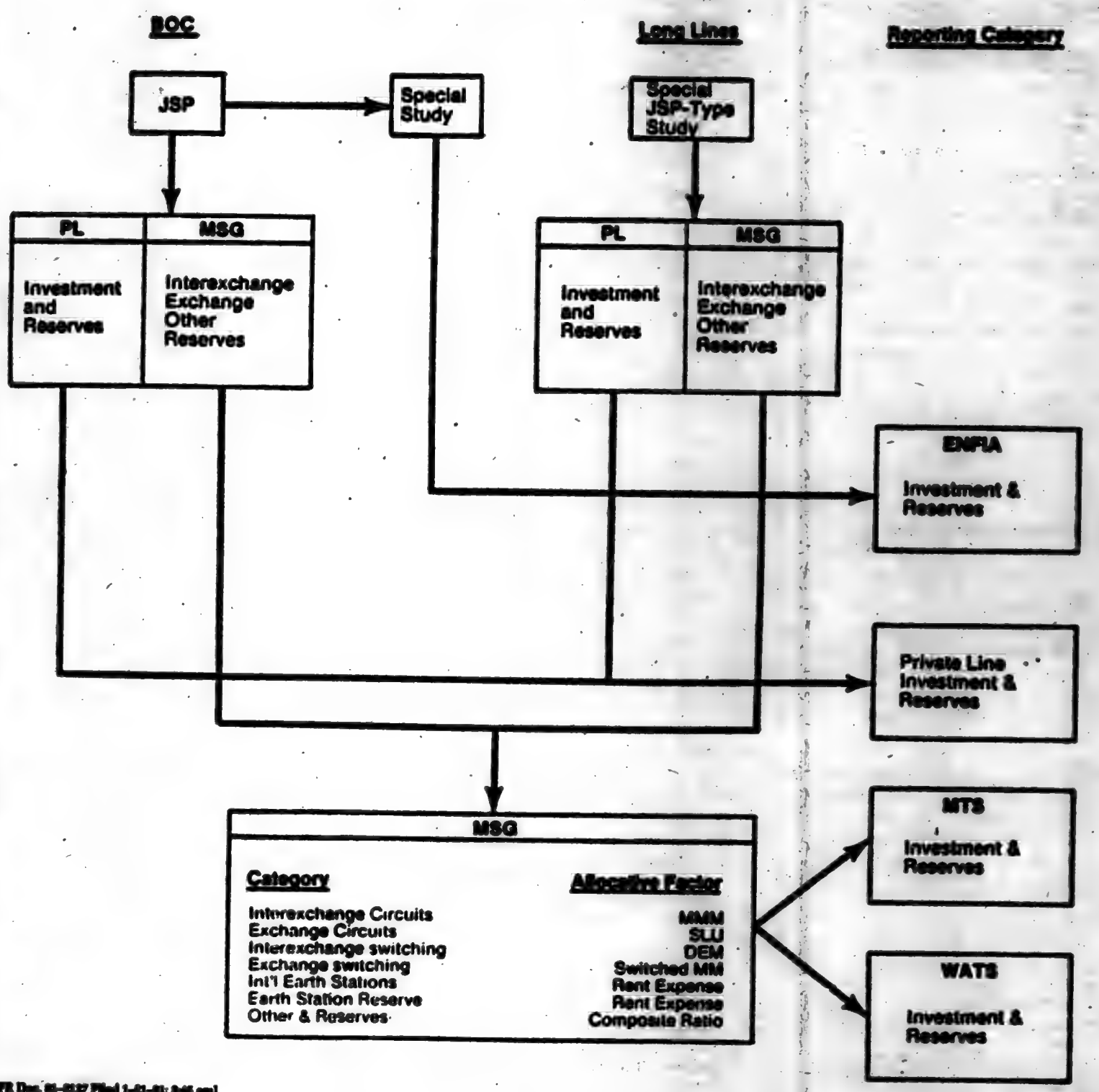

[FR Doc. 81-2127 Filed 1-21-81; 8:45 am]
BILLING CODE 6712-01-C

47 CFR PART 73

[BC Docket No. 80-179; RM-3417]

FM Broadcast Station West Salem, Wisconsin; Proposed Changes in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Final rule (Report and Order).

SUMMARY: This action dismisses a petition filed by Good News Radio, Inc., seeking the assignment of FM channel 269A to West Salem, Wisconsin. The rule making is dismissed due to a lack of expressed interest in the assignment.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Mark N. Lipp, Broadcast Bureau (202) 632-7792.

SUPPLEMENTARY INFORMATION:

In the matter of amendment of § 73.202(b) Table of Assignments, FM Broadcast Stations. (West Salem, Wisconsin); Report and Order (Proceeding Terminated).

Adopted: January 6, 1981.

Released: January 12, 1981.

By the Chief, Policy and Rules Division.

1. Before the Commission is a *Notice of Proposed Rulemaking*, 45 FR 29872, adopted April 16, 1980 in response to a petition from Good News Radio, Inc. ("Good News"), which proposed the assignment of FM Channel 269A to West Salem, Wisconsin, as its second FM assignment. Good News previously filed comments stating that it is no longer interested in the assignment and asking that the Commission dismiss the rulemaking. Comments were also submitted by Everybody's Mood, Inc. ("EMI"), an applicant for a first FM station on Channel 261A in West Salem. EMI's original comments supported the assignment, but its subsequent comments indicate that EMI, like Good News, is now disinterested in the proposed assignment. EMI has become the only applicant on Channel 261A at West Salem and therefore could not apply for Channel 269A if assigned.

2. According to the Commission's procedures, a showing of continuing interest is required before a channel will be assigned. Both parties initially indicating an interest in the assignment at West Salem have now disavowed such interest. The period for filing comments in this proceeding has expired and no other party has expressed an interest in the Channel 269A assignment to West Salem.

3. In view of the foregoing, it is ordered, that the petition of Good News Radio, Inc. proposing the assignment of Channel 269A to West Salem, Wisconsin, is hereby dismissed.

4. It is further ordered, that this proceeding is terminated.

Federal Communications Commission.

Henry L. Baumann,

Chief, Policy and Rules Division Broadcast Bureau.

[FR Doc. 81-2234 Filed 1-21-81; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[BC Docket No. 80-194; RM-3472]

FM Broadcast Station in Lawton, Oklahoma; Changes Made in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Final rule (Report and Order).

SUMMARY: This action assigns a Class A FM channel to Lawton, Oklahoma, as the third assignment in response to a petition filed by Linda A. Meyer.

DATE: Effective March 3, 1981.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Michael McGregor, Broadcast Bureau, (202) 653-7586.

SUPPLEMENTARY INFORMATION:

In the matter of amendment of § 73.202(b), Table of Assignments, FM Broadcast Stations (Lawton, Oklahoma); Report and order (Proceeding terminated).

Adopted: January 6, 1981.

Released: January 13, 1981.

By the Chief, Policy and Rules Division.

1. The Commission has under consideration the *Notice of Proposed Rulemaking*, 45 FR 30094, in response to a petition filed by Linda A. Meyer ("Meyer"), proposing the assignment of FM Channel 237A to Lawton.[1] Supporting comments were filed by Meyer in which she reaffirmed her intent to file for the channel, if assigned. No oppositions to the proposal were received.

2. Lawton (population 74,300),[2] the seat of Commanche County (population 108,444), is located approximately 128 kilometers (80 miles) southwest of Oklahoma City. It is currently served by two AM stations (one full-time and one daytime only) and two Class C FM stations.

3. Meyer states that Lawton is a rapidly growing community with a 1980 estimated population of 82,746. According to Meyer, the city is the home of numerous industries including the Lawton Coca-Cola Bottling Company, Lawton Manufacturing Company and Mead Foods. Fort Sill, a large military base, is located just north of the city. Meyer has submitted persuasive information with respect to Lawton and its need for a third FM assignment.

4. The assignment of Channel 237A to Lawton would cause preclusion to one community without local aural service and with a population exceeding 1,000, Walters, Oklahoma (population 2,611). However, a staff study indicates that other channels are available for assignment to Walters. The assignment of Channel 237A to Lawton involves intermixture with the two Class C FM stations presently serving Lawton. However, Meyer is willing to apply for and operate on a Class A Channel despite these competitive disadvantages. In such a situation, we are not disposed to deny the assignment based on intermixture of channels. *See Yakima, Washington*, 42 FCC 2d 548 (1973).

5. We have given careful consideration to the proposal and believe that Channel 237A should be assigned to Lawton, Oklahoma. Interest has been shown for its use and the assignment would provide the community with an opportunity for its third FM station.

6. Authority for the action taken herein is contained in §§ 4(i), 5(d)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and § 0.281 of the Commission's Rules.

7. In view of the foregoing, it is ordered, That effective March 3, 1981, § 73.202(b) of the Commission's Rules, the FM Table of Assignments, as regards Lawton, Oklahoma, is amended to read as follows:

City	Channel No.
Lawton, Oklahoma	237A, 251, 269

8. It is further ordered, That this proceeding is terminated.

9. For futher information concerning this proceeding, contact Michael A.

[1] Meyer's original proposal to assign FM Channel 269A to Lawton was modified to avoid conflict with the assignment of Channel 294 to Burbarnett, Texas (BC Docket No. 79-178, RM-3337).

[2] Population figures are taken from the 1970 U.S. Census.

McGregor, Broadcast Bureau (202) 653–7566.

Henry L. Baumann,
Chief, Policy and Rules Division, Broadcast Bureau.

[FR Doc. 81-2259 Filed 1-21-81; 8:45 am]
BILLING CODE 6712-01-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 577

[Docket No. 80–17; Notice 1]

Defect and Noncompliance Notification

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Final rule.

SUMMARY: This notice amends the defect and noncompliance notification regulation to require that manufacturers include the agency's toll free Auto Safety Hotline number in their defect and noncompliance notification letters. The amendment is being made to provide a means of easy access to the agency by consumers who may have complaints about the recall and remedy of their vehicles or equipment. Since it is a minor technical amendment, it is being made effective immediately without notice or opportunity for comment.

EFFECTIVE DATE: January 22, 1981.

FOR FURTHER INFORMATION CONTACT: Mr. James Murray, Office of Defects Investigation, National Highway Traffic Safety Administration, 400 Seventh St., SW., Washington, D.C. 20590 (202–426–2840).

SUPPLEMENTARY INFORMATION: This notice makes a minor technical amendment to Part 577, *Defect and Noncompliance Notification,* to require manufacturers conducting recall campaigns to include the agency's toll free Auto Safety Hotline number in the notification letters.

Existing notification letters are required to state that a consumer may contact the agency if he or she feels that remedy of a defect or noncompliance is not being made without charge or in a reasonable time. Manufacturers also frequently include their address and a toll free number that consumers can call to complain to the manufacturer about the status of a remedy. The agency believes that the use of manufacturer toll free numbers is a good idea and has decided that the agency's toll free number should also be included in the letter. This will provide easy access for consumers to the agency for reporting any complaints concerning the recall or remedy of their vehicles. It also will provide timely information to our Enforcement office pertaining to the compliance with our regulations by the manufacturers.

Since this is a minor technical amendment and will result in little impact upon manufacturers, the agency finds for good cause shown that it is in the interest of safety to make the amendment effective immediately without notice and opportunity for comment.

In consideration of the foregoing, Title 49 of the Code of Federal Regulations, Part 577, *Defect and Noncompliance Notification,* is amended by revising the introductory sentence in § 577.5(g)(1)(vii) to read as follows:

§ 577.5 Notification pursuant to a manufacturer's determination.

* * * * *

(g) * * *

(1) * * *

(vii) A statement informing the owner that he or she may submit a complaint to the Administrator, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, D.C. 20590 or call the toll free Auto Safety Hotline at 800–426–0393 (Washington D.C. area residents may call 426–0123), if the owner believes that—

* * * * *

The principal authors of this notice are Mr. James Murray of the Office of Defects Investigations and Roger Tilton of the Office of Chief Counsel.

(Secs. 108, 112, and 119, Pub. L. 89–563; 80 Stat. 718; Secs. 102, 103, and 104, Pub. L. 93–492, 88 Stat. 1470 (15 U.S.C. 1397, 1401, 1408, and 1411–1420); delegation of authority at 49 CFR 1.50)

Issued on January 14, 1981.

Joan Claybrook,
Administrator.

[FR Doc. 81-2116 Filed 1-21-81; 8:45 am]
BILLING CODE 4910-59-M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1331

[Ex Parte No. 297 (Sub-No. 5)]

Motor Carrier Rate Bureaus—Implementation

AGENCY: Interstate Commerce Commission.

ACTION: Notice of extension of effective date of final rules and extension of date of new or amended agreements.

SUMMARY: By notice published in the Federal Register on December 31, (45 FR 86736), we issued final rules to govern the activities of motor carrier rate bureaus. The effective date of these rules was the Federal Register date of December 31, 1980. The date for filing new or amended agreements was January 19, 1981. These dates are being extended to February 2, 1981, and March 5, 1981, respectively. Cancellation of special permission authorities is rescinded and these authorities shall remain in effect until February 2, 1981.

DATE: The effective date of our final rules is now February 2, 1981. The date for filing new or amended agreements is now March 5, 1981.

FOR FURTHER INFORMATION CONTACT: Richard B. Felder or Jane F. Mackall, (202) 275–7656.

SUPPLEMENTARY INFORMATION: A petition was filed on January 7, 1981, by motor carrier rate bureaus requesting a postponement of the effective date of our decision in this proceeding served December 30, 1980, and a petition was filed on January 8, 1981 by the National Association of Specialized Carriers, Inc. for a stay and/or extension of compliance date of our decision.[1] Each petition asks for a 120 day extension to April 29, 1981 in which to comply with our final rules issued in our decision.

The petitions are granted in part. First, the effective date of the final rules and standards in our decision is being extended to February 2, 1981. Our December 30, 1980 decision was made effective on publication in the Federal Register, December 31, 1980. (45 FR 86736). This did not comply with Section 553(d) of the Administrative Procedure Act (5 U.S.C. 553(d)) since we did not make the rules effective on at least 30 days notice nor did we find that there was good cause for departing from this notice requirement. Thus, our cancellation of special permission authorities is rescinded and these authorities shall remain in effect until February 2.

Second, we shall extend from January 19 to March 5, 1981 the period for submitting new or amended agreements in conformity with the Motor Carrier Act of 1980 as interpreted in our decision. The petitions point out that the rate bureaus are governed by bylaws that can be amended by formal procedures that require sufficient time. We believe the extension to March 5, 1981 will be adequate to allow the rate bureaus to

[1] The National Small Shipments Traffic Conference, Inc., and the Drug and Toilet Preparation Traffic Conference filed on January 8, 1981 a petition for stay pending administrative review. It is currently under consideration.

submit their amended agreements, particularly since both petitioners had previously gone through this process in submitting new agreements by October 29, 1980.

Finally, as required under 49 U.S.C. 10706(e)(2), in the period between February 2 and our approval of the new agreements, the rate bureaus must comply with the final rules and standards of our December 30 decision.

Decided: January 14, 1981.

By the Commission, Darius W. Gaskins, Jr., Chairman.

Agatha L. Mergenovich,
Secretary.

[FR Doc. 81-2226 Filed 1-21-81; 8:45 am]
BILLING CODE 7035-01-M

Propos

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rules.

DEPARTMENT

Agricultural Ma

7 CFR Part 104

[Docket No. AO-

Milk in the Sout
Marketing Area
Filing Exceptio
Recommended
Amendments to
Agreement and

AGENCY: Agricul
USDA.

ACTION: Extensi
exceptions to pr

SUMMARY: This
for filing excepti
decision concern
amendments to
milk order. Coun
Producers Assoc
additional time.

DATE: Exception
before February

ADDRESS: Excep
should be filed w
Room 1077, Soutl
Department of A
D.C. 20250.

FOR FURTHER INF
Martin J. Dunn, M
Dairy Division, U
Agriculture, Was
202-447-7311.

SUPPLEMENTARY
documents in thi

Notice of Hear
1980, published M
14047).

Recommended
December 30, 198
1981 (46 FR 1279)

Notice is hereb
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This notice is i
provisions of the
Agreement Act of

Proposed Rules

Federal Register
Vol. 46, No. 14
Thursday, January 22, 1981

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1040

[Docket No. AO-225-A33]

Milk in the Southern Michigan Marketing Area; Extension of Time for Filing Exceptions to the Recommended Decision on Proposed Amendments to Tentative Marketing Agreement and To Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Extension of time for filing exceptions to proposed rule.

SUMMARY: This action extends the fime for filing exceptions to a recommended decision concerning proposed amendments to the Southern Michigan milk order. Counsel for Michigan Milk Producers Association requested the additional time.

DATE: Exceptions now are due on or before February 4, 1981.

ADDRESS: Exceptions (four copies) should be filed with the Hearing Clerk, Room 1077, South Building, U.S. Department of Agriculture, Washington, D.C. 20250.

FOR FURTHER INFORMATION CONTACT: Martin J. Dunn, Marketing Specialist, Dairy Division, U.S. Department of Agriculture, Washington, D.C. 20250, 202–447–7311.

SUPPLEMENTARY INFORMATION: Prior documents in this proceeding:

Notice of Hearing: Issued February 28, 1980, published March 4, 1980 (45 FR 14047).

Recommended Decision: Issued December 30, 1980, published January 6, 1981 (46 FR 1279).

Notice is hereby given that the time for filing exceptions to the above listed recommended decision is hereby extended to February 4, 1981.

This notice is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), and the applicable rules of practice and procedures governing the formulation of marketing agreements and marketing orders (7 CFR Part 900).

Signed at Washington, D.C., on January 16, 1981.

William T. Manley,
Deputy Administrator, Marketing Program Operations.

[FR Doc. 81-2323 Filed 1-21-81; 8:45 am]
BILLING CODE 3410-02-M

Commodity Credit Corporation

(7 CFR Part 1430)

Price Support Program for Milk; Terms and Conditions of 1980–81 Price Support Program

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Proposed Rule.

SUMMARY: The proposal announces that the Secretary of Agriculture is considering the semiannual adjustment of the support price for milk to be effective April 1, 1981. The Secretary may also consider other matters pertaining to the milk support program, including (1) the allocation of any change in the support price between CCC purchase prices for butter and nonfat dry milk, (2) the value of the solids-not-fat in whey used in calculating the CCC purchase price for cheese, (3) the determination of the manufacturing margins used in calculating CCC's purchase prices for butter, nonfat dry milk and cheese and (4) the determination of the sales markup for CCC-owned dairy products offered for sale for unrestricted use.

DATE: Comments must be received on or before February 17, 1981, to be sure of consideration.

ADDRESS: Director, Procurement and Sales Division, Agricultural Stabilization and Conservation Service, U.S. Department of Agricultural, 5741 South Building, P.O. Box 2415, Washington, D.C. 20013.

FOR FURTHER INFORMATION CONTACT: S.E.T. Bogan, Agricultural Economist, Procurement and Sales Division, Agricultural Stabilization and Conservation Service, U.S. Department of Agriculture, 5741 South Building, P.O. Box 2415, Washington, D.C. 20013, (202–447–3571).

The Draft Impact Analysis describing the options considered in developing this proposed rule and the impact of implementing each option is available on request from Donald E. Friedly at the same address and phone number.

SUPPLEMENTARY INFORMATION: This proposed action has been reviewed under USDA procedures established in Secretary Memorandum 1955 to implement Executive Order 12044, and has been classified "significant". In compliance with Secretary's Memorandum No. 1955 and "Improving USDA Regulations" (43 FR 50988), it is determined after review of these and related regulations contained in 7 CFR Part 1430 for need, currency, clarity, and effectiveness that no additional changes be proposed at this time.

James E. Agnew, Jr., Acting Director, Procurement and Sales Division, ASCS, has determined that an emergency exists which warrants less than a 60 day comment period on this proposed action in order that all comments may be considered before the level of support for milk is announced for the midyear adjustment which begins on April 1, 1981.

Section 201(c) of the Agricultural Act of 1949, as amended, provides as follows: "The price of milk shall be supported at such level not in excess of 90 per centum nor less than 75 per centum of the parity price therefor as the Secretary determines necessary in order to assure an adequate supply of pure and wholesome milk to meet current needs, reflect changes in the cost of production, and assure a level of farm income adequate to maintain productive capacity sufficient to meet anticipated future needs. Notwithstanding the foregoing, effective for the period * * * ending September 30, 1981, the price of milk shall be supported at not less than 80 per centum of the parity price therefor. Such price support shall be provided through purchases of milk and the products of milk."

Section 201(d) of the Act, as amended, provides as follows: "Effective for the period * * * ending September 30, 1981, the support price of milk shall be adjusted by the Secretary at the beginning of each semiannual period after the beginning of the marketing year to reflect any estimated change in the parity index during such semiannual

period. * * * Any adjustment unde subsection shall be announced by t Secretary not more than thirty days prior to the beginning of the period to which it is applicable."

Except as influenced by the price support program, the prices of milk and its products are arrived at competitively. Manufacturing grade milk as a percent of total milk marketed has been declining as more producers have become eligible to market fluid grade milk. However, the milk price support program remains the foundation of the entire price structure for fluid and manufacturing grade milk sold by farmers. In 1979, manufacturing grade milk was 17 percent of all milk marketed while fluid grade milk was the remainder. Fluid milk consumption represented 43 percent of milk marketings. Thus, with 57 percent of the milk used in manufactured products, more dairy products are made from fluid grade than manufacturing grade milk.

The program to support prices of manufacturing grade milk is achieved through purchases of butter, cheese and nonfat dry milk at prices calculated to enable plant operators to return the support price to the farmer. At times of significant price support purchases, market prices for these products tend to be near the purchase prices of these dairy products. Reliance is placed upon competition among manufacturers for the average price received by manufacturing grade producers to equal the announced support price. Since most of the fluid milk prices are based on prices paid for manufacturing milk, the price support program undergirds all milk and dairy product prices.

On October 1, 1979, the support price for milk was set at 80 percent of parity, which was $11.22 per hundredweight for milk of 3.5 percent milkfat content, or $11.49 for milk of national average milkfat content (3.67 percent). Effective April 1, 1980, the support price was adjusted upward 7.6 percent to $12.07 per hundredweight for milk of 3.5 percent milkfat content, based on the 7.6 percent increase in the parity index (index of prices paid by farmers for commodities and services, interest, taxes and wage rates) from October 1, 1979 to April 1, 1980.

On October 1, 1980, the beginning of the 1980–81 marketing year, the support price was set at $12.80 per hundredweight (80 percent of parity, the statutory minimum) for milk of 3.5 percent milkfat content, or $13.10 per hundredweight for milk of 3.67 percent milkfat content.

The expected midyear adjustment is based on a projected increase of 6.9 percent in the parity index from October 1, 1980 to April 1, 1981. This would result in a support price of $13.68 per hundredweight for milk of 3.5 percent milkfat content, or $14.00 for 3.67 percent milkfat content milk.

Milk production for the 1980–81 marketing year is projected to be 129.0 billion pounds, an increase of 2.0 billion pounds over 1979–80. Commercial consumption of milk is projected to be 121.0 billion pounds, up from 119.1 billion pounds in 1979–80, and CCC net removals of dairy products is projected to be the equivalent of 8.0 billion pounds of milk compared with 8.2 billion pounds in 1979–80.

Milk production increased in 1979–80 as production per cow continued to increase and the number of cows, reversing a long term trend, began to increase above year earlier numbers.

The projected CCC net removals of dairy products in 1980–81 (equivalent to 8.0 billion pounds of milk) are expected to consist of 255 million pounds of butter, 275 million pounds of cheese and 585 million pounds of nonfat dry milk. This compares with 233 million pounds of butter, 336 million pounds of cheese and 592 million pounds of nonfat dry milk purchased under the support program in 1979–80.

Proposed Rule

Notice is hereby given that the Secretary of Agriculture is considering the midyear adjustment in the support price for milk to be established for the second half of the 1980–81 marketing year as required by law, and the prices and terms of purchase by CCC of butter, cheese and nonfat dry milk, including factors used in calculating the dairy product purchase prices. Such factors include: (1) the allocation of any change in the support price between CCC purchase prices for butter and nonfat dry milk, (2) the value of the solids-not-fat in whey used in calculating the CCC purchase price for cheese, (3) the determination of the manufacturing margins used in calculating CCC's purchase prices, and (4) the determination of the sales markup for CCC-owned dairy products offered for sale for unrestricted use.

You are invited to submit in writing to the Director, Procurement and Sales Division, data, views and recommendations concerning the determinations to be made. In order to be assured of consideration, all submissions must be received by the Director not later than February 17, 1981. All written submissions made pursuant to this notice will be made available for public inspection at the Office of the Director, Procurement and Sales Division, ASCS, USDA, Room 5741, South Building, during regular business hours (8:15 a.m.–4:45 p.m.).

(Sec. 201 (c) and (d) of the Agricultural Act of 1949, as amended (63 Stat. 1051, as amended; 7 U.S.C. 1446); and Sec. 4 and 5 of the Commodity Credit Corporation Act, as amended (62 Stat. 1070, as amended; 15 U.S.C. 714b and 714c))

Signed at Washington, D.C., on January 13, 1981.

Ray Fitzgerald,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 81-2329 Filed 1-21-81; 8:45 am]

BILLING CODE 3410-05-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 80-AEA-61]

Proposed Alteration of Group I Terminal Control Area (TCA)-New York, N.Y.

Correction

In FR Doc. 81-599 appearing in the issue of Thursday, January 8, 1981, at page 2088, please make the following corrections:

(1) On page 2089, third column, third paragraph, tenth line, "TAC" should be changed to read "ATC".

(2) On page 2090, second column, under "Area B", fourth line, insert "circle" between "radius" and "centered"

(3) On page 2090, third column, under "Area F", thirteenth line insert "and" between "to," and "counter-clockwise".

(4) On page 2090, third column, under "Area F", thirty-second line, insert "radius" between "10-mile" and "circle".

(5) On page 2091, first column, under "Area H", seventh line, "and 25-mile" should be inserted between "20-mile" and "circle".

(6) On page 2091, first column, under "Area I", twelfth line, insert "radius" between "mile" and "circle".

(7) On page 2091, second column, The FR Doc. line should have appeared before the BILLING CODE and read as follows:

[FR Doc. 81-599 Filed 1-7-81; 8:45 am]

BILLING CODE 4910-01-M

14 CFR Part 139

[Docket No. 20468; Notice No. 80-10]

Certification and Operations: Land Airports Serving CAB-Certificated Air Carriers

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Proposed rule; Publication of Letter to Congress.

SUMMARY: This publishes a letter to certain members of the Congress concerning the present status of a notice of proposed rule making to amend the rules governing the certification and operation of land airports. It advises that, after further analysis and review of the proposal in the light of comments received, the FAA has concluded that its authority to issue a rule in this area is sufficiently unclear and that rulemaking should not proceed until the statutory basis for such a rule is clarified. It is intended to bring the problem to the attention of the Congress which will be giving early consideration to pending airport and airway legislation.

FOR FURTHER INFORMATION CONTACT: Mr. Donald P. Byrne, Regulations and Enforcement Division (AGC-200), Office of the Chief Counsel, 800 Independence Avenue SW., Washington, D.C. 20591, Telephone (202) 426-3461.

SUPPLEMENTARY INFORMATION: On June 12, 1980, the FAA published Notice of Proposed Rulemaking No. 80-10 in the Federal Register (45 FR 39857). That notice proposed amending Part 139 of the Federal Aviation Regulations (Certification and Operations: Land Airports Serving CAB-certificated Air Carriers) to require airport operating certificates for airports serving commuter air carriers.

After further analysis and review of the proposal in the light of comments by the Commuter Airline Association of America and others, the FAA has concluded that its authority to issue the proposed rule is sufficiency unclear and that rulemaking should not proceed until the statutory basis for such a rule is clarified.

In order to bring this to the early attention of the Congress which will be considering pending airport and airway legislation, the Administrator has written several members of the Congress having responsibility for aviation legislation. The letter explains the purpose of, and need for, this rulemaking, and brings to their attention the need to clarify the FAA's authority in this area. The letter has been sent to the Honorable Bob Parkwood and the Honorable Nancy L. Kassebaum, United States Senate, and the Honorable Norman Y. Mineta, House of Representatives.

For the information of the aviation community and members of the public who are concerned with aviation safety the text of the letter is appended to this notice.

Issued in Washington, D.C., on January 15, 1981.

Langhorne Bond,

Administrator.

January 15, 1981.

Hon. Bob Packwood, *Chairman, Committee on Commerce, Science and Transportation, Washington, D.C.*

Dear Mr. Chairman: Because of your interest in aviation safety and because I am aware you will be considering pending airport and airway legislation, I am writing to advise you of the present status of the Federal Aviation Administration's (FAA) regulatory program regarding the airports that serve commuter air carriers. As you know, in June 1980 we issued a notice of proposed rule making proposing to amend the rules governing the certification and operation of land airports to require operating certificates for certain airports that serve commuter air carriers. A copy of that notice (Notice 80-10) is enclosed for your reference.

After further analysis and review of the proposal in the light of comments by the Commuter Airline Association of America and others, we have concluded that the FAA's authority to issue a rule in this area is sufficiently unclear and that rulemaking should not proceed until the statutory basis for such a rule is clarified.

Notice 80-10 was part of the FAA's implementation of the Airline Deregulation Act of 1978 (P.L. 95-504; 92 Stat. 1705), and was intended to ensure, to the extent feasible, that passengers traveling on commuter air carriers would be afforded a level of safety equivalent to that now provided to passengers of air carriers holding certificates of public convenience and necessity (CPCN). Airports that serve these CPCN holders are already required to hold airport operating certificates under FAA rules.

Section 612 of the Federal Aviation Act of 1958 (FA Act; 49 U.S.C. 1432) empowers the Administrator to issue airport operating certificates to airports serving air carriers certificated by the Civil Aeronautics Board (CAB) and to establish minimum safety standards for the operation of those airports. The FAA implemented this section in 1972 by adopting Part 139 of the Federal Aviation Regulations which prescribes rules governing the certification and operation of land airports serving air carriers that hold certificates of public convenience and necessity.

With the implementation of the Airline Deregulation Act and the resulting liberalization of the CAB policies and regulations, numerous commuter air carriers are now conducting operations similar to those that were previously conducted only by CPCN holders. Commuter air carriers have been authorized to use larger aircraft. CPCN holders are being allowed to discontinue service at different terminals while commuters are gaining these terminal and route authorizations. CPCN holders are also being authorized to serve airports not included in their CPCN.

The FAA is concerned that the airports used by these commuter air carriers are not required to be certificated. For example, a commuter air carrier providing service between the same two points served by a CPCN holder could use uncertificated airports as intermediate stops. A member of the traveling public, using commuter air carrier service instead of CAB-certificated air carrier service, would likely assume that the same level of service and safety would be provided at all airports.

In passing the Deregulation Act, the Congress did not amend the authority of the FAA under Section 612 of the FA Act to provide for the certification of airports serving these new commuter operations. However, it did recognize the safety implication that could result from this comingling of operations, and Section 22(c)(2) required the Federal Aviation Administration to "impose requirements upon such commuter air carriers to assure that the level of safety provided to persons traveling on such commuter air carriers is, to the maximum feasible extent, equivalent to the level of safety provided to persons traveling on air carriers (holding certificates of convenience and necessity)." In Section 107(a) of that Act, the Congress expressed the intent "that implementation of the Airline Deregulation Act of 1978 result in no diminution of the high standard of safety in air transportation attained in the United States at the time of the enactment of such Act."

In view of this expression of Congressional concern and the lack of applicability of Section 612 to airports serving these new commuter operations, the FAA looked elsewhere for authority to regulate commuter airports. Section 308 of the FA Act empowers the Administrator to inspect, classify, and rate any air navigation facility (including an airport) available for the use of civil aircraft as to its suitability for such use, and to certificate such air navigation facilities. Section 313(a) empowers the Administrator to make and amend such general or special rules, regulations, and procedures, pursuant to and consistent with the provisions of the FA Act, as he shall deem necessary to carry out the provisions of, and to exercise and perform his powers and duties under, the Act. Finally, Section 601(a)(8) gives the Administrator the general power and duty to prescribe such reasonable rules and regulations, or minimum standards, governing practices, methods, and procedures, as he may find necessary to provide adequately for national security and safety in air commerce.

Viewing this authority in the light of the mandate of the Deregulation Act, the FAA issued Notice 80-10 proposing to amend Part 139 to require an airport operating certificate for airports serving scheduled operations by commuter air carriers. Operations at airports above a certain minimum level of commuter activity would be covered, regardless of whether service by the commuter is substituting for that of a CPCN holder.

Several commenters on the notice of proposed rule making have challenged the FAA's authority to adopt the proposed rule changes. After review of these comments and reconsideration of our own position, it must be conceded that our authority in this matter is not clear.

As we have already noted, Section 612 of the FA Act is limited to airports served by air carriers certificated by the CAB. While Section 608 of the FA Act empowers the Administrator to inspect, classify, and rate air navigation facilities, it does not expressly provide authority to require those facilities to have a certificate in order to operate or to regulate the holder of a certificate.

In addition it must be noted that, while the Deregulation Act expresses the concern that there be no diminution of the level of safety, it appears to speak only to those operations by commuter air carriers that substitute for operations by CPCN holders, and does not speak to the level of safety to be provided by all commuter operations.

For these reasons the FAA has chosen not to proceed with rulemaking on the matter of the certification of commuter airports until its statutory authority has been clarified. Since this Congress will be giving early consideration to the pending airport and airway legislation, I wanted to bring the problem to your attention at this time.

I would also note that there are several other related issues which I believe warrant discussion between our staffs. My staff would be pleased to elaborate on these issues whenever it may be convenient for your staff.

Sincerely,

Langhorne Bond,

Administrator.

[FR Doc. 81-2000 Filed 1-21-81; 8:45 am]

BILLING CODE 4910-13-M

FEDERAL TRADE COMMISSION

16 CFR Part 453

Funeral Industry Practices

AGENCY: Federal Trade Commission.

ACTION: Publication of Revised Proposed Rule and Notice of Opportunity to Comment.

SUMMARY: On March 23, 1979, the Commission approved in principle a proposed rule to regulate funeral industry practices (the "funeral rule") and directed its staff to prepare the rule for final issuance. On May 28, 1980, the FTC Improvements Act of 1980 was signed into law. Section 19(b) of the Act limits the Commission's authority to regulate the funeral industry and states that, if the Commission elects to issue the funeral rule, the rule: (1) must be limited to those provisions which are permitted by Section 19(c), and (2) must be published for public comment. The Commission has issued a revised rule for public comment and invites all interested persons to submit written data, views, and arguments regarding the revised rule. A rebuttal period, in which parties may respond to comments submitted by other interested parties, will immediately follow the close of the public comment period. After all comment has been received, the Commission will hear oral presentations on the proposed rule.

DATES: Written comments will be accepted for a period of 60 days ending on March 23, 1981. Written rebuttal comments will be accepted for a period of 20 days beginning on March 23, 1981, and ending on April 13, 1981. An oral presentation will be held 30 days later on May 13, 1981.

ADDRESSES: Comments should be submitted to: Secretary, Federal Trade Commission, 6th & Pennsylvania Ave., NW, Washington, DC 20580, Attention: Funeral Rule.

Requests for copies of guides submitted to the Commission by funeral trade associations or copies of the staff memoranda analyzing them should be sent to: Public Reference Branch, Room 130, Federal Trade Commission, 6th Street and Pennsylvania Avenue, NW, Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT: Robert A.M. Schick, Program Advisor, Funeral Industry Project, Federal Trade Commission, Room 283, 6th & Pennsylvania Ave., NW, Washington, DC 20580, telephone (202) 523-3885.

SUPPLEMENTARY INFORMATION:

Section A—Background Information

On August 29, 1975, the Commission published an Initial Notice of Rulemaking in the Federal Register (40 FR 39901) for a proposed trade regulation rule regarding the funeral industry, in accordance with the provisions of the Federal Trade Commission Act, as amended, 15 U.S.C. 41, et. seq. Following publication of the Initial Notice, written comments were received on the proposed rule and public hearings were held; after the rulemaking record was closed, reports analyzing the record were written by the Presiding Officer and the staff. On March 23, 1979, the Commission approved in principle the issuance of the funeral rule, with several modifications to the rule as proposed on August 29, 1975. The Commission further directed its staff to prepare the rule for final issuance.

On May 28, 1980, the FTC Improvements Act of 1980 (Pub. L. No. 96-252) was signed into law. Section 19(b) of the Act prohibits the Commission from using funds to issue the funeral rule on any other substantially similar rule except as permitted in Section 19(c) of the Act.[1]

On December 17, 1980, the Commission met to consider revisions to the funeral rule in light of Section 19 and approved a revised version of the funeral rule for purposes of public comment. The Commission's final determination on whether to adopt the revised rule will be based upon the prior rulemaking record for the funeral rule, as well as upon the public comments, rebuttals, and oral presentations, pursuant to this Notice.

On October 8, 1980, the Commission received Guides from several funeral trade associations that were proposed as an alternative to a final rule. The staff prepared an analysis of the Guides that was forwarded to the Commission for review. At its December 17, 1980 meeting, the Commission considered the Guides and concluded that they did not

[1] Section 19(c) states:

"(c)(1) The Commission shall have authority to use the funds specified in subsection (b) to issue the funeral trade regulation rule in final form only to the extent that the funeral trade regulation rule [in its final form]—

"(A) requires persons, partnerships, and corporations furnishing goods and services relating to funerals to disclose the fees or prices charged for such goods and services in a manner prescribed by the Commission; and

"(B) prohibits or prevents such persons, partnerships, and corporations from—

"(i) engaging in any misrepresentation;

"(ii) engaging in any boycott against, or making any threat against, any other person, partnership, or corporation furnishing goods and services relating to funerals;

"(iii) conditioning the furnishing of any such goods or services to a consumer upon the purchase by such consumer of other such goods or services; or

"(iv) furnishing any such goods or services to a consumer for a fee without obtaining the prior approval of such consumer.

"(2)(A) The Commission, before issuing the funeral trade regulation rule in final form—

"(i) shall publish in the Federal Register for public comment a revised version of the funeral trade regulation rule which contains the provisions specified in subparagraph (A) and subparagraph (B) of paragraph (1);

"(ii) shall allow interested persons to submit written data, views, and arguments relating to such revised version of the funeral trade regulation rule, and make all such submissions publicly available; and

"(iii) may permit interested persons, or, as appropriate, a single representative of each group of such persons having the same or similar interests with respect to such revised version of the funeral trade regulation rule, to present their position orally.

"(B) The requirements established in subparagraph (A) are in addition to, and not in lieu of, any other requirements established in the Federal Trade Commission Act (15 U.S.C. 41 et seq.), or in any other provision of law, and applicable to the promulgation of trade regulation rules by the Commission. The requirements established in subparagraph (A) shall not be construed to vacate or otherwise affect any proceedings conducted by the Commission before the date of enactment of this Act with respect to the funeral trade regulation rule."

obviate the need for a continuation of the rulemaking proceeding. In particular, the Commission was concerned that the Guides did not require the disclosure of itemized prices for funeral services and goods and did not ensure that price disclosures and other representations would be given at specific times. The Commission also was concerned that additional definitions may be needed to clarify some of the terms used in the Guides. The Commission further noted that the issue of an adequate enforcement mechanism still needed to be addressed.

The Commission indicated at the meeting that comments on the proposed rule may address specific Guides provisions and discuss which, if any, would provide consumer protection comparable to provisions in the proposed rule. In order to facilitate the comment process, the Commission has directed that the Guides, the staff memoranda analyzing the Guides, and the Commission's letter discussing the Guides, be made available without charge for use in preparing comments on the proposed rule.

Section B—Proposed Revised Rule

PART 453—FUNERAL INDUSTRY PRACTICES

Sec.

453.1 Definitions.
453.2 Price disclosures.
453.3 Misrepresentations.
453.4 Use of threats or boycotts.
453.5 Required purchase of funeral goods or funeral services.
453.6 Services provided without prior approval.
453.7 Retention of documents.
453.8 Comprehension of disclosures.
453.9 Declaration of Commission intent.
453.10 State exemptions.

Authority: 38 Stat. 717, as amended, 15 U.S.C. 41, et seq.

§ 453.1 Definitions

(a) *Accounting year.* "Accounting year" refers to the particular calendar year or other one year period used by a funeral provider in keeping financial records for tax or accounting purposes.

(b) *Alternative container.* An "alternative container" is a non-metal receptacle or enclosure, generally not ornamented, which can hold or transport human remains and which is not a "casket" as defined in this part. Examples of alternative containers include cardboard, pressed-wood or composition containers and pouches of canvas or other material.

(c) *Cash advance items.* A "cash advance item" is any item of service or merchandise, however described, which a person other than the funeral provider supplies for the use of a customer and for which the funeral provider pays on the customer's behalf. A "cash advance item" is also any item which funeral providers state that they have obtained in this manner. Cash advance items may include, but are not limited to, the following items: cemetery or crematory services; pallbearers; public transportation; clergy honoraria; flowers; musicians or singers; nurses; obituary notices; gratuities; and death certificates.

(d) *Caskets.* A "casket" is a rigid container which is designed for the encasement and burial of human remains and which is usually constructed of wood or metal, ornamented and lined with fabric.

(e) *Commission.* "Commission" refers to the Federal Trade Commission.

(f) *Cremation.* "Cremation" is a heating process which reduces human remains. For the purposes of this rule, "cremation" includes calcination.

(g) *Crematory.* A "crematory" is any person, partnership or corporation that performs cremation and sells funeral goods.

(h) *Customary services of funeral director and staff.* The "Customary services of funeral director and staff" are the services, not included in prices of other categories on the general price list, § 453.2(b) (4), which may be furnished by a funeral provider in arranging and supervising a funeral, such as conducting the arrangements conference, planning the funeral, obtaining necessary permits and placing obituary notices.

(i) *Funeral goods.* "Funeral goods" are the goods which are sold or offered for sale directly to the public, for use in connection with funeral services.

(j) *Funeral provider.* A "funeral provider" is any person, partnership or corporation that sells or offers to sell funeral goods and funeral services to the public.

(k) *Funeral services.* "Funeral services" are any services which may be used to: (1) care and prepare deceased human bodies for burial, cremation or other final disposition; and (2) arrange, supervise or conduct the funeral ceremony or the final disposition of deceased human bodies.

(l) *Memorial society.* A "memorial society" is a nonprofit membership association which assists its members in obtaining information and making arrangements for funerals, cremation, or other methods of disposition of human remains.

(m) *Minimum services of funeral director and staff.* The "minimum services of funeral director and staff" are the services which a funeral provider furnishes in connection with immediate cremation or burial, or delivery of remains for shipment to another location, such as obtaining necessary permits and arranging for disposition or shipment.

(n) *Outer burial container.* An "outer burial container" is any container which is placed in the grave around the casket including, but not limited to, containers commonly known as burial vaults, grave boxes, and grave liners.

§ 453.2 Price disclosures.

(a) *Unfair or Deceptive Acts or Practices.* In selling or offering to sell funeral goods or funeral services to the public, it is an unfair or deceptive act or practice for a funeral provider to fail to furnish itemized price information concerning funeral goods and funeral services to persons inquiring about the purchase of funerals.

(b) *Preventive Requirements.* To prevent these unfair or deceptive acts or practices, as well as the unfair or deceptive acts or practices defined in § 453.5(b)(1), funeral providers must:

(1) Telephone Price Disclosures. (i) Tell persons who call the funeral provider's place of business and ask about the funeral goods or services offered, or about their prices, that:

(A) Price information is available over the telephone; and

(B) The funeral provider will furnish, at the funeral home, a general price list, required by § 453.2(b)(4), showing prices for the services and goods offered.

Possible Additional Provisions:

(ii) Tell persons who call the funeral provider's place of business the price of any item on the general price list, required in § 453.2(b)(4), if such price is requested.

(iii) Tell persons who ask by telephone about the funeral provider's prices, any accurate price information which reasonably answers the question and which is readily available.

(iv) Tell persons who ask by telephone about the funeral provider's offerings or prices, the range of prices charged for the following, if the funeral provider sells them:

(A) The standard adult funeral (which shall include the charges on the general price list required for embalming, full services of funeral directors and staff, transfer of remains to funeral home, use of facilities for funeral ceremony, hearse or limousine);

(B) Direct disposition (which shall include charges for the services of the funeral director and staff and any goods

offered for the purpose of immediate cremation or burial):

(C) Caskets.

(2) Casket and Alternative Container Price Disclosures. (i) Give a printed or typewritten price list to people who inquire in person about the casket offerings or prices of caskets or alternative containers. The funeral provider must furnish the list before discussing or showing caskets or alternative containers. The list must contain in order, from least to most expensive, the retail prices of all alternative containers and caskets offered which do not require special ordering, enough information to identify each, and the effective date for the price list. In lieu of a written list, other formats, such as notebooks, brochures, or charts may be used if they contain the same information as would the printed or typewritten list and display it in a clear and conspicuous manner.

(ii) Place the following heading on the list, whether a printed or typewritten list or other format is used:

[Name of Funeral Home]
Casket [and Alternative Container]
Price List

(3) Outer Burial Container Price Disclosures. (i) Give a printed or typewritten price list to people who inquire in person about outer burial container offerings or prices. The funeral provider must furnish the list before discussing or showing the containers. The list must contain in order, from least to most expensive, the retail prices of all outer burial containers offered which do not require special ordering, enough information to identify each container, and the effective day for the prices listed. In lieu of a written list, the funeral provider may use other formats, such as notebooks, brochures, or charts, if they contain the same information as the printed or typewritten list and display it in a clear and conspicuous manner.

(ii) Place the following heading on the list, whether a printed or typewritten list or another format is used:

[Name of Funeral Home]
Outer Burial Container Price List

(4) General Price List. (i) Give a printed or typewritten price list, for retention, to people who inquire in person about funeral arrangements or the prices of funeral goods or funeral services. When people inquire in person about funeral arrangements or the prices of funeral goods or funeral services, the funeral provider must give them the list before discussing any funeral arrangments or the selection of any funeral goods or funeral services. This list must contain the retail prices (either the flat fee, or the price per hour, mile or other unit of computation) and the other information specified below for at least each of the following items:

(A) Minimum services of funeral director and staff (together with a list of services provided for any quoted price);

(B) Customary services of funeral director and staff (together with a list of services provided for any quoted price and the statement: "The charge for services may be different depending on the services you choose");

(C) Embalming;

(D) Other preparation of the body;

(E) Transfer of remains to funeral home;

(F) Use of facilities for veiwing;

(G) Use of facilities for funeral ceremony;

(H) Hearse;

(I) Limousine;

(J) Casket(s), $—— to $—— (together with the statement: "A complete price list will be provided at the funeral home");

(K) Alternative container(s), $—— to $—— (together with the statement: "A complete price list will be provided at the funeral home," if offered for sale);

(L) Outer burial container(s), $—— to $—— (together with the statement, "A complete price list will be provided at the funeral home", if offered for sale).

(ii) Place the following information on the price list, above the prices specified in paragraph (2)(b)(4)(i)(A) through (L) of this section.

(A) A heading with the following information:

(Name of Funeral Home)
(address and telephone number of home)
General Price List

(B) The effective date for the prices listed thereon;

(C) The statement: "This list does not include prices for certain items that you may ask us to buy for you, such as cemetery or crematory services, flowers, and newspaper notices. The prices for those items will be shown on your statement of funeral goods and services selected or bill."

(5) Statement of Funeral Goods and Services Selected. (i) Give a written statement for retention to each person who arranges a funeral, at the conclusion of the discussion of funeral arrangements. The statement must list the goods and services selected by that person and the price to be paid for them, broken down into at least the following categories:

(A) Transfer of remains to funeral home;

(B) Embalming;

(C) Other preparation of the body;

(D) Use of facilities for viewing;

(E) Use of facilities for funeral ceremony;

(F) Services of funeral director and staff. (This price may include only those services actually provided. The principal services included in the price must be stated in writing.);

(G) Casket or alternative container selected;

(H) Other specifically itemized charges for services, facilities, or transportation;

(I) Specifically itemized cash advances. (These prices must be given to the extent then known or reasonably ascertainable. If prices are not known or reasonably ascertainable, a good faith estimate shall be given and a written statement of the actual charges shall be provided before the final bill is paid).

(ii) Place the following heading on the statement:

(Name of funeral home)
(Address and telephone number of home)
Statement of Funeral Goods and Services Selected

(iii) If funeral providers furnish people with the general price list, required by § 453.2(b)(4), and the statement of funeral goods and services selected, required by this § 453.2(b)(5), and otherwise comply with this rule, the funeral providers may also furnish people with any other price information, in any format which the funeral providers desire.

(c) *Declaration of Intent.* Any funeral provider who complies with the preventive requirements in § 453.2(b) is not engaged in the unfair or deceptive acts or practices defined in § 453.2(a).

§ 453.3 Misrepresentations.

(a) *Embalming Provisions.* (1) Deceptive Acts or Practices. In selling or offering to sell funeral goods or funeral services to the public, it is a deceptive act or practice for a funeral provider to:

(i) Represent that a deceased person must be embalmed when state or local law does not require embalming;

(ii) Fail to disclose to persons arranging funerals that they may choose whether or not to have embalming performed, unless embalming is required by state or local law.

(2) Preventive Requirements. To prevent these deceptive acts or practices, funeral providers must:

(i) Place the following disclosure on the general price list, required by § 453.2(b)(4), on the line where the heading "Embalming" appears: "In general, you have the right to choose whether embalming is done. It is not required by law except in certain special cases;"

(ii) Include on the contract, final bill, or other written evidence of agreement given to the person arranging a funeral, the disclosure: "Embalming is not required by law except in certain special cases. If this was such a case, we will explain why below."

(b) *Casket for Cremation Provisions.* (1) Deceptive Acts or Practices. In selling or offering to sell funeral goods or funeral services to the public, it is a deceptive act or practice for a funeral provider to:

(i) Represent that a casket is required for cremation;

(ii) Fail to disclose to persons arranging cremations that alternative containers can be used for cremations.

(2) Preventive Requirements. To prevent these deceptive acts or practices, funeral providers must place the following disclosure on the general price list, immediately below the disclosure on cash advance items (required by § 453.2(b)(4)(ii)(C)): "If you want to arrange a cremation, you do not have to buy a casket. A simple container (made out of materials like heavy cardboard or pressed wood) can be used for cremations." This disclosure only has to be placed on the general price list if the funeral provider arranges cremations.

(c) *Outer Burial Container Provisions.* (1) Deceptive Acts or Practices. In selling or offering to sell funeral goods and services to the public, it is a deceptive act or practice for a funeral provider to:

(i) Represent that state or local laws or regulations, or particular cemeteries, require outer burial containers when such is not the case;

(ii) Fail to disclose to persons arranging funerals that they may choose among cemeteries, some of which may not require an outer burial container;

(iii) Fail to disclose to persons arranging funerals that cemetery requirements can usually be met by purchase of a burial vault, or by purchase of a grave liner.

(2) Preventive Requirements. To prevent these deceptive acts or practices, funeral providers must place the following disclosure on the outer burial container price list, immediately below the list's heading (required by § 453.2(b)(3)(ii): "In most areas of the country, no state or local law requires you to buy a burial vault or grave liner. However, many cemeteries require some kind of container so that the grave will not sink in. Either a burial vault or a grave liner, which is usually less expensive, will satisfy these requirements."

(d) *General Provisions on Legal and Cemetery Requirements.* (1) Deceptive Acts or Practices. In selling or offering to sell funeral goods or funeral services to the public, it is a deceptive act or practice for funeral providers to represent that federal, state, or local laws or particular cemeteries or crematories require the purchase of any funeral goods or funeral services when such is not the case.

(2) Preventive Requirements. To prevent these deceptive acts or practices, as well as the deceptive acts or practices identified in § 453.3(a)(1), § 453.3(b)(1), § 453.3(c)(1), funeral providers must identify and briefly describe in writing on the statement of funeral goods and services selected (required by § 453.2(b)(5)) any legal, cemetery, or crematory requirement which the funeral provider represents to persons as compelling the purchase of funeral goods or funeral services for the funeral which that person is arranging.

(e) *Provisions on Preventive and Protective Value Claims.* In selling or offering to sell funeral goods or funeral services to the public, it is a deceptive act or practice for a funeral provider to:

(1) Represent that funeral goods or funeral services will delay the natural decomposition of human remains for a long-term or indefinite time;

(2) Represent that funeral goods have protective features or will protect the body from gravesite substances when such is not the case.

(f) *Cash Advances Provisions.* (1) Deceptive Practices. In selling or offering to sell funeral goods or funeral services to the public, it is a deceptive act or practice for a funeral provider to:

(i) Represent that the price charged for a cash advance item is the same as the cost to the funeral provider for the item when such is not the case;

(ii) Fail to disclose to persons arranging funerals that the price being charged for a cash advance item is not the same as the cost to the funeral provider for the item when such is the case.

(2) Preventive Requirements. To prevent these deceptive acts or practices, funeral providers must place the following sentence in the general price list, at the end of the cash advances disclosure (required by § 453.2(b)(1)(ii)(c)): "We charge you a fee for buying these items," if the funeral provider makes a charge upon, or receives and retains a rebate, commission or trade or volume discount upon a cash advance item.

§ 453.4 Use of threats or boycotts.

It is an unfair or deceptive act or practice for funeral providers to engage in concert in a course of conduct which consists of using any boycott against, or making any threat against another funeral provider for the purpose of preventing or restraining that funeral provider from:

(a) Advertising or otherwise providing information to the public which is not unfair or deceptive regarding the availability or prices of funeral goods or funeral services;

(b) Offering funeral goods or funeral services directly to the public;

(c) Entering into an arrangement with a memorial society or other formal or informal association for the purpose of providing funeral goods or funeral services to that association.

§ 453.5 Required purchase of funeral goods or funeral services.

(a) *Casket for Cremation Provisions.* (1) Unfair or Deceptive Acts or Practices. In selling or offering to sell funeral goods or funeral services to the public, it is unfair or deceptive act or practice for a funeral provider, or a crematory, to require that a casket be purchased for cremation.

(2) *Preventive Requirement.* To prevent this unfair or deceptive act or practice, funeral providers must make alternative containers available in lieu of a casket, if they arrange cremations.

(b) *Other Required Purchases of Funeral Goods or Funeral Services.* (1) Unfair or Deceptive Acts of Practices. In selling or offering to sell funeral goods or funeral services, it is an unfair or deceptive act or practice for a funeral provider to condition the furnishing of any funeral good or funeral service to a person arranging a funeral upon the purchase of any other funeral good or funeral service, except as required by law.

(2) Preventive requirements. To prevent this unfair or deceptive act or practice, funeral providers must:

(i) Place the following disclosure in the general price list, immediately below the effective date for the price list, (required by § 453.2(b)(4)(ii)(B)]: "You may choose only the items you desire. If you have to pay for any items you did not specifically ask for, we will explain the reason in writing on our Statement of Funeral Goods and Services Selected."

(ii) Place the following disclosure on the statement of funeral goods and services selected, immediately below the heading (required by § 453.2(b)(5)(ii)): "Charges are only for those items that are used. If we are required by law to use any items, we will explain the reasons in writing below."

§ 453.6 Services provided without prior approval.

(a) *Unfair or Deceptive Acts or Practices.* In selling or offering to sell funeral goods or funeral services to the public, it is an unfair or deceptive act or practice for any funeral provider to embalm a deceased human body for a fee without first having obtained explicit written or oral permission from a legally authorized family member or representative of the deceased, unless state or local law or regulation requires embalming in the particular circumstances, regardless of any funeral choice which the family might make.

(b) *Preventive Requirement.* To prevent these unfair or deceptive acts or practices, funeral providers must include on the contract, final bill, or other written evidence of the agreement or obligation given to the customer, the statement "You don't have to pay for embalming that was done without prior permission unless it is required by state or local law."

§ 453.7 Retention of documents.

To prevent the unfair or deceptive acts or practices specified in § 453.2 and § 543.3 of this rule, funeral providers must retain and make available for inspection by Federal Trade Commission officials, true and accurate copies of records adequate to disclose compliance with § 453.2(b)(2) (casket price list), § 453.2(b)(3) (outer burial container price list), § 453.2(b)(4) (general price list), for at least two years after the date of their last distribution to customers, and a copy of each statement of funeral goods and services selected, as required by § 453.2(b)(5), for at least two years from the date on which the agreement was signed.

§ 453.8 Comprehension of disclosures.

To prevent the unfair or deceptive acts or practices specified in §§ 453.2, 453.3, 453.5 and 453.6, funeral providers must make all disclosures required by those sections in a clear and conspicuous manner.

§ 453.9 Declaration of Commission intent.

(a) Except as otherwise provided in § 453.2(c), it is a violation of this rule to engage in any unfair or deceptive acts or practices specified in this rule, or to fail to comply with any of the preventive requirements specified in this rule;

(b) The provisions of this rule are separate and severable from one another. If any provision is determined to be invalid, it is the Commission's intention that the remaining provisions shall continue in effect.

§ 453.10 State exemptions.

If, upon application to the Commission by an appropriate state agency, the Commission determines, that—

(a) There is a state requirement in effect which applies to any transaction to which this rule applies; and

(b) That state requirement affords an overall level of protection to consumers which is as great as, or greater than, the protection afforded by this rule;

then the Commission's rule will not be in effect in that state to the extent specified by the Commission in its determination, for as long as the State administers and enforces effectively the state requirement.

Section C—Questions for Comment

Pursuant to Section 19(c)(2)(A) of the FTC Improvements Act of 1980, the Commission invites interested persons to submit written data, views, and arguments relating to the revised rule. Comments would be most useful if they focused upon new issues presented by the latest revisions. The Commission specifically requests comments on the following questions:

1. Are there any provisions which the Commission has retained in the revised rule which are not within the standards established by Congress in Section 19(c)(1) of the FTC Improvements Act of 1980? If so, please describe in detail why you believe the revised rule does not conform to Section 19(c)(1).

2. The Commission is considering what telephone price disclosure provisions are appropriate for inclusion in any final rule. The revised rule published for comment has four provisions specifying information which must be given over the telephone. These are: (1) a provision stating that persons calling about funeral goods or services be told that price information is available over the telephone and that a general price list is available at the funeral home (§ 453.2(b)(1)(i)); (2) a provision stating that persons calling be told the price of any item or combination of items on the general price list if they request such price (§ 453.2(b)(1)(ii)); (3) a provision stating that persons who ask by telephone be given information which reasonably answers their question and is readily available (§ 453.2(b)(1)(iii)); and (4) a provision stating that perons be told, over the telephone, the range of prices charged for standard adult funerals, direct dispositions, and caskets (§ 453.2(b)(1)(iv)). The Commission is considering for adoption the first provision (§ 453.2(b)(1)(i)) for inclusion in the revised rule, together with one or more of the three subsequent provisions.

Factors which will influence the Commission's choice of one or more of the three additional provisions include: (1) which provision, or combination of provisions, will best facilitate fast, effective comparison shopping over the telephone; and (2) which provision, or combination of provisions, will provide the funeral industry with the clearest, least burdensome telephone price disclosure requirements.

The rulemaking record developed thus far indicates that once a body is removed to a funeral home, it stays there in all but rare cases. If comparison shopping between funeral homes on the basis of price is to occur, it must be done before the body is transferred. Thus, for all practical purposes, most consumers must use the telephone to comparison shop. However, many consumers may not be aware of the structure of the transaction they are about to enter—e.g., what items are components of the type of funeral they desire—and therefore they may be unable to ask the questions anticipated by the second and third proposed rule provisions (§ 453.2(b)(1) (ii)–(iii)). Therefore, the Commission is seeking comment on whether a disclosure requirement such as that suggested in the proposed fourth additional rule provision (§ 453.2(b)(1)(iv)) is necessary to ensure that consumers are able to comparison shop effectively. The Commission also seeks comment on whether the price disclosures required by the fourth alternative provision would undermine other fundamental goals of the rule, such as discouraging the mandatory "packaging" of funeral goods and services.

The Commission is further interested in receiving comment on the compliance burden which would be imposed by its adoption of one or more of the suggested telephone price disclosure requirements. Specifically, is there any particular combination of proposed requirements that would impose the smallest possible burden on industry members while still ensuring that consumers receive adequate price information over the telephone?

Finally, the Commission is interested in receiving comment on what other specific provisions should be considered to address the concerns outlined above in lieu of or in addition to those now contained in the proposed rule.

3. The revised rule requires that funeral providers furnish consumers with three separate price lists: (1) a casket price list (§ 453.2(b)(2)); (2) an outer burial container price list (§ 453.2(b)(3)); and (3) a general price list (§ 453.2(b)(4)). Currently, the rule requires that the general price list be typewritten or printed and that it be given to consumers for retention prior to any discussion of funeral arrangements or selection of goods and services. The rule also requires that funeral providers give out price information from the general price list over the telephone. By contrast, the casket and outer burial container price lists must be shown to consumers before any discussion or showing of caskets or outer burial containers, they need not be discussed over the telephone, and they can be provided in formats other than a written or printed list as long as those formats contain the same information as would a list. The Commission seeks comment on the following questions: (1) Should the Commission specify that funeral providers make available three separate price lists, or should funeral providers be permitted to use other formats, such as consolidating the information from the casket and outer burial container price lists onto the general price list? (2) If funeral providers were permitted to use other formats and did so, would consumers be able to understand and use the information they received to the same degree as if given three separate price lists?

4. The rule requires that the prices on the casket and outer burial container price lists (§ 453.2(b) (2) and (3)) appear in order, from the least to the most expensive. The purpose of this requirement is to ensure that the prices on the lists are shown in a readily comprehensible manner and in a manner which facilitates comparison shopping. The Commission seeks comment on whether these sections should be changed to omit the requirement that goods be listed from least to most expensive and to permit funeral directors to organize these price lists in other ways. For example, a funeral director might seek to organize the price lists by manufacturer. If funeral providers could organize these price lists in sequences other than from least to most expensive, would compliance costs to funeral providers be reduced? Would sequences other than those organized by ascending price provide consumers with the same information, in as comprehensive a fashion? Should the Commission, in lieu of specifying the sequence of the price lists, require placement of the following disclosure on the casket price list: "Caskets range in price from $——[minimum price] to $——[maximum price]" and placement of an equivalent disclosure on the outer burial container price list?

In the alternative, should the last sentence of § 453.2(b) (2) and (3) be interpreted to give funeral directors the flexibility to organize price lists in other ways?

5. § 453.2(b)(5) of the revised rule requires that funeral providers give consumers a written statement of the goods and services which they have selected and their prices. This statement must be given at the conclusion of the discussion of funeral arrangements. The statement provides price information in addition to that contained on the price lists required by the rule, such as the cost of cash advance items and the fees to be charged for the funeral provider's services for a particular funeral. The statement also is designed to enable persons arranging a funeral to see and evaluate, in one place, the cost of all the items they are considering for purchase. However, in light of the requirement that funeral providers give price information in the form of a general price list, a casket price list and a price list for outer burial containers, the Commission seeks comment as to whether the statement of funeral goods and services selected is necessary to ensure adequate price disclosure to consumers.

6. In drafting the definitions of "alternative containers" (§ 453.1(b)) and "casket" (§ 453.1(d)), the Commission's intent is to provide a workable distinction between the two types of burial containers. Are there examples of containers currently in use which could not be readily classified into one of these two categories? If so, what other definitions of "alternative container" and "casket" would eliminate or mitigate any such problem?

7. Section 19(c)(1)(B)(ii) permits the Commission to prohibit persons who sell funeral goods and services from "* * * engaging in any boycott against, or making any threat against * * * any other person providing funeral goods and services. Section 453.4 has been drafted to limit the practices it prohibits to conduct involving threats or boycotts. By contrast, former versions of the rule prohibited other forms of conduct, such as the use of disparagement, or the misuse of state administrative or judicial processes for the purpose of intimidation or harassment. In addition, the Commission has limited the revised rule to concerted conduct by two or more funeral providers. By contrast, former rule versions also would have applied to conduct engaged in by an individual funeral provider. The Commission seeks comment upon whether the rulemaking record shows that the acts and practices addressed by the more limited provision in the revised rule are sufficiently prevalent to warrant their prohibition in an industry-wide trade regulation rule.

8. Section 453.5(a)(2) of the revised rule requires funeral providers who arrange cremations to make alternative containers available to consumers. The revised rule also prohibits funeral providers from requiring a casket for cremation (§ 453.5(a)(1)), prohibits any representation that a casket is required for cremation (§ 453.5(b)(1)(i)), and requires that funeral providers disclose to consumers on the general price list that an alternative container may be used for cremation in lieu of a casket (§ 453.3(b)(2)). The Commission invites public comment on whether it is necessary to require that alternative containers be made available by funeral providers who arrange cremations, and on the extent to which this provision may create a burden on funeral providers. The Commission also seeks comment on whether the prohibition on requiring a casket for cremation and the disclosure that caskets are not required could ensure that persons arranging cremations do not, in fact, have to purchase a casket. Alternatively, the Commission seeks comment on whether it should substitute for the current rule requirement that funeral providers stock alternative containers, a requirement that any funeral provider who offers cremations but does not stock alternative containers must disclose that fact in any advertisement or telephone discussion in which the availability of cremations is mentioned.

9. Under 453.5(b) of the revised rule, persons arranging funerals are given the right to select only those items from the funeral provider's general price list which they wish to purchase. The

provision would require funeral providers to deal with consumers on an item-by-item basis, and would prohibit any refusal to deal because the consumer refuses to purchase a "package" of funeral goods and services. (However, the rule would not affect a funeral provider's right to refuse to deal with any individual consumer for other legitimate business reasons, such as a particular consumer's poor credit history.)

It is possible that situations could be imagined in which a consumer's choice of a combination of individual items would create practical problems for the funeral provider. The Commission recognizes the need for common sense flexibility in its implementation of any rule that may be promulgated. If there are any such situations and they present a genuine problem, one way to deal with them would be through compliance guides outlining any cases that would be treated as exceptions to the general prohibition on mandatory "package" selling.

However, at this point in the proceeding, the Commission is also interested in receiving comment on whether the rule itself can be reworded to avoid creating a technical rule violation in any such aberrant situations without vitiating the goals of the rule's itemized pricing provisions.

10. The rule currently requires (§ 453.6) that funeral providers obtain explicit written or oral permission from a legally authorized family member or representative of the deceased prior to embalming for a fee. The rule makes an exception to this requirement in those instances where state or local law or regulations require embalming, regardless of any decision which the family might have made. The Commission is considering whether an additional exception should be included in the embalming provision. This exception would permit unauthorized embalming for a fee if a funeral provider could show that despite diligent efforts, a legally authorized family member or representative could not be found to give permission to embalm. To what extent would the embalming provision, without such an exception, result in funeral providers not embalming where the family would have desired that embalming be performed? To what extent, if the exception were added to the provision, would it result in embalming where the family would not have desired that embalming be performed? Does Section 3 of the Industry Guides address these problems more or less adequately than the proposed rule?

11. Section 453.3(f)(2) of the revised rule requires affirmative disclosure on the general price list that a fee is charged for cash advance items, if that is the case. Is such an affirmative disclosure necessary or are the prohibitions of § 453.3(f)(1) adequate to protect consumers against misrepresentations about the prices for cash advance items?

Opportunities for Public Comments

Pursuant to Section 19(c)(2)(A) of the FTC Improvements Act of 1980, the Commission solicits written data, views, and arguments relating to the revised rule from all interested persons. The Commission has additionally decided to establish a rebuttal period, which will immediately follow the close of the public comment period. During the rebuttal period, persons who have participated in the funeral rule proceedings prior to the rebuttal period may present written responses to comments submitted during the public comment period.

After the rebuttal period is completed, the Commission will allow some persons who have previously participated in the rulemaking proceeding to make oral presentations before the Commission on the revised rule. The oral presentations will be held on May 13, 1981. The presentations must be confined to information already in the rulemaking record. Requests to participate in the oral presentation must be submitted to the Commission during the initial public comment period, ending on March 23, 1981. The Commission will select participants from among those persons who have requested the opportunity to appear. The Commission will seek to ensure that all viewpoints are presented. A single representative may be chosen by the Commission to represent the views of persons having the same or similar interests.

Public comments, rebuttal comments and requests to appear in the oral presentation should be sent to Secretary, Federal Trade Commission, 6th Street & Pennsylvania Ave., NW., Washington, D.C. 20580, Attention: Funeral Rule. When possible and not burdensome, three copies of each comment or request to appear should be submitted.

Issued: January 13, 1981.

By the Commission.

Carol M. Thomas,

Secretary.

[FR Doc.81-2100 Filed 1-21-81; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Parts 715, 816, and 817

Surface Coal Mining and Reclamation Operations Interim and Permanent Regulatory Programs; Use of Explosives

AGENCY: Office of Surface Mining Reclamation and Enforcement, U.S. Department of the Interior.

ACTION: Proposed amendments to interim and permanent rules.

SUMMARY: The provisions of the Interim Program Regulations, Surface Mining Control and Reclamation Act of 1977 (SMCRA; the Act), published at 42 FR 62639 (Dec. 13, 1977), included standards governing the use of explosives, specifically blasting standards restricting the peak particle velocity of the ground motion caused by a blast to 1-inch per second and requiring regulatory authority approval of a variance for blasting at distances closer than 1,000 feet to inhabited buildings. Amendments are also proposed to similar provisions of the Permanent Regulatory Program. Sections 816/817.65 and 67 which limited distance and particle velocity criteria are proposed for change.

The Act, which is intended to protect the public and the environment, mandates in Section 515(b)(15)(C) that the Office of Surface Mining (OSM; the Office) issue performance standards that limit the size of blasts to prevent (i) injury to persons, (ii) damage to public and private property outside the permit area. The amendments to the interim and permanent regulatory program proposed herein carry out the responsibilities of the Office under the Act by establishing blasting standards that will protect persons and property from the hazards of using explosives during surface coal mining operations.

Section 816.65(f) was suspended by reference in notice September 15, 1980 (45 FR 61123). Amended interim § 715.19(e) and permanent regulations Sections 816/817.65 and 817.67 are proposed herein with accompanying justification. These amendments, if adopted, replace regulations under suspension.

DATES: The comment period on this proposed amendment will extend until March 23, 1981. All written comments must be received by 5:00 p.m. on that date. Comments received after that hour and those delivered during the comment period to locations other than that

specified below will not be considered or included in the administrative record for the final rulemaking.

Hearings will be held February 11 and 18, 1981. See Supplementary Information for function details.

Requests to testify at a public hearing should be received on or before February 9, 1981. See Supplementary Information for details.

ADDRESSES: Written comments must be mailed or hand-delivered to the Office of Surface Mining, U.S. Department of the Interior, Administrative Record Office, Room 153, South Building, 1951 Constitution Avenue, NW., Washington, D.C. 20240. All comments will be available for inspection at the Administrative Record Office.

Hearings will be held in Washington, D.C., Knoxville, TN, Indianapolis, IN, and Denver, CO. See Supplementary Information for further details.

FOR FURTHER INFORMATION CONTACT: Russell F. Price, P.E., Division of Technical Services, Office of Surface Mining, U.S. Department of the Interior, Washington, D.C. 20240; 202-343-4022.

SUPPLEMENTARY INFORMATION:

Background

In litigation over the interim regulations, the United States Court of Appeals for the District of Columbia Circuit issued a decision May 2, 1980 (In re: Surface Mining Regulations Litigation, No. 78-2190, 78-2191, and 78-2192). That decision addressed two blasting issues: (1) The 1,000-foot limitation on blasting in § 715.19(e)(1)(vii) and (2) the one-inch per second limitation on particle velocity produced by blasting in § 715.19(e)(2)(ii). The 1,000 foot limit was found to be inconsistent with the Act, Sections 522(e)(2) and (5), and the 1 inch per second vibration limit was invalidated as arbitrary, capricious and lacking technical support.

In response to that decision, these blasting rules have been reviewed by the office and amendments are proposed in this notice to conform with the intent of the Court of Appeals' ruling.

Availability of Copies

Copies of this proposed amendment may be obtained from the following OSM offices:

Headquarters, U.S. Department of the Interior, South Building, Room 153, 1951 Constitution Ave., NW., Washington, DC 20420; 202-343-4728
Region I, 603 Morris Street, Charleston, WV 25301; 303-342-8125.
Region II, Suite 500, 530 Gay St., SW., Knoxville, TN 37902; 615-637-8060
Region III, Room 202, Federal Building & U.S. Courthouse, 46 East Ohio St., Indianapolis, IN 46204; 317-269-2600
Region IV, Scarritt Building, 5th Floor, 818 Grand Ave., Kansas City, MO 64106; 816-374-2618
Region V, Brooks Towers, 1020 15th St., Denver, CO 80202; 303-837-5511

Public Hearings

Public hearings on this regulation will be held on the dates and at the locations below to hear all those who wish to testify. The hearings will begin at 9:30 a.m., local time.

Washington—Department of the Interior Auditorium, 18th and C Sts., NW., Washington, D.C., February 11, 1981
Indianapolis—Indiana War Memorial, 431 North Meridian St., Indianapolis, IN. February 18, 1981
Knoxville, TN—530 Gay Street, Suite 500, Knoxville, TN., February 11, 1981
Denver—Court House, 1961 Stout St., Rm. C-503, Denver, Colo., February 11, 1981

Persons wishing to testify at the public hearings on this proposed amendment should contact persons listed under Public Meetings for the appropriate location on or before February 9, 1981. Individual testimony at these hearings may be limited at the discretion of the hearing panel depending on the number of speakers. The hearings will be transcribed. Filing of a written statement at the time of giving oral testimony would be helpful and would facilitate the job of the court reporter. Submission of written statements in advance of the hearings would greatly assist OSM officials who will attend the hearings. Advance submissions will give these officials an opportunity to consider appropriate questions which could be asked for clarification or to request more specific information from the person testifying.

The public hearings will continue on the day indicated above until all persons scheduled to speak have been heard. Persons in the audience who have not been scheduled to speak and wish to do so will be heard following the scheduled speakers. Each hearing will end after all persons scheduled to testify and persons present in the audience who wish to speak have been heard. Persons not scheduled to testify, but wishing to do so, assume the risk of having the public hearing adjourned unless they are present in the audience at the time all scheduled speakers have been heard.

Public Meetings

Representatives of OSM will be available to meet between January 22, 1981 and March 23, 1981, at the request of members of the public, State representatives, and industry organizations to receive their advice and recommendations concerning the content of these proposed amendments. Persons wishing to meet with representatives of OSM during this time period may request a meeting at the Washington Office or any of the five regional offices. Persons to contact to schedule or attend such meetings are as follows:

Washington—Russ Price 303-343-4022
Charleston—Jesse Jackson 304-342-8125
Knoxville—William Thomas 615-637-8060
Indianapolis—Allen Perry 317-269-2266
Kansas City—Richard Dawes 816-374-5109
Denver—John Hardaway 303-837-4972

OSM representatives will be available for these meetings between 9:00 a.m. and noon, and 1:00 and 4:00 p.m., local time, Monday through Friday excluding holidays, at the OSM offices. All such meetings are open to the public. Notices of the date, time, and place of the meetings will be posted in advance to the extent possible. A written summary of each meeting will be made a part of the administrative record and will be available to the public.

Public Comments

Written and oral comments should be as specific as possible. OSM will appreciate any and all comments, but those most useful and likely to influence decisions on these amendments will be those which include a rationale based on fact, not opinion, for any given recommendation.

Explanation of Proposed Amendment Concerning the 1,000 Foot Limitation on Blasting

The rule governing distance limitation from inhabited buildings and structures for surface blasting was designed to protect persons and property from the dangers of flyrock, airblast, and ground vibration. The rule as issued December 13, 1977 (42 FR 62639), required that a regulatory authority must approve blasting operations to be conducted within 1,000 feet of inhabited buildings and 500 feet of utilities and other structures.

The U.S. District Court of Appeals cited the 300 foot limitation in Section 522(e)(5) of the Act (Pub. L. 95-87) as the statutory basis for restricting surface mining operations, including blasting, and found that the 1,000 foot blasting limit was inconsistent with the 300 foot provision.

The statutory basis of this rule is protection of persons, property and water resources as directed by Section

515(b)(15)(C) of the Act. To protect the public, OSM added additional precautions which are considered to be necessary when blasting is conducted in close proximity to inhabited areas and presents an imminent danger to persons and property. This is interpreted to include both before and after protection afforded by technical control of blast designs, monitoring for adverse effects, and recording of the actual blasting operation. To accomplish these goals several alternatives were considered.

Option 1—Retain the prior regulation establishing 1,000-foot limitation requiring regulatory authority approval of any variance to those limitations.

Option 2—Delete all distance limitations for blasting near inhabited buildings except the statutory limit of no mining within 300 feet and those imposed by the Act depending on other performance standards to provide protection to persons and property.

Option 3—Delete § 15.19(e)(1)(vii)(A) and add new rules which require blast design certification, monitoring of all blasts conducted within 1,000 feet of inhabited buildings, and specific restrictions on flyrock range.

Option 1

After considering whether to retain the prior rule, OSM believed that intent of the requirement for regulatory authority approval of a waiver to blast within 1000 feet of inhabited buildings during the permit process was not to place a restriction on blasting or mining, but to require additional precautions for blasts near inhabited areas. It was found that waivers of the distance limit by State regulatory authorities, if approved on the basis of preblast surveys, do not necessarily consider blast design and actual site-specific conditions of blasting. As proposed for the permanent regulations 43 FR 41888 Sep. 18, 1978, the preblast survey would analyze the structural condition and the report would recommend blasting restraints. However, as currently issued, the requirement for a preblast survey only catalogs visually apparent structural conditions. Also, as stated on the preamble (44 FR 15048) to the permanent program regulations "difficulty would exist in providing detailed information on blasting operations at the permit application stage." Therefore, under the interim and final rules, no detailed data is evaluated or considered for blasting within the limitations, and no specific requirements are placed on monitoring. Instead, the waiver is granted if an operator can demonstrate the ability and intent to comply. Therefore, OSM believes that this option should be rejected and that the rule which applies standards which protect people and property should be adopted.

Option 2

In order to evaluate the effect of this alternative, the past actions of the State regulatory authorities in granting approval for blasting within 1,000 feet of specified structures must be considered. Under current rules State regulatory authorities can grant such approval on the basis that preblast surveys were conducted or offered to each specified structure within 1,000 feet of the applicant's proposed blasting. Generally, approval of the distance limitation is given at the time the permit is issued and therefore prior to any blasting, however some states set monitoring and reporting requirements which must be met.

On the basis of the above description of these anticipated procedures, and the lack of a detailed evaluation and recommendation in the preblast survey, relying on the 300 foot mining limit alone, would provide limited additional protection to persons or property. Residents or owners of structures within one-half mile already are eligible for preblast surveys upon request (Section 515(b)(15)(E) of the Act). Essentially, this is the same investigation that the regulatory authorities have employed to grant approval for blasting under the 1,000 foot restrictions. Therefore, deleting the distance limits and relying on the 300 foot mining restriction would place the burden of protection on vibration and airblast limits which are designed to reduce the possibility of damage but are generally observed after the blast has occurred.

Procedures developed by the state regulatory authorities vary for the design and loading of blasts within 1,000 feet of structures. In some instances blasts within 1000 feet of residences have not been scrutinized any more closely than those at greater distances, while other regulators have required submission of blast plans and seismographic records of adjacent areas. The preparation of a blast design is especially pertinent in evaluating the possibility of flyrock. The design and actual configuration of blast under the permanent program rules are evaluated only after detonation and in most cases, only if a complaint is filed, damage recorded, or an injury occurs. Therefore, it appears that regulatory restrictions do not afford residents adequate safeguards against adverse effects of blasting, especially flyrock, unless additional emphasis is given to those blasts where it is recognized that uncontrolled flyrock will present an imminent hazard.

OSM believes that adherence to performance standards which govern flyrock, airblast, and ground vibrations will generally preclude damage to property and injury to the public under normal blasting conditions. Flyrock and airblast can be reduced by applying design criteria. The concept of preparing a blast design when blasting within 1000 feet of structures that are particularly susceptable to the hazards of flyrock, will insure that a design rationale is applied to consider these performance standards prior to the blast. Through this demonstration of their ability to meet the standards for flyrock range, airblast, and ground vibration limits, the operator will provide the regulatory authority and the homeowners the protection anticipated by the Act. This rationale parallels the design precautions incorporated into construction of spoil fills and impoundments. The application of best available design techniques and certification implies, that to the knowledge of the operator, the standards developed to prevent damage and injury have been incorporated in the blasting operation. Additionally, this concept reiterates the liability and responsibilities which the operator and blaster-in-charge undertake, and should help when obtaining the required insurance for personal liability and property damage in the use of explosives required under § 806.16.

OSM believes that insufficient protection of the public would be afforded by Option 2 because other performance standards restricting damage due to ground vibration and airblast are only evaluated after the blast has occurred and a 300 foot limit is inadequate to preclude damage and hazards from flyrock. Therefore, Option 2 must be rejected because it would not provide the degree of safety required by Section 515(b)(15)(C) of the Act.

Option 3

This alternative proposes to revise the philosophy of granting a waiver to distance restrictions on blasts within 1,000 feet of inhabited buildings during the permit approval process, and to provide rules which provide a zone of additional protection by adding specific requirements in conducting blasts near inhabited areas not generally required for blasts outside that zone. This Option would require an operator to submit to the regulatory authority a copy of a certified blast design 10 days prior to conducting any blast within 1,000 feet of a dwelling or other inhabited building. This option does not prohibit blasting in

close proximity to houses, but requires that all blasts within 1000 feet of inhabited buildings would be developed and conducted with close scrutiny. This differs substantially from the prior rule, because it affords knowledge of the blast design and site-specific information, rather than the broad permit requirements. In this manner, the regulatory authority will be notified of blasting within 1000 feet and have the data on file if an analysis is necessary. This will not constitute or be assumed to include or require the regulatory authority approval. The blaster-in-charge is responsible for approving and conducting all blasts under his cognizance. This will, however, allow the regulatory authority to (1) be notified of such blasts and to be aware of the design of the blast before the blast is conducted, with the opportunity for review and to make recommendations, if deemed necessary, (2) allow the regulatory authority to monitor blasts within the distance limitations, and (3) insure that a certified blaster has considered the hazards by certifying the blast design. These requirements are appropriate to ensure that specific attention will be given to designs for blasts having a greater potential of causing personal injury or property damage. In addition, the regulatory authority will be able to compare the blast design and the actual shot record if problems arise.

The Act places emphasis on preventing injury to persons and damage to property. The potential for such injury and damage is greatest in inhabited areas. OSM believes that the provisions of the Act in protecting persons from injury and property from damage can be best achieved through control of blasting within distance limits. Blasting in close proximity to inhabited areas must be considered more hazardous to the public than remote blasts.

The distance limits of 1,000 feet for inhabited buildings are required to establish a zone of added protection from that commonly used in blasts outside the zone. Coupled with fly rock standards, limits on airblast and the peak particle velocity, this additional emphasis on controlled blasting near inhabited buildings accomplishes the intent of the Act, by tying site-specific conditions with the protection of property and persons from injury.

In a study by Management Science Associates (Roth and others, 1977), 28 of 34 accidents to mine workers during scheduled blasts were attributed to flyrock. Although these statistics were derived to provide safety to miners and quarry personnel, the unpredictability of flyrock also applies to the safety of the public when blasting is conducted close to inhabited areas.

Flyrock range is analyzed by Roth in Appendix F, and the study provides fromulas by which to predict flyrock range. Table F–1 relates blasts and their design to both predicted and observed flyrock ranges. Flyrock was observed to travel up to 4,500 feet in a hard rock quarry. The study also addressed possible reasons the large range was attained. OSM believes that using accepted blast design standards, (i.e., proper burden, spacing, and stemming) an operator can prevent most flyrock. Additionally, performance standards governing airblast and ground vibration have a beneficial effect on reducing flyrock by dictating other constraints on the geometry of blasts because of limits on the amount of explosives per delay and requirements for adequate stemming.

Hazards of flyrock were discussed in the preamble to the final permanent program rules (44 FR 15195). Flyrock damage in several States was also discussed (44 FR 15193). An additional provision is proposed here to prevent injury from flyrock, by restricting the travel of flyrock to one-half the distance to the nearest inhabited building beyond the area of regulated access, or to the permit boundary whichever is less. A similar provision was issued under provisions of the permanent regulations (30 CFR 816.65.(g)), and underwent public comment and analysis (44 FR 15195, paragraph VIII).

Preferred Alternative

The proposed rule is based on Option 3. The new language of § 715.19(e)(2)(vii) and (viii) of the interim rules and Section 816/817.65(f) of the permanent rules would (1) alert the regulatory authority of proposed blasting to be conducted within defined distance limits, (2) allow regulatory authorities and consultants to evaluate the correlation of blast design and actual field data if citizen complaints are received or as a basis for modifying the blast design, (3) require a certified blaster to prepare the blast design, and (4) provide specific restraints on the travel of flyrock to prevent personal injury or property damage. OSM believes that the zone of 1,000 feet is reasonable to provide protection to the public as required by the Act, but will consider suggested alternatives, accompanied by a reasonable rationale, in the drafting of final rules. In proposing this amendment, OSM believes that the inconsistencies with Section 522(e)(5) of the Act found by the Court of Appeals are resolved because the proposed rule does not restrict blasting, except under the general restrictions of surface mining under the statute. The limits proposed create a safety zone, rather than imposing a blanket limitation on blasting, and are believed to comply with Section 515(b)(15)(C). The need for the zone of additional precaution stems from the statute in requiring protection of the public from injury and property from damage. OSM believes that in requiring additional attention to design standards, optional monitoring, and certification of blasts near inhabited areas that the protection provisions of Section 515(b)(15) can be carried out. The requirement for a blaster-in-charge to certify the design is considered to be similar to certification of design plans by a qualified professional in the specific field of expertise required by other sections of the Act and rules. As noted in the rules the blaster-in-charge is always responsible for the blasting operation. The concept of blaster certification is believed to be consistent with this rule and ultimately, each State will certify blasters in surface coal mines, under a program approved by OSM under rules of Subchapter M. Until the final rules of Subchapter M are effective and a State program approved, the current State program, if any, will apply to the design submission provision. An operator must appoint a certified blaster who will be responsible for blasting operations, to comply with this provision until the OSM certificates program is promulgated. A beneficial saftey condition is achieved by incorporating the effects of other regulatory requirements such as airblast limits and use of the scaled-distance equation on the hazards of flyrock.

Explanation of Proposed Amendments on Ground Vibration Standards

In proposing this amendment to the blasting regulations, OSM has reviewed the Court of Appeals, decision, which found the original provision arbitrary and without technical support. In this proposed amendment OSM relies upon the recent Bureau of Mines Report of Investigations by Siskind and others (1980) for its technical support and Section 515(b)(15)(C) as the statutory basis for this rule. This amendment allows the flexibility for site-specific conditions, preblast conditions and evaluating critical factors in blast vibration damage criteria. In establishing the maximum allowable ground vibration limits, parameters which provide a low probability of damage and reasonable protection to property interests have been chosen.

The ground vibration rules are designed to protect property both public and private, underground mines, and water resources from adverse effects of blasting performed in connection with surface coal mining activities. The prior rules restricted ground vibration to a maximum peak particle-velocity of 1 inch per second. The 1 inch per second limitation differed from the Bureau of Mines (1971) Bulletin 656 which recommended a safe blasting limit of 2 inches per second, and it was cited as imposing an additional constraint on the industry which had accepted the Bureau of Mines limit. In initiating this rulemaking, several alternatives have been considered. (1) Delete the 1-inch per second standard for peak particle velocity and accept the previous BOM 2 inch-per-second standard; (2) Repromulgate rules supporting a 1-inch-per second standard; and (3) Develop a rationale incorporating the Bureau of mines (1980) (RI 8507) research study in establishing safe blasting limits.

Prior to the enactment of SMCRA, the Subcommittee on Energy and Environment of the House Committee on Interior and Insular Affairs heard extensive testimony on the extent and the nature of the hazards associated with blasting in surface mining. (Surface Mining Control and Reclamation Act of 1977. Hearings on H.R. 2 before the Subcommittee on Energy and Environment of the House Committee on Interior and Insular Affairs, 95th Cong., 1st Sess. (1977).) Those hearings indicated that the process of surface coal mining often requires a great deal of blasting to fracture the rock strata which overlies the coal seam.

The Court of Appeals in responding to litigation found the 1-inch rule remanded by the court in the interim regulatory program has the identical counterpart in the permanent program. Therefore, the proposed amendments to ground vibration limits will address changes in both the permanent and interim programs.

In promulgating the prior permanent program rules governing blasting, OSM analyzed the technical references which were available through the fall of 1978. Those materials formed the basis for a 1-inch per second peak particle velocity standard in the permanent rules (30 CFR 816.65). The discussions published on March 13, 1979 (44 FR 15196–15199), are hereby incorporated by reference for this rulemaking, and the reference material listed (44 FR 15179) is relied upon for farther reference.

Additional and more recent technical documents considered by OSM in the development of these revised rules are as follows:

Siskind, D. E., Stagg, M. S., Stachura, V. J., 1978, Safe ground vibration and airblast criteria: 51st Annual Meeting, Eastern Section Seismological Society of America, October 1978, Blacksburg, Va.

Siskind, D. E., Stagg, M.S., Kopp, J. W., Dowding, C. H., 1980, Structure Response and Damage Produced by Ground Vibration From Blasting: U.S. Bureau of Mines Report of Investigations (RI 8507) including all applicable references.

Bollinger, G. A., 1971, Blast vibration analysis: Southern Illinois Univ. Press.

Hemphill, Gary B., 1980, Blasting Operations: McGraw-Hill. Roth, J., Britton, K. C., Campbell, R. W., Keller, W. R., 1978, Evaluation of surface mining blasting procedures: Management Science Associates.

Option 1. The prior blasting rules instituted a 1 inch-per-second peak particle-velocity ground vibration limit, based partly on interpretation of the Bureau of Mines' Bulletin 656 and other referenced publications. This bulletin indicated that damage points existed below the Bureau's 2 inch per second "safe blasting criteria" and the damage points on the graphs were classified into two groups "minor damage" and "major damage." The two inch-per-second standard was established to preclude minor damage. Edwards and Northop classified damage into three categories "threshold," "minor," and "major" and related this damage to the strength of a structure after damage. This report cited visual cracking as threshold damage, minor as more superficial damage to plaster or inelastic members but not affecting structural ability, and major damage as serious weakening of the structure. The Dvorak study cited three parameters for classifying damage with threshold and major damage criteria similar to Edwards and Northop, but described minor damage as loosening and falling of plaster and minor cracking in masonry and cited minor damage occuring between 1.2–2.4 inches/second. In addition, Dvorak predicted threshold damage at levels of 0.4–1.2 inch/second. It was pointed out that these limits were considered conservative at that time. OSM established the 1-inch per second standard to preclude threshold damage (i.e. damage which would be clearly visible and create public criticism).

Since the acceptance of BOM 656, research studies and technical discussions have demonstrated that dynamic qualities of material to be blasted and dynamic response of structures to be protected, enter into the consideration of damage probability. The use of BOM Bulletin 656 and the 2 inch per second "safe blasting limit" at this time would ignore recent studies and would appear to provide an inadequate degree of protection to property in proximity to surface coal mining operations. OSM therefore chose to reject Option 1, relying upon a 2 inch-per-second particle velocity as adequate protection because the "safe blasting criteria" outlined in BOM 656, while clearly preventing major damage, appears to border on the possibility of minor damage, and may not prevent threshold damage, as documented in the Bureau's latest study (Siskind et al., 1980) (RI 8507).

Option 2. In analyzing the prior 1-inch per second standard, the court cited OSM's interpretation of Bulletin 656 as without technical support in the interim rules. As discussed in Option 1, the Bulletin 656 "safe blasting limit" does not provide the degree of certainty necessary to fulfill the requirements of Section 515(b)(15)(C) of the Act. Based on the most recent Bureau of Mines Report of Investigations, RI 8507 Structure Response and Damage Produced by Ground Vibrations from Blasting (Siskind, 1980)), the Office appears to have been correct in rejecting the Bureau's 2-inch per second standard as applicable to surface coal mines and correct in establishing a lower value. This reduction is substantiated in the report (Siskind 1980) by relating damage criteria (threshold, minor and major) to frequency of blast vibration and demonstrating that at lower frequencies the damage level occurs at lower peak particle velocities. Also, supporting this finding is the histogram which indicates that blasts at surface coal mines normally produce lower frequencies than quarry or construction blasting operations. This relationship further supports the need for maximum allowable peak particle velocity less than 2 inches per second, and the one inch-per-second was chosen based on those premises. However, the latest BOM report (Siskind 1980) recommends that the damage limits for threshold damage be reduced as low as 0.5 inch-per-second for older homes with plaster-on-lath construction and sensitive structural elements, and 0.75 inch per second for dwellings with modern gypsum-board construction. This recommendation covers the predominate frequencies which are realized in coal mine blasting.

In view of the latest BOM Report (Siskind 1980) and corroborating evidence in (Langefors and Kihlstrom 1979) that low frequency blasts can cause greater damage, OSM rejects the constant application of a 1 inch-per-second blasting standard because the degree of protection may not consistently fulfill provisions of the Act, especially in areas where older homes and critical residential structures may

be subjected to 1 inch-per-second peak-particle velocities. In rejecting Option 1 and Option 2, OSM has chosen to accept Option 3 based on the most recent BOM findings and design criteria to prevent damage to property, thereby achieving the standard of Section 515(b)(1)(C)(ii) of the Act.

Option 3. The BOM's recent report (Siskind, 1980 RI 8507) provides extensve analysis of field data compiled during research projects conducted at BOM's Twin Cities Research Center relating blasting damage to ground vibration and geophysical data recorded from actual surface mining operations both by the BOM and previous research studies. This research generated a technical paper (Siskind and others, 1979) and a report of investigations (Siskind, and others, 1980, RI 8507). Those documents provide data on the subject of blast frequency vs. displacement, demonstrate the use of response spectra analysis of building elements, and analyze the conditions which contribute to structural damage. These research studies indicate that blasting damage to structures may not be totally avoided by setting a constant particle-velocity limitation alone; instead structural damage from blasting may only be prevented by requiring an analysis of the amplitude and frequency of the particle velocity, as well as the natural frequency, construction material, and condition of the affected structure. The studies demonstrated that vibration levels below 1 inch per second continually disturb residents and may cause threshold damage (Table A–1) to structures when the frequency of the ground wave is below 40 Hertz (Hz). Frequency histograms presented by Siskind (Figure 1), indicate that the predominant frequency of blasts in surface coal mines is between 5 and 30 Hz. Therefore, a lesser damage criteria for blast vibrations of low frequencies must be established to preclude damages to structures under specific site conditions. This phenomenon is similar to that experienced under earthquake conditions where displacement of the surface wave may be of more concern than the velocity in evaluating the damage threshold. The data provided by the Bureau of Mines indicates that the relationship between peak particle velocity and degree of damage may vary with frequency, and minor damage is more probable as the frequency decreases (Siskind, 1980).

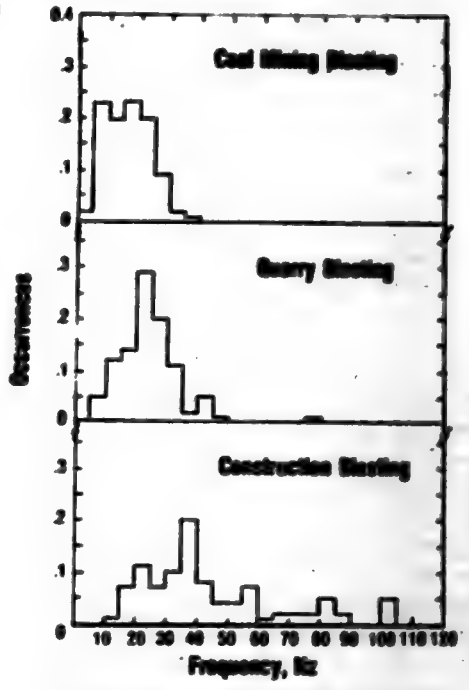

Figure 1 Predominate Frequencies Of Blast Vibrations From Coal Mining,Quarry And Construction Blasting (FROM Siskind And Others, 1980)(Fig. 2)

Table A–1.—*Damage Classification*

[From Siskind and others, 1980] (Table 10)

Uniform classification	Description of damage	As described in studies of blasting damage
Threshold	Loosening of paint; small plaster cracks at joints between construction elements; lengthening of old cracks.	Threshold: Dvorak; Edwards and Northwood; Northwood, Crawford, and Edwards; Thoenen and Windes.
Minor	Loosening and falling of plaster; cracks in masonry around openings near partitions; hairline to 3-mm cracks (⅛ to ⅛ in.); fall of loose mortar.	Minor: Dvorak; Edward and Northwood; Northwood Crawford, and Edwards; Langefors, Westerberg, and Kihlstrom. Major: Thoenen and Windes.
Major	Cracks of several mm in walls; rupture of opening vaults; structural weakening; fall of	Major: Dvorak; Edwards and Northwood; Northwood Langefors,

Table A–1.—*Damage Classification*—Continued

[From Siskind and others, 1980] (Table 10)

Uniform classification	Description of damage	As described in studies of blasting damage
	masonry, e.g., chimneys; load support daily affected.	Westerberg, and Kihlstrom.

In Table A–1 taken from the report of investigations, Siskind defines the three damage classifications and relates these to past studies used as corroborating data. As presented in Table A–1, threshold, minor and major damage are defined in terms of the resultant change one could expect in evaluating the pre-blast to post-blast condition of a structure. Threshold damage as defined, includes visually apparent crack propagation, lengthening of existing cracks and chipping of paint. These cracks although not considered minor damage, do diminish the value of the property because to a prospective buyer, an insignificant crack may mean the beginning of major problems. Also, a threshold crack caused by blasting, even if barely noticeable, is an invasion on the property which if blasting did not occur, may never happen. Therefore, OSM has interpreted the Act as providing protection to prevent any damage which might affect the property, by conducting blasting operations. The most prevalent cracks which would be obeserved are those occuring at intersecting construction elements (such as window frames and door frames). Minor damage can be more readily indentified since plaster will fall and inelastic construction materials such as concrete masonry, brick and mortar joints receive permanent deformation (cracks). Major damage can be evaluated as structural failure of construction members.

In evaluating the parameters for providing protection to property, OSM has accepted threshold damage as the target level of damage to avoid when blasting. As stated above, threshold damage describes the level of protection to one's property which the Act provides

in limiting the use of explosives in surface coal mining operations.

Below the threshold classification lies the area of no damage as observed in the studies cited in the Siskind report. Many observations were plotted which indicate both below and above the recommended standard that no damage would occur. This may be predicated on the type of structure (number of stories, dimensions); the construction material or maintenance (upkeep): All criteria which affect the ability to withstand ground vibration. The condition referred to as threshold damage has been described as actual damage, and not merely the possibility of damage likely in residences. Major damage, as defined, is highly unlikely in residences since it requires structural failure and it is not considered to be a problem at particle velocities less than 2 inches per second regardless of the blast frequency. Therefore, the damage most prevalent in residential structures which must be absolutely prevented is minor damage, and threshold damage is to be avoided. The Siskind report indicates that the frequency of blast vibrations predict the threshold damage level; and that under good conditions most threshold damage is avoided when blast vibrations are below 0.75 inch per second: However, if the structual conditions warrant a factor of 0.5 inch-per-second is recommended and may be imposed. Therefore, OSM has set the allowable particle velocity as determined by frequency under normal conditions, and provided that, when other determining factors govern, a more stringent particle velocity may be assigned.

Proposed Amendment

The proposed new rule provides that, as determined by certain site specific criteria, the regulatory authority may establish an allowable maximum peak particle velocity within specific limits if surrounding conditions indicate that blasting will have adverse effects on critical structures. In evaluating the allowable peak particle-velocity, the regulatory authority may require that an analysis be performed on affected structures to relate natural frequency to blast-vibration data in order to support the need to establish the maximum allowable peak particle velocity. The analysis, if the operator decides to submit, one would be considered part of the permit application, and used to evaluate and determine the allowable peak particle-velocity. Any such analysis of a residence, not provided by the operator as part of the evaluation requested by the regulatory authority, would be at an owner's expense with a final decision of allowable peak particle-velocity to be made by the regulatory authority. The evaluation will require analysis of blast vibration frequency in the geologic strata to be affected, to determine the predominant response frequency.

In view of the latest research by the BOM (Siskind and others, 1980), OSM has decided that the maximum allowable peak particle velocity for surface coal mines must not exceed a particle velocity which has a reasonable probability of causing threshold damage. In addition the regulatory authority must have the authority to reduce the allowable value at sites where seismic monitoring or the condition of structures demonstrate that damage may result from blasts using the assigned allowable value of peak particle velocity.

OSM, on the basis of the BOM study (Siskind and others 1980), proposes to establish a peak particle-velocity limit for each permit area in compliance with the requirement of Section 515(b)(15)(C) for regulations that limit the type of explosives and detonating equipment, the size, the timing and frequency of blasts based upon *the physical conditions of the site* so as to prevent damage to public and private property outside the permit area.

The U.S. Bureau of Mines (Bulletin 656) Blasting Vibrations and Their Effects on Structures (1971) established values of minimal damage and set the "safe" peak particle velocity limit at 2 inches per second. The latest BOM report (Siskind, 1980, RI 8507) cites Bulletin 656 as containing blast data on generation and propagation of vibrations from 25 quarry operations and having relatively weak damage analysis. The new report (RI 8507) analyzes blasting data for different blasting situations (quarry, construction, and coal mining), and concludes that surface coal mine blasting produces the lowest predominant frequencies of the three operations (Figure 1) and that "damage potential for low frequency blasts (less than 40 Hz) is considerably higher than those for high frequency blasts (greater than 40 Hz) (Siskind et al., 1980, conclusions)." Although quarry blasts should also be considered as low-frequency blasts, they generally cause frequencies from 10 to 60 Hz, while coal mining blasts range predominantly from 5 to 30 Hz. (Figure 1). Considering the relationship between frequency (f) and velocity (v) a coal mining blast will usually generate the same displacement (A) as a quarry blast at 20 percent less peak particle-velocity (v) due to its lower frequency (f) from the equation $A=V/2\pi f$. This is explained in the study, in stating the "low frequency vibration (eq, 5 Hz) corresponds to larger displacement and produces more strain on sensitive structural elements such as brick, concrete block and

plaster" (Siskind, 1980). This higher displacement appears to relate to the large number of the occurrences of minor and major damage at low frequencies (Figure 2).

Coal mining blasts generally have lower frequencies of blast vibration than quarry blasts because the sonic velocity of the blasted material and the propagation medium are lower. This difference in propagation velocity due to differing ground strata and its affect on the frequency of blast vibrations has been analyzed with the conclusion that damage factors for the frequencies of wave velocity in the ground are proportional to the relative ground vibration velocity (Langefors & Kihlstrom, 1979) (Table A–2). This reference indicates that structures on strata such as sand, clay or loose material with a sonic velocity of 300–1500 meters/second (900–4500 f/s) would experience cracking (threshold values) at 6–30 mm/sec (0.23–1.18"/sec) whereas structures on dense strata (such as limestone or granite) with high sonic velocities 4500–6000 m/s (14,000–18,000 f/s) would not experience threshold cracks with particle velocities as high as 4"/sec. Coal mines, however, usually have strata which generally have low sonic velocities. Therefore, the probability of threshold damage in coal mine blasing as supported by the histogram in Figure 1, is considered a greater risk at lower particle velocities than in quarry or roadbuilding operations. Tables A–3 & A–4 from the Bureau's study (Siskind, 1980) (RI 8507) indicate other research data which relates sound propagation velocities in geologic strata with particle-velocity damage indicators. Although no attempt was made in these tables to relate blast vibration frequency with propagation velocity, the same effect is realized when comparing particle velocity to blast vibration frequency (Figure 2) where a constant particle velocity of 2 inches per second can be attributed to no damage at high frequencies 40 Hz and minor damage at frequencies less than 40 Hertz. Using this rationale, graphically extending limits for 1 inch per second and 0.5 inch per second, would be required to avoid minor damage and threshold damage points, at frequencies less than 25 Hertz (See Figure 2).

Table A–2.—*Damage Levels From Blasting, Modified From Langefors and Kihlstrom* (1978) (Table 9:1)

Damage effects	Peak particle velocity					
	Sand, gravel clay below water level; c=1,000–1,500 meters per second		Moraine, slate, or soft limestone; c=2,000–3,000 meters per second		Granite, hard limestone, or diabase; c=4,000–6,000 meters per second	
	Millimeters per second	Inches per second	Millimeters per second	Inches per second	Millimeters per second	Inches per second
No noticable crack formation	4–18	0.16–0.71	35	1.4	70	2.8
Fine cracks and falling plaster threshold	6–30	.23–1.2	55	2.2	110	4.3
Severe cracks	12–60	.47–2.4	115	4.5	230	9.0

Table A–3.—*Limiting and Safe Vibration Values, After Ashley (From Siskind and Others, 1980) (Table A–2)*

Type of construction	Peak particle velocity	
	Millimeters per second	Inches per second
Ancient and historic monuments	7.5	0.30
Housing in poor repair	12	.50
Good residential, commercial, and industrial structures	25	1.0
Welded gas mains, sound sewers, engineered structures	50	2.0

Table A–4.—*Limiting Safe Vibration Values of Pseudo Vector Sum Peak Particle Velocities, After Esteves (17)*

Type of construction	Peak particle velocity					
	Incoherent loose soils, soft coherent soils, rubble mixtures; c less than 1,000 m/sec, c less than 3,000 ft/sec		Very hard to medium consistence coherent soils, uniform or well-graded sand; c=3,000–2,000 ft/sec		Coherent hard soils and rock c greater than 2,000 m/sec, c greater than 6,000 ft/sec	
	Millimeters per second	Inches per second	Millimeters per second	Inches per second	Millimeters per second	Inches per second
Special care, historical monuments, hospitals, and very tall buildings	2.5	0.10	5	0.20	10	0.40
Current construction	5	.20	10	.40	20	.80
Reinforced construction, e.g., earthquake resistant	15	.60	30	1.20	60	2.40

Figure 2 Displacement VS. Frequency Summary - Damage Points

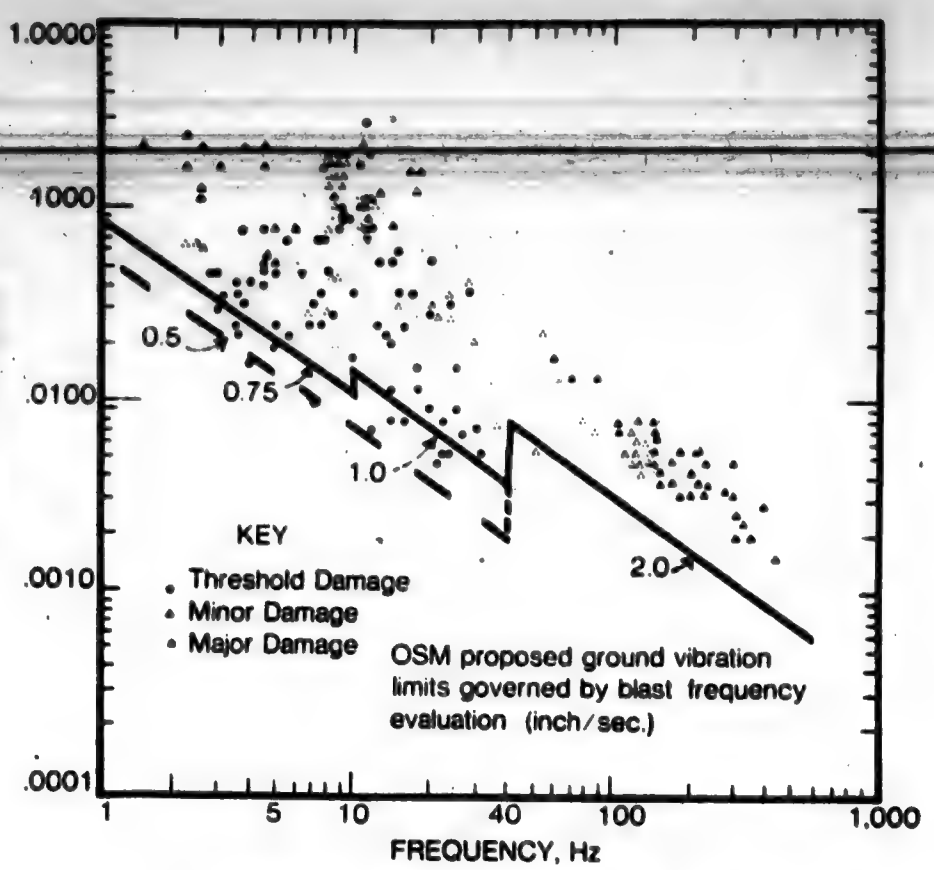

(modified from Siskind and others, 1980) Figure 52

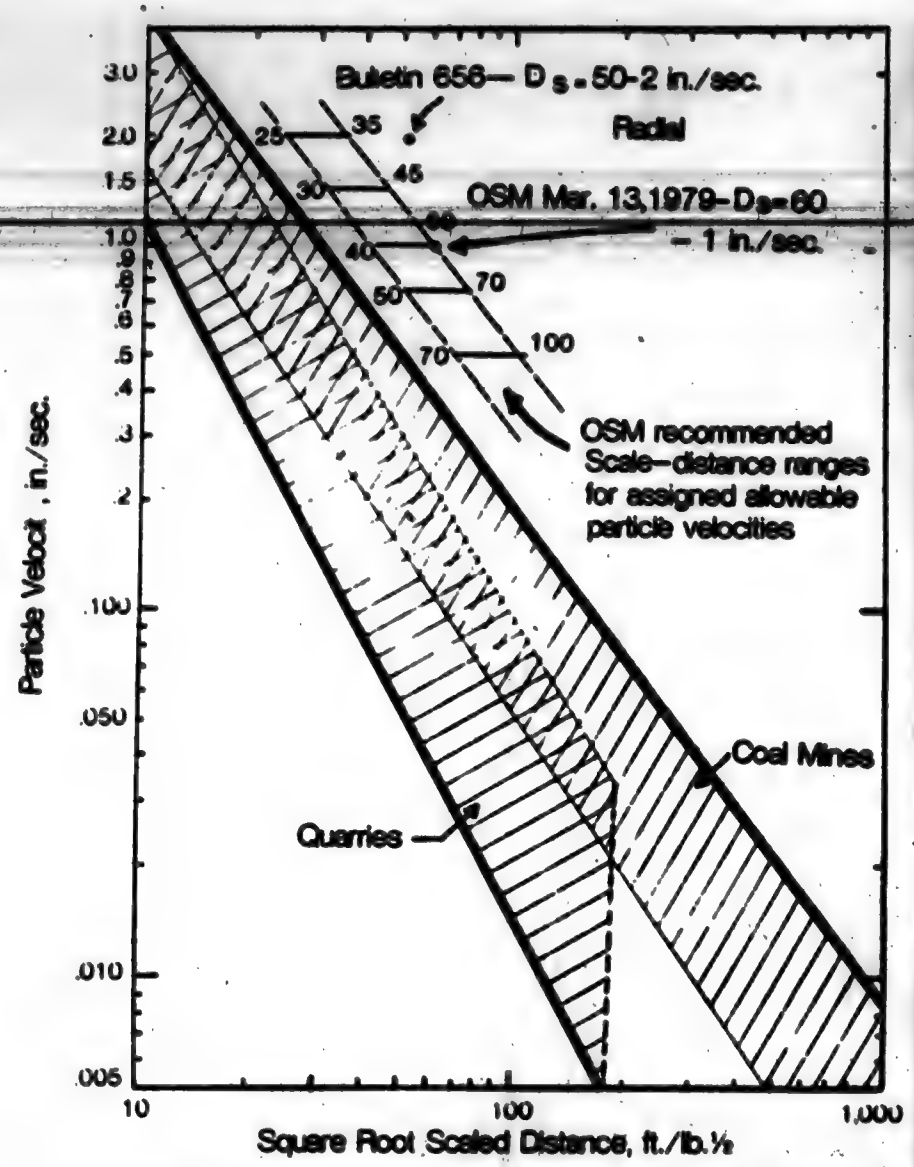

Zones of mean propagation regressions for two major types of blasting.

Figure 3 (modified from Siskind and others, 1980,Figure 11)

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The (Siskind, also analyze due to low-freq vibrations. The threshold dama affected structur per second at c (Siskind et al., believes that the regulatory auth reducing the all velocity if low-f vibrations are c from data prese Figure 3) on vib during a blast re OSM has deter scaled-distance will not generall second and will ground vibratio second. Figure 2 for a test dwelli minor, and thres observed throug the vibration fre occurrence of m coincides with l velocities for ex point at 57 Hz re of 0.006 inches (1 However, the s 8 Hz was obser inches displace second). In consi from Figure 1, co have predomina range from 5 to 3 velocity, at low f less than 1 inch degree of assura not be subjected damage (Siskind Superimposing a intercepts on Fig normal frequenci operations place 0.5 inch per secon inch per second, 2.0-inch-per-seco less than 5 Hz oc of the coal mine vibrations below 50 percent of the believes that allo velocity of greate second has a high threshold damag surface coal mine

The Siskind 19

"Practical safe cr generate low-freq vibrations are 0.7

The (Siskind, 1980) (RI 8507) study also analyzes the probability of damage due to low-frequency blasting vibrations. The data presented predicts threshold damage to 20 percent of affected structures for blasts at 1 inch per second at one particular site (Siskind et al., 1980) (RI 8507). OSM believes that the rules should allow the regulatory authority the option of reducing the allowable peak particle velocity if low-frequency blast vibrations are observed. Additionally, from data presented (Siskind et al., 1980, Figure 3) on vibrations propagated during a blast related to scaled distance, OSM has determined that using the scaled-distances of 60 ground vibrations will not generally exceed 1 inch per second and will most likely create ground vibration 0.2 to 0.7-inch-per-second. Figure 2 establishes data points for a test dwelling for which major, minor, and threshold damage was observed through instrumentation. As the vibration frequency decreases, the occurrence of minor-damage points coincides with lower peak particle velocities for example, a minor-damage point at 37 Hz related to a displacement of 0.006 inches (1.85 inches per second.) However, the same degree of damage at 8 Hz was observed to result from 0.02 inches displacement (1.0 inches per second). In considering the histogram from Figure 1, coal mining operations have predominant frequencies in the range from 5 to 35 Hz. The peak particle velocity, at low frequencies, must be less than 1 inch per second to provide a degree of assurance that structures will not be subjected to minor and threshold damage (Siskind 1980) (RI 8507). Superimposing a network of velocity intercepts on Figure 2 and plotting the normal frequencies for coal mining operations places the threshold level at 0.5 inch per second, minor damage at 1.0 inch per second, and major damage at a 2.0-inch-per-second limit. Frequencies less than 5 Hz occur in about 4 percent of the coal mine blasts; however, blast vibrations below 15 Hz occurred about 50 percent of the time. Therefore, OSM believes that allowing a peak particle velocity of greater than 1 inch per second has a high probability of causing threshold damage at residences near surface coal mine operations.

The Siskind 1980 report states that "Practical safe criteria for blasts which generate low-frequency ground-vibrations are 0.75 inches per second for modern gypsum-board houses and 0.50 inches per second for plaster on lath interiors." This applies to conditions where normal ground vibration frequencies are below 40 Hz. Figure 1 cites all coal mining operations as having blast vibrations less than 40 Hz. Also, Siskind states that "human reaction to blasting can be the limiting factor." Blast vibration levels as low as 0.5 inch per second can be annoying and that complaints may be expected. Table A–4 establishes the safe level of blast vibration at 2 inches per second at residences in cases where the predominant frequency of the ground-wave vibration equals or exceeds 40 Hz. If the data presented by Siskind in Figure 52 is related to predominant coal mining frequencies, e.g. vibration frequencies of 5–35 Hz, it would require peak particle velocities less than 0.5 inch per second to avoid all threshold damage points, 1.2 inches per/second to avoid all minor-damage points, and about 2 inches per second to avoid major damage.

Table A–4.—*Bureau of Mines Recommended Safe Levels of Blasting Vibrations for Residential Type Structures*

[From Siskind and Others, 1980 (Table 12)]

Type of structure	Ground vibration—peak particle velocity, in/sec	
	At low frequency[1] (less than 40 Hz)	At high frequency (equal or over 40 Hz)
Modern homes, Drywall interiors	0.75	2.0
Older homes, plaster on wood lath construction for interior walls	0.50	2.0

[1] All spectral peaks within 6 dB (50 pct) amplitude of the predominant frequency must be analyzed.

In evaluating the maximum peak-particle velocity applicable to a particular permit site, the regulatory authority must consider the type of structure to be protected, the condition of the structure (as determined in a preblast survey) and the predominate ground vibration frequency. In applying the acceptable standards derived by Siskind, OSM has developed Figure 4 for determining the maximum allowable peak particle velocity for structure type, condition and predominate frequency of blast vibrations. OSM has chosen to allow establishment of varying peak-particle velocity standards to specific mine sites in keeping with the Act Section 515(b)(15)(C). In developing these standards, Tables 51 and 54 of the Siskind study were used to determine the lower of particle velocities within the level occurrence of threshold damage which would apply for varying frequency levels of blast vibration. Siskind recommends that all blasts less than 40 Hertz not exceed 0.75 inch per second and those greater than 40 Hertz be restricted to 2 inches per second. OSM has proposed the application of three elements, each of equal consideration in determining the allowable particle velocity. The minimum particle velocity for any of the three factors is the maximum allowed. Independently, a value for one of the factors might allow a 2 inch per second standard, but another factor may indicate that a 0.75 inch per second standard is necessary to prevent damage. Therefore, a 0.75 inch per second standard would be set.

The three elements of this determination are as follows:

Structure Type: The first factor to consider is the type of structure to be protected. As indicated in (Siskind 1980 (RI 8507), conclusion 5), "Home construction is also a factor in the minimum expected damage levels. Gypsum-board (Drywall) interior walls are more damage resistant than old plaster on wood-lath construction," and (Table A–4 from Siskind 1980) recommended particle velocities of 0.75 and 0.50 respectively for these structures where frequency of blast vibration was less than 40 Hz. Therefore, five structural types have been identified for setting blast vibration limits for frequencies less than 40 Hz. All structural types are grouped together when frequencies exceed 40 Hertz, since it has been demonstrated that the structural type has little bearing on damage at high frequencies.

Structural Condition. The condition of a structure is the capability or integrity of the building construction to undergo stress and strain. The preblast survey catalogs the preblast conditions. Through structural analysis and evaluation of the building elements and their dynamic response characteristic, a prediction can be made determining the maximum particle velocity which would pertain to a structure. These factors have been categorized into general condition statements which would require supporting documentation to determine the maximum peak particle.

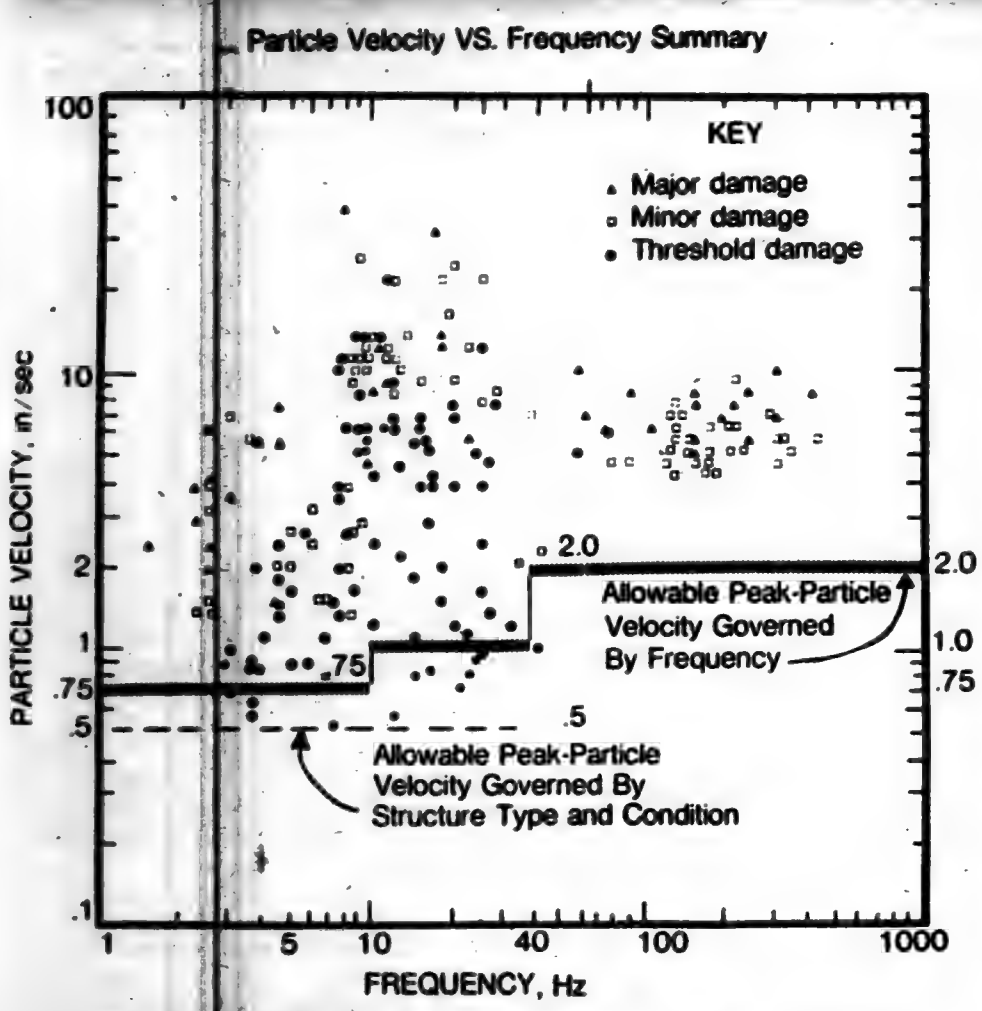

Figure 4 (modified from Siskind and others, 1980) Figure 54

Blast Vibration Frequency: This single parameter as determined by seismic investigation received great emphasis in the Siskind 1980 Study (RI 8507). The report concluded that damage relating to ground vibration frequency divided into two catagories less than 40 Hz and greater than 40 Hz. OSM has chosen to follow this philosophy, but believes that a transition phase is necessary in applying allowable ground vibration standards to frequency data. Therefore, OSM has subdivided the frequency ranges into additional categories. The lower frequencies (less than 40 Hz) relate to lower values of peak particle velocity. Blast frequencies having values greater than 40 Hz correspond to the BOM 2 inch per second recommendation. OSM believes that a stepped approach to particle velocity determination can be used to provide a rational basis for limiting the use of explosives, without imposing a blanket limit which might be unnecessary in specific circumstances.

Relating this procedure to the one-inch per second standard issued in the interim and permanent program rules, the application of maximum particle-velocity limits vary from a 0.5 inch per second to 1.0 inch per second for coal mining operations. If, however, frequencies and conditions warrant; a 2 inch per second standard could be authorized.

Based on the occurrence of predominant frequencies expressed in Figure 1 and the limits proposed by OSM Figure 2, the following percentages of surface coal mines would be assigned allowable peak particle velocities in the ranges listed. If frequency governs, the allowable particle velocity must be from Column 4. If structure type and condition are critical, the particle velocity applicable to a site may be set as low as the minimum value in Column 3.

1	2	3	4
Blast frequency	Percent coal mining blasts	Particle velocity ranges	Particle velocity frequency governed
0–10Hz	25	0.5–.75	0.75
10–40Hz	75	0.5–1.0	1.0
40 Hz and up	0	2.0	2.0

In amending the rule governing peak particle velocity of ground vibration, OSM proposes to establish limits for the regulatory authority to assign to set-specific blasting operations. In reducing the allowable peak particle velocity to 0.75 inch per second, from the prior 1.0 inch per second standard, OSM has determined that the scaled distance equation using a factor (Ds) of 60 must be re-evaluated to preclude damage at a lesser value than 1 inch per second if used without instrumentation and as an exception to an assigned maximum peak particle velocity. Therefore, OSM proposes to amend the scale-distance factor to (Ds=70) for general application without instrumentation and without assignment of a specific peak particle velocity. This use of the factor of 70 will initially assume that blasts complying with this formula will produce ground vibrations less than or equal to the lowest particle velocities associated with threshold damage (i.e. ppv=.75 inch per second). The rule also provides that, if the use of the equation proves to exceed the acceptable limit, a modified equation may be developed. This proposed process would require an analysis of site-specific conditions, including the condition of structures, for the regulatory authority or qualified blasting consultant to evaluate and establish the maximum ground vibration allowable. In cases where a particle velocity is not assigned, the operator may choose to utilize the scaled-distance formula $W=(D/Ds)^2$ where $D^2=70$. An operator assigned a peak particle velocity of 1.0 inch per second allowable ground vibration might choose to use a scaled-distance equation using $D_s=50$, and, if approved by the regulatory authority, would not be required to monitor each blast. This, then, would not be considered as the maximum allowable to be used without seismic monitoring unless supported by detailed seismic and structural condition survey in setting higher allowable values. (Siskind 1980 conclusion 3) "Where the opertor wants to be relieved of the responsibility of instrumenting all shots, he could design for a conservative square-root-scale distance of 70. The typical vibration levels at this scaled distance would be 0.08 to 0.15 in/sec.". This typical level provides an appropriate safety factor in its application. In using the above formula the maximum charge weight (W) of high explosives to be detonated in any 8-millisecond period is calculated by measuring the distance in feet (D), to the nearest dwelling, church, school, or commercial or industrial building, and calculating the equation. A table of values of (D) distance and (W) weight of explosive is provided in the rule.

Scaled Distance: In addition to the factors for determining particle velocity this amendment also contains a recommended scaled-distance value (Ds), which has been evaluated to achieve associated particle velocities.

Ds values are recommended to calculate the maximum charge weight of explosives per delay when a maximum particle-velocity has been assigned, and may be used as a guide for safe blasting at other locations where the applicable particle-velocity is required.

Recommended ranges of Scaled-distance factors associated with particle velocity limits which provide a similar safety factor are as follows: (See Figure 3 for graphic interpretation.)

Particle velocity	Ds (in equation W=(D/Ds)2)
0.5 inch/second	70–100
0.75	50–70
1.0	40–60
1.5	30–45
2.0	25–35

Reviews of Figures 2 and 4 lead to the theory that a constant particle velocity may not be appropriate since the degree of protection would vary. The Siskind report also cites the damage from blasts at very low frequency as having a higher occurrence probability. Therefore, OSM has subdivided the range into a stepped maximum particle-velocity to follow the damage occurrences, as follows.

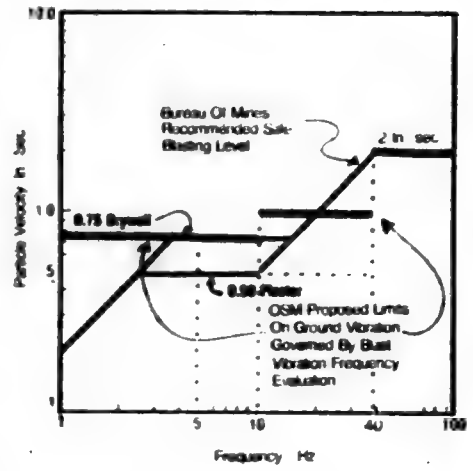

Figure 5 (Modified From Siskind And Others, 1980) Fig B 1

Frequency	Particle velocity
Less than 10 Hz	0.75
10–40 Hz	1.00
Greater than 40 Hz	2.00

This rationale follows the basic Siskind recommendation, but allows a transition to account for the frequency change. The stepped arrangement would be the lower limit of threshold damage in the Siskind report as depicted by developing a threshold damage envelope in Figure 2.

The adaptation of a stepped allowable particle velocity based on blast frequency applies the Siskind recommendation safe-blasting levels shown in figure 5, for low frequency blasts. However, other evaluation factors such as Structure Type and Structural Condition will serve to reduce the allowable particle velocities as Siskind recommends to safe levels of 0.5 or 0.75 inch per second if the regulatory authority determines site conditions warrant.

In conjunction with the modification to the 1 inch-per-second standard, § 715.19(e)(3) of the interim rules and §§ 816.67 and 817.67 of the permanent program have been amended to reflect reference to the approved peak particle velocity rather than the specific 1 inch-per-second standard. Therefore, sections where the 1 inch-per-second ground vibration standard was specifically addressed have been deleted and the remaining reference to peak-particle-velocity meaning *the approved value*, has been retained.

Correlation of interim rule changes with the permanent program rules has been made in this rulemaking because the issues remanded or proposed for amendment follow closely from the interim to permanent rules. The corresponding proposed amendments to portions of the permanent rules are proposed in this notice. Specific comments on each section will be assumed to apply to both interim and permanent program rules in an attempt to issue final rules in the most efficient time frame. The following comparison is provided:

Subject	Interim program	Permanent program
Airblast measurement.	715.19(e)(1)(i)-(ii).	816/817.67(e)(1).
500' of underground mines.	715.19(e)(1)(i-ii).	816.79
Particle velocity	715.19(e)(2)(i).	816/817.67(i).
Scale-distance equation.	715.19(e)(2)(iv) and (v).	816/817.67(i) and (j).
Flyrock	715.19(e)(2)(vi)(new).	816/817.67(j).
Seismic measurements modified and equation distance limitations.	715.19(e)(3)..... 715.19(e)(1)(i-ii).	816/817.67(e) and (e). 816/817.67(f).

Statements of Significance and Environmental Impact

The Department of the Interior has determined that this document is not a significant rule and does not require a regulatory analysis under Executive Order 12044 and 43 CFR Part 14. A document supporting the finding of nonsignificance has been filed in the administrative record. Section 501(a) of SMCRA provides that the interim program regulations are exempt from the requirements of Section 102(2)(C) of the National Environmental Policy Act of 1969. Findings of no significant impact and an environmental assessment have been prepared and placed in the administrative record. The Department has determined that these rules will not affect the quality of the human environment.

Certification of no Significant Economic Impact

The amendment to rules proposed herein have been found not to have significant economic effect on a substantial number of small entities. This finding is based on estimates the compliance with the standards of these amendments will result in modest increased blasting costs for only small percentage of the total number of small operators subject to the rules. Therefore, in accordance with 43 CFR Part 14, I certify that the rules described above will not have significant economic effect on a substantial number of small entities.

Dated: January 15, 1981.

Joan M. Davenport,

Assistant Secretary for Energy and Minerals.

A. Proposed Amendments to the Interim Regulations

PART 715—GENERAL PERFORMANCE STANDARDS

1. It is proposed to amend 30 CFR 715.19(e) as follows:

(a.) Paragraph (e)(1)(vi) is redesignated as (e)(1)(vi)(A).

(b.) Paragraph (e)(1)(vi)(B) is added to read as set forth below.

(c.) Paragraph (e)(1)(vii) is revised to read as set forth below.

(d.) Paragraph (e)(2)(ii) is amended and expanded to include (e)(2)(ii)(A), (B), (C), and (D) and to read as set forth below.

(e.) Paragraph (e)(2)(iv) is revised to read as set forth below.

(f.) Paragraph (e)(2)(v) is revised to read as set forth below.

(g.) Paragraph (e)(2)(vii) is added to read as set forth below.

(h.) Paragraph (e)(2)(viii) is added to read as set forth below.

(i.) Paragraphs (e)(3)(i) and (ii) are revised to read as set forth below.

§ 715.19 Use of explosives.

* * * * *

(e) *Blasting procedures*—(1) *General.* * * *

(vi) *Airblast.* (A) * * *

(B) The regulatory authority may require an operator to monitor airblast of any or all blasts, to ensure compliance with paragraph (e)(1)(vi)(A) of this section, and may specify the location where measurements are to be taken.

(vii) Except where lesser distances are approved by the regulatory authority, based upon a preblasting survey or other appropriate investigations, blasting shall not be conducted within—

(A) 500 feet of facilities including, but not limited to, disposal wells, petroleum- or gas-storage facilities, municipal water-storage facilities, fluid-transmission pipelines, gas- or oil-collection lines, or water and sewage lines; and

(B) 500 feet of an underground mine not totally abandoned, except with the concurrence of the Mine Safety and Health Administration (MSHA).

(2) *Blasting standards.* (i) * * *

(ii)(A) In all blasting operations, except as otherwise authorized in this section, the maximum peak particle velocity of ground vibration shall not exceed the value established by the regulatory authority as prescribed in paragraph (e)(2)(ii)(C) of this section as applicable to surface coal mining activities at the location of any dwelling, public building, school, church, or commercial or industrial building. Peak particle velocities shall be recorded in 3 mutually perpendicular directions. The maximum peak particle velocity shall be the largest of the three measurements.

(B) The regulatory authority shall approve a maximum peak particle velocity based on the physical site conditions of each permit area. Ground vibrations due to blasting shall not exceed the approved limit at the nearest critical structure. The regulatory authority may reduce the maximum peak particle velocity if it determines that a lower value is required because of density of population, land use, age or type of structure, geology, hydrology, repetition of blasting operations, or other factors.

(C) The maximum peak particle velocity for surface coal mining activities shall be assigned by the regulatory authority following a detailed evaluation of the types of structures to be protected, geologic formations, seismic factors, degree of protection necessary to prevent threshold damage to public and private property, and adverse impacts on hydrology, underground mines, and other structures. The permittee shall submit detailed information as described above to the regulatory authority by which to evaluate the allowable ground vibration standard. Permittees who do not request a peak particle-velocity determination shall comply with paragraph (e)(2)(iv) of this section.

(D) The peak particle velocity authorized by the regulatory authority for surface blasting operations shall not exceed the limits established herein for structure type, structural condition, or the predominant frequency of the ground vibration due to blasting operations or equivalent test blast, or the charge weight per delay shall not exceed the amount allowed by the scaled distance factor in paragraph (e)(2)(A) of this section.

Type of structure	Condition of structure	Frequency of ground vibrations in hertz	Peak particle velocity, in inches/second
0	Poor		0.50
1	Poor to fair	0–10	.75
2, 3	Fair to good	10–40	1
1, 2, 3, 4	Excellent	Greater than 40	2

Note.—

0. Sensitive or protected structures such as historic buildings and residences with deteriorated plaster interiors and rough stone foundation walls.

1. Older homes more than 20+ years old, with plaster-on-lath interiors.

2. Modern homes less than 20 years old, with gypsum-board interiors, reinforced concrete or concrete masonry unit foundations and wood-frame structures.

3. Critical structures with safety considerations such as water towers, impoundments, tunnels, pipelines, underground mines.

4. Engineered structures, such as those designed to withstand dynamic loads (i.e. earthquakes, traffic and wind).

(iii) * * *

(iv) All surface coal mining operations not assigned a maximum peak particle velocity as in paragraph (e)(2)(ii) of this section or choosing not to submit data by which to analyze the ground-vibration parameters, Shall use the equation found in paragraph (e)(2)(v) of this section (scaled-distance equation) for determining the maximum charge weight of explosives that can be detonated within any 8-millisecond period. If the blasting is conducted in accordance with the equation of paragraph (e)(2)(v)(A) of this section, the peak particle velocity shall be deemed to be acceptable unless either site-specific conditions necessitate a reduced charge weight per delay or conditions of paragraph (e)(2)(ii) of this section are met.

(v)(A) The maximum weight of explosives to be detonated within any 8-millisecond period may be determined by the formula $W=(D/Ds)^2$, where W=the maximum charge weight of explosives, in pounds, that can be detonated in any 8-millisecond period, and D=the distance, in feet, from the blast to the nearest dwelling, school, church, or commercial or institutional building, and Ds=a scaled distance factor of 70. A modified equation with a (Ds) value other than 70 may be approved for use by the regulatory authority for site-specific areas where a regulatory authority assigns a specific peak particle velocity.

(B) For distances between 300 and 5,000 feet, solution of the equation results in the following maximum weight:

Distance, in feet (D)	Maximum weight, in pounds (W)
300	18
350	25
400	33
500	51
600	73
700	100
800	130
900	165
1,000	204
1,100	246
1,200	294
1,300	345
1,400	400
1,500	460
1,600	522
1,700	590
1,800	660
1,900	736
2,000	818
2,500	1,275
3,000	1,840
3,500	2,502
4,000	3,265
4,500	4,130
5,000	5,100

* * * * *

(vii) Flyrock, including blasted material traveling along the ground, shall not be cast more than half the distance to the nearest dwelling or other occupied structure and in no case beyond the line of property owned or leased by the permittee, or beyond the area of regulated access required under paragraph (e)(1)(iv) of this section.

(viii)(A) The regulatory authority shall require an operator to submit to the regulatory authority a copy of a typical blast design as prepared by a certified blaster for blasting operations at least 10 days prior to conducting surface blasting within 1,000 feet of any building used as a dwelling, school, church, hospital, or nursing facility; and

(B) The blast design shall demonstrate that the operator has considered the necessary precautions to protect property from damage and persons from injury, shall adhere to particle-velocity limits or scaled-distance calculations of paragraph (e)(2)(v)(A) of this section, and shall include sketches of the types of blasts, direction, drill patterns, delays, decking, type and amount of explosives to be used, critical dimensions, and the locations and general condition of structures to be protected. The design shall be certified by a blaster-in-charge, as prepared by a certified blaster or a qualified blasting consultant. The regulatory authority may require a design for each blast, if determined necessary, but a typical blast design with specific locations indicated on a map may be acceptable. A blaster-in-charge shall be responsible for designing and conducting all blasts conducted during surface coal mining operations.

(C) The regulatory authority may require seismic and airblast monitoring by the operator of blasts conducted within 1,000 feet of inhabited buildings, to ensure scaled-distance values are not exceeding predicted values.

* * * * *

(3) *Seismograph measurements.* (i) Where a seismograph is used to monitor the velocity of ground motion and the assigned peak particle-velocity limit is not exceeded, the equation in paragraph (e)(2)(v)(A) of this section need not be used. However, if the equation is not being used, a seismograph record shall be obtained for every shot.

(ii) The use of a modified equation to determine maximum change weight of explosives for blasting operations at a particular site may be approved by the regulatory authority on receipt of a petition from the operator accompanied by reports of blasting operations including seismograph records of test blasting on the site. However, in no case shall the regulatory authority approve the use of a modified equation where the peak particle-velocity limit required in paragraph (e)(2)(ii) of this section would be exceeded.

* * * * *

B. Proposed Amendments to the permanent regulations

PART 816—PERMANENT PROGRAM PERFORMANCE STANDARDS—SURFACE MINING ACTIVITIES

1. It is proposed to amend 30 CFR Part 816 as follows:

1. Section 816.65 (f), (i), (k) and (l) would be revised to read in their entirety as set forth below.

§ 816.65 Use of Explosives: Surface blasting requirements.

* * * * *

(f)(1) The regulatory authority shall require an operator to submit to the regulatory authority a copy of a typical blast design at least 10 days prior to conducting surface blasting within—

(i) 1,000 feet on any building used as a dwelling, school, church, hospital, or nursing facility; and

(ii) 500 feet of facilities including, but not limited to, underground mines, disposal wells, petroleum- or gas-storage facilities, municipal water-storage facilities, fluid-transmission pipelines, gas- or oil-collection lines, or water and sewage lines.

(2) The blast design shall demonstrate that the operator has considered the necessary precautions to protect property from damage and persons from injury, shall adhere to allowable particle-velocity limits or to scaled-distance calculations of § 816.65(1)(1) and shall include sketches of the type of blast, direction, drill patterns, delays, decking, type and amount of explosive to be used, critical dimensions, and the locations and general condition of structures to be protected. The design shall be certified by a blaster-in-charge, prepared by a certified blaster or a qualified blasting consultant. The regulatory authority may require a design for each blast, if determined necessary, but typical blast designs with specific locations indicated on a map may be acceptable. A blaster-in-charge shall be responsible for designing and conducting all blasts conducted during surface coal mining operations.

(3) The regulatory authority may require seismic and airblast monitoring of blasts conducted within the distances specified in paragraph (f)(1) of this section, to ensure continued compliance and establish data, even if a scaled-distance equation is used.

* * * * *

(i)(1) In all blasting operations, except as otherwise authorized in this Section, the maximum peak particle-velocity of ground vibration shall not exceed the value established by the regulatory authority as applicable to surface coal mining activities at the location of any dwelling, public building, school, church, or commercial or industrial building. Peak particle velocities shall be recorded in 3 mutually perpendicular directions. The maximum peak particle velocity shall be the largest of the three measurements.

(2) The regulatory authority shall approve a maximum peak particle-velocity based on the physical site conditions of each permit area. Ground vibrations due to blasting shall not exceed the approved limit at the nearest critical structure. The regulatory authority may reduce the maximum peak particle-velocity if it determines that a lower value is required because of density of population, land use, age or type of structure, geology, hydrology, repetition of blasting operations, or other factors.

(3) The maximum peak particle velocity for surface coal mining activities shall be assigned by the regulatory authority following a detailed evaluation of the types of structures to be protected, geologic formations seismic factors, degree of protection necessary to prevent threshold damage to public and private property, and adverse impacts on hydrology, underground mines, and other structures. The permittee shall submit information to the regulatory authority by which to evaluate the allowable ground-vibration standard as part of the permit application under Parts 778 and 780. Permittes not requesting a peak particle-velocity determination shall comply with paragraph (k) of this section.

(4) The peak particle velocity authorized for surface blasting operations shall not exceed the limits established herein for structure type, structural condition, or the predominant frequency of the ground vibration due to blasting operations or equivalent test blasts.

Type of structure	Condition of structure	Frequency of ground vibration, in Hertz	Peak particle velocity, in inches/second
0	Poor		0.50
1	Poor to fair	8-10	.75
2,3	Fair to good	10-40	1
1,2,3,4	Excellent	Greater than 40	2

Note.—

0. Sensitive or protected structures such as: historic buildings and residences with delaminated plaster finishes and rough stone foundation walls.

1. Older homes more than 30+years old, with plaster on lath finishes.

2. Modern homes less than 30 years old, with gypsum board finishes, reinforced concrete or concrete masonry unit foundations, and wood-frame structures.

3. Critical structures with safety considerations such as water towers, impoundments, tunnels, pipelines, underground mines.

4. Engineered structures, such as those designed to withstand dynamic loads (i.e. earthquakes, traffic and wind).

• • • • •

(k) All surface coal operations not assigned a maximum peak particle velocity as in paragraph (i) of this section or choosing not to submit data by which to analyze the ground-vibration parameters, shall use the equation in paragraph (l) (scaled-distance equation) for determining the maximum charge weight of explosives that can be detonated within any 8-millisecond period or limit ground vibration to a maximum peak particle-velocity of 0.75 inch per second. If the blasting is conducted in accordance with the equation of paragraph (l), the peak particle velocity shall be deemed to be within an acceptable limit. When a lower limit is required, a modified equation may be developed by the regulatory authority and authorized for operator use.

(l)(1) The maximum weight of explosives to be detonated within any 8-millisecond period if not conducting seismic monitoring may be determined by the formula $W=(D/70)^2$, where W=the maximum charge weight of explosives, in pounds, that can be detonated in any 8-millisecond period, and D=the distance, in feet, from the blast to the nearest dwelling, school, church, or commercial or institutional building.

(2) For distances between 300 and 5,000 feet, solution of the equation results in the following weights:

Distance, in feet (D):	Maximum weight, in pounds (W)
300	18
350	25
400	33
500	51
600	73
700	100
800	130
900	165
1,000	204
1,100	248
1,200	294
1,300	345
1,400	400
1,500	460
1,600	522
1,700	590
1,800	660
1,900	736
2,000	816
2,500	1,275
3,000	1,840
3,500	2,500
4,000	3,265
4,500	4,130
5,000	5,100

2. Section 816.67(a) and (b) are amended by removing reference to "1 inch per second". Revised paragraphs (a) and (b) are set forth below.

§ 816.67 Use of explosives: Seismographic measurements.

(a) Where a seismograph is used to monitor the velocity of ground motion and the peak particle velocity limit is not exceeded, the equation in § 816.65(l) need not to be used. However, if an approved equation is not used, a seismograph record shall be obtained for every shot.

(b) The use of a modified equation to determine maximum charge weight of explosives for blasting operations at a particular site may be approved by a the regulatory authority on receipt of a petition accompanied by report including seismograph records of test blasting on the site. However, in no case shall the regulatory authority approve the use of a modified equation where the established peak particle velocity limit of § 816.65(i) would be exceeded.

• • • • •

C. Proposed Amendments to the Permanent Regulations

PART 817—PERMANENT PROGRAM PERFORMANCE STANDARDS—UNDERGROUND MINING ACTIVITIES

It is proposed to amend 30 CFR Part 817 as follows:

1. Section 817.65(f), (i), (k), and (l) are proposed to be revised to read as set forth below.

§ 817.65 Use of explosives: Surface blasting requirements.

• • • • •

(f)(1) The regulatory authority shall require an operator to submit to the regulatory authority a copy of a typical blast design at least 10 days prior to conducting surface blasting within—

(i) 1,000 feet of any building used as a dwelling, school, church, hospital, or nursing facility; and

(ii) 500 feet of facilities including, but not limited to, underground mines, disposal wells, petroleum- or gas-storage facilities, municipal water-storage facilities, fluid-transmission pipelines, gas or oil-collection lines, or water and sewage lines.

(2) The blast design shall demonstrate that the operator has considered the necessary precautions to protect property from damage and persons from injury, shall adherence to allowable peak particle velocity limits or scale-distance calculations of paragraph (l) of this section and include sketches of the types of blast, direction, drill patterns, delays, decking, type and amount of explosives to be used, critical dimensions, and the locations and general condition of structures to be protected. The design shall be certified by a blaster-in-charge, as prepared by a certified blaster or a qualified blasting consultant. The regulatory authority may require a design for each blast, if determined necessary, but typical blast designs with specific locations indicated on a map may be acceptable. A blaster-in-charge shall be responsible for designing and conducting all blasts conducted during surface coal mining operations.

(3) The regulatory authority may require seismic and airblast monitoring of blast conducted within distance criteria of paragraph (f)(1) of this section, to ensure continued compliance and to establish blasting data, even if a scaled-distance equation is being used.

• • • • •

(i)(1) In all blasting operations, except as otherwise authorized in this section, the maximum peak particle-velocity of ground vibration shall not exceed the value established by the regulatory authority as applicable to surface coal mining activities at the location of any dwelling, public building, school, church, or commercial or industrial building. Peak particle velocities shall be recorded in 3 mutually perpendicular directions. The maximum peak particle velocity shall be the largest of the three measurements.

(2) The regulatory authority shall approve a maximum peak particle velocity based on the physical site conditions of each permit area. Ground vibrations due to blasting shall not exceed the approved limit at the nearest critical structure. The regulatory authority may reduce the maximum peak particle velocity if it determines that a lower value is required because of density of population, land use, age or type of structure, geology, hydrology, repetition of blasting operations, or other factors.

(3) The maximum peak particle-velocity for surface coal mining activities shall be assigned by the regulatory authority following a detailed evaluation of the types of structure to be protected, geologic formations, seismic factors, degree of protection necessary to prevent threshold damage to public and private property, and adverse impacts on hydrology, underground mines, and other structures. The permittee shall submit information to the regulatory authority by which to evaluate the allowable ground vibration standard as part of the permit application under Parts 783 and 784. Permittees not requesting a peak particle-velocity determination shall comply with paragraph (k) of this section.

(4) The peak particle velocity authorized for surface blasting

operations shall not exceed the limits established herein for structure type, structural condition, or the predominant frequency of the ground vibration due to blasting operations or equivalent test blast.

Type of structure *	Condition of structures	Frequency of ground vibrations, in hertz	Peak particle velocity, in inches/second
0	Poor		0.50
1	Poor to fair	0–10	.75
2,3	Fair to good	10–40	1
1,2,3,4	Excellent	Greater than 40	2

* Note.—
0. Sensitive or protected structures such as historic buildings or residences with deteriorated plaster interiors and rough stone foundation walls.
1. Older homes more than 20+ years old, with plaster-on-lath interiors.
2. Modern homes less than 20 years old, with gypsum-board interiors, reinforced concrete or concrete masonry unit foundations and wood frame structures.
3. Critical structures with safety considerations such as water towers, impoundments, tanvats, pipelines, underground mines.
4. Engineered structures, such as those designed to withstand dynamic loads (i.e. earthquakes, traffic and wind).

* * * * *

(k) All surface coal operations not assigned a maximum peak particle velocity as in paragraph (i) of this section or choosing not to submit data by which to analyze the ground-vibration parameters shall use the equation found in paragraph (1) of this section (scaled-distance equation) for determining the maximum charge weight of explosives that can be detonated within any 8-millisecond period or limit ground vibrations to a maximum peak particle velocity of 0.75 inch per second. If the blasting is conducted in accordance with the equation of paragraph (l) of this section, the peak particle velocity shall be deemed to be within an acceptable limit. When a lower limit is required, a modified equation may be developed by the regulatory authority and authorized for operator use.

(l)(1) The maximum weight of explosives to be detonated within any 8-millisecond period if not conducting seismic monitoring may be determined by the formula $W=(D/70)^2$ where W=the maximum charge weight of explosives, in pounds, that can be detonated in any 8-millisecond period, and D=the distance, in feet, from the blast to the nearest dwelling, school, church, or commercial or institutional building.

(2) For distances between 300 and 5,000 feet, solution of the equation results in the following maximum weight:

Distance, in feet (D)	Maximum weight, in pounds (W)
300	18
350	25
400	33
500	51
600	73
700	100
800	131
900	165
1,000	204
1,100	246
1,200	294
1,300	345
1,400	400
1,500	460
1,600	522
1,700	589
1,800	660
1,900	736
2,000	816
2,500	1,275
3,000	1,840
3,500	2,500
4,000	3,265
4,500	4,130
5,000	5,100

2. Section 817.67(a) and (b) are proposed to be amended by removing reference to "1 inch per second". Revised paragraphs (a) and (b) are set forth below.

§ 817.67 Use of explosives: Seismograph measurement.

(a) Where a seismograph is used to monitor the velocity of ground motion and the peak particle velocity limit is not exceeded, the equation in § 817.66(1) need not to be used. However, if an approved equation is not being used, a seismograph record shall be obtained for every shot.

(b) The use of a modified equation to determine maximum charge weight of explosives for blasting operations at a particular site may be approved by the regulatory authority on receipt of a petition accompanied by a report including seismograph records of test blasting on the site. However, in no case shall the regulatory authority approve the use of a modified equation where the peak particle-velocity limit required in § 817.66(i) would be exceeded.

* * * * *

(Sec. 102, 201, 501, 503, 504, 508, 515, 517, 519, 701, 717, and 719, of Pub. L. 95–87, 91 Stat. 448, 449, 457, 470, 471, 478, 486, 498, 501, 515, and 526 (30 U.S.C. 1202, 1211, 1251, 1253, 1254, 1258, 1265, 1268, 1291, 1307, and 1309)).

[FR Doc. 81-2213 Filed 1-21-81; 8:45 am]
BILLING CODE 4310-05-M

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30 CFR Parts 731 and 732

Surface Coal Mining and Reclamation Operations; Procedures for State Programs and Hearing Announcement

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rules.

SUMMARY: OSM is proposing to amend 30 CFR Parts 731 and 732 to provide that a State which has not received approval of a State program by a final decision of the Secretary may resubmit a State program at any time after that decision, rather than waiting until a Federal program is implemented, as presently required.

DATE: Written comments on the proposed rules must be received at the address below by 5:00 p.m. on or before February 23, 1981. A public hearing on the proposed rules has been scheduled for February 12, 1981, at the Office of Surface Mining, Room 251, Interior South Building, 1951 Constitution Avenue, N.W., Washington, D.C. 20240. Any person interested in making an oral or written presentation at the hearing should contact Mr. Art Abbs at the address and phone number listed below by February 2, 1981. If no person by this date has contacted Mr. Abbs to express an interest in participating in the hearing, the hearing will be cancelled. A notice announcing any cancellation will be published in the Federal Register.

ADDRESSES: Written comments must be mailed or hand-delivered to the Office of Surface Mining, U.S. Department of the Interior, Administrative Record, Room 153, 1951 Constitution Avenue, N.W., Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT: Art Abbs, State Program Manager, Division of State Programs, Office of Surface Mining, U.S. Department of the Interior, Washington, D.C. 20240, (202) 343–5361.

SUPPLEMENTARY INFORMATION: On March 13, 1979, the Secretary promulgated final rules for the permanent regulatory program under the Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. 1201 *et seq.* (the Act). The rules, among other things, established requirements and procedures for the development, review and approval of programs submitted by States for the purpose of obtaining primary jurisdiction under the Act to regulate surface coal mining and reclamation operations on non-Federal and non-Indian lands within their respective borders.

Certain provisions of the rules establish requirements with respect to dates when States may resubmit programs following a final decision of the Secretary to disapprove a State program.

Section 731.12(b)(1) provides that States may submit a proposed program at any time later than June 3, 1980, if "implementation of a Federal program

under 30 CFR Part 730 has been completed * * *." Similarly, the rules provide that after a final decision disapproving a State program, the State may submit another proposed State program at any time after implementation of a Federal program (*see* 30 CFR 732.14 and the preamble at 44 FR 14961). These provisions preclude a State which has failed to receive approval of its program from submitting another State program until after a Federal program has been implemented in the State.

As noted in the preamble to the final rules (44 FR 14961), § 732.14 was based on the express language of Section 504(e) of the Act, which provides that a "State which has failed to obtain approval of a State program prior to implementation of a Federal program may submit a State program at any time *after such implementation*" (emphasis supplied).

Comments to the proposed final regulations suggested that § 732.14 be changed to allow submission of a new proposed State program at any time. North Dakota Public Service Commission, comments F–22.5, F–46.8, p. 44; Soil Conservation Society of America, comment F–177; Carter Oil Co., comment F–428. These commenters argued that it would be wasteful to force a State to wait until after a Federal program was completely implemented before submitting a new program. Once that State program is accepted, the newly implemented Federal program would have to be dismantled (30 U.S.C. 504(e); 30 CFR 736.16). The response to these comments stated that Section 732.14 was authorized by Sections 504(a)(2) and 504(e) of the Act (44 FR 14961, March 13, 1979.

A re-examination of § 504(e) of the Act indicates that while it authorizes 30 CFR 732.14, it does not mandate the restriction on resubmission of proposed State programs. The language in Section 504(e) is permissive in that it states that a State *may* submit a new program after the Federal program is implemented. It may be inferred from this permissive language that Congress intended this section simply to mean that the implementation of a Federal program would not end the chance for resubmission of a proposed State program.

The Findings of Congress in drafting this legislation support this interpretation. Section 101(f) states that the States are better suited to regulate the surface mining of coal because of the diversity of physical conditions among the various States (30 U.S.C. 1201(f)). The States, after a disapproval, should therefore be able to submit revised proposed programs as often and as early in the regulatory scheme as necessary to gain primacy.

There is nothing in the legislative history that contradicts this interpretation. The Conference Report on the Act described Section 504(e) as a procedure for smooth transition from Federal to State regulation (H. Conf. Rep. No. 493, 95th Cong., 1st Sess. 102 (1977)). Allowing a State to submit a proposed program before the Federal program is implemented will not affect the smoothness of the transition from Federal to State; in fact, the transition may not be necessary if the State program is approved before the Federal program is implemented

Accordingly, 30 CFR 731.12 and 732.14 are proposed to be amended by adding provisions to allow submission of a State program at any time following a final decision by the Secretary, rather than waiting until a Federal program is implemented.

Note.—The Assistant Secretary has determined that, pursuant to § 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on these rules. The Assistant Secretary has determined that these rules are not significant under Executive Order 12044 and 43 CFR Part 14, 43 FR 58292 *et seq.* (December 12, 1979). The Assistant Secretary has further determined that the proposed rules will not have a significant economic effect on a substantial number of small entities as the rules are essentially a procedural change with no direct impact on small entities. Primary author of this document is Mary Crouter, Division of State Programs, Office of Surface Mining.

Dated: January 15, 1981.

Joan M. Davenport,

Assistant Secretary, Energy and Minerals.

Text of Proposed Amendment

PART 731—SUBMISSION OF STATE PROGRAMS

§ 731.12 [Amended]

1. 30 CFR 731.12(b)(1) is proposed to be amended by redesignating it as 731.12(b)(2).

2. 30 CFR 731.12(b)(2) is proposed to be amended by redesignating it as 731.12(b)(3).

3. 30 CFR 731.12(b)(3) is proposed to be amended by redesignating it as 731.12(b)(4).

4. 30 CFR 731.12(b) is proposed to be amended by adding a new 731.12(b)(1) to read: "By a final decision, the state program submitted under 30 CFR 731.12(a) is disapproved; or * * *."

5. Revised 30 CFR 731.12(b) would read:

§ 731.12 Submission of State programs.

* * * * *

(b) States may submit a proposed program at any time later than June 3, 1980, if:

(1) By a final decision, the State program submitted under 30 CFR 731.12(a) is disapproved; or

(2) Implementation of a Federal program under 30 CFR Part 736 has been completed; or

(3) There have been no surface coal mining and reclamation operations since August 3, 1977, but coal exploration or surface coal mining operations are anticipated; or

(4) A State program has been enjoined by a court of competent jurisdiction, in which case the requirements of 30 CFR 730.12 shall apply."

* * * * *

PART 732—PROCEDURES AND CRITERIA FOR APPROVAL OR DISAPPROVAL OF STATE PROGRAM SUBMISSIONS

§ 732.14 [Amended]

6. 30 CFR 732.14 is proposed to be amended by inserting after the words Regional Director in the first sentence "at any time after the date of the final decision; or."

7. Revised 30 CFR 732.14 would read in its entirety:

§ 732.14 Resubmission of State programs.

If, by a final decision, the program is disapproved, the State may submit another proposed state program to the Regional Director at any time after the date of the final decision, or at any time after implementation of a Federal program for that State under 30 CFR 736. Resubmitted State programs must meet the requirements of 30 CFR 731.14 and will be acted upon pursuant to 30 CFR 732.12–732.16.

[FR Doc. 81-2300 Filed 1-21-81; 8:45 am]
BILLING CODE 4310-05-M

SELECTIVE SERVICE SYSTEM

32 CFR Ch. XVI

Alternative Service; Proposed Concept

AGENCY: Selective Service System.

ACTION: Proposed Concept of Alternative Service.

SUMMARY: The Selective Service System is considering revising its concept of alternative service in accord with the document reproduced below.

Alternative service could be required only after the induction of persons into the armed forces has been authorized. That authority does not exist at the present time. Should the Congress in the future authorize the resumption of

inductions, the Selective Service System must be prepared also to implement a program of Alternative Service.

DATE: Comments that are received on or before March 31, 1981 will be considered.

ADDRESS: Selective Service System, ATTN: Manager, Alternative Service, 600 E Street, NW., Washington, D.C. 20435.

FOR FURTHER INFORMATION CONTACT: William D. McCann, Manager, Alternative Service, 600 E Street, NW, Washington, D.C. 20435. Phone (202) 724-0003.

SUPPLEMENTARY INFORMATION: Alternative service is administered under authority of section 6(j) of the Military Selective Service Act (50 U.S.C. App. 456 (j)). Present regulations governing alternative service appear in 32 CFR Part 1660.

Bernard Rostker

Director of Selective Service.

January 16, 1981.

The proposed concept is:

Alternative Service Concept Paper; Selective Service System

January 1981.

Introduction

Following a long tradition in U.S. History, the Military Selective Service Act imposes a general citizen obligation for military service. All men, aged 18 to 26, are subject to be called for training and service in the Armed Forces. Within the general citizen obligation, the Act recognizes that there are individuals whose religious or moral beliefs prohibit them from participating in any type of warfare. Thus, under the Act, Conscientious Objectors are exempted from military service, but must, in lieu of induction, fulfill their citizen obligation by performing "such civilian work contributing to the maintenance of the national health, safety or interest as the Director may deem appropriate". The Director of Selective Service is specifically charged with the responsibility "for the placement of such persons (Conscientious Objectors) in appropriate civilian work". (50 U.S.C. App. 456(j) Supp.)

This paper presents a concept for an Alternative Service Program whereby the Director of Selective Service can insure that Conscientious Objectors will meet their obligation through their placement in non-military jobs contributing to the national health, safety or interest. The concept embraces a confluence of civilian work force priorities, specific job openings appropriate for alternative service and individual skills in an efficient and systematic way which will treat Conscientious Objectors fairly and with dignity.

Program Structure

The Alternative Service Program for Conscientious Objectors would operate under a structure which would provide for the interaction of three primary program components. These are:

1. *Priorities.* The Alternative Service Program must identify areas of crucial civilian work force shortages and set placement priorities.
2. *Jobs.* Within the priority areas, the Alternative Service Program must identify specific job openings.
3. *People.* The Alternative Service Program must be able to determine the aptitudes and abilities of participating Conscientious Objectors and match them with jobs contributing to the national health, safety or interest.

Priorities

Alternative service would be performed by Conscientious Objectors in lieu of induction into the Armed Forces, therefore, the program would be activated only during a national emergency and mobilization. In such an emergency, it is expected that shortages in the civilian work force would develop as large numbers of young people enter military service, and industrial needs place new stresses on the labor market. These circumstances would create a need for national and regional resource and work force management. As the agency within the Federal Government designated to serve as the focal point for emergency activities, the Federal Emergency Management Agency (FEMA) has a direct concern in matters of policy which affect the distribution of, or powers to control, the distribution of work force between military and civilian users in a mobilization.

FEMA's responsibilities relate to Selective Service because Conscientious Objectors placed in work in the national health, safety or interest would constitute a workforce pool which could be used to fill shortages in essential civilian areas. Selective Service would obtain from FEMA, the Department of Labor and other Federal agencies, information pertinent to prioritizing civilian work gaps. Selective Service would make every attempt to place Conscientious Objectors in accordance with the priorities so long as the jobs were in conformity with the legal requirements for alternative service.

There would also be an important corollary to the process of determining priorities: public and private agencies would become aware of their respective work force shortages. This awareness would presumably lead them to take the initiative in filling work force shortages. To the extent that their needs could be met by Conscientious Objectors, they would be as eager to enlist them as Selective Service would be to place them. This would facilitate the placement process and permit all agencies concerned to move expeditiously toward the accomplishment of their objectives.

Selective Service National Headquarters would be responsible for overall management and coordination with FEMA and the other agencies. On the regional level, the Selective Service System would review employment priorities as they are channeled down from the national headquarters. An evaluation of job descriptions submitted to the regional offices would be conducted based on the employment priorities. In addition, the Regional Alternative Service office would conduct operational evaluations of the Alternative Service work programs within the region.

As a program designed in part to help alleviate civilian work force shortages in a national mobilization, it is crucial that the Alternative Service Program be designed to insure a rapid and efficient placement of workers to priority areas. The Alternative Service Program must be able to stimulate employers to participate. Moreover, the Alternative Service Program must be able to guarantee the timely placement of Conscientious Objectors. For these reasons, it is anticipated that the Federal Government fund alternative service work through a system of stipends or employer tax incentives.

Jobs

The work force placement priorities determined through the efforts of FEMA, the Selective Service System and the Department of Labor, would be applied to job openings identified as suitable for alternative service placements. The listing of approved job openings would be derived from job openings submitted to the regional offices. Job openings submitted to the regional offices for evaluation would come from several different sources. Liaison activities between local Selected Service System offices and State Employment Security Agency offices could provide a broad source of job openings. Local Alternative Service office contacts with state and local governments, community health and service organizations would also provide a source of available jobs. Additionally, job openings in Federal agencies could be identified through the Office of Personnel Management and the respective agencies. Following the

evaluation for appropriateness to alternative service, a job description would either be deemed acceptable, and subsequently entered into the data files established for approved job descriptions, or unacceptable, in which case it would be dropped from the program.

Job openings submitted for evaluation by the various sources would be entered into the data banks through terminals located at designated Alternative Service offices. The data system, established to maintain the Alternative Service Program information files, would consist of a data bank at the national level with input coming from and output flowing to the designated area and regional Alternative Service offices. The data system would provide two types of output: output about all Conscientious Objectors who are or were involved in the program and data about the jobs available and unfilled, and those jobs already filled in the program.

The job identification and development function would require assistance from FEMA, the Office of Personnel Management, Department of Labor and Selective Service System National Headquarters to encourage employers experiencing work force shortages to submit their job openings. Additionally, the Department of Labor would serve the Alternative Service Program by facilitating a cooperative effort between the Alternative Service area offices and the State Employment Security Agency offices in identifying potential job placements. Personnel from State Employment Security Agency offices, serving in a liaison capacity, could assist these offices in identifying potential job placements.

In order to identify public agencies, private and religious organizations which would be prepared to sponsor Conscientious Objectors, the Alternative Service Program staff will undertake a series of discussions with such potential sponsors in advance of mobilization. These organizations would be encouraged to develop employment programs for Conscientious Objectors. The programs would have to meet guidelines established by Selective Service to insure that they would contribute to the national health, safety or interest and be appropriate for alternative service. Selective Service would develop agreements, which would include provisions for compensation, placement, and monitoring with the sponsoring organizations, so that the employment programs would be ready to operate and accept Conscientious Objectors shortly after a mobilization.

People

A viable and successful Alternative Service Program must seek to match the skills and abilities of Conscientious Objectors with the priority job openings. Skill and aptitude tests could be administered to incoming Conscientious Objectors. Additionally, Conscientious Objectors could be interviewed by alternative service personnel at the local Selective Service office. Potential job placements would be made from the job bank. Conscientious Objectors could be placed in individual job openings or in approved group work projects.

Unlike virtually all other placement agencies, alternative service would perform no recruitment functions whatsoever. It would not be the function of the Alternative Service Program to find Conscientious Objectors for all the work force shortages that may exist in an emergency. Rather, it would be the job of the Alternative Service Program to place everyone who was classified as a Conscientious Objector in an alternative service job which contributed to the maintenance of the national health, safety or interest. This calls for a placement process oriented to the Conscientious Objectors rather than to the jobs to be filled.

Alternative service personnel would be responsible for giving to persons entering alternative service (1) information concerning citizenship obligations and alternative service as a concept and (2) information about the Alternative Service Program, including pay, leave, duration of service and medical coverage. Depending on the nature of the emergency, it is also possible that alternative service entrants would receive training in areas such as first aid. Although alternative service placements are expected to be quite varied, this common training would equip them, regardless of their alternative service job, to render a much needed humanitarian service in an emergency.

Alternative Service would seek to maximize the Conscientious Objector's job retention. It is anticipated that most Conscientious Objectors would remain with their employers throughout their terms of service. In case emergencies arise, it may be necessary to transfer temporarily some Conscientious Objectors to meet such emergencies. The job training and day-to-day supervision of Conscientious Objectors in the program would be the responsibility of the employer. Both the employer and the Conscientious Objector would have reporting requirements to Alternative Service and be subject to audits.

In the placement and oversight of alternative service work projects, Alternative Service would seek ways to insure that both the participants and the public were aware that alternative service is a necessary and legitimate fulfillment of the Conscientious Objector's obligation as a citizen. Alternative Service Program representatives would visit work sites to maintain close contact with Conscientious Objectors. Employers and beneficiaries of alternative service work would be encouraged to publicly recognize the contribution of the program.

The proposed function and responsibilities of each agency are summarized in Chart I. It depicts the responsibilities of the national, regional and local branches of Federal agencies, state and local governments and private employers participating in the Alternative Service Program.

Administration

As the Alternative Service Program is a necessary component to Selective Service's mission of providing an untrained work force in a national emergency, Selective Service must retain all administrative and programmatic control over the Alternative Service Program. To promote efficiency and accountability, the structure of the Alternative Service Program would parallel the Selective Service structure as closely as feasible. Like inductees, Conscientious Objectors would be processed completely at the local level by alternative service personnel stationed in designated area offices.

* In order to meet its responsibility in a timely fashion, Selective Service will explore possibilities for the rapid processing and placement of Conscientious Objectors. Discussions will be held with educational institutions and other organizations that may be interested in hosting a number of Conscientious Objectors. It is anticipated that a number of pre-emergency agreements will be made between Selective Service and sponsoring organizations.

BILLING CODE 8015-01-M

CHART I

FUNCTIONS OF COOPERATING AGENCIES IN ALTERNATIVE SERVICE

CHART I

FUNCTIONS OF COOPERATING AGENCIES IN ALTERNATIVE SERVICE

	SELECTIVE SERVICE SYSTEM	DEPARTMENT OF LABOR	FEDERAL EMERGENCY MANAGEMENT AGENCY	OPM AND FEDERAL AGENCIES	STATE AND LOCAL GOVERNMENT/PUBLIC SERVICE EMPLOYERS
NATIONAL	•Policy Development •Program Guidance •Maintains Job Bank •National Job Development and Priorities •Administration •Coordination with Other Federal Agencies •Chairs Alternative Service Interagency Committee	•Supplies Manpower Data to FEMA and SSS •Participates in Priority Setting •Directs SESA in SSS/SESA Coordination •Member of Alternative Service Interagency Committee	•Coordinate with SSS in Planning to Include Alternative Service in National Emergency Preparedness Plan •Member of Alternative Service Interagency Committee	•Develop and Submit Manpower Shortages to FEMA •Organize Existing Programs for Possible Employment of CO's •Member of ASP Committee	•Participation on Alternative Service Advisory Committee
REGIONAL	•Administrative Support for Local Offices •Determines Acceptability of Job Openings for ASP •Review and Interpret Employment Priorities •Operational Evaluating of ASP Work Program in Region •Receives Job Listings	•Supplies Manpower Data		•Submit Manpower Needs to Agency's National Headquarters	
LOCAL	•Administrative Responsibility for CO's •Interviews and Places CO's •Oversight of Local ASP Work Projects •Review Job Listings •Coordinate with SESA Office •Local Job Development	•SESA Offices Establish Liaison with Alternative Service Local Office •Submits Job Listings to Alternative Service •Assists in Local Job Development		•Submit Specific Job Openings •Day-to-Day Job Supervision of CO's •Training of CO's •Reporting to Local ASP Offices	•Submit Specific Job Openings •Day-to-Day Job Supervision of CO's •Training of CO's •Reporting to Local ASP Offices

BILLING CODE 6010-01-C

In addition to their job placement function, alternative service personnel would be the primary administrative contact for both participating employers and working Conscientious Objectors within the area of jurisdiction. The alternative service personnel would continue to be the contact points for Conscientious Objectors throughout their service. Alternative service personnel would be responsible for initiating and maintaining the files of Conscientious Objectors involved in the program. They would handle travel arrangements and payments to Conscientious Objectors. Additionally, alternative service personnel would be responsible for receiving reports from and auditing participating employers. Selective Service regional offices would provide administrative and logistical support to alternative service personnel. Operational evaluation of the Alternative Service Program placements within the regions would be conducted by alternative service officials.

At the national level, the Selective Service System would initiate all administrative policy and establish the necessary guidelines to enable individual employers to supervise the Conscientious Objectors under their authority. The Alternative Service Program National Headquarters would provide overall management and monitoring of the program.

Advisory and Coordinating Committee

The participation of a number of federal agencies on a standing coordinating committee is a viable means of providing the coordination and input needed in implementing the Alternative Service Program. Policy and guidance established by the Selective Service System would be presented to the committee agencies for dissemination. The committee would also provide the agencies with a contact point for expressing both work force needs and input for priority determinations in meeting those needs. The agencies involved would include, but not be limited to, Selective Service System, FEMA, OPM and the Department of Labor. The Selective Service System would form and chair the coordinating committee.

In addition to a federal coordinating committee, it would be advantageous to have an advisory committee on alternative service. Organizations or individuals interested in Conscientious Objectors and alternative service and employers participating in the program could be represented on the committee. If the plan for a broader Selective Service Advisory Committee is carried out, a panel of that committee could be devoted to alternative service.

Summary

The Director of Selective Service is required by law to place Conscientious Objectors in appropriate civilian work. This paper sets forth a conceptual framework within which Conscientious Objectors can meet their alternative service obligation with fairness and dignity.

The framework is constructed from a tripod consisting of priorities, jobs and people. Conscientious Objectors would make a civilian contribution by working in areas of natiuonal priority. Most of the actual jobs in alternative service would be generated locally a result of extensive contacts between area alternative service officers and a host of private, public service organizations, such as hospitals, and with public agencies, such as the State Employment Security Agency.

Finally, Conscientious Objectors would be placed in priority jobs appropriate to their abilities. The placement process would be assisted by a job data bank which would also maintain a continuing profile of alternative service jobs and people.

Such an Alternative Service Program would fulfill the Selective Service Director's responsibility under the law; would contribute to the nation's health, safety and interest in a critical time; would render humanitarian assistance that would otherwise be neglected; and would sustain the faith of those who defend the nation.

[FR Doc. 81-2207 Filed 1-21-81; 8:45 am]
BILLING CODE 3915-01-M

DEPARTMENT OF EDUCATION

34 CFR Part 64

Museum Services Program

AGENCY: Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Institute of Museum Services proposes an amendment to its regulations governing a program of Federal financial assistance to museums under the Museum Services Act. The proposed amendment expands the types of assistance offered under the program to include assistance for institutional assessment.

DATES: Comments must be received on or before February 23, 1981.

ADDRESSES: Comments should be addressed to Mrs. Lee Kimche (Room 4110, Switzer Building), 400 Maryland Ave., SW, Washington, D.C. 20202.

FOR FURTHER INFORMATION CONTACT: Mrs. Lee Kimche, telephone (202) 245-0413.

SUPPLEMENTARY INFORMATION:

Nature of Program

The Museum Services Program is authorized by the Museum Services Act, which is Title II of the Arts, humanities, and Cultural Affairs Act of 1976. The Museum Services Act ("the Act") was enacted on October 8, 1976. The purpose of the Act is stated in section 202, 20 U.S.C. 961, as follows:

> It is the purpose of this (Act) to encourage and assist museums in their educational role, in conjunction with formal systems of elementary, secondary, and post-secondary education and with programs of nonformal education for all age groups; to assist museums in modernizing their methods and facilities so that they may be better able to conserve our cultural, historic, and scientific heritage; and to ease the financial burden borne by museums as a result of their increasing use by the public.

The Act establishes an Institute of Museum Services (IMS) consisting of a National Museum Services Board (NMSB) and a Director. A more detailed description of the structure of the Institute and the provisions of the Act may be found in 43 FR 45166 (September 29, 1978).

Current Program Regulations

Current program regulations for IMS were issued on August 11, 1980 by the Secretary. These regulations were published at 45 FR 53414. The current regulations provide rules for the definition of "museum" (under the program); the eligibility of museums for assistance; the types of assistance available; the requirements which applicants must meet; and the criteria used to judge applications. The program regulations provide for assistance to museums for one year general operational support (GOS) and for project support. The Secretary has also issued regulations under the Government in the Sunshine Act governing the conduct of NMSB meetings in 45 FR 53412 (Aug. 11, 1980).

Proposed Change; Museum Assessment

The Secretary proposes to amend the program regulations by adding a new Subpart B which would provide rules for the award of grants to museums to assist and encourage them to obtain institutional assessment. The assessment process generally involves review of a museum's overall programs and operations; diagnosis of their strengths and weaknesses; recommendations for long range planning; and suggestions for further

technical assistance requests. Assessment is carried out by qualified surveyors (through arrangements with a professional organization) in accordance with accepted professional standards. Section 206 of the Museum Services Act authorizes the Director of IMS, subject to the policy direction of NMSB, "to make grants to museums to increase and improve museum services." 20 U.S.C. 965. The purpose of this subpart, in furtherance of the objectives set out in sections 202 and 206 of the Act, is to aid museums in improving their services by providing them with the means, at least in part, to obtain expert assistance in evaluating those services, through the assessment process. When such an evaluation is complete, the museum can use what it has learned to serve its community more effectively.

A museum may use a grant under the proposed subpart for expenses of assessment such as registration fees; surveyor honorariums, travel and other expenses of a surveyor; and technical assistance materials.

Grants under this subpart may not exceed $000.00.

Following careful consideration of this issue by the National Museum Services Board, the Secretary has concluded that assisting and encouraging museums to obtain the services involved in the assessment process will help participating museums to improve their services; to enhance their institutional capacity; and to increase their level of financial support from private and other non-federal sources. Information received from museums—particularly those which are located in rural areas or which have limited resources—indicates that experience with the assessment or similar processes has had a positive impact upon the day to day operations of the institutions affected. While grants under this subpart are awarded for limited amounts, there is reason to believe that these amounts will stimulate museums to seek and employ assessment services.

Finally, this program will enable IMS to use its resources to reach a significant number of additional museums which could not otherwise participate in IMS programs, thus helping to improve museum services in a wider geographic area.

Invitation to Comment

Interested persons are invited to submit comments and recommendations regarding the proposed amendment to the regulations. Written comments and recommendations may be sent to the address given at the beginning of this preamble. All comments received on or before February 23, 1981, will be considered in the development of the final regulations.

All comments submitted in response to these proposed regulations will be available for public inspection, during and after the comment period, in Room 4008, Switzer Building, Washington, D.C. between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday of each week except Federal holidays.

(Catalog of Federal Domestic Assistance No. 84.115, Museum Services Program)

Dated: January 16, 1981.

Shirley M. Hufstedler,
Secretary of Education.

The Secretary of Education proposes to add a new Subpart b to Part 64 of Title 34 of the Code of Federal Regulations to read as follows:

PART 64—INSTITUTE OF MUSEUM SERVICES

Subpart A—General Operational and Project Support

Sec.
64.1 Purpose of Museum Services Program.
* * * * *

Subpart B—Museum Assessment

64.20 Purpose of program.
64.21 Eligibility.
64.22 Allowable costs.
64.23 Form of assistance; limitation on amount.
64.24 Conditions of participation.
64.25 Funding and award procedures.
64.26 Responsibility of museum.

Subpart D–F [Reserved]

Subpart G—Meetings of the National Museum Services Board

* * * * *

Authority: Secs. 201–210, Pub. L. 94–462, 90 Stat. 1975.
(20 U.S.C. 961–968); (5 U.S.C. 552b).

Subpart B—Museum Assessment

§ 64.20 Purpose of program.

The Secretary makes grants under this subpart to assist museums in carrying out institutional assessments to enable museums to obtain technical assistance in order to evaluate their programs and operations by generally accepted professional standards.

§ 64.21 Eligibility.

(a) A museum as defined in § 64.3 may apply for assessment assistance under this subpart.

(b) A museum which receives a grant for assessment assistance under this subpart for a fiscal year may not receive another grant for assessment assistance in the same or a subsequent fiscal year.

§ 64.22 Allowable costs.

A museum may use a grant under this subpart for expenses of institutional assessment such as registration fees; surveyor honariums; travel and other expense of a surveyor; and technical assistance materials.

§ 64.23 Form of assistance; limitation on amount.

(a) The Secretary makes payments to a museum under this subpart in advance.

(b) The amount of a grant to a museum under this subpart may not exceed $000.00.

(c) The aggregate amount of the grants under this subpart may not exceed $200,000 for a fiscal year.

§ 64.24 Conditions of participation.

The Secretary considers an application (on a form supplied by IMS) by a museum for a grant under this subpart for assessment assistance only if:

(a) The museum applies for assessment to an appropriate professional organization as defined in paragraph (c) and

(b) That organization notifies IMS that the application for assessment is complete and the museum is eligible for assessment.

(c) An appropriate professional organization for purposes of this subpart means (1) the American Association of Museums or (2) other professional organizations that are determined to be capable of arranging for a program of assessment services for a category of museums and so designated by notice published in the Federal Register.

§ 64.25 Funding and award procedures.

(a) The Secretary approves applications meeting the requirements of this subpart on a first-come, first-served basis, in the order in which it is determined that such requirements have been met, until a date in the fiscal year to be established by publication in the Federal Register.

(b) There are no selection criteria.

(c) Section 64.10 (IMS share of the cost of a proposal) does not apply to grants under this subpart.

(d) The following sections of the Education Department General Administrative Regulations, 34 CFR Part 75, relating to selection criteria and grantmaking procedures, do not apply to the museum assessment program:

(1) Selection criteria, §§ 75.200–75.222; and

(2) Grantmaking procedures, §§ 75.230–75.234.

§ 64.26 Responsibility of museum.

Except in unusual circumstances, a museum which receives a grant under this subpart must take the steps normally expected of it to complete the assessment process for which it has received assistance. Section 64.13(h) (a criterion for evaluation of general operational support applications) applies to the use of funds under this subpart.

[FR Doc. 81-2226 Filed 1-21-81; 8:45 am]

BILLING CODE 4000-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR 52

[A-6-FRL 1732-6]

Approval and Promulgation of State Implementation Plans; Louisiana Submission of Volatile Organic Compound (VOC) Regulations for Set II Control Technique Guideline Sources

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rulemaking.

SUMMARY: This action proposes approval and/or conditional approval of revisions to the Louisiana State Implementation Plan (SIP) which were submitted by the Governor on December 10, 1979 and September 12, 1980. Specifically, the State has revised Regulations 4.0 and 22.0 of the Louisiana Air Control Commission Regulations to include new definitions and legally enforceable regulations for several of the source categories addressed in the EPA Control Technique Guideline (CTG) documents which were issued between January 1978 and January 1979 (Set II CTGs). These revisions were submitted in response to the Clean Air Act Amendments of 1977. The Administrator's memorandum of February 24, 1978 (43 FR 21673, May 19, 1978), and the General Premable for Proposed Rulemaking on Approval of Plan Revisions for Nonattainment Areas (44 FR 20372, April 4, 1979) discussed the minimum requirements for the stationary source portion of an approvable ozone SIP revision.

DATES: Interested persons are invited to submit comments on this proposed action on or before March 23, 1981.

ADDRESSES: Written comments should be submitted to the address below: Evironmental Protection Agency, Region 6, Air and Hazardous Materials Division, Air Programs Branch, 1201 Elm Street, Dallas, Texas 75270.

Copies of the State's submittal are available for inspection during normal business hours at the address above and at the following locations:

Environmental Protection Agency, Public Information Reference Unit, Room 2922, EPA Library, 401 "M" Street SW., Washington, D.C. 20460

State Land and Natural Resources Bldg., Office of Environmental Affairs, Air Quality Division, 625 N. 4th St., 6th Floor, Baton Rouge, Louisiana.

FOR FURTHER INFORMATION CONTACT: Donna M. Ascenzi, Implementation Plan Section, Environmental Protection Agency, Region 6, Air and Hazardous Materials Division, Air Programs Branch, 1201 Elm Street, Dallas, Texas 75270 (214) 767-1518.

SUPPLEMENTARY INFORMATION:

Introduction

Provisions of the Clean Air Act enacted in 1977 (the Act) required States to revise their State Implementation Plans (SIPs) for areas that had not attained the National Ambient Air Quality Standards (NAAQS). Each State was to submit a SIP revision by January 1, 1979, providing for the attainment of the primary NAAQS as expeditiously as practicable, but no later than the end of 1982 (or the end of 1987 for areas with approved extensions which have particularly difficult ozone or carbon monoxide problems).

The requirements for an approvable SIP were set out in Section 110 and Part D of the Act. The Administrator's memorandum of February 24, 1978, published in the Federal Register at 43 FR 21673 (May 19, 1978), summarized the elements that an approved SIP must contain in order to meet the requirements of Part D. EPA also published at 44 FR 20372 (April 4, 1979), a General Preamble for proposed rulemaking on approval of SIP revisions for nonattainment areas, summarizing the major considerations guiding EPA's evaluation of nonattainment area plan revisions. EPA published the General Preamble in order to assist the public in commenting on the approvability of the State SIP revisions. See, also, supplements to the General Preamble published at 44 FR 38583 (July 2, 1979), 44 FR 50371 (August 28, 1979), 44 FR 53761 (September 17, 1979), and 44 FR 67182 (November 23, 1979).

For areas not attaining the ozone NAAQS, the Administrator's memorandum and the General Preamble stated that, at a minimum, the stationary source portion of an approvable ozone SIP revision must include legally enforceable regulations that reflect the application of reasonably available control technology (RACT) to those volatile organic compound (VOC) sources for which EPA had published a control technique guideline (CTG) by January 1978, and provide for adoption and submittal of additional legally enforceable RACT regulations on an annual basis beginning January 1980 for VOC sources covered by CTGs that have been published by January of the preceding year. RACT requirements for sources covered by the CTGs issued between January 1978 and January 1979 (Set II CTGs) were to be adopted and submitted to EPA by January of 1980. However, on November 25, 1980, EPA revised the deadline for submission of the RACT regulations for Set II CTG sources when it became apparent that the regulatory adoption process was going to take longer than originally anticipated 45 FR 78121. EPA notified States that plan revisions setting forth RACT regulations for the following Set II CTG sources were due by January 1, 1981.

Factory Surface Coating of Flatwood Paneling
Petroleum Refinery Fugitive Emissions (Leaks)
Pharmaceutical Manufacture
Rubber Tire Manufacture
Surface Coating of Miscellaneous Metal Parts and Products
Graphic Arts (Printing)
Dry Cleaning, Perchloroethylene
Gasoline Tank Trunks, Leak Prevention
Petroleum Liquid Storage, Floating Roof Tanks

On February 14, 1980, EPA issued final conditional approval to the revisions to the Louisiana SIP which were submitted in response to the requirements of Part D of the Act. These revisions included legally enforceable regulations that reflected the application of RACT to those VOC sources for which EPA had published a CTG by January 1978 (Set I CTGs). In the regulatory portion of that notice, under the "Approved Status" section, EPA stated that continued satisfaction of the requirements of Part D for the ozone portion of the SIP was contingent on the adoption and submittal of future VOC RACT regulations.

On December 10, 1979 and September 12, 1980, the Governor submitted, among other things, revisions to Regulation 22.0 of the Louisiana Air Control Commission (LACC) Regulations which consisted of legally enforceable regulations for the following Set II CTG source categories: perchloroethylene dry cleaning, graphic arts systems, pharmaceutical manufacture, gasoline tank trucks, surface coating of miscellaneous metal parts and products, flatwood paneling, and petroleum

refinery leaks. In addition, the Governor's submittal of December 10, 1979 contained certification that there were no major stationary sources in the State which manufactured pneumatic rubber tires. Also, this submission contained revisions to Regulation 4.0 (i.e., the addition of 4.99 through 4.116), which consisted of new definitions pertaining to these source categories. On September 12, 1980, the Governor submitted revisions to Regulation 22.0 which included a legally enforceable regulation for petroleum liquid storage in floating roof tanks, and a revision to Section 22.20.2 which clarified the exemption allowed under graphic arts. EPA has reviewed the State's submittal and developed an evaluation report [1] which discusses the technical aspects of the revisions in detail. This evaluation report is available for inspection by interested parties during normal business hours at the EPA Region 6 office and the other addresses listed above.

The July 2, 1979 supplement to the General Preamble of April 4, 1979, outlined, among other things, the criteria for conditional approval. EPA proposes to conditionally approve these revisions where there are minor deficiencies and the State has provided assurances that it will submit corrections by a specific deadline. The notice solicits comments on what items should be conditionally approved, and it solicits comments on the deadlines where specified in this notice. A conditional approval will mean that the restrictions on new major source construction will not apply unless the State fails to submit the necessary SIP revisions by the scheduled dates, or unless the revisions are not approved by EPA.

It should be noted that only those revisions to Regulation 22.0, pertaining to control requirements for the Set II CTG source categories, are dealt with in this notice.

Revisions to Regulation 22.0

As previously noted, the State has revised Regulation 22.0 to include legally enforceable regulations which address the application of RACT for the Set II CTG source categories discussed above.

EPA has reviewed the revisions to Regulation 22.0 and found several deficiencies in the State's approach to the control of VOC emissions from these source categories. The CTGs provide information on available air pollution control techniques and contain recommendations of what EPA calls the "presumptive norm" for RACT. Based on the information in the CTGs, EPA believes that the submitted regulations represent RACT, except as noted below. On the points noted below, the State regulations are not supported by the information in the CTGs, and the State must provide an adequate demonstration that its regulations represent RACT, or amend the regulations to be consistent with the CTGs. The specific deficiencies are outlined below.

1. Section 22.9.2 which pertains to the control of VOC emissions from surface coating operations for miscellaneous metal parts and products, and flatwood paneling must be revised to include the appropriate test procedures for determining compliance with the requirements for add-on controls.
2. The exemptions specified under Subsection 22.19.2 (a) and (b) must be revised to require that the dry cleaning facilities described therein, are exempt only from the add-on control requirements but still subject to the operational requirements specified in the regulation.
3. Section 22.20.2, which pertains to the control of VOC emissions from graphic arts systems, must be revised to include the appropriate test for determining compliance with the requirements for add-on controls.
4. Subsection 22.21.2(e), which pertains to the control of VOC emissions from petroleum refinery leaks, must be revised to require that pressure relief valves be monitored within 24 hours after being vented to the atmosphere.
5. Section 22.23, which pertains to the control of VOC emissions from pharmaceutical manufacturing facilities, must be revised to include the appropriate test methods.

EPA proposes to conditionally approve the revisions to §§ 22.9.2, 22.19, 22.20, 22.21, and 22.23 of Regulation 22.0 on the following conditions: (1) the regulation is revised in accordance with the requirements discussed above within 90 days from the publication of this notice and (2) the State submit the revised portions of the regulation within 120 days from the publication of this notice. EPA also proposes to approve §§ 22.3, 22.22, and 22.9.3(b) which pertain to the control of VOC emissions from the storage of VOCs, gasline tank trucks and vapor collection systems, and test methods for low solvent coatings respectively. In addition, EPA proposes to approve the revisions to Regulation 4.0 (i.e. the addition of 4.99 through 4.116).

Pursuant to the provisions of 5 U.S.C. 605(b) I hereby certify that the attached rule will not if promulgated have a significant economic impact on a substantial number of small entities. This action only approves State actions. It imposes no new requirements. Moreover, due to the nature of the Federal-State relationship, Federal inquiry into the economic reasonableness of the State actions would serve no practical purpose and could well be improper.

In addition, EPA proposed to approve the revisions to Regulation 4.0, (i.e. the addition of 4.99 through 4.116).

Note.—Under Executive Order 12044, EPA is required to judge whether a regulation is "significant" and therefore subject to the procedural requirements of the Order or whether it may follow other specialized development procedures. EPA labels these other regulations specialized." I have reviewed this regulation and determined that it is a specialized regulation not subject to the procedural requirements of Executive Order 12044.

This notice of proposed rulemaking is issued under the authority of Sections 110(a) and 42 U.S.C. 7410(a) and 7501.

Date: December 22, 1980.

Francis E. Phillips,
Acting Regional Administrator.

[FR Doc. 81-2155 Filed 1-21-81; 8:45 am]
BILLING CODE 6560-38-M

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40 CFR Part 52

[A-3-FRL 1730-8]

State of Pennsylvania; Proposed Revision of the Pennsylvania State Implementation Plan

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: A proposed revision to the Pennsylvania State Implementation Plan (SIP) for the attainment of the ozone standard in the Scranton/Wilkes-Barre Metropolitan Region (Luzerne and Lackawanna Counties) was submitted by Governor Thornburgh to EPA, Region III, on May 28, 1980, and subsequently revised and resubmitted by Clifford Jones, Secretary of the Pennsylvania Department of Environmental Resources (DER) on September 19, 1980. The proposed revision: (a) demonstrates that the National Ambient Air Quality Standard for ozone can be achieved in the Scranton/Wilkes-Barre area prior to December 31, 1982, (b) deletes Pennsylvania's previous request for an extension of time beyond December 31, 1982 to attain the ozone standard, and (c) requests deletion of the portion of the 1979 SIP pertaining to implementation of an automobile emissions inspection and maintenance (I/M) program in the Scranton/Wilkes-Barre area. EPA is proposing this SIP revision concurrent with Pennsylvania's proposal of this revision (see the discussion in the supplementary information section of

[1] EPA Review of Louisiana's State Implementation Plan Revisions for the Set II CTG Source Categories, November 1980.

this notice for a further description of this concurrent proposal).

DATE: Comments must be submitted on or before February 21, 1981.

ADDRESSES: Copies of the proposed SIP revision and accompanying support documentation are available for public inspection during normal business hours at the following locations:

U.S. Environmental Protection Agency, Region III, Air Programs Branch, Curtis Building, Tenth Floor, 6th & Walnut Streets, Philadelphia, PA 19106, Attn: Patricia Sheridan

Pennsylvania Department of Environmental Resources, Bureau of Air Quality Control, Fulton Bank Building, Third and Locust Streets, Harrisburg, PA 17120, Attn: Henry Alexander

Public Information Reference Unit, Room 2922, EPA Library, U.S. Environmental Protection Agency, 401 M St. SW (Waterside Mall), Washington, D.C. 20460.

All comments on the proposed revision submitted on or before 60 days of publication of this notice will be considered and should be directed to: Mr. Glenn Hanson, Chief, PA, DE, WVA Section (3AH12), Air Programs Branch, U.S. Environmental Protection Agency, 6th & Walnut Streets, Philadelphia, PA 19106, Attn: AH3[illegible]PA.

FOR FURTHER INFORMATION CONTACT: Mr. Ed Shoener (3AH12), Air Programs Branch, U.S. Environmental Protection Agency, Region III, 6th & Walnut Streets, Philadelphia, PA 19106, Tel. No. 215/597–8179.

SUPPLEMENTARY INFORMATION:

Background

The Clean Air Act (Act) as amended in 1977 requires that all areas that are nonattainment areas for the National Ambient Air Quality Standard (NAAQS) for ozone (O_3) demonstrate attainment of that NAAQS by 1982. If a State cannot demonstrate attainment of the O_3 NAAQS by 1982 the State may request up to an additional five-year period (until 1987) extension to attain the O_3 NAAQS. However, if an extension is requested, Section 172 of the Act requires, among other things, that the State must "establish a specific schedule for implementation of a vehicle emission control inspection and maintenance program." Implementation of this program is required no later than December 31, 1982, under Section 172 of the Act.

Pennsylvania's 1979 SIP, as required under Part D of the Act, projected the need for extension of the attainment date. The 1979 SIP was approved by EPA on May 20, 1980, 45 FR 33607 (1980). In the 1979 SIP submittal, Pennsylvania used 1976 as the base year and developed a non-methane hydrocarbon (VOC) emissions inventory for 1976. Pennsylvania then projected VOC emissions reductions for 1982 and estimated that there would be a 33.6% reduction in VOC emissions between 1976 and 1982. The 1979 SIP also used ambient ozone data from 1975 to 1977 which showed that a 36.2% reduction in VOC emissions was needed to attain the O_3 NAAQS by 1982. The projected 33.6% reduction in VOC emissions fell short of the needed 36.2% reduction and, therefore, the O_3 NAAQS, according to this analysis would not be attained by 1982 and an extension beyond 1982 to attain the O_3 NAAQS was necessary. Accordingly, an I/M program was necessary.

Since the 1979 SIP was submitted, there has been a substantial improvement in the monitored O_3 ambient levels in the Scranton/Wilkes-Barre area and more recent VOC emissions inventory data has been developed which allowed DER to reevaluate the need for an extension. Based on this re-evaluation, on May 29, 1980, Governor Thornburgh submitted a proposed revision to the SIP recommending deletion of the I/M requirement for the Scranton/Wilkes-Barre area. The DER subsequently revised this SIP revision and resubmitted it on September 19, 1980. The remainder of this document will review the Commonwealth's re-evaluation of the need for an extension.

Analysis of ozone data: As required under EPA guidelines, the most recent complete three years of ambient O_3 air quality data was evaluated. Data came from the Commonwealth of Pennsylvania Ambient Monitoring Stations in the Scranton and Wilkes-Barre areas for the years 1977, 1978 and 1979.

The Scranton and Wilkes-Barre ambient O_3 air quality was analyzed using the Larsen statistical method referenced in the EPA guideline document "Guideline for the Interpretation of Ozone Air Quality Standards" (EPA 45015–79–003). This method calculates the O_3 design value by ranking observed values using a frequency distribution. This procedure calculated an O_3 design value of 0.171 ppm.

Inventory: In the submittal the base year VOC emissions inventory has been updated to 1979 to reflect more recent data on the stationary source and off-highway gasoline engine categories and to incorporate the VOC emission reductions which have occurred from 1976 to 1979. The projected 1982 VOC emission inventory has also been updated to reflect these refinements. Using the updated VOC emissions inventories it is estimated there was 37,403 tons of VOC emissions in the Scranton/Wilkes-Barre area in 1979 and it is projected there will be 25,806 tons of VOC emissions in 1982; a 31.0% reduction from 1979 levels.

Modeling: The Commonwealth used the linear rollback model to forecast O_3 concentrations by 1982. The results of the analysis show that, with a design value of 0.171 ppm, the model requires a reduction of 23.8%. As discussed above under inventories, the region will achieve a reduction of 31.0% (of the 1979 base year inventory). Thus, based upon this analysis the Scranton/Wilkes-Barre area is projected to attain the O_3 NAAQS by 1982.

Conclusion: EPA has made a thorough review of the State's submissions. The data from the monitors in Scranton/Wilkes-Barre and the modeling data have been determined to be valid and in accordance with EPA guidelines. EPA proposes to approve this revision of the Pennsylvania SIP because the Commonwealth of Pennsylvania has demonstrated that the Scranton/Wilkes-Barre area can achieve the O_3 NAAQS by 1982 and therefore, will not need an extension of the attainment date. Accordingly, Pennsylvania will not need to implement an automobile emissions I/M program in the Scranton/Wilkes-Barre area at this time. However, if at some time in the future O_3 ambient air quality levels increase in the Scranton/Wilkes-Barre area or projected VOC emission reductions, as calculated, do not occur, it may be demonstrated that the O_3 NAAQS can not be achieved by 1982. In that case extension of the attainment date would be required, necessitating the implementation of an I/M program.

In order to expeditiously process this proposed SIP revision, EPA will hold a public comment period concurrently with DER. DER notified the public of this proposed SIP revision by placing ads in newspapers in the Scranton/Wilkes-Barre area on December 20, 1980. DER will hold a 60-day public comment period (closing on February 20, 1981) with a public hearing on January 21, 1981 at DER's office in Wilkes-Barre, Pennsylvania. EPA's public comment periods begins today and will close on February 21, 1981. The public is invited to submit comments to the EPA to the address stated above on whether the Commonwealth's SIP should be approved. At the close of its public comment period DER will submit the revision in final form. If the final SIP revision differs in any substantive manner from this proposed revision EPA

will repropose the revision and open another public comment period.

The Administrator's final decision to approve or disapprove the proposed revision will be based on the comments received and on a determination of whether the amendment meets the requirements of Section 110(a)(2) and 172 of the Clean Air Act and 40 CFR Part 51, Requirements for Preparation, Adoption and Submittal of State Implementation Plans.

Pursuant to the provisions of 5 U.S.C. 605(b) I hereby certify that this proposed rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. It imposes no new requirements. In fact, this action, if promulgated would remove several regulatory requirements.

Note.—Under Executive Order 12044 EPA is required to judge whether a regulation is "significant" and therefore subject to the procedural requirements of the order or whether it may follow other specialized development procedures. EPA labels these other regulations "specialized." I have reviewed this regulation and determined that it is a specialized regulation not subject to the procedural requirements of Executive Order 12044.

(42 U.S.C. 7401-642)

Dated: January 2, 1981.

Thomas Voltaggio,

Acting Regional Administrator.

[FR Doc. 81-2200 Filed 1-21-81; 8:45 am]

BILLING CODE 6560-38-M

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40 CFR Part 52

[A-7-FRL 1724-4]

Approval and Promulgation of Implementation Plans; State of Missouri

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rulemaking.

SUMMARY: The State of Missouri has submitted revisions to its State Implementation Plan (SIP) involving start-up, shutdown, and malfunction conditions. These changes to the Missouri regulations provide the owner or operator of an installation the opportunity to sumbit data regarding conditions resulting in excess emissions of air pollutants. The data will be used by the state to determine whether the excess emissions were due to start-up, shutdown or malfunction conditions. Enforcement action can then be taken at the state's discretion.

This notice advises the public that EPA proposes to approve the Missouri submission. Interested persons are invited to submit comments on this proposal.

DATES: Comment must be received before March 23, 1981.

ADDRESSES: Comments should be sent to Mr. Wayne G. Leidwanger, Air Support Branch, Environmental Protection Agency, 324 East 11th Street, Kansas City, Missouri 64106. Copies of the state submission and the EPA prepared rationale document are available at the above address and at the following locations:

Public Information Reference Unit, Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460.

Missouri Department of Natural Resources, 2010 Missouri Boulevard, Jefferson City, Missouri 65102.

FOR FURTHER INFORMATION CONTACT: Wayne G. Leidwanger at 816-374-3791 (FTS 758-3791)

SUPPLEMENTARY INFORMATION: On September 5, 1980, the state of Missouri submitted Rule 10 CSR 10-6.050, Start-up, Shutdown, and Malfunction Conditions, as a SIP revision. Included with the new rule were revisions to Rule 10 CSR 10-6.020 Definitions and deletion of start-up, shutdown and malfunction provisions from existing regulations in Rules 10 CSR 10-2.030, 10-3.050, 10-3.060, 10-3.090, 10-4.090, 10-4.040 and 10-5.050. These latter provisions generally allowed automatic exemptions from emission limitations during periods of excess emissions due to start-up, shutdown or malfunction conditions. The new rule is more restrictive in that the source must demonstrate that the excess emissions, although constituting a violation, were due to an unavoidable malfunction. The state will determine at its discretion whether additional enforcement action is warranted based upon data submitted by the owner or operator of a source showing that the excess emissions were the consequence of a malfunction, start-up or shutdown.

EPA believes that the imposition of a penalty for sudden and unavoidable malfunctions caused by circumstances entirely beyond the control of the owner or operator is not appropriate under certain conditions. However, because the SIP must provide for attainment and maintenance of the national ambient air quality standards (NAAQS), provisions on malfunctions, start-ups and shutdowns must be narrowly drawn. Regulations which provide for automatic exemptions where a malfunction is alleged by a source will not be approved by EPA. Automatic exemptions may aggravate air quality so as to result in not providing for attainment of the NAAQS as required by the Clean Air Act.

Start-ups and shutdowns must be treated similarly. Routine phasing in and out of process equipment is part of the normal operation of a source. It is reasonable to expect that careful planning or additional control equipment will eliminate violations of emission limitations during such periods. If excess emissions should occur during routine phasing in and out of such equipment, the excess emissions cannot be considered as having resulted from an exempted upset unless the source can demonstrate that such emissions were actually caused by a sudden and unforeseeable breakdown in the equipment.

The state has adopted a regulation which EPA believes is consistent with its policy regarding malfunctions, start-ups, and shutdowns. The rule provides that malfunctions are not automatically exempt nor is the routine phasing in and out of process equipment exempt from enforcement action. However, upon receipt of a notice of excess emissions, the source may provide information showing that the excess emissions were the consequence of a malfunction, start-up or shutdown. Based upon this information, the state will determine whether additional enforcement action is warranted.

Proposed Action

EPA proposes to approve Rule 10 CSR 10-6.050, Start-up, Shutdown, and Malfunction Conditions, and the revisions to Rules 10 CSR 10-6.020, 10-2.030, 10-3.050, 10-3.060, 10-3.090, 10-4.090, 10-4.040 and 10-5.050 as a revision to the State Implementation Plan.

The public is invited to submit comments on whether the Missouri submission should be approved as a revision to the SIP. The Administrator's decision to approve or disapprove will be based upon the comments received and on a determination of whether the amendments meet the requirements of Section 110 of the Clean Air Act and 40 CFR Part 51, Requirements for Preparation, Adoption and Submittal of Implementation Plans.

Note.—Under Executive Order 12044, EPA is required to judge whether a regulation is "significant" and, therefore, subject to the procedural requirements of the Order, or whether it may follow other specialized development procedures. EPA labels these other regulations "specialized."

I have reviewed this regulation and determined that it is a specialized regulation not subject to the procedural requirements of Executive Order 12044.

This notice of proposed rulemaking is issued under the authority of Section 110 of the Clean Air Act as amended.

Pursuant to the provisions of 5 U.S.C. 605(b), I herby certify that the proposed rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. This action only approves state actions. It imposes no new requirements. Moreover, due to the nature of the federal-state relationship, federal inquiry into the economic reasonableness of the state's action would serve no practical purpose and could well be improper.

Dated: January 14, 1981.

Kathleen Camin,

Regional Administrator.

[FR Doc. 81-2160 Filed 1-21-81; 8:45 am]

BILLING CODE 6560-38-M

40 CFR Part 52

[A-5-FRL 1724-6]

Approval and Promulgation of Implementation Plans; Ohio

AGENCY: U.S. Environmental Protection Agency.

ACTION: Proposed Rulemaking.

SUMMARY: This notice proposes to revise sulfur dioxide (SO_2) emission limitations in the federally promulgated Ohio State Implementation Plan (SIP) for sources in Pike and Wayne Counties. USEPA is proposing the revisions in response to a remand by the United States Court of Appeals for the Sixth Circuit in "Northern Ohio Lung Association v. EPA." 572 F.2d 1182 (1978). The Court held that the federally promulgated plan did not include specific provisions for meeting the secondary National Ambient Air Quality Standards for sulfur dioxide. Following the remand, USEPA reviewed the secondary standard modeling analyses it had performed in developing the plan. This review established that EPA had evaluated and set emission limits to protect the secondary standard in all but four counties: Delaware, Pike, Wayne, and Gallia counties. USEPA will propose rulemaking on Gallia County in a separate Notice of Proposed Rulemaking. Further analysis indicated that the current limits protect the secondary standards in Delaware County. Accordingly, EPA is not revising the plan for Delaware County. USEPA solicits comments on the revised sulfur dioxide emission limitations for sources in Pike and Wayne Counties.

DATES: Comments on this proposed review must be received on or before February 23, 1981. Requests for a public hearing must be received no later than February 6, 1981.

ADDRESSES: Written comments and requests for a hearing should be sent to Gary Gulezian, Chief, Regulatory Analysis Section, U.S. Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604. The docket for this revision (#5A-80-16) is on file at the above address and at Central Docket Section, U.S. Environmental Protection Agency, West Tower Lobby, Gallery 1, 401 M Street SW, Washington, D.C. 20460. The docket may be inspected and copied during normal business hours.

FOR FURTHER INFORMATION CONTACT: Mary Gade, Assistant Regional Counsel, U.S. Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois 60604, Phone: 312/886-6073.

SUPPLEMENTARY INFORMATION: Section 110(a)(1) of the Clean Air Act (Act) requires each State to adopt and submit to USEPA a plan which provides for attainment and maintenance of the primary and secondary national ambient air quality standards. The plan for achieving the secondary standard may be submitted as part of a State's plan for achieving the primary standard or as a separate plan. The primary standard plan must provide for attainment no later than three years from plan approval. Attainment of the secondary standard must be within a reasonable time.

Under Section 110(c) of the Act, USEPA promulgated its substitute sulfur dioxide plan for the State of Ohio on August 27, 1976 and set emission limitations for Ohio sources to attain and maintain the national ambient air quality standards for sulfur dioxide. See 41 FR 36324, 41 FR 52455, and 42 FR 27588. As explained in USEPA's Final Technical Support Document, the federal plan was designed to insure attainment of *both* the primary and secondary sulfur dioxide standards within three years of plan approval.

On February 9, 1978, the U.S. Court of Appeals for the Sixth Circuit remanded to USEPA for its further consideration two aspects of the plan. "Northern Ohio Lung Association v. EPA", 572 F.2d 1182 (6th cir. 1978). The Court held that the plan did not comply with the requirements of section 110(a)(2)(F) of the Act and did not include specific provisions for meeting the secondary ambient air quality standards for SO_2. This notice addresses the secondary standard portion of the remand.

Following the remand, USEPA reviewed the secondary standard modeling analyses it had performed in developing the sulfur dioxide plan. This review established that USEPA had evaluated and set emission limits to protect the secondary standard in all but four counties: Gallia, Delaware, Pike, and Wayne Counties. In Gallia County, USEPA had not analyzed the secondary standard for Ohio Valley Electric Company's Kyger Creek power plant and Ohio Power Company's Gavin power plant. USEPA is remodeling the Gavin and Kyger Creek power plants to evaluate the secondary standards. Once the remodeling is completed, EPA will publish the results and if necessary, will revise the emission limitations. In Delaware, Pike and Wayne Counties, USEPA had evaluated the secondary standard, but had overlooked secondary standard violations and had not set adequate emission limitations for sources in those three counties.

Upon review of an updated emissions inventory which was submitted by the Ohio EPA, USEPA found that the emissions inventory used in the original USEPA modeling for Delaware and Pike Counties was outdated. The revised inventory for Pike County consisted of only one minor change and has no effect on the regulation. However, the updated inventory for Delaware County showed two substantial changes to the original USEPA inventory. Further discussion of the inventory changes can be found in the Technical Support Document in the docket. Therefore, USEPA conducted a modeling analysis of the updated inventory with the current emission limitation for Delaware County. The results indicate that the secondary standard is being protected with the current emission limitation. Therefore, no revision to the Delaware County regulation is required.

For Wayne and Pike Counties, USEPA has corrected the emission limitations based on the original EPA modeling and proposes the following revisions to assure that the secondary standard is protected.

The CRSTER modeling analysis for Pike County shows that the highest 3 hour ground level concentration of the Portsmouth Gaseous Diffusion Plant (previously ERDA) facility is 1102 $\mu g/m3$. Using the background concentration employed in the original modeling of 25 $\mu g/m3$ it was determined that a 15.6% increase above the base year level of 2,291.9 nanogram/joule (ng/J) (5.33 lbs. SO_2/MMBTU) will protect the NAAQS. Therefore USEPA proposes to revise the emission limitation for Pike county from 3,010 ng/J (7.00 lbs. SO_2/MMBTU) to 2,648.8 ng/J (6.16 lbs. SO_2/MMBTU). The CRSTER modeling analysis for Wayne County shows the second highest 3 hour ground level concentration for the

Orrville Municipal Power Plant is 1066 μg/m3. Using a background of 77 μg/m3 it was determined that a 14.7% increase above the base year level of 2.485.4 ng/J (5.78 lbs. SO_2/MMBTU) is permitted for the Orrville Municipal Power Plant. No other changes in the Wayne County strategy are needed. Consequently, the emission limitations remain the same for the Morton Salt Company and the Packaging Corporation of America. Therefore, USEPA proposes to revise the emission limitation for the Orrville Municipal Power Plant from 3.010 ng/J (7.00 lbs. SO_2/MMBTU) to 2.850.9 ng/J (6.63 lbs. SO_2/MMBTU)

Final promulgation of this revision will follow an analysis of all comments submitted and will depend on its consistency with Section 110 of the Clean Air Act.

Note.—Under Executive Order 12044 (43 FR 12661), USEPA is required to judge whether a regulation is "significant" and, therefore, subject to certain procedural requirements of the Order or whether it may follow other specialized development procedures. USEPA labels these other regulations "specialized". I have reviewed this proposed regulation pursuant to the guidance in USEPA's response to Executive Order 12044, "Improving Environmental Regulations," signed March 29, 1979 by the Administrator and I have determined that it is a specialized regulation not subject to the procedural requirements of Executive Order 12044.

(Sec. 110 of the Clean Air Act, as amended, 42 U.S.C. 7410)

Dated: December 8, 1980.

John McGuire,

Regional Administrator.

Part 52 of Chapter I, Title 40 of the Code of Federal Regulations is proposed to be amended as follows:

Subpart KK—Ohio

1. Section 52.1875 is amended by revising footnote "f" to the table in paragraph (a).

§ 52.1875 [Amended]

* * * * *

(a) * * *

f. August 27, 1979 except for the companies listed in (1) which are subject to an attainment date of June 17, 1980, the Ashland Oil Company which is subject to an attainment date of September 14, 1982, the companies in Summit County listed in (2) which are subject to an attainment date of January 4, 1983, PPG Industries, Inc. (boilers only) in Summit County, Ohio which is subject to an attainment date of August 25, 1983, the utilities listed in (3) which are subject to an attainment date of June 19, 1983, and all companies in Pike County and the Orrville Municipal Power Plant in Wayne County which are subject to an attainment date of (3 years from the effective date of promulgation).

2. Section 52.1881(b)(52) and (b)(64) are revised as follows:

§ 52.1881 Control Strategy: Sulfur Oxides (sulfur dioxide)

* * * * *

(b) Regulations for the control of sulfur dioxide in the State of Ohio.

* * * * *

(52) In Pike County, no owner or operator of any fossil fuel-fired steam generating unit shall cause or permit the emission of sulfur dioxide from any stack in excess of 2.648.4 ng/J (6.16 lbs. SO_2/MMBTU).

* * * * *

(64) In Wayne County.

(i) The Morton Salt Company or any subsequent owner or operator of the fossil fuel-fired steam generating units at the facility shall not cause or permit the emission of sulfure dioxide from any stack in excess of 3.010 ng/J (7.00 lbs. SO_2/MMBTU).

(ii) The Packaging Corporation of America or any subsequent owner or operator of the fossil fuel-fired steam generating units at the facility shall not cause or permit the emission of sulfur dioxide from any stack in excess of 3.010 ng/J (7.00 lbs. SO_2/MMBTU).

(iii) The Orrville Municipal Power Plant or any subsequent owner or operator of the fossil fuel-fired steam generating units at the facility shall not cause or permit the emission of sulfur dioxide from any stack in excess of 2.850.0 ng/J (6.63 lbs. SO_2/MMBTU).

* * * * *

3. Section 52.1882 is amended by adding subsection (j).

§ 52.1882 Compliance schedules.

* * * * *

(j) The Federal compliance schedule for sources in Pike County and the Orrville Municipal Power Plant in Wayne County is set forth in § 52.1882(b) except that all references to June 17, 1977 are changed to (the effective date of promulgation).

[FR Doc. 81-2187 Filed 1-21-81; 8:45 am]

BILLING CODE 6560-26-M

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40 CFR Part 81

[A-7-FRL 1724-3]

Designation of Areas for Air Quality Planning Purposes: State of Nebraska

AGENCY: Environmental Protection Agency.

ACTION: Proposed Rule.

SUMMARY: Section 107(d) of the Clean Air Act, as Amended, requires the states and EPA to determine the status of all areas in regard to the National Ambient Air Quality Standards (NAAQS). All designations are recommended by the state and approved or revised as necessary by EPA. Designation of areas as either attainment, nonattainment or unclassified was published in the Federal Register on March 3, 1978. On December 7, 1979, the Nebraska Environmental Control Council adopted requested changes to these designations as part of its State Implementation Plan (SIP). EPA is acting on these requests today to redesignate areas in Cass, Douglas and Sarpy Counties for total suspended particulate (TSP). Nebraska has notified the state of Iowa of requests for redesignations which are applicable to their interstate regions.

COMMENTS: Comments received on or before March 23, 1981 will be considered in EPA's final decision on redesignations.

ADDRESSES: Copies of the state submittal and EPA's evaluation document are available at the following locations:

Environmental Protection Agency, Public Information and Reference Unit, Room 2922, 401 M Street, SW, Washington, D.C. 20460

Nebraska Department of Environmental Control, 301 Centennial Mall, Lincoln, Nebraska 68509

Lincoln-Lancaster County Air Pollution Control Agency, 2200 St. Mary's Avenue, Lincoln, Nebraska 68502

Permits and Inspection Division, Housing and Community Development Department, 1819 Farnam, Room 402, Omaha, Nebraska 68102

Lincoln-Lancaster County Planning Commission, 555 South Tenth Street, Lincoln, Nebraska 68508

Omaha-Council Bluffs Metropolitan Area Planning Agency, 7000 West Center Road, Omaha, Nebraska 68106

FOR FURTHER INFORMATION CONTACT: Eloise Reed at (816) 374-3791 (FTS 758-3791).

SUPPLEMENTARY INFORMATION: The Clean Air Act Amendments of 1977 required each state to prepare a list of areas which had attained the NAAQS, had failed to meet the NAAQS, or had insufficient data to make a determination for each pollutant for which there is a standard. An attainment area is one in which the measured or predicted air quality does not exceed the ambient air quality standards. A nonattainment area is one in which the air quality is worse than the standards. An unclassified area is one for which there is insufficient data to determine whether the area is attainment or nonattainment.

In order to designate an area as attainment, the state is required to

examine at least two years of valid air quality data. If the most current year's data show that the standards were not exceeded, the state examines the data for the previous year. If there are two consecutive years showing the standards were not exceeded, the area can be classified attainment. However, certain rural or non-urban areas can also be designated attainment if the criteria for fugitive dust are met, even if the NAAQS were exceeded.

For rural parts of a state, the EPA allows those areas which experience violations of the TSP standards which could be attributed to fugitive dust to be designated attainment, if these areas have (1) a lack of major industrial development or an absence of significant industrial particulate emissions, and (2) low urbanized population.

All designations are recommended by the state and approved or modified as necessary by EPA.

On September 22, 1980, the state of Nebraska submitted a number of redesignation requests as part of the SIP revision required by the 1977 Clean Air Act Amendments. Certain requests also seek 18-month extensions until July 1, 1980, to submit a SIP which addresses attainment of the secondary standard for TSP. EPA will propose action on these extensions in a separate Federal Register notice.

Redesignation requests

The state's requested changes in attainment status and EPA's proposed action are discussed for each applicable pollutant in this section.

If an area is redesignated to an attainment or unclassified status a nonattainment plan for the applicable standard is not required for that area. Areas that remain nonattainment will be required to submit nonattainment plans.

(a) *Douglas County*—The country is presently classified as nonattainment for TSP, however, the final report of a study by a consulting firm indicates the actual nonattainment areas are within a one-half mile radius of two monitoring sites in Omaha. The state is requesting that the primary TSP nonattainment area be redefined as:

(1) An area bounded on the north by Interstate 80 from 42nd Street east to the Missouri River, south to Harrison Street, west to 30th Street, north to "Q" Street, west to 42nd Street, and then north to the point of beginning.

(2) An area bounded on the north by Ames Avenue from 30th Street east to 24th Street, south to Pinkney Street, east to the western limits of Carter Lake, Iowa, south to Locust Street, east to the eastern limits of Carter Lake, Iowa to the Missouri River, in a southerly direction to Leavenworth Street, west to 20th Street, north to Dodge Street, west to the east side of Interstate 480, north along the east edge of Interstate 480 and the North Freeway to Lake Street, west to 30th Street, and then north to the point of beginning.

The state also requests that the remainder of the city of Omaha be reclassified to secondary nonattainment and that the remainder of Douglas County be reclassified as attainment. An 18-month extension is requested to submit a SIP to address the secondary TSP standard.

Two years valid data (1977 and 1978) are submitted in support of this request.

Proposed Action. EPA proposes that the current primary nonattainment TSP status for Douglas County be revised to (1) retain the primary TSP nonattainment area for the 24th and "O" Street and 11th and Nicholas sites described above, (2) remove the primary and retain TSP nonattainment designation for the remainder of Omaha, and (3) redesignate Douglas County, excluding Omaha, as attainment for TSP.

(b) *Sarpy County*—The county is currently designated as not meeting the primary TSP standard. The state requested that EPA classify Sarpy County as attainment and submitted 24 months of data (April 1977 to April-1979) in support of the request. Although there were violations of the secondary standard at the Bellevue site, the state sought to have Bellevue reclassified to attainment in accordance with EPA's Fugitive Dust Policy. EPA believes that the EPA Fugitive Dust Policy is not applicable to Bellevue because three major sources of industrial particulate emissions are located in the area. EPA further determined that the City of Bellevue should be reclassified to a secondary nonattainment area for TSP. The state has requested an 18-month extension to submit a secondary SIP for Bellevue. Monitoring data submitted justifies reclassifications of Sarpy County, excluding Bellevue, to attainment.

Proposed Action. EPA proposes that the current TSP nonattainment status for Sarpy County be revised to (1) remove the primary nonattainment designation and retain the secondary nonattainment designation for Bellevue, and (2) reclassify all of Sarpy County, excludng Bellevue, as an attainment area.

(c) *Cass County*—The county is currently designated nonattainment for the primary TSP standard. The state requests reclassification of Cass County to attainment for TSP, with the exception of the cities of Weeping Water and Louisville which they believe should remain primary TSP nonattainment areas. Two years of data (1977 and 1978) for the monitoring sites in these cities are submitted in support of this request. An 18-month extension is requested for submitting the TSP secondary SIP for Louisville and Weeping Water.

The request for redesignation of the remainder of Cass County to attainment is inconsistent with EPA policy because it is not based on either monitoring or modeling data. Because of the lack of monitoring data outside of the municipal boundaries of Louisville and Weeping Water, EPA believes it to be advisable to redesignate Cass County, excluding the municipalities of Louisville and Weeping Water, as unclassified for TSP until such time as sufficient monitoring or modeling data are available and submitted by the state to substantiate a redesignation.

Proposed Action. EPA proposes that the current primary nonattainment classification for Cass County be revised to (1) redesignate Cass County, exluding the municipal boundaries of Weeping Water and Louisville, as unclassified for TSP, and (2) retain the primary TSP nonattainment designation for the area within the municipal boundaries of Weeping Water and Louisville.

Note.—Under Executive Order 12044, the EPA is required to judge whether a regulation is "significant" and, therefore, subject to the procedural requirements of the order, or whether it may follow other specialized development procedures. EPA lables these other regulations "specialized." EPA has determined that this is a specialized regulation not subject to the procedural requirements of Executive Order 12044.

This notice of proposed rulemaking is issued under the authority of Section 107 of the Clean Air Act Amendments of 1977.

Pursuant to the provision of 5 U.S.C. 605(b) I hereby certify that the attached rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. This action imposes no regulatory requirements but only changes area air quality designations. Any regulatory requirements which may become necessary as a result of this action will be dealt with in a separate action.

Dated: January 14, 1981.

Kathleen Camin,

Regional Administrator.

[FR Doc. 81-2103 Filed 1-20-81; 8:45 am]

BILLING CODE 6560-20-M

40 CFR Part 763

[OPTS 61994; FRL 1894-6]

Friable Asbestos-Containing Materials in Schools; Proposed Identification and Notification

Correction

In FR Doc. 80-28824, appearing on page 61986 in the issue of Wednesday, September 17, 1980, make the following corrections:

1. In § 763.2, on page 61987, the first column, seventh line, the word "insures" should have read "inures".

2. In the same column, in the seventh line of § 763.3 the word "intered" should have read "entered".

3. On page 61987, in the second column, the heading for § 763.6 should have read:

§ 763.6 Warnings and notifications.

BILLING CODE 1505-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

42 CFR Parts 432, 433

Cost Allocation Plans for Public Assistance Programs

AGENCY: Office of the Secretary, HHS.

ACTION: Notice of Proposed Rule Making.

SUMMARY: The proposed rule would revise existing regulations concerning the preparation, submission and approval of State agency cost allocation plans used in computing claims for Federal Financial Participation under Title XIX of the Social Security Act. It would also reflect the transfer of responsibility for review and approval of the plans to the Department's Regional Divisions of Cost Allocation. This responsibility was previously assigned to the Social and Rehabilitation Service which was abolished by Secretarial Order published on March 9, 1977 (42 FR 13282). The current rule has been rewritten so that it is clearer, easier to understand and more specific.

DATE: Comments must be received on or before March 9, 1981.

ADDRESS: Interested parties are invited to submit written data, views, or comments regarding the proposed regulations to the Director, Office of Grant and Contract Financial Management, Office of Grants and Procurement, Office of the Assistant Secretary for Management and Budget, U.S. Department of Health and Human Services, Room 544G, Hubert H. Humphrey Building, 200 Independence Avenue, S.W. Washington, D.C. 20201. Comments will be available for public inspection at the above address Monday through Friday from 9:00 a.m. to 5:30 p.m.

FOR FURTHER INFORMATION CONTACT: Henry G. Kirschenmann (202) 245-6771.

SUPPLEMENTARY INFORMATION: By concurrent Notice published elsewhere in this issue of the Federal Register, this Department is revising the current regulations on the preparation, submission and approval of the State cost allocation plans for public assistance programs to reflect the transfer of responsibility for review and approval of the plans to the Department's Regional Divisions of Cost Allocation. This responsibility was previously assigned to the Social and Rehabilitation Service which was abolished by Secretarial Order published on March 9, 1977 (42 FR 13282). The proposed regulation, Subpart E of 45 CFR Part 95, consolidates on a Department-wide basis all cost allocation requirements for public assistance agencies into a single regulation. 42 CFR 432.60(c) is being deleted because the major provisions of this section are included in the new Subpart E.

Dated: December 15, 1980.

Patricia Roberts Harris,

Secretary of Health and Human Services.

PART 432—STATE PERSONNEL ADMINISTRATION

§ 432.60 [Amended]

A. 42 CFR 432.60(c) is removed.

PART 433—STATE FISCAL ADMINISTRATION

B. 42 CFR 433.34 is revised to read as follows:

§ 433.34 Cost allocation.

A State plan under Title XIX of the Social Security Act must provide that the single or appropriate Agency will have an approved cost allocation plan on file with the Department in accordance with the requirements contained in Subpart E of 45 CFR Part 95. Subpart E also sets forth the effect on FFP if the requirements contained in that Subpart are not met.

[FR Doc. 81-1777 Filed 1-21-81; 8:45 am]

BILLING CODE 4110-12-M

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45 CFR Parts 95, 205, 232, 302, 304, 1356

Cost Allocation Plans for Public Assistance Programs

AGENCY: Office of the Secretary, HHS.

ACTION: Notice of Proposed Rule Making.

SUMMARY: This proposed rule would revise existing regulations concerning the preparation, submission and approval of State agency cost allocation plans used in computing claims for Federal Financial Participation under public assistance programs. It would also reflect the transfer of responsibility for review and approval of the plans to the Department's Regional Divisions of Cost Allocation. This responsibility was previously assigned to the Social and Rehabilitation Service which was abolished by Secretarial Order published on March 9, 1977 (42 FR 13282). The current rule has been rewritten so that it is clearer, easier to understand and more specific.

DATE: Comments must be received on or before March 9, 1981.

ADDRESS: Interested parties are invited to submit written data, views or comments regarding the proposed regulations to the Director, Office of Grant and Contract Financial Management, Office of Grants and Procurement, Office of the Assistant Secretary for Management and Budget, U.S. Department of Health and Human Services, Room 544G, Hubert H. Humphrey Building, 200 Independence Avenue, SW. Washington, D.C. 20201. Comments will be available for public inspection at the above address Monday through Friday from 9:00 a.m. to 5:30 p.m.

FOR FURTHER INFORMATION CONTACT: Henry G. Kirschenmann (202) 245-6771.

SUPPLEMENTARY INFORMATION: This proposed rule would revise current regulations on the preparation, submission and approval of the State cost allocation plans used in computing claims for Federal Financial Participation under Title I, IV-A, IV-B, IV-C, IV-D, IV-E, X, XIV, XVI (AABD), XIX, and XX of the Social Security Act. It would also reflect the transfer of responsibility for review and approval of the plans to the Department's Regional Divisions of Cost Allocation. This responsibility was previously assigned to the Social and Rehabilitation Service which was abolished by Secretarial Order published on March 9, 1977 (42 FR 13282). The current rule has been rewritten so that it is clearer, easier to understand and more specific. For example, the proposed rule includes

definitions, the requirement that an organization chart be submitted with each cost allocation plan, a description of the activities performed by each organizational unit and, where not self-explanatory, an explanation of the benefit to Federal programs.

The proposed rules improve upon current rules by making several changes. First the proposal contains one set of rules for cost allocation plans to all programs administered by a State public assistance agency. Thus the rule consolidates the cost allocation regulations currently found in 45 CFR 205.150 (applicable to programs supervised by the Office of Family Assistance); 45 CFR 302.16 (applicable to programs supervised by the Office of Child Support Enforcement); 45 CFR 1395.2 (applicable to programs supervised by the Office of Human Development); and in 42 CFR 433.34 (applicable to programs supervised by the Health Care Financing Administration). The proposed rule also applies to awards made under the Refugee Act of 1980.

The proposed rule also clarifies the requirements for the preparation and amendment of cost allocation plans. The rule describes when a State must submit a plan or plan amendment and when a plan or plan amendment becomes effective. Under current regulations, State agencies must submit new cost allocation plans at least annually. Under the proposed regulation, State agencies may submit new plans or plan amendments, or may simply certify annually that the existing plan is still accurate and should remain in effect. These changes should reduce the number of disputes that have arisen in the past concerning when a plan or plan amendment should have been submitted.

The proposed rules also revise the procedure by which a State agency can appeal the disapproval of a cost allocation plan or plan amendment or the disallowance of administrative costs. Previously, the State agency was subject to the appeal procedure of each funding agency and to 45 CFR Part 75 where common administrative costs involving more than one program are involved. The proposed rule provides that the appeal process set out in 45 CFR Part 75 will be the single avenue for appealing the disapproval of a cost allocation plan or plan amendment or the disapproval of administrative costs claimed under a cost allocation plan. The Department has found use of more than one appeals process to be confusing and inefficient, and thinks that establishment of a single appellate procedure will benefit all involved.

In describing the appeals process, the proposed rule refers to the decision of the Director, Division of Cost Allocation (DCA). This Office is part of the Regional Administrative Support Center which was formally referred to as the Assistant Regional Director for Financial Management (Regional Comptroller) in 45 CFR Part 75. In addition, the Title of the Regional Director has been changed to the Principal Regional Official. The proposed rule uses these new titles and Part 75 will be amended at a later date to reflect these changes.

Finally, the proposed rules contain several technical changes. The current requirements at 45 CFR 205.150, 302.16 and 1395.2 are being replaced with a cross-reference to Subpart E of 45 CFR Part 95. 45 CFR 232.20(a) is being deleted because the major provisions of this section are included in the new Subpart E. 42 CFR 433.34 is being amended via a concurrent notice published elsewhere in this issue of the Federal Register.

Dated: December 15, 1980.

Patricia Roberts Harris,

Secretary of Health and Human Services.

PART 205—GENERAL ADMINISTRATION—PUBLIC ASSISTANCE PROGRAMS

A. 45 CFR 205.150 is revised to read as follows:

§ 205.150 Cost allocation.

A State plan under Title I, IV–A, X, XIV, or XVI (AABD) of the Social Security Act must provide that the State agency will have an approved cost allocation plan on file with the Department in accordance with the requirements contained in Subpart E of 45 CFR Part 95. Subpart E also sets forth the effect on FFP if the requirements contained in that Subpart are not met.

PART 1395—SOCIAL SERVICES PROGRAMS FOR INDIVIDUALS AND FAMILIES: TITLE XX OF THE SOCIAL SECURITY ACT

B. 45 CFR 1395.2 is revised to read as follows:

§ 1395.2 Cost allocation.

A State plan under Title XX of the Social Security Act must provide that the State agency will have an approved cost allocation plan on file with the Department in accordance with the requirements contained in Subpart E of 45 CFR Part 95. Subpart E also sets forth the effect on FFP if the requirements contained in that Subpart are not met.

PART 232—SPECIAL PROVISIONS APPLICABLE TO TITLE IV–A OF THE SOCIAL SECURITY ACT

§ 232.20 [Amended]

C. 45 CFR 232.20 paragraph (a) is removed, and the (b) preceding the second paragraph is also removed.

PART 302—STATE PLAN REQUIREMENTS

§ 302.16 [Redesignated as § 304.15 and Revised]

D. 45 CFR 302.16 is redesignated as § 304.15 and is revised to read as follows:

A State Agency in support of its claims under Title IV–D of the Social Security Act must have an approved cost allocation plan on file with the Department in accordance with the requirements contained in Subpart E of 45 CFR Part 95. Subpart E also sets forth the effect on FFP if the requirements contained in that subpart are not met.

PART 95—GENERAL ADMINISTRATION—GRANT PROGRAMS PUBLIC ASSISTANCE AND MEDICAL ASSISTANCE

E. 45 CFR Part 95 is amended by adding a new Subpart E to read as follows:

Subpart A–D—[Reserved]

Subpart E—Cost Allocation Plans

Sec.
95.501 Purpose.
95.503 Scope.
95.505 Definitions.
95.507 Plan requirements.
95.509 Cost allocation plan amendments and certifications.
95.511 Approval of the cost allocation plan or plan amendment.
95.513 Disapproval of the cost allocation plan or plan amendment.
95.515 Effective date of a cost allocation plan or plan amendment.
95.517 Claims for Federal financial participation.
95.519 Cost disallowance.

* * * * *

Authority: Sec. 1102, 49 Stat. 647, 42 U.S.C. 1302.

Subpart A–D—[Reserved]

Subpart E—Cost Allocation Plans

§ 95.501 Purpose.

This subpart establishes requirements for:

(a) Preparation, submission, and approval of State agency cost allocation plans for public assistance programs; and

(b) Adherence to approved cost allocation plans in computing claims for Federal financial participation.

§ 95.501 Scope.

This subpart applies to all administrative costs applicable to awards made under Title I, IV–A, IV–B, IV–C, IV–D, IV–E, X, XIV, XVI (AABD), XIX, and XX of the Social Security Act, and under the Refugee Act of 1980, Pub. L. No. 96–212, Title IV, Chapter 2 of the Immigration and Nationality Act.

§ 95.505 Definitions.

As used in this subpart:

"Administrative costs" include all costs incurred by the State agency except expenditures for financial assistance, medical vendor payments, and payments to third party providers in compensation for services and goods provided directly to program recipients such as day care services, family planning services or household items as provided for under the approved State program plan.

"Cost allocation plan" means a narrative description of the procedures that the State agency will use in identifying, measuring, and allocating all administrative costs incurred in support of all programs administered or supervised by the State agency.

"FFP" or "Federal financial participation" means the Federal Government's share of expenditures made by a State agency under any of the programs cited in § 95.503.

"Principal operating components" (POCs) means the HHS organizational components responsible for administering public assistance programs. These components are the Social Security Administration, Office of Human Development Services, Office of Child Support Enforcement, Health Care Financing Administration, and Office of Refugee Resettlement.

"Public assistance programs" means the programs cited in § 95.503.

"State" means the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, the Northern Mariana Islands, and Guam.

"State agency" means the State agency administering or supervising the administration of the State plan for any program cited in § 95.503.

"State Plan" means a comprehensive written commitment by the State agency to administer or supervise the administration of any of the public assistance programs cited in § 95.503 in accordance with all Federal requirements.

§ 95.507 Cost allocation plan requirements.

(a) A State agency shall submit its cost allocation plan to the Director, Division of Cost Allocation (DCA), in the appropriate HHS Regional Office. The plan shall:

(1) Describe the procedures used to identify, measure, and allocate administrative costs to each of the programs operated by the State agency;

(2) Conform to the accounting principles and standards prescribed in Federal Management Circular 74–4, and other pertinent Department regulations and instructions;

(3) Be compatible with the State plan for public Assistance Programs described in 45 CFR Chapters II, III and XIII, and 42 CFR Chapter IV Subchapter C; and

(4) Contain sufficient information in such detail to permit the Director, Division of Cost Allocation, after consulting with the POCs, to make an informed judgement on the correctness and fairness of the State's procedures for identifying, measuring, and allocating administrative costs to each of the programs operated by the State agency.

(b) The cost allocation plan shall contain the following information:

(1) An organizational chart showing the placement of each unit whose costs are charged to the programs operated by the State agency.

(2) A listing of all Federal and all non-Federal programs performed, administered, or serviced by these organizational units.

(3) A description of the activities performed by each organizational unit and, where not self-explanatory an explanation of the benefits provided to Federal programs.

(4) The procedures used to identify, measure, and allocate administrative costs to each benefiting program and activity (including activities subject to different rates of FFP).

(5) The estimated cost impact resulting from the proposed changes to a previously approved plan. These estimated costs are required solely to permit an evaluation of the procedures used for identifying, measuring, and allocating costs. Therefore, approval of the cost allocation plan shall not constitute approval of these estimated costs for use in calculating claims for FFP;

(6) A statement stipulating that wherever costs are claimed for services provided by a governmental agency outside the State agency, that they will be supported by a written agreement that includes, at a minimum (i) the specific service(s) being purchased, (ii) the basis upon which the billing will be made by the provider agency (e.g. time reports, number of homes inspected, etc.) and (iii) a stipulation that the billing will be based on the actual cost incurred. This statement would not be required if the costs involved are specifically addressed in a State-wide cost allocation plan, local-wide cost allocation plan, or an umbrella/department cost allocation plan.

(7) A certification by a duly authorized official of the State agency stating:

(i) That the information contained in the proposed cost allocation plan was prepared in conformance with Federal Management Circular 74–4.

(ii) That the costs are accorded consistent treatment through the application of generally accepted accounting principles appropriate to the circumstances.

(iii) That an adequate accounting and statistical system exists to support claims that will be made under the cost allocation plan; and

(iv) That the information provided in support of the proposed cost allocation plan is accurate.

(8) Other information as is necessary to establish the validity of the procedures used to identify, measure, and allocate costs to all programs being operated by the State agency.

§ 95.509 Cost allocation plan amendments and certifications.

(a) The State agency shall promptly amend its cost allocation plan and submit the amended plan to the Director, DCA if any of the following events occur:

(1) The procedures shown in the existing cost allocation plan become outdated because of organizational changes, changes in Federal law or regulations, or significant changes in program levels affecting the validity of the approved cost allocation procedures.

(2) A material defect is discovered in the cost allocation plan by the Director, DCA or the State.

(3) The State plan for public assistance programs is amended so as to affect the allocation of costs.

(4) Other changes occur which make the allocation basis or procedures in the approved cost allocation plan invalid.

(b) If a State agency has not submitted a plan or plan amendment during a given State fiscal year, the State agency shall submit an annual statement to the Director, DCA certifying that its approved cost allocation plan is not outdated. This statement shall be submitted within 60 days after the end of that fiscal year.

§ 95.511 Approval of the cost allocation plan or plan amendment.

(a) The Director, DCA, after consulting with the affected POCs, shall notify the State agency in writing of his/

her findings. This notification will be made within 60 days after receipt of the proposed plan or amendment and shall either: (1) Advise the State agency that the plan or plan amendment is approved or disapproved, (2) advise the State agency of the changes required to make the plan or amendment acceptable, or (3) request the State agency to provide additional information needed to evaluate the proposed plan or amendment. If the DCA cannot make a determination within the 60-day period, it shall so advise the State agency.

(b) For purpose of this subpart, State agency cost allocation plans which have been approved by the Regional Commissioner of the Social and Rehabilitation Services or the Director, DCA prior to the effective date of this regulation are considered approved until such time as a State agency is required by § 95.509(a) to submit a new plan or plan amendment.

§ 95.513 Disapproval of the cost allocation plan or plan amendment.

(a) The Director, DCA shall notify a State agency in writing of the disapproval of its cost allocation plan or plan amendment. The notification will set forth the reasons for the determination and the basic changes required in sufficient detail to enable the State agency to respond and will inform the State agency of its opportunity for reconsideration of the determination under 45 CFR Part 75.

(b) If the State agency in accordance with 45 CFR Part 75, wishes to request a reconsideration of the DCA's determination, the application for reconsideration must be postmarked no later than 30 days after the postmark date of the DCA's determination letter.

§ 95.515 Effective date of a cost allocation plan amendment.

As a general rule, the effective date of a cost allocation plan amendment shall be the first day of the calendar quarter following the date of the event that required the amendment (See § 95.509). However, the effective date of the amendment may be earlier or later under the following conditions:

(a) An earlier date is needed to avoid a significant inequity to either the State or the Federal Government.

(b) The information provided by the State Agency which was used to approve a previous plan or plan amendment is later found to be materially incomplete or inaccurate, or the previously approved plan is later found to violate a Federal statute. In either situation, the effective date of any required modification to the plan will be the same as the effective date of the plan or plan amendment that contained the defect.

(c) It is impractical for the State to implement the amendment on the first day of the next calendar quarter. In these instances, a later date may be established by agreement between the State and the DCA.

§ 95.517 Claims for Federal financial participation.

(a) A State must claim FFP for administrative costs associated with a program only in accordance with its approved cost allocation plan. However, if a State agency has submitted a plan or plan amendment, it may, at its option claim FFP based on the proposed plan or plan amendment, unless otherwise advised by the DCA. However, where a State has claimed costs based on a proposed plan or plan amendment the State, if necessary, shall retroactively adjust its claims in accordance with the plan or amendment as subsequently approved by the Director, DCA. The State agency may also continue to claim FFP under its existing approved cost allocation plan for all costs not affected by the proposed amendment.

§ 95.519 Cost disallowance.

If costs under a Public Assistance program are not claimed in accordance with the approved cost allocation plan (except as otherwise provided in § 95.517), or if the State agency failed to submit an amended cost allocation plan as required by § 95.509, the costs improperly claimed will be disallowed.

(a)(1) If the issue affects the program(s) of only one POC and does not affect the programs of other POCs or Federal departments, that POC will determine the amount of the disallowance and will also inform the State agency of its opportunity for reconsideration of the determination in accordance with the POC's procedures. Prior to issuing the notification, however, the POC shall consult with the DCA to ensure that the issue does not affect the programs of other POCs or Federal departments.

(2) If the State agency wishes to request a reconsideration of the POC's determination, it must submit the request in accordance with the POC's procedures.

(b)(1) If the issue affects the programs of more than one POC, Federal department or the State, the Director, DCA, after consulting with the POCs, shall determine the amount inappropriately claimed under each program. The Director, DCA will notify the State agency of this determination, of the dollar affect of the determination on the claims made under each program, and will inform the State agency of its opportunity for reconsideration of the determination under 45 CFR Part 75. The State will subsequently be notified by the appropriate POC as to the disposition of the funds in question.

(2) If the State agency, in accordance with 45 CFR Part 75, wishes to request a reconsideration of the DCA's determination, the application for reconsideration must be postmarked no later than 30 days after the postmark date of the DCA's determination letter.

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[FR Doc. 81-1779 Filed 1-21-81; 8:45 am]
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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[Docket No. 20418; RM-2346; RM-2727]

Petition for Rulemaking To Amend Television Table of Assignments To Add New VHF Stations in the Top 100 Markets and To Insure That the New Stations Maximize Diversity of Ownership, Control and Programming; Order Extending Time for Filing Comments and Reply Comments

AGENCY: Federal Communications Commission.

ACTION: Petitions for Reconsideration; Extension of comment and reply comment period.

SUMMARY: This action extends the time for filing statements in support of, or in opposition to, petitions for reconsideration that were filed in the matter of Petition for Rulemaking to Amend Television Table of Assignments to Add New VHF Stations in the Top 100 Markets and to Assure that the New Stations Maximize Diversity of Ownership, Control and Programming ("VHF Drop-In" proceeding), Docket No. 20418. This extension is in respone to requests from the Knoxville Broadcasting Corporation and WIIC–TV Corporation.

DATES: Statements in support of, or in opposition to, the petitions for reconsideration must be filed on or before January 16, 1981, and responses to those statements must be filed on or before January 26, 1981.

ADDRESS: Statements, oppositions and replies should be filed with, Secretary, Federal Communications Commission, 1919 M Street, N.W., Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Roger D. Holberg, Broadcast Bureau, (202) 632-7792.

SUPPLEMENTARY INFORMATION:

In the matter of petition for rulemaking to amend television table of assignments to add new VHF stations in the top 100 markets and to insure that the new stations maximize diversity of ownership, control and programming. Order (see also 45 FR 83316, December 18, 1981).

Adopted: January 8, 1981.

Released: January 12, 1981.

By the Chief, Policy and Rules Division:

1. Before the Commission for its consideration are a "Motion for Extension of Time" filed by Knoxville Broadcasting Corporation (hereinafter "Knoxville") and a "Motion to Consolidate Time for Filing Oppositions or Statements Regarding Petitions for Reconsideration" filed by WIIC–TV Corp. (hereinafter "WIIC"). The Knoxville Motion asks that the Commission extend for two weeks (from January 2, 1981, to January 16, 1981) the deadline for filing respones to a "Petition for Reconsideration" and a "Petition for Stay" filed in this proceeding by South Central Broadcasting Corporation. WIIC requests that the time for filing oppositions or statements relative to all of the petitions for reconsideration in this matter (which now number nine) be consolidated to the same date. Notice of the petitions for reconsideration that have been filed were published in the Federal Register on two separate dates resulting in two separate deadlines for filing statements in support of, or opposition to, those petitions.

2. Knoxville has shown good cause for the extension of the filing deadline until January 16, 1981. As is noted in its pleading, the Christmas and New Year holidays occurred in the midst of the period for preparing such comments. This could have hindered not only Knoxville, but others as well, in preparing responses to the South Central Broadcasting Corporation filings. Nor does it appear that any prejudice to any party would result from the extension of the filing deadline. While Knoxville requested that it be permitted to file its response until January 16, 1981, we believe that most of the factors that hindered it in preparing its response may have also impacted upon others and, thus, a generalized extension of the response period is in order. Accordingly, any party wishing to comment on the South Central filings will have until January 16, 1981, to do so. Additionally, in accordance with the provisions of § 1.429(g) of the Commission's Rules, the time for filing replies to oppositions to the subject pleadings will be extended to January 26, 1981.

3. WIIC notes that there currently are a number of different filing deadlines with regard to petitions for reconsideration of actions taken in this proceeding. This resulted from the publication of notice of the filing of those petitions in the Federal Register on different dates. The time for filing oppositions and replies to oppositions to petitions for reconsideration in rule making proceedings is determined with reference to the date of publication of notice of the filing of the petition in the Federal Register. (See § 1.429(f) of the Commission's Rules). As the various sets of petitions for reconsideration concern the same subject matter, it does not seem to be desirable to have separate filing deadlines. To have such differing deadlines would require a party to respond to issues regarding the same subject in separate pleadings because of the different filing deadlines. We believe that the public interest is better served by having the same filing deadlines for statements in support of, or in opposition to, the various petitions for reconsideration in this matter. Since we are extending the filing deadline for one of those petitions as a result of the Knoxville request, we shall both consolidate the filing deadlines for all of the petitions and extend that deadline until January 16, 1981. The deadline for filing replies will be extended until January 26, 1981. Of course, any parties that have already filed statements, oppositions, or replies with reference to any of the subject petitions for reconsideration may take advantage of this extension to supplement their filing. In this way parties that labored under the original filing deadlines will not be prejudiced by this extension.

4. Accordingly, It Is Ordered, That the deadline for filing statements in support of, or in opposition to, any or all of the petitions for reconsideration already filed in this proceeding, Is Extended, until January 16, 1981. It Is Further Ordered, That the filing deadline for replies to any statements in support of, or in opposition to, any of the subject petitions, Is Extended, until January 26, 1981.

Federal Communications Commission.

Henry L. Baumann,

Chief, Policy and Rules Division, Broadcast Bureau.

[FR Doc. 81-2221 Filed 1-21-81; 8:45]

BILLING CODE 6712-01-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 79–19; Notice 1]

Federal Motor Vehicle Safety Standards; Pedestrian Impact Protection

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes a new safety standard applicable to passenger cars that would require them to protect pedestrians by subjecting them to lower impact forces. The proposal would require some redesign of the front structures of passenger cars by the addition of softer materials to reduce impact forces. The soft materials would substantially reduce the severity of the injuries suffered by pedestrians when struck by a vehicle. The industry is already beginning to use some softer materials, e.g., plastics and urethane foams, in vehicle front structures to reduce the weight of cars and thereby improve their fuel economy. The agency proposes this requirement now to channel these industry efforts in a way that will produce significant benefits in stemming the increasing number of pedestrian deaths and injuries.

DATES: Comments to the notice must be received on or before May 22, 1981. Proposed effective date: September 1, 1984.

ADDRESSES: Comments should refer to the docket number and be submitted to: Docket Section, Room 5108, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, D.C. 20590. (Docket hours: 8:00 a.m. to 4:00 p.m.)

FOR FURTHER INFORMATION CONTACT: Mr. Samuel Daniel, Crashworthiness Division, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, D.C. 20590 (202–426–2264).

SUPPLEMENTARY INFORMATION: Each year thousands of pedestrians are hit by motor vehicles. Pedestrian fatalities have numbered between 7,000 and 9,000 annually. Data from the agency's Fatal Accident Reporting System (FARS) and the Pedestrian Injury Causation Study (PICS) indicate that approximately 137,000 pedestrians are injured annually. These statistics show clearly that pedestrian injuries and fatalities are major safety issues.

Through the use of statistical techniques that are fully developed in the regulatory evaluation for this rulemaking action, the agency has projected the future growth of pedestrian accidents. (The regulatory evaluation is available to the public in the docket under the number listed for this action.) The agency projects that 145,000 pedestrians will be struck by vehicles in 1994. The total number of fatalities projected from this number of accidents is 8,700.

The agency has tentatively concluded that any new pedestrian protection activity should be directed toward reducing the severity of pedestrian injuries and thereby reducing fatalities. Of the 137,000 people struck annually, many suffer serious and often permanent impairment. Accordingly, the agency is exploring ways of reducing the severity of injuries sustained during pedestrian impacts. The best way of reducing the severity of pedestrian injuries appears to be making vehicle front structures softer.

When the agency commenced this action, it determined that rulemaking should concentrate initially upon the vehicles and vehicle structures that represent the majority of the pedestrian impact problem. Accordingly, the agency reviewed the available accident statistics from its FARS and PICS files, National Accident Sampling System (NASS) and the National Electronic Injury Surveillance System. These data sources indicate that of the 137,000 persons impacted each year in 1977 and 1978, approximately 72 percent were hit by passenger cars. Further, of those accidents involving passenger cars, approximately 74 percent of the pedestrians were struck by the front structure of the vehicle. Transforming these percentages into numbers shows that in 1979 approximately 73,000 pedestrians were hit by the front structures of passenger cars.

BASIS for This Action

The agency has been conducting research since the early 1970's designed to provide information on the causation of pedestrian injuries and how the severity of these injuries might be reduced. Throughout this research process, abundant data have been generated that give a clearer picture of the reaction of a pedestrian when struck by a passenger car. NHTSA test reports are all available in the docket under the number listed for this action.

When an adult pedestrian is struck by the front of an existing production passenger car, the area of first impact is the knee region. The portion of the vehicle which makes this contact is the bumper. Subsequently, the upper part of the grille or front edge of the hood impacts the pedestrian's pelvic area. Finally, the pedestrian's upper body and head may impact the hood of the vehicle before he or she is thrown to the ground.

The agency decided in the early stages of research that it would divide the pedestrian accident rulemaking into two areas. The first area would focus on reductions that might be made in the pedestrian knee and pelvis impact problem. The pedestrian knee impact problem is the subject of this notice of proposed rulemaking. Pelvis impacts will be addressed in a future rulemaking notice. The second area involves the benefits that might be attainable in reducing the severity of the upper body and head impacts sustained by pedestrians. In connection with a long term rulemaking action, effort is underway to examine the magnitude of those benefits.

Having obtained data detailing the nature of pedestrian impacts and having decided to focus initially on the knee area, the agency then tentatively determined which test speed would be most appropriate. The agency wanted to propose a rule that would provide the best combination of benefits and costs. In analyzing available data from our PICS file, the agency found that 91 percent of the accidents occur at or below 20 mph. The corresponding figure for speeds at or below 25 mph was 96 percent, and for speeds at or below 30 mph, 98 percent. The number of pedestrian accidents that occur at 30 mph or less is not substantially greater than the number which occur at 20 mph or less. However, at 25 or 30 mph, manufacturers would have to use substantially more energy absorbing material than would be necessary at 20 mph. Based upon these data, the agency tentatively concluded that a 20 mph test speed would provide the best combination of costs and reduced injuries and fatalities and was a reasonable starting point for exploring the appropriate goals of pedestrian protection rulemaking. The agency anticipates that if the test speed were set at 20 mph, some benefits will be realized at speeds above 20 mph. Comments are requested to aid the agency in evaluating the appropriateness of that test speed and the alternative 25 mph test speed discussed in the regulatory evaluation.

The agency conducted several impact tests of production vehicles using adult cadavers and dummies to find out the severity of injuries currently sustained by pedestrians when struck at a variety of test speeds. The results of these tests are in the docket under the docket number for this notice. In summary, the tests showed that adults were likely to be subjected to very high impact forces in the knee area. These extremely high forces predictably result in serious injury and the possibility of death. Through an analysis of data relating to impact forces on the human body, the agency determined that injury severity and the possibility of death could be significantly lowered if the impact forces were reduced to 100 g's in the leg area.

To examine the magnitude of the reduction in these acceleration forces that could be achieved by softening vehicle fronts, the agency modified a 1978 Pontiac LeMans. The agency chose this vehicle because it was representative of a typical class of passenger car then in production. NHTSA reasoned that if the feasibility of reducing the severity of pedestrian impacts could be shown with the LeMans, the results could be applied with appropriate adjustments to other production vehicles.

The agency tested the modified LeMans with eight impacts using both child and adult test dummies. The dummies were instrumented to provide readings of the peak accelerations of the foot, knee, pelvis, chest, and head areas. The results of these tests are also available in the docket. The test results showed a remarkable lessening of the peak accelerations on the test dummies.

Based upon these test results, the agency tentatively concluded that major benefits could be achieved by modifying passenger car frontal structures. Subsequent analysis and study showed that these benefits could be achieved with any vehicle modified in a similar manner. Accordingly, NHTSA also tentatively found that it was technologically feasible to reduce significantly the impact forces borne by pedestrians.

Proposed Test Requirements

The essence of the test is that all cars would be struck at a speed up to 20 mph with a device designed to simulate the impact response of an adult's lower leg. The impact acceleration response and rebound velocity are limited to levels which will significantly reduce the severity of injury and likelihood of death.

The lower leg impact simulation device consists of 4 components which are rigidly attached to form a 7 pound unit. The four components are an impactor, a bracket, an accelerometer, and a ram. The impactor is a rectangular block of wood with a thickness that varies from about 2 to 2⅛ inches and an

impact surface that is a 4 inch by 6 inch section of a right circular cylinder with an 8 inch radius. The bracket is a metal plate attached to the impactor on the side opposite the impact surface and used primarily for ballast and attachment of other parts.

The accelerometer is a device capable of measuring acceleration in one direction and is attached to the bracket. The ram is a circular metal tube with a radius of approximately 2 inches which is also attached to the bracket and acts as a piston in a cylinder used to propel the simulator and as the means of guiding and maintaining the orientation of the simulator during the test. Precise descriptions of the simulator are in section 5 of the proposed rule.

All passenger cars would be struck in the bumper area with the lower leg impact simulator. At the required compliance speed of 20 mph or any lesser speed, the maximum acceleration response of the simulator may not exceed 100 times the acceleration of gravity during contact with the vehicle and the rebound velocity subsequent to contact may not exceed 60 percent of impact velocity.

The proposed test procedures and vehicle test areas are very simple and are described in more detail in the proposed rule. The lower-leg simulator has also been carefully detailed in the proposed rule. Commenters wishing to see examples of the simulator should contact the person listed in the beginning of this notice. The device that propels the simulator has not been detailed in the proposal. Any device that can achieve the desired impact speed and propel the test simulator in the specified manner would be suitable for testing purposes. However, the device must be capable of measuring the g's and rebound velocity. If commenters desire information about the device that the agency would use to propel the simulator, they should write or call the contact person listed in this notice.

Effectiveness of Proposed Rule

The agency has attempted to determine the extent to which the reduction in impact force upon pedestrians will lower a pedestrian's injury severity and reduce his or her likelihood of death. To accomplish this task, the agency has conducted an exhaustive analysis of pedestrian injuries and their severity as measured by the Abbreviated Injury Scale (AIS). An AIS is a measurement that rates the severity of any injury. For example, an injury which is rated at the AIS 1 level is considered a minor injury. At the other extreme, an AIS 6 injury is always fatal.

Using information obtained from agency testing to determine the reduction in impact force levels on test dummies as a result of modifying vehicles in accordance with the proposal, the agency was able to compute the likely reductions in AIS severity for injuries sustained by pedestrians in impacts at 20 mph and below. The computations involve projecting the injury reduction observed from agency testing to national injury exposure statistics. The agency has decided to predict an upper and lower bound of injury reduction benefits. The key element of the upper bound of the range is the projection that AIS 2, 3, and 4 injuries caused by impact with the bumper would be reduced to AIS 1 injuries. The projection on which the lower bound is based is that AIS 3 and 4 injuries would be reduced to AIS 2 injuries. The agency believes that the available data and analysis more closely support benefit figures in the upper portion than in the lower portion of the range.

A full discussion of how these benefit calculations were achieved is in the regulatory evaluation for this rulemaking. Knowing the number of pedestrian injuries in the lower-leg area in each AIS level prior to the implementation of this proposed rule, the agency could use the projected reduction in the AIS level of injuries to determine the number of injuries whose severity would be reduced. NHTSA determined that from 5,000 to 13,000 injuries would be reduced in severity when the full fleet of passenger cars has been modified in 1994, 10 years after implementation of the proposed rule.

Since the cumulative severity of an accident victim's injuries determines the likelihood of his or her death, the agency was able to calculate the fatality reduction using the two different projects for AIS injury reduction, the data on current pedestrain injuries, and the Injury Severity Score (ISS). The ISS is a formula developed to project fatalities and is discussed in detail in the regulatory evaluation. In summary, the ISS score reflects the severity of the 3 most severe injuries suffered by an accident victim during an accident. The premise of the ISS is that there is a direct relationship between the probability of fatality and the severity score and that there is a specific level of probability for each score. Thus, reducing the severity of one or more of the three most severe injuries will reduce the probability of fatality by some quantifiable amount. By using this technique and applying it to all accidents in which pedestrians were struck by car fronts, the agency calculated the extent to which the probability of fatality was reduced. By applying an effectiveness ratio (explained in the regulatory evaluation) to the total number of pedestrians killed as a result of being struck by car fronts, the agency calculated a fatality reduction of between 323 and 340 in 1994 depending upon which projections of AIS injury level reduction was used.

Although other benefits will result from this proposed rulemaking, the uncertain magnitude of these benefits has led the agency not to rely extensively upon them in reaching its decision to issue this proposal. They are being mentioned here primarily for the purpose of discussion and to solicit comments from individuals or groups that might have information in any of these areas.

The first additional benefit involves the possibility of reducing injury severity to body regions above the knee. Agency test data indicate that the speed of the impact of a pedestrian's upper body with the vehicle hood is reduced as a result of the lower portion of the person's body being struck by the softer frontal system. These agency tests suggest that upper body injury severity would also be reduced by this rulemaking action. A reduction in the severity of head injuries could prove very beneficial in further reducing fatalities and permanently disabling injuries resulting from pedestrian impacts.

A second additional benefit from this regulation is one that might accrue to motorcyclists and bicyclists. They should be struck less severely by a car with a softer front than a current production car has. However, the agency has limited data to aid it in measuring the extent of the benefits from such reductions. The agency tentatively concluded that research efforts to quantify such benefits are not now necessary since the existing benefit analysis supports issuance of this proposal.

Third, equipping a car with softer front ends may reduce the damage which the car inflicts when it runs forward into another vehicle. In one test conducted by Battelle Columbus Laboratories, the results of which are in the docket, a car with a modified front end was run into the side of another vehicle. The damage inflicted on the side of the struck vehicle was compared with the damage done to the side of an indentical target vehicle struck under similar conditions by a vehicle with an unmodified front end. In the former crash, there was less damage done to the side of the struck vehicle. This leads

the agency to believe that soft front end vehicles may produce some benefits in damage reduction in low speed side impacts. The agency seeks comments from any individual or group, especially insurance companies, as to whether they have any information bearing on the possibility that damage reduction benefits may result from this rulemaking.

Costs and Other Impacts

In accordance with E.O. 12221, the agency has evaluated the costs associated with this proposal and has determined that this proposal is not significant within the meaning of that order. Further, the agency has prepared a regulatory evaluation and placed it in the docket for this notice. Comment is requested on the evaluation and the alternatives discussed in it.

Over the past several years, the agency has conducted three different cost studies to evaluate the impacts of this proposal. Each study had some limitations regarding its ability to predict costs that would be borne by the fleet of redesigned, smaller cars to be manufactured in the mid to late 1980's.

This proposal would, in effect, require vehicles to be constructed with some type of energy absorbing structure on the front which would be covered with a polyurethane type facia or other soft covering. If the agency were to compute the cost of the energy absorbing material and facia based upon today's vehicles, it might significantly understate or overstate the amount of weight that would be added to or reduced from each vehicle as well as the total cost associated with the rulemaking if it is implemented in model year 1985 as proposed. The reasons for this are many. First, bumpers on current passenger cars are largely constructed of heavy steel. However, the motor vehicle industry is already experimenting with lighter weight aluminum and plastic bumper structures to reduce vehicle weight and increase fuel economy. To the extent that any of these advances are incorporated in production vehicles over the next few years, the cost of modifying a vehicle to comply with this proposed standard for model year 1985 should be decreased. Similarly, the highest cost item associated with modifying a vehicle to comply with this proposal would be the soft facia on the vehicle exterior. This is the major cost item because the facia material is made of more expensive plastics and requires some molding operations. Several vehicles such as the Mustang and Camaro have these facias today. The agency has been informed through several trade publications that the industry plans to produce many vehicles with this type of facia by the mid-1980's because it is popular for styling and has some fuel economy and perhaps repairability benefits. To the extent that the use of these facias increases voluntarily over the next few years, the cost of complying with this regulation in a manner similar to the agency's concept would drop dramatically.

The agency has summarized the above matters to show that it understands the problems of assessing the cost of this proposal and to assure the industry and others that the agency is considering cost impacts. The agency concludes that this proposal would reduce vehicle weight and that little or no cost increase would occur for the average car. It is even possible that a cost decrease might occur. A full discussion of the agency's cost analysis is in the regulatory evaluation.

NHTSA has also examined other potential impacts of this proposal including effects upon car fuel economy and weight. The problems with projecting these effects are similar to those which exist for assessing the cost impacts of the proposal. NHTSA data indicate that large passenger cars would achieve a large net weight loss and a resultant fuel economy gain through compliance with this proposal. This would occur because weight could be removed from the large and relatively heavy bumber systems on existing production vehicles.

Small cars, which will constitute the largest percentage of the vehicle fleet in the future, might have a very small weight increase as a result of this proposal. A slight weight gain can occur because most smaller vehicles have undergone significant weight reductions already and do not now have additional weight in their bumper systems that can be easily removed through material substitution or other means. In the regulatory evaluation for this proposal, the agency has indicated the average weight gain or loss associated with each vehicle size class. Further, NHTSA has projected the sales volume of each vehicle size class to arrive at an estimate of the total impact of the proposal on vehicle fleet weight.

Pursuant to the Regulatory Flexibility Act, the agency has considered the possible impact of this proposal on the small businesses to which it would apply. The agency does not believe that this proposal is likely to have a significant economic impact on a substantial number of small manufacturers of passenger cars. The agency also notes that, as in the case of other safety standards, small manufacturers can apply on the basis of economic hardship for exemptions for this safety standard if it is adopted.

Effect on Other Regulations

The agency has explored the possibility that this proposed regulation might affect the efforts of manufacturers to comply with some of the other safety standards applicable to passenger cars. NHTSA has concluded that compliance with this proposal will not have any negative effect on compliance with the crash worthiness or crash avoidance standards. The agency looks particularly closely at the possibility that redesigned new vehicle front structures would affect crash sensor devices used for air bags. The agency concluded that any effect on air bag sensors would be minimal, requiring nothing more than the sort of adjustments that would be made for sensors when any new vehicle model is introduced. The technological feasibility of using air bag sensors in vehicles with soft frontal structures has been shown in the agency's research safety vehicles.

The agency has also evaluated the interrelationship of this proposal and Part 581, *Bumper Standard.* Implementation of this proposal might increase the cost of complying with the pendulum test requirement of that Part since that requirement would require a significant upgrading of the bumper designed solely to comply with this proposal. The agency thinks that continued compliance with the current pendulum test requirement might be unnecessary since a pedestrian protection bumper may have damage reduction possibilities beyond those of the existing Part 581 bumper systems. These damage reduction possibilities include the lessened impact forces on vehicles struck by pedestrian bumpers. Accordingly, the agency tentatively plans to issue a proposal to amend Part 581 to alter the pendulum test in a way that would optimize the benefits of that regulation. In order to make full use of all available data, the agency will not issue the bumper proposal until comments have been received on this notice. This will permit the agency to incorporate comments from this notice into the bumper proposal and to obtain a further round of comments specifically on that issue. The leadtime for the effective date for pedestrian protection standard will take into consideration the effect of a Part 581 bumper amendment.

Alternatives

The agency explored other alternatives to this regulation and found them not as useful or cost beneficial as the chosen alternative. Alternatives are

more fully developed in the regulatory evaluation for this regulation. The alternative of compliance test speeds has already been discussed.

Other possible methods of reducing pedestrian accidents through changing vehicle technology and design have been explored and subsequently set aside when it was shown that they would not have nearly so significant an impact on the pedestrian safety problem as the proposal the agency is issuing today. For example, NHTSA considered lowering the bumper height of passenger cars. Lowering the bumper height would not reduce the force of impact, but would lower the point of contact with an adult pedestrian below the knee. By moving the impact area, injury severity at the sensitive knee area might be reduced. This would likely result in lowering long term or permanent knee impairment resulting from pedestrian impacts. The agency decided that lowering bumper height would have the effect of causing serious problems when vehicles with lower bumper heights impacted older vehicles with higher bumpers. As a result, this option was not adopted.

The agency also considered improved braking as a means of preventing pedestrian accidents. Although the agency closely follows advances made in vehicle braking and always considers this to be an area for safety improvements NHTSA concluded that only a slight reduction in the occurence and little if any reduction in the severity of pedestrian impacts were likely to be gained at this time through brake improvement.

The agency also explored alternatives such as driver and pedestrian education and other non-vehicle options. To reduce pedestrian impacts, the Federal government and States have worked together to develop and implement a variety of programs including improved street crossings, education of the public, and other traffic safety programs. NHTSA efforts, for example, in the training, public safety messages, and pedestrian traffic safety regulations areas have demonstrated decreases in selected types of pedestrian accidents ranging from 20 to 77 percent. An active crash avoidance program continues in these areas as the agency focuses on other types of pedestrian accidents. However, the agency also wants to improve the chances of survivability of persons who are impacted. The agency has tentatively concluded that effort must be addressed at reducing injury severity so that fewer people will have to go through life with permanently disabling injuries that could have been prevented by improving vehicle front structures.

Based upon an analysis of all of these options and some others that are not discussed here, the agency tentatively concluded that the present crash-mitigation proposal provides the best complementary activity to the crash-avoidance approach and has a high possibility for achieving significant pedestrian benefits for the lowest cost to the industry to the consumer.

Leadtime

The agency explored the possibility of a very early implementation as well as a long-term leadtime for this regulation. Based upon an evaluation of several considerations, NHTSA has decided to propose an effective date of September 1, 1984, for this standard.

Although an earlier implementation of this regulation would advance the date on which the regulation begins producing benefits, the agency tentatively concluded that such an implementation schedule would increase the costs of retooling for the production of soft vehicle frontal systems disproportionately compared with the added benefits of that schedule. The proposed date is therefore deemed preferable, especially in light of the current circumstances of the motor vehicle industry.

NHTSA also studied a later implementation date that would have permitted manufacturers to incorporate the new frontal systems into more of their newly designed vehicles as they are being downsized. Although at first glance this option looks attractive, when more fully explored, it appears that very little cost reduction is achieved by establishing a later implementation date. Extensive and costly vehicle redesign would not be required by this standard. The main cost of compliance with the standard might be the soft facia and underlying foam. Except as a function of prevailing petroleum prices, this cost does not vary if a date later than September 1, 1984, is established. Further, delaying the implementation of the regulation would cause a loss of the benefits that could be achieved by a more expeditious implementation of the standard.

In light of this analysis and particularly since the costs would not be decreased substantially by a delayed effective date, the agency tentatively chose September 1, 1984, as the proposed date for implementing this standard.

Future Rulemaking

The agency has conducted research in the hood edge area of passenger cars to determine the effect of the impact of this area of a passenger car on pedestrian safety. As part of the testing for the lower impact test proposed in this notice, the agency conducted tests designed to determine whether benefits were possible in the hood edge area as well. Using adult cadavers and dummies, the agency showed that it is possible to reduce significantly the severity of impact forces on the hip and pelvic areas as a result of softer vehicle structures in the hood edge area. The agency has included the results of its testing in this docket for the information of all commenters.

As stated earlier, the agency plans to proceed with rulemaking on the hood edge area in the future. Since the final test parameters have not yet been determined, a proposal is not being made at this time to incorporate a hood edge requirement. However, the agency encourages manufacturers who may be experimenting in the bumper area to consider redesign of the entire vehicle frontal structure in a way that might provide comprehensive protection for pedestrians. Several options appear to be possible from agency data to accomplish this task. On some vehicles, for example, the lowering of the hood edge would substantially reduce the injury hazard to pedestrians. Other vehicles could recess rigid components on the front leaving a relatively soft sheet metal to absorb impacts. Finally, vehicles could be redesigned in a way that soft materials and facias could be used over their entire frontal surfaces. Industry initiative in this area could make it unnecessary for the agency to pursue rulemaking in the vehicle hood edge area.

The agency has been working toward the development of improved pedestrian protection for over 10 years. Today, NHTSA has vast amounts of data from numerous tests and studies that lead the agency to conclude that the time to go forward with this rulemaking proposal is now. However, NHTSA realizes that this rulemaking raises a variety of questions. The agency believes that the costs are far outweighed by the benefits that will result from this regulation. The agency by this notice wants to involve the public and the industry more closely in the development of a regulation that has such significance to the public in general and to children in particular. NHTSA welcomes debate of this subject and encourages all interested parties to comment. So that the public can be involved to the greatest extent possible and to permit time for thorough and well-considered comments on this notice, NHTSA is providing a 120-day

comment period. Further, a public meeting, which will be announced shortly, is being scheduled in Washington, D.C. The agency hopes that all interested persons will take the opportunity to participate in this public meeting and let their views be known. Also they are encouraged to submit written comments and information in accordance with the guidelines set forth below.

Interested persons are invited to submit comments on the proposal. It is requested but not required that 10 copies be submitted.

All comments must be limited not to exceed 15 pages in length. Necessary attachments may be appended to these submissions without regard to the 15 page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. Any claim of confidentiality must be supported by a statement demonstrating that the information falls within 5 U.S.C. section 552(b)(4), and that disclosure of the information is likely to result in substantial competitive damage; specifying the period during which the information must be withheld to avoid that damage; and showing that earlier disclosure would result in that damage. In addition, the commenter or, in the case of a corporation, a responsible corporate official authorized to speak for the corporation must certify in writing that each item for which confidential treatment is requested is in fact confidential within the meaning of section 552(b)(4) and that a diligent search has been conducted by the commenter or its employees to assure that none of the specified items has previously been disclosed or otherwise become available to the public.

All comments received before the close of business on the comment closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. However, the rulemaking action may proceed at any time after that date, and comments received after the closing date and too late for consideration in regard to the action will be treated as suggestions for future rulemaking. The NHTSA will continue to file relevant material as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose, in the envelope with their comments, a self addressed stamped postcard. Upon receiving the comments, the docket supervisor will return the postcard by mail.

In consideration of the foregoing, it is proposed that a new safety standard, Standard No. ——, *Pedestrian Impact Protection*, be added to Part 571 of Volume 49 of the Code of Federal Regulations as set forth below.

§ 571.——, Standard No. ——, Pedestrian Impact Protection

S1 *Scope.* This standard specifies vehicle performance requirements limiting the force of impact with pedestrians.

S2 *Purpose.* The purpose of this standard is to reduce the number of deaths and injuries that occur to pedestrians as a result of their being struck by vehicles.

S3 *Application.* This standard applies to passenger cars.

S4 *Requirements.* Each vehicle shall comply with the requirements of S4.1.

S4.1 *Impact test requirements.* When a stationary vehicle is impacted in accordance with S6.1 and S6.2 with the pedestrian lower leg simulator described in S5.1:

(a) The acceleration of the simulator shall not be greater than 100 times the acceleration of gravity for a time period longer than 0.003 second (3 milliseconds) for any one peak; and

(b) The rebound velocity of the simulator shall not be greater than 60 percent of the impact velocity.

S5 *Pedestrian simulator.*

S5.1 *Lower leg simulator.* The lower leg simulator consists of the four components specified in paragraphs (a) through (d) of this section. The four components have a combined weight of 7.00 pounds. (See Figure 1)

(a) Impactor. The impactor is a rectangular solid except that the side which serves as the impact surface is curved. The shape and dimensions of the impactor are the same as the portion of a 6 inch high, 8 inch radius right circular cylinder that includes the curved surface of the cylinder and is bounded by:

(1) a plane parallel to and located 5.5 inches from the longitudinal axis of the cylinder, and

(2) two planes that are perpendicular to the first plane and are located on opposite sides of the axis a a distance of 2 inches from the axis.

The impactor is a solid piece of white pine with a density of 25 to 40 pounds per cubic foot. The grain of the wood is parallel to the 6-inch dimension (See Figure 2).

(b) Bracket. The bracket is a 4-inch by 6-inch metal plate which is rigidly attached to the impactor on the side opposite the impact surface.

(c) Ram. The ram is a rigid hollow cylinder with an outside diameter of 1.75 to 2.5 inches and a length of 20 to 25 inches. It is rigidly attached to the bracket surface at its geometric center.

(d) Accelerometer. The accelerometer is a linear, uniaxial, 2000 g—1,000 cps min. acceleration transducer oriented with its sensitive axis coaxial with the longitudinal centerline of the ram. The output of the accelerometer and of the data channel conforms to the requirement of SAE Recommended Practice J–211b, December 1974 of Channel Class 180. The mounting of the accelerometer and the entire lower leg simulator have no resonance frequency less than 3 times the cut-off frequency of the 1000 Channel Class.

S6 *Test conditions and procedures.*

S6.1 *General test conditions and procedures.*

(a) The vehicle is loaded to its curb weight and positioned on a flat, level surface.

(b) The vehicle engine is shut off.

(c) If the vehicle is equipped with an automatic transmission, the transmission is in the Park position and if the vehicle is equipped with a manual transmission, the transmission is in one of the forward gears.

(d) The ambient temperature of the test site is 72 degrees Farenheit with a pretest soak of the vehicle for not less than 12 hours.

S6.2 *Impact test.*

S6.2.1 *Vehicle impact zone.* The vehicle impact zone is the area bounded:

(a) On the top by a horizontal plane 20 inches directly above and parallel to the vehicle's resting surface;

(b) On the bottom by a horizontal plane 16 inches directly above and parallel to the vehicle's resting surface; and

(c) On the right and left by vertical longitudinal planes that are 2 inches inboard from vertical longitudinal planes that intersect and outermost points of the vehicle that are less than 18 inches rearward of the vehicle's forwardmost point.

S6.2.2 *Impact test procedures.*

(a) The point of initial contact of the simulator with the vehicle is less than 1

inch from a horizontal plane passing through the center of the ram. (See Figure 3.)

(b) At the point of initial contact—

(1) The simulator is traveling at any speed not greater than 20 mph.

(2) The direction of the simulator's travel is parallel to the vehicle's longitudinal axis.

(3) The 6-inch surfaces of the impactor are vertical.

(4) The ram is oriented so that the horizontal centerline of the ram passes through the vehicle impact zone. (See Figure 2.)

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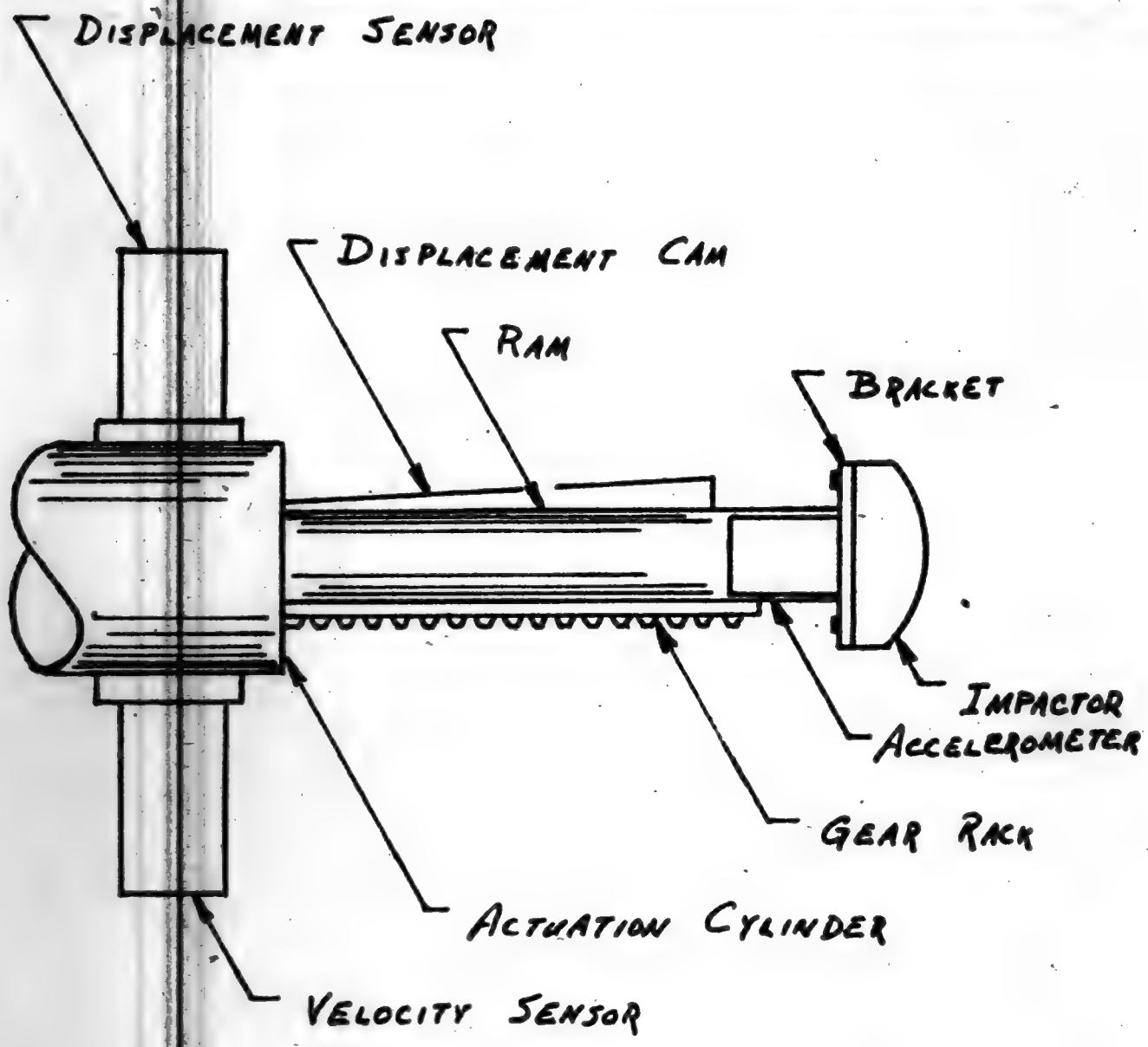

FIGURE 1 — TOP VIEW OF TYPICAL LOWER LEG SIMULATOR SHOWING LOCATION OF INSTRUMENTS

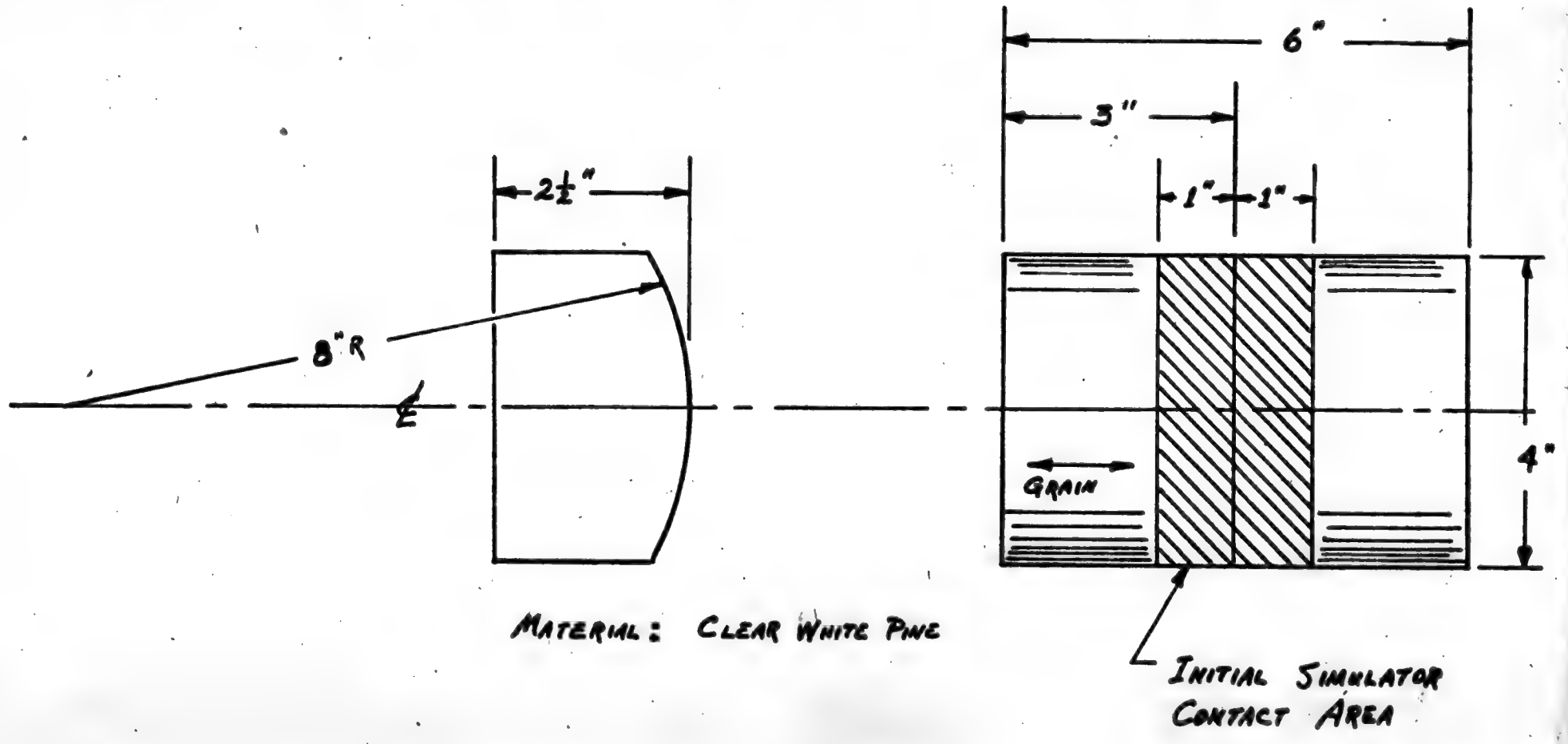

FIGURE 2 - IMPACTOR

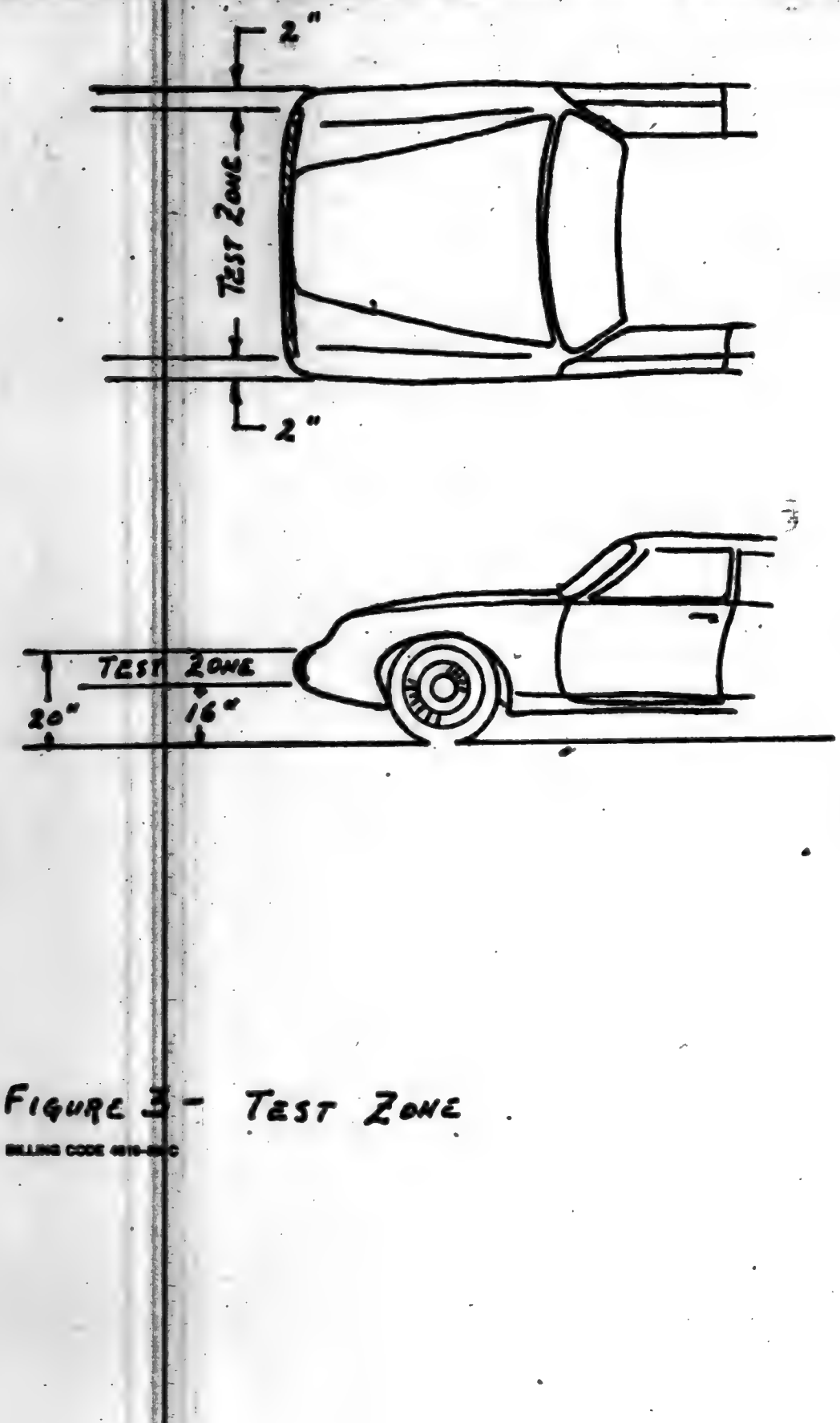

FIGURE 3 - TEST ZONE

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(Secs. 108 and 119, Pub. L. 89-563, 80 Stat. 718 (15 U.S.C. 1392 and 1407); delegations of authority at 49 CFR 1.50 and 501.8)

Issued on January 16, 1981.

Michael Finkelstein,

Associate Administrator for Rulemaking.

[FR Doc. 81-2127 Filed 1-[illegible]; 2:00 pm]

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49 CFR Part 583

[Docket No. 79-17; Notice 1]

Crashworthiness Ratings

AGENCY: Department of Transportation.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes establishment of a new car crashworthiness performance ratings program in which information to be developed by manufacturers on the ability of their passenger motor vehicles to protect occupants in high speed collisions would be made available to consumers. The proposal responds to the increased importance of occupant crash protection resulting from the current trend toward smaller, lighter weight cars. The agency intends, through the proposed program to provide prospective purchasers with comparative information on the crashworthiness of different vehicle models, and thereby to encourage the purchase of cars offering the highest level of crashworthiness.

DATES: Comment due date: Comments must be received on or before April 22, 1981. Proposed effective date: June 1, 1982.

ADDRESSES: Comments should refer to the docket number and be submitted to Room 5108, Nassif Building, 400 Seventh Street, S.W., Washington, D.C. 20590.

FOR FURTHER INFORMATION CONTACT: For further information regarding this notice contact Mr. Steve Zaidman, Office of Automotive Ratings, National Highay Traffic Safety Administration, 400 Seventh Street, S.W., Washington, D.C. 20590, 202-416-1740.

SUPPLEMENTARY INFORMATION: The traditional approach taken by the National Highway Traffic Safety Administration (NHTSA) in promoting improvements in vehicle safety has been to issue performance standards under the National Traffic and Motor Vehicle Safety Act of 1966. While this approach affords manufacturers substantial latitude in selecting their means of compliance, the NHTSA has been searching for ways to suppplement minimum safety standards with a program using market forces to encourage the manufacture of safer automobiles. One way identified by NHTSA is to provide consumers with information which enables them to compare new vehicles based on their relative safety performance. A similar effort, combining standards and performance information, is already being effectively implemented with respect to automotive fuel economy.

Although NHTSA has disseminated consumer information on new vehicle safety for some time, the information has been exclusively concerned with accident avoidance, e.g., braking capability. Until last year, the agency had not attempted in any systematic fashion to disseminate information on crashworthiness, an aspect of vehicle performance that is of crucial importance. The public interest in crashworthiness information and the agency's desire to pursue methods of providing regulatory flexibility have led NHTSA to propose a program for rating the crashworthiness of new cars.

This proposal is issued under Title II of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 1941, *et seq.*) and the National Traffic and Motor Vehicle Safety Act of 1966 (Safety Act) (15 U.S.C. 1391, *et seq.*) Title II directs NHTSA to devise ways in which information relating to the crashworthiness of passenger motor vehicles can be developed and communicated to consumers to aid them in selecting new cars. Congress' adopted this provision recognizing that although the ability of a vehicle to protect its occupants in a collision is an important consideration in the selection of a motor vehicle, prospective purchasers presently have no way of evaluating the relative crashworthiness of competing vehicles. Section 112(d) of the Safety Act (15 U.S.C. 1401(d)) complements Title II by requiring manufacturers to supply the agency with performance and safety data on their vehicles and to notify prospective purchasers of such data.

Studies conducted by NHTSA and others have confirmed that safety information is of substantial interest to vehicle purchasers. A survey conducted for NHTSA by Booz-Allen & Hamilton, Inc., "Automobile Consumer Information Study, Title II, Pub. L. 92-513, Final Phase I Report, June 1976", DOT-HS-4-00904, (Docket 79-17, Notice 1, No. 133) indicates that consumer purchasing decisions would be influenced by crashworthiness ratings of new cars. More recent studies by Peter Hart and Associates (Docket 79-17, Notice 1, No. 134) and the Automobile Club of Southern California (Docket 79-17, Notice 1, No. 135) also conclude that safety performance is a major concern of new car purchasers. Through the establishment of a crashworthiness ratings program, the agency intends to provide information of value to consumers in evaluating and compering the safety performance of passenger cars. Although the primary focus of NHTSA's efforts is on the individual new car purchaser, the agency hopes that crashworthiness ratings information will also be relied upon by private and government fleet operators and by used car purchasers.

In addition to aiding consumers in making better informed purchasing decisions, the ratings program should foster competition among automobile manufacturers in the design of safer products. NHTSA sees the use of marketplace forces as a means by which design flexibility can be enhanced and costs minimized, while improving vehicle safety performance. Thus, the agency expects the automotive ratings program to be a valuable supplement to the vehicle safety standards.

Development of NHTSA's Crash Test Program

NHTSA considered several alternatives in its search for the best means of providing meaningful crashworthiness ratings. Among the options studied were using historical data to assess the performance of vehicles-in-use, using information about vehicle design to predict the performance of new vehicles, and determining new vehicle performance through new-car crash testing. Of these, NHTSA has found that the crash test approach provides the best prospect for the development of information useful to new car purchasers.

NHTSA studied several possible sources of historical crashworthiness data, that is, data on the performance of vehicles involved in actual highway collisions. The agency found that police and insurance company accident reports lacked precise information on variables, such as crash speed and injury severity, which are of vital importance to a crashworthiness ratings system. While crash investigation files compiled by NHTSA through the Fatal Accident Reporting System (FARS), the National Crash Severity Study (NCSS), and the National Accident Sampling System (NASS) are more reliable and may provide a useful source of information in the future, they are presently too limited in scope to be helpful in rating individual vehicles. In any event, the delay inherent in compiling a sufficient volume of crash data for any historical ratings system would severely limit the

value of such a system to new-car buyers. Also, historical data reflects the combined influence of vehicle and driver factors, and may not always be suitable for assessing purely vehicular differences. Thus, while NHTSA believes that historical data merits further study, the agency has tentatively concluded that such data is not the best available basis for a new car ratings system at this time.

NHTSA has also considered the use of predictive techniques employing computer assisted mathematical models to project vehicle crash performance from design data. However, questions remain regarding the accuracy of existing predictive techniques, particularly in modeling restraint system performance in preventing injuries. Thus, the agency believes that existing predictive techniques do not provide the best means of rating automotive crashworthiness.

While predictive approaches require additional research, extensive testing conducted by NHTSA under the New Car Assessment Program (NCAP) indicates that controlled crash testing of new cars containing instrumented anthropomorphic dummies, represents a viable means of deriving crashworthiness ratings. Based on the years of developmental testing leading to the issuance of Federal Motor Vehicle Safety Standard (FMVSS) No. 208, Occupant Crash Protection (49 CFR § 571.208), which will be phased into effect beginning September 1, 1981, and the fact that the majority of serious injuries and deaths in auto accidents result from frontal collisions, see "National Crash Severity Study—Passenger Cars, June 1977–March 1979", UM–HSRI–80–36, June 1980 (Docket 79–17, Notice 1, No. 136), the FMVSS No. 208 test procedure was made the primary focus of the NCAP program. To determine whether some vehicles could exceed minimum occupant protection and other standards, the agency tested new cars at 35 mph instead of the 30-mph speed specified in the standards. A 35-mph collision represents a significant (36%) increase in kinetic energy over a 30-mph crash.

Substantial safety benefits are offered by vehicles capable of meeting FMVSS No. 208 criteria at 35 mph instead of 30 mph. Data collected by the Agency using its NCSS data system indicate that many hundreds of deaths and serious injuries could be avoided annually in the United States if all cars were capable of providing 35-mph frontal crash protection. See, "Estimated Benefits of the New Car Assessment Program", Appendix to "Regulatory Analysis on Crashworthiness Performance Ratings for New Cars", Docket 79–17, Notice 1, No. 137).

To determine whether significant differences exist in the crashworthiness of vehicles at speeds above the required 30-mph standard, cars in the NCAP were tested in accordance with the frontal barrier crash procedures of FMVSS No. 208, at an impact speed of 35 mph. That test procedure requires, among other things, that a vehicle provide a specified level of occupant protection when tested in a 30-mph frontal collision with a stationary rigid barrier. Occupant protection is determined by the application of specified injury criteria to measurements from instrumented dummies representing a driver and a front seat passenger. Head injuries are measured by composite acceleration values known as Head Injury Criteria (HIC numbers). Chest and upper leg injuries are measured by chest deceleration and femur (thigh bone) load values. While FMVSS No. 208 will mandate the use of automatic occupant restraints, NHTSA believes the crash test procedure is also valid for vehicles equipped with manual belt systems.

Vehicle performance was also evaluated against three other safety standards involving 30-mph barrier crashes: FMVSS No. 212, Windshield Mounting (49 CFR 571.212); FMVSS No. 219, Windshield Zone Intrusion (49 CFR 571.219); and FMVSS No. 301, Fuel System Integrity (49 CFR 571.301). As with tests involving the FMVSS No. 208 procedures, impact speeds for these tests were increased to 35 mph for NCAP testing. The 35-mph impact speed proved in the testing to be a speed at which significant differences in occupant protection are apparent.

NCAP Test Results

NCAP testing conducted by NHTSA in 1979 and 1980 involved a wide variety of domestic and foreign cars of all sizes. Vehicles tested ranged from a Honda Civic weighing 2180 lbs. to a Lincoln Continental weighing 4846 lbs. NHTSA tested 44 1979 and 1980 models in 35-mph frontal crashes. Of these vehicles, 32 failed to meet one or more of the FMVSS No. 208 occupant protection criteria. Major differences among the cars were found in all performance areas, with HIC numbers ranging from a low of 429 to a high of 2904 (1000 is a passing reading under the FMVSS No. 208 Procedure), chest deceleration readings extending from 33 g's to 108 g's (60 g's is passing), and femur loads ranging from 67 to 3118 lbs. (2250 lbs. is passing).

Test results available in Docket No. 79–17 indicate that significant differences in crashworthiness exist among vehicles within size classes. Since the FMVSS No. 208 procedure and the other test procedures used in NCAP simulate collisions between vehicles of the same mass, and vehicle mass is a major factor that affects crash severity, NCAP data is useful only for comparing vehicles within weight classes.

Within classes of competing cars differences in crashworthiness were marked. A 1979 Ford Mustang test produced HIC readings of 819 for the driver and 567 for the passenger, while a 1980 Honda Prelude scored 2904 and 1759 for the driver and passenger respectively. A 1980 Chevrolet Chevette had HIC readings of 668 and 699 for the driver and passenger, while a similarly sized 1980 Honda Civic provided corresponding HIC numbers of 2626 and 1506. HIC readings of over 1000 are considered by the agency to indicate a likelihood of serious injury or death.

Significant differences in performance were also evident in the other areas tested. Some models experienced no fuel leakage as a result of 35-mph front and rear impacts, while others sustained serious fuel tank ruptures. Most vehicles tested passed the FMVSS No. 212 and 219 requirements at 35-mph, although several tests produced potentially dangerous failures.

In addition to establishing the existence of major differences in crashworthiness among vehicle models, the NCAP tests and the examples given below suggest that significant safety improvements are possible in many cars at moderate costs. Thus, competition induced by publication of safety ratings could result in equipment upgrading with substantial safety benefits.

The greatest number of failures in the NCAP 35-mph tests resulted from high HIC readings, involving, with rare exceptions, contact of the test dummy's head with the dashboard or steering wheel. In some cases, the steering column was displaced upward into the passenger compartment, aggravating the extent of injury. In many cases, technologically attainable improvements in steering column or seat belt design, such as restricting upward movement of the steering column and limiting belt stretch and spool out, could have substantially improved test performance by preventing head impacts with the vehicle interior. NHTSA believes that for most cars tested the necessary steering column changes and restraint system improvements could be accomplished without major increases in costs. Similarly, many of the fuel system failures encountered in the testing could have been avoided by inexpensive measures such as improved

positioning of the fuel tank or the elimination of puncture-causing protrusions. See, "Implications of the New Car Assessment Program for Small Car Safety" by Brownlee, Hackney, and Abney, Docket No. 79-17, Notice 1, No. 138.

Need For Crashworthiness Information

The need for crashworthiness information is increasing substantially as a result of the growing popularity of small cars. In 1976, according to Automotive News figures, subcompact, compact, and foreign cars made up approximately 47 percent of total sales of new automobiles. Since January 1980, these vehicles have comprised approximately 60 percent of new-car sales. Occupants of small cars generally face a greater risk in a collision due to the smaller physical structure of the vehicle capable of absorbing crash forces and the more limited distance between the occupant and the contactable portions of the vehicle interior. Statistics indicate that small car occupants accounted for 51 percent of all fatalities in single vehicle crashes in 1979, while small cars made up only 38 percent of the vehicle fleet. See, "Safety Consequences of the Shift to Small Cars in the 1980's" by Boehly and Lombardo, Docket No. 79-17, Notice 1, No. 139. Given this increased risk, purchasing a vehicle capable of providing greater occupant protection takes on added importance.

Response to NHTSA's release of NCAP test data indicates that, in fact, the public is concerned about crashworthiness and would be influenced by crashworthiness ratings. Following release of these data, the agency received numerous calls and letters from consumers desiring information on which models scored well in the tests or on how particular models performed. The tests also attracted considerable attention in the news media. Market reaction in recent years to various safety defect recalls and to safety allegations concerning certain new cars provides additional evidence of the public awareness and use of safety information.

The Proposal

The regulation proposed in this notice would establish a new Part 583, Crashworthiness Ratings. The primary element of Part 583 would be a requirement for manufacturers to disclose to prospective purchasers on a window sticker and certify to the NHTSA Administrator whether or not their passenger cars conform to the occupant protection criteria of FMVSS No. 208, when tested under the frontal fixed rigid barrier crash procedures of that safety standard, but at a speed of 35 mph.

Under the proposal, anthropomorphic test dummies, as described in Part 572, Anthropomorphic Test Dummies (49 CFR Part 572), would be placed in the front seats of the vehicle, in accordance with the dummy positioning procedures of FMVSS No. 208. The injury criteria to be applied, incorporated by reference from S6 in 49 CFR § 571.208, would set upper limits of 1000 HIC for head injuries, 60g's (over 3 milliseconds) for chest loads and 2250 lbs. for femur compressive loads.

Manufactuers would also be required to certify to the NHTSA Administrator for distribution to prospective purchasers whether or not their passenger cars comply with the requirements of FMVSS Nos. 212 and 219, and the front impact, rear impact, and rollover requirements of FMVSS No. 301, when tested at an impact speed of 35 mph. FMVSS No. 212 specifies windshield retention requirements for frontal collisions with a fixed collision barrier. FMVSS No. 219 limits the displacement into the windshield area of motor vehicle components like the hood during a frontal crash with a fixed barrier. FMVSS No. 301 sets limits on the amount of fuel spillage which may be incurred in a frontal impact with a fixed barrier, in a rear impact with a moving barrier, and when the vehicle is rotated on its longitudinal axis to each successive increment of 90 degrees following these impacts. The lateral moving barrier crash requirements of FMVSS Nos. 208 and 301 apply to lower speed collisions and therefore have been omitted from this proposal, as has the rollover test of FMVSS No. 208.

Under the proposal, manufacturers may at their option certify to NHTSA and specify on the window sticker that their vehicles meet the stated standards when tested at an impact speed greater than 35 mph. Actual testing by manufacturers is not required by the proposal. However, manufacturers choosing not to verify compliance at 35 mph or a higher speed would nonetheless be required to state that their vehicles have failed to comply with the criteria at speeds higher than 30 mph.

The disclosure sticker would be applied to the windshield or front driver's side window of each vehicle by its manufacturer. A separate sticker could be used or the information could be combined with either the fuel economy lablel required by section 508 of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 2008) or with the price sticker required by the Automobile Information Disclosure Act (15 U.S.C. 1232). The sticker would be required to conform to a specified format and would only contain information on compliance with the FMVSS No. 208 occupant protection criteria, recognizing the greater importance to vehicle safety of the occupant protection standard. Readers would be referred to a separate booklet for comparative data, information on compliance with the other criteria, and an explanation of the ratings system.

Manufacturers' certifications would be submitted to NHTSA 90-days before their vehicles are first offered for sale. This requirement would permit NHTSA to compile and disseminate in booket form a comparative listing of crashworthiness ratings in all four performance categories early in each model year. Manufacturers would be required to distribute the bookat to their dealerships. Dealers would then be required to display the materials and order additional copies as needed. NHTSA believes that the 90-day advance notification would not impose an unreasonable burden on industry, since certification testing for FMVSS compliance is generally conducted well before the introduction of new vehicle models. To permit the agency to monitor possible deliberate underrating of performance, manufacturers would also be required to submit with their certification a summary of the factual basis for the ratings assigned, including the number of tests conducted by the manufacturer, a description of the vehicles tested, and the outcome of the tests. The regulation would be implemented beginning with the 1983 model year.

Issues of Particular Interest

In compiling comparative information based on the crashworthiness ratings, NHTSA has tentatively concluded that size classes based on vehicle weight would provide the best means of grouping vehicles so as to minimize the effects of mass differential. Would uniform weight increments (e.g., 400 lbs.) or a system which approximates the weight ranges of market classes provide a better basis for grouping? How broad should the weight classes be? What are the limitations of other systems, such as the interior volume technique employed by the Environmental Protection Agency in its fuel economy bookets?

Another issue of major importance to the ratings system is assigment of the responsibility for data development. Under the proposed rule, any data development for the ratings program would be conducted by manufacturers, with the decisions on whether to test

and how much to test for particular models being left to the manufacturers' discretion. NHTSA is concerned that this approach may be subject to abuse by manufacturers declining to conduct any testing and routinely making negative declarations.

While NHTSA believes that market forces will discourage this type of activity, the agency requests the view of interested parties on whether the agency's tentative conclusion that voluntary manufacturer testing, coupled with a mandatory declaration regarding performance, provides the best means of obtaining information for the program. What is the prospect for deliberate underrating under this system? Would required testing by manufacturers be a more promising alternative? If so, how much testing should be required? Would testing conducted by the agency provide greater certainty of obtaining accurate information at a reasonable cost? Would the agency be able to obtain and test vehicles in time to disseminate the information sufficiently early in the model year?

The proposal calls for dissemination of information to prospective purchasers by means of a window sticker bearing information applicable to the particular vehicle model to which the sticker is affixed. Information would also be submitted to NHTSA for inclusion in a comparative booklet to be made available by NHTSA through automobile dealerships. Is the agency correct in its tentative judgment that these measurers provide the most effective means of communicating ratings information to consumers? Would dissemination of a comparative booklet without window sticker disclosure be sufficient?

NHTSA anticipates that dissemination of crashworthiness information to prospective vehicles purchasers would lead to competition among manufacturers in seeking to achieve occupant crash protection at higher speeds. Has NHTSA accurately estimated the cost likely to be incurred by consumers and industry as a result of this competition? In analyzing the potential benefits of improved crashworthiness performance, NHTSA uses a hypothetical average vehicle overdesign of 10 percent at both the 30 and 25 mph crash test performance goals. See, "Regulatory Analysis on Crashworthiness Performance Ratings for New Cars" (Docket 79-17, Notice 1, No. 140). Does 10 percent accurately represent manufacturers' actual or contemplated levels of overdesign for these test goals? Is there any evidence that safety trade-offs (e.g., reduced safety performance in other accident modes or in frontal impacts at lower speeds) may be associated with efforts to improve high speed occupant protection?

On December 9–11, 1980, the NHTSA sponsored an International Automotive Ratings Symposium in Lancaster, Pennsylvania. One of the purposes of the Symposium was to obtain suggestions from representatives of the automobile and insurance industries, marketing experts, consumer representatives, and other interested parties on the agency's plans for a crashworthiness ratings program.

Some Symposium participants suggested, as an alternative to the type of system proposed above, that the NHTSA develop an indexing procedure which would combine head and chest deceleration and femur load readings developed in frontal crash tests into a composite measure of crashworthiness. This would permit a numerical ranking of automobiles according to their crashworthiness performance.

Other Symposium attendees felt that the variability of crash test results for a particular automobile make or model would significantly increase with increases in crash test speeds. Thus, automobile manufactureres, who would have reasonable confidence in certifying 30-mph test performance in conformance with minimum FMVSS's may refrain from claiming 35-mph occupant protection performance under the ratings system as proposed. It was suggested that the agency establish a "compliance band" bordering the crash-worthiness grading goals of 1000 HIC, 60 chest g's and 2250 lbs. femur load. For example, under this alternative, if three cars of the same model yield driver HIC scores of 950, 1000, and 1100 in the 35-mph frontal crash test, and similar scores for the occupant dummy, this model could be considered to have met the head injury criterion at 35 mph (assuming a maximum band of 100 bordering the HIC threshold of 1000).

Another suggested approach would entail rating cars on a continuum of crash test speeds. Contrary to the proposed rule, which requires satisfaction of the crash test criteria at a minimum of 35 mph before a manufacturer can make a positive crashworthiness certification, a continuous ratings system would allow manufacturers to disclose test speeds greater than 30 mph at which their cars meet the occupant protection criteria.

NHTSA is seeking comments on these alternative ratings approaches as well as on the proposal described above. Specifically, the NHTSA is interested in receiving information on the possibility of establishing a crashworthiness indexing procedure in lieu of the ratings approach described at length in this notice. Also, should the disclosure requirements be relaxed somewhat to account for the possible existence of greater test variability at crash speeds above 30 mph? Should this be accomplished by the insertion of a "compliance band" or window bordering the current maximum allowable test readings? If so, how wide should this band be? Finally, if disclosure were permitted at any speed in excess of 30 mph, in lieu of the proposed 35-mph minimum requirement, would minor differences in crash speeds significantly reflect improved crashworthiness performance? Would consumers be able to adequately distinguish among cars providing, for example 30, 32, or 34 mph occupant protection?

Comment is also requested on the desirability of adopting a provision exempting model types of cars whose annual production is limited to 1,000 vehicles. A similar exemption was incorporated in the Uniform Tire Quality Grading System Regulation by an amendment published April 7, 1980 (45 FR 23442).

Related Issues for Future Consideration

The proposed regulation, which relies primarily on fixed barrier collisions to assess crashworthiness, in effect bases its test for 35-mph performance on the ability of a vehicle to protect its occupants in a collision with a vehicle of identical mass traveling at the same speed in the opposite direction. Small cars are at a disadvantage when involved in a collision with vehicles of greater mass. The proposed system does not provide a means of comparing occupant protection performance of cars in different weight classes.

The Booz-Allen & Hamilton study cited above indicates that, in purchasing a motor vehicle, most consumers first select a size class which is suitable for their needs, then compare vehicles within the class before making a purchasing decision Accordingly, the agency has concluded that the system as proposed should provide valuable information to consumers and that the effect of differential vehicle mass is not critical to the initial phase of the crashworthiness ratings program.

Nevertheless, NHTSA is exploring means to account for vehicle mass in future crashworthiness ratings. For example, if a moving barrier test were employed, the barrier mass could be altered to simulate the effect of a collision between vehicles of differing mass. The agency seeks comment on

whether the crashworthiness ratings should be supplemented at some future time with information on crashworthiness performance in collisions with vehicles of differing mass.

If information relating to differential mass effects would be of value, the agency desires comments on the advantages and disadvantages of moving barrier tests, car-to-car collisions, and any other available methods by which mass effects could be evaluated. What are the prospects for development of a deformable barrier which would accurately represent the behavior of a vehicle in a 35-mph crash? If a moving barrier test procedure could be developed, should it be used in addition to or as a substitute for the fixed barrier test? Would average vehicle weight for a given model year be the most appropriate determinant of barrier mass? If car-to-car crash testing were conducted, how could a standardized test car be selected?

The proposed regulation calls for disclosure of whether a vehicle meets the FMVSS No. 208 injury criteria at 35 mph, or at a higher speed chosen by the manufacturer. Could a composite index be developed whereby each injury criterion is weighted taking into account the frequency of serious injuries or death attributable to each relevant body region? What are the limitations, costs, and feasibility of such an alternative rating format?

As noted above, frontal collisions are the cause of the majority of all serious injuries and deaths resulting from auto accidents. All the crash tests proposed for use in the crashworthiness rating program involve frontal impact, with the exception of the rear moving barrier test for fuel system integrity. NHTSA plans to explore side impact ratings using the side impact dummy and test procedure now being developed to upgrade FMVSS No. 214. Should the ratings system include ratings derived from side impacts and other crash configurations, and if so, how should this information be developed?

The current FMVSS No. 208 test procedure uses a 50th percentile Part 572 dummy that incorporates a maximum permissible chest load of 60 g's, and FMVSS No. 208 has previously permitted chest loads up to a chest severity index of 1000 for some restraint systems. NHTSA is currently conducting a program to evaluate several 50th percentile anthropometric test devices, including the Part 572 device, the GM Hybrid III device, and the Association Peugeot-Renault device. Sled tests are being conducted with these devices impacting a driver air bag and knee bolster system, and a 3-point belt system. Some human volunteer and cadaver test data is already available for these restraint systems. Depending on the outcome of these tests, NHTSA may consider employment of a different test dummy and modification and expansion of its injury criteria for the vehicle ratings tests. For example, shoulder belt loads could be used to evaluate the potential for serious or fatal chest injury with safety belt systems. Similarly, tibia (shin bone) loads and knee shear as well as femur load may be important in evaluating air bag or automatic belt systems that employ a knee bolster for lower body restraint. Also, the chest severity index could be used in conjunction with or in lieu of chest g's for evaluation of the occupant crash protection systems. How could the rating system reflect recent developments in dummies and injury criteria? Would additional injury criteria permit more complete evaluation of occupant crash protection performance?

This proposed regulation is considered significant for purposes of Departmental regulatory policies and procedures implementing Executive Order 12221. A draft Regulatory Analysis evaluating the economic and other consequences of the proposed regulation has been placed in the docket for this notice and is available for public review and comment. Copies of the draft Regulatory Analysis may be obtained by writing to the Chief, Technical Reference Branch, Room 5108, Nassif Building, 400 Seventh Street, S.W., Washington, D.C. 20590.

The costs for the crashworthiness ratings program are relatively small. All manufacturers together will incur a first year cost of approximately $3 million in model year 1983 to develop the ratings. The annual cost for each successive years would be only $240,000.

This notice has been reviewed under the Regulatory Flexibility Act. If limited production model types are exempted from the requirements of program, the notice would not have a significant impact on a substantial number of small passenger car manufacturers. Comment on such an exemption is requested in this notice.

In consideration of the foregoing, it is proposed that a new Part 583, Crashworthiness Ratings, be added to Title 49 of the Code of Federal Regulations, as follows:

PART 583—CRASHWORTHINESS RATINGS

Sec.

583.1 Scope.
583.2 Purpose.
583.3 Application.
583.4 Definitions.
583.5 Information requirements.
583.6 Certification criteria.
583.7 Optional certification.

Authority: Secs. 201, 208; Pub. L. 89-563, 80 Stat. 947 (15 U.S.C. 1941, 1944); secs. 112, 119; Pub. L. 89-563, 80 Stat. 718 (15 U.S.C. 1401, 1407)

§ 583.1 Scope.

This part requires manufacturers and dealers of passenger motor vehicles to provide information on the ability of their vehicles to protect occupants from serious injury or death in high speed collisions.

§ 583.2 Purpose.

The purpose of this regulation is to provide prospective vehicle purchasers with comparative information with which to evaluate the crashworthiness of new motor vehicles offered for sale.

§ 583.3 Application.

This part applies to manufacturers and dealers of passenger cars and to passenger cars manufactured on or after September 1, 1982.

§ 583.4 Definitions.

(a) Statutory definitions. All terms used in this part that are defined in section 102 of the National Traffic and Motor Vehicle Safety Act of 1966 (15 U.S.C. 1391) are used as defined in that statute.

(b) Other definitions. All terms used in this part that are defined in § 571.3(b) of this chapter are used as defined in that paragraph.

§ 583.5 Information requirements.

(a)(1) Except as provided in § 583.7, each manufacturer shall affix or cause to be affixed to each of its vehicles subject to this part, which it has found meets the performance criteria specified in § 583.6(a) when tested in accordance with the conditions and procedures specified in that paragraph, a label in the form illustrated in Figure 1. Each manufacturer shall affix or cause to be affixed to each of its vehicles subject to this part, which it has not found meets the performance criteria specified in § 583.6(a) when tested in accordance with the conditions and procedures specified in that paragraph, a label in the form illustrated in Figure 2. Labels on all vehicles produced prior to September 1, 1983, and labeled in accordance with this paragraph, shall include the footnote indicated by an asterisk in Figures 1 and 2.

(2) The label shall:

(i) Be affixed to the windshield or front driver's side window prior to the offer for sale to the consumer of the vehicle to which it applies,

(ii) Be readily legible from the exterior of the vehicle, and

(iii) Remain affixed and legible until the time the automobile is delivered to the possession of the first purchaser for purposes other than resale.

(b) Except as provided in § 583.7, each manufacturer shall, for each of its motor vehicles covered by this part, certify in writing to the Administrator at least 90 days before the vehicle is first offered for sale to the consumer, whether or not the vehicle has been found to meet one or more of the performance criteria specified in § 583.6 (a), (b), (c), and (d), when tested in accordance with the conditions and procedures specified in those paragraphs. Accompanying the certification provided under this pargraph, or under § 583.7, each manufacturer shall submit a concise summary of the factual basis for that certification, including the number of tests, if any, conducted by or for the manufacturer pertaining to certification under this part, a listing of the vehicles tested, and a statement of the outcome of each test.

(c) Each dealer of passenger motor vehicles shall provide without charge and in sufficient quantity to be available for retention by prospective purchasers a booklet containing information comparing the crashworthiness of vehicles of different manufacturers. The booklet shall be prominently displayed by the dealer in the same manner and in the same location used to display brochures describing the automobiles offered for sale by the dealer. The booklet will be furnished by the National Highway Traffic Safety Administration (NHTSA) to vehicle manufacturers. Each manufacturer shall provide sufficient copies of the booklet to each dealer of its passenger motor vehicles with whom the manufacturer has a contractual, proprietary, or other legal relationship, or who has such a relationship with a distributor of the manufacturer, and shall, on request of such dealer, promptly supply necessary additional copies. The booklet shall be furnished to the dealer by the manufacturer not later than 30 days after the manufacturer's receipt of the booklet from NHTSA. The booklet shall be made available to prospective purchasers by the dealer not later than 45 days after receipt of the booklet by the manufacturer. The dealer shall request from the manufacturer additional copies of the booklet as necessary.

§ 583.6 Certification Criteria.

The certification and labeling required by § 583.5 (a) and (b) and 583.7 shall be based on the following performance criteria:

(a) Occupant crash protection. When the vehicle traveling longitudinally forward at a speed of 35 mph impacts a fixed collision barrier that is perpendicular to the line of travel of the vehicle, or at any angle up to 30° in either direction from the perpendicular to the line of travel of the vehicle, under the applicable conditions and procedures of S8.1, S10 and S11 of § 571.208 of this chapter, with anthropomorphic test devices conforming to Subpart B of 49 CFR Part 572 at each designated seating position described in (1) or (2) for which a barrier crash test is required under S4 of § 571.208, the vehicle meets the injury criteria of S6 of § 571.208. An anthropomorphic test device is placed—

(1) In the case of a vehicle equipped with bucket seats, at each front designated seating position; and

(2) In the case of a vehicle equipped with a frontal bench seat, at the driver's designated seating position and at any other one front designated seating position.

(b) Windshield mounting. When the vehicle traveling longitudinally forward at a speed of 35 mph impacts a fixed collision barrier that is perpendicular to the line of travel of the vehicle, under the conditions of S6 of § 571.212 of this chapter, the windshield mounting of the vehicle retains not less than the minimum portion of the windshield periphery specified in S5.1 and S5.2 of § 571.212.

(c) Windshield zone intrusion. When the vehicle traveling longitudinally forward at a speed of 35 mph impacts a fixed collision barrier that is perpendicular to the line of travel of the vehicle, under the conditions of S7 of § 571.219 of this chapter, no part of the vehicle outside the occupant compartment, except windshield molding and other components designed to be normally in contact with the windshield, penetrates the protected zone template, affixed according to S6 of § 571.219, to a depth of more than one quarter inch, and no such part of the vehicle penetrates the inner surface of that portion of the windshield, within the daylight opening, as defined in S4 of § 571.219, below the protected zone described in S6 of § 571.219.

(d) Fuel system integrity.

(1) Each vehicle meets the criteria of either barrier crash test described in § 583.6(d) (2) and (3), followed by a static rollover, without alteration of the vehicle during the test sequence. A particular vehicle need not meet further criteria after having been subjected to a single barrier crash test and a static rollover test.

(2) When the vehicle traveling longitudinally forward at a speed of 35 mph impacts a fixed collision barrier that is perpendicular to the line of travel of the vehicle, or at any angle up to 30° in either direction from the perpendicular to the line of travel of the vehicle, with 50th-percentile test dummies as specified in Subpart B Part 572 of this chapter at each front outboard designated seating position and at any other position whose protection system is required to be tested by a dummy under the provisions of § 571.208 of this chapter, under the applicable conditions of S7 of § 571.301, fuel spillage, as defined in S4 of § 571.301, does not exceed the limits of S4 of S5.5 of § 571.301.

(3) When the vehicle is impacted from the rear by a barrier moving at 35 mph, with test dummies as specified in Part 572 of this chapter at each front outboard designated seating position, under the applicable conditions of S7 of § 571.301 of this chapter, fuel spillage, as defined in S4 of § 571.301, does not exceed the limits of S5.5 of § 571.301.

(4) When the vehicle is rotated on its longitudinal axis to each successive increment of 90° following an impact crash of § 583.6(d) (2) or (3), fuel spillage, as defined in S4 of § 571.301 of this chapter, does not exceed the limits of S6 of § 571.301.

§ 583.7 Optional certification.

When any vehicle meets the performance criteria of § 583.6 (a), (b), (c), or (d), when tested in accordance with the conditions and procedures specified in those paragraphs, but at an impact speed greater than 35 mph, the manufacturer may, at its option, indicate that the vehicle so conforms by specifying the higher impact speed in the certification required by § 583.5(b) and, in the case of § 583.6(a), on the label required by § 583.6(a).

Figure 1

DOT Crashworthiness Ratings

Passenger car must meet a minimum Federal occupant crash protection standard in a 30 mph frontal barrier crash.[*] Some cars provide greater occupant protection by meeting the criteria of the standard at speeds higher than 30 mph. The speed at which this car meets the occupant protection criteria is specified below.

Occupant Crash Protection [35] mph

This safety rating should only be used in comparing cars of the same weight class. A booklet containing ratings for all cars, grouped by weight class, and a full explanation of the ratings system, is available from your dealer. The booklet also

contains ratings for windshield retention and intrusion and fuel system integrity.

WARNING: The occupant crash protection rating applies only if the car's occupants are correctly using available restraint systems.

[*The standard does not apply to some model year 1983 passenger cars, although all such vehicles have been rated under this program.]

Figure 2

DOT Crashworthiness ratings

Passenger cars must meet a minimum Federal occupant crash protection standard in a 30 mph frontal barrier crash.[*] Some cars provide greater occupant protection by meeting the criteria of the standard at speeds higher than 30 mph.

THIS CAR HAS FAILED TO MEET THE OCCUPANT PROTECTION CRITERIA AT SPEEDS HIGHER THAN 30 MPH.

This safety rating should only be used in comparing cars of the same weight class. A booklet containing ratings for all cars, grouped by weight class, and a full explanation of the ratings system, is available from your dealer.

WARNING: The occupant crash protection rating applies only if the car's occupants are correctly using available restraint systems.

[*The standard does not apply to some model year 1983 passenger cars, although all such vehicles have been rated under this program.]

Interested persons are invited to submit comments on any aspect of the proposal. It is requested but not required that 10 copies be submitted.

All comments must be limited not to exceed 15 pages in length. Necessary attachments may be appended to these submissions without regard to the 15 page limit. This limitation is intended to encourage commenters to detail their primary arguments in a succinct and concise fashion.

Those persons desiring to be notified upon receipt of their comments in the rulemaking document should enclose, in the envelope with their comments, a self addressed stamped postcard. Upon receiving the comments, the docket supervisor will return the postcard by mail.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential information, should be sumitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. Any claim of confidentiality must be supported by a statement demonstrating that the information falls within 5 U.S.C. section 552(b)(4), and that disclosure of the information is likely to result in substantial competitive damage; specifying the period during which the information must be withheld to avoid that damage and showing that earlier disclosure would result in that damage. In addition, the commenter or, in the case of a corporation a responsible corporate official authorized to speak for the corporation, must certify in writing that each item for which confidential treatment is requested is in fact confidential within the meaning of section 552(b)(4) and that a diligent search has been conducted by the commenter or its employees to assure that none of the specified items has previously been disclosed or otherwise become available to the public.

All comments received before the close of business on the comment closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. However, the rulemaking action may proceed at any time after that date, and comments received after the closing date and too late for consideration in regard to the action will be treated as suggestions for future rulemaking. The NHTSA will continue to file relevant material as it becomes available to the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

The principal author of this proposal is Richard J. Hipolit of the Office of the Chief Counsel.

(Secs. 201, 203; Pub. L. 92-513, 86 Stat. 947 (15 U.S.C. 1941, 1944); secs. 112, 119; Pub. L. 89-563, 80 Stat. 718 (15 U.S.C. 1401, 1407))

Issued on: January 16, 1981.

Neil Goldschmidt,

Secretary.

[FR Doc. 81-2257 Filed 1-20-81; 3:03 pm]

BILLING CODE 4910-59-M

Urban Mass Transportation Administration

49 CFR Part 638

[Docket No. 80-N]

Maintenance Requirements

Note.—This document was originally published in the Federal Register of Wednesday, January 21, 1981. It is reprinted in this issue to meet the Monday/Thursday publication schedule assigned to the Urban Mass Transportation Administration.

AGENCY: Urban Mass Transportation Administration, DOT.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Urban Mass Transportation Administration (UMTA) is proposing a policy that will insure that each mass transit operator maintains facilities and equipment purchased with UMTA funds consistent with practices necessary to provide adequately for safety, comfort and preservation and expansion of transit service. UMTA is seeking public comment to assist in the development of maintenance guidelines and procedures.

DATE: Comments must be received by May 22, 1981.

ADDRESS: Comments must be submitted to UMTA Docket No. 80-N, 400 7th Street, SW., Washington, D.C. 20590. All comments and suggestions received will be available for examination in room 9320 at the above address between 8:30 a.m. and 5:00 p.m., Monday through Friday. Receipt of comments will be acknowledged by UMTA if a self-addressed, stamped postcard is included with the comment.

FOR FURTHER INFORMATION CONTACT: Charlotte Adams, Office of Program Analysis, (202) 472-6397.

SUPPLEMENTARY INFORMATION: All comments received before the expiration of the comment period will be considered in the development of guidelines and procedures. Comments received after the expiration of the comment period will be considered to the extent feasible.

The Administrator has determined that the proposed action is significant under the criteria in the DOT Order for Improving Government Regulations (44 FR 11042, February 26, 1979) since it concerns a matter on which there may be substantial controversy and since it initiates a substantial change in policy.

A draft Regulatory Evaluation has been prepared and has been placed in the public docket, and is available at the address above.

Discussion

The Urban Mass Transportation Administration is proposing a policy that will insure that each mass transit operator maintains facilities and equipment purchased with UMTA funds consistent with practices necessary to provide adequately for safety, comfort, and preservation and expansion of transit sevice. This policy will be applicable to all funds administered for the maintenance and expansion of mass transportation systems by UMTA discretionary Grant funds (Section 3 (49 U.S.C. 1602)); Formula Grant funds (Section 5 (49 U.S.C. 1604)); Section

16(b)(2) funds [49 U.S.C. 1612(b)(2)]; Interstate Transfer funds (23 U.S.C. 103) and Urban System funds (23 U.S.C. 142).

Federal investments in the capital and operating cost of transit equipment and facilities are substantial, totalling several billion dollars annually. The use of public transit depends largely upon its ability to provide efficient and reliable service. Efficiency and reliability are functions of the type and level of maintenance performed. Systematic maintenance practices by transit operators have proven effective in reducing service interruptions and in ensuring the useful life and operating expectancy of vehicles and equipment.

Although maintenance procedures impose time and cost burdens on transit operations, UMTA believes such an investment in preventive maintenance practices reduces the likelihood of costly replacement of facilities or equipment before they have reached the end of their useful life or costly repairs that could have been prevented if maintenance practices had been employed. UMTA recognizes the importance of the interrelationship of maintenance, transit reliability and the expense of maintaining vehicle and equipment. Proper maintenance demands a commitment by transit operators to secure the necessary financial and manpower resources often not sought because of immediate operating needs, and limited budgets. UMTA recognizes the difficulties faced by transit operators in establishing maintenance as a local priority and wishes to provide assistance to transit operators in this important area. Because we do not have the benefit, as yet, of systematic analyses of the relationship between maintenance practices and vehicle performance, no simple standard procedure will guarantee improvement in maintenance practices. The Federal government does, however, have a strong interest in ensuring that federal funds available for mass transportation assistance are used prudently and with maximum effectiveness. Therefore UMTA will begin to emphasize the importance of maintenance through this ANPRM, and its intent to identify and evaluate opportunities for improvement in maintenance practices and to initiate needed actions.

Section 116 of the Surface Transportation Assistance Act of 1978, Pub. L. 95–599, 92 Stat. 2696, requires State certification and Federal oversight for maintenance of interstate highways. Although there is no similar statutory requirement for Federal oversight of maintenance of transit facilities and equipment, both Section 3(A)(1)(D) and Section 5(d)(1) of the Urban Mass Transportation Act, as amended, provide the Secretary with the authority to subject grants and loans "to such terms, conditions, requirements and provisions as the Secretary determines necessary or appropriate." In addition, Section 5(d)(2) provides the Secretary with the authority to "issue such regulations as he deems necessary to administer this subsection * * * including requirements for improving the efficiency of transit services." These sections provide UMTA with the authority to require adequate maintenance for rail rolling stock, buses, and related transit equipment and facilities. As further support of bus maintenance in particular, the House Committee on Public Works and Transportation indicated in the legislative history to the 1978 Act, House Report No. 1485, dated August 11, 1978, that fourth tier formula funds may "be used to purchase bus equipment needed to maintain the usefulness of the buses pruchase." In addition, OMB Circular A–102, Attanchment N, Prescribes uniform property management standards for grantees of Federal agencies requiring in Section (d)(5) that "adequate maintenance procedures shall be implemented to keep the property in good condition."

The pressure for transit capacity, and the Federal Government's interest in ensuring that federal funds available for mass transportation assistance be used prudently and in a productive manner all necessitate increased attention to transit maintenance practices. UMTA wishes, however, to proceed thoughtfully in the development of alternative strategies for improved maintenance practices. Public comments are requested to assist in the development of future maintenance guidelines and procedures.

Vehicle reliability, therefore total system reliability, varies greatly because of the disparity in operator maintenance practices throughout the country and the many inherent variables in local situations. Manufacturers, however, do provide either maintenance manuals or standards for the warranty period and/or useful life of vehicles, equipment, and facilities.

Assumptions

Because a systematic evaluation of the tradeoffs between reliability, vehicle availability and maintenance costs as a basis of proof of benefit to operators in terms of reduction in overall operating costs has not been established, it is necessary that assumptions be made regarding maintenance practices at all levels. These assumptions are:

1. There is a perceived cost savings resulting from adequate maintenance practices since service life, reliability and availability of equipment and facilities are increased.

2. Proper maintenance practices postpone and perhaps reduce the need for costly capital investments in new equipment.

3. The actual tradeoffs between reliability and maintenance costs vary from property to property. There is no standard definition of "adequate" maintenance as variables such as climate and road conditions necessitate the need for flexible maintenance practices.

4. A Federal policy which would require transit operators to institute routine maintenance practices would:

a. Provide the motivation for increased attention and allocation of local dollars for maintenance activities;

b. Increase performance and useful life of equipment and facilities;

c. Minimize replacement costs;

d. Result in cost savings for both Federal and local interests;

e. Require enforcement.

In the interest of making all transit operators and the general public aware of the issues to be considered by UMTA in developing a long term policy on maintenance, we specifically request comments on the following alternative requirements, the discussion of compliance, and the discussion of sanctions:

Alternative Maintenance Requirements

The alternatives outlined below are not mutually exclusive. Many could be combined depending upon the direction that evolves. It should be noted that the alternatives encompass various "innovative regulatory techniques" such as use of performance standards; use of voluntary standards; and tailoring of the standards to suit the particular characteristics of the grantee (size of the transit property, geographic location, and weather conditions). These techniques should be considered in commenting on the alternatives. The advantages and disadvantages listed for each alternative represent only our initial analysis. We invite commentors to provide additional advantages and disadvantages.

1. Reinforce UMTA's current authority by specifically requiring maintenance as a condition for UMTA assistance.

Advantages

a. Easy to implement.

b. Allows flexibility in implementation.

c. Accomodates local variables regarding maintenance needs and capabilities.

Disadvantages

a. Provides no uniform or consistent application of the policy because of the wide variety of interpretations of "adequate maintenance."

b. Provides no method of evaluation or monitoring.

c. Compliance is not defined, leading to possible confusion as to when sanctions might be applied.

2. Require grantees to develop and implement a maintenance plan for all vehicles, equipment, and fixed facilities. This plan would be based upon published manufacturers' equipment standards, or these standards and practices combined with an operator's judgment and experience which would result in maintenance practices designed for a specific operation. This plan would cover the warranty period and the stated service life of the equipment and facilities. UMTA would review and approve the plan and ensure compliance through on-site inspections or other means. UMTA also would require that maintenance records be kept.

Advantages

a. Through systematic reviews of the plans, UMTA could ensure some level of uniformity and consistency in maintenance practices among similar properties by comparing various maintenance plans with performance.

b. Provide flexibility in maintenance practices by allowing operators to develop individual maintenance plans.

Disadvantages

a. UMTA would need additional staff and perhaps different expertise to review maintenance plans or conduct inspections.

b. Development of such plans or recordkeeping may be perceived as costly and a paperwork burden.

c. Would not ensure any uniformity or consistency in application of maintenance practices.

3. Require grantees to develop and implement a maintenance plan for all vehicles, equipment, and fixed facilities. This plan would cover the warranty period and the stated service life of the equipment and facilities. UMTA would evaluate the adequacy of the plan by comparing it to the published minimum maintenance standards established by UMTA, on-site inspections, etc. UMTA also would require that maintenance records be kept.

Advantages

a. UMTA would have a standard or criterion against which to evaluate maintenance plans for each property and grantees would have guidelines for the development of such plans.

b. UMTA would be able to ensure consistency and uniformity among maintenance plans developed and maintenance practices.

c. Would provide UMTA with more direct involvement in operators' maintenance practices.

d. Would ensure protection of Federal investment.

Disadvantages

a. Would require additional expertise and staff resources to develop standards and monitor compliance.

b. May be perceived as unwarranted and improper Federal intervention in industry practices.

c. Could encourage adherence to a lower level of maintenance activity.

d. Does not account for variables in local conditions.

e. Could result in Federal Government assuming responsibility for equipment failures.

4. Require grantees to develop and implement a maintenance plan for all vehicles, equipment and fixed facilities. UMTA would require that the plan be made available for review upon request only.

Advantages

a. Provide flexibility in maintenance practices by allowing operators to develop individual maintenance plans.

b. Would not require additional UMTA staff or expertise to ensure compliance.

Disadvantages

a. UMTA would have no standard or criterion against which to evaluate the maintenance plans.

b. Would not ensure national consistency and uniformity in development of plans or application of maintenance practices.

c. Would not necessarily ensure protection of Federal investment.

d. Would not necessarily result in improved maintenance practices.

5. As part of the bid specification, require manufacturers to provide maintenance schedules to grantees for all facilities and equipment for their entire useful life, as do bus manufacturers, and require that these schedules be implemented.

Advantages

a. Minimum amount of involvement by UMTA.

b. Places responsibility for maintenance on grantee and manufacturers.

c. Easy to implement.

d. If a cost is attached to various maintenance activities, it could be used as part of life cycle costing procurement.

Disadvantages

a. Because the manufacturers' primary goal is to produce, the impact and usefulness of manufacturers' maintenance recommendations may be questionable.

b. UMTA would have no way of assessing the usefulness of such schedules except over time by comparing them with performance.

c. May impose a burden on manufacturers who do not recommend maintenance practices to develop such.

d. Manufacturers who do not or choose not to issue maintenance schedules may lose business.

6. Set aside a percentage of Section 5 funds to be used for maintenance activities and/or maintenance training and require that grantees use a percentage of each fiscal year's Section 5 apportionment for these activities.

Advantages

a. Would be easy to track.

b. Would provide visibility for such an emphasis.

c. Such funds also could be used to develop training or information-sharing workshops or courses for transit operators.

Disadvantages

a. Might not result in a satisfactory level of maintenance.

b. Would be difficult, if not impossible, to develop a basis for earmarking Section 5 funds or ensuring equitable distribution of funds among grantees.

c. Would not reflect grantees needs therefore might not have the desired effect.

d. UMTA would have no way of assessing the appropriatness of impact of the training provided or maintenance practices.

e. Earmarking funds by grantee or area may result in a reduction in amount expended on that activity. Could become a ceiling, rather than a floor.

f. Would open the way for earmarking funds for other "priority" activities, a policy discouraged in the past.

7. Establish a formal policy stating that UMTA will not replace vehicles or equipment prior to the end of the manufacturer's specified useful life unless extraordinary conditions warrant replacement before such time.

Advantages

a. Avoids UMTA involvement in specific maintenance requirements.

b. Provides grantees maximum flexibility to maintain vehicles and equipment as they deem appropriate.

c. May provide incentive to manufacturers to produce better quality products or provide improved guidance on maintenance practices.

Disavantages

a. May result in manufacturers recommending a reduced useful life.

b. May result in products of lesser quality or reduced attention by manufacturers to recommended maintenance practices.

c. May not be possible for manufacturer to determine "useful life" for all facilities and equipment.

d. Would put UMTA in position of refusing to replace failed equipment, thereby causing disruption of transit service.

e. Does not account for local variations in climate, terrain, service use, which affect useful life.

8. Initiate maintenance studies in the areas of maintenance planning, manuals, recordkeeping and actual maintenance practices.

Advantages

a. Would provide the cost data to support various levels of bus maintenance practices and resultant performance levels.

b. Would provide additional basis for developing guidance.

Disadvantages

a. May be difficult to obtain appropriate data with which to analyze cost effectiveness of various levels of maintenance.

Compliance

UMTA could impose one or more methods for ensuring grantee compliance with a maintenance requirement.

1. Do the minimum, essentially alternative No. 1.

2. Annual grantee certification to UMTA stating that grantee is in compliance with the chosen maintenance requirement.

3. Review of grantee maintenance records.

4. On-site inspections of grantee maintenance practices. These methods have associated impacts which should be considered in assessing the practicality of their implementation. For instance, on-site inspections and review of grantee maintenance records by UMTA may require additional UMTA staff and such involvement may be perceived as unwarranted Federal involvement in daily transit operations; depending upon the level required, recordkeeping may be considered a costly, time-consuming, paperwork burden.

Sanctions

UMTA could impose a variety of sanctions fro non-complicance with the chosen maintenance requirement depending upon the content of that requirement. Types and time limits for sanctions could vary depending upon the specifics of individual cases in question. Sanctions could include:

1. Submission of a corrective action plan if maintenance practices are found deficient.

2. A requirement that funds be used for the express purpose of correcting deficiencies within a specified time period.

3. Denial or suspension of operating assistance or capital assistance for replacement facilities or equipment or fleet expansion.

The applicability of each sanction to a specific operator's problem should be considered carefully in order to ensure its usefulness and practicality in achieving the desired goal of the chosen maintenance requirement. Withholding Section 5 operating assistance would have the desired immediate impact but also would deny the very funds needed to correct the maintenance deficiency cited. Witholding capital assistance would have a less immediate and perhaps less harmful impact but is an equally undesirable sanction. Regardless of the sanction chosen, UMTA would ensure a clear understanding of the intent of the policy and a clearly defined procedure for due process through which this policy would be implemented.

Dated: January 15, 1981.

Theodore C. Lutz

Administrator.

[FR Doc. 81-2038 Filed 1-15-81; 4:10 pm]
BILLING CODE 4910-57-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 611 and 658

Shrimp Fishery of the Gulf of Mexico

AGENCY: National Oceanic and Atmospheric Administration (NOAA)/ Commerce.

ACTION: Notice of extension of comment period.

SUMMARY: On November 7, 1980, plan approval and proposed regulations for the shrimp fishery of the Gulf of Mexico were published in the Federal Register (45 FR 74178). Subsequently, a correction designating a contact person and phone number was published (45 FR 79128, November 28, 1980).

Comments were invited until December 31, 1981. However, the State of Alabama requested an extension of the comment period, based on information by the Justice Department that the plan would be implemented within water areas which are the subject of the case of *United States* v. *Louisiana*, No. 9, Original, October Term 1979. Consequently, the comment period on the regulations is extended until January 31, 1981.

DATE: Comments are invited until January 31, 1981.

FOR FURTHER INFORMATION CONTACT: Mr. Edward E. Burgess, National Marine Fisheries Service, Southeast Region, Duval Building, 9450 Koger Boulevard, St. Petersburg, Florida 33702, (813) 893-3721.

Signed at Washington, D.C. this 16th day of January, 1981.

Robert K. Crowell,

Deputy Executive Director, National Marine Fisheries Service.

[FR Doc. 81-2358 Filed 1-20-81; 8:45 am]
BILLING CODE 3510-22-M

Notices

Federal Register
Vol. 46, No. 14
Thursday, January 22, 1981

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ACTION

Performance Review Board; Members

AGENCY: Action.

ACTION: Notice.

SUMMARY: Action publishes the names of the members of the Performance Review Board established by ACTION under the Civil Service Reform Act.

FOR FURTHER INFORMATION CONTACT:
Robert S. Currie, Executive Officer, ACTION, 806 Connecticut Avenue, NW, Washington, D.C. 20525 (202/254–7284).

SUPPLEMENTARY INFORMATION: The Civil Service Reform Act of 1978 (CSRA), which created the Senior Executive Service (SES), requires that each agency establish one or more performance review boards to review and evaluate the initial appraisal of a senior executive's performance by the supervisor and to make recommendations to the appointing authority concerning the performance of the senior executive.

The persons named below have been selected to serve on the Performance Review Board.

ACTION Senior Executive Service Performance Review Board

Robert S. Currie, Executive Officer, Chairman
James B. Lancaster, Jr., Assistant Director for Administration and Finance
Donald Green, Executive Assistant for Programs
Janet B. Watlington, Assistant Director for Legislative and Governmental Affairs
Edward J. Gass, Deputy Assistant Director for Administration and Finance
Dana Rodgers, Deputy Assistant Director for Policy and Planning
Leo E. Palensky, Director of Accounting
Dr. Robert Lee, Professor of Public Administration, Pennsylvania State University

Issued in Washington, D.C., on January 14, 1981.

Sam Brown,
Issuance System Manager.

[FR Doc. 81-2182 Filed 1-21-81; 8:45 am]
BILLING CODE 6050-01-M

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

Disqualification of Individual for Judging or Managing Any Horse Show

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of Disqualification.

PURPOSE: This notice is to advise the general public and the horse industry of the disqualification of the following individual, under section 6(c) of the Horse Protection Act, from showing or exhibiting any horse, judging or managing any horse show, horse exhibition, or horse sale or auction for the period indicated.

Frank Parnell, Newbern, Tennessee

Frank Parnell has been disqualified from showing or exhibiting any horse, judging or managing any horse show, horse exhibiting, or horse sale or auction for a period of 2 years which is to run from November 22, 1980, through November 21, 1982.

SUPPLEMENTARY INFORMATION: Section 6(c) of the Horse Protection Act states in relevant part that, " " " any person " " " may be disqualified by order of the Secretary, after notice and an opportunity for a hearing before the Secretary, from showing or exhibiting any horse, judging or managing any horse show, horse exhibiting or horse sale or auction for a period of not less than 1 year for the first violation and not less than 5 years for any subsequent violation. Any person who knowingly fails to obey an order of disqualification shall be subject to civil penalty of not more than $3,000 for each violation. Any horse show, horse exhibition, or horse sale or auction, or the management thereof, collectively and severally, which knowingly allows any person who is under an order of disqualification to show or exhibit any horse, to enter for the purpose of showing or exhibiting any horse, to take part in managing or judging, or otherwise to participate in any horse show, horse exhibition, or horse sale or auction in violation of an order shall be subject to a civil penalty of not more than $3,000 for each violation " " ".

This will serve as notification to the general public and the horse industry that Frank Parnell has been disqualified as indicated, and that allowing a disqualified person to participate in prohibited activities is a violation of section 6(c) of the Act and is subject to the penalties indicated therein.

Done at Washington, DC., this 16th day of January, 1981.

R. P. Jones,
Acting Deputy Administrator, Veterinary Services.

[FR Doc. 81-2271 Filed 1-21-81; 8:45 am]
BILLING CODE 3410-34-M

Forest Service

Forest Land and Resource Management Plan for the White River National Forest, Eagle, Garfield, Gunnison, Mesa, Moffat, Pitkin, Rio Blanco, Routt, and Summit Counties, Colo.; Intent To Prepare an Environmental Impact Statement

Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969, and the Forest and Rangeland Renewable Resource Planning Act of 1974, as amended by the National Forest Management Act fo 1976, the Forest Service, Department of Agriculture, will prepare an environmental impact statement on the Forest Land and Resource Management Plan (Forest Plan) for the White River National Forest.

Alternative ways to allocate land use and apply management prescriptions to land will be analyzed and evaluated. Three alternative plans which emphasize current management, environmental quality and production of market commodities will be analyzed and evaluated along with other alternatives which emphasize various mixes of providing for environmental quality, non-market and market outputs. The selected plan will provide policy and program direction for management of National Forest System lands under the administration of the Forest Supervisor for the White River National Forest, including the District on the Arapaho National Forest.

The work plan for completing the Forest Plan is available for public review at the Forest Supervisor's Office, White River National Forest, P.O. Box 948, Glenwood Springs, Colorado 81601, telephone (303) 945-6562.

The scope of the planning effort will be determined by the public issues and management concerns identified early in the planning process. The public including Federal, state, and local agencies will be contacted to determine existing or emerging issues. Management concerns of the Forest Service will also be identified.

The plan will be sensitive to public issues. Public notices will be given, public meetings held and written public comment solicited to assure that the public is informed of and involved in the planning process.

The specific date, time, place, and description of meetings will be published in newspapers and sent to those on the Forest Plan mailing list more than 30 calendar days before a meeting is scheduled. All requests for written public response will allow at least 30 calendar days for reply. The planning process and resultant plan will be coordinated with local, county, state, and other Federal agencies.

The planning action documentation for public issues, management concerns, and management opportunities; planning criteria; data bases; and, analysis of the management situation are currently scheduled to be available for public review around June 1982. Documentation for alternatives, effects of alternatives, and evaluation of alternatives will be available for public review as part of the draft environmental impact statement.

Based on the regulations implementing the National Forest Managment Act, it appears that the planning process will require about two years. The draft environmental impact statement is scheduled for completion in December 1982. A 90-day period for public review and comments will follow. The final environmental impact statement is scheduled for transmitting to the Environmental Protection Agency in September 1983 with implementation of the Forest Plan to begin in October 1983.

Craig W. Rupp, Regional Forester for the Rocky Mountain Region, is the responsible official. Richard E. Woodrow, Forest Supervisor, is responsible for preparation of the environmental impact statement and Forest Plan.

Please contact Richard E. Woodrow, Forest Supervisor, White River National Forest, P.O. Box 948, Glenwood Springs, Colorado 81601, telephone (303) 945-6562, for further information and any adjustments in the scheduled availability of planning action documentation or for comments on this Notice of Intent and the Forest Plan.

Dated: January 12, 1981.

Craig W. Rupp,

Regional Forester.

[FR Doc. 81-2215 Filed 1-21-81; 8:45 am]

BILLING CODE 3410-11-M

CIVIL AERONAUTICS BOARD

[Order 81-1-75; Docket Nos. 38965, 39158]

Application of Wings International Airways, Inc. for a Certificate of Public Convenience and Necessity.

AGENCY: Civil Aeronautics Board.

ACTION: Notice of Order to Show Cause 81-1-75, Docket 38965 and Fitness Investigation of Wings International Airways, Inc., Docket 39158.

SUMMARY: The Board is issuing an order in which it tentatively finds and concludes that it is consistent with the public convenience and necessity to grant the application of Wings International Airways, Inc., for a certificate autorizing the air transportation of persons, property and mail between New York, N.Y. and Newark, N.J., on the one hand, and the coterminal points Los Angeles, Ontario and Long Beach, Calif. on the other hand. Certification is subject to a favorable determination of the applicant's fitness in the Wings International Airways Fitness Investigation (Docket 39158), instituted concurrently.

DATES: All interested persons having objections to the Board issuing an order making final the tentative findinds and conclusions shall file by February 18, 1981, a statement of objections together with a summary of testimony, statistical data and other material expected to relied upon to support the stated objections. Such filings shall be served upon all parties listed below.

Persons wishing to file petitions to intervene in the Wings International Airways Fitness Investigation shall file their petitions in Docket 39158 prior to the prehearing conference and serve such filings on all persons listed below. Notice of the prehearing conference shall be published in the Federal Register.

ADDRESSES: Objections to the issuance of a final order should be filed in the Dockets Section, Civil Aeronautics Board, Washington, D.C. 20428, in Docket 38965, application of Wings International Airways, Inc. for a certificate of public convenience and necessity.

In addition, copies of such filings should be served on Wings International Airways, Inc., the Mayors of New York, Newark, Los Angeles, Ontario and Long Beach, the airport managers at New York (LaGuardia), Newark, Los Angeles, Ontario and Long Beach, the New York Department of Transportation, the New Jersey Department of Transportation and the California Public Utilities Commission.

FOR FURTHER INFORMATION CONTRACT: Sherry L. Kinland, Bureau of Domestic Aviation, Civil Aeronautics Board, 1825 Connecticut Avenue, NW, Washington, D.C. 20428; (202) 673-5333.

SUPPLEMENTARY INFORMATION. The complete text of Order 81-1-75 is available from our Distribution Section, Room 516, 1825 Connecticut Ave., NW, Washington, D.C. Persons outside the metropolitan area may send a postcard request for Order 81-1-75 to the Distribution Section, Civil Aeronautics Board, Washington, D.C. 20428.

By the Civil Aeronautics Board: January 15, 1981.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 81-2260 Filed 1-21-81; 8:45 am]

BILLING CODE 6320-01-M

DEPARTMENT OF COMMERCE

International Trade Administration

Data 100 Systems, Ltd.; Order

The Office of Export Administration, International Trade Administration, United States Department of Commerce, having determined to initiate adminstrative proceedings pursuant to Section 11(c) of the Export Administration Act of 1979 (Pub. L. 96-72, to be codified at 50 U.S.C. app. sec. 2401, *et seq.)* and Part 388 of the Export Administration Regulations (44 FR 59697, October 17, 1979) against Data 100 Systems, Ltd. ("Data 100 Ltd."), based on allegations that Data 100 Ltd. violated §§ 387.2, 387.4 and 387.6 of the Export Administration Regulations [15 CFR Part 388, *et seq.* (1979)] (the "Regulations"); and

The Department and Data 100 Ltd. having entered into a Consent Agreement whereby Data 100 Ltd. has agreed to settle this matter by payment of a civil penalty in the amount of $22,000 and by undertaking certain corrective measures to ensure compliance with the Regulations; and

The Deputy Assistant Secretary for Export Administration having approved the terms of the Consent Agreement in complete settlement of the matter;

It is therefore ordered,

First, that a civil penalty in the amount of $22,000 is assessed against Data 100 Ltd.;

Second, that Data 100 Ltd., within 20 days of the service of this Order, pay to the Department, pursuant to Section 11(c)(1) of the Act, the sum of $11,000, which is one-half of the total civil penalty assessed against it;

Third, that payment of the remaining $11,000 by data 100 Ltd. shall be suspended for a probation period of one year from the date of entry of this Order, with payment of the suspended civil penalty to be waived at the end of the probation period provided that there are no further violations of the Regulations by Data 100 Ltd. and that it has undertaken the corrective measures specified in the Consent Agreement;

Fourth, that Data 100 Ltd. shall take the measures specified in the Consent Agreement, incorporated herein by reference, to ensure future compliance;

Fifth, that the proposed Charging Letter and the Consent Agreement be made available to the Public and this Order be published in the Federal Register; and

Sixth, that Data 100 Ltd. submit a report to the Director, Compliance Division, Office of Export Administration, within six months after the date of entry of this Order specifying in detail the steps it has taken to implement the corrective measures specified in the Consent Agreement.

Entered this 19th day of December, 1980

Eric L. Hirschhorn

Deputy Assistant Secretary for Export Administration.

[FR Doc. 81-2211 Filed 1-21-81; 8:45 am]

BILLING CODE 3510-25-M

Northern Telecom Systems Corp.; Order

The Office of Export Administration, International Trade Administration, United States Department of Commerce, having determined to initiate administrative proceedings pursuant to Section 11(c) of the Export Administration Act of 1979 (Pub. L. 96-72, to be codified at 50 U.S.C. app. sec. 2401, *et seq.*) and Part 388 of the Export Administration Regulations (44 FR 59697, October 17, 1979) against Data 100 Corporation ("Data 100") and its successor, Northern Telecom Systems Corporation ("NTSC"), based on allegations that Data 100 and NTSC violated §§ 387.2, 387.4 and 387.6 of the Export Administration Regulations [15 CFR Part 388, *et seq.* (1979)] (the "Regulations"); and

The Department and NTSC having entered into a Consent Agreement whereby NTSC has agreed to settle this matter by payment of a civil penalty in the amount of $61,400 and by undertaking certain corrective measures to ensure compliance with the Regulations; and

The Deputy Assistant Secretary for Export Administration having approved the terms of the Consent Agreement in complete settlement of the matter;

It is therefore ordered,

First, that a civil penalty in the amount of $61,400 is assessed against NTSC;

Second, that NTSC, within 20 days of the service of this Order, pay to the Department, pursuant to Section 11(c)(1) of the Act, the sum of $30,700, which is one-half of the total civil penalty assessed against it;

Third, that payment of the remaining $30,700 by NTSC shall be suspended for a probation period of one year the date of entry of this Order, with payment of the suspended civil penalty to be waived at the end of the probation period provided that there are no further violations of the Regulations by NTSC and NTSC has undertaken the corrective measures specified in the Consent Agreement;

Fourth, that NTSC shall take the measures specified in the Consent Agreement, incorporated herein by reference, to ensure future compliance;

Fifth, that the proposed Charging Letter and the Consent Agreement be made available in the *Federal Register;* and

Sixth, that NTSC submit a report to the Director, Compliance Division, Office of Export Administration, within six months after the date of entry of this Order specifying in detail the steps it has taken to implement the corrective measures specified in the Consent Agreement.

Entered this 19th day of December, 1980.

Eric L. Hirschhorn,

Deputy Assistant Secretary for Export Administration.

[FR Doc. 81-2214 Filed 1-21-81; 8:45 am]

BILLING CODE 3510-25-M

Sycor, Inc.; Order

The Office of Export Administration, United States Department of Commerce, having initiated administrative proceedings pursuant to Section 11(c) of the Export Administration Act of 1979 (Pub. L. 96-72, to be codified at 50 U.S.C. app. sec. 2401, *et seq.*) and Part 388 of the Export Administration Regulations (44 FR 59697, October 17, 1979) against Sycor Inc. ("Sycor"), based on allegations that Sycor violated §§ 387.2, 387.4 and 387.6 of the Export Administration Regulations [15 CFR Part 388, *et seq.* (1979)] (the "Regulations"); and

The Department and Northern Telecom Systems Corporation ("NTSC"), as successor to Sycor, having entered into a Consent Agreement whereby NTSC has agreed to settle this matter by payment of a civil penalty in the amount of $16,000 and by undertaking certain corrective measures to ensure compliance with the Regulations; and

The Hearing Commissioner having approved the terms of the Consent Agreement in complete settlement of the matter;

It is therefore ordered,

First, that a civil penalty in the amount of $16,000 is assessed against NTSC;

Second, that NTSC, within 20 days of the service of this Order, pay to the Department, pursuant to Section 11(c)(1) of the Act, the sum of $8,000, which is one-half of the total civil penalty assessed against it;

Third, that payment of the remaining $8,000 by NTSC shall be suspended for a period of six months from the date of entry of this Order, with payment of the suspended civil penalty to be waived at the end of the probation period provided that there are no further violations of the Regulations by NTSC and that NTSC has undertaken the corrective measures specified in the Consent Agreement;

Fourth, that NTSC shall take the measures specified in the Consent Agreement, incorporated herein by reference, to ensure future compliance;

Fifth, that the Charging Letter and the Consent Agreement be made available to the public and this Order be published in the Federal Register; and

Sixth, that NTSC submit a report to the Director, Compliance Division, Office of Export Administration, within six months after the date of entry of this Order specifying in detail the steps it has taken to implement the corrective measures specified in the Consent Agreement.

Entered this 9th day of December, 1980.

Betram Freedman,

Hearing Commissioner.

[FR Doc. 81-2209 Filed 1-21-81; 8:45 am]

BILLING CODE 3510-25-M

Discrete Semiconductor Device Subcommittee of the Semiconductor Technical Advisory Committee; Closed Meeting

AGENCY: International Trade Administration.

SUMMARY: The Semiconductor Technical Advisory Committee was initially established on January 3, 1973, and rechartered on August 29, 1980 in accordance with the Export Administration Act of 1979 and the Federal Advisory Committee Act. The Subcommittee was approved for continuation on September 19, 1980 pursuant to the charter of the Committee.

The Discrete Semiconductor Device Subcommittee was formed to study transistor, diode, photoconductive, and thyristor semiconductor devices with the goal of making recommendations to the Department of Commerce relating to the appropriate parameters for controlling exports for reasons of national security.

TIME AND PLACE: February 10, 1981, at 9:30 a.m. The meeting will take place at the Main Commerce Building, Conference Room B, 14th Street and Constitution Avenue, NW., Washington, D.C. The Subcommittee will meet only in Executive Session to discuss matters properly classified under Executive Order 12065, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

FOR FURTHER INFORMATION CONTACT: Mrs. Margaret A. Cornejo, Office of the Director of Licensing, Office of Export Administration, Room 1609, U.S. Department of Commerce, Washington, D.C. 20230. Telephone: 202–377–2583.

SUPPLEMENTARY INFORMATION: The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formaly determined on September 16, 1980, pursuant to Section 10(d) of the Federal Advisory Committee Act, that the matters to be discussed in the Executive Session should be exempt from the provisions of the Federal Advisory Committee Act relating to open meetings and public participation therein, because the Executive Session will be concerned with matter listed in 5 U.S.C. 552b(c)(1) and are properly classified under Executive Order 12065. A copy of the Notice of Determination to close meetings or portions thereof is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 5317, U.S. Department of Commerce, Telephone: 202–377–4217.

Dated: January 14, 1981.

Saul Padwo,

Director of Licensing, Office of Export Administration.

[FR Doc. 81-2219 Filed 1-23-81; 8:45 am]

BILLING CODE 3510-25-M

Microcircuit Subcommittee of the Semiconductor Technical Advisory Committee; Closed Meeting

AGENCY: International Trade Administration.

SUMMARY: The Semiconductor Technical Advisory Committee was initially established on January 3, 1973, and rechartered on August 29, 1980 in accordance with the Export Administration Act of 1979 and the Federal Advisory Committee Act. The Subcommittee was approved for continuation on September 19, 1980 pursuant to the charter of the Committee.

The Microcircuit Subcommittee was formed to study microcircuit and acoustic wave devices with the goal of making recommendations to the Department of Commerce relating to the appropriate parameters for controlling exports for reasons of national security.

TIME AND PLACE: February 10, 1981, at 9:30 a.m. The meeting will take place at the Main Commerce Building, Room 5611, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230. The Subcommittee will meet only in Executive Session to discuss matters properly classified under Executive Order 12065, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

FOR FURTHER INFORMATION CONTACT: Mrs. Margaret A. Cornejo, Office of the Director of Licensing, Office of Export Administration, Room 1609, U.S. Department of Commerce, Washington, D.C. 20230. Telephone: 202–377–2583.

SUPPLEMENTARY INFORMATION: The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on September 16, 1980, pursuant to Section 10(d) of the Federal Advisory Committee Act, that the matters to be discussed in the Executive Session should be exempt from the provisions of the Federal Advisory Committee Act relating to open meetings and public participation therein, because the Executive Session will be concerned with matters listed in 5 U.S.C. 552b(c)(1) and are properly classified under Executive Order 12065. A copy of the Notice of Determination to closed meetings or portions thereof is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 5317, U.S. Department of Commerce, Telephone: 202–377–4217.

Dated: January 14, 1981.

Saul Padwo,

Director of Licensing, Office of Export Administration.

[FR Doc. 81-2220 Filed 1-23-81; 8:45 am]

BILLING CODE 3510-25-M

Numerically Controlled Machine Tool Technical Advisory Committee; Partially Closed Meeting

AGENCY: International Trade Administration.

SUMMARY: The Numerically Controlled Machine Tool Technical Advisory Committee was initially established on January 3, 1973, and rechartered on August 29, 1980 in accordance with the Export Administration Act of 1979 and the Federal Advisory Committee Act.

The Committee advises the Office of Export Administration with respect to questions involving (A) technical specifications and policy issues relating to those specifications which are of concern to the Department, (B) worldwide availability of products and systems, including quantity and quality, and actual utilization of production technology, (C) licensing procedures which affect the level of export controls applicable to numerically controlled machine tool or technology, and (D) exports of the aforementioned commodities subject to unilateral and multilateral controls which the United States establishes or in which it participates including proposed revisions of any such controls.

TIME AND PLACE: February 25, 1981, at 10:00 a.m. The meeting will take place at the Main Commerce Building, Room 3708, 14th Street and Constitution Ave., NW., Washington, D.C.

AGENDA:

General Session

(1) Opening remarks by the Chairman.
(2) Presentation of papers or comments by the public.
(3) Continuation of discussion pertaining to robots.
(4) Any new business.

Executive Session

(5) Discussion of matters properly classified under Executive Order 12065, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

PUBLIC PARTICIPATION: The General Session of the meeting will be open to the public and a limited number of seats will be available. To the extent time permits members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting.

SUPPLEMENTARY INFORMATION: The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on September 16, 1980, pursuant to Section 10(d) of the Federal Advisory Committee Act, that the matters to be discussed in the Executive Session should be exempt from the provisions of the Federal Advisory Committee Act relating to open meetings and public participation therein, because the Executive Session will be concerned with matters listed in 5 U.S.C. 552b(c)(1) and are properly classified under Executive Order 12065. A copy of the Notice of Determination to close meetings or portions thereof is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 5317, U.S. Department of Commerce, Telephone: 202-377-4217.

FOR FURTHER INFORMATION OR COPIES OF THE MINUTES CONTACT: Mrs. Margaret A. Cornejo, Office of the Director of Licensing, Office of Export Administration, Room 1609, U.S. Department of Commerce, Washington, D.C. 20230, Telephone: 202-377-2583.

Dated: January 14, 1980.

Saul Padwo,

Director of Licensing, Office of Export Administration.

[FR Doc. 81-2218 Filed 1-21-81; 8:45 am]

BILLING CODE 3510-25-M

Semiconductor Manufacturing Materials and Equipment Subcommittee of the Semiconductor Technical Advisory Committee; Closed Meeting

AGENCY: International Trade Administration.

SUMMARY: The Semiconductor Technical Advisory Committee was initially established on January 3, 1973, and rechartered on August 29, 1980 in accordance with the Export Administration Act of 1979 and the Federal Advisory Committee Act. The Subcommittee was approved for continuation on September 19, 1980 pursuant to the charter of the Committee.

The Semiconductor Manufacturing Materials and Equipment Subcommittee was formed to study the technical and strategic value of semiconductor device production equipment and materials for the purpose of maintaining a continuous review of the export control technical parameters, and the formulation of recommendations to the Commerce Department for parameter updating as appropriate for reasons of national security.

TIME AND PLACE: February 10, 1981, at 9:30 a.m. The meeting will take place at the Main Commerce Building, Room 3708, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230. The Subcommittee will meet only in Executive Session to discuss matters properly classified under Executive Order 12065, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

FOR FURTHER INFORMATION CONTACT: Mrs. Margaret A. Cornejo, Office of the Director of Licensing, Office of Export Administration, Room 1609, U.S. Department of Commerce, Washington, D.C. 20230. Telephone: 202-377-2583.

SUPPLEMENTARY INFORMATION: The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on September 16, 1980, pursuant to Section 10(d) of the Federal Advisory Committee Act, that the matters to be discussed in the Executive Session should be exempt from the provisions of the Federal Advisory Committee Act relating to open meetings and public participation therein, because the Executive Session will be concerned with matters listed in 5 U.S.C. 552b(c)(1) and are properly classified under Executive Order 12065. A copy of the Notice of Determination to close meetings or portions thereof is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 5317, U.S. Department of Commerce, Telephone: 202-377-4217.

Dated: January 14, 1981.

Saul Padwo,

Director of Licensing, Office of Export Administration.

[FR Doc. 81-2219 Filed 1-21-81; 8:45 am]

BILLING CODE 3510-25-M

Semiconductor Technical Advisory Committee; Partially Closed Meeting

AGENCY: International Trade Administration.

SUMMARY: The Semiconductor Technical Advisory Committee was initially established on January 3, 1973, and rechartered on August 29, 1980 in accordance with the Export Administration Act of 1979 and the Federal Advisory Committee Act.

The Committee advises the Office of Export Administration with respect to questions involving (A) technical specifications and policy issues relating to those specifications which are of concern to the Department, (B) worldwide availability of products and systems, including quantity and quality, and actual utilization of production technology, (C) licensing procedures which affect the level of export controls applicable to semiconductors, or technology, and (D) exports of the aforementioned commodities subject to unilateral and multilateral controls which the United States establishes or in which it participates including proposed revisions of any such controls.

TIME AND PLACE: February 11, 1981, at 9:30 a.m. The meeting will take place at the Main Commerce Building, Room 6802, 14th Street and Constitution Ave., NW, Washington, D.C.

AGENDA:

General Session.

(1) Opening remarks by the Chairman.

(2) Presentation of papers or comments by the public.

(3) Committee preparation for the next list review.

(4) Subcommittee reports:

a. Discrete Semiconductor Device,

b. Microcircuits and

c. Semiconductor Manufacturing Materials and Equipment.

Executive Session

(5) Discussion of matters properly classified under Executive Order 12065, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

PUBLIC PARTICIPATION: The General Session of the meeting will be open to the public and a limited number of seats will be available. To the extent time permits members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting.

SUPPLEMENTARY INFORMATION: The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on September 16, 1980, pursuant to Section 10 (d) of the Federal Advisory Committee Act, that the matters to be discussed in the Executive Session should be exempt from the provisions of the Federal Advisory Committee Act relating to open meetings and public participation therein, because the Executive Session will be concerned with matters listed in 5 U.S.C. 552(c)(1) and are properly classified under Executive Order 12065. A copy of the Notice of Determination to close meetings or portions thereof is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 5317, U.S. Department of Commerce, Telephone: 202-377-4217.

FOR FURTHER INFORMATION OR COPIES OF THE MINUTES CONTACT:
Mrs. Margaret A. Cornejo, Office of the Director of Licensing, Office of Export Administration, Room 1609, U.S. Department of Commerce, Washington, D.C. 20230, Telephone: 202-377-2583.

Dated: January 14, 1981.

Seni Padwo

Director of Licensing, Office of Export Administration.

[FR Doc. 81-2217 Filed 1-[illegible]; 8:45 am]

BILLING CODE 3510-25-M

National Radio Astronomy Observatory; Decision on Application for Duty-Free Entry of Scientific Article

The following is a decision on an application for duty-free entry of a scientific article pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Public Law 89-651, 80 Stat. 897) and the regulations issued thereunder as amended (15 CFR 301).

A copy of the record pertaining to this decision is available for public review between 8:30 A.M. and 5:00 P.M. in Room 3109 of the Department of Commerce Building, 14th and Constitution Avenue, NW Washington, D.C. 20230.

Docket Number: 80-00335. Applicant: National Radio Astronomy Observatory, Associated Universities, Inc., 2010 N. Forbes Blvd., Suite 100, Tucson AZ 85705. Article: Repair of Klystron VKT-2125B14. Manufacturer: Varian Canada, Inc., Canada. Intended use of article: See Notice on page 47865 in the Federal Register of July 17, 1980.

Comments: No comments have been received with respect to this application.

Decision: Application approved. No instruments or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, is being manufactured in the United States.

Reasons: The foreign article operates at a frequency range of 132-140 gigahertz. The National Bureau of Standards advises in its memorandum dated November 7, 1980 that (1) the capability of the foreign article described above is pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign article for the applicant's intended use.

The Department of Commmerce knows of no other instrument or apparatus of equivalent scientific value to the foreign articles, for such purposes as this article is intended to be used, which is being manufactured in the United States.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials.)

Frank W. Creel,

Acting Director, Statutory Import Programs Staff.

[FR Doc. 81-2240 Filed 1-21-81; 8:45 am]

BILLING CODE 3510-25-M

Papanicolaou Cancer Research Institute; Decision on Application for Duty-Free Entry of Scientific Article

The following is a decision on an application for duty-free entry of a scientific article pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Public Law 89-651, 80 Stat. 897) and the regulations issued thereunder as amended (15 CFR 301).

A copy of the record pertaining to this decision is available for public review between 8:30 A.M. and 5:00 P.M. in Room 3109 of the Department of Commerce Building, 14th and Constitution Avenue, NW, Washington, D.C. 20230.

Docket Number: 80-00146. Applicant: Papanicolaou Cancer Research Institute, 1155 N.W. 14th St., (POB 016189), Miami, Florida 33101. Article: NMR Spectrometer, Model FX-90Q and Accessories. Manufacturer: JEOL Ltd., Japan. Intended use of Article: See Notice on page 25442 in the Federal Register of April 15, 1980.

Comments: No comments have been received with respect to this application.

Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, was being manufactured in the United States at the time the foreign article was ordered (September 28, 1979).

Reasons: The foreign article provides the capability for measuring T_1-rho, the spin-lattice relaxation time in the rotating frame. The most closely comparable domestic instrument is the Model XL-200 manufactured by Varian Associates. The XL-200 provides the capability for T_1-rho measurements. However at the time the foreign article was ordered, the Model XL-200 did not provide the capability for making T_1-rho measurements. The National Bureau of Standards advises in its memorandum dated November 12, 1980 that (1) the capability of the foreign article described above is pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign article for the applicant's intended use at the time the foreign article was ordered.

The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, which was being manufactured in the United States at the time the foreign article was ordered.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials.)

Frank W. Creel,

Acting Director, Statutory Import Programs Staff.

[FR Doc. 81-2242 Filed 1-21-81; 8:45 am]

BILLING CODE 3510-25-M

University of California; Decision on Application for Duty-Free Entry of Scientific Article

The following is a decision on an application for duty-free entry of a scientific article pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Public Law 89-651, 80 Stat. 897) and the regulations issued thereunder as amended (15 CFR 301).

A copy of the record pertaining to this decision is available for public review between 8:30 A.M. and 5:00 P.M. in Room 3109 of the Department of Commerce Building, 14th and Constitution Avenue, NW., Washington, D.C. 20230.

Docket Number: 80-00330. Applicant: University of California, Lawrence Berkeley Laboratory, One Cyclotron Road, Berkeley, CA 97420.

Article: Electron Beam Ioniser.

Manufacturer: Ansac Inc., New Zealand. Intended use of Article: See Notice on page 45936 in the Federal Register of July 8, 1980.

Comments: No comments have been received with respect to this application.

Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, is being manufactured in the United States.

Reasons: The foreign article provides a guaranteed 40 microampere beam current. The National Bureau of Standards advises in its memorandum dated October 9, 1980 that (1) the capability of the foreign article described above is pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign article for the applicant's intended use.

The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, which is being manufactured in the United States.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials.)

Frank W. Creel,

Acting Director, Statutory Import Programs Staff.

[FR Doc. 81-2239 Filed 1-21-81; 8:45 am]

BILLING CODE 3510-25-M

University of California; Decision on Application for Duty-Free Entry of Scientific Article

The following is a decision on an application for duty-free entry of a scientific article pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importantion Act of 1966 (Public Law 89–651, 80 Stat. 897) and the regulations issued thereunder as amended (15 CFR 301).

A copy of the record pertaining to this decision is available for public review between 8:30 A.M. and 5:00 P.M. in Room 3109 of the Department of Commerce Building, 14th and Constitution Avenue, NW, Washington, D.C. 20230.

Docket Number: 80–00351. Applicant: University of California, Lawrence Berkeley Laboratory, One Cyclotron Road, Berkeley, CA 94720. Article: Cryo Microtome. Manufacturer: LKB Produkter AB, Sweden. Intended use of Article: See Notice on page 56122 in the Federal Register of August 22, 1980.

Comments: No comments have been received with respect to this application.

Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, is being manufactured in the United States.

Reasons: The foreign article cuts 20–100 micron thick sections of a large area (160×150 millimeters) without decalcification. The Department of Health and Human Services advises in its memorandum dated November 12, 1980 that (1) the capability of the foreign article described above is pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign article for the applicant's intended use.

The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, which is being manufactured in the United States.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials.)

Frank W. Creel,

Acting Director, Statutory Import Programs Staff.

[FR Doc. 81–2241 Filed 1–21–81; 8:45 am]

BILLING CODE 3510–25–M

University of Illinois; Decision on Application for Duty-Free Entry of Scientific Article

The following is a decision on an application for duty-free entry of a scientific article pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Public Law 89–651, 80 Stat. 897) and the regulations issued thereunder as amended (15 CFR 301).

A copy of the record pertaining to this decision is available for public review between 8:30 A.M. and 5:00 P.M. in Room 3109 of the Department of Commerce Building, 14th and Constitution Avenue, NW., Washington, D.C. 20230.

Docket Number: 80–00344. Applicant: University of Illinois, Urbana-Champaign Campus, Purchasing Division, 223 Administration Building, Urbana, Illinois 61801. Article: Superconducting High-Resolution Magnet System (280 MHz). Manufacturer: Oxford Instruments, United Kingdom. Intended use of article: See Notice on page 56121 in the Federal Register of August 22, 1980.

Comments: No comments have been received with respect to this application.

Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, is being manufactured in the United States.

Reasons: The foreign article guarantees a field homogeneity of 10^{-6} over a 20 × 20 millimeter cylindrical sample using superconducting shims. The Department of Health and Human Services advises in its memorandum dated November 12, 1980 that (1) the capability of the foreign article described above is pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign article for the applicant's intended use.

The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, which is being manufactured in the United States.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials.)

Frank W. Creel,

Acting Director, Statutory Import Programs Staff.

[FR Doc. 81–2239 Filed 1–21–81; 8:45 am]

BILLING CODE 3510–25–M

University of Illinois/Urbana-Champaign; Decision on Application for Duty-Free Entry of Scientific Article

The following is a decision on an application for duty-free entry of a scientific article pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Public Law 89–651, 80 Stat. 897) and the regulations issued thereunder as amended (15 CFR 301).

A copy of the record pertaining to this decision is available for public review between 8:30 A.M. and 5:00 P.M. in Room 3109 of the Department of Commerce Building, 14th and Constitution Avenue, NW, Washington, D.C. 20230.

Docket Number: 80–00290. Applicant: University of Illinois/Urbana-Champaign, Purchasing Division, 223 Administration Building, Urbana, Illinois 61801. Article: Electron Energy Analyzer. Manufacturer: Leybold Heraeus, West Germany. Intended use of article: See Notice on page 43000 in the Federal Register of June 23, 1980.

Comments: No comments have been received with respect to this application.

Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, is being manufactured in the United States.

Reasons: The foreign article provides a surface sensitivity equal to or better than 0.90 electron volts Full Width Half Maximum at 40,000 counts per second. The National Bureau of Standards advises in its memorandum dated October 24, 1980 that (1) the capability of the foreign article described above is pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign article for the applicant's intended use.

The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, which is being manufactured in the United States.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials.)

Frank W. Creel,

Acting Director, Statutory Import Programs Staff.

[FR Doc. 81–2240 Filed 1–21–81; 8:45 am]

BILLING CODE 3510–25–M

Yale University; Decision on Application for Duty-Free Entry of Scientific Article

The following is a decision on an application for duty-free entry of a scientific article pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Public Law 89–651, 80 Stat. 897) and the regulations issued thereunder as amended (15 CFR 301).

A copy of the record pertaining to this decision is available for public review between 8:30 A.M. and 5:00 P.M. in Room 3109 of the Department of Commerce Building, 14th and Constitution Avenue, NW, Washington, D.C. 20230.

Docket Number: 80–00338. APPLICANT: Yale University, 10½Hillhouse Avenue, New Haven, CT 06520. Article: Laser, TEA 103–2

and Accessories. Manufacturer: Lumonics Research Ltd., Canada. Intended use of article: See Notice on page 47894 in the Federal Register of July 17, 1980.

Comments: No comments have been received with respect to this application.

Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, is being manufactured in the United States.

Reasons: The foreign article provides 50 milliwatts power per pulse. The National Bureau of Standards advises in its memorandum dated October 24, 1980 that (1) the capability of the foreign article described above is pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign article for the applicant's intended use.

The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, which is being manufactured in the United States.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials.)

Frank W. Creel,

Acting Director, Statutory Import Programs Staff.

[FR Doc. 81-2342 Filed 1-21-81; 8:45 am]

BILLING CODE 3510-25-M

Leather Wearing Apparel From Colombia; Preliminary Affirmative Countervailing Duty Determination; Correction

AGENCY: International Trade Administration, U.S. Department of Commerce.

ACTION: Correction.

Several lines were inadvertently omitted from the notice published in the Federal Register on January 14, 1981, entitled "Leather Wearing Apparel from Colombia; Preliminary Affirmative Countervailing Duty Determination" (46 FR 3255–56). The first paragraph under the heading "Administrative Procedures" (page 3256) should read as follows:

Administrative Procedures

In accordance with Section 703(d) of the Act (19 U.S.C. 1671b(d)) Customs officers will be directed to suspend liquidation of all entries, or withdrawals from warehouse, for consumption of the subject merchandise on or after the date of publication of this notice in the Federal Register. In consideration of the fact that the Colombian exporter, Confecciones Amazonas Orinoco, has voluntarily renounced the receipt of the CAT payments and has entered into negotiations with the Department of Commerce for a suspension agreement, we have preliminarily determined not to order the posting of a cash deposit or bond on entries of the subject merchandise by this exporter. The renunciation is in the full amount of the subsidy on exports to the United States on or after January 1, 1981, of all merchandise currently classified under TSUS 791.76.

B. Waring Partridge,

Acting Deputy Assistant Secretary for Import Administration.

January 15, 1981.

[FR Doc. 81-2339 1-21-81; 8:45 am]

BILLING CODE 3510-25-M

National Bureau of Standards

Federal Standard COBOL (FIPS Pub. 21-1); Proposed Interpretation

Correction

In FR Doc. 80-40344 appearing at page 85806 in the issue of Tuesday, December 30, 1980, of page 85807, second column, in line fifteen, the word "reinitiate" should read "reinitialize".

BILLING CODE 1505-01-M

National Oceanic and Atmospheric Administration

Western Pacific Fishery Management Council; Public Meetings With Partially Closed Sessions

AGENCY: National Marine Fisheries Service, NOAA.

SUMMARY: Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, as amended in 1976 by Public Law 94–409, notice is hereby given of partially closed sessions of public meetings of the Western Pacific Fishery Management Council, established by Section 302 of the Fishery Conservation and Management Act of 1976 (Public Law 94–265). The closed sessions of the meetings are being held to discuss personnel matters regarding the selection of a Fiscal Officer; the selection of individuals to fill vacancies on advisory subpanels, the Scientific and Statistical Committee, and planning teams which are composed of members or employees of the Council, Scientific and Statistical Committee or Advisory Panel. The sessions of the meetings which will be open to the public will address approval of the final fishery management plan for the billfish fisheries; approve a work plan for the bottomfish fisheries, and review progress of programmatic activities.

DATES: The closed sessions of the meetings will be held on February 3, 1981—1 p.m. to 2 p.m., and on February 4, 1981—10 a.m. to 11:30 a.m. The open sessions of the meetings will be held on February 3, 1981—2 p.m. to 5 p.m.; February 4, 1981—1 p.m. to 5 p.m., and on February 5, 1981—9 a.m. to 2 p.m.

ADDRESS: On February 3, 1981, the meetings will take place at the Saipan Continental Hotel, Chalan Kanoa Village, Saipan, and on February 4–5, 1981, the meetings will take place at the Guam Daichi Hotel, Tumon Bay, Agana, Guam.

FOR FURTHER INFORMATION CONTACT: Western Pacific Fishery Management Council, Room 1608, 1164 Bishop Street, Honolulu, Hawaii 96813, Telephone: (808) 523–1368.

SUPPLEMENTARY INFORMATION: The Assistant Secretary for Administration of the Department of Commerce, with the concurrence of its General Counsel, formally determined on , pursuant to Section 10(d) of the Federal Advisory Committee Act, that the agenda items covered in the closed sessions may be exempt from the provisions of the Act relating to open meetings and public participation therein because these items will be concerned with matters that are within the purview of 5 U.S.C. 552b(c)(6). These portions of the closed meetings are likely to disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy. (A copy of the determination is available for public inspection and copying in the Public Reading Room, Central Reference and Records Inspection Facility, Room 5317, Department of Commerce.) All other portions of the meetings are open to the public.

Dated: January 19, 1981.

Robert K. Crowell,

Deputy Executive Director, National Marine Fisheries Service.

[FR Doc. 81-2338 Filed 1-21-81; 8:45 am]

BILLING CODE 3510-22-M

COMMODITY FUTURES TRADING COMMISSION

Proposed Futures Contracts; Proposed Rules of Major Economic Significance; Terms and Conditions of the Futures Contract Based on the Spot Values of Certain Equity Portfolios of the Chicago Board of Trade

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of proposed rules of contract markets.

SUMMARY: The
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SUMMARY: The Chicago Board of Trade ("CBT") has applied for designation as a contract market in eleven futures contracts, each of which is based on the spot values of certain equity portfolios. As proposed, each of ten of the portfolios is comprised of a specified number of shares of stock in companies designated by the CBT as representative of a particular industry (*e.g.*, air transport, banking, chemical). The eleventh equity portfolio is a composite of those ten industry portfolios. All of the proposed contracts are identical in terms and conditions, except for the stock composition of each particular portfolio. The Commodity Futures Trading Commission ("Commission") has determined that the proposed terms and conditions of the proposed futures contracts are of major economic significance and that, accordingly, publication of the proposed terms and conditions is in the public interest, will assist the Commission in considering the views of interested persons, and is consistent with the purposes of the Commodity Exchange Act.

DATE: Comments must be received on or before March 23, 1981.

ADDRESS: Interested persons should submit their views and comments to Jane K. Stuckey, Secretary, Commodity Futures Trading Commission, 2033 K Street, N.W., Washington, D.C. 20581. Reference should be made to CBT Portfolio Futures Contracts.

FOR FURTHER INFORMATION CONTACT: George L. Garrow, Jr., Staff Attorney, Division of Trading and Markets, Commodity Futures Trading Commission, 2033 K Street, N.W., Washington, D.C. 20581; Telephone: (202) 254–8955.

SUPPLEMENTARY INFORMATION: The terms and conditions of CBT's proposed portfolio futures contracts are as follows:

Portfolio Futures Contract

XX01.00 *Authority*—Index and Equity Related Futures Contracts—Trading in index futures contracts and equity related futures contracts may be conducted under such terms and conditions as the Board may prescribe by regulation. Trading in such futures contracts shall be supervised as directed by the Board.

XX02.01 *Application of Regulation*—Futures transactions in ———* Portfolios shall be subject to the general rules of the Association as far as applicable and shall also be subject to the regulations contained in this chapter, which are exclusively applicable to trading in ———* Portfolios.

XX04.01 *Unit of Trading*—The unit of trading shall be the quantity of common stock specified in the Standards (Regulation XX36.01) as contract grade. The unit of trading is defined as a Portfolio.

XX05.01 *Months Traded In*—Trading in Portfolios shall be conducted in any month as determined by the Financial Instruments Committee or the Board.

XX06.01 *Price Basis*—The minimum price movement shall be twelve dollars and fifty cents ($12.50) per contract grade Portfolio.

XX07.01 *Hours of Trading*—The hours of trading for future delivery in Portfolios shall be determined by the Board.

XX08.01 *Trading Limits*—The Board shall determine the limits on price movement for a single trading day in futures contracts of Portfolios.

XX09.01 *Last Day of Trading*—The last day of trading in Portfolio futures contracts deliverable in the current delivery month shall be the fourth business day prior to delivery day.

XX09.02 *Liquidation During the Delivery Month*—After trading in contracts for future delivery in the current delivery month has ceased, in accordance with Regulation XX09.01 of this chapter, outstanding contracts for such delivery shall be liquidated by the delivery, on delivery day, of a Certified Promissory Note, as prescribed in Regulation XX42.01.

Each Clearing Member shall transmit to the Clearing Corporation, by 8 p.m. on the third business day prior to delivery day, the position of each and every customer and the house position that is open in addition to other data normally submitted.

XX10.01 *Margin requirements*—Margin requirements shall be as determined by the Board by regulation.

XX36.01 *Standards*

A. *Contract Grade Portfolio.*

The contract grade for futures trading made under these regulations shall be the Spot Market Value (Regulation XX48.01) of a group of common stock. The group of common stock shall be defined as the ———* Portfolio (the ———* Portfolio shall be referred to in this chapter as the "Portfolio"). The Board shall determine the firms and share quantities that comprise the contract grade portfolio.

Ownership of a Portfolio futures contract shall not extend any rights of ownership, including but not limited to any right to cash distributions or dividends, in the common stock of firms that comprise the Portfolio.

B. *Share Adjustment Mechanism.*

After futures trading has commenced, the contract grade Portfolio's firm composition and share quantities are adjusted only for stock splits, stock dividends, and delistings from the New York Stock Exchange involving the firms included in the Portfolio. Specifically, share adjustments will not be made to the Portfolio for cash dividends or cash distributions.

Fractional shares are never included in the Portfolio. Fractional shares of two or more firms are never combined into whole shares. Fractional shares that result from share quantity adjustments are rounded to a complete share. A fractional share less than one-half is rounded down to the last complete share. A fractional share equal to or greater than one-half is rounded up to an additional complete share.

Adjustments of the Portfolio shall be made in the following manner.

(1) *Stock Split and Reverse Stock Split*—When a firm included in the Portfolio declares a stock split or reverse stock split (hereafter referred together as a "split"), the firm's share quantity in the Portfolio shall be adjusted according to the following procedure:

(i) Calculate the "Split Factor". The Split Factor is the number of shares of common stock that a shareholder is entitled to receive on the *ex-dividend* date for a single share of outstanding stock held prior to the split.

(ii) Multiply the firm's share quantity in the Portfolio prior to the *ex-dividend* date associated with the split by the "Split Factor". The resulting product is the firm's Portfolio share quantity after the split.

The firm's share quantity in the Portfolio shall be adjusted for a split on the ex-dividend date associated with the split. A split does not affect the share quantities of firms in the Portfolio other than the firm declaring the split.

(2) *Stock Dividend*—When a firm included in the Portfolio declares a stock dividend, the firm's share quantity in the Portfolio shall be adjusted according to the following procedure:

(i) Calculate the "Stock Dividend Factor" using the following formula:

Stock Dividend Factor =1+R/R, where

R=The number of the firm's shares a stockholder must own to receive one whole share of stock dividend.

(ii) Multiply the firm's share quantity in the Portfolio prior to the stock dividend's *ex-dividend* date by the "Stock Dividend Factor". The resulting product is the firm's Portfolio share quantity after the stock dividend.

The firm's share quantity in the Portfolio shall be adjusted for a stock dividend on the stock dividend's ex-dividend date. The stock dividend does not affect the share quantities of firms in the Portfolio other than the firm declaring the stock dividend.

(3) *Delisting from the New York Stock Exchange*—When a a firm included in the Portfolio is delisted from the New York Stock Exchange, the firms and share quantities which comprise the Portfolio are adjusted according to the following procedure:

(i) Obtain the Spot Market Value of the shares (Regulation XX48.01) included in the Portfolio on the third business day prior to the effective date of the firm's delisting.

(ii) Using the Spot Market Values obtained in (i), calculate the "Delisting Adjustment Factor" using the following formula:

Delisting Adjustment Factor=P/P−F, where

P=Spot Market Value of the Portfolio, and

F=Spot Market Value of the delisted firm.

(iii) Multiply the Delisting Adjustment Factor by the pre-delisting share quantities of the firms in the Portfolio not being delisted. The resulting products are the share quantities for the firms remaining in the Portfolio after the delisted firm is eliminated from the Portfolio.

The adjustment to the Portfolio resulting from a delisting occurs on the effective date of the firm's delisting.

The shares of the delisted firm are eliminated from the Portfolio on the day the

Portfolio's share quantities are adjusted for the delisting.

The shares of the delisted firm are eliminated from the Portfolio on the day the portfolio's share quantities are adjusted for the delisting.

Firms not originally included in the Portfolio are never added to the Portfolio.

XX42.01 *Delivery on Futures Contracts*—Delivery against the Portfolio futures contract shall be by delivery of a Certified Promissory Note (Regulation XX43.01).

The value of the Certified Promissory Note will equal the Portfolio's Spot Market Value (Regulation XX48.01) on the fourth business day prior to delivery day.

All open positions are reported to the Clearing Corporation by 8:00 p.m. on the third business day prior to delivery day.

The Clearing Corporation will, by 4:00 p.m. the second business day prior to delivery day, inform the Clearing Members with open positions of their matchings.

The Short Clearing Member will invoice the Long Clearing Member for delivery no later than 2:00 p.m. on the first business day prior to delivery day. The invoice price for delivery of the Certified Promissory Note shall equal the settlement price on the last day of trading of the current delivery month.

The Short Clearing Member will deposit by 10:00 a.m. on delivery day with the Clearing Corporation the funds required for the Clearing Corporation's co-signature on the Certified Promissory Note.

Delivery of the Certified Promissory Note shall be made no later than 12:00 noon on delivery day.

XX43.01 *Certified Promissory Note*—A promissory note is certified when the note is co-signed by the Clearing Corporation, guaranteeing payment on the note.

As a condition for receiving the Clearing Corporation's co-signature, the Short Clearing Member is required to deposit with the Clearing Corporation one-hundred percent (100%) of the value of the Certified Promissory Note to be delivered.

The Short Clearing Member can regain the funds deposited with the Clearing Corporation as a condition for co-signature when either:

(a) The Short Clearing Member presents to the Clearing Corporation a Certified Promissory Note cancelled by the Long Clearing Member indicating payment on the note having been made, or

(b) The Long Clearing Member has not presented to the Short Clearing Member the Certified Promissory Note for payment within ten business days of delivery day (inclusive).

The Short Clearing Member is required to pay immediately the value of the Certified promissory Note when the note is presented by the Long Clearing Member.

Only the Long Clearing Member who received delivery of the Certified Promissory Note may collect payment on the note. Certified Promissory Notes are not transferable.

A Certified Promissory Note delivered into the contract is void on and after the eleventh business day subsequent to delivery day (inclusive). Collection on the note must be made prior to the eleventh business day after delivery day to receive payment.

XX46.01 *Date of Delivery*—Delivery day shall be the last business day of the delivery month unless the last business day is a Friday, in which case delivery day shall be the first business day prior to that Friday.

XX47.01 *Payment*—Payment will be by certified or cashier's check drawn on a Bank in the vicinity of the Board of Trade. The certified or cashier's check will be transferred to the Short Clearing Member from the Long Clearing Member by 12:00 noon on delivery day.

XX48.01 *Spot Market Value*—The Spot Market Value of a share included in the Portfolio is its average price per share traded for a day's trading on the New York Stock Exchange as reported by a source designated by the Board.

The Spot Market Value of a share in the Portfolio on a specified day is calculated from the share's trading on that day. If, on the specified day, the share did not trade on the New York Stock Exchange, the Spot Market Value for the share is calculated from trading on the first day prior to the specified day in which the share did trade on the New York Stock Exchange.

The Spot Market Value of a firm in the portfolio is equal to the Spot Market Value of the firm's share multiplied by the number of the firm's shares included in the Portfolio.

The Spot Market Value of the Portfolio is the sum of the Spot Market Values of the firms in the Portfolio.

3.2.1a *Contract Titles*

The regulations for the industry portfolio contracts in the Portfolio Futures Complex are exactly the same for all the contracts. Only the contract titles are explicitly unique to each contract.

The asterisks included in the contract title and regulations XX02.01 and XX36.01 mark the locations where the contract titles are to be inserted. Below, the specified word(s) which replaces the asterisk in each contract is listed.

Portfolio Future Contract Market	Asterisk Replacement
Air Transport Portfolio	Air Transport.
Automotive Portfolio	Automotive.
Banking Portfolio	Banking.
Chemical Portfolio	Chemical.
Drug Portfolio	Drug.
Information Processing Portfolio	Information Processing.
Petroleum Portfolio	Petroleum.
Photo-Optic Portfolio	Photo-Optic.
Retail Portfolio	Retail.
Telecommunication Portfolio	Telecommunication.

3.2.1b *Contract Grade Portfolios: The Industry Portfolios*

As specified in the *Standards* (Regulation XX36.01–A), the Board of Directors has selected the following firms and share quantities to comprise the contract grade portfolio for the corresponding industry portfolio contracts. The shares specified are common stock.

Air Transport Portfolio

Delta Airlines, Inc., Northwest Airlines, Inc., Tiger International, Trans World Corp., UAL Inc.—300 shares each.

Automotive Portfolio

American Motors Corp., Chrysler Corp., Ford Motor Co., General Motors Corp., International Harvester Co.—300 shares each.

Banking Portfolio

BankAmerica Corp., Chase Manhattan Corp., Citicorp, Continental Illinois Corp., J. P. Morgan & Co.—300 shares each.

Chemical Portfolio

Allied Chemical Corp., American Cyanamid Co., Dow Chemical, E. I. DuPont De Nemours, Union Carbide Corp.—300 shares each.

Drug Portfolio

Eli Lilly & Co., Merck & Co., Pfizer Inc., Smithkline Corp., Squibb Corp.—300 shares each.

Information Processing Portfolio

Burroughs Corp., Control Data Corp., International Business Machines Corp., NCR Corp., Xerox Corp.—300 shares each.

Petroleum Portfolio

Atlantic Richfield Co., Exxon Corp., Gulf Oil Corp., Mobil Corp. Co., Standard Oil Co. (Indiana)—300 shares each.

Photo-Optic Portfolio

Bausch & Lomb Inc., Bell & Howell Co., Eastman Kodak Co., Minnesota Mining & Mfg. Co., Polaroid Corp.—300 shares each.

Retail Portfolio

Federated Depart. Stores, Inc., J. C. Penney Co., May Department Stores Co., R. H. Macy & Co., Sear, Roebuck & Co.—300 shares each.

Telecommunication Portfolio

American Telephone & Telegraph, Continental Telephone Corp., General Telephone & Electronics, United Telecommunications, Western Union Corp.—300 shares each.

Industry Composite Portfolio Futures Contract

XX01.00 *Authority*—Index and Equity Related Futures Contracts-Trading in index futures contracts and equity related futures contracts may be conducted under such terms and conditions as the Board may prescribe by regulation. Trading in such futures contracts shall be supervised as directed by the Board.

XX02.01 *Application of Regulation*—Futures transactions in Industry Composite Portfolios shall be subject to the general rules of the Association as far as applicable and shall also be subject to the regulations contained in this chapter, which are exclusively applicable to trading in Industry Composite Portfolios.

XX04.01 *Unit of Trading*—The unit of trading shall be the quantity of common stock specified in the Standards (Regulation XX36.01) as contract grade. The unit of trading is defined as a Portfolio.

XX06.01 *Months Traded In*—Trading in Portfolios shall be conducted in any month as determined by the Financial Instruments Committee or the Board.

XX06.01 *Price Basis*—The minimum price movement shall be twelve dollars and fifty cents ($12.50) per contract grade Portfolio.

XX07.01 *Hours of Trading*—The hours of trading for future delivery in Portfolios shall be determined by the Board.

XX08.01 *Trading Limits*—The Board shall determine the limits on price movement for a single trading day in futures contracts of Portfolios.

XX09.01 *Last Day of Trading*—The last day of trading in Portfolio futures contracts deliverable in the current delivery month shall be the fourth business day prior to delivery day.

XX09.02 *Liquidation During the Delivery Month*—After trading in contracts for future delivery in the current delivery month has ceased, in accordance with Regulation XX09.01 of this chapter, outstanding contracts for such delivery shall be liquidated by the delivery, on delivery day, of a Certified Promissory Note as prescribed in Regulation XX42.01.

Each Clearing Member shall transmit to the Clearing Corporation, by 8:00 p.m. on the third business day prior to delivery day, the position of each and every customer and the house position that is open in addition to other data normally submitted.

XX10.01 *Margin Requirements*—Margin requirements shall be as determined by the Board by regulation.

XX36.01 *Standards*

A. *Contract Grade Portfolio.*

The contract grade for futures trading made under these regulations shall be the Spot Market Value (Regulation XX48.01) of a group of common stock. The group of common stock shall be defined as the Industry Composite Portfolio (the Industry Composite Portfolio shall be referred to in this chapter as the "Portfolio"). The Board shall determine the firms and share quantities that comprise the contract grade Portfolio.

Ownership of a Portfolio futures contract shall not extend any rights of ownership, including but not limited to any right to cash distributions or cash dividends in the common stock of firms that comprise the Portfolio.

B. *Share Adjustment Mechanism.*

After futures trading has commenced, the contract grade Portfolio's firm composition and share quantities are adjusted only for stock splits, stock dividends, and delistings from the New York Stock Exchange involving the firms included in the Portfolio. Specifically, share adjustments will not be made to the Portfolio for cash dividends or cash distributions.

Adjustments to a firm's share quantities that result in fractional shares shall be rounded to the tenth share. An incremental share less than five one-hundredths (0.05) of a share shall be rounded down to the last complete tenth share. An incremental share equal to or greater than five one-hundredths of a share is rounded up to an additional tenth share.

The equities which comprise the Portfolio shall be segmented into groups. When a firm in the Portfolio is delisted from the New York Stock Exchange, only the share quantities of the firms included in the delisted firm's equity group are adjusted in response to the delisting. The Board shall determine the equity groups within the Portfolio.

Adjustments of the Portfolio shall be made in the following manner.

(1) *Stock Split and Reverse Stock Split*—When a firm included in the Portfolio declares a stock split or reverse stock split (hereafter referred together as a "split"), the firm's share quantity in the Portfolio shall be adjusted according to the following procedure:

(i) Calculate the "Split Factor". The Split Factor is the number of shares of common stock that a shareholder is entitled to receive on the *ex-dividend* date for a single share of outstanding stock held prior to the split.

(ii) Multiply the firm's share quantity in the Portfolio prior to the *ex-dividend* date associated with the split by the "Split Factor". The resulting product is the firm's Portfolio share quantity after the split.

The firm's share quantity in the Portfolio shall be adjusted for a split on the *ex-dividend* date associated with the split. A split does not affect the share quantities of firms in the Portfolio other than the firm declaring the split.

(2) *Stock Dividend*—When a firm included in the Portfolio declares a stock dividend, the firm's share quantity in the Portfolio shall be adjusted according to the following procedure:

(i) Calculate the "Stock Dividend Factor" using the following formula:

Stock Dividend Factor = 1 + R/R,

where

R = The number of the firm's shares a stockholder must own to receive one whole share of stock dividend.

(ii) Multiply the firm's share quantity in the Portfolio prior to the stock dividend's *ex-dividend* date by the "Stock Dividend Factor". The resulting product is the firm's Portfolio share quantity after the stock dividend.

The firm's share quantity in the Portfolio shall be adjusted for a stock dividend on the stock dividend's *ex-dividend* date. The stock dividend does not affect the share quantities of firms in the Portfolio other than the firm declaring the stock dividend.

(3) *Delisting from the New York Stock Exchange*—When a firm included in the Portfolio is delisted from the New York Stock Exchange, the firms and share quantities which comprise the delisted firm's equity group are adjusted according to the following procedure:

(i) Obtain the Spot Market Value of the shares (Regulation XX48.01) included in the equity group on the third business day prior to the effective date of the firm's delisting.

(ii) Using the Spot Market Values obtained in (i), calculate the "Delisting Adjustment Factor" using the following formula:

Delisting Adjustment Factor = P/P − F,

where

P = Spot Market Value of the equity group, and

F = Spot Market Value of the delisted firm.

(iii) Multiply the Delisting Adjustment Factor by the pre-delisting share quantities of the firms in the equity group not being delisted. The resulting products are the share quantities for the firms remaining in the equity group after the delisted firm is eliminated from the Portfolio.

The adjustment to the Portfolio resulting from a delisting occurs on the effective date of the firm's delisting.

The shares of the delisted firm are eliminated from the Portfolio on the day the Portfolio's share quantities are adjusted for the delisting.

Firms not originally included in the Portfolio are never added to the Portfolio.

XX42.01 *Delivery on Futures Contracts*—Delivery against the Portfolio futures contract shall be by delivery of a Certified Promissory Note (Regulation XX49.01).

The value of the Certified Promissory Note will equal the Portfolio's Spot Market Value (Regulation XX48.01) on the fourth business day prior to delivery day.

All open positions are reported to the Clearing Corporation by 8:00 p.m. on the third business day prior to delivery day.

The Clearing Corporation will, by 4:00 p.m. the second business day prior to delivery day, inform the Clearing Members with open positions of their matchings.

The Short Clearing Member will invoice the Long Clearing Member for delivery no later than 2:00 p.m. on the first business day prior to delivery day. The invoice price for delivery of the Certified Promissory Note shall equal the closing price on the last day of trading of the current delivery month.

The Short Clearing Member will deposit by 10:00 a.m. on delivery day with the Clearing Corporation the funds required for the Clearing Corporation's co-signature on the Certified Promissory Note.

Delivery of the Certified Promissory Note shall be made no later than 12:00 noon on delivery day.

XX43.01 *Certified Promissory Note*—A promissory note is certified when the note is co-signed by the Clearing Corporation, guaranteeing payment on the note.

As a condition for receiving the Clearing Corporation's co-signature, the Short Clearing Member is required to deposit with the Clearing Corporation one-hundred percent (100%) of the value of the Certified Promissory Note to be delivered.

The Short Clearing Member can regain the funds deposited with the Clearing Corporation as a condition for co-signature when either:

a) The Short Clearing Member presents to the Clearing Corporation a Certified Promissory Note cancelled by the Long Clearing Member indicating payment on the note having been made, or

b) The Long Clearing Member has not presented to the Short Clearing Member the Certified Promissory Note for payment within ten business days of delivery day (inclusive).

The Short Clearing Member is required to pay immediately the value of the Certified Promissory Note when the note is presented by the Long Clearing Member.

Only the Long Clearing Member who received delivery of the Certified Promissory Note may collect payment on the note. Certified Promissory Notes are not transferable.

A Certified Promissory Note delivered into the contract is void on and after the eleventh business day subsequent to delivery day (inclusive). Collection on the note must be made prior to the eleventh business day after delivery day to receive payment.

XX46.01 *Date of Delivery*—Delivery day shall be the last business day of the delivery month unless the last business day is a Friday, in which case delivery day shall be the first business day prior to that Friday.

XX47.01 *Payment*—Payment will be by certified or cashier's check drawn on a Bank in the vicinity of the Board of Trade. The certified or cashier's check will be transferred to the Short Clearing Member from the Long Clearing Member by 12:00 noon on delivery day.

XX48.01 *Spot Market Value*—The Spot Market Value of a share included in the Portfolio is its average price per share traded for a day's trading on the New York Stock Exchange as reported by a source designated by the Board.

The Spot Market Value of a share in the Portfolio on a specified day is calculated from the share's trading on that day. If, on the specified day, the share did not trade on the New York Stock Exchange, the Spot Market Value of the share is calculated from trading on the first day prior to the specified day in which the share did trade on the New York Stock Exchange.

The Spot Market Value of a firm in the Portfolio is equal to the Spot Market Value of the firms' share multiplied by the number of the firm's shares included in the Portfolio.

The Spot Market Value of the Portfolio is the sum of the Spot Market Values of the firms in the Portfolio.

3.2.2a *Contract Grade Portfolio: The Industry Composite Portfolio*

The Board of Directors has selected as contract grade for the Industry Composite Portfolio all fifty firms that comprise the industry protfolios listed in Section 3.2.1c. Each firm in the Industry Composite Portfolio shall be initially represented by thirty (30) shares of common stock.

The Board has also determined that the equity groups which must be specified within the contract grade portfolio (Regulation XX36.01–B) correspond exactly to the contract grade protfolios of the industry portfolio contracts.

* * * * *

The Commission also will make available any other materials submitted by the CBT in support of its application for contract market designation to the extent that such materials are not entitled to confidential treatment under Part 145 of the Commission's regulations (17 CFR Part 145). Copies of such materials submitted by the CBT in support of its application for designation will be available through the Commission's Secretary or its offices in Washington, New York, Chicago, Minneapolis, Kansas City and San Francisco.

Any person interested in submitting written data, views or arguments on the terms and conditions of the proposed futures contracts, or with respect to other materials submitted by the CBT in support of its application for contract market designation, should send such comments to Jane K. Stuckey, Secretary, Commodity Futures Trading Commission, 2033 K Street, NW, Washington, D.C. 20581, by March 23, 1981.

Issued in Washington, D.C., on January 16, 1981.

Jane K. Stuckey,
Secretary of the Commission.

[FR Doc. 81-2225 Filed 1-21-81; 8:45 am]
BILLING CODE 6351-01-M

COMMUNITY SERVICES ADMINISTRATION

Waiver of Non-Federal Share Requirements for National Paralegal Institute

AGENCY: Community Services Administration.

ACTION: Notice of Non-Federal Share Waiver.

SUMMARY: The Community Services Administration is filing a Notice of Waiver of Non-Federal Share requirements for the National Paralegal Institute with regard to FY'80 and '81 funds. The waiver is based on the nature of the services provided by the grantee, the specialization function of the grantee and the fact that such services and functions are not the kind that lend themselves to generation of non-Federal share.

FOR FURTHER INFORMATION CONTACT: Carl Shaw, Telephone (415) 556–7895.

(Sec. 602, 78 Stat. 530 (42 U.S.C. 2942); Sec. 225(c) (42 U.S.C. 2812))

Richard Rios,
Director.

Notice of Waiver of Non-Federal Share Requirements

1. *Purpose.* This notice is issued to inform the public of a waiver of the non-Federal share requirement for the National Paralegal Institute, and the criteria on which the waiver is based.

2. *Background.* Section 225(c) of the Economic Opportunity Act of 1964, as amended, authorizes the Director to waive the non-Federal share matching requirements where he/she determines the waiver would further the purposes of the EOA. Title II of the EOA provides financial assistance for the purposes of enhancing community capabilities to achieve self sufficiency for poor community residents. From time to time, the imposition of a matching share requirement for a grant inhibits essential projects that otherwise further this mission. This is particularly true of projects that provide techincal assistance and training for community action agencies and community based organizations. In these situations the grantee may lack the ability to generate the non-Federal match either in-kind or cash because the grantee is specialized in functions and lacks the financial and constituent base that would normally provide such a contribution.

The Director has determined that when a grantee is unable to meet non-Federal share requirement for the reason stated above such grantee may be eligible for waiver of such non-Federal share.

3. *Waiver.* The National Paralegal Institute (NPI) is a CSA grantee funded to provide valuable training and technical assistance to community action agencies, community based organizations and numerous other agencies that assist the poor. As such, NPI is unable to generate non-Federal match either in-kind or cash because it is specialized in functions and lacks the financial and constituent base that would normally provide such a contribution. The Director has concluded that NPI meets the criteria for waiving the non-Federal share requirement pursuant to his authority under Section 225(c) of the EOA and hereby is waiving such requirement with regard to NPI's fiscal 1980 and 1981 CSA grants.

[FR Doc. 2227- Filed 1-21-81; 8:45 am]
BILLING CODE 6315-01-M

DEPARTMENT OF DEFENSE

Department of the Navy

Relocation of Navy Resale and Services Support Office From Brooklyn, N.Y. to Staten Island, N.Y. Finding of No Significant Impact

Pursuant to the regulations implementing the procedural provisions of the National Environmental Policy Act [40 CFR 1506.13 (1979)], the Department of the Navy gives notice that an environmental impact statement is not being prepared for the relocation of the Navy Resale and Services Supoort Office (NAVRESSO) from Brooklyn, N.Y., to three existing buildings located at Fort Wadsworth, Staten Island, N.Y. This action is being taken as the present Brooklyn location is to be vacated by 1984 (the building is unsafe and further repair is considered uneconomical) and Fort Wadsworth is the preferred alternative among possible facilities investigated. Other alternatives were the Gertz Building in Queens, N.Y; a Federal building on Varick Street in lower Manhattan and Willowbrook Hospital on Staten Island. Approximately 800 personnel are involved in th relocation which will add an approximate 7 miles commuting

distance across the Verrazano Bridge to the new location.

The environmental assessment of this action indicates that the proposed relocation will not cause significant impacts on the environment except for a possible minimal increase in energy use associated with that portion of the office population that will elect to commute by personal automobiles and the fact that some personnel (less than 10%) might choose to seek alternate employment. This information is derived from personnel questionnaires completed by NAVRESSO personnel. No archeological or cultural properties and no endangered flora or fauna will be affected by the relocation. Depending on the eventual mix of private automobiles and carpools, there may be a problem concerning parking. However, provisions can be made for parking overflow if required.

Pursuant to the Council on Environmental Quality's regulations implementing the procedural provisions of the National Environmental Policy Act, economic or social effects by themselves do not require the preparation of an environmental impact statement. 40 CFR 1508.14.

As a result of the environmental assessment, it has been determined that preparation and review of an environmental impact statement is not required.

The environmental assessment prepared by the Navy addressing this action is on file and may be reviewed by interested parties both at the point of origin, Logistics Plans and Policy Control Division, Naval Supply Systems Command, Room 704, Crystal Mall No. 3, Arlington, VA 20376 [(202)695–5932], and at the Environmental Protection and Occupational Safety and Health Division, Office of the Deputy Chief of Naval Operations (Logistics), Room BD 766, The Pentagon, Washington, D.C. 20350 [(202) 697–3668]. This document is available for public review for a period of 30 days from the date of publication of this notice (February 23, 1981). Additionally, a limited number of copies of the environmental assessment are available to fill single copy requests made to Logistics Plans and Policy Control Division (NSUP–042), Naval Supply Systems Command Headquarters, Department of the Navy, Washington, D.C. 20376, or to Environmental Protection and Occupational Safety and Health Division (OP–45), Office of the Deputy Chief of Naval Operations (Logistics), Department of the Navy, Washington, D.C. 20350.

For further information, contact: Mr. E. J. McDermott (NSUP–0422), Naval Supply Systems Command Headquarters, Department of the Navy, Washington, D.C. 20376, telephone (202) 695–5932.

Dated: January 16, 1981.

P. B. Walker,

Captain, JAGC, U.S. Navy, Alternate Federal Register Liaison Officer.

[FR Doc. 81-2220 Filed 1-21-81; 8:45 am]

BILLING CODE 3810-71-M

DEPARTMENT OF EDUCATION

National Center for Education Statistics (NCES); Vocational Education Data System; Extension of Data Submission Date

AGENCY: Department of Education.

ACTION: Notice of Extension of Submission Date for Vocational Education Data System (VEDS) Data.

SUMMARY: Certain data collection activities are required to be announced publicly under the provisions of section 400A (Control of Paperwork) of the General Education Provisions Act. Accordingly, the VEDS data requirements (along with other data requirements) were published in the Federal Register on September 26, 1979 (44 FR 55424). The VEDS data requirements are stated under the activity titled, "The National Vocational Education Data Reporting and Accounting System." Paragraph (h)(2) of these requirements established the "Time of Collection" or submission date as November 15, 1980. That date was extended to December 1, by an announcement in the Federal Register on April 22, 1980 (45 FR 27018).

The submission date is again extended to February 2, 1981, as the new "postmark" date by which States are to submit the data collected to meet the 1979–80 VEDS data requirement of NCES.

This notice does not affect the first round of VEDS data collected for the 1978–79 period. The date for the second round of VEDS data collection, for the 1979–80 period, was previously extended from November 15, 1980 to December 1, 1980, in an affort to establish a regular annual date for all VEDS data collections. However, because the previous announcements have caused confusion about which collections were due on a particular date it has become necessary again to extend the "postmark" or submission date to February 2, 1981.

It is important that States submit their collections to NCES by February 2, 1981, in order to allow NCES the time necessary to review data from all the States and to make a determination either under 34 CFR 400.118 that a State fully meets the VEDS requirements, or under 34 CFR 400.119 that a State substantially meets the VEDS requirements. A State which does not submit its data by the extended submission data risks the late compliance review of its data.

The forms for the submission of the 1979–80 VEDS data, including the uniform definitions and the information elements to be included, were sent by NCES to the sole Boards for Vocational Education of each State in June of 1980.

The VEDS data submission is to be mailed or hand-delivered to the: VEDS Staff, National Center for Education Statistics, Presidential Building, Room 205, 6525 Belcrest Road, Hyattsville, Maryland 20782.

States should note that if a State is seeking a finding of substantial compliance under the provisions of 34 CFR 400.119, *all* substantial compliance materials required by that section are to be submitted to NCES according to the same "postmark" or submission date, February 2, 1981.

FOR FURTHER INFORMATION CONTACT: Dr. Robert Morgan, VEDS Director, National Center for Education Statistics, Presidential Building, Room 905, Telephone: (301) 436–6349.

Dated: January 16, 1981.

Terry Saario,

Acting Assistant Secretary for Educational Research and Improvement.

[FR Doc. 81-2220 Filed 1-21-81; 8:45 am]

BILLING CODE 4000-01-M

National Institute of Education

Follow Through Research and Development; Public Input Meetings

AGENCY: Department of Education.

ACTION: Notice of Meeting.

SUMMARY: The National Institute of Education (NIE) announces two meetings for the public to provide input about Follow Through research and development to be supported by NIE.

DATE AND LOCATIONS: One meeting is to be held on February 24, 1981 in Room 239, Federal Building, 1961 Stout Street, Denver, Colorado. The public may offer comments between the hours of 1:00 p.m. and 5:00 p.m. The other meeting will be held on February 26, 1981 in Room 3619, Kluczynski Building, 230 South Dearborn, Chicago, Illinois. The public may offer comments between the hours of 1:00 p.m. and 5:00 p.m.

Procedure: Registration from individuals, agencies, projects, and other groups wishing to offer comments will

be accepted at each meeting location from 12:30 p.m. to 4:30 p.m., or until all speaking allotments are exhausted. Individuals are asked to limit their oral comments to no more than ten minutes. Agencies, projects, or other groups wishing to have more that one spokesperson present their views are asked to limit their oral comments to a total of no more than fifteen minutes. More extensive comments as well as comments from persons or groups not able to attend one of the meetings may be submitted in writting on or before February 28, 1981. These should be directed to: Tim Kocher, Senior Associate, National Institute of Education, Mailstop scratch 9, 1200 19th Street, N.W., Washington, D.C. 20208.

FOR FURTHER INFORMATION CONTACT: Contacts Mrs. Cora Corry, Program Assistant, National Institute of Education, Mailstop scratch 9, 1200 19th Street, N.W. Washington, D.C 20208, (202) 254-6271.

SUPPLEMENTARY INFORMATION: In April, 1981, NIE anticipates two open competitions for projects to conduct Follow Through research and development. One competition will be for pilot projects that will develop and test new Follow Through approaches. The other competition will be for supporting research which will help inform the development and evaluation of additional pilot projects in future years—it is anticipated that the next group of pilot projects will be funded in 1984 of 85.

Since 1967, the Follow Through program has been operated as a Federally supported "planned variation" demonstration designed to compare the relative effectiveness of alternative instructional models for early childhood education of disadvantaged children. It is authorized under the Economic Opportunity Act of 1964, as amended by Public Law 95-568 in 1978.

The program primarily serves children in kindergarten through third grade who were enrolled previously in Head Start or similar preschool programs. Local Follow Through projects are expected to provide educational services as well as health, social, and other support services to participating students. The parents of participating children must be involved actively in all project activities.

Under an agreement with the Office of Elementary and Secondary Education, which had responsibility for the operation of the Follow Through Program, a portion of the Follow Through funds allocated to knowledge production are being transferred to the National Institute of Education to support research and development related to new Follow Through approaches.

There are two main strands in the preliminary NIE research strategy. The first involves developing guidelines for funding of the first wave of new Follow Through approaches to be tested beginning in the 1981-82 school year. The second is a process for continually seeking out newer and, as yet, less developed conceptions of Follow Through which would lead to implementation of a second and succeeding waves of new Follow Through pilot projects at periodic intervals over a longer term of 5-10-20 years. As part of the second strand, funds will be set aside for supporting research on selected methodological and programmatic issues which are key to progress with the new approaches.

Briefly, Strand 1 is based on the premise that while no simple recipes for success have emerged for the enormous attention focused on programs to improve education for low-income children, they provide a rich body of suggestions about how to make Follow Through better. Consequently, rather than focusing the pilot projects on development of new curricular or learning theories, NIE will fouce on practical solutions to overcoming obstacles to effective practice in school improvement, specifically on the effective management of instruction—including that undertaken at home or in the community.

Illustrative themes around which pilot projects for the new Strand 1 approaches might be organized to use such knowledge include:

Means to increase instructional time in Follow Through classrooms through improved management of services;

New Patterns of staff development and selection of staff to gain better instructional management, including cooperative agreements between schools, teacher education institutions and teacher associations or unions;

New ways to systematically involve parent and community groups and planning and conducting Follow Through Programs, including the use of parents and families to provide instruction in the home or community;

New uses of information systems, including testing and evaluation results, to bring better diagnostic and prescriptive information to bear on Follow Through student learning needs;

New ways to facilitate support of school building and district administrators for substantial changes typically required by innovative Follow Through procedures.

Documentation and evaluation of the pilot projects will be of major importance. NIE expects to provide support to each pilot project to assist them in the design and execution of a documentation/evaluation system. The system should help the project identify weaknesses so that these may be corrected and provide information that external audiences interested in using all or part of the project can use to determine its effectiveness. Of particular interest in the documentation and evaluation system will be methods of determining how well the project is implemented.

Part of Strand 2 provides a more speculative, "high-risk" strategy for developing a second wave of approaches for eventual funding in five years. All avenues of promising thinking related to serving low income children through Follow Through will be explored. Such thinking will be outside strictly educational areas as well as within them. Some preliminary areas of inquiry for this activity are the effects of media and new technology on early childhood learning, broad societal and environmental influences on early childhood education and extrapolation of research from other fields to Follow Through. This thinking will eventually be channeled into practical vehicles for improving schooling and learning. The intent is to cast a broad net to capture ideas that will benefit children eligible for Follow Through, and then continually assess the feasibility of converting these ideas into working models. The ideas closest to being ready for more rigorous testing will be identified, and a subset selected for funding in Fiscal Year 1985 or 1986.

Part of Strand 2 to be funded in 1981 will be for supporting research on issues of enduring interest to Follow Through. This will include field-initiated research on more basic issues dealing with methodolgy and program topics related to Follow Through. In addition, NIE believes that opportunities for further analyis of existent Follow Through data should be afforded in this part. There are numerous areas for such analysis that can help inform the development of future approaches to Follow Through. Opportunities for funding such analyses have not been made systematically available in the past.

At any given time in this overall research strategy, the single biggest piece of funds would be targeted for the approaches then being tested in the field, with smaller amounts for developing conceptions of the successor wave(s) of approaches and supporting research.

Copies of the complete NIE preliminary plan for Follow Through research and Development may be

obtained by contacting Cora Corry at the address given at the beginning of this notice.

Dated: January 15, 1981.

Terry Beirle,

Acting Assistant Secretary for Educational Research and Improvement.

[FR Doc. 81-2238 Filed 1-21-81; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Compliance with the National Environmental Policy Act; Intent To Prepare an Environmental Impact Statement on Operation of PUREX and Uranium Oxide Plant Facilities at Hanford, Wash.

AGENCY: Department of Energy.

ACTION: Notice of intent (NOI) to prepare an environmental impact statement (EIS) pertaining to resuming operation of PUREX and Uranium Oxide Plant facilities at Hanford, Washington.

SUMMARY: The Department of Energy (DOE) announces its intent to prepare an EIS in accordance with section 102(2)C of the National Environmental Policy Act (NEPA) to provide environmental input into the decision to resume operation of the PUREX and Uranium Oxide (UO_3) Plant facilities to recover plutonium and uranium for national defense and research and development activities.

The purpose of this NOI is to present pertinent background information regarding the proposed scope and content of the EIS and to solicit comments and suggestions for consideration in its preparation. Interested agencies, organizations, and the general public desiring to submit comments or suggestions for consideration in connection with the preparation of this EIS are invited to do so. No public scoping meeting is scheduled; however, should DOE determine after it reviews public comments in response to this notice of intent that a scoping meeting is appropriate, one will be scheduled. Upon completion of the draft EIS, the document will be made available to the public for review; comments received will be used in preparing the final EIS. Written comments or suggestions on the scope of the environmental impact statement may be submitted to: Mr. Roger K. Heusser, Director, Division of Materials Processing (DP-73), Mail Station A-362 GTN, U.S. Department of Energy, Washington, D.C. 20545.

For general information on DOE's EIS process contact: NEPA Affairs Division, Office of Environmental Compliance and Overview, Office of the Assistant Secretary for Environment, U.S. Department of Energy, Attn: Richard P. Smith, EV-121, 1000 Independence Avenue, Washington, D.C. 20585.

DATE: Written comments postmarked within 30 days of the issuance of this NOI, will be considered in the preparation of the EIS. Comments postmarked after that date will be considered to the extent practicable.

Background Information

The PUREX and UO_3 plants were used from 1955 to 1972 to process irradiated fuels produced by nine plutonium production reactors located on the Hanford site. By the end of 1971, eight of the reactors were shut down by Presidential decision. The PUREX and UO_3 plants are of such large capacity that they could not economically be operated on a continuing basis after shutdown of the other reactor plants at Hanford. The PUREX/UO_3 facilities have been maintained in a standby condition awaiting resumption of operations at such time as processing could be justified based on defense requirements and research and development needs. DOE is considering resuming operation of the PUREX/UO_3 plants in April 1984.

Maintenance was performed in 1978 and 1979 on the PUREX process systems to maintain its standby condition. The maintenance included a cell-by-cell checkout and operability testing of all process equipment. Current maintenance and operability testing on supporting equipment indicates that PUREX can safely resume operations.

If the PUREX facility is not operated to process the fuel from the operating reactor, when the current storage capacity is fully utilized—estimated to be in late fiscal year 1984–, either new storage facilities would be required or operation of the reactor would be discontinued.

The EIS will describe the existing facilities, namely the PUREX/UO_3 plants, as well as mitigating actions to minimize environmental effects from their operation. Possible facility modifications will be evaluated with respect to further mitigation of the effects of effluents on the environment.

This EIS will analyze and evaluate the environmental impacts associated with the resuming operation of PUREX/UO_3 plants and the alternatives thereto. This EIS will not evaluate or analyze in detail issues concerning the waste management operation at Hanford, which have been previously addressed in ERDA-1538 and DOE/EIS-0063, but will update the information contained in those documents where appropriate.

Proposed Action

The proposed action under consideration is to resume operation of the PUREX and UO_3 plants. This action includes facility modifications undertaken or completed since 1972 when the facilities were placed in standby. These facility modifications contributed to maintaining the facility in a safe standby condition and maintaining operational viability. Any additional modifications which would further mitigate environmental effects of plant operation will be considered as a sub-alternative to this proposed action.

Identification of Environmental Issues

The following issues will be analyzed for the proposed action and alternatives during the preparation of the EIS. This list neither is intended to be all inclusive nor a predetermination of the impacts:

Effects on the general population from emissions of radiologic and nonradiologic releases caused by normal operations;

Effects of exposure of operating personnel to radiologic and nonradiologic releases during normal operations;

Effects resulting from potential accidents;

Effect on air and water quality and other environmental consequences during normal operations;

Effect on future decontamination and decommission decisions;

Cumulative effects of operations at the Hanford site;

Transportation impacts (offsite transport of irradiated fuel and/or product oxide and onsite transport of irradiated fuel);

Short-term versus long-term land use;

Irretrievable and irreversible commitment of resources;

Socioeconomic impacts to surrounding communities.

Alternatives to the Proposed Action

The alternatives to be analyzed are:

Ship Fuel Offsite for Processing. Ship the irradiated fuel offsite for processing and extraction of plutonium and uranium. Currently, the only other operational processing facility in the United States is located at the DOE Savannah River Plant, Aiken, South Carolina; it is being operated at high capacity and would require major modifications to process fuel generated at Hanford.

Construct New Processing Plant at Hanford. The costs and benefits of constructing a new processing plant will be analyzed.

No Action. Maintain PUREX/UO$_3$ facilities in the current standby mode and not process fuel. (Continue present action.)

Comments and Scoping

All interested parties are invited to submit written comments or suggestions to be considered by DOE in the preparation of this EIS. Written comments or suggestions on the scope of the EIS may be submitted ot Mr. Roger K. Heusser (address given above). Written comments postmarked within 30 days of the issuance of this Notice of Intent will be considered in the preparation of this EIS. Comments postmarked after that date will be considered to the extent practicable. Those who wish to receive a copy of the draft EIS for review and comment when it is issued should also notify Mr. Heusser. Those seeking further information on the proposal or the EIS process also may contact Mr. Richard Smith (address given above).

Copies of the documents currently planned to be used in the preparation of the EIS are available for inspection at:

Public Reading Room, Room 1E–190, 1000 Independence Avenue, S.W., Washington, D.C. 20585.
Chicago Operations Office, 9800 South Cass Avenue, Argonne, Illinois 60439.
Chicago Operations and Regional Office, 175 West Jackson Boulevard, Chicago, Illinois 60604.
Idaho Operations Office, 550 Second Street, Idaho Falls, Idaho 83401.
Nevada Operations Office, 2753 South Highland Drive, Las Vegas, Nevada 89114.
Albuquerque Operations Office, National Atomic Museum, Kirkland Air Force Base East, Albuquerque, New Mexico 87715.
Oak Ridge Operations Office, Federal Building, Oak Ridge, Tennessee 37830.
Richland Operations Office, Federal Building, Richland, Washington 99352.
Energy Information Center, 215 Fremont Street, San Francisco, California 94105.
Savannah River Operations Office, Savannah River Plant, Aiken, South Carolina 29801.
Regional Energy/Environmental Information Center, Denver Public Library, 1357 Broadway, Denver, Colorado 80203.

Dated at Washington, D.C., this 16th of January 1981. For the United States Department of Energy.

Ruth C. Clusen,

Assistant Secretary for Environment.

[FR Doc. 81-2311 Filed 1-21-81; 8:45 am]
BILLING CODE 6450-01-M

Proposed Contract Award

AGENCY: Department of Energy.

ACTION: Notice of proposed contract award.

SUMMARY: In accordance with the Department of Energy (DOE) Procurement Regulations, DOE gives Public Notice that it intends to exercise an option to extend a contract, after taking into account the existence of potential organizational conflicts of interest, because the exercise of this option is determined to be in the best interest of the United States.

FOR FURTHER INFORMATION CONTACT: Mr. Lee Brennan, Office of Naval Petroleum and Oil Shale Reserves, Room 6454, 12th and Pennsylvania Avenue, N.W., Washington, D.C. 20461, (202) 633–8667.

Determination and Findings

Upon the basis of the following findings and determination, the proposed option to extend the contract described below is being exercised, after taking into account the existence of potential organizational conflicts of interest, because this action is determined to be in the best interest of the United States, pursuant to the authority of Department of Energy Procurement Regulations 41 CFR 9–1.5409(a)(3).

Findings

(1) The Department of Energy (DOE), Office of Resource Applications has recently completed two years of a five year pre-development program for Naval Oil Shale Reserves (NOSR) Nos. 1 and 3 located in Garfield County, Colorado. This pre-development program is undertaken pursuant to the authority contained in 10 U.S.C. Chapter 641. 10 U.S.C. 7422 provides the Secretary of Energy with the authority to explore, prospect, conserve, develop, use and operate the Naval Oil Shale Reserves in his discretion, subject to other provisions of the law. As now constituted, the pre-development program provides for the preparation of all necessary environmental, preliminary engineering, and economic analysis required to support the leasing of NOSRs 1 and 3, should the Government determine that such action is desirable.

(2) In connection with the completion of the pre-development program, it is necessary for the Office of Resource Applications to retain skilled and experienced professionals to manage and analyze the information and data obtained regarding, among other things, a complete oil shale resource definition of NOSRs 1 and 3, a programmatic environmental impact statement, and assessment of various technologies which are applicable to the NOSRs. For the past two years, TRW Inc. (TRW) has served as a management support systems engineering contractor to the Office of Resource Applications for this pre-development program.

(3) In accordance with 41 CFR 9–1.5405, TRW provided a statement disclosing relevant information concerning its interests related to the work performed for DOE and bearing on whether it has possible organizational conflicts of interest (1) with respect to being able to render impartial, technically sound and objective assistance or advice, or (2) which may give it an unfair competitive advantage. Numerous questions were asked of TRW regarding the relationship of its clients and business activities to the scope of the work to be performed under the contract.

(4) Based on an evaluation of the facts contained in the disclosure statement, it has been determined that TRW has a potential organizational conflict of interest with regard to the work required by the Office of Resource Applications regarding the pre-development program of NOSRs 1 and 3.

(5) Due to the substantial work TRW has performed on this project since the date of its initial competitive contract award, only TRW has the capability and staff to perform the work for the Office of Resource Applications within the time constraints allowed. Accordingly, it is not feasible to disqualify this contractor pursuant to 41 CFR 9–1.5409(a)(1). Furthermore, it is not possible to avoid the potential organizational conflicts of interest by the inclusion of appropriate conditions in the resulting contract, in accordance with 41 CFR 9–1.5409(a)(2).

(6) The completion, in a timely manner, of the pre-development program for NOSRs 1 and 3 will have far reaching benefits in terms of the necessary data available for DOE to determine whether or not to proceed with development and production of the hydrocarbon resources of NOSRs 1 and 3 through the leasing mechanism. The work performed by TRW is critical to the timely completion of the pre-development program.

Mitigation

Mitigation, to the extent feasible, under 41 CFR 9–1.5409(a)(3) will be obtained by independent staff review by DOE Officials of contractor reports, as well as through administrative procedures through which the reception of public comment will allow mitigation

of potential conflicts in the data and analysis. Additionally, the Organizational Conflicts of Interest special clause entitled "Organizational Conflicts of Interest", 41 CFR 9-5403(2)(b), should be included in the contract, modified as necessary to meet the specific circumstances involved.

Determination

In light of the above Findings and Mitigation, and in accordance with 41 CFR 9-1.5409(a)(3), I hereby find that the extension of this contract would be in the best interest of the United States.

Dated: January 16, 1981.

Ruth M. Davis,

Assistant Secretary Resource Applications.

[FR Doc. 81-2307 Filed 1-21-81; 8:45 am]

BILLING CODE 6450-01-M

[DOE/EIS-0073-D]

Solvent Refined Coal-I Demonstration Project (January 1981), Newman, Daviess County, Ky.; Public Hearing

The Department of Energy (DOE) filed a Draft Environmental Impact Statement (EIS), DOE/EIS-0073-D, Solvent Refined Coal—I (SRC-I) Demonstration Project, with the Environmental Protection Agency on January 9, 1981. The 45-day public review and comment period closes on March 2, 1981. Notice is hereby given that public hearing on the draft EIS will be held on February 23, 1981, at the Daviess County High School, Owensboro, Kentucky, 7:00 p.m. to 10:00 p.m.; Febuary 24, 1981, at the Henderson County High School, Henderson, Kentucky, 7:00 p.m. to 10:00 p.m.; and February 25, 1981, at the Stanley Elementary School, Stanley, Kentucky, 7:00 p.m. to 10:00 p.m.

The draft EIS was prepared in compliance with the National Environmental Policy Act of 1969 to assess the environmental impacts of, and alternatives to, a proposed DOE action to cost-share with the International Coal Refining Company, Inc., the design, construction and operation of a SRC-I Demonstration Plant with a 6,000 tons-of-coal per stream day capacity at a site in Newman, Daviess County, Kentucky. The facility is intended to demonstrate the technical operability, economic viability and environmental acceptability of the process for converting coal into SRC-I solid and liquid products. The environmental impacts assessed include the effects of the project on occupational and public health resulting from the production and use of SRC-I products, potential impacts on terrestrial and aquatic ecology including state and Federal threatened or endangered species; potential and expected impacts on land use, withdrawal and alteration of prime agricultural land; projected impacts on floodplains and wetland areas; potential impacts on surface and groundwater; effects on ambient air quality; potential changes in the cultural landscape, including presence of sites of archaeological significance, and changes to existing economic and social characteristics of the site area. Additionally, the statement presents an assessment of the potential impacts of future commercial expansion of the operation of the SRC-I Demonstration Plant and the cumulative impacts of the proposed action with other planned and proposed energy facilities in the region. Mothballing, conversion to another government use, and decommissioning also are considered. A construction and operational monitoring plan to assess the effectiveness of the planned mitigation measures during the demonstration phase is also presented.

The range of alternatives assessed in the draft EIS includes programmatic alternatives, as well as proceeding with the proposed project, modifying the action and subsequently continuing the project, and terminating with no further action. An evaluation of alternate plant designs and alternate plant sites also is included.

DOE will conduct the public hearings in connection with the draft EIS on February 23, 1981, as the Daviess County High School, Owensboro, Kentucky, 7:00 p.m. to 10:00 p.m.; February 24, 1981, at the Henderson County High School, Henderson, Kentucky, 7:00 p.m. to 10:00 p.m.; and February 25, 1981, at the Stanley Elementary School, Stanley, Kentucky, 7:00 p.m. to 10:00 p.m. The purpose of the public hearing is to receive additional public comments and to assure maximum public participation in the EIS process. The substantive comments received at the public hearing, as well as those received within the public comment period, will be addressed and revisions will be incorporated, where appropriate, in the final EIS.

The public hearings will be conducted by a Presiding Board selected by DOE. The Presiding Board will not attempt to undertake a resolution of issues or render judgments concerning the SRC-I Demonstration Project.

The public hearings will not be conducted as an evidentiary hearing and those who choose to make statements may not be questioned by anyone other than the members of the Presiding Board.

In order to facilitate arrangements for the public hearing, those wishing to participate are requested to contact: Mr. James A. Reafsnyder, SRC Project Officer, U.S. Department of Energy, P.O. Box E, Oak Ridge, Tennessee 37830, (615) 576-1055, by February 20, 1981.

Written comments or suggestions may also be submitted to Mr. Reafsnyder at the address noted above. Written and oral comments will be given equal weight. Speakers are requested to provide a telephone number and mailing location so that they can be contacted prior to the meeting regarding scheduling information. Those who desire a copy of the draft EIS for review prior to the public hearing may obtain a copy by contacting Mr. Reafsnyder.

Persons, organizations or Government agencies wishing to participate, but who have not submitted a request in advance, may register at the time of the hearing. DOE reserves the right to arrange the schedule of presentations and to establish procedures governing the conduct of the meeting. DOE desires to maximize the number of participants and to assure a broad spectrum of viewpoints. Efforts will be made to allow all interested persons in attendance to speak. However, the actual allocation of time for speakers will depend upon the number of persons requesting to be heard. Total time allocated for statements will be limited to the three 3-hour periods noted at the beginning of this notice. DOE may allow more time for representatives of organizations than for individuals.

Those persons wishing to speak on behalf of an organization should identify their organizational affiliation in their request. Should any speaker desire to provide further information for the record subsequent to the meeting, it may be submitted in writing no later than March 2, 1981.

Any further procedural rules needed for the proper conduct of the hearings will be announced at the start of the hearing.

A transcript of the public hearings will be made available for public inspection at:

Owensboro-Daviess County Public Library, 450 Griffith Avenue, Owensboro, Kentucky 42301

Evansville and Vanderburgh County Public Library, 22 SE 5th Street, Evansville, Indiana 47708

Commonwealth of Kentucky, Department of Library and Archives, P.O. Box 537, Berry Hill, Frankfort, Kentucky 40602

and also in DOE's Public Document Rooms located at:

U.S. DOE Public Reading Room, Room 1E-190, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C. 20585
U.S. DOE Public Document Room, Room G-206, Federal Building, P.O. Box E, Oak Ridge, Tennessee 37830
U.S. DOE Technical Information Center, Customer Services Branch, P.O. Box 62, Oak Ridge, Tennessee 37830

Copies of the draft statement are available for inspection at the above locations. Upon completion of the final EIS, its availability will be announced in the Federal Register.

Issued in Washington, D.C. on January 15, 1981.

George Fumich, Jr.,
Assistant Secretary for Fossil Energy.

[FR Doc. 81-2240 Filed 1-21-81; 8:45 am]
BILLING CODE 6450-01-M

Economic Regulatory Administration

Hines Oil Co.; Action Taken on Consent Order

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Notice of action taken and opportunity for comment on Consent Order.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) announces action taken to execute a Consent Order and provides an opportunity for public comment on the Consent Order and on potential claims against the refunds deposited in an escrow account established pursuant to the Consent Order.

DATES: Effective date: December 31, 1980. Comments by: February 23, 1981.

ADDRESS: Send comments to William D. Miller, Central District Manager of Enforcement Department of Energy, 324 East 11th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Jeannine C. Fox, Chief, Refined Products Programs Management Branch, 324 East 11th Street, Kansas City, Missouri 64106. (phone) 816-374-5932.

SUPPLEMENTARY INFORMATION: on December 31, 1980, the Office of Enforcement of the ERA executed a Consent Order with Hines Oil Company of Murphysboro, Illinois. Under 10 CFR 205.199J(b), a Consent Order which involves a sum of less than $500,000 in the aggregate, excluding penalties and interest, becomes effective upon its execution.

I. The Consent Order

Hines Oil Company (Hines), with its home office located in Murphysboro, Ill., is a firm engaged in the marketing of motor gasoline to resellers and end-users, and is subject to the Mandatory Petroleum Price and Allocation Regulations at 10 CFR, Parts 210, 211, 212. To resolve certain civil actions which could be brought by the Office of Enforcement of the Economic Regulatory Administration as a result of its audit of Hines, the Office of Enforcement, ERA, and Hines entered into a Consent Order.

The Consent Order encompasses Hines' sales of covered products during the period March 1, 1979, through July 31, 1979.

II. Disposition of Refunded Overcharges

In this Consent Order, Hines agrees to refund, in full settlement of any civil liability with respect to actions which might be brought by the Office of Enforcement, ERA, arising out of the transactions specified in I. above, the sum of seven thousand eight hundred ninety-seven dollars and sixty-nine cents. ($7,897.69) by December 31, 1982. Refunds of overcharges of $6,897.69 will be in the form of a price reduction in its sales of motor gasoline to end-users for a period of two (2) years after the effective date of the Consent Order.

Refunds of overcharges to resellers of $1,000.00 will be in the form of certified checks made payable to the United States Department of Energy and will be delivered to the Assistant Administrator for enforcement, ERA. These refunds will remain in a suitable account pending the determination of their proper disposition.

The DOE intends to distribute the refund amounts in a just and equitable manner in accordance with applicable laws and regulations. Accordingly, distribution of such refunded overcharges requires that only those "persons" (as defined at 10 CFR 205.2) who actually suffered a loss as a result of the transactions described in the Consent Order receive appropriate refunds. Because of the petroleum industry's complex marketing system, it is likely that overcharges have either been passed through as higher prices to subsequent purchasers or offset. In fact, the adverse effects of the overcharges may have become so diffused that it is a practical impossibility to identify specific, adversely affected persons, in which case disposition of the refunds will be made in the general public interest by an appropriate means such as payment to the Treasury of the United States pursuant to 10 CFR 205.199I(a).

III. Submission of Written Comments

A. *Potential Claimants:* Interested persons who believe that they have a claim to all or a portion of the refund amount should provide written notification of the claim to the ERA at this time. Proof of claims is not now being required.

Written notification to the ERA at this time is requested primarily for the purpose of identifying valid potential claims to the refund amount. After potential claims are identified, procedures for the making of proof of claims may be established. Failure by a person to provide written notification of a potential claim within the comment period for the Notice may result in the DOE irrevocably disbursing the funds to other claimants or to the general public interest.

B. *Other Comments:* The ERA invites interested persons to comment on the terms, conditions or procedural aspects of this Consent Order.

You should send your comments or written notification of a claim to William D. Miller, Central District Manager of Enforcement, Department of Energy, 324 East 11th Street, Kansas City, Missouri 64106. You may obtain a free copy of this Consent Order by writing to the same address or by calling 816-374-5932.

You should identify your comments or written notification of a claim on the outside of your envelope and on the documents you submit with the designation, "Comments on Hines Consent Order." We will consider all comments we receive by 4:30 p.m., local time, on February 23, 1981. You should identify any information or data which, in your opinion, is confidential and submit it in accordance with the procedures in 10 CFR 205.9(f).

Issued in Kansas City, Missouri on the 8th day of January 1980.

Concurrence:
David H. Jackson,
Chief, Enforcement Counsel.

Dated: January 8, 1981.
William D. Miller,
District Manager of Enforcement.

[FR Doc. 81-2247 Filed 1-21-81; 8:45 am]
BILLING CODE 6450-01-M

A. Johnson & Co. Inc., Proposed Consent Order

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Notice of Proposed Consent Order and opportunity for comment.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department

of Energy (DOE) announces a proposed Consent Order and provides an opportunity for public comment on the terms and conditions of the proposed Consent Order and for potential claims against refunds deposited in an escrow account established pursuant to the Consent Order.

DATE: Comments by: February 23, 1981.

ADDRESS: Send Comments to: Stanley S. Mills, Program Manager, for Entitlements, Room 5114, Office of Enforcement, U.S. Department of Energy, ERA, 2000 M Street, NW., Washington, D.C. 20461.

FOR FURTHER INFORMATION CONTACT: Stanley S. Mills, (202) 653-3548

SUPPLEMENTARY INFORMATION: On November 25, 1980, the Office of Enforcement of the ERA executed a proposed Consent Order with A. Johnson & Co., Inc., of New York, New York. Under 10 CFR 205.199(b), a Consent Order which involves a sum of $500,000 or more in the aggregate, excluding penalties and interest, becomes effective no sooner than 30 days after DOE has provided an opportunity for comment with respect to the proposed Consent Order. Although the ERA has signed and tentatively accepted the proposed Consent Order, the ERA may, after consideration of the comments it receives, withdraw its acceptance and, if appropriate, attempt to negotiate an alternative Consent Order.

I. The Consent Order

A. Johnson & Co. Inc. (Johnson) with its home office located in New York, New York, is a refiner as defined in 10 CFR 211.62 and is therefore subject to the Mandatory Petroleum Price and Allocation Regulations at 10 CFR Parts 210, 211, and 212. To resolve certain civil actions which could be brought by the Office of Enforcement of the ERA as a result of its audit of Johnson, the Office of Enforcement and Johnson entered into a proposed Consent Order, the significant terms of which are as follows:

1. The period of the audit was from January 1976 through July 1979 and included all Johnson's submissions of forms ERA-49 and its predecessor forms P-102-M.

2. The DOE alleges that Johnson committed errors in the application of 10 CFR 211.66(h) and 211.67 and as a consequence, received benefits from the Entitlements Program in the amount of $673,558.

3. Johnson voluntarily refunded $548,994 in January 1980 and agrees to refund the remaining $124,564 plus interest within 10 days of the effective date of this Consent Order.

4. The provisions of 10 CFR 205.199 J, including the publication of this Notice, are application to the Consent Order.

II. Disposition of Refunds

In this Consent Order, Johnson agrees to refund in full settlement of any civil liability with respect to actions which might be brought by the Office of Enforcement ERA arising out of the transactions, the sum of $124,564 plus $91,112 interest within 10 days of the effective date of the Consent Order. Refunded amount will be in the form of a certified check made payable to the United States Department of Energy and will be delivered to the Assistant Administrator for Enforcement ERA. This amount will remain in a suitable account pending the determination of their proper disposition.

The DOE intends to distribute the refund amounts in a just and equitable manner in accordance with applicable laws and regulations. Accordingly, distribution of such refunds requires that only those "persons" (as defined at 10 CFR 205.2) who actually suffered a loss as a result of the transactions described in the Consent Order receive appropriate refunds. Because of the petroleum industry's complex marketing system, it is likely that violation amounts have either been passed through as higher prices to subsequent purchasers or offset through the Entitlements Program. In fact, the adverse effects of the reporting errors may have become so diffused that it is a practical impossibility to identify specific, adversely affected persons, in which case disposition of the refunds will be made in the general public interest by an appropriate means such as payment to the Treasury of the United States pursuant to 10 CFR 205.199I(a).

III. Submission of Written Comments

A. *Potential Claimants.* Interested persons who believed that they have a claim to all or a portion of the refund amount should provide written notification of the claim to the ERA at this time. Proof of claims is not now being required. Written notification to the ERA at this time is requested primarily for the purpose of identifying valid potential claims to the refund amount. After potential claims are identified, procedures for the making of proof of claims may be established.

Failure by a person to provide written notification of a potential claim within the comment period for this Notice may result in the DOE irrevocably disbursing the funds to other claimants or to the general public interest.

B. *Other Comments.* The ERA invites interested persons to comment on the terms, conditions, or procedural aspects of this Consent Order.

You should send your comments or written notification of a claim to Stanley S. Mills, Program Manager for Entitlements, Office of Enforcement, ERA, 2000 M Street, NW., Room 5114, Washington, D.C. 20461.

You should identify your comments or written notification of a claim on the documents you submit with the designation, "Comments on A. Johnson & Co. Inc. Consent Order." We will consider all comments we receive by 4:30 p.m., local time, on February 23, 1981. You should identify any information or data which, in your opinion, is confidential and submit it in accordance with the procedures in 10 CFR 205.9(f).

Issued in Washington DC on the 15 day of January 1981.

Robert D. Gerzog,

Director, Program Operations Division, Office of Enforcement Economic Regulatory Administration.

[FR Doc. 81-2168 Filed 1-21-81; 8:45 am]

BILLING CODE 6450-01-M

Kocolene Oil Corp.; Action Taken on Consent Order

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Notice of action taken and opportunity for comment on Consent Order.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) announces action taken to execute a Consent Order and provides an opportunity for public comment on the Consent Order.

DATES: Effective date: December 31, 1980. Comments by: February 23, 1981.

ADDRESS: Send comments to William D. Miller, Central District Manager of Enforcement, Department of Energy, 324 East 11th Street; Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Jeannine C. Fox, Chief, Refined Products Programs Management Branch, 324 East 11th Street, Kansas City, Missouri 64106. (Phone) 816-374-5222.

SUPPLEMENTARY INFORMATION: On December 31, 1980, the Office of Enforcement of the ERA executed a Consent Order with Kocolene Oil Corporation of Seymour, Indiana. Under 10 CFR 205.199J(b), a Consent Order which involves a sum of less than

$500,000 in the aggregate, excluding penalties and interest, becomes effective upon its execution.

I. The Consent Order

Kocolene Oil Corporation (Kocolene), with its home office located in Seymour, Indiana, is a firm engaged in the marketing of motor gasoline to resellers and end-users, and is subject to the Mandatory Petroleum Price and Allocation Regulations at 10 CFR, Parts 210, 211, 212. To resolve certain civil actions which could be brought by the Office of Enforcement of the Economic Regulatory Administration as a result of its audit of Kocolene, the Office of Enforcement, ERA, and Kocolene entered into a Consent Order.

The Consent Order encompasses Kocolene's sales of covered products during the period January 1, 1977, through April 30, 1980.

II. Disposition of Refunded Overcharges

In this Consent Order, Kocolene agrees to refund, in full settlement of any civil liability with respect to actions which might be brought by the Office of Enforcement, ERA, arising out of the transactions specified in I. above, the sum of four hundred seventy-five thousand dollars ($475,000) within twelve (12) months after the effective date of the Consent Order. Refunds of overcharges will be in the form of price reductions in its sales of motor gasoline to unidentifiable end-users for a period of one year after the effective date of the Consent Order.

III. Submission of Written Comments

The ERA invites interested persons to comment on the terms, conditions or procedural aspects of this Consent Order.

You should send your comments to William D. Miller, Central District Manager of Enforcement, Department of Energy, 324 East 11th Street, Kansas City, Missouri 64106. You may obtain a free copy of this Consent Order by writing to the same address or by calling 816-374-5032.

You should identify your comments on the outside of your envelope and on the documents you submit with the designation, "Comments on Kocolene Consent Order." We will consider all comments we receive by 4:30 p.m., local time, on February 23, 1981. You should identify any information or data which, in your opinion, is confidential and submit it in accordance with the procedures in 10 CFR 205.9(f).

Issued in Kansas City, Missouri on the 8th day of January 1981.

Dated: January 6, 1981.

Concurrence:

David H. Jackson,

Chief, Enforcement Counsel.

William D. Miller,

District Manager of Enforcement.

[FR Doc. 81-2148 Filed 1-8-81; 8:45 am]

BILLING CODE 6450-01-M

Office of Energy Research

DOE/NSF Nuclear Science Advisory Committee; Open Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770), notice is hereby given of the following meeting:

Name: DOE/NSF Nuclear Science Advisory Committee.

Date and time: February 9, 1981—8:00 a.m.-9:00 p.m.; February 10, 1981—8:00 a.m.-5:00 p.m.

Place: Department of Energy, Forrestal Building—Room 4A104, 1000 Independence Avenue, SW, Washington, D.C. 20585.

Contact: Enloe Ritter, ER-23, Division of Nuclear Physics, M.S. G-256 GTN, U.S. Department of Energy, Washington, D.C. 20545, Telephone: 301-353-3613.

Purpose of Committee: To provide advice to the Department of Energy and the National Science Foundation on the management of and long range planning for basic nuclear research programs

Tentative Agenda:

- Discussion of NSF and DOE budget situations for FY 1981 and FY 1982
- NSF and DOE guidance to Nuclear Science Advisory Committee on prospects for new facility construction in FY 1983
- Presentation and discussion of proposals for new facility construction in FY 1983
- Selection of proposals to be referred to Facilities Subcommittee for further review
- Discussion of the status of CW electron accelerator proposals and projects
- Reports from Subcommittees on Heavy Ion Facilities, Manpower, Universities, and Computational Needs of Nuclear Theorists
- Public Comment (10 minute rule)

Public Participation: The meeting is open to the public. The Chairperson of the Committee is empowered to conduct the meeting in a fashion that will, in his judgment, facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the Committee will be permitted to do so, either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact the Advisory Committee Management Office at 202-252-5187. Requests must be received at least 5 days prior to the meeting and reasonable provision will be made to include the presentation on the agenda.

Transcripts: Available for public review and copying at the Public Reading Room, Room 5B180, Forrestal Building, 1000 Independence Avenue, SW, Washington, D.C., between 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Executive Summary: Available approximately 30 days following the meeting from the Advisory Committee Management Office.

Issued at Washington, D.C. on January 15, 1981.

Georgia Hildreth,

Director, Advisory Committee Management.

[FR Doc. 81-2149 Filed 1-21-81; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Project No. 3632-000]

Benton Falls Hydro, Inc.; Application for Preliminary Permit

January 13, 1981.

Take notice that Benton Falls Hydro, Inc. (Applicant) filed on October 30, 1980, an application for preliminary permit [pursuant to the Federal Power Act, 16 U.S.C. 791(a)-825(r)] for proposed Project No. 3632 to be known as the Benton Falls Project located on the Sebasticook River in Benton, Kennebec County, Maine. The application is on file with the Commission and is available for public inspection. Correspondence with the Applicant should be directed to: Mark Isaacson, Benton Falls Hydro, Inc., P.O. Box 465, Lisbon, Maine 04240. Any person who wishes to file a response to this notice should read the entire notice and must comply with the requirements specified for the particular kind of response that person wishes to file.

Project Description.—The proposed project would consist of: (1) a new concrete dam at the location of a timber crib dam breached in 1936; (2) existing headgates, forebay and canal, to be refurbished; (3) two new steel penstocks; (4) a new powerhouse containing two turbine generators with a total rated capacity of 2.8 MW; (5) a tailrace channel; and (6) appurtenant facilities.

The Applicant estimates that the average annual energy output would be 12,000,000 kWh saving the equivalent of 20,000 barrels of oil or 5,600 tons of coal.

Purpose of Project.—Markets for the electric energy produced would be

determined during the term of the preliminary permit.

Proposed Scope and Cost of Studies under Permit.—The work proposed under this preliminary permit would include geotechnical investigations at the site of the proposed dam, engineering plans, and an environmental assessment. Geotechnical investigations would include a boring program in the vicinity of the axis of the breached dam and at the existing forebay, canal and new powerhoue. Based on results of these studies, Applicant would decide whether to proceed with more detailed studies and the preparation of an application for license to construct and operate the project. Applicant estimates that the work to be performed under this preliminary permit would cost $189,500.

Purpose of Preliminary Permit.—A preliminary permit does not authorize construction. A permit, if issued, gives the Permittee, during the term of the permit, the right of priority of application for license while the Permittee undertakes the necessary studies and examinations to determine the engineering, economic, and environmental feasibility of the proposed project, the market for power, and all other information necessary for inclusion in an application for a license.

Agency Comments.—Federal, State, and local agencies that receive this notice through direct mailing from the Commission are invited to submit comments on the described application for preliminary permit. (A copy of the application may be obtained directly from the Applicant.) Comments should be confined to substantive issues relevant to the issuance of a permit and consistent with the purpose of a permit as described in this notice. No other formal request for comments will be made. If an agency does not file comments within the time set below, it will be presumed to hae no comments.

Competing Applications.—Anyone desiring to file a competing application must submit to the Commission, on or befoe March 18, 1981, either the competing application itself or a notice of intent to file a competing application. Submission of a timely notice of intent allows an interested person to file the competing application no later than May 18, 1981. A notice of intent must conform with the requirements of 18 CFR 4.33(b) and (c) (1980). A competing application must conform with the requirements of 18 CFR 4.33(a) and (d) (1980).

Comments, Protests, or Petitions to Intervene.—Ayone desiring to be heard or to make any protests about this application should file a petition to intervene or a protest with the Commission, in accordance with the requirements of its Rules of Practice and Procedure, 18 CFR 1.8 or 1.10 (1980). Comments not in the nature of a protest may also be submitted by conforming to the procedures specified in § 1.10 for protests. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but a person who merely files a protest or comments does not become a party to the proceeding. To become a party, or to participate in any hearing, a person must file a petition to intervene in accordance with the Commission's rules. Any comments, protest, or petition to intervene must be received on or before March 18, 1981.

Filing and Service of Responsive Documents.—Any comments, notices of intent, competing applications, protests, or petitions to intervene must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", or "PETITION TO INTERVENE", as applicable. Any of these filings must also state that it is made in response to this notice of application for preliminary permit for Project No. 3632. Any comments, notices of intent, competing applications, protests, or petitions to intervene must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Applications Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208, 400 First Street, NW., Washington, D.C. 20426. A copy of any notice of intent, competing application, or petition to intervene must also be served upon each representative of the Applicant specified in the first paragraph of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 81-2172 Filed 1-21-81; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. TA81-1-3-000 (PGA81-1)]

Chattanooga Gas Co.; Proposed PGA Rate Adjustment

January 13, 1981

Take notice that on January 6, 1981, Chattanooga Gas Company, a Division of Jupiter Industries, Inc., (Chattanooga) tendered for filing proposed changes to Original Volume No. 1 of its FERC Gas Tariff to be effective on January 1, 1981, consisting of the following revised tariff sheet:

Thirty-Seventh Revised Tariff Sheet No. 6

The Thirty-Seventh Revised Tariff Sheet No. 6 reflects a current increase in the LNG rates of 67.4 cents per MMBtu and a cumulative increase of $1.007 per MMBtu.

Chattanooga states the sole purpose of this revised Tariff Sheet is to adjust Chattanooga's LNG rates pursuant to its PGA provision in Section 5 of the General Terms and Conditions of its Gas Tariff to reflect the cumulative effect of the underlying rate adjustments filed for by both of its suppliers since July 1, 1980. Chattanooga states that its semi-annual PGA filing dates are January 1 and July 1. The suppliers' rate adjustments being tracked by Chattanooga are those filed for by Southern Natural in Docket No. RP78-36 and RP80-40 with an effective date of August 1, 1980; in Docket No. RP80-102 with an effective date of November 1, 1980; in Docket No. RP 74-6 and RP72-74 with an effective date of December 1, 1980; in Docket No. TA81-1-7 with an effective date of January 1, 1981; and those filed for by East Tennessee in Docket No. TA81-1-2 with an effective date of January 1, 1981. Chattanooga requests the Thirty-Seventh Revised Tariff Sheet No. 6 become effective January 1, 1981, the proposed effective date of the latest rate changes by Southern Natural and East Tennessee.

As noted above, the proposed effective date of Chattanooga's rate change is January 1, 1981. Sections 22.1(c) and 24.8(d) require Chattanooga to file any proposed rate change pursuant to those Sections at least forty-five days prior to the Effective Date of Adjustment. However, because Southern Natural and East Tennessee only recently advised Chattanooga of their revised rates, Chattanooga, for good cause shown, respectfully requests that the Commission grant waiver of the forty-five day notice requirement in order that the proposed rate change will become effective January 1, 1981 as proposed.

Chattanooga states that copies of the filing have been mailed to all of its jurisdictional customers.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Sections 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before January 21, 1981. Protests will be considered by the

Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 81-2175 Filed 1-21-81; 8:45 am]

BILLING CODE 6450-85-M

[Project No. 3666-000]

City of Bakersfield and North Kern Delta Water District; Application for Preliminary Permit

January 13, 1981

Take notice that City of Bakersfield and North Kern Delta Water District (Applicant) filed on November 5, 1980, an application for preliminary permit [pursuant to the Federal Power Act, 16 U.S.C. 791(a)–825(r)] for proposed Project No. 3666 to be known as the Beardsley Powerplants Project located on the Kern River in Kern County, California. The application is on file with the Commission and is available for public inspection. Correspondence with the Applicant should be directed to: Mr. Harold Bergen, City Manager, City of Bakersfield, 1501 Truxtun Avenue, Bakersfield, California 93301. Any person who wishes to file a response to this notice should read the entire notice and must comply with the requirements specified for the particular kind of response that person wishes to file.

Project Description.—The proposed project would consist of two powerplants with a total rated capacity of 1,000 kW. One would consist of a 800-kW generating unit constructed as an integral part of the reconstructed Beardsley Diversion Structure and would use flows released into the Kern River. A second powerplant would consist of a 200-kW generating unit constructed as an integral part of the reconstructed Beardsley Canal Headworks Structure. The project would include a short transmission line.

The Applicant estimates that the average annual energy output would be 3,760 MWh.

Purpose of Project.—Project power would supplement existing electrical supplies in the project area.

Proposed Scope and Cost of Studies under Permit.—Applicant would prepare a feasibility study, secure water rights, complete environmental documentation, perform preliminary design and cost estimates for the project, prepare an application for license, and negotiate any necessary agreements for project construction and operation. Applicant estimates the cost of performing these studies at $44,000.

Purpose of Preliminary Permit.—A preliminary permit does not authorize construction. A permit, if issued, gives the Permittee, during the term of the permit, the right of priority of application for license while the Permittee undertakes the necessary studies and examinations to determine the engineering, economic, and environmental feasibility of the proposed project, the market for power, and all other information necessary for inclusion in an application for a license.

Agency Comments.—Federal, State, and local agencies that receive this notice through direct mailing from the Commission are invited to submit comments on the described application for preliminary permit. (A copy of the application may be obtained directly from the Applicant.) Comments should be confined to substantive issues relevant to the issuance of a permit and consistent with the purpose of a permit as described in this notice. No other formal request for comments will be made. If an agency does not file comments within the time set below, it will be presumed to have no comments.

Competing Applications.—Anyone desiring to file a competing application must submit to the Commission, on or before February 28, 1981, either the competing application itself or a notice of intent to file a competing application. Submission of a timely notice of intent allows an interested person to file the competing application no later than April 27, 1981. A notice of intent must conform with the requirements of 18 CFR 4.33(b) and (c) (1980). A competing application must conform with the requirements of 18 CFR 4.33(a) and (d) (1980).

Comments, Protests, or Petitions to Intervene.—Anyone desiring to be heard or to make any protests about this application should file a petition to intervene or a protest with the Commission, in accordance with the requirements of its Rules of Practice and Procedure, 18 CFR 1.8 or 1.10 (1980). Comments not in the nature of a protest specified in § 1.10 for protests. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but a person who merely files a protest or comments does not become a party to the proceeding. To become a party, or to participate in any hearing, a person must file a petition to intervene in accordance with the Commission's Rules. Any comments, protest, or petition to intervene must be received on or before February 28, 1981.

Filing and Service of Responsive Documents.—Any comments, notices of intent, competing applications, protests, or petitions to intervene must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", or "PETITION TO INTERVENE", as applicable. Any of these filings must also state that it is made in response to this notice of application for preliminary permit for Project No. 3666. Any comments, notices of intent, competing applications, protests, or petitions to intervene must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE, Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Applications Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 209, 400 First Street, NW., Washington, D.C. 20426. A copy of any notice of intent, competing application, or petition to intervene must also be served upon each representative of the Applicant specified in the first paragraph of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 81-2173 Filed 1-21-81; 8:45 am]

BILLING CODE 6450-85-M

[Project No. 3449]

City of North Little Rock, Ark.; Application for Preliminary Permit

January 13, 1981.

Take notice that the City of North Little Rock, Arkansas (Applicant) filed on September 8, 1980, an application for preliminary permit [pursuant to the Federal Power Act, 16 U.S.C. 791(a)–825(r)] for proposed Project No. 3449 to be known as the Murray Power Project located on the Arkansas River in Pulaski County, Arkansas. Correspondence with the Applicant should be directed to: Mayor William F. Laman, City Hall, North Little Rock, Arkansas 72114.

Project Description.—The proposed project would utilize the Corps of Engineers' Murray Lock and Dam No. 7 and would consist of: (1) a 130 by 350 foot powerhouse on the northern bank and housing: (2) fifteen tube-type turbine/generator units with a total rating of 25.5 MW at a head of 16 feet; (3) a switchyard near the northern end of the powerhouse; (4) a 5.0-mile long

transmission line connecting the project to the Applicant's substation, and (5) appurtenant facilities. Applicant estimates annual power generation would average 148,500,000 KWH.

Purpose of Project.—All project power would be used in the Applicant's municipal system.

Proposed Scope and Cost of Studies under Permit.—Applicant seeks issuance of preliminary permit for a period of three years, during which time it would perform surveys and geological investigations, determine the economic feasibility of the project, reach final agreement on sale of project power, secure financing commitments, consult with Federal, State, and local government agencies concerning the potential environmental effects of the project, and prepare an application for FERC license, including an environmental report. Applicant estimates the cost of studies under the permit would be between $75,000 and $100,000.

Purpose of Preliminary Permit.—a preliminary permit does not authorize construction. A permit, if issued, gives the Permittee, during the term of the permit, the right of priority of application for license while the Permittee undertakes the necessary studies and examinations to determine the engineering, economic, and environmental feasibility of the proposed project, the market for the power, and all other information necessary for inclusion in an application for a license.

Agency Comments.—Federal, State, and local agencies that receive this notice through direct mailing from the Commission are invited to submit comments on the described application for preliminary permit. (A copy of the application may be obtained directly from the Applicant.) Comments should be confined to substantive issues relevant to the issuance of a permit and consistent with the purpose of a permit as described in this notice. No other formal request for comments will be made. If an agency does not file comments within the time set below, it will be presumed to have no comments.

Competing Applications.—This application was filed as a competing application to those filed by Arkansas Electric Cooperative Corporation on February 22, 1980, and Arkansas Power & Light Company on March 31, 1980, for Projects Nos. 3050 and 3122, respectively, under 18 CFR 4.33 (*as amended*, 44 FR 61328, Oct. 25, 1979), and, therefore, no further competing applications or notices of intent to file a competing application will be accepted for filing.

Comments, Protests, or Petitions to Intervene.—Anyone desiring to be heard or to make any protest about this application should file a perition to intervene or a protest with the Federal Energy Regulatory Commission, in accordance with the requirements of the Commission's Rules of Practice and Procedure, 18 CFR § 1.8 or 1.10 (1979). Comments not in the nature of a protest may also be submitted by conforming to the procedures specified in § 1.10 for protests. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but a person who merely files a protest or comments does not become a party to the proceeding. To become a party, or to participate in any hearing, a person must file a petition to intervene in accordance with the Commission's Rules. Any comments, protest, or petition to intervene must be filed on or before February 26, 1981.

Filing and Service of Responsive Documents.—Any comments, notices of intent, competing applications, protests, or petitions to intervene must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION, "PROTEST", or "PETITION TO INTERVENE", as applicable. Any of these filings must also state that it is made in response to this notice of application for preliminary permit for Project No. 3449. Any comments, notices of intent, competing applications, protests, or petitions to intervene must be filed by providing the original and those copits required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE, Washington, D.C. 20426.

An Additional copy much be sent to: Fred E. Springer, Chief, Applicatons Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208, 400 First Street, NW, Washington, D.C. 20426. A copy of any notice of intent, competing application, or petition to intervene must also be served upon each representative of the Applicant specified in the first paragraph of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 81-2170 Filed 1-21-81; 8:45 am]

BILLING CODE 6450-85-M

[Dockets Nos. RP78-20, et al.]

Columbia Gas Transmission Corp., et al.; Filing of Pipeline Refund Reports and Refund Plans

January 13, 1981.

Take notice that the pipelines listed in the Appendix hereto have submitted to the Commission for filing proposed refund reports or refund plans. The date of filing, docket number, and type of filing are also shown on the Appendix.

Any person wishing to do so may submit comments in writing concerning the subject refund reports and plans. All such comments should be filed with or mailed to the Federal Energy Regulatory Commission, 825 North Capitol Street, NE, Washington, D.C. 20426, on or before January 21, 1981. Copies of the respective filings are on file with the Commission and available for public inspection.

Kenneth F. Plumb,

Secretary.

Appendix

Filing date	Company	Docket No.	Type filing
Dec. 16, 1980	Columbia Gas Transmission Corporation.	RP78-20	Report Supplement.
Dec. 19, 1980	Texas Eastern Transmission Corporation.	RP81-24-000	Plan and Petition.
Dec. 19, 1980	Columbia Gas Transmission Corporation.	RP78-20	Report Supplement.
Dec. 22, 1980	Alabama Tennessee Natural Gas Co.	RP73-77	Report.
Dec. 29, 1980	Southern Natural Gas Company.	RP72-91, *et al.*	Report.
Dec. 30, 1980	Natural Gas Pipeline Co. of America.	RP72-125-002	Report.
Jan. 2, 1981	Texas Eastern Transmission Corporation.	RP81-27-000	Plan and Petition.
Jan. 5, 1981	Consolidated Gas Supply Corporation.	RP72-157	Report.

[FR Doc. 81-2170 Filed 1-21-81; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. TA81-1-33 (PGA81-1, IPR81-1, AP81-1, LFUT81-1 and TT81-1)]

El Paso Natural Gas Co.; Data Filing

January 13, 1981.

Take notice that El Paso Natural Gas Company [El Paso] on November 14, 1980, filed certain information which the pipeline asserts demonstrates that the prices paid for company-owned production included in its Purchase Gas Cost Adjustment (PGA), filed August 29, 1980, meets the "affiliated entities test" of Section 601(b)(1)(E) of the Natural Gas Policy Act of 1978 (NGPA).

On September 30, 1980, the Commission accepted for filing and suspended certain tariff sheets in the above-listed docket. In addition, the Commission was unable to determine whether the proposed purchase prices assigned by the pipeline to its company-owned production satisfied the affiliated entities limitation set forth in Section 601(b)(1)(E) of the NGPA. That Section provides that in the case of any first sale between any interstate pipeline and any affiliate of such pipeline, any amount paid shall be deemed just and reasonable if in addition to not exceeding the applicable maximum lawful price ceiling, such amount does not exceed the amount paid in comparable first sale transactions between persons not affiliated with such pipeline. Accordingly, the Commission's acceptance of the tariff sheets was conditioned upon El Paso's filing data responsive to certain data request. In essence, such data request sought information demonstrating that the value claimed for its own production meets the affiliated entities test.

Accordingly, El Paso asserts that the information provided in the November 14, 1980, filing demonstrates the pricing of such company-owned production meets the requirements of Section 601(b)(1)(E) of the NGPA. However, El Paso notes that such filing does not include certain information which the company believes is either irrelevant or confidential.

Therefore, El Paso requests that the Commission accept such November 14, 1980, filing as demonstrating the company's satisfaction of Section 601(b)(1)(E) of the NGPA and, accordingly, find El Paso's tariff sheets in the above-listed docket just and reasonable.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE, Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before January 21, 1981. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene.

Kenneth F. Plumb,
Secretary.

[FR Doc. 81-2177 Filed 1-21-81; 8:45 am]
BILLING CODE 6450-85-M

[Docket No. ER81-105-000]

Indiana & Michigan Electric Co.; Order Granting Waiver of Filing Requirements, Denying Waiver of Notice, Accepting for Filing and Suspending Proposed Rates, Consolidating Dockets, Directing Summary Disposition, Granting Intervention, and Establishing Procedures

Issued January 9, 1981.

Before Commissioners: Georgiana Sheldon, Acting Chairman; Matthew Holden, Jr., George R. Hall and J. David Hughes.

On November 10, 1980, Indiana & Michigan Electric Company (IME) tendered for filing revised tariffs proposed to become effective November 1, 1980, which provide for an increase in jurisdictional revenue from its municipal wholesale customers of approximately $209,635 based on the twelve month period ending December 31, 1979.[1] IME proposes to increase its demand charge from $8.80/kW to $9.14/kW, to decrease its energy charge from 9.60 mills/kWh to 9.41 mills/kWh, and to decrease its monthly customer charge from $385.05 to $221.93. In addition, the base cost of fuel will be increased from 6.9109 mills/kWh to 7.5945 mills/kWh and the loss factor will be decreased from 3.54% to 2.975%. IME also proposes to eliminate the currently specified 60% billing demand ratchet.

Notice of the filing was issued on November 18, 1980, with responses due on or before December 5, 1980. Petitions to intervene were filed on December 5, 1980, by the Cities of Anderson and Auburn, Indiana (Anderson), and on December 5, 1980, as amended on December 19, 1980, by the Cities of Avilla, Bluffton, Columbia City, Frankton, Garrett, Gas City, Mishawaka, New Carlisle, and Warren, Indiana, and the Cities of Niles, South Haven, and Sturgis, Michigan together with the Indiana and Michigan Municipal Distributors Association (IMMDA). On December 17, 1980, IME filed its response.

Anderson and IMMDA argue that the rate increase is, in actuality, substantially larger than IME suggests. Anderson urges that the filing be rejected. Anderson, in the alternative, and IMMDA seek a maximum five month suspension and an order instituting a hearing concerning the lawfulness of the proposed rate increase. In addition, Anderson and IMMDA raise a variety of cost of service issues.

Both Anderson and IMMDA also allege that the proposed rates will result in a price squeeze, and they request that the Commission institute price squeeze procedures.

Discussion

Initially, we find that participation by each of the petitioners is in the public interest. Consequently, we shall grant the petitions to intervene.

In Order No. 91, Docket No. RM79-64, issued June 27, 1980, the Commission indicated that until revised filing requirements became effective, the Commission would waive the filing requirements of the then current section 35.13 for those utilities that seek to implement the revised cost of service format. Although IME has not specifically requested such waiver, our review of its filing indicates that IME tendered its revised rates in accordance with the filing requirements of section 35.13, as revised by Order No. 91, and we thus shall regard such a request as implicit in IME's filing. Accordingly, we find that waiver of the filing requirements of section 35.13 at the time of IME's filing is warranted and the motion to reject will be denied.

IME has requested waiver of the 60-day notice requirement of section 35.3 of the Commission's regulations in order to allow an effective date of November 1, 1980. IME states that the proposed rates represent a nominal increase, and constitute only a technical filing designed to create a locked-in period with respect to rates which have been in effect, subject to refund, since December 23, 1978. According to IME, the purpose for creating such a locked-in period is to limit IME's exposure to refunds which

[1] See Attachment for rate schedule designations.

might result if a recent initial decision [2] respecting the earlier rates is affirmed by the Commission. As indicated above, Anderson and IMMDA contend that the Commission should deny IME's request because the increase in rates is not minimal, but rather is substantial in comparison to rates which might be expected on the basis of the pending initial decision. Upon consideration, the Commission finds that IME's arguments do not constitute the requisite showing of good cause for waiver of the notice requirements, as required by section 35.11 of the Commission's regulations. The request will therefore be denied.

Considering the allegations raised by the intervenors, we find that the proposed rates have not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory, preferential, or otherwise unlawful. Accordingly, we shall accept the proposed rates for filing and suspend them as ordered below.

In a number of suspension orders,[3] we have addressed the considerations underlying the Commission's policy regarding rate suspensions. For the reasons given there, we have concluded that rate filings should generally be suspended for the maximum period permitted by statute where preliminary study leads the Commission to believe that the filing may be unjust and unreasonable or that it may run afoul of other statutory standards. We have acknowledged, however, that shorter suspensions may be warranted in circumstances where suspension for the maximum period may lead to harsh and inequitable results. Such circumstances have been presented here. The Commission notes that a variety of substantive contentions have been raised by the intervenors, but that our preliminary analysis indicates that the proposed rates may not yield excessive revenues. We therefore believe that a five month suspension is unnecessary and may be inequitable to IME. However, in order to ensure refund protection for the affected customers pending further review, we believe we should exercise our discretion to suspend the rates for only one day from sixty days after filing, permitting the rates to take effect subject to refund thereafter on January 11, 1981.

Both IME and Anderson request that the instant docket be consolidated with the proceedings in Docket Nos. ER81-46-000 *et al.* These dockets, involving revised rates filed on October 24, 1980, for three other wholesale customer classes, were suspended for one day from sixty days after filing to become effective on December 25, 1980, were set for hearing, and were consolidated for hearing and decision thereon.[4] Because the instant docket and these dockets present common questions of law and fact, we shall consolidate Docket No. ER81-105-000 with these dockets for purposes of hearing and decision.

Anderson and IMMDA correctly note that IME has reflected accumulated deferred investment tax credits (ADITC) in its capitalization at the company's claimed overall rate of return. The Commission has previously determined that summary disposition is appropriate under these circumstances,[5] and we shall so resolve the issue in this docket. However, the Commission notes that the revenue impact of this summary disposition is relatively small in relation to the proposed rate increase. Moreover, as noted above, our preliminary analysis has indicated that IME's proposed rates may not produce excessive revenues. As a result, we shall not require IME to refile its cost of service and rates at this time. Nonetheless, summary disposition of the ADITC issue shall be reflected in any rates finally approved by the Commission.

The Commission observes that IME's proposed rate schedules for Anderson and IMMDA contain a tax adjustment clause. We shall not reject the tax adjustment clause, but we note that implementation of the clause will constitute a change in rate necessitating a timely filing with the Commission pursuant to section 25.13 of the regulations.

The Commission further observes that IME's proposed rates incorporate by reference the curtailment provision at issue in Docket No. E-9548 and E-9549, currently awaiting Commission action. We note that the curtailment provision shall remain subject to the outcome of the proceedings in those dockets.

In accordance with the Commission's policy established in *Arkansas Power & Light Company*, Docket No. ER79-339, order issued August 6, 1979, we shall phase the price squeeze issue. As we have noted in previous orders, this procedure will allow a decision first to be reached on the cost of service, capitalization and rate of return issues. If, in the view of the intervenors or staff, a price squeeze persists, a second phase of the proceeding may follow.

The Commission orders

(A) The requirement of § 35.13 of the Commission's regulations at the time of IME's filing that cost of service data, Period I, end no earlier than seven months prior to the date of the filing is hereby waived. The motion to reject is hereby denied.

(B) IME's request for waiver of the Commission's notice requirements is denied.

(C) IME's proposed rates tendered for filing on November 10, 1980, are accepted for filing and suspended for one day from sixty days after filing, to become effective on January 11, 1981, subject to refund pending hearing and decision thereon.

(D) The proceedings in Docket No. ER81-105-000 are hereby consolidated with the proceedings in Docket Nos. ER81-46-000 *et al.* for purposes of hearing and decision thereon.

(E) IME's inclusion of ADITC in its capitalization at the claimed overall rate of return is summarily rejected. This determination shall be reflected in any rates ultimately approved by the Commission in this docket.

(F) IME is hereby advised that implementation of its tax adjustment clause will require timely filing in accordance with the provisions of § 35.13 of the Commission's regulations.

(G) IME is hereby advised that the curtailment provision incorporated by reference in the instant filing is subject to the outcome of the proceedings in Docket Nos. E-9548 and E-9549.

(H) We hereby order initiation of price squeeze procedures in Docket No. ER81-105-000 and further order that the proceeding be phased so that the price squeeze procedures begin after issuance of a Commission opinion establishing the rate which, but for a consideration of price squeeze, would be just and reasonable. The presiding judge may order a change in this schedule for good cause. The price squeeze portion of this case shall be governed by the procedures set forth in § 2.17 of the Commission's regulations as they may be modified prior to the initiation of the price squeeze phase of this proceeding.

(I) The petitions to intervene are granted subject to the rules and regulations of the Commission; *Provided, however,* that participation by the intervenors shall be limited to matters set forth in their petitions to intervene; and *Provided, further,* that the admission of the intervenors shall not be construed as recognition by the

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[2] *Indiana & Michigan Electric Co.*, Docket Nos. ER78-378, *et al.*, Initial Decision, issued June 18, 1980.

[3] *E.g., Boston Edison Co.*, Docket No. ER80-308 (August 28, 1980) (five month suspension); *Alabama Power Co.*, Docket Nos. ER80-306, *et al.* (August 28, 1980) (one day suspension); *Cleveland Electric Illuminating Co.*, Docket No. ER80-488 (August 22, 1980 (one day suspension).

[4] *Indiana and Michigan Electric Company*, Docket Nos. ER81-46-000 *et al.*, order issued December 18, 1980.

[5] *E.g., El Paso Electric Co.*, Docket No. ER 79-528, order issued September 24, 1979.

Commission that they might be aggrieved because of any order or orders by the Commission entered in this proceeding.

(J) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the DOE Act and by the Federal Power Act, particularly sections 205 and 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the Federal Power Act [18 CFR, Chapter I (1980)], a public hearing shall be held concerning the justness and reasonableness of IME's proposed rates.

(K) A presiding administrative law judge, to be designated by the Chief Administrative Law Judge, shall convene a conference in this proceeding to be held within approximately ten (10) days of the service of top sheets in a hearing room of the Federal Energy Regulatory Commission, 825 North Capitol Street, NE, Washington, D.C. 20426. The designated law judge is authorized to establish procedural dates, and to rule on all motions (except motions to consolidate or sever and motions to dismiss), as provided for in the Commission's Rules of Practice and Procedure.

(L) The Commission staff shall serve top sheets in this proceeding on or before January 9, 1981.

(M) The Secretary shall promptly publish this order in the Federal Register.

By the Commission.

Kenneth F. Plumb,
Secretary.

Indiana and Michigan Electric Company, Docket No. ER81-[illegible]

Filed: November 10, 1980.

Other Parties: (1) Cities of Anderson, Auburn, and Mishawaka; (2) Towns of Avilla, Frankton, New Carlisle, and Warren, and Cities of Bluffton, Columbia City, Garrett, Gas City, Niles, South Haven, and Sturgis.

(1) First Revised Sheet No. 1B, Second Revised Sheet Nos. 1 and 6–1, Third Revised Sheet Nos. 5 and 6, and Fourth Revised Sheet No. 4 under Schedule WS under FPC Electric Tariff, Original Volume No. 2 (Supersede Original Sheet No. 1B, First Revised Sheet Nos. 1 and 6–1, Second Revised Sheet Nos. 5 and 6, and Third Revised Sheet No. 4 thereunder).

(2) First Revised Sheet No. 1C, Second Revised Sheet No. 8–2, Third Revised Sheet No. 1, Fourth Revised Sheet Nos. 8 and 8–1, and Fifth Revised Sheet No. 7 under Schedule MPS under FPC Electric Tariff, Original Volume No. 1 (Supersede Original Sheet No. 1C, First Revised Sheet No. 8–2, Second Revised Sheet No. 1, Third Revised Sheet Nos. 8 and 8–1, and Fourth Revised Sheet No. 7 thereunder).

[FR Doc. 81-2178 Filed 1-21-81; 8:45 am]
BILLING CODE 6450-85-M

[Docket No. CP80-228]

Lone Star Gas Co., A Division of ENSERCH Corp.; Application

January 14, 1981.

Take notice that on February 4, 1980, Lone Star Gas Company, a Division of ENSERCH Corporation (Applicant), 301 South Harwood Street, Dallas, Texas 75201, filed in Docket No. CP80–228 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of taps and regulators for the delivery of natural gas to five customers, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant proposes to construct and operate taps, regulating and measuring facilities for delivery of natural gas to the following customers: (1) for Silo Public School in Bryan, Oklahoma, for the purpose of heating and air conditioning; (2) for Frank Martino in Denton, Texas, for the purpose of commercial development; (3) for Roy Stout in McCurtain, Oklahoma, for the purpose of commercial heating; (4) for Jerry McClure in McCurtain, Oklahoma, for the purpose of commercial heating; and (5) for Wayne Reese in McCurtain, Oklahoma, for the purpose of commercial heating.

Applicant states that the cost of the proposed facilities for the delivery of natural gas would be $54,876, which costs would be financed from Applicant's working capital.

Any person desiring to be heard or to make any protest with reference to said application should on or before January 30, 1981, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Lois D. Cashell,
Acting Secretary.

[FR Doc. 81-2179 Filed 1-21-81; 8:45 am]
BILLING CODE 6450-85-M

[Project No. 3668-000]

Mitchell Energy Co., Inc.; Application for Preliminary Permit

January 13, 1981.

Take notice that Mitchell Energy Company, Inc. (Applicant) filed on November 4, 1980, an application for preliminary permit [pursuant to the Federal Power Act, 16 U.S.C. 791(a)–825(r)] for proposed Project No. 3668 to be known as Mississippi Lock and Dam No. 11 Hydroelectric Project located at the U.S. Army Corps of Engineers' Mississippi Lock and Dam No. 11 on the Mississippi River in Dubuque County, Dubuque, Iowa. The application is on file with the Commission and is available for public inspection. Correspondence with the Applicant should be directed to: Mr. Mitchell L. Dong, President, Mitchell Energy Company, Inc., 173 Commonwealth Avenue, Boston, Massachusetts 02116, telephone (617) 267–4394. Any person who wishes to file a response to this notice should read the entire notice and must comply with the requirements specified for the particular kind of response that person wishes to file.

Project Description.—The proposed project would utilize a U.S. Army Corps of Engineers' dam. Project No. 3668 would consist of: (1) a proposed powerhouse that would be operated as a run-of-the-river installation and located

at the non-overflow section of the dam having generation units with a total capacity of approximately 10 MW; (2) proposed transmission lines; and (3) appurtenant facilities. The proposed project would be located on Federal land.

The Applicant estimates that the average annual energy output would be 72,500,000 kWh.

Purpose of Project.—The Applicant proposes to sell the output of energy generated to the Iowa Power and Light Company or other local utilities.

Proposed Scope and Cost of Studies Under Permit.—The Applicant seeks issuance of a preliminary permit for a period of 36 months. Within the 36-month time frame, the Applicant proposes to conduct engineering, environmental and legal investigations. The Applicant estimates the cost of the proposed investigations to be $50,000.

Purpose of Preliminary Permit.—A preliminary permit does not authorize construction. A permit, if issued, gives the Permittee, during the term of the permit, the right of priority of application for license while the Permittee undertakes the necessary studies and examinations to determine the engineering, economic, and environmental feasibility of the proposed project, the market for power, and all other information necessary for inclusion in an application for a license.

Agency Comments.—Federal, State, and local agencies that receive this notice through direct mailing from the Commission are invited to submit comments on the described application for preliminary permit. (A copy of the application may be obtained directly from the Applicant.) Comments should be confined to substantive issues relevant to the issuance of a permit and consistent with the purpose of a permit as described in this notice. No other formal request for comments will be made. If an agency does not file comments within the time set below, it will be presumed to have no comments.

Competing Applications.—Anyone desiring to file a competing application must submit to the Commission, on or before March 19, 1981, either the competing application itself or a notice of intent to file a competing application. Submission of a timely notice of intent allows an interested person to file the competing application no later than May 18, 1981. A notice of intent must conform with the requirements of 18 CFR 4.33 (b) and (c) (1980). A competing application must conform with the requirements of 18 CFR 4.33 (a) and (d) (1980).

Comments, Protests, or Petitions to Intervene.—Anyone desiring to be heard or to make any protests about this application should file a petition to intervene or a protest with the Commission, in accordance with the requirements of its Rules of Practice and Procedure, 18 CFR 1.8 or 1.10 (1980). Comments not in the nature of a protest may also be submitted by conforming to the procedures specified in § 1.10 for protests. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but a person who merely files a protest or comments does not become a party to the proceeding. To become a party, or to participate in any hearing, a person must file a petition to intervene in accordance with the Commission's Rules. Any comments, protest, or petition to intervene must be received on or before March 19, 1981.

Filing and Service of Responsive Documents.—Any comments, notices of intent, competing applications, protests, or petitions to intervene must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", or "PETITION TO INTERVENE", as applicable. Any of these filings must also state that it is made in response to this notice of application for preliminary permit for Project No. 3668. Any comments, notices of intent, competing applications, protests, or petitions to intervene must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Applications Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208, 400 First Street, NW., Washington, D.C. 20426. A copy of any notice of intent, competing application, or petition to intervene must also be served upon each representative of the Applicant specified in the first paragraph of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 81-2188 Filed 1-21-81; 8:45 am]

BILLING CODE 6450-85-M

[Project No. 3667-000]

Mitchell Energy Co., Inc.; Application for Preliminary Permit

January 13, 1981.

Take notice that Mitchell Energy Company, Inc. (Applicant) filed on November 4, 1980, an application for preliminary permit [pursuant to the Federal Power Act, 16 U.S.C. 791(a)–825(r)] for proposed Project No. 3667 to be known as Allegheny Lock and Dam No. 2 Hydro Project located on the Allegheny River in Allegheny County, Pennsylvania. The application is on file with the Commission and is available for public inspection. Correspondence with the Applicant should be directed to: Mr. Mitchell L. Deng, President, Mitchell Energy Company, Inc., 173 Commonwealth Avenue, Boston, Massachusetts 02116. Any person who wishes to file a response to this notice should read the entire notice and must comply with the requirements specified for the particular kind of response that person wishes to file.

Project Description.—The proposed project would utilize the existing U.S. Army Corps of Engineers' Allegheny Lock and Dam No. 2 and would consist of: (1) new penstocks near the right dam abutment; (2) a new powerhouse containing units having a total rated capacity of 10,600 kW; (3) a tailrace; (4) a new transmission line; and (5) appurtenant facilities. The Applicant estimates that the average annual energy output would be 55,700,000 kWh.

Purpose of Project.—Project energy would be sold to a local utility.

Purpose Scope and Cost of Studies under Permit.—Applicant seeks issuance of a preliminary permit for a period of two years, during which time it would prepare studies of the hydraulic, construction, economic, environmental, historic and recreational aspects of the project. Depending on the outcome of the studies, Applicant would prepare an application for an FERC license. Applicant estimates the cost of the studies under the permit would be $50,000.

Purpose of Preliminary Permit.—A preliminary permit does not authorize construction. A permit, if issued, gives the Permittee, during the term of the permit, the right of priority of application for license while the Permittee undertakes the necessary studies and examinations to determine the engineering, economic, and environmental feasibility of the proposed project, the market for power, and all other information necessary for inclusion in an application for a license.

Agency Comments.—Federal, State, and local agencies that receive this notice through direct mailing from the Commission are invited to submit comments on the described application for preliminary permit. (A copy of the application may be obtained directly from the Applicant.) Comments should be confined to substantive issues relevant to the issuance of a permit and consistent with the purpose of a permit

as described in this notice. No other formal request for comments will be made. If an agency does not file comments within the time set below, it will be presumed to have no comments.

Competing Applications.—This application was filed as a competing application to North Corporation's application for Project No. 3494 on September 23, 1980, under 18 CFR 4.33 (1980). Anyone desiring to file a competing application must submit to the Commission, on or before March 19, 1981, either the competing application itself or a notice of intent to file a competing application. Submission of a timely notice of intent allows an interested person to file the competing application no later than May 18, 1981. A notice of intent must conform with the requirements of 18 CFR 4.33 (b) and (c) (1980). A competing application must conform with the requirements of 18 CFR 4.33 (a) and (d) (1980).

Comments, Protests, or Petitions to Intervene.—Anyone desiring to be heard or to make any protests about this application should file a petition to intervene or a protest with the Commission, in accordance with the requirements of its Rules of Practice and Procedure, 18 CFR 1.8 or 1.10 (1980). Comments not in the nature of a protest may also be submitted by conforming to the procedures specified in § 1.10 for protests. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but a person who merely files a protest or comments does not become a party to the proceeding. To become a party, or to participate in any hearing, a person must file a petition to intervene in accordance with the Commission's Rules. Any comments, protest, or petition to intervene must be received on or before March 19, 1981.

Filing and Service of Responsive Documents.—Any comments, notices of intent, competing applications, protests, or petitions to intervene must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", or "PETITION TO INTERVENE", as applicable. Any of these filings must also state that it is made in response to this notice of application for preliminary permit for Project No. 3667. Any comments, notices of intent, competing applications, protests, or petitions to intervene must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Applications Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208, 400 First Street, NW., Washington, D.C. 20426. A copy of any notice of intent, competing application, or petition to intervene must also be served upon each representative of the Applicant specified in the first paragraph of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 81-2181 Filed 1-23-81; 8:45 am]

BILLING CODE 6450-85-M

[Project No. 3572-000]

North Stratford Equipment Corp.; Application for Preliminary Permit

January 13, 1981

Take notice that North Strafford Equipment Corporation (Applicant) filed on October 15, 1980, an application for preliminary permit [pursuant to the Federal Power Act, 16 U.S.C. 791(a)–825(r)] for proposed Project No. 3572 to be known as the Livermore Falls Project located on the Pemigewasset River in Grafton County, New Hampshire. The application is on file with the Commission and is available for public inspection. Correspondence with the Applicant should be directed to: Mr. John M. A. Rolli, North Stratford Equipment Corporation, 126 Main Street, Littleton, New Hampshire 03561. Livermore Falls Dam is owned by the Applicant. Any person who wishes to file a response to this notice should read the entire notice and must comply with the requirements specified for the particular kind of response that person wishes to file.

Project Description.—The proposed project would be run-of-the-river and would consist of: (1) an existing dam, 80-feet long and 14-feet high, constructed of concrete and masonry, and a repaired wing wall, 240-feet long and 14-feet maximum height, constructed of rock-filled timber cribs; (2) an existing headgate; (3) intakes constructed of concrete and masonry; (4) an existing penstock; (5) a renovated powerhouse containing two turbines directly connected to two generators having a total rated capacity of 1,400 kW; (6) a tailrace; (7) one 2.4 kV primary line, 300-feet long; and (8) appurtenant facilities. The Applicant estimates that the average annual energy output would be 10,900,000 kWh.

Purpose of Project.—Project energy would be sold to New Hampshire Cooperative Electric Corporation.

Proposed Scope and Cost of Studies under Permit.—Applicant seeks issuance of a preliminary permit for a period of one year, during which time it would prepare studies of the hydraulic, construction, economic, environmental, historic and recreational aspects of the project. Depending on the outcome of the studies, Applicant would prepare an application for an FERC license. Applicant estimates the cost of the studies under the permit would be $6,300.

Purpose of Preliminary Permit.—A preliminary permit does not authorize construction. A permit, if issued, gives the Permittee, during the term of the permit, the right of priority of application for license while the Permittee undertakes the necessary studies and examinations to determine the engineering, economic, and environmental feasibility of the proposed project, the market for power, and all other information necessary for inclusion in an application for a license.

Agency Comments.—Federal, State, and local agencies that receive this notice through direct mailing from the Commission are invited to submit comments on the described application for preliminary permit. (A copy of the application may be obtained directly from the Applicant.) Comments should be confined to substantive issues relevant to the issuance of a permit and consistent with the purpose of a permit as described in this notice. No other formal request for comments will be made. If an agency does not file comments within the time set below, it will be presumed to have no comments.

Competing Applications.—Anyone desiring to file a competing application must submit to the Commission, on or before March 18, 1981, either the competing application itself or a notice of intent to file a competing application. Submission of a timely notice of intent allows an interested person to file the competing application no later than May 18, 1981. A notice of intent must conform with the requirements of 18 CFR § 4.33(b) and (c) (1980). A competing application must conform with the requirements of 18 CFR § 4.33(a) and (d) (1980).

Comments, Protests, or Petitions to Intervene.—Anyone desiring to be heard or to make any protests about this application should file a petition to intervene or a protest with the Commission, in accordance with the requirements of its Rules of Practice and Procedure, 18 CFR 1.8 or 1.10 (1980). Comments not in the nature of a protest may also be submitted by conforming to the procedures specified in § 1.10 for protests. In determining the appropriate

action to take, the Commission will consider all protests or other comments filed, but a person who merely files a protest or comments does not become a party to the proceeding. To become a party, or to participate in any hearing, a person must file a petition to intervene in accordance with the Commission's Rules. Any comments, protest, or petition to intervene must be received on or before March 16, 1981.

Filing and Service of Responsive Documents.—Any comments, notices of intent, competing applications, protests, or petitions to intervene must bear in all capital letters the title "COMMENTS", NOTICE OF INTENT TO FILE COMPETING APPLICATION", COMPETING APPLICATION", "PROTEST", or "PETITION TO INTERVENE", as applicable. Any of these filings must also state that it is made in response to this notice of application for preliminary permit for Project No. 3572. Any comments, notices of intent, competing applications, protests, or petitions to intervene must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Applications Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208, 400 First Street, NW., Washington, D.C. 20426. A copy of any notice of intent, competing application, or petition to intervene must also be served upon each representative of the Applicant specified in the first paragraph of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 81-2182 Filed 1-21-81; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. TA81-1-17-001]

Texas Eastern Transmission Corp.; Proposed Changes in FERC Gas Tariff

January 13, 1981.

Take notice that Texas Eastern Transmission Corporation (Texas Eastern) on January 2, 1981, tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, the following sheets:

Fifty-sixth Revised Sheet No. 14
Fifty-sixth Revised Sheet No. 14A
Fifty-sixth Revised Sheet No. 14B
Fifty-sixth Revised Sheet No. 14C
Fifty-sixth Revised Sheet No. 14D
Third Revised Sheet No. 14E

These sheets are being issued pursuant to provisions of the General Terms and Conditions of Texas Eastern's FERC Gas Tariff contained in Section 12.4, Demand Charge Adjustment Commodity Surcharge; Section 23, Purchased Gas Cost Adjustment and Section 28, Louisiana First Use Tax Adjustment. These sheets are also being issued pursuant to Article VI, Rate Reductions for Repayments of Advance Payments, and Article IX, Transportation Tracker, of the Stipulation and Agreement in RP78-57 approved by Commission Order issued April 4, 1980.

The changes proposed consist of:

(1) Changes in the DCA Commodity Surcharges pursuant to Section 12.4, mentioned above;

(2) Increased PGA Adjustments by $.160/dth in the demand component of rates and 0.50¢/dth in the commodity component based on the net of increases in the projected cost of gas purchased from producer and pipeline suppliers and a decrease in the Account 191 balance as of October 31, 1980 pursuant to Section 23;

(3) Projected Incremental Pricing Surcharges for the period February, 1981 through July, 1981 pursuant to Section 23;

(4) An increase in the LAFUT Adjustment of 0.06¢/dth pursuant to Section 28;

(5) A reduction of 0.49¢/dth due to Repayment of Advance Payments pursuant to Article VI of the RP78-57 Stipulation and Agreement; and

(6) Reductions in the T&C by others Adjustments to reflect reduced projected transportation and compression costs and the estimated January 31, 1981 balance in the Deferred Transportation Cost Account pursuant to the provisions of Article IX of the RP78-57 Stipulation and Agreement.

The proposed effective date of the above tariff sheets is February 1, 1981.

Copies of the filing were served upon the company's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Sections 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before January 21, 1981. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 81-2183 Filed 1-21-81; 8:45 am]

BILLING CODE 6450-85-M

Office of Hearings and Appeals

Cases Filed; Week of December 5 Through December 12, 1980

During the week of December 5 through December 12, 1980, the appeals and applications for exception or other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under DOE procedural regulations, 10 CFR Part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, D.C. 20461.

January 13, 1981.

George B. Breznay,

Director, Office of Hearings and Appeals.

List of Cases Received by the Office of Hearings and Appeals

[Week of Dec. 5 through Dec. 12, 1980]

Date	Name and location of applicant	Case No.	Type of submission
Dec. 5, 1980	Commonwealth Oil Refining Company, San Antonio, Texas.	DEN-1308	Interim Order. If granted: Commonwealth Oil Refining Company would receive exception relief on an interim basis pending a final determination on its Application for Exception (Case No. BEE-1308).
Dec. 5, 1980	Edgington Oil Company, Washington, D.C.	BEE-1308	Exception from the Entitlements Program. If granted: Edgington Oil Company would receive an exception from the provisions of 10 CFR, Section 211.67 which would modify its entitlements purchase obligations.

List of Cases Received by the Office of Hearings and Appeals—Continued

[Week of Dec. 5 through Dec. 12, 1980]

Date	Name and location of applicant	Case No.	Type of submission
Dec. 5, 1980	Office of Enforcement, Washington, D.C.	BEF-0014	Implementation of Special Refund Procedures. If granted: The Office of Hearings and Appeals would implement Special Refund Procedures pursuant to 10 CFR, Part 205, in connection with the July 18, 1980 Consent Order (#040VC00008) issued to Delridge Oil Company.
Dec. 5, 1980	Office of Enforcement, Washington, D.C.	BEF-0015	Implementation of Special Refund Procedures. If granted: The Office of Hearings and Appeals would implement Special Refund Procedures pursuant to 10 CFR, Part 205, in connection with September 25, 1979 Consent Order (#080C00004) issued to Grenor Oil Company.
Dec. 5, 1980	Office of Enforcement, Washington, D.C.	BEF-0016	Implementation of Special Refund Procedures. If granted: The Office of Hearings and Appeals would implement Special Refund Procedures pursuant to 10 C.F.R., Part 205, in connection with June 25, 1979 Consent Order (#010C00004) issued to Hixon Development Company.
Dec. 5, 1980	Office of Enforcement, Washington D.C.	BEF-0017	Implementation of Special Refund Procedures. If granted: The Office of Hearings and Appeals would implement Special Refund Procedures pursuant to 10 C.F.R., Part 205, in connection with July 18, 1979 Consent Order (#010C00428) issued to Navarent Oil Company.
Dec. 5, 1980	Office of Enforcement, Washington D.C.	BEF-0018	Implementation of Special Refund Procedures. If granted: The Office of Hearings and Appeals would implement Special Refund Procedures pursuant to 10 C.F.R., Part 205, in connection with October 11, 1979 Consent Order (#070C00004) issued to Tipperary Oil and Gas Corporation.
Dec. 5, 1980	Stephen M. Shaw, La Jolla, California	BEF-0547	Appeal of an Information Request Denial. If granted: The November 24, 1980 Information Request Denial issued by the Division of FOI and Privacy Acts Activities would be rescinded and Stephen M. Shaw would receive access to certain DOE materials.
Dec. 8, 1980	Alliance Oil & Refining Company, Houston, Texas	BEG-0040	Petition for Special Redress. If granted: The Interim Remedial Order for Immediate Compliance issued by the Office of Enforcement on October 24, 1980 would be rescinded.
Dec. 8, 1980	Crude Oil Purchasing, Inc., Washington, D.C.	BFA-0548	Appeal of an Information Request Denial. If granted: The November 7, 1980 Information Request Denial issued by the Director of the Special Investigation Division of the Office of General Counsel would be rescinded and Crude Oil Purchasing, Inc. would receive access to DOE information pertaining to a Notice of Probable Violation (Case No. 6AG00008) issued to the firm on June 2, 1980.
Dec. 8, 1980	Ernest A. Allerkamp, Denver, Colorado	BEG-0039	Petition for Special Redress. If granted: Mr. Ernest E. Allerkamp would receive a stay of the proceedings in connection with the September 21, 1979 Proposed Remedial Order pending a determination by the Department of Energy with respect to whether a criminal investigation is to go forward.
Dec. 8, 1980	Johnnie's Exxon, Dorchester, Massachusetts	BRX-0014	Supplemental Order. If granted: The Proposed Remedial Order (Case No. BRO-1169) issued to Johnnie's Exxon would be rescinded on the basis that a Consent Order has been issued.
Dec. 8, 1980	Office of Enforcement, Washington, D.C.	BEF-0019	Implementation of Special Refund Procedures. If granted: The Office of Hearings and Appeals would implement Special Refund Procedures pursuant to 10 C.F.R., Part 205, in connection with the December 19, 1979 Consent Order (Case No. 041C00360) issued to Crystal Oil Company.
Dec. 8, 1980	Powerine Oil Company, Los Angeles, California	BEX-0136	Supplemental Order. If granted: The September 15, 1980 Decision and Order (Case No. BAR-0044) would be modified for clarification of the price which Powerine Oil Co. will be permitted to charge for untreated gasoline sold to Thomas P. Reidy, Inc. pursuant to that Order.
Dec. 9, 1980	Amoco Oil/Energy Cooperative, Washington, D.C.	BEJ-0184	Motion for Protective Order. If granted: Amoco Oil would enter into a Protective Order with Energy Cooperative regarding the release of proprietary information to Amoco Oil in connection with Energy Cooperative's Applications for Exception (Case Nos. BEE-0808 and BEE-1298).
Dec. 9, 1980	Gulf Oil Corporation (Discorbis), Houston, Texas	BEE-1557	Price Exception. If granted: Gulf Oil Corporation would be permitted to sell at upper tier ceiling prices the crude oil produced from the Discorbis 16 Sand Unit C, located in Iberia Parish, Louisiana.
Dec. 9, 1980	Johnson Oil Company, Salt Lake City, Utah	BEJ, BED-0163	Motion for Discovery and Protective Order. If granted: Discovery would be granted to Johnson Oil in connection with the Statement of Objections submitted in response to the Proposed Decision and Order (Case No. BDE-1289) issued by Southwestern Refining Company, Inc. Johnson Oil Company would enter into a Protective Order with Southwestern Refining Company, Inc. regarding the release of proprietary information in connection with the above listed case.
Dec. 9, 1980	Kerr-McGee Corporation, Washington, D.C.	BEE-1561 and BEL-1561.	Exception and Temporary Exception from the Entitlements Program. If granted: Kerr-McGee Corporation would receive an exception and temporary exception from the provisions of 10 C.F.R., Section 211.67, which would modify its entitlements purchase obligations for December, 1980.
Dec. 9, 1980	Oil-Tex Petroleum, Inc., San Antonio, Texas	BEE-1558	Price Exception. If granted: Oil-Tex Petroleum, Inc. would receive an exception from the provisions of 10 C.F.R., Section 212,185, regarding the extension of the crude oil refund deadline from November 20, 1980 to December 31, 1980.
Dec. 9, 1980	Plateau, Inc., Washington, D.C.	BEX-0135	Supplemental Order. If granted: Plateau, Inc. would receive a stay of a portion of its entitlements purchase obligations.
Dec. 9, 1980	Refinery Associates, Inc., San Antonio, Texas	BEE-1560	Price Exception. If granted: Refinery Associates, Inc. would receive an exception from the provisions of 10 C.F.R., Section 212.85, regarding the extension of the crude oil refund deadline from November 20, 1980 to December 31, 1980.
Dec. 9, 1980	State of Minnesota (Ashley), St. Paul, Minnesota	BFA-0550	Appeal of an Information Request Denial. If granted: The State of Minnesota would receive access to certain DOE data.
Dec. 9, 1980	Texaco, Inc., White Plains, New York	BER-0079 and BEJ-0165.	Modification and Rescission and Motion for Protective Order. If granted: The August 22, 1980 Decision and Order issued to Texaco, Inc. (Case No. BEJ and BED-0120) by the Office of Hearings and Appeals would be modified. Texaco, Inc. would enter into a Protective Order with Little America Refining Co. regarding the release of proprietary information to Texaco, Inc. in connection with Little America Refining Co.'s Application for Exception (Case No. BEE-1064).
Dec. 9, 1980	Texaco, Inc., White Plains, New York	BEE-1559	Price Exception. If granted: Texaco, Inc. would receive an exception to the provisions of 10 C.F.R., Section 212.72, regarding the certification of property qualifying under the marginal well provision.
Dec. 9, 1980	Texas Gas Exploration Corporation, Houston, Texas.	BEE-1556	Price Exception. If granted: Texas Gas Exploration Corporation would receive an exception from the provisions of 10 C.F.R., Section 212.186, regarding the recovery of certain processing costs in the sale of Natural Gas Liquid.
Dec. 9, 1980	Whiting Brothers Oil Company, Phoenix, Arizona	BFA-0549	Appeal of an Information Request Denial. If granted: The October 31, 1980, Information Request Denial issued by the Office of Enforcement, Western District, would be rescinded, and Whiting Brothers Oil Company would receive access to certain DOE documents.
Dec. 10, 1980	Pester Derby Oil Company, Des Moines, Iowa	BRD-1329	Motion for Discovery. If granted: Discovery would be granted to Pester Derby Oil Company in connection with the Statement of Objection submitted in response to the Proposed Remedial (Case No. BRO-1329) issued to the firm.

List of Cases Received by the Office of Hearings and Appeals—Continued

[Week of Dec. 5 through Dec. 12, 1980]

Date	Name and location of applicant	Case No.	Type of submission
Dec. 10, 1980	The Crude Company, et al, Washington, D.C	BEZ-0072 and 0074, BRZ-0073, 0075, 0076, and 0077.	Interlocutory Order. If granted: The relief accorded in the November 7, 1980 Decision and Order (Case Nos. BEZ-0069 and 0070, BRZ-0069, 0091 and 0092) would be extended.
Dec. 11, 1980	Hudson Refining Company, Inc., Washington, D.C	BEE-1062	Exception from the Entitlements Program. If granted: Hudson Refining Company, Inc., would receive an exception from the provisions of 10 C.F.R., Section 211.67, which would modify its entitlements purchase obligations.
Dec. 11, 1980	Office of Enforcement, Washington, D.C	BEF-0020	Implementation of Special Refund Procedures. If granted: The Office of Hearings and Appeals would implement Special Refund Procedures pursuant to 10 C.F.R., Part 205, in connection with the December 19, 1979 Consent Order issued to Mickelson Oil Company.
Dec. 12, 1980	Gary Energy Corporation, Denver, Colorado	BRS-0121	Request for Stay. If granted: Gary Energy Corporation would receive a stay of the enforcement proceedings relating to a May 19, 1980 Notice of Probable Violation pending the issuance of a Proposed Remedial Order.
Dec. 12, 1980	Martin Oil Service, Washington, D.C	BFA-0051	Appeal of an Information Request Denial. If granted: The November 5, 1980, Information Request Denial issued by the Central Enforcement District, ERA, would be rescinded and Martin Oil Service would receive access to documents regarding the September 24, 1980, Notice of Probable Violation issued to the firm.

Notices of Objection Received

[Week of Dec. 5, 1980 to Dec. 12, 1980]

Date	Name and location of applicant	Case No.
Dec. 9, 1980	Robert H. Hart & Sons, Inc., Dallas, Texas	BEE-0722
Dec. 9, 1980	Board of School Commissioners, Indianapolis, Indiana	DEE-7922
Dec. 9, 1980	Pride Refining, Inc., Abilene, Texas	BEE-0091
Dec. 11, 1980	J. A. Nare Co., Inc., Fredericksburg, Virginia	DZE-0091

[FR Doc. 81-2218 Filed 1-21-81; 8:45 am]

BILLING CODE 6450-01-M

Objection to Proposed Remedial Order; Week of December 8 Through December 12, 1980

During the week of December 8 through December 12, 1980, the notices of objection to proposed remedial orders listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Any person who wishes to participate in the proceeding that will be conducted by the Department of Energy concerning the proposed remedial orders described in the Appendix to this Notice must file a request to participate pursuant to 10 CFR 205.194 on or before February 11, 1981. The Office of Hearings and Appeals will then determine those persons who may participate on an active basis in the proceeding and will prepare an official service list, which it will mail to all persons who filed requests to participate. Persons may also be placed on the official service list as non-participants for good cause shown.

All requests to participate in these proceedings should be filed with the Office of Hearings and Appeals, Department of Energy, Washington, D.C. 20461.

George B. Breznay,

Director, Office of Hearings and Appeals.

January 15, 1981.

Proposed Remedial Orders

Barkett Oil Co., Miami, Fla., BRO-1342, motor gasoline

On December 9, 1980, Barkett Oil Company, 7980 N.W. 36th Street, Miami, Florida 33166, filed a Notice of Objection to a Proposed Remedial Order which the DOE Southeast District Office of Enforcement issued to the firm on November 7, 1980. In the PRO, the Southeast District found that during the period January 1, 1979, to March 31, 1979, Barkett Oil Company sold gasoline at prices in excess of the maximum lawful selling prices determined in accordance with the provisions of 10 CFR 212.93. According to the PRO, the Barkett Oil Company violation resulted in $204,425.42 of overcharges.

Cape Fair Boat Dock, Cape Fair, Mo., BRO-1343, motor gasoline

On December 11, 1980, Cape Fair Boat Dock, P.O. Box 6, Cape Fair, Missouri 65624, filed a Notice of Objection to a Proposed Remedial Order which the DOE Central District Office of Enforcement issued to the firm on July 29, 1980. In the PRO, the Central District found that during the period April 4, 1980 to July 1, 1980, Cape Fair Boat Dock committed pricing violations with respect to sales of motor gasoline in the State of Missouri. According to the PRO, the Cape Fair Boat Dock violation resulted in $751.22 of overcharges. This Notice of Objection has been transferred to the Central Regional Center of the Office of Hearings and Appeals for analysis

[FR Doc. 81-2213 Filed 1-21-81; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[SA-FRL 1724-7]

Science Advisory Board, Clean Air Scientific Advisory Committee; Open Meeting

Under Pub. L. 92-463, notice is hereby given of a meeting of the Clean Air Scientific Advisory Committee (CASAC) of the Science Advisory Board. The meeting will be held February 6, 1981, starting at 8:30 am in Room 3906, Mall at EPA Headquarters, 401 M Street, SW, Washington, D.C.

The agenda for the meeting will include a scientific review by CASAC of the health effects sections of the draft staff paper for nitrogen oxides entitled "Preliminary Assessment of Health and Welfare Effects Associated With Nitrogen Oxides for Standard-Setting Purposes."

Copies of the draft staff paper may be obtained by writing Mr. Michael Jones, Office of Air Quality Planning and Standards, (MD-12) EPA, Research Triangle Park, NC 27711. Copies of the draft staff paper will also be available at the CASAC meeting.

The meeting is open to the public. Any member of the public wishing to attend or obtain information should contact Terry F. Yosie, Staff Officer, Science

Advisory Board on (202) 755-0283 before close of business January 30, 1981.

Harry Tenne,
Acting Director, Science Advisory Board.
January 14, 1981.
[FR Doc. 81-2248 Filed 1-21-81; 8:45 am]
BILLING CODE 6560-01-M

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Senior Executive Service Performance Awards

The Equal Employment Opportunity Commission hereby gives notice that it has scheduled payment of Senior Executive Service performance awards for February 3, 1981, or as soon as thereafter as practicable. For further information contact Beverly A. Gary, Director of Personnel, at 634-7002.

Dated: January 15, 1981.
Eleanor Holmes Norton,
Chair.
[FR Doc. 81-2247 Filed 1-21-81; 8:45 am]
BILLING CODE 6570-06-M

FEDERAL COMMUNICATIONS COMMISSION

[BC Docket Nos. 80-772, 80-773; File Nos. BPH-10,930, BPH-780631AF]

Communications Properties, Inc. and Broadcasting Corp.; Hearing Designation Order

Adopted: December 22, 1980.
Released: January 19, 1981.

In re Applications of Communications Properties, Inc., Fargo, North Dakota, BC Docket No. 80-772, File No. BPH-10,930, Req: 101.9 MHz, Channel No. 270, 100 kW, 629' HAAT; Red River Broadcasting Corporation, Fargo, North Dakota, BC Docket No. 80-773, File No. BPH-780631AF, Req: 101.9 MHz, Channel No. 270, 100 kW, 1010' HAAT.

1. The Commission, by the Chief, Broadcast Bureau, acting pursuant to delegated authority, has under consideration the above-captioned mutually exclusive applications filed by Communications Properties, Inc. (CPI) and Red River Broadcasting Corporation (Red River).

2. *CPI.* CPI has failed to comply with the requirements of the *Primer on Ascertainment of Community Problems by Broadcast Applicants*, 27 FCC 2d 650, 21 RR 2d 1507 (1971). The applicant did not set forth the minority, racial or ethnic breakdown of the community, its governmental activities nor its public service organizations, as required by Question and Answer 9 of the *Primer*. Because of these defects it is not possible to determine which groups in Fargo are significant for purposes of ascertainment. Further, in most cases, CPI does not identify the leadership positions of the persons interviewed. Therefore, it is not known whether bona-fide leaders were in fact consulted. Question and Answer 11(a) of the *Primer* requires that principals or management level employees conduct all consultations with community leaders. Question and Answer 15 requires that applicants for new facilities conduct their leader and general public interviews within the six month period prior to the filing date of an application. CPI does not provide any information necessary to make these determinations required by the *Primer*. For the foregoing reasons, a general ascertainment issue will be specified.

3. Although CPI informed the Commission that it published a public notice pertaining to its amendment of November 24, 1978, Commission records do not indicate that a notice was published for the original application filed January 13, 1978. Further, the notice of the amendment does not contain all of the information required by § 73.3580 of the rules. To remedy these deficiencies, CPI will be required to republish local notice of its application if it has not already done so, and to file a statement of publication with the presiding Administrative Law Judge.

4. At the time its application was tendered for filing, CPI was owned 83.3% by Diane K. Cardozo and Harold M. Gallman, co-executors of the Estate of Hart N. Cardozo, Jr., and 16.7% by KVZ, Inc. The officers, directors and stockholders of KVZ, Inc. were: Philip T. Kelly, President, Treasurer, director and 49.9% stockholder; Richard C. Voight, Vice President, director and 25.8% stockholder; and James L. Zimmerman, Vice-President, director and 24.3% stockholder.[1] On November 24, 1978, CPI amended its application to report that KVZ, Inc. acquired 100% control of CPI on September 15, 1978 pursuant to Commission authorization (File Nos. BTC-6743 and BAL-6391). The name of KVZ, Inc. was then changed to CPI upon dissolution of the former CPI entity. While the transfer application was filed on FCC Form 315 ("long form") and involved 50% or more of the stock in CPI, so that such an amendment would normally effect a major change under § 73.3573(b) of the Rules that would require a new file number, the circumstances herein are the result of the demise of the controlling stockholder, Hart N. Cardozo, Jr., and his executor's sale of his holdings to the remaining owners, officers and directors of CPI. Based upon the Commission's decision in *Rose Broadcasting Co.*, 66 FCC 2d 1242 (1978), an involuntary transfer of control has occurred which exempts CPI from the major change and new file number requirements of § 73.3573(b) of the rules.

5. Both CPI and Red River filed numerous amendments and informational findings pursuant to §§ 1.514 and 1.65 of the Rules after August 24, 1979, the date specified as the last date for filing amendments as a matter or right. Of these amendments, CPI opposed Red River's May 27, 1980 amendment to change transmitter site, and Red River opposed CPI's October 20, 1980 amendment reporting the resignation of a corporate director from positions as director of two other corporate applicants for broadcast facilities. Since Red River stipulated that no comparative advantage would be sought, and the move was due to circumstances beyond its control, good cause exists for grant of the petition for leave to amend and acceptance of Red River's May 27, 1980 amendment.[2] With respect to CPI's amendment, it contends that because the broadcast interests of its director were acquired and disposed of after the amendment deadline, no comparative consideration is warranted. Although an applicant is not permitted to improve its comparative posture after the amendment deadline, it does not follow that acquisition of interests that weigh against the applicant should not be considered. However, where as here the interests do not reflect ownership interests and involve only applications rather than authorizations for facilities at substantial distance from the community at issue in the instant proceeding, the comparative effect, if any, of such factors is of such minimal potential significance that good cause for amendment appears justified. Accordingly, CPI's October 20, 1980 petition for leave to amend will be granted and the amendment accepted.

6. Data on file indicate that there would be a significant difference in the areas and populations which would receive service from the proposals. Consequently, for the purpose of comparison, the areas and populations which would receive service of 1 mV/m

[1] On October 28, 1978, control of CPI (formerly KVZ, Inc.) was transferred to Messrs. Kelly (65.2%) and Voight (34.1%) pursuant to Commission grant October 23, 1979 of FCC Form 316 (short-form) application (File No. BTC(H) 790823 F W/FX/FY/FZ/GA and GB).

[2] Accordingly, any comparative advantage resulting from Red River's transmitter site changes subsequent to August 24, 1979, the last day for minor amendments as a matter of right, will be disallowed.

or greater strength, together with the availability of other primary aural services in such areas will be considered under the standard comparative issue for the purpose of determining whether a comparative preference should accrue to either of the applicants.

7. Except as indicated by the issues specified below, the applicants are qualified to construct and operate as proposed. However, since the proposals are mutually exclusive, they must be designated for hearing in a consolidated proceeding on the issues specified below.

8. Accordingly, it is ordered, That, pursuant to Section 309(e) of the Communications Act of 1934, as amended, the applications are designated for hearing in a consolidated proceeding, at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine the efforts made by Communications Properties, Inc. to ascertain the community needs and problems of the area to be served and the means by which the applicant proposes to meet those needs and problems.

2. To determine which of the proposals would, on a comparative basis, better serve the public interest.

3. To determine, in the light of the evidence adduced pursuant to the foregoing issues, which, if either, of the applications should be granted.

9. It is further ordered, That the petitions for leave to amend filed by Red River and CPI are granted and the accompanying amendments are accepted for filing.

10. It is further ordered, that Communications Properties, Inc. shall file a statement with the presiding Administrative Law Judge showing compliance with the public notice requirement of § 73.3580(f) of the Commission's rules.

11. It is further ordered, That, to avail themselves of the opportunity to be heard, the applicants herein shall, pursuant to § 1.221(c) of the Commission's rules, in person or by attorney, within 20 days of the mailing of this Order, file with the Commission in triplicate a written appearance stating an intention to appear on the date fixed for the hearing and to present evidence on the issue specified in this Order.

12. It is further ordered, that the applicants herein shall, pursuant to Section 311(a)(2) of the Communications Act of 1934, as amended, and § 73.3594 of the Commission's rules, give notice of the hearing (either individually or, if feasible and consistent with the Commission of the publication of such notice as required by § 73.3580(g) of the Rules.

Federal Communications Commission.

Larry D. Eads,

Acting Chief, Broadcast Facilities Division Broadcast Bureau.

[FR Doc. 81-2138 Filed 1-21-81; 8:45 am]

BILLING CODE 6712-01-M

[BC Docket Nos. 80-777, 80-778; File Nos. BPED-780628AD, BPED-781220AE]

School Board of Broward County FL and Boca Raton Christian School; Hearing Designation Order

Adopted: December 31, 1980.

Released: January 14, 1981.

In re applications of the School Board of Broward County, Florida, Sunrise, Florida, BC Docket No. 80-777, File No. BPED-780628AD, Req: 88.5 MHz, Channel #203, 3.0 kW (H&V), 100 feet; Boca Raton Christian School, Boca Raton, Florida, BC Docket No. 80-778, File No. BPED-781220AE, Req: 88.5 MHz, Channel #203, 3.0 kW (H&V), 281 feet; for construction permit for a New Educational FM Station.

1. The Commission, by the Chief, Broadcast Bureau, acting pursuant to delegated authority, has under consideration the above-captioned mutually exclusive applications filed by Boca Raton Christian School (Boca Raton), and the School Board of Broward County, Florida (School Board).

2. *Boca Raton.* Analysis of the financial portion of Boca Raton's application reveals that it will require $68,085 to construct the proposed facility and operate for three months, itemized as follows:

Equipment	$61,285
Operating Expenses	6,350
Total	68,085

To meet this requirement, Boca Raton intends to rely on existing capital in the amount of $25,000, donations from several people totalling $38,000, and additional capital provided by Bibletown Community Church. Boca Raton did not furnish adequately information showing the availability of such funds as required by Paragraph 2(a), Section III of Form 340. Specifically, signed pledges and donor balance sheets were not submitted and the commitment letter of Bibletown Community Church did not mention the amount of funds to be supplied. Accordingly, a limited financial issue will be specified.

3. *School Board.* Applicants for new broadcast stations are required by § 73.3580(f) of the Commission's rules to give local notice of the filing of their applications. They must then file with the Commission the statement described in § 73.3580(h) of the rules. We have no evidence that the School Board published the required notice. To remedy this deficiency, the School Board will be required to publish local notice of its application, if they have not already done so, and to file a statement of publication with the presiding Administrative Law Judge.

4. The respective proposals, although for different communities, would serve substantial areas in common. Consequently, in addition to determining, pursuant to Section 307(b) of the Communications Act of 1934, as amended, which of the proposals would better provide a fair, efficient and equitable distribution of radio service a contingent comparative issue will also be specified.

5. Inasmuch as this proceeding involves competing applicants for noncommercial educational facilities, the standard areas and populations issue will be modified in accordance with the Commission's prior action in *New York University*, FCC 67-672, released June 8, 1967, 10 RR 2d 215 (1967). Thus the evidence adduced under this issue will be limited to available noncommercial educational FM signals within the respective service areas.

6. Neither applicant has indicated whether an attempt has been made to negotiate a share-time arrangement. Therefore, an issue will be specified to determine whether a share-time arrangement between the applicants would be the most effective use of the frequency and thus better serve the public interest. *Granfalloon Denver Education Broadcasting, Inc.*, 43 FR 49360, published October 24, 1978. In the event that this issue is resolved in the affirmative, an issue will also be specified to determine the nature of such an arrangement. It should be noted that our action specifying a share-time issue is not intended to preclude the applicants, either before the commencement of the hearing or at any time during the course of the hearing, from participating in negotiations with a view toward establishing a share-time agreement between themselves.

7. Except as indicated by the issues specified below, the applicants are qualified to construct and operate as proposed. However, since the proposals are mutually exclusive, they must be designated for hearing in a consolidated proceeding on the issues specified below.

8. Accordingly, it is ordered that, pursuant to Section 309(e) of the Communications Act of 1934, as

amended, the applications are designated for hearing in a consolidated proceeding, at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine the number of other reserved channel noncommercial educational FM services available in the proposed service area of each applicant, and the area and population served thereby.

2. To determine with respect to Boca Raton:

a. The source and availability of additional funds over and above the $25,000 indicated; and

b. In light of evidence adduced pursuant to (a) above, whether the applicant is financially qualified to construct and operate the proposed station.

3. To determine whether a share-time arrangement between the applicants would result in the most effective use of the channel and thus better serve the public interest, and, if so, the terms and conditions thereof.

4. To determine, in the light of Section 307(b) of the Communications Act of 1934, as amended, which of the proposals would better provide a fair, efficient and equitable distribution of radio service.

5. To determine, in the event it is concluded that a choice between applications should not be based solely on considerations relating to Section 307(b), the extent to which each of the proposed operations will be integrated into the overall educational operation and objectives of the respective applicants; or whether other factors in the record demonstrate that one applicant will provide a superior FM educational broadcast service.

6. To determine, in the light of the evidence adduced pursuant to the foregoing issues, which of the applications, if either, should be granted.

9. It is further ordered, that the School Board of Broward County, Florida shall publish local notice of its application, if they have not already done so, and to file a statement of publication with the presiding Administrative Law Judge as described in § 73.3580(h) of the rules.

10. It is further ordered, that, to avail themselves of the opportunity to be heard, the applicants herein shall, pursuant to § 1.221(c) of the Commission's rules, in person or by attorney, within 20 days of the mailing of this Order, file with the Commission in triplicate a written appearance stating an intention to appear on the date fixed for the hearing and to present evidence on the issues specified in this Order.

11. It is further ordered, that the applicants herein shall, pursuant to Section 311(a)(2) of the Communications Act of 1934, as amended, and § 73.3594(g) of the Commission's rules, give notice of the hearing (either individually or, if feasible and consistent with the rules, jointly) within the time and in the manner prescribed in such rule, and shall advise the Commission of the publication of such notice as required by § 73.3594(g) of the rules.

Federal Communications Commission.

Larry D. Eads,

Acting Chief, Broadcast Facilities Division Broadcast Bureau.

[FR Doc. 81-2132 Filed 1-21-81; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL MARITIME COMMISSION

Agreements Filed

The Federal Maritime Commission hereby gives notice that the following agreements have been filed with the Commission for approval pursuant to section 15 of the Shipping Act, 1916, as amended (39 Stat. 733, 75 Stat. 763, 46 U.S.C. 814).

Interested parties may inspect and obtain a copy of each of the agreements and the justifications offered therefor at the Washington Office of the Federal Maritime Commission, 1100 L Street, NW, Room 10218; or may inspect the agreements at the Field Offices located at New York, N.Y.; New Orleans, Louisiana; San Francisco, California; Chicago, Illinois; and San Juan, Puerto Rico. Interested parties may submit comments on each agreement, including requests for hearing, to the Secretary, Federal Maritime Commission, Washington, D.C., 20573, on or before February 11, 1981. Comments should include facts and arguments concerning the approval, modification, or disapproval of the proposed agreement. Comments shall discuss with particularity allegations that the agreement is unjustly discriminatory or unfair as between carriers, shippers, exporters, importers, or ports, or between exporters from the United States and their foreign competitors, or operates to the detriment of the commerce of the United States, or is contrary to the public interest, or is in violation of the Act.

A copy of any comments should also be forwarded to the party filing the agreements and the statement should indicate that this has been done.

Agreement No.: T-21-6.

Filing Party: Mr. Ronald L. Laumbach, Assistant General Counsel, Cargill, Incorporated Law Department, P.O. Box 9300, Minneapolis, Minnesota 55441.

Summary: Agreement No. T-21-6, between Sacramento-Yolo Port District (Port) and Cargill, Inc. (Cargill), modifies the basic agreement which provides for the lease to Cargill of a grain terminal facility at Sacramento, California. The purposes of the modification are to: (1) extend the basic lease for an additional 9 years; (2) increase the monthly rental and minimum tonnage beginning July 1, 1981, through June 30, 1985; (3) provide for improvements and additions to the leased facility by Port, with costs not to exceed $1,230,000; (4) provide for Port's reimbursement to Cargill for costs incurred in the installation of a truck scale; and (5) provide for a reduction in the monthly rental and minimum tonnage in the event that suitable bond financing is not obtained by July 1, 1981.

Agreement No.: T-2196-5.

Filing Party: Mr. H. H. Wittren, Assistant Director of Real Estate, Waterfront Real Estate, Port of Seattle, P.O. Box 1209, Seattle, Washington 98111.

Summary: Agreement No. T-2196-5, between Port of Seattle and Puget Sound Tug & Barge Co., Modifies the parties' basic agreement which provides for the lease of certain premises at Pier 17, Seattle, Washington, for the docking, repairing and provisioning of tug boats and barges. The purpose of the modification is to add 70,681 square feet of harbor area to the premises. This brings the total leased area to 265,831 sq. ft. and increases the monthly rental to $2,920.

Agreement No.: T-3306-2.

Filing Party: Mr. H. H. Wittren, Assistant Director of Real Estate, Waterfront Real Estate, Port of Seattle, P.O. Box 1209, Seattle, Washington 98111.

Summary: Agreement No. T-3306-2, between the Port of Seattle and Matson Terminals, Inc. (Matson), modifies the parties' basic agreement which provides for the 3-year lease to Matson of approximately 15 acres of container terminal facilities at Terminal 18, Seattle, Washington. The purpose of the modification is to reduce the leased premises by 3½ acres, which was added by the previous amendment, with a corresponding reduction in rental.

Agreement No.: T-3939.

Filing Party: William E. Emick, Jr., Deputy City Attorney, Offices of the City Attorney of Long Beach, Harbor Administration Building, P.O. Box 570, Long Beach, California 90801.

Summary: Agreement No. T-3939, between the City of Long Beach and Metropolitan Stevedore Company (Metropolitan) provides for the two year preferential assignment to Metropolitan of bulkloading facilities on Pier G in the Port of Long Beach, California. The agreement further provides for maintenance work on the bulkloading facility and the construction of a pedestrian bridge by Metropolitan, which will be reimbursed for the work by withholding $0.125 per metric ton of bulk cargo loaded until all costs have been recovered.

Agreement No.: T-3940.

Filing Party: Mr. Peter P. Wilson, Senior Counsel, Matson Navigation Company, 333 Market Street, San Francisco, California 94119.

Summary: Agreement No. T-3940 between Matson Terminals, Inc. (Matson) and Nippon

Yusen Kaisha (NYK), provides for Matson's performance of maintenance and repair services on NYK container and container handling equipment at Matson's Honolulu, Oakland and Los Angeles terminals. Both parties agree to an itemized schedule of rates on maintenance and repair services and to terms, provided in the agreement, for the review of rate changes. The parties further agree to various working procedures, conditions and terms provided for in the agreement. The agreement shall remain in effect for one year and continue on a year-to-year basis until terminated by either party.

Agreement No.: 10409

Filing Party: Seymour H. Kligler, Esquire, Brauner Baron Rosenzweig Kligler Sparber & Bauman, 120 Broadway, New York, New York 10271.

Summary: Agreement No. 10409, among Korea Shipping Corporation (KSC), Neptune Orient Lines, Ltd. (NOL), and Orient Overseas Container Line, Inc. (OOCL), provides for a cooperative arrangement whereby the parties will cross charter space to each other. The scope of the agreement will include trade between ports in the United States (including the States of Hawaii and Alaska and all commonwealth, territories and possessions of the United States) and ports in the Republic of Korea, Republic of China, Hong Kong, Japan (including Okinawa), Thailand, Malaysia, Republic of Singapore, Indonesia and Republic of the Phillippines. The parties will operate two separate services: (a) between ports on the Pacific coast of the United States and ports in the Far East and Southeast Asia, and (b) between ports on the Atlantic coast of the United States and ports in the Far East and Southeast Asia. Under the agreement KSC will operate no more than 5 vessels, NOL will operate no more than 4½ vessels and OOCL will opierate no more than 7½ vessels. Each such vessel will have a capacity from approximately 1,500 TEUs to approximately 2,000 TEUs. Each party agrees to charter on each voyage of each vessel space to the other parties in an amount which is determined by multiplying that fraction the numerator of which is the amount of space (TEUs) on all vessels operated by such other party and the denominator of which is the total amount of space (TEUs) on all vessels operated by the parties by the total carrying capacity of said vessel. No party will, directly or indirectly, conduct any container liner operations in the trade except pursuant to the agreement. No party will become a party to any conference or other rate making agreement in the trade unless at least two of the parties agree to become parties and upon such agreement by two of the parties, all of the parties will simultaneously become parties to such conference or other rate making agreement. Each party retains independence in regard to its vote as a conference member. Except as may be required by any conference or rate agreement, any party may charge such rates as it sees fit. The parties will cooperate with each other to rationalize each of the services in the trade and to arrange advertising and sailing schedules so as to avoid conflicting dates. The agreement provides for a termination on the fifth anniversary of the effective date or on any date thereafter by any party giving at least 60 days' written notice to the other parties and the FMC. Upon becoming effective, Agreement No. 10409 is intended to supersede Agreement No. 10180, as amended. Publication of the notice of the filing of Agreement No. 10409 was delayed pending an anticipated refiling of the agreement, however, the refiling was not accomplished. Consideration will be on the agreement as originally filed on December 24, 1980.

Agreement No.: 10408.

Filing Party: Thomas K. Roche, Esquire, R. D. Box 1782, Jericho-East Norwich Road, Syosset, New York 11791.

Summary: Agreement No. 10408, among Northern Pan America Line A/S, Nopal Star Line Limited, Nopal Venezuela Line Ltd., Rocargo, C.A., Lorentzen Shipping Agency, Inc. (LSA), Olvind Lorentzen A/S Sobral, and DFDS A/S, is an agency agreement whereby LSA agrees to serve as agent, manager and/or daily line administrator for each of the carrier parties, assessing costs in proportion to cargo handled and use of facilities, as well as coordinating certain charter operations. Additionally, LSA may in the interests of efficiency set up a leasing company to deal with equipment for the use of the carrier parties. LSA's compensation for such agency and management services will be determined on the basis of percentage of freight, per diem and/or minimum flat fees, and flat fee or commission with regard to containers.

By Order of the Federal Maritime Commission.

Dated: January 15, 1981.

Francis C. Hurney,

Secretary.

[FR Doc. 81-2120 Filed 1-21-81; 8:45 am]

BILLING CODE 6730-01-M

Gulf/United Kingdom Rate Agreement No. 10140; Agreement Termination

The Federal Maritime Commission gives notice that it shall terminate its approval of the Gulf/United Kingdom Rate Agreement No. 10140, as amended, effective October 8, 1980, the effective date of the withdrawal of Seatrain International S.A. from membership in the Agreement. Seatrain's withdrawal reduced the Agreement membership to only one party. Section 15 of the Shipping Act, 1916, only recognizes agreements between two or more persons subject to the Act.

Dated: January 15, 1981.

By Order of the Federal Maritime Commission.

Francis C. Hurney,

Secretary.

[FR Doc. 2123 Filed 1-21-81; 8:45 am]

BILLING CODE 6730-01-M

[Agreement No. T-3039]

The Port Authority of New York and New Jersey/Universal Maritime Service Corp.; Availability of Finding of No Significant Impact

Upon completion of an environmental assessment, the Federal Maritime Commission's Office of Energy and Environmental Impact has determined that the environmental issues relative to the referenced proceeding do not constitute a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq.* and that preparation of an environmental impact statement is not required. For a description of the agreement, please refer to 45 FR 73134 (November 4, 1980).

This Finding of No Significant Impact (FONSI) will become final within 20 days unless a petition for review is filed pursuant to 46 CFR 547.6(b).

The FONSI and related environmental assessment are available for inspection or request from the Office of the Secretary, Room 11101, Federal Maritime Commission, Washington, D.C. 20573, telephone (202) 523-5725.

Francis C. Hurney,

Secretary.

[FR Doc. 81-2128 Filed 1-21-81; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Bank Holding Companies; Proposed de Novo Nonbank Activities

The bank holding companies listed in this notice have applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1842(c)(8)) and § 225.4(b)(1) of the Board's Regulation Y (12 CFR 225.4(b)(1)), for permission to engage *de novo* (or continue to engage in an activity earlier commenced *de novo*), directly or indirectly, solely in the activities indicated, which have been determined by the Board of Governors to be closely related to banking.

With respect to each application, interested persons may express their views on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interest, or unsound banking practices." Any comment on an application that requests a hearing must include a statement of the reasons a written presentation

would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of that proposal.

Each application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank indicated for that application. Comments and requests for hearings should indentify clearly the specific application to which they relate, and should be submitted in writing and, except as noted, received by the appropriate Federal Reserve Bank not later than February 15, 1981.

A. *Federal Reserve Bank of New York* (A Marshall Puckett, Vice-President) 33 Liberty Street, New York, New York 10045:

Manufacturers Hanover Corporation, New York, New York (second mortgage lending, serving, and insurance activities; Pennsylvania): to engage, through its *de novo* indirect subsidiaries Ritter Mortgage Company and Investors Mortgage Company, in arranging, making or acquiring for their own account or for the account of others, loans and other extensions of credit secured by second mortgages on residential real property such as would be made by a consumer finance company; servicing such loans and other extensions of credit for any person; acting as an agent or broker for the sale of single and joint credit life insurance which is directly related to such loans and extensions of credit and, through its subsidiaries Ritter Life Insurance Company and Tempco Life Insurance Company, reinsuring such credit insurance. These activities would be conducted from existing offices of Ritter Consumer Discount Company, Inc., of Pennsylvania, and Investors Consumer Discount Company of Pennsylvania, located in and servicing the following Pennsylvania counties or portions thereof: Beaver, Cumberland, Franklin, Westmoreland, Lawrence, Adams, York, Cambria, Blair, Montgomery, Centre, Columbia, Philadelphia, Clarion, Fayette, Bucks, Berks, Northumberland, Somerset, Dauphin, Delaware, North Hampton, Washington, Chester, Lycoming, Lebanon, Lancaster, Perry, Lehigh, Fulton, Bedford, Indiana, Carbon, Schuylkill, Montour, Snyder, Union, Clinton, Allegheny, Mercer, Butler, Juniata, Huntingdon, Monroe, Greene, Sullivan, Clearfield, Mifflin, Luzerne, Jefferson, Forest, Armstrong, and Venango. Comments on this application must be received by Febuary 13, 1981.

B. *Federal Reserve Bank of Richmond* (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

Maryland National Corporation, Baltimore, Maryland (commerical financing activities; Alabama, Florida, Georgia, Mississippi, South Carolina and Tennessee): to engage through its subsidiary Maryland National Industrial Finance Corporation, in commerical lending operations, including but not limited to financing of accounts receivable, inventories, and other types of secured and unsecured loans to commerical enterprises; serving commerical loans for affiliated or non-affiliated individuals, partnerships, corporations, or other entities; and acting as agent or broker in commerical lending transportations. These activities would be conducted from an office in Marietta, Georgia serving the six states listed in the caption to this notice. Comments on this application must be received by Febuary 13, 1981.

C. *Federal Reserve Bank of Kansas City* (Thomas M. Hoenig, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

K.I. AND D.M., INC., Polk, Nebraska (general insurance activities; Nebraska) to engage through Stewart Insurance Agency in a general insurance agency business in a town with a population not exceeding 5,000 persons. These activities would be conducted from an office in Polk, Nebraska and would serve Polk and the surrounding area.

D. *Federal Reserve Bank of San Francisco* (Harry W. Green, Vice President) 400 Sansome Street, San Francisco, California 94120:

Bankamerica Corporation, San Francisco, California (financing and servicing; all fifty (50) states and the District of Columbia): to engage, through its direct subsidiary, Decimus Corporation, a California Corporation, in the activities of making or acquiring for its own account, secured and unsecured commerical loans and other commerical extensions of credit. Such activities will include, but not be limited to, the making of loans in connection with the financing of computer systems and computer related equipment, software and services. Such loans may be secured by tangible and intangible personal property, including, but not limited to, computer and computer related equipment, leases, software and licenses and other contracts related to the computer business. Decimus Corporation also proposes to engage in the additional activity of servicing loans and other extensions of credit for others in connection with extensions of credit made or acquired by Decimus Corporation. These activities will be conducted from an existing office located in San Francisco, California serving the fifty (50) states and the District of Columbia.

E. *Other Federal Reserve Banks:* None.

Board of Governors of the Federal Reserve System, January 15, 1981.

Jefferson A. Walker,

Assistant Secretary of the Board.

[FR Doc. 81-2102 Filed 1-21-81; 8:45 am]

BILLING CODE 6210-01-M

Granby Bancshares, Inc.; Formation of Bank Holding Company

Granby Bancshares, Inc., Granby, Missouri, has applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company by acquiring 98.4 per cent or more of the voting shares of The Citizens State Bank of Granby, Granby, Missouri. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Kansas City. Any person wishing to comment on the application should submit views in writing to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551 to be received no later than February 13, 1981. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, January 14, 1981.

Jefferson A. Walker,

Assistant Secretary of the Board.

[FR Doc. 81-2100 Filed 1-21-81; 8:45 am]

BILLING CODE 6210-01-M

Marshall & Ilsley Corp.; Proposed Retention of Office of First National Leasing Co.

Marshall & Ilsley Corporation, Milwaukee, Wisconsin, has applied, pursuant to section 4(c)((8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and 225.4(b)(2) of the Board's Regulation Y (12 CFR 225.4(b)(2)), for permission to retain voting shares of First National Leasing Corporation, Milwaukee, Wisconsin.

Applicant states that the subsidiary would continue to engage in the activities of leasing equipment on a full payout basis, purchasing conditional

sales contracts from equipment suppliers and manufacturers, and making chattel security loans on commercial and industrial equipment. These activities would be performed from offices of Applicant's subsidiary in Creve Coeur, Missouri, and the geographic areas to be served are the State of Missouri, and the geographic areas to be served are the State of Missouri and the southern one-half of the State of Illinois. Such activities have been specified by the Board in 225.4(a) of Regulation Y as permissible for bank holding companies, subject to Board approval of individual proposals in accordance with the procedures of § 225.4(b).

Interested persons may express their views on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a writen presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Chicago.

Any person wishing to comment on the application should submit views in writing to the Reserve Bank to be received not later than February 14, 1981.

Board of Governors of the Federal Reserve System, January 15, 1981.

Jefferson A. Walker,

Assistant Secretary of the Board.

[FR Doc. 81-2304 Filed 1-21-81; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Assistant Secretary for Health

National Council on Health Care Technology; Meeting

Pursuant to the Federal Advisory Committee Act (Pub. L. 92-463), notice is hereby given that the eighth meeting of the National Council on Health Care Technology (Council), which was established pursuant to the Health Research, Health Statistics, and Health Care Technology Act of 1978 (Pub. L. 95-623) and which advises the Secretary and the Director of the National Center for Health Care Technology (Center) on the activities of the Center, will convene on Friday, February 13, 1981 at 9:00 a.m. in Room 800 of the Hubert H. Humphrey Building, 200 Independence Avenue, S.W., Washington, D.C. 20201. This meeting will be open to the public from 9:00 a.m. to 3:30 p.m. to discuss the business of the Council and the Center. Principal consideration and discussion will be devoted to reports of the Subcommittees, discussion of guidelines for use of health care technology and discussion of inter-relationships with other Councils.

This meeting will be closed to the public from 3:30 p.m. to adjournment in accordance with the provisions set forth in Sections 552b(c)(4) and 552b(c)(6), Title 5, U.S. Code, and Section 10(d) of Pub. L. 92-463, for the review, discussion, and evaluation of individual grant applications, as indicated. These proposals and applications and the discussions could reveal confidential trade secrets or material, and personal information concerning individuals associated with the proposals and applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

On Wednesday, February 11, 1981, the Subcommittee on Grants and Contracts will convene at 7:00 p.m. at Lombardy Towers, 2019 Eye Street, NW, Washington, D.C. This meeting will also be closed to the public from 7:00 p.m. to adjournment in accordance with the provisions set forth in Sections 552b(c)(4) and 552b(6), Title 5, U.S. Code, and Section 10(d) of Pub. L. 92-463, for the review, discussion and evaluation of individual grant applications, as indicated. These proposals and applications and the discussions could reveal confidential trade secrets or material, and personal information concerning individuals of which would constitute a clearly unwarranted invasion of personal privacy.

On Thursday, February 12, 1981, the Subcommittee on Criteria will convene at 9:30 a.m. in Room 303-A of the Hubert H. Humphrey Building, 200 Independence Avenue, SW, Washington, D.C. Principal consideration will be given to further discussions regarding the processes for criteria development. The Subcommittee on Coverage will convene at 9:30 a.m. in Room 800 of the Hubert H. Humphrey Building. Principal consideration will be given to the economic assessment of health care technologies. The Subcommittee on Dissemination of Research Development will convene at 9:30 a.m. in Room 503-A of the Hubert H. Humphrey Building. Principal consideration will be given to public use tapes resulting from NCHCT sponsored research.

The Subcommittee on Criteria, the Subcommittee on Coverage and the Subcommittee on Dissemination of Research Development will be open to the public from 9:30 a.m. to adjournment.

Further information regarding the Council may be obtained by contacting Sharon Paino, Executive Secretary, National Council on Health Care Technology, Room 17A-29, 5600 Fishers Lane, Rockville, Maryland 20857.

Dated: December 31, 1980.

Wayne C. Richey, Jr.,

Acting Executive Secretary, Office of Health Research, Statistics, and Technology.

[FR Doc. 81-2143 Filed 1-21-81; 8:45 am]

BILLING CODE 4110-83-M

Centers for Disease Control

Mine Health Research Advisory Committee; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), the Centers for Disease Control announces the following National Institute for Occupational Safety and Health Committee meeting:

Name: Mine Health Research Advisory Committee.

Date: February 4-6, 1981.

Place: Conference Room G, Parklawn Building, 5600 Fishers Ln., Rockville, MD 20857.

Time: 8:30 a.m.-4:30 p.m.—February 4; 8:30 a.m.-12 noon—February 5.

Type of Meeting: Closed: 8:30 a.m. to 9:30 a.m. on February 4; Open: 9:30 a.m. on February 4 through adjournment on February 5.

Contact Person: Roy M. Fleming, Sc.D., Executive Secretary, 5600 Fishers Lane, Room 8A-44, Rockville, Maryland 20857. Phone: (301) 443-4514.

Purpose: The Committee is charged with advising the Secretary of Health and Human Services, on matters relating to all types of mine health research, including grants and contracts for such research.

Agenda: Beginning at 8:30 a.m. on February 4, the Committee will be performing the final review of the mine health research grant applications for Federal assistance. This portion of the meeting will not be open to the public in accordance with the provisions set forth in Section 552(c)(6), Title 5 US Code and the Determination of the Director, Centers for Disease Control, pursuant to Pub. L. 92-463.

Agenda items for the open portion of the meeting beginning at 9:30 a.m. on February 4, will include announcements,

consideration of minutes of previous meeting and future meeting dates, presentations and discussions on the respirator research program, surveillance program, pulmonary function test procedures, guidelines for research studies, energy research program, and future prospects for grants program and film of taconite mining.

Agenda items are subject to change as priorities dictate.

The portion of the meeting so indicated is open to the public for observation and participation. Anyone wishing to make an oral presentation should notify the contact person listed above as soon as possible before the meeting. The request should state the amount of time desired, the capacity in which the person will appear, and a brief outline of the presentation. Oral presentations will be scheduled at the discretion of the Chairperson and as time permits. Anyone wishing to have a question answered during the meeting by a scheduled speaker should submit the question in writing, along with his or her name and affiliation, through the Executive Secretary to the Chairperson. At the discretion of the Chairperson and as time permits, appropriate questions will be asked of the speakers.

A roster of members and other relevant information regarding the meeting may be obtained from the contact person listed above.

Dated: January 15, 1981.

William H. Foege, M.D.,

Director, Centers for Disease Control.

[FR Doc. 81-2329 Filed 1-21-81; 8:45 am]

BILLING CODE 4110-83-M

Health Care Financing Administration

Medicare Program; Solicitation of Hospitals and Medical Centers to Participate in a Study of Heart Transplants

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice.

SUMMARY: This notice invites hospitals and medical centers to participate in a study of heart transplants to be conducted by HCFA. The purpose of the study is to examine, in general, all aspects of heart transplants, including the scientific, social, economic, and ethical issues, and, in particular, the impact of a possible Medicare decision to pay for heart transplants on the Medicare program, Medicare beneficiaries, and providers of health care. The study will be done in two related parts—the selection and participation of hospitals and medical centers, to which this notice is addressed, and an analysis of pertinent data and issues, to be conducted by an independent contractor.

Hospitals and medical centers selected to participate in this study, under this notice, may be reimbursed for a limited number of heart transplants performed for Medicare beneficiaries during the course of the study. In addition, these institutions will furnish data about heart transplants performed at their facilities and will be reimbursed for the costs of furnishing this information.

This notice contains information about the study, the availability of funds, and the procedures by which interested institutions can communicate their willingness to participate in the study. This notice also contains the criteria for the selection of hospitals and medical centers for heart transplant funding.

DATES: All applications must be received by 4:30 p.m., March 30, 1981.

ADDRESSES: Address applications to: Morris J. Levy, Director, Office of Coverage Policy, Room 401, East High Rise Building, Health Care Financing Administration, 6401 Security Boulevard, Baltimore, Maryland 21235.

FOR FURTHER INFORMATION CONTACT: Donald A. Young, M.D., Deputy Director, Office of Coverage Policy, (301) 594-9690.

SUPPLEMENTARY INFORMATION:

Background

In November 1979, HCFA authorized Medicare payments for heart transplantation procedures performed for Medicare beneficiaries at Stanford University Medical Center. This was an interim decision, based on preliminary findings by the Public Health Service (PHS) regarding the safety and efficacy of heart transplants performed at that center. HCFA anticipated, when reimbursement was tentatively authorized, that we soon would be able to reach a final decision not only about coverage at that center, but also on generally applicable, broadly based criteria for approving Medicare coverage of heart transplantations at other facilities.

As we proceeded to review Medicare coverage of heart transplants, we determined that the issues are much more complex than originally contemplated and that many of them cannot be resolved now because adequate data do not exist. There are questions, for example, concerning the patient selection process, the basis for assessing safety and efficacy, the long-term social and economic consequences of the procedure, broad ethical considerations, the cost effectiveness of the procedure, and the potential, if any, for substantial expansion in the availability of heart transplantation. We have concluded that we do not have sufficient information at this time to support the development of generally applicable coverage criteria. Consequently, the Secretary of HHS announced a decision to exclude heart transplants from Medicare coverage, with the exception of a very few patients previously selected for and awaiting transplantations. That decision was announced June 12, 1980 by the Secretary and published as a notice in the Federal Register on August 6, 1980 (45 FR 52296).

The decision to exclude heart transplants from Medicare coverage was accompanied by an announcement that HCFA, in close cooperation with the PHS National Center for Health Care Technology (NCHCT), will conduct a broad study of heart transplants. The study will address a broad range of issues pertaining to a potential Medicare coverage decision on heart transplants, including scientific, social, ethical, and economic issues. The study will also examine the impact of a potential coverage decision on beneficiaries, the Medicare program, and health care providers. When the results of the study have been analyzed, HCFA will publish a proposed decision as to Medicare coverage and give the public an opportunity to participate fully in the development of the final policy, with all pertinent facts being made available for analysis.

Implementing the Heart Transplant Study

Overview of the Study

The heart transplant study will be conducted over an eighteen-month period (beginning approximately in May, 1981) and will have two aspects: (1) Institutions participating in the study will furnish, or facilitate access to, a wide variety of data regarding heart transplants previously performed at their facilities over a period of years. (2) A contractor will gather, coordinate, evaluate, and report to HCFA on the data it collects from those institutions and other sources.

Hospitals and medical centers participating in the study will furnish information about the heart transplants performed during a period starting no later than January 1, 1975, and continuing through the period of this study. This will include data on the institution's facility and personnel resources, heart donor program, patient selection criteria, transplant and patient

care protocols, patient follow-up care, patient survival, costs of establishing and maintaining a heart transplant program, patient charge information, and other similar and related information.

The institution must agree to contact former heart transplant patients, or relatives of those patients, to invite their cooperation in the study, including their authorization for the institution to release information about their cases and to be interviewed in connection with the study.

In addition to this Notice, HCFA will publish a Request for Porposals to select a contractor, through a competitive process, to gather the data furnished by the institutions and reimburse the institutions for expenses incurred in producing that data.

Applications To Participate in the Study

Hospitals and medical centers that wish to participate in the heart transplant study are requested to send a letter to HCFA, at the address shown above, making known their desire to participate. Institutions may participate in either of two ways—by only furnishing data for the study or by furnishing data and receiving reimbursement for some agreed-upon number of transplantations. Institutions that do not seek reimbursement for heart transplants, but are interested in submitting data for the study, should indicate that to us.

HCFA will select the institutions to participate in the study, will negotiate an agreed number of transplants to be performed on Medicare beneficiaries, and will make arrangements for Medicare reimbursement. The contractor HCFA selects for this study will than contact those institutions, informing them in detail about the data that must be furnished and about procedures for reimbursing institutions for costs incurred in providing that data.

Procedures for Selecting Institutions To Be Reimbursed for Heart Transplants

As part of the study, HCFA will provide for payments to qualified hospitals and medical centers for a total of approximately 15 heart transplants performed for Medicare beneficiaries during the study period. Institutions participating in the study may apply for these funds by following the procedures detailed below in the "Applications for Payments for Heart Transplants" section. The institutions selected will receive payment, in accordance with Medicare regulations, for all inpatient and outpatient care and diagnostic and therapeutic services, including physicians' and other medical services, ordianarily furnished during the evaluation, transplantation and follow-up portions of the heart transplant program. Payments will be made by the Medicare Part A fiscal intermediaries presently serving the institutions and Part B carriers serving the geographic areas in which the institutions are located. The details of the procedures for billing and payment will be furnished to the institutions as soon as possible after the selections are made.

The selection of institutions will be based on a careful review of the materials they submit regarding their capability and procedures for performing heart transplants. In this regard, cardiac transplantation cannot be considered as simply a surgical procedure. Clinical effectiveness and usefulness are dependent upon careful and appropriate patient selection, expert surgery, postoperative care, immunosuppression, evaluation for incipient rejection of the donor heart, management of complications associated with immunosuppression, patient education, and liaison with the patient's permanent physician for subsequent lifelong care. Because of these unusual complexities and the need for achieving reasonable clincial results with cardiac transplantation, we will be setting forth guidance for the use of institutions in preparing applications and for use in selecting institutions. This guidance is derived from criteria developed by the National Heart, Lung and Blood Institute, with the advice of an advisory group of experts in cardiology, caridovascular surgery, organ transplantation and immunology. The criteria were furnished to HCFA by the NCHCT.

HCFA will select the institutions to receive payments for heart transplants and will base its selections on the recommendations of a panel, or panels, made up predominantly of experts in the fields of cardiology, cardiovascular surgery, organ transplantation, and immunology. The panel will examine written materials submitted by the applicant institutions and may seek additional relevant information as necessary, for example, through site visit to the applicant institutions and interviews with relevant persons. The panel of experts will compare the institution's submission against the criteria, specified below, in recommending institutions for heart transplant funding. Although each of the four major criteria listed below are required, the panel will not necessarily recommend only those institutions that adhere strictly to the sub-criteria identified. It will take into account all evidence set forth by the applicant institution, the facility's overall medical experience, and its experience in cardiac transplantation. These criteria do not necessarily represent our view as to what procedures are essential to assessing safety and efficacy in the performance of cardiac transplantation. However, in our view, they do give us guidance in conducting this study in a responsible manner. Alternate approaches in keeping with the major criteria may be approved if in the opinion of the panel of experts the institution's procedures seem to achieve comparable results and appear to merit study.

Criteria for Assessing and Selecting Institutions

1. The institution must have had experience with a clinical heart transplant program within the past five years.

2. The institution must have adequate patient selection criteria, evidenced by the following:

(a) Patient selection criteria are to be based upon both critical medical need for transplantation and maximum likelihood of successful clinical outcome.

(b) The institution selects patients that have a very poor prognosis (e.g. less than 10 to 25 percent likelihood of survival for six months) as a result of poor cardiac functional status.

(c) All other medical and surgical therapies have been considered or tried that might be expected to yield improvement and a one-year survival comparable to that of cardiac transplantation.

(d) Patient selection criteria give consideration to those factors that are recognized at the present time as exerting an adverse influence on the outcome after cardiac transplantation. Strongly adverse factors include—

(1) Advancing age—e.g., beyond the age (normally about 50) at which the individual begins to have a diminished capacity to withstand postoperative complications;

(2) Severe pulmonary hypertension as reflected, for example, by a pulmonary artery systolic pressure over 65–70 mm Hg and exceeding pulmonary artery wedge pressure by about 40 or more mm Hg, or a calculated pulmonary vascular resistance above approximately 6 Wood units (applicable to orthotopic cardiac transplantation because of the limited work capacity of a normal donor right ventricle);

(3) Irreversible and severe hepatic or renal dysfunction (because of the likelihood of exacerbation early postoperatively and because of

interference with immunosuppressive regimens);

(4) Active systemic infection (because of the likelihood of exacerbation with initiation of immunosuppression);

(5) Any other systemic disease considered likely to limit or preclude survival and rehabilitation after transplantation;

(6) A history of a behavior pattern or psychiatric illness considered likely to interfere significantly with compliance with a disciplined medical regimen (because a lifelong medical regimen is necessary, requiring multiple drugs several times a day with serious consequences in the event of their interruption or excessive consumption);

(7) Recent and unresolved pulmonary infarction or pulmonary roentgenographic evidence of infection or of abnormalities of unclear etiology (because of the likelihood of pulmonary infection or its exacerbation with initiation of immunosuppression under such circumstances);

(8) Insulin-requiring diabetes mellitus (because of exacerbation by chronic corticosteroid therapy);

(9) Symptomatic or documented severe asymptomatic peripheral or cerebrovascular disease (because of observed accelerated progression in some patients after cardiac transplantation and on chronic corticosteroid treatment);

(10) Active peptic ulcer disease (because of the likelihood of early postoperative exacerbation);

(11) The absence of adequate external psychosocial supports for either short or long-term bases (because such support is generally necessary during the inevitable waxing and waning of the clinical status of the patient and for adherence to the lifelong medical regimen).

3. The institution must have adequate patient management plans and protocols that include the following:

(a) Detailed plans for the therapeutic and evaluative procedures for the acute and long term management of a patient, including commonly encountered complications.

(b) The basis for confidence in the proposed therapeutic and evaluative regimen.

(c) The logistics of the plans for patient management and evaluation during the waiting and immediate post-discharge, as well as in-hospital, phases of the program.

(d) The logistics of the plans for the long-term management and evaluation, including education of the patient and liaison with the patient's permanent physician.

(4) The institution must have made a sufficient commitment of resources and planning to the heart transplant program to carry through on its application. Indications of such commitment could include the following:

(a) Commitment of the institution to the heart transplant program is at all levels and broadly evident throughout the institution. (A cardiac transplantation program requires a major commitment of resources. These may intermittently include many other departments as well as the principal sponsoring departments.)

(b) There are both the expertise and the commitment for participation in the medical, surgical, and other relevant areas, particularly cardiology, cardiovascular surgery, anesthesiology, immunology, infectious diseases, nursing, neurology/neurosurgery, and social services. In most of these areas, individual persons need to be identified to achieve an identifiable and stable transplant team.

(c) The component teams are integrated into a comprehensive team with clearly defined leadership and corresponding responsibility.

(d) The institution has an active clinical organ transplantation program involving immunosuppressive techniques and the results of that program. (In the absence of such an active clinical organ transplant program, the institution may have great difficulty in showing that the necessary expertise will be available and logistically feasible.)

(e) There is an active cardiovascular, medical, and surgical program. (General indicators of this would be a minimum of 500 cardiac catheterizations and coronary arteriograms annually, with the ability and willingness to do such procedures on an emergency basis, and a surgical group that has demonstrated low mortality rates in an active open heart surgical program involving at least 250 procedures a year.) The surgical team responsible for transplantation must be an identified, stable group.

(f) The anesthesia service is prepared to develop a team for transplantation that will also be available at all times.

(g) The infectious diseases service has both professional skills and the laboratory resources that are needed to discover, identify, and manage a whole range of organisms, many of which are uncommonly encountered in the usual infectious diseases laboratory.

(h) The nursing service is prepared to develop a team or teams trained not only in hemodynamic support of the patient, but also in the special problems of managing immunosuppressed patients.

(i) Pathology resources are available for studying and promptly reporting the pathological responses to transplantation.

(j) A neurology or neurosurgery group is available for the donor selection procedures for objective clinical decision on brain death.

(k) Adequate social service resources are available.

(l) There is a clearly assigned and knowledgeable legal officer familiar with transplantation laws and regulations.

(m) Adequate logistical plans exist for organ procurement meeting legal and ethical criteria, as well as yielding viable transplantable organs in reasonable numbers.

Application Procedure

1. A hospital or medical center that wishes to participate in the study must submit an application to HCFA that includes an express commitment to provide the data indicated above, including data on all heart transplants performed at the institution beginning no later than January 1, 1975, at the request of the contractor chosen by HCFA.

2. If the institution seeks reimbursement for heart transplantation during the study, an original and 20 copies of the application must be submitted on 8½ × 11 inch paper, signed by a person authorized to commit the institution. The following must be submitted:

(a) A complete written description of the institutions's heart transplant program. Information and data must be clearly stated, well organized, and appropriately indexed to aid in its review against the "Criteria for Assessing and Selecting Institutions";

(b) An estimate of the number of heart transplants it would anticipate performing on Medicare beneficiaries during the course of the study; and

(c) An express commitment to comply with the Department's regulations on human subjects (45 CFR Part 46) and a willingness to complete form HHS-596 (Rev. 1975), "Protection of Human Subjects", when requested.

We will publish in the Federal Register for the information of the public the names of the institutions selected, but we will notify the selected institutions as soon as selections are made.

(Sec. 1875 of the Social Security Act (42 U.S.C., 1395ll)

(Catalog of Federal Domestic Assistance Program No. 13.773, Medicare—Hospital Insurance Program; No. 13.774, Medicare Supplementary Medical Insurance Program)

Dated: January 16, 1981.

Howard N. Newman,

Administrator, Health Care Financing Administration.

[FR Doc. 81-2169 Filed 1-21-81; 8:45 am]

BILLING CODE 4110-86-M

Health Services Administration

Project Grants for General Family Planning Services Delivery Improvement Research; Availability of Grants

The Bureau of Community Health Services, Health Services Administration, announces that under the authority of section 1004(a) of the Public Health Service Act (42 U.S.C. 300a–2(a)) grants will be available in fiscal year 1981 to public or nonprofit private entities for research projects in the field of program implementation related to the improved delivery of family planning services (Catalog of Federal Domestic Assistance Number 13.974). The amount available for these grants in fiscal year 1981 is $300,000, and it is expected that 2 to 4 awards will be made under this program during fiscal year 1981.

Application kits, including all necessary forms, instructions, and information, may be obtained by writing: Grants Management Branch, Bureau of Community Health Services, Room 6–49, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, telephone number 301 443–1440.

Completed applications must be received by April 1, 1981, and should be submitted to the Grants Management Branch at the above address. Applications received after April 1, 1981, will not be considered.

Consultation and technical assistance regarding development of an application are available from Mr. William J. White, Bureau of Community Health Services, Office for Family Planning, 5600 Fishers Lane, Room 7–15, Rockville, Maryland 20857, telephone number 301 443–2430.

It is anticipated that the Secretary will issue regulations establishing procedures and criteria for the approval of applications for research in the field of program implementation related to the delivery of family planning services. Until such regulations are issued, all information and guidance provided reflect preliminary policies only; if those policies are changed by the regulations before grants are made, applications will have to be revised accordingly.

George I. Lythcott, M.D.

Assistant Surgeon General Administrator.

[FR Doc. 81-2165 Filed 1-21-81; 8:45 am]

BILLING CODE 4110-84-M

Office of the Secretary

Grant Appeals Procedures; Public Meeting

AGENCY: Departmental Grant Appeals Board, OS, HHS.

ACTION: Notice of meeting.

SUMMARY: The HHS Departmental Grant Appeals Board (DGAB) announces a public meeting to receive comments on its proposed new procedures.

DATE: The meeting will be held at 10:00 a.m., Tuesday, February 17, 1981.

ADDRESS: The meeting will be held in the Ground Floor Auditorium, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, D.C. 20201.

FOR FURTHER INFORMATION CONTACT: Judy Ballard, Room 2004, Switzer Building, 330 C Street, SW., Washington, D.C. 20201, 202–472–4364.

SUPPLEMENTARY INFORMATION: The purpose of the meeting it to receive comments on proposed procedures for appeals before the DGAB, published at 46 FR 1644, January 6, 1981. If you wish to review the procedures before the meeting, you may refer to the Federal Register, or may request a copy from the information contact identified above.

If you wish to appear and comment at the meeting, you should notify the information contact, indicating the length of time you wish to speak, any preference at to time, and your phone number. You will be informed in advance of the time scheduled for your statement. Statements generally will be limited to ten minutes. Submission of a typed copy of any statement would be appreciated. Time will be reserved for unscheduled comments.

If you cannot attend the meeting, please note that written and telephone comments on the proposed procedures will be considered if they are received no later than March 9, 1981.

Dated: January 13, 1981.

Norval D. (John) Settle,

Chair, Departmental Grant Appeals Board.

[FR Doc. 81-2185 Filed 1-21-81; 8:45 am]

BILLING CODE 4110-72-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. D-81-634]

Service Office Supervisor, Grand Rapids Multifamily Service Office; Designation and Delegation of Authority

Designation of Acting Service Office Supervisor—Each of the officials appointed to the following positions is designated to serve as Acting Service Office Supervisor during the absence of the Service Office Supervisor, with all powers, functions, and duties redelegated or assigned to the Service Office Supervisors: *Provided*, That no official is authorized to serve as Acting Service Office Supervisor unless all officials listed before him in this designation are unavailable to act by reason of absence or vacancy in the position:

1. The Deputy Supervisor for Management
2. The Deputy Supervisor for Development
3. Chief, Assisted Housing Management Branch
4. Chief, Loan Management Branch
5. Chief, Housing Programs Branch

Effective: July 28, 1980.

Brenda G. Head,

Acting Regional Administrator, Region V.

[FR Doc. 81-2166 Filed 1-21-81; 8:45 am]

BILLING CODE 4210-01-M

INTERAGENCY REGULATORY LIAISON GROUP

Testing Standards and Guidelines Work Group: Availability of Toxicity Testing Guidelines

AGENCY: Interagency Regulatory Liaison Group (IRLG) representing the Consumer Product Safety Commission (CPSC); the Environmental Protection Agency (EPA); the Food and Drug Administration, Department of Health and Human Services (FDA); the Food Safety and Quality Service, Department of Agriculture (FSQS); and the Occupational Safety and Health Administration, Department of Labor (OSHA).

ACTION: Notice of availability of toxicity testing guidelines.

SUMMARY: The following IRLG guidelines are now available for use: Acute Eye Irritation, Acute Oral Toxicity in Rodents, Acute Dermal Toxicity, and Teratogenicity. These guidelines were developed by the Testing Standards and Guidelines Work Group of the IRLG for use when testing chemicals for toxicity.

REQUESTS FOR GUIDELINES: Guidelines may be obtained by writing to: Associate Commissioner for Consumer Affairs, 5600 Fishers Lane, Room 15B32, Rochville, Md. 20857.

ADDRESS: Questions about the guidelines should be addressed to Dr. Victor Morgenroth, III, HFF–155, Food and Drug Administration, Bureau of Foods, Division of Toxicology, 200 "C" Street, SW., Washington, D.C. 20204.

SUPPLEMENTARY INFORMATION:.

Background

The IRLG was established for the purpose of improving public health through sharing of information, avoiding duplication of effort, and developing consistent regulatory policy. The testing of chemicals to determine their health effects is a fundamental step in many of the regulatory programs being implemented by the IRLG agencies. The agencies recognize that current toxicity testing requirements are not always uniform and that the differences exist primarily in details of methodology and not in fundamental toxicological principles.

The IRLG established the Testing Standards and Guidelines Work Group for the purpose of attempting to resolve these differences by preparing guidelines which would satisfy the toxicity testing needs of all the agencies. The Work Group reviewed tests and procedures already in use or under development, solicited comments from the private sector, and coordinated its work with the agencies and others who were also in the process of developing guidelines. Early drafts of the IRLG guidelines were circulated through each agency for review, and comments from that review are incorporated in them. In addition, drafts of the EPA Offices of Pesticides Programs (OPP) proposed guidelines (43 FR 37338, 22 August 1978) under the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) and public comments to those guidelines were used extensively in an effort to assure compatibility and to benefit from the appreciable time and effort the OPP staff and respondents put in to their development. A second major source of information was *Principles and Procedures for Evaluating the Toxicity of Household Substances* (NAS Pub. No. 1138), prepared for CPSC by the National Academy of Sciences. Still others heavily relied on were the Pharmaceutical Manufacturers' Association *Guidelines for the Assessment of Drug and Medical Device Safety in Animals* (February 1977), the FDA, Bureau of Foods Direct Additive Cyclic Review Draft Guidelines; the *Appraisal of the Safety of Chemicals in Foods, Drugs and Cosmetics*, Association of Food and Drug Officials of the U.S.; and protocols submitted by several industrial organizations. The Work Group made the draft guidelines available to the public for comment (43 FR 46015, 15 August, 1979) and held a public meeting on October 30, 1979, to discuss them. Written comments and comments from the public meeting were considered in developing the final guidelines. The Work Group acknowledges the contributions from each of these information sources and takes this opportunity to express its appreciation to the scientists who developed them and made them available and to those who commented on the IRLG drafts.

For several years the IRLG Work Group and the Organization for Economic Cooperation and Development (OECD) have cooperated in the development of guidelines by exchanging drafts and through the direct participation of IRLG members on OECD work groups. As a result, guidelines for Acute Eye Irritation, Acute Oral Toxicity in Rodents, Acute Dermal Toxicity, and Teratogenicity have been completed by the IRLG Work Group and have requirements identical to those of OECD. Statements of how each agency will use the guidelines follow.

1. *Consumer Product Safety Commission.*—The Consumer Product Safety Commission (CPSC) considers the test methods developed by the IRLG and OECD to be suitable for obtaining information which would be acceptable to the Commission except in a few cases where the Commission has contradictory regulations or statutes by which toxicity or irritancy is defined for purposes of the Federal Hazardous Substances Act (FHSA). The Commission intends to consider amending its regulations to make them consistent with these guidelines. Unless and until final amendments are issued, however, where the FHSA requirements differ from the IRLG or OECD guidelines and substances are being evaluated for FHSA purposes, the FHSA requirements must be followed. These differences are explained below.

Eye irritation: The FHSA defines "irritant" at Section 2(j) of the act, and this definition is elaborated upon at 16 CFR 1500.3(a)(8) and 1500.3(c)(4). The FHSA test method for determining eye irritancy is at section 1500.42 and uses 6 rabbits instead of the initial 3 rabbits used in the IRLG or OECD test. However, the IRLG or OECD test could be used to screen substances for FHSA testing. (Although the IRLG and OECD tests expressly provide for an option to use an anesthetic, the FHSA test does not expressly preclude this, and the CPSC supports the use of anesthetics where the animal would otherwise be subjected to extreme pain and the anesthetic will not interfere with obtaining valid test results.)

The Commission's present regulations do not establish a test for the eye irritancy of aerosol substances, and the IRLG or OECD test for these substances is suitable for this determination.

Dermal toxicity: Dermal toxicity is defined in the FHSA at section 2(h)(1)(c) and in the CPSC regulations at 16 CFR 1500.3(c)(2)(iii). These provisions contain some requirements different than the IRLG test procedures. The IRLG procedure states that albino rabbits, weighing from 2 to 3 kg, are the preferred species but that other species can be used where justified. The CPSC regulations require the use of 2.3 to 3.0 kg rabbits only. Unlike the IRLG test, the CPSC test requires that half the specimens have partially abraded skin, and there are differences in the descriptions of the location and mount of hair that is clipped from the test animals' bodies. At the end of 24 hours, the CPSC procedures provide for cleaning the animal by wiping, while the IRLG guideline provides for washing.

Oral toxicity: The CPSC's present provisions for oral toxicity testing under the FHSA are contained in section 2(g) of the act and at 16 CFR 1500.3(c)(2)(i). Whereas the IRLG test permits the use of either rats (125–250 grams) or mice (20–30 grams), the CPSC requirements allow only rats (200–300 grams). Furthermore, the CPSC requires the administration of the test substance in a single dose, while the IRLG allows administration over a period of time in certain circumstances.

Teratogenicity: The Commission does not presently have regulations defining a test for teratogenicity, but CPSC considers that the IRLG or OECD test would produce data relevant to whether a substance could be classified as toxic on the basis that the substance was teratogenic.

2. *Environmental Protection Agency.*—The Environmental Protection Agency can require private firms to test the effects of their products or wastes under three authorities: Section 4 of the Toxic Substances Control Act (TSCA); Section 3 of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA); and Sections 3001 and 3002 of the Resources, Conservation and Recovery Act (RCRA). Testing standards are being adopted by informal rulemaking under TSCA and FIFRA. While final

standards have not yet been adopted, it is expected that they will be consistent, to the extent feasible, with the IRLG and OECD guidelines.

For chemicals required to be tested under Section 4 of TSCA or Section 3 of FIFRA, the Agency will consider proposed protocols which are consistent with the IRLG and OECD guidelines. Under TSCA, requests to introduce variations into an approved protocol will be considered during the period between a proposed and final test rule requiring testing of specific chemicals or groups of chemicals. Under FIFRA, requests for variations would be submitted and considered at the time the Agency requests data pertaining to specific pesticides.

Under TSCA, the Agency will accept testing done on new chemicals (substances for which a premanufacturing notice has to be submitted under Section 5 of TSCA) if those tests are conducted in accordance with the IRLG or OECD guidelines.

The Agency is not at this time issuing health effects testing standards under RCRA and will accept the results of any tests performed according to the IRLG or OECD guidelines for the purposes of that Act.

3. *Food and Drug Administration.*— The Food and Drug Administration considers these IRLG guidelines to be appropriate for testing substances regulated under the Federal Food, Drug and Cosmetic Act and will implement their use throughout the Agency. The IRLG guidelines will be the Agency's standard procedures, but data derived using OECD guidelines for these tests will be acceptable. It is also recognized that special data requirements may dictate use of special tests.

4. *Food Safety and Quality Service.*— Although the Food Safety and Quality Service does not usually require private industry to conduct the type of tests included in the IRLG and OECD guidelines, it fully supports and will encourage their use, by laboratory contractees of the Agency and by those submitting data to the Agency for review.

5. *Occupational Safety and Health Administration.*— The Occupational Safety and Health Administration also supports the use of these IRLG and OECD guidelines. OSHA has not, in the past, issued permits for the use of specific substances. Rather, the best available evidence is used to determine whether a specific substance presents a hazard to the employees and then OSHA limits exposures accordingly.

Therefore, these guidelines will be used in conjunction with scientific judgment to assist OSHA in evaluating such tests.

Dated: January 15, 1981.

Susan King,

Chairman, Consumer Product Safety Commission.

Douglas M. Costle,

Administrator, Environmental Protection Agency.

Jere E. Goyan,

Commissioner, Food and Drug Administration.

Carol Tucker Foreman,

Assistant Secretary, Food and Consumer Service, Department of Agriculture.

Eula Bingham,

Assistant Secretary for Labor, Occupational Safety and Health Administration.

[FR Doc. 81-2199 Filed 1-21-81; 8:45 am]

BILLING CODE 6560-25-M

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management

PROPOSED SALES NOS. 72 AND 74

GULF OF MEXICO

CALL FOR NOMINATIONS OF AND COMMENTS ON AREAS FOR OIL AND GAS LEASING

PURPOSE OF CALL

Section 102 of the Outer Continental Shelf Lands Act Amendments of 1978 (92 Stat. 629) describes the purposes of that Act. One of the purposes is to establish policies and procedures intended to expedite exploration and development of the Outer Continental Shelf (OCS) in order to achieve national economic and energy policy goals, assure national security, reduce dependence on foreign sources, and maintain a favorable balance of payments in world trade. Equally important purposes include balancing energy resource development with the protection of the human, marine and coastal environments, as well as assuring States and local governments the opportunity to review and comment on decisions relating to OCS activities. To assist the Secretary of the Interior in carrying out these purposes, and pursuant to 43 CFR 3313.1, nominations are hereby requested for areas on the Gulf of Mexico Outer Continental Shelf for possible oil and gas leasing under the Outer Continental Shelf Lands Act (43 U.S.C. 1331-1343), as amended. The Secretary is also requesting comments on the possible environmental impacts and potential use conflicts in specified areas. Nominations for two proposed sales are being solicited in one call.

DESCRIPTION OF AREAS

Nominations will be considered for any or all of the blocks seaward of the submerged lands of the adjacent States which are to be found on the Official Protraction Diagrams and Leasing Maps listed below.

These blocks may be found on Outer Continental Shelf Official Protraction Diagrams and Leasing Maps which may be purchased from the Manager, New Orleans OCS Office, Bureau of Land Management, Hale Boggs Federal Building, 500 Camp Street, Suite 841, New Orleans, Louisiana 70130, as follows:

		Latest Approval or Revision Date
	South Texas Set[1]	
1	South Padre Island Area	7/16/54
1A	South Padre Island Area, East Addition	5/06/65
2	North Padre Island Area	7/16/54
2A	North Padre Island Area, East Addition	5/06/65
3	Mustang Island Area	10/30/61
3A	Mustang Island Area, East Addition	1/23/67
4	Matagorda Island Area	7/16/54
	East Texas Set[2]	
5	Brazos Area	7/16/54
5B	Brazos Area, South Addition	9/24/59
6	Galveston Area	7/16/54
6A	Galveston Area, South Addition	9/24/59
7	High Island Area	8/55
7A	High Island Area, East Addition	1/23/67
7B	High Island Area, South Addition	9/24/59
7C	High Island Area, East Addition, South Extension	9/24/59
8	Sabine Pass Area	3/07/77
	Louisiana Set[3]	
1	West Cameron Area	7/22/54
1A	West Cameron Area, West Addition	1/30/57
1B	West Cameron Area, South Addition	9/08/59
2	East Cameron Area	8/01/73
2A	East Cameron Area, South Addition	9/08/59
3	Vermilion Area	7/22/54
3A	South Marsh Island Area	8/07/59
3B	Vermilion Area, South Addition	9/08/59
3C	South Marsh Island Area, South Addition	9/08/59
3D	South Marsh Island Area, North Addition	1/18/72
4	Eugene Island Area	7/22/54
4A	Eugene Island Area, South Addition	9/08/59
5	Ship Shoal Area	6/08/54
5A	Ship Shoal Area, South Addition	9/08/59
6	South Timbalier, South Pelto, and Bay Marchand Areas	12/09/54
6A	South Timbalier Area, South Addition	7/22/68
7	Grand Isle Area	6/08/54
7A	Grand Isle Area, South Addition	3/07/61
8	West Delta Area	6/08/54
8A	West Delta Area, South Addition	11/24/61
9	South Pass Area	5/11/73
9A	South Pass Area, South and East Addition	9/08/59
10	Main Pass and Breton Sound Areas	7/22/54
10A	Main Pass Area, South and East Addition	9/08/59
11	Chandeleur Area	7/22/54
11A	Chandeleur Area, East Addition	9/08/59
12	Sabine Pass Area	3/07/77

[1] $5.00 this set
[2] $7.00 this set
[3] $17.00 this set

OCS OFFICIAL PROTRACTION DIAGRAMS

Gulf of Mexico[4]

NG	14-3 Corpus Christi	1/27/76
NG	14-6 Port Isabel	1/27/76
NG	15-1 East Breaks	1/27/76
NG	15-2 Garden Banks	12/02/76
NG	15-3 Green Canyon	12/02/76
NG	15-4 Alaminos Canyon	3/26/76
NG	15-5 Keathley Canyon	12/02/76
NG	15-6 Walker Ridge	12/02/76
NG	16-1	12/02/76
NG	16-2	12/02/76
NG	16-3 The Elbow	12/02/76
NG	16-4	12/02/76
NG	16-5	12/02/76
NG	16-6	12/02/76
NG	16-9 Howell Hook	4/18/79
NG	17-1 St. Petersburg	12/02/76
NG	17-4 Charlotte Harbor	12/02/76
NG	17-7 Pulley Ridge	10/24/78
NH	15-12 Elbow Bank	12/02/76
NH	16-4 Mobile	12/21/77
NH	16-5 Pensacola	12/02/76
NH	16-7 Viosca Knoll	12/02/76
NH	16-8 Destin Dome	12/02/76
NH	16-9 Apalachicola	1/15/76
NH	16-10 Mississippi Canyon	12/02/76
NH	16-11 DeSoto Canyon	12/02/76
NH	16-12 Florida Middle Ground	12/02/76
NH	17-7 Gainesville	1/27/76
NH	17-10 Tarpon Springs	12/02/76

[4] $2.00 per map

INSTRUCTIONS ON CALL

Nominations must be described by referring to the Outer Continental Shelf Official Protraction Diagrams and Leasing Maps prepared by the Bureau of Land Management, Department of the Interior and referred to above. Only whole blocks may be nominated. Those nominating twelve blocks or more are requested to arrange their nominations into three groups according to the priority of their interest.

In addition to nominations, we are seeking comments about particular geological, environmental, biological, archaeological, and socioeconomic conditions or problems, or other information which might bear upon potential leasing and development of particular blocks. Comments should be as specific as possible in identifying individual blocks or areas which should receive special concern and analysis.

Nominations and comments must be submitted not later than March 2, 1981, in envelopes labeled "Nominations of Tracts for Leasing in the Outer Continental Shelf - Gulf of Mexico" or "Comments on Leasing in the Outer Continental Shelf - Gulf of Mexico," as appropriate. They must be submitted to the Manager, New Orleans Outer Continental Shelf Office, Bureau of Land Management, Hale Boggs Federal Building, 500 Camp Street, Suite 841, New Orleans, Louisiana 70130. Copies should be sent to the Director, Attention 541, Bureau of Land Management, Department of the Interior, Washington, D.C. 20240, and to the Conservation Manager, U.S. Geological Survey, Gulf of Mexico Area, P.O. Box 7944, Metairie, Louisiana 70010, and to the Director, U.S. Geological Survey, National Center, Mail Stop 101, 12201 Sunrise Valley Drive, Reston, Virginia 22092.

USE OF INFORMATION FROM CALL

Nominations will be evaluated and used along with other geologic and geophysical information to determine what, if any, tracts should be tentatively selected for further environmental analysis pursuant to the National Environmental Policy Act of 1969 (42 U.S.C. 4321-4347) and the OCS Lands Act, as amended. Generally, because of limits on the geographic scope of areas which can be successfully planned for a single sale, only a portion of the tracts nominated is selected for further environmental analysis and possible leasing. The nominations from this call will be used to develop two proposed sales in the Gulf of Mexico, OCS Sales 72 and 74.

Comments will be considered along with other relevant information available to the Secretary to determine what tracts should be designated for further environmental analysis and study. As a general rule, tracts which are believed to have potential for the production of hydrocarbons are not excluded from further environmental study unless the Secretary has sufficient information to conclude that it is not possible for those tracts to be developed in an environmentally safe manner.

In any event, selection of tracts for further environmental analysis does not insure that the tracts will be subsequently offered for lease or that they will be deleted for environmental or use conflicts. It simply insures that more information will be available when that decision is made. In performing the additional environmental analyses leading to a sale decision, the Department will take into account comments received as it determines particular areas and issues for attention.

Final selection of tracts for competitive bidding will be made only at a later date after compliance with established Departmental procedures and all requirements of the National Environmental Policy Act of 1969. Notice of any tracts finally selected for competitive bidding will be published in the Federal Register stating the conditions and terms for leasing and the place, date, and hour at which bids will be received and opened.

Nominations and comments are also specifically requested on the possible leasing of tracts larger than the standard maximum size of 5,760 acres. Under section 8(b)(1) of the OCS Lands Act (43 U.S.C. 1337) as amended, the Secretary may find "that a larger area is necessary to comprise a reasonable economic production unit." Nominations may be submitted for groupings of blocks into larger areas and should be clearly identified as groups to be considered for leasing as larger sized units. Such nominations of larger areas should refer to block numbers on applicable leasing diagrams and should be submitted at the same time as the single block nominations solicited by this notice and the envelope should be labeled "Group Nomination." Supporting rationale for such nominations is also requested as well as any general comments about the problems and opportunities of this leasing technique. This notice does not constitute a commitment by the Secretary to use this concept. In general, the Department is aware that exploration and development costs are significantly greater in deeper water. What may be an economical or efficient project may vary with these depths as well as other factors. Nominations and

comments should address this question only for areas in excess of 200 meters water depth. The public is reminded that the Secretary could tentatively select individual tracts for further study and yet delay making a decision about whether larger leasing areas would be offered until a later date.

Nominations and comments are also requested on the leasing of tracts with terms of longer than 5 years pursuant to section 8(b)(2) of the OCS Lands Act (43 U.S.C. 1337) as amended.

Ed Hastey
Director, Bureau of Land Management
Associate

Dated: JAN 15 1981

Approved:

Deputy Assistant Secretary of the Interior

[FR Doc. 81-2144 Filed 1-21-81; 8:45 am]
BILLING CODE 4310-84-C

Geological Survey

Best Available and Safest Technologies (BAST)

AGENCY: U.S. Geological Survey, Interior.

ACTION: Solicitation for information.

SUMMARY: Section 21(b) of the OCS Lands Act Amendments of 1978 provides that the Secretary of the Interior shall require on all new drilling and production operations, and wherever practicable on existing operations, the use of the best available and safest technologies. This requirement is equipment oriented and applies to equipment whose failure could adversely affect safety, health, or the environment. This requirement cannot address the problem of human error; but human engineering, personnel training, and operational procedures are considered an integral part of BAST. BAST requirements may, however, be specifically waived in instances where the incremental benefits resulting from the use of BAST do not exceed the incremental costs involved in such use.

Information on and details of new technologies which may assist in the safe and expeditious exploration and development of the leaseable minerals of the Outer Continental Shelf (OCS) are solicited.

DATES: Comments should be submitted as soon as possible. This solicitation will be repeated periodically.

ADDRESS: Information and details should be submitted to the Deputy Division Chief, Offshore Minerals Regulation, Conservation Division, U.S. Geological Survey, National Center, Mail Stop 640, Reston, Virginia 22092.

FOR FURTHER INFORMATION CONTACT: Richard J. Giangarelli, Chief, BAST Unit, (703) 860-6822.

SUPPLEMENTARY INFORMATION: The BAST requirement has been included in the regulation in 30 CFR Part 250 and OCS Order No. 5. The program the Geological Survey is using to implement BAST is described in a document published by the Geological Survey in April 1980 entitled "The Use of Best Available and Safest Technologies (BAST) During Oil and Gas Drilling and Producing Operations on the Outer Continental Shelf." Copies of this document are available from the Deputy Division Chief, Offshore Minerals Regulation.

The Geological Survey has developed a number of programs over the past years to ensure that oil and gas operations on the OCS are conducted in a manner which takes into consideration safety, health, and environmental concerns. In line with this, OCS Orders establish minimum requirements in the form of performance standards and some specifications for technology, equipment, or procedures. These requirements are based on a determination that the technology, equipment, and procedures which meet these standards and specifications provide the level of protection necessary to assure safe operations. Therefore, any technology, equipment, or procedure which meets or exceeds the requirement shall qualify as best available and safest. The BAST program systematically incorporates the various program elements into an overall OCS regulatory scheme.

As this is an evolutionary program, changes will be made to the existing body of regulations, OCS Orders, and standards which govern operational practices when improvements, additions, and advances are made in safety concepts and technology.

Dated: January 13, 1981.

Robert L. Rioux,

Deputy Division Chief, Offshore Minerals Regulation, Conservation Division.

[FR Doc. 81-2097 Filed 1-21-81; 8:45 am]

BILLING CODE 4310-31-M

Heritage Conservation and Recreation Service

Urban Park and Recreation Recovery Program

AGENCY: Heritage Conservation and Recreation Service, Interior.

ACTION: Notice of grant rounds for UPARR program.

SUMMARY: This notice sets forth the intentions of the Urban Park and Recreation Recovery Program (UPARR) regarding the schedule and types of grant proposals to be submitted for the FY 81 second grant round and FY 82 first grant round.

FOR FURTHER INFORMATION CONTACT: Mr. Sam L. Hall, Division of Urban Programs, Heritage Conservation and Recreation Service, 440 G Street NW, Room 310, Washington, D.C. 20243 (202) 343-5971.

SUPPLEMENTARY INFORMATION: The next UPARR grant round is tentatively scheduled for announcement in July. About $15 million will be available for Rehabilitation and Innovation grants in this second competitive round of FY 1981. To increase the benefits of the limited funds available, it is the intention of the program that the July round give maximum emphasis to Innovation grants, for creative recreation service improvements with high nationwide demonstration value. This intention complies with UPARR legislation, Pub. L. 95-625, Sec. 1013 which states that "not more than 10 per centum [of the funds authorized in any fiscal year] may be used for innovation grants—." Funds for 1981 have been authorized at $150 million.

Therefore, up to 10 per centum, or $15 million, could be used for Innovation Grants. A small number of Rehabilitation proposals may also be funded. However, only those proposals demonstrating the most urgent rehabilitation needs, which cannot qualify for other sources of funding, are expected to receive consideration.

To complement this round, depending on FY 82 appropriations, the first round of FY 82 is tentatively scheduled for this fall as a Rehabilitation-oriented competition for about $50 million. This will provide incentive for the continued development of larger scale Rehabilitation proposals during the first six months of the year.

This Innovation emphasis for the July round will complement the efforts of applicants to implement their recently completed Recovery Action Programs, particularly through projects that promote public-private cooperation, increase citizen involvement, and improve management efficiency. Planning grants will continue to be available to support the development and improvement of Recovery Action Programs. Interested applicants should consult their HCRS regional offices for further information.

(Catalog of Federal Domestic Assistance 15.417)

(Title X, National Parks and Recreation Act of 1978, Pub. L. 95-625, 16 U.S.C. 2501-2514)

Dated: January 4, 1981.

Chris Therral Delaport,

Director, Heritage Conservation and Recreation Service.

[FR Doc. 81-2218 Filed 1-21-81; 8:45 am]

BILLING CODE 4310-03-M

National Park Service

Council of the National Park System Advisory Board; Committee Renewal

This notice is published in accordance with the provisions of Section 7(a) of the Office of Management and Budget Circular A-63 (revised). Pursuant to the authority contained in section 14(a) of the Federal Advisory Committee Act (Pub. L. 92-463), the Secretary of the interior has determined that renewal of

the Council of the National Park System Advisory Board is necessary and in the public interest.

The purpose of the committee is to participate in activities of, and to further the purposes of, the National Park System Advisory Board in advising the Secretary of the Interior in regard to matters relating to the National Park System.

The General Services Administration concurred in the renewal of this committee on November 24, 1980.

Further information regarding this committee may be obtained from Shirley M. Luikens, Advisory Boards and Commissions, National Park Service, Department of the Interior, Washington, DC 202-343-3012.

Dated: January 14, 1981.

Jean C. Henderson,

Chief, Office of Cooperative Activities, National Park Service.

[FR Doc. 81-2180 Filed 1-21-81; 8:45 am]

BILLING CODE 4310-70-M

General Management Plan, Yosemite National Park

Pursuant to section 102(2)(c) of the National Environmental Policy Act, the Department of the Interior has prepared a general management plan for Yosemite National Park, California. Copies of the plan and record of decision are available at the following locations:

National Park Service, Department of the Interior, 18th and C Street, NW, Washington, D.C. 20240.

Yosemite National Park, Post Office Box 577, Yosemite, California 95389.

National Park Service, Western Region Office, 450 Golden Gate Avenue, San Francisco, California 94102.

National Park Service, Los Angeles Information Office, Federal Building, 300 N. Los Angeles Street, Los Angeles, California 90012.

The record of decision follows this notice.

Dated: January 12, 1981.

John S. Adams,

Acting Regional Director, National Park Service, Western Region.

Record of Decision—Yosemite National Park General Management Plan

I. The Decision

The National Park Service has decided to adopt the general management plan as presented in the Yosemite National Park Final Environmental Impact Statement (FES 80-46). This final plan was released to the public on October 31, 1980 after a six year planning process which included extensive public involvement.

The goals of this plan are to: (1) reclaim and restore outstanding natural areas that have been developed for uses such as staff housing, office space and warehousing; (2) reduce automobile congestion by restricting the use of private vehicles and increasing public transportation; (3) reduce crowding by bringing parking and accommodations into line with visitor use levels; (4) restore and perpetuate the natural processes of the park's ecosystems; and (5) promote visitor understanding and enjoyment by increasing the amount and kinds of information and interpretive programs available to visitors.

A. Land Acquisition and Wilderness

The National Park Service will continue to purchase lands within the boundaries of the park as they are offered for sale by willing sellers. No new development will be permitted at Foresta or Aspen Valley, but private owners may continue to use their lands in a manner compatible with park values without the National Park Service initiating acquisition action. Limited residential development of the Wawona community will be permitted. Owners of private land in Section 35 may construct housing on presently plotted tracts under zoning standards that will be developed to ensure that park and community objectives are met.

The National Park Service has recommended to Congress that 670,000 acres be classified as wilderness and 3,500 acres be classified as potential wilderness. All lands recommended for potential wilderness and actual wilderness will be protected from further development.

B. Visitor Services

Parking for day use visitors in Yosemite Valley will be reduced by about 50 percent to 1,271 spaces. Enforcement of this reduced carrying capacity will be accomplished through an information system at park entrance stations. Some additional day use parking opportunities will be provided by the development of outlying parking lot and shuttlebus transportation to El Portal, Crane Flat, and Wawona. Traffic within Mariposa Grove will also be restricted and the shuttlebus will be extended to provide service to this area.

Beyond the life of this plan, the National Park Service is committed to elimination of all private vehicles from Yosemite Valley. Various methods to provide additional bus service from gateway communities will be studied. Ultimately, all day and overnight visitors will be able to enjoy the valley without their cars. Each phase of the transportation system will be adequately planned to minimize environmental impact, solve operational problems and promote public acceptance.

Visitor information and orientation will be decentralized and relocated to where they can best serve visitor needs—through the public media, at urban and regional information/reservation centers, at park entrances, and developed areas.

A wide variety of traditional uses will be retained. Activities such as picnicking, hiking, and camping, which take advantage of the park's natural features rather than man-made facilities or mechanized equipment, are the most appropriate uses of the park. Downhill skiing will be allowed to continue.

The number of campsites will be increased by nine percent to 2,504 sites. Some sites will be relocated to zones more suitable for man's activities in order to protect sensitive resources and increase manageability.

Lodging will be reduced parkwide by about 10 percent to 3,552 units. However, in Yosemite Valley, lodging will be reduced by 17 percent to 1,536 units.

An Indian cultural center will be constructed at the former Indian village site west of Sunnyside Campground. The American Indian Council of Mariposa County will build and operate the center under a special use permit.

C. Park Operations

The park headquarters, along with the majority of the administrative and maintenance support facilities for government and concession operations will be moved from the valley to El Portal. Only those facilities essential to daily operations of the valley will remain, and these facilities will be redesigned and consolidated to minimize their physical intrusion.

Housing will be provided for employees whose jobs require them to live near their worksites. Housing for other employees will be provided only when there is no viable alternative for securing housing outside the park.

II. The Alternatives

1. Provide for resource related activities and a moderate amount of commercial services.

2. Emphasize backcountry experiences and provide only a minimal amount of commercial services.

3. Provide opportunities for a large range of recreational and social activities supported by a substantial amount of commercial services.

4. No action.

5. Provide for resource-related activities and reduce accommodations and commercial services.

6. Relocate operational facilities from the valley to Wawona and El Portal while leaving accommodations much as they are today.

7. Relocate operational facilities from the valley primarily to El Portal and reduce the level of accommodations and commercial services (September, 1980, Final Plan).

The cumulative environmental effects do not differ significantly between alternatives 1, 5, 6, and 7. Therefore, all four of these alternatives have been determined to be environmentally preferable.

III. Mitigating Measures

A. Natural Environment

As outlined in the natural resources managment plan, a monitoring program for evaluating the incidence and effects of *Fomes annosus* on conifers will continue. Among other things, this program will evaluate relationships between *F. annosus* infection and visitor use/development within the park. At some time in the future it may be necessary to alter visitor-use patterns, if it is determined that activity and development are significant contributors to *F. annosus* infection and that the extent of infection threatens the loss of natural vegetation types.

An ongoing program of monitoring water quality of major rivers will be expanded to include additional tributaries affected by development areas. The results of these studies will provide a basis for reliably assessing water quality impacts during future planning and construction projects. All public water systems will be upgraded as soon as possible.

A study of water use in the Wawona area will evaluate ways to mitigate potential adverse effects associated with future development of the area. Wherever possible, impacts associated with the use of facilities will be displaced to the more resilient ecosystems, avoiding fragile meadow and riverine environments. For example, construction of campground footpaths a distance from river and stream banks will channel foot traffic away from shoreline areas and promote revegetation of these areas.

In association with the increased commuting by National Park Service and concessioner employees, an increasingly larger fleet of buses will be utilized to decrease congestion energy use and levels of air pollution.

Facilities will be designed to minimize impacts on the natural environment. Removal of vegetation will be avoided wherever possible during construction activities, with particular attention to mature trees.

Natural surface and subsurface drainage patterns will be thoroughly evaluated and maintained to the extent possible. In restoration projects only endemic vegetation will be used. Natural backgrounds will be retained at development sites and facilities will be constructed with materials that blend with the natural background.

B. Cultural Environment

Cultural resource management will be carried out in accordance with cultural resource management section (plan) of the general management plan, which seeks to avoid effects to cultural resources, to minimize effects or to mitigate adverse effects. In accordance with the National Historic Preservation Act of 1966 (Public Law 89-665) and the procedures of the Advisory Council on Historic Preservation (36 CFR 800) a memorandum of agreement has been concluded between the state historic preservation officer, Advisory Council on Historic Preservation and the National Park Service on actions affecting cultural resources and the actions to be taken to avoid, minimize effects or mitigate adverse effects.

Yosemite contains Native American cultural resources and the National Park Service will consult with the American Indian Council of Mariposa County concerning archeological resources and Native American resources towards the goal of furthering their preservation for future generations.

On December 12, 1980, the President approved Public Law 96-515, the National Historic Preservation Act of 1980, a major revision and expansion of the National Historic Preservation Act of 1966. While copies of the final legislation are not yet available, drafts indicate that major new public policies are set forth in the act. When the new legislation is available, a review will be made of cultural resource management proposed actions and changes will be made where needed to conform to the new public policy set forth in the legislation. The state historic preservation officer will be consulted as indicated.

C. Socioeconomic Environment

Acquisition of private lands will cause a reduction in the county tax base and resultant loss in county revenues. Public Law 94-565 provides for two types of payments to reduce this impact on the local government. Entitlement payments are made for all federally owned lands within a county. These payments are at a fixed rate per acre and subject to reduction based on county population and other payments received by the county government. Entitlement payments on fiscal year 1977 were $163,032 for Madera County, $767,502 for Mariposa County and $570,791 for Tuolumne County.

In addition to entitlement payments, acquired payments will be made on all newly purchased lands. These payments are calculated at one percent of the fair market value and continue for five years following acquisition. Payments may not exceed the real property taxes levied in year preceding acquisition. Based on an estimated property value, acquired land payments are expected to be approximately $135,000 to $175,000 in Mariposa County and $4,400 to $6,500 in Tuolumne County.

IV. Rationale for the Decision

The proposal maximizes resource protection while providing for a wide variety of visitor experiences. In addition, through the relocation of accommodations, officers and employee housing this plan will achieve the greatest reduction of congestion in Yosemite Valley while minimizing the impact on the rest of the park. El Portal would be the park headquarters site and the main support community.

Dated: December 23, 1980.

Howard H. Chapman,

Regional Director, Western Region, National Park Service.

[FR Doc. 81-2017 Filed 1-21-81; 8:45 am]

BILLING CODE 4310-70-M

Office of Surface Mining Reclamation and Enforcement

[Federal Coal Leases W-0322255, W-0321780, B-031719]

Scoping Meeting to Consider Preparation of an Environmental Impact Statement and Availability for Public Review, Mining and Reclamation Plan, Proposed by Nerco for The Antelope Coal Mine, Converse County, Wyo.

AGENCY: Office of Surface Mining Reclamation and Enforcement, Department of the Interior.

ACTION: Availability for Public Review of a Coal Mining and Reclamation Plan and Notice of Scoping Meeting to Consider Preparation of an Environmental Impact Statement on a Proposed Surface Coal Mine.

SUMMARY: The Office of Surface Mining (OSM) has received an application from NERCO, Inc. for a mining and reclamation plan approval and permit

pursuant to the Surface Mining Control and Reclamation Act of 1977 (SMCRA) for the proposed Antelope Coal Mine. OSM has determined that approval or disapproval of this proposed mine may be a significant Federal action affecting the human environment which may require the preparation of an environmental impact statement (EIS).

A public meeting will be held on January 28, 1981 at 7:00 p.m. at the Converse County Library, 300 Walnut Street, Douglas, Wyoming. The purpose of the meeting is to solicit public comments on the proposed mine which would assist OSM in making a determination of the need for an EIS under the National Environmental Policy Act (NEPA). All interested persons or agencies are invited to participate at this meeting. This meeting will provide the basis for scoping the EIS determination. In addition, this notice is issued to inform the public of the availability of this mine plan for review pursuant to § 1500.2 of Title 40, Code of Federal Regulations.

Location of Lands To Be Affected

Applicant: NERCO, Inc.
Mine Name: Antelope Coal Mine
Type of Mine: Surface Coal Mine
State: Wyoming
County: Converse
Township, Range, Section: All or parts of T 41 N, R 71 W, Sec. 25, 26, 27, 34, 35, 36; T 41 N, R 70 W, Sec. 30, 31; T 40 N, R 71 W, Sec. 1, 2, 3, 10, 11, 12, 14, 15; T 40 N, R 70 W, Sec. 6.
Office of Surface Mining Reference No. WY-0052.

The proposed surface coal mine would be located approximately 65 miles south of Gillette, 55 miles north of Douglas, and 60 miles west of Newcastle, Wyoming. The mine would cover approximately 7,641 acres of state and private surface, and Federal surface within the Thunder Basin National Grasslands. The mine would be in operation for approximately 28 years, with a maximum annual production of 12 million tons of coal.

Prior to the Department taking action on this mine plan, the Office of Surface Mining and the State of Wyoming, Department of Environmental Quality (DEQ) will prepare a technical and environmental analysis (TEA), to determine whether the proposed plan meets the requirements of SMCRA. The Office of Surface Mining will also prepare either an Environmental Impact Statement (EIS) or an Environmental Assessment (EA) which would evaluate the impacts of actions the Department of the Interior may take on the plan. The public participation meeting on the 28th of January will assist OSM in making a preliminary determination on the preparation of an EIS. During the analytical review, it is possible that additional information will be requested from the company. Any information obtained would also be available for public review.

Should the Office of Surface Mining, after the public meeting and consultation with the State and other agencies, determine an EIS is required, a Notice of Intent to prepare an EIS would be published in the Federal Register and local newspapers. If an Environmental Assessment (EA) is prepared, a Notice of Availability of the EA will also be published in the Federal Register and local newspapers.

The mining and reclamation plan submitted by NERCO, Inc., is available for public review during normal working hours at the Office of Surface Mining, Region V, second floor, Brooks Towers, 1020 15th Street, Denver, Colorado; the State of Wyoming Department of Environmental Quality, 401 West 19th Street, Cheyenne, Wyoming; and at the County Clerk's Office, Converse County, Douglas, Wyoming (307) 358-2244. Comments on the proposed plan may be submitted to the Regional Director, Office of Surface Mining, at the Denver address or to the Director, Wyoming Department of Environmental Quality, at the above Cheyenne address.

FOR FURTHER INFORMATION CONTACT: Jerome J. Cuzella or Florence Munter Schaller, Office of Surface Mining, Region V, Brooks Towers, 1020 15th Street, Denver, Colorado 80202, Telephone (303) 837-3773.

Dated: January 13, 1981.

Donald A. Crane,
Regional Director.

[FR Doc. 81-2130 Filed 1-21-81; 8:45 am]
BILLING CODE 4310-05-M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB-6 (Sub-No. 89F)]

Burlington Northern Inc.; Findings on Abandonment Between Binford and McHenry, ND

Notice is hereby given pursuant to 49 U.S.C. 10903 that by a Certificate and Decision decided January 15, 1981, a finding, which is administratively final, was made by the Commission, Review Board Number 5, stating that, the present and future public convenience and necessity permit the abandonment by the Burlington Northern Inc. of a line of railroad known as the Binford to McHenry line extending from railroad milepost 51.19 near Binford, ND, to railroad milepost 62.86, at the end of the line, near McHenry, ND, a distance of 11.68 miles in Foster and Griggs Counties, ND, subject (1) to the conditions for the protection of employees discussed in *Oregon Short Line R. Co.-Abandonment Goshen*, 360 I.C.C. 91 (1979); (2) that BN shall maintain all track, bridges, and structures on the Binford-McHenry line for a period of time not to exceed 180 days from the decided date of the certificate and decision to permit any state or local government agency or other interested party to negotiate the acquisition for public use of all or any portion of the right-of-way; (3) in the event BN plans to demolish the line or sell it for uses which would adversely affect its historic quality, BN must document the line in accordance with appropriate documentation procedures established by the State Historical Society of North Dakota; and (4) BN shall notify the State Historical Society of North Dakota of its plans for the line. If BN sells the line, it should include in the contract of sale a provision requiring the purchaser(s) to notify the State Historical Society of North Dakota of their plans for the line. This condition does not require approval of these plans. A certificate of public convenience and necessity permitting abandonment was issued to the Burlington Northern Inc. Since no investigation was instituted, the requirement of § 1121.38(b) of the Regulations that publication of notice of abandonment decisions in the Federal Register be made only after such a decision becomes administratively final was waived.

Upon receipt by the carrier of an actual offer of financial assistance, the carrier shall make available to the offeror the records, accounts, appraisals, working papers, and other documents used in preparing Exhibit I (Section 1121.45 of the Regulations). Such documents shall be made available during regular business hours at a time and place mutually agreeable to the parties.

The offer must be filed with the Commission and served concurrently on the applicant, with copies to Ms. Ellen Hanson, Room 5417, Interstate Commerce Commission, Washington, DC 20423, no later than February 2, 1981. The offer, as filed, shall contain information required pursuant to § 1121.38(b) (2) and (3) of the Regulations. If no such offer is received, the certificate of public convenience and necessity authorizing abandonment

shall become effective 30 days form the service date of the certificate.

Agatha L. Mergenovich,
Secretary

[FR Doc. 81-2088 Filed 1-21-81; 8:32 am]
BILLING CODE 7035-01-M

[Ex Parte No. MC-19 (Sub-38)]

Bekins Van Lines Co., Petition for Relief From Household Goods Regulations and From Released Rates Order MC-505

AGENCY: Interstate Commerce Commission.

ACTION: Dismissal of petition for waiver of regulations.

SUMMARY: Bekins Van Lines Co. filed a petition for waiver of regulations concerning weighing of household goods shipments and from released rates order MC-505, for the purpose of offering the shipping public a guaranteed price for transportation and accessorial services. The Household Goods Transportation Act of 1980 contains provision for carriers to file binding estimate tariff provisions. Since the Act supercedes our rules to the extent that the rules are inconsistent with the Act, no grant of relief is warranted and the petition is dismissed.

EFFECTIVE DATE: February 23, 1981.

FOR FURTHER INFORMATION CONTACT: John H. O'Brien, (202) 275-7148 or Patricia M. Schaefe, (202) 275-7475.

SUPPLEMENTARY INFORMATION: By petition filed under docket No. MC-52793, December 15, 1980, Bekins Van Lines, Co., requests a waiver of the following regulations and from released rates Order MC-505 for the purpose of offering the public binding estimates for transportation and accessorial services.

49 CFR-1056.6—Determination of Weights
49 CFR-1056.8—Estimates of Charges, Sub-Section (a) (b) and (d)
49 CFR-1056.9—Order for Service, Sub-Section (a), Item (5), (9), (10) and (11)
49 CFR-1056.10—Receipt or Bill of Lading, Sub-Section (a), Items (5), (7), (8), and (9)
49 CFR-1056.11—Driver's Weight Certificate
49 CFR-1056.12—Sub-Section (b) and 49 CFR-1056.3, Sub-Section (d) as they prohibit Space Reservation charges and estimates
49 CFR-1056.28—Collection of Freight Charges on Partially Lost or Destroyed Shipments.

For purposes of giving this decision wider notice, we have docketed it as Ex Parte No. MC-19 (Sub-No. 38).

Bekins states that its Guaranteed Price Program does not contemplate the weighing of shipments moved on the basis of a binding estimate since the estimated weight alone will be determinative of the guaranteed price. It therefore urges that those household goods rules which require or make reference to weighing are inimical to the institution of its binding estimate proposal.

Although not specifically referenced in its petition, Bekins apparently intends to offer its Guaranteed Price Program pursuant to section 4 of the Household Goods Transportation Act of 1980 which became law on October 15, 1980. That section allows household goods carriers to establish a tariff rate for household goods transportation based on the carrier's written binding estimate, provided that the rate be available to shippers on a nonpreferential basis and not result in predatory charges.

As Bekins points out, the Commission has instituted a rulemaking proceeding to implement the provisions of the Household Goods Transportation Act of 1980. We have not, however, suspended the household goods rules in effect prior to the passage of that Act, inasmuch as they still have application to shipments moved under currently effective tariffs containing weight based rates.

It is not necessary, however, to waive the rules utilizing standards based on requirements of weighing, as requested by Bekins, inasmuch as a regulation which is in conflict with or restrictive of the statute is, to the extent of the conflict or restriction, invalid. A regulation valid, when promulgated, becomes invalid to the extent it conflicts with a statute subsequently enacted. See *Scofield* v. *Lewis*, 251 F.2d 128 (1958).

If a household goods carrier submits a tariff encompassing a plan to provide transportation under binding estimates and that plan includes no provision to determine the actual weight of the shipment and/or does include space reservation and valuation plans different from those authorized in Released Rate Order MC-505 as significant features, the proper time and place for challenges to the plan is in connection with that tariff filing. Once such a tariff responsive to changes in the law becomes effective, the applicability of prior existing general regulations is narrowed as to transportation under that tariff to the extent it is inconsistent with the plan established by that tariff.

We find:

The Household Goods Transportation Act of 1980 does not require specific waiver of regulations found in 49 CFR 1056 or released rates order MC-505 for approval of tariffs providing for shipments to move under effective binding estimate provisions.

It is ordered:

That the petition of Bekins Van Lines Co. be dismissed.

Decided: January 12, 1981.

By the Commission, Chairman Gaskins, Vice Chairman Alexis, Commissioners Gresham, Clapp, Trantum, and Gilliam.

Agatha L. Mergenovich,
Secretary.

[FR Doc. 81-2138 Filed 1-21-81; 8:45 am]
BILLING CODE 7035-01-M

Long and Short-Haul Applications for Relief (Formerly Fourth Section Applications); Washington

January 16, 1981.

These applications for long-and-short-haul relief have been filed with the I.C.C.

Protests are due at the I.C.C. by February 6, 1981.

No. 43893, Southwestern Freight Bureau, Agent, No. B-110, increased rates on common salt, in carloads, from origins in Kansas and Southwestern Territory to destinations in Illinois, Northern, Southwestern, and Western Territories, in Supplement 97 to its Tariff ICC SWFB 2006-K, effective January 19, 1981. Grounds for relief—need for additional revenue.

No. 43894, Southwestern Freight Bureau, Agent, No. B-112, reduced rates on diphenyl oxide disulfonates, in carloads, between stations in Louisiana and Texas, on the one hand, and Bay City and Midland, MI and Sarnia, ON, Canada, on the other, in supplement 82 to its Tariff ICC SWFB 4616, effective February 11, 1981. Grounds for relief—rate relationship and addition of new commodity.

No. 43895, Southwestern Freight Bureau, Agent, No. B-108, increased rates on crushed stone and related articles, in carloads, from, to, and between stations in Western Territory, in Supplements 436 and 130 to its Tariffs ICC SWFB 2270-F and 4319, respectively, effective February 14, 1981. Grounds for relief—need for additional revenue.

No. 43896, Southwestern Freight Bureau, Agent, No. B-111, reduced rates on petroleum and petroleum products, in carloads, from Etter, TX to stations in Illinois, Kentucky, Michigan, and Western Territory, in Supplement 70 to its Tariff ICC SWFB 4662, effective February 17, 1981. Grounds for relief—market competition.

By the Commission

Agatha L. Mergenovich
Secretary.

[FR Doc. 81-2139 Filed 1-21-81; 8:45 am]
BILLING CODE 7035-01-M

Motor Carriers; Decision-Notice

The following applications, filed on or after July 3, 1980, seek approval to

consolidate, purchase, merge, lease operating rights and properties, or acquire control of motor carriers pursuant to 49 U.S.C. 11343 or 11344. Also, applications directly related to these motor finance applications (such as conversions, gateway eliminations, and securities issuances) may be involved.

The applications are governed by Special Rule 240 of the Commission's Rules of Practice (49 CFR 1100.240). An interim proposed final Rule 240 reflecting changes to comport with the Motor Carrier Act of 1980 was published in the July 3, 1980, Federal Register at 45 FR 45529 under Ex Parte 55 (Sub-No. 44), *Rules Governing Applications Filed By Motor Carriers Under 49* U.S.C. 11344 and 11349. These rules provides among other things, that opposition to the granting of an application must be filed with the Commission in the form of verified statements within 45 days after the date of notice of filing of the application is published in the Federal Register. Failure seasonably to oppose will be construed as a waiver of opposition and participation in the proceeding. If the protest includes a request for oral hearing, the request shall meet the requirements of Rule 240(C) of the special rules and shall include the certification required.

Persons wishing to oppose an application must follow the rules under 49 CFR 1100.240(B). A copy of any application, together with applicant's supporting evidence, can be obtained from any applicant upon request and payment to applicant of $10.00, in accordance with 49 CFR 1100.240(A)(h).

Amendments to the request for authority will not be accepted after the date of this publication. However, the Commission may modify the operating authority involved in the application to conform to the Commission's policy of simplifying grants of operating authority.

We find, with the exception of those applications involving impediments (e.g., jurisdictional problems, unresolved fitness questions, questions involving possible unlawful control, or improper divisions of operating rights) that each applicant has demonstrated, in accordance with the applicable provisions of 49 U.S.C. 11301, 11302, 11343, 11344, and 11349, and with the Commission's rules and regulations, that the proposed transaction should be authorized as stated below. Except where specifically noted this decision is neither a major Federal action significantly affecting the quality of the human environment nor does it apear to qualify as a major regulatory action under the Energy Policy and Conservation Act of 1975.

In the absence of legally sufficient protests as to the finance application *or* to any application directly related thereto filed within 45 days of publication (or, if the application later becomes unopposed), appropriate authority will be issued to each applicant (unless the application involves impediments) upon compliance with certain requirements which will be set forth in a notification of effectiveness of this decision-notice. To the extent that the authority sought below may duplicate an appliant's existing authority, the duplication shall not be construed as conferring more than a single operating right.

Applicant(s) must comply with all conditions set forth in the grant or grants of authority within the time period specified in the notice of effectiveness of this decision-notice, or the application of a non-complying applicant shall stand denied.

Dated: January 14, 1981.

By the Commission, Review Board Number 5, Members Krock, Taylor and Williams. (In MC-F-14529F Board Member Taylor votes to publish with an impediment as to the duplications between the rights to be acquired and those held by Johnson).

MC-F-14532F, filed December 22, 1980. BLACKBURN TRUCK LINES, INC. (Blackburn) (4996 Branyon Avenue, South Gate, CA 90280)—purchase—FAIRCHILD GENERAL FREIGHT, INC. (Fairchild) (19 West Washington, Yakima, WA 98903). Representatives: Warren N. Grossman, 707 Wilshire Blvd., Suite 1800, Los Angeles, CA 90017, and George H. Hart, 1100 IBM Bldg., Seattle, WA 98101. Blackburn seeks authority to purchase the interstate operating rights and property of Fairchild. Richard A. Ramey, Bobby Burns, and Robert Sparks control Blackburn through ownership of a majority of stock. As a condition to approval of this transaction, they will be required to join in the application. Blackburn seeks authority to purchase the operating rights of Fairchild, as set forth in MC 33919 and subs thereof, which authorize the transportation of: (1) *General commodities* (with usual exceptions) between points within 3 miles of Yakima, WA; (2) *livestock*, between points in WA on and east of a line extending north and south of Roslyn, WA, and points in OR and ID; (3) *wool*, from points in WA on and east of a line extending north and south from Roslyn, WA, to Portland, OR; (4) *paper* and *paper articles*, as defined in Appendix XI of *Descriptions in Motor Carrier Certificates*, 61 M.C.C. 209, 289-91, between Longview and Yakima, WA, on the one hand, and, on the other, points in ID; (5) *fiberboard, paper,* and *pulpboard boxes* and *partitions*, from Longview and Yakima, WA, to the Dalles and Hood River, OR; (6) *fiberboard containers* and *partitions* and *paper products*, between the plant site and warehouse distribution facilities of Container Corporation of America at Portland, OR, on the one hand, and, on the other, Renton and Seattle, WA; (7) *fiberboard containers* and *packing forms*, from the plant site and warehouse distribution facilities of Container Corporation of America at Portland, OR, to points in ID and points in that part of WA east of the line formed by the western boundaries of Okanogan, Chelan, Kittitas, Yakima, and Klickitat Counties, WA; (8) *glass containers* and *closures* therefor, from the plant site and distribution facilities of Owens-Illinois, Inc., at Portland, OR, to points in ID, MT and WA; (9) *glass containers* and *closures* therefor, from the plant site and warehouse distribution facilities of Owens-Illinois, Inc., at Portland, OR, to Ogden, UT; (10) *paper and paper products*, from Yakima, WA, to those ports of entry on the U.S.-Canada Boundary Line at or near Oroville, WA; (11) *canned goods*, in containers or in trailers, from the facilities of Del Monte Corporation at Toppenish and Yakima, WA, to Portland, OR; (12) *empty containers, used trailers,* and *used trailer chassis*, from Portland, OR, to the facilities of Del Monte Corporation at Toppenish and Yakima, WA; (13) *glass containers*, from the ports of entry on the U.S.-Canada Boundary Line, located at or near Osoyoos, WA, to Anaheim, CA; (14) *materials and supplies*, used in the manufacture of glass containers, corrugated fiber containers and corrugated fiber roll stock, from points in CA, ID, MT, NV, OR, UT, WA, and WY, to the facilities of Owens-Illinois, Glass Container Division, at or near Oakland, Tracy, Los Angeles and San Jose, CA, and at or near Portland, OR; (15) *empty pallets*, from the destinations to the origins named in (14) above; (16) *glass containers* and *plastic containers*, and *caps, tops and closures*, from the aforementioned facilities of Owens-Illinois, Glass Container Division, at Oakland, Tracy, Los Angeles, and San Jose, CA, and at or near Portland, OR, to points in CA, ID, MT, NV, OR, WA, and WY; (17) *empty pallets*, from the destinations to the origins named in (16) above; (18) *glass containers and closures, glass manufacturing molds,* and *empty pallets*, between the facilities of Owens-Illinois, Glass Container Division, at Oakland, Tracy, Los Angeles, and San Jose, CA, and at or

near Portland, OR; and (IV) *paper and paper products*, from the facilities of Container Corporation of America, at Portland, OR, to those points in WA in and west of Whatcom, Skagit, Snohomish, King, Pierce, Lewis and Skamania Counties. Blackburn holds motor common carrier authority pursuant to MC 134567, and sub thereof. *Condition:* Approval and authorization of this transaction is conditioned upon the prior receipt by the Commission of an affidavit signed by Richard A. Ramey, Bobby Burns, and Robert Sparks, stating that they control Blackburn Truck Lines, Inc., through majority stock ownership and that they join in this application as persons in control.

Note.—Application for temporary authority has been filed.

MC-F-14496F, filed December 16, 1980. MERIDIAN EXPRESS COMPANY, INC. [Meridian], (4835 LBJ Freeway, Dallas, TX 75234)—CONTROL—DELTA CALIFORNIA INDUSTRIES [DCI], DELTA LINES, INC. [Delta Lines], and THUNDERBIRD FREIGHT LINES, INC. [Thunderbird] (all of 333 Hegenberger Road, Oakland, CA 94621). Representatives: Jack R. Turney, Jr., 2001 Massachusetts Avenue, N.W., Washington, DC 20036; James M. Harbison, Jr., 402 Pierce Avenue, P.O. Box 391, Houston TX 77001; and Andrew J. Skaff, 333 Hegenberger Road, Oakland, CA 94621. Meridian, a non-carrier, seeks authority to acquire control of DCI, a non-carrier holding company, and thereby of the carrier operating rights and properties of DCI's carrier subsidiaries, Delta Lines and Thunderbird. Nevada-California Express Co., a freight forwarder operating pursuant to FF–130, is also a subsidiary of DCI. In the proposed plan of acquisition, Delta Acquisition Subsidiary [DAS] (of 4835 LBJ Freeway, Dallas, TX 75234), a non-carrier subsidiary of Meridian formed for the transaction, would be merged into DCI, and all outstanding shares of the capital stock of DCI would be converted into the right to receive $13 per share in cash, to be paid by Meridian California Industries [MCI] (of 4835 LBJ Freeway, Dallas, TX 75234), a non-carrier subsidiary of Meridian formed for the transaction, and the corporate parent of DAS. To replace said converted shares, 100 shares of substitute no-par common stock would be issued by DCI, the surviving corporation, to MCI. DCI would thereafter be merged into MCI, along with Delta Terminals, Inc. [Terminals], (of 333 Hegenberger Road, Oakland, CA 94621), a non-carrier subsidiary of DCI. The name of MCI, the surviving corporation, would then be changed to Delta California Industries. The operating rights of Delta Lines to be controlled are contained in certificates issued to Delta Lines in Docket No. MC–56640 and Subs thereunder, together with orders authorizing acquisitions of authorities in Docket Nos. MC–F–12675, MC–F–13016, MC–F–13908, and MC–F–14161F (certificates not yet issued). These authorities authorize the transportation of general commodities, with the usual exceptions, over a network of regular and irregular routes in the states of CA, AZ, OR, NV, NM, TX, and WA. The operating rights of Thunderbird to be controlled are contained in certificates issued to Thunderbird in Docket No. MC–89512 and Subs thereunder, authorizing the transportation of general commodities, with various exceptions, over a network of regular routes which extend between Los Angeles, CA, and Phoenix, AZ, Tucson, AZ, and various points in the White Mountain Area of AZ. Meridian does not hold authority from this Commission. However, through non-carrier subsidies (Merchants, Inc. and Meridian Lines, Inc. (both of East Highway 80, Abilene, TX 79604), Meridian controls (a) Merchants Fast Motor Lines, Inc. (of the same address), holder of certificates in Docket No. MC 2228 and Subs thereunder, authorizing the transportation of general commodities, with the usual exceptions, over a network of regular and irregular routes in the states of TX, NM, and AZ; (b) Oil Transport Company (of the same address), holder of certificates in Docket No. MC–111740 and Subs thereunder, authorizing the transportation of petroleum, various petroleum compound products, and sulphur, in bulk, in tank vehicles, over irregular routes in the states of TX, OK, AR, CO, KS, MO, NM, AZ; and (c) Gypsum Transport, Inc. (of the same address), holder of certificates in Docket No. MC–125421 and Subs thereunder, authorizing the transportation, over irregular routes, of building materials (other than lumber), gypsum, gypsum products and materials and supplies used in the manufacture, installation and distribution thereof (except commodities in bulk), between a plantsite at Sweetwater, TX and points in AL, AZ, AR, CO, FL, GA, IA, KS, LA, MS, MO, NM, OK, NE, and TN, and adhesives, building material, paint, and paint products (except liquids in bulk) and materials and supplies used in the manufacture, installation and distribution thereof, between a plantsite in Dallas, TX and points in AR, CO, KS, LA, MS, MO, NM, OK, TN, and TX. MCI, DAS and DCI join in the application as the directly participating non-carrier applicants. Non-carrier private investment entities WEDGE Transportation, Inc. (of 4835 LBJ Freeway, Dallas, TX 75234); WEDGE International Holdings B.V. (of Uilenstede 473, 1180 AE Amstelveen, The Netherlands); Iseam Investments N.V. (of Willemstad, Curacao, Dutch Antilles); Faydra International Holdings B.V. (of Amsterdam, The Netherlands); Faydra Investments N.V. (of Willemstad, Curacao, Dutch Antilles); Najdia Holdings N.V. (of Willemstad, Curacao, Dutch Antilles); and The Minefa Trust (of Athens, Greece); as well as Iseam M. Fares (a non-carrier individual, of 2–4 Messogion Avenue, Athens (810) Greece), seek authority to control Delta Lines and Thunderbird through the acquisition of control by Meridian. (2) Two directly related applications under 49 U.S.C. §§ 11301 and 11302 have been filed. In F.D. 29545, *Delta California Industries—Stock*, DCI seeks authority to issue to MCI, as part of the first non-carrier merger, 100 shares of no-par common stock, to serve as DCI's only outstanding capital stock during the interim between the conversion of DCI's presently outstanding shares into rights to receive $13 per share, and the merger of DCI into MCI (when the 100 shares would be cancelled). (3) In the other directly related application under 49 U.S.C. 11301 and 11302, F.D. 29544, *Meridian California Industries—Assumption of Debt Securities*, MCI seeks authority, as an essential incident of the proposed merger of DCI and Terminals in a total principal amount not exceeding $14,850,000.

(4) By decision of December 30, 1980, Meridian's petition seeking waiver of certain of the Commission's procedural regulations at 49 CFR 1100.240 was granted. *Impediment:* This application presents serious questions as to the financial arrangements; the necessity for subjecting certain non-carriers, such as WEDGE Transportation, Meridian Express Co., Meridian California Industries, and Delta Acquisition to the Act; the issuance of securities and the assumption of obligations by certain carriers who are pledging equipment and have not filed applications therefore; and the accounting for the transactions relative to the recording of the purchase price and the write up of the book value of tangible property when considered under the Commission's accounting rules. Therefore, this proceeding will be held open for disposition under the modified procedure. The applications in Finance Docket Nos. 29545 and 29544 will be

consolidated with the application in MC-F-14462F for disposition under the modified procedure.

Note.—(1) This notice does not purport to be a complete description of the operating rights of the carriers involved.

MC-F-14525F, filed December 23, 1980. NEBRASKA CARRIERS, INC. (Nebraska) (Rural Route 2, Box 123-C, Grand Island, NE 68801)—PURCHASE (PORTION)—WILLIAMS TRANSFER, INC. (Williams) (P.O. Box 486, Grand Island, NE 68801). Representative: Donald L. Stern, Suite 610, 7171 Mercy Road, Omaha, NE 68106. Nebraska seeks authority to purchase a portion of the interstate operating rights of Williams. Robert Wenzl and Marvin Johnson are equal stockholders of Nebraska. Robert Wenzl seeks authority to acquire control of said rights through the transaction. As a condition to the approval and authorization of this transaction, Marvin Johnson will also be required to join in this application as a person in control. Nebraska is purchasing the interstate operating rights contained in Williams' certificates in MC-120427 (Sub.-Nos. 9 and 21), which authorize the transportation, as a motor common carrier, of (1) *grain storage and grain drying equipment, grain augers and conveyors, and knocked down buildings (iron or steel),* between Crawfordsville, IN and Webster City, IA, on the one hand, and, on the other, points in the U.S. (except AK and HI), *restricted* to the transportation of traffic originating at or destined to the facilities of Modern Farm Systems, Inc., at or near Crawfordsville, IN and Webster City, IA, and (2) *grain storage and grain drying equipment; grain augers and conveyors, aeration pipe and irrigation systems; (iron, steel and aluminum articles); items used in the manufacture of grain storage and grain drying equipment, grain augers and conveyors, and irrigation systems;* and *knocked down buildings (iron or steel),* between points in NE (except Omaha, Seward, Beatrice, Norfolk, Valley, York, Columbus, Fremont, Lindsey and Gering, and points in their commercial zones), on the one hand, and, on the other, points in the U.S. (except AK and HI), *restricted* to the transportation of traffic originating at or destined to points in the State of NE. (3)(a) *Grain storage, grain drying and grain handling equipment,* and (b) *materials and equipment* used in the manufacture of the commodities in (a) above, from the facilities of Blackhawk Systems, Inc., at or near Chicago and Assumption, IL, to points in the U.S. (except AK and HI), *restricted* to the transportation of traffic originating at the named origins. Nebraska presently holds no authority from the Commission. However, Robert Wenzl controls T.F.S., Inc., a motor common carrier pursuant to MC-145743 and a motor contract carrier pursuant to MC-141575. Marvin Johnson controls Johnson Truck Line, Inc., a motor common carrier pursuant to MC-106774. Condition: Approval and authorization of this transaction is conditioned upon the prior receipt by the Commission of an affidavit signed by Marvin Johnson stating that as a person in control of Nebraska Carriers, Inc., he joins in this application.

Note.—Application for TA has been filed.

Agatha L. Mergenovich,
Secretary.

[FR Doc. 81-2130 Filed 1-21-81; 8:45 am]
BILLING CODE 7035-01-M

[Volume No. OP5-01]

Motor Carriers; Permanent Authority Decisions

Decided: January 5, 1981.

The following applications, filed on or after July 3, 1980, are governed by Special Rule 247 of the Commission's Rules of Practice, see 49 CFR 1100.247. Special Rule 247 was published in the Federal Register of July 3, 1980, at 45 FR 45539. For compliance procedures, refer to the Federal Register issue of December 3, 1980, at 45 FR 80109.

Persons wishing to oppose an application must follow the rules under 49 CFR 1100.247(B). A copy of any application, together with applicant's supporting evidence, can be obtained from any applicant upon request and payment to applicant of $10.00.

Amendments to the request for authority are not allowed. Some of the applications may have been modified prior to publication to conform to the Commission's policy of simplifying grants of operating authority.

Findings

With the exception of those applications involving duly noted problems (e.g., unresolved common control, fitness, water carrier dual operations, or jurisdictional questions) we find, preliminarily, that each applicant has demonstrated its proposed service warrants a grant of the application under the governing section of the Interstate Commerce Act. Each applicant is fit, willing, and able to perform the service proposed, and to conform to the requirements of Title 49, Subtitle IV, United States Code, and the Commission's regulations. Except where noted, this decision is neither a major Federal action significantly affecting the quality of the human environment nor a major regulatory action under the Energy Policy and Conservation Act of 1975.

In the absence of legally sufficient interest in the form of verified statements filed on or before March 9, 1981, (or, if the application later becomes unopposed) appropriate authorizing documents will be issued to applicants with regulated operations (except those with duly noted problems) and will remain in full effect only as long as the applicant maintains appropriate compliance. The unopposed applications involving new entrants will be subject to the issuance of an effective notice setting forth the compliance requirements which must be satisfied before the authority will be issued. Once this compliance is met, the authority will be issued.

Within 60 days after publication an applicant may file a verified statement in rebuttal to any statement in opposition.

To the extent that any of the authority granted may duplicate an applicant's other authority, the duplication shall be construed as conferring only a single operating right.

By the Commission, Review Board No. 1, Members Carleton, Joyce and Jones.

Agatha L. Mergenovich,
Secretary.

Note.—All applications are for authority to operate as a motor common carrier in interstate or foreign commerce over irregular routes, unless noted otherwise. Applications for motor contract carrier authority are those where service is for a named shipper "under contract".

MC 50069 (Sub-564F), filed December 18, 1980. Applicant: REFINERS TRANSPORT & TERMINAL CORPORATION, 445 Eastwood Ave., Oregon, OH 43618. Representative: J. A. Kundtz, 1100 National City Bank Bldg., Cleveland, OH 44114. Transporting *petroleum oil,* in bulk, in tank vehicles, from points in Fairfield County, CT to points in Cuyahoga County, OH.

MC 52979 (Sub-25F), filed December 18, 1980. Applicant: HUNT TRUCK LINES, INC., West High St., Rockwell City, IA 50579. Representative: William L. Fairbank, 1980 Financial Center, Des Moines, IA 50309. Transporting *clay products* and *materials and supplies* used in the manufacture and distribution of clay products, between points in Webster County, IA, on the one hand, and, on the other, points in IL and WI.

MC 80428 (Sub-67F), filed December 18, 1980. Applicant: McBRIDE TRANSPORTATION, INC., P.O. Box 430, Goshen, NY 10924. Representative: S. Michael Richards, P.O. Box 225,

Webster, NY 14580. Transporting *alcohol* (in bulk, in tank vehicles, except alcoholic liquors), from Newark and Carteret, NJ to Peekskill, NY.

MC 119988 (Sub-21F), filed December 4, 1980. Applicant: J & M CARRIERS CORP., 43-08 54th Rd., Maspeth, NY 11378. Representative: Morton E. Kiel, Suite 1532, Two World Trade Center, New York, NY 10048. Transporting *such merchandise* as is distributed by premium stamp redemption centers, and *materials, equipment, and supplies* used in the conduct of such business, between points in the U.S., under continuing contract(s) with Sperry and Hutchison Co., of New York.

MC 119988 (Sub-270F), filed December 19, 1980. Applicant: GREAT WESTERN TRUCKING CO., INC., P.O. Box 1384, Lufkin, TX 75901. Representative: Clayte Binion, 1108 Continental Life Bldg., Fort Worth, TX 76102. Transporting *general commodities* (except household goods as defined by the Commission, classes A and B explosives, and commodities in bulk), between points in the U.S.

MC 124239 (Sub-35F), filed December 18, 1980. Applicant: BUILDERS TRANSPORT, INC., P.O. Box 500, Camden, SC 29020. Representative: William P. Sullivan, 816 Connecticut Ave., NW., Washington, DC 20006. Transporting *general commodities* (except household goods as defined by the Commission and classes A and B explosives), between points in the U.S., under continuing contract(s) with Lowe's Companies, Inc. of North Wilkesboro, NC.

MC 136709 (Sub-3F), filed December 18, 1980. Applicant: WALLACE TRUCKING COMPANY, a corporation, Route 4, Box A-71, Laurinburg, NC 28352. Representative: F. Kent Burns, P.O. Box 2479, Raleigh, NC 27602. Transporting *such commodities* as are dealt in or used by a manufacturer of medical supplies and health care products, between Laurinburg, NC on the one hand, and, on the other, points in VA, MD, RI, DE, DC, NJ, PA, NY, CT, MA, NH, VT, ME, WV, TN, KY, IN, IL, OH, MI, WI, CA, NV, AZ, UT, CO, WY, NE, MO, IA, NM, TX, AR, MS, AL, LA, KS and OK.

MC 138469 (Sub-230F), filed December 17, 1980. Applicant: DONCO CARRIERS, INC., P.O. Box 75364, Oklahoma City, OK 73107. Representative: Daniel O. Hands, Suite 200, 205 W. Touhy Ave., Park Ridge, IL 60068. Transporting *general commodities* (except commodities in bulk, classes A and B explosives, and household goods as defined by the Commission), between points in the U.S. (except AK and HI), restricted to traffic originating at or destined to the facilities of International Paper Company.

MC 143498 (Sub-2F), filed December 18, 1980. Applicant: THOMAS PRODUCE COMPANY OF MT. AIRY, INC., P.O. Box 16707, Greensboro, NC 27406. Representative: Michael F. Morrone, 1150 17th St. NW., Suite 1000, Washington, DC 20036. Transporting *tobacco products* and *materials and supplies* used in the processing, manufacture, and distribution of tobacco and tobacco products, between points in the U.S., under continuing contract(s) with Lorillard, a Division of Loews Theaters, Inc. of Greensboro, NC.

MC 143498 (Sub-3F), filed December 17, 1980. Applicant: THOMAS PRODUCE COMPANY OF MOUNT AIRY, INC., P.O. Box 16707, Greensboro, NC 27406. Representative: Michael F. Marrone, 1150 17th St. NW., Suite 1000, Washington, DC 20036. Transporting *such commodities* as are dealt in or used by a manufacturer of textile products and floor coverings, between points in the U.S., under continuing contract(s) with Dan River, Incorporated of Danville, Va.

MC 142078 (Sub-37F), filed December 16, 1980. Applicant: CAL-ARK, INC., 854 Moline, P.O. Box 610, Malvern, AR 72104. Representative: John C. Everett, 140 E. Buchanan, P.O. Box A, Prairie Grove, AR 72753. Transporting *household cleaning, washing, and scouring compounds*, from the facilities of the Purex Corporation at (a) Dallas, TX, (b) Jefferson, LA, and (c) St. Louis, MO, to points in AR, OK, LA, TX, MS, and TN.

MC 146079 (Sub-13F), filed December 17, 1980. Applicant: JACKSON TRANSPORTATION, INC., R.R. 1, Box 410-A, Clayton, IN 46118. Representative: Donald W. Smith, P.O. Box 40248, Indianapolis, IN 46240. Transporting (1) *heating and air conditioning equipment, stoves, and ranges*, and (2) *materials, equipment, and supplies* used in the manufacture and distribution of commodities in (1), between points in Marion County, IN, on the one hand, and, on the other, points in the U.S.

MC 152288 (Sub-1F), filed December 17, 1980. Applicant: NEAL TRANSPORT, INC., 4481 Pineview Drive, P.O. Box 21, Powder Springs, GA 30073. Representative: Philip L. Martin, 2220 Parklake Drive NE, Suite 427, Atlanta, GA 30345. Transporting *copper wire, copper rods, wire processing machinery*, and *empty reels*, between points in the U.S., under continuing contract(s) with Larcon Wire Corporation and Laribee Wire Insulated Products, both of Atlanta, GA.

[FR Doc. 81-2139 Filed 1-21-81; 8:45 am]
BILLING CODE 7035-01-M

[Volume No. 4]

Motor Carrier Permanent Authority Decisions; Restriction Removals

Decided: January 16, 1981.

The following restriction removal applications, filed after December 28, 1980, are governed by 49 CFR 1137. Part 1137 was published in the Federal Register of December 31, 1980, at 45 FR 86747.

Persons wishing to file a comment to an application must follow the rules under 49 CFR 1137.12. A copy of any application can be obtained from any applicant upon request and payment to applicant of $10.00.

Amendments to the restriction removal applications are not allowed.

Some of the applications may have been modified prior to publication to conform to the special provisions applicable to restriction removal.

Findings

We find, preliminary, that each applicant has demonstrated that its requested removal of restrictions or broadening of unduly narrow authority is consistent with 49 U.S.C. 10922(h).

In the absence of comments filed within 25 days of publication of this decision-notice, appropriate reformed authority will be issued to each applicant. Prior to beginning operations under the newly issued authority, compliance must be made with the normal statutory and regulatory requirements for common and contract carriers.

By the Commission, Restriction Removal Board, Members Sporn, Alspaugh, and Shaffer.

Agatha L. Mergenovich,
Secretary.

MC 119422 (Sub-73X), filed January 12, 1981. Applicant: Ee-JAY MOTOR TRANSPORTS, INC., 15th & Lincoln Streets, P.O. Box 1037, East St. Louis, IL 62204. Representative: Lawrence E. Lindeman, 1032 Pennsylvania Building, Pennsylvania Ave. & 13th St., NW., Washington, DC 20004. Applicant seeks removal of restrictions in its Sub-Nos. 17 and 70 certificates to (1) expand the commodity descriptions from dry, granulated sugar, liquid and liquid blends of sugar (except corn sugar or any syrup, blend or moisture containing corn syrup) in Sub-No. 17; and sweeteners and materials and supplies used in their production and

distribution, in bulk, in tank vehicles in Sub-No. 70, to authorize "food and related products, in bulk," (2) remove the in tank vehicle restrictions, (3) remove the plantsite restriction in Sub-No. 70 which limits transportation to traffic originating at and destined to a named shipper at or near St. Louis, MO, and (4) change the territorial description from one-way to radial service between St. Louis, MO and Missouri points in the St. Louis, MO commercial zone, and, points in MO, IA, IL and IN in Sub-No. 17; and between St. Louis, MO, and, points in AR, KS, KY, MS, OH and TN in Sub-No. 70.

MC 134453 (Sub-21X), filed January 14, 1981. Applicant: STERNLITE TRANSPORTATION COMPANY, Winsted, MN 55395. Representative: Robert P. Sack, P.O. Box 6010, West St. Paul, MN 55118. Applicant seeks to remove restrictions in Permit No. MC–134453, Sub-Nos. 3, 5, 6, 9, 13, and 14 by broadening the commodity description from poles, and parts and accessories for poles, steel radio broadcasting masts, steel piling, platforms and pallets, to *"metal and concrete products"* and to broaden the territorial description from named points to between points in the United States, under contract(s) with a named shipper.

MC 138741 (Sub-121X), filed January 7, 1981. Applicant: AMERICAN CENTRAL TRANSPORT, INC., 2005 North Broadway, Joliet, IL 60435. Representative: Tom B. Kretsinger, 20 East Franklin, Liberty, MO 64068. Applicant seeks to remove restrictions from its Sub-No. 79F certificate which authorizes the radial transportation of specific commodities, between Mobile, AL, Denver, CO, Savannah, GA, Joliet, IL, Mt. Vernon, IN, Minneapolis, MN, Annapolis, Kansas City, and St. Louis, MO, Erie, PA, Dallas, TX and Kremlin and Pembine, WI, and points in AL, AR, CO, GA, IL, IN, IA, KS, KY, CA, MI, MN, MS, MO, NE, OH, OK, PA, TN, TX, and WI, restricted to the transportation of traffic originating at or destined to the facilities and suppliers of the GAF Corporation, in order to expand the base territory from the above-named cites to the counties and commercial zones of Mobile County, AL, Denver, CO, Chatham County, GA, Will County, IL, Posey County, IN, Minneapolis, MN, Iron County, MO, Kansas City and St. Louis, MO, Erie County, PA, Dallas, TX, and Marinette County, WI.

MC 144122 (Sub-79X), filed January 13, 1981. Applicant: CARRETTA TRUCKING, INC., South 160, Route 17 North, Paramus, NJ 07652. Representative: Charles J. Williams, P.O. Box 188, Scotch Plains, NJ 07076. Applicant seeks to remove restrictions in its Sub-No. 50 certificate in order to (1) remove all exceptions in its general commodity authority except "classes A and B explosives", (2) replace the facilities restriction with authority to service the Chicago, IL commercial zone, and (3) broaden the one-way authority to radial authority between Chicago, IL, on the one hand and, on the other, points in CA, CT, DE, MA, NJ, NY, OR, PA, RI, TX, and WA.

MC 149301 (Sub-3X), filed January 13, 1981. Applicant: FRANKLIN J. DAVIS, Dba Davis Truck Lines, Stanhope, IA 50246. Representative: Richard D. Howe, 600 Hubbell Building, Des Moines, IA 50309. Applicant seeks to remove restrictions in its Sub-No. 2F certificate to (1) broaden the construction materials commodity description by eliminating the "except commodities in bulk" restriction, and (2) by expanding the territory from plantsite facilities to counties and commercial zones between Wabash County, IN, Chicago, IL, Will, Coles, and Adams Counties, IL, and Dubuque and Webster Counties, IA, on the one hand, and, on the other, points in IA, IL, IN, MN, MO, NE, ND, SD, and WI.

MC 149388 (Sub-4X), filed January 12, 1981. Applicant: FEPCO TRUCKING, INC., 3456 Moreland Ave., Conley, GA 30027. Representative: Archie B. Culbreth, P.C., Suite 202, 2200 Century Parkway, Atlanta, GA 30345. Applicant seeks to remove restrictions in its Permit Nos. MC–144828 and Sub-No. 2 by (1) broadening the commodity descriptions from "fibreboard, paperboard or pulpboard containers (except corrugated)" to "pulp, paper and related products", and (2) broadening the territorial descriptions to between points in the United States under continuing contract(s) with a named shipper.

MC 149388 (Sub-5X), filed January 13, 1981. Applicant: FEPCO TRUCKING, INC., 3456 Moreland Avenue, Conley, GA 30027. Representatives: Archie B. Culbreth, Suite 202, 2200 Century Parkway, Atlanta, GA 30345. Applicant seeks to remove restrictions in its Permit No. MC–144828 (Sub-No. 5) in order to (1) expand the commodity description from foodstuffs and pet foods to "such commodities as are dealt in or used by food manufacturers, processors or distributors" and, (2) to expand the territorial description to "between points in the U.S., under continuing contract(s) with Nabisco, Inc. of Hanover, NJ."

[FR Doc. 81-2187 Filed 1-21-81; 8:45 am]
BILLING CODE 7035-01-M

Motor Carrier; Temporary Authority Application

Important Notice

The following are notices of filing of applications for temporary authority under Section 10928 of the Interstate Commerce Act and in accordance with the provisions of 49 CFR 1131.3. These rules provide that an original and two (2) copies of protests to an application may be filed with the Regional Office named in the Federal Register publication no later than the 15th calendar day after the date the notice of the filing of the application is published in the Federal Register. One copy of the protest must be served on the applicant, or its authorized representative, if any, and the protestant must certify that such service has been made. The protest must identify the operating authority upon which it is predicated, specifying the "MC" docket and "Sub" number and quoting the particular portion of authority upon which it relies. Also, the protestant shall specify the service it can and will provide and the amount and type of equipment it will make available for use in connection with the service contemplated by the TA application. The weight accorded a protest shall be governed by the completeness and pertinence of the protestant's information.

Except as otherwise specifically noted, each applicant states that there will be no significant effect on the quality of the human environment resulting from approval of its application.

A copy of the application is on file, and can be examined at the ICC Regional Office to which protests are to be transmitted.

Note.—All applications seek authority to operate as a common carrier over irregular routes except as otherwise noted.

Motor Carriers of Property

Notice No. F–68

The Following Applications Were Filed in Region I

Send protests to: Interstate Commerce Commission, Regional Authority Center, 150 Causeway Street, Room 501, Boston, MA 02114.

MC 39666 (Sub-1–5TA), filed January 7, 1981. Applicant: TRAFIK SERVICES INC., 25 Esten Avenue, Pawtucket, RI. Representative: A. Joseph Mega, Trafik Services Inc., 25 Esten Avenue, Pawtucket, RI. *Commodities classified as hazardous waste other than movements in bulk* from 11 points in RI to the facilities of Cecos International, Inc. at or near Williamsburg, OH.

Supporting shipper: Ciba-Geigy Corporation, 180 Mill Street, Cranston, RI.

MC 153450 (Sub-1–1TA), filed January 7, 1981. Applicant: BRUCE C. WARD d.b.a. AMERICAN DREAM ADVENTURE TOURS, 237 Haverhill Street, North Reading, MA 01864. Representative: Bruce C. Ward, 237 Haverhill Street, North Reading, MA 01864. *Passengers and their baggage in special operations*, from Boston, MA, on the one hand and points in NY, OH, PA, IN, IL, WI, MN, SD, WY, UT, NV, CA, AZ, NM, TX, LA, MS, AL, GA, SC, NC, VA, and MD on the other hand. Supporting Shippers: Pamela J. Kearins, 23 Harding Road, Melrose, MA 02176; Pamela J. Sampson, 61 Kenmore Road, Medford, MA; Christopher Ford, 25 Keniston Road, Melrose, MA 02176; Kevin P. Greelish, 93 Stratford Road, Melrose, MA 02176; William J. Kearins III, 16 Essex Street, Melrose, MA 02176.

MC 153324 (Sub-1–1TA), filed December 29, 1980. Applicant: NORTH JERSEY TANK LINES, INC., P.O. Box 119, Wyckoff, NJ 07481. Representative: Robert B. Pepper, 168 Woodbridge Ave., Highland Park, NJ 08904. *Contract Carrier:* Irregular routes: *Dry and liquid sugar, in bulk, in tank vehicle* from Frazier, PA, to Port Chester, NY. Supporting shipper: LifeSaver, Inc., 1 Church St., Canajoharie, NY 13317.

MC 98542 (Sub-1–3TA), filed December 30, 1980. Applicant: COLLINS & SIMMONS, INC., Commerce Drive, Box 128, Dansville, NY 14437. Representative: Raymond A. Richards, 35 Curtice Pk., Webster, NY 14580. *Electrical Appliances, Radios, Citizen CB's, Tape Recorders, and materials, equipment and supplies used in the manufacture, sale and and distribution of the above commodities* between all points in the U.S., restricted to traffic originating at or destined to the facilities of General Electric Co. (Housewares and Audio Business Division). Supporting shipper: General Electric Co., 1285 Boston Ave., Bridgeport, CT 06602.

MC 151639 (Sub-1–6TA), filed December 29, 1980. Applicant: COMMAND TRANSPORTATION, INC., 280 Eastern Avenue, Chelsea, MA 02150. Representative: Wesley S. Chused, 15 Court Square, Boston, MA 02108. *Alcoholic and non-alcoholic beverages and advertising materials*, from Schenley, PA; Lawrenceburg, IN; Tullahoma, TN; Frankfort, Lawrenceburg, Towne and Owensboro, KY; New York, Long Island City, Brooklyn and Hammondsport, NY; and Dayton, Scobeyville, Jersey City, Linden, Lawrenceville and Edison, NJ to Auburn, Medford, and New Bedford, MA. Supporting shipper: Charles Gilman & Sons, Inc., 60 Hall Street, Medford, MA 02155.

MC 145679 (Sub-1–4TA), filed December 29, 1980. Applicant: A & A TRANSPORT, P.O. Box 569, Palmer, MA 01069. Representative: Charles W. Madison, P.O. Box 569, Palmer, MA 01069. *Building metal work racks, and pallets, materials, equipment and supplies used in the manufacture, sale, and distribution of metal building work racks, and pallets* between points in New Hampshire on the one hand, and, on the other, points in the U.S. Supporting shipper: Kingston-Warren Corp., Rt. 85, Newfields, NH 03856.

MC 136366 (Sub-1–1TA), filed December 31, 1980. Applicant: BEE LINE, INC., 17 Commerce Road, Fairfield, NJ 07006. Representative: George A. Olsen, P.O. Box 357, Gladstone, NJ 07934. *(1) Plastic articles; and (2) materials, equipment, and supplies used in the manufacture, sale, and distribution of the commodities named in (1) above*, between points in CT, DE, MD, MA, NJ, NY, OH, PA, RI, VA, and DC, restricted to traffic originating at or destined to the facilities used or utilized by Mitsubishi International Corp. and Mitsubishi Corp. Supporting shippers: Mitsubishi International Corp./Mitsubishi Corp., 277 Park Ave., New York, NY 10017.

MC 2900 (Sub-1–24TA), filed January 2, 1981. Applicant: NATIONAL FREIGHT, INC., 71 West Park Avenue, Vineland, NJ 08360. Representative: Gerald S. Duzinski, 71 West Park Avenue, Vineland, NJ 08360. *Paper and paper products, and equipment and supplies used in the manufacture and distribution of paper and paper products*, between points in Alabany and Saratoga Counties, NY, on the one hand, and, on the other, points in KY, IL, OH, and TN. Supporting shipper: Tagsons Paper, Inc., P.O. Box 1969, Albany, NY 12201.

MC 142603 (Sub-1–15TA), filed January 2, 1981. Applicant: CONTRACT CARRIERS OF AMERICA, INC., P.O. Box 1968, Springfield, MA 01101. Representative: Raymond A. Richards, 35 Curtice Park, Webster, NY 14580. *Contract carrier: irregular routes: Rubber Scrap in bags, flammable solid, NOS (item #171600) and Scrap Rubber used in the manufacture thereof* between all points in the U.S. under continuing contract(s) with Baker Rubber, Inc., Supporting shipper: Baker Rubber, Inc., P.O. Box 2551, South Bend, IN 46680.

MC 147621 (Sub-1–1TA), filed January 2, 1981. Applicant: BEE-JAY TRANSPORTATION, INC., 1576 Hart St. Rahway, NJ 07065. Representative: Benjamin Jordan, 1576, Hart St., Rahway, NJ 07065. *Contract carrier: regular routes: Products for industrial cleaning, metal treatment and raw materials in the manufacture thereof*, from NJ to Birmingham, AL; Los Angeles, CA; Denver, CO; Tampa, FL; Atlanta, GA; Chicago, IL; Wichita, KS; New Orleans, LA; Romulus, MI; Kansas City, MO; Memphis, TN; and Houston, TX. Supporting shipper: Oakite Products, Inc., 50 Valley Rd, Berkeley Heights, NJ 07922.

MC 140986 (Sub-1–3TA), filed January 5, 1981. Applicant: GREAT NORTHERN TRUCK LINES, INC., Bank Street, Netcong, NJ 07857. Representative: Robert B. Pepper, 168 Woodbridge Ave., Highland Park, NJ 08904. Contract carrier: Irregular routes: *Drugs or medicine, toilet preparations, chewing gums, confectionery, rubbing alcohol compounds, compounds and dental plate cleaning powder, candy and cough drops, razor blades, shaving cream, electrical appliances, such commodities which are sold in grocery, department and drug stores, and products used in the manufacture and distribution of the aforementioned products except in bulk*, between points in the US on shipments originating at or destined to the facilities of Warner-Lambert Company. Supporting shipper: Warner-Lambert Company, 201 Tabor Road, Morris Plains, NJ 07950.

MC 98396 (Sub-1–1TA), filed January 5, 1981. Applicant: CARRANO EXPRESS, INC., Middletown Ave., Northford, CT 06472. Representative: Richard H. Streeter, Wheeler & Wheeler, 1729 H Street NW., Washington, DC 20006. *Such merchandise as is dealt in by retail or wholesale grocery houses or merchants*, between points in CT and NJ, on the one hand, and, on the other, points in NH, ME, VT, and NY. Supporting shipper: Hunt-Wesson Foods, Inc., P.O. Box 127, Rossford, OH 43460.

MC 146671 (Sub-1–1TA), filed January 5, 1981. Applicant: PORT TERMINAL REFRIGERATED WAREHOUSE, Foot of Algiers St., Port Newark, NJ 07114. Representative: Frank D. Hall, Postell & Hall, P.C., Suite 713, 3384 Peachtree Rd., Atlanta, GA 30326. *Bananas* between the ports of Albany, NY; Newark, NJ; and Baltimore, MD, on the one hand, and, on the other, points in PA, OH, MI, IN, NY, CT, NJ, IL, WI, RI, MA, NH, VT, and ME. Supporting shipper: Chiquita Brands, inc., 15 Mercedes Drives, Montvale, NJ 07654.

MC 153425 (Sub-1–1TA), filed January 5, 1981. Applicant: PAUL F. DEVENEY, d.b.a. WATERFORD FAST FREIGHT,

138 Wilder St., Brockton, MA 02403. Representative: Russell S. Callahan, P.O. Box 1808, Brockton, MA 02403. *Household and electrical applicances,* between Allston and Worcester, MA, on the one hand, and, on the other, the facilities utilized by Key Cooperative of Boston, Inc. at Franklin, MA. Restricted to traffic having a prior or subsequent movement by rail. Supporting shipper: Key Cooperative of Boston, Inc., 140 Grove St., Franklin, MA 02038.

MC 67227 (Sub-1–1TA), filed January 2, 1981. Applicant: B & H TRUCKING CO., INC., 1441 Ferry Ave., Camden, NJ 08104. Representative: James Rutherford, 1441 Ferry Ave., Camden, NY 08104. Alloys, non-ferrous metals, iron or steel products, foodstuffs and kindred commodities, chemicals, including chemicals in bulk in tank or dump vehicles, crude rubber, building materials, plastic materials or products, between points in US east of KS, ND, NE, OK, SD, TX. Department store merchandise and supplies and equipment, between the facilities of Lionel Leisure, Inc., and points in US. *Skylights and materials used in the manufacture of skylights,* between West Conshohocken, PA and points in US. *Alloys, building materials, cement, cinders, coal, coke and kindred commodities commonly transported in dump type vehicles,* between Camden, NJ and Philadelphia, PA on the one hand, and, on the other, points in CT, DE, DC, MA, MD, NC, NH, NJ, NY, OH, PA, RI, SC, VA, WV. Supporting shipper(s): There are seven statements in support of this application which may be examined at the I.C.C. Regional Office in Boston, MA.

MC 153204 (Sub-1–1TA), filed January 5, 1981. Applicant: MANCHESTER SECURITY SERVICES, INC., P.O. Box 4916, 600 Harvey Rd., Manchester, NH 03108. Representative: Cleveland, Waters, and Bass, Attn: David W. Rayment, 16 Centre St., Concord, NH 03301. *Banking commodities, including currency, coin, gold, silver, negotiable and non-negotiable instruments, safety deposit boxes, diamonds, and other valuables, and bank documents and memoranda* between points in NH, ME, and MA, on the one hand, and, on the other hand, points in MA, ME, and NH. Supporting shipper's: Merchants National Bank, 488 Central Ave., Dover, NH; Amoskeag National Bank & Trust Co., 875 Elm St., Manchester, NH 03105; Hampton National Bank, Hampton, NH 03842; Indian Head Banks, 3 Pleasant St., Portsmouth, NH 03801; Bank of NH, 300 Franklin St., Manchester, NH 03101.

MC 149063 (Sub-1–3TA), filed January 2, 1981. Applicant: AIRFREIGHT TRANSPORTATION CORP. OF NEW JERSEY, 333 North Henry St., Brooklyn, NY 11222. Representative: George A. Olsen, P.O. Box 357, Gladstone, NJ 07934. *Contract carrier:* irregular routes: *General commodities (except household goods and classes A and B explosives),* between points in the US (except AK and HI), under continuing contract(s) with LeeWards Creative Crafts, Inc., Supporting shipper: LeeWards Creative Crafts, Inc., 1200 St. Charles St., Elgin, IL 60120.

MC 146566 (Sub-1–2TA), filed January 5, 1981. Applicant: FRED McCALL TRUCKING, INC., 2070 Railroad Ave., Ontario, NY 14519. Representative: James E. Brown, 58 Brunswick Rd., Depew, NY 14043. *Calcium nitrate in bags or in bulk, in dump trailers,* from Toledo, OH and Norfolk, VA to points in NY; *returned, refused or rejected material of the same description* in the reverse direction. Supporting shipper's: Ag-Chem Sevice Corp, Buesman Rd., Sodus, NY 14551; Herrmans Farm & Home Inc., 2066 Railraod Ave., Ontario, NY 14519.

MC 151078 (Sub-1–3TA), filed January 5, 1981. Applicant: COASTAL FAST FREIGHT, INC., P.O. Box 445, Jersey City, NJ 07306. Representative: Owen B. Katzman, 1828 L St. NW., Suite 1111, Washington, DC 20036. *Contract Carrier:* irregular routes: *General commodities (except household goods as defined by the Commission, Classes A and B explosives, commodities in bulk, articles of unusual value, and those requiring special equipment),* between points in the US (except AK and HI), under a continuing contract with Acme Fast Freight, Inc. Supporting shipper: Acme Fast Freight, Inc., 2110 Alhambra, Los Angeles, CA 90031.

MC 151408 (Sub-1–13TA), filed January 2, 1981. APPLICANT: CARGO TRANSPORT, INC., P.O. Box 268, Somerville, MA 02143. Representative: William F. Mix, 153 Grove Street, Lexington, MA 02173. *Contract carrier:* irregular routes: *General commodities (except classes A & B explosives and household goods as defined by the Commission,* (1) between points in WI on the one hand, and, on the other, points in MI, MN and IL; and (2) between New York, NY; Newark, NJ; Baltimore, MD; Houston, Tx; on the one hand, and, on the other, points in WI, MI, MN and IL. Supporting shipper: Eka Chemical, Inc., 1001 International Blvd., Suite 1090, Atlanta International Center, Atlanta, GA 30091.

MC 148299 (Sub-1–2TA), filed December 30, 1980. Applicant: CHAMY TRANSPORT, LTD., 3060 Bernard Pilon Street, St. Mathieu de Beloeil, Quebec J3G 4S5 Canada. Representative: W. Norman Charles, P.O. Box 724, Glens Falls, NY 12801. *General commodities (except classes A and B explosives and household goods as defined by the Commission) in containers,* between ports of entry on the U.S.-Canadian boundary line in ME, MI, NH, NY, and VT, on the one hand, and, on the other, points in CT, DE, IL, IN, ME, MD, MA, MI, NH, NJ, NY, OH, PA, RI, VT, VA and DC, restricted to traffic having a prior or subsequent movement by water. Supporting shipper: T.C.I., Inc., 8 Belcourt Road, Dollard des Ormeaux, Quebec H9A, 1X7, Canada.

MC 153322 (Sub-1–1TA), filed December 29, 1980. Applicant: A–Z WASTE SERVICE, INC., 60 Harmon Avenue, Falconer, NY 14733. Representative: Ronald W. Malin, Bankers Trust Bldg., Jamestown, NY 14701. *Hazardous waste, toxic waste and waste materials for disposal and/or recycling and reuse,* between points in PA, NY and OH. Supporting shipper(s): GTE Products Corporation, 525 Lexington Avenue, Warren, PA 16365; Ingersoll Rand Company—Proto Tool Division, 503 Allen Street, Jamestown, NY 14701; Blackstone Corporation, 1111 Allen Street, Jamestown, NY 14701; Weber-Knapp Company, 441 Chandler Street, Jamestown, NY 14701.

MC 112417 (Sub-1–1TA), filed December 31, 1980. Applicant: JOHN KOBLAN AND MICHAEL KOBLAN a.b.a. CLIFF TRUCKING CO., 178 Middlesex Ave., Englewood Cliffs, NJ 07632. Representative: George A. Olsen, P.O. Box 357, Gladstone, NJ 07934. *(1) Decorated glassware, plastic bottles, caps and cover; and (2) materials, equipment, and supplies used in the manufacture and sale of the commodities named in (1) above,* between Hackensack, NJ, on the one hand, and, on the other, points in CT, DE, MD, MA, NY, PA, RI, and DC. Supporting shipper(s): Ethyl Products Co., a subsidiary of Ethyl Corporation, 171 Newman Street, Hackensack, NJ 07601.

MC 149114 (Sub-1–1TA), filed December 31, 1980. Applicant: NATIONAL TRANSPORT SERVICES, 100 Industrial Avenue, Edison, NJ 08817. Representative: Barbara R. Klein, 1101 Connecticut Avenue, NW., Washington, DC 20036. *Contract carrier:* irregular routes. *Plastic film and commodities used to manufacture and distribute plastic film* between all points in the US under continuing contract with the Goodyear Tire and Rubber Company. Supporting shipper: The Goodyear Tire and Rubber Company, 1144 East Market Street, Akron, OH 44316.

MC 99421 (Sub-1-1TA), filed December 2, 1980. Applicant: J & H TRUCKING CO., INC., 37 Cypress Street, Warwick, RI 02888. Representative: David F. Sweeney, Esquire, 10 Jefferson Blvd., Warwick, RI 02888. *General commodities (except explosives, commodities in bulk in tank vehicles, radioactive, and waste materials)* from points in RI to points in MA. Applicant intends to tack this authority to that now held and proposes to interline at Warwick, RI. Supporting shipper's: Bradford Dyeing Assoc., Rt. 91, Bradford, RI; Peacedale Processing, Peacedale, RI; American Luggage Corp., Main Street, Warren, RI; Kenyon Piece Dye Works, Rt. 2, Kenyon, RI 02836.

MC 146723 (Sub-1-5TA), filed January 2, 1981. Applicant: M & L MESSENGER SERVICE, INC., Jewel Lane, New Fairfield, CT 06810. Representative: James M. Burns, 1383 Main Street, Suite 413, Springfield, MA 01103. (1) *Paper work, art work, forms and computer parts*, between Georgetown, CT and New York City, NY and MA, restricted to packages not exceeding 100 pounds per package originating at or destined to the facilities of Murren Associates, Inc., Georgetown, CT and (2) *Machinery parts and paper products*, between Danbury, CT and points in NJ, MA and NY, restricted to packages not exceeding 100 pounds per package, originating at or destined to the facilities of Technipower/A. Penril Co., Danbury, CT 06810. Supporting shippers: Murren Associates, Inc., Old Mill Road, Georgetown, CT 06829 and Technipower/A. Penril Co., Commerce Drive, Danbury, CT 06810.

MC 152818 (Sub-1-1TA), filed January 2, 1981. Applicant: R & H TRUCKING CO., INC., 184 Doremus Avenue, Newark, NJ 07105. Representative: Morton E. Kiel, Suite 1832, 2 World Trade Center, New York, NY 10048. *Gasoline, in bulk*, from facilities of Getty Refining & Marketing Co., in Newark, NJ to points in Dutchess County, NY. Supporting shipper(s): Getty Refining & Marketing Co., Doremus Avenue, Newark, NJ 07105.

MC 153001 (Sub-1-1TA), (Republication), filed December 5, 1980. Applicant: HISKO TRUCKING CO., INC., 100 Lister Avenue, Newark, NJ 07105. Representative: Lawrence Hisko, 100 Lister Avenue, Newark, NJ 07107. Contract carrier: Irregular routes: *Chemical waste material* between points in the U.S. except AK and HI. Supporting shipper: SCA Chemical Services Co., 107 Albert Street, Newark, NJ 07105.

MC 6252 (Sub-1-2TA), (Republication), filed December 1, 1980. Applicant: TRAL'S EXPRESS, INC., 36 Laura Street, Lyons Falls, NY 13368. Representative: Roy D. Pinsky, Esq., Suite 1020—State Tower Building, Syracuse, NY 13202. *General commodities, (except Classes A and B explosives and household goods as defined by the Commission)* between all points in the NY counties of Cortland, Herkimer, Jefferson, Lewis, Madison, Oneida, Onondaga and Oswego on the one hand, and, on the other, all points in the NY Counties of Albany, Columbia, Fulton, Greene, Montgomery, Rensselaer, Saratoga, Schenectady and Schoharie. Supporting shipper(s): Branch Motor Express Company, 114 Fifth Avenue, New York, NY 10011; Springmeier Shipping Co., Inc., 225 Johnson Street, East Syracuse, NY 13057; Georgia-Pacific Corporation, Center Street, Lyons Falls, NY 13368; AMF Incorporated, Bowling Pin Division, Utica Boulevard, Lowville, NY 13367. Purpose of republication is to show that applicant intends to interline with another carrier at Utica, Syracuse, Watertown and Albany, NY. Previously in Federal Register of December 15, 1980, on Page 82370.

MC 153363 (Sub-1-1TA), (Republication), filed November 28, 1980. Applicant: AMERICAN MESSENGER SERVICE INC., 160 Lake Avenue, Manchester, NH 03105. Representative: Susan M. Vercillo, Esq., Devine, Millimet, Stahl & Branch, Professional Association, 1850 Elm Street, Manchester, NH 03105. *General commodities (except those of unusual value, Classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment)* between points in NH, ME and MA. Supporting shipper(s): There are 143 statements in support attached to this application which may be examined at the ICC Regional Office in Boston, MA. The purpose of this republication is to show that applicant amended his application to common, irregular. Previously published in Federal Register of December 15, 1980 on Page 82372.

The following applications were filed in Region 3. Send protests to ICC, Regional Authority Center, P.O. Box 7600, Atlanta, GA 30357.

MC 31675 (Sub-3-35TA), filed January 9, 1981. Applicant: NORTHERN FREIGHT LINES, INC., P.O. Box 34303, Charlotte, N.C. 28234. Representative: Jay R. Hanson (same as above). *Plastic pipe, plastic pipe fittings, and equipment, materials and supplies used in the manufacture, installation and transportation of plastic pipe and plastic pipe fittings* between Pineville, NC, and points in and east of ND, SD, NE, KS, OK and TX. Supporting shipper(s): Elsoni Thermoplastics, Inc., Rodney Blvd., Pineville, NC 28134.

MC 112520 (Sub-3-12TA), filed January 12, 1981. Applicant: McKENZIE TANK LINES, INC., P.O. Box 1200, Tallahassee, FL 32302. Representative: Sol H. Proctor, 1101 Blackstone Building, Jacksonville, FL 32202. *Waste Solvent*, from Calvert City, KY to Pace, FL. Supporting shipper: Air Products & Chemicals, P.O. Box 538, Allentown, PA 180105.

MC 134105 (Sub-3-10TA), filed January 12, 1981. Applicant: CELERYVALE TRANSPORT, INC., 1706 Rossville Avenue, Chattanooga, TN 37408. Representative: James E. Elgin (same address as applicant). *Margarine, Shortening and Peanut Butter* from the plantsites and storage facilities of Sunnyland Refining Company at or near Jefferson County, AL to all points in CT, DE, DC, GA, IL, IN, KY, ME, MD, MA, MI, NH, NJ, NY, NC, OH, PA, RI, SC, TN, VA and WV. Supporting shipper: Sunnyland Refining Company, 3330 10th Avenue North, Birmingham, Alabama 35234.

MC 127264 (Sub-3-1TA), filed January 9, 1981. Applicant: AMERICAN PARCEL SERVICE, INC., 212 Hermitage Road, Greensboro, NC 27403. Representative: Guy H. Postell, Postell & Hall, P.C., Suite 713, 3384 Peachtree Rd. NE., Atlanta, GA 30326. *Contract, irregular, Merchandise, equipment and supplies sold, used or distributed by a manufacturer of cosmetics*, under a continuing contract, or contracts, with Avon Products, Inc., New York, NY, (1) from Charlotte, NC, to points in Montgomery County, NC; (2) from Greensboro, NC, to points in Carroll and Patrick Counties, VA; and, (3) from Fayetteville, NC, to points in the following NC counties: Cumberland, Bladen, Columbus, Brunswick, New Hanover, Pender, Duplin, Sampson, Harnette, Lee, Moore, Richmond, Montgomery, Anson, Scotland, Robeson, Hoke, Greene, Onslow, Carteret, Jones, Lenior, Beaufort, Pamlico, Pitt, and Chatham. Supporting shipper: Avon Products, Inc., 2200 Cotillion Drive, Chamblee, GA 30302.

MC 147911 (Sub-3-5TA), filed January 9, 1981. Applicant: TILFORD TRUCKING, INC., P.O. Box 34, Readyville, TN 37149. Representative: Henry E. Seaton, 929 Pennsylvania Bldg., 425 13th St., NW., Washington, DC 20004. *Limestone, limestone products and building materials (except commodities in bulk)*, between the facilities of Franklin Industries at or near Crab Orchard and Nashville, TN, on the one hand, and, on the other,

points in and east of ND, SD, NE, KS, OK and TX. Supporting shipper(s): Franklin Industries, Inc., 612 Tenth Ave., North, Nashville, TN 37203.

MC 146646 (Sub-3-39TA), filed January 9, 1981. Applicant: BRISTOW TRUCKING CO., INC., P.O. Box 6355-A, Birmingham, AL 35217. Representative: James W. Segrest (same address as applicant). *Pressure-sensitive paper, label stock, self-adhesive paper labels and reinforcements, gum paper, printing and wrapping paper, label machines, plastics and cellulose film, aluminum foil, textile labels and tags, reflective sheeting and materials used in manufacturing thereof.* Between points in the U.S. (except AK and HI) and the facilities of Avery International. Supporting shipper: Avery International, 250 Chester Street, Painesville, OH 44077.

MC 144337 (Sub-3-2TA), filed January 9, 1981. Applicant: KENNETH HENDERSON TRUCKING CO., INC., Route 66, Cullowhee, NC 28723. Representative: Eric Meierhoefer, Suite 423, 1511 K Street, NW., Washington, DC 20005. *Contract carrier;* Irregular: *(1) molded plastic products, and (2) machinery, machinery parts, and materials and supplies used in the manufacture and distribution of (1) above,* between Charlotte and Cashiers, NC, and points in their commercial zones, and Phoenix, AZ, and points in its commercial zone, on the one hand, and, on the other, points in the US, under continuing contract(s) with Cashiers Plastic—Division of Consolidated Metco, Inc. Supporting shipper: Cashiers Plastic—Division of Consolidated Metco, Inc., Box 37, Cashiers, NC 28717.

MC 153509 (Sub-3-2TA), filed January 9, 1981. Applicant: KENTUCKY DISPATCH, INC., 3303 Camp Ground Road, Louisville, KY 40216. Representative: James B. Murphy, Suite 102, Interchange Bldg., 835 West Jefferson St., Louisville, KY 40202. *Contract;* Irregular; *commercial laundry drying equipment and materials, equipment and supplies used in the manufacture of this type equipment,* between Louisville, KY on the one hand, and, on the other, points in the U.S. under continuing contract with W. M. Cissell Mfg. Co. Supporting shipper: W.M. Cissell Mfg. Co., 831 South First Street, Louisville, KY.

MC 153509 (Sub-3-3TA), filed January 9, 1981. Applicant: KENTUCKY DISPATCH, INC., 3303 Camp Ground Road, Louisville, Kentucky 40216. Representative: James B. Murphy, Suite 102, Interchange Bldg., 835 West Jefferson Street, Louisville, Kentucky 40202. *Contract;* Irregular: *paper and plastic articles; materials, equipment and supplies used in the manufacture of these commodities* between Lexington, KY on the one hand, and on the other, points in the United States under continuing contract with American Can Company. Supporting shipper: American Can Company, Harbison Road, Lexington, Kentucky 40505.

MC 153509 (Sub-3-4TA), filed January 8, 1981. Applicant: KENTUCKY DISPATCH, INC., 3303 Camp Ground Road, Louisville, Kentucky 40216. Representative: James B. Murphy, Suite 102, Interchange Bldg., 835 West Jefferson Street, Louisville, Kentucky 40202. *Contract;* irregular: *adhesives; plastic bottles, and materials, equipment and supplies used in the manufacture of these commodities* between Lexington, KY, on the one hand, and on the other, points in the United States under continuing contract with Franklin Chemical Inds., Inc. & Subsidiaries. Supporting shipper: Franklin Chemical Inds., Inc. & Subsidiaries, 2020 Bruck Street, Columbus, Ohio 43207.

MC 146496 (Sub-3-5TA), filed January 9, 1981. Applicant: JOSEPH MOVING & STORAGE CO., INC., d.b.a. ST. JOSEPH MOTOR LINES, 5724 New Peachtree Rd., Chamblee, GA 30341. Representative: Richard M. Tettelbaum, Fifth Floor, Lenox Towers S, 3390 Peachtree Rd., NE., Atlanta, GA 30326. *Contract carrier:* Irregular routes: (1) *Automotive tires and tubes* and (2) *materials, equipment and supplies used in the installation and sale of the commodities in (1) above,* from Birmingham, AL, Philadelphia, PA, Columbus, OH and Dallas, TX, to points in the US in and east of WI, IL, MO, OK and TX, under continuing contract(s) with Gulf Oil Company-US. Supporting shipper: Gulf Oil Company-US, P.O. Box 3706, Houston, TX 77001.

MC 150193 (Sub-3-2TA), filed January 9, 1981. Applicant: DARICA TRUCKING CO., 338 S. Oliver Street, Elberton, GA 30635. Representative: Bruce E. Mitchell, Fifth Floor, Lenox Towers South, 3390 Peachtree Rd., NE., Atlanta, GA 30326. *Granite* from the facilities of Coggins Granite Company at or near Elberton, GA to points in NY and NJ. Supporting shipper: Coggins Granite Company, P.O. Box 250, Elberton, GA 30635.

MC 75840 (Sub-3-46TA), filed January 9, 1981. Applicant: MALONE FREIGHT LINES, INC., Post Office Box 11103, Birmingham, AL 35202. Representative: William P. Jackson, Jr., Post Office Box 1240, Arlington, VA 22210. *General commodities (except Classes A and B explosives, household goods, and commodities in bulk),* between Atlanta, GA, and its commercial zone, on the one hand, and, on the other, points in TX, AR, LA, MS, TN, GA, FL, AL, KY, NC, SC, VA, DE, MD, WV, OH, PA, NY, NJ, RI, CT, MA and DC. Supporting shipper: Greater Atlanta Shippers Association, 6160 Boatrock Boulevard, SW, Atlanta, GA 30336.

MC 121615 (Sub-3-2TA), filed January 5, 1981. Applicant: ALL SOUTH MOTOR FREIGHT, INC., 1220 Fadur Court, Nashville, TN 37219. Representative: Robert L. Baker, Sixth Floor, United American Bank, Nashville, TN 37219. *Common* Carrier: Regular: *General Commodities (except classes A and B explosives, household goods, commodities in bulk and those requiring special equipment)* between Nashville, TN, and Birmingham, AL; from Nashville over I-65 and/or U.S. Hwy 31 to Birmingham, AL, and return over the same route serving all intermediate points on I-65 and U.S. Hwy 31 between AL-TN state lines and Birmingham, except Ardmore, AL. Applicant proposes to interline at Nashville, TN, and Birmingham, AL. Supporting shippers: There are 30 statements of support attached to this application which may be examined at the ICC Regional Office in Atlanta, GA.

MC 153493 (Sub-3-1TA), filed January 7, 1981. Applicant: NOBLES SLUDGE PUMPING, Route 4, Box 150, Carrollton, GA 30117. Representative: E. Carl Prince, Esquire, Post Office Box 662, Carrollton, GA 30117. *Sludge and other industrial waste,* from Carroll County, GA, to Sumter County, AL. Supporting shipper: Trent Tube Division, Colt Industries, Inc., 114 Hammonds Street, Carrollton, GA 30117.

MC 129328 (Sub-3-1TA), filed January 8, 1981. Applicant: CHEMICAL TANK LINES, INC., P.O. Box 432, Mulberry, FL 33860. Representative: Keith Alexander (same address as applicant). *Contract carrier:* Irregular: *a mobile liquid fertilizer plant and equipment, finished manufactured liquid fertilizer and raw materials necessary for the manufacture of finished fertilizers, and associated equipment for cleaning of storage tanks* between points in the U.S. under contract with USAMEX Fertilizers, Inc. Supporting shipper: USAMEX Fertilizers, Inc., 410 Ware Blvd., Suite 314, Tampa, FL 33619.

MC 134105 (Sub-3-6TA), filed January 6, 1981. Applicant: CELERYVALE TRANSPORT, INC., 1708 Rossville Avenue, Chattanooga, TN 37408. Representive: James E. Elgin (same address as applicant). *Such merchandise as is dealt in by food business houses and materials,*

ingredients and supplies used in their manufacture and distribution. Between points in the states of OH and SC on the one hand, and on the other, points in the states of: AL, CT, DC, DE, FL, GA, KY, LA, MA, MD, ME, MS, NC, NH, NJ, NY, OH, PA, RI, SC, TN, VA, VT and WV. Supporting shipper: Stouffer Foods Corporation, 5750 Harper Road, Solon, OH 44139.

MC 144503 (Sub-3-6TA), filed January 8, 1981. Applicant: ADAMS REFRIGERATED EXPRESS, INC., P.O. Box F, Forest Park, GA 30050. Representative: Charles L. Redel, 212 Hoeschler Exchange Building, La Crosse, WI 54601. *General commodities (except classes A and B explosives, household goods as defined by the commission, commodities in bulk, and those requiring special equipment)* between points in Wayne County, MI, Lucas County, OH, and Crawford County, AR, on the one hand, and, on the other, points in the Continental U.S. Restricted to traffic originating at or destined to the facilities of Canton Lubricants Company and Snyder Machine and Tool Company, Div. of G & L, Wayne County, MI, and Therma-Tru, Div. of LST Corp., Lucas County, OH, and Crawford County, AR. Supporting shippers: Canton Lubricants Company, Detroit, MI, Snyder Machine and Tool Company, Div. of G & L, Detroit, MI, and Therma-Tru, Div. of LST Corp., Toledo, OH.

MC 107515 (Sub-3-90TA), filed January 8, 1981. Applicant: REFRIGERATED TRANSPORT CO., INC., P.O. Box 308, Forest Park, GA 30050. Representative: Alan E. Serby, Esq., 3390 Peachtree Rd., NE., 5th Floor—Lenox Towers South, Atlanta, GA 30326. *Bakery Products (except in bulk)* from Valdosta, GA to facilities of Winn-Dixie Stores, Inc. at or near Montgomery, AL; Jacksonville, Orlando, Miami, Tampa and Pompano Beach, FL; Louisville, KY; New Orleans, LA; Charlotte and Raleigh, NC; Greenville, SC; and Ft. Worth, TX. Supporting shipper: Winn-Dixie Stores, Inc., Box "B", Jacksonville, FL 32203.

MC 143753 (Sub-3-2TA), filed January 8, 1981. Applicant: BOLES & FRANKLIN, INCORPORATED, Route 2, Box 169, Weaverville, NC 28787. Representative: George W. Clapp, P.O. Box 836, Taylors, SC 29687. *Coal, in bulk, in dump vehicles,* from points in Lee and Rockcastle Counties, KY, to points in IN, and OH. Supporting shipper: Tenkiller Mining Services, Inc., P.O. Box 209, Livingston, KY 40445.

MC 150506 (Sub-3-2TA), filed January 8, 1981. Applicant: VERMAD TRUCKING, INC., 6908 Vergos Drive North, Eight Mile, Alabama 36613. Representative: James David Mills, Attorney at Law, Post Office Box 2664, Mobile, Alabama 36652. *Contract Carrier:* Irregular: *Building Materials* between AL, MS, GA, FL, LA, TX, AR, MI, NM, SC, NC, KY, TN, OH, NJ and all points in the United States except HI, restricted to the facilities and job sites of Gulf Atlantic Corporation, Coastal Insulation of Pensacola, Inc., Coastal Specialties, Inc., Thompson Insulation, Inc., West Florida Sash & Door, Inc., West Cash & Carry, Inc., Fiberglass Insulators, Inc., Insulation Contractors, Inc. and William Henry Contracting, Inc. There are nine supporting shippers attached to this application which may be examined at the Interstate Commerce Commission, Atlanta, Georgia.

MC 153301 (Sub-3-1TA), filed January 8, 1981. Applicant: COMPLETE REFUSE REMOVAL, INC., 782 Smyrna Hill Dr., Smyrna, GA 30081. Representative: Raymond E. Fowler (same address as applicant). *Paint and Sludge Waste* from Atlanta, GA. to Emelle, AL. Supporting shipper: GM Assembly Division, General Motors Corp., Lakewood Plant, P. O. Box 16505, Atlanta, GA 30321.

MC 153179 (Sub-3-1TA), filed January 7, 1981. Applicant: WHITE TRUCKING, INC., Huff, KY 42250. Representative: Rudy Yessin, 113 West Main Street, Frankfort, KY 40601. *Coal,* between points in KY, on the one hand, and, points in IN, IL and TN, on the other. Supporting shipper: Tri-Coal Engergies, Inc., Cromwell, KY 42333; Mac Coal Sales, Box 26, Beaver Dam, KY 42320.

MC 109026 (Sub-3-7TA), filed January 8, 1981. Applicant: MANNING MOTOR EXPRESS, INC., P.O. Box 665, Glasgow, KY 42141. Representative: Henry E. Seaton, 929 Pennsylvania Bldg., 425 13th Street, NW., Washington, DC 20004. *General Commodities (except classes A and B explosives),* serving all points in Barren and Monroe County, KY as off route points in connection with applicant's presently authorized routes. Supporting shippers: There are seven certificates of support submitted with this application and they may be examined at the Commission's regional authority center in Atlanta, GA.

Note.—Applicant intends to tack with docket number MC 109026 at Glasgow, KY and to interline with existing carriers at Louisville, KY and Nashville, TN.

MC 75040 (Sub-3-49TA), filed January 12, 1981. Applicant: MALONE FREIGHT LINES, INC., P.O. Box 11103, Birmingham, Alabama 35202. Representative: Raymond Hamilton, Malone Freight Lines, Inc., 3400 Third Avenue South, Birmingham, Alabama 35222. *Auto Parts and Accessories, Aluminum Castings and Fittings,* from MS, TN and NC to MI; from points in NC to OH. Supporting shipper: Ford Motor Company One Parklane Blvd., 200 Parklane Towers East, Dearborn, MI 48126.

MC 75040 (Sub-3-50TA), filed January 13, 1981. Applicant: MALONE FREIGHT LINES, INC., Post Office Box 11103, Birmingham, AL 35202. Representative: William P. Jackson, Jr., Post Office Box 1240, Arlington, VA 22210. *General commodities (except Classes A and B explosives and household goods),* between points in TX, AR, LA, MS, TN, GA, FL, AL, KY, NC, SC, VA, DE, MD, WV, OH, PA, NY, NJ, RI, CT, MA, and DC. There are 35 shipper statements attached to this application which may be examined at the ICC Regional Office in Atlanta, GA.

MC 145056 (Sub-3-2TA), filed January 12, 1981. Applicant: TRANSMEDIC CARRIERS, INC., 1340 Indian Rocks Road, Belleair, FL 33516. Representative: Rudy Yessin, 113 West Main Street, Frankfort, KY 40601. (1) *Blood, derivatives of blood, and plasma; (2) medical and dental products, and (3) materials, equipment and supplies used in the manufacture and distribution of the commodities in (1) and (2) above:* Between all points and places in the United States (except AK and HI), restricted to the transportation of traffic originating at or destined to the facilities of Beckman Instruments, Inc. Supporting shipper: Beckman Instruments, Inc. 2500 Harbor Blvd., Fullerton, CA 92634.

MC 85578 (Sub-3-1TA), filed January 12, 1981. Applicant: W. M. BURNETT TRUCK LINE, INC., P.O. Box 206, Haleyville, AL 35565. Representative: Johnny Bennett (same address as applicant). Common carrier, regular routes: *General commodities (except explosives and commodities requiring special equipment)* between Haleyville, AL, on the one hand, and, on the other, Florence, AL serving all points in Marion County, AL and all points within 15 miles of Florence, AL including Listerhill, AL as off-route points: (1) from Haleyville, AL over AL Hwy 5 to the junction of US Hwy 43; thence over US Hwy 43 to Florence, AL and return over the same route serving all intermediate points; (2) from Haleyville, AL over AL Hwy 129 and 13 to respective junctions with US Hwy 278, thence over US Hwy 278 to junction US Hwy 43, thence over US Hwy 43 to Florence, AL and return over the same route serving all intermediate points; and serving all points in Marion County, AL and all points within 15 miles of Florence, AL including Listerhill, AL as off-route points in connection with applicant's authorized service. There are

27 supporting shipper statements which may be examined in the ICC Regional Office in Atlanta, GA. Applicant intends to interline at Birmingham and Florence, Sheffield, Tuscumbia and Muscle Shoals; and will tack the authority sought with existing authority at Haleyville, AL.

MC 138176 (Sub-3-1TA), filed January 13, 1981. Applicant: RENTZ FARM SUPPLY, INC., Route 1, Brinson, GA 31725. Representative: Guy H. Postell, Postell & Hall, P.C., Suite 713, 3384 Peachtree Rd., NE., Atlanta, GA 30326. *Liquefied petroleum gas, in bulk, in tank vehicles,* between Albany, GA, on the one hand, and, on the other, Chiefland, Bronson, New Smyrna Beach, Melbourne and Cocoa, FL. Supporting shipper: Tru-Gas of Florida, Inc., Suite 350, 2700 Cumberland Parkway, Atlanta, GA 30339.

MC 115831 (Sub-3-2TA), filed January 13, 1981. Applicant: TIDEWATER TRANSIT CO., INC., P.O. Box 189, Kinston, NC 28501. Representative: Ralph McDonald, Attorney at Law, P.O. Box 2246, Raleigh, NC 27602. *Liquid fertilizer and liquid fertilizer materials* from points in New Hanover, Robeson and Wayne Counties, NC to points in SC. Supporting shipper(s): Texas Gulf Sulphur, Mt. Olive, NC 28365; and W. R. Grace & Co., P.O. Box 368, Wilmington, NC 28401.

MC 142835 (Sub-3-9TA), filed January 12, 1981. Applicant: CARSON MOTOR LINES, INC., P.O. Box 337, Lakeland, FL 33823. Representative: A. Charles Tell, 100 E. Broad St., Columbus, OH 43215. *General commodities (except Classes A and B explosives),* from the facilities of Purex Corp. at or near Auburndale, FL to points in AL and GA. Supporting shipper: Purex Corp., 909 Magnolia, Auburndale, FL 33823.

MC 139934 (Sub-3-1TA), filed January 12, 1981. Applicant: ALL SOUTHERN TRUCKING, INC., Post Office Box 2698, Tampa, FL 33601. Representative: Robert R. Solomon (same as applicant). *General commodities (except commodities of unusual value, class A and B explosives, household goods, and commodities requiring special equipment) in containers or trailers and empty containers and trailers having immediately prior or subsequent movement by water or rail.* Between Jacksonville, FL and Charleston, SC. Supporting shipper: United States Lines, Inc., Post Office Box 26009, Jacksonville, FL 32118.

MC 153506 (Sub-3-1TA), filed January 12, 1981. Applicant: BELCHER TRUCKING CO., INC., P.O. Box 160, Brent, AL 35034. Representative: John R. Frawley, Jr., Suite 200, 120 Summit Parkway, Birmingham, AL 35209. *Lumber or Wood Products* between Chilton and Bibb Counties in AL on the one hand, and, on the other, points in GA, OH, TN, KY, IN, IL, WI, MI, VA, WA, PA, and IA. Supporting shippers: Hammermill Paper Company, Southern Forest Products Division, P.O. Box 768, Selma, AL 36701; Olon Belcher Lumber Co., Inc., P.O. Box 160, Brent, AL 35034; Freeman Lumber Company, Inc., P.O. Box 68, Centreville, AL 35042.

MC 124835 (Sub-3-5TA), filed January 12, 1981. Applicant: PRODUCER TRANSPORT CO., P.O. Box 4022, Chattanooga, TN 37405. Representative: David K. Fox (same address as applicant). *Cement, in bulk, and in packages,* from Gray, TN to all points in AL, GA, KY, NC, SC, VA, WV and TN. Supporting shipper: Ideal Basic Industries, Inc., P.O. Box 6789, Denver, CO 80201.

MC 149132 (Sub-3-1TA), filed January 13, 1981. Applicant: T & T HAULING, INC., 231 Bayou Sara Avenue, Saraland, AL 36571. Representative: Terry Simison (same address as applicant). *Hazardous and non-hazardous waste liquids and sludges* in vacuum tankers from points in AL, MS, FL, LA and TX to EPA approved disposal sites in AL, MS, FL, LA, and TX. Supporting shippers: Dowell Div. of Dow Chemical Co., P.O. Box 11493, Chickasaw, AL 36611, Shell Oil Company, P.O. Box 2099, Houston, TX 77001.

MC 75840 (Sub-3-47TA), filed January 12, 1981. Applicant: MALONE FREIGHT LINES, INC., Post Office Box 11103, Birmingham, AL 35202. Representative: William P. Jackson, Jr., Post Office Box 1240, Arlington, VA 22210. *Such commodities as are dealt in by a processor or manufacturer of marble and stone products (except in bulk),* from the facilities of Georgia Marble Company, at or near Tate, GA, and Sylacauga, AL, to points in TX, AR, LA, MS, TN, GA, FL, AL, KY, NC, SC, VA, DE, MD, WV, OH, PA, NY, NJ, RI, CT, MA, and DC. Supporting shipper: Georgia Marble Company, 2575 Cumberland Parkway NW, Atlanta, GA 30339.

MC 138306 (Sub-3-19TA), filed January 12, 1981. Applicant: KLM, INC., P.O. Box 6098, Jackson, MS 39206. Representative: Robert L. McArty, P.O. Box 22628, Jackson, MS 39205. *Such commodities as are dealt in or used by construction and home improvement businesses (except commodities in bulk)* (1) from the facilities of Therma-Tru, Division of LST Corporation at or near Van Buren, AR; Colorado Springs, CO; and Toledo, OH, to points in the U.S. (except AK and HI); and, (2) from points in CA to the facilities of Therma-Tru, Division of LST Corporation at or near Van Buren, AR; Colorado Springs, CO; and Toledo, OH. Supporting shipper: Therma-Tru, Division of LST Corporation, 2300 N. Reynolds Road, Toledo, OH 43615.

MC 153565 (Sub-3-1TA), filed January 12, 1981. Applicant: M. L. TRANSPORT DIVISION OF M. L. ENTERPRISES, INC., Route #1, Box 282 GA, Pell City, AL 35215. Representative: George M. Boles, Carlton, Boles, Clark, Vann, Stichweh & Caddis, 727 Frank Nelson Bldg., Birmingham, AL 35203. *Contract carrier:* irregular: *Iron and steel, iron and steel articles and building materials,* between facilities of Engineered Components, Inc., at Houston, TX, and Jemison, AL, and Culp Metals, Inc., Gadsden, AL, on the one hand, and, on the other, points in the U.S. Supporting shipper: Engineered Components, Inc., Jemison, AL, and Culp Metals, Inc., East Gadsden, AL.

MC 150388 (Sub-3-3TA), filed January 12, 1981. BOSS TRANSPORTATION CO., INC., P.O. Box 40977, Memphis, TN 38104. Representative: Wesley S. Chused, 15 Court Square, Boston, MA 02108. *Plastic articles (except in bulk),* between Leominster, MA, Arlington, TX and Kingman, AZ, on the one hand, and, on the other, points in the U.S. (except AK and HI). Supporting shipper: Tucker Housewares, 345 Central Street, Leominster, MA 01453.

MC 149112 (Sub-3-1TA), filed January 13, 1981. Applicant: FLORIDA-NEW ORLEANS EXPRESS, INC., 625 North Wabash Street, Lakeland, FL 33801. Representative: Rudy Yessin, 113 West Main Street, Frankfort, KY 40601. *Citrus fruits, fruit juices, and beverages, in containers, glass cartons and cans,* from the facilities of Tropicana Products Co., in Manatee County, FL, to New Orleans, LA; St. Louis, MO; Indianapolis, IN; Minneapolis, Saint Paul and Hopkins, MN. Supporting shipper: National Tea Company, 1807 Richmond Rd., Lakeland, FL 33803.

MC 2934 (Sub-3-27TA), filed January 12, 1981. Applicant: AERO MAYFLOWER TRANSIT COMPANY, INC., 9998 North Michigan Road, Carmel, IN 46032. Representative: W. G. Lowry (same as above). *New furniture, partitions, store and office fixtures,* from York County, PA to: AR, IA, KS, KY, LA, MI, MN, MS, NE, OH, OK, TN, TX, VA, WI and WV. Supporting shipper: Thonet, 491 East Princess Street, York, PA 17405 and Zell Brothers, Church Lane, Red Lion, PA 17356.

MC 151173 (Sub-3-5TA), filed January 12, 1981. Applicant: HAR-BET, INC., 7209 Tara Blvd., Jonesboro, GA 30236.

Representative: Richard M. Tettelbaum, Fifth Floor, Lenox Towers S, 3390 Peachtree Rd., NE., Atlanta, GA 30326. *Contract* carrier: Irregular Routes: *General commodities, except in bulk,* from the facilities of The Gillette Company at or near Andover, MA and St. Paul, MN, to Morrow, GA, under continuing contract(s) with The Gillette Company. Supporting Shipper: The Gillette Company, P.O. Box 29, The Prudential Bldg., Boston, MA 02199.

MC 153557 (Sub-3-1TA), filed January 12, 1981. Applicant: MOTOR INDUSTRIES INCORPORATED, 1203 Audubon Parkway, Louisville, KY 40213. Representative: George W. Merckar, 1017 Kentucky Home Life Bldg., Louisville, KY 40202. *Such commodities as are dealt in by wholesale and retail chain groceries, drug and food business houses and any products required in production of same, including plastic containers and other packaging material,* between Clark and Floyd counties, IN, on the one hand, and, on the other, points in KY and OH. Supporting shipper: Colgate Palmolive Co., P.O. Box 9, Jeffersonville, IN 47130.

Note.—Applicant intends to interline with other carriers at Louisville, Lexington, and Bowling Green, KY; and Cincinnati, Toledo, Columbus, and Cleveland, OH.

MC 142585 (Sub-3-1TA), filed January 12, 1981. Applicant: TRIAD LIMOUSINE SERVICE, INC., P.O. Box 6475, Greensboro, NC 27410. Representative: Henry E. Frye, Attorney, P.O. Box 21401, Greensboro, NC 27420. *Contract carrier,* irregular routes: *Computer, financial and payroll data,* between Western Electric Company locations at Winston-Salem, NC, and Radford, VA. Supporting shipper: Western Electric Company, 3300 Lexington Road, S.E., Winston-Salem, NC 27102.

MC 75640 (Sub-3-46TA), filed January 12, 1981. Applicant: MALONE FREIGHT LINES, INC., Post Office Box 11103, Birmingham, AL 35202. Representative: William P. Jackson, Jr., Post Office Box 1240, Arlington, VA 22210. *Such commodities as are dealt in, used or distributed by a manufacturer of metal roof decks and floor decks, (except in bulk),* between the facilities of Epic Metals Corporation, located at or near Braddock, PA, on the one hand, and, on the other, points in TX, AR, LA, MS, TN, GA, FL, AL, KY, NC, SC, VA, DE, MD, WV, OH, PA, NY, NJ, RI, CT, MA, and DC. Supporting shipper: Epic Metals Corporation, 11 Talbot Avenue, Braddock, PA 15104.

MC 146226 (Sub-3-6TA), filed January 13, 1981. Applicant: J & P TRUCKING CO., INC., P.O. Box 457, Lincolnton, NC 28092. Representative: Dwight L. Koerber, Jr., P.O. Box 1233, 110 N. 2nd St., Clearfield, PA 16830. *Textiles and textile products,* between the facilities of Courtaulds North America, Inc., at LeMoyne, AL, on the one hand, and, on the other, points in NC and SC. Supporting shipper: Courtaulds North America, Inc., P.O. Box 2048, Mobile, AL 36601.

MC 153509 (Sub-3-1TA), filed January 9, 1981. Applicant: KENTUCKY DISPATCH, INC., 3303 Camp Ground Road, Louisville, KY 40216. Representative: James B. Murphy, Suite 102, Interchange Bldg., 535 West Jefferson Street, Louisville, KY 40202. *Contract:* irregular; *bags, envelopes, packets, pouches, and materials, equipment and supplies used in the manufacture of these commodities,* between Louisville, KY on the one hand, and on the other, points in the United States under continuing contract with American Cellophane & Plastics. Supporting shipper: American Cellophane & Plastics, 7841 National Turnpike Road, Louisville, KY 40214.

MC 146782 (Sub-3-10TA), filed January 9, 1981. Applicant: ROBERTS CONTRACT CARRIER CORPORATION, 300 First Avenue South, Nashville, TN 37201. Representative: Stephen L. Edwards, 806 Nashville Bank & Trust Building, Nashville, TN 37201. *Steel pipe and tubing* between Mecklenburg County, NC, on the one hand, and, on the other, Cook County, IL. Supporting shipper: Marmon Keystone Corporation, P.O. Box 7447, Charlotte, NC.

MC 143059 (Sub-3-30TA), filed January 8, 1981. Applicant: MERCER TRANSPORTATION CO., P.O. Box 35610, Louisville, Kentucky 40232. Representative: Kenneth W. Kilgore, (same as applicant). *(1) Machinery, (2) Oil Well Drilling Equipment,* from Oklahoma County, Ok to points in AR, LA, TX, WY, NE, and TN. Supporting shipper: Sasnett Machine & Manufacturing, Inc., 1420 East Reno, Oklahoma City, OH 73117.

The following applications were filed in Region 5. Send Protests To: Consumer Assistance Center, Interstate Commerce Commission, Post Office Box 17150, Fort Worth, TX 76102.

MC 2900 (Sub-5-4TA), filed January 8, 1981. Applicant: ENGLAND TRANSPORTATION COMPANY OF TEXAS, INC., 2301 McKinney Street, Houston, TX 77023. Applicant's Representative: R. Larry Wells, P.O. Box 45538, Dallas, TX 75245. *Chemicals (not in bulk) in cargo containers* from the facilities of the Celanese Corporation located at or near Bishop, TX, to Houston, TX. Restricted to traffic having a subsequent movement by water. Supporting shipper(s): Gulf Coast Shipping, Inc., 1949 Stemmons Freeway, Dallas, TX 75207.

MC 5227 (Sub-5-14TA), filed January 8, 1981. Applicant: ECKLEY TRUCKING, INC., P.O. Box 301, Maud, NE 68061. Representative: A. J. Swanson, Quaintance & Swanson, P.O. Box 1103, 226 N. Phillips Avenue, Sioux Falls, SD 57101. *Chemicals, drilling mud compounds and additives* (except in bulk), (1) from points in Natrona, Weston and Crook Counties, WY; and Salt Lake City, UT and Houston, TX and points in their commercial zones to NM; and (2) from Rothchild, WI; Springfield, MO; and Atchison, KS and points in their commercial zones and points in Eddy County, NM; Williams and Bowman Counties, ND, Uintah County, UT; and Nye County, NV to points in LA, TX, WY, OK, CO, KS and NM. Supporting shipper: Eisenman Chemical Company, P.O. Box 1200, Greeley, CO 80632.

MC 66100 (Sub-5-3TA), filed January 9, 1981. Applicant: D. P. BONHAM TRANSFER, INC., P.O. Drawer G, Bartlesville, OK 74003. Representative: Larry E. Gregg, P.O. Box 1979, Topeka, KS 66601. *(1) Rough Iron Castings and (2) Materials, Equipment and Supplies (except in bulk) used in the distribution of (1) above,* Between the facilities of Jencast, Inc., at or near South Coffeyville, OK, on the one hand, and, on the other, points in AR, KS, MO, NE, PA, TN, TX and VA. Supporting shipper: Jencast, Inc. P.O. Box 298, South Coffeyville, OK 74072.

MC 106196 (Sub-5-1TA), filed January 9, 1981. Applicant: CLARK BROS. TRANSFER, INC., 900 North First, Norfolk, NE 68701. Representative: Arlyn L. Western, Westergren & Hauptman, P.C., Suite 201, 9202 West Dodge Road, Omaha, NE 68114. *Rubber products and rubber compound* from Norfolk, NE to Mt. Pleasant, IA. Supporting shipper: The Goodyear Tire & Rubber Company, 1144 East Market Street, Akron, OH 44316.

MC 11131 (Sub-5-19TA), filed January 9, 1981. Applicant: JONES TRUCK LINES, INC., 610 East Emma Avenue, Springdale, AR 72764. Representative: James H. Berry (same address as applicant). *(1) Concrete additives, air entraining agents, concrete plasticizer compound, building mortar, concrete mix, cement compound, iron borings, surface curing compounds, grout and paint compounds. (2) Cement, sand, pea gravel, iron borings, various chemicals and shipping containers and other materials, equipment and supplies used in the manufacture, sale and*

distribution (1) above between Erie County, NY; Green County, MO and San Bernardino County CA on the one hand, and, on the other points in the U.S. except AK and HI. Supporting shipper: Master Builders Division Martin Marietta Crop., Cleveland, OH.

MC 119741 (Sub-5-29TA), filed January 9., 1981. Applicant: GREEN FIELD TRANSPORT COMPANY, INC., 1515 Third Avenue NW., P.O. Box 1235, Fort Dodge, IA 50501. Representative: D. L. Robson (same as applicant) *Meats, meat products, meat by-products, and articles distributed by meat packinghouses, as described in Sections A and C of Appendix I to The Report in Descriptions in Motor Carrier Certificates, 61 M.C.C. 209 and 766,* from the facilities of Farmland Foods, Inc. at (a) Crete and Omaha, NE and (b) Carroll, Denison, Des Moines, Iowa Falls, and Sioux City, IA to points in AL, AZ, AR, CA, CO, CT, DE, DC, FL, GA, ID, KY, LA, ME, MD, MA, MS, MT, NV, NH, NJ, NM, NY, NC, OK, OR, PA, RI, SC, TN, TX, UT, VT, VA, WA, WV, AND WY; (c) Lincoln, NE and (d) Fort Dodge, IA to points in AL, AZ, AR, CA, CT, DE, DC, FL, GA, ID, KY, LA, ME, MD, MA, MS, MT, NV, NH, NJ, NM, NY, NC, OK, OR, PA, RI, SC, TN, TX, UT, VT, VA, WA, WV, and WY. Supporting shipper: Farmland Foods, Inc., P.O. Box 403, Denison, IA 51442.

MC 135797 (Sub-5-94TA), filed January 9, 1981. Applicant: J. B. HUNT TRANSPORT, INC., Post Office Box 130, Lowell, AR 72745. Representative: Paul R. Bergant, Esquire (same as above). *Such commodities as are dealt in or used by wholesale, retail discount, variety and department stores.* Between Pulaski County, AR on the one hand, and, on the other, points in the U.S. (except AK and HI). Supporting shippers: Sterling Stores, Co. Inc., 6500 Forbing Road, Little Rock, AR 72203 and Target Stores, Inc., 600 Carnahan Drive, Maumelle, AR 72118.

MC 138069 (Sub-5-3TA), filed January 8, 1981. Applicant: LUCIUS, INC., 2512 South 163rd Street, Omaha, NE 68130. Representative: Max Vance, 2512 South 163rd Street, Omaha, NE 68130. *Meat and packinghouse products* from Sunflower Beef Packers at York, NE to pts in LA, TX, MS, MO, AL, GA, CO, OH, IL, IN, IA, KY, WI, MN, TN, NY, NJ, MA, PA, RI, MD, FL, NC and SC. Supporting shipper: Sunflower Beef Packers, 14th Street and Division Ave., York, NE 68467.

MC 138750 (Sub-5-2TA), filed January 8, 1981. Applicant: W. F. BARTHELME, d.b.a. W. F. BARTHELME DIST. CO., 1602 North Broadway, Pittsburg, KS 66762. Representative: Laurel D. McClellan, 401 North Sixth, P.O. Box 478, Fredonia, KS 66736. Contract irregular: *Clay tile and related products* from Bessemer, AL, Bradenton, FL, Lehigh, IA, Pittsburg, KS, Kansas City, MO, Sasparnco and Texarkana, TX, and Meridian, MS, to points in the U.S. (except AK and HI). Supporting shipper: W.S. Dickey Manufacturing Co., Pittsburg, KS 66762. Hearing site: Wichita, KS; Springfield, MO.

MC 141666 (Sub-5-16TA), filed January 8, 1981. Applicant: ACTION DELIVERY SERVICE, INC., 2401 West Marshall Drive, Grand Prairie, TX 75051. Representative: A. William Brackett, 1108 Continental Life Building, Forth Worth, TX 76102. Contract: Irregular. *Such commodities as dealt in by Home Products Distributors,* from the facilities of Amway Corporation at Des Moines, IA, to points in NM, MN, and WI. Supporting shipper: Amway Corporation, 4101 McDonald, Des Moines, IA 50313.

MC 144822 (Sub-5-67TA), filed January 8, 1981. Applicant: GLENN BROS. TRUCKING, INC., P.O. Box 9343, Little Rock, AR 72219. Representative: J. B. Stuart, P.O. Box 179, Bedford, TX 76021. *Such commodities as are dealt in by wholesale, retail, and discount stores* from Bainbridge, NY to Carrollton, TX. Supporting shipper: Borden Chemical, 180 East Broad Street, Columbus, OH 43215.

MC 145317 (Sub-5-4TA), filed January 8, 1981. Applicant: QUALITY SERVICE TANK LINES, INC., 9022 Perrin Beitel Road, San Antonio, TX 78217. Representative: Timothy Mashburn, P.O. Box 2207, Austin, TX 78768. *Drilling mud, in bulk,* between points in TX and LA. Supporting shipper: Dresser Industries, Inc., P.O. Box 6504—DCOB 1, Suite 186, Houston, TX 77005.

MC 146765 (Sub-5-5TA), filed January 9, 1981. Applicant: DAYTON ENTERPRISES, INC. 110 First Avenue., Clarence, IA 52216. Representative: Donald S. Mullins, 1033 Graceland Avenue, Des Plaines, IL 60016. *Iron and Steel Articles,* from the facilities of Jones and Laughlin Steel Corp. at or near Hennepin, IL, to pts in AL, AR, GA, MS, OK, TN, and that part of KS east of U.S. Highway 77.

MC 147530 (Sub-5-9TA), filed January 9, 1981. Applicant: D. L. SITTON MOTOR LINES, INC., P.O. Box 1567, Joplin, MO 64801. Representative: David L. Sitton P.O. Box 1567, Joplin, MO 64801. *Paper, paper products, materials, equipment, and supplies used in the manufacture and distribution of paper and paper products,* between Muskogee County, OK, on the one hand, and, on the other, Points in AL, AR, FL, KS, LA, MO, TX, and UT. Supporting shipper: Container Corporation of America, P.O. Box 1441, Fort Worth, TX 76101.

MC 150099 (Sub-5-2TA), filed January 9, 1981. Applicant: THE TOM DAVIS CORP., d.b.a. Davis Truck Lines, 5335 N.W. 111th Drive, Grimes, IA 50111. Representative: Richard D. Howe, 600 Hubbell Building, Des Moines, IA 50309. *Steel forms and molds for concrete construction and materials, supplies, and parts used in the manufacture and distribution of steel forms and molds,* between pts in Polk County, IA, on the one hand, and, on the other, pts in the U.S. (except AK and HI). Supporting shipper: Construction Products, Inc., Economy Forms Corporation, 4301 NE 14th Street, Des Moines, IA 50316.

MC 153478 (Sub-5-1TA), filed January 8, 1981. Applicant: BREWER TRANSPORTATION, INC., Route 2, box 58-A, Kenawa, OK 74849. Representative: C. L. Phillips, Room 248, Classen Terrace Bldg., 1411 N. Classen, Oklahoma City, OK 73106. *Drilling Mud Additives (except in tank vehicles),* from Upton and Green River, WY and Gascoyne, ND to points in OK. Supporting shippers: Dan-Maur Mud Service, Inc., 10th and Okla., Shawnee, OK 74801; Eagleton's Wholesale Mud & Chemical, 1010 E. Reno, Okla. City, OK 73117.

MC 153494 (Sub-5-1TA), filed January 8, 1981. Applicant: JACK C. GRANT d.b.a. VEHICLE DELIVERY SERVICE, 1752 Brown Trail, Hurst, TX 76053. Representative: Jack C. Grant (same as above). *Damaged and repossessed motor vehicles (in drive away or tow away condition),* between points in TX, AR, LA, OK, and NM, on the one hand, and on the other, points in the U.S. Supporting shippers: General Motors Acceptance Corporation, 740 California Parkway, Ft. Worth, TX 76113; General Motors Acceptance Corporation, 1001 W. Euless Blvd., Euless, TX 76039.

MC 153504 (Sub-5-1TA), filed January 9, 1981. Applicant: CHRISTENSEN TRANSPORTATION, INC., 418 South Second Street, Pierce, NE 68767. Representative: Jack L. Shultz, P.O. Box 82028, Lincoln, NE 68501. Contract, Irregular: (1) *Oil pump units, parts and accessories,* from Pierce, NE to pts in the US (except AK, HI and NE), and (2) *Materials, supplies and equipment utilized in the manufacture, sale and distribution of the commodities in (1) above,* from pts in the US (except AK, HI and NE) to Pierce, NE, under a continuing contract with Pierce Manufacturing, Inc. Supporting shipper: Pierce Manufacturing, Inc., P.O. Box 375, Pierce, NE 68767.

MC 153510 (Sub-5-1TA), filed January 9, 1981. Applicant: FRY TRUCKING CO., INC., R.R. #2, Granby, MO 64844. Representative: Frank W. Taylor, Jr., 1221 Baltimore Ave., Suite 600, Kansas City, MO 64105. Contract: Irregular: *Beef quarters, suspended, and packing house products*, (1) from Kansas City, KS to all points in MO, OK, IL, CA, CO, TN, GA, TX, NE, and AZ and (2) from Joplin, MO to all points in MS, OK, IL, CA, CO, TN, GA, TX, NE, and AZ. Supporting shippers: Jack Polen Beef Co., Inc., 28 N. 2nd, Kansas City, KS 66118 and Polen & Maughmer, Inc., P.O. Box 2325, Joplin, MO 64801.

MC 200 (Sub-5-78TA), filed January 12, 1981. Applicant: RISS INTERNATIONAL CORPORATION, P.O. Box 100, 215 W. Pershing Road, Kansas City, MO 64141. Representative: H. Lynn Davis (same as applicant). *General commodities (except household goods as defined by the Commission and classes A & B explosives)*, between points in the U.S., restricted to traffic originating at or destined to facilities used by Sunbeam Appliance Company, its affiliates, suppliers, or vendors. Supporting shipper: Sunbeam Appliance Co., 5400 W. Roosevelt Road, Chicago, IL 60650.

MC 200 (Sub-5-79TA), filed January 12, 1981. Applicant: RISS INTERNATIONAL CORPORATION, P.O. Box 100, 215 W. Pershing Road, Kansas City, MO 64141. Representative: H. Lynn Davis (same as applicant). *General commodities (except household goods as defined by the Commission and classes A & B explosives)*, between points in the U.S., Restricted to traffic originating at or destined to facilities used by Rhone-Poulenc, Inc., its affiliates, suppliers, or vendors. Supporting shipper: Rhone-Poulenc, Inc., P.O. Box 125, Black Horse Lane, Monmouth Junction, NJ 08852.

MC 200 (Sub-5-80TA), filed January 12, 1981. Applicant: RISS INTERNATIONAL CORPORATION, P.O. Box 100, 215 W. Pershing Road, Kansas City, MO 64141. Representative: H. Lynn Davis (same as applicant). *General commodities (except household goods as defined by the Commission and classes A & B explosives)*, between points in Henderson County, KY, on the one hand, and, on the other, points in CA, CO, CT, DC, DE, IA, IL, IN, KS, KY, MA, MD, MI, MO, NE, NJ, NY, OH, OK, PA, RI, TX, VA, and WV, restricted to traffic originating at or destined to facilities used by Anaconda Aluminum Co., its affiliates, suppliers, or vendors. Supporting shipper: Anaconda Aluminum Co., 2700 First National Tower, P.O. Box 32260, Louisville, KY 40232.

MC 200 (Sub-5-81TA), filed January 12, 1981. Applicant: RISS INTERNATIONAL CORPORATION, P.O Box 100, 215 W. Pershing Road, Kansas City, MO 64141. Representative: H. Lynn Davis (same as applicant). *Non exempt food or kindred products (STCC code 20)*, between points in the U.S., restricted to traffic originating at or destined to facilities used by PVO International, Inc., its affiliates, suppliers, or vendors. Supporting shipper: PVO International, Inc., 3400 N. Wharf St., St. Louis, MO 63147.

MC 200 (Sub-5-82TA), filed January 12, 1981. Applicant: RISS INTERNATIONAL CORPORATION, P.O. Box 100, 215 W. Pershing Road, Kansas City, MO 64141. Representative: H. Lynn Davis (same as applicant). *General commodities (except household goods as defined by the Commission and classes A and B explosives)*, between points in the U.S., restricted to traffic originating at or destined to facilities used by Purex Corp., its affiliates, suppliers, or vendors. Supporting shipper: Purex Corporation, 24600 S. Main St., P.O. Box 6200, Carson, CA 90749.

MC 200 (Sub-5-83TA), filed January 12, 1981. Applicant: RISS INTERNATIONAL CORPORATION, P.O. Box 100, 215 W. Pershing Road, Kansas City, MO 64141. Representative: H. Lynn Davis (same as applicant). *General commodities (except household goods as defined by the Commission and classes A and B explosives)*, between points in the U.S., restricted to traffic originating at or destined to facilities used by Shaklee Corp., its affiliates, suppliers, or vendors. Supporting shipper: Shaklee Corporation, 1900 Powell St., Emeryville, CA 94608.

MC 200 (Sub-5-84TA), filed January 12, 1981. Applicant: RISS INTERNATIONAL CORPORATION, P.O. Box 100, 215 W. Pershing Road, Kansas City, MO 64141. Representative: H. Lynn Davis (same as applicant). *Hides*, between Ft. Wayne, IN, on the one hand, and, on the other, Laredo, TX. Restricted to traffic originating at or destined to facilities used by A. J. Hollander & Co., Inc., its affiliates, suppliers, or vendors. Supporting shipper: A. J. Hollander & Co., Inc., 5 Hanover Square, NYC, NY 10004.

MC 5023 (Sub-5-2TA), filed January 12, 1981. Applicant: ARROW TRUCKING CO., P.O. Box 7280, Tulsa, OK 74105. Representative: J. G. Dail, Jr., P.O. Box LL, McLean, VA 22101. (1) *Machinery, equipment, materials, and supplies used in, or in connection with, the discovery, development, production, refining, manufacture, processing, storage, transmission, and distribution of natural gas and petroleum and their products and by-products*, (2) *machinery, materials, equipment, and supplies used in, or in connection with, the construction, operation, repair, servicing, maintenance, and dismantling of pipelines, including the stringing and picking up thereof (except in connection with main or trunk pipelines)*, (3) *earth drilling machinery and equipment*, and (4) *machinery, equipment, materials, supplies, and pipe incidental to, used in, or in connection with (a) the transportation, installation, removal, operation, repair, servicing, maintenance, and dismantling of drilling machinery and equipment*, (b) *the completion of holes or wells drilled*, (c) *the production, storage, and transmission of commodities resulting from drilling operations at well or hole sites, and (d) the injection or removal of commodities into or from holes or wells*, between points in AZ, CA, NV, OR, and WA, on the one hand, and, on the other, points in CO, KS, LA, MT, NM, ND, OK, TX, and WY. Supporting shippers: There are 15 supporting shippers.

MC 30844 (Sub-5-42TA), filed January 12, 1981. Applicant: KROBLIN REFRIGERATED XPRESS, INC., 4616 East 67th Street, Tulsa, OK 74121. Representative: Robert Kroblin, P.O. Box 21222, Tulsa, OK 74121. *Direct fastening, drilling and anchoring, pneumatic fastening systems.* Between points in the U.S. Supporting shipper: Hilti Industries, Inc., P.O. Box 21148, Tulsa, OK 74121.

MC 52460 (Sub-5-25TA), filed January 12, 1981. Applicant: ELLEX TRANSPORTATION, INC., 1420 W. 35th St., P.O. Box 9637, Tulsa, OK 74107. Representative: Don E. Kruizinga, 1420 W. 35th St., P.O. Box 9637, Tulsa, OK 74107. *(1) Adhesives, Cements, Tires, Tread Rubber, Tubes, and Supplies used in the tire recapping industry. (2) Synthetic Rubber.* (1) Between the facilities of Bandag, Inc. located at or near Chino, CA Griffin, GA, Muscatine, IA, Oxford, NC, and Abilene, TX (2) From Baton Rouge, LA, and Port Neches, TX, to the facilities of Bandag, Inc. located at or near Chino, CA, Griffin, GA, Muscatine, IA, Oxford, NC, and Abilene, TX Supporting shipper: Bandag, Inc., Bandag World Headquarters, Muscatine, IA 52761.

MC 52460 (Sub-5-26TA), filed January 12, 1981. Applicant: ELLEX TRANSPORTATION, INC., 1420 W. 35th St., P.O. Box 9637, Tulsa, OK 74107. Representative: Don E. Kruizinga, 1420 W. 35th St., P.O. Box 9637, Tulsa, OK

74107. *Paper, Paper Products, and Dry Ink, except in bulk.* Between Lawton, OK and points in CO, FL, GA, and MO. Supporting shipper: Ansley Paper Co., 2 "C" Ave., Lawton, OK 73501.

MC 52569 (Sub-5-1TA), filed January 12, 1981. Applicant: BLUE BIRD TRANSFER & STORAGE CO., P.O. Box 854, Clinton, IA 52732. Representative: Richard D. Howe, 600 Hubbell Building, Des Moines, IA 50309. *(1) ventilators and plastic articles, and (2) aluminum plate or sheet, fiberboard or paperboard boxes, and plastic articles,* (1) from Clinton, IA, to points in IL, IN, KY, MI, MN, MO, OH, and WI; and (2) from IL, IN, KY, MI, MN, MO, OH, and WI, to Clinton, IA. Supporting shipper: Air Vent, Inc., 1710 South 21st Street, Clinton, IA 52732.

MC 99427 (Sub-5-5TA), filed January 12, 1981. Applicant: ARIZONA TANK LINES, INC., 666 Grand Avenue, Des Moines, IA 50309. Representative: E. Check, 666 Grand Avenue, Des Moines, IA 50309. *Liquid feed ingredients,* from Los Angeles, CA to points in AZ. Supporting shipper: Cargill, Inc., P.O. Box 9300/Dept 29, Minneapolis, MN 55440.

MC 107496 (Sub-5-52TA), filed January 12, 1981. Applicant: RUAN TRANSPORT CORPORATION, 666 Grand Avenue, Des Moines, IA 50309. Representative: E. Check, 666 Grand Avenue, Des Moines, IA 50309. *Agriculture chemicals, in bulk,* from St. Rose, LA to Fremont, NE. Supporting shipper: Ciba-Geigy Corporation, 444 Saw Mill River Road, Ardsley, NY 10502.

MC 112713 (Sub-5-26TA), filed January 12, 1981. Applicant: YELLOW FREIGHT SYSTEM, INC., P.O. Box 7270, Overland Park, KS 66207. Representative: William F. Martin, Jr., P.O. Box 7270, Overland Park, KS 66207. Common; Regular. *General commodities (except those of unusual value, Classes A and B explosives, household goods as defined by the Commission, commodities in bulk and those requiring special equipment),* serving Holdrege, NE, as an off-route point in connection with carrier's otherwise authorized operations. Applicant intends to tack and interline. Supporting shippers: Walco International, W Highway 6 and 34, Holdrege, NE 68949; Allmand Brothers, Inc., W Highway 23, Holdrege, NE 68949.

MC 112713 (Sub-5-27TA), filed January 12, 1981. Applicant: YELLOW FREIGHT SYSTEM, INC., P.O. Box 7270, Overland Park, KS 66207. Representative: William F. Martin, Jr., P.O. Box 7270, Overland Park, KS 66207. *Cast iron pipe, pipe fittings and related articles; plastic pipe, pipe fittings and related articles,* from Charlotte and Bakers, NC, to points in the U.S. in and east of ND, SD, NE, KS, OK and TX. Supporting shipper: Charlotte Pipe & Foundry Co., P.O. Box 4430, Charlotte, NC 28204.

MC 112713 (Sub-5-28TA), filed January 12, 1981. Applicant: YELLOW FREIGHT SYSTEM, INC., P.O. Box 7270, Overland Park, KS 66207. Representative: William F. Martin, Jr., P.O. Box 7270, Overland Park, KS 66207. Common; Regular. *General commodities (except those of unusual value, Classes A and B explosives, household goods as defined by the Commission, commodities in bulk and those requiring special equipment),* serving Palestine, TX, as an off-route point in connection with carrier's otherwise authorized operations. Applicant intends to tack and interline. Supporting shipper: Wal-Mart Stores, Inc., P.O. Box 116, Bentonville, AR 72712.

MC 117119 (Sub-5-45TA), filed January 12, 1981. Applicant: WILLIS SHAW FROZEN EXPRESS, INC., P.O. Box 188, Elm Springs, AR 72728. Representative: L. M. McLean (same address as applicant). *Meat, meat products, meat by-products and articles distributed by meat packinghouses as described in Sections A & C of Appendix I to the Report in Descriptions on Motor Carrier Certificates, 61 M.C.C. 209 & 766 (except hides and commodities in bulk)* from the facilities of Iowa Beef Processors, Inc., at or near Wallula, WA to points in the States of CA, NV, and AZ. Supporting shipper(s): Iowa Beef Processors, Inc., P.O. Box 515, Dakota City, NE 68731.

MC 117119 (Sub-5-46TA), filed January 12, 1981. Applicant: WILLIS SHAW FROZEN EXPRESS, INC., P.O. Box 188, Elm Springs, AR 72728. Representative: L. M. McLean (same address as applicant). *Caulking compound* from (a) St. Louis, MO to La Mirada, CA and from (b) St. Louis, MO to Trenton, NJ. Supporting shipper(s): Thiokol Corporation/Specialty Chemicals Division, P.O. Box 8296, Trenton, NJ 08650.

MC 119345 (Sub-5-1TA); filed January 12, 1981. Applicant: CARRY TRUCKING, INC., Box 265, Downs, KS 67437. Representative: Richard E. Dietz, 118 West Main, Osborne, KS 674373. *Meat and packing house products,* from Downs, KS, points and places in the state of CA. Supporting shipper: Pork Packers International, Inc., Box 158, Downs, KS 67437.

MC 121658 (Sub-5-6TA), filed January 12, 1981. Applicant: STEVE D. THOMPSON TRUCKING, INC., 710 Prairie St., Winnsboro, LA 71295. Representative: Robert L. McArty, P.O. Box 22828, Jackson, MS 39205. *Common regular general commodities (except household goods as defined by the Commission and classes A and B explosives)* serving points in Ascension, Assumption, Cameron, East Baton Rouge, East Feliciana, Iberia, Iberville, Jefferson, Lafourche, Livingston, Orleans, Plaquemines, Pointe Coupee, St., Bernard, St. Charles, St. Helena, St. James, St., John the Baptist , St. Martin, St. Mary, St. Tammany, Tangipahoa, Terrebonne, Vermilion, Washington, West Baton Rouge, and West Feliciana Parishes, LA as off-route points in connection with applicant's authorized regular route operations. Supporting shippers: There are 109 supporting shippers.

Note.—Applicant intends to interline and tack.

MC 125535 (Sub-5-5TA), filed January 12, 1981. Applicant: NATIONAL SERVICE LINES INC. OF NEW JERSEY, 2275 Schuetz Road, Creve Coeur, MO 63141. Representative: (same as applicant). Contract; Irregular. *(1) Paper and paper products and (2) materials, equipment and supplies used in the manufacture and distribution of commodities in (1) above (except commodities in bulk in tank vehicles),* between Albany, NY on the one hand; and on the other points in the U.S. in and east of ND, SD, NE, KS, OK, TX; between Carthage, Glens Falls and Syracuse, NY on the one hand and on the other points in AR, FL, GA, IA, KS, LA, ME, MN, MS, OK, SD, TX, and VT. Supporting shipper: Crown Zellerbach Corporation, 1 River Street, Glens Falls, NY 12801.

MC 126822 (Sub-5-43 TA) filed January 12, 1981. Applicant WESTPORT TRUCKING CO., 15560 South 169 Highway, Olathe, KS 66061. Representative: John T. Pruitt (same as applicant). *Metals and metal products* between points in the U.S., restricted to shipment from, to or between the facilities of S-G Metals Industries, Inc. Supporting shipper: S-G Metals Industries, Inc., 2nd and Riverside, Kansas City, KS.

MC 126822 (Sub-5-44TA), filed January 12, 1981. Applicant: WESTPORT TRUCKING CO., 15560 South 169 Highway, Olathe, KS 66061. Representative: John T. Pruitt (same as applicant). *General commodities (except household goods as defined by the Commission and Class A and B explosives)* between points in the U.S., restricted to shipments from, to, or between the facilities of Western Publishing Company, Inc., Supporting

shipper: Western Publishing Company, Inc., 1220 Mound Avenue, Racine, WI 53404.

MC 128822 (Sub-5-45TA), filed January 12, 1981. Applicant: WESTPORT TRUCKING CO., 15560 South 169 Highway, Olathe, KS 66061. Representative: John T. Pruitt (same as applicant). *Iron and steel angles and channels, particle board, and shelving, and equipment, materials and supplies used in the installation and assembly thereof (except commodities in bulk in tank vehicles)* from Hannibal, MO, Weirton, WV, and Monrovia, CA, on the one hand, and, points in the U.S., on the other, restricted to traffic originating at or destined to the facilities of New Idria Distribution, a subsidiary of Ft. Steuben Material Products. Supporting shipper: New Idria Distribution, Subsidiary of Ft. Steuben Material Products, No. 3 Industrial Loop Drive, Hannibal, MO 63401.

MC 128988 (Sub-5-9TA), filed January 12, 1981. Applicant: JO/KEL, INC., 15560 South 169 Highway, Oalthe, KS 66061. Representative: John T. Pruitt (same as applicant). Contract; Irregular. *Primary metal products and fabricated metal products—STCC 33 and 34* between points in the U.S., restricted to the transportation of shipments from, to, or between the facilities of the Earle M. Jorgensen Company. Supporting shipper: Earle M. Jorgensen Company, P.O. Box 24026, Seattle, WA 98124.

MC 134134 (Sub-5-10TA), filed January 12, 1981. Applicant: MAINLINER MOTOR EXPRESS, 4204 Dahlman Road, P.O. Box 7439, Omaha, NE 68107. Representative: Lavern R. Holdeman, P.O. Box 81849, Lincoln, NE 68501. *Alcoholic beverages (except in bulk),* from Brooklyn and Hammondsport, NY; Jersey City, NJ; Relay and Dundalk, MD and points in their respective commercial zones to the facilities of Federated Distributors, Inc., at or near Chicago, IL. Supporting shipper: Federated Distributors, Inc., 4130 South Morgan, Chicago, IL 60609.

MC 134282 (Sub-5-3TA), filed January 12, 1981. Applicant: ENNIS TRANSPORTATION CO., INC., a Texas Corporation, P.O. Drawer 778, Ennis, Texas 75119. Representative: William D. White, jr., 4200 Republic National Bank Tower, Dallas, Texas 75201, 214/742-1021. *Flat glass* between Navarro County, TX, on the one hand, and, on the other, points in AR, CO, KS, LA, MS, MO, NM, OK and TN. Supporting shipper: Guardian Industries, Corp., P.O. Box 10001, Corsicana, TX 75110.

MC 134405 (Sub-5-15TA), filed January 12, 1981. Applicant: BACON TRANSPORT COMPANY, P.O. Box 1134, Ardmore, OK 73401. Representative: Wilburn L. Williamson, Suite 615-East, The Oil Center, 2601 Northwest Expressway, Oklahoma City, OK 73112. *Fuel oil,* from Ardmore, OK to points in Harris County, TX. Supporting shipper(s): National Petroleum Sales, Inc., Suite 509, 3105 East Shelly Drive, Tulsa, OK 74105.

MC 143594 (Sub-5-6TA), filed January 12, 1981. Applicant: NATIONAL BULK TRANSPORT, INC., P.O. Box 402535, Dallas, TX 75240. Representative: Patrick M. Byrne, P.O. Box 2296, Green Bay, WI 54306. *Commodities as are dealt in or used by manufacturers or distributors of dispersing agents* between points in the U.S. Supporting shipper: Armak Pioneer Chemical Division, Route #73, Box 237, Maple Shade, NJ 08052.

MC 145441 (Sub-5-39TA), filed January 12, 1981. Applicant: A.C.B. TRUCKING, INC., P.O. Box 5130, North Little Rock, AR 72119. Representative: Ralph E. Bradbury, P.O. Box 5130, North Little Rock, AR 72119. *Non-exempt foods or kindred products, (except in bulk),* between the facilities utilized by Lamb-Weston on the one hand, and, on the other, all customer destinations located at points in the U.S. Supporting shipper: Lamb-Weston, Inc., 6600 S. W. Hampton Street, P.O. Box 23517, Portland, OR 97223.

MC 145441 (Sub-R-5-40TA), filed January 12, 1981. Applicant: A.C.B. TRUCKING, INC., P.O. Box 5130, North Little Rock, AR 72119. Representative: Ralph E. Bradbury, P.O. Box 5130, North Little Rock, AR 72119. *Foodstuffs, Dry and Frozen, (except commodities in bulk).* From the plant sites and storage facilities utilized by Stilwell Foods in OK to points in the US in and east of ND, SD, NE, KS, OK, and TX. Supporting shipper: Stilwell Foods, P.O. Box 432, Stilwell, OK 74960.

MC 147196 (Sub-5-18TA), filed January 12, 1981. Applicant: ECONOMY TRANSPORT, INC., P.O. Box 50262, New Orleans, LA 70150. Representative: Donald A. Larousse, P.O. Box 50262, New Orleans, LA 70150. Contract: Irregular. *Commercial Laundry Tumblers, Machines and equipment and parts thereof, Ironers, Irons and related articles* between Jefferson County, KY on the one hand, and, on the other, the 48 states under a continuing contract or contracts with W. M. Cissell Manufacturing Company, Louisville, KY. Supporting shipper: W. M. Cissell Manufacturing Company, 831 South First Street, Louisville, KY.

MC 148107 (Sub-5-2TA), filed January 12, 1981. Applicant: JESSE J. MESA d./b./a. J. J. MESA TRUCKING CO., 1500 S. Zarzamora St., San Antonio, TX 78207. Representative: Ronald Mercier (same address). (1) *Tile* between TX and AZ, CA, CO, NM, OK, UT, OR, ID and WA also in reverse direction; (2) *Materials, equipment and supplies used in the manufacture, sale, or distribution of tile (except in bulk).* Supporting shipper: Aztec Ceramics Corp., 4735 Emil Road, San Antonio, TX 78219

MC 149028 (Sub-5-20TA), filed January 12, 1981. Applicant: TRANS-STATES LINES, INC., P.O. Box 1486, Van Buren, AR 72956. Representative: Larry C. Price (address same as above). *Glass, glassware, glass articles, equipment, materials and supplies used in the manufacture, distribution and assembly of the above named articles,* between Laredo, TX, on the one hand, and, on the other, points in the United States (except AK and HI). Supporting shipper: Riekes Crisa Corporation; 1600 Justo Penn; P.O. Box 2489, Laredo, TX 78041; Licensed Custom House Broker; P.O. Box 1434; Laredo, TX 78040.

MC 149028 (Sub-5-21TA), filed January 12, 1981. Applicant: TRANS-STATES LINES, INC., P.O. Box 1486, Van Buren, AR 72956. Representative: Larry C. Price (address same as above). *Store, hotel and restaurant equipment, fixtures, merchandise and supplies,* between the facilities of Air System Equipment, Inc., at or near Fort Smith, AR, on the one hand, and, on the other, points in the United States (except AK & HI). Supporting shipper: Air Systems Equipment, Inc., 501 Wheeler Ave., Fort Smith, AR 72902.

MC 150425 (Sub-5-12TA), filed January 12, 1981. Applicant: TRANS-CONTINENTAL EXPRESS, INC., P.O. Box D, Clarksville, TX 75426. Representative: Kim G. Meyer, P.O. Box 872, Atlanta, GA 30301. *Chemicals, toilet preparations, shampoo, soap, and such commodities as are dealt in by department, grocery and hardware stores (except foodstuffs, meats and commodities in bulk) and materials and supplies used in the manufacture of the commodities above (except commodities in bulk)* between the facilities of American Cyanamid Co., at or near Pearl, MS on the one hand, and, on the other, points in CT, GA, IL, KS, MA, MI, MO, NJ, OH, PA, TN and TX. Supporting shipper: American Cyanamid Co., Wayne, NJ 07470.

MC 153548 (Sub-5-1TA), filed January 12, 1981. Applicant: CECIL GODDARD, 515 Golf Road, Webb City, MO 64870. Representative: Bruce McCurry, 910 Plaza Towers, Springfield, MO 65804. *Contract* irregular *industrial scales and items used in the manufacture* between Jasper County, MO on the one hand and

points in AL, AR, CT, DE, FL, GA, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, NH, NJ, NY, NC, OH, OK, PA, RI, SC, TN, TX, VT, VA, WV, and WI on the other hand. Supporting shipper: Cardinal Scale Manufacturing Co., 203 E. Daugherty, Webb City, MO 64870.

Agatha L. Mergenovich,
Secretary.

[FR Doc. 81-2161 Filed 1-21-81; 8:45 am]
BILLING CODE 7035-01-M

INTERNATIONAL TRADE COMMISSION

[Investigation 337-TA-69]

Certain Airtight Cast-Iron Stoves; Termination

AGENCY: U.S. International Trade Commission.

ACTION: Termination of investigation as to 21 respondents and issuance of consent orders.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has approved and issued consent orders in the above-referenced investigation, thereby terminating the investigation as to 21 respondents: Abundant Life Farm; White Mountain, Inc.; Dutchwest India, Inc.; International Foundries, Inc.; Lou Ehrlich, Inc.; Worldwide Distributors, Inc.; Himark Enterprises, Inc.; Prebilt Corporation; Futura Energy Products, Inc. (formerly Blaze of California, Inc.); Mr. Bar-B-Q, Inc.; Basco, Inc.; Lechmere Tire and Sales Co.; Sutherland Lumber Co.; Hearth Craft, Inc.; Harbor Sales Co.; Homestead Products; Pay 'N Pak Stores, Inc.; Central Hardware; Belknap, Inc.; Omni Trading Co.; and Ranch-Rite, Inc.

SUPPLEMENTARY INFORMATION: In connection with a complaint filed on May 23, 1979, under section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) of alleged unfair acts and methods of competition in the importation into or sale in the United States of certain airtight cast-iron stoves, the complainants, the Commission investigative attorney, and 21 respondents entered into consent order agreements. Complainants were Aksjelskapet Jotul, a Norwegian company, and Kristia Associates, a Maine corporation. In a notice of investigation published in the Federal Register on July 12, 1979 (44 FR 40732), the Commission stated that the investigation was being undertaken to determine whether respondents' stoves were infringing Jotul's common law trademarks, infringing Jotul's registered U.S. trademarks, being passed off as Jotul products, or being deceptively advertised and marketed.

Copies of the Commission's Action and Order and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the office of the Secretary, U.S. International Trade Commission, 701 E St. NW., Washington, D.C. 20436, telephone 202-523-0161.

FOR FURTHER INFORMATION CONTACT: Jeffrey S. Neeley Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202-523-0359.

By order of the Commission.

Kenneth R. Mason,
Secretary.

Issued: January 12, 1981.

[FR Doc. 81-2234 Filed 1-21-81; 8:45 am]
BILLING CODE 7035-01-M

[Investigation No. 337-TA-69]

Certain Airtight Cast-Iron Stoves; Issuance of Exclusion Order and Cease and Desist Orders

AGENCY: U.S. International Trade Commission.

ACTION: Issuance of exclusion order and cease and desist orders.

SUMMARY: On January 12, 1981, the Commission issued its Action and Order, and Opinion in the above-captioned investigation. The Commission ordered that airtight cast-iron wood-burning stoves which are visually similar to stoves made by Jotul of Norway be excluded from entry into the United States and that respondents Wood Heat, Heritage Stove Co., Hutch Manufacturing Co., Fireplace Distributors, Meteor Design International, and Great Eastern Trading Co. cease and desist from violating section 337 in ways specified in the orders.

SUPPLEMENTARY INFORMATION: This investigation, under section 337 of the Tariff Act of 1930, was instituted by notice published in the Federal Register on July 12, 1979 (44 FR 40732) following receipt of a complaint by Jotul of Norway and Kristia Associates of Portland, Maine. In that notice, the Commission ordered that an investigation be instituted under section 337 to determine whether unfair methods of competition and unfair act exist in the importation or sale in the United States of certain airtight cast-iron wood- and coal-burning stoves. The notice stated that the investigation was being undertaken to determine whether respondents' stoves were infringing Jotul's common law trademarks, being passed off as Jotul's products, infringing Jotul's registered U.S. trademarks, or being deceptively advertised and marketed. The complaint alleged that the effect of these acts was to injure an industry, Kristia Associates (now Jotul USA, Inc.) and the Jotul stove dealers, efficiently and economically operated in the United States, or to restrain trade and commerce in the United States.

Fourteen foreign and eleven domestic firms were named respondents in the original notice of investigation. On October 5, 1979, twenty-six additional firms were added as respondents. On October 16, 1979, one additional foreign firm was added as a respondent. During the course of the investigation, four firms were terminated as respondents upon proof that they had ceased all involvement in the stove business. The investigation has been terminated as to twenty-five other respondents that have executed consent order agreements or settlement agreements. The remaining respondents failed to appear and were found by the administrative law judge to be in default. The Commission's Action and Order, and Opinion issued on January 12, 1981, is concerned with those defaulting respondents.

The Commission's Action and Order, and the Commission Opinion in support thereof is available in the office of the Secretary, U.S. International Trade Commission, 701 E Street, NW., Washington, D.C. 20436, telephone 202-523-0161.

FOR FURTHER INFORMATION CONTACT: Jeffrey Neeley, Esq., Office of the General Counsel, U.S. International Trade Commission, 701 E Street, NW., Washington, D.C. 20436, telephone 202-523-0359.

By order of the Commission.

Issued: January 12, 1981.

Kenneth R. Mason,
Secretary.

[FR Doc. 81-2235 Filed 1-21-81; 8:45 am]
BILLING CODE 7035-01-M

[Investigation No. 337-TA-89]

Certain Apparatus for the Continuous Production of Copper Rod; Denial of Motions Requesting Changes in Temporary Relief

AGENCY: U.S. International Trade Commission.

ACTION: Denial of request for issuance of temporary cease and desist order and denial of request for entry of goods without bond.

SUPPLEMENTARY INFORMATION: On December 2, 1980, Southwire Company, complainant in the above-captioned investigation, filed a petition for additional preliminary relief (motion 69-23) with the Commission. Southwire requested that the Commission issue a temporary cease and desist order prohibiting the Krupp and Phelps Dodge respondents from constructing and starting up the rolling mill in the Phelps Dodge facility in Norwich, Connecticut. On December 12, 1980, Krupp filed an answer to Southwire's motion and also asked for a modification of the existing temporary exclusion order based upon a redesign of the rolling mill (motion 69-24). The Phelps Dodge respondents supported the petition of Krupp on the two motions. The Commission investigative attorney supported the position of Southwire on the two motions. On January 9, 1980, the Commission vote to deny both motions.

Copies of the Commission's Action and Order and other public documents are available in the Office of the Secretary, U.S. International Trade Commission, 701 E Street, NW., Washington, D.C. 20436, telephone 202-523-0161.

FOR INFORMATION CONTACT: Jeffrey Neeley, Esq., Office of the General Counsel, U.S. International Trade Commission, 701 E Street, NW., Washington, D.C. 20436, telephone 202-523-0359.

By order of the Commission.

Issued: January 12, 1981.

Kenneth R. Mason,

Secretary

[FR Doc. 81-2258 Filed 1-[illegible]; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-68]

Certain Spring Assemblies and Components Thereof, and Methods of Their Manufacture

Notice

Notice is hereby given that a prehearing conference previously scheduled for January 16, 1981 (45 FR 81688, December 11, 1980) will be held at 9 a.m. on February 2, 1981, immediately prior to the hearing.

The Secretary shall publish this notice in the Federal Register.

Issued: January 9, 1981.

Janet D. Saxon,

Administrative Law Judge.

[FR Doc. 81-2259 Filed 1-[illegible]; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-62]

Certain Headboxes and Papermaking Machine Forming Sections for the Continuous Production of Paper, and Components Thereof; Hearing on the Presiding Officer's Recommendation and on Relief, Bonding, and the Public Interest, and the Schedule for Filing Written Submissions

AGENCY: U.S. International Trade Commission.

ACTION: The scheduling of oral arguments and briefing for investigation No. 337-TA-62, Certain Headboxes and Papermaking Machine Forming Sections for the Continuous Production of Paper, and Components Thereof.

Notice is hereby given that the presiding officer has issued a recommended determination that there is a violation of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the unauthorized importation into the United States and sale of the headboxes and papermaking machine forming sections for the continuous production of paper, and components thereof, which are the subject of the Commission's investigation. Accordingly, the recommended determination and the record of the hearing have been certified to the Commission for review and a Commission determination. Interested persons may obtain copies of the nonconfidential version of the presiding officer's recommendation (and all other public documents on the record of the investigation) by contacting the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Room 161, Washington, D.C. 20436, telephone 202-523-0161.

COMMISSION HEARING: The Commission will hold a public hearing on February 24, 1981, in the Commission's Hearing Room, 701 E Street NW., Washington, D.C. 20436, beginning at 10:00 a.m. The hearing will be divided into two parts. First, the Commission will hear oral arguments on the presiding officer's recommended determination that a violation of section 337 of the Tariff Act of 1930 exists. Second, the Commission will hear presentations concerning appropriate relief, the effect that such relief would have upon the public interest, and the proper amount of the bond during the Presidential review period, in the event that the Commission determines that there is a violation of section 337. These matters will be heard on the same day in order to facilitate the completion of this investigation within time limits established under law and to minimize the burden of this hearing upon the parties. The procedure for each portion of the hearing follows.

ORAL ARGUMENTS: Any party to the Commission's investigation or any interested Government agency may present an oral argument concerning the presiding officer's recommended determination. Such arguments will be limited to 30 minutes. Each party or interested agency may reserve 10 minutes of its allotted time for rebuttal. The oral arguments will be held in the following order: complainant, respondents, interested agencies, and the Commission investigative attorney. Any rebuttals will be held in this order: respondents, complainant, interested agencies, and the Commission investigative attorney.

ORAL PRESENTATIONS ON RELIEF, BONDING, AND THE PUBLIC INTEREST: If the Commission finds that a violation of section 337 has occurred, it may issue (1) an order which could result in the exclusion of the subject articles from entry into the United States or (2) an order which could result in the respondents being required to cease and desist from engaging in unfair methods of competition or unfair acts in the importation and sale of such articles. Accordingly, the Commission is interested in hearing presentations which address the form of relief, if any, which should be ordered.

If the Commission finds that a violation of section 337 has occurred and orders some form of relief, the President has 60 days to approve or disapprove the Commission's action. During this period, the subject articles would be entitled to enter the United States under a bond in an amount determined by the Commission and prescribed by the Secretary of the Treasury. The Commission is therefore interested in hearing presentations concerning the amount of the bond, if any, which should be imposed.

If the Commission concludes that a violation of section 337 has occurred and orders some form of relief, it must consider the effect of that relief upon the public interest. The factors which the Commission will consider include the effect that an exclusion order or a cease and desist order would have upon (1) the public health and welfare, (2) competitive conditions in the U.S. economy, (3) the U.S. production of articles which are like or directly competitive with those which are the subject of the investigation, and (4) U.S. consumers.

Following the oral arguments on the presiding officer's recommendation, parties to the investigation, interested agencies, public-interest groups, or any interested members of the public may make oral presentations on the issues of

relief, bonding, and the public interest. Such presentations will be limited to 15 minutes. Participants will be given an additional 5 minutes for closing arguments after all presentations have been concluded. The Commission investigative attorney will be allotted the full time available to a party. Oral presentations on relief, bonding, and the public interest will be heard in the same order as oral arguments on the recommended determination.

WRITTEN SUBMISSIONS: In order to give greater focus to the hearing, the parties to the investigation, interested agencies, and the Commission investigative attorney are encouraged to file briefs on the issues of violation (to the extent they have not already briefed that issue in their written exceptions to the presiding officer's recommended determination), remedy, bonding, and the public interest. Such briefs must be filed not later than the close of business on February 17, 1981. During the course of the hearing, the parties may be asked to file posthearing briefs.

NOTICE OF APPEARANCE: Written requests to appear at the Commission hearing must be filed with the Office of the Secretary by Feburary 17, 1981.

ADDITIONAL INFORMATION: The original copy and 19 true copies of all briefs and written comments must be filed with the Office of the Secretary not later than February 17, 1981. Any person desiring to discuss confidential information, or to submit a document (or a portion thereof) to the Commission in confidence, must request in camera treatment unless the information has already been granted such treatment by the presiding officer. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. Documents or arguments containing confidential information approved by the Commission for in camera treatment will be treated accordingly. All nonconfidantial written submissions will be available for public inspection at the Secretary's Office.

Notice of this investigation was published in the Federal Register of April 8, 1980 (45 FR 23832).

FOR FURTHER INFORMATION CONTACT: Phyllis N. Smithey, Esq., Office of the General Counsel, Room 224, U.S. International Trade Commission, telephone 202-523-0321.

By order of the Commission.

Issued: January 12, 1981.

Kenneth R. Mason,
Secretary.

[FR Doc. 81-2221 Filed 1-21-81; 8:45 am]
BILLING CODE 7020-02-M

[Investigation No. 337-TA-85]

Certain Surface Grinding Machines and Literature for the Promotion Thereof; Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. 1337.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on December 15, 1980, under section 337 of the Tariff Act of 1930 (19 U.S.C. 1337), on behalf of Brown and Sharpe Mfg. Co., Precision Park, North Kingstown, R.I. 02852. The complaint alleges unfair methods of competition and unfair acts in the importation of certain surface grinding machines and literature for the promotion thereof into United States, or in their sale, by reason of copyright and trademark infringement, palming off, reverse palming off, false designation of origin, trade libel, and misappropriation of trade dress and trade name, the effect or tendency of which is to destroy or substantially injure an industry, efficiently and economically operated, in the United States.

The complainant requests that, during the investigation, a temporary exclusion of the imports in question be ordered and that, after a full investigation, a permanent exclusion order and cease and desist order be issued by the Commission.

AUTHORITY: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and in section 210.12 of the Commission's Rules of Practice and Procedure.

SCOPE OF THE INVESTIGATION: Having considered the complaint, the U.S. International Trade Commission, on January 14, 1981, ordered that—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337(b)), an investigation be instituted to determine whether there is reason to believe there is a violation and whether there is a violation of subsection (a) of section 337 in the unlawful importation of certain surface grinding machines and literature for the promotion thereof into the United States, or in their sale, by reason of copyright and trademark infringement, palming off, reverse palming off, false designation of origin, trade dress and trade name, the effect or tendency of which is to destroy or substantially injure an industry efficiently and economically operated, in the United States;

(2) For the purpose of this investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is
Brown & Sharpe Mfg. Co., Precision Park, North Kingstown, R.I. 02852.

(b) The respondents are the following companies allegedly engaged in the unlawful importation of such articles into the United States, or in their sale, and are parties upon which the complaint is to be served:

Lian Feng Machine Co., 93 Chung Shan Road, Fengyuan/Taiwan, 420 R.O.C.
Jet Equipment and Tool, 1901 Jefferson Avenue, Tacoma, WA. 98402.
Ramco Machinery Sales, 16128 Ledwell Street, Van Nuys, CA. 91406.
Jones and Henry Tool Co., 2910 South Santa Fe Avenue, Los Angeles, CA. 90058.
Langford Machinery, 1516 South Grand Avenue, Santa Ana, California 92705.
Performance Machine Tool, 101 Timberline Court, Danville, CA. 94526.
Cactus State Machinery, 2737 West McDowell, Phoenix, AZ. 85009.
Sigma Machinery Inc., 8230 Haskell Avenue, Van Nuys, CA. 91406.
Select Machine Tool and Supply Co., 7606 South Ramis Street, Bellgarden, CA. 90302.
Casslere Machinery Company, 145 Crary Street, Providence, R.I. 02903.
KBC Machinery, 6300 Eighteen Mile Road, Sterling Heights, MI. 48077.
Ralmike's Tool-A-Rama, 4405 South Clinton Avenue, South Plainfield, N.J. 07080.
Bob's Machinery Sales, 1221 East 9 Mile Road, Ferndale, MI. 48220.

Although listed as a proposed respondent in the complaint, H. Leach Machinery Company has not been named a party respondent in this investigation because that firm has entered into a settlement agreement with the complainant which provides that Leach will cease and desist from the importation and sale of surface grinding machines manufactured by Lian Feng.

(c) For the purpose of the investigation so instituted, Louis S. Mastriani, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436, is hereby named Commission investigative attorney, a party to this investigation; and

(3) For the investigation so instituted, Donald K. Duvall, Chief Administrative

Law Judge, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436, shall designate the presiding officer.

SUPPLEMENTARY INFORMATION:

Responses must be submitted by the named respondents in accordance with § 210.21 of the Commission's Rules of Practice and Procedure (19 CFR 210.21). Pursuant to §§ 201.16(d) and 210.21(b) of the rules, such responses will be considered by the Commission if received not later than twenty (20) days after the date of service of the complaint. Extensions of time for submitting a response will not be granted unless good and sufficient cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the presiding officer and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter both a recommended determination and a final determination containing such findings.

The complaint, except for any confidential information contained therein, is available for inspection during official working hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436, telephone 202-523-0161.

FOR FURTHER INFORMATION CONTACT:

Louis S. Mastriani, Commission investigative attorney, Unfair Import Investigations Division, U.S. International Trade Commission, telephone 202-523-0480.

Issued: January 16, 1981.
By order of the Commission.

Kenneth R. Mason,
Secretary.

[FR Doc. 81-2289 Filed 1-21-81; 8:45 am]
BILLING CODE 7020-02-M

[332-123]

Probable Economic Effect on Domestic Industries of the Designation of the Peoples Republic of China as a Beneficiary Developing Country for Purposes of the U.S. Generalized System of Preferences

AGENCY: United States International Trade Commission.

ACTION: Institution of an investigation under section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)) at the request of the President as transmitted through the U.S. Trade Representative (USTR) for the purpose of providing the USTR with advice as to the probable economic effect on domestic industries producing articles like or directly competitive with GSP eligible articles, and on consumers, or designating the Peoples Republic of China (PRC) as a beneficiary developing country for purposes of the GSP.

EFFECTIVE DATE: January 12, 1981.

FOR FURTHER INFORMATION CONTACT:

Agricultural and forest products, Mr. Edward Furlow, 202-724-0066.
Textiles and apparel, Mr. Reuben Schwartz, 202-523-0114.
Chemicals, Dr. Aimison Jonnard, 202-523-0423.
Minerals and metals, Mr. Larry Brookhart, 202-523-0275
Machinery and equipment, Mr. Aaron Chesser, 202-523-0353.
General manufactures, Mr. Walter Trezevant, 202-724-1719.

All of the above are in the Commission's Office of Industries. For information on legal aspects of the investigation contact Mr. William Gearhart of the Commission's Office of the General Counsel at 205-523-0487.

SUPPLEMENTAL INFORMATION:

Background

In the Agreement on Trade Relations between the United States of America and the Peoples Republic of China (PRC) signed on July 7, 1979, the United States recognized the PRC as a developing country. The PRC has indicated its desire to be designated as a beneficiary developing country under the U.S. Generalized System of Preferences (GSP) as soon as it fulfills the special conditions applicable to communist countries which are specified in section 502(b)(1) of the Trade Act of 1974 (19 U.S.C. 2462(b)(1)). The PRC has, the USTR has advised, already fulfilled part of those conditions.

The USTR, in his letter received December 22, 1980, requesting the investigation, asked that the Commission's advice specifically identify each GSP eligible article in the Tariff Schedules of the United States for which GSP duty-free imports from the PRC would, in the Commission's judgment, seriously adversely affect a domestic industry. the USTR asked that the Commission's advice be provided not later than July 1, 1981.

Public Hearing

A public hearing in connection with the investigation will be held in the Commission Hearing Room, 701 E Street, NW., Washington, D.C. 20436, beginning at 10:00 a.m., e.s.t., on April 21, 1981, and continued on April 22 and 23, 1981, as required. All persons shall have the right to appear by counsel or in person, to present information, and to be heard. Requests to appear at the public hearing should be filed with the Secretary, United States International Trade Commission, 701 E Street NW., Washington, D.C. 20436, not later than noon, April 16, 1981.

Written submissions

In lieu of or in addition to appearances at the public hearing, interested persons are invited to submit written statements concerning the investigation. Commercial or financial information which a submitter desires the Commission to treat as confidential must be submitted on separate sheets of paper, each clearly marked 'Confidential Business Information" at the top. All submissions requesting confidential treatment must conform with the requirements of section 201.6 of the Commission's *Rules of Practice and procedure* (19 CFR 201.6). All written submissions, except for confidential business information, will be made available for inspection by interested persons. To be assured of consideration by the Commission, written statements should be submitted at the earliest practicable date, but no later than May 15, 1981. All submissions should be addressed to the Secretary at the Commission's office in Washington, D.C.

Issued: January 13, 1981.
By order of the Commission:

Kenneth R. Mason,
Secretary.

[FR Doc. 81-2283 Filed 1-21-81; 8:45 am]
BILLING CODE 7020-02-M

[332-122]

Study of the Economic Impact on the Domestic Jewelry Industry of the Subdivision of Item 740.10 of the Tariff Schedules of the United States for Purposes of the Generalized System of Preferences

AGENCY: United States International Trade Commission.

ACTION: At the request of the Committee on Finance, United States Senate, the Commission has instituted investigation No. 332-122 under section 332(b) of the Tariff Act of 1930 (19 U.S.C. 1332(b)), for the purpose of studying the economic

impact on the domestic jewelry industry of the subdivision of item 740.10 of the Tariff Schedules of the United States (TSUS) for purposes of the Generalized System of Preferences. The scheduled subdivision consists of five new TSUS items comparable to the existing 7-digit statistical breaks under TSUS item 740.10.

EFFECTIVE DATE: January 6, 1981.

FOR FURTHER INFORMATION CONTACT: Mr. Peter Bodde, General Manufactures Division, Office of Industries, U.S. International Trade Commission, Washington, D.C. 20436 (Telephone 202-724-1730).

SUPPLEMENTAL INFORMATION:

Public Hearing

A public hearing in connection with the investigation will be held in the conference room of the Biltmore Hotel, Kennedy Plaza, Providence, RI on February 19, 1981 beginning at 10:00 a.m. All persons shall have the right to appear by counsel or in person, to present information, and to be heard.

Written Submissions

In lieu of or in addition to appearances at the public hearing, interested persons are invited to submit written statements concerning the investigation. Commercial or financial information which a submitter desires the Commission to treat as confidential must be submitted on separate sheets of paper, each clearly marked "Confidential Business Information" at the top. All submissions requesting confidential treatment must conform with the requirements of section 201.6 of the Commission's *Rules of Practice and Procedure* (19 CFR 201.6). All written submissions, except for confidential business information, will be made available for inspection by interested persons. To be assured of consideration by the Commission, written statements should be submitted at the earliest practicable date, but no later than February 24, 1981. All submissions should be addressed to the Secretary at the Commission's office in Washington, D.C.

Issued: January 9, 1981.
By order of the Commission:

Kenneth R. Mason,
Secretary.

[FR Doc. 81-2280 Filed 1-21-81; 8:45 am]
BILLING CODE 7020-02-M

DEPARTMENT OF JUSTICE

Office of the Attorney General

[Order No. 926-81]

Designating Stephen J. Wilkinson as the Representative From the Department of Justice on the Administrative Committee of the Federal Register

By virtue of the authority vested in me by 44 U.S.C. 1506, I hereby designate Stephen J. Wilkinson of the Office of Legal Counsel as the representative of the Department of Justice on the Administrative Committee of the Federal Register.

Order No. 828-79, of April 16, 1979, is revoked.

This order is effective on January 27, 1981.

Dated: January 13, 1981.

Benjamin R. Civiletti,
Attorney General.

[FR Doc. 81-2128 Filed 1-21-81; 8:45 am]
BILLING CODE 4410-01-M

Drug Enforcement Administration

Importation of Controlled Substances; Application

Pursuant to 21 U.S.C. 958(a) and § 1311.42(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on October 30, 1980, Arenol Chemical Corporation, 40-33 23rd Street, Long Island City, New York 11101, made application to the Drug Enforcement Administration (DEA) for registration as an importer of the basic class of controlled substances phenylacetone (drug code 8501).

Any such person registered as a bulk manufacturer of such substances or who has made application therefor may file written comments on or objections to the issuance of the proposed registration, and may file a written request for a hearing on the application in accordance with 21 CFR 1301.54 and in the form prescribed by 21 CFR 1316.47.

Any such comments, objections or requests for a hearing may be addressed to the Administrator, Drug Enforcement Administration, United States Department of Justice, 1405 I Street, NW, Washington, D.C. 20537, Attention: Federal Register Representative (Room 1203), and must be filed no later than February 23, 1981.

Dated: January 15, 1981.

Peter B. Bensinger,
Administrator.

[FR Doc. 81-2273 Filed 1-21-81; 8:45 am]
BILLING CODE 4410-09-M

Office of Juvenile Justice and Delinquency Prevention

Publication of Final OJJDP Continuation Funding Policy

AGENCY: Office of Juvenile Justice and Delinquency Prevention, Justice.

ACTION: Publication of final OJJDP continuation funding policy.

SUMMARY: Notice is hereby given that the Office of Juvenile Justice and Delinquency Prevention, pursuant to the Juvenile Justice and Delinquency Prevention Act of 1974, as amended, proposes to publish in final form, the Continuation Policy for all grants awarded under the authority of the Juvenile Justice and Delinquency Prevention Act.

This announcement does not address OMB Circular A-95 Clearance requirements which are addressed in the specific OJJDP program announcements.

The Federal Catalogue of Domestic Assistance number for Special Emphasis and Technical Assistance is 16.541; the Federal Catalogue of Domestic Assistance number for Allocation to States is 16.540.

For additional information, please contact Mr. Vermont R. McKinney, Office of Juvenile Justice and Delinquency Prevention, 633 Indiana Ave., NW., Washington, D.C. 20531. Telephone: 202/724-7755. The proposed text is as follows:

RESPONSES TO COMMENTS RECEIVED REGARDING PROPOSED CONTINUATION POLICY

The Office of Juvenile Justice and Delinquency Prevention (OJJDP) received fourteen letters in response to the proposed Continuation Policy for OJJDP Grants. An analysis of comments indicates that almost all responses were supportive of the proposed policy. Responses were received from a variety of public and private non-profit youth serving agencies and many useful suggestions and recommendations were made.

A. Responsiveness to Section 228(a)

Comment

Two comments were received questioning the responsiveness of the proposed policy to Section 228(a) of the Juvenile Justice and Delinquency Prevention Act.

Response

Subsequent to publication of the draft policy the Juvenile Justice Amendments of 1980 were enacted on December 8, 1980 (Pub. L. 96-509). These amendments deleted Section 228(a) of the Juvenile Justice and Delinquency Prevention Act of 1974, as amended through 1977. Thus, the Act no longer establishes a continuation funding policy.

Congress never intended that Juvenile Justice Act categorical programs be considered entitlement programs. However, OJJDP believes that Congress did intend, and has not removed the Office's ability to promulgate, a policy permitting long term funding under criteria established by OJJDP.

B. Formula Grants

Comment

One commentator suggested that the following be added to the second sentence under *Formula Grants Program* • • • "the applicant continues to meet identified needs." This commentator also suggested that the last sentence in this Section be deleted as it is inconsistent with first sentence of the same paragraph.

Response

No addition has been made to the second sentence as such wording is superfluous. The last sentence has not been deleted but rather incorporated into the second paragraph. OJJDP does not consider it to be inconsistent to not mandate states to adopt a categorical funding policy but at the same time encourage them to formulate policies that are consistent with that policy. It now reads as follows:

"However, State Councils, with the assistance and advice of the State Advisory Group, are strongly encouraged to formulate specific policy to govern the continuation of carefully chosen and successful action programs and projects funded with formula grant funds, beyond the minimum period of funding established in the state plan that is consistent with the policy established herein as applicable to categorical programs and projects awarded by OJJDP."

C. Institutionalization

Comment

One commentator strongly supports the principle of institutionalization, suggesting that the principle of institutionalization should be emphasized as part of the continuation criteria.

Response

OJJDP supports the principle of institutionalization. Under the *General Continuation Criteria* Section in the policy statement, Criterion No. 4 addresses the principle of institutionalization and reads as follows:

"Where action to obtain funding from other sources for project activities is required by a program announcement or by terms of the grant award, OJJDP will consider the extent to which the grantee has documented efforts to obtain funding from other governmental or private sources and submitted an acceptable plan to continue such efforts over the period of continuation funding."

D. Assumption-of-Cost

Comment

Two respondents support a strong assumption-of-cost policy for JJ programs and suggest that efforts to obtain local funding be emphasized as part of continuation criteria.

Response

The concept of assumption-of-cost implies a limit on the length of Federal funding. Because juvenile justice program and project grantees have traditionally had difficulty in achieving continuity of funding, particularly in obtaining state or local government support when private or Federal government fund sources have ceased to be available, OJJDP does not believe it is desirable to set fund length limitations that apply to all programs and projects.

E. Specificity of Continuation Criteria Language

Comment

Several comments were received suggesting that the Continuation Criteria should be more specific and points should be more clearly enumerated.

Response

Measures of satisfactory performance, evidence of attempts to secure funding, program innovation and other specific criteria will be established in program announcements and cannot be elicited on a generic basis as these matters vary with different program areas.

F. Continuation Criteria and Satisfactory Performance

Comment

One commenter stated that Criterion #5 is beyond the intent of the JJDP Act's general continuation policy in that a criteria that measures "• • • efforts to obtain funding • • •" is not directly related to program evaluation, and if that criterion #5 is retained in the final policy guideline, what is meant by "• • • efforts to obtain funding • • •" should be clearly specified.

Response

The General Continuation Criteria have been separated from elements that will be considered in determining whether a project has met satisfactory performance requirements.

GRANT CONTINUATION POLICY OF THE OFFICE OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION (OJJDP)

The Office of Juvenile Justice and Delinquency Prevention (OJJDP) published for public comment on August 8, 1980) 45 FR 52947) a proposed continuation policy. The proposed policy implemented section 228(a) of the Juvenile Justice and Delinquency Prevention Act, as amended through 1977. Congressional action (the Juvenile Justice amendments of 1980, Pub. L. 96-509, December 8, 1980) has subsequently resulted in the deletion of Section 228(a) in order to clarify that Congressional policy neither establishes a right nor an entitlement to funding of OJJDP categorical fund recipients. The deletion, however, does not preclude OJJDP's adoption of a continuation policy. Therefore, OJJDP, under the general authority to promulgate regulations to implement the Act, Section 201(d) of the Juvenile Justice and Delinquency Prevention Act of 1974, as amended, is publishing this policy in final form.

The Office of Juvenile Justice and Delinquency Prevention recognizes the historic difficulty juvenile justice program and project grantees have had in achieving continuity of funding, particularly in obtaining state or local government support when private or Federal government fund sources have ceased to be available. OJJDP is interested in addressing the problem by assiting in the institutionalization of carefully chosen and successful programs and projects, in particular, action programs and projects operated by public agencies and private non-profit organizations that result in an improvement of or the direct delivery of services to juveniles.

OJJDP categorical grants are currently awarded under a Project Period System of support in accordance with Instruction I 4040.2, September 14, 1979. Under the Project Period System of funding grants, projects which are intended to receive financial support for more than one year may be programmatically approved for multiple annual budget periods. Support for future budget periods within the project period is subject to specific conditions set forth in the Instruction and the Grant Award Agreement, such as, availability of Congressional appropriations,

compliance with the terms and conditions of the grant award, and the continued best interest of the government. The funding of noncompeting continuation grants (i.e., grants in support of a budget period after the first budget period, but within the approved project period) remains subject to I 4060.2 and the terms of the project period award document.

The policy set forth below applies only to an OJJDP grantee's eligibility for project period extensions (or refunding of single budget period awards) beyond the initial project (or single budget) period, through a competing project extension application. A competing project extension application is the equivalent of an application for continuation funding. Submission dates, contemplated project periods, levels of support, and other detail related to the submission of competing project period extension applications will be announced by OJJDP for each program.

Policy

It is the policy of OJJDP that, subject to the limitations and exclusions noted below, action programs and projects funded through grants awarded under the Juvenile Justice Act will be eligible for continuation funding beyond their initial project period based on the general continuation criteria specified below and any additional criteria for, or limitations on, continuation specified in initial or continuation program announcements issued by the Office of Juvenile Justice and Delinquency Prevention and published in the Federal Register.

Continuation funding eligibility is also conditioned upon any limitations specified in grant award agreements in force at the time the grant expires. Eligible applicants meeting the general continuation criteria will be considered for refunding provided that they have received a satisfactory evaluation as determined under the satisfactory evaluation principles stated herein and in accordance with specific performance measures indicated in an applicable program announcement or the terms and conditions of the grant award.

Projects that are continued will be funded at a level necessary to sustain essential project activities whether below, at, or above prior funding levels as OJJDP determines to be appropriate and necessary to successful continuation.

OJJDP will announce annually in the Federal Register the eligible continuation program areas, the level of funds that will be available, application submission deadlines, and any additional criteria which applicants must meet in order to qualify to receive continuation funding. Subsequent to Fiscal Year 1981 this announcement shall be made during the first quarter of each Fiscal Year. Where fund limitations and program priorities do not permit the funding of all eligible projects within a continuation program, a competitive continuation program will be announced and all eligible applicants will be rated and ranked in accordance with both the general criteria and any additional criteria that have been established for the particular program. Only those applicants receiving the highest scores up to the level of funds available for continuation of the particular program would then receive continuation funding.

This policy does not apply to OJJDP contractors or recipients of funds under cooperative agreements because of the nature of activities carried out under those funding instruments. It also does not apply to sub-recipients (sub-grantees or contractors) of OJJDP grantees, except that where a state criminal justice council or local government is serving as the grantee of categorical grant funds, for administrative purposes, the sub-grantee will be eligible for continuation in accordance with the policies herein.

Program Coverage and Exclusions

The Office of Juvenile Justice and Delinquency Prevention administers five programs under the authority of the Juvenile Justice Act:

1. Special Emphasis Prevention and Treatment
2. National Institute for Juvenile Justice and Delinquency Prevention
3. Concentration of Federal Effort
4. Technical Assistance
5. Formula Grant

Special Emphasis Prevention and Treatment

Under the Special Emphasis Prevention and Treatment Program established in Part B, Subpart II of the Act, Sections 224–225, funds are to be used for the promotion of programs designed to address twelve specific statutory program objectives. Most Special Emphasis programs are action programs intended to result in an improvement of or the direct delivery of services to juveniles. Action programs are those programs designed to employ specific methods and strategies to achieve identified objectives within a specified time frame.

Occasionally, OJJDP will use Special Emphasis funds to support research and development programs in conjunction with the National Institute for Juvenile Justice and Delinquency Prevention. Such programs are designed to test methodology and strategy and refine program approaches for replication if the program is effective. Projects funded under programs designated in advance as research and development programs are not eligible for continuation based on the criteria established under this policy. They will be funded only for the specific period of time needed to demonstrate the efficacy of a particular program approach, i.e., the project period plus any extensions or refunding necessary to complete the project.

National Institute for Juvenile Justice and Delinquency Prevention

The National Institute for Juvenile Justice and Delinquency Prevention, established under Part C of the Act has statutory authority to perform the following functions:

(1) Information collection and dissemination

(2) Research

(3) Program evaluation

(4) Demonstration of innovative techniques and methods for the prevention and treatment of delinquency

(5) Training

(6) Development of standards for juvenile justice and model state legislation.

The functions designated under (1), (2), (3), and (6) above represent discrete or time-limited activities to which the rationale for continuation funding is inapplicable. Where funds for such activities are awarded by the Institute, funding length shall be in accordance with the applicable program announcement and award document. The length of funding for projects funded under programs designated as demonstrations (4) similarly shall be determined by the program announcement and award document and excluded from the continuation policy. Demonstration programs serve a limited purpose and are intended, by the nature of their design, to be funded only for the period of time needed to demonstrate the efficacy of particular innovative techniques and methods which have been identified as having a potential to contribute to the prevention and treatment of delinquency.

Training program and project grants (5) that are funded by the Institute shall be subject to the general continuation policy and criteria set forth herein, where the objective of the training program or project is to provide ongoing training that will result in an improvement of the juvenile justice system or the direct delivery of services to youth.

Concentration of Federal Effort

Funds under this program are used primarily for the support of the Federal Coordinating Council on Juvenile Justice and Delinquency Prevention and the National Advisory Committee for Juvenile Justice and Delinquency Prevention.

These funds may also be used to assist operating agencies, to support evaluations and studies of Federal programs and activities, to implement coordinated Federal juvenile delinquency programs, to develop reports, to provide technical assistance at the Federal level, and to enter into joint funding agreements with other Federal agencies.

Because of the administrative nature of most of these activities and the demonstration purpose of coordinated or jointly funded action programs and projects which OJJDP might fund under Concentration of Federal Effort authority, these funds shall not be subject to the continuation policy and criteria specified herein unless specifically stated in a program announcement issued by OJJDP.

Technical Assistance

The purpose of the OJJDP Technical Assistance Program is to assist state and local governments, juvenile courts, public and private agencies, institutions, and individuals in the planning, establishment, funding, operation, or evaluation of juvenile delinquency programs. By its nature, technical assistance is a discrete activity performed by a technical assistance provider for identified target recipients over a specific period of time. Therefore, all OJJDP technical assistance grants will be funded only for the period of time specified in the applicable program announcement or award document plus any extensions or refunding necessary to complete the technical assistance activity.

Formula Grant Program

Under the Formula Grant Program established in Part B, Subpart I of the Act, Sections 221–223, LEAA regulations (28 CFR 31.703(j)) require that the State Council establish a minimum project period for each juvenile justice and delinquency prevention program described in the state plan. Projects funded under the program are then entitled to funding for the established project period unless there is a substantial decrease in formula grant funding to the state, the applicant fails to comply with the terms and conditions of the grant award, or fails to receive a satisfactory annual evaluation.

The criteria established herein for continuation funding are not applicable to the formula grant program. However, State Councils, with the assistance and advice of the State Advisory Group, are strongly encouraged to formulate a specific policy to govern the continuation of carefully chosen and successful action programs and projects funded with formula grant funds, beyond the minimum period of funding established in the state plan, that is consistent with the policy established herein as applicable to categorical programs and projects awarded by OJJDP.

Continuation Funding Eligibility Criteria and Standards

Eligible applicants meeting the general continuation criteria will be considered for refunding provided that they have received a satisfactory evaluation as determined under the satisfactory evaluation standards. The general continuation criteria and satisfactory evaluation standards are as follows:

A. *General Continuation Criteria*

The following general criteria will be utilized by OJJDP in making continuation funding determinations for projects initially funded under programs that qualify for continuation consideration under the above OJJDP policy:

(1) The project has proven to be cost effective in meeting the objectives of the program and has significantly contributed to meeting the goals and objectives of the Act and the program priorities established by OJJDP;

(2) The grantee has documented the need for continuation of project activities in order to achieve project goals, outcomes, and objectives;

(3) All outstanding audit exceptions have been cleared;

(4) Where action to obtain funding from other sources for project activities is required by a program announcement or by the terms of the grant award, OJJDP will consider the extent to which the grantee has documented efforts to obtain funding from other governmental or private sources and submitted an acceptable plan to continue such efforts over the period of the continuation funding;

(5) Allocated funds are available for the OJJDP program under which the program and project were funded;

(6) Circumstances indicate that continued funding would be in the best interests of the government;

(7) Where a competitive continuation program is announced by OJJDP, to merit an award of funds, the project's rating is sufficiently high in the established rank order to merit an award from available funds.

B. *Satisfactory Evaluation.*

The following evaluation standards will be used by the OJJDP Administrator to determine whether a program or project has met requirements for a satisfactory evaluation:

(1) Program or project performance has been satisfactory as established by:

(a) Project level monitoring and/or audit of fiscal and program performance which demonstrate that the project has conformed with the time/task plans set forth in the application, with OJJDP reporting requirements, evaluation requirements, and with sound financial procedures, and

(b) Monitoring assessment which demonstrates that the project has conformed with the goals, objectives and procedures set forth in the grant document with the intended degree of implementation as indicated by the coverage of target sites, audiences or clients, with sound program design requirements and program strategies as determined by available research or evaluation data, with program change requirements as determined by management information system and/or evaluation data, and with project outcome (impact) requirements as determined by a management information system and/or evaluation (if intermediate or final project results are expected to materialize by the time of the continuation decision, in accordance with the program design).

It is an OJJDP requirement, that for each project, specific performance measures be set forth in the grant document consistent with the project's goals, objectives and program design;

(2) The project has substantially complied with Federal statutory and guideline requirements and the terms and conditions of the grant award.

Ira M. Schwartz,

Administrator, Office of Juvenile Justice and Delinquency Prevention.

[FR Doc. 81-2199 Filed 1-21-81; 8:45 am]

BILLING CODE 4410-18-M

NATIONAL TRANSPORTATION SAFETY BOARD

[N-AR 81-4]

Reports, Recommendations and Responses; Availability

Pipeline Accident Reports

Brief Format, Issue No. 1, 1980 (NTSB-PAB-80-1).—This publication, released by the National Transportation

Safety Board on January 12, contains briefs of 42 selected pipeline accidents, occurring during the calendar years 1976, 1977, 1978, and 1979. The brief format presents basic facts, conditions, and probable cause(s) in each instance. Copies of this document may be purchased from the National Technical Information Service, U. S. Department of Commerce, Springfield, Va. 22161.

Aviation Safety Recommendation Letters

After encountering severe thunderstorms while at an altitude of less than 6,000 ft and experiencing a simultaneous loss of power to both engines because of massive water ingestion, last June 12 an Air Wisconsin, Inc., Swearingen SA–226 Metro crashed near Valley, Nebr., killing 13 persons and seriously injuring two others. Following investigation, the Safety Board on January 5 recommended that:

Federal Aviation Administration—

Amend 14 CFR 23.785(f) to require dynamic testing of seats to insure more realistic protection of occupants from serious injury in a minor crash. (Class III, Longer Term Action) (A–75–61) (Reiterated)

Expedite the development and implementation of an aviation weather subsystem for both en route and terminal area environments, which is capable of providing a real-time display of either precipitation or turbulence, or both, and which includes a multiple-intensity classification scheme. Transmit this information to pilots either via the controller as a safety advisory or via an electronic data link. (Class II, Priority Action) (A–77–63) (Reiterated)

Formulate rules and procedures for the timely dissemination by air traffic controllers of all available severe weather information to inbound and outbound flightcrews in the terminal area. (Class II, Priority Action) (A–77–66) (Reiterated)

Initiate research to determine the attenuating effects of various levels of precipitation and icing on airborne radomes of both X- and C-band radar, and disseminate to the aviation community any data derived concerning the limitations of airborne radar in precipitation. (Class II, Priority Action) (A–78–1) (Reiterated)

Undertake an experimental program to analyze and evaluate the technical and operational feasibility of requiring that air traffic control provide separation between aircraft and severe meteorological conditions when the nature and location of the meteorological conditions can be determined. (Class III, Longer Term Action) (A–80–132)

Review the realtionship and duties of ARTCC team supervisors to flow controllers/weather coordinators to insure that the nature of each job function is understood and accomplished. (Class III, Longer Term Action) (A–80–133)

Require that the subject accident report be reviewed by air traffic control specialists and supervisors. (Class III, Longer Term Action) (A–80–134)

Require that flow controllers and supervisory personnel assess the potential effects of hazardous weather on low-altitude en route traffic and use the evaluation to adjust air traffic flow as necessary. (Class II, Priority Action) (A–80–135)

Require that the effect of precipitation-induced attenuation on X-band airborne weather radar be incorporated into airline training programs and that airborne weather radar manufacturerse include attenuation data in radar operators handbooks. (Class II, Priority Action) (A–80–136)

Amend 14 CFR 23.807, Eargency Exits, to require all emergency exits on Part 23 air taxi and commuter aircraft with a capacity of 10 or more passenger seats manufactured after a specified date to be installed so that each could be opened from outside the aircraft. (Class III, Longer Term Action) (A–80–137)

Evaluate procedures which govern the transmission of SIGMET's on navaids to determine what additional steps are necessary to provide timely dissemenation, and take necessary corrective measures to insure that they are issued according to the procedures. (Class II, Priority Action) (A–80–138)

National Weather Service

Develop specific criteria for Center Weather Service Units which would govern the issuance of center weather advisories to update or supplement convective SIGMET's. (Class II, Priority Action) (A–80–139)

Require that all severe weather warnings and significant weather radar observations issued by a National Weather Service office expected to affect the airspace of an air traffic control approach control facility be transmitted by that office to the facility by the most expeditious means available. (Class II, Priority Action) (A–80–140)

On the basis of a recent in-flight failure of a main landing gear inboard wheel flange involving a Lockheed L–1011–200 aircraft operated by a foreign carrier, the Safety Board on January 8 recommended that the Federal Aviation Administration:

Issue an immediate Airworthiness Directive to require that operators of L–1011 aircraft at the next tire change or within 30 cycles, whichever is sooner, measure the flange thickness on all P/N 3–1366 wheels with serial number up to 1404 which have been used on aircraft with a gross takeoff weight of 430,000 pounds or more, and include in the Airworthiness Directive a requirement to remove all wheels with outer flange thicknesses of less than 0.490 inch and installed on aircraft operating at gross takeoff weights of 430,000 pounds or more. Further requirements should include at each wheel disassembly of all P/N 3–1366 and P/N 3–133 wheels, an inspection in accordance with procedures which have been evaluated by the FAA and demonstrated by industry experience to be effective in detecting in-service cracking prior to failure. (Class I, Urgent Action) (A–81–1)

Initiate an immediate survey of B.F. Goodrich manufacturing facilities by a Quality Assurance Systems Analysis Review Team or equivalent to assure the manufacturer's compliance with current regulatory requirements governing production certification and specifically the issuance and approval of service bulletins, investigation and reporting of service difficulties, maintenance of appropriate production and inspection records, and coordination of service difficulties with primary airframe manufacturers. (Class I, Urgent Action) (A–81–2)

Require tire, wheel, and airframe manufacturers to publish and disseminate to all operators all engineering data necessary to determine the effect on fatigue life of aircraft wheels by increasing or decreasing tire inflation pressures. (Class I, Urgent Action) (A–81–3)

Establish a program with air carriers, wheel, and airframe manufacturers to determine effective nondestructive inspection techniques for the variety of aircraft and wheel combinations in air carrier service and require operators to implement effective inspection programs. (Class II, Priority Action) (A–81–4)

Expeditiously disseminate any required wheel inspection and service programs to all foreign civil aviation authorities with regulatory responsibilities over operators of U.S.-manufactured aircraft and equipment. (Class I, Urgent Action) (A–81–5)

Responses to Safety Recommendations

Aviation

A–79–62 through –65, from the Federal Aviation Administration, December 30, 1980.—Response is to a Safety Board inquiry of July 9 as to status of implementation of these recommendations, issued as a result of investigation of the December 28, 1978, United Airlines DC–8 accident at Portland, Ore. The Safety Board on January 4 acknowledged FAA's earlier response of last November 23 (44 FR 70243, December 6, 1979).

Regarding recommendation A–79–62, FAA reported that as an alternative to issuance of an Air Carrier Maintenance Bulletin, it had directed a letter on September 11, 1980, to all Regional Flight Standards Division Chiefs clarifying the content of the regulations regarding the conspicuity of passenger emergency exit signs when exits are open and the requirement for exit signs to be relocated in aircraft which have signs affixed on the exit closure.

With respect to recommendation A–79–63, FAA concurs in expediting research on a means to most effectively restrain infants and small children during inflight upsets and survivable crash landings, and reports issuance on October 7, 1980, of a technical standard order prescribing the minimum performance standard that child restraint systems must meet.

FAA reports with reference to A–79–64 that issuance of the notice of

proposed rulemaking regarding a power source for public address systems independent of the main aircraft power supply in passenger-carrying aircraft is expected during December 1980.

Regarding A-79-65, FAA concurs and reports that a final rule requiring domestic and flag air carriers to maintain passenger lists with the proviso that both ticketed and nonticketed passengers' names be provided was published June 19, 1980.

A companion recommendation, No. A-79-66 concerning special training in flight resource management, was designated "Closed—Acceptable Action" by the Board's letter of January 4 after advice by FAA of issuance of Operations Bulletin No. 8-79-3.

Marine

M-80-62, from the U.S. Coast Guard, January 8, 1981.—Response is to a recommendation issued November 5 following investigation of the collision of tankship M/V PINA and towboat M/V MR. PETE and its tow on the Mississippi River, December 29, 1979. [See 45 FR 75029, November 13, 1980.]

USCG concurs with the recommendation and reports that shortly after the collision the Captain of the Port of New Orleans instituted a program of night-time boardings of towboats and barges. USCG personnel were instructed to check warning lights and operating procedures. Numerous citations of violations have resulted. When USCG discovers a towboat without a licensed operator, that operation is terminated until a licensed operator is brought aboard.

Railroad

R-79-4, from the Federal Railroad Administration, December 24, 1980.—Letter is in response to the Safety Board's comments of November 3 concerning FRA's previous response of last June 12 (45 FR 48002, July 17, 1980). The Board advised that it considered unacceptable FRA's action in response to its recommendation to prohibit the use of narcotics and intoxicants by employees for a specified period prior to their reporting for duty and while they are on duty. The Board requested FRA's reconsideration.

In response, FRA reiterates its earlier opinion that a Federal regulation prohibiting the use of alcohol and drugs would be costly, cumbersome, and ineffective. FRA also indicates that its efforts to enlist management and union support to voluntarily resolve the alcohol problem are extending to issues raised by the Board in its November 3 letter (e.g., the ineffectiveness of Rule G and the threat to safety from the nonproblem drinker).

Note.—Copies of the Safety Board's recommendation letters, as well as responses and related correspondence, are provided free of charge. All requests for copies must be in writing, identified by recommendation number. Address requests to: Public Inquiries Section, National Transportation Safety Board, Washington, D.C. 20594.

(49 U.S.C. 1903(a)(2), 1906)

Margaret L. Fisher,

Federal Register Liaison Officer.

January 16, 1981.

[FR Doc. 81-2022 Filed 1-21-81; 8:45 am]

BILLING CODE 4910-58-M

OFFICE OF MANAGEMENT AND BUDGET

Agency Forms Under Review

Background

January 14, 1981.

When executive departments and agencies propose public use forms, reporting, or recordkeeping requirements, the Office of Management and Budget (OMB) reviews and acts on those requirements under the Federal Reports Act (44 USC, Chapter 35). Departments and agencies use a number of techniques including public hearings to consult with the public on significant reporting requirements before seeking OMB approval. OMB in carrying out its responsibility under the Act also considers comments on the forms and recordkeeping requirements that will affect the public.

List of Forms Under Review

Every Monday and Thursday OMB publishes a list of the agency forms received for review since the last was published. The list has all the entries for one agency together and grouped into new forms, revisions, extensions (burden change), extensions (no change), or reinstatements. The agency clearance officer can tell you the nature of any particular revision you are interested in. Each entry contains the following information:

The name and telephone number of the agency clearance officer (from whom a copy of the form and supporting documents is available);
The office of the agency issuing this form;
The title of the form;
The agency form number, if applicable;
How often the form must be filled out;
Who will be required or asked to report;
The Standard Industrial Classification (SIC) codes, referring to specific respondent groups that are affected;
Whether small businesses or organizations are affected;
A description of the Federal budget functional category that covers the information collection;
An estimate of the number of responses;
An estimate of the total number of hours needed to fill out the form;
An estimate of the cost to the Federal Government;
The number of forms in the request for approval;
The name and telephone number of the person or office responsible for OMB review; and
An abstract describing the need for and uses of the information collection.

Reporting or recordkeeping requirements that appear to raise no significant issues are approved promptly. Our usual practice is not to take any action on proposed reporting requirements until at least ten working days after notice in the Federal Register, but occasionally the public interest requires more rapid action.

Comments and Questions

Copies of the proposed forms and supporting documents may be obtained from the agency clearance officer whose name and telephone number appear under the agency name. The agency clearance officer will send you a copy of the proposed form, the request for clearance (SF83), supporting statement, instructions, transmittal letters, and other documents that are submitted to OMB for review. If you experience difficulty in obtaining the information you need in reasonable time, please advise the OMB reviewer to whom the report is assigned. Comments and questions about the items on this list should be directed to the OMB reviewer or office listed at the end of each entry.

If you anticipate commenting on a form but find that time to prepare will prevent you from submitting comments promptly, you should advise the reviewer of your intent as early as possible.

The timing and format of this notice have been changed to make the publication of the notice predictable and to give a clearer explanation of this process to the public. If you have comments and suggestions for further improvements to this notice, please send them to Jim J. Tozzi, Assistant Director for Regulatory and Information Policy, Office of Management and Budget, 726 Jackson Place, Northwest, Washington, D.C. 20503.

DEPARTMENT OF AGRICULTURE

Agency Clearance Officer—Richard J. Schlosser—202-447-6201

Extensions (Burden Change)

Economics and Statistics Service
Maple Syrup Inquiries
Semiannually
Farms
Maple Syrup Producers
Small Businesses or Organizations
Agricultural Research and Services: 2,800 responses, 442 hours, $22,600 Federal Cost, 1 form
OE. of Federal Statistical Policy & Standard, 202-673-7974
Provides data to estimate maple syrup production and disposition in 9 States. Estimates used by maple processor and blenders plus related businesses for price determinations, labor requirements and other production and marketing decisions.

DEPARTMENT OF DEFENSE

Agency Clearance Officer—John V. Wenderoth—703-697-1195

Extensions (No Change)

Department of the Air Force
Industrial Construction Progress Reports
113-2506
Monthly
Businesses or Other Institutions
Defense Contractors That Have Government-Owned Plants
Department of Defense—Military, 156 Responses, 530 hours, 1 form
Edward C. Springer, 202-695-4614
Information reported is required to apprise AF civil (industrial) engineers as to the current progress on industrial construction projects. Initial report provides data pertinent to pending construction projects with monthly progress reports indicating changes, problems general progress or lack of progress.
Department of the Air Force
Industrial Facilities Program (Applications by Contractors or Use)
AFF116
Annually
Businesses or Other Institutions
Defense Contractors Who Use Government-Owned Facilities Small Businesses or Organizations
Department of Defense-Military, 180 responses, 2,800 hours; 0 form
Edward C. Springer, 202-695-4614
Prepared by Air Force contractors when requesting government-furnished industrial facilities to fulfill their current or proposed contractual facility source capable of performing requirements under their sponsorship. Contractor provides information on type of proposed facilities, project, identification of program being supported, types of facilities proposed and cost.

DEPARTMENT OF EDUCATION

Agency Clearance Officer—William A. Wooten—202-426-3020

New

Office of Special Education and Rehabilitative Services
Annual Vocational Rehabilitation Program/Cost Report
RSA-2
Annually
State or Local Governments
State VA Agencies
SIC: 425
Elementary, Secondary, and Vocational Education, 84 responses, 2,142 hours: $10,000 Federal Cost, 1 form
Laverne V. Collins, 202-245-8880
Data reported will be used to set rehabilitation goals for States, to determine the average cost of a large number of services, to determine budget needs, to provide base to analyze and respond to HEW and GAC audits, and to provide base for planning the distribution of Federal funds for training and manpower development.

DEPARTMENT OF ENERGY

Agency Clearance Officer—Irene Montle—202-633-8484

New

Energy Information Administration
Crude Oil and Petroleum Product Ownership Report
EIA-456B
Monthly
Businesses or Other Institutions
Petroleum Refineries & Independent Bulk Terminal Operators
SIC: 291 517
Energy Information, Policy, and Regulation, 766 responses, 20,400 hours; $36,000 Federal Cost, 1 form
Jefferson B. Hill, 202-395-7340
The information will be used by the Department of Energy monitoring the operations and supply obligations of refiners and bulk terminals.

Revisions

Energy Information Administration
Natural Gas Liquids Operations Report
EIA-64
Monthly
Businesses or Other Institutions
Natural Gas Processing Plants, Fractionators & Natural Gas
SIC: 492
Unassigned, 10,200 responses, 20,400 hours; $150,000 Federal Cost, 1 form
Jefferson B. Hill, 202-395-7340
Data are requested pursuant to the Federal Energy Administration Act of 1974 (P.L. 93-275). Information will be used to establish a data bank on the production, receipts, deliveries and stocks of natural gas liquids in the U.S.
• Energy Information Administration
International Energy Agency Emergency Supply Report
EIA-142
Monthly
Businesses or other institutions
Imptr of crude petro, natu gas liq, feedstks, & petroleum
SIC: 517
Energy information, policy, and regulation, 648 responses, 1,944 hours, $1,575 Federal cost, 1 form
Jefferson B. Hill, 202-395-7340
The form will be used to collect information on imports and stocks at sea of crude petroleum, natural gas liquids, feedstocks, and petroleum products for meeting reporting requirements to the international energy agency.
Extensions (no change).

• Economic Regulatory Administration
Certification of Requirements for Use Under Allocation Level not Subject to an Allocation Fraction
ERA-100
Annually
Businesses or other institutions
Wholesale purchaser-resellers of petroleum products
Energy information, policy, and regulation, 30,000 responses, 20,000 hours, $1,000 Federal cost, 1 form
Jefferson B. Hill, 202-395-7340
To certify requirements; end users, wholesale-consumer, recertify intermediate supplier requirement, revised certification, not to allocation fraction, 211. 210 mandatory petroleum allocation regs.

VETERANS ADMINISTRATION

Agency Clearance Officer—R. C. Wild—202-389-2146

New

• Asset Information Collection Nonrecurring
Individuals or households
Vet. appli. who are nonserv.-conn., under the age 65; etc.
Hospital and medical care for veterans, 0 responses, 0 hours, $10,000 Federal cost, 1 form
Robert Neal, 202-389-2620
Information is needed to develop policy and procedures for the implementation of section 401, P.L. 96-330 pertaining to an individual's inability to defray the expenses of necessary medical treatment. It is estimated that a savings of approximately $100 million may be realized in FY 1981 by instituting a

program to look behind an applicant's statement of inability to pay.

NATIONAL SCIENCE FOUNDATION

Agency Clearance Officer—Herman Fleming—202-357-7811

Revisions

• 1981 Survey of Doctorate Recipients
Biennially
Individuals or households
Individual doctoral scientists, engineers & humanists
General science and basic research, 40,000 responses, 12,250 hours, $340,000 Federal cost, 1 form
Marsha D. Traynham, 202-306-7340
The NSF Act of 1950, as amended, authorizes and directs NSF to collect, interpret and analyse data on the availability and current need of scientific and technical personnel resources in the U.S. and to provide a source of information for the formulation of science policy.

TENNESSEE VALLEY AUTHORITY

Agency Clearance Officer—Eugene E. Mynatt—615-857-4336

New

• Commercial and Industrial (Energy) Survey 1981: Customers of Local and Electric Utilit Distributing TVA Power
Nonrecurring
Businesses or other institutions
Class. (known SIC code) & unclas. (SIC co. unkn.) bus. & ind
SIC: Multiple
Small businesses or organizations
Energy supply, 4,000 responses, 2,003 hours, $595,726 Federal cost, 2 forms
Charles A. Ellett, 202-385-7340
To forecast future power requirements, the TVA needs information on current and projected energy consumption and conservation in the valley for commercial and industrial firms. This information will also be used for TVA program planning and is scheduled for collection between March 15, 1981, and June 15, 1981.

Revisions

• Home Insulation Program Participant Survey
TVA-8254]
On occasion
Individuals or households
Hsdhlds serviced by the 160 TVA distributors
Multiple functions, 47,004 responses, 7,834 hours, $52,000 Federal cost, 1 form
Charles A. Ellett, 202-385-7340
The information collected on this form will be aggregated and used to determine the characteristics of TVA program participants for both internal and external purposes. In-house analysis will aid in progress reporting and development of promotional strategies. Externally, DOJ's title VI (28 CFR 42.406) regulations will be fulfilled with race/ethnic, sex, and age data gathered.

C. Louis Kincannon,
Deputy Assistant Director for Reports Management.

[FR Doc. 81-2000 Filed 1-19-81; 8:45 am]
BILLING CODE 3110-01-M

Agency Forms Under Review

Background

January 14, 1981.

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The name and telephone number of the agency clearance officer (from whom a copy of the form and supporting documents is available);
The office of the agency issuing this form;
The title of the form;
The agency form number, if applicable;
How often the form must be filled out;
Who will be required or asked to report;
The Standard Industrial Classification (SIC) codes, referring to specific respondent groups that are affected;
Whether small businesses or organizations are affected;
A description of the Federal budget functional category that covers the information collection;
An estimate of the number of responses;
An estimate of the total number of hours needed to fill out the form;
An estimate of the cost to the Federal Government;
The number of forms in the request for approval;
The name and telephone number of the person or office responsible for OMB review; and
An abstract describing the need for and uses of the information collection.

Reporting or recordkeeping requirements that appear to raise no significant issues are approved promptly. Our usual practice is not to take any action on proposed reporting requirements until at least ten working days after notice in the Federal Register, but occasionally the public interest requires more rapid action.

Comments and Questions

Copies of the proposed forms and supporting documents may be obtained from the agency clearance officer whose name and telephone number appear under the agency name. The agency clearance officer will send you a copy of the proposed form, the request for clearance (SF83), supporting statement, instructions, transmittal letters, and other documents that are submitted to OMB for review. If you experience difficulty in obtaining the information you need in reasonable time, please advise the OMB reviewer to whom the report is assigned. Comments and questions about the items on this list should be directed to the OMB reviewer or office listed at the end of each entry.

If you anticipate commenting on a form but find that time to prepare will prevent you from submitting comments promptly, you should advise the reviewer of your intent as early as possible.

The timing and format of this notice have been changed to make the publication of the notice predictable and to give a clearer explanation of this process to the public. If you have comments and suggestions for further improvements to this notice, please send them to Jim J. Tozzi, Assistant Director for Regulatory and Information Policy, Office of Management and Budget, 726 Jackson Place, Northwest, Washington, D.C. 20503.

DEPARTMENT OF EDUCATION

(Agency Clearance Officer—William A. Wooten—202-426-3826)

New

Office of Special Education and Rehabilitative Services
RSA discretionary program application instructions
RSA-424
Annually

State of local governments/businesses or other institutions
Resp. are prim. St. Vr Agen., Col. & Uni. & Oth Nonprof Org.
SIC: All
Small businesses or organizations
Social services, 1,170 responses, 46,800 hours, $10,000 Federal cost, 1 form
Laverne V. Collins, 202-395-6880
Instructions are required so that all applications will be completed in accordance with specific and unique requirements of various RSA programs. Program staff and/or outside reviewers use the application information to evaluate program progress, project viability, soundness of approach and reasonableness of proposed cost of new and continuation projects.

DEPARTMENT OF ENERGY

Agency Clearance Officer—Irene Montio—202-633-8404

New

Conservation and Solar Energy
Solar installers/dealers survey
CS-701
Annually
Businesses or other institutions
SIC: 507
Small businesses or organizations
Energy supply; 3,000 responses; 750 hours; $128,000 Federal cost; 1 form
Jefferson B. Hill, 202-395-7340
This survey will assess potential market response to the use of solar energy for providing space and water heating for residential, industrial and commercial buildings. The data will also provide a data base that can be used to evaluate trends in types of systems being sold, areas, cost construction features.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency Clearance Officer—Joseph Strnad—202-245-7488

New

Social Security Administration
Study of domiciliary care facilities
SSA-4338
Nonrecurring
State or local governments
State and local government officials and employees
SIC: 805
Small businesses or organizations
General retirement and disability insurance; 612 responses; 459 hours; $223,521 Federal cost; 1 form
Barbara F. Young, 202-395-6880
The purpose is to collect systematic information on domiciliary care facilities under both Federal and State administered optional supplementation programs for those States which make special provisions for such care.

DEPARTMENT OF THE INTERIOR

Agency Clearance Officer—Vivian A. Keadle—202-343-6181

New

Heritage Conservation and Recreation Service
South Bronx, land and water conservation fund evaluation study
Nonrecurring
Individuals or households
Resid. of So. Br. Adjac. to open space, comm. leaders, etc.
Recreational resources; 150 responses, 150 hours, $62,663 Federal cost, 6 forms Erika Jones, 202-395-7340
The need to evaluate the effectiveness of the South Bronx neighborhood open space. Development project in meeting recreation needs at a reasonable cost.

DEPARTMENT OF LABOR

Agency Clearance Officer—Paul E. Larson—202-523-6341

New

Employment and Training Administration
TJTC quality control review schedule, co-operative
Education review supplement
ETA-RC38
Nonrecurring
Individuals or households/State or local governments
Parti. in the TJTC prog. cert. for tax cred., Admin. of St.
SIC: 944
Training and Employment; 577 responses, 591 hours, $339,104 Federal cost, 2 forms
Arnold Strasser 202-395-6880
For a random sample of TJTC participants, certain identifying, demographic, and eligibility characteristics will be transcribed from existing Government files and subjected to review and verification, results, including determination of eligibility, will be reported to Congress pursuant to Pub. L. 95-600, Sec. 554.

Revisions

Employment and Training administration
Validation handbook
ETA-361
Quarterly; other—see SF83
State of local governments
State employment security agencies
SIC: 944
Small business or organizations
Training and employment; 468 responses; 10,400 hours, $91,902 Federal cost, 3 forms
Arnold Strasser, 202-395-6880
To provide sufficiently credible information upon which management can make policy decisions, the ETA program management information systems must provide data that are reliable. The basic goal of the validation programs is to insure accuracy and comparability of reporting in order to aid in the equitable allocation of funds, since fund allocation involves the use of data from these mis's.

DEPARTMENT OF TRANSPORTATION

Agency Clearance Officer—John Wiesor, Acting—202-426-1887

New

Office of the Secretary
Various requirements in 49 CFR, Part 23, minority business enterprise regulation
Nonrecurring, quarterly, annually
State or local governments/businesses or other institutions
State or loc. gov't receiving DOT finan. assist.
SIC: Multiple
Small business or organizations
Other transportation; 1 response, 0 hours $0 Federal cost; 1 form
Corrinne Hayward, 202-395-7340
The requirements in this request are various details of the MBE affirmative action programs called for by the regulations.

C. Louis Kincannon,
Deputy Assistant Director for Reports Management.

[FR Doc. 81-2070 Filed 1-20-81; 8:45 am]
BILLING CODE 3110-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 21882 (70-6542)]

Georgia Power Co.; Proposal To Issue and Sell First Mortgage Bonds at Competitive Bidding

January 14, 1981.

Notice is hereby given that Georgia Power Company ("Georgia"), 270 Peachtree Street, N.W., Atlanta, Georgia 30303, an electric utility subsidiary of The Southern Company, a registered holding company, has filed an application-declaration with this Commission pursuant to the Public Utility Holding Company Act of 1935 ("Act"), designating Sections 6(b) and 12(c) of the Act and Rules 42 and 50 promulgated thereunder as applicable to the proposed transaction. All interested persons are referred to the application-declaration, which is summarized

below, for a complete statement of the proposed transaction.

Georgia proposes to issue and sell up to $125,000,000 aggregate principal amount of its first mortgage bonds ("new Bonds"). The issuance of such new Bonds is to be in addition to the issuance of $50,000,000 principal amount of first mortgage bonds currently authorized for issuance by the Commission's order of October 1, 1980 (HCAR No. 21737). It is proposed that a portion of the new Bonds ("initial series") will be issued in March, 1981 concurrently, and as part of a series of bonds, with such previously authorized $50,000,000 principal amount of first mortgage bonds, and the remainder ("additional bonds") will be issued not later than June 30, 1981. It is proposed that each series of new Bonds will have a term of not less than five nor more than 30 years and will be sold at competitive bidding for the best price obtainable but for a price to Georgia of not less than 98 percent nor more than 101¾ percent of the principal amount thereof, plus accrued interest. The new Bonds will be issued under the Indenture dated as of March 1, 1941, between Georgia and Chemical Bank, as Trustee, as heretofore supplemented by various indentures supplemental thereto, and as to be further supplemented by Supplemental Indentures to be dated as of the first day of the month during which each series of new Bonds is issued. Georgia will decide on the terms of each series of the new Bonds after the date of the respective public invitation for proposals and then in each case notify prospective bidders of its decision by telephone, confirmed in writing, not less than 72 hours prior to the time of each bidding. For such reasons, it is also proposed that in each such notice Georgia may designate a lesser aggregate principal amount of the new Bonds of the particular series to be issued and sold than that previously specified in the respective public invitation for proposals, and that Georgia reserve the right in its discretion to designate a principal amount or term for the new Bonds of a particular series different from that theretofore specified by notice to prospective bidders not less than 24 hours prior to the time of each bidding.

None of the new Bonds will be redeemable for up to a five-year period commencing with the first day of the month of issuance, respectively, at a regular redemption price if such redemption is for the purpose or in anticipation of refunding such new Bonds through the use, directly or indirectly, of funds borrowed by Georgia at an effective interest cost to Georgia of less than the effective interest cost to Georgia of the respective series of new Bonds. Such limitation will not apply to redemptions at a special redemption price by operation of the sinking or improvement fund or the maintenance and replacement provisions of the above-mentioned Indenture or by the use or proceeds of released property. Georgia also will convenant that it will not redeem any of the new Bonds of a particular series, in any year prior to the fifth year after the issuance of such series, through the operation of the sinking or improvement fund provisions in a prinicipal amount which would exceed the sinking or improvement fund requirement attributable to such series (i.e., 1 percent of the aggregate prinicipal amount of such series). In addition, Georgia may make provision for a mandatory cash sinking fund for the benefit of the new Bonds of a particular series. Such mandatory sinking fund would retire up to 5 percent annually of the initial aggregate principal amount of the new Bonds of such series, commencing five years or later after the sale thereof. Georgia also may have the non-cumulative option in any year, commencing five years or later after the sale, of making an optional sinking fund payment in an amount not exceeding such mandatory sinking fund payment.

Georgia may request by amendment hereto that such sale be excepted for the competitive bidding requirements of Rule 50. Georgia proposes to use the proceeds from each sale of the new Bonds principally to finance its business as an electric utility company, including the repayment of outstanding short-term indebtedness, if any, and the payment of costs incurred in its on-going construction program.

A statement of the fees, commissions and expenses to be incurred in connection with the proposed transaction will be filed by amendment. The proposed transaction has been authorized by the Georgia Public Service Commission. It is stated that no other state of federal regulatory authority, other than this Commission, has jurisdiction over the proposed transaction.

Notice is further given that any interested person may, not later than February 7, 1981, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by the filing which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon the applicant-declarant at the above-stated address, and proof of service (by affidavit or, in case an an attorney at law, by certificate) should be filed with the request. At any time after said date, the application-declaration, as filed or as it may be amended, may be granted and permitted to become effective as provided in Rule 23 of the General Rules and Regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices or orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons,
Secretary.

[FR Doc. 81-2126 Filed 1-21-81; 8:45 am]
BILLING CODE 8010-01-M

Merrimack Farmers' Exchange, Inc.; Application and Opportunity for Hearing

[File No. 81-644]

January 15, 1981.

Notice is hereby given that Merrimack Farmers' Exchange, Inc. (the "Applicant") has filed an application pursuant to Section 12(h) of the Securities Exchange Act of 1934, as amended (the "1934 Act") for an order of partial exemption from the periodic reporting requirements under Sections 13 and 15(d) of the 1934 Act.

The Application states:

(1) On August 12, 1980, the Applicant sold substantially all of its assets pursuant to a Proposed Sale and Plan of Liquidation which had been adopted by shareholders at a special meeting on July 8, 1980, proxies for which were solicited in accordance with the requirements of Regulation 14A under the 1934 Act;

(2) By the terms of the sale, proceeds of the sale will be received in three annual installments commencing August 12, 1980;

(3) The Applicant will file a Form 10-K for the period ending September 30, 1980; and

(4) The Applicant undertakes to make reports of income of disbursements on Form 10-K.

For a more detailed statement of the information presented, all persons are referred to said application which is on file in the offices of the Commission at 500 North Capital Street NW., Washington, D.C. 20549.

Notice is further given that any interested person no later than February 9, 1981 may submit to the Commission in writing views or any substantial facts bearing on this application or the desireability of a hearing thereon. Any such communication or request should be addressed: Secretary, Securities and Exchange Commission, 500 North Capital Street, NW., Washington, D.C. 20549, and should state briefly the nature of the interests of the person submitting such information or requesting the hearing, the reason for such request, and the issues of fact and law raised by the application which he desires to controvert. At any time after said date, an order granting the application may be issued upon request or upon the Commission's own motion.

For the Commission, by the Division of Corporation Finance, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 81-2128 Filed 1-21-81; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 17454; (SR-NASD-80-25)]

The National Association of Securities Dealers, Inc.; Filing of Proposed Rule Change and Order Approving Proposed Rule Change

January 15, 1981.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78(s)(b)(1) ("Act"), notice is hereby given that on December 15, 1980, the National Association of Securities Dealers, Inc. ("NASD"), 1735 K Street, N.W., Washington, D.C. 20006, filed with the Commission copies of a proposed rule change which amends Article IV, Section 3(h) of its By-Laws to increase from three to seven the number of Governors-at-Large elected by the Board of Governors. The proposed rule change would also amend Article IV, Section 2(a) of the NASD's By-Laws to provide that the Board of Governors shall consist of thirty-one members instead of twenty-seven members and to amend certain references in the provisions of Section 3 of the NASD By-Laws related to these changes in the composition of the Board of Governors. The NASD has requested that this rule filing receive accelerated approval pursuant to Section 19(b)(2) of the Act.

Interested persons are invited to submit written data, views and arguments concerning the proposed rule change on or before February 12, 1981. Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. Reference should be made to File No. SR-NASD-80-25.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change which are filed with the Commission and all written communications relating to the proposed rule change between the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room, 1100 L Street, NW, Washington, D.C.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the NASD, and in particular, the requirements of Section 15A of the Act and the rules and regulations thereunder.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof. Such accelerated approval will allow the Board of Governors to commence the nomination and selection process for new Governors-at-Large at their January 19, 1981, meeting and avoid the lapse of time between the comment period and a subsequent meeting of the Board of Governors. The Commission also finds that accelerated approval satisfies the requirement of Section 15A(b)(4) that one or more directors shall be representative of issuers and investors and not be associated with a member of the association, broker, or dealer.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change referenced above be, and it hereby is, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 81-2130 Filed 1-21-81; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. 17452; SR-NASD-80-26]

National Association of Securities Dealers, Inc.; Filing of Proposed Rule Change and Order Approving Proposed Rule Change

January 15, 1981.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1) (the "Act"), notice is hereby given that on December 30, 1980, the National Association of Securities Dealers, Inc. ("NASD"), 1735 K Street, NW, Washington, D.C. 20006, filed with the Commission copies of a proposed rule change to amend Sections 3 and 4 to Appendix E of Section 33 of Article III of its Rule of Fair Practice, respectively, to increase from 1,000 to 2,000 contracts the aggregate position that can be maintained in put and call options on the same side of the market on the same underlying security, and to increase from 1,000 to 2,000 the number of contracts of a given class of options that can be exercised within a period of five consecutive business days.

Interested persons are invited to submit written data, views and arguments concerning the submission within 21 days from the date of this publication. Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. Reference should be made to File No. SR-NASD-80-26.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change which are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room, 1100 L Street, NW, Washington, D.C.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a registered securities association, and in particular, the requirements of Section 15A and the rules and regulations thereunder.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing. The proposed changes in position and exercise limit levels will conform the NASD's rules to those of the options

exchanges, as recently approved by the Commission.[1] In approving the NASD's proposed rule change, the Commission is relying on the same basis articulated in its order approving the prior proposals of the options exchanges. No public comments, adverse or otherwise, were received by the Commission either during the pendency of the options exchange proposals or subsequent to the Commission's order approving those changes.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change referenced above be, and it hereby is approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 81-2139 Filed 1-21-81; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-17450; File No. SR-SCCP 80-8]

Stock Clearing Corporation of Philadelphia; Proposed Rule Change; Self-Regulatory Organization

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), as amended by Pub. L. No. 94-29, 16 (June 4, 1975), notice is hereby given that on January 5, 1981, the above-mentioned self-regulatory organization filed with the Securities and Exchange Commission a proposed rule change as follows:

Statement of Terms of Substance of the Proposed Rule Change

Stock Clearing Corporation of Philadelphia (SCCP) proposes an amendment to Rule 23, Compensation, which deals with charges for services rendered. The change involves SCCP's stock loan program and is in two parts: lending participants will be charged a varying percentage of the broker call rate, depending on the number of trades cleared monthly through SCCP's CNS system; and SCCP will begin apportioning rebates of its stock loan revenues to holders of short positions in margin accounts.

Basis and Purpose of Proposed Rule Change

The purpose of the proposed change is to retain a competitive stock loan interest rate to the lender, while at the same time giving credit to margin account holders on their short positions which can be borrowed by SCCP, since these accounts generate the stock loan business.

The proposed rule change provides equitable allocation of reasonable dues, fees and other charges among participating members in accordance with the standards set forth in Section 17A(b)(3)(D) of the Act.

No formal comments have been solicited or received regarding the proposed rule change.

No burden on competition will be imposed by the proposed rule change. The proposed rate schedule does not discriminate between marketplaces nor does it inhibit clearing interfaces.

The foregoing rule change has become effective, pursuant to Section 19(b)(3) of the Securities Exchange Act of 1934. At any time within sixty days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Securities Exchange Act of 1934.

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons desiring to make written submissions should file 6 copies thereof, with the Secretary of the Commission, Washington, D.C. 20549. Copies of the filing with respect to the foregoing and of all written submissions will be available for inspection and copying in the Public Reference Room, 1100 "L" Street, NW., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted on or before February 12, 1981.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

January 14, 1981.

[FR Doc. 81-2137 Filed 1-21-81; 8:45 am]

BILLING CODE 8010-01-M

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[1] Securities Exchange Act Release No. 17237, October 22, 1980, 45 FR 71454, October 28, 1980.

SMALL BUSINESS ADMINISTRATION

ITT Small Business Finance Corp.; Filing of Application for Eligibility Determination as a Small Business Lending Company

An application for Eligibility Determination as a Small Business Lending Company has been filed by ITT Small Business Finance Corporation (Applicant), 300 South County Road 18, Minneapolis, Minnesota 55426, with the Small Business Administration pursuant to § 120.4(b) of SBA Regulations (13 CFR 120.4(b)(1980)), promulgated under the Small Business Act.

As a Small Business Lending Company (SBLC), under Subsection (b) mentioned above, the Applicant will be engaged solely in the making of loans to small business concerns, in participation with SBA, and in accordance with applicable SBA Regulations; and, it will be subject to supervision and examination by the SBA.

The Applicant is incorporated under the laws of the State of Delaware. It intends to conduct its operations on a nationwide basis and to sell, in the Secondary Market, the SBA's guaranteed portions of loans made to small business concerns.

The Officers and Directors of the Applicant are:

Name and Title

Thomas E. Wilshire, 17913 Brigham Trail, Wayzata, MN 55391, President.
Clarence R. Polzin, 4011 Pebblebrook Drive, Bloomington, MN 55437, Director and Vice President.
Roger L. Shipp, 53 Hamiltonian Drive, Red Bank, NJ 07701, Director, Vice President, Controller and Treasurer.
John E. Thomas, 5328 Smithtown Road, Excelsior, MN 55331, Director, Vice President, General Counsel and Secretary.
Joseph F. McCarthy, 4067 Kensington Gate, Shorewood, MN 55331.
James F. Dougherty, Route 1, Box 303, Holcombe, WI 54745, Assistant Vice President.
Thomas E. Dwyer, 2210 Walnut Grove Ln., Plymouth, MN 55391, Assistant Vice President.
Michael J. Kelley, 5509 Chantrey Road, Edina, MN 55436, Assistant Vice President.
Bonnie J. Stubbs, 3435 175th Lane, NW, Anoka, MN 55303, Assistant Secretary.

The parent of the Applicant is ITT Financial Corporation of 12555 Manchester Road, St. Louis, Missouri, 53131. The parent, a Delaware Corporation, is a holding company all of whose common stock is owned by ITT Consumer Services Corporation, a Delaware corporation, all of whose common stock is owned by International Telephone and Telegraph Corporation (ITT), a Delaware Corporation.

Matters involved in SBA's consideration of the application include the general business reputation and character of management, and the probability of successful operation of the company under their management, including adequate profitability and financial soundness, in accordance with the Small Business Act and the Regulations promulgated thereunder.

Notice is hereby given that all interested parties may, on or before February 6, 1981, submit to SBA written comments on the proposed Applicant and/or its management. Any such communication should be addressed to: Wayne S. Foren, Director, Office of Lender Relations and Certification, Small Business Administration, 1441 L Street, NW, Washington, D.C. 20416.

A copy of this notice shall be published in a newspaper of general circulation in Minneapolis, Minnesota, as well as in the four (4) regional editions of the *Wall Street Journal*.

(Catalog of Federal Domestic Assistance Program No. 59.012 Small Business Loans)

Dated: January 9, 1981.

A. Vernon Weaver,

Administrator.

[FR Doc. 81-2207 Filed 1-21-81; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement; Queens County, N.Y.

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed highway project in Queens County, New York.

FOR FURTHER INFORMATION CONTACT: John A. Marino, Assistant Commissioner, New York State Department of Transportation, Office of New York City Affairs, 2 World Trade Center, Room 5454, New York, New York 10047, Telephone: (212) 488-6613; or Victor E. Taylor, Division Administrator, Federal Highway Administration, Leo W. O'Brien Federal Building, Ninth Floor, Clinton Avenue and North Pearl Street, Albany, New York 12207, Telephone (518) 472-3616.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the New York State Department of Transportation (NYSDOT), is preparing an environmental impact statement (EIS) for a proposal to improve the Long Island Expressway between Maurice Avenue and the Grand Central Parkway for a distance of 3.5 miles in Queens County, New York. The proposed improvement would involve reconstruction work on the existing highway to improve operating efficiency and safety.

Alternatives under consideration include (1) no build; (2) safety upgrading, extension of existing service roads, interchange improvements, and pedestrian structure improvements; (2A) the elements of Alternative 2 with additional service road continuity; (2B) the elements of Alternative 2 with additional interchange improvements; (2.1) the elements of Alternative 2 with the addition of an auxiliary lane on part of the eastbound roadway; (2.2) the elements of Alternative 2 with the addition of auxiliary lanes on a portion of the roadways.

The scope of this proposed project has been developed through an extensive process. In addition to the procedures of NYSDOT's Environmental Action Plan, a special task Group of City, Regional and State organizations was formed in July 1974 to consider the means for moving people and goods through Queens efficiently and safely. Following the Task Group's guidance, a Preliminary Study of Transportation Alternatives was made. The results of this study were circulated to Government agencies, private and Community groups through Project Reports I & II, dated May 1976. Based on the comments received, the report was revised and recirculated as Project Report III, dated January 1978. Copies of these documents are available for review and copying at the Long Island Expressway Project Information Office, 91-31 Queens Boulevard—Room 110, Elmhurst, New York 11373, and at the addresses provided above. Upon completion of the Draft EIS, a Notice of Public Hearing will be given. The Draft EIS will be available for review and comments from interested public officials, agencies, organizations, and individuals will be received. No formal scoping meeting will be held.

To insure that the full range of issues related to this proposed action are addressed and all significant issues are identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the NYSDOT or FHWA at the addresses provided above.

Issued on: January 6, 1981.

Victor E. Taylor,

Division Administrator, Albany, New York.

[FR Doc. 81-2212 Filed 1-21-81; 8:45 am]

BILLING CODE 4910-22-M

Environmental Impact Statement; Morton County, N. Dak.

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed highway project in Mandan, North Dakota.

FOR FURTHER INFORMATION CONTACT: Marvin Espeland, Division Administrator, Federal Highway Administration, P.O. Box 1755, Bismarck, ND 58502. Telephone Number is (701) 255-4011. (FTS 783-4204).

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the North Dakota State Highway Department and the city of Mandan, will prepare an Environmental Impact Statement (EIS) on a proposal to improve Mandan Avenue, the Old Red Trail, and the Sunset Drive Interchange in Mandan, North Dakota. The proposed improvement would involve the reconstruction of Mandan Avenue and the Old Red Trail from the Mandan Avenue Interchange westerly to 56th Avenue NW and revisions to the Sunset Drive Interchange. The improvements are intended to provide for improved traffic flow and safety.

Alternates under consideration for Mandan Avenue and the Old Red Trail consists of either an urban (curb and gutter) or rural sections for various segments of those streets. Two alternate plans for the revision of the interchange are under consideration. The "No Action Alternate" is under consideration.

Letters soliciting views and comments on the proposed project were sent to various federal, state and local agencies. The project has been discussed at local meetings in Mandan. The Draft EIS will be available for public and agency review and comment. A public hearing will be held to discuss alternates and impacts of the proposed action. Public notice will be given for the time and place of the public hearing. No formal scoping meeting will be held.

Issued on January 14, 1981.

Marvin Espeland,

Division Administrator, Bismarck, North Dakota.

[FR Doc. 81-2210 Filed 1-21-81; 8:45 am]

BILLING CODE 4910-22-M

National Highway Traffic Safety Administration

American Trucking Associations; Denial of Petition for Rulemaking

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Denial petition for rulemaking.

SUMMARY: This notice denies a petition for rulemaking submitted by the

American Trucking Associations (ATA) requesting that Standard NO. 121, *Air Brake Systems*, be amended to remove the requirement that tractor and trailer brakes be actuated by a single control knob. The agency is denying this petition because the ATA recommendation does not appear to be necessary at this time, and implementation of the recommendation might adversely affect the safety of heavy truck brakes.

FOR FURTHER INFORMATION CONTACT: Mr. John Machey, Office of Crash Avoidance, National Highway Traffic Safety Administration, 400 Seventh Street, S.W., Washington, D.C. 20590 (202-426-2715).

SUPPLEMENTARY INFORMATION: The ATA petitioned the agency on April 28, 1980, to amend Standard No. 121, *Air Brake Systems*, to delete the last sentence of S5.6.4. That sentence states that: "[t]he parking brake control shall control the parking brakes of the vehicle and of any air braked vehicle that it is designed to tow." In effect, this provision requires a single control knob to actuate both tractor and trailer parking brakes.

ATA requested that the single knob requirement be changed to permit the use of more than one control knob in controlling heavy vehicle parking brake systems. The ATA petition suggested that such a change would eliminate existing confusion resulting from a lack of standardized brake control knobs. Further, the ATA suggested that this change would return to vehicle brake systems in effect before Standard No. 121 went into effect which required less plumbing and were less expensive. In addition, the ATA argued that requiring tractor and trailer brakes both to be applied with a single knob results in trailer brakes freezing in cold weather. A final argument presented by ATA to support its petition is that the separation of emergency and parking brake functions in the standard means that a single control knob for parking brakes is no longer necessary.

The single control knob requirement was mandated in the standard, because vehicles cannot be held on some hills by using just the tractor or trailer brakes. Runaway heavy vehicles present a safety problem. This problem is significantly reduced at very little expense by the use of a common brake control knob that applies all parking brakes simultaneously.

The ATA recommends deletion of this requirement because existing control knobs are confusing. The agency agrees that the existing tractor/trailor control knobs are somewhat confusing. This is caused by the failure of many truck manufacturers to comply with the recommended practices of the Society of Automotive Engineers that recommend uniform control knob systems. NHTSA is considering issuing a proposal to require a uniform system of parking brake controls to avoid the confusion to which the ATA refers. The agency does not believe the ATA recommendation would reduce the existing confusion in the brake control area.

A second argument put forward by the ATA for allowing more than one knob to control both the tractor and trailer brake systems is that trailer brakes freeze if applied in cold weather. Therefore, according to ATA it should be possible to apply only the tractor brakes if the trailer brakes are not necessary to hold the vehicle on an incline.

Currently, the standard requires only that both trailer and tractor brakes be applied initially by the same control device. However, the standard permits other control knobs that can be used to release either the tractor or trailer brakes. Accordingly, if a driver fears that his or her trailer brakes might freeze if applied in cold weather, he or she can make the conscious decision to release the trailer parking brakes after determining that they are not necessary to hold the vehicle as parked. Many vehicles are constructed in a manner that allows such a release. However, it is required that both sets of brakes apply by the use of a single control device until the decision is made to release one set of brakes. Since trailer brakes can now be released when not needed to hold a trailer on a hill, the freezing brake problem should not be significant. ATA suggested that applying all parking brakes and then subsequently releasing the trailer brakes is too time consuming. NHTSA disagrees. This brake actuation and release is a simple procedure and does not involve a large use of time.

The ATA argued that recent changes in the standard with respect to emergency brake control through the treadle valve support an amendment in the parking brake requiements to permit the type of brake controls that it requested. It contends that since parking brakes are no longer used as emergency brakes there is no need to have them applied by a single knob. The agency disagrees.

The use of a treadle valve to control emergency brakes has no relationship to the need for a single control to apply the parking brakes. The treadle valve serves a function in stopping a vehicle in emergency braking situations. The parking brake, on the other hand, is for the purpose of providing sufficient holding power when a vehicle is stopped and left unattended. The emergency and parking brake functions are, therefore, entirely unrelated, although their systems frequently employ the same components. The agency still considers the application of parking brakes by one knob to be important. This means of brake actuation provides sufficient parking brakes to hold a vehicle on most surfaces.

Since the ATA petition requests an amendment that would in the judgment of this agency reduce the safety of vehicle systems, the agency is not persuaded to grant their request without a showing of need for the amendment. The ATA reasons for suggesting the petition have been detailed and discussed in the foregoing. None of the reasons put forth by the ATA are substantial enough to warrant reducing the safety of existing brake systems. For this reason, the agency denies the ATA petition.

The principal authors of this notice are Mr. John Machey of the Crash Avoidance Division and Mr. Roger Tilton of the Office of Chief Counsel.

(Secs. 103 and 119, Pub. L. 89-563, 80 Stat. 718 (15 U.S.C. 1392 and 1407); delegation of authority at 49 CFR 1.50)

Issued on January 15, 1981.

Joan Claybrook,

Administrator.

[FR Doc. 81-2191 Filed 1-21-81; 8:45 am]
BILLING CODE 4910-59-M

Interagency Coordinating Committee on Automotive Inspection, Maintenance and Repair

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Establishment of mailing list.

SUMMARY: This notice requests that organizations and individuals interested in receiving information on and/or participating in activities or the Interagency Coordinating Committee on Automotive Inspection, Maintenance and Repair send their names, address and telephone numbers to the NHTSA.

DATES: Closing date February 10, 1981. However, names can be added to the initial list at any time following this date.

ADDRESS: Information should be submitted to: Ann Mitchell, Consumer Participation Division, NOA-42, Office of Public Affairs and Consumer Participation, National Highway Traffic Safety Administration, 400 7th Street, SW., Washington, D.C. 20590.

FOR FURTHER INFORMATION CONTACT: Ann Mitchell (202-426-0570) or Tom Crews (202-426-9294).

SUPPLEMENTARY INFORMATION: On September 6, 1979, Secretary of Transportation Neil Goldschmidt signed a charter establishing the Automotive Inspection, Maintenance, and Repair Interagency Coordinating Committee (IMR-ICC). The Committee was created in order to mobilize a government-wide concerted effort aimed at dealing with the serious problems of auto repair. It is recognized, however, that constructive and effective solutions cannot be identified or achieved without full participation by the public in this interagency activity.

The Committee is sponsored by the NHTSA and has had active participation by other Federal agencies including: The Department of Transportation's Office of Consumer Affairs, the General Services Administration, and the Department of Labor. We anticipate future participation by these and other interested Federal agencies. The Committee is co-chaired by NHTSA staff members in order to reflect representation from both the consumer and technical perspectives, each critical to the success of this effort.

The goal of the IMR-ICC is to explore the problems involved in auto repair and to determine possible solutions for those problems. It is anticipated the improvement of the auto repair process will result in improved motor vehicle safety and fuel economy, reduced emissions and noise, and lower consumer costs and costs of regulation, repair and maintenance. Participation of all interested members of the public and industry will be requested at various stages of committee activity to ensure full review of all the issues and the identification of workable solutions.

Activities of the Committee thus far have included the identification of problems or issues in the inspection, maintenance and repair fields and the development of project plans to address them during the upcoming year. These subject areas include:

Consumer dispute resolution mechanisms.
Generalized ratings of repair quality mechanics and shops.
Consumer education and information.
Federal, State and local auto repair law enforcement efforts.
Improving in-service diagnostic and repair procedures.
Training for the professional mechanic.
Development of ratings on how costly it is to inspect, diagnose, maintain, and repair.
Designing for inexpensive inspection, diagnosis, maintenance, and repair.

In order to receive announcements of actions and initiatives contemplated or undertaken by the Committee, it is important that you be placed on the IMR-ICC mailing list. Those on the list will also receive advance notices of meetings and other activities in which they will have an opportunity to participate. Significant Committee activity will be reported on a routine basis to those on the list. Requests to be placed on the mailing list should be directed to Ann Mitchell.

January 16, 1981.

Charles F. Livingston,
Associate Administrator, Traffic Administrator, Traffic Safety Programs.

[FR Doc. 81-2192 Filed 1-21-81; 8:45 am]
BILLING CODE 4910-59-M

International Harmonization of Safety Standards; Calendar of Meetings

A goal of the Trade Agreement Act of 1979 and a policy of the National Highway Traffic Safety Administration (NHTSA) is the harmonization of U.S. and foreign safety standards to promote and facilitate broader competition, avoid unnecessary waste and assure equal access to manufacturers on a world basis. Carrying out this policy is being achieved by NHTSA's participation in the Group of Experts on the Construction of Vehicles (WP29) under the Inland Transport Committee of the United Nations' Economic Commission for Europe (ECE) and the eight groups of Rapporteurs of the WP29. The NHTSA participates in all of these meetings except those on Noise and Pollution which are represented by members of the Environmental Protection Agency (EPA).

This calendar consists of those meetings in which the NHTSA and the EPA will provide representation and in which the public interest is expected. It is published for information and planning purposes and the meeting dates and places are subject to change. For further information contact: Mr. John Carson, Office of Vehicle Safety Standards, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, D.C. 20590, (202) 426-2720.

Inquiries or comments relating to a specific meeting should be made at least 2 weeks preceding the meeting.

January 19-21, 1981.—Group of Rapporteurs on Crashworthiness (GRCS) Eighth Session—Geneva, Switzerland.
February 24-27, 1981.—Group of Rapporteurs on Protective Devices (GRDP) Ninth Session—London, England.
March 5-6, 1981.—Ad Hoc Meeting on the Program of Work of the WP29 Fifteenth Session—Geneva, Switzerland.
March 9-13, 1981.—Group of Experts on the Construction of Vehicles Sixty-third Session—Geneva, Switzerland.
April 7-10, 1981.—Group of Rapporteurs on Lighting and Light Signalling (GRE) Eighth Session—Lippstadt, Germany.
May 5-8, 1981.—Group of Rapporteurs on Safety Provisions (GRSG) Thirty-seventh Session—Rome, Italy.
May 19-22, 1981.—Group of Rapporteurs on Brakes and Running Gear (GRRF) Ninth Session—Geneva, Switzerland.
June 1-4, 1981.—Group of Rapporteurs on Safety Provisions for Motor Coaches and Buses (GRSA). Twenty-fifth Session—Frankfurt, Germany.
June 15-19, 1981.—Ad Hoc Meeting on the Program of Work of the WP29 Sixteenth Session—Geneva, Switzerland.
June 22-26, 1981.—Group of Experts on the Construction of Vehicle Sixty-fourth Session—Geneva, Switzerland.
July 20-23, 1981.—Group of Rapporteurs on Protective Devices (GRDP) Tenth Session—Geneva, Switzerland.
August 24-28, 1981.—Group of Rapporteurs on Crashworthiness (GRCS) Ninth Session—Geneva, Switzerland.
September 7-10, 1981.—Group of Rapporteurs on Pollution and Energy (GRPE) Fourth Session—Geneva, Switzerland.
September 15-18, 1981.—Group of Rapporteurs on Lighting and Light Signalling (GRE) Ninth Session—Leipzig, Germany.
September 29—October 2, 1981.—Group of Rapporteurs on Noise (GRB) Tenth Session—Washington, D.C.
October 22-23, 1981.—Ad Hoc Meeting on the Program of Work of the WP29 Seventeenth Session—Geneva, Switzerland.
October 26-30, 1981.—Group of Experts on the Construction of Vehicles Sixty-fifth Session—Geneva, Switzerland.
November 10-13, 1981.—Group of Rapporteurs on Safety Provisions for Motor Coaches and Buses (GRSA). Twenty-sixth Session—Edinburgh, Scotland.
November 30-December 3, 1981.—Group of Rapporteurs on General Safety Provisions (GRSG) Thirty-eighth Session—Geneva, Switzerland.
December 8-11, 1981.—Group of Rapporteurs on Brakes and Running Gear (GRRF) Tenth Session—Geneva, Switzerland.

Michael M. Finkelstein,
Associate Administrator for Rulemaking.

January 16, 1981.

[FR Doc. 81-2191 Filed 1-21-81; 8:45 am]
BILLING CODE 4910-59-M

[Docket No. IP80-3; Notice 2]

Ford Motor Co.; Grant of Petition for Determination of Inconsequential Noncompliance

This notice grants a petition by Ford Motor Co. of Dearborn, Michigan, to be exempted from the notification and remedy requirements of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1381 et seq.) for an apparent noncompliance with 49 CFR 571.120,

Motor Vehicle Safety Standard No. 120, *Tire Selection and Rims for Vehicles Other Than Passenger Cars*. The basis of the petition was that the noncompliance is inconsequential as it relates to motor vehicle safety.

Notice of the petition was published on March 20, 1980 (45 FR 18224) and an opportunity afforded for comment.

Petitioner is a truck manufacturer, dependent upon an outside supplier (the Budd Company) for its wheels. Paragraph S5.2 of Standard No. 120 requires each rim of a truck wheel to be marked with five discrete items of information. Ford learned that certain 16x6K single piece wheels provided by Budd were not marked in accordance with S5.2. There were two types of nonconformities. In the first, the 16x6K was mistakenly labelled "16x16K". In the second, no information was applied to the rims. The trucks potentially affected are the F–250 (all 1979 models, and all 1980 models built before August 28, 1979).

The precise number of noncomplying vehicles is not known, though 36,164 trucks were manufactured with the wheels at issue. Ford's own examination of 8,300 wheels led it to conclude that 2.2% of all wheels supplied by Budd during the manufacturing period in question may have contained one or the other nonconformity. As 163,014 wheels were supplied, this means that slightly over 4,000 wheels may have failed to comply, according to Ford's calculation.

Petitioner argued that the incorrect rim size designation has an inconsequential relationship to safety because no tire is available for installation on a 16 inch wide rim, and in the unlikely event one were obtained, it could not be successfully mounted or inflated on a 6 inch rim. Both noncompliances were also said to be unimportant because the rim information would be contained on the vehicles' other rims (assuming that not all were noncompliant), "certification label," and operator's manual. The other missing information (source of rims published nominal dimensions, DOT symbol, rim manufacturer's designation, manufacture date) is Ford's opinion, "is to facilitate NHTSA enforcement" and to provide a means of certification and not intended to provide information relating to rim and tire matching.

The Budd Company supported Ford's petition. No other comments were received.

The NHTSA concurs with Ford's argument that the labelling of rims as "16x16K" is an inconsequential noncompliance. No tire is available for installation on a 16 inch wide rim, and if one were available, it would not fit on the narrow rim in question. In all likelihood the truck owner will choose to replace the original equipment tire with one identical in size. If he wishes to change size or load range, he has the option of consulting the operator's manual or vehicle certification label.

With respect to the lack of information on the rim, the agency does not accept Ford's position that the tire inflation placard provides an alternative source of information; S5.3.1 and S5.3.2 of Standard No. 120 permit listing of appropriate tires and rims but not necessarily those that are actually on the vehicle. Nor does the agency agree that the purpose of the information requirement is to facilitate compliance testing. The NHTSA believes, however, that a vehicle operator is more likely to refer to the sidewall of the tire being replaced, rather than the rim, for replacement information. Further, in the event of a recall, both Ford and Budd have assured the agency that each rim bears a distinctive Budd part number that could serve as an identifier. Finally, the assurances of Ford and Budd that the rims otherwise comply with Standard No. 120 together with the relatively small number of rims involved have convinced the agency that this noncompliance also is inconsequential as it relates to motor vehicle safety. Accordingly, petitioner has met its burden of persuasion and its petition is hereby granted.

(Sec. 102, Pub. L. 93–492, 88 Stat. 1470 (15 U.S.C. 1417); delegations of authority at 49 CFR 1.50 and 501.8)

Issued on January 13, 1981.

Michael M. Finkelstein,

Associate Administrator for Rulemaking.

[FR Doc. 81–2119 Filed 1–21–81; 8:45 am]

BILLING CODE 4910–59–M

General Motors Corp.; Intermediate Station Wagons Equipped With Electro-Clear Rear Window Defoggers; Public Proceeding Regarding Safety Defect Investigation

Pursuant to section 152 of the National Traffic and Motor Vehicle Safety Act of 1966, as amended (Pub. L. 93–492, 88 Stat. 1470; October 27, 1974), 15 U.S.C. 1412, the Associate Administrator for Enforcement, National Highway Traffic Safety Administration, has made an initial determination that a safety-related defect exists in General Motors Corporation intermediate-size station wagons equipped with Electro-Clear rear window defoggers, and manufactured during the period from January, 1979 through December 31, 1979.

A public proceeding will be held at 10:00 a.m. on February 12, 1981, in Room 2230 of the Department of Transportation Headquarters, 400 Seventh Street, SW, Washington, D.C. 20590, at which time General Motors Corporation will be afforded an opportunity to present data, views and arguments to establish that the alleged defect in these vehicles does not exist or is not safety-related.

Interested persons are invited to participate through written or oral presentations. Persons wishing to make oral presentations are requested to notify Ms. Joyce Tannahill, Office of Defects Investigation, National Highway Traffic Safety Administration, Room 5320, Nassif Building, 400 Seventh Street, SW, Washington, D.C. 20590 (telephone 202–426–2850) before close of business on February 5, 1981.

The agency's investigative file in this matter is available for public inspection during working hours (7:45 a.m. to 4:15 p.m.) in the Technical Reference Library, Room 5108, 400 Seventh Street, SW, Washington, D.C. 20590.

(Sec. 152, Pub. L. 93–492, 88 Stat. 1470 (15 U.S.C. 1412); delegation of authority at 49 CFR 1.51 and 49 CFR 501.8)

Issued on January 14, 1981.

Lynn L. Bradford,

Associate Administrator for Enforcement.

[FR Doc. 81–2068 Filed 1–21–81; 8:45 am]

BILLING CODE 4910–59–M

Research and Special Programs Administration

Hazardous Materials; Applications for Exemptions

AGENCY: Materials Transportation Bureau, D.O.T.

ACTION: List of applicants for exemptions.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR Part 107, Subpart B), notice is herby given that the Office of Hazardous Materials Regulation of the Materials Transportation Bureau has received the applications described herein. Each mode of transportation for which a particular exemption is requested is indicated by a number in the "Nature of Application" portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo only aircraft, 5—Passenger-carrying aircraft.

DATES: Comment period closes February 23, 1981.

ADDRESS: COMMENTS TO: Dockets Branch, Information Services Division, Materials Transportation Bureau, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate.

FOR FURTHER INFORMATION CONTACT:

Copies of the applications are available for inspection in the Dockets Branch, Room 8426, Nassif Building, 400 7th Street, SW Washington, DC.

New Exemptions

Application No.	Applicant	Regulation(s) affected	Nature of exemption thereof
8542-N	EVA, Eisenbahn-Verkehrsmittel, AG, Dusseldorf, West Germany.	49CFR 173.119a, 173.119, 173.125, 173.128, 173.131, 173.137, 173.144, 173.245(a)(30), 173.246, 173.620.	To authorize shipment of various flammable, corrosive, combustible, poison B liquids and ORM-A materials in non-DOT specification IMCO Type 1 portable tanks. (Modes 1, 2, 3).
8543-N	Waggonvermietung, AG, Brunnen, Switzerland.	49 CFR 173.120	To authorize shipment of ethyl chloride, classed as a flammable liquid in non-DOT specification IMCO Type 5 portable tanks. (Modes 1, 2, 3).
8544-N	Hagonnet, S.A., Paris, France	49 CFR 173.119a, 173.119, 173.125, 173.245, 173.246, 173.510.	To authorize shipment of various flammable, corrosive, combustible, poison B liquids and ORM-A materials in non-DOT specification IMCO Type 1 portable tanks. (Modes 1, 2, 3).
8545-N	Hercules Incorporated, Cumberland, MD	49 CFR 173.62(a)(1)	To authorize shipment of high explosive liquid in a DOT Specification 15A with an inside DOT Specification 37A containing approximately 2 pounds of solution in a polyethylene bottle secured with sawdust in lieu of copper containers and rubber boots. (Mode 1).
8546-N	Global International Airways Corporation Kansas City, MO.	49 CFR 172.101, 172.204(c)(3), 173.27, 175.30(a)(1), 175.3200(b), Part 107 Appendix B.	To authorize carriage of class A, B, and C explosives not permitted for air shipment or in quantities greater than those prescribed for air shipment. (Mode 4).
8547-N	NATICO, Incorporated, Chicago, IL	49 CFR 178.118, Part 178 Subpart D, Subpart E, Subpart F, Subpart H.	To manufacture, mark and sell a non-DOT specification 55 gallon steel tight head drum incorporating a metal plastic top head with molded closures, in lieu of a steel top head, for shipment of those commodities presently authorized in DOT 17E drum. (Mode 2).
8548-N	Solvent Service Company, San Jose, CA	49 CFR 173.119(a)(17), 173.245(a)(30)(31), 178.340-7, 178.342-5, 178.343-5.	To manufacture, mark and sell non-DOT specification cargo tanks complying generally with DOT Specification MC 312 except for bottom outlet valve variations for the transport of flammable or corrosive waste liquids or semi-solids. (Mode 1).
8549-N	Peters Manufacturing Company, South El Monte, CA.	49 CFR173.119(a)(17), 173.245(a)(30)(31), 173.346-(a)(12), 178.340-7, 178.343-5 178.343-5.	To manufacture, mark and sell non-DOT specification cargo tanks complying generally with DOT Specification MC 312 except for bottom outlet valve variations for the transport of flammable, poison or corrosive waste liquids or semi-solids. (Mode 1).
8550-N	Environmental Sciences, Associates, Incorporated, Bedford, MA.	49 CFR 173.119(m)(i), 175.30	To authorize shipment of a hydrochloric acid/propanol mixture, classed as a flammable liquid in non-DOT specification 1 pint polyethylene bottles not to exceed 6 bottles to one outside DOT Specification 12B fiberboard box. (Mode 1, 2, 3, 4, 5).
8551-N	Huber Manufacturing, Incorporated, Gulfport, MS.	49 CFR 173.119(a)(17), 173.245(a)(30)(31), 173.346-(a)(12), 178.340-7, 178.345-5, 178.343-5.	To manufacture, mark and sell non-DOT specification cargo tanks complying generally with DOT Specification MC-307/312 except for bottom outlet valve variations and certain other features for transportation of flammable, corrosive or poisonous waste liquids or semi-solids. (Mode 1).
8552-N	Brenner Tank, Incorporated, Fond du Lac, WI.	49 CFR .173.119(a)(17), 173.245(a)(30)(31), 178.340-8, 178.342-5, 178.343-5.	To manufacture, mark and sell non-DOT specification cargo tanks complying generally with DOT Specification MC-307/312 except for bottom outlet valve variations for transportation of flammable or corrosive waste liquids or semi-solids. (Mode 1).
8553-N	Woodward, Incorporated, Albuquerque, NM.	49 CFR 172.101, 172.300, 172.304, 172.400, 172.411(c)(d), 173.114(a).	To authorize shipment of a limited of a limited number of packages of nitrocarbonitrate, after December 31, 1980, bearing the outdoor label. (Mode 1).
8554-N	E. I. duPont de Nemours and Company Wilmington, DE.	49 CFR 173.114a, 173.93	To convert (SA-811) to exemption for the transportation of explosive liquids and solids class B; propellant explosives and blasting agents in non-DOT specification tank motor vehicles. (Mode 1).
8555-N	Thiokol Corporation, Brigham City, UT	49 CFR 173.92	To authorize shipment of rocket motors, class B explosive, in a configuration other than what is prescribed in the regulations. (Modes 1, 2).

This notice of receipt of applications for new exemptions is published in accordance with Section 107 of the Hazardous Materials Transportation Act (49 U.S.C. 1806; 49 CFR 1.53(e)).

Issued in Washington, D.C., on January 9, 1981.

J.R. Grothe,

Chief, Exemptions Branch, Office of Hazardous Materials Regulation, Materials Transportation Bureau.

[FR Doc. 81-1749 Filed 1-21-81; 8:45 am]

BILLING CODE 4910-60-M

Technical Hazardous-Liquid Pipeline Safety Standards Committee; Advisory Committee Charter

This notice announces the establishment of the Technical Hazardous-Liquid Pipeline Safety Standards Committee as required by section 204(a) of the Hazardous Liquid Pipeline Safety Act of 1979 (Title II of Pub. L. 96–129). It also sets forth the charter of the Committee prepared in accordance with the Federal Advisory Committee Act (Pub. L. 92–463; 86 Stat. 770).

The purpose of the Technical Hazardous-Liquid Pipeline Safety Standards Committee is to review proposed hazardous liquid pipeline safety standards and report to the Associate Director for Pipeline Safety Regulation on the technical feasibility, reasonableness, and practicability of each such proposal. The Committee may propose safety standards to the Associate Director for his consideration for hazardous liquid pipeline facilities.

It has been determined that establishment of the Technical Hazardous-Liquid Pipeline Safety Standards Committee is in the public interest in connection with the

performance of duties imposed by law on the Department under section 204(a) of the Hazardous Liquid Pipeline Safety Act of 1979.

The charter of the Committee is set forth below.

Charter—Technical Hazardous-Liquid Pipeline Safety Standards Committee

1. *Purpose.* This charter of the Technical Hazardous-Liquid Pipeline Safety Standards Committee is prepared in accordance with the Federal Advisory Committee Act enacted October 6, 1972.

2. *Background.* Section 204 of the Hazardous Liquid Pipeline Safety Act of 1979 (HLPSA) authorizes the establishment and prescribes the duties of the Technical Hazardous-Liquid Pipeline Safety Standards Committee. The Committee was established on January 16, 1981, by the appointment of 15 members.

3. *Sponsor.* The Office of Pipeline Safety Regulation is the Committee sponsor. The Associate Director for Pipeline Safety Regulation of the Materials Transportation Bureau is designated the Executive Director of the Committee and shall be the Department of Transportation (DOT) official authorized to call or adjourn meetings, approve the agenda, and otherwise monitor the Committee's meetings and progress.

4. *Committee Objectives and Duties.* The Associate Director for Pipeline Safety Regulation shall submit to the Committee for its consideration any notice of proposed hazardous liquid pipeline safety standards published in the Federal Register (including both new standards and amendments to existing standards). Within 90 days after receipt by the Committee of any such proposal, the Committee shall prepare a report on the technical feasibility, reasonableness, and practicability of the proposal. Each report by the Committee, including any minority views, shall, if timely made, be published and form a part of the proceedings for the promulgation of standards. The Director, Materials Transportation Bureau, may prescribe a final standard at any time after the 90th day after a proposal's submission to the Committee, whether or not the Committee has reported on such proposal. The Committee may propose safety standards to the Associate Director for his consideration for hazardous liquid pipeline facilities. The Associate Director shall not be bound by conclusions of the Committee, but in the event that the conclusions of the majority of the current members of the Committee are rejected, the reasons for rejection shall be incorporated in the preamble published with the final rule (HLPSA, Section 204, and 49 CFR 1.53). The Committee may also review and report on other matters related to the Department's hazardous liquid pipeline safety rulemaking function as are presented by the Associate Director.

5. *Membership.*

a. The Committee shall be composed of 15 members, each of whom shall be appointed by the Secretary, after consultation with public and private agencies concerned with the technical aspect of the transportation of hazardous liquids or the operation of pipeline facilities. Members shall be appointed on the basis of their experience in the safety regulation of the transportation of hazardous liquids and of pipeline facilities, or their training, experience, or knowledge in one or more fields of engineering applied in the transportation of hazardous liquids or the operation of pipeline facilities to evaluate hazardous liquid pipeline safety standards, as follows:

(1) Five members shall be selected from Federal, State, or local governmental agencies, and two of the five shall be State commissioners selected after consultation with representatives of the national organization of State commissions;

(2) For members shall be selected from the hazardous liquids industry, after consultation with industry representatives, and not less than three of the four shall be currently engaged in the active operation of pipeline facilities; and

(3) Six members shall be selected from the general public.

b. The membership shall be fairly balanced in terms of the points of view represented, and the advice and recommendations of the Committee shall be the result of its independent judgment (FACA, section 5(b)(2) and (3)).

c. Members are appointed for a term of 3 years except that a member may serve until his successor is appointed, but for not more than a total of 6 years.

6. *Appointment of Officers.* At the first meeting of each calendar year, the Associate Director shall appoint a Chairman and Vice-Chairman, and the Committee shall, by majority vote of the members present, elect a Secretary. These three officers, who will serve until their successors are appointed, shall constitute an executive committee.

7. *Meetings and Procedures.*

a. *Calling meetings.* The Associate Director for Pipeline Safety Regulation shall approve in advance the scheduling and agenda of each Committee meeting (FACA, section 10(f)). The Committee may recommend agenda items to the Associate Director. A designated officer or employee of the Federal government shall attend each Committee meeting, and is authorized to adjourn the meeting whenever he determines it to be in the public interest (FACA, section 10(e)).

b. *Presiding at meetings.* The Chairman shall preside at all meetings of the Committee and of the Executive Committee, except that the Associate Director or his delegate may preside whenever the Committee is, at the request of an official of the Department of Transportation, advising the Department on matters other than notices of proposed rulemaking. The Vice-Chairman shall assume and perform the duties of the Chairman in the event of his absence. A majority of the current members of the Committee must be present at a meeting to perform the Committee's statutory duties.

c. *Duties of Secretary.* The Committee Secretary shall, as directed by the Chairman, monitor records, summarize activities, prepare and process letter ballots, and prepare reports for submission to the Associate Director. In the absence of the Secretary, the Chairman appoints a member of the Committee to perform the duties of the Secretary.

d. *Notice of meetings.* Notice of each Committee meeting shall be published in the Federal Register at least 15 days in advance of the meeting, except in emergency situations. Other forms of notice are to be used to the extent practicable (FACA, section 10(a)(2)).

e. *Frequency of Committee meetings.* The Committee meets at least once every 6 months. In addition, Committee members may be polled or asked for comments on notices of proposed rulemaking or other matters at any time without formally assembling at one place.

f. *Public participation.* Each Committee meeting shall be open to the public, and interested persons shall be permitted to attend, appear before, or file written statements with the Committee, subject to the limitations contained in the exceptions to the Freedom of Information Act (5 U.S.C. 552(b)), and also subject to reasonable rules prescribed concerning availability of space, time, etc. (FACA, section 10(a)(1) and (3)).

g. *Minutes.* Detailed minutes of each Committee meeting shall be kept and certified to by the Committee Chairman. The minutes shall contain a record of the persons participating, a complete and accurate description of the matters discussed and conclusions reached, and copies of all reports received, issued, or

approved by the Committee (FACA, section 10(c)).

h. *Availability of records.* The records, reports, transcripts, minutes, and other documents of the Committee shall be available for public inspection and copying at the Office of Pipeline Safety Regulation, 400 Seventh Street, SW., Washington, D.C. 20590, subject to the limitations contained in the exceptions to the Freedom of Information Act, 5 U.S.C. 552(b) (FACA, section 10(b)).

8. *Compensation.* Members of the Committee other than Federal employees shall be compensated at the rate of $150 per day (including travel time) when engaged in the actual duties of the Committee. All members, while away from their homes or regular places of business, shall be allowed travel expenses, including per diem in lieu of subsistence.

9. *Duration of the Committee.* Under the provisions of the Hazardous Liquid Pipeline Safety Act, the Committee's purposes are continuing in nature; therefore, the Committee has an indefinite duration. The Committee itself must be renewed at successive 2-year intervals by the appropriate action of the Secretary (FACA, section 14(c)).

10. *Administrative Support.* The Associate Director for Pipeline Safety Regulation is responsible for providing office space, equipment, supplies, clerical help, and other administrative and financial support for the Committee.

11. *Annual Operating Cost.* Estimated annual operating cost is approximately $40,000 for salaries, travel, and recording the proceedings, plus about one-eighth person-year of staff support.

12. *Public Interest.* The formation and use of the Technical Hazardous-Liquid Pipeline Safety Standards Committee is determined to be in the public interest in connection with the performance of duties imposed on the Department by law. In fact, the Hazardous Liquid Pipeline Safety Act of 1979 specifically requires the DOT to submit all proposed hazardous liquid pipeline safety standards to the Committee as part of the proceedings for the promulgation of such standards.

13. *Filing Date. January 16, 1981*—This is the effective date of the charter which will expire 2 years from that date unless sooner terminated.

Melvin A. Judak,

Acting Associate Director for Pipeline Safety Regulation, Materials Transportation Bureau.

[FR Doc. 81-2139 Filed 1-21-81; 8:45 am]

BILLING CODE 4910-60-M

VETERANS ADMINISTRATION

Central Office Education and Training Review Panel; Renewal

This is to give notice in accordance with the Federal Advisory Committee Act (Public Law 92-463) of October 6, 1972, that the Central Office Education and Training Review Panel has been renewed by the Administrator of Veterans Affairs for a two year period beginning December 31, 1980 through December 31, 1982.

Dated: January 13, 1981.

By direction of the Administrator.

Rufus H. Wilson,

Deputy Administrator.

[FR Doc. 81-2165 Filed 1-21-81; 8:45 am]

BILLING CODE 8320-01-M

Cooperative Studies Evaluation Committee; Meeting

The Veterans Administration gives notice pursuant to Public Law 92-463 that a meeting of the Cooperative Studies Evaluation Committee, authorized by 38 U.S.C. 4101, will be held at the Miami Springs Villas, Miami Springs, Florida, on February 9 and 10, 1981. The meeting will be for the purpose of reviewing proposed cooperative studies and advising the Veterans Administration on the relevance and feasibility of the studies, the adequacy of the protocols, including involvement of human subjects.The Committee advises the Director, Medical Research Service, through the Chief of the Cooperative Studies Program, on its findings.

The meeting will be open to the public up to the seating capacity of the room from 8 to 8:30 a.m., on February 9 and 10, to discuss the general status of the program. To assure adequate accommodations, those who plan to attend should contact Dr. James A. Hagans, Coordinator of the Committee, Veterans Administration Central Office, Washington, DC (202-389-3702) prior to January 23.

The meeting will be closed from 8:30 a.m. to 4:15 p.m., on February 9, and from 8:30 a.m. to 10:30 a.m. on February 10, for consideration of specific proposals in accordance with provisions set forth in Subsection 10(d) of Public Law 92-463, as amended by Public Law 94-409, and 5 U.S.C. 552b(c)(6). During this portion of the meeting, discussion and decisions will deal with qualifications of personnel conducting the studies and the medical records of patients who are study subjects, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Dated: January 13, 1981.

By direction of the Administrator:

Rufus H. Wilson,

Deputy Administrator.

[FR Doc. 81-2166 Filed 1-21-81; 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register
Vol. 46, No. 14
Thursday, January 22, 1981

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

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1

CHRYSLER CORPORATION LOAN GUARANTEE BOARD.

TIME AND DATE: 9 a.m., January 19, 1981.

PLACE: Room 4424, Main Treasury Building, 15th Street and Pennsylvania Avenue NW., Washington, D.C.

STATUS: Closed to the public.

MATTERS TO BE DISCUSSED: The Board will continue its discussion of Chrysler's new Operating and Financing Plans and related documents and its request for additional guarantees. On Wednesday, January 14, the Board approved a summary of the terms on which it expected to be able to grant formal approval later in the week. The January 19 meeting will be a continuation of the Board's meeting of Friday, January 16, which was recessed until January 19. At the January 19 meeting the Board expects to take formal action on Chrysler's application for up to an additional $400 million of guarantees.

CONTACT PERSON FOR MORE INFORMATION: Bruce D. Bolander, Secretary of the Board (202) 566-2278.

This notice is given as a result of a court order. The position of the Board is that it is not subject to the Government in the Sunshine Act.

Dated: January 17, 1981.

Bruce D. Bolander,
Secretary of the Board.

[S-169-81 Filed 1-19-81; 9:03 am]
BILLING CODE 4810-87-M

2

COMMODITY FUTURES TRADING COMMISSION.

TIME AND DATE: 11 a.m., Friday, January 30, 1981.

PLACE: 2033 K Street NW., Washington, D.C., eighth floor conference room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Briefing.

CONTACT PERSON FOR MORE INFORMATION: Jane Stuckey, 254-6314.

[S-170-81 Filed 1-19-81; 11:24 am]
BILLING CODE 6351-01-M

3

FEDERAL DEPOSIT INSURANCE CORPORATION.

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that the Federal Deposit Insurance Corporation's Board of Directors will meet in open session at 2:00 p.m. on Monday, January 26, 1981, to consider the following matters:

Disposition of minutes of previous meetings.

Request by the Comptroller of the Currency for a report on the competitive factors involved in a proposed merger of Puget Sound National Bank, Tacoma, Washington, and The Peninsula State Bank, Gig Harbor, Washington.

Memorandum and Resolution re: Exemption from periodic reporting requirements of the Securities Exchange Act of 1934—Banco Central y Economias, San Juan, Puerto Rico.

Recommendation with respect to payment for legal services rendered and expenses incurred in connection with receivership and liquidation activities:

Francis, Doval, Munoz, Acevedo, Otero & Trias, Hato Rey, Puerto Rico, in connection with the liquidation of Banco Credito y Ahorro Ponceno, Ponce, Puerto Rico.

Recommendation regarding the liquidation of a bank's assets acquired by the Corporation in its capacity as receiver, liquidator, or liquidating agent of those assets:

Case No. 44,633-SR—Franklin Bank, Houston, Texas

Reports of committees and officers:

Minutes of the actions approved by the Committee on Liquidations, Loans and Purchases of Assets pursuant to authority delegated by the Board of Directors.

Reports of the Director of the Division of Bank Supervision with respect to applications or requests approved by him and the various Regional Directors pursuant to authority delegated by the Board of Directors.

Report of the Controller on the termination of the liquidation of The First State Bank of Jennings, Jennings, Kansas.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550 17th Street, NW, Washington, D.C.

Requests for information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 389-4425.

Dated: January 19, 1981.
Federal Deposit Insurance Corporation.
Hoyle L. Robinson,
Executive Secretary.

[S-169-81 Filed 1-19-81; 12:57 pm]
BILLING CODE 6714-01-M

4

FEDERAL DEPOSIT INSURANCE CORPORATION.

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 2:30 p.m. on Monday, January 26, 1981, the Federal Deposit Insurance Corporation's Board of Directors will meet in closed session, by vote of the Board of Directors pursuant to sections 552b (c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10) of Title 5, United States Code, to consider the following matters:

Application for Federal deposit insurance:

Stewardship Bank of Oregon, a proposed new bank, to be located at 2918 N.E. 181st Avenue, Multnomah County (P.O. Portland), Oregon.

Application for consent to merge and establish branches:

Bay Springs Bank, Bay Springs, Mississippi, for consent to merge, under its charter and with the title Commonwealth Bank, with First Citizens Bank and Trust Company, Poplarville, Mississippi, and for consent to establish the two offices of First Citizens Bank and Trust Company as branches of the resultant bank.

Application for consent to purchase assets and assume liabilities and establish branches:

People's Savings Bank-Bridgeport, Bridgeport, Connecticut, for consent to purchase the assets of and assume the liability to pay

deposits made in First Stamford Bank and Trust Company, Stamford, Connecticut, and for consent to establish the five existing offices and one approved but unopened office of First Stamford Bank and Trust Company as branches of People's Savings Bank-Bridgeport.

Recommendations regarding the liquidation of a bank's assets acquired by the Corporation in its capacity as receiver, liquidator, or liquidating agency of those assets:

Case No. 44,596-L—The Mission State Bank and Trust Company, Mission, Kansas
Case No. 44,603-L—American Bank & Trust, Orangeburg, South Carolina
Case No. 44,610-L—American Bank & Trust, Orangeburg, South Carolina
Case No. 44,625-NR—United States National Bank, San Diego, California

Recommendations with respect to the initiation, termination, or conduct of administrative enforcement proceedings (cease-and-desist proceedings, termination-of-insurance proceedings, suspension or removal proceedings, or assessment of civil money penalties) against certain insured banks or officers, directors, employees, agents, or other persons participating in the conduct of the affairs thereof:

Names of persons and names and locations of banks authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(6), (c)(8), (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(6), (c)(8), (c)(9)(ii)).

Personnel actions regarding appointments, promotions, administrative pay increases, reassignments, retirements, separations, removals, etc.:

Names of employees authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(2) and (c)(6) of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(2) and (c)(6)).

Reports of committees and officers:

Reports of the Director, Division of Liquidation:
Memorandum re: Reports Required Under Delegated Authority Releases of Collateral for Fair Market Value
Memorandum re: Reports Required Under Delegated Authority Compromise Settlements
Report of the Director, Office of Corporate Audits:
Audit Report re: Audit of Selected Relocation Expenses, dated October 17, 1980

Recommendation of the Controller re: Audit of Selected Relocation Expenses.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 500 17th Street NW., Washington, D.C.

Requests for information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 389-4425.

Dated: January 19, 1981.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[S-107-81 Filed 1-20-81; 12:17 pm]

BILLING CODE 6714-01-M

5

FEDERAL ENERGY REGULATORY COMMISSION.

January 19, 1981.

TIME AND DATE: 1 p.m., January 26, 1981.

PLACE: Room 9306, 825 North Capitol Street NE., Washington, D.C. 20426.

STATUS: Open.

MATTERS TO BE CONSIDERED: Staff Briefing on Preliminary Permit Processing.

CONTACT PERSON FOR MORE INFORMATION:
Lois D. Cashell, Acting Secretary; telephone (202) 357-8400.

[S-105-81 Filed 1-20-81; 11:05 am]

BILLING CODE 6450-85-M

6

FEDERAL MARITIME COMMISSION.

TIME AND DATE: 9 a.m., January 28, 1981.

PLACE: Hearing Room One, 1100 L Street NW., Washington, D.C. 20573.

STATUS: Parts of the meeting will be open to the public. The rest of the meeting will be closed to the public.

MATTERS TO BE CONSIDERED: Portions open to the public:

1. Agreements Nos. T-3003 and T-3003-A: Non-exclusive preferential assignments of wharf and berthing areas and cranes from the City of Long Beach, California to Orient Overseas Container Line.
2. Agreement No. T-3004: Lease of terminal facilities by the Port of Tacoma Washington to Totem Ocean Trailer Express.

Portion closed to the public:

1. Docket No. 80-63: W.I.N.A.C. Tariff No. FMC-3, Rule 26—Consideration of request for oral argument and possible consideration of the record.

CONTACT PERSON FOR MORE INFORMATION:
Francis C. Hurney, Secretary (202) 523-5725.

[S-111-81 Filed 1-19-81; 3:03 pm]

BILLING CODE: 6730-01-M

7

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM.

TIME AND DATE: 10 a.m., Monday, January 26, 1981.

PLACE: 20th Street and Constitution Avenue NW., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION:
Mr. Joseph R. Coyne, Assistant to the Board (202) 452-3204.

Dated: January 16, 1981.

James McAfee,

Assistant Secretary of the Board.

[S-103-81 Filed 1-20-81; 3:05 pm]

BILLING CODE 6210-01-M

8

BOARD FOR INTERNATIONAL BROADCASTING.

TIME AND DATE: 9:30 a.m., January 30, 1981.

PLACE: Board for International Broadcasting Conference Room, Suite 430, 1030 15th Street NW., Washington, D.C. 20005.

STATUS: Closed, pursuant to 5 U.S.C. 552b(c)(1) 22 CFR 1302.4 (c) and (h) of the Board's rules (42 FR 9326, Feb. 16, 1977).

MATTERS TO BE CONSIDERED: Matters concerning the broad foreign policy objectives of the United States Government.

CONTACT PERSON FOR ADDITIONAL INFORMATION:
Arthur D. Levin, Budget and Administrative Officer, Board for International Broadcasting, Suite 430, 15th Street NW., Washington, D.C. 20005, 202-254-8040.

Arthur D. Levin,

Budget and Administrative Officer.

[S-102-8 Filed 1-19-81; 3:03 pm]

BILLING CODE 8190-01-M

9

[OPO401]

PAROLE COMMISSION.

TIME AND DATE: Tuesday, February 3, 1981, 2:30-5:30 p.m., and Wednesday, February 4, 1981, 9-5:30 p.m.

PLACE: Room 500, 320 First Street NW., Washington, D.C.

STATUS: Open.

CHANGES IN THE MEETING: On January 16, 1981 the Commission determined that the following matters be added to the agenda as previously published and posted.

16. Cuban Detainees
17. Supervision Guidelines

The above change is being announced at the earliest practicable time.

CONTACT PERSON FOR MORE INFORMATION:
Barbara Meierhoefer, Acting Director of Research (202) 724–3096.

[S-103-8 Filed 1-19-81; 2:[illegible] pm]
BILLING CODE 4410-01-M

10

UNITED STATES RAILWAY ASSOCIATION.

TIME AND DATE: 9 a.m., January 29, 1981.

PLACE: Board Room, Room 2–500, fifth floor, 955 L'Enfant Plaza North SW., Washington, D.C.

STATUS: Parts of this meeting will be open to the public. The rest of the meeting will be closed to the Public.

MATTERS TO BE CONSIDERED BY THE BOARD OF DIRECTORS: Portions closed to the Public (9 a.m.)

1. Consideration of internal personnel matters.
2. Litigation report.
3. Comments on Report.
4. Status Report on Conrail Study.
5. Review of Conrail proprietary and financial information for monitoring and investment purposes.
6. Review of Delaware and Hudson Railway Company proprietary and financial information for monitoring and investment purposes.

Portions open to the public (10:00 a.m.)

7. Approval of minutes of the January 6, 1981 Board of Directors meeting.
8. Consideration of Conrail drawdown request for February.
9. Consideration of Delaware and Hudson loan request.
10. Contract Actions (extensions and approvals).

CONTACT PERSON FOR MORE INFORMATION:
Alex Bilanow (202) 426–4250.

[S-115-81 Filed 1-19-81; 3:[illegible] pm]
BILLING CODE 8240-01-M

federal register

Thursday
January 22, 1981

Part II

Department of Commerce

National Oceanic and Atmospheric Administration

Financial Assistance for Fisheries Development

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Financial Assistance for Fisheries Development

AGENCY: National Oceanic and Atmospheric Administration/ Department of Commerce.

ACTION: Saltonstall-Kennedy Funds Amended Notice of availability/ Instruction to the public.

SUMMARY: On December 17, 1980 the National Marine Fisheries Service (NMFS) announced, by publication in the Federal Register the availability of and instructions for Saltonstall-Kennedy funds for the fiscal year 1981. On December 22, 1980, the President signed the American Fisheries Promotion Act (the "AFPA" Title II of Pub. L. 96-561). The AFPA effects several modifications to the Saltonstall-Kennedy Act that were effective upon enactment and require implementation in the current solicitation.

Amendments made to implement the provisions of the AFPA include: inclusion of a statement of the broad range of projects which may be assisted; inclusion of a requirement that 50% of available Saltonstall-Kennedy funds be used to assist such projects; inclusion of the statutory requirements for eligibility, to specifically include all those previously eligible with the exception of foreign citizens, nationals, or non-citizen entities (except fishery development foundations or other private non-profit corporations located in Alaska); modification of the cost sharing formulae to conform to the statutory requirement that the amount of any grant be at least 50% of the total cost of the project; revision of dates for submission of applications, the review and comment period, and the final date for approval or disapproval of applications; modification of criteria for technical review of applications; and inclusion of additional record-keeping and reporting requirements. In addition, two amendments have been made in the priorities section: under Section III C, deletion of priority status for projects to develop, establish and operate a voluntary system to sample, inspect grade the quality of whole fish landed at U.S. ports; and under Section IV E, deletion of priority status for proposals which focus on personal use of recreationally caught species in Alaska.

Accordingly, the NMFS is publishing this amended notice: in the interest of clarity, all portions of the notice, whether or not amended, are provided.

For fiscal year 1981, funds will be available to assist persons in carrying out research and development projects addressed to any aspect of United States fisheries, (recreational or commercial) including, but not limited to, harvesting, processing, marketing, and associated infrastructures. Proposals will be funded through grants and cooperative agreements. Any individual who is a citizen or national of the United States, or a citizen of the Northern Mariana Islands (NMI), any fishery development foundation or other private non-profit corporation located in Alaska, or any corporation, partnership, association or other entity, non-profit or otherwise, if a citizen of the United States (as defined by Section 2 of the Shipping Act of 1916 (46 U.S.C. 802), is eligible to apply for funding under this solicitation. The NMFS, NMFS employees and their immediate relatives are not eligible to apply hereunder.

This notice sets forth conditions under which proposals will be evaluated to determine appropriateness for funding. Applicants are required to comply with Office of Management and Budget Circular A-95 regarding State and Area-wide Planning and Development Clearinghouse review. The Catalogue of Federal Domestic Assistance number and title for this program are 11-427, "Fisheries Development and Utilization Research and Demonstration Grants and Cooperative Agreements." This amended notice of availability of Financial assistance for fisheries research and development projects will also appear in the *Commerce Business Daily*.

FOR FURTHER INFORMATION CONTACT: Mr. Preston Smith, Office of Utilization and Development, National Marine Fisheries Service, Washington, D.C. 20235, Phone: 202-634-7252.

I. Introduction

The Saltonstall-Kennedy Act (15 U.S.C. 713c-2-713c-3) makes thirty percent of the gross receipts collected under the customs laws from duties on fishery products available to the Secretary of Commerce. The AFPA provides that at least 50% of these funds are to be used by the Secretary to make grants to assist persons in carrying out research and development projects addressed to any aspect of United States fisheries, including, but not limited to, harvesting, processing, marketing and associated infrastructures. "United States fishery" is defined in the AFPA to mean any fishery, including a tuna fishery, that is or may be engaged in by U.S. citizens or nationals or citizens of the NMI. For fiscal year 1981, about $10,000,000 of Saltonstall-Kennedy monies may be made available to fund fisheries research and develop projects which promote the goals and priorities of the NMFS fisheries development program.

II. NMFS Fisheries Development and Utilization Program

A. Fisheries development and utilization goals

In 1979, the Department of Commerce announced a broad based fisheries development policy designed to strengthen the U.S. fishing industry and increase the supply of domestically produced wholesome and nutritious fish and fish products. These goals would be met by identifying and resolving economic and technological impediments to the development and strengthening of the U.S. fishing industry. More specifically, the aim of the NMFS fisheries development policy is to:

(1) Encourage development and growth of the domestic fishing industry in order to provide increased employment opportunities, improve the economic well-being of fisheries-dependent communities, and increase the supply of economically priced fish and fish products to U.S. consumers.

(2) Increase productivity and promote efficiency in the harvesting, processing, distributing, and marketing of fish and fish products.

(3) Lower the foreign trade deficit in fishery products through increased exports of U.S. fish and fish products and displacement of imports.

(4) Provide consumers with a good quality and wide variety of wholesome, nutritious fish and fish products.

(5) Encourage the development of non-traditional fish resources, strengthen the long-term viability of the industry, and reduce reliance on traditional fish resources already harvested at optimum yield.

(6) Improve domestic and foreign market efficiency, through the transfer of information and the elimination of any market practices that restrict competition.

B. Saltonstall-Kennedy Activities

The Saltonstall-Kennedy program constitutes an important part of the NMFS fisheries development program; Saltonstall-Kennedy program monies will be used to fund proposed projects which are directed to the attainment of the stated goals of the NMFS development program. NMFS will consider funding proposals which relate to the development of one specific fishery, proposals which relate to more than one fishery, or proposals

which are national in scope.[1] However, all proposals should be comprehensive in dealing with the impediments to development. Thus, proposals which relate to one specific fishery should discuss all phases of the development of that fishery, from harvesting to processing, distribution, and marketing. Proposals addressed to the needs of a particular region in one or more fisheries should show how the proposal relates to existing regional plans. All proposals which address regional needs will be considered even though the may not be part of existing regional fisheries plans, but will be considered more favorably if they complement regional plans where such plans exist. For example, a project to plan facilities for a specific port or port district, or a project to demonstrate a squid cleaning machine, or a project to demonstrate advanced technology for artificial reefs would be considered to be comprehensive only if the individual projects are identified as part of a comprehensive plan or program to develop fisheries within that region. Projects which address national concerns should be responsive to the goals and priorities of the NMFS fisheries utilization and development program.

III. Areas for Grants and Cooperative Agreements

For fiscal year 1981, NMFS seeks to fund fisheries research and development projects which relate to regional and national concerns originally identified in 1979 by the Department of Commerce Fisheries Development Task Force, which have since been reviewed and updated in consultation with members of the fishing industry. The final report of this Task Force is available from the office listed at the front of this notice. Project priorities are described below, but other projects within the areas of concern will also be considered. Applicants having knowledge in any of these areas are encouraged to develop complete proposals; however, there is no guarantee that sufficient funds will be available to make awards for all approved proposals.

Fisheries research and development and utilization proposals should relate to all or some of the 5 areas of concern identified by the Task Force. These are:

A. Application of Technology to Fishing Operations and Processes

The National Marine Fisheries Service intends to fund projects that demonstrate the feasibility and use of new or existing technologies in fisheries that have not had the opportunity to examine or test such state-of-the-art technologies. Low priority will generally be given to the funding of any proposal involving extensive design or development of new technology.

Projects of particular interest include, in order of priority: (1) projects to demonstrate the feasibility and use of new or existing technologies to improve fuel efficiency or otherwise reduce energy needs in harvesting or processing; (2) projects to provide direct technical assistance to members of the fishing industry to apply new or existing technology to reduce the energy needs in harvesting or processing; (3) projects to analyze the feasibility of transfer of available technology from one fishery to another by study an demonstration of foreign and domestic methods of harvesting and processing specific fish; (4) projects to analyze the costs and benefits of transfer of technology from one fishery to another to increase the productivity of harvesting or processing; (5) projects to improve storage techniques, processing or preservation methods, or otherwise reduce processing costs, to increase the ability of the industry to utilize available fish resources and provide an increased variety of safe, wholesome, and nutritious fish and fish products to consumers; or (6) projects to examine fishing vessel safety, to improve the safety of vessel operations, to teach vessel safety, or to disseminate information on increasing vessel safety.

B. Improvement of Access to Domestic and Foreign Markets

Projects should be designed to enhance the opportunities for the marketing of U.S. fish and fish products, at home and abroad. NMFS is soliciting, in order of priority, projects to (1) increase the use of domestically harvested fish, especially non-traditional species and shellfish, in U.S. institutions; (2) identify present or potential export markets for U.S. fishery products, inform the U.S. industry of export markets (e.g., Denmark, Norway, Finland, Venezuela, Columbia, Argentina, Brazil, Canada, and Mexico), and provide instruction on penetration of these markets (e.g., export seminars in Boston, Tampa, Los Angeles and Seattle); (3) increase awareness of foreign consumers of American fisheries products; (4) determine, compile, and publish safety, quality and labeling standards and inspection and other import requirements of foreign governments for fish and fish products; or (5) measure the impact of foreign tariff and nontariff barriers on the U.S. fishing industry (i.e., subsidies and reference price in the EEC, subsidies in Canada, and Brazilian fish trade restrictions).

C. Safety, Quality, Labeling, and Nutritional Value of Fish and Fish Products

NMFS is soliciting, in order of priority, proposals to (1) continue studies to determine the levels and public health significance of hazardous materials in fish and fish products; (2) continue studies to identify and measure natural toxins in fish, and to prevent toxic fish from reaching the market place; (3) conduct a comprehensive, objective assessment of the quality of seafood produced by U.S. processors for domestic and foreign consumption; (4) study the nutrient composition, and nutritional qualities of commercial and recreational species and nutrient/nutrient interactions; (5) develop modern, effective product standards specifications for underutilized species to accelerate consumer acceptance; (6) study the effects of processing, storage, additives, and methods of cooking on the nutritive quality and shelf life of fish and fish products; or (7) identify and eliminate specific safety, quality, and labeling problems which impede the utilization of nontraditional or underutilized fish resources.

D. Support Facilities

NMFS is soliciting proposals for regional studies, coordinated with the work on the Economic Development Administration, Maritime Administration, Minority Business Development Agency, or the U.S. Army Corps of Engineers, to address impediments to fisheries development due to inadequacy of ports, harbors, and other support facilities.

The NMFS has found that the most serious impediment to the orderly development of support facilities is the lack of regional planning. In evaluating proposals for planning support facilities, the NMFS will afford highest priority to proposals which consider total needs of a region, and provide for development of the underutilized or unused fish resources within the region. Where a regional plan exists, the highest priority will be given for studies which plan the placement, characteristics, and priorities of specific support facilities within the

[1] For purposes of this notice, a fishery is defined as one or more stocks of fish which are identified as a unit based on geographic, scientific, technical, recreational and economic characteristics, and any and all phases of fishing for such stocks. Examples of fisheries are: Alaskan groundfish, Pacific Whiting, New England Whiting, Gulf of Mexico groundfish, etc. The term "United States fishery" is defined by the AFPA as any fishery, including any tuna fishery, which is or may be engaged in by citizens or nationals of the United States or citizens of the NMI.

region or at a site identified in the regional plan. High priority would also be given to cost/benefit studies for such facilities. NMFS will consider requests for funds for construction or purchase of support facilities only if all other qualified proposals have been funded and funds remain unallocated.

E. Consumer Education/Consumer Awareness

The NMFS is soliciting proposals for projects designed to increase per capita consumption of seafood, consistent with dietary goals established by the U.S. Senate Select Committee on Nutrition and Human Needs through consumer education and awareness. Projects could include, in order of priority: (1) projects to provide the most effective type of educational materials about fish and fish products, and the best methods of disseminating these materials; (2) projects to provide consumers with information on the safety, quality, identity (nomenclature), economy, and nutritional value of fish and fish products; or (3) projects to educate consumers on the preparation of fish and fish products.

IV. Regional Priorities

The NMFS is seeking to encourage a regional approach to developing or strengthening fisheries. "Region" refers to a geographic area corresponding to the area in which fishing for a species or group of species would likely take place. A region generally corresponds to the range over which the species of fish can be harvested and/or the area encompassed by the NMFS regions. Regional priorities have been identified and established by the NMFS in conjunction with groups, organizations and local governmental units having an interest in the development of fisheries in the region. NMFS is specifically soliciting proposals which provide a regional approach to (1) development or expansion of a specific fishery or group of fisheries capable of supporting further development; (2) removal of impediments to the development or expansion of such fisheries; or (3) further involvement of small and minority business in those fisheries.

Specific fish resources within each region which have the greatest potential for development have been identified. These fish resources, and the major impediments to their development are:

A. Northeast Region

The Northwest Region is seeking development of those fisheries resources which are known to be abundant and available for additional exploitation, including squids (Illex and Loligo), hakes (several species), butterfish, scup (porgy), monkfish, rock and jonah crabs, dogfish, skates, rays and mackerel.

Impediments to development include use of out-dated fishing methods, inadequate and locally oriented marketing/distribution systems, lack of industry-related information, and imbalance among the producing, processing and marketing segments of the industry.

Priority will be given projects that:

(1) introduce new and/or modified technology for the harvesting, handling, processing or marketing of these species;

(2) are directed to more comprehensive use of developed resources, such as use of groundfish frames or scallop gonads as marketable products, and increased consumption of recreationally caught species not historically used for food, such as sharks and ocean pout.

(3) demonstrate the economic viability of manufactured products, such as pickled or marinated herring and shellfish and/or shelf stable products such as canned mackerel or whiting; or

(4) extend current industry or state marketing activities through better coordination, or adoption of innovative approaches for domestic and export marketing.

Preference will be granted to those projects which are likely to provide industry-wide benefits, and those which are endorsed by industry as part of a comprehensive regional program for fisheries development. A lower priority will be afforded those projects that involve specific port development, aquaculture, marine extension, or are environmentally oriented. Only those proposals that have potential for significant economic impact and/or those that will benefit a broad segment of the domestic industry should be submitted.

B. Southeast Region

Resources which have the greatest potential for development in the Southeast Region are sardines, herring and similary small pelagic species, Gulf groundfish, Jack Crevales, bonitos, blackfin and yellowfin tuna and coastal pelagics, and South Atlantic groundfish. Projects directed to other species or species groups will be considered individually in terms of overall merit.

Major impediments to the development of the fishing industry in the Southeast Region are as follows:

(1) Insufficient knowledge about the abundance, location, seasonality and other characteristics of the resources, in economically applicable terms.

(2) Lack of adequate onboard handling and storage facilities or sorting methods for recreational and large volume, low value commercial species.

(3) Insufficient knowledge of market potentials in Africa, South America and Western Asia for many of the underutilized southeastern species.

(4) Inadequate information on characteristics of several underutilized species for food processing purposes.

(5) Lack of knowledge regarding the adaptability of harvesting techniques which are new or commonly employed elsewhere in the U.S. or abroad.

(6) Lack of economic evaluation and investment opportunity information regarding undeveloped or partially developed fisheries.

Priority will be given to any project directed to energy conservation or shrimp bycatch utilization.

C. Southwest Region

The Southwest Region places high priority on projects that address the fishing industry's ability to adjust to fluctuations and imbalances in the supply and demand of seafood products landed in California, Hawaii, American Samoa, Guam, the Trust Territory of the Pacific Islands, and the Commonwealth of Northern Marianas.

On the U.S. west coast, underutilized species include, but are not limited to, rockfish (Seabastes sp), Pacific whiting (hake), squid, mackerel, sablefish and shark. The major impediment to the development of the west coast fishing industry is the current inability of processing and marketing sectors to handle the increased domestic fleet catch. Competitions for foreign fishermen and imported products also contstrain development. Recreational fisheries would benefit from the application of advanced technology in artificial reef development.

In the western and central Pacific, projects that assist in the expansion of the skipjack and albacore fisheries, and/or development of local fisheries that provide regional benefits will receive high priority. Projects must be coordinated with ongoing regional planning efforts.

Fisheries development efforts in the Pacific Islands must consider the varied social and cultural mores of island people. Impediments to fisheries development in the central and western Pacific are rooted in the low level of industry development that characterizes island economies. Development of fisheries is impeded by the inadequacy of infrastructure, market distribution systems, support facilities, and by the absence of coordinated fisheries development planning. Within the tuna

fishery the baitboat fisherman are impeded by the scarcity and frailty of naturally occuring baitfish; recreational and commerical fishermen are impeded by the absence of techniques to harvest western Pacific tuna, which have unique schooling characteristics.

D. Northwest Region

In the Northwest Region, Pacific whiting is the only species off Washington, Oregon and California with a directed foreign fishery and, therefore, the development of this fishery by the U.S. is a high priority. Other species with potential for increased domestic harvest include widow and shortbelly rockfish and species of shark.

A major impediment to the development of the West Coast fishing industry is inadequate marketing capability. Priority will be afforded those projects that increase the consumption of Pacific Coast fishery products and those projects that improve the competitive position of fishermen and processors. Market acceptance of fishery products is impeded by inadequacy of quality control, consumer education, and information on product availability, product form and labeling, and consumer trends. High fuel costs and the inability to dispose of processing waste products efficiently, also impede resource development.

E. Alaska Region

Non-traditional fishery resources available for harvest within the U.S. 200 miles fishery zone off Alaska exceed 1.9 million metric tons. This available tonnage, currently harvested largely by foreign nations, does not include traditional high value species currently harvested by U.S. fishermen, such as salmon, halibut, shrimp, and crab. Domestic capability for catching, processing and marketing substantial portions of these non-traditional fishery resources is very limited. The need for development of all aspects of Alaska fisheries is substantial; however, funding priority will be given to those proposals which focus on: (1) marketing of underutilized species; (2) quality control at all levels of product handling; (3) fuel efficiency; and (4) technological innovation for improving efficiency in catching and processing.

Multiyear projects approved in FY 80 directed to improving gear technology, quality control extension services, processing technology, and marketing methods will receive priority for additional financial support in FY 81.

V. Applications

A. Eligible Applicants

Applications for grants or cooperative agreements for fisheries development projects can be made, in accordance with the procedures set forth in this notice, by:

(1) any individual who is a citizen or national of the United States;

(2) any individual who is a citizen of the Northern Mariana Islands (NMI), being an individual who qualifies as such under Section 8 of the Schedule on Transitional Matters attached to the Constitution of the NMI;

(3) any fishery development foundation or other private non-profit corporation located in Alaska;

(4) any corporation, partnership, association, or other entity (including, but not limited to, any fishery development foundation or other private non-profit corporation not located in Alaska), non-profit or otherwise, if such entity is a citizen of the United States within the meaning of Section 2 of the Shipping Act, 1916 as amended (46 U.S.C. 802).[2]

The NMFS encourages minority individuals and groups, and women, to submit proposals. NMFS employees (or their immediate families, including full, part-time, and intermittent personnel) and NMFS offices or centers are not eligible to submit a proposal under this solicitation, or aid in the preparation of a proposal, except to provide general information or guidance about the fisheries development program and the priorities and procedures included in this solicitation.

B. Amount and Duration of Funding

For fiscal year 1981, NMFS expects to have about $10,000,000 available to fund the fishery research and development projects solicited herein. Grants or cooperative agreements will be awarded for a period of 1 year. Proposals will be considered for projects which extend for up to 3 years; however, continuing projects will have to resubmit proposals each year, and continued funding will be contingent upon the availability of funds, the extent to which project objectives are met during the prior year, and the continued priority of the project as established in subsequent years. Any proposal submitted for multiyear funding shall completely describe activities to be undertaken in the first year for which funding is requested, and shall outline planned activities and expected costs for each succeeding year. Publication of this announcement shall not obligate NMFS to award any specific grant or to obligate the entire amount of funds available or any part thereof.

C. Cost Sharing Requirements

In accordance with the AFFA, the amount of a grant will be at least 50% of the estimated cost of the project. Thus, up to 50% of the total cost of each project may be required to be provided by the applicant from non-Federal sources. The non-Federal share may include funds received from private sources or from State or local governments, or the value of in-kind contributions. In-kind contributions are noncash contributions provided by the applicant or non-Federal third parties. In-kind contributions may be in the form of, but are not limited to, personal services rendered in carrying out functions related to, and permission to use real or personal property owned by others (for which consideration is not required) in carrying out the project.

The percentage of the total project costs provided by the applicant from non-Federal sources, not to exceed 50% of the cost of the project, will be an important factor in the selection of projects to be funded. Applicants who receive all or nearly all of their funding from Federal sources may be exempted from non-Federal cost sharing requirements. Complete exemption from cost-sharing requirements may be granted in unusual circumstances only to non-profit public interest

[2] To qualify as a citizen of the United States within the meaning of this statute, citizens or nationals of the United States or citizens of the NMI must own not less than 75 percent of the interest in the entity or, in the case of a non-profit entity, exercise control of the entity that is determined by the Secretary to be equivalent to such ownership; and, in the case of a corporation, the president or other chief executive officer and the chairman of the board of directors must be citizens of the United States, no more of its board of directors than a minority of the number necessary to constitute a quorum may be non-citizens, and the corporation itself must be organized under the laws of the United States, or of a State, including the District of Columbia, Commonwealth of Puerto Rico, American Samoa, the Virgin Islands of the United States, Guam, the NMI or any other Commonwealth, territory, or possession of the United States. 75 percent of the interest in a corporation shall not be deemed to be owned by citizens or nationals of the United States or citizens of the NMI, if: (i) the title to 75% of its stock is not vested in such citizens or nationals of the United States or citizens of the NMI free from any trust or fiduciary obligation in favor of any person not a citizen or national of the United States or citizen of the NMI; (ii) 75% of the voting power in such corporation is not vested in citizens or nationals of the United States or citizens of the NMI; (iii) through any contract or understanding it is arranged that more than 25% of the voting power in such corporation may be exercised, directly or indirectly, in behalf of any person who is not a citizen or national of the United States or a citizen of the NMI; or (iv) by any means whatsoever, control of any interest in the corporation is conferred upon or permitted to be exercised by any person who is not a citizen or national of the United States or a citizen of the NMI.

organizations which demonstrate no financial ability to meet cost-sharing requirements. The total project costs and the percentage of cost sharing required will be determined as described below.

(1) *Determining Total Project Cost*

The total costs of a project consist of all costs incurred by the applicant in the performance of project tasks, including the value of the in-kind contributions, which are necessary to accomplish the objectives of the project during the period in which the project is conducted. A project begins on the date that a formal grant or other agreement between the applicant and an authorized representative of the United States takes effect, and ends when a final report is submitted and accepted by such authorized representative. Accordingly, the time expended and costs incurred in either development of a project or the financial assistance application, or in any subsequent discussions or negotiations up to the point of formal award, are neither reimbursable nor recognizable as part of the recipient's cost share.

NMFS will determine the appropriateness of all cost-sharing proposals, including the valuation of in-kind contributions, on the basis of guidance provided in Office of Management and Budget (OMB) Circular A–110, "Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations." In general the value of in-kind services or property used to fulfill the cost sharing requirements will be the fair market value of the services or property. Thus, the value is equivalent to the costs of obtaining such services or property if they had not been donated. Cost sharing to be provided by the applicant may include:

(a) Expenses incurred by the grantee as project costs. (Not all charges require cash outlays by the grantee during the project period; examples are depreciation and use charges for building and equipment.)

(b) Project costs paid for with cash contributed or donated to the grantee by other non-Federal public agencies and institutions, or private organizations or individuals.

(c) The value of in-kind contributions.

(2) *Determining the Level of Cost Sharing Required.*

As previously stated, the amount of a grant must be at least 50% of the estimated cost of the project. The percentage of the total costs required to be provided by the applicant from non-Federal sources will be as follows:

(a) *20 percent.* For projects in which direct industry participation may be limited, the non-Federal cost share shall be no less than 20 percent of the total project cost. Projects in this category benefit many interest groups and, therefore, offer no unique advantage to those conducting the project. Projects in this category might relate to: planning the placement of support facilities, fishing vessel safety, economic or food technology research, seafood product safety, or consumer attitudes toward seafoods. Because of their nature, these projects, would ordinarily be conducted by or for State or local government entities or by non-profit organizations.

(b) *30 percent.* For projects in which direct industry participation can be significant, the non-Federal cost share shall be no less than 30 percent of the total project cost. These projects contain significant or indeterminate risks which prevent an individual or group from undertaking them without assistance. Projects in this category would ordinarily deal with the non-traditional species, demonstration of new harvesting gear or processing methods, the development of new fish product concepts or forms, or the enhanced use of domestically harvested fish in institutional markets or for personal consumption.

(c) *40 percent.* For projects which involve significant industry participation, entail a limited risk, and in which the prospects for immediate future gain from the project are significant, the non-Federal cost share shall be no less than 40 percent of the total project cost. These projects would involve established fisheries or markets as, for example, expanding the markets for fish or parts of fish normally discarded during harvesting or processing. Such projects require significant participation by individuals or groups within the industry to ensure their success.

In determining the category of cost sharing in which the project belongs, NMFS will consider:

(a) The project's direct benefits to the general public, or to the fishing and seafood industry;

(b) The financial risk assumed by the applicant in undertaking the project;

(c) The potential of the project to generate revenues that would allow the applicant to recover costs incurred through participation in the project; and

(d) The compatibility of the project with national fisheries development policy and its potential for national economic benefit.

A project which will benefit the general public, such as a research project dealing with the safety of fish and fish products or demonstrating advanced technologies to benefit recreational fisheries, will have a lower cost-sharing requirement than one which directly benefits only a specific segment of the industry or an identifiable number of firms. Similarly, industry demonstration projects in high-risk ventures, as those which involve the harvesting, processing, or marketing of non-traditional U.S. species, will be expected to provide lesser amounts of cost sharing than would industry projects related to species for which strong domestic or foreign markets already exist. Projects which have a high potential for fulfilling national fisheries development policy or making significant contributions to the national economy might also have a lower cost-sharing requirement than projects with a lessor potential for doing so.

D. Format

Applications for funds must be complete. They must identify the principal participants and include copies of any agreements between the participants and the applicant. Project proposals should give a clear presentation of the proposed project, the methods for carrying out the project, and its relevance to developing and strengthening the U.S. fishing industry. Applicants should not assume prior knowledge on the part of NMFS as to the relative merits of the project described in the proposal. The applicant is advised to contact the appropriate regional office for guidance in preparing proposals. Such consultations with NMFS staff will not result in more favorable consideration of any proposal. Proposals shall be submitted in the following format:

1. *Cover sheet.*

A Federal Government Standard form 424 shall be used as the cover sheet. Standard form 424 may be obtained from the NMFS Regional Offices or the NMFS Washington Office listed at the end of this notice.

2. *Project summary.*

A summary of not more than one page shall be provided for each proposed project within the proposal containing the following information:

(a) Project title.

(b) Principal investigator.

(c) Purpose or objective of project.

(d) Summary of work to be undertaken.

(e) Beneficiaries of project results.

(f) Geographic impact of project (local, state-wide, regional, national).

(g) Project duration.

(h) Total project costs.

(i) Project costs to be provided by applicant, stated in actual amount and as a percentage of total project costs.

(j) Total Federal funds requested, stated in actual amount and as a percentage of total project costs.

(k) Principal uses for Federal funds and amounts requested for each use (salaries, travel, vessel charter, sub-contracts, equipment rental, etc.).

3. *Project description.*

Each proposal shall provide a complete and accurate description of each proposed project. For each project within a proposal the description may not exceed fifteen pages. The applicant should describe conditions affecting the fishing industry and the significance of the problem(s) being addressed by the project. This information should be brief, specific, and provide the basis for the evaluation of the project in terms of the need for the proposed work, the effectiveness of methods to be used, and the likelihood of success in solving the problems addressed. All portions of the submitted proposals will be made available to the public and members of the fishing industry for review and comment; therefore, the NMFS will *not* guarantee the confidentiality of any information submitted as part of any proposal. Each project shall be described as follows:

(a) *Identification of Problem(s).* Describe existing conditions which prevent or impede the U.S. fishing industry in development of the fishery or utilization of the existing fisheries. Specifically describe (i) the species of fish involved, (ii) the specific impediment(s) that the fishing industry has encountered, (iii) the sectors of the fishing industry that are affected, (iv) the fishing industry reaction to the impediment(s), and (v) the extent of the impact of impediment(s) at the local, the regional, and national level.

(b) *Project Goals and Objectives.* Clearly state the extent to which the project would eliminate or reduce the impediment(s) described above. Describe the anticipated effect of the project on one or more of the stated national fisheries development and utilization goals. To the greatest extent possible, goals and objectives should be quantified, in terms of anticipated increased landings, production, sales, exports, product quality, safety, or any other measureable factor.

(c) *Appropriateness and Need for Government Financial Assistance.* Clearly describe the circumstances which have prevented the applicant from obtaining funds from other public or private sources. Factors which inhibit private industry from undertaking the project are of particular importance. The proposal should list all alternative sources of assistance which have been pursued.

(d) *Participation by Persons or Groups Other Than the Applicant.* Indicate (i) the level of participation by NMFS, Sea Grant, or other government and non-government entities required to ensure the success of the projects; (ii) the form of such participation; and (iii) if such participation is voluntary, describe the procedures required for participation in the project. In addition identify all persons or groups consulted during the preparation of the proposal.

(e) *Federal, State, and Local Government Activities.* List any existing federal, state, or local government plans or activities, including State Coastal Zone Management Plans, which would be affected by this project, and describe the relationship between the proposed project and these plans or activities.

(f) *Project Outline.* Set out all tasks to be performed, and the key events in the task schedule; where applicable, indicate any task(s) which might be adversely affected by factors beyond the control of the applicant.

(g) *Project Management.* Describe how the project will be organized and managed. List all persons or groups who will be involved in the project, their qualifications, and their level of involvement in the project. Provide copies of any agreements between the participants and the applicant.

(h) *Monitoring of Project Performance.* Describe how the progress of the project would be monitored and who would participate in the monitoring. Specify what actions would be taken in the event specific project tasks become unattainable. This is particularly important in demonstration projects where the project can be affected by factors beyond the control of the applicant.

(i) *Evaluation of Project Results.* Describe the methods or procedures to be used upon the completion of the project to evaluate the success of the project in overcoming the impediment(s) that was addressed in the project, and the extent to which the project results promote the national fisheries development and utilization goals.

(j) *Project Benefits.* Identify the sectors of the fishing industry which will benefit, either directly or indirectly, from the project. These benefits should be described in quantitative terms to the extent possible and practical.

(k) *Dissemination of Project Results.* Describe (i) how the project results will be conveyed to the members of the fishing industry or consumers who would directly benefit from the project and (ii) any special conditions or requirements that might have to be met before project results could be used.

(l) *Project Costs.* Provide a detailed schedule of project costs, identifying in particular: (i) sub-contracts, (ii) salaries, (iii) travel cost, and (iv) all other administrative and technical costs of the project. Funds will ordinarily not be granted for the purchase of capital equipment. Fee or profit will not be paid by NMFS under any funding award.

(m) *Cost Sharing for the Project.* Specify all activities which will be undertaken directly or indirectly by the applicant or by other project participants which will be funded from non-Federal sources, including in-kind contributions. State the total amount of non-Federal funds, including in-kind contributions, to be committed to the project, and specify the time at which such contributions will be available.

4. *Supporting documentation.*

This section shall include any required documents and any additional information necessary or useful to the description of the project. The amount of information given in this section will depend on the type of project(s) proposed. The applicant should present any information which would emphasize the value of the project in terms of the significance of the impediments addressed, or the efficacy of methods used to calculate the costs and benefits of the projects. Without such information, the merits of the project may not be fully understood, or the value of the project to fisheries development may be underestimated. The absence of adequate supporting documentation may cause reviewers to question assertions made in describing the project and may result in a lower ranking of the project.

E. Application Submission and Deadline

(1) *Deadline.*

Applications for funding under this program shall be accepted between December 17, 1980 and March 2, 1981. An application will be considered to be timely filed if (a) the application is in any of the offices listed at the end of this notice on or before March 2, 1981, or (b) the application is postmarked 5 days prior to March 2, 1981.

(2) *Submission of Applications to NMFS.*

One signed original and two (2) copies of all completed applications must be submitted to the appropriate reviewing official.

(a) Proposals for projects relating to a specific fishery or a particular region should be submitted to the appropriate Regional office of the NMFS as specified below:.

Northeast Region (Maine, Massachusetts, Rhode Island, Connecticut, Vermont, New

Hampshire, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, West Virginia, Ohio, Indiana, Illinois, Wisconsin, Michigan, Minnesota: Regional Director, National Marine Fisheries Service, Federal Bldg., 14 Elm Street, Gloucester, MA 01930, Phone: (617) 281–3600.

Southeast Region (North Carolina, South Carolina, Georgia, Florida, Alabama, Mississippi, Louisiana, Texas, New Mexico, Oklahoma, Arkansas, Tennessee, Kentucky, Missouri, Kansas, Nebraska, Iowa, Puerto Rico, Virgin Islands): Regional Director, National Marine Fisheries Service, Duval Bldg., 9450 Koger Blvd., St. Petersburg, Florida 33702, Phone (813) 893–3142

Southwest Region (California, Hawaii, Nevada, Arizona, American Samoa, Guam, Trust Territory of Pacific Islands): Regional Director, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, CA 90731, Phone (213) 548–2575

Northwest Region (Washington, Oregon, Idaho, Montana, Wyoming, Utah, Colorado, North Dakota, South Dakota): Regional Director, National Marine Fisheries Service, 1700 Westlake Ave., North, Seattle, WA 98109, Phone (206) 442–7575

Alaska Region (Alaska): Regional Director, National Marine Fisheries Service, P.O. Box 1668, Juneau, AK 99802, Phone (907) 586–7221

(b) Proposals that do not directly address the development of a particular fishery or region of the country but do address broad national concerns, such as impediments to increased use of fish and fish products, industry productivity or efficiency, or consumer welfare should be sent to: Director, Office of Utilization and Development, National Marine Fisheries Service, 3300 Whitehaven St., N.W., Washington, D.C. 20235.

If an applicant is unsure who should review the proposal, it should be sent to the above address.

VI. Review Process and Criteria

A. Initial Screening

Upon receipt by the appropriate regional or national office, all proposals will be subject to an initial screening to determine whether such proposal provides all required information specified in Section V D (Format) of this amended solicitation, and that the required A–95 notice has been submitted to State and areawide clearinghouses. If it is determined that a proposal is incomplete, applicants will be so notified, and will be given additional time as determined appropriate by NMFS to complete such proposal; the proposal will not be considered further unless modifications are made to complete the proposal within the time allowed by NMFS.

B. Initial Review

All proposals which have been determined to be complete will then be subject to an initial review by the receiving office, to determine whether the applicant has the requisite technical and financial capability to carry out the project, and to determine whether the proposal meets the minimum requirements specified below. Proposals will be evaluated as a whole; if a proposal includes 2 or more projects, such projects will not be considered separately at this stage of review. To meet minimum requirements, proposals must:

(1) address an identified impediment to the development or strengthening of the fishing industry; meet the needs of the fishing industry and/or consumers; be consistent with regional and/or national priorities; contribute to established fisheries development and utilization goals;

(2) meet the minimum level of cost sharing; and

(3) include a procedure for evaluating the success of the proposal in overcoming the impediment(s) specified and in furthering national fisheries development and utilization goals.

The decisions of the regional and Washington offices as to whether proposals meet these minimum requirements will be final.

C. Formal Evaluation and Ranking of Proposed Projects

Proposals which satisfy the minimum requirements will then be evaluated by the NMFS office where the application is filed, in consultation with representatives from other Federal government agencies with programs affecting the U.S. fishing industry, members of the fishing industry, and consumer groups, on the basis of technical merit. The regional and Washington offices of the NMFS will make proposals available for review as follows:

(1) Public review and comment. Regional proposals may be inspected at the office to which they are submitted. All proposals will be available for inspection at the NMFS Washington office from March 9, 1981 to April 1, 1981. Written comments will be accepted at the regional or Washington offices until April 1, 1981.

(2) Consultation with members of the fishing industry. NMFS shall, in its discretion, request comment from members of the fishing industry who have knowledge in the area of a proposal or who would be affected by a proposal.

(3) Consultation with other government agencies. Proposals will be reviewed in consultation with the NMFS Research Centers and Utilization Laboratories, Regional Fisheries Management Councils, and the appropriate NOAA Grants/Contracts Offices. The appropriate Regional Fisheries Management Council may be asked to review proposals and advise of any real or potential conflicts with Council activities.

Receiving offices will formally rank each of the proposals which meet minimum requirements. If a proposal contains 2 or more projects, the projects will be evaluated and ranked separately. All comments submitted to NMFS will be taken in consideration in the evaluation of proposals. Proposed projects will be given point scores based on the following criteria:

(a) Significance of the impediment addressed in the proposal (20 points).

(b) Minimization of duplication with other fisheries research and development projects (15 points).

(c) Feasibility of research/development/demonstration and possibilities of securing productive results (15 points).

(d) Soundness of design/technical approach (15 points).

(e) Organization and management of the project, including qualifications and previous related experience of the management team and the personnel involved (15 points).

(f) Effectiveness of proposed methods for monitoring and evaluating the sucess or failure of the project (10 points).

(g) Appropriateness of the budget in terms of the work to be performed (10 points).

A panel of NMFS, fishing industry and consumer representatives will then be convened in Washingon, D.C., to review the ranking of the proposals, and to develop a composite ranking. The panel may make recommendations on the level of funding to be awarded for each project.

D. Funding Awards

After projects have been ranked, and the ranking reviewed, final funding of awards will be determined. The NMFS Office of Utilization and Development will make final recommendations for project funding based on the technical review score, the amount of cost sharing to be provided by the applicant, and the overall benefits to be derived from the project. The recommendations will be

submitted to the Assistant Administrator for Fisheries, who will make the final determination as to which projects will be funded. The NMFS expects that proposals will be funded in the order determined by the technical scores. However, if two or more proposals receive similar technical scores, and address similar problems or problems of equal significance or seriousness, funding will be awarded first to the proposal in which the applicant provides the larger percentage of cost sharing, or to the proposal which has the greatest potential for regional or national benefit. Remaining proposals will be funded only if sufficient funds remain.

The exact amount of funds to be awarded for a project will be determined by preaward discussions between the applicant and the NOAA/NMFS Program and Grants representatives. The form of the financial assistance agreement and the award will be determined by NOAA Grants Officers. In accordance with the requirements of the AFPA, all applications will be approved or disapproved before June 30, 1981.

VII. Administrative Requirements

A. *Obligations of the Applicant.* An applicant shall:

(1) meet all application requirements and provide all information necessary for the evaluation of the proposal.

(2) Prior to the submission of a formal proposal to NMFS, comply with the notice provisions of OMB Circular A–95. These provisions require that an applicant notify state and area-wide planning and development clearinghouses in the jurisdiction in which a project will be undertaken of the intention to apply for funds. The notification shall consist of a standard form SF–424 and a summary description of the proposed project. Copies of such notification should be provided simultaneously to NMFS and to State and area-wide clearinghouses, the addresses of which are available from regional offices listed below. The summary description, attached to form SF–424, shall contain the following:

(a) Identity of the applicant.

(b) Description of the geographic area in which the project will be performed.

(c) A brief description of the project, its purpose, size or scale, estimated cost and other particulars sufficient to enable clearinghouses to identify local or State agencies with plans, programs or projects that might be affected by the proposed project.

(d) Approximate date of anticipated filing of formal NMFS application.

When referring to this program, the applicant shall use the Catalogue of Federal Domestic Assistance number and title as follows: "11–427–Fisheries Development and Utilization Research and Demonstration Grants and Cooperative Agreements."

Applicants shall provide the NMFS office where the application is filed with a copy of all comments and recommendations made by or through clearinghouses, whenever such comments and recommendations are received by such applicant.

(3) Be available, in person or by designated representatives, to respond to questions during the review and evaluation of the proposal.

(4) If a proposal is funded, manage the day-to-day operations of the project, be responsible for the performance of all activities for which funds are granted, and be responsible for the satisfaction of all administrative and managerial conditions imposed by NMFS.

(5) If a proposal is funded, keeps records sufficient to disclose the use made of grants funds, and allows access to records for audit and examination by the Secretary, the Comptroller of the United States, or their authorized representatives.

(6) If a proposal is funded, submit quarterly project status reports to NMFS within thirty days after the end of each calendar quarter, on the use of funds and progress of the project. These reports shall specify, for each project funded:

(a) whether goals or objectives are being achieved within projected time periods;

(b) where necessary, state reasons why goals or objectives are not being met;

(c) any changes in plans or redirection of resources or activities and the reasons therefor;

(d) such report shall be submitted within the time and to the individual specified in the funding agreement.

(7) If a proposal is funded, submit a final report within 90 days after the end of each project. This report shall describe the project, the work performed and the results and benefits of the work in sufficient detail to enable the NMFS to assess the completed project for its annual report to Congress as specified in subsection B(6) of this section. Results should be described in relation to the project objectives of resolving specific impediments, and should be quantified to the extent possible. Potential uses of project results in private industry should be specified. Any conditions or requirements necessary to the effective utilization of project results should be identified.

(8) Submit such additional reports as may be required by NMFS.

B. *Obligations of the National Marine Fisheries Service*

The NMFS shall:

(1) provide all forms and explanatory information necessary for the proper submission of proposals for fisheries development and utilization projects;

(2) provide advice, through the NMFS Office servicing the applicant's area, to inform applicants of the NMFS fisheries development policies and goals;

(3) when proposals submitted to regional offices are approved for funding, the NMFS Regional Director of such regional office shall inform the applicant of all requirements and conditions for the use of such funds;

(4) monitor all projects to ascertain their effectiveness in achieving project objectives and a producing measurable results. Actual accomplishments of a project will be compared with intended or anticipated accomplishments. Conclusions drawn by NMFS in monitoring projects will be used to support funding decisions on multiyear projects and on succeeding or similar projects;

(5) make project results and reports available upon request to Congress, public agencies or the public.

(6) include in the annual report to Congress, as required by the AFPA, a description of all funded projects, a list of applications approved and disapproved, the total amount of grants made during the current fiscal year and the extent to which available funds were not obligated or expended for such fiscal year. The report shall also include an assessment of each funded project that was completed in the preceding year in terms of the extent to which project objectives were attained, contributed to fishery development.

C. Legal Requirements

The applicant shall be required to satisfy the requirements of applicable local, state and Federal laws.

Signed at Washington, D.C. this 16th day of January 1981.

Jerry Leitzell

Assistant Administrator for National Marine Fisheries Service.

[FR Doc. 81-2121 Filed 1-21-81; 8:45 am]

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federal register

Thursday
January 22, 1981

Part III

Administrative Committee of the Federal Register

Identification of Subjects in Agency Regulations; Final Rule

ADMINISTRATIVE COMMITTEE OF THE FEDERAL REGISTER

1 CFR Part 18

Identification of Subjects in Agency Regulations

AGENCY: Administrative Committee of the Federal Register (ACFR).

ACTION: Final rule.

SUMMARY: This regulation requires agencies to identify major topics and categories of persons affected in their regulations by using standard terms established in the Federal Register Thesaurus of Indexing Terms. Increased public need for information on regulations has led to interest in more comprehensive indexes and information services for the Federal Register (FR) and Code of Federal Regulations (CFR). Requiring agencies to identify the subjects in their regulations in standard terms from the Thesaurus will help readers to locate all the regulations that affect or are of interest to them. It will also help the Office of the Federal Register (OFR) expand its information services to the public directly and through published finding aids.

DATES: *Effective date:* February 23, 1981.

Implementation dates:

By December 31, 1981: Agencies must prepare a list of index terms for existing CFR Parts and send the list to the Director of the Federal Register.

Beginning April 1, 1982: Agencies must include a list of index terms for each CFR Part affected in documents submitted for publication in the Rules and Regulations and Proposed Rules sections of the Federal Register.

FOR FURTHER INFORMATION CONTACT: Carol Mahoney, Office of the Federal Register, National Archives and Records Service, Washington, D.C. 20408, Telephone (202) 523-5230.

SUPPLEMENTARY INFORMATION:

Background

The public's right to know about and participate in their Government and its day-to-day activities is protected by the Federal Register Act, the Administrative Procedure Act, and the Freedom of Information, Privacy and Government in the Sunshine Acts. These laws and and other specific legislation require that public notice of agency regulations, proposed regulations, meetings, record systems, and administrative procedures be printed in the Federal Register. Agency compliance with these laws requiring publication produced 78,000 pages of Federal Register material in fiscal year 1980 and 98,000 pages in the Code of Federal Regulations. The Code of Federal Regulations is an annually revised compilation of the general and permanent regulations published in the Federal Register. The Federal Register and Code of Federal Regulations' purpose is to be a communication link between Federal agencies and the public. Viewed as an information system for the public, these publications have many of the problems common to large information systems: An increasing volume of material; complex information on a variety of subjects; specialized technical language; and a diverse group of users increasingly demanding easy access to the system.

This regulation begins to address these problems in several ways.

First, this regulation sets up a specific requirement that agencies be responsible for identifying the major topics and persons affected in their regulations.

The increasing volume and complexity of material in the FR/CFR system has led us to the conclusion that the originators of the regulations, the agencies, are best able to analyze their regulations and provide the most relevant information for indexing and retrieval purposes.

Second, this regulation requires that agencies use standard terms, specifically the Federal Register Thesaurus of Indexing Terms, to indentify subject areas and persons affected in their regulations.

Federal Register users frequently find the same or similar material described in different terms by different Government agencies. The same material may be indexed or referenced in other terms in the FR/CFR system. The use of a controlled vocabulary, a thesaurus, is intended to improve research and provide a framework for information retrieval in the Federal Register system by standardizing the language used to identify and search major areas subject to Federal regulation. The identifying terms provided by the agencies with their regulations will be used at the OFR to expand the existing indexes to both the Federal Register and the Code of Federal Regulations. Through the use of automated technology the identifying terms will also be incorporated with the CFR text in a computerized data base for eventual automated information retrieval.

Third, this regulation will be implemented in stages.

By December 31, 1981, each agency shall prepare and submit to the Director of the Federal Register a list of index terms for its existing CFR Parts. Beginning April 1, 1982, each agency that submits a document for publication in the Rules and Regulations or Proposed Rules sections of the Federal Register shall include a list of index terms for each CFR Part affected by the document.

Proposed Rule and Comments

We published four previous documents on this subject: an advance notice of proposed rulemaking (ANPRM) and an extension of the comment period on the ANPRM (45 FR 2906; January 15, 1980, and 45 FR 13715; February 23, 1980), a proposed rule (45 FR 46826; July 9, 1980), and a change to the proposed rule (45 FR 49065; July 23, 1980). Comments on the ANPRM and our response were detailed in the proposed rule document of July 9, 1980. We received 26 written comments on the proposed rule as well as a number of telephone calls. The majority of these comments were from Federal agencies. In the following paragraphs we discuss the comments received.

Implementation plan

Generally, agencies viewed the proposed rule as more workable than the ANPRM. The ANPRM would have required each agency to prepare a list of subjects for each new part as it was added to the agency's regulation and eventually to compile subject lists for all existing CFR parts. The proposed rule reversed the implementation schedule to require that each agency first prepare a list of subjects for existing regulations. We received the following comment from one department: "Several agencies commented that the revised schedule would be helpful to their efforts. They anticipate that the information gathered from the Office of the Federal Register comments on their list of terms for existing regulations will assist in the selection of appropriate terms for future documents."

Implementation Dates

In this final rule, as in the proposed rule, December 31, 1981, is the date by which agencies must prepare a list of index terms for their existing regulations and send the list to the Director of the Federal Register. We are extending the date for including lists of index terms in Federal Register documents, however, from January 1, 1982, the date in the proposed rule, to April 1, 1982. This will provide a 3-month period between the date the initial lists are compiled and submitted to the Director of the Federal Register and the date when agencies must start including terms with their Federal Register documents. During this

period the Office of the Federal Register will review the lists, consult with agencies, and update and publish a revised edition of the Thesaurus for future agency use in preparing lists of terms for their Federal Register documents. We encourage agencies to prepare and submit their list of index terms for existing CFR parts at any time prior to the December 31, 1981, deadline. Once the lists of terms for existing CFR parts are reviewed at the Office of the Federal Register, agencies may also begin publishing lists of terms with Federal Register documents before the April 1, 1982, deadline.

Format

In our proposed rule we requested comments on format and placement for the subject lists to be included in Federal Register documents beginning April 1, 1982. We received no comments on format. This regulation specifies that the subject list be the last item in the "Supplementary Information" section of the preamble for Federal Register documents. This will place the subject list close to the regulatory text in each document.

Need for the Regulation

Several comments questioned the need for the regulation in light of already existing requirements for preambles and descriptive headings in agency documents.

While some agencies' documents have useful preambles and descriptive headings which help to explain and define the regulations, there is no consistency or standard language throughout the FR/CFR system. In order to thoroughly or effectively research a subject in the massive FR/CFR system there must be a consistently used term to identify that subject. This term, selected from the Thesaurus and used in information and index systems, will allow the public to pinpoint more easily all pertinent regulations on a particular subject.

Identifying Terms as Finding Aids

Comments on the effectiveness of the regulation centered on the concern that the identifying terms provided by agencies could be misleading, could cause a misunderstanding or misinterpretation of the regulation, and that failure to include all pertinent terms might lead to the regulations being overlooked.

One comment on the proposed rule expressed our position on this clearly. "We view this indexing requirement solely as a finding aid for those using the Federal Register and Code of Federal Regulations as a research tool * * * Clearly, the scope and application of a regulation must be determined by the wording of the regulation itself and not by the terms under which a regulation is indexed." In addition, 1 CFR 5.1(c) of the ACFR's regulations states:

> (c) In prescribing regulations governing headings, preambles, effective dates, authority citations, and similar matters of form, the Administrative Committee does not intend to affect the validity of any document that is filed and published under law.

Federal Register Thesaurus

There was concern expressed in comments on the proposed rule that the terms in the Federal Register Thesaurus are too general and that the Thesaurus is not complete enough to help researchers or adequately describe agency programs.

We continue to stress that the existing Thesaurus is the beginning of a vocabulary for identifying major areas subject to Federal regulation, and that it will not only expand but also improve through use and with the suggestion of terms by agencies and Federal Register users. In addition, agencies may include terms in their lists of subjects that are not contained in the Thesaurus as long as the appropriate Thesaurus terms are also used.

Standard Industrial Classification

In developing this regulation, we considered requiring agencies to use the Standard Industrial Classification Manual (SIC), where possible, in addition to the Federal Register Thesaurus to identify major topics and persons affected in their regulations. We continue to recommend that when agencies include industry names in their list of subjects that they use the terminology in the SIC Manual. Some agencies already use SIC codes and terminology in the text of their regulations. The U.S. Regulatory Council recommends use of the SIC, where applicable, for entries in the Calendar of Federal Regulations. Agency use of SIC terminology in their subject lists would further the purpose of this regulation by providing FR/CFR researchers with additional standard terms for research. The requirement for using the SIC Manual has been dropped from the final rule since agency comments were not favorable; and no supporting comments were received from the public sector.

Thesaurus Publication

The Federal Register Thesaurus of Indexing Terms to be used by agencies in implementing this regulation will be printed in the Federal Register of Tuesday, February 17, 1981 as Part II.

Agencies wishing to order copies from the Government Printing Office may do so by submitting a completed Standard Form 1 (SF-1) by noon Friday, February 13, 1981, to: Planning Service Division, Government Printing Office.

Copies of the Thesaurus will also be available from the Office of the Federal Register, National Archives and Records Service, Washington, D.C. 20408.

Training

Training and consultation to help agencies comply with this new requirement will be provided by the Office of the Federal Register. Training will include information on how to use the Thesaurus and how to analyze and apply the terms to specific agency regulations. We encourage agencies to decide who in the agency needs training and to make arrangements and schedule training well in advance of the December 31, 1981 deadline to allow OFR sufficient time to respond to all training requests.

To arrange for training, agencies should call: Carol Mahoney, Office of the Federal Register, National Archives and Records Service, Washington, D.C. 20408, Telephone (202) 523-5236.

Rulemaking Authority

The Administrative Committee of the Federal Register is issuing this regulation under the Committee's authority in Title 44 of the United States Code, section 1506, to prescribe regulations for carrying out the Federal Register Act including "* * * the manner and form in which the Federal Register shall be printed, reprinted, and compiled, indexed, bound, and distributed; * * *"

List of Subjects in 1 CFR Part 18

Administrative practice and procedure, Federal Register, Indexing.

PART 18—PREPARATION AND TRANSMITTAL OF DOCUMENTS GENERALLY

1 CFR Part 18 is amended as follows:

1. The authority citation for Part 18 reads as follows:

> Authority: 44 U.S.C. 1506; sec. 6, E.O. 10930, 19 FR 2709; 3 CFR 1954–1958 Comp. p. 189.

2. Add a new § 18.20 to read as follows:

§ 18.20 Identification of subjects in agency regulations.

(a) *Existing regulations.* Each agency shall—

(1) Prepare a list of index terms for each of its existing Code of Federal Regulations Parts; and

(2) Send the list to the Director of the Federal Register on or before December 31, 1981.

(b) *Federal Register documents.* Beginning April 1, 1982, each agency that submits a document that is published in the Rules and Regulations section or the Proposed Rules section of the Federal Register shall—

(1) Include a list of index terms for each Code of Federal Regulations Part affected by the document; and

(2) Place the list of index terms as the last item in the Supplementary Information portion of the preamble for the document.

(c) *Federal Register Thesaurus.* To prepare its list of index terms, each agency shall use terms contained in the Federal Register Thesaurus of Indexing Terms. Agencies may include additional terms not contained in the Thesaurus as long as the appropriate Thesaurus terms are also used. Copies of the Federal Register Thesaurus of Indexing Terms are available from the Office of the Federal Register, National Archives and Records Service, Washington, D.C. 20408.

Robert M. Warner,
Chairman.
Samuel L. Sayler,
Member.
Leon Ulman,
Member.

Approved:
Benjamin R. Civiletti,
Attorney General.
Ray Kline,
Acting Administrator of General Services.

[FR Doc. 81-2145 Filed 1-21-81; 8:45 am]
BILLING CODE 1505-01-M

federal register

Thursday
January 22, 1981

Part IV

Health and Human Services Department

Public Health Service

Governing Body Requirements for Health Systems Agencies

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

42 CFR Part 122

Governing Body Requirements for Health Systems Agencies

AGENCY: Public Health Service, HHS.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: These regulations set forth proposed amendments to the regulations governing the selection, composition and responsibility of health systems agency (HSA) governing bodies. They are intended to implement section 1512(b)(3) of the Public Health Service Act, as amended. The proposed regulations have been developed because some of the statutory provisions concerning body composition and selection require elaboration and regulation to ensure that they will be interpreted consistently with Congressional intent.

DATE: Comments must be received by March 23, 1981.

ADDRESS: Interested persons may submit written comments and recommendations on the proposed regulations to: Colin C. Rorrie, Jr., Ph. D., Director, Bureau of Health Planning, 3700 East-West Highway, Room 6–22, Hyattsville, Maryland 20782. All comments received in timely response to this document will be considered in the development of final regulations. All materials received in response to this Notice will be available for public inspection at the above address between the hours of 8:30 a.m. and 5:00 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: June Horner, Chief, Agency Management Branch, Division of Planning Assistance and Assessment, 3700 East-West Highway, Room 6–27, Hyattsville, Maryland 20782, (301) 436–6720.

SUPPLEMENTARY INFORMATION: The Assistant Secretary for Health, with the approval of the Secretary of Health and Human Services, proposes to revise §§ 122.1 and 122.109 of Title 42 CFR, to implement recent amendments to Title XV of the Public Health Service Act ("The Act") relating to the selection composition, and responsibilities of governing bodies of health systems agencies ("HSAs"). In implementing these statutory amendments, the proposed regulations differ in some respects from and are more extensive than those proposed in an earlier Notice of Proposed Rulemaking pertaining to the same subject matter published on May 28, 1976 (43 FR 22858). Final publication of those earlier proposed regulations was postponed because Congressional hearings on amendments to the Act were scheduled to begin not long after the close of the comment period provided by that Notice. The legislative process thus begun culminated in the enactment, on October 4, 1979, of the Health Planning and Resources Development Amendments of 1979 (Pub. L. 96–79). As anticipated, Pub. L. 96–79 contained significant amendments to those portions of the Act relating to the composition, method of selection, and responsibilities of HSA governing bodies.

In developing the proposed rules set forth below, the Secretary considered, insofar as they remain pertient in light of the statutory amendments, comments received in response to the May 28, 1976, NPRM. In addition, the Secretary has considered comments and suggestions offered at a series of public meetings sponsored by the Health Resources Administration from representatives of State and local health planning agencies, national consumer and provider organizations, and business, labor, and governmental groups, as well as interested individuals. The Secretary has also considered written comments and suggestions from these groups and individuals.

Following is a discussion of significant changes in the regulations which would be made by the proposed amendments set out below.

§ 122.1(o) Definition of "provider".

The statutory definition of "provider" (section 1531(3) of the Act) was amended by Pub. L. 96–79 in several respects:

(1) "Ancillary personnel employed under the supervision of a physician" has been added to the definition.

(2) "Alcohol and drug treatment facilities" has been substituted for "substance abuse treatment facilities" in connection with the inclusion in the definition of individuals engaged in the administration of health care facilities.

(3) The term "indirect provider of health care" has been deleted from the definition, although the coverage previously embodied in that term has not been changed except as described in paragraphs (4) and (6) below.

(4) Excluded from the definition are individuals who have fiduciary positions with or interests in entities described in section 501(c)(3) of the Internal Revenue Code of 1954 (26 U.S.C. 501(c)(3)) which do not have as their primary purpose the delivery of health care, the conduct of research, the conduct of instruction for health professionals, or the production of drugs or articles for use in research or instruction in the provision of health care.

(5) The amount which an individual must receive (directly or through his or her spouse) from a provider entity before falling within the definition has been increased from one-tenth to one-fifth of gross annual income.

(6) The following language was added to section 1531(3):

> An individual shall not be considered a provider of health care solely because the individual is the [sic] member of the governing board of an entity [engaged in providing health care, research or struction in health care, or producing drugs or other articles for use in health care].

Perhaps the most controversial change in the definition of "provider" is the amendment quoted in paragraph (6) above. The quoted provision has the clear effect of excluding from the definition an individual whose "provider" status prior to the amendment derived exclusively from the fiduciary obligation created by membership on the governing board of a hospital or other health care-related entity. Thus, effective one year from the date of enactment of Pub. L. 96–79 (Oct. 4, 1980; see sec. 129, 93 Stat. 629), persons who sit on such governing boards and who do not otherwise fall within the definition of "provider" must be considered consumers of health care for purposes of the Act, including membership on HSA governing bodies. The revision of § 122.1(o) set out below reflects this change, as well as the other amendments to section 1531(3) of the Act.

§ 122.1(v) Definition of "health maintenance organization".

A definition of HMO has been added, in accordance with section 1531(6) of the Act as amended.

§ 122.109(b)(1) Consumer composition requirement.

Regulations governing the composition of the consumer majorities of HSA governing bodies are set forth at 42 CFR 122.109(b)(1). The current regulations essentially repeat the applicable statute (section 1512(b)(3)(C)(i) of the Act) as it appeared prior to its amendment by Pub. L. 96–79, without elaboration. The Federal Register Preamble to those regulations, however, stated that while the provision that the consumer majority must be "broadly representative" of the population groups of the health service area did not require that each group be represented in proportion to its percentage of the population in the area, the consumer majority should "roughly approximate, in its representational

aspects, the whole population of the health service area" (41 FR 12830). Experience demonstrated that HSAs interpreted the representation requirements in different ways, producing considerable uncertainty. In addition, a number of lawsuits were filed, challenging the legality of the composition of certain governing bodies on the grounds that various population groups (including low income persons, women, and the handicapped) were underrepresented.

In light of the difficulties in applying this interpretation, Congress amended section 1512(b)(3)(C)(i) to require that the "broadly representative" consumer majority of the governing body "include individuals representing the principal social, economic, linguistic, handicapped, and racial populations and geographic areas" of the health service area. In so doing the Conference Committee explicitly stated that

> * * * it was not the intent of Congress in enacting this provision to mandate a quota system requiring the selection of representatives of a particular category strictly proportionate to its representation in the population of the area * * * S. Rep. No. 96-300, 96th Cong., 1st Sess. (August 9, 1979), at p. 64.

Accordingly, the proposed regulations set out below provide that while the consumer majority must be "broadly representative" in the sense that it includes and may be expected to consider and articulate the interests of all segments of the population of its area in health planning, no specific quota or percentages of representation are required.

Health planning agencies, as recipients of Federal financial assistance, are subject to Title VI of the Civil Rights Act of 1964 and Section 504 of the Rehabilitation Act of 1973. Title VI prohibits discrimination on the basis of race, color, or national origin; Section 504 prohibits discrimination against qualified handicapped persons on the basis of handicap.

Regulations have been issued by the Department pursuant to these two statutes regarding participation on planning and advisory bodies. 45 CFR 80.3(b)(1) provides that, "A recipient under any program to which this part applies may not, directly or through contractual or other arrangements, on ground of race, color, or national origin * * * (vi) Deny a person the opportunity to participate as a member of a planning or advisory body which is an integral part of the program". 45 CFR 84.4(b)(1)(vi) establishes a similar requirement with regard to handicapped persons.

In monitoring compliance with these requirements, the Office for Civil Rights of the Department (OCR) reviews the extent to which the demographic characteristics of the health service area population with regard to race, color, national origin, and handicap, are proportional to the demographic characteristics of the governing body or advisory committee. The absence of proportional representation does not establish a violation of either Title VI or Section 504. However, when the groups protected by these statutes are not proportionately represented, OCR may investigate whether discriminatory selection procedures or criteria have been used.

The Secretary notes that certain groups have tended to be underrepresented on HSA governing bodies. These are: low and middle economic groups; women; persons age 65 and over; and the handicapped. The proposed regulations specify that these groups must be represented on the consumer majority of the governing body.

The regulations would further require representation of each identifiable racial or linguistic population group which constitutes at least 10 percent of the population of the area. The 10 percent minimum population percentage is consistent with the guideline previously suggested by the Bureau of Health Planning for translation of summaries or relevant portions of Health Systems Plans and Annual Implementation Plans into a language other than English. See the Bureau of Health Planning's Program policy Notice 79-05, Guidance for the Development of Health Systems Plans and Annual Implementation Plans. An HSA may, at its discretion, adopt a lower percentage for purposes of identifying "principal" population groups for representation on the governing body.

Proposed § 122.109(b)(1)(i)(B) requires, governing body representation of lower, middle, and upper income economic groups. For purposes of reviewing governing body composition, the Department has defined "lower income" as family income under $10,000, "middle income" as family income between $10,000 and $24,999, and "upper income" as family income greater than $25,000. The Secretary recognizes that these ranges do not reflect changes in income as a result of inflation, nor do they allow for regional variations in income; and therefore invites suggestions on alternative methods of establishing income ranges.

Proposed § 122.109(b)(1)(i)(E) defines the term "handicapped" to have the same meaning as in section 504 of the Rehabilitation Act of 1973. It should be noted that the Secretary does not construe the language of the statute to require separate representation of various groups or categories of handicapped persons, but only that the handicapped population of the area in general be represented.

The proposed regulations reflect the deletion by Pub. L. 96-79 of the requirement that to be considered a consumer an individual cannot have been a provider within the twelve months preceding his or her appointment to the governing body.

Finally, proposed § 122.109(b)(1)(ii) provides, in accordance with the specific statement of intention of the Conference Committee, that, in order to be considered a representative of a population group, an individual must either be a member of that group or be selected by an organization composed primarily of members of that group. See S. Rep. No. 96-300, at p. 64.

§ 122.109(b)(2) Provider composition requirements.

The proposed regulations reflect a number of amendments to the statutory provision (section 1512(b)(3)(C)(ii)) pertaining to membership of providers on HSA governing bodies, as follows:

Providers who have their principal place of business in the health service area are now eligible for membership in addition to those who reside in the area. The regulations propose, as a matter of fairness, to require that a provider who lives in one area and works in another be permitted to serve on the governing body of *either* HSA but not *both* HSAs. See § 122.109(d)(6).

Representatives of podiatrists, physician assistants, and rehabilitation facilities have been added.

A new required category, entitled "other providers of health care", has been added. According to the legislative history (see S. Rep. No. 96-66, at p. 62), "other providers" include, for example, nurses' aides and outreach workers. See § 122.109(b)(2)(vi).

In accordance with amendments made by Pub. L. 96-79, the proportion of provider governing body members who must be direct providers of health care (as described in section 1531(3) of the Act) has been increased to one-half from one-third, and a requirement has been added that at least one of the direct providers must be engaged in the administration of a hospital.

§ 122.109(b)(3) Miscellaneous composition requirements.

The pertinent statute (section 1512(b)(3)(C)(iii)) has been amended in

several respects which are reflected in the proposed regulations:

The governing body membership must include (either through consumer or provider members) public elected officials *and* other representatives of "units of general purpose local government" (formerly "governmental authorities") in the health service area. The proposed regulations, following the clear grammatical construction of this provision, require membership of a least one public elected official *and* at least one representative of units of general purpose local government. The statute also was amended to require that, "to be considered a representative of a unit of general purpose local government," an individual "must be appointed by such unit or a combination thereof;" and to provide that in the case of "a State which is comprised of a single health service area," the government of the State shall be deemed a unit of general purpose local government.

The statute previously required inclusion on the governing body of a percentage of residents of nonmetropolitan areas "equal to" the percentage of nonmetropolitan residents in the area's population. As amended, the language reads "at least equal to". Thus, the percentage of nonmetropolitan residents on the governing body may exceed their proportionate share of the population of the area. See proposed § 122.109(b)(3)(iii).

The amended statute requires that the governing body "include (through consumer and provider members) individuals who are knowledgeable about mental health services." The Bureau will be issuing guidance on determining who may be considered to be "knowledgeable." The Secretary notes, however, that the term is not intended to exclude the appointment of consumers who are or have been mental health service beneficiaries. Section 122.109(b)(3)(iv) of the proposed regulations, which reflects that new requirement, specifies that the requirement of a consumer member "knowledgeable about mental health services" and the requirement of consumer representation of the handicapped cannot both be satisfied by the designation of a single individual to serve in both capacities. While the definition of "handicapped" in section 504 of the Rehabilitation Act of 1973 includes the physically and mentally handicapped, so that a representative of the handicapped may in fact be knowledgeable about mental health services, it is the Secretary's judgment that these two new consumer representation requirements will not adequately be satisfied unless separate individuals are selected and designated to articulate the concerns of each of the two categories of consumers.

Section 122.109(b)(3)(v) has been amended to reflect the new statutory requirement that the Veterans Administration representative be a *non-voting* ex-officio member of the governing body and executive committee. The Secretary wishes to emphasize, however, that when the V.A. representative serves on a committee or advisory group, he or she may, at the option of the HSA, be considered a full voting member of the committee or advisory group.

Section 1512(b)(3)(C)(iii)(V) of the Act provides that if an HSA "serves an area in which there is located" one or more HMOs, the governing body must include at least one member "who is representative of such organizations." Proposed § 122.109(b)(3)(vi) would implement this requirement by requiring an HMO representative (1) if at least one HMO has more enrollees residing in the area than in any other health service area, or (2) if any HMO has a health service delivery facility located in the area, or (3) if a substantial number of area residents are enrollees of an HMO. HMOs which provide basic health services through an individual practice association (IPA) frequently provide these services by individual practitioners in their private offices. The Secretary notes that although these offices may not be "health service delivery facilities" and hence do not require representation under proposed § 122.109(b)(3)(vi)(B), an HMO designated as an IPA (as well as any other HMO as defined in section 1531(8) of the Act) do cause there to be a requirement for HMO representation on the governing body of the HSA in the health service area in which the largest number of enrollees of the HMO reside. The Secretary requests comments on whether a percentage should be specified to determine whether a substantial number of area residents are enrollees of an HMO, and if so, what that percentage should be. It should also be noted that the requirement for HMO representation is no longer limited to HMOs which are Federally qualified under Title XIII of the Public Health Service Act.

§ 122.109(d) Selection of members.

Pub. L. 96-79 amended the Act by adding a new section 1512(b)(3)(D), establishing requirements for the process of selecting governing body members. In general, the new provision requires that each HSA establish, make public, and report to the Secretary a process which is designed to assure that the membership requirements are satisfied, that there is "the opportunity for broad participation in such process by the residents" of the area and that "the participation of such residents will be encouraged and facilitated." The process must also "prohibit the selection of more than one-half of the members of [the governing] body by members of such body." The Secretary notes that there are a variety of selection methods that agencies may adopt which would satisfy these requirements. (See the Bureau's Program Information Letter 80-33, Guidance on Governing Body Selection Processes, for descriptions of some of the methods.) The Secretary also proposes to require that agencies must allow for public participation and comment in the development of the selection process. The Secretary suggests that an agency, when developing its selection process, circulate drafts of the proposed process and hold a public meeting to obtain comments on it. The Secretary calls attention to the following features of the proposed regulations implementing these new requirements.

Section 122.109(d)(2)(i) specifies that the process must provide for the selection of at least one-half of the members of the governing body by other than the existing governing body. This requirement would apply to the total membership of the governing body and to the annual turnover in governing body members.

Section 122.109(d)(2)(ii) specifies that the process must provide for the selection of at least one-half of the consumer members and one-half the provider members of the governing body by other than the existing governing body. This requirement would apply to the total membership of the governing body but not necessarily to the annual turnover in governing body members.

Section 122.109(d)(7) repeats another provision of section 1512(b)(3)(D), which states that subarea advisory councils (SACs) may select members of the governing body only if the SACs themselves are selected in accordance with that section. One effect of this provision is to prohibit the selection of any governing body members by a SAC a majority of whose members are chosen by the governing body.

Proposed § 122.109(d)(3) would require that selection processes which involve an election open to the general public (1) must ensure that the election will be conducted fairly and (2) must ensure that only consumers will vote for consumers and only providers will vote for providers. The Secretary recognizes that this requirement may present

practical problems in administering elections, and specifically seeks comment on potential problems and on the requirement. Provisions for fairness may include such procedures as having a neutral observer and using secret ballots and registration. Elections must be held in such manner as to be reasonably accessible to all persons eligible to vote. Under proposed § 122.109(d)(4), processes which involve selection by local elected or other officials must also encourage and facilitate broad participation by residents of the area.

Proposed § 122.109(d)(5) would required that if an HSA is a membership corporation (or association) whose governing body members are selected solely from among the membership, the membership is required to be unlimited and open to all residents of the area, at no more than a nominal membership fee. The Secretary expects this membership fee to be low enough to ensure that area residents will not be denied membership solely because of inability to pay. In any case where the corporation selects governing body members, if consumers do not comprise a majority of the membership, either (1) the membership must appoint a committee with a consumer majority to select governing body members, or (2) the process must provide that only consumers may select consumers and only providers may select providers to serve on the governing body, or (3) the agency must provide another method approved by the Secretary to ensure that consumers will cast a majority of the votes in the selection of governing body members.

The Secretary is concerned that in the past agencies have allowed vacancies to exist on boards for unnecessarily long periods of time. For that reason, the proposed regulations (§ 122.109(d)(9)) require each agency to adopt a process for the expeditious filling of vacancies. For those agencies whose selection process includes appointments by officials or groups other than the governing body, the process must specify the maximum length of time available to make the appointment following a vacancy, and the procedure the agency will follow if the position remains vacant beyond that time.

Finally, proposed § 122.109(d)(10) would require that selection processes include provisions for challenging whether the agency has followed its adopted procedures in the selection of any member.

§ 122.109(e) Responsibilities and authority.

The proposed regulations reflect a number of changes in section 1512(b)(3)(B) of the Act as it relates to the relationship in a public HSA between the public regional planning body of unit of general purpose local government and its separate governing body for health planning. The statutory amendments negate, with certain limited exceptions, the effect of the decision in *Montgomery County, Md.* v. *Califano*, 599 F.2d 1048 (4th Cir. 1979), *aff'g* 449 F. Supp. 1230(D.Md. 1978). In that case, the court held invalid that portion of the current regulations which states that the governing body for health planning of a public HSA must have "the sole, undivided authority to act for the agency" in performing the HSA's health planning functions; and held that the Secretary was without authority under the statue to deprive a regional planning body or unit of local government of its authority to control" the governing body for health planning in the performance of those functions. 449 F. Supp. 1230, 1241.

The amendments to section 1512(b)(3)(B) remove any doubt as to the exclusivity of the responsibility of the governing body for health planning of a public HSA for the performance of the HSA's health planning functions. The amendments do, however, provide for the following exceptions:

(1) The public body is responsible for the establishment of personnel rules and practices for the staff of the agency and for the agency's budget, unless it specifically authorizes the governing body for health planning to perform those functions. Section 1512(b)(3)(B)(i)(I) of the Act as amended.

(2) The four HSAs which units of general purpose local government whose designation agreements were in effect on January 1, 1979 (those serving Montgomery County, Md., the City of Chicago, Santa Clara County, Cal., and the Navajo Nation) are authorized to review and approve the health systems plan and annual implementation plan for their respective jurisdiction. Section 110(e)(2)(B) of Pub. L. 96-79; 93 Stat. 604.

(3) With respect to all public HSAs other than the four listed in (2) above, the public body must be given a reasonable opportunity to comment on the health systems plan and annual implementation plan proposed by the government body for health planning, and to propose revisions in them. Section 1512(b)(3)(B)(ii) of the Act.

In addition, the Secretary notes that proposed § 122.109(a)(1) would require that the public body appoint the members of the governing body for health planning. Section 1512(b)(3)(A) of the Act as amended.

The regulations set out below reflect these statutory changes

§ 122.109(f) Meetings and conduct of business

Section 1512(b)(3)(B)(viii) of the Act was amended by Pub. L. 96-79 (1) to permit an HSA to close to the public that part of any meeting at which information will be disclosed relating to the HSA's participation in a judicial proceeding, or to the performance or remuneration of an employee where such disclosure would constitute a "clearly unwarranted invasion of the personal privacy" of the employee; and (2) to withhold from the public records and data pertaining to the same subjects. Paragraphs (3) and (4) of § 122.109(f) include these changes. All other meetings to conduct the business of the agency must still be held in public upon adequate notice to the public, and all other records and data must still be made available, upon request, to the public. Similar requirements apply to meetings of an executive committee and of any committee, subcommittee or advisory group appointed by the governing body or executive committee.

Section 1512(b)(3)(B)(viii) of the Act (and § 122.109(f)(2) of the proposed regulations) specifies that a governing body (and executive committee (if any)) shall act only by vote of a majority of its members present and voting at a meeting called upon adequate notice to all its members and at which a quorum is in attendance. Although under this provision a quorum is required to be in attendance only when meetings of the governing body (or executive committee) are brought to order, the Secretary strongly encourages agencies to conduct all business, particularly votes for the purpose of adopting plans and making certificate of need recommendations, in the presence of quorum.

Paragraph (5) of § 122.109(f) has been revised to reflect the amendment to section 1512(b)(3)(B)(vi) of the Act that requires HSAs to reimburse or, when appropriate, to make advances to, governing body members for their "reasonable costs" in performing HSA duties and functions in addition to attendance at governing body meetings. The paragraph has also been amended to specify that "reasonable costs" includes expenses for travel, meals, and child care and may, at the option of the HSA, include wages lost by low-income members in the performance of HSA duties and functions.

§ 122.109(g)(1) Executive committee

The statute (section 1512(b)(3)(A)) provides that an HSA governing body with more than 30 members must establish an executive committee of not

less than 10 nor more than 30 (formerly, not more than 25) members, which must meet the composition requirements applicable to governing bodies and to which must be delegated the authority to take such action (other than establishment and revision of Health Systems Plans and Annual Implementation Plans) as the governing body is authorized to take. The proposed regulations repeat this statutory requirement, and provide that an executive committee may not be delegated the authority to amend the HSA articles of incorporation or bylaws. See proposed §122.109(g)(1)(i). Additionally, the proposed regulations provide that a governing body of 30 or less members may, if it wishes, also appoint an executive committee to assist in the efficient operation of the agency. See proposed § 122.109(g)(1)(ii). Any such executive committee must have not less than 10 members and may be delegated authority within the limits applicable to executive committees appointed by over-30 governing bodies. If it is delegated such authority, it must meet the composition requirements applicable to governing bodies.

The proposed regulations also make clear that a governing body itself may perform any function or activity the authority for which it has delegated to an executive committee.

Section 122.109(g)(1)(iv), pertaining to the selection of executive committee members by the governing body, requires that either (1) consumer members of the executive committee must be selected only by consumer members of the governing body, and provider members of the committee by provider members of the governing body, or (2) a majority of persons present and eligible to vote for both consumer and provider members of the committee must be consumers. The Secretary believes that these options will effectively protect the interests of consumers in the selection of the executive committee membership while allowing each HSA the flexibility to choose the selection method that best serves its needs.

§ 122.109(g)(2) Committees, subcommittees, and advisory groups

Section 1512(b)(3)(C)(vi) was amended by Pub. L. 96-79 to require that any subcommittee or advisory group appointed by the governing body or executive committee must have a majority of consumers, and to delete the words "of its members" after "subcommmittee." The proposed regulations reflect these changes.

§ 122.109(h) Data and information

The Office of Management and Budget clearance number assigned to the data and information requirements in this section is 68-S1656.

Effective Dates

Section 129 of Pub. L. 96-79 (93 Stat. 629-30) provides in pertinent part that the amendments to the Act made by Pub. L. 96-79 reflected in the proposed regulations set out below shall take effect on October 4, 1980, except that on and after October 4, 1979.

(1) the changes in the membership of the health systems agencies * * * required by amendments to sections 1512 * * * and 1531 [of the Public Health Service Act] shall be implemented through selections of members to fill vacancies occurring after such date, [and]

(2) a health systems agency * * * may make the organizational and related changes required by the amendments to sections 1521 * * * and 1531 of the Public Health Service Act * * *

Therefore, any selection to an agency's governing body after October 4, 1980, must be made in a manner which complies with the new selection requirements.

It is proposed that Part 122 of 42 CFR be amended in the manner set forth below.

Dated: November 5, 1980.

Julius B. Richmond,

Assistant Secretary for Health.

Approved: January 9, 1981.

Patricia Roberts Harris,

Secretary.

PART 122—HEALTH SYSTEMS AGENCIES

1. Paragraph (o) of § 122.1 is revised to read as follows:

§ 122.1 Definitions

* * * * *

(o) "Provider of health care" means an individual:

(1) Who is a direct provider of health care (including, but not limited to, a physician (doctor of medicine or doctor of osteopathy), dentist, nurse, podiatrist, optometrist, physician assistant, or ancillary personnel employed under the supervision of a physician) in that the individual's primary current activity is the provision of health care to individuals or the administration of facilities (including, but not limited to, hospitals, long-term care facilities, rehabilitation facilities, alcohol and drug abuse treatment facilities, outpatient facilities, and health maintenance organizations) in which such are provided and, when required by State law, the individual has received professional training in the provision of such care or in such administration and is licensed or certified for such provision or administration;

(2) Who holds a fiduciary position with, or has a fiduciary interest in, any entity described in paragraph (o)(3) (ii) or (iv) of this section other than an entity described in section 501(c)(3) of the Internal Revenue Code of 1954 and which does not have as its primary purpose the delivery of health care, the conduct of research, the conduct of instruction for health professionals, or the production of drugs or articles described in paragraph (o)(3)(iii) of this section.

(i) For purposes of this paragraph, a "fiduciary position or interest" means a position or interest with respect to such entity that is affected with the character of trust, including members of boards of directors and officers, majority shareholders, agents and attorneys.

(ii) Notwithstanding paragraph (o)(2)(i) of this section, an individual shall not be considered a provider of health care solely because the individual is a member of the governing board of one or more entities described in paragraph (o)(3) (ii) or (iv) of this section.

(3) Who receives (either directly or through the individual's spouse) more than one-fifth of the individual's gross annual income from any one or combination of the following:

(i) Fees or other compensation for research into instruction in the provision of health care;

(ii) Entities, or associations or organizations composed of entities or individuals, engaged in the provision of health care or in research or instruction in the provision of health care;

(iii) Producing or supplying drugs or other articles for individuals or entities for use in the provision of or in research into or instruction in the provision of health care; or

(iv) Entities, or associations or organizations composed of entities or individuals, engaged in producing drugs or such other articles;

(4) Who is a member of the immediate family of an individual described in paragraphs (o)(1), (2), or (3) of this section. For purposes of this paragraph, "immediate family" includes only parents, spouse, children, and brothers and sisters who reside in the same household; or

(5) Who is engaged in issuing any policy or contract of individual or group health insurance of hospital or medical service benefits.

* * * * *

2. Section 122.1 is amended by adding the following new paragraph:

* * * * *

(v) "Health maintenance organization" means a public or private organization, organized under the laws of any State, which—

(1) Is a qualified health maintenance organization under section 1310(d) of the Act; or

(2)(i) Provides or otherwise makes available to enrolled participants health care services, including at least the following basic health care services: usual physician services, hospitalization, laboratory, X-ray, emergency and preventive services, and out of area coverage; (ii) is compensated (except for copayments) for the provision of the basic health care services listed in paragraph (v)(2)(i) to enrolled participants by a payment which is paid on a periodic basis without regard to the date the health care services are provided and which is fixed without regard to the frequency, extant, or kind of health service actually provided; and (iii) provides physicians' services primarily (A) directly through physicians who are either employees or partners of such organization or (B) through arrangements with individual physicians or one or more groups of physicians (organized on a group practice or individual practice basis).

3. Section 122.109 is revised to read as follows:

§ 122.109 Governing body; executive and other committees.

(a) *General.* (1) A health systems agency which is a public regional planning body or unit of a general purpose local government shall, in addition to any other governing board, appoint a governing body for health planning which meets the requirements of paragraphs (b) and (c) of this section and which has the responsibilities prescribed in paragraph (e) of this section. The members of the governing body for health planning shall be selected in accordance with paragraph (d) of this section.

(2) A health systems agency which is a nonprofit private corporation (or similar legal mechanism) shall have a governing body to direct all its health planning and development activities which meets the requirements of paragraphs (b) and (c) of this section and which has the responsibilities prescribed in paragraph (e) of this section. The members of the governing body shall be selected in accordance with paragraph (d) of this section.

(b) *Composition.* The membership of the governing body of an agency shall meet the following requirements:

(1) *Consumer composition requirements.* A majority (but not more than 60 percentum) of the members shall be residents of the health service area served by the agency who are consumers of health care and who are not providers of health care, and who are broadly representative of the health service area. The consumer majority must include individuals representing the principal social, economic, linguistic, handicapped, and racial populations and geographic areas of the health service area and major purchasers of health care in the area.

(i) The purpose of the requirements of this subparagraph is to ensure that each health systems agency will be governed by a body with a consumer majority which, looked at as a whole, includes and may reasonable be expected to consider and articulate the interests of all segments of the population of its health service area in carryng out its health planning functions. Accordingly, while no specific quotas or percentages of representation are required, the Secretary must be satisfied that the consumer majority of the governing body is broadly representative of the entire population of the area. In particular, the following groups must be represented on the consumer majority:

(A) Each identifiable racial or linguistic population group which constitutes at least ten percent of the population of the area;

(B) Lower, middle and upper income economic groups;

(C) Women;

(D) Persons age 65 and over; and

(E) The handicapped, as that term is defined in section 504 of the Rehabilitation Act of 1973 (see also paragraph (b)(3)(iv) of this section).

(ii) In order to be considered a representative of a specific population group, an individual must either be a member of that group or have been selected as a representative by an organization composed primarily of members of that group.

(iii) For purposes of this paragraph, "major purchaser of health care" means an entity (including a labor organization or a business corporation), other than an entity described in paragraph (b)(2) of this section, which either directly or indirectly (such as through the purchase of group health insurance or hospital or medical service benefits) provides health care for its employees, members, or beneficiaries.

(2) *Provider composition requirements.* The remainder of the members shall be residents of, or individuals whose principal place of business is in, the health service area served by the agency who are providers of health care and who represent:

(i) Physicians (particularly practicing physicians), dentists, nurses, optometrists, podiatrists, physician assistants, and other health professionals;

(ii) Health care institutions (particularly hospitals, long-term care facilities, rehabilitation facilities, alcohol and drug abuse treatment facilities, and health maintenance organizations);

(iii) Health care insurers;

(iv) Health professional schools (which include schools of medicine, dentistry, osteopathy, optometry, podiatry, pharmacy and veterinary medicine as defined in section 724(4) of the Act, and schools of nursing as defined;

(v) The allied health professions; and

(vi) Other providers of health care.

At least one-half of the providers of health care who are members of the governing body shall be direct providers of health care, at least one of whom must be a person engaged in the administration of a hospital.

(3) *Miscellaneous composition requirements.* The total membership as described in paragraphs (b)(1) and (b)(2) of this section shall:

(i) Include (either through consumer or provider members) at least one public elected official and at least one other representative of a unit of general purpose local government in the agency's health service area. To be considered a representative of a unit of general purpose local government, an individual must be appointed by that unit or a combination of such units. Where the health service area of the agency includes an entire State, the government of that State shall be deemed to be a unit of general purpose local government for purposes of this subsection;

(ii) Include representatives of public and private agencies in the area concerned with health;

(iii) Include a percentage of individuals who reside in nonmetropolitan areas within the health service area that is at least equal to the percentage of residents of the area who reside in nonmetroplitan areas;

(iv) Include at least one consumer and one provider member who are knowledgeable about mental health services. The requirement of this subsection pertaining to consumer membership and the requirement of paragraph (b)(1)(i)(E) pertaining to representation of the handicapped may not be satisfied by the designation of a single individual to serve in both capacities;

(v) If the agency serves an area in which there is located one of more hospitals or other health care facilities of the Veterans Administration, include, as a nonvoting, ex officio member, an individual whom the Chief Medical Director of the Veterans Administration shall have designated for that purpose. A member appointed under this subsection shall not be considered in determining the number of members of the governing body for purposes of the numerical limits prescribed by paragraph (c) of this section; and

(vi) If the agency serves a health service area in which there is located one or more health maintenance organizations, include at least one member who is representative of such organizations. For purposes of this subsection, a health maintenance organization shall be considered to be "located in" a health service area if (A) more of the HMO's enrollees reside in the area than in any other health service area, or (B) a health service delivery facility owned or operated by the organization is located in the area, or (C) a substantial number of area residents are enrollees of a health maintenance organization.

(c) *Number of members.* The governing body must be composed of not less than 10 members or more than 30 members, except that the number of members may exceed 30 where the governing body has, in accordance with its Articles of Incorporation or bylaws (or in the case of a public regional planning body or single unit of general purpose local government, its charter, authorizing statute, ordinance or executive order, or any rules or regulations governing its internal management), established an executive committee which meets the requirements of paragraph (g)(1) of this section.

(d) *Selection of members.* Each health systems agency must establish a process for the selection of the members of its governing body (or, in the case of a public regional planning body or unit of general purpose local government, its governing body for health planning) which process is designed to ensure that the membership meets the requirements of paragraph (b) of this section, that there is the opportunity for broad participation in the process by the residents of the health service area of the agency, and that the participation of the residents will be encouraged and facilitated. In addition, agencies must allow for public participation and comment in the development of the process.

(1) Each health systems agency must make public the process established under this paragraph, and shall report it to the Secretary at a time and in a form and manner prescribed by the Secretary.

(2)(i) The process must provide for the selection of at least one-half of the members of the governing body by other than the existing governing body. This requirement shall apply to the total membership of the governing body and to the annual turnover in governing body members.

(ii) The process must provide for the selection of at least one-half the consumer members and one-half the provider members of the governing body by other than the existing governing body. This requirement shall apply to the total membership of the governing body but not necessarily to the annual turnover in governing body members.

(3) Where the selection process involves an election which is open to the general public, the process (i) must be designed so as to ensure that the election will be conducted fairly and (ii) must provide that only consumers will vote for consumers and only providers will vote for providers. The election must be held in a place or places reasonably accessible to persons eligible to vote.

(4) Where local elected or other officials make the final selection of members, the process must provide for, encourage and facilitate broad participation by the residents of the area in the nomination of candidates for such selection.

(5) Where a health systems agency is a membership corporation or association or other similar membership organization whose governing body members are selected solely from among the membership of the organization, such membership must be unlimited and open to all residents of the area at no more than a nominal membership fee. In any case where the corporation selects governing body members and if consumers do not comprise a majority of the membership of the organization, its bylaws must (i) require that the membership appoint a committee with a consumer majority which is empowered to select governing body members, or (ii) prohibit consumer members of the organization from voting for provider members of the governing body and provider members of the organization from voting for consumer members of that body, or (iii) provide another method approved by the secretary to ensure that consumers will cast a majority of the votes in the selection of governing body members.

(6) The process must prohibit the selection as a governing body member of any individual who is a member of the governing body of another health systems agency.

(7) Where a subarea advisory council established under section 1512(c) of the Act is authorized to select or selects one or more members of the governing body, the members of the council must be selected in accordance with the requirements of section 1512(b)(3)(D) of the Act.

(8) If the process for the selection of governing body members by other than governing body members involves a nominating committee, a majority of the members of the nominating committee must be individuals who are not governing body members.

(9) The process must provide for the expeditious filling of governing body vacancies. Where the selection process includes appointments by officials or groups other than the governing body, the process must specify the maximum length of time available to make the appointment following a vacancy, and the procedure the agency will follow if the position remains vacant beyond that time.

(10) The process must include a provision for challenging whether the Agency used its adopted procedures in the selection of any member.

(e) *Responsibilities and authority.* (1) The governing body of a health systems agency shall:

(i) Be responsible for the internal affairs of the agency, including matters relating to the staff of the agency and the agency's budget, except that the governing body for health planning of an agency which is a public regional planning body or unit of general purpose local government shall not be responsible for the establishment of personnel rules and practices for the staff of the agency or for the agency's budget unless authorized by the planning body or unit of government;

(ii) Be responsible for the adoption of procedures and criteria, developed and published under section 1532 of the Act and applicable regulations of the Secretary, to be utilized in the agency's performance of its functions under section 1513(e), (f) and (g) of the Act;

(iii) Be responsible for issuing an annual report concerning the activities of the agency in accordance with § 122.115 of this subpart; and

(iv) Have the exclusive authority to perform the functions described in section 1513 of the Act and the agency's designation agreement entered into in accordance with § 122.106 or § 122.107 of this subpart. For such purposes the term "exclusive" as it applies to the role of the governing body means that the governing body shall have the sole, undivided authority to act for the agency

in performing those functions subject to the provisions of paragraph (g)(1) of this section relating to the delegation of functions to an executive committee; *Provided, that*

(A) the public regional planning body or single unit of general purpose local government may establish procedures not inconsistent with the requirements of this part for the functioning of the agency, including an opportunity to comment on any action proposed by the governing body in the performance of its functions;

(B) the public regional planning body or single unit of general purpose local government must be given the opportunity to comment on the health systems plan and the annual implementation plan, and to propose additions to and other revisions to those plans, prior to their establishment; and

(C) any public regional planning body or single unit of general purpose local government which was designated as a health systems agency before January 1, 1979, is authorized to approve or disapprove the health systems plan and annual implementation plan. No plan which has been disapproved by such body or unit may be considered established.

(2) The public regional planning body or single unit of general purpose local government may establish rules and regulations not inconsistent with the Act and the regulations of this part for the exercise of the responsibilities described in paragraph (d)(1) of this section by the governing body.

(f) *Meetings and conduct of business.* The governing body shall:

(1) Meet at least once in each calendar quarter of a year and shall meet at least two additional times in a year unless its executive committee, if any, meets at least twice in that year;

(2) Act only by vote of a majority of its members present and voting at a meeting called upon adequate notice to all its members and at which a quorum, which shall be not less than one-half of its members, is in attendance;

(3) Hold in public all meetings to conduct the business of the agency (other than any part of a meeting in which it is likely, as determined by the governing body, that information respecting the performance or remuneration of an an employee of the agency will be disclosed and such a disclosure would constitute a clearly unwarranted invasion of personal privacy of the employee or that information relating to the agency's participation in a judicial proceeding will be disclosed) and give adequate notice to the public of such meetings (as required by the agency's Articles of Incorporation or bylaws or, in the case of a public entity, its charter, authorizing statute, ordinance, or executive order or any rules or regulations for internal management); and

(4) Make its data and records available to the public in accordance with the requirements of § 122.114 of this subpart. "Data and records" do not include records or data respecting the performance or remuneration of an employee the disclosure of which would be clearly unwarranted invasion of the personal privacy of the employee or records or data of the agency relating to its participation in a judicial proceeding.

(5) Reimburse (or when appropriate make advances to) its members for their reasonable costs incurred in attending meetings of the governing body and performing any other duties and functions of the health systems agency. For purposes of this paragraph, "reasonable costs" includes expenses for travel, meals, and child care and may, at the option of the agency, include wages lost by low-income members.

(g) *Executive committee; subcommittees and advisory committees.* (1) *Executive committee.* (i) A governing body whose membership exceeds 30 shall establish an executive committee of its members, which shall consist of not less than 10 or more than 30 members, shall be composed in accordance with the requirements of paragraph (b) of this section, and shall be delegated the authority to take such action as the governing body is authorized to take except that the executive committee shall not be delegated the authority (A) to take action with respect to the agency's Articles of Incorporation or bylaws or, in the case of an agency which is a public regional planning body or single unit of general purpose local government, its charter, authorizing statute, ordinance, or executive order and any internal rules or regulations which govern its operations; or (B) to establish or amend the health systems plan and annual implementation plan required by section 1513(b) (2) and (3) of the Act.

(ii) A governing body whose membership is 30 or less may establish an executive committee of not less than 10 of its members. Any such committee must be composed in accordance with the requirements of paragraph (b) of this section, and may be delegated authority in accordance with subsection (i) above.

(iii) A governing body may itself perform any function or activity the authority for which it has delegated to an executive committee.

(iv) The members of the executive committee shall be selected by the governing body from among its members; *Provided, that* either (A) the HSA must develop a procedure which requires that a majority of the individuals present and eligible to vote for the selection of each consumer and provider to be named to the executive committee must be consumers, or (B) only consumer members of the governing body may participate in the selection of consumer members of the executive committee, and only provider members of the governing body may participate in the selection of provider members of the executive committee.

(v) The executive committee shall conduct itself in accordance with the requirements of paragraph (f) (2) and (3) of this section.

(2) *Committees, subcommittees, and advisory groups.* (i) Where in the exercise of its functions the governing body or executive committee appoints a committee, subcommittee, or an advisory group, appointments to that committee, subcommittee or group shall, to the extent practicable, be made in such a manner as to provide that the representation on the committee, subcommittee or group meets the composition requirements of paragraph (b) of this section; *Provided, that* a majority of the membership of each such committee, subcommittee and advisory group must be consumers of health care.

(ii) Committees, subcommittees and advisory groups shall conduct themselves in accordance with the requirements of paragraphs (f) (2) and (3) of this section.

(h) *Data and information.* The health systems agency shall provide to the Secretary such data and information as the Secretary may require relating to compliance with the requirements of this section, including the following:

(1) Income, racial and other pertinent characteristics of consumer members of the governing body and executive committee. In addition, the health systems agency shall collect such data for consumer members of subarea advisory councils and committees, subcommittees and advisory groups appointed by the governing body or executive committee, and shall retain it at the health systems agency to be made available to the Secretary upon request.

(2) In the case of provider members, information on their occupations and affiliations and other pertinent characteristics which form the basis for their membership. In addition, the health systems agency shall collect such data for provider members of subarea advisory councils and committees, subcommittees and advisory groups appointed by the governing body or executive committee, and shall retain it

at the health systems agency to be made available to the Secretary upon request.

(3) Quantitative information supporting the health systems agency's determination of the demographic characteristics of the population in its health service area.

(4) The process of selection of members of the governing body, executive committee, subcommittees, advisory groups, and subarea advisory councils.

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Part V

Department of Health and Human Services

Public Health Service

Mental Health System; Equitable Arrangements for Employee Protection; Proposed Rulemaking

DEPARTMENT OF HEALTH AND HUMAN SERVICES

42 CFR Part 64c

Mental Health Systems; Equitable Arrangements for Employee Protection

AGENCY: Public Health Service, Department of Health and Human Services.

ACTION: Notice of proposed rulemaking.

SUMMARY: These proposed regulations establish criteria for State mental health authorities to follow in the development and implementation of the equitable arrangements for employee protection required by section 801 of the Mental Health Systems Act. The Act requires that each State mental health authority have these arrangements in effect to protect the interests of employees affected adversely by actions taken by the authority to emphasize outpatient mental health services. This proposal has been prepared in consultation with the Secretary of Labor and his concurrence will, as required by section 801 of the Act, be obtained prior to promulgation of the final rule.

DATES: Comments must be received on or before March 9, 1981.

ADDRESS: Submit comments to: Anne B. Drissel, Assistant to the Director for Program Policy and Planning, Division of Mental Health Service Programs, National Institute of Mental Health, Parklawn Building, Room 11C–22, 5600 Fishers Lane, Rockville, Maryland 20857.

Comments will be available for public inspection at the above location between the hours of 8:00 a.m. and 4:00 p.m., Monday through Friday, except for Federal holidays.

FOR FURTHER INFORMATION CONTACT: Anne B. Drissel, Telephone: (301) 443–4576.

SUPPLEMENTARY INFORMATION:

General

The Mental Health Systems Act was enacted on October 7, 1980, as Pub. L. 96–398 with the purpose of improving the delivery of mental health services and otherwise promoting mental health throughout the country. Among the Act's statutory findings is the following—

> The shift in emphasis from institutional care to community-based care has not always been accompanied by a process of affording training, retraining, and job placement for employees affected by institutional closure and conversion.

This finding states the Congressional concern which is addressed in section 801 of the Act. Under that section each State mental health authority must establish, in accordance with regulations issued by the Secretary of Health and Human Services with the concurrence of the Secretary of Labor, equitable arrangements to protect the interests of State employees affected adversely by actions of the State mental health authority to emphasize outpatient mental health services. This notice proposes for public comment the regulations which are referred to in section 801.

Over the last 30 years, there has been a growing emphasis on maintaining mentally ill persons in the community with mental health and related support services rather than in inpatient mental health facilities. The Act assists in meeting the need for providing services in the community by authorizing the Department to fund part of the costs associated with comprehensive community mental health centers and with several other programs for the provision of community-based mental health care and related support services.

The Congress found that due to this shift in emphasis the jobs of employees of inpatient mental health facilities might change or be displaced. Accordingly, Congress mandated that each State mental health authority must protect the interests of these employees through the establishment of arrangements "designed to preserve employee rights and benefits and to provide training and retraining of employees, where necessary, for work in mental health or other fields and arrangements under which maximum effort will be made to place employees in employment."

Sec. 801(a)(1)—Obligations of State Mental Health Authorities—Criteria for Arrangements

Under these regulations the State mental health authority must be October 1, 1981:

(a) Adopt the equitable arrangements in writing, with copies available to the public upon request; and

(b) Include certain types of protections in the equitable arrangements.

After careful consideration of the available alternatives, a determination was made to propose regulations which provide substantial protections for employees but do not describe the protections in minute detail. This allows discretion at the State level for making decisions on the particular arrangements which would be fair and equitable to the employees in that State. However, the Department believes the proposed regulations provide meaningful minimum requirements for the State mental health authority to follow in conforming to the statutory standard.

The Department believes that a compelling reason for proposing regulations which give the States discretionary authority is that the Act does not specifically direct or authorize the funding of the various costs of providing employee protections, other than the limited funds available under section 207 for employee training, retraining, and assistance in securing employment. Thus, it would be inequitable and impractical to require detailed employee protections which might be inconsistent with existing State laws or threaten the budgets of the several States. In this regard, the legislative history of the Act states:

> "[T]he Conferees intend that the Secretary • • • may, to the extent feasible, consistent with the objective of protecting against a worsening of the positions of affected employees, take into account the State's financial circumstances and legal requirements." *H.R. Rep. No. 96–1367, 96th Cong. 2d. Sess. 63 (1980).*

In addition, regulations mandating more detailed requirements were not favored because (1) the State's personnel systems are diverse and their capabilities to implement protections vary greatly and (2) the Act only requires each State mental health authority to effectuate "equitable" arrangements and does not require that the arrangements be approved or certified at the Federal level.

An alternative to the middle course taken by the Department in these proposed regulations would be to promulgate a bare outline which would allow each State mental health authority to exercise greater discretion on the type and scope of protections. This approach was rejected because the Department believes it would amount to little more than a repetition of the statutory provisions and would provide insufficient guidance to the State mental health authorities for complying with the requirement to establish employee protections.

In summary, we believe the proposed regulations represent a successful effort to avoid being either overly general or too detailed and inflexible.

Enforcement Provisions

Under the proposed regulations the Secretary may, after consultation with the Secretary of Labor, discontinue payments under section 107 (allotments to improve administration of State mental health programs) or 305 (assistance to carry out exclusive agent agreements) of the Act as a penalty for failure to comply substantially with any requirement of section 801(a) of the Act

or the regulations. In addition, the State mental health authority will be required to include in any application for assistance under section 107 or 305, certification that the arrangements have been adopted and are available in writing to the Secretary and the general public upon request. The regulations do not include a "procedures" section, since the statute adequately ensures that no penalty could be imposed unless the State is afforded reasonable notice and an opportunity for a hearing.

The proposed regulations follow the statutory language of section 801 in requiring that each State mental health authority must have in effect equitable arrangements for employee protection. However, consistent with the limited enforcement authority of section 801(b), it provides for Departmental enforcement of compliance with section 801(a) only through the withholding of assistance to the State mental health authority under sections 107 or 305 of the Act.

Consideration was given to requiring Federal review and approval of the equitable arrangements pursuant to section 801(a) as a pre-condition to recognition by the Secretary that a State mental health authority has in effect a State mental health services program under section 301 of the Act. This alternative was rejected because it is not specifically provided for in the statute and because it would unreasonably penalize all beneficiaries of the Act within a State (a State mental health services program is required to be in effect before the State mental health authority or any entity in the State is eligible to receive funding under Titles II or III of the Act)—a penalty which is not commensurate with the relationship of the employee protection provisions to the Act as a whole. Further, Congress makes not reference to the principal assistance programs of Title II in the enforcement and penalty provision of section 801(b).

The Department also considered a system under which the Secretary would accept, adjudicate, and order remedial action for complaints that individual employees had not received the protections required by law. This concept was not incorporated because of the potential difficulties in administering such a system and because it was decided to require, instead, that the equitable arrangements established by the State mental health authority include a mechanism for resolution of individual disputes.

Substantive Actions To Protect Employees

These proposed regulations prescribe the minimum protections which are believed to be fair and equitable, viz.: each State mental health authority must provide some arrangements for affected employees in each of the following categories:

(a) Preservation of employment, wages, hours, and benefits;
(b) Training or retraining;
(c) Job placement activities; and
(d) Preservation of collective bargaining rights and benefits under existing agreements.

The Department believes there is nothing in the Act to warrant an abrupt termination of any bargaining agreement which currently covers the State employees covered by the equitable arrangements. Accordingly, the State mental health authority is required to honor labor-management contracts during the period of employee protection, and to recognize that the right to bargain collectively follows any facility, or work unit, which might be transferred to another agency or facility under the control of the State.

There is an affirmative obligation imposed on the State mental health authority to search the State's personnel system in order to identify opportunities for a comparable substitute job which can be offered to each affected employee. In all probability, there will be some situations where the State may wish to unilaterally transfer the employee. However, these regulations are intended to require that unless the job is substantially equivalent in terms of wages, salaries, and benefits, the employee is permitted to decline the job without forfeiting the eligibility for other protective measures.

Further, the State must utilize existing training programs or develop a satisfactory program to retrain affected employees so they may obtain substantially equivalent employment as it becomes available. Training must be conducted in a manner which does not produce economic or other disadvantages for the employee during the training period. It is expected that the State would continue to pay employees their regular salaries or wages, but excuse them from the performance of duties during their training period. The training which is provided under the arrangements is not required to be of a longer duration than the employee's eligibility for protections. It is not intended that States be obligated under this provision to retrain employees who already have professional degrees or licenses. It is especially not intended that a State be obligated to provide training for a professional employee to become certified in a new specialty.

It is noteworthy that the Act expressly authorizes training for work in fields other than mental health. The proposed regulations incorporate this alternative in the arrangements required for training and in the requirement for assisting employees to find new jobs. The Department believes that this provides expanded opportunities for employees and needed flexibility to the States in the efficient utilization and deployment of personnel.

Finally, the State mental health authority must provide severance pay to employees who do not find suitable reemployment under one of the other protective arrangements. The proposed requirements for protective arrangements deliberately avoid mandatory guarantees or minimum levels for such things as training or severance pay. It is expected that each State will assess its own capabilities and adopt arrangements which are equitable under its particular circumstances.

The Department considered, but rejected, a requirement that the States pay affected employees a percentage of wages or salary for a fixed period of time. An acceptable arrangement for each State will depend on its fiscal resources as well as the requirements of State law. Here again, the Department believes the statutory standard of "equitability" outweighs the benefit of a simplistic, but administratively attractive, nationwide standard.

Eligibility for Protections

The proposed regulations require the State mental health authority to protect the interests of State employees who work in a State-operated mental health facility for inpatient treatment on a paid, permanent basis with the exception of officers and directors. Other people engaged in delivering mental health care or support services are not required to be included, because:

1. Unpaid volunteers will not be affected in a tangible or measurable manner.

2. Temporary staff, by definition, do not have any expectation of continuing employment which will be adversely affected by actions to emphasize outpatient mental health services.

3. Coverage of State employees not working in the affected facility would present burdensome administrative problems as a result of having to prove a casual connection between the effect on their jobs and the State action.

4. The Department has concluded that the focus of the protection of employment interests is on the staff of State institutions for inpatient care and treatment. Employees of local governmental units, or private providers, or contractors and employees of contractors who work in inpatient mental health facilities are not within the ambit of Congressional intent as reflected in section 801 of the Act and its legislative history. Given this lack of statutory authority, the Department does not believe it can impose an enforceable obligation on the States to provide for people who are not employees of the State.

5. The Department also considers other employees in the community (whose jobs may be linked to the economic activity at the covered facility) to be beyond the scope of statutory coverage.

Specific Actions Which Have an Adverse Effect

The range of activities and decisions which any State might elect to pursue to "emphasize outpatient mental health services" (the statutory standard for protection) cannot be accurately predicted. Accordingly, these regulations do not attempt to define any specific State action which should trigger an employment protection response. Rather, State actions which will be covered by the regulations will be identifiable by their result, i.e., the closure or partial closure of, or reduction of the inpatient population in, a State-operated mental health care facility.

Moreover, most cases will be clear because the State mental health authority is required to furnish advance written notice to affected employees. Consequently, the State mental health authority will be under a continuing obligation to consider the "employment effect" of its actions to emphasize outpatient mental health services.

Cost of Implementing This Regulation

Some additional costs could occur to States as a result of the regulation which is proposed by this NPRM. However, it is the belief of the Department that these costs are likely to be limited because most States already require training, retraining, or reemployment of permanent public employees who are displaced by changes in their jobs. This regulation will establish a minimum set of protections which would not reduce a State's obligation under its own laws or collective bargaining agreements. Therefore, it is expected that significant additional costs to States would be incurred only in those cases where it was necessary to provide severance pay to employees who do not obtain or receive offers of substantially equivalent employment. Analysis of the expected cost of implementing this regulation is underway. Public comments on the expected costs of this regulation are especially invited.

Effective Date of Protections

The Act does not specify when the States must have the arrangements in place. Similarly, the Act is silent on the timing of events which might make an employee eligible for protection. The proposed regulations mandate that each State mental health authority adopt the required protections in order to comply with the statutory standard and that the protections must be in effect no later than October 1, 1981. The Department selected this date because it marks the first day for which funds are authorized under Titles I, II, and III of the Act and believes that it will allow sufficient time for the State mental health authority to implement the required projections.

No protections are required to be available retroactively to employees affected by State actions taken prior to establishment of the arrangements as the Department believes it would create administrative problems disproportionate to the number of employees who might be eligible for benefits and that it would not be equitable to impose upon the States the financial burden of implementing the employee protections prior to the availability of assistance under the Act.

Miscellaneous

The Department is required to submit to the Office of Management and Budget for review and approval § 54c.104 of the proposed regulations which deals with reporting and recordkeeping requirements. The Department will submit this section to OMB.

Because this proposed rule applies only to State mental health authorities and the employees protected by it are limited to State employees in State-operated facilities, the Department certifies that the proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities as defined by the Regulatory Flexibility Act, Pub. L. 96-354.

Dated: January 9, 1981.

Julius B. Richmond,

Assistant Secretary for Health.

Approved: January 14, 1981.

Patricia Roberts Harris,

Secretary.

It is proposed to add a new Part 54c to 42 CFR as follows:

PART 54c—MENTAL HEALTH SYSTEMS

Subpart A—Equitable Arrangements for Employee Protection

Sec.

54c.101 Purpose.
54c.102 To whom do these regulations apply?
54c.103 Definitions.
54c.104 What are the procedures for the development of the equitable arrangements for employee protection?
54c.105 What are the minimum equitable arrangements for employee protection?
54c.106 When do the equitable arrangements for employee protection become effective and what employees are entitled to benefit from them?
54c.107 What is the penalty for noncompliance?
54c.108 What other terms and conditions apply?

Authority: Pub. L. 96-398, 94 Stat. 1584-1613 (42 U.S.C. 9401-9522).

Subpart A—Equitable Arrangements for Employee Protection

§ 54c.101 Purpose.

This subpart provides standards for State mental health authorities to follow in implementing the requirements of section 801 of the Mental Health Systems Act that they provide equitable arrangements for protecting the employment interests of persons whose jobs are adversely affected by actions taken by the State mental health authority to emphasize outpatient mental health services.

§ 54c.102 To whom do these regulations apply?

This subpart applies to each State mental health authority designated under section 105 of the Act to be responsible for the mental health programs of the State.

§ 54c.103 Definitions.

For purposes of this subpart, unless the context otherwise requires:

"Act" means the Mental Health Systems Act (Pub. L. 96-398).

"Actions to emphasize outpatient mental health services" means actions of the State mental health authority to close, to partially close, or to reduce substantially the inpatient population of any State-operated facility (or unit or ward thereof) for the provision of mental health care services, as a result of a shift in emphasis from institutional care to community-based care in the delivery of mental health and support services.

"Adversely affect" means to displace an employee or to abolish, or cause a worsening of, the employee's position with respect to the wages, salaries, or benefits of employment, as a result of

actions taken by the State mental health authority to emphasize outpatient mental health services.

"Employee" means any permanent employee of the State who is employed in a State-operated facility, or unit or ward thereof, for the provision of mental health care services. The term includes administrative, clinical, and support personnel. The following are excluded from the definition of employee:

(1) Probationary employees.

(2) Members of the board of directors and corporate officers.

(3) Self-employed persons.

"Secretary" means the Secretary of Health and Human Services or the Secretary's delegate.

"Secretary of Labor" means the Secretary of Labor or the Secretary of Labor's delegate.

"State" means the fifty States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Trust Territory of the Pacific Islands, and the Northern Mariana Islands.

"State mental health authority" means the agency designated by a State under section 106 of the Act to be responsible for the mental health programs of the State.

"Substantially equivalent employment" means permanent employment in mental health or other fields that is the same or similar to the employment in which an employee was serving at the time the employee was adversely affected with regard to the wages, salaries, or benefits of the employment. If the adversely affected employee's new employment or offer of new employment provides approximately the same value of wages, salaries, and benefits, taken as a whole rather than by category, as the employee's previous employment, the new employment shall be considered substantially equivalent employment.

§ 54c.104 What are the procedures for the development of the equitable arrangements for employee protection?

(a) *Written arrangements available to the public.* In order to comply with section 801 of the Act, the State mental health authority must have in effect written equitable arrangements for employee protection which meet the requirements of this subpart. The written arrangements must be available for inspection and copying by the Secretary and members of the public.

(b) *Negotiations.* The State mental health authority must attempt to develop the equitable arrangements for employee protection through good faith negotiations with the labor organization or organizations representing employees who may be affected or, if there as no such organizations, with the employees who may be affected. If the negotiations do not result in agreement upon the equitable arrangements, the State mental health authority must adopt equitable arrangements meeting the requirements of this subpart and, by October 1, 1981, submit to the Secretary a summary of the attempts to negotiate and the address where the Secretary and members of the public may obtain a copy of the adopted arrangements and the summary of the attempts to negotiate.

(c) *Equitable arrangements a prerequisite for certain awards.* In order to qualify for assistance under section 107 (allotments to improve administration of State mental health programs) or 305 (assistance to carry out exclusive agent agreements) of the Act, the State mental health authority must in its application for that assistance certify that in compliance with paragraph (b) of this section it has adopted equitable arrangements for employee protection which meet the requirements of this subpart and state where the Secretary and members of the public may obtain a copy of those arrangements.

§ 54c.105 What are the minimum equitable arrangements for employee protection?

The equitable arrangements for employee protection adopted by the State mental health authority must at least provide for:

(a) *The preservation of rights, privileges and benefits under existing collective bargaining agreements or otherwise.* During the period of protection, adversely affected employees' rights, privileges and benefits, including pension benefits, vacation benefits, health and insurance benefits, seniority rights, and other fringe benefits must be preserved and continued.

(b) *The continuation of collective bargaining rights.* Collective bargaining rights of employees must continue when—

(1) The administration of a facility is transferred from one State agency to another; or

(2) An employee unit is moved to another State-operated facility.

(c) *The continuation of employment.* (1) Adversely affected employees must be offered substantially equivalent employment if it is available. In order to meet this requirement the State mental health authority must give employees who qualify the right to early retirement under State civil services laws and make maximum efforts to place those employees who do not take early retirement in employment in other State-operated facilities for the provision of mental health care services—including out-patient facilities—or other fields of employment by—

(i) Arranging for the reassignment of adversely affected employees to other State jobs;

(ii) Considering adversely affected employees for transfer to any vacancies for substantially equivalent State employment; and

(iii) Posting employment opportunities at locations convenient for employees.

(2) An adversely affected employee is entitled to receive relocation expenses upon obtaining substantially equivalent employment, if its location is more than 50 miles beyond the location of the employee's previous job.

(d) *Training and retraining.* If adversely affected employees do not take early retirement or have not obtained or been offered substantially equivalent employment under paragraph (c) of this section, the State mental health authority must offer training or retraining to those employees in order that they may obtain other substantially equivalent employment for which positions are available or are expected to become available in the foreseeable future. In carrying out this requirement, the State mental health authority must:

(1) Make maximum efforts to offer training and retraining in or near the present place of employment of adversely affected employees;

(2) Offer training and retraining at no expense to employees;

(3) Insure that employee compensation will not be adversely affected during training and that the employee will receive compensation for additional indirect expenses incurred during training (e.g., travel to the training site);

(4) Count hours of training as regular working hours; and

(5) Whenever reasonably possible, commence training and retraining before the date on which an employee is adversely affected.

(e) *Severance pay.* The State mental health authority must provide for severance pay if an employee has not taken early retirement or has not obtained or been offered substantially equivalent employment during the period in which the employee is entitled to protection under paragraph (f) of this section.

(1) Severance pay may be provided through a lump sum payment or through either monthly or weekly allowances.

(2) In determining the amount of, and the conditions for, severance pay, the State mental health authority may take into consideration the financial capacity

of the State to absorb any additional costs that will be incurred by this provision.

(3) A State mental health authority may require employees to report, as a condition of receiving dismissal allowances, the amounts they receive from unemployment insurance and other employment.

(4) If severance pay provisions are already provided for the employee under State civil service or collective bargaining agreements, those provisions may be incorporated into the equitable arrangements for employee protection in satisfaction of the requirements of this provision.

(f) *Period of protection for adversely affected employees.* (1) Except as provided in paragraph (a)(2) of this section, an employee is entitled to protection under the equitable arrangements for employee protection beginning with the date on which the employee is adversely affected and ending with completion of the longer of the following periods—

(i) One year; or

(ii) The average period required for an employee to accept a new job in the same occupation in the State as determined by the most recent statistics available from the State's department of labor or similar agency.

(2) The period of protection shall not exceed an employee's period of employment with the State or extend beyond the date on which the employee obtains, or refuses an offer for, substantially equivalent employment. The period of protection ceases in the event of the employee's resignation, death, retirement or dismissal for cause. This does not affect any other rights, privileges or benefits the employee may have under an existing collective bargaining agreement or established personnel policy.

(g) *Procedures for the resolution of disputes.* These procedures must provide for the impartial resolution of disputes between the State mental health authority and any adversely affected employee concerning the interpretation, application, or enforcement of the equitable arrangements.

(h) *Notice to employees.* Employees must be given notification prior to the expected adverse effect resulting from actions taken to emphasize outpatient mental health services. These notification procedures must be congruent with other State policies on informing employees as to potential adverse effects of State actions.

§ 54c.106 When do the equitable arrangements for employee protection become effective and what employees are entitled to benefit from them?

The equitable arrangements for employee protection become effective on the date on which they are adopted by the State mental health authority. In order to comply with section 801, this date must be no later than October 1, 1981. Any employee that is adversely affected, following the date of adoption of the arrangements, by actions of the State mental health authority to emphasize outpatient mental health services is entitled to benefit from the protections provided by these arrangements.

§ 54c.107 What is the penalty for non-compliance?

For a failure to comply substantially with section 801(a) of the Act or this subpart, the Secretary, after consultation with the Secretary of Labor, may discontinue payments to the State mental health authority under sections 107 (allotments to improve administration of State mental health programs) and 305 (assistance to carry out exclusive agent agreements) of the Act as authorized by section 801(b) of the Act.

§ 54c.108 What other terms and conditions apply?

The Secretary may from time to time require the State mental health authorities to submit reports on their efforts to implement these requirements.

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Thursday
January 22, 1981

Part VI

Environmental Protection Agency

State Implementation Plans; Approval of 1982 Ozone and Carbon Monoxide Plan Revisions for Areas Needing an Attainment Date Extension; and Approved Ozone Modeling Techniques; Final Policy and Proposed Rulemaking

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 51

[A-FRL 1722-8]

State Implementation Plans; Approval of 1982 Ozone and Carbon Monoxide Plan Revisions for Areas Needing an Attainment Date Extension

AGENCY: Environmental Protection Agency.

ACTION: Final policy.

SUMMARY: Provisions of the 1977 Clean Air Act Amendments require states that have received an extension of the attainment date for a national ambient air quality standard (NAAQS) for ozone or carbon monoxide beyond 1982 to submit a state implementation plan (SIP) revision by July 1, 1982. This policy describes the criteria that the Environmental Protection Agency (EPA) will use to review these 1982 SIP submittals and also updates and supplements the Administrator's February 24, 1978 memorandum, "Criteria for Approval of 1979 SIP Revisions," (43 FR 21673) and subsequent guidance.

EPA proposed this policy on September 30, 1980 (45 FR 64855) and announced a 60-day period for public comment. The comments received on major issues, EPA's response to the comments, and the changes to the proposed policy are summarized below. A more detailed summary of comments and the EPA responses have been included in Docket No. A-79-43 and are also available for review at EPA regional offices.

DATES: Final policy effective January 22, 1981.

ADDRESS: Docket No. A-79-43, containing material relevant to this action, is located at the EPA Central Docket Section, West Tower Lobby, Gallery 1, 401 M Street, SW., Washington, D.C. 20460. The docket may be inspected between 8:00 a.m. and 4:00 p.m. on weekdays and a reasonable fee may be charged for copying. A summary of the comments received on the proposed policy and EPA responses to the comments are also available for review at the EPA regional office locations listed in Appendix E.

FOR FURTHER INFORMATION CONTACT: Additional information about the policy is available from the following: General policy contact: Mr. Johnnie L. Pearson, Standards Implementation Branch, Environmental Protection Agency (MD-15), Research Triangle Park, North Carolina 27711, telephone (919) 541-5497.

Transportation policy contact: Mr. Gary C. Hawthorn, Office of Transportation and Land Use Policy (ANR-445), Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460, telephone (202) 755-0603.

Vehicle inspection and maintenance contact: Mr. Donald White, Motor Vehicle Emission Test Lab, Environmental Protection Agency, 2565 Plymouth Road, Ann Arbor, Michigan 48105, telephone (313) 668-4350.

SUPPLEMENTARY INFORMATION: During the 60-day comment period for the proposed policy EPA received comments from 28 organizations and individuals. Comments from over 50 other organizations and individuals were received after the close of the comment period. EPA carefully considered all the comments and made several changes to the policy. Major issues raised by those submitting comments, EPA's responses, and any resultant changes in the policy are summarized below. A more detailed summary of comments and EPA responses are included in Docket No. A-79-43 and available at EPA regional offices.

Attaining NAAQSs After 1987

In the proposed policy EPA recognized that a few large urban areas with very severe ozone and carbon monoxide problems may not be able to attain NAAQSs by December 31, 1987, the deadline set in the Clean Air Act. EPA proposed that such areas should submit SIP revisions by July 1, 1982 that demonstrate attainment as soon as possible after 1987 using additional, more effective measures beyond those required in other areas.

Some public and private organizations commenting on this portion of the proposal supported the course of action outlined by EPA. Others believed, however, that such a policy would encourage some areas to slow or abandon their air quality clean-up efforts. For example, one state environmental agency commented that granting any delay was inappropriate as federal policy and that asking the public to accept additional years of poor air quality was unacceptable. Several state and local agencies stated they believed that the EPA Administrator would be exceeding his authority under the Clean Air Act if he accepted a SIP that did not demonstrate attainment by 1987.

The final EPA policy still permits the submission from a few urban areas with severe ozone and carbon monoxide problems of SIPs that provide for expeditious attainment of NAAQSs by a specific date after 1987. The policy now makes more explicit, however, EPA's intent to carefully evaluate the effectiveness of measures in SIPs for all area and ensure that the most effective measures have been adequately considered in any area that does not demonstrate attainment by 1987.

EPA recognized in the proposal that current provisions of the Clean Air Act may not allow approval of a SIP that provides for attainment of NAAQSs after 1987 and that action by the Congress may be necessary. EPA considers any request to the Congress for additional delay of attainment deadlines to be a serious step and one that should be considered only after it is clear that all available and implementable control measures will be adopted.

Providing Adequate Time for SIP Adoption

The proposed policy reiterated and expanded upon the Clean Air Act requirements that a fully adopted, legally enforceable SIP revision must be submitted to EPA by July 1, 1982. Several state and local agencies responsible for SIP development commented that they would be unable to ensure the adoption and submittal of all required measures by July 1982, particularly if EPA guidance mentioned in the proposed policy is not available early in 1981. EPA recognizes that meeting the July deadline may be a problem for some areas, but is constrained by the Clean Air Act from granting any time extensions.

EPA will continue the practice of granting conditional SIP approval followed in acting on the plan revisions due in 1979. If a SIP revision is in substantial compliance with Part D of the Clean Air Act and the state provides assurances that remaining minor deficiences will be remedied within a short time, EPA may approve the plan with conditions that corrective actions will be completed according to a specified schedule. For example, if missing regulations applying RACT to required sources constitutes a minor deficiency in the SIP and the state commits to a schedule for submitting those regulations, then EPA may conditionally approve the SIP.

The proposed policy included the requirement that states must adopt regulations applying reasonably available control technology (RACT) to all sources of volatile organic compounds (VOCs) covered by a control technique guideline (CTG) and to all other major sources of VOCs. EPA also announced its intent to issue additional CTGs during 1981. A number of agencies

responsible for developing SIPS commented that they do not have sufficient resources to finalize regulations for both CTG and non-CTG source categories. Some of the agencies also indicated that the time necessary to satisfy state and local procedural requirements makes it unlikely that the required regulations will be fully adopted by July 1982. A state environmental agency, for example, stated that although the agency agrees in principle with the requirements for regulating both CTG and non-CTG source categories, the agency does not have adequate staff and financial resources to complete the necessary technical analysis and rulemaking activities. In addition, the requirements of the state administrative review process cannot be met by July 1982, even if rulemaking is limited only to CTG sources. A local environmental agency commented that it may not be possible to submit regulations for source categories covered by CTGs issued late in 1981. In order for the regulations to be included in the July 1982 submittal, the local agency must provide the regulations to the state by the end of 1981.

To help ensure that states have adequate opportunity to meet the July 1982 deadline, EPA will issue the new CTGs as early as possible in 1981. The CTGs are in preparation and will be available in draft form between January and May 1981. The final CTGs will be published between July and October 1981. If state and local agencies begin now to develop the necessary data and work with the draft CTGs, they should be able to complete development of regulations by July 1982.

Providing for the Implementation of I/M Programs

The proposed policy included the requirement that states submit, by July 1982, the rules and regulations for vehicle inspection and maintenance (I/M) programs, as well as documentation of 10 other critical I/M program elements. The proposed policy stated that EPA would update I/M guidance for determining I/M program adequacy.

Some state and local agencies commented that guidance not available for their use in planning and implementing I/M programs should not be used to evaluate the I/M portion of the 1982 SIP. Many of these agencies were concerned that updated guidance would include new requirements which could adversely affect I/M activities already in progress and which could not be completed by July 1, 1982. Other agencies commented that EPA should not evaluate individual elements of an I/M program, but should evaluate the program as a whole; that the I/M guidance should be promulgated through rulemaking to allow review and comment by interested parties; and that the intent of requiring the I/M public awareness plan in the 1982 SIP is unclear.

A state agency also questioned whether additional emission reductions from other source categories could be used to offset any shortfall from I/M, rather than making the I/M program more stringent. That agency also questioned whether, in a state with a post-1978 attainment date and with legislative authority which needed to be changed before I/M effectiveness could be increased, commitments to obtain needed legislative changes were adequate for the 1982 SIP, rather than having the legislative changes themselves before July 1982.

EPA's basic requirements for I/M programs are included in a widely distributed July 17, 1978 policy memorandum. Subsequent clarifications to that policy have defined the factors involved in designing I/M program elements and provided information on designing programs which optimize technical and cost effectiveness. Additional information along these lines will be provided.

The July 17, 1978 policy memorandum will be the primary basis for determining I/M program adequacy in the 1982 SIP process. The final policy has been revised to reflect this. EPA agrees that the policy should contain provisions for those states that are meeting an approved schedule, but will not be able to make a complete I/M submission by July 1982. Appropriate changes have been incorporated into the final policy. EPA also agrees that the I/M program must be evaluated as a whole, rather than element by element.

EPA does not believe that I/M policy and guidance needs to be promulgated through rulemaking, but does agree that review and comment by interested parties are important. The appropriate place for rulemaking for I/M is the SIP review and approval process. EPA feels that the states and other interested parties have always been extensively involved in the policy and guidance development process. EPA will continue to seek such review and comment.

EPA feels that the I/M public awareness plan is critical for the successful implementation of an I/M program and that it must be included as part of the 1982 SIP. EPA recognizes, however, that much of the public awareness activity should generally have been completed before the 1982 SIP deadline and will work with the states in developing and implementing their public awareness plans. Guidance is available on what should be included in a good public awareness plan.

If an I/M programs fails to achieve the requisite emission reduction, then the program will have to be modified to obtain that reduction. Additional emission reductions from other source categories cannot be used to compensate for a shortfall from I/M.

Because section 172(c) of the Act requires all measures in the 1982 SIP to be legally enforceable, any further legislative authority will have to be obtained before the 1982 SIP is submitted. A commitment to obtain such authority will not be sufficient for the 1982 SIP.

Making Commitments to Implement Transportation Measures

The proposed policy required that the 1982 SIP submittal include commitments by state and local governments to implement the necessary transportation measures. The documentation of the commitment must include identification of costs, funding sources, and responsibilities of state and local agencies and officials. Several state and local agencies commenting on the proposal expressed concern about making commitments to transportation improvement projects that are only in the early stages of planning and have not been included in state and local budgets or been approved for federal funding.

The definition of implementation commitments contained in Appendix C has been expanded to clarify the form of the commitment for projects that are progressing towards implementation, but have not received budget approvals. Essentially, the implementation commitment for these projects or measures should be a schedule of the major steps required to advance the project through the planning and programming processes. This schedule should also contain an identification of the responsible agencies that must take significant actions to implement the measure. An illustration of such a schedule is also contained in Appendix C.

If a particular measure cannot be implemented because the necessary funds cannot be obtained from the funding source identified in the schedule and if the SIP planning agencies can demonstrate compliance with the provisions of the Clean Air Act requiring priority treatment for projects important for improved air quality and basic transportation needs, then the measure may justifiably be delayed. If this does occur, another substitute measure may

be needed for replacement to ensure that NAAQSs are attained (see the section on contingency plans).

Developing Monitoring and Contingency Plans for Transportation Measures

The proposed policy included requirements for developing a monitoring plan for regularly assessing the effectiveness of transportation measures and a contingency plan for implementing additional transportation measures if forecasted emission reductions do not occur. A number of state and local governments commented that they do not have sufficient time and resources to develop monitoring and contingency plans at the same time that they are developing the measures to meet the emission reduction targets for transportation. Some of those commenting interpreted the monitoring requirements as being primarily for air quality monitoring.

In the final policy the monitoring plan requirements emphasize the use of methods that rely on surrogate measures and on data already being collected for other purposes. The monitoring plan need *not* include additional air quality monitoring.

The requirements for a contingency plan have been revised to require a listing only of transportation measures and projects that, because of their potentially adverse effect on air quality, will be delayed while a SIP is being revised. The projects will be delayed when the Administrator of EPA finds that a SIP is inadequate to attain ozone or carbon monoxide NAAQSs and calls for a SIP revision under section 110(c) of the Clean Air Act. EPA has also adopted the suggestion of a local transportation planning agency and is requiring that the SIP include a description of the process to be used to develop and implement additional transportation control measures when they are determined necessary.

Establishing Emission Reduction Targets

The proposed policy required state and local officials to reach agreement on the emission reductions necessary to attain NAAQSs, the extent to which the emission reductions will come from controls on mobile or stationary sources, and the responsibilities for implementation of the measures. Several comments were received noting the difficulties in determining emission reduction targets for meeting the ozone NAAQS because of the form of the standard, the characteristics of the Empirical Kinetic Modeling Approach (EKMA) model, and the effects of pollutant transport. Other comments reflected confusion about where in the SIP development process the identification of targets would occur.

An August 1, 1978 EPA policy memorandum outlined the reasons for establishing emission reduction targets through a negotiated process involving state and local officials from affected jurisdictions. In the past, emission reduction targets and responsibilities for achieving the targets have sometimes been determined without adequate intergovernmental consultation. In some instances, for example, states attempted to require local agencies to make up large shortfalls in needed reductions entirely through transportation measures without examining whether other measures, such as more stringent emission limitations for stationary sources, might make up some of the shortfall.

The final policy has been revised to help clarify the intent of the section on emission reduction targets. The process for negotiating emission reduction targets becomes especially important in those areas where the minimum control measures described in subsections I.B–I.D are not sufficient to attain NAAQSs and additional measures must be evaluated and selected. The subsection on analysis of alternatives has been revised to indicate that the results of the evaluation of alternatives should be used in defining emission reduction targets.

Demonstrating Reasonable Further Progress

The proposed policy included requirements for demonstrating reasonable further progress towards attaining NAAQSs. A substantial number of comments were received objecting to the requirement for a "linear attainment program" represented graphically by a straight line from base year to attainment year emissions. Those commenting noted that many control measures, particularly those for vehicle emissions, have long lead times and do not have significant effects within the first few years after adoption. Those measures that are implemented within the early years will generally not result in a linear rate of emission reduction.

The final policy has been redrafted to clarify that the linear attainment program represents only the upper limit for annual net emissions from 1980 through the year of attainment. The measures encompassed by the linear attainment program include those in both the 1979 and 1982 submittals. Although there may be some lag time before the measures in the 1982 submittal result in emission reductions, reductions should already be occurring as a result of measures in the 1979 submittal.

The final policy now also reiterates the reporting requirements included in the approval criteria for the 1979 submittal and asks that the annual reasonable further progress reports be combined with related information already being submitted on July 1 of each year.

Ensuring Conformity of Federal Actions

Section 176(c) of the Clean Air Act requires that federal actions conform to SIPs. The proposed policy indicated that states should, where possible, identify the emissions associated with federal actions planned during the period covered by the SIP. A number of comments received on that portion of the proposed policy requested clarification of the process for ensuring conformity and the respective responsibilities of federal, state, and local governments. The comments noted the potentially large number of actions involved, the associated work load for state and local governments, and the lack of available state and local resources. The comments also included questions about the methods to be used for determining conformity.

The final policy outlines the general responsibilities of federal, state, and local governments. Further clarification will be provided in a proposed rule that EPA intends to issue shortly. Section 176(c) states that the assurance of conformity of federal actions is the affirmative responsibility of the head of each federal agency. EPA believes that each federal agency should establish criteria and procedures for making conformity determinations and that state and local governments should have opportunity to review proposed criteria and procedures, as well as the individual conformity determinations that result from their application. The proposed rule that EPA is preparing encourages the use of existing review processes, such as those required by the National Environmental Policy Act and Office of Management and Budget Circular A–95, to reduce the resources required for ensuring conformity.

Interim criteria for use in making and reviewing conformity determinations are included in an advance notice of proposed rulemaking published by EPA on April 1, 1980 (45 FR 21690). Criteria and procedures for evaluating the direct and indirect air quality effects of wastewater treatment facilities funded under the Clean Water Act are included in the section 316 policy published on August 11, 1980 (45 FR 53382). Identification, during SIP preparation, of the emissions associated with future

major federal actions will facilitate state and local review of conformity determinations.

Consultation Among State and Local Officials

Two state environmental agencies commenting on the proposed policy thought that the consultation provisions were generally unclear. A local planning agency asked that the policy be supplemented to indicate that the designations of agency responsibilities made by governors prior to the 1979 plan submittals remain in effect. A public interest group requested that the policy forbid states from making unilateral changes in SIP provisions developed by local governments.

Modifications were made in the consultation provisions of the final policy to help clarify apparently ambiguous points and to indicate that new section 174 agency designations are not necessary. Although EPA agrees that a state should not revise a locally developed SIP provision without consulting local officials, EPA believes that the regulations for implementing section 121 of the Clean Air Act already adequately cover such a situation and provide opportunity for appeal to EPA if adequate consultation does not take place.

Determining Data and Modeling Requirements

The proposed policy required that emission inventories should, where possible, be prepared for a 1960 base year. The policy also required that base year and projected year emission inventories for the ozone portion of the SIP be seasonally adjusted annual inventories. The proposal required the SIP to be based on the most recent three years of air quality data, generally including data collected through the third quarter of 1981. The proposal recommended use of the city-specific EKMA model to develop the ozone portion of the SIP.

Several agencies responsible for developing emission inventories commented that agreements had been reached and work had already begun on inventories for base years other than 1960. The agencies recommended that EPA remain flexible in the final policy and accept inventories for those other base years. The final policy continues to allow inventories for base years other than 1960 to be used.

A number of state and local agencies questioned the validity of requiring seasonally adjusted annual inventories of VOCs. Most of those commenting recommended that the inventories be prepared for a typical summer weekday instead. The final policy requires the weekday inventory.

Several agencies indicated in their comments that their normal processing time to validate air quality data would prevent them from using data through the third quarter of 1981, if the SIP was to be developed and submitted by July 1982. The final policy encourages the use of data through the third quarter of 1981, but allows states to use earlier data. If a state selects to use earlier data, it still must present a summary of air quality data through 1981 in its July 1982 submittal and describe how the data may affect the SIP.

State and local agencies that had applied photochemical dispersion models in their previous SIP development work commented that they should be allowed to use these models, rather than the less sophisticated city-specific EKMA model, in developing their 1982 submittals. The final policy encourages the use of the photochemical dispersion models where the agency developing the SIP has a demonstrated capability to use such models and wishes to do so. Use of a model other than city-specific EKMA or its equivalent must be approved by EPA.

Final Policy—Criteria for Approval of The 1982 Plan Revisions

Introduction

In circumstances where a state has received an extension beyond 1982 for attaining a NAAQS for ozone or carbon monoxide, the Clean Air Act Amendments of 1977 [Section 129(c) of Pub. L. 95-95] require the state to adopt and submit a SIP revision to the Administrator of EPA by July 1, 1982. The areas that are affected by this requirement are listed in Appendix A. The purpose of this notice is to outline the criteria that EPA will use in evaluating the adequacy of the 1982 SIP revisions. These criteria fall into four general categories: (1) Control strategies and attainment demonstration, (2) SIP development process, (3) data collection, and (4) modeling.

The Clean Air Act Amendments of 1977 require all SIPs for the areas that have received an extension beyond 1982 to demonstrate attainment of the NAAQSs for ozone and carbon monoxide as expeditiously as practicable, but not later than December 31, 1987. As a condition for extending the attainment date, Congress also required that each SIP contain certain control provisions covering stationary sources, vehicle I/M, and transportation measures. The control provisions must be included in the SIP for an area where an extension has been granted, regardless of the date after December 31, 1982 when attainment can be demonstrated. These minimum measures and their relationship to the plan's attainment demonstration are described in Section I. Section I also discusses the approach that EPA believes should be followed by those few large urban areas where air quality problems are so severe that analyses may indicate that attainment by 1987 is not possible.

In addition to including a demonstration of attainment, the development of the 1982 SIP must conform to the process and follow the procedures required by the Clean Air Act and described in subsequent EPA guidance. Section II identifies the major steps in the SIP development process. Selected EPA guidance documents for the SIP process are listed in Appendix B. Terms used in the transportation-air quality process are defined in Appendix C. Also, the air quality and emissions data bases to be used in developing the 1982 SIP must be updated. The data requirements for both ozone and carbon monoxide are explained in Section III. The data base for the ozone portion of the SIP must be sufficient to support at least a Level III modeling analysis. The requirements for a Level III analysis are summarized in Appendix D.

Finally, Section IV describes the status of the various air quality models and alerts states to modeling requirements. EPA recommends application of city-specific EKMA or an equivalent method for developing the ozone portion of the SIP, unless the agency preparing the SIP already has the capability and wants to apply a more sophisticated level of modeling. For the carbon monoxide portion, EPA recommends application of the models identified in existing EPA guidance.

I. Control Strategies and Attainment Demonstration

A. Summary

The Clean Air Act requires the 1982 SIPs to contain a fully adopted, technically justified program that adopts and commits to implement groups of control measures that will result in attainment of the ozone and carbon monoxide NAAQSs no later than 1987 and that will provide reasonable further progress in the interim. All plans must contain the three categories of minimum control measures described in this section. If these minimum control measures are not adequate to show attainment by 1987, additional measures which can be implemented by 1987 must be identified and adopted. If all measures which can be implemented by

1987 are not adequate to demonstrate attainment by 1987, additional measures which can be implemented after 1987 must be identified and adopted and attainment must be demonstrated by the earliest possible date. the date of attainment must be specified in all SIPs. In order to ensure equity among the areas unable to demonstrate attainment by 1987, EPA intends to evaluate all SIPs submitted in July 1982 for the effectiveness of measures applied in all areas. Should EPA find that any of the areas not demonstrating attainment by 1987 have failed to adopt the most effective measures available, EPA will compile a list of such controls and require these areas to revise their SIPs to include the more effective control measures.

Subsections B-D describe in detail the minimum control measures which must be contained in each plan submitted in July 1982. The state must demonstrate that adoption and implementation of these elements will result in the attainment of the ozone and carbon monoxide standards by the most expeditious date possible. Control measures must be adopted in legally enforceable form. The SIP submittal must include implementation schedules and commitments. Subsections E and F describe reasonable further progress and attainment demonstration requirements. Subsection G describes the conformity of federal actions requirement.

B. Stationary Sources

Section 172(b) of the Clean Air Act requires states to implement all reasonably available control measures as expeditiously as practicable and, in the interim, maintain reasonable further progress, including such reduction in emissions from existing sources as may be obtained through the adoption, at a minimum, of RACT. In order to complete the requirement to adopt all reasonably available control measures, states must include as part of the 1982 submittal, adopted regulations applying RACT to the following categories of sources: (1) All sources of VOCs covered by a CTG, (2) all remaining major (emitting more than 100 tons per year potential emissions as defined under section 302(j) of the Clean Air Act) stationary sources of VOCs, and (3) all sources of carbon monoxide emitting more than 1,000 tons per year potential emissions.

The guidelines for the 1979 ozone submittals permitted states to defer the adoption of regulations until the CTG for a source category was published. This delay allowed the states to make more technically sound decisions regarding the application of RACT. EPA anticipates issuing a number of additional CTGs in 1981 for various source categories of VOCs. These documents, in conjunction with the previously issued CTGs, will address most of the major source categories which are of national importance. Legally enforceable measures implementing RACT for all sources addressed by these documents must be included in the July 1982 submittal.

There will remain numerous other major sources of VOCs that may be of local importance for which a CTG will not be available. For the major sources for which a CTG does not apply, a state must determine whether additional controls representing RACT are available. EPA will require the submittal to include either legally enforceable measures implementing RACT on these sources or documentation supporting a determination by the state that the existing level of control represents RACT for each of these sources.

If application of RACT to all sources covered by a CTG and all other major sources, together with implementation of a vehicle I/M program and transportation controls, does not result in attainment of the ozone standards by 1987, then additional stationary source controls must be adopted by the state.

C. Vehicle Inspection and Maintenance

All major urban areas needing an extension beyond 1982 for attainment of a standard for ozone or carbon monoxide were required to include vehicle I/M as an element of the 1979 SIP revision. States were required at that time to submit only evidence of adequate legal authority, a commitment to implement and enforce a program that will reduce hydrocarbon and carbon monoxide exhaust emissions from light duty vehicles in 1987 by 25 percent, and a schedule for implementation. Full implementation of that program, in accordance with EPA's established I/M policy, is required in all cases by December 31, 1982.

States with areas that have I/M programs under development or operational as part of their 1979 SIP revisions were required to submit only qualitative descriptions of their I/M program elements in the 1979 SIP submittal. The documentation discussed below must be submitted by July 1982, if not previously submitted as evidence of compliance with the 1979 implementation schedule. The 1982 SIP revision must include rules and regulations and all other I/M elements which could affect the ability of the I/M program to achieve the minimum emission reduction requirements. More specifically, the 1982 submittal must include: (1) Inspection test procedures; (2) emission standards; (3) inspection station licensing requirements; (4) emission analyzer specification and maintenance/calibration requirements; (5) recordkeeping and record submittal requirements; (6) quality control, audit, and surveillance procedures; (7) procedures to assure that noncomplying vehicles are not operated on the pubic roads; (8) any other official program rules, regulations, and procedures; (9) a public awareness plan; and (10) a mechanics training program if additional emission reduction credits are being claimed for mechanics training.

As part of the 1982 SIP review process, EPA will determine the overall adequacy of the critical elements of each I/M program and, therefore, the approvability of the 1982 SIP by comparing those elements to established I/M policy. I/M program elements must be consistent with EPA policy or a demonstration must be made that the program elements are equivalent.

State or local governments that have I/M programs, but plan to increase the coverage and/or stringency of the programs in order to achieve greater reductions, must submit the progam modifications in legally enforceable form through the 1982 SIP revision process.

If a state wishes to submit all or part of the I/M elements required for the 1982 SIP revision before July 1982, with or without other portions of the 1982 SIP revision, EPA will review and evaluate the submittal and take appropriate action as expeditiously as practicable. In the case of a partial submittal, EPA's action will be limited to the available program elements. Final action on the total I/M program must be reserved until all elements are submitted and reviewed in order to assure that the program satisfies the provisions in Part D of the Clean Air Act.

If a state is implementing an I/M program on an approved schedule which extends beyond July 1, 1982, and the state is unable to finalize some of the critical elements of its I/M program in time to include them in the 1982 SIP revision, the state may submit those elements at a later date. This later date must, however, be identified and justified by the state in its 1982 SIP revision and be consistent with the I/M implementation schedule in its 1979 SIP submittal. In such cases EPA will review the available program elements and, if adequate, conditionally approve the I/M program on the submittal (by the designated date) and approval of the outstanding elements.

D. Transportation Measures

The portion of the 1982 SIP addressing emission reductions to be achieved through the implementation of transportation measures must include the basic provisions listed below.

Further guidance will be issued, as necessary, to describe these requirements in greater detail.

1. An updated emission reduction target for the transportation sector. As discussed below, the target must be determined by consultation among state and local officials using the procedures established under sections 121 and 174 of the Act.

2. All reasonably available transportation measures and packages of measures necessary for the expeditious attainment of the transportation emission reduction target. Categories of reasonably available transportation measures are identified in section 108(f) of the Act. The submittal should present documentation, based on technical analysis, of the basis for not implementing any of the measures identified in this section. The 1982 SIP submittal must contain transportation emission reduction estimates for adopted measures and packages of measures for each year between 1982 and the attainment date. Any reasonably available transportation measures that have been adopted between the submission of the 1979 revision and the preparation of the 1982 revision should be included in the 1982 submittal along with the associated emission reductions.

3. Commitments, schedules of key milestones, and, where appropriate, evidence of legal authority for implementation, operation, and enforcement of adopted reasonably available transportation measures. Costs and funding sources for planning, implementing, operating, and enforcing adopted measures must be determined for all measures. Tasks and responsibilities of state and local agencies and elected officials in carrying out required programming, implementation, operation, and enforcement activities associated with adopted transportation measures must be identified. The 1982 submittal must also include documentation that state and local governments are continuing to meet the schedules and commitments for the transportation measures included in the 1979 SIP.

4. Comprehensive public transportation measures to meet basic transportation needs. The measures must be accompanied by an identification and commitment to use, to the extent necessary, federal, state, and local funds to implement the necessary improvements. Commitments and schedules for the implementation of these measures must also be submitted.

5. A description of public participation and elected official consultation activities during development of the transportation measures.

6. A monitoring plan for periodically assessing success or failure of transportation measures or packages of measures in meeting emission reduction projections. The plan should contain methods for determining the reasons for success or failure.

7. Administrative and technical procedures and agency responsibilities for ensuring, in response to section 176(c) of the Clean Air Act, that transportation plans, programs, and projects approved by a metropolitan planning organization (MPO) are in conformance with the SIP.

8. A two-part contingency provision. the first part is applicable to only those areas with populations of 200,000 or more. These areas must submit as part of the SIP a list of planned transportation measures and projects that may adversely affect air quality and that will be delayed, while the SIP is being revised, if expected emission reductions or air quality improvements do not occur. The second part, which must be submitted by all areas preparing 1982 SIP revisions, consists of a description of the process that will be used to determine and implement additional transportation measures beneficial to air quality that will compensate for the unanticipated shortfalls in emission reductions. The contingency provision must be initiated when the EPA Administrator determines that a SIP is inadequate to attain NAAQSs and that additional emission reductions are needed.

The Administrator's February 24, 1978 memorandum, "Criteria for Approval of 1979 SIP Revisions," and the October 1978 SIP Transportation Checklist identified the elements necessary for the transportation portion of the 1979 SIP. The provisions listed above supplement the elements described in the earlier guidance.

The guidance for 1979 placed primary emphasis on the establishments of a continuing air quality-transportation planning process. This continuing planning process must be used in developing the transportation portion of the 1982 SIP revision. The process is described in the June 1978 EPA-Department of Transportation (DOT) Transportation-Air Quality Planning Guidelines and the May 1, 1980 EPA–DOT Expanded Guidelines for Public Participation. Where the process for an area has changed from that described in the 1979 submittal, an updated description, including key planning, programming, and funding decision points, should be submitted in 1982.

Solutions to carbon monoxide problems can be found through metropolitan-wide planning, as well as through analyses of relatively small ("hotspot") problem areas. Evidence of specific carbon monoxide problem areas is derived from modeling and monitoring information. Although the geographic area that is nonattainment for carbon monoxide may be small, the measures necessary to meet standards may have to be applied over a larger area. It is essential to guard against selecting measures that will solve the carbon monoxide problem in a small geographic area, but that will worsen the ozone problem or simply transfer the carbon monoxide problem to another area.

E. Reasonable Further Progress

The July 1982 submittal must demonstrate that reasonable further progress toward attainment of the ozone and carbon monoxide standards will continue to be made and reported throughout the period of nonattainment. The annual emission reductions must at least equal the emission reductions that would be achieved through a linear attainment program. As described in the criteria for approval of the 1979 SIP submittal, this program is represented graphically by a straight line drawn from the emissions inventory for the base year of the 1979 submittal to the allowable emissions on the attainment date. Compliance with the reasonable further progress requirement does not authorize delays in implementation or adoption of any measures. All controls must be implemented as expeditiously as practicable.

The demonstration of reasonable further progress must indicate the total amount of the annual reduction in emissions and must distinguish between those reductions projected to result from mobile source and stationary source measures. The projected reductions to be achieved from these source categories must be consistent with the emission reduction targest established through the consultation process involving state and local officials.

The criteria for approval of the 1979 submittal recognized that there would be a lag in the early years in achieving reasonable further progress because most measures would not achieve immediate reductions. By 1982, however, a significant number of the stationary source controls and transportation measures included in the 1979 submittal will be implemented, as will the vehicle

emission I/M program. Emission reductions will also continue to result from the control systems required by the Federal Motor Vehicle Control Program for new vehicles. Accordingly, each plan must demonstrate for each year until attainment is achieved that the annual net emissions fall on or below the point representing that year on the straight line. No lag period will be allowed in 1982 and later years.

The criteria for approving the 1979 SIP submittals included a requirement for annual reporting of reasonable further progress. The information demonstrating reasonable further progress shall be submitted along with the source emissions and annual state action report required by July 1 of each year (40 CFR 51.321–51.328).

F. Additional Control Measures Required for Attainment

If the minimum control measures described in subsections B–D are not adequate to demonstrate attainment by 1987, the state must identify, evaluate, and adopt additional measures which can be implemented as quickly as possible, but no later than 1987. Examples of such measures include the following:

(1) Requiring control of all major stationary sources to levels more stringent than those generally regarded as RACT,

(2) Extending controls to stationary sources and source categories other than those subject to the minimum control measures described in subsection B,

(3) Implementing a broader range of transportation controls (e.g., extending the geographic coverage of some measures or providing more intensive implementation), and

(4) Increasing the coverage and stringency of the vehicle emission I/M program.

If implementation of all measures which can be implemented by 1987 will still not demonstrate attainment by 1987, the state should then analyze the transportation and other measures possible *in a longer time frame* that, together with the measures already evaluated, will result in attainment as quickly as possible after 1987. The specific date for attainment shall be included in the SIP. State and local governments must commit to implementation of such measures.

Given the additional time and potential resources available to areas with a post-1987 attainment date, more extensive evidence will be required to demonstrate that any of the measures identified in section 108(f) of the Clean Air Act is not reasonably available. Many transportation measures which cannot be implemented by 1987 can, because of the additional time and resources available, be implemented by a post-1987 attainment date. The 108(f) measures ultimately selected should, both individually and collectively, be at least as ambitious as applications of these measures in other comparable areas. EPA, in consultation with the DOT, will act as a clearinghouse in identifying ambitious performance levels for specific measures.

The 1982 SIP revision to achieve a post-1987 emission reduction target must include a convincing demonstration that the target cannot be achieved by 1987 and that the post-1987 date is the most expeditious date possible. The demonstration must identify the minimum times needed for planning, programming, and implementation of adopted transportation and stationary source control measures and must demonstrate that all possible measures will be implemented prior to 1987. In addition, the demonstration must show that projected resources from available sources (federal, state, and local) are insufficient for faster implementation of the measures.

EPA will use the technical evaluation prepared by a state to assess whether areas are making all efforts possible to attain the ozone and carbon monoxide standards by 1987. If an area is unable to attain the ozone and carbon monoxide NAAQSs by 1987, then the "most expeditious date beyond 1987" must be agreed to by state and local agencies. The transportation and stationary source control measures necessary for demonstrating attainment by the most expeditious date must be adopted as part of the 1982 SIP submitted to EPA.

EPA believes that an approach which requires a state to demonstrate attainment by a certain date using measures it is committed to implement is more in keeping with the spirit of the Clean Air Act than an approach which would accept "paper" demonstrations of attainment by 1987 which relied on measures which would be virtually impossible to implement. EPA will not approve a plan which relies on such unimplementable measures to demonstrate attainment, when it is clear that the state is not committed to implement and enforce those aspects of the plan.

EPA will review plans with post-1987 attainment dates in accordance with the requirements of the Clean Air Act. If EPA concludes that the current provisions of the Act do not allow approval of a SIP that provides for expeditious attainment of standards after 1987, EPA intends to seek legislative changes that will allow such an approval. The nature of any legislative change that the Agency may request will be based on a careful evaluation of the status of state efforts to develop plans which attain the standards on or before 1987. One option for legislative change that EPA will consider recommending would provide area-specific schedules and control requirements for each of the areas that cannot demonstrate attainment by 1987.

G. Conformity of Federal Actions

Section 176(c) of the Clean Air Act requires all federal projects, licenses, permits, financial assistance and other activities to conform to SIPs. Assurance of conformity is an affirmative responsibility of the head of each federal agency. In addition, section 316(b) requires that the direct and indirect emissions associated with any wastewater treatment facility funded under the Clean Water Act be accommodated in the SIP. In preparing the 1982 SIP revision, states and local governments should identify, to the extent possible, the direct and indirect emissions associated with major federal actions, including wastewater treatment facility grants, that will take place during the period covered by the SIP. Explicit identification of emissions will enable state and local governments to more quickly and easily evaluate subsequent federal conformity determinations. To assist in determining conformity, the population projections on which the 1982 SIP revision is based should be capable of being disaggregated at the time of project analysis so that the areas affected by individual federal actions not explicitly accounted for in the SIP can be identified.

II. SIP Development Process

The Clean Air Act, as amended in 1977, and subsequent regulations, policies and guidance from EPA have defined specific procedural requirements for developing SIP revisions for nonattainment areas. Appendix B includes a list of selected guidance documents that should be used in the preparation of the 1982 SIP. EPA regional offices will work with states and affected local governments during the preparation of the SIP to help ensure that procedural requirements are satisfied and that interim products and activities are completed on a schedule that will enable the July 1, 1982 submittal deadline to be met.

A. Consultation Among State and Local Officials

Section 121 of the Clean Air Act requires each state to provide a process for consultation with local governments, organizations of local elected officials, and federal land managers during certain actions under the Act, including preparation of SIP revisions for nonattainment areas. Section 174 of the Act requires a joint determination by state and local officials of the roles that various governmental agencies will take in the SIP development, implementation, and enforcement process. Section 174 also requires the governor of each state to designate the agency or agencies responsible for SIP development. The designation made by the governor for the 1979 SIP submittal remains in effect, unless the governor designates a new agency. The joint determination of responsibilities and any revised agency designations should be completed early in the process and must be submitted as a part of the 1982 SIP revision. Final regulations on section 174 and 121 (40 CFR Part 51, (Subpart M) were published on June 18, 1979 (44 FR 35176).

B. Establishment of Emission Reduction Targets

The control strategy for the 1982 SIP must reflect agreement among affected state and local officials on the emission reductions needed to attain NAAQSs. It is particularly important that the emission reduction targets established for stationary and mobile sources be determined through a process of negotiation among state and local officials of affected jurisdictions. In most cases, the initial emission reduction targets will be established soon after the technical evaluation of reasonably available stationary and mobile source control measures. Targets may have to be revised as additional information becomes available during SIP development. Revised targets should also be determined through consultation among state and local officials.

C. Analysis of Alternatives and Their Effects

In order for decision-makers and the public to have adequate information during development of SIPs requiring measures beyond the minimum described in subsections I.B.–I.D, alternative control strategies should be developed and analyzed. For example, where a vehicle *I/M* program and RACT applied to all major stationary sources will not be sufficient, in combination with reasonably available transportation measures, to attain standards, a range of more stringent stationary and mobile source controls should be evaluated to determine the best combination to achieve the required emission reductions. This evaluation should be used in determining the emission reduction targets described in the previous subsection. Examples of these more stringent controls are listed in subsection I.F.

The Clean Air Act requires that SIP submittals include an analysis of air quality, health, welfare, economic, energy, and social effects of the SIP and of the alternative measures considered during SIP development. EPA believes that, in assessing the effects of alternative control measures, two national concerns should receive special emphasis. These concerns are (1) conservation of petroleum and natural gas, and (2) protection of the economies of declining urban areas. Additional emphasis on the effects of SIPs on energy conservation and economies of distressed urban areas will implement the intent of Executive Order 12185, Conservation of Petroleum and Natural Gas (45 FR 8537, February 7, 1980), and the National Urban Policy.

III. Air Quality and Emission Data Bases

The requirements for the 1979 SIP submittal included use of the best data available at the time of SIP development. Although states generally complied with this provision, in many cases the available data base had many shortcomings. All states will have had adequate time by 1982 to have an updated data base.

States will need to have the data necessary for SIP development significantly before the July 1, 1982 submittal date. To ensure that this effort receives appropriate priority and attention, EPA expects states to complete data collection, analyses, and documentation by December 31, 1981. This requirement in no way relieves a state from any prior commitments to have such data available at an earlier date.

Emission inventories should, where possible, be prepared for a 1980 base year and projected to a date that will, at a minimum, include the anticipated year of attainment. Population projections and other forecasts used for determining growth rates and areawide emission estimates must be consistent with population projections developed in accordance with the EPA's cost-effectiveness guidelines for wastewater treatment facilities (40 CFR Part 35, Supart E, Appendix A).

The most recent three years of air quality data from the state and local air monitoring system network must be reduced, validated, and summarized in the plan submittal. Generally, this will include all data collected through the third quarter of 1981. All data from special studies implemented to support the modeling effort must also be compiled, reduced, and documented. If a state cannot reduce, evaluate, and validate data through the third quarter of 1981 in sufficient time to develop the SIP revision and still meet intergovernmental consultation, public participation, and other requirements, the state shall present the data in the SIP submittal and describe how the data may effect the plan.

A. Data for Ozone SIP Revisions

EPA previously described the minimum data that the Agency anticipated would be necessary to prepare an ozone modeling effort for four levels of analyses (44 FR 65267, November 14, 1979). It now appears, however, that many of the areas requiring the more sophisticated levels of modeling will not be able to complete the more extensive data base collection efforts required for these models in time to support the 1982 SIP submittal. Accordingly, every urban area must complete a data base sufficient to support at least a Level III (city-specific EKMA) modeling analysis. The elements of this data base are summarized in Appendix D.

EPA anticipates that states with especially severe ozone problems will need to apply a photochemical dispersion model or an equivalent technique in subsequent modeling analyses after 1982. Data collection efforts should be structured to provide for this contingency.

In order to ensure that all the data bases will be compatible and that there is a consistent level of documentation and quality assurance, state submittals of environmental data must be consistent in format and content with the EPA guideline document, *Emission Inventory Requirements for 1982 Ozone SIPs*.

B. Data for Carbon Monoxide SIP revisions

The emission inventory for carbon monoxide must be of sufficient accuracy and detail to provide the necessary input to models, and to determine the effectiveness of proposed control measures. The inventory should normally represent a typical weekday during the worst carbon monoxide season and should cover the entire urban area. More detailed inventories for smaller hotspot areas may be needed for analyzing specifically identified

problems. In developing carbon monoxide emission inventories states may, if they desire, limit the identification of stationary sources to those with potential emissions of 1000 tons per year. The final acceptability of the inventory developed will be dependent on the modeling approach selected and will be judged on a case-by-case basis.

IV. Modeling

States will need to apply the best tools available in their 1982 SIP submittal. The air quality models that EPA considers acceptable are identified below.

A. Ozone Models

Photochemical dispersion models have the greatest potential for evaluating the effectiveness of ozone control strategies. This potential arises primarily from the ability to relate emissions directly to ambient ozone concentrations, taking into account atmospheric chemistry and dispersion. In most cases, however, data requirements associated with applying these models by 1982 are prohibitive. Of the generally available, less data intensive models, only the various applications of EKMA consider local meteorological influences and atmospheric chemistry in evaluating control requirements. The city-specific EKMA approach is the most promising for 1982 and EPA recommends its use. If the agency preparing the SIP already has the capability to apply a more sophisticated level of modeling and wants to do so, EPA encourages such applications. The use of a modeling approach other than city-specific EKMA must be approved by EPA prior to a commitment by the state to its use. EPA is currently finalizing the guideline on the use of city-specific EKMA; the guideline should be available by March 1981.

The inability of other simpler models to adequately consider chemical kinetics and meteorological parameters reduces their ability to represent local situations. Accordingly, EPA will not consider plans based on linear or proportional rollback to provide an adequate demonstration of attainment. EPA is publishing a proposal in today's Federal Register to modify 40 CFR 51.14 by deleting the provision allowing the use of rollback as an acceptable modeling technique. A state that used rollback in the SIP revision submittal in 1979 to demonstrate attainment by 1982 will not be required to revise the analysis on which its SIP is based, unless EPA determines the SIP to be deficient for attaining the ozone NAAQS. Upon such a determination, the state will be required to meet the provisions of this policy including adoption of the minimum control measures, as well as the modeling requirements.

B. Carbon Monoxide Models

States and urban areas must estimate the impact of local and regional control strategies on carbon monoxide nonattainment areas and demonstrate attainment of the carbon monoxide standard. The generally available carbon monoxide models are described in *Guideline on Air Quality Models*, April 1978, EPA 450/2-78-027. These guidelines, and any subsequent updates, should be followed in preparing a carbon monoxide attainment analysis. The acceptability of models other than those listed in the guideline will be evaluated on a case-by-case basis. Other models proposed for use must be adequately documented and validated.

Dated: January 13, 1981.

Douglas M. Costle,
Administrator.

Appendix A—Extension Areas

Table 1.—*Areas Requesting an Extension Beyond 1982 for Attaining the Ozone Standard*

EPA region	State	Metropolitan area
I	Connecticut	Statewide.
	Massachusetts	Statewide.
	Rhode Island	Statewide.
II	New Jersey	Statewide.
	New York	New York City.
III	Delaware	Wilmington.
	District of Columbia	Washington.
	Maryland	Baltimore, Washington.
	Pennsylvania	Allentown, Philadelphia, Pittsburgh, Scranton/Wilkes-Barre.
	Virginia	Richmond, Washington.
IV	Kentucky	Cincinnati, Louisville.
	Tennessee	Nashville.
V	Illinois	Chicago, St. Louis.
	Indiana	Chicago, Louisville.
	Michigan	Detroit.
	Ohio	Cincinnati, Cleveland.
	Wisconsin	Milwaukee.
VI	Texas	Houston.
VII	Missouri	St. Louis.
VIII	Colorado	Denver.
	Utah	Salt Lake City.
IX	California	Fresno,[1] Sacramento, San Diego, San Francisco Bay Area Basin, South Coast Basin, Ventura-Oxnard.[2]
X	Oregon	Portland.
	Washington	Portland, Seattle.

[1] San Joaquin Valley Nonattainment Area.
[2] South Central Coast Nonattainment Area.

Table 2.—*Areas Requesting an Extension Beyond 1982 for Attaining the Carbon Monoxide Standard*

EPA region	State	Metropolitan area
I	Connecticut	Bridgeport, Hartford, New Haven.
	Massachusetts	Boston, Springfield, Worcester.
	New Hampshire	Manchester, Nashua.
II	New Jersey	Atlantic City, Burlington, Camden, Elizabeth, Freehold, Hackensack, Jersey City, Morristown, Newark, Paterson, Penns Grove, Perth Amboy, Somerville, Toms River, Trenton.
	New York	New York City.
III	District of Columbia	Washington.
	Maryland	Baltimore, Washington.
	Pennsylvania	Pittsburgh, Philadelphia.
IV	Georgia	Atlanta.
	Kentucky	Louisville.
	North Carolina	Charlotte.
	Tennessee	Nashville, Memphis.
V	Illinois	Chicago.
	Ohio	Cincinnati, Cleveland.
	Michigan	Detroit.
	Wisconsin	Milwaukee.
VI	New Mexico	Albuquerque.
VII	Missouri	St. Louis.
VIII	Colorado	Denver, Colorado Springs, Fort Collins, Greely.
	Utah	Salt Lake City.
IX	Arizona	Phoenix.
	California	Fresno, Lake Tahoe, Sacramento, San Diego, San Francisco Bay Area Basin, South Coast Basin.
	Nevada	Las Vegas.
X	Oregon	Eugene, Medford, Portland.
	Washington	Seattle, Tacoma.
	Idaho	Boise.

Appendix B—Selected EPA Guidance for SIP Development

The following list identifies selected EPA guidance for SIP development. A compilation of major EPA guidance for SIP development is included in the "Air Programs Policy and Guidance Notebook," which is distributed to state and local agencies. Copies of the notebook are available for copying at the EPA Public Information Reference Unit in Washington, D.C. and at each EPA regional office.

1. Criteria for Approval of 1979 SIP Revisions, memorandum from Douglas M. Costle, Administrator of EPA to Regional Administrators, Regions I-X, February 24, 1978 (43 FR 21673).
2. Memorandum of Understanding Between DOT and EPA Regarding the Integration of Transportation and Air Quality Planning, June 1978.
3. EPA-DOT Transportation-Air Quality Planning Guidelines, June 1978.
4. Inspection/Maintenance Policy, memorandum from David G. Hawkins to Regional Administrators, Regions I-X, July 17, 1978.
5. Determination of Emission Reduction Responsibilities, memorandum from David G. Hawkins to Regional Administrators, August 1, 1978.

6. General Preamble for Proposed Rulemaking, April 4, 1979 (44 FR 20372). The General Preamble was amended on the following dates: April 30, 1979 (44 FR 25243); July 2, 1979 (44 FR 38565); August 28, 1979 (44 FR 50371); September 17, 1979 (44 FR 53181); and November 23, 1979 (44 FR 67182).

7. 40 CFR Part 51, Subpart M—Intergovernmental Consultation, June 18, 1979 (44 FR 35176)

8. EPA–DOT Expanded Public Participation Guidelines, May 1, 1980 (45 FR 43062).

9. DOT–EPA Procedures for Conformance of Transportation Plans, Programs and Projects with Clean Air Act State Implementation Plans, June 12, 1980.

10. Policy and Procedures to Implement Section 316 of the Clean Air Act, as Amended, memorandum from Douglas M. Costle to Regional Administrators, Regions I–X, July 23, 1980, (45 FR 53362).

Appendix C—Description of Terms Used in the Transportation-Air Quality SIP Development Process

Adopted Measures

A transportation measure, program, or policy that state and local planning and implementing agencies and governments have agreed to include in the official SIP submission.

Planning Process

The process defined in the September 17, 1975 Federal Highway Administration (FHWA)-Urban Mass Transportation Administration (UMTA) regulations, the June 1978 EPA–DOT Transportation-Air Quality Planning Guidelines, and the May 1, 1980 EPA–DOT Expanded Public Participation Guidelines. Through this process transportation measures are introduced, evaluated, placed in the Transportation Systems Management (TSM) or long range element of the urban transportation plan, and advanced to the Transportation Improvement Program (TIP) and the annual element of the TIP.

Programming Process

The process by which transportation measures are advanced from the annual element of the TIP to the capital programs and budgets of implementing agencies and then to funding by state and local governments, FHWA (through the statewide 105 program), or UMTA (through the section 3 and 5 programs).

Expeditious Attainment Date

The attainment date approved in the 1979 SIP submission. This date may be modified if the analysis of alternatives done as part of the development of the 1982 SIP submittal shows that an earlier date is possible through expeditious implementation of all reasonably available control measures or that a later date is necessary because the approved attainment date cannot be achieved.

Reasonably Available Transportation Measures

A measure that has been determined to be beneficial to air quality and which will not result in substantial and long-term adverse impacts. These measures need to be adopted by the affected state and local officials participating in the planning and programming processes. The process of determining reasonably available transportation measures is analytical, participatory, and negotiatory, and involves the public, as well as local, state, and federal agencies and officials. The analytic part of the process includes determinations of technical and economic feasibility.

Expeditious Implementation of Reasonably Available Transportation Measures

Implementation by the earliest possible date considering:

1. The minimum time required to advance the measure through planning and programming processes.

2. The minimum time required to obtain implementation commitments.

3. The minimum time required to construct (if needed) and begin operation of the measures.

Implementation Commitments

Certification (may be by reference to budgets or other legally adopted documents) by federal, state, and local agencies with the authority to implement SIP measures that (1) funds to implement the measure are obligated and (2) all necessary approvals have been obtained. Identification by the implementing agency of the scheduled dates for start of construction (if appropriate) and for start of operation.

If a project has not reached the stage of receiving budget approval, then the implementation commitment should be in the form of a schedule that lists the projected dates for completing the major steps required to advance the measure through the remaining planning and programming processes. The schedule should also contain an identification of the responsible agencies that must take significant actions to implement the measure.

Actions by many agencies and elected officials are usually required before a transportation project is implemented. The SIP should list the important actions, the agencies or officials required to take each action, and a schedule that will lead to implementation.

The lead planning agency is usually charged with obtaining the various commitments. This requires:

1. Identifying all remaining actions and the agency or official responsible for each action.

2. Consulting with each agency or official to establish the date by when the action will be taken.

The product of these efforts should be submitted in the SIP in a form similar to the following example.

Example

The MPO for an urban area has adopted for inclusion in the SIP a busway that will connect a suburban residential area with the central business district. Operation of the busway will require the purchase of 25 new buses. Corridor location studies have been completed and final design is underway. The provision in the 1982 SIP submittal should include an approximate schedule similar to that outlined below for completion of the project:

1. MPO places project in annual element of the SIP; each funding agency prepares budget requests for necessary funds—Complete.

2. Transit operating agency adopts project as part of capital program—Complete.

3. Transit operating agency or appropriate project sponsor solicits approval of local government share of project costs from the city and county councils—Fall 1982.

4. Transit operating agency submits project application to state department of transportation—Winter 1982.

5. State department of transportation requests state legislature to appropriate state share of matching funds—Spring 1983.

6. Transit operating agency submits a grant application to UMTA (submittal occurs if the funding match has been approved; if the project is delayed at this point, contingency provisions will be adopted)—Summer 1983.

(Checkpoint: project receives approval from UMTA)—Spring 1984.

7. Transit operating agency places order for new buses—Spring 1984.

8. State department of transportation starts construction contract for busway—Winter 1985.

9. Agreement with state and local enforcement authorities is signed—Spring 1986.

(Checkpoint: Buses delivered and construction completed)—Summer 1986.

10. Transit operating agency initiates operation—Summer 1986.

Justification for not Adopting a Section 108(f) Measure

Justification should include:

1. Documentation of air quality, health, welfare, economic, energy, social and mobility effects of the measure, as appropriate for the type of measure and the scale of application.

2. Documentation that the measure was considered in a process that involved the public and state and local officials.

3. Determination that implementation of the measure results in substantial and long-term adverse impacts.

4. Demonstration that the air quality standards can be expeditiously attained without the measure.

Monitoring Plan

The monitoring plan to be contained in the 1982 SIP should be designed for periodically assessing the extent to which transportation measures, either individually or packaged, are resulting in projected emission reductions and the reasons for any shortfalls in reductions. The monitoring plan need not cover air quality monitoring. The plan should contain methods for determining the reasons for success or failure of the emission reduction achievements of the transportation measures contained in the 1982 SIP. The monitoring plan should depend upon existing data, regularly collected data, surrogate emission indicators (such as the number of auto trips, trip speeds, etc.) and approximation techniques. Collection of new data should be minimized.

Contingency Plan

The contingency provision is needed in the event that EPA calls for a SIP revision based on its determination that the reasonable further progress schedule is not being met. The contingency provision contains two parts. The first part is only for areas over 200,000 population. For these areas, the contingency provision should include a locally developed list of projects which implementing agencies have agreed can be delayed during an interim period while the SIP is being revised. The second part of the contingency provision is a description of a process for determining additional transportation measures beneficial to air quality that can be implemented to compensate for unanticipated shortfalls in emission reductions or can be accelerated to replace adopted measures that are not proceeding on schedule. This second part of the contingency provision should be included in every 1982 SIP submittal.

Appendix D—Summary of Minimum Level III Data Requirements for 1982 Ozone Modeling Submittals

A. Emission Data Requirements

1. *Spatial Resolution.* County-wide emission inventories for VOCs and nitrogen oxides (NO_x) are needed for a Level III analysis.

2. *Temporal Resolution.* Typical summer weekday emission estimates are required as part of the Level III data submittal. Preparation of these estimates is described in the guideline, *Emission Inventory Requirements for the 1982 Ozone SIPs.*

3. *VOC Categories.* Classification into reactive species of VOCs is not required for a Level III analysis.

4. *Source Category Delineation.* It is necessary to separate the emissions estimates according to major source categories such as is described in the guideline, *Emission Inventory Requirements for the 1982 Ozone SIPs.* This disaggregation of estimates is useful for making projections of future aggregated emissions.

B. Air Quality Data Requirements

1. *Ozone Monitors* (3 sites). Ozone monitors should be located at (a) one upwind site, (b) one downwind site at the edge of the urbanized area, and (c) one downwind site approximately 10–30 kilometers from the urbanized area.

2. *THC/CH_4, NO_x Monitors* (1 site required, 2 sites desirable). Guidance presented in EPA–450/4–80–011, *Guidance for the Collection of Ambient NMOC Data for Use in 1982 Ozone SIP Development, and Network Design and Siting Criteria for the NMOC and NO_x Monitors,* should be followed.

3. *Upwind Precursor Data.* Optional air quality data for Level III are measurements of ambient NO_x and THC/CH_4 at one site upwind of an urbanized area. These data are generally unnecessary and are needed only for unusual cases when it is desirable to take explicit account of transported precursors in the analysis. Most studies have indicated that transported ozone is of greater significance than transported precursors in contributing to urban problems. Because of the lack of precision associated with nonmethane hydrocarbon (NMHC) estimates from continuous THC/CH_4 monitors at low concentrations, use of these instruments at upwind sites is not recommended. It is preferable to collect a limited number of grab samples, analyze these chromatographically, and sum species to estimate upwind NMHC. Guidance presented in EPA–450/4–80–008, *Guidance for the Collection and Use of Ambient Hydrocarbon Species Data in the Development of Ozone Control Strategies,* should be followed. Continuous measurement of NO/NO_x is appropriate.

C. Meteorological Data Requirements

1. *Upper Air and Surface Temperature Data.* Estimates of the morning (8:00 a.m.) and maximum afternoon mixing heights are required. Preferably, estimates should be obtained using the nearest National Weather Service radiosonde data (if available) in conjunction with hourly urban surface temperature data. If radiosonde data are not available, morning and afternoon mixing heights can be estimated using AP–101, "Mixing Heights, Wind Speeds and Potential for Urban Air Pollution Throughout the Contiguous United States."

2. *Surface Wind Data.* Surface wind data at two sites (one site located in an area of high precursor emissions and another outside the urban core) are required. The wind data are used to help ensure that the recorded design value is measured downwind of the city.

Appendix E—Regional Office Locations of Comments and Responses on the Proposed 1982 SIP Policy

The locations and times for review of the comments on the proposed 1982 SIP policy and EPA responses may be determined by contacting the following:

Harley F. Laing, Chief, Air Programs Branch, EPA—Region I, John F. Kennedy Federal Building, Boston, MA 02203, 617–223–6883
Bill Baker, Chief, Air Programs Branch, EPA—Region II, 26 Federal Plaza, New York, NY 10007, 212–264–2517
Raymond Cunningham, Chief, Air Programs Branch, EPA—Region III, Curtis Building, 6th & Walnut Streets, Philadelphia, PA 19106, 215–597–8175
Winston Smith, Chief, Air Programs Branch, EPA—Region IV, 345 Courtland Street, N.E., Atlanta, GA 30308, 404–881–3043
Steve Rothblatt, Chief, Air Programs Branch, EPA—Region V, 230 South Dearborn Street, Chicago, IL 60604, 312–353–6030
Jack Divita, Chief, Air Programs Branch, EPA—Region VI, First International Building, 1201 Elm Street, Dallas, TX 75270, 214–767–2742
Art Spratlin, Chief, Air Programs Branch, EPA—Region VII, 324 East Eleventh Street, Kansas City, MO 64106, 816–374–3791
Robert DeSpain, Chief, Air Programs Branch, EPA—Region VIII, 1860 Lincoln Street, Denver, CO 80295, 303–837–3471
David Howekamp, Chief, Air Programs Branch, EPA—Region IX, 215 Fremont Street, San Francisco, CA 94105, 415–556–4708
Richard Thiel, Chief, Air Programs Branch, EPA—Region X, 1200 6th Avenue, Seattle, WA 98101, 206–442–1230

[FR Doc. 81–2221 Filed 1–21–81; 8:45 am]
BILLING CODE 6560–26–M

ENVIRONMENTA
AGENCY

40 CFR Part 51

[AD FRL–1722–8a,

State Implement
Ozone Modeling

AGENCY: Environ
Agency.

ACTION: Proposed

SUMMARY: In the
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DATES: Comments
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West Tower, U.S.
Protection Agency
Washington, D.C.
4:00 p.m. on week
fee may be charge

FOR FURTHER INFO
Mr. Johnnie L. Pea
Quality Planning
15), Environmenta
Research Triangle
27711, telephone:

SUPPLEMENTARY I

A. Background

The Clean Air A
1977 required the
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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 51

[AD FRL-1722-8a, Docket No. A-80-56]

State Implementation Plans; Approved Ozone Modeling Techniques

AGENCY: Environmental Protection Agency.

ACTION: Proposed Rulemaking.

SUMMARY: In the policy on 1982 Ozone State Implementation Plan (SIP) revisions for areas needing an attainment date extension published elsewhere in the Federal Register today, EPA stated that it would not consider linear or proportional rollback modeling as acceptable techniques to demonstrate attainment for the 1982 plans.

Today EPA is proposing to modify 40 CFR 51.14 to delete rollback as an acceptable ozone modeling methodology.

DATES: Comments must be received by the Central Docket Section by March 23, 1981. All comments received by that date will be considered before final action is taken.

ADDRESSES: Written comments must be submitted (in duplicate, if possible) to: Central Docket Section (A-130), U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460, Attention: Docket No. A-80-56. The docket may be inspected at Gallery 1, West Tower, U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. between 8:00 a.m. and 4:00 p.m. on weekdays and a reasonable fee may be charged for photocopying.

FOR FURTHER INFORMATION CONTACT: Mr. Johnnie L. Pearson, Office of Air Quality Planning and Standards (MS-15), Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone: (919-541-5437).

SUPPLEMENTARY INFORMATION:

A. Background

The Clean Air Act Amendments of 1977 required the States to revise their SIPs for all areas that had not attained the national ambient air quality standards (NAAQS). Each State was to submit a SIP revision by January 1, 1979 providing for attainment of the NAAQS as expeditiously as practicable, but no later than the end of 1982 (or the end of 1987 for areas with particularly difficult ozone or carbon monoxide problems). A State that requires an extension of the attainment date beyond 1982 for ozone or carbon monoxide areas is required to submit a further SIP revision of these areas by July 1, 1982.

On February 8, 1979, EPA revised the national ambient air quality standard for ozone (44 FR 8202). At that time EPA also revised the requirements set forth in 40 CFR 51.14 for the preparation, adoption, and submittal of SIPs related to ozone (44 FR 8234). Specifically, § 51.14(c)(7) was revised to require that one of the following modeling techniques be used to determine the amount of hydrocarbon control necessary to demonstrate attainment of the ozone standard:

1. Photochemical dispersion models.
2. Empirical Kinetic Modeling Approach (EKMA).
3. Empirical and statistical models.
4. Proportional rollback.

For purposes of the 1979 SIP revisions, States generally used only the standard EKMA and proportional rollback techniques to evaluate ozone control strategies and make ozone attainment demonstrations. The States used these techniques rather than the more rigorous photochemical dispersion models because the detailed data required for the more rigorous techniques were generally not available. EPA, therefore, approved ozone attainment demonstrations based on proportional rollback and EKMA techniques for the 1979 SIPs. On November 14, 1979, however, EPA published guidance on the collection of the detailed data base necessary for the more sophisticated techniques and indicated that the agency would expect these techniques to be used in future SIP revisions (44 FR 65667, November 14, 1979).

Elsewhere in today's Federal Register EPA is issuing the policy for approval of the 1982 ozone and carbon monoxide SIP revisions for those areas needing an attainment date extension beyond 1982. This policy recognizes that even though photochemical dispersion models have the greatest potential for accurately evaluating the effectiveness of ozone control strategies, the extensive data requirements for these models preclude their use for the 1982 SIP revisions. The policy also recognizes that the States should have the data base necessary for application of the city-specific EKMA model. EKMA, unlike proportional rollback techniques, takes into consideration local meteorological influences and atmospheric chemistry in evaluating control requirements. For this reason, city-specific EKMA is a more accurate method of evaluating ozone control strategies. Therefore, in the 1982 SIP policy, EPA recommends that States use city-specific EKMA for the 1982 ozone SIPs. EPA's policy also states that 1982 plans based on proportional rollback would not be considered to provide an adequate demonstration of attainment.

B. Proposed Rule

EPA is proposing to delete proportional rollback from from the list of approved modeling techniques for ozone SIP attainment demonstrations. This action is consistent with the policy on 1982 ozone SIPs and is based on the fact that the States now have or can develop the data bases necessary for the more rigorous techniques and use of these techniques, provide more accurate evaluations of ozone control strategies and more realistic attainment demonstrations.

This deletion will be prospective in nature. In other words, after promulgation of this change to 40 CFR 51.14, EPA will not approve any ozone SIP revision based on proportional rollback modeling techniques, but States with approved SIPs based on rollback will not be required to revise their SIPs. However, if the ozone standard is not attained by means of present SIP requirements by 1982 or if for any other reason a SIP revision if necessary, the revision cannot be based on a rollback technique. Since the States have notice of this action and should have the data bases necessary for the more rigorous techniques, the deletion of the rollback technique should not unduly burden the SIP development process.

C. Solicitation of Comments

EPA is soliciting comments on all aspects of today's proposal and in particular, its impact on SIP revisions not covered by the policy on SIP revision for areas which requested extension of the 1982 attainment date.

D. Classification

EPA has determined that this revision is "specialized" and therefore, is not subject to the procedural requirements of executive order 12044.

E. Economic Impacts

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that the proposed rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. This action imposes no new regulatory requirements, but only revises the ozone modeling techniques available to states in making attainment demonstrations. Few, if any, small entities will need to expend additional resources to meet the revised requirements. Accordingly, this action will not cause significant economic impacts on a substantial number of small entities.

F. Authority

This proposed action is issued pursuant to sections 110, 171–174, 301 of the Clean Air Act 42 U.S.C. 7410, 7501–7504 and 7601.

Dated: January 13, 1981.

Douglas M. Costle,

Administrator.

§ 51.14 [Amended]

It is proposed to amend 40 CFR 51.14 as follows: (1) 40 FR Part 51 is amended by removing § 51.14(c)(7)(iv).

[FR Doc. 81-2252 Filed 1-20-81; 8:45 am]

BILLING CODE 6560-26-M

federal register

Thursday
January 22, 1981

Part VII

Department of Education

Office of Elementary and Secondary Education

Special Impact Aid Provisions for Local Educational Agencies That Claim Entitlements Based on the Number of Children Residing on Indian Lands

DEPARTMENT OF EDUCATION

Office of Elementary and Secondary Education

34 CFR Part 223

Special Impact Aid Provisions for Local Educational Agencies That Claim Entitlements Based on the Number of Children Residing on Indian Lands

AGENCY: Department of Education.

ACTION: Final regulations with invitation to comment.

SUMMARY: The Secretary issues final regulations to implement the amendments, made by the Education Amendments of 1978, Pub. L. 95–561, to Title I (Financial assistance for local educational agencies in areas affected by Federal activity) of the Act of September 30, 1950, Pub. L. 81–874, that apply to local educational agencies (LEAs) claiming entitlements based on the number of children residing on Indian lands. The regulations clarify the requirements which these LEAs must meet to receive their entitlements; contain minimum standards for formulating policies and procedures to ensure the participation of Indian parents and tribes in the education process; describe the process that a tribe or its designee must follow to file a complaint regarding these policies and procedures; and establish hearing procedures to resolve complaints.

DATES: All comments on these final regulations must be received on or before March 23, 1981.

EFFECTIVE DATE: These final regulations are expected to take effect 45 days after they are transmitted to Congress. Regulations are transmitted to Congress several days before they are published in the Federal Register. The effective date is changed by statute if Congress takes certain adjournments. If you wish to know the effective date of these final regulations, call or write the Department of Education contact person.

ADDRESSES: Comments should be addressed to Ms. Edna K. Cave, Division of Impact Aid, Office of Elementary and Secondary Education, U.S. Department of Education, 400 Maryland Avenue, S.W., Room 2100, Washington, D.C. 20202.

FOR FURTHER INFORMATION CONTACT: Ms. Edna K. Cave. Telephone: (202) 245–1975.

SUPPLEMENTARY INFORMATION:

A. Background

The Education Amendments of 1978 (Pub. L. 95–561) enacted several amendments to Title I (Financial assistance for local educational agencies in areas affected by Federal activity) of the Act of September 30, 1950 (Pub. L. 81–874) (hereinafter "the Act") that significantly altered the provisions applying to local educational agencies (LEAs) that claim entitlements based on the number of children residing on Indian lands. In particular, the amendments made two major changes. First, they established a new weighting factor for computing the entitlements for these LEAs. Second, they enumerated the policies and procedures that each LEA receiving a entitlement must establish to ensure the increased participation of Indian parents and tribes in the Education process. The amendments also established complaint and hearing procedures to guarantee the meaningfulness of Indian input.

On June 29, 1979, the Commissioner of Education issued proposed regulations implementing these amendments as part of a notice of proposed rulemaking (44 FR 38184, 38222) (Subpart I—Entitlements for Children Residing on Indian Lands). When these proposed regulations were published, however, the Commissioner was operating under a directive from the Secretary of Health, Education, and Welfare to simplify program regulations by incorporating by reference other applicable regulations and eliminating provisions that merely repeated or paraphrased the authorizing statute. As a result, the regulations in Subpart I concerning "Entitlements for Children Residing on Indian Lands" were so succinct that they failed to implement several statutory provisions and to provide necessary clarification on others.

Following the notice of proposed rulemaking, interested persons were given sixty days in which to submit comments, either in writing or in person at one of thirteen public hearings held throughout the nation. Frequently, these comments criticized the regulations in Subpart I because they were too brief, not self-contained, and insufficient to provide guidance on implementing the new legislation. In response to these comments, the Secretary is issuing final regulations that include more detail than the June 29, 1979 proposed regulations.

B. Summary of Changes From the June 29, 1979 Proposed Regulations

In the June 29, 1979 proposed regulations, the provisions concerning LEAs that claimed entitlements for children residing on Indian lands were contained in Subpart I of 45 CFR Part 116 (now 34 CFR Part 222) (Assistance for local educational agencies in areas affected by Federal activities and arrangements for education of children where local educational agencies cannot provide suitable free public education). Because of the need to provide immediate guidance to these LEAs, final regulations governing entitlements based on the number of children residing on Indian lands are being issued separately as 34 CFR Part 223.

As Part 223, these final regulations implement all the relevant statutory provisions that were added by the Education Amendments of 1978 (Pub. L. 95–561). In particular, these regulations explain the requirements which LEAs claiming entitlements based on the number of children residing on Indian lands must meet to receive their entitlements; contain minimum standards for formulating policies and procedures to ensure the participation of Indian parents and tribes in the education process; describe the process a tribe or its designee must follow to file a complaint regarding these policies and procedures; and establish hearing procedures to resolve complaints.

The following discussion briefly explains some of the major provisions in Part 223 and summarizes the most significant changes that have been made since publication of the June 29, 1979 proposed regulations:

Entitlement based on the number of children residing on Indian lands (§ 223.5).

The regulations in Part 223 apply to LEAs that claim entitlements under Section 3(d)(2)(D) of the Act. Essentially, an LEA must meet three requirements to receive an entitlement. First, the LEA must serve children who reside on Indian lands. Second, the LEA must meet the general eligibility requirements in Section 3(c) of the Act. Section 3(c) provides that, before an LEA may receive any payments under the Act, it must serve a minimum number of federally affected children, including children residing on Indian lands. Finally, the LEA must establish the policies and procedures described in § 223.10.

If an LEA meets these requirements, it is eligible to receive an entitlement based on the number of children it serves who reside on Indian lands. Specifically, this entitlement is computed by counting the number of children residing on Indian lands in average daily attendance at the LEA. The number of children is multiplied by the local contribution rate and then multiplied by 125 percent.

Unless the LEA requests a waiver of the deadline for establishing its policies and procedures under § 223.8, and the Secretary grants the LEA's request, an LEA that does not meet the above requirements may not receive either its entitlement under § 223.5 or its preliminary payment as defined in § 223.4. Moreover, as the definition of entitlement in § 223.4 indicates, the LEA is also precluded from receiving that portion of its regular Impact Aid payment based on the number of children residing on Indian lands.

For the purpose of computing the entitlement, therefore, an LEA counts all children, including non-Indian children, who reside on Indian lands. Once the LEA is eligible to receive an entitlement, however, the remaining provisions in these regulations address the rights of parents of Indian children and Indian tribes having children in the LEA's schools, as well as the responsibilities of LEAs regarding the participation of Indians in the education process.

Waiver of deadline for establishing policies and procedures (§ 223.8).

Section 5(b)(3)(A) of the Act provides that the entitlement described in § 223.5 of these regulations may be paid only to LEAs that have established the policies and procedures described in § 223.10 within certain deadlines. These deadlines are contained in § 223.7. However, Section 5(b)(3)(A) also authorizes the Secretary to waive these deadlines for good cause shown. Section 223.8 of these final regulations implements this statutory provision.

If an LEA cannot meet its deadline in § 223.7 for establishing policies and procedures, the LEA may request the Secretary to waive that deadline. According to § 223.8(a)(2), the LEA's request must be in writing, provide a full justification of the need for a waiver, indicate when policies and procedures can be established, and include any supporting information the Secretary may require.

If the LEA shows good cause, the Secretary may waive the deadline. Section 223.8(b)(2) contains several factors for the Secretary to consider in determining good cause: the progress of the LEA in establishing its policies and procedures; administrative obstacles faced by the LEA in establishing its policies and procedures; and exceptional or unforseen circumstances.

Although the Secretary may find that good cause exists to grant a waiver, the justification supporting the request may not warrant payment of the full entitlement. Therefore, § 223.8(c) gives the Secretary the discretion to vary the method for paying the LEA's entitlement according to the circumstances underlying the waiver request. For example, an LEA that did not establish policies and procedures by the end of the 1979–80 school year as required by § 223.7(a) may request a waiver under this section. However, the Secretary may decide, based on the justification in the request, that the LEA should only receive prospective payments of the entitlement from the year in which the LEA establishes policies and procedures, rather than retroactive payments covering the years in which the LEA was out of compliance. On the other hand, a newly established LEA may be unable to meet its deadline in § 223.7(b). If the underlying circumstances so warrant, the Secretary may waive the deadline but nevertheless pay the LEA its full entitlement at that time.

Policies and procedures (§§ 223.10–223.13).

Section 5(b)(3)(B) of the Act states the objectives that an LEA's policies and procedures must address to ensure the participation of parents of Indian children and Indian tribes in the education process. Section 223.10 of these final regulations implements this statutory requirement, although the regulations paraphrase the statutory language to give more guidance to LEAs concerning what the policies and procedures must include. In keeping with the legislative history, § 223.10(a) requires the policies and procedures to ensure that the LEA gives tribal officials and parents of Indian children the opportunity to comment on the participation of Indian children on an equal basis in the school program with all other children educated by the LEA.

Similarly, § 223.10(b) requires the LEA to disseminate certain documents to tribal officials and parents of Indian children. This section clarifies the documents that must be disseminated, limiting them to those dealing with educational programs assisted with funds provided under the Act. The regulations impose this limitation because, as § 223.6 of these regulations indicates, an LEA that receives an entitlement under § 223.5 is not required to spend that entitlement exclusively for Indian children or for special programs for Indian children. Rather, the entitlement becomes part of the LEA's general fund. Thus, tribal officials and parents of Indian children should receive information on those educational programs assisted from the LEA's general fund of which the Pub. L. 81–874 entitlement is a part.

Section 223.11 contains minimum standards with which an LEA's policies and procedures must comply. These standards, which coincide with the objectives of the policies and procedures, are designed to give guidance to LEAs in establishing their policies and procedures without prescribing how the LEA must achieve the objectives. Discretion is needed because particular local circumstances will dictate different policies and procedures. For example, factors such as the extent to which there has been cooperation and dialogue between the LEA and Indian representatives in the past, the current practices of the LEA to ensure that Indian children are afforded equal educational opportunity, and the size, location, and geographical characteristics of the Indian community in relation to the LEA should be considered by an LEA in formulating its policies and procedures.

These minimum standards also allow flexibility for LEAs to adopt creative procedures. For example, LEAs may indicate in their policies and procedures that they will hold meetings of the school board or PTA on tribal lands; that they will schedule meetings between tribal officials and school board members; or that they will plan special meetings for Indians to voice their concerns. This flexibility permits an LEA's policies and procedures to reflect a spirit of cooperation rather than mere strict adherence to the minimum statutory requirements.

Section 223.12 of these final regulations requires an LEA that has established policies and procedures under § 223.7 to review them annually to ensure that they meet the minimum standards in § 223.11 and continue to provide for an adequate level of Indian participation. If the LEA determines that its policies and procedures do not meet these requirements, it must amend them.

Likewise, § 223.13 provides for periodic review by the Secretary of an LEA's policies and procedures. This review will ensure that the LEA has amended its policies and procedures to meet the minimum standards in § 223.11. If the Secretary finds that the LEA's policies and procedures do not meet these minimum standards, the LEA must correct its policies and procedures within sixty days or the Secretary will withhold the LEA's entitlement according to § 223.42(b).

Compliant procedures (§§ 223.30–223.36).

Section 5(b)(3)(C)(i) of the Act permits any tribe, or its designee, that has students attending an LEA to file a written complaint with the Secretary regarding the policies and procedures that LEA has established. Sections 223.30–223.36 of these final regulations implement this provision. However, as the regulations indicate, the Assistant

Secretary for Elementary and Secondary Education has, under the general delegation of authority for Impact Aid programs from the Secretary to the Assistant Secretary, assumed responsibility for receiving and resolving complaints.

Section 223.20(a) of these final regulations defines the scope of a complaint. Under this section, a tribe may complain about an LEA's failure to establish adequate policies and procedures, to adhere to its policies and procedures, or to take into consideration meaningful Indian input in designing its education program. Resolution of the issues in a complaint, therefore, necessarily requires the Assistant Secretary to make qualitative judgments, including whether the LEA has taken particular local circumstances such as those listed above into consideration in developing its policies and procedures. Because these final regulations cannot establish minimum standards that reflect the variety of particular local circumstances that exist, it is possible that an LEA's policies and procedures may meet the minimum standards in § 223.11 yet be inadequate to provide the requisite level of participation by Indian tribes and parents of Indian children in the education process.

Section 223.21(a) specifies that any tribe, or its designee, that has students attending an LEA's schools may file a complaint. Indian tribe, as defined in § 223.4, includes only those groups of Indians recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

As indicated in § 223.21(b), parents of Indian children are not eligible to file a complaint. Rather, they must submit their grievances to the tribe or its designee. However, neither the tribe nor its designee is obligated to file these grievances in a complaint. Moreover, according to § 223.21(c), a complaint need not reflect the views of a majority of the parents of Indian children attending the LEA's schools.

Section 5(b)(3)(C)(ii) of the Act imposes strict time constraints on the complaint resolution process once a complaint is received by the Assistant Secretary. Thus, before a complaint may be considered to have been received, § 223.24 requires that the complaint satisfy the requirements in §§ 223.20–223.21 and § 223.23 and be signed by a tribal official or the tribe's authorized designee. If a complaint does not meet these requirements, § 223.25 authorizes the Assistant Secretary to notify the tribe that its complaint has been dismissed for purposes of invoking the hearing procedures in §§ 223.30–223.41. Notice that a complaint has been dismissed, however, does not preclude other efforts to investigate or resolve the issues raised in the complaint, including the filing of an amended complaint.

Hearing procedures (§§ 223.30–223.41).

Sections 223.30–223.41 of the final regulations contain the hearing procedures that follow receipt of a complaint. In addition to implementing all of the procedures required by Section 5(b)(3)(C)(ii)–(vii) of the Act, the regulations contain several other provisions that are helpful in resolving the complaint. Section 223.34, for example, requires an LEA to file a reply to the charges in a complaint. Similarly, § 223.37 affords each party, following the hearing, the opportunity to submit to the hearing examiner additional evidence that is relevant to the issues raised at the hearing. Finally, § 223.39 gives each party the opportunity to comment to the Assistant Secretary on the hearing examiner's findings and recommendations. These provisions have been added to the statutory procedures outlined in the Act in order to provide all parties the maximum opportunities to present evidence in their favor within the tight time constraints imposed by the Act for complaint resolution.

Invitation To Comment

As previously indicated, the Department received public comments on the proposed regulations which it has considered in preparing the final regulations. A discussion of these public comments and the Department's responses to them is contained in the appendix to the final regulations. Because these final regulations are different from the proposed regulations, however, interested persons are also invited to submit comments and recommendations on these final regulations. Written comments and recommendations may be sent to the address given at the beginning of this preamble. All comments received on or before March 23, 1981, will be considered in the revision of these final regulations.

All comments submitted in response to these final regulations will be available for public inspection, during and after the comment period, in Room 2109, 400 Maryland Avenue SW., Washington, D.C., between the hours of 8:30 a.m. and 4 p.m., Monday through Friday of each week except Federal holidays.

Regulatory Flexibility Act Analysis

The Regulatory Flexibility Act (Pub. L. 96–354, enacted Sept. 19, 1980) requires each Federal agency to prepare an initial regulatory flexibility analysis and a final regulatory flexibility analysis for each regulation that—

(1) Is published as a notice of proposed rulemaking after January 1, 1981; and

(2) Has a significant economic impact on a substantial number of small entities (small businesses, small organizations, or small governmental jurisdictions).

Because the Department has not yet established its own definitions of "small organization" and "small governmental jurisdiction," as contemplated by the Act, it is not possible to prepare a full initial regulatory flexibility analysis at this time. It is impracticable, however, to delay publication of these regulations while the necessary definitions are being developed. Therefore, in these circumstances, the Regulatory Flexibility Act permits a waiver or delay of the initial regulatory flexibility analysis. If it is determined that these regulations are subject to that Act, the Secretary will prepare the necessary analyses at a later date.

As an interim measure, this document, to the maximum extent possible, includes information of the kind contemplated by the Regulatory Flexibility Act, including the reasons for the regulations, the objectives and legal basis for the regulations, and any significant issues and alternatives for consideration by the public. To assist the Department in determining whether the Regulatory Flexibility Act applies to these regulations, and in complying with the Act's requirements, public comment is especially invited on the following matters:

(1) The number and kind of small entities (small businesses, small organizations, or small governmental jurisdictions) affected by the regulations.

(2) The reporting, recordkeeping, and compliance burdens imposed by the regulations on small entities.

(3) The type of professional skills necessary for preparation of any reports or records required by the regulations.

(4) Any Federal rules that may duplicate, overlap, or conflict with the regulations.

(5) Any significant alternatives that would accomplish the purposes of the applicable statute but would minimize any significant economic impact of the regulations on small entities. The Secretary is particularly interested in suggestions on alternatives such as the following:

• The establishment of differing reporting or compliance requirements or timetables that take into account the resources available to small entities.

• The clarification, consolidation, or simplification of compliance and reporting requirements for small entities.

• The use of performance rather than design standards.

• An exemption for small entities from coverage of part or all of the regulations.

Citation of Legal Authority

A citation of statutory or other legal authority is placed in parentheses on the line following each substantive provision of these final regulations.

(Catalog of Federal Domestic Assistance No. 84.041, School Assistance for Federally Affected Areas—Maintenance and Operation)

Dated: January 15, 1981.

Shirley M. Hufstedler,

Secretary of Education.

The Secretary amends Title 34 of the Code of Federal Regulations by adding a new Part 223 to read as follows:

PART 223—SPECIAL IMPACT AID PROVISIONS FOR LOCAL EDUCATIONAL AGENCIES THAT CLAIM ENTITLEMENTS BASED ON THE NUMBER OF CHILDREN RESIDING ON INDIAN LANDS

Subpart A—General

Sec.
223.1 Purpose.
223.2 Applicability of regulations in this part.
223.3 Applicability of other statutes and regulations.
223.4 Definitions.
223.5 Entitlement based on the number of children residing on Indian lands.
223.6 Use of entitlement.
223.7 Requirements to receive entitlement.
223.8 Waiver of deadline for establishing policies and procedures.
223.9 [Reserved]

Subpart B—Policies and Procedures

223.10 Required policies and procedures.
223.11 Minimum standards for establishing policies and procedures.
223.12 Review by LEAs of policies and procedures.
223.13 Review by the Secretary of policies and procedures.
223.14–223.19 [Reserved]

Subpart C—Complaint Procedures

223.20 Contents of a complaint.
223.21 Who may file a complaint.
223.22 Where to file a complaint.
223.23 When to file a complaint.
223.24 Receipt of a complaint by the Assistant Secretary.
223.25 Dismissal of a complaint.
223.26 Consolidation of complaints.
223.27–223.29 [Reserved]

Subpart D—Hearing Procedures

Sec.
223.30 Applicability of hearing procedures in this subpart.
223.31 Applicability of other laws.
223.32 Parties to a hearing.
223.33 Notice.
223.34 LEA's reply to the complaint.
223.35 General procedural rules.
223.36 Conduct of the hearing.
223.37 Opportunity to submit additional evidence.
223.38 The hearing examiner's findings and recommendations.
223.39 Opportunity to comment on the hearing examiner's findings and recommendations.
223.40 The Assistant Secretary's final determination.
223.41 Judicial review of the Assistant Secretary's final determination.
223.42 Effects of noncompliance with the Assistant Secretary's final determination.

Authority: Sec. 5(b)(3) of Title I of the Act of September 30, 1950, Pub. L. 81–874, as amended by the Education Amendments of 1978, Pub. L. 95–561 (20 U.S.C. 240(b)(3)), unless otherwise noted.

Subpart A—General

§ 223.1 Purpose.

The purpose of this part is to—

(a) Clarify the requirements which local educational agencies (LEAs) must meet to receive an entitlement under Section 3(d)(2)(D) of the Act and § 223.5 of these regulations;

(b) Establish minimum standards for formulating policies and procedures to ensure the participation of Indian parents and tribes in the education process;

(c) Describe the process that a tribe or its designee shall follow to file a complaint regarding those policies and procedures; and

(d) Establish hearing procedures to resolve complaints.

(20 U.S.C. 240(b)(3))

§ 223.2 Applicability of regulations in this part.

(a) The regulations in this part apply to LEAs that claim entitlements under § 223.5.

(b)(1) Except as provided in paragraph (b)(2) of this section, these regulations are designed to ensure participation in the LEA's education program by Indian tribes and parents of Indian children residing on Indian lands.

(2) For purposes of computing the entitlement only, the LEA shall count all children, including any non-Indian children, residing on Indian lands.

(20 U.S.C. 238(d)(2)(D); 20 U.S.C. 240(b)(3))

§ 223.3 Applicability of other statutes and regulations.

In addition to the regulations in this part, the following statutes and regulations apply to LEAs that claim entitlements under § 223.5:

(a) Title I (Financial assistance for LEAs in areas affected by Federal activity) of the Act of September 30, 1950, Pub. L. 81–874, as amended in 20 U.S.C. 236 *et seq.* particularly 240(b)(3).

(b) The Impact Aid regulations in 34 CFR Part 222 pertaining to LEAs in areas affected by Federal activity.

(c) The General Education Provisions Act (GEPA) in 20 U.S.C. 1221 *et seq.*

(20 U.S.C. 240(b)(3); 20 U.S.C. 1221 *et seq.*; 34 CFR Part 222)

§ 223.4 Definitions.

For purposes of this part, the following definitions apply:

"Act" means Title I (Financial assistance for LEAs in areas affected by Federal activity) of the Act of September 30, 1950, Pub. L. 81–874, as amended. Significant amendments pertinent to this part were made by the Education Amendments of 1978, Pub. L. 95–561.

"Assistant Secretary" means the Assistant Secretary for Elementary and Secondary Education or the Assistant Secretary's designee.

"Child" means any child who is within the age limits for which the applicable State provides free public education.

"Department" means the U.S. Department of Education.

"Entitlement" means, for purposes of this part, the amount of funds (or whatever portion of those funds that is provided by an appropriation) determined by the number of children residing on Indian lands in average daily attendance at the LEA multiplied by the local contribution rate multiplied by 125 percent.

"Indian children" means children residing on Indian lands who are recognized by an Indian tribe as being affiliated with that tribe.

"Indian lands" means—

(a) Real property held in trust by the United States for individual Indians or Indian tribes; and

(b) Real property held by individual Indians or Indian tribes that is subject to restrictions on alienation imposed by the United States.

"Indian tribe" means any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established under the Alaska Native Claims Settlement Act (85 Stat. 688), which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

"Local Educational Agency (LEA)" means a board of education or other

legally constituted local authority having administrative control and direction of free public education in a county, township, independent, or other school district located within a State. This term includes any State agency which directly operates and maintains facilities for providing free public education.

"Parent" includes a legal guardian or other person standing in loco parentis.

"Preliminary payment" means a payment equal to 75 percent (or the percentage permitted by an appropriation) of the total impact aid payment received by the LEA for the preceding year.

"Secretary" means the Secretary of the U.S. Department of Education.

(20 U.S.C. 240(b)(3); 20 U.S.C. 244)

§ 223.5 Entitlement based on the number of children residing on Indian lands.

(a) To be eligible for an entitlement under this part, an LEA that serves children who reside on Indian lands shall meet—

(1) The eligibility requirements in Section 3(c) of the Act; and

(2) The requirements in § 223.7.

(b) If an LEA meets the requirements in paragraph (a) of this section, the Secretary pays the LEA the entitlement defined in § 223.4.

(c) Except as provided in § 223.8, if an LEA that serves children who reside on Indian lands does not meet the requirements in paragraph (a) of this section, the Secretary may not pay either—

(1) The entitlement defined in § 223.4; or

(2) The preliminary payment defined in § 223.4.

(20 U.S.C. 238(d)(2)(C); 20 U.S.C. 240(b)(3)(A))

§ 223.6 Use of entitlement.

An LEA that receives the entitlement referred to in § 223.5 is not required to spend that entitlement exclusively for Indian children or for special programs for Indian children.

(20 U.S.C. 240(b)(3); H. Rept. 15, 95th Cong., 2d Sess. 114 (1978))

§ 223.7 Requirements to receive entitlement.

To receive the entitlement referred to in § 223.5—

(a) An LEA formed before November 1, 1978 shall have complied with the requirements under Section 5(b)(3) of the Act for establishing policies and procedures by the end of the 1979–1980 school year; or

(b) An LEA formed after November 1, 1978 shall—

(1) Establish the policies and procedures described in §§ 223.10–223.11, in consultation with and based on information from tribal officials and parents of Indian children, within one year of its formation; and

(2) Include in its application for payments under the Act—

(i) An assurance that the LEA established these policies and procedures in consultation with and based on information from tribal officials and parents of Indian children; and

(ii) A copy of the policies and procedures.

(20 U.S.C. 240(b)(3)(A))

§ 223.8 Waiver of deadline for establishing policies and procedures.

(a)(1) If an LEA cannot meet its deadline in § 223.7 for establishing policies and procedures, the LEA may request the Secretary to waive that deadline and set a new one.

(2) The LEA's request for a waiver must—

(i) Be in writing;

(ii) Provide a full justification of the need for a waiver;

(iii) Indicate when policies and procedures can be established; and

(iv) Include any supporting information the Secretary may require.

(b)(1) The Secretary may waive the deadline in § 223.7 for establishing policies and procedures and set a new one if the LEA shows good cause.

(2) In determining whether the LEA has shown good cause, the Secretary considers the following factors:

(i) The progress of the LEA in establishing its policies and procedures.

(ii) Administrative obstacles faced by the LEA in establishing its policies and procedures.

(iii) Exceptional or unforeseen circumstances.

(c) If the Secretary decides to grant the LEA's request for a waiver, the Secretary may vary the method for paying the LEA's entitlement under § 223.5, depending on the circumstances underlying the waiver request. The methods available to the Secretary include the following:

(1) Pay the LEA the full entitlement for the current year in which the Secretary grants the waiver.

(2) Grant the waiver but pay the LEA the full entitlements for past years retroactively when the LEA establishes it policies and procedures.

(3) Grant the waiver but only pay the entitlement prospectively from the year in which the LEA establishes policies and procedures.

(d) If the Secretary denies the LEA's request for a waiver, the Secretary may not pay either—

(1) The entitlement referred to in § 223.5; or

(2) The preliminary payment defined in § 223.4.

(20 U.S.C. 240(b)(3)(A))

§ 223.9 [Reserved]

Subpart B—Policies and Procedures

§ 223.10 Required policies and procedures.

The policies and procedures required under § 223.7 must ensure that an LEA that serves children residing on Indian lands—

(a) Gives tribal officials and parents of Indian children the opportunity to comment on the participation of Indian children on an equal basis in the school program with all other children educated by the LEA;

(b) Disseminates to tribal officials and parents of Indian children—

(1) The Pub. L. 81–874 application;

(2) Any evaluations of education programs assisted with funds provided under the Act; and

(3) Any program plans for education programs that the LEA plans to initiate or eliminate;

(c) Consults actively and involves regularly tribal officials and parents of Indian children in the planning and development of education programs assisted with funds provided under the Act; and

(d) Affords tribal officials and parents of Indian children an opportunity to—

(1) Make recommendations concerning—

(i) The needs of their children; and

(ii) The ways by which they can assist their children in realizing the benefits to be derived from the education programs assisted with funds provided under the Act; and

(2) Present their overall views on the education program in the LEA, including—

(i) The operation of the LEA's education program; and

(ii) The degree of parental participation allowed.

(20 U.S.C. 240(b)(3)(B))

§ 223.11 Minimum standards for establishing policies and procedures.

To accomplish the objectives in § 223.10, an LEA's policies and procedures must include, at a minimum—

(a) Specific procedures for how the LEA will—

(1) Give tribal officials and parents of Indian children the opportunity to comment on the participation of Indian children on an equal basis in the education program;

(2) Assess the extent to which Indian children do participate on an equal basis; and

(3) Modify its education program to allow Indian children to participate on an equal basis;

(b) Specific procedures for disseminating the information required in § 223.10(b). This dissemination must—

(1) Take place in a timely manner; and

(2) Ensure that tribal officials and parents of Indian children have had adequate time and opportunity to present their views;

(c) A description of how the LEA will actively consult and regularly involve tribal officials and parents of Indian children in the planning and development of education programs assisted with funds provided under the Act;

(d) A description of the LEA's methods to afford tribal officials and parents of Indian children the opportunity to make recommendations and to present their views as provided in § 223.10(d). This description should include specific ways the LEA will gather information concerning Indian views, including the frequency, location, and time of meetings; and

(e) Specific procedures for—

(1) Assessing the meaningfulness of Indian input; and

(2) Modifying the LEA's policies and procedures, if necessary, based on that input.

(20 U.S.C. 240(b)(3)(B); 20 U.S.C. 1221e-3(a)(1); H. Rept. 15, 95th Cong., 2d Sess. 114-115 (1978))

§ 223.12 Review by LEAs of policies and procedures.

(a) Each LEA that has established policies and procedures under § 223.7 shall review those policies and procedures annually to ensure that they—

(1) Meet the minimum standards in § 223.11; and

(2) Continue to provide for an adequate level of Indian participation.

(b) If an LEA determines that its policies and procedures do not meet the requirements in paragraph (a) (1)–(2) of this section, the LEA shall amend its policies and procedures to conform with those requirements.

(c) An LEA that must amend its policies and procedures under paragraph (b) of this section shall send a copy of those amended policies and procedures to—

(1) The Secretary; and

(2) The affected tribe or tribes.

(20 U.S.C. 1221e-3(a)(1))

§ 223.13 Review by the Secretary of policies and procedures.

(a) The Secretary periodically reviews an LEA's policies and procedures to ensure that they meet the minimum standards in § 223.11.

(b) If the Secretary determines that the LEA's policies and procedures do not meet the minimum standards in § 223.11, the LEA shall make the necessary changes within 60 days after receiving the Secretary's determination.

(c) If the LEA fails to correct its policies and procedures within 60 days, the Secretary withholds the LEA's entitlement according to § 223.42(b).

(20 U.S.C. 1221e-3(a)(1))

§§ 223.14–223.19 [Reserved]

Subpart C—Complaint Procedures

§ 223.20 Contents of a complaint.

For purposes of this part, a complaint is a signed statement that includes—

(a) An allegation that an LEA has failed to—

(1) Establish adequate policies and procedures under §§ 223.10–223.11 to ensure the participation of Indian parents and tribes in the education process;

(2) Adhere to these policies and procedures; or

(3) Take into consideration meaningful Indian input in designing the education program;

(b) Information that supports the allegation;

(c) A specific request for relief; and

(d) A statement describing what steps it has taken under § 223.23(b) to resolve with the LEA the matters on which the complaint is based.

(20 U.S.C. 240(b)(3)(C)(i); 20 U.S.C. 1221e-3(a)(1); H. Rept. 15, 95th Cong., 2d Sess. 115 (1978))

§ 223.21 Who may file a complaint.

(a)(1) Any tribe, or its designee, that has students attending an LEA's school may, in its discretion and without regard to the requirements of any other provision of law, file a written complaint with the Assistant Secretary regarding any action of the LEA pursuant to, or relevant to, the matters in § 223.20(a).

(2) If a tribe files a complaint through a designee, the tribe shall acknowledge in writing in the complaint that the designee is authorized to act on its behalf.

(b)(1) Parents of Indian children may not file a complaint directly with the Assistant Secretary.

(2) These parents shall submit their grievances to the tribe or its designee, although neither the tribe nor its designee is obligated to file these grievances in a complaint with the Assistant Secretary.

(c) A complaint filed under paragraph (a) of this section need not reflect the views of a majority of the parents of Indian children attending the LEA's schools.

(20 U.S.C. 240(b)(3)(C)(i); H. Rept. 15, 95th Cong., 2d Sess. 115 (1978))

§ 223.22 Where to file a complaint.

To file a complaint, a tribe must—

(a) Designate the complaint "SAFA Indian Complaint"; and

(b) Send it to the Assistant Secretary for Elementary and Secondary Education.

(20 U.S.C. 240(b)(3)(C)(i))

§ 223.23 When to file a complaint.

A tribe may file a complaint with the Assistant Secretary only if—

(a) The LEA has complied with the requirements in § 223.7; and

(b) The tribe has taken reasonable steps to resolve with the LEA the issues on which the complaint is based.

(20 U.S.C. 240(b)(3)(C)(i); 20 U.S.C. 1221e-3(a)(1))

§ 223.24 Receipt of a complaint by the Assistant Secretary.

The Assistant Secretary considers a complaint to have been received only after the Assistant Secretary determines that the complaint—

(a) Satisfies the requirements in §§ 223.20–223.21 and § 223.23; and

(b) Is in writing and signed by a tribal official or the tribe's authorized designee.

(20 U.S.C. 240(b)(3)(C)(i))

§ 223.25 Dismissal of a complaint.

(a) If the Assistant Secretary determines that a complaint fails to meet the requirements in § 223.24, the Assistant Secretary notifies the tribe or its designee that the complaint has been dismissed for purposes of invoking the hearing procedures in §§ 223.30–223.41.

(b) Each notice that a complaint has been dismissed includes the reasons why the Assistant Secretary determined that the complaint did not meet the requirements in § 223.24.

(c) Notice that a complaint has been dismissed does not preclude other efforts to investigate or resolve the issues raised in the complaint, including the filing of an amended complaint.

(20 U.S.C. 240(b)(3)(C)(i); 20 U.S.C. 1221e-3(a)(1))

§ 223.26 Consolidation of complaints.

The Assistant Secretary may consolidate complaints involving the same tribe or LEA.

(20 U.S.C. 240(b)(3)(C)(viii))

§§ 223.27–223.29 [Reserved]

Subpart D—Hearing Procedures

§ 223.30 Applicability of hearing procedures in this subpart.

The hearing procedures in this subpart apply only to proceedings under Section 5(b)(3)(C) of the Act.

(20 U.S.C. 240(b)(3)(C)

§ 223.31 Applicability of other laws.

The following provisions do not apply to proceedings under this subpart:

(a) Administrative Procedure Act.

(b) Federal Rules of Civil Procedure.

(c) Federal Rules of Evidence.

(20 U.S.C. 240(b)(3)(C); 20 U.S.C. 1221e–3(a)(1))

§ 223.32 Parties to a hearing.

The parties to a hearing under this subpart are—

(a) The complaining tribe or tribes; and

(b) The affected LEA or LEAs.

(20 U.S.C. 240(b)(3)(C)

§ 223.33 Notice.

Within 10 working days after receiving a complaint, the Assistant Secretary—

(a) Appoints a hearing examiner to conduct the hearing;

(b) Selects a time for the hearing so that the hearing occurs no more than 30 days after the appointment of a hearing examiner;

(c) Designates a place for the hearing that is, to the extent possible—

(1) Near the LEA; or

(2) At another location convenient to the tribe and the LEA, if the Assistant Secretary determines there is good cause to designate another location;

(d) Notifies the tribe and the LEA of the time, place, and nature of the hearing; and

(e) Sends copies of the complaint to the LEA and the tribe.

(20 U.S.C. 240(b)(3)(C)(ii))

§ 223.34 LEA's reply to the complaint.

Within 15 days after receiving the notice described in § 223.33, the LEA shall file with the Assistant Secretary its reply to the charges in the complaint.

(20 U.S.C. 1221e-3(a)(1))

§ 223.35 General procedural rules.

(a) *Communications.* No party shall communicate orally or in writing with the hearing examiner or the Assistant Secretary on matters under review, except minor procedural matters, unless all parties to the complaint are given—

(1) Timely and adequate notice of the communication; and

(2) Reasonable opportunity to respond.

(b) *Submission of documents.* For each document that a party submits, the party shall—

(1) File one copy for inclusion in the record of the proceedings; and

(2) Provide a copy to each of the other parties to the proceedings.

(c) *Record.* A record of the proceedings will be established and maintained by the Assistant Secretary.

(20 U.S.C. 240(b)(3)(C); 20 U.S.C. 1221e-3(a)(1))

§ 223.36 Conduct of the hearing.

(a) *Public hearing.* The hearing must be open to the public.

(b) *Representation by counsel.* Parties may be represented by counsel.

(c) *Evidence.* (1) Each party may submit oral and written testimony that is relevant to the issues in the proceedings.

(2) A party may object to evidence it considers to be irrelevant or unduly repetitious.

(d) *Authority and responsibilities of the hearing examiner.* (1) The hearing examiner may regulate the course of the proceedings and the conduct of the parties during those proceedings. The hearing examiner takes all steps necessary to conduct a fair and impartial proceeding, to avoid delay, and to maintain order, including the following:

(i) The hearing examiner may clarify, simplify, or define the issues or consider other matters that may aid in the disposition of the complaint.

(ii) The hearing examiner may direct the parties to exchange relevant documents or information.

(iii) The hearing examiner may receive, rule on, exclude, or limit evidence.

(iv) Although hearings are open to the general public, the hearing examiner may establish reasonable rules governing public attendance at the proceedings.

(v) The hearing examiner may examine witnesses.

(2) The hearing examiner may interpret applicable statutes and regulations but may not waive them or rule on their validity.

(e) *Transcripts.* (1) The Assistant Secretary—

(i) Arranges for the preparation of a transcript of each hearing;

(ii) Retains the original transcript as part of the record of the proceedings; and

(iii) Provides one copy of the transcript to each party.

(2) Additional copies of the transcript are available on request and with payment of the reporting service's reproduction fee.

(f) *Hearing costs.* Each party shall bear only its own costs in the proceeding.

(20 U.S.C. 240(b)(3)(C)(iii)–(iv); 20 U.S.C. 1221e–3(a)(1))

§ 223.37 Opportunity to submit additional evidence.

(a) Each party may submit to the hearing examiner additional evidence that is relevant to the issues raised at the hearing.

(b) The hearing examiner must receive each party's additional evidence within 10 days after the hearing.

(20 U.S.C. 1221e–3(a)(1))

§ 223.38 The hearing examiner's findings and recommendations.

Within 30 days after the hearing, the hearing examiner—

(a) Makes, on the basis of the record, written findings of fact and recommendations concerning any appropriate remedial action that should be taken;

(b) Submits those findings and recommendations, along with the hearing record, to the Assistant Secretary; and

(c) Sends a copy of those findings and recommendations to each party.

(20 U.S.C. 240(b)(3)(C)(v); 20 U.S.C. 1221e–3(a)(1))

§ 223.39 Opportunity to comment on the hearing examiner's findings and recommendations.

(a) Each party may file with the Assistant Secretary comments on the hearing examiner's findings and recommendations.

(b) The Assistant Secretary must receive each party's comments within 10 days after the party receives a copy of the hearing examiner's findings and recommendations.

(20 U.S.C. 1221e–3(a)(1))

§ 223.40 The Assistant Secretary's final determination.

(a) Within 30 days after receiving the hearing record and the hearing examiner's findings and recommendations, the Assistant Secretary makes, on the basis of the record, a written determination that includes—

(1) Any appropriate remedial action that the LEA must take;

(2) A schedule for completing any remedial action; and

(3) The reasons for the Assistant Secretary's decision.

(b) After completing the final determination required by paragraph (a)

of this section, the Assistant Secretary sends the parties a copy of—

(1) The hearing record;

(2) The hearing examiner's findings and recommendations; and

(3) The Assistant Secretary's final determination.

(c) The Assistant Secretary's final determination under paragraph (a) of this section is the final action of the Department concerning the complaint.

(20 U.S.C. 240(b)(3)(C)(vi)–(vii))

§ 223.41 *Judicial review of the Assistant Secretary's final determination.*

If a party is dissatisfied with the Assistant Secretary's final determination, the party may seek judicial review before a court of competent jurisdiction.

(20 U.S.C. 240(b)(3)(C)(vii))

§ 223.42 *Effects of noncompliance with the Assistant Secretary's final determination.*

(a) *Determination of compliance.* (1) For an LEA that was required under §§ 223.40–223.41 to undertake remedial action, the Secretary determines whether the LEA has—

(i) Undertaken the required remedial action; or

(2) Failed to undertake the remedial action within the time established and the Secretary determines that an extension of time will not effectively encourage the required remedial action.

(b) *Withholding by the Secretary.* (1) Except as provided in paragraphs (b)(1)(i)–(ii) of this section, if the Secretary determines under paragraph (a)(2) of this section that the LEA has failed to undertake the remedial action, the Secretary withholds payment of all funds to which an LEA is entitled under Section 238(d)(2)(D) of the Act until that remedial action is undertaken.

(i) The Secretary does not withhold funds if the tribe or its designee requests in writing that these funds be released to the LEA.

(ii) The Secretary may not withhold funds during the course of the school year if the Secretary determines that a withholding would substantially disrupt the education programs of the LEA.

(2) If an LEA is aggrieved by the Secretary's action under paragraph (b)(1) of this section, the LEA may request a hearing under Section 5(g) of the Act.

(c) *Election of alternative services by the tribe.* (1) If the Secretary determines under paragraph (a)(2) of this section that the LEA has failed to undertake the remedial action, the affected tribe may elect to—

(i) Contract with the Bureau of Indian Affairs under Title I of the Indian Self-Determination and Education Assistance Act, Pub. L. 93-638 (25 U.S.C. 450 *et seq.*) to provide educational services previously provided by the LEA; or

(ii) Have a Bureau of Indian Affairs' school provide those educational services.

(2)(i) If the affected tribe exercises its option under paragraph (c)(1) of this section, any Indian students affiliated with that tribe who wish to remain in attendance at the LEA against whom the complaint was filed may be counted by the LEA for the purpose of receiving funds under Section 3(d)(2)(D) of the Act.

(ii) If Indian students remain affiliated with the LEA under paragraph (c)(2)(i) of this section—

(A) The Secretary may not withhold funds under paragraph (b)(1) of this section that are based on the number of Indian students who remain affiliated with the LEA; and

(B) The tribe may not file any further complaints with respect to these Indian students.

(20 U.S.C. 240(b)(3)(D)–(E); 20 U.S.C. 240 note)

Appendix—Comments and Responses on NPRM (Formerly Subpart I of 34 CFR Part 222)

Part 223—Special Impact Aid Provisions for Local Educational Agencies That Claim Entitlements Based on the Number of Children Residing on Indian Lands

Comment. A number of commenters stated that the regulations of concern to Indian parents and tribes and to LEAs educating Indian children were too brief, not self-contained, and did not help to promote an understanding of the new legislation.

Response. A change has been made. These final regulations implement all the relevant statutory provisions that were added by the Education Amendments of 1978 (Pub. L. 95-561). In particular, these regulations explain the requirements which LEAs claiming entitlements based on the number of children residing on Indian lands must meet to receive their entitlements; contain minimum standards for formulating policies and procedures to ensure the participation of Indian parents and tribes in the education process; describe the process a tribe or its designee must follow to file a complaint regarding these policies and procedures; and establish hearing procedures to resolve complaints.

Comment. Several commenters recommended exempting LEAs from the requirements of the new legislation in cases where Indians are serving on the school boards of the LEAs.

Response. No change has been made. The law does not provide authority to exempt LEAs from the requirements in these cases. Although H.R. Rep. No. 15, 96th Cong., 2d Sess. 116 (1978) indicates that the House bill exempted LEAs when a majority of school board members were Indians, this exemption was removed by the House-Senate conferees and was not included in the law.

Comment. Several commenters stated that more emphasis should be placed on parents and less on tribal officials because some tribal officials live far away from the school districts.

Response. No change has been made. The regulations cannot change the law which requires the involvement of both tribal officials and parents of Indian children residing on Indian lands. *See, e.g.*, sections 5(b)(3)(A), 5(b)(3)(B)(ii), 5(b)(3)(D)(iii).

Comment. One commenter suggested that the regulations should ensure that all lands claimed under the Alaska Native Lands Settlement Act of 1971 are included as Indian lands for purposes of Pub. L. 81-874 entitlement calculations.

Response. A change has been made. In § 223.4, the definition of "Indian tribe" specifically includes "any Alaska Native village or regional or village corporation as defined in or established under the Alaska Native Claims Settlement Act (85 Stat. 688)." Thus, the provisions in this part apply to LEAs that serve children who reside on such lands.

Comment. One commenter recommended that the regulations transfer the authority of the Commissioner of Education under the new legislation to the Bureau of Indian Affairs because of concern that the Commissioner would delegate that authority to the States.

Response. No change has been made. The law assigns responsibility to the Commissioner of Education for administering section 5(b)(3) of Pub. L. 81-874, as amended by the Education Amendments of 1978, Pub. L. 95-561. The Commissioner (now the Secretary) is not authorized to delegate that responsibility to anyone outside the Department of Education.

Comment. One commenter recommended that children of teachers who live on school district property in order to teach Indian children be considered as Federally connected children. Housing for these teachers must be constructed on school district property because tribal regulations do not permit such housing to be constructed on Indian lands.

Response. No change has been made. To qualify for an entitlement under this part, an LEA must count the number of children "residing on Indian lands." The definition of "Indian lands" in section 403(1) of Pub. L. 81-874 and § 223.4 of these regulations is specific, and does not suggest the inclusion of school district property.

Comment. One commenter asked whether Indian parents have any recourse if an LEA refuses to apply for payments for children residing on Indian lands.

Response. No change has been made. The law does not provide Indian parents any recourse if an LEA refuses to apply for payments for children residing on Indian lands. However, § 223.5 of these regulations indicates that the Secretary may not pay either the entitlement defined in § 223.4 or the preliminary payment defined in § 223.4 if an LEA refuses to establish policies and procedures. Although this recourse is not specifically available to parents, it should

encourage LEAs to establish policies and procedures in order to receive their entitlements.

Comment. One commenter suggested that the regulations should ensure that, if Indian parents or tribes request specific programs affecting the basic education of Indian students, the programs be implemented as conveniently as possible if it would not impose an undue hardship on the LEA.

Response. No change has been made. The Secretary is not authorized to exercise any direction, supervision or control over the curriculum or program of instruction of any school system. The 1978 amendments to section 5(b)(3) of Pub. L. 81–874 only require that, as a condition of receiving Pub. L. 81–874 funds based on the number of children residing on Indian lands, LEAs establish policies and procedures to ensure the participation of Indian parents and tribes in the education process. These required policies and procedures and the minimum standards for formulating them are contained in §§ 223.10–223.11 of these regulations. Of course, if a tribe believes that an LEA has failed to establish adequate policies and procedures, to adhere to its policies and procedures, or to take into consideration meaningful Indian input in designing its education programs, the tribe may complain to the Assistant Secretary under §§ 223.20–223.28.

Comment. Several commenters asked if an LEA could refuse to educate children who live on Indian lands if it did not apply for Pub. L. 81–874 funds. Also, they asked if Federal law supersedes a State law that requires an LEA to educate every child in its school district.

Response. No change has been made. Section 5(b)(3)(F) of Pub. L. 81–874 specifically states that "nothing in [section 5(b)(3)] shall be deemed to relieve any State of any duty with respect to any citizens of that State." Therefore, this provision does not supersede a State law that requires an LEA to educate every child in its school district. Moreover, an LEA's responsibility to educate children who reside on Indian lands is not tied to its application for the entitlement referred to in § 223.5 of these regulations. Section 5(b)(3)(A) of Pub. L. 81–874 does not require LEAs to apply for an entitlement; it only permits them to do so. If such an entitlement is granted, LEAs are not required, according to § 223.5, to spend that entitlement exclusively for Indian children or for special programs for Indian children.

Comment. Several commenters suggested that the Secretary should provide personnel to give local training and technical assistance and to monitor implementation at the local level to ensure the maximum implementation of the new legislation.

Response. A change has been made. Section 223.13 of these regulations requires the Secretary to review an LEA's policies and procedures periodically to ensure that they meet the minimum standards in § 223.11. Moreover, Impact Aid program review procedures currently include some technical assistance during on-site reviews of LEA records.

Comment. Several commenters asked if non-Indian children and their parents have any specific rights under section 5(b)(3) of Pub. L. 81–874.

Response. No substantive change has been made. Section 223.2 provides clarification that—except for computing the entitlement, in which case the LEA counts all children, including non-Indian children, residing on Indian lands—these regulations are designed to ensure participation in the LEA's education program by Indian tribes and parents of Indian children residing on Indian lands. Thus, the required policies and procedures do not apply to non-Indian children who reside on Indian lands.

Comment. One commenter recommended that a tribe be allowed the option to be an SEA and distribute the Impact Aid funds.

Response. No change has been made. There is no basis in the law or in the legislative history that would permit the Secretary to consider a tribe as an SEA or to allow a tribe to distribute Impact Aid funds. Impact Aid payments may be made only to eligible LEAs.

Comment. One commenter suggested that tribal governments should be involved in developing State standards for educating children in a State, especially when membership of a tribe spanned several States.

Response. No change has been made. The Secretary does not have the authority to direct the involvement of tribes in developing State standards. However, the Secretary encourages tribes to communicate to SEAs their desires to participate in this process.

Comment. One commenter questioned which tribe is responsible for a child who has descended from more than one tribe.

Response. A change has been made. Section 223.4 of these regulations defines "Indian children" as children residing on Indian lands who are recognized by an Indian tribe as being affiliated with that tribe.

Comment. One commenter suggested that, to ensure full participation of Indian parents, some provision should be included to ensure that Indians serve on the school board.

Response. No change has been made. The Secretary has no authority to interfere in local matters such as electing or appointing school board members.

Comment. One commenter stated that the hearing examiner appointed by the Secretary should be a person designated by the State who has responsibility for supervising primary and secondary education in that State—for example, the Superintendent of Public Instruction.

Response. No change has been made. The regulations do not presently state specific qualifications for hearing examiners. The Secretary believes, however, that the hearing examiner must be able to examine the basis of the complaint in an objective manner, to judge impartially the facts presented, and to provide a fair and honest recommendation based on those facts. To accomplish these goals, the Secretary will make every effort to appoint a hearing examiner who is affiliated with none of the parties to the complaint.

Comment. Several commenters stated that the regulations should contain a section that indicates how payments for children residing on Indian lands may be used by an LEA. This section should clarify that the payments are not just for Indian children or for special programs.

Response. A change had been made. Section 223.8, which has been added to these regulations, provides that an "LEA that receives the entitlement referred to in § 223.5 is not required to spend that entitlement exclusively for Indian children or for special programs for Indian children."

Comment. One commenter asked if some students decided to return to the LEA, after the tribe has elected and received other educational services, would Pub. L. 81–874 funds return to the LEA or stay with the other educational services provided by the Bureau of Indian Affairs' school. Another commenter asked a similar question concerning payments for students who choose to remain in the schools of the LEA.

Response. A change has been made. Pub. L. 81–874 payments are made only to LEAs and not to the Bureau of Indian Affairs' schools. Moreover, according to § 223.42(c)(2)(i) of these regulations, Indian students who either remain or return to an LEA in the situations described can be claimed for Pub. L. 81–874 payments by the LEA.

Comment. One commenter stated that the regulations should clearly prohibit LEAs from receiving funds when they are not in compliance with the requirements of Pub. L. 81–874 or when complaints are pending against them.

Response. A change has been made. Section 223.5 of these regulations indicates that, unless a waiver is granted, an LEA that does not establish policies and procedures may not recieve either the entitlement or the preliminary payment defined in § 223.4. The statute and regulations, however, do not require payments to be withheld while a complaint is pending. Rather, payments may only be withheld, under § 223.13(c) or § 223.42(b), after an LEA has failed to comply with a determination by the Secretary or Assistant Secretary that required remedial action.

Comment. One commenter stated that the regulations fail to state clearly the requirements which an LEA must meet before receiving the entitlement provided under section (3)(d)(2)(D) of Pub. L. 81–874.

Response. A change has been made. Section 223.5 specifically requires an LEA to meet the following requirements in order to be eligible for an entitlement:

- The LEA must serve children who reside on Indian lands.
- The LEA must meet the general eligibility requirements in Section 3(c) of Pub. L. 81–874.
- The LEA must establish the policies and procedures described in § 223.10. Section 223.11 provides minimum standards for formulating these policies and procedures.

Comment. One commenter stated that, if monies are withheld during the time that children still attend the public school district, only the children will be hurt.

Response. A change has been made. Section 223.42(b)(1)(i)–(ii) implements the statutory language in Section 5(b)(3) of Pub. L. 81–874 which prohibits the Secretary from withholding funds if the tribe formally requests that those funds be released to the LEA or from withholding funds, during the course of the school year, if it would

substantially disrupt the educational programs of the LEA.

Comment. One commenter stated that the regulations should contain the method under which a tribe would contract for Pub. L. 81–874 funds.

Response. A partial change has been made. Section 223.42(c)(1) of these regulations sets out the options available to a tribe if the LEA does not comply with any remedial action that is required under §§ 223.40–223.41. In addition, the Bureau of Indian Affairs is responsible for promulgating regulations that will ensure an orderly and expeditious transfer of educational services previously provided by LEAs to services under contract with, or provided by, BIA. Under Pub. L. 81–874, however, funds cannot be paid to either BIA or to a tribe because that statute only authorizes payments of Federal assistance to LEAs.

Comment. Several commenters asked whether, in school districts that include children from several tribes, each of the tribes had to be contacted.

Response. A change has been made. Section 223.10, for example, requires an LEA that serves children residing on Indian lands to establish policies and procedures that ensure the participation of Indian tribes and parents of Indian children in the education process. This requirement in no way excuses an LEA from establishing policies and procedures that apply to each tribe that has children in its schools. An LEA may have to establish separate policies for each tribe in order to ensure adequate participation.

Comment. Several commenters suggested that the Indian Parent Committee elected under Part A of Title IV or, if there is not a Title IV committee, the Johnson O'Malley Parent Committee should be the voice of the Indian parents for Pub. L. 81–874 purposes.

Response. No change has been made. For the purpose of filing a complaint under § 223.20 of these regulations, a tribe may, according to § 223.21, designate a group, such as a parent committee, to act on its behalf. If not so designated, § 223.21(b) precludes such a committee from filing a complaint on behalf of Indian parents. Regarding the general opportunities for the participation of tribal officials and parents of Indian children included in these regulations, all parents are entitled to participate.

Comment. Several commenters asked what is meant by "applications, evaluations, and program plans."

Response. A change has been made. Section 223.10(b) of these regulations describes the applications, evaluations, and program plans referred to in Section 5(b)(3)(B)(ii) of Pub. L. 81–874.

Comment. A number of commenters suggested that the regulations should define how Indian children are considered to participate on an equal basis with all other children educated by an LEA. Several other commenters suggested that the definition should be established by the Indian parents and tribes in conjunction with the LEA.

Response. A change has been made. Section 223.10(a) provides that an LEA that serves Indian children residing on Indian lands must give tribal officials and parents of Indian children the opportunity to comment on the participation of Indian children on an equal basis in the school program with all other children educated by the LEA. Under § 223.11(a), the LEA is required to include, in its policies and procedures, specific procedures for how the LEA will accomplish this goal. These procedures must also include how the LEA will assess the extent to which Indian children do participate on an equal basis and how the the LEA will modify its education program to allow Indian children to participate on an equal basis.

Comment. One commenter asked how Indians not affiliated with a tribe but who live on Indian lands file a complaint.

Response. A change has been made. Section 223.21 provides that only a tribe, or its designee, that has students attending an LEA's schools may file a complaint. Section 223.4 defines "Indian tribe" to mean "any Indian tribe, band, nation, or other organized group or community . . . which is recognized as eligible for special programs and services provided by the United States to Indians because of their status as Indians." Thus, Indians who are not affiliated with a tribe may not file a complaint.

Comment. One commenter asked whether parents have any recourse if they have a grievance and the tribe decides not to file it in a complaint. Another commenter stated that a complaint should represent the viewpoint of a majority of the Indian parents whose children are in that particular school district.

Response. No change has been made. Pub. L. 95–48, approved August 6, 1978, amended Section 5(b)(3)(C)(i) of Pub. L. 81–874 to provide discretion to a tribe or its designee in filing a complaint. Thus, it is the tribe's decision whether to pursue a particular complaint. There is no recourse available to parents under the statute because parents cannot file complaints themselves. *See* H.R. Rep. No. 15, 95th Cong., 2d Sess. 115 (1978).

Section 223.21(c) provides that a complaint need not reflect the view of a majority of the parents of Indian children.

Comment. Several commenters stated that the requirements placed on LEAs by the new legislation have the effect of usurping the authority of locally-elected school boards.

Response. No change has been made. Although the Secretary does not believe that Section 5(b)(3) of Pub. L. 81–874 usurps the authority of locally-elected school boards, the Secretary is powerless to change the requirements that Congress has enacted. The statute requires an LEA that claims entitlements based on the number of children residing on Indian lands to establish policies and procedures. The Secretary must enforce this requirement.

Comment. Several commenters suggested that the regulations should explain the basis of a complaint and who may file a complaint.

Response. A change has been made. According to § 223.20, a complaint is based on an allegation that an LEA has failed to establish adequate policies and procedures, to adhere to those policies and procedures, or to take into consideration meaningful Indian input in designing its education program. Section 223.21(a) permits any tribe, or its designee, that has students attending an LEA's schools to file a complaint.

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DEPARTMENT OF EDUCATION

Office of Elementary and Secondary Education

34 CFR Part 222

Special Impact Aid Provisions for Local Educational Agencies That Claim Entitlements Based on the Number of Children Residing on Indian Lands

AGENCY: Department of Education.

ACTION: Notice of Proposed Rulemaking; Cross-reference.

SUMMARY: The Secretary proposes regulations for the Impact Aid program in Title 34 of the Code of Federal Regulations. These regulations implement the amendments, made by the Education Amendments of 1978, Pub. L. 95–561, to Title I (Financial assistance for local educational agencies in areas affected by Federal activity) of the Act of September 30, 1950, Pub. L. 81–874, that apply to local educational agencies claiming entitlements based on the number of children residing on Indian lands

The Secretary invites comments on these proposed regulations.

The text of the regulations on which the Secretary invites comments is published in the Rules and Regulations section of this issue of the Federal Register. The regulations have been adopted as final regulations and will govern this program until the Secretary issues new regulations based on public comment.

DATES: All comments, suggestions, or objections must be received on or before March 23, 1981.

ADDRESS: Comments should be addressed to Ms. Edna K. Cave, Division of Impact Aid, Office of Elementary and Secondary Education, U.S. Department of Education, 400 Maryland Avenue, SW., Room 2109, Washington, D.C. 20202.

FOR FURTHER INFORMATION CONTACT: Ms. Edna K. Cave. Telephone: (202) 245–1975.

Invitation to Comment

For additional details on how to comment, see the preamble of the final regulations for these programs published in this issue of the Federal Register.

(Catalog of Federal Domestic Assistance No. 84.041, School Assistance for Federally Affected Areas—Maintenance and Operations)

Dated: January 15, 1981.

Shirley M. Hufstedler,

Secretary of Education.

[FR Doc. 81-2098 Filed 1-21-81; 8:45 am]

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Thursday,
January 22, 1981

Part VIII

Department of the Interior

Office of Surface Mining Reclamation and Enforcement

Prime Farmlands: Initial Regulatory Program; Final Rules

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 716

Prime Farmland; Initial Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement, U.S. Department of the Interior, Washington, D.C. 20240.

ACTION: Final rules.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (the Office or OSM) is amending a portion of its initial regulatory program (42 FR 62639–62716, December 13, 1977, codified at 30 CFR Chapter VII, Subchapter B) relating to prime farmland. The changes and the basis and purpose of each are discussed below. The Office is required to effect these changes primarily as a result of the decisions of the United States District Court in *In Re: Surface Mining Regulation Litigation*, 452 F. Supp. 327 (D. D.C. 1978) and 456 F. Supp. 1301 (D. D.C. 1978). (The Office is also promulgating regulation changes which are not the direct result of the court's decision.) These final regulations are intended to replace those portions of the prime farmland regulations which the court enjoined and remanded to the Secretary of the Interior for reconsideration, to clarify some provisions of the regulations, and to make the Office's initial regulations with respect to prime farmland more analogous to the permanent regulatory program on prime farmland.

EFFECTIVE DATE: February 23, 1981.

ADDRESSES: Director, Office of Surface Mining Reclamation and Enforcement, Department of the Interior, Washington, D.C. 20240, 202/343–4038.

FOR FURTHER INFORMATION CONTACT: Donal F. Smith, Agricultural Engineer, Branch of Applied Research, Office of Surface Mining, U.S. Department of the Interior, 1951 Constitution Ave. N.W., Washington, D.C. 20240; 703/758–6934.

SUPPLEMENTARY INFORMATION:

Background

On December 13, 1977 (42 FR 62639–62716), the Office promulgated final initial regulations (30 CFR Chapter VII, Subchapter B), as required by Section 501(a) of the Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. Section 1251(a), (SMCRA or the Act). Section 716.7 of the initial regulations pertains to surface coal mining and reclamation operations conducted on prime farmland (42 FR 62663–65 (1977)).

The validity of § 716.7 was challenged in *In Re: Surface Mining Regulation Litigation*, 452 F. Supp. 327 (D. D.C. 1978 and 456 F. Supp. 1301 (D. D.C. 1978). The court's opinions in these cases as they relate to prime farmland will be discussed below in greater detail under the headings "HISTORICAL USE CLAUSE" and "GRANDFATHER EXEMPTION." The regulations discussed under those headings are intended primarily to replace those portions of the initial prime farmland regulations which the court enjoined and remanded to the Secretary of the Interior for reconsideration. These rules together with the unaffected portion of § 716.7 of the initial regulations constitute the initial regulations of the Office with regard to surface coal mining and reclamation operations on prime farmland. Other revisions to the prime farmland grandfather clause are now pending before the agency. (See discussion below.)

Historical Use Clause

Sections 510(d) and 515(b)(7) of the Act provide for special environmental protection during the mining and reclamation process for lands classified as "prime farmland." Section 701(20) of the Act defines prime farmland as having the same meaning as that previously prescribed and published by the Secretary of Agriculture and lists several factors which shall be the components of that definition.

In addition, Section 701(20) requires that land meeting the technical criteria of the Department of Agriculture must also have been historically used for intensive agricultural purposes (30 U.S.C. Section 1291(20)). The statutory definition of prime farmland was implemented in the initial regulations of the Office in § 716.7(a) and (b) (42 FR 62663–65 (1977)). The technical criteria which had previously been published by the Secretary of Agriculture were referenced in § 716.7(b) and the pertinent portion of the technical criteria was reproduced for the convenience of the reader (42 FR 62664 (1977)). Section 716.7(b) was not challenged in the litigation and thus was not an issue in the District Court's opinion.

Section 716.7(a)(1) of the initial regulations further defined the concept of historic use for intensive agricultural purposes by specifying the historical use period (the period of time the land must have been in crop production) as at least 5 years out of the 20 years preceding the date of the permit application (42 FR 62663 (1977)). The District Court enjoined this part of the initial regulations because the regulation was not explained or supported in the preamble and the regulation as written was overly broad. (See *In re: Surface Mining Litigation*, 456 F. Supp. at 1312 (D. D.C. 1978)).

Grandfather Clause

Section 510(d)(2) of the Act, 30 U.S.C. Section 1260(d)(2), sets forth a grandfather exemption with respect to some surface coal mining and reclamation operations as follows:

> Nothing in this Subsection shall apply to any permit issued prior to the date of enactment of this Act, or to any revisions or renewals thereof, or to any existing surface mining operations for which a permit was issued prior to the date of enactment of this Act.

The grandfather clause was implemented in the initial regulations of the Office as § 716.7(a)(2). (See 42 FR 62663 (1977)).

The District Court held that this Section was generally a reasonable exercise of the Secretary's discretion in implementing the Act and properly limited the areas which are exempt from the prime farmland provision of the initial regulations. (See *In Re: Surface Mining Regulation Litigation*, 452 F. Supp. at 340 (D. D.C. 1978)). However, to the extent that § 716.7(a)(2) as originally promulgated attempted to limit the effect of the grandfather exemption to the permit application requirements of Section 510(d)(1) of the Act, the court found that the exemption was an incorrect application of the statute. The court found that the exemption stated in Section 510(d)(2) of the Act specifically applies to the prime farmland performance standards of Section 515(b)(7), 30 U.S.C. Section 1265(b)(7), as well as to the permit application requirement of Section 510(d)(1) of the Act. The Court then enjoined enforcement of the provisions of § 716.7 to the extent they imposed performance standards on operations exempt from those requirements under Section 510(d) of the Act. Thus, the grandfather clause, as a result of the Court's opinion, should be construed as exempting surface coal mining and reclamation operations operating under permits issued prior to August 3, 1977, or renewals or revisions thereof, from both the prime farmland permit application requirements and performance standards.

Supplemental Judicial Decision and Related Rulemaking

As noted above, the District Court has previously upheld the Secretary's interim program regulations implementing the grandfather clause of the Act.

On April 16, 1980, OSM published proposed revisions to 30 CFR 716.7(a)(2)

and its counterpart in the permanent program, 30 CFR 785.17(a). (45 FR 25982–95, April 16, 1980; comment period extended at 45 FR 39448, June 10, 1980; comment period reopened 45 FR 56364, August 25, 1980.) The proposed revision to the permanent program grandfather regulation was mandated by the Department's decision to suspend that regulation as part of the permanent program litigation. OSM proposed a revision in the interim program regulations in an attempt to respond to difficulties encountered in attempting to enforce the regulation as written. States were also having difficulty in applying the interim program regulation.

On May 2, 1980, the U.S. Court of Appeals for the District of Columbia issued a decision invalidating the interim program regulation at 30 CFR 716.7(a)(2). *In Re: Surface Mining Regulation Litigation*, Nos. 78–2190, 78–2191, 78–2192, Slip op. 26–31.

In the proposed regulations which are the subject of this notice (44 FR 33628, June 11, 1979), OSM proposed to revise 30 CFR 716.7(a)(2) to take into consideration the District Court's holding that operations having permits issued prior to August 3, 1977, or renewals or revisions thereof, were exempt from both the prime farmland permit application requirements *and* performance standards. See 44 FR 33628, June 11, 1979. This change was reflected in the deletion of the words, "regarding actions to be taken before a permit is issued", from the original version of 30 CFR 716.7(a)(2), second sentence, December 13, 1977, and is preserved in the final rule published today. Compare 42 FR 62693, December 13, 1977, and 44 FR 33628, June 11, 1979, and see discussion below.

The proposed grandfather regulation for the interim program published on April 16, 1980, does not contain any of the second sentence of 30 CFR 716.7(a)(2) which appeared in previous versions of the regulation. See 45 FR 25995, April 16, 1980. This sentence appears to be unnecessary based on the scope of the grandfather exemption as published in the April 16, 1980 proposed grandfather regulation. However, OSM will retain the second sentence of 30 CFR 716.7(a)(2) until the proposed regulations published on April 16, 1980 are published in the Federal Register in final form. That Federal Register will discuss and explain the treatment of 30 CFR 716.7(a)(2) in its entirety.

Public Hearings

Public hearings on the proposed regulations were held on June 27, 1979, in Washington, D.C., Indianapolis, Indiana, and Kansas City, Missouri. Scheduled morning, afternoon, and evening sessions were held to give the public maximum time to participate in the development of the rules. Members of the public took advantage of these public hearings by submitting their comments, both verbally and written, to representatives from the Office. These comments were then made part of the public record and were carefully considered in preparation of the final rules.

Public Meetings

Representatives of the Office were available to meet with members of the public between June 15, 1979, and July 27, 1979, at their request to receive their advice and recommendations concerning the content of the proposed regulations. Notice of the Office's availability was published in the proposed rules at 44 FR 33628, June 11, 1979. One public meeting was held at 1951 Constitution Avenue, NW., Washington, D.C. The comments received at this meeting were made a part of the public record and carefully considered in preparation of the final rules.

Analysis of Public Comments

The Office received 33 different comments from 30 individuals, organizations, and government agencies during the comment period. This preamble to the final rules contains the bases and purpose, alternatives considered, and decisions made by the Office in responding to significant comments. The Office considered significant comments to be those urging the adoption of viable alternatives or questioning the provisions in the proposed regulations, and those which provided reasonable rationale, justification, technical references, or other materials supporting the recommendations or comments. Insignificant comments, that is, of a more general nature or those which correct minor errors, appear in the administrative record but are not discussed in the preamble.

In its June 11, 1979, Federal Register notice, the Office proposed a total of six changes. Briefly described, these proposed changes were as follows: (1) Defining *historically used for cropland* as 5 out of 10 years; (2) measuring the historical use period from the date of acquisition of the land for mining purposes; (3) providing for the regulatory authority to have flexibility to classify as prime farmland those lands important to the state or local economy; (4) providing for the regulatory authority to have flexibility to classify as prime farmland those lands taken out of cropland use of more that 5 years in 10 due to ownership circumstances which do not relate to the capability of the land to produce crops; (5) substitution of the term "cropland" for "cultivated crops"; and (6) implementing the grandfather clause of the Act (Section 510(d)(2)) as exempting surface coal mining and reclamation operations operating under permits issued prior to August 3, 1977, or renewals or revisions thereof, from both the prime farmland permit application requirements and performance standards of the Act. These proposals and the comments received are discussed below.

Measuring the Historical Use Period

The initial regulations promulgated on December 13, 1977 provide that the date from which the historical use period must be measured is the date of the permit application (42 FR 62693). In its June 11, 1979 notice, the Office proposed to change the date of measurement to the date of acquisition of the land for the purpose of mining. Several commenters felt that the historical use period should begin prior to the date of the permit application. They felt that the whole program would make more sense and could be more easily implemented; that land purchased prior to mining and held out of cropland use would no longer be prime farmland and therefore should not be required to be reconstructed to prime farmland standards; that it may be difficult to establish as a matter of fact, how the land was actually used in instances where a long period of time is involved; that the time period proposed could provide a basis of historical farming determinations far in excess of the past 10-years concept; that the starting data was adequate in the final rules of December 13, 1977, and it should continue to be acceptable; that in some instances the burden of proof would be impossible to comply with; that a time frame starting from the date of filing of a mining application is straight forward, enforceable and workable; that proposed § 716.7(b)(2)(ii) gives the regulatory authority the flexibility to curtail abuses of the present system.

Another commenter felt the historical use period should begin from the date of the Act, August 3, 1977. He felt that the regulations pose an unnecessary hardship on the operators to delve into the use of land acquired many years ago; that local records may not indicate the use of the land, in which case the operator would be forced to base a decision on historical use on the memories and hearsay of local residents, and the belief that, "the years prior to the date of the land purchase would better represent a prime farmland

historical use, because it would not be influenced by the mining activity", (44 FR 14931, March 13, 1979), is mere supposition. Also, the regulation, as proposed, would require the regulatory authority to determine motives for acquiring the land. Furthermore, the land would have to be returned to row crop use despite the historical use as other than cropland. Finally, an operator who is an owner or lessee of prime farmland is as likely, as is any other private owner, to use the land for row crops, in order to make a profit from the land.

Several other commenters supported the historical use clause as proposed by OSM. They felt that the existing regulations provided a loophole for coal operators, and needed revision; that coal companies can control the land and let it remain in pasture 5 years prior to mining; that this type of loophole was being used by coal companies in Illinois until that State passed a law in 1975 which required all prime farmland to be reconstructed to prime farmland standards; that the intent of the Act and initial regulations is to identify a class of very productive soil, "prime farmland", and ensure that those lands were restored to their original productivity.

As a result of careful evaluation of these comments, the Office continues to feel that the years prior to the date of the land purchase would better represent a prime farmland historical use, because it would not be influenced by the mining activity. The Office does not expect the historical use period to extend beyond the year 1949 as stated at 44 FR 14931, March 13, 1979. This will alleviate some of the difficulty in determining land use in the past. The fact that land can be held out of crop land use for a period of time, thus avoiding the prime farmland reconstruction standards, was one of the reasons for changing the date from which the historical use period was to be measured. The Office feels that these rules are more sensible and consistent with the final permanent program regulations. The date of measurement in the permanent program definition at 30 CFR 701.5 has been upheld by the District Court in *In Re: Permanent Surface Mining Regulation Litigation*, No. 79–1144, D.D.C., slip op. at 8, n. 7 (May 16, 1980). It is true that proposed § 716.7(b)(2)(ii) does give the regulatory authority more flexibility to include additional agricultural lands under the prime farmland reconstruction standards. Several commenters have pointed out that a few regulatory authorities have been avoiding the prime farmland reconstruction standards. The Office feels that these State regulatory authorities may not exercise their more stringent options immediately.

Several commenters disagreed with OSM's statement that cropland records for the 5 out of 10 years are readily available from local sources. 44 FR 33628, June 11, 1979. OSM has considered these objections. In instances where specific cropland history is not readily available, the regulatory authority may accept other methods such as affidavits, certifications from landowners, aerial photography, cropping history, etc. to reveal the historical cropland use.

Defining Historically Used for Cropland as 5 Years or More Out of 10 Years

Several comments were received with respect to the historical use period of any 5 years out of the 10 years preceding the date of acquisition of the land for the purposes of mining. Some commenters supported the five year in ten criterion as representative of modern agricultural practices. Most of these commenters supported this criterion only if the full set of changes proposed by OSM are adopted as final rules. They stated that the relationship between the 5 years in 10 years criterion and the start of the historical use period at the date of acquisition of the land for the purposes of mining (together with the other proposed changes) was an important step in preserving prime farmland.

Some commenters felt that the historical use period should remain for 20 years because land ownership of 10 years prior to mining is common where the land was purchased for purposes other than farming. These commenters expressed the belief that much land acquired and left fallow would not fall within the historical use period criteria. Other commenters suggested that five consecutive years be used rather than any five years out of the ten year historical use period citing as support an unspecified conferees' report. An additional commenter suggested that any use for agricultural purposes in the entire past history of land use qualified land as prime farmland and that a specified number of years of historical use is bound to leave out of the prime farmland designation areas suitable for cropland use. Some commenters stated that all soils meeting the U.S. Department of Agriculture criteria for prime farmland should be reclaimed regardless of the historical use of those soils.

The Office is unable to accept those comments which recommend placing no limitations on or eliminating the concept of historical use in the definition of prime farmland. OSM must be guided by the statutory definition of prime farmland which specifies that such land shall meet the technical definition of the U.S. Department of Agriculture and must have been historically used for intensive agricultural purposes. Section 701(20), 30 U.S.C. 1291(20). Congress did not intend that any past use for agricultural activities qualified the land as prime farmland (123 Cong. Rec. 8110, May 20, 1977 (daily ed.) The Office continues to believe that a historical use period of 10 years prior to the date of acquisition of the land for the purpose of mining constitutes a reasonable method for establishing agricultural land use with recent and generally more available data. Fifty percent or more of this period represents the predominant land use, *i.e.*, 5 or more years out of 10. The Offaice finds nothing in the legislative history of the Act to support the assertion that the 5 years must be consecutive.

Providing Flexibility to the Regulatory Authority To Classify Additional Lands a Prime Farmland

OSM's proposed regulations (proposed § 716.7(b)(2) (ii) and (iii)) included provisions to allow regulatory authorities to classify as prime farmland lands important to the State or local economy and lands taken out of cropland use for more than 5 years out of 10 for reasons not related to the capability of the land to produce crops (*e.g.*, retirement, litigation, death). Several commenters felt that proposed § 716.7(b)(2) (ii) and (iii) should be deleted because: (1) the operator is being penalized for management and production decisions by persons over which he has no control, (2) these provisions are vague and overly broad, and (3) the rule is not rational or authorized by the statute. Several commenters also supported these provisions. These subsections are included to permit the regulatory authority to consider local conditions and practices and to protect prime farmland that may be temporarily inactive for reasons not related to crop capability. The Office believes these provisions are consistent with the intent of Congress to allow the States to have a lead role in administering the Act (Section 503) and to have more stringent laws and regulations than those mandated by the Act (Section 505). (See also the preamble to the permanent program regulations at 44 FR 14931–2, March 13, 1979).

One commenter requested a punctuation change with respect to § 716.7(b)(2)(iii) suggesting that a semicolon following the word "or"

preceding subparagraph (iii) will make it clear that subparagraphs (i), (ii), and (iii) are intended to be separate and independent bases for a determination that land has been historically used for cropland.

The Office rejects this comment because these criteria are not intended to be separate and independent bases. The regulatory authority may make a determination based upon "additional cropland history" or "some fact of ownership or the land" to only increase the minimum cropland acreage identified in § 716.7(b)(2)(i). The regulation has been revised to reflect this intent (the phrase on increasing acreage has been moved to the end of subparagraph (iii)).

Other comments suggested that these provisions should be drafted to permit the regulatory authority to exclude small size or odd shape parcels and parcels which do not form a viable economic unit. The Office has not accepted this comment because it has no authority to provide a variance from the specific prime farmland requirements of the Act. However, the initial regulations allow for reasonable flexibility in meeting the standards of the Act where small or odd shaped parcels are involved. These parcels may be consolidated and relocated so long as the requirements of § 716.7 of the regulations are met. Compliance with § 716.7 has a result in which the aggregated amount of prime farmland that is restored equals the amount that existed before mining and satisfies the prime farmland reconstruction requirements.

Substitution of the Term "Cropland" for "Cultivated Crops"

The Act defines prime farmland as lands which meet certain technical criteria and which have been historically used for intensive agricultural purposes (Section 701(20) of the Act). For purposes of the initial regulations, "intensive agricultural purposes" was defined as "cultivated crops." (See §§ 716.7(a)(1) and 716.7(d)(1), 42 FR 62693 and 62694 (1977) respectively.) The Office proposed amending 30 CFR 716.7 to substitute "cropland" for "cultivated crops" because cropland is a term with a long history of use by the Department of Agriculture and is a basis for collection of statistical data on crop production and land use. (See 44 FR 33628, June 11, 1979).

One comment received suggested replacing the term "cropland" with the phrase "intensive agricultural activities", returning to this definition the exact language of the statute. The Office has not made this change. As noted above, the term cropland is appropriate because of its history of use by the governmental agency with responsibility to define prime farmland. In addition and as noted in the preamble to the permanent regulations, itensity of agricultural use refers to the amount of economic input, less land costs, that is expended to produce a crop (44 FR 14931, March 13, 1979).

Intensive farming is farming in which a comparatively large amount of labor and working capital is used per acre of farmland. Accordingly, the Office has defined "intensive agricultural purposes" to mean cropland for purposes of the initial and permanent regulations.

Implementation of Section 510 of the Act (The "Grandfather" Clause)

As noted in the above discussion, the District Court enjoined enforcement of the provisions of 30 CFR 716.7 to the extent they imposed prime farmland performance standards on operations exempt from those requirements under Section 510(d)(2) of the Act. The Office proposed a change which would have the effect of exempting qualified operations from both the prime farmland permit application requirements and performance standards (See proposed § 716.7(a)(2)). The Office received no comments on the proposed change. This revision to the initial regulations does not relieve an operator from compliance with all other applicable performance standards of the initial program for those lands which, but for the application of the grandfather clause, would qualify for classification as prime farmland.

The Office did, however, receive numerous comments on other aspects of the grandfather clause regulations which were not directly affected by the proposal of June 11, 1979. Issues raised in the comments include contiguous expansion, revisions or renewals, use of types of permits utilized in grandfathering decisions, and revegetation standards. Some commenters recommended eliminating grandfathering expansion entirely. The Office is cognizant of concens regarding the implementation of the grandfather clause in Section 510(d) of the Act. Those comments are technically outside the scope of the proposal published for comment on June 11, 1979. Since the close of the comment period on that proposal, OSM has published proposed rules on the scope of Section 510(d)(2) of the Act in the permanent program. (See 45 FR 25982–85, April 16, 1980.) These comments will be transferred to that rulemaking. This action is particularly appropriate since many commenters expressed their general views on the correct interpretation of the statute—an issue fundamental to the April 16, 1980, proposed rulemaking.

Miscellaneous Comments

One commenter noted that the preamble to the proposed regulations implied that the regulatory authority had some flexibility in identifying prime farmland. The Office agrees with this commenter that the Department of Agriculture defines prime farmland (Section 701(20) of the Act) and that the latitude of the regulatory authority is with respect to historical use (30 CFR 716.7(b)(2) (ii) and (iii)). However, no change is required in the regulations.

One commenter suggested that the Office make further provisions for land that has been brought into agricultural use more recently than the 5 years out of 10 years, where special changes such as irrigation or new agricultural techniques, have made such land use feasible in a lesser time period. The commenter felt that the special environmental protection afforded land in use for longer time periods should be made applicable to these newer prime farmlands. The regulatory authority may designate these lands under 30 CFR 716.7(b)(2) (ii) and (iii). Alternatively, the Department of Agriculture may in the future undertake to recognize new techniques in its definition of prime farmland in 7 CFR Part 657, which in turn is part of OSM's definition (See § 716.7(b)(1)). The Office believes that these are the appropriate means for accommodating as yet undefined technological advances.

One commenter suggested that the reference in proposed § 716.7(b)(1) to 7 CFR Part 657 should be changed to 7 CFR 657.5(a). The Office acknowledges that 7 CFR 657.5(a) specifically defines prime farmland and that other lands not classified as prime farmlands (e.g., unique farmland) are also defined in 7 CFR Part 657. However, the Office believes the suggested change is unnecessary since prime farmland is clearly defined in only one subsection of 7 CFR Part 657.

A commenter questioned the proposed change to 30 CFR 716.7(d)(1) as having no explanation. The term "cropland" was placed in § 716.7(d)(1) for reasons stated in the preamble to the proposed change at 44 FR 33628, June 11, 1979. (See also discussion above on comments received on substituting "cropland" for "cultivated crops".)

One commenter questioned the reference to Section 702(d) as a basis for an exemption from the environmental impact statement requirement of the National Environmental Policy Act.

Futhermore, this commenter stated that an impact statement should be prepared since an emergency situation does not exist for revisions to the initial regulations. This comment correctly points out a typographical error. The correct statutory reference in Section 501(a) of the Act. The Office believes that the unqualified exemption in Section 501(a) of the Act applies to all regulations of the initial program. Accordingly, no impact statement has been prepared.

Drafting Information

These changes to the interim program regulations and the accompanying preamble have been drafted by Donald F. Smith, Agricultural Engineer, and Arlo Darlymple, Agronomist, Technical Services and Research, OSM, Washington, D.C. (703) 756-6954.

Statements of Significance and Environmental Impact

The Department of the Interior has determined that this document is not a significant rule and does not require a regulatory analysis under Executive Order 12044 and 43 CFR Part 14. Section 501(a) of the Act [30 U.S.C. Section 1251(a)] exempts this action from the environmental impact statement of the National Environmental Policy Act.

Dated: January 12, 1981.

Joan M. Davenport,

Assistant Secretary—Energy and Minerals.

1. 30 CFR 716.7 (a) and (b) are removed in their entirety and new § 716.7 (a) and (b) is added as follows:

§ 716.7 Prime farmland.

(a) *Applicability.* (1) Permittees of surface coal mining and reclamation operations conducted on prime farmland shall comply with the general performance standards of Part 715 of this chapter in addition to the special requirements of this section.

(2) The requirements of this section are applicable to any permit issued on or after August 3, 1977. Permits issued before that date and revisions or renewals of those permits need not conform to the provisions of this section. Permit renewals or revisions shall include only those areas that—

(i) Were in the original permit area or in a mining plan approved prior to August 3, 1977; or

(ii) Are contiguous and under State regulation or practice would have normally been considered as a renewal or revision of a previously approved plan.

(b) *Definitions.* For purposes of this section, the following definitions are applicable.

(1) *Prime farmland* means those lands which are defined by the Secretary of Agriculture in 7 CFR 657 and which have been historically used for cropland.

(2) *Historically used for cropland* means (i) lands that have been used for cropland for any 5 years or more out of the 10 years immediately preceding the acquisition, including purchase, lease, or option, of the land for the purpose of conducting or allowing through resale, lease, or option the conduct of surface coal mining and reclamation operations; (ii) lands that the regulatory authority determines, on the basis of additional cropland history of the surrounding lands and the lands under consideration, that the permit area is clearly cropland but falls outside the specific 5-years-in-10 criterion, or (iii) lands that would likely have been used as cropland for any 5 out of the last 10 years immediately preceding such acquistion but for some fact of ownership or control of the land unrelated to the productivity of the land, in which case the regulations for prime farmland may be applied to include more years of cropland history only to increase the prime farmland acreage to be protected.

(3) *Cropland* means land used for the production of adapted crops for harvest, alone or in a rotation with grasses and legumes, and includes row crops, small grain crops, hay crops, nursery crops, orchard crops, and other similar speciality crops.

* * * * *

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federal register

Thursday
January 22, 1981

Part IX

Department of Commerce

Bureau of Economic Analysis

Direct Investment Surveys; Solicitation of Comments

DEPARTMENT OF COMMERCE

Bureau of Economic Analysis

15 CFR Part 806

BE-12, Benchmark Survey of Foreign Direct Investment in the United States—1980; Solicitation of Written Public Comment on Proposed Survey Form and Associated Rule Changes

AGENCY: Bureau of Economic Analysis, Commerce.

ACTION: Proposed rules.

SUMMARY: Section 4(b) of the International Investment Survey Act of 1976, Pub. L. 94-472, 90 Stat. 2059, 22 U.S.C. 3101-3108 (the Act), requires that a benchmark survey of foreign direct investment in the United States be conducted at least once every five years. Such a survey will be conducted early in 1981, covering the year 1980.

A draft 1980 BE-12 report form and *Instruction Booklet* have been prepared. Written public comment is solicited on the drafts, the associated rule changes, and the changes in related quarterly and other periodic report forms for reporting foreign direct investment in the United States. The changes are detailed below.

DATES: Written comments must be received by BEA no later than February 23, 1981.

ADDRESS: Written comments should be addressed to the U.S. Department of Commerce, Bureau of Economic Analysis, International Investment Division (BE-50), Washington, D.C. 20230. All comments in response to this notice will be available for public inspection from 8:00 a.m. to 4:00 p.m. in room 608, 1401 K Street, N.W., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: George R. Kruer, Chief, International Investment Division, Bureau of Economic Analysis, U.S. Department of Commerce, Washington, D.C. 20230, (202) 523-0657.

SUPPLEMENTARY INFORMATION: In the September 12, 1980 Federal Register, Volume 45, No. 2[illegible] page 60650-1, the Bureau of Economic Analysis (BEA) requested written public suggestions concerning the content of the 1980 BE-12 report form, and gave an announcement of a public meeting to be held on October 20, 1980 to discuss the written suggestions received and to receive verbal suggestions. The written and verbal suggestions received as a result of the Federal Register notice, suggestions received at a meeting of the Interagency Committee on International Investment Statistics called to discuss the proposed survey, and the requirements of the Act were considered in designing the proposed form.

The Act, in Section 4(b), states that the benchmark survey, "* * * shall, among other things and to the extent he (the President) determines necessary and feasible—

"(1) Identify the location, nature, and magnitude of, and changes in total investment by any parent in each of its affiliates and the financial transactions between any parent and each of its affiliates;

"(2) Obtain (A) information on the balance sheet of parents and affiliates and related financial data, (B) income statements, including the gross sales by primary line of business (with as much product line detail as is necessary and feasible) of parents and affiliates in each country in which they have significant operations, and (C) related information regarding trade between a parent and each of its affiliates and between each parent or affiliate and any other person;

"(3) Collect employment data showing both the number of United States and foreign employees of each parent and affiliate and the levels of compensation, by country, industry, and skill level;

"(4) Obtain information on tax payments by parents and affiliates by country; and

"(5) Determine, by industry and country, the total dollar amount of research and development expenditures by each parent and affiliate, payments or other compensation for the transfer of technology between parents and their affiliates, and payments or other compensation received by parents or affiliates from the transfer of technology to other persons."

Regulations implementing the Act in regard to direct investment are contained in 15 CFR Part 806.

Reproduced as part of this notice are the standard Form BE-12 for all nonbank U.S. affiliates; a shorter, specialized report form for U.S. affiliates in banking (BE-12 BANK), and the *Instruction Booklet*. The *Industry Classifications and Export and Import Trade Classifications Booklet* is not reproduced.

Listed below are some of the major decisions made in drafting the proposed report form that should be considered by those who will have to file a report and those who will use the data.

1. Exemption levels of $1,000,000 of assets, sales, or net income, and 200 acres of U.S. land owned, have been set and a U.S. affiliate below these levels will not be required to file a BE-12 report form, but must file a "Claim for Not Filing a Form BE-12."

2. U.S. affiliates may report on a fiscal year basis rather than a calendar year basis. BEA itself is opposed to fiscal year reporting for several reasons; the most important is that serious distortions will result in aggregating data from reports that may cover any one year period over a span of two years. Nevertheless, the Office of Federal Statistical Policy and Standards has ruled on another BEA form that fiscal year reporting must be permitted in order to reduce the reporting burden. That decision carries over to the 1980 BE-12.

3. A change in the method of reporting by unincorporated U.S. affiliates is being introduced with this survey. In past benchmark surveys and in the quarterly BE-605 and annual BE-15 report forms, an unincorporated affiliate was required to net its asset and liability positions with its foreign parent and to report only the net amount in owners' equity rather than showing the assets and the liabilities separately. Thus, owners' equity represented the net position, including undistributed earnings, of the foreign parent in the U.S. affiliate. Under the new reporting method, all positions that the U.S. affiliate has with its foreign parent will be shown in the proper balance sheet accounts. Thus, if the affiliate has received a long-term loan from its foreign parent that is still outstanding, this will now be shown as long-term debt. Similarly, if it has trade receivables due from its foreign parent, these will now be shown in trade accounts and notes receivable.

This change in reporting affects not only the balance sheet, but also Part III, Section A, "Investment Between U.S. Affiliate and Foreign Parent." It also requires unincorporated U.S. affiliates to report that portion of their earnings that has been distributed.

4. U.S. affiliates will be required to identify the ultimate beneficial owner (UBO) of the foreign investment, except where the UBO is an individual; only the country of location of an individual must be given.

5. A U.S. affiliate must fully consolidate all majority-owned domestic subsidiaries that are also U.S. affiliates of its foreign parent; foreign subsidiaries cannot be fully consolidated.

6. A short form (BE-12 BANK) has been prepared for reporting by U.S. affiliates that are banks.

7. U.S. affiliates must breakdown total employment by BEA industry code, for the eight largest industries in which it is active. For U.S. affiliates engaged in manufacturing activities, a breakdown of production worker employment, hours worked, and wages and salaries paid,

by BEA manufacturing industry code, is required (see Part II, Section I).

8. In the schedule of data by State (Part II, Section K), the gross book value of "all land, and other property, plant, and equipment, wherever carried on the balance sheet" must be disaggregated by State by use. (Would a breakdown of plant and equipment only by State by use be more useful?)

9. A foreign person holding real estate investments that are foreign direct investments in the United States must aggregate all such holdings for the purpose of applying the exemption level tests. If the aggregate of such holdings exceeds one or more of the exemption levels, then the holdings must be reported even if they individually would be exempt.

10. Trade data must be reported on a "shipped" rather than a "charged" basis to conform to official U.S. trade data.

11. Close fiscal year 1979 balances are to be before restatement due to a change in the entity.

The other forms for reporting foreign direct investment in the United States are:

BE-605—Transactions of U.S. Corporation with Foreign Parent

BE-606—Transactions of Unincorporated U.S. Business Enterprise (Except a Bank) with Foreign Parent

BE-606B—Transactions of U.S. Banking Branch or Agency with Foreign Parent

BE-607—Industry Classification Questionnaire

BE-13A—Form for a U.S. Business Enterprise, Business Segment, or Operating Unit that has been Established or Acquired by a Foreign Person or Existing U.S. Affiliate of a Foreign Person

BE-13B—Form for Foreign Person, or Existing U.S. Affiliate of a Foreign Person, that Establishes or Acquires a U.S. Business Enterprise, or a Business Segment or Operating Unit of a U.S. Business Enterprise

BE-14—Report by a U.S. Person who Assists or Intervenes in the Acquisition of a U.S. Business Enterprise by, or Who Enters into a Joint Venture with, a Foreign Person

BE-15—Interim Survey of Foreign Direct Investment in the U.S.

The major changes that will affect these other forms are:

1. Form BE-606 will be eliminated; instead, unincorporated U.S. affiliates will report on the BE-605. The BE-605 instructions will be changed to accommodate its use by unincorporated affiliates.

2. The exemption levels for Forms BE-13 and BE-14 will be raised to $1,000,000.

3. A U.S. affiliate that was partially exempt from filing Form BE-13A and which had to complete only items 1 and 5 through 19 of Form BE-13A, will now be considered totally exempt and rather than filing a partially completed Form BE-13A, will now have to file an "Exemption Claim, Form BE-13A." The latter will contain the same data as item 5 of the BE-12's "Claim for Not Filing a Form BE-12."

4. Data reported on the BE-15 may be for a U.S. affiliate's fiscal year rather than for a calendar year.

5. The aggregation of a foreign person's real estate investments for purposes of the exemption level tests will be imposed for all forms.

6. In general, all special instructions relating to real estate given in Part IV, Section E of the *Instruction Booklet* will be applicable, as appropriate, for the other report forms.

These changes will be effected commencing on January 1, 1981 for reports covering reporting periods or transactions occurring in 1981. BEA may continue to use supplies of old report forms on hand, but they must be filed in accordance with the new regulations once they are adopted. Revised forms are not being printed as part of this notice; they will be handled at a later date like the usual revisions to existing report forms whereby the revised form is submitted to OMB for clearance. OMB will put a notice in the Federal Register that they have received the form for clearance and give the public a period of time in which to comment.

Note.—The Department of Commerce has determined that this proposal is not a significant regulation requiring preparation of a regulatory analysis under Executive Order 12044.

It is therefore proposed to modify Part 806 as set forth below.

George Jaszi,

Bureau of Economic Analysis.

1. The following paragraph is added to § 806.15(a):

§ 806.15 Foreign direct investment in the United States.

(a) Specific definitions.

* * * * *

(8) "Ultimate beneficial owner (UBO)" is that owner, proceeding up the ownership chain beginning with and including the foreign parent, that is not more than 50 percent owned or controlled by another person. (An owner who creates a trust, proxy, power of attorney, arrangement, or device with the purpose or effect of divesting such owner of the ownership of an equity interest as part of a plan or scheme to avoid reporting information, is deemed to be the owner of the equity interest.)

2. In § 806.15, the following paragraphs are redesignated as follows:

(b) becomes (e)
(c) becomes (f)
(d) becomes (g)
(e) becomes (h)
(f) becomes (i)
(g) becomes (j)

3. In § 806.15, the following new paragraphs are inserted:

§ 806.15 Foreign direct investment in the United States.

* * * * *

(b) Beneficial, not record, ownership is the basis of the reporting criteria.

(c) Bearer shares—If the ownership in a U.S. affiliate by any owner in the ownership chain from the U.S. affiliate up to and including the ultimate beneficial owner (UBO) is represented by bearer shares, the requirement to disclose the information regarding the UBO remains with the reporting U.S. affiliate, except where a company in the ownership chain has publicly traded bearer shares. In that case, identification of the UBO may stop with the identification of the company whose capital stock is represented by the publicly traded bearer shares. For closely held companies with non-publicly traded bearer shares, identifying the foreign parent or the UBO as "bearer shares" is not an acceptable response. The U.S. affiliate must pursue the identification of the UBO through managing directors or any other official or intermediary.

(d) Aggregation of real estate investment—A foreign person holding real estate investments that are foreign direct investments in the United States must aggregate all such holdings for the purpose of applying the exemption level tests. If the aggregate of such holdings exceeds one or more of the exemption levels, then the holdings must be reported even if they individually would be exempt.

4. The following changes are made to various paragraphs in § 806.15; reference to lettered paragraphs are after they have been relettered as prescribed above:

a. Paragraph (g) is amended by removing in the first sentence, the word "net" where it precedes "sales."

b. Paragraph (h)(1) is revised as follows:

* * * * *

(1) BE-605—Transactions of U.S. Affiliate, Except an Unincorporated Bank, with Foreign Parent: One report is required for each U.S. affiliate exceeding an exemption level of $1,000,000.

* * * * *

c. Paragraph (h)(2) is removed and paragraph (h)(3) is redesignated as (h)(2).

d. Paragraph (i) is amended in the first sentence, by removing the word "net" where it precedes "sales."

e. Paragraph (j)(3) concerning the BE-13:

1. In subparagraph (i), for Form BE-13A, under Exemptions, *Total*, paragraph (a) is revised as follows:

* * * * *

(a) Residential real estate held exclusively for personal use and not for profitmaking purposes is not subject to the reporting requirements. A residence which is an owner's primary residence that is then leased by the owner while outside his/her country of residence but which the owner intends to reoccupy, is considered real estate held for personal use. Ownership of residential real estate by a corporation whose sole purpose is to hold the real estate and where the real estate is for the personal use of the individual owner(s) of the corporation, is considered real estate held for personal use.

* * * * *

2. In paragraph (b), change the $500,000.00 to $1,000,000.

3. Under Exemptions, *Partial*, the paragraph is revised as follows:

* * * * *

An established or acquired U.S. business enterprise, as consolidated, is exempt if its total assets (not the foreign parent's or existing U.S. affiliate's share) at the time of acquisition or immediately after being established were $1,000,000 or less and it does not own 200 acres or more of U.S. land. (If it owns 200 acres or more of U.S. land, it must report regardless of the value of total assets.) If exempt, the established or acquired U.S. business enterprise must, nevertheless, file an "Exemption Claim, Form BE-12A," to validate the exemption.

* * * * *

4. In subparagraph (ii) for Form BE-13B, the section entitled Total Exemption is revised as follows:

* * * * *

Total Exemption.—The foreign parent or existing U.S. affiliate is exempt from filing a BE-13B if a BE-13A is not required to be filed.

* * * * *

5. In subparagraph (4) concerning Form BE-14: Under Total Exemptions, paragraph (a) is revised as follows:

(a) Residential real estate held exclusively for personal use and not for profitmaking purposes is not subject to the reporting requirements. A residence which is an owner's primary residence that is then leased by the owner while outside his/her country of residence but which the owner intends to reoccupy, is considered real estate held for personal use. Ownership of residential real estate by a corporation whose sole purpose is to hold the real estate and where the real estate is for the personal use of the individual owner(s) of the corporation, is considered real estate held for personal use.

In paragraph (b), change the $500,000.00 to $1,000,000.

5. Section 806.17 is revised as follows:

§ 806.17 Rules and Regulations for BE-12, Benchmark Survey of Foreign Direct Investment in the United States—1980.

A BE-12, Benchmark Survey of Foreign Direct Investment in the United States will be conducted covering 1980. All legal authorities, provisions, definitions, and requirements contained in 806.1 through 806.13, and 806.15 (a), (b), (c) and (d) are applicable to this Survey. Specific additional rules and regulations for the BE-12 Survey are given below.

(a) Basic requirement—A BE-12 report is required for each U.S. affiliate, i.e., for each U.S. business enterprise in which a foreign person owned or controlled, directly or indirectly, 10 percent or more of the voting securities if an incorporated U.S. business enterprise, or an equivalent interest if an unincorporated U.S. business enterprise, at any time during the business enterprise's 1980 fiscal year. A business enterprise's 1980 fiscal year is the business enterprise's financial reporting year that has an ending date in calendar year 1980. For a business enterprise that does not have a financial reporting year, such as investments in unimproved real estate, or does not have a financial reporting year ending in calendar year 1980, its 1980 fiscal year is deemed to be the same as calendar year 1980. A report is required even though the foreign person's equity interest in the U.S. business enterprise may have been established, acquired, or liquidated or sold during the reporting period.

(b) Exemption—A U.S. affiliate as consolidated, or aggregated in the case of real estate investments, is not required to file a BE-12 report if:

(1) Each of the following three items for the U.S. affiliate (not the foreign parent's share) was between −$1,000,000 and +$1,000,000 during the reporting period:

(i) Total assets,

(ii) Sales or gross operating revenues, excluding sales taxes, and

(iii) Net income after provision for U.S. income taxes and

(2) The U.S. affiliate did not own 200 acres or more of U.S. land during the reporting period (if the U.S. affiliate owned 200 acres or more of U.S. land, it must report regardless of the value of the three items listed above). If a U.S. business enterprise is a U.S. affiliate but is not required to file a completed Form BE-12 because it falls below the exemption levels, then it must complete and file a "Claim for Not Filing a Form BE-12" with item 5 of the Claim marked and the information requested in item 5 provided. (The Claim is on the last page of the standard Form BE-12 and should be detached for filing.)

(c) Banks—A specialized report form (Form BE-12 BANK) has been adopted for U.S. affiliates that are banks (including bank holding companies), that is, for U.S. business enterprises over 50 percent of whose total revenues are generated by activities classified in industry code 600. Use of specialized Form BE-12 BANK is at the discretion of BEA; in situations where use of Form BE-12 BANK is not clear-cut, permission to use it must be secured from BEA in advance of filing. Nonbank U.S. affiliates owned by a U.S. affiliate that is a bank or a bank holding company may not be consolidated on Form BE-12 BANK, but must be reported separately on a standard Form BE-12. Activities of nonbank U.S. affiliates that provide support to the parent bank company, such as a real estate subsidiary set up to hold the office building occupied by the parent company, are considered part of the bank activity. Form BE-12 BANK, where its use is permitted, stands in place of Form BE-12, and the instructions given for Form BE-12 BANK should be so construed.

(d) Due date—A completed and certified 1980 Form BE-12 must be filed with BEA not later than (a date will be given in the final notice and will be at least 60 days after the mailout of the forms; mailout is not expected prior to April 30, 1981.)

(e) Inquires concerning Form BE-12 should be directed to: U.S. Department of Commerce, Bureau of Economic Analysis (BE-50/IN), Washington, D.C. 20230. Telephone (202) 523-0547.

The text of the Instruction Booklet and Form BE-12 are set forth below. This material will not appear in the code of Federal. Regulations.

BE-12 Instruction Booklet—Benchmark Survey of Foreign Direct Investment in the United States—1980

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I. Purpose and Legal Authority

A. *Purpose*—Reports on this form are required in order to provide complete and accurate data on the amount, types, and financial and operating characteristics of foreign direct investment in the United States.

B. *Authority*—Reports on Form BE–12 are mandatory under Section 5(b)(2) of the International Investment Survey Act of 1976 (Pub. L. 94–472, 90 Stat. 2059, 22 U.S.C. 3101–3108—hereinafter the "Act"). In Section 3 of Executive Order 11961, the President designated the President designated the Department of Commerce as the federal agency responsible for collecting the require data on direct investment, and the Secretary of Commerce has assigned this responsibility to the Bureau of Economic Analysis (BEA). The implementing regulations are contained in Title 15, CFR, Part 806.

This report has been approved by the Office of Management and Budget under the Federal Reports Act (Pub. L. 931, 77th Congress).

C. *Penalties*—Whoever fails to report may be subject to a civil penalty not exceeding $10,000 and to injunctive relief commanding such person to comply, or both. Whoever willfully fails to report shall be fined not more than $10,000 and, if an individual, may be imprisoned for not more than one year, or both. Any officer, director, employee, or agent of any corporation who knowingly participates in such violation, upon conviction, may be punished by a like fine, imprisonment, or both. (See Section 6 of the Act, 22 U.S.C. 3105.)

D. *Confidentiality*—The information filed in this report may be used only for analytical and statistical purpose and access to the information shall be available only to officials and employees (including consultants contractors and their employees) of agencies designated by the President to perform functions under the Act. The President may authorize the exchanged of the information between agencies or officials designated to perform functions under the Act, but only for analytical and statistical purposes. No official or employee (including consultants and contractors and their employees) shall publish or make available any information collected under the Act in such a manner that the person to whom the information relates can be specifically identified. Reports and copies of reports prepared pursuant to the Act are confidential and their submission or disclosure shall not be compelled by any person without the prior written permission of the person filing the report and the customer of such person where the information supplied is identifiable as being derived from the records of such customer (22 U.S.C. 3104).

II. Definitions

A. *United States*, when used in a geographic sense, means the several States, the District of Columbia, the Commonwealth of Puerto Rico, and all territories and possessions of the United States.

B. *Foreign*, when used in a geographic sense, means that which is situated outside the United States or which belongs to or is characteristic of a country other than the United States.

C. *Person* means any individual, branch, partnership, association, associated group, estate, trust, corporation, or other organization (whether or not organized under the laws of any State), and any government (including a foreign government, the U.S. Government, a State or local government, and any agency, corporation, financial institution, or other entity or instrumentality thereof, including a government sponsored agency).

D. *Foreign person* means any person resident outside the United States or subject to the jurisdiction of a country other than the United States.

E. *Direct investment* means the ownership or control, directly or indirectly, by one person of 10 per centum or more of the voting securities of an incorporated business enterprise or an equivalent interest in an unincorporated business enterprise.

F. *Foreign direct investment in the United States* means the ownership or control, directly or indirectly, by one foreign person of 10 per centum or more of the voting securities of an incorporated U.S. business enterprise or an equivalent interest in an unincorporated U.S. business enterprise, including a branch.

G. *Branch* means the operations or activities conducted by a person in a different location in its own name rather than through an incorporated entity.

H. *Affiliate* means a business enterprise located in one country which is directly or indirectly owned or controlled by a person of another country to the extent of 10 per centum or more of its voting securities for an incorporated business enterprise or an equivalent interest for an unincorporated business enterprise, including a branch.

I. *U.S. affiliate* means an affiliate located in the United States in which a foreign person has a direct investment.

J. *Foreign parent* means the foreign person, or the first person outside the United States in a foreign chain of ownership, which has direct investment in a U.S. business enterprise, including a branch.

K. *Affiliated foreign group* means (i) the foreign parent, (ii) any foreign person, proceeding up the foreign parent's ownership chain, which owns more than 50 per centum of the person below it up to and including that person which is not owned more than 50 per centum by another foreign person, and (iii) any foreign person, proceeding down the ownership chain(s) of each of these members, which is owned more than 50 per centum by the person above it.

L. *Associated group* means two or more persons who, by the appearance of their actions, by agreement, or by an understanding, exercise or appear to exercise, their voting privileges in a concerted manner to influence the management of a business enterprise. The following are deemed to be associated groups:

1. Members of the same family.

2. A business enterprise and one or more of its officers or directors.

3. Members of a syndicate or joint venture

4. A corporation and its domestic subsidiaries.

M. *Foreign affiliate of a foreign parent* means with reference to a given U.S. affiliate, any member of the affiliated foreign group owning the U.S. affiliate that is not a foreign parent of the U.S. affiliate.

N. *U.S. corporation* means a business enterprise incorporated in the United States.

O. *Business enterprise* means any organization, association, branch, or venture which exists for profitmaking purposes or to otherwise secure economic advantage, and any ownership of any real estate.

P. *Intermediary* means any agent, nominee, manager, custodian, trust, or any person acting in a similar capacity.

Q. *Ultimate beneficial owner (UBO)* is that person, proceeding up the ownership chain beginning with and including the foreign parent, that is not more than 50 percent owned or controlled by another person. [A person who creates a trust, proxy, power of attorney, arrangement, or device with the purpose or effect of divesting such owner of the ownership of an equity interest as part of a plan or scheme to avoid reporting information, is deemed to be the owner of the equity interest.]

R. *Lease* is an agreement conveying the right to use property, plant, or equipment (i.e., land and/or depreciable assets), usually for a stated period of time.

1. Capital lease—A long-term lease under which a sale of the asset is recognized at the inception of the lease. These may be shown as lease contracts or accounts receivable on the lessor's books. The assets would not be considered as owner by the lessor.

2. Operational lease—Generally, a lease with a term which is less than the useful life of the asset and the transfer of ownership is not contemplated.

8. *U.S. affiliate's 1980 fiscal year* is the affiliate's financial reporting year that has an ending date in calendar year 1980.

III. General Instructions

A. *Who must report*—A BE-12 report is required for each U.S. affiliate, i.e., for each U.S. business enterprise in which a foreign person owned or controlled, directly or indirectly, 10 percent or more of the voting securities if an incorporated U.S. business enterprise, or an equivalent interest if an unincorporated U.S. business enterprise, at any time during the business enterprise's 1980 fiscal year.

A report is required even though the foreign person's equity interest in the U.S. business enterprise may have been established, acquired, liquidated, or sold during the reporting period.

Beneficial, not record, ownership is the basis of the reporting criteria.

Voting securities, voting stock, ownership interest, equity interest, and voting interest all have the same general meaning and are used more or less interchangeably throughout the instructions and the report form, although one may be more appropriate than the others when referring to a specific business enterprise, or group of enterprises.

B. *Fiscal year reporting period*—The report is to cover the U.S. affiliate's 1980 fiscal year. The affiliate's 1980 fiscal year is defined to be the affiliate's financial reporting year that has an ending date in calendar year 1980. For a business enterprise that does not have a financial reporting year, such as investments in unimproved real estate, or does not have a financial reporting year ending in calendar year 1980, its 1980 fiscal year is deemed to be the same as calendar year 1980. (U.S. affiliates that changed the ending date of their financial reporting year in 1980 should contact BEA to determine what reporting period should be used.)

C. *Calculation of indirect ownership interest*—All direct and indirect lines of ownership interest held by a foreign person in a given U.S. business enterprise must be summed to determine whether the enterprise is a U.S. affiliate of the foreign person for purposes of reporting.

A foreign parent's percentage of indirect ownership interest in a given U.S. business enterprise is the product of the direct ownership percentage of the foreign parent in the first U.S. business enterprise in the ownership chain times that first enterprise's direct ownership percentage in the second U.S. business enterprise times each succeeding direct ownership percentage of each other intervening U.S. business enterprise in the ownership chain between the foreign parent and the given U.S. business enterprise.

If there is more than one line of ownership from the foreign parent, or if other members of the affiliated foreign group hold direct or indirect lines of ownership to the U.S. business enterprise, then all ownership interest lines must be summed to determine if the U.S. business enterprise is a U.S. affiliate of a foreign person.

D. *Accounting methods and records*—Generally accepted U.S. accounting principles should be followed, unless otherwise specified. Corporations should generally use the same methods and records that are used to generate reports to stockholders except where the instructions indicate a variance.

E. *Consolidated reporting by U.S. affiliate*—A U.S. affiliate must file on a fully consolidated domestic (U.S.) basis, including in the full consolidation all of its foreign parent's other *U.S. affiliates* in which it directly or indirectly owns more than 50 percent of the outstanding voting interest. Hereinafter the fully consolidated entity is considered to be one U.S. affiliate.

A separate BE-12 report may be filed by a U.S. affiliate that is more than 50 percent owned by another U.S. affiliate if the first U.S. affiliate is not normally fully consolidated due to unrelated operations or lack of control and provided that written permission has been requested from and granted by BEA.

If a U.S. affiliate is not fully consolidated in its U.S. parent's BE-12 report, it must be listed on Supplement B of the U.S. parent's Form BE-12 and must file its own BE-12 report.

Foreign subsidiaries, branches, or other foreign operations or equity investments of a U.S. affiliate are *not* to be included on a fully consolidated basis, but are to be included only as provided under III.H.

F. *Aggregation of real estate investment*—A foreign person holding real estate investments that are foreign direct investments in the United States must aggregate all such holdings for the purpose of applying the exemption level tests. If the aggregate of such holdings exceeds one or more of the exemption levels, then the holdings must be reported even if they individually would be exempt.

G. *Exemption*—A U.S. affiliate as consolidated, or aggregated in the case of real estate investments, is not required to file a BE-12 report if:

1. Each of the following three items for the U.S. affiliate (not the foreign parent's share) was between −$1,000,000 and +$1,000,000 during the reporting period:

a. Total assets;

b. Sales or gross operating revenues, excluding sales taxes, and

c. Net income after provision for U.S. income taxes; and

2. The U.S. affiliate did not own 200 acres or more of U.S. land during the reporting period (if the U.S. affiliate owned 200 acres or more of U.S. land, it must report regardless of the value of the three items listed above).

If a U.S. business enterprise is a U.S. affiliate but is not required to file a completed Form BE-12 because it falls below the exemption levels, then it must complete and file a "Claim for Not Filing a Form BE-12" with item 5 of the "Claim" marked and the information requested in item 5 filled in. (The Claim is on the last page of Form BE-12 and should be detached for filing.)

H. *Method of accounting for equity investments in business enterprises that are not fully consolidated*—A U.S. affiliate's equity investment in all foreign business enterprises and in U.S. business enterprises that are not fully consolidated should be accounted for as detailed below. Foreign business enterprises must not be fully consolidated with the U.S. affiliate, no matter what the percentage ownership. When equity investments are included under the equity method, intercompany account items *must not* be eliminated.

1. Investment in those business enterprises owned 20 percent or more should be reported using the equity method. However, immaterial investments may be reported using the cost basis provided this method is consistent with normal reporting practice.

2. Investment in those business enterprises owned less than 20 percent should be reported using the cost method.

I. *Changes in the reporting entity*—Changes in the consolidated reporting entity that occurred during FY 1980 reporting period must *not* result in restatement of close FY 1979 balances. The close FY 1979 balances for balance sheet or other items should represent the reporting entity as it existed at the close of FY 1979. This principle applies throughout the report form; for example, in Part III, close FY 1979 intercompany account balances should be those between the foreign parent and the U.S. affiliate as it actually existed at the close of FY 1979.

J. *Reporting by unincorporated U.S. affiliate:*

Directly-owned—A separate BE-12 report shall be filed by each unincorporated U.S. affiliate, including a branch, which is directly owned 10 percent or more by a foreign person; two or more such directly-owned U.S. affiliates may not be combined on a single Form BE-12. The only exception is for U.S. affiliates that are real estate investments (see Special Instructions, Real Estate).

Indirectly-owned—An indirectly-owned unincorporated U.S. affiliate owned more than 50 percent by another U.S. affiliate should be fully consolidated on the report with the U.S. affiliate that holds the ownership interest in it. Otherwise, a separate report is required for each indirectly-owned unincorporated U.S. affiliate, except real estate.

K. *Industry and export and import trade classifications*—A list of explanation of the industry classifications and export and import trade classifications used are given in the revised *"Industry Classifications and Export and Import Trade Classifications Booklet,"* BE-799, which is included as part of the BE-12 package.

L. *Number of BE-12 Part IIIs, Investment and Transactions Between U.S. affiliate and Foreign Parent, to be filed*—A separate Part III is required to be filed by the U.S. affiliate for each foreign parent that the affiliate had during its 1980 fiscal year. If multiple Part III's are required because there was more than one foreign parent, the foreign parent that held the largest percentage of direct ownership interest should be reported on the Part III that is included in the BE-12 report itself. Each other foreign ownership line should be reported on a Form BE-12, Part III-ADDITIONAL. If copies of BE-12, Part III-ADDITIONAL are not available, reproduced copies of BE-12 Part III may be used as necessary.

M. *Bearer shares*—If the ownership in a U.S. affiliate by any owner in the ownership chain up to including the ultimate beneficial

owner (UBO) is represented by bearer shares, the requirement to disclose the information regarding the UBO remains with the reporting U.S. affiliate, except where a company in the ownership chain has publicly traded bearer shares. In that case, identification of the UBO may stop with the identification of a company whose capital stock is represented by the publicly traded bearer shares. For closely held companies with non-publicly traded bearer shares, identifying the foreign parent or the UBO as "bearer shares" is not an acceptable response. The U.S. affiliate must pursue the identification of the UBO through managing directors, or any other official or intermediary.

N. *Required information not available*—All reasonable efforts should be made to obtain information required for reporting. Every question on each form should be answered, except where specifically exempt. When only partial information is available, an appropriate indication should be given.

O. *Estimates*—If actual figures are not available, estimates should be supplied and labeled as such. When data items cannot be fully subdivided as required, totals and an estimated breakdown of the totals should be supplied.

P. *Specify*—When "specify" is included in certain data items, the type and dollar amount of the major items included must be given for at least the items mentioned in the line instruction.

Q. *Space on form insufficient*—When space on a form is insufficient to permit a full answer to any item, the required information should be submitted on supplementary sheets, appropriately labeled and references to the item number and the form.

IV. Special Instructions

A. *Insurance companies*—When there is a difference, the financial and operating data in this report are to be prepared on the same basis as an annual report to stockholders, rather than on the basis of an annual statement to an insurance department. Valuation should be according to normal commercial accounting procedures, *not* at the rates promulgated by the National Association of Insurance Commissioners. Include assets not acceptable for inclusion in the annual statement to an insurance department.

ITEM Trade accounts and trade notes receivable—Include current items such as agents' balances, uncollected premiums, amounts recoverable from reinsurers, and other current notes and accounts receivable (net of allowances for doubtful items) arising from the ordinary course of business.

Trade accounts and trade notes payable—Include current items such as loss liabilities, policy claims, commissions due, and other current liabilities arising from the ordinary course of business. Policy reserves are to be included in "Other non-current liabilities," item 48, unless they are clearly current liabilities.

Sales or gross operating revenues, excluding sales taxes—Include items such as earned premiums, annuity considerations, gross investment income, and items of a similar nature. Exclude income from unconsolidated affiliates that is to be reported in item 59 or 92.

Costs and expenses relating to operations—Include costs relating to sales or gross operating revenues, item 56 such as policy losses incurred, death benefits, matured endowments, other policy benefits, increases in liabilities for future policy benefits, other underwriting expenses, and investment expenses.

B. *Banks*—A specialized report form has been adopted for U.S. affiliates in banking (including bank holding companies); that is, for U.S. affiliates over 50 percent of whose total revenues are generated by activities classified in industry code 600. Use of specialized Form BE-12 BANK is at the discretion of BEA; in situations where its possible use is not clear-cut, permission must be secured from BEA in advance of filing.

Non-bank subsidiaries must not be consolidated with a bank or bank holding company on Form BE-12 BANK, but must be reported separately on standard Form BE-12. An exception is that activities of subsidiaries that are not banks but that provide support to their bank parent, such as a real estate subsidiary set up to hold the office building occupied by the bank parent, are considered bank activities. The specialized report form, where its use is permitted, stands in place of the standard form, and the instructions given should be so construed.

C. *Airlines and ship operators*—U.S. stations, ticket offices, and terminal and port facilities of foreign airlines and ship operators which provide services *only* to the foreign airlines' and ship operators' own operations are not required to be reported. Reports are required when such enterprises produce significant revenues from services provided to unaffiliated persons.

D. *Railroad transportation companies*—Railroad transportation companies should include only the net annual balances for interline settlement items (car hire, car repair, freight revenues, switching revenues, and loss and damage settlements) in items 35, 43 46, 312 and 313. Receipts or payments of the same interline settlement items should be excluded from items 340 and 342.

E. *Real estate*—In the International Investment Survey Act of 1976, the ownership of real estate is defined to be a business enterprise, and if foreign-owned, is a U.S. affiliate of a foreign person. A BE-12 report is required unless the enterprise is otherwise exempt.

Residential real estate held exclusively for personal use and not for profit-making purposes is not subject to the reporting requirements. A residence which is an owner's primary residence that is then leased by the owner while outside the United States but which the owner intends to reoccupy, is considered real estate held for personal use.

Ownership of U.S. residential real estate by a corporation whose sole purpose is to hold the real estate and where the real estate is for the personal use of the owner(s) of the corporation, is considered to be real estate held for personal use and therefore not subject to the reporting requirements.

A foreign person holding real estate investment that are business enterprises reportable as foreign direct investment in the United States must aggregate all such holdings for the purpose of applying the exemption level tests. If the aggregate of such holdings exceeds one or more of the exemption levels, then the holdings must be reported even if they individually would be exempt. A single report form should be filed to report the aggregated holdings. Nevertheless, if preferred, separate reports may be filed, but the aggregate of holdings must be used for the purpose of applying the exemption level tests. If separate reports are filed, they must be filed as a group and notice given that they are all for one owner.

In Part I, Identification of U.S. Affiliate, for real estate investments being reported, BEA is not seeking a legal description of the property, not necessarily the address of the property itself. Since there may be no operating business enterprises as such for the investment, what is wanted is a consistently identifiable investment (i.e., U.S. affiliate) together with an address to which report forms can be mailed so that the investment (affiliate) can be reported on a consistent basis from survey to survey, or period to period. Thus, in item 1 of Form BE-12, the "name and address" of the U.S. affiliate might be:

XYZ Corp. N.V., Real Estate Investments
c/o B&K Inc., Accountants
120 Major Street
Miami, Florida XXXXX

If the investment property has a name, such as Sunrise Apartments, Acme Building, etc., the name and address in item 1 of Form BE-12 might be:

Sunrise Apartments
c/o ABC Real Estate
120 Major Street
Miami, Florida XXXXX

BEA will accommodate foreign owners that wish to have report forms sent directly to them. However, owners should be aware that extra time consumed in mailing to and from a foreign place may make filing deadlines difficult.

There are questions throughout the report form that may not be applicable to certain types of real estate affiliates—questions such as the employer identification number (Part I, item 4), or, for unimproved land held as an investment, number of employees (Part II, item 120); and all of Part II, Section J, Exports and Imports of U.S. Affiliate. In such cases, the items should be left blank.

Persons engaged in a joint venture solely to hold, develop, or operate real estate should report only their share of the venture and consider that share to be a 100 percent owned business enterprise. If the share in the joint venture is directly held by a foreign person, then the foreign person may consider its share to be a 100-percent owned U.S. affiliate; the affiliate should report its prorata share of data as taken directly from the books of the joint venture. If the share in the joint venture is directly held by a U.S. affiliate, then the owning U.S. affiliate should fully consolidate in its BE-12 report its prorata share of the data of the joint venture is taken directly from the books of the joint venture. If two or more foreign persons have a reportable ownership interest in a given joint venture, then each must report on the prorata basis described above in order to avoid duplication in reported data.

Foreign owners of farms, which the owners do not operate themselves, should prepare the income statement and related items based on the extent to which the income from the farm accures to, and the expenses of the farms are borne by, the owner. Generally this means that to the extent the risk of the operation falls on the owner, then the income, expenses and the gain (loss) assignable to the owner or to the farm itself should all be shown in the income statement and related items. For example, even though the operator and other workers on the farm are hired by a management firm, if their wages and salaries are assigned to and borne by the farm operation being reported, then the operator and other workers should be reported as employees of that farm operation and the wages and salaries should be included as an expense in the income statement.

EXAMPLES:

1. If the farm is leased to an operator for a fixed fee, then the owner should report the fixed fee as his "sales or gross operating revenue," and should report the non-operating expenses that he may be responsible for, such as real estate taxes, interest on loans, etc., as expenses in the income statement.

2. If the farm is operated by another person on a share arrangement whereby income and expenses are shared by the owner and operator in some ratio, the owner's share of income should be shown in "sales or gross operating revenues," and the owner's share of operating expenses and the owner's non-operating expenses should be shown elsewhere in the income statement, and in related items, as appropriate.

3. If the farm is operated by a management firm that oversees the operation of the farm and hires an operator, but the operating income and expenses are assigned to the farm, the income and expenses so assigned should be shown in the requested detail in the income statement, and related items, as appropriate. (The report should not show just one item, i.e., the net of income less the management fee, where the management fee includes all expenses.)

F. *Estates, trusts, and intermediaries:*

A *foreign estate* is a person and therefore may have direct investment, and the estate, not the beneficiary, is considered to be the owner.

A *trust* is a person, but is not a business enterprise. The trust shall be considered the same as an intermediary and reporting should be as outlined below. For reporting purposes, the beneficiary(ies) of the trust, or the creator(s) of the trust in the situation detailed in the next sentence, or if there is, or may be, a reversionary interest, shall be considered to be the owner(s) of the investments of the trust for determining the existence of direct investment. When a corporation or other organization creates a trust designating its shareholders or members as beneficiaries, the creating corporation or organization shall be deemed to be the owner of the investments of the trust, or succeeding trusts where the presently existing trust had evolved out of a prior trust, for the purposes of determining the existence and reporting of direct investment.

This procedure is adopted in order to fulfill the statistical purposes of this survey and does not imply that control over an enterprise owner or controlled by a trust is, or can be, exercised by the beneficiary(ies) or creator(s).

Intermediary—

a. If a particular foreign direct investment in the United States is held, exercised, administered, or managed by a U.S. intermediary for the foreign beneficial owner, such intermediary shall be responsible for reporting the required information for, and in the name of, the U.S. affiliate, and shall report on behalf of the U.S. affiliate or shall instruct the U.S. affiliate to submit the required information. Upon so instructing the U.S. affiliate, the intermediary shall be released from further liability to report provided it has informed this Bureau of the date such instructions were given and the name and address of the U.S. affiliate, and has supplied the U.S. affiliate with any information in the possession of, or which can be secured by, the intermediary that is necessary to permit the U.S. affiliate to complete the required reports. When acting in the capacity of an intermediary, the accounts or transactions of the U.S. intermediary with a foreign beneficial owner shall be considered as accounts or transactions of the U.S. affiliate with the foreign beneficial owner. To the extent such transactions or accounts are unavailable to the U.S. affiliate, they may be required to be reported by the intermediary.

b. If a foreign beneficial owner holds a U.S. affiliate through a foreign intermediary, the U.S. affiliate may report the intermediary as its foreign parent but, when requested, must also identify and furnish information concerning the foreign beneficial owner. Accounts or transactions of the U.S. affiliate with the foreign intermediary shall be considered as accounts or transactions of the U.S. affiliate with the foreign beneficial owner.

G. *Partnerships*—Limited partners do not have voting rights in a partnership and therefore cannot have a direct investment in a partnership; their investment is considered to be portfolio investment. Determination of the existence of direct investment in a partnership shall be based on the country of residence of, and the percentage control exercised by, the general partner(s), although the latter may differ from the financial interest of the general partner(s).

H. *Determining place of residence and country of jurisdiction of individuals*—An individual will be considered a resident of, and subject to the jurisdiction of, the country in which physically located, subject to the following qualifications:

1. Individuals who reside, or expect to reside, outside their country of citizenship for less than one year are considered to be residents of their country of citizenship.

2. Individuals who reside, or expect to reside, outside their country of citizenship for one year or more are considered to be residents of the country in which they are residing, except as provided in H.3.

3. Notwithstanding paragraph H.2., if an owner or employee of a business enterprise resides outside the country of location of the enterprise for one year or more for the purpose of furthering the business of the enterprise, and the country of the business enterprise is the country of citizenship of the owner or employee, then such owner or employee shall nevertheless be considered a resident of the country of citizenship provided there is the intent to return within a reasonable period of time.

4. Individuals and members of their immediate families who are residing outside their country of citizenship as a result of employment by the government of that country—diplomats, consular officials, members of the armed forces, etc.—are considered to be residents of their country of citizenship.

V. Response Required When Contacted by BEA

The publication in the Federal Register of the notice implementing this survey is considered legal notice to covered U.S. business enterprises of their obligation to report. Therefore, a report is required from persons subject to the reporting requirements of the BE-12 survey, whether or not they are contacted by BEA. Also, a person, or their agent, to whom a BE-12 report form is sent by BEA, must respond in writing pursuant to Section 806.4 of 15 CFR, Chapter VIII. This may be accomplished either by filing a completed Form BE-12 on a timely basis or, if applicable, by completing and returning the "Claim for Not Filing a Form BE-12," which is included as the last page of Form BE-12, and which is due within 30 days of the date the BE-12 was sent by BEA.

VI. Filing the BE-12

A. *Due date*—A fully completed and certified Form BE-12 is due to be filed with BEA not later than

A U.S. person that is sent a Form BE-12, but that is exempt or not subject to the reporting requirements must file a "Claim for Not Filing a Form BE-12" within 30 days of the date the BE-12 was sent by BEA. (See V. above.) Any other U.S. person that is a U.S. affiliate but that is exempt from completing Form BE-12, must file a "Claim for Not Filing a Form BE-12" within 30 days of the publication in the Federal Register of the notice implementing this survey.

B. *Extension*—Requests for an extension of the reporting deadline will not normally be granted. However, in a hardship case, a written request for an extension will be considered provided it is received at least 15 days prior to the due date of the report and enumerates substantive reasons necessitating the extension. BEA will provide a written response to such requests.

C. *Assistance*—If there are any questions concerning the report, telephone (202) 523-0647 for assistance.

D. *Annual stockholders' report*—Business enterprises issuing annual reports to stockholders are to furnish a copy of their FY 1980 annual report when filing the BE-12 report.

E. *Number of copie.*—A single copy of the BE-12, including any Supplements, is to be filed with BEA. This should be the copy with the address label in Part I, if such a labeled copy has been provided by BEA. You must also retain a file copy of the BE-12 report for five years, to facilitate resolution of any

questions that BEA may have concerning your report. (Both copies are protected by law; see statement on confidentiality in I.D.)

F. *Where to send report*—Return the report to U.S. Department of Commerce, Bureau of Economic Analysis (BE-80/IN), Washington, D.C. 20230.

VII. Instructions for Specific Sections of the Report Form

A. *Employment and employee compensation*—Employment and employee compensation data must be based on payroll records, and relate to activities during the reporting period. The employment and employee compensation data must cover only activities that were charged as an expense on the income statement, charged to inventories, or capitalized during the reporting period. Do not include data related to activities of prior periods, such as those capitalized or charged to inventories in prior years.

1. *Employment* is the average number of employees for the reporting period, including part time employees but excluding home workers and independent sales personnel who are not employees. If possible, the average for the reporting period should be computed as the average of the number of persons on the payroll at the end of each pay period, month or quarter, during the reporting period. Employment at the end of the reporting period may be used as an estimate of average employment only if employment throughout the reporting period did not vary significantly due to seasonal operations, a strike, temporary shutdowns, etc.

2. *Production workers*—Those employees most directly connected with carrying out the activities of the business being reported, up to and including working foremen, but excluding other supervisory employees. They are those employees involved in the physical production of goods, handling and storage of goods, related services (e.g., maintenance and repair), and auxiliary production for plant's own use (e.g., power plant).

3. *Employee compensation* consists of wages and salaries of employees and employer expenditures for all employee benefit plans.

a. *Wages and salaries* are the gross earnings of all employees before deduction of employees' payroll withholding taxes, social insurance contributions, group insurance premiums, union dues, etc. Include time and piece rate payments, cost of living adjustments, overtime pay and shift differentials, bonuses, profitsharing amounts, and commissions. Exclude commissions paid to independent personnel who are not employees.

Wages and salaries include direct payments by employers for vacations, sick leave, severance (redundancy) pay, etc. Exclude payments made by, or on behalf of, benefit funds rather than by the employer. (Employer contributions to benefit funds are included in "employee benefit plans".)

Wages and salaries include in-kind payments, valued at their cost, that are *clearly and primarily of benefit to the employees as consumers.* Do not include expenditures that benefit employers as well as employees, such as for plant facilities, employee training programs, and reimbursements for business expenses.

b. *Employee benefit plans*—Employer expenditures for all employee benefit plans, including those required by government statute, those resulting from a collective-bargaining contract, or those that are voluntary. Employee benefit plans include retirement plans, life and disability insurance, guaranteed sick pay programs, workers' compensation insurance, medical insurance, family allowances, unemployment insurance, severance pay funds, etc. If plans are financed jointly by the employer and the employee, only the contributions of the employer should be included.

4. *Hours worked* by production workers. Include standby or reporting time; exclude hours paid for holidays, vacations, sick leave, or other paid leave.

B. *U.S. merchandise exports and imports*—The data on U.S. merchandise trade between U.S. affiliates and foreigners must be reported on a "shipped" basis, i.e., on the basis of when, where, and to (or by) whom the goods were shipped, irrespective of to (or by) whom the goods were billed or charged. It may be necessary to obtain the shipment data from shipping and receiving, rather than from accounting, records.

The merchandise trade categories given in the *Industry Classifications and Export and Import Trade Classifications Booklet* are not the same as the SIC categories used to classify your company by industry. Please check the trade category descriptions to facilitate accurate answers to the trade questions. (In particular, note that for the trade data, parts and accessories for transportation equipment are, in important instances, classified outside the transportation equipment category.)

1. *U.S. exports and imports* refer to physical movements of goods between the customs area of the United States and the customs area of a foreign country. Consigned goods must be included as a shipment or receipt of merchandise, even though not normally recorded as sales or purchases when initially consigned.

2. *Only goods shipped* between the United States and a foreign country in the U.S. affiliate's 1980 fiscal year should be included, regardless of when the goods were charged or consigned. For example, capital goods shipped by the U.S. affiliate to a foreign parent in fiscal year 1980, that were charged or consigned to the foreign parent in fiscal year 1981, should be included; but such goods shipped in fiscal year 1979 that were charged or consigned to the foreign parent in fiscal year 1980 should by excluded.

3. *U.S. exports* should be valued f.a.s. (free along side) at the U.S. port of exportation. This includes costs incurred up to the point of loading the goods aboard the export carrier including the selling price at the interior point of shipment (or cost if not sold), packaging costs, and inland freight and insurance. It excludes all subsequent costs, such as loading costs, freight and insurance from the U.S. port of exportation, etc.

4. *U.S. imports* should be valued at the contract price, adjusted to an f.a.s. foreign-port-of-exportation basis. This includes all costs incurred up to the point of loading the goods aboard the export carrier, including the selling price at the interior point of shipment (or cost if not sold), packaging costs, and inland freight and insurance. It excludes all subsequent costs, such as loading costs, freight and insurance from the foreign port of exportation, etc.

5. *"Products of shipper"* refers to merchandise which has been produced (i.e., grown, extracted, processed, assembled, or manufactured) by the shipper, or which has been physically changed by the shipper so as to increase the value of the merchandise. Merchandise shipped in essentially the same condition as when purchased is not considered a product of the person shipping the merchandise.

6. *Goods shipped* by an independent carrier or a freight forwarder at the expense of, or on behalf of, a business enterprise, are shipments of that business enterprise.

7. *Country of ultimate destination or origin*—The country of ultimate destination is the country where the goods are to be consumed, further processed, or manufactured, as known to the shipper at the time of exportation. If the shipper does not know the country of ultimate destination, the shipment is credited to the last country to which the shipper knows that the merchandise will be shipped in the same form as when exported. The country of origin is the country where the goods were grown, mined, or manufactured. In instances where the country of origin cannot be determined, the transactions are credited to the country of shipment.

C. *Distribution of selected data by State*—The schedule of employment, wages and salaries, land and other property, plant, and equipment by State covers the 50 States, the District of Columbia, and all territories and possessions of the United States. Include in this schedule only data pertaining to those U.S. business enterprises that are fully consolidated into the reporting U.S. affiliate; foreign business enterprises or operations, whether incorporated or unincorporated, should not be consolidated with the reporting U.S. affiliate and no data for them should be included. Exclude data for employees permanently located outside the United States. The "foreign" category is primarily for use in reporting movable fixed assets temporarily outside the United States or for reporting any foreign fixed assets carried directly on the U.S. affiliate's books.

1. *Location* of employees or of an asset is the U.S. State, territory, or possession in which the person is permanently employed, or in which the land or other property, plant, and equipment is physically located and to which property taxes, if any, on such assets are paid. In the case of equipment which may reside in more than one location during the reporting period, such as transportation equipment, location of the asset is to be—

a. The State, territory, or possession to which property taxes, if any, were paid.

b. If no tax was paid, the State, territory, or possession in which the asset was physically located at the end of the reporting period. (If the plant and equipment is movable, and is temporarily located outside the United States, enter in the "foreign" category.)

2. *Valuation of property, plant, and equipment*—Land and other property, plant, and equipment are to be valued at historical

cost before any allowances for depreciation, depletion, and like charges.

3. *Classification of land and other property, plant, and equipment by use category*—For purposes of this survey, land and other property, plant, and equipment are classified according to various use categories. If a given asset can be classified in more than one of the use categories, the entire asset should be considered to fall within the category best describing its primary use. If not in actual use during the reporting period, classify by expected or intended use.

BILLING CODE 3510-09-M

Form BE-13
(REV. 12-80)

U.S. DEPARTMENT OF COMMERCE
BUREAU OF ECONOMIC ANALYSIS

MANDATORY – CONFIDENTIAL

BENCHMARK SURVEY OF FOREIGN DIRECT INVESTMENT IN THE U.S.

1980

RETURN REPORTS TO: U.S. Department of Commerce, Bureau of Economic Analysis BE-49 (BE), Washington, D.C. 20230

Important Read Instruction Booklet

before completing form. The instructions given below are only a brief summary of certain ones relating to this form.

BANKS – See page of Instruction Booklet regarding special instructions and report forms for reporting by banks and bank holding companies.

• DEFINITIONS

1. Foreign direct investment in the United States means the ownership or control, directly or indirectly, by one foreign person of 10 per centum or more of the voting securities of an incorporated U.S. business enterprise or an equivalent interest in an unincorporated U.S. business enterprise, including a branch.
2. Business enterprise means any organization, association, branch, or venture which exists for profitmaking purposes or to otherwise secure economic advantage, and any ownership of any real estate.
3. Affiliate means a business enterprise located in one country which is directly or indirectly owned or controlled by a person of another country to the extent of 10 per centum or more of the voting securities for an incorporated business enterprise or an equivalent interest for an unincorporated business enterprise, including a branch.
4. U.S. affiliate means an affiliate located in the United States in which a foreign person has a direct investment.
5. U.S. affiliate's 1980 fiscal year is the affiliate's financial reporting year that has an ending date in calendar year 1980.

• REPORTING REQUIREMENTS

1. The exact report – A BE-13 report is required for each U.S. affiliate, i.e., for each U.S. business enterprise in which one foreign person owned or controlled, directly or indirectly, 10 percent or more of the voting securities if an incorporated U.S. business enterprise, or an equivalent interest if an unincorporated U.S. business enterprise, at anytime during the business enterprise's 1980 fiscal year.
2. Consolidated reporting – A U.S. affiliate shall file on a fully consolidated basis, including in the full consolidation all other U.S. affiliates in which it directly or indirectly owns more than 50 percent of the outstanding voting securities. However, the fully consolidated entity is considered to be one U.S. affiliate. See [illegible] page [illegible] Exemption criteria are applied to the consolidated entity.
3. Aggregation of real estate investments – A foreign person holding real estate investments must aggregate all such holdings for the purpose of applying the exemption level tests. If the aggregate of such holdings exceeds one or more of the exemption levels, then the holdings must be reported even if they individually would be exempt.
4. Exemption – A U.S. affiliate so consolidated, or aggregated in the case of real estate investments, is not required to file a report, if:

   (a) Each of the following three items for the U.S. affiliate and the foreign parent's share) was between −$1,000,000 and +$1,000,000 during the reporting period:
   (1) Total assets,
   (2) Sales or gross operating revenues, excluding sales taxes, and
   (3) Net income after provision for U.S. income taxes;

   and

   (b) The U.S. affiliate did not own 200 acres or more of U.S. land during the reporting period (if the U.S. affiliate owned 200 acres or more of U.S. land, it must report regardless of the value of the three items listed above).

   A U.S. affiliate that is not required to file a consolidated Form BE-13 because it falls below the exemption levels, must complete and file a Claim for Not Filing a Form BE-13, with item 1 of the Claim marked, and furnish the information requested in item 2. (The Claim is on the last page of Form BE-13 and should be submitted for filing.)
5. Response required – A person or their agent who is sent a report form by BEA and who claims to not be subject to the reporting requirements must file a completed "Claim for Not Filing a Form BE-13" which is printed on the last page of Form BE-13. The Claim must be filed within 30 days of the date the BE-13 was sent by BEA.
6. Due Date – A completed report on Form BE-13 is due on later than

• ASSISTANCE – Telephone (202) 523-0659.

• GENERAL NOTES

1. Number of acres, number of employees, hours worked, and other non-monetary amounts must be reported to the nearest whole unit.
2. Monetary amounts must be reported in U.S. dollars rounded to the nearest thousand dollars. Do not enter amounts in the shaded portions of any item.
   EXAMPLE: If amount is $1,324,615.00, report as:

Bil.	Mil.	Thous.	Dols.
	1	325	////

3. If an item is between +$500,000 or −$500,000 enter "0."
4. Use parentheses to indicate negative numbers.
5. All questions must be answered in the context of the reporting period delineated in items 8, 9, and 10.

Part I IDENTIFICATION OF U.S. AFFILIATE

1. Name and principal mailing address

A mailing label, if affixed, shows, among other things, the name and address of this U.S. affiliate, as known to BEA. If there are no changes to name and address, write "none" in space below. If there are any changes to name or address, enter correct name and address below in full.

If no mailing label is affixed, or if there is a change in the name and address as given on the mailing label, print name and address in blocks; skip a single block between words.

BEA USE ONLY

Name of U.S. Affiliate

Street or P.O. Box

City and State ZIP Code

2. Is more than 50 percent of the ownership interest in this U.S. affiliate owned by another U.S. affiliate of your foreign parent?

1 ☐ Yes 2 ☐ No

If the answer is "Yes," do not complete this report unless this affiliate qualifies for filing separately and has obtained permission from BEA to do so. Otherwise, the report must reflect information and data for, and be filed in the name of, the fully-consolidated U.S. business enterprise meeting the definition of U.S. affiliate. Please forward this BE-13 survey packet to the U.S. business enterprise owning your company to the extent of more than 50 percent, notify BEA of the action taken, and provide to BEA the name and address of the U.S. business enterprise that is required to file for the fully-consolidated U.S. business enterprise.

(WHEREVER THE INSTRUCTION "MARK ONE" IS GIVEN BELOW, IF IT IS NECESSARY TO MARK MORE THAN ONE ANSWER, GIVE AN EXPLANATION.)

3. Form of organization of U.S. affiliate (Mark one):

1 ☐ Incorporated in U.S.
2 ☐ U.S. partnership
3 ☐ U.S. branch of a foreign person
4 ☐ Real property not in 1–3 above
5 ☐ Business enterprise (unincorporated except, but whose head office is located in the United States and whose business activity is conducted in, or from, the United States
6 ☐ Other – Specify:

4. Enter primary Employer Identification Number used by U.S. affiliate in its U.S. income and payroll taxes.

[ ][ ]–[ ][ ][ ][ ][ ][ ][ ] ← E.I. Number

5. U.S. affiliates fully consolidated in this report:

If this report is for a single unconsolidated U.S. affiliate enter "1" in the box. If more than one U.S. affiliate is fully consolidated in this report, enter the number of U.S. affiliates fully consolidated. (Remember, they are considered to be one U.S. affiliate.) Exclude all wholly-owned U.S. business enterprises, and all foreign business enterprises owned by this U.S. affiliate, from full consolidation; such affiliates must be included in this report on the equity basis, or asset basis if less than 20 percent owned. See consolidation instructions, page of the Instruction Booklet. Given that all-more-than-50-percent-owned U.S. affiliates must be fully consolidated in this report unless permission has been received from BEA to do otherwise, those not fully consolidated must file a separate Form BE-13.)

[ ] ← Number If number is greater than one, Supplement A must be completed.

6. U.S. affiliates not fully consolidated:

Number of U.S. affiliates in which this U.S. affiliate has an ownership interest that ARE NOT fully consolidated in this report.

[ ] ← Number If figure is not zero, Supplement B must be completed. The U.S. affiliate named in item 1 must include data for such U.S. affiliates in this report on an equity basis, and must notify such other U.S. affiliates of their obligation to file a BE-13 in their own name.

7. Does this U.S. affiliate have an equity interest in a foreign business enterprise or conduct operations outside the United States?

1 ☐ Yes 2 ☐ No If "Yes," do not fully consolidate such enterprises in this report; include them in data on an equity basis, or asset basis if less than 20 percent owned.

MANDATORY – This survey is being conducted pursuant to the International Investment Survey Act of 1976 (P.L. 94–472, 90 Stat. 2059, 22 U.S.C. 3101 to 3108 – hereinafter "the Act"), and the filing of reports is mandatory pursuant to Section 5(b)(3) of the Act (22 U.S.C. 3104).

PENALTIES – Whoever fails to report may be subject to a civil penalty not exceeding $10,000 and to injunctive relief commanding such person to comply, or both. Whoever willfully fails to report shall be fined not more than $10,000 and, if an individual, may be imprisoned for not more than one year, or both. Any officer, director, employee, or agent of any corporation who knowingly participates in such violations, upon conviction, may be punished by a like fine, imprisonment, or both. (See Section 6 of the Act, 22 U.S.C. 3105.)

CONFIDENTIALITY – The information filed in this report may be used only for analytical and statistical purposes and access to the information shall be available only to officials and employees (including contractors and contractors' and their employees) of agencies designated by the President to perform functions under the Act. The President may authorize the exchange of the information between agencies or officials designated to perform functions under the Act, but only for analytical and statistical purposes. No official or employee (including contractors and contractors' and their employees) shall publish or make available any information retained under the Act in such a manner that the person to whom the information relates can be specifically identified. Reports and copies of reports prepared pursuant to the Act are confidential and their submission or disclosure shall not be compelled by any person without the prior written permission of the person filing the report and the purposes for which the information supplied is obtainable are being derived from the records of such customer (12 U.S.C. 3104).

Print name and address

U.S. PERSON FOR BEA TO CONSULT ABOUT THIS REPORT:

U.S. TELEPHONE NUMBER: Area Code | Number | Extension

CERTIFICATION The undersigned official certifies that the information contained in this report is correct and complete to the best of his/her knowledge.

Authorized Official's Signature | Type Name and Title | Date

18 U.S.C. 1001 (Crimes and Criminal Procedure) makes it a criminal offense to make a willfully false statement or representation to any department or agency of the United States as to any matter within its jurisdiction. Any officer, director, employee, or agent of any corporation who knowingly participates in a willful failure to report, upon conviction, may be punished by a fine, imprisonment, or both (22 U.S.C. 3105). For a further citation of applicable statutes, see the Instruction Booklet to this form.

Part I – IDENTIFICATION OF U.S. AFFILIATE (Continued)

8. This U.S. affiliate's 1980 fiscal year ends on — Month / Day / Year

NOTE: For a U.S. business enterprise that was a U.S. affiliate for all of FY 1980 – Data for the reporting period should be for the U.S. affiliate's 1980 fiscal year; data for Close FY 1980 should be for the U.S. affiliate as it existed at the ending date of the 1980 fiscal year; and data for Close FY 1979 should be for the U.S. affiliate as it existed one year prior to the 1980 fiscal year date. (Close FY 1979 data must not be restated due to changes in the entity during FY 1980.)

For a U.S. business enterprise that was a U.S. affiliate for only part of FY 1980 – If the enterprise became a U.S. affiliate during the reporting period, the Close FY 1979 data columns should not be used. If the enterprise ceased to be an affiliate during the reporting period, the Close FY 1980 data columns should all be used.

9. Was the U.S. business enterprise a U.S. affiliate for only part of FY 1980?
1 ☐ Yes
2 ☐ No

10. If the answer to item 9 is "Yes," complete one of the following: — Month / Day / Year
Date U.S. business enterprise became a U.S. affiliate.
OR
Date U.S. business enterprise ceased to be a U.S. affiliate.

11. Was there a change in the entity during FY 1980 that caused prior year data to be restated?
1 ☐ Yes *If "Yes," please note that all close FY 1979 data must be before restatement due to a change in the entity, unless otherwise specified. The effect of restatement on retained earnings of an incorporated affiliate or owners' equity for an unincorporated affiliate, must be entered in item 70, and the effect of restatement on property, plant, and equipment accounts must be entered in item 90.*
2 ☐ No

Ownership – Enter percent of ownership, to a tenth of one percent, based on voting stock if an incorporated affiliate or an equivalent interest if an unincorporated affiliate, in this U.S. affiliate held directly by –

	Close FY 1980 (3)	Close FY 1979 (4)
12. All foreign parents of this affiliate – Give name of each (If more than 4, continue on separate sheet):	1 . %	2 . %
a.	////	////
b.	////	////
c.	////	////
d.	////	////
13. All U.S. affiliates of the foreign parents included in item 12	1 . %	2 . %
14. All other U.S. persons	1 . %	2 . %
15. All other foreign persons	1 . %	2 . %
16. TOTAL – Sum of items 12 through 15 →	100.0 %	100.0 %

If there is an entry in item 13, column 1 or column 2, give the information requested for each U.S. affiliate holding a direct ownership interest in this U.S. affiliate (If more than 4, continue on separate sheet).

	U.S. affiliates holding direct ownership interest in this U.S. affiliate				U.S. affiliates in ownership chain which is directly owned by a foreign parent	
	Name (1)	BEA Identification Number (2)	Percent direct ownership in this U.S. affiliate (For the close of each year the sum of these percents for all direct owners must equal item 16) Close FY 1980 (3)	Close FY 1979 (4)	Name (5)	BEA Identification Number (6)
17.			. %	. %		
18.			. %	. %		
19.			. %	. %		
20.			. %	. %		

21. Major activity of fully consolidated U.S. affiliate (Each one)
(For inactive affiliate, indicate the activity pertinent to the last active period; for "start-up," show the intended activity.)

Extracting oil or minerals (including exploration and development) (BEA codes in the 100 series, except 070 and 138)	1 ☐
Manufacturing (fabricating, assembling, processing) (BEA codes in the 200–300 series)	2 ☐
Selling or distributing goods (BEA codes in the 500 series)	3 ☐
Real estate (investing in or engaging in as an operator, manager, developer, lessor, agent, or broker) (BEA codes 640, 650, and 651)	4 ☐
Providing a service (BEA codes in the 400–800 series, and 070 and 138; exclude 640, 650, and 651)	5 ☐
Other – Specify: _____	6 ☐

22. What is the major product or service involved in this activity? If a product, state what is done to it; i.e., whether it is mined, manufactured, sold at wholesale, transported, packaged, etc.

BEA USE ONLY

Part I – IDENTIFICATION OF U.S. AFFILIATE (Continued)

Industry classification of fully consolidated U.S. affiliate (based on value of gross operating revenues) – Enter the appropriate 3-digit industry code(s) and the value (as defined in item 24) associated with each code. For a full explanation of each code, see the Directory Classification and Export and Import Trade Classifications Booklet. If you use fewer than eight codes you must account for total sales. For an inactive affiliate, show the industry classification(s) pertinent to the last active period; for "start-ups" with no sales, show the intended activity(ies).

	Industry code (1)	Sales (2) Bil. Mil. Thous. Dols.
23. Enter code with largest sales	0	0
24. Enter code with second largest sales	0	0
25. Enter code with third largest sales	0	0
26. Enter code with fourth largest sales	0	0
27. Enter code with fifth largest sales	0	0
28. Enter code with sixth largest sales	0	0
29. Enter code with seventh largest sales	0	0
30. Enter code with eighth largest sales	0	0
31. Sales accounted for (Sum of items 23 through 30)		0
32. Sales not accounted for above		0
33. Total sales – Sum of items 31 and 32 and must equal item 56. →		0
BEA USE ONLY ▶		0

Summary of Industry Classification

AGRICULTURE, FORESTRY, AND FISHING

- 010 Agricultural production – crops
- 020 Agricultural production – livestock, except beef cattle feedlots
- 021 Agricultural production – beef cattle feedlots
- 070 Agricultural services
- 080 Forestry
- 090 Fishing, hunting, and trapping

MINING

- 101 Iron ore
- 102 Copper, lead, zinc, gold, and silver ores
- 103 Bauxite and other aluminum ores
- 109 Other metallic ores and metal mining services
- 110 Coal and other nonmetallic minerals, except oil and gas
- 131 Crude petroleum extraction (no refining) and natural gas
- 138 Oil and gas field services

CONSTRUCTION

- 150 Construction

MANUFACTURING

- 201 Meat products
- 202 Dairy products
- 203 Canned and preserved fruits and vegetables
- 204 Grain mill products
- 205 Bakery products
- 206 Beverages
- 209 Other food and kindred products
- 210 Tobacco manufactures
- 220 Textile mill products
- 230 Apparel and other finished products made from fabrics and similar materials
- 240 Lumber and wood products, except furniture
- 250 Furniture and fixtures
- 261 Pulp, paper, and board mills
- 264 Miscellaneous converted paper products
- 265 Paperboard containers and boxes
- 270 Printing, publishing, and allied industries
- 281 Industrial chemicals, plastics materials, and synthetics
- 283 Drugs
- 284 Soap, cleaners, and toilet goods
- 285 Paints and allied products
- 287 Agricultural chemicals
- 289 Chemical products, n.s.k.
- 291 Integrated petroleum refining and extraction
- 292 Petroleum refining without extraction
- 299 Petroleum and coal products, n.s.k.
- 305 Rubber products
- 307 Miscellaneous plastics products
- 310 Leather and leather products
- 321 Glass products
- 329 Stone, clay, cement, and concrete products
- 331 Primary metal products, ferrous
- 335 Primary metal products, non-ferrous
- 341 Metal cans and shipping containers
- 342 Cutlery, hand tools, and hardware
- 343 Metal plumbing fixtures and heating equipment, except electric and warm air
- 344 Fabricated structural metal products
- 345 Screw machine products, bolts, nuts, screws, rivets, and washers
- 346 Metal stampings and forgings
- 349 Fabricated metal products, n.s.k.; ordnance; and coating, engraving, and allied services
- 351 Engines and turbines
- 352 Farm and garden machinery and equipment
- 353 Construction, mining, and materials handling machinery and equipment
- 354 Metalworking machinery and equipment
- 355 Special industry machinery
- 356 General industrial machinery and equipment
- 357 Office, computing, and accounting machines
- 358 Refrigeration and service industry machinery
- 359 Machinery, except electrical, n.s.k.
- 363 Household electrical appliances
- 364 Electric lighting and wiring equipment
- 366 Radio, television, and communication equipment
- 367 Electronic components and accessories
- 369 Electrical machinery, n.s.k.
- 371 Motor vehicles and equipment
- 379 Other transportation equipment, n.s.k.
- 381 Scientific instruments and measuring and controlling devices
- 383 Optical and ophthalmic goods
- 384 Surgical, medical, and dental instruments and supplies
- 386 Photographic equipment and supplies
- 387 Watches, clocks, and watchcases
- 390 Miscellaneous manufactured products, n.s.k.

TRANSPORTATION, COMMUNICATION, ELECTRIC, GAS, AND SANITARY SERVICES

- 441 Petroleum tanker operations
- 442 Other water transportation
- 450 Transportation by air
- 451 Pipeline transportation, including natural gas transmission
- 470 Petroleum storage for hire
- 479 Transportation, warehousing, terminal facilities, travel agents, and related services, n.s.k.
- 481 Communications
- 489 Electric, gas, and sanitary services

WHOLESALE TRADE

- 501 Motor vehicles and automotive parts and supplies
- 503 Lumber and other construction materials
- 504 Farm and garden machinery, equipment, and supplies
- 505 Metals and minerals, except petroleum
- 506 Electrical goods
- 507 Hardware, plumbing and heating equipment and supplies
- 508 Machinery, equipment, and supplies, except farm and garden machinery and equipment
- 509 Miscellaneous durable goods, n.s.k.
- 511 Paper and paper products
- 512 Drugs, proprietaries, and sundries
- 513 Apparel, piece goods, and notions
- 514 Groceries and related products
- 515 Farm-product raw materials
- 517 Petroleum and petroleum products
- 519 Miscellaneous nondurable goods, n.s.k.

RETAIL TRADE

- 540 Food stores and eating and drinking places
- 551 Gasoline service stations
- 599 Retail trade, except gasoline service stations, food stores, and eating and drinking places

FINANCE, INSURANCE, AND REAL ESTATE

- 600 Banking, including bank holding companies
- 610 Finance, except banking
- 630 Insurance carriers, agents, brokers, and services
- 640 Lessors of gasoline service stations and other
- 650 Real estate, except agricultural and forestry and except lessors of gasoline service stations and other
- 552 Real estate, agricultural and forestry
- 660 Combinations of real estate, insurance, loans, and law offices
- 671 Holding companies, excluding bank holding companies
- 672 Individuals, estates, and trusts holding investments

SERVICES

- 700 Hotels, rooming houses, camps, and other lodging places
- 731 Advertising
- 780 Motion pictures, including television tape and film
- 891 Engineering, architectural, and surveying services
- 893 Accounting, auditing, and bookkeeping services
- 894 Religious, charitable, and other groups, associations or organizations operating on a nonconvenient, nonprofit basis
- 899 Other personal business services, n.s.k., provided on a commercial basis

Part II – FINANCIAL AND OPERATING DATA OF U.S. AFFILIATE

- Use U.S. generally accepted accounting principles unless otherwise specified. All data must represent a full consolidation of domestic nonbank U.S. affiliates only; include other U.S. and foreign business enterprises on the equity basis, or cost basis if less than 20 percent owned.
- Close FY 1979 balances should not be restated due to changes in the entity.
- U.S. AFFILIATES THAT ARE INSURANCE COMPANIES OR IN REAL ESTATE – See the special instructions in the Instruction Booklet, page .
- IMPORTANT DATE – UNINCORPORATED U.S. AFFILIATES – A change in method of reporting has been instituted for unincorporated U.S. affiliates commencing with this survey. Before proceeding, see discussion of change as given in the Instruction Booklet, page .

IMPORTANT EXAMPLE: Report all dollar figures below in thousands of U.S. dollars, as illustrated:

EXAMPLE: If figure is $2,125,628,000.00

Bil.	Mil.	Thous.	Dols.
2	125	628	

SECTION A – BALANCE SHEET

UNINCORPORATED U.S. AFFILIATE: All asset and liability items should be disaggregated in the detail shown; in particular, receivables and payables between the affiliate and the foreign parent should be shown in the proper sales and liability accounts of the affiliate rather than being included only as a net amount in total owners' equity. Include assets and liability items of the U.S. affiliate that are carried only on an owners' basis.

	Balances							
	Close FY 1980 (1)				Close FY 1979 (estimated) (2)			
	Bil.	Mil.	Thous.	Dols.	Bil.	Mil.	Thous.	Dols.
• ASSETS								
34. Cash items – Deposits in financial institutions and other cash items. Do NOT include overdrafts here as negatives.	1 / 5				2 / 6			
35. Trade accounts and trade notes receivable, current, net of allowances for doubtful items.	1				2			
36. Other current receivables, net of allowances for doubtful items.	1				2			
37. Inventories – Land development companies should exclude land held for resale (include in item 39); finance and insurance companies should exclude inventories of marketable securities (include in item 38 or item 42, as appropriate).	1				2			
38. Other current assets, including current marketable securities.	1				2			
39. Property, plant, and equipment, net – Land, timber, mineral rights, structures, machinery, equipment, special tools, shipping containers, construction in progress, and capitalized tangible and intangible exploration and development costs of the affiliate, at historical cost net of accumulated depreciation, depletion, amortization, and like charges. Include items on capital leases from others, per FASB 13. Exclude all other types of intangible assets, and land held for resale. (An unincorporated affiliate should include items owned by its foreign parent but which are in the affiliate's possession whether or not carried on its own books or records.)	1				2			
40. Equity investment in other U.S. affiliates that are not fully consolidated – For those owned 20 percent or more, show on the equity basis to include equity in undistributed earnings since acquisition; for those owned less than 20 percent, show at cost.	1				2			
41. Equity investment in foreign business enterprises owned 20 percent or more – Show on the equity basis to include equity in undistributed earnings since acquisition.	1				2			
42. Noncurrent investments not shown in items 40 and 41 – Noncurrent marketable securities, other equity investments whether carried at cost or on equity basis, and other investments.	1				2			
43. Trade accounts and trade notes receivable, noncurrent, net of allowances for doubtful items	1				2			
44. Other noncurrent assets – Intangible assets, net of amortization, and other noncurrent assets not included above.	1				2			
45. TOTAL ASSETS – Sum of items 34 through 44. →	1 / 5				2 / 6			
• LIABILITIES								
46. Trade accounts and trade notes payable, current	1				2			
47. Other current liabilities – Current portion due of long-term debt, overdrafts, and other current liabilities not included in item 46; having an original maturity of one year or less.	1				2			
48. Long-term debt – Debt with an original maturity of more than one year or with no stated maturity, and debt with an original maturity of one year or less that has been retained, or with respect to which there is the intention and the ability to renew, extend or refinance for more than one year. Include capitalized lease obligations; exclude current portion due of long-term debt.	1				2			
49. Other noncurrent liabilities – Items other than those identifiable as long-term debt, such as deferred taxes and unconsolidated minority interest in consolidated U.S. subsidiaries. Specify major items:	1				2			
50. TOTAL LIABILITIES – Sum of items 46 through 49. →	1 / 5				2 / 6			
• OWNERS' EQUITY (INCORPORATED AFFILIATE ONLY, ITEMS 51–54)								
51. Capital stock – Common and preferred, voting and non-voting.	1				2			
52. Additional paid-in capital	1				2			
53. Retained earnings (deficit)	1				2			
54. Treasury stock.	1 ( )				2 ( )			
• TOTAL OWNERS' EQUITY (INCORPORATED OR UNINCORPORATED U.S. AFFILIATE)								
55. Items 51 + 52 + 53 + 54 for incorporated U.S. affiliate. For an unincorporated U.S. affiliate, give no breakdown in items 51–54, but enter total owners' equity in this item. For both incorporated and unincorporated affiliates, total owners' equity must equal item 45 minus item 50.	1 / 5				2 / 6			

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Part II – FIN

SECTION B

• INCOME

56. Sales or gross o… or gross operating… items listed thro…

57. Income from affi… report equity in e…

58. Equity in net inc… in item 61 – Exp…

59. Income from affi… business enterpris… owned less than 2…

60. Net realized and … of investment ass… value of the affilia… during the reporting… of assets, whether…

61. Other income – N…

62. TOTAL INCOME

• COSTS AND EXPEN…

63. Costs of goods s… or gross operating… and to other perso… exclude all other …

64. Selling, general, …

65. Income taxes – P…

66. Other costs and e… out of consolidat…

67. TOTAL COSTS A…

• NET INCOME

68. Net income after …

SECTION C

69. Balance, close F… amount item from …

70. Increase (decrease… Specify reasons for…

71. FY 1979 closing …

72. Net income – (Ite…

73. Dividends or remi… out of current or pr… enter amount of cur…

74. Net realized and … therefore exclude… unincorporated affili… income tax liability…

75. Other increases (… dividends, or in t… of capital). Specify …

76. FY 1980 closing b… item 53, column 1…

SECTION D

77. Increase (decrease… stock items, consi… Specify –

Part II – FINANCIAL AND OPERATING DATA OF U.S. AFFILIATE (Continued)

SECTION B — INCOME STATEMENT
(Net income must be calculated in accordance with the "all inclusive" concept of the income statement.)

	Amount (1) Mil.	Thous.	Dols.
• INCOME			
56. Sales or gross operating revenues, excluding sales taxes – Gross sales minus returns, allowances, and discounts, or gross operating revenues, both exclusive of sales or consumption taxes levied directly on the consumer and excise taxes levied directly on manufacturers, wholesalers and retailers.	56		
57. Income from other U.S. affiliates for which investment is shown in Item 40 – For those owned 20 percent or more, report equity in earnings during the reporting period; for those owned less than 20 percent, report dividends received.	57		
58. Equity in net income of foreign business enterprises owned 20 percent or more, for which investment is shown in Item 41 – Equity in earnings during the reporting period.	58		
59. Income from other equity investments – Income from equity investments included in Item 38 or Item 42. For those business enterprises owned 20 percent or more, report equity in earnings during the reporting period; for those owned less than 20 percent, report dividends received. Do not include any interest income.	59		
60. Net realized and unrealized capital gains (losses) – Include gains (losses) resulting from the sale or disposition of investment securities, property, plant, and equipment, or other assets; those resulting from changes in the dollar value of the affiliate's foreign currency denominated assets and liabilities due to changes in foreign exchange rates during the reporting period; and all other recognized capital gains (losses), including those resulting from revaluation of assets, whether or not realized.	60		
61. Other income – Non-operating and other income not included above. Specify	61		
62. TOTAL INCOME – Sum of Items 56 through 61. →	62		
• COSTS AND EXPENSES			
63. Costs of goods sold –Operating expenses (other than selling, general and administrative expenses) that relate to sales or gross operating revenues, Item 56. Include production royalty payments to governments, their subdivisions and agencies, and to other persons. Include depletion charges representing the amortization of the actual cost of capital assets, but exclude all other depletion charges.	63		
64. Selling, general, and administrative expenses.	64		
65. Income taxes – Provision for U.S. Federal, State, and local income taxes. Exclude production royalty payments.	65		
66. Other costs and expenses not included above, including underlying minority interest in profits that arises out of consolidation. – Specify major items:	66		
67. TOTAL COSTS AND EXPENSES – Sum of Items 63 through 66 →	67		
• NET INCOME			
68. Net income after provision for U.S. Federal, State, and local income taxes (Item 62 minus Item 67).	68		

SECTION C — CHANGE IN RETAINED EARNINGS OF INCORPORATED U.S. AFFILIATE OR IN TOTAL OWNERS' EQUITY OF UNINCORPORATED U.S. AFFILIATE

	Amount (1) Mil.	Thous.	Dols.
69. Balance, close FY 1979 before restatement due to a change in the entity, if any – Incorporated affiliates, enter amount from Item 53, column 2; unincorporated affiliates, enter amount from Item 54, column 2.	69		
70. Increase (decrease) to FY 1979 closing balance resulting from restatement due to a change in the entity. Specify reasons for change.	70		
71. FY 1979 closing balance as restated – Item 69 plus Item 70.	71		
72. Net income – Enter amount from Item 68.	72		
73. Dividends or remitted earnings – Incorporated affiliates, enter amount of dividends declared, inclusive of withholding taxes, out of current or prior period income, on common and preferred stock, excluding stock dividends. Unincorporated affiliates, enter amount of current or prior period net income distributed to owners.	73		
74. Net realized and unrealized capital gains (losses) that were not included in the determination of net income and therefore excluded from Item 68, but that were taken directly to retained earnings or to a surplus account for an incorporated affiliate, or to owners' equity for an unincorporated affiliate. Report amount after giving effect to income tax liability (benefit) if any, on the gains (losses). Specify –	74		
75. Other increases (decreases) in retained earnings of an incorporated affiliate, including stock or liquidating dividends, or in total owners' equity of an unincorporated affiliate, including capital contributions (return of capital). Specify –	75		
76. FY 1980 closing balance – Sum of Items 71, 72, 74, and 75 minus Item 73. For incorporated affiliates, must equal Item 53, column 1; and for an unincorporated affiliate, must equal Item 54, column 1.	76		

SECTION D — CHANGE IN ADDITIONAL PAID-IN CAPITAL OF INCORPORATED AFFILIATE

	Amount (1) Mil.	Thous.	Dols.
77. Increase (decrease) in all additional paid-in, or contributed, capital, in addition to or in excess of capital stock items, causing difference between close FY 1980 and close FY 1979 balances of Item 52. Specify –	77		

Part II – FINANCIAL AND OPERATING DATA OF U.S. AFFILIATE (Continued)

SECTION E – COMPOSITION OF EXTERNAL FINANCES OF U.S. AFFILIATE

	Total (1)	Foreign parent(s) and its (their) foreign affiliates (2)	Other foreign persons, including foreign business enterprises owned by this U.S. affiliate (3)	U.S. persons (4)
• CLOSE FY 1980:	Bil. Mil. Thous. Dols.	Bil. Mil. Thous. Dols.	Bil. Mil. Thous. Dols.	Bil. Mil. Thous. Dols.
Current liabilities – Sum of items 78 and 79, column 1, must equal sum of items 86 and 87, column 1				
78. To banks	0	0	0	0
79. To other than banks				
Long-term debt – Sum of items 80 and 81, column 1, must equal item 45, column 1				
80. To banks				
81. To other than banks				
82. Current receivables – Column 1 must equal sum of items 35 and 36, column 1				
83. Noncurrent financial instruments and noncurrent receivables – Column 1 must equal sum of item 43 and that part of item 42 that is financial investments, column 1				
84. Total owners' equity – For incorporated U.S. affiliates, column 1 must equal sum of items 91, 92, and 93, column 1; for unincorporated U.S. affiliates, column 1 must equal item 38, column 1 →	0	0	0	0
• CLOSE FY 1979, before restatement due to a change in the entity:				
Current liabilities – Sum of items 86 and 87, column 1, must equal sum of items 78 and 79, column 2				
85. To banks	0	0	0	0
86. To other than banks				
Long-term debt – Sum of items 87 and 88, column 1, must equal item 45, column 2				
87. To banks				
88. To other than banks				
89. Current receivables – Column 1 must equal sum of items 35 and 36, column 2				
90. Noncurrent financial instruments and noncurrent receivables – Column 1 must equal sum of item 43 and that part of item 42 that is financial investments, column 2				
91. Total owners' equity – For incorporated U.S. affiliates, column 1 must equal sum of items 91, 92, and 93, column 2; for unincorporated U.S. affiliates, column 1 must equal item 38, column 2 →	0	0	0	0
BEA USE ONLY ▶	0	0	0	0

SECTION F – LAND AND OTHER PROPERTY, PLANT, AND EQUIPMENT

Land and other property, plant, and equipment includes all land and other property, plant, and equipment carried anywhere on the U.S. affiliate's balance sheet, whether or not the intent is to hold and actively use the asset in the operating activity of the business. Land refers to any part of the earth's surface; other property, plant, and equipment includes timber, mineral and like rights owned, all structures, machinery, equipment, special tools, and other depreciable property, construction in progress, and capitalized intangible and intangible exploration and development costs, but excludes other types of intangible assets. In addition to items carried in property, plant, and equipment (item 39), such items may be carried in noncurrent investments (item 43), or in other current or noncurrent assets.

Items, including land, being obtained from others pursuant to capital leases are to be considered as owned by the affiliate; items which the affiliate has sold on a capital lease basis are not to be considered as owned by the affiliate. The capitalized value of timber, mineral, and like rights leased by the affiliate from others is to be included.

Expenditures cover all acquisitions by, or transfers to, the U.S. affiliate of the items detailed above, irrespective of where carried on the balance sheet. Exclude from expenditures all changes in land and in other property, plant, and equipment accounted for by a change in the entity (i.e., due to mergers, acquisitions, divestitures, etc.) during your FY80 fiscal year; such changes are separately accounted for in item 99.

	Land		Other property, plant, and equipment	
	Number of acres (1)	Gross book value (historical cost) (2)	Gross book value (historical cost) (3)	Net book value (4)
• Land and other property, plant, and equipment at close of FY 1980:		Bil. Mil. Thous. Dols.	Bil. Mil. Thous. Dols.	Bil. Mil. Thous. Dols.
92. Carried in property, plant, and equipment accounts – Column 2 plus column 4 must equal item 39, column 1.		0	0	0
93. Carried in noncurrent investments – that part of item 43 that is land or other property, plant, and equipment.		0	0	0
94. Carried elsewhere on balance sheet (Specify where):		0	0	0
95. Total – Sum of items 92 through 94 →	0	0	0	0

	Amount (1)
• Schedule of changes from FY 1979 closing balances to FY 1980 closing balances:	
Balances at close FY 1979, before restatement due to a change in the entity:	Bil. Mil. Thous. Dols.
96. Gross book value (historical cost) of all land and other property, plant, and equipment, wherever carried on balance sheet	0
97. Accumulated depreciation and depletion applicable to assets included in item 96	0
98. Net book value of assets included in item 96 – Item 96 minus item 97	0
Changes during FY 1980:	
99. If answer to item 11 was "Yes," give amount by which the net book value in item 98 would be restated due to a change in the entity. If a decrease, put amount in parentheses.	0
Expenditures by the U.S. affiliate for, or transfers into the U.S. affiliate of:	
100. Land	0
101. Mineral rights	0
102. New* plant, equipment and property other than land and mineral rights	0
103. Used* plant, equipment, and property other than land and mineral rights.	0
104. Depreciation and like charges applicable to assets defined for inclusion in this section	0
105. Depletion and like charges applicable to assets defined for inclusion in this section	0
106. Net book value of sales, retirements, or transfers out of assets defined for inclusion in this section. Other increases (decreases)–Specify:	0
Balances at close of FY 1980:	
107. Net book value – Combine sum of items 96, 99, 100, 101, 102, and 103, minus sum of items 104, 105, and 106; and must also equal item 95, column 2 plus column 4	0
108. Accumulated depreciation, depletion, and like charges applicable to assets included in item 107	0
109. Gross book value (historical cost) of all land and other property, plant, and equipment, wherever carried on balance sheet – Sum of items 107 and 108, and also must equal item 95, column 2 plus column 3.	0

* If it would be burdensome to exclude all used plant, equipment, etc., from new, then other used items may be included in item 102 and only major items of used reported in 103.

Part II – FINANCIAL AND OPERATING DATA OF U.S. AFFILIATE (Continued)

SECTION G — INTEREST, TAXES, AND SUBSIDIES

	Amount (1) Bil. Mil. Thous. Dols.
110. Interest received by U.S. affiliate from, or credited to U.S. affiliate by, all payers (including foreign parents and affiliates), net of tax withheld at the source. Do not net against interest paid (item 111).	0 0
111. Interest paid or credited to all payees (including foreign parents and affiliates), by U.S. affiliate, gross of tax withheld by the affiliate. Do not net against interest received (item 110).	0
112. Production royalty payments – Include amounts paid or accrued for the year to U.S. Federal, State, or local governments, their subdivisions and agencies for production royalties for natural resources.	0
113. Taxes (other than income and payroll taxes) and non-tax payments (other than production royalties) – Amount paid or accrued for the year, net of refunds or credits, to U.S. Federal, State, or local governments, their subdivisions and agencies for sales, consumption and excise taxes; property and other taxes on the value of assets and capital; any remaining taxes (other than income and payroll taxes); and all payments and accruals of non-tax liabilities (other than for purchases of goods and services and payments of production royalties), such as import and export duties, license fees, fines, penalties, and similar items.	0
114. Subsidies and grants received – Monetary and other grants received or accrued from U.S. Federal, State, or local governments, their subdivisions and agencies, that are not payments for property, goods, or services purchased from this affiliate, whether such subsidies or grants are reflected in income of the affiliate, or are used for investment or are to cover losses of property, plant, and equipment.	0 0

SECTION H — RESEARCH AND DEVELOPMENT (R&D)

	Amount (1) Bil. Mil. Thous. Dols.
115. Research and development expenditures, calculated in accordance with FASB-2. All R & D costs incurred, including depreciation, amortization, wages and salaries, taxes, cost of materials and supplies, allocated overhead, indirect R & D costs, and the costs of R & D conducted by others on behalf of the U.S. affiliate. Exclude costs incurred in R&D activities conducted for others under a contractual arrangement (such as those reported in item 116).	0 0
116. Federally-funded R&D expenditures – R&D expenditures not included in item 115, but conducted under a contractual arrangement for the Federal government, its subdivisions and agencies.	0 0

SECTION I — EMPLOYMENT AND EMPLOYEE COMPENSATION

Employment and compensation data should be based on payroll records. They should relate to activities during the reporting period regardless of whether such activities were charged as an expense on the income statement, charged to inventories, or capitalized. Do NOT include data related to activities of a prior period, such as those capitalized or charged to inventories in prior periods. See Instruction Booklet, page .

• EMPLOYMENT – Report the average of the number of persons on the payroll at the end of each pay period, month, or quarter, during the reporting period. Include part-time employees.

	Number of employees (1)
117. Research and development managers, scientists, and engineers, and other professional and technical employees engaged in research and development	0
118. All other employees	0
119. TOTAL NUMBER OF EMPLOYEES – Sum of items 117 and 118. →	0
120. Number of employees in item 119 covered by collective bargaining agreements	0

• EMPLOYEE COMPENSATION – All expenditures made by employer in connection with the employment of workers, including cash payments, payments in-kind, and employer expenditures for employee benefit plans.

	Total, for all employees (1) Bil. Mil. Thous. Dols.
121. Wages and salaries – Employees' gross earnings (before payroll deductions), and all direct and in-kind payments by the employer to employees	0 0
122. Employee benefit plans – Employer expenditures for all employee benefit plans, including those required by statute, such as employer's social security taxes, those resulting from collective bargaining contracts, and those that are voluntary.	0
123. TOTAL EMPLOYEE COMPENSATION – Sum of items 121 and 122 →	0 0

• Employment and wage and salary data by industry	Industry Code – Enter respective industry codes from items 20 through 30 (1)	Number of employees engaged in activities encompassed in each industry code in column 1 (2)	To be completed only for the industry codes listed in column 1 that fall within manufacturing – SIC codes 201 through 399: Number of production workers engaged in activities encompassed in each manufacturing industry code in column 1 (3)	Number of hours of work for which the production workers in column 3 were paid (4)	Wages and salaries paid to production workers in column 3 (5) Bil. Mil. Thous. Dols.
124. Code of industry with largest sales	0	0	0	0	0 0
125. Code of industry with second largest sales	0	0	0	0	0
126. Code of industry with third largest sales	0	0	0	0	0
127. Code of industry with fourth largest sales	0	0	0	0	0
128. Code of industry with fifth largest sales	0	0	0	0	0
129. Code of industry with sixth largest sales	0	0	0	0	0
130. Code of industry with seventh largest sales	0	0	0	0	0
131. Code of industry with eighth largest sales	0	0	0	0	0
132. Employees in central administrative offices and headquarters	//////	0	//////	////	//////////
133. Amount accounted for above – Sum of items 124 through 132	//////	0	0	0	0 0
134. Employees not accounted for above	//////	0	//////	////	//////////
135. TOTAL EMPLOYMENT – Column 2 must equal item 119 →	//////	0	//////	////	//////////
SEA USE ONLY ▶	0	0	0	0	0

Part II – FINANCIAL AND OPERATING DATA OF U.S. AFFILIATE (Continued)

SECTION J EXPORTS AND IMPORTS OF U.S. AFFILIATE – GOODS ONLY, DO NOT INCLUDE SERVICES

IMPORTANT NOTES: This section requires data on U.S. merchandise trade for the U.S. affiliate's reporting period. The data must be reported on a "shipped" basis, irrespective of the time when the shipments were billed or "charged." The value of merchandise exports or imports shipped by or to the U.S. affiliate is not the same as the affiliate's sales to, or purchases from, foreign persons. Thus, data for Section J usually cannot be obtained from your financial or accounting records, but must be derived from documents of your shipping and receiving department showing when, where, and to whom goods actually were sent.

Data in this section cover all goods which physically left or entered the U.S. customs area in the reporting period, including capital goods but excluding the value of ships, planes, railroad rolling stock, and trucks that are temporarily outside the United States transporting people or merchandise. Consigned goods must be included in the trade figures when shipped or received, even though not normally recorded as sales or purchases when ultimately completed. (See page of the instructions booklet for additional details of data requirements.

Please indicate source of your data for this Section J (Mark "X")

1 ☐ Accounting records

2 ☐ Documents of your shipping and receiving department

3 ☐ Other – Specify

The certification on page 1 of this BE-11 includes a certification that the trade data supplied in this Section J are on a shipment basis.

MERCHANDISE TRADED WITH U.S. AFFILIATE WITH ALL FOREIGNERS	SEA USE ONLY (1)	EXPORTS – Shipped by U.S. affiliate to foreigners (without U.S. port)			IMPORTS – Shipped to U.S. affiliate by foreigners (without U.S. foreign port)		
		TOTAL (2)	To foreign parent(s) and his (their) foreign affiliates (3)	To all other foreigners (4)	TOTAL (5)	By foreign parent(s) and his (their) foreign affiliates (6)	To all other foreigners (7)
		Mln. Mil. Thous.	Mln. Mil. Thous.	Mln. Mil. Thous.	Mln. Mil. Thous.	Mln. Mil. Thous.	Mln. Mil. Thous.
130. Merchandise trade of U.S. affiliate with foreigners, total – Equals sum of items 131 through 140, sum of items 141 and 142, sum of items 151 through 155, and, beginning with item 160, the sum of data for all countries with entries.	1	2	3	4	5	6	7
BY PRODUCT (See the "Export and Import Trade Classifications" section of the Industry Classifications and Export and Import Trade Classifications Booklet)							
131. Raw and prepared foods and live animals (SITC 0)	1	2	3	4	5	6	7
132. Beverages and raw and manufactured tobacco (SITC 1)	1	2	3	4	5	6	7
133. Inedible crude materials, except fuels (SITC 2)	1	2	3	4	5	6	7
134. Petroleum and products, mineral waters, natural and manufactured gas (Part of SITC 3)	1	2	3	4	5	6	7
135. Coal, coke, and briquets (Part of SITC 3)	1	2	3	4	5	6	7
140. Chemicals (SITC 5)	1	2	3	4	5	6	7
141. Machinery, electrical and non-electrical (SITC 71–77)	1	2	3	4	5	6	7
142. Road motor vehicles and parts (SITC 78) – Include all parts that are shipped with the vehicles. Parts that are shipped separately may be in this or another classification*	1	2	3	4	5	6	7
143. Other transportation equipment (SITC 79) – Include all parts that are shipped with the equipment. Parts that are shipped separately may be in this or another classification*	1	2	3	4	5	6	7
145. Metal manufactures (SITC 67, 68, and 69)	1	2	3	4	5	6	7
147. Other manufactures (SITC 6 through 8, and 9) Specify –	1	2	3	4	5	6	7
148. All other products (SITC 4 and 9) Specify –	1	2	3	4	5	6	7
BY TRADE PRODUCTS:							
149. Products of shipper – That part of item 130 that is produced, grown, extracted, processed, assembled, or manufactured by the U.S. affiliate (for exports), or by the foreign parent, etc., (for imports).	1	2	3	4	//////	6	//////
150. Products of others – That part of item 130 that is produced, grown, extracted, processed, assembled, or manufactured by persons other than the shipper.	1	2	3	4	//////	6	//////
BY INTENDED USE:							
151. Capital equipment and other goods charged by U.S. affiliate to its fixed asset accounts	1	//////	//////	//////	5	6	7
152. Goods intended for further processing, assembly, or manufacture by this affiliate before resale to others	1	//////	//////	//////	5	6	7
153. Goods for resale without further processing, assembly, or manufacture by U.S. affiliate	1	//////	//////	//////	5	6	7
154. Other: Specify –	1	//////	//////	//////	5	6	7

* In the SITC, some parts that are shipped separately are included in SITC 78 and 79, respectively; however, others are included in SITC product categories appropriate to the type of part listed, such as the part's end-use, but rather on the main type of material from which it is made or its general function. Major exceptions of such parts are gasoline and diesel engines (SITC 71); air conditioners for motor vehicles (SITC 748); tires and tubes (SITC 625); and lamps, batteries, and electrical parts for engines (SITC 778). For more complete information see the Industry Classifications and Export and Import Trade Classifications Booklets.

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Part II – FINANCIAL AND OPERATING DATA OF U.S. AFFILIATE (Continued)

SECTION J EXPORTS AND IMPORTS OF U.S. AFFILIATE – GOODS ONLY, DO NOT INCLUDE SERVICES (Continued)

MERCHANDISE TRADE OF U.S. AFFILIATE WITH ALL FOREIGNERS	BEA USE ONLY (1)	EXPORTS – Shipped by U.S. affiliates to foreigners (valued f.a.s. U.S. port)			IMPORTS – Shipped to U.S. affiliates by foreigners (valued f.a.s. foreign port)		
		TOTAL (3)	To foreign parent(s) and its (their) foreign affiliates (5)	To all other foreigners (4)	TOTAL (5)	By foreign parent(s) and its (their) foreign affiliates (6)	To all other foreigners (7)
		Bil. Mil. Thous.	Bil. Mil. Thous.	Bil. Mil. Thous.	Bil. Mil. Thous.	Bil. Mil. Thous.	Bil. Mil. Thous.
136. *(Repeated) Bring forward amount from item 136, page 8, and beginning with item 155, must equal sum of all countries with entries and item 182.*							
BY COUNTRY OF ULTIMATE DESTINATION OR ORIGIN	1	2	3	4	5	6	7
155. Australia							
156. Belgium and Luxembourg							
157. Brazil							
158. Canada							
159. Denmark							
160. France							
161. Germany							
162. Ireland							
163. Italy							
164. Japan							
165. Mexico							
166. Netherlands							
167. New Zealand							
168. Sweden							
169. Switzerland							
170. South Africa							
171. United Kingdom							
172. Venezuela							
Other individual countries to which exports were $200,000.00 or more – Specify: (Use supplemental sheets, if necessary, to account for all such countries) 173.							
174.							
175.							
176.							
177.							
178.							
179.							
180.							
181.							
182. Sum of exports to all countries to which exports were less than $200,000.00 – The sum of this item and all countries with entries must equal item 135							

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Part II – FINANCIAL AND OPERATING DATA OF U.S. AFFILIATE (Continued)

SECTION K — SCHEDULE OF EMPLOYMENT, WAGES AND SALARIES, LAND AND OTHER PROPERTY, PLANT, AND EQUIPMENT, BY LOCATION

Land and other property, plant, and equipment covers all such items, whether carried as investments, in fixed asset accounts, or in other balance sheet accounts. Include land held for resale, held for investment purposes, and all other land owned. Land and other property, plant, and equipment on capital lease from others should be included, but that on capital lease to others should be excluded.

In categorizing land and other property, plant, and equipment by use, classify by primary use. For land not in use, classify it by expected or intended use, if known; otherwise, include it in "other."

Do not include in the "foreign" category land and other property, plant, and equipment owned either by foreign business enterprises in which this U.S. affiliate has an equity interest or by foreign operations of this affiliate. The "foreign" category is primarily for use in reporting movable fixed assets temporarily outside the U.S. or for reporting any foreign fixed assets owned directly on the U.S. affiliate's books.

Location	BEA USE ONLY (1)	Cross Code (2)	Number of employees (Total must equal item 119) (3) number	Wages and salaries of employees (Total must equal item 121) (4) Thous.	Dols.	Acres of mineral rights owned or leased from others, as of close of FY 1980. Do not include acreage reported as land owned in column 6 (5)	All acres of land owned at close of FY 1980, by use: Total (Total must equal item 96, column 1) (6)	Agriculture and forestry (7)	Natural resources (8)	Water facilities (9)	Residential, office buildings, stores, and shopping centers (10)	Other (11)
100. TOTAL for each column must equal sum of items 101 through 203												
101. Alabama		01										
102. Alaska		02										
103. Arizona		04										
104. Arkansas		05										
105. California		06										
106. Colorado		08										
107. Connecticut		09										
108. Delaware		10										
109. Florida		12										
110. Georgia		13										
111. Hawaii		15										
112. Idaho		16										
113. Illinois		17										
114. Indiana		18										
115. Iowa		19										
116. Kansas		20										
117. Kentucky		21										
118. Louisiana		22										
119. Maine		23										
120. Maryland		24										
121. Massachusetts		25										
122. Michigan		26										
123. Minnesota		27										
124. Mississippi		28										
125. Missouri		29										
126. Montana		30										
127. Nebraska		31										
128. Nevada		32										
129. New Hampshire		33										
130. New Jersey		34										
131. New Mexico		35										
132. New York		36										
133. North Carolina		37										
134. North Dakota		38										
135. Ohio		39										
136. Oklahoma		40										
137. Oregon		41										
138. Pennsylvania		42										
139. Rhode Island		44										
140. South Carolina		45										
141. South Dakota		46										
142. Tennessee		47										
143. Texas		48										
144. Utah		49										
145. Vermont		50										
146. Virginia		51										
147. Washington		53										
148. West Virginia		54										
149. Wisconsin		55										
150. Wyoming		56										
151. District of Columbia		11										
152. Puerto Rico		43										
153. Virgin Islands		52										
154. Guam		14										
155. American Samoa		60										
156. U.S. Offshore Oil and Gas Sites		65										
157. Other U.S. Territories and Possessions		66										
200. Foreign*		79										

* Includes only those of U.S. business enterprises fully consolidated into the U.S. affiliate. No foreign business enterprises, incorporated or unincorporated, can be considered part of the reporting U.S. affiliate.

Part II – FINANCIAL AND OPERATING DATA OF U.S. AFFILIATE (Continued)

SECTION E — SCHEDULE OF EMPLOYMENT, WAGES AND SALARIES, LAND AND OTHER PROPERTY, PLANT, AND EQUIPMENT, BY LOCATION (Continued)

Gross book value (historical cost) of all land and other property, plant, and equipment, wherever carried on balance sheet. FY 1980 closing balances, by row – Total, column 3 must equal sum of item 9B, column 2 plus column 3.

Location	SEA USE ONLY (1)	Country Code (2)	Total (3) Thous.	Dols.	Agriculture and forestry (4) Thous.	Dols.	Mineral resources (5) Thous.	Dols.	Manufacturing: Petroleum refining (6) Thous.	Dols.	Manufacturing: Chemicals (7) Thous.	Dols.	Manufacturing: Other (8) Thous.	Dols.	Retail trade, office buildings, stores, and shopping centers (9) Thous.	Dols.	Other (10) Thous.	Dols.
200. TOTAL for each column must equal sum of items 205 through 255.			$		$		$		$		$		$		$		$	
205. Alabama		01	$		$		$		$		$		$		$		$	
206. Alaska		02																
207. Arizona		04																
208. Arkansas		05																
209. California		06																
210. Colorado		08																
211. Connecticut		09																
212. Delaware		10																
213. Florida		12																
214. Georgia		13																
215. Hawaii		15																
216. Idaho		16																
217. Illinois		17																
218. Indiana		18																
219. Iowa		19																
220. Kansas		20																
221. Kentucky		21																
222. Louisiana		22																
223. Maine		23																
224. Maryland		24																
225. Massachusetts		25																
226. Michigan		26																
227. Minnesota		27																
228. Mississippi		28																
229. Missouri		29																
230. Montana		30																
231. Nebraska		31																
232. Nevada		32																
233. New Hampshire		33																
234. New Jersey		34																
235. New Mexico		35																
236. New York		36																
237. North Carolina		37																
238. North Dakota		38																
239. Ohio		39																
240. Oklahoma		40																
241. Oregon		41																
242. Pennsylvania		42																
243. Rhode Island		44																
244. South Carolina		45																
245. South Dakota		46																
246. Tennessee		47																
247. Texas		48																
248. Utah		49																
249. Vermont		50																
250. Virginia		51																
251. Washington		53																
252. West Virginia		54																
253. Wisconsin		55																
254. Wyoming		56																
255. District of Columbia		11																
256. Puerto Rico		43																
257. Virgin Islands		52																
258. Guam		14																
259. American Samoa		60																
260. U.S. Offshore Oil and Gas Sites		86																
261. Other U.S. Territories and Possessions		69																
262. Foreign*		70	$		$		$		$		$		$		$		$	

* Include only data of U.S. business enterprises fully consolidated into the U.S. affiliate. No foreign business enterprises, incorporated or unincorporated, can be considered part of the reporting U.S. affiliate.

Part III – INVESTMENT AND TRANSACTIONS BETWEEN U.S. AFFILIATE AND FOREIGN PARENT

A separate Part III or Part III-ADDITIONAL, must be completed for each foreign parent that held a direct or indirect equity interest in the U.S. affiliate at any time during the reporting period.

301. Number of Part III or Part III-ADDITIONAL schedules filed by the U.S. affiliate – If there is only one, enter "1" in the box below; if more than one, enter the number of Part III's to be filed.

☐ Number — If number is greater than "1," use Part III-ADDITIONAL schedules for the remaining foreign parents.

302. Name of foreign parent filing this Part III, or Part III-ADDITIONAL, in item

Name

The foreign parent named in item 302 holds: (Mark either item 303 or 304.)

303. ☐ A direct equity interest in the U.S. affiliate

304. ☐ An indirect equity interest in the U.S. affiliate

(If a foreign parent holds both direct and indirect equity interests, then separate Part III's must be completed for each line of ownership. However, do not duplicate positions or transactions where multiple Part III's are filed. The marking of either 303 or 304 will indicate which is being reported on this Part III.)

305. If item 303 is marked, give percent of voting rights owned.

	Close PY 1980 (1)	Close PY 1979 (2)
%	. %	. %

(For the close of each year, the sum of lots from item 48 Part III's filed for U.S. affiliate must equal item (1).)

306. Country of location of foreign parent named in item 302.

BEA USE ONLY

307. Industry code* of foreign parent named in item 302.

BEA USE ONLY

308. Is the foreign parent named in item 302 the ultimate beneficial owner (UBO)? *(See definition.)*

1 ☐ Yes

2 ☐ No

If the answer to item 308 is "Yes," complete the following:

309. Name of UBO *(If the UBO is an individual, a name is not required, complete only items 310 and 311.)*:

310. Country of UBO named in item 309:

BEA USE ONLY

311. Industry code* of UBO named in item 309:

BEA USE ONLY

NOTE: If item 304 is marked, then only the following items in the case of this Part III need be completed to report direct transactions or positions, if any, between the U.S. affiliate and the foreign parent: 312, 313, 314, 315, 331, 332, 335, 339, 340, 341, 342, and 343.

SECTION A INVESTMENT BETWEEN U.S. AFFILIATE AND FOREIGN PARENT NAMED IN ITEM 302, ACCORDING TO BOOKS OF THE U.S. AFFILIATE

	Balance at Close PY 1980 (1) Mil. Thous.	Balance at Close PY 1979 (2) Mil. Thous.
• CURRENT ITEMS		
312. Current liabilities owed by U.S. affiliate to foreign parent – That portion of items 48 and 49 representing amounts owed to foreign parent	$	$
313. Current receivables owed to U.S. affiliate from foreign parent – That portion of items 35, 36, and 39 representing amounts due from foreign parent		
• LONG-TERM ITEMS		
314. Long-term debt owed by U.S. affiliate to foreign parent – That portion of item 49 representing amounts owed to foreign parent		
315. Long-term receivables due U.S. affiliate from foreign parent – That portion of items 37 and 40 representing amounts due from foreign parent		
• OWNERS' EQUITY ITEMS, INCORPORATED AFFILIATES ONLY – FOREIGN PARENT'S EQUITY IN:		
316. Capital stock, common and preferred, voting and nonvoting		
317. Additional paid-in capital		
318. Retained earnings (deficit)		
319. Treasury stock held by U.S. affiliate	( )	( )
• FOREIGN PARENT'S SHARE OF TOTAL OWNERS' EQUITY OF INCORPORATED OR UNINCORPORATED U.S. AFFILIATE		
320. For incorporated U.S. affiliate, sum of items 316, 317, 318, and 319. For unincorporated U.S. affiliate, give equity breakdown in items 316 through 319, but enter foreign parent's share of total owners' equity, item 320.		
• Net book value of property, plant, and equipment on lease and not reflected in items 312 to 319. Exclude operating leases of one year or less. Give book value for operating leases of more than one year to the original owner less accumulated depreciation; for capital leases, it is the amount of unbooked payments remaining due on the specified lease including payment called for by bargain purchase option, if any.)		
321. On loans from foreign parent to U.S. affiliate		
322. On loans from U.S. affiliate to foreign parent	$	$
323. BEA USE ONLY ▶ Total direct investment position in the U.S. affiliate	$	$

* Insert industry code for foreign parent or ultimate beneficial owner from page ... of the Industry Classifications and Export and Import Trade Classifications Section.

Part III – INVESTMENT AND TRANSACTIONS BETWEEN U.S. AFFILIATE AND FOREIGN PARENT (Continued)

SECTION B – CHANGES IN FOREIGN PARENT'S EQUITY HOLDINGS IN U.S. AFFILIATE

Report in items 334 through 344 transactions during the reporting period by the foreign parent that changed its equity holdings in the U.S. affiliate. Exclude changes caused by carrying net income to the equity account, the payment of stock or cash dividends (other than liquidating dividends), or the distribution of earnings during the period. Exclude effect of treasury stock transactions with persons other than the foreign parent and reorganizations in capital structure that do not affect total equity. Report all amounts at transaction value, i.e., the value of the consideration given (received) by the foreign parent.

	Amount (1) Bil. Mil. Thous. Dols.
Transactions between foreign parent and U.S. affiliate:	
Increase in equity interest –	
334. Establishment of affiliate by foreign parent	$
335. Purchase by foreign parent of capital stock from incorporated affiliate	
336. Additional equity capital contributed by foreign parent (for an incorporated affiliate, report only those contributions not resulting in the issuance of stock)	
Decrease in equity interest –	
337. Total liquidation of affiliate by foreign parent	
338. Sale by foreign parent of capital stock to incorporated affiliate	
339. Return of contributed equity capital to foreign parent (for an incorporated affiliate, report here only those returns not resulting in a reduction of issued stock)	
Transactions between foreign parent and a person other than U.S. affiliate:	
Acquisition by foreign parent of equity interest in U.S. affiliate from –	
330. All U.S. persons	
331. All foreign persons	
Sale by foreign parent of equity interest in U.S. affiliate to –	
332. All U.S. persons	
333. All foreign persons	
334. Increase (decrease) at transactions value of changes in equity holdings – The consideration given (received) by the foreign parent in order to bring about the changes in equity holdings; must equal sum of items 334, 335, 336, 338, and 331 minus sum of items 337, 338, 339, 332, and 333.	
335. Approximate book value on the date of the transaction(s), based on books of the U.S. affiliate, that is equivalent to the transactions value reported in item 334. (The amount given here should approximate the change in item 320, column 1 minus column 2, after allowance is made in item 320 to exclude changes caused by carrying net income to the equity account, payment of stock or cash dividends (other than liquidating dividends, distribution of earnings, and treasury stock transactions.)	$

SECTION C – PAYMENTS AND RECEIPTS OF DIVIDENDS, DISTRIBUTED EARNINGS, INTEREST, FEES, ROYALTIES, AND RENTALS BETWEEN U.S. AFFILIATE AND FOREIGN PARENT

Enter amounts paid, received, or entered into intercompany accounts. Include amounts for which payments were made in-kind. Amounts should be entered as of the date paid (received) by the affiliate, or entered into intercompany accounts with the foreign parent, whichever occurred first. For an item entered into intercompany account, in order to avoid duplication, any subsequent settlement of the account must not be reflected in one of the items below, but must be reflected only as a reduction in intercompany account.

	Payments or credits by U.S. affiliate to foreign parent		Receipts by or credits to U.S. affiliate from foreign parent	
	Net of U.S. tax withheld (1)	Amount of U.S. tax withheld (2)	Net of foreign tax withheld (3)	Amount of foreign tax withheld (4)
	Bil. Mil. Thous. Dols.	Bil. Mil. Thous. Dols.	Bil. Mil. Thous. Dols.	Bil. Mil. Thous. Dols.
Incorporated U.S. affiliate:				
336. Dividends on the U.S. affiliate's common and preferred stock, paid out of current and past earnings, excluding stock dividends	$	$	//////////	//////////
Unincorporated U.S. affiliate:				
337. Earnings distributed, whether out of current or past earnings			//////////	//////////
All U.S. affiliates:				
338. Interest – Include interest on capital leases				
339. Royalties, license fees, and other fees for the use or sale of intangible property				
340. Payments and receipts for use of tangible property except film or television tape rentals – Include rentals for operating leases of one year or less and rent on operating leases of more than one year. Net rent is the equivalent to the rent lease payment less the return of capital (depreciation) component				
341. Film or television tape rentals				
342. Fees for services rendered – Include fees for management, professional or technical services, R&D assessments, and allocated expenses other than those given above				
343. TOTAL – Sum of items 336 through 342 ——→	$	$	$	$

FOREIGN PARENT'S EQUITY IN U.S. AFFILIATE'S NET INCOME

Net income must be calculated in accordance with the all inclusive concept of the income statement.

	Amount (1) Bil. Mil. Thous. Dols.
344. Foreign parent's direct equity in U.S. affiliate's net income (loss) – Enter foreign parent's direct ownership share of net income, item 60.	$
Foreign parent's equity in U.S. affiliate's net realized and unrealized capital gains (losses):	
345. Foreign parent's share of item 60, net realized and unrealized capital gains included in net income	
346. Foreign parent's share of item 74, net realized and unrealized capital gains (losses) taken directly to retained earnings or owner's equity, after provision for income tax liability (benefit), if any, on the gains (losses).	$

Part IV – DIRECT TRANSACTIONS OR ACCOUNTS BETWEEN U.S. AFFILIATE AND FOREIGN AFFILIATES OF THE FOREIGN PARENT(S)

Report all direct transactions or balances between the U.S. affiliate and foreign affiliates of the foreign parent(s). Do not include any direct transactions, balances, or balances between U.S. affiliates and the foreign parent – they must be reported in Part III. Do not net payables against receivables.

In Section A, report payments and liabilities to, and in Section B report receipts and receivables due from foreign affiliates of the foreign parent(s) by country. Please only use foreign country per line. If more lines than provided are needed in order to list all countries, any additional copies of Part IV sheets as necessary, properly identified with the name and ID number of the U.S. affiliate. An item need be reported by country only if it exceeds $500,000 for one element, for each item, the value not shown by country should be entered on the nonidentified line.

3.01. Does the U.S. affiliate (or consolidated) have direct transactions or accounts with foreign affiliates of any foreign parent? (Mark one)

☐ Yes – If "Yes", complete Part IV

☐ No – If "No", skip Part IV

BEA USE ONLY

IMPORTANT EXAMPLE: Report all dollars in thousands of U.S. dollars, as illustrated:

EXAMPLE: If figure is $1,123,456.00 enter:

Bil.	Mil.	Thous.	Dols.
1	123	456	

Country of foreign affiliate of foreign parent	BEA USE ONLY	Interest, including interest on capital leases	Royalties, license fees, and other fees for the use or sale of intangible property	Rents for the use of tangible property	Other transaction type values	Net gain (loss) from foreign currency transactions, undistributed earnings of unconsolidated affiliates, R&D performed, and withheld taxes	Close of FY 1980		Close of FY 1979	
							Current liability to foreign parent (see Glossary)	Long-term liability to foreign parent (see Glossary)	Current liability to foreign parent (see Glossary)	Long-term liability to foreign parent (see Glossary)
	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)
SECTION A U.S. AFFILIATE'S PAYMENTS AND LIABILITIES		Payments or accruals to foreign affiliates of the foreign parent (net of U.S. tax withheld)					Liabilities of U.S. affiliate to foreign affiliates of the foreign parent			
348. Canada										
349. United Kingdom										
350. Germany										
351. France										
352. Italy										
353. Japan										
354. Netherlands										
355. Switzerland										
Specify other countries:										
356.										
357.										
358.										
359.										
360.										
361. Unallocated by country – The amounts for countries for which entries are less than $500,000										
362. TOTAL, all countries Section A										

Country of foreign affiliate of foreign parent	BEA USE ONLY	Interest, including interest on capital leases	Royalties, license fees, and other fees for the use or sale of intangible property	Rents for the use of tangible property	Other transaction type values	Net gain (loss) from foreign currency transactions, undistributed earnings of unconsolidated affiliates, R&D performed, and withheld taxes	Close of FY 1980		Close of FY 1979	
							Current liability to foreign parent (see Glossary)	Long-term liability to foreign parent (see Glossary)	Current liability to foreign parent (see Glossary)	Long-term liability to foreign parent (see Glossary)
	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)
SECTION B U.S. AFFILIATE'S RECEIPTS AND RECEIVABLES		Receipts or accruals from foreign affiliates of the foreign parent (net of foreign tax withheld)					Receivables of U.S. affiliate from foreign affiliates of the foreign parent			
363. Canada										
364. United Kingdom										
365. Germany										
366. France										
367. Italy										
368. Japan										
369. Netherlands										
370. Switzerland										
Specify other countries:										
371.										
372.										
373.										
374.										
375.										
376. Unallocated by country – The amounts for countries for which entries are less than $500,000										
377. TOTAL, all countries, Section B										

Page 2

Form BE-12 Supplement A

U.S. DEPARTMENT OF COMMERCE
U.S. Bureau of Economic Analysis

LIST OF ALL U.S. BUSINESS ENTERPRISES FULLY CONSOLIDATED INTO THE REPORTING U.S. AFFILIATE

BEA USE ONLY ▶ | Page No. _____ of this Supplement A | _____ pages of

Name of U.S. affiliate as shown in Part I, item 1, of Form BE-12

Supplement A – List of ALL U.S. Business Enterprises Fully Consolidated into the Reporting U.S. Affiliate, must be completed by the U.S. affiliate reporting consolidated financial and operating data to BEA; each U.S. business enterprise so fully consolidated must be more than 50 percent owned, directly or indirectly, by the foreign parent, and must also be more than 50 percent owned by the U.S. affiliate named in Part I, item 1, of Form BE-12. The number of U.S. affiliates listed below plus the reporting U.S. affiliate must agree with item 5, Part I of Form BE-12. Continue listing each additional consolidated enterprise on separate lines. If more lines than provided are needed in order to list all consolidated enterprises, any additional copies of Supplement A sheets as necessary, properly identified with the name and ID number of the U.S. affiliate.

Name of U.S. business enterprise fully consolidated into the reporting U.S. affiliate	Employer Identification Number (EIN) (if any)	Address (number and street)	City	State	ZIP code

Form BE-12 Supplement A

U.S. DEPARTMENT OF COMMERCE
Bureau of Economic Analysis

BEA USE ONLY ▶ | | | | | | | Page No. _____ of this Supplement A _____ of _____ pages of

LIST OF ALL U.S. BUSINESS ENTERPRISES FULLY CONSOLIDATED INTO THE REPORTING U.S. AFFILIATE

Supplement A – List of ALL U.S. Business Enterprises Fully Consolidated into the Reporting U.S. Affiliate, must be completed by the U.S. affiliate reporting consolidated financial and operating data to BEA; each U.S. business enterprise so fully consolidated must be more than 50 percent owned, directly or indirectly, by the foreign parent, and must also be more than 50 percent owned by the U.S. affiliate named in Part I, Item 1, of Form BE-12. The number of U.S. affiliates listed below plus the reporting U.S. affiliate must agree with Item 5, Part I of Form BE-12. Continue listing onto as many additional copied pages as necessary.

Name of U.S. affiliate as shown in Part I, Item 1, of Form BE-12

Employer Identification Number of the above-named U.S. affiliate used by affiliate in filing income and payroll taxes (as shown in Item 4, Form BE-12) ▶ | | - | | | | | | | |

BEA USE ONLY (1)	Name and address of each U.S. business enterprise fully consolidated in this BE-12 Report. (2)	Employer Identification Number used by U.S. business enterprise listed in column 2 in filing income and payroll taxes (3)	Name of U.S. business enterprise which holds the direct equity interest in the U.S. business enterprise listed in column 2 (4)	Percentage of direct ownership which the U.S. business enterprise listed in column 4 listed in column 2 has to-the U.S. business enterprise listed in column 2 (Enter percentage to nearest tenth.) (5)
		||-|||||||		. %
		||-|||||||		. %
		||-|||||||		. %

Form BE-12 Supplement B
(10-80)

U.S. DEPARTMENT OF COMMERCE
BUREAU OF ECONOMIC ANALYSIS

BEA USE ONLY ▶ | Page No. ____ of this Supplement B. ____ of ____ pages of

LIST OF ALL U.S. AFFILIATES IN WHICH THE REPORTING U.S. AFFILIATE (AS CONSOLIDATED) HAS A DIRECT EQUITY INTEREST BUT WHICH ARE NOT FULLY CONSOLIDATED ON THIS BE-12 REPORT

IDENTIFICATION— Name of U.S. affiliate as shown in Item 1 Part I of Form BE-12

List all other U.S. affiliates of the foreign parent(s) to which the fully consolidated U.S. affiliate named in Item 1, Part I has a direct equity interest, but which are not fully consolidated on this BE-12 report. The number of such affiliates must agree with Item 6, Part I of Form BE-12; use as many copied pages as needed.
NOTE: U.S. affiliates listed on Supplement B MUST NOT be listed on Supplement A.
The U.S. affiliate named in Item 1, Part I MUST NOTIFY each U.S. affiliate listed below that it must file in its own name, a completed form BE-12 report or a BE-12 Supplement C, Claim for Not Filing a Form BE-12. Indicate in column 4 whether or not such notification has been given.

Employer identification number of the above named U.S. affiliate used by affiliates to file income and payroll taxes (as given in Item 4, Form BE-12) ▶ [ ]-[ ]

BEA USE ONLY (1)	Name of each U.S. affiliate in which a direct interest is held (2)	Address of each U.S. affiliate listed in column 2 Give number, street, city, State and ZIP Code (3)	Is affiliate to be or previously been made aware of foreign ownership? (Check one) (4)	Employer identification number used by U.S. affiliate listed in Column 2 to file income and payroll taxes (5)	Percentage of direct ownership in each U.S. affiliate listed in Column 2, held by the reporting affiliate named in Item 1, Part I of BE-12 (Enter percentage to nearest tenth) (6)
			☐ Yes ☐ No	[ ]-[ ]	%
			☐ Yes ☐ No	[ ]-[ ]	%
			☐ Yes ☐ No	[ ]-[ ]	%
			☐ Yes ☐ No	[ ]-[ ]	%
			☐ Yes ☐ No	[ ]-[ ]	%
			☐ Yes ☐ No	[ ]-[ ]	%
			☐ Yes ☐ No	[ ]-[ ]	%
			☐ Yes ☐ No	[ ]-[ ]	%
			☐ Yes ☐ No	[ ]-[ ]	%
			☐ Yes ☐ No	[ ]-[ ]	%
			☐ Yes ☐ No	[ ]-[ ]	%
			☐ Yes ☐ No	[ ]-[ ]	%

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Form BE-12 Supplement C
(10-80)

U.S. DEPARTMENT OF COMMERCE
BUREAU OF ECONOMIC ANALYSIS

BEA USE ONLY ▶ | Page No. ____ of this Supplement C. ____ of ____ pages of

CLAIM FOR NOT FILING A FORM BE-12

IDENTIFICATION— Name of U.S. affiliate as shown in Item 1 Part I of Form BE-12

Employer identification number of the above named U.S. affiliate used by affiliates to file income and payroll taxes (as given in Item 4, Form BE-12) ▶ [ ]-[ ]

1. ☐ This U.S. affiliate is not filing a Form BE-12 because it is fully consolidated on the Form BE-12 report filed by the U.S. affiliate named in Item 1, Part I of Form BE-12 on Page ____ of this report.

2. ☐ This U.S. affiliate is not filing a Form BE-12 because it is fully consolidated on the Form BE-12 report filed by the U.S. affiliate named in Item 1, Part I of Form BE-12 on Page ____ of Supplement B.

3. ☐ This U.S. affiliate is not filing a Form BE-12 because it is fully consolidated on the Form BE-12 report filed by the U.S. affiliate named in Item 1, Part I of Form BE-12 on Page ____ of Supplement C.

4. ☐ This U.S. affiliate is not filing a Form BE-12 because it is fully consolidated on the Form BE-12 report filed by the U.S. affiliate named in Item 1, Part I of Form BE-12 on Page ____ of Supplement C.

5. ☐ This U.S. affiliate is not filing a Form BE-12 because it is fully consolidated on the Form BE-12 report filed by the U.S. affiliate named in Item 1, Part I of Form BE-12 on Page ____ of Supplement C.

and

(a) The U.S. affiliate named in Item 1, Part I of Form BE-12 has notified this U.S. affiliate that it must file a Form BE-12 report.

(b) The U.S. affiliate named in Item 1, Part I of Form BE-12 has not notified this U.S. affiliate that it must file a Form BE-12 report.

and

(i) The U.S. affiliate named in Item 1, Part I of Form BE-12 has notified this U.S. affiliate that it must file a Form BE-12 report.

(ii) The U.S. affiliate named in Item 1, Part I of Form BE-12 has not notified this U.S. affiliate that it must file a Form BE-12 report.

6. ☐ Other — Specify

U.S. PERSON FILING THIS CLAIM TO CONSULT A LAWYER

CERTIFICATION
Authorized Official's Name and Title

18 U.S.C. 1001 (Criminal Code) provides that whoever knowingly and willfully makes or uses a document knowing the same to contain any false, fictitious or fraudulent statement or entry, in any matter within the jurisdiction of any department or agency of the United States, shall be fined not more than $10,000 or imprisoned for not more than five years, or both.

BE-13 Supplement C

U.S. DEPARTMENT OF COMMERCE
BUREAU OF ECONOMIC ANALYSIS (BEA)

CLAIM FOR NOT FILING A BE-12
Benchmark Survey of Foreign Direct Investment in the U.S. – 1980

The publication in the Federal Register of the notice implementing this survey is considered legal notice to covered U.S. business enterprises of their obligation to report. Therefore, a report is required from persons subject to the reporting requirements of this BE-12 survey, whether or not they are contacted by BEA. Also, a person, or their agent, contacted by BEA concerning their being subject to reporting either by sending them a report form or by certain activity, must respond in writing pursuant to Section 806.4 of 15 CFR, Chapter VIII. For this reason, this may be accomplished by filing a completed Form BE-12 on a timely basis or, if applicable, by completing and returning this claim within 30 days of the date the BE-12 was sent by BEA.

If claim is disallowed, the original due date for the BE-12 remains in force.

Affiliate's 1980 fiscal year is defined to be the affiliate's financial reporting year that last or, ending date in calendar year 1980.

See the Instruction Booklet for definitions and rules.

Name and address of U.S. business enterprise for which this claim is filed – If the business enterprise received a preinduted BE-12 form – See Item 1, Part I, Form BE-12 – Enter name, address and BEA identification Number from that label into the blocks below; skip a single block between words. If a preinduted form was not received, enter name and address as construed on letter transmitting the report forms to you, indicating any changes or corrections.

Name

Street or P.O. Box

City and State ZIP Code

BEA Identification Number

BEA USE ONLY

BASIS OF CLAIM FOR NOT FILING *(Mark one and answer applicable questions)*

1. ☐ This U.S. business enterprise was not a U.S. affiliate of a foreign person at any time during its 1980 fiscal year but had been a U.S. affiliate of a foreign person at some time between January 1, 1974 and the beginning of its 1980 fiscal year.

   Give date foreign ownership ceased or went below 10 percent:

Month	Day	Year

2. ☐ This U.S. business enterprise was not a U.S. affiliate of a foreign person at any time during its 1980 fiscal year and was not a U.S. affiliate of a foreign person at any time since January 1, 1974.

3. ☐ This U.S. business enterprise was a U.S. affiliate of a foreign person during its 1980 fiscal year but is fully consolidated into the BE-12 report for another U.S. affiliate – *Give name, address, and BEA identification Number of consolidated U.S. affiliate that is reporting to BEA*, in the blocks below (Skip a single block between words):

   Name

   Street or P.O. Box

   City and State ZIP Code

   BEA Identification Number

4. ☐ The U.S. business enterprise is not subject to the reporting requirements because the owners are citizens of the United States who are resident abroad as a result of official employment by the U.S. Government (including the immediate family of such persons), or the owners have been or expect to be resident abroad for less than one year.

5. ☐ This U.S. business enterprise was a U.S. affiliate of a foreign person during its 1980 fiscal year but is exempt because, on a fully consolidated, or, in the case of real estate investments, or an aggregated, basis:

   (a) Each of the following three items for the U.S. affiliate (not the foreign parent's share) was between –0– million and +$1 million during its 1980 fiscal year:

   (i) Total assets,

   (ii) Sales or gross operating revenues, excluding sales taxes, and

   (iii) Net income after provision for U.S. income taxes;

   and

   (b) The U.S. affiliate did not own 200 acres or more of U.S. land during the reporting period (if the U.S. affiliate owned 200 acres or more of U.S. land, it must report regardless of the value of the three items listed above).

   Enter value or amount for each:

	Amount (Bil. Mil. Thous. Units)
i. Total assets (do not net out liabilities)	$
ii. Sales or gross operating revenues, excluding sales taxes (do not give gross margin)	$
iii. Net income after provision for U.S. income taxes	$
	Number
iv. Number of acres of U.S. land owned	

   and complete the following:

   i. Country of foreign parent _____

   ii. Country of ultimate beneficial owner _____

   BEA USE ONLY

6. ☐ Other – Specify and include reference to section of regulations or instructions on which claim is based.

U.S. PERSON FOR BEA TO CONSULT ABOUT THIS CLAIM

Print name and address

U.S. TELEPHONE NUMBER

Area code	Number	Extension

CERTIFICATION The undersigned official certifies that the information contained in this report is correct and complete to the best of his/her knowledge.

Authorized Official's signature	Please type Name and Title	Date

18 U.S.C. 1001 (Crimes and Criminal Procedure) makes it a criminal offense to make a willfully false statement or representation to any department or agency of the United States as to any matter within its jurisdiction. Any officer, director, employee, or agent of any corporation who knowingly participates in a willful failure to report, upon conviction, may be punished by a fine, imprisonment, or both (22 U.S.C. 3105). For a further citation of applicable statutes, see the Instruction Booklet to this form.

BE-12 BANK (Report for U.S. affiliate that is a bank)

U.S. DEPARTMENT OF COMMERCE
Bureau of Economic Analysis

MANDATORY – CONFIDENTIAL

BENCHMARK SURVEY OF
FOREIGN DIRECT INVESTMENT IN THE U.S.
1980

RETURN REPORTS TO: U.S. Department of Commerce, Bureau of Economic Analysis BE-49 (SS), Washington, D.C. [illegible]

Important – Use Instruction Booklet before completing form. The instructions given below are only a brief summary of certain cases relating to this form.

See SPECIAL NOTE: BANKS, before proceeding.

• DEFINITIONS

1. Foreign direct investment in the United States means the ownership or control, directly or indirectly, by one foreign person of 10 percent or more of the voting securities of an incorporated U.S. business enterprise or an equivalent interest in an unincorporated U.S. business enterprise, including a branch.

2. Business enterprise means any organization, association, branch, or venture which exists for profitmaking purposes or to otherwise secure economic advantage, and any ownership of any real estate.

3. Affiliate means a business enterprise located in one country which is directly or indirectly owned or controlled by a person of another country to the extent of 10 percent or more of the voting securities for an incorporated business enterprise or an equivalent interest for an unincorporated business enterprise, including a branch.

4. U.S. affiliate means an affiliate located in the United States in which a foreign person has a direct investment.

5. U.S. affiliate's 1980 fiscal year is the affiliate's financial reporting year that has an ending date in calendar year 1980.

6. Banking (industry code 6000) includes business enterprises engaged in deposit banking, closely allied banking activities, such as investment or foreign business, foreign branches and agencies of U.S. banks whether or not they accept deposits abroad, U.S. branches and agencies of foreign banks whether or not they accept deposits in the United States, and bank holding companies, i.e., holding companies for which over 50 percent of their total income is from banks which they hold.

• REPORTING REQUIREMENTS

1. Who must report – A BE-12 report is required from each U.S. affiliate, i.e., for each U.S. business enterprise in which any foreign person owned or controlled, directly or indirectly, 10 percent or more of the voting securities of an incorporated U.S. business enterprise, or an equivalent interest in an unincorporated U.S. business enterprise, at the time during the business enterprise's 1980 fiscal year.

2. Consolidated reporting – Except as specified in SPECIAL NOTE: BANKS, a U.S. affiliate must file on a fully consolidated basis, including in the U.S. consolidation all other U.S. affiliates in which it directly or indirectly owns more than 50 percent of the outstanding voting securities. Thereafter, the fully consolidated entity is considered to be one U.S. affiliate. See Instruction Booklet, page 2. Exemption criteria are applied to the consolidated entity.

3. Exemption – A U.S. affiliate is not required to file a report if:

(a) Each of the following three items for the U.S. affiliate and the foreign parent's shares thereof is between −$1,000,000 and +$1,000,000 during the reporting period:

(1) Total assets,

(2) Sales or gross operating revenues, excluding sales taxes, and

(3) Net income after provision for U.S. income taxes; and

(b) The U.S. affiliate did not have 200 acres or more of U.S. land during the reporting period. (If the U.S. affiliate owned 200 acres or more of U.S. land, it must report regardless of the value of the three items listed above).

4. A U.S. affiliate that is not required to file a completed Form BE-12 because it falls below the exemption levels, must complete and file a Claim for Not Filing a Form BE-12, with item 5 of the Claim marked, and furnish the information requested in item 5. (The Claim is on the last page of Form BE-12 and should be detached for filing.)

5. Response required – A person to their agent who is sent a report form by BEA and who claims to not be subject to the reporting requirements must fully complete "Claim for Not Filing a Form BE-12" which is printed on the last page of Form BE-12. The Claim must be filed within 30 days of the date the BE-12 was sent by BEA.

6. Due date – A completed report on Form BE-12 is due no later than [illegible]

• ASSISTANCE – Telephone inquiries welcomed.

• GENERAL NOTES

1. Number of employees and other employment amounts must be reported to the nearest whole number.

2. Monetary amounts must be reported in U.S. dollars rounded to the nearest thousand (omitting 000). Do not enter amounts in the shaded portions of any item.

EXAMPLE: If amount is $1,321,654.00, round as:

Bil.	Mil.	Thou.	Dols.
	1	322	///////

3. If an item is between +$500,000 and −$500,000, enter "0."

4. Use parentheses to indicate negative numbers.

5. All questions must be answered for the context of the reporting period designated in Items 3, 4, and 5.

Part I – IDENTIFICATION OF U.S. AFFILIATE

1. Name and principal mailing address

A mailing label, if affixed, shows, among other things, the name and address of this U.S. affiliate, as known to BEA. If there are no changes to the name and address, enter "none" in space below. If there are any changes to name or address, enter correct name and address below in full.

If no mailing label is affixed, or if there is a change in the name and address as given on the mailing label, print name and address in blocks; skip a single block between words.

BEA USE ONLY

Name of U.S. Affiliate

Street or P.O. Box

City and State ZIP Code

2. Is more than 50 percent of the ownership interest in this U.S. affiliate owned by another U.S. affiliate of your foreign parent?

[1] ☐ Yes [2] ☐ No

If the answer is "Yes," do not complete this report unless this affiliate qualifies for filing separately and has obtained permission from BEA to do so. Note, however, that nonbank affiliates of a bank affiliate must file separately regardless of the ownership interest; see "SPECIAL NOTE: BANKS." Otherwise, the report must reflect information and data for, and be filed in the name of, the fully-consolidated U.S. business enterprise meeting the definition of U.S. affiliate. Please forward this Form BE-12 survey packet to the U.S. business enterprise owning your company to the extent of more than 50 percent, notify BEA of the action taken, and provide BEA the name and address of the U.S. business enterprise that is required to file for the fully-consolidated U.S. business enterprise.

(WHEREVER THE INSTRUCTION "MARK ONE" IS GIVEN BELOW, IF IT IS NECESSARY TO MARK MORE THAN ONE ANSWER, GIVE AN EXPLANATION.)

3. Form of organization of U.S. affiliate (Mark one):

[1] ☐ Incorporated in U.S.
[2] ☐ U.S. proprietorship
[3] ☐ U.S. branch or agency of a foreign person
[4] ☐ Business enterprise incorporated abroad, but whose head office is located in the U.S. and whose business activity is conducted in, or from, the United States
[5] ☐ Other – Specify:

4. Enter primary Employer Identification Number used by U.S. affiliate to file U.S. income and payroll taxes

[ ][ ]-[ ][ ][ ][ ][ ][ ][ ] or U.I. Number

SPECIAL NOTE: BANKS

A specialized report form, BE-12 BANK, has been adapted for banks (that is, a business enterprise for which over 50 percent of its total revenues are generated by activities classified in banking, industry code 6000). Use of the specialized report form is at the discretion of BEA; in situations where its possible use is not clear-cut, permission must be secured from BEA in advance of filing.

The specialized report form, BE-12 BANK, is for reporting by a U.S. affiliate which is a bank or a bank holding company, and in which a foreign parent holds a direct or indirect ownership interest. It is not to be used by a U.S. affiliate which may technically be classified as a bank holding company because of an interest in a banking activity, but which has 50 percent or more of its revenues generated by non-bank activities. Activities of subsidiaries which may not be banks but which provide support to the parent company, such as real estate subsidiaries set up to hold office buildings occupied by the parent bank company, are considered bank activities.

A U.S. affiliate that is a bank holding company must fully consolidate on its BE-12 BANK report those of its majority-owned subsidiaries that are U.S. affiliates of its foreign parent that are mainly concentrated, and that are engaged in banking (or provide support to bank activities of the U.S. bank holding company). Subsidiaries of a bank holding company that are non-bank U.S. affiliates must not be so consolidated, but must submit a standard Form BE-12 on their own sales.

Each separately incorporated U.S. bank affiliate that does not meet the consolidation rules given in the Instruction Booklet must file a separate report on Form BE-12 BANK. Each unincorporated U.S. bank affiliate in which a foreign parent holds a direct ownership interest must file a BE-12 BANK. Two or more unincorporated U.S. bank affiliates owned by the same foreign person, and located in the same U.S. State or territory, may be aggregated on a single Form BE-12 BANK, provided that written permission has been obtained from BEA prior to such filing.

A U.S. affiliate that is a bank, but that has a non-bank foreign parent, must file a Form BE-12 BANK. A U.S. affiliate that is not a bank, but that has a bank foreign parent, must file a standard Form BE-12.

The BE-12 BANK form, where its use is permitted, stands in place of the standard form, and the instructions given herein and in the Instruction Booklet, should be so construed, and references to Form BE-12 should be interpreted as also covering Form BE-12 BANK.

MANDATORY – This survey is being conducted pursuant to the International Investment Survey Act of 1976 (P.L. 94-472, 90 Stat. 2059, 22 U.S.C. 3101 to 3108 – hereinafter "the Act"), and the filing of reports is mandatory pursuant to Section 5(b)(2) of the Act (22 U.S.C. 3104).

PENALTIES – Whoever fails to report may be subject to a civil penalty not exceeding $10,000 and to injunctive relief commanding such person to comply, or both. Whoever willfully fails to report shall be fined not more than $10,000 and, if an individual, may be imprisoned for not more than one year, or both. Any officer, director, employee, or agent of any corporation who knowingly participates in such violations, upon conviction, may be punished by a like fine, imprisonment, or both. (See Section 6 of the Act, 22 U.S.C. 3105.)

CONFIDENTIALITY – The information filed in this report may be used only for analytical and statistical purposes and access to the information shall be available only to officials and employees (including consultants and contractors and their employees) of agencies designated by the President to perform functions under the Act. The President may prohibit the disclosure of the information between agencies or officials designated to perform functions under the Act, but only for analytical and statistical purposes. No official or employee (including consultants and contractors and their employees) shall publish or make available any information collected under the Act in such a manner that the person to whom the information relates can be specifically identified. Reports and copies of reports prepared pursuant to the Act are confidential and their submission or disclosure shall not be compelled by any person without the prior written permission of the person filing the report and the customer of such person whose the information supplied is identifiable as being derived from the records of such customer (22 U.S.C. 3104).

Print name and address

U.S. PERSON FOR BEA TO CONSULT ABOUT THIS REPORT:

U.S. TELEPHONE NUMBER: Area Code | Number | Extension

CERTIFICATION: This [illegible] official certifies that the information contained in this report is correct and complete to the best of his/her knowledge.

Authorized Official's Signature	Type Name and Title	Date

18 U.S.C. 1001 (Criminal and Criminal Procedure) makes it a criminal offense to make a willfully false statement or representation to any department or agency of the United States as to any matter within its jurisdiction. Any officer, director, employee, or agent of any corporation who knowingly participates in a willful failure to report, upon conviction, may be punished by a fine, imprisonment, or both (22 U.S.C. 3105). For a further citation of applicable statutes, see the Instruction Booklet to this form.

Part I – IDENTIFICATION OF U.S. AFFILIATE (Continued)

5. U.S. affiliates fully consolidated in this report:

If this report is for a single consolidated U.S. bank affiliate enter "1" in the box. If more than one U.S. affiliate is fully consolidated for aggregated, in case of unincorporated U.S. bank affiliate(s) in this report, enter the number of U.S. affiliates fully consolidated or aggregated. (Combination may are considered to be one U.S. affiliate.) Exclude from full consolidation all nonbank U.S. business enterprises (other than those solely engaged in customary operations of U.S. bank affiliates), all unincorporated U.S. business enterprises, and all foreign business enterprises owned by this U.S. affiliate; such affiliates must be included in this report on the equity basis, or cost basis if less than 20 percent owned. See consolidation procedures, page of the instructions booklet. Does that these U.S. affiliates not fully consolidated must file a separate Form BE-12.)

If number is greater than "1," attach a list reformatting this item 5 and the name of the U.S. affiliate given in item 1, and give the name and U.S. mailing address of, and your percent ownership interest in, each U.S. affiliate fully consolidated on this Form BE-13 BANK report. ☐ No. Number

6. U.S. affiliates not fully consolidated in this report:

Number of U.S. affiliates in which this U.S. affiliate has an ownership interest that ARE NOT fully consolidated (or aggregated, in case of unincorporated U.S. bank affiliates) in this report. The U.S. affiliates named in item 1 must include data for such U.S. affiliates in this report on the equity basis, or cost basis if less than 20 percent owned, and must notify such other U.S. affiliates of their obligation to file a Form BE-12 in their own name.

If figure is not zero, attach a list reformatting this item 6 and the name of the U.S. affiliate given in item 1, and give the name and U.S. mailing address of, and your percent ownership interest in, each other U.S. affiliate. ☐ No. Number

7. Does this U.S. affiliate have an equity interest in a foreign business enterprise or conduct operations outside the United States?

1 ☐ Yes — If "YES," do not fully consolidate such enterprise in this report; include them in data on an equity basis, or cost basis if less than 20 percent owned.

2 ☐ No

8. This U.S. affiliate's 1980 fiscal year ends on:

Month	Day	Year
1		

NOTE: For a U.S. business enterprise that was a U.S. affiliate for all of FY 1980 – Data for the reporting period should be for the U.S. affiliate's 1980 fiscal year; data for Close FY 1980 should be for the U.S. affiliate as it existed at the ending date of the 1980 fiscal year; and data for close FY 1979 should be for the U.S. affiliate as it existed one year prior to the 1980 fiscal year date. (Close FY 1979 data must not be restated due to changes in the entity during FY 1980.)

For a U.S. business enterprise that was a U.S. affiliate for only part of FY 1980 – If the enterprise became a U.S. affiliate during the reporting period, the Close FY 1979 data columns should all be zero. If the enterprise ceased to be an affiliate during the reporting period, the Close FY 1980 data columns should all be zero.

9. Was the U.S. business enterprise a U.S. affiliate for only part of FY 1980?

1 ☐ Yes

2 ☐ No

10. If the answer to item 9 is "YES," complete one of the following:

	Month	Day	Year
Date U.S. business enterprise became a U.S. affiliate: OR	1		
Date U.S. business enterprise ceased to be a U.S. affiliate:	1		

11. Was there a change in the entity during FY 1980 that caused prior/year data to be restated?

1 ☐ Yes — If "YES," please note that all Close FY 1979 data must be before acquisition and as existing in the entity.

2 ☐ No

Ownership – Enter percent of ownership, to a tenth of one percent, based on voting stock if an incorporated affiliate or an equivalent measure if an unincorporated affiliate, in this U.S. affiliate held directly by –	Close FY 1980 (1)	Close FY 1979 (2)
12. All foreign parents of this affiliate – Give name of each (If more than 4, continue on separate sheet):	%	%
a.	////	////
b.	////	////
c.	////	////
d.	////	////
13. All U.S. affiliates of foreign parents of this affiliate	%	%
14. All other U.S. persons	%	%
15. All other foreign persons	%	%
16. TOTAL – Sum of items 12 through 15 →	100.0 %	100.0 %

If there is an entry in item 13, column 1 or column 2, given, beginning with item 17, the information requested for each U.S. affiliate holding a direct ownership interest in this U.S. affiliate (If more than 4, continue on separate sheet).

U.S. affiliate holding direct ownership interest in the U.S. affiliate named in item 1				U.S. affiliate in ownership chain which is directly owned by a foreign parent	
Name (1)	BEA Identification Number (2)	Percent direct ownership in U.S. affiliate named in item 1 (For the close of each year, the sum of these percents for all direct owners must equal item 16) Close FY 1980 (3)	Close FY 1979 (4)	Name (5)	BEA Identification Number (6)
17.		%	%		
18.		%	%		
19.		%	%		
20.		%	%		

Industry classification of fully-consolidated U.S. affiliate (based on sales or gross operating revenues) – Enter the appropriate 3-digit industry code(s) and the sales (as defined for item 26 on the standard Form BE-12) associated with each code. For a full explanation of each code, see the Standard Classification and Export and Import Trade Classification Booklet. If you use fewer than eight codes you must estimate the sales. For an inactive affiliate, show the industry classification(s) pertinent to the last active period; for "start-up" with no sales, show the intended activity(ies). Bank holding companies must show percentage of total income (item 27 on this form).	Industry code (1)	Sales (2) Mil. Dol. Thous. Dol.
21. Banking	6000	$
22. Enter code with second largest sales		
23. Enter code with third largest sales		
24. Enter code with fourth largest sales		
25. Enter code with fifth largest sales		
26. Enter code with sixth largest sales		
27. Enter code with seventh largest sales		
28. Enter code with eighth largest sales		
29. Sales accounted for (sum of items 21 through 28)	//////	
30. Sales not accounted for above	//////	
31. Total sales – Sum of items 29 and 30 →	//////	

If the amount of sales as given in item 21 is not more than 75.0 percent of total sales as given in item 31, then the U.S. affiliate most likely does not qualify for using Form BE-13 BANK. Before proceeding, call BEA for clarification (202) 523-0567.

Part II – FINANCIAL AND OPERATING DATA OF U.S. AFFILIATE

• Use U.S. generally accepted accounting principles unless otherwise specified. All data must represent a full consolidation of domestic nonbank-owned U.S. affiliates that are named; include other U.S. affiliates or foreign business enterprises on the equity basis, or cost basis if less than 20 percent owned.

IMPORTANT EXAMPLE: Report all dollar figures below in thousands of U.S. dollars, as illustrated

EXAMPLE: If figure is 12,125,630,000.00	Bil.	Mil.	Thous.	Dols.
	12	125	630	

	Amount (1) Bil. Mil. Thous. Dols.
32. Total assets at close PY 1980 – As defined for reporting on the U.S. bank affiliate's consolidated report of condition of its domestic offices and affiliates	$
33. Total income – Include sales or gross operating revenues (excluding sales taxes), equity in net income of unconsolidated U.S. and foreign business enterprises, unrealized and realized capital gains (losses) which have been recognized, and other income. Use same basis as required by item 62 of standard Form BE-12	
34. Net income – Net income after provision for U.S. Federal, State, and local income taxes, but before dividends on common and preferred stock. Use same basis as required by item 69 of standard Form BE-12	
35. Net realized and unrealized capital gains (losses) – Include gains (losses) resulting from the sale or disposition of investment securities, property, plant, and equipment, or other assets; those resulting from changes in the dollar values of the affiliate's foreign currency denominated assets and liabilities due to changes in foreign exchange rates during the reporting period; and all other recognized capital gains (losses), including those resulting from revaluation of assets, whether or not realized. (Should sum of items 34 and 35.	
36. Those capital gains (losses) that are included in net income, item 34 above	
37. Those capital gains (losses) that are carried directly to an equity account and are not included in net income, item 34 above	
	Number
38. Total employment – Report the average number of employees for the year, as defined by item 119 of standard Form BE-12	
	Amount Bil. Mil. Thous. Dols.
39. Total employee compensation – For all employees, the sum of wages and salaries and employer expenditures for employee benefit plans, as defined for item 120 of standard Form BE-12	$

If item 38, total employment, or item 39, total employee compensation, is less, explain here.

Part III – INVESTMENT AND TRANSACTIONS BETWEEN U.S. AFFILIATE AND FOREIGN PARENT

A separate Part III, or Part III-ADDITIONAL, must be completed for each direct or indirect equity interest held by foreign parents in the U.S. affiliates at any time during the reporting period. Permanent debt and equity investment and retained earnings, income, loss, and other items remitted or credited between the U.S. affiliates and the foreign parent, should be reported here on the appropriate lines. NOTE: In order to avoid duplication in U.S. Government statistics, permanent debt investment (item 53), and owners' equity (items 58 through 63), and changes in these items should not be reported on Treasury Department International Capital Forms. However, transactions and positions of the U.S. affiliates with foreign affiliates of the foreign parent are all assumed to be regular bank counterparties and should be reported on the Treasury Department International Capital forms rather than here.

40. Number of Part III schedules filed by the U.S. affiliate – If there is only one, enter "1" in the box below; if more than one, enter the number of Part III's to be filed.

☐ ← Number

If number is greater than "1", use Part III-ADDITIONAL schedules.

41. Name of foreign parent that this Part III is for:

Name

The foreign parent named in item 41 holds (Mark either 42 or 43):

42. ☐ A direct equity interest in the U.S. affiliate

43. ☐ An indirect equity interest in the U.S. affiliate

If a foreign parent holds both direct and indirect equity interests, then separate Part III's must be completed for each line of ownership. The marking of either item 42 or 43 will indicate which is being reported on this Part III.

44. If item 42 is marked, give percent of voting rights directly owned (For the class of stock, the sum of this item from all Part III's filed for the U.S. affiliate must equal item 12.)	Close PY 1980 (1)	Close PY 1979 (2)
	. %	. %

45. Country of location of foreign parent named in item 41:

☐☐☐ ← BEA USE ONLY

46. Industry code* of foreign parent named in item 41:

☐☐☐ ← Code

47. Is the foreign parent named in item 41 the ultimate beneficial owner (UBO) *(See definition)*?

1 ☐ Yes

2 ☐ No If the answer to item 47 is "no," complete the following:

48. Name of UBO *(If the UBO is an individual, a name is not required, complete only items 49 and 50)*:

49. Country of UBO named in item 48:

☐☐☐ ← BEA USE ONLY

50. Industry code* of UBO named in item 48:

☐☐☐ ← Code

* Secure industry code for foreign parent or ultimate beneficial owner from page of the Industry Classifications and Export and Import Trade Classifications Booklet.

Part III – INVESTMENT AND TRANSACTIONS BETWEEN U.S. AFFILIATE AND FOREIGN PARENT (Continued)

NOTE: If item 40 is marked, then only the following items in the rest of this Part III need be completed to report direct connections or positions, if any, related to permanent debt investment between the U.S. affiliate and the foreign parent: 51, 52, 72, 74, 75, 76, and 77. Do not duplicate data reported on other Part III's.

SECTION A – INVESTMENT BETWEEN U.S. AFFILIATE AND FOREIGN PARENT NAMED IN ITEM 41, ACCORDING TO BOOKS OF U.S. AFFILIATE

	Balance, Close PY Yes (1)	Balance, Close PY Now (2)
• Debt to foreign parent:	Bil. Mil. Thous. Dols.	Bil. Mil. Thous. Dols.
51. Long-term debt to foreign parent, total – Debt with an original maturity of more than one year or with no stated maturity, and debt with an original maturity of one year or less which has been renewed, or with respect to which there is the intention and the means to renew, extend, or refinance, for more than one year. Exclude current portion debt.	$	$
52. Foreign parent's permanent debt investment in the U.S. affiliate – That part of item 51 which is considered by the foreign parent to be permanent debt investment in the affiliate		
• Foreign parent's share in owners' equity		
Incorporated affiliates:		
53. Permanent invested equity capital – That part of the foreign parent's investment in the U.S. affiliate, other than permanent debt investment reported in item 52, which the foreign parent considers to be permanent invested equity capital, including accumulated income. This would normally consist of capital allocated to the affiliate, special reserves out of net income, and net income not yet distributed		
Incorporated affiliates:		
54. Capital stock, common and preferred, voting and nonvoting		
55. Additional paid-in capital		
56. Retained earnings (deficit)		
57. Treasury stock held by U.S. affiliate	( )	( )
58. Total owners' equity – Sum of items 54, 55, 56, and 57 →	$	$
• BEA USE ONLY		

SECTION B – CHANGES IN FOREIGN PARENT'S EQUITY HOLDINGS IN U.S. AFFILIATE

Report in items 59 through 69 transactions during the reporting period by the foreign parent that changed its equity holdings, as given in item 58 or item 50, in the U.S. affiliate, but exclude changes caused by carrying net income to the equity account, the payment of stock or cash dividends (other than liquidating dividends), or the distribution of earnings during the period. Exclude effect of treasury stock transactions with persons other than the foreign parent and reorganizations in capital structure that do not affect total equity. Report all amounts at transaction value, i.e., the value of the consideration given (received) by the foreign parent.

	Amount (1)
• Transactions between foreign parent and U.S. affiliate:	Bil. Mil. Thous. Dols.
Increase in equity interest –	
59. Establishment of affiliate by foreign parent	$
60. Purchase by foreign parent of capital stock from incorporated affiliate	
61. Additional equity capital contributed by foreign parent (for an incorporated affiliate, report only those contributions not resulting in the issuance of stock)	
Decrease in equity interest –	
62. Total liquidation of affiliate by foreign parent	
63. Sale by foreign parent of capital stock to incorporated affiliate	
64. Return of contributed equity capital to foreign parent (for an incorporated affiliate, report only those returns not resulting in a reduction of issued stock)	
• Transactions between foreign parent and a person other than U.S. affiliate:	
Acquisition by foreign parent of equity interest in U.S. affiliate from –	
65. U.S. persons other than the U.S. affiliate	
66. All foreign persons	
Sale by foreign parent of equity interest in U.S. affiliate to –	
67. U.S. persons other than the U.S. affiliate	
68. All foreign persons	
69. Increase (decrease) at transactions values of changes in equity holdings – The consideration given (received) by the foreign parent in order to bring about the change in equity holdings; must equal sum of items 59, 60, 61, 65, and 66 minus sum of items 62, 63, 64, 67, and 68.	
70. Approximate book value on the date of the transaction(s), based on books of the U.S. affiliate, that is equivalent to the transactions values reported in item 69. (The amount given here should approximate the change in item 53 or item 58, column 1 minus column 2, after allowance is made in item 53 or item 58 to exclude changes caused by carrying net income to the equity account, payment of stock or cash dividends (other than liquidating dividends), distribution of earnings, and treasury stock transactions.)	$

SECTION C – PAYMENTS AND RECEIPTS OF DIVIDENDS, DISTRIBUTED EARNINGS, INTEREST, FEES, ROYALTIES, AND RENTALS BETWEEN U.S. AFFILIATE AND FOREIGN PARENT

Enter amounts paid, received, or owed into intercompany accounts, include amounts for which payments were made in-kind. Amounts should be entered as of the date paid (received) by the affiliate, or entered into intercompany accounts with the foreign parent, whichever occurred first. For an item entered into intercompany accounts, in order to avoid duplication, any subsequent settlement of the amounts must not be reflected in one of the items below, but must be reflected only as a reduction in intercompany account.

	Payments or credits by U.S. affiliate to foreign parent: Net of U.S. tax withheld (1)	Payments or credits by U.S. affiliate to foreign parent: Amount of U.S. tax withheld (2)	Receipts by or credits to U.S. affiliate from foreign parent: Net of foreign tax withheld (3)	Receipts by or credits to U.S. affiliate from foreign parent: Amount of foreign tax withheld (4)
	Bil. Mil. Thous. Dols.	Bil. Mil. Thous. Dols.	Bil. Mil. Thous. Dols.	Bil. Mil. Thous. Dols.
Incorporated U.S. affiliates:				
71. Dividends on the U.S. affiliate's common and preferred stock, paid out of current and past earnings, excluding stock dividends	$	$	//////	//////
Unincorporated U.S. affiliates:				
72. Earnings distributed, whether out of current or past earnings			//////	//////
All U.S. affiliates:				
73. Interest on long-term debt considered to be permanent debt investment – Enter interest paid by U.S. affiliate on the affiliate's long-term debt to the foreign parent which is considered to be permanent debt investment in the affiliate, item 52			//////	//////
74. Royalties, license fees, and other fees for the use or sale of intangible property			$	$
75. Payments and receipts for use of tangible property – Include rentals for operating leases of one year or less and net rent on operating leases of more than one year. Net rent is the equivalent to the rent lease payment less the return of capital (depreciation) component				
76. Fees for services rendered – Include fees for management, professional or technical services, R & D assessments, and allocated expenses other than those given above				
77. TOTAL – Sum of items 71 through 76 →	$	$	$	$

FOREIGN PARENT'S EQUITY IN U.S. AFFILIATE'S NET INCOME

Net income must be calculated in accordance with the all inclusive concept of the income statement.

	Amount (1)
	Bil. Mil. Thous. Dols.
78. Foreign parent's direct equity in U.S. affiliate's net income (loss) – Enter foreign parent's direct ownership share of net income, item 34	$
79. Foreign parent's share of item 35, net realized and unrealized capital gains (losses) included in net income	
80. Foreign parent's share of item 37, net realized and unrealized capital gains (losses) taken directly to retained earnings or owner's equity, after provision for income tax liability (benefit), if any, on the gains (losses)	$

[FR Doc. 81-2287 Filed 1-21-81; 8:45 am]
BILLING CODE 3510-08-C

15 CFR Part 806

Direct Investment Surveys; Solicitation of Written Public Comment on Proposed Survey Rule Changes

AGENCY: Bureau of Economic Analysis, Commerce.

ACTION: Proposed rule.

SUMMARY: This rule is being proposed to accomplish the following:

(1) Solicit written public comments on increasing the exemption level for the quarterly reports on U.S. direct investment abroad (Forms BE-577, 578, and 578B) from $1,000,000 to $5,000,000.

(2) Notify the public that Form BE-577S has been discontinued.

(3) Notify the public that the proposal to initiate an annual survey of U.S. direct investment abroad, the BE-11, is being dropped from consideration at this time; and that the BE-133, Sources and Applications of Funds of U.S. Direct Investment Abroad, survey is being discontinued.

(4) Make three minor changes to update, clarify, and correct the regulations.

DATES: Written comments must be received by BEA no later than February 23, 1981.

ADDRESS: Written comments should be addressed to the U.S. Department of Commerce, Bureau of Economic Analysis, International Investment Division (BE-50), Washington, D.C. 20230. All comments in response to this notice will be available for public inspection from 8:00 to 4:00 p.m. in room 808, 1401 K Street, N.W., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: George R. Kruer, Chief, International Investment Division, Bureau of Economic Analysis, U.S. Department of Commerce, Washington, D.C. 20230, (202) 523-0657.

SUPPLEMENTARY INFORMATION: Each of the proposed actions is discussed below.

1. Based on the results of the Benchmark Survery of U.S. Direct Investment Abroad-1977, it has been determined that the exemption level for the quarterly balance of payments reports for U.S. direct investment abroad can be increased from $1,000,000 to $5,000,000 (positive or negative, of assets, sales, or net income) without significantly affecting the validity of the country by industry data normally published. The numbers and titles of the forms are:

BE-577—Direct Transactions of U.S. Reporter with Foreign Affiliate Incorporated Abroad

BE-578—Transactions of U.S. Reporter with Unincorporated Foreign Affiliate, Except a Bank

BE-578B—Transactions of U.S. Reporter with Unincorporated Foreign Banking Affiliate

This action will result in a reduction from about 15,000 to about 11,000 in the number of reports filed each quarter.

It is proposed that the change become effective with the reports due to be filed covering the first quarter of 1981.

2. After consultations with the Office of Federal Statistical Policy and Standards (OFSPS), Form BE-577S, U.S. Reporter's Directly-Owned Foreign Affiliate's Share in Net Income of Indirectly-Owned Foreign Affiliate, an annual report, was discontinued after collecting data for 1979. This action will remove from the regulations the requirement for filing the report.

3. In the January 4, 1980 Federal Register, Volume 45, No. 3, page 1049, BEA published a notice proposing to abolish the mandatory reporting requirement for an annual statistical survey, the BE-133, Sources and Applications of Funds of U.S. Direct Investment Abroad, and to establish a mandatory reporting requirement for a new statistical survey, the BE-11, Annual Survey of U.S. Direct Investment Abroad.

These proposed actions were the subject of a public hearing and several interagency meetings conducted by OPSPS. It was decided that the BE-11 survey should not be initiated at this time but will be reconsidered as an annual survey to follow the next benchmark survey of U.S. direct investment abroad, which will cover 1982. At the same time, it was decided that BEA would not continue the BE-133, Sources and Applications of Funds of U.S. Direct Investment Abroad, survey. This action will remove from the regulations the requirement for filing the report.

4. The following minor changes are being made to update, clarify, and correct the regulations:

(a) The definition of "United States" as contained in the regulations is being revised to eliminate the "Canal Zone" as part of the United States;

(b) Language is being added to the section on real estate to clarify the circumstances whereby real estate owned is considered real estate held for personal use and, therefore, not subject to reporting requirements; and

(c) § 806.14(b) is being revised to add two words—"conditions apply"—that were inadvertently dropped in a prior notice.

It is therefore proposed to modify Part 806 as set forth below.

George Jaszi,
Bureau of Economic Analysis.

1. Section 806.7(a) is revised to eliminate the Canal Zone from the definition of the United States as follows:

§ 806.7 General definitions.

(a) "United States," when used in a geographic sense, means the several States, the District of Columbia, the Commonwealth of Puerto Rico, and all territories and possessions of the United States.

2. Section 806.8 is revised to read as follows:

§ 806.8 Real estate.

Residential real estate held exclusively for personal use and not for profit-making purposes is not subject to the reporting requirements of this Part. A residence which was an owner's primary residence that is then leased by the owner while outside his/her country of residence but which the owner intends to reoccupy, is considered real estate held for personal use. Ownership of residential real estate by a corporation whose sole purpose is to hold the real estate and where the real estate is for the personal use of the individual owners(s) of the corporation, is considered real estate held for personal use.

If a business enterprise, otherwise required to report, is in the form of real property not identifiable by name, reports are required to be filed by and in the name of the beneficial owner, or in the name of such beneficial owner by the intermediary of such beneficial owner.

3. The introductory paragraph of § 806.14(b) is revised to read as follows:

§ 806.14 U.S. direct investment abroad.

* * * * *

(b) Foreign affiliate consolidation. In cases where the recordkeeping system of foreign affiliates makes it impossible or extremely difficult to file a separate report for each foreign affiliate, a U.S. Reporter may consolidate affiliates in the same country when the following conditions apply: * * *

* * * * *

4. In § 806.14(e)(1), (2), and (3), change the exemption level in each from $1,000,000 to $5,000,000.

5. In § 806.14(f), strike subparagraphs (1) and (4), and renumber subparagraph (2) to (1); and renumber subparagraph (3) to (2).

[FR Doc. 81-2288 Filed 1-19-81; 1:18 am]
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federal register

Thursday
January 22, 1981

Part X

Department of Health and Human Services

Office of Human Development Services

Social Services Programs Under Title XX and Titles I, IV–A, X, XIV and XVI (AABD) of the Social Security Act

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Human Development Services

45 CFR Parts 1392, 1393, 1396 and 1397

Social Services Programs Under Title XX and Titles I, IV-A, X, XIV and XVI (AABD) of the Social Security Act

AGENCY: Office of Human Development Services, HHS.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: These rules are proposed to implement the amendments to title XX of the Social Security Act contained in the "Adoption Assistance and Child Welfare Act of 1980," Pub. L. 96-272. In addition, we propose to make conforming changes in the regulations for the social services programs under titles I, IV-A, X, XIV and XVI (AABD) in the Territories that are necessitated by proposed changes in the rules governing the title XX program. We are also proposing several clarifying changes and technical corrections to the current regulation.

DATE: Consideration will be given to written comments on or before March 23, 1981. Agencies or organizations are requested to submit their comments in duplicate.

ADDRESS: Address comments to: Cesar A. Perales, Assistant Secretary for Human Development Services, Department of Health and Human Services, P.O. Box 1923, Washington, D.C. 20013. Comments will be available for public inspection in room 722-E in the Hubert H. Humphrey Building, 200 Independence Avenue SW., Washington, D.C., on Monday through Friday of each week from 8:30 a.m. to 5 p.m., area code (202) 472-4415.

FOR FURTHER INFORMATION CONTACT: Mrs. Johnnie U. Brooks, Room 722-E, HHH Building, Department of HHS, 200 Independence Avenue SW., Washington, D.C. 20201 (202) 472-4415.

SUPPLEMENTARY INFORMATION: Pub. L. 96-272, the "Adoption Assistance and Child Care Welfare Act of 1980," was signed by the President on June 17, 1980. Implementation of the statute requires a substantial number of revisions to the title XX regulations in 45 CFR Part 1396 (formerly Part 228), and modifications to the regulations contained in Parts 1392, 1393, and 1397 of title 45 (formerly Parts 230, 222 and 220 respectively). With the exception of the training plan, most of the provisions of the statutory amendments are nondiscretionary. Therefore, these proposed regulations, for the most part, adhere strictly to the statute.

First, we will discuss the provisions in the statute and the corresponding changes we are proposing in Parts 1396 and 1397 in the order in which they will appear in those Parts. Second, we will discuss the conforming changes we propose in Parts 1392 and 1393 of the regulations for the social services programs in the Territories under titles I, IV-A, X, XIV, and XVI (AABD) of the Act. The proposed revisions to the title XX rules are as follows:

1. *Program definitions*—This section adds a definition of "Training plan" and is revised to recognize the multi-year service plan option.

2. *Multi-Year Plan and Choice of Fiscal Year*—Section 2004 of the Act previously required each State to publish and make available for public review an annual comprehensive services plan which describes its services program. Pub. L. 96-272 amended Section 2004 to allow States to use a multi-year service program period. States may now choose a one, two, or three-year program period and must publish the services plan prior to the beginning of the program period selected. The program period must begin at the beginning of the fiscal year of the Federal, State or local government and end at the close of that fiscal year or the second or third fiscal year, as appropriate.

When a State adopts a multi-year program period, the statute requires that it must publish and make generally available information about the program at intervals prescribed by the Secretary. We think that the public should be informed about the program at least on an annual basis. We gave much consideration to what information States should make available, at what intervals and to what audience or audiences. We considered requiring that States publish an annual display ad similar to current requirements. We decided against this option as it would require an undue amount of paperwork, would prove too costly and would not provide States with flexibility consistent with the multi-year program period option.

We also considered allowing States complete discretion in determining the content, publication methods and publication intervals for this information. This proposal offers the advantage of simplicity, but we believe that minimum Federal requirements are necessary to ensure that all interested individuals and organizations are informed about the title XX program.

Therefore, we are proposing in a new § 1396.37 that States opting for a multi-year program period take action prior to the beginning of the second and/or third fiscal year that is part of the State's service program period aimed at two major "audiences" for two purposes. First, we believe certain information is important to individuals, advocacy organizations, services agencies and others to keep them informed about and involved in the State's public review process. We also believe that actual and potential service recipients need to know about the title XX services that are available and where to go to apply for and receive them.

Therefore, for addressing interested individuals, organizations, and agencies, we propose that the State publish written information consisting of: (1) the name of the State agency administering the plan; (2) the program period; (3) the publication date of the services plan; (4) the actual amount of the Federal allotment for the forthcoming fiscal year; (5) where to obtain information about the services program and where to apply; (6) where the services plan may be reviewed or a copy obtained; and (7) the information required by section 1616(e) of title XVI(SSI) about standards for residential facilitites for SSI recipients. By not requiring that this information be published as a display ad, we propose to give States the option of selecting the manner in which this information is published.

Second, for informing actual and potential service recipients, we propose that the State make the following information information generally available throughout the State at least annually, and preferably on an ongoing basis: (1) a description of services offered; (2) who is eligible for services; and (3) where to call throughout the program period for information about and where to apply for a service. This may be accomplished through the news media (e.g., newspapers, television or radio) and/or by means of posters or pamphlets located in places frequented by the general public.

Also, we are proposing that the information desctibed above be made available in foreign language(s) when the State agency determines that it is appropriate.

Although we propose to allow States to select the publication and/or media methods best suited to their particular audiences, we expect that the method(s) used will insure that the information will reach a maximum number of interested parties, that the information may be understood by the average citizen in the State, and that the State will periodically examine the method(s)

it uses to access the effectiveness of such method(s).

In order to reflect the multi-year program period option, the word "annual" has been deleted from all references to "Comprehensive Annual Services Program Plan" (CASP); all references to "program year" have been changed to "program period"; and other language changes have been made in Parts 1300 and 1397 as necessary.

3. *Permanent Extension of Provisions Related to Services For Alcoholics and Drug Addicts*—From October, 1975 through March 31, 1980, States could receive Federal matching under title XX for detoxification and rehabilitation services to alcoholics and drug addicts without regard to certain statutory limitations placed on the provision of room or board, medical and remedial care, and services to individuals in certain institutions. (These limitations require that medical and remedial care and room and board be integral but subordinate to a particular service and that services provided to individuals living in hospitals, skilled nursing facilities (SNFs), intermediate care facilities (ICFs) or prisons be provided by staff other than the staff of such facilities.) A series of temporary legislative amendments exempts services for alcoholics and drug addicts from these limitations. Pub. L. 96–272 amends section 2002(a)(7) and (a)(11) of the Act to make these exemptions permanent. Under the amendments, FFP is available in expenditures for medical care and room or board that are a part of the entire rehabilitative process whether or not more than one provider participates in the process. FFP is also available in expenditures for initial detoxification in a hospital, SNF or ICF if the detoxification is integral to the further provision of services under title XX, even if the detoxification services are provided by the institution's own staff. Sections 1396.40, 1396.41, and 1396.44 are revised to incorporate these exemptions.

4. *Emergency Shelter For Adults*—Prior to enactment of Pub. L. 96–272, emergency shelter was available under section 2002(a)(11) of the Act only for children who were in danger of abuse, neglect or exploitation. Under current rules, this service may be provided to such children for a period not to exceed 30 days in any six-month period. Pub. L. 96–272 amends section 2002(a)(11) to allow States to provide emergency shelter for adults. In order to receive this service, the adult must be in danger of physical or mental injury, neglect, maltreatment or exploitation. This provision will enable States to respond more effectively in situations such as domestic violence, where battered spouses and other vulnerable adults who are unable to protect their own interests are in need of emergency shelter. The new provision regarding emergency shelter for adults is incorporated into Section 1396.40.

5. *Funding Provisions*—Pub. L. 96–272 made several changes with respect to funding.

First, the allocation of title XX funds will be indexed annually based on the Consumer Price Index until a maximum of $3.3 billion is reached. Section 1396.52 is amended to reflect this change.

Second, Pub. L. 96–272 places a limitation on training funds for fiscal years 1980 and 1981. Prior to fiscal year 1980, States were not limited as to the amount of Federal funds that could be exended for personnel training and retraining directly related to the provision of services.

Third, section 2002(a)(1) of the Act was amended to specify that, beginning in FY 1982, funds for training expenditures will not have a ceiling but States will be reimbursed only for expenditures included in the training plan approved by the Secretary. Section 1396.51 is revised to incorporate this change.

Fourth, Pub. L. 96–272 amended section 2002(a)(7) with respect to donations for training for FY 1980 and FY 1981. States may accept funds donated for personnel training by a public or private non-profit provider of training and use this donation to match the Federal share. In other words, for these two fiscal years, States may accept "restricted" private donations for their training programs. Section 1396.53 is modified to reflect this change.

Finally, Pub. L. 96–272 extends permanently the provision which allows 100% Federal matching for child day care services. During fiscal years 1977, 1978 and 1979, $200 million above the title XX funding ceiling was available for child day care services at 100 percent Federal matching. Under Pub. L. 96–272, up to $200 million for child day care services is included within the ceiling for FY 1980 and FY 1981. For FY 1982 and thereafter, the States will be limited to 8 percent of their title XX ceiling at the 100 percent match for these services. Including these funds within the State's allotment means that a State may, at its option, use its share of these funds for child day services, and claim 100 percent or use these funds for other services at the 75 percent match. Section 1396.51 revised to incorporate this change.

6. *AFDC Recipient*—Pub. L. 96–272 established a new Part E of title IV of the Social Security Act under which foster care maintenance and adoption assistance payments may be made on behalf of certain children. Sections 472 and 473 of Part E provide that any child for whom such payments are made shall be deemed an "AFDC" recipient under title IV–A for purposes of titles XIX and XX. We have accordingly included these individuals in Section 1396.56 (Fifty percent rule) and 1396.60 (Persons eligible and access to services) as part of the AFDC category.

7. *The Training Plan*—As we stated earlier, one of the purposes of our proposals for the training program is to strengthen the State agency's administration of the title XX services program. We believe the requirement for a training plan will enable States to plan for, cost out in advance and better manage a comprehensive training program that directly relates to their social services programs.

We believe one purpose of the Congress in enacting this new training plan and approval requirement was to enable the Federal Government to contain training costs. We especially solicit comment on whether the proposed requirements will achieve this purpose and provide a reasonable basis for decisions both on individual training activities and on over-all budgetary levels. In addition, we solicit suggestions about proven standards or approaches to assessment of training needs which the Department should encourage States to meet or use.

A training plan was originally required by the title XX regulations issued in June 1975, but the regulations did not specify any requirements for the plan. The requirement was removed by the Department during the first major revision of the regulations in January 1977, despite strong support by commentors, on the grounds that it imposed unnecessary paperwork requirements on the States. Even so, some States have continued to transmit to the Regional Offices a copy of their title XX training plan along with their annual services plan. Strong support for a training plan has also been expressed by provider agencies, the academic community, and public interest groups. For the most part, the training plan is not seen as a burden but as a needed management tool.

Section 2002(a)(2)(A)(iii) II of the Act, as added by Pub. L. 96–272, contains the following requirement:

> Payment to a State with respect to such expenditures [training] for fiscal year 1982 or any succeeding fiscal year may be made only if the State has submitted to the Secretary in accordance with paragraph (16) (prior to the beginning of the fiscal year involved) a

training plan specifying how its funds expended for such training or retraining in that fiscal year will be used, and only with respect to expenditures included in such plan which are approved by the Secretary in accordance with criteria prescribed by him.

Section 2002(a)(1)(B), added by Pub. L. 96–272, prescribes the following requirements for a training plan:

Effective October 1, 1981, no payment may be made under this section for training or retraining expenditures except in accordance with a training plan approved by the Secretary which, at a minimum—

(A) Describes how training needs were assessed and how the assessment was used to structure the training programs, the individuals to be trained, and the training resources to be used;

(B) Demonstrates that the training activities have a direct relationship to the title XX services program and to the State's staffing needs to carry out the title XX services programs; and

(C) Describes the State agency's plan to monitor training programs and to evaluate the agency's overall staff training and development program.

To carry out these requirements, we are proposing to require what we believe is the minimum data required by law and needed as the basis for Departmental approval of training expenditures. We considered asking for more detailed and more specific data. This was rejected as being too burdensome on States although Congress and others repeatedly express concern at our lack of data on the training program. On the other hand, we felt we could not require less data and still fulfill the requirement of the law that expenditures be approved. Therefore, we have proposed in § 1396.87 that States submit, in line with paperwork burden reduction and simplified State planning efforts, the following:

(a) An assurance that the State agency has a full time staff development director and adequate staff to manage the title XX training program;

(b) A summary statment of program goals and objectives;

(c) A brief description of the needs assessment process used;

(d) An assurance that the results of the needs assessment are on file in the State agency and available for review by the Department;

(e) A prioritized list of training needs;

(f) A statement of the amounts of Federal, State appropriated and donated funds available for training;

(g) Estimated training activities and expenditures;

(h) A description that demonstrates that the training program was based on the needs assessment and has a direct relationship to the current services program and to the State's staffing needs;

(i) A description of the agency's plan for monitoring training programs; and

(j) A description of the State agency's plan for evaluating the training programs.

The data we are proposing to require as a part of the training plan are based on statutory requirements. With respect to the requirement for a full-time staff development director, we believe a direct relationship exists between the quality of a training program and the designation of a full-time official responsible for the program, as well as adequate staff to carry out the duties and responsibilities related to all phases of training program operations. By full-time director we mean an individual who is employed full time and may, in addition to title XX training, be responsible for other training programs in the agency, e.g., training under title IV–A or title XIX.

Statutory requirements also include information specified in § 1396.87(g), "Estimated Activities and Expenditures." We view this requirement as the operational backbone of the training plan.

We propose to require data concerning:

(a) The training activities (e.g., workshops, courses);

(b) The subject of the training;

(c) The number of persons to be trained;

(d) The expenditures associated with trainees (i.e., per diem, travel, education costs);

(e) The provider of the training; and

(f) The expenditures associated with the provider of the training (e.g., salaries, purchase or development of teaching materials).

In developing this regulation, we have had much discussion concerning what constitutes an expenditure (i.e., what level of detail should be required, do we mean actual or estimated expenditures); what constitutes approval of an expenditure and of the training plan as required by law; and, after approval of a plan, under what conditions are amendments required.

We have resolved the first concern by proposing to allow States to submit aggregate and estimated activity and expenditure data as opposed to requiring actual expenditure data on an activity by activity basis. This means that for example, States may provide estimated expenditure data for 50 workshops on interviewing for State and provider agency staff throughout the State, or 100 courses on child development for provider agency staff. (A chart for illustrative purposes is included following this section of the regulation and gives further examples.)

This aggregate and estimated activity and expenditures data will be reviewed and approved as one part of the training plan by the Regional Administrator, HDS. FFP will be available only for approved expenditures in an approved training plan.

We think that it is clear that Congress intended that we approve training expenditures in advance. Advance approval can only be on the basis of estimates, and we are aware that no matter how careful a State's estimates are, actual expenditures may well vary somewhat from those estimates. Accordingly, we are proposing to allow up to a 5 percent deviation in actual expenditures from the approved estimated amounts. Expenditures in excess of the 5 percent deviation will be disallowed unless the State amends its plan and obtains advance approval for the amendment. We have tried to build flexibility into the approval and amendment process as we view the training plan as an operational, on-going plan rather than a static, formal one. Accordingly, we propose to allow States to amend their training plans and/or activities and expenditures at any time.

With respect to approval of the training plan, all the information required by § 1396.87 must be submitted before a plan can be approved. We propose to allow that the training plan, amendments or the annual activities and expenditure data required by § 1396.87(g) to be approved, even though certain specific activities and/or expenditures are not approved. (All specific activities and expenditures must be approved, however, in order to receive FFP for these expenditures.) This proposal allows FFP to continue uninterrupted for those approved activities and expenditures while questions concerning specific activities and expenditures are being resolved.

All States must submit their initial training plans for approval at least 60 days prior to October 1, 1981, before FFP can be claimed for training expenditures in FY 1982. Subsequent training plans must be submitted at least 60 days prior to the beginning of the Federal fiscal year. We are proposing to require that States conduct a needs assessment and an evaluation of their training programs at least once every three years. Accordingly, we are proposing that States submit new training plans at least once every three years. For those years that a new training plan is not required, States may submit either all the information required by § 1396.87 or only the estimated activities and expenditure data required by

§ 1396.67(g) if previously submitted information in the training plan is still accurate and current. This also is in in line with paperwork reduction efforts.

In cases where the Regional Administrator questions a part of the training plan, the State agency shall be responsible for documenting, justifying or correcting the item in question.

Items not resolved through negotiation may be appealed to the Assistant Secretary in accordance with § 1396.68.

8. *Permanent Extension of Grants to Day Care Providers to Hire Welfare Recipients and Win Tax Credit*— Through a series of temporary legislative amendments, from September, 1976, through September 30, 1978, States, at their option, could make title XX grants to day care providers to hire welfare recipients. Proprietary day care providers were also eligible to receive WIN tax credits. This option, with a few additions, was extended by Pub. L. 96–178 for the period October 1, 1979 through March 31, 1980 and made permanent by Pub. L. 96–272. The amount of grants to day care providers to hire welfare recipients is now set at $6,000 annually in the case of public or non-profit providers; and $5,000 annually in the case of other providers. Also, a new provision expanded the definition of an eligible welfare recipient to include a part time employee if the employee's employment is related to the provision of child care services. We have accepted the suggestion in the Conference Report that a part time employee be defined as one who is employed at least 8 hours per week. (96th Congress, 2nd Session, House Rept. No. 96–900, p. 63.) A new subpart J contains these provisions.

Conforming Changes to Parts 1392 and 1393. Prior to Pub. L. 96–272, in addition to funds for social services available to the Territories under Section 1108 of the Act, funds were also made available to the Territories under Section 2002 of the Act contingent upon the States' certifying that they would not use all of their title XX allotments. The maximum amount that could be available to the Territories under Section 2002 was $16 million, if the States so certified.

Pub. L. 96–272 amends section 2002(a)(2) to authorize a separate entitlement for the Territories of $16.1 million. Even though the entitlement is authorized under Section 2002, the title XX program requirements and options were not extended to the Territories. For services under titles I, IV–A, X, XIV and XVI(AABD), Guam and the Virgin Islands are entitled to $600,000 each and Puerto Rico is entitled to $15 million. The Commonwealth of the Northern Mariana Islands is entitled to $100,000 for services under title IV–A and for services to other individuals as defined by the Secretary. We are proposing to define "other individuals" as aged, blind and disabled persons who are former, current, or potential recipients of SSI. Potential recipients refers to individuals whose income and life circumstances make it likely that they will, within one year, become SSI recipients unless preventive services are provided to them. In our consideration of this proposal, we were guided by Congressional intent as expressed in the Omnibus Territories Act (Pub. L. 94–241) that the Commonwealth of the Northern Marianas be provided with the same options as are available to Guam with respect to services for their residents. We particularly solicit comments from the Northern Marianas on this suggestion.

Conforming changes to implement this legislative provision and to make other technical changes are proposed in the relevant sections of Parts 1392 and 1393.

The Department is required to submit to the Office of Management and Budget (OMB) for review and approval Subpart H of Part 1396 which contain reporting and recordkeeping requirements in connection with the training plan. The Department will submit that Subpart to OMB.

The Department has determined that these proposed regulations do not exceed the threshold criteria established by Executive Order 12044 for regulatory analyses. Therefore, a full regulatory analysis was not done. The completed threshold study which describes an estimate of potential costs the regulations might create is available for public review. Since these proposed rules have implications for cost increases only as related to the title XX training regulations (Subpart H of Part 1396), we have confined the study to that area of the NPRM.

Under chapter 6 of the Administrative Procedure Act, which was recently added by the Regulatory Flexibility Act, Pub. L. 96–354, September 19, 1980, an agency is required to make available for public comment an initial regulatory flexibility analysis, which describes the impact of proposed regulations on small entities, e.g., small businesses, small organizations, and small governmental jurisdictions, unless the head of the agency certifies that the regulations will not, if promulgated, have a significant economic impact on a substantial number of small entities.

The Secretary of Health and Human Services certifies that the regulation proposed in this notice of proposed rule making will not have a significant economic impact on a substantial number of small entities.

Consequently, an initial regulatory flexibility analysis has not been prepared for this rule.

The reasons for the Secretary's certification in this NPRM are that (1) most of these regulations impose conditions for Federal financial participation on the State agency and do not impact directly or indirectly upon small businesses, small organizations, or small governmental jurisdictions as defined in the Act; (2) although a few of these regulations require the State to impose conditions of eligibility for grants or contracts for which small entities may be eligible, these conditions are required by law or are information requirements that can be met with available data or their cost would be paid by the grant or contract; or (3) these regulations impose no compliance or recordkeeping or reporting requirements or small entities.

(Sec. 1102, 49.647 (42 U.S.C. 1302) Pub. L. 96–272)

(Catalog of Federal Domestic Assistance Program No. 13.642, Social Services for Low Income and Public Assistance Recipients)

Dated: January 7, 1981.

Cesar A. Perales,

Assistant Secretary for Human Development Services.

Approved: January 16, 1981.

Patricia Roberts Harris,

Secretary.

We propose to amend Parts 1392, 1393, 1396 and 1397 of 45 CFR Chapter XIII, as follows:

1. The Table of Contents of 45 CFR Part 1392 is amended by revising the title of § 1392.64 as follows:

PART 1392—SERVICE PROGRAMS FOR FAMILIES AND CHILDREN: TITLE IV PARTS A AND B OF THE SOCIAL SECURITY ACT

* * * * *

Subpart C—Federal Financial Participation

Sec.

1392.64 Federal financial participation: Provisions common to title IV–A and B.

* * * * *

2. 45 CFR 1392.61(f) is corrected to remove the word "delete" inadvertently included in the heading and to revise § 1392.61(f) introductory text and (f)(3)(iii) as follows:

§ 1392.61 Federal financial participation; AFDC.

* * * * *

(f) *Rates and amounts of Federal financial participation (FFP) and cost allocation requirements for Puerto Rico, the Virgin Islands, Guam, and the*

Commonwealth of the Northern Mariana Islands.

* * * * *

(3) * * *

(iii) Guam shall not exceed $90,000.

* * * * *

3. In § 1392.61, a new paragraph (g) is added and the current paragraph (g) is redesignated as paragraph (h), and the word "delete" is removed from subparagraph (h)(3).

* * * * *

(g) *Allotments to the Territories under section 2002 of the Act.* (1) In addition to amounts available under section 1108 of the Act, beginning in FY 1980 the Secretary allocates:

(i) To Puerto Rico, $15,000,000;

(ii) To the Virgin Islands, $500,000;

(iii) To Guam, $[illegible]00,000; and

(iv) To the Commonwealth of the Northern Mariana Islands, $100,000.

(2) The amounts specified in paragraphs (g)(1)(i), (ii) and (iii) of this section are for the purpose of payments for services under sections 3(a) (4) and (5), 403(a)(3), 1003(a) (3) and (4), 1403(a) (3) and (4); and 1[illegible]3(a) (4) and (5) of the Act.

(3) The amount specified in paragraph (g)(1)(iv) of this section shall be used to provide services under title IV–A, and to aged, blind, and disabled individuals who are former, current, or potential recipients of SSI. Potential recipients are individuals whose income and life circumstances make it likely that they will, within one year, become SSI recipients unless preventive services are provided to them.

(h) *Federal financial participation in the work incentive program.* (1) Federal financial participation at the rate of 90 percent is available in the costs of self-support services [and the related administrative costs) provided by the separate administrative units in accordance with 45 CFR 224.15(c).

* * * * *

(3) This paragraph does not apply to Puerto Rico, the Virgin Islands, Guam, and the Commonwealth of the Northern Mariana Islands.

4. Section 1392.64 is amended by revising the title of the section and paragraph (b) as follows:

§ 1392.64 Federal financial participation; provisions common to title IV–A and B.

* * * * *

(b) *Restrictions on State's share.* The State's share in claiming FFP under both Parts A and B of title IV shall be in accordance with 45 CFR 1396.53 except that paragraph (a)(3) does not apply.

5. The Table of Contents of 45 CFR Part 1393 is amended by adding the title for a new § 1393.91.

PART 1393—SERVICE PROGRAMS FOR AGED, BLIND, OR DISABLED PERSONS: TITLES I, X, XIV, AND XVI (AABD) OF THE SOCIAL SECURITY ACT

* * * * *

Subpart E—Federal Financial Participation

Sec.

1393.91 Allotments to the Territories under section 2002 of the Act.

* * * * *

6. Section 1393.60(b) is revised as follows:

§ 1393.60 Conditions for FFP.

* * * * *

(b) *Restrictions on State's share.* The State's share in claiming FFP under this part shall be in accordance with 45 CFR 1396.53 except that paragraph (a)(3) does not apply.

7. A new § 1393.91 is added to Part 1393 as follows:

§ 1393.91 Allotments to the Territories under section 2002 of the Act.

The allotments to the Territories under section 2002 of the Act shall be made in accordance with the requirements of § 1392.61(g) of this title.

8. In 45 CFR Part 1396, the Table of Contents is amended by adding a new § 1396.37, deleting references to "annual" and "program year," and substituting "program period," removing § 1396.29–a, revising Subpart H, and adding a new Subpart J as follows:

PART 1396—SOCIAL SERVICES PROGRAMS FOR INDIVIDUALS AND FAMILIES: TITLE XX OF THE SOCIAL SECURITY ACT

* * * * *

Subpart C—Comprehensive Services Program Plan

Sec.

1396.20 Conditions for FFP.
1396.21 Establishment of program period.
1396.22 Services plan.
1396.23 Program goals and objectives.
1396.24 Individuals to be served.
1396.25 Availability of services by geographic area.
1396.26 Services.
1396.27 Estimates of individuals to be served and expenditures.
1396.28 Program resources.
1396.29 Program coordination and utilization.
1396.30 Organizational structure.
1396.31 Needs assessment.
1396.32 Planning, evaluation and reporting.
1396.33 The public review process.
1396.34 Regional review of proposed and final services plan.
1396.35 Correction of proposed and final services plans and display advertisements.
1396.36 Amendments to final services plan.
1396.37 State mechanism for annually disseminating certain information to the public.

* * * * *

Subpart H—Training for the Title XX Program

Sec.

1396.67 The training plan: Content.
1396.68 The training plan: Submittal and approval procedures.
1396.69 The training plan: Appeal procedures.

Subpart J—Grants to Child Day Care Providers To Employ Welfare Recipients

Sec.

1396.100 Definitions.
1396.101 Conditions for FFP.
1396.102 Claims for FFP.

9. Section 1396.1, "Program definitions," is amended by adding a definition for "Training plan," and removing the reference to "annual" with respect to the annual services plan in "categories of individuals" and "service plan", as follows:

§ 1396.1 Program definitions.

* * * * *

Categories of individuals means groupings of persons on the basis of common characteristics such as recipient status (AFDC, SSI, Medicaid), income level, age, physical or mental condition or any other characteristic that the State specifies in its comprehensive (Delete "annual" services plan.

* * * * *

Services plan means the State Comprehensive (Delete "annual") Services Program Plan under section 2004 of the Act.

* * * * *

Training plan means the State agency's title XX training plan under § 1396.67 of this Part.

10. Section 1396.5 is amended to add the training plan as a responsibility of the State agency in paragraph (e). As revised paragraph (e) reads as follows:

Subpart B—State Plan Requirements, Reports, Maintenance of Effort, Compliance

§ 1396.5 Appropriate State agency.

* * * * *

(e) *Authority and responsibility of the agency.* There shall be maintained within the appropriate State agency the authority and responsibility for:

(1) The State plan;

(2) The Services plan;

(3) The training plan;

(4) The projection of estimated expenditures;

(5) The accountability for Federal funds;

(6) The establishing and maintaining of standards for the determination of eligibility;

(7) The administration or supervision of the administration for the provision of services;

(8) Operating the program on a Statewide basis;

(9) Complying with any program reporting requirements;

(10) Maintaining a working relationship between the Secretary and the State; and

(11) Overall supervision, control and oversight of title XX activities.

* * * * *

11. Section 1396.18 is revised as follows:

§ 1396.18 Maintenance of effort.

(a) Each State that participates in the program shall spend during each fiscal year (as selected under § 1396.21) from State and local appropriated funds an amount for services under this Part that is not less than the amount spent from appropriated funds for services under an approved State plan for titles I, IV-A, VI, X, XIV or XVI(AABD) during the fiscal year ending June 30, 1973 or June 30, 1974, whichever is less.

(b) Paragraph (a) of this section does not apply to any State for any services program period in which the payments to the State, other than payments for training expenditures defined in Subpart H of this Part, equal the State's allotment.

12. Section 1396.21 is revised to change the term program "year" to program "period" and to reflect the option States have for a multi-year program period as follows:

§ 1396.21 Establishment of program period.

(a) Beginning with program periods established on or after June 17, 1980, the State shall establish a program period of one, two, or three years;

(b) The beginning of the State's services program period shall be the beginning of the fiscal year of the Federal Government, the State, Government, or a political subdivision of the State;

(c) The end of the State's services program period shall be the end of the first, second, or third fiscal year adopted by the State in accordance with paragraphs (a) and (b) of this section;

(d) In order to exercise the options in paragraph (b) of this section, when changing the length of its program period, the State may have a program period of less than 12 months or may extend the program period for not more than 36 months.

13. Section 1396.22 is amended by removing the reference to the Comprehensive Annual Services Plan and inserting the words "services plan"; removing the word "year" with respect to program year and inserting the term program "period"; and adding new items of information which must be included in the services plan in paragraphs (b)(3) and (c). As revised, § 1396.22 reads as follows:

§ 1396.22 Services plan.

(a) The Chief Executive Officer of the State, or such other official as the laws of the State shall provide, shall publish in both proposed and final form the services plan prepared by the State agency prior to the beginning of each services program period. The proposed and final services plans shall meet all requirements of this Subpart.

(b) The final services plan shall also include: (1) A summary of the public comments; including the State's response to the comments;

(2) An explanation of differences between the proposed and final services plan if any and the reasons therefor; and

(3) A statement of the fiscal year(s) on which the program period is based.

(c) For States with a multi-year plan (in proposed and final services plans) a description of how they plan to make the information available in accordance with § 1396.37.

14. Sections 1396.24(a) and 1396.26(b) are amended by removing the word "year" with respect to program year and inserting, in its place, the word "period" as follows:

§ 1396.24 Individuals to be served.

The proposed and final services plans shall:

(a) Specify which of the categories of individuals described in § 1396.60 will be provided services in the forthcoming program period; describe the income levels for eligibility, and include the Statewide definition of family in accordance with § 1396.1;

* * * * *

§ 1396.26 Services.

The services plan shall:

* * * * *

(b) Specify the effective date when each discrete service is available if the effective date is other than the beginning of the program period.

* * * * *

15. Section 1396.27 is amended by removing the word "year" with respect to program year and inserting the word "period" and adding language to show that estimates are required for each year of the program period. As revised § 1396.27 reads as follows:

§ 1396.27 Estimates of individuals to be served and expenditures.

In order to provide residents of the State with information on the scope of the services program, the services plan shall include estimates of State and Federal expenditures applicable to the title XX program as follows:

(a) For each discrete service for each year of the forthcoming program period, a list of estimated expenditures and estimated numbers of individuals to be served, by each category of eligible individuals and by each geographic area; and

(b) A comparison of estimated aggregate non-Federal expenditures for the forthcoming program period with those of the preceding completed comparable program period.

16. Section 1396.28 is amended in paragraph (b) by removing the word "year" with respect to program year and inserting the word "period"; by revising and designating the last two sentences of paragraph (b) as paragraph (c), and by adding a new paragraph (d) as follows:

§ 1396.28 Program resources.

* * * * *

(b) Where a State program period is the same as the Federal fiscal year, States shall include in the services plan the full amount of the federal allotment.

(c) Where a State program period extends through more than one fiscal year, a State shall include in the services plan the full amount of the Federal allotment for any fiscal year or portion thereof within the program period for which such information has been promulgated by the Secretary in accordance with § 1396.52.

(d) A State shall include in its services plan an estimate of the Federal allotment for any fiscal year within the program period for which the actual amount has not been promulgated.

§ 1396.29-a [Removed]

17. Section 1396.29–a is removed.

18. Section 1396.33 is amended to remove the word "year" with respect to program year and insert the word "period" in the introducing paragraph and in paragraphs (b)(1), (d), (g)(1), and (h)(1). Paragraph (b)(10) is redesignated as (b)(11) and a new (b)(10) is added. The amendments read as follows:

§ 1396.33 The public review process.

A State's services plan does not become effective for its services program period until the public review process is completed in accordance with §§ 1396.33, 1396.34, and 1396.35 (if applicable).

* * * * *

(b) *Scope.* The public review process shall include at least:

(1) Publication of the proposed services plan and a display advertisement describing that plan, and a summary of the plan, if any, at least 90 days before the beginning of the program period, with a 45-day period for public comment;

* * * * *

(10) Publication on an annual basis of information that must be made generally available to the public in accordance with § 1396.37 in States that adopt a services program planning period longer than one year.

(11) Public access to copies of the proposed and final services plans.

* * * * *

(d) *Retention of published services plans.* Copies of the proposed and final services plans shall be retained for at least three years beyond the expiration date of the State's program period in specified local public offices and made available for public and Federal inspection throughout the program period.

* * * * *

(g) *Display advertisement for the proposed plan.* A display advertisement shall at least:

(1) Specify the beginning and ending dates of the program period;

* * * * *

(h) *Summary of proposed services plan.* If the State publishes a services plan summary (to be provided free in lieu of a free copy of the entire services plan), it shall contain at least the following information:

(1) The beginning and ending dates of the program period;

* * * * *

19. Section 1396.36(a)(1) is revised as follows:

§ 1396.36 Amendments to final services plan.

(a) Amendments to the final services plan are necessary at least when:

(1) Change is to be made in the period of time encompassed by the program period (See § 1396.21);

* * * * *

20. A new § 1396.37 if added as follows:

§ 1396.37 State mechanism for disseminating certain information to the public annually.

(a) If a State adopts a services program period that is longer than one year, the State agency shall annually publish in written form and make generally available to the public the following information at a minimum:

(1) The name of the State agency administering the plan;

(2) The services program period, including the publication date of the services plan;

(3) The actual amount of the Federal allotment for the forthcoming fiscal year;

(4) A name and address or a toll-free number where information may be obtained about the services program and where to apply for services;

(5) A name and address or a toll-free number where copies of the services plan and any amendments are available for review and distribution to the public either free or at a reasonable cost; and

(6) The information required in § 1397.30 of this chapter concerning standards for residential facilities for SSI recipients.

(b) If the State agency has a program period longer than one year, it shall make generally available at least annually throughout the State the following information at a minimum:

(1) A description of the services available in each local area;

(2) A description of who may be eligible for services; and

(3) A toll-free number where additional information may be obtained throughout the year about the services program and where to apply for services.

(c) The State agency shall make the information required by paragraphs (a) and (b) of this section available in foreign language(s) when the agency decides it is appropriate.

(d) The information required by paragraphs (a) and (b) of this section shall be published and/or made generally available at least 45 days prior to the beginning of the second and any succeeding fiscal year that is part of the services program period established in accordance with § 1396.21.

(e) The agency shall maintain a copy of the published information required by paragraph (a) of this section and a copy or a description of the information required by paragraph (b) of this section as verification that the requirements of this section have been met.

21. Section 1396.40 is amended by adding a new paragraph (c) as follows:

§ 1396.40 Minor medical and remedial care.

* * * * *

(c) Notwithstanding the requirement of paragraph (a) of this section, that medical and remedial care must be integral but subordinate to a particular service, FFP is available for medical and remedial care provided on or after October 1, 1975 in a program of rehabilitative services to drug and alcohol abusers, under the following conditions:

(1) When medical and remedial care is provided in the initial detoxification of such persons for no more than 7 days, and such detoxification is integral (but not necessarily subordinate) to the further provision of other title XX services to drug and alcohol abusers; or

(2) When medical and remedial care is integral but subordinate to the entire rehabilitative process (rather than to a particular service). The rehabilitative process may include, but is not limited to, initial detoxification, short-term residential services, and subsequent outpatient counseling and rehabilitative services, whether or not such a process involves more than one provider of services.

* * * * *

22. Section 1396.41 is amended by adding a new paragraph (e) to read as follows:

§ 1396.41 Room or board.

* * * * *

(e) Notwithstanding the requirement of paragraph (a) of this section, that room or board must be integral but subordinate to a particular service, FFP is available for room or board provided on or after October 1, 1975 in a program of rehabilitative services to drug and alcohol abusers, under the following conditions:

(1) When room or board is provided in the initial detoxification of such persons for no more than 7 days, and the detoxification is integral (but not necessarily subordinate) to the further provision of other title XX services to drug and alcohol abusers; or

(2) When room or board is integral but subordinate to the entire rehabilitative process (rather than a particular service). The rehabilitative process may include but is not limited to initial detoxification, short-term residential services, and subsequent outpatient counseling and rehabilitative services, whether or not such a process involves more than one provider of services.

23. Section 1396.44 is amended by adding a new paragraph (e) to read as follows:

§ 1396.44 Services to individuals living in hospitals, skilled nursing facilities, intermediate care facilities (including hospitals or facilities for mental diseases or for the mentally retarded), or prisons.

* * * * *

(e) Notwithstanding the requirements of paragraphs (a)(2) and (b) of this section, FFP is available on or after October 1, 1975 for the cost of providing initial detoxification services for no more than 7 days for drug and alcohol

abusers when the detoxification is integral to the further provision of other title XX services, even though:

(1) Hospital or other institutional staff provide detoxification services to resident drug and alcohol abusers; and

(2) Such detoxification services include inherent or intrinsic responsibilities of the facility where they are provided.

24. Section 1396.42(a) is revised to allow emergency shelter for adults as follows:

§ 1396.42 Emergency shelter.

(a) FFP is available for emergency shelter as a protective service to any child, including runaways, or adult only under the following conditions:

(1) The child is in danger of abuse, neglect or exploitation;

(2) The need for emergency shelters for children is documented by personnel authorized by State law to place children; or by an Indian tribal council.

(3) The adult is in danger of physical or mental injury, neglect, maltreatment or exploitation;

(4) The need for emergency shelter for adults is documented by State or provider agency personnel; and

(5) Emergency shelter is provided for not in excess of 30 days in any 6 month period which may be consecutive or may accumulate over more than one stay.

* * * * *

25. Section 1396.51(c) is revised as follows:

§ 1396.51 Matching rates.

* * * * *

(c) *One hundred percent FFP.* (1) Notwithstanding paragraph (a) of this section, FFP is available at the 100 percent rate for the provision of day care services, not to exceed:

(i) In FY 1980 and 1981, an amount which bears the same ratio to $200,000,000 as the amount of the State's allotment under § 1396.52(b)(1) bears to the total allotment for such years; and

(ii) In FY 1982 and thereafter, 6% of the State's allotment under § 1396.52(b)(1).

(2) FFP at the 100 percent rate is only available for:

(i) Grants to child day care providers to hire welfare recipients in accordance with Subpart J of this Part. To the extent feasible, the State shall use funds available under this paragraph for this purpose;

(ii) Day care services provided to children in their own homes, in day care centers, group day care homes, and family day care homes that meet the requirements of § 1396.42; and

(iii) Staff activities in direct support of child day care services such as:

(A) Licensing homes or facilities used by title XX children;

(B) Monitoring title XX child day care services delivery; and

(C) Training staff in accordance with Subpart H of this Part.

26. Section 1396.52 is revised as follows:

§ 1396.52 Allotments to States.

(a) *Basic Title XX Allotment.* The basic allotment of Federal funds payable to the States under this Part for any fiscal year for expenditures for services, administration and training is limited to the amounts available according to the provisions described in paragraph (b) of this section.

(b) *Basic Allotments to the States for each Fiscal Year.* (1) For fiscal year 1980 and each succeeding fiscal year the total allotment under the ceiling will be indexed annually in accordance with Section 2002(a)(2)(A) of the Act. For any fiscal year the amount of the allotment may not exceed $3.3 billion.

(2) For each State, the allotment in any fiscal year will be an amount which bears the same ratio to the total allotment as the population of the State bears to the population of all the States.

(3) The Secretary promulgates the allotment for each State for each fiscal year prior to December 1 of the preceding fiscal year. The population of each State is determined by the most recent satisfactory data available from the Department of Commerce.

(c) *Training allotment.* For FY 1980 and 1981, the allotment for training (in excess of the allotment under paragraph (b) of this section) shall be limited to the highest of:

(1) 4 percent of the State's allotment for title XX services; or

(2) The actual amount of Federal matching for the amounts spent by the States for training in fiscal year 1979; and

(3) The amount payable to the State with respect to State appropriations made prior to October 1, 1979 for fiscal year 1980 limited to $6 million distributed proportionally among affected States.

(4) For fiscal year 1982 or any succeeding fiscal year, there is no allotment ceiling for training expenditures.

(d) *Date of expenditure and review of expenditures.* (1) Expenditures for services are ordinarily considered to be incurred on the date on which the State agency makes payment or the date to which the expenditure was allocated, according to the cost principles of Subpart Q of Part 74 of this title and the cost allocation principles of § 1396.2 of this Part.

(2) In the case of a locally administering title XX agency the date of expenditure by the local agency governs.

(3) In the case of purchase of services from another public agency, the date of expenditure by such other public agency governs.

(4) Different rules regarding the date of expenditure may be applied with respect to a State either generally or for particular classes of expenditures, only when justified by the State and approved by the Assistant Secretary. In reviewing State requests for approval, the Assistant Secretary will consider generally applicable State law, consistency of State practice, and other factors relevant to the purposes of this section.

27. Section 1396.53 is amended by adding a new paragraph (a)(3) as follows:

§ 1396.53 Restriction on State's share in claiming FFP.

(a) Subpart G of 45 CFR Part 74 shall be followed in meeting the State's share in claiming FFP for the services program, including training and other administrative functions except:

* * * * *

(3) For fiscal years 1980 and 1981 the restrictions in paragraph (a)(2) (ii) and (iii) of this section do not apply to funds donated for training by a public or non-profit entity that conducts training.

* * * * *

28. Section 1396.56(a) is revised as follows:

§ 1396.56 Fifty Percent Rule.

(a) In each fiscal year, a State must spend an amount equal to at least one-half of the Federal funds it receives for that year on services to individuals:

(1) Who are AFDC recipients (including children for whom a foster care maintenance or adoption assistance payment is made under title IV-E of the Act), or eligible to receive such aid; or

(2) Whose needs are taken into account in determining the needs of an individual receiving AFDC; or

(3) Who are eligible to have their needs taken into account in determining the eligibility of an individual who is receiving AFDC or is eligible to receive AFDC; or

(4) With respect to whom supplementary security income benefits under title XVI or State supplementary payments, are being paid, or who are eligible to have such benefits or payments paid with respect to them; or

(5) Whose income and resources are taken into account in determining the amount of supplemental security income benefits or State supplementary payments being paid with respect to an individual, or whose income and resources would be taken into account in determining the amount of such benefits or payments to be paid with respect to an individual who is eligible to have such benefits or payments paid with respect to him; or

(6) Who are eligible for medical assistance under the plan of the State approved under title XIX.

* * * * *

30. Section 1396.30 is amended by revising paragraphs (b)(1)(i) and (c)(1) as follows:

Subpart F—Limitations: Individuals Served, Eligibility and Fees

§ 1396.60 Persons eligible and access to services.

* * * * *

(b) *Categories of individuals who may receive services—*

(1) *Income maintenance status.* The following individuals are eligible on the basis of income maintenance status:

(i) Recipients of AFDC, including children for whom a foster care maintenance or adoption assistance payment is made under title IV–E of the Act.

* * * * *

(c) *Median income.* (1) On or before December 1 of each year, beginning with calendar year 1979, the Secretary will promulgate the median income for a family of four for each State and for the 50 States and the District of Columbia. This promulgation shall be used for purposes of determining eligibility and establishing fees in the fiscal year established by the State in accordance with § 1396.21 for which the median income is promulgated.

* * * * *

31. Subpart H of 45 CFR Part 1396 is amended by adding three new §§ 1396.67, 1396.68 and 1396.69.

§ 1396.67 The training plan: Content.

To be approved, the training plan shall contain the following information—

(a) An assurance that the State agency has a full-time director of staff development for the title XX program and adequate staff to administer the title XX training program.

(b) A summary statement of the long- and short-term goals and objectives of the State agency's services program.

(c) A brief description of the training needs assessment process used to collect the data for the development of the training plan, including a statement that demonstrates that the State agency coordinated with other human service programs in the process and reviewed the training needs of all State and provider agency staff and volunteers involved in the title XX program.

(d) An assurance that the training needs assessment is performed every 3 years at a minimum and that the data are on file with the State agency and are available for review by the Department.

(e) A prioritized list of the skills and knowledge needed by prioritized categories of State and provider agency staff and State agency volunteers and others eligible to be trained identified by the needs assessment programs.

(f) A statement of the amount of the Federal share and the estimated aggregate amounts of appropriated and donated funds available for the training program.

(g) *Estimated training activities and expenditures.* (1) The training activities and expenditures must meet the requirements of this Subpart and must have a direct relationship to the title XX services program and its staffing needs.

(2) At a minimum, the following aggregated information for each type of training activity must be submitted:

(i) The subject areas of training (e.g., skills, knowledge);

(ii) The categories and estimated number of State and provider agency staff, volunteers, and other eligible individuals to be trained;

(iii) The estimated expenditures, as appropriate, for travel, per diem, salaries, stipends, and education costs;

(iv) The training resources to be used, e.g., State and provider agency staff development staff, experts, universities; and

(v) The estimated cost for State and provider agency staff development staff and staff development activities; and for each identified university, and expert, e.g., salaries, purchase or development of teaching materials. (See sample chart at end of this section.)

(h) A description that demonstrates that the training was designed based on the results of the needs assessment; and that the training activities have a direct relationship to the services program for the current period, and to the State's staffing needs to carry out the program.

(i) A description of the State agency's plan for monitoring training programs, including an assurance that the State agency has staff assigned to monitor all grants and contracts awarded for the period covered by the training plan.

(j) A description of the State agency's plan for evaluation of the overall staff training and development program and an assurance that it will be completed, at a minimum, at least every three years.

Sample Chart for § 1396.67(g): Estimated Training Activities and Expenditures

Training activity	Subject area (Skills, knowledge)	Estimated number to be trained by category	Estimated trainee costs	Provider of training	Estimated provider costs
Workshops	Eligibility determination	400 State agency staff, 200 provider agency staff.	Travel	State agency staff development staff.	Salaries. Travel. Materials.
20 seminars	Characteristics of aging and service delivery to elderly.	100 State agency supervisors; 200 State agency workers.	Per diem Travel	State agency staff development staff plus experts from State Agency Office.	
10 degree oriented academic courses.	Social welfare administration	10 State agency middle managers; 30 State agency first line supervisors.	Stipends	University of Graduate School of Social Work Administration.	
50 workshops	Interviewing	All newly hired staff in State agency; 100 provider agency staff.	Per diem Travel	State agency staff development staff and provider agency staff development staff.	
20 degree oriented courses	Child development	500 provider agency staff	Per diem Travel	Community College	
10 workshops	Nutritive needs of elderly	200 State and provider homemaker staff.	Travel	County extension offices	No cost to title XX.

§ 1396.86 The training plan: Submittal and approval procedures.

(a) *Submittal of the initial training plan.* (1) The State agency shall submit two copies of the initial training plan to the Regional Administrator, HDS, for approval no later than August 2, 1981.

(2) The initial training plan shall contain all of the information required in § 1396.87.

(b) *Submittal of subsequent training plans.* (1) 60 days prior to the beginning of each Federal fiscal year, the State agency shall submit for approval two copies to the Regional Administrator, HDS, of either:

(i) All the information required by § 1396.87; or

(ii) Only the activities and expenditure information required by § 1396.87(g) if all other information required by § 1396.87 is still accurate and current. The information required by § 1396.87(g) must be submitted annually as the basis for approval of the State's training expenditures.

(2) The remaining information required by § 1396.87 may be submitted annually, or on a one-time basis with amendments submitted as required in paragraph (c).

(3) The State shall submit a new training plan that contains all the information specified in § 1396.87 at least once every three years.

(c) *Amendments to the approved training plan.* (1) Amendments to the approved training plan shall be submitted to the Regional Administrator, HDS, for prior approval at any time during the period covered by the training plan.

(2) Whenever a State agency anticipates that a training expenditure will deviate 5% or more from the amount approved for a particular activity in the training plan, it shall amend the training plan. Deviations of 5% or more must approved in advance for FFP to be provided.

(3) The State agency shall amend the training plan when changes are made in the other information required by § 1396.87.

(d) *Approval of the training plan.* (1) The training plan, amendments, or annual activities and expenditures required by § 1396.87(g) may be approved even though specific activities or expenditures may not be approved. Specific activities and expenditures must be approved in advance, however, in order to receive FFP for those items.

(2) The Regional Administrator, HDS, notifies the State in writing of the approval of the plan, the annual activities and expenditures or amendments and the effective date for FFP, or their disapproval and the reason therefor, at least 30 working days after receipt of these items.

(3) In cases where the Regional Administrator questions a specific activity, expenditure or other part of the plan, the State agency shall be responsible for documenting and justifying the appropriateness of that item.

(4) Training expenditures are approved subject to the availability of funds.

§ 1396.88 The training plan: Appeal procedures.

(a) A State agency which is unable to resolve non-approval of the training plan, amendments, or specific activities and expenditures through negotiation with the Regional Administrator, HDS, may appeal the action to the Assistant Secretary, HDS.

(b) The request for a hearing must be in writing and must be postmarked or delivered in person within 60 days of the date of the disapproval notice. The request must include:

(1) A copy of the notice of disapproval; (2) a full written response to each objection specified in the notice of disapproval, including the pertinent facts and reasons in support of its response; and (3) any and all documentation to support the State's position.

(c) The Assistant Secretary, HDS, will respond within 30 days to the merits of the State's request.

(d) After his or her response, the Assistant Secretary sets a date for the hearing. He or she notifies the State agency in writing of the date, time and place for the hearing.

(e) The hearing procedures include the right of the State agency to—

(1) A hearing before the Assistant Secretary or an official designated by him or her;

(2) Be heard in person;

(3) Present written evidence prior to and at the hearing, and present oral evidence at the hearing if the Assistant Secretary or designated official decides that oral evidence is necessary for the proper resolution of the issues involved.

(f) The Assistant Secretary or designated official conducts a fair and impartial hearing, takes all necessary action to avoid delay and maintains order, and has all powers necessary to these ends.

(g) Formal rules of evidence do not apply to the hearings.

(h) The official hearing transcript together with all papers, documents, exhibits, and requests filed in the proceedings, including rulings, constitutes the record for decision.

(i) After consideration of the record, the assistant Secretary or designated official issues a written decision, based on the record, which sets forth the reasons for the decision and the evidence on which it was based. The decision is issued within 60 days of the date of the hearing, constitutes the final administrative action on the matter and is promptly mailed to the State agency.

(j) Either the State agency or the Assistant Secretary may request for good cause, an extension of any of the time limits specified in this section.

12. In 45 CFR Part 1396, a new Subpart J is added as follows:

Subpart J—Grants to Child Day Care Providers To Employ Welfare Recipients

§ 1396.100 Definitions.

For purposes of this Subpart:

(a) *A qualified child day care provider* is one in whose facility the costs for services to at least 20 percent of the total number of children regularly served are partly or totally funded under title XX.

(b) An *eligible employee* is, as defined in sections 50B (h) and (i) of the Internal Revenue Code of 1954, one who meets the following requirements:

(1) Has been certified by the State or local welfare department as:

(i) Eligible for AFDC and as having continuously received AFDC during the 90-day period which immediately precedes the date on which the employee is hired; or

(ii) Placed in employment under the WIN program;

(2) Has been a full-time or part-time employee of the provider for more than 30 consecutive days, if the individual is employed as a child day care worker. (A part-time employee is one who is employed at least 8 hours per week);

(3) Has not displaced any other individual from employment by the provider. A qualified child day care provider may not terminate, lay-off, or reduce the working hours of an employee for the purpose of hiring an eligible employee with funds available under this Part. The day care provider may not hire an eligible employee when another person is on lay-off from the same or any substantially equivalent job; and

(4) Is not a migrant worker. (Section 50B(h) of the Internal Revenue Code of 1954 defines a migrant worker as one who is employed in a job for which the customary period of employment by one employer is less than 30 days if the

nature of the job requires the worker to travel from place to place over a short period of time.)

§ 1396.101 Conditions for FFP.

(a) FFP is available for wages paid under grants which States make in accordance with this Subpart to qualified public, nonprofit private, and proprietary child day care providers under contract to the State agency, to employ eligible employees.

(b) The grants may not exceed:

(1) $8,000 to public and nonprofit private providers for any employee's wages per year; and

(2) $5,000 to other providers for any employee's wages per year, or 80 percent of the annual wages paid to any employee.

(c) Pursuant to § 1396.17, States shall submit statistical and financial reports on the AFDC recipients hired under these grants, in accordance with instructions issued by the Secretary.

§ 1396.102 Claims for FFP.

States may claim for salaries paid by child day care providers for the 30 days of full-time or part-time continuous employment needed to make a recipient eligible, as defined in § 1396.100(b).

33. In 45 CFR Part 1397, §§ 1397.20(a)(4), and 1397.30(a) (3) and (b) are revised to comport with State option for a multi-year program period as follows:

PART 1397—STANDARD SETTING REQUIREMENTS FOR MEDICAL AND NONMEDICAL FACILITIES WHERE SSI RECIPIENTS RESIDE

§ 1397.20 Responsibilities of designated standard-setting authorities.

Each standard-setting authority shall, effective October 1, 1977:

(a) *Establish standards.*

* * * * *

(4) The authority shall provide annually to the State title XX agency the information required in § 1397.20.

* * * * *

§ 1397.30 State certification to the Department of Health and Human Services.

(a) Each State shall certify annually to the HHS official in the Regional Office who receives title XX plans, that:

* * * * *

(3) It has published the following information in the State's title XX proposed and final services plans or, for States in the second or third year of a multi-year program period, it has published the following information in accordance with § 1396.37:

* * * * *

(b) The certification shall be in the form of a factual statement signed by the Chief Executive of the State or his designee and submitted within the first quarter following the beginning of each fiscal year that is part of a State's title XX program period.

[FR Doc. 81-2069 Filed 1-21-81; 8:45 am]

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AGENCY PUBLICATION ON ASSIGNED DAYS OF THE WEEK

The following agencies have agreed to publish all documents on two assigned days of the week (Monday/Thursday or Tuesday/Friday). This is a voluntary program. (See OFR NOTICE 41 FR 32914, August 6, 1976.)

Monday	Tuesday	Wednesday	Thursday	Friday
DOT/SECRETARY	USDA/ASCS		DOT/SECRETARY	USDA/ASCS
DOT/COAST GUARD	USDA/FNS		DOT/COAST GUARD	USDA/FNS
DOT/FAA	USDA/FSQS		DOT/FAA	USDA/FSQS
DOT/FHWA	USDA/REA		DOT/FHWA	USDA/REA
DOT/FRA	MSPB/OPM		DOT/FRA	MSPB/OPM
DOT/NHTSA	LABOR		DOT/NHTSA	LABOR
DOT/RSPA	HHS/FDA		DOT/RSPA	HHS/FDA
DOT/SLSDC			DOT/SLSDC	
DOT/UMTA			DOT/UMTA	
CSA			CSA	

Documents normally scheduled for publication on a day that will be a Federal holiday will be published the next work day following the holiday.
Comments on this program are still invited.
Comments should be submitted to the Day-of-the-Week Program Coordinator, Office of the Federal Register, National Archives and Records Service, General Services Administration, Washington, D.C. 20408

NOTE: As of September 2, 1998, documents from the Animal and Plant Health Inspection Service, Department of Agriculture, will no longer be assigned to the Tuesday/Friday publication schedule.

REMINDERS

The "reminders" below identify documents that appeared in issues of the Federal Register 15 days or more ago. Inclusion or exclusion from this list has no legal significance.

Rules Going Into Effect Today

ENERGY DEPARTMENT

84828 12-23-80 / Coal leasing; final rulemaking regarding coal bidding systems

PERSONNEL MANAGEMENT OFFICE

84755 12-23-80 / Excepted service; amendment to regulation authorizing establishment of a new temporary schedule C authority

List of Public Laws

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's List of Public Laws.

A complete listing for the second session of the 96th Congress is published in the Reader Aid section of the issue of January 7, 1981.

THE FEDERAL REGISTER: WHAT IT IS AND HOW TO USE IT

FOR: Any person who uses the Federal Register and Code of Federal Regulations.
WHO: The Office of the Federal Register.
WHAT: Free public briefings (approximately 2½ hours) to present:
1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between Federal Register and the Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them, as part of the General Services Administration's efforts to encourage public participation in Government actions. There will be no discussion of specific agency regulations.
WHEN: February 13 and 27; March 13 and 27; at 9 a.m. (identical sessions).
WHERE: Office of the Federal Register, Room 9409, 1100 L Street NW., Washington, D.C.
RESERVATIONS: Call King Banks, Workshop Coordinator, 202-523-5235.

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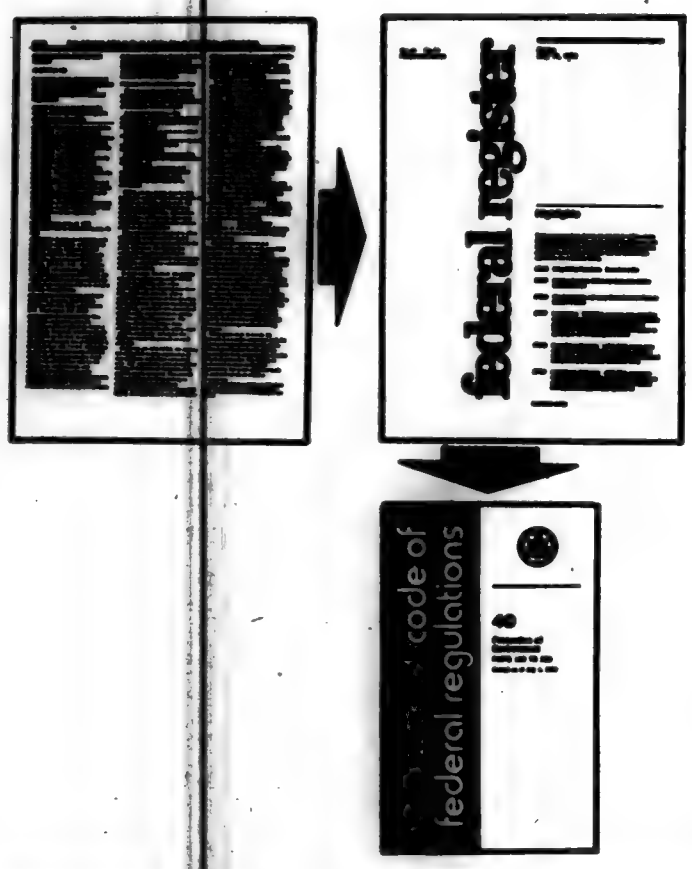

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ISSUE NUMBER 15, JANUARY 23, 1981 READS VOLUME 45
SHOULD READ VOLUME 46.

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7257-7560

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federal register

Book 1 of 2 Books
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7913-7931 **Release of American Hostages in Iran** Executive orders relating to (10 documents) (Part XXII of this issue)

7646 **Food Relief Programs** USDA/FNS publishes final regulations regarding income eligibility criteria for participation in the Special Supplemental Food Program for Women, Infants and Children (Part XVI of this issue)

7748 **Food Stamps** USDA/FNS proposes to mandate photo identification in certain areas as a result of changes in the Food Stamp Act; comments by 3-24-81 (Part VII of this issue)

7666, 7684 **Hazardous Waste** EPA publishes rule and proposal regarding incinerator standards for owners and operators of hazardous waste management facilities; effective 7-22-81; comments by 4-22-81 (Part IV of this issue) (2 documents)

7402 **Occupational Safety** Labor/OSHA proposes identification, classification and regulation of potential occupational carcinogens; comments by 3-31-81

7562-7639 **Medical Devices** HHS/FDA proposes general rules applicable to the classification of all gastroenterology-urology devices; comments by 3-24-81; (Part II of this issue) (58 documents)

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FEDERAL REGISTER Published daily, Monday through Friday, (not published on Saturdays, Sundays, or on official holidays), by the Office of the Federal Register, National Archives and Records Service, General Services Administration, Washington, D.C. 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

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Questions and requests for specific information may be directed to the telephone numbers listed under INFORMATION AND ASSISTANCE in the READER AIDS section of this issue.

7509 **Juvenile Delinquency** Justice invites comments until 2–23–81 on proposed guidelines, Prevention of Juvenile Delinquency through Capacity Building—Cycle II

7457 **Grant Programs** HHS/HSA announces accepting applications for genetic diseases testing and counseling services and sickle cell screening and education clinics; apply by 4–10–81

7267 **Immigration** Justice/INS eliminates duration of status for all nonimmigrant students; effective 2–23–81

7806 **Consumer Affairs** Office of the Special Assistant to the President, the White House publishes background report on executive order 12264 on Federal policy regarding the export of banned or significantly restricted substances (Part XIII of this issue)

7269 **Social Security** HHS/SSA publishes interim rule regarding regression formula in computation of Federal fiscal liability rates; effective 1–23–81; comments by 3–24–81

7846 **Grant Programs** USDA/FNS describes allocation of fiscal year 1981 program and administrative grants for Special Supplemental Food Program for Women, Infants and Children; effective 1–1–81

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Rules and Regulations

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each month.

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Parts 271, 272, 275, and 277

[Amendment No. 169]

Food Stamp Program—Sanction/Incentive Systems

AGENCY: Food and Nutrition Service, USDA.

ACTION: Final rule.

SUMMARY: These final regulations establish the rules for the Food Stamp Program Sanction and Incentive Systems. This rulemaking implements Sections 125 and 126 of Public Law 96–249, which modified Section 16(c) of the Food Stamp Act of 1977 and added Section 16(g). These sections establish systems for determining (1) whether a State is eligible for enhanced administrative funding and (2) whether a State is liable to the Federal Government for the dollar value equivalent of a portion of its food stamp issuance. Both determinations are made upon the basis of quality control error rates. These regulations define the national annual rate of reduction, specify what will constitute good cause for excessive error rates, and outline the role of the Food and Nutrition Service's (FNS') role in monitoring and, when necessary, adjusting States' error rates. These regulations are intended to implement the sanction and incentive systems in a manner that treats States consistently and achieves the legislative goal of reducing States' rates of error in their administration of the Food Stamp Program.

EFFECTIVE DATES: Effective as of February 23, 1981. These provisions shall apply to the period beginning October 1, 1980, except that to the extent applicable the negative case provisions for enhanced funding shall apply from October 1, 1978.

FOR FURTHER INFORMATION CONTACT: Maurice C. Tracy, Chief, Performance Reporting Systems Branch, Food and Nutrition Service, USDA, Washington, D.C. (202) 447–4002. The final rules and the impact of the decision made on each issue is available upon request from the above named individual.

SUPPLEMENTARY INFORMATION: This final action has been reviewed under USDA procedures, established in the Secretary's Memorandum 1955 to implement Executive Order 12044, and has been classified as "significant".

Background

In the October 3, 1980, Federal Register [45 FR 65932, et seq.], the Department issued proposed rulemaking on the sanction and incentive systems as contained in Sections 16(c) and 16(g) of the Food Stamp Act of 1977 (Public Law 95–113, 91 Stat. 958, September 29, 1977), as amended by Public Law 96–249 (94 Stat. 364–365, May 26, 1980) (hereafter referred to as the Act).

The sanction system outlined in the proposed regulations reflected the structure established by Congress in Public Law 96–249. Due to the specificity of the Act, the Department had little flexibility in many areas of the proposed rulemaking. The Department met with representatives from interested State agencies and the American Public Welfare Association (APWA) to explain the sanction and incentive systems and to obtain input on the issues that were subsequently addressed in the proposed rules. The Department relied upon the information and suggestions obtained at these meetings in conjunction with the House Report No. 96–786 (96th Congress, 2nd Session, February 27, 1980) and the Conference Report No. 96–704 (96th Congress, 2nd Session, May 14, 1980) in the development of the proposed regulations. The Department established a 60-day period for public comment on the proposed rules.

A total of 105 States, counties, FNS Regional Offices and other interested parties commented upon the proposed rules within the 60 day period. All pertinent comments were taken into consideration in developing these final rules. However, many comments were directed to provisions of the Act. While the Department recognizes commenters' concerns over the sanction system, only the comments pertinent to matters over which the Department has administrative discretion can be considered in this rulemaking. The following is a discussion of the comments received and an explanation of the decisions made. Because the explanation of many of this rule's provisions is set forth in the proposed rule of October 3, 1980, it may be necessary to refer to that publication for a full understanding of the basis and purpose of this rule.

Sanctions—General

The sanction system will operate as follows. The first 6 months of each Federal fiscal year serve as the base period for the following fiscal year. During each base period, a national standard payment error rate is constructed, which is the weighted (by each State's total issuance) mean payment error rate for all States during the base period. Each State's individual payment error rate is then evaluated relative to the national standard.

Each State with an error rate less than or equal to the national standard during the base period must remain at or below the national standard for the base period during each 6-month period of the following fiscal year to avoid any liability. Those States with payment error rates greater than the national standard during the base period must reduce their error rates during each 6-month period of the following fiscal year to either the national standard for the base period, or by a rate specified by the Secretary as the national annual rate of error reduction, whichever results in a higher error rate as the State's goal. Thus, States must either remain at or below the national standard or reduce their error rates all or part of the way to the national standard to avoid liability for excessive error rates.

The payment error rate is defined in the Act as ". . . the percentage of all food stamp allotments which are issued in a given period by a State agency to households which fail to meet the eligibility requirements of Sections 5 and 6 of this Act, are overissued to eligible households, and are underissued to eligible households. . . ." Sec. 126, Pub. L. 96–249, 94 Stat. 364–365, May 26, 1980.

The Act also states that the base period for fiscal year 1981 is the October 1979–March 1980 reporting period and

for all subsequent fiscal years the base period is the first 6 months of the prior fiscal year. The Act also specifies that States shall be liable to the Secretary for the dollar value equivalent of the difference between their payment error rate and their error rate goal.

As discussed in the proposed rules, the Act does give the Secretary the authority to establish the required national rate of error reduction which will be applied to those States with error rates which are above the national standard payment error rate during the base period. The Act also allows the Secretary to determine whether good cause exists for a State which exceeds its error rate goal. Finally, the Act directs the Secretary to study the feasibility of including in States' payment error rates invalid decisions by State agencies in denying eligibility to households which are, in fact, eligible.

These discretionary provisions of the Act together with the issues of Federal monitoring and incorrect/incomplete sampling, were discussed and options were presented in the proposed regulations. In developing these final regulations, the Department has attempted, as with the proposed regulations, to establish a sanction system that is consistently applied to States, meets the intent of the Act and recognizes States' difficulties in administration of the Food Stamp Program in a variety of different and changing circumstances.

Several States opposed the basic concept of the quality control sanction system. The commenters pointed out that high error rates are often caused by a lack of staff which is a result of the State's financial difficulties. They stated that the sanction system could remove a portion of the State's available resources and thereby impede the State's efforts to reduce error rates.

While the Department understands commenters' concerns, the Act clearly requires that States be liable for error rates in excess of their goals. Other commenters opposed the idea of basing sanctions on the quality control error rates. Another group of commenters believed it was improper to include underissuance dollars in the payment error rate. Some States and counties did not believe that the error rates should include those dollar losses caused by participants since these are difficult to control.

The Department has not modified the proposed regulations in response to these comments. The Act requires that sanctions be based upon quality control findings and that underissuances be included in the payment error rate. The Department has no discretion to modify this provision. The quality control system has historically included participant-caused errors in the States' error rates. Neither the Act nor its legislative history suggest that Congress intended a major modification in the definition of errors to exclude these types of errors. Further, it is often difficult to distinguish participant-caused errors from those caused by the agency. Since the overall sanction system is based upon the relative performance of States, the Department believes that consistency in evaluation of States' performance is the most important factor in structuring the system. Since participant error will be counted in all States, the Department sees no strong justification for excluding participant errors from payment error rates. If anything, it appears that such a change would complicate the process of determining a State's payment error rate.

One State proposed that the claims collected by States should be subtracted from any sanction assessed against the State. This is a most difficult procedure to implement and would probably result in relatively minor savings to States. Any claims discounted from the amount of a State's liability would have to be based upon a loss incurred during the period for which liability was established and the reason for the claim would have to coincide with a situation in which quality control would cite an error. Thus, claims collected for duplicate issuances, for example, could not be offset against the quality control based liability since these are not included in the quality control error rates. Therefore, this suggestion was not adopted.

Another commenter pointed out that if the Department of Health and Human Services (HHS) and the Department both established liability on the part of a State for the same reporting period, there would be a certain amount of overlap between the two sanctions since food stamp error rates in part, include error made in determining households' payments in the Aid to Families with Dependent Children (AFDC) Program. The Department proposed to compensate for this "double-counting" of Federal losses in the April 10, 1979 Federal Register [44 FR 21504, et seq.], but withdrew this proposal due to State opposition as discussed in the August 3, 1979 Federal Register [44 FR 45660, et seq.].

Following are those issues which received the greatest attention from commenters and are central to the operation of the quality control sanction system.

Incomplete Sampling. The Department received a total of 38 comments on this area of the proposed regulations, the vast majority of which were critical of the proposed rulemaking. Commenters' primary concern with the Department's proposed solution for incomplete sampling related to the lack of a definition or guidelines for determining whether minimal or significant bias exists in a State's error rate when its sample is less than 95 percent complete. FNS had proposed to examine each State's sample when the 95 percent completion standard was not met and determine whether it was likely that the uncompleted cases would have an error rate which was significantly higher than the completed cases. If it were determined that the State's error rate reflected no significant bias, FNS would not adjust the State's error rate based upon the low completion rate. If FNS determined that bias had been introduced, the State's error rate would be adjusted by assigning the upper limit of the confidence interval (the statistical bounds of the reported error rate) to each uncompleted case up to 100 percent of the sample.

The State's error rate would then be recalculated and this new estimate would become the State's final error rate for sanction purposes. Several commenters noted that FNS had not proposed any definition for what would constitute significant bias in the above determination and asserted that this determination must be consistent and based upon sound evidence. Other commenters suggested that the completion standard be adjusted to 90 percent. They asserted that 95 percent is unreasonable due to the number of migrant households and other households which have moved from the area, and households which refuse to cooperate. Other commenters raised objection to adjusting all noncompleted cases and recommended that States' error rates be adjusted only to the 95 percent completion standard.

The final regulations have been modified from the proposal in recognition of the above concerns. The Department agrees that the significant bias test is difficult to apply consistently. The Department is not prepared to define bias and has therefore deleted the requirement for an FNS determination of whether significant bias exists. Instead, the final regulations requires FNS to adjust *all* States' error rates when the completion standard is not met. As with the proposed procedure, the upper level of the confidence interval will be used as the adjustment factor for the

uncompleted cases. The Department has taken this action in response to commenters' concerns and for the reasons mentioned above. While this method does not assume that States "true" error rates will be produced, the Department believes its results will be fair (it may well understate the "true" error rate in some States) and it will be applied consistently to all States. There is general agreement that uncompleted cases by and large are more prone to error (i.e., refusal to cooperate, unable to locate the household). The comments from the Texas State Agency underscored this point. The procedure included in the final rules should compensate to some degree for the resulting bias when such cases are not included in the final error rates. This provision will provide States with an incentive to complete as many cases as possible, which enhances the overall validity of the system.

The Department has modified the original proposal in two additional significant ways. First, adjustment will be made to the 95 percent completion standard rather than 100 percent of the required sample. The Department has adopted this suggestion since it is inconsistent to establish a standard, and then adjust beyond the standard if it is not met. The Department does, however, disagree with the notion that the 95 percent completion standard should be reduced. It is critical that the error rates be as accurate as possible, given their added significance under the sanction system. Most States did achieve the 95 percent standard in the October 1979–March 1980 reporting period which seems to indicate that the standard is, in fact, reasonable. Further, reducing the completion standard would not, in any real sense, address the problem of bias in the sample.

Second, the Department will use a relatively low confidence interval in assigning an error rate to the uncompleted cases. Rather than using the more common 95 percent confidence interval, the Department will use a 67 percent confidence interval. A 67 percent confidence interval corresponds to one standard deviation from the mean, a common measuring of the dispersion in a simple distribution and a natural breakpoint. While this does not in any way threaten the validity of the QC error rates, it will result in somewhat lower error rates being assigned to uncompleted cases. The use of the 67 percent confidence interval should not have a major affect on the error rates of States which are close to the 95 percent completion standard.

Therefore, when a State fails to meet the 95 percent completion standard, FNS will adjust the State's rate by multiplying its error rate by the percentage of cases completed relative to the 95 percent standard, multiplying the remaining percentage of cases relative to the 95 percent standard by the upper level of their 67 percent confidence interval (or one standard deviation) and summing these two products.

Beyond the mechanics of adjustment, FNS is committed to avoiding this problem to the extent possible. To this end, the Department has adopted some commenters' suggestions that FNS assist States in completing cases. During the validation reviews discussed below, FNS will attempt to complete those cases or return cases to the States for completion that the State initially failed to complete. Further, the Department is now seriously considering issuing a proposal to modify existing regulations so that cases with missing casefiles can be removed from the not completed category as specified in § 275.12(b)(2). This modification would increase States' completion rates since these cases could be counted as completed cases.

State QC reviewers would complete reviews based upon the households' circumstances in the sample month in relation to the allotment issued in that month. The only major difficulty with such a proposal (and the primary reason why these cases are currently classified as not completed) is that the excluded variances outlined in § 275.12(b)(1)(iv) could not generally be applied in these cases since the lack of a casefile would rule out the documentation necessary to exclude these variances. Thus, the error rates resulting from completed reviews of such cases could be higher due to the lack of a casefile.

In regard to a related issue, the question has been raised of whether FNS would provide States with enhanced funding if the 95 percent completion standard was not met. If after the adjustment described above, the State's error rate is at or below the required level the State would receive enhanced funding.

Incorrect Sampling. Commenters' basic concern with the proposed provision dealing with incorrect sampling and FNS's right to assign a new error rate centered upon the lack of specificity. They believed that FNS should include in the regulations exactly what information would be used to assign States an error rate and in what circumstances this would be done. One State believed that this area of the regulations should be clarified and reproposed. Other commenters pointed out that if FNS monitors States closely enough, this problem should not occur. Many comments also suggested that if FNS approves a State's sampling plan, that FNS should somehow be limited in what action could be taken in assigning a new error rate if the plan results in an incorrect sample selection.

The Department understands commenters' concerns in this area, but does not agree that FNS's future actions can be specified or, in general, limited. The proposed regulations were intended to be general to allow FNS to use the best information available when a State's sample selection, estimation, or data management procedures are deficient and cannot be corrected accurately. The point at which such a deficiency is detected and the resources available to the State and the Department will determine what data is available or can be obtained in a timely manner. FNS is committed to the idea, and agrees with commenters' assertions, that avoidance of this problem through close monitoring is the best solution to the problem. However, if this problem should develop and a State's sample and reported error rate are invalid (regardless of whether the State's sampling plan was incorrectly approved), it is FNS's responsibility to develop some estimate of the State's performance in order to ensure all States are accurately included in the payment error rate, and that States are treated equitably in relation to each other. Therefore, in assigning error rates, FNS will negotiate with the State to attempt to select a source of information that is acceptable to the State. Furthermore, States have the right in all such situations resulting in a claim to request an administrative hearing. In assigning error rates, FNS will seek in every instance to use the data that most closely reflects the State's performance for the reporting period in question. However, it must be recognized that it is unlikely that any assigned error rate will be as accurate as a correct and complete quality control sample would generate.

Therefore, these final regulations retain the provision of the proposed regulations on incorrect sampling with some clarification.

Rate of Reduction. This issue was discussed in some detail in the preamble to the proposed regulations and four alternatives that the Department has considered were explained. The Department proposed that States with payment error rates above the national standard payment error rate be required to reduce their error rates by 12 percent of the difference between each State's error rate in the base period and a goal

of 5 percent or to the national standard of the base period, whichever results in a higher error rate goal for the subsequent fiscal year. Thus, if a State's error rate is 15 percent in a base period and the national standard is 12 percent, the State would be required to achieve an error rate of 13.8 percent to avoid liability (15—(15-8) (.12)=13.8).

A total of 49 comments were received on this proposal, 33 of which disagreed with the basic proposal or some aspect of it. Some States felt the proposal was not justified sufficiently and lamented the lack of comparable historical data for use in determining a reasonable future reduction standard.

A few commenters supported one or another of the other options discussed in the proposed regulations, which would set a fixed single rate of reduction or establish a variable rate based upon the rate of reduction in the national standard payment error rate. However, the majority of commenters seemed to support retention of the proposed formula for determining States' goals (at least until historical data is available), but recommended that either the 5 percent national goal be modified to 8 percent or the proposed 12 percent reduction factor be reduced to 10 percent, or both.

The principal recommendation advanced by State agencies objecting to the proposal was that the national goal be established at 8 percent rather than 5 percent. States observed that Public Law 96-249 provides enhanced funding for States that achieve error rates of 8 percent or less and that Congress therefore has indicated that 8 percent is an appropriate error reduction goal.

The Department has determined, however, that the goal should remain at 5 percent, as proposed. Five percent was the level originally established by Congress (in Public Law 96-113) as the level for receiving enhanced funding, and under Public Law 96-249, the Congress has provided for a higher level of enhanced funding for States with error rates below 5 percent than for States with error rates between 5 and 8 percent. That Congress distinguished between the 5 percent and the 8 percent level is further illustrated by the fact that the Act sets the level for 60 percent enhanced funding at 8 percent or that national standard, whichever is lower. By contrast, the Act sets the level for 65 percent enhanced funding at 5 percent, regardless of whether the national standard should drop below this. Clearly, Congress does not believe that 8 percent should be a final goal for error reduction efforts or the final indicator of outstanding performance. Therefore, the final regulations retain 5 percent as the goal in the error rate sanction system.

Commenters also recommended that the 12 percent reduction factor be modified to 10 percent. This modification would have less of an effect than the increase in the goal from 5 to 8 percent. The Department considered this comment in light of the decision to drop efforts to identify significant bias when a State did not achieve a 95 percent completion rate, and instead, to assign the upper limit of the confidence interval to all States not achieving the desired 95 percent completion standard. The Department recognizes that this decision will likely increase a number of States' error rates, and thereby make achievement of these States' reduction goals more difficult than would have been the case under the proposed rules. In light of this fact, and taking into consideration the lack of historical data on error rate reduction, and the nearly unanimous opposition of commenters to the proposal, the Department has adopted the suggestion to set the reduction factor at 10 percent. The Department does share the concern of commenters over the lack of historical data and will reexamine the reduction factor when more information becomes available. In addition, the Department will examine the required rate of reduction in light of future program changes and could modify these regulations in response to changing circumstances.

Good Cause. This provision of the proposed rules also received relatively heavy comment, with 47 comments. About one-half of the commenters were critical of the Department's proposal. The comments were directed at three aspects of the good cause provision. Some commenters asked that the final regulations establish a timeframe for submission of a request for good cause when a State's error rate would place it in a sanction position. The Department has adopted this suggestion by adding a 30-day period for such requests. The 30-day period will begin upon notification by FNS of the State's final error rate and of the State's liability.

The second concern raised by commenters concerned § 275.25(d)(5)(i)(D) of the proposed regulations, which established as one of the good cause criteria "changes in the food stamp or other Federal or State programs that have a substantial adverse impact upon management of the State's Food Stamp Program." Some commenters believed that whenever a change affects more than a specified percentage of the food stamp caseload (such as 25 percent), this should be considered good cause. The Department examined this suggestion, but has concluded that the percentage of caseload affected by a change is not a sufficient gauge of whether the change was sufficiently disruptive of food stamp operations to constitute good cause. For example, the annual adjustment in food stamp allotments affects virtually all households. The change in food stamp rounding rules which took effect on July 1, 1980 resulted in a benefit change of $1 for a significant proportion of the caseload. Both of these changes affected a large proportion of the caseload, and neither was substantially disruptive of program management. Some changes that affect many households are minor and are not difficult for States to handle. A simple percentage threshold would thus result in an inappropriate and rather arbitrary good cause standard. The Department, therefore, has retained this provision as originally proposed.

The third and most difficult issue relating to the good cause standards was the strong recommendation of many commenters, including a large number of States, that the good cause provisions should include a standard for "good faith effort" similar to the one now used by the Department of Health and Human Services in its AFDC and Medicaid sanction systems. States suggested that a number of criteria be utilized to determine whether a good faith effort has been made to reduce errors. The suggested criteria included: demonstrated commitment by top management to the error reduction program, sufficiency and quality of systems designed to reduce errors, use of effective systems and procedures for the statistical and program analysis of QC and related data, and effective management and execution of the corrective action process.

In the preamble to the proposed rules, the Department stated that the effort States have expended toward error reduction should be considered in determining whether a good cause exemption from all or part of a sanction should be granted. The Department noted, however, that "good faith effort" alone should not automatically result in a good cause ruling. It was pointed out that it is difficult to evaluate States' intentions and efforts in a sufficiently objective manner to make this criterion, by itself, an automatic trigger for a finding of good cause. The Department expressed its concern over the possibility of a State claiming "good faith effort" year after year without actually achieving error rate reduction.

The preamble concluded that State error reduction efforts would be taken into consideration, and that a State might be able to establish good cause by proving it had made an exemplary effort to reduce errors, or had invested an unusual amount of resources into error reduction, and that error reduction had begun to result after the conclusion of the QC measurement period.

The Department has considered the comments, but continues to believe that "good faith effort" alone cannot automatically justify a good cause determination. The Department does agree, however, that when a good faith effort produces concrete error reduction result, this warrants the most serious consideration. Moreover, the Department recognizes that major error reduction efforts often take some time to produce results, and that successful results may then become a permanent characteristic of the State's operation, providing continued savings for years to come.

With these concerns in mind, the Department has restructured this aspect of the good cause standards to recognize State efforts that produce markedly successful results, and to provide even stronger incentives for States with error problems to make major, permanent reductions in errors. The revised good faith effort standard is designed both to provide equity when State effort is particularly successful, and to increase the savings to the Federal Government through reduced errors in future years.

The essense of the new standard is that States that are subject to a sanction because they did not achieve their goal in a given 6-month period will be determined to have made a major effort that constitutes good cause if they have achieved substantial error rate reduction by the corresponding 6-month period of the following fiscal year. The error rate the State must achieve in the following fiscal year is the rate it would have had to achieve for that period if it had met its initial goal in the preceding year. An example will help to clarify this matter. If a State's error rate was 15 percent in a base period and remained at the 15 percent level for both periods of the following fiscal year, the State would incur a 1 percent liability for each period of that fiscal year, since its goal was 14 percent. The State's goal for the succeeding fiscal year would then again be 14 percent. However, if the State had achieved its initial goal of 14 percent, its goal for the succeeding fiscal year would have been 13.1 percent. Therefore, the State's liability for missing its goal in the initial fiscal year would be determined to come within the good cause exception provided by the statute if the State actually achieved the 13.1 percent level in the comparable period of the next fiscal year.

The State would, in essence, have two goals for the next fiscal year: a 13.1 percent goal to substantiate its claim of good faith effort and secure a good cause finding with regard to its liability, and a 14 percent goal to avoid assumption of a new additional liability.

For States whose error rate was below the national standard in the original base period, and who exceed their error rate goal, the new standard would be slightly different. The States would have to achieve the *lower* of the following to substantiate their good faith effort: the error rate that would have been the State's goal in the succeeding fiscal year if the State had met its initial goal, or the State's original error rate in the original base period. For example, if a State's error rate was 9.5 percent during a base period, and the national standard payment error rate for this base period was 10 percent, the State would be liable for errors in each period of the following fiscal year that were in excess of the 10 percent level. If the State's error rate in the following year was 10.2 percent, the State would incur a liability of 0.2 percent. The State's goal for the succeeding fiscal year would then be 9.7 percent (assuming the national standard error rate had dropped to at least this level). However, FNS would compute what the State's goal for the succeeding year would have been had the State achieved its initial goal; in this case its goal would have been the national standard payment rate during the initial six month period for which it is liable. If the national standard had been 9 percent during this period, the State's liability for each period of the initial fiscal year would qualify for a good cause determination if the State actually achieved the 9 percent level in the comparable period of the next fiscal year. However, if the national standard payment error rate during the period the State was liable had remained at 10 percent, the State's liability would qualify for a good cause determination if it achieved its original error rate during the original base period, or 9.5 percent, since this is lower than the appropriate national standard payment error rate.

This standard accomplishes several purposes. First, it provides an objective measure to substantiate a State contention that it had made laudable and successful efforts to achieve error rate reduction, but that the results had not yet shown up in the first year's error rates because major error rate reduction may take a longer period of time to achieve. Since error reduction efforts may entail acquisition or redesign of automated data processing systems, hiring of additional personnel, and other such actions, the Department agrees that some time may be needed before the results are fully reflected in State's error rates.

Second, this standard should result in added savings to the Federal Government over the long run. It is designed to induce States to increase their error reduction efforts by setting lower error reduction goals than would otherwise be the case. If a State achieved the lower goal, then its next goal for the following year would be lower still. Thus, this standard is designed to induce even larger, permanent decreases in errors.

In addition to specifying this standard, the Department has also incorporated into the regulations much of the discussion on good faith effort that appeared in the preamble to the proposed regulations. The proposed good cause standard based on direction of resources to other aspects of the program which FNS determined to be of higher priority (§ 275.23(d)(5)(i)(F) of the proposal) has been eliminated because the Department felt it was too vague. Its purpose is met under the revised good faith effort provision described above and under a new provision describing a good faith finding due to other circumstances beyond the control of the State. Otherwise the good cause criteria remain unchanged in the final rules. The final rules maintain the stringent sanction system as directed by Congress while also following the Congressional directive to recognize legitimate instances of good cause for not meeting an error rate goal in a given period.

Federal Validation. The Department received a total of 27 comments on this area of the proposed regulations. While commenters did not, in general, oppose the idea of FNS validating States' error rates, several concerns over the provision as proposed were raised. Commenters believed that the Federal sample size and the Federal error rate adjustment procedure should be valid and specified in the final regulations together with a description of the Federal review process. The Department agrees with this and has included the formula for the Federal sample size with an outline of the Federal review procedures in the final regulations.

Many commenters recommended that the Department establish a system for resolving differences between State and Federal case findings. Again, the Department agrees with this suggestion and has established a procedure in the

final regulations which will require each FNS Regional Office to appoint an official, who is not involved in the Federal QC validation process, to arbitrate policy issues which may develop between Federal reviewers' and State reviewers' findings. The Department does not intend to designate an entity outside of FNS for the purpose of resolving differences since determinations on food stamp policy are clearly an FNS responsibility. However, if a policy difference cannot be resolved at the Regional level, the State can appeal through the Region to the FNS National Office where a final decision will be made.

Another group of commenters felt that timeframes must be specified for the establishment of each State's payment error rate and the national standard payment error rate. Related to this concern was a recommendation by some commenters that FNS begin conducting reviews concurrent with the State or as soon as possible in the review period. The former concern is one over which the Department has little control. Establishment of the national standard is largely dependent upon how quickly States report quality control findings. If even one State is late in reporting, the delay will be passed on to all States. In the October '79–March '80 period, several States had to be given extensions. The last States reported over 3 months after the required date in the regulations. However, FNS will make every effort to process States' reports as soon as possible. FNS is currently working on a nation-wide automated QC reporting system which should substantially reduce reporting and processing time. When this system is implemented, the Department will examine the feasibility of establishing more exact timeframes for generation of final error rates. In reference to the commenters' second concern, the point that Federal reviews can begin is again dependent upon the States' efforts in selecting and reviewing cases and supplying this information to FNS. The earlier this is done, the sooner FNS can begin the Federal review process. The final regulations have been modified to reflect this by stating that FNS will begin its review process as soon as possible after the State supplies the necessary information.

A number of States also recommended that FNS should conduct "blind" reviews. This concept was discussed in the preamble for the proposed regulations. While it is possible that this procedure could have advantages over the current procedure (where FNS uses the State's review results in determining the correctness of the QC case determination), this has not been demonstrated at the present time. What is known is that the blind review approach would require a substantial increase in Federal manpower and in Federal expenditures for travel costs. Blind reviews could also, as one State observed, delay the establishment of State payment error rates and the national standard. Therefore, a requirement that every case in the Federal validation should be subjected to a blind review is not warranted or practicable at this time. However, the Department does recognize that this is a significant issue, and is committed to exploring the matter in a more thorough and systematic manner. As a result, FNS will initially conduct blind reviews in a percentage of the Federal case reviews to gather data on the impact of blind reviews. FNS will then reassess this matter based on the results of the blind reviews it has conducted.

The final regulations also include an added provision that FNS will attempt to assist States in completing cases that the State failed to complete initially. This provision in no way relieves the States of their responsibility for completion of the required sample size. FNS will examine cases the State has failed to complete due to an inability to locate the household or to obtain a household's cooperation. If FNS can locate the household or obtain cooperation, the case will be returned to the State for completion or if circumstances warrant, FNS will complete the case for the State. The second possibility will only take place in a limited number of cases.

States' Liability for Error Rates. Several commenters questioned what rules FNS will use in rounding a State's error rate and pointed out that the method must be consistent and should be precise. The final regulations contain a provision for rounding States' payment error rates, the national standard payment error rate, and States' error rate goals, generated by the rate of reduction formula, to the nearest one-hundredth of a percent.

Several commenters questioned the relationship between the QC sanction system and the negligence provisions of § 276.3. Both the preamble to the proposed QC sanction regulations and the preamble to the final Federal Sanctions and State Agency Liability Regulations of the November 21, 1980 **Federal Register** [45 FR 77258, et. seq.] addressed this issue. The primary factors in the relationship are: (1) FNS will not bill a State for negligence based upon QC data or other information that monitors overall certification error rates; (2) FNS will base negligence billings on failure to comply, due to negligence on the part of a State agency, with specific program requirements; and (3) FNS will not bill the State for the same dollar loss twice. If a State is billed for negligence and is held liable for QC error rates during the same period of time, any overlapping loss will be subtracted from either the negligence claim or the QC sanction.

Negative Cases. The Department received 22 comments on the concept of including the dollar loss from invalid denials and terminations in States' payment error rates. The majority of commenters opposed this concept with some advocate groups expressing support. Those opposing the inclusion of invalid denials and terminations did not believe it to be possible to accurately combine error rates from active cases and negative cases or did not believe inclusion is appropriate since the system should be based upon Federal dollar loss rather than on food stamps that have not been issued. Some commenters pointed out that HHS does not include negative case losses in the AFDC sanction determination. Those supporting the inclusion of negative case results expressed a concern that States may deny households improperly in an effort to avoid liability based upon the active case payment error rate.

The Act is specific on this and requires inclusion of negative case losses in payment error rates, if this is feasible. While the Department is continuing to study this issue, the Department has not established the feasibility of including these losses at this time. Therefore, the regulations have not been modified in this area. If in the future the Department concludes that a particular method is feasible and equitable, a new proposed rulemaking will be issued with its own comment period, so that interested parties can carefully examine the method and provide comments before any final decision is made.

Enhanced Funding

The Department received 21 commments on the proposed provisions dealing with enhanced funding. While most comments seemed to favor the idea for enhanced funding, several concerns were expressed regarding the proposed negative case standard that must be reached for a State to qualify for the 60 or 65 percent enhanced administrative funding. The Department proposed that the national weighted mean negative case error rate be the standard for each review period. One commenter objected to the proposed

standard on the grounds that it would eliminate the possibility of all States receiving enhanced funding in the same period. First, this should not be a concern at this time with most States well above even the 8 percent error rate level. Second, the department views the enhanced funding as an incentive for those States with outstanding performance, rather than a reward that all States can qualify for easily. Further, establishing a fixed percentage rate as the standard rather than the weighted mean negative case error rate (as this commenter suggested) could work to States' disadvantage if the average negative error rates prove to be higher for a given period than the fixed percentage standard. For these reasons the Department has retained the provision of the proposed regulations in these final regulations with some clarifications.

The other provision of the proposed rules that received a number of comments is the retroactive implementation of the negative case standard provision. The legality of this action was questioned. This provision is mandated by the Act and therefore, the Department has no discretion in this matter.

Therefore, Part 271 is amended to include the following definitions and Parts 272, 275 and 277 are amended as follows:

PART 271—GENERAL INFORMATION AND DEFINITIONS

1. Section 271.2 is amended by adding the following definitions in alphabetical order:

§ 271.2 Definitions.

* * * * *

"Base Period" means the first 6-month reporting period of each fiscal year.

* * * * *

"National Standard Payment Error Rate" means the weighted mean of all States' payment error rates during a base period.

* * * * *

"Payment Error Rate" means cumulative allotment error rate.

* * * * *

PART 272—REQUIREMENTS FOR PARTICIPATING STATE AGENCIES

2. Subparagraph (31) is added to § 272.1(g) in numerical order to read as follows:

§ 272.1 General terms and conditions.

* * * * *

(g) *Implementation.* * * *

(31) Amendment 169. The provisions of Amendment 169 shall be effective (insert 30th day after publication). These provisions shall apply to the period beginning October 1, 1980, except that the provisions of § 277.4(b)(2) shall apply to the period October 1, 1978 through October 1, 1980. No State shall be subject to sanctions based upon quality control error rates for any period prior to October 1, 1980. No State shall receive enhanced funding based upon quality control data for a period prior to the date upon which its quality control system was in operation.

* * * * *

PART 275—PERFORMANCE REPORTING SYSTEM

3. In Section 275.3, paragraph (b)(2) is removed and paragraph (c) is revised to read as follows:

§ 275.3 Federal monitoring.

* * * * *

(c) *Validation of States' Payment/Cumulative Allotment Error Rates.* FNS shall validate each State's reported payment error rate during each 6-month quality control (QC) reporting period. Each validation review shall consist of the following actions.

(1) FNS will select a subsample of a State's completed sample. The Federal review sample size for completed active cases is determined by the following equation:

$n^1 = .14n + 50.31$

where

n^1 is the subsample size (maximum 180), and

n is the State's minimum required active sample size as determined by § 275.11(d)(1)

This number (n^1) represents the minimum number of Federal review sample cases which must be selected and reviewed by a Regional office when conducting a validation review.

(2) FNS will conduct case record and field investigations to the extent necessary to determine the accuracy of the State's findings using the household's certification records, the State's QC records, collateral contacts, and home visits as a basis for this determination.

(3) Each FNS Regional office shall appoint an individual to arbitrate disputes between State and Federal findings on a case-by-case basis. This individual will not be directly involved in the validation effort and will accept questions of certification policy only upon written request by the State.

(4) FNS will review the State's sampling procedures, estimation procedures and the State's system for data management to ensure compliance with § 275.11 and § 275.12.

(5) FNS will begin each State's validation review as soon as possible after the State has supplied the necessary information regarding its sample and review activity.

(6) FNS will review each State's negative case sampling and review procedures against the provisions of §§ 275.11 and 275.13 in at least one 6-month period of each fiscal year.

(7) FNS will validate the negative case error rate for each period a State's cumulative allotment error rate is below 8 percent or the national standard, whichever is lower, following the guidelines similar to those of paragraphs (c) (1), (2), (3) and (4) of this section.

(8) FNS will assist States to the extent possible in the completion of cases where the participant refuses to cooperate or cannot be located. Any deficiencies detected in a State's QC system shall be included in the State's corrective action plan. The findings of validation reviews shall be used as outlined in § 275.25(d)(6).

* * * * *

4. Section 275.16(b)(3) is revised to read as follows:

§ 275.16 Corrective action planning.

(b) * * *

(3) Are the causes for a cumulative allotment error rate for States which do not receive enhanced funding as described in § 275.25(c)(2) for any reporting period (actions to correct errors in individual cases, however, shall not be submitted as part of the State plan);

* * * * *

4. Section 275.25(c) is revised and a new paragraph (d) is added to read as follows:

§ 275.25 Determination of State agency program performance.

* * * * *

(c) *Federal enhanced funding.* (1) Before making enhanced funding available to a State agency as described in Part 277.4(b), FNS will:

(i) Validate the State's reported cumulative allotment error rate as provided for in § 275.3(c);

(ii) Ensure that the sampling techniques used by the State are FNS-approved procedures as established in § 275.11 of this part;

(iii) Validate the State's quality control completion rate to ensure that the rate is at the level required by § 275.11(f) of these regulations; and

(iv) For States claiming 60 or 65 percent enhanced funding, validate the State's negative case error rate following the procedures of (i), (ii) and (iii) above.

(2) Upon completion of the activities specified in paragraph (c)(1) of this section, FNS will, if necessary, correct or adjust a State's error rate as described in paragraph (d)(6) of this section. After validation and any necessary adjustment of States' error rates, the following levels of funding will be provided.

(i) States with a cumulative allotment error rates of less than 5 percent for a 6-month period shall be eligible for a 65 percent Federally funded share of administrative costs, provided that the State's negative case error rate is less than the national weighted mean negative case error rate for the period of enhanced funding.

(ii) States with a cumulative allotment error rate during a 6-month QC period of 5 percent or more but less than 8 percent of the national standard of the prior year's base period, whichever is lower, shall be entitled to a 60 percent share of federally funded administrative costs, provided that the State's negative case error rate is less than the national weighted mean negative case error rate for the period of enhanced funding.

(iii) States with a 25 percent or greater reduction in their cumulative allotment error rate from one QC period to the comparable period of the next fiscal year shall be entitled to a 55 percent share of Federally funded administrative costs for the 6-month QC period(s) of the second fiscal year.

(3) States entitled to enhanced funding shall receive such funding on a retroactive basis only for the review period in which their error rates are less than the levels described in paragraph (2) above. No State shall be eligible for more than one of these increased funding levels in a six-month period with the higher level always taking precedence.

(d) *State Liabilities for Payment Error Rates.* (1) During each 6-month QC reporting period, States' payment error rates will be evaluated to determine whether they exceed the goals established in the paragraphs below. If a State's payment error rate is equal to or less than its goal, the State will have no liability for its payment error rates. If a State's payment error rate exceeds its goal for a 6-month period, the State will be held liable for a percentage of its payment error rate as specified in paragraph (3) below.

(2) *Establishment of Payment Error Rate Goals.* For each 6-month period, the base period shall be the first 6-month period of the preceding fiscal year.

(i) The payment error rate goal for each State with a payment error rate below the national standard payment error rate during the base period shall be the national standard payment error rate for the base period. For example, if the national standard payment error rate during the base period is 10 percent and a State's payment error rate is 9 percent during the same period, the State's goals for each 6-month period of the following fiscal year would be 10 percent or less.

(ii) The payment error rate goal for a State with a payment error rate above the national standard payment error rate during the base period shall be the higher of either:

(A) The national standard payment error rate during the base period; or

(B) The State's payment error rate during the base period less 10 percent of the difference between that error rate and the payment error rate of 5 percent. For example, if the national standard is 10 percent during the base period and a State's payment error rate is 12 percent during the same period, the State's goal for each 6-month period of the following fiscal year would be an error rate of 11.3 percent (12−(12−5)(.10)=11.3). However, if the State's payment error rate had been 10.5 percent during the base period, its goal would be 10 percent rather than 9.95 percent since 10 percent is the higher of the two figures.

(C) States' payment error rates, payment error rate goals, and the national standard payment error rate shall be rounded to the nearest one hundreth of a percent with .005 and above being rounded up to the next highest one-hundredth and .004 and below being rounded to the next lowest one-hundredth (i.e., an error rate of 10.544 will become 10.54 while 10.555 will be 10.56).

(3) *States Failing to Achieve Payment Error Rate Goals.* Each State which fails to achieve its payment error rate goal during a 6-month period shall be liable for the dollar value equivalent of the difference between its goal and its actual error rate expressed as a percentage of its total issuance during the 6-month period. Thus, if a State's goal is 10 percent during a 6-month period and its payment error rate is determined to be 12 percent, the State would be liable for 2 percent of its total issuance during the 6-month period.

(4) *Relationship to Warning Process and Negligence.* (i) States' liability for payment error rates as determined above are not subject to the warning process of § 276.4(d). However, States shall be notified 30 days in advance of any billing and may request a good cause waiver or reduction at any time during the 30-day period. If a State requests a good cause determination, FNS shall hold the billing pending a decision on the good cause request. If a determination is made that good cause did not exist, FNS shall promptly issue the billing. While the amount of a State's liability may be recovered through offsets to their letter of credit as identified in § 277.16(c), FNS shall also have the option of billing a State directly or using other claims collection mechanisms authorized under the Federal Claims Collection Act, depending upon the amount of the State's liability.

(ii) FNS shall not determine negligence (as described in § 276.3) based on the overall allotment error rate for issuances to ineligible households and overissuances to eligible households in a State or political subdivision thereof. FNS may only establish a claim under § 276.3 for dollar losses from failure to comply, due to negligence on the part of the State agency (as defined under § 276.3), with specific certification requirements. Thus, FNS will not use the results of States' QC reviews to determine negligence.

(iii) While FNS may determine a State to be liable for dollar loss under the provisions of this section and the negligence provisions of §276.3 for the same period of time, FNS shall not bill a State for the same dollar loss under both provisions. If FNS finds a State liable under both the sanction system and the negligence provisions, FNS shall adjust the billings to ensure that two claims are not made against the State for the same dollar loss.

(5) *Good Cause and Appeals.* (i) When a State is found to be liable for a portion of its payment error rate as described in paragraphs (2) and (3) above, FNS may determine that the State had good cause for not achieving its payment error rate goal. FNS shall evaluate requests for a good cause determination based upon one or more of the following criteria:

(A) Natural disasters or civil disorders that adversely affect program operations;

(B) Strikes by State staff necessary to the determination of eligibility and processing of case changes;

(C) Significant caseload growth prior to or during a 6-month period of, for example, 15 percent;

(D) Changes in the food stamp or other Federal or State programs that have a substantial adverse impact upon management of the State's Food Stamp Program;

(E) Misapplication of Federal policy where such misapplication directly affects the State's QC error rates and was incorrectly provided or approved by an FNS representative who is reasonably believed to have the necessary authority;

(F) Other circumstances beyond the control of the State; and

(G) Good faith efforts by the State to reduce or maintain its error rate. Efforts expended by States will be considered. It may be possible, for example, for a State to establish good cause by proving it has made exemplary efforts to reduce errors or has invested an unusual amount of resources into achieving error reduction, and that error reduction has begun to result after the conclusion of the QC measurement period. A State may also be able to show that its efforts to reduce errors, in combination with other factors, should constitute a basis for a good cause finding. However, implementation of an approved corrective action plan and other efforts to reduce errors shall not automatically, in and of themselves, result in a good cause finding. Each State's circumstances shall be evaluated on its own merits. Substantial weight shall be given to the achievement of results stemming from the State's efforts. Good cause shall automatically be determined to exist when the following standards have been met by a State:

(1) The State implemented in good faith an FNS-approved corrective action plan prior to the 6-month period in which the State's error rate exceeded its established goal, and the plan was specifically designed to reduce the State's payment error rate; and

(2)(i) If a State's payment error rate exceeded the national standard payment error rate in a base period, and the State did not meet its goal in a period(s) of the following fiscal year, the State achieved a reduction of its payment error rate for the comparable period(s) of the succeeding fiscal year to the level that would have been required if the State had met its initial goal. (For example, if a State's error rate was 15 percent in a base period and remained at the 15 percent level for both periods of the following fiscal year, the State would incur a 1.0 percent liability for each period of that fiscal year, since its goal was 14 percent. The State's goal for the succeeding fiscal year would, based on the required rate of reduction, again be 14 percent. However, FNS would compute what the State's goal for the succeeding year would have been had the State achieved its initial goal; in this case, had the State initially achieved its 14 percent goal, its goal for the next fiscal year would have been 13.1 percent. The State's liability for each period of the initial fiscal year would be eliminated if the State actually achieved the 13.1 percent level in the comparable period of the next fiscal year. The State would thus, in essence, have two goals for the next fiscal year: a 13.1 percent goal to substantiate its claim of good faith effort and secure a good cause finding, and a 14 percent goal to avoid assumption of a new, additional liability.); or

(ii) If a State's payment error rate was at or below the national standard payment error rate in a base period, and the State did not meet its goal in a period of the following fiscal year, the State achieved a reduction of its payment error for the comparable period(s) of the succeeding fiscal year to the level that would have been required if the State had met its initial goal, or to its original level in the original base period, which ever is lower. For example, if a State's error rate was 9.5 percent during a base period, and the national standard payment error rate for this base period was 10 percent, the State would be liable for errors in each period of the following fiscal year that were in excess of the 10 percent level. If the State's error rate in the following year was 10.2 percent, the State would incur a liability of 0.2 percent. The State's goal for the succeeding fiscal year would then be 9.7 percent (assuming the national standard error rate had dropped to at least this level). However, FNS would compute what the State's goal for the succeeding year would have been had the State achieved its initial goal; in this case its goal would have been the national standard payment error rate during the initial six month period for which it is liable. If the national standard had been 9 percent during this period, the State's liability for each period of the initial fiscal year would be eliminated if the State actually achieved the 9 percent level in the comparable period of the next fiscal year. However, if the national standard payment error rate during the period the State was liable had remained at 10 percent, the State's liability would be eliminated if it achieved its original error rate during the original base period, or 9.5 percent, since this is lower than the appropriate national standard payment error rate.

(ii) If FNS determines that there was good cause for all or part of a State's payment error rate to exceed its goal in a 6-month period, FNS shall reduce or eliminate the State's liability as appropriate.

(iii) Whenever a State is assessed for an excessive payment error rate, the State shall have the right to request an appeal in accordance with the procedures of § 276.7.

(6) *Determination of Payment Error Rates.* As specified in § 275.2(c), FNS will validate all States' reported error rates through rereviewing a sample of each State's QC sample and ensuring that each State's sampling, estimation and data management procedures are correct.

(i) FNS will adjust States' reported error rates through findings of rereviewed cases. Once the Federal case rereviews have been completed and all differences with the State agency have been resolved, the State's reported error rate will be adjusted using the following linear regression equation.

$y' = y + b(X - x)$ where

y' is the average value of allotment issued in error to participating households,

y is the average value of allotments issued in error in the rereview sample according to the Federal finding,

b is the estimate of the slope parameter,

x is the average value of allotments issued in error in the rereview sample according to State findings, and

X is the average value of allotments issued in error in the full quality control sampling according to the State findings.

The adjusted error rates are then given by:

$r = y'/u$ Where u is the average value of allotments issued to participating households.

The allotment error rates for eligibility, overissuance, and underissuance are each adjusted separately as detailed above and the sum of these after adjustments is the State's payment error rate. This adjusted error rate will then become the State's official error rate for use in the liability determination and in determinations for enhanced funding under paragraph (c) of this section.

(ii) If FNS determines that a State has sampled incorrectly, estimated improperly, or has deficiencies in its QC data management system, FNS will correct the State's reported error rate based upon a correction to that aspect of the State's QC system which is deficient. If FNS cannot accurately correct the State's deficiency, FNS will assign the State an error rate based upon the best information available. After consultation with the State, this assigned error rate will then be used in the above described liability determination and in determinations for enhanced funding under paragraph (c) of this section. States shall have the right to appeal assignment of an error rate in this situation in accordance with the procedure of § 276.7.

(iii) Should a State fail to complete 95 percent of its required sample size as required by § 275.11(f), FNS shall adjust the State's error rate by assigning an error rate equal to the upper limit of the confidence interval to that portion of cases between the State's completion rate and 95 percent, and recalculate the

State's error rate. A 97 percent confidence interval shall be used.

(iv) When a State's reported error rates are modified through assignment or adjustment of error rates by FNS as described in paragraphs (d)(6)(ii) and (iii) of this section, the State's final error rate shall continue to be subject to adjustment as described in paragraph (d)(9)(i) of this section.

PART 277—PAYMENT OF CERTAIN ADMINISTRATIVE COSTS OF STATE AGENCIES

8. Section 277.4(b) is amended by renumbering paragraph (b)(5) as (b)(8), revising paragraph (b)(2), and adding paragraphs (b) (5), (6), and (7) to read as follows:

§ 277.4 Funding

* * * * *

(b) *Federal Reimbursement Rate.*

* * *

(2) For the period beginning October 1, 1978, a State agency's federally-funded share of Food Stamp Program administrative costs shall be increased to 60 percent when the State's cumulative allotment error rate is less than 5 percent; provided that the State's negative case error rate is less than the national weighted mean negative case error rate for the period of enhanced funding.

* * * * *

(5) For the period beginning October 1, 1980, a State agency's federally-funded share of Food Stamp Program administrative costs shall be increased to 65 percent when that State meets the standards contained in § 275.25(c)(2)(i).

(6) For the period beginning October 1, 1980, a State agency's federally-funded share of Food Stamp Program administrative costs shall be increased to 60 percent when the State meets the standards contained in § 275.25(c)(2)(ii).

(7) For the period beginning October 1, 1980, a State agency which meets the standards of § 275.25(c)(2)(iii) shall be eligible for 55 percent federal funding for allowable program changes.

* * * * *

(P.L. 95-113, 91 Stat. 958 (7 U.S.C. 2011–2027), as amended by Pub. L. 96-249, 94 Stat. 364–365, May 26, 1980.)

[Catalog of Federal Domestic Programs No. 10.551, Food Stamps.]

Dated: January 19, 1981.

Carol Tucker Foreman,

Assistant Secretary.

[FR Doc. 81-2085 Filed 1-22-81; 8:45 am]

BILLING CODE 3410-30-M

Animal and Plant Health Inspection Service

7 CFR Part 371

Organization, Functions and Delegations of Authority

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: This document revises the statement of functions of Animal and Plant Health Inspection Service as it relates to the Deputy Administrator, Veterinary Services, to specifically assign functional responsibilities under the Swine Health Protection Act.

EFFECTIVE DATE: January 23, 1981.

FOR FURTHER INFORMATION CONTACT: John C. Frey, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Washington, DC 20250 (202–447–5335 or 301–436–8466).

SUPPLEMENTARY INFORMATION: The statement of organization, functions, and delegations of authority of the Animal and Plant Health Inspection Service is being amended to delegate to the Deputy Administrator, Veterinary Services, the functional responsibility for administering the provisions of the Swine Health Protection Act which was signed into law October 17, 1980. The Act regulates the feeding of garbage to swine and is considered necessary to prevent outbreaks of Hog Cholera and African Swine Fever and other such swine diseases which have become an increasing threat to the American hog industry. The Secretary has delegated this responsibility to the Assistant Secretary for Marketing and Transportation Services, who in turn has delegated such authority to the Administrator, Animal and Plant Health Inspection Service (45 FR 85698).

This rule relates to internal agency management and, therefore, pursuant to 5 U.S.C. 553, it is found upon good cause that notice and other public procedures with respect thereto are impractical and contrary to the public interest, and good cause is found for making this rule effective less than 30 days after its publication in the Federal Register.

Further, since this rule relates to internal agency management, it is exempt from the provisions of Executive Order 12044, Improving Government Regulations, and, thus, does not require the preparation of a regulatory impact analysis.

Accordingly, 7 CFR Part 371 is amended as follows:

Section 371.2 is amended by adding a new paragraph (d)(2)(xvix) to read as follows:

§ 371.2 The Office of the Administrator.

* * * * *

(d) * * *

(2) * * *

(xvix) The Swine Health Protection Act (Pub. L. 96–468, 94 Stat. 2229 (7 U.S.C. 3801–3812)).

* * * * *

Authority: 5 U.S.C. 301.

Issued at Washington, D.C., this 12th day of January, 1981.

Harry C. Mussman,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 81-1965 Filed 1-22-81; 8:45 am]

BILLING CODE 3410-34-M

Agricultural Marketing Service

7 CFR Part 910

[Lemon Regulation 289]

Lemons Grown in California and Arizona; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This regulation establishes the quantity of fresh California-Arizona lemons that may be shipped to market during the period January 25–31, 1981. Such action is needed to provide for orderly marketing of fresh lemons for this period due to the marketing situation confronting the lemon industry.

EFFECTIVE DATE: January 25, 1981.

FOR FURTHER INFORMATION CONTACT: William J. Doyle, 202–447–5975.

SUPPLEMENTARY INFORMATION: *Findings.* This regulation is issued under the marketing agreement, as amended, and Order No. 910, as amended (7 CFR Part 910), regulating the handling of lemons grown in California and Arizona. The agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). The action is based upon the recommendations and information submitted by the Lemon Administrative Committee, and upon other information. It is hereby found that this action will tend to effectuate the declared policy of the act.

This action is consistent with the marketing policy for 1980–81 which was designated significant under the procedures of Executive Order 12044. The marketing policy was recommended by the committee following discussion at a public meeting on July 8, 1980. A final impact analysis on the marketing policy is available from William J. Doyle, Acting Chief, Fruit Branch, F&V,

AMS, USDA, Washington, D.C. 20250, telephone 202–447–5975.

The committee met again publicly on January 19, 1981, at Los Angeles, California, to considered the current and prospective conditions of supply and demand and recommended a quantity of lemons deemed advisable to be handled during the specified week. The committee reports the demand for lemons is steady.

It is further found that there is insufficient time between the date when information became available upon which this regulation is based and when the action must be taken to warrant a 60 day comment period as recommended in E.O. 12044, and that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rulemaking, and postpone the effective date until 30 days after publication in the Federal Register (5 U.S.C. 553). It is necessary to effectuate the declared purposes of the act to make these regulatory provisions effective as specified, and handlers have been apprised of such provisions and the effective time.

Section 910.589 is added as follows:

§ 910.589 Lemon Regulation 289.

(a) The quantity of lemons grown in California and Arizona which may be handled during the period January 25, 1981, through January 31, 1981, is established at 215,000 cartons.

(b) As used in this section, "handled" and "carton(s)" mean the same as defined in the marketing order.

(Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674)

Dated: January 21, 1981

D. S. Kuryloski,

Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 81-2000 Filed 1-23-81; 8:45 am]

BILLING CODE 3410-02-M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 214

Nonimmigrant Classes; Revised Requirements for Nonimmigrant "F–1" Students

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: This final rule eliminates the duration of status for all nonimmigrant students; limits their admission to definite stated periods; provides for extensions of stay; and establishes uniform criteria for use by Service district directors in reinstating students to lawful status.

EFFECTIVE DATE: February 23, 1981.

FOR FURTHER INFORMATION CONTACT:

For general information: Stanley J. Kieszkiel, Acting Instructions Officer, Immigration and Naturalization Service, 425 Eye Street, N.W., Washington, DC 20536. Telephone: (202) 633–3048.

For specific information: Robert E. Coughlon, Immigration Examiner, Immigration and Naturalization Service, 425 Eye Street, N.W., Washington, DC 20536. Telephone: (202) 633–3946.

SUPPLEMENTARY INFORMATION: On March 19, 1980, the Service published proposed rules in the Federal Register at 45 FR 17590 to give interested persons an opportunity to participate in the rule making prior to adoption of the final rules revising the "F–1" student regulations. During the sixty day comment period following publication of the proposed rules in the Federal Register, the Service received 237 comments from educational institutions, educational associations, and individuals. The majority of commenters opposed eliminating the duration of status for nonimmigrant students and replacing it with annual extensions of stay. Duration of status for foreign students was initially implemented in January 1979 to reduce the continual need to process vast numbers of applications for extension of stay. While the duration of status regulations eased the administrative workload for the Service and the educational institutions affected, this procedure resulted in questionable control over the foreign students and has contributed to problems in record keeping. Recent events have highlighted the problem of control of foreign students in the United States. To meet this obligation, the Service proposed eliminating duration of status for foreign students and imposing an annual reporting requirement.

Additionally, the Service proposed uniform criteria for use by Service district directors in reinstating students to lawful status, where students overstayed or otherwise violated their status in circumstances beyond their control, or in hardship cases. Most commenters favored regulations which provided uniform criteria for reinstatement of students to lawful status to ensure equal treatment throughout the Service. The proposal revising the rules as to student transfers from one school to another, student employment, and temporary absences from the United States with subsequent reentry, also generated considerable controversy.

After carefully considering the comments received, reassessing the administrative costs involved, and the need for more effective accountability for foreign students admitted to the United States, the Service is modifying its position to provide for a graduated implementation of necessary regulations. This final rule represents the first step in a series of regulatory changes being planned to more effectively monitor foreign students and the schools which enroll them. It eliminates duration of status for all incoming foreign students as of the effective date of this order. Those foreign students who were previously admitted or granted duration of status are converted to date certain status based upon the anticipated completion date of their studies as certified on Form I–20. Students are not required to report to the Immigration and Naturalization Service to have their Form I–94 changed from duration of status to date certain. Date certain changes will be made on the Form I–94 as the students come in contact with the Immigration and Naturalization Service. Students returning to the U.S. after a temporary absence or who seek a benefit from the Service will have a date certain recorded on their Form I–94 at that time. Extensions of time to remain in the United States to pursue additional courses of study will be reviewed by the Service on a case-by-case basis. Extensions of time may be granted only for periods necessary to complete courses of study. The Service will no longer grant duration of status to any foreign students.

The proposed uniform criteria for reinstating students to lawful status are adopted as a final rule except that the second condition listed in the proposed subparagraph, i.e., "(2) is pursuing the same general educational objective for which he/she was originally granted student status," is deleted from the final revision as being too vague for uniform application. Reference to eligibility of an alien to receive deferred action treatment or voluntary departure in the same subparagraph is also deleted from the final revision as superfluous language. The proposed rule dealing with student temporary absence from the United States is substantially adopted as a final rule. The revised text merely eliminates reference to duration of status and provides for a specific expiration of status date on Form I–94. The proposed rules relating to student employment and school transfer will not be adopted in this order. The regulations

currently in force will remain unchanged pending further future assessment by the Service. The Service will not adopt the proposed rule revising § 214.5 which would have required all foreign students to report to their respective district offices on an annual basis.

Accordingly, the following amendments are made to Chapter I of Title 8 of the Code of Federal Regulations:

PART 214—NONIMMIGRANT CLASSES

1. Section 214.2, paragraph (f) is amended by revising subparagraphs (2), (3), (5), and adding (8) to read as follows:

§ 214.2 Special requirements for admission, extension, and maintenance of status.

* * * * *

(f) * * *

2. *Admission.* A nonimmigrant who has a classification under section 101(a)(15)(F)(i) of the Act shall not be eligible for admission unless he/she establishes that he/she is destined to and intends to attend the school specified in his/her visa or the school specified on Form I–94 presented by a student returning from a temporary absence in accordance with subparagraph (3) of this paragraph. In all cases, the name of the school a student is authorized to attend and the expiration of status date shall be endorsed by the examining immigration officer on the student's Form I–94. The period of admission for a nonimmigrant student shall be for the period of time necessary to complete the course of study indicated on Form I–20, subject to the condition that the student maintains his/her passport valid for a minimum period of six months at all times while in the United States unless exempt from the presentation of a passport requirement. The period of stay will be adjusted if the student transfers to a different course of study. Extensions of stay may be applied for as described in subparagraph (5) of this paragraph.

3. *Temporary absence.* Form I–20 presented by a student returning from a temporary absence may be retained by him/her and used for any number of reentries within one year of the date of its issuance. However, a Canadian national or an alien landed immigrant of Canada who has a common nationality with Canadian nationals who has been temporarily absent in Canada, or any alien whose visa is considered to be automatically revalidated pursuant to 22 CFR 41.125(f)(2) or is within the purview of that regulation except that his/her nonimmigrant visa has not expired, returning to the United States as a nonimmigrant under section 101(a)(15)(F)(i) of the Act, shall, if otherwise admissible, be readmitted, without presentation of Form I–20, for the remainder of his/her initial admission or current extension of stay as shown on Form I–94, provided a specific expiration of status date is shown thereon. Any student whose Form I–94 indicates duration of status must present Form I–20 when applying for any admission to the United States after a temporary absence.

4. * * *

5. *Extension of stay and revocation of duration of status.* Each student previously granted duration of status is converted to date certain status as certified on Form I–20 unless adjustment of the date is made by the Service. Extensions of stay may be granted for the period of time necessary to complete a course of study if the student establishes that he/she is currently maintaining student status and is able to and in good faith intends to continue to maintain such status for the period for which the extension is requested. Application for extension of stay must be made on Form I–538. A student who desires an extension of stay for his/her spouse and children in a classification under section 101(a)(15)(F)(ii) of the Act may include them in his/her application. A student's spouse or children are not eligible for an extension of stay unless the student is eligible for an extension of stay. A student who has been compelled by illness to interrupt his/her schooling may be granted an extension of stay without being required to change his/her nonimmigrant classification provided he/she establishes that he/she will resume a full course of study after treatment.

6. * * *

7. * * *

8. *Reinstatement of student status.* Any alien who was admitted to the United States as, or whose status has been changed to, an F–1 nonimmigrant student, and who has overstayed the authorized period of stay granted by the Service or who has otherwise violated the conditions of such status may be reinstated in the discretion of the district director to lawful nonimmigrant student status only if the student:

(1) is currently pursuing a full course of study at an approved school,

(2) has not been employed without authorization, and

(3) is not deportable on any ground other than section 241(a)(2) or (9) of the Act, or, § 214.1(g) of this Chapter.

Additionally, the student must establish to the satisfaction of the district director that his/her violation of status resulted from circumstances beyond his/her control or that failure to receive reinstatement to lawful status would result in considerable hardship to the student.

No appeal shall lie from the decision of the district director.

* * * * *

(Secs. 103 and 214; U.S.C. 1103 and 1184)

Dated: January 16, 1981.

David Crosland,

Acting Commissioner of Immigration and Naturalization.

[FR Doc. 81-2214 Filed 1-22-81; 8:45 am]

BILLING CODE 4410-10-M

CIVIL AERONAUTICS BOARD

14 CFR Part 203

[Economic Regulations; Amendment No. 2 to Part 203; Docket 38793]

Removal of Certificate Restrictions

AGENCY: Civil Aeronautics Board.

ACTION: Erratum to ER–1207.

SUMMARY: The CAB corrects interim final rule ER–1207 (46 FR 1664, January 7, 1981) from which a clause was inadvertently omitted. The interim final rule amended the Board's restriction removal program by only granting unrestricted authority to domestic certificated carriers that have been found fit, willing and able to operate under the Federal Aviation Act.

FOR FURTHER INFORMATION CONTACT: Joseph A. Brooks, Office of the General Counsel, Civil Aeronautics Board, 1825 Connecticut Avenue, N.W., Washington, D.C. 20428; 202–673–5442.

SUPPLEMENTARY INFORMATION: In ER–1206 (45 FR 86413, December 31, 1980), the Board added paragraph (f) to 14 CFR 203.3. Paragraph (f) states that any new authority that the Board grants to an air carrier will include nonstop authority to all other points on its certificate, except where new authority has been deferred pending environmental analysis. ER–1207 (46 FR 1664, January 7, 1981) in turn amended paragraph (f) to state that the award of additional nonstop authority under § 203.3 only applies to those carriers that have been found fit, willing, and able under the Federal Aviation Act. In making this amendment, the exception clause in the last line of paragraph (f) was inadvertently dropped.

In column 3 of ER–1207, at 46 FR 1664, the rule should read as follows:

§ 203.3 Timetable of automatic removal of restrictions.

* * * * *

(f) After December 31, 1980, any route authority granted by the Board to a carrier that has been found fit, willing, and able to provide scheduled passenger air transportation will include nonstop authority to all existing points on the carrier's route system, except for those points where new authority has been deferred by Board order pending environmental analysis.

Dated: January 19, 1981

Phyllis T. Kaylor,

Secretary.

[FR Doc. 81-2219 Filed 1-13-81; 8:45 am]

BILLING CODE 6320-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Part 416

Supplemental Security Income for the Aged, Blind, and Disabled; State Supplementation Provisions; Agreements; Payments—Use of Regression Formula in Computing Federal Liability

AGENCY: Social Security Administration, HHS.

ACTION: Interim rule with request for comments.

SUMMARY: This regulation will afford States for whom SSA administers both optional and mandatory State supplementation payments under the Supplemental Security Income (SSI) program, the use of a regression formula in the computation of Federal fiscal liability (FFL) rates. With FFL the Federal government assumes responsibility for Federal errors discovered by the quality assurance system, which exceed the 4 percent tolerance for error as established in the regulations. The regression formula is a means of determining the relationship between our original quality assurance findings and the results of an independent State review of a subsample of these same cases. It is an alternative to the current method of correcting only the differences noted in the States subsample, before we compute the FFL error rates. The use of the regression formula is at the option of the State, and is effective with 6-month sample periods beginning October 1, 1980.

EFFECTIVE DATE: This interim regulation is effective (enter date of publication), but States may start applying it with the 6-month sample periods beginning October 1, 1980. We will consider any comments we receive on or before March 24, 1981.

ADDRESSES: Send your written comments to the Social Security Administration, Department of Health and Human Services, P.O. Box 1585, Baltimore, Maryland 21203.

Copies of all comments we receive can be seen at the Washington Inquiries Section, Office of Government Affairs, Department of Health and Human Services, Switzer Building, Room 1212, 330 C Street, S.W., Washington, D.C. 20201.

FOR FURTHER INFORMATION CONTACT: Willie H. Dow, Room 4123 Annex Building, 6401 Security Boulevard, Baltimore, Maryland 21235, (301) 597-2516.

SUPPLEMENTARY INFORMATION: Some States have entered into an agreement for us to administer the States' mandatory and optional supplementary payments in the SSI program. Part of our responsibility is to review a valid sample of cases for each 6-month period beginning in April and October of each year, and to compute our FFL if our error rate based on the review exceeds a prescribed standard (currently 4 percent). Additionally, a State may rereview the cases we select. Traditionally, the States have chosen to rereview a small subsample of these cases. If we agree with the State's review findings, we revise our data base and compute our FFL by treating the State's findings as if they were our own on a case-by-case basis.

Recently the States, through the National Council of State Public Welfare Administrators (NCSPWA), have proposed the use of a mathematical regression formula to weight the value of errors detected by a State in its subsample review. A regression methodology estimates the extent of differences in the full sample, whereas the present case-by-case methodology corrects only differences noted in the State's subsample and our sample. The regression formula produces more accurate final error rates without having to subject to rereview every case in the quality assurance sample. The effect of using the regression formula in any particular FFL determination may be to raise, lower, or not change original error rate projections. However, use of a regression formula in the Aid to Families with Dependent Children (AFDC) program results most often in raising error rates.

Historically, the quality control systems in SSI and in AFDC have been similar. The regression formula has been used for some time in the AFDC program. The States have requested that the use of the regression formula be an available option in the SSI program. Accordingly, we have amended § 416.2096(h)(2) to allow a State, at its option, to use the regression formula for 6-month sample periods beginning October 1, 1980.

The proposal provides the States with an option that they presently do not have in their subsample review of SSI cases. Use of the regression formula will increase accuracy of the payment error rate used for FFL determination and may lower administrative costs for both the States and us. Prompt effectuation of the new rules effective with the six month sample period beginning October, 1980 will remove the final barrier to negotiation of a new model agreement with the States. Accordingly, we find that good cause exists for publication of these rules without notice of proposed rulemaking in accordance with § 553(b). of the Administrative Procedure Act. (5 U.S.C. 553(b)).

(Secs. 1102 and 1631 of the Social Security Act, as amended; 49 Stat. 647, as amended, 86 Stat. 1465, as amended; 42 U.S.C. 1302 and 1383)

(Catalog of Federal Domestic Assistance Program No. 13.807 Supplemental Security Income Program)

Dated: January 15, 1981.

William J. Driver,

Commissioner of Social Security.

Approved: January 19, 1981.

Patricia Roberts Harris,

Secretary of Health and Human Services.

Part 416 of Chapter III of Title 20 of the Code of Federal Regulations is amended at § 416.2096 by revising paragraph (h)(2) to read as follows:

§ 416.2096 Federal liability when error rate in payment of federally administered State supplementation exceeds national standard.

* * * * * * *

(h) * * *

(1) * * *

(2) *Adjustment to liability.* If a State's finding in a case differs from ours and if we agree that the State is correct, we will use this revised finding in computing FFL. We will then determine our liability—

(i) By treating the State's findings on cases that we agree upon as if they were the findings of our sample review; or

(ii) At the State's option, through the use of a regression formula as specified in the Federal-State agreement. For purposes of this section, the term "regression formula" means a mathematical technique commonly used in statistical analysis. The results derived from analyzing a subsample of the total cases selected for quality

review will be mathematically adjusted to project an accurate computation of the case errors in the total sample of cases selected for quality review. This option is available for 6-month sample periods beginning on or after October 1, 1980.

[FR Doc. 81-2220 Filed 1-22-81; 8:45 am]
BILLING CODE 4110-07-M

DEPARTMENT OF LABOR

Employment and Training Administration

20 CFR Part 614

Unemployment Compensation for Ex-Servicemembers; New Schedule of Remuneration

AGENCY: Employment and Training Administration, Labor.

ACTION: Final rule.

SUMMARY: The Department of Labor is revising 20 CFR 614.19, to increase the monthly rates of remuneration in the Schedule of Remuneration used to compute the Federal wages of ex-servicemembers covered by the program of Unemployment Compensation for Ex-Servicemembers (UCX Program). The new schedule will apply to new claims under the UCX Program that are filed on and after January 4, 1981.

DATES: Effective date: January 4, 1981, with respect to first claims filed on and after that date.

Comments: All comments on this proposal must be received on or before February 27, 1981.

ADDRESSES: Send comments on this proposal to the U.S. Department of Labor, Employment and Training Administration, Room 7000, Patrick Henry Building, 601 "D" Street, N.W., Washington, D.C. 20213.

All comments received will be available for public inspection during normal business hours, in room 7000 at the above address.

FOR FURTHER INFORMATION CONTACT: Bert Lewis, Administrator, Unemployment Insurance Service, Employment and Training Administration, U.S. Department of Labor, 601 "D" Street, N.W., Washington, D.C. 20213, telephone: 202-376-7032.

SUPPLEMENTARY INFORMATION: The UCX Program was established by the "Ex-Serviceman's Unemployment Compensation Act of 1958," and is now codified at Subchapter II of Chapter 85, in Title 5 of the United States Code (5 U.S.C. 8521-8525). It is a program of unemployment benefits for individuals who are separated from military service and are unable to obtain work.

In most unemployment compensation programs the benefit amounts payable to claimants are computed on the basis of the wages paid to each claimant in a designated base period. For the UCX Program, the statute provides that benefit amounts shall be computed on the basis of wages as prescribed in the current Schedule of Remuneration.

Section 8521(a)(2) requires the Secretary of Labor to issue, from time to time, after consultation with the Secretary of Defense, a Schedule of Remuneration specifying the pay and allowances for each pay grade of members of the military services, which reflect representative amounts for appropriate elements of the pay and allowances whether in cash or in kind.

A Schedule of Remuneration adopted in accordance with the law has been published from time to time as changes in military pay and allowances occur, and appears in 20 CFR 614.19. These schedules adopted from time to time are made effective for new claims filed on and after the effective date of each new schedule, and new claims established under a prior schedule are not changed.

The new Schedule of Remuneration in this document adjusts the scheduled monthly rates of pay upward to reflect the military pay increase that became effective on October 1, 1980, under Executive Order 12248. The new schedule set forth in this document is made effective with respect to first claims which are filed on and after January 4, 1981, to conform to the new pay schedules that went into effect on October 1, 1980. The purpose of making the new schedule effective in the first week of the quarter succeeding the quarter in which the pay increase takes effect is to regularize the effective dates of new schedules. This stabilizes administration of the UCX Program and is fairer to claimants.

In order to accomplish this goal with respect to the 1980 military pay raise it is essential to make the new schedule effective on January 4, 1981. For this reason I, as Secretary of Labor, find that, irrespective of 29 CFR 2.7, it is contrary to the public interest to publish the new Schedule of Remuneration as a proposal with opportunity for comment, and for the same reason I find that it is necessary that the new Schedule shall become effective on January 4, 1981.

Although the new Schedule is being published in final form and is made effective as stated above, it is the policy of the Department of Labor to solicit and consider comments on the regulations it issues. Therefore, comments will be received, just as though the new schedule were a proposal, until February 27, 1981, after which time the comments received will be evaluated and, if warranted, the Schedule will be appropriately revised. Meanwhile, in the interest of making the new Schedule effective as stated above, it shall remain in force until revised.

Interested persons are invited to submit written data, views, or arguments on the new Schedule, on or before February 27, 1981.

Note.—The Department of Labor has determined that this document does not contain a major regulation that requires the preparation of a regulatory analysis, within the meaning of Executive Order 12044 and the Department's guidelines published at 44 FR 5570. This note also reflects that I have certified, in accordance with 5 U.S.C. 605(b), that the regulation in this document will not have a significant economic impact on a substantial number of small business entities.[1]

This document was prepared under the direction and control of Bert Lewis, Administrator, Unemployment Insurance Service, Employment and Training Administration, U.S. Department of Labor, 601 "D" Street, N.W., Washington, D.C. 20213; telephone: 202-376-7032.

Accordingly, it is proposed to amend 20 CFR Part 614 as follows:

1. The authority citation for Part 614 is revised to read as follows:

Authority: 5 U.S.C. 8506; Secretary's Order No. 4-75, 40 FR 18515; (5 U.S.C. 301). Interpret and apply secs. 8521-8525 of title 5, United States Code.

2. In Part 614, § 614.19 is revised to read as follows:

§ 614.19 Schedule of remuneration.

(a) The following Schedule of Remuneration is issued pursuant to 5 U.S.C. 8521(a)(2), and shall apply to first claims which are filed on or after January 4, 1981:

Pay grade	Monthly rate
(1) Commissioned Officers:	
O-10	$5,398
O-9	5,398
O-8	5,398
O-7	5,004
O-6	4,149
O-5	3,579
O-4	2,786
O-3	2,343
O-2	1,888
O-1	1,582
(2) Warrant Officers:	
W-4	$2,099
W-3	1,736
W-2	1,552
W-1	1,358
(3) Enlisted Personnel:	
E-9	$2,339

[1] A copy of a letter of certification is filed with the Office of the Federal Register as part of the original document.

Pay grade	Monthly rate
E-9	1,950
E-7	1,680
E-6	1,429
E-5	1,207
E-4	1,037
E-3	922
E-2	854
E-1	763

(b) The Schedule of Remuneration published at 45 FR 1014, on January 4, 1980, remains applicable to first claims filed prior to the effective date of the new Schedule of Remuneration set forth in paragraph (a). The new schedule in paragraph (a) does not revoke the prior schedule or any preceding schedule or change the periods of time they were in effect.

Signed at Washington, D.C., on January 16, 1981.

Ray Marshall,

Secretary of Labor.

[FR Doc. 81-2060 Filed 1-23-81; 8:01 am]

BILLING CODE 4510-28-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 178

[Docket No. 80F-0122]

Antioxidants and/or Stabilizers for Polymers; N,N'-Hexamethylenebis(3,5-di-Tert-Butyl-4-Hydroxyhydrocinnamamide)

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) amends the food additive regulations to provide for the safe use of *N,N'*-hexamethylenebis(3,5-di-*tert*-butyl-4-hydroxyhydrocinnamamide) as an antioxidant and/or stabilizer for nylon resins used in articles intended for food-contact use. This action responds to a food additive petition filed by Ciba-Geigy Corp.

DATES: Effective January 23, 1981, objections by February 23, 1981.

ADDRESS: Written objections to the Dockets Management Branch (formerly the Hearing Clerk's office) (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Marvin D. Mack, Bureau of Foods (HFF-334), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5740.

SUPPLEMENTARY INFORMATION: In a notice published in the Federal Register of April 29, 1980 (45 FR 28406), FDA announced that a food additive petition (FAP 0B3469) had been filed by Ciba-Geigy Corp., Ardsley, NY 10502, proposing to amend § 178.2010 *antioxidants and/or stabilizers for polymers* (21 CFR 178.2010) to provide for the safe use of *N,N'*-hexamethylenebis(3,5-di-*tert*-butyl-4-hydroxyhydrocinnamamide) as an antioxidant and/or thermal stabilizer for nylon resins used in articles intended for food-contact use.

FDA has evaluated data in the petition and other relevant material and concludes that § 178.2010 should be amended as set forth below to include the petitioned additive.

The agency has carefully considered the potential environmental effects of this action and has concluded that the action will have no significant impact on the human environment and that an environmental impact statement, therefore, is not required. The agency's finding of no significant impact and the evidence supporting this finding, may be seen in the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 201(s), 409, 72 Stat. 1784-1788 as amended (21 U.S.C. 321(s), 348)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.1), Part 178 is amended in § 178.2010(b) by alphabetically inserting a new item in the list of substances to read as follows:

§ 178.2010 Antioxidants and/or stabilizers for polymers.

* * * * *

(b) * * *

Substances	Limitations
* * * * *	
N,N'-Hexamethylenebis(3,5-di-tert-butyl-4-hydroxyhydrocinnamamide) (CAS Reg. No. 23128-74-7).	For use only: 1. At levels not to exceed 1 percent by weight of nylon resins complying with § 177.1500(b) of this chapter, items 1 through 8, that contact food only of the types identified in categories in § 176.170(c) of this chapter, table 1, except VI-A and VI-C. 2. At levels not to exceed 0.75 percent by weight of nylon 12 resins complying with § 177.1500(b) of this chapter, item 9, that contact food only of the types identified in categories in § 176.170(c) of this chapter, table 1, except VI-A and VI-C.

* * * * *

Any person who will be adversely affected by the foregoing regulation may at any time on or before February 23, 1981, submit to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, written objections thereto and may make a written request for a public hearing on the stated objections. Each objection shall be separately numbered and each numbered objection shall specify with particularity the provision of the regulation to which objection is made. Each numbered objection on which a hearing is requested shall specifically so state; failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held; failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Four copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this regulation. Received objections may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Effective date. This regulation becomes effective January 23, 1981.

(Secs. 201(s), 409, 72 Stat. 1784-1788 as amended (21 U.S.C. 321(s), 348))

Dated: January 12, 1981.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 81-1715 Filed 1-23-81; 8:45 am]

BILLING CODE 4110-03-M

21 CFR Part 201

[Docket No. 79N-0096]

Content and Format for Labeling for Human Prescription Drugs; Amendment of Effective Date for Certain Biological Products

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) amends the effective date of its regulations designating a required content and format for the professional labeling of certain biological products for human use. FDA is taking this action to reduce the burden of the regulations on

manufacturers of certain biological products licensed after July 1, 1972.

DATES: Effective January 23, 1981; comments by March 24, 1981.

ADDRESS: Written comments to the Dockets Management Branch (formerly the Hearing Clerk's office) (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: About this notice: Paul K. Hiranaka, Bureau of Biologics (HFB–620), Food and Drug Administration, 8800 Rockville Pike, Bethesda, MD 20205, 301–443–1306.

About labeling requirements and changes in biological licenses: Michael G. Beatrice, Bureau of Biologics (HFB–720), Food and Drug Administration, 8800 Rockville Pike, Bethesda, MD 20205, 301–443–5493.

SUPPLEMENTARY INFORMATION: In the Federal Register of May 16, 1980 (45 FR 32550), FDA issued a final rule establishing in § 201.59 (21 CFR 201.59) effective dates for compliance with the content and format requirements in §§ 201.56, 201.57 and 201.100(d)(3) (21 CFR 201.56, 201.57, and 201.100(d)(3)) for the professional labeling of prescription drugs. The regulation also gives dates for the submission of revised labeling by manufacturers.

With respect to biological products, the rule provides for manufacturers of products licensed after July 1, 1972, to submit revised labeling copy by November 1, 1980. The rule provides, however, that manufacturers of products licensed before July 1, 1972, and reviewed generically by an advisory panel under FDA's review of licensed biological products, are not required to comply with the labeling requirements until 6 months after a final order is published under § 601.25(g) (21 CFR 601.25(g)). The agency has reconsidered this requirement and concludes that it unnecessarily burdens manufacturers of products that are both licensed after July 1, 1972, and also reviewed generically by an advisory panel under FDA's review of licensed biological products. Those manufacturers would be required to revise their professional labeling now and may be required to revise their labeling again after a final order is published.

To relieve this burden, FDA is amending the regulations to provide the same due dates for submission of revised labeling and the same effective dates for all biological products that are reviewed generically by an advisory panel, and are the subject of a final order, regardless of whether the products were licensed before or after July 1, 1972. The due date for submission of the revised labeling is 6 months after a final order is published. The effective date is 2 years after the due date. This amendment does not, however, affect the due dates and effective dates of November 1, 1980, and November 1, 1982, respectively, for products licensed after July 1, 1972, that are not being reviewed under FDA's review of licensed biological products.

The agency has determined pursuant to 21 CFR 25.24(d)(13) (proposed December 11, 1978; 44 FR 71742) that this action is of a type that does not individually or cumulatively have a significant impact on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 201, 502, 701, 52 Stat. 1040–1042 as amended, 1050–1051 as amended, 1055–1056 as amended (21 U.S.C. 321, 352, 371)) and the Public Health Service Act (sec. 351, 58 Stat. 702 as amended (42 U.S.C. 262)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.1), Part 201 is amended in § 201.59(a) in the table by revising the entries under "Biologics" to read as follows:

§ 201.59 Effective date of §§ 201.56, 201.57, 201.100(d)(3), and 201.100(e).

* * * * * *

Effective	Revised labeling due	Drug class	Mail routing code
Biologics			
Nov. 1, 1982	Nov. 1, 1980	Bacterial vaccines and antigens with no U.S. standard of potency.	HFB–720
Do	do	Skin test antigens	HFB–720
Nov. 1, 1982, except the effective date for all biological products reviewed generically by the advisory panel is 30 months after a final order is published under 21 CFR 601.25(g).	Nov. 1, 1980, except the due date for all biological products reviewed generically by the advisory panel is 6 months after a final order is published under 21 CFR 601.25(g).	Bacterial vaccines and toxoids with standards of potency.	HFB–720
Do	do	Viral and rickettsial vaccines	HFB–720
Do	do	Allergenic extracts	HFB–720
Do	do	Blood and blood derivatives	HFB–720

* * * * * * *

Under the Administrative Procedure Act (5 U.S.C. 553 (b) and (d)) and 21 CFR 10.40 (c)(4) and (e)(1), the agency concludes that there is good cause to find that notice, public procedure, and delayed effective date are unnecessary for the amendment of § 201.59 because the revision does not impose any new substantive burden on any person. However, interested persons may, on or before March 24, 1981, submit to the Dockets Management Branch (formerly the Hearing Clerk's office) (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, written comments regarding this final rule. Such comments will be considered in determining whether amendments or revisions to the regulation are warranted. Four copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Effective date. This final rule becomes effective January 23, 1981.

(Secs. 201, 502, 701, 52 Stat. 1040–1042 as amended, 1050–1051 as amended, 1055–1056 as amended (21 U.S.C. 321, 352, 371); sec. 351, 58 Stat. 702 as amended (42 U.S.C. 262))

Dated: January 12, 1981.

William F. Randolph,
Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 81-2749 Filed 1-22-81; 8:45 am]
BILLING CODE 4110-03-M

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21 CFR Part 444

[Docket No. 80N-0187; DESI 6574]

Oligosaccharide Antibiotic Drugs; Antibiotic Otic Preparations; Confirmation of Effective Date and Amendment

Correction

In FR Doc. 80-34057, at page 73034, in the issue of Tuesday, November 4, 1980, on page 73035, make the following corrections:

(1) In the first column, under § 444.442a, second line from the end of the page, correct "§ 444.442(a)(1)" to read "§ 444.42a(a)(1)".

(2) In the second column, paragraph (a)(3)(ii)(*b*)(*1*) of § 444.442a, capitalize the "a" after the colon which appears at the end of the first line.

(3) In the second column, paragraph (b)(1), the third line down, correct "§ 444.442a" to read "§ 444.42a".

BILLING CODE 1505-01-M

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21 CFR Parts 510 and 522

Implantation or Injectable Dosage Form New Animal Drugs Not Subject to Certification; Chorionic Gonadotropin

Correction

In FR Doc. 80-37892, published at page 81037, in the issue of Tuesday, December 9, 1980, and corrected at 46 FR 2998, January 13, 1981, the correction should have been to § 510.600(c)(2). In the first column on page 2998, second paragraph, the phrase in the first sentence now reading "In § 522.600(c) * * *" should read "In § 510.600(c) * * *".

BILLING CODE 1505-01-M

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21 CFR Parts 436 and 446

[Docket No. 80N-0297]

Tests and Methods of Assay of Antibiotic and Antibiotic-Containing Drugs and Tetracycline Antibiotic Drugs—Doxycycline Hyclate Tablets

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) amends the antibiotic drug regulations to provide for the certification of a new antibiotic dosage form, doxycycline hyclate tablets. The manufacturer has supplied sufficient data and information to establish its safety and efficacy.

DATES: Effective January 23, 1981, comments by February 23, 1981.

ADDRESS: Written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Joan Eckert, Bureau of Drugs (HFD-140), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4290.

SUPPLEMENTARY INFORMATION: FDA has evaluated data submitted in accordance with regulations promulgated under section 507 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 357), as amended, with respect to providing for the certification of a new antibiotic dosage form, doxycycline hyclate tablets. The agency concludes that the data supplied by the manufacturer on doxycycline hyclate tablets are adequate to establish its safety and efficacy when used as directed in the labeling and that the regulations should be amended in Parts 436 and 446 (21 CFR Parts 436 and 446) to provide for its certification.

The agency has determined pursuant to 21 CFR 25.24(b)(22) (proposed December 11, 1979; 44 FR 71742), that this action is of a type that does not individually or cumulatively have a significant impact on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 507, 52 Stat. 463 as amended (21 U.S.C. 357)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.1), Parts 436 and 446 are amended as follows:

1. Part 436 is amended in § 436.541 by revising the section heading, by alphabetically inserting a new item into the table in paragraph (b), and by adding paragraph (c)(3), to read as follows:

§ 436.541 Dissolution test.

* * * * *

(b) * * *

Dosage form	Dissolution medium	Stirring blade[1]	Sampling times
Doxycycline hyclate tablets	900 mL distilled water.	75	60 min. and 90 min.

[1] Stirring blade rotation rate (revolutions per minute).

(c) * * *

(3) *Doxycycline hyclate.* Proceed as directed in paragraph (c)(1) of this section, except use the doxycycline working standard.

2. Part 446 is amended by adding new § 446.120c to read as follows:

§ 446.120c Doxycycline hyclate tablets.

(a) *Requirements for certification*—(1) *Standards of identity, strength, quality, and purity.* Doxycycline hyclate tablets contain doxycycline hyclate with or without one or more disintegrants, lubricants, colorings, and coating substances. Each tablet contains doxycycline hyclate equivalent to 100 milligrams of doxycycline. Its potency is satisfactory if it is not less than 90 percent and not more than 120 percent of the number of milligrams of doxycycline that it is represented to contain. Its moisture content is not more than 5.0 percent. It passes the dissolution test. It passes the identity test. The doxycycline hyclate conforms to the standards prescribed by § 446.20(a)(1).

(2) *Labeling.* It shall be labeled in accordance with the requirements of § 432.5 of this chapter.

(3) *Requests for certification; samples.* In addition to complying with the requirements of § 431.1 of this chapter, each such request shall contain:

(i) Results of tests and assays on:

(*a*) The doxycycline hyclate used in making the batch for potency, safety, moisture, pH, doxycycline content, identity, and crystallinity.

(*b*) The batch for potency, moisture, dissolution, and identity.

(ii) Samples required:

(*a*) The doxycycline hyclate used in making the batch: 10 packages, each containing approximately 300 milligrams.

(*b*) The batch: A minimum of 100 tablets.

(b) *Tests and methods of assay*—(1) *Potency.* Proceed as directed in § 436.108 of this chapter, preparing the sample for assay as follows: Place a representative number of tablets into a high-speed glass blender jar containing 0.1*N* hydrochloric acid to obtain a stock solution of convenient concentration containing not less than 100 micrograms of doxycycline per milliliter (estimated). Blend for 3 to 5 minutes. Remove an

aliquot of the stock solution and further dilute with sterile distilled water to the reference concentration of 0.100 microgram of doxycycline per milliliter (estimated).

(2) *Moisture.* Proceed as directed in § 436.201 of this chapter.

(3) *Dissolution.* Proceed as directed in § 436.541 of this chapter, except in lieu of paragraph (d) of that section, use the interpretation described in the United States Pharmacopeia XX dissolution test. The quantity, *Q* (the amount of doxycycline dissolved) is 55 percent at 60 minutes and 85 percent at 90 minutes.

(4) *Identity.* Proceed as directed in § 436.306 of this chapter, except prepare the sample and standard solutions as follows: Grind tablet to a powder. Dissolve precise amount of the doxycycline tablet and of the doxycycline working standard in methanol and further dilute each solution to a concentration of 1 milligram of doxycycline per milliliter. Prepare the sample-standard mixed solution by mixing equal volumes of the final standard and sample solutions. The standard and sample must each produce a major, yellow fluorescent spot with the same R_f value and the standard-sample mixed solution must show no separation of major spots.

This regulation announces standards that FDA has accepted in a request for approval of an antibiotic drug. In accordance with the conditions for certification in section 507 of the act, FDA permits the manufacturer to market this drug on a "release" status pending the regulation's becoming effective. Because this regulation is not controversial and because when effective it provides notice of accepted standards and permits earlier certification of regulated products, notice and comment procedure and delayed effective date are found to be unnecessary and not in the public interest. The amendment, therefore, is effective upon the date of publication in the Federal Register. However, interested persons may, on or before February 23, 1981, submit to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, written comments on this rule. Four copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Dockets Management Branch office between 9 a.m. and 4 p.m., Monday through Friday.

Any person adversely affected by this regulation may file objections to it, request a hearing, and show reasonable ground for the hearing. Any person who decides to seek a hearing must file (1) on or before February 23, 1981, a written notice of participation and request for hearing, and (2) on or before March 24, 1981, the data, information, and analyses on which the person relies to justify a hearing, as specified in 21 CFR 430.20. A request for a hearing may not rest upon mere allegations or denials, but must set forth specific facts showing that there is a genuine and substantial issue of fact that requires a hearing. If it conclusively appears from the face of the data, information, and factual analyses in the request for a hearing that no genuine and substantial issue of fact precludes the action taken by this order, or if a request for hearing is not made in the required format or with the required analyses, the Commissioner of Food and Drugs will enter summary judgment against the person(s) who request(s) the hearing, making findings and conclusions and denying a hearing.

The procedures and requirements governing this order, a notice of participation and request for hearing, a submission of data, information, and analyses to justify a hearing, other comments, and grant or denial of a hearing are contained in 21 CFR 430.20.

All submissions under this order must be filed in four copies, identified with the docket number appearing in the heading of this order and filed with the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

All submissions under this order, except for data and information prohibited from public disclosure under 21 U.S.C 331(j) or 18 U.S.C. 1905, may be seen in the office of the Dockets Management Branch, between 9 a.m. and 4 p.m., Monday through Friday.

Effective date. This regulation shall be effective January 23, 1981.

(Sec. 507, 59 Stat. 463 as amended (21 U.S.C. 357))

Dated: January 12, 1981.

Mary A. McEniry,

Assistant Director for Regulatory Affairs, Bureau of Drugs.

[FR Doc. 81-2305 Filed 1-22-81; 8:45 am]

BILLING CODE 4110-03-M

21 CFR Part 449

[Docket No. 80N-0360]

Antifungal Antibiotic Drugs Griseofulvin (Ultramicrosize) Tablets

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) amends the antibiotic drug regulations to provide for certification of a new type (without polyethylene glycol 6,000) of griseofulvin (ultramicrosize) tablet. The manufacturer has supplied sufficient data and information to establish its safety and efficacy.

DATES: Effective January 23, 1981; comments by February 23, 1981.

ADDRESS: Written comments to the Dockets Management Branch (formerly the Hearing Clerk's office) (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Joan Eckert, Bureau of Drugs (HFD–140), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4290.

SUPPLEMENTARY INFORMATION: FDA has evaluated data submitted in accordance with regulations promulgated under section 507 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 357), as amended, with respect to providing for the certification of a new type (without polyethylene gylcol 6,000) of griseofulvin (ultramicrosize) tablet. The agency concludes that the data supplied by the manufacturer concerning this antibiotic drug are adequate to establish its safety and efficacy when the drug is used as directed in the labeling and that the regulations should be amended in Part 449 (21 CFR Part 449) to provide for its certification.

The agency has determined pursuant to 21 CFR 25.24(b)(22) (proposed December 11, 1979, 44 FR 71742), that this action is of a type that does not individually or cumulatively have a significant impact on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 507, 59 Stat. 463 as amended (21 U.S.C. 357)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.1), Part 449 is amended in § 449.120d by revising paragraphs (a)(1) and (a)(3)(i)(*a*), to read as follows:

§ 449.120d Griseofulvin (ultramicrosize) tablets.

(a) * * *

(1) *Standards of identity, strength, quality, and purity.* Griseofulvin (ultramicrosize) tablets are composed of ultramicrosize crystals of griseofulvin which may or may not be dispersed in polyethylene glycol 6,000. Each tablet contains 125 milligrams of griseofulvin. The griseofulvin content is satisfactory if it is not less than 90 percent and not more than 115 percent of the number of milligrams of griseofulvin that it is represented to contain. The loss on drying is not more than 5.0 percent. It passes the solubility characteristic test. If it is dispersed in polyethylene glycol 6,000, the griseofulvin used conforms to the standards prescribed by § 449.20(a)(1). If it is not dispersed in polyethylene glycol 6,000, the griseofulvin used conforms to the standards prescribed by § 449.20(a)(1), except specific surface area.

* * * * *

(3) * * *

(i) * * *

(*a*) The griseofulvin used in making the batch for potency, safety, loss on drying, melting point, specific rotation, identity, residue on ignition, heavy metals, specific surface area (if it is dispersed in polyethylene glycol 6,000), and crystallinity.

* * * * *

This regulation announces standards that FDA has accepted in a request for approval of an antibiotic drug. In accordance with the conditions for certification in section 507 of the act, FDA permits the manufacturer to market this drug on a "release" status pending the regulation's becoming effective. Because this regulation is not controversial and because when effective it provides notice of accepted standards and permits earlier certification of regulated products, notice and comment procedure and delayed effective date are found to be unnecessary and not in the public interest. The amendment, therefore, is effective upon the date of publication in the **Federal Register**. However, interested persons may, on or before February 23, 1981, submit to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, written comments on this rule. Four copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the Docket number found in brackets in the heading of this document. Received comments may be seen in the Dockets Management Branch office between 9 a.m. and 4 p.m., Monday through Friday.

Any person who will be adversely affected by this regulation may file objections to it, request a hearing, and show reasonable grounds for the hearing. Any person who decides to seek a hearing must file (1) on or before February 23, 1981, a written notice of participation and request for hearing, and (2) on or before March 24, 1981, the data, information, and analyses on which the person relies to justify a hearing, as specified in 21 CFR 430.20. A request for a hearing may not rest upon mere allegations or denials, but must set forth specific facts showing that there is a genuine and substantial issue of fact that requires a hearing. If it conclusively appears from the face of the data, information, and factual analyses in the request for a hearing that no genuine and substantial issue of fact precludes the action taken by this order, or if a request for hearing is not made in the required format or with the required analyses, the Commissioner of Food and Drugs will enter summary judgment against the person(s) who request(s) the hearing, making findings and conclusions and denying a hearing.

The procedures and requirements governing this order, a notice of participation and request for hearing, a submission of data, information, and analyses to justify a hearing, other comments, and grant or denial of a hearing are contained in 21 CFR 430.20.

All submissions under this order must be filed in four copies, identified with the docket number appearing in the heading of this order and filed with the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

All submissions under this order, except for data and information prohibited from public disclosure under 21 U.S.C. 331(j) or 18 U.S.C. 1905, may be seen in the office of the Dockets Management Branch, between 9 a.m. and 4 p.m., Monday through Friday.

Effective date. This regulation shall be effective January 23, 1981.

(Sec. 507, 59 Stat. 463 as amended (21 U.S.C. 357))

Dated: January 12, 1981.

Mary A. McEniry,

Assistant Director for Regulatory Affairs, Bureau of Drugs.

[FR Doc. 81-2204 Filed 1-22-81; 8:45 am]

BILLING CODE 4110-03-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[T.D. 7762]

Income Tax; Defined Benefit Plans for Self-Employed Individuals and Shareholder-Employees

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final regulations.

SUMMARY: This document provides final regulations relating to defined benefit plans for self-employed individuals and shareholder-employees. Changes to the applicable tax law were made by the Employee Retirement Income Security Act of 1974. These regulations provide necessary guidance to the public for compliance with the law and affect sole proprietorships, partnerships, and "Subchapter S" corporations which maintain tax-qualified defined benefit plans.

DATE: The regulations are generally effective for taxable years beginning after December 31, 1975, and to plan years beginning with or within such taxable years.

FOR FURTHER INFORMATION CONTACT: Richard J. Wickersham of the Employee Plans and Exempt Organizations Division, Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, D.C. 20224 (Attention: CC:LR:T) (202–566–3250) (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

On May 23, 1978, the Federal Register published proposed amendments to the Income Tax Regulations (26 CFR Part 1) under sections 401(a)(16), 401(j), 404 and 1379 of the Internal Revenue Code of 1954 (43 FR 22734). The amendments were proposed to conform the regulations to section 2001(d) of the Employee Retirement Income Security Act of 1974 (88 Stat. 953). A public hearing was held on October 4, 1978. After consideration of all comments regarding the proposed amendments, those amendments are adopted as revised by this Treasury decision.

Organization of the Regulations

In response to criticism that the proposed regulations were unnecessarily confusing, the final regulations have been reorganized. The sections have been substantially reordered, but the substance is unchanged except as discussed below.

Defined Benefit Plans

Section 401(j) applies only to defined benefit plans benefitting self-employed individuals or shareholder-employees. Several commentators asked whether a target benefit plan would be considered a defined benefit plan for purposes of section 401(j). A target benefit plan is a money purchase pension plan which specifies a targeted benefit commencing at normal retirement age. Under such a plan contributions equal the amount necessary to fund the targeted benefit if all the actuarial assumptions are realized. However, because contributions are not adjusted to reflect experience gains and losses, a participant's actual benefit, which is provided solely from amounts allocated to the participant's account, may differ from the participant's targeted benefit. A sentence has been added to § 1.401(j)-1(a)(2) to make it clear that a target benefit plan is not a defined benefit plan even though the amount contributed is based on estimates of amounts necessary to fund specified benefits.

Adjustments for Nonbasic Benefits

Several commentators objected to adjustments to the statutory percentages for various nonbasic benefits, particularly pre-retirement death benefits and qualified joint and survivor annuities. Other commentators suggested that organizations other than insurance companies, such as banks and savings and loans, be permitted to offer benefits for a term greater than life expectancies. Benefits for longer than life expectancy are permitted, although an adjustment is required because benefits for any period other than life are nonbasic benefits. However, adjustments for nonbasic benefits are required under section 401(j)(5)(B)(ii) to provide for compatibility between defined contribution and defined benefit plans for owner-employees and shareholder-employees. Therefore these adjustments cannot be eliminated. Section 1.401(j)-1(g)(2)(i) of the final regulations provides that the actuarial equivalents for nonbasic benefits must be based on the 1971 Group Annuity Mortality Table for males and an interest rate of 6% compounded annually. These are the assumptions used to determine the applicable percentages in section 401(j)(3) and § 1.401(j)-1(f)(1).

Several commentators objected to the prohibition of cost of living adjustments in proposed § 1.401(j)-1(g)(2)(ii). As a result, cost of living adjustment has been added to the list of nonbasic benefits in § 1.401(j)-1(g)(3)(i) of the final regulations. While the cost of living adjustment may be based on any index (for example, the Consumer Price Index, the performance of a particular group of stocks, or the prime rate) the plan must provide a maximum annual percentage increase. The adjustments for cost of living adjustments will be based on those maximums.

Adjustments for various nonbasic benefits were set forth in a proposed Revenue Ruling, IRS Announcement 78-96, 1978-23 I.R.B. 42 (June 5, 1978). The Service intends to finalize that Revenue Ruling in the near future.

Multiple Plans

Proposed § 1.401(j)-2(b) provided that benefits under all plans of a single employer and all plans in which an individual is a self-employed individual would be aggregated in determining whether the benefit for that individual exceeds the maximum basic benefit permitted under section 401(j). Several commentators suggested that the final regulations clarify to what extent Subchapter S plans must be aggregated, for purposes of section 401(j), with other Keogh, Subchapter S and non-Subchapter S corporate plans that are aggregated under section 414 (b) or (c).

Under § 1.401(j)-2(a) of the final regulations Subchapter S plans must be aggregated with other Subchapter S or Keogh plans only if they are part of a controlled group within the meaning of section 414 (b) or (c). If a controlled group includes both Subchapter S corporations and non-Subchapter S corporations, the plans of the non-Subchapter S corporations will be disregarded for purposes of section 401(j). All Keogh plans in which an individual is a self-employed individual must be aggregated, whether or not under common control.

Aggregating Plans

Section 1.401(j)-2(c) provides a method for determining the maximum benefit permitted on behalf of an employee subject to the limitations of section 401(j) when a defined benefit plan and defined contribution plan covering that employee are required to be aggregated. Under this method the plan first determines the 401(j) defined contribution fraction (the amount deductible for the participant under the defined contribution plan over the maximum amount deductible). The 401(j) defined benefit fraction is then determined by subtracting the 401(j) defined contribution fraction from one.

A new provision has been added to § 1.401(j)-2(c)(3) to cover situations where the 401(j) defined contribution fraction varies from year to year because of varying contributions.

Insured Plans

Section 1.401(j)-2(c) of the proposed regulations provided an adjustment to a participant's maximum benefit under a fully insured plan if the cash value exceeded the rates set forth in that paragraph of the proposed regulations. That rule has been revised in the final regulations. New § 1.401(j)-4(a) limits the cash value which may be accumulated under a fully insured level premium plan described in section 412(i). New § 1.401(j)-4(b)(1) limits the value of all other insurance or annuity contracts to the actuarial equivalent of the maximum benefit, using the same assumptions used to determine the applicable percentages (1971 Group Annuity Mortality Table (male) without projection and 6 percent interest compounded annually). For single premium participating or variable annuity contracts purchased at or near normal retirement age the value of the contract equals the premium. Limits on variable or participating contracts purchased at other times or in installments equals the premium for a comparable single premium contract.

Under § 1.401 (j)-4 (c) of the final regulations, an insured plan that does not distribute insurance or annuity contracts to its participants or otherwise provide that a participant may receive the cash surrender value or dividends under such contract will not be subject to the limitations of § 1.401 (j)-4.

Participating and Variable Annuities

Proposed § 1.401 (j)-1(g)(2)(ii) prohibited variable annuities in section 401(j) plans. Several commentators objected that variable benefits may be a desirable feature in a defined benefit plan. As a result of these comments, the final regulations permit the use of participating and variable annuity contracts in section 401(j) plans.

Transitional Rule

Section 401(j) and the regulations thereunder are effective for taxable years beginning after December 31, 1975. However, § 1.401(j)-6(b) provides a transitional period during which a plan can be amended to limit future accruals to compensate for accruals in excess of the maximum benefit permitted under section 401(j). Under the proposed regulations, the transitional rule applied only to excess benefits accrued in plan years beginning before July 25, 1978. Under the final regulations, the transitional rule applies to all plan years beginning before January 23, 1982.

The transitional rule has also been expanded to explain how a plan can limit future accruals to comply with the

transitional rule. A fully insured level premium plan described in section 412(i) will comply with the transitional rule if a new level premium is established which, when combined with the cash surrender value of the current contract, will result in a cash surrender value at or below the limits described in § 1.401(j)–4(a).

Integration

Several commentators were uncertain whether a Subchapter S plan could be integrated with Social Security. Section 401(j)(4) and § 1.401(j)–2(f) provide that a plan benefiting owner-employees will not satisfy the requirements of section 401(j) unless the plan is nondiscriminatory without taking into account contributions or benefits provided under Social Security or other state or federal law. There is no similar restriction on plans benefiting shareholder-employees. Thus, a Subchapter S plan may be integrated with Social Security.

Drafting Information

The principal author of this regulation is Ellen A. Hennessy of the Employee Plans and Exempt Organizations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulation, both on matters of substance and style.

Adoption of Amendments to the Regulations

Accordingly—

1. Paragraphs 3 and 4, as set forth in the notice of proposed rulemaking, are withdrawn.

2. The other amendments to 26 CFR Part 1 are hereby adopted as set forth below.

Paragraph 1. Section 1.401(a)–18, as set forth in paragraph 1 of the notice of proposed rulemaking, is added immediately after § 1.401(a)–17:

§ 1.401(a)–18 Special requirements for defined benefit plans providing benefits for self-employed individuals or shareholder-employees.

For special requirements which apply to a defined benefit plan which provides benefits for an employee who is either an employee within the meaning of section 401(c)(1) or a shareholder-employee within the meaning of section 1379(d), see §§ 1.401(j)–1 through 1.401(j)–6.

Par. 2. Sections 1.401(j)–1 through 1.401(j)–6, as set forth in paragraph 2 of the notice of proposed rulemaking, are revised to read as follows and added immediately after § 1.401(a)–6:

§ 1.401(j)–1 Defined benefit plans covering self-employed individuals or shareholder-employees.

(a) *Application of section 401(j)*—(1) *Qualification.* A defined benefit plan (as defined in section 414(j)) which provides benefits for a self-employed individual or shareholder-employee is not a qualified plan (and a trust forming part of such plan is not a qualified trust) unless the plan satisfies the applicable requirements of section 401(j) and §§ 1.401(j)–1 through 1.401(j)–6. "Self-employed individual" refers to an employee within the meaning of section 401(c)(1). "Shareholder-employee" refers to a shareholder-employee of an electing small business (Subchapter S) corporation within the meaning of section 1379(d).

(2) *Section 401(j) limitation.* Except in the case of a final average pay plan, section 401(j) imposes a limitation on the amount of the basic benefit, as defined in paragraph (c)(2) of this section, which may be accrued under a defined benefit plan for any plan year of participation, as defined in paragraph (c)(4)(iii) of this section, by any employee who is either a self-employed individual or a shareholder-employee. Section 401(j) and this section do not, however, limit the benefit of an employee which may be accrued under a plan for any plan year in which the employee is neither a self-employed individual nor a shareholder-employee nor do they require a plan to provide accrued benefits in the form of a basic benefit. For purposes of section 401(j), a target benefit plan is not a defined benefit plan.

(3) *Outline of regulations*—(i) *Limitations on benefits-career average plans.* This section (§ 1.401(j)–1) provides limitations on benefits under section 401(j) for plans other than final average pay plans ("career average plans").

(ii) *Aggregation of plans and other plan requirements.* Section 1.401(j)–2 provides rules under section 401(j)(1) (relating to certain plan aggregations) and under section 401(j)(4) (relating to the requirement that a plan covering owner-employees may not be integrated with social security, etc.).

(iii) *Changes in accrual rate or compensation base-career average plans.* Section 1.401(j)–3 provides rules under section 401(j)(3)(B)(iii) relating to changes in the rate of benefit accrual and compensation base under a career average plan.

(iv) *Insured plans.* Section 1.401(j)–4 provides a special rule for certain plans funded with insurance or annuity contracts.

(v) *Final average pay plan.* Section 1.401(j)–5 provides limitations on benefits under section 401(j) for final average pay plans. A final average pay plan is a defined benefit plan accruing benefits based on the employee's compensation over a period less than the total period of the employee's participation in the plan. Thus, for example, a plan which provides that an employee's accrued benefit is based on compensation earned over the last five years would be a final average pay plan.

(vi) *Effective dates.* Section 1.401(j)–6 provides the effective dates for the application of section 401(j) to a plan and special transitional rules.

(b) *Maximum benefit—career average plan*—(1) *In general.* For purposes of section 401(j), in the case of a plan other than a final average pay plan or an insured plan described in § 1.401(j)–4 (a) or (b), the maximum benefit of a self-employed individual or a shareholder employee for a plan year equals—

(i) The employee's annual compensation not in excess of the compensation base for such year, as defined in paragraph (d)(2) of this section, multiplied by

(ii) The applicable percentage as determined under paragraphs (c), (d)(1), and (e) of this section and § 1.401(j)–3 (change in compensation base or rate of accrual), if applicable.

For special rules governing final average pay plans, see § 1.401 (j)–5.

(2) *No possibility of excess accruals.* A plan to which this section applies is not a qualified plan (and a trust forming a part of such a plan is not a qualified trust) if the benefit accruing under the plan for any plan year of participation by an employee exceeds the maximum benefit. Further, the plan is not qualified unless the plan contains provisions that preclude any such benefit accrual prescribed in the preceding sentence, irrespective of whether or not there is, in fact, an excess accrual for such an employee.

(3) *Section 415 limitations.* A plan to which this section applies is also subject to the limitations on benefits set forth in section 415. Consequently, even though a plan provides benefits which are not in excess of the maximum benefit set forth in this section, the plan will not be qualified under section 401(a) if the plan benefits are in excess of the section 415 limitations.

(c) *Applicable percentage*—(1) *Table of applicable percentages.* For purposes of section 401(j) and the regulations thereunder, the applicable percentage for an employee for any plan year shall

be the percentage shown on the following table opposite the age of the employee at the time the current period of participation in the plan by the employee began, with adjustments as provided by these regulations:

Age	Applicable percentage
30 or less	6.5
31	6.3
32	6.0
33	5.8
34	5.6
35	5.4
36	5.1
37	4.9
38	4.8
39	4.6
40	4.4
41	4.2
42	4.1
43	3.9
44	3.8
45	3.6
46	3.5
47	3.4
48	3.2
49	3.1
50	3.0
51	2.9
52	2.8
53	2.7
54	2.6
55	2.5
56	2.4
57	2.3
58	2.2
59	2.1
60 or over	2.0

The applicable percentages above may be adjusted by the Commissioner from time to time to take into account changes in prevailing interest and mortality rates occurring after December 31, 1973.

(2) *Basic benefit.* The term "basic benefit" means that—

(i) The benefit is in the form of a straight life annuity,

(ii) The benefit commences at the later of age 65, or the day 5 years after the day the participant's current period of participation began,

(iii) The plan provides no ancillary benefits, and

(iv) The employee does not contribute to the plan.

(3) *Adjustments for nonbasic benefits.* (i) A plan to which section 401(j) applies may provide benefits other than the basic benefit. Other benefits which a plan may provide include, but are not limited to, pre-retirement death and disability benefits, benefits that vary with a cost of living formula (up to a maximum stated by the plan), and benefits payable in the form of either a joint and survivor annuity or an annuity certain for a specified period. The Commissioner shall provide adjustments to the applicable percentage for such nonbasic benefits, based on the 1971 Group Annuity Mortality Table (male) without projection and an assumed interest rate of 6 percent compounded annually, to assure that the total benefit, including the nonbasic benefit, does not exceed the actuarial equivalent of the maximum basic benefit.

(ii) If a plan provides a benefit in the form of life, accident, health, or other insurance protection, no adjustment is required for any such plan benefit attributable to amounts considered to be contributed by the employee under the rules of section 72(f) and paragraph (b) of § 1.72–16 if such amounts are includable in the employee's gross income.

(4) *Definitions*—(i) *Determination of ages.* For determining the applicable percentage, the age of an employee when the employee's current period of participation began is the employee's age (last birthday) on or before the beginning of the first plan year in the current period of participation.

(ii) *Current period of participation.* The term "current period of participation" means any period of consecutive plan years of participation beginning with the first day of the first plan year of participation in the period and ending with the last day of the last consecutive plan year of participation in the period. The status of an employee at the time the employee's current period of participation began (*i.e.*, as a common-law employee, self-employed individual, or shareholder-employee) is not relevant.

(iii) *Plan year of participation.* The term "plan year of participation" means a plan year for which a participant accrues a benefit under the terms of the plan (determined only with respect to benefits provided by the plan and without regard to any plan provision not in effect in that plan year). Thus, for example, benefits provided under the Social Security Act or past service benefits for prior years are not included for purposes of determining plan year of participation.

(d) *Compensation and compensation base*—(1) *Compensation.* The term "compensation" means—

(i) In the case of a self-employed individual, the earned income of the individual,

(ii) In the case of a shareholder-employee, the compensation received (or accured in the case of an individual who computes income under the accrual method) by the individual from the electing small business corporation, or

(iii) In the case of any employee not included in subdivision (i) or (ii) for any relevant year, the compensation includible in the individual's gross income derived from the sole proprietorship, partnership or electing small business corporation (see the change in status rules in paragraph (e) of this section for application of this provision).

(2) *Compensation base.* The term "compensation base" means the highest level of annual compensation of the employee which may be taken into account for a plan year under the plan for determining benefits. The compensation base must be specified in the plan and may not exceed $100,000. If a plan initially specifies a compensation base in excess of $50,000, the applicable percentage shall be adjusted by multiplying such percentage by the ratio of $50,000 to the initial compensation base of the plan. For rules applicable to plans which change compensation bases, see § 1.401(j)–3.

(e) *Change in status*—(1) *Participant becomes subject to section 401(j).* In the case of a participant who is neither a self-employed individual nor a shareholder-employee and who becomes a self-employed individual or shareholder-employee during the plan year, the applicable percentage for such year is not less than the applicable percentage determined under this section for the age of the participant when he becomes a self-employed individual or shareholder-employee. A higher applicable percentage is allowed, limited to the accrual rate established by the lesser of (A) the past accrual rate for the participant or (B) the applicable percentage determined under this section for the age when the participant's current period of participation commenced, and for the compensation base in effect when the participant becomes a self-employed individual or shareholder-employee.

(2) *Subchapter S plan.* If a defined benefit plan of a Subchapter S corporation is established prior to the first plan year to which section 401(j) applies (e.g., before the employer makes the Subchapter S election), the applicable percentage shall be determined as if the time section 401(j) applies to the plan is the time of a change in status. A plan amendment required (with respect to the first plan year) to satisfy the requirements of section 401(a) (16) and (j) shall not be treated as a change in the plan's compensation base or rate of accrual for purposes of applying the rules of § 1.401(j)–3. Thus, for example, if a plan provided for a 7.5% past accrual rate (calculated in accordance with subparagraph (3)) on $50,000 of compensation for Participant A, who commenced participation at age 30 in 1966, and the plan is amended for 1976 to meet the requirements of section 401(j), the applicable percentage for 1976

is determined under subparagraph (1) and equals 6.5% (the lesser of 7.5% (past accrual rate) or 6.5% (applicable percentage at age 30); but not less than 4.4% (the applicable percentage at age 40)].

(3) *Past accrual rate.* (i) For purposes of this paragraph, the past accrual rate equals the ratio determined by dividing (A) the employer-derived accrued benefit of the participant as of the close of the plan year immediately preceding the year in which the participant becomes a self-employed individual or a shareholder-employee, by (B) the sum of the compensation earned by the participant in each year (limited to the compensation covered by the plan for each year) for all periods of plan participation ending with the close of such immediately preceding plan year. The accrued benefit of the participant as of the close of the immediately preceding plan year shall be determined by disregarding any increase in the benefit not in effect at such time. Thus, for example, a subsequent past service benefit provided retroactively for the plan year would be disregarded.

(ii) If records are unavailable to compute the sum of the compensation earned by the participant, the compensation of the participant, referred to in subdivision (i) of this subparagraph, shall be determined by assuming that the participant earned compensation in each year of plan participation equal to the compensation earned in the plan year immediately preceding the plan year in which the participant becomes a self-employed individual or shareholder-employee. This assumption shall not apply to any plan years of participation ending after December 31, 1975.

(f) *Employee contributions*—(1) *Voluntary contributions.* The maximum benefit shall not be adjusted for voluntary contributions within the meaning of section 411. In such a case the plan can provide a benefit equal to the sum of the maximum benefit and the benefit derived from employee contributions accounted for separately. See section 411 (b) (2), (c) (2) (A), and (d) (5), and § 1.411 (c)–1 (a) for rules which require separate accounting in the case of voluntary-employee contributions.

(2) *Mandatory contributions.* Under section 411(c) and § 1.411(c)–1, the employee's total accrued benefit (determined without regard to any accrued benefit attributable to voluntary employee contributions) must be allocated between the part attributable to mandatory employee contributions and the part attributable to employer contributions according to specified rules. For purposes of determining the participant's maximum benefit in a career average pay plan under section 401(j) the following rules apply with respect to each plan year. For each plan year, the total benefit accruing derived from all contributions and the benefit accruing from mandatory employee contributions must be computed in accordance with the rules in section 411 (c) (2) (B). Then the participant's total benefit accruing for the year must be reduced by the benefit accruing derived from his mandatory contributions for the year and the remaining difference must be compared with the maximum basic benefit. The total benefit accruing for the year is determined by ascertaining the increase from the total accrued benefit (for all prior years) as of the close of the immediately preceding plan year and the benefit accruing from mandatory employee contributions is determined only with respect to those contributions made for the year. For a final average pay plan, the rules of section 411 (c) and § 1.411 (c)–1 apply.

(g) *Examples.* The provisions of this section can be illustrated by the following examples, in which, except where otherwise specified, it is assumed that the plan is a career average pay plan and that the participant is not married and has continuous service and plan years of participation:

Example (1). Maximum benefit. (i) A enters a defined benefit plan as a self-employed individual at age 30. The plan provides benefits on compensation up to $50,000 in the form of a single life annuity commencing at age 65 with no ancillary benefits. A's compensation for the first year is $20,000. The applicable percentage for A is 6.5%, determined under paragraph (c) for the age at which A's participation began (age 30). Under this section the maximum benefit that A could accrue for the plan year is $1,300 (6.5% of $20,000).

(ii) The second plan year, A's compensation is $25,000. The applicable percentage for A is still 6.5%, the applicable percentage for age 30 when A's current period of participation began, even though A is older in the second plan year. The maximum benefit A may accrue under this section for the plan year is $1,625 (6.5% of $25,000).

Example (2). Section 415 limitations. Assume the same facts as in Example 1, except that in the first plan year and all subsequent plan years, A's compensation is $50,000. A works 35 years. A's maximum benefit for each year under this section equals $3,250. Under this section, A's maximum accrued benefit at the end of 35 years would be $113,750 (35 years × $3,250). However, section 415 (b) (1) limits A's benefit to 100% of A's average compensation for A's high 3 years. A's average compensation in the high 3 years is $50,000. Therefore, under section 415 (b) (1), A's accrued benefit may not exceed $50,000.

Example (3). Multiple periods of participation. (i) A, a self-employed individual, enters a defined benefit plan at age 30. The plan provides benefits on compensation up to $50,000 in the form of a single life annuity commencing at age 65 with no ancillary benefits. A's compensation for the first year equals $20,000. The maximum benefit accruing which could be provided by the plan for A under paragraph (f) of this section equals $1,300 (6.5% of $20,000). The applicable percentage for such year is determined under paragraph (c) of this section for the age at which A's participation begins, age 30.

(ii) Assume that for the next four years, A's compensation remains at $20,000. Under this section, A's maximum benefit accruing for each of these years is still $1,300 [6.5% of $20,000]. The applicable percentage is still measured by the 6.5% applicable to age 30, when A's current period of plan participation began, even though A is older.

(iii) Assume that, after five years of participation, A leaves the plan and recommences participation at age 50. In the first year after his return, A earns $30,000. Under this section, A's maximum benefit for the year cannot exceed $900 (3% of $30,000). The applicable percentage is determined for age 50, when A's next current period of plan participation began, and not at age 30. If A's compensation remains at $30,000 for four more years, A's maximum benefit for each of these four years remains at $900 (3% of $30,000).

(iv) Assume that, at age 55, A's compensation is $40,000. Under this section, A's maximum benefit for the year cannot exceed $1,200 (3% of $40,000). The percentage limit of paragraph (c)(1) of this section remains at 3% because the determination is made by reference to age 50, when A's current period of plan participation began. If A's compensation remains at $50,000 for four more years, A's maximum benefit for each of these four years remains at $1,200 (3% of $40,000).

(v) Assume that, at age 60, A's compensation is $60,000. Under this section, A's maximum benefit for the year cannot exceed $1,800 (3% of $60,000). The percentage limit of paragraph (c)(1) of this section remains at 3 percent. If A's compensation remains at or above $60,000 for four more years, A's maximum benefit for each of these four years remains at $1,800 (3% of $60,000).

(vi) Accordingly, when A retires at age 65 the maximum benefit which could be paid to A under the plan would be $24,500 per year, computed as follows:

Age	Compensation per year	Rate	Benefit earned per year	Total benefit
30 to 34	$20,000	6.5	$1,300	$6,500
35 to 39	30,000	4.0	900	4,500
40 to 44	40,000	3.0	1,200	6,000
45 to 49	50,000	3.0	1,500	7,500
Total				24,500

Example (4). Joint and survivor annuity. Assume the same facts as in *Example (3).*

except that A is married. Under section 401(a)(11), the plan is required to offer the payment of benefits in the form of a qualified joint and survivor annuity. If A receives the joint and survivor annuity, which is a nonbasic benefit, A's applicable percentage (and therefore A's maximum benefit) will be reduced to reflect the actuarial value of the nonbasic benefit. A's maximum benefit ($24,800) will be multiplied by a factor determined by the Commissioner for the age of A's beneficiary. Assuming for example that the factor were .90, A's maximum benefit after adjusting for the joint and survivor annuity would be $22,080 ($24,800×.90).

Example (5). Annual accrual in excess of maximum. A career-average defined benefit plan covers employee F who is a self-employed individual. In 1980, F's total accrued annual benefits equal $13,000. Had F accrued the maximum benefit for each year, F's total accrued benefit would have been $13,500. The plan, however, for plan year 1980 accrued an annual benefit for F equal to $1,800 when the maximum benefit equaled $1,825. The plan fails to satisfy the requirements of this section in 1980 and thus the plan is not qualified. Under § 1.401(j)-1(b)(1), the limitation on an employee's benefits must be satisfied with respect to the incremental increase in accrued benefits in each plan year, even though the employee's aggregate benefits could have been higher if the employee had accrued the maximum benefit for each year of participation.

§ 1.401(j)-2 Aggregating plans and other rules.

(a) *Plans required to be aggregated—(1) General rules.* In determining whether or not the requirements of section 401(j) are satisfied—

(i) All plans of an employer must be aggregated;

(ii) All plans of all trades or businesses in which the employee is a self-employed individual must be aggregated whether or not under common control under section 414(c); and

(iii) All plans in which an employee is a shareholder-employee must be aggregated with all other plans in which the employee is a self-employed individual or a shareholder-employee that are maintained by employers described in section 414 (b) or (c).

(2) *Special rule for Subchapter S plan.* In determining whether the requirements of section 401(j) are satisfied, a plan in which an employee is a shareholder-employee is not aggregated with any plan not described in subparagraph (1)(iii) of this paragraph. Thus, if an individual is a shareholder-employee in a Subchapter S corporation and an employee of a non-Subchapter S corporation, whether or not part of a controlled group under section 414(b), benefits under the non-Subchapter S corporate plan will be disregarded in determining whether the requirements of section 401(j) are satisfied. Similarly, if an individual is a shareholder-employee in a Subchapter S corporation and a self-employed individual in a partnership that are not under common control within the meaning of section 414(c), the limitations of section 401(j) will be applied separately to each plan.

(b) *Two or more defined benefit plans—(1) Limit on accrued benefit.* If two or more defined benefit plans are required to be aggregated under paragraph (a) of this section, then the accrued benefit under all such plans for any employee subject to the limitations of this section must be aggregated in determining whether or not the limitation on benefit accruals is exceeded.

(2) *Same plan year required.* In order to insure reasonable comparability of retirement benefits between qualified defined benefit plans and qualified defined contribution plans, or combinations thereof, as required by section 401(j)(1), this subparagraph sets forth certain conditions which must be satisfied in order for a defined benefit plan to be qualified. If one defined benefit plan ("first plan") is established and another defined benefit plan ("second plan") is established by the same employer subsequent to the establishment of the first plan, and if the second plan is required to be aggregated with the first plan under paragraph (a) of this section, then the second plan shall be deemed not to satisfy the requirements of section 401(j) unless both plans have the same plan year. Notwithstanding the preceding sentence, in the case where two or more such plans have been adopted prior to January 23, 1981 with different plan years, the second plan shall not fail to satisfy the requirements of this section solely by reason of having a different plan year if the plans are amended to adopt, for years beginning after that date, the same plan year and to adjust plan benefits as determined by the Commissioner. Such amendments must also comply with section 412(c)(5). Irrespective of any limitation on the time of amendment, the amendment required by the preceding sentence may be adopted within the 1 year period beginning January 23, 1981.

(c) *Defined benefit and defined contribution plans—(1) Defined benefit fraction.* If a defined benefit plan and a defined contribution plan are required to be aggregated under paragraph (a) of this section, the maximum benefit with respect to the defined benefit plan for a plan year on behalf of an employee subject to the limitations of section 401(j) shall be determined by multiplying the maximum benefit otherwise determined under section 401(j) for the defined benefit plan (determined without regard to this subparagraph) by 1 minus the fraction determined under subparagraph (2) of this paragraph, for the taxable year ending with or within that plan year.

(2) *Section 401(j) defined contribution fraction.* The fraction for any taxable year in which an employee is a participant in a defined contribution plan is a fraction—

(i) The numerator of which is the amount deductible for the participant under the defined contribution plan, and

(ii) The denominator of which is the maximum amount that would be deductible (and not includable in gross income under section 1379(b)) under the defined contribution plan if the plan provided for the maximum deduction allowable for the participant under section 404 and the regulations thereunder.

(3) *Increase in 401(j) defined benefit fraction.* If a plan limits the benefit of an employee by stating the above fractional rule, any increase in the 401(j) defined benefit fraction described in subparagraph (1) of this paragraph resulting from a decrease in the 401(j) defined contribution fraction described in subparagraph (2) under the defined contribution plan will be considered an amendment to the defined benefit plan increasing the plan's rate of benefit accrual. Thus, the plan will be subject to the rules of § 1.401(j)-3, which requires that the maximum benefit be calculated by reference to the age of the participant at the time of the amendment.

(d) *No integration for plan benefiting owner-employees.* A defined benefit plan which provides contributions or benefits for owner-employees does not satisfy the requirements of section 401(j) and this section unless such plan meets the requirements of section 401(a)(4) without taking into account contributions or benefits under chapter 2 of the Code (relating to tax on self-employment income), chapter 21 of the Code (relating to Federal Insurance Contributions Act), Title II of the Social Security Act, or under any other Federal or State law. Thus, a plan covering owner-employees will not qualify if the plan integrates its benefits with benefits provided under Social Security or under similar laws.

(e) *Deductions and inclusions.* A defined benefit plan to which section 401(j) applies is not subject to the special limitations on deductions for self-employed individuals set forth in section 404(e) or the special deduction computations, for common-law employees and self-employed

individuals, set forth in section 404(a)(8). (See § 1.404(e)–1A.) Except as provided in § 1.401(j)–6(c) for Subchapter S plans in existence before January 1, 1976, the rules on taxability of shareholder-employees set forth in section 1379(d) do not apply to a defined benefit plan to which section 401(j) applies. Section 404(a)(1) sets forth the rules with respect to deductions for defined benefit plans.

(f) *Nondiscrimination.* Section 401(a)(4) requires that a defined benefit plan not discriminate in favor of employees who are members of the prohibited group. The term "prohibited group employees" means those employees in whose favor the benefits provided under a defined benefit plan may not discriminate under section 401(a)(4). For purposes of testing discrimination under a plan which provides for full and immediate vesting, the plan will not be considered to be discriminatory merely because the accrued benefit determined under the plan for any employee is limited to the maximum basic benefit as determined under section 401(j). Thus, for example, a plan which provides for full and immediate vesting and which bases benefits on percentages of compensation determined at the age when an employee's participation in the plan commences will not be considered to be discriminatory merely because the prohibited group employees are younger than other employees at such time and consequently have benefits determined at higher percentages.

(g) *Definitely determinable benefits.* A defined benefit plan to which this section applies is also subject to the requirements under section 401(a) to provide definitely determinable benefits. Thus, for example, for a final average pay plan to satisfy both the requirements of section 401(j) and the definitely determinable requirements, the plan would have to provide for a plan benefit formula under which a self-employed individual's or shareholder-employee's accrued benefit does not exceed the lesser of the final average pay formula, determined without regard to § 1.401(j)–5 but with regard to other applicable requirements (such as those set forth in section 415), or the limitation in that section.

(h) *Examples.* The provisions of this section can be illustrated by the following examples, in which, except where otherwise specified, it is assumed that the participant is not married and has continuous service and plan years of participation:

Example (1). Two defined benefit plans. Employee D is a self-employed individual in a partnership which has a defined benefit plan. D also has an unrelated sole proprietorship which has a defined benefit plan. The two plans both have the same plan years. Under paragraph (a)(1)(ii) of this section, both plans are required to be taken into account in determining whether or not the requirements of this section are satisfied.

Example (2). Defined contribution plan and defined benefit plan. Employee E is covered by both a defined benefit and a defined contribution plan required to be aggregated under paragraph (a) of this section. If, for 1980, the defined contribution plan is subject to the limitation of section 404(e) and E had $50,000 of earned income in 1980, the maximum amount deductible with respect to E equals $7,500 (15% of $50,000). If, for 1980, there is a deductible contribution for E under the defined contribution plan of $1,875, the fraction referred to in paragraph (c)(2) of this section equals $7,500÷$1,875 or ¼. If, for 1980, E's maximum benefit under the defined benefit plan, determined without regard to paragraph (d)(1) of this section, equals $2,200, E's maximum benefit is determined by multiplying $2,200 times ¾ (that is, 1 minus ¼) which equals $1,650. Consequently, if E accrues a benefit in 1980 in excess of $1,650 under the defined benefit plan, the plan fails to satisfy the requirements of section 401(j).

Example (3). Related Sub-S and non-Sub-S corporations. (i) Employee E, age 30, is a shareholder-employee in S, a Subchapter S corporation. E is also an employee of C, a non-electing corporation related to S under section 414(b). E is covered by career average, defined benefit pension plans of S and C. E accrues a basic benefit of 6.5% of compensation under the S plan and an annual benefit accrual of 10% of compensation in the C plan. The compensation base in the S plan is $50,000. E earns $30,000 from each corporation. The plans comply with all other requirements of section 401(a).

(ii) Although C is related to S, the limitations of section 401(j) do not apply to the C plan, because C is not a Subchapter S corporation. Therefore, E's benefits under the C plan need not be aggregated with the benefit E accrues under the S plan to determine whether the section 401(j) limitations are satisfied by the S plan. E's maximum benefit under the S plan is $1,950 (6.5% of $30,000). E accrues a benefit of $1,950 under the S plan, satisfying the section 401(j) limitations.

Example (4). Unrelated Partnerships. (i) Employee F, age 30, is a partner in P1 and P2, partnerships which are not under common control within the meaning of section 414(c). F is covered by career average, defined benefit pension plans of P1 and P2. F accrues a basic benefit of 6.5% of compensation under each plan. The compensation base in each plan is $50,000 and F earns $30,000 from each partnership.

(ii) F's benefit accrual under the P1 and P2 plans must be aggregated because all plans in which F is a self-employed individual, whether or not related under section 414(c), must be aggregated under paragraph (a)(ii) of this section. F's maximum benefit under the P1 and P2 plans together is $3,250 (6.5% of $50,000). However, F accrues a benefit of $3,900 ($1,950 under the P1 plan and $1,950 under the P2 plan). Because F's benefit accrual for the year exceeds F's maximum benefit, neither the P1 nor P2 plan is qualified.

Example (5). Unrelated Subchapter S Plans. (i) Assume the same facts as in Example (4) except that F is a shareholder-employee in S1 and S2, Subchapter S corporations which are not under common control within the meaning of section 414(b).

(ii) The benefit F accrues under S1 and S2 need not be aggregated because the two Subchapter S corporations are not related under section 414(b). The benefit E accrues under each plan ($1,950) equals E's maximum benefit (6.5% of $30,000) for that plan. Thus, the plans satisfy the section 401(j) limitations.

Example (6). Partnerships and Subchapter S corporation. (i) Employee G, age 30, is a partner in P1 and P2, partnerships which are not under common control within the meaning of section 414(c). G is also a shareholder-employee in S1, a Subchapter S corporation under common control with P1 within the meaning of section 414(c). G is covered by career-average, defined benefit pension plans of P1, P2, and S1. G accrues a basic benefit of 6.5% of compensation under the terms of the S1 and P2 plans. G accrues a basic benefit of 4% of compensation under the P1 plan. G earns $30,000 from each business.

(ii) Under paragraph (a)(ii) of this section, G's benefit accrual under P1 and P2 must be aggregated because both are plans in which G is a self-employed individual. Under § 1.401(j)–1(b), G's maximum benefit under the P1 and P2 plans together is $3,250 (6.5% of $50,000). G accrues a benefit of $1,200 under the P1 plan and $1,950 under the P2 plan for a total of $3,150. Because G's benefit accrual for the year ($3,150) is less than G's maximum benefit ($3,250) both the P1 and P2 plans satisfy the section 401(j) limitations for the plan year.

(iii) Separately, G's benefit accrual under the P1 and S1 plans must be aggregated because S1 and P1 are under common control within the meaning of section 414(c). G's maximum benefit under the S1 and P1 plans together is $3,250 (6.5% of $50,000). G accrues a benefit of $1,200 under the P1 plan (4% of $30,000) and $1,950 under the S1 plan (6.5% of $30,000), totaling $3,150. Because G's benefit accrual is less than G's maximum benefit under the two plans, the P1 and S1 plans satisfy the section 401(j) limitations for the plan year.

(iv) Even though the P1, P2 and S1 plans satisfy the section 401(j) limitations for the plan year the plans will not be qualified under section 401(j) unless the plan contains a provision precluding excess accruals (see § 1.401(j)–1(b)(2)).

§ 1.401(j)–3 Change in compensation base or rate of accrual.

(a) *Changes in rate of benefit accrual or compensation base*—(1) *In general.* Except as provided in subparagraph (2) of this paragraph, if a plan changes either the rate of benefit accrual or the compensation base (or both) with respect to a participant, the applicable percentage for any level of compensation is the greater of (i) the prior-benefit accrual rate with respect to

that level of compensation, or (ii) the attained-age applicable percentage with respect to that level of compensation. If a plan changes its compensation base applicable to a participant, an applicable percentage shall be determined for that participant for each level of compensation that results from such change.

(2) *Fresh start.* If with respect to any participant subject to the requirements of section 401(j) a plan is amended so that the participant is treated under the plan as commencing a new period of plan participation and the applicable percentage is determined on the basis of the participant's age at that time, then the plan shall be deemed to be a new plan with respect to that participant. Thus, such a plan amendment would not be subject to the requirements of this section.

(b) *Definitions.* For purposes of this section—

(1) *Level of compensation.* The term "level of compensation" means (i) the initial compensation base and (ii) the difference between each prior compensation base (beginning with the initial base) and the next succeeding compensation base.

(2) *Prior-benefit accural rate.* The term "prior-benefit accrual rate" means the benefit accrual rate, if any, determined under the plan for each level of compensation under the plan prior to any change in the plan's compensation base or the benefit accrual rate. If a plan decreases its benefit accrual rate, the decreased benefit accrual rate (not the rate prior to the decrease) shall, on and after the effective date of the decrease, be deemed to be the plan's prior-benefit accrual rate. In no event shall the prior-benefit accrual rate exceed the entry-age applicable percentage.

(3) *Attained-age applicable percentage.* The term "attained-age applicable percentage" means the otherwise determined applicable percentage for the age of the participant when the plan amendment to either the compensation base or the rate of accrual is effective. The attained-age applicable percentage is determined for each different level of compensation by using the compensation base in effect after the plan amendment, including any adjustment for excess compensation base referred to in paragraph (c)(5) of this section.

(4) *Entry-age applicable percentage.* The term "entry-age applicable percentage" means, with respect to a level of compensation, the otherwise applicable percentage determined under section 401(j) for the age of the participant at which a benefit could first accrue under the plan for that level of compensation or, if later, at which that participant's current period of participation began. The entry-age applicable percentage is determined for each different level of compensation by using the compensation base in effect prior to any change in the plan's compensation base and by including any adjustment (in effect prior to such change) for excess compensation base referred to in paragraph (c)(5) of this section.

(c) *Other rules*—(1) *Amendment not applicable to self-employed individual or shareholder-employee.* If a plan never amends its compensation base or rate of benefit accrual (or amends, but makes the changes applicable only to participants who are neither self-employed individuals nor shareholder-employees), the requirements of this section will not apply.

(2) *Adopted and scheduled amendments.* For purposes of section 401(j) and the regulations thereunder, amendments to the compensation base or rate of accrual include both adopted plan amendments and scheduled amendments (that is, amendments which are effective at a later time). Whether a particular amendment results in a change in base or rate shall be determined by the effect of the amendment upon plan benefit accruals and not by either the particular form of the amendment or the specific plan provision amended. For example, any plan amendment which changes the definition of compensation from less than total compensation to increase that amount upon which benefit accruals are based (for example, to add overtime hours to the compensation taken into account) would constitute a change in compensation base. Additionally, an increase in a survivor annuity from 50 percent to 75 percent of the employee benefit without any actuarial reduction would constitute a change in rate of benefit accrual.

(3) *No possibility of excess accruals.* If the rate of benefit accrual for any level of compensation exceeds the applicable percentage for that level determined under this section, the plan does not satisfy section 401(j). Also, the general rule set forth in § 1.401(j)–1(b)(2) that a plan is not qualified unless the plan contains provisions that preclude benefit accruals in excess of permissible section 401(j) amounts is equally applicable to changes in a plan's rate of accrual or compensation base. Thus, even though there is not in fact an excess accrual for a self-employed individual or shareholder-employee by reason of such an amendment, the plan is not qualified if there could be such an excess under the plan amendment.

(4) *Amendments effective at same time.* All plan amendments which effect a change in the plan's rate of benefit accrual or compensation base, and which are effective at the same time, shall be deemed to be a single amendment for purposes of applying the rules of this section.

(5) *Compensation bases in excess of $50,000.* (i) In the case of a plan which initially specifies a compensation base in excess of $50,000, the applicable percentage must be adjusted under § 1.401(j)–1)(d)(2) by multiplying such percentage by the ratio of $50,000 to the initial compensation base of the plan.

(ii) In the case of a plan which amends its compensation base to increase such base in excess of $50,000, the percentage applicable to the compensation between the prior compensation base and the new compensation base shall be adjusted by multiplying that percentage by a fraction, the numerator of which equals the excess of $50,000, if any, over the prior compensation base, and the denominator of which equals the new compensation base minus the prior compensation base. However, no adjustment is required to the percentage applicable to a participant's compensation up to the prior compensation base.

(iii) In the case of a plan which has a compensation base in excess of $50,000 and which subsequently amends its compensation base to decrease such base to another base in excess of $50,000, either the adjustment specified in subdivision (ii) or (i) of this subparagraph shall be made, depending on whether there is, or is not, respectively, a prior compensation base less than $50,000.

(d) *Other changes.* If a plan's rate of benefit accrual or compensation base is changed in a manner not dealt with in this section, the applicable percentages for the plan shall be adjusted, as determined by the Commissioner, in a manner consistent with the regulations under section 401(j).

(e) *Examples.* The provisions of this section can be illustrated by the examples set forth below. In each of the examples (except where otherwise specified) the following assumptions have been made: (1) Each plan is a career average defined benefit plan; (2) each plan provides a basic benefit as defined in § 1.401(j)–1(c)(2); (3) each participant has continuous service and one current period of participation; (4) each plan provides no non-basic benefit except an actuarially equivalent joint and survivor annuity required by section

401(a)(11); and (5) each plan is not a fully insured plan subject to § 1.401(j)–4.

Example (1). Change in accrual rate. Participant A, a self-employed individual, begins participation at age 30 in Plan X, which provides a basic benefit accruing at the annual rate of 3.25%. Plan X's compensation base is $50,000. The applicable percentage for A at age 30 is 6.5%. When A is 40 Plan X is amended to increase its rate of benefit accrual to the maximum applicable percentage, and to provide the maximum benefit. A's applicable percentage and maximum benefit are determined as follows:

(i) Under paragraph (a), A's applicable percentage after the plan is amended is the greater of (1) 3.25% (Plan X's prior-benefit accrual rate for A) or (2) 4.4% (the attained-age applicable percentage for a participant age 40). Accordingly, the rate of benefit accrual for A in Plan X after the amendment cannot exceed 4.4%.

(ii) Under § 1.401(j)–1(b), the maximum benefit which could accrue annually for A under Plan X equals the product of A's compensation (up to the compensation base) times 4.4% (the applicable percentage). Accordingly, A's maximum benefit per year equals $2,200, if A's compensation equals or exceeds $50,000.

Example (2). Change in compensation base. B, a self-employed individual, begins participation at age 30 in Plan Y, which provides a basic benefit accruing at the annual rate of 5.0% of compensation up to $20,000. The applicable percentage for B is 6.5%. When B is 40, Plan Y is amended to increase the specified compensation base to $50,000 and to provide the maximum basic benefit. B's compensation equals or exceeds the plan's compensation base at all times. The applicable percentages for each level of compensation and maximum benefit after the plan is amended are determined as follows:

(i) Under paragraph (a), B's applicable percentage after the plan is amended cannot exceed the limitation applicable to each level of compensation. For the initial compensation base of $20,000, the applicable percentage is the greater of (1) 5.0% (Plan Y's prior-benefit accrual rate for B) or (2) 4.4% (Plan Y's attained-age applicable percentage for B). Therefore, B's applicable percentage for the first $20,000 of compensation is 5.0%.

(ii) B's applicable percentage for the level of compensation in excess of $20,000 up to the new $50,000 compensation base, or the next $30,000 of compensation, is 4.4% (Plan Y's attained-age applicable percentage for B). There is no prior-benefit accrual rate for this level of compensation.

(iii) Under § 1.401 (j)–1(b), the maximum benefit which could accrue annually for B under Plan Y after the plan is amended equals the sum of $1,000 (the initial compensation base of $20,000 times the 5.0% applicable percentage) and $1,320 (the $30,000 next level of compensation times the 4.4% applicable percentage). Accordingly, B's maximum benefit equals $2,320.

Example (3). Change to compensation base over $50,000. Assume the same facts as in *Example (2)* for participant C at age 30 in Plan Y except that the annual rate is 6.5%. When C is 40, Plan Y is amended to increase the specified compensation base to $75,000 and to provide the maximum benefit. The applicable percentages for each level of compensation and maximum benefit after the plan is amended are determined as follows:

(i) Under paragraph (a), C's applicable percentage after the amendment cannot exceed a limitation applicable to each level of compensation. For the initial compensation base of $20,000, the applicable percentage is the greater of (1) 6.5% (Plan Y's prior-benefit accrual rate for C) or (2) 4.4% (Plan Y's attained-age applicable percentage for C). Therefore, C's applicable percentage for the first $20,000 of compensation is 6.5%.

(ii) C's applicable percentage for the level of compensation in excess of $20,000 up to the new $75,000 compensation base, or the next $55,000 of compensation, is the attained-age applicable percentage (there is no prior-benefit accrual rate for this level of compensation). Under paragraph (b)(3), the attained-age applicable percentage for C is determined by making the adjustment for the excess compensation base specified in paragraph (c)(5). Accordingly, the applicable percentage is 2.4% (4.4% times ($50,000 − $20,000)/($75,000 − $20,000)).

(iii) Under § 1.401(j)–1(b), the maximum benefit which could accrue annually for C under Plan Y after the plan is amended equals the sum of $1,300 (the initial compensation base of $20,000 times the 6.5% applicable percentage) and $1,320 ($55,000, the next level of compensation, times the 2.4% applicable percentage). Accordingly, C's maximum benefit per year equals $2,620.

Example (4). Decrease in compensation base to $50,000. D begins participation as a shareholder employee at age 30 in Plan Z, which provides a basic benefit accruing at the annual rate of 3.25% of compensation up to $100,000. D's compensation equals or exceeds the compensation base at all times. In order to determine the applicable percentage, 6.5% must be adjusted for the excess compensation base, as specified in paragraph (c)(5)(i), to obtain an applicable percentage of 3.25% (6.5% times $50,000/$100,000). When D is 40, Plan Z is amended to decrease its specified compensation base to $50,000 and to provide the maximum basic benefit. The applicable percentage for the new compensation base and the maximum benefit after the plan is amended are determined as follows:

(i) Under paragraph (a), the applicable percentage for the new $50,000 compensation base is the greater of 3.25% (Plan Z's prior-benefit accrual rate for D) or 4.4% (Plan Z's attained-age applicable percentage for D). Therefore, D's applicable percentage is 4.4%.

(ii) Under § 1.401(j)–1(b), the maximum benefit which could accrue annually for C under Plan Z after the amendment equals the product of $50,000 (the new compensation base) times 4.4% (the applicable percentage). Accordingly, D's maximum benefit equals $2,200.

Example (5). Change in both accrual rate and compensation base. E, a self-employed individual, begins participation at age 30 in Plan W, which provides a basic benefit accruing at the annual rate of 3% of compensation up to $30,000. The applicable percentage for E at age 30 is 6.5%. When E is age 40, Plan W is amended to increase the compensation base to $50,000, to increase the rate of benefit accrual and to provide the maximum basic benefit. E's compensation equals or exceeds the plan's compensation base at all times. The applicable percentages for each level of compensation, the accrual rates and maximum benefit after the plan is amended are determined as follows:

(i) Under paragraph (a), an applicable percentage is determined for each level of compensation. For the initial compensation base of $30,000, the limitation determined under paragraph (a) is 4.4% (the greater of 3%, Plan W's prior-benefit accrual rate for E, or 4.4%, Plan W's attained-age applicable percentage for E). In this instance, Plan W can raise its benefit accrual rate to 4.4% applicable to the initial compensation base of $30,000.

(ii) The limitation on the applicable percentage for the next level of compensation in excess of $30,000 up to the new $50,000 compensation base (the next $20,000 of compensation) is 4.4%, the attained-age applicable percentage (there is no prior-benefit accrual rate for this level of compensation). In this instance, Plan W can raise its benefit accrual rate to 4.4% applicable to this next $20,000 level of compensation.

(iii) Under § 1.401(j)–1(b), the maximum benefit which could accrue annually for E under Plan W after the plan is amended equals the sum of $1,320 (the initial compensation base of $30,000 times the 4.4% applicable percentage) and $880 (the $20,000 next level of compensation times the 4.4% applicable percentage). Accordingly, E's maximum benefit equals $2,200.

§ 1.401(j)–4 Special rules for certain insured plans.

(a) *Insurance contract plans described in section 412(i)—(1) Targeted cash surrender value.* If a plan is described in section 412(i), the cash surrender value of insurance or annuity contracts at normal retirement age (the targeted cash surrender value) may not exceed the product of—

(i) The total annual life annuity benefit commencing at that normal retirement age that would be permitted under section 401(j) for the participant for all years of participation, adjusted to reflect all pre-retirement ancillary benefits provided by the plan, and

(ii) The amount shown in Table A (if the insurance or annuity contracts are based on mortality assumptions determined by the sex of the participant) or Table B (if the contracts are not based on different assumptions by sex) for the normal retirement age.

Table A.—*Sex Based Table*

Normal retirement age	Amount	
	Male	Female
55	$11.78	$13.20
56	11.55	13.00
57	11.32	12.80
58	11.09	12.58
59	10.84	12.36

Table A.—*Sex Based Table*—Continued

Normal retirement age	Amount	
	Male	Female
60	10.59	12.13
61	10.34	11.80
62	10.08	11.65
63	9.81	11.40
64	9.54	11.14
65	9.27	10.88
66	8.99	10.60
67	8.72	10.32
68	8.44	10.03
69	8.17	9.73
70	7.90	9.43

Table B.—*Unisex Table*

Normal retirement age	Amount
55	$12.08
56	11.84
57	11.62
58	11.39
59	11.14
60	10.90
61	10.66
62	10.39
63	10.13
64	9.86
65	9.59
66	9.32
67	9.03
68	8.76
69	8.49
70	8.21

(2) *Benefits before normal retirement age.* A plan described in section 412(i) shall not fail to satisfy section 401(j) because it provides a benefit before a participant's normal retirement age equal to the cash surrender value under the insurance or annuity contracts so long as the targeted cash surrender value does not exceed the limitations of subparagraph (1).

(b) *Other plans involving insurance*—(1) *In general.* If a plan other than a plan described in section 412(i) distributes insurance or annuity contracts (including participating and variable annuities) to provide plan benefits, the value of such contracts together with the value of any other distribution may not exceed the actuarial equivalent of the maximum benefit that could be provided to that participant. The actuarial equivalent will be determined by the Commissioner based on the 1971 Group Annuity Mortality Table (male) without projection and an assumed interest rate of 6 percent compounded annually.

(2) *Participating and variable annuities*—(i) *Single premium contracts.* If a plan purchases a single-premium insurance or annuity contract at or about the time that the participant attains normal retirement age and the participant's benefits may vary because of mortality, interest, or expense experience, the value of the contract will equal the premium paid for the contract.

(ii) *Other contracts.* If a plan purchases an insurance or annuity contract under which a self-employed individual or shareholder-employee may receive a benefit that varies in accordance with mortality, interest, or expense experience in circumstances other than those described in subdivision (i) of this subparagraph, the value of the contract will be the single premium purchase price (at the date of distribution) of an equivalent contract.

(3) *Cash surrender value.* For purposes of this paragraph, the value of any insurance or annuity contract shall not be less than its cash surrender value.

(c) *Nonparticipating contracts with no cash surrender value.* The rules of paragraph (b) shall not apply to any contract which provides for level benefits during the life of the participant, which pays no dividends to the participant or a beneficiary, and which cannot be exchanged by the participant or beneficiary for cash or a contract with cash surrender value.

§ 1.401(j)–5 Benefit limitations applicable to final average pay plans.

(a) *General rule.* A final average pay plan as defined in § 1.401(j)–1(a)(3)(v) is not qualified unless the plan precludes the accrual (or the potential of accrual) of benefits by a self-employed individual or shareholder-employee in excess of the limitation determined under this section. Except as provided in this section, the provisions of § 1.401(j)–1 through 1.401(j)–4, inclusive, and § 1.401(j)–6 apply to a final average pay plan.

(b) *Maximum benefit. Final average pay plan*—(1) *General rule.* If a participant has been subject to the section 401(j) limitations during all plan years for which that participant has accrued benefits under the plan, the participant's accrued benefit is limited to the sum of the products of:

(i) The applicable percentage rate, determined under § 1.401(j)–1, for each period of plan participation, multiplied by

(ii) The sum of the participant's compensation covered under the plan for that period of plan participation including the plan year for which the limitation is being determined.

If the plan changes the participant's rate of accrual, the compensation base with respect to the participant, or both, the Amended Limitation determined under paragraph (c)(2) applies to the participant.

(2) *Change in status.* If a participant has not been subject to section 401(j) during all plan years in which the participant accrued benefits under the plan, the participant's accrued basic benefit is limited to the sum of (i) the participant's pre-401(j) benefit and (ii) the maximum benefit determined under subparagraph (1) of this paragraph for the participant's post-401(j) periods of participation. If the plan changes the participant's rate of accrual, the compensation base with respect to the participant or both, the Amended Limitation determined under paragraph (c)(2) applies to the participant. However, if a plan is amended effective as of the date section 401(j) first applies to the plan to conform the plan to the requirements of section 401(j) the limitations of this subparagraph apply to the plan: *Provided,* That the plan is not subsequently amended.

(3) *Pre-401(j) benefit.* In a final average pay plan, a participant's pre-401(j) benefit equals the greater of—

(i) The accrued benefit of the participant under the plan as of the close of the plan year immediately preceding the first plan year in which section 401(j) applies to the participant (*i.e.,* the later of (A) the plan year in which the participant becomes a self-employed individual or a shareholder-employee or (B) the first plan year for which section 401(j) applies to the plan) determined as if the participant separates at such time; or

(ii) The benefit of the participant obtained by totaling the products of (A) the applicable percentage rate, determined under § 1.401(j)–1, for each period of plan participation by (B) the sum of the compensation earned by the participant for each year during that period of plan participation (ending the current period of participation with the close of the immediately preceding plan year referred to in subdivision (i) of this subparagraph).

The pre-401(j) benefit of the participant determined under subdivisions (i) and (ii) of this subparagraph shall be determined in a manner consistent with the determination of the accrued benefit under § 1.401(j)–1(e)(3) (relating to past accrual rates in the case of an employee's change in status). Notwithstanding § 1.401(j)–1(e)(3) any plan amendment affecting the compensation base or rate of accrual occurring prior to or within the immediately preceding plan year referred to in subdivision (i) of this subparagraph shall be disregarded for purposes of determining the accrued benefit under subdivision (ii) of this subparagraph. Further, the applicable percentage in subdivision (ii)(A) and the compensation for each year described in subdivision (ii)(B) shall be determined with respect to the plan's compensation base in effect for the first plan year in which section 401(j) applies to the participant.

(c) *Change in compensation base or rate of accrual*—(1) *Application.* If a final average pay plan changes either the compensation base or the rate of accrual with respect to a participant who is either a self-employed individual or shareholder-employee, the plan does not satisfy section 401(j) in any plan year for which the plan provides for (or permits) an accrual of benefits for the participant which exceeds the Amended Limitation.

(2) *Amended Limitation.* The Amended Limitation, with respect to a participant, for any level of compensation (see § 1.401(j)–3(b)(1)), equals the sum of—

(i) The accrued benefit of the participant with respect to that level of compensation under the plan as established and

(ii) The accrued benefit of the participant under the plan on account of each subsequent amendment with respect to that level of compensation.

For purposes of this subparagraph and the succeeding rules in this section, the term "under the plan as established" means, with respect to a participant's level of compensation, under the plan at the time the participant first accrues a benefit for a particular level of compensation (or could have so accrued but for his compensation being less than such level). Thus, for example, if a plan is established in year 1 and a designated employee commences participation in year 10, then the plan as established means the plan in year 10.

(3) *Accrued benefit under plan as established.* The accrued basic benefit of the participant under the plan as established equals the lesser of—

(i) The accrued benefit of the participant as determined for each level of compensation based on the plan in effect on the date that the participant is first subject to section 401(j) and based on that participant's service and compensation taken into account under the plan for the participant's period of plan participation, or

(ii) The participant's maximum benefit determined under paragraph (b) of this section for each level of compensation.

(4) *Limitation on increases.* If the accrued benefit of the participant on account of the plan as established with respect to a level of compensation equals the participant's maximum benefit determined under paragraph (b) of this section, then the accrued benefit of the participant on account of each subsequent amendment with respect to such level of compensation is zero.

(5) *Permitted increases.* If the accrued benefit of the participant on account of the plan as established with respect to a level of compensation is less than the participant's maximum benefit determined under paragraph (b) of this section, then the accrued benefit of the participant on account of each subsequent amendment with respect to such level of compensation at any relevant time affected by such amendment equals the lesser of—

(i) The increase in the accrued benefit of the participant determined under subparagraph (6) or

(ii) The Averaged Cap with respect to that participant determined under subparagraph (7).

(6) *Increase in accrued benefit.* The increase in the participant's accrued benefit under the plan formula described in subparagraph (5)(i) of this paragraph equals the difference between—

(i) The participant's accrued benefit determined under the plan in effect prior to the plan amendment and

(ii) The participant's accrued benefit determined under the plan in effect after the plan amendment. Both such accrued benefits are determined with respect to the participant's service and compensation taken into account under the plan as of the plan year for which the limitation is being determined.

(7) *Averaged Cap.* The Averaged Cap with respect to the participant equals the product of—

(i) The difference, if any, between (A) the applicable percentage rate of the participant after the amendment and (B) the prior-benefit accrual rate of the participant before the amendment, as defined in § 1.401(j)–3(b)(2), and

(ii) The sum of the compensation earned by the participant after the amendment (and taken into account under the plan's level of compensation) for each plan year within the participant's current period of plan participation including the plan year for which the limitation is being determined.

The percentage rates of the participant referred to in subdivision (i) (A) and (B) of this subparagraph are the otherwise determined percentages under section 401(j), including the required adjustments under § 1.401(j)–3, relating to changes in compensation base and rate of accrual. Thus, for example, the participant's applicable percentage rate before the amendment for a particular level of compensation must be determined in a manner consistent with the rules in § 1.401(j)–3(d), relating to requirements for changes in compensation bases.

(8) *Limitation on increases.* (i) If the accrued benefit of the participant on account of the plan as first amended with respect to a level of compensation equals the participant's Averaged Cap (determined under subparagraph (7) of this paragraph), then the accrued benefit of the participant on account of each succeeding amendment, after the first such amendment, with respect to such level of compensation is zero.

(ii) If the accrued benefit of the participant on account of the plan's first amendment with respect to a level of compensation is less than the participant's Averaged Cap (determined under subparagraph (7) of this paragraph, then the participant's accrued benefit on account of each succeeding amendment, after the first such amendment, is determined by applying the rules of subparagraphs (6) and (7) of this paragraph to each succeeding amendment as if the plan as established and first amended with respect to a level of compensation constituted the established plan. In that application of the rules under subparagraphs (6) and (7) of this paragraph, the participant's maximum benefit determined under paragraph (b) of this section shall be deemed to be the participant's Averaged Cap (determined under subparagraph (7) of this paragraph).

(d) *Other adjustments.* The Commissioner shall, in the case of a final average pay plan, determine if any other adjustments to plan accruals are required to be made in a manner consistent with section 401(j) including this section and § 1.401(j)–3.

(e) *Examples.* The provisions of this section can be illustrated by the examples set forth below. In each of the examples (except where otherwise specified) the following assumptions have been made: (1) Each participant is a single self-employed individual or shareholder-employee in a final average pay plan; (2) the plan year and employer taxable year coincide; and (3) each plan provides a basic benefit for each participant.

Example (1). Maximum benefit. Participant A begins participation in Plan M at age 50. Plan M provides for an annual benefit accrual of 1% of final year's compensation, not to exceed $60,000, for each year of participation. (A plan would not be qualified if benefits were based on only the last year, but for illustrative purposes assume that such a formula is permissible.) Plan M also limits benefit accruals to satisfy the limitations of this section. A's compensation for each of the first 10 years equals $10,000 per year. At age 60, A's compensation is increased and equals $40,000. A's maximum benefit and benefit accrual for the 11th year is determined as follows:

(A) Because A is always subject to section 401(j) under Plan M, A's maximum benefit is determined under paragraph (b)(1) and equals the product of 3% (the applicable

percentage at age 50 times $140,000 ([10 years times $10,000, or $100,000] plus [1 year times $40,000, or $40,000]), or $4,200.

(B) Under Plan M's benefit formula, without regard to the plan provision required to satisfy this section, A's accrued benefit would equal 1% times $40,000 times 11 years, or $4,400.

(C) Accordingly, Plan M would satisfy section 401(j) if it provided a deferred normal retirement benefit for A of $4,200, if A left the plan at the end of the 11th year of participation.

(D) If Plan M is never amended and A continues plan participation (instead of ending plan participation as in (C), above) for 4 more years at the same compensation of $40,000, then A's accrued normal retirement benefit under the plan equals $5,000 (1% times $40,000 times 15 years). A's maximum benefit in this instance, equals $9,000 (3% times $300,000 ($140,000 over 11 years plus $160,000 over 4 years)). Thus, Plan M would satisfy section 401(j) by providing A with a $6,000 normal retirement benefit.

Example (2). Amended limitation. Participant B begins participation in Plan N at age 50. Plan N provides for an annual benefit accrual of 1% of final year's compensation, not to exceed $50,000 for each year of participation. Plan N is amended to provide for an annual benefit accrual of 2% of last year's compensation, not to exceed $50,000, when B is age 55 (6th year of B's plan participation). Plan N also limits benefit accruals to satisfy the limitation of this section. B's compensation for each of the first 10 years (age 50 to 59) equals $25,000 per year. When B is age 60, B's compensation is increased and equals $40,000 for each of the next 5 years (age 60 to age 64). Assume the Plan N's benefit formula has satisfied this section prior to the plan amendment. B's Amended Limitation and benefit accrual are determined as follows:

(A) B's Amended Limitation under Plan N is determined under paragraph (c). B's Amended Limitation for the plan's $50,000 level of compensation equals the sum of (1) B's accrued benefit under Plan N as established and (2) B's accrued benefit on account of the amendment to Plan N.

(B) B's accrued benefit under Plan N as established equals the lesser of (1) B's accrued benefit under Plan N as in effect when section 401(j) applies to B or (2) B's maximum benefit. In this case these amounts, respectively, equal $20,000 (1% times $40,000 times 15 years) and $13,500 (3%, age 50, times $450,000 (10 years times $25,000, or $250,000) plus (5 years times $40,000, or $200,000)). Accordingly, B's accrued benefit under Plan N, as established, equals $13,000. Because B's maximum benefit exceeds B's accrued benefit under the plan as established, Plan N can amend its plan benefit accrual formula to provide B a greater accrued benefit.

(C) B's accrued benefit on account of the amendment to Plan N equals the lesser of (1) B's increased accrued benefit as a result of the amendment or (2) B's Averaged Cap. B's accrued benefit under the new plan benefit formula equals $12,000 (2% times $40,000 times 15 years). Therefore, B's increased accrued benefit equals $6,000 ($12,000 new minus $6,000 old). B's Averaged Cap equals (under paragraph (c)(7)) the product of a percentage and a career compensation dollar amount. B's compensation for his 10 years of plan participation since the plan amendment equals $325,000 (5 times $25,000 plus 5 times $40,000). The percentage equals the difference between the *post*-amendment applicable percentage and the prior-benefit accrual rate, both determined consistently with the plan amendment rules in § 1.401(j)-3. In this case, B's *post*-amendment percentage equals the attained-age applicable percentage of 2.5% for age 55. B's prior-benefit accrual rate is determined by dividing B's accrued benefit of $6,000 under the original plan by B's $450,000 compensation for his 15 years of plan participation and equals 1.33%. The difference between the two percentages equals 1.17%. Accordingly, B's Averaged Cap under Plan N, as amended, equals $3,803 ($325,000 times 1.17%). B's accrued benefit on account of the amendment equals $3,803 (the lesser of $6,000 or $3,803).

(D) B's Amended Limitation under Plan N equals $9,803 ($6,000 plus $3,803). Because B's accrued benefit on account of the plan amendment is determined by reference to B's Averaged Cap, Plan N could not provide for additional benefit accruals for B, assuming B leaves the plan after his 15 years of participation.

Example (3). Worksheet. Using the facts of Example (2), B's Amended Limitation and benefit accrual can be computed under the following worksheet:

FINAL AVERAGE PAY WORKSHEET

(For one level of compensation and only one period of current participation)

Step No., Operation, and Answer

1. Determine accrued benefit under plan as established, using plan formula and final average pay—$6,000 (1%×15×$40,000)
2. Determine maximum benefit by following steps:
   (a) Limitation on pre-401(j) benefit:
   (i) accrued benefit of participant as of close of last pre-401(j) plan year determined as of that time—0
   (ii) applicable percentage based on age as of beginning of current participation—3%
   (iii) sum of compensations within this level for years prior to 401(j)—0
   (iv) product of (ii) and (iii)—0
   (v) greater of (i) or (iv)—0
   (b) Limitation on post-401(j) benefit:
   (i) applicable percentage in (a)(ii)—3%
   (ii) sum of compensations within this level for years since 401(j)—$450,000 (10×$25,000+5×$40,000)
   (iii) product of (i) and (ii)—$13,500
   (c) Maximum benefit equals the sum of (a)(v) plus (b)(iii)—$13,500

   If Step 1 is not less than Step 2(c), or if there are no further plan amendments, enter zero in Step 6 and proceed to Step 7. Otherwise proceed to Step 3.

Amendment: 1, 2, and 3.

3. Determine the accrued benefit on account of each subsequent amendment, using plan formula, and final average pay as follows:
   (a) Accrued benefit based on plan in effect after the amendment—$12,000 (2%×15×$40,000)
   (b) Accrued benefit based on plan in effect prior to the amendment—$6,000
   (c) Increase [(a)-(b)]—$6,000
4. Determine Averaged Cap steps:
   (a) Prior benefit accrual rate:
   (i) accrual rate for plan as established [Step 1÷(Step 2(a)(iii)+Step 2(b)(ii))]—1.33% $6,000÷$450,000
   (ii) greater of Step 4(a)(i) in this column or Step 4(a)(iv) in prior column—1.33%
   (iii) from prior column [Step 5÷Step 4(d)]—0
   (iv) sum of Step 4(a)(iii) and Step 4 (a)(ii)—1.33%
   (b) Attained age applicable percentage at time of amendment—2.5%
   (c) Excess, if any [(b)-(a)(iv)]—1.17%
   (d) Sum of compensations within this level for years since amendment—$325,000 (5×$40,000+5×$25,000)
   (e) Product of (c) and (d)—$3,803
5. Maximum accrued benefit attributable to this amendment [Lesser of Step 3(c) or Step 4(e)]—$3,803

   If, for this amendment, Step 3(c) is not less than Step 4(e) or, if there are no subsequent amendments, proceed to Step 8. Otherwise, do Steps 3-5 for the next amendment.
6. Maximum accrued benefit due to all amendments (sum columns of Step 5)—$3,803
7. Maximum accrued benefit under plan as established [lesser of Steps 1 or 2(c)]—$6,000
8. Maximum accrued benefit—Total (Sum of Step 6 and Step 7)—$9,803

Example (4). Multiple periods of participation. (i) Assume the same facts as in *Example (3)* of § 1.401(j)-1(g), except that the plan is a final average pay plan instead of a career average plan. The final average pay plan provides for an annual benefit accrual of 2.5% of the participant's average compensation for the high three years. The plan also limits benefit accruals to satisfy the limitation of this section and section 415. In each of the high three years, A earned $50,000. Therefore, A's accrued basic benefit under the plan (without regard to this section) equals $25,000 (2.5% of $50,000×20 years).

(ii) A's maximum benefit is determined by multiplying A's applicable percentage for each period of participation by the sum of A's compensation (not in excess of the contribution base) in that period of participation. As summarized in *Example (3)(vi)* of § 1.401(j)-1(g), A's compensation, applicable percentages and maximum benefits for each period of participation are as follows:

Age	Compensation per year	Rate	Benefit earned per year	Total benefit
30 to 34	$20,000	6.5	$1,300	$6,500
50 to 54	30,000	3.0	900	4,500
55 to 59	40,000	3.0	1,200	6,000
60 to 64	50,000	3.0	1,500	7,500
Total				24,500

(iii) Accordingly, A's maximum benefit under the final average pay plan would be $24,500 (the same as A's maximum benefit under the career average plan described in

Example (3) of § 1.401 (j)–1 (g)). Thus, the plan would satisfy section 401(j) if it provided A with a $24,500 normal retirement benefit instead of the $25,000 benefit determined under the plan formula without regard to this section.

§ 1.401(j)–6 Effective dates and transitional rules.

(a) *Effective dates.* Section 401(j) and the regulations thereunder apply to taxable years of an employer beginning after December 31, 1975, and to any plan year beginning with or within such taxable years.

(b) *Transitional rule.* (1) A plan will be treated as satisfying the requirements of section 401(j) for plan years beginning prior to January 23, 1982 if, for such years, any excess of the benefit accruing under the plan over the maximum benefit permitted for a participant under section 401(j) for such years is used, to the extent reasonably possible, to reduce the maximum benefit permitted under section 401(j) for plan years beginning on or after such date. This subparagraph will apply to a plan only if it is amended to satisfy the requirements of this subparagraph by the beginning of the first plan year beginning on or after January 23, 1982.

(2) A plan other than a plan described in section 412(i) will satisfy subparagraph (1) of this paragraph only if it is amended to provide that a participant who has accrued an excess benefit will reduce the accruals in each subsequent year by the remaining amount of such excess, until the excess is completely eliminated. An amendment required by this subparagraph shall not be considered a change in benefit accruals requiring the adjustments described in §§ 1.401(j)–3 or 1.401(j)–5(c).

(3) A plan described in section 412 (i) will satisfy subparagraph (1) if a new level premium is established based on a targeted cash surrender value at or below the limits described in § 1.401(j)–4(a).

(4) The rules of this paragraph may be illustrated by the following examples:

Example (1). (i) A, a partner in the X partnership, becomes a participant in the X Plan, a career average defined benefit plan, in 1977 at age 32. A accrues a basic benefit of 6.5% of compensation up to $50,000 for each year of service. A earns $20,000 in 1977, $30,000 in 1978, $40,000 in 1979, and $50,000 or more in 1980 and all subsequent years. In 1977, A accrues a basic benefit of $1,300 (6.5% of $20,000); in 1978, $1,950 (6.5% of $30,000); in 1979, $2,600 (6.5% of $40,000); and in 1980, $3,250 (6.5% of $50,000), for a total of $9,100. The plan otherwise complies with the requirements of section 401 and is not a plan described in section 412(i).

(ii) Under § 1.401(j)–1(c)(1) A's applicable percentage is 6.0% and A's maximum benefit accrual is $1,200 (6% of $20,000) for 1977; $1,800 (6% of $30,000) for 1978; $2,400 (6% of $40,000) for 1979; and $3,000 (6% of $50,000) for 1980, for a total maximum benefit of $8,400. Thus, A accrued an excess benefit of $700 in 1977–80. In 1980, the plan is amended effective January 1, 1981, the beginning of the plan year, to provide A with a benefit accrual in 1981 of $2,300 (6% of $50,000, or $3,000, minus $700) and 6% of compensation up to $50,000 thereafter.

(iii) Under subparagraphs (1) and (2), the plan will continue to be qualified because the amendment to reduce future accruals to the extent of past excess accruals was adopted before [one year after publication of this Treasury decision in the Federal Register]. A's applicable percentage remains 6.0% because the amendment required by this section does not begin a new period of participation.

Example (2). (i) A, a self-employed individual, begins participation in Plan X, a career average defined benefit plan, in 1976 at age 32. The plan is not a plan described in section 412(i). Each year A accrues a basic benefit of 6.5% of compensation up to $50,000. On May 1, 1980, A ceases to be covered by the plan.

(ii) Under § 1.401(j)–1(b) (1) A's maximum benefit for each plan year is 6.0% (the applicable percentage for age 32) of compensation up to $50,000. Therefore A has accrued a benefit in excess of the maximum benefit permitted under section 401(j). The plan will satisfy the requirements of section 401(j) if it is amended to provide that A's future benefit accruals will be reduced to zero until A's accrued benefit equals the sum of A's maximum benefits for all plan years in which A is or was subject to the section 401(j) limitations. The plan, so amended, will satisfy the requirements of this section even though A never again participates in the plan.

Example (3). (i) Employee A, a shareholder-employee, became a participant in a defined benefit plan in 1976 at age 45. The plan is a plan described in section 412(i) and the insurance company uses sex base tables to determine its premiums. A is male. A's compensation each year from 1976 through 1980 was $20,000. The plan year begins on January 1. In 1981, A's compensation was again $20,000. Under the terms of the plan in effect through 1980 and the terms of the insurance contract purchased to fund A's benefit, A's targeted cash surrender value was $150,000. However, under § 1.401(j)–4(a) the maximum targeted cash surrender value for A at age 65 is $133,488 (3.8% (A's applicable percentage) times 20 (A's years of possible participation to retirement) times $20,000 (A's compensation for each year) times 9.27 (Table A)).

(ii) The plan is amended in December 1980, effective January 1, 1981, to conform to these regulations. A lower annual premium is established to reflect the new targeted cash surrender value of $133,488. Under subparagraph (3), the plan will continue to be qualified because the plan has been amended to conform to these regulations prior to January 23, 1982.

Example (4). (i) Employee B, a shareholder-employee, became a participant in a defined benefit plan in 1979 at age 50. The plan is a plan described in section 412(i) and the insurance company uses sex-based tables to determine the premiums. B is female. B's compensation was $30,000 in 1979 and 1980 and increased to $40,000 in 1981. The plan year begins January 1. Under the terms of the plan in effect through 1980 and the terms of the insurance contract purchased to fund B's benefit, B's targeted cash surrender value was $180,000. However, under § 1.401(j)–4(a) the maximum targeted cash surrender value for B at age 65 was $146,880 (3% (B's applicable percentage) times 15 (B's years of possible participation to retirement) times $30,000 (B's compensation for each year) times 10.88 (Table A)).

(ii) The plan is amended in December 1980, effective January 1, 1981, to conform to these regulations. Because B's compensation increased and because the plan was amended, B's targeted cash surrender value at age 65 under the terms of the plan and insurance contracts purchased to fund B's benefits is $180,000. Under § 1.401(j)–4(a) the maximum targeted cash surrender value for B at age 65 is $189,312 [3% times $30,000 times 10.88 for each of the first two plan years plus 3% times 13 (B's years of possible plan participation from age 52 to retirement) times $40,000 (B's compensation) times 10.88]. No adjustment in B's targeted cash surrender value need be made, even though B's targeted cash surrender value under the plan exceeded the maximum targeted cash surrender value for years prior to 1981.

(c) *Subchapter S plan in existence before December 31, 1975.* If a defined benefit plan covered a shareholder-employee in a plan year beginning before December 31, 1975, the pre-401(j) part of the plan is subject to the rules on taxability of shareholder-employees set forth in section 1379(b). The pre-401(j) part of the plan is the part attributable to benefits accrued for plan years beginning prior to December 31, 1975, in which the plan covered a shareholder-employee.

(Secs. 401(j), 7805, Internal Revenue Code of 1954 (88 Stat. 953, 88A Stat. 917 (26 U.S.C. 401(j), 7805)))

Jerome Kurtz,
Commissioner of Internal Revenue.

Approved: January 12, 1981.

Donald C. Lubick,
Assistant Secretary of the Treasury.

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26 CFR Part 1

[T.D. 7795]

Investment Credit for Energy Property

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to the business

investment credit for energy property. Changes in the applicable tax law were made by the Energy Tax Act of 1978. These regulations will provide the public with the guidance needed to comply with the law.

DATES: These regulations are effective, in general, for the period beginning on October 1, 1978, and ending December 31, 1982.

FOR FURTHER INFORMATION CONTACT: Mary Frances Pearson of the Legislation and Regulations Division, Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, D.C. 20224, Attention: CC:LR:T (202-566-3458, not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains amendments to the Income Tax Regulations (26 CFR Part 1) under section 48 of the Internal Revenue Code of 1954. These amendments were proposed in the Federal Register for September 19, 1980 (45 FR 62490). A public hearing concerning the proposed amendments was held on December 4, 1980. These amendments conform the regulations to certain changes made by section 301(b) of the Energy Tax Act of 1978 (Pub. L. 95-618, 92 Stat. 3174) and are issued under the authority contained in Code sections 7805 (68A Stat. 917, 26 U.S.C. 7805) and 38(b) (76 Stat. 962, 26 U.S.C. 38).

After careful consideration of the comments submitted in response to the notice of proposed rulemaking, and after consultation with the Department of Energy, the proposed rules are adopted, as revised by this Treasury Decision.

Windfall Profit Tax Legislation

This regulation does not reflect any amendments under sections 221-223 of the Crude Oil Windfall Profit Tax Act of 1980 (Pub. L. 96-223, 94 Stat. 229). Under that Act, certain categories of energy property have been expanded and effective dates for certain energy property have been extended. A subsequent notice of proposed rulemaking will cover those amendments.

In General

In general, a taxpayer may claim a 10-percent investment credit (regular credit) for certain tangible business property. The taxpayer may apply the regular credit against a portion of its tax liability. Unused credits may be carried forward or carried back. If property for which the regular credit was claimed is disposed of before the end of its estimated useful life, the credit must be recomputed on the basis of its actual life.

For the period beginning October 1, 1978, and ending December 31, 1982, section 301(b) of the Energy Tax Act of 1978 adds a 10 percent credit for energy property (energy credit). The rules for the regular credit apply, in general, to the energy credit. However, the energy credit may offset 100 percent of the tax liability remaining after applying the regular credit.

Energy property is defined as alternative energy property, solar or wind energy property, specially defined energy property, recycling equipment, shale oil equipment, and equipment used to produce natural gas from geopressured brine. Energy property must be new section 38 property. For the energy credit only, building and structural components of buildings and property used in lodging facilities (to the extent qualified, *e.g.*, solar or geothermal equipment) are treated as section 38 property. However, since this type of property, in general, is not otherwise section 38 property, the property does not qualify for the regular credit. Public utility property generally does not qualify as energy property. To be eligible, the original use of acquired property must begin after September 30, 1978, and before January 1, 1983. Property constructed by the taxpayer is eligible only to the extent of basis attributable to construction for the period beginning on October 1, 1978, and ending on December 31, 1982.

Recapture

If energy property is sold or otherwise disposed of, the recapture rules of section 47 apply to both the regular credit and energy credit. In response to public comments, the application of the section 47 recapture rules to the energy credit was clarified to emphasize that the recapture determination is based upon the estimated useful life of the property which was taken into account in computing qualified investment. Thus, the principles of recapture for the energy credit are the same as for the regular credit.

Alternative Energy Property

Alternative energy property includes (1) equipment which uses an alternate substance as a fuel, and (2) equipment which produces a synthetic fuel from an alternate substance. An alternate substance is a substance other than oil or natural gas or any product of oil or natural gas. Various comments suggested that the definition of alternate substance in the proposed regulations should be expanded to include the synthetic fuels produced from an alternate substance, oil shale, and tar sands. These suggestions were not adopted.

Congress provided a subsidy for direct use of alternate substances as a fuel as well as for producing synthetic fuels from the alternate substance. The commentators would disregard the word "synthetic" and would treat it as the equivalent of alternate substance, the very product from which the synthetic fuel is produced. Congress did not intend, however, to subsidize the use of synthetic fuel. Such a subsidy is unnecessary because synthetic fuel in most cases is a close substitute for conventional fuel and does not require specialized equipment. For example, a credit is provided for equipment used to produce methane from landfill, but, since such methane is a close substitute for pipeline quality natural gas, no credit is provided for equipment which uses such methane as a fuel and which is indistinguishable from equipment using natural gas.

The suggestion that shale oil and tar sands be considered alternate substances was not adopted because those are oil substances although in a form which makes their recovery more difficult. Of course, in the case of oil shale property, Congress provided a credit for such equipment in section 48(l)(7). The Senate had adopted a $3 per barrel credit for production of oil from tar sands. See H.R. 5263, section 1044, as passed by the Senate on October 31, 1977. However, that provision was rejected in Conference. Such a credit was adopted as section 44D of the Code by Congress in the Crude Oil Windfall Profit Tax Act of 1980. (Pub. L. 96-223 94 Stat. 288)

There were some suggestions that synthetic fuel production equipment be expanded to include an oxygen plant. Under section 48(l)(3)(iii), synthetic fuel equipment is "equipment for *converting* and alternate substance into a synthetic liquid, gaseous, or solid fuel. An oxygen plant does not convert the alternate substance into a synthetic fuel but merely supplies the catalyst use in the conversions process. If the statutory language meant to incorporate equipment not directly involved in the conversion process, language such as "used in connection with the conversion" would have been used instead. For this reason, oxygen plants are not synthetic fuel equipment under the regulations.

In response to comments, the definition of synthetic fuel has been changed to state that fuel derived from biomass which undergoes the process of defiberization is a synthetic fuel. This

change is consistent with the "chemical change" requirement since biomass is changed into a refuse derived fuel through a series of chemical and heat treatments which break down the structural fibers of the substance.

Pollution Control Equipment

Under the proposed regulations, pollution control equipment was eligible for the energy credit only if installed on or in connection with eligible alternative energy property. Pollution control equipment required by Federal, State, or local government regulation in effect on October 1, 1978, with respect to property burning coal on that date was excluded. Any order permitting delayed compliance was to be disregarded in determining whether property was required to be installed on October 1, 1978.

Several comments took issue with the requirement in § 1.48–9(c)(8)(iii) that in order for pollution control equipment to qualify as alternative energy property, it must be installed in connection with eligible alternative energy property. These comments were not adopted. The inclusion of certain pollution control equipment under the energy credit was not intended to provide a general subsidy for pollution control equipment, but rather was intended to provide an incentive for the installation of new property using alternate substances. A credit was provided for pollution control equipment only to the extent that such equipment was required for the installation of the alternative energy property. Therefore, this limitation remains in the final rules.

Comments also suggested that orders which permit delayed compliance should be considered in determining what pollution control equipment was required on October 1, 1978. The statutory language in section 48(l)(3)(C) indicates an intention to determine what equipment was required by reference to rules of general application. The law clearly denies the credit to taxpayers who installed such equipment prior to October 1, 1978. Taxpayers, required to install pollution control equipment on that date, who arranged to delay compliance should not be given preferential treatment.

Geothermal Equipment

Under section 48(l)(3)(A)(viii), alternative energy property includes "equipment used to produce, distribute, or use energy derived from a geothermal deposit (within the meaning of section 613(e)(3)). . . ." The proposed regulations defined geothermal deposit by cross-reference to section 1.44C–2(h), which requires a wellhead temperature exceeding 50°C. The proposed regulations also provided that, to qualify, geothermal equipment (1) must be specially adapted to use geothermal energy and (2) must be used exclusively with energy derived from a geothermal deposit. Under the statute, production and distribution equipment qualifies while exploration and development equipment does not.

Comments suggested elimination of the "dual function rule." The dual function rule prevents unnecessary administrative burdens and reflects Congressional intent to limit the subsidy to equipment exclusively used for geothermal energy. Without such a rule, it frequently would be impossible to determine when energy from a geothermal deposit is being used. Further, property which uses energy from a conventional source in addition to geothermal energy is indistinguishable from property that performs the same function without the use of geothermal energy. Congress did not intend to provide a credit for property that would be purchased for conventional heating or cooling uses. However, as noted below, the rule is clarified to indicate that dual use is determined by reference to the particular application, and not by reference to any uses for any equipment.

In response to comments, the final regulations do not contain the specially adapted equipment rule. The comments noted that, in general, geothermal equipment is not specially designed for geothermal use. Consequently, adoption of this rule would have disqualified most geothermal equipment. In response to requests by commentators, the regulations also make it clear that "downhole" equipment necessary to produce geothermal energy (e.g., screening or slotted liners, tubing and downhole pumps), and reinjection well property are production equipment.

Finally, comments have criticized the § 1.44C–2(h) requirement adopted by cross reference that the wellhead temperature exceed 50°C for an energy source to be considered to be a geothermal deposit. The statutory language "energy derived from a geothermal *deposit* (within the meaning of section 613(e)(3)) (emphasis added)" indicates a clear Congressional intent to limit the credit to property utilizing geothermal energy contained in a distinct, specific, and identifiable reservoir. Reference to the depletion provisions contemplates a depletable energy source, and not an aquifer whose water is being constantly replenished.

The intent to thus restrict the term geothermal is also reflected in the description of geothermal energy in the Ways and Means committee print, Energy Program, Number 11, "Geothermal Tax Provisions and Minimum Tax Treatment of Intangible Drilling Costs for Oil and Gas," prepared by the staff of the Joint Committee on Taxation, June 11, 1977. In the committee print, which provided the technical background material for the legislation which ultimately became the Energy Tax Act of 1978, geothermal energy is described by reference as definable deposits of steam, hot water and hot, dry rocks. The lowest temperature mentioned is 60°C, the highest, 1500°C. The technology described involved direct use of the heat from such resources.

Recognizing the difficulty taxpayers would otherwise face in demonstrating that energy was derived from a sufficiently identifiable and depletable deposit, the proposed regulations provide a 50°C rule as a safe-harbor rule. The final regulations retain this liberal rule.

Solar Energy Property

In response to comments, the definition of solar energy property was expanded to make it clear that it includes storage devices, power conditioning equipment, transfer equipment, and property solely related to the functioning of those items. However, such equipment does not include transmission equipment.

Wind Energy Property

A number of comments cited specific legislative history to the effect that wind energy property includes "transfer equipment." See, H. Rep. No. 95–496, Part III, 95th Cong., 1st Sess., p. 121; S. Rep. No. 95–1324, 95th Cong., 2d Sess., p. 82). Accordingly, transfer equipment is specifically added to the definition of wind energy property. Transfer equipment includes equipment which permits the aggregation of electricity generated by several windmills and equipment which alters voltage in order to permit transfer to a transmission line. However, transfer equipment does not include transmission lines, a distinction based upon the technical definition of the terms transfer and transmission, and on specific references to transmission in the Act (both including and excluding such equipment) indicating Congressional cognizance of the differences between the two functions.

Specially Defined Energy Property

Section 48(1)(5) lists items of specially defined energy property, which qualify for the energy credit if installed in an existing industrial or commercial process. The proposed regulations

provided descriptions of the items listed. The proposed regulations also excluded equipment used in connection with general office, retail, and similar activities as not involving industrial or commercial processes.

A large number of comments suggested that the term "industrial or commercial process" should include office, retail, and similar activities. Specifically, many commentators argued that automatic energy control systems even when installed in retail stores, office buildings, or multi-family dwellings should qualify for the energy credit as specially defined energy property. The commentators relied primarily on the fact that the administration had proposed a business energy conservation credit which applied to all business buildings and on the appearance of the term "automatic energy control systems" in the statute. These comments were rejected as being inconsistent with the statute and the legislative history of the provision.

The Administration 1977 energy tax proposals contained a general business energy conservation credit which combined both industrial and commercial conservation property under one category. See the Treasury Department's Technical Explanation A-7, published May 18, 1977. Thus, automatic energy control systems, recuperators, and heart wheels (presently eligible for a credit as specially defined energy property) were on a list with insulation, double glazing, and other business insulation property. The House generally adopted the Administration proposal with respect to the business energy credits. However, the House distinguished between those items that were specially designed to achieve conservation in existing industrial processes and items for general business conservation uses.

Property identified as qualifying for the conservation credit, in addition to insulation, included items to be designated by the Secretary as being designed to reduce the heat loss or gain of an existing commercial or industrial building or facility. In contrast to "specifically" defined energy property the class of property described in the conservation credit was not limited by reference to recovery of waste heat or gas nor was it required that it be installed in connection with an existing process. (See, section 2061 (b) & (c) of H.R. 8444 as passed by the House on August 5, 1977; The Ways and Means Committee report (H. Rep. No. 95-406, Part III, 95th Cong. 1st Sess., p. 121).

The Senate bill expanded the definition of specially defined energy property, and retained the House conservation provision. Under the Senate bill, the requirement of use with an existing process was eliminated because the Senate has expanded the qualifying category of items to include non-process items. Thus, under the Senate bill the result called for in these comments would have been correct. (See section 1031 of H.R. 5263 as passed by the Senate October 31, 1977).

However, in Conference, the conferees adopted the House specially defined energy tax credit provision, reinserting the existing industrial or commercial process limitation which the Senate had deleted. The position taken in the comments would require interpreting "in connection with an existing industrial or commercial process," which Congress specifically reinserted, in a way which would cause it to have no meaning. The insulation and conservation credit was not adopted because of budgetary constraints. (See, S. Rep. No. 95-1324) (Conference Report), 95th Cong., 2d Sess., p. 64-67.)

In response to a number of comments, several technical changes were made in the definition of the listed items.

Recycling Equipment

Under section 48(1)(6), recycling equipment is equipment that sorts or prepares solid waste for recycling or that recycles solid waste, as well as equipment that converts solid waste into useful energy. The proposed regulations defined solid waste by reference to the definition in the regulations under section 103(b)(4)(E), which permits tax-exempt financing of "solid waste disposal facilities." Under the proposed rules, the recycling process for recovering raw materials from solid waste is limited to one in which raw materials are recovered which may be used in fabricating an end product in the same way as materials from a virgin substance.

A number of comments suggested including "reconstituted products for commercial purposes" in the definition of recycling. Thus, equipment used to remanufacture used industrial and automotive parts, such as valves, gaskets, carburetors, and distributors or to retread tires would be eligible for the credit. These suggestions were not adopted. Permitting equipment used in these processes to qualify would be inconsistent with the Senate Report which requires that recycling equipment (other than conversion equipment) be designed to recover raw materials. (See, S. Rep. 95-529, 95th Cong., 1st Sess., at 82.) Thus, no change is made in the proposed rules in response to these comments.

In response to a request for clarification, the final rules specify that equipment that processes animal waste is not recycling equipment.

Some comments suggested that the regulations incorporate by reference the definition of solid waste under 42 U.S.C. § 6903, the Solid Waste Disposal Act, as amended, (which treats *e.g.*, liquid and gaseous wastes as "solid waste") rather than the definition of solid waste in the regulations under section 103(b)(4). It is not appropriate to adopt this suggestion.

There is no indication that Congress intended to alter the tax definition of solid waste (except to the extent described below). The legislative history of section 103(b)(4)(E) incorporates by reference, and specifically cites, the definition of solid waste in the Solid Waste Disposal Act in effect at that time. (See, H. Rep. No. 1533, 90 Cong., 2d Sess., p. 38). When that definition in that Act was subsequently amended, Congress did not conform the tax law to the new definition. Furthermore, the legislative history of the Energy Tax Act of 1978 contains no cross-reference to the Solid Waste Disposal Act, as amended, thereby impliedly accepting the existing tax definition.

As a general rule, Congress is presumed to intend terms to have the same meaning for tax purposes when used in more than one Code section. Therefore, under the final rules, the term continues to have the same meaning for purposes of the energy credit as under the regulations under section 103(b)(4)(E).

However, Congress clearly intended certain changes be made in the tax definition of solid waste for purposes of the energy credit. The section 103 regulation excludes from the definition of solid waste any substance that may be sold (*i.e.*, for value) to an unrelated third party. Under this rule, virtually none of the items identified in the Senate Report, such as scrap metal, newsprint, and fibers would be considered solid waste, since all of these items have a market value at least equal to the price a recycler would pay for the material. See, Senate Report, at 83.

Therefore, the proposed regulation defined solid waste by beginning with the section 103 definition but has modified it by deleting an irrelevant reference to the date of issue of obligations, by adding a provision which indicates that if the market value of material is attributable only to its recycling use the material is not considered to have a market value, and by permitting the recycled material to include not more than 10 percent virgin material during a taxable year.

Shale Oil Equipment

In response to comments, the distinction in the proposed regulations between surface mining equipment and equipment used in *in situ* technology is eliminated in the final rules. The distinction appeared in the Senate Report at page 83, although it was not made in the Conference Report. It was decided that, consistent with the legislative intent to encourage shale oil development, the final rules should not favor any particular shale oil recovery technology. In addition, the rules are clarified to indicate that retorting includes direct cooling and condensing and that water supply and treatment equipment and handling equipment for spent shale qualifies. However, under the statute equipment which is used for hydrogenation, refining, or other process subsequent to retorting does not qualify. Consequently, gas cleanup equipment has not been included within the qualified category of equipment.

Several comments took issue with the incremental cost rule in the proposed regulations. Incremental cost is the excess of the total cost of equipment over the amount that would have been expended for the equipment if the equipment were not used for a qualifying purpose.

One item of property in many instances can be used in part for a qualifying energy purpose and in part for non-qualifying functions. The approach in this situation is to give no energy credit for the property, partial credit or full credit. Denying the credit entirely would discourage energy property investments. On the other hand, property which incidently serves an energy function should not receive the subsidy of a full energy credit. The fairer approach adopted in this regulation is the incremental cost rule.

Drafting Information

The principal author of these regulations is Mary Frances Pearson of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations, both on matters of substance and style.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR Part 1 is amended as follows:

Paragraph 1. Section 1.47–1 is amended as follows:

1. Paragraph (a)(1)(i) is amended by adding at the end thereof "For rules applicable to energy property, see paragraph (h) of this section."

2. A new paragraph (h) is added to read as set forth below:

§ 1.47–1 Recomputation of credit allowed by section 38.

* * * * *

(h) *Special rules for energy property*—(1) *In general.* A recapture determination is required for the investment credit attributable to the energy percentage (energy credit) if property is (i) disposed of or (ii) otherwise ceases to be energy property (as defined in section 48(l)) with regard to the taxpayer before the close of the estimated useful life (as determined under paragraph (a)(2)(i) of this section) which was taken into account in computing qualified investment.

(2) *Dispositions.* The term "disposition" is described in § 1.47–2(a)(1). A transfer of energy property that is a "disposition" requiring a recapture determination for the investment credit attributable to the regular percentage (regular credit) and the ESOP percentage (ESOP credit) will also be a "disposition" requiring a recapture determination for the energy credit.

(3) *Cessation.* The term "cessation" is described in § 1.47–2(a)(2). For energy property, a cessation occurs during a taxable year if, by reason of a change in use or otherwise, the property would not have qualified for an energy credit if placed in service during that year. A change in use will not require a recapture determination for the regular or ESOP credit unless, by reason of the change, the property would not have qualified for the regular or ESOP credit if placed in service during that year.

(4) *Recordkeeping requirement.* For recordkeeping requirements with respect to dispositions or cessations, the rules of paragraph (e)(1) of this section apply. For example, the taxpayer must maintain records for each recycling facility indicating the percentage of virgin materials used each year. See, § 1.48–9(g)(5)(ii).

(5) *Examples.* The following examples illustrate this paragraph (h).

Example (1). (a) In 1980, corperation X, a calendar year taxpayer, acquires and places in service a computer that will perform solely energy conserving functions in connection with an existing industrial process. Assume the computer has a 10 year useful life and qualifies for both the regular and energy credits. In 1981, a change is made in the industrial process (within the meaning of § 1.48–9(l)(2)). However, for 1981 the computer continues to perform solely energy conserving functions. In 1982, the computer ceases to perform energy conserving functions and begins to perform a production related function.

(b) For 1981, a recapture determination is not required. For 1982, the entire energy credit must be recaptured, although none of the regular credit is recaptured. If in 1982 the computer first ceased to perform an energy conserving function, no part of the energy credit would be recaptured.

Example (2). Assume the same facts and conclusion as in example (1). Assume further that X sells the computer in 1985. A recapture determination is required for the regular credit.

Example (3). In 1981, corporation Y, a calendar year taxpayer, acquires and places in service recycling equipment. Assume the equipment has a 7-year useful life and qualifies for both the regular credit and energy credit. During the course of 1982, more than 10 percent of the material recycled is virgin material. The energy credit is recaptured in its entirety, although none of the regular credit is recaptured. See § 1.48–9(g)(5)(B)(ii).

Example (4). In 1980, corporation Z, a calendar year taxpayer, acquires and places in service a boiler the primary feel for which is an alternate substance. The boiler has a 7-year useful life. Assume the boiler is a structural component of a building within the meaning of § 1.48–1(e)(2). Assume further that the boiler is not a part of a qualified rehabilitated building (as defined in section 48(g)(1)) or a single purpose agricultural or horticultural structure (as defined in section 48(p)). Z is allowed only an energy credit since the boiler is a structural component of a building. In 1984, Z modifies the boiler to use oil as the primary fuel. A recapture determination is required for the energy credit. See § 1.48–9(c)(3).

Par. 2. A new § 1.48–9 is added to read as set forth below:

§ 1.48–9 Definition of energy property.

(a) *General rule*—(1) *In general.* Under section 48(l)(2), energy property means property that is described in at least one of 6 categories of energy property and that meets the other requirements of this section. If property is described in more than one of these categories, or is described more than once in a single category, only a single energy investment credit is allowed. In that case, the energy investment credit will be allowed under the category the taxpayer chooses by indicating the chosen category on Form 3468, Schedule B. The 6 categories of energy property are:

(i) alternative energy property,
(ii) solar or wind energy property,
(iii) specially defined energy property,
(iv) recycling equipment,
(v) shale oil equipment, and
(vi) equipment for producing natural gas from geopressured brine.

(2) *Depreciable property with 3-year useful life.* Property is not energy property unless depreciation (or amortization in lieu of depreciation) is

allowable and the property has an estimated useful life (determined at the time when the property is placed in service) of 3 years or more.

(3) *Effective date rules.* To be energy property—

(i) If property is constructed, reconstructed or erected by the taxpayer, the construction, reconstruction, or erection must be completed after September 30, 1978, or

(ii) If the property is acquired, the original use of the property must (A) commence with the taxpayer and (B) commence after September 30, 1978, and before January 1, 1983.

For transitional rules, see section 48(m).

(4) *Cross references.* (i) To determined if depreciation (or amortization in lieu of depreciation) is allowable for property, see § 1.48–1(b).

(ii) For the meaning of "estimated useful life", see § 1.48–3(e)(7).

(iii) The meaning of "acquired", "original use", "construction", "reconstruction", and "erection" is determined under the principles of § 1.48–2(b).

(iv) For the definition of energy investment credit (energy credit), see section 48(o)(2).

(v) For special rules relating to public utility property, see paragraph (n) of this section.

(b) *Relationship to section 38 property*—(1) *In general.* (i) Energy property is treated under section 48(l)(1) as meeting the general requirements for section 38 property set forth in section 48(a)(1). For example, structural components of a building may qualify for the energy credit. In addition, the exclusion from section 38 property under section 48(a)(3) (lodging limitation) does not apply to energy property. For purposes of the energy credit, energy property is treated as section 38 property solely by reason of section 48(l)(1). For example, if property ceases to be energy property, it ceases to be section 38 property for all purposes relating to the energy credit and, thus, if subject to recapture under section 47. See § 1.47–1(h).

(ii) See the effective date rules under paragraph (a)(3) of this section for limitations on the eligibility of property as energy property.

(iii) Section 48(l)(1) does not affect the character of property under sections of the Code outside the investment credit provisions. For example, structural components of a building that are treated as section 38 property under section 48(l)(1) remain section 1250 property and are not section 1245 property.

(2) *Other section 48 rules apply.* (i) In general, section 48(a) otherwise applies in determining if energy property is section 38 property. Thus, energy property excluded from the definition of section 38 property under section 48(a) (except by reason of section 48(a)(1) or (a)(3)) is not eligible for the energy credit. For example, energy property used predominantly outside the United States (section 48(a)(2)) or used by tax exempt organizations (section 48(a)(4)), in general, is not treated as section 38 property for any purpose and thus, is not eligible for the energy credit.

(ii) Other rules of section 48, such as those for leased property under section 48(d), also apply to energy property.

(3) *Regular credit denied for certain energy property.* In computing the amount of credit under section 46(a)(2), the regular percentage does not apply to any energy property which, but for section 48(l)(1), would not be section 38 property. See section 46(a)(2)(D). For example, energy property used for lodging (section 48(a)(3)) and, in general, structural components of a building (section 48(a)(1)(B)) re not eligible for the regular credit even though they may be eligible for the energy credit. However, a structural component of a qualified rehabilitated building (as defined in section 48(g)(1)) or a single purpose agricultural or horticultural structure (as defined in section 48(p)) may qualify for the regular credit without regard to section 48(l)(1).

(c) *Alternative energy property*—(1) *In general.* Alternative energy property means property described in paragraph (c)(3) through (10) of this section. In general alternative energy property includes certain property that uses an alternate substance as a fuel or feedstock or converts an alternate substance to a synthetic fuel and certain associated equipment.

(2) *Alternate substance.* (i) An alternate substance is any substance or combination of substances other than an oil or gas substance. Alternate substances include coal, wood, and agricultural, industrial, and municipal wastes or by-products. Alternate substances do not include synthetic fuels or other products that are produced from an alternate substance and that have undergone a chemical change as described in paragraph (c)(5)(ii) of this section. For example, methane produced from landfills is not an alternate substance; rather it is a synthetic fuel produced from an alternate substance. However, preparing an alternate substance for use as a fuel or feedstock or for conversion into a fuel does not create a new product if no chemical change occurs. For example, pelletizing, drying, compacting, and liquefying do not result in a new product if no chemical change occurs.

(ii) The term "oil or gas substance" means—

(A) oil or gas and

(B) any primary product of oil or gas.

(iii) For the definition of primary product of oil or gas, see § 1.993–3(g)(3)(i), (ii), and (vi). Thus, petrochemicals are not primary products of oil or gas.

(3) *Boiler.* (i) A boiler that uses an alternate substance as its primary fuel is alternative energy property.

(ii) A boiler is a device for producing vapor from a liquid. Boilers, in general, have a burner in which fuel is burned. A boiler includes a fire box, boiler tubes, the containment shell, pumps, pressure and operating controls, and safety equipment, but not pollution control equipment (as defined in paragraph (c)(6) of this section).

(iii) A "primary fuel" is a fuel comprising more than 50 percent of the fuel requirement of an item of equipment, measured in terms of Btu's for the remainder of the taxable year from the date the equipment is placed in service and for each taxable year thereafter. Electricity and waste heat are not fuels. For example, electric boilers do not qualify as alternative energy property even if the electricity is derived from an alternate substance.

(4) *Burners.* (i) A burner for a combustor other than a burner described in paragraph (c)(3)(ii) of this section is alternative energy property if the burner uses an alternate substance as its primary fuel (as defined in paragraph (c)(3)(iii) of this section).

(ii) A burner is the part of a combustor that produces a flame. A combustor is a process heater which includes ovens, kilns, and furnaces.

(iii) A burner includes equipment (such as conveyors, flame control devices, and safety monitoring devices) located at the site of the burner and necessary to bring the alternate substance to the burner.

(5) *Synthetic fuel production equipment.* (i) Equipment (synthetic fuel equipment) that converts an alternate substance into a synthetic solid, liquid, or gaseous fuel (other than coke or coke gas) is alternative energy property. Synthetic fuel production equipment does not include equipment, such as an oxygen plant, that is not directly involved in the treatment of an alternate substance, but produces a substance that is, like the alternate substance, a basic feedstock or catalyst used in the conversion process. Equipment is not eligible if it is used beyond the point at which a substance usable as a fuel has been produced. Equipment is eligible

only to the extent of the equipment's cost or basis allocable to the annual production of substances used as a fuel or used in the production of a fuel. For example, assume for the taxable year that 50 percent of the output of equipment is used to produce alcohol for production of whiskey and 50 percent is used to produce alcohol for use in a fuel mixture, such as gasohol. The alcohol production equipment qualifies as synthetic fuel equipment but only to the extent of one-half of its cost or basis. If, in a later taxable year, the equipment is used exclusively to produce whiskey, all of the equipment ceases to be synthetic fuel equipment.

(ii) A fuel is a material that produces usable heat upon combustion. To be "synthetic", the fuel either must differ significantly in chemical composition, as opposed to physical composition, from the alternate substance used to produce it or, in the case of solid fuel produced from biomass, the chemical change must consist of defiberization. Examples of synthetic fuels include alcohol derived from coal, peat, and vegetative matter, such as wood and corn, and methane from landfills.

(iii) Synthetic fuel equipment includes coal gasification equipment, coal liquefaction equipment, equipment for recovering methane from landfill, and equipment that converts biomass to a synthetic fuel.

(iv) Synthetic fuel equipment does not include equipment that merely mixes an alternate substance with another substance. For example, synthetic fuel equipment includes neither equipment that mixes coal and water to produce a slurry nor equipment that mixes alcohol and gasoline to produce gasohol. Equipment used to produce coke or coke gas, such as coke ovens, is also ineligible.

(6) *Modification equipment.* (i) Alternative energy property includes equipment (modification equipment) designed to modify existing equipment. For the definition of "existing," see paragraph (l)(1)(i) of this section. To be eligible, the modification must result in a substitution for the remainder of the taxable year from the date the equipment is placed in service and for each taxable year thereafter of the items in paragraph (c)(6)(ii)(A) or (B) of this section for all or a portion of the oil or gas substance used as a fuel or feedstock. As a result of the modification, the substituted alternate substance must comprise at least 25 percent of the fuel or feedstock (determined on the basis of Btu equivalency). If the modification also increases the capacity of the equipment, only the incremental cost (as defined in paragraph (k) of this section) of the equipment qualifies.

(ii) The substitutes for an oil or gas substance are—

(A) An alternate substance or

(B) A mixture of oil and an alternate substance.

(iii) Modification equipment does not include replacements or a boiler of burner. If the boiler or burner is replaced, the items must be described in paragraph (c) (3) or (4) of this section to qualify as alternative energy property. Modification may include, however, replacements of components of a boiler or burner, such as a heat exchanger.

(iv) The following examples illustrate this paragraph (c)(6).

Example (1). On January 1, 1980, corporation X is using oil to fuel its boiler. On June 1, 1980, X modifies the boiler to permit substitution of a coal and oil mixture for 40 percent of X's oil fuel needs. The mixture consists 75 percent of oil and 25 percent of coal. The equipment modifying the boiler does not qualify as modification equipment because the alternate substance comprises only 10 percent of the fuel.

Example (2). Assume the same facts as in example (1) except 75 percent of the mixture is coal. The equipment modifying the boiler qualifies.

Example (3). Assume the same facts as in example (2) except, instead of substituting an oil and coal mixture for 40 percent of X's oil fuel needs, X uses the modification to expand the boiler's fuel capacity by 40 percent using the mixture as additional fuel. The additional fuel mixture comprises only 28 percent of X's total fuel needs. Thus, even though 75 percent of the additional fuel mixture is an alternate substance, the boiler does not qualify as modification equipment because the alternate substance comprises only 21 percent of the total fuel.

(7) *Equipment using coal as feedstock.* Equipment that uses coal (including lignite) to produce a feedstock for the manufacture of chemicals, such as petrochemicals, or other products is alternative energy property. Equipment is not eligible if it is not directly involved in the treatment of coal or a coal product, but produces a substance that is, like coal, a basic feedstock or catalyst used in the coal conversion process. Equipment is not eligible if it is used beyond the point at which the first product marketable as a feedstock has been produced. Equipment used to produce coke or coke gas, such as coke ovens, is ineligible.

(8) *Pollution control equipment.* (i) Pollution control equipment is alternative energy property. Eligible equipment is limited to property or equipment to the extent it qualifies as a pollution control facility under section 103(b)(4)(F) and the regulations thereunder except that, if control of pollution is not the only significant purpose (within the meaning of those regulations), only the incremental cost (as defined in paragraph (k) of this section) of the equipment qualifies. However, if a Treasury decision changes the regulations under section 103(b)(4)(F) and, thus, the rules reflected in this subdivision (i), the rules as changed will apply as of the effective date of the Treasury decision.

(ii) To be eligible, the equipment must be required by a Federal, State, or local government regulation to be installed on, or used in connection with, eligible alternative energy property (as defined in paragraph (c)(8)(v) of this section).

(iii) Under section 48(l)(3)(D) equipment is not eligible if required by a Federal, State, or local government regulation in effect on October 1, 1978, to be installed on, or in connection with, property using coal (including lignite) as of October 1, 1978.

(iv) Under this subparagraph (8), pollution control equipment is required by regulation if it would be necessary to install the equipment to satisfy the requirements of any applicable law, including nuisance law. The pollution control equipment need not be specifically identified in the applicable law. If several different types of equipment may be used to comply with the applicable law, each type of equipment is considered necessary to satisfy the requirements of the law. An order permitting a taxpayer to delay compliance with any applicable law is disregarded.

(v) Under this subparagraph (8) "eligible alternative energy property" is energy property (as defined in section 48 (l)(2)) described in paragraph (c) (3) through (7) of this section. If equipment otherwise qualifying as pollution control equipment is installed on, or used in connection with, both eligible alternative energy property and property other than eligible alternative energy property, only the incremental cost (as defined in paragraph (k) of this section) of the equipment qualifies.

(vi) *Examples.* The following examples illustrate this subparagraph (8). Assume that the property or equipment in the examples are described in § 1.103–8(g)(2)(ii) and that their only purpose is control of pollution.

Example (1). On October 1, 1978, corporation X acquires and places in service in State A a paper mill. The facility includes a boiler the primary fuel for which is wood chips. The facility includes equipment necessary to comply with pollution control standards in effect on October 1, 1978 in State A. This equipment qualifies as pollution control equipment.

Example (2). On October 1, 1978, corporation Y was burning coal at its facility

in State B. The emissions from the facility exceeded State air pollution control requirements in effect on October 1, 1978. On January 1, 1979, X installed cyclone separators to comply with the State pollution control requirements. The cyclone separators do not qualify as pollution control equipment.

Example (3). Assume the same facts as in example (2) except that Y installs a baghouse instead of cyclone separators to meet more stringent standards that take effect on December 31, 1978. The baghouse qualifies as pollution control equipment because the baghouse was not necessary to meet the standards in effect on October 1, 1978.

Example (4). On October 1, 1978, corporation Z is burning coal at its facility in State C. The emissions from that facility exceed State air pollution control standards in effect on October 1, 1978. C orders Z to install cyclone separators before January 1, 1979. However, C allows Z to operate its facility until January 1, 1979, under less stringent interim standards applicable only to Z. The separators do not qualify as pollution control equipment. The delayed compliance order is disregarded.

(9) *Handling and preparation equipment.* (i) Alternative energy property includes equipment (handling and preparation equipment) used for unloading, transfer, storage, reclaiming from storage, or preparation of an alternate substance for use in eligible alternative energy property (as defined in paragraph (c)(9)(ii) of this section). Handling and preparation equipment must be located at the site the alternate substance is used as a fuel or feedstock. For example, equipment used to screen and prepare coal for use at a power plant qualifies if located at the plant. However, similar equipment located at the coal mine would not qualify.

(ii) Under this subparagraph (9), "eligible alternative energy property" is energy property (as defined in section 48(l)(2)) described in paragraph (c) (3) through (8) of this section. If equipment otherwise qualifying as handling and preparation equipment is installed on, or used in connection with, property other than eligible alternative energy property, only the incremental cost (as defined in paragraph (k) of this section) of the equipment qualifies.

(iii) The term "preparation" includes washing, crushing, drying, compacting, and weighing of an alternate substance. Handling and preparation equipment also includes equipment for shredding, chopping, pulverizing, or screening agricultural or forestry byproducts at the site of use.

(iv) Handling and preparation equipment does not include equipment, such as coal slurry pipelines and railroad cars, that transports a fuel or a feedstock to the site of its use.

(10) *Geothermal equipment.* (i) Alternative energy property includes equipment (geothermal equipment) that produces, distributes, or uses energy derived from a geothermal deposit (as defined in § 1.44C–2(h)).

(ii) In general, production equipment includes equipment necessary to bring geothermal energy from the subterranean deposit to the surface, including well-head and downhole equipment (such as screening or slotted liners, tubing, downhole pumps, and associated equipment). Reinjection wells required for production also may qualify. Production does not include exploration and development.

(iii) Distribution equipment includes equipment that transports geothermal steam or hot water from a geothermal deposit to the site of ultimate use. If geothermal energy is used to generate electricity, distribution equipment includes equipment that transports hot water from the geothermal deposit to a power plant. Distribution equipment also includes components of a heating system, such as pipes and ductwork that distribute within a building the energy derived from the geothermal deposit.

(iv) Equipment that uses energy derived from a geothermal deposit is eligible only if it uses geothermal energy exclusively. Thus, geothermal equipment does not include equipment that uses energy derived both from a geothermal deposit and from sources other than a geothermal deposit. However, the existence of a backup system designed for use only in the event of a failure in the system providing energy derived from a geothermal deposit will not disqualify any other equipment. For example, radiators, fan-coil units, and baseboard heaters are not eligible if they are used in a particular application with hot water from sources other than a geothermal deposit. If geothermal energy is used to generate electricity, equipment using geothermal energy includes the electrical generating equipment, such as turbines and generators. However, geothermal equipment does not include any electrical transmission equipment, such as transmission lines and towers, or any equipment beyond the electrical transmission stage, such as transformers and distribution lines.

(v) *Examples.* The following examples illustrate this subparagraph (10):

Example (1). In 1979, corporation X installs a system which heats its office building by circulating hot water heated by energy derived from a geothermal deposit through the building. Geothermal equipment includes the circulation system, including the pumps and pipes which circulate the hot water through the building.

Example (2). The facts are the same as in example (1), except that corporation X also installs a boiler to produce hot water for heating the building exclusively in the event of a failure of the geothermal equipment. Such a boiler is not geothermal equipment, but the existence of such a backup system does not serve to disqualify property eligible in example (1).

Example (3). The facts are the same as in example (1), except that the water heated by energy derived from a geothermal deposit is not hot enough to provide sufficient heat for the building. Therefore, X installs a system in which the water is heated by an electric boiler before being circulated in the heating system. In this case, neither the boiler nor the circulating system is considered to be geothermal equipment.

Example (4). Corporation Y acquires a commercial vegetable dehydration system in 1981. The system operates by placing fresh vegetables on a conveyor belt and moving them through a dryer. The conveyor belt is powered by electricity. The dryer uses solely energy derived from a geothermal deposit. The dryer is geothermal equipment while the equipment powered by electricity does not qualify.

(d) *Solar energy property*—(1) *In general.* Energy property includes solar energy property. The term "solar energy property" includes equipment and materials (and parts solely related to the functioning of such equipment) that use solar energy directly to (i) generate electricity, (ii) heat or cool a building or structure, or (iii) provide hot water for use within a building or structure. Generally, these functions are accomplished through the use of equipment such as collectors (to absorb sunlight and create hot liquids or air), storage tanks (to store hot liquids), rockbeds (to store hot air), thermostats (to activate pumps or fans which circulate the hot liquids or air), and heat exchangers (to utilize hot liquids or air to create hot air or water). Property that uses, as an energy source, fuel or energy derived indirectly from solar energy, such as ocean thermal energy, fossil fuel, or wood, is not considered solar energy property.

(2) *Passive solar excluded* (i) Solar energy property excludes the materials and components of "passive solar systems," even if combined with "active solar systems."

(ii) An active solar system is based on the use of mechanically forced energy transfer, such as the use of fans or pumps to circulate solar generated energy.

(iii) A passive system is based on the use of conductive, convective, or radiant energy transfer. Passive solar property includes greenhouses, solariums, roof ponds, glazing, and mass or water trombe walls.

(3) *Electric generation equipment.* Solar energy property includes equipment that uses solar energy to

generate electricity, and includes storage devices, power conditioning equipment, transfer equipment, and parts solely related to the functioning of those items. In general, this process involves the transformation of sunlight into electricity through the use of such devices as solar cells or other collectors. However, solar energy property used to generate electricity includes only equipment up to (but not including) the stage that transmits or uses electricity.

(4) *Pipes and ducts.* Pipes and ducts are solar energy property if used exclusively to carry energy derived from solar energy.

(5) *Specially adopted equipment.* Equipment that uses solar energy beyond the distribution stage is eligible only if specially adopted to use solar energy.

(6) *Auxiliary equipment.* Solar energy property does not include equipment (auxiliary equipment), such as furnaces and hot water heaters, that use a source of power other than solar or wind energy to provide usable energy. Solar energy property also does not include equipment, such as ducts and hot water tanks, whether utilized solely by auxiliary equipment or by both auxiliary equipment and solar energy equipment.

(7) *Solar process heat equipment.* Solar energy property does not include equipment that uses solar energy to generate steam at high temperatures for use in industrial or commercial processess (solar process heat).

(8) *Example.* The following example illustrates this paragraph (d).

Example. (a) In 1978, corporation X constructs an apartment building and purchases equipment to convert solar energy into heat for the building. Corporation X also installs an oil-fired water heater and other equipment to provide a backup source of heat when the solar energy equipment cannot meet the energy needs of the building.

(b) The items purchased in addition to the water heater include a roof solar collector, a heat exchanger, a hot water tank, a control component, pumps, pipes, fan-coil units, and valves. Assume the fan-coil units could be used with energy derived from an oil or gas substance without significant modification. All items are depreciable and have a useful life of three years or more. The use of the equipment to heat the building is the first use to which the equipment has been put.

(c) Water is pumped from the basement through pipes to the roof solar collector. Heated water returns through pipes to a heat exchanger which transfers heat to the water in the hot water tank.

(d) The hot water tank and the oil-fired water heater utilize the same distribution pipe. Pumps and valves at the points of connection between the hot water tank, the oil-fired water heater, and the distribution pipe regulate the auxiliary energy supply use. They also prevent the oil-fired water heater from heating water in the hot water tank.

(e) An integrated control component determines whether hot water from the hot water tank or from the oil-fired water heater is distributed to fan-coil units located throughout the building.

(f) The roof solar collector is solar energy property. The pump that moves the water to the roof collector and the pipes between the roof collector and the hot water tank qualify because they are solely related to transporting solar heated water. The hot water tank qualifies because it stores water heated solely by solar radiation. The heat exchanger also qualifies.

(g) The oil-fired water heater does not qualify as solar energy property because it is auxiliary equipment.

(h) The distribution pipe, the control component, and the pumps and valves do not qualify because they serve the oil-fired water heater as well as the solar energy equipment. All of these items would qualify if used solely in connection with solar energy equipment. The fan-coil units do not qualify because they are not specially adapted to use energy derived from solar energy.

(e) *Wind energy property*—(1) *In general.* Energy property includes wind energy property. Wind energy property is equipment (and parts solely related to the functioning of that equipment) that performs a function described in paragraph (e)(2) of this section. In general, wind energy property consists of a windmill, wind-driven generator, storage devices, power conditioning equipment, transfer equipment, and parts solely related to the functioning of those items. Wind energy property does not include equipment that transmits or uses electricity derived from wind energy. In addition, limitations apply similar to those set forth in paragraph (d)(5) and (6) of this section.

(2) *Eligible functions.* Wind energy property is limited to equipment (and parts related solely to the functioning of that equipment) that—

(i) Uses wind energy to heat or cool, or provide hot water for use in, a building or structure, or

(ii) Uses wind energy to generate electricity (but not mechanical forms of energy).

(f) *Specially defined energy property*—(1) *In general.* Specially defined energy property means only those items described in paragraph (f)(4) through (14) of this section that meet the requirements of paragraph (f)(2) of this section. The items described in paragraph (f)(4) through (14) of this section also consist of related equipment, such as fans, pumps, ductwork, piping, and controls, the installation of which is necessary for the specified item to reduce the energy consumed or heat wasted by the process.

(2) *General requirements.* To be eligible, each item described in paragraph (f)(4) through (14) of this section must be installed in connection with an existing industrial or commercial facility. In addition, the principal purpose of each of those items must be reduction of energy consumed or heat wasted in any existing industrial or commercial process. See section 48(l)(10) and paragraph (l) of this section. If an item performs more than one function, only the incremental cost (as defined in paragraph (k) of this section) of the equipment qualifies.

(3) *Industrial or commercial process.* (i) A process is a means or method of producing a desired result by chemical, physical, or mechanical action. For example, equipment installed in connection with retail sales, general office use, and residential use are not used in a process within the meaning of this paragraph (f)(3).

(ii) An industrial process includes agricultural processes and thermal processes relating to production or manufacture, such as those involving boilers and furnaces.

(iii) A commercial process includes laundering and food preparation.

(iv) More than one process may be conducted in a single facility. The fact that several processes involved in the production of a product are integrated does not cause such integrated processes to be treated as one process. For example, in a food canning facility, producing prepared food from fresh vegetables is not one process but rather an integration of several processes including washing, cooking and canning.

(v) The following example illustrates this paragraph (f)(3).

Example. Corporation X, an advertising agency, acquires an automatic energy control system designed to reduce energy consumed by heating and cooling its office building. Although the use of an office for X's business is a commercial activity, heating or cooling an office is not an industrial or commercial process. The automatic energy control system does not qualify because it does not reduce energy consumed in an industrial or commercial process.

(4) *Recuperators.* Recuperators recover energy, usually in the form of waste heat from combustion exhaust gases, hot exiting product, or product cooling air, that is used to heat incoming combustion air, raw materials, or fuel. Recuperators are configurations of equipment consisting in part of fixed heat transfer surfaces between two gas flows, and include related baffles, dividers, entrance flanges, transition sections, and shells or cases enclosing the other components of the recuperator. In general, a fixed heat transfer surface absorbs heat from a gas or liquid flow or dissipates heat to the gas or liquid flow.

(5) *Heat wheels.* Heat wheels recover energy, usually in the form of waste heat, from exhaust gases to preheat incoming gases. Heat wheels are items of equipment consisting in part of regenerators (which rotate between two gas flows) and related drive components, wiper seals, entrance flanges, and transition sections.

(6) *Regenerators.* Regenerators are devices, such as checker columns or chains, that recover energy by efficiently storing heat while exposed to high temperature gases and releasing heat while exposed to low temperature gases, fluids, or solids.

(7) *Heat exchangers.* Heat exchangers recover energy, usually in the form of waste heat, from high temperature gases, liquids, or solids for transfer to low temperature gases, liquids, or solids. Heat exchangers consist in part of fixed heat transfer surfaces (described in paragraph (f)(4) of this section) separating two media. Heat exchange equipment does not include fluidized bed combustion equipment.

(8) *Waste heat boilers.* Waste heat boilers use waste heat, usually in the form of combustion exhaust gases, as a substantial source of energy. A substantial source of energy is one that comprises more than 20 percent of the energy requirement on the basis of Btu's during the course of each taxable year (including the start-up year).

(9) *Heat pipes.* Heat pipes recover energy, usually in the form of waste heat, from high temperature fluids to heat low temperature fluids. A heat pipe consists in part of sealed heat transfer chambers and a capillary structure. In general, the heat transfer chambers alternatively vaporize and condense a working fluid as it passes from one end of the chamber to the other.

(10) *Automatic energy control systems.* Automatic energy control systems automatically reduce energy consumed in an industrial or commercial process for such purposes as environmental space conditioning (*i.e.*, lighting, heating, cooling or ventilating, etc.). Automatic energy control systems include, for example, automatic equipment settings controls, load shedding devices, and relay devices used as part of such system. Property such as computer hardware installed as a part of the energy control system also qualifies, but only to the extent of its incremental cost (as defined in paragraph (k) of this section).

(11) *Turbulators.* Turbulators increase the rate of transfer of heat from combustion gases to heat exchange surfaces by increasing the turbulence in the gases. A turbulator is a baffle placed in a boiler firetube or in a heat exchange tube in industrial process equipment to deflect gases to the heat transfer surface.

(12) *Preheaters.* Preheaters recover energy, usually in the form of waste heat, from either combustion exhaust gases or steam, to preheat incoming combustion air or boiler feedwater. A preheater consists in part of fixed heat transfer surfaces (described in paragraph (f)(4) of this section) separating two fluids.

(13) *Combustible gas recovery systems.* Combustible gas recovery systems are items of equipment used to recover unburned fuel from combustion exhaust gases.

(14) *Economizers.* Economizers are configurations of equipment used to reduce energy demand or recover energy from combustion exhaust gases and other high temperature sources to preheat boiler feedwater.

(15) *Other property added by the Secretary.* [Reserved]

(g) *Recycling equipment*—(1) *In general.* Recycling equipment is equipment used exclusively to sort and prepare, or recycle, solid waste (other than animal waste) to recover usable raw materials ("recovery equipment"), or to convert solid waste (including animal waste) into fuel or other useful forms of energy ("conversion equipment"). Recycling equipment may include certain other onsite related equipment.

(2) *Recovery equipment.* Recovery equipment includes equipment that—

(i) Separates solid waste from a mixture of waste,

(ii) Applies a thermal, mechanical, or chemical treatment to solid waste to ensure the waste will properly respond to recycling, or

(iii) Recycles solid waste to recover usable raw materials, but not beyond occurrence of the first of the following:

(A) The point at which a material has been created that can be used in beginning the fabrication of an end-product in the same way as materials from a virgin substance. Examples are the fiber stage in textile recycling, the newsprint or paperboard stage in paper recycling, and the ingot stage for other metals (other than iron and steel). In the case of recycling iron or steel, recycling equipment does not include any equipment used to reduce solid waste to a molten state or any process thereafter.

(B) The point at which the material is a marketable product (*i.e.*, has a value other than for recycling) even if the material is not marketed by the taxpayer at that point.

(3) *Conversion equipment.* Conversion equipment includes equipment that converts solid waste into a fuel or other usable energy, but not beyond the point at which a fuel, steam, electricity, hot water, or other useful form of energy has been created. Thus, combustors, boilers, and similar equipment may be eligible if used for a conversion process, but steam and heat distribution systems between the combustor or boiler and the point of use are not eligible.

(4) *On-site related equipment.* Recycling equipment also includes onsite loading and transportation equipment, such as conveyors, integrally related to other recycling equipment. This equipment may include equipment to load solid waste into a sorting or preparation machine and also a conveyor belt system that transports solid waste from preparation equipment to other equipment in the recycling process.

(5) *Solid waste.* (i) The term "solid waste" has the same meaning as in § 1.103–8(f)(2)(ii)(*b*), subject to the following exceptions and the other rules of this subparagraph (5):

(A) The date the equipment is placed in service is substituted in the first sentence of § 1.103–8(f)(2)(ii)(*b*) for the date of issue of the obligations, and

(B) Material that has a market value at the place it is located only by reason of its value for recycling is not considered to have a market value.

(ii) Solid waste may include a nominal amount of virgin materials, liquids, or gases, not to exceed 10 percent. If more than 10 percent of the material recycled during the course of any taxable year (including the "start up" year) consists of virgin material, liquids, or gases, the equipment ceases to be energy property and is subject to recapture under section 47. The determination of the portion of virgin material, liquids, or gases used is based on volume, weight, or Btu's whichever is appropriate.

(6) *Ineligible equipment.* Transportation equipment, such as trucks, that transfer solid waste between geographically separated sites (*e.g.*, the collection point and the recycling point) is not eligible. Steam and heat distribution systems are also ineligible.

(7) *Increased recycling capacity.* If the equipment both replaces recycling capacity and increases that capacity at a particualr site, only the incremental cost (as defined in paragraph (k) of this section) of increasing the capacity qualifies. Recycling capacity is determined by the ability to produce a product not previously produced by the taxpayer, or more of an existing product, in a way that does not lower overall production.

(8) *Examples.* The following examples illustrate this paragraph (g).

Example (1) Corporation W recycles aluminum scrap metal. W owns a junk yard where it collects and crushes the metal into compact units. W's trucks bring the scrap metal from the junk yard to its main plant located 3 miles away. W's furnace equipment at the main plant reduces the scrap to the molten state and W's rolling equipment rolls the aluminum into sheets. The furnace qualifies, but for two separate reasons the rolling equipment does not qualify. First, the molten aluminum would be a marketable product if reduced to ingots prior to rolling. It is not necessary that W actually reduce the molten aluminum to ingots. Second, the molten aluminum could be used in the same way as virgin material.

Example (2) Corporation X manufactures newsprint using wood chips discarded during X's lumber operations. Assume X could sell the wood chips to other companies located a short distance from X's mill for use as a fuel. None of the equipment used to manufacture the newsprint qualifies.

Example (3) Assume the same facts as in example (2) except X uses old newspapers which have no value except for recycling in the area where X's mill is located. The equipment qualifies.

Example (4) Corporation Y recycles municipal waste. Assume the municipal waste is "solid waste" under paragraph (g)(5) of this section. During the first taxable year Y operates the equipment, Y uses 8,500 pounds of municipal waste and 1,500 pounds of virgin material and liquids. No energy credit is allowed for the equipment.

Example (5) Corporation Z owns a waste recovery facility. The corrugated paper portion of the waste stream is picked off a conveyor as it enters the facility. The corrugated paper is baled and sold as a secondary paper product. Z acquires shredding and air-classification equipment. Corrugated paper that is not removed from the conveyor belt enters the new equipment for production as a fuel. Z increases the input of corrugated paper so that the same amount of corrugated paper is removed from the conveyor to be baled. The excess paper that is not removed for baling enters the shredding and air-classification equipment. The new equipment qualifies.

(h) *Shale oil equipment*—(1) *In general.* Shale oil equipment used in mining or either surface or *in situ* processing qualifies as energy property. Shale oil equipment means equipment used exclusively to mine, or produce or extract oil from, shale rock.

(2) *Eligible processes.* In general, processing equipment qualifies if used in or after the mining stage and up through the retorting process. Thus, eligible processes include crushing, loading into the retort, and retorting, but not hydrogenation, refining, or any process subsequent to retorting. However, with respect to *in situ* processing, eligible processes include creating the underground cavity.

(3) *Eligible equipment.* Shale oil equipment includes—

(i) Heading jumbos, bulldozers, and scaling and bolting rigs used to create an underground cavity for *in situ* processing.

(ii) On-site water supply and treatment equipment and handling equipment for spent shale.

(iii) Crushing and screening plant equipment, such as hoppers, feeders, vibrating screens, and conveyors.

(iv) Briquetting plant equipment, such as hammer mills and vibratory pan feeders, and

(v) Retort equipment, including direct cooling and condensing equipment.

(i) [Reserved]

(j) *Natural gas from geopressured brine.* Equipment used exclusively to extract natural gas from geopressured brine described in section 613A(b)(3)(C)(i) is energy property. Eligible equipment includes equipment used to separate the gas from saline water and remove other impurities from the gas. Equipment is eligible only up to the point the gas may be introduced into a pipeline.

(k) *Incremental cost.* The term "incremental cost" means the excess of the total cost of equipment over the amount that would have been expended for the equipment if the equipment were not used for a qualifying purpose. For example, assume equipment costing $100 performs a pollution control function and another function. Assuming it would cost $60 solely to perform the nonqualifying function, the incremental cost would be $40.

(l) *Existing*—(1) *In general.* for purposes of section 48(l), the term "existing" means—

(i) When used in connection with a facility or equipment, 50 percent or more of the basis of that facility or equipment is attributable to construction, reconstruction, or erection before October 1, 1978, or

(ii) When used in connection with an industrial or commercial process, that process was carried on in the facility as of October 1, 1978.

(2) *Industrial or commercial process.* (i) A process will be considered the same as the process carried on in the facility as of October 1, 1978, unless and until capitalizable expenditures are paid or incurred for modification of the process. The expenditures need not be capitalized in fact; it is sufficient if the taxpayer has an option or may elect to capitalize. In general, the date of change will be the date the expenditures are properly chargeable to capital account. If the taxpayer properly elects to expense a capitalizable expenditure, the date of change will be the date the expenditure could have been properly chargeable to capital account if the expenditure had been capitalized. Recapture will not occur by reason of a change in a process unless the process change also changes the use of the equipment. See example (1) of § 1.47-1(b)(5).

(m) *Quality and performance standards*—(1) *In general.* Energy property must meet quality and performance standards, if any, that have been prescribed by the Secretary (after consultation with the Secretary of Energy) and are in effect at the time of acquisition.

(2) *Time of acquisition.* Under this paragraph (m) the time of acquisition is—

(i) The date the taxpayer enters into a binding contract to acquire the property or

(ii) For property constructed, reconstructed, or erected by the taxpayer, (A) the earlier of the date it begins construction, reconstruction, or erection of the property, or (B) the date the taxpayer and another person enter into a binding contract requiring each to construct, reconstruct, or erect property and place the property in service for an agreed upon use. See example under paragraph (m)(4) of this section.

(3) *Binding contract.* Under this paragraph (m), a binding contract to construct, reconstruct, or erect property, or to acquire property, is a contract that is binding at all times on the taxpayer under applicable State or local law. A binding contract to construct, reconstruct, or erect property or to acquire property, does not include a contract for preparation of architect's sketches, blueprints, or performance of any other activity not involving the beginning of physical work.

(4) *Example.* The following example illustrates this paragraph (m).

Example. Corporation X owns a junk yard. Corporation Y manufactures recycling equipment and operates several recycling facilities. On January 1, 1978, X and Y enter into a written contract that is binding on both parties on that date and at all times thereafter. Under the contract's terms X will supply scrap metals to Y and Y agrees in return to build a recycling facility on land adjacent to the junk yard. Y will own and operate the facility using the scrap metal supplied by X. Y may treat the agreement as a binding contract under paragraph (m) (2) and (3) of this section.

(n) *Public utility property*—(1) *Inclusions.* Public utility property is included in both of the following categories of energy property:

(i) Shale oil equipment and

(ii) Equipment for producing natural gas from geopressured brine.

(2) *Exclusions.* Public utility property is excluded from each of the following categories of energy property:

(i) Alternative energy property,

(ii) Specially defined energy property,

(iii) Solar or wind energy property, and

(iv) Recycling equipment.

(3) *Public utility property.* The term "public utility property" has the meaning given in section 46(f)(5).

(Sec. 7805 (68A Stat. 917, 26 U.S.C. 7805) and 38 (b) (70 Stat. 902, 26 U.S.C. 38) of the Internal Revenue Code of 1954)

William E. Williams,

Acting Commissioner of Internal Revenue.

Approved: January 19, 1981.

Emil M. Sunley,

Acting Assistant Secretary of the Treasury.

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26 CFR Parts 20 and 25

[T.D. 7761]

Employee Retirement Benefits Excluded From Gross Estate and Taxable Gifts

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final regulations.

SUMMARY: This document provides final regulations relating to the estate and gift tax treatment of amounts payable under qualified employee pension, profit-sharing, stock bonus and annuity plans and under individual retirement plans. Changes to the applicable tax law were made by the Tax Reform Act of 1976, the Revenue Act of 1978 and the Technical Corrections Act of 1979. The regulations provide necessary guidance to the public for compliance with the law, and primarily affect the estates of decedents with respect to whom amounts are payable under such plans.

DATE: The regulations are generally effective for decedents dying and transfers made after December 31, 1976.

FOR FURTHER INFORMATION CONTACT: Richard L. Johnson of the Employee Plans and Exempt Organizations Division, Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, D.C. 20224, Attention: CC:LR:T:EE-25-78, 202-566-3544 (Not a toll-free number).

SUPPLEMENTARY INFORMATION

Background

On March 2, 1978, the Federal Register published at 44 FR 11791 proposed amendments to the Estate Tax Regulations (26 CFR Part 20) and the Gift Tax Regulations (26 CFR Part 25) under sections 2039 and 2517 of the Internal Revenue Code of 1954. The amendments were proposed to conform the regulations to section 2009(c) of the Tax Reform Act of 1976 (90 Stat. 1894) and section 142 of the Revenue Act of 1978 (92 Stat. 2786). No public hearing was requested. After consideration of all comments regarding the proposed amendments, those amendments are adopted as revised by this Treasury decision.

Code section 2039(f) was also amended by section 101(a)(8)(B) of the Technical Corrections Act of 1979 (94 Stat. 201). The regulations adopted by this Treasury decision reflect that amendment.

Rollovers by a Surviving Spouse

The proposed regulations took no position with regard to the consequences to an employee's gross estate if the employee's surviving spouse rolls over to an individual retirement plan all or a portion of a lump sum distribution paid on account of the death of the employee. The final regulations provide that in the case of such a rollover, the lump sum distribution is excluded from the employee's gross estate. The final regulations further provide that, with respect to the gross estate of a spouse who has made such a rollover, amounts payable under an individual retirement plan are not eligible for the estate tax exclusion to the extent that they are attributable to the rollover.

Taxpayer's Election

Under the proposed regulations, no amount paid or payable as a lump sum distribution under a qualified plan is excludable from a deceased employee's gross estate unless the recipient makes the required "section 402(a)/403(a) taxation election." The proposed regulations provided that the election is made by the recipient's filing an income tax return for the taxable year of the distribution that is consistent with the election.

Some comments requested that the regulations be revised to provide that the recipient make the election on the estate tax return. Although the election is provided for under the estate tax law, for the electing taxpayer the election is primarily an income tax election. Accordingly, the final regulations follow the proposed regulations. However, the proposed regulations have been revised to provide that when the estate tax return is filed before the recipient's income tax return, the return for the estate may reflect the exclusion of a lump sum distribution from the gross estate, even though the recipient has not yet made the required election.

The regulations have also been clarified to emphasize that once a recipient files an income tax return or makes a rollover contribution that constitutes the election described in the regulations, the election cannot be revoked. Thus, the filing of an amended income tax return reflecting either the long-term capital gain or 10-year averaging treatment otherwise afforded lump sum distributions will not be given effect for income tax and estate tax purposes. This is true even if the amended return is accompanied by the payment of any estate tax that would be due if the distribution were included in the gross estate.

IRA Provisions Added

The final regulations also contain two additional clarifying rules governing the estate tax exclusion for amounts payable under individual retirement plans. The first of these rules reflects § 1.408-2(b)(7)(ii) of the Income Tax Regulations. That section permits a beneficiary under an individual retirement plan to elect, for purposes of the income tax rules, to treat the plan as one established on the beneficiary's behalf, rather than as a plan under which amounts are payable to the beneficiary as a beneficiary. Under § 20.2039-5(c)(5), the amount with respect to which the decedent, as a beneficiary, made the election is not an amount with respect to which the exclusion described in section 2039(e) will apply.

The final regulations also contain, in § 20.2039-5(c)(6), rules relating to individual retirement plan rollovers. Under section 408(d)(3)(A)(i) or 409(b)(3)(C), amounts paid under an individual retirement plan may, subject to certain conditions, be paid ("rolled over") to another such plan. Under the income tax rules, the rolled over amounts are not included in gross income. The final regulations clarify that the rules under section 2039(e) are applied to the plan that is the recipient of the rollover (the "transferee plan") by taking into account the source of the contributions made to the transferor plan. Under the regulations the exclusion described in 2039(e) does not apply with respect to any portion of the rollover contribution to the transferee plan that is determined to be attributable to a contribution to the transferor plan with respect to which the exclusion is denied.

Examples (3) and (4) have been added to § 20.2039-5(d) to illustrate these added clarifying rules.

Community Property Interests in IRA's

Several persons commenting on the proposed regulations raised questions with regard to the treatment of a decedent's community property interest in an IRA.

Section 2039 does not include rules specifically governing the treatment of community property interests in individual retirement plans. Community property interests are the subject of section 2039(d), but that section by its term applies only to community property interests in a qualified employee plan or certain annuity contracts. Subject to certain limitations, if the non-employee spouse predeceases the employee spouse, the decedent spouse's community interest under the qualified plan or contract is excluded from the gross estate.

Some commenters urged that the final regulations include a parallel rule for IRA's. The final regulations do not include such a broad rule. Absent statutory authority in subsection (d) or (e) of section 2039, a rule like that in subsection (d) cannot be applied to the predeceased spouse's community interest in an individual retirement plan. This does not mean that the exclusion is therefore denied. The community interest of the predeceased spouse is excludible as described in section 2039(e), provided that the qualifying annuity rule in § 20.2039–5(b) is satisfied with respect to that interest.

Employer Securities

The Technical Corrections Act of 1979 amended Code section 2039(f) to provide that a recipient's election under that section does not preclude the application of Code section 402(e)(4)(J) to the recipient's lump sum distribution. In general, section 402(e)(4)(J) provides that the net unrealized appreciation in employer securities received in a lump sum distribution is excluded from the recipient's gross income for the year of receipt.

Clarifying Revisions

In addition to the revisions described above, the final regulations include certain corrective and clarifying changes. In particular, the discussion of the treatment of annuity contracts purchased for and distributed to a decedent's beneficiary under either a qualified plan or an individual retirement plan has been expanded. The example in the proposed regulations relating to individual retirement plans also has been expanded. With regard to distributions under qualified employee plans, this document revises two examples under § 20.2039–2 that were not proposed to be amended in the notice of proposed rulemaking.

Drafting Information

The principal author of this regulation is Richard L. Johnson of the Employee Plans and Exempt Organizations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulation, both in matters of substance and style.

Adoption of amendments to the regulations

Accordingly, the proposed amendments to 26 CFR Parts 20 and 25 are adopted subject to the changes indicated below.

Estate Tax Regulations

[26 CFR Part 20]

Paragraph 1. Paragraph (b) of § 20.2039–2 is amended by revising Examples (2) and (3) to read as follows:

§ 20.2039–2 Annuities under "qualified plans" and section 403(b) annuity contracts.

* * * * *

(b) *Plans and annuity contracts to which section 2039(c) applies.* * * *

Example 2. Pursuant to a profit-sharing plan, the employer made contributions to a trust which were allocated to the employee's individual account. Under the plan, the employee would, upon retirement at age 60, receive a distribution of the entire amount credited to the account. If the employee should die before reaching retirement age, the amount credited to the account would be distributed to the employee's designated beneficiary. Assume that the employee died before reaching the retirement age and that at such time the plan met the requirements of section 401(a). Since the payment to the designated beneficiary is receivable under a qualified profit-sharing plan, the provisions of section 2039(c) apply. However, if the payment is a lump sum distribution to which § 20.2039–3 or § 20.2039–4 applies, the payment is excludable from the decedent's gross estate only as provided in such section.

Example 3. Pursuant to a pension plan, the employer made contributions to a trust which were used by the trustee to purchase a contract from an insurance company for the benefit of an employee. The contract was to provide the employee, upon retirement at age 65, with an annuity of $100 per month for life, and was to provide the employee's designated beneficiary upon the employee's death after retirement, with a similar annuity for life. The contract further provided that if the employee should die before reaching retirement age, a lump sum payment equal to the greater of (a) $10,000 or (b) the reserve value of the policy would be paid to the designated beneficiary in lieu of the annuity. Assume that the employee died before reaching the retirement age and that at such time the plan met the requirements of section 401(a). Since the payment to the designated beneficiary is receivable under a qualified pension plan, the provisions of section 2039(c) apply. However, if the payment is a lump sum distribution to which § 20.2039–3 or § 20.2039–4 applies, the payment is excludable from decedent's gross estate only as provided in such section. It should be noted that for purposes of the exclusion under section 2039(c) it is immaterial whether or not the payment constitutes the proceeds of life insurance under the principles set forth in § 20.2039–1(d).

* * * * *

Par. 2. Paragraph (c)(1) of § 20.2039–2, as set forth in the notice of proposed rulemaking, is amended by revising subdivisions (ii) and (iii) to read as follows:

§ 20.2039–2 Annuities under "qualified plans" and section 403(b) annuity contracts.

* * * * *

(c) *Amounts excludable from the gross estate.*

(1) * * *

(ii) In the case of a decedent dying before January 1, 1977, payments or contributions made under a plan described in paragraph (b) (1), (2) or (3) of this section on behalf of the decedent for a period for which the decedent was self-employed, within the meaning of section 401(c)(1), with respect to the plan are considered payments or contributions made by the decedent and not by the employer.

(iii) In the case of a decedent dying after December 31, 1978, however, payments or contributions made under a plan described in paragraph (b) (1), (2) or (5) of this section on behalf of the decedent for a period for which the decedent was self-employed, within the meaning of section 401(c)(1), with respect to the plan are considered payments or contributions made by the employer to the extent the payments or contributions are, or were, deductible under section 404 or 405(c). Contributions or payments attributable to that period which are not, or were not, so deductible are considered made by the decedent.

* * * * *

Par. 3. Section 20.2039–3, as set forth in the notice of proposed rulemaking, is amended by revising the second sentence in paragraph (a) and the second sentence in paragraph (b). Paragraph (a), as revised, and the revised sentence in paragraph (b) read as follows:

§ 20.2039–3 Lump sum distributions under "qualified plans;" decedents dying after December 31, 1976, and before January 1, 1979.

(a) *Limitation of section 2039(c) exclusion.* This section applies in the case of a decedent dying after December 31, 1976, and before January 1, 1979. If a lump sum distribution is paid with respect to the decedent under a plan described in § 20.2039–2(b) (1) or (2) (a "qualified plan"), no amount payable with respect to the decedent under the plan is excludable from the decedent's gross estate under § 20.2039–2.

(b) *"Lump sum distribution" defined.* * * * The distribution of an annuity contract is not a lump sum distribution for purposes of this section, and § 20.2039–2 will apply with respect to the distribution of an annuity contract without regard to whether the contract is included in a distribution that is otherwise a lump sum distribution under this paragraph (b). * * *

Par. 4. Section 20.2039–4, as set forth in the notice of proposed rulemaking, is amended by revising the second sentence in paragraph (a), by revising paragraphs (b), (c) and (d), by redesignating paragraphs (e) and (f) as paragraphs (f) and (g), by adding a new paragraph (e), and by deleting paragraph (g). As revised, § 20.2039–4 reads as follows:

§ 20.2039–4 Lump sum distributions from "qualified plans;" decedents dying after December 31, 1978.

(a) *Limitation on section 2039(c) exclusion.* This section applies in the case of a decedent dying after December 31, 1978. If a lump sum distribution is paid or payable with respect to a decedent under a plan described in § 20.2039–2(b) (1) or (2) (a "qualified plan"), no amount paid or payable with respect to the decedent under the plan is excludable from the decedent's gross estate under § 20.2039–2, unless the recipient of the distribution makes the section 402(a)/403(a) taxation election described in paragraph (c) of this section. For purposes of this section, an amount is payable as a lump sum distribution under a plan if, as of the date the estate tax return is filed (as determined under § 20.2039–3(d)), it is payable as a lump sum distribution at the election of the recipient or otherwise.

(b) *"Lump sum distribution" defined; treatment of annuity contracts.* For purposes of this section the term "lump sum distribution" means a lump sum distribution defined in section 402(e)(4)(A) that satisfies the requirements of section 402(e)(4)(C), relating to the aggregation of certain trusts and plans. A distribution is a lump sum distribution for purposes of this section without regard to the election described in section 402(e)(4)(B). The distribution of an annuity contract is not a lump sum distribution for purposes of this section, and the limitation described in this section does not apply to an annuity contract distributed under a plan. Accordingly, if the amount payable with respect to a decedent under a plan is paid to a recipient partly by the distribution of an annuity contract, and partly by the distribution of an amount that is a lump sum distribution within the meaning of this paragraph (b), § 20.2039–2 shall apply with respect to the annuity contract without regard to whether the recipient makes the section 402(a)/403(a) taxation election with respect to the remainder of the distribution.

(c) *Recipient's section 402(a)/403(a) taxation election.* The section 402(a)/403(a) taxation election is the election by the recipient of a lump sum distribution to treat the distribution as—

(1) Taxable under section 402(a), without regard to section 402(a)(2), to the extent includable in gross income (in the case of a distribution under a qualified plan described in § 20.2039–2(b)(1)),

(2) Taxable under section 403(a), without regard to section 403(a)(2), to the extent includable in gross income (in the case of a distribution under a qualified annuity contract described in § 20.2039–2(b)(2)), or

(3) A rollover contribution, in whole or in part, under section 402(a)(7) (relating to rollovers by a decedent's surviving spouse).

Accordingly, if a recipient makes the election, no portion of the distribution is taxable to the recipient under the 10-year averaging provisions of section 402(e) or as long-term capital gain under section 402(a)(2). However, a recipient's election under this paragraph (c) does not preclude the application of section 402(e)(4)(J) to any securities of the employer corporation included in the distribution.

(d) *Method of election.* The recipient of a lump sum distribution shall make the section 402(a)/403(a) taxation election by—

(1) Determining the income tax liability on the income tax return (or amended return) for the taxable year of the distribution in a manner consistent with paragraph (c) (1) or (2) of this section, or

(2) Rolling over all or any part of the distribution under section 402(a)(7).

If the date the estate tax return is filed precedes the date on which the recipient makes the section 402(a)/403(a) taxation election with respect to a lump sum distribution, the estate tax return may nevertheless reflect the election, as if the election had been made.

(e) *Election irrevocable.* If a recipient of a lump sum distribution files an income tax return (or amended return) or makes a rollover contribution that constitutes the section 402(a)/403(a) taxation election described in paragraphs (c) and (d), the election may not be revoked. Accordingly, a subsequent and amended income tax return filed by the recipient that is inconsistent with the prior election will not be given effect for purposes of section 2039 and section 402 or 403.

(f) *Lump sum distribution to multiple recipients.* In the case of a lump sum distribution paid or payable under a qualified plan with respect to the decedent to more than one recipient, the exclusion under § 20.2039–2 applies to so much of the distribution as is paid or payable to a recipient who makes the section 402(a)/403(a) taxation election.

(g) *Distributions of annuity contracts included multiple distributions.* Notwithstanding that a recipient makes the section 402(a)/403(a) taxation election with respect to a lump sum distribution that includes the distribution of an annuity contract, the distribution of an annuity contract is to be taken into account by the recipient for purposes of the multiple distribution rules under section 402(e).

Par. 5. All following paragraph (a) in § 20.2039–5, as set forth in the notice of proposed rulemaking, is revised to read as follows:

§ 20.2039–5 Annuities under individual retirement plans.

* * * * *

(b) *Qualifying annuity.* For purposes of this section, the term "qualifying annuity" means an annuity contract or other arrangement providing for a series of substantially equal periodic payments to be made to a beneficiary for the beneficiary's life or over a period ending at least 36 months after the decedent's death. The term "annuity contract" includes an annuity purchased for a beneficiary and distributed to the beneficiary, if under section 408 the contract is not included in the gross income of the beneficiary upon distribution. The term "other arrangement" includes any arrangement arising by reason of the decedent's participation in the program providing the individual retirement plan. Payments shall be considered "periodic" if under the arrangement or contract (including a

distributed contract) payments are to be made to the beneficiary at regular intervals. If the contract or arrangement provides optional payment provisions, not all of which provide for periodic payments, payments shall be considered periodic only if an option providing periodic payments is elected not later than the date the estate tax return is filed (as determined under § 20.2039–2(d)). For this purpose, the right to surrender a contract (including a distributed contract) for a cash surrender value will not be considered an optional payment provision. Payments shall be considered "substantially equal" even though the amounts receivable by the beneficiary may vary. Payments shall not be considered substantially equal, however, if more than 40 percent of the total amount payable to the beneficiary under the individual retirement plan, determined as of the date of the decedent's death and excluding any postmortem increase, is payable to the beneficiary in any 12-month period.

(c) *Amount excludable from gross estate*—(1) *In general.* Except as otherwise described in this paragraph (c), the amount excluded from the decedent's gross estate under section 2039(e) is the entire value of the qualifying annuity (as determined under §§ 20.2031–1 and 20.2031–7 through 20.2031–10) payable under the individual retirement plan.

(2) *Excess contribution.* In any case in which there exists, on the date of the decedent's death, an excess contribution (as defined in section 4973(b)) with respect to the individual retirement plan, the amount excluded from the value of the decedent's gross estate is determined under the following formula:

$$E = A - A(X \div C - R)$$

Where:

E = the amount excluded from the decedent's gross estate under section 2039(e),

A = the value of the qualifying annuity at the decedent's death (as determined under §§ 20.2031–1 and 20.2031–7 through § 20.2031–10),

X = the amount which is an excess contribution at the decedent's death (as determined under section 4973(b)),

C = the total amount contributed by or on behalf of the decedent to the individual retirement plan, and

R = the total of amounts paid or distributed from the individual retirement plan before the death of the decedent which were either includable in the gross income of the recipient under section 408(d)(1) and represented the payment or distribution of an excess contribution, or were payments or distributions described in section 408(d)(4) or (5) (relating to returned excess contributions).

(3) *Certain section 403(b)(8) rollover contributions.* This subparagraph (3) applies if the decedent made a rollover contribution to the individual retirement plan under section 403(b)(8), and the contribution was attributable to a distribution under an annuity contract other than an annuity contract described in § 20.2039–2(b)(3). If such a rollover contribution was the only contribution made to the plan, no part of the value of the qualifying annuity payable under the plan is excluded from the decedent's gross estate under section 2039(e). If a contribution other than such a rollover contribution was made to the plan, the amount excluded from the decedent's gross estate is determined under the formula described in subparagraph (2) of this paragraph, except that for purposes of that formula, X includes the amount that was a rollover contribution under section 403(b)(8) attributable to a distribution under an annuity contract not described in § 20.2039–2(b)(3).

(4) *Surviving spouse's rollover contribution.* This subparagraph (4) applies if the decedent made a rollover contribution to the individual retirement plan under section 402(a)(7), relating to rollovers by a surviving spouse. If the rollover contribution under section 402(a)(7) was the only contribution made by the decedent to the plan, no part of the value of the qualifying annuity payable under the plan is excluded from the decedent's gross estate under section 2039(e). If a contribution other than a rollover contribution under section 402(a)(7) was made by the decedent to the plan, the amount excluded from the decedent's gross estate is determined under the formula described in subparagraph (2) of this paragraph, except that for purposes of that formula, X includes the amount that was a rollover contribution under section 402(a)(7).

(5) *Election under § 1.408–2(b)(7)(ii).* This subparagraph (5) applies if the decedent at any time made the election described in § 1.408–2(b)(7)(ii) with respect to an amount in the individual retirement plan. If this subparagraph (5) applies, the amount excluded from the decedent's gross estate is determined under the formula described in subparagraph (2), except that for purposes of that formula, X and C include the amount with respect to which the election was made.

(6) *Plan-to-plan rollovers.* (i) This subparagraph (6) applies if the individual retirement plan is a transferee plan. A "transferee plan" is a plan that was the recipient of a contribution described in section 408(d)(3)(A)(i) or 409(b)(3)(C) (relating to rollovers from one individual retirement plan to another) made by the decedent. The amount of the contribution described in section 408(d)(3)(A)(i) or 409(b)(3)(C) is the "rollover amount." The plan from which the rollover amount was paid or distributed to the decedent is the "transferor plan."

(ii) If the decedent made a contribution described in subparagraph (3) or (4) to the transferor plan, the amount excluded from the decedent's gross estate with respect to the transferee plan is determined under the formula described in subparagraph (2), except that for purposes of that formula, X includes so much of the rollover amount as was attributable to the contribution to the transferor plan that was described in subparagraph (3) or (4). The extent to which a rollover amount is attributable to a contribution described in subparagraph (3) or (4) that was made to the transferor plan is determined by multiplying the rollover amount by a fraction, the numerator of which is the amount of such contribution, and the denominator of which is the sum of all amounts contributed by the decedent to the transferor plan (if not returned as described under R in subparagraph (2)), and any amount in the transferor plan to which the election described in subparagraph (5) applied.

(iii) If the decedent made the election described in subparagraph (5) with respect to an amount in the transferor plan, the amount excluded from the decedent's gross estate with respect to the transferee plan is determined under the formula described in subparagraph (2), except that for purposes of that formula, X includes so much of the rollover amount as was attributable to the amount in the transferor plan to which the election applied. The extent to which a rollover amount is attributable to an amount in the transferor plan to which the election applied is determined by multiplying the rollover amount by a fraction, the numerator of which is the amount to which the election applied, and the denominator of which is the sum of all amounts contributed by the decedent to the transferor plan (if not returned as described under R in subparagraph (2)), and the amount in the transferor plan to which the election applied.

(iv) If a transferor plan described in this subparagraph (6) was also a transferee plan, then the rules described in this subparagraph (6) are to be applied with respect to both the rollover amount paid to the plan and the rollover amount thereafter paid from the plan.

(d) *Examples.* The provisions of this section are illustrated by the following examples:

Example (1). (1) A establishes an individual retirement account described in section 408 (a) on January 1, 1976, when A is age 65. A's only contribution to the account is a rollover contribution described in section 402(a)(5). The trust agreement provides that A may at any time elect to have the balance in the account distributed in one of the following methods:

(i) A single sum payment of the account,

(ii) Equal or substantially equal semi-annual payments over a period equal to A's life expectancy, or

(iii) Equal or substantially equal semi-annual payments over a period equal to the life expectancy of A and A's spouse.

(2) The trust agreement further provides that although semiannual payments have commenced under option (ii) or (iii), A (or A's surviving spouse) may, by written notice to the trustee, receive all or a part of the balance remaining in the account. In addition, under option (ii), any balance remaining in the account at A's death is payable in a single sum to A's designated beneficiary. Under option (iii), any balance remaining in the account at the death of the survivor of A or A's spouse is payable in a single sum to a beneficiary designated by A or A's surviving spouse.

(3) A elects option (iii), and the first semiannual payment is made to A on July 1, 1976. On that date, A's life expectancy is 15 years, and that of A's spouse is 22 years. Under option (iii), the semiannual payments to A or A's surviving spouse will continue until July 1, 1998.

(4) A dies on November 20, 1978. On December 15, 1978, the trust agreement is modified so that A's surviving spouse no longer may elect to receive all or part of the balance remaining in the account. The value of the semiannual payments payable to A's spouse is excluded from A's gross estate under section 2039(e).

(5) A's spouse dies July 12, 1981, and the single sum payment payable on account of the death of A's spouse is paid to the designated beneficiary on August 1, 1981. Notwithstanding that the balance in the account was paid to the designated beneficiary within 36 months after A's death, the value of the semiannual payments payable to A's spouse are excluded from A's gross estate, since at A's death those semiannual payments were to be paid over a period extending beyond 36 months. Section 2039(e) does not apply to exclude any amount from the estate of A's spouse, because A's spouse was only a beneficiary and not the individual on whose behalf the account was established.

Example (2). Assume the same facts as in example (1), except that the trust agreement is not modified so that A's surviving spouse no longer may elect to receive all or part of the balance remaining in the account (see (2) and (4) in example (1)). Instead, the balance of the account is applied toward the purchase of a contract providing an immediate annuity, the contract is distributed to A's surviving spouse on December 15, 1978, and under section 408 the contract is not included in the gross income of the spouse upon its distribution. The value of the annuity contract is excluded from A's gross estate, if the contract provides for a series of substantially equal periodic payments (within the meaning of paragraph (b) of this section) to be made over the life of A's surviving spouse or over a period not ending before the date 36 months after A's death.

Example (3). (1) B establishes an individual retirement plan described in section 408(a) ("IRA B") on February 6, 1981, in order to receive a $220,000 rollover contribution from a qualified plan, as described in section 402(a)(5). B dies August 14, 1981. C, an individual, is the sole beneficiary under IRA B. The amount in IRA B ($238,000) is payable to C in whole or part as C may elect. Because the amount in IRA B is payable to C as other than a qualifying annuity, within the meaning of paragraph (b) of this section, no amount is excluded from B's gross estate under section 2039(e).

(2) On October 17, 1981, C contributes $1,500 on C's own behalf to IRA B. Under § 1.408-2(b)(7)(ii), C's contribution will cause IRA B to be treated as being maintained by and on behalf of C ("IRA C"), and C's making the contribution constitutes an election to which paragraph (c)(5) of this section applies. The balance in IRA C immediately before C's contribution is $240,000. Accordingly, the amount with respect to which C made the election is $240,000.

(3) C dies January 19, 1982. E, an individual, is the sole beneficiary under the plan, and the amounts payable to E ($242,000) are payable as a qualifying annuity, within the meaning of paragraph (b) of this section.

(4) The rules described in section 2039(e) and this section are applied with respect to the gross estate of C without regard to whether amounts now payable under IRA C were or were not excluded from B's gross estate. Under paragraph (c) of this section, the amount not excluded from C's gross estate is the value of the qualifying annuity payable to E ($242,000), multiplied by the fraction $240,000/ ($240,000+$1,500). Thus, the amount not excluded from C's gross estate is $240,497. [($242,000) ($240,000÷$240,000+$1,500)]=$240,497.The amount excluded is therefore $1,503 ($242,000−$240,497).

Example (4). (1) F, an individual, establishes an individual retirement plan ("IRA F1") in 1977 and makes $1,250 annual contributions for 1977, 1978, 1979 and 1980 (4×$1,250=$5,000), each of which is deducted by F under section 219. In February 1980, F receives an $85,000 distribution on account of the death of G, F's spouse, from the qualified plan of G's former employer, and rolls it over into IRA F1, under section 402(a)(7). Because IRA F1 includes a rollover contribution under section 402(a)(7), paragraph (c)(4) of this section applies. In 1981, F's entire interest in IRA F1, $100,000, is paid to F and contributed to another individual retirement plan ("IRA F2") under section 408(d)(3)(A)(i). IRA F2 is a transferee plan to which paragraph (c)(6) of this section applies because of the rollover. F makes a $1,500 deductible contribution to IRA F2 for 1981.

(3) Under paragraph (c) of this section, the amount not excluded from F's gross estate is the value of the qualifying annuity payable under IRA F2 multiplied by the fraction $90,700/$101,500. Accordingly, the amount not excluded is $139,006. [($148,000) ($90,700/$101,500)=$139,006.] The amount excluded is $8,994 ($148,000−$139,006).

(4) The numerator of the fraction ($90,700) is determined by multiplying the amount rolled over from IRA F1 to IRA F2 ($100,000) by a fraction, the numerator of which is the amount of the rollover contribution to IRA F1 ($85,000), and the denominator of which is the total contributions to IRA F1 ($85,000+$5,000=$90,000). [($100,000) ($85,000/$90,000)=$90,700.]

(5) The denominator of the fraction ($101,500) is the sum of the contributions to IRA F2 (the $100,000 rollover contribution from IRA F1, and the $1,500 annual contribution to IRA F2).

Gift Tax Regulations

[26 CFR Part 25]

Par. 6. Paragraph (c)(1) of § 25.2517–1, as set forth in the notice of proposed rulemaking, is amended by revising subdivisions (ii) and (vi) to read as follows:

§ 25.2517–1 Employees' annuities.

* * * * *

(c) *Limitation on amount excludable from gift*—(1) * * *

(ii) For transfers made before January 1, 1977, payments or contributions made to a plan described in paragraph (b)(1), (i), (ii) or (vi) of this section on behalf of an individual for a period for which the individual was self-employed, within the meaning of section 401(c)(1), with respect to the plan are considered payments or contributions made by the employee.

* * * * *

(vi) In the case of a plan described in paragraph (b)(1) (i), (ii) or (vi) of this section, an amount includable in the gross income of an employee under section 1379(b) (relating to shareholder-beneficiaries under certain plans) is considered an amount paid or contributed by the employee.

* * * * *

This Treasury decision is issued under the authority contained in sections 2039(f)(2) and 7805 of the Internal Revenue Code of 1954 (192 Stat. 2796,

68A Stat. 917; 26 U.S.C. 2039(f)(2), 7805).

Jerome Kurtz,
Commissioner of Internal Revenue.

Approved: January 13, 1981.

Donald C. Lubick,
Assistant Secretary of the Treasury.

PART 20—ESTATE TAX; ESTATES OF DECEDENTS DYING AFTER AUGUST 16, 1954

Par. 1. Section 20.2039–2(a) is revised to read as follows:

§ 20.2039–2 Annuities under "qualified plans" and section 403(b) annuity contracts.

(a) *Section 2039(c) exclusion.* In general, in the case of a decedent dying after December 31, 1953, the value of an annuity or other payment receivable under a plan or annuity contract described in paragraph (b) of this section is excluded from the decedent's gross estate to the extent provided in paragraph (c) of this section. In the case of a plan described in paragraph (b) (1) or (2) of this section (a "qualified plan"), the exclusion is subject to the limitation described in § 20.2039–3 (relating to lump sum distributions paid with respect to a decedent dying after December 31, 1976, and before January 1, 1979) or § 20.2039–4 (relating to lump sum distributions paid with respect to a decedent dying after December 31, 1978).

Par. 2. Section 20.2039–2(b) is amended by removing "or" at the end of subparagraph (3), by removing the period at the end of subparagraph (4) and adding in lieu thereof "; or", and by adding a new subparagraph (5) to read as follows:

§ 20.2039–2 Annuities under "qualified plans" and section 403(b) annuity contracts.

* * * * *

(b) *Plans and annuity contracts to which section 2039(c) applies.* * * *

(5) In the case of a decedent dying after December 31, 1962, a bond purchase plan described in section 405.

* * * * *

Par. 3. Paragraph (b) of § 20.2039–2 is amended by revising Examples (2) and (3) to read as follows:

§ 20.2039–2 Annuities under "qualified plans" and section 403(b) annuity contracts.

* * * * *

(b) *Plans and annuity contracts to which section 2039(c) applies.* * * *

Example (2). Pursuant to a profit-sharing plan, the employer made contributions to a trust which were allocated to the employee's individual account. Under the plan, the employee would, upon retirement at age 60, receive a distribution of the entire amount credited to the account. If the employee should die before reaching retirement age, the amount credited to the account would be distributed to the employee's designated beneficiary. Assume that the employee died before reaching the retirement age and that at such time the plan met the requirements of section 401(a). Since the payment to the designated beneficiary is receivable under a qualified profit-sharing plan, the provisions of section 2039(c) apply. However, if the payment is a lump sum distribution to which § 20.2039–3 or § 20.2039–4 applies, the payment is excludable from the decedent's gross estate only as provided in such section.

Example (3). Pursuant to a pension plan, the employer made contributions to a trust which were used by the trustee to purchase a contract from an insurance company for the benefit of an employee. The contract was to provide the employee, upon retirement at age 65, with an annuity of $100 per month for life, and was to provide the employee's designated beneficiary upon the employee's death after retirement, with a similar annuity for life. The contract further provided that if the employee should die before reaching retirement age, a lump sum payment equal to the greater of (a) $10,000 or (b) the reserve value of the policy would be paid to the designated beneficiary in lieu of the annuity. Assume that the employee died before reaching the retirement age and that at such time the plan met the requirements of section 401(a). Since the payment to the designated beneficiary is receivable under a qualified pension plan, the provisions of section 2039(c) apply. However, if the payment is a lump sum distribution to which § 20.2039–3 or § 20.2039–4 applies, the payment is excludable from the decedent's gross estate only as provided in such section. It should be noted that for purposes of the exclusion under section 2039(c) it is immaterial whether or not the payment constitutes the proceeds of life insurance under the principles set forth in § 20.2039–1(d).

* * * * *

Par. 4. Section 20.2039–2(c)(1) is revised to read as follows:

§ 20.2039–2 Annuities under "qualified plans" and section 403(b) annuity contracts.

* * * * *

(c) *Amounts excludable from the gross estate.* (1) The amount to be excluded from a decedent's gross estate under section 2039(c) is an amount which bears the same ratio to the value at the decedent's death of an annuity or other payment receivable by the beneficiary as the employer's contribution (or a contribution made on the employer's behalf) on the employee's account to the plan or towards the purchase of the annuity contract bears to the total contributions on the employee's account to the plan or towards the purchase of the annuity contract. In applying this ratio—

(i) Payments or contributions made by or on behalf of the employer towards the purchase of an annuity contract described in paragraph (b)(3) of this section are considered to include only such payments or contributions as are, or were, excludable from the employee's gross income under section 403(b).

(ii) In the case of a decedent dying before January 1, 1977, payments or contributions made under a plan described in paragraph (b) (1), (2) or (5) of this section on behalf of the decedent for a period for which the decedent was self-employed, within the meaning of section 401(c)(1), with respect to the plan are considered payments or contributions made by the decedent and not by the employer.

(iii) In the case of a decedent dying after December 31, 1976, however, payments or contributions made under a plan described in paragraph (b) (1), (2) or (5) of this section on behalf of the decedent for a period for which the decedent was self-employed, within the meaning of section 401(c)(1), with respect to the plan are considered payments or contributions made by the employer to the extent the payments or contributions are, or were, deductible under section 404 or 405(c). Contributions or payments attributable to that period which are not, or were not, so deductible are considered made by the decedent.

(iv) In the case of a plan described in paragraph (b) (1) or (2) of this section, a rollover contribution described in section 402(a)(5), 403(a)(4), 409(d)(3)(A)(ii) or 409(b)(3)(C) is considered an amount contributed by the employer.

(v) In the case of an annuity contract described in paragraph (b)(3) of this section, a rollover contribution described in section 403(b)(8) is considered an amount contributed by the employer.

(vi) In the case of a plan described in paragraph (b) (1), (2) or (5) of this section, an amount includable in the gross income of an employee under section 1379(b) (relating to shareholder-employee beneficiaries under certain qualified plans) is considered an amount paid or contributed by the decedent.

(vii) Amounts payable under paragraph (b)(4) of this section are attributable to payments or contributions made by the decedent only to the extent of amounts deposited by the decedent pursuant to section 1438 or 1452(d) of Title 10 of the United States Code.

(viii) The value at the decedent's death of the annuity or other payment is determined under the rules of §§ 20.2031–1 and 20.2031–7 through 20.2031–10.

Par. 5. The following new sections are added immediately after § 20.2039–2:

§ 20.2039–3 Lump sum distributions under "qualified plans;" decedents dying after December 31, 1976, and before January 1, 1979.

(a) *Limitation of section 2039(c) exclusion.* This section applies in the case of a decedent dying after December 31, 1976, and before January 1, 1979. If a lump sum distribution is paid with respect to the decedent under a plan described in § 20.2039–2(b) (1) or (2) (a "qualified plan"), no amount payable with respect to the decedent under the plan is excludable from the decedent's gross estate under § 20.2039–2.

(b) *"Lump sum distribution" defined.* For purposes of this section the term "lump sum distribution" means a lump sum distribution defined in section 402(e)(4)(A) that satisfies the requirements of section 402(e)(4)(C), relating to the aggregation of certain trusts and plans. The distribution of an annuity contract is not a lump sum distribution for purposes of this section, and § 20.2039–2 will apply with respect to the distribution of an annuity contract without regard to whether the contract is included in a distribution that is otherwise a lump sum distribution under this paragraph (b). A distribution is a lump sum distribution for purposes of this section without regard to the election described in section 402(e)(4)(B).

(c) *Amounts payable as a lump sum distribution.* If on the date the estate tax return is filed, an amount under a qualified plan is payable with respect to the decedent as a lump sum distribution (whether at the election of a beneficiary or otherwise), for purposes of this section the amount is deemed paid as a lump sum distribution no later than on such date. Accordingly, no portion of the amount payable under the plan is excludable from the value of the decedent's gross estate under § 20.2039–2. If, however, the amount payable as a lump sum distribution is not, in fact, thereafter paid as a lump sum distribution, there shall be allowed a credit or refund of any tax paid which is attributable to treating such amount as a lump sum distribution under this paragraph. Any claim for credit or refund filed under this paragraph must be filed within the time prescribed by section 6511, and must provide satisfactory evidence that the amount originally payable as a lump sum distribution is no longer payable in such form.

(d) *Filing date.* For purposes of paragraph (c) of this section, "the date the estate tax return is filed" means the earlier of—

(1) The date the estate tax return is actually filed, or

(2) The date nine months after the decedent's death, plus any extension of time for filing the estate tax return granted under section 6081.

§ 20.2039–4 Lump sum distributions from "qualified plans;" decedents dying after December 31, 1978.

(a) *Limitation on section 2039(c) exclusion.* This section applies in the case of a decedent dying after December 31, 1978. If a lump sum distribution is paid or payable with respect to a decedent under a plan described in § 20.2039–2(b) (1) or (2) (a "qualified plan"), no amount paid or payable with respect to the decedent under the plan is excludable from the decedent's gross estate under § 20.2039–2, unless the recipient of the distribution makes the section 402(a)/403(a) taxation election described in paragraph (c) of this section. For purposes of this section, an amount is payable as a lump sum distribution under a plan if, as of the date the estate tax return is filed (as determined under § 20.2039–3(d)), it is payable as a lump sum distribution at the election of the recipient or otherwise.

(b) *"Lump sum distribution" defined; treatment of annuity contracts.* For purposes of this section the term "lump sum distribution" means a lump sum distribution defined in section 402(e)(4)(A) that satisfies the requirements of section 402(e)(4)(C), relating to the aggregation of certain trusts and plans. A distribution is a lump sum distribution for purposes of this section without regard to the election described in section 402(e)(4)(B). The distribution of an annuity contract is not a lump sum distribution for purposes of this section, and the limitation described in this section does not apply to an annuity contract distributed under a plan. Accordingly, if the amount payable with respect to a decedent under a plan is paid to a recipient partly by the distribution of an annuity contract, and partly by the distribution of an amount that is a lump sum distribution within the meaning of this paragraph (b), § 20.2039–2 shall apply with respect to the annuity contract without regard to whether the recipient makes the section 402(a)/403(a) taxation election with respect to the remainder of the distribution.

(c) *Recipient's section 402(a)/403(a) taxation election.* The section 402(a)/403(a) taxation election is the election by the recipient of a lump sum distribution to treat the distribution as—

(1) Taxable under section 402(a), without regard to section 402(a)(2), to the extent includable in gross income (in the case of a distribution under a qualified plan described in § 20.2039–2(b)(1)),

(2) Taxable under section 403(a), without regard to section 403(a)(2), to the extent includable in gross income (in the case of a distribution under a qualified annuity contract described in § 20.2039–2(b)(2)), or

(3) A rollover contribution, in whole or in part, under section 402(a)(7) (relating to rollovers by a decedent's surviving spouse).

Accordingly, if a recipient makes the election, no portion of the distribution is taxable to the recipient under the 10-year averaging provisions of section 402(e) or as long-term capital gain under section 402(a)(2). However, a recipient's election under this paragraph (c) does not preclude the application of section 402(e)(4)(J) to any securities of the employer corporation included in the distribution.

(d) *Method of election.* The recipient of a lump sum distribution shall make the section 402(a)/403(a) taxation election by—

(1) Determining the income tax liability on the income tax return (or amended return) for the taxable year of the distribution in a manner consistent with paragraph (c) (1) or (2) of this section, or

(2) Rolling over all or any part of the distribution under section 402(a)(7).

If the date the estate tax return is filed precedes the date on which the recipient makes the section 402(a)/403(a) taxation election with respect to a lump sum distribution, the estate tax return may nevertheless reflect the election, as if the election had been made.

(e) *Election irrevocable.* If a recipient of a lump sum distribution files an income tax return (or amended return) or makes a rollover contribution that constitutes the section 402(a)/403(a) taxation election described in paragraphs (c) and (d), the election may not be revoked. Accordingly, a subsequent and amended income tax return filed by the recipient that is inconsistent with the prior election will not be given effect for purposes of section 2039 and section 402 or 403.

(f) *Lump sum distribution to multiple recipients.* In the case of a lump sum distribution paid or payable under a qualified plan with respect to the decedent to more than one recipient, the exclusion under § 20.2039–2 applies to so much of the distribution as is paid or payable to a recipient who makes the section 402(a)/403(a) taxation election.

(g) *Distributions of annuity contracts included in multiple distributions.* Notwithstanding that a recipient makes the section 402(a)/403(a) taxation election with respect to a lump sum distribution that includes the distribution of an annuity contract, the distribution of the annuity contract is to be taken into account by the recipient for purposes of the multiple distribution rules under section 402(e).

§ 20.2039-5 Annuities under individual retirement plans.

(a) *Section 2039(e) exclusion*—(1) *In general.* In the case of a decedent dying after December 31, 1976, section 2039 (e) excludes from the decedent's gross estate, to the extent provided in paragraph (c) of this section, the value of a "qualifying annuity" receivable by a beneficiary under an individual retirement plan. The term "individual retirement plan" means—

(i) An individual retirement account described in section 408(a).

(ii) An individual retirement annuity described in section 408(b), or

(iii) A retirement bond described in section 409(a).

(2) *Limitations.* (i) Section 2039(e) applies only with respect to the gross estate of a decedent on whose behalf the individual retirement plan was established. Accordingly, section 2039(e) does not apply with respect to the estate of a decedent who was only a beneficiary under the plan.

(ii) Section 2039(e) does not apply to an annuity receivable by or for the benefit of the decedent's estate. For the meaning of the term "receivable by or for the benefit of the decedent's estate," see § 20.2042-1(b).

(b) *Qualifying annuity.* For purposes of this section, the term "qualifying annuity" means an annuity contract or other arrangement providing for a series of substantially equal periodic payments to be made to a beneficiary for the beneficiary's life or over a period ending at least 36 months after the decedent's death. The term "annuity contract" includes an annuity purchased for a beneficiary and distributed to the beneficiary, if under section 408 the contract is not included in the gross income of the beneficiary upon distribution. The term "other arrangement" includes any arrangement arising by reason of the decedent's participation in the program providing the individual retirement plan. Payments shall be considered "periodic" if under the arrangement or contract (including a distributed contract) payments are to be made to the beneficiary at regular intervals. If the contract or arrangement provides optional payment provisions, not all of which provide for periodic payments, payments shall be considered periodic only if an option providing periodic payments is elected not later than the date the estate tax return is filed (as determined under § 20.2039-3(d)). For this purpose, the right to surrender a contract (including a distributed contract) for a cash surrender value will not be considered an optional payment provision. Payments shall be considered "substantially equal" even though the amounts receivable by the beneficiary may vary. Payments shall not be considered substantially equal, however, if more than 40% of the total amount payable to the beneficiary under the individual retirement plan, determined as of the date of the decedent's death and excluding any postmortem increase, is payable to the beneficary in any 12-month period.

(c) *Amount excludible from gross estate*—(1) *In general.* Except as otherwise described in this paragraph (c), the amount excluded from the decedent's gross estate under section 2039 (e) is the entire value of the qualifying annuity (as determined under §§ 20.2031-1 and 20.2031-7 through 20.2031-10) payable under the individual retirement plan.

(2) *Excess contribution.* In any case in which there exists, on the date of the decedent's death, an excess contribution (as defined in section 4973(b)) with respect to the individual retirement plan, the amount excluded from the value of the decedent's gross estate is determined under the following formula:

$$E = A - A(X \div C - R)$$

Where:

E = the amount excluded from the decedent's gross estate under section 2039(e).

A = the value of the qualifying annuity at the decedent's death (as determined under §§ 20.2031-1 and 20.2031-7 through § 20.2031-10).

X = the amount which is an excess contribution at the decedent's death (as determined under section 4973(b)).

C = the total amount contributed by or on behalf of the decedent to the individual retirement plan, and

R = the total of amounts paid or distributed from the individual retirement plan before the death of the decedent which were either includable in the gross income of the recipient under section 408(d)(1) and represented the payment of distribution of an excess contribution, or were payments or distributions described in section 408(d)(4) or (5) (relating to returned excess contributions).

(3) *Certain section 403(b)(8) rollover contributions.* This subparagraph (3) applies if the decedent made a rollover contribution to the individual retirement plan under section 403(b)(8), and the contribution was attributable to a distribution under an annuity contract other than an annuity contract described in § 20.2039-2(b)(3). If such a rollover contribution was the only contribution made to the plan, no part of the value of the qualifying annuity payable under the plan is excluded from the decedent's gross estate under section 2039(e). If a contribution other than such a rollover contribution was made to the plan, the amount excluded from the decedent's gross estate is determined under the formula described in subparagraph (2) of this paragraph, except that for purposes of that formula, X includes the amount that was a rollover contribution under section 403(b)(8) attributable to a distribution under an annuity contract not described in § 20.2039-2(b)(3).

(4) *Surviving spouse's rollover contribution.* This subparagraph (4) applies if the decedent made a rollover contribution to the individual retirement plan under section 402(a)(7), relating to rollovers by a surviving spouse. If the rollover contribution under section 402(a)(7) was the only contribution made by the decedent to the plan, no part of the value of the qualifying annuity payable under the plan is excluded from the decedent's gross estate under section 2039(e). If a contribution other than a rollover contribution under section 402(a)(7) was made by the decedent to the plan, the amount excluded from the decedent's gross estate is determined under the formula described in subparagraph (2) of this paragraph, except that for purposes of that formula, X includes the amount that was a rollover contribution under section 402(a)(7).

(5) *Election under § 1.408-2(b)(7)(ii).* This subparagraph (5) applies if the decedent at any time made the election described in § 1.408-2(b)(7)(ii) with respect to an amount in the individual retirement plan. If this subparagraph (5) applies, the amount excluded from the decedent's gross estate is determined under the formula described in subparagraph (2), except that for purposes of that formula, X and C include the amount with respect to which the election was made.

(6) *Plan-to-plan rollovers.* (i) This subparagraph (6) applies if the individual retirement plan is a transferee plan. A "transferee plan" is a plan that was the recipient of a contribution described in section 408(d)(3)(A)(i) or 403(b)(3)(C) (relating to rollovers from one individual retirement plan to another) made by the decedent. The amount of the contribution described in section 408(d)(3)(A)(i) or

408(b)(3)(C) is the "rollover amount." The plan from which the rollover amount was paid or distributed to the decedent is the "transferor plan."

(ii) If the decedent made a contribution described in subparagraph (3) or (4) to the transferor plan, the amount excluded from the decedent's gross estate with respect to the transferee plan is determined under the formula described in subparagraph (2), except that for purposes of that formula, X includes so much of the rollover amount as was attributable to the contribution to the transferor plan that was described in subparagraph (3) or (4). The extent to which a rollover amount is attributable to a contribution described in subparagraph (3) or (4) that was made to the transferor plan is determined by multiplying the rollover amount by a fraction, the numerator of which is the amount of such contribution, and the denominator of which is the sum of all amounts contributed by the decedent to the transferor plan (if not returned as described under R in subparagraph (2)), and any amount in the transferor plan to which the election described in subparagraph (5) applied.

(iii) If the decedent made the election described in subparagraph (5) with respect to an amount in the transferor plan, the amount excluded from the decedent's gross estate with respect to the transferee plan is determined under the formula described in subparagraph (2), except that for purposes of that formula, X includes so much of the rollover amount as was attributable to the amount in the transferor plan to which the election applied. The extent to which a rollover amount is attributable to an amount in the transferor plan to which the election applied is determined by multiplying the rollover amount by a fraction, the numerator of which is the amount to which the election applied, and the denominator of which is the sum of all amounts contributed by the decedent to the transferor plan (if not returned as described under R in subparagraph (2)) and the amount in the transferor plan to which the election applied.

(iv) If a transferor plan described in this subparagraph (6) was also a transferee plan, then the rules described in this subparagraph (6) are to be applied with respect to both the rollover amount paid to the plan and the rollover amount thereafter paid from the plan.

(d) *Examples.* The provisions of this section are illustrated by the following examples:

Example (1). (1) A establishes an individual retirement account described in section 408(a) on January 1, 1975, when A is age 65. A's only contribution to the account is a rollover contribution described in section 402(a)(5). The trust agreement provides that A may at any time elect to have the balance in the account distributed in one of the following methods:

(i) A single sum payment of the account,

(ii) Equal or substantially equal semiannual payments over a period equal to A's life expectancy, or

(iii) Equal or substantially equal semiannual payments over a period equal to the life expectancy of A and A's spouse.

(2) The trust agreement further provides that although semiannual payments have commenced under option (ii) or (iii), A (or A's surviving spouse) may, by written notice to the trustee, receive all or a part of the balance remaining in the account. In addition, under option (ii), any balance remaining in the account at A's death is payable in a single sum to A's designated beneficiary. Under option (iii), any balance remaining in the account at the death of the survivor of A or A's spouse is payable in a single sum to a beneficiary designated by A or A's surviving spouse.

(3) A elects option (iii), and the first semiannual payment is made to A on July 1, 1976. On that date, A's life expectancy is 15 years, and that of A's spouse is 22 years. Under option (iii), the semiannual payments to A or A's surviving spouse will continue until July 1, 1998.

(4) A dies on November 20, 1978. On December 15, 1978, the trust agreement is modified so that A's surviving spouse no longer may elect to receive all or part of the balance remaining in the account. The value of the semiannual payments payable to A's spouse is excluded from A's gross estate under section 2039(e).

(5) A's spouse dies July 12, 1981, and the single sum payment payable on account of the death of A's spouse is paid to the designated beneficiary on August 1, 1981. Notwithstanding that the balance in the account was paid to the designated beneficiary within 36 months after A's death, the value of the semiannual payments payable to A's spouse are excluded from A's gross estate, since at A's death those semiannual payments were to be paid over a period extending beyond 36 months. Section 2039(e) does not apply to exclude any amount from the estate of A's spouse, because A's spouse was only a beneficiary and not the individual on whose behalf the account was established.

Example (2). Assume the same facts as in example (1), except that the trust agreement is not modified so that A's surviving spouse no longer may elect to receive all or part of the balance remaining in the account (see (2) and (4) in example (1)). Instead, the balance of the account is applied toward the purchase of a contract providing an immediate annuity, the contract is distributed to A's surviving spouse on December 15, 1978, and under section 408 the contract is not included in the gross income of the spouse upon its distribution. The value of the annuity contract is excluded from A's gross estate, if the contract provides for a series of substantially equal periodic payments (within the meaning of paragraph (b) of this section) to be made over the life of A's surviving spouse or over a period not ending before the date 36 months after A's death.

Example (3). (1) B establishes an individual retirement plan described in section 408(a) ("IRA B") on February 8, 1981, in order to receive a $220,000 rollover contribution from a qualified plan, as described in section 402(a)(5). B dies August 14, 1981. C, an individual, is the sole beneficiary under IRA B. The amount in IRA B ($236,000) is payable to C in whole or part as C may elect. Because the amount in IRA B is payable to C as other than a qualifying annuity, within the meaning of paragraph (b) of this section, no amount is excluded from B's gross estate under section 2039(e).

(2) On October 17, 1981, C contributes $1,500 on C's own behalf to IRA B. Under § 1.408-2(b)(7)(ii), C's contribution will cause IRA B to be treated as being maintained by and on behalf of C ("IRA C") and C's making the contribution constitutes an election to which paragraph (c)(5) of this section applies. The balance in IRA C immediately before C's contribution is $240,000. Accordingly, the amount with respect to which C made the election is $240,000.

(3) C dies January 19, 1982. E, an individual, is the sole beneficiary under the plan, and the amounts payable to E ($242,000) are payable as a qualifying annuity, within the meaning of paragraph (b) of this section.

(4) The rules described in section 2039(e) and this section are applied with respect to the gross estate of C without regard to whether amounts now payable under IRA C were or were not excluded from B's gross estate. Under paragraph (c) of this section, the amount not excluded from C's gross estate is the value of the qualifying annuity payable to E ($242,000), multiplied by the fraction $240,000/($240,000+$1,500). Thus, the amount not excluded from C's gross estate is $240,497. [($242,000) ($240,000 ($240,000+$1,500))=$240,497.] The amount excluded is therefore $1,503 ($242,000−$240,497).

Example (4). (1) F, an individual, establishes an individual retirement plan ("IRA F1") in 1977 and makes $1,250 annual contributions for 1977, 1978, 1979 and 1980 (4×$1,250=$5,000), each of which is deducted by F under section 219. In February 1980, F receives an $85,000 distribution on account of the death of G, F's spouse, from the qualified plan of G's former employer, and rolls it over into IRA F1, under section 402(a)(7). Because IRA F1 includes a rollover contribution under section 402(a)(7), paragraph (c)(4) of this section applies. In 1981, F's entire interest in IRA F1, $100,000, is paid to F and contributed to another individual retirement plan ("IRA F2") under section 408(d)(3)(A)(i). IRA F2 is a transferee plan to which paragraph (c)(6) of this section applies because of the rollover. F makes a $1,500 deductible contribution to IRA F2 for 1981.

(2) F dies in 1984. The balance in IRA F2 ($146,000) is payable to G, an individual, as a qualifying annuity, within the meaning of paragraph (b) of this section.

(3) Under paragraph (c) of this section, the amount *not* excluded from F's gross estate is the value of the qualifying annuity payable

under IRA F2 multiplied by the fraction $96,700/$101,800. Accordingly, the amount not excluded is $129,000. [($140,000) ($96,700/$101,800)=$129,000.] The amount excluded is $9,904 ($140,000—$130,096).

(4) The numerator of the fraction ($96,700) is determined by multiplying the amount rolled over from IRA F1 to IRA F2 ($100,000)) by a fraction, the numerator of which is the amount of the rollover contribution to IRA F1 ($95,000), and the denominator of which is the total contributions to IRA F1 ($25,000+$5,000=$30,000). [($100,000) ($95,000/$30,000)=$96,700.]

(5) The denominator of the fraction ($101,800) is the sum of the contributions to IRA F2 (the $100,000 rollover contribution from IRA F1, and the $1,800 annual contribution to IRA F2).

PART 25—GIFT TAX; GIFTS MADE AFTER DECEMBER 31, 1954

Par. 6. Section 25.2517–1 is amended by revising paragraph (b)(1)(iii) and (iv), by adding a new paragraph (b)(1)(v) and a new paragraph (b)(1)(vi) by revising the third sentence in paragraph (b)(2), by revising so much of paragraph (c)(1) as precedes Example (1), and by adding a new paragraph (d). These revised and added provisions read as follows:

§25.2517–1 Employees' annuities.

* * * * *

(b) *Annuities or other payments to which section 2517 applies.* (1) * * *

(iii) A retirement annuity contract purchased for an employee by an employer which is an organization referred to in section 170(b)(1)(A) (ii) or (vi) or which is a religious organization (other than a trust) and is exempt from tax under section 501(a);

(iv) With respect to calendar years after 1965, an annuity under chapter 73 of title 10 of the United States Code (10 U.S.C. 1431, et seq.);

(v) With respect to transfers made after December 31, 1976, an individual retirement account described in section 408(a), an individual retirement annuity described in section 408(b), or a retirement bond described in section 409(a) (an "individual retirement plan"); or

(vi) With respect to transfers made after December 31, 1982, a bond purchase plan described in section 405.

(2) * * * For purposes of this section, the term "employee" includes a former employee, and in the case of an individual retirement plan described in subparagraph (1)(v) of this paragraph, means the individual for whose benefit the plan was established or purchased. * * *

(c) *Limitation on amount excludable from gift.* (1) In the case of a plan or annuity contract described in paragraph (b)(1) (i), (ii), (iii) or (vi) of this section, if an annuity or other payment payable thereunder is attributable to payments or contributions made by both the employee and the employer, the exclusion is limited to that proportion of the value on the date of the gift (see paragraph (a)(1) of this section) of the annuity or other payment which the employer's contribution (or a contribution made on the employer's behalf) to the plan on the employee's account bears to the total contributions to the plan on the employee's account. In applying this ratio—

(i) Payments or contributions made by the employer toward the purchase of an annuity contract described in paragraph (b)(1)(iii) of this section are considered to be employee contributions to the extent that the contributions are not, or were not, excludable from the employee's gross income under section 403(b).

(ii) For transfers made before January 1, 1977, payments or contributions made to a plan described in paragraph (b)(1)(i), (ii) or (vi) of this section on behalf of an individual for a period for which the individual was self-employed, within the meaning of section 401(c)(1), with respect to the plan are considered payments or contributions made by the employee.

(iii) For transfers made after December 31, 1976, however, payments or contributions made under a plan described in paragraph (b)(1) (i), (ii) or (vi) of this section on behalf of such a self-employed individual are considered employer contributions to the extent that they are, or were, deductible under section 404 or 405(c), and are considered employee contributions to the extent that they are not, or were not, so deductible.

(iv) In the case of a plan described in paragraph (b)(1) (i) or (ii) of this section, a rollover contribution described in section 402(a)(5), 403(a)(4), 403(d)(3)(A)(ii) or 409(b)(3)(C) is considered an amount contributed by the employer.

(v) In the case of an annuity contract described in paragraph (b)(1)(iii) of this section, a rollover contribution described in section 403(b)(8) is considered an amount contributed by the employer.

(vi) In the case of a plan described in paragraph (b)(1) (i), (ii) or (vi) of this section, an amount includable in the gross income of an employee under section 1379(b) (relating to shareholder-beneficiaries under certain plans) is considered an amount paid or contributed by the employee.

(vii) In the case of an annuity described in paragraph (b)(1)(iv) of this section, amounts paid or contributed by the employee include only amounts deposited by the employee under section 1426 or 1622(d) of Title 10 of the United States Code.

The application of this paragraph may be illustrated by the following examples, none of which involves employees within the meaning of section 401(c)(1):

* * * * *

(d) *Exemption of annuity interest created by community property laws*—(1) *In general.* An employee's transfer of benefits attributable to either—

(i) Contributions or payments made by an employer or former employer on the employee's behalf to a trust, annuity contract or bond purchase plan described in paragraph (b)(1) (i), (ii), (iii) or (vi) of this section, or

(ii) Contributions or payments made by the employee to an individual retirement plan described in paragraph (b)(1)(v) of this section, will not be considered a transfer by the employee's spouse to the extent the spouse's interest in the transferred benefits is also attributable to such contributions or payments and arises solely by reason of the spouse's interest in community income under the community property laws of a State.

(2) *Limitation.* The exemption described in subparagraph (1) of this paragraph does not apply in the case of an employee's transfer of benefits payable under a trust, annuity contract or bond purchase plan described in paragraph (b)(1) (i), (ii), (iii) or (vi) of this section to the extent such benefits are attributable to contributions or payments made by the employee. For purposes of the limitation described in this subparagraph—

(i) Employer contributions toward the purchase of an annuity contract described in paragraph (b)(1)(iii) of this section, to the extent not excludable from the employee's gross income under section 403(b), are considered employee contributions.

(ii) In the case of a plan described in paragraph (b)(1) (i), (ii), or (vi) of this section, contributions or payments made on behalf of an individual while the individual was self-employed within the meaning of section 401(c)(1) with respect to the plan are considered employer contributions to the extent they are, or were, deductible under section 404 or 405(c) and are considered employee contributions to the extent they are not, or were not, so deductible.

(iii) In the case of a plan described in paragraph (b)(1) (i) or (ii) of this section, a rollover contribution described in section 402(a)(5), 403(a)(4), 408(d)(3)(A)(ii) or 409(b)(3)(C) is considered an employer contribution.

(iv) In the case of an annuity contract described in paragraph (b)(1)(iii) of this section, a rollover contribution described in section 403(b)(8) is considered an employer contribution.

(3) *Effective date.* Section 2517(c) and this paragraph apply to transfers made after December 31, 1976.

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BILLING CODE 4830-01-M

DEPARTMENT OF LABOR

Wage and Hour Division

29 CFR Part 778

Overtime Compensation

AGENCY: Wage and Hour Division, Labor.

ACTION: Amendment to Interpretative Bulletin.

SUMMARY: Part 778 explains the overtime provisions of the Fair Labor Standards Act and provides numerous examples of how these provisions apply to specific situations. It is now being revised in order to reflect amendments to the Act that have changed some of the overtime provisions. In addition, the wage rates specified in most of the examples have been increased to take account of increases in the statutory minimum wage rate. There has also been a change made to a section which deals with the effect on the overtime rate of pay of compensating for certain activities which the Act does not require an employer to pay for.

EFFECTIVE DATE: January 23, 1981.

FOR FURTHER INFORMATION CONTACT: Mr. James L. Valin, Director, Division of Minimum Wage and Hour Standards, Office of Fair Labor Standards, Wage and Hour Division, U.S. Department of Labor, 200 Constitution Avenue N.W. Rm. S-3506, Washington, D.C. 20210 Telephone: (202) 523-7043. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Part 778 of Title 29, Code of Federal Regulations, constitutes the official interpretations of the Department of Labor with respect to the meaning and application of the maximum hours and overtime compensation requirements contained in Section 7 of the Fair Labor Standards Act (29 U.S.C. 207). During the period since Part 778 was last revised, the Fair Labor Standards Act has been amended, not only to increase the statutory minimum wage rate, but also to repeal part of Section 7.

The statutory amendments have necessitated two types of changes in Part 778. First, the wage rates specified in nearly all of the examples have been increased, so that no pay practice described in any example results in an employee being paid less than the current minimum wage. However, the principle illustrated by the example remains unchanged.

Second, the discussion of Sections 7(c) and 7(d) of the FLSA has been deleted from § 778.602, because those provisions, which partially exempted certain employees from the overtime protections of the FLSA, were repealed effective December 31, 1976, as a result of the Fair Labor Standards Amendments of 1974. In a related change, § 778.603 has been deleted because its description of the partial overtime exemptions in Sections 13(b)(8) and 13(b)(19) of the FLSA has become obsolete as a result of the Fair Labor Standards Amendments of 1974.

In addition to these changes, another revision has been made to Part 778. This revision is to § 778.320, which deals with compensation for hours spent in certain types of activities which would regarded as working time under the Act if no compensation were provided.

Examples of such activities specifically referred to in old § 778.320 were certain preliminary and post-preliminary activities, time spent in travel outside the hours of the normal workday, and time spent in eating meals between working hours. The old section made clear that where payment for any of these activities converts them into hours worked, the payment must be added into the regular rate for purposes of determining proper overtime compensation. On the other hand, the section made clear that where payment for any of the specified activities does *not* convert them into hours worked, the payment can be excluded from the regular rate if the provisions of Section 7(e)(2) of the Act are satisfied. (Section 7(e)(2) excludes from the regular rate certain specified payments and "other similar payments to an employee which are not made as compensation for his hours of employment * * *.") Old § 778.320 very strongly implied that payment for time spent in the specified activities would almost invariably convert them into hours worked.

Although new § 778.320 retains the basic principles of the old version with regard to the effect of the extra payments on the regular rate, it makes two specific changes. The first change is to avoid the implication that payment for time devoted to the specified activities converts them, virtually without exception, into hours worked. The new language expressly states that whether or not payment converts the activities into hours worked depends on "whether or not it appears from all the pertinent facts that the parties have agreed to treat such time as hours worked." This change recognizes the fact that many employers pay for certain otherwise noncompensable activities, particularly lunch periods, in circumstances where neither the employer nor the employees intend that the time is to be hours worked. The new position more clearly honors the intent of the parties than the old position did.

The second change is to omit from the specified examples the reference to time spent in travel outside the hours of the normal workday. The inclusion of this example in old § 778.320 made that section inconsistent with § 785.39 of the Interpretative Bulletin (29 CFR § 785.39), relating to travel away from the home community. Moreover, the Department is reassessing the position taken in § 785.39 about such travel. Section 785.39 states, in pertinent part:

> As an enforcement policy the Divisions will not consider as worktime that time spent in travel away from home outside of regular working hours as a passenger on an airplane, train, boat, bus, or automobile.

Old § 778.320 was inconsistent with this position because, in referring to time spent in travel outside the hours of the normal workday, it implied that under the FLSA this time would not be considered hours worked if it was not paid for. However, § 785.39, in setting forth an enforcement position, reserves the question of whether or not such travel time is hours worked under the FLSA. The Department now has under study the issue of whether and under what circumstances the travel time referred to in § 785.39 is hours worked. Until that study has been concluded, it would not be appropriate to leave the reference to travel time in § 778.320.

Apart from the changes described above, there are also a few minor editorial changes.

As this amendment involves interpretative rules, it is unnecessary to publish it initially in proposed form, or to delay the effective date beyond the date of publication of this document in the Federal Register. Nor does the Regulatory Flexibility Act apply.

It has been determined that this document does not contain a major proposal requiring the preparation of a regulatory analysis under Executive Order 12044, Improving Government Regulations (43 FR 12661, March 24, 1978).

Part 778 in its totality is a lengthy document, because it explains how the FLSA's overtime provisions apply to virtually every pay plan that employers have devised over the years. Moreover,

in order to provide adequate guidance, Part 778 must be accurate and precise. The basic overtime principles, however, are quite simple, and the application of these principles to the most common types of pay plans—hourly wage, piece rate, salary, and commission—are set forth in a relatively short space (see §§ 778.107–.122).

This document was prepared under the direction and control of Herbert J. Cohen, Assistant Administrator, Wage and Hour Division.

Accordingly, the specified sections of Part 778 are amended to read as follows.

1. The table of contents to Part 778 is amended by removing the reference to § 778.603 and by revising the titles to § 778.601 and § 778.602 as follows:

Sec.

• • • • •

778.601 Special overtime provisions available for hospitals and residential care establishments under section 7(j).

778.602 Special overtime provisions under section 7(b).

778.603 [Removed]

2. Section 778.3 is revised as follows:

§ 778.3 Interpretations made, continued, and superseded by this part.

On and after publication of this part in the Federal Register, the interpretations contained therein shall be in effect and shall remain in effect until they are modified, rescinded or withdrawn. This part supersedes and replaces the interpretations previously published in the Federal Register and Code of Federal Regulations as Part 778 of this chapter. Prior opinions, rulings and interpretations and prior enforcement policies which are not inconsistent with the interpretations in this part or with the Fair Labor Standards Act as amended are continued in effect; all other opinions, rulings, interpretations, and enforcement policies on the subjects discussed in the interpretations in this part are rescinded and withdrawn. Questions on matters not fully covered by this part may be addressed to the Administrator of the Wage and Hour Division, U.S. Department of Labor, Washington, D.C. 20210, or to any Regional Office of the Division.

3. Section 778.101 is revised as follows:

§ 778.101 Maximum nonovertime hours.

As a general standard, section 7(a) of the Act provides 40 hours as the maximum number that an employee subject to its provisions may work for an employer in any workweek without receiving additional compensation at not less than the statutory rate for overtime. Hours worked in excess of the statutory maximum in any workweek are overtime hours under the statute; a workweek no longer than the prescribed maximum is a nonovertime workweek under the Act, to which the pay requirements of section 6 (minimum wage and equal pay) but not those of section 7(a) are applicable.

4. Section 778.102 is revised as follows:

§ 778.102 Application of overtime provisions generally.

Since there is no absolute limitation in the Act (apart from the child labor provisions and regulations thereunder) on the number of hours that an employee may work in any workweek, he may work as many hours a week as he and his employer see fit, so long as the required overtime compensation is paid him for hours worked in excess of the maximum workweek prescribed by section 7(a). The Act does not generally require, however, that an employee be paid overtime compensation for hours in excess of eight per day, or for work on Saturdays, Sundays, holidays or regular days of rest. If no more than the maximum number of hours prescribed in the Act are actually worked in the workweek, overtime compensation pursuant to section 7(a) need not be paid. Nothing in the Act, however, will relieve an employer of any obligation he may have assumed by contract or of any obligation imposed by other Federal or State law to limit overtime hours of work or to pay premium rates for work in excess of a daily standard or for work on Saturdays, Sundays, holidays, or other periods outside of or in excess of the normal or regular workweek or workday. (The effect of making such payments is discussed in §§ 778.201–207 and 778.219.)

5. Section 778.107 is revised as follows:

§ 778.107 General standard for overtime pay.

The general overtime pay standard in section 7(a) requires that overtime must be compensated at a rate not less than one and one-half times the regular rate at which the employee is actually employed. The regular rate of pay at which the employee is employed may in no event be less than the statutory minimum. (The statutory minimum is the specified minimum wage applicable under section 6 of the Act, except in the case of workers specially provided for in section 14 and workers in Puerto Rico, the Virgin Islands, and American Samoa who are covered by wage orders issued pursuant to section 8 of the Act.) If the employee's regular rate of pay is higher than the statutory minimum, his overtime compensation must be computed at a rate not less than one and one-half times such higher rate. Under certain conditions prescribed in section 7 (f), (g), and (j), the Act provides limited exceptions to the application of the general standard of section 7(a) for computing overtime pay based on the regular rate. With respect to these, see §§ 778.400 through 778.421 and 778.601 and Part 548 of this chapter. The Act also provides, in section 7(i), (b), (k) and (m) and in section 13, certain partial and total exemptions from the application of section 7(a) to certain employees and under certain conditions. Regulations and interpretations concerning these exemptions are outside the scope of this Part 778 and reference should be made to other applicable parts of this chapter.

6. Section 778.110 is revised as follows:

§ 778.110 Hourly rate employee.

(a) *Earnings at hourly rate exclusively.* If the employee is employed solely on the basis of a single hourly rate, the hourly rate is his "regular rate." For his overtime work he must be paid, in addition to his straight time hourly earnings, a sum determined by multiplying one-half the hourly rate by the number of hours worked in excess of 40 in the week. Thus a $6 hourly rate will bring, for an employee who works 46 hours, a total weekly wage of $294 (46 hours at $6 plus 6 at $3). In other words, the employee is entitled to be paid an amount equal to $6 an hour for 40 hours and $9 an hour for the 6 hours of overtime, or a total of $294.

(b) *Hourly rate and bonus.* If the employee receives, in addition to his earnings at the hourly rate, a production bonus of $9.20, the regular hourly rate of pay is $6.20 an hour (46 hours at $6 yields $276; the addition of the $9.20 bonus makes a total of $285.20; this total divided by 46 hours yields a rate of $6.20). The employee is then entitled to be paid a total wage of $303.20 for 46 hours (46 hours at $6.20 plus 6 hours at $3.10, or 40 hours at $6.20 plus 6 hours at $9.30).

7. Section 778.111 is revised as follows:

§ 778.111 Piecework.

(a) *Piece rates and supplements generally.* When an employee is employed on a piece-rate basis, his regular hourly rate of pay is computed by adding together his total earnings for the workweek from piece rates and all other sources (such as production bonuses) and any sums paid for waiting time or other hours worked (except statutory exclusions); This sum is then divided by the number of hours worked

in the week for which such compensation was paid, to yield the pieceworker's "regular rate" for that week. For his overtime work the piece-worker is entitled to be paid, in addition to his total weekly earnings at this regular rate for all hours worked, a sum equivalent to one-half this regular rate of pay multiplied by the number of hours worked in excess of 40 in the week. (For an alternative method of complying with the overtime requirements of the Act as far as pieceworkers are concerned, see § 778.418.) Only additional half-time pay is required in such cases where the employee has already received straight-time compensation at piece rates or by supplementary payments for all hours worked. Thus, if the employee has worked 50 hours and has earned $245.50 at piece rates for 46 hours of productive work and in addition has been compensated at $5.00 an hour for 4 hours of waiting time, his total compensation, $265.50 must be divided by his total hours of work, 50, to arrive at his regular hourly rate of pay—$5.31. For the 10 hours of overtime the employee is entitled to additional compensation of $26.55 (10 hours at $2.655). For the week's work he is thus entitled to a total of $292.05 (which is equivalent to 40 hours at $5.31 plus 10 overtime hours at $7.965).

(b) *Piece rates with minimum hourly guarantee.* In some cases an employee is hired on a piece-rate basis coupled with a minimum hourly guaranty. Where the total piece-rate earnings for the workweek fall short of the amount that would be earned for the total hours of work at the guaranteed rate, the employee is paid the difference. In such weeks the employee is in fact paid at an hourly rate and the minimum hourly guaranty which he was paid is his regular rate in that week. In the example just given, if the employee was guaranteed $5.50 an hour for productive working time, he would be paid $253 (46×$5.50) for the 46 hours of productive work (instead of the $245.50 earned at piece rates). In a week in which no waiting time was involved, he would be owed an additional $2.75 (half time) for each of the 6 overtime hours worked, to bring his total compensation up to $280.50 (46 hours at $5.50 plus 6 hours at $2.75 or 40 hours at $5.50 plus 6 hours at $8.25). If he is paid at a different rate for waiting time, his regular rate is the weighted average of the 2 hourly rates, as discussed in § 778.115.

8. Section 778.113 is revised as follows:

§ 778.113 Salaried employees—general.

(a) *Weekly salary.* If the employee is employed solely on a weekly salary basis, his regular hourly rate of pay, on which time and a half must be paid, is computed by dividing the salary by the number of hours which the salary is intended to compensate. If an employee is hired at a salary of $182.70 and if it is understood that this salary is compensation for a regular workweek of 35 hours, the employee's regular rate of pay is $182.70 divided by 35 hours, or $5.22 an hour, and when he works overtime he is entitled to receive $5.22 for each of the first 40 hours and $7.83 (one and one-half times $5.22) for each hour thereafter. If an employee is hired at a salary of $220.80 for a 40-hour week his regular rate is $5.52 an hour.

(b) *Salary for periods other than workweek.* Where the salary covers a period longer than a workweek, such as a month, it must be reduced to its workweek equivalent. A monthly salary is subject to translation to its equivalent weekly wage by multiplying by 12 (the number of months) and dividing by 52 (the number of weeks). A semimonthly salary is translated into its equivalent weekly wage by multiplying by 24 and dividing by 52. Once the weekly wage is arrived at, the regular hourly rate of pay will be calculated as indicated above. The regular rate of an employee who is paid a regular monthly salary of $1,040, or a regular semimonthly salary of $520 for 40 hours a week, is thus found to be $6 per hour. Under regulations of the Administrator, pursuant to the authority given to him in section 7(g)(3) of the Act, the parties may provide that the regular rates shall be determined by dividing the monthly salary by the number of working days in the month and then by the number of hours of the normal or regular workday. Of course, the resultant rate in such a case must not be less than the statutory minimum wage.

9. Section 778.114, paragraph (b) is revised as follows:

§ 778.114 Fixed salary for fluctuating hours.

* * * * *

(b) The application of the principles above stated may be illustrated by the case of an employee whose hours of work do not customarily follow a regular schedule but vary from week to week, whose overtime work is never in excess of 50 hours in a workweek, and whose salary of $250 a week is paid with the understanding that it constitutes his compensation, except for overtime premiums, for whatever hours are worked in the workweek. If during the course of 4 weeks this employee works 40, 44, 50, and 48 hours, his regular hourly rate of pay in each of these weeks is approximately $6.25, $5.68, $5, and $5.21, respectively. Since the employee has already received straight-time compensation on a salary basis for all hours worked, only additional half-time pay is due. For the first week the employee is entitled to be paid $250; for the second week $261.36 ($250 plus 4 hours at $2.84, or 40 hours at $5.68 plus 4 hours at $8.52); for the third week $275 ($250 plus 10 hours at $2.50, or 40 hours at $5 plus 10 hours at $7.50); for the fourth week approximately $270.86 ($250 plus 8 hours at $2.61 or 40 hours at $5.21 plus 8 hours at $7.82).

* * * * *

10. Section 778.116 is revised as follows:

§ 778.116 Payments other than cash.

Where payments are made to employees in the form of goods or facilities which are regarded as part of wages, the reasonable cost to the employer or the fair value of such goods or of furnishing such facilities must be included in the regular rate. (See Part 531 of this chapter for a discussion as to the inclusion of goods and facilities in wages and the method of determining reasonable cost.) Where, for example, an employer furnishes lodging to his employees in addition to cash wages the reasonable cost or the fair value of the lodging (per week) must be added to the cash wages before the regular rate is determined.

11. In § 778.120 examples (i) and (ii) of paragraph (a) and paragraph (b) are revised as follows:

§ 778.120 Deferred commission payments not identifiable as earned in particular workweeks.

* * * * *

(a) *Allocation of equal amounts to each week.* * * *

* * * * *

Examples

(i) If there is a monthly commission payment of $416, the amount of commission allocable to a single week is $96 ($416×12=$4,992÷52=$96). In a week in which an employee who is due overtime compensation after 40 hours works 48 hours, dividing $96 by 48 gives the increase to the regular rate of $2. Multiplying one-half of this figure by 8 overtime hours gives the additional overtime pay due of $8. The $96 may also be multiplied by 0.083 (the appropriate decimal shown on the coefficient table) to get the additional overtime pay due of $8.

(ii) An employee received $364 in commissions for a 4-week period. Dividing this by 4 gives him a weekly increase of $96. Assume that he is due overtime compensation after 40 hours and that in the 4-week period he worked 44, 40, 44 and 48 hours. He would be due additional compensation of $4.36 for the first and third week ($96÷44=$2.18÷2=$1.09×4 overtime

hours=$1.25), no extra compensation for the second week during which no overtime hours were worked, and $8 for the fourth week, computed in the same manner as weeks one and three. The additional overtime pay due may also be computed by multiplying the amount of the weekly increase by the appropriate decimal on the coefficient table, for each week in which overtime was worked.

(b) *Allocation of equal amounts to each hour worked.* Sometimes, there are facts which make it inappropriate to assume equal commission earnings for each workweek. For example, the number of hours worked each week may vary significantly. In such cases, rather than following the method outlined in paragraph (a) of this section, it is reasonable to assume that the employee earned an equal amount of commission in each hour that he worked during the commission computation period. The amount of the commission payment should be divided by the number of hours worked in the period in order to determine the amount of the increase in the regular rate allocable to the commission payment. One-half of this figure should be multiplied by the number of statutory overtime hours worked by the employee in the overtime workweeks of the commission computation period, to get the amount of additional overtime compensation due for this period.

Example: An employee received commissions of $192 for a commission computation period of 96 hours, including 16 overtime hours (i.e., two workweeks of 48 hours each). Dividing the $192 by 96 gives a $2 increase in the hourly rate. If the employee is entitled to overtime after 40 hours in a workweek, he is due an additional $16 for the commission computation period, representing an additional $1 for each of the 16 overtime hours.

12. Section 778.202 paragraphs (c) and (e) are revised as follows:

§ 778.202 Premium pay for hours in excess of a daily or weekly standard.

* * * * *

(c) *Premiums for excessive daily hours.* If an employee whose maximum hours standard is 40 hours is hired at the rate of $5.75 an hour and receives, as overtime compensation under his contract, $8.25 per hour for each hour actually worked in excess of 8 per day (or in excess of his normal or regular daily working hours), his employer may exclude the premium portion of the overtime rate from the employee's regular rate and credit the total of the extra 50-cent payments thus made for daily overtime hours against the overtime compensation which is due under the statute for hours in excess of 40 in that workweek. If the same contract further provided for the payment of $8.75 for hours in excess of 12 per day, the extra $1 payments could likewise be credited toward overtime compensation due under the Act. To qualify as overtime premiums under section 7(e)(5), the daily overtime premium payments must be made for hours in excess of 8 hours per day or the employee's normal or regular working hours. If the normal workday is artificially divided into a "straight time" period to which one rate is assigned, followed by a so-called "overtime" period for which a higher "rate" is specified, the arrangement will be regarded as a device to contravene the statutory purposes and the premiums will be considered part of the regular rate. For a fuller discussion of this problem, see § 778.501.

* * * * *

(e) *Premium pay for sixth or seventh day worked.* Under section 7(e)(6) and 7(h), extra premium compensation paid pursuant to contract or statute for work on the sixth or seventh day worked in the workweek is regarded in the same light as premiums paid for work in excess of the applicable maximum hours standard or the employee's normal or regular workweek.

13. Section 778.205 is revised as follows:

§ 778.205 Premiums for weekend and holiday work—example.

The application of section 7(e)(6) may be illustrated by the following example: Suppose an agreement of employment calls for the payment of $7.50 an hour for all hours worked on a holiday or on Sunday in the operation of machines by operators whose maximum hours standard is 40 hours and who are paid a bona fide hourly rate of $5 for like work performed during nonovertime hours on other days. Suppose further that the workweek of such an employee begins at 12:01 a.m. Sunday, and in a particular week he works a schedule of 8 hours on Sunday and on each day from Monday through Saturday, making a total of 56 hours worked in the workweek. Tuesday is a holiday. The payment of $320 to which the employee is entitled under the employment agreement will satisfy the requirements of the Act since the employer may properly exclude from the regular rate the extra $20 paid for work on Sunday and the extra $20 paid for holiday work and credit himself with such amount against the statutory overtime premium required to be paid for the 16 hours worked over 40.

14. Section 778.206 is revised as follows:

§ 778.206 Premiums for work outside basic workday or workweek—examples.

The effect of section 7(e)(7) where "clock pattern" premiums are paid may be illustrated by reference to provisions typical of the applicable collective bargaining agreements traditionally in effect between employers and employees in the longshore and stevedoring industries. These agreements specify straight time rates applicable during the hours established in good faith under the agreement as the basic, normal, or regular workday and workweek. Under one such agreement, for example, such workday and workweek are established as the first 8 hours of work, exclusive of mealtime, each day, Monday through Friday, between the hours of 8 a.m. and 5 p.m. Under another typical agreement, such workday and workweek are established as the hours between 8 a.m. and 12 noon and between 1 p.m. and 5 p.m., Monday through Friday. Work outside such workday and workweek is paid for at premium rates not less than one and one-half times the bona fide straight-time rates applicable to like work when performed during the basic, normal, or regular workday or workweek. The extra compensation provided by such premium rates will be excluded in computing the regular rate at which the employees so paid are employed and may be credited toward overtime compensation due under the Act. For example, if an employee is paid $5 an hour under such an agreement for handling general cargo during the basic, normal, or regular workday and $7.50 per hour for like work outside of such workday, the extra $2.50 will be excluded from the regular rate and may be credited to overtime pay due under the Act. Similarly, if the straight time rate established in good faith by the contract should be higher because of handling dangerous or obnoxious cargo, recognition of skill differentials, or similar reasons, so as to be $7.50 an hour during the hours established as the basic or normal or regular workday or workweek, and a premium rate of $11.25 an hour is paid for the same work performed during other hours of the day or week, the extra $3.75 may be excluded from the regular rate of pay and may be credited toward overtime pay due under the Act. Similar principles are applicable where agreements following this general pattern exist in other industries.

15. Section 778.215 paragraph (a)(4) is revised as follows:

§ 778.215 Conditions for exclusion of benefit-plan contributions under section 7(e)(4).

(a) *General rules.* * * *

* * * * *

(4) The employer's contributions must be paid irrevocably to a trustee or third person pursuant to an insurance agreement, trust or other funded arrangement. The trustee must assume the usual fiduciary responsibilities imposed upon trustees by applicable law. The trust or fund must be set up in such a way that in no event will the employer be able to recapture any of the contributions paid in nor in any way divert the funds to his own use or benefit. (It should also be noted that in the case of joint employer-employee contributory plans, where the employee contributions are not paid over to a third person or to a trustee unaffiliated with the employer, violations of the Act may result if the employee contributions cut into the required minimum or overtime rates. See Part 531 of this chapter.) Although an employer's contributions made to a trustee or third person pursuant to a benefit plan must be irrevocably made, this does not prevent return to the employer of sums which he had paid in excess of the contributions actually called for by the plan, as where such excess payments result from error or from the necessity of marking payments to cover the estimated cost of contributions at a time when the exact amount of the necessary contributions under the plan is not yet ascertained. For example, a benefit plan may provide for definite insurance benefits for employees in the event of the happening of a specified contingency such as death, sickness, accident, etc., and may provide that the cost of such definite benefits, either in full or any balance in excess of specified employee contributions, will be borne by the employer. In such a case the return by the insurance company to the employer of sums paid by him in excess of the amount required to provide the benefits which, under the plan, are to be provided through contributions by the employer, will not be deemed a recapture or diversion by the employer of contributions made pursuant to the plan.

* * * * *

10. In § 778.219 paragraphs (a) (1) and (2) and (b) (1) and (2) are revised as follows:

§ 778.219 Pay for foregoing holidays and vacations.

(a) *Sums payable whether employee works or not.* * * *

* * * * *

(1) An employee whose rate of pay is $5 an hour and who usually works a 6-day 48-hour week is entitled, under his employment contract, to a week's paid vacation in the amount of his usual straight-time earnings—$240. He foregoes his vacation and works 50 hours in the week in question. He is owed $250 as his total straight-time earnings for the week, and $240 in addition as his vacation pay. Under the statute he is owed an additional $25 as overtime premium (additional half-time) for the 10 hours in excess of 40. His regular rate of $5 per hour has not been increased by virtue of the payment of $240 vacation pay, but no part of the $240 may be offset against the statutory overtime compensation which is due. (Nothing in this example is intended to imply that the employee has a statutory right to $240 or any other sum as vacation pay. This is a matter of private contract between the parties who may agree that vacation pay will be measured by straight-time earnings for any agreed number of hours or days, or by total normal or expected take-home pay for the period or that no vacation pay at all will be paid. The example merely illustrates the proper method of computing overtime for an employee whose employment contract provides $240 vacation pay.)

(2) An employee who is entitled under his employment contract to 8 hours' pay at his rate of $5 an hour for the Christmas holiday, foregoes his holiday and works 9 hours on that day. During the entire week he works a total of 50 hours. He is paid under his contract, $250 as straight-time compensation for 50 hours plus $40 as idle holiday pay. He is owed, under the statute, an additional $25 as overtime premium (additional half-time) for the 10 hours in excess of 40. His regular rate of $5 per hour has not been increased by virtue of the holiday pay but no part of the $40 holiday pay may be credited toward statutory overtime compensation due.

(b) *Premiums for holiday work distinguished.* * * *

* * * * *

(1) The typical situation is one in which an employee is entitled by contract to 8 hours' pay at his rate of $5 an hour for certain named holidays when no work is performed. If, however, he is required to work on such days, he does not receive his idle holiday pay. Instead he receives a premium rate of $7.50 (time and one-half) for each hour worked on the holiday. If he worked 9 hours on the holiday and a total of 50 hours for the week, he would be owed, under his contract, $67.50 (9×$7.50) for the holiday work and $205 for the other 41 hours worked in the week, a total of $272.50. Under the statute (which does not require premium pay for a holiday) he is owed $275 for a workweek of 50 hours at a rate of $5 an hour. Since the holiday premium is one and one-half times the established rate for nonholiday work, it does not increase the regular rate because it qualifies as an overtime premium under section 7(e)(6), and the employer may credit it toward statutory overtime compensation due and need pay the employee only the additional sum of $2.50 to meet the statutory requirements. (For a discussion of holiday premiums see § 778.203.)

(2) If all other conditions remained the same but the contract called for the payment of $10 (double time) for each hour worked on the holiday, the employee would receive, under his contract $90 (9×$10) for the holiday work in addition to $205 for the other 41 hours worked, a total of $295. Since this holiday premium is also an overtime premium under section 7(e)(6), it is excludable from the regular rate and the employer may credit it toward statutory overtime compensation due. Because the total thus paid exceeds the statutory requirements, no additional compensation is due under the Act. In distinguishing this situation from that in the example in paragraph (a)(2) of this section, it should be noted that the contract provisions in the two situations are different and result in the payment of different amounts. In example (2) the employee received a total of $85 attributable to the holiday: 8 hours' idle holiday pay at $5 an hour, due him whether he worked or not, and $45 pay at the nonholiday rate for 9 hours' work on the holiday. In the situation discussed in this paragraph the employee received $90 pay for working on the holiday—double time for 9 hours of work. Thus, clearly, all of the pay in this situation is paid for and directly related to the number of hours worked on the holiday.

17. Section 778.220 is revised as follows:

§ 778.220 "Show-up" or "reporting" pay.

(a) *Applicable principles.* Under some employment agreements, an employee may be paid a minimum of a specified number of hours' pay at the applicable straight time or overtime rate on infrequent and sporadic occasions when, after reporting to work at his scheduled starting time on a regular work day or on another day on which he has been scheduled to work, he is not provided with the expected amount of work. The amounts that may be paid under such an agreement over and

above what the employee would receive if paid at his customary rate only for the number of hours worked are paid to compensate the employee for the time wasted by him in reporting for work and to prevent undue loss of pay resulting from the employer's failure to provide expected work during regular hours. One of the primary purposes of such an arrangement is to discourage employers from calling their employees in to work for only a fraction of a day when they might get full-time work elsewhere. Pay arrangements of this kind are commonly referred to as "show-up" or "reporting" pay. Under the principles and subject to the conditions set forth in Subpart B of this part and §§ 778.201 through 778.207, that portion of such payment which represents compensation at the applicable rates for the straight time or overtime hours actually worked, if any, during such period may be credited as straight time or overtime compensation, as the case may be, in computing overtime compensation due under the Act. The amount by which the specified number of hours' pay exceeds such compensation for the hours actually worked is considered as a payment that is not made for hours worked. As such, it may be excluded from the computation of the employee's regular rate and cannot be credited toward statutory overtime compensation due him.

(b) *Application illustrated.* To illustrate, assume that an employee entitled to overtime pay after 40 hours a week whose workweek begins on Monday and who is paid $5 an hour reports for work on Monday according to schedule and is sent home after being given only 2 hours of work. He then works 8 hours each day on Tuesday through Saturday, inclusive, making a total of 42 hours for the week. The employment agreement covering the employees in the plant, who normally work 8 hours a day, Monday through Friday, provides that an employee reporting for scheduled work on any day will receive a minimum of 4 hours' work or pay. The employee thus receives not only the $10 earned in the 2 hours of work on Monday but an extra 2 hours' "show-up" pay, or $10 by reason of this agreement. However, since this $10 in "show-up" pay is not regarded as compensation for hours worked, the employee's regular rate remains $5 and the overtime requirements of the Act are satisfied if he receives, in addition to the $210 straight-time pay for 42 hours and the $10 "show-up" payment, the sum of $5 as extra compensation for the 2 hours of overtime work on Saturday.

18. Section 778.221 paragraph (b) is revised as follows:

§ 778.221 "Call-back" pay.

* * * * *

(b) *Application illustrated.* The application of these principles to call-back payments may be illustrated as follows: An employment agreement provides a minimum of 3 hours' pay at time and one-half for any employee called back to work outside his scheduled hours. The employees covered by the agreement, who are entitled to overtime pay after 40 hours a week, normally work 8 hours each day, Monday through Friday, inclusive, in a workweek beginning on Monday, and are paid overtime compensation at time and one-half for all hours worked in excess of 8 in any day or 40 in any workweek. Assume that an employee covered by this agreement and paid at the rate of $5 an hour works 1 hour overtime or a total of 9 hours on Monday, and works 8 hours each on Tuesday through Friday, inclusive. After he has gone home on Friday evening he is called back to perform an emergency job. His hours worked on the call total 2 hours and he receives 3 hours' pay at time and one-half, or $22.50, under the call-back provision, in addition to $200 for working his regular schedule and $7.50 for overtime worked on Monday evening. In computing overtime compensation due this employee under the Act, the 43 actual hours (not 44) are counted as working time during the week. In addition to $215 pay at the $5 rate for all these hours, he has received under the agreement a premium of $2.50 for the 1 overtime hour on Monday and of $5 for the 2 hours of overtime work on the call, plus an extra sum of $7.50 paid by reason of the provision for minimum call-back pay. For purposes of the Act, the extra premiums paid for actual hours of overtime work on Monday and on the Friday call (a total of $7.50) may be excluded as true overtime premiums in computing his regular rate for the week and may be credited toward compensation due under the Act, but the extra $7.50 received under the call-back provision is not regarded as paid for hours worked; therefore, it may be excluded from the regular rate, but it cannot be credited toward overtime compensation due under the Act. The regular rate of the employee, therefore, remains $5, and he has received an overtime premium of $2.50 an hour for 3 overtime hours of work. This satisfies the requirements of section 7 of the Act. The same would be true, of course, if in the foregoing example, the employee was called back outside his scheduled hours for the 2-hour emergency job on another night of the week or on Saturday or Sunday, instead of on Friday night.

19. Section 778.223 is revised as follows:

§ 778.223 Pay for non-productive hours distinguished.

Under the Act an employee must be compensated for all hours worked. As a general rule the term "hours worked" will include (a) all time during which an employee is required to be on duty or to be on the employer's premises or at a prescribed workplace and (b) all time during which an employee is suffered or permitted to work whether or not he is required to do so. Thus, working time is not limited to the hours spent in active productive labor, but includes time given by the employee to the employer even though part of the time may be spent in idleness. Some of the hours spent by employees, under certain circumstances, in such activities as waiting for work, remaining "on call", traveling on the employer's business or to and from workplaces, and in meal periods and rest periods are regarded as working time and some are not. The governing principles are discussed in Part 785 of this chapter (interpretative bulletin on "hours worked") and Part 790 of this chapter (statement of effect of Portal-to-Portal Act of 1947). To the extent that these hours are regarded as working time, payment made as compensation for these hours obviously cannot be characterized as "payments not for hours worked." Such compensation is treated in the same manner as compensation for any other working time and is, of course, included in the regular rate of pay. Where payment is ostensibly made as compensation for such of these hours as are not regarded as working time under the Act, the payment is nevertheless included in the regular rate of pay unless it qualifies for exclusion from the regular rate as one of a type of "payments made for occasional periods when no work is performed due to * * * failure of the employer to provide sufficient work, or other similar cause" as discussed in § 778.218 or is excludable on some other basis under section 7(e)(2). For example, an employment contract may provide that employees who are assigned to take calls for specific periods will receive a payment of $5 for each 8-hour period during which they are "on call" in addition to pay at their regular (or overtime) rate for hours actually spent in making calls. If the employees who are thus on call are not confined to their homes or to any particular place, but may come and go as they please,

provided that they leave word where they may be reached, the hours spent "on call" are not considered as hours worked. Although the payment received by such employees for such "on call" time is, therefore, not allocable to any specific hours of work, it is clearly paid as compensation for performing a duty involved in the employee's job and is not of a type excludable under section 7(e)(2). The payment must therefore be included in the employee's regular rate in the same manner as any payment for services, such as an attendance bonus, which is not related to any specific hours of work.

20. Section 778.302 paragraph (b) is revised as follows:

§ 778.302 Computation of overtime due for overlapping workweeks.

* * * * *

(b) *Application of rule illustrated.* Suppose that, in the example given in § 778.301, the employee, who receives $5 an hour and is subject to overtime pay after 40 hours a week, worked 5 hours on Sunday, March 7, 1965. Suppose also that his last "old" workweek commenced at 7 a.m. on Monday, March 1, and he worked 40 hours March 1 through March 5 so that for the workweek ending March 7 he would be owed straight time and overtime compensation for 45 hours. The proposal is to commence the "new" workweek at 7 a.m. on March 7. If in the "new" workweek of Sunday, March 7, through Saturday, March 13, the employee worked a total of 40 hours, including the 5 hours worked on Sunday, it is obvious that the allocation of the Sunday hours to the old workweek will result in higher total compensation to the employee for the 13-day period. He should, therefore, be paid $237.50 (40×$5+5×$7.50) for the period of March 1 through March 7, and $175 (35×$5) for the period of March 8 through March 13.

* * * * *

21. Section 778.304 paragraph (b) is revised as follows:

§ 778.304 Amounts deducted from cash wages—general.

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(b) In general, where such deductions are made, the employee's "regular rate" is the same as it would have been if the occasion for the deduction had not arisen. Also, as explained in Part 531 of this chapter, the requirements of the Act place certain limitations on the making of some of the above deductions.

22. Section 778.306 paragraph (a) is revised as follows:

§ 778.306 Salary reductions in short workweeks.

(a) The reductions in pay described in subparagraph (4) of § 778.304(a) are not, properly speaking, "deductions" at all. If an employee is compensated at a fixed salary for a fixed workweek and if this salary is reduced by the amount of the average hourly earnings for each hour lost by the employee in a short workweek, the employee is, for all practical purposes, employed at an hourly rate of pay. This hourly rate is the quotient of the fixed salary divided by the fixed number of hours it is intended to compensate. If an employee is hired at a fixed salary of $200 for a 40-hour week, his hourly rate is $5. When he works only 36 hours he is therefore entitled to $180. The employer makes a "deduction" of $20 from his salary to achieve this result. The regular hourly rate is not altered.

* * * * *

23. Section 778.307 is revised as follows:

§ 778.307 Disciplinary deductions.

Where deductions as described in § 778.304(a)(5) are made for disciplinary reasons, the regular rate of an employee is computed before deductions are made, as in the case of deductions of the types in paragraphs (a) (1), (2), and (3) of § 778.304. Thus where disciplinary deductions are made from a piece-worker's earnings, the earnings at piece rates must be totaled and divided by the total hours worked to determine the regular rate before the deduction is applied. In no event may such deductions (or deductions of the type described in § 778.304(a)(2)) reduce the earnings to an average below the applicable minimum wage or cut into any part of the overtime compensation due the employee. For a full discussion of the limits placed on such deductions, see Part 531 of this chapter. The principles set forth therein with relation to deductions have no application, however, to situations involving refusal or failure to pay the full amount of wages due. See Part 531 of this chapter; also § 778.306. It should be noted that although an employer may penalize an employee for lateness subject to the limitations stated above by deducting a half hour's straight time pay from his wages, for example, for each half hour, or fraction thereof of his lateness, the employer must still count as hours worked all the time actually worked by the employee in determining the amount of overtime compensation due for the workweek.

24. Section 778.308 paragraph (b) is revised as follows:

§ 778.308 The overtime rate is an hourly rate.

* * * * *

(b) To qualify under section 7(e)(5), the overtime rate must be greater than the regular rate, either a fixed amount per hour or a multiple of the nonovertime rate, such as one and one-third, one and one-half or two times that rate. To qualify under section 7(e) (6) or (7), the overtime rate may not be less than one and one-half times the bonafide rate established in good faith for like work performed during nonovertime hours. Thus, it may not be less than time and one-half but it may be more. It may be a standard multiple greater than one and one-half (for example, double time); or it may be a fixed sum of money per hour which is, as an arithmetical fact, at least one and one-half times the nonovertime rate for example, if the nonovertime rate is $5 per hour, the overtime rate may not be less than $7.50 but may be set at a higher arbitrary figure such as $8 per hour.

25. Section 778.310 is revised as follows:

§ 778.310 Fixed sum for varying amounts of overtime.

A premium in the form of a lump sum which is paid for work performed during overtime hours without regard to the number of overtime hours worked does not qualify as an overtime premium even though the amount of money may be equal to or greater than the sum owed on a per hour basis. For example, an agreement that provides for the payment of a flat sum of $75 to employees who work on Sunday does not provide a premium which will qualify as an overtime premium, even though the employee's straight time rate is $5 an hour and the employee always works less than 10 hours on Sunday. Likewise, where an agreement provides for the payment for work on Sunday of either the flat sum of $75 or time and one-half the employee's regular rate for all hours worked on Sunday, whichever is greater, the $75 guaranteed payment is not an overtime premium. The reason for this is clear. If the rule were otherwise, an employer desiring to pay an employee a fixed salary regardless of the number of hours worked in excess of the applicable maximum hours standard could merely label as overtime pay a fixed portion of such salary sufficient to take care of compensation for the maximum number of hours that would be worked. The Congressional purpose to effectuate a maximum hours standard by placing a penalty upon the performance of excessive overtime work would thus be defeated. For this reason,

where extra compensation is paid in the form of a lump sum for work performed in overtime hours, it must be included in the regular rate and may not be credited against statutory overtime compensation due.

26. Section 778.311, paragraph (b) is revised as follows:

§ 778.311 Flat rate for special job performed in overtime hours.

* * * * *

(b) *Application of rule illustrated.* It may be helpful to give a specific example illustrating the result of paying an employee on the basis under discussion.

(1) An employment agreement calls for the payment of $5 per hour for work during the hours established in good faith as the basic workday or workweek; it provides for the payment of $7.50 per hour for work during hours outside the basic workday or workweek. It further provides that employees doing a special task outside the basic workday or workweek shall receive 6 hours' pay at the rate of $7.50 per hour (a total payment of $45) regardless of the time actually consumed in performance. The applicable maximum hours standard is 40 hours in a workweek.

(2) Suppose an employee under such an agreement works for following schedule:

	M	T	W	T	F	S	S
Hours within basic workday	8	8	7	8	8	0	0
Pay under contract	$40	$40	$35	$40	$40	0	0
Hours outside basic workday	2	2[1]	1	0	0	4	0
Pay under contract	$15	$45	$7.50	0	0	$30	0

[1] Hours spent in the performance of special work.

(3) To determine the regular rate, the total compensation (except statutory exclusions) must be divided by the total number of hours worked. The only sums to be excluded in this situation are the extra premiums provided by a premium rate (a rate per hour) for work outside the basic workday and workweek, which qualify for exlusion under section 7(e)(7) of the Act, as discussed in § 778.204. The $15 paid on Monday, the $7.50 paid on Wednesday and the $30 paid on Saturday are paid pursuant to rates which qualify as premium rates under section 7(e)(7) of the Act. The total extra compensation (over the straight time pay for these hours) provided by these premium rates is $17.50. The sum of $17.50 should be subtracted from the total of $292.50 due the employee under the employment agreement. No part of the $45 payment for the special work performed on Tuesday qualifies for exclusion. The remaining $275 must thus be divided by 48 hours to determine the regular rate—$5.73 per hour. The employee is owed an additional one-half this rate under the Act for each of 8 overtime hours worked—$22.92. The extra compensation in the amount of $17.50 payable pursuant to contract premium rates which qualify as overtime premiums may be credited toward the $22.92 owed as statutory overtime premiums. No part of the $45 payment may be so credited. The employer must pay the employee an additional $5.42 as statutory overtime pay—a total of $297.92 for the week.

27. Section 778.313 is revised as follows:

§ 778.313 Computing overtime pay under the Act for employees compensated on task basis.

(a) An example of the operation of a plan of the second type discussed in § 778.312 may serve to illustrate the effects on statutory overtime computations of payment on a task basis. Assume the following facts: The employment agreement establishes a basic hourly rate of $5 per hour, provides for the payment of $7.50 per hour for overtime work (in excess of the basic workday or workweek) and defines the basic workday as 8 hours, and the basic workweek as 40 hours, Monday through Friday. It further provides that the assembling of a machine constitutes a day's work. An employee who completes the assembling job in less than 8 hours will be paid 8 hours' pay at the established rate of $5 per hour and will receive pay at the "overtime" rate for hours worked after the completion of the task. An employee works the following hours in a particular week:

	M	T	W	T	F	S	S
Hours spent on task	8	7	7	8	8½	6	0
Day's pay under contract	$40	$40	$40	$40	$40	$30	0
Additional hours	2	0	2	0	½	0	0
Additional pay under contract	$15	0	$15	$7.50	$7.50	0	0

(b) In the example in paragraph (a) of this section the employee has actually worked a total of 48 hours and is owed under the contract a total of $305 for the week. The only sums which can be excluded as overtime premiums from this total before the regular rate is determined are the extra $2.50 payments for the extra hour on Thursday and Friday made because of work actually in excess of 8 hours. The payment of the other premium rates under the contract is either without regard to whether or not the hours they compensated were in excess of a bona fide daily or weekly standard or without regard to the number of overtime hours worked. Thus only the sum of $5 is excluded from the total. The remaining $300 is divided by 48 hours to determine the regular rate—$6.25 per hour. One-half this rate is due under the Act as extra compensation for each of the 8 overtime hours—$25. The $5 payment under the contract for actual excess hours may be credited and the balance—$20—is owed in addition to the $305 due under the contract.

28. Section 778.317 is revised as follows:

§ 778.317 Agreements not to pay for certain nonovertime hours.

An agreement not to compensate employees for certain nonovertime hours stands on no better footing since it would have the same effect of diminishing the employee's total overtime compensation. An agreement, for example, to pay an employee whose maximum hours standard for the particular workweek is 40 hours, $5 an hour for the first 35 hours, nothing for the hours between 35 and 40 and $7.50 an hour for the hours in excess of 40 would not meet the overtime requirements of the Act. Under the principles set forth in § 778.315, the employee would have to be paid $25 for the 5 hours worked between 35 and 40 before any sums ostensibly paid for overtime could be credited toward overtime compensation due under the Act. Unless the employee is first paid $5 for each nonovertime hour worked, the $7.50 per hour payment purportedly for overtime hours is not in fact an overtime payment.

21. Section 778.320 is revised as follows:

§ 778.320 Hours that would not be hours worked if not paid for.

In some cases an agreement provides for compensation for hours spent in certain types of activities which would not be regarded as working time under the Act if no compensation were provided. Preliminary and postliminary activities and time spent in eating meals between working hours fall in this category. The agreement of the parties to provide compensation for such hours may or may not convert them into hours worked, depending on whether or not it appears from all the pertinent facts that the parties have agreed to treat such time as hours worked. Except for certain activity governed by the Portal-to-Portal Act (see paragraph (b) of this section),

the agreement of the parties will be respected, if reasonable.

(a) *Parties have agreed to treat time as hours worked.* Where the parties have reasonably agreed to include as hours worked time devoted to activities of the type described above, payments for such hours will not have the mathematical effect of increasing or decreasing the regular rate of an employee if the hours are compensated at the same rate as other working hours. The requirements of section 7(a) of the Act will be considered to be met where overtime compensation at one and one-half times such rate is paid for the hours so compensated in the workweek which are in excess of the statutory maximum.

(b) *Parties have agreed not to treat time as hours worked.* Under the principles set forth in § 778.319, where the payments are made for time spent in an activity which, if compensable under contract, custom, or practice, is required to be counted as hours worked under the Act by virtue of Section 4 of the Portal-to-Portal Act of 1947 (see Parts 785 and 790 of this chapter), no agreement by the parties to exclude such compensable time from hours worked would be valid. On the other hand, in the case of time spent in activity which would not be hours worked under the Act if not compensated and would not become hours worked under the Portal-to-Portal Act even if made compensable by contract, custom, or practice, the parties may reasonably agree that the time will not be counted as hours worked. Activities of this type include eating meals between working hours. Where it appears from all the pertinent facts that the parties have agreed to exclude such activities from hours worked, payments for such time will be regarded as qualifying for exclusion from the regular rate under the provisions of section 7(e)(2), as explained in §§ 778.216 to 778.224. The payments for such hours cannot, of course, qualify as overtime premiums creditable toward overtime compensation under section 7(h) of the Act.

30. Section 778.322 is revised as follows:

§ 778.322 Reducing the fixed workweek for which a salary is paid.

If an employee whose maximum hours standard is 40 hours was hired at a salary of $200 for a fixed workweek of 40 hours, his regular rate at the time of hiring was $5 per hour. If his workweek is later reduced to a fixed workweek of 35 hours while his salary remains the same, it is the fact that it now takes him only 35 hours to earn $200, so that he earns his salary at the average rate of $5.71 per hour. His regular rate thus becomes $5.71 per hour; it is no longer $5 an hour. Overtime pay is due under the Act only for hours worked in excess of 40, not 35, but if the understanding of the parties is that the salary of $200 now covers 35 hours of work and no more, the employee would be owed $5.71 per hour under his employment contract for each hour worked between 35 and 40. He would be owed not less than one and one-half times $5.71 ($8.57) per hour, under the statute, for each hour worked in excess of 40 in the workweek. In weeks in which no overtime is worked only the provisions of section 6 of the Act, requiring the payment of not less than the applicable minimum wage for each hour worked, apply so that the employee's right to receive $5.71 per hour is enforceable only under his contract. However, in overtime weeks the Administrator has the duty to insure the payment of at least one and one-half times the employee's regular rate of pay for hours worked in excess of 40 and this overtime compensation cannot be said to have been paid until all straight time compensation due the employee under the statute or his employment contract has been paid. Thus if the employee works 41 hours in a particular week, he is owed his salary for 35 hours—$200, 5 hours' pay at $5.71 per hour for the 5 hours between 35 and 40—$28.55, and 1 hour's pay at $8.57 for the 1 hour in excess of 40—$8.57, or a total of $237.12 for the week.

31. Section 778.323 is revised as follows:

§ 778.323 Effect if salary is for variable workweek.

The discussion in the prior section sets forth one result of reducing the workweek from 40 to 35 hours. It is not either the necessary result or the only possible result. As in all cases of employees hired on a salary basis, the regular rate depends in part on the agreement of the parties as to what the salary is intended to compensate. In reducing the customary workweek schedule to 35 hours the parties may agree to change the basis of the employment arrangement by providing that the salary which formerly covered a fixed workweek of 40 hours now covers a variable workweek up to 40 hours. If this is the new agreement, the employee receives $200 for workweeks of varying lengths, such as 35, 36, 38, or 40 hours. His rate thus varies from week to week, but in weeks of 40 hours or over, it is $5 per hour (since the agreement of the parties is that the salary covers up to 40 hours and no more) and his overtime rate, for hours in excess of 40, thus remains $7.50 per hour. Such a salary arrangement presumably contemplates that the salary will be paid in full for any workweek of 40 hours or less. The employee would thus be entitled to his full salary if he worked only 25 or 30 hours. No deductions for hours not worked in short workweeks would be made. (For a discusison of the effect or deductions on the regular rate, see §§ 778.304 to 778.307.)

32. Section 778.325 is revised as follows:

§ 778.325 Effect on salary covering more than 40 hours' pay.

The same reasoning applies to salary covering straight time pay for a longer workweek. If an employee whose maximum hours standard is 40 hours was hired at a fixed salary of $275 for 55 hours of work, he was entitled to a statutory overtime premium for the 15 hours in excess of 40 at the rate of $2.50 per hour (half-time) in addition to his salary, and to statutory overtime pay of $7.50 per hour (time and one-half) for any hours worked in excess of 55. If the scheduled workweek is later reduced to 50 hours, with the understanding between the parties that the salary will be paid as the employee's nonovertime compensation for each workweek of 55 hours or less, his regular rate in any overtime week of 55 hours or less is determined by dividing the salary by the number of hours worked to earn it in that particular week, and additional half-time, based on that rate, is due for each hour in excess of 40. In weeks of 55 hours or more, his regular rate remains $5 per hour and he is due, in addition to his salary, extra compensation of $2.50 for each hour over 40 but not over 55 and full time and one-half, or $7.50, for each hour worked in excess of 55. If, however, the understanding of the parties is that the salary now covers a fixed workweek of 50 hours, his regular rate is $5.50 per hour in all weeks. This assumes that when an employee works less than 50 hours in a particular week, deductions are made at a rate of $5.50 per hour for the hours not worked.

33. Section 778.326 is revised as follows:

§ 778.326 Reduction of regular overtime workweek without reduction of take-home pay.

The reasoning applied in the foregoing sections does not, of course, apply to a situation in which the former earnings at both straight time and overtime are paid to the employee for the reduced workweek. Suppose an employee was hired at an hourly rate of $5 an hour and regularly worked 50 hours, earning $275 as his total straight time and overtime compensation, and the parties now

agree to reduce the workweek to 45 hours without any reduction in take-home pay. The parties in such a situation may agree to an increase in the hourly rate from $5 per hour to $6 so that for a workweek of 45 hours (the reduced schedule) the employee's straight time and overtime earnings will be $285. The parties cannot, however, agree that the employee is to receive exactly $285 as total compensation (including overtime pay) for a workweek varying, for example, up to 50 hours, unless he does so pursuant to contracts specifically permitted in section 7(f) of the Act, as discussed in §§ 778.402 through 778.414. An employer cannot otherwise discharge his statutory obligation to pay overtime compensation to an employee who does not work the same fixed hours each week by paying a fixed amount purporting to cover both straight time and overtime compensation for an "agreed" number of hours. To permit such a practice without proper statutory safeguards would result in sanctioning the circumvention of the provisions of the Act which require that an employee who works more than 40 hours in any workweek be compensated, in accordance with express congressional intent, at a rate not less than one and one-half times his regular rate of pay for the burden of working long hours. In arrangements of this type, no additional financial pressure would fall upon the employer and no additional compensation would be due to the employee under such a plan until the workweek exceeded 50 hours.

34. Section 778.327 is revised as follows:

§ 778.327 Temporary or sporadic reduction in schedule.

(a) The problem of reduction in the workweek is somewhat different where a temporary reduction is involved. Reductions for the period of a dead or slow season follow the rules announced above. However, reduction on a more temporary or sporadic basis presents a different problem. It is obvious that as a matter of simple arithmetic an employer might adopt a series of different rates for the same work, varying inversely with the number of overtime hours worked in such a way that the employee would earn no more than his straight time rate no matter how many hours he worked. If he set the rate at $6 per hour for all workweeks in which the employee worked 40 hours or less, approximately $5.93 per hour for workweeks of 41 hours, approximately $5.86 for workweeks of 42 hours, approximately $5.45 for workweeks of 50 hours, and so on, the employee would always receive (for straight time and overtime at these "rates") $6 an hour regardless of the number of overtime hours worked. This is an obvious bookkeeping device designed to avoid the payment of overtime compensation and is not in accord with the law. See Walling v. Green Head Bit & Supply Co., 138 F. 2d 453. The regular rate of pay of this employee for overtime purposes is, obviously, the rate he earns in the normal nonovertime week—in this case, $6 per hour.

(b) The situation is different in degree but not in principle where employees who have been at a bona fide $6 rate usually working 50 hours and taking home $330 as total straight time and overtime pay for the week are, during occasional weeks, cut back to 42 hours. If the employer raises their rate to $7.65 for such weeks so that their total compensation is $328.95 for a 42-hour week the question may properly be asked, when they return to the 50-hour week, the $2 rate and the gross pay of 110 whether the $6 rate is really their regular rate. Are they putting in 8 additional hours of work for that extra $7.65 or is their "regular" rate really now $7.65 an hour since this is what they earn in the short workweek? It seems clear that where different rates are paid from week to week for the same work and where the difference is justified by no factor other than the number of hours worked by the individual employee—the longer he works the lower the rate—the device is evasive and the rate actually paid in the shorter or nonovertime week is his regular rate for overtime purposes in all weeks.

35. Section 778.408 paragraph (c) is revised as follows:

§ 778.408 The specified regular rate.

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(c) The rate specified in the contract must also be a "regular" rate which is operative in determining the total amount of the employee's compensation. Suppose, for example, that the compensation of an employee is normally made up in part by regular bonuses, commissions, or the like. In the past he has been employed at an hourly rate of $5 per hour in addition to which he has received a cost-of-living bonus of $7 a week and a 2-percent commission on sales which averaged $70 per week. It is now proposed to employ him under a guaranteed pay contract which specifies a rate of $5 per hour and guarantees $200 per week, but he will continue to receive his cost-of-living bonus and commissions in addition to the guaranteed pay. Bonuses and commissions of this type are, of course, included in the "regular rate" as defined in section 7(e). It is also apparent that the $5 rate specified in the contract is not a "regular rate" under the requirements of section 7(f) since it never controls or determines the total compensation he receives. For this reason, it is not possible to enter into a guaranteed pay agreement of the type permitted under section 7(f) with an employee whose regular weekly earnings are made up in part by the payment of regular bonuses and commissions of this type. This is so because even in weeks in which the employee works sufficient hours to exceed, at his hourly rate, the sum guaranteed, his total compensation is controlled by the bonus and the amount of commissions earned as well as by the hourly rate.

* * * * *

36. Section 778.409 is revised as follows:

§ 778.409 Provision for overtime pay.

The section 7(f) contract must provide for compensation at not less than one and one-half times the specified regular rate for all hours worked in excess of the applicable maximum hours standard for the particular workweek. All excessive hours, not merely those covered by the guarantee, must be compensated at one and one-half times (or a higher multiple) of the specified regular rate. A contract which guaranteed a weekly salary of $160, specified a rate of $3.60 per hour, and provided that not less than one and one-half times such rate would be paid only for all hours up to and including 46⅔ hours would not qualify under this section. The contract must provide for payment at time and one-half (or more) for all hours in excess of the applicable maximum hours standard in any workweek. A contract may provide a specific overtime rate greater than one and one-half times the specified rate, for example, double time. If it does provide a specific overtime rate it must provide that such rate will be paid for all hours worked in excess of the applicable maximum hours standard.

37. Section 778.411 is revised as follows:

§ 778.411 Sixty-hour limit on pay guaranteed by contract.

The amount of weekly pay guaranteed may not exceed compensation due at the specified regular rate for the applicable maximum hours standard and at the specified overtime rate for the additional hours, not to exceed a total of 60 hours. Thus, if the maximum hours standard is 40 hours and the specified regular rate is $5 an hour the weekly guaranty cannot be greater than $350. This does not mean that an employee

employed pursuant to a guaranteed pay contract under this section may not work more than 60 hours in any week; it means merely that pay in an amount sufficient to compensate for a greater number of hours cannot be covered by the guaranteed pay. If he works in excess of 60 hours he must be paid, for each hour worked in excess of 60, overtime compensation as provided in the contract, in addition to the guaranteed amount.

38. Section 778.413 is revised as follows:

§ 778.413 Guaranty must be based on rates specified in contract.

The guaranty of pay must be "based on the rate so specified," in the contract. If the contract specifies a regular rate of $5 and an overtime rate of $7.50 and guarantees pay for 50 hours and the maximum hours standard is 40 hours, the amount of the guaranty must be $275, if it is to be based on the rates so specified. A guaranty of $250 in such a situation would not, obviously, be based on the rates specified in the contract. Moreover, a contract which provides a variety of different rates for shift differentials, arduous or hazardous work, stand-by time, piece-rate incentive bonuses, commissions or the like in addition to a specified regular rate and a specified overtime rate with a guaranty of pay of, say, $290 from all sources would not qualify under this section, since the guaranty of pay in such a case is not based on the regular and overtime rates specified in the contract.

39. Section 778.414 paragraph (b) is revised as follows:

§ 778.414 "Approval" of contracts under section 7(f).

* * * * *

(b) As a guide to employers, it may be helpful to describe a fact situation in which the making of a guaranteed salary contract would be appropriate and to set forth the terms of a contract which would comply, in the circumstances described, with the provisions of section 7(f).

Example: An employee is employed as an insurance claims adjuster; because of the fact that he must visit claimants and witnesses at their convenience, it is impossible for him or his employer to control the hours which he must work to perform his duties. During the past 6 months his weekly hours of work have varied from a low of 30 hours to a high of 58 hours. His average workweek for the period was 45 hours. In about 80 percent of the workweeks he worked less than 52 hours. It is expected that his hours of work will continue to follow this pattern. The parties agree upon a regular rate of $5 per hour. In order to provide for the employee the security of a regular weekly income the parties further agree to enter into a contract which provides a weekly guaranty of pay. If the applicable maximum hours standard is 40 hours, guaranty of pay for a workweek somewhere between 45 hours (his average week) and 52 would be reasonable. In the circumstances described the following contract would be appropriate.

The X Company hereby agrees to employ John Doe as a claims adjuster at a regular hourly rate of pay of $5 per hour for the first 40 hours in any workweek and at the rate of $7.50 per hour for all hours in excess of 40 in any workweek, with a guarantee that John Doe will receive, in any week in which he performs any work for the company, the sum of $275 as total compensation, for all work performed up to and including 50 hours in such workweek.

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40. Section 778.501 is revised as follows:

§ 778.501 The "split-day" plan.

(a) Another device designated to evade the overtime requirements of the Act was a plan known as the "Poxon" or "split-day" plan. Under this plan the normal or regular workday is artificially divided into two portions one of which is arbitrarily labeled the "straight time" portion of the day and the other the "overtime" portion. Under such a plan, an employee who would ordinarily command an hourly rate of pay well in excess of the minimum for his work is assigned a low hourly rate (often the minimum) for the first hour (or the first 2 or 4 hours) of each day. This rate is designated at the regular rate: "time and one-half" based on such rate is paid for each additional hour worked during the workday. Thus, for example, an employee is arbitrarily assigned an hourly rate of $5 per hour under a contract which provides for the payment of so-called "overtime" for all hours in excess of 4 per day. Thus, for the normal or regular 8-hour day the employee would receive $20 for the first 4 hours and $30 for the remaining 4 hours; and a total of $50 for 8 hours. (This is exactly what he would receive at the straight time rate of $6.25 per hour.) On the sixth 8-hour day the employee likewise receives $50 and the employer claims to owe no additional overtime pay under the statute since he has already compensated the employee at "overtime" rates for 20 hours of the workweek.

(b) Such a division of the normal 8-hour workday into 4 straight time hours and 4 overtime hours is purely fictitious. The employee is not paid at the rate of $5 an hour and the alleged overtime rate of $7.50 per hour is not paid for overtime work. It is not geared either to hours "in excess of the employee's normal working hours or regular working hours" (section 7(e)(5)) or for work "outside of the hours established in good faith * * * as the basic, normal, or regular workday" (section 7(e)(7)) and it cannot therefore qualify as an overtime rate. The regular rate of pay of the employee in this situation is $6.25 per hour and he is owed additional overtime compensation, based on this rate, for all hours in excess of the applicable maximum hours standard. This rule was settled by the Supreme Court in the case of Walling v. Helmerich & Payne, 323 U.S. 37, and its validity has been reemphasized by the definition of the term "regular rate" in section 7(e) of the Act as amended.

41. Section 778.502 paragraphs (b) and (c) are revised as follows:

§ 778.502 Artificially labeling part of the regular wages a "bonus."

* * * * *

(b) For example, if an employer has agreed to pay an employee $300 a week without regard to the number of hours worked, the regular rate of pay of the employee is determined each week by dividing the $300 salary by the number of hours worked in the week. The situation is not altered if the employer continues to pay the employee, whose applicable maximum hours standard is 40 hours, the same $300 each week but arbitrarily breaks the sum down into wages for the first 40 hours at an hourly rate of $4.80 an hour, overtime compensation at $7.20 per hour and labels the balance a "bonus" (which will vary from week to week, becoming smaller as the hours increase and vanishing entirely in any week in which the employee works 55 hours or more). The situation is in no way bettered if the employer, standing by the logic of his labels, proceeds to compute and pay overtime compensation due on this "bonus" by prorating it back over the hours of the workweek. Overtime compensation has still not been properly computed for this employee at his regular rate.

(c) An illustration of how the plan works over a 3-week period may serve to illustrate this principle more clearly:

(1) In the first week the employee whose applicable maximum hours standard is 40 hours, works 40 hours and receives $300. The books show he has received $192 (40 hours × $4.80 an hour) as wages and $108 as bonus. No overtime has been worked so no overtime compensation is due.

(2) In the second week he works 45 hours and receives $300. The books show he has received $192 for the first 40 hours and $36 (5 hours × $7.20 an hour) for the 5 hours over 40, or a total of $228

as wages, and the balance as a bonus of $72. Overtime compensation is then computed by the employer by dividing $72 by 45 hours to discover the average hourly increase resulting from the bonus—$1.60 per hour—and half this rate is paid for the 5 overtime hours—$4. This is improper. The employee's regular rate in this week is $8.67 per hour. He is owed $316.85 not $304.

(3) In the third week the employee works 50 hours and is paid $300. The books show that the employee received $192 for the first 40 hours and $72 (10 hours×$7.20 per hour) for the 10 hours over 40, for a total of $264 and the balance as a bonus of $36. Overtime pay due on the "bonus" is found to be $3.60. This is improper. The employee's regular rate in this week is $6 and he is owed $330, not $303.60.

* * * * *

42. Section 778.503 is revised as follows:

§ 778.503 Pseudo "percentage bonuses."

As explained in § 778.210 of this part, a true bonus based on a percentage of total wages—both straight time and overtime wages—satisfies the Act's overtime requirements, if it is paid unconditionally. Such a bonus increases both straight time and overtime wages by the same percentage, and thereby includes proper overtime compensation as an arithmetic fact. Some bonuses, however, although expressed as a percentage of both straight time and overtime wages, are in fact a sham. Such bonuses, like the bonuses described in § 778.502 of this part, are generally separated out of a fixed weekly wage and usually decrease in amount in direct proportion to increases in the number of hours worked in a week in excess of 40. The hourly rate purportedly paid under such a scheme is artificially low, and the difference between the wages paid at the hourly rate and the fixed weekly compensation is labeled a percentage of wage "bonus."

Example: An employer's wage records show an hourly rate of $5.62 per hour, and an overtime rate of one and one-half times that amount, or $8.43 per hour. In addition, the employer pays an alleged percentage of wage bonus on which no additional overtime compensation is paid:

Week 1—40 hours worked:	
40 hours at $5.62 per hour	$224.80
Percentage of total earnings bonus at 33.45% of $224.80	75.20
Total	300.00
Week 2—43 hours worked:	
40 hours at $5.62 per hour	224.80
3 hours at $8.43 per hour	25.29
Subtotal	250.09
Percentage of total earnings bonus at 18.99% of $250.09	49.91
Total	300.00
Week 3—46 hours worked:	
40 hours at $5.62 per hour	224.80
6 hours at $8.43 per hour	67.44
Subtotal	292.24
Percentage of total earnings bonus at 2.65% of $292.24	7.76
Total	300.00

This employee is in fact being paid no overtime compensation at all. The records in fact reveal that the employer pays exactly $300 per week, no matter how many hours the employee works. The employee's regular rate is $300 divided by the number of hours worked in the particular week, and his overtime compensation due must be computed as shown in § 778.114.

* * * * *

43. Section 778.601 paragraphs (a), (c) and (e) are revised as follows:

§ 778.601 Special overtime provisions available for hospital and residential care establishments under section 7(j).

(a) *The statutory provision.* Section 7(j) of the Act provides, for hospital and residential care establishment employment, under prescribed conditions, an exemption from the general requirement of section 7(a) that overtime compensation be computed on a workweek basis. It permits a 14-day period to be established for the purpose by an agreement or understanding between an employer engaged in the operation of a hospital or residential care establishment, and any of his employees employed in connection therewith. The exemption provided by section 7(j) applies—

if, pursuant to an agreement or understanding arrived at between the employer and employee before performance of the work, a work period of 14 consecutive days is accepted in lieu of the workweek of 7 consecutive days for purposes of overtime computation and if, for his employment in excess of 8 hours in any workday and in excess of 80 hours in such 14-day period, the employee receives compensation at a rate not less than one and one-half times the regular rate at which he is employed.

* * * * *

(c) *The agreement or understanding.* The agreement or understanding between the employer and employee to use the 14-day period for computing overtime must be entered into before the work to which it is intended to apply is performed. It may be arrived at directly with the employee or through his representative. It need not be in writing, but if it is not, a special record concerning it must be kept as required by Part 516 of this chapter. The 14-day period may begin at any hour of any day of the week; it need not commence at the beginning of a calendar day. It consists of 14 consecutive 24-hour periods, at the end of which a new 14-day period begins. The election to use the 14-day period in lieu of the workweek must, like selection of an employee's workweek (§ 778.105) be with the intent to use such period permanently or for a substantial period of time. Changes from such period to the workweek and back again to take advantage of less onerous overtime pay liabilities with respect to particular work schedules under one system than under the other are not permissible.

* * * * * *

(e) *Use of 14-day period in lieu of workweek.* Where the 14-day period is used as authorized in section 7(j), such period is used in lieu of the workweek in computing the regular rate of pay of employees to whom it applies (i.e., those of the hospital's or residential care establishment's employees with whom the employer has elected to enter into the necessary agreement or understanding as explained in paragraph (c) of this section). With this exception, the computation of the regular rate and the application of statutory exclusions therefrom is governed by the general principles set forth in this Part 778.

44. Section 778.602 is amended as follows:

§ 778.602 Special overtime provisions under section 7(k).

(a) *Daily and weekly overtime standards.* The general overtime pay requirements of the Act provide for such pay only when the number of hours worked exceeds the standard specified for the workweek; no overtime compensation on a daily basis is required. However, section 7 of the Act, in subsection (k), provides certain partial exemptions from the general overtime provisions, each of which is conditioned upon the payment to the employee of overtime compensation at a rate not less than one and one-half times his regular rate of pay for his hours worked in the workweek in excess of daily, as well as weekly, standards specified in the subsection. Under these provisions, when an employee works in excess of both the daily and weekly maximum hours standards in any workweek for which such an exemption is claimed, he must be paid at such overtime rate for all hours worked in the workweek in excess of the applicable daily maximum or in excess of the applicable weekly maximum, whichever number of hours is greater. Thus, if his total hours of work in the workweek

which are in excess of the daily maximum are 10, and his hours in excess of the weekly maximum are 8, overtime compensation is required for 10 hours, not 8.

(b) *Standards under section 7(b).* The partial exemptions provided by section 7(b) apply to an employee under the conditions specified in clause (1), (2), or (3) of the subsection "if such employee receives compensation for employment in excess of 12 hours in any workday, or for employment in excess of 56 hours in any workweek, as the case may be, at a rate not less than one and one-half times the regular rate at which he is employed." As an example, suppose an employee is employed under the other conditions specified for an exemption under section 7(b) at an hourly rate of $5.20 and works the following schedule:

Hours	M	T	W	T	F	S	S	Tot.
Worked	14	9	10	15	12	8	0	68

Number of overtime hours: Daily, 5 (hours over 12); weekly, 12 (hours over 56).

Since the weekly overtime hours are greater, the employee is entitled to pay for 12 hours at $7.80 an hour (1½×$5.20), a total of $93.60 for the overtime hours, and to pay at his regular rate for the remaining 56 hours (56×$5.20) in the amount of $291.20 or a total of $384.80 for the week. If the employee had not worked the 8 hours on Saturday, his total hours worked in the week would have been 60, of which five were daily overtime hours, and there would have been no weekly overtime hours under the section 7(b) standard. For such a schedule the employee would be entitled to 5 hours of overtime pay at time and one-half (5×1½×$5.20=$39) plus the pay at his regular rate for the remaining 55 hours ($55×$5.20=$286), making a total of $325 due him for the week.

§ 778.603 [Removed]

45. Section 778.603 is removed.

(52 Stat. 1060, as amended; 29 U.S.C. 201–217; Secretary's Order No. 10–75, 40 FR 55913, Dec. 2, 1975; Employment Standards Order No. 78–1, 43 FR 51465, Nov. 3, 1978.)

Signed at Washington, D.C., this 19th day of January 1981.

Donald Elisburg,

Assistant Secretary for Employment Standards.

Henry T. White, Jr.,

Deputy Administrator.

[FR Doc. 81-2271 Filed 1-20-81; 1:19 pm]

BILLING CODE 4510-27-M

Pension and Welfare Benefit Programs

29 CFR Part 2550

Regulations Relating to Certain Loans, Leases and Dispositions of Property Prior to June 30, 1984

AGENCY: Department of Labor.[1]

ACTION: Final Regulations.

SUMMARY: This document contains final regulations under the Employee Retirement Income Security Act of 1974 (the Act) relating to loans or other extensions of credit, leases or joint uses of property, and sales of leased or jointly used property where an employee benefit plan is involved in the transaction. These regulations clarify the scope of certain provisions of the Act which, in effect, allow such transactions to take place for a limited period of time and under specified circumstances. These regulations affect participants and beneficiaries of employee benefit plans, and employers and other persons engaged in loan, lease, joint use, or sale transactions with employee benefit plans.

EFFECTIVE DATE: Regulations 29 CFR 2550.414c–1 and 2550.414c–2 are effective January 1, 1975. Regulation 2550.414c–3 is effective February 23, 1981.

FOR FURTHER INFORMATION CONTACT: William J. Flanagan, Plan Benefits Security Division, Office of the Solicitor, U.S. Department of Labor, Washington, D.C. 20216, (202) 523–7931.

SUPPLEMENTARY INFORMATION: On April 27, 1979, notice was published in the Federal Register (44 FR 24676) that the Department had under consideration a proposal to adopt regulations 29 CFR 2550.414c–1, 2550.414c–2, and 2550.414c–3, under section 414(c) (1) through (3) of the Act, relating to transitional relief provided prior to June 30, 1984, for certain loans, leases and dispositions of property involving employee benefit plans.

The Department has determined that these regulations are "significant" within the meaning of Department of Labor guidelines (44 FR 5570, January 26, 1979) issued to implement Executive Order 12044 (44 FR 12661, March 23, 1979).

Section 414(c)(1) of the Act provides that the prohibitions and limitations of sections 406 and 407(a) will not apply until June 30, 1984, to a loan of money or other extension of credit between a plan and a party in interest, provided, among other things, that the loan or extension of credit is made pursuant to either a binding contract which was in effect on July 1, 1974, or renewals of such a contract. Section 414(c)(2) of the Act contains similar provisions with respect to leases or joint uses of property involving a plan and a party in interest; and, under section 414(c)(3), property described in section 414(c)(2) may, until June 30, 1984, be the subject of a sale, exchange, or other disposition between the plan and the party in interest provided that the plan receives no less than, or pays no more than, fair market value for the property.

The Department received a number of public comments on the proposals, some of which suggested revisions in the proposed regulations. The major comments are discussed below.

A. Regulation 414c–3(b)(2)—The "50 percent rule"

Proposed regulation section 414c–3(b)(2) provided that property will not be regarded as the subject of a lease or joint use between a plan and a party in interest to the extent that one or more unrelated persons leases or jointly uses any portion or portions of such property representing a total value equal to or greater than the value of the portion of the property leased to or jointly used by a party in interest and the plan. Some commentators suggested that this so-called "50-percent rule" be deleted because it is not specifically provided for in the legislative history and because the party in interest leasing or jointly using the less valuable portion of the property might still be the most interested prospective buyer of the property.

The Department does not find these comments persuasive. In the Department's view, the principal purpose of the transitional rule contained in section 414(c)(3) is to prevent undue hardship that might result if a plan could not sell property to the best available buyer because the property is subject to a lease or joint use between the plan and a party in interest.[2] In those cases where one or more unrelated parties lease or jointly use a portion of the property which is more valuable than the portion leased or

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[1] Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to promulgate certain classes of regulations to the Secretary of Labor. Pursuant to that transfer of authority, the Department will adopt provisions for similar treatment under the Internal Revenue Code of 1954 of the transitional rules contained in section 2003(c)(2)(A)–(C) of ERISA. Those sections were formerly administered by the Secretary of the Treasury.

[2] See H.R. Rep. No. 93–1280, 93d Cong., 2d Sess. 325 (1974).

jointly used by a party in interest, it does not appear to the Department that there is a reasonable basis to expect, as a general matter, that a party in interest will be the best available buyer.[3] However, it should be noted that, in accordance with the statutory language, the regulation would permit the sale of that part of the property actually leased or jointly used by the plan or the party in interest.

One commentator suggested that Regulation 414c–3(b)(2) be modified to make clear that transitional relief under section 414(c)(3) of the Act is available for the sale of property which is leased to a party in interest who has subleased the property to a third party. The commentator indicated that the sublessee might be viewed as an unrelated person leasing a portion of the property equal in value to the portion of the property leased by the party in interest. The Department does not intend that the "50 percent rule" should operate in a manner which would limit the use to which a party in interest may put property leased from a plan. In order to eliminate any confusion, the final regulation has been revised to make clear that the transitional relief under section 414(c)(3) would not be unavailable merely because property leased or jointly used by a party in interest were subleased to, or jointly used by, an unrelated party.

B. Regulation 414c–3(b)(3)—Fair Market Value

Proposed Regulation 414c–3(b)(3) stated that the determination of fair market value for purposes of applying section 414(c)(3) to the sale between a plan and a party in interest of property leased or jointly used by a plan and a party in interest must be made without regard to any diminution in value resulting from the property being subject to such lease or joint use. Commentators recommended the elimination of or modifications of this section for a variety of reasons.

The purpose of the proposed definition of fair market value was to prevent a party in interest from profiting twice at the expense of a plan by enjoying favorable lease terms and then purchasing the leased property at a price depressed by the existence of the same lease. The Department recognizes, however, that the commentators have identified a number of legitimate problems with this particular approach to defining fair market value. In consideration of these concerns, the Department has decided to modify the definition of the term "fair market value" contained in section 414c–3(b)(3) so that, subject to the two limitations discussed below, the fair market value of property sold pursuant to section 414(c)(3) of the Act and regulation 414c–3 shall be determined in good faith by the plan trustee or named fiduciary in light of the facts and circumstances of the particular case.

One of the restrictions, contained in subparagraph (3)(B)(i), provides that the plan trustee or named fiduciary shall not take into account any diminution in value resulting from an encumbrance, arising out of a lease or joint use, which violates any provision of the Act. The Department does not believe that Congress, in granting transitional relief, intended such relief to be used as a vehicle for circumventing the other provisions of the Act.[4]

The other restriction, contained in subparagraph (3)(B)(ii), provides that the plan trustee or named fiduciary shall not take into account any diminution in value resulting from an encumbrance arising out of a lease or joint use to the extent such encumbrances would extend beyond June 30, 1984. This provision recognizes that Congress, in section 414(c)(3) of the Act, has provided a period of transitional relief for transactions which will become prohibited after the transitional period. Thus, for example, if a lease has a termination date after June 30, 1984, a plan trustee or named fiduciary must treat the lease as if it ended on June 30, 1984 when determining the effect of the lease on the property's fair market value. The plan trustee or named fiduciary may take into account the term of the lease beyond June 30, 1984 only if the lease is the subject of an administrative exemption issued pursuant to section 408(a) of the Act. The Department believes that this approach accommodates the need for flexibility identified by the commentators with the intent of Congress in providing this transitional period.

By adopting regulation section 414c–3(b)(3), the Department neither purports nor intends to establish a general formula for the determination of fair market value in all transactions covered by the Act. Rather, the Department has adopted this provision in response to the problems described by the commentators in valuing property which is subject to a lease or joint use and which is to be sold pursuant to section 414(c)(3) of the Act.

D. Certain Other Comments

One commentator requested that the regulations provide relief for employee benefit plans which had made mortgage loans to parties in interest in situations where such loans, though made before the enactment of the Act, would not be retired before June 30, 1984. The transitional relief provided by section 414(c)(1) of the Act (as well as that afforded under sections 414(c)(2) and (3)) expires on June 30, 1984. On that date, all prohibited loan or lease transactions covered by the transitional relief must have been terminated and all sale transactions pursuant to section 414(c)(3) of the Act must have been consummated, unless an administrative exemption granted by the Department in accordance with section 408(a) of the Act or another statutory exemption is available. The Department does not have the authority to adopt regulations under section 414 which would extend, beyond the above date, the application of the transition rules.

Another commentator requested that sections 414c–2 and 414c–3 of the regulation be revised to include a definition of the term "property" which would provide transitional relief for the disposition by a plan of a controlling interest in the stock of a corporation whose only significant assets are property subject to a lease or joint use between a plan and a party in interest. The Department is not persuaded that the class of transactions described would, in all cases, have the same economic effect as would the disposition of the property itself. Accordingly, the Department is not prepared to state, as a general matter, that the relief provided by section 414(c)(2) would be available in those situations.

F. Retroactivity

Several comments received by the Department suggested that these regulations be effective prospectively only, rather than retroactively to January 1, 1975, as originally proposed. The commentators argued that certain requirements of these regulations are not readily apparent from a reading of the Act and the legislative history. They especially noted that the Department's definition of the term "fair market value" in regulation 414c–3(b)(3) may cast doubt upon the validity of transactions previously entered in good faith by plan fiduciaries based on their

[3] The fact that transitional relief may not be available would not preclude the Department from granting an administrative exemption under section 408(a) of the Act if the criteria set forth in that section were satisfied.

[4] The subparagraph permits encumbrances to be taken into account only if they arise out of leases or joint uses, because section 414(c)(3) of the Act is available only for the sale of leased or jointly used property. The effect on fair market value of encumbrances not arising out of a lease or joint use are beyond the scope of section 414(c)(3) of the Act and these regulations.

interpretations of sections 414(c) (1), (2), and (3) of the Act in the absence of regulations.

In general, the Department believes that these regulations, as adopted, do not alter the impact of the provisions of section 414(c)(1), (2) and (3). However, upon consideration of the commentators' special concern regarding regulation 414c-3, the Department has decided to make regulation 414c-3 effective 30 days after the date of its publication in the **Federal Register**. Regulations 414c-1 and 414c-2 are effective, as proposed, as of January 1, 1975.

Statutory Authority: The regulations set forth below are adopted pursuant to the authority contained in section 505 of the Act (Pub. L. 93-406, 88 Stat. 894 (29 U.S.C. 1135)).

Final Regulation: The Department has considered all of the comments received on the proposed regulations, and has determined to adopt the modified regulations set forth below. Accordingly, Part 2550 of Chapter XXV of Title 29 of the Code of Federal Regulations is amended by adding in the appropriate places to read §§ 2550.414c-1, 2550.414c-2, and 2550.414c-3 as set forth below:

§ 2550.414c-1 Transitional rule relating to certain loans or other extensions of credit prior to June 30, 1984.

(a) Before June 30, 1984, sections 406 and 407(a) of the Employee Retirement Income Security Act of 1974 shall not apply with respect to a loan of money or other extension of credit between a plan and a party in interest under a binding contract in effect on July 1, 1974, or pursuant to renewals of such a contract, if such loan or other extension of credit remains at least as favorable to the plan as an arm's-length transaction with an unrelated party would be, and if the execution of the contract, the making of the loan, or the extension of credit was not, at the time of such execution, making, or extension, a prohibited transaction within the meaning of section 503(b) of the Internal Revenue Code of 1954 or the corresponding provisions of prior law.

(b) For purposes of this section,

(1) "Binding contract" means a contract which is binding under applicable state law;

(2) A loan or other extension of credit will not be considered to "remain at least as favorable to the plan as an arm's-length transaction with an unrelated party would be" unless:

(i) Such loan or extension of credit, at the time of the execution of the contract and any renewal, is on terms at least as favorable to the plan as those which reasonably would be expected to exist in the case of an otherwise identical transaction in a normal commercial setting between the plan and the party in interest if they were unrelated parties, and

(ii) The plan requires termination or modification of the contract at such time as, and in such manner and to such extent that, it reasonably would be expected to require such termination or modification in the case of an otherwise identical transaction in a normal commercial setting with the party in interest if they were unrelated parties; and

(3) "Renewal" of a contract means only a renewal which:

(i) The plan reasonably would be expected to agree to in the case of an otherwise identical transaction in a normal commercial setting with the party in interest if they were unrelated parties, and

(ii) Except to the extent required by paragraph (b)(2)(ii) of this section, does not result in any substantial change or modification of the terms of the existing contract.

§ 2550.414c-2 Transitional rule relating to certain leases or joint uses of property prior to June 30, 1984

(a) Before June 30, 1984, sections 406 and 407(a) of the Employee Retirement Income Security Act of 1974 shall not apply with respect to a lease or joint use of property involving the plan and a party in interest pursuant to a binding contract in effect on July 1, 1974, or pursuant to renewals of such a contract, if such lease or joint use remains at least as favorable to the plan as an arm's length transaction with an unrelated party would be and if the execution of the contract was not, at the time of such execution, a prohibited transaction within the meaning of section 503(b) of the Internal Revenue Code of 1954 or the corresponding provisions of prior law.

(b) For purposes of this section,

(1) "Binding contract" means a contract which is binding under applicable state law;

(2) A lease or joint use of property will not be considered to "remain at least as favorable to the plan as an arm's-length transaction with an unrelated party would be" unless:

(i) The contract for such lease or joint use of property, at the time of the execution and any renewal thereof, is on terms at least as favorable to the plan as those which reasonably would be expected to exist in the case of an otherwise-identical transaction in a normal commercial setting between the plan and the party in interest if they were unrelated parties, and

(ii) The plan requires termination or modification of the contract at such time as, and in such manner and to such extent that, it reasonably would be expected to require such termination or modification in the case of an otherwise identical transaction in a normal commercial setting with the party in interest if they were unrelated parties; and

(3) "Renewal" of a contract means only a renewal which:

(i) The plan reasonably would be expected to agree to in the case of an otherwise identical transaction in a normal commercial setting with the party in interest if they were unrelated parties, and

(ii) Except to the extent required by paragraph (b)(2)(ii) of this section, does not result in any substantial change or modification of the terms of the existing contract.

§ 2550.414c-3 Transitional rule relating to certain sales, exchanges, or other dispositions of property prior to June 30, 1984.

(a) Before June 30, 1984, sections 406 and 407(a) of the Employee Retirement Income Security Act of 1974 shall not apply with respect to a sale, exchange, or other disposition of leased or jointly used property described in 29 CFR 2550.414c-2 between a plan and a party in interest: *Provided*, That:

(1) In the case of a sale, exchange, or other disposition of such property by the plan to the party in interest, the plan receives an amount which is not less than the fair market value of the property at the time of such disposition; and

(2) In the case of the acquisition of such property by the plan, the plan pays an amount which is not in excess of the fair market value of the property at the time of such acquisition.

(b) For purposes of this section:

(1) The term "property described in 29 CFR 2550.414c-2" means any property subject to a lease or joint use involving a plan and a party in interest under a binding contract in effect on July 1, 1974, or pursuant to renewals of such contracts;

(2) A property will not be regarded as the subject of a lease or joint use between a plan and a party in interest if one or more unrelated persons leases or jointly uses any portion or portions of such property representing a total value equal to or greater than the value of the portion of the property leased to or jointly used by one or more parties in interest. Property leased or jointly used by a party in interest which is subleased to or jointly used with an unrelated party shall not, solely because of such

sublease or use, be considered property leased to or jointly used by an unrelated party.

(3)(A) Subject to the provisions of subparagraph (B) of this paragraph, "fair market value" shall be determined by the plan trustee or named fiduciary in light of the facts and circumstances of the particular case.

(B) In determining the fair market value of leased or jointly used property pursuant to subparagraph (A) of this paragraph, the plan trustee or named fiduciary shall not take into account any diminution in value resulting from

(i) Any encumbrance arising out of a lease or joint use which violates any provision of the Act, and

(ii) Any encumbrance, arising out of a lease or joint use, to the extent such encumbrance extends beyond June 30, 1984.

(4) The term "property" means any property or part thereof.

Signed at Washington, D.C., this 19th day of January, 1981.

Ian D. Lanoff,

Administrator, Pension and Welfare Benefit Programs, Labor-Management Services Administration, Department of Labor.

[FR Doc. 81-2445 Filed 1-22-81; 8:45 am]

BILLING CODE 4510-29-M

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Part 2609

Limitation on Guaranteed Benefits

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: This amendment to the Limitation on Guaranteed Benefits regulation adds an appendix which sets forth by year, the maximum guaranteeable pension benefit that may be paid by the Pension Benefit Guaranty Corporation to a plan participant in a pension plan which terminated in that year. This amendment is necessary because of a change in the Social Security Act which created a special contribution and benefit base on which the maximum guaranteeable benefit is based. The public will be made aware of the maximum guaranteeable benefit for each year from 1974 to 1981 by this amendment.

EFFECTIVE DATE: January 23, 1981.

FOR FURTHER INFORMATION CONTACT: Ms. Nina R. Hawes, Staff Attorney, Office of the General Counsel, Pension Benefit Guaranty Corporation, 2020 K Street, N.W., Washington, D.C. 20006, 202-254-3010.

SUPPLEMENTARY INFORMATION: On February 11, 1976, the Pension Benefit Guaranty Corporation ("PBGC") published a final rule on the Limitation on Guaranteed Benefits (29 CFR Part 2609). This rule sets forth the method of calculating the maximum guaranteeable benefit, as set forth in section 4022(b)(3)(B) of the Employee Retirement Income Security Act of 1974 (*as amended by* the Multiemployer Pension Plan Amendments Act of 1980) ("ERISA"). The maximum benefit is "$750 multiplied by the fraction x/$13,200, where 'x' is the Social Security contribution and benefit base determined under § 230 of the Social Security Act in effect on the date of termination of the plan." Section 2609.3(a)(2).

In the 1977 Amendments to the Social Security Act ("SSA"), special increases were added to the contribution and benefit base. However, the amended SSA specifically states that, for the purpose of section 4022(b)(3)(B) of ERISA, the contribution and benefit base for each year after 1976 would be the base that would have been determined for such year if the special increases had not been made. 42 U.S.C. 430(d) (1976 Ed., Supp. III).

It has come to PBGC's attention that since the 1977 amendments to the Social Security Act, members of the public cannot easily obtain the correct contribution and benefit base to compute the maximum benefit figure. Moreover, the public may confuse the generally publicized contribution and benefit base with the base used to compute the maximum benefit figure. Therefore, PBGC has decided to publish, as an appendix to the Limitation on Guaranteed Benefits regulation, a listing of the maximum guaranteeable benefit for plans that terminate each year since ERISA went into effect. It is intended that this appendix will be amended each year to show the maximum benefit for that year.

This appendix will be published in the Code of Federal Regulations and will provide the public with a record of all the maximum benefit amounts in one location. The PBGC feels this will be of benefit to the public.

This appendix does not amend or affect any existing portions of the text of this regulation, nor does it introduce any new requirements or restrictions. Its purpose is to notify the public of the maximum benefit for a pension plan that terminated in each year since ERISA became effective.

Because the maximum guaranteeable benefit is determined under ERISA, and this appendix makes no change in the amount or its method of calculation, but simply lists these amounts for the public's knowledge, the PBGC finds that notice of and public comment on this amendment are impracticable and unnecessary. Moreover, because the 1981 maximum benefit is effective when the Social Security contribution and benefit base is effective, *i.e.*, January 1, 1981, and the effective date of the maximum benefit is not affected by this publication, the PBGC finds that good cause exists for making this amendment effective immediately.

The PBGC has determined that this amendment to the Limitation on Guaranteed Benefits regulation is not "significant" under criteria prescribed by Executive Order 12044, "Improving Government Regulations", 42 FR 12661 (March 24, 1978), and the PBGC's Statement of Policy and Procedures implementing the Order, 43 FR 56237 (December 13, 1978). The reasons for this determination are that this amendment is not likely to engender substantial public interest or controversy, does not affect another Federal agency, and will not have a major economic impact.

In consideration of the foregoing, Part 2609 of Chapter XXVI, Code of Federal Regulations, is hereby amended by adding Appendix A to Part 2609 to read as follows:

Appendix A to Part 2609—Maximum Guaranteeable Monthly Benefit

The following table lists by year the maximum guaranteeable monthly benefit payable in the form of a life annuity commencing at age 65 as described by § 2609.3(a)(2) to a participant in a plan that terminated in that year:

Year	Maximum guaranteeable monthly benefit
1974	$750.00
1975	801.14
1976	869.32
1977	937.50
1978	1,006.65
1979	1,073.86
1980	1,159.09
1981	1,261.36

(Secs. 4002(b)(3), 4022(b), Pub. L. 93-406, 88 Stat. 1004, 1016-18, (1974), as amended by Secs. 403(1), 403(c), and 102, Pub. L. 96-364, 94 Stat. 1302, 1300, 1315 (1980))

Issued at Washington, D.C., on this 16th day of January 1981.

Robert E. Nagle,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 81-2252 Filed 1-22-81; 8:45 am]

BILLING CODE 7708-01-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 948

Approval of the Abandoned Mine Reclamation Plan for State of West Virginia Under Surface Mining Control and Reclamation Act of 1977

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule.

SUMMARY: On October 29, 1980, the State of West Virginia, Department of Natural Resources (DNR), submitted to OSM its proposed abandoned mine land reclamation plan under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The purpose of this submission is to demonstrate the State's intent and capability to assume responsibility for administering and conducting the Abandoned Mine Reclamation Program established by Title IV of SMCRA and regulations adopted by OSM (30 CFR Chapter VII, Subchapter R, 43 FR 49932–49952, October 25, 1978). After opportunity for public comment and review of the plan submission, the Director of the Office of Surface Mining has determined that the West Virginia Abandoned Mine Reclamation Plan meets the requirements of SMCRA and the Abandoned Mine Land Reclamation Program. Accordingly, The Director of the Office of Surface Mining has approved the West Virginia Plan.

EFFECTIVE DATE: This approval is effective February 23, 1981.

ADDRESSES: Copies of the full text of the West Virginia Plan are available for review during regular business hours at the following locations:

Office of Surface Mining Reclamation and Enforcement, Region I, 603 Morris Street, Charleston, West Virginia 25301

West Virginia Department of Natural Resources, 1800 Washington Street East, Charleston, West Virginia 25301

FOR FURTHER INFORMATION CONTACT:

Charles A. Beasley, Assistant Director, Abandoned Mine Lands, Office of Surface Mining Reclamation and Enforcement, U.S. Department of the Interior, South Interior Building, 1951 Constitution Avenue, N.W., Washington, D.C. 20240, Telephone (202) 343–4012.

SUPPLEMENTARY INFORMATION:

General Background of Abandoned Mine Lands Program

Title IV of the Surface Mining Control and Reclamation Act of 1977 (SMCRA), Public Law 95–87, 30 U.S.C. 1201 *et seq.*, establishes an abandoned mine land reclamation program for the purpose of reclaiming and restoring lands and water resources adversely affected by past mining. This program is funded by a reclamation fee imposed upon the production of coal. Lands and water eligible for reclamation under the program are those that were mined or affected by mining and abandoned or left in an inadequate reclamation status prior to August 3, 1977, and for which there is no continuing reclamation responsibility under State or Federal law.

Each State having within its borders coal mined lands eligible for reclamation under Title IV of SMCRA, may submit to the Secretary a State Reclamation Plan, demonstrating its capability for administering an abandoned mine reclamation program. Title IV provides that the Secretary may approve the plan once the State has an approved regulatory program under Title V of SMCRA. If the Secretary determines that a State has developed and submitted a program for reclamation and has the necessary State legislation to implement the provisions of Title IV, the Secretary shall grant the State exclusive responsibility and authority to implement the provisions of the approved plan. Section 405 of SMCRA (30 U.S.C. 1235) contains the requirements for State reclamation plans.

The Secretary has adopted regulations that specify the content requirements of a State reclamation plan and the criteria for plan approval (30 CFR Part 884, 43 FR 49932, 49947, October 25, 1978). Under those regulations, the Director is required to review the plan, solicit and consider comments of other Federal agencies and the public, and either approve or disapprove the plan. If the Director disapproves the State plan, the State may resubmit a revised reclamation plan at any time.

Upon approval of the State reclamation plan by the Director, the State may submit to the Director on an annual basis, an application for funds to be expended in such State on specific reclamation projects which are necessary to implement the State reclamation plan as approved. Such annual requests shall be made by the State and reviewed and approved by OSM in compliance with the requirements of 30 CFR Part 886.

To codify information applicable to individual States under SMCRA, including decisions on State reclamation plans, OSM has established a new Subchapter T of 30 CFR Chapter VII. Subchapter T consists of parts 900 through 950. Provisions relating to West Virginia are found in 30 CFR Part 948.

Background on the West Virginia Abandoned Mine Plan Submission

On August 17, 1978, a cooperative agreement between the West Virginia Department of Natural Resources and the Office of Surface Mining was approved. The purpose of this agreement was to assure that information required for the preparation of the West Virginia Abandoned Mine Reclamation Plan would be assembled.

The West Virginia Department of Natural Resources held public meetings on West Virginia's proposed Abandoned Mine Land Reclamation Plan at the following locations:

Charleston, October 16
Huntington, October 17
Princeton, October 20
Summersville, October 21
Fairmont, October 22
Buckhannon, October 23

On November 18, 21, 24 and 26, 1980, representatives of the DNR and OSM met to discuss amendments and modifications to the original plan.

On December 4, 1980, the Office of Surface Mining conducted a public hearing in Charleston, West Virginia. No comments were received.

On December 12, 1980, the DNR submitted revised pages to the West Virginia Abandoned Mine Lands Reclamation Plan.

The revised pages contain several amendments and modifications to the original plan as a result of the discussions between representatives of the DNR and OSM.

The necessary changes have been incorporated in the revised pages received on December 12, 1980, and therefore comply with the requirement that the policies and procedures to be followed by the agency be incorporated into the reclamation plan.

All of the documents mentioned above are available for public inspection at the office of OSM listed above under "Addresses" and at the Office of the Department of Natural Resources listed under "Addresses."

Notice of receipt of the submission initiating the Plan review was published November 5, 1980, (45 FR 73512–73514). The announcement requested public comments and scheduled a public hearing for December 4, 1980. The public hearing was held as scheduled and there were no public comments.

On January 14, 1981, the Regional Director and on January 15, 1981, the Assistant Director for Abandoned Mine Lands Reclamation recommended to the Director that the West Virginia Reclamation Plan be approved.

The administrative record on the West Virginia Plan is available for review during regular business hours at the Office of Surface Mining Reclamation and Enforcement, Region I, 603 Morris Street, Charleston, West Virginia 25301.

Director's Findings

1. In accordance with Section 405 of SMCRA the Director finds that West Virginia has submitted a plan for reclamation of abandoned mine lands and has the ability and necessary State legislation to implement the provisions of Title IV of SMCRA.

2. The Director has determined, pursuant to 30 CFR 884.14, that: (a) The Department of Natural Resources has the legal authority, policies and administrative structure necessary to carry out the proposed plan;

(b) the proposed plan meets all the requirements of 30 CFR Chapter VII Subchapter R;

(c) the State has an approved regulatory program; and

(d) the proposed plan is in compliance with all applicable State and Federal laws and regulations.

3. The Director has solicited and considered the views of other Federal Agencies having an interest in the plan as required by CFR 884.14(a)(2).

These agencies include the Bureau of Mines (BOM), Bureau of Land Management (BLM), Soil Conservation Service (SCS), U.S. Forest Service (USFS), U.S. Fish and Wildlife Service (FWS), and U.S. Geological Survey (USGS).

Disposition of Comments

The comments received on the West Virginia Abandoned Mine Lands Reclamation Plan during the public comment period raised the issues listed below, which were considered in the Director's evaluation of the West Virginia plan as indicated.

1. The BOM stated that "certain weaknesses exist in the area of public participation in Sections 884.13(c)(7) and 884.13(e)."

The State of West Virginia has amended Section 884.13(c)(7) to provide expanded opportunity for public input in the Abandoned Mine Lands Reclamation Program. In addition, OSM is satisfied that Section 884.13(e) was adequately addressed in the West Virginia Plan. the West Virginia DNR provided for ample public participation in the development of their reclamation plan consistent with the requirements set out in 30 CFR 884.13(e).

2. The BOM stated that in development of estimated costs for controlling subsidence the State used figures that will distort the cost estimate because they do not reflect areas which have already experienced subsidence and are not suitable as candidate sites for referenced technology. Remedial measures in such areas, BOM states, may be limited to surface restructuring for adequate protection or restoration.

The State of West Virginia has amended its plan to show that the subsidence acreage actually represents areas that "have been, will be or are presently affected by surface subsidence." The cost estimates are therefore reliable. It should be noted also that West Virginia policy in their plan is to address priority 1 and priority 2 projects in the first five years of the plan.

3. The BOM stated that the synopsis of mine fire control methods is misleading to the untrained and the estimated cost is optimistic.

The plan discussion on mine fires is considered adequate by OSM. The cost estimates in the plan were discussed with the State of West Virginia and a detailed evaluation and cost detail will be developed for specific projects.

4. The BLM stated the "Data Base" in Part B, the support data section of the plan, did not discuss soil types and distribution.

The State of West Virginia has amended the plan by including a section on "Soil Capability" and land limited in use. (Source: U.S. Department of Agriculture, Soil Conservation Service 1976).

5. The SCS stated that the Rural Abandoned Mine Program is not restricted to privately owned lands but also may be used to reclaim abandoned lands on all non-Federally owned or controlled public property.

The State of West Virginia recognizes this editorial error and has changed page 28 number three to read "prevention of erosion on eligible lands" rather than privately owned land.

6. SCS recommended the plan include the RAMP–OSM primary coordination procedures.

OSM is satisfied that coordination between SCS and DNR will occur. The West Virginia plan description provides "that the Administrator of the Abandoned Mine Lands Section has a permanent position on the State Reclamation Committee which is a part of the RAMP organization."

7. SCS recommended for situations involving the recovery of coal, that the State require the mineral owner to waive all rights to the coal prior to reclamation efforts being undertaken and that the State use the proceeds from the sale of the coal to offset their reclamation costs.

OSM is satisfied that West Virginia's plan adequately addresses the question of coal recovery. Though every effort will be made to obtain the voluntary release of the mineral rights, there will be situations where the State will have to acquire such rights prior to proceeding with the project. Additionally, in situations where monies are obtained from the sale of coal, such funds can be either placed in the Abandoned Mine Land Fund or alternatively, used to offset the cost of the specific reclamation projects.

8. The Appalachian Research and Defense Fund Inc. (ARDF) stated that West Virginia's criteria for air quality, water quality and aesthetics might be improved.

The State of West Virginia amended the plan to provide for additional criteria.

9. The ARDF commented the affected population category for specific reclamation projects was too broad since it covered an entire watershed.

This category is not too broad or vague since it refers to a site specific consideration and the population affected will be determined on a project by project basis.

10. The ARDF commented that West Virginia's discussion of potential flood hazards should include severe sedimentation problems.

The State of West Virginia amended the plan to include sedimentation as a consideration in potential flood hazards.

11. The ARDF commented that the Plan should state that all applicable and reasonable environmental standards will be enforced when DNR waives the requirement to obtain a permit for removal of coal incidental to AML reclamation.

OSM has already published guidelines (45 FR 14810, 1980) for reclamation programs and projects to assist States in interpreting and applying the general reclamation requirements for individual programs and projects funded under SMCRA.

Additionally, all State and Federal environmental controls will apply on all AML projects, regardless of coal removal. Accordingly, OSM is satisfied that the West Virginia Plan adequately addresses environmental concerns.

12. The ARDF commented that the West Virginia Reclamation Plan was unclear regarding how DNR will coordinate reclamation activities when

an active mining operation is involved in the reclamation effort.

OSM is satisfied that the State of West Virginia plan adequately addresses in its project selection process and purchasing and procurement procedures how projects and contracts will be developed, regardless of whether an active mining process is involved.

13. The ARDF states that West Virginia DNR may delay a necessary AML project if future mining activities will reclaim the area. The ARDF suggests, however, where no mine is actually in the planning stages, the State should undertake the reclamation and advertise for bids to recover the coal in order to off-set the reclamation costs.

OSM is satisfied that the West Virginia's ranking and selection procedures for AML projects in Sections 7 (A)(C) and (D) of their Plan and OSM Guidelines for Reclamation Programs and projects will adequately provide for all considerations where the possibility of future mining exists.

14. The ARDF stated that West Virginia's Reclamation Plan implies that AML projects will only cover work at the abandoned mine sites. They suggest that offsite damages should also be addressed. Under Section 404 of SMCRA, lands and water eligible for reclamation or drainage abatement expenditures are those which were mined for coal or which were affected by such mining, wastebanks, coal processing, or other coal mining process and abandoned or left in an inadequate reclamation status prior to August 3, 1977 and for which there is no continuing reclamation responsibilities under State or Federal laws. It is clear from such statutory authority that AML reclamation activities are not limited to mine site areas.

15. ARDF commented that due to the eligibility limitations contained in Section 404 of SMCRA, the pollution problems of certain up-drift mines which closed between 1978 and 1981 will not be addressed. Accordingly, they urge that the DNR reassess this problem in their plan and possibly consider enacting a small tax on each ton of coal mined to handle this problem. Based on the limitations concerning eligible lands and water contained in Section 404 of SMCRA and Section 12C.03 of the West Virginia statute, there is no authority to use AML funds to abate post 1977 reclamation problems, nor a requirement under 30 CFR 884.13 that such problems be addressed in their reclamation plan.

16. The ARDF stated that the State should develop procedures for undertaking high priority projects even though there may be some unresolved legal issue concerning the mine owner's continuing responsibility for reclamation.

The determination of eligibility is made on a case by case basis and depends upon the factual situations encountered. Prior to undertaking reclamation activities on lands and water adversely affected by past coal mining practices, the DNR must find that the lands in question meet the eligibility requirements set out in Chapter 20, Article 6c, Section 12(c), of West Virginia's Abandoned Mine Lands and Reclamation Act. One such requirement is that there be no continuing reclamation responsibility under state or Federal law. Accordingly, the determination of eligibility is made on a case by case basis and depends upon the factual situations encountered. Specific procedures for initiating projects prior to making these findings are therefore not required.

17. The ARDF suggested that problems posed by old structures such as tipples, along with their reclamation be discussed under the section entitled "Scope and Severity of the Problem".

The discussions under this section of the plan cover what the State classifies as the five generic types of AML problems and is not intended to cover specifics on structures such as tipples.

18. The ARDF commented that the Plan discussed only acid mine drainage.

The term "mine drainage" as used by West Virginia on page 22 of their plan is not restricted to acid drainage, but includes sediments, sulfates, iron and hardness and notes that acid is the most significant pollutant.

19. The ARDF stated that the basis for the 2.7 billion dollar cost of acid mine drainage abatement be discussed.

The basis for all costs in the "Scope and Severity of the Problem" Section of the plan is the U.S. Bureau of Mines 1979 estimates as stated on page 13 of the plan. Accordingly, no further discussion is required.

20. The ARDF and FWS stated that there seemed to be an error in the Environmental Problems Matrix table by an omission of an indicator of acid drainage in refuse piles.

This omission has been brought to the attention of DNR for correction.

21. The ARDF commented that West Virginia's plan does not specify individual AML projects will be determined. Specifically the project ranking system on page 25 reduces the priority of projects which leave the coal mining problem only partially abated, (i.e. where 75% acid reduction will restore stream quality and further abatement would be prohibitive). The ARDF stated, however, that for some projects partial abatement may be the only reasonable solution and therefore this type of project should not be penalized in the ranking system.

The State of West Virginia amended their ranking and selection procedures and eliminated the negative points for partial abatement of a problem.

22. The ARDF commented that the public is involved to only a very limited extent in the inventory and ranking of AML sites and that perhaps a media campaign to solicit letters from the public should be considered.

The OSM is satisfied that present inventory and ranking procedures, including researching records, aerial surveys, contacts with DNR inspectors, industry personnel and local residents will identify the majority of the AML sites.

It should be noted that the inventory is not a one time effort, but will continue to be updated as new information becomes available. In addition, OSM regulations (30 CFR 884.13 (c)(7) and (e) require the State to actively involve the public both in the development of their AML Plan (pg 50) and the annual grant application (pg 51). OSM therefore believes that opportunity for public participation is adequately provided.

23. The USFS questioned whether they were included as members of the State Reclamation Committee and suggested that if they were not included, the DNR should provide for close coordination with USFS on all projects involving lands which they administer. In addition they questioned whether the State Division of Forestry had had input into the development of West Virginia's Reclamation plan.

The USFS is not included as a member of the State Reclamation Committee. However, the DNR will maintain close coordination with the USFS on AML projects associated with or involving Forest Service Lands. Regarding development of the Reclamation Plan, the State Division of Forestry was consulted during the drafting stages as were other operating division of the DNR.

24. The USFS commented that West Virginia's Reclamation Plan should provide for cooperative agreements between DNR and the USFS which would include provisions for the pass through of funds to the USFS for design, administration and inspection of construction projects on USFS abandoned mine lands. Section 412(b) of SMCRA does not require such cooperative efforts as outlined by the USFS but rather leaves such reclamation decisions to the discretion of the Secretary or the State. The State will treat all projects on a case by case basis

and where feasible, will enter into cooperative agreements with other agencies to undertake reclamation activities.

25. The USFS, Monogahela National Forest requested that West Virginia make further improvements in their project ranking and selections procedures.

West Virginia has made major revisions to this section of their Plan after detailed coordination with OSM. Personnel who will be responsible for evaluating individual projects will be trained in the proper procedures and methodologies to achieve uniformity according to OSM's guidelines. This section is now in conformance with acceptable format.

26. The USGS has raised the need for certain technical corrections in West Virginia's "Supporting Data" section relative to the units of measurement and data on length of streams affected by acid mine drainage.

These inaccuracies have been pointed out for correction by the DNR.

27. The FWS commented that a third task under "Problem Abatement," page 10 of the Plan should be "Evaluation". The State of West Virginia in amending their Plan has deleted the tasks on page 10. West Virginia will provide evaluation as set out in the "Final guidelines for Reclamation programs and projects" published in the Federal Register on March 6, 1980, (45 FR 14810) and 30 CFR 886.23 of OSM's regulations.

Dated: January 16, 1981.

Walter N. Heine,

Director, Office of Surface Mining Reclamation and Enforcement.

Part 948 is amended by adding § 948.20 to read as follows:

PART 948—WEST VIRGINIA

§ 948.20 Approval of the West Virginia Abandoned Mine Reclamation Plan.

The West Virginia Abandoned Mine Reclamation Plan as submitted on October 29, 1980, and amended December 12, 1980, is approved, effective February 23, 1981. Copies of the approved program are available at the following locations:

Office of Surface Mining Reclamation and Enforcement, Region I, 603 Morris Street, Charleston, West Virginia 25301

West Virginia Department of Natural Resources, 1800 Washington Street East, Charleston, West Virginia 25301

Office of Surface Mining Reclamation and Enforcement, Room 153, 1951 Constitution Avenue, N.W., Washington, D.C. 20240

(30 U.S.C. 1211 (c)(2))

[FR Doc. 81-2330 Filed 1-22-81; 8:45 am]

BILLING CODE 4310-05-M

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 219

National Forest System Land and Resource Management Planning

AGENCY: Forest Service, USDA.

ACTION: Final rule; amendment.

SUMMARY: This document amends the final regulations on land and resource management planning on the National Forest System, which were published in the Federal Register of September 17, 1979 (44 FR 53928), to establish the status of roadless area allocations within the Mount St. Helens planning unit on the Gifford Pinchot National Forest.

EFFECTIVE DATE: February 23, 1981.

FOR FURTHER INFORMATION CONTACT: Charles R. Hartgraves, Director, Land Management Planning, P.O. Box 2417, Washington, D.C. 20013 202-447-6697.

SUPPLEMENTARY INFORMATION: Because of the special circumstances resulting from the May 18, 1980, eruption of Mount St. Helens, some of the earlier land management plans and allocations on the Gifford Pinchot National Forest are no longer valid. Early planning action is desirable within the Mount St. Helens area to provide fully for the protection and interpretation of the unique natural features and to facilitate resource recovery of the portion of the area within the Gifford Pinchot National Forest prior to the completion of the comprehensive forest land management planning directed by the National Forest Management Act. It is determined that the revisions do not constitute a major Federal action significantly affecting the environment and that no detailed environmental impact statement is required pursuant to Section 102(2)(c) of the National Environmental Policy Act of 1969 [42 USC 4332 (2)(c)].

Section 219.16 is amended by adding a new paragraph (c) to read as follows:

§ 219.16 Transition period.

* * * * * *

(c) As a result of the eruption of Mount St. Helens, a land management plan for the Mount St. Helens area will be prepared substantially in accordance with the following procedures:

(1) Notwithstanding any other provisions in this subpart, the area included in the Mount St. Helens land management plan will not be subject to planning activities for the first generation Gifford Pinchot National Forest Plan unless the Regional Forester for the Pacific Northwest Region determines that additionalplanning activities are desirable.

(2) Lands which were inventoried as roadless and allocated to nonwilderness uses in the Roadless Area Review and Evaluation (RARE II) will be managed for uses other than wilderness. Except for a small part of the Mount Margaret roadless area (B 6071), the Mount St. Helens land management plan will not consider wilderness allocation for these lands.

(3) Lands which were inventoried as roadless and designated as further planning in the Roadless Area Review and Evaluation (RARE II) will be evaluated in the Mount St. Helens land management plan and will be managed in accordance with that plan.

Bob Bergland,

Secretary.

January 19, 1981.

[FR Doc. 81-2430 Filed 1-22-81; 8:45 am]

BILLING CODE 3410-11-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 35

[WH-FRL 1790-7]

State and Local Assistance; Grants for Construction of Treatment Works

Correction

In FR Doc. 80-39521, appearing in the Federal Register for Friday, December 19, 1980 on page 83497, the "EFFECTIVE DATE:" now reading "December 19, 1981" should have read "December 19, 1980."

BILLING CODE 1505-01-M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

41 CFR Part 14-1

Small and Disadvantaged Business Program

AGENCY: Department of the Interior.

ACTION: Final rule.

SUMMARY: This rule revises the temporary rule which was published in the Federal Register on September 15, 1978, (43 FR 41207-41214; FR Doc. 78-26024) and establishes a final rule governing the policies and procedures of

the Department of the Interior's Small and Disadvantaged Business Program. This program is authorized and required pursuant to Public Law 95-507 and FPR Temporary Regulations 50, Supple-ment 2.

EFFECTIVE DATE: This rule is effective January 23, 1981.

FOR FURTHER INFORMATION CONTACT: Kenneth T. Kelly, Division of Small Business Utilization, Office of Small and Disadvantaged Business Utilization, Department of the Interior, (202) 343-4907.

SUPPLEMENTARY INFORMATION: The principal author of this final rulemaking is Kenneth T. Kelly of the Office of Small and Disdvantaged Business Utilization, assisted by the Office of Acquisition and Property Management.

On September 15, 1978, the Department of the Interior published a temporary rule in the **Federal Register** (43 FR 41207, as amended at 44 FR 30095, May 24, 1979) which established a Department of the Interior program to increase the contracting and subcontracting participation of minority business enterprises in its procurement program and which further prescribed certain policies, procedures, and contract clauses to be used to that end.

On October 24, 1978, the President signed into law Public Law 95-507 (92 Stat. 1757; 15 U.S.C. 631) which amended the Small Business Act and the Small Business Investment Act of 1958 and which involved extensive revisions to these two acts.

On April, 29, 1980, the Office of Federal Procurement Policy (OFPP) issued Policy Letter 80-2 (45 FR 31028, May 9, 1980) containing the final regulatory guidance implementing Section 211 (subcontracting) of Public Law 95-507, except for data collection formats which will be prescribed later.

On May 23, 1980, the General Services Administration issued Federal Procurement Regulations (FPR) Temporary Regulation 50, Supplement 2 (45 FR 35809, May 28, 1980), implementing the OFPP regulatory guidance in the FPR.

On July 22, 1980, OFPP issued Policy Letter 80-6 (45 FR 50193, July 28, 1980) containing the final regulatory guidance on implementing Section 211 (Small Purchases) of Public Law 95-507.

On August, 13, 1980, the General Services Administration issued Amendment 206 to FPR Subpart 1-1.7 (45 FR 55721-3, August 21, 1980) implementing OFPP Policy Letter 80-6, which establishes OFPP regulatory guidance for all Government small purchase procurement.

Issuance of the above actions render the Department's temporary regulations as published on September 15, 1978 and amended on May 24, 1979, under 41 CFR Subpart 14-1.13, as obsolete.

Therefore, it is necessary for the Department to revise these regulations and adopt a final rule in conformance with the requirements of Public Law 95-507, OFPP Policy Letter Nos. 80-2 and 80-6, and FPR Temporary Regulations 50, Supplement 2. All Department of the Interior procuring activities and contracting officers shall comply with the policies and procedures prescribed in this final rule.

Waiver

It is the general policy of the Department of the Interior to allow time for interested parties to participate in the rulemaking process. However, the amendments contained herein are entirely administrative in nature and public participation would serve no useful purposes. Therefore, the public rulemaking process is waived in this instance in accordance with 5 U.S.C. 553.

Impact

The Department of the Interior has determined that this document is not a significant rule and does not require a regulatory analysis under Executive Order 12044 and 43 CFR Part 14.

Accordingly, 41 CFR Subpart 14-1.13 is hereby revised pursuant to the authority of the Secretary of the Interior contained in 5 U.S.C. 301.

Dated: January 16, 1981.

Larry E. Meierotto,

Assistant Secretary of the Interior.

1. The table of contents for subpart 14-1.13 is revised to read as follows:

PART 14-1—GENERAL

Subpart 14-1.13 Small and Disadvantaged Business Program

Sec.

14-1.1300 Sope of subpart.
14-1.1301 Applicability.
14-1.1302 Agency programs.
14-1.1302-1 General
14-1.1302-2 Definitions.
14-1.1302-3 Office of Small and Disadvantaged Business Utilization.
14-1.1302-4 Office of Inspector General.
14-1.1302-5 Office of the Solicitor.
14-1.1302-6 Assistant Secretaries.
14-1.1302-7 Heads of procuring activities.
14-1.1302-8 Business utilization and development specialists.
14-1.1310 Subcontracting with small business and small disadvantaged business concerns.
14-1.1350 Small business and small disadvantaged business vendor sources.
14-1.1351 Reports.

Authority: Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c); and 5 U.S.C. 301.

PART 14-1—GENERAL

* * * * *

Subpart 14-1.13 Small and Disadvantaged Business Program

§ 14-1.1300 Scope of subpart.

This subpart prescribes the Department of the Interior revised policies and procedures which establish a small and disadvantaged business program.

§ 14-1.1301 Applicability.

These policies and procedures are applicable to all Interior procuring activities and contracting officers.

§ 14-1.1302 Agency programs.

§ 14-1.1302-1 General.

This section defines certain terms and establishes responsibilities, policies, and procedures that implement the Small and Disadvantaged Business Program.

§ 14-1.1302-2 Definitions.

(a) The term "small business concern" means a small business as defined pursuant to Section 3 of the Small Business Act and in relevant regulations promulgated pursuant thereto.

(b) The term "small business concern owned and controlled by socially and economically disadvantaged individuals" means a small business concern (1) which is at least 51 per centum owned and controlled by one or more socially and economically disadvantaged individuals; or in the case of any public owned business, at least 51 per centum of the stock of which is owned by one or more socially and economically disadvantaged individuals; and (2) whose management and daily business operations are controlled by one or more of such individuals.

(c) The term "socially disadvantaged individuals" means those individuals who have been subjected to racial or ethnic prejudice or cultural bias because of their identity as a member of a group without regard to their individual qualities.

(d)(1) The term "economically disadvantaged individuals" means those socially disadvantaged individuals whose ability to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities as compared to others in the same business area who are not socially disadvantaged.

(2) Business owners who certify that they are members of named groups (Black Americans, Hispanic Americans,

Native Americans, and Asian Pacific Americans) are to be considered socially and economically disadvantaged.

(e) The term "Native Americans" means American Indians, Eskimos, Aleuts, and native Hawaiians. The term "Asian-Pacific Americans" means United States citizens whose origins are from Japan, China, the Philippines, Vietnam, Korea, Samoa, Guam, the United States Trust Territories of the Pacific, Northern Marianas, Laos, Cambodia, and Taiwan. Other individuals may qualify as socially and economically disadvantaged on a case by case basis as determined by the Small Business Administration (see 13 CFR 124.1-1(3)(iii)).

(f) Subcontract. The term "subcontract" means any agreement (other than one involving an employer-employee relationship) entered into by a Federal Government prime contractor or subcontractor calling for supplies or services required for the performance of the original contract or subcontract.

§ 14-1.1302-3 Office of Small and Disadvantaged Business Utilization.

The Office of Small and Disadvantaged Business Utilization is responsible for the development and implementation of policies, procedures, and guidelines for the effective administration of the Department's Small and Disadvantaged Business and Labor Surplus Area Programs. This is in accordance with the requirements of Public Law 95-507 and Departmental Manual 111 DM 8.

§ 14-1.1302-4 Office of Inspector General.

The Office of Inspector General is responsible for ensuring compliance with the intent and purpose of these regulations at all Departmental levels and contractor tiers. The Office of Inspector General is also responsible for evaluating and documenting all findings with respect to the accomplishment of the goals, objectives, and policies of the Department's Small and Disadvantaged Business Program and for recommending those positive corrective actions needed to improve the program's effectiveness.

§ 14-1.1302-5 Office of the Solicitor.

The Office of the Solicitor is responsible for reviewing selected procurement actions for legal sufficiency in accordance with the provisions of § 14-1.352 of this chapter.

§ 14-1.1302-6 Assistant Secretaries.

Each Assistant Secretary within the Department is responsible for ensuring that all policies, procedures and regulations pertaining to the Department's Small and Disadvantaged Business Program are effectively implemented at all operational levels under his/her jurisdiction and for timely dissemination of all communications related to the Department's Small and Disadvantaged Business Program to the heads of procuring activities; and for fully endorsing and supporting recommended procurement seminars, conferences and special forums related to the Department's Small and Disadvantaged Business Program.

§ 14-1.1302-7 Heads of procuring activities.

(a) The head of each procuring activity (see § 14-1.206 of this chapter) is responsible for administering the Department's Small and Disadvantaged Business Program within that activity. This responsibility may be assigned to other qualified senior level official(s) designated by the head of the procuring activity.

(b) The head of each procuring activity, or designee, shall take immediate positive action to ensure maximum practicable participation of small and disadvantaged business concerns in the procurement opportunities of the organization. This action shall include, but not be limited to, the following:

(1) Establishment of aggressive small business and disadvantaged business goals based on the annual review of advance procurement plans (see § 14-1.5000 of this chapter). These goals shall be expressed as a percentage of planned procurement dollars and submitted in accordance with the requirements of § 14-1.1351 of this chapter.

(2) Full utilization of available Small Business and Disadvantaged Business vendor listings, directories, and query systems to ensure that eligible and qualified Small and Disadvantaged Business concerns are included on bidders mailing lists and source lists.

(3) Providing training opportunities for all personnel involved in carrying out the Department's Small and Disadvantaged Business Program so as to effectively assist such businesses seeking to do business with the government.

(4) Appointment of a qualified, full time Business Utilization and Development Specialist (BUDS) for each procurement office within a procuring activity which has annual contract dollar awards of $20 million or more. When volume of procurement and contract activity warrants it, a full-time BUDS may be appointed for procurement offices with annual contract dollar awards of less than $20 million. A qualified, part-time BUDS shall be appointed for each procurement office which has annual contract dollar awards of less than $20 million and in which the volume of procurement and contract activity does not justify a full time BUDS (see § 14-1.1302-8 of this chapter).

(5) Establishment and issuance of operating procedures which fully implement this subpart § 14-1.13 and which, as a minimum, are to be followed by all personnel involved in carrying out the Department's Small and Disadvantaged Business Program. Such procedures shall include, but not be limited to, the following actions:

(i) A review of each procurement requirement in excess of $10,000 to determine the opportunity for award to the Small Business Administration pursuant to Section 8(a) of the Small Business Act (15 U.S.C. 637(a)) (see § 1-1.713 of this title). A search shall be made for small business and small disadvantaged business concerns including those located in rural areas for the inclusion of such concerns on the bidders mailing lists and source lists (see § 14-1.1350 of this chapter).

(ii) Regular consultations with the designated BUDS, other procuring activities of the Department, and other Federal agencies, to ensure that a sufficient number of small business and small disadvantaged business concerns are identified on the bidders mailing lists and other source lists, and to further ensure that such lists are periodically updated and fully utilized in the solicitation of bids and proposals.

(iii) With regard to small disadvantaged business concerns on existing bidders mailing lists and other source lists, maintain records showing the number of such concerns solicited and the total dollar amount of awards to each (See § 14-1.1351(b)(3) of this chapter).

(iv) Whenever practicable, recommend small business and labor surplus area set-asides for each procurement requirement that cannot be awarded to the Small Business Administration pursuant to Section 8(a) of the Small Business Act (15 U.S.C. 637(a)) (See §§ 1-1.706 and 1-1.804 of this title).

(v) Ensure to the maximum extent practicable, that procurement specifications and requirements are written in such a way as to enhance the possibility of participation by small and disadvantaged business concerns.

(vi) Assist in the counseling of small business and small disadvantaged business concerns on matters relating to future procurement opportunities and appropriate procedures for participating in the Department's procurement

requirements. However, this does not include the advance release of information regarding specific procurements in process (See §§ 1–1.1006 and 1–3.802(c)(4) of this title).

(vii) Review all proposed procurements to explore the possibility of dividing the work into components or subcomponents suitable for participation by small business or small disadvantaged business concerns. Ensure that the estimated dollar amount of a particular requirement is not used as a determining factor in soliciting small disadvantaged business concerns for participation in the award of contracts to the Small Business Administration under the Section 8(a) of the Small Business Act (15 U.S.C. 637(a)).

(viii) Ensure that all competitive procurements and procurements offering subcontracting opportunities are synopsized in the Commerce Business Daily in a timely fashion and that the maximum practicable response time is provided (See § 1–1.1003–6 of this title).

(ix) Facilitate participation of small business and small disadvantaged business enterprises concerns by providing them with counsel and advice on matters relating to preparation of bids and proposals, allowance for time for preparation of bids and proposals, quantities of articles or services required, specifications, delivery schedules, bonding requirements, level of effort estimates (when appropriate), and any other relevant procurement information that will aid and assist such concerns in competing for contract opportunities with the Department.

(x) Ensure that each solicitation which incorporates the clauses prescribed under § 14–1.1310–2 of this chapter contains a conspicuous notice of the requirements for submission of a small business and small disadvantaged business subcontracting plan. Ensure that a thorough review is made of subcontracting plans submitted by bidders/offerors, in consultation with the BUDS of the particular procuring activity.

(xi) Take full advantage of the services offered by the Small Business Administration's Field Procurement Center Representatives, and the local Office of the Minority Business Development Agency, Department of Commerce, in order to ensure that ample procurement opportunities are provided to small business and small disadvantaged business concerns.

(xii) Provide debriefings to unsuccessful small and small disadvantaged business concerns upon request. The debriefing should place special emphasis on the deficiencies of the proposal so that the small and small disadvantaged businesses will be able to enhance their future solicitation responses based on the knowledge gained (See § 1–3.103(c) of this title).

(xiii) Whenever practicable attend and participate in local procurement conferences, seminars, and meetings on matters relating to small and small disadvantaged business concerns. Apprise such concerns of procurement opportunities and obtain a working knowledge of their capabilities. Invite members of small business and small disadvantaged business trade and professional organizations, the Minority Business Development Agency, Department of Commerce, to speak at Department sponsored procurement conferences and to participate in small business and small disadvantaged business procurement workshops, seminars, and forums.

(xiv) By using Optional Form 61 (see §§ 1–1.16.804–5 and 1–16.902–OF–61 of this title) or, upon OMB approval, the Federal Quarterly Summary Subcontracting Report form, obtain data on subcontract awards to small business and small disadvantaged business concerns from all prime contractors having contracts which contain the clauses prescribed under § 14–1.1310–2 of this chapter. Negative reports are also required.

(xv) Maintain data on contract and subcontract awards to small business and small disadvantaged business concerns and make such data available to the procuring activity personnel responsible for submitting required reports (see § 14–1.1351 of this chapter.)

(xvi) In negotiating subcontracting plans, exercise sound judgment and flexibility in determining percentage goals for small business and small disadvantaged business subcontractors by considering known circumstances and market conditions, (e.g., cases where it is clearly known and established that an insufficient number of small or small disadvantaged business concerns are available within a reasonable geographical area); document all facts and circumstances.

(xvii) Ensure that each contract for the procurement of goods and services which has an anticipated value of less than $10,000 and which is subject to small purchase procedures be reserved exclusively for small business unless the Contracting Officer is unable to obtain offers or quotations from two or more small business concerns that are competitive with market prices and in terms of quality and delivery of the goods and services being purchased (See § 14–1.1310–3 of this chapter).

(xviii) Ensure that the practice of making awards under Section 8(a) of the Small Business Act prior to the actual identification of an 8(a) source is not used to prolong availability of annual funds and that no letter contracts are issued to SBA unless expresely required by mission urgency.

(xix) To the extent practicable, encourage utilization of the Commerce Business Daily's new "Numbered Note" system #100 in procurements of $500,000, or more, which offer substantial subcontracting opportunities for small and small disadvantaged business concerns.

§ 14–1.1302–6 Business utilization and development specialists.

The head of each procuring activity shall appoint full time and part-time Business Utilization and Development Specialists (BUDS) within each procurement office in accordance with the provisions set forth in § 14–1.1302–7(b)(4) of this chapter. Part-time BUDS positions shall be allocated a minimum of 50% of their time for performance of small business and small disadvantaged business functions. Persons designated as BUDS shall take positive actions that will result in the maximum practicable achievement of the small and disadvantaged business program objectives. The duties and responsibilities of BUDS shall include, but not be limited to the following:

(a) Participate in procurement planning and evaluation activities including the review of and written concurrence in advance procurement plans; participate in the determination on annual small and disadvantaged business goals; and coordinate with the Contracting Officer in the review and evaluation of all small and small disadvantaged business subcontracting plans submitted by potential prime contractors.

(b) Review of each procurement requirement in excess of $10,000 received in the procurement office to determine the potential for award to the Small Business Administration in accordance with Section 8(a) of the Small Business Act (15 U.S.C. 637(a)). Subsequent to each review, the BUDS shall advise the appropriate Contracting Officer in writing, of all recommendations citing rationale for same.

(c) Assist program and procurement personnel in the development of the technical proposal evaluation criteria to ensure that such criteria and their assigned weighting factors are realistic representation of the Government's actual need for requirements. For example, if the experience of the key or

principal individual(s) is significant to the successful performance of the procurement requirement, the BUDS shall ensure that the evaluation factor for "key personnel" is given greater weight than the factor for company experience.

(d) In concert and cooperation with the Contracting Officer, ensure that bonding requirements for nonconstruction contracts are not arbitrarily or capriciously imposed and that when such requirements are needed, the amount required does not exceed that absolutely necessary to protect the best interest of the Government.

(e) Ensure that the procuring activity is kept abreast of new and/or revised small and small disadvantaged business enterprise regulations, policies, procedures and other related information. Compile data and prepare all reports pertaining to small business and small disadvantaged business activities. Ensure that small and small disadvantaged business reporting data is current, accurate, and complete.

(f) Maintain all records and files necessary to demonstrate that maximum efforts have been taken to implement an aggressive, effective, and viable small and disadvantaged business program.

(g) Assist contracting personnel in the review of large complex procurements to explore the feasibility of the requirement being divided into reasonably small lots suitable for participation by small and small disadvantaged business concerns.

(h) Participate in debriefing sessions with unsuccessful small and small disadvantaged business bidders and offerors. The debriefing should place special emphasis on the deficiencies of the proposal or bid so that the small or small disadvantaged business concern will be able to enhance its further responses to solicitations based on the knowledge gained.

(i) Actively and aggressively seek out and contact small business and small disadvantaged business concerns having actual or potential capabilities to fulfill procurement requirements. In this regard, BUDS shall continuously coordinate with local and regional officials of the Minority Business Development Agency (MBDA), Department of Commerce, and the Small Business Administration (SBA) to advise them at the earliest possible date of projected or potential requirements for which small and small disadvantaged business concerns will be sought. To the extent practicable, make maximum use of SBA's Procurement Automated Source System (PASS) in searching out and identifying small and small disadvantaged business sources.

(j) Assist in the establishment and maintenance of current source lists of small and small disadvantaged business concerns. Ensure that all small and small disadvantaged business concerns seeking to do business with the Department's procuring activity are listed under all commodity and service classifications in which the firms have demonstrated capabilities.

(k) Advise and counsel small and disadvantaged business representatives on the various ways and means of enhancing their participation in Government procurement by: (1) explaining bid and proposal submission requirements; (2) serving as liaison person to ensure that small and disadvantaged business concerns are granted access to appropriate program and project personnel; and (3) directing small and disadvantaged business concerns to SBA or MBDA for certification of 8(a) eligibility, financial assistance, management assistance, and any other business or technical assistance offered by such organizations and their funded components in the private sector.

(l) Provide small and small disadvantaged business concerns with a source list of large business firms solicited for any proposed procurements that contain any of the small and small disadvantaged business subcontracting clauses specified in § 14–1.1310–2 of this chapter.

(m) Contact procuring activities of other Federal agencies which procure like or similar goods and services for the purpose of increasing and expanding the list of small and small disadvantaged business sources maintained by the procuring activity.

(n) Establish contact with local small and small disadvantaged business trade and professional associations and Indian tribal councils to apprise them of the procuring activity's needs and recurring procurement requirements.

(o) Actively participate in the programs and activities of the local Minority Business Opportunity Committees (MBOC) as well as other relevant small and small disadvantaged business activities on the local level.

(p) Periodically sponsor or participate in local procurement conferences, workshops, or trade fairs in order to attract potential small and small disadvantaged business contractors and to apprise them of current and projected contracting opportunities. Such conferences, workshops, or trade fairs should normally be held in conjunction with other Departmental activities, activities of other Federal agencies, or the activities of a responsible local SBA or MBDA funded organization.

(q) Invite members of small and small disadvantaged business trade, business and professional associations, MBOC Chairpersons, MBDA and SBA representatives to speak at conferences, workshops, seminars and other similar type forums to increase program and personnel awareness of small and small disadvantaged business concerns and capabilities.

(r) To the extent practicable, participate in all training opportunities related to the Department's Small and Disadvantaged Business Program.

(s) Encourage the establishment of local, regional and national small and small disadvantaged business Steering Committees or Councils, for the purpose of exploring new ways of increasing contract awards to such concerns. The committees or councils should be comprised of the BUDS and the appropriate procurement and program management officials responsible for the procurement placement of organizational resources and requirements. These groups should meet as often as necessary, preferably not less than quarterly, to review the progress of the organization's complete small and disadvantaged business program and make recommendations for improvement.

(t) To the extent practicable, actively participate in the negotiation process on all procurements generated through the Small Business Administration in accordance with Section 8(a) of the Small Business Act (15 U.S.C. 637(a)). Such participation shall be coordinated with the Contracting Officer and shall include all phases of the negotiation process. However, the degree of involvement should not adversely impact the effective performance of the other duties and responsibilities set forth in § 14–1.1302–6 of the chapter.

§ 14–1.1310 Subcontracting with small business and small disadvantaged business concerns.

The notices, clauses, policies, and procedures set forth in Federal Procurement Regulations (FPR) Temporary Regulation 50, Supplement 2, May 23, 1980, including Attachment A (OFPP Policy Letter No. 80–2, April 29, 1980), are prescribed for use in all solicitations and contracts as specified therein.

§ 14–1.1350 Small and small disadvantaged business vendor sources.

The head of each procuring activity shall ensure the availability of, or access to, all possible sources of small and small disadvantaged business concerns,

both locally and nationally. In this regard, procuring activities are encouraged to make maximum use of the following sources in addition to any other listings at their disposal.

(a) The Small Business Administration's publication "Firms in the 8(a) Business Development Program" should be used as an aid in locating eligible 8(a) firms. This publication is a nationwide listing, by State, and can be ordered from: Small Business Administration, Office of Reports, Room 503, 1441 L Street NW., Washington, D.C. 20416.

(b) The Small Business Administration's "Procurement Automated Source System" (PASS) which became operational in September 1978, has been adopted by the Department as the principle source system for locating and identifying small business and small disadvantaged business concerns. The PASS system represents a comprehensive data base of small business, minority business, and women-owned business firms. Company profiles are also available on research and development, manufacturing, service, and construction organizations. For additional information concerning the administrative and operational components of the PASS system, contact the: PASS Project Officer, Small Business Administration, 1441 L Street NW., Washington, D.C. 20416 (202) 653-6938.

(c) The National Minority Purchasing Council (NMPC) query system, "Vendor Information System (VIS)," is also a direct method of obtaining current, detailed listings of minority 8(a) and Non-8(a) firms. Requests can be made either by telephone or by completing and mailing the NMPC VIS Processing Form. Telephone request must include the desired VIS capability code(s) and, for regional requests, the VIS Geographic Regions. Calls should be made to the NMPC at (202) 466-7077. Mail order requests can be ordered from the NMPC at the following address: National Minority Purchasing Council, Inc., 1925 K Street NW., Suite 206, Washington, D.C. 20006.

§ 14-1.1351 Reports.

(a) The head of each procuring activity shall submit to the Office of Small and Disadvantaged Business Utilization, an annual report on the separate goals established for each of the Department's small and disadvantaged business programs no later than August 30 of each fiscal year (see §§ 14-1.1302-7(b)(1) and 14-1.5000 of this chapter). The Office of Small and Disadvantaged Business Utilization, after negotiations with bureaus/offices and upon acceptance of the goals submitted, will consolidate the goal reports of each procuring activity and submit a Departmental goal report to the Small Business Administration and the Minority Business Development Agency, Department of Commerce, as required.

(b) The head of each procuring activity shall submit to the Office of Small and Disadvantaged Business Utilization, within thirty (30) days after the end of each quarter, quarterly progress reports on the actual number and dollar amounts of contract and subcontract awards made during the quarter in each of the Department's small and disadvantaged business programs. The numbers and amounts of awards shall be reported on a non-cumulative basis for the preceding quarter. In compiling the quarterly progress report of actual awards, reporting activities may count one contract award for as many times as it is applicable to the Department's socioeconomic program goals (e.g., if an award is made to a small, woman-owned, socially and economically disadvantaged business concern under a labor surplus area set aside procurement, the award shall count as a goal achievement under the reporting activities' small business goal, woman-owned business goal, small socially and economically disadvantaged business goal, and labor surplus area goal). In the event a procuring activity fails to meet its established goals, an explanation shall be provided on the last quarterly report for the fiscal year including specific recommendations for meeting future goals. The following additional information shall also be submitted with each quarterly report:

(1) For each contract awarded to the Small Business Administration (SBA) under Section 8(a) of the Small Business Act (see § 1-1.713 of this title), list the name of the 8(a) firm; the date the requirement was offered to SBA; the dollar amount of the contract; the date of contract award; SBA office; a brief description of work under the contract; and the performance of the 8(a) firm to date (satisfactory/unsatisfactory).

(2) For each procurement requirement offered to SBA under Section 8(a) of the Small Business Act and rejected by SBA, list a brief description of the work required under the procurement; the date the requirement was offered to SBA; the estimated dollar amount of the requirement; location of SBA office and name of representative (if known); date of the SBA rejection; and reason(s) given by SBA for the rejection.

(3) For each contract awarded to a small disadvantaged business concern excluding section 8(a) contracts with SBA, list the name of the contractor, a description of the work under the contract, the dollar amount of the contract and the date of contract award.

(4) For contracts awarded which contain the clauses prescribed by § 14-1.1310-2 of this chapter, submit an Optional Form 61 (see §§ 1-16.804-5 and 1-16.902-OF-61 of this title) report or, upon OMB approval, the Federal Quarterly Summary Subcontracting Report form, which summarizes the number and dollar amounts of subcontract awards made to small business concerns and small disadvantaged business concerns. The head of each procuring activity shall ensure that sufficient supplies of the Optional Form 61 or any subsequent replacement form are available at each procurement office and that they are made available to contractors for their completion and quarterly submission to the Contracting Officer as required.

(c) Unless otherwise specified herein, the quarterly reporting requirements set forth in § 14-1.1351 of this chapter shall be submitted on the quarterly MBE-91 report with an attached supplement containing the required information not reflected on the MBE-91 form.

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BILLING CODE 4310-10-M

DEPARTMENT OF LABOR

Office of Federal Contract Compliance Programs

41 CFR Parts 60-1, 60-2, 60-4, 60-20, 60-30, 60-50, 60-250, and 60-741

Government Contractors; Affirmative Action Requirements; Correction

AGENCY: Office of Federal Contract Compliance Programs, Department of Labor.

ACTION: Final rule, correction.

SUMMARY: On December 30, 1980, the Department of Labor published a final rule (45 FR 86216) which amended 41 CFR Chapter 60 by consolidating and integrating certain regulatory provisions pertaining to the three programs administered by OFCCP: Executive Order 11426, as amended; section 402 of the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended; and section 503 of the Rehabilitation Act of 1973, as amended. This notice makes corrections to the regulations published on December 30, 1980.

EFFECTIVE DATE: January 23, 1981.

FOR FURTHER INFORMATION CONTACT:
James W. Cisco, Acting Director, Division of Program Policy, Office of Federal Contract Compliance Programs, Room C-3324, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210. Telephone (202) 523-9426.

SUPPLEMENTARY INFORMATION:

Background

On December 28, 1979, the Office of Federal Contract Compliance Programs (OFCCP) U.S. Department of Labor, published in the **Federal Register** (44 FR 77006) a proposed rule to amend, consolidate, and integrate certain regulatory provisions pertaining to the three programs administered by OFCCP: Executive Order 11246, as amended; section 402 of the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended; and section 503 of the Rehabilitation Act of 1973, as amended. The December 28 publication stated that comments would be received until February 26, 1980. That deadline was extended until March 24, 1980 by a notice published in the **Federal Register** on February 22, 1980 (45 FR 11856). On December 30, 1980, OFCCP published in the **Federal Register** (45 FR 86216) the final rule.

Need for Correction

Editorial review of the December 30, 1980 publication has revealed several errors in the preamble and text. This document corrects those errors.

In addition, the preamble to the December 30, 1980 publication stated that several new recordkeeping and reporting requirements imposed by the December 30 regulations would be held in abeyance until they are cleared by the Office of Management and Budget (OMB) under the Federal Reports Act. Those requirements held in abeyance are listed at 45 FR 86227.

The regulation published on December 30, 1980, extended the requirement to develop, implement and maintain an Affirmative Action Program (AAP) to those Government contractors with 50 employees and contracts which total $50,000 in a 12 month period and to construction contractors with regard to their noncraft employees if they have 50 such employees and a $50,000 contract or contracts which total $50,000 in a 12 month period. This correction notice clarifies that the new AAP requirements resulting from the December 30, 1980, publication are held in abeyance pending OMB clearance.

Signed at Washington, D.C., January 16, 1981.

Ray Marshall,
Secretary of Labor.
Donald Elisburg,
Assistant Secretary, Employment Standards Administration.
Weldon J. Rougeau,
Director, OFCCP.

Preamble

1. 45 FR 86222, first column, first full paragraph, first line, "OFFCCP" is corrected to "OFCCP".

2. 45 FR 86222, second column, item 14, second line, "consolidated" is corrected to "consolidate".

3. 45 FR 86225, second column, item 27–A, first line, "Section 60–2.3" is corrected to "Section 60–20.3".

4. 45 FR 86226, first column, item 32, fifth paragraph twelfth line, "althought" is corrected to "although".

5. 45 FR 86227, second column, item 3 is corrected to read as follows:

3. *Section 60–1.40.* (a) This section presently requires contractors with 50 employees and: (i) a contract of at least $50,000; or (ii) Government bills of lading which total $50,000 in a 12-month period, to develop and implement an affirmative action program. Certain recordkeeping and reporting requirements are associated with developing and implementing an AAP. The regulation adopted today would expand the written AAP requirement to those contractors with 50 employees and contracts, in addition to bills of lading, which total $50,000 in a 12-month period. This new requirement will be held in abeyance until OMB has cleared the recordkeeping and reporting requirements associated with developing and implementing an AAP and notice has been published in the **Federal Register**. However, contractors with Government bills of lading which total $50,000 in a 12-month period or which have a contract of at least $50,000 will continue to develop and implement the written AAP requirement and to keep records and report as in the past.

(b) The written AAP also is being required for the first time of construction contractors with regard to their noncraft employees if they have 50 such employees and: (i) a $50,000 contract; or (ii) contracts which total $50,000 in a 12-month period. This new requirement is held in abeyance until OMB has cleared the reporting and recordkeeping requirements and until further notice in the **Federal Register**.

PART 60–1—OBLIGATIONS OF CONTRACTORS AND SUBCONTRACTORS

6. Citation of Authority on the eleventh line, "Development" is corrected to "Developmental" and "Amendment" is corrected to "Amendments."

7. In § 60–1.1 (b) on the thirty-fifth line, a semicolon is inserted between "contract" and "Neither" and "Neither" is corrected to "neither."

8. In § 60–1.3 in the eighth paragraph first line, "Assistance" is corrected to "Assistant."

9. In § 60–1.3 in the fifteenth paragraph second line, "entitled" is corrected to "entitled."

10. In § 60–1.3 in the nineteenth paragraph twelfth line a comma is inserted between "grant" and "contract."

11. In § 60–1.3 in the twenty-first paragraph fifteenth line "pruchaser" is corrected to "purchaser."

12. In § 60–1.3 in the twenty-eighth paragraph, first line, quotation marks are inserted after "individual."

13. In § 60–1.4(a)(7) on the seventeenth line, "with litigation with a" is deleted and on the eighteenth line, "subcontractor" is deleted.

14. In § 60–1.4(b) on the second line, delete "(1)".

15. In § 60–1.4(b) on the twentieth line, insert a comma between "loan" and "insurance".

16. In § 60–1.4(b)(2) on the first line, "contract" is corrected to "contractor".

17. In § 60–1.4(b)(2) on the sixth line, "races" is corrected to "race."

18. In § 60–1.4(c) the first, second, third and fourth lines are regular size type.

19. In § 60–1.9(c)(2) on the second line, "effects" is corrected to "affects".

20. In § 60–1.9(c)(2) on the twelfth line, "in the collective bargaining agreement" is inserted after the word "changes".

21. In § 60–1.20(c) on the fourth line, "persuasion" is corrected to "persuassion."

22. In § 60–1.24(c)(2) on the fifth line, "recommended" is corrected to "referred."

23. In § 60–1.29(d) on the tenth line, "the" is corrected to "this".

24. In § 60–1.29(e) on the tenth line, "made" is corrected to "make".

25. In § 60–1.29(e) on the thirty-fourth line, "office" is corrected to "Office".

26. In § 60–1.29(f)(4) on the fifth line, "contract" is corrected to "contractual."

27. In § 60–1.29(f)(4) on the sixth line, insert "or of the regulations implementing sections 402 and 503" after "Order".

28. In § 60–1.29(f)(4) on the eleventh line, "contract" is corrected to "contractual".

29. In § 60–1.29(f)(4) on the twelfth line, insert "or of the regulations implementing sections 402 and 503" after "Order."

30. In § 60–1.29(g) on the eleventh line, "contractural" is corrected to "contractual."

31. In § 60–1.29(i) on the tenth line, "violations" is corrected to "violation."

32. In § 60–1.31(b) on the thirty-ninth line, "of" is corrected to "or".

PART 60–2—AFFIRMATIVE ACTION PROGRAMS

33. In § 60–2.25(b) on the third line, "schedule" is deleted.

PART 60–4—CONSTRUCTION CONTRACTORS—AFFIRMATIVE ACTION REQUIREMENTS

34. In § 60–4.2(a) on the twelfth line, "the" is corrected to "this".

35. In § 60–4.3(a)(7)(o) on the sixth line, "femal" is corrected to "female".

36. In § 60–4.5(b) on the fifth line, "provision" is corrected to "provisions."

PART 60–30—RULES OF PRACTICE FOR ADMINISTRATION PROCEEDINGS TO ENFORCE EQUAL OPPORTUNITY UNDER EXECUTIVE ORDER 11246, SECTION 402, AND SECTION 503

37. In the heading of PART 60–30 on the fourth line, "EXECTUVIE" is corrected to "EXECUTIVE."

38. In § 60–30.8(a) on the fourteenth line, "motion" is corrected to "motions."

39. In § a00–30.8(a) on the sixteenth line, "motions" is corrected to "motion".

40. In § 60–30.11(c) on the forty-first line, delete "the" and on the forty-second line, delete "answer."

41. In § 60–30.13(c)(1) on the third line, "or" is added after the semicolon.

42. In § 60–30.15(f)(4) on the first line, "Involking" is corrected to "Invoking".

43. In § 60–30.23(a) on the eighth line, "of" is corrected to "or".

44. In § 60–30.38(a) on the ninth line, a period is inserted after "sanctions" and "in" is corrected to "In."

45. In § 60–30.38(f) on the seventh line, "of" is corrected to "or".

46. In § 60–30.38(f) on the twenty-fourth line, "Provided" is corrected by placing it in italics.

47. In § 60–30.38(f) on the twenty-fifth line, a comma is inserted between "cancellation" and "termination".

PART 60–50—GUIDELINES ON DISCRIMINATION BECAUSE OF RELIGION OR NATIONAL ORIGIN

48. A statement of authority is added as follows: Sec. 201, E.O. 11246, 30 FR 12319, and E.O. 11375, 32 FR 14303, as amended by E.O. 12086.

PART 60–250—AFFIRMATIVE ACTION OBLIGATIONS OF CONTRACTORS AND SUBCONTRACTORS FOR DISABLED VETERANS AND VETERANS OF THE VIETNAM ERA

49. In § 60–250.5(b) on the twenty-seventh line, "The" is deleted, "appendix" is corrected to "Appendix" and "B" is inserted after "Appendix".

PART 60–741—AFFIRMATIVE ACTION OBLIGATIONS OF CONTRACTORS AND SUBCONTRACTORS FOR HANDICAPPED WORKERS

50. The citation of authority is corrected to read "Sec. 503 of the Rehabilitation Act of 1973, (29 U.S.C. 793), as amended by Sec. 111(a), Pub. L. 93–516, 88 Stat. 1619 (29 U.S.C. 706) and by Sections 119 and 122 of the Rehabilitation Comprehensive Services and Developmental Disabilities Amendments of 1978, Pub. L. 95–602, 92 Stat. 2955 and Executive Order 11758.

51. In § 60–741.2(a)(2), The first line is corrected by placing it in italics.

52. In § 60–741.2(a)(3), The first line is corrected by placing it in italics.

53. In § 60–741.2(a)(4), the first line is corrected by placing it in italics and the second line is corrected by placing "governments" in italics.

54. In § 60–741.2(a)(5), the first line is corrected by placing it in italics and the second line is corrected by placing "contracts" in italics.

55. In § 60–741.2(b)(1), the first line is corrected by placing "Specific contracts and" in italics and the second line is corrected by placing "classes of contracts" in italics.

56. In § 60–741.2(b)(2), the first line is corrected by placing "National security" in italics.

57. In § 60–741.5(f) on the nineteenth line, "practice" is corrected to "practices."

58. In § 60–741.6(c) on the fourth line, "§ 60–741.4(c)" is corrected to "§ 60.741.5(c)."

59. In § 60–741.21 on the first line, "(a) General responsibility" is deleted.

[FR Doc. 81–2180 Filed 1–21–81; 2:19 pm]
BILLING CODE 4510–27–M

DEPARTMENT OF THE INTERIOR

Office of Hearings and Appeals

43 CFR Part 4

Department Hearings and Appeals Procedures

AGENCY: Office of Hearings and Appeals, Department of the Interior.

ACTION: Final rule.

SUMMARY: This Office changes Subpart D of its procedural regulations in 43 CFR Part 4 to comply with Exec. Order No. 12044 "Improving Government Regulations" (43 FR 12661 (Mar. 24, 1978)) by adding new rules governing procedure before the Interior Board of Indian Appeals. The purpose of the revisions is to incorporate into Subpart D those procedural provisions of Subparts A and B that will be deleted as indicated in 45 FR 35351 (May 27, 1980). The rules relating to Indian probate proceedings before the Interior Board of Indian Appeals are revised to permit filing of appeals from orders by Administrative Law Judges with the Board. Appeals to the Board are limited to issues which were brought before the Administrative Law Judge in appropriate review requests, although the Board retains authority to correct any clear error or manifest injustice committed by an Administrative Law Judge. The present provision of 43 CFR 4.296 which stays the effectiveness of final Board decisions for a period of 60 days is deleted.

The rules governing appeals to the Board of Indian Appeals from Bureau of Indian Affairs' decisions are revised to conform to rules published at 25 CFR 2.19 permitting such appeals. The rule setting filing times is changed from 45 to 60 days to conform to 25 CFR 2.19(c)(2). The rule concerning the use of a stipulated record is limited, provisions covering record preparation and docketing are added, and the rules pertaining to hearings matters are deleted.

EFFECTIVE DATE: January 23, 1981.

FOR FURTHER INFORMATION CONTACT: Franklin Arness, Administrative Judge, Office of Hearings and Appeals, (703) 557–1400.

SUPPLEMENTARY INFORMATION: Exec. Order No. 12044 directs each executive agency to adopt procedures to improve existing and future regulations. Additionally, agencies are required to review and revise existing regulations to make them as simple and clear as possible and to eliminate rules no longer necessary. To comply with this directive, a Rules Committee was

established within the Office of Hearings and Appeals to review and revise the Office's procedural regulations. Although the work of the committee continues, the following immediate changes to Subpart D of 43 CFR Part 4 are made. The addition of new procedural rules requires a renumbering of certain rules; §§ 4.290–4.297 (probate) and §§ 4.350–4.360 (administrative appeals) are deleted; the revised rules are published beginning at § 4.310.

Discussion of Comments. The public comment period, which ended November 17, 1980, produced several comments which were considered in connection with this final rulemaking.

1. The comment that a time limitation be imposed upon the Bureau of Indian Affairs within which to transmit the record of an administrative appeal under §§ 4.330–4.338 is rejected. The rule as changed at § 4.335 requires preparation of the record on appeal by the Bureau of Indian Affairs in accordance with prescribed standards. An additional time limitation is not regarded as necessary at present, since the Bureau has already begun to implement the new rule in timely fashion. Should the need for a time requirement within which to forward records on appeal develop, this suggestion may be considered in future rulemaking.

2. The comment that notices of appeal in Indian probate matters should be required within 60 days from the date of mailing the decision appealed, rather than 60 days from the date the decision is received by the appellant, is rejected for the reason that delays caused by use of addresses no longer current or for other reasons are common in Indian probate matters. While date of mailing is a certain date and most convenient for the Department, it may not afford adequate protection for all interested parties.

3. The provision of § 4.315(c) concerning finality is relaxed so as to permit the Board, in unusual cases, to suspend the final effect of a decision pending reconsideration.

4. A comment was received suggesting clarification of the jurisdiction of the Board of Indian Appeals over determinations involving mineral resource exploration and development on Indian land. The Board of Land Appeals has traditionally adjudicated appeals from decisions of the Commissioner of Indian Affairs in this subject area when the matter involves an underlying determination by an officer of the Conservation Division, Geological Survey. *See* 30 CFR Part 290. It was generally agreed by officials of the Board of Land Appeals and the Board of Indian Appeals that existing regulations in Titles 25, 30, and 43 CFR should not be interpreted as precluding the Board of Indian Appeals from adjudicating mineral rights decisions of the Commissioner of Indian Affairs which are either based on interpretation of Federal Indian law or do not depend upon specialized recommendations or determinations of the Conservation Division, Geological Survey.

5. A comment was received suggesting that decisions of the Office of Indian Education Programs, Bureau of Indian Affairs, should be expressly excluded from the review authority of the Board since Education Program decisions are presently reviewable by the Assistant Secretary—Indian Affairs. This suggestion is adopted. The principal author of these revisions is Franklin Arness, Administrative Judge, Office of Hearings and Appeals, Department of the Interior, (703) 557–1400.

Note.—The Department of the Interior has determined that this document is not a significant rule and does not require a regulatory analysis under Exec. Order No. 12044 and 43 CFR Part 14.

(Secs. 1, 2, 36 Stat. 855, as amended, sec. 1, 38 Stat. 586, 42 Stat. 1185, as amended, secs. 1, 2, 56 Stat. 1021, 1022; R.S. 463, 465; 5 U.S.C. 301; 25 U.S.C. secs. 2, 9, 372, 373, 374, 373a, 373b.)

Dated: January 19, 1981.

James A. Joseph,

Under Secretary.

Accordingly, Subpart D of Part 4 of Title 43 of the *Code of Federal Regulations* is revised as follows:

The main Subpart heading, Subpart D, is revised to read as follows:

Subpart D—Rules Applicable in Indian Affairs Hearings and Appeals

[Note: Hearings rules codified at 43 CFR 4.200–4.282 and to be codified as sections 4.300–4.306 of 43 CFR (45 FR 50329 (July 29, 1980)) appear between the foregoing heading and the rules governing appeals to IBIA, which begin with § 4.310.]

Former sections 4.290–4.297 and 4.350–4.360 are deleted. New sections 4.310–317; 4.320–4.323; and 4.330–4.340 are added.

General Rules Applicable to Proceedings on Appeal Before the Interior Board of Indian Appeals

§ 4.310 Documents.

(a) *Filing.* The effective date for filing a notice of appeal or other document with the Board during the course of an appeal is the date of mailing or the date of personal delivery.

(b) *Service.* Notices of appeal and pleadings shall be served on all parties in interest in any proceeding before the Interior Board of Indian Appeals by the party filing the notice or pleading with the Board. Service shall be accomplished upon personal delivery or mailing.

(c) Computation of time for filing and service. Except as otherwise provided by law, in computing any period of time prescribed for filing and serving a document, the day upon which the decision or document to be appealed or answered was served or the day of any other event after which a designated period of time begins to run is not to be included. The last day of the period so computed is to be included, unless it is a Saturday, Sunday, Federal legal holiday, or other nonbusiness day, in which event the period runs until the end of the next day which is not a Saturday, Sunday, Federal legal holiday, or other nonbusiness day. When the time prescribed or allowed is 7 days or less, intermediate Saturdays, Sundays, Federal legal holidays, and other nonbusiness days shall be excluded in the computation.

(d) *Extensions of time.* (1) The time for filing or serving any document except a notice of appeal may be extended by the Board.

(2) A request to the Board for an extension of time must be filed within the time originally allowed for filing.

(e) *Retention of documents.* All documents received in evidence at a hearing or submitted for the record in any proceeding before the Board will be retained with the official record of the proceeding. The Board, in its discretion, may permit the withdrawal of original documents while a case is pending or after a decision becomes final upon conditions as required by the Board.

§ 4.311 Briefs on appeal.

(a) The appellant may file an opening brief within 30 days after receipt of the notice of docketing. Appellant shall serve copies of the opening brief filed upon all interested parties or counsel and file a certificate with the Board showing service upon the named parties. Opposing parties or counsel shall have 30 days from receipt of appellant's brief to file answer briefs, copies of which shall be served upon the appellant or counsel and all other parties in interest. A certificate showing service of the answer brief upon all parties or counsel shall be attached to the answer filed with the Board.

(b) Appellant may reply to an answering brief within 15 days from its receipt. A certificate showing service of the reply brief upon all parties or counsel shall be attached to the reply filed with the Board. Except by special permission of the Board, no other briefs will be allowed on appeal.

(c) The Bureau of Indian Affairs shall be considered an interested party in any proceeding before the Board. The Board may request that the Bureau submit a brief in any case before the Board.

§ 4.312 Decisions.

Decisions of the Board will be made in writing. Distribution of decisions shall be made by the Board to all parties concerned. Unless otherwise stated in the decision, rulings by the Board which are final for the Department shall be given immediate effect.

§ 4.313 Amicus Curiae. Intervention. Joinder motions.

(a) Any interested person or Indian tribe desiring to intervene or to join other parties or to appear as amicus curiae or to obtain an order in an appeal before the Board shall apply in writing to the Board stating the grounds for the action sought. Permission to intervene, to join parties, to appear, or for other relief, may be granted for purposes and subject to limitations established by the Board. This section shall be liberally construed.

(b) Motions to intervene, to appear by amicus curiae brief or to join additional parties to an appeal pending before the Board shall be served in the same manner as appeal briefs.

§ 4.314 Exhaustion of administrative remedies.

(a) No decision of an Administrative Law Judge which at the time of its rendition is subject to appeal to the Board shall be considered final so as to constitute agency action subject to judicial review under 5 U.S.C. § 704, unless made effective pending decision on appeal by order of the Board.

(b) No further appeal will lie within the Department from a decision of the Board.

(c) The filing of a petition for reconsideration is not required to exhaust administrative remedies.

§ 4.315 Reconsideration.

(a) Reconsideration of a decision of the Board will be granted only in extraordinary circumstances. Any party to the decision may petition for reconsideration. The petition must be filed with the Board within 30 days from receipt of the decision and shall contain a detailed statement of the reasons why reconsideration should be granted.

(b) A party may file only one petition for reconsideration.

(c) The filing of a petition shall not stay the effect of any decision or order and shall not affect the finality of any decision or order for purposes of judicial review, unless so ordered by the Board.

§ 4.316 Remands from courts.

Whenever any matter is remanded from any court to the Board for further proceedings, and to the extent the court's directive and time limitations will permit, the parties shall be allowed an opportunity to submit to the Board a report recommending procedures to be followed to comply with the court's order. The Board will review the reports and enter special orders governing matters on remand.

§ 4.317 Standards of conduct.

(a) *Inquiries about cases.* All inquiries with respect to any matter pending before the Board shall be made to the Chief Administrative Judge of the Board or to the member of the Board assigned the matter.

(b) *Ex parte communications.* There shall be no communication between any party and a member of the Board concerning the merits of an appeal unless such communication, if written, is also furnished to the other party, or, if oral, is made in the presence of the other party. The Board shall refuse to receive, except as part of the record on appeal, information having any bearing upon an appeal from persons who do not represent a party in the appeal, but who have an interest in the decision to be rendered.

(c) Disqualification. A Board member may withdraw from a case in accordance with standards found in the recognized canons of judicial ethics if the member deems such action appropriate. If, prior to a decision of the Board, a party files an affidavit of personal bias or disqualification with substantiating facts, and the Board member concerned does not withdraw, the Director of the Office of Hearings and Appeals shall determine the matter of disqualification.

Appeals to the Board of Indian Appeals in Probate Matters.

§ 4.320 Who may appeal; scope of review.

A party in interest shall have a right of appeal to the Board of Indian Appeals from an order of an Administrative Law Judge on a petition for rehearing, a petition for reopening, or regarding tribal interests in a deceased Indian's trust estate. An appeal shall be limited to those issues which were before the Administrative Law Judge upon the petition for rehearing, reopening or regarding tribal interests. However, the Board shall not be limited in its scope of review and may exercise the inherent authority of the Secretary to correct a manifest injustice or error where appropriate.

(a) *Notice of Appeal.* Within 60 days after receipt of decision, an appellant shall file a written notice of appeal signed by appellant, appellant's attorney, or other qualified representative as provided in 43 CFR 1.3; with the Board of Indian Appeals, Office of Hearings and Appeals, U.S. Department of the Interior, 4015 Wilson Boulevard, Arlington, Virginia 22203. A statement of the errors of fact and law upon which the appeal is based shall be included in either the notice of appeal or in any brief filed. The notice of appeal shall include the names of parties served.

(b) *Service of copies of notice of appeal.* The appellant shall personally deliver or forward by United States mail to the Board of Indian Appeals the original notice of appeal. A copy shall be served upon the Administrative Law Judge whose decision is appealed as well as all interested parties.

(c) *Action by Administrative Law Judge; record inspection.* The Administrative Law Judge, upon receiving a copy of the notice of appeal, shall notify the Superintendent concerned to return the duplicate record filed under §§ 4.236(b) and 4.241(d), or under § 4.242(f), to the title plant designated under § 4.236(b). The duplicate record shall be conformed to the original by the title plant and shall thereafter be available for inspection either at the title plant or at the office of the Superintendent.

§ 4.321 Notice of transmittal of record on appeal.

The original record on appeal shall be forwarded by the title plant to the Board by certified mail. Any objection to the record as constituted shall be filed with the Board within 15 days of the date of docketing of the appeal by the Board.

§ 4.322 Docketing.

The appeal shall be docketed by the Board upon receipt of the administrative record from the title plant. All interested parties as shown by the record on appeal shall be notified of the docketing. The docketing notice shall specify the time within which briefs may be filed and shall cite the procedural regulations governing the appeal.

§ 4.323 Disposition of the record.

Subsequent to a decision of the Board, other than remands, the record filed with the Board and all documents added during the appeal proceedings, including the Board's decision, shall be forwarded by the Board to the title plant designated under § 4.236(b). Upon receipt of the record by the title plant, the duplicate record required by

§ 4.320(c) shall be conformed to the original and forwarded to the Superintendent concerned.

Appeals to the Board of Indian Appeals From Administrative Actions of Officials of the Bureau of Indian Affairs: Administrative Review in Other Indian Matters Not Relating to Probate Proceedings

§ 4.330 Scope.

(a) The definitions set forth in § 2.1 of Part 2, Title 25 of the Code of Federal Regulations, apply also to these special rules. These regulations apply to the practice and procedure for (1) appeal to the Board of Indian Appeals from administrative actions or decisions of officials of the Bureau of Indian Affairs issued under regulations in Chapter 1 of 25 CFR, in cases involving determinations, findings and orders protested as a violation of a right or privilege of the appellant; and (2) administrative review by the Board of Indian Appeals of other matters pertaining to Indians which are referred to it for exercise of review authority of the Secretary, the Assistant Secretary for Indian Affairs, or the Commissioner of Indian Affairs.

(b) Except as otherwise permitted by the Secretary, the Assistant Secretary for Indian Affairs or the Commissioner of Indian Affairs by special delegation or request, the Board shall not adjudicate: (1) tribal enrollment disputes; (2) matters decided by the Bureau of Indian Affairs through exercise of its discretionary authority; (3) appeals from decisions of the Commissioner of Indian Affairs pertaining to final recommendations or actions by officers of the Conservation Division, Geological Survey, unless the Commissioner's decision is based on an interpretation of Federal Indian law (Commissioner's decisions not so based which arise from determinations of the Geological Survey are appealable to the Board of Land Appeals in accordance with 43 CFR 4.410); or (4) decisions of the Office of Indian Education Programs for which Secretarial review is otherwise provided.

§ 4.331 Who may appeal.

Any interested party affected by a final administrative action or decision of an official of the Bureau of Indian Affairs issued under regulations in Title 25 of the Code of Federal Regulations in a case involving a determination, finding, or order protested as a violation of a right or privilege of the appellant may appeal to the Board of Indian Appeals, except (a) to the extent that decisions of officials under the supervision of the Commissioner of the Bureau of Indian Affairs must first be appealed to the Commissioner under provisions in 25 CFR Part 2; (b) where such decision has been approved by the Secretary prior to promulgation; and (c) where otherwise provided by law or regulation.

§ 4.332 Appeal to the Board; how taken; mandatory time for filing; preparation assistance; requirement for bond.

(a) A notice of appeal shall be in writing, signed by the appellant or by his attorney of record or other qualified representative as provided by 43 CFR 4.1, and filed with the Board of Indian Appeals, Office of Hearings and Appeals, U.S. Department of the Interior, 4015 Wilson Boulevard, Arlington, Virginia 22203, within 60 days after receipt by the appellant of the decision from which appeal is taken. A notice of appeal not timely filed shall be dismissed for lack of jurisdiction. A notice of appeal shall include:

(1) A full identification of the case;

(2) A statement of the reasons for the appeal and of the relief sought;

(3) Any arguments the appellant wishes to make; and

(4) The names and addresses of all additional interested parties, Indian tribes, tribal corporations, or groups having rights or privileges which may be affected by a change in the decision, whether or not they participated as interested parties in the earlier proceedings.

(b) An appeal properly and timely filed with the Commissioner pursuant to 25 CFR 2.10 and referred to the Board pursuant to 25 CFR 2.19 without a decision may be docketed by the Board as timely filed.

(c) When the appellant is an Indian or Indian tribe, the officer who issued the decision appealed shall upon request of the appellant, render such assistance as is appropriate in the preparation of the appeal.

(d) At any time during the pendency of an appeal, an appropriate bond may be required to protect the interest of any Indian, Indian tribe, or other parties involved.

§ 4.333 Service of notice of appeal.

(a) On or before the date of filing of the notice of appeal the appellant shall serve a copy of the notice upon each interested party named, and upon the official of the Bureau of Indian Affairs from whose decision the appeal is taken. If the appellant is an Indian or an Indian tribe not represented by counsel, the appellant may request the official of the Bureau whose decision is appealed to assist in service of copies of the notice of appeal and any supporting documents.

(b) The notice of appeal will be considered to have been served upon the date of personal service or mailing.

§ 4.334 Extensions of time.

Requests for extensions of time to file documents may be granted upon a showing of good cause, except for the time fixed for filing a notice of appeal, as specified in § 4.332, which may not be extended.

§ 4.335 Preparation and transmittal of record by official of the Bureau of Indian Affairs.

(a) Upon receipt of a copy of a notice of appeal or upon notice from the Board, the official of the Bureau of Indian Affairs whose decision is appealed shall assemble and transmit the record to the Board. The record on appeal shall include, without limitation, copies of transcripts of testimony taken, all original documents, petitions, or applications by which the proceeding was initiated and all supplemental documents which set forth claims of interested parties, as well as documents upon which all previous decisions were based.

(b) The administrative record shall include a Table of Contents noting, as a minimum, inclusion of the following: (1) the decision appealed from; (2) the notice of appeal or copy thereof; and (3) certification that the record contains all information and documents utilized by the deciding official in rendering the decision appealed.

§ 4.336 Docketing.

An appeal shall be docketed by the Board upon receipt of the administrative record. All interested parties as shown by the record on appeal shall be notified of the docketing. The docketing notice shall specify the time within which briefs shall be filed and cite the procedural regulations governing the appeal.

§ 4.337 Action by the Board.

(a) The Board may make a final decision, or where the record indicates a need for further inquiry to resolve a genuine issue of material fact, the Board may require a hearing. All hearings shall be conducted by an Administrative Law Judge of the Office of Hearings and Appeals. The Board may, in its discretion, grant oral argument before the Board.

(b) Where the Board finds that one or more issues involved in an appeal or a matter referred to it require the exercise of discretionary authority of the Commissioner, the Board shall refer

those issues to the Commissioner for resolution.

§ 4.338 Submission by Administrative Law Judge of proposed findings, conclusions and recommended decision.

(a) When an evidentiary hearing pursuant to § 4.337(a) is concluded, the Administrative Law Judge shall make proposed findings of fact and conclusions of law, in a recommended decision, stating the reasons for such recommendations. A copy of the recommended decision shall be sent by certified mail, return receipt requested, to each party to the proceeding, to the Bureau official involved, and to the Board. Simultaneously, the entire record of the proceedings including the transcript of the hearing before the Administrative Law Judge shall be forwarded to the Board.

(b) The Administrative Law Judge shall advise the parties at the conclusion of the recommended decision of their right to file exceptions or other comments regarding the recommended decision with the Board in accordance with § 4.339.

§ 4.339 Exceptions or comments regarding recommended decision by Administrative Law Judge.

Within 30 days after receipt of the recommended decision of the Administrative Law Judge, any party may file exceptions to the decision with the Board.

§ 4.340 Decision by the Board.

The Board shall issue a decision which shall set forth findings of fact and conclusions of law. The decision may adopt, modify, or set aside any proposed finding, conclusion or order of an Administrative Law Judge. The decision of the Board shall be the final administrative action by the Department. The decision shall be served by certified mail on the appropriate official of the Bureau of Indian Affairs and to all interested parties.

[FR Doc. 81-2340 Filed 1-22-81; 8:45 am]

BILLING CODE 4310-[illegible]

Bureau of Land Management

43 CFR Public Land Order 5825

[Nev-044887; Nev-044898]

Nevada; Modification of Public Land Order No. 2013

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order provides for the modification of Public Land Order No. 2013 which withdrew and reserved lands for flood control projects (Mathews and Pine Canyon Dams) for use by the U.S. Army Corps of Engineers. The modification order is for a period of 20 years.

EFFECTIVE DATE: January 23, 1981.

FOR FURTHER INFORMATION CONTACT: Vienna Wolder, Nevada State Office, 702-784-5703.

By virtue of the authority contained in Section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751, 43 U.S.C. 1714, it is ordered as follows:

1. Public Land Order No. 2013 of October 22, 1959, which withdrew the public lands described in paragraphs 2 and 3 below for use as Mathews and Pine Canyon Dam flood control projects is hereby modified to continue in full force and effect for a period of 20 years from the date of this order.

2. The following described public lands remain segregated from all forms of appropriation under the general land laws, including the mining, and the mineral leasing laws and disposal of materials under the Act of July 31, 1947, as amended, 61 Stat. 681; 30 U.S.C. 601-604.

Mount Diablo Meridian

T. 5 S., R. 69 E.,
Sec. 24, E½SE¼SW¼;
Sec. 25, SE¼NE¼;
Sec. 29, W½SW¼SW¼;
Sec. 30, E½SW¼SE¼ and SE¼SE¼;
Sec. 31, NE¼NE¼, NE¼NW¼NE¼ and N½SE¼NE¼;
Sec. 32, NW¼NW¼NW¼ S½NW¼N¼ and SW¼NE¼
T. 5 S., R. 70 E.,
Sec. 19, SW¼SE¼SE¼;
Sec. 30, lot 2, W½E½NE¼, SE¼NW¼, N½NE¼SW¼ and N½N½SE¼.

The area described aggregates approximately 406.29 acres in Lincoln County, Nevada.

3. The following described public lands are segregated from all forms of appropriation under the public land laws including the mining laws, but not the mineral leasing laws nor disposal of materials under the Act of July 31, 1947, as amended (supra).

Mount Diablo Meridian

T. 5 S., R. 69 E.,
Sec. 32, SW¼SW¼NE¼, NW¼NW¼SE¼, NW¼NE¼SE¼, S½N½SE¼m S½SE¼, E½SE¼SW¼, NE¼SW¼, NE¼NW¼SW¼, SE¼NW¼, and SW¼NE¼NW¼;
Sec. 33, SW¼NW¼SW¼, NW¼SW¼SW¼, S½SW¼SW¼, and SW¼SE½SW¼.
T. 6 S., R. 69 E., (Unsurveyed)
Sec. 4, W½NE¼NW¼, NW¼NW¼, NE¼SW¼NW¼, and W½SE¼NW¼;
Sec. 5, E½NE¼NE¼, NW¼NE¼, NW¼SW¼NE¼, E½NE¼NW¼, and NE¼SE¼NW¼.

The area described aggregates approximately 510 acres in Lincoln County, Nevada.

4. The jurisdiction of the Department of the Army over the lands described in paragraph 1(b) of PLO No. 2013 shall be limited to their use for flowage purposes. All leases and permits under the general land laws, including the mineral leasing laws, shall contain provisions (1) subordinating the rights granted thereunder to a right of intermittent flooding by the Government of the United States, its officers, agents or employees, including the right to accumulate and dispose of thereon such silt and debris as may be necessary in furtherance of the operation and maintenance of the project and (2) prohibiting human habitation upon the lands or the construction and maintenance of floatable structures thereon.

5. This withdrawal will be reviewed for continuation or termination one year prior to the expiration of this modification order.

Inquiries concerning the lands should be addressed to the Chief, Branch of Lands and Minerals Operation, Bureau of Land Management, P.O. Box 12000, Reno, Nevada 89520.

Guy R. Martin,
Assistant Secretary of the Interior.
January 15, 1981.

[FR Doc. 81-2339 Filed 1-22-81; 8:45 am]

BILLING CODE 4310-84-M

43 CFR Public Land Order 5826

[U-14415]

Utah; Power Site Restoration No. 725; Revocation of Power Site Reserve Nos. 7, 38, 246, and 370

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order partially revokes 4 Power Site Reserves. It has been determined that these lands will not be developed for power purposes. The public lands will be restored to operation of the public land laws.

EFFECTIVE DATE: February 20, 1981.

FOR FURTHER INFORMATION CONTACT: Ken Latimer, Utah State Office, 801-524-4245.

By virtue of the authority contained in Section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat.

2751, 43 U.S.C. 1714, and pursuant to the determination by the Federal Power Commission (now the Federal Energy Regulatory Commission) in DA–195 and DA–199–Utah, it is ordered as follows:

1. The Withdrawal Orders of July 2, 1910; February 15, 1912; and July 22, 1913, creating Power Site Reserve Nos. 7, 38, 246 and 370 are hereby revoked to the extent that they affect the following described lands:

Salt Lake Meridian

Power Site Reserve No. 7

T. 3 S., R. 20 E.,
Sec. 1, lot 2 (Formerly NW¼NE¼), SW¼NE¼, W½SE¼, SE¼SE¼;
Sec. 12, NE¼NE¼.
T. 3 S., R. 21 E.,
Sec. 18, lots 1, 2, 3, 4;
Sec. 19, lots 1, 8, 13, 14; (Formerly lots 1–4);
Sec. 30, lots 5–9, 15, NW¼NE¼, NE¼SW¼.

Power Site Reserve No. 38

T. 3 S., R. 20 E.,
Sec. 1, lot 3 (Formerly NE¼NW¼), SE¼NW¼, E½SW¼;
Sec. 12, NW¼NE¼, NE¼NW¼.

Power Site Reserve No. 246

T. 3 S., R. 21 E.,
Sec. 7, lots 5, 6 (Formerly lots 3, 4).

Power Site Reserve No. 370

T. 3 S., R. 21 E.,
Sec. 17, W½SW¼, SE¼SW¼;
Sec. 18, lots 1, 6 (Formerly SW¼NE¼), 7 (Formerly NW¼SE¼), E½NW¼, NE¼SE¼;
Sec. 20, lots 3 (Formerly SW¼NE¼), 5 (Formerly NW¼SE¼), 6 (Formerly NE¼SE¼), 8 (Formerly SE¼SE¼), E½NW¼;
Sec. 21, lot 11 (Formerly SW¼SW¼);
Sec. 27, lot 1 (Formerly NW¼SW¼), SW¼NW¼, E½SW¼, SW¼SE¼;
Sec. 28, lot 2 (Formerly SE¼NE¼), W½NE¼, N½NW¼;
Sec. 34, NE¼.

The total area described aggregates 2,302.91 acres in Uintah County.

The lands lie along Ashley Creek, a tributary of the Green River, 8 to 13 miles north of Vernal, Utah. The average flow of Ashley Creek in the area under consideration is about 100 cfs and the stream falls about 100 feet per mile.

Ashley Creek is a perennial stream, which furnishes most of the water for public, industrial and agricultural needs in Ashley Valley. Vegetation along the stream is riparian with such plants as willow, cottonwood, skunkbush, sumac, various grasses and sedges predominating. The lands not adjacent to the stream are typical of the semi-arid juniper and sage brush types.

2. The State of Utah has waived the right to select lands for highway rights-of-way or material sites as provided by the Federal Power Act of June 10, 1920, 16 U.S.C. 818.

3. At 10 a.m., on February 20, 1981, the public lands shall be open to operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law. All valid applications received at or prior to 10 a.m., on February 20, 1981, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

4. The public lands have been open to applications and offers under the mineral leasing laws, and to location under the United States mining laws subject to the provisions of the Act of August 11, 1955 (69 Stat. 682; 30 U.S.C. 621) with the exception of Section 1, lots 2, 3, SW¼NE¼, SE¼NW¼, E½SW¼, W½SE¼, SE¼SE¼; Section 12, N½NE¼, T. 3 S., R. 20 E., which are closed to mining location and mineral leasing by a Water Supply Withdrawal for the City of Vernal, Utah, and SW¼NW¼, NW¼SW¼ Section 27, and the S½NE¼ Section 34, T. 3 S., R. 21 E., which are closed to mining location by a Bureau of Reclamation (now the Water and Power Resources Service) withdrawal.

Inquiries concerning the lands should be addressed to the Chief, Branch of Lands and Minerals Operations, Bureau of Land Management, University Club Building, 136 East South Temple, Salt Lake City, Utah 84111.

Guy R. Martin,
Assistant Secretary of the Interior.
January 15, 1981.

[FR Doc. 81–2513 Filed 1–22–81; 8:45 am]
BILLING CODE 4310–84–M

43 CFR Public Land Order 5827

[NM–32915]

New Mexico; Revocation of Public Land Order No. 658 Sacramento Peak Upper Air Research Site

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order revokes a public land order which withdrew 53,654 acres of land in the Lincoln National Forest for the Air Force for the operation of the Sacramento Peak Upper Air Research Site. The lands will be restored to National Forest status.

EFFECTIVE DATE: February 20, 1981.

FOR FURTHER INFORMATION CONTACT: Stella Gonzales, New Mexico State Office, 505–988–6211.

By virtue of the authority contained in Section 204 of the Federal Land Policy and Management Act of October 21, 1976, 90 Stat. 2751; 43 U.S.C. 1714, it is ordered as follows:

1. Public Land Order No. 658 of August 15, 1950, which withdrew the following described lands within the Lincoln National Forest for use of the Department of the Air Force in connection with a solar observatory is hereby revoked in its entirety:

New Mexico Principal Meridian

T. 17 S., R. 10 E., (unsurveyed),
Sec. 1, SE¼SE¼;
Sec. 11, SE¼SE¼;
Sec. 12, E½, SE¼NW¼, and SW¼;
Sec. 13;
Sec. 14, E½, and E½SW¼;
Sec. 22, SE¼SE¼;
Secs. 23, 24, 25 and 26;
Sec. 27, E½E½;
Sec. 34, E½E½;
Secs. 35 and 36.
T. 18 S., R. 10 E., (unsurveyed),
Secs. 1 and 2;
Sec. 3, E½NE¼;
Sec. 11, E½, E½NW¼ and NW¼NW¼;
Sec. 12;
Sec. 13, N½, N½SW¼, SE¼SW¼ and SE¼;
Sec. 14, E½NE¼;
Sec. 24, N½NE¼.
T. 17 S., R. 11 E., (partly unsurveyed),
Sec. 1, lots 7, 8, 9, 10, W½SE¼ and SW¼;
Sec. 2, lot 4, S½N½ and S½;
Secs. 3 and 4;
Sec. 5, lots 1, 2, S½NE¼, S½NW¼ and S½;
Sec. 6, NE¼NE¼, NE¼SW¼, S½SW¼ and SE¼;
Secs. 7 to 36, inclusive.
T. 18 S., R. 11 E.,
Secs. 1 to 15, inclusive;
Secs. 17 and 18;
Sec. 19, N½ and N½SE¼;
Secs. 20, 21 and 22;
Sec. 23, N½, N½S½, S½SW¼ and SW¼SE¼;
Sec. 24, N½NE¼, SW¼NE¼, NW¼ and NW¼SW¼;
Sec. 27, NW¼NE¼ and N½NW¼;
Sec. 28, N½N½.
T. 17 S., R. 12 E.,
Sec. 7, lots 1, 2, 3, 4, SE¼NW¼, E½SW¼, W½SE¼ and SE¼SE¼;
Sec. 17, SW¼NW¼ and SW¼;
Secs. 18 and 19;
Sec. 20, W½NE¼, W½, W½SE¼ and SE¼SE¼;
Secs. 29, 30, 31 and 32.
T. 18 S., R. 12 E.,
Sec. 5, lots 1, 2, 3, 4, W½SE¼ and SW¼;
Secs. 6 and 7;
Sec. 8, NW¼ and W½SW¼;
Sec. 18, lots 1 to 11, inclusive, NE¼NE¼ and W½NE¼.

The areas described aggregate approximately 53,654 acres in Otero County.

2. This order shall take precedence over but not otherwise affect (1) Executive Order No. 2633 of June 6, 1917, transferring the lands of the Alamo

National Forest to the Lincoln National Forest; (2) The order of the Secretary of the Interior of December 9, 1916, withdrawing certain lands for stock driveway purposes, so far as such orders affect any of the above-described lands; (3) Public Land Order 4187 of April 6, 1967, which added the following described 440 acres in Otero County to the Lincoln National Forest:

New Mexico Principal Meridian

T. 18 S., R. 11 E.,
Sec. 8, E½SW¼ and N½SE¼;
Sec. 21, N½SE¼ and SW¼SE¼;
Sec. 27, W½SE¼ and SE¼SE¼;
Sec. 34, NE¼NE¼.

(4) Public Land Order 4573 of January 16, 1969, which added the following described 1,925.69 acres in Otero County to the Lincoln National Forest:

New Mexico Principal Meridian

T. 18 S., R. 11 E.,
Sec. 7, lots 3 and 4, E½SW¼ and SE¼;
Sec. 9, S½;
Sec. 30.
T. 19 S., R. 11 E.,
Sec. 4, lots 1 and 2, S½NE¼ and SE¼;
Sec. 9, N½.

(5) Public Land Order 4577 of January 17, 1969, which added the following described 160 acres in Otero County to the Lincoln National Forest:

New Mexico Principal Meridian

T. 17 S., R. 11 E.,
Sec. 21, S½NE¼ and N½SE¼.

3. At 10 a.m., on February 20, 1981, the lands shall be open to such forms of disposition as may by law be made of national forest lands. The lands revert to national forest status and management as established by the Proclamations of November 6, 1906, and April 16, 1908, withdrawing lands for national forest purposes.

Inquiries concerning the lands should be addressed to the State Director, Bureau of Land Management, P.O. Box 1449, Santa Fe, New Mexico 87501.

Guy R. Martin,
Assistant Secretary of the Interior.
January 15, 1981.
[FR Doc. 81-3100 Filed 1-22-81; 8:45 am]
BILLING CODE 4310-84-M

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43 CFR Public Land Order 5828

[CA-3367]

California; Power Site Restoration No. 753, Partial Revocation of Power Site Reserve No. 329; Power Site Cancellation No. 339, Partial Cancellation of Power Site Classification No. 178

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order will partially revoke Power Site Reserve No. 329 and partially cancel Power Site Classification No. 178 as to lands in the Rubicon River and South Fork American River Basin in El Dorado County, California. This action is required in order to permit an exchange between the Forest Service and the Michigan-California Lumber Company.

EFFECTIVE DATE: February 20, 1981.

FOR FURTHER INFORMATION CONTACT: Marie Getsman, California State Office, 916–484–4431.

By virtue of the authority contained in Section 204(a) of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714, and Section 24 of the Federal Power Act of June 10, 1920, as amended, 41 Stat. 1075, 16 U.S.C. 818, and pursuant to the determination of the Federal Power Commission (now the Federal Energy Regulatory Commission) in DA–1123, California, it is ordered as follows:

1. The Executive Order of December 31, 1912, creating Power Site Reserve No. 329, is hereby revoked so far as it affects the following described land:

El Dorado National Forest

Mount Diablo Meridian

T. 13 N., R. 14 E.,
Sec. 28, SW¼NE¼.

The area described contains 40 acres in El Dorado County.

2. The Departmental Order of May 6, 1927, creating Power Site Classification No. 178 is hereby canceled and revoked insofar as it affects the following described lands:

Mount Diablo Meridian

T. 13 N., R. 14 E.,
Sec. 23, NE¼SE¼ and S½SE¼;
Sec. 24, S½;
Sec. 25, NW¼NE¼ and N½NW¼;
Sec. 26, NW¼SW¼, NE¼, and E½NW¼;
Sec. 28, N½NE¼ and E½NW¼.

The area described aggregates 1,000 acres in El Dorado County.

3. The State of California has waived its preference right of application for highway rights-of-way or material sites as provided by Section 24 of the Federal Power Act of June 10, 1920, as amended, 16 U.S.C. 818.

4. Effective immediately, the following described national forest lands included in Power Site Classification No. 178 shall be open to applications for the disposal of the lands under the General Exchange Act of March 20, 1922, 42 Stat. 465, as amended, 16 U.S.C. 485, subject to valid existing rights, the provisions of existing withdrawals and the requirements of applicable law:

Mount Diablo Meridian

T. 13 N., R. 14 E.,
Sec. 25, NW¼NE¼ and N½NW¼;
Sec. 26, NW¼SW¼.

5. At 10 a.m., on February 20, 1981, the following described lands, included in Power Site Classification No. 178 and embraced within the Eldorado National Forest, shall be open to such forms of disposition as may be made of national forest lands:

Mount Diablo Meridian

T. 13 N., R. 14 E.,
Sec. 23, NE¼SE¼ and S½SE¼;
Sec. 24, S½;
Sec. 25, NE¼ and E½NW¼;
Sec. 26, N½NE¼ and E½NW¼.

6. The lands in Power Site Classification No. 178 have been open to applications and offers under the mineral leasing laws, and to location under the United States mining laws, subject to provisions of the Act of August 11, 1955 (69 Stat. 682; 30 U.S.C. 621).

7. The land in Power Site Reserve No. 329 identified in Paragraph 1 is privately owned and not subject to disposition under the public land laws.

Inquiries concerning the lands should be addressed to the Bureau of Land Management, Room E–2841 Federal Office Building, 2800 Cottage Way, Sacramento, California 95825.

Guy R. Martin,
Assistant Secretary of the Interior.
January 15, 1981.
[FR Doc. 81-3099 Filed 1-22-81; 8:45 am]
BILLING CODE 4310-84-M

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43 CFR Public Land Order 5829

[ORE-06567]

Oregon; Revocation of Public Land Order No. 2964

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order revokes a public land order which withdrew 140 acres of lands for protection of recreational values. This action permits restoration of the lands to operation of the mining laws provided appropriate rules and regulations are issued to allow mineral location on lands conveyed pursuant to the Recreation and Public Purposes Act.

EFFECTIVE DATE: January 23, 1981.

FOR FURTHER INFORMATION CONTACT: Champ C. Vaughan, Jr., Oregon State Office, 503–231–6905.

By virtue of the authority contained in Section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat.

2751; 43 U.S.C. 1714, it is ordered as follows:

1. Public Land Order No. 2964 of March 18, 1963, which withdrew the following described lands for protection of recreational values, is hereby revoked:

Willamette Meridian

T. 2 N., R. 41 E.,
Sec. 19, NE¼SE¼, E½NW¼SE¼, NE¼SW¼SE¼, and S½SW¼SE¼;
Sec. 30, W½NW¼SW¼;
Sec. 30, N½NW¼NE¼ and SE¼NW¼NE¼.

The area described contains 140 acres in Wallowa County.

2. The surface estate of the land has been conveyed from United States ownership pursuant to the Recreation and Public Purposes Act of June 14, 1926, as amended (43 U.S.C. 869; 869–4); therefore, unless and until appropriate rules and regulations are issued, the lands will not be open to location under the United States mining laws. The lands have been and continue to be open to applications and offers under the mineral leasing laws.

Inquiries concerning the land should be addressed to the State Director, Bureau of Land Management, P.O. Box 2965, Portland, Oregon 97208.

Guy R. Martin,
Assistant Secretary of the Interior.
January 15, 1981.

[FR Doc. 81-2306 Filed 1-22-81; 8:45 am]
BILLING CODE 4310-84-M

43 CFR Public Land Order 5830

[CA-7030]

California; Revocation of Townsite Withdrawal

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This action revokes an order which withdrew public lands for townsite purposes. The lands will be restored to the operation of the public land laws generally and to location under the United States mining laws.

EFFECTIVE DATE: February 20, 1981.

FOR FURTHER INFORMATION CONTACT: Stephen D. Padula, California State Office, 914—484–4431.

By virtue of the authority contained in Section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714, it is ordered as follows:

1. Executive order No. 4516 of September 28, 1926, which reserved the following described lands for townsite purposes, is hereby revoked:

San Bernardino Meridian

T. 16 S., R. 11 E.,
Sec. 8, N½NE¼.

The area described contains 80.00 acres in Imperial County, California.

2. At 10 a.m., on February 20, 1981, the lands shall be open to operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law. All valid applications received at or prior to 10 a.m. on February 20, 1981, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

3. At 10 a.m., on February 20, 1981, the lands will open to location under the United States mining laws. They have been open to applications and offers under the mineral leasing laws.

Inquiries concerning the lands should be addressed to the Bureau of Land Management, Room E–2841 Federal Office Building, 2800 Cottage Way, Sacramento, California 95825.

Guy R. Martin,
Assistant Secretary of the Interior
January 15, 1981.

[FR Doc. 81-2307 Filed 1-22-81; 8:45 am]
BILLING CODE 4310-84-M

43 CFR Public Land Order 5831

[ORE-03457]

Oregon; Revocation of Public Land Order No. 1165

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order revokes a public land order which withdrew 120 acres of lands as a material site for use by the Bureau of Land Management. This action will restore the lands to operation of the public land laws generally, including the mining and mineral leasing laws.

EFFECTIVE DATE: February 20, 1981.

FOR FURTHER INFORMATION CONTACT: Champ C. Vaughn, Jr., Oregon State Office, 503–231–6905.

By virtue of the authority contained in Section 204(a) of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714, it is ordered as follows:

1. Public Land Order No. 1165 of June 13, 1955, which withdrew the following described public lands for use by the Bureau of Land Management as a material site is hereby revoked:

Willamette Meridian

Revested Oregon and California Railroad Grant Land

T. 15 S., R. 7 W.,
Sec. 18, SE¼NE¼ and N½SE¼.

The area described contains 120 acres in Lane County.

2. At 10 a.m., on February 20, 1981, subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law, the lands will be open to such forms of disposition as may by law be made of revested Oregon and California Railroad Grant Land.

3. At 10 a.m., on February 20, 1981, the lands will open to location under the United States mining laws and to applications and offers under the mineral leasing laws.

Inquiries concerning the lands should be addressed to the State Director, Bureau of Land Management, P.O. Box 2965, Portland, Oregon 97208.

Guy R. Martin,
Assistant Secretary of the Interior
January 15, 1981.

[FR Doc. 81-2304 Filed 1-22-81; 8:45 am]
BILLING CODE 4310-84-M

43 CFR Public Land Order 5832

[Nev-051783]

Nevada; Partial Revocation and Modification of Public Land Order No. 1175

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order revokes 80 acres of a 120-acre withdrawal of lands used as part of the Nellis Air Force Base in Nevada. The lands will be open to operation of the public land laws including the mining and mineral leasing laws. Public Land Order No. 1175 is modified to continue withdrawal of the remaining 40 acres for a period of 20 years.

EFFECTIVE DATE: February 20, 1981.

FOR FURTHER INFORMATION CONTACT: Vienna Wolder, Nevada State Office, 702–784–5703.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714, it is ordered as follows:

1. Public Land Order No. 1175 of June 24, 1955, which withdrew 120 acres of public land for use of the Department of the Air Force, is hereby revoked so far as it affects the following described lands:

T. 20 S., R. 62 E.,
Sec. 14, W½NW¼.

The area described contains 80 acres in Clark County.

2. At 10 a.m. on February 20, 1981, the lands described above shall be open to operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law. All valid applications received at or prior to 10 a.m. on February 20, 1981, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

3. At 10 a.m. on February 20, 1981, the lands described above will be open to location and entry under the United States mining laws and to applications and offers under the mineral leasing laws.

4. Public Land Order No. 1175 of June 24, 1955, which withdrew the public lands described below is hereby modified to continue in full force and effect for a period of 20 years from the date of this order.

Mount Diablo Meridian

T. 19 S., R. 62 E.,
Sec. 35, SE¼SW¼.

The area described contains 40 acres in Clark County.

Inquiries concerning the land should be addressed to Chief, Division of Technical Services, Nevada State Office, Branch of Lands and Minerals Operations, 300 Booth Street, P.O. Box 12000, Reno, Nevada 89520.

Guy R. Martin,
Assistant Secretary of the Interior.
January 15, 1981.
[FR Doc. 81-2484 Filed 1-22-81; 8:45 am]
BILLING CODE 4310-84-M

43 CFR Public Land Order 5833

[OR-598]

Oregon; Partial Revocation of Public Land Order No. 4319

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order revokes a public land order in part as to 46.53 acres of lands withdrawn as a seed production area for use by the Forest Service. This action will restore the lands to operation of the mining laws.

EFFECTIVE DATE: February 20, 1981.

FOR FURTHER INFORMATION CONTACT: Champ C. Vaughan, Jr., Oregon State Office, 503-231-6905.

By virtue of the authority contained in Section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751, 43 U.S.C. 1714, it is ordered as follows:

1. Public Land Order No. 4319 of November 14, 1967, which withdrew certain lands for use by the Forest Service as a seed production area is hereby revoked so far as it affects the following described lands:

Willamette Meridian

Siskiyou National Forest

Waldo Seed Production Area

T. 41 S., R. 8 W.,
Sec. 4, S½ of Lot 4 and N½SW¼NW¼;
Sec. 5, E½NE¼SE¼NE¼.

The area described contains 46.53 acres in Josephine County, Oregon.

2. At 10 a.m., on February 20, 1981, the lands will be open to location under the United States mining laws. The lands have been and continue to be open to applications and offers under the mineral leasing laws and to such forms of disposition as may by law be made of national forest lands.

Inquiries concerning the lands should be addressed to the State Director, Bureau of Land Management, P.O. Box 2965, Portland, Oregon 97208.

Guy R. Martin,
Assistant Secretary of the Interior.
January 15, 1981.
[FR Doc. 81-2488 Filed 1-22-81; 8:45 am]
BILLING CODE 4310-84-M

43 CFR Public Land Order 5834

[OR-18994-A]

Oregon; Partial Revocation of Public Water Reserve No. 118

AGENCY: Bureau of Land Mangement, Interior.

ACTION: Public Land Order.

SUMMARY: This order revokes an Executive Order in part as to 160 acres of lands withdrawn as a public water reserve. This action will restore the lands to operation of the public land laws generally, including nonmetalliferous mineral location under the mining laws.

EFFECTIVE DATE: February 20, 1981.

FOR FURTHER INFORMATION CONTACT: Champ C. Vaughan Jr., Oregon State Office, 503-231-6905.

By virtue of the authority contained in Section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714, it is ordered as follows:

1. The Executive Order of February 13, 1929, which withdrew certain lands for public water reserve purposes is hereby revoked so far as it affects the following described lands:

Willamette Meridian

Public Water Reserve No. 118

T. 18 S., R. 37 E.,
Sec. 29, W½NE¼, SW¼SW¼ and SW¼SE¼.

The area described contains 160 acres in Malheur County.

2. At 10 a.m., on February 20, 1981, the public lands described above shall be open to operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law. All valid applications received at or prior to 10 a.m., on February 20, 1981, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

3. At 10 a.m., on February 20, 1981, the public lands described above will be open to nonmetalliferous mineral location under the United States mining laws. The lands have been and continue to be open to metalliferous mineral location under the United States mining laws and to applications and offers under the mineral leasing laws.

Inquiries concerning the lands should be addressed to the State Director, Bureau of Land Management, P.O. Box 2965, Portland, Oregon 97208.

Guy R. Martin,
Assistant Secretary of the Interior.
January 15, 1981.
[FR Doc. 81-2501 Filed 1-22-81; 8:45 am]
BILLING CODE 4310-84-M

43 CFR Public Land Order 5835

[A-9275]

Arizona; Withdrawal of Forest Lands for Research Area

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order withdraws 355 acres of forest lands from operation of the mining laws for a period of twenty years.

EFFECTIVE DATE: January 23, 1981.

FOR FURTHER INFORMATION CONTACT: Mario L. Lopez, Arizona State Office, (602) 261-4774.

By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751, 43 U.S.C. 1714, it is ordered as follows:

1. Subject to valid existing rights, the following described national forest land is hereby withdrawn from appropriation under the mining laws (30 U.S.C., Ch. 2), but not from leasing under the mineral

leasing laws, and reserved as a research natural area:

Gila and Salt River Meridian

Coronado National Forest

Elgin Research Natural Area.

T. 21 S., R. 16 E.
Sec. 20, W½W½E½NE¼, W½NE¼, E½W½, E½SE¼SW¼SW¼, W½W½NE¼SE¼, and W½SE¼.

The areas described aggregate 355 acres in Santa Cruz County.

2. The withdrawal made by this order does not alter the applicability of those public laws governing the use of the national forest lands under lease, license, or permit, or governing the disposal of their mineral or vegetative resources other than under the mining laws.

3. This withdrawal shall remain in effect for a period of 20 years from the date of this order.

Guy R. Martin,

Assistant Secretary of the Interior.

January 15, 1981.

[FR Doc. 81-2685 Filed 1-22-81; 8:45 am]

BILLING CODE 4310-84-M

43 CFR Public Land Order 5836

[M-41683]

Montana; Partial Revocation of Air Navigation Site Withdrawal

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order restores 40 acres of public land to operation of the public land laws, including the mining laws.

EFFECTIVE DATE: February 20, 1981.

FOR FURTHER INFORMATION CONTACT: Dan Stark, Montana State Office 406-657-6291.

By virtue of the authority contained in Sec. 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751 (43 U.S.C. 1714), it is ordered as follows:

1. Air Navigation Site Withdrawal No. 103 of January 31, 1936, is hereby revoked as to the following described land:

Principal Meridian

T. 9 N., R. 3 W.
Sec. 25, SW¼NW¼

The area described contains 40 acres in Jefferson County.

2. At 10 a.m. on February 20, 1981, the land shall be open to operation of the public land laws generally, subject to valid existing rights, the privisions of existing withdrawals, and the requirements of applicable law. All valid applications received at or prior to 10 a.m. on February 20, 1981, shall be considered as simultaneously filed at that time. Those received thereafter, shall be considered in the order of filing.

3. The land will be open to location under the United States mining laws at 10 a.m. on February 20, 1981. They have been open to applications and offers under the mineral leasing laws.

Inquiries concerning the land should be addressed to the Chief, Branch of Lands and Minerals Operations, Bureau of Land Management, P.O. Box 30157, Billings, Montana 59107.

Guy R. Martin,

Assistant Secretary of the Interior.

January 15, 1981.

[FR Doc. 81-2680 Filed 1-22-81; 8:45 am]

BILLING CODE 4310-84-M

43 CFR Public Land Order 5837

[M 057841; formerly M 028853]

Montana; Revocation of Public Land Order No. 3040

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order will revoke Public Land Order 3040 which withdrew 320 acres of national forest lands from the operation of the mineral leasing laws for protection of a proposed airport.

EFFECTIVE DATE: February 20, 1981.

FOR FURTHER INFORMATION CONTACT: Dan Stark, Montana State Office, 406-657-6291.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714 it is ordered as follows:

1. Public Land Order 3040 dated April 26, 1963, withdrawing the following described land from leasing under the provisions of the Mineral Leasing Act of 1920, as amended and supplemented, is hereby revoked in its entirety:

Principal Meridian

Gallatin National Forest

T. 13 S., R. 5 E.,
Sec. 16: E½

The area described contains 320 acres in Gallatin County.

2. At 10 a.m. on February 20, 1981, the land shall be open to applications and offers under the mineral leasing laws. The lands remain open to such forms of disposition as may by law be made of national forest lands.

Inquiries concerning the land should be addressed to the Chief, Branch of Lands and Minerals Operations, Bureau of Land Management, P.O. Box 30157, Billings, Montana 59107.

Guy R. Martin,

Assistant Secretary of the Interior.

January 15, 1981.

[FR Doc. 81-2682 Filed 1-22-81; 8:45 am]

BILLING CODE 4310-84-M

43 CFR Public Land Order 5838

[ORE-02896]

Oregon; Revocation of Public Land Order No. 1009

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order revokes a public land order which withdrew 320 acres of lands as a material site for use by the Bureau of Land Management. This action will restore the lands to operation of the public land laws generally, including the mining and mineral leasing laws.

EFFECTIVE DATE: February 20, 1981.

FOR FURTHER INFORMATION CONTACT: Champ C. Vaughan, Jr., Oregon State Office, 503-231-6905.

By virtue of the authority contained in Section 204(a) of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714, it is ordered as follows:

1. Public Land Order No. 1009 of September 14, 1954, which withdrew the following described public lands for use by the Bureau of Land Management as a material site is hereby revoked:

Willamette Meridian

Revested Oregon and California Railroad Grant Land

T. 19 S., R. 9 W.,
Sec. 23, N½.

The area described contains 320 acres in Douglas County, Oregon.

2. At 10 a.m., on February 20, 1981, subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law, the lands will be open to such forms of disposition as may by law be made of revested Oregon and California Railroad Grant Land.

3. At 10 a.m., on February 20, 1981, the lands will be open to location under the United States mining laws and to applications and offers under the mineral leasing laws.

Inquiries concerning the lands should be addressed to the State Director.

Bureau of Land Management, P.O. Box 2965, Portland, Oregon 97208.

Guy R. Martin,

Assistant Secretary of the Interior.

January 15, 1981.

[FR Doc. 81-2503 Filed 1-22-81; 8:45 am]

BILLING CODE 4310-84-M

43 CFR Public Land Order 5839

[ORE 03586-B]

Oregon; Partial Revocation of Public Land Order No. 1867

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order partially revokes a public land order as to 1,635 acres of land withdrawn as a road and streamside zone for use by the Forest Service. This action will restore the lands to such forms of disposition as may by law be made of national forest lands.

EFFECTIVE DATE: February 20, 1981.

FOR FURTHER INFORMATION CONTACT: Champ C. Vaughan, Jr., Oregon State Office, 503-231-6905.

By virtue of the authority contained in Section 204(a) of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714, it is ordered as follows:

1. Public Land Order No. 1867 of May 28, 1959, which withdrew certain lands for use by the Forest Service as a road and streamside zone, is hereby revoked so far as it affects the following described lands:

Willamette Meridian

Umpqua National Forest

Steamboat Creek Road and Streamside Zone

T. 25 S., R. 1 E.,
- Sec. 24, E½SE¼NE¼, S½S½, and NE¼SE¼;
- Sec. 25, Lots 1 and 2, and NE¼NW¼; (formerly N½NW¼, and SW¼NW¼)
- Sec. 26, S½N½N½ and N½S½N½;
- Sec. 27, S½SW¼NE¼, SE¼NE¼, N½S½, and N½S½SW¼;
- Sec. 28, SE¼SE¼SW¼ and S½SE¼;
- Sec. 31, NE¼SE¼ and S½SE¼;
- Sec. 32, S½S½N½ and N½S½;
- Sec. 33, NW¼NE¼, NE¼NW¼, S½NW¼, and N½N½SW¼.

Except those portions of land described as follows: (1) A strip of land of variable width located between 200 feet north and west of the centerline of Steamboat Creek Road No. 232 and 330 feet south and east of the centerline of Steamboat Creek through the preceding identified subdivisions, and (2) those strips of land located within 330 feet on either side of the centerlines of Deep Creek, Singe Creek, and Canton Creek through the preceding identified subdivisions.

T. 24 S., R. 2 E.,
- Sec. 8, S½SE¼NE¼, SE¼SW¼, N½SE¼, and SW¼SE¼;
- Sec. 17, SW¼NE¼, NE¼NW¼, W½E½SW¼, W½SW¼, and S½NW¼;
- Sec. 20, W½E½NW¼, E½W½NW¼, E½SW¼, and W½SW¼SE¼;
- Sec. 29, W½W½E½ and E½E½W½;
- Sec. 32, NW¼NE¼, S½NE¼, and E½SE¼.

Except those portions of land described as follows: (1) A strip of land of variable width located between 200 feet north and west or south and west of the centerline of Steamboat Creek Road No. 232 and 330 feet north and east or south and east of the centerline of Steamboat Creek through the preceding identified subdivisions, and (2) those strips of land located within 330 feet on either side of the centerlines of Cedar Creek, Buster Creek, Longs Creek, Little Rock Creek, and City Creek through the preceding identified subdivisions.

T. 25 S., R. 2 E.,
- Sec. 5, E½ of Lot 8, S½SW¼NE¼, SE¼NE¼, E½SW¼, and NW¼SE¼;
- Sec. 7, SE¼;
- Sec. 8, W½NE¼NW¼, W½NW¼, and NW¼SW¼;
- Sec. 18, E½;
- Sec. 19, S½ of Lot 1, N½ of Lot 2, and NW¼NE¼.

Except those portions of land described as follows: (1) A strip of land of variable width located between 200 feet north and west or south and east of the centerline of Steamboat Creek Road No. 232 and 330 feet south and east or north and west of the centerline of Steamboat Creek through the preceding identified subdivisions, and (2) those strips of land located within 330 feet on either side of the centerlines of Reynolds Creek, Johnson Creek, and Big Bend Creek through the preceding identified subdivisions.

The areas described aggregate, after making the aforesaid exceptions, approximately 1,635 acres in Douglas and Lane Counties, Oregon.

2. At 10 a.m., on February 20, 1981, the lands will be open to such forms of disposition as may by law be made of national forest lands.

Guy R. Martin,

Assistant Secretary of the Interior.

January 15, 1981.

[FR Doc. 81-2494 Filed 1-22-81; 8:45 am]

BILLING CODE 4310-84-M

43 CFR Public Land Order 5840

[New Mexico 39656]

New Mexico; Partial Cancellation of Power Site Classification No. 228

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order partially revokes Power Site Classification No. 228 insofar as it affects 1,200 acres of public and nonpublic lands in Dona Ana County. The public lands will be restored to operation of the public land laws.

EFFECTIVE DATE: February 20, 1981.

FOR FURTHER INFORMATION CONTACT: Stella Gonzales, New Mexico State Office, 505-988-6211.

By virtue of the authority contained in Section 204(a) of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714, and pursuant to the determination by the Federal Energy Regulatory Commission in DA-89-New Mexico, it is ordered as follows:

1. Power Site Classification No. 228 dated May 16, 1929, is hereby cancelled insofar as it pertains to the following described lands:

New Mexico Principal Meridian

T. 25 S., R. 3 E.,
- Sec. 21, NW¼NW¼, S½NW¼, NE¼SW¼, NE¼SE¼ and SW¼SE¼;
- Sec. 28, SE¼NE¼ and E½SE¼;
- Sec. 34, NW¼, NE¼SW¼ and W½SE¼.

T. 26 S., R. 3 E.,
- Sec. 3, N½NE¼ and SE¼NE¼;
- Sec. 11, N½NW¼, SE¼NW¼, NE¼SW¼ and W½SE¼;
- Sec. 14, W½E½;
- Sec. 23, NW¼NE¼.

The areas described contain 1,200 acres of public and nonpublic lands in Dona Ana County.

2. The State of New Mexico has waived its preference right for highway rights-of-way or material sites as provided by the Federal Power Act of June 10, 1920, 16 U.S.C. 818.

3. At 10 a.m., on February 20, 1981, the public lands shall be open to operation of the public land law generally, subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law. All valid applications received at or prior to 10 a.m., on February 20, 1981, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

The lands have been open to applications and offers under the mineral leasing laws, and to location under the United States mining laws subject to the provisions of the Act of August 11, 1955, 69 Stat. 682; 30 U.S.C. 621.

Inquiries concerning the lands should be addressed to the Bureau of Land Management, P.O. Box 1449, Santa Fe, New Mexico 87501.

Guy R. Martin,

Assistant Secretary of the Interior.

January 15, 1981.

[FR Doc. 81-2495 Filed 1-22-81; 8:45 am]

BILLING CODE 4310-84-M

43 CFR Public Land Order 5841

[NM 35710]

New Mexico; Revocation of Public Land Order No. 1436

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order will restore 1,360 acres of land to national forest status and open them to such forms of disposition as may by law be made of national forest lands.

EFFECTIVE DATE: February 20, 1981.

FOR FURTHER INFORMATION CONTACT: Stella Gonzales, New Mexico State Office 505–988–6211.

By virtue of the authority contained in Section 204(a) of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714, it is ordered as follows:

1. Public Land Order No. 1436 of June 28, 1957, reserving lands within the Lincoln National Forest for use of the Department of the Air Force in the development of a solar furnace for experimental purposes is hereby revoked in its entirety:

New Mexico Principal Meridian

T. 15 S., R. 12 E.,
Sec. 23, SE¼,
Sec. 24, S½;
Sec. 25, W½, NE¼, and N½SE¼;
Sec. 26, E½.

The areas described aggregate 1,360 acres in Otero County.

Their lands revert to national forest status and management as established by the Proclamation of April 24, 1907.

2. At 10 a.m., on February 20, 1981, the lands shall be open to such forms of disposition as may by law be made of national forest lands.

Guy R. Martin,
Assistant Secretary of the Interior.
January 15, 1981.

[FR Doc. 81-2367 Filed 1-22-81; 8:45 am]
BILLING CODE 4310-84-M

43 CFR Public Land Order 5842

[I–15235]

Idaho; Powersite Restoration No. 756; Partial Revocation of Powersite Reserve No. 241

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order partially revokes an Executive Order which withdrew lands for powersite purposes. It has been determined that these lands will not be developed for power purposes. Eighty acres of public land will be restored to operation of the public land laws. The remaining 760 acres are privately owned lands.

EFFECTIVE DATE: February 20, 1981.

FOR FURTHER INFORMATION CONTACT: Larry Lievsay, Idaho State Office 208–334–1735.

By virtue of the authority contained in Section 204(a) of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714, and pursuant to the determination of the Federal Energy Regulatory Commission in DA–623–Idaho, it is ordered as follows:

1. The Executive Order of January 23, 1912, creating Powersite Reserve No. 241 is hereby revoked so far as it affects the following described lands:

Boise Meridian

T. 7 S., R. 42 E.
Sec. 11, SE¼SE¼;
Sec. 12, SW¼SW¼;
Sec. 13, NW¼NE¼, SE¼NE¼, N½NW¼;
Sec. 14, NE¼NE¼, SW¼NE¼, S½NW¼, N½SW¼ and NW¼SE¼;
Sec. 15, E½SE¼;
Sec. 22, NE¼;
Sec. 23, W½NW¼.

The area described contains 840 acres of public and nonpublic lands in Caribou County. The 80 acres of public land is described as Section 14, SW¼NE¼ and SW¼NW¼.

2. The State of Idaho has waived its right to select lands for highway rights-of-way or material sites as provided by the Federal Power Act of June 10, 1920, 16 U.S.C. 818.

3. At 10 a.m. on February 20, 1981, the public lands shall be open to operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law. All valid applications received at or prior to 10 a.m. on February 20, 1981, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

The lands continue to be open to applications and offers under the mineral leasing laws, and to location under the U.S. mining laws.

Inquiries concerning the lands should be addressed to the State Director, Bureau of Land Management, Federal Building, Box 042, 550 W. Fort Street, Boise, Idaho 83724.

Guy R. Martin,
Assistant Secretary of the Interior.
January 15, 1981.

[FR Doc. 81-2369 Filed 1-22-81; 8:45 am]
BILLING CODE 4310-84-M

43 CFR Public Land Order 5843

[OR 29418]

Oregon; Revocation of Recreational Withdrawal No. 39

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order revokes a Secretarial order which withdrew 200 acres of lands for protection of recreational values. This action permits restoration of the lands to operation of the mining laws provided appropriate rules and regulations are issued to allow mineral location on lands conveyed pursuant to the Recreation and Public Purposes Act.

EFFECTIVE DATE: January 23, 1981.

FOR FURTHER INFORMATION CONTACT: Champ C. Vaughan, Jr., Oregon State Office 503–231–5905.

By virtue of the authority contained in Section 204(a) of the Federal Land Policy and Management Act of October 21, 1976, 90 Stat. 2751; 43 U.S.C. 1714, it is ordered as follows:

1. The Secretarial Order of October 4, 1930, which withdrew the following described lands for protection of recreational values is hereby revoked:

Willamette Meridian

T. 8 S., R. 1 E.,
Sec. 11, W½W½, NE¼SE¼.

The areas described aggregate 200 acres in Marion County, Oregon.

2. The surface estate of the lands has been conveyed from United States ownership pursuant to the Recreation and Public Purposes Act of June 14, 1926, as amended (43 U.S.C. 869; 869–4); therefore, unless and until appropriate rules and regulations are issued, the lands will not be open to location under the United States mining laws. The lands have been and continue to be open to applications and offers under the mineral leasing laws.

Inquiries concerning the lands should be addressed to the State Director, Bureau of Land Management, P.O. Box 2965, Portland, Oregon 97208.

Guy R. Martin,
Assistant Secretary of the Interior.
January 15, 1981.

[FR Doc. 81-2368 Filed 1-22-81; 8:45 am]
BILLING CODE 4310-84-M

43 CFR Public Land Order 5844

[I-12548]

Idaho; Partial Powersite Cancellation No. 351; Revocation of Powersite Classification No. 390

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order will revoke Powersite Classification No. 390. It has been determined that these lands will not be developed for power purposes but will be restored to the operation of the public land laws.

EFFECTIVE DATE: February 20, 1981.

FOR FURTHER INFORMATION CONTACT: Larry R. Lievsay, 208-334-1735.

By virtue of the authority contained in Section 204(a) of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714, and pursuant to the determination of the Federal Energy Regulatory Commission in DA-819-Idaho, it is ordered as follows:

1. The Executive Order of July 26, 1948, creating Powersite Classification No. 390, is hereby revoked so far as it affects the following described lands:

Boise Meridian

T. 8 S., R. 13 E.,
Sec. 12, W½NW¼.

The area described contains 80 acres in Twin Falls County.

2. The State of Idaho has waived its right to select lands for highway rights-of-way or material sites as provided by the Federal Power Act of June 10, 1920, 16 U.S.C. 818.

3. At 10 a.m. on February 20, 1981, the above described public lands shall be open to operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable laws. All valid applications received at or prior to 10 a.m., on February 20, 1981, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

4. The public lands in this order have been and continue to be open to applications and offers under the mineral leasing laws, and to location under the U.S. mining laws.

Inquiries concerning the public lands should be addressed to the State Director, Idaho State Office, Box 042, Federal Building, 550 W. Fort Street, Boise, Idaho 83724.

Guy R. Martin,
Assistant Secretary of the Interior.
January 15, 1981.

[FR Doc. 81-2488 Filed 1-22-81; 8:45 am]
BILLING CODE 4310-84-M

43 CFR Public Land Order 5845

[OR 20231-A]

Oregon; Partial Revocation of Public Water Reserve No. 84

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order revokes an Executive Order in part as to 40 acres of lands withdrawn as a public water reserve. This action will restore the lands to operation of the public land laws generally, including nonmetalliferous location under the mining laws.

EFFECTIVE DATE: February 20, 1981.

FOR FURTHER INFORMATION CONTACT: Champ C. Vaughan, Jr., Oregon State Office 503-231-6905.

By virtue of the authority contained in Section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714, it is ordered as follows:

1. The Executive Order of June 7, 1922, which withdrew certain lands for public water reserve purposes is hereby revoked so far as it affects the following described lands.

Willamette Meridian

T. 21 S., R. 22 E.,
Sec. 14, E½NE¼NW¼, W½NW¼NW¼.

The area described contains 40 acres in Crook County.

2. At 10 a.m., on February 20, 1981, the lands shall be open to operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law. All valid applications received at or prior to 10 a.m., on February 20, 1981, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

3. At 10 a.m., on February 20, 1981, the lands will be open to nonmetalliferous mineral location under the United States mining laws. The lands have been and continue to be open to metalliferous mineral location under the mining laws and to applications and offers under the mineral leasing laws.

Inquiries concerning the land should be addressed to the State Director, Bureau of Land Management, P.O. Box 2965, Portland, Oregon 97208.

Guy R. Martin,
Assistant Secretary of the Interior.
January 15, 1981.

[FR Doc. 81-2489 Filed 1-22-81; 8:45 am]
BILLING CODE 4310-84-M

43 CFR Public Land Order 5846

[OR 20695]

Oregon; Revocation of Executive Order No. 4096

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order revokes an Executive order which withdrew 123.56 acres for classification in aid of legislation. This action will restore the lands to operation of the public land laws generally, including nonmetalliferous mineral location under the mining laws.

EFFECTIVE DATE: February 20, 1981.

FOR FURTHER INFORMATION CONTACT: Champ C. Vaughan, Jr., Oregon State Office, 503-231-6905.

By virtue of the authority contained in Section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714, it is ordered as follows:

1. Executive Order No. 4096 of October 29, 1924, which withdrew the following described public lands for classification in aid of legislation, is hereby revoked:

Willamette Meridian

Revested Oregon and California Railroad Grant Land

T. 16 S., R. 3 E.,
Sec. 31, lots 7, 8, 10, and 14 (formerly lot 9).

The area described contains 123.56 acres in Lane County.

2. At 10 a.m., on February 20, 1981, subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law, including Section 24 of the Federal Power Act, the lands will be open to such forms of disposition as may by law be made of revested Oregon and California Railroad Grant Land.

3. At 10 a.m., on February 20, 1981, the lands will be open to nonmetalliferous mineral location under the United States mining laws. The lands have been and continue to be open to metalliferous mineral location under the United States mining laws and to applications and offers under the mineral leasing laws.

Inquiries concerning the lands should be addressed to the State Director,

Bureau of Land Management, P.O. Box 2965, Portland, Oregon 97208.

Guy R. Martin,

Assistant Secretary of the Interior.

January 15, 1981.

[FR Doc. 81-2502 Filed 1-23-81; 8:45 am]

BILLING CODE 4310-84-M

43 CFR Public Land Order 5847

[OR 20413]

Oregon; Revocation of Recreational Withdrawal No. 55

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order revokes a Secretarial Order affecting 200 acres of land withdrawn for recreational purposes. The lands remain segregated from the public land laws generally, including the mining and mineral leasing laws by another existing withdrawal.

EFFECTIVE DATE: January 23, 1981.

FOR FURTHER INFORMATION CONTACT: Champ C. Vaughan, Jr., Oregon State Office, 503-231-6905.

By virtue of the authority contained in Section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714, it is ordered as follows:

1. The Secretarial Order of November 18, 1933, which withdrew the following described lands for recreational purposes is hereby revoked:

Willamette Meridian

Recreational Withdrawal No. 55

T. 11 S., R. 20 E.,
Sec. 20, SE¼SW¼ and S½SE¼;
Sec. 29, N½NE¼.

The area described contains 200 acres in Grant County.

2. The lands described above remain segregated from the public land laws generally, including the mining laws and mineral leasing laws by the John Day Fossil Beds National Monument withdrawal, OR 13939.

Inquiries concerning the lands should be addressed to the State Director, Bureau of Land Management, P.O. Box 2965, Portland, Oregon 97208.

Guy R. Martin,

Assistant Secretary of the Interior.

January 15, 1981.

[FR Doc. 81-2507 Filed 1-22-81; 8:45 am]

BILLING CODE 4310-84-M

43 CFR Public Land Order 5848

[M-35197]

Montana; Revocation of Public Land Order No. 1258

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This document revokes Public Land Order No. 1258 of November 29, 1955, which withdraw 75 acres of public land for use of the Forest Service, Department of Agriculture. This action will restore the public lands to operation of the public land laws generally, including the mining laws and the mineral leasing laws. They have been open to applications and offers for oil and gas under the mineral leasing laws.

EFFECTIVE DATE: February 20, 1981.

FOR FURTHER INFORMATION CONTACT: Dan Stark, Montana State Office 406-657-6291.

By virtue of the authority contained in Section 204(a) of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714, it is ordered as follows:

1. Public Land Order No. 1258 dated November 29, 1955, which withdrew and reserved the following described public lands for use of the Forest Service, Department of Agriculture, as the Sheep Creek Administrative Site is hereby revoked:

Principal Meridian, Montana

T. 15 S., R. 10 W.,
Sec. 9, NE¼SE¼NW¼, W½SE¼NW¼, W½SE¼SE¼NW¼, and NE¼SW¼.

The area described contains 75 acres in Beaverhead County.

2. At 10 a.m. on February 20, 1981, the lands shall be open to operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law. All valid applications received at or prior to 10 a.m. on February 20, 1981, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

3. The lands will be open to location under the United States mining laws and to the mineral leasing laws, except for oil and gas, at 10 a.m. on February 20, 1981. They have been and continue to be open to applications and offers for oil and gas under the mineral leasing laws.

Inquiries concerning the lands should be addressed to the State Director, Bureau of Land Management, Granite Tower, 222 N. 32nd St., P.O. Box 30157, Billings, Montana 59107.

Guy R. Martin,

Assistant Secretary of the Interior.

January 15, 1981.

[FR Doc. 81-2491 Filed 1-23-81; 8:45 am]

BILLING CODE 4310-84-M

43 CFR Public Land Order 5849

[U-47671]

Utah; Revocation of Public Land Order No. 1109

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order revokes Public Land Order No. 1109 which withdrew lands for protection of the Salt Lake City Watershed. The lands will be open to operation of the public land laws generally, including the mining and mineral leasing laws.

EFFECTIVE DATE: February 20, 1981.

FOR FURTHER INFORMATION CONTACT: Ken Latimer, Utah State Office, 801-524-4245.

By virtue of the authority contained in Section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714, it is ordered as follows:

1. Public Land Order No. 1109 of March 31, 1955, which withdrew lands for protection of the Salt Lake City Watershed is hereby revoked:

Salt Lake Meridian

Sec. 10, NE¼.

Containing 160 acres in Salt Lake and Summit Counties.

2. At 10 a.m., on February 20, 1981, the public lands described above shall be open to operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law. All valid applications received at or prior to 10 a.m., on February 20, 1981, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

3. The public lands described above will be open to applications and offers under the mineral leasing laws and to location under the United States mining laws at 10 a.m. on February 20, 1981.

Inquiries concerning the lands should be addressed to the Chief, Branch of Lands and Minerals Operations, Bureau of Land Management, University Club

Building, 136 East South Temple, Salt Lake City, Utah 84111.

Guy R. Martin,

Assistant Secretary of the Interior.

January 15, 1981.

[FR Doc. 81-2311 Filed 1-22-81; 8:45 am]

BILLING CODE 4310-84-M

43 CFR Public Land Order 5850

[U-13501]

Utah; Partial Revocation of Reclamation Project Withdrawals

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order will revoke a reclamation withdrawal as to approximately 34,285 acres. The public lands within the Dinosaur National Monument will not be affected by this order. Approximately 8,900 acres are situated outside the National Monument. These lands will be restored to the operation of the public land laws including the mining laws.

EFFECTIVE DATE: February 20, 1981.

FOR FURTHER INFORMATION CONTACT: Ken Latimer, 801-524-4245.

By virtue of the authority contained in Section 204(a) of the Act of October 21, 1976, 90 Stat. 2751; 43 U.S.C. 1714, it is ordered as follows:

1. The Secretary of the Interior's First Form Reclamation Withdrawal Order, dated May 6, 1942, and the Secretary's two First Form Reclamation Withdrawal Orders dated July 13, 1943, for the Split Mountain Reservoir Site, Colorado River Storage Project, are hereby revoked so far as they affect the following described lands:

Salt Lake Meridian

T. 4 S., R. 23 E.,
Secs. 24, 25, and 36;
Sec. 27, lot 2, NE¼, E½NW¼, N½S½;
Sec. 28, lot 1, S½N½, N½S½, S½SW¼, SW¼SE¼;
Sec. 33, lots 2, 7, 8, W½NE¼, NW¼, N½SW¼, NW¼SE¼;
Sec. 34, lots 5, 6, and 7;
Sec. 35, lot 7, SE¼NE¼.
T. 5 S., R. 23 E.,
Sec. 1, lots 1, 2, 3, 5, 6, 7, SW¼NE¼, SE¼NW¼, E½SW¼, W½SE¼ (formerly lots 1, 2, 3, S½NE¼, SE¼NW¼, E½SW¼, SE¼;
Sec. 3, lots 1, 2, 3, S½NE¼, SE¼NW¼, SE¼;
Sec. 4, lots 4, 5, 6, SW¼NW¼, NW¼SW¼ (formerly lot 4, SW¼NW¼, NW¼SW¼, SE¼SE¼);
Sec. 10, NE¼SW¼, NW¼SE¼;
Sec. 11, lot 1, S½NE¼, NW¼NE¼, NW¼, N½SW¼, SE¼SW¼, SE¼ (formerly N½, N½S½, SE¼SW¼, S½SE¼);
Secs. 12, 13, and 14;
Sec. 15, E½NE¼, SE¼SW¼, SE¼.
T. 3 S., R. 24 E.,
Sec. 25 and 35.
T. 4 S., R. 24 E.,
Sec. 1, lots 3, 4, 7, 8, 10, 11, SW¼NW¼, S½SE¼;
Sec. 2, lot 5, SW¼, N½SE¼, SW¼SE¼;
Sec. 3, lots 1 and 4, S½N½, S½;
Secs. 10 to 23 inclusive, 29, 30, 31, 33.
T. 5 S., R. 24 E.,
Sec. 4;
Sec. 5, lots, 4, 5, 6, 9 to 12 inclusive, NW¼SW¼, SE¼SW¼;
Secs. 6 to 9 inclusive, and 18.
T. 3 S., R. 25 E.,
Sec. 22, S½NE¼, W½, SE¼;
Secs. 23 to 29 inclusive;
Sec. 30, lots 1 to 8 inclusive, E½NE¼, W½NW¼, N½SE¼;
Sec. 31, lots 1 to 8, 12 to 18, inclusive, SE¼NE¼, S½SW¼;
Secs. 32 to 35 inclusive.
T. 4 S., R. 25 E.,
Secs. 4, 5, and 6.

The areas described aggregate 34,284.87 acres in Uintah County.

2. The above described lands are mainly within the exterior boundaries of the Dinosaur National Monument as established by Presidential Proclamation No. 1313 of October 14, 1915, as enlarged by Presidential Proclamation No. 2290 of July 14, 1938, and as revised by the Act of September 8, 1960, 74 Stat. 857, and, therefore, are withdrawn from all forms of appropriation under the public land laws, including the mining laws and the mineral leasing laws.

3. The public lands described below, which are outside of the exterior boundaries of the Dinosaur National Monument, will be open to the operation of the public laws generally, including the U.S. mining laws, 30 U.S.C., Ch. 2, at 10 a.m., on February 20, 1981, subject to valid existing rights, existing withdrawals and segregation orders, and the requirements of applicable law. The lands have been and continue to be open to the filing of applications and offers under the mineral leasing laws.

Salt Lake Meridian

T. 4 S., R. 23 E.,
Sec. 28, S½NW¼, SW¼;
Sec. 33, lots 7, 8, NW¼, N½SW¼, NW¼SE¼;
Sec. 34, lots 5, 6, and 7.
T. 5 S., R. 23 E.,
Sec. 3, lots 1, 2, 3, S½NE¼, SE¼NW¼, SE¼;
Sec. 4, lots 4, 5, 6, SW¼NW¼, NW¼SW¼ (formerly lot 4, SW¼NW¼, NW¼SW¼, SE¼SE¼);
Sec. 10, NE¼SW¼, NW¼SE¼;
Sec. 11, lot 1, S½NE¼, NW¼NE¼, NW¼, N½SW¼, SE¼SW¼, SE¼ (formerly N½, N½S½, SE¼SW¼, S½SE¼);
Sec. 12, lots 3, 10, 11, 12, 13, 16, SW¼SW¼;
Secs. 13 and 14;
Sec. 15, E½NE¼, SE¼SW¼, SE¼.
T. 3 S., R. 24 E.,
Sec. 25, W½;
Sec. 35, N½.
T. 4 S., R. 24 E.,
Sec. 33, excluding that portion in the S½S½ within the Dinosaur National Monument.
T. 5 S., R. 24 E.,
Sec. 4, excluding that portion in the W½W½ within the Dinosaur National Monument;
Sec. 5, lot 12, excluding that portion within the Dinosaur National Monument;
Sec. 6, lots 3, 4, 5, 8, 12 to 15, incl., SE¼NW¼, E½SW¼;
Sec. 7;
Sec. 8, lots 1, 3, 5, 7, S½N½, S½;
Secs. 9 and 18.

The lands described aggregate approximately 8,359.69 acres in Uintah County.

Inquiries concerning the lands should be addressed to the State Director, Utah State Office, Bureau of Land Management, 136 East South Temple, Salt Lake City, Utah 84111.

Guy R. Martin,

Assistant Secretary of the Interior.

January 15, 1981.

[FR Doc. 81-2309 Filed 1-22-81; 8:45 am]

BILLING CODE 4310-84-M

43 CFR Public Land Order 5851

[U-018045]

Utah; Revocation of Reclamation Project Withdrawal

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order partially revokes an order which withdrew lands for the Pack Creek Project. This action will restore 4,273.73 acres of public lands to operation of the public land laws, including the mining laws.

EFFECTIVE DATE: February 20, 1981.

FOR FURTHER INFORMATION CONTACT: Ken Latimer, Utah State Office, 801-524-4245.

By virtue of the authority contained in Section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714, it is ordered as follows:

1. The Order of the Bureau of Reclamation (now Water Power and Resources Service) dated February 3, 1956, concurred in by the Bureau of Land Management on March 12, 1956, which withdrew lands for the Pack Creek Project, is hereby revoked in its entirety:

Salt Lake Meridian

T. 28 S., R. 21 E.,
Sec. 11, Lot 1;
Sec. 12, Lots 2, 3, 4, 6 and 12.
T. 30 S., R. 22 E.,

Sec. 3, S½N½, and S½;
Sec. 4, Lots 6 and 7, SE¼NE¼, and E½SE¼;
Sec. 5, Lots 10 and 11, and W½SE¼;
Sec. 8, Lots 1, 2, 3, and 5, and SW¼NE¼;
Sec. 9, Lots 1, 2, and 3, E½E½ (includes Lots 21 and 22 in SE¼SE¼);
Sec. 10, All;
Sec. 20, Lots 1, 2, 3, 4, 8, 9 and 89, W½NW¼, and SW¼SE¼.
T. 27 S., R. 23 E.,
Sec. 4, SW¼NE¼, S½NW¼, SW¼, and N½SE¼;
Sec. 5, Lots 5, 6, and 7, SW¼NE¼, SW¼, and W½SE¼;
Sec. 6, E½SW¼, and SE¼;
Sec. 9, NW¼NE¼, and N½NW¼;
Sec. 10, NW¼NW¼;
Sec. 14, All.

The areas described aggregates 4,273.73 acres in Grand and San Juan Counties.

2. At 10 a.m., on February 20, 1981, the public lands described above shall be open to operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law. All valid applications received at or prior to 10 a.m., on February 20, 1981, shall be considered in order of filing.

3. The public lands described above will be open to location under the United States mining laws at 10 a.m., on February 20, 1981. They have been and continue to be open to applications and offers under the mineral leasing laws.

Inquiries concerning the lands should be addressed to the Chief, Branch of Lands and Minerals Operations, Bureau of Land Management, University Club Building, 136 East South Temple, Salt Lake City, Utah 84111.

Guy R. Martin,
Assistant Secretary of the Interior.
January 15, 1981.

[FR Doc. 81-2312 Filed 1-22-81; 8:45 am]
BILLING CODE 4310-84-M

43 CFR Public Land Order 5852

[OR-04910]

Oregon; Revocation of Stock Driveway Withdrawal

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order revokes a Bureau of Land Management order which withdrew public lands for use as a stock driveway. This action will restore the lands to operation of the public land laws generally.

EFFECTIVE DATE: February 20, 1981.

FOR FURTHER INFORMATION CONTACT: Champ C. Vaughan, Jr., Oregon State Office, 503–231–6905.

By virtue of the authority contained in Section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714, it is ordered as follows:

1. The Bureau of Land Management Order of August 21, 1956, which withdrew the following described public lands for a stock driveway is hereby revoked:

Willamette Meridian

T. 14 S., R. 14 E.,
Sec. 30, lots 3 and 4, and E½SW¼.
T. 15 S., R. 13 E.,
Sec. 1, lots 1 to 4, inclusive, S½N½, and S½;
Sec. 12, all;
Sec. 13, all;
Sec. 23, E½SE¼;
Sec. 24, NW¼, and NW¼SW¼;
Sec. 26, E½NE¼NW¼NE¼, SE¼NW¼NE¼, S½SW¼NW¼NE¼, SW¼NE¼, and SW¼;
Sec. 34, E½;
Sec. 35, W½W½.
T. 16 S., R. 13 E.,
Sec. 3, lots 1 to 4, inclusive, E½NE¼SW¼, and S½SW¼;
Sec. 4, lots 1 and 2, and SE¼;
Sec. 9, all;
Sec. 10, W½SW¼;
Sec. 15, W½;
Sec. 21, all;
Sec. 22, NW¼, and W½SW¼
Sec. 28, W½NE¼, NW¼, and S½;
Sec. 29, all;
Sec. 30, lots 1 to 4, inclusive, E½, and E½W½;
Sec. 31, lots 1 to 4, inclusive, E½, and E½W½;
Sec. 32, N½, and SW¼.
T. 17 S., R. 13 E.,
Sec. 6, lots 1 to 5, inclusive, S½NE¼, SE¼NW¼; and SE¼;
Sec. 7, NE¼NE¼;
Sec. 8, all.

The areas described aggregate 9,306.92 acres in Crook and Deschutes Counties.

2. At 10 a.m., on February 20, 1981, the lands shall be open to operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law. All valid applications received at or prior to 10 a.m., on February 20, 1981, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

3. The lands have been and continue to be open to location under the United States mining laws and to applications and offers under the mineral leasing laws.

Inquiries concerning the lands should be addressed to the State Director, Bureau of Land Management, P.O. Box 2965, Portland, Oregon 97208.

Guy R. Martin,
Assistant Secretary of the Interior.
January 15, 1981.

[FR Doc. 81-2308 Filed 1-22-81; 8:45 am]
BILLING CODE 4310-84-M

43 CFR Public Land Order 5853

[U-46066]

Utah; Partial Revocation of Reclamation Withdrawal

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This document will revoke the Secretarial Order of April 11, 1939, withdrawing approximately 142.21 acres of land and will simultaneously restore and open 22.2 acres to the operation of the general land laws including the mining laws. The remaining 120.01 acres will be opened to proposals under Section 206 of the Act of October 21, 1976.

EFFECTIVE DATE: February 21, 1981.

FOR FURTHER INFORMATION CONTACT: Ken Latimer, Utah State Office 801–524–4245.

By virtue of the authority contained in Section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714, it is ordered as follows:

1. Secretary's Order of April 11, 1939, which withdrew public lands for the Utah Lake Reservoir and features of the Bonneville Unit of the Central Utah Project from all forms of appropriation under the public land laws, including the mining laws for use by the Bureau of Reclamation, now the Water and Power Resources Service, is hereby revoked as to the following described lands:

Salt Lake Base and Meridian

Parcel A

An irregular parcel of land in the W½ and lot 2, of Section 18, T. 7 S., R. 3 E., being more particularly described as follows:

Beginning at a point which lies W. 1,498.4 feet along the section line and S. 1,082.5 feet from the north quarter corner of said section 18; said point also being on the east right-of-way line of Highway I–15; thence along the Utah Lake Meander Line the following courses: thence S. 72°00' E. 1,312.8 feet; thence S. 85°00' E. 867.8 feet; thence S. 41°00' E. 145.2 feet; thence S. 35°00' W. 369.6 feet; thence S. 75°00' W. 442.4 feet; thence S. 85°00' W. 627.8 feet, more or less, to a point on the easterly right-of-way line of said Highway I–15; thence N. 31°32' W. 1,220.6 feet along said Highway I–15 right-of-way line to point of beginning containing 22.2 acres, more or less.

Parcel B

An irregular parcel of land in the S½ of Section 18 and the N½ of Section 19, T. 7 S., R. 3 E., being more particularly described as follows:

Beginning at a point which lies S. 01°20' W. 4,547.5 feet along the section line from the northwest corner of said section 18; thence N. 66°30' E. 2,524.6 feet; thence along the Utah Lake Meander Line the following courses: S. 75°00' E. 462 feet; thence S. 46°30' E. 528 feet; thence S. 02°30' E. 231 feet; thence S. 85°00' W. 283.8 feet; thence N. 80°30' W. 719.4 feet; thence S. 77°00' W. 1,214.4 feet; thence S. 20°00' W. 396 feet; thence S. 03°00' E. 100.8 feet, more or less, to a point on the easterly right-of-way of Highway I–15; thence N. 31°52' W. 1,088.4 feet, more or less, along the easterly line of said Highway I–15, to point of beginning containing 45.8 acres, more or less.

Parcel C

An irregular parcel of land in the E½ of Section 13, T. 7 S., R. 2 E., and the W½ of Section 18, T. 7 S., R. 3 E., containing 74.21 acres, more or less, and being more particularly described as follows:

Beginning at a point which lies S. 2,392.4 feet along the section line and W. 698.2 feet from the northeast corner of said section 13; said point being on the east right-of-way line of Highway I–15; thence along the Utah Lake Meander Line the following courses: N. 87°30' E. 110.6 feet; thence S. 85°00' E. 676.8 feet; thence S. 66°00' E. 2,065.8 feet; thence S. 75°00' E. 782 feet; thence S. 69°30' W. 2,824.6 feet, more or less, to a point on the east right-of-way line of said Highway I–15; thence along the east right-of-way line of said Highway I–15 the following courses: N. 31°52' W. 504.2 feet; thence N. 29°44' W. 404.1 feet; thence N. 27°08' W. 227.5 feet to point of tangency of a regular curve to the right having a radius of 1,859.9 feet; thence along the arc of the said curve 598.2 feet; thence N. 02°12' E. 200.2 feet, more or less, to the point of beginning, containing 83.85 acres, more or less, excepting therefrom a parcel of land containing 9.64 acres, more or less, leaving a net "Parcel C" area of 74.21 acres, more or less, said excepted area being described as follows:

Exception (to be used for Water and Power Resources Services project purposes)

A parcel of land in the SW¼ of Section 18, T. 7 S., R. 3 E., containing 9.64 acres, more or less, and being more particularly described as: Beginning at a point which lies N. 89°22' E. 398 feet along the section line and S. 00°38' E. 3,130.1 feet from the northwest corner of said section 18; said point has U.S.C. and G.S. plane grid coordinates N. 663,103.99 and E. 1,957,054.61; thence S. 89°26' E. 700 feet; to a point which lies S. 01°05' W. 38.1 feet from found monument; thence S. 01°05' W. 600 feet; thence N. 89°38' W. 700 feet; thence N. 01°05' E. 600 feet, more or less, to the point of beginning. (The foregoing bearings are based on the Utah Coordinate System, Central Zone.) Based on the Utah Coordinate System, the northwest corner of said section 18 has plane grid coordinates N. 666,230.47 and E. 1,958,622.41 and north quarter corner of said section 18 has plane grid coordinates N. 663,284.17 and E. 1,[illegible]97.92.

The total net area of Parcels A, B, and C is 142.21 acres, more or less, in Utah County.

2. At 10 a.m., on February 21, 1981, the lands in Parcel A shall be open to operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law. All valid applications received at or prior to 10 a.m., on February 21, 1981, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

3. At 10 a.m., on February 21, 1981, the lands in Parcel A will be open to location under the United States mining laws. The lands have been and continue to be open to applications and offers under the mineral leasing laws.

4. Effective the date of this publication, the lands in Parcels B and C shall be open to proposals under Section 206 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2756; 43 U.S.C. 1716, subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law.

Inquiries concerning the land should be addressed to the State Director, Bureau of Land Management, University Club Building, 136 East South Temple, Salt Lake City, Utah 84111.

Guy R. Martin,
Assistant Secretary of the Interior.
January 16, 1981.

[FR Doc. 81-2310 Filed 1-22-81; 8:45 am]
BILLING CODE 4310-84-M

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43 CFR Part 4100

Grazing Administration and Trespass on Public Lands; Amendments to Grazing Regulations

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rule; correction.

SUMMARY: This notice gives the justification for making effective upon publication the amendments to the Grazing Administration and Trespass regulations. The amendments were published as a final rulemaking in the Federal Register of January 19, 1981 (46 FR 5784). This justification was inadvertently omitted from the preamble to those amendments.

EFFECTIVE DATE: January 19, 1981.

ADDRESS: Any suggestions or inquiries should be addressed to: Director (220), Bureau of Land Management, 1800 C Street, N.W., Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT: Paul Leonard, (202) 343–5841.

SUPPLEMENTARY INFORMATION: The amendments were the result of intensive public involvement in the refinement of a policy for adjusting livestock use on the public rangelands. The amendments are designed to ensure that future decisions on livestock use are made in a manner that is fair and equitable to all users of the public rangelands, that ensures a maximum degree of public involvement and review, that provides for decisions to be based on the best scientific information available at the time of each decision and that furthers the Nation's overall objective of increasing the productivity of the public rangelands. The changes made by the amendments also bring the grazing administration procedures of the Bureau of Land Management more in line with those of the U.S. Forest Service.

It is in the national interest that the benefits to be derived from the implementation of these amendments be realized as soon as possible. At present, hundreds of proposed grazing decisions based on environmental impact statements completed during the last two years are written to be effective on March 1, 1981—the beginning of the 1981–1982 grazing season. If the effective date of these amendments is delayed, it will be impossible to implement these final grazing decisions with a five-year phase-in period, including needed livestock use adjustments and construction of rangeland improvements, during the 1981–1982 grazing season. Actual implementation of the amendments through grazing decisions would be unnecessarily postponed until March 1, 1982—the beginning of the 1982–1983 grazing season.

Therefore, it is in the national interest that these amendments be effective January 23, 1981.

January 19, 1981.

Guy R. Martin,
Assistant Secretary of the Interior.

[FR Doc. 81-2307 Filed 1-22-81; 8:45 am]
BILLING CODE 4310-84-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 64

[Docket No. FEMA 5972]

List of Communities Eligible for the Sale of Insurance Under the National Flood Insurance Program

AGENCY: Federal Insurance Administration, FEMA.

ACTION: Final rule.

SUMMARY: This rule lists communities participating in the National Flood Insurance Program (NFIP). These communities have applied to the program and have agreed to enact certain flood plain management measures. The communities' participation in the program authorizes the sale of flood insurance to owners of property located in the communities listed.

EFFECTIVE DATES: The date listed in the fifth column of the table.

ADDRESSES: Flood insurance policies for property located in the communities listed can be obtained from any licensed property insurance agent or broker serving the eligible community, or from the National Flood Insurance Program (NFIP) at: P.O. Box 34294, Bethesda, Maryland 20034, Phone: (800) 638-8620.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Krimm, National Flood Insurance Program, (202) 755-5581 or Toll Free Line 800-424-8872, Room 5270, 451 Seventh Street, SW., Washington, DC 20410.

SUPPLEMENTARY INFORMATION: The National Flood Insurance Program (NFIP), enables property owners to purchase flood insurance at rates made reasonable through a Federal subsidy. In return, communities agree to adopt and administer local flood plain management measures aimed at protecting lives and new construction from future flooding. Since the communities on the attached list have recently entered the NFIP, subsidized flood insurance is now available for property in the community.

In addition, the Federal Insurance Administrator has identified the special flood hazard areas in some of these communities by publishing a Flood Hazard Boundary Map. The date of the flood map, if one has been published, is indicated in the sixth column of the table. In the communities listed where a flood map has been published, Section 102 of the Flood Disaster Protection Act of 1973, as amended, requires the purchase of flood insurance as a condition of Federal or federally related financial assistance for acquisition or construction of buildings in the special flood hazard area shown on the map.

The Federal Insurance Administrator finds that delayed effective dates would be contrary to the public interest. The Administrator also finds that notice and public procedure under 5 U.S.C. 553(b) are impracticable and unnecessary.

The Catalog of Domestic Assistance Number for this program is 83.100 "Flood Insurance." This program is subject to procedures set out in OMB Circular A-95.

In each entry, a complete chronology of effective dates appears for each listed community. The entry reads as follows:

Section 64.6 is amended by adding in alphabetical sequence new entries to the table.

§ 64.6 List of eligible communities.

State	County	Location	Community No.	Effective dates of authorization/ cancellation of sale of flood insurance in community	Special flood hazard area identified
California	Alameda	Pleasanton, city of	060128	Dec. 16, 1980, suspension withdrawn.	June 28, 1974 and Oct. 23, 1978.
Do	Yolo	Unincorporated areas	060238	do	Oct. 15, 1977.
Colorado	Summit	do	080200	do	Sept. 15, 1977.
Connecticut	Hartford	Hartland, town of	090149	do	June 28, 1974 and Dec. 15, 1978.
Florida	Polk	Bartow, city of	120268	do	Jan. 23, 1974 and Sept. 12, 1978.
Illinois	Cook	Glencoe, village of	170088	do	Nov. 2, 1973 and Aug. 6, 1976.
Do	Lake	Gurnee, village of	170368	do	May 24, 1974 and May 14, 1976.
Do	Cook	River Grove, village of	170159	do	Feb. 1, 1974 and June 4, 1976.
Do	do	Riverside, village of	170169	do	Feb. 1, 1974 and Apr. 9, 1976.
Iowa	Pottawattamie	Avoca, city of	190225	do	Jan. 23, 1974 and Jan. 9, 1976.
Do	Tama	Chelsea, city of	190516	do	Aug. 16, 1974 and Jan. 2, 1976.
Louisiana	Terrebonne	Unincorporated areas	225209	do	July 1, 1974 and Nov. 19, 1976.
Maine	Kennebec	Readfield, town of	230049	do	Feb. 1, 1975 and Sept. 3, 1976.
Mississippi	Simpson	D'Lo, town of	280157	do	June 7, 1974 and July 23, 1976.
Do	Madison	Madison, town of	280238	do	Dec. 13, 1974 and Dec. 12, 1978.
New Jersey	Somerset	Rocky Hill, borough of	340439	do	June 28, 1974 and Apr. 16, 1976.
Pennsylvania	Lancaster	Akron, borough of	420491A	do	Jan. 31, 1975, Dec. 26, 1975, and Apr. 30, 1976.
Do	Lancaster	Clay, township of	421794B	do	May 3, 1974 and May 21, 1976.
Do	do	East, township of	421767B	do	Sept. 28, 1974 and July 16, 1976.
Do	do	East Lampeter, township of	421771B	do	Sept. 6, 1974 and Sept. 3, 1976.
Do	Lebanon	South Annville, township of	420808B	do	Nov. 16, 1973 and Dec. 24, 1976.
Do	Berks	Windsor, township of	421128B	do	Jan. 23, 1974 and June 4, 1976.
Rhode Island	Providence	Cumberland, town of	445019A	do	Jan 2, 1975.
South Carolina	Anderson	Anderson, city of	450014B	do	May 14, 1974 and Dec. 13, 1974.
South Dakota	Fall River	Edgemont, city of	460088B	do	Aug. 2, 1974 and Jan. 16, 1976.
Texas	Titus	Mount Pleasant, city of	480021B	do	Feb. 1, 1974 and May 14, 1976.
Virginia	Albemarle	Unincorporated areas	510006B	do	Aug. 30, 1978.
Wisconsin	Dane	Marshall, village of	550049B	do	Dec. 17, 1973 and May 28, 1976.
Do	Ozaukee	Saukville, village of	550379B	do	Jan. 16, 1974 and June 4, 1976.
Kentucky	Campbell	Newport, city of	210036B	Mar. 23, 1973, emergency; Nov. 5, 1980, regular; Nov. 5, 1980, suspended; Dec. 22, 1980, rescinded.	Feb. 1, 1974.
Georgia	Rabun and Habersham	Tallulah Falls, town of	130068	Dec. 29, 1980, emergency	Apr. 23, 1976.
New York	Warren	Stony Creek, town of	360869A	do	Aug. 30, 1974 and Dec. 17, 1976.
Tennessee	Wilson	Watertown, city of	470369A	do	Sept. 15, 1976.
Texas	Fayette	Carmine, city of	481558A	do	Apr. 2, 1976.
Do	Trinity	Groveton, city of	481092	do	Nov. 5, 1976.
Do	Wood	Yantis, city of	481167	do	July 9, 1976.
Alabama	Tuscaloosa	Northport, city of	010466C	June 13, 1973, emergency; Sept. 5, 1979, regular; Mar. 4, 1980, suspended; Dec. 19, 1980, rescinded.	Dec. 28, 1973 and July 9, 1976.

(National Flood Insurance Act of 1968 (title XIII of the Housing and Urban Development Act of 1968); effective Jan. 28, 1969 (33 FR 17804, Nov. 28, 1968), as amended, 42 U.S.C. 4001–4128; Executive Order 12127, 44 FR 19367; and delegation of authority to Federal Insurance Administrator)

Issued: January 8, 1981.

Francis V. Reilly,

Acting Federal Insurance Administrator.

[FR Doc. 81-2286 Filed 1-22-81; 8:45 am]

BILLING CODE 6718-03-M

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44 CFR Part 64

[Docket No. FEMA 6477]

List of Communities Eligible for the Sale of Insurance Under the National Flood Insurance Program

AGENCY: Federal Insurance Administration, FEMA.

ACTION: Final Rule.

SUMMARY: This rule lists communities participating in the National Flood Insurance Program (NFIP). These communities have applied to the program and have agreed to enact certain flood plain management measures. The communities' participation in the program authorizes the sale of flood insurance to owners of property located in the communities listed.

EFFECTIVE DATES: The date listed in the fifth column of the table.

ADDRESSES: Flood insurance policies for property located in the communities listed can be obtained from any licensed property insurance agent or broker serving the eligible community, or from the National Flood Insurance Program (NFIP) at: P.O. Box 34294, Bethesda, Maryland 20034, Phone: (800) 638-8020.

FOR FURTHER INFORMATION CONTACT: Mr. Robert G. Chappell, National Flood Insurance Program, (202) 426-1460 or Toll Free Line 800-424-8872, Room 5150, 451 Seventh Street SW., Washington, D.C. 20410.

SUPPLEMENTARY INFORMATION: The National Flood Insurance Program (NFIP), enables property owners to purchase flood insurance at rates made reasonable through a Federal subsidy. In return, communities agree to adopt and administer local flood plain management measures aimed at protecting lives and new construction from future flooding. Since the communities on the attached list have recently entered the NFIP, subsidized flood insurance is now available for property in the community.

In addition, the Federal Insurance Administrator has identified the special flood hazard areas in some of these communities by publishing a Flood Hazard Boundary Map. The date of the flood map, if one has been published, is indicated in the sixth column of the table. In the communities listed where a flood map has been published, Section 102 of the Flood Disaster Protection Act of 1973, as amended, requires the purchase of flood insurance as a condition of Federal or federally related financial assistance for acquisition or construction of buildings in the special flood hazard area shown on the map.

The Federal Insurance Administrator finds that delayed effective dates would be contrary to the public interest. The Administrator also finds that notice and public procedure under 5 U.S.C. 553(b) are impracticable and unnecessary.

The Catalog of Domestic Assistance Number for this program is 83.100 "Flood Insurance." This program is subject to procedures set out in OMB Circular A-95.

In each entry, a complete chronology of effective dates appears for each listed community. The entry reads as follows:

Section 64.6 is amended by adding in alphabetical sequence new entries to the table.

§ 64.6 List of eligible communities.

State	County	Location	Community No.	Effective date of authorization of sale of flood insurance for area	Hazard area identified
California	Contra Costa County	Antioch, city of	060029	750301 emerg., 801202 reg	740626
Arkansas	Jefferson County	Wabbaseka, city of	050111	750626 emerg., 801202 reg	740510
California	Los Angeles County	Los Angeles County [1]	060043	750710 emerg., 801202 reg	791024
California	San Bernardino County	Ontario, city of	060276	750627 emerg., 801202 reg	740809
California	Orange County	Brea, city of	060214	740626 emerg., 801202 reg	740524
California	Los Angeles County	Los Angeles, city of	060137	700619 emerg., 801202 reg	771213
Kentucky	Boyd County	Boyd County [1]	210016	751212 emerg., 801202 reg	741213
Iowa	Cerro Gordo County	Mason City, city of	190060	750321 emerg., 801202 reg	740301
Illinois	Lake County	Winthrop Harbor, village of	170396	750710 emerg., 801202 reg	750321
Illinois	Cook County	Hazel Crest, village of	170102	721020 emerg., 801202 reg	740626
Idaho	Clearwater County	Orofino, city of	160047	750321 emerg., 801202 reg	731123
Georgia	Ware County	Ware County [1]	130184	750605 emerg., 801202 reg	751217
Florida	Polk County	Davenport, town of	120419	760301 emerg., 801202 reg	770304
West Virginia	Mingo County	Mingo County [1]	540133	750609 emerg., 801202 reg	741220
Washington	King County	Pacific, city of	530096	750706 emerg., 801202 reg	740626
Vermont	Orleans County	Troy, town of	500099	751114 emerg., 801202 reg	740726
Vermont	Franklin County	Montgomery, town of	500058	750604 emerg., 801202 reg	740621
Texas	Harris County	Piney Point Village, city of	480308	740701 emerg., 801202 reg	740626
South Carolina	Greenville County	Greenville County [1]	450089	740212 emerg., 801202 reg	751119
Pennsylvania	Luzerne County	Wilkes-Barre, township of	421823	740613 emerg., 801202 reg	751022
Pennsylvania	Luzerne County	Newport, township of	421822	751217 emerg., 801202 reg	741227
Pennsylvania	Luzerne County	Laflin, borough of	420995	751004 emerg., 801202 reg	751119
Pennsylvania	Lycoming County	Wolf, township of	420903	730330 emerg., 801202 reg	770701
Pennsylvania	Luzerne County	Lehman, township of	420815	750710 emerg., 801202 reg	740626
Pennsylvania	Luzerne County	Harveys Lake, borough of	420809	730316 emerg., 801202 reg	731226
Oklahoma	Logan County	Guthrie, city of	400089	750827 emerg., 801202 reg	731226
Oklahoma	Cleveland County	Moore, city of	400044	740418 emerg., 801202 reg	740607
Oklahoma	Cleveland County	Lexington, city of	400043	750606 emerg., 801202 reg	740626
Oklahoma	Alfalfa County	Cherokee, city of	400006	750605 emerg., 801202 reg	740614
New York	St. Lawrence County	Morristown, village of	361857	751212 emerg., 801202 reg	740321
Nebraska	Wayne County	Wayne, city of	310231	740530 emerg., 801202 reg	740322
Missouri	St. Louis County	Northwoods, city of	290372	740412 emerg., 801202 reg	740405
Missouri	Grundy County	Trenton, city of	290183	750601 emerg., 801202 reg	740215
Michigan	Genesee County	Genesee, township of	260076	750511 emerg., 801202 reg	740524
Maine	Cumberland County	Pownal, town of	230304	750509 emerg., 801202 reg	750131
Louisiana	St. Tammany Parish	Madisonville, town of	220291	740917 emerg., 801202 reg	750228

State	County	Location	Community No.	Effective date of authorization of sale of flood insurance for area	Hazard area identified
Kentucky	Hardin County	Elizabethtown, city of	210095	750322 emerg., 801282 reg	740625
Pennsylvania	Luzerne County	Penn Lake Park, borough of	422845	780712 emerg., 801205 reg	0
Illinois	Lake County	North Chicago, city of	170304	740703 emerg., 801205 reg	740405
California	Alameda County	Pleasanton, city of	060012	710807 emerg., 801216 reg	740028
Connecticut	Middlesex County	Middletown, city of	090066	740816 emerg., 801216 reg	740516
Colorado	Summit County	Summit County [1]	080239	761128 emerg., 801216 reg	770513
California	Yolo County	Yolo County [1]	060428	730910 emerg., 801216 reg	771048
Illinois	Cook County	River Grove, village of	170182	740401 emerg., 801216 reg	740201
Illinois	Cook County	North Riverside, village of	170135	750804 emerg., 801216 reg	740201
Illinois	Cook County	Glenview, village of	170055	730419 emerg., 801216 reg	731102
Illinois	Cook County	Brookfield, village of	170056	741009 emerg., 801216 reg	740412
Florida	Polk County	Bartow, city of	120263	750619 emerg., 801216 reg	740123
Connecticut	Hartford County	Hartland, town of	090149	750114 emerg., 801216 reg	740228
Wisconsin	Ozaukee County	Saukville, village of	550317	740418 emerg., 801216 reg	740116
Wisconsin	Dane County	Marshall, village of	550094	750715 emerg., 801216 reg	731217
Washington	Pierce County	Sumner, city of Pierce Co.	530147	741004 emerg., 801216 reg	740728
Virginia	Albemarle County	Albemarle County [1]	510006	730809 emerg., 801216 reg	760625
Vermont	Chittenden County	Shelburne, town of	500189	751216 emerg., 801216 reg	741213
Utah	Utah County	Mapleton, city of	490196	750807 emerg., 801216 reg	740228
Texas	Titus County	Mount Pleasant, city of	480021	750729 emerg., 801216 reg	740201
South Dakota	Fall River County	Edgemont, city of	460086	800306 emerg., 801216 reg	740502
South Carolina	Anderson County	Anderson, city of	450014	731102 emerg., 801216 reg	740517
Rhode Island	Providence County	Cumberland, town of	440016	750715 emerg., 801216 reg	750109
Pennsylvania	Lancaster County	Akron, borough of	422491	751201 emerg., 801216 reg	750131
Pennsylvania	Lancaster County	East Lampeter, township of	421771	740809 emerg., 801216 reg	740906
Pennsylvania	Lancaster County	Earl, township of	421757	750115 emerg., 801216 reg	740509
Pennsylvania	Lancaster County	Clay, township of	421704	750429 emerg., 801216 reg	740508
Pennsylvania	Berks County	Windsor, township of	421135	750417 emerg., 801216 reg	740128
Pennsylvania	Berks County	Centre, township of	421099	771004 emerg., 801216 reg	741101
Pennsylvania	Luzerne County	Butler, township of	420999	750916 emerg., 801216 reg	740501
Pennsylvania	Lebanon County	South Annville, township of	420998	750911 emerg., 801216 reg	731108
Pennsylvania	Berks County	St. Lawrence, borough of	420181	750913 emerg., 801216 reg	750730
Oklahoma	Oklahoma County	Warr Acres, city of	400449	750127 emerg., 801216 reg	741228
Oklahoma	Woodward County	Woodward, city of	400232	740430 emerg., 801216 reg	740514
Oklahoma	Ottawa County	Miami, city of	400167	741128 emerg., 801216 rg	740501
New Jersey	Somerset County	Rocky Hill, borough of	340443	750715 emerg., 801216 reg	740328
Montana	Lincoln County	Troy, town of	300132	750611 emerg., 801216 reg	750711
Missouri	Atchison County	Rock Port, city of	290012	740801 emerg., 801216 reg	740504
Mississippi	Madison County	Madison, town of	280229	741017 emerg., 801216 reg	741213
Mississippi	Simpson County	D'Lo, town of	280167	750802 emerg., 801216 reg	740607
Maine	Kennebec County	Readfield, town of	230245	751024 emerg., 801216 reg	750221
Louisiana	St. Tammany Parish	Slidell, city of	220204	721128 emerg., 801216 reg	731116
Louisiana	St. Martin Parish	St. Martinville, city of	220191	750829 emerg., 801216 reg	731005
Louisiana	Morehouse Parish	Bastrop, city of	220127	750702 emerg., 801216 reg	740315
Iowa	Tama County	Chelsea, city of	190281	750715 emerg., 801216 reg	740216
Iowa	Pottawattamie County	Avoca, city of	190223	740820 emerg., 801216 reg	740125
Illinois	Lake County	Gurnee, village of	170305	740809 emerg., 801216 reg	740524
Illinois	Cook County	Riverside, village of	170188	740710 emerg., 801216 reg	740201
Maryland	Dorchester County	Secretary, town of	2140123	750813 emerg., 801219 reg	741101
Ohio	Stark County	Beach City, village of	390639	750801 emerg., 801219 reg	750730
Pennsylvania	Allegheny County	Crafton, borough of	420088	740415 emerg., 801219 reg	740501
Pennsylvania	Allegheny County	Fraser, township of	421288	750508 emerg., 801219 reg	751105
Pennsylvania	York County	Dover, borough of	422969	751208 emerg., 801219 reg	750131
Pennsylvania	Mercer County	Jackson, township of	423469	750729 emerg., 801219 reg	750117
Alabama	Jefferson County	Pleasant Grove, city of	010288	750108 emerg., 801219 reg	741220
California	San Joaquin County	Tracy, city of	060308	730859 emerg., 801222 reg	0
Florida	Volusia County	Deland, city of	120307	750219 emerg., 801222 reg	0
Washington	Yakima County	Granger, town of	530219	750916 emerg., 801222 reg	731226
Illinois	Pulaski County	Mounds, city of	170584	740918 emerg., 801222 reg	0
Florida	Sumter County	Wildwood, city of	120299	751231 emerg., 801228 reg	740123

Total: 96.
[1] Unincorporated areas.

(National Flood Insurance Act of 1968 (title XIII of the Housing and Urban Development Act of 1968); effective Jan. 28, 1969 (33 FR 17804, Nov. 28, 1968), as amended, 42 U.S.C. 4001–4128; Executive Order 12127, 44 FR 19367; and delegation of authority to Federal Insurance Administrator)

Issued: January 13, 1981.

Gloria M. Jimenez,

Federal Insurance Administrator.

[FR Doc. 81-2288 Filed 1-22-81; 8:45 am]

BILLING CODE 6718-03-M

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44 CFR Part 64

[Docket No. FEMA 6071]

Suspension of Community Eligibility Under the National Flood Insurance Program

AGENCY: Federal Insurance Administration, FEMA.

ACTION: Final rule.

SUMMARY: This rule lists communities where the sale of flood insurance, as authorized under the National Flood Insurance Program (NFIP), will be suspended because of noncompliance with the flood plain management requirements of the program.

EFFECTIVE DATES: The third date ("Susp.") listed in the fifth column.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, National flood Insurance Program, (202) 755–5581 or Toll Free Line 800–424–8872, Room 5270, 451 Seventh Street, SW., Washington, DC 20410.

SUPPLEMENTARY INFORMATION: The National Flood Insurance Program (NFIP), enables property owners to purchase flood insurance at rates made reasonable through a Federal subsidy. In return, communities agree to adopt and administer local flood plain management measures aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended (42 U.S.C. 4022) prohibits flood insurance coverage as authorized under the National Flood Insurance Program (42 U.S.C. 4001–4128) unless an appropriate public body shall have adopted adequate flood plain management measures with effective enforcement measures. The communities listed in this notice no longer meet that statutory requirement for compliance with program regulations (44 CFR Part 59 et seq.). Accordingly, the communities are suspended on the effective date in the fifth column, so that as of that date subsidized flood insurance is no longer available in the community.

In addition, the Federal Insurance Administrator has identified the special flood hazard areas in these communities by publishing a Flood Hazard Boundary Map. The date of the flood map, if one has been published, is indicated in the sixth of column of the table. Section 202(a) of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), as amended, provides that no direct Federal financial assistance (except assistance pursuant to the Disaster Relief Act of 1974 not in connection with a flood) may legally be provided for construction or acquisition of buildings in the identified special flood hazard area of communities not participating in the NFIP, with respect to which a year has elapsed since identification of the community as having flood prone areas, as shown on the Office of Federal Insurance and Hazard Mitigation's initial flood insurance map of the community. This prohibition against certain types of Federal assistance becomes effective for the communities listed on the date shown in the last column.

The Federal Insurance Administrator finds that delayed effective dates would be contrary to the public interest. The Administrator also finds that notice and public procedure under 5 U.S.C. 553(b) are impracticable and unnecessary.

The Catalog of Domestic Assistance Number for this program is 83.100 "Flood Insurance." This program is subject to procedures set out in OMB Circular A–95.

In each entry, a complete chronology of effective dates appears for each listed community.

Section 64.6 is amended by adding in alphabetical sequence new entries to the table.

§ 64.6 List of eligible communities.

State	County	Location	Community No.	Effective dates of authorization/ cancellation of sale of flood insurance in community	Special flood hazard area identified	Date[1]
Alabama	Jefferson	Hoover, city of	0101228	Apr. 11, 1975, emergency, Feb. 4, 1981, regular, Feb. 4, 1981, suspended.	Nov. 3, 1978	Feb. 4, 1981.
Do	do	Irondale, city of	0101248	Aug. 28, 1975, emergency, Feb. 4, 1981, regular, Feb. 4, 1981, suspended.	June 7, 1974 Jan. 9, 1976	Do.
Do	Lauderdale	Unincorporated areas	0103228	June 14, 1979, emergency, Feb. 4, 1981, regular, Feb. 4, 1981, suspended.	Mar. 31, 1978	Do.
Do	Mobile	Prichard, city of	0101788	Apr. 22, 1975, emergency, Feb. 4, 1981, regular, Feb. 4, 1981, suspended.	June 28, 1974 Aug. 13, 1976	Do.
Alaska		Juneau, city and borough	0200088	May 22, 1970, emergency, Feb. 4, 1981, regular, Feb. 4, 1981, suspended.	May 9, 1979 May 20, 1977	Do.
Arkansas	Jackson	Tuckerman, city of	0801058	May 9, 1975, emergency, Feb. 4, 1981, regular, Feb. 4, 1981, suspended.	Nov. 16, 1973 Feb. 27, 1976	Do.
California	San Mateo	Menlo Park, city of	060021C	Apr. 2, 1975, emergency, Feb. 4, 1981, regular, Feb. 4, 1981, suspended.	June 14, 1974 Aug. 8, 1975 Feb. 15, 1979	Do.
Connecticut	New London	Waterford, town of	090197B	Aug. 23, 1974, emergency, Feb. 4, 1981, regular, Feb. 4, 1981, suspended.	July 26, 1974 Nov. 19, 1976	Do.
Florida	Glades	Moore Haven, city of	120067A	Mar. 9, 1976, emergency, Feb. 4, 1981, regular, Feb. 4, 1981, suspended.	Apr. 11, 1975	Do.
Do	Polk	Mulberry, city of	120208B	July 19, 1974, emergency, Feb. 4, 1981, regular, Feb. 4, 1981, suspended.	Feb. 8, 1978	Do.
Do	Okeechobee	Unincorporated areas	120177B	May 1, 1975, emergency, Feb. 4, 1981, regular, Feb. 4, 1981, suspended.	Aug. 4, 1978	Do.
Illinois	St. Clair	Dupo, village of	1706298	May 28, 1973, emergency, Feb. 4, 1981, regular, Feb. 4, 1981, suspended.	May 3, 1974 July 2, 1976	Do.
Do	Du Page	Elmhurst, city of	170206B	Jan. 14, 1975, emergency, Feb. 4, 1981, regular, Feb. 4, 1981, suspended.	May 3, 1974 Mar. 28, 1975	Do.
Do	Calhoun	Hardin, village of	170736C	Feb. 1, 1974, emergency, Feb. 4, 1981, regular, Feb. 4, 1981, suspended.	June 28, 1974 Jan. 22, 1976 Mar. 23, 1979	Do.
Do	Will	Joliet, city of	1707028	Apr. 12, 1973, emergency, Feb. 4, 1981, regular, Feb. 4, 1981, suspended.	May 31, 1974 Oct. 10, 1975	Do.
Do	Calhoun	Kampsville, village of	170735B	Jan. 30, 1974, emergency, Feb. 4, 1981, regular, Feb. 4, 1981, suspended.	Jan. 9, 1974 June 4, 1976	Do.
Do	Cook	Orland Park, village of	170140C	Apr. 15, 1974, emergency, Feb. 4, 1981, regular, Feb. 4, 1981, suspended.	Mar. 22, 1974 Aug. 23, 1976 May 12, 1978	Do.
Do	Du Page	Villa Park, village of	170217B	Apr. 23, 1974, emergency, Feb. 4, 1981, regular, Feb. 4, 1981, suspended.	Mar. 8, 1974 Feb. 7, 1975	Do.

State	County	Location	Community No.	Effective dates of authorization/ cancellation of sale of flood insurance in community	Special flood hazard area identified	Date[1]
Do	Lake	Wadsworth, village of	170366B	Aug. 1, 1975, emergency, Feb. 4, 1981, regular, Feb. 4, 1981, suspended.	Mar. 1, 1974 Nov. 21, 1975	Do.
Iowa	Polk	Des Moines, city of	190227B	Sept. 8, 1974, emergency, Feb. 4, 1981, regular, Feb. 4, 1981, suspended.	Sept. 6, 1974 Aug. 20, 1976	Do.
Kentucky	Scott	Georgetown, city of	210208B	June 28, 1975, emergency, Feb. 4, 1981, regular, Feb. 4, 1981, suspended.	May 24, 1974	Do.
Louisiana	Acadia	Estherwood, village of	220004A	June 12, 1975, emergency, Feb. 4, 1981, regular, Feb. 4, 1981, suspended.	Mar. 5, 1976	Do.
Maine	Androscoggin	Auburn, city of	230001B	Aug. 27, 1971, emergency, Feb. 4, 1981, regular, Feb. 4, 1981, suspended.	May 31, 1974 July 2, 1976	Do.
Michigan	Macomb	Macomb, township of	260419B	Dec. 16, 1977, emergency, Feb. 4, 1981, regular, Feb. 4, 1981, suspended.	Mar 18, 1977	Do.
Do	Genesee	Mount Morris, township of	260400A	June 12, 1975, emergency, Feb. 4, 1981, regular, Feb. 4, 1981 suspended.	Sept. 19, 1975	Do.
Minnesota	Hennepin	Golden Valley, city of	270168B	Apr. 22, 1974, emergency, Feb. 4, 1981, regular, Feb. 4, 1981, suspended.	Mar. 8, 1974 Apr. 30, 1976	Do.
Do	Kittson	Unincorporated areas	270234B	Feb. 11, 1974, emergency, Feb. 4, 1981, regular, Feb. 4, 1981, suspended.	Nov. 4, 1977	Do.
Do	McLeod	Unincorporated areas	270516B	Mar. 4, 1974, emergency, Feb. 4, 1981, regular, Feb. 4, 1981, suspended.	June 3, 1977	Do.
Do	Rice	Unincorporated areas	270646B	May 30, 1974, emergency, Feb. 4, 1981, regular, Feb. 4, 1981, suspended.	Oct. 21, 1977	Do.
Do	Olmsted	Rochester, city of	275346B	Mar. 28, 1971, emergency, Feb. 4, 1981, regular, Feb. 4, 1981, suspended.	Mar. 27, 1971 July 1, 1974	Do.
Missouri	St. Louis	Fleetwood, city of	290362B	June 11, 1973, emergency, Feb. 4, 1981, regular, Feb. 4, 1981, suspended.	Feb. 13, 1976 Nov. 9, 1972 Sept. 6, 1975	Do.
Do	Adair	Kirksville, city of	290008B	Dec. 2, 1974, emergency, Feb. 4, 1981, regular, Feb. 4, 1981, suspended.	May 17, 1974 Oct. 24, 1975	Do.
Do	Lawrence	Mt. Vernon, city of	290262B	Apr. 14, 1975, emergency, Feb. 4, 1981, regular, Feb. 4, 1981, suspended.	May 24, 1974 Dec. 26, 1975	Do.
New Jersey	Middlesex	Milltown, borough of	340366B	Feb. 1, 1974, emergency, Feb. 4, 1981, regular, Feb. 4, 1981, suspended.	May 3, 1974 July 2, 1976	Do.
Do	Bergen	Westwood, borough of	340081C	Dec. 17, 1971, emergency, Feb. 4, 1981, regular, Feb. 4, 1981, suspended.	May 11, 1973 Mar. 22, 1974 Apr. 23, 1976	Do.
New Mexico	Eddy	Artesia, city of	350018B	Apr. 4, 1975, emergency, Feb. 4, 1981, regular, Feb. 4, 1981, suspended.	Jan. 16, 1974 June 18, 1976	Do.
Do	Debeca	Fort Sumner, city of	350011B	Nov. 2, 1974, emergency, Feb. 4, 1981, regular, Feb. 4, 1981, suspended.	May 31, 1974 Mar. 19, 1976	Do.
New York	Onondaga	Liverpool, village of	360552B	Dec. 28, 1974, emergency, Feb. 4, 1981, regular, Feb. 4, 1981, suspended.	July 26, 1974 June 11, 1976	Do.
Do	Niagara	Lockport, city of	360503B	Dec. 17, 1973, emergency, Feb. 4, 1981, regular, Feb. 4, 1981, suspended.	Oct. 22, 1976	Do.
Ohio	Clermont	Batavia, village of	390080D	Mar. 2, 1976, emergency, Feb. 4, 1981, regular, Feb. 4, 1981, suspended.	Nov. 30, 1973 May 7, 1976 Feb. 11, 1977 Aug. 31, 1979	Do.
Do	Summit	Macedonia, city of	390150A	Nov. 11, 1976, emergency, Feb. 4, 1981, regular, Feb. 4, 1981, suspended.	Apr. 16, 1975	Do.
Do	Butler	Millville, village of	390041B	Mar. 28, 1975, emergency, Feb. 4, 1981, regular, Feb. 4, 1981, suspended.	June 7, 1974 May 7, 1976	Do.
Do	Cuyahoga	Solon, city of	390130D	July 28, 1975, emergency, Feb. 4, 1981, regular, Feb. 4, 1981, suspended.	Apr. 5, 1974 July 2, 1976	Do.
Do	Summit	Twinsburg, city of	390504C	Sept. 18, 1973, emergency, Feb. 4, 1981, regular, Feb. 4, 1981, suspended.	Mar. 15, 1974 June 18, 1976 May 18, 1979	Do.
Oklahoma	Okmulgee	Okmulgee, city of	400148B	Apr. 28, 1975, emergency, Feb. 4, 1981, regular, Feb. 4, 1981, suspended.	Feb. 1, 1974 Dec. 26, 1975	Do.
Do	Kay	Tonkawa, city of	400078B	June 28, 1975, emergency, Feb. 4, 1981, regular, Feb. 4, 1981, suspended.	Nov. 23, 1973 Feb. 23, 1976	Do.

State	County	Location	Community No.	Effective dates of authorization/ cancellation of sale of flood insurance in community	Special flood hazard area identified	Date[1]
Pennsylvania	Blair	Antis, township of	421395B	July 30, 1975, emergency, Feb. 4, 1981, regular, Feb. 4, 1981, suspended.	Dec. 27, 1974 July 16, 1976	Do.
Do	Clinton	Bald Eagle, township of	420319B	May 22, 1973, emergency, Feb. 4, 1981, regular, Feb. 4, 1981, suspended.	Oct. 23, 1973 July 30, 1976	Do.
Do	Westmoreland	Irwin, borough of	420661B	June 18, 1974, emergency, Feb. 4, 1981, regular, Feb. 4, 1981, suspended.	Apr. 12, 1974 May 28, 1976	Do.
Do	Erie	North East, borough of	421366B	April 23, 1975, emergency, Feb. 4, 1981, regular, Feb. 4, 1981, suspended.	Nov. 8, 1974 Aug. 6, 1976	Do.
Do	Westmoreland	Penn, borough of	420665B	Mar. 19, 1975, emergency, Feb. 4, 1981, regular, Feb. 4, 1981, suspended.	Apr. 12, 1974 Aug. 6, 1976	Do.
Do	Lancaster	Strasburg, township of	421784B	May 27, 1975, emergency, Feb. 4, 1981, regular, Feb. 4, 1981, suspended.	May 31, 1974 June 25, 1976	Do.
Texas	Walker	Huntsville, city of	480639B	Jan. 20, 1975, emergency, Feb. 4, 1981, regular, Feb. 4, 1981, suspended.	May 24, 1974 Feb 6, 1976	Do.
Do	Scurry	Snyder, city of	481091B	Sept. 5, 1974, emergency, Feb. 4, 1981, regular, Feb. 4, 1981, suspended.	Feb. 1, 1974 Apr. 9, 1976	Do.
Virginia	Henrico	Unincorporated areas	510077B	Dec. 30, 1971, emergency, Feb. 4, 1981, regular, Feb. 4, 1981, suspended.	Nov. 22, 1974 May 14, 1976	Do.
Washington	Chelan	Unincorporated areas	530015A	Jan. 12, 1973, emergency, Feb. 4, 1981, regular, Feb. 4, 1981, suspended.	Jan. 12, 1973 Jan. 10, 1975	Do.
Do	...do	Wenatchee, city of	530020A	Nov. 7, 1974, emergency, Feb. 4, 1981, regular, Feb. 4, 1981, suspended.	Feb. 1, 1974 Aug. 9, 1974	Do.
Wisconsin	Jackson	Black River Falls, city of	550186B	Apr. 7, 1975, emergency, Feb. 4, 1981, regular, Feb. 4, 1981, suspended.	Dec. 17, 1973 May 21, 1976	Do.
Do	Vernon	Coon Valley, village of	550452B	Apr. 7, 1975, emergency, Feb. 4, 1981, regular, Feb. 4, 1981, suspended.	Apr. 12, 1974 Oct. 31, 1975	Do.
Do	Douglas	Unincorporated areas	550536B	Apr. 28, 1974, emergency, Feb. 4, 1981, regular, Feb. 4, 1981, suspended.	Dec. 22, 1978	Do.
Do	Jackson	Unincorporated areas	550583A	Sept. 30, 1975, emergency, Feb. 4, 1981, regular, Feb. 4, 1981, suspended.		Do.
Do	Winnebago	Unincorporated areas	550537B	Apr. 15, 1974, emergency, Feb. 4, 1981, regular, Feb. 4, 1981, suspended.	Feb. 18, 1977	Do.

[1]Date certain Federal assistance no longer available in special flood hazard area.

(National Flood Insurance Act of 1968 (title XIII of the Housing and Urban Development Act of 1968); effective Jan. 28, 1969 (33 FR 17804, Nov. 28, 1968), as amended, 42 U.S.C. 4001–4128; Executive Order 12127, 44 FR 19367; and delegation of authority to Federal Insurance Administrator)

Issued: January 6, 1981.

Gloria M. Jimenez,

Federal Insurance Administrator.

[FR Doc. 81-2268 Filed 1-23-81; 8:45 am]

BILLING CODE 6718-03-M

44 CFR Part 65

[Docket No. FEMA 6076]

List of Communities With Special Hazard Areas Under the National Flood Insurance Program

AGENCY: Federal Insurance Administration, FEMA.

ACTION: Final Rule.

SUMMARY: This rule identifies communities with areas of special flood, mudslide, or erosion hazards as authorized by the National Flood Insurance Program. The identification of such areas is to provide guidance to communities on the reduction of property losses by the adoption of appropriate flood plain management or other measures to minimize damage. It will enable communities to guide future construction, where practicable, away from locations which are threatened by flood or other hazards.

EFFECTIVE DATES: The effective date shown at the top right of the table or 30 days after the date of the Federal Register publication, whichever is later.

FOR FURTHER INFORMATION CONTACT: Mr. Robert G. Chappell, National Flood Insurance Program, (202) 426–1460 or Toll Free Line 800–424–8872, Room 5150, 451 Seventh Steet, SW., Washington, DC 20410.

SUPPLEMENTARY INFORMATION: The Flood Disaster Protection Act of 1973 (Pub. L. 93–234) requires the purchase of flood insurance on and after March 2, 1974, as a condition of receiving any form of Federal or federally related financial assistance for acquisition or construction purposes in an identified flood plain area having special flood hazards that is located within any community participating in the National Flood Insurance Program.

One year after the identification of the community as flood prone, the requirement applies to all identified special flood hazard areas within the United States, so that, after that date, no such financial assistance can legally be provided for acquisition and construction in these areas unless the community has entered the program. The prohibition, however, does not

apply in respect to conventional mortage loans by federally regulated, insured, supervised, or approved lending institutions.

This 30 day period does not supersede the statutory requirement that a community, whether or not participating in the program, be given the opportunity for a period of six months to establish that it is not seriously flood prone or that such flood hazards as may have existed have been corrected by floodworks or other flood control methods. The six months period shall be considered to begin 30 days after the date of publication in the Federal Register or the effective date of the Flood Hazard Boundary Map, whichever is later. Similarly, the one year period a community has to enter the program under section 201(d) of the Flood Disaster Protection Act of 1973 shall be considered to begin 30 days after publication in the Federal Register or the effective date of the Flood Hazard Boundary Map, whichever is later.

This identification is made in accordance with Part 64 of Title 44 of the Code of Federal Regulations as authorized by the National Flood Insurance Program (42 U.S.C. 4001–4128)

Section 65.3 is amended by adding in alphabetical sequence a new entry to the table:

§ 65.3 List of communities with special hazard areas (FHBMs in effect).

BILLING CODE 6718-03-M

EFFECTIVE DATE January 2, 1981

1 State	2 Ident. Number	3 Community Name County Name	4 Panels Printed (& Map Suffix)	5 Inland/ Coastal	6 Hazard	7 60.3 Code	8 Program Status	9 Status of FIRM	9 Status of FIRM	10 Previous Map Dates FIRM	10 Previous Map Dates FIRM	11 Revision(s) Code(s)	12 Rescission	13 Floodways Panels Printed	14 Location of Map Repository
IN	180457	Benton Co. (Uninc. Area)	Index 0001A 0002A 0003A 0004A	I	FL	B	4	2	1	N/A	N/A	N/A	N/A	N/A	Benton County Auditor's Office County Courthouse Fowler, IN 47944 Phone: 317-884-0930
IN	180476	Blackford Co. (Uninc. Area)	Index 0001A 0002A 0003A 0004A	I	FL	B	4	2	1	N/A	N/A	N/A	N/A	N/A	Blackford County Clerk's Office County Courthouse Hartford City, IN 47348 Phone: 317-348-1130
PA	421879	Township of Armagh (Mifflin Co.)	Index 0002A 0004A 0005A 0007A	I	FL	B	1	3	1	1/10/75	N/A	9 10 16	N/A	N/A	Frank Houser, Chairman Twp. Board of Supervisors Second Floor Central Counties Bank Bldg. P.O. Box 396 Milroy, PA 17063 Twp. Phone: 717-667-6280 Home Phone: 717-667-3187
PA	422068	Township of Middletown (Susquehanna Co.)	Index 0001A 0002A	I	FL	B	1	3	1	4/11/75	N/A	9 10 16	N/A	N/A	Thomas Young, Chairman Twp. Board of Supervisors R.D. 1, Box 8 Friendsville, PA 18818 Phone: 717-744-2304
IL	170999	McDonough Co. (Uninc. Area)	Index 0001A thru 0006A	I	FL	B	4	2	1	N/A	N/A	N/A	N/A	N/A	McDonough County Clerk's Office County Courthouse Macomb, IL 61455 Phone: 309-833-2474

EFFECTIVE DATE January 2, 1981

STATE	IDENT. NUMBER	COMMUNITY NAME & COUNTY NAME	PANELS PRINTED (MAP SUFFIX)	INLAND/ COASTAL	HAZARD	60.3 CODE	PROGRAM STATUS	STATUS OF FIRM	STATUS OF FIRM	PREVIOUS MAP DATES FHBM	PREVIOUS MAP DATES FIRM	REVISION CODE(S)	RESCISSION	FLOODWAYS PANELS PRINTED	LOCATION OF MAP REPOSITORY
1	2	3	4	5	6	7	8	9	9	10	10	11	12	13	14
IN	180457	Benton Co. (Uninc. Area)	Index 0001A 0002A 0003A 0004A	I	FL	B	4	2	1	N/A	N/A	N/A	N/A	N/A	Benton County Auditor's Office County Courthouse Fowler, IN 47944 Phone: 317-884-0930
IN	180476	Blackford Co. (Uninc. Area)	Index 0001A 0002A 0003A 0004A	I	FL	B	4	2	1	N/A	N/A	N/A	N/A	N/A	Blackford County Clerk's Office County Courthouse Hartford City, IN 47348 Phone: 317-348-1130
PA	421879	Township of Armagh (Mifflin Co.)	Index 0002A 0004A 0005A 0007A	I	FL	B	1	3	1	1/10/75	N/A	9 10 16	N/A	N/A	Frank Houser, Chairman Twp. Board of Supervisors Second Floor Central Counties Bank Bldg. P.O. Box 396 Milroy, PA 17063 Twp. Phone: 717-667-6280 Home Phone: 717-667-3187
PA	422068	Township of Middletown (Susquehanna Co.)	Index 0001A 0002A	I	FL	B	1	3	1	4/11/75	N/A	9 10 16	N/A	N/A	Thomas Young, Chairman Twp. Board of Supervisors R.D. 1, Box 8 Friendsville, PA 18818 Phone: 717-744-2304
IL	170999	McDonough Co. (Uninc. Area)	Index 0001A thru 0006A	I	FL	B	4	2	1	N/A	N/A	N/A	N/A	N/A	McDonough County Clerk's Office County Courthouse Macomb, IL 61455 Phone: 309-833-2474

EFFECTIVE DATE January 2, 1981

1 STATE	2 IDENT. NUMBER	3 COMMUNITY NAME & COUNTY NAME	4 PANELS PRINTED (# AND SUFFIX)	5 INLAND/ COASTAL	6 HAZARD	7 BLS CODE	8 PROGRAM STATUS	9 STATUS OF FHBM	9 STATUS OF FIRM	10 PREVIOUS MAP DATES FHBM	10 PREVIOUS MAP DATES FIRM	11 REVISION CODE(S)	12 RESCISSION	13 FLOODWAYS PANELS PRINTED	14 LOCATION OF MAP REPOSITORY
IL	170910	Hamilton County (Unine. Area)	Index 0001A Thru 0006A	I	FL	B	1	2	1	N/A	N/A	N/A	N/A	N/A	Supervisor of Assessments Office Hamilton County Courthouse McLeansboro, IL 62859 Phone: 618-643-3971
IL	170467	Massac County (Uninc. Areas)	Index 0001A Thru 0004A	I	FL	B	1	2	1	N/A	N/A	N/A	N/A	N/A	Massac County Clerk's Office P. O. Box 429 Metropolis, IL 62960 Phone: 618-524-9632
EFFECTIVE DATE: January 6, 1981															
OK	400501	Adair County (Unincorporated Areas)	Index 0001A Thru 0006A	I	FL	B	4	2	1	N/A	N/A	N/A	N/A	N/A	Mr. Carl Pettigrew Chairman of County Commissioners Adair County Commissioners Box 169 Stilwell, OK 74960 (918) 774-7198
EFFECTIVE DATE: January 9, 1981															
IL	170992	Montgomery County (Unine. Areas)	Index 0001A Thru 0009A	I	FL	B	4	2	1	N/A	N/A	N/A	N/A	N/A	Montgomery Co. Clerk's Office County Courthouse Hillsboro, IL 62049 Phone: 217-532-2552
IL	171003	Wayne County (Unine. Areas)	Index 0001A Thru 0009A	I	FL	B	4	2	1	N/A	N/A	N/A	N/A	N/A	Mr. Layton Atwood Chairman of Co. Board Route 1 - Mt. Erie, IL 62446 Phone: 618-854-2251
IN	180482	Pulaski County (Unine. Areas)	Index 0002A Thru 0004A	I	FL	B	4	2	1	N/A	N/A	N/A	N/A	N/A	County Auditor's Office Pulaski Co. Courthouse Winamac, IN 46996 Phone: 219-946-3653

EFFECTIVE DATE January 9, 1981

1 State	2 Ident. Number	3 Community Name County Name	4 Panels Printed (& any Suffix)	5 Inland/ Coastal	6 Hazard	7 60.3 Code	8 Program Status	9 Status of		10 Previous Map Dates		11 Revision Code (S)	12 Rescission	13 Floodways Panels Printed	14 Location of Map Repository
								FHBM	FIRM	FHBM	FIRM				
OH	390283	Vinton County (Uninc. Area)	Index 0001A Thru 0007A	I	FL	B	A	3	1	N/A	N/A	N/A	N/A	N/A	President of the County Com. Vinton County Courthouse McArthur, Ohio 45615 Phone: 614-596-4571
PA	422072	Twp. of Apolacon (Susquehanna Co.)	Index 0001A	I	FL	B	1	3	1	11/29/78	N/A	9 10 16	N/A	N/A	Gerald Thorne, Chairman Twp. Board of Supervisors R.D. 1, Box 278 Brackney, PA 18812 Phone: 717-833-2985
VA	510197	Carroll County (Uninc. Area)	Index 0001A Thru 0007A	I	FL	B	1	3	1	4/25/75	N/A	9 10 16	N/A	N/A	County Administrator's Office P.O. Box 515 County Courthouse Hillsville, VA 24343 Phone: 703-729-3331
WI	550606	Washburn County (Uninc. Area)	Index 0001A Thru 0008A	I	FL	B	4	2	1	N/A	N/A	N/A	N/A	N/A	Washburn County Clerk's Office County Courthouse Shell Lake, WI 54871 Phone: 715-468-7808
NY	361108	T. of Dunkirk (Chautaqua Co.)	0005B	I	FL	B	1	3	1	11/29/74 7/30/76	N/A	9 10	N/A	N/A	Mr. Ronald J. Stanczynski Town Supervisor Town of Dunkirk 11171 Urban Road Dunkirk, New York 14048
NM	350001	Bernalillo Co. Uninc. Areas	0008C	I	FL	B	1	3	1	12/20/77 9/6/77 7/10/79	N/A	9	N/A	N/A	Mr. Alex Abeyta, JR Bernalillo Co. Manager 420 Lomas, N.W. (505) 766-4000

EFFECTIVE DATE: January 13, 1981

EFFECTIVE DATE January 16, 1981

1 State	2 Ident. Number	3 Community Name County Name	4 Panels Printed (& any Suffix)	5 Inland/ Coastal	6 Hazard	7 60.3 Code	8 Program Status	9 Status of		10 Previous Map Dates		11 Revision Code (S)	12 Rescission	13 Floodways Panels Printed	14 Location of Map Repository
								FHBM	FIRM	FHBM	FIRM				
NM	350001	Bernalillo Co. Uninc. Areas	0008C	I	FL	B	1	3	1	12/20/77 9/6/77 7/10/79	N/A	9	N/A	N/A	Mr. Alex Abeyta, JR Bernalillo Co. Manager 420 Lomas, N.W. (505) 766-4000

EFFECTIVE DATE January 16, 1981

1 State	2 Ident. Number	3 Community Name County Name	4 Panels Printed (# and Suffix)	5 Inland/ Coastal	6 Hazard	7 60.3 Code	8 Program Status	9 Status of FHBM	9 Status of FIRM	10 Previous Map Dates FHBM	10 Previous Map Dates FIRM	11 Revision Code(S)	12 Rescissions	13 Floodways Panels Printed	14 Location of Map Repository
IL	170940	Clark County (Uninc. Area)	Index 0001A thru 0008A	I	FL	B	4	2	1	N/A	N/A	N/A	N/A	N/A	County Clerk's Office County Courthouse Marshall, IL 62441 Phone: 217-826-8311
IL	170873A	Village of East Brooklyn (Grundy Co.)	Index 01	I	FL	B	4	3	1	3/21/75	N/A	10	N/A	N/A	John Hakey, Village President 600 Bremer East Brooklyn, IL 60474 Phone: 815-237-8268
MI	260579	Village of Clifford (Lapeer Co.)	0001A	I	FL	B	4	3	1	10/24/75	N/A	9	N/A	N/A	Raymond R. Miller, Jr. Village Presiden: Village Hall 4549 Madison Street Clifford, MI 48727 Phone: 517-761-7003
PA	422342	Township of Cherry (Butler Co.)	Index 0001A 0002A	I	FL	B	1	3	1	1/10/75	N/A	9 10 16	N/A	N/A	Leonard Hildebrandt, Chm. Twp. Board of Supervisors Municipal Building R.D. 1 Hillards, PA 16040 Phone: 412-637-2124
PA	422431	Twp. of Dunkard (Greene Co.)	Index 0002A 0003A	I	FL	B	4	3	1	1/10/75	N/A	9 10	N/A	N/A	Thomas Orben, Chm. Twp. Board of Supervisors Bobtown, PA 15315 Phone: 412-839-7231
PA	422551	Twp. of Watson (Warren Co.)	Index 0001A 0002A 0003A 0004A 0005A	I	FL	B	1	3	1	1/10/75	N/A	9 10 16	N/A	N/A	Ray M. Mickelson, Chm. Twp. Board of Supervisors R.D. 1 Tidioute, PA 16351 Phone: 814-484-3818

EFFECTIVE DATE January 20, 1981

STATE	COMM. NUMBER	COMMUNITY NAME & COUNTY NAME	PANELS PRINTED IF ANY SUFFIX	INLAND/ COASTAL	HAZARD	SFHA CODE	PROGRAM STATUS	STATUS OF FIRM	STATUS OF FIRM	PREVIOUS MAP DATES FIRM	PREVIOUS MAP DATES FIRM	REVISION CODES	RESCISSION	FLOODWAYS PANELS PRINTED	LOCATION OF MAP REPOSITORY
CA	[illegible]	City of [illegible] (Siskiyou County)	0001A	I	FL	B	1	3	1	N/A	N/A	N/A	N/A	N/A	Mr. Lyle W. Larson City Administrator City Hall 700 South Davis Avenue Weed, CA 96094 (916) 938-4042
KS	200487	City of Delphos (Ottawa County)	0001A	I	FL	B	1	3	1	8-18-75	N/A	9	N/A	N/A	Mrs. Dean Smith Delphos City Clerk City Hall Delphos, KS 67436 (913) 523-4361
													EFFECTIVE DATE: January 23, 1981		
MN	270619	Cook County (Unincorporated Areas)	Index 0001A Thru 0021A	I	FL	B	1	2	1	N/A	N/A	N/A	N/A	N/A	Cook County Zoning Admr. Cook County Courthouse Grand Marais, MN 55604 Phone 218-387-1335
NJ	340062	B. of Paramus (Bergen Co.)	0001B 0002B 0003B	I	FL	B	1	3	1	8/31/73 2/22/80	N/A	9	N/A	N/A	Hasu K. Patel Jockish Square Paramus, N.J. 07652 (201)265-2100
ME	230177	T. Castine (Hancock Co.)	0005A 0010A	C	FL	B	1	3	1	1/31/75	N/A	9	N/A	N/A	Mr. Andrew Patterson Town Manager, Town of Castine Castine, Maine 04421
NY	361351	V. Laurens (Otsego Co.)	0001B	I	FL	B	1	3	1	11/15/74 5/21/76	N/A	8 10	N/A	N/A	Honorable Clarence Speight Mayor, Village of Laurens R.D. #1, Box 18 Laurens, N.Y. 13796
NY	361229	T. Savannah (Wayne)	0005B 0010B 0015B 0020B	I	FL	B	1	3	1	12/20/74 6/25/76	N/A	6	N/A	N/A	Donald Colvin Town Supervisor 1344 E. Main St. Savannah, N.Y. 13146 (315)365-2811

EFFECTIVE DATE January 23, 1981

1 State	2 Ident. Number	3 Community Name County Name	4 Panels Printed If any, and Suffix	5 Inland/ Coastal	6 Hazard	7 SFHA Code	8 Program Status	9 Status of		10 Previous Map Dates		11 Revision Code(s)	12 Rescission	13 Floodways Panels Printed	14 Location of Map Repository

EFFECTIVE DATE: January 23, 1981

1 State	2 Ident. Number	3 Community Name County Name	4 Panels Printed (Index and Suffix)	5 Inland/ Coastal	6 Hazard	7 SFHA Cat.	8 Program Status	9 Status of FIRM		10 Previous Map Dates FIRM		Revision Date (UDC)	Reactivation	13 Floodways Panels Printed	14 Location of Map Repository
PA	422058	Twp. of Cherry (Sullivan Co.)	Index 0001A 0002A 0004A	I	FL	B	1	3	1	12/22/76	N/A	9 10 16	N/A	N/A	Arthur Rohe, Chairman Twp. Board of Supervisors R.D. 1 Dushore, PA 18614 Phone: 717-928-8301
PA	421627	Twp. of German (Fayette Co.)	Index 0001A 0002A 0003A 0004A	I	FL	B	1	3	1	1/ 3/75	N/A	9 10 16	N/A	N/A	Robert Sterbutsel, Jr., Chm. Twp. Board of Supervisors Municipal Building R.D. 1, Box 287 McClellandtown, PA 15458 Home Phone: 412-737-5224 Twp. Phone: 412-737-5130
PA	422867	Twp. of Lebanon (Wayne Co.)	Index 0001A 0002A 0003A	I	FL	B	1	3	1	1/ 3/75	N/A	9 10 16	N/A	N/A	Louis Pytus, Chairman Twp. Board of Supervisors R.D. 1 Honesdale, PA 18431 Phone: 717-648-2878
PA	422153	Twp. of Smith (Washington Co.)	Index 0001A 0002A 0003A	I	FL	B	1	3	1	12/12/75	N/A	9 10 16	N/A	N/A	Vincent Gl'Anfrancesco, Chm. Twp. Board of Supervisors Box 94 Municipal Building Slovan, PA 15078 Home Phone: 412-947-2072 Twp. Phone: 412-947-9452
PA	421703	Twp. of Warriors Mark (Huntingdon Co.)	Index 0002A 0003A	I	FL	B	1	3	1	1/12/75	N/A	9 10 16	N/A	N/A	Jesse Marshall, Chairman Twp. Board of Supervisors R.D. 4 Tyrone, PA 16686 Phone: 814-632-7589
PA	421498	Twp of West Nantmeal (Chester Co.)	Index 0001A 0002A	I	FL	B	1	3	1	12/12/75	N/A	9 10 16	N/A	N/A	Omar Beam, Chairman Twp. Board of Supervisors R.D. 2 Elverson, PA 19520 Phone: 215-286-9465

EFFECTIVE DATE January 27, 1981

1 STATE	2 NCIP NUMBER	3 COMMUNITY NAME & COUNTY NAME	4 PANELS PRINTED (# AND SUFFIX)	5 INLAND/ COASTAL	6 HAZARD	7 6(3) CODE	8 PROGRAM STATUS	9 STATUS OF FHBM	9 STATUS OF FIRM	10 PREVIOUS MAP DATES FHBM	10 PREVIOUS MAP DATES FIRM	11 REVISION CODE(S)	12 RESCISSION	13 FLOODWAYS PANELS PRINTED	14 LOCATION OF MAP REPOSITORY
AR	050084	City of Earle (Crittenden County)	0001B	I	FL	B	1	3	1	10-12-73 12-26-75	N/A	B 9 10	N/A	N/A	The Honorable James H. King Mayor, City of Earle City Hall Earle, AR 72331 (501) 792-8909
EFFECTIVE DATE: January 30, 1981															
VT	500127	Town of Dover (Windham County)	0005B 0010B	I	FL	B	1	3	1	2/2/76 10/22/76	N/A	9 10	N/A	N/A	Mr. Herbert C. Childs Town Hall Town of Dover West Dover, VT 05356
IL	170810	Cass County (Unincorporated Areas)	Index 0001A 0002A 0003A 0004A 0005A	I	FL	B	1	2	1	N/A	N/A	N/A	N/A	N/A	County Clerk's Office Cass County Courthouse Virginia, IL 62691 Phone: 217-452-7525
OH	390766	Cuyahoga County (Unincorporated Areas)	Index 0003A 0006A	I	FL	B	1	2	1	N/A	N/A	N/A	N/A	N/A	County Administration Building 1219 Ontario Street Cleveland, OH 44113 Phone: 216-622-7180
PA	422147	Twp. of East Finley (Washington Co.)	Index 0001A 0002A 0003A	I	FL	B	1	3	1	11/29/74	N/A	9 10 16	N/A	N/A	Vance Dorsey, Chairman Twp. Board of Supervisors R.D. 2 West Finley PA 15377 Phone: 412-222-6858
PA	421646	Twp. of Hickory (Forest Co.)	Index 0001A 0003A	I	FL	B	1	2	1	12/20/74	N/A	9 10 16	N/A	N/A	Charles Kiffer, Chairman Twp. Board of Supervisors Endeavor, PA 16322 Phone: 814-463-7366

BILLING CODE 6718-03-C

Community Number
(Codes: Where applicable use N/A)

Column Codes
1. Two letter State code
2. FIA Community number
3. Community name
4. Four digit panel number
FIRM or FHBM
5. INL/Coastal
I=Inland
C=Coastal
6. Hazard
FL=Flood
MS=Mud Slide
ER=Erosion
NF=Non Flood
MF=Mini Flood
7. 60.3 Code
A=Special flood hazard elevation determined
B=Special flood hazard elevation determined
C=FIRM, High Hazard
'D=FIRM, Undetermined Designation
'E=FIRM, Undetermined
'Dual entry
8. Program status
1=Emergency
2=Regular
3=Not participating
4=Not participating
5=Withdrawn
6=Suspended
9. FHBM status
1=Never mapped
2=Original FHBM
3=Revised FHBM
4=Rescinded FHBM
5=Superseded by FIRM
FIRM status
1=Never mapped
2=Original FIRM
3=Revised FIRM
4=Rescinded FIRM
5=All zones
6=All Zones undetermined
10. Dates of previous maps
11. Revision Codes
1. 1916 BFE
Decrease
2. 1916 BFE
3. 1916 SFHA
Area) Change
4. Change or revised
5. Corrilin
6. 1914 Inc
7. 1914 Dis
8. 1914 Am
9. SFHA R
10. Non-191
Numbere
11. Non-191

12 RESCISSION
13 FLOODWAYS PANELS PRINTED
14 LOCATION OF MAP REPOSITORY

Community Map Actions

(Codes: Where no entry is necessary use N/A)

Column Code:
1. Two letter state designator.
2. FIA Community 6-digit identity number.
3. Community name; county(ies) name
4. Four digit number and suffix of each FIRM or FHBM panel printed.
5. INL/Coast
   I=Inland
   C=Coastal
6. Hazard
   FL=Flood
   MS=Mudslide
   ER=Erosion
   NF=Non Flood Prone
   MF=Minimally flood prone
7. 60.3 Code
   A=Special Hazard not defined, no elevation data (No FHBM)
   B=Special Hazard Designated, no elevation data (FHBM)
   C=FIRM, No Floodway or Coastal High Hazard
   *D=FIRM, Regulatory Floodway Designated
   *E=FIRM, Coastal High Hazard
   *Dual entry is available.
8. Program status
   1=Emergency
   2=Regular
   3=Not participating, no map
   4=Not participating, with map
   5=Withdrew
   6=Suspended
9. FHBM status
   1=Never mapped
   2=Original
   3=Revised
   4=Rescinded
   5=Superseded by firm

FIRM status
   1=Never mapped
   2=Original
   3=Revised
   4=Rescinded
   5=All zone C—no published firm
   6=All Zone A and C—no elevations determined
10. Dates of all previous maps
11. Revision codes
   1. 1916 BFE (Base Flood Elevation) Decrease
   2. 1916 BFE Increase
   3. 1916 SFHA (Special Flood Hazard Area) Change
   4. Change of Zone Desgination; revised FIRM
   5. Curvilinear
   6. 1914 Incorporation
   7. 1914 Discorporation
   8. 1914 Annexation
   9. SFHA Reduction
   10. Non-1916 SFHA Increase Without Numbered Zones
   11. Non-1916 SHFA Increase with Numbered Zones
   12. Drafting Correction; Printing Errors
   13. Suffix Change ONLY
   14. Change to Uniform Zone Designations (7/1/74)
   15. Revisions Withdrawn
   16. Refunds Possible
   17. Letter of Map Amendment (1916)
   18. Letter of Map Amendment (1916 without Federal Register publication)
   19. Federal Register Omission
   20. Attention. A previous map (or maps) has been rescinded or withdrawn for this community. This may have affected the sequence of suffixes.
   21. Miscellaneous
13. List of Numbered Floodway Panels Printed
14. Address of Community Map Repository

(44 CFR § 65.3)

(National Flood Insurance Act of 1968 (title XIII of the Housing and Urban Development Act of 1968); effective Jan. 28, 1969 (33 F.R. 17804, Nov. 28, 1968), as amended, 42 U.S.C. 4001–4128; Executive Order 12127, 44 FR 19367; and delegation of authority to Federal Insurance Administrator)

Issued: January 13, 1981.

Gloria M. Jimenez,

Federal Insurance Administrator.

[FR Doc. 81-2290 Filed 1-22-81; 8:45 am]

BILLING CODE 6718-03-M

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44 CFR Part 65

[Docket No. FEMA-6975]

Communities With Minimal Flood Hazard Areas; National Flood Insurance Program

AGENCY: Federal Insurance Administration, FEMA.

ACTION: Final rule.

SUMMARY: The Federal Insurance Administrator, after consultation with local officials of the communities listed below, has determined, based upon analysis of existing conditions in the communities, that these communities' Special Flood Hazard Areas are small in size, with minimal flooding problems. Because existing conditions indicate that the area is unlikely to be developed in the foreseeable future, there is no immediate need to use the existing detailed study methodology to determine the base flood elevations for the Special Flood Hazard Areas.

Therefore, the Administrator is converting the communities listed below to the Regular Program of the National Flood Insurance Program (NFIP) without determining base flood elevations.

EFFECTIVE DATE: Date listed in fourth column of List of Communities with Minimal Flood Hazard Areas.

FOR FURTHER INFORMATION CONTACT: Mr. Robert G. Chappell, National Flood Insurance Program, (202) 426–1460 or Toll Free Line 800–424–8872, Federal Emergency Management Agency, Washington, D.C. 20472.

SUPPLEMENTARY INFORMATION: In these communities, the full limits of flood insurance coverage are available at actuarial, non-subsidized rates. The rates will vary according to the zone designation of the particular area of the community.

Flood insurance for contents, as well as structures, is available. The maximum coverage available under the Regular Program is significantly greater than that available under the Emergency Program.

Flood insurance coverage for property located in the communities listed can be purchased from any licensed property insurance agent or broker serving the eligible community, or from the National Flood Insurance Program. The effective date of conversion to the Regular Program will not appear in the Code of Federal Regulations except for the page number of this entry in the Federal Register.

The entry reads as follows:

§ 65.7 List of communities with minimal flood hazard areas.

State	County	Community name	Date of conversion to regular program
Iowa	Unincorporated area	Shelby County	Feb. 10, 1981.
Massachusetts	Worcester	Town of Paxton	Feb. 13, 1981.
Pennsylvania	Bradford	Borough of La Fayette	Feb. 20, 1981.
Kansas	Sherman	City of Goodland	Feb. 24, 1981.
West Virginia	Greenbrier	Town of Quinwood	Feb. 27, 1981.

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001–4128; Executive Order 12127, 44 FR 19367; and delegation of authority to the Federal Insurance Administrator)

Issued: January 6, 1981.

Gloria M. Jimenez,

Federal Insurance Administrator.

[FR Doc. 81-2280 Filed 1-22-81; 8:45 am]

BILLING CODE 6718-03-M

44 CFR Part 65

[Docket No. FEMA-6074]

Communities With No Special Hazard Areas; National Flood Insurance Program

AGENCY: Federal Insurance Administration, FEMA.

ACTION: Final rule.

SUMMARY: The Federal Insurance Administrator, after consultation with local officials of the communities listed below, has determined, based upon analysis of existing conditions in the communities, that these communities would not be inundated by 100-year flood. Therefore, the Administrator is converting the communities listed below to the Regular Program of the National Flood Insurance Program (NFIP) without determining base flood elevations.

EFFECTIVE DATE: Date listed in fourth column of List of Communities with No Special Flood Hazards.

FOR FURTHER INFORMATION CONTACT: Mr. Robert G. Chappell, National Flood Insurance Program, (202) 426-1460 or Toll Free Line 800-424-8872, Federal Emergency Management Agency, Washington, D.C. 20472.

SUPPLEMENTARY INFORMATION: In these communities, there is no reason not to make full limits of coverage available. The entire community is now classified as zone C. In a zone C, insurance coverage is available on a voluntary basis at low actuarial nonsubsidized rates. For example, under the Emergency Program in which your community has been participating the rate for a one-story 1–4 family dwelling is $.25 per $100 of coverage. Under the Regular Program, to which your community has been converted, the equivalent rate is $.01 per $100 coverage. Contents insurance is also available under the Regular Program at low actuarial rates. For example, when all contents are located on the first floor of a residential structure, the premium rate is $.05 per $100 of coverage.

In addition to the less expensive rates, the maximum coverage available under the Regular Program is significantly greater than that available under the Emergency Program. For example, a single family residential dwelling now can be insured up to a maximum of $185,000 coverage for the structure and $60,000 coverage for contents.

Flood insurance policies for property located in the communities listed can be obtained from any licensed property insurance agent or broker serving the eligible community, or from the National Flood Insurance Program.

The effective date of conversion to the Regular Program would not appear in the Code of Federal Regulations except for the page number of this entry in the Federal Register.

The entry reads as follows:

§ 65.8 List of communities with no special flood hazard areas.

State	County	Community name	Date of conversion to regular program
California	San Joaquin	City of Tracy	Dec. 22, 1980.
Washington	Yakima	Town of Granger	Dec. 22, 1980.
Florida	Volusia	City of DeLand	Dec. 22, 1980.
Illinois	Pulaski	City of Mounds	Dec. 22, 1980.

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001–4128; Executive Order 12127, 44 FR 19367; and delegation of authority to the Federal Insurance Administrator)

Issued: January 6, 1981.

Gloria M. Jimenez,

Federal Insurance Administrator.

[FR Doc. 81-2280 Filed 1-22-81; 8:45 am]

BILLING CODE 6718-03-M

44 CFR Part 67

National Flood Insurance Program; Final Flood Elevation Determinations

AGENCY: Federal Insurance Administration, FEMA.

ACTION: Final rule.

SUMMARY: Final base (100-year) flood elevations are listed below for selected locations in the nation.

These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required either to adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

EFFECTIVE DATE: The date of issuance of the Flood Insurance Rate Map (FIRM), showing base (100-year) flood elevations, for the community.

ADDRESSES: See table below.

FOR FURTHER INFORMATION CONTACT: Mr. R. Gregg Chappell, National Flood Insurance Program, (202) 426-1460 or Toll Free Line (800) 424-8872 (in Alaska and Hawaii Call Toll Free (800) 424-9080), Room 5150, 451 Seventh Street, S.W., Washington, D.C. 20410.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the final determination of flood elevations for each community listed.

This final rule is issued in accordance with Section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added Section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448), 42 U.S.C. 4001–4128, and 44 CFR Part 60.4(a)). An opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided, and the Administrator has resolved the appeals presented by the community.

The Administrator has developed criteria for flood plain management in flood-prone areas in accordance with 44 CFR Part 60.

The final base (100-year) flood elevations for selected locations are:

Final Base (100-Year) Flood Elevations

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
Missouri	(V), Peerless Park, St. Louis County (Docket No. FI–4660).	Meramec River	Downstream corporate limit	*491
			Upstream corporate limit	*499
Maps available for inspection at the Village Hall, Peerless Park, Missouri 63088.				
New Jersey	Montvale (Borough), Bergen County (FEMA–5773).	Bear Brook	At center of Van Riper Road crossing of Bear Brook	*315
		Cherry Brook	100 feet upstream from center of Middletown Road crossing of Cherry Brook.	*180
		Echo Glen Brook	30 feet upstream from center of Alwin Avenue crossing of Echo Glen Brook.	*256
		Fieldstone Brook	100 feet north of the intersection of Dogwood Lane and Valemont Road.	*188
		Laurel Brook	At Limit of Detailed Study (approximately 3,025 feet above mouth)	*241
		Mill Brook	20 feet upstream from center of Grand Avenue West crossing of Mill Brook.	*279
			At center of Summit Avenue crossing of Mill Brook	*306
		Muddy Creek	80 feet upstream from center of Kinderkamack Road crossing of Muddy Creek.	*189
		Peacock Brook	100 feet upstream from center of Grand Avenue crossing of Peacock Brook.	*144
			At center of Magnolia Avenue crossing of Peacock Brook	*188
		Stateline Brook	At Corporate Limits	*240
Maps available for inspection at Municipal Building, Memorial Drive, Montvale, New Jersey.				
Texas	City of Seagoville, Dallas and Kaufman Counties (FEMA–5748).	Stream 2A1	Approximately 100 feet upstream of Wills Drive	*379
			Just upstream of Water Street	*401
			Just upstream of Malloy Bridge Road	*417
		Stream 2A2	Just upstream of Malloy Bridge Road	*397
			Just upstream of Smith Lane	*402
			Just upstream of Reeves Street	*425
		Stream 4C1	Approximately 100 feet upstream of Cloverhill Road	*400
		Stream 4C3	Approximately 200 feet downstream of South Frontage Road of U.S. Highway 175.	*423
		Trinity River	Just Northwest of the intersection of Malloy Bridge Road and the Southwestern Corporate Limits.	*379
Maps available for inspection at City Manager, 704 N. Highway 175, Seagoville, Texas 75159.				

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended (42 U.S.C. 4001–4128); Executive Order 12127, 44 FR 19367; and delegation of authority to Federal Insurance Administrator)

Issued: January 6, 1981.

Gloria M. Jimenez,

Federal Insurance Administrator.

[FR Doc. 81-2284 Filed 1-22-81; 8:45 am]

BILLING CODE 6718-03-M

44 CFR Part 67

[Docket No. FEMA–6845]

National Flood Insurance Program; Final Flood Elevation Determination; Kansas

AGENCY: Federal Insurance Administration, FEMA.

ACTION: Deletion of final rule for the unincorporated areas of Sedgwick County, Kansas.

SUMMARY: The Federal Insurance Administration has erroneously published the final flood elevation determination for the unincorporated areas of Sedgwick County, Kansas. This notice will serve to delete that publication. Following an engineering analysis and review, a revised notice of proposed flood elevation determination will be issued.

EFFECTIVE DATE: January 23, 1981.

FOR FURTHER INFORMATION CONTACT: Mr. Robert G. Chappell, National Flood Insurance Program, (202) 426–1460 or Toll Free Line (800) 424–8872, (In Alaska and Hawaii call Toll Free Line (800) 424–9080), Federal Emergency Management Agency, Washington, D.C. 20472.

SUPPLEMENTARY INFORMATION: As a result of a recent engineering analysis, the Federal Insurance Administration has determined that the notice of final flood elevation determination for the unincorporated areas of Sedgwick County, Kansas, published at 45 FR 82930, on December 17, 1980, should be deleted. After a technical evaluation, a revised notice of proposed flood elevations will be issued, with a ninety-day period specified for comments and appeals.

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001–4128; Executive Order 12127, 44 FR 19367; and delegation of authority to Federal Insurance Administrator)

Issued: January 6, 1981.

Gloria M. Jimenez,

Federal Insurance Administrator.

[FR Doc. 81-2282 Filed 1-22-81; 8:45 am]

BILLING CODE 6718-03-M

44 CFR Part 67

[Docket No. FEMA-6225]

National Flood Insurance Program; Final Flood Elevation Determination; Michigan

AGENCY: Federal Insurance Administration, FEMA.

ACTION: Deletion of final rule for the City of Sterling Heights, Macomb County, Michigan.

SUMMARY: The Federal Insurance Administration has erroneously published the final flood elevation determination for the City of Sterling Heights, Macomb County, Michigan. This notice will serve to delete that publication. Following an engineering analysis and review, a revised notice of proposed flood elevation determination will be issued.

EFFECTIVE DATE: January 23, 1981.

FOR FURTHER INFORMATION CONTACT: Mr. Robert G. Chappell, National Flood Insurance Program, (202) 426-1460 or Toll Free Line (800) 424-8872 (In Alaska and Hawaii call Toll Free Line, (800) 424-9080), Federal Emergency Management Agency, Washington, D.C. 20472.

SUPPLEMENTARY INFORMATION: As a result of a recent engineering analysis, the Federal Insurance Administration has determined that the notice of final flood elevation determination for the City of Sterling Heights, Macomb County, Michigan, published at 45 FR 62830, on September 22, 1980, should be deleted. After a technical evaluation, a revised notice of proposed flood elevations will be issued, with a ninety-day period specified for comments and appeals.

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001-4128; Executive Order 12127, 44 FR 19367; and delegation of authority to Federal Insurance Administrator)

Issued: January 6, 1981.

Gloria M. Jimenez,

Federal Insurance Administrator.

[FR Doc. 81-2280 Filed 1-22-81; 8:45 am]

BILLING CODE 6718-03-M

44 CFR Part 67

[Docket No. FEMA-6245]

National Flood Insurance Program; Final Flood Elevation Determination; Wisconsin

AGENCY: Federal Insurance Administration, FEMA.

ACTION: Deletion of final rule for the Village of Ettrick, Trempealeau County, Wisconsin.

SUMMARY: The Federal Insurance Administration has erroneously published the final flood elevation determination for the Village of Ettrick, Trempealeau County, Wisconsin. This notice will serve to delete that publication. Following an engineering analysis and review, a revised notice of proposed flood elevation determination will be issued.

EFFECTIVE DATE: January 23, 1981.

FOR FURTHER INFORMATION CONTACT: Mr. Robert G. Chappell, National Flood Insurance Program, (202) 426-1460 or Toll Free Line (800) 424-8872. (In Alaska and Hawaii call Toll Free Line, (800) 424-9080), Federal Emergency Management Agency, Washington, D.C. 20472.

SUPPLEMENTARY INFORMATION: As a result of a recent engineering analysis, the Federal Insurance Administration has determined that the notice of final flood elevation determination for the Village of Ettrick, Trempealeau County, Wisconsin, published at 45 FR 73680, on November 6, 1980, should be deleted. After a technical evaluation, a revised notice of proposed flood elevations will be issued, with a ninety-day period specified for comments and appeals.

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001-4128; Executive Order 12127, 44 FR 19367; and delegation of authority to Federal Insurance Administrator)

Issued: January 6, 1981.

Gloria M. Jimenez,

Federal Insurance Administrator.

[FR Doc. 81-2281 Filed 1-22-81; 8:45 am]

BILLING CODE 6718-03-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

45 CFR Part 73

Standards of Conduct

AGENCY: Department of Health and Human Services.

ACTION: Final rule.

SUMMARY: These regulations are a revision of the Department of Health and Human Services (HHS) standards of conduct. They are issued to tell HHS employees and special Government employees what standards of conduct are expected of them in performing their duties and what activities are permitted or prohibited both while they are employed and after their employment with HHS ends.

EFFECTIVE DATE: January 23, 1981.

FOR FURTHER INFORMATION CONTACT: Mr. Timothy M. White, Office of the General Counsel (202) 245-7767 or Mrs. Florence Perman, Office of Personnel Policy and Communications (202) 245-1984.

SUPPLEMENTARY INFORMATION: The Department's conduct regulations were first issued in 1966. Changes have been made since that time; but no complete revision of the regulations has, up to now, been undertaken. Because of the need to include new requirements of law or policy, clarify existing provisions, and give examples to help officials who must apply the regulations, the decision was made to revise the complete text. The Office of the General Counsel and the Office of the Assistant Secretary for Personnel Administration worked together on the revision. A draft of the proposed regulations was widely circulated within the Department for review, and comments received were used in preparing the final regulations. Additions to or changes in the regulations include the following:

Subpart B has been added to show responsibilities within the Department with respect to standards of conduct, including requirements under the Ethics in Government Act. Employees are basically responsible for maintaining a high standard of ethical behavior, but the Department recognizes its obligation to help employees know what is expected of them in various situations and to advise and assist employees and supervisors. Officials responsible for carrying out this obligation are identified in Subpart B.

Under Subpart C, "Conduct on the Job," sections on courtesy and sexual harassment have been added.

The subpart on "Gifts, Entertainment, and Favors," Subpart E, has been expanded to include more detail on Department policy and to provide examples of what is permitted and prohibited.

Subpart F on "Political Activity" has been added to include in the regulations information on permissible and prohibited political activities. While this information is found in regulations and publications of the Office of Personnel Management, it is repeated in these regulations as a convenience to Department employees.

Under Subpart G, "Outside Activities" a section on the acceptance of honoraria has been added, and the legal restriction on the amount of an honorarium has

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Thomas S. McF
Assistant Secret
Administration.
January 15, 1981.
Approved: Jan
Patricia Roberts
Secretary.
45 CFR Part
follows:
SUBTITLE A—D
AND HUMAN SE
ADMINISTRATIO
PART 73—STA
Subpart A—Gen
Sec.
73.735-101 Pur
73.735-102 Def
73.735-103 App
Subpart B—Res
73.735-201 Emp
73.735-202 Man
Subpart C—Con
73.735-301 Cou
others.
73.735-302 Sup
73.735-303 Use
73.735-304 Use
73.735-305 Con
73.735-306 Sex
73.735-307 Use
Subpart D—Fin
73.735-401 Gen
Subpart E—Gift
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73.735-501 Pro
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been reflected. Approval requirements for certain kinds of outside activities have been included in this subpart for ease of administration.

The subparts on financial interests and reporting financial interests, Subparts H and I respectively, have been expanded to include provisions on negotiating for future employment, to add requirements of the Ethics in Government Act of 1978, and to provide clarifying information on the various provisions related to conflicts of interest.

Subpart M has been added to cover the reporting of violations and to state the prohibition of reprisal against an employee who reports a violation of law or regulations.

Subpart N incorporates the regulations of the Office of Government Ethics on post employment conflicts of interest.

The Secretary has determined that these regulations relate solely to Department management and personnel and are exempt from the requirement for publication as proposed rules 5 U.S.C. 553(a)(2).

Thomas S. McFee,

Assistant Secretary for Personnel Administration.

January 15, 1981.

Approved: January 16, 1981.

Patricia Roberts Harris,

Secretary.

45 CFR Part 73 is revised to read as follows:

SUBTITLE A—DEPARTMENT OF HEALTH AND HUMAN SERVICES, GENERAL ADMINISTRATION

PART 73—STANDARDS OF CONDUCT

Subpart A—General Provisions

Sec.
73.735–101 Purpose.
73.735–102 Definitions.
73.735–103 Applicability.

Subpart B—Responsibilities

73.735–201 Employees and supervisors.
73.735–202 Management officials.

Subpart C—Conduct on the Job

73.735–301 Courtesy and consideration for others.
73.735–302 Support of department programs.
73.735–303 Use of government funds.
73.735–304 Use of government property.
73.735–305 Conduct in Federal buildings.
73.735–306 Sexual harassment.
73.735–307 Use of official information.

Subpart D—Financial Obligations

73.735–401 General provisions.

Subpart E—Gifts, Entertainment, and Favors

73.735–501 Prohibited acceptance of gifts, entertainment, and favors.
73.735–502 Permissible acceptance of gifts, entertainment, and favors.
73.735–503 Criminal provisions relating to gifts, entertainment, and favors.
73.735–504 Gifts to official superiors.
73.735–505 Acceptance of awards and prizes.
73.735–506 Gifts and decorations from foreign governments.
73.735–507 Acceptance of travel and subsistence.
73.735–508 Other prohibitions.

Subpart F—Political Activity

73.735–601 Applicability.
73.735–602 Permissible activities.
73.735–603 Prohibited activities.

Subpart G—Outside activities

73.735–701 General provisions.
73.735–702 Criminal prohibitions on outside activities.
73.735–703 Statutory prohibitions related to employment by a foreign government.
73.735–704 Professional and consultative services.
73.735–705 Writing and editing.
73.735–706 Teaching, lecturing, and speechmaking.
73.735–707 Holding office in professional societies.
73.735–708 Administrative approval of certain outside activities.
73.735–709 Annual reporting of outside activities.
73.735–710 Maintenance of records.

Subpart H—Financial Interest

73.735–801 Participation in matters affecting a personal financial interest.
73.735–802 Executive order prohibitions.
73.735–803 Prohibition against involvement in financial transactions based on information obtained through Federal employment.
73.735–804 Waiver of the prohibitions in this subpart.
73.735–805 Advice and guidance on conflicts matters.
73.735–806 Documentation and publication of opinions.

Subpart I—Reporting Financial Interests

73.735–901 Reporting requirement of the ethics in Government Act of 1978.
73.735–902 Reporting requirements for certain employees not covered by the Ethics in Government Act of 1978.
73.735–903 Action if conflicts of interest or possible conflicts are noted.
73.735–904 Resolution of apparent or actual conflicts of interest.

Subpart J—Provisions Relating to Experts, Consultants and Advisory Committee Members

73.735–1001 Coverage.
73.735–1002 Ethical standards of conduct.
73.735–1003 Conflicts of interest statutes.
73.735–1004 Requesting waivers or exemptions.
73.735–1005 Salary from two sources.
73.735–1006 Reporting financial interests.
73.735–1007 Political activity.

Subpart K—Special Government Employees Other Than Consultants

73.735–1101 General provision.

Subpart L—Disciplinary Action

73.735–1201 General provisions.

Subpart M—Reporting Violations

73.735–1301 Responsibility for reporting possible criminal violations.
73.735–1302 Responsibility for reporting allegations of misconduct.
73.735–1303 Prohibition of reprisals.
73.735–1304 Referral of Matters arising under the standards of this part.

Subpart N—Conduct and Responsibilities of Former Employees

73.735–1401 Prohibitions against post-employment conflicts of interest.

Authority: 5 USC 7301; E.O. 11222, May 8, 1965; 5 CFR 735.104.

Subpart A—General Provisions

§ 73.735–101 Purpose.

To assure that the business of the Department of Health and Human Services (HHS) is conducted effectively, objectively, and without improper influence or the appearance of improper influence, employees and special Government employees must be persons of integrity and must observe high standards of honesty, impartiality, and behavior. They must not engage in any conduct prejudicial to the Government and must avoid conflicts of private interests with public duties and responsibilities. In accord with these principles, the regulations in this Part are issued to inform HHS employees and special Government employees what standards of conduct are expected of them in performing their duties and what activities are permitted or prohibited both while they are employed and after their employment with the Department is ended.

§ 73.735–102 Definitions.

In this part:

(a) "Employee" means an officer or employee of HHS other than a special Government employee and includes Commissioned Officers of the Public Health Service who are on active duty, and individuals on assignment or detail to HHS pursuant to the Intergovernmental Personnel Act (5 U.S.C. 3371–3376). The term also includes HHS employees who are detailed to non-Federal or other Federal organizations. At times the term "regular employee" is used in place of "employee" to make a clear distinction between special Government employees and others employed by the Federal government.

(b) "Special Government employee" means an individual who is retained,

designated, appointed, or employed to perform temporary duties either on a full-time or intermittent basis, with or without compensation, for not to exceed 130 days during any period of 365 consecutive days.

(c) "Person" means an individual, a corporation, a company, an association, a firm, a partnership or any other organization.

(d) "Former employee" means a former employee of HHS or former special Government employee as defined in paragraph (b) of this section.

(e) "Principal Operating Component" has the meaning given to that term in the Department's General Administration Manual. In addition, when used in these regulations, it includes the Office of the Secretary.

(f) "Department" means the Department of Health and Human Services.

§ 73.735–103 Applicability.

(a) The regulations in this Part apply to all employees of the Department and to special Government employees to the extent indicated in Subparts J and K. They apply whether an employee is on leave, including leave without pay, or on duty.

(b) These regulations may be supplemented by regulations governing principal operating components, or sub-units of principal operating components, provided the clearance and publication requirements for standards of conduct regulations are met and approval is obtained from the Department Ethics Counselor and the Assistant Secretary for Personnel Administration.

Subpart B—Responsibilities

§ 73.735 Employees and supervisors.

(a) Employees and special Government employees shall be responsible for observing all generally accepted rules of conduct and the specific provisions of law and the regulations of this Part that apply to them. They are required to become familiar with these regulations and to exercise informed judgments to avoid misconduct or conflicts of interest. They shall secure approvals when required and file financial disclosure reports or statements in accordance with the provisions of this Part. Failure to observe any of these regulations may be cause for disciplinary action. Some of the provisions are required by law and carry criminal penalties which are in addition to any disciplinary action which could be taken. When employees have doubts about any provision, they should consult their supervisor, personnel office, or the Department Ethics Counselor or a deputy counselor.

(b) Supervisors, because of their day-to-day relationships with employees, are responsible to a large degree for making sure high standards of conduct are maintained. They must become familiar with the Department's standards of conduct regulations and apply the standards to the work they do and supervise. Supervisors shall take suitable action, including disciplinary action in accordance with Subpart L of these regulations, when violations occur.

§ 73.735–202 Management officials.

(a) The Department has an obligation to enforce the requirements of this Part in all respects and to help employees, special Government employees, and supervisors carry out their responsibilities to maintain high standards of ethical conduct. This includes an obligation for managers to provide information and training concerning the HHS conduct regulations, to provide advice and guidance with respect to them, and to review for possible conflicts of interest certain outside activities and financial interests of employees. The officials responsible for discharging the Department's oligations in this regard are identified in paragraphs (b) through (f) of this section.

(b) Department Ethics Counselor. The Assistant General Counsel, Business and Administrative Law Division, shall be the Department Ethics Counselor and shall serve as the Designated Agency Official for matters arising under the Ethics in Government Act of 1978, (Pub. Law 95–521). The responsibilities of the Department Ethics Counselor shall include:

(1) Rendering authoritative advice and guidance on matters of general applicability under the standards of this Part and all other laws and regulations governing employee conduct, with particular reference to conflicts of interest matters.

(2) Coordinating the Department's counselling and training services regarding conflicts of interest and assuring that employees of the Department are kept informed of developments in conflict of interest laws and other related matters of ethics.

(3) Receiving information on conflicts of interest and appearances of conflicts of interest involving employees of the Department and forwarding this information to the appropriate management official, or the Inspector General, as necessary, with his or her legal evaluation of the matters addressed.

(4) Reviewing the financial disclosure reports, requests for approval of outside activities, and similar reports filed by Executive level officers, non-career executives, deputy ethics counselors, and Schedule C employees in the Office of the Secretary for the purpose of identifying and resolving possible and actual conflicts of interest.

(5) Maintaining liaison with the Office of Government Ethics.

(6) Advising management officials on the resolution of conflicts of interest by any of the remedies set forth in 73.735–904 of this Part.

(7) Maintaining accurate and complete documentation of all formal guidance and advice regarding conflict of interest matters subject to the provisions of this Part, except for routine or repetitious cases where the guidance given is not precedential.

(8) Maintaining and publishing from time to time a list of those circumstances or situations which have resulted or may result in noncompliance with conflict of interest laws or regulations. [Section 208(b)(7), Pub. L. 95–521].

(9) Designating and training an appropriate number of reviewing officials to assist him or her in carrying out the duties of the Designated Agency Offical under the Ethics in Government Act.

(10) Maintaining effective lines of communication with deputy ethics counselors on all matters regarding employee conduct and ethics.

(c) Deputy Ethics Counselors. Assistant General Counsels and Regional Attorneys are designated deputy ethics counselors to assist the Department's Counselor in carrying out his or her responsibilities, particularly with respect to employees in the organization in which the deputy counselor serves. Regional Attorneys shall provide such assistance for all employees of the Department in organizations for which the Principal Regional Official provides personnel services.

(d) The Assistant Secretary for Personnel Administration shall be responsible for developing and issuing procedures and requirements for the implementation of these regulations and for monitoring the application of such procedures and requirements throughout the Department.

(e) Heads of Principal Operating Components and the Assistant Secretary for Management and Budget for the Office of the Secretary shall be ultimately responsible for assuring that persons who work for their respective organizations comply with the standards

of this Part. Their responsibilities shall include:

(1) Designating officials to review and approve outside activity requests in accordance with § 73.735–708 of this Part or statements of employment or financial interests under § 73.735–902. A list of the officials designated for these purposes shall be provided to the Department Ethics Counselor and to the Assistant Secretary for Personnel Administration and shall be updated in January and July of each year.

(2) Designating for the components of his or her organization, other than those for which a principal regional official provides personnel services, one or more individuals to oversee and coordinate the administrative aspects of these regulations. Responsibilities of such a person include making sure each employee or special government employee is provided a copy of these regulations, or an appropriate summary thereof; ensuring that training in the requirements of the regulations is provided to supervisors and to new employees; providing for the distribution, receipt, review and retention of financial interest reports and statements as directed by the Department Ethics Counselor and the Assistant Secretary for Personnel Administration; sending annual reminders as required; providing for a file of outside work requests; giving information and assistance to employees on a day-to-day basis; and making available to employees the names and addresses of the Department's Ethics Counselor and deputy ethics counselors.

(f) Principal Regional Officials (PROs) shall designate one or more regional employees to perform, for components for which personnel services are provided by the PROs, the responsibilities in (e)(2) of this section.

Subpart C—Conduct on the Job

§ 73.735–301 Courtesy and consideration for others.

(a) An employee's conduct on the job is, in all respects, of concern to the Federal government. Courtesy, consideration, and promptness in dealing with the public must be shown in carrying out official responsibilities, and actions which deny the dignity of individuals or conduct which is disrespectful to others must be avoided. Employees must recognize that inattention to matters of common courtesy can adversely affect the quality of service the Department is responsible for providing. Where appropriate, courtesy to the public should be included in the standards for employee performance.

(b) Of equal importance is the requirement that courtesy be shown in day-by-day interaction with co-workers. Employees shall be polite to and considerate of other employees, and shall respect their needs and concerns in the work environment.

§ 73.735–302 Support of department programs.

(a) When a Department program is based on law, Executive Order or regulation, every employee has a positive obligation to make it function as efficiently and economically as possible and to support it as long as it is a part of recognized public policy. An employee may, therefore, properly make an address explaining and interpreting such a program, citing its achievements, defending it against uninformed or unjust criticism, or soliciting views for improving it.

(b) An employee shall not, either directly or indirectly, use appropriated funds to influence, or attempt to influence, a Member of Congress to favor or oppose legislation. However, when authorized by his or her supervisor, an employee is not prohibited from:

(1) Testifying, on request, as a representative of the Department on pending legislation or proposals before Congressional Committees; or

(2) Assisting Congressional Committees in drafting bills or reports on request, when it is clear that the employee is serving solely as a technical expert under the direction of committee leadership.

(c) All employees shall be familiar with regulations and published instructions that relate to their official duties and responsibilities and shall comply with those directives. This includes carrying out proper orders from officials authorized to give them.

(d) Employees are required to assist the Inspector General and other investigative officials in the performance of their duties or functions. This requirement includes the giving of statements or evidence to investigators of the Inspector General's office or other HHS investigators authorized to conduct investigations into potential violations.

§ 73.735–303 Use of government funds.

(a) An employee shall not:

(1) Improperly use official travel;

(2) Improperly use payroll and other vouchers and documents on which Government payments are based;

(3) Take or fail to account for funds with which the employee is entrusted in his or her official position; or

(4) Take other Government funds for personal use. Violation of these prohibitions carry criminal penalties.

(b) In addition, employees shall avoid wasteful actions or behavior in the performance of their assigned duties.

§ 73.735–304 Use of Government property.

(a) An employee shall not directly or indirectly use, or allow the use of, Government property of any kind, including property leased to the Government, for other than officially approved activities. An Employee has a positive duty to protect and conserve Government property, including equipment, supplies, and other property entrusted or issued to him or her. For example:

(1) Only official documents and materials may be processed on Government reproduction facilities. Both supervisors and employees must assure that this rule is strictly followed. (Exception for employee welfare and recreation associations is stated in Chapter 25–10, General Administration Manual. Exception for labor organizations is stated in Personnel Instruction 711–1.)"

(2) Employees may drive or use Government automobiles or aircraft only on official business. Use of a Government owned, leased, or rented vehicle or aircraft for non-official purposes may result in suspension for at least 30 days or removal from the Federal service. 31 U.S.C. 638a.

Example: Normally, use of a Government automobile by travel between home and place of duty would not be considered official business and could not be authorized. An exception to this rule might be appropriate in a situation where an employee is required to leave early in the morning to attend a meeting in a distant city, or to return late in the day from such a meeting. Allowing the employee to drive a government car to his or her home the night before in order to leave from home, or to return to his or her home in the evening upon completion of the trip is permissible, provided the employee does not use the car for any personal reason.

§ 73.735–305 Conduct in Federal buildings.

(a) An employee shall not participate while on Government-owned or leased property or while on duty for the Government, in any gambling activity including the operation of a gambling device, in conducting a lottery or pool, in a game for money or property, or in selling or purchasing a numbers slip or ticket.

(b) An employee shall not while in or on Government-owned or leased property or while on duty for the Government solicit alms and contributions, engage in commercial

soliciting and vending, display or distribute commercial advertisements, or collect private debts.

(c) The prohibitions in (a) and (b) of this section do not preclude:

(1) Activities necessitated by an employee's law enforcement duties;

(2) Participation in Federally sponsored fund-raising activities conducted pursuant to Executive Order 10927, or similar HHS-approved activities; or

(3) Buying a lottery ticket at an authorized State lottery outlet for a lottery authorized by State law and conducted by an agency of a State within that State.

(d) General Services Administration regulations on "Conduct on Federal Property" apply to all property under the control of the General Services Administration, and they are also applicable to all buildings and space under the control of this Department. These regulations prohibit, among other things, gambling, being intoxicated, and possession, distribution, or use of narcotic or dangerous drugs on the premises. The GSA regulations are found in Subpart 101–20.3 of the GSA Regulations, 41 CFR 101–20.3.

§ 73.735–306 Sexual harassment.

Sexual harassment is deliberate unsolicited verbal comments, gestures, or physical contact of a sexual nature which are unwelcome. Sexual harassment is unacceptable conduct and is expressly prohibited. In addition, supervisors and managers are prohibited from taking or promising personnel actions in exchange for sexual favors, or failing to take an action because an employee or applicant for employment, refuses to engage in sexual conduct. This same prohibition applies to relationships between Department personnel who take or recommend action on a grant or contract and the grantee or contractor. Those employees who wish to file a complaint of sexual harassment should contact the Office of Equal Employment Opportunity (EEO) within their respective agencies for guidance. (Timeframes for pursuing a charge alleging sexual harassment are the same as for any other complaint based on allegations of sex discrimination.)

§ 73.735–307 Use of official information.

(a) The public interest requires that certain information in the possession of the Government be kept confidential, and released only with general or specific authority under Department or operating component regulations. Such information may involve the national security or be private, personal, or business information which has been furnished to the Government in confidence. In addition, information in the possession of the Government and not generally available may not be used for private gain. The following paragraphs set forth the rules to be followed by Department employees in handling information in official files or documents:

(1) *Classified information.* Employees who have access to information which is classified for security reasons in accordance with Executive Order 12065 are responsible for its custody and safekeeping, and for assuring that it is not disclosed to unauthorized persons. See the Department's Security Manual, Part 3 for details.

(2) *Security and investigative information.* Security and investigative data received from Government agencies or other sources for official use only within the Department or developed under a pledge of confidence is not to be divulged to unauthorized persons or agencies.

(3) *Information obtained in confidence.* Certain Department units (e.g., Food and Drug Administration, and the Social Security Administration) obtain in the course of their program activities certain information from businesses or individuals which they are forbidden by law from disclosing. These statutory prohibitions are found in 21 U.S.C. 331j, and 18 U.S.C. 1905. Each employee is responsible for observing these laws.

(4) *Use of information for private gain.* Government employees are sometimes able to obtain information about some action the Government is about to take or some other matter which is not generally known. Information of this kind shall not be used by the employee to further his or her or someone else's private financial or other interests. Such a use of official information is clearly a violation of a public trust. Employees shall not, directly or indirectly, make use of, or permit others to make use of, for the purpose of furthering any private interest, official information not made available to the general public.

(b) The Privacy Act provides criminal penalties for an employee who willfully discloses individually identifiable information from records, disclosure of which is prohibited by that Act. 5 U.S.C. 552a(i).

Subpart D—Financial Obligations

§ 73.735–401 General provisions.

(a) The Department considers the indebtedness of its employees to be a matter of their own concern. However, employees shall not by failure to meet their just financial obligations reflect adversely on the Government as their employer. Employees are expected to pay each just financial obligation in a proper and timely manner. A "just financial obligation" is one acknowledged by the employee or reduced to judgment by a court, or one imposed by law such as Federal, State, or local taxes. "In a proper and timely manner" is a manner which the Department determines does not, under the circumstances, reflect adversely on the part of an employee in meeting his or her financial obligations, particularly those that relate to support of the employee's family, to payment of Federal, State, or local taxes, or to payments to tax-supported institutions such as a city or state hospital, or educational institution. If for some reason an employee is unable to pay these obligations promptly, he or she is expected to make satisfactory arrangements for payment and abide by these arrangements.

(b) Disciplinary action may be considered when an employee has handled his or her financial affairs in such a way that:

(1) Action on complaints received from creditors requires the use of a considerable amount of official time, or

(2) It appears that financial difficulties are impairing the employee's efficiency on the job, or

(3) Because of the employee's financial irresponsibility, the attitude of the general public toward the Department may be adversely affected; and the employee after counseling does not make arrangements to meet his or her financial obligations.

Subpart E—Gifts, Entertainment, and Favors

§ 73.735–501 Prohibited acceptance of gifts, entertainment, and favors.

(a) Except as provided in 73.735–502 and 73.735–506, an employee shall not directly or indirectly solicit or accept anything of monetary value, including gifts, gratuities, favors, entertainment or loans from a person who the employee knows, or should know because of the nature of the employee's work:

(1) Has, or is seeking to obtain, contractual or other business or financial relations with the employee's principal operating component, or sub-unit thereof; or with a component of the Department with respect to which the employee has official duties;

(2) Conducts operations or activities that are regulated by the employee's principal operating component, or sub-unit thereof or by a component of the

Department with respect to which the employee has official duties; or

(3) Has interests that may be substantially affected by the performance or non-performance of the employee's official duties.

(b) Employees may not designate a person or an organization, including charitable or non-profit organizations, to accept any gift which an employee is prohibited from accepting directly.

§ 73.735–502 Permissible acceptance of gifts, entertainment and favors.

(a) An employee may accept a gift, gratuity, favor, entertainment, loan or similar favor of monetary value which stems from a family relationship such as that between the employee and his or her parents, spouse or children, if it is clear that the relationship is the motivating factor.

(b) Loans from banks or other financial institutions may be accepted on customary terms.

(c) Unsolicited advertising or promotional material such as pens, note pads, calendars and similar items of nominal intrinsic value may be accepted.

(d) An employee may accept food or refreshment of nominal value on infrequent occasions in the ordinary course of a luncheon or dinner meeting or on an inspection tour only if the employee is properly in attendance and there is not a reasonable opportunity to pay.

Example 1: Employee is on the premises of Company participating in a meeting at a normal mealtime. A representative of Company provides a meal for all meeting participants from a Company facility and there is no established method for payment. Employee may accept.

Example 2: Employee is on the premises of Company and he or she goes outside for lunch with a representative of the Company. The representative offers to pay the bill. Since it is practical for the employee to pay for his or her own meal, the employee may not accept.

(e) An employee may also accept food or refreshment of nominal value on infrequent occasions if the food and/or refreshment is offered to all participants or attendees of a meeting or convention.

Example 1: During the course of a convention of a professional organization a luncheon open to all attendees is sponsored by a corporation which conducts business with the Department and the employee has official dealings with representatives of the corporation. The employee may attend the luncheon.

§ 73.735–503 Criminal provisions relating to gifts, entertainment, and favors.

(a) The law provides criminal penalties for whoever, directly or indirectly:

(1) Receives or accepts anything of value for or because of any official act the employee has performed or will perform; or

(2) Gives, offers or promises anything of value for the performance of an official act or to influence the performance of an official act. 18 USC 201.

(b) The law prohibits an employee from receiving any salary or any contribution to, or supplementation of, his or her salary as compensation for services as an officer or employee of the Government from any source other than the United States or any state, county or municipality. This law does not prohibit an employee from continuing to participate in a bona fide pension, retirement, group life, health or accident insurance, profit-sharing, stock bonus or other employee welfare or benefit plan maintained by a former employer. 18 U.S.C. 209.

Example 1: A corporate executive is asked to accept a position in the Department. The corporation offers to continue to pay the executive the difference between his or her salary as a Government employee and that received by an employee of the corporation. Such payment would be considered to be "compensation for" the employee's Government service and is prohibited.

Example 2: A corporate executive is asked to accept a position in the Department. The corporation proposes to pay him or her a special severance payment in anticipation of this or her serving in the Government. This proposal would be prohibited because there is no distinction between the proposed lump-sum payment and the prohibited continuation of salary payments described in the example above.

Example 3: A corporate executive is asked to accept a position in the Department. The corporation has an established policy which provides for an amount of severance pay to be paid any departing executive and proposes to make payment based on that policy when the executive leaves. The executive may accept the payment. Under these circumstances it is clear that the severance pay is in payment for past services not in anticipation of the future services for the Government.

§ 73.735–504 Gifts to official superiors.

An employee shall not solicit a contribution from another employee for a gift to an official superior, make a donation as a gift to an official superior, or accept a gift from an employee receiving less pay than himself or herself. 5 U.S.C. 7351. This section does not prohibit a voluntary gift of nominal value or donation in nominal amount made on a special occasion such as marriage, illness or retirement.

§ 73.735–505 Acceptance of awards and prizes.

(a) Employees may accept awards, including cash awards, given in recognition of a meritorious public contribution or achievement. However, if there is any indication that the award may improperly influence the employee in the performance of his or her offical duties, advice about the acceptance of it should be sought from a deputy ethics counselor. Also, an employee may not accept an award from an organization which the employee knows, or should know, has a contractual or other business arrangement with, or is regulated by, the principal operating component, or a sub-unit, in which he or she is employed or with respect to which the employee has official duties, unless acceptance is approved by the head of the employee's principal operating component. The head of the component may not approve acceptance unless he or she is satisfied that no actual conflict of interest would result.

(b) Employees may generally accept trophies, entertainment, rewards, and prizes given to competitors in contests or events which are open to the public.

(c) Employees may not accept gifts, awards, decorations or other things of value from a foreign government except as provided in § 73.735–506.

§ 73.735–506 Gifts and decorations from foreign governments.

(a) An employee may not request or otherwise encourage the tender of a gift or decorations from a foreign government or official thereof.

(b) An employee may accept from a foreign government:

(1) A gift which is in the nature of medical treatment or an educational scholarship;

(2) A tangible gift of minimal value tendered or received as a mark of courtesy; ("Minimal value" means a retail value in the United States at the time of acceptance of not more than one hundred dollars, unless the Administrator of the General Services Administration adjusts the value by regulation.) or

(3) A tangible gift of more than minimal value when it appears that to refuse the gift would be likely to cause offense or embarrassment or otherwise adversely affect the foreign relations of the United States. However, the acceptance of such a gift would be on behalf of the United States and the gift would become the property of the United States. See the Department's General Administration Manual,

Chapter 20–25 for information regarding the disposition of a gift accepted under these circumstances.

(c) An employee may also accept from a foreign government gifts of travel or expenses for travel (such as transportation, food and lodging) that take place entirely outside the United States and are of more than minimal value, if such acceptance is consistent with the interests of the United States and is approved by the travel approving authority in accordance with the Department's Travel Manual. See General Administration Manual, Chapter 20–25 for a requirement to report such travel.

(d) An employee may accept, retain, and wear a decoration tendered in recognition of active field service in time of combat operations or awarded for other outstanding or unusually meritorious performance, subject to the approval of the Secretary or his or her designee.

(e) Members of an employee's family and household are also subject to the regulations in this section. A member of an employee's family and household is a relative by blood, marriage or adoption who is a resident of the household. However, if a member of an employee's family and household is employed by another agency of the Government, the offer or acceptance of a gift shall be treated under the regulations of that agency.

(f) For purposes of this section "foreign government" means:

(1) Any unit of foreign government authority including any foreign national, state, local and municipal government;

(2) Any international or multinational organization whose membership is composed of any unit of foreign government described in subparagraph (1); or

(3) Any agent or representative of any such unit or organization when acting as such agent or representative. (5 U.S.C. 7342)

§ 73.735–507 Acceptance of travel and subsistence

(a) Except as provided in (b) of this section, employees may accept accommodations, subsistence, and travel in cash or in kind in connection with official travel for attendance at meetings, conferences, training in non-Governmental facilities or for performing advisory services, if approved in accordance with the provisions of the HHS Travel Manual. (5 U.S.C. 4111; 42 U.S.C. 3508)

(b) Employees may not accept accommodations, subsistence, or travel in cash or in kind in connection with official travel from a non-Governmental source with which they have official dealings unless Government or commercial travel and/or accommodations are not available. If travel and/or subsistence is accepted for official travel under these circumstances, such acceptance and the basis for it must be reported in writing to the Head of the Principal Operating Component or Assistant Secretary for Management and Budget for the Office of the Secretary.

§ 73.735–508 Other prohibitions.

Employees shall avoid any action whether or not specifically prohibited by this Part, which might result in or create the appearance of:

(a) Using public office for private gain;

(b) Giving preferential treatment to any person;

(c) Impeding Government efficiency or economy;

(d) Losing complete independence or impartiality in the performance of their Government duties;

(e) Making a Government decision outside official channels; or

(f) Affecting adversely the confidence of the public in the integrity of the Government.

Subpart F—Political Activity

§ 73.735–601 Applicability.

(a) All employees in the Executive Branch of the Federal Government, including non-career employees, are subject to basic political activity restrictions in subchapter III of Chapter 73 of title 5, United States Code (the former Hatch Act) and Civil Service Rule IV. Employees are individually responsible for refraining from prohibited political activity. Ignorance of a prohibition does not excuse a violation. This subpart summarizes provisions of law and regulation concerning political activity of employees. The Federal Personnel Manual and other publications of the Office of Personnel Management contain more detailed information on this subject. These may be reviewed in Department personnel offices, or will be made available by the Ethics Counselor, or the deputy counselor for the employee's organizational component.

(b) The Secretary and Under Secretary are exempt from the prohibitions concerning active participation in political management and political campaigns. Also exempt are other officials of the Department, except the Inspector General and Deputy Inspector General, who are appointed by the President by and with the advice and consent of the Senate, and who determine policies to be pursued by the United States in the nationwide administration of Federal laws.

(c) Intermittent employees are subject to the restrictions when in active duty status only and for the entire 24 hours of any day of actual employment.

(d) Employees on leave, on leave without pay, or on furlough even though an employee's resignation has been accepted, are subject to the restrictions. Separated employees who have received a lump-sum payment for annual leave are not subject to the restriction during the period covered by the lump-sum payment or thereafter, provided they do not return to Federal employment during that period. Employees are not permitted to take a leave of absence to work with a political candidate, committee, or organization or to become a candidate for office with the understanding that they will resign their position if nominated or elected.

(e) Employees are accountable for political activity by another person acting as their agent or under the employee's direction or control, if they are thus accomplishing indirectly what they may not lawfully do directly and openly.

(f) Though officers in the Public Health Service Commissioned Corps are not subject to the restrictions in subchapter III of Chapter 73 of title 5, United States Code, the provisions of this subpart apply to them.

§ 73.735–602 Permissible activities.

(a) Section 7324 of title 5, U.S.C. provides that employees have the right to vote as they please and to express their opinions on political subjects and candidates. Generally, however, employees are prohibited from taking an active part in political management or political campaigns or using official authority or influence to interfere with an election or affect its results. There are some exemptions from the restrictions of the statute:

(1) Employees may engage in political activity in connection with any question not specifically identified with a national or State political party. They also may engage in political activity in connection with an election, if none of the candidates represents a party any of whose candidates for presidential elector received votes at the last preceding election at which presidential electors were selected.

(2) An exception relates to political campaigns within, or in communities adjacent to, the District of Columbia, or in communities the majority of whose voters are employees of the Federal government. Communities to which the exception applies are specifically

designated by the Office of Personnel Management. Information regarding the localities and the conditions under which the exceptions are granted may be obtained from personnel offices or the Department Counselor or deputy counselors.

(b) A covered employee is permitted to:

(1) Register and vote in any election;

(2) Express his or her opinion as an individual citizen privately and publicly on political subjects and candidates;

(3) Display a political picture, sticker, badge or button;

(4) Participate in the nonpartisan activities of a civic, community, social, labor, or professional organization, or of a similar organization;

(5) Be a member of a political party or other political organization and participate in its activities to the extent consistent with law;

(6) Attend a political convention, rally, fund raising function; or other political gathering;

(7) Sign a political petition as an individual citizen;

(8) Make a financial contribution to a political party organization;

(9) Take an active part, as an independent candidate, or support of an independent candidate, in a partisan election in localities identified as permissible for such activities by the Office of Personnel Management;

(10) Take an active part, as a candidate or in support of a candidate, in a nonpartisan election;

(11) Be politically active in connection with a question which is not specifically identified with a political party, such as a constitutional amendment, referendum, approval of a municipal ordinance or any other question or issue of a similar character;

(12) Serve as an election judge or clerk, or in a similar position to perform nonpartisan duties as prescribed by State or local law; and

(13) Otherwise participate fully in public affairs, except as prohibited by law, in a manner which does not materially compromise his or her efficiency or integrity as an employee or the neutrality, efficiency, or integrity of his or her agency.

(c) The head of a principal operating component may prohibit or limit the participation of an employee or class of employees of his or her component in an activity permitted by paragraph (b) of this section, if participation in the activity would interfere with the efficient performance of official duties, or create a conflict or apparent conflict of interest.

§ 73.735-803 Prohibited activities.

(a) The following are prohibited activities:

(1) Serving as an officer of a political party, a member of a national, State or local committee of a political party, an officer or member of a committee of a partisan political club, or being a candidate for any of these positions;

(2) Organizing or reorganizing a political party organization or political club;

(3) Directly or indirectly soliciting, receiving, collecting, handling, disbursing, or accounting for assessments, contributions, or other funds for a partisan political purpose or in connection with a partisan election;

(4) Organizing, selling tickets to, seeking support for, or actively participating in a fund-raising activity of, a political party or political club;

(5) Taking an active part in managing the political party campaign of a candidate for public office or political office;

(6) Being a candidate for, or campaigning for, an elective public office, except as permitted in section 73.735-802(b)(9);

(7) Taking an active part in an organized solicitation of votes in support of or in opposition to a candidate for public office or political party office;

(8) Acting as recorder, watcher, challenger, or similar officer at the polls on behalf of a political party or candidate in a partisan election;

(9) Driving voters to the polls on behalf of a political paty or a candidate in a partisan election;

(10) Endorsing or opposing a candidate in a partisan election in a political advertisement, a broadcast, campaign literature, or similar material;

(11) Serving as a delegate, alternate, or proxy to a political party convention;

(12) Addressing a State or national convention or caucus, or a rally or similar gathering of a political party, in support of or in opposition to a candidate for public or political party office, or on a partisan political question; and

(13) Initiating or circulating a nominating petition for a candidate in a partisan election.

(b) In addition, certain political activities are prohibited by Federal criminal law:

(1) Officers and employees may not directly or indirectly solicit or receive, or be in any way involved in soliciting or receiving, any assessment, subscription or contribution for any political purpose whatever from another officer or employee. This prohibition extends to one who acts as a mere agent or messenger for the purpose of turning the contribution over to a political organization. 18 U.S.C. 602.

(2) All persons, whether employees or not, are prohibited from soliciting in any manner, or receiving a contribution of, money or a thing of value, in any room or building occupied in the discharge of official duties by any officer or employee of the United States. 18 U.S.C. 603. This prohibition extends to the sending of a letter soliciting political contributions for delivery in a Government building.

(3) No officer or employee may directly or indirectly give to any other officer, employee or person in the service of the United States, any money or other thing of value to be applied to the promotion of any political objective. 18 U.S.C. 607.

(4) Discrimination for giving or withholding any contribution for any political purpose and discrimination based on political influence or recommendations is prohibited.

(c) Various other laws prohibit certain activities in connection with political campaigns and elections. They include:

(1) Intimidating, threatening, or coercing voters in Federal elections (18 U.S.C. 594).

(2) Using official authority in interfering with a Federal election by a person employed in any administrative position by the United States or by any department, independent establishment, or agency of the United States or by any State, agency, or political subdivision thereof in connection with any activity financed in whole or in part by Federal funds (18 U.S.C. 595).

(3) Promising Federal employment, compensation, or any benefit from Federal funds, in return for political activity or support (18 U.S.C. 600).

(4) Depriving anyone of employment, compensation, or any benefit derived from Federal relief or work relief funds on account of race, creed, color, or political activity (18 U.S.C. 601).

(5) Soliciting, assessing, or receiving subscriptions or contributions for political purpose from anyone on Federal relief or work relief (18 U.S.C. 604).

Subpart G—Outside Activities

§ 73.735-701. General provisions.

(a) Outside employment may be appropriate when it will not adversely affect performance of an employee's official duties and will not reflect discredit on the Government or the Department. Such work may include civic, charitable, religious, and community undertakings. There are certain types of outside work, however, which give rise to a real or apparent

conflict of interest. Some of these are prohibited by law. Others are prohibited by regulation, as discussed in paragraph (b) of this section, or by criteria developed by heads of operating components for application within a particular component. All of these provisions are binding, but they do not necessarily include all possible conflicts of interest. In all instances, good judgment must be used to avoid a conflict between an employee's Federal responsibilities and outside activities.

(b) An employee shall not engage in outside employment or other outside activity not compatible with the full and proper discharge of the duties and responsibilities of his or her Government employment whether or not in violation of any specific provision of law. Incompatible activities include, but are not limited to:

(1) Acceptance of a fee, compensation, gift, payment of expense, or any other thing of monetary value in any circumstances in which acceptance may result in, or create the appearance of, conflicts of interest;

(2) Outside employment which tends to impair the employee's mental or physical capacity to perform Government duties and responsibilities in an acceptable manner;

(3) Work which identifies the Department or any employee in his or her official capacity with any organization commercializing products relating to work conducted by the Department, or with any commercial advertising matter, or work performed under such circumstances as to give the impression that it is an official act of the Department or represents an official point of view;

(4) Outside work or activity that takes the employee's time and attention during his official work hours.

(c) An employee shall not receive any salary or anything of monetary value from a private source as compensation for services to the Government. For example, a Department employee may be called upon, as a part of his or her official duties, to participate in a professional meeting sponsored by a non-Government organization, or to contribute a paper or other writing prepared on official time for publication under non-Government auspices. The employee must not accept an honorarium or fee for such services, even though the organization accepting the service customarily makes such a payment to those who participate. Nor may the employee accept a contribution to some charity, educational institution, or the like, in appreciation of the services furnished by the Department employee who cannot accept the usual payment. All offers to make such a contribution must be refused. Any employee with whom such a question is raised shall explain that the service involved was provided as an official action of the Department and is authorized by law. Under these circumstances, it is inappropriate for any payment to be made, even indirectly and to a third party, for services which are furnished without charge by the Government.

(d) Other than as provided in (c) of this section, employees may receive compensation or other things of monetary value for any lecture, discussion, writing or appearance the subject matter of which is in part devoted to the responsibility, programs or operations of the Department so long as the activity is undertaken in a personal capacity, is not performed as official duty, is not done while on official time, and does not create a conflict of interest or appearance of conflict of interest. However, such activities are considered outside employment and may be undertaken only as provided in this subpart.

(e) This section does not restrict the acceptance of compensation or other things of monetary value for any lecture, discussion, writing or appearance, the subject matter of which is not devoted to the responsibilities, programs, or operations of the Department and which are undertaken in a private capacity and in accordance with §§ 73.735.704, 705, or 706.

(f) Federal law limits the amount of honorarium that may be paid any employee for any one speech, writing or appearance to $2,000.00 (not to include amounts for actual travel and subsistence expenses for the employee and his or her spouse) and an aggregate of $25,000.00 in any calendar year. This limitation applies to such activities whether or not the subject matter is related to the responsibilities, programs or operations of the Department. (2 U.S.C. 441i) The term "honorarium" means payment of money or other thing of value whether made gratuitously or as a fee for an appearance, speech or article but does not include salary or compensation made for services rendered on a continuing basis, such as for teaching, or as proceeds from the sale of a book or similar undertaking.

(g) An employee who is a Presidential appointee covered by section 401(a) of Executive Order 11222 shall not receive compensation or anything of monetary value for any consultation, lecture, discussion, writing or appearance, the subject matter of which is devoted substantially to the responsibilities, programs, or operations of his or her component, or which draws substantially on official data or ideas which have not or will not on request become public information.

(h) Application of these general provisions to some specific activities is discussed below.

§ 73.735-702. Criminal prohibitions on outside activities.

(a) An employee may not, with or without compensation, represent another before any Government agency, court or commission in connection with any proceeding, application, request for a ruling, contract, claim or other particular matter in which the United States is a party or has a direct and substantial interest. (18 U.S.C. 203 and 205)

(b) An employee may not act as agent or attorney for anyone else in prosecuting any claim against the United States (18 U.S.C. 205).

(c) As an exception to the above, if it is not inconsistent with the performance of his or her duties, an employee may act without compensation as an agent or attorney for another employee, or a person under active consideration for Federal employment, who is the subject of disciplinary, loyalty, or other personnel administration proceedings in connection with those proceedings at the administrative level. For example, an employee may represent another employee who is the subject of disciplinary action, or the complainant in a discrimination proceeding, at all stages within the Department and before the Merit Systems Protection Board or Equal Employment Opportunity Commission but not in Federal Court. It would be inconsistent with the performance of official duties for a supervisor to represent subordinate employees.

(d) The law and these regulations do not prohibit an employee from acting, with or without compensation, as agent or attorney for his or her parents, spouse, child or any person for whom, or estate for which, he or she is acting as fiduciary provided that the head of the principal operating component or his or her designee approve. Such approval, if granted, must be granted in accordance with the procedures for approval of outside activity. However, the employee may not do so if the particular matter is one in which he or she has participated personally and substantially or which is his or her official responsibility. (18 U.S.C. 205).

§ 73.735–703 Statutory prohibitions related to employment by a foreign government.

Employees, including officers in the Public Health Service (PHS) Commissioned Corps and retired officers of the Regular Commissioned Corps of the PHS, may not, without the consent of Congress, be employed by a foreign government or agency of a foreign government (Art. I, Sec. 9, U.S. Const.). Congress has consented to such employment by Reserve Commissioned Officers of the PHS not on active duty and by Retired Regular Commissioned Officers (37 U.S.C. 801, note) if approved under regulations of the Department of State. 22 CFR Part 3a.

§ 73.735–704 Professional and consultative services.

(a) Employees may engage in outside professional or consultative work only after meeting certain conditions. Except as provided in §§ 73.735–705 and 73.735–706 for activities discussed in those sections, the conditions which must be met are:

(1) The work is not to be rendered, with or without compensation, to organizations, institutions, or state or local governments with which the official duties of the employee are directly related, or indirectly related if the indirect relationship is significant enough to cause the existence of conflict or apparent conflict of interest; or

(2) The work is not to be rendered for compensation to help a person, institution, or government unit prepare or aid in the preparation of grant applications, contract proposals, program reports, and other material which are designed to become the subject of dealings between the institutions or government units and the Federal Government. All requests to perform consultative services, either compensated or uncompensated, for institutions or government units which have recently negotiated or may in the near future seek a contract or grant from this Department must be carefully appraised to avoid any conflict or apparent conflict of interest.

(b) Advance administrative approval in accordance with § 73.735–706 of this subpart must be obtained. Such approval is required whether or not the services are for compensation, and whether or not related to the employee's official duties.

(c) For the purpose of this section, "professional and consultative work" is performance of work requiring knowledge of an advanced type in a field of science or learning customarily acquired by a course of specialized instruction and study in an institution of higher education, or hospital which requires the exercise of judgment and discretion in its performance and is primarily intellectual in nature as opposed to manual, mechanical or physical work.

(d) Membership on a Board of Directors, Board of Regents, Board of Trustees, Planning Commission, Advisory Council or Committee, or on any similar body which provides advice, counsel, or consultation, shall be considered outside consultative services for which advance administrative approval is required.

§ 73.735–705 Writing and editing.

(a) Employees are encouraged to engage in outside writing and editing whether or not done for compensation, when such activity is not otherwise prohibited. Such writing and editing, though not a part of official duties, may be on a directly related subject or entirely unrelated. Certain conditions must be met in either case, however, and certain clearances or approvals are prescribed according to the content of the material as set forth in paragraphs (b) through (e) of this section.

(b) Conditions applying to writing and editing done not as a part of official duties.

(1) The following conditions shall apply to all writing and editing whether related or unrelated to the employee's official duties:

(i) Government-financed time or supplies shall not be used by the author or by other Government employees in connection with the activity; and

(ii) Official support must not be expressed or implied in the material itself or advertising or promotional material, including book jackets and covers, relating to the employee and his or her contribution to the publication.

(2) If the writing or editing activity is unrelated to the employee's official duties or other responsibilities and programs of the Federal government, the employee must:

(i) Make no mention of his or her official title or affiliation with the Department, or

(ii) Use his or her official title or affiliation with the Department in a way that will not suggest or convey official endorsement of the work.

(3) If the writing or editing activity is related to the employee's official duties or other responsibilities and programs of the Federal government, the employee must:

(i) Make no mention of his or her official title or affiliation with the Department, or

(ii) Use his or her official title or affiliation with the Department and a disclaimer as provided in paragraph (c) of this section, or

(iii) Submit the material for clearance within the operating component, under procedures established by the component. When clearance is denied at any lower level, the employee shall have recourse for review up to the head of the principal operating component. This clearance will show there are no official objections to the activity and the employee may then use his or her official title or affiliation with the Department usually without a disclaimer.

(c) *Disclaimers.* (1) Except where the requirement for disclaimer is waived as a result of official clearance, disclaimers shall be used in all writing and editing related to the employee's official duties or other responsibilities and programs of the Federal government:

(i) In which the employee identifies himself or herself by official title or affiliation with the Department, or

(ii) When the prominence of the employee or the employee's position might lead the public to associate him or her with the Department, even without identification other than name.

(2) Disclaimers shall read as follows unless a different wording is approved by the Assistant General Counsel, Business and Administrative Law Division, Office of the General Counsel: "This (article, book, etc.) was (written, edited) by (employee's name) in (his or her) private capacity. No official suport or endorsement by (name of operating component or of Department) is intended or should be inferred."

(d) Advance approval. Advance approval is required in accordance with § 73.735–706 of this subpart when one or more of the following conditions apply:

(1) Any Government information is used which is not available on request to persons outside the Government;

(2) Material is written or edited which pertains to subject matter directly related to an employee's official duties; (This includes editing for scientific or professional journals which is related to his or her official duties.)

(3) Material is written or edited which pertains to any Government-sponsored research or other studies for which clinical case records or other material of a confidential nature are used or to which access is limited for persons outside the Government. Such use will not be permitted unless made under safeguards established by the operating component to retain the confidentiality of the material, and such use is determined to be in the public interest.

§ 73.735-706 Teaching, lecturing, and speechmaking.

(a) Employees are encouraged to engage in teaching and lecturing activities which are not part of their official duties when certain conditions are met. These conditions, which apply to outside teaching and lecturing (including giving single addresses such as commencement and Memorial Day speeches) whether or not done for compensation, are:

(1) No Government-financed time, or Government supplies not otherwise available to the public, are used in connection with such activity;

(2) Government travel or per diem funds are not used for the sole purpose of obtaining or performing such teaching or lecturing;

(3) Such teaching or lecturing is not dependent on specific information which would not otherwise be available to the public;

(4) Teaching, lecturing, or writing may not be for the purpose of the special preparation of a person or class of persons for an examination of the Office of Personnel Management or Board of Examiners for the Foreign Service, that depends on information obtained as a result of the employee's Government employment, except when that information has been made available to the general public or will be made available on request;

(5) Such activities do not involve knowingly instructing persons on dealing with particular matters pending before Government organizations with which the employee is associated in an official capacity;

(6) Advance approval is obtained when required by paragraph (b) of this section.

(b) Advance approval. Advance approval must be obtained in accordance with § 73.735-708 of this subpart before an employee may:

(1) Teach or lecture for an institution which has or is likely to have official dealings with the bureau or comparable organizational unit in which he or she is employed;

(2) Use, for teaching or lecturing purposes, clinical case records or other material of a confidential nature or to which access is limited for persons outside the Government. Such use will not be permitted unless made under safeguards established by the operating component to retain the confidentiality of the material, and such use is determined to be in the public interest.

§ 73.735-707 Holding office in professional societies.

(a) Employees may be members of professional societies and be elected or appointed to office in such a society. Activity in professional associations is generally desirable from the point of view of both the Department and the employee. Employees shall avoid, however, any real or apparent conflict of interest in connection with such membership. For example, they must not:

(1) Directly or indirectly commit the Department or any portion of it on any matter unless such action is taken in an official capacity;

(2) Permit their names to be attached to documents the distribution of which would be likely to embarrass the Department; or

(3) Serve in capacities involving them as representatives of non-Government organizations in dealing with the Government.

(b) In undertaking any office or function beyond ordinary membership in a professional association, a Department employee must obtain advance approval in accordance with § 73.735-708 of this subpart in any situation in which his or her responsibilities as an officer would relate to his or her official duties or would create a real or apparent conflict of interest with responsibilities as a Department employee. For example, advance administrative approval must be obtained:

(1) Before an employee who is responsible for review and approval of grants or contracts, or is in a supervisory position over those who conduct review and approval, may hold office, or be a trustee or member of the governing board, or the chairman or member of a committee, in any organization which has or is seeking a grant or contract with the bureau or comparable organizational unit in which he or she is employed;

(2) Before an employee may hold office in an organization which customarily expresses publicly views on matters of legislative or administrative policy within the specific areas of concern to the Department.

§ 73.735-708 Administrative approval of certain outside activities.

(a) *Scope.* As specified in § 73.735-704 through 707, an employee is required to obtain advance administrative approval to engage in the following outside activities:

(1) Certain writing or editing activities;

(2) Certain types of teaching and lecturing;

(3) All professional and consultative services;

(4) Any other outside activity for which the head of a principal operating component or the head of a sub-unit of a principal operating component imposes internal requirements for administrative approval; and

(5) Certain office-holding activities in professional societies.

(b) *Requests for Administrative Approval.* An employee seeking to engage in any of the activities for which advance approval is required shall make a written request for administrative approval a reasonable time before beginning the activity. (See § 73.735-202(e)(1)). This request should be directed to the employee's supervisor who will forward it to the official authorized to approve outside work requests for the employee's component. The request should include the following information:

(1) Employee's name, position title, grade or rank;

(2) Nature of the activity, fully describing the specific duties or services for which approval is requested;

(3) Name and business of person or organization for which work will be done, or statement that work will be self-employment. If self-employment, employee must state whether activity will be conducted alone or with partners;

(4) Place where work will be performed;

(5) Estimated total time to be devoted to activity. If on a continuing basis, indicate estimated time per year and the anticipated termination date;

(6) Whether services can be performed entirely outside of usual duty hours. If not, the estimated number of hours absent from work should be indicated;

(7) Method or basis of compensation if any (e.g., fee, per diem, per annum, or other).

(8) Where an employee seeks approval to provide consultative or professional services to organizations including governments which have been awarded or may apply for a Federal grant or contract, the request shall also include full details on any aspect of the professional and consultative services which could relate in any way, either directly or indirectly, to grant applications, contract proposals, program reports, and other material which are designed to become the subject of dealings between the grantee or contractor and the Government. (See § 73.735-704(a)(2))

(c) The Department Ethics Counselor will review and approve outside work requests for Executive level officers, non-career executives, deputy ethics counselors, and Schedule C employees in the Office of the Secretary.

(d) *Granting Approval of Certain Activities.* The approving official shall review each request submitted under (b) of this section, and appraise each request on the basis of the standards of this Part and all other applicable laws, regulations or internal rules of the principal operating component or sub-unit thereof. He or she should consult with a deputy ethics counselor or the Department Ethics Counselor in all cases that raise a difficult or novel question of law or fact. The approving official shall approve or disapprove each request and communicate his or her decision in writing to the employee.

§ 73.735–709 Annual reporting of outside activities.

By September 10 of each year the approving official shall require a report from each person for whom outside work has been approved during the past year. The report shall show:

(a) For the 12 months just past (ending August 31):

(1) Whether the anticipated work was actually performed for the person or organization named in the request for approval;

(2) Actual amount of time spent on the activity.

(b) For the forthcoming 12 months (ending August 31):

(1) Whether it is anticipated that the outside work will continue;

(2) Whether any change is anticipated with respect to information supplied in accordance with the original request on which approval was based.

§ 73.735–710 Maintenance of records.

The official responsible for the administrative aspects of these regulations (§ 73.735–202) shall make provisions for the retention and filing of requests for approval of outside work (or copies of such requests), a copy of the notification of approval or disapproval, and the annual report.

Subpart H—Financial Interests

§ 73.735–801 Participation in matters affecting a personal financial interest.

(a) An employee shall not participate personally and substantially as a Government employee in a matter in which any of the following individuals or organizations has a financial interest:

(1) The employee;

(2) The employee's spouse;

(3) The employee's minor child;

(4) An organization in which the employee serves as an officer, director, trustee, partner, or employee; or

(5) A person or organization with which the employee is negotiating for prospective employment or has an arrangement for prospective employment. Criminal penalties may be imposed under 18 U.S.C. 208 for violations of the prohibition.

(b) Applying the provision of 18 U.S.C. 208:

(1) A "financial interest" is any interest of monetary value which may be directly and predictably affected by the official action of an employee. There is no minimum amount of value or control that constitutes a financial interest.

Example 1: An employee owns a single share of stock in a widely-held corporation. If the corporation is likely to be affected by a matter in which the employee participates as a Government official, the employee may violate 18 U.S.C. 208.

Example 2: An employee has a paid part-time position with a non-federal organization. If the organization is likely to be affected by a matter in which the employee participates as a Government official, the employee would violate 18 U.S.C. 208.

(2) The prohibition of 18 U.S.C. 208 applies to personal and substantial involvement by an employee in a matter, exercised through decision, approval, disapproval, recommendation, investigation, giving advice, or other significant effort regarding the matter.

Example 1: An employee is a member of a panel that evaluates proposals for contracts and makes recommendations as to their award. If the employee's spouse owns stock in a company which submits a proposal that is reviewed by the panel, the employee would violate 18 U.S.C. 208 even though the panel recommendation may be rejected by the contracting officer.

Example 2: An employee is on a leave of absence from a university. He or she would violate 18 U.S.C. 208 by participating in the drafting of regulations which would have a "direct and predictable effect" upon universities in general and, therefore, upon the employee's university.

(3) An employee must know that the financial interest exists in order to violate 18 U.S.C. 208.

Example: An employee inherited a beneficial interest in a trust. He or she does not, however, have actual knowledge of the specific property held by the trustee. If the trust contains stock in a corporation which may be affected by the employee's official actions, he or she would not violate 18 U.S.C. 208 in taking official action affecting the corporation.

(4) Negotiation for prospective employment includes both an indication of interest on the part of the employee in working for an organization and an affirmative action on the part of the organization to show consideration of the employee.

Example 1: An employee of the Department sends resumes and cover letters to fifty prospective employers, all of whom regularly have dealings with HHS. Forty employers do not respond; however, ten respond with cordial form letters stating that the employee's resume will be retained for future reference. For purposes of the 18 U.S.C. 208 prohibition, the employee is negotiating for prospective employment at the time he or she sends resumes.

Example 2: At a site visit to a grantee institution, an employee who is officially responsible for a grant to that institution informs an officer of the institution that he or she is seeking a new position outside HHS. The grantee subsequently makes a conditional offer of employment to the employee who promptly responds by asking for an opportunity to discuss salary and related matters. Under these circumstances, a negotiation for prospective employment is underway.

(c) An employee may obtain approval to participate in his or her official capacity in a matter in which he or she has a direct or indirect financial interest, if the interest is not so substantial as to affect the integrity of his or her official duties. An employee who believes that such participation is warranted should follow the procedures in § 73.735–804.

(d) An employee convicted of violating 18 U.S.C. 208 may be fined up to $10,000, or imprisoned up to two years, or both.

§ 73.735–802 Executive order prohibitions.

(a) *Basic prohibition of Executive Order 11222.* (1) An employee shall not have a direct or indirect financial interest that conflicts substantially, or appears to conflict substantially, with his or her duties as a Federal employee.

(2) An employee need not have a financial interest that actually conflicts with his or her duties to violate the prohibition of E.O. 11222. Any financial interest that could reasonably be viewed as an interest which might compromise the employee's integrity, whether or not this is in fact true, is subject to this prohibition.

(3) Except as provided in § 73.735–802 (b) and (c), an employee who has an indirect financial interest in a business entity through the ownership of shares in a widely-held mutual fund or other regulated investment company will not violate E.O. 11222. Stocks in business entities held by an intermediary such as a mutual fund are generally too remote or inconsequential to affect the integrity of an employee's services.

(b) *Employees in regulatory activities.* (1) An employee who is working in a regulatory activity shall not have a financial interest in any company whose business activities are subject to the regulations of the particular activity with which the employee is associated, unless the regulated activities of the company are an insignificant part of its total business operations.

(2) An employee working in a regulatory activity may not hold shares in a mutual fund or other regulated investment company which specializes in holdings in industries that are regulated by the particular activity in which he or she is employed.

Example: An employee working for the Bureau of Laboratories, Center for Disease Control, may not hold shares in a regulated investment company which specializes in holdings that include medical testing laboratories.

(c) Employees having procurement or contracting responsibilities.

(1) An employee who serves as a procurement or contracting officer shall not have a financial interest in a company or companies with which he or she in the course of his or her official duties would be likely to have procurement or contracting relationships.

(2) A procurement or contracting officer may not hold shares in a mutual fund or other regulated investment company that specializes in holdings in industries with which such officer would be likely to have procurement or contracting relationships.

Example: A contracting officer in the Social Security Administration owns shares in the XYZ Mutual Fund which specializes in stock in firms manufacturing electronic data processing equipment. Ownership of XYZ Mutual Fund shares would be prohibited in this instance. On the other hand, a contracting officer for a Public Health Service hospital, who is not likely to have responsibility for major contracts relating to electronic data processing, could hold such shares.

§ 73.735–803 Prohibition against involvement in financial transactions based on information obtained through federal employment.

An employee shall not engage in, directly or indirectly, a financial transaction as a result of, or in primary reliance upon, any information gained through his or her official duties. Information gained through official duties are those facts and other data that relate to the employee's official duties or to the functions of the employing component and would not be available to the employee were he or she not an officer of the Federal government.

Example 1: An employee working part-time for a consulting firm that does no business with the employee's principal operating component, in the area of health care planning advises it based upon his or her knowledge of a new health care planning program about to be initiated by the Public Health Service. The employee's knowledge of the program was acquired solely through reading policy statements and other PHS literature available to the public under the Freedom of Information Act. In such case, the employee would not violate this regulation if the outside activity was otherwise approvable under Subpart C.

Example 2: A contracting officer with detailed knowledge of a negotiated procurement contract invests in a corporation that is likely to indirectly profit from the award of that contract. The officer's decision to invest is based upon technical details of the successful contract proposal that would not otherwise be available to a private citizen. The officer would violate this regulation in such a situation.

§ 73.735–804 Waiver of the prohibitions in this subpart.

(a) An employee may request approval to participate in his or her official capacity in a matter in which he or she has a direct or indirect financial interest if the employee believes the interest is so remote and inconsequential that it would not affect the integrity of his or her official duties. Also an employee who has a financial interest that would otherwise be prohibited under these regulations may request an exemption from the prohibition for the reason stated in the preceding sentence.

(b) The request shall be in writing and shall include the following information:

(1) Employee's name, occupational title, grade or rank and Federal salary;

(2) Full description of financial interest: including whether ownership, service as officer, partner, etc.;

(3) Business or activity in which financial interest exists;

(4) Description of official matter in which employee is requesting approval to participate;

(5) Basis for requesting determination that the interest is "not so substantial as to be deemed likely to affect the integrity of the services which the Government may expect." (If based on a small total value of investment, supply appropriate information on total value, such as total shares held and latest quoted market price. If other basis, explain fully.)

The request should be sent through usual administrative channels to the official responsible for reviewing financial disclosure reports or statements for the employee's organization (Subpart I). That official, after conferring with a deputy ethics counselor or with the Department Ethics Counselor as appropriate, will make a decision about the exemption or exception and inform the employee in writing.

§ 73.735–805 Advice and guidance on conflicts matters.

(a) Whenever an employee has a question about the appropriate course of conduct to be followed in a matter that may involve an actual or apparent conflict of interest, he or she should immediately consult with his or her supervisor or a deputy ethics counselor, or both. If a supervisor who is consulted determines that the matter warrants further consideration, he or she may, in conjunction with the employee, submit the details of the matter, in writing, to the appropriate deputy ethics counselor. These details should include a description of:

(1) The activity, relationship, or interest giving rise to the question posed by the employee;

(2) The duties or official responsibilities of the employee(s) involved;

(3) The nature of the actual or apparent conflict of interest; and

(4) Any other information that may be helpful in reviewing the problem.

(b) Upon receiving the submission of an employee or a supervisor, the deputy ethics counselor will develop any additional information about the matter as necessary, and will confer with the Department Ethics Counselor as appropriate. The Department Ethics Counselor and the head of the principal operating component or his or her designee will be informed of any serious violation of the standards of this subpart or any other conflict of interest law. Questions of first impression or other unusual matters shall be brought to the attention of the Department Ethics Counselor and the head of the principal operating component or his or her designee.

(c) On the basis of all information gathered including, where appropriate, the advice of the Department Ethics Counselor, the deputy ethics counselor will:

(1) Decide that there is no violation or potential violation of the standards of this subpart or any other law and so notify the employee and his or her supervisor in writing; or

(2) Decide that a violation or potential violation of the standards of this subpart or other law has occurred or may occur, and that the employee involved shall take one or more of the steps set forth in § 731.735–904 to resolve the problem and notify the employee and his or her supervisor in writing; or

(3) Decide that, although no violation of this subpart or other law has occurred, the nature of the matter is such that the employee should periodically report any additional information that would require reconsideration of the initial submission.

§ 73.735–906 Documentation and publication of opinions.

(a) The Department Ethics Counselor, deputy ethics counselors, and any other individuals required to be involved in the review and resolution of violations or potential violations of this subpart shall maintain full and accurate documentation of the formal advice and guidance given.

(b) From time to time, the Department Ethics Counselor shall publish summaries of advisory opinions issued by his or her office, deleting, as necessary, any personal identifiers or other information which may give rise to an unwarranted invasion of personal privacy. These summaries shall be distributed to all deputy ethics counselors, heads of principal operating components, and principal regional officials.

(c) From time to time, the Department Ethics Counselor shall publish an index of all summaries issued in accordance with paragraph (b) above and shall distribute these indexes to all deputy ethics counselors and heads of principal operating components who shall in turn make them available for review by supervisors and interested employees.

Subpart I—Reporting Financial Interests

§ 73.735–901 Reporting requirement of the Ethics in Government Act of 1978.

(a) *Applicability.* The following employees and special Government employees shall submit public financial disclosure reports in accordance with the provisions of Title II of the Ethics in Government Act of 1978, Pub. L. 95–521, as amended:

(1) Officers and employees (including consultants who will work more than 60 days in a calendar year) whose positions are classified at GS–16 or above of the General Schedule, or whose basic rate of pay (excluding "step" increases) under other pay schedules is equal to, or greater than, the rate for GS–16 (step 1);

(2) Members of the uniformed services whose pay grade is 0–7 or above;

(3) Officers and employees in any other positions determined by the Director of the Office of Government Ethics to be of equal classification to GS–16;

(4) Administrative Law Judges;

(5) Employees in the excepted service in positions which are of a confidential or policy-making character, unless their position has been excluded by the Director of the Office of Government Ethics;

(6) Department Ethics Counselor; and

(7) Deputy Ethics Counselors.

An employee who thinks that his or her position has been improperly included under the reporting requirements of this Part may obtain a review of that determination by writing to the Department Ethics Counselor.

(b) *Filing Dates.* Employees listed in § 73.735–901 (a) of this subpart shall file a financial disclosure report:

(1) Within 5 days after the transmittal by the President to the Senate of their nomination to a position requiring Senate confirmation, or

(2) Within 30 days after assuming a covered position not requiring Senate confirmation unless the employee has left another covered position listed in § 73.735–901 (a) of this subpart, or

(3) Within 30 days after terminating Federal employment or assuming a position which is not listed in § 73.735–901 (a) of this subpart; and

(4) By May 15 of each calendar year, unless the employee has in that calendar year already submitted a financial disclosure report covering the preceding calendar year.

(c) *Submission of reports.* (1) Executive level officers, non-career executives, deputy ethics counselors and Schedule C employees in the Office of the Secretary who are required to report in accordance with § 73.735–901 (a) of this subpart shall submit their reports to the Department Ethics Counselor.

(2) All other employees required to report in accordance with § 73.735–901 (a) of this subpart shall submit their reports to the reviewing official for their organizational component under procedures described in the Department's Personnel Manual. Personnel offices will keep a list of reviewing officials and will give each covered employee the name of the official to whom his or her report should be sent.

(d) *Review and certification of reports.* (1) Each report submitted in accordance with this section shall be reviewed by the appropriate reviewing official within 60 days of its receipt. Upon reviewing a report and finding that the information contained therein reveals no conflict of interest or other violation of any provision of this Part or applicable law, the reviewing officer shall certify the report with his or her signature.

(2) The certification of a report filed in accordance with this section shall have the concurrence of the Office of the General Counsel.

(3) Action to be taken by the reviewing official if the individual is not in compliance with applicable laws and regulations is discussed in § 73.735–903 and § 73.735–904.

§ 73.735–902 Reporting requirements for certain employees not covered by the Ethics in Government Act of 1978.

(a) *Applicability.* The following employees and special Government employees shall submit confidential statements of employment and financial interests in accordance with the provisions of this subpart, provided they are not required to submit financial disclosure reports under § 73.735–901. A list of the positions in this Department whose incumbents are required to file financial interest statements as prescribed by this subpart is available for review in all of the Departments servicing personnel offices.

(1) Officers and employees in positions classified at GS–13 or above (or comparable pay level) who have decision-making responsibility for the following matters:

(i) Contracting or procurement,

(ii) Administering or monitoring grants or subsidies,

(iii) Regulating or auditing private or other non-Federal enterprises, or

(iv) Other activities where the decision or action would have an economic impact on the interest of any non-Federal enterprise.

(2) Incumbents of any other positions designated by the head of the principal operating component, or by the Assistant Secretary for Management and Budget for the Office of the Secretary, to report employment and financial interests in order to protect the integrity of the Government and to avoid possible conflicts of interest. The designation of any such positions below the GS–13 grade must be approved by the Office of Personnel Management.

(3) All experts, consultants, or advisory committee members who are not required to submit a public financial disclosure report in accordance with the Ethics in Government Act except:

(i) Doctors, dentists and allied medical specialists performing services for, or consulted as to the diagnosis or treatment of, individual patients; or

(ii) Veterinarians performing services for or consulted as to care and service to animals.

(b) *Filing dates.* (1) Experts, consultants, and advisory committee members shall file a confidential Statement of Employment and Financial Interest no later than the date employment commences and shall file supplemental statements as necessary to keep all information submitted current and accurate.

(2) Other individuals covered by § 73.735–902 (a) of this subpart shall:

(i) File a confidential statement no later than 30 days after assuming a covered position unless the employee,

within 30 days before assuming the position, left another covered position in HHS that is included in § 73.735–901(a) or § 73.735–902(a) of this subpart; and

(ii) Report changes in or additions to the information in the statement as of June 30 of each calendar year, or a different date set by employee's component with authorization by the Office of Personnel Management.

(c) *Submission and review of financial statements.* (1) Heads of principal operating components, the Assistant Secretary for Management and Budget, and principal regional officials for employees under their appointing authority shall establish procedures to ensure that financial statements from covered employees are received and updated on a timely basis and are referred to the appropriate reviewing officials for review and certification. (See § 73.735–202 (e)(1)).

(2) The reviewing official shall review statements to determine whether conflicts of interest or apparent conflicts might arise from the activities reported thereon. If the review discloses no conflict or apparent conflict, the reviewing official shall certify the statement with his or her signature. Action to take if the individual is not in compliance with applicable laws and regulations is discussed in § 73.735–903 and § 73.735–904.

§ 73.735–903. Action if conflicts of interest or possible conflicts are noted.

(a) If after reviewing a financial disclosure report or a financial interest statement, a reviewing official believes that additional information is needed, he or she shall tell the individual submitting such report what additional information is required and the time by which it must be submitted.

(b) If the reviewing official is of the opinion that, on the basis of information submitted, the reporting individual is not in compliance with applicable laws and regulations, he or she shall notify the individual, afford him or her a reasonable opportunity for a written or oral response, and after consideration of such response, determine whether or not the individual is in compliance.

(c) If the reviewing official determines that an individual is not in compliance with applicable laws and regulations, he or she shall notify the individual of that determination in writing and, after an opportunity for personal consultation, determine and notify the individual of the action, including those actions set forth in § 73.735–904, that would be appropriate to assure compliance with such laws and regulations, and the date by which such action should be taken. The action required and the date for taking it shall be determined by the nature of the financial interest or other relationship, the particular circumstances of the reporting individual (including his or her ability to resolve the problem), and other factors which the reviewing official deems relevant. In no case, however, should the date be later than 90 days after the reporting individual is notified of the reviewing official's opinion.

(d) If steps for assuring compliance with applicable laws and regulations are not taken by the date set in paragraph (c), the matter shall be referred to the Department Ethics Counselor.

§ 73.735–904. Resolution of apparent or actual conflicts of interest.

(a) Disqualification from participating in a particular matter or category of matters is an appropriate method for resolving apparent or actual conflicts of interest when the interest or activity giving rise to the problem:

(1) Bears a direct or indirect relationship to particular, identifiable duties of the employee involved; and

(2) Is not so substantial as to affect or give the appearance of affecting the integrity of the services which the Government may expect of the employee. Whenever disqualification is employed to resolve an apparent or actual conflict of interest, the disqualified employee shall sign a written statement reflecting the scope of the disqualification and the precise nature of the conflicting interest or activity. The reviewing official shall keep a file of all such disqualification statements and shall monitor compliance with these statements on a regular basis.

(b) *Change of assignment* is an appropriate method for resolving apparent or actual conflicts of interest when the interest giving rise to the problem bears a direct or indirect relationship to particular, identifiable duties of the employee involved, and those duties constitute a significant portion of the employee's position.

(c) *Waiver* under 18 U.S.C. 208(b) is an appropriate method for resolving apparent or actual conflicts of interest when:

(1) The employee seeking the waiver reported the financial interest that bears some relationship to his or her official duties, and the reviewing official, in consultation with a deputy ethics counselor or the Department Ethics Counselor, determines that the financial interest is not so substantial as to be deemed likely to affect the integrity of the services which the Government may expect from such employee; or

(2) By general rule or regulation published in the Federal Register, the Department has exempted the financial interest from the requirements of 18 U.S.C. 208 and this Part as being too remote or too inconsequential to affect the integrity of the Government officers' service.

(d) A *trust* containing a financial interest which may give rise to an apparent or actual conflict of interest is an appropriate method of resolving such conflicts when:

(1) The trust is qualified under Sec. 202(f) of the Ethics in Government Act of 1978 (Pub. L. 95–521), as amended, and subject to the regulations of the Office of Government Ethics; or

(2) In the opinion of the Department's Ethics Counselor, it is sufficiently independent of the employee involved so that the integrity of the employee's services to the Government are not compromised.

(e) *Divestiture* is an appropriate method for resolving actual conflicts of interest when the nature of the financial interest is such that the conflict of interest cannot be adequately resolved by any of the methods set forth in paragraphs (a), (b), (c), and (d) of this section.

(f) *Terminating* an appointment as a method for resolving an actual conflict of interest should be used only when it is clear that no other remedy can be found which would be acceptable to both the Department and the employee. Generally, this method will be employed only in the most extreme cases. Such a termination would be subject to adverse action.

Subpart J—Provisions Relating to Experts, Consultants and Advisory Committee Members

§ 73.735–1001 Coverage.

(a) For purposes of this subpart the title "consultant" will be used to include those who are appointed to serve as experts, consultants or members of advisory committees. All persons who serve as an employee of the Government in the capacity of a consultant are covered by the provisions of this subpart irrespective of:

(1) The title by which designated;

(2) The statutory authority under which services are obtained;

(3) The duration of the period for which services are obtained;

(4) Whether services are obtained by appointment or invitation and acceptance;

(5) Whether services are compensated or rendered without compensation;

(6) Whether or not services are obtained pursuant to a statute excepting

employees or special Government employees from conflict of interest statutes.

(b) When the service is for less than 130 days in a service year, experts, consultants, and advisory committee members are included in the group of employees designated by law (18 U.S.C. 202) as "Special Government employees."

§ 73.735–1002 Ethical standards of conduct.

(a) Like other Federal employees, an individual serving in a consultant capacity must conduct himself or herself according to ethical behavior standards of the highest order. In particular, such an individual must:

(1) Refrain from any use of office which is, or appears to be, motivated by a private gain for himself or herself or other persons, particularly those with whom he or she has family, business, or financial ties. The fact that desired gain, if it materializes, will not take place at the expense of the Government makes his or her actions no less improper.

(2) Conduct himself or herself in a manner devoid of any suggestion that he or she is exploiting Government employment for private advantage. A consultant must not, on the basis of any inside information, enter into any speculation or recommend speculation to members of his or her family or business associates, in commodities, land, or the securities of any private company. This injunction applies even though the consultant's duties have no connection whatever with the Government programs or activities which may affect the value of such commodities, land, or securities. He or she should be careful in all personal financial activities to avoid any appearance of acting on the basis of information obtained in the course of his or her Government work.

(3) Refrain from using information not generally available to those outside the Government for the special benefit of a business or other entity by which the consultant is employed or retained or in which he or she has a financial interest. Information not available to private industry should remain confidential in the consultant's hands and not be divulged to his or her private employer or clients. In cases of doubt whether information is generally available to the public, the consultant should confer with the person for whom he or she provides services, with the office having functional responsibility for a specific type of information, or, as appropriate, with the officials designated in § 73.735–202 to give interpretive and advisory service.

(4) Where requested by a private enterprise to act for it in a consultant or advisory capacity and the request appears motivated by the desire for inside information, make a choice between acceptance of the tendered private employment and continuation of his or her Government consultancy. He or she may not engage in both.

(5) Not use his or her position in any way to coerce, or give the appearance of coercing, anyone to provide a financial benefit to him or her or another person, particularly one with whom the consultant has family, business, or financial ties.

(6) Not receive or solicit anything of value as a gift, gratuity, loan, entertainment, or favor for himself or herself or another person, particularly one with whom he or she has family, business, or financial ties if the acceptance would result in loss of complete independence or impartiality in serving the Government. All consultants are subject to the restrictions in § 73.735–506 of this Part concerning gifts and decorations from foreign governments.

(b) Consultants may engage in other employment so long as there is no real or apparent conflict between the consultant's private employment and his or her official duties. See § 73.735 Subpart G. The regular employment of a consultant who is a special Government employee is not considered outside work for purposes of Subpart G. Also, the limitation in § 73.735–701(f) regarding the amount of an honorarium that may be received does not apply to special Government employees.

(c) A consultant who has questions about conflicts of interest or the application of the regulations in this Part to him or her or to his or her assigned work should make inquiry of the person for whom services are provided. That person may direct the consultant to the Department Ethics Counselor or a deputy ethics counselor for interpretative and advisory services as provided in § 73.735–202.

§ 73.735–1003 Conflicts of interest statutes.

(a) Each consultant should acquaint himself or herself with sections 203, 205, 207 and 208 of title 18, United States Code, all of which carry criminal penalties related to conflicts of interest. The restraints imposed by the four criminal sections are summarized in paragraphs (b) and (c) of this section.

(b) 18 U.S.C. 203 and 205.

(1) These two sections in general operate to preclude a person who works for the Government, except in the discharge of his or her official duties, from representing anyone else before a court or Government agency in a matter in which the United States is a party or has a direct and substantial interest. The prohibition applies whether or not compensation is received for the representation. However, if the individual is a special Government employee, this restriction applies only if:

(i) The representation involves a matter in which the individual has at any time participated personally and substantially in the course of his or her Government employment; or

(ii) The individual has served the Department for more than 60 days in the immediately preceding period of 365 days, and the matter is one which is pending before the Department. This second restraint applies whether or not the matter is one in which the individual participated personally and substantially in his or her Government employment. These two provisions apply to a special Government employee on days when he or she does not serve the Government as well as on the days when services are rendered, and they apply to both paid and unpaid representation.

(2) To a considerable extent the prohibitions of sections 203 and 205 are aimed at the sale of influence to gain special favors for private businesses and other organizations and at the misuse of governmental position or information. In accordance with these aims, a consultant, even when not compelled to do so by sections 203 and 205, should make every effort in his or her private work to avoid any personal contact with respect to negotiations for contracts or grants with the component of the department in which he or she is serving, if the subject matter is related to the subject matter of his or her consultancy or other service. This will not always be possible to achieve where, for example, a consultant has an executive position with his or her regular employer which requires him or her to participate personally in contract negotiations with the department or agency he or she is advising. Whenever this is the case, the consultant should participate in the negotiations for his or her employer only after advising the responsible Government official of his or her involvement in other matters in the Department. In other instances an occasional consultant may have technical knowledge which is indispensable to his or her regular employer in his efforts to formulate a research and development contract or a research grant, and for the same reason, it is in the interest of the Government that the consultant should take part in

negotiations for his or her private employer. Again, the individual should participate only after advising the responsible Government official of the relevant facts.

(3) Section 205 permits both the Government and the private employer of a special Government employee to benefit, in certain cases, from his or her performance of work under a grant or contract for which he or she would otherwise be disqualified because of having participated in the matter for the Government or because it is pending in a component in which the consultant had served more than 60 days in the past year. This provision gives the head of a department the authority, notwithstanding any prohibition in either section 203 or 205, to allow a special Government employee to represent before such department or agency either his or her regular employer or another person or organization in the performance of work under a grant or contract. As a basis for this action, the Secretary must first makes a certification in writing, published in the Federal Register, that it is required by the national interest.

(4) Section 205 contains two other exemptive provisions, which apply to both special and regular Government employees. See § 73.735–702.

(c) 18 U.S.C. 207 applies to individuals who have left Government service. See Subpart N of these regulations.

(d) 18 U.S.C. 208 bears on the activities of Government personnel, including special Government employees, in the course of their official duties. In general, it prevents a Government employee from participating as such in a particular matter in which, to his or her knowledge, he or she, his or her spouse, minor child, partner, or a profit or non-profit enterprise with which he or she is connected has a financial interest. However, the section permits an employee's agency to grant him or her an ad hoc exemption if the interest is not so substantial as to affect the integrity of his or her services. Insignificant interests may also be waived by a general rule or regulation. The matters in which special Government employees are disqualified by section 208 are not limited to those involving a specific party or parties in which the United States is a party or has an interest, as in the case of sections 203, 205 and 207. Section 208 therefore extends to matters in addition to contracts, grants, judicial and quasi-judicial proceedings, and other matters of an adversary nature. Accordingly, a special Government employee, like all government employees, should in general be disqualified from participating as such in a matter of any type the outcome of which will have a direct and predictable effect upon the financial interests covered by the section.

However, the power of exemption may be exercised in this situation if the special Government employee renders advice of a general nature from which no preference or advantage over others might be gained by any particular person or organization. The power of exemption may also be exercised where the financial interests involved are minimal in value.

§ 73.735–1004. Requesting waivers or exemptions.

(a) A consultant may present in writing to the official for whom he or she provides services requests for the waivers or exemptions specified in § 73.735–1003. That official will take, or refer the request for, action as appropriate, and will see that the employee receives advice or decision on his or her request.

(b) A file of all waivers or exemptions granted shall be maintained in such manner that information can be given promptly on individual cases or statistics provided upon request. Generally, these records, together with written advice given in connection with less formal requests concerning questions of ethical standards, are kept with the employee's statement of employment and financial interests or financial disclosure report (§ 73.735–1006).

§ 73.735–1005. Salary from two sources.

Special government employees are not subject to 18 U.S.C. 209 which prohibits other employees from receiving any salary, or supplementation of Government salary, from a private source as a compensation for services to the Government. This Department will not knowingly pay per diem to a consultant who also receives per diem pay for the same day from another Government agency (in or outside the Department). Erroneous payments in contravention of this provision will be subject to collection, and any consultant who willfully collects double payments may be barred from further employment.

§ 73.735–1006. Reporting financial interests.

(a) Consultants who will work more than 60 days in a calendar year are subject to the provisions of title II of the Ethics in Government Act of 1978 when their rate of pay is equal to or greater than the basic rate for GS–16, Step 1. Such consultants are covered by the reporting requirements of § 73.735–901 of these regulations.

(b) Consultants not subject to the Ethics in Government Act shall file statements of financial interests as provided by § 73.735–902 of these regulations.

§ 73.735–1007. Political activity.

Consultants who serve intermittently are subject to the political activity restrictions of subchapter III of Chapter 73 of title 5 U.S.C. and Civil Service Rule IV only on days on which service is rendered and then for the entire 24 hours of such service day. Other consultants are subject to these restrictions at all times.

Subpart K—Special Government Employees Other Than Consultants

§ 73.735–1101. General provision.

Individuals who are designated as special Government employees because of the nature of their services but who are not serving as a consultant, expert, or advisory committee member are subject to the provisions of Subparts B through I of these regulations. However, the provisions of 18 U.S.C. 205, 206, 207, and 208 apply to them only as described in Subpart J. Also, the limitation in § 73.735–701(f) on the amount of an honorarium that may be received does not apply.

Subpart L—Disciplinary Action

§ 73.735–1201 General provisions.

(a) Violation of the regulations contained in this Part may be cause for disciplinary action which could be in addition to any penalty prescribed by law.

(b) The type of disciplinary action to be taken must be determined in relation to the specific violation. Those responsible for recommending and for taking disciplinary action must apply judgment to each case, taking into account the general objectives of meeting any requirements of law, deterring similar offenses by the employee and other employees, and maintaining high standards of employee conduct and public confidence. Some types of disciplinary action which may be considered are:

(1) Admonishment
(2) Written reprimand
(3) Reassignment
(4) Suspension
(5) Demotion
(6) Removal

(c) Suspension, demotion, and removal are adverse actions; and when such actions are taken, applicable laws, regulations, and policies must be followed.

Subpart M—Reporting Violations

§ 73.735–1301 Responsibility for reporting possible criminal violations.

An employee who has information which he or she reasonably believes indicates a possible offense against the United States by an employee of the Department, or any other individual working on behalf of the Department, shall immediately report such information to his or her supervisor, any management official, or directly to the Office of the Inspector General. Offenses covered by the preceding sentence include, but are not limited to, bribery, fraud, perjury, conflict of interest, misuse of funds, equipment, or facilities, and other conduct by a government officer or employee, grantee, contractor or other person which is prohibited by title 18 of the United States Code. Employees and supervisors should refer to chapter 5–10 of the Department's General Administration Manual for procedures regarding the reporting and handling of such information.

§ 73.735–1302 Responsibility for reporting allegations of misconduct.

An employee who has information which he or she reasonably believes indicates the existence of an activity constituting (1) a possible violation of a rule or regulation of the Department; or (2) mismanagement, a gross waste of funds, or abuse of authority; or (3) a substantial and specific danger to the public health and safety, shall immediately report such information to his or her supervisor, any management official of the Department, or directly to the Office of the Inspector General. Employees and supervisors should refer to chapter 5–10 of the Department's General Administration Manual for procedures regarding the reporting and handling of such information. This subsection does not cover employee grievances, equal employment opportunity complaints, classification appeals, or other matters for which a formal government-wide review system has been established by the Federal government.

§ 73.735–1303 Prohibition of reprisals.

(a) Any employee who has authority to take, direct others to take, recommend, or approve any personnel action, shall not, with respect to such authority, take or threaten to take any action against any employee as a reprisal for making a complaint or providing any information pursuant to § 73.735–1301 and 1302. If the complaint was made or the information was disclosed with the knowledge that it was false, or with willful disregard of its truth or falsity, any personnel action taken against the employee based on those reasons would not constitute a reprisal action.

(b) An employee who believes that he or she has been threatened with a personnel action, any other action, or harassment or has been harmed by any action as a reprisal for having made a complaint or providing information pursuant to § 73.735–1301 or 1302 may request the Office of the Inspector General to review his or her allegations. Whenever the Inspector General has reason to believe that the allegations may be true, he or she will refer the matter to the Assistant Secretary for Personnel Administration for appropriate action. The Assistant Secretary for Personnel Administration may order a stay of any personnel action if he or she determines that there are reasonable grounds to believe that the personnel action is being taken as a reprisal for making a complaint or providing information pursuant to § 73.735–1301 or 1302.

§ 73.735–1304 Referral of matters arising under the standards of this part.

(a) The Department Ethics Counselor may refer to the Inspector General for investigation and/or further action any matter arising under the standards of this Part.

(b) The Department Ethics Counselor may refer to the Office of Government Ethics, or the Inspector General may refer to the Department of Justice, suspected violations of the criminal laws regarding employee standards of conduct and conflicts of interest.

Subpart N—Conduct and Responsibilities of Former Employees

§ 73.735–1401 Prohibitions against post-employment conflicts of interest.

(a) The purpose of criminal prohibition in 18 U.S.C. 207 is to prevent the unfair use of inside knowledge or influence that results from Federal service. 18 U.S.C. 207 generally prohibits a former employee from acting as another person's representative to the Government in particular matters involving a specific party or parties in which the employee had been involved while in Federal service. This prohibition does not require a former employee to decline employment with any organization regardless of his or her dealings with that organization while employed by the Government. It applies solely to activities, not the mere existence of an employment arrangement.

(b) The Office of Government Ethics, Office of Personnel Management, has issued Government-wide regulations covering post-employment conflict of interest (5 CFR Part 737). Those regulations are incorporated herein by reference, and they are available for review in personnel offices throughout the Department.

[FR Doc. 81-2343 Filed 1-23-81; 8:45 am]
BILLING CODE 4110-12-M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1331

[Ex Parte No. 297 (Sub-No. 5)]

Motor Carrier Rate Bureaus; Implementation of Pub. L. 96–296

AGENCY: Interstate Commerce Commission.

ACTION: Notice of Extension of Effective Date of Final Standards.

SUMMARY: By notice of decision published in the Federal Register on December 31, 1980, (45 FR 86720), the Commission issued standards for motor carrier rate bureau activities. These standards were effective on Federal Register publication. The Commission is extending the effective date of these standards to February 2, 1981. In the Federal Register of January 22, 1981, the Commission is extending the date for filing new or amended agreements and the effective date of the final rules.

DATE: The effective date of the final standards is now February 2, 1981.

FOR FURTHER INFORMATION CONTACT: Richard B. Felder or Jane F. Mackall, (202) 275–7656.

Decided: January 14, 1981.

By the Commission, Darius W. Gaskins, Jr., Chairman.

Agatha L. Mergenovich,
Secretary.

[FR Doc. 81-2340 Filed 1-23-81; 8:45 am]
BILLING CODE 7035-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 611

Foreign Fishing; Reports and Recordkeeping

AGENCY: National Oceanic and Atmospheric Administration (NOAA)/ Commerce.

ACTION: Final rules; correction.

SUMMARY: This document corrects the table of species codes to include a code for "non-specified species" in the Gulf of Alaska, published November 5, 1980 (45 FR 73486).

FOR FURTHER INFORMATION CONTACT: Robert McVey, Director, Alaska Region, National Marine Fisheries Service, P.O. Box 1668, Juneau, Alaska 99802. Telephone: (907) 586-7221.

Signed this day of January, 1981.

Robert K. Crowell,

Deputy Executive Director, National Marine Fisheries Service.

Authority: 16 U.S.C. 1801 *et seq.*

Accordingly, 50 CFR 611.9 is corrected by adding the following entry:

§ 611.9 Reporting and recordkeeping.

* * * * *

Appendix I.—Species Code

* * * * *

B. Pacific Ocean Fishes—Finfishes

Code, Common English Name, and Scientific Name
500, nonspecified species, see § 611.92(b)(4)

* * * * *

(16 U.S.C. 1801 *et seq.*)

[FR Doc. 81-2540 Filed 1-22-81; 8:45 am]
BILLING CODE 3510-22-M

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50 CFR Part 611

Seamount Groundfish Fishery Resources

AGENCY: National Oceanic and Atmospheric Administation (NOAA) / Commerce.

ACTION: Final rulemaking.

SUMMARY: This notice implements final regulations for the preliminary fishery management plan (PMP) for seamount groundfish fishery resources. The regulations establish annual specifications of zero for domestic harvest, domestic processing, joint venture processing, and reserve. The specifications are effective for 1981 and beyond.

EFFECTIVE DATE: February 23, 1981.

FOR FURTHER INFORMATION CONTACT: Alan W. Ford, southwest Region Director, National Marine Fisheries Service, 300 S. Ferry Street, Terminal Island CA 90731, Telephone 213-548-2575.

SUPPLEMENTARY INFORMATION: The proposed rulemaking was published on December 2, 1980 (45 FR 79846) for a 30 day comment period ending January 2, 1981. No comments were received. The preamble to the proposed regulations explained how the specifications were derived. The Assistant Administrator has determined this amendment to the PMP is necessary and appropriate to the conservation and management of seamount groundfish resources, and that the amendment is consistent with provisions of the Magnuson Fishery Conservation & Management Act of 1976, as amended, and other applicable laws. The Assistant Administrator also has determined that this action does not require the preparation of an environmental assessment or an environmental impact statement under the National Environmental Policy Act of 1969; and that it does not constitute a significant regulation requiring the preparation of a regulatory analysis under Executive Order 12044.

Signed in Washington, D.C., this 19th day of January, 1981.

Robert K. Crowell,

Deputy Executive Director, National Marine Fisheries Service.

Authority: 16 U.S.C. 1801 *et seq.*

50 CFR Part 611 is amended as follows:

1. 50 CFR Part 611 is amended by revising § 611.80(b)(2) to read as follows:

§ 611.80 Seamount groundfish fishery.

* * * * *

(b) * * *

(2) TALFF, DAH, DAP, JVP, Reserve. The total allowable level of foreign fishing (TALFF), domestic annual harvest (DAH), joint venture processing (JVP), and reserve for seamount groundfish are listed in Appendix 1 to Section 611.20. These specifications are valid for each calendar year unless amended.

* * * * *

2. 50 CFR Part 611 is amended by revising Section 3.A of Appendix 1 of § 611.20 as follows:

§ 611.20 Total allowable level of foreign fishing.

* * * * *

Appendix 1. Optimum yield (OY), domestic allowable harvest (DAH), domestic allowable processing (DAP), joint venture processing (JVP), domestic non-processed fish (DNP), reserve, and total allowable level of foreign fishing (TALFF), all in metric tons.

* * * * *

Species	Species areas code	OY	DAH	DAP	JVP	DNP	Reserve	TALFF
3. Western Pacific Ocean fisheries:								
A. Seamount groundfish fishery:								
Armorheads	200							
Alfonsins	201							
Other groundfish	400	2,000	0	0	0		0	2,000

[FR Doc. 81-2567 Filed 1-22-81; 8:45 am]
BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 46, No. 15
Friday, January 23, 1981

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Rural Electrification Administration

7 CFR Part 1701

Remanufactured Distribution Transformers; Proposed Revision of REA Specification D–17

AGENCY: Rural Electrification Administration, USDA.

ACTION: Proposed rule.

SUMMARY: The Rural Electrification Administration (REA) proposes to issue a revision of REA Specification D–17, "Remanufactured Distribution Transformers." This proposed revision would provide means of ensuring that remanufactured distribution transformers are fully equivalent to new transformers of modern designs.

DATE: Public comments must be received by REA no later than March 27, 1981.

ADDRESS: Submit written comments to the Director, Engineering Standards Division, Rural Electrification Administration, Room 1268, South Building, U.S. Department of Agriculture, Washington, D.C. 20250.

FOR FURTHER INFORMATION CONTACT: J. C. Arnold, Jr., telephone (202) 447–3541. A Draft Impact Analysis has been prepared and is available from the Director, Engineering Standards Division, at the above address.

SUPPLEMENTARY INFORMATION: Pursuant to the Rural Electrification Act, as amended (7 U.S.C. 901 et seq.), REA proposes to issue a revision of REA Specification D–17, "Remanufactured Distribution Transformers."

The proposed changes in REA policy update recommended requirements for remanufactured distribution transformers to those standards generally followed in new distribution transformers of current manufacturers. Copies of the draft supplement are available from the Director, Engineering Standards Division, at the above address.

This program is listed in the Catalog of Federal Domestic Assistance as 10.850—Rural Electrification Loans and Loan Guarantees.

This proposal has been reviewed under the USDA criteria established to implement Executive Order 12044, "Improving Government Regulations." A determination has been made that this action should not be classified "significant" under those criteria.

Dated: January 15, 1981.

Joe S. Zoller,
Assistant Administrator—Electric.

[FR Doc. 81–2470 Filed 1–22–81; 8:45 am]
BILLING CODE 3410–15–M

Farmers Home Administration

7 CFR Part 1804

Planning and Performing Site Development Work

AGENCY: Farmers Home Administration, USDA.

ACTION: Advanced Notice of Proposed Rule Making.

SUMMARY: The Farmers Home Administration (FmHA) plans to revise and redesignate its regulations pertaining to Planning and Performing Site Development Work. The intent of this action will be to improve existing regulations in order that FmHA can better meet the needs of the applicants and provide increased guidance to field personnel in program administration.

FOR FURTHER INFORMATION CONTACT: Mr. Glendon D. Deal, Environmental and Technology Staff, Room 6305, S. Agriculture Building, 14th and Independence Avenue, SW, Washington, D.C. 20250. Telephone: (202) 447–3394.

SUPPLEMENTARY INFORMATION: In 1973 FmHA developed the existing regulations now contained in 7 CFR 1804, Subpart D to establish policies, methods and responsibilities with respect to planning and performing site development work in connection with all types of loans and grants authorized by Title V of the Housing Act of 1949. As a result of Executive Order 12044, these regulations will be redesignated as a new Subpart C of Part 1924, Chapter XVIII, Title 7 of the Code of Federal Regulations. In addition, portions of the regulations will be amended to recognize recent social, economic and technical changes in the housing industry, to more clearly communicate FmHA policies to our field offices and to reflect a reassignment of responsibilities within the Agency. In the interim period until this task can be accomplished, FmHA in response to housing needs in hilly terrain is modifying the Hillside Development Standards section of the booklet entitled, "Site Development Design Standards" referred to in 7 CFR 1804.63(b)(2). This booklet will be published for public comment along with the program regulations in the forthcoming proposed rule making process. The amended booklet will be available for viewing in all FmHA offices within 60 days after the date of this publication.

The FmHA programs and projects which are affected by this intended action are subject to state and local clearinghouse review in the manner delineated in Part 1901, Subpart H of this Chapter.

Authorities: 42 USC 1480; 7 CFR 2.23, 7 CFR 2.70.

Dated: January 8, 1981.

Gordon Cavanaugh,
Administrator, Farmers Home Administration.

[FR Doc. 81–2328 Filed 1–22–81; 8:45 am]
BILLING CODE 3410–07–M

Food Safety and Quality Service

9 CFR Parts 317 and 381

Prior Label Approval Program, Reopening of Comment Period

AGENCY: Food Safety and Quality Service, USDA.

ACTION: Advance notice of proposed rulemaking; reopening of comment period.

SUMMARY: On October 31, 1980, the Food Safety and Quality Service (FSQS) published in the Federal Register a document announcing its efforts to streamline its regulatory procedures by delegating certain labeling authority to inspectors in charge in the field. A pilot program began December 1, 1980, in three selected meat and poultry inspection areas. In response to a request for additional time to comment on the pilot program procedures, the Agency is reopening the comment period for an additional 30 days.

DATE: Comments must be received on or before: February 23, 1981.

ADDRESS: Written comments to: Regulations Coordination Division, Attn: Annie Johnson, Food Safety and Quality Service, Compliance Program, U.S. Department of Agriculture, Room 2637, South Agriculture Building, Washington, DC 20250. Oral comments to Ms. Joan Moyer Schwing, (202) 447–4293.

FOR FURTHER INFORMATION CONTACT: Ms. Joan Moyer Schwing, Deputy Director, Meat and Poultry Standards and Labeling Division, Compliance Program, Food Safety and Quality Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 447–4293.

SUPPLEMENTARY INFORMATION:

Background

On October 31, 1980 (45 FR 72197), the Food Safety and Quality Service published an advance notice of proposed rulemaking in which it announced that it would test the feasibility of the recommendation of a joint Compliance/Meat and Poultry Inspection Program (MPI) Task Force to:

1. Allow the Inspector-in-Charge to approve final labeling which is identical to a sketch previously approved by the Washington Office;
2. Separate labeling into two distinct classes—"simple" and "nonsimple" labeling, as described in that Notice and;
3. Delegate the labeling approval authority for simple labeling to the Inspector-in-Charge at the field level.

The Agency is particularly interested in learning whether such field delegation will adequately serve industry's needs for prompt review and approval of labeling modifications, and suggestions as to how the labeling approval procedure can otherwise be improved.

Three areas were selected for the pilot program. These areas include: Missouri (Southwestern Region), Kentucky (Southeastern Region), and the Hyattsville area, which includes Maryland, Delaware and the District of Columbia (Northeastern Region). The pilot program commenced December 1, 1980, and will last for 120 days. The period for receiving comments on the advance notice ended December 31, 1980.

The Agency has been requested to extend the period of time within which data, views, or arguments may be submitted. The request stated that additional time was needed in order to more fully review the experience under the pilot study and comment thereon.

The Agency has determined that additional time for comment is justified and therefore is reopening the comment period until February 23, 1981.

Done at Washington, DC, on: January 19, 1981.

Donald L. Houston,

Administrator, Food Safety and Quality Service.

[FR Doc. 81-2460 Filed 1-23-81; 8:45 am]

BILLING CODE 3410-DM-M

NUCLEAR REGULATORY COMMISSION

10 CFR Ch. I

Periodic and Systematic Review of Regulations

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of Comprehensive Review of Regulations and Request for Comments.

SUMMARY: The Nuclear Regulatory Commission is undertaking a comprehensive review of its regulations (10 CFR Chapter I) in order to ensure (1) that the regulations, both individually and collectively, achieve the substantive goals set forth in the several statutes which direct the activities of the Commission, including the Atomic Energy Act of 1954, as amended, the Administrative Procedure Act, and the National Environmental Policy Act; and (2) that, in accordance with Executive Order 12044 and the Regulatory Flexibility Act (Pub. L. 96–354), the regulations are as simple and clear as possible, that they achieve legislative goals effectively and efficiently, and that they do not impose unnecessary burdens on the economy, on individuals, on public or private organizations, on small entities, or on state and local governments. Public comment is invited upon the approach to be used by the Commission in conducting this review, the structure and organization of 10 CFR Chapter I, and the interrelationship between and among parts within 10 CFR Chapter I.

DATE: Comments period expires March 24, 1981.

ADDRESSES: All interested persons who desire to submit written comments or suggestions for consideration should send them to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Branch. Copies of all comments received may be examined in the Commission's Public Document Room at 1717 H Street NW., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: I. Craig Roberts, Office of Standards Development, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, telephone: (301) 443–5965.

SUPPLEMENTARY INFORMATION: On July 30, 1980, the Commission published for public comment (45 FR 50613) the NRC Action Plan (NUREG–0660), a comprehensive and integrated approach for the correction and improvement of the regulation and operation of nuclear facilities based on the experience gained from the Three Mile Island Unit No. 2 accident. The Commission is now reviewing the comments. Task IV.G.2. of the NRC Action Plan requires a periodic and systematic reevaluation of existing NRC regulations and sets forth the Commission's commitment to comply with Executive Order 12044, "Improving Government Regulations" (3 CFR 152 (1978)). This task, which is to be completed within five years, calls for a detailed review of the entire body of NRC regulations in order to ensure that (1) the regulations, both individually and collectively, achieve the substantive goals set forth in the several statutes which direct the activities of the Commission, including the Atomic Energy Act of 1954, as amended (42 U.S.C. § 2011, *et seq.*), the Energy Reorganization Act of 1974, as amended (42 U.S.C. § 5801, *et seq.*), the Administrative Procedure Act (5 U.S.C. § 500, *et seq.*) and the National Environmental Policy Act (42 U.S.C. 4321, *et seq.*); and (2) that, in accordance with Executive Order 12044 and the Regulatory Flexibility Act (Pub. L. 96–354), the regulations are as simple and clear as possible, that they achieve legislative goals effectively and efficiently, and that they do not impose unnecessary burdens on the economy, on individuals, on public or private organizations, on small entities or on state and local governments.

In conducting this review the NRC will ensure that each regulation has been evaluated for conformance with the following criteria, set forth in Executive Order 12044:

1. The regulation is needed.
2. Direct and indirect effects of the regulation have been adequately considered.
3. Alternative approaches have been considered and the least burdensome of the acceptable alternatives has been chosen.
4. Public comments have been considered and adequate responses have been prepared.
5. The regulation is written in plain English and is understandable to those who must comply with it.
6. An estimate has been made of the reporting burdens or record keeping requirements necessary for compliance with the regulation and submitted to GAO in accordance with the Federal Reports Acts for approval.

7. The name, address, and telephone number of a knowledgeable agency official has been provided for each regulation.

8. A plan for evaluating the regulation has been developed.

In addition, all regulations which have or will have a significant economic impact upon a substantial number of small entities will be reviewed in order to determine whether such rules should be continued without change, or should be amended or rescinded to minimize any significant economic impact of the rules upon small entities. As required by the Regulatory Flexibility Act, this part of the review will focus on:

1. The continued need for the rule;
2. The nature of complaints or comments received concerning the rule from the public;
3. The complexity of the rule;
4. The extent to which the rule overlaps, duplicates or conflicts with other Federal rules, and, to the extent feasible, with State and local governmental rules; and
5. The length of time since the rule has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the rule.

The NRC will undertake a study of the overall organization of 10 CFR Chapter I, with an eye toward developing options to remedy any organizational problems in the NRC's regulations.

In soliciting public comment on the approach to be used in conducting this review, the NRC wishes to emphasize that interested persons should focus their comments on the structure and organization of 10 CFR Chapter I, including the interrelationship between and among parts within Chapter I. Opportunity to comment on specific provisions within 10 CFR will be provided at a later date. The NRC is particularly interested in any comments the public may have with respect to possible approaches to restructuring the regulations. The range of options available for consideration is wide, running the gamut from retaining the current structure to undertaking a major revision of the entire structure of 10 CFR Chapter I. Each of these options, as well as the entire midrange, is open for comment.

It should be further noted that in conducting this review, the Commission has assigned highest priority to those areas identified in the TMI Action Plan as most directly affected by the TMI accident. These include regulations involving operator training, emergency planning, environmental monitoring, radiation protection, and consistent treatment of fission product release from fuel cladding failure. Recognizing that these areas are of most immediate concern, the NRC has developed a preliminary schedule for conducting this review over the next five years, which includes estimated start and completion dates for individual parts and subparts. This schedule is set forth in an attachment to this notice.

Dated at Bethesda, Maryland, this 30th day of December, 1980.

For the Nuclear Regulatory Commission.

William J. Dircks,

Executive Director for Operations, U.S. Nuclear Regulatory Commission.

Schedule for Review of NRC Regulations

10 CFR Part and title	Start review (fiscal year)	Complete preliminary review [1]	Publish proposed rule	Publish final rule	Remarks
0 Conduct of Employees	1982		None required	9/82	
1 Statement of Organization and General Information	1981		None required	3/81	
2 Rules of Practice for Domestic Licensing Proceedings	1984		9/84	9/85	
4 Nondiscrimination in Federally Assisted Commission Programs.	Ongoing		12/81	6/82	
7 Advisory Committees	1981	12/81	(1)	(1)	
9 Public Records	Ongoing		7/81	2/82	
10 Criteria and Procedures for Determining Eligibility for Access to Restricted Data or National Security Information.	Ongoing		1/82	8/82	
11 Criteria and Procedures for Determining Eligibility for Access to or Control Over Special Nuclear Material (proposed).	1985	9/85	(1)	(1)	Rule Recently published (11/21/80).
14 Administrative Claims Under Federal Tort Claims Act	1981		10/82	12/82	
19 Notices, Instructions, and Reports to Workers; Inspections.	1983	1/83	(1)	(1)	
20 Standards for Protection Against Radiation	Ongoing		12/81	12/82	Advance Notice of Rulemaking published March 20, 1980 (45 FR 18023).
21 Reporting of Defects and Noncompliance	1982	4/82	(1)	(1)	
25 Access Authorization for License Personnel	1983		1/84	9/84	
30 Rules of General Applicability to Domestic Licensing of Byproduct Material.	Ongoing		1/83	6/83	Marketing of new products leads to ongoing consideration of revisions to this part. In addition, the review schedule is set to be consistent with planned studies of byproduct and source material in consumer products, general licensing uses, and specific licenses.
31 General Domestic Licenses for Byproduct Material	Ongoing		9/84	9/85	Do.
32 Specific Domestic Licenses to Manufacture or Transfer Certain Items Containing Byproduct Material.	Ongoing		9/84	9/85	Do.
33 Specific Domestic Licenses of Broad Scope for Byproduct Material.	Ongoing	6/83	(1)	(1)	
34 Licenses for Radiography and Radiation Safety Requirements for Radiographic Operations.	Ongoing		12/82	6/84	
35 Human Uses of Byproduct Material	Ongoing		6/82	6/83	
40 Domestic Licensing of Source Material	Ongoing		9/84	9/85	Results of ongoing studies will affect scheduling of this review. In addition, significant amendments to this part were recently made effective 11/17/80.
50 Domestic Licensing of Production and Utilization Facilities.	Ongoing		See remarks		Revision of Part 50 will involve numerous rulemaking actions over the period 1980–1985.
51 Licensing and Regulatory Policy and Procedures for Environmental Protection.	Ongoing		3/80	1/81	Notice of proposed rulemaking published March 3, 1980 (45 FR 13738).
55 Operators' Licenses	Ongoing	3/82	(1)	(1)	
60 Disposal of High-Level Radioactive Wastes in Geologic Repositories.	Ongoing		12/79, 3/81	1/81, 12/81	Part 60 is a proposed new part. It involves two separate rulemaking actions. See notice of proposed rulemaking on licensing Procedures published December 6, 1979 (44 FR 70408) and advanced notice of rulemaking on technical criteria published May 13, 1979 (45 FR 31393).
61 Management and Disposal of Low-Level Wastes by Shallow Land Burial and Alternative Disposal Methods (proposed).	Ongoing		4/81	9/82	Part 61 would be a new part. See Advance Notice of Rulemaking published October 25, 1979 (43 FR 49811).

Schedule for Review of NRC Regulations—Continued

10 CFR Part and title	Start review (fiscal year)	Complete pre-Secretary review[1]	Publish proposed rule	Publish final rule	Remarks
70 Domestic Licensing of Special Nuclear Material	Ongoing		4/81–6/84	6/86	This part will be reviewed and revised in subparts over the period 4/81–6/86; to be completed by 6/84.
71 Packaging of Radioactive Material for Transport and Transportation of Radioactive Material Under Certain Conditions.	Ongoing		9/79	4/81	Proposed revision published August 17, 1979 (44 FR 48224).
72 Licensing Requirements for the Storage of Spent Fuel in an Independent Spent Fuel Storage Installation.	Ongoing	11/80	(*)	(*)	
73 Physical Protection of Plants and Material	1981		4/81–6/84	6/86	This part will be reviewed and revised in subparts over the period 4/81–6/86; to be completed by 6/84.
75 Safeguards on Nuclear Material—Implementation of US/IAEA Agreement.	1986	8/86	(*)	(*)	Rule recently issued (10/80).
81 Standard Specifications for the Granting of Patent Licenses.	1981		9/81	9/82	
95 Security Facility Approval and Safeguarding of National Security Information and Restricted Data.	1983		1/84	9/84	
100 Reactor Site Criteria	Ongoing		3/81	6/82	Advance Notice of Rulemaking published July 28, 1980 (45 FR 50350).
110 Export and Import of Nuclear Facilities and Materials	1981		1/81	10/81	
140 Financial Protection Requirements and Indemnity Agreements.	Ongoing		3/84	12/84	
150 Exemptions and Continued Regulatory Authority in Agreement States Under Section 274.	Ongoing	3/80	(*)	(*)	
169 Trespassing on Commission Property	1981		8/81	8/81	
170 Fees for Facilities and Materials	1981		12/81	6/82	

[1]For certain parts, the need and schedule for revisions will be determined by the preliminary review. [*]Not yet scheduled.

[FR Doc. 81-2000 Filed 1-[illegible]; 8:45 am]

BILLING CODE 7590-01-M

FEDERAL TRADE COMMISSION

16 CFR Part 13

[File No. 9136]

Gould Inc.; Proposed Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order, accepted subject to final commission approval, would require, among other things, a Rolling Meadow, Ill. manufacturer and seller of various electrical products to cease having on its board any director who simultaneously serves as a director of a competing company, if the revenues of either corporation derived from the competing "product or service market" exceed the lesser of ten million dollars or one percent of the corporation's total sales; or any individual who fails to provide the statement required under the terms of the order. The order would further require that the company institute an annual monitoring program for the next five years, designed to detect unlawful interlocks.

DATE: Comments must be received on or before March 24, 1981.

ADDRESS: Comments should be directed to: Office of the Secretary, Federal Trade Commission, 6th St. and Pennsylvania Ave., N.W., Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT: FTC/C, E. Perry Johnson, Washington, D.C. 20580. (202) 523–3601.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 3.25(f) of the Commission's Rules of Practice (16 CFR 3.25(f)), notice is hereby given that the following consent agreement containing a consent order to cease and desist and an explanation thereof, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(14) of the Commission's Rules of Practice (16 CFR 4.9(b)(14)).

United States of America

Before Federal Trade Commission

In the matter of Gould Inc., a corporation; Docket No. 9136, agreement containing consent order to cease and desist.

The Agreement herein, by and between Gould Inc., a corporation (sometimes referred to as "respondent"), by its duly authorized officer and its attorney, and counsel for the Federal Trade Commission, is entered into in accordance with the Commission's Rule governing consent order procedures. In accordance therewith the parties hereby agree that:

1. Gould Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 10 Gould Center, Rolling Meadows, Illinois 60008.

2. Respondent has been served with a copy of the complaint issued by the Federal Trade Commission on May 9, 1980, charging respondent with violation of Section 8 of the Clayton Act, 15 U.S.C. § 19, and Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45.

3. Respondent admits all the jurisdictional facts set forth in the Commission's complaint in this proceeding.

4. Respondent waives:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law; and

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement.

5. This agreement shall not become a part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission it will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the respondent, in which event it will take such action as it may consider appropriate, or issue and serve its decision, in disposition of the proceeding.

6. This agreement is for settlement purposes only and does not constitute an admission by respondent that the law has been violated as alleged in the said copy of the complaint issued by the Commission.

7. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of Section 3.25(f) of the Commission's Rules, the Commission may without further notice to respondent, (1) issue its decision containing

the following order to cease and desist in disposition of the proceeding, and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the decision containing the agreed-to order to respondent's address as stated in this agreement shall constitute service. Respondent waives any right it might have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or in the agreement may be used to vary or to contradict the terms of the order.

8. Respondent has read the complaint and the order contemplated hereby. It understands that once the order has been issued, it will be required to file one or more compliance reports showing that it has fully complied with the order. Respondent further understands that it may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

I

The following definitions shall apply in this order:

"Subsidiary" of a corporation means any company of which 50 percent of more of the issued and outstanding voting stock is owned or controlled, directly or indirectly, by such corporation.

"Parent" of a corporation means any company which owns or controls, directly or indirectly, 50 percent or more of the issued and outstanding voting stock of such corporation.

"Sister" of a corporation means any subsidiary of a parent of that corporation.

"Product or service market" means any line of commerce in which Gould's (including its subsidiaries and divisions) annual revenues exceed the lesser of:

(1) Five millions dollars; or

(2) One-half of one percent of Gould's total annual revenues.

II

It is ordered that respondent Gould Inc. ("Gould"), its successors and assigns, shall forthwith cease and desist from having, and in the future shall not have, on its board of directors any person who either:

(a) serves at the same time as a director of any other corporation if Gould and such other corporation are, by virtue of their business and location of operation, competitors, so that the elimination of competition by agreement between them would constitute a violation of any of the provisions of any of the antitrust laws, providing that the revenues of either corporation derived from the product or service market(s) in which they are competitors exceed the lesser of:

(1) Ten million dollars; or

(2) One percent of the total sales of that corporation; or

(b) fails to submit to Gould any statement required to be obtained by Gould under Paragraph III of this order.

III

It is further ordered that within thirty (30) days of the effective date of this order, and prior to each election of directors or prior to the solicitation of proxies for such election, whichever is earlier, Gould shall obtain a written statement from each member of its board of directors (except directors whose terms expire at the next election and who are not standing for re-election) and from each nominee for a directorship (who is not then a director) showing:

(a) the name and home mailing address of such director or nominee; and

(b) the name and principal office mailing address of, and a listing of each product or service produced, offered or sold by, each corporation which the director or nominee then serves as a director, or has been nominated to serve as director at the time of the statement.

The requirements of this Paragraph shall not apply to elections of directors occurring after five years from the effective date of this order, nor shall directors or nominees be required to list products or services of subsidiaries, sisters, or parents of Gould.

Nothing in this Paragraph shall be construed to relieve Gould of its obligation under Paragraph II(a) of this order due to any error or omission contained in any written statement received pursuant to this Paragraph.

If competition arises in any product or service market between Gould and any other corporation with which Gould shares a common director, by virtue of action taken by such other corporation subsequent to a submission of information by such director pursuant to this paragraph, then Gould shall not be liable under Paragraph II until the date for the next submission of information.

IV

It is further ordered that within forty-five (45) days of the effective date of this order and annually for a period of ten (10) years thereafter, Gould shall file with the Commission a written report setting forth in detail the manner and form in which it has complied with this order. Copies of the statements obtained pursuant to Paragraph III of this order shall be submitted to the Commission as part of the reports of compliance required by this Paragraph during the first five (5) years. Nothing in this Paragraph shall relieve Gould of its obligation to comply with Paragraph II and V of this order once it is no longer required to submit reports of compliance to the Commission.

V

It is further ordered that Gould shall notify the Commission not more than thirty (30) days after any change in the corporation, such as dissolution, assignment, or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries, or any other change in the corporation which may affect compliance obligations arising out of this order.

Gould Inc.

[Docket No. 9136]

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted an agreement to a proposed consent order from Gould Inc. ("Gould"). The complaint in this matter, which was issued on May 9, 1980, alleges that Gould has violated Section 8 of the Clayton Act, 15 U.S.C. § 19, and Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45, by maintaining interlocking directorates with Midland-Ross Corporation and Narco Scientific, Inc.

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

Paragraph I of the proposed order contains difinitions of several terms used throughout the agreement.

Paragraph II of the proposed order prohibits Gould from having any director who is also a director of a competing corporation if the revenues of either corporation derived from the competing "product or service markets" exceed the lesser of (a) ten milion dollars, or (b) one percent of that corporation's total sales. The phrase "product or service market" is defined in Paragraph I as any line of commerce in which Gould's annual revenues exceed the lesser of (a) five million dollars, or (b) one-half of one percent of Gould's total annual revenues. Therefore, in determining whether the competition between Gould and an interlocked corporation falls within the terms of Paragraph II, all lines of commerce that come within the definition of "product or service market" are taken into consideration. This paragraph further provides that gould shall not permit any person to serve as a director who has failed to submit to Gould any statement required by Paragraph III.

Paragraph III of the proposed order: (1) requires that Gould institute an annual monitoring program for the next five years to detect unlawful interlocks, and further requires that as part of this program Gould shall obtain from each of its directors and nominees for directorships a listing of each product or service produced, offered or sold by each other corporation on whose board the director also serves or has been

nominated to serve; (2) provides that Gould shall not be relieved of its responsibilities under Paragraph II due to any error or omission contained in any statement submitted pursuant to this paragraph; and (3) provides a temporary exemption for liability under Paragraph II in cases in which competition arises between Gould and an interlocked company during the period between annual monitoring programs by virtue of action taken by the other company (*e.g.*, an acquisition or entry into a new product line) until the date for the next annual monitoring program.

Paragraph IV of the proposed order requires that Gould submit reports to the Commission for the next ten years to enable the Commission to assess Gould's compliance under the order.

Paragraph V of the proposed order requires that Gould notify the Commission not more than thirty (30) days after any change in the company that may affect Gould's compliance obligations arising under the order.

This order furthers competition by preventing interlocking directorates between Gould and its competitors that could lead to collusive conduct, the exchange of competitively sensitive information, or other anticompetitive activity.

The purpose of this analysis is to facilitate public comment on the proposed order. It is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way its terms.

Carol M. Thomas,

Secretary.

[FR Doc. 81-2508 Filed 1-22-81; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF LABOR

Office of the Secretary

Office of Workers' Compensation Programs

Occupational Safety and Health Administration

20 CFR Part 10

29 CFR Parts 2 and 1906

Subpoenas Served Upon Departmental Employees; Procedure To Be Followed; Rulemaking

AGENCY: Office of the Secretary, Office of Workers' Compensation Programs, and Occupational Safety and Health Administration, Labor.

ACTION: Proposed rule.

SUMMARY: Because an increasing number of subpoenas are being served on Labor Department employees, and because of the lack of a uniform Departmental policy for responding to such subpoenas, it is proposed below to establish one procedure to be followed by all Labor Department employees who have received subpoenas calling for the production of records or other materials, or the disclosure of information. A uniform procedure should result in more equitable treatment for the general public and place the responsibility for determining the response to subpoenas on the appropriate Department officials.

DATES: Comments must be received on or before March 24, 1981.

ADDRESS: Comments must be in writing and should be sent to Ronald Whiting, Associate Solicitor, Division of General Legal Services, Office of the Solicitor, U.S. Department of Labor, Room N-2464, 200 Constitution Avenue NW., Washington, D.C. 20210.

FOR FURTHER INFORMATION CONTACT: Sofia Petters, Counsel for Administrative Legal Services, Office of the Solicitor, U.S. Department of Labor, Room N-2464, 200 Constitution Avenue NW., Washington, D.C. 20210, Telephone: (202) 523-6607.

SUPPLEMENTARY INFORMATION: The Labor Department's enforcement responsibility has increased dramatically over the past 10 to 15 years, especially in the area of work-related injuries—occupational safety and health and mine safety and health. There has accompanied this expansion in responsibility an increased interest in access to Department records or information by persons seeking remedies under other laws for injuries or losses they may have sustained. Consequently, Labor Department employees are now frequently subpoenaed in those private actions and called upon to produce Department records or to disclose information relating to Department records. The Department currently has no uniform policy for dealing with these subpoenas. As a result, Department employees have not had clear guidance regarding the manner in which they should respond to subpoenas. As one might expect, the manner in which subpoenas have been dealt with nationwide has been inconsistent. It is the purpose of the regulation proposed below to prescribe a single Department of Labor policy regarding subpoenas so that employees respond in a consistent manner and so that members of the public are accorded consistent treatment.

The most efficient way to deal with the problem, it appears, is to follow the lead of other Federal agencies and establish within the Department a "clearinghouse" to which all subpoenas, no matter who is served, would be referred for a determination of the Department's response. Accordingly, pursuant to the regulation proposed below, the Secretary of Labor, who has custody over all Labor Department records, would delegate to the Solicitor of Labor and the Deputy Solicitor of Labor the authority to determine the appropriate response to subpoenas which are served upon Labor Department employees.

Consistent with this uniform policy approach, to the extent divisions of the Department have issued regulations addressing the manner in which employees of that division are to respond to subpoenas, those regulations would be revoked.

This document is being jointly executed by the Secretary of Labor, the Assistant Secretary for Employment Standards and the Assistant Secretary for Occupational Safety and Health. Each of these signatories has rulemaking authority for the three various parts of the Code of Federal Regulations, which are today being proposed to be amended. These parts are 20 CFR Part 10 (the Assistant Secretary for Employment Standards); 29 CFR Part 2 (the Secretary of Labor); and 29 CFR Part 1906 (the Assistant Secretary for Occupational Safety and Health).

The Department of Labor has determined that the proposal in this document is not a "major regulation" that requires preparation of a regulatory analysis under Executive Order 12044 and the Department's guidelines published at 44 FR 5570 (Jan. 26, 1979). The Secretary of Labor has also certified, in accordance with 5 U.S.C. 605(b), that the regulation in this document will not have a significant economic impact on a substantial number of small business entities.

Accordingly, it is proposed to amend the following three parts of the Code of Federal Regulations, being—

(a) Part 10, Chapter I of Title 20, Code of Federal Regulations (20 CFR Part 10);

(b) Part 2, Subtitle A of Title 29, Code of Federal Regulations (29 CFR Part 2); and

(c) Part 1906, Chapter XVII of Title 29, Code of Federal Regulations (29 CFR Part 1906) as set forth below.

Title 20—Employees' Benefits

PART 10—CLAIMS FOR COMPENSATION UNDER THE FEDERAL EMPLOYEES' COMPENSATION ACT, AS AMENDED

1. The authority citation for Part 10 is revised to read as follows:

Authority: (5 U.S.C. 301); Reorganization Plan No. 6 of 1950, 15 FR 3174, 64 Stat. 1263; (5 U.S.C. 8145, 8149); Secretary of Labor's Order No. 10–75, 40 FR 55913, Employment Standards Order No. 78–1, 43 FR 51460.

2. In § 10.11, paragraph (e) is removed and paragraph (f) is redesignated as paragraph (e).

Title 29—Labor

PART 2—GENERAL REGULATIONS

3. The authority citation for Part 2 reads as follows:

Authority: 5 U.S.C. 301, unless otherwise noted.

4. 29 CFR Part 2 is amended by adding new §§ 2.20 through 2.24 being new Subpart C, to read as follows:

Subpart C—Employees Served With Subpoenas

Sec.
2.20 Purpose and scope.
2.21 Production or disclosure prohibited unless approved by Solicitor of Labor or Deputy Solicitor of Labor.
2.22 Procedure in the event of a demand for production or disclosure.
2.23 Procedure where a decision concerning a demand is not made prior to the time a response to the demand is required.
2.24 Procedure in the event of an adverse ruling.

Subpart C—Employees Served With Subpoenas

§ 2.20 Purpose and scope.

(a) This subpart sets forth the procedures to be followed whenever a subpoena, order, or other demand (hereinafter referred to as a "demand") of a court or other authority is issued for the production or disclosure of (1) any material contained in the files of the Department, (2) any information relating to material contained in the files of the Department, or (3) any information or material acquired by any person while such person was an employee of the Department as a part of the performance of his official duties or because of his official status.

(b) For purposes of this subpart, the term "employee of the Department" includes all officers and employees of the United States appointed by, or subject to the supervision, jurisdiction, or control of the Secretary of Labor.

§ 2.21 Production or disclosure prohibited unless approved by Solicitor of Labor or Deputy Solicitor of Labor.

No employee or former employee of the Department of Labor shall, in response to a demand of a court or other authority, produce any material contained in the files of the Department or disclose any information relating to material contained in the files of the Department, or disclose any information or produce any material acquired as part of the performance of his official duties or because of his official status without prior approval of the Solicitor of Labor or the Deputy Solicitor of Labor.

§ 2.22 Procedure in the event of a demand for production or disclosure.

Whenever an employee or former employee of the Department receives a demand for the production of material or the disclosure of information described in 2.20(a), he shall immediately notify the nearest office of the Solicitor.

§ 2.23 Procedure where a decision concerning a demand is not made prior to the time a response to the demand is required.

If the response to the demand is required before the instructions from the Solicitor or Deputy Solicitor are received, a Department attorney or other government attorney designated for the purpose shall appear with the employee or former employee of the Department upon whom the demand has been made, and shall furnish the court or other authority with a copy of the regulations contained in this subpart and inform the court or other authority that the demand has been, or is being, as the case may be, referred for the prompt consideration of the Solicitor or Deputy Solicitor and shall respectfully request the court or other authority to stay the demand pending receipt of the requested instructions.

§ 2.24 Procedure in the event of an adverse ruling.

If the court or other authority declines to stay the effect of the demand in response to a request made in accordance with pending receipt of instructions, or if the court or other authority rules that the demand must be complied with irrespective of instructions not to produce the material or disclose the information sought, the employee or former employee upon whom the demand has been made shall respectfully decline to comply with the demand. "United States ex rel Touhy v. Ragen." 340 U.S. 462.

PART 1906—ADMINISTRATION WITNESSES AND DOCUMENTS IN PRIVATE LITIGATION

5. The authority citation for Part 1906 reads as follows:

Authority: Sec. 8(g), 84 Stat. 1600; 29 U.S.C. 657.

6. Part 1906 of 29 CFR Chapter XVII is removed and reserved.

Signed at Washington, D.C. this 19th day of January, 1981.

Ray Marshall,
Secretary of Labor.

Donald Elisburg,
Assistant Secretary for Employment Standards.

Eula Bingham,
Assistant Secretary for Occupational Safety and Health.

[FR Doc. 81-2404 Filed 1-22-81; 8:45 am]
BILLING CODE 4510-27-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Part 416

Supplemental Security Income for the Aged, Blind, and Disabled; Income

AGENCY: Social Security Administration, HHS.

ACTION: Proposed rule.

SUMMARY: These regulations propose to add a new kind of income to the kinds that are excluded before income is deemed from an ineligible spouse or parent to an eligible individual who lives in the same household. For SSI purposes, a spouse is someone who lives with an eligible individual as husband or wife. A parent is a natural or adoptive parent or such parent's spouse. Payments provided under title XX or other governmental programs to an eligible individual and paid to that person's ineligible spouse or ineligible parent in return for in-home supportive services (chore, attendant, homemaker), or paid directly to the ineligible spouse or ineligible parent to provide these services, will not be deemed to be the income of the eligible individual. This is based on a decision by the Commissioner of Social Security on behalf of the Secretary that deeming this income is inequitable under the circumstances. The provision will be effective on publication of final regulations.

DATES: Your comments will be considered if we receive them no later than March 24, 1981.

ADDRESSES: Send your written comments to Social Security Administration, Department of Health and Human Services, P.O. Box 1585, Baltimore, Maryland 21203.

Copies of all comments we receive can be seen at the Washington Inquiries Section, Office of Governmental Affairs, Department of Health and Human Services, Switzer Building, Room 1212, 330 C Street, S.W., Washington, D.C. 20201.

FOR FURTHER INFORMATION CONTACT: Rita Hauth, Legal Assistant, Room 4234 West High Rise Building, 6401 Security Boulevard, Baltimore, Maryland 21235, (301) 594-7112.

SUPPLEMENTARY INFORMATION: We plan to revise our rules on deeming of certain income of an ineligible spouse or ineligible parent to an eligible individual. The Social Security Administration (SSA) has decided to revise these rules because of a conflict between the purpose for which a State provides payments for chore, attendant or homemaker services and the effect of the reduction or termination of SSI benefits which these payments cause under current SSI regulations.

The President's Commission on Mental Health and the President's Committee on Mental Retardation recommend greater assistance for the severely disabled. The 1979 Advisory Council on Social Security recommended the development of adequate means to provide attendant care for the disabled. The Commissioner's decision to add this exclusion from deemed income implements the recommendation of the Commission, the Committee and the Council.

Since the SSI program began, sections 1614(f)(1) and (2) of the Social Security Act have required that the income and resources of spouses and parents who are not eligible for SSI be considered to be the income and resources of their spouses and children who are eligible for SSI benefits and who live in the same household. This process is called deeming—we deem the income and resources of the ineligible spouse or ineligible parent to be those of the SSI beneficiary. The statute requires the deeming of such income (and resources) except to the extent determined by the Secretary to be inequitable under the circumstances. Accordingly, the Secretary many determine the amounts and types of income and resources that are excluded before the balance is deemed to a beneficiary. The deemed income and resources are added to those the beneficiary already has and the total is subject to the limits and exclusions the statute provides for individuals.

A number of States, particularly California, have established programs, funded under title XX of the Social Security Act or another State program, under which they provide monies to pay for in-home supportive services necessary to enable an individual who needs these services in order to live in his or her home. The payments are made to the individual to pay for the services or may be paid directly to the person who performs the services. If the individual is an SSI beneficiary, and the one who performs the service is any one except an ineligible spouse, or ineligible parent (if the beneficiary is a child), who lives in the same household there is no effect on the SSI benefit. The money does not constitute income to the beneficiary because it is earmarked as payment for the specific services. A problem arises when the person who renders the services and receives the payments is the ineligible spouse of an eligible individual, or the ineligible parent of an eligible child, and they live in the same household. In these cases, income of the ineligible spouse or ineligible parent must be deemed to be that of the eligible individual.

Reducing or terminating the SSI benefit of an eligible individual because of these payments tends to defeat the purpose for which the payment is made. Too, this kind of payment to a member of a household other than an ineligible spouse or ineligible parent has no adverse effect on an SSI beneficiary.

If the ineligible spouse or ineligible parent is also an essential person, generally the more strict essential person deeming rules apply and the income must be deemed to the eligible individual. However, the eligible individual has the option of not having the essential person where it is to the individual's advantage. The spouse-to-spouse or parent-to-child deeming rules will then apply and the income may be excluded.

Although relatively few beneficiaries are disadvantaged by "circle-back" deeming (projected to be less than 2,000 nationwide), a change is necessary since to continue deeming these payments would be inequitable under the circumstances. The revised rule will enable these individuals to better cope with their disabilities and prevent their institutionalization. The proposed revision of the regulations imposes no reporting or recordkeeping requirements on beneficiaries or others.

Section 416.1161 of the recodified Part 416, Subpart K (Income), published at 45 FR 65541 on October 3, 1980, is amended by adding to the kinds of income that are not deemed to be the income of eligible individuals. In the case of an ineligible spouse who lives with his or her eligible spouse, or an ineligible parent who lives with his or her eligible child, amounts paid under a Federal, State, or local government program to provide in-home supportive services to an eligible individual will no longer be deemed to be income of an eligible individual.

(Catalog of Federal Domestic Assistance Program No. 13.807, Supplemental Security Income Program)

Dated: January 15, 1981.

William J. Driver,

Commissioner of Social Security.

Approved: January 19, 1981.

Patricia Roberts Harris,

Secretary of Health and Human Services.

Part 416 of Title 20 of the Code of Federal Regulations is amended as follows:

1. The authority citation for Subpart K of Part 416 is revised to read as follows:

Authority: Secs. 1102, 1611, 1612, 1613, 1614, and 1631, of the Social Security Act, as amended; Sec. 211 of Pub. L. 93-66; 49 Stat. 647, as amended, 86 Stat. 1465, 86 Stat. 1468, 86 Stat. 1470, 86 Stat. 1471, 86 Stat. 1475, 87 Stat. 154; U.S.C. 1302, 1382, 1382a, 1382b, 1382c and 1383.

2. In § 416.1161 the introductory text of the section and the introductory text of paragraph (a) is revised and paragraph (a)(16) added to read as follows:

§ 416.1161 Income of an ineligible spouse, ineligible parent, and essential person for deeming purposes.

The first step in deeming is determining how much income your ineligible spouse, ineligible parent, or essential person has. (See § 416.1160 for definitions of these terms.) We do not always include all of their income when we determine how much income to deem to you. In this section we explain the rules for determining how much of their income is subject to deeming. As part of the process of deeming income from your ineligible spouse or ineligible parent we must determine the amount of income of any ineligible children in the household.

(a) *For an ineligible spouse or parent.* We do not include any of the following types of income (see § 416.1102) of an ineligible spouse or parent: * * *

(16) Income of your ineligible spouse or ineligible parent which was paid under a Federal, State, or local government program (For example, payments under title XX of the Social

Security Act) to provide you with chore, attendant or homemaker services.

* * * * *

[FR Doc. 81-1819 Filed 1-22-81; 8:45 am]
BILLING CODE 4110-87-M

DEPARTMENT OF LABOR

Employment and Training Administration

20 CFR Part 675

Comprehensive Employment and Training Act (CETA) Regulations Concerning Eligibility of Prisoners

AGENCY: Employment and Training Administration, Labor.

ACTION: Proposed rule.

SUMMARY: This document proposes to amend the regulation at 20 CFR 675.5–1(e), published on May 20, 1980 at 45 FR 33859, concerning CETA eligibility requirements for persons institutionalized in prisons, jails or similar correctional institutions. The proposal would permit CETA funds to be used to provide employment and training services to prisoners consistent with participation timeframes applicable to CETA programs, with the restriction that stipends or allowances shall not be paid to any prisoner participating in such activities within the confines of the prison prior to one year from presumptive release. The purpose of this publication is to request comments on the proposed rule.

DATES: Comments on the proposed rule are due on or before February 23, 1981.

ADDRESS: Comments should be addressed to the Assistant Secretary for Employment and Training, U.S. Department of Labor, 601 D Street, N.W. Washington, D.C. 20213. Attention: Mr. Robert Anderson, Administrator, Office of Comprehensive Employment Development, Employment and Training Administration.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Anderson, telephone (202) 376–6254.

SUPPLEMENTARY INFORMATION: On January 4, 1980, the Department amended the CETA regulations published on April 3, 1979, in order to limit the eligibility of prisoners for Comprehensive Employment and Training Act (CETA) programs to those who have a reasonable expectation of release, parole or work release within 12 months of enrollment. This provision was retained in the CETA regulations published in the Federal Register on May 20, 1980.

The Department has received a number of comments requesting modification of the eligibility provision to expand the timeframes within which CETA services may be provided to prisoners, with a limitation on the period for which wages, allowances and stipends can be paid to such persons. The House of Representatives, in its Report (No. 96–1244) on the FY 1981 appropriation bill for the Departments of Labor, Health and Human Services, Education and Related Agencies, expressed concern that language in the previous year's appropriation bill prohibiting payment of CETA funds to any prisoner for work performed prior to one year before presumptive release had been misconstrued and that the provision was not intended to restrict the availability of CETA training and counseling to prisoners. The House Report advised the Department to revise the eligibility regulation "to allow CETA funds to be used to provide training and counseling to prisoners consistent with participation timeframes applicable to CETA programs, with the only restriction being that stipends or allowances shall not be paid to any prisoner participating in training within the confines of the prison prior to one year from presumptive release" (Report, pp 7–8).

Regulatory Impact: The financial and other impact of the proposed regulation is less than specified in DOL guidelines at 44 FR 5576 (January 20, 1979) for determining when a regulatory analysis should be made. Therefore, preparation of a regulatory analysis is not required for this regulation. Also the Secretary has certified in accordance with 5 U.S.C. 605 (b) that the proposed regulation in this document will not have a significant economic impact on a substantial number of small business entities.

While this regulation is deemed significant within the meaning of Executive Order 12044 (43 FR 12661, March 23, 1978), since the changes merely implement the Congressional intent with respect to CETA services for prisoners the comment period is only 30 days, rather than 60 days.

Section 675.5–1(e) is revised to read as follows:

Accordingly, it is proposed to amend Part 675 of Title 20 of the Code of Federal Regulations as follows:

§ 675.5–1 Eligibility requirements pertaining to all prime sponsor programs.

* * * * *

(e) Persons who are institutionalized in a prison, jail or similar correctional institution and:

(1) Who have a reasonable expectation of release, parole, or work release within 12 months of enrollment are eligible to participate in any activity authorized under these regulations and to be compensated for such participation in accordance with these regulations; or

(2) Who do not have a reasonable expectation of release, parole, or work release within 12 months of enrollment are eligible to participate only in classroom training and to receive services to applicants as described in § 676.25–5 (a) and employment and training services as described in § 675.25–5 (b), provided:

(i) Participation is consistent with participant timeframes as specified in § 676.30 (f);

(ii) No allowances are paid for such participation; and

(iii) Participation is confined to programs conducted within the prison.

Sec. 126 of the Comprehensive Employment and Training Act (Pub. L. 95–524, 92 Stat. 1909, 29 U.S.C. 801 *et seq.*)

Signed at Washington, D.C. this 16th day of January 1981.

Ray Marshall,
Secretary of Labor.

[FR Doc. 81-2000 Filed 1-22-81; 8:45 am]
BILLING CODE 4510-28-M

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20 CFR Part 676

Comprehensive Employment and Training Act; Allowability of Legal Expenses

AGENCY: Employment and Training Administration, Labor.

ACTION: Proposed rule.

SUMMARY: This document proposes to specify the conditions under which Comprehensive Employment and Training Act (CETA) funds may be used by recipients (and their subrecipients and contractors) for legal fees associated with administration of their grants. The proposed regulations will provide CETA recipients with more explicit and comprehensive guidance as to the allowability of legal costs than presently exists.

DATES: Comments on this proposed rule are due on or before March 24, 1981.

ADDRESS: Comments should be addressed to the Assistant Secretary for Employment and Training, U.S. Department of Labor, 601 D Street, N.W., Washington, D.C. 20213, Attn: Robert Anderson: Administrator, Office of Comprehensive Employment Development.

FOR FURTHER INFORMATION CONTACT: Robert Anderson, telephone: (202) 376–6254

SUPPLEMENTARY INFORMATION: The reauthorized CETA of 1978 contains a number of provisions which reflect Congressional concern for preventing fraud and abuse in CETA programs. Two such provisions involve the use of CETA funds to pay for legal costs incurred by recipients. Section 123(f) (2) of CETA, 29 U.S.C. 825(f)(2), provides:

> Nothing in section 121 of this section shall be deemed to authorize the Secretary to pre-approve the selection of legal counsel by a prime sponsor, but the Secretary shall assure that no funds available for administrative costs under any title of this Act are used by a prime sponsor for making payments on contracts for legal or other associated services unless the prime sponsor certifies that—
>
> "(A) the payments are not unreasonable in relation to the fees charged by other contractors providing similar services; and
>
> "(B) the services could not be competently provided through employees of the prime sponsor or other available State or local governmental employees.

In addition, Section 123(g) of CETA, 29 U.S.C. 825(g), provides: "The Secretary, by regulation, shall establish such standards and procedures for recipients of funds under this Act as are necessary to assure against program abuses including, but not limited to * * * excessive or unreasonable legal fees * * *"

The present CETA regulations concerning legal costs, at 20 CFR § 676.40–2(b), basically incorporate the statutory language at Section 123(f)(2), but do not otherwise indicate when such costs are allowable. The proposed rule would amend § 676.40–2(b) to further specify the conditions under which CETA funds may be used by recipients (and their subrecipients and contractors) for legal and associated costs arising from administration of the grant.

Specifically, the proposed rule would indicate that legal and associated costs are subject to a variety of existing provisions, such as the overall percentage limitations on the use of CETA funds for administrative expenses, CETA provisions on classification of costs by category, the CETA prohibitions against lobbying and political activities and the cost principles at 41 CFR 29–70.103, which incorporate by reference the provisions on legal expenses and allocability of costs at 41 CFR Part 1–15.

Under the proposed rule, legal costs would be allowable where they are incurred in connection with, and are incident to, administration of the grant. Costs incurred solely for the purpose of discharging the recipient's general responsibilities (*i.e.*, responsibilities that would be performed regardless of the existence of the grant) would be unallowable. The proposed regulation provides a number of examples of legal and associated costs that are allowable under the above standard.

Legal costs associated with representing the prime sponsor in recipient or employer level grievance/complaint proceedings would be allowable since such procedures are mandated by the CETA regulations (20 CFR §§ 676.83 and 676.84) and are related to administration of the grant.

Also, costs for legal services would be allowable where they involve representing the recipient's position before the Grant Officer prior to arriving at a settlement or, if no settlements is reached, prior to the Grant Officer's final determination. For example, the costs of representing the recipient in the informal resolution process under 20 CFR § 676.88(d) would be allowable. In cases involving analogous situations under Federal contracts, the courts have held that such costs are allowable, *e.g.*, *Acme Processing Equipment Co.* v. *U.S.*, 171 Ct. Cl. 251, 347 F.2d 538 (1965); *Kalvas Corporation, Inc.* v. *United States*, 211 Ct. Cl. 192, 543 F.2d 1298 (1976).

The proposed rule also indicates that costs associated with representing a recipient at the Administrative Law Judge (ALJ) or Secretarial level are unallowable except that such costs may subsequently be allowed where the recipient is ultimately held not in violation of the CETA statute or regulations. Such costs may be properly attributable to administration of the grant, and therefore allowable, where the recipient is held in compliance with CETA. Similarly, costs associated with the defense of a recipient in other proceedings related to the recipient's program, *e.g.*, a worker's compensation proceeding involving a CETA participant, would be unallowable except that they could be subsequently allowed where the recipient is ultimately held not in violation of Federal, State or local law.

Finally, the proposed rule specifies that recipients are responsible for insuring compliance with the restrictions on legal costs by their subrecipients and contractors.

While these regulations are deemed significant within the meaning of Executive Order 12044 and the Department of Labor regulations thereunder, the financial and other impact of these regulations are less than specified in DOL criteria for determining when a regulatory analysis should be made (see 44 FR 5576, January 26, 1979). Therefore, the preparation of a regulatory analysis is not required for these regulations.[1]

The program for which this rule is promulgated is listed in the Catalog of Domestic Federal Assistance as No. 17.232, "Comprehensive Employment and Training Programs."

Accordingly, § 676.40–2 of Title 20, Chapter V, of the Code of Federal Regulations is proposed to be amended by revising paragraph (b) as follows.

§ 676.40–2 [Amended]

* * * * *

(b) *Costs of Legal and Associated Services.* (1) Nothing in these provisions shall be deemed to authorize the Department to pre-approve the selection of legal counsel by a prime sponsor, but no administrative funds under any Title of the Act may be used by a prime sponsor for legal or other associated services from contractors unless the prime sponsor certifies in writing that:

(i) The payments are not unreasonable in relation to the fees charged by other contractors providing similar services; and

(ii) The services could not be competently provided through employees of the prime sponsor or other available State or local governmental employees (sec. 123(f)(2)).

(2) The costs of legal and associated services are allowable where they are incurred in connection with, and are incident to, the administration of the grant and are not incurred solely for the purpose of discharging the recipient's general responsibilities (*i.e.*, those responsibilities that would be performed regardless of the existence of the grant program). Examples of such allowable costs include, but are not limited to:

(i) Review for legal sufficiency of: the Comprehensive Employment and Training Plan, the recipient's eligibility determination and participant tracking procedures, the local grievance/complaint system, the recipient's procurement and contracting procedures and other fiscal, management and monitoring systems;

(ii) Providing legal advice with respect to interpretations of the CETA statute and regulations;

(iii) Representing the recipient at the local grievance/complaint level;

(iv) Negotiating, drafting and interpreting subgrants, contracts and agreements;

(v) Litigation of matters arising under subgrants and contracts, except as

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[1] A copy of a letter, dated January 16, 1981, from Ray Marshall to the Small Business Administration was filed with the original document. This letter certified that this rule would not have a significant economic impact upon a substantial number of small business entities.

limited in paragraph (b)(5) of this section:

(vi) Obtaining licenses and permits from, and resolving legal issues with, State or local regulatory and taxing authorities, where such activities are pertinent to program operations; and

(vii) Providing legal assistance in connection with personnel and labor relations problems involving CETA staff and participants.

(3) Costs of legal and associated services must otherwise be in accordance with other applicable provisions, including, but not limited to:

(i) The limitation at § 676.42(a) on the percentage of grant funds which may be used for administrative costs;

(ii) The provisions at § 676.41–1 on classification of costs by category;

(iii) The prohibition at § 676.69 against political activities in CETA programs;

(iv) The prohibition at § 676.70 against the use of CETA funds for lobbying activities; and

(v) The cost principles at 41 CFR 29–70.103, which incorporate by reference the provisions on allowability of costs set forth at 41 CFR § 1–15.703–2, and the restrictions on legal expenses specified at 41 CFR § 1–15.711–16.

(4) "Associated Services" shall mean, for purposes of this section, services that are ancillary to and are provided in connection with, legal services. Examples of associated services include, but are not limited to, clerical and paralegal services rendered in conjunction with legal services and provision of related information on legislative, regulatory and administrative changes applicable to the CETA program. Where the costs of legal services are unallowable, the costs of associated services shall also be unallowable.

(5)(i) Legal and associated costs are allowable where they involve representing the recipient in arriving at an informal resolution of the dispute or, if no such resolution is reached, such costs as were reasonably incurred prior to the Grant Officer's final determination.

(ii) Costs of representing the recipient in a CETA proceeding at the Administrative Law Judge or Secretarial level are unallowable except that such costs may subsequently be allowed where the recipient demonstrates by a final decision or order (after all appeals have been exhausted) that the recipient is not in violation of the CETA statute and regulations.

(iii) Costs of representing the recipient in other proceedings related to the recipient's CETA program, *e.g.*, a workers compensation proceeding involving a CETA participant, are unallowable, except that such costs may subsequently be allowed where the recipient demonstrates by a final decision or order (after all appeals have been exhausted) that the recipient is not in violation of Federal, state or local law.

(6) Each recipient is responsible for ensuring compliance with these provisions on legal and associated costs by its subrecipients and contractors.

* * * * *

(Sections 123(g) and 128 of the Comprehensive Employment and Training Act (29 U.S.C. 801 *et seq.*, Pub. L. 95–524, 92 Stat. 1907))

Signed at Washington, D.C. this 19th day of January, 1981.

Ray Marshall,

Secretary of Labor.

[FR Doc. 81–3139 Filed 1–19–81; 2:30 pm]

BILLING CODE 4510–30–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 161

[Docket No. 80N–0384]

Canned Sardines and Sardine-Type Products; Intent To Establish Standards

Correction

In FR Doc. 80–34280, at page 73092, in the issue of Tuesday, November 4, 1980, on page 73093, in the second column, the first full paragraph, the second from the last line, insert the word "providing" after the word "country".

BILLING CODE 1505–01–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[LR–68–79]

Income Tax—Investment Credit for Single Purpose Agricultural or Horticultural Structures; Notice of Proposed Rulemaking

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations relating to the investment credit for single purpose agricultural or horticultural structures. Changes to the applicable tax law were made by the Revenue Act of 1978. This regulation would provide the public with the guidance needed to comply with that Act.

DATES: Written comments and requests for a pulic hearing must be delivered or mailed by March 24, 1981. The amendments are proposed to be effective for open taxable years ending after August 15, 1971.

ADDRESS: Send comments and requests for a public hearing to: Commissioner of Internal Revenue, Attention: CC:LR:T (LR–68–79), Washington, D.C. 20224.

FOR FURTHER INFORMATION CONTACT: Carolyn Swift of the Legislation and Regulations Division, Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, D.C. 20224 (Attention: CC:LR:T) (202–566–3458) (not a toll free call).

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed amendments to the Income Tax Regulations (26 CFR Part 1) under section 48 of the Internal Revenue Code of 1954 as amended by section 314 of the Revenue Act of 1978 (92 Stat. 2763), and are to be issued under the authority contained in section 7805 of the Internal Revenue Code of 1954 (68A Stat. 917; 26 U.S.C. 7805).

After the restoration of the investment credit by section 101(a) of the Revenue Act of 1971 (85 Stat. 497) a controversy arose over whether investments in certain agricultural or horticultural structures were eligible for the credit. The determination concerning the eligibility of these structures was made on a case-by-case basis and taxpayers frequently litigated the Commissioner's denial of the credit. S. Rep. No. 95–1263, 95th Cong., 2d Sess. 116 (1978), 1978–3 C.B. 315. As a result of the continuing controversy over this question, Congress decided to provide specifically, in section 314 of the 1978 Act, that single purpose agricultural or horticultural structures are eligible for the investment credit. The new statute describes the property to which the credit extends and sets out a special rule for recapture under section 47 of the Code. These proposed regulations will implement the provisions of section 314 of the 1978 Revenue Act.

Effective Date

The provisions of section 48(a)(1)(D) and this regulation apply to taxable years ending after August 15, 1971. The Internal Revenue Service already has received comments from the public suggesting that the regulations provide a method for allowing taxpayers to claim a credit for taxable years ending after August 15, 1971 which are closed by the

statute of limitations. However, on the authority of *United States v. Zacks*, 375 U.S. 59 (1963), the statute of limitations cannot be waived to apply section 48(a)(1)(D) retroactively. See also Rev. Rul. 79-343, 1979-2 C.B. 20, which holds that the credit is available for open taxable years ending after August 15, 1971.

Single Purpose Agricultural Structure

A single purpose agricultural structure is a structure specifically designed, constructed, and used exclusively for the housing, raising, and feeding of a particular type of livestock and their produce. The structure also may contain a limited amount of work space for specific purposes. In addition, the structure must include equipment necessary to house, raise, and feed that particular type of livestock. The use of the conjunctive in section 48(p)(2) and the legislative history indicate that a qualifying structure must contain this equipment. H.R. Rep. No. 95-1800, 95th Cong. 2d Sess. 227 (1978), 1978-3 C.B. 521. A qualifying structure may not be designed, constructed, or used for any purposes unrelated to those stated above.

Single Purpose Horticultural Structure

A single purpose horticultrual structure is a greenhouse or structure which is specifically designed, constructed, and used exclusively for the commercial production of plants or mushrooms. The structure also may contain a limited amount of work space for certain specific purposes. A qualifying structure may not be designed, constructed, or used for any purposes unrelated to the commercial production of plants or mushrooms.

Specifically Used

Single purpose agricultural and horticultural structures must be specifically used only for permissible purposes. The proposed regulations set out the permissible purposes and explain how the specific use test is satisifed.

Workspace; Ancillary Post-Production Activities

Under section 48(p)(4), single purpose agricultural and horticultural structures may contain work space only if the work space is used for stocking, caring for, or collecting livestock, plants, or mushrooms; for maintenance of the structure; or for maintenance or replacement of equipment or stock enclosed or contained in the structure. The legislative history discusses this provision. See S. Rep. No. 95-1263, 95th Cong., 2d Sess. 116-17 (1978), 1978-3 C.B. 315. Proposed § 1.48-10(d) consequently provides that work space is permitted for these uses, including ancillary post-production activities. These activities, which include gathering, loading, sorting, and packing unprocessed plants and livestock produce, are to be distinguished from disqualifying activities such as processing or marketing.

Relation to Section 1250

The proposed regulations treat property to which section 48(a)(1)(D) applies as section 1250 property. Consequently the more rapid methods of depreciation that are available for section 1245 property may not be used for section 48(a)(1)(D) property and only limited depreciation recapture under section 1250 applies.

An analysis of the statute and its legislative history indicates that section 48(a)(1)(D) was intended to be section 1250 property other than section 1245 property and section 1245 property is defined by a specific list of types of property. Single purpose agricultural and horticultral structures are not included in this list. In the past, Congress has amended section 1245 to add to the definition of section 1245 property new categories of section 38 property under section 48(a)(1), as in the case of elevators and escalators. Revenue Act of 1962, § 13(a)(1), 76 Stat. 1032. In the case of section 48(a)(1)(D) property, however, no such amendment was enacted, despite the fact that the original House bill (H.R. 12840, 95th Cong., 2d Sess. (1978)), did contain a companion amendment to section 1245. The Conference Committee adopted substantially all of the provisions of the House bill, but did not include the amendment to section 1245.

Cases decided before section 48(a)(1)(D) was added to the Code classified some kinds of agricultural and horticultural structures as section 48(a)(1)(B) property and hence, by inference, as section 1245 property, since section 48(a)(1)(B) property is section 1245 property. In enacting section 48(a)(1)(D), however, Congress created a new category of property. Since the categories of property under section 48(a)(1) are mutually exclusive, this prior case law is not controlling for purposes of determining the nature of section 48(a)(1)(D) property. Instead, the statute and its legislative history must be analyzed and both indicate that Congress intended agricultural and horticultural structures to be section 1250 property. Accordingly, § 1.48-10(g)(2) provides that property to which section 48(a)(1)(D) applies is section 1250 property.

Comments and Requests for a Public Hearing

Before adopting these proposed regulations, consideration will be given to any written comments that are submitted (preferably six copies) to the Commissioner of Internal Revenue. All comments will be available for public inspection and copying. A public hearing will be held upon written request to the Commissioner by any person who has submitted written comments. If a public hearing is held, notice of the time and place will be published in the Federal Register.

Regulatory Flexibility Act

Although this document is a notice of proposed rulemaking which solicits public comment, the Internal Revenue Service has concluded that the regulations proposed herein are interpretative and that the notice and public procedure requirements of 5 U.S.C. 553 do not apply. Accordingly, these proposed regulations do not constitute regulations subject to the Regulatory Flexibility Act (5 U.S.C. chapter 6).

Drafting Information

The principal author of these proposed regulations is Carolyn Swift of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other Offices of the Internal Revenue Service and Treasury Department participated in developing the regulation, both on matters of substance and style.

Proposed Amendments to the Regulations

The Income Tax Regulations (26 CFR Part 1) are proposed to be amended by adding the following new § 1.48-10:

§ 1.48-10 Single purpose agricultural or horticultural structures.

(a) *In general*—(1) *Scope.* Under section 48(a)(1)(D), "section 38 property" includes single purpose agricultural and horticultural structures, as defined in section 48(p) and paragraphs (b) and (c) of this section. These structures are subject to a special rule for recapture of the credit. See paragraph (g) of this section. For the relation of this section to section 48(a)(1)(B) (other tangible property) and to section 1250 (depreciation recapture), see paragraph (h) of this section.

(2) *Effective date.* The provisions of section 48(a)(1)(D) and this section apply to open taxable years ending after August 15, 1971.

(b) *Definition of single purpose agricultural structure*—(1) *In general.*

Under section 48(p)(2), a single purpose agricultural structure is any structure or enclosure that meets all of the following requirements:

(i) It is specifically designed and constructed exclusively for permissible purposes (as defined in paragraph (b)(2) of this section). See paragraph (d) of this section for the rule regarding "specifically designed and constructed".

(ii) It is specifically used exclusively for those permissible purposes. See paragraph (e) of this section for the rules regarding "specifically used".

(iii) It houses equipment necessary to house, raise, and feed livestock and their produce. See paragraph (b) (3) and (4) of this section.

(2) *Permissible purposes.* The following are the only permissible purposes for a single purpose agricultural structure:

(i) Housing, raising, and feeding a particular type of livestock or its produce. The term "housing, raising, and feeding" includes the full range of livestock breeding and raising, activities including ancillary post-production activities (as defined in paragraph (f) of this section). Thus, for example, use of a structure for breeding livestock, or for producing eggs or livestock, is permitted. The structure may also be used for storing feed or machinery, but more than strictly incidental use for these purposes will disqualify the structure. See paragraph (e)(1) of this section. For the special rule concerning the permissible purposes for a milking parlor, see paragraph (b)(2)(iii) of this section.

(ii) Housing required equipment (including any replacements) as defined in this paragraph and in paragraph (b) (4) of this section.

(iii) If the structure is a dairy facility, it will qualify if it is used for: (A) the production of milk or for the production of milk and for housing, raising, or feeding dairy cattle, and (B) housing equipment (including any replacements) necessary to house, raise, or feed livestock. The term "housing, raising, or feeding" includes the full range of dairy cattle breeding and raising activities including ancillary post-production activities (as defined in paragraph (f) of this section). The structure may also be used for storing feed or machinery, but more than incidental use for these purposes will disqualify the structure. See paragraph (e)(1) of this section.

(3) *Livestock; particular type of livestock*—(i) *Livestock.* Livestock within the meaning of § 1.48–1(l) constitutes livestock for purposes of this section. Under section 48(p)(6), poultry constitutes livestock for purposes of section 48(a)(1)(D). The term "livestock" includes the offspring of livestock and the produce of livestock, such as milk and eggs. However, a structure that is used solely to house produce of livestock or equipment necessary to house produce of livestock will not qualify as a single purpose agricultural structure.

(ii) *Particular type of livestock.* A structure does not qualify as a single purpose agricultural structure if it is designed, constructed, or used exclusively for permissible purposes with respect to more than one particular type of livestock. For purposes of this section, each species is a different type except that all species of poultry are considered to be of a single type. Thus, for example, a structure will not qualify as a single purpose hog-raising facility if it also can be used to raise dairy cows, but a structure specifically designed, constructed, and used to raise poultry may house, raise, and feed both chickens and turkeys.

(4) *Required equipment rule.* (i) A single purpose agricultural structure must also house equipment necessary to house, raise, and feed the livestock ("required equipment"). Required equipment must be an integral part of the structure, and includes, but is not limited to, equipment necessary to contain the livestock, to provide them with water or feed, and to control the temperature, lighting, and humidity of the interior of the structure. For purposes of this section, equipment is an integral part of the structure if, after it is installed, it is economically impractical to put the structure to a use other than the use by reason of which it qualifies for the credit. The useful life of the structure, however, need not be contemporaneous with the life of the equipment it houses. A structure without required equipment is not a single purpose agricultural structure.

(ii) A single purpose agricultural structure may, but is not required to, house equipment (for example, loading chutes) necessary to the conduct of ancillary post-production activities as defined in paragraph (e) of this section.

(5) *Livestock structure.* In section 48(p)(2), the terms "single purpose livestock structure" and "single purpose agricultural structure" are interchangeable.

(c) *Definition of single purpose horticultural structure*—(1) *In general.* Under section 48(p)(3), a single purpose horticultural structure is any structure that meets both of the following requirements:

(i) It is a greenhouse or structure specifically designed and constructed exclusively for permissible purposes (as defined in paragraph (C)(2) of this section). See paragraph (d) of this section for the rule regarding "specifically designed and constructed."

(ii) It is specifically used exclusively for those permissible purposes. See paragraph (e) of this section for the rules regarding "specifically used."

(2) *Permissible purposes.* The following are the only permissible purposes for a single purpose horticultural structure:

(i) The commercial production of plants (including plant products such as flowers, vegetables, or fruit) in a greenhouse.

(ii) The commercial production of mushrooms in a structure.

(iii) A single purpose horticultural structure also may, but is not required to, house equipment necessary to carry out these permissible purposes listed in paragraph (c)(2) (i) and (ii) of this section.

(3) *Ancillary post-production activities.* The terms "commercial production of plants" and "commercial production of mushrooms" include ancillary post-production activities (as defined in paragraph (f) of this section).

(d) *Specifically designed and constructed.* A structure must be designed, constructed, and equipped in such a way that it is economically impractical to use the structure except for the specific use by reason of which it qualifies for the credit. For principles relating to required equipment, see paragraph (b)(4) of this section.

(e) *Specifically used.* There are two aspects of the specific use requirement—exclusive use and actual use.

(1) *Exclusive use.* (i) A structure qualifies as a single purpose agricultural or horticultural structure only if it is used exclusively for the permitted purposes by reason of which it qualified for the credit. Thus—

(A) The structure may not be used for any nonpermissible purposes (for example, processing, marketing, or more than incidental use for storing feed or equipment) and

(B) It may not be put to any use other than the specific use by reason of which it qualifies for the credit.

(ii) For purposes of this section, the term "incidental use" means a use which is both minor and related to the qualifying purpose. Thus, for example, if feed is stored in an agricultural structure which will be used for raising hogs, the feed stored must be used only for the hogs, and only a minor amount of space within the structure may be devoted to storing the feed.

(iii) A structure may fail the exclusive use test if either of the requirements of paragraph (e)(1)(i) is not met. Thus, for example, a horticultural structure that

contains an area for processing plants or plant products will fail the exclusive use test because there is a nonpermissible use. An agricultural structure that is used to house more than one particular type of livestock fails the exclusive use test for the same reason. A change in the use of an agricultural structure from one species of livestock to another will cause the structure to fail the exclusive use test when the change occurs. Thus, for example, a hog-raising facility which qualified for the credit when it was placed in service cannot later be modified and used for producing broiler chickens even if the structure would have qualified for the credit if it had been originally designed, constructed, and used exclusively for producing broiler chickens.

(2) *Actual use.* (i) A single purpose agricultural or horticultural structure also must actually be used for the permissible purpose by reason of which it qualifies for the credit. "Actual use" means "placed in service" (as defined in § 1.46-3 (d)). Mere vacancy, on a temporary basis, will not disqualify the structure. Thus, for example, a structure that is designed and constructed as a hog-raising structure will not qualify if it is never placed in service for raising hogs. However, a turkey-raising facility will not be disqualified if the turkeys are all sent to a packing plant in November and the structure remains vacant until the next spring when newly hatched turkeys are placed in the structure to be raised.

(ii) For purposes of this section, "vacancy on a temporary basis" includes temporary vacancy caused by market fluctuations or other economic considerations and vacancy on a seasonal basis.

(f) *Work space; ancillary post-production activities*—(1) *Permissible work space.* Under section 48(p)(4), a single purpose agricultural or horticultural structure may contain work space only if it is used for—

(i) Stocking, caring for, or collecting livestock, plants, or mushrooms,

(ii) Maintenance of the structure, and

(iii) Maintenance or replacement of the equipment or stock enclosed by or contained in the structure. Thus, for example, an eligible structure may not contain space devoted to processing or marketing or other nonpermissible purposes.

(2) *Ancillary post-production activities.* The term "stocking, caring for, or collecting" the livestock, plants, or mushrooms includes ancillary post-production activities. These activities, therefore, constitute permissible purposes when carried on in conjunction with other permissible purposes, and a qualifying structure may contain work space devoted to such activities. Ancillary post-production activities include gathering, sorting, and loading livestock, plants, and mushrooms and packing unprocessed plants, mushrooms, and the live offspring and unprocessed produce of the livestock. Ancillary post-production activities do not include processing activities, such as slaughtering or packing meat, nor do they include marketing activities.

(g) *Special rule for recapture under section 47.* Under section 48(p)(5), if a structure which qualifies for the credit under this section becomes ineligible because, within 7 years after the time it was placed in service, it ceases to be held for the specific use by reason of which it qualified, or it is used for other than that qualifying use, then the investment credit previously allowed with respect to the structure may be partially or entirely recaptured under section 47. Unlike other property to which section 47 applies, single purpose structures may not be converted from one permissible use to another without recapture. See subparagraph (e)(2) of this section.

(h) *Relationship to other sections*—(1) *Relation to section 48(a)(1)(B).* All structures that meet the requirements of section 48(a)(1)(D) will be considered to qualify under section 48(a)(1)(D) and not under section 48(a)(1)(B). Property that does not qualify under section 48(a)(1)(D), however, may nonetheless qualify under section 48(a)(1)(B) if it otherwise meets the requirements of that section.

(2) *Relationship to section 1250.* For purposes of depreciation recapture, property to which section 48(a)(1)(D) applies is section 1250 property.

(i) [Reserved]

(j) *Examples.* The provisions of this section may be illustrated by the following examples.

Example (1). A constructs a rectangular structure for use as an egg-producing facility. The structure has no windows. The walls and roof are made of corrugated steel and there is a door which is 4 feet wide and 8 feet tall at each end of the structure. At the end of each wall are louvered openings approximately 4 feet high and 8 feet long. These openings house thermostatically controlled fans. In the center of the walls are manually operated fresh-air openings. Corrugated steel "curtains" hang from the top of the openings so that the openings can be completely closed in cold weather, but the curtains can be propped open to admit fresh air. The building is well insulated. A has reinforced the roof with extra trusses and rafters and reinforced the buildings with extra wall studs. Two rows of cages are suspended from the rafters by thin steel girders and wires. The floor of the structure is a sloping concrete slab pierced with long troughs which run the length of structure beneath the cages. The troughs are used for collection and disposal of chicken wastes. When this structure is placed in service it will qualify for an investment credit under this section.

Example (2). B constructs a greenhouse for the commercial production of plants. The greenhouse is a rectangular structure with translucent fiberglass walls and roof. The structure is equipped with an automatic temperature and humidity control system. Pipes were installed to carry water and liquid fertilizer to the plants and to release minute amounts of carbon dioxide into the air. When the structure was originally placed in service B used the entire structure for growing flowers commercially. In September 1978, B began to use the structure for growing tomatoes. Because of the success of the venture, in January 1979, B began to use the entire structure for growing tomatoes. In February 1980, B set up a small counter with a cash register at one end of the structure so that workers could sell tomatoes to customers at the greenhouse. Until February 1980, the structure would qualify for the credit under this section. The change in use from growing flowers to growing tomatoes will not affect the eligibility of the structure. Once the cash register is installed, however, the structure fails to meet both the exclusive use test of paragraph (e)(1) of this section and the work space rule of paragraph (f) of this section since a single purpose structure may not be used for marketing activities.

Example (3). C purchases a prefabricated structure and makes modifications so that the structure will meet C's requirements. C adds gates and constructs a partition which divides the structure into two parts. One part of the structure constitutes less than one-third of the total area of the structure and is used to house feeder cattle while they are fed with hay. This part of the structure has a sloping concrete floor. The other part of the structure constitutes more than two-thirds of the total area of the structure and is used to store the hay used to feed the cattle. This structure will not qualify for the credit since it fails the required equipment rule. The structure does not contain equipment which is an integral part of the structure and the installation of which makes it economically impractical to use the structure for other uses. This structure would also fail the "specifically designed and constructed" test of paragraph (d) of this section since it could be economically practical to use at least two-thirds of the structure for uses other than housing, raising, and feeding feeder cattle. The structure would also fail the specific use test of paragraph (e) of this section because it is not exclusively used to house, raise, and feed the cattle and because it is used for storing hay, which is a nonpermissible use.

Jerome Kurtz,

Commissioner of Internal Revenue.

[FR Doc. 81-2084 Filed 1-19-81; 8:45 am]

BILLING CODE 4830-01-M

26 CFR Part 1

[LR-133-78]

Books and Records of Foreign Corporations and Operations

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: This document contains proposed regulations relating generally to the books and records of a foreign organization, trade, or business. The proposed regulations authorize a district director or the Director of International Operations to designate, under certain circumstances, the location where the records must be kept and to require that a translation or interpreter be provided at the time records kept in a foreign language are made available for examination. The proposed regulations also require certain records of a controlled foreign organization, trade, or business to be kept and clarify when the records of a controlled foreign coropration must be provided.

DATES: Written comments and requests for a public hearing must be delivered or mailed by March 24, 1981. Section 1.6001–1(f), authorizing the designation of a location, is proposed to apply if the time fixed in accordance with § 301.7605–1 occurs more than 30 days after the date on which these proposed regulations are published in the Federal Register as a Treasury Decision. The language added to § 1.6001–1(a), requiring certain records of a controlled foreign organization, trade, or business to be kept, is proposed to apply to records of certain transactions occurring more than 30 days after the date on which those proposed regulations are published in the Federal Register as a Treasury Decision. Section 1.6001–1(g) and the language added to § 1.964–3(a) are proposed to be effective retroactively.

ADDRESS: Send comments and requests for public hearing to: Commissioner of Internal Revenue, Attention: CC:LR:T, Washington, D.C. 20224.

FOR FURTHER INFORMATION CONTACT: Herman B. Bouma of the Legislation & Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, D.C. 20224, Attention: CC:LR:T, 202–566–3289, not a toll-free call.

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed amendments to the Income Tax Regulations (26 CFR Part 1) under sections 964(c) and 6001 of the Internal Revenue Code of 1954. The amendments are proposed under the authority contained in sections 964(c), 6001, and 7805 of the Internal Revenue Code of 1954 (76 Stat. 1027, 26 U.S.C. 964(c); 68A Stat. 731, 26 U.S.C. 6001; 68A Stat. 917, 26 U.S.C. 7805).

Explanation of Provisions

Paragraph (a) of § 1.964–3 would be amended to make clear that the records of a controlled foreign corporation must be provided even though the U.S. shareholder claims it has no amounts includible in income under section 951.

Paragraph (a) of § 1.6001–1 would be amended to provide that a U.S. taxpayer must keep (or have kept on its behalf) certain records of any foreign organization, trade, or business that the taxpayer owns or controls directly or indirectly.

Proposed § 1.6001–1(f) applies to a person who has failed to provide at the time and place fixed in accordance with § 301.7605–1 records kept outside the United States and required by the Internal Revenue Code or the regulations thereunder. If it is reasonable to believe, considering the causes of the failure, that keeping the records at a different location would have facilitated obtaining the records, then the district director or the Director of International Operations may designate a location where the records must be kept. The location may be the United States.

Proposed § 1.6001–1(g) applies to records that are kept in a foreign language. If such records have been requested for examination, the district director or the Director of International Operations may require that a translation of the records or the services of a qualified interpreter be provided at the time of the examination.

Comments and Requests for a Public Hearing

Before adopting these proposed regulations, consideration will be given to any written comments that are submitted (preferably six copies) to the Commissioner of Internal Revenue. All comments will be available for public inspection and copying. A public hearing will be held upon request to the Commissioner by any person who has submitted written comments. If a public hearing is held, notice of the time and place will be published in the Federal Register.

Regulatory Flexibility Act

Pursuant to 5 U.S.C. 605(b), the Secretary of the Treasury has certified that the requirements of the Regulatory Flexibility Act do not apply to this Notice of Proposed Rulemaking as it will not have a significant economic impact on a substantial number of small entities. The proposed rules do not impose a significant economic burden on taxpayers. The records required by the amendment to paragraph (a) of § 1.6001–1 are already available to taxpayers; under paragraph (f) of § 1.6001–1, a taxpayer would be required to keep its records at a particular location only if the taxpayer failed to provide records and the location is necessary to facilitate obtaining the records. In addition, the proposed rules primarily affect taxpayers that own or control foreign organizations or that are required to keep records of foreign organizations. Only a limited number of small entities own or control foreign organizations.

Drafting Information

The principal author of these proposed regulations is Herman B. Bouma of the Legislation & Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations, both on matters of substance and style.

Proposed Amendments to the Income Tax Regulations

The proposed amendments to 26 CFR Part 1 are as follows:

Paragraph 1. Section 1.482–1 is amended by adding a new paragraph (e) to read as follows:

§ 1.482–1 Allocation of income and deductions among taxpayers.

* * * * *

(e) *Records of a controlled foreign organization, trade, or business.* For the records that a U.S. taxpayer must keep of any foreign organization, trade, or business it owns or controls, see paragraph (a) of § 1.6001–1.

Par. 2. Paragraph (a) of § 1.964–3 is amended by adding immediately after the first sentence a new sentence to read as follows:

§ 1.964–3 Records to be provided by United States Shareholders.

(a) *Shareholder's responsibility for providing records.* * * * The books and records must be provided even though the United States shareholder claims he has no such liability. * * *

* * * * *

Par. 3. Paragraph (a) of § 1.6001–1 is amended by adding a new sentence to read as follows:

§ 1.6001–1 Records.

(a) *In general.* * * * If the person owns or controls directly or indirectly any foreign organization, trade, or business, the person shall keep (or have kept on its behalf) the permanent books of account or records (that the person is not otherwise required to keep or have kept on its behalf) of the foreign organization, trade, or business relating to transactions that occur more than 30 days after the date on which these proposed regulations are published in the Federal Register as a Treasury Decision and that are between the foreign organization, trade, or business and any organization, trade, or business (including the person) owned or controlled directly or indirectly by the same interests that own or control directly or indirectly the person.

* * * * *

Par. 4. Section 1.6001–1 is amended by adding new paragraphs (f) and (g) to read as follows:

§ 1.6001–1 Records.

* * * * *

(f) *Designation of location of records)*—(1) *Authority to designate.* If—

(i) A person fails to provide at the time and place fixed in accordance with § 301.7605–1 books of account or records ("records") that the person is required by the Internal Revenue Code or the regulations thereunder to keep (or have kept on its behalf, including records to which § 1.964–3 applies),

(ii) The records are not kept in the United States, and

(iii) It is reasonable to believe, considering the causes of the failure, that keeping the records at a different location would have facilitated obtaining the records,

the district director or the Director of International Operations may designate by registered or certified mail to the person a location or locations, which may include the United States, where the person must keep the records described in paragraph (f)(2) of this section. The person failing to provide the records ("recordkeeper") and the person whose records were not provided ("recorded person") may or may not be identical.

(2) *Records required to be kept at designated location.* The records that must be kept at the designated location or locations are the records (or true copies thereof) of the recorded person that relate to the recorded person's first taxable year to which the records that the recordkeeper failed to provide relate, and to the nine immediately succeeding taxable years. The records shall be up to date with respect to a taxable year of the recorded person on or before the later of—

(i) The time (including extensions thereof) by which the recordkeeper is required to file a U.S. income tax return for the taxable year to which the taxable year of the recorded person relates, or

(ii) The 90th day after the notice designating the location or locations is mailed to the recordkeeper.

(3) *Revocation of designation.* The district director or the Director of International Operations may revoke the designation of a location or locations if the director concludes that the designation is no longer needed to facilitate obtaining records.

(4) *Effective date.* The provisions of this paragraph (f) shall apply if the time fixed in accordance with § 301.7605–1 occurs more than 30 days after the date on which these proposed regulations are published in the Federal Register as a Treasury Decision.

(g) *Records in a foreign language.* The district director or the Director of International Operations may require a person that is required by the Internal Revenue Code or the regulations thereunder to keep (or have kept on its behalf) books of account or records ("records") to provide, at the time the records are made available for examination, an accurate English translation of the records or the services of a qualified interpreter satisfactory to the director.

William E. Williams,

Acting Commissioner of Internal Revenue.

[FR Doc. 81–2490 Filed 1–19–81; 8:14 pm]

BILLING CODE 4830–01–M

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 6

[Notice No. 363; Reference Notice No. 355]

"Tied-House" Regulations Credit To Retailers in Arrears

AGENCY: Bureau of Alcohol, Tobacco and Firearms, Department of the Treasury.

ACTION: Proposed rule; extension of comment periods.

SUMMARY: On November 6, 1980, the Bureau of Alcohol, Tobacco and Firearms (ATF) published a notice of proposed rulemaking (Notice No. 355) in the Federal Register (45 FR 73692), relating to extension of credit to retail liquor dealers. That notice solicited comments on five proposed methods intended to prevent creation of a tied-house relationship between retailers in arrears of payments, and suppliers or wholesale liquor dealers who extended credit to retailers. The comment period for that notice expired January 5, 1981.

A number of industry members have requested more time in order to study the five proposed alternatives. The Director feels that extending the comment period for 30 days will provide adequate time for the preparation and submission of written comments by interested persons.

DATE: Comments must be received by February 5, 1981.

ADDRESS: Send comments to: Chief, Regulations and Procedures Division, Bureau of Alcohol, Tobacco and Firearms, Post Office Box 385, Washington, D.C. 20044, Attention: Notice No. 355.

FOR FURTHER INFORMATION CONTACT: Charles N. Bacon, Research and Regulations Branch, Telephone: 202–566–7626.

Sec. 5 of the Federal Alcohol Administration Act, 49 Stat. 981, as amended (27 U.S.C. 205).

Signed: January 14, 1981.

G. R. Dickerson,

Director.

[FR Doc. 81–2580 Filed 1–22–81; 8:45 am]

BILLING CODE 4810–31–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1990

Identification, Classification and Regulation of Potential Occupational Carcinogens; Proposed Amendments

AGENCY: Occupational Safety and Health Administration, Department of Labor.

ACTION: Proposed rule.

SUMMARY: Amendments are proposed to the permanent standard for the Identification, Classification and Regulation of Potential Occupational Carcinogens ("Cancer Policy" standard, 29 CFR Part 1990, 45 FR 5002, Jan. 22, 1980) to add new provisions to conform it to the recent Supreme Court decision on OSHA's benzene standard, *Industrial Union Department, AFL–CIO* v. *American Petroleum Institute, et al.* 65 L. Ed. 2d 1010, 100 S. Ct. 2844 (July 2, 1980). The proposed amendments reflect the Court's interpretation of the Occupational Safety and Health Act of 1970 to the effect that a determination of the significance of the risk must be made prior to the issuance of a carcinogen standard, that the exposure limit be set at the lowest feasible level

which is reasonably necessary or appropriate to eliminate significant risk, and that OSHA must consider all relevant evidence in making these determinations. In a separate Federal Register notice, 46 FR 4889, OSHA has deleted those provisions of the Cancer Policy which were inconsistent with the Supreme Court's decision. This proposal for amending the Cancer Policy is intended to incorporate new provisions which would clarify the Cancer Policy in light of the benzene decision.

DATES: Comments on the proposed amendments must be received on or before March 31, 1981.

ADDRESSES: Comments should be submitted to the Docket Officer, Occupational Safety and Health Administration, Docket No. H-090A, Room S-6212, U.S. Department of Labor, 3rd and Constitution Avenue NW., Washington, D.C. 20210.

FOR FURTHER INFORMATION CONTACT: Mr. James F. Foster, OSHA Office of Public Affairs, Room N-3641, U.S. Department of Labor, Third Street and Constitution Avenue, NW., Washington, D.C. 20210 telephone (202) 523-8151.

SUPPLEMENTARY INFORMATION:

1. Introduction

On January 22, 1980, the Occupational Safety and Health Administration published a final standard for the identification, Classification and Regulation of Potential Occupational Carcinogens (the "Cancer Policy") 29 CFR Part 1990, at 45 FR 5002. On June 27, 1980, OSHA issued a correction document at 45 FR 43403. The Cancer Policy included scientific policies, regulatory policies and procedures designed to lead to the more effective regulation of occupational carcinogens. Among the regulatory policies was the provision that exposures to Category I Occupational Carcinogens be reduced to the lowest feasible level taking into account economic and technical considerations. Limitations on the consideration of some types of evidence already considered in the Cancer Policy were also included.

On July 2, 1980, the Supreme Court issued its decision on the OSHA benzene standard, *Industrial Union Department, AFL-CIO* v. *American Petroleum Institute, et al.* 65 L Ed. 2d 1010, 100 S. Ct. 2844 (the "benzene decision" or *IUD* v. *API*). The Court held that OSHA must consider the significance of the risk before regulating toxic substances, that OSHA had the burden of demonstrating the significance of the risk, and that OSHA must consider all relevant evidence in making these determinations.

In a separate notice published in the Federal Register on January 19, 1981, OSHA deleted certain provisions of the Cancer Policy which were inconsistent with the Supreme Court's decision. In the notice published today, OSHA is proposing amendments to the Cancer Policy which will explicitly incorporate the new elements required by the benzene decision into the Cancer Policy. The proposed changes explicitly provide that a determination of the risk must be made prior to the issuance of a carcinogen standard, that the exposure limit be set at the lowest feasible level which is reasonably necessary or appropriate to eliminate significant risk and that OSHA must consider all relevant evidence in these determinations.

It should be noted that most provisions of the Cancer Policy are not affected by the benzene decision, and therefore have not been changed by the previously published deletion document or by this proposal. These provisions include scientific policies, priorities setting, identification criteria and classification criteria. A more extensive discussion of the Cancer Policy and the provisions unaffected by the Court's decision in *IUD* v. *API* is found in the Federal Register deletion notice, 46 FR 4889.

2. Proposed Amendments to Regulatory Sections

The following paragraphs discuss those sections of the Cancer Policy standard OSHA proposes to change to incorporate the elements of the Supreme Court's benzene decision with the Cancer Policy. The effect of the previous document was to delete provisions of the Cancer Policy which no longer had the force of law because they were inconsistent with the Supreme Court decision. As a result, the Cancer Policy is now fully consistent with the law of the benzene case. This proposal would now add a limited number of provisions to the Cancer Policy which would affirmatively incorporate the benzene decision into the Cancer Policy.

The Cancer Policy was intended to comprehensively cover issues relevant to identifying and regulating occupational carcinogens. Therefore the amendments are intended to reflect the Agency's position on the issues which OSHA must consider because of the benzene decision. OSHA intends that this rulemaking be confined to the regulatory and policy issues raised by the proposed amendments. As stated above, the scientific policies in the Cancer Policy were not affected by the Supreme Court's decision and are not the subject of this proceeding. Participants who wish to petition to amend a scientific policy should refer to 29 CFR §§ 1990.105 and 1990.145 for the appropriate procedures.

The proposed changes would not establish generic policies for determining whether a risk is significant or evaluating specific risk assessments. These questions will remain open issues for consideration in substance specific rulemakings. OSHA believes it is inappropriate at this time to propose generic policies for the determination of the significance of risk, because in contrast to the Cancer Policy which is based on extensive OSHA experience in regulating carcinogens, OSHA rulemakings have not generally considered the case by case applications of risk assessments.

§ *1990.111(b)*

This paragraph, after the deletions made by the January 19, 1981 Federal Register notice, provides that exposure to Category I Potential Carcinogens is to be reduced primarily through the use of engineering and work practice controls. *IUD* v. *API* requires that the significance of the risk created by the substance be considered before a standard is issued. (slip. op. pp. 4–5). To make this explicit in the Cancer Policy, an introductory clause, "where a significant risk exists" has been proposed for the paragraph, thereby explicitly indicating that consideration must be given to the significance of the risk before a standard may be issued.

In addition, the decision held that the agency could lower exposures to eliminate significant risks (sl. op. pp. 31, 33 n 49, 34–35). Accordingly, to incorporate this interpretation and to recognize that reducing exposures to the lowest feasible level is appropriate where reasonably necessary to eliminate significant risk, it is proposed to modify the paragraph to provide that the level set shall be the "lowest feasible level which is reasonably necessary or appropriate to eliminate significant risk."

As conformed to the Supreme Court's interpretation of the OSHA Act, this incorporates the three statutory concepts relevant to setting exposure levels. Section 6(b)(5) limits exposure levels to what is "feasible". Therefore exposure levels cannot be reduced below the lowest feasible level even if there is remaining significant risk. Substitution, if possible, may be considered as a regulatory alternative if such a risk remains.

Secondly, the lowest feasible level is to be set if reasonably necessary and appropriate to eliminate significant risk. This incorporates the requirement of

§ 6(b)(5) of the Act "that no employee will suffer material impairment of health or functional capacity" and the requirement of § 3(8) as interpreted by the Supreme Court that "health standards . . . be reasonably necessary or appropriate to provide safe or healthful employment . . .".

Finally, if the lowest feasible level is not reasonably necessary or appropriate to eliminate significant risk, then the exposure level is to be set at the level which is reasonably necessary or appropriate to eliminate significant risk.

The Supreme Court did not reach the question of whether the Act provides for cost benefit analysis in setting exposure limits. This issue is now before the Supreme Court in *American Textiles Manufacturers Institute* v. *Marshall*, No. 79-1429. Accordingly no change is proposed to the Cancer Policy with respect to cost benefit analysis.

No change is proposed in the regulatory policy of primary reliance on engineering and work practice controls. That policy was adopted by OSHA based on an extensive analysis of the record (see the discussion at 45 FR 5222) and was not affected by the Supreme Court's decision.

§ 1990.111(i)

This paragraph provides that exposures to Category II Potential Carcinogens "will be reduced as appropriate and consistent with the statutory requirements on a case-by-case basis". It is proposed to change the paragraph by inserting "where a significant risk exists" to make explicit the Supreme Court's interpretation that this issue must be considered before a standard can be issued. No other changes are needed, since the formulation of the criteria for setting the exposure limit is "as appropriate and consistent with statutory requirements." The existing language therefore automatically incorporates the Supreme Court's interpretation in *IUD* v. *API*.

§ 1990.111(j)

This paragraph, after the deletions made by the January 19, 1981 Federal Register notice, states that risk assessments will be performed based on the available data utilizing cautious and prudent assumptions. Again, as the significance of risk is now an explicit issue, it is proposed to change the paragraph to so indicate.

The clause that "cautious and prudent assumptions" are to be used remains. The Supreme Court held this was appropriate stating that,

> So long as they are supported by a body of reputable scientific thought, the agency is free to use conservative assumptions in interpreting the data with respect to carcinogens, risking error on the side of over protection, rather than under protection. (sl. op. p. 45).

§ 1990.111(k)

This section sets forth principles for regulation when a suitable substitute exists for a Category I Potential Carcinogen. It provides that when a suitable substitute exists that is less hazardous, a no occupational exposure limit be set. It is proposed to change it to explicitly require consideration of the question of whether "substitution is reasonably necessary or appropriate to reduce significant risk". This change would be added merely for clarification. The language, of course, incorporates the statutory language of § 3(8) of the Act.

§ 1990.132

This section sets forth factors which may be considered in setting priorities. A new paragraph 1990.132(b)(4) is proposed to be added to indicate explicitly that the "significance of the risk from exposure to the substance taking into account the results of risk assessments which may have been performed and other relevant factors", may also be taken into account in setting priorities. This makes it explicit that the significance of the risk, a factor required to be considered in regulation by the Supreme Court's interpretation, is one of the factors which may be taken into account in the priorities process. It should be noted that § 1990.132 is permissive and would remain so. The Secretary is not required to take into account every factor or weigh them in particular ways in setting priorities and no legal rights are created. Of course, the Secretary must take into account all required factors in issuing final regulations. The last four paragraphs of § 1990.132(b) are renumbered in a conforming change.

§ 1990.141

This section states that OSHA normally will issue an advance notice of proposed rulemaking before proposing to regulate a carcinogen. Paragraph 1990.141(a)(3) indicates that the advance notice will include a brief summary of health effects. A new clause is proposed specifying that a brief summary of the significance of the risk will be included. This change is made since this matter has regulatory importance as a result of the Supreme Court decision. However, advance notices are not required and they are pre-regulatory documents which do not create legal rights or liabilities in this respect. It is usually advantageous for the public to be notified in the early stages of the regulatory process before the agency has completed its analyses, so the public will have adequate time to gather data. Therefore it would be appropriate to issue an advance notice even though a risk assessment had not been completed, and although the discussion of the significance of the risk is limited to qualitative data as to carcinogenicity.

§ 1990.142(a)(1)

This section provides that after a notice of proposed rulemaking, the comment period shall be no more than 60 days and a hearing, if provided, shall commence within 100 days. The hearing's start may be postponed for no more than 30 days. As as result of the Supreme Court's decision, additional issues become relevant in the rulemaking. Therefore more time may be required by the public to submit comments and prepare for a hearing. Accordingly, a procedural change is proposed to permit the Agency to extend the periods for good cause shown.

§ 1990.142(a)(2)(iii)

This section sets forth the exposure limits to be set for a Category I Potential Carcinogen. It carries out in regulatory form the policy principles enunciated in § 1990.111(h) as to exposure limits and § 1990.111(k) as to suitable substitutes. It is proposed to change the language of § 1990.142(a)(2)(iii) to conform to the proposed changes made in § 1990.111(h) and (k). The specific reasons for the changes have been discussed above and need not be repeated.

§ 1990.142(b)(2)(iii) (originally designated § 1990.142(b)(3)(iii)

This paragraph deals with the exposure limit for Emergency Temporary Standards. For the same reasons discussed for the changes to § 1990.111(h), it is proposed that the language be changed to the "lowest feasible level which is reasonably necessary or appropriate to eliminate significant risk".

§ 1990.143

This section sets forth scientific principles to be utilized in the identification of carcinogenic substances. They are based on an extensive scientific record including review of hundreds of scientific articles, testimony of more than 100 scientific witnesses and extensive OSHA experience in earlier rulemaking proceedings. They are discussed in over 200 pages of Federal Register preamble. The agency is to apply these principles unless contrary arguments are based on substantial new evidence not

considered by the agency, substantial new issues (§ 1990.145), or upon evidence which meets certain threshold criteria (§ 1990.144).

The Supreme Court's decision is consistent with OSHA's recognizing scientific principles and policies based on a substantial evidentiary record. Several Supreme Court cases have recognized the appropriateness of generic policies so that the same issues need not be constantly repeated.

> To require the Commission to proceed only on a case-by-case basis would require it, so long as its policy outlawed indefinite price changing provisions, to repeat in hearing after hearing its conclusions that condemn all of them. There would be a vast proliferation of hearings. . . . We see no reason why under the statutory scheme the process of regulation need to be so prolonged and so crippled. (*F.P.C.* v. *Texaco*, 377 U.S. 33, 112 (1964).)

See also *United States* v. *Storer Broadcasting*, 351 U.S. 199 (1956) and *Weinberger* v. *Hynson*, 421 U.S. 609 (1973). Therefore these scientific principles remain established for the identification of carcinogens and the language of the section indicates that their purpose is limited to the identification of carcinogens.

However, arguments based on evidence which would not be relevant for identification (such as the dose levels in animal testing) could be relevant in assessing the significance of the risk. Therefore it is proposed to add a clarifying sentence indicating that "arguments based on evidence which does not conform to such criteria will nonetheless be considered to the extent justified by its relevance in assessing the risk of a substance for purposes of regulations."

§ 1990.144

This section, after the deletions made by the January 19, 1981 Federal Register notice, sets minimum quality standards for the consideration of certain types of evidence for the identification or classification of carcinogens. As discussed in regard to § 1990.143, the criteria are based on an extensive scientific record and are consistent with the Supreme Court's decision when utilizing the criteria for the identification and classification of carcinogens. However, data which do not meet those criteria may be relevant to assessing the significance of the risk in regulating carcinogens pursuant to the Supreme Court's decision. Therefore, it is proposed that a clarifying sentence be added, identical to the change to § 1990.143, to indicate that evidence not meeting the quality criteria will be considered, depending on its merit, for purposes of assessing the significance of the risk for regulation.

§ 1990.148

This section sets forth those issues to be considered during a rulemaking on a carcinogen. A new paragraph (i) is proposed explicitly providing for consideration of the significance of the risk from exposure to the substance taking into account the results of risk assessments which may have been performed and other relevant factors. It should be noted that the Supreme Court required consideration of the significance of the risk including risk assessments when they could be appropriately performed. The Court stated that this requirement was not to be a "mathematical straitjacket." It added that "OSHA is not required to support its finding that significant risk exists with anything approaching scientific certainty;" but can utilize the "best available evidence." The Court recognized that "there are a number of ways in which the agency can make a rational judgment about the relative significance of the risks. . . ." (sl. op. pp. 44, 45, 46). Therefore when data are not available to perform a formal quantitative risk assessment, other evidence may be appropriately utilized to base a determination of significance of risk.

Paragraphs subsequent to the proposed new paragraph (i) would be relettered. Paragraph (i) as originally lettered provides for the consideration of evidence relevant to setting exposure limits for Category I Potential Carcinogens. It is proposed to change it (as relettered paragraph (j)) to make explicit the Court's requirement that evidence of the risk be considered. The discussion of the reasons for the specific change is included in the discussion of § 1990.111(h).

Paragraph (k) as originally lettered provides for consideration of the suitability of substitutes and other issues relevant to substitution in the rulemaking process. It is proposed to change it (as relettered paragraph (l)) to explicitly include consideration of "whether substitution is reasonably necessary or appropriate to reduce significant risk." This change is proposed to conform to the Court's decision for the reasons stated in § 1990.111(k).

§ 1990.151(c)

Section 1990.151, the model standard for permanent carcinogen standards, sets forth guidelines for monitoring, exposure limit format, methods of compliance, medical protection, housekeeping, and other provisions. Conforming changes are proposed to paragraph (c) to be consistent with the Supreme Court's decision and with changes proposed in the prior sections of the Cancer Policy. The reasons are explained in the discussion for § 1990.111 (h) and (k).

Paragraph (c)(1)(i) is proposed to be conformed by adding a clause which would set the exposure limit for a Category I Potential Carcinogen, at the "lowest feasible level which is reasonably necessary and appropriate to eliminate significant risk." The clause which provides that when suitable substitutes are available a no occupational exposure limit be set, is proposed to be amended by adding that the Secretary determine that substitution is reasonably necessary or appropriate to reduce significant risk. Note that several minor wording changes have been proposed to make the language consistent with § 1990.111(k) and § 1990.151(c)(4) indicating that substitution is to be determined on a use or class of use basis.

Paragraphs (c)(1)(ii) on ceiling limits, (c)(2)(i) on eye exposure limits and (c)(2)(ii) on skin exposure limits are proposed to be changed by adding a reference to the "lowest feasible level which is reasonably necessary or appropriate to eliminate significant risk." It is proposed to change paragraph (c)(4) to explicitly indicate that in addition to determining that suitable substitutes are available, the Secretary must determine "that substitution is reasonably necessary or appropriate to reduce significant risk."

§ 1990.152(c)

Section 1990.152, the model standard for emergency temporary standards, sets forth guidelines similar to the guidelines contained in § 1990.151. Paragraph (c)(1)(i) on exposure limits, (c)(1)(ii) on ceiling limits, (c)(2)(i) on eye exposure and (c)(2)(ii) on skin exposure are proposed to be changed to provide for setting the exposure limit at the "lowest feasible level which is reasonably necessary or appropriate to eliminate significant risk."

3. Submission of Comments

Interested persons are invited to submit written comments on the proposed changes. OSHA emphasizes that this proposal is not intended to reopen the Cancer Policy generally, or to review regulatory issues other than as stated. Since the Supreme Court decision left intact the scientific policies established by the Cancer Policy for identifying carcinogens, they too are outside the scope of this rulemaking.

Comments should be submitted in quadruplicate and be received by March 31, 1981. They should be sent to the Docket Officer, Occupational Safety and Health Administration, Docket No. H-090A, Rm. S-6212, U.S. Department of Labor, 3rd Street and Constitution Avenue NW., Washington, D.C. 20210, where they will be available for inspection and copying.

OSHA does not believe that an oral hearing will be necessary since the principal issues are the very limited proposed changes to conform the Cancer Policy to the Supreme Court's decision in *IUD* v *API*. However, pursuant to Section 6(b) of the Act and OSHA's procedural rules, 29 CFR § 1911.11, interested persons may file, in addition to comments, written objections to proposals and may request a hearing thereon. Persons may submit such objections and hearing requests to the Docket Officer pursuant to those rules, by March 31, 1981. Any hearing requests must include a detailed summary of the evidence proposed to be adduced and must state the relevance of the evidence to the questions at issue in this proceeding and demonstrate that the evidentiary questions had not already been considered in the hearing already held for the Cancer Policy. If such submissions are filed OSHA will consider whether there are issues upon which a hearing would be appropriate.

Since the proposed changes are limited and merely conform the Cancer Policy to the Supreme Court's benezene decision, this amendment is not considered significant and therefore no regulatory assessment or analysis or regulatory flexibility analysis is required.

This document was prepared under the direction and supervision of Eula Bingham, Assistant Secretary of Labor for Occupational Safety and Health.

Accordingly, pursuant to sections 4(b), 6(b), 8(c) and 8(g) of the Occupational Safety and Health Act of 1970 (84 Stat. 1592, 1593, 1599; 29 U.S.C. §§ 653, 655, 657), the Secretary of Labor's Order 8-76 (41 FR 25059), and 29 CFR Part 1911, it is hereby proposed to amend Part 1990, of Title 29 of the Code of Federal Regulations as set forth below.

Signed at Washington, D.C. this 19th day of January, 1981.

Eula Bingham,

Assistant Secretary of Labor.

It is proposed to amend Part 1990 of title 29, Code of Federal Regulations as follows:

1. Section 1990.111 is amended by revising paragraphs (h), (i), (j) and (k) to read as follows:

§ 1990.111 General statement of regulatory policy.

* * * * *

(h) Where a significant risk exists, worker exposure to Category I Potential Carcinogens will be reduced, primarily through the use of engineering and work practice controls, to the lowest feasible level which is reasonably necessary or appropriate to eliminate significant risk.

(i) Where a significant risk exists, workers exposure to Category II Potential Carcinogens will be reduced as appropriate and consistent with the statutory requirements on a case-by-case basis in the rulemaking proceedings on individual substances. Any permissible exposure level so established shall be met primarily through engineering and work practice controls.

(j) The assessment of cancer risk to workers resulting from exposure to a potential occupational carcinogen and the significance of the risk will be made on the basis of available data. Because of the uncertainties and serious consequences to workers if the estimated risk is understated, cautious and prudent assumptions will be utilized to perform risk assessments.

(k) Where the Secretary determines that one or more suitable substitutes exist for certain uses of Category I Potential Carcinogens that are less hazardous to humans and that substitution is reasonably necessary or appropriate to reduce significant risk a no occupational exposure level shall be set for those uses, to be achieved solely through the use of engineering and work practice controls to encourage substitution. In determining whether a substitute is suitable, the Secretary will consider the technological and economic feasibility of the introduction of the substitute, including its relative effectiveness and other relevant factors, such as regulatory requirements and the time needed for an orderly transition to the substitute.

2. Section 1990.132 is amended by adding a new paragraph (b)(4) and renumbering existing paragraphs (b)(4), (b)(7) as (b)(5) through (b)(8) as follows:

§ 1990.132 Factors to be considered.

* * * * *

(b) * * *

(4) The significance of the risk from exposure to the substance taking into account the results of risk assessments which may have been performed and other relevant factors;

(5) The extent to which regulatory action could reduce not only risks of contracting cancer but also other occupational and environmental health hazards;

(6) Whether the molecular structure of the substance is similar to the molecular structure of another substance which meets the definition of a potential occupational carcinogen;

(7) Whether there are substitutes that pose a lower risk of cancer or other serious human health problems, or available evidence otherwise suggests that the social and economic costs of regulation could be small; and

(8) OSHA will also consider its responsibilities for dealing with other health and safety hazards and will consider the actions being taken or planned by other governmental agencies in dealing with the same or similar health and safety hazards.

(3) Section 1990.141 is amended by revising paragraph (a)(3) as follows:

§ 1990.141 Advance notice of proposed rulemaking.

(a) * * *

(3) A brief summary of the available data on health effects and the significance of the risk;

* * * * *

(4) Section 1990.142 is amended by revising paragraphs (a)(1), (a)(2)(iii), and (b)(2) as follows:

§ 1990.142 Initiation of a rulemaking.

* * * * *

(a) *Notice of proposed rulemaking (Section 6(b) of the Act).*—(1) *General.* The Secretary may issue a notice of proposed rulemaking in the Federal Register, pursuant to Section 6(b) of the Act and Part 1911 of this Chapter. The notice shall provide for no more than a sixty (60) day comment period, and may provide for a hearing, which shall be scheduled for no later than one hundred (100) days after publication of the Notice of Proposed Rulemaking. The comment period may be extended and the commencement of the hearing may be postponed for good cause shown.

(2) * * *

(iii) The permissible exposure limit shall be set, at the level which reduces worker exposure, primarily through engineering and work practice controls, to the lowest feasible level which is reasonably necessary or appropriate to eliminate significant risk, except that if a suitable substitute is available for one or more uses and if substitution is reasonably necessary or appropriate to reduce significant risk, no occupational exposure shall be permitted for those uses.

* * * * *

(b) * * *

(2) *Provisions of the ETS.* (i) The ETS shall contain at least provisions for scope and application, definitions, notification of use, a permissible

exposure limit, monitoring, methods of compliance including the development of a compliance plan, respiratory protection, protective clothing and equipment, housekeeping, waste disposal, medical surveillance, employee information and training, signs and labels, recordkeeping and employee observation of monitoring, unless the Secretary explains why any or all such provisions are not appropriate.

(ii) The model standard set forth in § 1990.152 shall be used as a guideline.

(iii) The permissible exposure limit shall be set at the lowest feasible level which is necessary to eliminate significant risk through any practicable combination of engineering controls, work practice controls and respiratory protection.

5. Section 1990.143 is amended by revising the introductory paragraph as follows:

§ 1990.143 General provisions for the use of human and animal data.

Human and animal data which are scientifically evaluated to be positive evidence for carcinogenicity shall be uniformly relied upon for the identification of potential occupational carcinogens. Arguments challenging the following provisions or their application to specific substances will be considered in individual rulemaking proceedings only if the evidence presented in support of the arguments meets the criteria for consideration specified in § 1990.144 or § 1990.145. Arguments based on evidence which does not conform to such criteria will nonetheless be considered to the extent justified by its relevance in assessing the risk of a substance for purposes of regulation.

* * * * *

6. Section 1990.144 as amended by revising the introductory paragraph as follows:

§ 1990.144 Criteria for consideration of arguments on certain issues.

Arguments on the following issues will be considered by the Secretary in identifying or classifying any substance pursuant to this Part, if evidence for the specific substance subject to the rulemaking conforms to the following criteria. Such arguments and evidence will be evaluated based upon scientific and policy judgments. Arguments based on evidence which does not conform to such criteria will nonetheless be considered, to the extent justified by its scientific merit and its relevance in assessing the risk of a substance for purposes of regulation.

* * * * *

7. Section 1990.146 is amended by adding a new paragraph (l) and relettering and revising paragraphs (l) through (1) as paragraphs (j) through (m) as follows:

§ 1990.146 Issues to be considered in the rulemaking.

* * * * *

(i) The determination of the significance of the risk from exposure to the substance taking into account the results of risk assessments which may have been performed and other relevant factors.

(j) The determination of the lowest feasible level to control exposures to Category I Potential Carcinogens primarily through the use of engineering and work practice controls including technological and economic considerations, which is reasonably necessary or appropriate to eliminate significant risk;

(k) The determination of the appropriate employee exposure level, consistent with the Act's requirements, for Category II Potential Carcinogens.

(l) Whether suitable substitutes are available for one or more uses of Category I Potential Carcinogens and whether substitution is reasonably necessary or appropriate to reduce significant risk and, if so, the no occupational exposure level to be achieved solely with engineering and work practice controls and other issues relevant to substitution; and

(m) Whether the provisions of the proposal and of § 1990.151 and § 1990.152 (model standards) are appropriate, except as limited by § 1990.142 and whether additional regulatory provisions may be appropriate.

8. Section 1990.151 is amended by revising paragraphs (c)(1), (c)(2) and (c)(4) as follows:

§ 1990.151 Model standard pursuant to section 6(b) of the Act.

* * * * *

(c) *Permissible exposure limits provisions*—(1) *Inhalation*—(i) *Time weighted average limit (TWA).* Within (insert appropriate time period) of the effective date of this section, the employer shall assure that no employee is exposed to an airborne concentration of ——— in excess of: (insert appropriate exposure limit representing: (A) the lowest feasible level which is reasonably necessary or appropriate to eliminate significant risk, except as modified by paragraph (c)(4) of this section or (B) when it is determined by the Secretary that there are available substitutes for all uses or classes of uses that are less hazardous to humans and that substitution is reasonably necessary or appropriate to reduce singnificant risk, the proposal shall permit no occupational exposure) as an eight (8)-hour time-weighted average.

(Where the Secretary finds that substitutes for ——— may which is reasonably necessary or appropriate to eliminate significant risk exist, the determination of the lowest feasible level/shall include consideration of the availability, practicability, relative degree of hazards, and economic consequences of the substitutes.)

(ii) *Ceiling limit. (If appropriate.)* Within (insert appropriate time period) of the effective date of this section the employer shall assure that no employee is exposed to an airborne concentration of ——— in excess of: insert exposure limit representing the lowest feasible level of exposure which is reasonably necessary or appropriate to eliminate significant risk as averaged over any: (insert appropriate time period) during the working day.

(2) *Dermal and eye exposure.* (If appropriate.) (i) Within (insert appropriate time period) of the effective date of this section, the employer shall (if eye exposure to ——— does not create a risk or cancer, insert exposure level or criteria which will prevent other adverse health effects of eye exposure to ——— if any. If eye exposure creates a risk of cancer, insert exposure level or criteria which represent the lowest feasible level of eye exposure to ——— which is reasonably necessary or appropriate to eliminate significant risk.)

(ii) Within (insert appropriate time period) of the effective date of this section, the employer shall (If skin exposure to ——— does not create a risk of cancer, insert exposure level or criteria which will prevent other adverse health effects of skin exposure to ——— if any. If skin exposure creates a risk of cancer, insert exposure level or criteria which represents the lowest feasible level of skin exposure to ——— which is reasonably necessary or appropriate to eliminate significant risk.)

(3) * * *

(4) *Other restrictions.* The employer shall assure that there is no occupational exposure to ——— from the following uses or classes of uses: (Where the Secretary determines, in the proposal or upon the record of the public rulemaking, that there are available suitable substitutes in certain applications where ——— might otherwise be used and that substitution is reasonably necessary or appropriate to reduce significant risk, the Secretary here shall specify that no occupational exposure to ——— shall be permitted in those circumstances and uses, listing

those circumstances or uses and including appropriate transitional provisions. Where the Secretary finds that substitutes for ——— exist, the determination of their suitability shall include consideration of the availability, practicability, relative degree of hazard, and economic consequences of the substitutes.)

(The preceding paragraph 1990.151(c) on permissible exposure limit provisions is for Category I Potential Carcinogens. Worker exposure to Category II Potential Carcinogens will be reduced as appropriate and consistent with the statutory requirements on a case-by-case basis in the individual rulemaking proceedings. Any permissible exposure level so established shall be met primarily through engineering and work practice controls. See § 1990.142(a)(3).)

* * * * *

9. Section 1990.152 is amended by revising paragraphs (c)(1) and (c)(2) as follows:

§ 1990.152 Model emergency temporary standard pursuant to section 6(c) of the Act.

* * * * *

(c) *Permissible exposure limits.* -(1) *Inhalation.* (i) *Time-weighted average limit (TWA).* Within (insert appropriate time) from the effective date of this emergency temporary standard, the employer shall assure that no employee is exposed to an airborne concentration of ——— in excess of: (insert appropriate exposure limit representing the lowest feasible level which is reasonably necessary or appropriate to eliminate significant risk that can be complied with immediately) as an eight (8)-hour time-weight average.

(ii) *Ceiling limit.* (If appropriate.) The employer shall assure that no employee is exposed to an airborne concentration of ——— in excess of: (insert appropriate exposure limit representing the lowest feasible level which is reasonably necessary or appropriate to eliminate significant risk that can be complied with immediately) as averaged over any: (insert appropriate time period) during the working day.

(2) *Dermal and eye exposure.* (If appropriate.)

(i) Within (insert appropriate time period) of the effective date of this section, the employer shall (If eye exposure to ——— does not create a risk of cancer, insert exposure level or criteria which will prevent other adverse effects of eye exposure to ———, if any. If eye exposure creates a risk of cancer, insert exposure level or criteria which represent the lowest feasible level of eye exposure to ——— which is reasonably necessary or appropriate to eliminate significant risk.)

(ii) Within (insert appropriate time period) of the effective date of this section, the employer shall (If skin exposure to ——— does not create a risk of cancer, insert exposure level or criteria which will prevent other adverse health effects of skin exposure to ——— if any. If skin exposure creates a risk of cancer, insert exposure level or criteria which represents the lowest feasible level of skin exposure to ——— which is reasonably necessary to appropriate to eliminate significant risk).

* * * * *

[FR Doc. 81-2021 Filed 1-19-81; 8:45 am]
BILLING CODE 4510-26-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 405, 442, and 483

Conditions of Participation for Skilled Nursing and Intermediate Care Facilities

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Withdrawal of Secretarial approval.

SUMMARY: On July 14, 1980, we published a notice of proposed rulemaking which would have revised the standards skilled nursing and intermediate care facilities must meet in order to participate in the Medicare or Medicaid programs. By the end of the 90-day comment period, which had been extended due to interest in the regulation, we had received over 3500 comments.

In December, 1980, Congress enacted Pub. L. 96-536, which specifically prohibits the expenditure of funds by the Department for the publication, implementation, or enforcement of the proposed regulation unless and until certain conditions were met.

On January 19, 1981, former Secretary Harris approved one portion of the regulation dealing with patients' rights. However, since one of the conditions set by Congress had not been fulfilled, *viz.*, receipt of the final report of the General Accounting Office concerning the impact of the proposed regulation, the regulation signed by Secretary Harris could not be issued.

Because this regulation may have considerable impact on both consumers and providers of health care, we have decided not to issue the regulation, or any portion thereof, until we have an opportunity to evaluate further all comments received, and the economic impact of the regulation as a whole. For this reason, we have withdrawn Secretarial approval of that section of the regulation approved January 19, 1981.

FOR FURTHER INFORMATION CONTACT: Mr. J. Richard Lenehan, Jr., (301) 594-7651.

(Catalog of Federal Domestic Assistance Program: No. 13.714—Medical Assistance Program; No. 13.773—Medicare-Hospital Insurance; No. 13.774—Medicare-Supplementary Medical Insurance)

Dated: January 21, 1981.

Paul Willging,

Acting Administrator, Health Care Financing Administration.

Approved: January 21, 1981.

Donald S. Fredrickson,

Acting Secretary.

[FR Doc. 81-2721 Filed 1-22-81; 8:45 am]
BILLING CODE 4110-85-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

[Docket No. FEMA-6806]

National Flood Insurance Program; Proposed Flood Elevation Determinations; Correction

AGENCY: Federal Insurance Administration, FEMA.

ACTION: Proposed rule; correction.

SUMMARY: This document corrects a notice of Proposed Determinations of base (100-year) flood elevations for selected locations in the City of Ansonia, New Haven County, Connecticut, previously published at 45 FR 59600 on September 10, 1980.

EFFECTIVE DATE: January 23, 1981.

FOR FURTHER INFORMATION CONTACT: Mr. Robert G. Chappell, Federal Emergency Management Agency, Federal Insurance Administration, National Flood Insurance Program, (202) 426-1460 or Toll Free Line (800) 424-8872, (In Alaska and Hawaii call Toll Free Line (800) 424-9060), Washington, D.C. 20472.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the correction to the Notice of Proposed Determinations of base (100-year) flood elevations for

selected locations in the City of Ansonia, New Haven County, Connecticut, previously published at 45 FR 59600 on September 10, 1980, in accordance with Section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added Section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90–448)), 42 U.S.C. 4001–4128, and 44 CFR 67.4(a).

Due to a clerical error, the elevation at the upstream side of dam, approximately 425 feet downstream of State Route 243 (Pulaski Highway), under the Source of Flooding of Two Mile Brook, was incorrectly published as 365 feet (National Geodetic Vertical Datum). It should be amended to read 265 feet in elevation. The corresponding Flood Insurance Study (profile) and Flood Insurance Rate Map were correct as printed.

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001–4128; Executive Order 12127, 44 FR 19367; and delegation of authority to Federal Insurance Administrator)

Issued: January 6, 1981.

Gloria M. [redacted],

Federal Insurance Administrator.

[FR Doc. 81-2270 Filed 1-22-81; 8:45 am]

BILLING CODE 6718-03-M

[44 CFR Part 67]

[Docket No. FEMA-6841]

National Flood Insurance Program; Revision of Proposed Flood Elevation Determinations

AGENCY: Federal Insurance Administration, FEMA.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations listed below for selected locations in the Township of Willistown, Chester County, Pennsylvania.

Due to recent engineering analysis, this proposed rule revises the proposed determinations of base (100-year) flood elevations published in the *Daily Local News* on May 21, and May 28, 1980, and in the Federal Register at 45 FR 42714 on June 25, 1980, and hence supersedes those previously published rules.

DATES: The period for comment will be ninety (90) days following the second publication of this notice in a newspaper of local circulation in each community.

ADDRESSES: Maps and other information showing the detailed outlines of the floodprone areas and the proposed flood elevations are available for review at the Willistown Township Muncipal Building.

Send comments to: Honorable William Tarr, Willistown Township Manager, Box 67, Sugartown Road, Malvern, Pennsylvania 19355.

FOR FURTHER INFORMATION CONTACT: Mr. Robert G. Chappell, Federal Emergency Management Agency, Federal Insurance Administration, National Flood Insurance Program, (202) 426–1460 or Toll Free Line (800) 424–8872, Washington, D.C. 20472.

SUPPLEMENTARY INFORMATION: Proposed base (100-year) flood elevations are listed below for selected locations in the Township of Willistown, Chester County, Pennsylvania, in accordance with Section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added Section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90–448)), 42 U.S.C. 4001–4128, and 44 CFR 67.4(a).

These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

These modified elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

Proposed Base (100-Year) Flood Elevations

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
Pennsylvania	Willistown, Township, Chester County (Docket No. FEMA-6841.	Crum Creek	Downstream Corporate Limits	*[illegible]
			Downstream of Bartram Covered Bridge	*[illegible]
			Upstream of Goshen Road	*344
			Upstream of Private Road	*[illegible]
			Upstream of Old Covered Bridge Road (Extended)	*[illegible]
			Upstream of Private Road (Extended)	*[illegible]
			Downstream of confluence of West Tributary to Crum Creek	*[illegible]
			Confluence of West Tributary to Crum Creek	*[illegible]
			Approximately 1,840' upstream of Confluence with West Tributary	*[illegible]
			900' upstream of Whitehorse Road	*[illegible]
			Upstream Fawbase Road (Extended)	*[illegible]
			Downstream of Whitehorse Road	*[illegible]
			Upstream of Whitehorse Road	*371
			Upstream of Davis Road	*375
			Downstream of Jaffary Road	*378
			Downstream of Private Drive	*[illegible]
			Evergreen Lane (Extended)	*[illegible]
			Downstream of Footbridge	*416
			Upstream of Footbridge	*417
			Downstream of Warren Avenue	*[illegible]
			Downstream of Vernon Lane	*441
			Upstream of Eisenhower Drive	*445
			Upstream of Marlin Drive	*[illegible]
			Upstream of Long Lane	*[illegible]
			Downstream of Pedi Lake	*461
		Tributary A	Confluence with Crum Creek	*[illegible]
			Upstream Corporate Limits	*[illegible]
		West Tributary to Crum Creek	Confluence with Crum Creek	*[illegible]
			Approximately 1,200' upstream of confluence	*[illegible]
			Approximately 1,600' upstream of confluence	*[illegible]
			Upstream of Hillview Road	*[illegible]
			Upstream of 1st Footbridge	*[illegible]

Proposed Base (100-Year) Flood Elevations—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
		Northeast Branch Ridley Creek	Downstream of Warren Avenue	*369
			Downstream of Private Drive	*391
			Upstream of Spring Road	*412
			Upstream of Laurel Circle (1st crossing)	*419
			Upstream of Laurel Circle (2nd crossing)	*424
			Downstream of Andrews Avenue	*430
			Upstream of Harvey Lane	*442
			Downstream of Sugartown Road	*456
			Downstream of Paoli Pike	*460
			Upstream of Line Road	*460
			Upstream of Dam	*464
			Upstream of Forest Lane	*472
			Upstream of Monument Road	*486
		East Tributary to Crum Creek	Approximately 2,000' upstream of Monument Avenue	*333
			Confluence with Crum Creek	*362
			Upstream of Dam	*405
			Upstream of Grubb Road	*409
			Downstream of Private Drive	*428
			Downstream of Devon Road	*454
			Upstream of Devon Road	*459
			Upstream of Corporate Limits	*467
		Tributary B	Confluence with East Tributary to Crum Creek	*405
			Downstream of Grubb Road	*410
Downstream of Colonial Lane				*424
			Upstream of Colonial Lane	*438
			Downstream of Devon Road	*451
			Upstream of Devon Road	*461
			Spruce Lane (Extended)	*478
			Lynnbrook Road (Extended)	*492
			Fairview Road (Extended)	*498
		Ridley Creek	Downstream Corporate Limits	*224
			Upstream of Delchester Road	*228
			Upstream Corporate Limits	*229

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001–4128; Executive Order 12127, 44 FR 19367; and delegation of authority to Federal Insurance Administrator)

Issued: December 15, 1980.

Gloria M. Jimenez,

Federal Insurance Administrator.

[FR Doc. 81-2277 Filed 1-22-81; 8:45 am]

BILLING CODE 6718-03-M

44 CFR Part 67

[Docket No. FEMA-5883]

National Flood Insurance Program; Proposed Flood Elevation Determinations; Correction

AGENCY: Federal Insurance Administration, FEMA.

ACTION: Proposed rule; corection.

SUMMARY: This document corrects a Notice of Proposed Determinations of base (100-year) flood elevations for selected locations in the Town of Belchertown, Hampshire County, Massachusetts, previously published at 45 FR 49611 on July 25, 1980.

EFFECTIVE DATE: January 23, 1981.

FOR FURTHER INFORMATION CONTACT: Mr. Robert G. Chappell, Federal Emergency Management Agency, Federal Insurance Administration, National Flood Insurance Program, (202) 426–1460 or Toll Free Line (800) 424–8872 (In Alaska and Hawaii call Toll Free Line (800) 424–9080), Washington, D.C. 20472.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the correction to the Notice of Proposed Determinations of base (100-year) flood elevations for selected locations in the town of Belchertown, Hampshire County, Massachusetts, previously published at 45 FR 49611 on July 25, 1980, in accordance with Section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added Section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90–448)), 42 U.S.C. 4001–4128, and 44 CFR 67.4(a).

Due to a clerical error, the elevation at the upstream side of Boston and Maine Railroad, under the Source of Flooding of Swift River, was incorrectly published as 366 feet (National Geodetic Vertical Datum). It should be amended to read 351 feet in elevation. The corresponding Flood Insurance Study (profile) and Flood Insurance Rate map were correct as printed.

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968); effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001–4128; Executive Order 12127, 44 FR 19367; and delegation of authority to Federal Insurance Administrator)

Issued: January 6, 1981.

Gloria M. Jimenez,

Federal Insurance Administrator.

[FR Doc. 81-2279 Filed 1-22-81; 8:45 am]

BILLING CODE 6718-03-M

44 CFR Part 67

[Docket No. FEMA-5845]

Revision of Proposed Flood Elevation Determinations for Town of Fromberg, Carbon County, Montana, Under the National Flood Insurance Program

AGENCY: Federal Insurance Administration, FEMA.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations listed below for selected locations in the Town of Fromberg, Montana.

Due to recent engineering analysis, this proposed rule revises the proposed determinations of base (100-year) flood elevations published in 45 FR 46115 on July 9, 1980 and in the *Valley Voice*, published on or about July 10, 1980, and July 17, 1980, and hence supersedes those previously published rules.

DATES: The period for comment will be ninety (90) days following the second publication of this notice in a newspaper of local circulation in the above-named community.

ADDRESSES: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed flood elevations are available for review at Town Hall, Fromberg, Montana.

Send comments to: Honorable Myron Skurdal, Fromberg, Montana 59041.

FOR FURTHER INFORMATION CONTACT: Mr. Robert G. Chappell, National Flood Insurance Program, (202) 426–1460 or Toll Free Line (800) 424–8872. In Alaska or Hawaii, call Toll Free Line (800–424–9060), Federal Emergency Management Agency, Washington, D.C. 20472.

SUPPLEMENTARY INFORMATION: Proposed base (100-year) flood elevations are listed below for selected locations in the Town of Fromberg, Montana, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90–448), 42 U.S.C. 4001–4128, and 44 CFR 67.4(a)).

These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

These modified elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

The proposed base (100-year) flood elevations are:

Source of flooding	Location	#Depth in feet above ground *Elevation in feet (NGVD)
Clarks Fork Yellowstone River.	On the north side of River Street approximately 400 feet east of intersection of Lovers Lane and River Street.	*3,520
	Southernmost end of Third Avenue at the corporate limits.	*3,525

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001–4128; Executive Order 12127, 44 FR 19367; and delegation of authority to Federal Insurance Administrator.)

Issued: January 6, 1981.

Gloria M. Jimenez,

Federal Insurance Administrator.

[FR Doc. 81-2279 Filed 1-22-81; 8:45 am]

BILLING CODE 6718-03-M

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44 CFR Part 67

[Docket No. FEMA–6673]

Revision of Proposed Flood Elevation Determinations for City of Phoenix, Jackson County, Oregon, Under the National Flood Insurance Program

AGENCY: Federal Insurance Administration, FEMA.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations listed below for selected locations in the City of Phoenix, Oregon.

Due to recent engineering analysis, this proposed rule revises the proposed determinations of base (100-year) flood elevations published in 44 FR 47574 on August 14, 1979 and in the *Medford Mail Tribune*, published on or about August 1, 1979, and August 8, 1979, and hence supersedes those previously published rules.

DATE: The period for comment will be ninety (90) days following the second publication of this notice in a newspaper of local circulation in the above named community.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed flood elevations are available for review at City Hall, 510 West First Street, Phoenix, Oregon.

Send comments to: Honorable Otto Caster, Mayor, City of Phoenix, City Hall, P.O. Box 327, Phoenix, Oregon 97535.

FOR FURTHER INFORMATION CONTACT: Mr. Robert G. Chappell, National Flood Insurance Program, (202) 426–1460 or Toll Free Line (800) 424–8872, In Alaska or Hawaii, call Toll Free Line (800–424–9060), Federal Emergency Management Agency, Washington, D.C. 20472.

SUPPLEMENTARY INFORMATION: Proposed base (100-year) flood elevations are listed below for selected locations in the City of Phoenix, Oregon, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90–448), 42 U.S.C. 4001–4128, and 44 CFR 67.4(a)).

These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

These modified elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

The proposed base (100-year) flood elevations are:

Source of flooding	Location	#Depth in feet above ground *Elevation in feet (NGVD)
Bear Creek	Fern Valley Road—150 feet upstream from centerline.	*1,472
	Corporate limits (9th crossing).	*1,486
Coleman Creek	U.S. Highway 99—200 feet downstream from centerline.	*1,473
	U.S. Highway 99—70 feet upstream from centerline.	*1,489

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001–4128; Executive Order 12127, 44 FR 19367; and delegation of authority to Federal Insurance Administrator)

Issued: January 6, 1981.

Gloria M. Jimenez,

Federal Insurance Administrator.

[FR Doc. 81-2280 Filed 1-22-81; 8:45 am]

BILLING CODE 6718-03-M

Notices

Federal Register
Vol. 46, No. 15
Friday, January 23, 1981

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

Farmers Livestock Auction Russellville, Alabama; Proposed Posting of Stockyards

The Chief, Rates and Registrations Branch, Packers and Stockyards, Agricultural Marketing Service, United States Department of Agriculture, has information that the livestock markets named below are stockyards as defined in section 302 of the Packers and Stockyards Act, 1921, as amended (7 U.S.C. 202), and should be made subject to the provisions of the Act.

AL-164 Farmers Livestock Auction, Russellville, Alabama
CO-150 Hi-Country Cattle Company, Ignacio, Colorado
FL-128 Trenton Livestock Market, Inc., Trenton, Florida
FL-127 North Florida Farmers Cooperative, Inc., Lake City, Florida
FL-128 Marvin Wages Auction, Leesburg, Florida
GA-190 Triple T Livestock Co., Dalton, Georgia
KS-203 Clay Center Livestock Company, Inc., Clay Center, Kansas
KY-166 Central Kentucky Livestock Market, Inc., Stanford, Kentucky
MN-175 Hecksel Auction, Inc., Winsted, Minnesota
MN-178 Minnesota Feeder Pig Markets, Inc., Elysian, Minnesota
MS-159 Central Mississippi Livestock Exchange, Inc., Bay Springs, Mississippi
MS-160 George County Stockyards, Inc., Lucedale, Mississippi
NE-190 Loup City Commission Company, Inc., Loup City, Nebraska
NY-160 Walt Wagner Cattle Sales, Central Bridge, New York
TX-319 Ranchers and Farmers Livestock, Inc., Uvalde, Texas
TX-321 Cattlemans Livestock Auction, Inc., Freer, Texas
WI-156 Barron Livestock Sales Barn, Barron, Wisconsin

Notice is hereby given, therefore, that the said Chief, pursuant to authority delegated under the Packers and Stockyards Act, 1921, as amended (7 U.S.C. 181 *et seq.*), proposes to issue a rule designating the stockyards named above as posted stockyards subject to the provisions of the Act as provided in section 302 thereof.

Any person who wishes to submit written data, views, or arguments concerning the proposed rule, may do so by filing them with the Chief, Rates and Registrations Branch, Packers and Stockyards, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, D.C. 20250, by February 9, 1981.

All written submissions made pursuant to this notice shall be made available for public inspection at such times and places in a manner convenient to public business (7 U.S.C. 1.27(b)).

Done at Washington, D.C., this 19th day of January, 1981.

Jack W. Brinckmeyer,
Chief, Rates and Registrations Branch, Livestock Marketing Division.

[FR Doc. 81-2822 Filed 1-22-81; 8:45 am]
BILLING CODE 3410-02-M

Packers and Stockyards; Louisiana Horse Palace, Inc., Elm Grove, Louisiana; Posted Stockyard

Pursuant to the authority delegated under the Packers and Stockyards Act, 1921, as amended (7 U.S.C. *et seq.*), it was ascertained that the livestock market named below was a stockyard within the definition of that term contained in section 302 of the Act, as amended (7 U.S.C. 202), and notice was given to the owner and to the public by posting notice at the stockyard as required by said section 302, on the respective data specified below.

Louisiana

Facility Number, name, and location of stockyard	Date of posting
La-136 Louisiana Horse Palace, Inc., Elm Grove.	Dec. 13, 1980.

Done at Washington, D.C., this 19th day of January, 1981.

Jack W. Brinckmeyer,
Chief, Rates and Registrations Branch, Livestock Marketing Division.

[FR Doc. 81-2823 Filed 1-22-81; 8:45 am]
BILLING CODE 3410-02-M

Packers and Stockyards; Norvel Reed & Sons, Inc., Jamestown, New York; Posted Stockyard

The stockyard formerly known as the Norvel Reed & Sons, Inc., Jamestown, New York, was originally posted on September 28, 1960, as being subject to the Packers and Stockyards Act, 1921, as amended (7 U.S.C. 181 *et seq.*). On November 11, 1960, there was published in the Federal Register a notice concerning the deposting of such stockyard for the reason that it was no longer being conducted as a public market. Subsequent to the publication of such notice and prior to the taking of further steps required by section 302(b) of the Act (7 U.S.C. 202(b)) for the deposting of a stockyard, it was ascertained that operation of such livestock market, under the name of Norvel Reed & Sons, Inc., is continuing as a stockyard within the definition of that term contained in section 302(a) of the Act (7 U.S.C. 202(a)).

Notice is hereby given, therefore, that the livestock market presently known as Norvel Reed & Sons, Inc., Jamestown, New York, originally posted on September 28, 1960, remains posted as a stockyard within the definition of that term contained in section 302 of the Act and remains subject to the provisions of the Act.

Done at Washington, D.C., this 19th day of January 1981.

Jack W. Brinckmeyer,
Chief, Rates and Registrations Branch, Livestock Marketing Division.

[FR Doc. 81-2824 Filed 1-22-81; 8:45 am]
BILLING CODE 3410-02-M

Packers and Stockyards; Nuel E. Hill Livestock Auction Co., Batesville, Arkansas; Depositing of Stockyards

It has been ascertained, and notice is hereby given, that the livestock markets named herein, originally posted on the respective dates specified below as being subject to the Packers and Stockyards Act, 1921, as amended (7 U.S.C. 181 et seq.), no longer come within the definition of a stockyard under said Act and are, therefore, no longer subject to the provisions of the Act.

Facility No., name, and location of stockyard	Date of posting
AR-184 Noel E. Hill Livestock Auction Co., Batesville, Arkansas.	July 10, 1980.
KS-110 Clay Center Livestock Co., Inc., Clay Center, Kansas.	Mar. 28, 1980.
MS-126 George County Stockyards, Inc., Lucedale, Mississippi.	Feb. 14, 1980.
OH-109 Cincinnati Union Stock Yards, Cincinnati, Ohio.	Nov. 1, 1921.

Notice or other public procedure has not proceeded promulgation of the foregoing rule. There is no legal justification for not promptly depositing a stockyard which is no longer within the definition of that term contained in the Act.

The foregoing is in the nature of a change relieving a restriction and may be made effective in less than 30 days after publication in the Federal Register. This notice shall become effective January 23, 1981.

(42 Stat. 159, as amended and supplemented; 7 U.S.C. 181 *et seq.*).

Done at Washington, D.C., this 19th Day of January, 1981.

Jack W. Brinckmeyer,

Chief, Rates and Registrations Branch, Livestock Marketing Division.

[FR Doc. 81-2269 Filed 1-22-81; 8:45 am]

BILLING CODE 3410-02-M

Food and Nutrition Service

Child Care Food Program; Day Care Home Food Service Payment Rates for the Period January 1–June 30, 1981

AGENCY: Food and Nurtition Service, USDA.

ACTION: Notice.

SUMMARY: This notice informs the public of adjustments in the food service payment rates for meals served in day care homes to reflect changes in the Consumer Price Index. These adjustments are required by regulations governing the Program.

FOR FURTHER INFORMATION CONTACT: Jordan Benderly, Director, or Beverly Walstrom, Child Care and Summer Programs Division, Food and Nutrition Service, U.S. Department of Agriculture, Washington, D.C. 20250, 202–447–8509.

EFFECTIVE DATE: January 1, 1981.

SUPPLEMENTARY INFORMATION: Pursuant to Section 17 of the National School Lunch Act (NSLA), as amended by Public Law 95–627, and § 226.4(g)(1) of the regulations governing the Child Care Food Program (7 CFR Part 226), notice is hereby given of the new food service payment rates for meals served to children attending day care homes. These rates shall be in effect during the period January 1–June 30, 1981. The administrative payment rates for administrative costs of sponsoring organizations with day care homes are adjusted annually, on July 1 of each year, and, therefore, are not included in this notice of adjustments to the Program's food service payment rates. In all States except Alaska and Hawaii, the new rates are as follows:

Section 17.—*Food Service Payment Rates (Day Care Homes)*

Meal	Rate in cents
Breakfasts	50
Lunches and suppers	90
Supplements	30

Note.—All States except Alaska and Hawaii.

The Department is developing a notice which will announce higher payment rates for participating institutions in the State of Hawaii. That notice will include the new food service payment rates for meals served to children attending day care homes in the State of Hawaii, in addition to new payment rates for administrative costs of sponsoring organizations with day care homes and new payment rates for meals served to children attending centers to reflect the higher cost of providing meals in that State.

Pursuant to Section 12(f) of the NSLA, the Department adjusts the payment rates for participating institutions in the State of Alaska. The new payment rates for Alaska shall be in effect during the period of January 1–June 30, 1981. The new rates for Alaska are as follows:

Section 12(f).—*Food Service Payment Rates—(Day Care Homes)—for Alaska*

Meal	Rate in cents
Breakfasts	82
Lunches and suppers	150
Supplements	48

The changes in the food service payment rates reflect a 4.12 percent increase in the rates prescribed for the period of July 1–December 31, 1980. This represents the percentage of increase during the six month period May to November 1980 (from 264.6 in May to 275.3 in November) in the food away from home series of the Consumer Price Index for All Urban Consumers, published by the Bureau of Labor Statistics of the Department of Labor.

The amount of payments available to each State agency for distribution to sponsoring organizations of day care homes is based on the rates contained in this notice, plus any administrative payments for sponsoring organizations of day care homes.

Definitions. The terms used in this notice shall have the meanings ascribed to them in the regulations governing the Child Care Food Program (7 CFR Part 226) published on January 22, 1980 at 45 FR 4960.

(Catalog of Federal Domestic Assistance Program No. 10.558.

(Sec. 2, Public Law 95–627, 92 Stat. 3603, 42 USC 1766; Sec. 10(a), Pub. L. 95–627, 92 Stat. 3623, 42 USC 1760)

Effective date: This notice shall be effective as of January 1, 1981.

Dated: January 8, 1981.

Bob Greenstein,

Administrator.

[FR Doc. 81-2270 Filed 1-22-81; 8:45 am]

BILLING CODE 3410-30-M

Child Care Food Program; Payment Rates for the State of Hawaii for the Period January 1–June 30, 1981

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice.

SUMMARY: This notice informs the public of adjustments in the payment rates for meals served during the period January 1–June 30, 1981 to children participating in the Child Care Food Program in the State of Hawaii. These adjustments are authorized by the National School Lunch Act and are made to reflect the higher cost of providing meals in Hawaii.

FOR FURTHER INFORMATION CONTACT: Jordan Benderly, Director, or Beverly Walstrom, Child Care and Summer Programs Division, Food and Nutrition Service, U.S. Department of Agriculture, Washington, D.C., 20250, (202) 447–8509.

EFFECTIVE DATE: January 1, 1981.

SUPPLEMENTARY INFORMATION: Section 12 of the National School Lunch Act, as amended by Pub. L. 95–627, provides the Secretary with the discretionary authority to make adjustments in the payment rates for the State of Hawaii to reflect higher food service costs in that State. After enactment of Pub. L. 95–627, the Department undertook a study to document the degree of higher than average costs and to determine what, if any, additional assistance should be made available. Based on this study, which is discussed in the Federal Register of October 19, 1979 (44 FR 60344), the Department has determined that the rates of payment for Hawaii should be increased by 17 percent.

Accordingly, the Department announces the following payment rates for meals served in the State of Hawaii to children participating in the Child

Care Food Program (7 CFR Part 226) during the six-month period January 1–June 30, 1981.

Hawaii.—Meals Served in Centers—Per Meal Payment Rates

	Amount
Breakfasts:	
Paid	$17.50
Free	42.50
Subtotal	61.00
Reduced	32.50
Paid	17.50
Total	50.00
Lunches and suppers:	
Paid	[1] 21.75
Free	97.75
Subtotal	[1] 119.50
Reduced	77.75
Paid	21.75
Total	[1] 99.50
Supplements:	
Paid	[2] 6.00
Free	[2] 32.75
Reduced	[2] 24.25

[1] These rates do not include the value of commodities (or cash-in-lieu of commodities) which institutions receive as additional assistance for each lunch and supper served to children under the Program. Notices announcing the value of commodities and cash-in-lieu of commodities are published separately in the FEDERAL REGISTER.

[2] These rates reflect not only the 17 percent upward adjustment for higher food service costs, but also a three-cent reduction in the paid, free, and reduced price rates for supplements served in centers. This reduction was mandated by Pub. L. 96–499, which became law on December 5, 1980. Three cents was subtracted from each of these rates after the 17 percent adjustment had been computed.

Hawaii.—Administrative Payment Rates for Sponsoring Organizations of Day Care Homes—Per Home/Per Month in Dollars

	Amount
Initial 25 day care homes	$67.00
Next 50 day care homes	44.00
Additional day care homes	[1] 28.00

Hawaii.—Meals Served in Day Care Homes—Per Meal Payment Rates in Cents

	Amount
Breakfasts	[1] 59
Lunches and Suppers	[1] 115
Supplements	[1] 35

[1] These rates reflect not only the 17 percent upward adjustment for higher food service costs, but also changes in the Consumer Price Index. Public Law 96–499, enacted on December 5, 1980, announced that no semi-annual rate adjustment to reflect changes in the Consumer Price Index would be made for meals served in centers for the period January 1–June 30, 1981. However, the semi-annual rate adjustment for meals served in day care homes was not affected. The semi-annual adjustment to the food service payment rates reflects a 4.12 percent increase in the rates prescribed for the period of July 1–December 31, 1980. This represents the percentage of increase during the six month period May to November 1980 (from 264.8 in May to 275.7 in November) in the food away from home series of the Consumer Price Index for All Urban Consumers, published by the Bureau of Labor Statistics of the Department of Labor.

Definitions

The terms used in this notice shall have the meanings ascribed to them in the regulations governing the Child Care Food Program (7 CFR Part 226) published in the Federal Register of January 22, 1980 (45 FR 4980).

(Catalog of Federal Domestic Assistance Program No. 10558.)

Authority: Sec. 10(a), Pub. L. 95–627, 92 Stat. 3623, 42 USC 1760.

Dated: January 8, 1981.

Bob Greenstein,

Administrator.

[FR Doc. 81–2238 Filed 1–23–81; 8:45 am]

BILLING CODE 3410–30–M

National School Lunch and School Breakfast Programs; Payment Rates for the State of Hawaii for the Period January 1–June 30, 1981

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice.

SUMMARY: The Department announces new payment rates of reimbursement for Hawaii for the period January 1 through June 30, 1981. These rates reflect an upward adjustment over the previous rates for the National School Lunch and School Breakfast Programs. This adjustment is necessary to make up the difference between the costs of providing lunches and breakfasts in Hawaii and the national average costs of providing lunches and breakfasts. The revised payment rates will provide for more funds to cover the costs of meals served to children in schools and institutions participating in the school lunch and breakfast programs. Payment rates for the Child Care Food Program and the Summer Food Service Programs for Hawaii for the subject six-month period will be announced in a separate Federal Register publications.

EFFECTIVE DATE: January 1, 1981.

FOR FURTHER INFORMATION CONTACT: Stanley C. Garnett, Branch Chief, Policy and Program Development Branch, School Programs Division, USDA, FNS, Washington, D.C. 20250, (202) 447–9069. The final impact statement is available from Mr. Garnett.

SUPPLEMENTARY INFORMATION:

Classification

This notice has been reviewed under USDA procedures established in Secretary's Memorandum 1955 to implement Executive Order 12044, and has been classified as "not significant."

Background

Pub. L. 95–627 provides the Secretary with discretionary authority to made adjustments in the national average payment factors to Alaska, Hawaii, Guam, American Samoa, Puerto Rico, the Virgin Islands, the Trust Territory of the Pacific Islands, and the Northern Mariana Islands. Section 10 of Pub. L. 95–627 amended Section 12 of the National School Lunch Act (NSLA) to read "* * * the Secretary may establish appropriate adjustments for each such State to the national average payment rates * * * reflect the differences between the costs of providing lunches and breakfast in those States and the costs of providing lunches and breakfast in all other States." After enactment, the Department undertook a study to document the existence and degree of higher than average costs in outlying areas and to determine what additional assistance, if any, should be made available.

To compare national average costs with those of Alaska, Hawaii and the outlying areas, an index of food and labor costs was constructed using the U.S. national average of such costs as the base of 100. Food and labor were selected as the two most significant cost items in producing a meal, accounting for over 90 percent of the total costs. (For purposes of this analysis, other costs and donated goods and services were assumed to vary in the same manner as the weighted average of food and labor.) A variety of data sources were examined to construct the index including routine reports received by FNS and various surveys conducted by other Federal agencies. Data from the September 1976 Thrifty Food Plan (for food) developed for the Food Stamp Program and the 1976 County Business Patterns prepared by the Bureau of the Census, Department of Commerce (for labor) were selected as the best available data sources to construct the indices. To compute a weighted average index to reflect the cost of producing a meal, indices for food and labor were separately constructed, a ratio of food and labor costs to total costs was calculated from data submitted for FY 1975 on Form FNS–13, Annual Statement of Income and Expenditures, and the indices were weighted and averaged. Based on these calculations the average cost of producing a meal in Alaska and Hawaii, respectively, is 62 percent and 17 percent greater than the national average cost. Comparable data were not available for the other outlying areas, and the data that were available did not appear to support the need for additional payments.

In its Federal Register notice of October 19, 1979, the Department authorized increased payment factors for Alaska, indicated its intent to assess the meal cost differences between Hawaii and the mainland States and to consider adjustment of Hawaii's payment factors. Further assessment of food costs by the Department indicates that these costs in Hawaii are substantially higher than those in the 48 States and the District of Columbia, and

account for virtually all of the difference in total meal costs. In this notice the Department authorizes payment factors for Hawaii that are 17 percent greater than the corresponding national average payment factors for the lower 48 States and the District of Columbia.

Payment Rates of Reimbursement

Pursuant to Sections 11, 12, and 17 of the National School Lunch Act (42 U.S.C. 1759a) as amended, notice is hereby given of adjustments to the national average payment rates and to maximum rates of payment for meals and supplements served in Hawaii during the six-month period January 1 through June 30, 1981 to children participating in the National School Lunch and School Breakfast Programs. For lunches served during the aforementioned period to children participating in the National School Lunch Program in Hawaii, national average payment rates are as follows: (a) 21.75 cents from general cash-for-food assistance funds for each lunch, (b) an additional 77.75 cents from special cash assistance funds for each reduced price lunch and (c) an additional 97.75 cents from special cash assistance funds for each free lunch.

For the six-month period January 1 through June 30, 1981, the maximum per lunch rates of payment for lunches served in the National School Lunch Program shall be as follows: (a) 28.75 cents from general cash-for-food assistance funds and (b) from a combination of general cash-for-food assistance and special cash assistance, 137.00 cents for a free lunch and 117.00 for a reduced price lunch.

For breakfasts served during the aforementioned period to children in schools participating in the School Breakfast Program in Hawaii, payment rates are as follows: (a) 17.50 cents for all breakfasts, (b) an additional 32.50 cents for each reduced price breakfast, and (c) an additional 43.50 cents for each free breakfast. The total amount of breakfast assistance payments to be made to Hawaii from sums appropriated therefore, shall be based upon the aforementioned adjustments to national average payment factors; *Provided, however,* that additional payments shall be made in such amounts as are needed to finance payment rates assigned for schools with severe need under § 220.9 of regulations governing the School Breakfast Program (7 CFR Part 220).

For schools in Hawaii determined to be in severe need under the School Breakfast Program, the maximum rates of payment for breakfasts are established pursuant to Section 4(b) of the Child Nutrition Act of 1966, as amended. This law requires that these rates be computed using two methods and that the method yielding the higher rates be used. Accordingly, for schools in Hawaii found to be in severe need, the maximum rate of payment for paid breakfasts shall be equal to the adjusted national average factor for all breakfasts (17.50 cents), and the maximum rate of payment for reduced price and free breakfast shall be 68.25 cents and 73.25 cents respectively.

Section 4 Cut in Payment Rates of Reimbursement:

Pub. L. 96–499, enacted on December 5, 1980, mandates that in school food authorities in which *less than 60 percent* of the lunches served during the second preceding year (School Year 1978–1979) were served free or at a reduced price, the section 4 payment would be reduced by two and a half cents for each meal served (free, reduced price, or paid) under the National School Lunch Program.

The payment rates of reimbursement as listed above must be adjusted accordingly if the school falls in the "less than 60 percent" category.

Definitions

The terms used in this notice shall have the meanings ascribed to them in regulations governing the National School Lunch Program (7 CFR Part 210), the School Breakfast Program (7 CFR Part 220), and in regulations for Determining Eligibility for Free and Reduced Price Meals and Free Milk in Schools (7 CFR Part 245).

(Catalog of Federal Domestic Assistance Programs Nos. 10.553 and 10.555)

(NSLP (Sec. 4, Pub. L. 92–433, 76 Stat. 944, 42 U.S.C. 1753, 84 Stat. 208, 42 U.S.C. 1752, 80 Stat. 231, 42 U.S.C. 1754; Sec. 2, Pub. L. 93–150, 86 Stat. 726, 42 U.S.C. 1753, 80 Stat. 232, 86 Stat. 729, 42 U.S.C. 1757). SBP (Sec. 4, (U.S.C. 1773 (b)) Pub. L. 92–433, 80 Stat. 888; Post, p. 726; Sec. 4, Pub. L. 93–195, 80 Stat. 888; 86 Stat. 86; 86 Stat. 726, 42 U.S.C. 1772; 86 Stat. 724).)

Dated: January 7, 1981.

Robert Greenstein,

Administrator, Food and Nutrition Service.

[FR Doc. 81-2270 Filed 1-22-81; 8:45 am]

BILLING CODE 3410-30-M

Special Supplemental Food Program for Women, Infants and Children (WIC); Allocation of WIC Program and Administrative Grants in Fiscal Year 1981

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice: Food and administrative funding formulas for the WIC Program.

SUMMARY: The Department of Agriculture is publishing a notice describing how it is allocating FY 1981 program and administrative grants for the second, third and fourth quarters of FY 1981 to State agencies participating in the Special Supplemental Food Program for Women, Infants and Children (WIC). The procedure described in this notice is being followed because the funds available for FY 1981 are insufficient to permit the Department to use the existing program and administrative funding formulas to allocate FY 1981 grant levels.

DATE: Effective January 1, 1981.

FOR FURTHER INFORMATION CONTACT: Barbara P. Sandoval, Director, Supplemental Food Programs Division, Food and Nutrition Service, USDA, Washington, D.C. 20250.

SUPPLEMENTARY INFORMATION: This action has been reviewed under procedures established in Secretary's Memorandum 1955 to implement Executive Order 12044 and has been classified as "not significant."

On October 24, 1980, the Department published at 45 FR 70527 a notice announcing the Department's plans to distribute FY 1981 program (food) monies to State agencies participating in the WIC Program. The action described in that notice was taken because the FY 1981 WIC appropriations provided in Pub. L. 96–369 making continuing appropriations for FY 1981 were insufficient to permit the Department to use the existing program funding formula in its entirety to allocate FY 1981 program grants. Therefore, the Department decided to guarantee either the State agency's FY 1980 fourth quarter funding level base or its maximum grant funding level in the first quarter of FY 1981. Provisions were also made to award special migrant funds and to negotiate lower first quarter program funding levels where possible.

Since funds had to be allocated to participating State agencies by October 1, 1980, this action was determined an emergency situation and was therefore published in the Federal Register without an opportunity for prior public comment.

A total of four comment letters were received on the food funding formula notice during the official comment period which ended December 24, 1980. The commenters included two State agencies, one local agency and one FNS Regional Office.

Two commenters supported the Department's action to guarantee State agencies their fourth quarter FY 1980 funding level or maximum grant level as the base for FY 1981 funding. It was felt

that this measure would ensure that State agencies could effectively plan and execute budgets with their local agencies. The other two commenters felt that the method of allocating grants was not equitable and would allow some State agencies to expand their Program while limiting the growth of others. The same commenters further suggested that funding levels for FY 1981 be derived using each State agency's September 1980 participation figure times a food package cost plus an inflation factor.

Because there was a consensus among all commenters that the Department establish a firm funding level for all State agencies in FY 1981, the Department has decided that the most equitable means of allocating available FY 1981 monies for the second, third and fourth quarters of the fiscal year is to provide State agencies funds based on September 1980 participation levels. Available funds do not permit any further growth beyond that participation level nationwide. Each State agency's funding level has been determined by using the agency's September 1980 participation and food package cost data as well as a food price inflation factor to the extent that available funds permitted. Whether these allocations permit State agencies to maintain their September participation levels will depend on whether actual food price inflation exceeds the inflation factor used. The Department has used the highest inflation factor possible within available funds.

The formula used by the Department to allocate WIC program and administrative grants for the second, third and fourth quarters of FY 1981 is described below.

Program Grants

The following funds were subtracted from the total estimated funds available for FY 1981: the funds set aside for WIC developmental project; the $236 million already awarded in the first quarter; the funds needed for migrant grants; the funds needed for grants to the three new State agencies (District of Columbia; Miccosukee, Florida; and Wyoming); and the special negotiated administrative grant guarantees resulting from the first quarter of FY 1981. Eighty percent of the funds remaining from this subtraction were then distributed to all remaining State agencies based on their September participation (less any migrant participants) and September food package cost information furnished to the Department from the FNS Regional Offices subsequent to recent reviews of State agencies' financial records. Due to the limited funding available, an inflation factor of .33665 percent per month was added to each State agency's September food package cost for each month following September. The resulting food package cost for each month from January 1981 through September 1981 was then multiplied by the State agency's September 1980 participation level. The resulting monthly amounts were then aggregated by quarter to derive each State agency's program grant level for the second, third and fourth quarters.

Administrative Grants

The 20 percent of funds remaining after the allocation of Program grants was allocated for administrative grants. Administrative grants for the second, third and fourth quarters were calculated by applying each States agency's FY 1980 administrative percentage (FY 1980 administrative grant as a percentage of the State agency's FY 1980 food grant) to the resulting program levels for the second, third and fourth quarters of FY 1981. This action was taken to minimize the variances of administrative grants between the first and the second, third and fourth quarters of FY 1981. Further, those State agencies receiving a minimum administrative grant amount of $7,500 per quarter were held to that grant level.

Migrant Grants

In order to continue the Department's commitment of providing continuous service to migrants to the maximum extent feasible, separate computations were used to determine migrant grants. The food grant portion was calculated by taking the FNS–187 monthly FY 1980 migrant participation data and multiplying that monthly figure by each State agency's inflated September 1980 food package cost. An inflation factor of .5 percent per month was used as migrant food package costs are often slightly higher than non-migrant food package costs. Consistent with past policy, if the migrant food grant computed for FY 1981 exceeded the food grant provided in FY 1980, affected State agencies were held to their FY 1980 migrant food grant. However, the total FY 1980 migrant food grant level was inflated by 6 percent to take into consideration food inflation in FY 1981. Because migrant grants were already awarded for the first quarter, these first quarter grant amounts were subtracted from the maximum allowable migrant grant each State could receive in FY 1981. The difference became the maximum amount of migrant program funds each State agency could receive in FY 1981 for the second, third and fourth quarters to serve migrants. The migrant administrative grant was calculated by utilizing each State agency's FY 1980 basic administrative percentage. Unlike non-migrant program and administrative grants which were allocated in escalating levels, migrant food and administrative grants for the second, third and fourth quarters were allocated in three equal quarterly allotments.

Negotiated Administrative Grant Increases

The Department believes that those State agency administrative grant levels which were increased for the first quarter of FY 1981 as a result of the negotiated administrative grant provisions (45 FR 72082) should be continued for the rest of the fiscal year because State agencies have already planned for the use of this money. Consequently, all State agencies receiving additional administrative funds through negotiated administrative grants in the first quarter of FY 1981 were guaranteed their first quarter administrative grant amount for the remaining quarters of the fiscal year. However, no new negotiated administrative grant increases were approved.

New State Agencies

The three new State agencies which started program operations in the fourth quarter of FY 1980 or have started or plan to start during FY 1981 could not be funded under the same provisions as other State agencies without seriously jeopardizing the new agencies' operation. That is because new State agencies may have extremely small caseloads in their early months that cannot permanently sustain a viable program. Consequently, the Department awarded these three State agencies a basic grant level that was determined necessary to sustain their operation during the fiscal year or permit them to begin operation. This determination was based on the review and evaluation of the State agencies' funding needs by FNS Regional Offices.

The grant levels allocated to WIC State agencies for the second, third and fourth quarters of FY 1981 result in a very slight funding increase for some State agencies from their first quarter allocation and a decrease for others. There is no room for program growth in these grant levels. The Department will make every effort not to recover funds for future reallocations from the first and second quarters of FY 1981 as long as State agencies have plans to use these funds to continue a stable participation level for the remainder of the fiscal year.

Signed in Washington, D.C. on January 13, 1981.

Bob Greenstein,

Administrator, FNS.

[FR Doc. 81-2074 Filed 1-22-81; 8:45 am]
BILLING CODE 3410-30-M

Forest Service

1981 Vegetation Management Program; Siuslaw National Forest, Benton, Douglas, Lane, Lincoln, Tillamook, and Yamhill Counties, Oregon; Finding of no Significant Impact

An environmental assessment has been prepared that discusses the 1981 vegetation management program for site preparation, conifer release, roadside vegetation, control of noxious weeds, and tree nursery management, on the Alsea, Hebo, Mapleton, and Waldport Ranger Districts of the Siuslaw National Forest. The environmental assessment involves the control of competing vegetation on 9,167 acres. All proposed treatment areas are located on National Forest lands within Benton, Douglas, Lane, Lincoln, Tillamook and Yamhill Counties, Oregon. The assessment is available for public review at the Alsea Ranger District in Alsea, Oregon, Hebo Ranger District in Hebo, Oregon, Mapleton Ranger District in Mapleton, Oregon, Waldport Ranger District in Waldport, Oregon, and the Siuslaw National Forest Office in Corvallis, Oregon.

Under the preferred alternative, 5,453 acres are proposed to be treated for conifer release, 3,471 acres for site preparation, and 71 acres for control of noxious weeds. Sixty-four percent of proposed acreage will be treated by aerial application method, 18 percent by chemical ground application, and 18 percent will be deferred.

I have determined through the environmental analysis that this is not a major Federal action that would significantly affect the quality of the human environment; therefore, an environmental impact statement is not needed. This determination was made considering the following factors, which are discussed in detail in the environmental assessment: (a) that the physical and biological effects of the proposed treatment are limited to the project area, (b) management requirements and constraints and mitigation measures ensures against the potential of significant adverse effects, (c) no irretrievable loss of timber production, (d) there are no apparent adverse cumulative or secondary effects, (e) no known threatened or endangered plants or animals within affected areas. This alternative has been determined to be environmentally preferable to the other alternatives considered in the assessment because it will provide a balance of environmental protection as well as goods and services for the public.

Some public concern has been expressed over the use of any chemical and the effects it has on water quality. The required mitigation measures and constraints on the implementation of the preferred alternative is designed to protect the water quality. State and Federal water quality standards will be met.

No action will be taken prior to February 23, 1981.

The responsible official is Larry A. Fellows, Forest Supervisor, Siuslaw National Forest, P.O. Box 1148, Corvallis, Oregon 97330.

January 15, 1981.

Larry A. Fellows,

Forest Supervisor.

[FR Doc. 81-2069 Filed 1-22-81; 8:45 am]
BILLING CODE 3410-11-M

Willamette National Forest—Control of Undesirable Species for the Purpose of Plantation Release and Site Preparation, Decision Notice and Finding of No Significant Impact; Lane, Douglas, Linn, and Marion Counties

An environmental assessment that discusses proposed control of undesirable vegetation for the purpose of site preparation and conifer release on not more than 5,600 acres on the Willamette National Forest, Lane, Douglas, Linn, and Marion Counties in Oregon, is available for review in the Forest Service Office in Eugene, Oregon and local Ranger Districts of the Willamette National Forest.

Based on the analysis and evaluation described in the environmental assessment, it is my decision to adopt a preferred alternative that includes the following control measures: scarification with heavy machinery, 66 acres; hand cutting of vegetation, 69 acres; hand pulling or grubbing vegetation, 810 acres; aerial application of phenoxy herbicides, 537 acres; aerial application of non-phenoxy herbicides, 2,170 acres; aerial application of phenoxy herbicides followed by burning, 28 acres; hand treatment with phenoxy herbicide mixture, 181 acres; hand treatment with non-phenoxy herbicides, 491 acres; hand cut vegetation and treat with phenoxy herbicide mixture, 1,130 acres; hand cut vegetation and treat with non-phenoxy herbicides, 45 acres.

A no treatment alternative was selected on 1,815 acres.

This preferred alternative, with specified mitigation measures and monitoring, provides the best combination of physical, biological, social and economic benefits and is considered to be the evironmentally preferable alternative.

I have determined, based on the environmental analysis, that this is not a major Federal action that would significantly affect the quality of the human environment; therefore, an environmental impact statement is not needed. This determination was made considering the following factors: (a) all chemicals are approved by EPA for the proposed use; (b) application of chemicals will comply with applicable EPA labels, State and Federal law, Forest Service policies and the current R-6 Environmental Statement dealing with vegetative management; (c) treatment with chemical, mechanical or hand methods will have only slight and temporary effect on the ecosystems in the treatment areas; (d) physical and biological effects are limited to the areas of planned treatment; and (e) there are no irreversible or irretrievable resource commitments or losses.

Project implementation may take place immediately after the date of this decision.

This decision is subject to administrative review (appeal) pursuant to 36 CFR 211.19.

Dated: January 14, 1981.

John E. Lowe,

Acting Forest Supervisor.

[FR Doc. 81-2251 Filed 1-22-81; 8:45 am]
BILLING CODE 3410-11-M

Black Hills National Forest Grazing Advisory Board; Meeting

The Black Hills National Forest Grazing Advisory Board will meet at 10:00 a.m., February 11, 1981 in the Conference Room of the Supervisor's Office, Custer, South Dakota. The purpose of this meeting is to discuss and make recommendations regarding allotment management planning goals and range betterment funding priorities which will result in realizing the potential for increasing forage production and livestock use.

The meeting will be open to the public. Persons who wish to attend should notify Lloyd Todd, Black Hills National Forest, 605/673-2251. Written statements may be filed with the committee before or after the meeting.

Dated: January 9, 1981.

James R. Mathers,

Forest Supervisor.

[FR Doc. 81-2287 Filed 1-23-81; 8:45 am]

BILLING CODE 3410-11-M

Forest Land and Resource Management Plan; Fishlake National Forest, Juab, Millard, Sanpete, Sevier, Beaver, Piute, Iron, Garfield, and Wayne Counties, Utah; Intent To Prepare an Environmental Impact Statement

A Notice of Intent To Prepare an Environmental Impact Statement for the Fishlake National Forest Land and Resource Management Plan was published in the Federal Register, Volume 45, No. 154, p. 52434, on August 7, 1980.

In conjunction with this planning effort and pursuant to 43 CFR, Part 3480, the Fishlake National Forest is in the process of applying coal unsuitability criteria as mandated by the Surface Mining Control and Reclamation Act of 1977. The Emery and Wasatch Plateau Known Recoverable Coal Resources Areas (KRCRA) and designated buffer area within the Fishlake National Forest are where the criteria are being applied. Applications of the criteria will be for all Fishlake National Forest lands within the following legal descriptions in Sevier and Wayne Counties, Utah:

T20S, R3E, R4E, S.L.M.
T21S, R2E, R3E, R4E, R5E, S.L.M.
T22S, R2E, S.L.M.
T23S, R2E, S.L.M.
T24S, R3E, R4E, S.L.M.
T25S, R3E, R4E, R5E, S.L.M.
T26S, R3E, R4E, R5E, S.L.M.

A map is available at the Forest Supervisor's Office, 170 North Main Street, Richfield, Utah, which shows those areas where the coal unsuitability criteria will be applied.

The Fishlake National Forest will hold a public meeting to discuss the coal unsuitability recommendations for the Fishlake National Forest Land and Resource Management Plan on February 10, 1981, at 10:00 a.m. at the Sevier County Courthouse auditorium in Richfield, Utah. At the same meeting, the unsuitability criteria recommendation for the Coastal States Energy Company proposal lease will be discussed.

Information, concerns, and issues which are made known at this meeting will be used to determine what lands are unsuitable for future coal leasing. Future planning efforts for the Fishlake National Forest Land and Resource Management Plan will incorporate the recommendations as appropriate to the application of the unsuitability criteria.

For further information about this planning effort or to present comments contact: Andrew E. Godfrey, Forest Planning Staff Officer, Fishlake National Forest, 170 North Main St., Richfield, Utah 84701, (801) 896-4491.

Dated: January 14, 1981.

Jeff M. Simon,

Regional Forester.

[FR Doc. 81-2288 Filed 1-23-81; 8:45 am]

BILLING CODE 3410-11-M

Irish Wilderness RARE II Further Planning Area; Mark Twain National Forest, Oregon County, Missouri; Intent To Prepare an Environmental Impact Statement

The Forest Service, Department of Agriculture, will prepare an environmental impact statement for the proposal to prospect for hard rock minerals within a part of the Irish Wilderness (an area designated for further planning during the Second Roadless Area Review Evaluation (RARE II)) on the Doniphan Ranger District.

A range of alternatives will be considered. One alternative will be not to permit prospecting within the area. Analysis of the alternatives must determine whether impacts adverse to the wilderness characteristics of the area would be sustained.

The major issues regarding the Irish Wilderness were identified during the recent scoping process used in development of the Forest Land and Resource Management Plan, therefore a separate scoping process is not planned for this proposed action.

The estimated release date of the draft environmental impact statement is December 1981. August 1982 is estimated as the release date of the final environmental impact statement.

Steve Yurich, Regional Forester, Eastern Region, Milwaukee, Wisconsin, is the responsible official.

Questions about the study and environmental impact statement should be directed to Robert Pokela, District Ranger, Doniphan, Missouri, telephone (314) 996-2153.

Written comments and suggestions concerning the study process should be sent to Leon Cambre, Forest Supervisor, Mark Twain National Forest, Rolla, Missouri, 65401.

James H. Freeman,

Director of Planning, Programming and Budgeting.

January 12, 1981.

[FR Doc. 81-2285 Filed 1-23-81; 8:45 am]

BILLING CODE 3410-11-M

Medicine Bow National Forest Grazing Advisory Board; Meeting

The annual meeting of the Medicine Bow National Forest Grazing Advisory Board will be February 23, 1981, at 10 a.m. in the Medicine Bow National Forest Supervisor's Office, 605 Skyline Drive, Laramie, Wyoming.

The agenda for the meeting will include: (1) accepting new board members; (2) acquaint new members with the function of the Board; (3) recommendations concerning the development of allotment management plans and the utilization of range betterment funds; (4) location and agenda for the summer tour; and (5) amend by-laws for ways to select a board member in case of tie vote.

The meeting will be open to the public. Persons who wish to attend and participate should notify Don Schmidtlein (307-745-8971) Laramie, Wyoming, prior to the meeting. Public members may participate in discussions at any time during the meeting, or may file a written statement following the meeting.

Dated: January 14, 1981.

Donald L. Rollins,

Forest Supervisor.

[FR Doc. 81-2289 Filed 1-23-81; 8:45 am]

BILLING CODE 3410-11-M

Office of the Secretary

African Swine Fever; Declaration of Emergency Because of the Existence of African Swine Fever in Haiti

Whereas, the highly contagious, infectious swine disease known as African swine fever exists in the Country of Haiti, and

Whereas, Haiti is a very close neighbor of the United States and the Commonwealth of Puerto Rico, and

Whereas, the potential dissemination of African swine fever to locations in the United States and its territories or possessions constitutes a danger to producers, shippers, slaughterers, and others concerned with the swine industry and to the national economy, and

Whereas, the Government of Haiti has requested assistance in combatting African swine fever,

Now, Therefore, in accordance with the provisions of the appropriation item for the Animal and Plant Health Inspection Service in the Agriculture, Rural Development, and Related Agencies Appropriation Act, 1981 (Pub. L. 96-528) and sections 1 and 2 of the Act of February 28, 1947, 61 Stat. 7, as amended (21 U.S.C. 114b and 114c), I find an emergency arising out of the existence of African swine fever in Haiti, a very close neighboring country, which constitutes a threat to the swine industry of the United States, and I hereby authorize the transfer from other appropriations or funds available to the agencies and corporations of the Department such sums as may be necessary to be utilized in a program in cooperation with the Government of Haiti, and with other governments and international organizations or associations, in carrying out operations or measures to eradicate, suppress, or control African swine fever in Haiti or to prevent or retard African swine fever or vectors thereof from being introduced to and disseminated into the United States.

This final action has been reviewed under procedures established in Secretary's Memorandum 1955 to implement Executive Order 12044 and has been classified as "significant." The emergency nature of this action warrants publication of this final action without completion of a Final Impact Statement. A Final Impact Statement will be developed as soon as possible.

Effective Date: This declaration of emergency shall become effective January 16, 1981.

Jim Williams,

Acting Secretary of Agriculture.

[FR Doc. 81-2370 Filed 1-19-81; 1:03 pm]

BILLING CODE 3410-04-M

Rural Electrification Administration

Cajun Electric Power Cooperative, Inc.; Proposed Loan Guarantee

Under the authority of Pub. L. 93-32 (87 Stat. 65) and in conformance with applicable agency policies and procedures as set forth in REA Bulletin 20-22 (Guarantee of Loans for Bulk Power Supply Facilities), notice is hereby given that the Administrator of REA will consider providing a guarantee supported by the full faith and credit of the United States of America for a loan in the approximate amount of $300,000,000 to Cajun Electric Power Cooperative, Inc., (Cajun) of New Roads, Louisiana. This loan guarantee will provide supplemental funds needed to complete the construction of Units 1, 2 and 3 at the Big Cajun 2 generating plant and working capital to finance a coal inventory.

Legally organized lending agencies capable of making, holding and servicing the loan proposed to be guaranteed may obtain information on the proposed program, including the engineering and economic feasibility studies and the proposed schedule of advances to the borrower of the guaranteed loan funds from Mr. James R. Smith, Manager, Cajun Electric Power Cooperative, Inc., P.O. Box 578, New Roads, Louisiana 70760.

In order to be considered, proposals must be submitted on or before February 23, 1981, to Mr. Smith. The right is reserved to give such consideration and make such evaluation or other disposition of all proposals received as Cajun and REA deem appropriate.

Prospective lenders are advised that the guaranteed financing for this project is available from the Federal Financing Bank under a standing agreement with the Rural Electrification Administration.

Copies of REA Bulletin 20-22 are available from the Director, Office of Information and Public Affairs, Rural Electrification Administration, U.S. Department of Agriculture, Washington, D.C. 20250.

This program is listed in the Catalog of Federal Domestic Assistance as 10.850—Rural Electrification Loans and Loan Guarantees.

Dated at Washington, D.C., this 14th day of January, 1981.

Robert W. Feragen

Administrator, Rural Electrification Administration.

[FR Doc. 81-2321 Filed 1-22-81; 8:45 am]

BILLING CODE 3410-15-M

Basin Electric Power Cooperative; Bismarck, North Dakota; Proposed Loan Guarantee

Under the authority of Public Law 93-32 (87 Stat. 65) and in conformance with applicable agency policies and procedures as set forth in REA Bulletin 20-22 (Guarantee of Loans for Bulk Power Supply Facilities), notice is hereby given that the Administrator of REA will consider providing a guarantee supported by the full faith and credit of the United States of America for a loan in the approximate amount of $434,000 to Basin Electric Power Cooperative of Bismarck, North Dakota. These loan funds will be used to finance early costs in connection with possible utilization of oil sunflower seed hulls as a supplemental boiler fuel and for modification of existing generating facilities to provide cogeneration of process steam at the William J. Neal Station.

Legally organized lending agencies capable of making, holding and servicing the loan proposed to be guaranteed may obtain information on the proposed project, including the engineering and economic feasibility studies and the proposed schedule for the advances to the borrower of the guaranteed loan funds from Mr. James L. Grahl, General Manager, Basin Electric Power Cooperative, 1717 East Interstate Avenue, Bismarck, North Dakota 58501.

In order to be considered, proposals must be submitted on or before February 23, 1981, to Mr. Grahl. The right is reserved to give such consideration and make such evaluation or other disposition of all proposals received, as Basin Electric Power Cooperative and REA deem appropriate. Prospective lenders are advised that the guaranteed financing for this project is available from the Federal Financing Bank under a standing agreement with the Rural Electrification Administration.

Copies of REA Bulletin 20-22 are available from the Director, Office of Information and Public Affairs, Rural Electrification Administration, U.S. Department of Agriculture, Washington, D.C. 20250.

This program is listed in the Catalog of Federal Domestic Assistance as 10.850—Rural Electrification Loans and Loan Guarantees.

Dated at Washington, D.C., this 15th day of January, 1981.

Robert W. Feragen,

Administrator, Rural Electrification Administration.

[FR Doc. 81-2375 Filed 1-22-81; 8:45 am]

BILLING CODE 3410-15-M

CHRYSLER CORPORATION LOAN GUARANTEE BOARD

Closed Board Meeting

The Chrysler Corporation Loan Guarantee Board will hold a meeting closed to the public on January 19, 1981 at 8:00 a.m., in Room 4426, Main Treasury Building, 15th Street and Pennsylvania Avenue, NW., Washington, D.C.

The Board will continue its discussion of Chrysler Corporation's new Operating and Financing Plans and related documents and its request for additional guarantees. On Wednesday, January 14, the Board approved a summary of the terms on which it expected to be able to grant formal approval later in the week. The January 19 meeting will be a continuation of the Board's meeting of

Friday, January 16, which was recessed until January 19. At the January 19 meeting the Board expects to take formal action on Chrysler's application for up to an additional $400 million of guarantees.

Discussions of the above matters are closed to the public pursuant to applicable exemptions under the Government in the Sunshine Act. The discussions at the meeting will involve significant amounts of non-public financial and commercial information received from Chrysler Corporation, relating to anticipated profitability, market positions, capital expenditures and cost reduction actions.

An open meeting is likely to disclose (1) confidential commercial and financial information, which is exempt under 5 U.S.C. 552b(c)(4); and (2) information the premature disclosure of which would be likely to significantly frustrate implementation of Board action, which is exempt under 5 U.S.C. 552b(c)(9)(B).

The meeting was closed pursuant to vote of the Board taken at the end of the January 16 meeting. Secretary of the Treasury G. William Miller and Comptroller General Elmer B. Staats voted to close the meeting. Federal Reserve Board Chairman Paul A. Volcker was absent and did not vote.

Those persons expected to attend the meeting, or portions thereof, include the Board members, the Executive Director, General Counsel, and Secretary of the Board, and members of the respective staffs of each Board member.

Those persons desiring further information should contact Bruce D. Bolander, Secretary of the Board, at (202) 566–2278.

This notice is given as a result of a court order. The position of the Board is that it is not subject to the Government in the Sunshine Act.

Dated: January 17, 1981.

Bruce D. Bolander,

Secretary of the Board.

[FR Doc. 81-2250 Filed 1-22-81; 8:45 am]

BILLING CODE 4810-[illegible]

CIVIL AERONAUTICS BOARD

[Docket 39039]

Eastern Air Lines, Inc.; Service Suspensions Enforcement Proceeding; Assignment of Proceeding

The above-entitled proceeding has been assigned to Administrative Law Judge William A. Kane, Jr. Future communications should be addressed to Judge Kane.

Dated at Washington, D.C., January 19, 1981.

Joseph J. Saunders,

Chief Administrative Law Judge.

[FR Doc. 81-2216 Filed 1-22-81; 8:45 am]

BILLING CODE 6320-01-M

[Docket 36115]

South Pacific Island Airways; Fitness Investigation; Hearing

Notice is hereby given, pursuant to the Federal Aviation Act of 1958, as amended, that a hearing in the above-entitled proceeding is assigned to be held on February 9, 1981, at 10:00 a.m. (local time), in Room 1003, Hearing Room B, Universal North Building, 1875 Connecticut Avenue, N.W., Washington, D.C., before the undersigned administrative law judge.

Dated at Washington, D.C., January 19, 1981.

William A. Pope II,

Administrative Law Judge.

[FR Doc. 81-2212 Filed 1-22-81; 8:45 am]

BILLING CODE 6320-01-M

DEPARTMENT OF COMMERCE

International Trade Administration

Worldwide Information and Trade System; Fee Schedule

AGENCY: International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce announces fee for on-line searches of the computerized Worldwide Information and Trade System (WITS).

EFFECTIVE DATE: January 26, 1981.

FOR FURTHER INFORMATION CONTACT: Search requests and other inquiries should be directed to the WITS Staff or to the nearest participating district office:

WITS Staff, Room 1098, The Great Hall, U.S. Dept. of Commerce, Washington, D.C. 20230, (202) 377–5291.

International Trade Administration, U.S. Dept. of Commerce Los Angeles District Office, 11777 San Vicente Boulevard, Los Angeles, CA 90049, (213) 824–7591.

International Trade Administration, U.S. Dept. of Commerce Chicago District Office, 1406 Mid Continental Plaza Building, 55 East Monroe Street, Chicago, IL 60603, (312) 353–4450.

International Trade Administration, U.S. Dept. of Commerce Boston District Office, Tenth Floor, 441 Stuart Street, Boston, MA 02116, (617) 223–2312.

International Trade Administration, U.S. Dept. of Commerce Dallas District Office, 1100 Commerce St., Dallas, TX 75242, (214) 767–0542.

International Trade Administration, U.S. Dept. of Commerce Seattle District Office, Lake Union Building, 1700 Westlake Avenue North, Seattle, WA 98109, (206) 442–5615.

SUPPLEMENTARY INFORMATION: WITS is a new computerized, international marketing information system for business and government designed by the Department of Commerce to provide fast, convenient access to current marketing intelligence. WITS can provide domestic businessmen with foreign trade leads, information on foreign companies and market trends, schedules of upcoming trade shows, and sources of further advice.

Trade specialists at the locations listed will advise what is available from WITS and help users formulate their search queries. The fee charged for on-line searches of WITS will be $2 for each minute of computer connect time. Additional charges may be incurred for certain off-line services, such as for ordering publications, reports, printouts, and other information in hard copy through WITS. In these cases, the user will pay the normal purchase price for the product ordered.

Dated: January 19, 1981.

Vernon Stansbury,

Deputy to the Deputy Assistant Secretary for Export Development.

[FR Doc. 81-2215 Filed 1-22-81; 8:45 am]

BILLING CODE 3510-25-M

National Oceanic and Atmospheric Administration

National Marine Fisheries Service; Permit Application; Correction

On December 12, 1979, Notice was published in the Federal Register (44 FR 71856), that an application had been filed with the National Fisheries Marine Service for a Scientific research permit to, among other things, radio-tag five female Northern elephant seals (*Mirounga angustirostris*). The permit subsequently issued and the Notice of Receipt should be corrected to read that five female Northern elephant seals will be out-fitted with digital depth recording/radio tag devices.

Documentation concerning this correction is available for review in the following offices:

Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street, N.W., Washington, D.C.; and

Regional Director, National Marine Fisheries Service, Southwest Region, 300 South Ferry Street, Terminal Island, California 90731.

Dated: January 16, 1981.

Richard B. Roe,

Acting Director, Office of Marine Mammals and Endangered Species, National Marine Fisheries Service.

[FR Doc. 81-2222 Filed 1-22-81; 8:45 am]

BILLING CODE 3510-22-M

Fisherman's Protective Act; Claims Pending Before the International Claims Board

AGENCY: National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Department of Commerce.

ACTION: Notice of waiver of 60-day filing deadline and of cognizability under section 10(c)(1) of claims pending before the international claims board.

SUMMARY: Applications for compensation under Section 10 of the Fisherman's Protective Act, the Fishing Vessel and Gear Damage Compensation Fund, for damage, loss, or destruction of fishing gear and fishing vessels occurring after September 17, 1978, and before December 22, 1980, may be filed during the 60-day period from December 22, 1980, to February 19, 1981. Also, claims for fishing gear loss pending on June 1, 1980, before the United States-Union of Soviet Socialist Republics Claims Board or the American-Spanish Fisheries Board shall be treated as timely filed under Section 10 for compensation. These provisions were effected by section 240 (a) and (b) of title II—Promotion of American Fisheries—of Pub. L. 96-561, enacted December 22, 1980.

EFFECTIVE DATE: Effective as of December 22, 1980.

FOR FURTHER INFORMATION CONTACT: Ms. Kathryn E. Hensley, Financial Services Division, National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Washington, D.C. 20235, telephone (202) 634-4868.

Accordingly, notwithstanding any other provision under 50 CFR Part 258, (i) any application for compensation from the Fishing Vessel and Gear Damage Compensation Fund of fishing vessel or gear damage, loss, or destruction occurring after September 17, 1978, and before December 22, 1980, shall be considered timely filed if filed on or after December 22, 1980, and no later than February 19, 1981, and (ii) any claims for fishing gear loss, pending on June 1, 1980, before the United States-Union of Soviet Socialist Republics Fisheries Claims Board or the American-Spanish Fisheries Board shall be treated as timely filed for compensation from the Fishing Vessel and Gear Damage Compensation Fund.

(Authority: Pub. L. 95-376, 92 Stat. 715 (22 U.S.C. 1980))

Dated: January 15, 1981.

Robert K. Crowell,

Deputy Executive Director, National Marine Fisheries Service.

[FR Doc. 81-2223 Filed 1-22-81; 8:45 am]

BILLING CODE 3510-22-M

Office of the Secretary

[Dept. Organization Order 30-2B]

National Bureau of Standards; Statement of Organization, Functions, and Delegation of Authority

This order effective December 23, 1980 supersedes the material appearing at 43 15473 of April 13, 1978, 43 FR 43534 of September 26, 1978, 44 FR 6976 of February 5, 1979, 44 FR 18720 of March 29, 1979, 45 FR 47902 of July 17, 1979 and 45 FR 80661 of December 8, 1980.

Section 1. Purpose

.01 This Order prescribes the organization and assignment of functions within the National Bureau of Standards (NBS). The scope of authority and functions are set forth in Department Organization Order 30-2A.

.02 This revision is a general update of the Order. It abolishes the position of Deputy Director for Information Systems; restructures the position of Deputy Director for Administrative Systems into a new position of Deputy Director of Administration (Section 6.); changes the title of the Director of Administrative and Information Systems to Director of Administration; changes the title of the Office of the Director of Administrative and Information Systems to Director of Administration; and incorporates outstanding amendments to the Order.

Section 2. Organization

The organization structure and line of authority of NBS shall be as depicted in the attached organization chart (Exhibit 1). A copy of the organization chart is on file with the original of this document in the Office of the Federal Register.

Section 3. Office of the Director

.01 The *Director* shall determine the policies of NBS and direct the development and execution of its programs.

.02 The *Deputy Director* shall assist the Director in the direction of NBS and perform the functions of the Director in the latter's absence.

Section 4. Staff Functions Reporting to the Director

.01 The *Legal Adviser* shall, under the professional supervision of the Department's General Counsel and as provided in Department Organization Order 10-6, serve as the law office of, and have responsibility for all legal services at NBS.

.02 The *Chief, EEO Support Division* shall report to the Director of Administration; except that, on matters pertaining to EEO or affirmative action, the Chief shall be directly responsible and have access to the Director and/or Deputy Director of NBS. Such direct responsibilities shall primarily include EEO and affirmative action policy recommendations to these officials and the NBS Executive Board, fulfilling EEO objectives, accomplishing the Affirmative Action Plan, and monitoring NBS' progress in these areas through formal quarterly reviews.

.03 The *Public Affairs Officer* shall serve as the public information spokesperson for the NBS; serve as Chief of the Public Information Division; and work with the NBS Executive Board in developing communications strategies for the Bureau, using the resources of the Division in implementing those strategies. The Public Affairs Officer shall report to the Director of Administration; except that, on certain matters pertaining to public relations or the dissemination of information to the public, the Officer shall be directly responsible and have access to the Director of NBS.

Section 5. Associate Director for Programs, Budget, and Finance

The *Associate Director for Programs, Budget, and Finance* shall plan, develop, and evaluate Bureau-level programs and formulate and carry out policies and strategies for programmatic, budgetary, and financial matters; develop techniques for an coordinate the review of technical and overhead programs; serve as the Director's staff for Bureau-level programmatic, budget formulation and execution, and finance matters; develop and maintain mechanisms to monitor planned and actual use of resources by providing integrated, evaluated information on program progress, opportunities, and resources to the NBS Director; advise management on significant changes and deviations; recommend programs, budget, finance, and accounting priorities to the NBS Director; serve as the focal point of intelligence and feedback for Bureau-level programmatic issues; coordinate

the formulation of the NBS budget and other Bureau-wide information packages and critique documents developed by line units; administer the NBS systems of accounting, financial management, travel, and payments; analyze resource and program proposals and investment levels; recommend distributions of the Working Capital Fund and Director's Reserve of funds, positions, and equipment to the NBS Director; and, through the comptroller, who shall report directly to the NBS Director on these matters, provide certification of official accounting records and reports and the control of funds.

a. The *Program Office* shall perform the functions of policy development, program analysis, and program development; sponsor, coordinate, and participate in issue studies and Bureau-wide information packages; develop analytical techniques for and coordinate the review of Bureau technical and overhead programs; generate strategies, guidelines, and formats for Bureau planning; articulate and document Bureau-level program plans and status for internal and external use; and define alternatives for resource allocation, and advise Bureau management on their implications.

b. The *Budget Office* shall provide advice and assistance to line management in the preparation, review, justification, presentation, and execution of the Bureau's budget, including financial management and resource allocation monitoring on the Bureau's total resources; interpret regulations and develop budgetary policy and procedures for the budget process; provide assistance in integrating program planning with the budgetary process using as a principal vehicle the Program and Financial Plan; maintain external liaison on budgetary matters; assist in the solution of budget and financing problems; design procedures for the resource monitoring system and review the execution of these procedures for the resource monitoring system and review the execution of these procedures; perform analyses and continuing reviews of status of funds in relation to fiscal plans; advise on appropriate use of resources; and review other agency orders for conformance to policy and regulations.

c. The *Office of the Comptroller* shall manage a comprehensive accounting and finance program for the Bureau; administer the NBS system of accounting, payments, billings and collections, and financial reports; execute agreements for obtaining other agency funds; analyze and develop improved financial policies and practices; monitor the fiscal health of the NBS Working Capital Fund; monitor the overall fund controls and certify the official NBS accounting records and reports.

d. The *Planning Office* shall perform long-range program planning functions; maintain user liaison mechanisms; analyze external trends, opportunities, and user needs as they relate to program priorities; and provide economic benefit analyses.

Section 6. Director of Administration

The *Director of Administration* shall manage and operate Bureau-wide administrative programs and equal employment opportunity support services; and shall establish and implement the related policies and plans; ensuring maximum responsiveness to the needs of NBS technical programs. The Director shall be assisted by a *Deputy Director of Administration,* who shall assist the Director in the performance of administrative functions, and serve as the Director during the latter's absence. The administrative functions are carried out in the following divisions:

a. The *Computing Systems Design Division* shall design, program, implement, and maintain the automated administrative information system; provide consulting , advisory, training, and user-communication services on computing and information needs by technical and adminstrative staff members; initiate developmental and experimental projects to evaluate and implement new hardware and software systems; and identify the need for and implement improvements in central computer resources such as data base management systems, computer graphics, and text handling facilities.

b. The *Library Division* shall furnish full bibliographic, document, information, and information referral services to the staff of the Bureau; provide consulting and training services for computerized information search and retrieval systems, initiate experimental projects to evaluate applications of new information storage, transmission, and retrieval technologies to the library's operations and services; participate in library and information networking and consortia activities in order to facilitate resource sharing among area and regional libraries; carry out the Bureau's library services and related information retrieval functions using both traditional and computerized information resources and methods; provide limited reference, loan, information, and training services to members of the outside scientific and academic communities.

c. The *Technical Information and Publications Division* shall carry out the overall planning and management of the NBS publications program, including: NBS policy, editorial, and procedural guidelines, publication budgeting, publication editing, design, and production, research and development on advance electronic typesetting technologies and their adaptation to NBS use, computer automation of publication statistics, and the distribution and archiving of all publications that record results of NBS scientific and technical research; coordinate technical and policy review of manuscripts prepared at Gaithersburg for publication; provide secretariat for the Washington Editorial Review Board; and serve as the central information center for users of the Bureau's outputs.

d. The *Public Information Division* shall serve as the focal point of Bureau communications with the public through interaction with the print and broadcast media, and by means of conferences, tours, and exhibits; advise on the public affairs impact and ramifications of program decisions; and coordinate handling and dissemination of information for the public.

e. The *Management and Organization Division* shall provide consultative services to line management in organization, procedures, and management practices; maintain the directives system; perform reports management and committee management functions; and serve as liaison with the Departmental Office of Information Management.

f. The *Plant Division* shall be responsible for the design, construction, alterations, and maintenance of all buildings, structures, roads, grounds, and utilities systems for NBS-Gaithersburg; manage all Bureau-owned and leased real property; operate and maintain the central steam and chilled water generation plant at NBS-Gaithersburg; provide administration and field inspection on all physical plant and construction, alteration, and repair contracts; manage space planning and utilization; and coordinate the energy conservation program for the NBS-Gaithersburg site.

g. The *Instrument Shops Division* shall design, fabricate, modify, and repair scientific instruments, apparatus, and equipment to meet the requirements of the Bureau's research, developmental work, and other agency work; provide engineering design and drafting, machining, finishing, welding, optical, glassblowing, and electronic fabricating services; and coordinate advisory service to the Statutory Import Programs

Staff (ITA) on Scientific Equivalency of Instruments (Florence Agreement).

h. The *Facilities Services Division* shall provide physicial security protection, fire protection, ambulance service, building, laboratory, and office cleaning for the NBS-Gaithersburg site; maintain property records; arrange for the transportation of materials and household moves; operate NBS storerooms; distribute and store Standard Reference Materials; provide audio-visual and conference facilities, mail, messenger, telecommunications, and warehouse services; and manage the NBS motor vehicle fleet.

i. The *Occupational Health and Safety Division* shall administer the Bureau's occupational safety/health (OSH) program; provide radiation protection services to Bureau users of ionizing and nonionizing radiation sources and lasers; conduct educational and preventive health programs for the staff; provide treatment of minor ailments and injuries with initial treatment and referral of emergencies of a more serious nature; carry out the NBS workmen's compensation program; provide technical direction on safety matters to the NBS fire protection unit; and conduct medical surveillance as determined by Occupational Safety and Health Administration (OSHA) standards.

j. The *Personnel Division* shall advise on personnel policy and utilization; administer recruitment, placement, classification, employee development, employee relations, labor relations, and special programs activities; advise and assist operating officials and employees on these and other aspects of personnel management; and process employee security clearances.

k. The *Office Management Division* shall, within the limitations on procurement authority spelled out in pertinent Department Orders, procure materials/services, prepare awards and administer grants, cooperative agreements, and contracts; arrange for repair of office machines and equipment; provide visual arts, quick copy, and printing services; conduct records and forms management programs; operate NBS records holding area; insure safeguarding of classified records materials; manage the WAE/Clerical Staffing Program; and provide office support for organizations reporting to the Office of the Director of Administration and for other organizational units in the Bureau who request the service.

l. The *EEO Support Division* shall develop program policy recommendations for the Director of NBS and members of the NBS Executive Board; assist the Director and Deputy Director of NBS and the Executive Board and line managers with their responsibilities for fulfilling the objectives of EEO and Affirmative Action Plan compliance throughout NBS, and the requirements of civil rights statutes, Executive Orders, and other regulatory provisions relating to equal opportunity and affirmative action; advise and assist the Personnel Division and line managers in the development and implementation of recruitment programs of qualified minorities, women, veterans, and handicapped persons assuring unbiased and equitable treatment of applicants; cooperate with the Minority Business Development Agency and the minority business community in support of minority business development; administer NBS' internal discrimination complaint system; coordinate the Special Emphasis Programs for Women, Hispanics, Handicapped, Veterans, Grants to Black Colleges, and Minority Business; and carry out related activities in cooperation with the EEOC, OPM, the Departmental Office of Civil Rights, the NBS Legal Adviser and the Department's General Counsel.

Section 7. National Measurement Laboratory

The *National Measurement Laboratory* shall provide the national system of physical and chemical and materials measurement; coordinate the system with measurement systems of other nations and furnish essential services leading to accurate and uniform physical and chemical measurement throughout the Nation's scientific community, industry, and commerce; conduct materials research leading to improved methods of measurement, standards, and data on the properties of materials needed by industry, commerce, educational institutions, and government; provide advisory and research services to other Government agencies; conduct physical and chemical research; develop, produce, and distribute Standard Reference Materials; provide standard reference data; provide calibration services; and collaborate with the National Engineering Laboratory and the Institute for Computer Sciences and Technology in carrying out the responsibilities of the National Measurement Laboratory.

a. The *Center for Absolute Physical Quantities* shall develop and maintain the scientific competences and laboratory facilities necessary to preserve and continue to refine the base physical quantities upon which the Nation's Measurement sytem is constructed; perform research, both experimental and theoretical, at the frontiers of physics in order to improve our measurement capability and our quantitative understanding of basic physical processes that underlie measurement science; improve, maintain, and transfer the measurement base for time, frequency, electricity, temperature, pressure, mass, and length; coordinate the National base standards with the Bureau International des Poids et Measures and national laboratories; measure at the highest level of accuracy the fundamental constants of nature; work closely with other centers of NBS in the interdisciplinary development of measurement science; and maintain scientific exchange programs with other measurement laboratories, including a continuing cooperative program with the University of Colorado.

b. The *Center for Radiation Research* shall develop and maintain the scientific competences and experimental facilities necessary to provide the Nation with a central basis for uniform physical measurements, measurement methodology, and measurement services in the areas of optical radiation, ultraviolet radiation, and ionizing radiation (x-ray, gamma rays, electrons, neutrons, radioactivity, etc); provide government, industry, and the private sector with essential calibrations for field radiation measurements needed in such applied areas as nuclear power, health care, radiation processing, advanced laser development, and radiation protection for public safety; carry out research in order to develop improved radiation standards, new radiation measurement technology, and improved understanding of atomic and nuclear radiation processes; collect, compile, critically evaluate, and supplement the existing atomic and nuclear data base in order to meet the major demands of the Nation for such data; and participate in collaborative efforts with other centers in the interdisciplinary applications of radiation.

c. The *Center for Analytical Chemistry* shall carry out basic and applied research in analytical chemistry; develop and improve methods for the separation, analysis, and characterization of materials, including Standard Reference Materials; conduct fundamental investigations of the phenomena on which measurement of the composition and behavior of chemical systems is based; use these measurement methods to improve the accuracy of composition measurement, and thereby the comparability among laboratories throughout the United States as well as ensuring measurement compatibility with other nations; use

these techniques to assist in the solution of problems of national impact, e.g., in improving the accuracy of clinical analytical chemistry, air and water pollution analysis, and in providing advisory services in analytical chemistry to government agencies, scientific organizations, and industry; and participate in collaborative efforts with other centers in the interdisciplinary applications of analytical chemistry.

d. The *Center for Thermodynamics and Molecular Science* shall develop and maintain the scientific competences and experimental facilities necessary to provide the Nation with uniform measurements, measurement methodologies, and measurement services in the areas of thermodynamics and transport properties, chemical kinetics, surface science, and molecular spectroscopy; provide government, industry, and the scientific community with essential standards and certified Standard Reference Materials needed to maintain the integrity of the measurement system; develop standards and techniques of measurement, conduct theoretical and experimental research, and provide consultative services in the fields of thermodynamics, kinetics, surface science, and molecular spectroscopy; measure, compile, critically evaluate, and disseminate thermodynamic spectroscopic data, chemical kinetic data, and data on photochemistry to the industrial, governmental, and technological communities nationally and internationally; and participate in collaborative efforts with other centers in disciplinary developments involving thermodynamics, kinetics, surface science, and molecular spectroscopy.

e. The *Center for Materials Science* shall characterize and conduct research on the structure of materials, key chemical reactions, and key physical and chemical properties which will lead to the safest, most efficient uses of materials, improve materials technologies, and encourage recycling; provide standards, measurement methods, data, concepts, and information concerning the properties and performance of metals, polymers, and inorganic materials, and disseminate this information to industry, government, universities, and consumers; maintain and develop research reactor activities which provide precise information about these materials.

Section 6. National Engineering laboratory

The *National Engineering Laboratory* shall provide technology and technical services to users in the public and private sectors to address National needs and to solve National problems in the public interest; conduct research in engineering and applied science in support of objectives in these efforts; build and maintain competence in the necessary disciplines required to carry out this research and technical service; develop engineering data and measurement capabilities; provide engineering measurement traceability services; develop test methods and propose engineering standards and code changes; develop and propose new engineering practices; develop and improve mechanisms to transfer results of its research to the ultimate user; and collaborate with the National Measurement Laboratory in conducting the National Engineering Laboratory's assigned responsibilities.

a. The *Center for Applied Mathematics* shall conduct research, collaborate with, and provide support to all Bureau activities and to other Federal agencies in selected fields of the mathematical and computer sciences important in science and engineering; undertake specialized computational support and services for high-technology science and engineering programs; develop tools for mathematical work such as mathematical models, statistical models and computational methods, mathematical tables, handbooks, and manuals, and advise on their use; provide training in disciplines related to these functions; operate, on a reimbursable basis, the Bureau's central computing facility that serves NBS and other agencies; provide the systems software and hardware support required for efficient operation of the facility; conduct computer performance monitoring and determine needs for additional hardware and systems software; maintain records of use of computing resources; and provide consulting and training to assist users in the effective utilization of the computing resources.

b. The *Center for Electronics and Electrical Engineering* shall provide a focus in NBS for research, development, and applications in the field of electronic and electrical materials and engineering; maintain and develop competences in measurements and analytic methods, in fabrication processes, in performance evaluation, and in practical applications appropriate to a wide range of electrical and electronic materials, devices, instruments, and systems; identify technologies for the achievement of National goals; conduct responsive applied research to yield the requisite practical data, measurement methods, theory, standards, technology, and technical services; and provide national reference standards and engineering measurement traceability and deliver the results for the benefit of the government, industry, the scientific community, and the consumer, either directly or through effective intermediaries.

c. The *Center for Mechanical Engineering and Process Technology* shall provide, within the National Engineering Laboratory, competence in mechanics, mechanical engineering, materials engineering, industrial engineering, mechanical engineering metrology, and automatic control technology; manage these competences to provide technology, standards, and measurement traceability services to strengthen the manufacturing industries, public utilities, and Government agencies for the purposes of increased productivity, improved international competitiveness, and efficiency in regulatory compliance.

d. The *Center for Building Technology* shall perform analytical, laboratory, and field research involving architecture, engineering, and physical and social sciences to produce performance criteria and methods of evaluation, and tests and measurements for codes and standards; serve building owners, occupants, designers, manufacturers, builders, regulatory authorities of State and local governments and Federal agencies with building programs; provide for demonstration, implementation, and evaluation of improved building practices by means of cooperative programs with other research organizations, professional societies, standards-writing organizations, State and local governments and other Federal agencies; and apply these methods and disciplines for the purposes of improving safety in building construction and use, energy conservation in buildings, establishment of sound technical bases for the solar heating and cooling of buildings, more useful and economical new buildings, and effective use of existing buildings.

e. The *Center for Fire Research* shall perform and support research in all aspects of fire with the aim of providing scientific and technical knowledge applicable to the prevention and control of fires, including: (1) basic and applied research for the purpose of arriving at an understanding of the fundamental processes underlying fires, including the physics and chemistry of combustion processes and products, early stages of fires and structural influences in fire

behavior, fire-safe design concepts for buildings, and specific fire hazards; (2) research into the biological, physiological, and psychological factors affecting human victims of fire, and the performance of individual members of fire services, including the phychological factors leading to arson and the prediction and cure of such behavior; and (3) operation tests, demonstration projects, and fire investigations in support of such activities.

f. The *Center of Consumer Product Technology* shall perform research and development toward establishing and advancing measurement techniques and test methodology to evaluate the safety, energy efficiency, and other performance characteristics of consumer products and law enforcement equipment; apply the disciplines of mechanical and electrical engineering, consumer and behavioral sciences, economics, and operations research to programs involving consumer product technology and product-user interactions; develop the technical and analytical bases for performance standards and characterizing product attributes; provide technical assistance, analyses, and evaluations related to consumer product technology to other agencies of Government; and produce descriptive literature and information for the public.

g. The *Center for Field Methods* shall investigate the effectiveness of various incentives and mechanisms to stimulate increased development and use of technology by industry. These investigations shall be designed to provide an experimental basis for the formulation of Government policy in this area.

Section 9. Office of the Director, NBS/ Boulder Laboratories

The *Office of the Director, NBS/ Boulder Laboratories,* located in Boulder, Colorado, shall provide administrative support to the technical programs of the NBS/Boulder Laboratories. These laboratories shall conduct research comprising work on measurement science for the National Measurement Laboratory in time and frequency, quantum physics, thermodynamics, materials science, and the development of essential technical data in quantum physics, thermodynamics, and materials science; and conduct programs for the National Engineering Laboratory in electromagnetics and fluid dynamics. The following administrative divisions are located in the Boulder Laboratories: Instrument Shops Division, and Plant Division.

Section 10. Institute for Computer Sciences and Technology

The *Institute for Computer Sciences and Technology,* in accordance with Public Law 89-306 (40 U.S.C. 759), shall develop and recommend Federal Information Processing Standards and participate in the development of voluntary commercial ADP standards; conduct research in the science and technologies of automatic data processing, computers, and related systems; provide scientific and technical advisory services to the Office of Management and Budget and the General Services Administration to support the formulation of Federal automatic data processing policies; provide advisory services and technical assistance to other Government agencies; build and maintain competence in computer science and engineering necessary to carry out these programs; and collaborate with the National Measurement Laboratory and the National Engineering Laboratory in carrying out the Institute's responsibilities.

a. The *Center for Programming Science and Technology* shall maintain computer science and engineering competence and experimental facilities support in order to provide Federal computer system and software standards and related guidelines for use in evaluation and management of computer utilization. Technical areas include computer programming languages, operating systems, text editors, data base management systems, programming tools and other utility software, data elements and codes, computer security, system certification and validation, performance assurance, and evaluation techniques such as auditing, programming productivity measurement, workload characterization, and system performance measurement. The Center also shall: (1) Provide Federal agencies with technology assessments and advisory services in these and related technical areas, and (2) provide the computer science research and technology base for the Federal ADP standards program.

b. The *Center for Computer Systems Engineering* shall maintain computer science and engineering competence and experimental facilities support in order to provide Federal computer system and network standards and related guidelines for use in the procurement and operation of Federal computer systems and networks, and their hardware and software components. Technical areas include computer system and network architecture, network protocols, local networks and office systems, network measurement, computer system interfaces, data communications, data acquisition and storage, terminals and peripherals, data interchange media, network access control, and system specification languages and verification techniques. The Center also shall: (1) Provide technology forecasts in these and related technical areas for use in establishing priorities for the standards program and for use by Federal agencies in their planning for future requirements; (2) provide advisory services for Federal agencies in these and related technical areas, and (3) provide the computer technology research and engineering base for the Federal ADP standards program.

Elsa A. Porter,
Assistant Secretary for Administration.

[FR Doc. 81-2270 Filed 1-23-81; 8:45 am]
BILLING CODE 3510-17-M

[Dept. Organization Order 20-8]

Office of Personnel; Statement of Organization Functions and Delegation of Authority

This order effective December 10, 1980 supersedes the material appearing at 45 FR 75268 of November 14, 1980.

Section 1. Purpose

.01 This Order prescribes the functions and organization of the Office of Personnel.

.02 This revision reflects a consolidation of functions into fewer organizational units, providing a simpler supervisory structure. A new position of Deputy Director replaces the former positions of Deputy Director for Personnel Development and Deputy Director for Personnel Administration. The former Performance Appraisal and Compensation Division and Employee Development and Awards Division are abolished, and the titles of the other divisions are changed to reflect a redistribution of functions within the Office.

Section 2. Status and Line of Authority

The Office of Personnel, a Departmental office, shall be headed by a Director who shall report and be responsible to the Deputy Assistant Secretary for Resources Management. The Director shall be assisted by a Deputy Director, who shall perform the functions of the Director during the latter's absence.

Section 3. Delegation of Authority

In addition to the authority implicit in and essential to carrying out the

functions assigned to the Office and related to the exercise of such functions, the Director, Office of Personnel:

a. Is delegated all authority and responsibilities vested in the Assistant Secretary for Administration pertaining to personnel programming and management, other than equal employment opportunity, including the direction, administration, processing, and authority to take final action on all personnel actions and other personnel matters;

b. Is authorized to redelegate such authority to appropriate officials of the Office of Personnel and other officials of the Department, subject to such conditions in the exercise of such authority as may be prescribed; and

c. As Director of Personnel for the Department, shall be the adviser to, and serve as the representative of, the Assistant Secretary for Administration and Deputy Assistant Secretary for Resources Management in all matters of personnel utilization, management, and administration, except for equal opportunity employment policies and programs.

Section 4. Functions

Pursuant to the authority vested in the Assistant Secretary for Administration by Department Organization Order 10-5, and subject to such policies and directives as the Assistant Secretary for Administration and the Deputy Assistant Secretary for Resources Management may prescribe, the Office shall:

a. Have Departmentwide staff responsibility for all matters, other than equal employment opportunity, relating to personnel management and administration, including executive resources management, staffing controls, recruitment and placement, employee utilization and development, supervisory and management development, classification and position management, performance appraisal, human development/work improvement, pay administration, labor relations, training, employee relations, employee benefits and services, personnel management evalution, occupational health, incentives programs, prevention of prohibited personnel practices, and compliance with and enforcement of applicable civil service laws, rules, and regulations; and

b. Establish and maintain close working relationships with the Office of Civil Rights and with other external Government agencies such as the Office of Personnel Management (OPM).

Section 5. Organization

Under the direction and supervision of the Director, the functions of the Office shall be organized and carried out as provided below:

.01 The *Office of the Director* shall consist of the Director and Deputy Director and such staff as they need for internal administration and for evaluation of the personnel management programs of the Department and the operating units. The Deputy Director shall be the principal management alternate for the Director, shall carry out special assignments to support and assist the Director, and shall supervise the following elements of the Office:

a. The *Policy Support Staff* shall provide staff assistance and technical advice to the Director, to other components of the Office, and to other Departmental units concerning the regulations, policies, and decisions of external bodies which have an impact on the Department's personnel policies and its labor-management relations. The Staff shall coordinate comments on and clearance of proposed legislation and regulatory material; oversee the development and issuance of Departmental personnel policies; and initiate a variety of special projects or studies peculiar to the overall functions of the Office. The Staff shall have continuing responsibility for the following programs and activities: labor-management relations; relationships with other merit systems (e.g., the foreign service); employee ethics, including financial disclosure and safeguarding of personal information; human development and work improvement; and employee training and career development.

b. The *Information System Staff* shall be responsible for the personnel management information system; for oversight of automated personnel systems in use throughout the Department; for ensuring compliance with the OPM requirements for the Central Personnel Data File—and ultimate conversion to the Federal Personnel Management Information System; and shall serve as the control point for all Departmentwide personnel management forms, reports, statistical evaluations, and analyses.

.02 The *Medical Division* shall plan and coordinate Departmentwide policies and programs in employee health services, represent the Director of Personnel in maintaining professional medical liaison with the U.S. Public Health Service, the OPM, and other appropriate agencies; and provide advice, assistance, and consultative services to operating units in employee health matters as requested. The Division shall be responsible for planning and administering the employee health service program for the Department's central health unit.

.03 The *Executive Resources Division* shall develop policy recommendations and guidance for the management of the Senior Executive Service (SES), and the other executive resources of the Department, and shall develop and oversee the implementation of systems to effect the policies set by the Executive Resources Board and by the Assistant Secretary for Administration, including systems for: the designation or classification of positions, recruitment, assignment and mobility of executives, performance appraisal, compensation, executive development, and those activities relating to the training and development of potential and incumbent managers. The Division shall control executive position authorizations, maintain current data on executive positions and personnel, prepare reports as required by OPM and other agencies outside the Department, provide technical assistance and administrative support to the Executive Resources Board and Performance Review Boards, and assist the Director in the evaluation of the executive resources management programs of the Department and the operating units.

.04 The *Classification and Compensation Division* shall plan, develop, and coordinate Departmentwide programs and activities in the areas of position classification, position management, pay administration, and compensation policy for non-executive employees; administer and monitor the Department's average grade control efforts including the vacancy review and maintenance review program; maintain liaison with the OPM on matters dealing with job evaluation and related program activities; formulate and issue policy guidance on matters peculiar to non-executive excepted positions; develop and issue a variety of special non-executive salary and wage schedules applicable to Department organizations throughout the country; provide technical assistance regarding overseas allowances and differentials; coordinate classification and qualification standards activities; and provide Departmental review on all non-executive job classification appeals. The Division shall provide policy guidance and staff assistance on all phases of the suggestion, awards, and recognition programs (except the incentive programs for executive personnel), provide

support for the Departmental Incentive Awards Board, and coordinate special Department-level recognition activities. The Division shall assist the Director in evaluation of the classification and compensation programs of the Department and of the operating units.

.05 The *Employment Programs Division* shall plan, develop, and oversee the Departmentwide implementation of programs for the recruitment, improvement, utilization, and fair treatment of the work force. Within the scope of its assigned functions, the Division shall provide guidance, advice, and technical assistance to all operating unit personnel programs; serve as the department's liaison with recruitment sources, outside organizations, OPM, and other Federal agencies; and serve as a catalyst for achievement of the Department's affirmative action goals. The Division shall assist the Director in evaluation of the employment programs of the Department and of the operating units, and shall be responsible for the following functions:

a. Recruitment, staffing, employee utilization and promotion, reduction in force, priority placement programs, and examining as delegated by OPM;

b. Special employment programs as assigned (e.g., student and summer employment), including the special funding and reporting requirements of these programs;

c. Performance appraisal (except for executive personnel); and

d. Employee relations, conduct and discipline, grievances, leave and hours of duty, and employee benefits and services (i.e., retirement, life and health insurance, injury compensation, and assistance to troubled or unproductive employees).

Elsa A. Porter,

Assistant Secretary for Administration.

[FR Doc. 81-2277 Filed 1-22-81; 8:45 am]

BILLING CODE 3510-17-M

[Dept. Organization Order 21-3]

Office of Regulatory Policy; Statement of Organization, Functions and Delegation of Authority

This order effective January 7, 1981, amends the material appearing at 45 FR 55798 of August 21, 1980.

Department Organization Order 21-3, dated July 29, 1980, is hereby amended as shown below. The purpose of this amendment is to assign to the Office of Regulatory Policy the responsibility for providing reports under Section 6 of the Federal Water Pollution Control Act Amendments of 1972.

In *Section 3, functions,* a new paragraph 3.m. is added to read as follows:

"m. Prepare a report from the Secretary of Commerce to the President and to the Congress on the effects of water pollution on international trade, as directed by Section 6 of the Federal Water Pollution Control Act Amendments of 1972 (Public Law 92-500; 86 Stat. 816; 33 U.S.C. 1251 nt.)."

Elsa A. Porter,

Assistant Secretary for Administration.

[FR Doc. 81-2276 Filed 1-22-81; 8:45 am]

BILLING CODE 3510-17-M

DEPARTMENT OF DEFENSE

Department of the Air Force

USAF Scientific Advisory Board; Meeting

January 9, 1981.

The USAF Scientific Advisory Board Ad Hoc Committee on Traveling Wave Tube Amplifier will meet on February 11 and 12, 1981 at the Space Division of Air Force Systems Command, Los Angeles, California, from 9:00 a.m. to 4:30 p.m. each day. The purpose of this meeting is to review the Traveling Wave Tube Amplifier's reliability.

The meeting concerns matters listed in Section 552b(c) of Title 5, United States Code, specifically subparagraph (4) thereof, and accordingly will be closed to the public.

For further information contact the Scientific Advisory Board Secretariat at (202) 697-4811.

Carol M. Rose,

Air Force Federal Register Liaison Officer.

[FR Doc. 81-2618 Filed 1-22-81; 8:45 am]

BILLING CODE 3910-01-M

Corps of Engineers, Department of the Army

Intent To Prepare a Draft Environmental Impact Statement (DEIS) for Water Resources Development of the Upper Cumberland River at Pineville, Bell County, Kentucky

AGENCY: U.S. Army, Corps of Engineers, Nashville District.

ACTION: Notice of Intent to prepare a Draft Environmental Impact Statement (DEIS) for Water Resources Development of the Upper Cumberland River at Pineville, Bell County, Kentucky.

SUMMARY: Section 202 of the Energy and Water Development Appropriation Act of 1981, 1 October 1980, authorized and directed the Secretary of the Army, acting through the Chief of Engineers, to design and construct flood control measures at or in the vicinity of Pineville, Kentucky, and other flood-damaged localities and their environs on the Cumberland River.

Two alternative plans to provide standard project flood protection at Pineville/Wallsend will be pursued in Section 202 post-authorization planning studies. These are providing a new floodwall/levee system and combining a channel enlargement plan with a new floodwall/levee system.

The floodwall/levee system woud be about 25 feet high at Pine Street Bridge. This is an increase of about 15 feet above the height of the present system and includes three feet of free board. The channel enlargement would be contained within the maximum limits of RM 657, upstream of Pineville, downstream to RM 648.5, the Bell-Knox County line. Nominal bottom width would be 200 feet; however, the bottom cut would be benched to maintain low flows within the existing normal low flow channel. The channel length and cross section be optimized in terms of flood reduction, costs, and environmental impacts. With the channel enlargement plan, a corresponding reduction in floodwall/levee height would be possible, with a resulting possible height of about 20 feet. The channel enlargement plan would also provide some degree of protection to the unprotected areas as well as lowering the height of the floodwall/levee system.

Other features of these alternatives to be considered are: a combination four-lane highway-levee plan and minimal nonstructural plans for homes and other structures outside the existing levee.

SCOPING PROCESS. The public is invited to submit written comments within 30 days of this notice to aid in determining the issues to be covered in the Draft Environmental Impact Statement (DEIS). Input from concerned Federal, State and local agencies will be solicited by letter.

The Corps of Engineers has contracted a biological inventory which will provide baseline data for the DEIS. The following is a list of significant issues which will be analyzed and addressed in the DEIS:

1. Effects on water quality (including turbidity, impacts on water supply and toxic materials).
2. Effects on recreation.
3. Social, economic impacts.
4. Effects on cultural resources.
5. Effects on aquatic habitats (including changes in substrate composition, bottom geometry, loss of associate canopy cover and sedimentation).

6. Effects on benthic and vital plankton populations.
7. Effects on management of floodplains.
8. Effects on prime and unique farmlands.
9. Effects on terrestrial habitat.
10. Effects on fish and wildlife.
11. Effects on endangered species.
12. Effects of discharge of fill material below ordinary high water under Section 404 of the Clean Water Act of 1977.

Inquiry will be made by the Corps of Engineers of the U.S. Fish and Wildlife Service (USFWS) concerning the presence of Federally-proposed or listed threatened or endangered species. If the presence of such species is possible, consultation procedures will be initiated in compliance with Section 7 of the Endangered Species Act of 1973 as amended in 1978. Further coordination will be conducted with USFWS and the Kentucky Department of Fish and Wildlife under the Fish and Wildlife Coordination Act (48 Stat. 401 as amended; 16 U.S.C. 661 et seq.). The Soil Conservation Service will be requested to determine the presence of any prime and unique farmlands within the proposed project area. Under provisions of Section 5(a) of the Wild and Scenic Rivers Act in coordination with the Heritage Conservation and Recreation Service will be conducted. The Service will identify any river segment having sectional potential for the designation of a Wild and Scenic River.

Copies of the DEIS will be transmitted to State and area-wide clearinghouses for comments in accordance with ER 200–2–2 and 33 CFR 209.120(i)(1)(iv). Also in accordance with ER 200–2–2, the draft and final EIS will be filed with the Environmental Protection Agency.

Upon completion of the cultural resources reconnaissance, two copies of the report will be forwarded to the Director, Office of Archeology and Historic Preservation, HCRS, with a request for review and comment in accordance with 33 CFR 305 (ER 1105–2–406). Two copies also will be furnished to the Kentucky State Historic Preservation Officer, State Archeologist, and State Historian for review and comment.

SCOPING MEETING: No scoping meeting will be conducted unless comments indicate that one is needed to obtain adequate input from the public and from other agencies. Scoping will be undertaken by mail.

ESTIMATED COMPLETION: The DEIS should be made available to the public May 1981.

QUESTIONS: The District point of contact for questions concerning the proposed action DEIS is MS. Vechere M. Vaughn, (615) 251–6028 or FTS 852–5027. All correspondence should be sent to the following address: U.S. Army Engineer District, Nashville, Environmental Analysis Section, P.O. Box 1070, Nashville, TN 37202.

Date: January 12, 1981.

Lee W. Tucker,

Colonel, Corps of Engineers, District Engineer.

[FR Doc. 81-2617 Filed 1-22-81; 8:45 am]

BILLING CODE 3710-GF-M

Department of the Navy

Chief of Naval Operations, Executive Panel Advisory Committee; Meeting Cancellation

Notice is hereby given that the meeting of the Strategy Sub-Panel of the Chief of Naval Operations (CNO) Executive Panel Advisory Committee scheduled for January 26–27, 1981, notice of which appeared at 46 FR 2378, has been cancelled.

P. B. Walker,

Captain, JAGC, U.S. Navy, Alternate Federal Register Liaison Officer.

January 19, 1981.

[FR Doc. 81-2627 Filed 1-22-81; 8:45 am]

BILLING CODE 3810-71-M

Office of the Secretary

Department of Defense Wage Committee; Closed Meetings

Pursuant to the provisions of section 10 of Public Law 92–463, the Federal Advisory Committee Act, effective January 5, 1973, notice is hereby given that a meeting of the Department of Defense Wage Committee will be held on Tuesday, March 3, 1981; Tuesday, March 10, 1981; Tuesday, March 17, 1981; Tuesday, March 24, 1981; and Tuesday, March 31, 1981 at 10:00 a.m. in Room 3D–325, The Pentagon, Washington, D.C.

The Committee's primary responsibility is to consider and submit recommendations to the Assistant Secretary of Defense (Manpower, Reserve Affairs, and Logistics) concerning all matters involved in the development and authorization of wage schedules for Federal prevailing rate employees pursuant to Public Law 92–392. At this meeting, the Committee will consider wage survey specifications, wage survey data, local wage survey committee reports and recommendations, and wage schedules derived therefrom.

Under the provisions of section 10(d) of Public Law 92–463, the Federal Advisory Committee Act, meetings may be closed to the public when they are "concerned with matters listed in section 552b. of Title 5, United States Code." Two of the matters so listed are those "related solely to the internal personnel rules and practices of an agency," (5 U.S.C. 552b. (c)(2)), and those involving "trade secrets and commercial or financial information obtained from a person and privileged or confidential" (5 U.S.C. 552b. (c)(4)).

Accordingly, the Deputy Assistant Secretary of Defense (Civilian Personnel Policy) hereby determines that all portions of the meeting will be closed to the public because the matters considered are related to the internal rules and practices of the Department of Defense (5 U.S.C. 552b. (c)(2)), and the detailed wage data considered by the Committee during its meetings have been obtained from officials of private establishments with a guarantee that the data will be held in confidence (5 U.S.C. 552b. (c)(4)).

However, members of the public who may wish to do so are invited to submit material in writing to the Chairman concerning matters believed to be deserving of the Committee's attention. Additional information concerning this meeting may be obtained by writing the Chairman, Department of Defense Wage Committee, Room 3D–281, The Pentagon, Washington, D.C.

M. S. Healy,

OSD Federal Register Liaison Officer, Washington Headquarters Services, Department of Defense.

January 16, 1981.

[FR Doc. 81-2573 Filed 1-22-81; 8:45 am]

BILLING CODE 3810-70-M

DEPARTMENT OF EDUCATION

Education Appeal Board Proceeding

AGENCY: Department of Education.

ACTION: Notice of Education Appeal Board Proceeding scheduled for January 30, 1981.

SUMMARY: This notice advises readers that the Education Appeal Board has scheduled a hearing in the *Appeal of the State of Kentucky*, Docket No. 1–(31)–77, for January 30, 1981.

FOR FURTHER INFORMATION CONTACT: Dr. David S. Pollen, Chairman, Education Appeal Board, 400 Maryland Avenue, S.W. (Room 2141, FOB–6), Washington, D.C. 20202. Telephone (202) 245–7835.

SUPPLEMENTARY INFORMATION: Under the Education Amendments of 1978 (20 U.S.C. 1234), the Education Appeal Board has authority to conduct (1) audit appeal proceedings, (2) withholding, termination, and cease and desist proceedings initiated by the Secretary of

Education, and (3) other proceedings designated by the Secretary as being within the jurisdiction of the Board. For information concerning the Board and its procedures, see the Board's final regulations as published in the Federal Register on April 3, 1980 (45 CFR 22634).

Hearing

The Education Appeal Board has scheduled an oral argument in the *Appeal of the State of Kentucky*, Docket No. 1–(31)–77. The hearing is scheduled for January 30, 1981, in Room 3000, 400 Maryland Avenue, SW., Washington, D.C. The hearing will begin at 10:00 a.m.

Kentucky requested the opportunity to present an oral argument in its appeal of a final audit determination made by the Deputy Commissioner for Elementary and Secondary Education (now the Assistant Secretary for Elementary and Secondary Education). The Education Appeal Board Panel granted the State's request.

The final audit determination contested by Kentucky found that the State improper used Federal funds under Title I of the Elementary and Secondary Education Act of 1965, as amended, to support readiness classes in fifty local educational agencies during fiscal year 1974. These expenditures were found by the Deputy Commissioner to result in a decrease in the use of State and local funding for the education of educationally deprived children residing in Title I project areas. This decrease in State and local funding was found to be a supplanting of State or local support with Federal funds in violation of the requirements of Title I. The Department of Education requested a refund from the State of $704,237.

(20 U.S.C. 1234)

(Catalog of Federal Domestic Assistance Number not applicable)

Dated: January 14, 1981.

David S. Pollen,

Chairman, Education Appeal Board.

[FR Doc. 81-2209 Filed 1-22-81; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Economic Regulatory Administration

McClure's Service Station; Action Taken on Consent Order

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Notice of action taken and an opportunity for comment on Consent Order.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) announces action taken to execute a Consent Order and provides an opportunity for comment on potential claims against the refunds deposited in an escrow account established pursuant to the Consent Order.

DATE: Effective date November 3, 1980.

COMMENTS BY: February 23, 1981.

ADDRESS: Send comments to: Edward F. Momorella, District Manager of Enforcement, Northeast District, Department of Energy, 1421 Cherry Street, Philadelphia, Pennsylvania 19102.

FOR FURTHER INFORMATION CONTACT: Joseph B. Connolly, Audit Director, Office of Enforcement, Suite 220, 7 Parkway Center, Pittsburgh, Pennsylvania 15220.

SUPPLEMENTARY INFORMATION: On November 3, 1980, the Office of Enforcement of the ERA executed a Consent Order with McClure's Service Station of Salisbury, Pennsylvania. Under 10 CFR 205.199J(b), a Consent Order which involves a sum of less than $500,000 in the aggregate, excluding penalties and interest, becomes effective upon its execution.

I. The Consent Order

McClure's Service Station (McClure), with its home office located in Salisbury, Pennsylvania, is a firm engaged in the marketing of gasoline, and is subject to the Mandatory Petroleum Price and Allocation Regulations at 10 CFR Part 212. To resolve certain civil actions which could be brought by the Office of Enforcement of the Economic Regulatory Administration as a result of its audit of McClure, the Office of Enforcement of the ERA, and McClure have entered into a Consent Order, the significant terms of which are as follows:

1. The total alleged overcharge during the period April 1, 1979 through September 30, 1980 on all sales of gasoline was $7,702.13.

2. The Office of Enforcement alleged that McClure violated the gasoline price regulations contained in 10 CFR 212.93(a)(1) of the Mandatory Petroleum Price Regulations by exceeding its "maximum legal selling price" for gasoline sold to end-user customers and retail station reseller customers.

3. McClure agreed to refund the total alleged overcharge, plus interest, according to the terms described below.

4. In this Consent Order, McClure agreed to refund, in full settlement of any civil liability with respect to actions which might be brought by the Office of Enforcement, ERA, arising out of the transactions between McClure and its end-user customers during the audit period the sum of $5,410.36 plus interest. This refund will be accomplished initially the issuance by October 31, 1980 of checks to the end-user customers overcharged, calculated consistently with the DOE calculation supplied to McClures. For those end-user customers who are not so repaid by February 1, 1981 McClure agrees to refund by certified check payable to the United States Department of Energy with delivery to the Assistant Administrator for Enforcement, Economic Regulatory Administration, Room 5302, 2000 M Street, N.W., Washington, D.C. 20461, Attention: Refund Coordinator.

5. McClure agreed to refund in full settlement of any civil liability with respect to actions which might be brought by the Office of Enforcement, ERA, arising out of the transactions between McClure and its retail station reseller customers during the audit period the sum of $2,683.66 including interest. McClure agreed to refund by October 31, 1980 by certified check payable to the United States Department of Energy with delivery to the Assistant Administrator of Enforcement.

6. With respect to McClure's payment to the Assistant Administrator for Enforcement under the procedures described above with respect to McClure's retail station reseller customers and end-user customers who have not been repaid by check by February 1, 1981, these funds will remain in a suitable account pending the determination of their proper disposition.

7. McClure agreed to pay a civil penalty of $1,200.00.

8. The provisions of Section 205.199J are applicable to the Consent Order.

Submission of Written Comments

A. *Potential Claimonts:* Because of the procedure for refund described above, interested persons who believe that they have a claim to all or a portion of the refund amount held by DOE should provide written notification of the claim to the ERA at this time. Proof of claim is not now being required. Written notice to the ERA at this time is requested primarily for the purpose of identifying potential claims to the refund amount. After potential claims are identified, procedures for proof of claims may be established. Failure to provide written notification of a potential claim within the comment period for this Notice may result in the DOE irrevocably disbursing the funds to other claimants or for the general public interest.

B. *Other Comments:* The ERA invites interested persons to comment on the terms, conditions, or procedural aspects

of this Consent Order. Such comments will be considered solely in connection with DOE's right to rescind or modify the Consent Order upon the discovery of new evidence or upon petition by McClure.

You should send your comments to Edward F. Momorella, District Manager of Enforcement, Northeast District, Department of Energy, 1421 Cherry Street, Philadelphia, Pennsylvania 19102. You may obtain a free copy of this Consent Order by writing to the same address or by calling (215) 597–2633. You should identify your comments on the outside of the envelope and on the documents you submit with the designation, "Comments on McClure's Service Station Consent Order". We will consider all comments which are pertinent as described above and which we receive by 4:30 p.m., Eastern Standard Time, on February 23, 1981. You should identify any information or data which, in your opinion, is confidential and submit it in accordance with the procedures in 10 CFR 205.9(f).

Issued in Philadelphia, Pa.; on the 22, day of December 1980.

Edward F. Momorella,

District Manager, Northeast District Office of Enforcement.

[FR Doc. 81-2288 Filed 1-22-81; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. ERA-FC-80-030; ERA Case No. 51000-2322-07-22]

Nevada Power Co.; Availability of Tentative Staff Analysis

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Notice of Availability of Tentative Staff Analysis.

SUMMARY: On March 27, 1980, Nevada Power Company (Nevada Power) petitioned the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) for a permanent peakload powerplant exemption from the provisions of the Powerplant and Industrial Fuel Use Act of 1978, 42 U.S.C. 8301 et seq. (FUA or the Act) which prohibit the use of petroleum or natural gas in new powerplants.

Nevada Power plans to install an 86,566 KW natural gas/oil-fired combustion turbine unit to be known as Clark Unit No. 7 in Clark County, Nevada. Nevada Power certifies that the unit will be operated solely as a peakload powerplant and will be operated only to meet peakload demand for the life of the plant.

After the submissions of additional information by Nevada Power on May 12, 1980, and August 4, 1980, ERA accepted the petition pursuant to 10 CFR 501.3 and 501.63 on October 14, 1980, and published notice of its acceptance in the Federal Register on October 21, 1980 (45 FR 69944). Publication of the Notice of Acceptance commenced a 45-day public comment period pursuant to section 701 (c) and (d) of FUA, and 10 CFR 501.31 and 501.33, during which time interested persons were given an opportunity to file comments and to request a public hearing on the petition. The comment period ended December 5, 1980. No comments were submitted. No hearing was requested.

ERA's staff has reviewed the information presently contained in the record of this proceeding. A Tentative Staff Analysis recommends that ERA issue an order which would grant a permanent peakload powerplant exemption to Nevada Power. A copy of the Tentative Staff Analysis is available from the Office of Public Information at the address listed below.

DATES: Written comments on the Tentative Staff Analysis and requests for a hearing are due on or before February 6, 1981.

ADDRESSES: Fifteen copies of written comments, and any request for a public hearing shall be submitted to: Department of Energy, Case Control Unit, Box 4629, Room 3214, 2000 M Street NW., Washington, D.C. 20461. Docket Number ERA–FC–80–030 should be printed clearly on the outside of the envelope and the document contained therein.

FOR FURTHER INFORMATION CONTACT:

Jack C. Vandenberg, Office of Public Information, Economic Regulatory Administration, Department of Energy, 2000 M Street, NW., Room B–110, Washington, D.C. 20461, Phone (202) 653–4055.

Louis T. Krezanosky, New Powerplants Branch, Department of Energy, Room 3012B, 2000 M Street, NW., Washington, D.C. 20461, Phone (202) 653–4208.

Marilyn Ross, Office of General Counsel, Department of Energy, 1000 Independence Avenue, SW., Room 6B–178, Washington, D.C. 20585, Phone (202) 252–2967.

SUPPLEMENTARY INFORMATION: Nevada Power Company (Nevada Power) plans to install an 86,566 KW natural gas/oil-fired combustion turbine unit to be called Clark Unit No. 7 at its Clark Station generating facility in Clark County, Nevada. Based upon estimates by Nevada Power, the proposed unit is expected to consume the energy equivalent of approximately 282,000 barrels of oil per year (772 bbl/day). Clark Unit No. 7 is scheduled for commercial operation on June 30, 1981./

FUA prohibits the use of natural gas or petroleum in certain new major fuel burning installations and powerplants unless an exemption for such use has been granted.

Nevada Power submitted a sworn statement with the petition signed by Mr. J. H. Zornes, Vice President, Generation, of Nevada Power as required by 10 CFR 503.41(b)(1). In his statement, Mr. Zornes certifies that Clark Unit No. 7 will be operated solely as a peakload powerplant and will be operated only to meet peakload demand for the life of the plant. He also certified that the maximum design capacity of the unit is 86,566 KW and that the maximum generation that the unit will be allowed during any 12-month period is the design capacity times 1,500 hours or 129,849,000 Kwh.

Under the requirements of 10 CFR 503.41(b)(1)(ii), if a petitioner proposes to use natural gas or to construct a powerplant to use natural gas in lieu of an alternate fuel as a primary energy source, he must obtain a certification from the Administrator of the Environmental Protection Agency or the director of the appropriate state air pollution control agency. This certification must state that the use by the powerplant of any available alternate fuel as a primary energy source will cause or contribute to a concentration, in an air quality control region or any area within the region, of a pollutant for which any national air quality standard is or would be exceeded. However, since ERA has determined that there are no presently available alternate fuels which may be used in the proposed powerplant, no such certification can be made. The certification requirement is therefore waived with respect to this petition.

Tentative Staff Analysis

On the basis of Nevada Power's sworn statements and information provided, the staff recommends that ERA should grant the requested peakload powerplant exemption.

Based upon the information provided by Nevada Power, ERA conducted an analysis which was reviewed by the DOE's Office of Environment, in consultation with the Office of General Counsel, and DOE has concluded that the granting of this exemption is not a major Federal action significantly affecting the quality of the human environment, within the meaning of the National Environmental Policy Act of 1969. Accordingly, neither an environmental impact statement nor an environmental assessment is required.

Terms and Conditions

Section 214(a) of the Act gives ERA the authority to include terms and conditions in any order granting an exemption. The staff of ERA has tentatively determined and recommends that any order which would grant the requested peakload powerplant exemption should pursuant to section 214 of the Act, be on the following conditions:

A. Nevada Power shall not produce more than 129,849,000 Kwh during any 12-month period with Clark Unit No. 7. Nevada Power shall provide annual estimates of the expected periods (hours during specific months) of operation of Clark Unit No. 7 for peakload purposes (e.g. 8:00–10:00 a.m. and 3:00–6:00 p.m. during the June–September period, etc.). Estimates of the hours in which Nevada Power expects to operate Clark Unit No. 7 during the first 12-month period shall be furnished within 30 days from the date of this order.

B. Nevada Power shall comply with the reporting requirements set forth at 10 CFR 503.41(d).

C. The quality of any petroleum to be burned in the unit will be the lowest grade available which is technically feasible and capable of being burned consistent with applicable environmental requirements.

D. Nevada Power shall comply with any terms and conditions which may be imposed pursuant to the environmental requirements set forth at 10 CFR 503.15(b).

Issued in Washington, D.C. on January 14, 1981.

Robert L. Davies,

Assistant Administrator, Office of Fuels Conversion, Economic Regulatory Administration.

[FR Doc. 81-2269 Filed 1-22-81; 8:45 am]

BILLING CODE 6450-01-M

Office of Conservation and Solar Energy

[Docket Number CAS-RM-81-404]

Inquiry and Public Meeting Concerning the Comprehensive Program Management Plan To Implement the Wind Energy Systems Act of 1980

AGENCY: Department of Energy, Office of Conservation and Solar Energy.

ACTION: Notice of Inquiry and Public Meeting.

SUMMARY: The Wind Energy Systems Division of the Department of Energy's Office of Conservation and Solar Energy invites the public to make suggestions for formulating a Comprehensive Program Management Plan (CPMP) for the research, development, demonstration, and technology application activities to implement the purposes of the Wind Energy Systems Act of 1980 (Pub. L. 96–345). The CPMP must be submitted to Congress by June 8, 1981.

DATES: Public meetings will be held from 9:00 AM to 5:30 PM as follows:

Meeting and date	Place
Small wind energy systems:	
Feb. 9, 1981	John F. Kennedy Federal Bldg., Rm. 2003, Government Center, Boston, MA.
Feb. 12, 1981	Post Office Auditorium, Rm. 239, 1823 Stout Street, Denver, CO.
Large wind energy systems:	
Feb. 10, 1981	John F. Kennedy Federal Bldg., Rm. 2003, Government Center, Boston, MA.
Feb. 13, 1981	Post Office Auditorium, Rm. 239, 1823 Stout Street, Denver, CO.

Written comments on the development of the CPMP or any issues under consideration will be accepted. Comments are requested to be submitted by February 23, 1981, to allow sufficient time for full consideration in the formulation of the plan. DOE will continue to accept comments until March 15, 1981.

ADDRESSES: Written comments should be addressed to Carol A. Snipes, U.S. Department of Energy, Hearings Procedures, Office of Conservation and Solar Energy, Mail Stop 6B–025, Docket Number CAS–RM–81–404, Washington, D.C. 20585. Written comments will also be accepted at the public meeting.

Envelopes and the enclosed comments should be clearly marked with the words: Comments on Wind Energy Systems Program Plan, Docket Number CAS–RM–81–404.

FOR FURTHER INFORMATION REGARDING THE MEETING CONTACT:

Lana Shanbar, (617) 223–5287, DOE Region I Office, Boston, MA.

Dale Eriksen, (303) 234–2420, DOE Region VIII Office, Denver, CO.

SUPPLEMENTARY INFORMATION: On September 8, 1980, the President signed the Wind Energy Systems Act of 1980 (Pub. L. 96–345). Section 2(b) provides as follows:

(1) to reduce the average cost of electricity produced by installed wind energy systems, by the end of fiscal year 1988, to a level competitive with conventional energy sources;

(2) to reach a total megawatt capacity in the United States from wind energy systems by the end of fiscal year 1988, of at least eight hundred megawatts of which at least one hundred megawatts are provided by small wind energy systems; and

(3) to accelerate the growth of a commercially viable and competitive industry to make wind energy systems available to the general public as an option in order to reduce national consumption of fossil fuel.

A CPMP for activities to satisfy these objectives must be developed and submitted to Congress by June 8, 1981. The CPMP is required to include:

(1) a five-year program for small wind energy systems (less than 100 kilowatt capacity);

(2) an eight-year program for large wind energy systems (greater than 100 kilowatt capacity); and

(3) a three-year program for wind resource assessment.

Elements of these programs will include anticipated research, development, demonstration, and technology applications objectives; program elements, management structure, and activities, including regional aspects and field responsibilities; program strategies, technology application plans, and milestone goals; significant economic, environmental, and societal effects; and relative financial contributions of Federal and non-Federal participants in the programs.

The purpose of this notice is to solicit oral and written suggestions and comments to assist DOE in the drafting of the CPMP. The public is especially invited to express views on the following subjects:

- Procurement strategy for direct Federal purchase of small wind energy systems (less than 100 kilowatts);
- Effective use of Federal financial assistance to promote purchase and installation of wind energy systems;
- Standards, performance criteria, and test procedures;
- Warranties; and
- Degree of required monitoring and instrumentation.

Written Comment Procedure

Interested persons are invited to submit written suggestions to the address indicated in this notice. Comments should be labeled both on the envelope and the documents as pertaining to the "Wind Energy Systems Meetings, Docket Number CAS–RM–81–404". Ten copies are requested to be submitted, but this is not a requirement for submission.

Any persons submitting information or data which they believe to be confidential and exempt by law from public disclosure, should submit one complete copy, and ten copies from which the information believed to be confidential has been deleted. DOE will honor requests for confidential

treatment of information to the extent allowed by law.

Meeting Procedure

Because of the importance of this program management plan, DOE wishes to achieve the maximum level of public participation possible. The Department encourages attendance and participation by individuals and representatives of organizations, consumer groups, manufacturers and industry, and other government agencies at the meeting.

DOE will summarize current thinking on the CPMP and describe the pros and cons of issues under consideration. DOE will then accept oral comments limited to a time which will be set in light of the number of persons who request to speak. Persons wishing to speak will be asked to so indicate upon registration and after the DOE presentation.

Tentative Program

9:00–9:15 AM—Introduction and meeting objectives.
9:15–9:30 AM—Overview of the Wind Energy Systems Act of 1980: Purpose and requirements.
9:30–10:00 AM—Summary of the Comprehensive Program Management Plan.
10:00–10:30 AM—Summary of issues under consideration.
10:30–10:45 AM—Break.
10:45–11:15 AM—Summary of issues under consideration.
11:15–12:00 PM—Public comment.
12:00–1:30 M—Lunch.
1:30–5:30 PM—Public comment.

Issued in Washington, D.C. January 19, 1981.

T. K. Stokes,
Assistant Secretary, Conservation and Solar Energy.

[FR Doc. 81-2078 Filed 1-22-81; 8:45 am]
BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[WH-FRL 1726-4]

Change in the Development of the 1980 Construction Grants Strategy

AGENCY: Environmental Protection Agency.

ACTION: Notice of meeting.

SUMMARY: On January 5, 1981, the Environmental Protection Agency (EPA) announced public hearings on the Preliminary Draft 1980 Construction Grants Strategy in the Federal Register. (46–FR–1025). At the same time EPA stated that the Preliminary Draft Strategy would be published in the Federal Register no later than January 23, 1981. Many people have already responded that the schedule proposed by EPA for public comment was inadequate to allow for thorough analysis and discussion of the issues. In addition, the document currently being drafted is a first attempt at preparing a consolidated draft. Therefore, EPA is making the following changes in the schedule to provide more time for public comment:

—A preliminary Draft Strategy will be mailed to a list of interested parties during the last week of January 1981. It is also available upon request.

—Rather than five public hearings, a series of informal workshops will be held around the country to discuss the Preliminary Draft Strategy. The dates will be changed to give more time for public comment. (See new schedule below.)

—On the basis of this public review, EPA will then publish a proposed Strategy in the Federal Register later in 1981. The public will then have opportunity to comment on the Proposed Draft developed under the new administration. At the conclusion of this comment period, the Strategy will be finalized.

It is important to note that the Preliminary Draft Strategy which will be available for public comment the last week in January does not represent EPA policy. Preliminary proposals in the Draft Strategy have been developed by EPA staff, based on substantial involvement by many individuals and interest groups.

During the next several weeks EPA will be attempting to resolve many of the issues dealt with by the Draft 1980 Strategy. The Preliminary Draft is being made available to the public, as part of the Agency's continuing effort to assure that the public has a role in helping to shape those decisions.

ADDRESSES: Send written comment to Ms. Marna Hurd, Associate Assistant Administrator for Water and Waste Management, WH–550, Environmental Protection Agency, Washington, D.C. 20460, by March 31, 1981. Expressions of interest in attending one of the workshops should be submitted to Ms. Hurd by March 2, 1981.

FOR FURTHER INFORMATION CONTACT: For more information on the workshops and to receive a copy of the Preliminary Draft Strategy, contact Francine Zucker, Office of Water Programs, WH–554, Environmental Protection Agency, Washington, D.C. 20460, (202) 755–6026.

New Schedule

March 10

San Francisco, California, Sir Francis Drake Hotel, Powell and Sutter Streets, 8:30 a.m.—5:00 p.m., EPA local information number (415) 556–0522.
Boston, Massachusetts, Boston Park Plaza, 64 Arlington Street, 8:30 a.m.–5:00 p.m., EPA local information number (617) 223–2778.

March 12

Chicago, Illinois, Palmer House, 17 East Monroe, 8:30 a.m.–5:00 p.m., EPA local information number (312) 886–6065.
New York, New York, New York Sheraton Hotel, 870 7th Avenue, 8:30 a.m.–5:00 p.m., EPA local information number (212) 264–2515.

March 17

Atlanta, Georgia, Atlanta Hilton, 255 Courtland Street, 8:30 a.m.–5:00 p.m., EPA local information number (404) 237–3004.

March 20

Springfield, Virginia, Springfield Hilton, 6550 Loisdale Road, 8:30 a.m.–5:00 p.m., EPA local information number (215) 597–9307 or (202) 755–0026.

Dated: January 16, 1981.

Eckardt C. Beck,
Assistant Administrator, Office of Water and Waste Management.

[FR Doc. 81-2081 Filed 1-22-81; 8:45 am]
BILLING CODE 6560-26-M

Availability of Environmental Impact Statements

[ER-FRL-1725-2]

AGENCY: Office of Environmental Review (A–104) U.S. Environmental Protection Agency.

PURPOSE: This notice lists the environmental impact statements (EIS's) which have been officially filed with the EPA and distributed to Federal agencies and interested groups, organizations and individuals for review pursuant to the Council on Environmental Quality's Regulations (40 CFR Part 1506.9).

PERIOD COVERED: This notice includes EIS'S filed during the week of January 12, 1981 to Janaury 16, 1981.

REVIEW PERIODS: The 45-day review period for draft EIS'S listed in this notice is calculated from January 23, 1981 and will end on March 9, 1981. The 30-day review period for final EIS's as calculated from January 23, 1981 will end on February 23, 1981.

EIS AVAILABILITY: To obtain a copy of an EIS listed in this noice you should contact the Federal agency which prepared the EIS. This notice will give a contact person for each Federal agency which has filed an EIS during the period covered by the notice. If a Federal agency does not have the EIS available upon request you may contact the Office of Environmental Review, EPA, for further information.

BACK COPIES OF EIS'S: Copies of EIS's previously filed with EPA or CEQ which

are no longer available from the originating agency are available with charge from the following source: Information Resources Press, 1700 North Moore Street, Arlington, Virginia 22209 (703) 558–8270.

SUMMARY OF NOTICE: This notice sets forth a list of EIS's filed with EPA during the week of January 12, 1981 to January 16, 1981. The Federal agency filing the EIS, the name, address, and telephone number of the Federal agency contact for copies of the EIS, the filing status of the EIS, the actual date the EIS was filed with EPA, the title of the EIS, the State(s) and county(ies) of the proposed action and a brief summary of the proposed Federal action and the Federal agency EIS number, if available, is listed in this notice. Commenting entities on draft EIS's are listed for final EIS's. All additional information relating to EISS' such as time extensions or reductions of prescribed review periods, withdrawals, retractions, corrections or supplemental reports is also noticed under the appropriate agency.

FOR FURTHER INFORMATION CONTACT: Kathi L. Wilson, Office of Environmental Review, Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460 (202) 245–3006.

Dated: January 19, 1981

William N. Hedeman, Jr.,

Director, Office of Environmental Review (A–104)

DEPARTMENT OF AGRICULTURE

Contact: Mr. Barry Flamm, Director, Office of Environmental Quality, Office of the Secretary, U.S. Department of Agriculture, Room 412–A Admin. Building, Washington, D.C. 20250, (202) 447–3965.

Forest Service

Draft

TOWER MOUNTAIN AREA, HURON-MANISTEE NATIONAL FOREST: Wexford County, Michigan, January 14: Proposed is a Land Management Plan for the Tower Mountain Area of the Huron-Manistee National Forest in Wexford County, Michigan. The preferred alternative would allocate this area for ski use and involve management requirements deferring development until such time it is deemed necessary. The other alternatives considered are: (1) Dispersed recreation, (2) natural environment, and (3) traditional forest management. (EIS Order No. 810030.)

Soil Conservation Service

Draft

BELL CITY WATERSHED PROTECTION: Calcasieu, Cameron, and Jefferson Davis Counties in Louisiana, January 13: Proposed is a multipurpose project for the Bell City Watershed in the parishes of Calcasieu, Cameron and Jefferson Davis, Louisiana. The planned works of improvement include conservation land treatment on 36,800 acres, 75 miles of channels and appurtenant structures, four water control structures, setback and rebuilding of the west levee on the Lacassine National Wildlife Refuge Pool, and improvement of boat and parking facilities. Channel work will involve the clearing of 36 miles and enlargement of 67 miles of existing channels. The cooperating agency is the State of Louisiana. (EIS Order No. 810027.)

U.S. Army Corps of Engineers

Contact: Mr. Richard Makinen, Office of the Chief of Engineers, Attn: Dean-CWR-P, Office of the Chief of Engineers, U.S. Army Corps of Engineers, 20 Massachusetts Avenue, Washington, D.C. 20314, (202) 272–0121.

Draft

HARBOR BEACH MAINTENANCE DREDGING/DISPOSAL, PERMIT: Huron County, Michigan, January 16: Proposed is the issuance of a permit for maintenance dredging in Lake Huron, offshore of the Harbor Beach Power Plant, and the disposal of dredge materials in a low-lying wetland area inland from Lake Huron, in Huron County, Michigan. The alternatives considered are: (1) Open water disposal, (2) use of various diked disposal sites, (3) artificial habitat creation, (4) placement of dredged material on agricultural land, (5) various dredging methods, and (6) no action. (Detroit district) (EIS Order No. 810034).

ARTHUR KILL FOSSIL FUELED POWER PLANT, PERMIT: Richmond County, New York, January 12: Proposed is the issuance of a permit for the construction of a 700 MW fossil fueled power plant at the Arthur Kill near Travis on Staten Island, Richmond County, New York. In addition to no action two other location alternatives for plant construction are considered which are: (1) The quarry site in Dutchess County, and (2) the Athens site in Greene County. The cooperating agency is DOE. (New York district) (EIS Order No. 810022).

EXTENSION: The review period for the above EIS has been extended until March 16, 1981. (#810023)

Final

White River navigation, Batesville to Mississippi River: Several counties in Arkansas, January 16: Proposed is a navigation project for the White River from Batesville to the Mississippi River in the counties of Arkansas, White, Woodruff, Prairie, Monroe, Jackson, and Phillips, Arkansas. The navigation channel would have a depth of 9 feet available 95 percent of the time and bottom width of 300 feet. Dredging would be required at 154 locations along 56 miles of the 244 miles of the waterway. Channel stabilization measures would include: 36 stone dikes totaling 9,150 feet; and stone bank paving at 9 locations totaling 4.7 miles (Memphis District). Comments made by: EPA, DOI, USDA, DOT, DOC, AHP, State and local agencies. (EIS Order No. 810042.)

Department of Defense, Army

Contact: Col. Kenneth Halleran, Chief of the Environmental Office, Headquarters DAEN–ZCE, Office of the Assistant Chief of Engineers, Department of the Army, Room 1E676, Pentagon, Washington, D.C. 20310, (202) 694–4269.

Final

Fort Carson, training land acquisition: Las Animas and Pueblo Counties, Colorado, January 12: Proposed is the acquisition of land to be used for combat maneuver training at Fort Carson in Huerfano, Las Animas and Pueblo Counties, Colorado. Two sites are under consideration: (1) the Huerfano River parcel located southeast of pueblo, and (2) the Pinon Canyon parcel located along the Purgortoire River between Trinidad and La Junta. Land use management plans have been developed for both sites considering the following major elements: (1) training intensity, (2) time of use, (3) boundaries, (4) limited and restricted use areas, (5) cantonment areas, (6) road development, and (7) river crossings (Omaha District). Comments made by: AHP, USDA, HHS, HUD, DOI, DOT, State and local agencies, groups, individuals and businesses. (EIS Order No. 810041.)

Department of Defense, Air Force

Contact: L/C William Verkest, AFRCE–MX/DEV, Ballistic Missile Office, Box EIS, Norton Air Force Base, California 92409, (714) 382–4951.

Extension: MX Missile, Deployment Area, Selection, published FR December 31, 1980—review extended from April 1, 1981, to May 1, 1981. (No. 800988)

Department of Commerce

Contact: Dr. Robert T. Miki, Acting Deputy Assistant Secretary for Regulatory Policy, Room 7814, Department of Commerce, Washington, D.C. 20230, (202) 377–3682.

National Oceanic and Atmospheric Administration

Draft

Groundfish fishery FMP regulatory analysis: Gulf of Mexico regulatory, January 16: Proposed is the regulatory analysis of the Groundfish Fishery Management Plan for the Gulf of Mexico. Implementation would provide gear restrictions in the shrimp fishery to reduce bycatch of groundfish when such gear is proven to be effective and meets specified criteria. Nursery sanctuaries in State waters and habitat protection would be encouraged (EIS Order No. 810040).

Incidental take of Dall Porpoise: Pacific Ocean, January 12: Proposed is the allowance of the incidental take of Dall Porpoises within the Japanese salmon fishery in the North Pacific and Bering Sea. The alternatives examined are: (1) allow the incidental take of marine mammals, and (2) not allow take, thereby ending the Japanese salmon fishery by taking no action by June, 1981. If the take of marine mammals is allowed the options considered are: (1) granting of an incidental take permit, or (2) recommendation of legislative action to extend the existing permit exemption (EIS Order No. 810035).

Spiny lobster FMP regulatory analysis: Atlantic and Gulf of Mexico regulatory, January 16: Proposed is the regulatory analysis of the Spiny Lobster Fishery Management Plan in the South Atlantic and

the Gulf of Mexico. Management measures considered are: (1) size limits, (2) a closed season, (3) certain gear restriction, (4) measures to protect "shorts" and "berried" females and prevent poaching, and (5) a measure to encourage a mechanism to minimize conflicts (EIS Order No. 810039).

ENVIRONMENTAL PROTECTION AGENCY

Contact: Environmental Protection Agency Library (MD-35), Research Triangle Park, North Carolina 27711, (919) 541-2777.

Draft

SYNTHETIC ORGANIC CHEMICAL EMISSIONS, STANDARDS: Regulatory, January 12: Proposed are performance standards that would limit emissions of volatile organic compounds from new, modified, and reconstructed units in the synthetic organic chemicals manufacturing industry. The standards would reduce emissions from pumps, compressors, valves, safety/relief valves, sampling connections, and open-ended lines. Fugitive emissions from affected facilities would be 300 gigagrams (GG)/yr under alternative 1 (no action) and 73, 62 and 28 GG/yr under alternatives 2, 3 and 4, respectively. (EPA-450/3-80033A) (EIS Order No. 810021).

EXTENSION: The review period for the above EIS has been extended until April 6, 1981. (No. 810021).

INDUSTRIAL SURFACE COATING—APPLIANCES, STANDARDS: Regulatory, January 12: Proposed are performance standards limiting emissions of VOC from new, modified and reconstructed appliance surface coating operations. Three regulatory alternatives are considered for prime coat operations and four for topcoat operations. The first two for both are: (1) State regulations only, and (2) no NSPS. The additional alternative for prime coat operations would limit emissions to those of waterborne prime coats applied by electrodeposition. For topcoat operations the alternatives are: (1) 30% reduction through use of various levels of solids coatings and/or incineration, and (2) emission elimination by use of powder coatings. (EPA-450/3-80-037A) (EIS Order No. 810022).

Draft

BENZENE FUGITIVE EMISSION, STANDARDS: Regulatory, January 14: Proposed are emission standards which would limit fugitive emissions of benzene from existing and new petroleum refining and chemical manufacturing units. Six regulatory alternatives are considered which employ various combinations of the available control techniques in the affected industry which reflect increasing levels of emission reduction and range from requiring no new controls to eliminating all benzene fugitive emissions. (EPA-450/3-80-032A) (EIS Order No. 810028).

EXTENSION: The review period for the above EIS has been extended until June 8, 1981. (810028).

PERCHLOROETHYLENE DRY CLEANER EMMISION STANDARDS: Regulatory, January 14: Proposed are performance standards for tetrachloroethylene, more commonly known as perchloroethylene (PERC) dry cleaners. PERC dry cleaners are generally divided into three categories: coin-operated, commercial and industrial. Two regulatory alternatives, each of which vary according to industry category are considered. (EPA-450/3-79-029A) (EIS Order No. 810029).

Final

Contact: Mr. Eugene Wojcik, Region V, Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois 60604, (312) 353-2157.

GREEN LAKE WASTE TREATMENT SYSTEMS, CASE STUDY NO. 2: Benzie County, Michigan, January 16: Proposed is a waste treatment system for the Crystal Lake area in Benzie County, Michigan. It is recommended that the existing wastewater treatment plants in the area should be replaced, but that complete abandonment of on-site systems is unjustified. This action would involve: (1) contruction of new sewers and a new rotating biological contractor treatment plant; (2) sewer system evaluation survey and rehabilitation of some existing sewers; (3) design and implementation of a small waste flow district; (4) site-specific analyses of existing on-site systems; (5) repair and replacement of on-site systems; and (6) cluster systems or other off-site treatment in some sections. Comments made by: DOI, DOT, State and local agencies, individuals and businesses. (EIS Order No. 810036).

Final

Contact: Ms. Lisa Corbin, Region X Environmental Protection Agency, 1200 6th Avenue, Seattle, Washington 98101 (206) 442-1265.

BEND CITY SEWAGE EFFLUENT DISPOSAL: Deschutes County, Oregon, January 13: Proposed is the disposal of sewage effluents from the city of Bend's wastewater treatment plant, Deschutes County, Oregon. Six alternatives are considered which include: (1) Discharge to drill holes or fractured rock, (2) discharge to infiltration ponds, (3) discharge to the Deschutes River, (4) discharge to sealed evapotranspiration ponds, (5) land application by spray irrigation, and (6) discharge to the north unit main canal. (EPA-910/9-80-074.) Comments made by: AHP, DOI, USDA, State and local, agencies and businesses. (EIS Order No. 810025.)

DEPARTMENT OF HUD

Contact: Mr. Richard H. Broun, Director, Office of Environmental Quality, Room 7274, Department of Housing and Urban Development, 451 7th Street, S.W., Washington, D.C. 20410 (202) 755-6300.

Final

GREENWOOD LAKES PLANNED UNIT DEVELOPMENT: Seminole County, Florida, January 14: Proposed is the issuance of HUD home mortgage insurance for the Greenwood Lakes planned unit development in Seminole County, Florida. The development encompasses 1,460 acres and will contain 5,110 townhouses, single-family and multi-family homes. The development will also include school, open space, park, and lake areas. (HUD-R04-EIS-79-03.) Comments made by: USDA, USAF, COE, DOC, HHS, DOI, EPA, TVA, DOT, State and local agencies and business. (EIS Order No. 810031.)

GEM HEIGHTS DEVELOPMENT MORTGAGE INSURANCE: Pierce County, Washington, January 15: Proposed is the issuance of HUD home mortgage insurance for the Gem Heights planned development in Pierce County, Washington. The multi-phased planned residential development is 374.55 acres in size and is intended to contain a maximum of 1,727 dwelling units of a variety of housing types. In addition, accessory neighborhood commercial and school areas will be provided. (HUD-R10-EIS-1F.) Comments made by: USDA, COE, EPA, DOT, DOI, HUD, State and local agencies, and businesses. (EIS Order No. 810032.)

DEPARTMENT OF INTERIOR

Contact: Mr. Bruce Blanchard, Director, Environmental Project Review, Room 4256 Interior Bldg., Department of the Interior, Washington, D.C. 20240 (202) 343-3891.

BUREAU OF LAND MANAGEMENT

Final

SOUTHERN APPALACHIAN REGIONAL COAL LEASING: Several Counties, Alabama, January 16: Proposed is the initiation of an active coal leasing program in the counties of Fayette, Jefferson, Tuscaloosa and Walker, Alabama. The low or preferred alternative would offer for lease in mid-1981, six underground tracts and seven surface-mineable tracts, which would result in an average annual production of approximately 8 million tons. The alternatives consider: (1) No action, (2) underground mining, (3) low production, (4) medium production, and (5) high production. (FES-81-3.) Comments made by: AHP, HUD, FERC, USDA, DOI, TVA, HHS, EPA, DOT, State and local agencies, groups and businesses. (EIS Order No. 810035.)

EXTENSION: Fish and Wildlife Coordination Act, Regulations, published FR December 24, 1980—review extended from February 9, 1981 to February 17, 1981. (No. 800960)

INTERSTATE COMMERCE COMMISSION

Contact: Mr. Carl Bausch, Chief, Section of Energy and Environment, Interstate Commerce Commission, Room 3371, 12th and Constitution Ave. NW., Washington, D.C. 20423 (202) 275-7658.

Final

SOMERSET RAILROAD, CONSTRUCTION AND OPERATION: Niagara County, New York, January 16: Proposed is construction of a 9.9 mile rail line between Gasport and Somerset, in Niagara County, New York. The line would connect with an existing rail line in Gasport and serve an existing steam-electric generating facility in Somerset. The alternatives consider various modes of transporting coal. The cooperating agencies are, the State of New York, FWS, COE, FRA, and USCG. (Finance Docket No. 29254) Comments made by: COE, EPA, DOI, DOC, State, and local agencies. (EIS order No. 810043).

NUCLEAR REGULATORY COMMISSION

Contact: Mr. Daniel R. Muller, Assistant Director for Environmental Technology, Nuclear Regulatory Commission, Room P-202, Washington, D.C. 20555 (301) 492-7017.

Draft Supplement

SAN ONOFRE NUCLEAR GENERATING STATION (DS-1): San Diego County, California, January 16: This statement supplements a draft EIS, No. 781287, filed 11-30-78 concerning the operation of the San Onofre nuclear generating station units 2 and 3 in San Diego County, California. The purpose of this supplement is to evaluate the site-specific impacts attributable to plant-specific accident sequences that lead to releases of radition and/or radioactive materials. (NUREG-0490) (EIS order No. 810038).

DEPARTMENT OF TRANSPORTATION

Contact: Mr. Martin Convisser, Director, Office of Environment and Safety, U.S. Department of Transportation, 400 7th Street SW., Washington, D.C. 20590 (202) 426-4357.

Federal Highway Administration

Final

CIRCLE BOULEVARD, IMPROVEMENT/EXTENSION: Benton County, Oregon, January 13: Proposed is the improvement and extension of NW Circle Boulevard from NW Lantana Drive to NW Whitman Hill Drive, city of Corvallis, Benton County, Oregon. The extension would consist of two lanes for 0.35 mile, a left turn lane at the intersection of Whitman Hill Drive, and a bikepath from NW Arbol Place to Whitman Hill Drive. The alternatives considered no build and a modified build alternative. Also addressed is the future construction of a 0.75 mile NW Circle Boulevard section between NW Harrison Boulevard and NW Whitman Hill Drive. The cooperating agency is the State of Oregon. (FHWA-AK-EIS-80-2-F.) Comments made by: DOE, EPA, DOI, USDA, State agencies, and individuals. (EIS order No. 810026).

SOUTH FAIRBANKS EXPRESSWAY: Alaska, January 12: Proposed is construction of the South Fairbanks Expressway betwen Parks Highway and Richardson Highway in Fairbanks, Alaska. The facility would be a limited access, four-lane highway with two terminal and three intermediate interchanges at University Avenue, Peger Road, and Lathrop Street. Alignment alternatives range from 4.3 to 5.3 miles in length. The alternatives consider: (1) No action, (2) four alignment alternatives, (3) postpone action, (4) phase development, and (5) development of other modes of transportation. The cooperating agency is the State of Alaska. (FHWA-AK-EIS-80-2-F.) Comments made by: DOT, HUD, DOI, EPA, COE, DOC, State agencies, and businesses. (EIS order No. 810024).

Final Supplement

I-505, NW NICOLAI STREET TO I-405, PORTLAND: Multnomah County, Oregon, January 16: This statement supplements a final EIS, No. 770901, filed 7-25-77 concerning the construction of I-505 in the city of Portland, Multnomah County, Oregon. The decision has been made not to build I-505. This statement proposes a freeway connection between I-405 and the intersection of Nicolai Street and Yeon Avenue. From that intersection U.S. 30 traffic would use Yeon Avenue which would be widened to five lanes. The number of rail crossings on Yeon Avenue would be reduced to one. Major improvements would occur on St. Helens Road, Wardway, Vaughn Street and Nicolai Street. (FHWA-OR-EIS-78-05-FS.) Comments made by: DOI, DOC, State and local agencies. (EIS order No. 810037).

[FR Doc. 81-2531 Filed 1-22-81; 8:45 am]

BILLING CODE 6560-37-M

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Department of Labor

Coordination of Equal Employment Opportunity Programs; Memorandum of Understanding

AGENCIES: Equal Employment Opportunity Commission and Department of Labor.

ACTION: Final notice.

SUMMARY: The Equal Employment Opportunity Commission (EEOC) and the Office of Federal Contract Compliance Programs (OFCCP) of the Department of Labor have adopted as final a Memorandum of Understanding. The Memorandum contains provisions dealing with: sharing of equal employment opportunity information between the two agencies; development of procedures to notify each other and to consult on cases to minimize duplication; establishment of Compliance Coordinating Committees; establishment of an interagency task group to advise on the development of standards and procedures for both agencies; and a provision for handling of employment discrimination complaints. The Memorandum replaces a Memorandum signed on September 11, 1974.

EFFECTIVE DATE: January 23, 1981.

FOR FURTHER INFORMATION CONTACT: Francesta E. Farmer, Director, Office of Interagency Coordination, EEOC, 2401 E Street NW., Washington, D.C. 20506, Area Code (202) 634-6915 or James Cisco, Director, Division of Program Policy, OFCCP, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, D.C. 20210, Area Code (202) 523-9426.

SUPPLEMENTARY INFORMATION: The new Memorandum of Understanding was proposed in response to a reexamination of the 1974 Memorandum and the agencies' experience under it; the substantial reorganizations which have occurred in both agencies' programs since 1974 and in recognition of EEOC's role as lead agency in coordination of equal employment opportunity programs under Executive Order 12067 (Providing for the Coordination of Federal Equal Employment Opportunity Programs).

The agencies published a proposed notice on April 22, 1980 and invited public comment. Comments were received from employers, groups representing persons protected by civil rights laws, two Federal agencies, a university, two individuals and a State Fair Employment Practices agency.

Most commentors praised the agencies for proposing a new Memorandum and supported the idea of greater communication and coordination between the two agencies. Specific topics presented by the commentors, suggested changes and the agencies' response to them are discussed below. Two of the commentors misread the proposed notice by concluding that EEOC meant to conduct investigations of complaints filed against Federal agencies.

One commentor opposed the Memorandum on the grounds that there should only be one Federal EEO agency.

Information Exchanges Between the Agencies

One commentor observed that the type of information to be exchanged between the two agencies is broader in the new Memorandum than in the 1974 Memorandum. The 1974 Memorandum had specified that a request for information must be premised on the existence of a charge. This limitation was removed in the new Memorandum. It now permits exchanging of information about employers in the absence of any specific charge to permit both agencies to do a better job of coordinating and planning reviews and investigations. The emphasis on better planning is also found, among other places, in the list of tasks of the interagency task group which calls for the development of "criteria and mechanisms for selecting industries and organizations for review and investigation."

The commentor argued for the 1974 limitation because it would provide grounds for objection on the part of employers seeking to limit the type of information exchanged between the agencies to protect against the sharing of irrelevant information. The commentor also suggested that the agencies adopt a policy of providing notice to employers in each instance of a request from the other agency in order to allow employers an opportunity to

show cause why the request should not be granted.

The agencies have balanced the need for better planning based on the exchange of as much information as possible, especially in light of E.O. 12067, against the remote possibility that some harm could come to an employer by the exchange of irrelevant information and concluded that the broader standard is more appropriate given the emphasis of the new Memorandum on joint scheduling to avoid duplicative reviews of the same employer.

Third Party Requests for Information

The new Memorandum makes a change in the policy contained in the 1974 Memorandum and in EEOC's previous Freedom of Information Act (FOIA) regulations which had provided that requests for information from third parties would be referred to the agency which initially compiled or collected the information. Since 1974, EEOC has changed its FOIA regulations to conform to prevailing case law which requires that the agency holding the information make a determination to disclose or not disclose as opposed to routinely referring the request to the compiling agency. The new Memorandum instead requires the agencies to coordinate their response with the agency which initially compiled or collected the information.

Several commentors preferred the previous policy and urged the agencies to return to it by requiring each to apply the policy of the compiler notwithstanding the change in FOIA's policy. We reject this position, regarding it as legally indefensible and conflicting with our FOIA policies.

Requirement That 706 Agencies Get Permission of OFCCP Before Disclosing Information Compiled by OFCCP

Paragraph 5(b) of the new Memorandum provides that EEOC will supply information compiled by OFCCP to State or local agencies designated as 706 agencies by EEOC with whom EEOC has a current charge resolution contract and a work sharing agreement which contains provisions requiring that the State or local agency will not make public information which it receives from EEOC. Such agencies will not disclose any information from OFCCP which was given to them by EEOC without the written approval of the Director of OFCCP.

Several commentors thought that the clarification was useful since under previous policy it was unclear whether the State or local agencies had to request the information from OFCCP directly.

Several commentors suggested that OFCCP should state a policy in the new Memorandum or elsewhere as to which information from OFCCP could not be made public to avoid needless delays in routine instances. As the agencies pointed out in their April 22, 1980 proposed notice discussion, the Supreme Court has remanded *Chrysler Corp.* v. *Brown*, 99 S. Ct. 1705 (1979) to determine whether certain disclosures of information held by OFCCP are "authorized" by law. The court has not rendered its decision and OFCCP considers it appropriate to delay further action on this issue until the decision is rendered.

The State agency commentor requested that the agencies adopt a policy that OFCCP originated information could be used in a proceeding under State law as it incorrectly assumed it could do with information received from EEOC. In fact, State or local agencies are not free to use EEOC information since EEOC information may not be disclosed prior to the institution of litigation under Title VII. Even then, conciliation materials may not be used in a proceeding without the written consent of the parties.

One commentor suggested that EEOC seek inclusion of specific language in each charge resolution contract and work sharing agreement with State or local agencies to ensure their compliance with the terms of paragraph 5(b). EEOC will do so.

Investigation of Systemic or Class Charges by OFCCP

Although the Supplementary Information discussion in the agencies' proposed notice of April 22, 1980 stated that, "OFCCP has traditionally investigated and resolved certain complaints, especially those of a systemic or class nature and will continue to do so", several commentors argued that a statement to that effect be made in the text of the Memorandum itself as opposed to in the Supplementary Information discussion on the grounds that this would enhance the likelihood that future administrations would continue the practice. The agencies have no objections to putting the commitment by OFCCP in the text since it does not represent a change in policy.

In response to these comments, the agencies have added new language to the end of paragraph 7 which reads: "OFCCP shall normally retain, investigate and resolve all complaints of a systemic or class nature which it receives. However, in appropriate cases the EEOC may request that it be referred complaints so as to avoid duplication and assure effective law enforcement."

The agencies also added a clarifying sentence to the language which previously appeared in the Supplementary Information discussion to state that EEOC may request an opportunity to handle some systemic or class complaints received by OFCCP. The purpose of the clarifying sentence is to avoid the impression that the agencies intended that only OFCCP would do systemic or class investigations and to provide a means for forestalling duplicative investigations when EEOC already has a proceeding underway or planned which involves the same subject matter. This notion may not have been adequately conveyed in the April 22, 1980 discussion.

Investigation of All Charges by EEOC

Several commentors recommended that EEOC investigate all complaints received by OFCCP to remove the possibility that both agencies would investigate the same employer based on two different charges, a possibility that was presented in the proposed notice when it may not have adequately conveyed the notion that EEOC could request an opportunity to handle some systemic or class complaints received by OFCCP when duplication would result. Beside systemic or class complaints there are other circumstances in which OFCCP would investigate other complaints it receives such as those enumerated in the April 22, 1980 proposed notice, such as charges by third parties who do not claim to be aggrieved or when the complaint is that the contractor's affirmative action plan is deficient. In these instances only OFCCP has authority to investigate. Another example of such differences in authority is the fact that EEOC has no authority to investigate complaints under Section 503 of the Rehabilitation Act and Section 402 of the Vietnam Era Veterans Readjustment Assistance Act of 1974 and OFCCP has no authority to investigate charges under the Age Discrimination in Employment Act.

Given differences in the responsibilities of the two agencies, there is virtually no way in which EEOC and OFCCP can absolutely guarantee that both agencies will never conduct complaint investigations of the same employer.

The Memorandum does not intend to make EEOC the sole charge investigating agency. Instead it represents an effort to *minimize* duplication where the agencies are able to do so.

Inclusion of More Operational Details in the Memorandum

One commentor suggested that the agencies include more operational specifics and more detailed statements of responsibility on the grounds that the new Memorandum is without effect until operating instructions are issued to the staff of both agencies. The commentor sought to have included more details: For example, the membership, structure and procedures of the interagency task group; specifics on the membership and duties of the Headquarters Compliance Coordinating Committee; and statement of the procedures for notification and consultation on cases in the Memorandum itself to substitute for the commitments to develop such procedures currently contained in the Memorandum.

The agencies are keenly aware of the need for operating instructions to implement the commitments contained in the Memorandum and have designated staff and made other necessary arrangements to issue operating instructions soon after the Memorandum goes into effect.

The Memorandum commits EEOC and OFCCP to take action on such topics as procedures for information exchanges; the agencies sought to place only the most important operational details into the Memorandum itself. However, a comparison to other interagency agreements of this nature including the 1974 Memorandum between the two agencies indicates that this Memorandum contains considerably more detail than is customarily contained in other Memoranda of Understanding of this nature.

In one instance, the agencies concluded that an inappropriate level of detail was contained in the proposed Memorandum when it specified that the Field Compliance Coordinating Committees should be composed of specific officials in the OFCCP organization and seemed to set a limitation on the number of EEOC staff members. The sentence has been eliminated in the final Memorandum because upon staff review it became apparent that the two agencies' field organizations are too dissimilar to permit such specificity. Exact membership of Field Compliance Coordinating Committees may vary depending on whether both agencies have staff in the same city and other operational considerations.

In another instance, the agencies decided to add an operational detail by adding the phrase "in appropriate instances" to paragraph 6(c). This paragraph states a commitment to develop procedures for notification by EEOC to OFCCP when conciliation of a cause finding is unsuccessful and EEOC does not plan to file a law suit. The agencies anticipate that in certain circumstances this notification may be inappropriate such as when the respondent is not a contractor or when OFCCP lacks jurisdiction for other reasons. Additionally, EEOC may have plans to conduct a more comprehensive enforcement action such as identifying the respondent for possible issuance of a more broadly based Commissioner Charge.

Accordingly, the two agencies adopt as final this Memorandum of Understanding.

Memorandum of Understanding

This Memorandum of Understanding between the Office of Federal Contract Compliance Programs (OFCCP) and the Equal Employment Opportunity Commission (EEOC) is being implemented to further the objectives of Congress under Section 715 of Title VII of the Civil Rights Act of 1964, as amended by the Equal Employment Opportunity Act of 1972; of Executive Order 12067, 43 FR 28967; and Section 6 of Reorganization Plan No. 1 of 1978 (43 FR 19807). These objectives are to develop and implement agreements, policies and practices designed to maximize effort, promote efficiency, and eliminate conflict, competition, duplication and inconsistency among the operations, functions and jurisdictions to the parties of the Memorandum.

The parties to this Memorandum agree as follows:

1. The OFCCP shall make available to the appropriate requesting official of the EEOC or his or her designee for inspection and copying and/or loan, any documents in its possession pertaining to the effective enforcement or administration of (a) Title VII of the Civil Rights Act of 1964, as amended; or (b) Reorganization Plan No. 1 of 1978 and Executive Order 12067. All documents will be made available within ten days of such request. Disclosure of such material by EEOC shall be in accordance with para. 5 of this Agreement.

2.a. The EEOC shall make available to the appropriate requesting offficial of the OFCCP or his or her designee for inspection and copying and/or loan any documents pertaining to the enforcement and administration of Executive Order 11246; Section 402 of the Vietnam Era Veterans Readjustment Assistance Act; Section 503 of the Rehabilitation Act of 1973; and Executive Order 12067. All documents in its possession (or to which it has access through a work-sharing agreement as described in para. 5(b) of this Agreement) will be made available within ten days of such request.

b. Disclose of such material by OFCCP shall be in accordance with para. 5 of this Agreement.

3. "Appropriate Requesting Officials" shall for the purpose of the Agreement, include the following officials, or their successors, or their designees:

a. For the EEOC:

1. The Chair
2. The Executive Director
3. The General Counsel
4. Any Regional Attorney
5. Assistant and Associate General Counsel
6. Any District or Area Office Director
7. Director, Office of Systemic Programs
8. Director, Office of Interagency Coordination
9. Director, Office of Field Services
10. Director, Office of Policy Implementation

b. For the OFCCP:

1. The Secretary of Under Secretary of Labor
2. The Solicitor of Labor
3. Assistant Secretary for Employment Standards
4. The Director or Deputy Director, OFCCP
5. Associate Solicitor of Labor
6. Any ESA Assistant Regional Administrator for OFCCP
7. Any Area Office Director
8. Any Regional Solicitor of Labor
9. Any OFCCP Division Director

4. Requests directed to a Headquarters Office of one agency from a field office of the other shall first be forwarded through the headquarters of the requesting agency. Responses to all requests for information shall be made to the official making such request, or his/her designee.

5a. All requests by third parties for disclosure of information shall be coordinated with the agency which initially compiled or collected the information.

b. Subparagraph 5(a), above, is not applicable to requests for data in EEOC files made be any state or local agency designated as a 706 agency with whom EEOC has a current charge resolution contract and a work-sharing agreement containing provisions required by Sections 706 and 709 of Title VII of the Civil Rights Act of 1964, as amended. Provided, however, that any such agency shall not disclose any of the information, initially compiled by OFCCP, to the public without express written approval by the Director of OFCCP.

6. EEOC and OFCCP shall establish procedures for notification and consultation at various stages of their respective compliance activities in order to increase efficiency and ensure coordination and minimize duplication. Such procedures shall include:

a. Establishment of an ongoing Compliance Coordination Committee (CCC) which shall meet at least quarterly to review pending and future compliance plans, the selection of establishments for review, potential Commissioner Charges, and potential litigation, and to take such other steps as may be appropriate to increase efficiency and eliminate competition and duplication. Such committees shall be established both in headquarters and in the field. At the conclusion of each quarterly meeting each field CCC shall forward to the Director, Office of Field Services, EEOC and The Director, Division of Program Operations, OFCCP, a report of the results of such meeting.

b. Contact by each agency at the commencement of and during a field investigation or compliance review where appropriate to obtain information in the possession of the agency on the employer being investigated.

c. Notification to OFCCP, in appropriate instances, when EEOC has made a finding of cause and has determined that attempts at conciliation are unsuccessful and that no lawsuit will be filed by EEOC.

d. Consultation with the appropriate field office of OFCCP when an EEOC field office is contemplating recommending a Commissioner Charge or litigation, and coordination of its activities.

e. Consultation with the appropriate field office of EEOC when an OFCCP Regional Office is contemplating recommending the issuance of an administrative complaint, and coordination of its activities.

7. Complaints filed with OFCCP within the jurisdiction of EEOC which OFCCP refers to EEOC shall be deemed charges filed jointly with EEOC. OFCCP shall promply transmit all such charges to the appropriate EEOC Field Office. For the purpose of determining the timeliness of the charge under statutes administered by EEOC the date the matter was received by OFCCP shall be deemed to be the date it was received by EEOC. OFCCP shall normally retain, investigate and resolve all complaints of a systemic or class nature which it receives. However, in appropriate cases the EEOC may request that it be referred complaints so as to avoid duplication and assure effective law enforcement.

8. OFCCP and EEOC seek to ensure consistent compliance and enforcement standards and procedures that will facilitate consistency of compliance determinations. The agencies also seek to make the most efficient use of their available resources through coordination. Accordingly, OFCCP and EEOC shall establish an interagency task group to advise in the development of standards and procedures for both agencies, including, but not limited to:

- Criteria and mechanisms for selecting industries and organizations for review and investigation;
- Procedures for routine exchanges of data, including, but not limited to, lists of proposed and completed compliance reviews, systemic, ELI and individual cases and conciliation agreements and settlements;
- Consistent analytical approaches to identifying and defining employment discrimination and determining appropriate remedies;
- Uniform training programs and training materials;
- Joint policy statements;
- Procedures for coordinated collection, sharing and analysis of data;
- Joint projects to develop consistent definitions and to share expertise, foster consistency, and reduce duplicative efforts in such areas as: analysis of employee selection procedures, labor market availability and use of employment statistics;
- Procedures to be utilized in obtaining compliance with OFCCP or EEOC requests for data and information, pursuant to investigations under either Title VII or Executive Order 11246.

9. EEOC and OFCCP shall conduct periodic reviews of the implementation of this agreement, on an ongoing basis.

This Memorandum of Understanding supersedes the agreement signed September 11, 1974.

Signed at Washington, D.C., this 16th day of January, 1981.

F. Ray Marshall,

Secretary of Labor.

Eleanor Holmes Norton,

Chair, Equal Employment Opportunity Commission.

[FR Doc. 81-2153 Filed 1-16-81; 12:25 pm]
BILLING CODE 4810-27-M

FARM CREDIT ADMINISTRATION

[Farm Credit Administration Order No. 829]

Authority Delegations; Authority of the Deputy Governor, Office of Supervision, and Order of Precedence of Certain Officers to Act as Deputy Governor, Office of Supervision (Revocation of FCA Order No. 825)

AGENCY: Farm Credit Administration.

ACTION: Notice.

SUMMARY: The Governor of the Farm Credit Administration issued Order No. 829 authorizing in the event the Deputy Governor, Office of Supervision is absent or unable to perform the duties of his office, certain officers are authorized to perform the necessary functions of the office. The text of the Order is as follows:

1. The Deputy Governor, Office of Supervision, shall, subject to the jurisdiction and control of the Governor of the Farm Credit Administration, executive and perform all power, authority, and duties relative to supervision of the credit, finance, and operation functions of the institutions of the Farm Credit System and to all matters incidental thereto, and to administration of all provisions of law pertinent to such supervision. Farm Credit Administration.

2. In the event the Deputy Governor, Office of Supervision, Farm Credit Administration, is absent or is not able to perform the duties of his office for any other reasons, the officer who is highest on the following list and who is available to act is hereby authorized to exercise and perform all functions, power, authority, and duties of the Deputy Governor, Office of Supervision, pertaining to the credit, finance and operation functions:

(a) Associate Deputy Governor, Office of Supervision.

(b) Director, Finance and Bank Services, Office of Supervision.

(c) Director, Western Division, Office of Supervision.

(d) Director, Eastern Division, Office of Supervision.

(e) Director, Central Division, Office of Supervision.

3. This order shall be effective on January 23, 1981 and revokes Farm Credit Administration Order No. 825, dated January 16, 1980, 45 FR 3070.

Carl T. Fredrickson,

Acting Governor.

[FR Doc. 81-2260 Filed 1-22-81; 8:45 am]
BILLING CODE 6705-01-M

FEDERAL COMMUNICATIONS COMMISSION

Advisory Committee on Radio Broadcasting and its Technical and Allocations Subgroups; Meeting

January 16, 1981.

The following open meeting will be held on Wednesday, February 18, 1981, at the time stated below, in Room A–110 of the FCC Annex, 1229 20th Street, N.W., Washington, D.C.:

A. The eleventh meeting of the Advisory Committee on Radio Broadcasting, starting at 9:30 a.m. The agenda will be:

1. Call to order by the Chairman;
2. Approval of minutes of previous meeting;
3. Recess for conduct of meetings of the Subgroups on Allocations and Technical Matters;
4. Reconvening of meeting of the Advisory Committee;
5. Receipt of reports by Allocations Subgroup;
6. Receipt of reports by Technical Subgroup;
7. Submission of reports to the FCC;
8. Other business;
9. Future meeting dates;
10. Adjournment.

B. The fourth meeting of the Subgroup on Radio Spectrum Allocations, starting after Item No. 3 of the Advisory Committee Agenda. The agenda for the subgroup will be:

1. Call to order;
2. Approval of minutes of previous meeting;
3. Reports on tasks performed by members of the Subgroup;
4. Assignment of further tasks to be performed and reported by designated persons;
5. Other business;
6. Next meeting date;
7. Adjournment.

C. The fourth meeting of the Subgroup on Technical Matters, starting upon conclusion of the fourth meeting of the Subgroup on Radio Spectrum Allocations. The agenda will be:

1. Call to order;
2. Approval of minutes of previous meeting;
3. Reports on tasks performed by members of the Subgroup;
4. Assignment of further tasks to be performed and reported to the Subgroup;
5. Other business;
6. Next meeting date;
7. Adjournment.

If it should not be possible to complete consideration of an entire agenda on the scheduled date, that meeting will be continued at an announced date and time.

All interested parties are invited to participate and may submit comments, addressed to Mr. Henry L. Baumann, Chairman, Advisory Committee on Radio Broadcasting, Federal Communications Commission, Washington, D.C. 20554.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 81-2269 Filed 1-22-81; 8:45 am]

BILLING CODE 6712-01-M

Beaufort County Broadcasting Co. and Barnacle Broadcast Ltd.; Hearing Designation Order

In the matter of applications of Carmen D. Trevitt and Calvin R. Means d.b.a. Beaufort County Broadcasting Company, Beaufort, South Carolina, Req: 104.9 MHz, Channel 285A, 3.0 kW (H & V), 144 feet (BC Docket Nos. 80-775 and 80-776; File Nos. BPH-790918AC) and Barnacle Broadcasting Ltd., Port Royal, South Carolina, Req: 104.9 MHz, Channel 285A, 3.0 kW (H & V), 295 feet (BC Docket No. 80-776, File No. BPH-800519AF) For a Construction Permit for a New FM Station.

Adopted: December 31, 1980.

Released: January 15, 1981.

By the Chief, Broadcast Bureau:

1. The Commission, by the Chief, Broadcast Bureau, acting pursuant to delegated authority has under consideration: (1) the above-captioned mutually exclusive applications of Carmen D. Trevitt and Calvin R. Means d.b.a. Beaufort County Broadcasting Company (Trevitt) and Barnacle Broadcasting Ltd. (Barnacle) for a construction permit for a new FM station; (2) Barnacle's September 5, 1980 informal objection to Trevitt's application; [1] (3) Trevitt's October 2, 1980 petition for leave to amend its application; and (4) related pleadings.

2. A Notice of Proposed Rulemaking in BC No. 80-214 to replace channel 285A with either channel 281A or 259C is currently pending. Both applicants' proposed sites would meet the spacing requirements on channel 281A but would involve shortspacing with Station WDMG-FM on channel 259C. We will permit both applicants to retain their cutoff dates if either channel is substituted for channel 285A and, therefore, republication will not be required. We will grant leave to amend to both applicants to eliminate the shortspacing problem if channel 259C is chosen.

3. The facilities specified by Trevitt in its original September 7, 1979 application received a final determination of hazard to air navigation by the Federal Aviation Administration on May 7, 1980. The basis of Barnacle's informal objection is that Trevitt failed to notify the Commission of this adverse FAA determination. Trevitt countered in its opposition by contending that the Commission had independent knowledge of this development and that its amendment of October 2, 1980 corrected the air hazard problem. We in fact had received notice of the FAA's decision through our Field Operations Bureau on May 15, 1980. However, our independent notice does not relieve Trevitt of its responsibilities, and therefore an issue will be specified against Trevitt for its failure to keep the Commission informed of this decisionally significant development in its application within 30 days of May 7, 1980, as required by Section 1.65 of our Rules. *Harold James Sharp*, 56 FCC 2d 254, 35 RR 2d 484 (Rev. Bd. 1975) [2]

4. Trevitt filed a petition for leave to amend its application on October 2, 1980, beyond the August 28, 1980 date prescribed by the Commission permitting amendment as of right. The amendment consists of a lower antenna height specified by Trevitt in order to correct the aforementioned air hazard determination. Since this minor engineering amendment does not improve the applicant's comparative position, the petition for leave to amend will be granted and the corresponding amendment will be accepted under Section 73.3522(a)(2) of the Commission's Rules.

5. The respective proposals, although for different communities, would serve substantial areas in common. Consequently, in addition to determining, pursuant to Section 307(b) of the Communications Act of 1934, as amended, which of the proposals would better provide a fair, efficient and equitable distribution of radio service, a contingent comparative issue will also be specified.

6. The applicants are qualified to construct and operate as proposed. However, since the proposals are mutually exclusive, they must be designated for hearing in a consolidated proceeding on the issues specified below.

7. Accordingly, it is ordered, That pursuant to Section 309(e) of the Communications Act of 1934, as amended, the applications are designated for hearing in a consolidated proceeding, at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine whether Carmen D. Trevitt and Calvin R. Means d.b.a. Beaufort County Broadcasting Company has failed to comply with Rule 1.65 by not reporting an adverse determination by the FAA as to its proposed tower and, if so, the effect of such

[1] We will consider Barnacle's petition as an informal objection pursuant to Section 73.3587 of the Rules because, although styled as a petition to deny or dismiss, it was filed beyond the applicable cutoff date for filing a petition to deny.

[2] We will specify the issue on a comparative basis only since there is no indication of deliberate concealment on the part of Trevitt. *Id.*

noncompliance on the applicant's comparative qualifications.

2. To determine, in the light of Section 307(b) of the Communications Act of 1934, as amended, which of the proposals would best provide a fair, efficient and equitable distribution of radio service.

3. To determine, in the event it is concluded that a choice between the applications should not be based solely on considerations relating to Section 307(b), which of the proposals would, on a comparative basis, better serve the public interest.

4. To determine, in the light of the evidence adduced pursuant to the foregoing issues, which of the applications should be granted.

5. It is further ordered, That a grant to either applicant is subject to the outcome of the rulemaking proceedings in BC Docket No. 80-214.

6. It is further ordered, That, in the event that either channel 261A or 259C is substituted for the present channel 265A both applicants will retain their present file numbers and cutoff dates.

10. It is further ordered, That, in the event that channel 259C is substituted for the present channel 265A, both applicants are granted leave to amend in order to specify transmitter sites that eliminate any short-spacing problems with Station WDMG-FM.

11. It is further ordered, That the petition for leave to amend filed by Trevitt IS GRANTED, and the corresponding amendment IS ACCEPTED.

12. It is further ordered, That, to avail themselves of the opportunity to be heard, the applicants herein shall, pursuant to Section 1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, file with the Commission in triplicate a written appearance stating an intention to appear on the date fixed for the hearing and to present evidence on the issues specified in this Order.

13. It is further ordered, That the applicants herein shall, pursuant to Section 311(a)(2) of the Communications Act of 1934, as amended, and Section 73.3594 of the Commission's Rules, give notice of the hearing (either individually or, if feasible and consistent with the Rules, jointly) within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by Section 73.3594(g) of the Rules.

Federal Communications Commission.

Larry Eads,

Acting Chief, Broadcast Facilities Division, Broadcast Bureau.

[FR Doc. 81-2360 Filed 1-23-81; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL MARITIME COMMISSION

Independent Ocean Freight Forwarder License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as independent ocean freight forwarders pursuant to section 44(a) of the Shipping Act, 1916 (75 Stat. 522 and U.S.C. 841(c)).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to communicate with the Director, Bureau of Certification and Licensing, Federal Maritime Commission, Washington, D.C. 20573.

Jose V. Medrana, 160 Clinton Avenue, Staten Island, NY 10301.

Nationwide Freight Forwarder (Kuo-Kuang Yu, d.b.a.), 102-A S. Orange Avenue, Monterey Park, CA 91754.

James R. Bagley, 3309 Rochdale, Houston, TX 77025.

Gallipoli International Shipping Service (Fernando Casalino, d.b.a.), 7206 Bayside Court, McLean, VA 22101.

By the Federal Maritime Commission.

Dated: January 19, 1981.

Francis C. Hurney,

Secretary.

[FR Doc. 81-2361 Filed 1-22-81; 8:45 am]

BILLING CODE 6730-01-M

[Independent Ocean Freight Forwarder License No. 2143]

Woodfab Forwarding (Wood Fabricating Company, Inc., d.b.a.); Order of Revocation

On December 8, 1980, Woodfab Forwarding (Wood Fabricating Company, Inc., d.b.a.), 6700 Chase Road, Dearborn, MI 48126, surrendered its Independent Ocean Freight Forwarder License No. 2143 for revocation.

Therefore, by virtue of authority vested in me by the Federal Maritime Commission as set forth in Manual of Orders, Commission Order No. 201.1 (Revised), section 5.01(c), dated August 8, 1977;

It is ordered, that Independent Ocean Freight Forwarder License No. 2143 issued to Woodfab Forwarding (Wood Fabricating Company, Inc., d.b.a.), be and is hereby revoked effective December 8, 1980, without prejudice to reapplication for a license in the future.

It is further ordered, that a copy of this Order be published in the Federal Register and served upon Woodfab Forwarding (Wood Fabricating Company, Inc., d.b.a.).

Daniel J. Connors,

Director, Bureau of Certification and Licensing.

[FR Doc. 81-2362 Filed 1-22-81; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL PREVAILING RATE ADVISORY COMMITTEE

Open Committee Meetings

Pursuant to the provisions of section 10 of the Federal Advisory Committee Act (Pub. L. 92-463), notice is hereby given that meetings of the Federal Prevailing Rate Advisory Committee will be held on:

Thursday, February 5, 1981.
Thursday, February 19, 1981.
Thursday, February 26, 1981.

These meetings will convene at 10 a.m., and will be held in Room 5A06A, Office of Personnel Management Building, 1900 E Street, NW, Washington, D.C.

The Federal Prevailing Rate Advisory Committee is composed of a Chairman, representatives of five labor unions holding exclusive bargaining rights for Federal blue-collar employees, and representatives of five Federal agencies. Entitlement to membership of the Committee is provided for in 5 U.S.C. 5347.

The Committee's primary responsibility is to review the prevailing rate system and other matters pertinent to the establishment of prevailing rates under subchapter IV, chapter 53, 5 U.S.C., as amended, and from time to time advise the Office of Personnel Management thereon.

These scheduled meetings will convene in open session with both labor and management representatives attending. During the meeting either the labor members or the management members may caucus separately with the Chairman to devise strategy and formulate positions. Premature disclosure of the matters discussed in these caucuses would impair to an unacceptable degree the ability of the Committee to reach a consensus on the matters being considered and disrupt substantially the disposition of its business. Therefore, these caucuses will be closed to the public on the basis of a determination made by the Director of the Office of Personnel Management under the provisions of Section 10(d) of

the Federal Advisory Committee Act (Pub. L. 92-463) and 5 U.S.C., section 552b(c)(9)(B). These caucuses may, depending on the issues involved, constitute a substantial portion of the meeting.

Annually, the Committee publishes for the Office of Personnel Management, the President, and Congress a comprehensive report of pay issues discussed, concluded recommendations thereon, and related activities. These reports are also available to the public, upon written request to the Committee Secretary.

Members of the public are invited to submit material in writing to the Chairman concerning Federal Wage System pay matters felt to be deserving of the Committee's attention. Additional information concerning these meetings may be obtained by contacting the Committee Secretary, Federal Prevailing Rate Advisory Committee, Room 1340, 1900 E Street, NW, Washington, D.C. 20415 (202-632-0710).

Jerome H. Ross,
Chairman, Federal Prevailing Rate Advisory Committee.

January 14, 1981.

[FR Doc. 81-2283 Filed 1-22-81; 8:45 am]
BILLING CODE 6325-01-M

FEDERAL RESERVE SYSTEM

European American Bancorp; Proposed Acquisition of Axinn Life Reinsurance Corp.

European American Bancorp, New York, New York, has applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.4(b)(2) of the Board's Regulation Y (12 CFR 225.4(b)(2)), for permission to acquire voting shares of Axinn Life Reinsurance Corp., Phoenix, Arizona.

Applicant states that the proposed subsidiary would engage in the activity of underwriting, as reinsurer, credit life insurance directly related to extensions of credit by European American Bank and Trust Company. These activities would be performed from offices of Applicant's subsidiary in Phoenix, Arizona, and the geographic areas to be served are New York City, Long Island, Southern Connecticut, and Northern and Central New Jersey. Such activities have been specified by the Board in § 225.4(a) of Regulation Y as permissible for bank holding companies, subject to Board approval of individual proposals in accordance with the procedures of § 225.4(b).

Interested persons may express their views on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of New York.

Any person wishing to comment on the application should submit views in writing to the Reserve Bank to be received not later than February 13, 1981.

Board of Governors of the Federal Reserve System, January 16, 1981.

Jefferson A. Walker,
Assistant Secretary of the Board.

[FR Doc. 81-2284 Filed 1-22-81; 8:45 am]
BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control

Annual Report; Availability of Filing

Notice is hereby given that pursuant to Section 13 of Public Law 92-463 (5 U.S.C. Appendix I), the fiscal year 1980 annual report for the following Federal advisory committee utilized by the Centers for Disease Control has been filed with the Library of Congress.

Mine Health Research Advisory Committee

Copies are available to the public for inspection at the Library of Congress, Newspaper and Current Periodical Reading Room, Room 1026, Thomas Jefferson Building, Second Street and Independence Avenue, SE., Washington, D.C. (telephone 202/287-6310). Additionally, on weekdays between 9:00 a.m. and 4:30 p.m. copies will be available for inspection at the Department of Health and Human Services, Department Library, HHS North Building, Room 1436, 300 Independence Avenue, SW., Washington, D.C. (telephone 202/245-6791).

Dated: January 16, 1981.

J. D. Millar, M.D.,
Acting Director, Centers for Disease Control.

[FR Doc. 81-2016 Filed 1-22-81; 8:45 am]
BILLING CODE 4110-86-M

Assessment of Occupational Health Hazard Control Technology for the Manufacture and Industrial Use of Adhesives; Open Meeting

The following meeting will be convened by the National Institute for Occupational Safety and Health of the Centers for Disease Control and will be open to the public for observation and participation, limited only by space available:

Assessment of Occupational Health Hazard Control Technology for the Manufacture and Industrial Use of Adhesives

Date: February 12, 1981.
Time: 9:30 a.m. to 3:00 p.m.
Place: Room 4022, Federal Office Building, 550 Main Street, Cincinnati, Ohio
Purpose: To discuss protocol and objectives for the control technology study of occupational exposure to chemical and physical agents associated with the manufacture and industrial use of adhesives.

Additional information may be obtained from: Mr. Vincent D. Mortimer, Jr., Division of Physical Sciences and Engineering, National Institute for Occupational Safety and Health, Centers for Disease Control, 4676 Columbia Parkway, Cincinnati, Ohio 45226; Telephone: (513) 684-4295.

Dated: January 15, 1981.

William H. Foege, M.D.,
Director, Centers for Disease Control.

[FR Doc. 81-3419 Filed 1-22-81; 8:45 am]
BILLING CODE 4110-87-M

Food and Drug Administration

Consumer Participation; Open Meeting

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) announces a forthcoming consumer exchange meeting to be chaired by Loren Y. Johnson, District Director, Philadelphia District Office, Philadelphia, PA.

DATE: The meeting will be held at 12:30 p.m., Thursday, February 19, 1981.

ADDRESS: The meeting will be held at the Federal Bldg., Rm. 2214, 1000 Liberty Ave., Pittsburgh, PA 15222.

FOR FURTHER INFORMATION CONTACT: Louise A. Dvorchak, Consumer Affairs Officer, Food and Drug Administration,

7 Parkway Center, Rm. 845, Pittsburgh, PA 15220, 412–644–2850.

SUPPLEMENTARY INFORMATION: The purpose of this meeting is to encourage dialogue between consumers and FDA officials, to identify and set priorities for current and future health concerns, to enhance relationships between local consumers and FDA's Philadelphia District Office, and to contribute to the agency's policymaking decisions on vital issues.

Dated: January 14, 1981.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 81-2207 Filed 1-22-81; 8:45 am]

BILLING CODE 4110-03-M

[FDA-225-81-4200]

Radiation Emergency Response Planning and Action; Memorandum of Understanding With the Centers for Disease Control

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is publishing a memorandum of understanding between FDA and the Centers for Disease Control. The purpose of the understanding is to describe the responsibilities of each agency in the event of peacetime radiological emergencies. It sets forth how emergency planning and action will be coordinated with regard to radiological accidents that may have an impact on public health and safety.

DATE: This memorandum of understanding became effective November 26, 1980.

FOR FURTHER INFORMATION CONTACT: Michael S. Tetrault, Office of the Director, Bureau of Radiological Health (HFX–1), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–3550.

SUPPLEMENTARY INFORMATION: FDA's policy is to publish in the Federal Register all agreements and memoranda of understanding between FDA and others as stated in 21 CFR 20.108(c). The agency is publishing the following memorandum of understanding:

Memorandum of Understanding Between the Centers for Disease Control and the Food and Drug Administration for Radiation Emergency Response Planning and Radiation Emergency Response Action Preamble

Over the past year, the Centers for Disease Control (CDC) and the Food and Drug Administration (FDA) have taken cooperative action to implement the Assistant Secretary for Health's (ASH) May 30, 1979, directive designating CDC as the lead agency within the Public Health Service (PHS) for health management of toxic environmental emergencies. This directive facilitates intramural communications and liaison with outside groups and ensures a prompt coordinated Federal response to environmental emergencies that endanger public health and safety.

CDC's lead responsibility encompasses emergencies involving potential exposure to radiation, e.g., the accident at Three Mile Island. In a September 5, 1979, memorandum to the then Acting Commissioner of Food and Drugs, the Assistant Secretary for Health endorsed an active role for the Bureau of Radiological Health (BRH) of the FDA in radiation emergencies because of its specialized expertise for radiation emergency response planning.

Purpose and Scope

The purpose of this Memorandum of Understanding (MOU) is to identify the respective responsibilities of each agency with regard to peacetime radiological emergencies and how emergency planning and action will be coordinated. This document is concerned with radiological accidents which might have an impact on public health and safety. It does not include the recovery phase of the operation or the non-emergency environmental radiation problems (e.g., foreign atmospheric nuclear testing, dose determination and assessment of Project Smokey and Portsmouth Naval Shipyard).

Authority

FDA and CDC shall continue to act under existing delegations of authority, and no transfer of statutory junctions or authority is implied by this MOU.

1. Both CDC and FDA derive authority from the Public Health Service Act, 42 U.S.C., 241, et seq., which provides authority for the conduct of health studies and the provision of guidance, assistance, and information on both health matters and for health emergencies. The Secretary of HHS is authorized to provide for cooperative planning to cope with health problems resulting from disasters, for participation in carrying out such planning, and, at the request of State and local authorities, in meeting health emergencies.

2. The FDA is responsible for enforcement of the Federal Food, Drug, and Cosmetic Act (U.S.C. Title 21), the Radiation Control for Health and Safety Act (42 U.S.C. 263b, et seq.), the Public Health Service Act as it pertains to Regulation of Biological Products (U.S.C. 262, et seq.), other sections of the PHS Act, and other laws. In fulfilling its responsibility under these laws, FDA protects the public health and safety by, inter alia, preventing the adulteration of or controlling adulterated products such as foods, drugs, cosmetics, medical devices, animal feeds, and human biologicals. It also protects the public from the dangers of electronic product radiation.

3. On December 7, 1979, the President directed the Federal Emergency Management Agency (FEMA) to head up all activities associated with the off-site planning and response to all peacetime radiological accidents at nuclear reactor facilities. Because of its leadership role, he further directed FEMA to undertake a series of activities including the development and issuance of updated interagency assignments delineating respective agency capabilities and responsibilities. FEMA outlined such responsibilities in a draft Federal Register publication in December 1979.

FDA Responsibilities

1. Response Planning

FDA will be responsive to CDC's request for representation on task forces and coordinating committees relating to FEMA's Radiological Emergency Response Plan (RERP).

FDA will serve as the PHS representative on and participate in the Interagency Radiological Assistance Plan (IRAP).

FDA will coordinate the development of FEMA guidance for HHS responsibilities that clearly fall under FDA's jurisdiction and expertise. Specifically, maintain the responsibility for the following:

A. Provide guidance to State and local governments on the use of radioprotective substances (e.g., thyroid blocking agents) to include dosage and also projected radiation doses at which such drugs should be used.

B. Provide guidance to State and local governments on protective action guides for foods and animal feeds.

FDA will keep CDC regularly informed, and CDC will be requested to provide, as deemed appropriate, review and comments on the overall PHS perspective on the items mentioned above.

FDA will in cooperation with CDC work with Regional Advisory Committees to provide appropriate technical review and comment in areas of FDA responsibility for all RERP's.

FDA will provide technical assistance to CDC in developing and implementing HHS Radiological Emergency Preparedness Training Programs.

2. Emergency Response Actions

When FDA is alerted to a radiation emergency, it will immediately alert CDC.

In accordance with specific State, regional, or national plans,[1] this MOU, and specific requests by CDC, FDA will:

A. As part of the HHS team, participate in the radiological emergency exercises, tests, and responses.

B. Establish appropriate emergency response liaison with the on-site CDC designated coordinator and keep CDC headquarters advised.

C. Provide technical support to State, local, and other Federal agencies.

FDA will implement and coordinate its own Emergency Response Procedures as set forth in Chapter 5–10 of the FDA Regulatory Procedures Manual. Radiological emergency response includes such actions as:

A. Environmental monitoring and sampling of milk, foods, and animal feed following a radiological incident.

B. Analysis and interpretation of food and environmental monitoring data.

C. Taking appropriate compliance actions and implementing protective actions for contaminated food and feed under the statutory authority of the Federal Food, Drug, and Cosmetic Act and other Acts administered by FDA.

FDA will provide technical support to CDC for the preparation of HHS news releases, for coordination with other agencies, and for working with public media in informing the public about health significance of a radiological incident.

FDA will give CDC emergency contact telephone numbers for maintaining close liaison in case an emergency response action becomes necessary and for implementing HHS resources.

CDC Responsibilities

1. Response Planning

CDC has the lead role within PHS for planning the HHS role in the FEMA national response to radiation emergencies. This includes the following activities:

A. CDC is responsible for arranging HHS representation on the Federal Interagency Central Coordinating Committee for REPP and designating HHS lead agency membership on relevant REPP subcommittees (e.g., FDA to represent HHS on the task force for 1) training and exercises, and 2) off-site instrumentation).

B. CDC arranges for appropriate PHS representation at meetings of all Regional Advisory Committees (RAC).

C. CDC participates in FEMA activities related to planning for radiation emergencies including coordinating the HHS response to review of FEMA documents relating to radiation emergencies.

D. CDC arranges for consultations between appropriate HHS components and State and local agencies and officials to help them plan for radiation emergencies in their jurisdiction.

E. CDC has the lead role for developing specific PHS response for implementation of the national radiation emergency response plan.

2. Emergency Response Actions

CDC has the PHS lead role to coordinate PHS response to radiological emergencies.

When notified of radiological emergency, CDC:

A. Obtains sufficient information to allow a determination to be made of whether or not an emergency requiring HHS action exists.

B. Alerts all appropriate HHS agencies.

C. Consults with other HHS agencies to determine availability of resources required under the FEMA national contingency plan.

D. Requests mobilization of resources of PHS agencies.

CDC serves as the focal point for communication and coordination of information within PHS and between PHS and other Federal agencies, including designation of an onsite PHS coordinator at the scene of the emergency.

CDC develops and maintains epidemiological surveillance of populations exposed to radiological accidents and emergencies at local, State, and national levels for purposes of disease prevention.

As coordinator for PHS emergency response and liaison with FEMA, CDC consults with other HHS agencies, State and local authorities to:

A. Identify segments of the population which may be at high risk of harm from exposure (e.g., people with predisposing clinical conditions, children, pregnant women, the elderly).

B. Arrange for collection and analysis of appropriate biological specimens.

C. Consult on recommendations for decontamination and prophylactic procedures.

[1] Plans as defined in NUREG–0654, "Criteria for Preparation and Evaluation of Radiological Emergency Response Plans and Preparedness in Support of Nuclear Power Plants."

Names and Addresses of Participating Agencies:
Centers for Disease Control, 1600 Clifton Road, N.E., Atlanta, Georgia 30333.
Food and Drug Administration, 5600 Fishers Lane, Rockville, Maryland 20857.

Liaison Officers:
CDC: Director, Chronic Diseases Division, Bureau of Epidemiology.
FDA: Senior Health Physics Advisor, Office of Director, Bureau of Radiological Health.

Approved and Accepted for the Centers for Disease Control:
s/ William C. Watson, Jr.
Title: Deputy Director
Centers for Disease Control
Date: *November 12, 1980.*

Approved and Accepted for the Food and Drug Administration:
s/ Joseph P. Hile
Title: Associate Commissioner for Regulatory Affairs
Food and Drug Administration
Date: *November 26, 1980.*

Effective date. This memorandum of understanding became effective November 26, 1980.

Dated: January 13, 1981.

William F. Randolph,
Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 81-2049 Filed 1-22-81; 8:45 am]
BILLING CODE 4110-03-M

[Docket No. 77C-0265]

Color Additives; Denial of Request for Formal Evidentiary Public Hearing

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is denying a request for a formal evidentiary public hearing on an objection to the agency's denial of a color additive petition concerning the use of color additives in pet food.

FOR FURTHER INFORMATION CONTACT: Gerad L. McCowin, Bureau of Foods (HFF–334), Food and Drug Administration, 200 C St. SW., Washington, D.C. 20204, 202–472–5690.

SUPPLEMENTARY INFORMATION: A notice was published in the Federal Register of December 23, 1977 (42 FR 64440) that a petition (CAP 8CP0134) had been filed by Glenn M. W. Scott, 6211 Orion Rd., Louisville, KY 40222, proposing to amend certain color additive regulations by prohibiting the use of color additives in dog and cat food. The petition asserted that the use of color additives in dog and cat food is deceptive. Specifically, the petitioner contended that color additives disguise the true quality and value of pet food products and mask the extent to which these

products contain meat and meat byproducts.

On May 15, 1979, FDA issued a notice in the Federal Register (44 FR 28418) denying CAP 8CP0134. The agency denied the petition on the following grounds:

1. The use of color additives in dog and cat food is not deceptive if, as required by section 403(k) of the Federal Food, Drug, and Cosmetic Act, the label of the pet food product discloses the presence of artificial coloring, and if the artificial coloring does not conceal damage to, or inferiority of, the product. Specifically, the agency interpreted the term "deception" in section 706 of the act in accordance with Congressional intent as manifested by the legislative history of the 1960 Color Additive Amendments.

2. No evidence was submitted to demonstrate that the use of color additives in dog and cat food disguises the extent to which these products contain meat and meat byproducts, if, as required by § 501.4(a) (21 CFR 501.4(a)), the label of the product lists the ingredients in descending order of predominance by weight.

In response to the agency's denial of CAP 8CP0134, the petitioner, on June 12, 1979, filed a timely objection and requested a formal evidentiary public hearing. The objection stated that the agency, in denying CAP 8CP0134, misread the statute, illogically interpreted the legislative history, ignored evidence supporting the petitioner's position, and erroneously interpreted the term "deception of the consumer". Further, the objection contended that the term "deception" in section 706 of the act should be broadly defined to allow for general public opinion on the use of color additives to make nonmeat ingredients in pet food appear like meat.

The agency has completed its review of the petitioner's objection and accompanying request for a hearing and concludes that the objection is based on disagreement with the agency's interpretation of the intent of the statute. As such, the objection is an issue of law, not an issue of fact, and therefore does not justify granting a hearing under the provisions of § 12.24(b)(1) (21 CFR 12.24(b)(1)).

Therefore, in accordance with § 12.28 (21 CFR 12.28), FDA is denying in its entirety the petitioner's request for a formal evidentiary public hearing on the use of color additives in dog and cat food. This notice constitutes final agency action as defined in § 12.28(d).

Dated: January 14, 1981.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 81-2143 Filed 1-23-81; 8:45 am]

BILLING CODE 4110-03-M

[Docket No. 80P-0158]

Finesse Corp.; Approval of Variance for Kreis Microwave Tunneloven

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) announces that a variance from the performance standard for microwave ovens has been approved by the Bureau of Radiological Health for the Kreis Microwave Tunneloven, model 7800-03/15, distributed by Finesse Corp. The tunneloven is a conveyorized microwave oven used for commerical heating of fool or other suitable products on a continuous basis.

DATES: The variance became effective November 4, 1980 and ends November 4, 1982.

ADDRESS: The application and all correspondence on the application have been placed on display in the Dockets Management Branch (formerly the Hearing Clerk's office) (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Melvyn R. Altman, Bureau of Radiological Health (HFX-460), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3426.

SUPPLEMENTARY INFORMATION: Under 21 CFR 1010.4, Finessa Corp., 3 Neshaminy Interplex, Threvos, PA 19047, has been granted a variance from § 1030.10(c)(2) (iv) and (vi), (c)(3) (iii) and (iv), (c)(4)(iii), (c)(5)(iii), and (c)(6)(i) (21 CFR 1030.10(c)(2) (iv) and (vi), (c)(3) (iii) and (iv), (c)(4)(iii), (c)(5)(iii), and (c)(6)(i)) of the performance standard for microwave ovens. The variance permits the manufacturer to introduce into commerce the mirowave oven known as the Kreis Microwave Tunneloven, model 7800-03/15. The tunneloven is a conveyorized microwave oven which can heat food or other suitable products on a continuous basis. The main application is intended to be in hospital or hotel kitchens to reconstitute chilled food. Suitable means of radiation protection will be provided by conditions imposed on the manufacturer in the letter of approval of the variance. The tunneloven shall bear variance No. 80P-0158.

By letter of November 4, 1980, the Director of the Bureau of Radiological Health, approved the requested variance which terminates on November 4, 1982.

In accordance with § 1010.4 (21 CFR 1010.4), the application and all correspondence (including the written notice of approval) on the application have been placed on public display in the Dockets Management Branch, Food and Drug Administration (address above), and may be seen in that office between 9 a.m. and 4 p.m., Monday through Friday.

Dated: January 14, 1981.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 81-2142 Filed 1-23-81; 8:45 am]

BILLING CODE 4110-03-M

[FDA-225-80-4001]

Monitoring and Investigation of Foodborne Illnesses; Memorandum of Understanding With the State of Illinois Department of Public Health

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has executed a memorandum of understanding with the Illinois Department of Public Health. The purpose of the memorandum of understanding is to set forth cooperative working arrangements covering the monitoring and investigation of foodborne illnesses within the State of Illinois.

DATE: The Memorandum of Understanding became effective on May 5, 1980.

FOR FURTHER INFORMATION CONTACT: Walter J. Kustka, Intergovernmental and Industry Affairs Staff (HFC-50), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-1583.

SUPPLEMENTARY INFORMATION: FDA's policy is to publish in the Federal Register all agreements and memoranda of understanding between FDA and others (21 CFR 20.108(c)). Therefore, the agency is publishing the following memorandum of understanding:

Memorandum of Understanding Between the State of Illinois Department of Health and the Region V, Chicago District U.S. Food and Drug Administration

I. Purpose

It is the purpose of this agreement to establish a cooperative program between the State of Illinois Department

of Public Health, (IDPH), and the Food and Drug Administration (FDA), relative to monitoring and the investigation of foodborne illnesses within the State of Illinois.

II. Background

The Illinois Department of Public Health [1] is authorized by the Illinois Revised Statutes, Chapter 111½, Paragraph 22 to investigate the causes of dangerously contagious or infectious diseases and take the means to suppress the same; this function is performed by the Division of Disease Control. The Department is authorized by the Illinois Food, Drug and Cosmetic Act, Section 522, to inspect, sample and test foods in intrastate distribution for adulteration, misbranding, safety, and wholesomeness; this is performed by the Division of Food and Drugs and is a counterpart function to that of the Federal FDA which has the same responsibility in interstate commerce.

The Food and Drug Administration (FDA) of the Department of Health, Education, and Welfare is charged with the enforcement of the Federal Food, Drug and Cosmetic Act. In fulfilling these responsibilities under the Act, FDA directs its activities toward the protection of the public health of the Nation by ensuring that foods distributed in interstate commerce are safe and wholesome. The authority to perform the necessary investigations and examinations of manufacturers, repackers, and distributors, towards that end, is granted under Sections 702(a) and 704 of the Act.

In order to reduce duplication of resources in the investigation of the causes of foodborne illnesses, sample collection, analysis and regulatory follow-up, these two agencies entered into an informal verbal agreement in 1972, as to the responsibilities of each party as they related to the investigation of said foodborne illnesses.

However, the increase in the number and complexities of such investigations, makes it increasingly necessary that the responsibilities of each agency be specifically delineated in a formal agreement.

The two agencies have certain common or related objectives in carrying out their respective regulatory and service activities. This Memorandum of Understanding sets forth the working arrangements which are to be followed or adopted to enable each agency to discharge, as effectively as possible, its responsibilities related to the investigational and inspectional activities as they relate to foodborne investigations.

III. Substance of Agreement

A. The IDPH will:

(1) Perform epidemiologic investigations, when indicated, of reported foodborne illnesses brought to its attention.

(2) Inform the Food and Drug Administration of any and all such foodborne illnesses as expeditiously as possible, involving commercially prepared food products subject to the jurisdiction of that agency.

(3) Transmit as expeditiously as possible, within the restrictions provided by existing State statute and implementing regulations, copies of records pertaining to the foodborne epidemiology investigation.

(4) Transmit as expeditiously as possible, analytical results and records which bear upon the causes of the foodborne illness.

(5) Serve as fact and/or expert witnesses when needed in regulatory litigation initiated and carried out by the FDA.

B. The Chicago District, FDA, will:

(1) Inform the Division of Disease Control, IDPH, of any reported or suspect foodborne illnesses which are reported to this agency, or which may be disclosed during its routine establishment inspections, or consumer complaints.

(2) Carry out inspections and investigations as authorized by Section 702(a) of the Act of commercial processors of food implicated in the foodborne illness. Where the firm may currently be subject to the Division of Food and Drugs, Illinois Department of Public Health, the agency will coordinate its activities with that unit.

(3) Transmit, as expeditiously as possible, the establishment inspection report, commensurate with the statute and implementing regulations, to Division of Disease Control.

(4) Transmit, as expeditiously as possible, the analytical results and records of samples collected during the inspections of these firms.

(5) Serve as fact and/or expert witnesses in regulatory litigation initiated by the State.

(6) Volunteer, within available resource limitation, analytical and investigational assistance as, and when needed by the State to expedite and complete a foodborne disease investigation.

C. Both agencies will:

(1) Evaluate the agreement on a yearly basis, and

(2) Maintain, alter, amend, or append the agreement as required.

IV. Name and Address of Participating Activities

A. State of Illinois Department of Public Health, Division of Disease Control, 535 W. Jefferson Street, Springfield, Illinois 62761.

B. Food and Drug Administration, 433 West Van Buren Street, Chicago, Illinois 60607.

V. Liaison Officers

A. Carl Langkop, Coordinator, Communicable Disease Control Program, Division of Disease Control, Illinois Department of Public Health, 535 West Jefferson Street, Springfield, Illinois 62761.

B. Phillip Shaeler, Director Compliance Branch Food and Drug Administration 433 West Van Buren Street Chicago, Illinois 60607

VI. Period of Agreement

A. This agreement is effective upon acceptance by both parties and will expire on the last day of the 12th month following the date of signing by both parties unless renewed and signed by both parties to continue it in effect for another 12 months.

B. This agreement in its entirety, or in part, may be revised by mutual consent, or it may be terminated upon 30 days written notice by either party.

Approved and Accepted for the State of Illinois Department of Public Health.

William L. Kempiners,

Acting Director, Illinois Department of Public Health.

Date May 5, 1980.

Approved and Accepted for the Food and Drug Administration.

Lloyd R. Claiborne,

Regional Director, FDA Region V.

Date May 5, 1980.

EFFECTIVE DATE. The Memorandum of Understanding became effective on May 5, 1980.

Dated: January 14, 1981.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 81-2241 Filed 1-22-81; 8:45 am]

BILLING CODE 4110-03-M

Advisory Committee; Meeting

AGENCY: Food and Drug Administration.

ACTION: Notice.

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[1] The Illinois Department of Public Health accomplishes its responsibilities in investigating communicable disease through recognized local health departments in cities and counties where local health departments have been established. In other areas of the State, the Illinois Department of Public Health has direct responsibility for investigating communicable disease.

SUMMARY: This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). This notice also sets forth a summary of the procedures governing committee meetings and methods by which interested persons may participate in open public hearings conducted by the committees and is issued under section 10(a) (1) and (2) of the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770-776 (5 U.S.C. App. I)), and FDA regulations (21 CFR Part 14) relating to advisory committees. The following advisory committee meeting is announced:

General Hospital and Personal Use Device Section of the General Medical Devices Panel

Date, time, and place. February 9, 9 a.m., Room 1207, 8757 Georgia Ave., Silver Spring, MD.

Type of meeting and contact person. Closed presentation of data, 9 a.m. to 10 a.m.; open public hearing, 10 a.m. to 11 a.m.; open committee discussion, 11 a.m. to 4:30 p.m.; Robert R. Gatling, Bureau of Medical Devices (HFK-420), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7750.

General function of the Committee. The Committee reviews and evaluates available data on the safety and effectiveness of devices currently in use and makes recommendations for their regulation.

Agenda—Closed presentation of data. The sponsor of premarket approval application P800032 will discuss this device and respond to questions from the Section members. This portion of the meeting will be closed to permit discussion of trade secret data (5 U.S.C. 552b(c)(4)).

Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the Committee. Those desiring to make formal presentations should notify the contact person by January 26, 1981, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. The Section will review and discuss the safety and effectiveness data in premarket approval application P800032. The Section will also make classification recommendations on the following devices: infusion stand; patient isolation chamber (portable and stationary); intravascular infusion controller (active and passive); hot water pasteurization device; allergen and vaccine delivery system; wound shield; and oral administration set.

Applications for reimbursement. Must be received by January 26, 1981.

Each public advisory committee meeting listed above may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. The dates and times reserved for the separate portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairman determines will facilitate the committee's work.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this Federal Register notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairman's discretion.

Persons interested in specific agenda items to be discussed in open session may ascertain from the contact person the approximate time of discussion.

A list of committee members and summary minutes of meetings may be requested from the Dockets Management Branch (formerly the Hearing Clerk's office) (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday. The FDA regulations relating to public advisory committees may be found in 21 CFR Part 14.

The Commissioner, with the concurrence of the Chief Counsel, has determined for the reasons stated that those portions of the advisory committee meetings so designated in this notice shall be closed. The Federal Advisory Committee Act (FACA), as amended by the Government in the Sunshine Act (Pub. L. 94-409), permits such closed advisory committee meetings in certain circumstances. Those portions of a meeting designated as closed, however, shall be closed for the shortest possible time, consistent with the intent of the cited statutes.

The FACA, as amended, provides that a portion of a meeting may be closed where the matter for discussion involves a trade secret; commercial or financial information that is privileged or confidential; information of a personal nature, disclosure of which would be a clearly unwarranted invasion of person privacy; investigatory files compiled for law enforcement purposes; information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency action; and information in certain other instances not generally relevant to FDA matters.

Examples of portions of FDA advisory committee meetings that ordinarily may be closed, where necessary and in accordance with FACA criteria, include the review, discussion, and evaluation of drafts of regulations or guidelines or similar preexisting internal agency documents, but only if their premature disclosures is likely to significantly frustrate implementation of proposed agency action; review of trade secrets and confidential commercial or financial information submitted to the agency; consideration of matters involving investigatory files compiled for law enforcement purposes; and review of matters, such as personnel records or individual patient records, where disclosure would constitute a clearly unwarranted invasion of personal privacy.

Examples of portions of FDA advisory committee meetings that ordinarily shall not be closed include the review, discussion, and evaluation of general preclinical and clinical test protocols and procedures for a class of drugs or devices; consideration of labeling requirements for a class of marketed drugs or devices; review of data and information on specific investigational or marketed drugs and devices that have previously been made public; presentation of any other data or information that is not exempt from public disclosure pursuant to the FACA, as amended; and, notably deliberative sessions to formulate advice and recommendations to the agency on matters that that do not independently justify closing.

Applications for reimbursement for participation in the meeting listed above should be sent to the Office of Consumer Affairs (HFE–88), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, rather than to the Dockets Management Branch as prescribed in § 10.210 of the regulations (21 CFR 10.210). If you wish to submit an application or wish more information regarding the reimbursement program, please call 301–443–3170.

FDA has established expedited procedures for review of any application for reimbursement for participation in the meeting announced in this notice. The Office of Consumer Affairs, FDA, will file any application for reimbursement for participation in the meeting announced in this notice in the docket for this notice.

Dated: January 15, 1981.

Jere E. Goyan,

Commissioner of Food and Drugs.

[FR Doc. 81-2262 Filed 1-22-81; 8:45 am]

BILLING CODE 4110-03-M

[Docket No. 80N-0529]

Aflatoxin-Contaminated Corn; Limited Exemptions From Prohibition of Interstate Shipment and Blending

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: This document announces that limited exemptions have been granted to the State of North Carolina and South Carolina and the Commonwealth of Virginia from the Food and Drug Administration's (FDA's) prohibition of interstate shipment and blending of corn containing aflatoxin in excess of the agency's action level of 20 parts per billion (ppb). Corn containing up to 100 ppb aflatoxin may be shipped in interstate commerce under plans which were developed by the three States and approved by FDA. The plans assure that such corn does not contain more than 100 ppb aflatoxin and is not diverted for uses other than as feed for mature, nonlactating livestock and mature poultry. Blending of corn to achieve levels of no more than 100 ppb aflatoxin is permitted under certain controlled conditions. These exemptions were granted to avert a substantial adverse impact on the national food supply.

EFFECTIVE DATES: October 9, 1980—North and South Carolina; November 5, 1980—Virginia.

EXPIRATION DATE: The exemptions apply only to the 1980 corn crop in North Carolina, South Carolina, and Virginia, and shall remain in effect until January 1, 1982.

FOR FURTHER INFORMATION CONTACT: Taylor M. Quinn, Bureau of Foods (HFF–300), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–245–1243.

SUPPLEMENTARY INFORMATION: In response to requests from the States of North Carolina and South Carolina and the Commonwealth of Virginia, FDA is establishing limited exemptions to its prohibition of interstate shipment and blending of corn containing aflatoxin above its action level of 20 ppb. These exemptions apply only to the 1980 corn crop harvested in the States of North Carolina and South Carolina and the Commonwealth of Virginia and allow the interstate shipment of corn containing up to 100 ppb aflatoxin to be used only for feed for mature, nonlactating livestock and mature poultry. These exemptions do not apply to corn or mixed feeds used for rations for lactating dairy animals, or starter rations for very young animals, or to corn for human consumption. Corn containing more than 20 ppb may be blended with less contaminated corn to achieve a total aflatoxin level of no more than 100 ppb.

Any food that contains aflatoxin in excess of 20 ppb (FDA Administrative Guidelines Manual, 7420.01 (5/16/79)) is considered by FDA to be adulterated under section 402(a)(1) of the Federal Food, Drug, and Cosmetic Act, (21 U.S.C. 342(a)(1)), and therefore may not be shipped in interstate commerce. Also, use of an adulterated food as an ingredient in another food causes the finished food to be deemed adulterated, even if the finished food itself does not violate an established action level.

The 20 ppb action level for aflatoxin applies only to unavoidable contamination of food. Thus, the intentional blending of a violative food with an uncontaminated food is not authorized by the action level.

FDA's regulations on unavoidable contaminants in animal food and food-packaging material, 21 CFR 509.8, provide for exemptions from regulatory action if the Commissioner of Food and Drugs determines that (1) based on all available evidence, the food is safe for consumption, that is, a significant health hazard is not involved, and (2) destruction or diversion of the food involved would result in a substantial adverse impact on the national food supply.

The agency has reviewed all available evidence concerning the effects on the health of animals consuming aflatoxin contaminated corn and humans consuming food derived from these animals. The agency has determined that the limited exemptions specified in this notice will not result in any adverse effects to the health of mature, nonlactating livestock and mature poultry fed such corn, and will not pose a significant health hazard or even a significant increase in risk to humans consuming edible products derived from these animals.

The agency has determined that the destruction or diversion of corn that would be required by the continued prohibition of interstate shipment and blending of the subject feed corn would result in a substantial adverse impact on the national food supply.

In the Federal Register of April 4, 1978 (43 FR 14122) FDA established a limited exemption to its prohibition against blending corn containing aflatoxin above its action level of 20 ppb with less contaminated corn to achieve a mixture below 20 ppb. The exemption applied only to corn harvested in 1977 in the southeast United States and was granted to avert a substantial adverse impact on the national food supply. In the 1978 notice, FDA stated that it had advised the States in the southeastern United States that "intrastate corn containing up to 100 ppb aflatoxin may be used safely for animal feed for mature poultry and swine, and mature, non-milk-producing beef cattle" if the State could ensure that the corn would not be diverted to other uses. FDA explained that the exemption required that the corn contain no more than 20 ppb after blending rather than 100 ppb "because FDA cannot monitor the flow of corn in interstate commerce to the extent necessary to ensure that the corn is used in accordance with the terms of the exemption. Permitting corn containing up to 100 ppb aflatoxin to be shipped in interstate commerce would present an unreasonable risk that the corn would be used to feed dairy animals or very young animals, or that it would be used for food for human consumption."

Analyses of samples of the 1980 corn crop from the States of North Carolina and South Carolina and the Commonwealth of Virginia reveal that aflatoxin contamination in those States is at least as great as, if not greater than, the aflatoxin contamination in the 1977 corn crop harvested in parts of the southeast United States. North Carolina, South Carolina, and Virginia, estimate that 63, 73, and up to 23 percent of their 1980 corn crop, respectively, may contain more than 20 ppb aflatoxin and therefore may not be shipped in

interstate commerce for food or feed use.

As part of their requests for exemptions from the current action level of 20 ppb aflatoxin, North Carolina, South Carolina, and Virginia have submitted to FDA detailed control plans to ensure that corn containing up to 100 ppb aflatoxin when shipped in interstate commerce is not diverted for uses other than as feed for mature, nonlactating livestock and mature poultry. Accordingly, FDA has agreed to permit (1) the shipment in interstate commerce of corn from the 1980 crop and which contains up to 100 ppb aflatoxin when such corn is shipped in accordance with those plans and (2) the blending of corn to achieve levels of aflatoxin of up to 100 ppb when such blending is done under certain controlled conditions. FDA anticipates that permitting the interstate shipment and blending of corn under the terms of the exemptions stated in this notice will increase the marketable feed corn crop in North Carolina, South Carolina, and Virginia. This increase is estimated at 101.4 million bushels, valued at 319.5 million dollars at current market prices.

The agency has determined that it will not recommend regulatory action for violation of the Federal Food, Drug, and Cosmetic Act with respect to the interstate shipment of corn from the 1980 crop harvested in North Carolina, South Carolina, and Virginia and which contains no more than 100 ppb aflatoxin; or with respect to the blending of corn to achieve a level of no more than 100 ppb aflatoxin, provided the conditions set out in this notice are met. FDA emphasizes, however, that it is not altering the agency's longstanding positions that it is unlawful to ship in interstate commerce corn containing more than 20 ppb aflatoxin and that it is unlawful to blend corn containing more than 20 ppb aflatoxin with less contaminated corn and ship the blended corn in interstate commerce. The agency is permitting the exemptions set out in this notice on a one-time basis for the 1980 corn crop harvested in North Carolina, South Carolina, and Virginia only because of the severity of this emergency situation.

Therefore, the Commissioner gives notice pursuant to § 509.8 (21 CFR 509.8) of the following exemptions:

Notice of Exemptions

a. The Food and Drug Administration will not recommend regulatory action against corn from the 1980 corn crop harvested in North Carolina, South Carolina, and Virginia and which contains between 20 ppb and 100 ppb aflatoxin or corn blended to achieve a level of no more than 100 ppb aflatoxin for violation of the Federal Food, Drug, and Cosmetic Act, provided the following terms and conditions of plans submitted to FDA by the three States have been met:

1. All corn handled in the manner described in the States' plans shall be used only for feeding of mature, nonlactating livestock and mature poultry.

2. Upon notification by a firm of its intention to ship in interstate commerce corn containing between 20 ppb and 100 ppb aflatoxin, the State of origin's Department of Agriculture shall obtain from the intended shipper a history of the corn and shall collect samples of all lots of the corn.

3. The lot (i.e, individually-characterized mass of corn, compartmentalized and ready for shipment to purchaser) of corn shall either be stream-sampled at intervals during the entire loading process to obtain at least a ten-pound sample or randomly-sampled with appropriate-size commercial grain probes to obtain at least a ten-pound sample that is representative of the lot.

4. The entire sample shall be ground, mixed, and analyzed by the State laboratories as prescribed in the "Official Methods of Analyzed of the Association of Official Analytical Chemists," 13th ed. 1980.

5. The test acceptance level for each lot shall be 80 ppb or less. For stream-sampled corn, a single analysis is sufficient; for randomly sampled corn, a duplicate analysis shall be performed, the average result of which may not exceed the 80 ppb level. Under this system, there is a 95 percent or greater probability that a lot of corn which contains a true mean of 100 ppb or more aflatoxin will be rejected.

6. Each lot of corn shall be labeled at all times with the name and address of the purchaser and of the seller, the aflatoxin content, and the phrase "To be fed only to nonlactating mature livestock and/or mature poultry". Any invoice and bill of lading shall also be marked with this information. In addition, the bill of lading shall bear the seal numbers or other identification to relate the bill of lading to the lot.

7. The Department of Agriculture of the State of origin shall maintain records for a period of at least one year after obtaining the samples. Such records shall include, but not be limited to information showing: the origin of the corn, the date sampled, the aflatoxin content, the destination, how the corn shipped from the State of origin to the receiving State was controlled to prevent diversion (e.g., railcar seals), and the intended use of the corn at its destination.

8. The State of origin shall have a prearranged agreement with the appropriate regulatory agency in the State to which corn is to be shipped. This agreement shall specify the means by which the designated regulatory agency in the receiving State intends to assure proper disposition of the corn. As a part of the agreement, the receiving State shall written notification from each buyer (ultimate user) that the corn shall be fed only to mature nonlactating livestock or mature poultry. The State of origin shall also notify FDA of each lot of corn to be shipped and the destination of each lot. The receiving State shall agree to notify the State of origin and FDA when such shipments are received. The receiving State shall maintain records documenting the final and proper disposition of the corn by the ultimate user.

9. Before a lot of "blended" corn (i.e., corn which because of its high aflatoxin content has been mixed with other corn to reduce its aflatoxin content below 100 ppb) is shipped in interstate commerce, the responsible firm shall submit to the Department of Agriculture of the State of origin a plan that describes how uniform blending is to be accomplished, the aflatoxin content of the contaminated corn and the blended corn, methods to be used for sampling and analysis, and the moisture content of both lots of corn. The State Department of Agriculture shall review and, if appropriate, approve the plan, and notify the firm of any changes which must be made. The State Department of Agriculture shall forward a copy of the approved plan to the appropriate FDA Regional Office, and maintain records for inspection by FDA. The final lots shall be sampled and analyzed by the Department of Agriculture of the State of origin as outlined in Steps 3 and 4 above and 11 below.

10. Corn in excess of 400 ppb aflatoxin shall not be used for blending.

11. Two ten-pound samples shall be randomly and representatively drawn from any lot of aflatoxin-contaminated corn which has been blended with other corn to achieve a level below 100 ppb aflatoxin. Both samples shall be analyzed in duplicate. The average of the duplicate analysis of the two ten-pound samples may not differ more than 50 ppb aflatoxin. The average four analysis may not exceed 80 ppb aflatoxin. If either of the assay criteria for blended corn is not met, the blending shall be classified as unacceptable. Reblending will be permitted.

12. Certification of the aflatoxin content of any lot of corn by the State or origin shall be made before interstate shipment.

13. Copies of the approved State plans for carrying out the FDA exemptions shall be distributed to all elevators merchandising corn in the affected States.

b. In all other cases the FDA's prohibition of interstate shipment and blending of corn containing aflatoxn in excess of the agency's 20 ppb action level will be applied.

All correspondence between the States of North Carolina and South Carolina and the Commonwealth of Virginia and FDA, including the State plans; and assessments of safety and impact on the national food supply, including references and supporting data upon which this notice is based, are on file with the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

Public comment is invited on this notice and the Commissioner's determinations herein. Comments may be sent to the Dockets Management Branch (address above) and will be received while this notice remains in effect.

This notice shall remain in effect until January 1, 1982.

Dated: January 19, 1981.

Joseph P. Hile,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 81–3804 Filed 1–22–81; 8:45 am]

BILLING CODE 4110–03–M

Health Care Financing Administration

Privacy Act of 1974; System of Records and Notice of Proposed Routine Uses

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice of new system of records.

SUMMARY: This Notice describes a new system of records, Medicare/Medicaid Hospice Demonstration, HCFA No. 09–70–0024, in accordance with the requirements of the Privacy Act of 1974. The purpose of this system of records is to provide billing, cost, and service data necessary to reimburse and evaluate the care received by terminally ill Medicare beneficiaries, Medicaid recipients, and their families from hospice organizations selected to participate in the demonstration. In addition, the system will furnish information necessary to evaluate the services received by three other groups of terminally ill patients and their families: 1) patients who are served by the participating hospices but are neither Medicare beneficiaries nor Medicaid recipients, 2) a selected comparison group of patients served by hospices outside the demonstration, and 3) another selected comparison group of patients served by hospitals and cancer centers which provide conventional medical care. There is a more detailed explanation of both the demonstration and the records system under the section entitled "Supplementary Information." HCFA invites public comments with respect to routine uses of the system.

DATES: HCFA filed a new system report with the Speaker of the House, the President of the Senate, and the Director, Office of Management and Budget (OMB) on January 16, 1981. The new system of records will be effective 60 days from the date submitted to OMB. Routine uses will become effective March 17, 1981, unless HCFA receives comments which would result in a contrary determination.

ADDRESS: The public should address comments to the Privacy Officer, Office of Management and Budget, Health Care Financing Administration, Bay A–3, 1710 Gwynn Oak Avenue, Baltimore, Maryland 21207. Comments received will be available for inspection at this location.

FOR FURTHER INFORMATION CONTACT: Thomas M. Kickham, Ph.D., Chief, Long Term Care Reimbursement Branch, Division of Long Term Care Experimentation, Office of Demonstrations and Evaluation, Office of Research, Demonstrations and Statistics, Health Care Financing Administration, Room 1–E–3 Oak Meadows Building, 6401 Security Boulevard, Baltimore, Maryland 21235, telephone: (301) 594–7621.

SUPPLEMENTARY INFORMATION: The Health Care Financing Administration (HCFA) Department of Health and Human Services, proposes to initiate a new system of collecting data under the authority of section 402 of the 1967 amendments to the Social Security Act, as amended by section 222(b) of the 1972 amendments to the Social Security Act, and section 1115(a) of the Social Security Act, as amended by section 404 of the Social Security Amendments of 1977.

Under the Medicare/Medicaid Hospice Demonstration, HCFA will reimburse for services provided to Medicare beneficiaries by 26 hospice organizations selected to participate in the demonstration. For 24 of these hospices, Medicaid State Agencies have also agreed to participate in the project and will reimburse for services to Medicaid recipients. (The 26 hospice organizations are identified under Appendix A, and the 14 participating Medicaid State Agencies are listed under Appendix B.) HCFA will permit payment to these hospices for a number of services which are not currently covered under the Medicare and Medicaid programs (such as outpatient prescription drugs which are now excluded under Medicare), and will not apply certain other requirements and restrictions of these programs (for example, the requirement that Medicare beneficiaries pay deductibles and coinsurance). To accomplish this, HCFA will "waive," or temporarily not enforce, certain provisions of the Medicare and Medicaid laws for the 26 participating hospices and the 14 Medicaid State Agencies. (The authorities for the demonstration waivers are cited in the first paragraph above.)

Payment for the waivered services will only be made for patients served by the participating hospices who meet the following requirements for participation: (1) a life expectancy of 6 months or less, (2) a "primary care giver," such as a relative, friend, or paid attendant who is available to provide simple personal care and emotional support on an around-the-clock basis, and (3) entitlement to Hospital Insurance Benefits (Medicare Part A) and Supplementary Insurance Benefits (Medicare Part B) and/or eligibility under Medicaid.

While the waivers will permit payment to all 26 hospices for certain non-covered services, not all hospices will offer the same services. Nor are these hospices organized and staffed in the same way. At present, there is no commonly accepted definition of "hospice." Generally, however, a hospice is considered to be a centrally administered program which provides physical, psychological, social, and spiritual care for terminally ill persons, as well as a variety of social, psychological and supportive services for their families.

The hospice concept views the patient and family as a single unit of care. Particularly in the United States, hospices focus on providing care in the patient's home, although some hospices also offer inpatient services. A medically supervised interdisciplinary team of professionals and volunteers provides the hospice services, which are available on a 24-hour basis. Hospices stress palliative care—that is, control of pain and other symptoms of terminal illness—in order to maximize the

patient's comfort and ability to function. After a patient dies, hospices continue to provide care to the family, including emotional support, during the bereavement period.

The purpose of this new system of records is to provide the billing, cost, and service data needed to reimburse and evaluate the care received by the terminally ill Medicare beneficiaries, Medicaid recipients, and their families served by the 26 participating hospices. However, to more clearly understand the effects of hospice care and of reimbursement for hospices care, HCFA will also gather comparable, person-specific information on three other groups of terminally ill patients and families: 1) patients served by the 26 demonstration hospices who are neither Medicare beneficiaries nor Medicaid recipients, or who otherwise do not meet the requirements for participation in the demonstration, 2) a selected comparison group of patients served by hospices outside the demonstration, and 3) another selected comparison group of patients served by hospitals and cancer centers which provide conventional medical care. Since patients in these comparison groups may not reside in the same States where the participating hospices are located, HCFA may request some billing and service information from non-participating Medicaid State Agencies.

HCFA will obtain the written informed consent of every individual from whom information is solicited or whose records are abstracted for purposes of the demonstration or its evaluation.

To distinguish among the different patient categories, this Notice will refer to Medicare beneficiaries and Medicaid recipients served by the 26 participating hospices as "patient participants" and to patients served by the participating hospices who are neither Medicare beneficiaries nor Medicaid recipients as "non-participating patients." Persons served by the hospices and hospitals outside the demonstration will be called "comparison patients" or the "patient comparison groups." Likewise, the hospices and hospitals which voluntarily cooperate with HCFA in identifying appropriate samples of their patients for the patient comparison groups will be identified as the "comparison hospices and hospitals."

Through this demonstration, HCFA will attempt to answer several basic questions:

1. What are the medical, social, psychological and other services that hospice patients and their families use, and at what costs?

2. Is hospice care used in addition to, or instead of, conventional care (that is, care provided by hospitals, cancer centers and other traditional providers of care)? How does the cost of hospice care compare to that of conventional care for terminally ill persons?

3. How does the quality of care, and patient and family satisfaction with care, provided by hospices compare with that provided through conventional care settings?

4. What would be the likely effects on hospices, hospice care, and demand for such care if coverage under the Medicare and Medicaid programs and private insurance plans were expanded to include hospice care?

In order to answer these questions, the demonstration and its evaluation will try to capture information on the complete range of services received by patient participants, non-participating patients, and comparison patients during their last months of life, from whatever source of care and whether reimbursed by Medicaid, Medicare, private insurors, or the patients themselves.

The evaluation of this demonstration will be jointly supported by HCFA, the Robert Wood Johnson Foundation, and the John A. Hartford Foundation. To assist in this effort, HCFA has selected a grantee, Brown University, who will conduct an independent study of the project in terms of cost, use, and quality, and acceptability of care provided to terminally ill persons and their primary care givers.

With the assistance of Brown University, HCFA will identify approximately six hospitals or cancer centers and six hospices not participating in the demonstration who will be invited to cooperate voluntarily in selecting appropriate samples of their patients and in providing data on services to their patients. Those patients who give their consent will become members of the patient comparison groups for purposes of data collection and evaluation.

Billing data in the demonstration records system concerning services received by participating patients will have the combined purposes of bill processing, reimbursement, and evaluation. HCFA and Brown University will use the additional information provided by other billing records in the system, the patient/primary care giver profiles, patient discharge forms, service utilization abstracts, the patient and family attitude survey, and the master demonstration file for purposes of evaluation. Results of the evaluation will assist the Department of Health and Human Services and the Congress in determining whether and to what extent hospice care should be covered under the Medicare and Medicaid programs.

Further, information collected for evaluation purposes will have an added use during the demonstration of monitoring the acceptability and appropriateness of the hospice services provided to patients and families. This function to important because hospices regard the home care they provide as an alternative to institutional care of dying patients. While the appropriateness of care offered by hospitals is usually reviewed by local Professional Standards Review Organizations (PSRO's), no equivalent review exists for home health care.

The fiscal intermediary for Medicare payments under the demonstration will be the Division of Health Services Studies (DHSS), Office of Direct Reimbursement, Bureau of Support Services, HCFA. Medicaid State Agencies may continue to use their regular fiscal agents, or may request DHSS to serve in this capacity.

Dated: January 16, 1981.

Howard Newman,

Administrator, Health Care Financing Administration.

09-70-0034

SYSTEM NAME:

Medicare/Medicaid Hospice Demonstration, HHS/HCFA/ORDS

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Health Care Financing Administration, Bureau of Support Services, Office of Health Program Systems, Program Support Branch, Operations Building, 6401 Security Boulevard, Baltimore, Maryland 21235.

Health Care Financing Administration, Bureau of Support Services, Office of Direct Reimbursement, Division of Health Services Studies, 6401 Security Boulevard, Baltimore, Maryland 21235.

Washington National Records Center, Reference Branch, 4205 Suitland Road, Suitland, Maryland 20409.

Brown University, Division of Biology and Medicine, Arnold Lab Building, 97 Waterman Street, Providence, Rhode Island 02912.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

1. Terminally ill Medicare beneficiaries and their primary care givers (that is, a family member, a friend, or an attendant paid by the patient or family) who receive hospice

services from the 26 participating hospices and who have given written informed consent to participate in the demonstration. These patients will be called "patient participants" in this Notice (Requirements for patient participation are listed at the end of this section);

2. Terminally ill Medicaid (Medi-Cal) recipients and their primary care givers who receive hospice services at 24 of the participating hospices under the 14 participating State Medicaid programs, and who have given written informed consent to participate in the demonstration. These patients also will be called "patient participants;"

3. Terminally ill patients and their primary care givers who receive services in the 26 participating hospices, but who are neither Medicare beneficiaries nor Medicaid recipients, or who otherwise do not meet the requirements for participation in the demonstration. Individuals in this category must give a written informed consent in order to be covered by this record system. These patients will be called "nonparticipating patients;"

4. Terminally ill patients and their primary care givers served by selected hospices outside the demonstration, and who have given a written informed consent to be covered by this record system. These individuals will be called "comparison patients" or members of the "patient comparison groups" in this Notice;

5. Terminally ill patients and their primary care givers who receive conventional care from selected hospitals or cancer centers, and who have given a written informed consent to be covered by this record system. These individuals also will be called "comparison patients" or members of the "patient comparison groups" in this Notice.

In order to participate in the demonstration, patients must have: (1) a life expectancy of 6 months or less as certified by a physician, (2) a primary care giver, such as a relative, friend, or paid attendant who is available to provide simple personal care and emotional support on an around-the-clock basis, and (3) entitlement to Hospital Insurance Benefits (Medicare Part A) and Supplementary Medical Insurance Benefits (Medicare Part B) and/or eligibility under Medicaid. The Health Care Financing Administration (HCFA) will "waive," or temporarily not enforce, some provisions of the Medicare and Medicaid laws in order to permit payment for certain hospice services which are not now covered under these two programs. HCFA will reimburse for waivered services provided only to patient participants and their primary care givers (the first two categories above).

CATEGORIES OF RECORDS IN THE SYSTEM:

1. Bills for hospice-type services waivered or currently covered by Medicare, which are submitted to HCFA by the 26 participating hospices. Billing and service information will show patient names and health insurance claim numbers (HI claim numbers);

2. Quarterly service utilization reports produced by HCFA from billing records. These reports will show Medicare services, by patient name and HI claim number, for which payment was made under the demonstration;

3. Billing information on hospice-type services waivered or currently covered by Medicaid, which is submitted by the participating hospices to participating Medicaid State Agencies or to HCFA. These records will show patient names and unique numberical identifiers;

4. Billing information on other non-waivered services received by patient participants, non-pariticipating patients, or comparison patients from the participating hospices, the comparison hospices and hospitals, or other sources of care. This category of records will include hard copy or magnetic tapes of billing and service data supplied by participating and non-participating Medicaid State Agencies and cooperating private insurors, as well as information extracted from selected Medicare claims and enrollment files that are covered by existing systems notices;

5. Patient/primary care giver profile forms which will show patient name and HI claim number or other unique identifier. These hospice forms will provide information such as the patient's current status and prognosis, the array of patient/family needs, and appropriateness of hospice care for these needs. In addition, the profile forms will supply a variety of demographic, financial, and insurance data, including whether or not the patient is receiving Social Security disability benefits;

6. Patient discharge data forms which will show patient name and HI claim number of other unique identifier. These forms will provide information on total days of services received in inpatient and home care settings, reason for discharge, and place of death;

7. Service utilization abstracts which will show patient name and HI claim number of other unique identifier. These records will be updated periodically for all categories of individuals in the system and will document services provided to each patient and primary care giver, time required for each service, and type of professional (or volunteer) providing the services. The abstracts will also document bereavement services to the primary care giver following the patient's death;

8. Survey on the "Impact of Hospice Care on Patient and Family." Survey forms will show patient name and HI claim number or other unique identifier. This survey will be a major source of information for the independent evaluator in determining the quality and acceptability of services provided to terminally ill patients. The questions will focus on the patient's experience of pain and other symptoms, functional and emotional status of the patient, and patient and primary care giver attitudes toward care received.

9. Master demonstration file, indexed by patient name and HI claim number or other unique identifier, containing all billing, service, and evaluation data included in the other system of records listed above.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 402 of the Social Security Amendments of 1967, Public Law 90-248, as amended by section 222(b) of the Social Security Amendments of 1972, Public Law 92-603, and section 1115(a) of the Social Security Act, as amended by section 404 of the Social Security Amendments of 1977, Public Law 95-216.

PURPOSE(S):

The purpose of this system of records is: (1) to provide billing, cost, and service data necessary to reimburse and evaluate the care received by terminally ill Medicare beneficiaries, Medicaid recipients, and their primary care givers from hospice organizations selected to participate in the demonstration; (2) to furnish information necessary to evaluate the services received by other groups of terminally ill patients and their families; (3) to develop national policy recommendations to the Congress; (4) to validate the work of the independent evaluator; (5) to provide national data projections as a basis for actuarial estimates of the cost of the hospice program and the cost of terminal illness in general; and (6) for additional internal analyses.

HCFA may also provide information from the record of an individual to other agencies of the Department of Health and Human Services, such as the Social Security Administration.

HCFA will obtain the written informed consent of every individual from whom information is solicited or whose records are abstracted for

purposes of the demonstration or its evaluation.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. Brown University will receive all information in the system from billing, service utilization, patient/primary care giver profile and patient/family attitude records, either in hard copy, magnetic tape, or flexible diskette form, and store it in the master demonstration file, a magnetic tape. The evaluator will use this information to assess the cost, use, quality and acceptability of care provided to terminally ill patients in both the demonstration and comparison groups;

2. HCFA may disclose a record from this system of records as a "routine use" to an individual or organization for a research, evaluation, or epidemiological project related to the prevention of disease or disability, or the restoration or maintenance of health if HCFA:

a. determines that the use or disclosure does not violate legal limitations under which the record was provided, collected, or obtained;

b. determines that the purpose for which the disclosure is to be made:

(1) cannot be reasonably accomplished unless the record is provided in individually identifiable form,

(2) is of sufficient importance to warrant the effect and/or risk on the privacy of the individual that additonal exposure of the record might bring, and

(3) there is reasonable probability that the objective for the use would be accomplished;

c. requires the information recipient to:

(1) establish reasonable administrative, technical, and physical safeguards to prevent unauthorized use or disclosure of the record, and

(2) remove or destroy the information that allows the individual to be identified at the earliest time at which removal or destruction can be accomplished consistent with the purpose of the project, unless the information recipient presents an adequate justification of a research or health nature for retaining such information, and

(3) make no further use or disclosure of the record except:

(a) in emergency circumstances affecting the health or safety of any individual,

(b) for use in another research project, under these same conditions, and with written authorization of HCFA,

(c) for disclosure to a properly identified person for the purpose of an audit related to the research project, if information that would enable research subjects to be identified is removed or destroyed at the earliest opportunity consistent with the purpose of the audit, or

(d) when required by law;

d. secures a written statement attesting to the information recipient's understanding of and willingness to abide by these provisions.

3. HCFA may make disclosures to a congressional office from the record of an individual in response to an inquiry which the congressional office makes at the request of that individual;

4. In event of litigation where the defendant is (a) the Department, any component of the Department, or any employee of the Department in his or her official capacity; (b) the United States where the Department determines that the claim, if successful, is likely to directly affect the operations of the Department or any of its components; or (c) any Department employee in his or her individual capacity where the Justice Department has agreed to represent such employee, the Department may disclose such records as it deems desirable or necessary to the Department of Justice to enable that Department to present an effective defense, provided such disclosure is compatible with the purpose for which the records were collected;

5. HCFA may make disclosures to a participating Medicaid State Agency from the record of a Medicaid recipient who resides in that State.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

Participating hospices will transmit hard copy or tapes of billing information for services that are waivered or currently covered by Medicare to Division of Health Services Studies, Office of Direct Reimbursement (DHSS/ODR), HCFA. This Office will serve as the fiscal intermediary for Medicare payments under the demonstration. DHSS/ODR will transfer this information to an automated record system using flexible diskettes. After the operational phase of the demonstration, this information will be transferred to magnetic tape.

Some participating Medicaid State Agencies have also chosen to use DHSS/ODR as their fiscal intermediary for the demonstration. In these States, participating hospices will also submit Medicaid bills to DHSS/ODR. Other Medicaid State Agencies which use their regular intermediaries for the demonstration will transmit billing information to the independent evaluator.

Besides Medicaid bills, Brown University will also receive copies of all other records in the system, whether generated by DHSS/ODR, Medicaid State Agencies, or cooperating private insurors. From these records and from information extracted from Medicare claims and enrollment files, Brown University will create a master demonstration file (a magnetic tape). HCFA will hold a duplicate of this master file.

HCFA and Brown University will store records in hard copy, flexible diskette and magnetic tape form.

RETRIEVABILITY:

(a) HCFA will store and retrieve Medicare and Medicaid billing data by beneficiary name and HI claim number or other unique identifier.

(b) HCFA will retrieve data from the master demonstration file by patient name and HI claim number or other unique identifier.

SAFEGUARDS:

HCFA and Brown University will maintain all records in secure storage areas accessible only to authorized employees and will notify all employees having access to records of criminal sanctions for unauthorized disclosure of information on individuals. For computerized records, HCFA and Brown University will initiate automated data processing (ADP) systems security procedures required by the Department's ADP Systems Manual, Part 6, ADP Systems Security. As examples of system safeguards, DHSS/ODR, which will process the majority of bills submitted by the participating hospices, will store all magnetic tapes in a locked tape library in a locked computer room. The mini-computer used by DHSS/ODR is not linked to any outside terminals and so there is no access to the system beyond the secured computer room. Moreover, only specific personnel may enter this room. The building housing this system is guarded during non-work hours.

RETENTION AND DISPOSAL:

HCFA and Brown University will retain these records for the life of the demonstration and the evaluation. HCFA then will destroy all information in records from the demonstration and evaluation which contain personal identifiers, whether in hard copy records or on magnetic tapes or flexible diskettes. The sole exception will be the hard copy Medicare billing records. Upon completion of the evaluation, these billing records will be sent to the

Washington National Records Center in Suitland, Maryland. Records on bills for the Hospital Insurance Program will be destroyed 8-years after payment is made, and records on bills for the Supplementary Medical Insurance Program will be destroyed 5-years after payment is made.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Office of Research, Demonstrations and Statistics, Health Care Financing Administration, Room 4228, HHS Building, 330 Independence Avenue, S.W., Washington, D.C. 20201.

NOTIFICATION PROCEDURE:

Individuals should address inquiries and request concerning system records to the system manager, indicated above, specifying name, approximate date of service (if known), and hospice or hospital. An individual who requests notification or access to a medical record shall, at the time the request is made, designate in writing a responsible representative who will be willing to review the record and inform the subject individual of its contents at the representative's discretion. These notification and access procedures are in accordance with Department Regulations (45 CFR 5b).

RECORD ACCESS PROCEDURE:

Individuals who participating in the demonstration project may request their data records in writing. Access procedure is the same as the notification procedure. Requestor should reasonably specify the record contents being sought. These access procedures are in accordance with Department Regulations (45 CFR 5b).

CONTESTING RECORD PROCEDURES:

An individual who wishes to contest the contents of any record in this system should contact the system manager, reasonably identify the record, and specify the information to be contested and the reason for contesting it, e.g., why it is inaccurate or incomplete. These procedures are in accordance with Department Regulations (45 CFR 5b).

RECORD SOURCE CATEGORIES:

Sources of information contained in this record system include individual patients and primary care givers, the participating hospices, the comparison hospices and hospitals, participating and selected non-participating Medicaid State Agencies, cooperating private insurors, and selected HCFA enrollment and claims files.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

Appendix A—Participating Hospices

Genesee Region Home Care Association, 311 Alexander Street, Rochester, New York 14604.

Connecticut Hospice, Inc., 61 Burban Drive, Branford, Connecticut 06405.

Overlook Hospital, Division of Community Health, 193 Morris Avenue, Summit, New Jersey 07901.

Medical College of Virginia, Box 37, MCV Station, Richmond, Virginia 23298.

Visiting Nurse Association of Dallas, 4916 Greenville Avenue, Dallas, Texas 75206.

Hospital Home Health Care, 400 Walter N.E., Suite 316, Albuquerque, New Mexico 87102.

Hospice Care, Inc., 8691 78th Avenue, North, Seminole, Florida 33543.

Providence Medical Center, 700 N.E. 47th Avenue, Portland, Oregon 97213.

Bethesda Lutheran Medical Center, 559 Capitol Boulevard, St. Paul, Minnesota 55103.

Bellin Memorial Hospital, P.O. Box 1700, 744 South Webster Avenue, Green Bay, Wisconsin 54305.

Community Home Health Care, 2627 Eastlake Avenue East, Seattle, Washington 98102.

Cabrini Medical Center, 227 East 19th Street, New York, New York 10003.

San Diego County Hospice Corporation, 3134 El Cajon Boulevard, San Diego, California 92104.

Hospice of Northern Virginia, Inc., 4715 North 15th Street, Arlington, Virigina 22205.

Santa Barbara Visting Nurse Association, 133 East Haley Street, Santa Barbara, California 93101.

Boulder County Hospice, 2118 14th Street, Boulder, Colorado 80302.

University of Massachusetts Medical Center, Palliative Care Service, Inc., 55 Lake Avenue, North, Worcester, Massachusetts 01605.

Hospital Home Health Care Agency of California, 23228 Hawthorne Bouldevard, Torrance, California 90505.

San Pedro Peninsula Hospital, 1300 West Seventh Street, San Pedro, California 90732.

St. Benedict Hospital and Nursing Home, Johnson at South Alamo, San Antonio, Texas 78204.

Hospice, Inc., 111 N.W. 10th Avenue, Miami, Florida 33128.

Hospice of the Good Shepherd, Inc., P.O. Box 144, Weban, Massachusetts 02186.

Visiting Nurse Association, Inc., 280 College Street, Burlington, Vermont 05401.

Hospice of Marin, 77 Mark Drive, #8, San Rafael, California 94903.

Rogers Memorial Hospital, Inc., 34810 Pabst Road, Oconomowoc, Wisconsin 53066.

Luthern Medical Center, Continuing Care Unit, 2839 Miami Street, St. Louis, Missouri 63118.

Appendix B—Participating Medicaid State Agencies

Colorado Department of Social Services, 1574 Sherman Street, Denver, Colorado 80203.

New Jersey Department of Human Services, 324 East State Street, Trenton, New Jersey 08625.

Department of Social Welfare, State Office Building, Montpelier, Vermont 05602.

Department of Social and Health Services, Division of Medical Assistance LK-11, Office of Medical Policy and Procedure, Olympia, Washington 98504.

Department of Human Services, Income Support Division, P.O. Box 2348, Santa Fe, New Mexico 87503.

Department of Health Services, 714 P Street, Sacramento, California 95814.

Department of Health and Rehabilitative Services, 1317 Winewood Boulevard, Tallahassee, Florida 32301.

New York State Department of Social Services, 40 North Pearl Street, Albany, New York 12243.

Department of Health, 109 Governor Street, Richmond, Virginia 23219.

Department of Health and Social Services, Room 642, 1 West Wilson Street, Madison, Wisconsin 53702.

Department of Income Maintenance, 110 Bartholomew Avenue, Hartford, Connecticut 06115.

Department of Public Welfare, Income Maintenance Division, 690 North Robert Street, St. Paul, Minnesota 55164.

Department of Public Welfare, 600 Washington Street, Boston, Massachusetts 02111.

Texas Department of Human Resources, P.O. Box 2960, Austin, Texas 78769.

[FR Doc. 81-2389 Filed 1-22-81; 8:45 am]

BILLING CODE 4110-85-M

Privacy Act of 1974; Report of New System

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notification of new system of records.

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, we are proposing to establish a new system of records:

Evaluation of the Home Dialysis Aide Demonstration HCFA No. 09-70-0023.

We have provided background information about the proposed system in the "Supplementary Information" section below. HCFA invites public comments with respect to routine uses of the system.

DATES: HCFA has sent a report of the new system to the Speaker of the House of Representatives, the President of the Senate and the Director, Office of Management and Budget, on January 16, 1981. HCFA has requested that OMB

grant a waiver of the usual requirement that a new system of records not be put into effect until 60 days after the report is sent to OMB and Congress. If this waiver is granted, the new system will be effective on the date of the waiver except for the routine uses. The routine uses will become effective as proposed without further notice on March 17, 1981, provided HCFA does not receive comments which would result in a contrary determination or when the system becomes effective, whichever is later.

ADDRESS: The public should address comments to the Privacy Officer, Office of Management and Budget, Health Care Financing Administration, Bay A–3, 1710 Gwynn Oak Avenue, Baltimore, Maryland 21207. Comments received will be available for inspection at this location.

FOR FURTHER INFORMATION CONTACT: Mr. Spike Duzor, Office of Research, Demonstrations and Statistics, Room 1–E–6, Oak Meadows Building, 6340 Security Boulevard, Baltimore, Maryland 21207, Telephone (301) 597–2367.

SUPPLEMENTARY INFORMATION: HCFA proposes to initiate a new system of collecting data under the authority of Section 402 of the Social Security Amendments of 1967, Public Law 90–248, as amended by Section 222(b) of the Social Security Amendments of 1972, Public Law 92–603, and Pub. L. 95–292.

During 1978, HCFA initiated three demonstration projects to test changes in Medicare program policies in the area of ESRD. These changes in Medicare policies are intended to affect decisions regarding the location in which hemodialysis (the major treatment for ESRD) is performed. Since the start of the ESRD program, the proportion of patients dialyzing at home has decreased significantly. Many experts believe home dialysis is less expensive, of equal medical care quality and may provide intangible benefits to the patient in comparison to dialysis in an ESRD facility, but that current policies may contain disincentives for home dialysis.

This new system of records will provide the utilization, attitude, cost, and quality of care data necessary to evaluate the dialysis care received by patients in both the experimental and control facilities under the three demonstrations. Persons served by selected experimental facilities will receive additional Medicare benefits, and may choose to dialyze at home, with or without an aide, or in a facility as an outpatient. Persons served by control facilities within the demonstrations will receive no additional Medicare esrd benefits. Thus, comparison patients may decide to dialyze at home, with or without an aide, or receive treatments in a dialysis facility.

If home dialysis can be definitely demonstrated to be cheaper and at the same time not adversely affect the quality of care, the Medicare program may be able to save a significant proportion of ESRD funds.

The Orkand Corporation will be conducting the evaluation of the Home Aide Demonstrations. In conducting the evaluation, we propose to survey patients and staff participating in the demonstration. Specifically, these survey activities will include:

• ESRD Patient Survey

Personal interview with a sample of home and facility patients who are participating in the demonstration. Data will be gathered on patient attitudes regarding modality of dialysis, health status and health care cost.

• Home Dialysis Aide

Personal interviews with a sample of aides participating in the demonstration. Data will be gathered on aide attitudes concerning training techniques, job satisfaction and patient relationships.

• ESRD Physicians

Personal interviews with a sample of physicians participating in the demonstration. Data will be gathered on physician attitudes regarding criteria for selecting appropriate patient modalities and experiences of utilizing paid aides.

• Home Training Nurses

Personal interviews with all nurses home training coordinators for the demonstration. Data will be gathered to solicit nurses views for home training procedures and the viability of paid aides.

Dated: January 16, 1981.

Howard Newman,

Administrator, Health Care Financing Administration.

SYSTEM NAME:

Evaluation of Home Dialysis Aide Experiment, HHS/HCFA/ORDS.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

The Orkand Corporation, 8630 Fenton Street, Suite 938, Silver Spring, Maryland 20910.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

1. Chronically ill Medicare beneficiaries with end-stage renal disease (ESRD) who dialyze at home, with or without a dialysis aide, or who dialyze in a facility as an outpatient; who receive dialysis services from participating experimental facilities; and who have signed the informed consent form for the demonstration and evaluation. (Note: For purposes of the demonstrations and the evaluation, dialysis aides have been defined as: Partner—a paid or non-paid family member; Assistant—a paid or non-paid, non-family member; Aide—generic term for either of the above.) The Health Care Financing Administration (HCFA) will permit payment for certain dialysis services (aide service and/or equipment) provided to these individuals and their aides which are not now covered under Medicare. These patients will be called "experimental patients" in this Notice.

2. Chronically ill Medicare beneficaries with end-stage renal disease who dialyze at home, with or without an aide, or who dialyze in a facility as an outpatient; who receive dialysis services from participating control facilities; and who have signed the informed consent form for the evaluation. These patients will be called "control patients" in this Notice.

CATEGORIES OF RECORDS IN THE SYSTEM:

1. Patient questionnaires administered to approximatley 1,500 patients, both home and in-facility, at both experimental and control facilities. These questionnaires will provide sociodemographic information on each patient; patient dialysis history and experience; out-of-pocket expenses incurred; and patient attitudes towards dialysis, training, aides, location of dialysis and a comparison of home to facility dialysis. Questionnaires will show patient name and health insurance claim number (HI claim number).

2. Aide questionnaires will show name and identify the aide's sociodemographic characteristics and employment experience as a dialysis aide and in other jobs. The questionnaire focuses on job attitudes, satisfaction with home training, responsibilites involved, facility support activities, and the job itself.

3. Aide record abstracts will identify aides by name and provide sociodemographic characteristics, occupational background, home training experience, employment history, amount of time spent in assisting patients with dialysis, and number of patients served.

4. Training records will identify patients by name and HI claim number and aides by name. Data will be provided on length of training, testing frequency and results, and retraining needed.

5. Medical records for both home and in-facility patients selected will identify

patients by name and HI claim number. Data will be provided on adverse dialysis events, monitoring and support services received, underlying diagnosis of renal disease, type of treatment received, and cause of death, if applicable.

6. Patient billing records will identify patients by name and HI claim number and will provide information on charges for specific dialysis services to Medicare, Medicaid, third party payors, and to the patient. Information will also be provided on payments made by various payors, amount disallowed by Medicare, and amount not paid.

7. Demonstration contractor data will also be entered into the system and identify patient by name and HI claim number. Demographic information will be provided and a breakdown of dialysis sessions recorded, type of aide, type of treatment, location of dialysis, and date of transplant, transfer, or death.

8. Information on patients will also be obtained from the supplemental Medicare billing forms. This data will be linked to other sources of data through a patient's HI claim number. Information to be provided includes patient history and treatment plan (HCFA 2742), outpatient dialysis service information (HCFA 2743), and death notification (HCFA 600-2).

9. Master magnetic tape file containing all utilization, quality, attitude, and cost data included in the other system records listed above.

10. HCFA will obtain written informed consent of every individual from whom information is solicited or whose records are abstracted for purposes of the demonstrations and evaluation.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 402 of the Social Security Amendments of 1967, Public Law 90-248, as amended by Section 222(b) of the Social Security Amendments of 1972, Pub. L. 92-603, and Pub. L. 95-292.

PURPOSE(S):

To provide utilization, attitude, cost, and quality data necessary to evaluate the dialysis care received by patients who dialyze at home, with or without an aide, or in-facility, and who are served by selected facilities participating in three demonstration projects sponsored by HCFA. The participating experimental facilities are identified in Appendix A and the participating control facilities are identified in Appendix B.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

1. The independent evaluator will receive all information in the system from patient questionnaires, aide questionnaires, patient records, aide records, facility records, demonstration contractor records, intermediaries, and selected HCFA files either in hard copy, magnetic tape, or cards and store it in a master file. The independent evaluator will use this information to evaluate the cost, quality, attitudes, and utilization of dialysis care provided to home and in-facility patients in both the experimental and control facilities participating in the Home Dialysis Aid demonstrations. Once patient questionnaire information is linked to patient billing and medical records, all personal identifiers will be removed from the file.

2. Disclosure may be made to a Congressional office from the record of an individual in response to an inquiry from the Congressional office made at the request of that individual.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

The independent evaluator will store records in hard copy and magnetic tape form.

RETRIEVABILITY:

Records are indexed by HI claim number or other unique identifier.

SAFEGUARDS:

The independent evaluator will maintain all records in secure storage areas accessible only to authorized employees and will notify all employees having access to records of criminal sanctions for unauthorized disclosure of information on individuals. Authorized HCFA representatives will upon request, be granted access to premises where records are kept for the purpose of inspecting physical security arrangements. However, no data will be released with identifying information. For computerized records, the independent evaluator will initiate automated data processing (ADP) system security procedures required by the Department's ADP Systems Manual, Part 6, ADP Systems Security, e.g. use of passwords.

RETENTION AND DISPOSAL:

The independent evaluator will hold hard-copy records, magnetic tapes, and cards until patient and aide-specific data are received and compiled. All identifying information and hard-copy will then be destroyed, thus protecting the confidentiality of all information collected. The Orkand Corporation will retain all records for the life of the evaluation (September 30, 1982) and then these records will become the custody of the Office of Research, Demonstrations and Statistics, HCFA. The independent evaluator will not retain any patient-based files. Data supplied to HCFA will not include patient identifiers. No data which would possibly identify an individual will be supplied.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Office of Research, Demonstrations, and Statistics, Health Care Financing Administration, Room 4228 HHS Building, 330 Independence Avenue, S.W., Washington, D.C. 20201.

NOTIFICATION PROCEDURE:

Individuals should address inquires and requests concerning system records to the system manager indicated above, specifying name, approximate date of service (if known), and ESRD facility. An individual who requests notification or access to a medical record shall, at the time the request is made, designate in writing a responsible representative who will be willing to review the record and inform the subject individual of its contents at the representative's discretion. These notification and access procedures are in accordance with Department Regulations (45 CFR 5b).

RECORD ACCESS PROCEDURES:

Individuals participating in the demonstrations and the evaluation may request their data records in writing. Access procedure is the same as the notification procedure. Requestor should reasonably specify the record contents being sought. (These access procedures are in accordance with Department Regulations (45 CFR 5b).)

CONTESTING RECORD PROCEDURES:

An individual who wishes to contest the contests of any record in this system should contact the system manager and reasonably identify and specify the information to be contested and reason for contesting, why it is inaccurate or incomplete. (These procedures are in accordance with Department Regulations (45 CFR 5b).)

RECORD SOURCE CATEGORIES:

Sources of information contained in this record system include individual patients and dialysis aides, participating experimental and control facilities, demonstration contractors, cooperating intermediaries, and selected HCFA files.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

Appendix A

I. University of Utah—Experimental Facilities

1. American Medical Supply, Inc., Denver, CO.
2. Bio-Medical Applications of Fort Collins, Fort Collins, CO.
3. Ogden Limited Care Dialysis Center, Ogden, UT.
4. Pike's Peak Dialysis Center, Colorado Springs, CO.
5. Maintenance Hemodialysis Unit, Presbyterian Medical Center, Denver, CO.
6. Rocky Mountain Kidney Center, Denver, CO.
7. St. Mary Corwin Hospital Hemodialysis Unit, Pueblo, CO.
8. Hemodialysis Unit, St. Mary's Hospital, Grand Junction, CO.
9. Home Training Center, University of Colorado Medical Center, Denver, CO.
10. Dialysis Training Center, University of Utah, Salt Lake City, UT.
11. Utah Dialysis Training Center, University of Utah, Salt Lake City, UT.

II. System Sciences, Inc.—Experimental Facilities

1. Baumritter Kidney Center, Bronx, NY.
2. Downstate Dialysis Center, Brooklyn, NY.
3. El Camino Hospital, Mountain View, CA.
4. Kidney Care, Inc., Jackson, MS.
5. Kidney Care of Florida, Inc., Tampa, FL.
6. Regional Kidney Disease Program, Minneapolis, MN.
7. St. Joseph's Hospital Hemodialysis Center, Orange, CA.
8. The Kidney Center, Boston, MA.

III. Research Triangle Institute—Experimental Facilities

1. A. J. Tannenbaum Medical Associates, Greensboro, NC.
2. Asheville Kidney Center, Asheville, NC.
3. Bowman Gray School of Medicine, Winston-Salem, NC.
4. Carolina Clinic, Inc., Dialysis Unit, Winston, NC.
5. Duke University Medical Center, Durham, NC.
6. Greenville Dialysis Center, Greenville, NC.
7. Nalle Clinic Kidney Center, Charlotte, NC.
8. North Carolina Memorial Hospital, Chapel Hill, NC.
9. Southeastern Kidney Center, Wilmington, NC.

Appendix B

I. University of Utah—Control Facilities

1. Holt-Krock Dialysis Center, Ft. Smith, AR.
2. Hemodialysis Unit, Jewish Hospital of St. Louis, St. Louis, MO.
3. Hemodialysis Unit, Baptist Unit, Baptist Medical Center, Oklahoma City, OK.
4. Hemodialysis Unit, Clinton Regional Hospital, Clinton, OK.
5. Sayre Memorial Hospital, Sayre, OK.
6. Renal Department, Hillcrest Medical Center, Tulsa, OK.

II. System Sciences, Inc.—Control Facilities

1. Bio-Medical Applications of Tampa, Tample, FL.
2. Bio-Medical Applications of Dallas, Dallas, TX.
3. Dade Dialysis Center, Miami, FL.
4. Mt. Diablo Medical Center, Concord, CA.
5. North Central Dialysis Center, Chicago, IL.
6. Northwest Kidney Center, Seattle, WA.
7. Rogosin Kidney Center, New York, NY.
8. UCSD Hemodialysis Unit, San Diego, CA.

III. Research Triangle Institute—Control Facilities

1. Dialysis Clinic, Inc., Nashville, TN.
2. Dialysis Clinic, Inc., Knoxville, TN.
3. Dialysis Clinic, Inc., Chattanooga, TN.
4. Rhea County Hospital, Dayton, TN.
5. Fort Sanders Kidney Center, Inc., Knoxville, TN.
6. Baptist Memorial Hospital, Memphis, TN.
7. East Tennessee Dialysis Center, Johnson City, TN.

[FR Doc. 81-2261 Filed 1-22-81; 8:45 am]

BILLING CODE 4110-35-M

Medicare and Medicaid Programs; Schedules of Limits on Home Health Agency Costs Per Visit, Hospital Inpatient General Routine Operating Costs, and Skilled Nursing Facility Inpatient Routine Service Costs

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: General Notice.

SUMMARY: This document corrects three notices published in the Federal Register this year. These notices set forth schedules of limits on costs for home health agencies, hospitals, and skilled nursing facilities. In deriving these limits, we used a wage index to reflect differences in costs that are correlated with area wage differences. Tables of wage index values for urban and rural areas were published in each notice.

Due to a reporting error, we used incomplete data to calcualate the wage index values for three New England areas. We have since obtained corrected data, and have used this to recalculate the wage index values for these areas. This document sets forth the corrected wage index values.

EFFECTIVE DATES: The Schedule of Limits on Home Health Agency Costs Per Visit (45 FR 38014) and the Schedule of Limits on Hospital Inpatient General Routine Operating Costs (45 FR 41868) are effective for cost reporting periods beginning on or after July 1, 1980. The Schedule of Limits on Skilled Nursing Facility Inpatient Routine Service Costs (45 FR 58639) is effective for cost reporting periods beginning on or after October 1, 1980.

FOR FURTHER INFORMATION CONTACT: Carl Slutter, 301-594-9044.

SUPPLEMENTARY INFORMATION: Section 1861(v)(1) of the Social Security Act (42 U.S.C. 1395x(v)(1)) as amended by section 223 (Limitation on Coverage of Costs) of Pub. L. 92-603, the Social Security Amendments of 1972, authorizes the Secretary to set prospective limits on the costs that are reimbursed under Medicare. These limits may be applied to the direct or indirect overall costs or to costs incurred for specific items or services furnished by a Medicare provider, and may be based on estimates of the cost necessary in the efficient delivery of needed health services.

Regulations implementing this authority are set forth at 42 CFR 405.460. Under this authority, we published the following final notices:

(1) Schedule of Limits on Home Health Agency Costs Per Visit for Cost Reporting Periods Beginning on or after July 1, 1980 (45 FR 38014; published June 5, 1980);

(2) Schedule of Limits on Hospital Inpatient General Routine Operating Costs for Cost Reporting Periods Beginning on or after July 1, 1980 (45 FR 41868, published June 20, 1980); and

(3) Schedule of Limits on Skilled Nursing Facility Inpatint Routine Service Costs for Cost Reporting Periods Beginning on or after October 1, 1980 (45 FR 58639, published September 4, 1980).

To derive and apply each cost limit schedule, we use a wage index to account for provider cost differences that are correlated with area wage differences. We developed this wage index from hospital wage data obtained from the Bureau of Labor Statistics (BLS). The data used are those for the "hospital industry," a standard BLS reporting category. The tables of wage index values published in each notice were based on data for 1978, which are the latest available data.

Due to a reporting error, data on wages and numbers of employees for Federal, State, and local governmental hosptials in New Hamphire were not included in the BLS records, and thus were not used in calculating the wage index in the published notices. Based on corrected BLS data that includes data from governmental hospitals in New Hampshire, we have recomputed the wage index values for all New Hampshire areas. Because Rockingham County, NH, is included in the Boston New England County Metropolitan Area (NECMA), inclusion of the corrected data has also resulted in a change in the wage index value for the Boston

NECMA. The revised index values are as follows:

	Previous index value	Revised index value
Urban areas:		
Manchester-Nashua NH	.9999	.9999
Boston-Lowell-Brockton-Lawrence-Haverhill MA-NH	1.1337	1.1339
Rural area:		
Rural New Hampshire	1.0673	1.0674

The Medicare intermediaries will use these revised wage index values to calculate the cost limits for individual providers in the affected areas, and will notify each provider of its new limit. For hospitals and home health agencies, this will change the cost limits for cost reporting periods beginning on or after July 1, 1980. For skilled nursing facilities, this will change the cost limits for cost reporting periods beginning on or after October 1, 1980.

(Sections 1102, 1814(b), 1861(v)(1), 1866(a), and 1871 of the Social Security Act; 42 U.S.C. 1302, 1395f(b), 1395x(v)(1), 1395cc(a), and 1395hh)

(Catalog of Federal Domestic Assistance Program No. 13.773; Medicare-Hospital Insurance)

Dated: December 23, 1980.

Earl M. Collier, Jr.,

Acting Administrator, Health Care Financing Administration.

Approved: January 16, 1981.

Patricia Roberts Harris,

Secretary.

[FR Doc. 81-2265 Filed 1-23-81; 8:45 am]

BILLING CODE 4110-35-M

Health Services Administration

Project Grants for Genetic Diseases Testing and Counseling Services and Sickle Cell Screening and Education Clinics

AGENCY: Health Services Administration, HHS.

ACTION: Notice of Availability of Grants.

SUMMARY: The Health Services Administration (HSA) announces that applications are being accepted for: (1) voluntary comprehensive genetic diseases testing and counseling services project grants, and (2) sickle cell screening and education services project grants which were funded in the previous fiscal year. Awards will be made under the authority of section 1101 of the Public Health Service (PHS) Act (42 U.S.C. 300b(a)).

Section 1101(a) authorizes the Secretary to make grants to public and nonprofit private entities for projects to plan, establish, and operate voluntary genetic diseases testing and counseling services programs. Section 1104(c) requires that, in doing so, the Secretary give special consideration to previously funded sickle cell screening and education clinics. The regulations implementating these authorities are set forth at 42 CFR Part 51f (44 FR 22857–43).

DATE: Completed applications must be received by 5:00 p.m., April 10, 1981.

ADDRESS: Grants Management Branch, Bureau of Community Health Services, Parklawn Building, Room 6–43, 5600 Fishers Lane, Rockville, Maryland 20857. Telephone number 301 443–1440.

SUPPLEMENTARY INFORMATION: Genetic Diseases Testing and Counseling Services.

A continuing resolution for fiscal year (FY) 1981 (Pub. L. 96–526, effective through June 5, 1981) makes $11.5 million available for operation of this program (Federal Catalog of Domestic Assistance, Number 13.980). Of this amount, it is anticipated that approximately $2.3 million will be available for 15 noncompeting, continuation awards for comprehensive broad-based genetic diseases projects. Approximately $6.0 million will be available to support 19 competing renewals and/or new, competing comprehensive genetic diseases projects. Priority will be afforded to renewal applications from currently funded projects which have performed satisfactorily. The average amount of an award to these broad-based projects will be approximately $220,000.

The Secretary will make grants to eligible applicants for projects which will, in the Secretary's judgment, best promote the purposes of section 1101(a) the Act. Factors which will be considered by the Secretary for approval of awards for comprehensive, broad-based genetic diseases services projects include:

1. The extent to which the project would meet the requirements set forth in 42 CFR 51f.106(a);

2. The number of persons proposed to be served and the extent to which rapid and effective use of funds would be made;

3. The comprehensiveness of the proposed project, with particular attention to the number of genetic diseases with respect to which the applicant intends to provide, either directly or indirectly, screening and testing services;

4. The feasibility of the plan in the application for providing services;

5. The degree to which the project will be operated in conjunction with programs supported under Title V of the Social Security Act, relating to Maternal and Child Health and Crippled Children's Services;

6. The extent to which the project proposes to coordinate its activities with the activities of other health services and genetic disease-related programs, including federally-assisted sickle cell projects, in the service area;

7. Whether the project is or proposes to be a part of a network of services covering the entire service area;

8. The capability of the applicant to provide sound financial management; and

9. The applicant's plans for evaluation in such areas as management efficiency, effectiveness of services, and the degree to which project goals will be met.

To be approved, an applicant must propose to serve an area no smaller than a State unless the Secretary waives this requirement because the applicant demonstrates good cause to serve a smaller area. See 42 CFR 51f.106(a)(2).

The Secretary will give priority to applicants for comprehensive genetic diseases services projects in areas which the Secretary determines have the greatest number of persons who may benefit from and are in need of genetic diseases testing and counseling services. This determination will be based on the size of the general population of the proposed service area and the extent to which available resources are insufficient to meet the needs of that population for these services.

Sickle Cell Screening and Education Services

Of the $11.5 million made available under the continuing resolution for FY 1981, Pub. L. 96–526, it is anticipated that $2.1 million will be used for noncompeting, continuation awards for previously funded sickle cell screening and education clinics which were supported under section 301 of the PHS Act in FY 1979 and were subsequently supported under section 1101 of the Act in FY 1980. The Secretary may support these projects under section 1101 beyond FY 1980 if no areawide network of genetic disease services exists, or if coordination with an existing network could not, in the Secretary's judgment, reasonably have been accomplished within these 2 years. Grants may be awarded to projects which will, in the judgment of the Secretary, best promote the purposes of the Act, taking into account:

1. The extent of the unmet need for sickle cell-related services in the service area;

2. The effectiveness of the project's previous performance with respect to use of funds and provision of services;

3. The effectiveness of the applicant's plan and the soundness of its management;

4. Whether an areawide plan to cover a broad range of genetic diseases has been developed and will be implemented in a service area which includes the service area of the applicant, during the project year for which the applicant requests funding;

5. The effectiveness of the applicant's plan to become a service component in an areawide network of services within the project year, if an areawide network exists;

6. Whether the provision of sickle cell services would be terminated or rendered ineffective if funding were not approved; and

7. The extent to which the project would meet the requirements set forth in § 51f.107 of the regulations.

Health Planning Requirements

All new and competing renewal applications as well as all continuing applications which propose a substantive change in the scope of the project must be submitted to the appropriate A–95 Clearinghouse Agency(s) (see Office of Management and Budget Circular A–95, Revised). A–95 Clearinghouses must have 60 days after receipt of notification from the applicant before the deadline for receipt of applications by the Department of Health and Human Services (HHS). Applicants requesting grant support for new, competing renewals, or continuation projects proposing substantive changes also must submit their applications to the appropriate Health Systems Agency(s) at least 67 days before the due date for completed applications to HHS. (See 42 CFR Part 122).

Application Information

Application kits, including all necessary forms, instructions, and a copy of the program regulations, may be obtained upon written request to the Grants Management Branch, Bureau of Community Health Services, Room 6–49, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857. Telephone number 301 443–1440. Completed applications must be returned to the same office.

Consultation and technical assistance regarding the development of an application are available from Audrey F. Manley, M.D., Office for Maternal and Child Health, Bureau of Community Health Services, Room 7–49, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857. Telephone number 301 443–1080.

Dated: January 15, 1981.

George I. Lythcott,

Administrator.

[FR Doc. 81-2481 Filed 1-22-81; 8:45 am]

BILLING CODE 4110-86-M

Office of Human Development Services White House Conference on Aging, Technical Committee; Change in Meeting

AGENCY HOLDING THE MEETING: Department of Health and Human Services, Office of Human Development Services, White House Conference on Aging, Technical Committee on Older Persons as a Growing National Resource.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 46 FR 2721, January 12, 1981.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: Tuesday, January 27, 1981 from 9:30 am until 3:30 pm at the HHS–North Bldg., 330 Independence Avenue, SW., Washington, D.C. 20201 in Room 5542.

CHANGES IN THE MEETING: The room number has been changed to Room 4758.

Dated: January 19, 1981.

Maizie Welborne,

HDS Committee Management Officer.

[FR Doc. 81-2518 Filed 1-22-81; 8:45 am]

BILLING CODE 4110-88-M

Office of the Secretary

Social Security Administration; Statement of Organization, Functions and Delegations of Authority

The Home Energy Assistance Act of 1980 (Title III of Pub. L. 96–223) provides for making energy assistance available to low-income households. Certain households receiving food stamps, Aid to Families with Dependent Children payments, various Veterans benefits or Supplemental Security Income payments, or whose income is at or below the Bureau of Labor Statistics lower living standard, will be eligible for assistance. Benefits will be made available through block grants to States, territories and Indian tribal organizations. To qualify for block grants, these entities must have approved plans for furnishing home energy assistance.

The Secretary of Health and Human Services (The Secretary) has responsibility for carrying out the provisions of the Home Energy Assistance Act of 1980. Under section 313(a)(1) of the Act, the Secretary may delegate any functions contained in the Act, except the making of regulations.

In order to administer the Low Income Energy Assistance program, the Secretary delegates to the Commissioner of Social Security the following authorities:

1. Authority to establish criteria and standards for State plan requirements and authority to approve or disapprove plans submitted by States, territories[1] and Indian tribal organizations for the distribution of energy assistance funds.

2. Authority to render decisions that constitute final administrative action on appeals of prior Social Security Administration (SSA) disapprovals of energy assistance plans.

3. Authority to waive one or more of the requirements for State plans outlined in section 308(b) of the Home Energy Assistance Act of 1980, to the extent and period necessary to enable a State to administer its program, after determining that a waiver is likely to assist in promoting the objectives of the Act.

4. Authority to approve or disapprove block grants to States, territories and Indian tribal organizations for energy assistance.

5. Authority to reallocate funds where it is determined that the full State allotment will not be required for the period such allotment is available.

6. Authority to approve or disapprove quarterly estimates and reports of final expenditures of funds for energy assistance submitted by States, territories and Indian tribal organizations.

7. Authority to approve or disapprove applications and awards for incentive grants to States that have energy assistance programs serving the same kinds of households as set out in section 305 of the Home Energy Assistance Act of 1980.

8. Authority to withhold payment of funds to States and Indian tribal organizations that fail to substantially comply with any provisions set forth in their plans approved under section 308 of the Home Energy Assistance Act of 1980.

9. Authority to enter into agreements with States to provide payment status data on Supplemental Security Income (SSI) beneficiaries or to arrange for direct payment by SSA of energy assistance benefits to SSI recipients.

10. Authority to certify energy assistance payments to the Department of the Treasury for disbursement to recipients of SSI benefits.

[1] Includes the Commonwealth of Puerto Rico and the insular areas of Guam, American Samoa, the Virgin Islands, the Northern Mariana Islands and the Trust Territory of the Pacific Islands.

11. Authority, under section 306(b)(1)(B) of the Home Energy Assistance Act of 1980, to transfer funds each fiscal year to the Director of the Community Services Administration for energy crisis activities.

12. Authority to perform all other administrative functions (except for promulgation of regulations) necessary to effectuate the Low Income Energy Assistance program, including authority to: Establish uniform standards for data collection by the States; monitor State program administration; utilize the services and facilities of public agencies and institutions and to pay for such services; coordinate the administration of the Low Income Energy Assistance Program with programs authorized by the Economic Opportunity Act of 1964 and other Federal energy programs; establish procedures for referrals for participation in Federal weatherization programs and develop and implement the capacity for estimating total annual energy expenditures of low income households in each State.

These delegations to the Commissioner are effective on January 23, 1981. The Commissioner may redelegate these authorities to the Associate Commissioner for Family Assistance. If the Commissioner or the delegate of the Commissioner exercises any of these authorities before this notice is published in the Federal Register, his or her actions are affirmed and ratified.

Dated: December 31, 1980.

Patricia Roberts Harris,

Secretary of Health and Human Services.

[FR Doc. 81-2221 Filed 1-23-81; 8:45 am]
BILLING CODE 4110-12-M

Public Health Service

Health Maintenance Organizations

AGENCY: Public Health Service, HHS.

ACTION: Notice, Continued Regulation of Health Maintenance Organizations: Determination of Noncompliance.

SUMMARY: On November 30, 1979, the Office of Health Maintenance Organizations determined that Connecticut Health Plan (CHP), 4000 Park Avenue, Bridgeport, Connecticut 06606, a federally qualified health maintenance organization (HMO), was not in compliance with the assurances if had provided to the Secretary that it would maintain a fiscally sound operation, and satisfactory administrative and managerial arrangements. The determination of noncompliance does not itself affect the status of CHP as a federally qualified HMO. Rather, CHP has, in fact, initiated corrective action to bring itself into compliance with the assurances it gave the Secretary.

FOR FURTHER INFORMATION CONTACT: Howard R. Veit, Director, Office of Health Maintenance Organizations, Park Building, 3rd Floor, 12420 Parklawn Drive, Rockville, Maryland 20857, 301/443-4105.

SUPPLEMENTARY INFORMATION: Under Section 1312(b)(1) of the Public Health Service Act (42 U.S.C. 300e-11(b)(1)) (the Act), if the Secretary makes a determination under Section 1312(a) that a qualified HMO which provided assurances to the Secretary under section 1310(b)(1) is not organized or operated in the manner prescribed by section 1301(c), then she shall (1) notify the HMO in writing of the determination, (2) direct the HMO to initiate such action as may be necessary to bring it into compliance with the assurances, and (3) publish the determination in the Federal Register.

On October 24, 1980 OHMO notified CHP that it had reestablished compliance with the assurances that it had given the Secretary that it would maintain a fiscally sound operation and satisfactory administrative and managerial arrangements.

Dated: January 12, 1981.

Howard R. Veit,

Director, Office of Health Maintenance Organizations.

[FR Doc. 81-2297 Filed 1-23-81; 8:45 am]
BILLING CODE 4110-85-M

DEPARTMENT OF AGRICULTURE

Forest Service

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Coal Unsuitability Recommendations for Federal Coal Emergency Lease Application; Meeting

AGENCY: U.S. Forest Service, Agriculture. Bureau of Land Management, Interior.

ACTION: Notice of public meeting.

SUMMARY: Notice is hereby given that the following public participation meeting will be held to discuss the coal unsuitability recommendations for a federal coal emergency lease application (No. U-47080) by Coastal States Energy Company of Houston, Texas. The meeting will be held on February 10, 1981, at 10:00 a.m. in the Sevier County Courthouse Auditorium, Richfield, Utah. Coal unsuitability criteria for the Fishlake Forest and Resource Management Plan will also be discussed at the meeting.

DATE: Comments by February 16, 1981.

FOR FURTHER INFORMATION CONTACT: Andrew E. Godfrey, Forest Planning Staff Officer, U.S. Forest Service, 170 North Main, Richfield, Utah 84701 (801) 896-4491, or Donald L. Pendleton, District Manager, Bureau of Land Management, 150 East 900 North, Richfield, Utah 84701 (801) 896-8221.

SUPPLEMENTARY INFORMATION: Before action can be taken on the request of Coastal States Energy Company for a federal coal emergency lease application, the process of applying the coal unsuitability criteria must be completed.

The following is the legal description of the area (1,158.05 acres) for which Coastal States Energy Company has requested that a federal coal emergency lease application be issued.

T21S, R4E, S.L.M.
Section 25, All
Section 36 N½
T21S, R5E, S.L.M.
Section 30, Lots 2, 3, and 4, W½SE¼
Dated: January 14, 1981.

Jeff M. Sirmon,

Regional Forester.

[FR Doc. 81-2239 Filed 1-23-81; 8:45 am]
BILLING CODE 4310-11-M
BILLING CODE 4310-84-M

DEPARTMENT OF THE INTERIOR

Nevada State Office; Protests to Final Intensive Wilderness Inventory Decisions

The Bureau of Land Management, Nevada State Office, announced its final intensive wilderness inventory decisions in the November 14, 1980 Federal Register on pages 75894-75897. The formal protest period to these decisions announced in that publication has been concluded.

The decisions issued on the following inventory units which were identified as Wilderness Study Areas have been protested:

Unit No.	Unit name	Acres in unit
Ely District:		
NV-010-027	Bluebell	23,120
NV-010-033	Goshute Peak	101,240
NV-010-035	South Pequop	43,020
NV-010-103	Cleveland Canyon	17,320
NV-010-122	Little Humboldt River	21,320
NV-010-191	Rough Hills	6,320
NV-010-194	Bad Lands	72,420
Winnemucca District:		
NV-020-020-A/CA-020-014	East Fork High Rock Canyon	23,320

Unit No.	Unit name	Acres in unit
NV-020-007	High Rock Lake	72,500
NV-020-009/CA-020-013.	Little High Rock Canyon	68,573
NV-020-012/CA-020-021/016.	Pueblo Mountain	157,100
NV-020-014	Fox Mountain Range	51,491
NV-020-019	Calico Mountains	67,681
NV-020-020	Selenite Mountain	34,731
NV-020-021	Mt. Limbo	34,512
NV-020-026	Tobin Range	38,572
NV-020-030	Star Lake	32,224
NV-020-035	South Jackson Mountains.	68,214
NV-020-036	North Jackson Mountains	36,428
NV-020-039	Black Rock Desert	35,300
NV-020-021	Pahute Peak	35,472
NV-020-022	North Black Rock Range	34,300
NV-020-027	McGee Mountain	25,456
NV-020-027	N. Fork Little Humboldt	114,021
NV-020-029/OR-3-153/OR-3-76.	Disaster Peak	37,326
Carson City District:		
NV-030-102	Clan Alpine Mountains	257,000
NV-030-104	Stillwater Range	113,310
NV-030-106	Augusta Mountains	66,000
NV-030-110	Desatoya Mountains	78,160
NV-030-122	Job Peak	116,120
NV-030-127	Gabbs Valley Range	61,139
NV-030-130	Basalt	56,480
NV-030-132	Hortons Mine	2,570
NV-030-135A	Burbank Canyons	14,480
NV-030-231/CA-010-105.	Slinkard	5,440
NV-030-302	Carson Iceberg	800
Ely District:		
NV-040-015	Goshute Canyon	199,680
NV-040-020/UT-060-038.	Granite Ridge	99,100
NV-040-154	Park Range	58,800
NV-040-155	Riordan's Well	100,700
NV-040-157	Table Mountain	57,280
NV-040-208/ UT060-218.	White Rock Range	32,370
NV-040-242	Worthington Mountains	62,400
NV-040-245	Weepah Spring	101,700
Las Vegas District:		
NV-050-0131	East Pahranagat	122,456
NV-050-0132	South Pahroc/Ilite	71,095
NV-050-0154	Madden Pass	11,462
NV-050-0165	Lower Pahranagat Lake	3,350
NV-050-0256	Silver Peak Range North	72,779
NV-050-0260	Pigeon Spring	6,977
NV-050-0264	Queer Mountain	68,780
NV-050-0266	Bonnie Claire Flat	61,779
NV-050-0268	Porter Mine	6,089
NV-050-0269	Amargosa	12,589
NV-050-0270	Nothing Peak	12,095
NV-050-029-82	Gem	2,191
NV-050-0401	Mountain Spring	309,000
NV-050-0414	Pine Creek	34,781
NV-050-0469	Resting Springs Range	21,099
Battle Mountain District:		
NV-060-019	Kawich	39,000
NV-060-060	Reveille Mountain	75,400
NV-060-112	South Reveille	114,556
NV-060-142/162	Pilot Knob Area	117,000
NV-060-168/169	Blue Eagle	72,900
NV-060-163	The Wall	49,300
NV-060-166	Grant Range	6,480
NV-060-169	Fandango	48,800
NV-060-191	Morey	28,760
NV-060-291/341	Antelope	148,300
NV-060-439	Simpson Park	61,800
NV-060-841	Roberts	57,300

	Units pro-tested	Total acreage protested
Elko District	7	450,450
Winnemucca District	16	1,819,370
Carson City District	11	819,210
Ely District	8	969,510
Las Vegas District	15	760,000
Battle Mountain District	12	894,490
Statewide	71	5,264,180

The decisions issued on the following inventory units which were dropped from further consideration because of a lack of wilderness characteristics have been protested:

Unit No.	Unit name	Acres in unit
Elko District:		
NV-010-002	Maverick Springs	84,040
NV-010-002C	Maverick Springs	7,040
NV-010-002E	Maverick Springs	5,080
NV-010-002F	Maverick Springs	31,280
NV-010-016	Spruce Mountain	35,080
NV-010-017	Spruce Ridge	40,080
NV-010-110	Milligan Creek	121,280
NV-010-112	Bullhead	35,180
NV-010-139	Rock Creek	37,080
NV-010-167	Hank's Creek	6,300
Winnemucca District:		
NV-020-036	Granite Mountain	30,280
NV-020-021A	Pahute Peak	32,240
NV-020-041	Pahute Meadows	16,240
Carson City District:		
NV-030-020	Wassuk Range	57,080
NV-030-035	East Pine Nuts	36,785
NV-030-060	Virginia Mountains	69,275
Ely District:		
NV-040-021	Butte Mountains	47,080
NV-040-021A	Butte Mountains	33,480
NV-040-122	Martin Spring	84,000
NV-040-123	West Pancakes	217,823
NV-040-125	South Pancakes	140,400
NV-040-243	Garden Valley Reservoir	99,080
Las Vegas District:		
NV-050-0410	Shenandoah Spring	62,917
Battle Mountain District:		
NV-060-168	Morgan	9,000
NV-060-192	Slanted Buttes	23,600
NV-060-407	Bates Mountain	77,920
NV-060-461	South Fish Creek	104,000

	Units pro-tested	Total acreage protested
Elko District	10	431,460
Winnemucca District	3	69,606
Carson City District	3	105,060
Ely District	6	663,660
Las Vegas District	1	62,917
Battle Mountain District	4	215,280
Statewide	27	1,646,175

The decisions issued on all inventory units that have not been protested are considered final. All Wilderness Study Areas and all inventory units protested will continue to be managed under provisions specified in the *Interim Management Policy and Guidelines for Lands Under Wilderness Review.*

A decision on each protest will be published in a future Federal Register notice. A thirty-day appeal period for all protest decisions will follow that announcement.

Dated: January 9, 1981.

Edward F. Spang,

State Director, Nevada.

[FR Doc. 81-1498 Filed 1-22-81; 8:45 am]

BILLING CODE 4310-84-M

DEPARTMENT OF INTERIOR

Fort Union Regional Coal Team; Meeting

AGENCY: Bureau of Land Management, Interior Department.

ACTION: Notice of Regional Coal Team Meeting.

SUMMARY: Pursuant to the responsibilities set forth in 43 CFR 3400.4(b), the Montana State Office is issuing this notice to announce a Fort Union Regional Coal Team Meeting on February 18 and 19 in the large Conference Room (6th floor) of Granite Tower, 222 North 32nd Street, Billings, Montana. On both days, the meetings will begin at 9:00 a.m.

Some of the items on the agenda are as follows:

Summary of *West-Central North Dakota Management Framework Plan*
Status of Site Specific analysis and Facility Evaluation Reports
Results of Public Response on Information Brochure
Update on Unsuitability Criteria Application
Status of Social and Economic Work
Tract Delineation Reports: Redwater and Golden Valley MFP Areas
Recommended Areas for Tract Delineation: West-Central North Dakota MFP Area
Discussion of Tract Ranking Procedure
Leasing Targets and Production Goals
Discussion of Small Business Set-Aside

The public is welcome to attend. There will be time for questions and comments from the public.

FOR FURTHER INFORMATION AND FOR A COPY OF THE AGENDA, CONTACT: Bill Frey, Assistant Project Manager, Bureau of Land Management, Montana State Office, P.O. Box 30157, Billings, Montana 59107 (406) 657-6632.

Dated: January 13, 1981.

Keenon Richards,

Acting State Director.

[FR Doc. 81-2288 Filed 1-22-81; 8:45 am]

BILLING CODE 4310-84-M

[1784]

Miles City, Montana, District Advisory Council; Meeting

Notice is hereby given, in accordance with Pub. L. 94-579 and 43 CFR Part 1780, that a meeting of the Miles City District Advisory Council will be held Friday, February 27, 1981, at 10:00 a.m. in the Conference Room at the Miles City District, Bureau of Land Management Office, West Highway 10-12, Miles City, Montana.

Agenda for the meeting will include:

1. Coal leasing program.
2. Public Service Program
3. Arrangements for next meeting.

The meeting is open to the public. Interested persons may make oral statements to the Council or file written statements for the council's consideration. Anyone wishing to make an oral statement must notify the District Manager at the Miles City District Office, P.O. Box 940, Miles City, Montana 59301 by February 20, 1981.

Summary minutes of the meeting will be maintained in the District Office and will be available for public inspection and reproduction during regular business hours within 30 days following the meeting.

Robert A. Teegarden,

Assistant District Manager.

[FR Doc. 81-2255 Filed 1-22-81; 8:45 am]

BILLING CODE 4310-84-M

[1784]

Miles City, Montana, District Grazing Advisory Board; Meeting

Notice is hereby given in accordance with Pub. L. 92-463 that a meeting of the Miles City District Grazing Advisory Board will be held Thursday, February 26, 1981. The meeting will begin at 10:00 a.m. in the conference room at the Miles City District Bureau of Land Management Office, West Highway 10-12, Miles City, Montana.

The agenda is as follows:

1. Range Improvements
   (a) Reservoir and other water developments
   (b) Cooperative maintenance
   (c) Contracting methods.
2. Allotment Management Plans
   (a) The drought
   (b) Environment impacts.
3. Arrangements for the next meeting.

The meeting is open to the public. Interested persons may make oral statements for the board's consideration. Anyone wishing to make an oral statement must notify the District Manager, Bureau of Land Management, P.O. Box 940, Miles City, Montana, 59301 by February 20, 1981.

Depending on the number of persons wishing to make statements, a time limit may be established by the District Manager.

Summary minutes of the board meeting will be maintained in the District Office and be available for public inspection and reproduction (during normal business hours) within 30 days following the meeting.

Robert Teegarden,

Assistant District Manager.

[FR Doc. 81-2256 Filed 1-22-81; 8:45 am]

BILLING CODE 4310-84-M

New Mexico; Intent To Prepare a Resource Management Plan

January 13, 1981.

The Department of the Interior, Bureau of Land Management (BLM), Las Cruces District, New Mexico will shortly begin preparation of a Resource Management Plan (RMP), including an Environmental Impact Statement (EIS) as an integral part of the planning process. The plan will make use and management decisions for resources on approximately 2.9 million acres of public land administered by the Bureau in the Las Cruces/Lordsburg Resources Area. The new planning start, under regulations in the code of Federal Regulations Title 43, Subpart 1601, will be the first in New Mexico. The public is invited to participate in the planning process, beginning with the identification of issues and planning criteria.

Geographic Area of the Plan

The plan will consider the public lands and Federal mineral ownership in Dona Ana, Luna, Hidalgo and Grant Counties as one planning unit. This encompasses approximately 2.9 million acres of BLM administered surface and 3.8 million acres of Federal minerals under Federal, State and private surface in the four county area.

Anticipated Issues

Issues that may be addressed during development of the RMP include, but are not limited to, the following: (1) Vegetation allocation for livestock, watershed and wildlife. The issues of range improvements and management intensity will be a part of the vegetation allocation issue. The management of wildlife habitat and watershed are also a part of this issue. (2) Areas to be open or restricted to off-road vehicular use. (3) Determination of wilderness suitability or nonsuitability and the effects of eventual wilderness designation. (4) The need to manage and protect areas of critical environmental concern. (5) Need for public lands for community expansion and for designation of right-of-way corridors or windows. (6) Water needs for resource management projects. (7) Access needs for management and recreational opportunities. (8) Fire management in high threat areas and areas with high use or value. (9) The need for and management of minerals and energy resources, especially oil and gas and geothermal fields. (10) The need to protect and manage habitat for wildlife.

The public is invited to comment on these issues and to suggest other concerns, needs or opportunities for consideration during planning.

Resource Management Planning Process

The preparation or revision of an RMP includes the following steps:

1. *Identification of issues;* an action that gives the public, other Federal agencies and State and local governments an opportunity at the outset of planning to suggest concerns, needs and resource use, development and protection opportunities for consideration in the RMP.

2. *Development of planning criteria* to guide the development of the RMP to ensure that it is tailored to the issues previously identified and to ensure that unnecessary data collection is avoided; to guide the analysis of the management situation; to assist in the design and formulation of alternatives, and to estimate the effects of alternatives.

3. *Inventory data and information collection* (including resource, environmental, social and economic and institutional data).

4. *Analysis of the management situation* to determine the capability of public land resources to respond to needs, concerns and opportunities identified through public participation and coordination with other publics; issues identified earlier in the planning process; and national and State Director guidance.

5. *Formulation of management alternatives* for the resources in the Resource Area. Several complete, reasonable alternatives will be prepared for the Resource Area. One will be for no action, which means continuation of present levels or systems of resource use. The other alternatives will provide a range of choices from those favoring resource protection to those favoring resource production.

6. *Estimation of the effects of the alternatives.*

7. *Selection of a preferred alternatives,* which is incorporated into the draft plan and draft environmental impact statement.

8. *Development of a proposed RMP* and final environmental impact statement.

9. *Monitoring and evaluation* of plan implementation after approval, at intervals of not more than five years.

Key Dates for the Las Cruces/Lordsburg RMP

Approval of issues and criteria for the plan—April 1981
Completion of inventories and information collection—October 1982
Completion of the management situation analysis—February 1983
Completion of alternatives formulation—April 1983
Completion of estimation of effects of alternatives—May 1983
Selection of a preferred alternative—May 1983
Publication of draft RMP—November 1983
Publication of final RMP—July 1984
Approval and publication of decision—September 1984

Interdisciplinary Team

The RMP will be developed by an interdisciplinary team under the supervision of the Las Cruces District Manager. Individuals working on the plan full-time will be a team leader, a writer-editor, an economist, one specialist representing the renewable resource disciplines and another specialist representing the nonrenewable resource disciplines. Additional technical support will be provided by Area and District staff specialists as needed.

Public Participation Plan

A comprehensive public participation plan covering the period from October 1, 1980, through September 30, 1984, has been prepared. It is intended to involve interested or affected parties early and continuously throughout the planning process. An individual may protest approval of a final RMP only with respect to those items he submitted in writing to the District Manager during the planning process. The public participation plan is flexible and designed to accommodate the unique situations caused by the scattered nature of BLM's ownership pattern and the variety of affected publics. The plan generally follows a "grass roots" approach to public involvement, emphasizing localized, one-to-one contacts and extensive direct mailings, as well as continual coordination with local, State and other Federal agencies.

A booklet on the RMP has been scheduled to be mailed out during March 1981. The booklet is intended to introduce interested parties to the RMP process and to involve the public in the identification of issues and the development of planning criteria. The availability for comment of proposed issues and planning criteria developed as a result of initial public involvement will be announced in the Federal Register before formal approval and use in planning.

Public Meetings and Formal Notices

Workshops, briefings and group discussions will be scheduled in conjunction with meetings of the District Advisory Council and the Grazing Advisory Board, to assure full representation and participation of interested and affected publics. Additional Federal Register notices and news releases will accompany publication of the draft RMP and environmental impact statement (upon which there will be a 90-day review and comment period) in November 1983, publication of the final RMP and environmental impact statement (which will trigger a 30-day opportunity for protest) in July 1984, and the final decision in September 1984.

This schedule is tentative, and may be changed as the planning process unfolds. Complete records of all public participation events will be available for public review throughout development of the RMP. Records pertaining to the analysis and conclusions reached by the District Manager and staff throughout the planning and environmental analysis process will also be maintained and will be available for inspection on request.

Additional Information

For information about resource management planning in the Las Cruces District—to review planning maps and narratives, to be placed on the mailing list, to obtain copies of the public participation plan or other information, or to offer data or assistance—contact one of the following individuals:

William J. Harkenrider, Jr., Las Cruces/Lordsburg Area Manager,
or
Diana Edwards, Public Affairs Officer, U.S. Bureau of Land Management, 1705 N. Valley Drive, P.O. Box 1420, Las Cruces, New Mexico 88001, Telephone: (505) 523-5571; FTS 572-0257.

Larry Woodard,
Acting New Mexico State Director.

[FR Doc. 81-2280 Filed 1-22-81; 8:45 am]
BILLING CODE 4310-84-M

DEPARTMENT OF THE INTERIOR

Geological Survey

Oil and Gas and Sulphur Operations in the Outer Continental Shelf

AGENCY: U.S. Geological Survey, Department of the Interior.

ACTION: Notice of the Receipt of a Proposed Development and Production Plan.

SUMMARY: Notice is hereby given that Gulf Oil Exploration and Production Company has submitted a Development and Production Plan describing the activities it proposes to conduct on Lease OCS-G 3593, Block 195, South Timbalier Area, offshore Louisiana.

The purpose of this Notice is to inform the public, pursuant to Section 25 of the OCS Lands Act Amendments of 1978, that the Geological Survey is considering approval of the Plan and that it is available for public reviews at the offices of the Conservation Manager, Gulf of Mexico OCS Region, U.S. Geological Survey, 3301 North Causeway Blvd., Metairie, Louisiana 70002.

FOR FURTHER INFORMATION CONTACT: U.S. Geological Survey, Public Records, Room 147, open weekdays 9 a.m. to 3:30 p.m., 3301 North Causeway Blvd., Room 147, Metairie, Louisiana 70002, Phone (504) 837-4720, Ext. 225.

SUPPLEMENTARY INFORMATION: Revised rules governing practices and procedures under which the U.S. Geological Survey makes information contained in Development and Production Plans available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979, (44 FR 53685). Those practices and procedures are set out in a revised Section 250.34 of Title 30 of the Code of Federal Regulations.

Dated: January 15, 1981.

E. A. Marsh,
Staff Assistant for Operations.

[FR Doc. 81-2282 Filed 1-22-81; 8:45 am]
BILLING CODE 4310-84-M

Oil and Gas and Sulphur Operations in the Outer Continental Shelf

AGENCY: U.S. Geological Survey, Department of the Interior.

ACTION: Notice of the Receipt of a Proposed Development and Production Plan.

SUMMARY: Notice is hereby given that McMoRan Offshore Exploration Company has submitted a Development and Production Plan describing the activities it proposes to conduct on Lease OCS-G 2350, Block A-446, High Island Area, offshore Texas.

The purpose of this Notice is to inform the public, pursuant to Section 25 of the OCS Lands Act Amendments of 1978, that the Geological Survey is considering approval of the Plan and that it is available for public review at the offices of the Conservation Manager, Gulf of Mexico OCS Region, U.S.

Geological Survey, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana 70002.

FOR FURTHER INFORMATION CONTACT: U.S. Geological Survey, Public Records, Room 147, open weekdays 9 a.m. to 3:30 p.m., 3301 North Causeway Blvd., Metairie, Louisiana 70002, Phone (504) 837–4720, Ext. 226.

SUPPLEMENTARY INFORMATION: Revised rules governing practices and procedures under which the U.S. Geological Survey makes information contained in Development and Production Plans available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979 (44 FR 53685). Those practices and procedures are set out in a revised Section 250.34 of Title 30 of the Code of Federal Regulations.

Dated: January 15, 1981.

E. A. Marsh,

Staff Assistant for Operations.

[FR Doc. 81-2009 Filed 1-23-81; 8:45 am]

BILLING CODE 4310-81-M

Oil and Gas and Sulphur Operations in the Outer Continental Shelf

AGENCY: U.S. Geological Survey, Department of the Interior.

ACTION: Notice of the Receipt of a Proposed Development and Production Plan.

SUMMARY: Notice is hereby given that Pennzoil Company has submitted a Development and Production Plan describing the activities it proposes to conduct on Lease OCS–G 2439, Block 535, East Cameron Area, offshore Louisiana.

The purpose of this Notice is to inform the public, pursuant to Section 25 of the OCS Lands Act Amendments of 1978, that the Geological Survey is considering approval of the Plan and that it is available for public review at the offices of the Conservation Manager, Gulf of Mexico OCS Region, U.S. Geological Survey, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana 70002.

FOR FURTHER INFORMATION CONTACT: U.S. Geological Survey, Public Records, Room 147, open weekdays 9 a.m. to 3:30 p.m., 3301 North Causeway Blvd., Metairie, Louisiana 70002, Phone (504) 837–4720, Ext. 226.

SUPPLEMENTARY INFORMATION: Revised rules governing practices and procedures under which the U.S. Geological Survey makes information contained in Development and Production Plans available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979, (44 FR 53685). Those practices and procedures are set out in a revised Section 250.34 of Title 30 of the Code of Federal Regulations.

Dated: January 15, 1981.

E. A. Marsh,

Staff Assistant for Operations.

[FR Doc. 81-2010 Filed 1-23-81; 8:45 am]

BILLING CODE 4310-81-M

Oil and Gas and Sulphur Operations in the Outer Continental Shelf

AGENCY: U.S. Geological Survey, Department of the Interior.

ACTION: Notice of the Receipt of a Proposed Development and Production Plan.

SUMMARY: Notice is hereby given that Placid Oil Company has submitted a Supplemental Development and Production Plan describing the actitivies it proposes to conduct on Lease OCS–G 2600, Block 281, South Marsh Island Area, offshore Louisiana.

The purpose of this notice is to inform the public, pursuant to Section 25 of the OCS Lands Act Amendment of 1978, that the Geological Survey is considering approval of the Plan and that is available for public review at the offices of the Conservation Manager, Gulf of Mexico OCS Region, U.S. Geological Survey, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana 70002.

FOR FUTHER INFORMATION CONTACT: U.S. Geological Survey, Public Records, Room 147, open weekdays 9 a.m. to 3:30 p.m., 3301 North Causeway Blvd., Metairie, Louisiana 70002, Phone (504) 837–4720, Ext. 226.

SUPPLEMENTARY INFORMATION: Revised rules governing practices and procedures under which the U.S. Geological Survey makes information contained in Development and Production Plans available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979, (44 FR 53685). Those practices and procedures are set out in a revised Section 250.34 of Title 30 of the Code of Federal Regulations.

Dated: January 15, 1981

E. A. Marsh,

Staff Assistant for Operations.

[FR Doc. 81-2011 Filed 1-23-81; 8:45 am]

BILLING CODE 4310-81-M

Oil and Gas and Sulphur Operations in the Outer Continental Shelf

AGENCY: U.S. Geological Survey, Department of the Interior.

ACTION: Notice of the Receipt of a Proposed Development and Production Plan.

SUMMARY: Notice is hereby given that The Superior Oil Company has submitted a Development and Production Plan describing the activities it proposes to conduct on Leases OCS–G 4144 and 4379, Blocks 3 and 53, Sabine Pass and West Cameron Areas, respectively, offshore Louisiana.

The purpose of this Notice is to inform the public, pursuant to Section 25 of the OCS Lands Act Amendments of 1978, that the Geological Survey is considering approval of the Plan and that it is available for public review at the offices of the Conservation Manager, Gulf of Mexico OCS Region, U.S. Geological Survey, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana 70002.

FOR FURTHER INFORMATION CONTACT: U.S. Geological Survey, Public Records, Room 147, open weekdays 9 a.m. to 3:30 p.m. 3301 North Causeway Blvd., Metairie, Louisiana 70002, Phone (504) 837–4720, Ext. 226.

SUPPLEMENTARY INFORMATION: Revised rules governing practices and procedures under which the U.S. Geological Survey makes information contained in Development and Production Plans available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979, (44 FR 53685). Those practices and procedures are set out in a revised Section 250.34 of Title 30 of the Code of Federal Regulations.

Dated: January 15, 1981

E. A Marsh,

Staff Assistant for Operations.

[FR Doc. 81-2012 Filed 1-23-81; 8:45 am]

BILLING CODE 4310-81-M

Oil and Gas and Sulphur Operations in the Outer Continental Shelf

AGENCY: U.S. Geological Survey, Department of the Interior.

ACTION: Notice of the Receipt of a Proposed Development and Production Plan.

SUMMARY: Notice is hereby given that Texaco, Inc. has submitted a Development and Production Plan describing the activities it proposes to conduct on Lease OCS 0554, Block 57, Vermilion Area, offshore Louisiana.

The purpose of this Notice is to inform the public, pursuant to Section 25 of the OCS Lands Act Amendments of 1978, that the Geological Survey is considering approval of the Plan and that it is available for public review at the offices of the Conservation Manager, Gulf of Mexico OCS Region, U.S. Geological Survey, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana 70002.

FOR FURTHER INFORMATION CONTACT: U.S. Geological Survey, Public Records, Room 147, open weekdays 9 a.m. to 3:30 p.m., 3301 North Causeway Blvd., Metairie, Louisiana 70002, Phone (504) 837–4720, Ext. 226.

SUPPLEMENTARY INFORMATION: Revised rules governing practices and procedures under which the U.S. Geological Survey makes information contained in Development and Production Plans available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979, (44 FR 53685). Those practices and procedures are set out in a revised Section 250.34 of Title 30 of the Code of Federal Regulations.

Dated: January 15, 1981.

R.A. Marsh,

Staff Assistant for Operations.

[FR Doc. 81-3613 Filed 1-22-81; 8:45 am]

BILLING CODE 4310-31-M

National Park Service

Appalachian National Scenic Trail; Relocations of Rights-of-Way

The National Trails System Act became law on October 2, 1968. The Act created a system to identify and establish a National Trails System. It also established the Pacific Crest Trail and the Appalachian Trail as the initial National Scenic Trails.

Section 7 of the National Trails System Act created a process for the administration and development of National Scenic Trails. This process included the responsibility to select an initial right-of-way for the National Scenic Trails and to publish notice of this right-of-way in the Federal Register "together with appropriate maps and descriptions." In selecting this right-of-way, the Secretary was required to obtain the advice and assistance of the states, local governments, private organizations, and landowners and land users concerned. For a two-year period after selection, he was also required to withhold federal action and to encourage the states or local governments involved (1) to enter into written cooperative agreements with landowners, private organizations and individuals to provide the necessary Trail right-of-way, or (2) to acquire such lands or interests therein to be utilized as segments of the National Scenic Trail. These responsibilities for the Appalachian Trail have been completed. A preliminary right-of-way and Trail route was selected after compliance with the consultation requirements of the Act and published in the Federal Register, Vo. 36, No. 197, Saturday, October 9, 1971, and the states and local governments have subsequently had the opportunity to act to protect the Trail.

Changes in the Trail route within the previously established right-of-way are routinely made. Section 7 also established a process for necessary relocations of the right-of-way after publication of notice in the Federal Register. This process inclues the responsibility to relocate segments of a National Scenic Trail right-of-way if such a relocation is necessary to preserve the purpose for which the Trail was established.

On March 21, 1978, Pub. L. 95–248 was enacted amending the original National Trails System Act. The thrust of this Amendment was to further the federal protection efforts under the original legislation, calling for an immediate federal land acquisition program. It also directed that this program be substantially completed within three years of September 30, 1978.

The original Act was further amended by Pub. L. 95–625 dated November 10, 1978. This Act eliminated the requirement for the Federal Government to wait two years after notice of selection of the right-of-way before acquisition could be initiated. We are kept advised on any action by states or localities to protect the Trail where relocations are involved.

As a part of this program to protect and establish an Appalachian Trail corridor, the Department of the Interior has determined that where the Trail is now along roads, close to houses or otherwise poorly located, the National Park Service will seek an alternative location, wherever possible, either pursuant to a change in Trail route, if feasible, within the existing right-of-way, or pursuant to the process outlined above by publishing a notice of right-of-way relocation in the Federal Register after appropriate consultation.

Consistent with this decision, the rights-of-way for the following sections of the Appalachian National Scenic Trail will be relocated outside of the originally designated rights-of-way to facilitate revised Trail routes that take advantage of the terrain, remove the Trail from roads, and/or moved the Trail away from houses so that these portions of the Trail meet the criteria and the purpose for which this Trail was established:

Beginning at the most Eastern part of Crawford Pond, just West of Jo-Mary Mountain, Piscataquis County, Maine and ending just South of Little Boardman Mountain, on the East Branch River, Piscataquis County, Maine, as indicated in Panels 28A.

Beginning on West Peak, West of Hay Mountain and East of Gulf Hagas Mountain, Piscataquis County, Maine and ending just South of Pugwash Pond, on the West Branch Pleasant River, as indicated in Panels 35A, 36A and 37A.

Beginning just North of the Northern tip of Pleasant Pond, Somerset County, Main and ending just East of Kennebec River, on Holly Brook, Somerset County, Maine, as indicated in Panels 83A and 84A.

Beginning on Maine State Route (4) just South of Sandy River Ponds, Franklin County, Maine and ending just East of Sabbath Day Pond, Franklin County, Maine, as indicated in Panels 93A, 94A, 95A and 96A.

Beginning on Bemis Mountain, Franklin County, Maine and ending just South of Surplus Pond, Oxford County, Maine, as indicated in Panels 103A, 104A, 105A and 106A.

Beginning at the Northern tip of Dream Lake, Coos County, New Hampshire and ending at or near the most Eastern corner of Leadmine, State Forest boundary, Coos County, New Hampshire, as indicated in Panels 121A and 122A.

Beginning at or near Mt. Mist, just South of Wachipauka Pond, White Mountain National Forest, Grafton County, New Hampshire and ending on the peak of Mount Cube, Grafton County, New Hampshire, as indicated in Panels 165A, 166A, 167A and 168A.

Beginning on the North Branch, just East of Quinttown, Grafton County, New Hampshire and ending just North of Smarts Mountain, Grafton County, New Hampshire, as indicated in Panel 170A.

Beginning on the Southern end of Lambert Ridge, Grafton County, New Hampshire and ending on State Route (113 A) just East of Lyme Center, Grafton County, New Hampshire, as indicated in Panel 177B.

Beginning just Southwest of Holts Ledge, Grafton County, New Hampshire and ending on the Northern end of Moose Mountain, Grafton County, New Hampshire, as indicated in Panel 178B.

Beginning on Connecticut Route (7), just South of Falls Village, Canaan Township, Litchfield County, Connecticut, proceeding in a southerly direction and ending on Connecticut Route (4), just west of Cornwall Bridge, Cornwall Township, Litchfield County, Connecticut, as indicated in Panels 277A, 278A and 279A.

Beginning near the South peak of Hammersly Ridge, just West of Quaker Lake, in the Town of Pawling, Dutchess County, New York and ends near the Pawling—Dover—Beekman Town Corner just northeast of Nuclear Lake, Dutchess County, New York, as indicated in Panels 285B and 286B.

Beginning just East of Dogtail Corners, Fairfield County, Connecticut and ending just

South of Wingdale, Dutchess County, New York, as indicated in Panels 293A and 294A.

Deletion of Panel 330, beginning just West of Lakeside, Sussex County, New Jersey and ending just East of Parker Lake, Sussex County, New Jersey. This is not a relocation. This action is necessary to correct a mapping error in original publication.

Beginning East of Maple Grange, Sussex County, New Jersey, on Wawayanda Mountain and ending at Pochuck Mountain just East of Owens, Sussex County, New Jersey, as indicated in Panels 335A and 336A.

Beginning near the Wallkill River, just Northwest of Owens, Sussex County, New Jersey, and running along the State line of New York and New Jersey and ending South of Unionville, Orange County, New York, but staying in the State of New Jersey, as indicated in Panel 338A.

Beginning just North of Mt. Salem, Sussex County, New Jersey and ending near High Point State Park, Sussex County, New Jersey just North of Radio Towers on Kittatinny Mountain, Sussex County, New Jersey, as indicated in Panel 341A.

Beginning at a point on the top of Sinking Creek Mountain, Simmonsville Magisterial District, Craig County, Virginia, proceeding in a northwesterly direction, crossing Virginia Route (42), and ending at a point on top of Clover Hollow Mountain, northwest of Huffman, Simmonsville Magisterial District, Craig County, Virginia, as indicated in Panel 599A.

Beginning on Brushy Mountain, near the Falls of Dismal in Jefferson National Forest, Giles County, Virginia and heading in a Southwesterly direction on Brushy Mountain, Giles and Bland County, Virginia and ending just north of Mechanicsburg, Bland County, Virginia, as indicated in Panel 613A.

Beginning just North of Crandon, Bland County, Virginia on Brushy Mountain, Jefferson National Forest and ending just North of the corner of Smyth County, Bland County and Wythe County, Virginia, as indicated in Panels 615A, 616A, 617A, 618A, 619A, 620A, 621A, 622A, 623A, 624A, 625A, 626A, 627A and 628A.

Appropriate maps, as designated above, are provided as an appendix to this notice to indicate the revised rights-of-way and the Trail routes within those rights-of-way. These changes are in compliance with provisions of Section 7 of the National Trails System Act, as amended, as discussed above.

Affected landowners have been contacted and afforded an opportunity to provide us their advice and assistance in selection of the revised rights-of-way and Trail routes within those rights-of-way. In addition, the rights-of-way and Trail routes have been selected in consultation with members of the Advisory Council for the Appalachian National Scenic Trail and with state and local officials.

The purpose of this notice is to request further public comment in the proposed relocation of the trail right-of-way and trail routes. An environmental assessment report relating to each relocation where the National Park Service is acquiring land is on file in the Project Manager's Office, Appalachian Trail Project Office, Harpers Ferry, West Virginia 25425. Comments concerning relocations may also be provided to the Project Manager on or before February 23, 1981. Following review of comments on the environmental assessment and the relocations, a decision regarding findings of significant impact pertaining to these relocations, and the implementation of the relocations, will be published.

Russell E. Dickinson,

Director, National Park Service.

BILLING CODE 4310-70-M

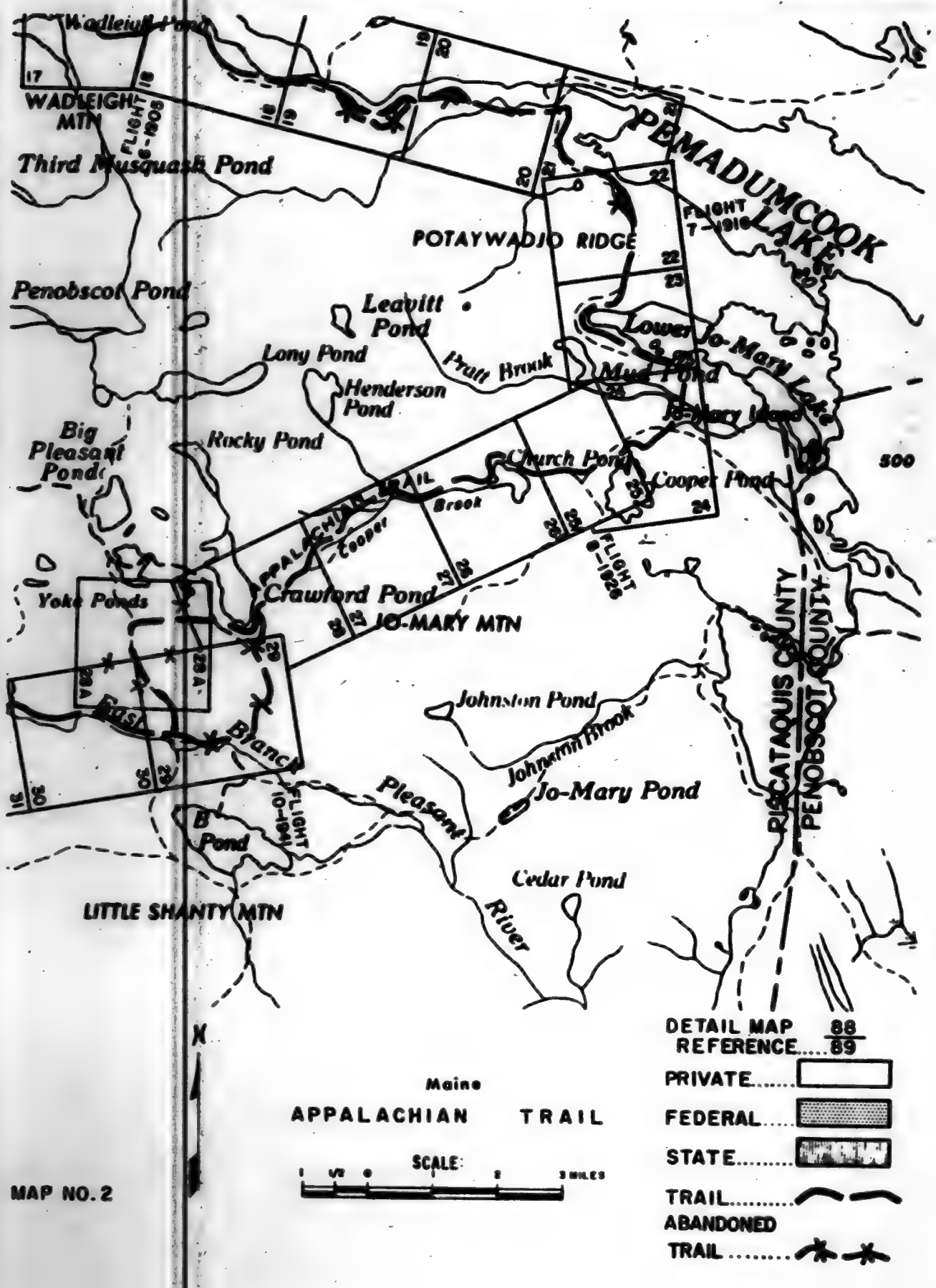
WADLEIGH MTN
FLIGHT E-905
Third Musquash Pond
PEMADUMCOOK LAKE
FLIGHT T-1916
POTAYWADJO RIDGE
Penobscot Pond
Leavitt Pond
Lower Jo-Mary Lake
Mud Pond
Lony Pond
Fruit Brook
Henderson Pond
Big Pleasant Pond
Rocky Pond
Church Pond
Cooper Pond
Brook
APPALACHIAN
Cooper
FLIGHT E-1928
Yoke Ponds
Crawford Pond
JO-MARY MTN
East
Branch
Johnston Pond
Johnson Brook
Jo-Mary Pond
PISCATAQUIS COUNTY
PENOBSCOT COUNTY
FLIGHT 10-1941
B Pond
Pleasant
Cedar Pond
River
LITTLE SHANTY MTN
DETAIL MAP REFERENCE 88/89
PRIVATE
FEDERAL
STATE
TRAIL
ABANDONED TRAIL
Maine
APPALACHIAN TRAIL
SCALE:
MAP NO. 2

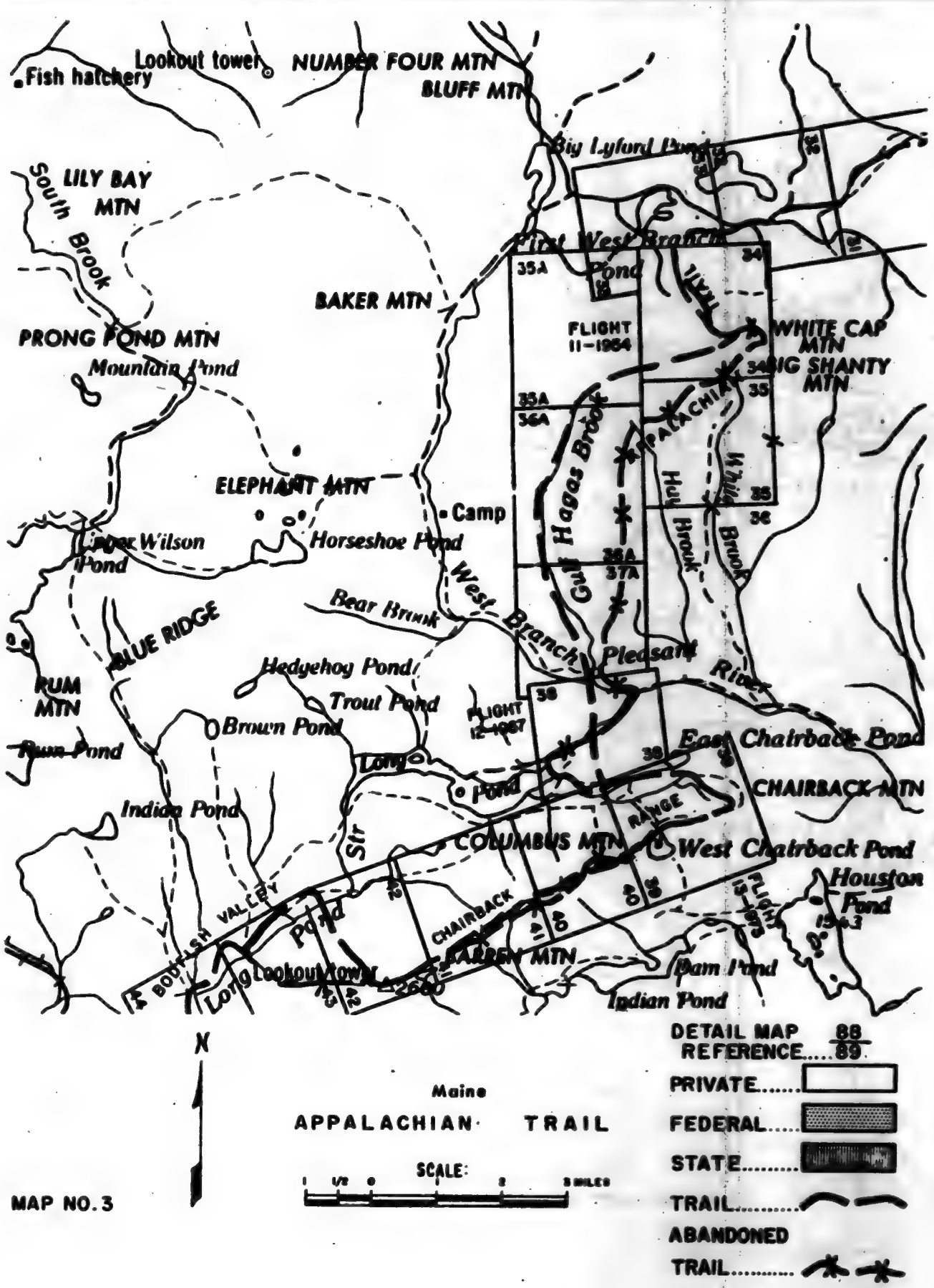
Lookout tower
NUMBER FOUR MTN
Fish hatchery
BLUFF MTN
Big Lyford Pond
LILY BAY MTN
South Brook
First West Branch Pond
BAKER MTN
PRONG POND MTN
Mountain Pond
FLIGHT 11-1964
WHITE CAP MTN
BIG SHANTY MTN
APPALACHIAN TRAIL
Gulf Hagas Brook
Hunt Brook
Whiting Brook
ELEPHANT MTN
Camp
Lower Wilson Pond
Horseshoe Pond
West Branch Pleasant River
Bear Brook
BLUE RIDGE
Hedgehog Pond
Trout Pond
RUM MTN
Brown Pond
FLIGHT 12-1967
East Chairback Pond
CHAIRBACK MTN
Long Pond
Indian Pond
RANGE
COLUMBUS MTN
West Chairback Pond
Houston Pond
BODFISH VALLEY
Long Pond
CHAIRBACK
BARREN MTN
Lookout Tower
2680
Pam Pond
Indian Pond
N
Maine
APPALACHIAN TRAIL
SCALE:
1 1/2 0 1 2 3 MILES
MAP NO. 3
DETAIL MAP 88
REFERENCE 89
PRIVATE
FEDERAL
STATE
TRAIL
ABANDONED TRAIL

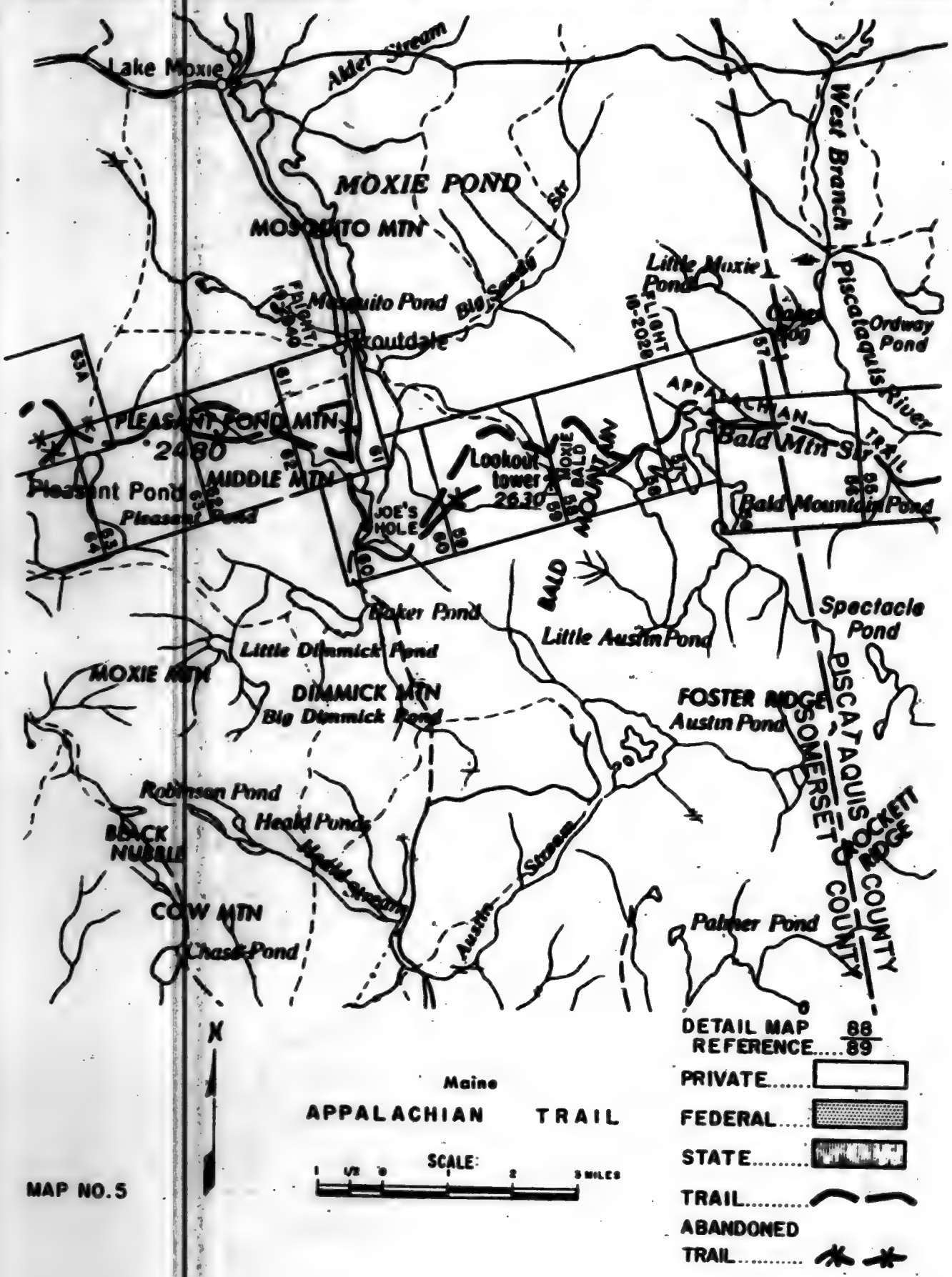
Lake Moxie
Alder Stream
MOXIE POND
MOSQUITO MTN
Mosquito Pond
Bog Brook
Little Moxie Pond
West Branch
Piscataquis River
Ordway Pond
Caribou Bog
FLIGHT 10-2029
Routzdale
PLEASANT POND MTN
2480
Pleasant Pond
MIDDLE MTN
Lookout tower 2630
MOXIE BALD MOUNTAIN
APPALACHIAN TRAIL
Bald Mtn Stream
Bald Mountain Pond
JOE'S HOLE
Baker Pond
Little Dimmick Pond
BALD MOUNTAIN
Little Austin Pond
Spectacle Pond
MOXIE MTN
DIMMICK MTN
Big Dimmick Pond
FOSTER RIDGE
Austin Pond
PISCATAQUIS COUNTY
SOMERSET COUNTY
ROCKETT RIDGE
Robinson Pond
Heald Ponds
Heald Stream
BLACK NUBBLE
COW MTN
Chase Pond
Austin Stream
Palmer Pond
DETAIL MAP REFERENCE 88/89
PRIVATE
FEDERAL
STATE
TRAIL
ABANDONED TRAIL
Maine
APPALACHIAN TRAIL
SCALE: 1 1/2 0 1 2 3 MILES
MAP NO. 5

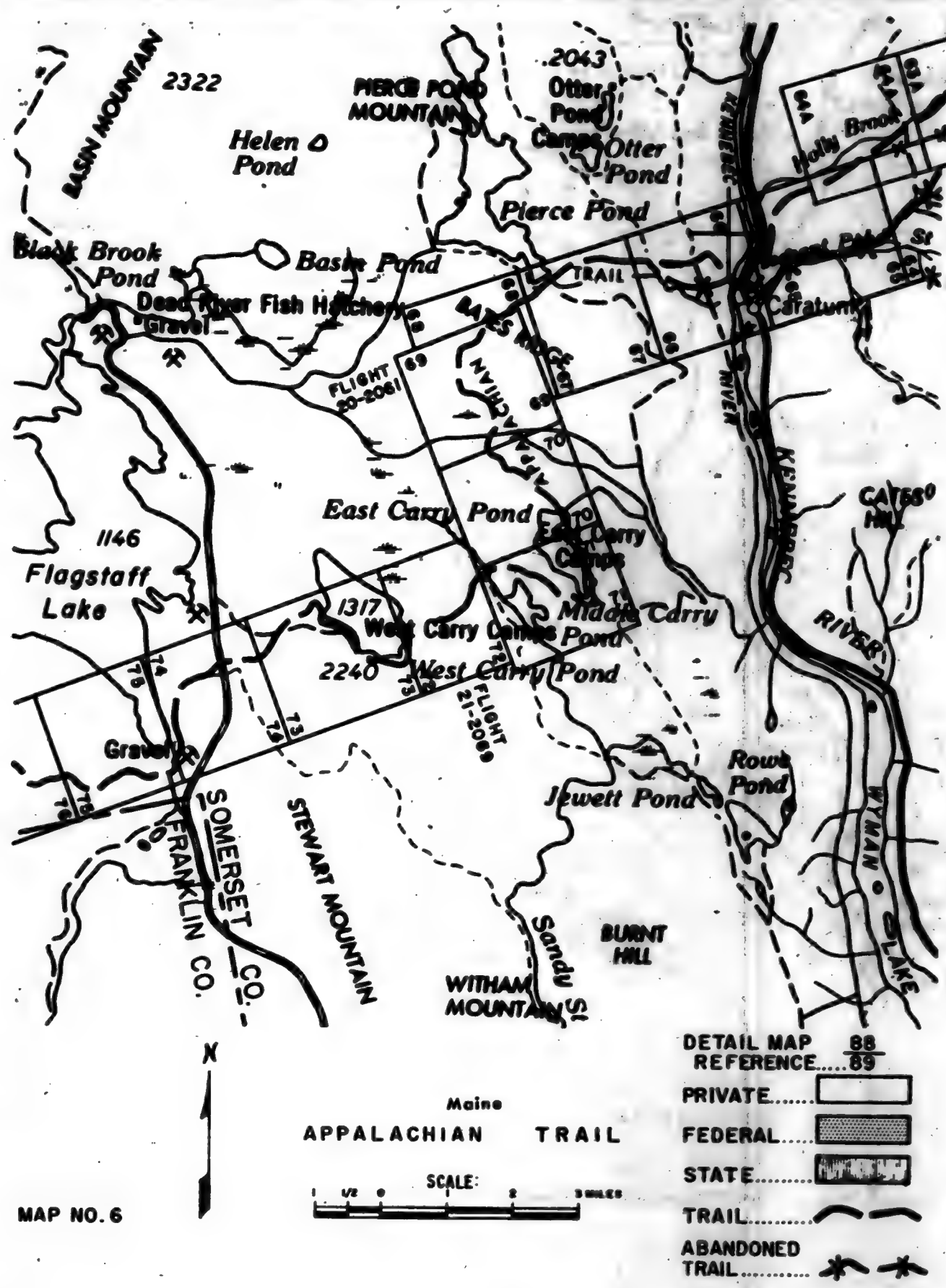
BASIN MOUNTAIN
2322
PIERCE POND MOUNTAIN
2043
Otter Pond
Camps
Otter Pond
Helen O Pond
Pierce Pond
Holly Brook
Black Brook Pond
Basin Pond
TRAIL
Dead River Fish Hatchery
Gravel
Caratunk
FLIGHT 20-2061
KENNEBEC RIVER
East Carry Pond
1146
Flagstaff Lake
East Carry Camps
1317
Middle Carry
West Carry Camps Pond
2240
West Carry Pond
CATES0 Hill
RIVER
Gravel
FLIGHT 21-2069
Rowe Pond
Jewett Pond
SOMERSET CO.
FRANKLIN CO.
STEWART MOUNTAIN
Sandy St
BURNT HILL
WITHAM MOUNTAIN
WYMAN LAKE
X
Maine
APPALACHIAN TRAIL
SCALE:
MAP NO. 6
DETAIL MAP REFERENCE..... 68/69
PRIVATE.....
FEDERAL.....
STATE.....
TRAIL.....
ABANDONED TRAIL.....

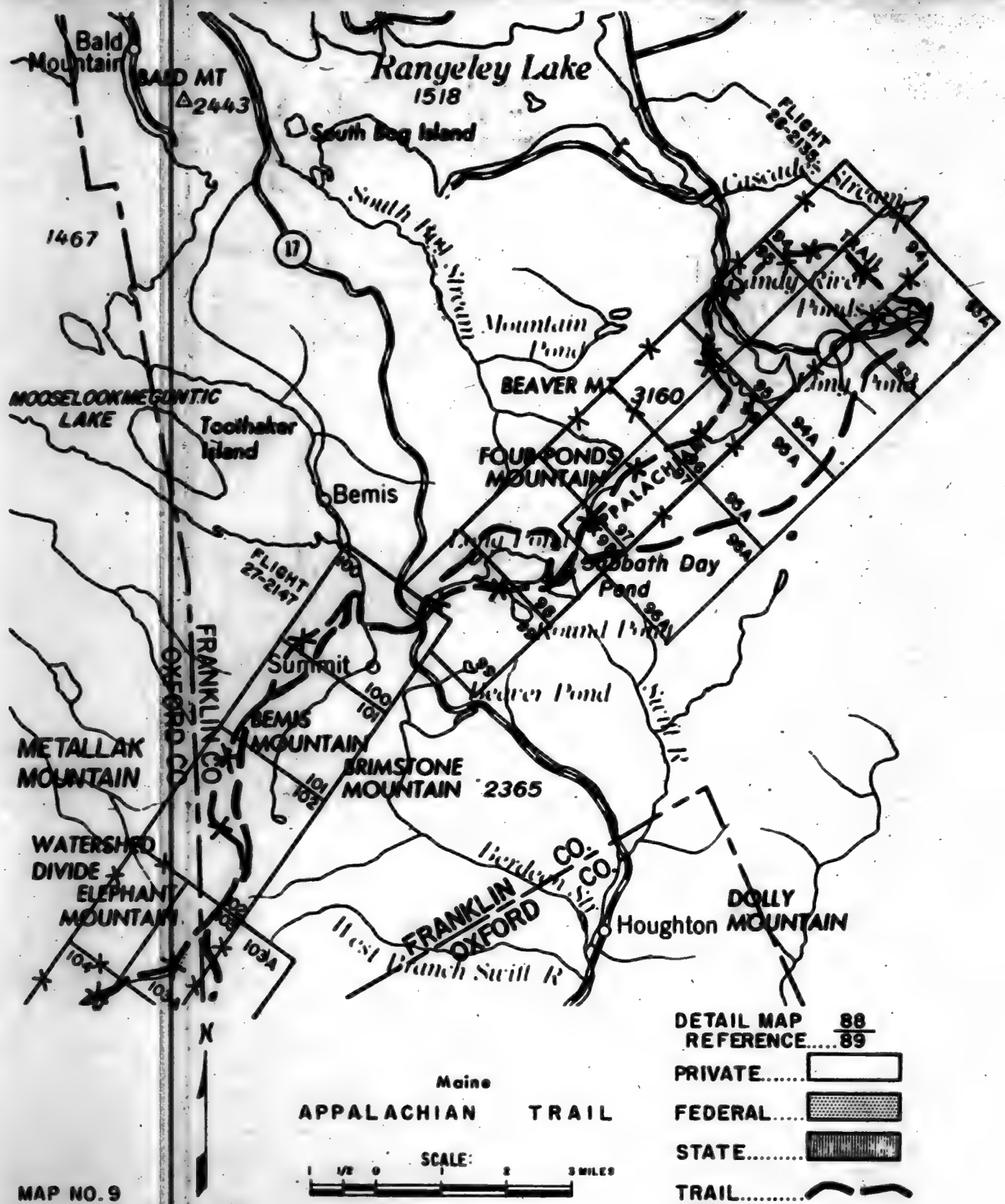
Bald Mountain
BALD MT
2443
Rangeley Lake
1518
South Bog Island
1467
17
South Fork Stream
Mountain Pond
BEAVER MT
3160
MOOSELOOKMEGUNTIC LAKE
Toothaker Island
Bemis
FOUR PONDS MOUNTAIN
APPALACHIAN TRAIL
Sabbath Day Pond
FLIGHT 27-2147
FLIGHT 28-2156
Sandy River Ponds
TRAIL
Summit
Beaver Pond
BEMIS MOUNTAIN
BRIMSTONE MOUNTAIN
2365
METALLAK MOUNTAIN
WATERSHED DIVIDE
ELEPHANT MOUNTAIN
FRANKLIN CO
OXFORD CO
FRANKLIN OXFORD CO CO
West Branch Swift R
Houghton
DOLLY MOUNTAIN
Maine
APPALACHIAN TRAIL
SCALE:
1 1/2 0 1 2 3 MILES
DETAIL MAP REFERENCE 88 89
PRIVATE
FEDERAL
STATE
TRAIL
ABANDONED TRAIL

MAP NO. 9

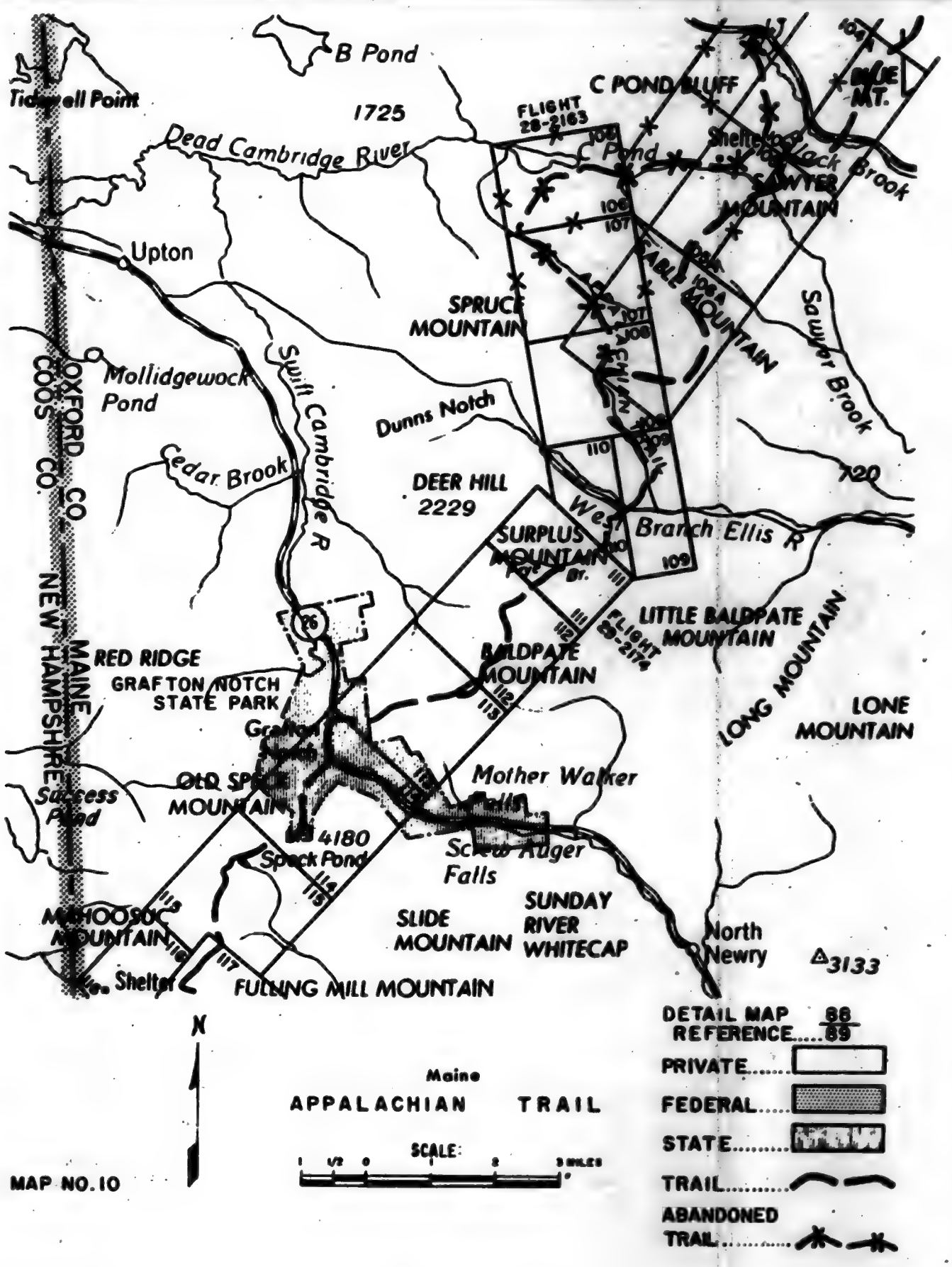
B Pond
1725
Tidewell Point
Dead Cambridge River
C POND BLUFF
FLIGHT 28-2163
C Pond
Shelter
Black Brook
CARTER MOUNTAIN
BLUE MT.
Upton
SPRUCE MOUNTAIN
TABLE MOUNTAIN
Sawyer Brook
Mollidgewock Pond
Swift Cambridge R
Dunns Notch
Cedar Brook
DEER HILL
2229
West Branch Ellis R
SURPLUS MOUNTAIN
Fire Tr.
Br.
LITTLE BALDPATE MOUNTAIN
FLIGHT 28-2174
BALDPATE MOUNTAIN
LONG MOUNTAIN
LONE MOUNTAIN
OXFORD CO.
COOS CO.
NEW HAMPSHIRE
MAINE
RED RIDGE
GRAFTON NOTCH STATE PARK
Grafton Notch
Old Speck MOUNTAIN
Mother Walker Falls
Success Pond
4180
Speck Pond
Screw Auger Falls
SUNDAY RIVER WHITECAP
SLIDE MOUNTAIN
MAHOOSUC MOUNTAIN
Shelter
FULLING MILL MOUNTAIN
North Newry
△3133
N
Maine
APPALACHIAN TRAIL
SCALE:
1 1/2 0 1 2 3 MILES
MAP NO. 10
DETAIL MAP REFERENCE..... 86 / 89
PRIVATE.....
FEDERAL.....
STATE.....
TRAIL.....
ABANDONED TRAIL.....

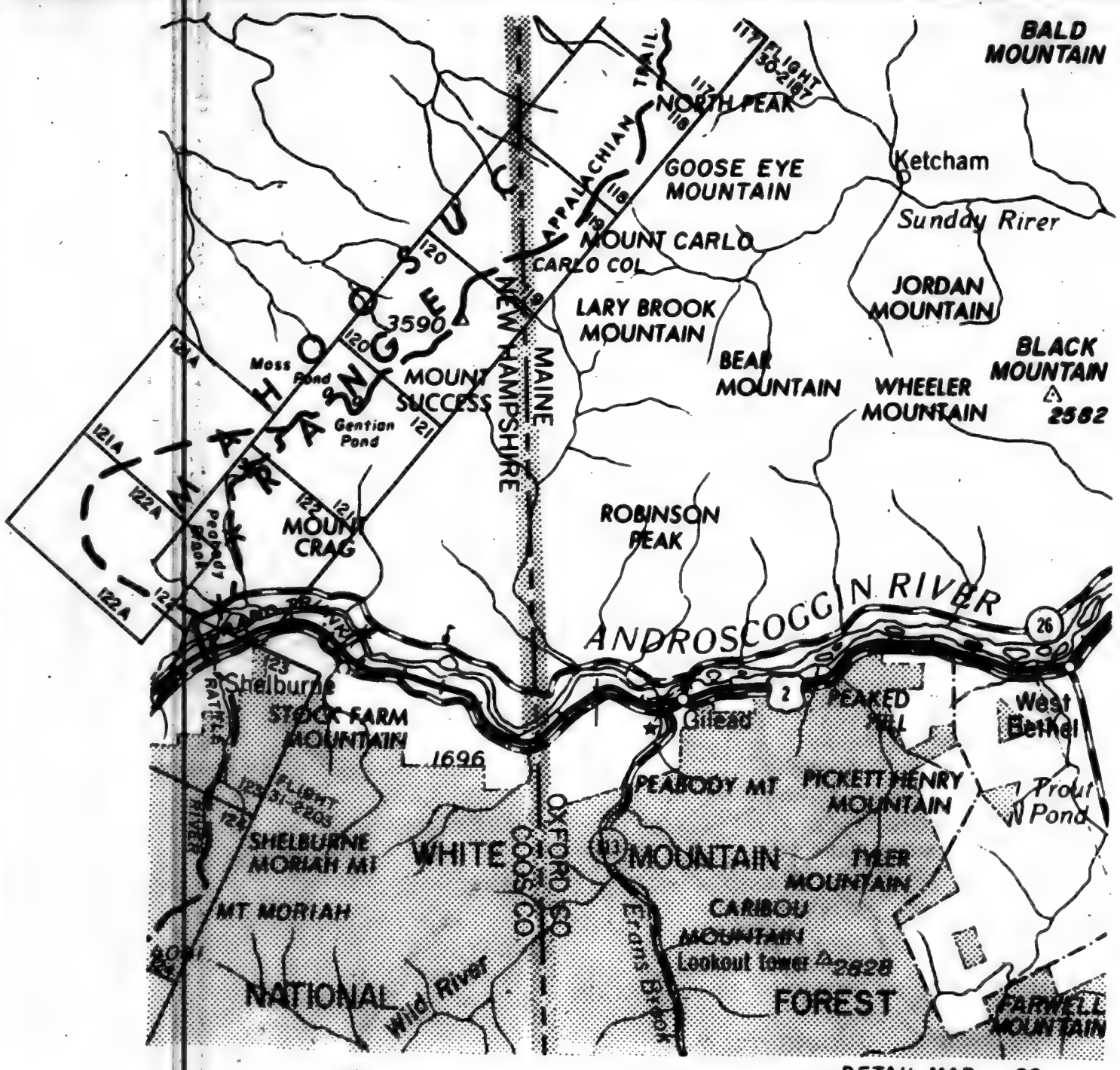

MAP NO. 11

MAP NO. 15

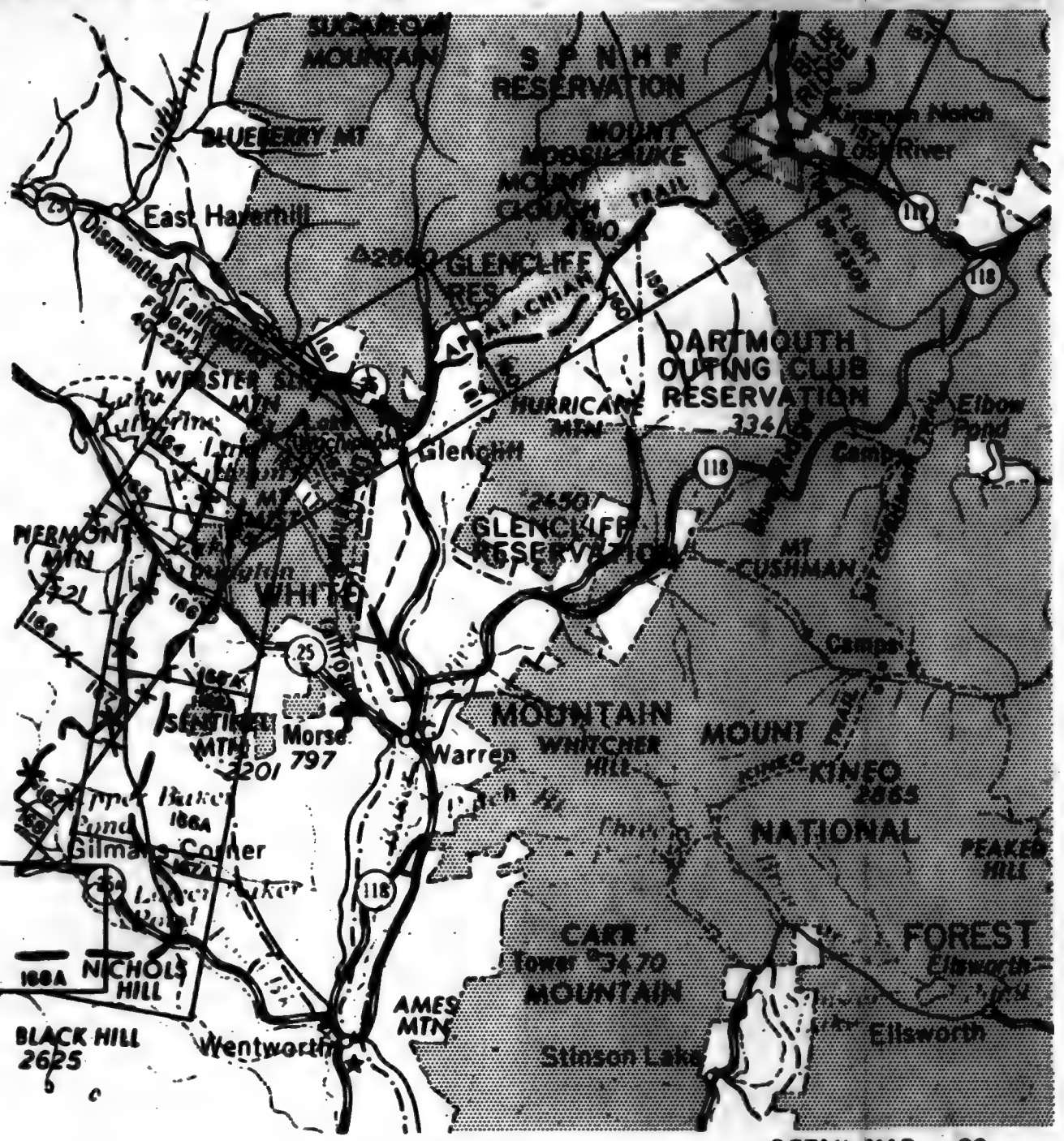
SUGARLOAF MOUNTAIN
S P N H F RESERVATION
BLUEBERRY MT
East Haverhill
Dismantled railroad
GLENCLIFF RES.
APPALACHIAN TRAIL
DARTMOUTH OUTING CLUB RESERVATION
HURRICANE MTN
Glencliff
GLENCLIFF RESERVATION
MT CUSHMAN
Camps
Elbow Pond
WEBSTER MTN
Lake Katherine
WHITE
MOUNTAIN
MOUNT KINEO
2355
NATIONAL
FOREST
PEAKED HILL
CARR MOUNTAIN
Tower 3470
Ellsworth
Stinson Lake
SENTINEL MTN
2201
Morse
797
Warren
WHITCHER HILL
Upper Baker Pond
Gilman's Corner
Lower Baker
NICHOLS HILL
AMES MTN
BLACK HILL
2625
Wentworth
118
112
25
25A
25B
26
93
93
93

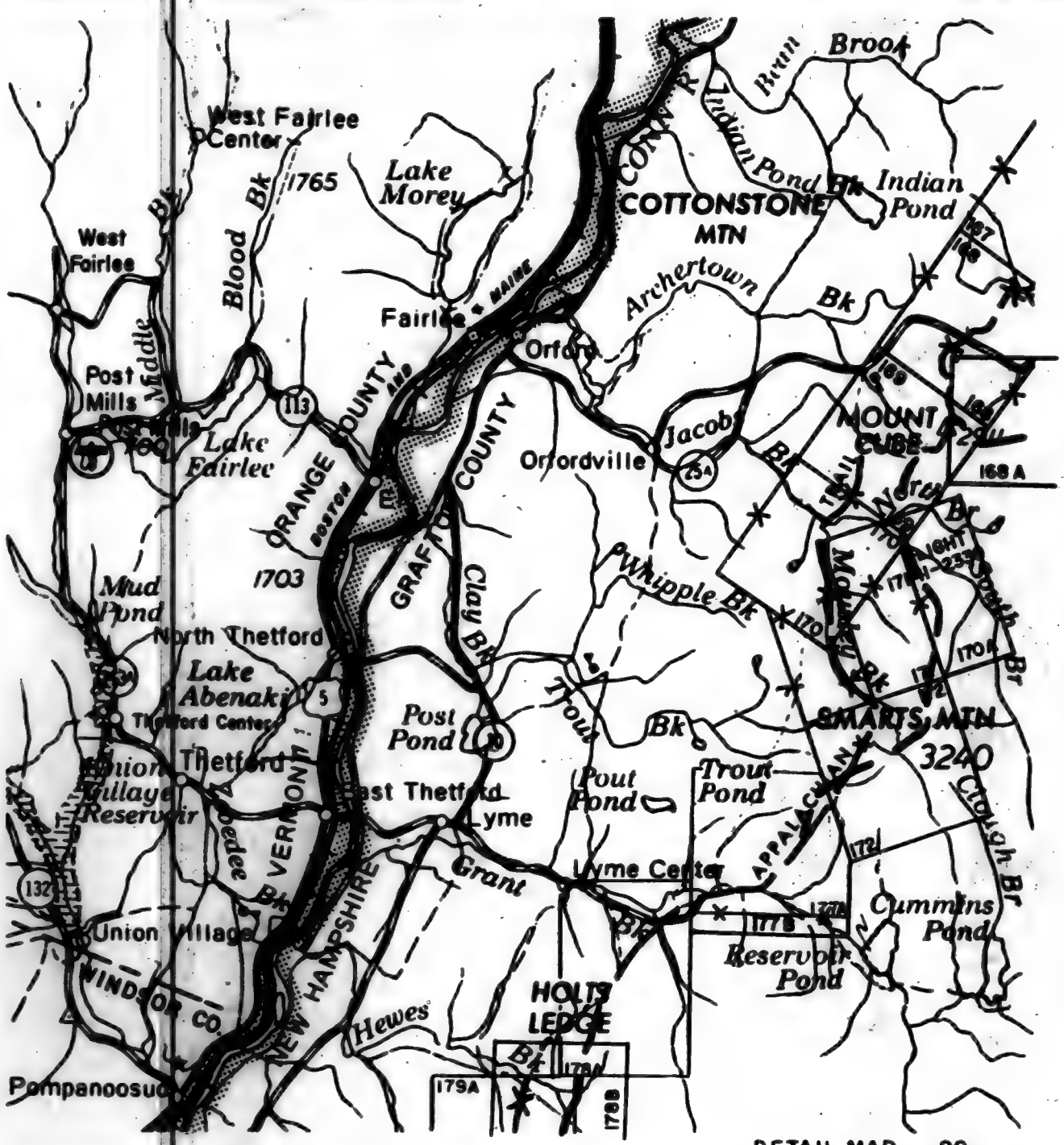

MAP NO.16

MAP NO.2
REVISED NO

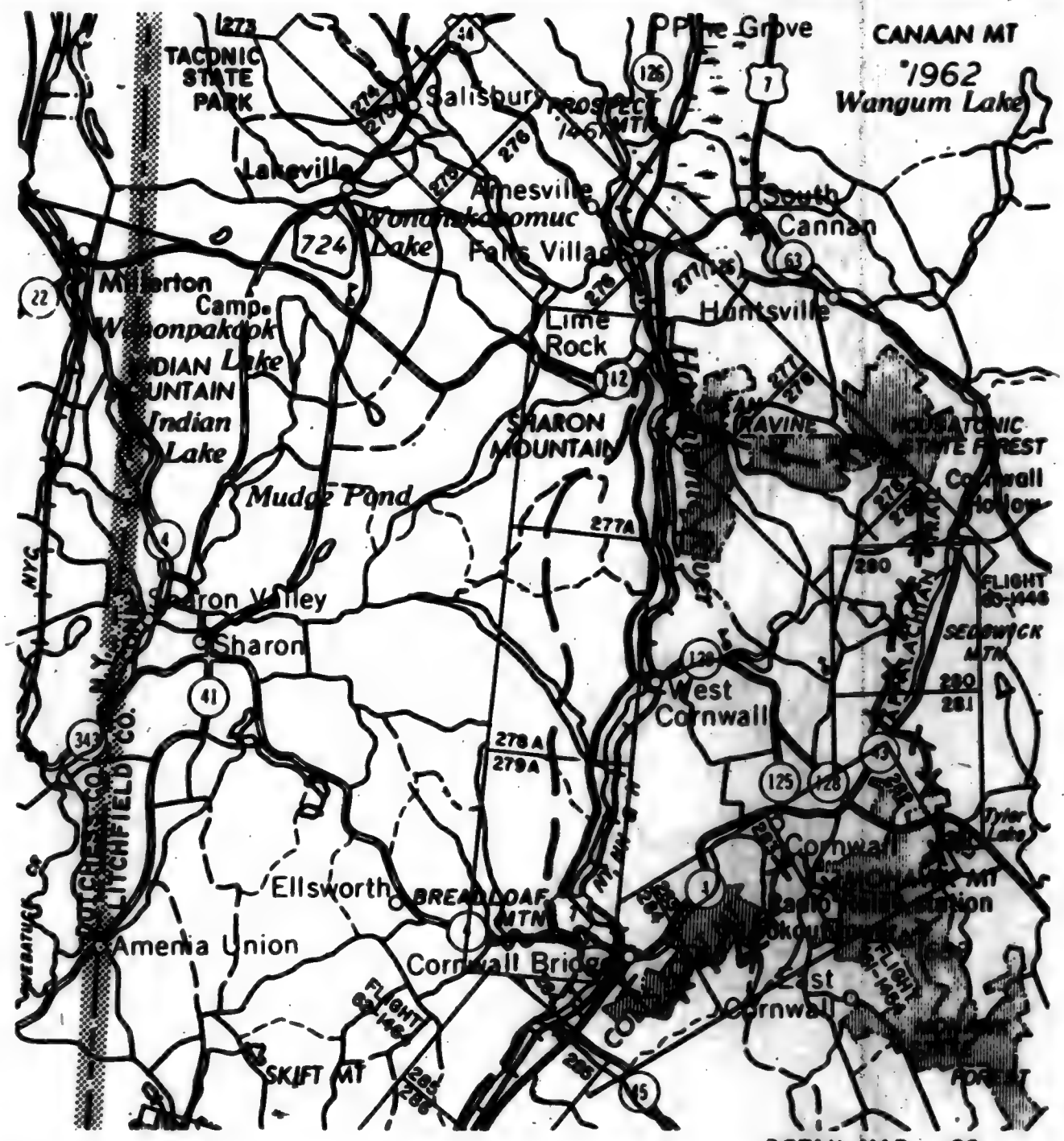
TACONIC STATE PARK
Salisbury
Prospect Mtn
Pine Grove
CANAAN MT
1962
Wangum Lake
Lakeville
Amesville
Wononskopomuc Lake
Falls Village
South Cannan
Huntsville
Lime Rock
Millerton
Camp Wononpakook
INDIAN MOUNTAIN
Indian Lake
Mudge Pond
SHARON MOUNTAIN
RAVINE
Cornwall Hollow
Sharon Valley
Sharon
West Cornwall
FLIGHT 93-1448
SEDGWICK MTN
Ellsworth
BREAD LOAF MTN
Amenia Union
Cornwall Bridge
Cornwall
SKIFT MT
DUTCHESS CO.
LITCHFIELD CO.
NYC
AT
CO
DETAIL MAP REFERENCE 88/89
PRIVATE
FEDERAL
STATE
TRAIL
ABANDONED TRAIL
N
Connecticut
APPALACHIAN TRAIL
SCALE: 1 1/2 0 2 3 MILES
MAP NO. 28
REVISED NOVEMBER 13, 1980

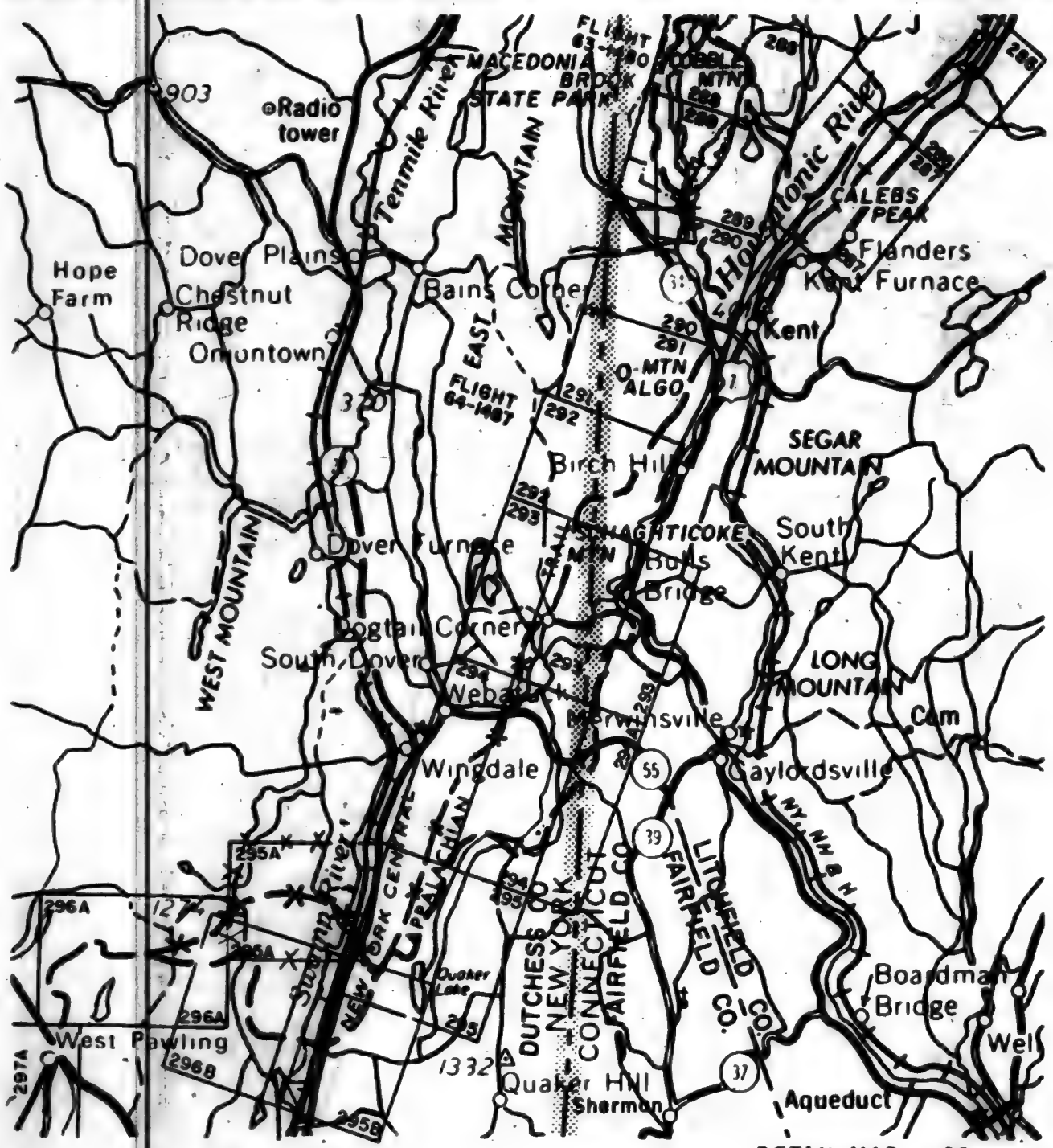

Connecticut - New York

APPALACHIAN TRAIL

SCALE

1" 1/2 0 1 2 3 MILES

DETAIL MAP REFERENCE 88/89

PRIVATE

FEDERAL

STATE

TRAIL

ABANDONED TRAIL

MAP NO. 29

REVISED MAY 16, 1980

MAP NO. 3

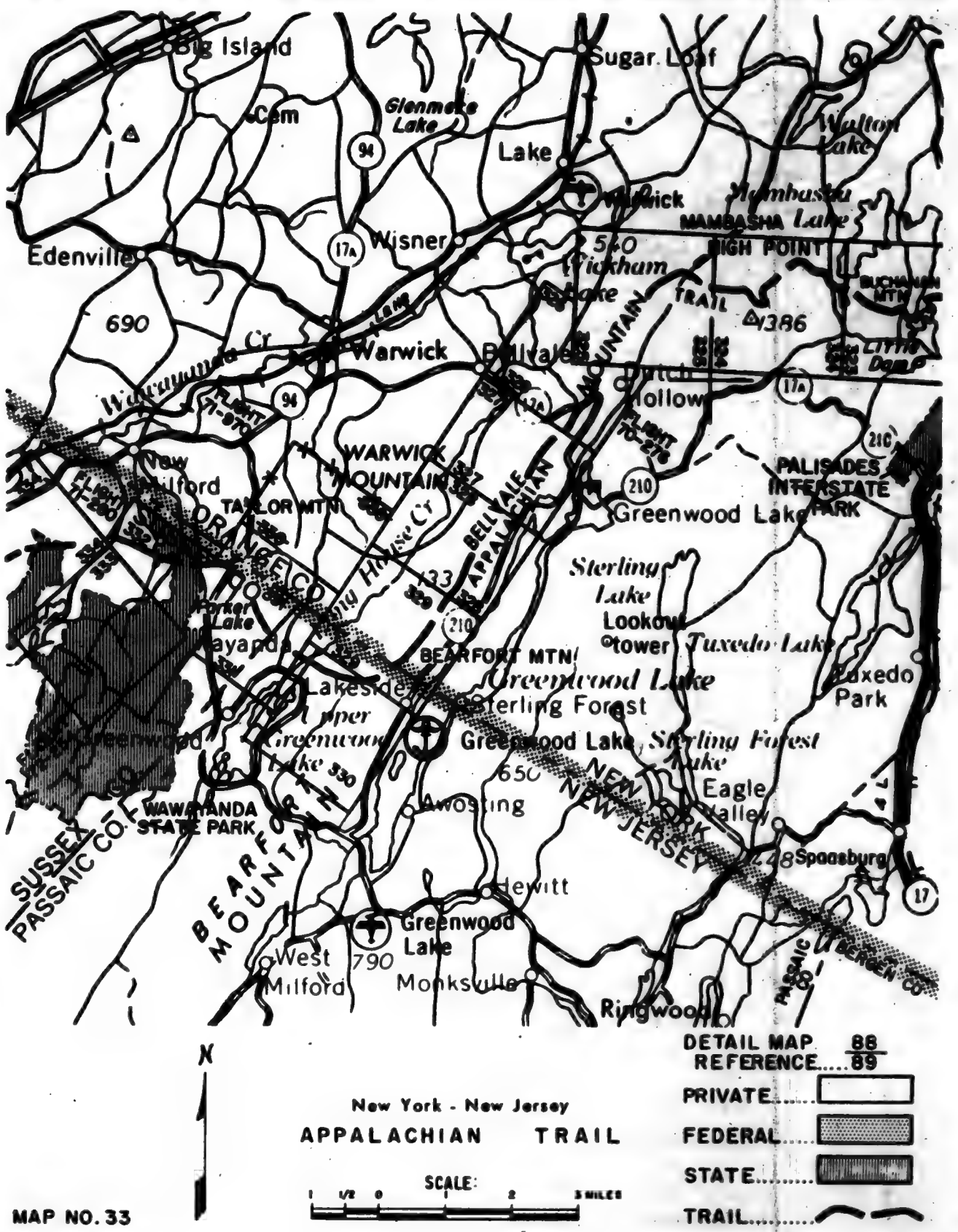
Big Island
Sugar Loaf
Glenmere Lake
Cem
Lake
Walton Lake
Wisner
Edenville
690
Warwick
Bellvale
Mombasha
MAMBASHA Lake
HIGH POINT
Pickham Lake
TRAIL
1386
BUCHANAN MTN
Dutch Hollow
WARWICK MOUNTAIN
TAYLOR MTN
Greenwood Lake
PALISADES INTERSTATE PARK
Sterling Lake
Lookout tower
Tuxedo Lake
BEARFORT MTN
Greenwood Lake
Sterling Forest
Tuxedo Park
Lakeside
Eagle Valley
WAWAYANDA STATE PARK
SUSSEX CO
PASSAIC CO
Awosting
Hewitt
Greenwood Lake
West Milford
790
Monksville
Ringwood
Sparrowbush
NEW YORK
NEW JERSEY
PASSAIC
BERGEN CO
DETAIL MAP REFERENCE 88/89
PRIVATE
FEDERAL
STATE
TRAIL
N
New York - New Jersey
APPALACHIAN TRAIL
SCALE:
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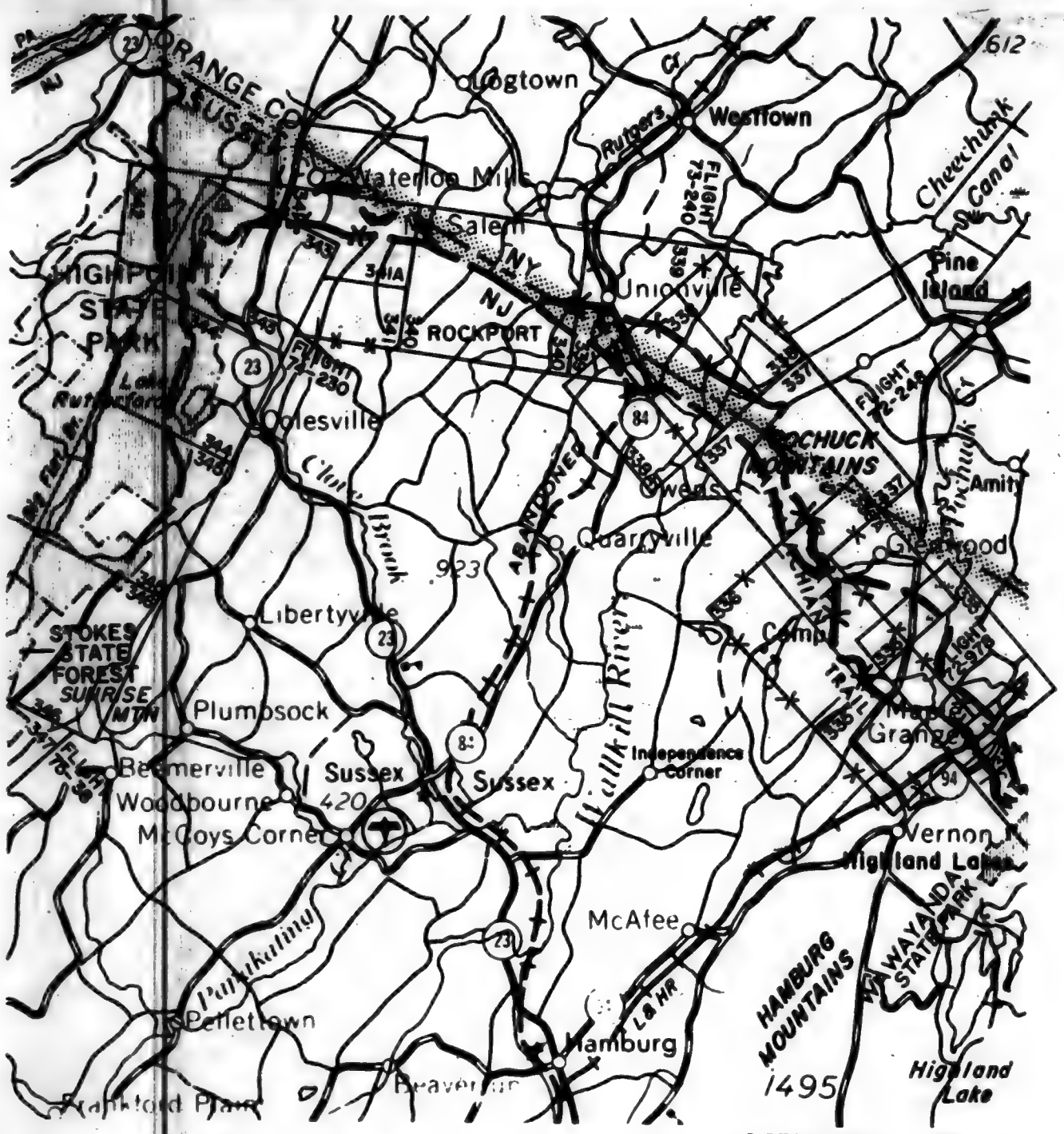

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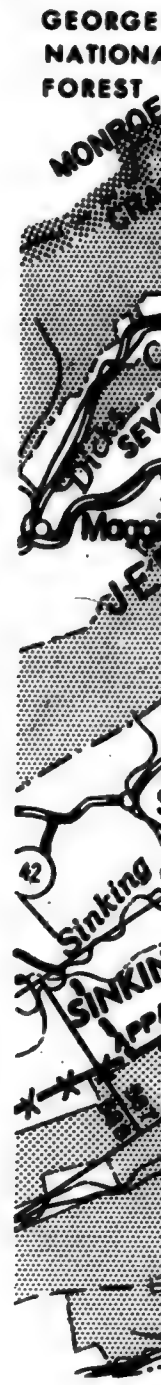

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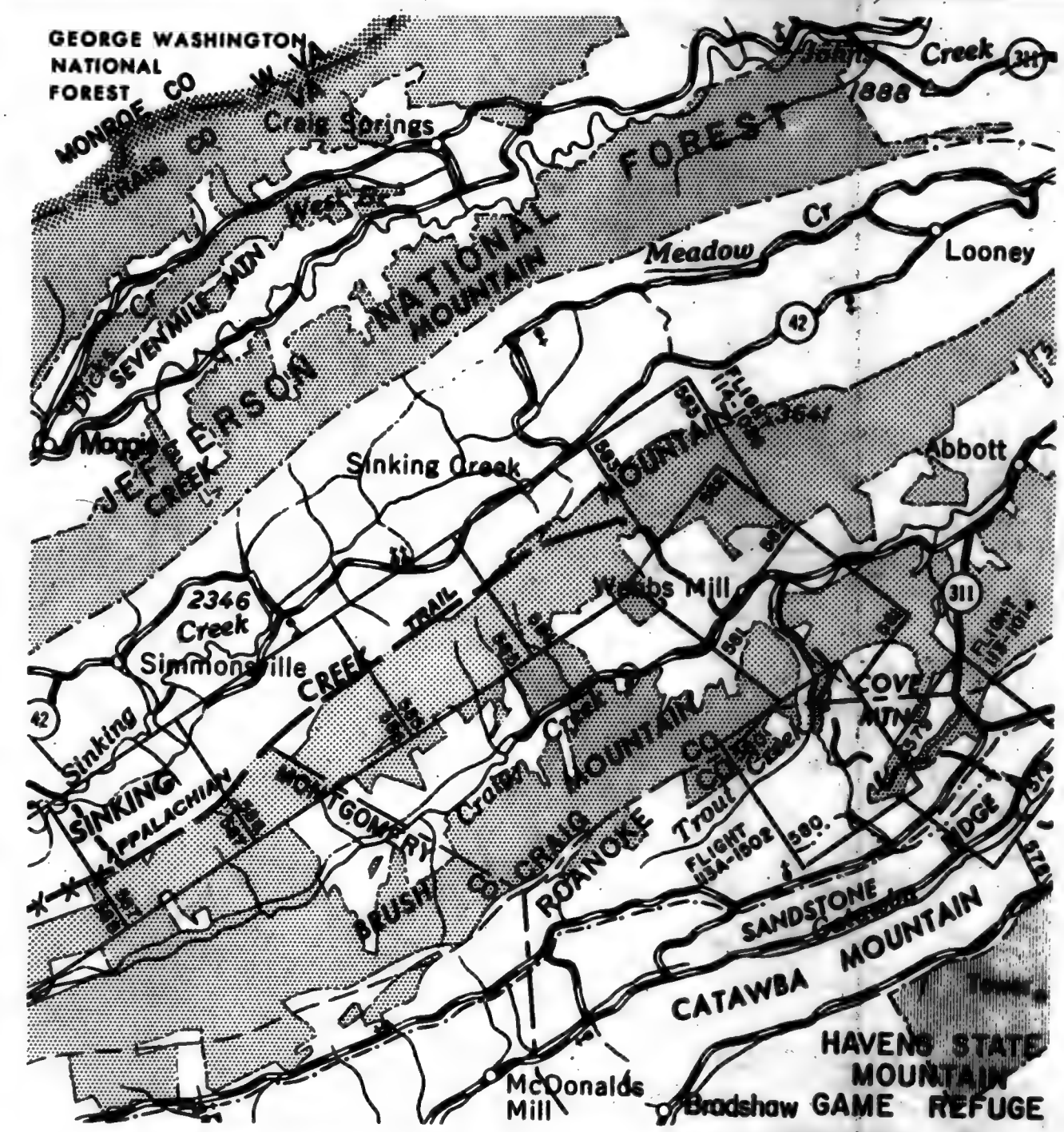
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MONROE CO W. VA.
CRAIG CO VA
Craig Springs
Johns Creek
311
1888
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JEFFERSON NATIONAL
MOUNTAIN
Meadow Cr
Looney
42
SEVENMILE MTN
West Br
Maggie Creek
Sinking Creek
Abbott
Webbs Mill
2346
Creek
TRAIL
Simmonsville
CREEK
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SINKING
APPALACHIAN
MOUNTAIN
Craig Creek
Trout
FLIGHT 115A-1502
580
BRUSH
McCRAIG
ROANOKE
SANDSTONE
CATAWBA MOUNTAIN
McDonalds Mill
Bradshaw
HAVENS STATE MOUNTAIN
GAME REFUGE
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MAP NO. 62
REVISED NOVEMBER 21, 1980
DETAIL MAP REFERENCE 88/89
PRIVATE
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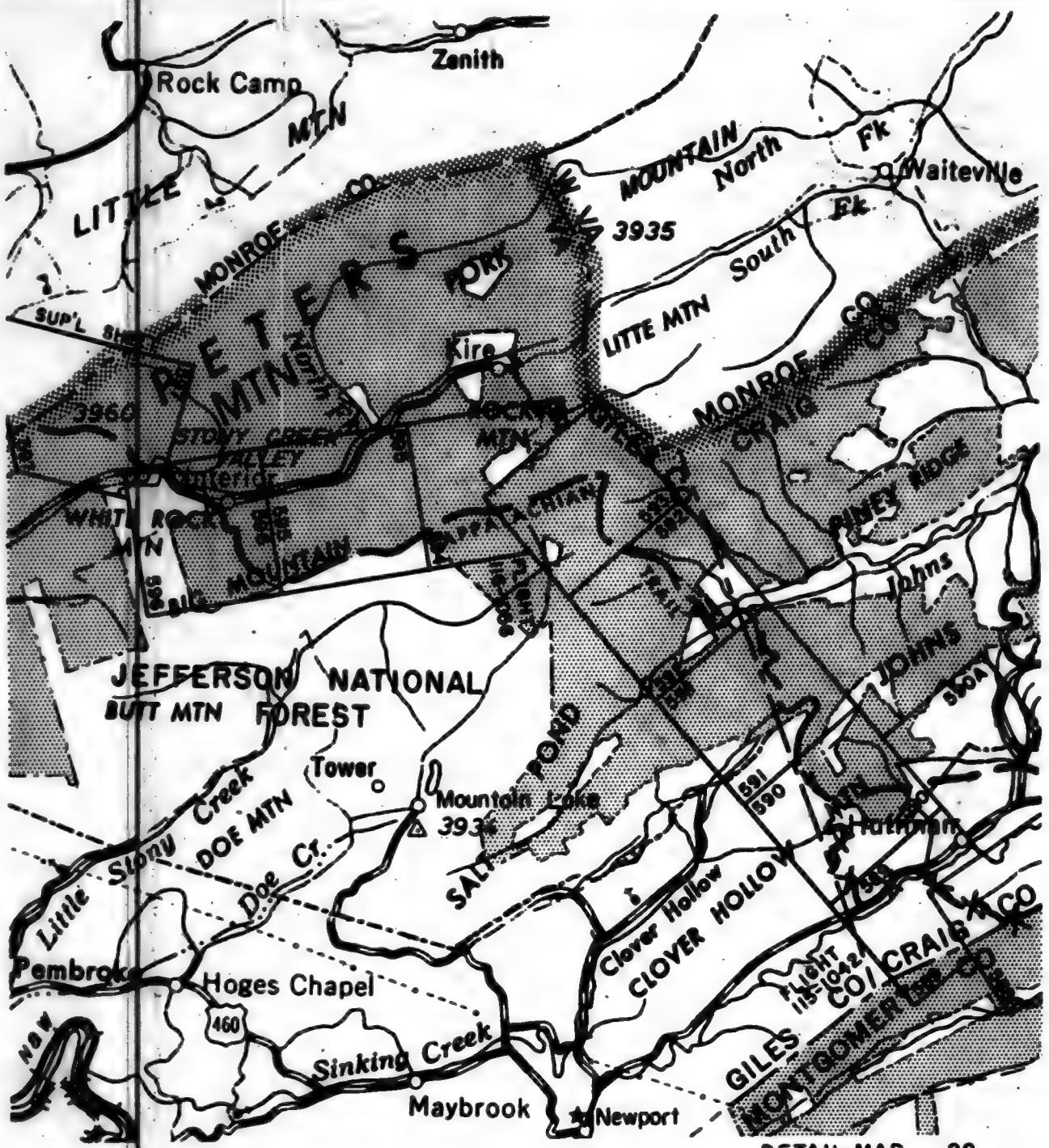

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REVISED NOVEMBER 21, 1980

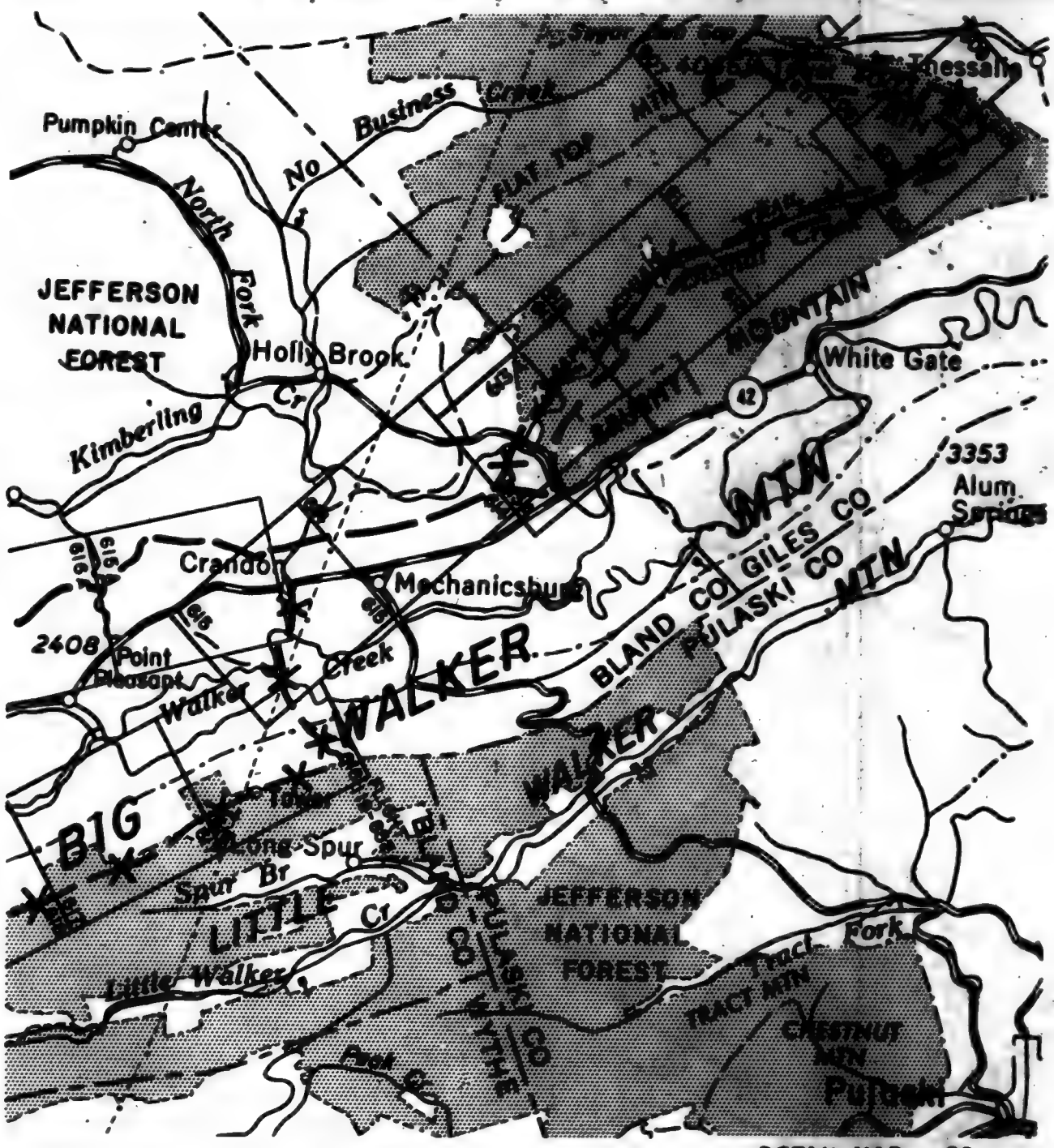
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North Fork
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Crandon
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PULASKI CO
3353
Alum Springs
White Gate
42
BIG
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Little Walker
JEFFERSON NATIONAL FOREST
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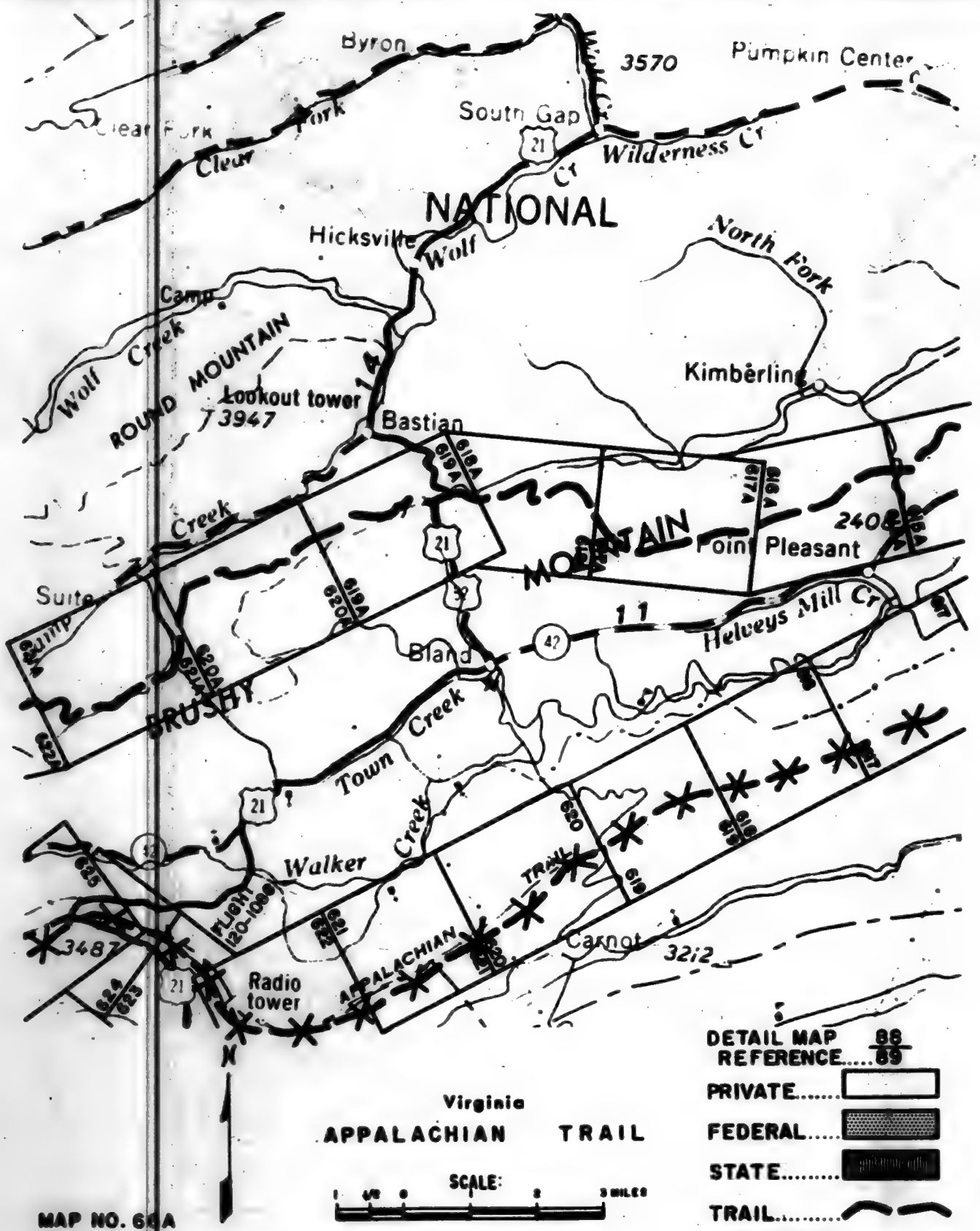
Byron
3570
Pumpkin Center
South Gap
Clear Fork
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Wilderness Ct
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Wolf Creek
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Lookout tower
3947
Bastian
Kimberling
Creek
MOUNTAIN
Point Pleasant
2405
Suite
Helveys Mill Cr
Bland
BRUSHY
Town Creek
Walker Creek
TRAIL
FLIGHT 120-1089
3487
Radio tower
APPALACHIAN
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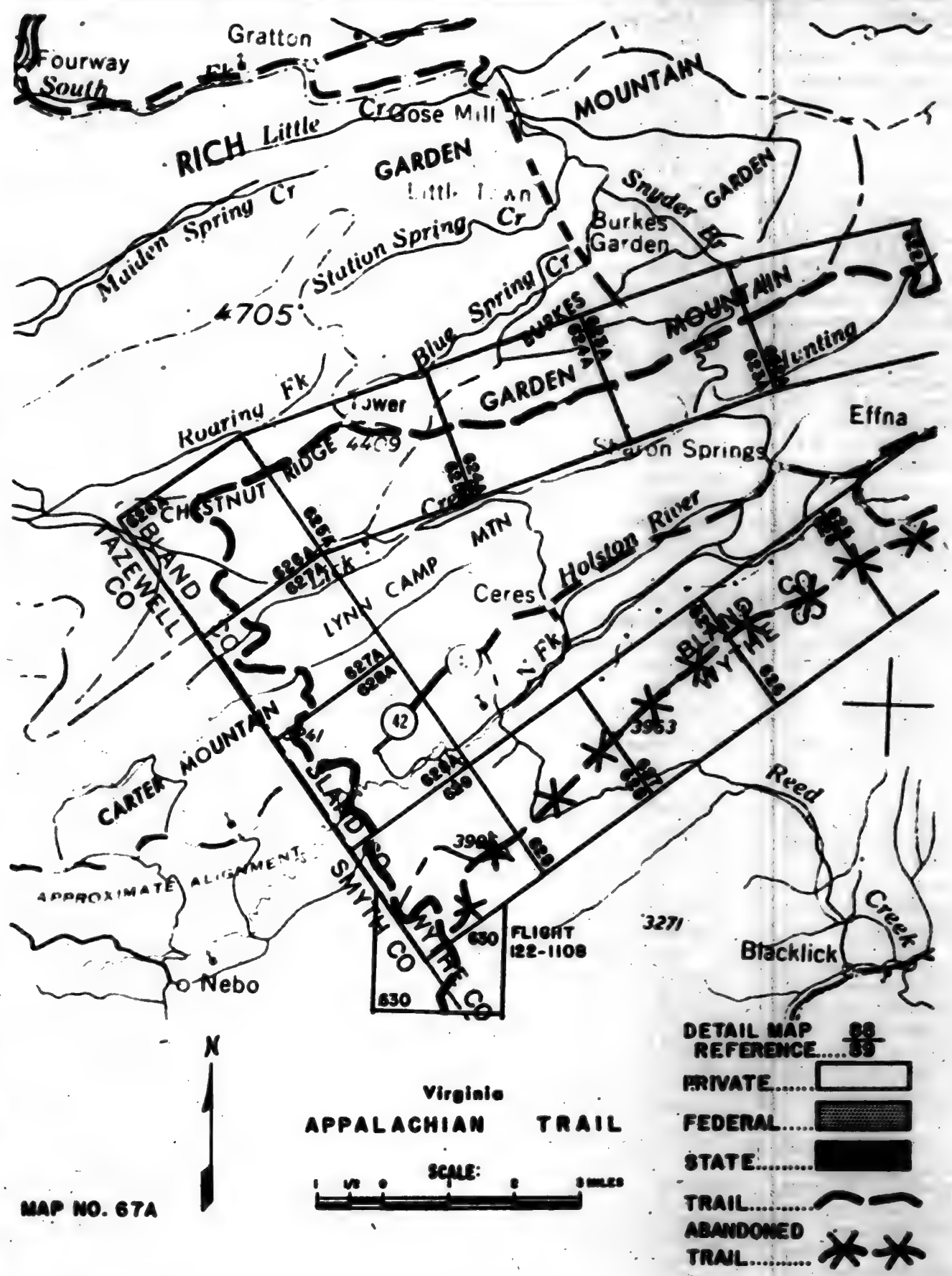

[FR Doc. 81-2374 Filed 1-23-81; 8:45 am]
BILLING CODE 4910-70-C

Office of the Secretary

Approval for Inclusion in the National Wild and Scenic Rivers System as State Administered Components

AGENCY: Interior.

ACTION: Notice.

Pursuant to the authority granted the Secretary of the Interior by Section 2 of the Wild and Scenic Rivers Act (82 Stat. 906 16 U.S.C. 1273), and upon proper application of the Governor of the State of California, five California rivers are hereby designated as State administered components of the National Wild and Scenic Rivers System. This action is based on the designation of the rivers by the State of California and the protections offered these rivers and their immediate environments by and pursuant to applicable State laws and regulations.

On July 18, 1980, the Governor of California petitioned the Secretary of the Interior to add all or portions of the Eel, Smith, Trinity, Klamath and American Rivers to the National System. (See Federal Register of August 7, 1980, page 52459.) These rivers had been designated in the State Wild and Scenic Rivers System in 1972. The following river segments are now components of both the California and National Wild and Scenic Rivers Systems and will continue under State administration except for adjacent Federal lands:

(a) *Klamath River.* The main stem from 3600 feet below Iron Gate Dam to the Pacific Ocean; the Scott River from the mouth of Shackleford Creek west of Fort Jones to the river mouth near Hamburg; the Salmon river from Cecilville Bridge to the river mouth near Somesbar; the North Fork of the Salmon river from the intersection of the river with the south boundary of the Marble Mountain Wilderness Area to the river mouth; Wooley Creek, from the western boundary of the Marble Mountain Wilderness Area to its confluence with the Salmon River.

(b) *Trinity River.* The main stem from 100 yards below Lewiston Dam to the river mouth at Weitchpec; the North Fork of the Trinity from the intersection of the river with the southern boundary of the Salmon-Trinity Primitive Area downstream to the river mouth at Helena; New River from the intersection of the river with the Southern Boundary of the Salmon Trinity Primitive Area downstream to the river mouth near Burnt Ranch; South Fork of the Trinity from the junction of the river with State Highway 36 to the river mouth near Salyer.

(c) *Eel River.* The main stem from 100 yards below Van Arsdale Dam to the Pacific Ocean; the South Fork of the Eel from the mouth of Section Four Creek near Branscomb to the river mouth below Weott; Middle Fork of the Eel from the intersection of the river with the southern boundary of the Middle Eel-Yolla Bolly Wilderness Area to the river mouth at Dos Rios; North Fork of the Eel from Old Gilman Ranch downstream to the river mouth near Ramsey; Van Duzen river from Dinsmores Bridge downstream to the river mouth near Fortuna.

(d) *American River.* The Lower American from Nimbus Dam to its junction with the Sacramento River.

(e) *Smith River.* The main stem from the confluence of the Middle and South Forks to its mouth at the Pacific Ocean, the Middle Fork Smith River from its source about 3 miles south of Sanger Lake as depicted on 1956 USGS 15' "Preston Peak" topographic map to the confluence with the South Fork;, the South Fork Smith River from its source about 0.5 miles southwest of Bear Mountain as depicted on 1956 USGS 15' "Preston Peak" topographic map to the confluence with the Middle Fork Smith River; the North Fork Smith River from the California-Oregon boundary to the confluence with the Middle Fork Smith River; the Siskiyou Fork of the Smith River from its source about 0.7 miles southeast of Broken Rib Mountain as depicted on 1956 USGS 15' "Preston Peak" topographic map to the confluence with the Middle Fork of the Smith River, and the South Siskiyou Fork of the Smith River from its source about 0.6 miles southwest of Buck Lake as depicted on 1956 USGS 15' "Preston Peak" topographic map to the confluence with Siskiyou Fork of the Smith River.

Also included are the following smaller tributaries in the Smith River System:

Rowdy Creek, Dominie Creek, Savoy Creek, Little Mill Creek, Mill Creek, Lower West Branch of Mill Creek, East Fork of Mill Creek, Bummer Lake Creek, Still Creek, Diamond Creek, High Plateau Creek, Bear Creek, North Fork Diamond Creek, Myrtle Creek, Kelly Creek, Patrick Creek, Shelly Creek, East Fork Patrick Creek, West Fork Patrick Creek, Monkey Creek, Packsaddle Creek, Griffin Creek, Knopki Creek, Craigs Creek, Coon Creek, Rock Creek, Gordon Creek, Canthook Creek, Goose Creek, East Fork of Goose Creek, Hurdygurdy Creek, Jones Creek, Muzzleloader Creek, Buck Creek, Quartz Creek, Eight Mile Creek, Williams Creek, Prescott Fork Smith River.

The beginning and ending points for designation of these smaller tributaries shall be as defined in INT FEIS 80-53.

The river resources involved in the State's application are protected to a great extent by their inclusion in the State System. Inclusion in the National System as well will have two major effects: (1) It will prevent Federal participation and assistance in the development of water resource projects which would have a direct and adverse effect on the values for which the rivers have been designated (anadromous fishery resources in all cases, as well as whitewater boating in the cases of the North Fork Smith and Middle Fork Eel and recreation in the case of the American River), and (2) it will require Federal land-managing agencies (primarily the U.S. Forest Service and the Bureau of Land Management) to reassess management policies, plans, regulations and contracts on lands adjacent to river segments, and to conform them with the intent of Wild and Scenic River designation. Designation will also prohibit new mining claims on Federal lands within a quarter mile of segments classified as "wild" and will impose environmentally protective conditions on other mining operations within river corridors.

For purposes of inclusion in the National Wild and Scenic Rivers System and as management direction to Federal agencies administering Federal lands adjacent to the above-described segments, the designated rivers will be managed in accordance with the classifications "wild," "scenic" and "recreational" as determined appropriate by the Heritage Conservation and Recreation Service and as stated in Appendix D of the Final Environmental Impact Statement, INT FEIS 80-53, "Proposed Designation of Five California Rivers in the National Wild and Scenic Rivers System" with the exception of the Smith River System. In the case of the smaller Smith River tributaries, beginning with Rowdy Creek and ending with Prescott Fork Smith River, these are classified as "recreational."

This action is taken following substantial public involvement and consultation with the Department of Agriculture, Federal Energy Regulatory Commission, U.S. Army Corps of Engineers and other Federal agencies as required by Section 4(c) of the Wild and Scenic Rivers Act. Public scoping meetings to identify important issues which needed to be covered in the environmental impact statement were held in four California locations in August. Public meetings were held in

five California locations in October to receive comments on the adequacy of the draft environmental statement and the merits of the Governor's proposal. All comments received throughout the application process have been carefully considered.

Notice is hereby given that effective upon this date, the above-described rivers and river segments are approved for inclusion in the National Wild and Scenic Rivers System as wild, scenic and recreational river areas to be administered by the State of California except for affected Federal lands.

The primary author of this notice is John Haubert, Heritage Conservation and Recreation Service, Department of the Interior, Washington, D.C. 20243, phone 202/343-4793.

Dated: January 19 1981, 7:45 p.m. E.S.T.

Cecil D. Andrus,

Secretary of the Interior.

[FR Doc. 81-2057 Filed 1-21-81; 8:45 am]

BILLING CODE 4310-69-M

[516 DM 6, Appendix 2]

National Environmental Policy Act; Revised Implementing Procedures

AGENCY: Department of the Interior.

ACTION: Notice of final revised instructions for the United States Geological Survey.

SUMMARY: This notice announces a final Appendix to the Department's NEPA procedures for the U.S. Geological Survey. The final Departmental procedures were published in the Federal Register on April 23, 1980 (45 FR 27541).

DATE: The Appendix was adopted January 19, 1981.

FOR FURTHER INFORMATION CONTACT: Bruce Blanchard, Director, Office of Environmental Project Review, Office of the Secretary, Department of the Interior, Washington, D.C. 20240; telephone (202) 343-3891, FTS 343-3891. For Geological Survey, contact Priscilla Woll, telephone (703) 860-7455.

SUPPLEMENTARY INFORMATION: This Appendix to the Departmental Manual (516 DM 6, Appendix 2) provides more specific NEPA compliance guidance to the U.S. Geological Survey (GS). In particular it provides information about GS organizational responsibilities for NEPA compliance, advice to applicants, actions normally requiring the preparation of an environmental impact statement (EIS), and categorical exclusions. The Appendix must be taken in conjunction with the Departmental procedures (516 DM 1-6) and the CEQ regulations (40 CFR 1500-1508). In addition, the Survey will prepare a handbook(s) or other technical guidance on how to apply these procedures to its principal programs.

Response to comments. The proposed Appendix was published in the Federal Register on November 14, 1980 (45 FR 75336) and comments were received from two oil companies and one in behalf of the North Slope Borough in Alaska. As a result of these comments and other internal review, several technical and clarifying changes were made to improve the instructions. Responses to comments are as follows:

Major Actions Normally Requiring an EIS. There has been some confusion about Section 2.3 and the purpose it serves. It must be read in conjunction with Sections 1501.4 and 1507.3 of the CEQ regulations and Sections 516 DM 2.3E and 6.5A(3) of the Departmental Manual. Actions listed in this section neither require the preparation of an EIS in all cases nor do they prevent the preparation of an EIS when other factors are present. The actions listed are merely thresholds which would normally lead to the preparation of an EIS. Their listing allows GS to bypass the preparation of an environmental assessment (EA), and informs the public that if an EIS is not prepared an EA will be prepared for public review prior to a decision.

The commentor in behalf of the North Slope Borough requested that paragraph 2.3A(2) be revised to include the approval of all OCS oil and gas development and production plans in all OCS areas or regions other than Gulf of Mexico. In contrast, an oil company commentor requested that the paragraph be revised to include only the approval of the first such plan in a frontier area. We have not adopted either approach and will continue to follow the environmental review process established for the GS in 30 CFR 250.34-4. Accordingly, we will, prior to approval of a development and production plan, review the environmental impacts of the activities proposed to determine if approval constitutes a major Federal action significantly affecting the quality of the human environment and, if so determined, we will prepare an EIS for such a plan. In conjunction with this we will, in any area or region of the OCS, except in the western Gulf of Mexico, prepare at least one development/production plan EIS pursuant to subsection 25(a) of the OCS Land Act Amendments of 1978.

In addition we have revised the wording of paragraph 2.3A(2) in order to follow more precisely the language of the OCS Land Act Amendments.

Another commentor from an oil company felt the 640 acre thresholds identified for surface mines (paragraph 2.3A(3)) and underground uranium mines (paragraph 2.3A(5)) were unwarranted and that EAs should suffice. He felt that this was establishing an arbitrary limitation which would require extended delays in preparing EISs. We would remind the commentor that the NEPA criteria for preparing an EIS is not changed by these paragraphs. As stated earlier these are thresholds to provide guidance to GS personnel, applicants and the public. We believe that the effects of one square mile (640 acres) of surface disturbance and the subsurface and surface effects of the development of and production from an underground uranium mine of 640 acres are normally significant. If, in a given case, these effects are not considered significant, and EA will be prepared in accordance with paragraph 2.3B.

Format.

Chapter 6 (516 DM 6) Managing the NEPA Process

Appendix 2 Geological Survey

2.1 NEPA Responsibility
2.2 Guidance to Applicants
2.3 Major Actions Normally Requiring an EIS
2.4 Categorical Exclusions

Other Bureaus. Final Appendices have been published in the Federal Register as follows:

1. Fish and Wildlife Service (45 FR 47941)
3. Heritage Conservation and Recreation Service (45 FR 76801)
4. Bureau of Indian Affairs (in publication)
6. Bureau of Mines (45 FR 85528)
7. National Park Service (46 FR 1042)
8. Office of Surface Mining (in publication)
9. Water and Power Resources Service (45 FR 47944)

Proposed Appendices have been published for the following: 5. Bureau of Land Management, December 15, 1980 (45 FR 82367)

Dated: January 19, 1981.

Cecil S. Hoffman,

Special Assistant to Assistant Secretary of the Interior.

Appendix 2

[516 DM 6]

Geological Survey

2.1 NEPA Responsibility

A. Director is responsible for NEPA compliance for U.S. Geological Survey (GS) activities.

B. Assistant Director, Resource Programs, is responsible for approving

or concurring with all EISs for GS actions. The Assistant Director is also responsible for approving reviews of environmental documents prepared by other agencies.

C. *Chief, Environmental Affairs Office* (Reston, VA), is the focal point for all NEPA matters and develops NEPA-related policy and guidance for the GS. The Chief is responsible for: assuring the quality control of environmental documents; monitoring Survey-wide activities to ensure NEPA compliance; reviewing and commenting on other bureaus' and agencies' environmental documents; managing GS personnel assigned to other agencies' EISs; preparing environmental documents at the request of other agencies, assisting in the performance of specialized studies in support of ongoing environmental analyses; and conducting research to improve the NEPA process. Information about GS environmental documents or the NEPA process can be obtained by contacting this office.

D. *Chiefs of Divisions* and *Independent Offices* are responsible within their respective organizations for ensuring compliance with NEPA and other environmental review and consultation requirements.

2.2 Guidance to Applicants

The following regulations and documents of the Survey include information to applicants as to the environmental information required to be submitted as part of or to accompany their applications relating to Federal or Indian mineral leases. The regulations and documents are available upon request from the appropriate regional Conservation Manager.

A. *Oil and Gas*

(1) Onshore—Notice to Lessees and Operators: NTL–6 (Approval of Operations)
(2) Offshore—30 CFR 250.34
—30 CFR 251.6–2
—Guidelines for Preparing Outer Continental Shelf (OCS) Environmental Reports

B. *Geothermal Resources*

—30 CFR 270.34
—Geothermal Resources Operational Order: GRO–4 (General Environmental Protection Requirements)

C. *Coal*

—30 CFR 211.10

D. *Solid Minerals (except coal)*

—30 CFR 231.10

2.3 Major Actions Normally Requiring an EIS

A. The following proposals will normally require the preparation of an EIS:

(1) Approval of studies and investigations that would result in liberation of radioactive tracer materials, or nuclear stimulation.

(2) Approval of an OCS oil and gas development and production plan in any area or region of the OCS, other than the Gulf of Mexico, when the plan is declared to be a major Federal action in accordance with Section 25 of the OCS Land Act Amendments of 1978 (30 CFR 250.34–4).

(3) Approval of a new non-coal surface mine plan which would disturb a total of 640 acres or more.

(4) Approval of a new commercial surface oil shale mine plan, regardless of size.

(5) Approval of a new underground uranium mine plan in which 640 acres or more would be mined.

B. If, for any of these actions, it is proposed not to prepare an EIS, an EA will be prepared and handled in accordance with Section 1501.4(e)(2).

2.4 Categorical Exclusions

In addition to the actions listed in the Departmental categorical exclusions outlined in Appendix 1 of 516 DM 2, many of which the Survey also performs, the following GS actions are designated categorical exclusions unless the action qualifies as an exception under 516 DM 2.3A(3):

A. *Internal Program Initiatives*

(1) Topographic, land use and land cover, geologic, mineralogic, resource evaluation, and hydrologic mapping activities including aerial topographic surveying, photography, and geophysical surveying.

(2) Rendering formal classification of Federal lands in the United States as to their mineral character and waterpower and waterstorage values.

(3) Collection of data and samples for geologic, paleontologic, mineralogic, geochemcical and geophysical investigations, and resource evaluation, including contracts therefor.

(4) Acquisition of existing geological or geophysical data from otherwise private exploration ventures.

(5) Well logging, aquifer response testing, digital modeling, inventory of existing wells and water supplies, water-sample collection, operation/installation of water-level recording devices in wells, and installation and operation of stream-gaging stations and telemetry systems, including contracts therefor.

(6) Establishment of survey marks, emplacement and operation of field instruments, and installation of any research/monitoring devices.

(7) Exploratory or observation groundwater well drilling operations, including contracts therefor.

(8) Establishment of seasonal and temporary field camps.

(9) Digging of exploratory trenches.

(10) Offroad travel to drilling or data collection or observation sites.

(11) Test or exploration drilling and downhole testing included in a project previously subject to the NEPA process.

(12) Hydraulic fracturing of rock formations included in a project previously subject to the NEPA process.

B. *Permit and Regulatory Functions*

(1) *Administrative and General*

(a) Issuance and modification of regulations, Orders, Standards, Notices to Lessees and Operators, and field rules where the impacts are obviously limited to administrative, economic or technological effects and the environmental impacts are minimal.

(b) Development of reporting forms to collect data required by regulations.

(c) Inspections and investigations.

(d) Decisions made and enforcement actions taken as a result of inspections made to ensure compliance with the applicable laws and regulations, Orders, lease terms, and all requirements imposed as conditions of approval.

(e) Approval of production measurement methods, facilities and procedures.

(f) Approval of off-lease storage in existing facilities.

(g) Determination and designation of logical mining units (LMU's).

(h) Approval of unitization agreements, pooling or communitization agreements.

(i) Approval for commingling of production.

(j) Approval of suspensions of operations and suspensions of production.

(k) Approval of royalty payment procedures and determinations concerning royalty quantities and values, such as audits, royalty reductions, collection procedures, cash handling procedures, reporting procedures, and any actions taken with regard to royalty collections (including similar actions relating to net profit and windfall profit taxes).

(l) Approval of applications for pricing determinations under the Natural Gas Policy Act.

(m) Administrative decisions and actions and recordkeeping, such as:

(i) Approval of royalty oil contracts.

(ii) Approvals of underground gas storage agreements from a presently or formerly productive reservoir.

(iii) Issuance of paying well determinations and participating area approvals..

(iv) Issuance of drainage determinations.

(n) Reports to Surface Management agencies concerning mineral appraisals and applications for rights-of-way, small tract leases, lease consolidation applications, lease assignments, and bond termination.

(o) Other actions where GS has concurrence or coapproval with another bureau and the action is a categorical exclusion for that bureau.

(2) *Onshore Oil and Gas*

(a) Approval of an Application for Permit to Drill (APD) for exploratory oil and gas wells prior to the first confirmation drilling.

(b) Approval of minor modifications to or minor variances from activities described in approved development/production plans, such as the relocation of a drill site(s).

(c) Approval of an APD for oil and gas wells subsequent to the first confirmation drilling for which an environmental document is required.

(d) Approval of wells as capable of producing in paying quantities.

(e) Approval of an APD for a new injection or withdrawal well pursuant to an approved gas storage project.

(f) Approval of an APD or equivalent proposal for the enhanced recovery of proven oil and gas resources.

(g) Approval of an APD for a well or approval of a surface facility for the disposal of produced water meeting the standards of NTL–2B (Disposal of Produced Water).

(h) Approval of conversion of an existing oil and gas well for disposal of produced water meeting the standards of NTL–2B.

(i) Approval of an APD for a new water source or observation well.

(j) Approval of conversion of an unsuccessful oil and gas well or an exhausted producer to a water source or observation well.

(k) Approval of Sundry Notices and Reports on Wells.

(3) *Offshore Oil and Gas*

(a) Approval of OCS geological and geophysical exploration activities, except where the proposed activity includes the drilling of deep stratigraphic test holes.

(b) Approval of an OCS exploration or development/production plan in the western Gulf of Mexico (30 CFR 250.2) which does not require an environmental report from an operator pursuant to Item 3 of NTL 80–6.

(c) Approval of minor revisions of or minor variances from activities described in an approved OCS exploration or development/production plan.

(d) Approval of an Application for Permit to Drill (APD) an OCS oil and gas exploration or development well when said well and appropriate mitigation measures are described in an approved exploration plan, development plan, or production plan.

(e) Other applicable actions included in paragraph (2) above.

(4) *Geothermal Resources*

(a) Approval of geophysical exploration for geothermal resources.

(b) Approval of a plan of operation for geothermal exploration or development when an environmental document has been prepared at the leasing stage.

(c) Approval of a plan for geothermal production when derived from a plan of utilization which has been covered by an environmental document.

(d) Approval of a plan for injection of geothermal fluids meeting the requirements of GRO–4 (Environmental Protection Requirements).

(e) Approval of conversion of an unsuccessful geothermal well or an exhausted producer to a water source or observation well.

(5) *Minerals*

(a) Approval of a mineral exploration plan on Federal or Indian lands where the preceding permit, lease, or contract has been covered by an environmental document.

(b) Approval of minor modifications to or minor variances from activities described in an approval mineral exploration plan.

(c) Approval of minor modifications to or minor variances from activities described in an approved underground or surface mine plan.

(d) Findings of completeness (30 CFR 211.10) furnished to the Office of Surface Mining for coal mining and operation plans filed under the Surface Mining Control and Reclamation Act.

[FR Doc. 81-2341 Filed 1-23-81; 8:45 am]
BILLING CODE 4310-01-M

[516 DM 6, Appendix 8]

National Environmental Policy Act; Revised Implementing Procedures

AGENCY: Department of the Interior.

ACTION: Notice of final revised instructions for the Office of Surface Mining.

SUMMARY: This notice announces a final appendix to the Department's NEPA procedures for the Office of Surface Mining. The final Departmental procedures were published in the Federal Register on April 23, 1980 (45 FR 27541).

DATE: The appendix was adopted January 19, 1981.

FOR FURTHER INFORMATION CONTACT: Bruce Blanchard, Director, Office of Environmental Project Review, Office of the Secretary, Department of the Interior, Washington, D.C. 20240; Telephone (202) 343–3891, FTS 343–3891. For Office of Surface Mining, contact Frank Anderson, Telephone (202) 343–5237, FTS 343–5237.

SUPPLEMENTARY INFORMATION: This appendix to the Departmental Manual (516 DM 6, Appendix 8) provides more specific NEPA compliance guidance to the Office of Surface Mining (OSM). In particular it provides information about OSM organizational responsibilities for NEPA compliance, advice to applicants, actions normally requiring the preparation of an EIS, and categorical exclusions. The Appendix must be taken in conjunction with the Departmental procedures (516 DM 1–6) and the CEQ regulations (40 CFR 1500–1508). In addition, the Office will prepare a handbook(s) or other technical guidance on how to apply these procedures to its principal programs.

Response to Comments. The proposed Appendix was published in the Federal Register on February 14, 1980 (45 FR 10043) and one comment was received. As a result of this comment and other internal review, several changes were made to improve the instructions as follows:

Major Actions Normally Requiring and EIS. There has been some confusion about paragraphs 8.3A (3) and (4) [originally 10.3C] and the purpose that they serve. They must be read in conjunction with Sections 1501.4 and 1507.3 of the CEQ regulations and Sections 516 DM 2.5E and 6.5A(3) of the Departmental Manual. Actions listed in these paragraphs neither require the preparation of an environmental impact statement (EIS) in all cases nor do they prevent the preparation of an EIS when other factors are present. The actions listed are merely thresholds which would *normally* lead to the preparation of an EIS. Their listing allows OSM to bypass the preparation of an environmental assessment (EA), and informs the public that if an EIS is not prepared, an EA will be prepared for public review prior to a decision. Paragraph 8.3B has been added to clarify this.

We have reviewed other factors that normally would lead to the preparation of an EIS and have included those in paragraph 8.3A(3). We welcome further

comments on these and any others that the public may propose.

The commentor was concerned that the expansion of existing mines could have the same impacts as new mines. We agree and have deleted the word "new" from paragraph 8.3A(4). In addition the commentor felt the language would exempt the preparation of EISs for underground mines, for small surface mines, and for portal and ancillary facilities. This is not the case. All actions of these types will require the preparation of an EA, and if the proposal is a major Federal action significantly affecting the quality of the human environment an EIS will be prepared.

Based on the comment received and our internal review, we have further modified paragraph 8.3A(4) to refine the thresholds for surface mines in order to better relate them to environmental factors. It is our intent not to prepare an EIS for mining and reclamation plans when the impacts are adequately covered in an EIS at an earlier stage (e.g., leasing) and subparagraph (4)(a) has been added to cover this. We have established a 1280 acre threshold in subparagraph (4)(b) because it is easily measure on Federal lands, and 2 square miles is a substantial area of surface disturbance. We have added a production threshold of 5 million tons/year in subparagraph (4)(b) as a measured of construction, transportation, environmental and socio-economic effect. In addition, we have included a threshold of 15 years of mining in subparagraph (4)(c) to distinguish those mines that have long-term effects. The Department has prepared EISs for 34 surface coal mining plans over the past 10 years and these thresholds were met or exceeded for 29 of them. Thus, we believe that they provide reasonable guidance for determining those surface coal mining plans normally requiring an EIS.

The commentor also proposed that we include in paragraph 8.3A the redesignation of lands as suitable for mining where some or all of the lands have previously been designated by OSM as unsuitable for mining. The rationale is that, whereas the designation as unsuitable has no environmental impact, a petition to redesignate is a reversal of a previous decision and will allow mining impact. We do not agree with the rationale. We believe that both designations and redesignations may have significant environmental impact and that these impacts depend upon the specific lands, resources, and values affected by the petition. This is best handled by the EA procedure on a case-by-case basis, and we have not adopted this suggestion.

Categorical Exclusions. The commentor took exception to subparagraph 8.4B(11) which excludes five-year permit renewals on life-of-mine plans. He felt that the exclusion should be categorical only upon certification by a competent official that the effects of renewal will not be significant, are not unknown, and were not precedent setting. We do not believe that such a certification is necessary and that the exceptions listed in 516 DM 2.3A(3) are sufficient.

In addition the commentor indicated that it was inappropriate to limit subparagraph 8.4B(11) to changes in the method of operations and to the area of the original permit, because there may be changed conditions both inside and outside the area. We agree in general with this comment, but it should be remembered that environmental documents prepared for life-of-mine plans consider the impacts over the full life of the mining and reclamation plans. We would also point out that, if a life-of-mine plan is substantially modified, such modification would be subject to the NEPA process. We have revised the language to better reflect this.

The commentor also pointed out that subparagraph 8.4B(22) was incorrectly drafted as it pertains to Section 523(d) of SMCRA. We thank him and have corrected it.

Lastly, we have deleted the exclusion for emergency projects (formerly 8.4B(8)) because it is adequately handled in Section 1506.11 and 516 DM 5.8, and added subparagraphs 8.4B (27), (28), and (29) pertaining to proposing legislation for Indian regulation of surface mining, certifying and training blasters, and approving State Reclamation Plans for abandoned mine lands. Comments are welcome on these additions.

Format

Chapter 6 (516 DM 6)—Managing the NEPA Process

Appendix 8—Office of Surface Mining

8.1 NEPA Responsibility
8.2 Guidance to Applicants
8.3 Major Actions Normally Requiring an EIS
8.4 Categorical Exclusions

Other Bureaus

Final Appendices for other bureaus have been published in the Federal Register as follows:

1. Fish and Wildlife Service (45 FR 47941)
3. Heritage Conservation and Recreation Service (45 FR 76801)
6. Bureau of Mines (45 FR 85528)
7. National Park Service (46 FR 1042)
9. Water and Power Resources Service (45 FR 47944)

Proposed Appendices have been published for the following bureaus:

2. Geological Survey, November 14, 1980 (45 FR 75336)
4. Bureau of Indian Affairs, July 24, 1980 (45 FR 49368)
5. Bureau of Land Management, December 15, 1980 (45 FR 82367).

Dated: January 19, 1981.

Cecil B. Hoffmann,

Special Assistant to Assistant Secretary of the Interior.

Appendix 8

[516 DM 6]

OFFICE OF SURFACE MINING

8.1 NEPA Responsibility

A. *Director.* Is responsible for NEPA compliance for Office of Surface Mining (OSM).

B. *Assistant Directors.*

(1) Are responsible to the Director for supervision and coordination of NEPA activities in their program areas of responsibility.

(2) Are responsible, within their program areas, for OSM Headquarters review of EISs for compliance with program area policy guidance.

(3) Are responsible for assuring that environmental concerns are identified early in the planning stages and appropriate policy and program guidance is disseminated.

C. *Regional Directors.*

(1) Are responsible to the Director for integrating the NEPA process into all Regional activities and for NEPA compliance activities in their Regions.

(2) Will designate a staff position to be responsible to the Regional Director for the consistency, adequacy, and quality of all NEPA documents prepared by the Region's staff. The position will also be responsible to the Regional Director for providing information, guidance, training, advice, and coordination on NEPA matters, and for oversight of the Region's NEPA process.

D. *Chief, Branch of Environmental Analysis (Washington).* Is designated by the Director to be responsible for overall policy guidance for NEPA compliance for OSM. Information about OSM NEPA documents or the NEPA process can be obtained by contacting this Branch.

8.2 Guidance to Applicants

OSM personnel are available to meet with all applicants for permits on Federal lands or under a Federal program for a State to provide guidance on the permitting procedures. Permit applications under approved State

programs are excluded from NEPA compliance. In addition, OSM's regulations implementing the Surface Mining Control and Reclamation Act of 1977 (SMCRA) provide requirements for applicants to submit environmental information. The following parts of the regulations (30 CFR) describe the information requirements.

A. Parts 770 and 771 outline the content requirements of permit applications on Federal lands or under a Federal program for a State, including: the procedures for coal exploration operations required by 30 CFR 776; the permit application contents for surface coal mining activities required by 30 CFR 778, 779, and 780; the permit application contents for underground coal mining required by 30 CFR 782, 783, and 784; the requirements for special categories of surface coal mining required by 30 CFR 785; and the procedures for review, revision, and renewal of permits and for the transfer, sale, or assignment of rights granted under permits, as required by 30 CFR 788.

B. Part 776 identifies the minimum requirements for coal exploration activities outside the permit area. Part 776 is complemented by Part 815 of Subchapter K which provides environmental protection performance standards applicable to these operations.

C. Part 778 provides the minimum requirements for legal, financial, compliance, and general nontechnical information for surface mining activities applications. Information submitted in permit applications under Part 778 will ber used primarily to enable the regulatory authority and interested members of the public to ascertain the particular nature of the entity which will mine the coal and those entities which have other financial interests and public record ownership interests in both the mining entity and the property which is to be mined.

D. Part 779 establishes the minimum standards for permit applications regarding information on existing environmental resources that may be impacted by the conduct and location of the proposed surface mining activities. With the information required under Part 779, the regulatory authority is to utilize information provided in mining and reclamation plans under Part 780, in order to determine what specific impacts the proposed surface mining activities will have on the environment.

E. Part 780 establishes the heart of the permit application: the mining operations and reclamation plan for surface mining activities. The regulatory authority will utilize this information, together with the description of the existing environmental resources obtained under Part 779, to predict whether the lands to be mined can be reclaimed as required by the Act.

F. Part 782 contains permit application requirements for underground mining activities. This corresponds to Part 778 for surface mining. As such, Part 782 sets forth the minimum requirements for general, legal, financial, and compliance information required to be contained in applications for permits.

G. Part 783 describes the minimum requirements for information on existing environmental resources required in the permit application for underground mining and corresponds to Part 779 for surface mining activities.

H. Part 784 contains a discussion of the minimum requirements for reclamation and operation plans related to underground mining permit applications and corresponds to Part 780 for surface mining activities.

I. Part 785 contains requirements for permits for special categories of mining, including anthracite, special bituminous, experimental practices, mountaintop removal, steep slope, variances from approximate original contour restoration requirements, prime farmlands, alluvial valley floors, augering operation, and in-situ activities. The provisions of Part 785 are intereulated to the performance standards applicable to the special categories covered in Subchapter K and must be reviewed together with the preamble and text for Parts 816 through 828 of Subchapter K.

J. Part 788 specifies the responsibilities of persons conducting surface coal mining and reclamation operations with respect to changes, modifications, renewals, and revisions of permits after they are originally granted, and of persons who attempt to succeed to rights granted under permits by transfer, sale, or assignment of rights.

8.3 Major Actions Normally Requiring an EIS

A. The following OSM actions will normally require the preparation of an EIS:

(1) Approval of the Abandoned Mine Lands Reclamation Program, (SMCRA, Title IV). *Completed in March 1980.*

(2) Promulgation of the permanent regulatory program for surface coal mining and reclamation operations (SMCRA, Title V). *Completed in February 1979.*

(3) Approval of a proposed mining and reclamation plan that includes any of the following:

(a) Mountaintop removal operations.

(b) Mining within high use recreation areas.

(c) Mining that will cause population increases that exceed the community's ability to absorb the growth.

(d) Mining that would require a major change in existing coal transportation facilities.

(4) Approval of a proposed mining and reclamation plan for a surface mining operation that meets the following:

(a) The environmental impacts of the proposed mining operation are not adequately analyzed in an earlier environmental document covering the specific leases or mining activity; and

(b) The area to be mined is 1280 acres or more, or the annual full production level is 5 million tons or more; and

(c) Mining and reclamation operations will occur for 15 years or more.

B. If for any of these actions it is proposed not to prepare an EIS, an EA will be prepared and handled in accordance with Section 1501.4(e)(2).

8.4 Categorical Exclusions

A. The following OSM actions are deemed not to be major Federal actions within the meaning of Section 102(2)(C) of NEPA under Sections 501(a) or 702(d) of the SMCRA. They are hereby designated as categorical exclusions from the NEPA process and are exempt from the exceptions under 516 DM 2.3A(3):

(1) Promulgation of interim regulations.

(2) Approval of State programs.

(3) Promulgation of Federal programs where a State fails to submit, implement, enforce, or maintain an acceptable State program.

(4) Promulgation and implementation of the Federal lands program.

B. In addition to the actions listed in the Departmental categorical exclusions outlined in Appendix 1 of 516 DM 2, many of which OSM also performs, the following OSM actions (SMCRA sections are in parentheses) are designated categorical exclusions unless the actions qualify as an exception under 516 DM 2.3A(3):

(1) Monetary allotments to States for mining and mineral resources institutes [301].

(2) Allocation of research funds to institutes [302].

(3) Any research effort associated with ongoing abandoned mine land reclamation projects where the research is coincidential to the reclamation [401(c)(8)].

(4) Collection of reclamation fees from operators [402(a)].

(5) Findings of fact and entries on land adversely affected by past coal mining [407(a)].

(6) Acquisition of particular parcels of abandoned mine lands for reclamation (407(c)).

(7) Filing liens against property adversely affected by past coal mining (408).

(8) Interim regulatory grants (502(e)(4)).

(9) Disapproval of a proposed State program (505(c)).

(10) Review of permits issued under a previously approved State program (504(d)).

(11) Five-year permit renewal on life-of-mine plans under the Federal lands program or the Federal program for a State where the environmental impacts of continued mining are adequately analyzed in a previous environmental document for the mining operation (506(d)).

(12) Small operator assistance program (507(c)).

(13) Issuance of public notices and holding public hearings on permit applications involving Federal lands or under a Federal program for a State (513).

(14) Routine inspection and enforcement activities (517).

(15) Conflict of interest regulations (517(g)).

(16) Assessment of civil penalties (518).

(17) Releases of performance bonds or deposits for mining on Federal lands or under a Federal program for a State (519).

(18) Issuance of cessation orders for coal mining and reclamation operations (521(a)(2) and (3)).

(19) Suspension or revocation of permits (521(a)(4)).

(20) Federal oversight and enforcement of ineffective State programs (521(b)).

(21) Cooperative agreements between a State and the Secretary to provide for State regulation of surface coal mining and reclamation operations on Federal lands (523(c)).

(22) Development of a program to assure that, with respect to the granting of permits, leases, or contracts for Federally-owned coal, no one shall be unreasonably denied purchase of the mined coal (523(d)).

(23) Annual grants programs to States for program development, administration, and enforcement (705(a)).

(24) Assistance to States in the development, administration, and enforcement of State programs (705(b)).

(25) Increasing the amount of annual grants to States (705(c)).

(26) Submission of the Secretary's annual report to the Congress (706).

(27) The proposal of legislation to allow Indian tribes to regulate surface coal mining on Indian lands (710(a)).

(28) The certification and training of blasters (719).

(29) Approval of State Reclamation Plans for abandoned mine lands (405).

[FR Doc. 81-2045 Filed 1-22-81; 8:45 am]
BILLING CODE 4310-05-M

[516 DM 6, Appendix 4]

National Environmental Policy Act; Revised Implementing Procedures

AGENCY: Department of the Interior.

ACTION: Notice of final revised instructions for the Bureau of Indian Affairs.

SUMMARY: This notice announces a final appendix to the Department's NEPA procedures for the Bureau of Indian Affairs. The final Departmental procedures were published in the Federal Register on April 23, 1980 (45 FR 27541).

DATE: The appendix was adopted January 19, 1981.

FOR FURTHER INFORMATION CONTACT: Bruce Blanchard, Director, Office of Environmental Project Review, Office of the Secretary, Department of the Interior, Washington, D.C. 20240; Telephone (202) 343-3891, FTS 343-3891. For Bureau of Indian Affairs, contact George Farris, Telephone (202) 343-4004, FTS 343-4004.

SUPPLEMENTARY INFORMATION: This appendix to the Departmental Manual (516 DM 6, Appendix 4) provides more specific NEPA compliance guidance to the Bureau of Indian Affairs. In particular it provides information about Bureau organizational responsibilities for NEPA compliance, advice to applicants, actions normally requiring the preparation of an EIS, and categorical exclusions. The Appendix must be taken in conjunction with the Departmental procedures (516 DM 1-6) and the CEQ regulations (40 CFR 1500-1508). In addition, the Bureau will prepare a handbook(s) or other technical guidance on how to apply these procedures to its principal programs.

The proposed Appendix was published in the Federal Register on July 24, 1980 (45 FR 49368) and no comments were received. As a result of internal review, several changes and additions have been made to improve the instructions for technical and consistency purposes. The principal changes appear in paragraphs 4.3A, 4.4F, and 4.4G. Further comments are welcome and will be considered in periodic revisions of the Appendix.

Format

Chapter 6 (516 DM 6) Managing the NEPA Process

Appendix 4. Bureau of Indian Affairs

4.1 NEPA Responsibility
4.2 Guidance to Applicants and Tribal Governments
4.3 Major Actions Normally Requiring an EIS
4.4 Categorical Exclusions

Other Bureaus

Final Appendices for other Bureaus have been published in the Federal Register, as follows:

1. Fish and Wildlife Service (45 FR 47941).
2. Heritage Conservation and Recreation Service (45 FR 78931).
3. Bureau of Mines (45 FR 85628).
7. National Park Service (46 FR 1042).
8. Water and Power Resources Service (45 FR 47944).

Proposed Appendices have been published for the following Bureaus:

2. Geological Survey, November 14, 1980 (45 FR 75336).
5. Bureau of Land Management, December 15, 1980 (45 FR 82387).
6. Office of Surface Mining, February 14, 1980 (45 FR 10043).

Dated: January 19, 1981.

Cecil B. Hoffmann,

Special Assistant to Assistant Secretary of the Interior.

4.1 NEPA Responsibility

A. *Commissioner of Indian Affairs.* As chief executive officer, the Commissioner is responsible for the NEPA compliance of Bureau of Indian Affairs (BIA) activities.

B. *Director, Office of Trust Responsibilities,* is responsible for oversight of the BIA program for achieving compliance with NEPA. The Director shall determine the adequacy of all EISs which come before the Commissioner.

C. The *Environmental Services Staff* (Washington), in the Office of Trust Responsibilities, is the focal point for NEPA matters within BIA and is responsible for advising and assisting Area Directors and field support personnel in their environmental activities and acting as the Central Office's liaison with Indian tribal governments on environmental matters. Information about BIA NEPA documents or the NEPA process can be obtained by contacting this staff.

D. Other *Central Office Directors* are responsible for ensuring that the programs and activities within their directorate comply with NEPA.

E. *Area Directors* and *Project Officers* are responsible for conducting all activities under their jurisdiction in compliance with NEPA and providing advice and assistance to Indian tribes on environmental matters; and will provide sufficient staff assistance to ensure that these responsibilities are fulfilled.

F. *Agency Superintendents and Field Unit Supervisors* are responsible, as directed and delegated by the Area Directors, for implementation and enforcement of the Bureau's environmental policy at the Agency or field unit level, including the field

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inspection, preparation, and approval of environmental documents.

4.2 Guidance to Applicants and Tribal Governments

A. *Relationship with Applicants and Tribal Governments.*

(1) *Types of Applicants.* An "applicant" is any entity which proposes to undertake an activity which will at some point require BIA action. These may include tribal governments, private entities, State and local governments, or Federal agencies.

(2) *Tribal Governments.*

(a) Tribal governments are accorded a special status by BIA. This relationship requires close cooperation and consultation. Tribal governments may be applicants, and/or be affected by a proposed action of BIA or another applicant. In the preparation of environmental documents, tribal governments will be consulted and, if they desire, be a cooperating agency.

(b) Tribal actions that do not require BIA or other Federal approval are not subject to the NEPA process.

B. *Prepared Program Guidance.* Program guidance for surface mining is found in 25 CFR 177 (Surface Exploration, Mining, and Reclamation of Land).

C. *Other Guidance.* Other programs under 25 CFR for which BIA has not yet issued regulations or directives for environmental information from applicants are listed below. These programs may or may not require environmental documents and could involve submission of applicant information. Applicants for these types of programs should contact the nearest affected BIA office for information and assistance:

(1) Indian Business Development Program (25 CFR 80)

(2) Loans to Indians from the Revolving Loan Fund (25 CFR 91)

(3) Loan guaranty, insurance, and interest subsidy (25 CFR 93)

(4) Leasing and permitting (Lands) (25 CFR 131)

(5) Preservation of antiquities (25 CFR 132)

(6) General forest regulations (25 CFR 141)

(7) Sale of lumber and other forest products by Indian epterprises from the forests of Indian reservations (25 CFR 142)

(8) Sale of forest products, Red Lake Indian Reservation, Minn. (25 CFR 144)

(9) General grazing regulations (25 CFR 151)

(10) Navajo grazing regulations (25 CFR 152)

(11) Grazing regulations for former Navajo-Hopi joint use area lands (25 CFR 153)

(12) Rights-of-way over Indian lands (25 CFR 161)

(13) Roads of the Bureau of Indian Affairs (25 CFR 162)

(14) Leasing of tribal lands for mining (25 CFR 171)

(15) Leasing of allotted lands for mining (25 CFR 172)

(16) Leasing of lands on Crow Indian Reservation, Montana, for mining (25 CFR 173)

(17) Leasing of restricted lands of members of Five Civilized Tribes, Oklahoma, for mining (25 CFR 174)

(18) Leasing of Osage Reservation, Oklahoma, lands for mining, except oil and gas (25 CFR 175)

(19) Lead and zinc mining operations and leases, Quapaw Agency (25 CFR 176)

(20) Leasing of Osage Reservation lands for oil and gas mining (25 CFR 183)

(21) Leasing of certain lands in the Wind River Indian Reservation, Wyoming, for oil and gas mining (25 CFR 184)

(22) Concessions, permits, and leases on lands withdrawn or acquired in connection with Indian irrigation projects (25 CFR 203)

(23) Electric power system—Colorado River Irrigation Project, Arizona (25 CFR 231)

(24) Electric power system—Flathead Indian Irrigation Project, Montana (25 CFR 232)

(25) Off-reservation treaty fishing (25 CFR 256)

(26) Contracts under Indian Self-Determination Act (25 CFR 271)

(27) Grants under the Indian Self-Determination Act (25 CFR 272)

(28) School construction contracts or services for tribally operated previously private schools (25 CFR 274)

(29) School construction contracts for public schools (25 CFR 277)

4.3 Major Actions Normally Requiring an EIS

A. The following BIA actions normally require the preparation of an EIS:

(1) Proposed mining contracts (for other than oil and gas), or the combination of a number of smaller contracts comprising a mining unit, for:

(a) new mines of 640 acres or more, other than surface coal mines.

(b) new surface coal mines of 1,280 acres or more, or having an annual full production level of 5 million tons or more.

(2) Proposed water development projects which would, for example, inundate more than 1,000 acres, or store more than 30,000 acre-feet, or irrigate more than 5,000 acres of undeveloped land.

B. If, for any of these actions, it is proposed not to prepare and EIS, an EA will be prepared and handled in accordance with section 1501.4(e)(2).

4.4 Categorical Exclusions

In addition to the actions listed in the Departmental categorical exclusions outlined in Appendix 1 of 516 DM 2, many of which the BIA also performs,the following BIA actions are designated as categorical exclusions unless the action qualifies as an exception under 516 DM 2.3A(3):

A. *Operation, maintenance, and replacement of existing facilities.* Examples are renovation of buildings, renovation of existing roads, and rehabilitation of irrigation structures.

B. *Transfer of Existing Federal Facilities to Other Entities.* Transfer of the operations and maintenance activities of Federal facilities to tribal groups, water user organizations, or other entities where the anticipated operation and maintenance activities are agreed to in a contract, follow BIA policy, and no major change in operations or maintenance is anticipated.

C. *Human resource programs having primarily socio-economic effects.* Examples are social services, education services, employment assistance, tribal operations, law enforcement, and credit and financing activities.

D. *Administrative actions and other activities relating to trust resources.* Examples are management of trust funds; issuance of such documents as certificates of competency, allotments, and fee patents; renewal of agricultural and other leases when environmental impacts are addressed in an earlier environmental document; and routine research and investigation activities regarding trust resources.

E. *Self-Determination Act Grants and Contracts.*

(1) Self-Determination Act grants.

(2) Self-Determination Act contracts for BIA programs which are listed as categorical exclusions, or for programs in which environmental impacts are adequately addressed in an earlier environmental document.

F. *Rights-of-way.*

(1) Rights-of-way inside another right-of-way or amendments to rights-of-way where minor deviations from or additions to the original right-of-way are involved and where there is an existing environmental document covering the same or similar impacts in the right-of-way area.

(2) Right-of-way for a single-poled power or telephone line to an individual residence, building or well from an existing line where installation will involve no clearance of vegetation from the right-of-way other than for placement of the poles.

G. *Mineral Resources.*

(1) Approval of a mineral prospecting permit or exploration plan when an environmental document has been prepared for the exploration or mining contract.

(2) Approval of minor modifications to or variances from activities described in an approved underground or surface mine plan.

(3) Approval of geophysical exploration for oil and gas and geothermal resources.

(4) Approval of minor modifications to or variances from activities described in an approved oil and gas or geothermal exploration or development/production plan, such as the relocation of a drill site(s).

(5) Approval of an Application for Permit to Drill (APD) exploratory oil and gas wells prior to the first confirmation drilling.

(6) Approval of an APD for exploratory oil and gas wells subsequent to the first confirmation drilling for which an environmental document is required.

(7) Approval of an APD for a new water source or observation well.

(8) Approval of an APD for a new injection or withdrawal well pursuant to an approved gas storage project.

(9) Approval of an APD or equivalent proposal for the enhanced recovery of proven oil and gas resources.

(10) Approval of conversion of an unsuccessful oil and gas or geothermal well or an exhausted producer to a water source well or observation well.

(11) Approval of conversion of an existing oil and gas well for disposal of produced water meeting the standards of NTL-2B (Disposal of Produced Water).

(12) Approval of surface facilities and wells for the disposal of produced water meeting the standards of NTL–2B.

(13) Approval of a plan for geothermal exploration or development.

(14) Approval of a plan for geothermal production when derived from a plan of utilization previously covered by an environmental document.

(15) Approval of a plan for injection of geothermal fluids meeting the requirements of GRO–4 (Environmental Protection Requirements).

(16) Approval of utilization agreements, pooling or communitization agreements.

(17) Other actions where BIA has concurrence or co-approval with another bureau and the action is a categorical exclusion for that bureau.

[FR Doc. 81–2259 Filed 1–22–81; 8:45 am]

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[516 DM 6, Appendix 5]

National Environmental Policy Act; Revised Implementing Procedures

AGENCY: Department of the Interior.

ACTION: Notice of final revised instructions for the Bureau of Land Management.

SUMMARY: This notice announces a final Appendix to the Department's NEPA procedures for the Bureau of Land Management. The Departmental procedures were published in the Federal Register on April 23, 1980 (45 FR 27541).

DATE: The appendix was adopted January 19, 1981.

FOR FURTHER INFORMATION CONTACT: Bruce Blanchard, Director, Office of Environmental Project Review, Office of the Secretary, Department of the Interior, Washington, D.C. 20240, Telephone: (202) 343–3891. For Bureau of Land Management, contact Bruce Bandurski, Telephone: 343–7417.

SUPPLEMENTARY INFORMATION: This Appendix to the Departmental Manual (516 DM 6, Appendix 5) provides more specific NEPA compliance guidance to the Bureau of Land Management (BLM). In particular it provides information about BLM organizational responsibilities for NEPA compliance, advice to applicants, actions normally requiring the preparation of an environmental impact statement (EIS), and categorical exclusions. The Appendix must be taken in conjunction with the Departmental procedures (516 DM 1–6) and the CEQ regulations (40 CFR 1500–1508). In addition, the Bureau will prepare a handbook(s) or other technical guidance on how to apply these procedures to its principal programs.

The proposed Appendix was published in the Federal Register on December 15, 1980 (45 FR 82367) and six comments were received from an energy corporation, an environmental organization, three officials from two professional geologist organizations, and a Federal agency. As a result of these comments and internal review, changes have been made to improve the instructions, including many minor changes for technical, clarifying and consistency reasons. Responses to comments are as follows:

Major Actions Normally Requiring an EIS

One commenter felt that regional coal lease sales schedules [5.3A(4)], OCS oil and gas lease sales [5.3A(5)], and major energy facility sites and rights-of-way [5.3A(6)] should be excluded from EIS requirements whenever prior environmental documents have been prepared covering the same or similar activities affecting the same area. Certainly, EISs will not be prepared for an action already covered by an EIS. In addition, the CEQ regulations allow the adoption and/or incorporation, by reference of relevant portions of applicable EISs. However, NEPA requires that there be a proposed action in an EIS rather than an analysis of a similar activity. We have not changed these paragraphs because actions of these types, if not covered by an earlier EIS, will normally require the preparation of an EIS.

Another commenter agreed with and supported all of the listed types of actions and suggested expanding the list to include actions affecting lands or items enumerated in paragraph 516 DM 2(A)(3). That paragraph enumerates our exceptions to categorical exclusions, which in term are derived from the definition of significance in Section 1508.27 of the CEQ regulations. We have not adopted this suggestion, because in essence it would merely restate the CEQ regulations in section 1502.3; i.e., major actions significantly affecting the quality of the human environment.

Two issues were raised about Section 5.3A(7). One commenter questioned the 5000 acre threshold for withdrawals from mineral entry because of the high value of some small mineral deposits. Another commenter supported it, but also wanted to include the termination of such withdrawals, where minerals are known to be present, but without any acreage threshold. We have adopted neither of these suggestions. We believe that the section as written reflects the importance the Congress placed on reviewing withdrawals over 5000 acres and requiring the Secretary to review withdrawals from mineral entry under the mining laws. We believe that the normal case-by-case NEPA review process of preparing an environmental assessment (EA) to determine whether to prepare an EIS will fully consider the other situations.

Categorical Exclusions

We have deleted the paragraph, formerly 5.A(1), which categorically excluded certain program guidance decisions and, to the extent they apply, BLM will use the Department-wide exclusions listed in Appendix 1 to 516 DM 2.

§ 5.4A(5). We have added a general consistency exclusion for an action requiring the approval of more than one bureau. This will particularly facilitate working arrangements between BLM and the Geological Survey.

§ 5.4B(1), (2), and (3). One commentor felt that these withdrawal continuations and extensions should be excluded only upon public notice and no adverse public response. Public notice is provided in these cases, but we do not believe that adverse comments in and of themselves are sufficient reason to require an EA. We believe our exceptions in 516 DM 2.3A(3) to be adequate safeguard to ensure an EA when significant environmental factors are present.

We have deleted the paragraph, formerly 5.4B(2), excluding withdrawal continuations and extensions involving less than 100 acres pending operating experience under this Appendix.

§ 5.4B(7). A commentor objected to excluding all withdrawal terminations which would open lands to discretionary land laws notwithstanding the fact that the NEPA process would apply to any subsequent discretionary action. We have retained the exclusion because we believe that our exceptions to the exclusions will require an EA whenever there is any evidence of significant impact at the time of their termination.

§ 5.4B(8). There was support for this exclusion of withdrawal terminations which would open lands to the mining laws, when minerals are not present. However, a commentor felt that if any minerals were found in the future the land should be retroactively withdrawn regardless of whether the mineral extraction involves discretionary or non-discretionary duties on the part of BLM. We believe this would lead to unacceptable uncertainties in managing the public lands. Moreover, there are no provisions for retroactive application of withdrawals in FLPMA. We have not adopted this suggestion.

Another commentor indicated that the interest expressed in mineral development should be a serious interest as reflected by parties having mineral competence or mining capability. We agree with this suggestion and have modified the language here and in two other places in the Appendix (paragraph 5.3A(7) and 5.4B(3)).

§ *5.4B(9).* One commentor believed that there was some element of discretion in almost all cases where the Secretary had a mandatory duty to terminate a withdrawal. This may be true in some cases, but we leave this to a case-by-case determination. The language has been modified to improve its clarity.

§ *5.4B(14).* A commentor requested us to define "minor actions" and opposed excluding the actual conveyance of the mineral estate. We have changed the wording to make it clear that we are excluding the conveyance, but only when it would be consistent with surrounding land uses or would cause only minimal environmental impact.

§ *5.4B(16).* An objection was expressed because these disclaimers could lead to situations having unacceptable environmental impact. This may be the case in isolated situations, but our actions under Section 315 are narrow legal determinations. We have not changed this section.

§ *5.4B(21).* Another commentor recommended that this exclusion be expanded to include adjacent rights-of-way. We did not accept the recommendation, but did change it to include minor deviations from the right-of-way.

§ *5.4B(23).* A commentor was concerned that this section could include upgrading power lines to 765-kV. We do not agree. This exclusion refers to poles and not towers.

§ *5.4B(24).* The commentor felt that this exclusion would omit well fields associated with coal slurry pipelines. We have clarified the language that we are excluding a single-poled line to an individual residence, building or well.

A commentor recommended that we add an exclusion which would cover all modifications to major energy facilities and rights-of-way which were covered in an existing document. To the extent they are covered, a categorical exclusion is not required (see 516 DM 3.2A), otherwise we believe an EA is appropriate. Another suggestion was to exclude all oil, gas, and coal lease sales within or adjacent to areas where an existing environmental document was prepared covering the same or similar activities. This is similar to a comment about removing these types of actions from the category normally requiring an EIS. We have not adopted this suggestion for the same reasons that we stated earlier.

Another commentor requested that we add an exclusion for terminating withdrawals proposed by another Federal agency. This is not necessary because we will use the environmental document which accompanies the Federal agency's proposal. A further suggestion was made to exclude land transfers to Federal agencies pursuant to Sections 205(c) and 206(c) of FLPMA. We have adopted this suggestion and it appears in Section 5.4B(10).

§ *5.4D(1).* There was opposition to the exclusion of the issuance of mineral patents because there may be discretionary actions at earlier stages of the issuance process, and, further, the Secretary has an obligation to protect surrounding public lands. We do not believe that this Appendix is the place to argue this issue. To the extent discretion exists, it is not excluded under this section; for we are only excluding the issuance of a mineral patent which the courts have determined is non-discretionary.

§ *5.4D(3).* Several commentors were concerned that this section implied that permits were always required for such mapping, inventory, reconnaissance and collecting. This is not the case. This section only excludes the approval of those activities for which BLM permits are required. It does not apply to those academic, scientific and casual activities that do not require permits.

§ *5.4D(4).* One commentor questioned our exclusion of individual upland oil and gas leases, because they are discretionary duties. We have revised the language to exclude only non-competitive leases because over the past ten years we have issued over 100,000 such leases and our tens of thousands of EAs have not even lead to one EIS. We believe our exceptions to the exclusions listed in 516 DM 2.3A(3) will capture those few non-competitive leases that may have some impact. Another commentor recommended that we expand this section to include geothermal leases. We have not done so because the lease stage is the first significant level of commitment towards the development of these resources. We may revise this for non-competitive leases at some time in the future when we have more experience with this program.

§ *5.4D(6 and 7).* A commentor opposed categorically excluding geophysical exploration for oil and gas and geothermal resources, and another commentor requested that we include shallow temperature gradient holes in the exploration of geothermal resources. Our experience in operating under the pre-leasing exploration regulations (43 CFR 3045 and 43 CFR 3200) generally reveals negligible environmental impacts and we have revised these to reference the regulations. Further our exceptions to the exclusions will require EAs whenever significant impacts may result.

We have added consistency provisions for geothermal and coal mining activities involving joint activities with the Geological Survey and the Office of Surface Mining in Section 5.4D(7–11).

§ *5.4E(3).* A suggestion was made to define "small sales." We do not believe this is necessary here and we leave it to the field-level decisionmaker. In any case the exceptions to the exclusion apply.

One commentor requested that we exclude all actions involving coal and off-shore oil and gas leasing and all major energy facilitites and rights-of-way not requiring EISs. We have not adopted this request and believe that these are best handled in the normal EA process.

Several new exclusions have been added as Sections 5.4E(5–10) for certain grazing, forestry and wildlife activities. Comments are welcome and will be considered in periodic revisions to the Appendix.

Format

Chapter 8 (516 DM 8) Managing the NEPA Process

Appendix 5. Bureau of Land Management

5.1 NEPA Responsibility
5.2 Guidance to Applicants
5.3 Major Actions Normally Requiring an EIS
5.4 Categorical Exclusions

Other Bureaus

Final Appendices have been published in the Federal Register for all other bureaus as follows:

1. Fish and Wildlife Service (45 FR 47941).
2. Geological Survey (in publication).
3. Heritage Conservation and Recreation Service (45 FR 78801).
4. Bureau of Indian Affairs (in publication).
6. Bureau of Mines (45 FR 85328).
7. National Park Service (46 FR 1042).
8. Office of Surface Mining (in publication).
9. Water and Power Resources Service (45 FR 47944).

Dated: January 19, 1981.

Cecil B. Hoffmann,

Special Assistant to Assistant Secretary of the Interior.

[516 DM 6]

Appendix 8—Bureau of Land Management

8.1 NEPA Responsibility

A. The *Director/Associate Director* are responsible for NEPA compliance for Bureau of Land Management (BLM) activities.

B. The *Deputy Director for Lands and Resources* is responsible for policy interpretation, program direction, leadership, and line management for BLM environmental policy, coordination, and procedures.

(1) *Office of Planning, Inventory and Environmental Coordination.* Although this Office reports to the Deputy Director for Lands and Resources, it has Bureauwide NEPA responsibilities. These include providing program direction and procedures for implementing NEPA, and insuring the incorporation and integration of the NEPA process into BLM management systems and decision processes.

(2) The *Branch of Environmental Coordination*, within the Office of Planning, Inventory and Environmental Coordination, serves as the BLM focal point for all NEPA matters and provides advice to the Director and other BLM decisionmakers on NEPA related activities. It is responsible for oversight of BLM's compliance with NEPA, monitoring the preparation and status of NEPA documents, and coordinating the review of non-BLM environmental documents. Information about BLM environmental documents or the NEPA process can be obtained by contacting this Branch.

C. The *Deputy Directors for Policy, Program, and Budget and for Services* are responsible for cooperating with the Deputy Director for Lands and Resources to insure that the NEPA process operates as prescribed within their areas of responsibility. This includes managing and insuring the quality of environmental analyses, environmental documents and records of decision.

D. *State Directors* are responsible to the Director/Associate Director for overall direction and integration of the NEPA process into their activities and for NEPA compliance in their States. The Planning and Environmental Coordination (P&EC) unit provides major staff support and is the key focal point for NEPA matters at the State level.

(1) *District Managers* are responsible for implementing the NEPA process at the District level. The P&EC unit provides major support and is the key focal point for NEPA matters at the District level.

(2) *Area Managers* are responsible for implementing the NEPA process at the Resource Area level.

E. *Outer Continental Shelf (OCS) Managers* are responsible to the Assistant Director for Energy and Mineral Resources for insuring that the NEPA process operates as prescribed within their areas of responsibility. This includes managing and insuring the quality of environmental analyses, environmental documents and assigned environmental reviews.

F. *Office of Coal Management*, which reports to the Director/Associate Director, is responsible for insuring that the NEPA process operates as prescribed in its area of responsibility. This includes managing and insuring the quality of environmental analyses, environmental documents and assigned environmental reviews.

G. *Office of Special Projects*, which reports to the Director/Associate Director, is responsible for insuring that the NEPA process operates as prescribed in its area of responsibility. This includes the organization for and preparation of environmental documents for major inter-State, non-BLM initiated development proposals and other major projects in accordance with established procedures or as assigned.

8.2 Guidance to Applicants

A. General

(1) Applicants should make initial contact with the line manager (Resource Area Manager, District Manager, State Director or OCS Office Manager) of the office where the affected public lands are located.

(2) If the application will affect responsibilities of more than one State Director (or OCS Office Manager) an applicant may contact any State Director (or OCS Office Manager) whose jurisdiction is involved. In such cases, the Director may assign responsibility either to the Headquarters office (e.g., Office of Special Projects) or to one of the State Offices (or OCS Offices) at his discretion. From that point, the applicant will deal with the designated lead office.

(3) Potential applicants may secure from State Directors and OCS Office Managers a list of program regulations or other directives/guidance providing advice or requirements for submission of environmental information. The purpose of making these requirements known to potential applicants, in advance, is to assist them in presenting a detailed, adequate and accurate description of the proposal and alternatives when they file their application and to minimize the need to request additional information. This is a minimum list and additional requirements may be identified after detailed review of the formal submission and during scoping.

(4) Since much of an applicant's planning may take place outside of BLM's Planning System, it is important for potential applicants to advise BLM of their planning at the earliest possible stage. Early communication is necessary to conduct properly our stewardship role on the public lands and to seek solutions to situations where private development decisions may conflict with public land use decisions. Early contact will also allow the determination of basic data needs concerning environmental amenities and values, potential data gaps that could be filled by the application and a modification of the list of requirements to fit unique local situations. Scheduling of the environmental analysis process can also be discussed, as well as various ways of preparing any environmental documents.

B. *Regulations.* The following partial list provides guidance to applicants on program regulations which may apply to a particular application. Many other regulations deal with proposals affecting public lands, some of which are specific to BLM, while others are applicable across a broad range of Federal programs (e.g., Protection of Historic and Cultural Programs, 36 CFR 800).

(1) Management of Rights-of-way and Related Facilities on Public Lands and Reimbursement of Costs (43 CFR 2800).

(2) Roads and Highways (43 CFR 2820).

(3) Rights-of-way Under the Mineral Leasing Act (43 CFR 2880).

(4) Surface Management Requirements (43 CFR 3100).

(5) Surface Management Requirements; Special Requirements (43 CFR 3204).

(6) Outer Continental Shelf Mineral and Rights-of-way Management; General (43 CFR 3300).

(7) Coal Management; Federally Owned Coal (43 CFR 3400).

(8) Leasing of Minerals Other than Oil and Gas; General (43 CFR 3500).

(9) Exploration and Mining, Wilderness Review Program (43 CFR 3802) [see 45 FR 13868].

(10) Surface Management of Public Lands Under the U.S. Mining Laws (43 CFR 3809) [see 45 FR 78902].

8.3 Major Actions Normally Requiring an EIS

A. The following types of BLM proposals will normally require the preparation of an EIS:

(1) Approval of Resource Management Plans.

Note.—BLM land use plans, termed Management Framework Plans (MFP), for which EISs are not normally prepared, are based on a set of procedures being phased out during the 1979–1983 period. During this same period, land use plans prescribed by the Federal Land Policy and Management Act (FLPMA), termed Resource Management Plans (RMP) are being phased in.

(2) Approval of major activity plans, within MFP's, for grazing and timber management in accordance with criteria and schedule established in decrees and court orders.

Note.—To the extent practicable, these activity plans will be phased into RMPs in the future and their associated impacts will be included in the EISs under paragraph (1) above. This should substantially reduce or eliminate the need for separate EISs for activity plans.

(3) Recommendations for wilderness proposals to the Congress.

(4) Approval of regional coal lease sales schedules in a coal production region.

(5) Approval of OCS oil and gas lease sales.

(6) Approval of applications to BLM for major actions in the following categories:

(A) Sites for major steam-electric powerplants, petroleum refineries, synfuels plants, and industrial facilities.

(B) Rights-of-way for major reservoirs, canals, pipelines, transmission lines, highways and railroads.

(7) Withdrawals from mineral entry under U.S. Mining Laws of 5,000 acres or more of public lands where evidence indicates

minerals of more than nominal value are present or serious interest in mineral development has been expressed.

B. If, for any of these actions, it is proposed not to prepare an EIS, an EA will be prepared and handled in accordance with Section 1501.4(c)(2).

5.4 Categorical Exclusions

In addition to the actions listed in the Departmental categorical exclusions outlined in Appendix 1 of 516 DM 2, many of which the Bureau also performs, the following BLM actions are designated categorical exclusions unless the action qualifies as an exception under 516 DM 2.3A(3):

A. *General*

(1) Inventory, data and information collection.

(2) Placing of monitoring equipment (e.g., stream gages).

(3) Non-manipulative research.

(4) Minor routine or preventive operation and maintenance activities on BLM facilities, lands and resource developments.

(5) Actions where BLM has concurrence or co-approval with another bureau and the action is a categorical exclusion for that bureau.

B. *Realty*

(1) Withdrawal continuations or extensions which would merely establish a specific time period and where there would be essentially no change in use and continuation would not lead to environmental degradation.

(2) Withdrawal continuations or extensions for administrative sites, location of facilities, other proprietary purposes, and roadside areas and buffer zones for other bureaus and the Forest Service.

(3) Withdrawal continuations or extensions where a report has been prepared which determined that the land contains minerals of no more than nominal value and there has been serious interest in mineral development expressed, and no new uses would be permitted and existing uses would not lead to environmental degradation under the continuation.

(4) Withdrawal terminations, modifications or revocations if, because of other withdrawals, classifications, management decisions or administrative determinations that will survive the action, the status of the land, insofar as its availability for appropriation under the general land laws, will not be changed.

(5) Withdrawal terminations, modifications or revocations that, because of overlying withdrawals or statutory provisions, involve merely a record clearing procedure.

(6) Withdrawal revocations and opening orders for stock driveways.

(7) Withdrawal terminations, modifications or revocations and classification cancellations and opening orders where the land would be opened to discretionary land laws and where such future discretionary actions would be subject to the NEPA process.

(8) Withdrawal terminations, modifications or revocations and classification cancellations and opening orders where the land would be opened to the operation of mining laws, if the land does not contain minerals of more than nominal value, as determined in accordance with the established practices and procedures of BLM, and there has not been any serious interest in mineral development expressed.

(9) Withdrawal terminations, modifications or revocations and opening orders that the Secretary of the Interior is under a specific statutory directive to execute.

(10) Transfers of land or interest in land to other bureaus or the Secretary of Agriculture pursuant to Sections 206(c) or 209(c) of FLPMA when the land was acquired for that purpose and the acquisition was covered by an environmental document.

(11) All non-discretionary land actions in Alaska pursuant to the Alaska Native Claims Settlement Act (ANCSA), Alaska Statehood Act, and other statutes including:

(a) ANCSA grants
(b) Native allotments
(c) Trade and manufacturing sites
(d) Homesites
(e) Headquarters sites
(f) Homesteads
(g) State selections

(12) Administratifve conveyances and leases to the State and Alaska to accommodate airports for which property rights existed prior to the enactment of NEPA.

(13) Continuations of Recreation and Public Purpose Act lands, small tract lands, or other land disposal classifications where the surface has been patented and the locatable minerals are reserved to the United States.

(14) Actions taken in conveying mineral interests under Section 209(b) of FLPMA where the intended land use by the non-Federal surface owner would be consistent with surrounding land uses or would cause only minimal environmental impact.

(15) Color of Title cases (Class one).

(16) Recordable disclaimers of interest under Section 315 of FLPMA.

(17) Corrections of patents and other conveyance documents under Section 316 of FLPMA and other applicable statutes.

(18) Assignment of land use authorization (to another party) where the assignment conveys no additinal rights beyond those granted in the original authorization.

(19) Transfer of use authorization from one agency to another when an action such as a boundary adjustment necessitates changing a right-of-way from one agency to another (e.g., Forest Service Special Land Use Permit to a BLM Title V right-of-way).

(20) Conversion of existing rights-of-way grants to title V of FLPMA grants where no new facilities or other changes are needed.

(21) Rights-of-way inside another right-of-way or amendments to rights-of-way where minor deviations from or additions to the original right-of-way are involved and where there is an existing environmental document covering the same or similar impacts in the right-of-way area.

(22) Buried power or telephone lines in an existing right-of-way using the split trench method.

(23) Upgrading or adding new lines (power or telephone) to existing pole(s) when there is no change in pole configuration.

(24) Right-of-way for a single-poled power or telephone line to an individual residence, building or well from an existing line where installation of the line will involve no clearance of vegetation from the right-of-way other than for placement of poles.

(25) Rights-of-way for overhead line (no pole or tower on BLM land) crossing over a corner of public land.

(26) Right-of-way which would add another radio transmitter to an approved communication site.

(27) Minor ancillary rights-of-way actions associated with the action of another bureau or Federal agency, and the action is a categorical exclusion for that bureau/agency, but only if a cooperative arrangement for the related actions provides for mutually acceptable mitigation measures.

C. *Transportation.*

(1) Placing of existing roads in BLM road net where no new facilities or other changes are needed.

(2) Installation of routine signs, markers or cattleguards on or adjacent to existing roads.

(3) Temporary road closures.

D. *Minerals*

(1) Issuance or mineral patents.

(2) Actions taken in conjunction with 43 CFR 3809 which do not require an EA, pursuant to Section 3809.2-1.

(3) Approval of permits for geologic and paleontologic mapping, inventory, reconnaissance and surface collecting.

(4) Issuance of individual non-competitive upland oil and gas leases.

(5) Conversion of an abandoned oil well to a water well if water facilities are established near the well site only.

(6) Establishment of terms and conditions in Notices of Intent to conduct geophysical explorations for oil and gas pursuant to 43 CFR 3045.

(7) Approval of Notices of Intent to conduct geothermal resources exploration operations pursuant to 43 CFR 3200.

(8) Approval of a plan of operation for geothermal exploration or development when an environmental document has been prepared at the leasing stage.

(9) Approval of a plan for injection of geothermal fluids meeting the standards of GRO-4 (Environmental Protection Requirements.)

(10) Approval of a plan for geothermal production when derived from a plan of utilization which has been covered by an environmental document.

(11) Findings of completeness furnished to the Office of Surface Mining for coal mining and operation plans filed under the Surface Mining Control and Reclamation Act.

e. *Other*

(1) Cadastral surveys.

(2) Issuance of special use or short term permits not entailing environmental disturbance.

(3) Small sales of sand and gravel, wood products,or other materials from authorized sale areas.

(4) Dispersed non-commercial recreation activities such as rock collection, Christmas tree cutting, and pine nut gathering.

(5) Issuance of grazing permits and leases and annual authorizations which are consistent with decisions covered by a grazing management EIS.

(6) Issuance of grazing permits and leases and annual authorizations in areas scheduled

for the preparation of a grazing management EIS which do not increase the level of use or continue unsatisfactory environmental conditions.

(7) Land cultivation activities in forest tree nurseries.

(8) Construction of guzzlers, spring developments, and other small water harvesting facilities for wildlife water.

(9) Modification of existing fences to provide improved wildlife ingress and egress.

(10) Reintroduction of endemic or native species into their historical habitats, other than endangered or threatened species.

[FR Doc. 81-2540 Filed 1-22-81; 8:45 am]

BILLING CODE 4310-84-M

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development

Joint Committee on Agricultural Development of the Board for International Food and Agricultural Development; Notice of Meeting

Pursuant to Executive Order 11769 and the provisions of Section 10(a), (2), P.L. 92-463, Federal Advisory Committee Act, notice is hereby given of the meeting of the Joint Committee on Agricultural Development (JCAD) of the Board for International Food and Agricultural Development (BIFAD) on February 9 and 10, 1981. (Joint Research Committee (JRC) and JCAD joint sessions on 2/10.)

The meeting on February 9, 1981 will convene from 9:00 a.m. to 12:00 p.m. in the form of Joint JCAD–JRC Regional Work Groups. Africa RWG in Room 2941, New State Department Building, Washington, D.C. 20523 (Mr. Lane E. Holdcroft, A.I.D. Federal Designee for this meeting can be contacted at (202/632–3650); Latin America RWG in Room 2242 New State Department Building (Mr. Albert Brown, A.I.D. Federal Designee for this meeting can be contacted at (202/632–6126); Near East RWG in room 6484 New State Department Building (Mr. Keith Sherper, A.I.D. Federal Designee for this meeting can be contacted at (202/632–6256); and the Asia RWG in Room 609 Rosslyn Plaza "C" Building, 1901 North Kent Street, Rosslyn, Virginia (Mr. David Lundberg, A.I.D.. Federal Designee for this meeting can be contacted at (703/235–8870).

The Joint JCAD–JRC Work Groups on Training and Education, Women in Development, and Procurement Process will convene from 2:00 p.m. to 4:30 p.m. in Room 1205, Room 1207, and Room 1408, respectively of the New State Department Building, Washington, D.C. 20523.

The full JCAD and JRC Committees will meet on February 10, 1981, from 9:00 a.m. to 11:45 a.m. to receive Reports from the Joint JCAD–JRC Work Groups, Title XII Regional Seminars, International Agricultural Research Centers and the A.I.D. Food Sector Strategy. National Academy of Sciences Research Grant Proposal to A.I.D. and up-date on Collaborative Research Support Program will be discussed. The full JCAD Committee will meet from 1:00 p.m. to 4:30 p.m. to receive reports from the JCAD Guidelines Revision Group and the Asia Agricultural Officers Meeting. These meetings will be held at the Holiday Inn, Dynasty Room, 1850 N. Fort Myer Drive, Arlington, Virginia 22209.

The meetings are open to the public. Any interested person may attend, may file written statements with the Committee before or after the meetings, or may present oral statements in accordance with procedures established by the Committee, and to the extent the time available for the meetings permit.

Mr. John C. Rothberg, BIFAD Support Staff, is designated A.I.D. Advisory Committee Representative at the February 9 and 10 meetings. It is suggested that those desiring further information write to him in care of the Agency for International Development, State Department, Washington, D.C. 20523, or telephone him at (202) 632–7937.

Dated: January 19, 1981.

John C. Rothberg,

A.I.D. Advisory Committee Representative, Joint Committee on Agricultural Development Board for International Food and Agricultural Development.

[FR Doc. 81-2539 Filed 1-22-81; 8:45 am]

BILLING CODE 4710-02-M

Joint Research Committee of the Board for International Food and Agricultural Development; Notice of Meeting

Pursuant to Executive Order 11769 and the provisions of section 10(a), (2), P.L. 92-463, Federal Advisory Committee Act, notice is hereby given of the thirty-seventh meeting of the Joint Research Committee (JRC) of the Board for International Food and Agricultural Development (BIFAD) on February 10 and 11, 1981.

The purpose of the meeting is to: (1) discuss in a joint session with the Joint Committee on Agricultural Development (JCAD) on February 10, 1981 from 9:00 a.m. to 11:45 a.m. to following topics: Plans for Title XII Regional Seminars; International Agricultural Research Centers; activities of the Joint JRC–JCAD Work Groups; A.I.D. Food Sector Strategy; and the Proposal from the National Academy of Sciences to A.I.D. on a research grants program; (2) discuss the following topics pertaining to the JRC: Activities of the JRC Work Group on research and research priorities, the Work Group on alternate contractual/grant models for A.I.D. sponsored Title XII collaborative research with U.S. and LDC institutions, the Work Group on LDC livestock research and other development needs, the Work Group on management structure and procedures on Collaborative Research Support Programs (CRSPs), and the Study Group on CRSP management structure; and to discuss operating organization and structure of the JRC.

The meeting will convene from 9:00 a.m. to 5:00 p.m. on Feb. 10, and 9:00 a.m. to noon on Feb. 11. The meeting will be held at the Holiday Inn, Dynasty Room, 1850 N. Fort Myer Drive, Rosslyn, Virginia 22209. The meeting is open to the public. Any interested person may attend, may file written statements with the Committee before or after the meeting, or may present oral statements in accordance with procedures established by the Committee, and to the extent the time available for the meeting permits.

Mr. William F. Johnson, BIFAD Support Staff is the designated A.I.D. Advisory Committee Representative at the meeting. It is suggested that those desiring further information write to him in care of the Agency for International Development, BIFAD Support Staff, Department of State, Washington, D.C. 20523 or telephone him at (202) 632–7935.

Dated: January 19, 1981.

William F. Johnson,

AID Advisory Committee Representative Joint Research Committee, Board for International Food and Agricultural Development.

[FR Doc. 81-2537 Filed 1-22-81; 8:45 am]

BILLING CODE 4710-02-M

INTERSTATE COMMERCE COMMISSION

Motor Carrier Permanent Authority Decisions; Decision-Notice

The following applications, filed on or after July 3, 1980, are governed by Special Rule 247 of the Commission's Rules of Practice, see 49 CFR 1100.247. Special Rule 247 was published in the Federal Register of July 3, 1980, at 45 FR 45539. For compliance procedures, refer to the Federal Register issue of December 3, 1980, at 45 FR 80109.

Persons wishing to oppose an application must follow the rules under 49 CFR 1100.247(B). A copy of any application, together with applicant's supporting evidence, can be obtained from any applicant upon request and payment to applicant of $10.00.

Amendments to the request for authority are not allowed. Some of the applications may have been modified prior to publication to conform to the Commission's policy of simplifying grants of operating authority.

Findings:

With the exception of those applications involving duly noted problems (e.g., unresolved common control, fitness, water carrier dual operations, or jurisdictional questions) we find, preliminarily, that each applicant has demonstrated its proposed service warrants a grant of the application under the governing section of the Interstate Commerce Act. Each applicant is fit, willing, and able to perform the service proposed, and to conform to the requirements of Title 49, Subtitle IV, United States Code, and the Commission's regulations. Except where noted, this decision is neither a major Federal action significantly affecting the quality of the human environment nor a major regulatory action under the Energy Policy and Conservation Act of 1975.

In the absence of legally sufficient interest in the form of verified statements filed on or before March 9, 1981 (or, if the application later becomes unopposed) appropriate authorizing documents will be issued to applicants with regulated operations (except those with duly noted problems) and will remain in full effect only as long as the applicant maintains appropriate compliance. The unopposed applications involving new entrants will be subject to the issuance of an effective notice setting forth the compliance requirements which must be satisfied before the authority will be issued. Once this compliance is met, the authority will be issued.

On or before March 24, 1981, an applicant may file a verified statement in rebuttal to any statement in opposition.

To the extent that any of the authority granted may duplicate an applicant's other authority, the duplication shall be construed as conferring only a single operating right.

Note.—All applications are for authority to operate as a motor common carrier in interstate or foreign commerce over irregular routes, unless noted otherwise. Applications for motor contract carrier authority are those where service is for a named shipper "under contract".

Volume No. OP4–197

Decided: January 14, 1981.

By the Commission, Review Board No. 2, Members Chandler, Eaton, and Liberman.

MC 21866 (Sub-187), filed December 18, 1980. Applicant: WEST MOTOR FREIGHT, INC., 740 S. Reading Ave., Boyertown, Pa 19512. Representative: Alan Kahn, 1430 Land Title Bldg., Philadelphia, Pa. 19110. Transporting (1) *household appliances, radios, televisions, sounds and video reproducing and recording equipment,* and *(2) materials, equipment, and supplies,* used in the manufacture and distribution of the commodities named in (1) above, between Louisville, KY, on the one hand, and, on the other, those points in the U.S. in and east of ND, SD, NE, KS, OK, and TX.

MC 48958 (Sub-20F), filed December 29, 1980. Applicant: JAMES FLEMING TRUCKING, INC., 761 East St., Suffield, CT 06078. Representative: S. Michael Richards, P.O. Box 225, Webster, NY 14580. Transporting *such commodities* as are dealt in or used by grocery and food business houses, and *materials, equipment, and supplies* used in the conduct of such business, between points in the U.S., under continuing contract(s) with The Great Atlantic & Pacific Tea Co., and Compass Foods, Inc., both of Montvale, NJ.

MC 61016 (Sub-59F), filed December 30, 1980. Applicant: PETER PAN BUS LINES, INC., 1776 Main St., Springfield, MA 01103. Representative: Ronald W. Malin, Bankers Trust Bldg., Jamestown, NY 14701. Transporting *passengers and their baggage,* in the same vehicle with passengers, in charter and special operations, (1) between points in CT, ME, MA, NH, NY, RI, and VT, and (2) beginning and ending at points named in (1) above and extending to points in the U.S. (including AK but excluding HI). Condition: Issuance of a certificate in this proceeding is subject to prior or coincidental cancellation at applicant's written request of MC–61016 (Sub-No. 48F), which authorizes the service requested above limited to transportation in vehicles with a seating capacity not to exceed 25 passengers.

MC 74416 (Sub-28F), filed December 29, 1980. Applicant: LESTER M. PRANGE, INC., Box 1, Kirkwood, PA 17536. Representative: Chester A. Zyblut, 366 Executive Bldg., 1030 15th St., N.W., Washington, DC 20005. Transporting (1) *such commodities* as are dealt in or used by the manufacturers and distributors of clay and refractory products (except in bulk), and (2) *materials and supplies* used in the manufacture of the commodities named above (except commodities in bulk), between points in York County, PA, on the one hand, and, on other, points in the U.S. (except AK and HI).

MC 76926 (Sub-1F), filed January 2, 1981. Applicant: CTC VAN LINES, INC., 134–41 Springfield Blvd., Springfield Gardens, NY 11413. Representative: Allan Schwartz (same address as applicant). Transporting *household goods,* between New York, NY, on the one hand, and, on the other points in VT, NH, RI, WV, NC, SC, GA, FL, AL, TN, KY, IN, MI, WI, IL, MS, LA, AR, MO, IA, MN, and TX.

MC 120616 (Sub-5F), filed December 24, 1980. Applicant: A. V. DEDMON TRUCKING, INC., Hwy 150 East, Shelby, NC 28150. Representative: John C. Bradley, Suite 1301, 1600 Wilson Blvd., Arlington, VA 22209. Transporting *general commodities* (except articles of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk and those requiring special equipment), between points in Burke, Catawba, Cleveland, Davidson, Gaston, Lincoln, Mecklenburg, and Rowan Counties, NC, on the one hand, and, on the other, points in Sullivan, Washington, Carter, Greene, Unicoi and Johnson Counties, TN.

MC 120636 (Sub-13F), filed January 2, 1981. Applicant: BRUNTON STORAGE & VAN CO., INC., Sixth and Locust Sts., Chatsworth, IL 60921. Representative: E. Stephen Heisley, 605 McLachlen Bank Bldg., 666 Eleventh St., N.W., Washington, DC 20001. Transporting *plastic articles,* and *materials, equipment, and supplies* used in the manufacture and distribution of plastic articles, between points in the U.S., restricted to the traffic originating at or destined to the facilities of Mobil Chemical Company.

MC 124236 (Sub-110F), filed December 22, 1980. Applicant: CHEMICAL EXPRESS CARRIERS, INC., 4645 No. Central Expressway, Dallas, TX 75205. Representative: Sam Hallman, 4555 First National Bank Bldg., Dallas, TX 75202. Transporting *potash,* from points in NM to points in LA, OK, and TX.

MC 136246 (Sub-43F), filed December 29, 1980. Applicant: GEORGE BROS., INC., P.O. Box 492, Sutton, NE 68979. Representative: Arlyn L. Westergren, Suite 301, 9202 West Dodge Rd., Omaha, NE 68114. Transporting (1) *grain bins, grain handling equipment, and metal buildings,* and (2) *materials, equipment, and supplies* used in the manufacture and erection of the commodities in (1) above, between points in York County,

NE, on the one hand, and, on the other, points in the U.S. Condition: Applicant seeks to convert its contract carrier authority to common, therefore, issuance of a certificate in this proceeding is subject to prior or coincidental cancellation, at applicant's written request, of Permit MC 141536 (Sub-1F).

MC 138096 (Sub-15F), filed December 29, 1980. Applicant: J & S, INC., P.O. BOX 288, Indianola, PA 15051. Representative: William A. Gray, 2310 Grant Bldg., Pittsburgh, PA 15219. Transporting *general commodities* (except household goods as defined by the Commission, and classes A and B explosives), between points in the U.S., under continuing contract(s) with J. C. Penney Company, Inc., of New York, NY.

MC 144543 (Sub-1F), filed December 24, 1980. Applicant: LAWYER TRUCKING, INC., Old State Road South, P.O. Box 188, Mooresville, IN 46158. Representative: Robert W. Loser II, 1101 Chamber of Commerce Bldg., 320 North Meridian St., Indianapolis, IN 46204. Transporting *general commodities* (except classes A and B explosives, and household goods as defined by the Commission), between points in the U.S., under continuing contract(s) with Cellulose Manufacturing, Inc., of Mooresville, IN.

MC 150936 (Sub-1F), filed December 17, 1980. Applicant: HERMANN ASSOCIATES, INC., d.b.a. BANK DRAYAGE, 1405 Indiana St., San Francisco, CA 94107. Representative: Donald White (same address as applicant). Transporting (1) *bank equipment*, (2) *machinery*, (3) *museum fixtures and equipment*, (4) *art objects, displays, and exhibits*, and (5) *materials, equipment and supplies* used in the installation of the commodities in (1) through (4) above, between points in CA.

MC 152136 (Sub-1F), filed December 24, 1980. Applicant: DANE TRUCKING & CARTAGE CO., 7818 Noneman St., Fort Worth, TX 76180. Representative: Sam Hallman, 4555 First National Bank Bldg., Dallas, TX 75202. Transporting *rubber coated tire fabric*, between points in the U.S., under continuing contract(s) with Kelly Springfield Tire Company, of Cumberland, MD.

Volume No. OP4-288

Decided: January 14, 1981.

By the Commission, Review Board No. 2, Members Chandler, Eaton, and Liberman. (Member Liberman not participating.)

MC 66937 (Sub-7F), filed December 24, 1980. Applicant: A. A. RABALAIS, INC., P.O. Box 10052, New Orleans, LA 70121. Representative: William P. Jackson, Jr., 3426 N. Washington Blvd., P.O. Box 1240, Arlington, VA 22210. Transporting *general commodities* (except household goods as defined by the Commission, and classes A and B explosives), between points in the U.S., under continuing contract(s) with Dan Kelly Warehouse, Inc., of Harahan, LA.

MC 70557 (Sub-43F), filed December 22, 1980. Applicant: NIELSEN BROS. CARTAGE CO., INC., 4919 W. Homer St., Chicago, IL 60639. Representative: Carl L. Steiner, 39 So. LaSalle St., Chicago, IL 60603. Transporting *paper and paper products*, between St. Louis, MO, on the one hand, and, on the other, points in AL, AR, FL, GA, KY, LA, MS, NC, OK, TN, TX, VA, and WA.

MC 123407 (Sub-65F), filed December 22, 1980. Applicant: SAWYER TRANSPORT, INC., Sawyer Center, Route 1, Chesterton, IN 46304. Representative: Sterling W. Hygema (same address as applicant). Transporting *glass, glass products, and materials, equipment supplies* used in the manufacture and distribution of glass and glass products (except commodities in bulk), between Lathrop, CA, on the one hand, and, on the other, those points in the U.S. in and west of ND, SD, NE, KS, OK, and TX.

MC 126327 (Sub-16F), filed December 22, 1980. Applicant: TRAILS TRUCKING, INC., 1825 De La Cruz Blvd., Suite 11, Santa Clara, CA 95050. Representative: Laura M. Robinson (same address as applicant). Transporting (1) *paper and paper products*, and (2) *materials, equipment, and supplies* used in the manufacture and distribution of the commodities named in (1) above (except commodities in bulk in tank vehicles), between points in AZ, CA, CO, ID, NV, NM, OK, OR, TX, UT and WA.

MC 128637 (Sub-27F), filed December 12, 1980. Applicant: TRUCKING SERVICE, INC., P.O. Box 229, Carlinville, IL 62626. Representative: Michael W. O'Hara, 300 Reisch Bldg., Springfield, IL 62701. Transporting *charcoal briquettes, paper bags*, and *sodium nitrate*, between points in the U.S.

MC 135627 (Sub-4F), filed December 22, 1980. Applicant: PANTIER, INC., 1501 Second St., Perry, IA 50220. Representative: William L. Fairbank, 1980 Financial Center, Des Moines, IA 50309. Transporting *chemicals* (except in bulk), between points in Polk and Dallas Counties, IA, on the one hand, and, on the other, points in IL, IN, KS, MI, MN, MO, NE, ND, SD, and WI.

MC 136686 (Sub-13F), filed December 18, 1980. Applicant: L.C.W. TRUCKING, INC., 101 Hampton Rd. East, Crowley, TX 76036. Representative: M. Ward Bailey, 2412 Continental Life Bldg., Fort Worth, TX 76102. Transporting *cheese and cheese products*, from points in WI, IL, IA, and MO, to points in TX.

MC 143127 (Sub-76F), filed December 22, 1980. Applicant: K. J. TRANSPORTATION, INC., 6070 Collett Rd., Victor, NY 14564. Representative: Linda A. Calvo (same address as applicant). Transporting *such commodities* as are dealt in or used by department store (except foodstuffs and commodities in bulk), between points in MI and NY, on the one hand, and, on the other, points in the U.S.

MC 145026 (Sub-11F), filed December 22, 1980. Applicant: NORTHEAST CORRIDOR EXPRESS, INC., Railroad Ave., Federalsburg, MD 21632. Representative: Dwight L. Koerber, Jr., P.O. Box 1320, 110 N. 2nd St., Clearfield, PA 16830. Transporting *such commodities* as are dealt in or used by grocery and food business houses, between points in PA, NJ, NY, RI, MA, NH, VT, ME, DE, MD, VA, and DC, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 145507 (Sub-3F), filed December 22, 1980. Applicant: TRUCKING SERVICES, INC., 28400 Van Born Rd., Dearborn Heights, MI 48125. Representative: John W. Bryant, 900 Guardian Bldg., Detroit, MI 48226. Transporting (1) *construction materials*, and (2) *lumber, wood, and metal products*, (a) between points in MI, OH, IN, IL, WI, KY, WV, PA, NY, NJ, DE, MD, VA, IA, MO, MN, ME, NH, VT, MA, RI, CT, ND, and DC, and (b) between the points in (1) above, on the one hand, and, on the other, points in NC, SC, GA, FL, TN, AL, MS, AR, and LA.

MC 151167 (Sub-1F), filed December 22, 1980. Applicant: MAILWAY TRUCKING CORP., 160 Winfred Ave., Yonkers, NY 10704. Representative: Harold L. Reckson, 33-26 Halsey Rd., Fair Lawn, NJ 07410. Transporting *furniture, machinery, laboratory equipment, electrical equipment, office equipment, and scrap metal*, between points in the U.S., under continuing contract(s) with Michael Schiavone & Sons, Inc. of North Haven, CT.

MC 151567 (Sub-1F), filed December 23, 1980. Applicant: VAN ECK & LOSITO TRUCKING, INC., 110 Ridge Plate, Wayne, NJ 07470. Representative: Harold L. Reckson, 33-26 Halsey Rd., Fair Lawn, NJ 07410. Transporting *materials, equipment, and supplies* used in the bottling and distribution of alcoholic beverages, between points in

the U.S., under continuing contract(s) with Black Prince Distillers, of Clifton, NJ.

MC 151657 (Sub-1F), filed December 18, 1980. Applicant: HARLIS R. ELLINGTON CONSTRUCTION, INC., State Road 100 West, Lake Butler, FL 32054. Representative: Dan R. Schwartz, 3100 University Blvd. S., Suite 225, Jacksonville, FL 32216. Transporting (1) *forest products and lumber,* and (2) *materials, equipment and supplies* used in the manufacture and distribution of the commodities in (1) above, between points in the U.S. under continuing contract(s) with Lake Butler Sawmill of Owens-Illinois, Inc., of Lake Butler, FL.

MC 153426F, filed December 16, 1980. Applicant: JAMES M. KAUFFMAN, R.D. No. 1, Cochranville, PA 19330. Representative: John W. Metzger, 49 North Duke St., Lancaster, PA 17602. Transporting *agricultural limestone,* (1) from points in Lancaster County, PA, to points in NY, NJ, DE, MD, and VA, and (2) from Viola and Laurel, DE, to points in MD end VA.

Volume No. OP4-199

Decided: January 14, 1981.

By the Commission, Review Board No. 2, Members Chandler, Eaton, and Liberman.

MC 21866, (Sub-188F), filed January 2, 1981. Applicant: WEST MOTOR FREIGHT, INC., 740 S. Reading ave., Boyertown, PA 19512. Representative: Alan Kahn, 1430 Land Title Bldg., Philadelphia, PA 19110. Transporting *general commodities* (except classes A and B explosives) between points in Berks, Chester, Lancaster, Lebanon, Lehigh, Montgomery, Northampton and York Counties, PA, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 111936 (Sub-21F), filed January 2, 1981. Applicant: MURROW'S TRANSFER, INC., P.O. Box 4095, High Point, NC 27263. Representative: Wilmer B. Hill, 805 McLachlen Bank Bldg., 666 Eleventh St., NW., Washington, DC 20001. Transporting *plastic articles,* and *materials, equipment, and supplies* used in the manufacture and distribution of plastic articles, between the facilities of Mobil Chemical Co., in the U.S., on the one hand, and, on the other, points in the U.S.

MC 130356 (Sub-1F), filed December 22, 1980. Applicant: RAY DODD AND CHRISTINE DODD d.b.a. DODD TRAVELERS, 2111 Lindbergh, Tyler, TX 75703. Representative: Christine Dodd (same address as applicant). To operate as a broker at Tyler, TX, in arranging for the transportation by motor vehicle, of passengers and their baggage, in special and charter operations, between points in the U.S. (including AK and HI).

MC 133566 (Sub-172F), filed January 5, 1981. Applicant: GANGLOFF & DOWNHAM TRUICKING CO., INC., P.O. Box 479. Logansport, IN 46947. Representative: Daniel O. Hands, Suite 200, 205 W. Touhy Ave., Park Ridge, IL 60068. Transporting *food and related products,* and *materials, equipment, and supplies* used in the manufacture and distribution of food and related products, between points in Cumberland County, NE, and Marion County, MO, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 133566 (Sub-174F), filed January 5, 1981. Applicant: GANGLOFF & DOWNHAM TRUCKING CO., INC., P.O. Box 479, Logansport, IN 46947. Representative: Daniel O. Hands, 205 West Touhy Ave., Suite 200, Park Ridge, IL 60068. Transporting *food and related products* and *materials, equipment, and supplies* used in the manufacture of food and related products, between points in NY, WI, VA, FL, TN, CA, PA, OH, GA, and TX, on the one hand, and, on the other, points in the U.S.

MC 151666 (Sub-2F), filed January 2, 1981. Applicant: BARR FREIGHT SYSTEM, INC., 4109 West 52nd St., Chicago, IL 60632. Representative: Carl L. Steiner, 39 S. LaSalle St., Chicago, IL 60603. Transporting *chemicals,* between points in the U.S., under continuing contract(s) with DeSoto, Inc., of Des Plaines, IL.

MC 151846 (Sub-1F), filed January 2, 1981. Applicant: BEITLER TRUCKING, INC., 3379 Stafford St., Pittsburgh, PA 15204. Representative: William J. Lavelle, 2310 Grant Bldg., Pittsburgh, PA 15219. Transporting *general commodities* (except classes A and B explosives), between points in the U.S., under continuing contract(s) with W.J. Beitler Co., of Pittsburgh, PA.

MC 153416 (Sub-1F), filed January 6, 1981. Applicant: ACCORD SERVICE, INC., 9414 Lewis, Kansas City, MO 64138. Representative: Frank W. Taylor, Jr., 1221 Baltimore Ave., Suite 600, Kansas City, MO 64105. Transporting *general commodities* (except classes A and B explosives), between points in the U.S., under continuing contract(s) with Metro Park Warehouse, Inc., of Kansas City, KS.

Volume No. OP4-201

Decided: January 14, 1981.

By the Commission, Review Board No. 2, Members Chandler, Eaton, and Liberman.

MC 26396 (Sub-366F), filed December 29, 1980. Applicant: THE WAGGONERS TRUCKING, a corporation, P.O. Box 31357, Billings, MT 59107. Representative: Barbara S. George (same address as applicant). Transporting *general commodities* (Except classes A and B explosives, and household goods as defined by the Commission), between points in the U.S., restricted to traffic originating at or destined to the facilities of Olin Corporation.

MC 42487 (Sub-1014F), filed December 30, 1980. Applicant: CONSOLIDATED FREIGHTWAYS CORPORATION OF DELAWARE, 175 Linfield Drive, Menlo Park, CA 94025. Representative: V. R. Oldenburg, P.O. Box 3062, Portland, OR 97208. Transporting *general commodities* (except household goods as defined by the Commission, and classes A and B explosives), serving points in Atlantic County, NJ, as off-route points in connection with carrier's otherwise authorized regular-route operations.

MC 111687 (Sub-40F), filed December 22, 1980. Applicant: BEN RUEGSEGGER TRUCKING SERVICE, INC., R No. 1, Kawkawlin, MI 48631. Representative: Benjamin H. Ruegsegger, 1754 Chip Rd., Kawkawlin, MI 48631. Transporting *malt beverages,* (1) from the facilities of the Miller Brewing Company, at Trenton, OH, to points in the lower peninsula of MI, and (2) from Minneapolis, MN, to points in MI (except Saginaw Bay City, and Flint).

MC 115917 (Sub-37F), filed December 24, 1980. Applicant: UNDERWOOD & WELD COMPANY, INC., P.O. Box 247, Crossnore, NC 28616. Representative: Wilmer B. Hill, 805 McLachlen Bank Bldg., 666 Eleventh St., N.W., Washington, DC 20001. Transporting (1) *olivine and olivine products,* between points in Jackson and Clay Counties, NC, and Skagit County, WA, on the one hand, and, on the other, points in the U.S. (except AK and HI), (2) *bentonite clay,* between points in Monroe and Tippah Counties, MS, and Crook County, WY, on the one hand, and, on the other, points in the U.S. (except AK and HI), (3) *foundry sand additives,* between points in Fulton and Wadsworth Counties, OH, and Boone County, IL, on the one hand, and, on the other, points in the U.S. (except AK and HI), and (4) *mica,* between points in Buncombe County, NC, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 120737 (Sub-75F), filed December 22, 1980. Applicant: STAR DELIVERY & TRANSFER, INC., P.O. Box 39, Canton, IL 61520. Representative: James C. Hardman, 33 N. LaSalle St., Chicago, IL 60602. Transporting *such commodities* as are dealt in or used by metal

fabricators and finishers (except commodities in bulk), from Auro, IL and York, PA, to points in the U.S. (except AK and HI).

MC 128117 (Sub-42F), filed January 2, 1981. Applicant: NORTON-RAMSEY MOTOR LINES, INC., P.O. Box 896, Hickory, NC 28603. Representative: Francis J. Ortman, 7101 Wisconsin Ave., N.W., Washington, DC 20014. Transporting (1) *new furniture and furniture parts*, and (2) *materials, equipment and supplies* used in the manufacture and distribution of the commodities in (1) above, (a) from Austin, TX and Arcadia, LA, to points in AL, AZ, AR, CA, CO, FL, GA, KY, KS, MS, MO, NE, NV, NM, NC, OK, SC, TN, VA, and UT, (b) from Austin, TX, to points in LA, (c) from Arcadia, LA, to points in TX, and (d) from Lynchburg, VA, and points in Caldwell, Rutherford, Alexander, and Catawba Counties, NC, and Washington, County, VA, to Austin, TX and Arcadia, LA.

MC 134197 (Sub-16F), filed January 2, 1981. Applicant: JACKSON & JOHNSON, INC., P.O. Box 327, Rt. No. 31, Savannah, NY 13146. Representative: Roy D. Pinsky, Suite 1020—State Tower Bldg., Syracuse, NY 13202. Transporting *foodstuffs*, between points in the U.S.

MC 147766 (Sub-4F), filed December 22, 1980. Applicant: COLORADO-DENVER/WAREHOUSE-DELIVERY, INC., 4902 Smith Rd., Denver, CO 80216. Representative: Edward C. Hastings, 653 Grant St., Denver, CO 80203. Over regular routes, transporting *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), (1) Between Denver and Glenwood Springs, CO; from Denver over Interstate Hwy 70 and U.S. Hwy 6 to junction of CO Hwy 9, then over CO Hwy 9 to the junction of U.S. Hwy 40, then over CO Hwy 13 and 789, then over CO Hwys 13 and 789 to the junction of Interstate Hwy 70, then over Interstate Hwy 70 to Glenwood Springs, and return over the same route, serving the intermediate points of Steamboat Springs and Craig, CO, and the off-route point of Aspen, CO, and (2) between Gunnison and Delta, CO, over U.S. Hwy 50, serving all intermediate points.

MC 148647 (Sub-9F), filed January 2, 1980. Applicant: HI-CUBE CONTRACT CARRIER CORP., 5501 West 70th St., Burbank, IL 60459. Representative: Arnold L. Burke, 180 No. LaSalle St., Chicago, IL 60601. Transporting *general commodities* (except classes A and B explosives), between points in the U.S., under continuing contract(s) with Standard Brands Incorporated, of New York, NY.

MC 149167 (Sub-4F), filed January 2, 1981. Applicant: MAVERICK FREIGHTWAYS, INC., 105 Howell St., Jersey City, NJ 07306. Representative: Arthur J. Piken, 95–25 Queens Blvd., Rego Park, NY 11374. Transporting *bakery products*, between points in the U.S., under continuing contract(s) with Entenmann's, Inc., of Bay Shore, NY.

Volume No. OP4-294

Decided: January 16, 1981.

By the Commission, Review Board No. 2, Members Chandler, Eaton, and Liberman.

MC 21866 (Sub-190F), filed January 6, 1981. Applicant: WEST MOTOR FREIGHT, INC., 740 S. Reading Ave., Boyertown, PA 19512. Representative: Alan Kahn, 1430 Land Title Bldg., Philadelphia, PA 19110. Transporting *automotive parts*, and *materials, equipment, and supplies* used in the manufacture and distribution of automotive parts, between those points in the U.S. in and east of ND, SD, NE, KS, OK, and TX.

MC 21866 (Sub-191F), filed December 29, 1980. Applicant: WEST MOTOR FREIGHT, INC., 740 So. Reading Ave., Boyertown, PA 19512. Representative: Edward J. Kiley, 1730 M St. NW., Washington, D.C. Transporting *plastic and plastic products rubber and rubber products, and metal articles*, between points in Rockingham County, NH, on the one hand, and, on the other, points in the U.S.

MC 29656 (Sub-1F), filed December 29, 1980. Applicant: TRENTON MOTOR EXPRESS, INC., 1700 Columbia Ave., Trenton, NJ 08607. Representative: Harold L. Reckson, 32–28 Halsey Rd., Fair Lawn, NJ 07410. Transporting *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), between Trenton, NJ, and points in Middlesex County, NJ, on the one hand, and, on the other, points in MD, PA, NY, NJ, and DE.

MC 67866 (Sub-39F), filed January 2, 1981. Applicant: FILM TRANSIT, INC., 3931 Homewood Rd., Memphis, TN 38118. Representative: Warren A. Goff, 2006 Clark Tower, 5100 Poplar Ave., Memphis, TN 38137. Transporting *general commodities* (except classes A and B explosives), between points in New Madrid County, MO, on the one hand, and, on the other points in LA, AR, MS, those in KY on and west of a line beginning at the IL–KY State line and extending along U.S. Hwy 68 to junction U.S. Hwy 641, then along U.S. Hwy 641 to the KY–TN State line, those in TN on and west of a line beginning at the KY–TN State line and extending along U.S. Hwy 31W to Nashville, then along U.S. Hwy 31 to Columbia, then along TN Hwy 50 to Lewisburg, then along U.S. Hwy 431 to the TN–AL State line, those in AL (a) on, west, and north of a line beginning at the TN–AL State line and extending along AL Hwy 17 to Hamilton, then along U.S. Hwy 78 to the AL–MS State line, and (b) on and south of a line extending from the MS–AL State line over U.S. Hwy 45 to Mobile, AL, then over Interstate Hwy 10 to the AL–FL State line, those in Washington, Mobile, and Baldwin Counties, AL, those in Escambia County, FL, those in MO on and south of a line beginning at the AR–MO State line and extending along U.S. Hwy 62 to New Madrid and the Mississippi River, those in OK on and east of a line beginning at the OK–TX State line and extending along U.S. Hwy 277 to junction U.S. Hwy 81, then north along U.S. Hwy 81 to the OK–KS State line, restricted against the transportation of (1) any package or article weighing more than 100 pounds, or exceeding 110 inches in length or 150 inches in length and girth combined, and (2) packages or articles weighing in the aggregate more than 500 pounds from one consignor to one consignee on any one day. Condition: Issuance of a certificate in this proceeding is subject to prior or coincidential cancellation, at applicant's written request, of Certificates MC–67866 Subs 36 and 37.

MC 118666 (Sub-47F), Filed January 6, 1981. Applicant: FERREE FURNITURE EXPRESS, INC., 252 Wildwood Rd., Hammond, IN 46324. Representative: John F. Wickes, Jr., 1301 Merchants Plaza, Indianapolis, IN 46204. Transporting (1) *new furniture*, (a) between points in Elkhart County, IN, on the one hand, and, on the other, those points in the U.S. in and east of ND, SD, NE, CO, OK, and TX, and (b) between points in Ouachita Parish, LA and Worchester County, MA, on the one hand, and, on the other, points in MO, IA, MN, WI, IL, IN, OH, and MI, (2) *insulation and insulation products*, between points in Rock County, WI, Washita County, OK, Warren and Huron County, OH, on the one hand, and, on the other, those points in the U.S. in and east of ND, SD, NE, KS, OK, and TX, (3) *urethane foam and urethane foam products*, between points in Green County, WI, on the one hand, and, on the other, those points in the U.S. in and east of ND, SD, NE, KS, OK, and TX, (4) *paper and paper articles*, between points in Grayson County, KY, on the

one hand, and, on the other, those points in the U.S. in and east of ND, SD, NE, KS, OK, and TX, and (5) *materials, equipment, and supplies* used in the manufacture and distribution of television picture tubes and television sets, (a) between points in Grant County, IN, on the one hand, and, on the other, points in Cook County, IL, Webb County, TX, and St. Francis County, AR, and (b) between points in Lackawanna County, PA, on the one hand, and, on the other, points in Wilson and Davidson Counties, TN.

MC 133566 (Sub-175F), filed January 6, 1981. Applicant: GANGLOFF & DOWNHAM TRUCKING CO., INC., P.O. Box 479, Logansport, IN 46947. Representative: Daniel O. Hands, 205 West Touhy Ave., Suite 200, Park Ridge, IL 60068. Transporting *general commodities* (except classes A and B explosives), between points in the U.S., restricted to traffic originating at or destined to facilities used by Quaker Oats Company.

MC 146646 (Sub-140F), filed January 6, 1981. Applicant: BRISTOW TRUCKING CO., INC., P.O. Box 6355A, Birmingham, AL 35217. Representative: James W. Segrest (same address as applicant). Transporting *general commodities* (except classes A and B explosives), between points in the U.S.

MC 146876 (Sub-3F), filed January 2, 1981. Applicant: WILLIAM W. EGGERS, d.b.a. CEDAR VALLEY TRANSPORT, R.R. Box 309, Webster City, IA 50595. Representative: Richard D. Howe, 600 Hubbell Bldg. Transporting *meats, meat products, meat byproducts, and articles distributed by meat packing-houses,* (1) between points in Lancaster, Saline, and Douglas Counties, NE, on the one hand, and on the other, points in IL, IA, KS, MN, MO, ND, SD, and WI, (2) between Carroll, Hardin, Polk, Webster, Cherokee, and Woodbury Counties, IA, on the one hand, and, on the other, points in IL, KS, MN, MO, NE, ND, SD, and (3) between points in Crawford County, IA, on the one hand, and, on the other, points in IL, KS, MN, MO, ND, and WI.

MC 151716 (Sub-2F), filed December 22, 1980. Applicant: AMERICAN CARGO EXPRESS, INC., 747 Glasgow Ave., Inglewood, CA 90301. Representative: Miles L. Kavaller, 315 S. Beverly Dr., Suite 315, Beverly Hills, CA 90212. Transporting *furniture,* between points in the U.S., under continuing contract(s) with Pacific Condi of Compton, CA.

Agatha L. Mergenovich,
Secretary.

[FR Doc. 81-2533 Filed 1-22-81; 8:45 am]
BILLING CODE 7035-01-M

Motor Carriers; Permanent Authority Decisions; Decision-Notice

The following applications, filed on or after July 3, 1980, are governed by Special Rule 247 of the Commission's Rules of Practice, see 49 CFR 1100.247. Special rule 247 was published in the Federal Register on July 3, 1980, at 45 FR 45539. For compliance procedures, refer to the Federal Register issue of December 3, 1980, at 45 FR 80109.

Persons wishing to oppose an application must follow the rules under 49 CFR 1100.247(b). Applications may be protested *only* on the grounds that applicant is not fit, willing, and able to provide the transportation service and to comply with the appropriate statutes and Commission regulations. A copy of any application, together with applicant's supporting evidence, can be obtained from any applicant upon request and payment to applicant of $10.00.

Amendments to the request for authority are not allowed. Some of the applications may have been modified prior to publication to conform to the Commission's policy of simplifying grants of operating authority.

Findings:

With the exception of those applications involving duly noted problems (e.g.'s., unresolved common control, fitness, water carrier dual operations, or jurisdictional questions) we find, preliminarily, that each applicant has demonstrated its proposed service warrants a grant of the application under the governing section of the Interstate Commerce Act. Each applicant is fit, willing, and able to perform the service proposed, and to conform to the requirements of Title 49, Subtitle IV, United States Code, and the Commission's regulations. Except where noted, this decision is neither a major Federal action significantly affecting the quality of the human environment nor a major regulatory action under the Energy Policy and Conservation Act of 1975.

In the absence of legally sufficient interest in the form of verified statements filed on or before March 9, 1981 (or, if the application later becomes unopposed) appropriate authorizing documents will be issued to applicants with regulated operations (except those with duly noted problems) and will remain in full effect only as long as the applicant maintains appropriate compliance. The unopposed applications involving new entrants will be subject to the issuance of an effective notice setting forth the compliance requirements which must be satisfied before the authority will be issued. Once this compliance is met, the authority will be issued.

On or before March 24, 1981, an applicant may file a verified statement in rebuttal to any statement in opposition.

To the extent that any of the authority granted may duplicate an applicant's other authority, the duplication shall be construed as conferring only a single operating right.

Note.—All applications are for authority to operate as a motor common carrier in interstate or foreign commerce over irregular routes, unless noted otherwise. Applications for motor contract carrier authority are those where service is for a named shipper "under contract".

Volume No. OP1-[illegible]

Decided: January 16, 1981.

By the Commission, Review Board No. 1, Members Carleton, Joyce, and Jones.

MC 121060 (Sub-129F), filed October 9, 1980. Applicant: ARROW TRUCK LINES, INC., P.O. Box 1416, Birmingham, AL 35201. Representative: William P. Jackson, Jr., 3426 N. Washington Blvd., P.O. Box 1240, Arlington, VA 22210. Transporting *general commodities,* between Barnesburg, Brighton, Cheviot, Dent, Fernald, Miamitown, New Baltimore, Taylor's Creek, and Willy's Pit, OH, on the one hand, and, on the other, points in the U.S.

Note.—The purpose of this application is to substitute motor carrier for abandoned rail carrier service.

MC 121060 (Sub-130F), filed October 10, 1980. Applicant: ARROW TRUCK LINES, INC., P.O. Box 1416, Birmingham, AL 35201. Representative: William P. Jackson, Jr., 3426 N. Washington Blvd., P.O. Box 1240, Arlington, VA 22210. Transporting *general commodities,* between Big Bend Bordelonville, Bunkie, Cottonport, Dupont, Evergreen, Hamburg, Legonier, Lettsworth, Longbridge, Mansura, Marksville, Moreauville, Plaucheville, Simmesport, and Torres, LA, on the one hand, and, on the other, points in the U.S.

Note.—The purpose of this application is to substitute motor carrier for abandoned rail carrier service.

MC 121060 (Sub-131F), filed October 22, 1980. Applicant: ARROW TRUCK LINES, INC., P.O. Box 1416, Birmingham, AL 35201. Representative: William P.

Jackson, Jr., 3426 N. Washington Blvd., P.O. Box 1240, Arlington, VA 22210. Transporting *general commodities*, between Calera, Columbiana, Shelby, Shelby Springs, and South Calera, AL, on the one hand, and, on the other, points in the U.S.

Note.—The purpose of this application is to substitute motor carrier for abandoned rail carrier service.

MC 121060 (Sub-132F), filed October 20, 1980. Applicant: ARROW TRUCK LINES, INC., P.O. Box 1416, Birmingham, AL 35201. Representative: William P. Jackson, Jr., 3426 N. Washington Blvd., P.O. Box 1240, Arlington, VA 22210. Transporting *general commodities*, between Black Bayou Junction, Minter City, Ryall Chapel, Somerville, Barto, Bear Town, Conerly, Davo, Dillon, Fernwood, Holmesville, Knoxo, Kokomo, Lehr, Lexie, McComb, Mesa, Rushing, Tylertown, Baird, Bellewood, Belzoni, Blaine, Caile, Castleman, Cottondale, Doddsville, Drew, Dwyer, Eastland, Fitzhugh, Goldfield, Indianaola, Inverness, Isola, Jaquith, Markham, Milroy, Minot, Parchman, Pentecost, Rome, Ruleville, Sunflower, Tutwiler, Vance, and Whitney, MS, on the one hand, and, on the other, points in the U.S.

Note.—The purpose of this application is to substitute motor carrier for abandoned rail carrier service.

MC 121060 (Sub-133F), filed October 21, 1980. Applicant: ARROW TRUCK LINES, INC., P.O. Box 1416, Birmingham, AL 35201. Representative: William P. Jackson, Jr., 3426 N. Washington Blvd., P.O. Box 1240, Arlington, VA 22210. Transporting *general commodities*, between Anniston, East Praire, Samos, Whiting, Wilson City, and Wyatt, MO, on the one hand, and, on the other, points in the U.S.

Note.—The purpose of this application is to substitute motor carrier for abandoned rail carrier service.

MC 136286 (Sub-36F), filed September 29, 1980. Applicant: SOUTHERN INTERMODAL LOGISTICS, INC., P.O. Box 1375, Thomasville, GA 31792. Representative: William P. Jackson, Jr., 3426 N. Washington Blvd., P.O. Box 1240, Arlington, VA 22210. Transporting *general commodities* between Black Bayou Junction, Minter City, Ryall Chapel, Somerville, Barto, Bear Town, Conerly, Davo, Dillon, Fernwood, Holmesville, Knoxo, Kokomo, Lehr, Lexie, McComb, Mesa, Rushing, Tylertown, Baird, Bellewood, Belzoni, Blaine, Caile, Castleman, Cottondale, Doddsville, Drew, Dwyer, Eastland, Fitzhugh, Goldfield, Indianaola, Inverness, Isola, Jaquith, Markham, Milroy, Minot, Parchman, Pentecost, Rome, Ruleville, Sunflower, Tutwiler, Vance, and Whitney, MS, on the one hand, and, on the other, points in the U.S.

Note.—The purpose of this application is to substitute motor carrier for abandoned rail carrier service.

MC 136286 (Sub-36F), filed September 18, 1980. Applicant: SOUTHERN INTERMODAL LOGISTICS, INC., P.O. Box 1375, Thomasville, GA 31792. Representative: William P. Jackson, Jr., 3426 N. Washington Blvd., P.O. Box 1240, Arlington, VA 22210. Transporting *general commodities*, between Barnesburg, Brighton, Cheviot, Dent, Fernald, Miamitown, New Baltimore, Taylor's Creek, and Willy's Pit, OH, on the one hand, and, on the other, points in the U.S.

Note.—The purpose of this application is to substitute motor carrier for abandoned rail carrier service.

MC 140563 (Sub-1F), filed September 29, 1980. Applicant: SUPER TRUCKERS, INC., 3000 Commerce Ave., Fairfield, AL 35064. Representative: William P. Jackson, Jr., 3426 N. Washington Blvd., P.O. Box 1240, Arlington, VA 22210. Transporting *general commodities*, between Barto, Bear Town, Conerly, Davo, Dillon, Fernwood, Holmesville, Knoxo, Kokomo, Lehr, Lexie, McComb, Mesa, Rushing, Tylertown, Black Bayou Junction, Minter City, Ryall Chapel, Somerville, Baird, Bellewood, Belzoni, Blaine, Caile, Castleman, Cottondale, Doddsville, Drew, Dwyer, Eastland, Fitzhugh, Goldfield, Indianaola, Inverness, Isola, Jaquith, Markham, Milroy, Minot, Parchman, Pentecost, Rome, Ruleville, Sunflower, Tutwiler, Vance, and Whitney, MS, Big Bend, Bordelonville, Bunkie, Cottonport, Dupont, Evergreen, Hamburg, Legonier, Lettsworth, Longbridge, Mansura, Marksville, Moreauville, Plaucheville, Simmesport, and Torres, LA, and Garciasville, Grulla, Hidalgo, Los Ebanos, Rio Grande City, Spaulding and Sullivan City, TX, on the one hand, and, on the other, points in the U.S.

Note.—The purpose of this application is to substitute motor carrier for abandoned rail carrier service.

MC 140563 (Sub-2F), filed September 19, 1980. Applicant: SUPER TRUCKERS, INC., 3000 Commerce Ave., Fairfield, AL 35064. Representative: William P. Jackson, Jr., 3426 N. Washington Blvd., P.O. Box 1240, Arlington, VA 22210. Transporting *general commodities*, between Barnesburg, Brighton, Cheviot, Dent, Fernald, Miamitown, New Baltimore, Taylor's Creek, and Willy's Pit, OH, on the one hand, and, on the other, points in the U.S.

Note.—The purpose of this application is to substitute motor carrier for abandoned rail carrier service.

MC 140563 (Sub-2F), filed October 8, 1980. Applicant: SUPER TRUCKERS, INC., 3000 Commerce Ave., Fairfield, AL 35064. Representative: William P. Jackson, Jr., 3426 N. Washington Blvd., P.O. Box 1240, Arlington, VA 22210. Transporting *general commodities*, between Calera, Columbiana, Shelby, Shelby Springs, and South Calera, AL, on the one hand, and, on the other, points in the U.S.

Note.—The purpose of this application is to substitute motor carrier for abandoned rail carrier service.

MC 142563 (Sub-1F), filed October 1, 1980. Applicant: GARY L. DUNPHY, Embden, ME 04958. Representative: William P. Jackson, Jr., 3426 N. Washington Blvd., P.O. Box 1240, Arlington, VA 22210. Transporting *general commodities*, between Arnold Hill, Au Sable Forks, Black Brook, Clayburg, Clintonville, Harkness, Hawkeye, Keeseville, Lapham's Mills, North Pole, Otis Junction, Peasleeville, Peru, Plattsburgh, Rogers, Salmon River Junction, Schuyler Falls, South Junction, Swastika, Upper Jay, and Wilmington, NY, on the one hand, and, on the other, points in the U.S.

Note.—The purpose of this application is to substitute motor carrier for abandoned rail carrier service.

Volume No. OP4-299

Decided: January 14, 1981.

By the Commission, Review Board No. 2, Members Chandler, Eaton, and Liberman.

MC 140016 (Sub-12F), filed January 6, 1981. Applicant: TRANSPORTATION SERVICES, INC., 1320 East Glendale Ave., Sparks, NV 89431. Representative: Robert G. Harrison, 4299 James Dr., Carson City, NV 89701. Transporting, for or on behalf of the United States Government, *general commodities* (except used household goods, hazardous or secret materials, and sensitive weapons and munitions), between points in the U.S.

MC 152476 (Sub-1F), filed January 2, 1981. Applicant: COMBINED TRANSPORTATION SERVICES, INC., 6300 Beltzer Rd., Baltimore, MD 21222. Representative: Barry Weintraub, Suite 800, 6133 Leesburg Pike, Vienna, VA 22180. As a *broker of general commodities* (except household goods), between points in the U.S.

Agatha L. Mergenovich,
Secretary.

[FR Doc. 81-2032 Filed 1-23-81; 8:45 am]
BILLING CODE 7035-01-M

Motor Carriers; Permanent Authority Decisions; Decision-Notice

The following applications, filed on or after July 3, 1980, are governed by Special Rule 247 of the Commission's Rules of Practice, see 49 CFR 1100.247. Special rule 247 was published in the Federal Register of July 3, 1980, at 45 FR 45539.

Persons wishing to oppose an application must follow the rules under 49 CFR 1100.247(B). A copy of any application, together with applicant's supporting evidence, can be obtained from any applicant upon request and payment to applicant of $10.00.

Amendments to the request for authority are not allowed. Some of the applications may have been modified prior to publication to conform to the Commission's policy of simplifying grants of operating authority.

Findings

With the exception of those applications involving duly noted problems (e.gs., unresolved common control, fitness, water carrier dual operations, or jurisdictional questions) we find, preliminarily, that each applicant has demonstrated its proposed service warrants a grant of the application under the governing section of the Interstate Commerce Act. Each applicant is fit, willing, and able to perform the service proposed, and to conform to the requirements of Title 49, Subtitle IV, United States Code, and the Commission's regulations. Except where noted, this decision is neither a major Federal action significantly affecting the quality of the human environment nor a major regulatory action under the Energy Policy and Conservation Act of 1975.

In the absence of legally sufficient protests in the form of verified statements filed on or before March 9, 1981 (or, if the application later becomes unopposed) appropriate authority will be issued to each applicant (except those with duly noted problems) upon compliance with certain requirements which will be set forth in a notice that the decision-notice is effective. Within 60 days after publication an applicant may file a verified statement in rebuttal to any statement in opposition.

To the extent that any of the authority granted may duplicate an applicant's other authority, the duplication shall be construed as conferring only a single operating right.

Note.—All applications are for authority to operate as a motor common carrier in interstate or foreign commerce over irregular routes, unless noted otherwise. Applications for motor contract carrier authority are those where service is for a named shipper "under contract."

Volume No. OP3–132

Decided: January 2, 1981.

By the Commission, Review Board No. 2, Members Chandler, Liberman, and Eaton. (Member Liberman not participating.)

MC 69684 (Sub-116F), filed December 16, 1980. Applicant: WYCOFF COMPANY, INCORPORATED, P.O. Box 366, Salt Lake City, UT 84110. Representative: Peter A. Greene, 1920 N Street NW., Suite 700, Washington, DC 20036. Transporting *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), restricted to (1) the transportation of articles or packages weighing not more than 100 pounds over presently authorized routes in UT, NV, CA, ID, WY, and CO, and (2) the right to interline at Reno, NV, and Denver, CO.

Note.—Applicant already holds all of the authority set forth in this notice in MC–69684 Subs 49, 54, 57, 58, 63, 74, 78, 81, 85, 91, 92, 100, and 103, subject to a restriction against the transportation of shipments of packages or articles weighing more than 500 pounds in the aggregate from one consignor at one location to one consignee at one location during a single day. The purpose of this application is to eliminate that restriction. In addition, the authority sought herein would eliminate restrictions against commingling for-hire and private transportation operations which applicant considers to be obsolete since it is no longer engaged in any private transportation operations. The authority sought herein would also eliminate prohibitions against tacking or joinder to which certain of applicant's authorities are currently subject.

MC 153154F, filed December 12, 1980. Applicant: K & K TRUCKING, INC., P.O. Box 941, Dickinson, ND 58601. Representative: R. W. Wheeler, P.O. Box 773, Bismarck, ND 58502. Transporting (1) *lumber, wood products, forest products, shingles, and gypsum board,* from points in WA, OR, CA, ID, MT, UT, NV, CO, and WY, to points in CA, NV, CO, IL, WI, MI, OH, MO, TX, ND, SD, MN; IA, MT, WY, NE, and KS, (2) *knocked down steel buildings and parts and accessories for knocked down steel buildings,* from Pleasant City, IA, Spanish Fork, UT, and Columbus, NE, to points in ND, SD, MT, and MN, (3) *insulating materials and supplies, and roofing, and roofing materials and supplies,* from points in WY, SD, NE, MN, WI, and IL, to points in ND, (4) *drilling mud, drilling mud additives, and drilling fluids,* (a) from points in KS, OK, MO, TX, UT, CO, and WY, to points in ND, SD, MT, and WY, and (b) from ND to WY, and (5) *fabricated castings,* from Arlington, WA, to points in the U.S.

Volume No. OP3–135

Decided: January 6, 1981.

By the Commission, Review Board No. 3, Members: Parker, Fortier, and Hill. (Member Hill not participating.)

MC 2304 (Sub-42F), filed December 22, 1980. Applicant: THE KAPLAN TRUCKING COMPANY, a corporation, 6000 Bessemer Ave., Cleveland, OH 44127. Representative: James M. Burtch, 100 E. Broad St., Columbus, OH 43215. Transporting (1) *motor vehicle parts,* (2) *materials, equipment and supplies* used in the manufacture and sale of the commodities in (1), between points in IL, IN, MI, OH, PA, OK, TN and CA, on the one hand, and, on the other, points in IL, IN, KY, MI, NY, OH, PA, OK, TN and CA, restricted to traffic originating at or destined to the facilities of Excel Industries, Inc. and its subsidiary companies.

MC 3114 (Sub-42F), filed December 19, 1980. Applicant: T. H. COMPTON, INC., R.F.D. No. 1, Berkeley Springs, WV 25411. Representative: Herbert Alan Dubin, 618 Connecticut Ave., N.W., Washington, DC 20008. Transporting *petroleum products,* from points in Franklin, Bedford, and York Counties, PA, to points in Berkeley, Jefferson, and Morgan Counties, WV.

MC 67234 (Sub-34F), filed December 22, 1980. Applicant: UNITED VAN LINES, INC., One United Dr., Fenton, MO 63026. Representative: B. W. LaTourette, Jr., 11 S. Meramec, Suite 1400, St. Louis, MO 63105. Transporting *furniture* and *fixtures,* between Los Angeles, CA, on the one hand, and, on the other, points in the U.S.

MC 76074 (Sub-4F), filed December 22, 1980. Applicant: DEEHAN's EXPRESS, INC., 32 O'Brien Ave., Whitman, MA 02382. Representative: Frank J. Weiner, 15 Court Square, Boston, MA 02108. Transporting *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), between points in MA, RI, and NH.

MC 77424 (Sub-54F), filed December 22, 1980. Applicant: WENHAM TRANSPORTATION, INC., 3200 East Seventy-Ninth Street, Cleveland, OH 44104. Representative: James Johnson (same address as applicant). Transporting *general commodities* (except household goods as defined by the Commission and classes A and B explosives), between points in DE, IL,

IN, IA, KY, MD, MI, MO, NJ, NY, OH, PA, RI, WV, and DC.

Note.—Issuance of a certificate in this proceeding is conditioned upon prior or coincidental cancellation of Certificates Nos. MC 77434 and subs thereunder, at applicant's written request.

MC 91725 (Sub-5F), filed December 23, 1980. Applicant: MANY'S EXPRESS, INC., P.O. Box 328, Old Route 9 and Croton River Bridge, Ossining, NY 10562. Representative: Roy A. Jacobs, 550 Mamaroneck Ave., Harrison, NY 10528. Transporting *household goods* as defined by the Commission, between points in Westchester County, NY, on the one hand, and, on the other, points in DE, ME, MD, NH, VT, VA, and DC.

MC 94265 (Sub-371F), filed December 29, 1980. Applicant: BONNEY MOTOR EXPRESS, INC., P.O. Box 305, Windsor, VA 23487. Representative: John J. Capo, P.O. Box 720434, Atlanta, GA 30328. Transporting (1) *foodstuffs* (except in bulk) and (2) *materials, equipment and supplies* used in the manufacture and distribution of foodstuffs, between points in the U.S. (except AK and HI).

MC 100315 (Sub-1F), filed November 6, 1980, previously published in Federal Register of December 2, 1980. Applicant: CASSERINO'S MOVING & STORAGE COMPANY, a corporation, 5 Pease Ave., Middletown, CT 06450. Representative: Sidney L. Goldstein, 109 Church St., New Haven, CT 06510. Transporting *household goods* as defined by the Commission, between points in Middlesex, Hartford, New London and New Haven Counties, CT, on the one hand, and, on the other, points in NH, ME, VT, PA, DE, VA, WV, MD, NJ, and DC.

Note.—This republication corrects the territorial description.

MC 109874 (Sub-516F), filed December 22, 1980. Applicant: SCHILLI MOTOR LINES, INC., P.O. Box 123, Remington, IN 47977. Representative: Jerry L. Johnson (same address as applicant). Transporting (1) *pesticides, fertilizer and agricultural chemicals* and (2) *applicators* of (1) above, and (3) *materials, equipment and supplies* used in the manufacture and distribution of the commodities in (1), between Evansville, Danville, and E. St. Louis, IL, Ft. Madison, IA, Baltimore, MD, Springfield, MA, Maryland Hts., MO, Detroit, MI, Edison, Metuchen, and S. Plainfield, NJ, Lebanon, PA, Kenosha, WI, on the one hand, and, on the other, points in the U.S.

MC 116254 (Sub-320F), filed December 22, 1980. Applicant: CHEM-HAULERS, INC., P.O. Box 339, Florence, AL 35631. Representative: Hampton M. Mills (same address as applicant). Transporting *gloves, mittens, headwear, and yarn*, Appleton and Milwaukee, WI, to points in AR, CA, IL, IN, KY, ME, MA, MI, MO, NJ, NY, NC, OH, OR, PA, TN, and VA.

MC 121644 (Sub-7), filed November 20, 1980, previously noticed in the Federal Register issue of December 10, 1980. Applicant: S & W FREIGHT LINES, INC., 1136 Haley Rd., P.O. Box 667, Murfreesboro, TN 37130. Representative: Robert L. Baker, Sixth Floor, United American Bank Bldg., Nashville, TN 37219. Over regular routes, transporting *general commodities* (except household goods as defined by the Commission and classes A and B explosives), between Atlanta, GA and Bristol, VA, (1) from Atlanta over Interstate Hwy 85 to junction Interstate Hwy 26, then over Interstate Hwy 26 to junction Interstate Hwy 40, then over Interstate Hwy 40 to junction Interstate Hwy 81, then over Interstate Hwy 81 to Bristol, and return over the same route, serving all intermediate points, and serving all points in Hawkins, Sullivan, Cocke, Hamblen, Jefferson, Greene, Washington, Knox and Carter Counties, TN, Washington County, VA, and Anderson, Greeneville and Spartanburg Counties, SC, Buncombe County, NC, and Dade, Walker, Catoosa, Fulton, DeKalb, Cobb, Clayton, Douglas, Henry, Rockdale, Fayette and Gwinnett Counties, GA, as off-route points; (2) from Atlanta over Interstate Hwy 75 to junction Interstate Hwy 40, then over Interstate Hwy 40 to junction Interstate Hwy 81, then over Interstate Hwy 81 to Bristol, and return over the same route, serving the intermediate points of Chattanooga and Knoxville, TN, and serving all other points in Cocke, Hamblen, Jefferson, Greene, Washington, Knox, and Carter Counties, TN, and Fulton, Dekalb, Cobb, Clayton, Douglas, Henry, Rockdale, Fayette and Gwinnett Counties, GA, as off-route points.

Note.—This republication indicates Washington County, VA as off-route points in lieu of Harrison County, VA in (1) above.

MC 128045 (Sub-33F), filed December 29, 1980. Applicant: ALTER TRUCKING AND TERMINAL CORP., 1010 South Farragut Street, Box 3122, Davenport, IA 52808. Representative: Edward G. Bazelon, 39 South La Salle Street, Chicago, IL 60603. Transporting (1) *cast iron products, and (2) materials, equipment and supplies* used in the manufacture and distribution of cast iron products (except commodities in bulk, in tank vehicles), between points in the U.S. (except AK and HI).

MC 136884 (Sub-186F), filed December 22, 1980. Applicant: BASS TRANSPORTATION CO., INC., P.O. Box 391, Flemington, NJ 08822. Representative: Herbert Alan Dubin, 618 Connecticut Ave., NW., Washington, DC 20008. Transporting (1) *Chemicals or allied products, rubber or miscellaneous plastic products, and hazardous materials* as described in Items (28), (30) and (49) respectively of the *Standard Transportation Commodity Code*, and (2) *materials, equipment and supplies* used in the manufacture and distribution of the commodities named in (1) above, between points in the U.S.

MC 136835 (Sub-68F), filed December 22, 1980. Applicant: WHITEPORD TRUCK LINES, INC., 640 W. Ireland Rd., South Bend, IN 46680. Representative: Donald W. Smith, P.O. Box 40248, Indianapolis, IN 46240. Transporting (1) *Air conditioners, cooling and freezing machines*, and (2) *materials, equipment, and supplies* used in the manufacture of air conditioners, cooling and freezing machines, between Evansville, IN, on the one hand, and, on the other, points in U.S.

MC 143434 (Sub-4F), filed December 12, 1980. Applicant: CHARLES McALPIN d.b.a. CHARLES McALPIN TRUCKING, 1420 Danville Road, S.W., Decatur, AL 35601. Representative: D. H. Markstein, Jr., 512 Nasset Bldg., Birmingham, AL 35203. Transporting (1) *paper and paper products*, and (2) *materials, equipment, and supplies* used in the manufacture, conversion and distribution of the commodities in (1), between the facilities of Champion Internation, at Lawrence County, AL, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 144115 (Sub-6F), filed December 22, 1980. Applicant: DIVERSIFIED CARRIERS, INC., 903 Sixth St., N.W., Rochester, MN 55901. Representative: Charles E. Dye, P.O. Box 971, West Bend, WI 53095. Transporting *general commodities* (except household goods as defined by the Commission and classes A and B explosives), between points in the U.S. (except AK and HI), restricted to traffic originating at or destined to the facilities of Economics Laboratory, Inc.

MC 146585 (Sub-2F), filed December 22, 1980. Applicant: DOUBLE DD TRUCK LINE, INC., P.O. Box 230, Canby, OR 97013. Representative: Jerry R. Woods, Suite 1000, One Main Pl., 101 SW Main St., Portland, OR 97204. Transporting *construction materials*, from points in OR and WA, to points in AR, AZ, CA, CO, KS, IA, ID, IL, KY, MO, MN, MT, ND, NE, NM, NV, OK, SD, TX, UT, WI, and WY.

MC 151585 (Sub-1F), filed December 29, 1980. Applicant: BEST TRUCKING COMPANY, INC., 2913 Halstead Rd., Richmond, VA 23235. Representative: Carroll B. Jackson, 1610 Vincennes Rd., Richmond, VA 23229. Transporting *general commodities* (except household goods as defined by the Commission and classes A and B exposives), between points in the U.S., under continuing contract(s) with United Paper Company and Best Products Company, Inc., both of Richmond, VA.

MC 151904 (Sub-1F), filed December 29, 1980. Applicant: D M B TRANSPORTATION CORP., 141 Provost St., Jersey City, NJ 07306. Representative: Robert B. Pepper, 168 Woodbridge Ave., Highland Park, NJ 08904. Transporting *such commodities* as are dealt in by retail department stores (except in bulk), between New York, NY, and points in Suffolk, Rockland, and Westchester Counties, NY, on the one hand, and, on the other, points in Philadelphia, PA, Baltimore, MD, Washington, DC, and NJ.

Volume No. OP 3-145

Decided: January 14, 1981.

By the Commission, Review Board No. 3; Members Parker, Fortier, and Hill (Member Hill dissenting).

MC 67234 (Sub-35F), filed December 19, 1980. Applicant: UNITED VAN LINES, INC., One United Drive, Fenton, MO 63026. Representative: B. W. LaTourette, Jr., 11 S. Meramec, Suite 1400, St. Louis, MO 63105. Transporting *machinery and supplies*, between points in the U.S.

MC 123744 (Sub-94F), filed December 22, 1980. Applicant: BUTLER TRUCKING CO., a corporation, P.O. Box 88, Woodland, PA 16881. Representative: Dwight L. Koerber, Jr., P.O. Box 1320, 110 N. 2nd St., Clearfield, PA 16830. Transporting (1) *iron and steel articles*, and (2) *materials and supplies* used in the manufacture and distribution of iron and steel articles, between points in the U.S. (except AK and HI).

MC 134755 (Sub-232F), filed December 23, 1980. Applicant: CHARTER EXPRESS, INC., P.O. Box 3772, Springfield, MO 65804. Representative: S. Christopher Wilson, P.O. Box 3772, Springfield, MO 65804. Transporting *building materials and supplies*, between points in the U.S.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 81-2625 Filed 1-23-81; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 29487 (Sub-No. 1)]

Chicago and North Western Transportation Co.—Purchase (Portion)—Chicago, Milwaukee, St. Paul and Pacific Railroad Co.) Richard B. Ogilvie, Trustee)

AGENCY: Interstate Commerce Commission.

ACTION: Application accepted for consideration.

SUMMARY: The Commission is accepting for consideration the application of the Chicago and North Western Transportation Company (C&NW) to acquire and operate approximately 7.22 miles of railroad owned by the Chicago, Milwaukee, St. Paul and Pacific Railroad Company (Richard B. Ogilvie, Trustee) (MILW) located between Marathon and Albert City, IA. The Commission is also setting an evidentiary schedule for the proceeding.

DATES: (1) Verified statements supporting or opposing the application are due February 13, 1981.

(2) Verified statements from the United States Secretary of Tranpsortation and the Attorney General of the United States are due February 20, 1981.

(3) Verified replies are due February 27, 1981.

ADDRESS: An original and 10 copies of all statements should refer to Finance Docket No. 29487 (Sub-No. 1) and be sent to: Section of Finance, Room 5414, Interstate Commerce Commission, Washington, D.C. 20423.

FOR FURTHER INFORMATION CONTACT: Ellen D. Hanson, (202) 275-7245.

SUPPLEMENTAL INFORMATION: On January 9, 1981, the C&NW filed an application under Section 5 of the Milwaukee Railroad Restructuring Act, 45 U.S.C. 904, for authority to acquire approximately 7.22 miles of railroad owned by the MILW. The line to be acquired is located between Marathon and Albert City in Buena Vista County, IA. The application will be handled under the special procedures set forth in *Acquisition Procedures for Lines of Railroads*, 360 I.C.C. 623 (1980) and published as Subpart B of 49 CFR 1111 at 45 FR 6107 (1980). In a decision in Finance Docket No. 29487, *Chicago and North Western Transportation Company—Petition* (not printed), served November 5, 1980, the Commission determined that this proposed acquisition is a minor transaction.

The application has been reviewed and found to comply with the information requirements of our regulations.

The MILW's Reorganization Court, in Order No. 428 issued December 15, 1980, directed the Commission to act upon this application within 90 days from its filing. To meet this deadline, we have established an expedited schedule.

Requests for copies of the application should be addressed to applicant's representative: Christopher A. Mills, Chicago and North Western Transportation Company, 400 West Madison St., Chicago, IL 60606.

A copy of any statement filed should be served on applicant's representative.

It is ordered: 1. The application is accepted for consideration.

2. The parties shall compy with all provisions stated above.

3. This decision shall be effective on January 21, 1981.

Dated: January 16, 1981.

By the Commission, Gary J. Edles, Director, Office of Proceedings.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 81-2622 Filed 1-23-81; 8:45 am]

BILLING CODE 7035-01-M

[Ex Parte No. 400]

Modification of Procedure for Handling Exemptions Filed Under 49 U.S.C. 10505

January 16, 1981.

AGENCY: Interstate Commerce Commission.

ACTION: Clarification of Prior Notice.

SUMMARY: On December 24, 1980, a notice was published at 45 FR 85180, indicating that the Interstate Commerce Commission is modifying its procedure for handling petitions for exemption under 49 U.S.C. 10505. The purpose of this notice is to clarify the scope of the new procedures.

FOR FURTHER INFORMATION CONTACT: Ellen D. Hanson, (202) 275-7245.

SUPPLEMENTARY INFORMATION:

A notice was published in the Federal Register on December 24, 1980 (45 FR 85180) indicating that the Commission is modifying its procedure for handling petitions to exempt rail matters under 49 U.S.C. 10505. The notice indicated that, except in the small number of cases where a potential for significant impact exists or where the impact is not readily ascertainable from the petition, the Commission would eliminate the current notice and comment procedure and issue a final decision based solely on the petition. Any exemption granted under the new procedure would become effective 30 days from the date of the decision's publication in the Federal

Register (except in unusual circumstances).

The purpose of this notice is to clarify that the new procedure discussed in the prior notice will apply only to petitions for exemption of rail matters which arise under 49 U.S.C. 10901, 10902, 10903, 10904, 10905, 10909, 11301, 11303, 11342, 11343, 11344, 11345, 11346, 11347, and 11348.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 81-3433 Filed 1-22-81; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-55 (Sub-No. 47F)]

Seaboard Coast Line Railroad Co.—Abandonment—In Hillsborough County, FL; Findings

Notice is hereby given pursuant to 49 U.S.C. 10903 that by a Certificate and Decision decided January 16, 1981, a finding, which is administratively final, was made by the Commission, Review Board Number 5, stating that, the present and future public convenience and necessity permit the abandonment by the Seaboard Coast Line Railroad Company of a portion of a line railroad known as the Cosme Spur, Tampa Division, extending from railroad milepost SYA 856.32 near Tarpon Junction, FL, to milepost SYA 860.53 at Cosme, FL, a distance of 4.21 miles, in Hillsborough County, FL, subject to the conditions for the protection of employees discussed in *Oregon Short Line R. Co.-Abandonment Goshen*, 360 I.C.C. 91 (1979). A certificate of public convenience and necessity permitting abandonment was issued to the Seaboard Coast Line Railroad Company. Since no investigation was instituted, the requirement of § 1121.38(b) of the Regulations that production of notice of abandonment decisions in the Federal Register be made only after such a decision becomes administratively final was waived.

Upon receipt by the carrier of an actual offer of financial assistance, the carrier shall make available to the offeror the records, accounts, appraisals, working papers, and other documents used in preparing Exhibit I (Section 1121.45 of the Regulations). Such documents shall be made available during regular business hours at a time and place mutually agreeable to the parties.

The offer must be filed with the Commission and served concurrently on the applicant, with copies of Ms. Ellen Hanson, Room 5417, Interstate Commerce Commission, Washington, DC 20423, no later than February 2, 1981. The offer, as filed, shall contain information required pursuant to § 1121.38(b) (2) and (3), of the Regulations. If no such offer is received, the certificate of public convenience and necessity authorizing abandonment shall become effective 30 days from the service date of this certificate.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 81-3431 Filed 1-22-81; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-55 (Sub-No. 48F)]

Seaboard Coast Line Railroad Co.—Abandonment—Near Spring Hope and Bunn, in Nash and Franklin Counties, NC; Findings

Notice is hereby given pursuant to 49 U.S.C. 10903 that by a Certificate and Decision decided January 16, 1981, a finding, which is administratively final, was made by the Commission, Review Board Number 5, stating that, the present and future public convenience and necessity permit the abandonment by the Seaboard Coast Line Railroad Company of a portion of a line of railroad known as the Nashville Subdivision of the Rocky Mount Division, extending from railroad milepost ABA-139.50 near Spring Hope, NC to milepost ABA-148.05 at Bunn, NC, a distance of 8.55 miles, in Nash and Franklin Counties, NC, subject to the conditions for the protection of employees discussed in *Oregon Short Line R. Co.-Abandonment Goshen*, 360 I.C.C. 91 (1979). A certificate of public convenience and necessity permitting abandonment was issued to the Seaboard Coast Line Railroad Company. Since no investigation was instituted, the requirement of § 1121.38(b) of the Regulations that publication of notice of abandonment decisions in the Federal Register be made only after such a decision becomes administratively final was waived.

Upon receipt by the carrier of an actual offer of financial assistance, the carrier shall make available to the offeror the records, accounts, appraisals, working papers, and other documents used in preparing Exhibit I (§ 1121.45 of the Regulations). Such documents shall be made available during regular business hours at a time and place mutually agreeable to the parties.

The offer must be filed with the Commission and served concurrently on the applicant, with copies to Ms. Ellen Hanson, Room 5417, Interstate Commerce Commission, Washington, DC 20423, no later than February 2, 1981. The offer, as filed, shall contain information required pursuant to § 1121.38(b) (2) and (3) of the Regulations. If no such offer is received, the certificate of public convenience and necessity authorizing abandonment shall become effective 30 days from the service date of the certificate.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 81-3430 Filed 1-22-81; 8:45 am]

BILLING CODE 7035-01-M

[Section 5b Application No. 2 [1]]

Western Railroads—Agreement

AGENCY: Interstate Commerce Commission.

ACTION: Notice of Postponement of Compliance Date.

SUMMARY: The January 15, 1981 compliance date is postponed to January 21, 1981. The interim approval of the current rate bureau agreements, entered October 28, 1976, in Ex Parte No. 297 (Sub-No. 1), is also similarly extended.

FOR FURTHER INFORMATION CONTACT: Richard B. Felder or Jane F. Mackall, (202) 275-7656.

SUPPLEMENTARY INFORMATION: In a notice at 45 FR 790994 (October 27, 1980), the Commission extended the compliance date in these proceedings to January 15, 1981, and extended interim approval of the present rate bureau agreements to the same date for purposes of requesting further comments on the impact of the Staggers Rail Act of 1980 on our prior decision in this proceeding at 364 I.C.C. 1 (1980). The comments have been received and are presently being evaluated. We will issue our decision on January 21, 1981. Interim antitrust immunity for current agreements is extended up to and including January 21, 1981.

This action does not affect the quality of the human environment or the conservation of energy resources.

Authority: 49 U.S.C. 10706.

Decided: January 15, 1981.

By the Commission, Darius W. Gaskins, Jr., Chairman.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 81-3434 Filed 1-22-81; 8:45 am]

BILLING CODE 7035-01-M

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[1] This proceeding also embraces Section 5b Application No. 3, Eastern Railroads-Agreement and Section 5b Application No. 6, Southern Railroads Agreement.

Intent To Engage in Compensated Intercorporate Hauling Operations

This is to provide notice as required by 49 U.S.C. 10524(b)(1) that the named corporations intend to provide or use compensated intercorporate hauling operations as authorized in 49 U.S.C. 10524(b).

1. *Parent Corporation and Address of Principal Office:* Bill Burton & Sons Trucking, Inc., P.O. Box 404, Newberry, MI 49868.

2. *Wholly-Owned Subsidiaries Which Will Participate in the Operations and the Addresses of Their Respective Principal Offices:* Newberry Redi-Mix, Division of Bill Burton & Sons Trucking, Inc., Newberry, MI; B. All Seasons Sports, Inc., Manistique, MI.

1. Parent corporation and principal office address: Carolina Steel Corporation, 1451 South Elm/Eugene Street, Greensboro, NC 27406.

2. Wholly owned subsidiary and its principal office: Arnold Erection Company, Sandy Ridge Road at U.S. 421, Colfax, NC 27236.

3. Divisions and their respective principal offices:

Arnold Stone Company, Sandy Ridge Road at U.S. 421, Colfax, NC 27236.
Carolina Steel Corporation, Augusta Service Center, 911 Hayes Drive, Augusta, GA 30901.
Carolina Steel Corporation, Charlotte Service Center, 4612 Rozzells Ferry Road, Charlotte, NC 28216.
Carolina Steel Corporation, Columbia Service Center, 801 Rosewood Drive, Columbia, SC 29201.
Carolina Steel Corporation, Lynchburg Service Center, Elon Industrial Park—VA Hwy. 1326, Lynchburg, VA 24504.
Carolina Steel Corporation, Richmond Service Center, Hammond Industrial Park, Charles City Road, Richmond, VA 23231.
Carolina Steel Corporation, Roanoke Service Center, 609 Wasena Avenue, SW, Roanoke, VA 24015.
Carolina Steel Corporation, Tri-Cities District Office, Highway 126 West, Blountville, TN 37617.
Carolina Steel Corporation, Wilson Service Center, 2711 Commerce Road, South, Wilson, NC 27893.
Cast-A-Stone Products Company, 1309 Kirkland Road, Raleigh, NC 27603.
Greenville Steel Company, 3216 Wade Hampton Blvd., Taylors, SC 29687.
Hickory Steel Company, 1115 Third Avenue, NW, Hickory, NC 28601.
Mecklenburg Iron Works, 12825 Sam Neely Road, Charlotte, NC 28210.
Salem Steel Company, 1720 Vargrave Street, Winston Salem, NC 27107.

1. Parent corporation and address of principal office: Furst-McNess Company, 120 East Clark Street, Freeport, Illinois 61032.

2. Wholly-owned subsidiary which will participate in the operations, and address of their principal office: W.E. Kautenberg Company, 1235 South Adams Avenue, Freeport, Illinois 61032.

1. Parent corporation and address of principal office: Justin Industries, Inc., Box 425, Fort Worths, Texas 76101.

2. Wholly-owned subsidiaries which will participate in the operations, and address of their respective principal offices:

(a) Acme Brick Company, Box 425, Fort Worth, Texas 76101.
(b) Ceramic Cooling Tower Company, Box 425, Fort Worth, Texas 76101.
(c) The Featherlite Corporation, Featherlite Precast Corporation, Volcanic Cinder Company, Featherlite Precast Corporation, Box 425, Fort Worth, Texas 76101.
(d) H. J. Justin & Sons, Inc., Justin Belt Company, Justin Leathergoods Company, Box 548, Fort Worth, Texas 76101.
(e) Louisiana Concrete Products, Inc., 4747 Choctaw Drive, Baton Rouge, La. 70921.
(f) Northland Publishing Company, Inc., Box N, Flagstaff, Arizona 86002.
(g) Sanford Brick Corporation, Drawer 458, Sanford, NC 27330.

1. Parent corporation and address of the principal office is: Louisiana-Pacific Corporation, 1300 S.W. Fifth Avenue, Portland, Oregon, 97201.

2. Wholly-owned subsidiaries which will participate in the operations, and address of their respective principal offices are:

(a) H. C. Hodges Lumber Company of West Bay, Box 160, West Bay Station, Panama City, Florida 32407.
(b) H. C. Hodges Lumber Company, Inc., Box 668, Defuniak Springs, Florida 32433.
(c) Roy O. Martin Industries, Inc., Box 7798, Alexandria, Louisiana 71303.
(d) Pabco Insulation, Inc., Box 1267, Ruston, Louisina 71270.

1. Parent Corporation and Address of Principal Office: Sikes Corporation, 608 Prospect Street, Lakeland, Florida 33802.

2. Wholly Owned Subsidiaries Which Will Participate in the Operations and Address of Their Principal Office: Florida Tile Ceramic Centers, Inc., 608 Prospect Street, Box 447, Lakeland, Florida 33802.

1. The parent corporation and address of its principal office: Sperry Corporation, 1290 Avenue of the Americas, New York, NY 10104.

2. Divisions which will participate in the operations:

(a) Sperry New Holland Division, 500 Diller Avenue, New Holland, PA 17557.
(b) Sperry Division, Mail Station P-11, Great Neck, Long Island, NY 11020.
(c) Sperry Flight System Division, Post Office Box 21111, Phoenix, Arizona 85036.
(d) Sperry Univac Division, Post Office Box 500, Blue Bell, PA 19424.
(e) Sperry Vickers Division, 1401 Crooks Road, Troy, Michigan 48084.

1. Parent corporation and address of principal office: Thomas J. Lipton, Inc., 800 Sylvan Avenue, Englewood Cliffs, New Jersey 07632—Incorporated in Delaware.

2. Wholly-owned subsidiaries which will participate in the operations:

(i) Continental Foods, Inc.
(ii) Continental Foods, Inc. (S.A.)
(iii) Flemington Production, Inc.
(iv) Good Humor Corporation
(v) Knox Gelatine, Inc.
(vi) *Lawry's Foods, Inc.*—all incorporated in Delaware.
  (a) Krenz Enterprises, Inc.
  (b) Lawry's Foods International, Inc.—both incorporated in California.
(vii) *Lawry's Foods International, Inc.*—incorporated in California.
  (a) Alimentos Lawry's, S.A. de C.V.—incorporated in Mexico.
  (b) Lawry's Foods, Limited—incorporated in Canada.
  (c) Lawry's Foods Europe, Ltd.—incorporated in Ireland.
(viii) *Lipton Industries, Inc.*—incorporated in Delaware.
  (a) Lipton Pet Foods, Inc.—incorporated in Delaware.
(ix) Lipton Management, Inc.—incorporated in Delaware.
(x) Morton House Kitchens, Inc.—incorporated in Delaware.
(xi) Pennsylvania Dutch-Megs, Inc.—incorporated in Delaware.
(xii) A. Sahadi & Co., Inc.—incorporated in Delaware.
(xiii) TJL Properties, Inc.—incorporated in Delaware.

Agatha L. Mergenovich,
Secretary.

[FR Doc. 81-2187 Filed 1-22-81; 8:45 am]
BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

[AAG/A Order No. 60-81]

Privacy Act of 1974; Modified System of Records

Pursuant to the Privacy Act of 1974, 5 U.S.C. 552a(e)(4), the Department of Justice, Federal Bureau of Investigation (FBI) is republishing the following

system of records, which most recently was published on January 10, 1980 in the Department's annual publication of Privacy Act issuances in the Federal Register:

Identification Division Records System (Justice/FBI-009)

15 U.S.C. 78q, part of the Securities Acts Amendments of 1975, and 7 U.S.C. 12a, part of the Futures Trading Act of 1978, have been cited as additional authority for maintenance of the system.

All mention of the routine use pertaining to the Identification Division's Missing Persons Program has been deleted as that Program has been abolished and the records maintained in this system are no longer used in missing person cases.

28 CFR 20.33(a)(4) and 20.33(c) have been cited as additional guidelines applicable to the release of information to the news media.

The information under the caption "Storage" has been changed to more accurately describe the manner in which the system's records are stored. The January 10, 1980 notice indicated that some of the information was being stored electronically in converting the manual system to an automated system. This notice amplifies the 1980 notice by indicating the storage medium used.

Typographical errors under the caption "Systems exempted from certain provisions of the act" have been corrected. In addition, subsection "(m)" is being deleted from the Privacy Act provisions listed. A separate order on rulemaking is published in today's Federal Register to accomplish revocation of the exemption.

All the clarifications incorporated into the existing notice have been italicized for the convenience of the public. Since the modification to the system notice constitutes an amplification rather than an alteration or expansion of the system, the reporting criteria of Office of Management and Budget Circular A-108 do not require the filing of a report with the Office of Management and Budget and the Congress.

Pursuant to the authority vested in the Attorney General by 5 U.S.C. 552a, and delegated to me by Attorney General Order No. 793-78, the changes italicized below are hereby adopted.

Dated: January 13, 1981.

William D. Van Stavoren,

Acting Assistant Attorney General for Administration.

Justice/FBI-009

SYSTEM NAME:

Identification Division Records System.

SYSTEM LOCATION:

Federal Bureau of Investigation: > J. Edgar Hoover Bldg., 10th and Pennsylvania Avenue NW., Washington, D.C. 20535.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

A. Individuals fingerprinted as a result of arrest or incarceration.

B. Persons fingerprinted as a result of Federal employment applications, military service, alien registration and naturalization purposes and individuals desiring to have their fingerprints placed on record with the FBI for personal identification purposes.

CATEGORIES OF RECORDS IN THE SYSTEM:

A. Criminal fingerprint cards and related criminal justice information submitted by authorized agencies having criminal justice responsibilities.

B. Civil fingerprint cards submitted by Federal agencies and civil fingerprint cards submitted by persons desiring to have their fingerprints placed on record for personal identification purposes.

C. Identification records sometimes referred to as "rap sheets" which are compilations of criminal history information pertaining to individuals who have criminal fingerprint cards maintained in the system.

D. An alphabetical name index pertaining to *all individuals* whose fingerprints are maintained in the system. The criminal records and the civil records are maintained in separate files and each file has an alphabetical name index related to the data contained therein.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The system is established, maintained and used under authority granted by 28 U.S.C. 534, *15 U.S.C. 78q, 7 U.S.C. 12a, and Pub. L. No. 92-544 (86 Stat. 1115).* The authority is also codified in 28 CFR 0.85 (b), and (j).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The FBI operates the Identification Division Records System to perform identification and criminal history record information functions for federal, state, local, and foreign criminal justice agencies, and for noncriminal justice agencies, and other entities where authorized by Federal statute, state statute pursuant to Public Law 92-544 (56 Stat. 1115). Presidential executive order, or regulation of the Attorney General of the United States. In addition, identification assistance is provided in disasters and for other humanitarian *purposes.*

Release of information to the news media: *Guidelines applicable for the release of information to the news media and the public are set forth in 28 CFR 20.33(a)(4), 20.33(c), and 50.2.*

Release of information to Members of Congress: Information contained in systems of records maintained by the Department of Justice, not otherwise required to be released pursuant to 5 U.S.C. 552, may be made available to a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of and at the request of the individual who is the subject of the record.

Release of information to the National Archives and Records Service: A record from a system of records may be disclosed as a routine use to the National Archives and Records Service (NARS) in records management and inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

Information in the system is stored manually in file cabinets either in its natural state or on microfilm. In addition, some of the information is stored *in computerized data storage devices.*

RETRIEVABILITY:

(1) All information in the system is retrievable by technical fingerprint classification and positive identification is effected only by comparison of the unique *identifying characteristics appearing in* fingerprint impressions submitted for search against the fingerprint cards maintained within the system.

(2) An auxiliary means of retrieval is through alphabetical *name* indexes which contain names of the individuals, their birth date, other physical descriptors, and the individuals' technical fingerprint classifications and FBI numbers, if such have been assigned.

SAFEGUARDS:

Information in the system is unclassified. Disclosure of information from the system is made only to authorized recipients upon authentication and verification of the right to access the system by such persons and agencies. The physical security and maintenance of information within the system is provided by FBI rules, regulations and procedures.

RETENTION AND DISPOSAL:

(1) The Archivist of the United States has approved the destruction of records maintained in the criminal file when the records indicate individuals have reached 80 years of age, and the destruction of records maintained in the civil file when the records indicate individuals have reached 75 years of age.

(2) Fingerprint cards and related arrest data in the system are destroyed seven years following notification of the death of an individual whose record is maintained *in* the system.

(3) Fingerprint cards submitted by state and local criminal justice agencies are returned upon *the request* of the submitting agencies. The return of a fingerprint card under this procedure results in the deletion from the system of all arrest information related to that fingerprint card.

(4) Fingerprint cards and related arrest data are removed from the Identification Division Records System upon receipt of Federal court orders for expunctions when accompanied by necessary identifying information. Recognizing lack of jurisdiction of local and state courts over an entity of the Federal Government, the Identification Division Records System, as a matter of comity, returns fingerprint cards and related arrest data to local and state criminal justice agencies upon receipt of orders of expunction directed to such agencies by local and state courts when accompanied by necessary identifying informations.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Federal Bureau of Investigation, 10th and Pennsylvania Avenue N.W., Washington, D.C. 20535.

NOTIFICATION PROCEDURE:

Address inquiries to the System Manager.

RECORD ACCESS PROCEDURES:

The Attorney General has exempted the Identification Division Records System from compliance with subsection (d) of the Act. However, pursuant to 28 C.F.R. 16.30–34, and Rules and Regulations promulgated by the Department of Justice on May 20, 1975 at 40 Fed. Reg. 22114 (Section 20.34) for Criminal Justice Information Systems, an individual is permitted access to his identification record maintained in the Identification Division Records System and procedures are furnished for correcting or challenging alleged deficiencies appearing therein.

CONTESTING RECORD PROCEDURES:

Same as the above.

RECORD SOURCE CATEGORIES:

See Categories of Individuals.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

The Attorney General has exempted this system from subsections *(c)(3) and (4); (d); (e)(1), (2), (3), (4)(G) and (H), (5) and (8); (f); and (g)* of the Privacy Act pursuant to 5 U.S.C. 552a(j). Rules have been promulgated in accordance with the requirements of 5 U.S.C. 553(b), (c) and (e) and have been published in the Federal Register.

[FR Doc. 81-2181 Filed 1-23-81; 8:45 am]

BILLING CODE 4410-02-M

Office of Juvenile Justice and Delinquency Prevention

Proposed OJJDP Guideline; Request for Comments

Action: Request for Comments on the Proposed OJJDP Guideline: Prevention of Juvenile Delinquency Through Capacity Building—Cycle II

Notice is hereby given that the Office of Juvenile Justice and Delinquency Prevention, pursuant to the Juvenile Justice and Delinquency Prevention Act of 1974, as amended, 42 U.S.C. 5601, et. seq., proposes to issue a guideline.

The Office of Juvenile Justice and Delinquency Prevention (OJJDP) is inviting interested persons to comment on the proposed guideline, Prevention of Juvenile Delinquency through Capacity Building—Cycle II, and will consider all such written comments before the final publication of this guideline. The period for public comment on this proposed guideline is 30 days. After development of the final guideline, which is expected to be published in the Federal Register on or about March 15, 1981, it is anticipated that applicants will have approximately 30 days to develop concept papers. This will permit award of funds on or about August 30, 1981.

This notice and opportunity to submit written views and comments is provided pursuant to Executive Order No. 12044, Improving Government Regulations, to ensure that interested organizations, agencies and individuals have an opportunity to review the proposed guideline. Interested persons are invited to submit written comments or suggestions to Ms. Roberta Dorn, Office of Juvenile Justice and Delinquency Prevention, 633 Indiana Avenue NW, Room 442, Washington, D.C. 20531, on or before March 2, 1981.

Ira M. Schwartz,

Administrator Office of Juvenile Justice and Delinquency Prevention.

Program Announcement

The Prevention of Juvenile Delinquency Through Capacity Building—Cycle II

A. Purpose

The Office of Juvenile Justice and Delinquency Prevention (OJJDP) is sponsoring a second cycle of the Capacity Building Program. This cycle, Capacity Building II, is designed to increase the capacity of public and private not-for-profit youth serving agencies to better serve children and youth through the support and development of activities which will improve the effectiveness of the agencies involved.

B. Program Components

The Capacity Building strategies selected for funding under this initiative build upon the recommendations of the National Advisory Committee for Juvenile Justice and Delinquency Prevention as outlined in the recently issued *"Standards for the Administration of Juvenile Justice"*. Objectives sought by projects funded under this Guideline should be attainable within a 2 year period. Concept papers describing program activities incorporating one or more of the following strategies are invited:

1. Projects which seek to plan, coordinate and establish programs to utilize school facilities and resources by the local community during nonschool hours for the provision of delinquency prevention activities.

2. Projects which seek to increase the capacity of the schools to prevent delinquency by establishing school based programs to inform youth about juvenile law and increase awareness on the part of youth of the consequences of involvement with the juvenile justice system.

3. Projects which seek to enhance a public or private not-for-profit youth serving agency's capacity to serve youth through the use of adult and juvenile community volunteers to provide services, plan programs and monitor services provided by juvenile facilities.

4. Projects which seek to increase the capacity of agencies to provide effective participatory roles for youth in policy development and program implementation.

5. Projects which seek to improve the capacity of local public and private youth serving agencies to develop and implement management information

systems to improve the administration of youth services.

6. Projects which seek to increase the capacity of juvenile justice system agencies to identify, document and eliminate differential treatment of minority and female youth.

7. Projects which seek to enhance the capacity of an agency or group of agencies to better serve youth through the provision of intensive training of staff and volunteers in specialized areas of youth work such as gang intervention, teenage prostitution and monitoring of services provided by residential facilities. This does not include subsidy of academic education through degree granting educational institutions.

8. Projects which seek to increase the capacity of an agency or a group of agencies to serve youth by planning and implementing public awareness and education programs which will provide the community with timely and accurate information as to the need for youth services, and the role of community agencies in meeting those needs.

C. Dollar Range and Duration of Grants

1. The total amount of funds available for support of projects selected under this Guideline is 1.7 million dollars. Grants will be awarded for a one year period in amounts ranging from $50,000 to $150,000. Projects which perform satisfactorily in the first year will be considered for second year funding.

2. OJJDP will not fund projects beyond the two year project period and objectives sought should be attainable within this timeframe.

3. Applicants applying who have received OJJDP funds previously will be judged on the merits of the currently proposed concept paper and their performance under previously funded grants will be taken into consideration in making concept paper selections.

D. Eligible Applicants

Eligible applicants include all public and private youth serving agencies that have provided direct and indirect services to children and youth during the past two years.

E. Submission Requirements

1. *Procedures:* Concept papers must be submitted to the Office of Juvenile Justice and Delinquency Prevention in accordance with the following:

Deadline for Submission of Concept Papers: One original and two copies must be mailed or hand delivered to the Office of Juvenile Justice and Delinquency Prevention, LEAA, Room 442, 633 Indiana Avenue, NW., Washington, D.C. 20531 by midnight April 30, 1981. Concept papers sent by mail will be considered on time if sent by registered or certified mail as evidenced by the U.S. Postal Service postmark on the original receipt from the U.S. Postal Service.

2. Concept papers need not be submitted to the State Criminal Justice Councils or the A–95 Clearinghouses. If the concept paper is selected for full application development, the applicant will be required to submit the application for comment to the appropriate State Criminal Justice Council and A–95 Clearinghouse.

3. *Concept Paper Narrative Requirements:* The concept paper should not exceed fifteen single spaced typed pages. The paper should provide a discussion of the proposed capacity building strategy following the outline below:

1. Purpose (Goals and Objectives).
2. Methodology (Strategy).
3. Need (Justification for the implementation of the proposed project by discussion or documentation).
4. Management and Staffing.

4. *Budget Requirements:* A one page budget estimate should be attached to the concept paper. The estimate should be broken out into two annual periods and reflect the following categories:

1. Personnel.
2. Fringe Benefits.
3. Travel.
4. Equipment.
5. Supplies.
6. Contractual.
7. Other.

F. Selection Procedures

Concept papers will be reviewed and selected for full application development by a panel. The authors of concept papers selected for application development will be contacted by OJJDP and will be provided with further instructions regarding final application submission requirements and procedures. The selection of a concept paper does not guarantee funding and each final application will be judged on competitive merit and in relation to its ability to fully and satisfactorily develop the concept presented and to meet all applicable OJJDP fiscal and programmatic application requirements.

G. Selection Criteria

1. Concept papers must propose projects to implement one or more of the capacity building strategies listed in Section B. The criteria which will be used to evaluate the concept papers are:

a. Responsiveness of the concept to the outlined strategies.

b. Clarity of the goals and objectives.

c. Clarity and practicality of the methodology.

d. Clarity and persuasiveness of the statement of need.

e. Potential for the capacity building activities to result in measurable improvements in the effectiveness of the youth serving agency and its capacity to provide service to youths.

f. Indications that agency may become self-sustaining after grant period.

g. Priority consideration to projects which have multiple or cooperative funding arrangements (i.e., private foundations, United Ways, etc.).

2. Not more than two concept papers from any single state will be selected for application development.

3. The decision of OJJDP regarding the selection of concept papers will be final and no further programmatic review of concept papers not selected for application development will occur following the notification of finalists.

H. Definitions

1. *Capacity Building:* A systematic approach which maximizes the ability of a group, agency, or organization to provide youth services relevant to the needs of youth and the degree to which the activities and services can be expanded and sustained.

2. *Public Youth Serving Agency:* Any agency, organization, or institution which functions as a part of a unit of government and is supported by public revenue, for the purpose of providing services to youth.

3. *Private Not-for-Profit Youth Serving Agency:* Any agency, organization, or institution with experience in serving youth, designated tax exempt by the Internal Revenue Service under Section 501(c)(3) of the IRS Code.

4. *Youth:* Youth are defined by each jurisdiction's definition as contained in the relevant welfare and juvenile codes.

5. *Management Information Systems:* Policies and procedures for the periodic collection and analysis of data on project activities designed for use in program management and decision making.

I. For Further Information

For further information or clarification regarding this Guideline, please contact: Ms. Roberta Dorn, Juvenile Justice Specialist, (202) 724–7755.

[FR Doc. 81–2530 Filed 1–23–81; 8:45 am]
BILLING CODE 4410–18–M

DEPARTMENT OF LABOR

Office of Pension and Welfare Benefit Programs

[Prohibited Transaction Exemption 81-8]

Class Exemption Covering Certain Short-Term Investments

AGENCY: Department of Labor.

ACTION: Grant of class exemption.

SUMMARY: This exemption permits employee benefit plans to engage in transactions involving certain short-term investments notwithstanding the prohibited transaction restrictions of the Employee Retirement Income Secrity Act of 1974 (ERISA or the Act). The exemption will affect participants and beneficiaries of employee benefit plans, persons who manage the assets of such plans, and other persons who provide services to such plans.

EFFECTIVE DATE: January 1, 1975. (Certain conditions to the availability of the exemption are effective April 23, 1981).

FOR FURTHER INFORMATION CONTACT: William A. Schmidt, Plan Beneftis Security Division, Office of the Solicitor, U.S. Department of Labor, (202) 523-8610. (This is not a toll free number.)

SUPPLEMENTARY INFORMATION: On April 25, 1980, notice was published in the Federal Register (45 FR 28017) of the pendency before the Department of Labor (the Department) of a proposed class exemption from the restrictions of section 406(a)(1) (A), (B), and (D) of the Act and from the taxes imposed by section 4975 (a) and (b) of the Code by reason of section 4975(c)(1) (A), (B) and (D) of the Code. The proposed class exemption was requested in two applications for class exemption—one filed by the American Bankers Association,[1] and the other filed jointly by six insurance companies.[2] In addition, the proposed exemption also related to certain matters that were raised in an application for individual exemption filed by E. I. du Pont de Nemours and Company.[3] Public comments were received pursuant to the provisions of section 408(a) of the Act and section 4975(c)(2) of the Code, and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975).[4]

Discussion

The Department received eleven comments regarding the proposed exemption. All of the commentators generally supported the exemption, but each comment also suggested changes to it. The Department has made substantial changes to the proposed exemption in response to these suggestions, and these changes, together with the specific issues raised by the commentators, are discussed below. The discusion deals first with the three kinds of short-term investment covered by the proposed exemption—banker's acceptances, commercial paper, and repurchase agreements—and then deals with several issues raised by the commentators that relate to the scope of the exemption.

I. *Banker's Acceptances.* Two commentators suggested that the exemption for banker's acceptances be expanded to include banker's acceptances issued by foreign banks. According to these commentators, the fact that a bank is subject to supervision by the United States or a State would seem to have little bearing on a determination whether a transaction involves the types of conflict of interest abuses that the prohibited transaction provisions were designed to preclude, and it is unlikely that a foreign bank would be a party in interest. In addition, one commentator asserted that a determination to invest in instruments issued by a foreign bank involves questions of purdence which should be left to the plan fiduciary making the investment deceision on behalf of the plan.

The Department has retained as a condition of the exemption as applied to banker's acceptances the requirement that the banker's acceptance be issued by a bank that is supervised by the United States or a State. The condition was included in the proposed exemption because the Department believed that the existance of state or Federal regulation of a bank would provide at least some independent protection of the interests of the plan acquiring the investment. Although a foreign bank may also be subject to regulatory supervision that is at least as strict as that to which a domestic bank is subject, the commentators provided no indication of the kinds of foreign banks from which a plan might acquire a banker's acceptance or the regulation to which such banks are subject. Therefore, the Department does not believe that it has a sufficent basis for concluding that the acquisition of such instruments from a party in interest would be in the interest of affected plans or protective of such plans and their participants and beneficiaries. However, because retroactive applicaiton of the condition would apparantly disrupt existing transactions, the condition will apply only to transactions occurring on and after a date 90 days from the date of this exemption.

One commentator also requested that the Department expand the scope of the exemption to include banker's acceptances issued by agencies of banks. In connection with this point, the commentator expressed particular concern that the exemption extend to banker's acceptances that are issued by "Edge corporations"—*i.e.* corporations organized under Federal Law (12 U.S.C. 611-631) "for the purpose of engaging in international or foreign banking or foreign financial operaitons, or in banking or other financial operaitons in a dependency or insular possession of the United States . . ."

In the Departemnt's view, a banker's acceptance issued by an Edge corporation is within the scope of the exemption because such corporations are organized pursunt to provisions of the National Banking Act, and, although they engage primarily in foreign banking transactions, they are required to file periodic reports with the Board of Governors of the Federal Reserve System and are subject to examination by examiners apponted by the body.[5]

Another commentator requested that the Department either clarify that the exemption extends to secondary market transactions involving banker's acceptances or that the exemption be extended to include such transactions. In this regard, the Department believes that the exemption for banker's acceptances extends to secondary market transactions if the conditions of the exemption are met.

Finally, the Department has added a condition to the final exemption which provides that the purchase, sale or disposition of the banker's acceptance must be as favorable to the plan as an arm's length transaction with an unrelated party would be. This condition

[1] Exemption Application No. D-653.

[2] Exemption Application No. D-1204. The exemption requested by the insurance companies covers short-term investment of plan assets as well as a wide range of other transactions with periods who provide services to plans. This class exemption is not intended to deal with those other transactions. They will be addressed separately.

[3] Exemption Application No. D-1294.

[4] The applications for exemption were filed with the Internal Revenue Service, pursuant to Rev. Proc. 75-26, 1975-1 C.B. 722, as well as with the Department. However, the notice of proposed exemption was issued, and the exemption is being granted, solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue this type of exemption to the Secretary of Labor.

[5] 12 CFR 211.7(b), (c).

is included as an additional protection to plans and their participants and beneficiaries.

II. *Commercial Paper.*

A. *Guarantees of Commercial Paper.* One commentator requested that the Department modify the proposed exemption to make it clear that commercial paper that is guaranteed by a party in interest, but issued by another person, is covered by the exemption. With respect to this request, the commentator stated that a company may guarantee commercial paper that is issued by another company and this commercial paper might be purchased by an employee benefit plan with respect to which the guarantor is a party in interest. According to the commentator, there is little or no potential for abuse with respect to a plan's acquisition of such commercial paper in the circumstances contemplated by the exemption, and, if the exemption is not modified to clearly cover commercial paper guaranteed by a party in interest, many subsidiaries of large, reputable corporations, as well as other issuers, would be unable to borrow funds in the commercial paper market because many of the same problems exist in determining the existence of a prohibited transaction with respect to a guarantee of commercial paper as exist in connection with the mere issuance of commercial paper. The Department has modified the exemption in response to the commentator's request to make it clear that the exemption contemplates a plan's acquisition, holding or disposition of commercial paper that is guaranteed by a party in interest, provided the other conditions to the exemption are satisfied.

B. *The rating requirement.* A condition to the proposed exemption provided that an acquisition, holding or disposition of commercial paper would be subject to the exemption only if the commercial paper involved in the transaction were ranked in the highest category by at least two nationally recognized statistical rating services. Several commentators noted that commercial paper that does not meet the requirements of this condition may nonetheless be an acceptable investment for employee benefit plans and that, because the rating of an issue of commercial paper reflects the relative "riskiness" of the investment, higher rated paper generally carries relatively lower interest rates, and a lower rating will result in higher interest rates. According to the commentators, the rating requirement of the proposed exemption would have the practical effect of limiting employee benefit plans to investments *only* in commercial paper given the highest ranking by two nationally recognized rating services because the nature of the commercial paper market, in many cases, makes it impossible for a fiduciary or issuer to determine whether a transaction is prohibited under section 406(a) of ERISA.[6] Therefore, the commentators state, the imposition of a rating requirement would have the practical effect of preventing a plan fiduciary from making an independent judgment regarding appropriate commercial paper investments for the plan, and would limit the potential return that might be available to the plan with respect to such investments. Finally, one commentator also noted that commercial paper may be offered in a private transaction, and, even though such commercial paper may be an attractive investment for an employee benefit plan, it would not be rated by a nationally recognized rating service.

The Department has modified, but has not deleted, the rating condition in response to the comments summarized above. As modified, the condition requires that, with respect to transactions occurring on or after a date 90 days from the date the exemption is granted, commercial paper must be ranked in one of the three highest rating categories by at least one nationally recognized statistical rating service. This modification is intended to allow fiduciaries who make investment decisions regarding the short-term investments of a plan to choose from a broad range of issues of commercial paper while assuring that the quality of the issue has been assessed by an independent party. However, the Department does not intend to suggest that, merely because commercial paper may be acquired by a plan pursuant to the exemption, such an acquisition would necessarily be an appropriate investment for an employee benefit plan; that determination must be made by the responsible plan fiduciaries, taking into account all the relevant facts and circumstances.

With respect to unrated issues of commercial paper that are sold in a private offering, the extent to which commercial paper is issued in the ordinary course of business without being rated by an independent rating agency is unclear, and the comments received did not provide the Department with a basis for concluding that unrated private offerings of commercial paper have such protective characteristics that affected plans would not need the independent safeguards that the rating condition is intended to provide.

C. *The section 13 filing requirement.* Several commentators objected to the requirement contained in a condition of the proposed exemption that commercial paper be issued by a company required to file reports under section 13 of the Securities Exchange Act of 1934 (the 1934 Act). These commentators note that many insurance companies do not file periodic reports under section 13(a) of the 1934 Act because they are specifically exempt under section 12(g)(2)(G) of the 1934 Act from the registration requirements of section 12 of that act, and are not otherwise required to file such reports.[7]

In addition these commentators noted that the filing requirements of other paragraphs of section 13 of the 1934 Act—*i.e.* sections 13(d) and 13(g) (Generally applicable to purchasers and holders of more than five percent of a class of equity securities registered under section 12 of the 1934 Act), 13(e) (relating to registered issuers that purchase their own shares), and 13(f) (relating to institutional investment

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[6] As described in the notice of proposed exemption, the applicants for the exemption stated in their application that in view of the nature of the short-term investment market and the way the investment decision making process in large plans is structured, it is not feasible for trustees and investment managers of these plans to know, or determine prior to consummation of the transaction, whether the issuer of an obligation is a party in interest or disqualified person with respect to a plan for which the acquisition is contemplated. The comments received by the Department also made this point. See comments of the American Bankers Association, dated June 24, 1980, and comments made on behalf of six life insurance companies and the American Council of Life Insurance, dated June 24, 1980.

[7] Section 12(g)(2)(G) of the 1934 Act states:

(2) The provisions [requiring registration] shall not apply in respect of—

* * *

(G) any security issued by an insurance company if all of the following conditions are met:

(i) Such insurance company is required to and does file an annual statement with the Commissioner of Insurance (or other officer or agency performing a similar function) of its domiciliary State, and such annual statement conforms to that prescribed by the National Association of Insurance Commissioners or in the determination of such State commissioner, officer or agency substantially conforms to that so prescribed.

(ii) Such insurance company is subject to regulation by its domiciliary State of proxies, consents, or authorizations in respect to securities issued by such company and such regulation conforms to that prescribed by the National Association of Insurance Commissioners.

(iii) After July 1, 1966, the purchase and sales of securities issued by such insurance company by beneficial owners, directors, or officers of such company are subject to regulation (including reporting) by its domiciliary State substantially in the manner provided in section 16 of this title [relating to securities transactions by certain directors, officers and principal shareholders of the issuer of such securities].

managers who exercise investment discretion over at least $100 million in publicly traded equity securities)—relate to specific occurrences or are only applicable in certain circumstances, and, therefore, many issuers of commercial paper may have no obligation to file under these requirements. The commentators also noted that application of the section 13 filing requirement would prevent plans from acquiring commercial paper issued by many privately-held companies and subsidiaries of other companies because such companies also are not required to file reports under section 13 of the 1934 Act. Finally, one commentator asserted that application of the 1934 Act filing requirement would effectively preclude a plan from investing in any commercial paper issued by a company that does not meet this requirement because in most commercial paper transactions it is not known whether the ultimate purchaser of the commercial paper is an employee benefit plan or whether the issuer or an affiliate thereof is a party in interest with respect to the plan.

In the Department's view, it is important that a plan fiduciary have access to relevant financial information regarding an issuer of commercial paper in order to make an informed decision on behalf of a plan. In addition, where such information is readily available, other interested persons will be able to monitor plan fiduciaries' investment decisions with respect to commercial paper. Nonetheless, the Department is persuaded by the comments received that commercial paper that is an appropriate investment for an employee benefit plan may be issued by companies that are not required to file reports under the 1934 Act, and that inclusion of the 1934 Act filing requirement as a condition to the exemption might unduly limit the short-term investment opportunities available to a plan. Therefore, the Department has deleted this condition in the final exemption. However, notwithstanding this change, the Department notes that a plan fiduciary has a general fiduciary duty, in determining whether to acquire commercial paper on behalf of a plan, to obtain and consider such information as is necessary to an informed decision on behalf of the plan.

D. *Stated Maturity.* One commentator noted that the condition in the proposed exemption which limited coverage to commercial paper with a stated maturity of 270 days or less appears to be derived from section 3(a)(3) of the Securities Act of 1933 (the 1933 Act), but that section 3(a)(3) contains additional language modifying the 270 day requirement which does not appear in the condition to the exemption.[8] This commentator suggested that the condition be revised to conform to the definition in the 1933 Act. The Department agrees with this comment and has revised the condition accordingly.

E. *Employer Securities.* One commentator suggested that the Department expand the exemption to include commercial paper issued by an employer of participants in a plan, or an affiliate of such an employer, provided it is a "marketable obligation" as defined in section 407(e) of ERISA and otherwise meets the percentage requirements of section 407. Another commentator suggested that the condition to the proposed exemption which required that commercial paper involved in a transaction subject to the exemption not be issued by an employer of participants in the plan (or an affiliate of such an employer) be coordinated with section 408(e) of ERISA which provides an exemption for certain transactions involving employer securities. In the Department's view, commercial paper issued by an employer of participants in a plan, or an affiliate of such an employer, may be a "marketable obligation," and, therefore, a plan's acquisition or sale of such commercial paper would be exempt from the prohibited transaction restrictions of section 406 of ERISA if the transaction meets the requirements of section 408(e).[9] Accordingly, the Department has decided not to revise the exemption in response to the commentator's suggestions because it believes that section 408(e), rather than the exemption being granted here, should govern the circumstances in which commercial paper issued by an employer may be purchased or sold by a plan.

III. *Repurchase Agreements.* Most of the commentators urged the Department to eliminate or substantially modify several of the conditions of the proposed exemption relating to repurchase agreements. These objections to the conditions and the Department's responses to the comments are discussed below.

A. *The requirement of a writing.* Four of the commentators suggested that the Department eliminate or modify the condition of the exemption that would require that a repurchase agreement covered by the exemption be embodied in, or pursuant to, a written agreement. These commentators noted that a repurchase agreement transaction, like other transactions involving short-term investments, is consummated very quickly, and, in addition, a repurchase agreement may be for as short a period as overnight. According to the commentators, the only written evidence of a separate repurchase agreement transaction may be a confirmation of the transaction, and, in the context of the market for repurchase agreements, it would be burdensome to require a written agreement for each transaction.

The condition relating to a written agreement was included in the proposed exemption because the Department had concluded that a written instrument defining the rights of the parties to the agreement was necessary both for the protection of plans (and their participants and beneficiaries) and in order to permit monitoring of a plan's compliance with the terms of the exemption. However, the Department did not intend that a separate agreement necessarily be entered into for each repurchase agreement transaction. Therefore, the Department has modified the language of the condition to more clearly state that a transaction entered into under a "blanket" written agreement would be sufficient to satisfy the condition. In addition, the Department has revised the condition to provide that receipt of a written confirmation of a transaction will be considered sufficient to meet the requirements of the condition for transactions occurring before a date 90 days from the date of this exemption.

B. *Financial statements.* The proposed exemption included a condition that would require the bank, broker-dealer or dealer entering into the repurchase agreement (the seller) to furnish the plan with its most recent statement of financial condition prior to entering into the agreement, and to represent that there has been no material adverse change in its financial condition since the date of such statement.

Several commentators objected to the proposed condition relating to the furnishing of financial statements,

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[8] Section 3(a)(3) of the 1933 Act provides as follows:

Section 3. (a) Except as hereinafter expressly provided, the provisions of this title shall not apply to the following classes of securities:

* * *

(3) Any note, draft, bill of exchange, or banker's acceptance which arises out of a current transaction or the proceeds of which have been or are to be used for current transactions, and which has a maturity at the time of issuance of not exceeding nine months, exclusive of days of grace, or any renewal thereof the maturity of which is likewise limited.

[9] The exemption granted here does not extend to conduct that is prohibited under section 406(b) of ERISA, while section 408(e) of ERISA, in certain circumstances, does provide relief from violations of sections 406(b)(1) and 406(b)(2). *See* 45 FR 51194 (August 1, 1980) (to be codified as 29 CFR § 2550.408e).

indicating that, because repurchase agreement transactions are entered into with great speed and for very short periods of time, it would be highly burdensome or impossible for a seller to comply with the condition. In addition, some of the commentators stated that the condition is not necessary for the protection of participants because sellers that are permitted to engage in repurchase agreement transactions pursuant to the terms of the exemption are highly regulated and the plan officials who are likely to engage in such transactions on behalf of a plan are sophisticated investors who would monitor the financial condition of the seller involved in a transaction.

The purpose of the condition relating to the furnishing of financial statements is similar to that underlying the condition to the proposed exemption that related to the filing of reports under the 1934 Act by issuers of commercial paper—*i.e.*, to assure that plan officials entering into such transactions have access to information that is necessary to evaluate the transaction, and to assure that other interested parties can assess the propriety of a plan's short-term investment activities. The Department is not prepared, on the basis of the comments received, to conclude that furnishing statements of the financial condition of a seller who engages in repurchase agreement transactions with a plan is unnecessary to accomplish these purposes. However, the Department is persuaded that the condition as proposed would create undue administrative burdens, and that application of the condition to transactions that may have already occurred would be inequitable. Therefore, the condition has been revised to apply only to transactions that are entered into on and after a date 90 days from the date of this exemption, and, in addition, the condition has been modified to reduce the burden of complying with it. In this regard, one commentator suggested that the condition might be revised to provide that the seller, prior to entering into its first repurchase agreement transaction with the plan, undertake to furnish the plan with statements of financial condition as issued, and, in connection with each repurchase agreement transaction, represent that there has been no material adverse change in the seller's financial condition since the date of the statement last furnished to the plan. Generally, the Department has adopted this suggestion. However, the condition also permits a seller to agree in the instrument pursuant to which the repurchase agreement transaction is entered into that, by entering into such transaction, the seller represents that there has been no material adverse change in its financial condition since the date of the last financial statement furnished to the plan that has not been previously disclosed to the fiduciary with whom the written agreement is made. This change is intended to allow the individuals who engage in repurchase agreement transactions that are covered by the exemption to consummate such transactions without offering or eliciting a separate affirmative representation regarding the seller's financial condition prior to each transaction.

C. *Securities other than obligations of the United States.* Four commentators objected to that portion of a condition in the proposed exemption which required that, in order for a repurchase agreement transaction to be covered by the exemption, the plan must receive securities issued or guaranteed by the United States or its agencies (United States obligations). According to these commentators, repurchase agreements frequently involve securities other than United States obligations and, if the Department limits the availability of the exemption to transactions involving such obligations, the condition would unduly restrict the investment opportunities available to employee benefit plans. Further, one of the commentators argued that it would be inappropriate for the exemption to preclude a plan from acquiring securities in a repurchase agreement transaction that it could acquire directly in a separate transaction.

The Department has modified the condition in response to the comments received because it is persuaded that marketable obligations other than United States obligations may, as collateral, provide sufficient protection of affected plans (and of their participants and beneficiaries). Therefore, under the final exemption, repurchase agreements may involve securities other than United States obligations, as well as banker's acceptances, commercial paper and certificates of deposit,[9] provided: (1) the direct acquisition of the securities, banker's acceptances, commercial paper or certificates of deposit would not violate the restrictions imposed by ERISA on a plan's acquisition or holding of employer securities, and (2) any securities that are subject to the Securities Act of 1933 are obligations that are not restricted securities within the meaning of Rule 144 of that act.[10]

D. *Value of securities received and requirement for the delivery of additional securities.* Under the proposed exemption, in order for a repurchase agreement transacation to be exempt, a plan was required to have received securities whose market value was at least 102% of the purchase price paid by the plan. In addition, under another condition to the proposed exemption, if, during the course of a repurchase agreement, the market value of the underlying securities fell below 102 percent of the purchase price, the plan was required to receive from the seller, by the close of business on the following business day, additional securities the market value of which, together with the market value of securities previously delivered or sold to the plan under the repurchase agreement, equaled at least 102 percent of the purchase price paid to the plan.

With respect to the requirement that a plan receive at the beginning of a repurchase agreement securities whose fair market value is equal to at least 102% of the purchase price, several commentators noted that where a repurchase agreement involves the delivery of securities the fair market value of which is in excess of the purchase price, the purchaser might be required to accept a lower effective interest rate on the transaction. In addition, these commentators indated that sellers might be reluctant to engage in repurchase agreement transactions with plans if the plan is required to receive such "excess collateral."

With respect to the requirement that a plan receive additional securities by the close of the next business day when the fair market value of securities received under a repurchase agreement falls below 102% of the purchase price, many commentators indicated that repurchase agreements are often for a one-day or overnight period, and, that under such an overnight agreement, there would be no need to comply with the requirement

[9] The Department has specifically included banker's acceptances, commercial paper, and certificates of deposit in order to make it clear that the exemption is available for repurchase agreements that involve such instruments. However, in specifically including these instruments, the Department does not intend to express an opinion regarding whether these instruments are, or are not, securities.

[10] In determining whether to engage in a repurchase agreement transaction that involves securities or instruments other than United States obligations, a plan fiduciary, in addition to ascertaining whether direct acquisition of such securities, banker's acceptances, commercial paper or certificates of deposit would violate the restrictions relating to employer securities and determining whether the securities or instruments are of appropriate quality for use in a repurchase agreement transaction, would also be required to evaluate the additional risks of the transaction in relation to the expected return.

to deliver additional securities because the agreement would be fully performed by the close of the next business day following the day on which the market value of the securities involved fell below 102% of the purchase price. In addition, these commentators stated that the requirement of daily "marking-to-market"—*i.e.*, daily determination of the sufficiency of the market value of the securities underlying a repurchase agreement—would present substantial administrative difficulties, and, therefore, imposition of such a requirement might place employee benefit plans at a competitive disadvantage in the repurchase agreement market.

The commentators suggested several different ways of modifying the "marking-to-market" requirement. Some suggested that the requirement be applicable only with respect to repurchase agreements whose term exceeds a specified period, such as 15 or 35 days, and that additional collateral only be required upon the expiration of a period longer than one day; others suggested that the requirement that additional collateral be delivered be related to a different event, such as a substantial decline in the fair market value of the securities received by the plan, or a decline in the value of such securities to 95% or less of the purchase price. Still other commentators suggested that this requirement be deleted in its entirety but that the requirement that the securities initially delivered have a fair market value of at least 102% of the purchase price be retained.

The requirement that the securities received by a plan have a fair market value equal to at least 102% of the purchase price and the requirement that additional securities be delivered as necessary to maintain the fair market value of securities in the possession of the plan at at least 102% of the purchase price were included in the proposed exemption because such "excess collateral," in the Department's view, would provide meaningful protection to affected plans and their participants against the possibility that a seller would be unable to meet its obligations under a repurchase agreement and that the proceeds from the sale of the underlying securities would be insufficient to provide the plan with the benefit of its bargain. However, the Department also believes that plan officials should be permitted the maximum discretion in choosing repurchase agreement opportunities that is consistent with the protection of plan participants and beneficiaries. Therefore, the Department has modified the exemption to require that, in order for a repurchase agreement transaction to be covered by the exemption, a plan must receive securities at the outset of the transaction whose fair market value is at least equal to 100 percent of the purchase price. In addition, the final exemption requires that, for future transactions, the written agreement pursuant to which the repurchase agreement transaction is entered into must provide that if, during the course of an agreement, the value of the underlying securities falls below the purchase price, the plan may require the seller to deliver, on the following business day, additional securities whose market value together with the market value of securities initially received by the plan equals at least 100 percent of the purchase price. These revisions are intended to assure that there is initially full security for the plan's investment while allowing plan fiduciaries some latitude where the market value of the securities initially received falls below the purchase price.[11]

E. *Other Matter Relating to Repurchase Agreements.* One commentator suggested that the condition providing that the exemption is not available with respect to a repurchase agreement where the seller or an affiliate of the seller has discretionary authority or control with respect to the investment of the plan assets involved in the transaction, or renders investment advice with respect to those assets, should be revised to make it clear that a determination of whether a person is providing "investment advice" will be made in accordance with the Department's regulation[12] dealing with the meaning of that phrase as it is used in the definition of the term "fiduciary" under section 3(21)(A)(ii) of ERISA. The Department has decided to adopt this suggestion, and has revised the condition accordingly. In addition, for the sake of uniformity, the Department has made the same revision to the analogous conditions of those portions of the exemption that deal with banker's acceptances, commercial paper and certificates of deposit.[13]

Another commentator noted that the securities underlying a repurchase agreement may not be held directly by the purchaser, but may be held by a third party as agent for the purchaser, or in escrow. This commentator requested that the Department make it clear that the conditions to the exemption do not require the purchaser to hold such securities directly. In the Department's view, a repurchase agreement transaction that involves the delivery of the underlying securities to an agent for the plan that is acquiring the securities pursuant to the agreement, or delivery of the securities to an independent third party in escrow, would be covered by the exemption, provided the other conditions relating to repurchase agreements are met, because, under such arrangements, the seller has relinquished possession of the securities and, in the case of an agent, the plan has control of the person who receives the securities, and, in the case of an escrow arrangement, an independent third person is obligated to deliver the securities to the plan upon the occurrence of specified events, (such as default by the seller). However, some arrangements may not actually involve a repurchase agreement. For example, an arrangement might be nominally a "repurchase agreement," but, because the securities have not been segregated, the plan would have to take legal action against the seller in order to take possession of them in the event of default, and other creditors of the seller might be able to proceed against them. Such transactions would not be covered by the exemption.

Finally, one commentator suggested that the Department revise the condition of the proposed exemption which required that a plan receive "interest at a rate no less than it would receive in a comparable transaction with an unrelated party" to provide that the condition would be satisfied if the fiduciary acquiring the security, acting in good faith, reasonably believes that the interest rate is no less than that which would be available at the time from unrelated parties. The Department has not adopted this suggestion because it believes that a fiduciary who causes a plan to engage in a repurchase agreement transaction of the kind described in the applications and in the comments received should have no difficulty in establishing his compliance with the condition as it was proposed.

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[11] The revised exemption does not prevent a plan from negotiating a repurchase agreement that provides for more stringent initial "collateralization" and "marking-to-market" terms—or both, and, depending on the financial condition of the seller and the character of the underlying securities, a fiduciary may be obligated to obtain such terms before engaging in the transaction. *See* section 404(a) of ERISA.

[12] 29 CFR 2510.3–21(c).

[13] See the discussion below regarding the inclusion in the final exemption of certain bank certificates of deposit.

IV. *Scope of the exemption.*

A. *Section 406(b).* One commentator suggested that the proposed exemption be expanded to permit a plan to invest in commercial paper or banker's acceptances issued by a plan fiduciary with respect to the assets involved in the transaction as well as to permit a plan to enter into a repurchase agreement with such a fiduciary. According to the commentator, the short-term investments that are permitted by the exemption are analogous to bank deposits described in section 406(b)(4) of ERISA, which provides an exemption that permits a fiduciary bank to invest plan assets in its own deposits in certain circumstances, and the proposed exemption should therefore be expanded to include relief for transactions involving banker's acceptances that is similar to that provided for deposits by section 406(b)(4). The commentator also stated that such relief would be appropriate because a short-term investment that involves a fiduciary with respect to the plan assets involved in the transaction (or an affiliate of such a fiduciary) may be the best investment available to the plan, and excluding such investments would result in a lower overall yield to the plan than would otherwise be available.

In addition, another commentator suggested that those portions of the exemption dealing with banker's acceptances and commercial paper be expanded to include relief from sections 406(b)(1) and 406(b)(2) of ERISA for transactions where a party in interest acquires such an instrument on behalf of a plan pursuant to the direction of another person. The commentator noted that, in most cases involving a "directed account" transaction, the fiduciary with authority to make the investment decision directs the party executing the trade to purchase commercial paper or a banker's acceptance, but does not require that the commercial paper be issued by a particular person or that the banker's acceptance be that of a particular bank. In such circumstances, the commentator stated, the directed fiduciary should not be required to "screen" the persons involved in its purchase of commercial paper on behalf of the plan in order to determine whether the purchase would violate sections 406(b)(1) or 406(b)(2). Accordingly, the commentator suggested that the exemption should extend to those sections as well as section 406(a) with respect to transactions of the kind described, provided that the directed fiduciary was precluded from purchasing its own instruments or from its own portfolio.

The Department has not expanded the scope of the exemption to allow a plan to make short-term investments in a person who is fiduciary with respect to the plan assets involved in the transaction because it does not believe that the kinds of investments permitted by this exemption are sufficiently analogous to the bank deposits described in section 406(b)(4) of ERISA to justify providing relief from the restrictions on fiduciary conduct in section 406(b) without additional independent safeguards.

With respect to directed accounts, a fiduciary who receives general investment instructions from another person, but who has discretion to choose from among several specific investments, may have interests that prevent him from exercising his independent judgment as a fiduciary in connection with an investment in the person from whom he receives his instructions.[14] In addition, since the person effecting the short term investment on behalf of the plan must necessarily be aware of the fiduciary from whom he receives investment instructions, it should not be burdensome for him to identify that fiduciary and the affiliates of that fiduciary. Therefore, the Department has also decided not to revise the exemption to provide relief from section 406(b) for short-term investment transactions that involve a fiduciary who receives investment instructions from another.

One commentator noted that a fiduciary, such as a bank, may receive funds belonging to a plan at a time at which access to markets for short-term investments is limited or non-existent (such as a Friday afternoon or the afternoon of a day preceding a legal holiday), and, according to the commentator, in these circumstances it might substantially benefit the plan to enter into a repurchase agreement with the fiduciary who receives the funds. The Department has not revised the exemption to provide relief for the transactions described by the commentator because it does not believe that the comment provides information sufficient to establish a basis for class relief regarding the circumstances in which it might be necessary for a fiduciary to cause a plan to engage in a repurchase agreement with itself in order to discharge its fiduciary obligations to the plan.

Another commentator noted that an issuer, seller or guarantor of a short-term investment might also manage a portion of the assets of a plan on whose behalf such investment is made (and would thus be a plan fiduciary), even though such issuer, seller or guarantor has no control over the assets involved in the transaction. The commentator expressed concern that such an issuer, seller or guarantor might, in such circumstances, be regarded as dealing with plan assets in its own interest or for its own account in violation of section 406(b)(1) of ERISA and 4975(c)(1)(E) of the Code, or acting on behalf of a party (or representing a party) whose interests are adverse to the interests of the plan in violation of section 406(b)(2) of ERISA. Therefore, the commentator requested that the Department either specifically state that the conduct described would not constitute a violation of section 406(b)(1) and 406(b)(2) of ERISA (and 4975(c)(1)(E) of the Code), or that it expand the scope of the exemption to include relief from those provisions.

In the Department's view, if a fiduciary issues, sells, or guarantees a short term investment that is acquired by a plan, and if such fiduiciary uses none of the authority, control or responsibility that makes him a fiduciary in connection with the acquisition of the short term investment by the plan, he has not engaged in a transaction described in section 406(b)(1) of ERISA (and section 4975(c)(1)(E) of the Code). In addition, where a fiduciary issues, sells or guarantees a short-term obligation that is acquired by a plan, and such fiduciary is a fiduciary solely because he is an investment manager or provides investment advice with respect to plan assets other than the assets involved in the transaction, and does not use any of the authority, control or responsibility that makes him a fiduciary in connection with the plan's acquisition of the obligation, he has not engaged in a transaction that is prohibited under section 406(b)(2) of ERISA.

The same commentator also expressed concern that where a fiduciary with respect to a plan receives a fee for guaranteeing a short term obligation that is issued by another person, and the investment is acquired by the plan, the fiduciary might be considered to have received

[14] For example, a fiduciary in such circumstances may be affiliated with the person from whom he receives instructions, or the person giving the instructions may have discretion regarding the plan's continued use of the fiduciary's services, and these relationships may influence the fiduciary's decisions regarding the investment of plan assets in instruments issued or sold by the directing fiduciary or one of its affiliates. However, see the discussion below regarding certain transactions involving a fiduciary that do not violate sections 406(b)(1) or 406(b)(2) of ERISA.

consideration for his own personal account from a party dealing with the plan in a transaction involving the assets of the plan in violation of section 406(b)(3) of ERISA (and section 4975(c)(1)(F) of the Code) even though the fiduciary used none of his authority, control or responsibility as a fiduciary to cause the plan to acquire the obligation. In the Department's view, the mere receipt by a fiduciary of a fee for guaranteeing a short-term investment that is offered in an open market and is ultimately acquired by a plan does not constitute a violation of section 406(b)(3) of ERISA (or a transaction described in section 4975(c)(1)(F) of the Code) because the fiduciary received the fee for guaranteeing the investment and not in connection with the transaction that involved the assets of the plan (*i.e.* the plan's acquisition of the investment).[15] Therefore, no revisions have been made to the exemption in response to the request.

B. *Retroactivity.* Several commentators, while agreeing with the proposed January 1, 1975, effective date of the exemption, urged the Department to apply various conditions to the exemption only prospectively. As discussed above, the Department has made several revisions to the exemption in response to these comments.

C. *Certificates of Deposit.* One commentator suggested that the Department revise the exemption to permit the acquisition of a certificate of deposit that is issued by a bank which is supervised by the United States or a State if neither the bank nor any affiliate of the bank has discretionay authority or control with respect to the investment of plan assets involved in the transaction or renders investment advice with respect to the assets. In regard to this suggestion, the commentator noted that section 408(b)(4) of ERISA (and section 4975(d)(4) of the Code) provides an exemption from the prohibited transaction provisions of ERISA for the investment of a plan's assets in deposits of a bank or similar financial institution that is a fiduciary of the plan if the plan covers only employees of the bank or financial institution or if the investment is expressly authorized by a provision of the plan or by a fiduciary (other than the bank or similar financial institution or affiliate thereof) who is expressly empowered by the plan to so instruct the trustee with respect to the investment. The commentator also noted that although the Department's regulations under section 408(b)(4)[16] describe what will constitute sufficient authorization of a plan's investment in a bank or other financial institution that makes the investments in its own deposits or in deposits of an affiliate, the regulation provides no guidance with respect to authorization of transactions occurring after November 1, 1977, where the deposit is with a party in interest bank or other financial institution other than the institution making the deposit (or an affiliate of that institution). Therefore, the commentator suggested, it would be appropriate for the Department to include such certificates of deposit in the scope of the exemption in order to make it clear that they are permitted.

The Department has, in general, adopted the commentator's suggestion and has revised the exemption accordingly. However, the Department has not adopted a portion of the commentator's suggested revision to the exemption which merely reiterates the requirements of the Department's regulations under section 408(b)(4).

D. *Other Matters.* One commentator urged the Department to expand the exemption to include investments in, among other things, loans for development of alternative energy sources, and loans that would promote employee ownership of corporations. These matters are outside the scope of the exemption.

General Information

The attention of interested persons is directed to the following:

1. The fact that a transaction is the subject of an exemption granted under section 408(a) of the Act and section 4975(c)(2) of the Code does not relieve a fiduciary of a plan to which the exemption is applicable from certain other provisions of the Act, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act which, among other things, require a fiduciary to discharge his duties with respect to the plan solely in the interest of the plan's participants and beneficiaries and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act.

2. The exemption granted here does not extend to transactions prohibited under section 406(b) of the Act and sections 4975(c)(1) (E) and (F) of the Code.

3. The exemption set forth herein is supplemental to, and not in derogation of, any other provisions of the Act, including statutory exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

4. The class exemption is applicable to a particular transaction only if the transaction satisfies the conditions specified in the class exemption.

5. In accordance with section 408(a) of the Act and section 4975(c)(2) of the Code, and based upon the entire record, including the written comments submitted in response to the notice of April 25, 1980, the Department makes the following determinations:

(i) The class exemption set forth herein is administratively feasible;

(ii) It is in the interests of plans and of their participants and beneficiaries; and

(iii) It is protective of the rights of participants and beneficiaries of plans.

Exemption

Accordingly, the following exemption is hereby granted under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975).

Effective January 1, 1975, the restrictions of sections 406(a)(1)(A), (B) and (D) of the Act, and the taxes imposed by reason of section 4975(c)(1)(A), (B) and (D) of the Code shall not apply to an investment of employee benefit plan assets which involves the purchase or other acquisition, holding, sale, exchange or redemption by or on behalf of an employee benefit plan of the following:

I. *Banker's Acceptances.* A banker's acceptance that is issued by a bank if:

A. The banker's acceptance has a stated maturity date of one year or less from date of issue or has a maturity date of one year or less from the date of purchase on behalf of the plan;

B. Neither the bank nor any affiliate of the bank has discretionary authority or control with respect to the investment of the plan assets involved in the transaction or renders investment advice (within the meaning of 29 CFR 2510.3–21(c)) with respect to those assets;

C. The terms of the transaction are at least as favorable to the plan as those of an arm's length transaction with an unrelated party would be; and,

D. With respect to transactions occurring on or after April 23, 1981 the bank issuing the banker's acceptance is

[15] However, receipt of such a fee could constitute a violation of section 406(b)(3) in certain circumstances; for example, a violation of section 406(b)(3) might occur where it is specifically contemplated by the parties at the time the fiduciary receives the fee for guaranteeing the obligation, that the plan will acquire the short-term investment.

[16] 29 CFR 2550.408b–4.

supervised by the United States or a State.

II. *Commercial Paper.* Commercial paper if:

A. It is not issued by an employer any of whose employees are covered by the plan or by an affiliate of such employer;

B. It has a stated maturity date of nine months or less from the date of issue, exclusive of days of grace, or is a renewal of an issue of commercial paper the maturity of which is likewise limited;

C. Neither the issuer of the commercial paper, any guarantor of the commercial paper, nor an affiliate of such issuer or guarantor, has discretionary authority or control with respect to the investment of the plan assets involved in the transaction or renders investment advice (within the meaning of 29 CFR 2510.3–21(c)) with respect to those assets;

D. With respect to an acquisition or holding of commercial paper (including an acquisition by exchange) occurring on or after April 23, 1981, at the time it is acquired, the commercial paper is ranked in one of the three highest rating categories by at least one nationally recognized statistical rating service.

III. *Repurchase Agreements.* A repurchase agreement (or securities or other instruments under cover of a repurchase agreement) in which the seller of the underlying securities or other instruments is a bank which is supervised by the United States or a State; a broker-dealer registered under the Securities Exchange Act of 1934; or a dealer who makes primary markets in securities of the United States government or any agency thereof and reports daily to the Federal Reserve Bank of New York its position with respect to government securities and borrowings thereon, if each of the following conditions are satisfied.

A. The repurchase agreement is embodied in, or is entered into pursuant to, a written agreement the terms of which are at least as favorable to the plan as an arm's length transaction with an unrelated party would be. For transactions occurring before April 23, 1981 a written confirmation of a repurchase agreement whose terms were at least as favorable to the plan as an arm's length transaction with an unrelated party would have been will be deemed to satisfy this condition.

B. The plan receives interest at a rate no less than that which it would receive in a comparable transaction with an unrelated party.

C. The repurchase agreement has a duration of one year or less.

D. The plan receives securities, banker's acceptances, commercial paper, or certificates of deposit having a market value equal to not less than 100 percent of the purchase price paid by the plan.

E. Upon expiration of the repurchase agreement and return of the securities or other instruments to the bank, broker-dealer or dealer (seller), the seller transfers to the plan an amount equal to the purchase price plus the appropriate interest.

F. Neither the seller nor an affiliate of the seller has discretionary authority or control with respect to the investment of the plan assets involved in the transaction or renders investment advice (within the meaning of 29 CFR 2510.3–21(c)) with respect to those assets.

G. The securities, banker's acceptances, commercial paper or certificates of deposit received by the plan—

(1) Could be acquired directly by the plan in a transaction not covered by this section III without violating sections 406(a)(1)(E), 406(a)(2) or 407(a) of the Act; and,

(2) If the securities are subject to the provisions of the Securities Act of 1933, they are obligations that are not "restricted securities" within the meaning of Rule 144 under that act.

H. With respect to transactions occurring on or after *April 23, 1981,*

(1) If the market value of the underlying securities or other instruments falls below the purchase price at any time during the term of the agreement, the plan may, under the written agreement required by paragraph A of this section, require the seller to deliver, by the close of business on the following business day, additional securities or other instruments the market value of which, together with the market value of securities previously delivered or sold to the plan under the repurchase agreement, equals at least 100 percent of the purchase price paid by the plan;

(2) If the seller does not deliver additional securities or other instruments as required above, the plan may terminate the agreement, and, if upon termination or expiration of the agreement, the amount owing is not paid to the plan, the plan may sell the securities or other instruments and apply the proceeds against the obligations of the seller under the agreement, and against any expenses associated with the sale; and,

(3) The seller agrees to furnish the plan with the most recent available audited statement of its financial condition as well as its most recent available unaudited statement, agrees to furnish additional audited and unaudited statements of its financial condition as they are issued and either: (A) agrees that each repurchase agreement transaction pursuant to the agreement shall constitute a representation by the seller that there has been no material adverse change in its financial condition since the date of the last statement furnished that has not been disclosed to the plan fiduciary with whom such written agreement is made; or (B) prior to each repurchase agreement transaction, the seller represents that, as of the time the transaction is negotiated, there has been no material adverse change in its financial condition since the date of the last statement furnished that has not been disclosed to the plan fiduciary with whom such written agreement is made.

(4) In the event of termination and sale as described in (2) above, the seller pays to the plan the amount of any remaining obligations and expenses not covered by the sale of the securities or other instruments, plus interest at a reasonable rate.

If a seller involved in a repurchase agreement covered by this exemption fails to comply with any condition of this exemption in the course of engaging in the repurchase agreement, the plan fiduciary who caused the plan to engage in such repurchase agreement shall not be deemed to have caused the plan to engage in a transaction prohibited by section 406(a)(1)(A) through (D) of the Act solely by reason of the seller's failure to comply with the conditions of the exemption.

IV. *Certificates of Deposit.* A certificate of deposit that is issued by a bank which is supervised by the United States or a State if neither the bank nor any affiliate of the bank has discretionary authority or control with respect to the investment of the plan assets involved in the transaction or renders investment advice (within the meaning of 29 CFR 2510.3–21(c)) with respect to those assets.

For purposes of this exemption the term "affiliate" is defined in 29 CFR 2510.3–21(e).

Signed at Washington, D.C., this 16th day of January.

Ian D. Lanoff,

Administrator, Pension and Welfare Benefit Programs, Labor-Management Services Administration, U.S. Department of Labor.

[FR Doc. 81-2363 Filed 1-22-81; 8:45 am]

BILLING CODE 4510-29-M

Proposed Class Exemption To Permit Payment of Compensation To Plan Fiduciaries for the Provision of Securities Lending Services

AGENCY: Department of Labor.

ACTION: Notice of proposed class exemption.

SUMMARY: This document contains a notice of pendency before the Department of Labor (the Department) of a proposed class exemption from the prohibitions of section 406(b)(1) of the Employee Retirement Income Security Act of 1974 (the Act) and from the taxes imposed by section 4975 (a) and (b) of the Internal Revenue Code of 1954 (the Code) by reason of section 4975(c)(1)(E) of the Code. The proposed class exemption, if granted, will exempt certain compensation arrangements for the provision of securities lending services by a plan fiduciary to an employee benefit plan, if the conditions of the proposed exemption are met. If granted, the proposed exemption would affect participants and beneficiaries of employee benefit plans, and fiduciaries who provide securities lending services to such plans.

DATES: Written comments and requests for a public hearing must be received by the Department on or before February 23, 1981. If adopted, it is proposed that this class exemption will be effective upon the date of its publication in the Federal Register.

ADDRESSES: All written comments and requests for a hearing (preferably three copies) should be addressed to the Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C-4526, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20216, Attention: "Securities Lending Services".

The comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefit Programs, U.S. Department of Labor, Roon N-4677, 200 Constitution Avenue, N.W., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Roger Thomas, Esq., Plan Benefits Security Division, Office of the Solicitor, U.S. Department of Labor, (202) 523-8602. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Notice is hereby given of the pendency before the Department of a proposed class exemption from the restrictions of section 406(b)(1) of the Act and from the taxes imposed by section 4975 (a) and (b) of the Code by reason of section 4975(c)(1)(E) of the Code.

By notice appearing elsewhere in this issue of the Federal Register, the Department has granted a class exemption (PTE 81-6) to permit the lending of securities by employee benefit plans to banks and broker-dealers who are parties in interest with respect to such plans, if the conditions specified in the exemption are met. PTE 81-6 provides an exemption from the restrictions of section 406(a)(1) (A) through (D) of the Act and the taxes imposed by section 4975 (a) and (b) of the Code by reason of section 4975(c)(1) (A) through (D) of the Code.

In the preamble to the proposal that became PTE 81-6, the Department described one type of compensation arrangement for the provision of securities lending services that could give rise to a violation of section 406(b)(1).[1] The Department indicated in the preamble that, although the Department was not proposing relief from section 406(b)(1), the exemption provided by section 406(b)(6) might be available for the payment of compensation under such arrangement.

As explained in greater detail in the preamble to PTE 81-6, a number of commentators requested that the proposed exemption be expanded to cover section 406(b)(1) because of the uncertain availability and limited scope of section 406(b)(6). Since the Department had not previously proposed relief from section 406(b)(1), and since the Department was desirous of not delaying the grant of the proposed relief from section 406(a), the Department decided to adopt PTE 81-6 and to propose a class exemption from the prohibitions of section 406(b)(1) of the Act and 4975(c)(1)(E) of the Code to permit, under certain conditions designed to protect the plans involved, compensation for the provision of securities lending services to employee benefit plans.

The conditions of the exemption proposed herein do not limit the form that the compensation may take, although the compensation must be reasonable. In addition, the compensation must be paid in accordance with the terms of a written instrument. The compensation arrangement must be approved by an independent plan fiduciary, who may terminate the arrangement at any time without prior notice or penalty to the plan. The proposed exemption also provides that the fiduciary to be compensated (the "lending fiduciary") must provide the approving fiduciary with any reasonably available information which the lending fiduciary reasonably believes to be necessary to determine whether the authorization should be made or continued, as well as any other information that the approving fiduciary may reasonably require.

[1] Under this type of arrangement a fiduciary receives, as compensation, a portion of the "rental fee" for the loaned securities received by the lender. In these circumstances, the amount of the fee received by the fiduciary would depend both on the aggregate market value of the securities on loan, and on the duration of the loan. The amount of such fee would, therefore, be under the control of the fiduciary. The Department has taken the position that such an arrangement would violate the provisions of section 406(b)(1). See, letter to Arthur Sporn (Advisory Opinion 79-1111A, February 23, 1979).

Notice to Interested Persons

Because all plan participants and beneficiaries whose plans invest in securities could conceivably be considered interested persons, the Department has determined that the only practical form of notice is publication in the Federal Register.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject to an exemption under section 406(a) of the Act and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest of disqualified person from certain other provisions of the Act and the Code. These provisions include any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which, among other things, require a fiduciary to discharge his duties respecting the plan solely in the interest of participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before any exemption may be granted under section 406(a) of the Act and section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan(s) and of their participants and beneficiaries, and protective of the rights of the participants and beneficiaries of the plan(s);

(3) This exemption does not extend to transactions prohibited under section 406(b) (2) and (3) of the Act and section 4975(c)(1)(F) of the Code;

(4) This exemption is supplemental to and not in derogation of any other provisions of the Act or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(5) If granted, the pending class exemption will be applicable to a particular transaction only if the transaction satisfies the conditions specified in the class exemption.

Written Comments and Hearing Request

All persons are invited to submit written comments or requests for a hearing on the proposed exemtion to the address and within the time period set forth above. All comments will be made a part of the record. Comments and requests for a hearing should state the reasons for the writer's interest in the proposed exemption. Comments received will be available for public inspection with the applications for exemption at the address set forth above.

I. Exemption

Effective [date of publication of the final class exemption], the restrictions of section 406(b)(1) of the Employee Retirement Income Security Act of 1974 (the Act) and the taxes imposed by sections 4975 (a) and (b) of the Internal Revenue Code of 1954 (the Code) by reason of section 4975(c)(1)(E) of the Code shall not apply to the payment by an employee benefit plan to a fiduciary (the "lending fiduciary") of compensation for services rendered in connection with loans of plan assets that are securities, provided that:

(a) The loan of securities is not prohibited by section 406(a) of the Act;

(b) The lending fiduciary is authorized to engage in securities lending transactions on behalf of the plan;

(c) The compensation is reasonable and is paid in accordance with the terms of a written instrument;

(d) The arrangement under which the compensation is paid is subject to the prior authorization of a plan fiduciary (the "authorizing fiduciary"), who is independent of the lending fiduciary and of any affiliate thereof, and may be terminated by the authorizing fiduciary at any time without prior notice to the lending fiduciary and without penalty to the plan; and

(e) No such authorization is made or renewed unless the lending fiduciary shall have furnished the authorizing fiduciary with any reasonably available information which the lending fiduciary reasonably believes to be necessary to determine whether such authorization should be made or renewed, and any other reasonably available information regarding the matter that the authorizing fiduciary may reasonably request.

II.

For purposes of this exemption, the term "affiliate" of another person means:

(i) Any person directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with such other person;

(ii) Any officer, director, partner, employee or relative (as defined in section 3(15) of the Act) of such other person; and

(iii) Any corporation or partnership of which such other person is an officer, director or partner.

For purposes of this paragraph, the term "control" means the power to exercise a controlling influence over the management or policies of a person other than an individual.

Signed in Washington, D.C. this 16th day of January 1981.

Ian D. Lanoff,

Administrator, Pension and Welfare Benefit Programs, Labor-Management Services Administration, U.S. Department of Labor.

[FR Doc. 81-2584 Filed 1-22-81; 8:45 am]

BILLING CODE 4510-29-M

[Prohibited Transaction Exemption 81-7]

Class Exemption for Certain Transactions Involving Mortgage Pool Investment Trusts

AGENCY: Department of Labor.

ACTION: Grant of Class Exemption.

SUMMARY: This class exemption permits, under certain conditions, transactions between plans and parties in interest with respect to those plans related to the origination, maintenance and termination of mortgage pool investment trusts (mortgage pools), and the acquisition and holding of certain mortgage-backed pass-through certificates (certificates) of mortgage pools by plans. In the absence of the retroactive and prospective relief provided by this exemption, these transactions might be prohibited by the Employee Retirement Income Security Act of 1974 (the Act) and the Internal Revenue Code of 1954 (the Code).

EFFECTIVE DATE: January 1, 1975.

FOR FURTHER INFORMATION CONTACT: William J. Flanagan, Esq., Plan Benefits Security Division, Office of the Solicitor, U.S. Department of Labor, (202) 523-7925. (This is not a toll free number.)

SUPPLEMENTARY INFORMATION: On May 6, 1980, notice was published in the **Federal Register** (45 FR 29837) of the pendency before the Department of Labor (the Department) of a proposal for a class exemption from the restrictions of sections 406(a), 406(b) and 407 of the Act, and from the taxes imposed by section 4975 (a) and (b) of the Code by reason of section 4975(c) of the Code. The exemption was proposed on the basis of four individual applications filed by Bank of America National Trust and Savings Association (D-1446), Crocker National Bank (D-1449), Wells Fargo Bank, National Association (D-1357), and PMI Mortgage Corporation (D-1447). The notice set forth a summary of facts and representations contained in these applications, and referred interested persons to the applications for a complete statement of facts and representations. The applications have been available for public inspection at the Department in Washington, D.C.

Public comments and requests for a hearing with regard to the proposed class exemption were received pursuant to section 408(a) of the Act and section 4975(c)(2) of the Code, and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). Notice of a public hearing on the proposed class exemption was published on August 1, 1980 (45 FR 51318), and the public hearing was held on September 9, 1980. The record of this hearing remained open until September 23, 1980 and additional comments were received.

Upon consideration of all of the comments submitted and testimony received, the Department has determined to grant the proposed class exemption, subject to certain modifications. These modifications and the major comments are discussed below.

Description of the Proposal

The proposed class exemption contained in the notice of pendency provided conditional relief prospectively and retroactively to January 1, 1975 for transactions involving the origination, maintenance and termination of mortgage pools, and the acquisition and holding by plans of certificates issued by mortgage pools. Section I(A) of the proposed exemption would provide relief from the restrictions of section 406(a) and 407 of the Act and section 4975(c)(1) (A) through (D) of the Code for the sale, exchange or transfer of certificates between a plan and a pool sponsor when the pool sponsor or pool trustee is a party in interest with respect to such plan. Section I(A) also would provide such relief for a variety of listed transactions necessary to fulfill the terms of the pooling and servicing agreement governing each pool. This list of transactions was derived from the applicants' descriptions of the operations of their mortgage pools. The

specific conditions pertaining to each listed transaction were also taken from the representations of the applicants.

Section I(B) of the proposal would provide conditional relief from section 406(b) (1) and (2) of the Act and section 4975(c)(1)(E) of the Code for the sale exchange or transfer of certificates between a plan and a pool sponsor when the pool sponsor or pool trustee is a fiduciary with respect to such plan. Such relief would be available provided that: (1) a fiduciary who is independent of the pool sponsor and pool trustee and who has the authority to manage and control the assets of the plan approves the purchase of certificates; (2) the plan pays no more for the certificates than would be paid by an unrelated third party in an arm's-length transaction; (3) the plan pays no investment management, investment advisory, sales commission or similar fee to the pool sponsor with regard to such sale or acquisition; and (4) the total value of certificates purchased by all plans with respect to which the pool sponsor or pool trustee is a fiduciary shall not exceed 10% of the amount of the offering.

Section I(C) of the proposed exemption would provide relief from the restrictions of section 406(b)(1) of the Act and section 4975(c)(1)(E) of the Code for the collection, holding and investment of individual mortgage payments by the pool sponsor prior to the date of disbursement to certificate holders, and the retention of a specified portion of the interest by the pool sponsor as part of its compensation for organizing and servicing the mortgage pool. Relief for the retention of prepayment, late payment and assumption fees by the pool sponsor would be provided by section I(D) of the proposal.

Section II of the proposal contained four general conditions applicable to all of the transactions listed in Section I. Condition 1 provided that the certificates must have been issued in a public offering registered under the Securities Act of 1933 pursuant to a firm commitment underwriting. Condition 2 required the maintenance of a system for insuring or otherwise protecting the pooled mortgage loans and the property securing such loans up to an amount not less than the greater of one percent of the aggregate principal value of the pooled loans, or the principal value of the largest pooled loan. The condition went on to specify the ways in which such a system must be structured. These specifications were based on the applicants' representations. Condition 3 required that the pool trustee not be an affiliate of the pool sponsor. Condition 4 provided that the sum of all payments made to and retained by the pool sponsor in connection with a mortgage pool, and all funds inuring to the benefit of the pool sponsor as a result of the administration of the mortgage pool, must represent not more than adequate consideration for selling the mortgage loans plus reasonable compensation for services provided by the pool sponsor to the pool.

Section III of the proposal contained definitions of the terms "pool sponsor," "mortgage pool," "mortgage pool pass-through certificate," and "affiliate." These definitions generally reflected the representations of the applicants.

Discussion of the Comments

A. Structure of the Exemption

As noted above, the proposed class exemption would provide detailed relief in response to the applicants' requests. This was especially true in section I of the proposal, which listed the individual transactions exempted along with the specific conditions applicable to each transaction. It was the Department's intention that this specificity provide the basis for a detailed analysis of the ways in which the provisions of the Act affected investments in mortgage pools.

While praising the thoroughness of the Department's proposal, many commentators noted serious problems with this specific, transaction-based approach. Most indicated that the mortgage pool investment industry is still relatively young and is constantly developing new methods of operation. The commentators argued that the Department's proposal would, if finalized in the same form, require rigid adherence to the present modes of operation, thus preventing possibly beneficial innovation.

Several commentators also indicated the difficulties inherent in drafting and administering an exemption in the form proposed. In order to demonstrate the problems in basing a class exemption on a supposedly comprehensive list of transactions, the commentators brought to the Department's attention a number of transactions omitted from the list. The commentators further noted that mortgage pools maintained by sponsors other than the applicants may vary in certain minor ways from the applicants' pools. While these variations may not be sufficient to undermine the basis for granting class relief, the effect of such differences could render a specific, transaction-based exemption inapplicable to transactions posing no greater possibility for abuse than those associated with the pools described in the applications.

The Department has carefully reviewed these comments and has decided to restructure the final class exemption in the more generalized manner suggested by the commentators. Thus, section I of the final exemption provides relief for several types of transactions, but does not list those transactions individually. Section II contains several conditions applicable to the relief provided in section I. These conditions are designed to assure certain levels of protection for investing plans, rather than to require strict conformance to a specifically described program. Section III contains definitions designed to provide exemptive relief for a broader spectrum of entities involved in the mortgage pool investment industry. The provisions of these sections, and the ways in which they reflect modifications made in response to comments received regarding the proposal, are discussed below.

B. Section I(A)

Section I(A) of the final exemption provides relief from sections 406(a) and 407 of the Act and section 4975(c)(1) (A) through (D) of the Code for the direct or indirect sale, exchange or transfer of mortgage pool certificates between the sponsor of the mortgage pool and an employee benefit plan when the sponsor, trustee or insurer of the pool is a party in interest with respect to such plan. Such relief is available provided the plan pays no more than fair market value for such certificates, and the rights and interests evidenced by such certificates are not subordinated to the rights and interests evidenced by other certificates of the same mortgage pool. Section I(A) of the final exemption also provides relief for the continued holding by a plan of such certificates.

This section of the final exemption is essentially similar to paragraph I(A)(1) of the proposal. However, the Department has received several comments regarding this provision. First, certain commentators questioned whether the relief would extend to transactions in the secondary market. In response, the Department notes that it intended the relief provided in this section to apply only to the initial sale of certificates. In order to clarify this, the Department has modified this paragraph to apply only to the sale, exchange or transfer of certificates in the initial issuance of certificates. Also, in this regard, the Department notes that several other commentators have indicated that they anticipate that transactions in the secondary market would be so-called "blind transactions."

As such, these transactions would not be subject to the prohibited transaction provision of the Act. *See* H.R. Rept. 93-1280, 93d Cong., 2d Sess. 307 (1974). To the extent a sale of certificates between a plan and a party in interest in the secondary market is not, for whatever reason, a blind transaction, such transaction is not exempted under the provisions of this class exemption, and would be a prohibited transaction.

Second, at the request of several commentators, the final exemption provides relief for the continued holding by a plan of certificates purchased or otherwise acquired in accordance with the other provisions of section I(A). Such relief had been omitted from the proposal.

Third, section I(A) of the final exemption provides relief when the pool sponsor, trustee or insurer is a party in interest with respect to a plan purchasing certificates. The proposal referred only to the pool sponsor or trustee. One commentator argued that relief might be necessary when an insurer of the pool is a party in interest with respect to an investing plan. Another commentator objected to the reference to the pool trustee since, in the commentator's belief, the trustee is a totally disinterested party with respect to the sale of certificates. The Department has decided to provide relief when either the insurer or the trustee is a party in interest since such relief has been requested. The fact that such relief is available, however, is not dispositive of whether such transactions are in fact prohibited.

C. Section I(B)

Section I(B) of the final exemption provides conditional relief from the restrictions of section 406(b) (1) and (2) of the Act and section 4975(c)(1)(B) of the Code for the direct or indirect sale, exchange or transfer of certificates between the sponsor of a mortgage pool and a plan when the pool sponsor, insurer or trustee is a fiduciary with respect to the plan assets invested in such certificates. This section is based on section I(B) of the proposal, but with several important modifications made in response to comments received.

First, the proposal referred to fiduciaries with investment discretion with respect to an investing plan. Several commentators stated that this formulation was too broad for the perceived prohibited transaction since many plans have more than one fiduciary with investment authority. Thus, for example, a pool sponsor might be a fiduciary with investment discretion with respect to a portion of plan assets other than those invested in pool certificates, and would therefore not need an exemption from sections 406(b) (1) and (2). In light of these comments, the Department has modified the provisions of section I(B) to refer to situations in which the pool sponsor, insurer or trustee is a fiduciary with respect to the plan assets invested in pool certificates.

Second, section I(B)(1) of the final exemption contains five conditions on the purchase of certificates when the pool sponsor, trustee or insurer is a fiduciary with respect to an investing plan. The proposal contained four conditions. Condition (1) of the proposed exemption required that the decision to purchase certificates be made by an independent fiduciary with the authority to manage and control plan assets. Proposed condition (2) required that the plan pay no more for the certificates than would be paid by an unrelated third party in an arm's-length transaction. Both of these conditions have been adopted without change.

The third condition in the proposal required that the plan pay no investment management, investment advisory, sales commission or similar fee to the pool sponsor with regard to the acquisition of certificates. One commentator indicated that the condition could be interpreted to prohibit the pool sponsor from collecting either its investment management fee from the plan or its servicing compensation from the pool. The Department intended that this condition would prohibit the direct or indirect payment by a plan to a plan fiduciary of double fees for the same services. To the extent that a pool sponsor is a fiduciary with respect to a plan, and the services furnished by the pool sponsor to the plan which give rise to the investment management fee are different from those giving rise to the pool servicing compensation, the Department does not believe that this condition would prohibit the collection of both fees. Therefore, in light of these clarifications, this condition has been adopted as proposed.

The fourth condition in the proposal provided that the total value of all certificates purchased by all plans with respect to which the pool sponsor or trustee is a fiduciary shall not exceed 10% of the amount of the offering. A large number of commentators argued that this condition was too restrictive and would rob pool sponsors of the flexibility necessary to market pool certificates. These commentators stated further that such a condition would discriminate against pool sponsors who might be fiduciaries for a large number of plans. Because of these comments, and in light of the new conditions adopted in section I(B)(1) of the final exemption, the Department has decided to delete this condition.

In the final exemption, the Department has adopted new conditions (d) and (e). These conditions parallel the provisions of section 407(e)(2) of the Act, which define, in part, the term "marketable obligation." One of the commentators suggested this approach as a means to accomplish the Department's original aims in this class exemption in a way that would not be disruptive of current practices. Thus, condition (d) provides that the total value of the certificates purchased by a plan must not exceed 25% of the amount of the issue. Condition (e) requires that at least 50% of the issue is acquired by persons independent of the pool sponsor, trustee or insurer. (The term "persons independent of the pool sponsor, trustee or insurer" is difined in section III(F), discussed below.) The Department believes that these conditions guard against the potential abuse of "dumping" certificates on a plan, while at the same time allowing pool sponsors sufficient financial flexibility. In the Department's view, they also reduoce the possibility that pool certificates will be sold to plans at an unfair price by providing for an independent assessment of that price.

D. Section I(C)

Section I(C) of the final exemption provides conditional relief from the restrictions of sections 406(a) and (b) and 407 of the Act and section 4975(c) of the Code for all transactions in connection with the servicing and operation of mortgage pools. Section I(C) is designed specifically to meet requests that the exemption be more broadly drafted. Aside from the sales of certificates covered by sections I(A) and I(B) of the final class exemption, all of the transactions listed in the proposal, and most of the additional transactions suggested by the commentators, occur as a result of the internal functioning of the mortgage pool investment trust. As described by the applicants and commentators, these functions are primarily ministerial in nature, involving such responsibilities as the collection and processing of payments, the organization of indemnification procedures, and the investigations necessary to assure that warranties have been met. All of these functions are governed by the terms of the pooling and servicing agreement under which the pool is organized. As noted previously, because such pooling and servicing agreements may vary in certain technical ways, it becomes

difficult to list comprehensively all of the transactions which may occur pursuant to such agreement and which may be eligible for exemptive relief.

As a result, the Department has decided to dispense with the technique of listing individual transactions in this case and to provide more general relief. It should be understood that relief contained in section I(C) of the final exemption is intended to extend to all those transactions listed in sections I(A)(2) through (15), I(C), and I(D) of the proposal. However, this relief is not limited to transactions so listed.[1] Further, the only conditions applicable to such relief are those actually listed in the final exemption, and not those indicated only in the proposal.

The relief contained in section I(C) of the final class exemption is provided subject to two conditions. First, the transactions must be carried out in accordance with the terms of a binding pooling and servicing agreement which governs the operation of the pool. Second, the pooling and servicing agreement must be made available to investors before they purchase pool certificates. These conditions are simply corollaries of the representations of the applicants and commentators that the terms of the pooling and servicing agreement afford adequate protection for all certificate-holders and that the terms of the agreement generally are disclosed prior to the time certificates are purchased. These conditions assure that an investment plan will be aware of the terms of the pooling and servicing agreement, and that those terms will in fact govern the operation of the pool.

It should, of course, be noted that these conditions must be read in light of the conditions contained in sections I(A) and I(B) of the final exemption. Since the price of a certificate should reflect, amoung other things, the quality of the protections afforded investors under the pooling and servicing agreement, then the fair market value, arm's-length, and percentage limitations in section I(A) and I(B) will operate along with the conditions in section I(C) to provide an acceptable level of protection for investing plans.

[1] For example, among the transactions not listed in the proposal but covered by this final class exemption are transactions peculiar to variable rate mortgages. As noted in the preamble to the proposal, 45 FR at 28550, n.9, the Department intended to provide relief for pools composed in whole or in part of variable rate mortgages. Nevertheless, some commentators questioned whether the exemption would cover such pools. The Department believes that the provisions of the final exemption are broad enough to deal with the specific issues raised by variable rate mortgage pools, and that no special provisions for these pools are necessary.

E. Section I(D)

Serveral commentators noted that the proposed exemption provided no reflief for situations in which prohibited transactions may arise solely because a plan owns a pool certificate. These commentators stated that, subsequent to purchasing a certificate, a plan may, for example, have dealings with the pool sponsor regarding matters having nothing to do with the mortgage pool. The commentators indicated that, under such circumstances, a large number of inadvertant, technical prohibited transactions could result when no potential for abuse existed. These commentators have therefore requested general exemptive relief for such "external" transactions.

The Department has carefully considered this comment in light of its past practice regarding similar requests. In Class Exemption 80-51 (45 FR 49709, July 25, 1980) for Certain Transactions Involving Bank Collective Investment Funds, the Department provided, among other things, broad relief for certificate transactions between a collective investment fund and a service provider with respect to a plan investing in such a fund. Similar relief was provided in Class Exemption 78-19 (43 FR 59915, December 22, 1978) for Certain Transactions Involving Insurance Company Pooled Separate Accounts. The present request would extend beyond relief for service providers and would apply to a potentially large number of unspecified transactions.

It has been represented and the Department believes that an investment in a mortgage pool is fundamentally different from an investment in a bank collective investment fund or an insurance company pooled separate account. A mortgage pool is a fixed pool of loans; these assets generally are not subject to change once the certificates have been sold, except as mortgages are paid off and the principal and interest passed through to certificate-holders. Although the pooled loans are held in trust for the benefit of certificateholders, included investing plans, the Department does not believe that the mere existence of such an arrangement, or the provision of the services attendent upon an investment in a mortgage pool, would, absent other factors, pose such a potential for abuse as to preclude exemptive relief.

In addition, the Department notes that the structure of the mortgage pool relationship provides additional safeguards against the potential for abuse. The pooling and servicing agreement requires that certain services must be provided with regard to the pool regardless of the identity of individual certificateholders. When a plan contemplates investing an an issue of pool certicates, this exemption requires that the pooling and servicing agreement be made available to the plan prior to the purchase of certificates. When the pool sponsor is also a fiduciary with repect to an investing plan, this exemption requires that an independent fiduciary decide whether to purchase pool certificates upon consideration of the pooling and servicing agreement and other relevant information. Thus, the relationship established by the purchase of a pool certificates is far more attenuated than the usual, direct relationship established by the purchase of a pool certificate is far more attenuated than the usual, direct relationship between a plan and a service provider.

Therefore, the Department has decided to adopt this comment and has added section I(D) to the exemption. Section I(D) provides relief from the restrictions of section 406(a) and 407 of the Act and the taxes imposed by section 4975(a) and (b) of the Code by reason of section 4975(c)(1) (A) through (d) of the Code for any transactions to which such restrictions and taxes would otherwise apply merely because a person is deemed to be a party in interest (including a fiduciary) with repect to a plan who provides services to the plan, or who has a relationship to a service provider described in section 3(14) (F), (G), (H) or (I) of the Act, solely by reason of the ownership of a certificate by such plan. The Department notes, however, that this exemption would not be available if such person were a party in interest with respect to the plan because of any other pre-existing or subsequent relationship with the plan. [2]

F. Section II–General Conditions

Section II of the final class exemption contains three conditions applicable to the relief provided in Section I. Each of these conditions is based on one of the conditions contained in the proposal.

[2] It should be noted that this commentator also requested relief from the provisions of section 406(b) of the Act and section 4975(c)(1)(E) and (F) of the Code of transactions between a plan and person deemed to be a fiduciary with respect to that plan solely be reason of a the plan's ownership of a certificate. Neither the applicants nor the commentators have identified any transaction outside of the mortgage pool relationship which would be prohibited under these sections merely because the pool sponsor exercised fiduciary authority conferred solely by reason of the plan's ownership of pool certificates. As a result, section I(D) of the exemption provides no relief from section 406(b) of the Act or section 4975(c)(1)(E) and (F) of the Code.

(1) *Insurance and Indemification.* Condition 1 requires the establishment for each pool of a system for insuring or otherwise protecting the pooled mortgage loans and the property securing such loans, and for indemnifing certificateholders against reductions in pass-through payments due to loan defaults or property damage. The minimum amount for such coverage must be not less than the greater of the one percent of the aggregate principal balance of the covered loans, or the principal balance of the largest covered loan.

This condition is based on paragraph II(A)(2) of the proposal, but has been modified in response to comments in two ways. First, the proposal required that this protection be provided by one of the systems listed in subparagraphs II(A)(2) (a) through (d) of the proposal. A large number of commentators stated that this stipulation of methods rendered this provision overly restrictive. They argued that is would prevent development of safer, more efficient methods to accomplish the same level of protection. Upon consideration of these comments, the Department has eliminated this provision.

Second, the proposal required that when a pool sponsor purchased hazard and mortgage insurance from a private insurer, such insurer could not be an affiliate of the pool sponsor or pool trustee. One of the applicants, PMI Mortgage Corporation, had requested relief for pools using an affiliated insurer, but had not, in the Department's opinion, provided sufficient information on which to base the findings required by section 408(a) of the Act for the proposal of an exemption under those circumstances. However, after the publication of the proposal, PMI and the other commentators argued that it would be inconsistent to prohibit the use of an affiliated insurer while allowing a pool to self-insure, as proposed, through a system of subordinated certificates and a reserve fund. They also noted that an affiliated insurer would be subject to state insurance regulation. In light of these comments, the Department has deleted this prohibition from the final exemption.

(2) *Independent Trustee.* Condition 2 requires generally that the pool trustee not be an affiliate of the pool sponsor. This condition is the same as paragraph II(A)(3) of the proposal with one modification. In its comment, the Federal National Mortgage Association indicated that, as a public entity which might possible establish mortgage pools, it was prohibited by statute from transferring mortgages from its portfolio into the control of an independent trustee. The Department, in recognition of the public policy expressed by such statutory provisions and of the additional safeguards usually present when a public entity is the pool sponsor, has adopted this comment and made the independent trustee requirement inapplicable in the case of a governmental or quasi-governmental entity such as the Federal National Mortgage Association.

(3) *Funds retained by the pool sponsor.* The third condition listed in Section II provides that the sum of all payments made to and retained by the pool sponsor, and all funds inuring to the benefit of the pool sponsor as a result of the administration of a mortgage pool, must represent not more than adequate consideration for selling the mortgage loans plus reasonable compensation for services provided by the pool sponsor to the pool. This condition is identical to paragraph II(A)(4) of the proposal. One commentator criticized this condition as unnecessary, and said that the Department should let the marketplace determine the pool sponsor's remuneration. However, as the Department explained in the preamble to the proposal (45 FR 29937, 29939 n. 10), this condition does nothing more than repeat the requirement for the continued applicability of the exemptive relief accorded the provision of certain services under section 408(b)(2) of the Act and section 4975(d)(2) of the Code when no more than reasonable compensation is paid by the plan for such services.[3] Accordingly, the Department is adopting this condition as proposed.

(4) *Public Offerings.* The proposal contained a general condition requiring that all certificates purchased by plans pursuant to a final exemption be issued in a public offering registered under the Securities Act of 1933 pursuant to a firm commitment underwriting. All of the commentators addressing this provision opposed its adoption. Many noted that public offerings must be fairly large in order to be profitable, and this requirement would eliminate all but the largest entities as potential pool sponsors due to the increased cost. Other commentators contended that public offerings are inflexible investment vehicles and would not allow sponsors and investors alike to take advantage of market trends. Other commentators noted that private placements offer no significant additional risk for investors. These commentators made similar statemnts with regard to the firm commitment underwriting requirement.

The Department notes that the applications upon which the proposal was based focused primarily on publicly offered pools distributed through firm commitment underwritings. Although mention was made of other marketing methods, there was insufficient information in the record upon which to base relief for private placements even if such relief had been requested. In the case of any exemption application, the applicants bear the burden of bringing before the Department the information necessary to make the findings required by section 408(a) of the Act.

In response to the proposal, the commentators have supplied the Department with copious information regarding the advisability of private placements of pool certificates. They have indicated that the mortgage industry has traditionally used private placements, although the applicants have not consistently used this method for offering pool certificates. The commentators have also made a number of helpful suggestions for additional safeguards if the Department believed such extra protection to be necessary in the case of private placements. As explained above, the Department has adopted several of these suggestions.

As a result, the Department has deleted the public offering, firm commitment underwriting provision. The Department believes that the conditions contained in the final exemption provide sufficient protections for plan participants.[4]

G. Section III. Definitions

Section III of the final exemption contains definitions of terms used elsewhere in the exemption. These

[3] For a fuller discussion of this point, see the Preamble to the proposed exemption, 45 FR 29937, 29942 n. 17–18.

[4] As a related matter, one of the applicants had requested that the Department grant relief for the use of an affiliated underwriter to market pool certificates. In the preamble to the proposal, 45 FR 29937, 29941 n.15, the Department refused to propose such relief. The Department did not believe at that time it had sufficient information upon which to base such relief. A number of commentators have furnished the Department with additional information in support of this request for relief. However, due to the changes made in the final exemption which provide relief regardless of the method in which the certificates are marketed, specific relief in this area is no longer necessary. The exemption has been revised, in view of the relief which will now be available for transactions involving fiduciaries, to provide that no underwriting fee or similar compensation can be paid to the pool sponsor or its affiliate regarding the acquisition of pool certificates when such persons are fiduciaries with respect to the assets involved in the transaction. In these circumstances, the Department does not believe the commentators have demonstrated that there is justification for such compensation.

definitions are based on those contained in the proposal, with several changes and additions in response to comments.

(1) *Pool Sponsor.* Section III(A) defines the term "pool sponsor." This definition has been modified in two ways from the proposal. First, the proposal indicated in part that the pool sponsor was the entity which organizes and continues to service the pool. Several commentators noted that the pool sponsor often delegates the servicing of the fund to an affiliate, or to the institutions from which the sponsor purchased the pooled loans. These commentators suggested that the definition be modified to apply to entities which organize or service the pool. However, this formulation would raise all service providers with respect to the pool to the status of pool sponsor. In order to avoid this anomolous result, and at the same time to accommodate the concerns expressed by the commentators, the Department has modified this provision to refer to the entity which organizes, and either continues to service or supervises the provision of services to, a mortgage pool.

Second, the proposal limited the definition of pool sponsor to those entities which made the pooled loans or purchased such loans from the original lender. Several commentators noted that, in the case of so-called "conduit" pool sponsors, loans may not be purchased directly from the lender but from brokers or other third parties. They indicated that the proposal would prevent them from participating in the mortgage pool market. The Department originally proposed this definition to provide an accurate description of the pool sponsor as represented in the applications. In light of the commentators' concerns, the Department has decided to delete this restriction.

(2) *Mortgage Pool.* Section III(B) defines the term mortgage pool. This section contains one minor modification from the proposal. The proposal referred only to deeds of trust. In light of the fact that many states do not permit the use of deeds of trust, the Department has expanded this reference to include mortgages.

The Department has received a number of comments regarding various provisions of this section. First, the proposal would apply only to pools of first mortgages or first deeds of trust. Two commentators requested that this be expanded to include junior lien loans. They indicated that junior lien loans often have a better loan to value ratio than first mortgages, and also provide a higher return over a shorter period of time. They indicated that it was their belief that a pool of junior lien loans would be a higher quality investment and should, therefore, be accorded exemptive relief.

The Department notes that the proposal was based on information regarding pools of first mortgage loans. The applications, comments and hearing testimony all indicated that first mortgage pools have a structural uniformity which makes class relief possible. The Department has not received similar information concerning second mortgage pools. While there is nothing on the record reflecting adversely upon the quality of investment in second mortgages and second mortgage pools, the record is similarly silent regarding the extent to which second mortgage pools differ as a general matter, from first mortgage pools. Different conditions may be necessary for pools of second mortgage loans. In the absence of sufficient information upon which to base class exemptive relief, the Department has decided not to adopt this comment and the final exemption is restricted to pools of first lien loans.

Second, one commentator requested that the definition, which is restricted to pools organized as trusts, be expanded to include limited partnerships. With regard to this suggestion, the Department notes that the structure of the exemption and the presence of certain conditions, such as the independent trustee requirement, are premised on the trust format. The Department at this time does not know to what extent the partnership format would pose additional problems or involve additional prohibited transactions. The Department is also unaware of the extent to which limited partnership mortgage pools require class relief. Therefore, the Department does not accept this comment. This does not, however, preclude the commentator from seeking individual relief.

Similarly, the Department received two comments requesting relief for the commentators' specific programs. Both differed significantly from the other programs described to the Department. One involved the issuance of debt securities to finance mortgage purchases. The other involved a program to provide mortgage and construction financing in a specified geographic area. Rather than radically modify the terms of the proposal to accommodate these commentators, the Department invites them to seek individual relief.

(3) *Certificates.* Section III(C) defines the term "mortgage pool pass-through certificates." The proposal required that such certificates provide monthly pass-through payments. Several commentators noted that some pools provide quarterly or other periodic payments. Upon consideration of these comments, the Department has decided to adopt this comment and has deleted the reference to monthly payments.

(4) *Single-Family, Residential Property.* In response to requests by several commentators, the Department has adopted a new section, III(E), which defines "single-family residential property." This definition states that single-family residential property is non-farm property comprising one to four dwelling units, and also includes condominiums. This provision basically follows the industry definition previously noted in the preamble to the proposal. 45 FR 29937, 29938 n.6.

(5) *Independent Person.* New section III(F) defines the term "person independent of the pool sponsor, trustee or insurer." This term is used in section I(B)(1)(e) of the final exemption, which requires that 50 percent of an issue of certificates must be purchased by such persons in order to achieve relief from the restrictions of section 406(b) of the Act and section 4975(c)(1)(E) of the Code. This provision, based on section 407(e) of the Act, was suggested by a commentator, but the Department believes that a further definition of this term is necessary. Therefore, section III(F) states that a person will be "independent of the pool sponsor, trustee or insurer" only if: (1) such person is not an affiliate of the pool sponsor, trustee or insurer; and (2) neither the pool sponsor, trustee, insurer, nor any affiliate thereof, is a fiduciary who has investment management authority or renders investment advice with respect to any of the assets of such person. The Department has chosen this formulation to assure that a truly independent assessment of the worth of mortgage pool certificates takes place.

H. Other Comments

The Department has received one written comment referring to the possibility of "forward commitment" or "forward placement" of mortgage pool certificates. Testimony elicited at the hearing also referred to this subject. The Department does not have sufficient information at this time to identify this practice completely, to ascertain the frequency of its use in the mortgage pool industry, or to determine what, if any, abuses may be involved with such practices. The Department does not believe that it would be beneficial at this time to reopen the comment period

regarding this subject and thereby delay adoption of a final class exemption.

The Department notes that the class exemption adopted today applies to the sale, exchange, transfer or other acquisition by a plan of certificates representing undivided beneficial ownership interests in a pool of mortgage loans. The structure of this class exemption is predicated upon the provisions of a pooling and servicing agreement referring to a specific pool, and the presence of safeguards designed to protect the owner of a pool certificate. Therefore, to the extent that so-called "forward placements" or "forward commitments" involve transactions which precede the formation of a mortgage pool, such transactions are beyond the scope of this class exemption. To the extent that members of the public believe that relief is appropriate for such transactions, they are invited to file with the Department an application for relief in accordance with the provisions of ERISA Procedure 75–1 (40 FR 18471, April 28, 1975).

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption granted under section 408(a) of the Act and section 4975 (c)(2) of the Code does not relieve a fiduciary or other party in interest with respect to a plan to which the exemption is applicable from certain other provisions of the Act and the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act which, among other things, require a fiduciary to discharge his duties respecting the plan solely in the interest of the plan's participants and beneficiaries and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that a plan must operate for the exclusive benefit of participants and beneficiaries.

(2) This exemption is supplemental to, and not in derogation of, any other provision of the Act and the Code, including statutory exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

(3) The class exemption is applicable to a particular transaction only if the transaction satisfies the conditions specified in the class exemption.

Exemption

In accordance with section 408(a) of the Act and section 4975(c)(2) of the code, and based upon the entire record including the written comments submitted in response to the notice of May 6, 1980, and the testimony given at the public hearing of September 9, 1980, the Department makes the following determinations:

(a) The class exemption set forth herein is administratively feasible;

(b) it is in the interests of plans of their participants and beneficiaries; and

(c) it is protective of the rights of participants and beneficiaries of plans.

Accordingly, the following exemption is hereby granted under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1.

I. Transactions

A. Effective January 1, 1975, the restrictions of sections 406(a) and 407 of the Employee Retirement Income Security Act of 1974 (the Act) and the taxes imposed by section 4975(a) and (b) of the Internal Revenue Code of 1954 (the Code) by reason of section 4975(c)(1)(A) through (D) of the Code shall not apply to the following transactions involving mortgage pool investment trusts (mortgage pools) and pass-through certificates evidencing interests therein (certificates):

(1) The direct or indirect sale, exchange or transfer of certificates in the initial issuance of certificates between the sponsor of a mortgage pool and an employee benefit plan when the sponsor, trustee or insurer of such pool is a party in interest with respect to such plan, provided that the plan pays no more than fair market value for such certificates, and provided further that the rights and interests evidenced by such certificates are not subordinated to the rights and interests evidenced by other certificates of the same mortgage pool;

(2) The continued holding of certificates acquired pursuant to subparagraph (1), above, by an employee benefit plan.

B. Effective January 1, 1975, the restrictions of section 406(b) (1) and (2) of the Act and the taxes imposed by section 4975(a) and (b) of the Code by reason of section 4975 (c)(1)(E) of the Code shall not apply to the following transactions involving mortgage pools and certificates evidencing interests therein:

(1) The direct or indirect sale, exchange or transfer of certificates in the initial issuance of certificates between the sponsor of a mortgage pool and an employee benefit plan when the sponsor, trustee or insurer of such pool is a fiduciary with respect to the plan assets invested in such certificates provided:

(a) such sale, exchange or transfer is expressly approved by a fiduciary independent of the pool sponsor, trustee or insurer who has authority to manage and control those plan assets being invested in such cerrificates;

(b) the plan pays more for the certificates than would be paid in an arm's length transaction with an unrelated party;

(c) no investment management, advisory, or underwriting fee or sales commission or similar compensation is paid to the pool sponsor with regard to such sale, exchange or transfer;

(d) the total value of certificates purchased by a plan does not exceed 25% of the amount of the issue; and

(e) at least 50% of the aggregate amount of the issue is acquired by persons independent of the pool sponsor, trustee or insurer;

C. Effective January 1, 1975, the restrictions of section 406(a) and 407 of the Act and the taxes imposed by section 4975 (a) and (b) of the Code by reason of section 4975(c) of the Code shall not apply to transactions in connection with the servicing and operation of the mortgage pool provided that: (1) such transactions are carried out in accordance with the terms of a binding pooling and servicing agreement; and (2) such pooling and servicing agreement is made available to investors before they purchase certificates issued by the pool.

D. Effective January 1, 1975, the restrictions of section 406(a) and 407 of the Act and the taxes imposed by section 4975 (a) and (b) of the Code by reason of section 4975(c)(1) (A) through (D) of the Code shall not apply to any transactions to which such restrictions or taxes would otherwise apply merely because a person is deemed to be a party in interest (including a fiduciary) with respect to a plan by virtue of providing services to the plan (or who has a relationship to such service provider described in section 3(14) (F), (G), (H) or (I) of the Act), solely because of the ownership of a certificate evidencing an interest in a mortgage pool by such plan.

II. General Conditions

A. The relief provided under section I, above, is available only if the following conditions are met:

(1) The sponsor and trustee for each mortgage pool must maintain a system for insuring or otherwise protecting the

pooled mortgage loans and the property securing such loans, and for indemnifying certificateholders against reductions in pass-through payments due to defaults in loan payments or property damage. This system must provide such protection and indemnification up to an amount not less than the greater of one percent of the aggregate principal balance of all covered pooled mortgages, or the principal balance of the largest covered mortgage;

(2) Except in the case of a governmental or quasi-governmental entity such as the Federal National Mortgage Association, the trustee for each mortgage pool must not be an affiliate of the sponsor of such pool, provided, however, that the trustee shall not be considered to be an affiliate of the pool sponsor solely because the trustee has succeeded to the rights and responsibilities of the pool sponsor pursuant to the terms of the pooling and servicing agreement providing for such succession upon the occurrence of one or more events of default by the pool sponsor; and

(3) The sum of all payments made to and retained by the pool sponsor in connection with a mortgage pool, and all funds inuring to the benefit of the pool sponsor as a result of the administration of the mortgage pool, must represent not more than adequate consideration for selling the mortgage loans plus reasonable compensation for services provided by the pool sponsor to the pool.

III. Definitions

A. For the purposes of this exemption the terms "sponsor" or "pool sponsor" mean:

(1) the entity which organizes, and either continues to service or supervises the provision of services to, a mortgage pool comprised of mortgage loans either made or purchased by such entity; and

(2) any successor thereto.

B. For the purposes of this exemption, the term "mortgage pool" means an investment pool the corpus of which

(1) is held in trust; and

(2) consists solely of

(a) interest bearing obligations secured by first mortgages or deeds of trust on single-family, residential property;

(b) property which had secured such obligations and which has been acquired by foreclosure; and

(c) undistributed cash.

C. For the purposes of this exemption, the terms "mortgage pool pass-through certificate," or "certificate" means a certificate representing a beneficial undivided fractional interest in a mortgage pool and entitling the holder of such certificate to pass-through payment of principal and interest from the pooled mortgage loans, less any fees retained by the pool sponsor.

D. For the purposes of this exemption, the term "affiliate" of another person means:

(i) Any person directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with such other person;

(ii) Any officer, director, partner, employee or relative (as defined in section 3(15) of the Act) of such other person; and

(iii) Any corporation or partnership of which such other person is an officer, director or partner.

For purposes of this paragraph, the term "control" means the power to exercise a controlling influence over the management or policies of a person other than an individual.

E. For the purposes of this exemption, the term "single-family, residential property" means non-farm property comprising one to four dwelling units, and also includes condominiums.

F. For the purposes of this exemption, a person will be "independent of the pool sponsor, trustee, or insurer" only if:

(1) such person is not an affiliate (as defined in paragraph III(D) of this exemption) of the pool sponsor, trustee, or insurer; and

(2) neither the pool sponsor, trustee, insurer, nor any affiliate thereof, is a fiduciary who has investment management authority or renders investment advice with respect to any of the assets of such person.

Signed at Washington, D.C. this 16th day of January, 1981.

Ian D. Lanoff,

Administrator, Pension and Welfare Benefit Programs, Labor-Management Services Administration, U.S. Department of Labor.

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[Prohibited Transaction Exemption 81-6]

Class Exemption To Permit Certain Loans of Securities by Employee Benefit Plans

AGENCY: Department of Labor.

ACTION: Grant of class exemption.

SUMMARY: This exemption will allow the lending of securities by employee benefit plans to banks and broker-dealers who are parties in interest with respect to such plans, if the conditions specified in the exemption are met. The exemption affects participants and beneficiaries of employee benefit plans, persons who manage the assets of such plans, and parties in interest who might engage in securities lending transactions with such plans. In the absence of this exemption, securities lending transactions between a plan and a party in interest would be prohibited by the Employee Retirement Income Security Act of 1974 (the Act) and the Internal Revenue Code of 1954 (the Code).

EFFECTIVE DATE: January 23, 1981. For purposes solely of Prohibited Transaction Exemption 79-23 (the Grumman Corp. Pension Trust, 44 FR 31750, June 1, 1979), the final disposition of this class exemption will be deemed to occur on February 23, 1981.

FOR FURTHER INFORMATION CONTACT: Roger Thomas, Esq., Office of the Solicitor, U.S. Department of Labor, (202) 523-8502. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: On April 11, 1980, notice was published in the Federal Register (45 FR 24946) of the pendency before the Department of Labor (the Department) of a proposed class exemption from the restrictions of section 406(a)(1)(A) through (D) of the Act and the taxes imposed by section 4975(a) and (b) of the Code by reason of section 4975(c)(1)(A) through (D) of the Code.[1] Four applications were filed requesting individual exemptions concerning the lending of securities by employee benefit plans. These applications were filed by Grumman Corporation Pension Trust (D-762), Morgan Guaranty Trust Company (D-1102), Salomon Brothers (D-1108) and Fischer, Francis, Trees and Watts, Inc. (D-1130). In addition, the American Bankers Association filed an application (D-1323) requesting a class exemption covering the lending of securities by employee benefit plans to parties in interest with respect to such plans. The above applications were filed pursuant to section 408(a) of the Act and in accordance with procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975).

As stated in ERISA Procedure 75-1, an application for an individual exemption is not ordinarily considered separately if a class exemption which might encompass the transaction described in the individual application is under consideration by the Department. Accordingly, the Department notified each individual applicant of the fact that its application would not be considered separately from the proposed class exemption, and that its comments with

[1] Hereafter, references to provisions of the Act shall include references to parallel provisions of the Code.

respect to the proposed class exemption were sought by the Department.[3]

Section 102 of Reorganization Plan 4 of 1978 (43 FR 47713, October 17, 1978), effective December 31, 1978, transferred the authority of the Secretary of the Treasury for granting exemptions of the type granted herein to the Secretary of Labor. Therefore, although the four applications for individual exemptions were filed with both the Department and the Internal Revenue Service, the notice of pendency was issued and the exemption is being granted solely by the Department.

Upon consideration of all the public comments submitted, the Department has determined to grant the proposed class exemption, subject to certain modifications. These modifications and the major comments are discussed below.

Discussion of Comments

A. Paragraph 1

The proposed exemption included a condition that for a securities lending transaction between a plan and a party in interest to be exempted, neither the borrower nor an affiliate of the borrower could be a fiduciary with respect to the plan assets being loaned. One commentator suggested that the Department clarify that this requirement is meant to refer only to fiduciaries with investment authority or who render investment advice for a fee. Another commentator similarly request the Department's clarification as to which parties would be permitted to utilize this exemption.

In order to remove any uncertainty, this condition of the exemption has been changed to provide that neither the borrower not any affiliate of the borrower (1) has any discretionary authority or control with respect to the investment of the plan assets involved in the transaction, or (2) renders investment advice (within the meaning of 29 CFR § 2510.3-21(c)) with respect to those assets.

B. Paragraph 2

1. *Simultaneous Delivery*

The Department received many comments regarding a condition of the proposed exemption which would have required the simultaneous delivery of securities to the borrower and receipt of corresponding collateral by the plan. Some of the commentators asserted that complex administrative and operational processes involved in transferring securities and collateral make it difficult to determine, in a precise manner, when delivery of the securities and collateral in question would occur.

Another commentator noted that the actual time of receipt of the securities and collateral, after their transfer is initiated, might also depend upon the nature of the securities and collateral involved, and upon the efficiency of the parties' transfer agents. A few of the commentators indicated that transfers of securities and collateral are generally made through different channels, which would also cause uncertainty as to the exact time of delivery. Most of the commentators suggested that the Department modify the exemption so that it is conditioned upon delivery of collateral to the lender by the close of the lender's business on the day the borrowed securities are delivered to the borrower. On the basis of the comments, the Department has adopted this suggestion.

A few of the commentators also noted that certain transfers are always made through "book entry" systems of securities depositories. In these instances, "physical" delivery of the securities or collateral is impossible. In other cases, for the purpose of convenience, transfers are also made through book entries. Although, in these cases, physical delivery of securities or collateral might also be possible, the Department has decided, on the basis of the comments, that it is not necessary to require physical delivery of certificates. As a result, the final exemption provides that transfers of collateral made through such book entries will satisfy the delivery requirements of this exemption.

2. *Types of Collateral*

Another requirement of the proposed exemption stated that the plan as lender must receive from the borrower collateral consisting of cash or securities issued or guaranteed by the United States Government or its agencies, or any combination thereof. A number of commentators urged that the exemption be expanded to include bank letters of credit as permissible collateral. The commentators noted that bank letters of credit are customarily used in securities lending transactions, and that their omission from the exemption would put plans at a competitive disadvantage with respect to other lenders of securities. The Department, having considered these comments, has determined to expand the exemption so as not to preclude the use of bank letters of credit as collateral, provided that the letter of credit is irrevocable and is issued by a person other than the borrower or an affiliate of the borrower. Paragraph 2 of the exemption has been modified accordingly. This modification, of course, does not relieve a plan fiduciary from its responsibilities under section 404(a) of the Act that its decision to secure a loan with a bank letter of credit as well as its decision regarding the terms of the letter of credit are, among other things, "prudent" decisions.

3. *Amount of Collateralization*

Under the proposal, in order for a securities lending transaction to be exempt, the lending plan would have been required to receive collateral whose market value, at the time of the transaction, is equal to at least 102 percent of the then market value of the securities loaned. In addition, if, during the term of the securities loan, the market value of the collateral were less than 102 percent of the market value of the borrowed securities, the plan would have been required to receive from the borrower by the close of business on the following business day additional collateral the market value of which, together with the market value of other loan collateral previously delivered to the plan, equals at least 102 percent of the market value of the securities borrowed.

Five commentators stated that they supported the Department's requirement of 102 percent collateralization. However, most of these commentators suggested that the 102 percent minimum should apply to initial collateralization only, and recommended that additional collateral should be required to be posted by the borrower only when the market value of the collateral already given falls below 100 percent of the market value of the borrowed securities. In conjunction with this recommendation, it was further suggested that when the borrower did post additional collateral the amount of collateralization should be restored to the 102 percent level. The commentators pointed out that initial collateralization of the 102 percent, combined with a two percent margin, minimizes administrative burdens and transaction costs because a borrower would otherwise be required to make frequent deliveries of collateral to maintain 100 percent collateralization where insignificant variations in the market value of the borrowed securities had occurred.

Four commentators suggested that this 102 percent minimum is an artificial and unjustified standard that would limit the ability of plans to lend securities. Most of these commentators indicated that the amount of collateral should be determined by the "market place" (*i.e.*, the amount other prudent investment

[3] The Department granted a temporary individual exemption to permit the lending of securities to broker-dealers and banks by Grumman Corporation Pension Trust (44 FR 31750, June 1, 1979). Under its terms, that individual exemption will terminate upon the final disposition of this class exemption.

advisers would require for the same or similar securities).

The Department is not persuaded to permit transactions with collateralization of less than 100 percent. However, it does find persuasive the arguments of the commentators that a two percent margin (or some other margin) may be in the interests of all the parties to a securities lending transaction. The Department has decided, therefore, to revise this condition to require that a securities loan maintain a minimum collateralization of 100 percent throughout the term of the loan. This revision should provide adequate protection to plans while offering the parties the flexibility to negotiate whatever margin is appropriate under the circumstances.

C. Former Paragraph 3—Regulation T Purposes

The proposed exemption included a condition that would require that securities borrowed are used solely for purposes described in section 6(h) of Regulation T of the Federal Reserve Board (12 CFR §220.6(h)). This condition was based upon the submissions of the applicants, some of which described the reasons why broker-dealers would customarily borrow securities from others (including plans with respect to which they are parties in interest). Under section 6(h) of Regulation T, borrowing of securities is permitted for "* * * the purpose of making delivery of securities in the case of short sales, failure to receive securities [the broker-dealer] is required to deliver, or other similar cases * * *"

A few commentators indicated that they objected to limiting the purposes for which securities could be borrowed to those encompassed by Regulation T. One commentator suggested that plans which lend securities are not affected by how those securities are used by borrowers, and that the plan is protected by the borrower's financial resources (as evidenced by the required financial disclosures) and the requirement that the loan be fully collateralized. Another commentator indicated that the language in paragraph 3 could result in liability to an intermediary broker-dealer or bank who borrows securities from a plan and subsequently lends the securities to a third party for Regulation T purposes, if the third party, in fact, uses them for another purpose.

The Department has considered these comments and has decided that a specific condition in the exemption regarding the purposes for which securities are borrowed is not necessary for the protection of plans in light of the other safeguards contained in the exemption. Accordingly, the condition in paragraph 3 of the proposal has been omitted from the exemption as adopted.

D. Paragraph 3 (as renumbered)—Financial Statements

The proposed exemption included a condition that would require the bank or broker-dealer who intends to borrow securities to furnish the plan, prior to the loan, its most recent statement of financial condition and a representation that there has been no material adverse change in its financial condition since the date of such statement. Many commentators objected to this condition, and indicated that since the need for securities changes on a daily basis, the timing of securities lending transactions is critical, and compliance with this condition would be onerous or impossible for each separate loan. In addition, some commentators stated that it was a common practice for the borrower to supply its most recent financial statement together with a basic written loan agreement,[2] which would cover a series of loan transactions, and then to furnish additional financial statements on a quarterly basis or, alternatively, when available or as requested by the lender. Further, the commentators indicated that, for individual security loans under such a basic agreement, it is customary for the borrower to confirm the terms of the loan and assure the lender that there has been no material adverse change in its financial condition since its most recent financial statement.

One of the commentators suggested that the requirement to furnish the lender with the borrower's most recent statement of its financial condition is generally unnecessary and would impose a burden on borrowers in securities loan transactions without a corresponding benefit or protection to plan participants and beneficiaries. This commentator further stated that a fiduciary representing lenders of securities would normally deal only with borrowers whom it believes to be solvent, and argued that since all securities loans must be fully collateralized in cash or government securities, the requirement of furnishing financial statements is unnecessary and redundant. The Department, however, believes that the borrower's financial condition would be of importance to the plan fiduciary in evaluating possible securities lending transactions. It is in the interest of the lending plan, for example, to know whether a borrower is in weak financial condition since the borrower's inability to produce additional collateral, if required, could result in adverse consequences for the plan.

On the basis of the comments received, the Department is not prepared to conclude that the furnishing of financial statements is unnecessary. Nevertheless, the Department does believe that the condition, as proposed, might create undue burdens for the borrower. With regard to the requirement of furnishing the most recent financial statements, several commentators suggested that the condition be modified to require the borrower to furnish its most recent audited financial statement. The Department accepts this comment. However, since audited financial statements may be prepared on a relatively infrequent basis, the Department has modified the exemption so that, prior to the making of the loan by the plan, the borrower shall have provided the lending plan fiduciary with (1) its most recent available audited financial statement, (2) its most recent available unaudited financial statement, if more recent than the audited statement, and (3) a representation that, as of the time the loan is negotiated, there has been no material adverse change in the borrower's financial condition since the date of the financial statement last furnished to the plan. These changes are intended to allow persons covered by the exemption to engage in such transactions without providing separate financial statements prior to each transaction.

E. Paragraph 4 Arm's length requirement

Under the proposed exemption, in order for a securities lending transaction to be exempt, the loan is required to be made pursuant to a written loan agreement, the terms of which are at least as favorable to the plan as would be an arm's length transaction between the borrower and an unrelated party. A few commentators recommended that, in order to facilitate securities lending transactions, the Department consider permitting the use of a master or basic written loan agreement which could cover a series of loan transactions between a particular borrower and an employee benefit plan. One commentator stated that the use of such an agreement would eliminate the need for the parties to execute an agreement for each individual loan transaction with the same borrower, which would

[2] The utilization of a basic written loan agreement is discussed in more detail, *infra*, in connection with the conditions set forth in paragraph 5 of the proposal.

be burdensome because of the rapidity with which loan transactions are consummated. Several commentators also indicated that the use of a master agreement is a customary practice.

The Department accepts this comment and has modified the exemption accordingly. In addition, the Department has revised the condition to permit, in lieu of a written agreement for each transaction, written confirmation of each transaction covered by a "master" written agreement.

Two commentators also suggested that the Department eliminate the condition that the terms of the securities loan agreement be "at least as favorable to the plan as an arm's length transaction between the borrower and an unrelated party would be."

One of the commentators asserted that it would be difficult for the plan to document the terms of arm's length transactions between a borrower and unrelated third parties. In addition, the commentator stated that each loan is "unique" and that no reported loan transactions are available for comparison by the plan fiduciary. Another commentator suggested that this condition would be difficult for the borrower to monitor since it would require that all agreements entered into with employee benefit plans be compared with all other agreements negotiated at arm's length.

The Department believes that an arm's length standard is necessary for the protection of plan participants. However, in light of these comments, the Department has modified this condition of the exemption to require that the terms of the written loan agreement are at least as favorable to the plan as an arm's length transaction with an unrelated party would be. The Department believes that a fiduciary who causes a plan to engage in a securities lending transaction, as contemplated in this exemption, should be able to comply with the terms of the condition as adopted.

F. Paragraph 5—Reasonable Fee

Many commentators objected to that portion of the condition contained in paragraph 6 of the proposed exemption that requires, in order for a securities lending transaction to be covered by the exemption, that the plan must receive "a reasonable fee that is related to the value of the borrowed securities and the duration of the loan * * *" Several of the commentators stated that it was their belief that this condition implies either that the borrower will make a specifically defined payment to the plan which is dependent on the value of the borrowed securities and the duration of the loan, or, in the case of cash collateral, that a specified rate of return will be provided or guaranteed by the borrower. The commentators indicated that if the plan receives cash collateral from the borrower, it would not, in that case, receive a "reasonable fee" from the borrower. Instead, the amount of compensation the plan would realize from its securities loan would depend upon the plan's ability to invest the collateral during the term of the loan.[4]

Some commentators suggested that because of the use of cash collateral, the exemption should be modified so that the concept of a "reasonable fee" includes the opportunity for the plan to receive a return generated by the investment of the cash collateral, regardless of whether any return is, in fact, achieved.

In view of the recognized practice of providing compensation to lenders through the lenders' investment of cash collateral, the Department has modified the exemption to provide that an arrangement in which a plan derives its compensation through the investment of cash collateral is a compensation method contemplated by the exemption. In instances where the plan has the opportunity to use cash collateral for investments, the Department has further modified the exemption to permit the payment of a loan rebate fee by the plan, if such fee is not greater than the plan would pay in a comparable transaction with an unrelated party.

The Department has made these changes because it recognizes that the opportunity to invest cash collateral may be of value to a lending plan, and to that extent could be considered part or all of the consideration for the lending of securities. However, the Department notes that, where the lending plan agrees to pay to the borrower a periodic rebate fee in the form of a fixed percentage of the value of the collateral, the value of that obligation must be offset against the less certain value of the possible return that the plan may obtain through investment of the collateral in order to ascertain the value of the consideration derived by the plan in the arrangement. Plan fiduciaries, therefore, should be mindful of the above in deciding whether to engage in a securities lending transaction that involves the payment of a fixed loan rebate or similar fee.

G. Paragraph 6—Report of Market Value

The first portion of paragraph 7 of the proposed exemption contained a condition that would require the borrower in a securities lending transaction to furnish to the lending plan by the close of each business day, during the term of the loan, a report of the market value of all collateral and the market value of all borrowed securities at the close of trading on the previous business day. Regarding this condition, the Department stated in the preamble to the proposed exemption that while it believed that daily reporting would be an important protection for plan participants, it appeared to the Department that requiring daily reports from the borrower might not be necessary in all securities lending arrangements.

The Department specifically invited comments on this aspect of the proposal. Most of the commentators stated that the requirement of a daily determination by the borrower of the sufficiency of the market value of the borrowed securities and of the underlying collateral ("marking-to-market") would be an unjustified delegation to the borrower of the plan fiduciary's responsibility, and would place the borrower in a conflict of interest position. Moreover, several commentators indicated that a prudent plan fiduciary would verify the accuracy of the borrower's determinations and that, therefore, requiring the borrower to mark-to-market would result in a duplication of effort.

Some commentators also indicated that it is customary practice in securities lending transactions for the lender or some third party to perform the marking-to-market. In addition, several commentators indicated that if the borrower were required to provide market valuations to the lender, the additional paperwork and time involved would place employee benefit plans at a competitive disadvantage. Finally, several commentators stated that it was their belief that the requirement of daily marking-to-market was unnecessary for the plans' protection and unduly burdensome for the borrower.

On the basis of the comments, the Department has decided to delete the condition requiring daily reports. The Department's decision to eliminate this requirement, however, does not relieve the plan fiduciary of its general fiduciary responsibility to monitor the market value of the loaned securities and the collateral to ensure that the plan is

[4] However, in consideration for the lending plan's right to invest the cash collateral and to retain the proceeds of such investment, the lender customarily agrees to remit a fee (generally called a "loan rebate fee") which is established by negotiation between the parties prior to the securities loan, and generally is expressed as an annualized percentage of the cash collateral (which is fixed for the term of the loan). The loan rebate fee is payable in full and is not dependent upon the income which the lender realizes by investing the collateral.

adequately protected during the term of the loan.

H. Paragraph 7—Return of Securities Upon Termination

Under the proposed exemption, the securities loan may be terminated by the plan at any time, whereupon the borrower is required to deliver to the plan certificates for securities that are identical to the borrowed securities (or the equivalent thereof in the event of reorganization, recapitalization or merger of the issuer of the borrowed securities) within the customary delivery period for such securities, or five business days, whichever is lesser. The Department received three comments concerning this condition. One of the commentators suggested, in view of the fact that deliveries of securities are frequently made through depositories by book entries, with no physical delivery involved, that the Department should modify this condition to permit "delivery" of certificates through the use of book entries. In light of this comment, the Department has revised this condition to permit "delivery" of borrowed securities through the use of book entries. This change is consistent with the modifications, discussed above, relating to delivery of securities at the beginning of the loan transaction.

Another commentator suggested that the condition requiring delivery of certificates identical to the borrowed securities or "the equivalent thereof" is ambiguous, and should be modified to require only the return of certificates for securities which are "identical" to the borrowed securities. The purpose of the condition in the proposal concerning "equivalent" securities is to encompass situations in which the issuer of the borrowed securities has experienced a recapitalization, merger or other reorganization during the term of the loan. In these situations, it is possible that certificates "identical" to those borrowed either no longer exist or do not fully represent, at the time of termination of the loan, the rights of the holders of the borrowed securities. For example, in the instance of a stock split in which two new shares of stock are issued in place of one share of original stock, delivery by the borrower of the original number of shares lent by the plan would not satisfy this condition of the exemption. Consequently, the Department has decided not to accept this comment.

One commentator recommended that the lending plan be required to notify the borrower in writing of its desire to terminate a particular loan. The commentator stated that the purpose of this recommendation is to insure that an accurate record is available to complement the written loan agreement. It is the Department's belief that this suggestion would not necessarily be in the interests of the plan involved, because such a requirement might, in some instances, cause an unnecessary delay in notifying the borrower of the plan's desire to terminate the loan. Therefore, the Department has determined not to revise the exemption in this regard.

One commentator also suggested that the Department shorten the amount of time within which the borrower must return the securities to three business days, because one of the events that would trigger a termination of the lending arrangement by the plan would be a sale by the plan of the borrowed securities. Since the customary delivery period for corporate stocks and bonds is five business days, the commentator stated that a shortened time for delivery would enable the plan to be assured that it has the securities necessary to complete a contemplated sale transaction.

Nevertheless, the Department understands that it is customary in securities lending transactions for a lender to require delivery of borrowed securities within five business days. The Department is not persuaded that is is necessary to require, under all circumstances, a shortened period of time for delivery of securities as a condition of the exemption, although the terms of the exemption do not prevent the parties to a securities lending transaction from negotiating a shorter delivery period. Therefore, the Department has determined not to adopt this suggestion.

I. Paragraph 8—Failure to Return Securities Upon Termination

The conditions in this paragraph, as proposed, provided that in the event the loan is terminated, and the borrower fails to return the borrowed securities or the equivalent thereof within the customary delivery period for such securities or five business days, whichever is lesser, (1) the plan may, under the terms of the loan agreement, purchase securities identical to the borrowed securities (or their equivalent as described above) and may apply the collateral to the payment of the purchase price, any other obligations of the borrower under the agreement, and any expenses associated with the sale and/or purchase, and (2) the borrower must pay to the plan the amount of any remaining obligations and expenses not covered by the collateral, plus interest at a reasonable rate.

The Department received one comment on this paragraph. The commentator suggested that in the event of a termination of the loan and the failure of the borrower to return the borrowed securities, the borrower be expressly given the option, as a condition of the exemption, of replacing any non-cash collateral held by the plan with cash collateral equal to the then current market value of the securities borrowed. Although the Department has no objection to allowing the replacement of non-cash collateral with cash, it believes such an exchange should be permissible (and has revised the exemption accordingly) only if (1) the cash received by the plan is equal to or greater than the market value of the collateral at the time of the exchange, and (2) the exchange is approved by the plan fiduciary.

The Department also has made a minor change to this condition to require the borrower to deliver securities in less than either the customary delivery period or five business days, if such shorter period is negotiated by the parties to the securities lending transaction.

J. Fee Arrangement

The furnishing of services to a plan for a fee by a party in interest, including a trustee or other fiduciary, is prohibited by sections 406(a)(1)(C) of the Act. Section 408(b)(2) of the Act and the regulations promulgated thereunder provide exemptions from the restrictions of sections 406(a) for the provision of services to a plan by a party in interest if certain conditions are met.[4] The Department explained in the preamble to the proposed exemption that certain arrangements for the provision of securities lending services may also involve violations of section 406(b)(1) of the Act, which prohibits a fiduciary of a plan from dealing with the assets of the plan in its own interest or for its own account.[5] The exemption provided by section 408(b)(2) does not, however, provide relief from the prohibitions of sections 406(b)(1).[7] Nevertheless, section 406(b)(6) of the Act exempts from the restrictions of sections 406(a) and 406(b)(1) the provision of ancillary services by a bank or similar financial institution to a plan for which it is a fiduciary, if certain conditions are met.[8]

The Department stated in the preamble to the proposed exemption that it is its position, based on

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[4] 29 CFR 2550.408b–2.

[5] See, ERISA Advisory Opinion 78–111A, dated February 22, 1978.

[7] See, regulation cited in note 5, supra.

[8] See 29 CFR 2550.408b–6.

information contained in the applications, that the provision of securities lending services to a plan by a bank or similar financial institution that exercises discretionary authority or control respecting management of the plan's assets which include securities, is an ancillary service within the meaning of section 408(b)(8) of the Act.

Therefore, the Department concluded, a trustee or other fiduciary may provide securities lending services to a plan for an additional fee if: (1) the transaction meets the requirements of section 408(b)(2) and does not constitute a violation of sections 406(b), or (2) the fiduciary is a bank or similar financial institution, the transaction meets the requirements of section 408(b)(8) and the transaction does not constitute a violation of section 406(b)(3).

The Department noted that it had made no determination as to whether any particular fee arrangement, or class thereof, would satisfy the conditions of section 408(b)(8). The Department also stated that whether a fee arrangement satisfies the conditions of either of the statutory exemptions discussed above would depend on the facts and circumstances surrounding that arrangement.

Since none of the applicants requested relief from any specific prohibited transaction provision of the Act or Code for the provision of securities lending services to a plan by a trustee or other fiduciary for a fee, and because the Department was not persuaded, on the basis of the applications, that any relief, beyond that provided by the statutory exemptions discussed above, was necessary or appropriate, no such relief was included in the proposed class exemption.

The Department received many comments concerning the discussion in the preamble regarding the provision of securities lending services by a fiduciary for an additional fee. One commentator asserted that since the Department has not issued "specific guidelines" for section 408(b)(8) purposes, reliance on the statutory exemption provided in that section exposes banks or similar financial institutions to "second-guessing" as to what the guidelines will be and provides no assurance as to the availability of the exemption. Two commentators suggested that the exemption should expressly provide for the payment of reasonable compensation to trustees and other fiduciaries for the provision of securities lending services to plans. The commentators stated that it was their belief that trustees and other fiduciaries might be reluctant to undertake the additional costs necessary to establish and maintain a securities lending program without the Department's express assurance that such an arrangement would be exempt from the prohibitions of sections 406(b)(1).

Several commentators also noted that to the extent section 408(b)(8) does provide relief from sections 406(b)(1) for the provision of securities lending services by banks or similar financial institutions, this interpretation would provide such institutions with a competitive advantage over other institutional fiduciaries.

In view of the uncertainty concerning the availability of the exemption provided by section 408(b)(8), the Department has decided it may be appropriate to provide administrative relief from section 406(b)(1) for the payment of compensation for the provision of securities lending services.

However, the Department did not propose relief from section 406(b)(1) at the time the class exemption was proposed, and, pursuant to the requirements of section 408(a) of the Act, the Department is required to offer interested persons an opportunity to present their views and an opportunity for a hearing before granting an exemption from section 406(b). Therefore, in order not to delay the publication of an exemption from section 408(a) to permit securities lending transactions, the Department has decided to grant the exemption described herein, and to simultaneously publish elsewhere in this issue of the **Federal Register** notice of a class exemption from section 406(b)(1) for the payment of compensation in connection with the provision of securities lending services.

K. Effective Date

The individual class exemption regarding securities lending granted to the Grumman Corp. Pension Trust (Grumman) (Prohibited Transactions Exemption 79–23, 44 FR 31750, June 1, 1979) provides, by its terms, that it would terminate upon the "final disposition" of this class exemption. In order that Grumman is given sufficient notice to make any necessary changes in its securities lending program, the "final disposition" of this class exemption, for purposes of Prohibited Transaction Exemption 79–23, will be deemed to occur 30 days after the effective date of this class exemption.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and the Code. These provisions include any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things, require a fiduciary to discharge his duties respecting the plan solely in the interest of participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) This exemption does not extend to transactions prohibited under section 406(b) of the Act and section 4975(c)(1)(E) and (F) of the Code;

(3) This exemption is supplemental to and not in derogation of any other provisions of the Act or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The class exemption is applicable to a particular transaction only if the transaction satisfies the conditions specified in the class exemption.

Exemption

In accordance with section 408(a) of the Act and section 4975(c)(2) of the Code, and based upon the entire record including the written comments submitted in response to the notice of proposed class exemption published on April 11, 1980, and to the notice of a reopening of the comment period published June 24, 1980, the Department makes the following determinations:

(a) The class exemption set forth herein is administratively feasible;

(b) it is in the interest of plans and of their participants and beneficiaries; and

(c) it is protective of the rights of participants and beneficiaries of plans.

Accordingly, the following exemption is hereby granted under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1. Neither the borrower nor an affiliate of the borrower has discretionary authority or control with respect to the investment of the plan assets involved in the transaction, or renders investment advice (within the meaning of 29 CFR 2510.3–21(c)) with respect to those assets;

2. The plan receives from the borrower (either by physical delivery or by book entry in a securities depository) by the close of the lending fiduciary's business on the day in which the securities lent are delivered to the borrower, collateral consisting of cash, securities issued or guaranteed by the United States Government or its agencies, or irrevocable bank letters of credit issued by a person other than the borrower or an affiliate thereof, or any combination thereof, having, as of the close of business on the preceding business day, a maket value equal to not less than 100 percent of the then market value of the securities lent;

3. Prior to the making of any such loan, the borrower shall have furnished the lending fiduciary with (1) the most recent available audited statement of the borrower's financial condition, (2) the most recent available unaudited statement of its financial condition (if more recent than such audited statement), and (3) a representation that, at the time the loan is negotiated, there has been no material adverse change in its financial condition since the date of the most recent financial statement furnished to the plan that has not been disclosed to the lending fiduciary. Such representation may be made by the borrower's agreeing that each such loan shall constitute a representation by the borrower that there has been no such material adverse change;

4. The loan is made pursuant to a written loan agreement, the terms of which are at least as favorable to the plan as an arm's-length transaction with an unrelated party would be. Such agreement may be in the form of a master agreement covering a series of securities lending transactions;

5. (a) The plan (1) receives a reasonable fee that is related to the value of the borrowed securities and the duration of the loan, or (2) has the opportunity to derive compensation through the investment of cash collateral. Where the plan has that opportunity, the plan may pay a loan rebate or similar fee to the borrower, if such fee is not greater than the plan would pay in a comparable transaction with an unrelated party;

(b) The plan receives the equivalent of all distributions made to holders of the borrowed securities during the term of the loan, including, but not limited to, cash dividends, interest payments, shares of stock as a result of stock splits and rights to purchase additional securities;

6. If the market value of the collateral at the close of trading on a business day is less than 100 percent of the market value of the borrowed securities at the close of trading on that day, the borrower shall deliver, by the close of business on the following business day, an additional amount of collateral (as described in paragraph 2) the market value of which, together with the market value of all previously delivered collateral, equals at least 100 percent of the market value of all the borrowed securities as of such preceding day.

Notwithstanding the foregoing, part of the collateral may be returned to the borrower if the market value of the collateral exceeds 100 percent of the market value of the borrowed securities, as long as the market value of the remaining collateral equals at least 100 percent of the market value of the borrowed securities;

7. The loan may be terminated by the plan at any time, whereupon the borrower shall deliver certificates for securities identical to the borrowed securities (or the equivalent thereof in the event of reorganization, recapitalization or merger of the issuer of the borrowed securities) to the plan within (1) the customary delivery period for such securities, (2) five business days, or (3) the time negotiated for such delivery by the plan and the borrower, whichever is lesser; and

8. In the event the loan is terminated, and the borrower fails to return the borrowed securities or the equivalent thereof within the time described in paragraph 7, above, (i) the plan may, under the terms of the loan agreement, purchase securities identical to the borrowed securities (or their equivalent as described above) and may apply the collateral to the payment of the purchase price, any other obligations of the borrower under the agreement, and any expenses associated with the sale and/or purchase, and (ii) the borrower is obligated, under the terms of the loan agreement, to pay, and does pay to the plan the amount of any remaining obligations and expenses not covered by the collateral plus interest at a reasonable rate.

Notwithstanding the foregoing, the borrower may, in the event the borrower fails to return borrowed securities as described above, replace non-cash collateral with an amount of cash not less than the then current market value of the collateral, provided such replacement is approved by the lending fiduciary.

If the borrower fails to comply with any condition of this exemption in the course of engaging in a securities lending transaction, the plan fiduciary who caused the plan to engage in such transaction shall not be deemed to have caused the plan to engage in a transaction prohibited by section 406(a)(1) (A) through (D) of the Act solely by reason of the borrower's failure to comply with the conditions of the exemption.

For purposes of this class exemption the term "affiliate" of another person shall include: (i) Any person directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with such other person; (ii) Any officer, director, or partner, employee or relative (as defined in section 3(15) of the Act) of such other person; and (iii) Any corporation or partnership of which such other person is an officer, director or partner. For purposes of this definition the term "control" means the power to exercise a controlling influence over the management or policies of a person other than an individual.

Signed in Washington, D.C. this 16th day of January, 1981.

Ian D. Lanoff,

Administrator, Pension and Welfare Benefit Programs, Labor-Management Services Administration, U.S. Department of Labor.

[FR Doc. 81-2020 Filed 1-21-81; 11:20 am]

BILLING CODE 4510-29-M

Office of Federal Contract Compliance Programs

Compliance Responsibility for Equal Employment Opportunity; Correction

AGENCY: Office of Federal Contract Compliance Programs, Department of Labor.

ACTION: Final Notice, correction.

SUMMARY: On October 3, 1980, the Department of Labor published a Notice and attached Appendix B-80 to 41 CFR Part 60-4 (45 FR 65979) which set employment goals for minority workers in the construction industry. This notice makes corrections to Appendix B-80 published on October 3, 1980.

EFFECTIVE DATE: January 23, 1981.

FOR FURTHER INFORMATION CONTACT: James Cisco, Acting Director, Division of Program Policy, Office of Federal Contract Compliance Programs, Room C-3324, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, D.C. 20210, Telephone (202) 523-9426.

Correction of Publication: The following corrections to Appendix B-80, 45 FR 65984, are made as follows:

1. In Economic area 012, New York, N.Y. SMSA 5480, the goal is 5.8.

2. In Economic Area 012, New York, N.Y., SMSA 5600, delete "NY New York City" following "Westchester."

3. In Economic Area 012, New York, N.Y., SMSA 5600, the goal is 22.8.

4. In Economic Area 154, Missoula, MT., SMSA 154, insert"; MT Lake" after "MT Silver Bow."

5. In Economic Area 005, Non-SMSA Counties, "IR" is corrected to "RI".

6. In Economic Area 034, Non-SMSA Counties, "Collecton" is corrected to "Collection".

7. In Economic Area 106, "MO Boone" is the line following "1740 Columbia, MO" rather than preceding it.

8. In Economic Area 111, Non-SMSA Counties, on the sixth line, "Spring" is corrected to "Springs".

9. In Economic Area 124, on the sixth line, "5TX" is corrected to "TX".

10. In Economic Area 128, on the sixth line, "4TX" is corrected to "TX".

Ray Marshall,
Secretary of Labor.
Donald Elisburg,
Assistant Secretary, Employment Standards Administration.
Weldon J. Rougeau,
Director, Office of Federal Contract Compliance Programs.
Signed at Washington, D.C.,
[FR Doc. 81-2105 Filed 1-16-81; 2:19 pm]
BILLING CODE 4510-27-M

Office of the Secretary

Labor-Management Research Advisory Committee; Establishment

In accordance with the provisions of the Federal Advisory Committee Act and Office of Management and Budget Circular A-63 of March 1974, and after consultation with GSA, the Secretary of Labor has determined that the establishment of the Labor-Management Research Advisory Committee is in the public interest in connection with the responsibilities vested in the Department by the Act creating the Department of Labor, 29 U.S.C. 551 et seq., and subsequent enactments.

The Committee will advise the Secretary of Labor by (1) developing a richer dialogue among researchers, policymakers, and practitioners active in the area of labor-management relations and making recommendations for strengthening research efforts; and (2) helping update and advising on implementation of the research agenda of the Department and making recommendations on research reports.

The Committee will consist of 19 members: six academic researchers, six management representatives, six labor representatives, and the Assistant Secretary for Labor-Management Relations or his designee.

The Committee will function solely as an advisory body and in compliance with the provisions of the Federal Advisory Committee Act. Its charter will be filed under the Act on February 9, 1981.

Interested persons are invited to submit comments regarding the establishment of the Labor-Management Research Advisory Committee to Mrs. Ruth Morgenstern, Departmental Committee Management Officer, Department of Labor, Room S2517, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Signed at Washington, D.C., this 16th day of January 1981.

Ray Marshall,
Secretary of Labor.

[FR Doc. 81-2089 Filed 1-19-81; 4:54 pm]
BILLING CODE 4510-28-M

[TA-W-7498, 7498, 7498A]

Americana Glass Company, Inc., et al.; Negative Determination on Reconsideration

On October 17, 1980, the Department issues an Affirmative Determination Regarding Application for Reconsideration for workers and former workers producing souvenir decals at Americana Glass Company and for workers producing decorative earthenware products at Queens China Company. Americana Art China Company is the selling arm of these two affiliates.

The petitioners claimed that increased imports of decals are causing declines in jobs in the Company's artistry department, and at Queens China, loss of jobs was due to increased Company imports of pottery to fill orders of merchandise normally filled with products made at Queens China.

The Department's review showed that workers at the Sebring, Ohio facilities of Americana Glass Company, Queens China Company and Americana Art China Company did not meet the "contribute importantly" criterion of the Trade Act of 1974 with respect to souvenir decals and decorated earthenware products. A customer survey revealed that customers who decreased purchases from Americana Art China and increased import purchases represented a very small portion of the Company's sales decline during the periods covered by the survey. The Department also conducted a survey with those customers purchasing decorated pottery directly from Queens China. The survey showed that these customers did not purchase imported earthenware pottery.

On reconsideration, the Department found that although Americana Art China and its affiliated facilities imported some merchandise over a period of years, most of the merchandise was imported because these facilities were unable to produce those items for various reasons. In the periods from 1978 through 1980, these imports represented less than one percent of the Companies' total purchases.

With respect to decals, the Department found that Americana Art China Company did import some decals, but only because those decals were not available locally. Further, Company-imported products did not replace those items produced by the Company.

Conclusion

After reconsideration, I reaffirm the original Notice of Determination Regarding Eligibility to Apply for Worker Adjustment Assistance to workers and former workers of Americana Glass Company, Inc., Queens China Company, Inc., and Americana Art China Company, Inc., Sebring, Ohio.

Signed at Washington, D.C. this 9th day of January 1981.

James F. Taylor,
Director, Office of Management Administration and Planning.

[FR Doc. 81-1999 Filed 1-22-81; 8:45 am]
BILLING CODE 4510-28-M

[TA-W-8861]

Anchor Fasteners, Inc.; Negative Determination Regarding Application for Reconsideration

By letter of November 18, 1980, (copy attached), one of the petitioners for the workers requested administrative reconsideration of the Department of Labor's Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance for workers and former workers of Anchor Fasteners, Inc., Bedford Heights, Ohio. The determination was published in the Federal Register on October 31, 1980, (45 FR 72384).

Pursuant to 29 CFR 90.18(c), reconsideration may be granted under the following circumstances:

(1) if it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) if it appears that the determination complained of was based on a mistake in the determination of facts previously considered; or

(3) if, in the opinion of the Certifying Officer, a misrepresentation of facts or of the law justifies reconsideration of the decision.

One of the petitioners claims in his application for reconsideration that the reduction in domestic automobile manufacturing because of imported cars

is a basis for certification of firms in the industrial fastener industry.

The Department's review showed that the petition for workers at Anchor Fasteners, Inc., Bedford Heights, Ohio did not meet the "contributed importantly" test of the Trade Act. U.S. imports of industrial fasteners, which include nuts, bolts and large screws, decreased both absolutely and relative to domestic production in 1979 compared to 1978 and decreased absolutely in the first six months of 1980 compared to the same period in 1979. The Department's customer survey showed that customers who represented the preponderance of Anchor Fasteners' sales in 1979 and in the first five months of 1980 did not increase their reliance on imported industrial fasteners.

The Department grants that automobiles, whatever their origin—domestic or foreign, incorporate industrial fasteners; however, imports of the final product are not like or directly competitive with the component parts within the meaning of the Trade Act. The courts have sustained this position in at least one instance. Thus, imports of industrial fasteners must be considered in determining import injury to workers producing industrial fasteners at Anchor Fasteners, Inc., Bedford Heights, Ohio.

Conclusion

After review of the application and the investigative file, I conclude that there has been no error or misinterpretation of the law which would justify reconsideration of the Department of Labor's prior decision. The application is, therefore, denied.

Signed at Washington, D.C., this 12th day of January 1981.

James F. Taylor,

Director, Office of Management Administration and Planning.

[FR Doc. 81-1884 Filed 1-22-81; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-8310-8311]

Chrysler Corporation; Amplex-Harper Plant, Detroit, Michigan; Affirmative Determination Regarding Application for Reconsideration

On December 22, 1980, the petitioner requested administrative reconsideration of the termination date specified in the Department of Labor's Certification Regarding Eligibility to Apply for Worker Adjustment Assistance for workers and former workers of Chrysler Corporation's Amplex-Harper plant in Detroit, Michigan and the Amplex Division Office also in Detroit, Michigan. This determination was published in the Federal Register on December 2, 1980, (45 FR 79862).

The petitioner claims that layoffs have occurred, because of increased imports, beyond the termination date, November 29, 1980, specified in the Department's Certification for workers at the Amplex Division Office in Detroit, Michigan and that other layoffs will occur at the Amplex-Harper plant in Detroit, Michigan on January 12, 1981.

Conclusion

After review of the application, I conclude that the petitioner's claim is of sufficient weight to justify reconsideration of the Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, D.C., this 9th day of January 1981.

James F. Taylor,

Director, Office of Management Administration and Planning.

[FR Doc. 81-1885 Filed 1-22-81; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-7924, 8529C, 8511-28, 8530-31, 8533-34]

Ford Motor Co., Dearborn, Michigan; Revised Determination Regarding Eligibility to Apply for Worker Adjustment Assistance

On December 1, 1980, the Department reopened the instant investigations on behalf of workers and former workers at certain support facilities of the Ford Motor Company, Dearborn, Michigan. The Department's Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance in the instant cases was published in the Federal Register on December 12, 1980 (45 FR 81806).

The Department's original denials of certification of the workers at the instant support facilities was based on the finding that they did not produce an article within the meaning of Section 223(3) of the Trade Act of 1974 and they were not substantially integrated into the production of import-impacted Ford vehicles.

The Department reconsidered the denials following oral and written representations by the International Union of the United Auto Workers (UAW).

The UAW contended that Ford Parts Distribution Center (PDC) workers should have been certified because they worked for Ford, Ford vehicles were import-impacted, and PDC's warranty work made their activity "part and parcel" of the sale of the import-impacted vehicles. The UAW also argued that, since predelivery services are a prerequisite to the sale of Ford vehicles, the Ford Predelivery Service Corporation (PSC) workers should not be denied adjustment assistance just because independent dealers could perform these services themselves (The dealers had the option of preparing new Fords for retail sale or hiring PSC to do so.)

The Department's position, with respect to service workers generally, is that they may be certified eligible to apply for adjustment assistance only if an important cause of their separations was a reduction in demand for their services which (1) directly and substantially related to the articles adversely impacted by imports, and (2) originated at a facility of the same firm (or another firm related by ownership or control) at which workers independently meet the group eligibility requirements (Section 222 of the Trade Act of 1974). In this particular case, the Department's position is that the Ford Parts Distribution Center workers do not meet the above criteria but that some of the Ford Predelivery Service Workers do.

Ford Parts Distribution Center Workers

The Department recognizes two bases on which program coverage might be extended to workers at Ford Parts Distribution Centers (PDC's). One—an indirect link to import competition—would be if the parts activities were directly and substantially dependent on the production or sale of new import-impacted Ford vehicles.

The other—a direct link to import competition—would be if the parts activities were adversely affected by increased imports of parts like or directly competitive with those produced by Ford and handled by these workers.

(1) In its investigation, the Department found that virtually all of the activity of the Parts Distribution Centers was associated with providing parts to Ford vehicles which had already been sold. Direct import competition is felt at the point of sale and reflected back up the earlier stages in the manufacturing chain. While there may be an adverse, subsequent impact on follow-on parts activity—because of the import-related decline in new car sales—the reduced demand for such activity is less direct. The Centers are not a direct link in the production-sales chain but rather operate at a later stage subsequent to the sale of the new vehicles. The activities carried out by workers at the Parts Distribution Centers take place after title to the new vehicle has passed from Ford to the dealership or to the individual consumer. The impact of automobile import competition on replacement part operations might occur after a lag of several years. There is no evidence in the Trade Act of 1974 or in the legislative history that it was Congress' intent to extend

program coverage to these kinds of indirect and delayed import effects.

With respect to the warranty workers, who might under certain circumstances be eligible for assistance, the record shows that some of the parts handled by the PDCs are for warranty work, but the amount of activity by the PDCs associated with warranty does not constitute a substantial share of overall PDC activity. Moreover, the workers at the Centers are not separately identifiable along the lines of warranty versus non-warranty parts. The fact that the Centers engaged in some warranty work and that warranties may play a role in the promotion and sale of new cars would not provide an adequate basis for coverage.

(2) The parts handled by the Ford Parts Distribution Centers were predominantly produced by independent parts companies and not by Ford-owned plants which produce parts. Ford-owned facilities generally only produce parts as original equipment for Ford-assembled vehicles. The predominant share of Ford's own parts production is used for this purpose. Ford parts production for the replacement market or for warranty activity is not substantial. Under the circumstances, increased imports of directly competitive parts—if indeed there are any—would not provide an adequate basis for covering the workers at Ford's Parts Distribution Centers since most of the parts handled by the Ford depot workers are not parts produced by the Ford Motor Company.

In view of the above, it is concluded that increased imports of passenger cars and light trucks did not contribute importantly to the separation of workers at the Ford PDCs.

Predelivery Service Corporation

Workers at Ford Motor Company's Predelivery Service Corporation (PSC) perform the service of preparing new vehicles for sale following their shipment by sea or rail to a distribution point. Those services involve primarily cleaning new vehicles, checking them out for mechanical defects, and otherwise readying them for sale. PSC Centers enter into contracts with dealerships to perform these services.

On the one hand, the predominant number of dealerships with which PSC contracts are independent businesses. They are not Ford-owned. Title to domestically produced vehicles serviced by PSC has already passed from Ford to the independent dealership. Further, some of the vehicles which PSC workers prepare for delivery to the dealerships are Fords manufactured abroad, which makes them imports within the meaning of the Trade Act of 1974. Dealerships often do the new car prepping themselves and, regardless of whether the dealerships are Ford-owned or independent, they have the option of contracting with PSC to perform this service.

On the other hand, PSC workers are Ford employees, they service only Ford-produced vehicles, and predelivery services are an integral part of the sale of Ford vehicles. The Department found that most of the 1979 and 1980 Fords were adversely affected by increased import competition. It is likely that most of the domestic vehicles prepped for sale by PSC in the period under investigation were import-impacted vehicles. The reduction in demand for their services originated at Ford production facilities whose workers were certified eligible to apply for adjustment assistance because, to the extent there is less Ford auto production because of increased import competition, there is less demand for the car prepping services performed by PSC. Therefore, Ford predelivery services can properly be regarded as adversely affected by the loss of Ford sales due to increased import competition.

Of Ford's PSC facilities, those located at Houston, Texas (TA–W–8529B), Portsmouth, Virginia (TA–W–8529D), and Tampa, Florida (TA–W–8529A) exclusively serviced imported Ford vehicles in 1979. Increased company imports would have been correlated with sales increases, not decreases. PSC Headquarters in Detroit (TA–W–8529) oversees an operation most of which involves activity related to imported vehicles. At none of these facilities is there sufficient basis to certify the workers for adjustment assistance. At the Portland, Oregon (TA–W–8529C) and La Mirada, California (TA–W–7924) facilities, however, most of the vehicles serviced were domestically produced.

The greater weight of evidence supports certification of the PSC centers where a major share of the prepping activity involved domestically-produced vehicles. Therefore, it is concluded that increased imports of passenger cars and light trucks contributed importantly to the separation of workers at the La Mirada, California and Portland, Oregon facilities of PSC.

Coverage

Based on additional evidence, a review of the entire record, and in accordance with the provisions of the Act, I make the following revised determination:

After reconsideration, I reaffirm the original denial of eligibility to apply for adjustment assistance for all workers of Ford Motor Company's Parts Distribution Centers at the indicated locations below:

TAW	Facility and location
8511	Ford Parts & Service Division, Parts Redistribution Center, Wayne County, Detroit, Michigan
8512	Atlanta Parts Distribution Center, East Point, Georgia
8513	Boston Parts Distribution Center, Natik, Massachusetts
8514	Charlotte Parts Distribution Center, Charlotte, North Carolina
8515	Chicago Parts Distribution Center, Melrose Park, Illinois
8516	Cincinnati Parts Distribution Center, Cincinnati, Ohio
8517	Cleveland Parts Distribution Center, Cleveland, Ohio
8518	Dallas Parts Distribution Center, Carrollton, Texas
8519	Delaware Valley Parts Distribution Center, Pennsauken, New Jersey
8520	Denver Parts Distribution Center, Denver, Colorado
8521	Detroit Parts Distribution Center, Detroit, Michigan
8522	Houston Parts Distribution Center, Houston, Texas
8523	Jacksonville Parts Distribution Center, Jacksonville, Florida
8524	Kansas City Parts Distribution Center, Lenexa, Kansas
8525	Los Angeles Parts Distribution Center, Los Angeles, California
8526	Memphis Parts Distribution Center, Memphis, Tennessee
8527	National Parts Distribution Center, Livonia, Michigan
8528	New York Parts Distribution Center, Teterboro, New Jersey
8530	San Francisco Parts Distribution Center, Richmond, California
8531	Seattle Parts Distribution Center, Seattle, Washington
8533	Twin Cities Parts Distribution Center, Minneapolis, Minnesota
8534	Virginia Parts Distribution Center, Richmond, Virginia.

Further, I revise the original denial of eligibility for Ford Predelivery Service Corporation workers. All workers of Ford Motor Company's Predelivery Service Corporation's facilities at La Mirada, California (TA–W–7924) and Portland, Oregon (TA–W–8529C) who became totally or partially separated from employment on or after May 15, 1979, are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 9th day of January 1981.

James F. Taylor,

Director, Office of Management Administration and Planning.

[FR Doc. 81-1696 Filed 1-22-81; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-9026; 9246-48; 9250-51; 9253; 10,733; 10,735; 10,743-44; 10,748; 10,757; 10,761; 10,763; 10,766; 10,771-72; 10,775; 10,778; 10,781; 10,787; 10,799; 10,801-14; 10,819-44; 10,846-48]

General Motors Corp.; Amended Certification of Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, the Department of Labor issued Certifications of Eligibility to Apply for Adjustment Assistance on October 10, 1980, applicable to all workers of certain designated support facilities of General Motors Corporation, Detroit, Michigan. the Certifications were published in the Federal Register on October 21, 1980, (45 FR 69000). The Department also issued Notices of Amended Certification of Eligibility to Apply for Worker Adjustment Assistance on November 14, 1980, (45 FR 75368) and on December 5, 1980, (45 FR 80602).

On the basis of additional information, the Office of Trade Adjustment Assistance, on its own motion, reviewed the certifications. The additional information revealed that significant layoffs occurred immediately before the impact date of July 1, 1980 set for the GM Central Offices located in Los Angeles, California, TA-W-10,748; Denver, Colorado, TA-W->10,743; Chicago, Illinois, TA-W-10,735; Flint, Michigan, TA-W-10,757; St. Louis, Missouri, TA-W-10,766; Union, New Jersey, TA-W-10,771; Moorestown, New Jersey, TA-W-10,772; Tarrytown, New York, TA-W-10,775; Cincinnati, Ohio, TA-W-10,778; and Milwaukee, Wisconsin, TA-W-10,799. Layoffs also occurred immediately before the impact dates of June 1, 1980 and October 1, 1979 set for workers at the GM Proving Grounds in Milford, Michigan and for workers at the Chevrolet Zone Sales Office in Denver, Colorado, TA-W-10,761 and TA-W-10,814, respectively. Two layoffs occurred several weeks before the impact date of June 1, 1980 set for workers at the GM Central Office in New York, New York TA-W-9250. These layoffs were not covered by the original impact dates set in the certifications immediately cited above.

The intent of the certifications is to cover all workers at the instant General Motors support facilities who were affected by the decline in production of import impacted GM vehicles. The Certifications, therefore, are amended to include new impact dates: June 1, 1980 for workers at GM Central Office in Los Angeles, California, TA-W-10,735; Denver, Colorado, TA-W-10,743; Chicago, Illinois, TA-W-10,748; Flint, Michigan, TA-W-10,757; St. Louis, Missouri, TA-W-10,766; Union, New Jersey, TA-W-10,771; Moorestown, New Jersey, TA-W-10,772; Tarrytown, New York, TA-W-10,775; Cincinnati, Ohio, TA-W-10,778; and Milwaukee, Wisconsin, TA-W-10,799; May 1, 1980 for workers at the GM Proving Grounds in Milford, Michigan, TA-W-10,761; September 1, 1979 for workers at the Chevrolet Zone Sales Office in Denver, Colorado, TA-W-10,814; and February 1, 1980 for workers at the GM Central Office in New York, New York, TA-W-9250.

The certifications applicable to TA-W-9250, TA-W-10,735, TA-W-10,743, TA-W-10,748, TA-W-10,757, TA-W-10,761, TA-W-10,766, TA-W-10,771, TA-W-10,772, TA-W-10,775, TA-W-10,778, TA-W-10,799 and TA-W-10,814 are hereby amended as indicated in the appendix and issued as follows:

All workers of the support facilities of General Motors Corporation listed in the appendix who became totally or partially separated from employment on or after the impact date listed in the Appendix and before November 1, 1980 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, D.C., this 9th day of January 1981.

Appendix

Facility and TA-W-	Location	Impact date
GM Central Office:		
9250	New York, N.Y	Feb. 1, 1980.
10,735	Los Angeles, Calif.	June 1, 1980.
10,743	Denver, Colo	June 1, 1980.
10,748 GM	Chicago, Ill	June 1, 1980.
10,757	Flint, Mich	June 1, 1980.
GM Proving Grounds:		
10,761	Milford, Mich	May 1, 1980.
GM Central Office:		
10,766	St. Louis, Mo	June 1, 1980.
10,771	Union, N.J	June 1, 1980.
10,772	Moorestown, N.J	June 1, 1980.
10,775	Tarrytown, N.Y	June 1, 1980.
10,778	Cincinnati, Ohio	June 1, 1980.
10,799	Milwaukee, Wis	June 1, 1980.
Chevrolet Zone Sales Office:		
10,814	Denver, Colo	Sept. 1, 1980.

[FR Doc. 81-1987 Filed 1-22-81; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-7904]

Interstate United Corp.; Negative Determination Regarding Application for Reconsideration

By letter of November 5, 1980, after being granted a filing extension, the union for the workers requested administrative reconsideration of the Department of Labor's Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance in the case of workers and former workers of that company. The determination was published in the Federal Register on July 28, 1980, (45 FR 52980).

Pursuant to 29 CFR 90.18(c), reconsideration may be granted under the following circumstances:

(1) if it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) if it appears that the determination complained of was based on a mistake in the determination of facts previously considered; or

(3) if, in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justifies reconsideration of the decision.

The union claims that although the cafeteria workers in the Chrysler plant where they provide food service do not produce an article, and were therefore denied eligibility to apply for adjustment assistance, some of the plant employees such as security guards and office workers who also do not produce an article, are receiving assistance. It also pointed out that the cafeteria employees work on equipment owned by the Chrysler Corporation and are governed by the same hours, holidays and work regulations as Chrysler employees. The union further claims that Chrysler dictates the menu selection and pricing and may even provide a subsidy.

The Department's review revealed that the Interstate United Corporation is engaged in providing food service and, as such, does not produce an article within the meaning of Section 222(3) of the Trade Act.

The Department does not agree with the union's claim that cafeteria workers of the Interstate United Corporation are under the control of Chrysler by virtue of the fact that (1) Chrysler controls menu selection and pricing and may even pay a subsidy to the subject firm, and (2) that the cafeteria workers are governed by the same hours of work, holidays, work regulations and use the same facilities (e.g. Credit Union) available to the employees who are on the Chrysler payroll. Since workers at Interstate United do not produce an article, they may be certified only if the Chrysler Corporation is the "workers' firm" within the meaning of Section 222 of the Act. Chrysler may be determined to be the "workers' firm" if Chrysler and Interstate United are related by ownership or by a substantial degree of proprietary control, or if the workers are *de facto* employees of Chrysler. Chrysler is not the "workers' firm" under either test. There is no element of ownership or control between the firms. The workers also are not *de facto* employees of Chrysler since all payroll transactions, personnel actions and employee benefits are under control of

Interstate United. The mere fact the Chrysler may exercise some degree of control over the menu or might make available some of the facilities open to Chrysler employees is not sufficient in itself to support a determination that Chrysler is the "workers' firm". Obviously, Chrysler is the "workers' firm" for its own security guards and office workers. The Department sees no basis for certification of workers at Interstate United on the claim that Chrysler's security guards and office workers, who also do not produce an article, are receiving trade adjustment assistance.

Conclusion

After review of the application and the investigative file, I conclude that there has been no error or misinterpretation of the law which would justify reconsideration of the Department of Labor's prior decision. The application is, therefore, denied.

Signed at Washington, D.C., this 12th day of January 1981.

James F. Taylor,

Director, Office of Management Administration and Planning.

[FR Doc. 81-1699 Filed 1-22-81; 8:45 am]

BILLING CODE 4510-28-M

Rockport Log & Shake

[TA-W-8120]

Negative Determination on Reconsideration

On October 2, 1980, the Department made an Affirmative Determination Regarding Application for Reconsideration for workers and former workers producing cedar shingles and shakes at Rockport Log and Shake Company, Copalis Crossing, Washington.

The petitioners principally claim that imports of Canadian shakes at substantially lower prices make it impossible for the subject firm to compete in the market without great loses to the firm. Claimants contend that this is the primary cause for the decreased demand for their products.

The Department's review of the investigative file revealed that workers at Rockport Log and Shake did not meet the "contributed importantly" test of the Trade Act of 1974. The Department's customer survey indicated that none of the major customers (which were cedar brokers) reduced purchases of cedar shakes and shingles from Rockport in 1979 compared to 1978 while increasing purchases of imported shakes and shingles over the same period.

In its reconsideration investigation, the Department conducted a secondary survey of Rockport Log and Shake's customers (i.e., customers of Rockport's customers). The secondary survey revealed that these customers, while decreasing purchases of domestically produced shingles and shakes in 1979 compared to 1978, also reduced their import purchases during the same period. Although these customers increased their import purchases in the January-September 1980 period compared to the same period in 1979, while decreasing their domestic purchases, these switches to imports occurred after Rockport Log and Shake had already ceased production in November, 1979.

Conclusion

After reconsideration, I reaffirm the original Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance to workers and former workers of Rockport Log and Shake Company, Copalis Crossing, Washington.

Signed at Washington, D.C., this 9th day of January 1981.

James F. Taylor,

Director, Office of Management Administration and Planning.

[FR Doc. 81-1690 Filed 1-22-81; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-7833]

Sealed Power Corp., St. Johns Division; Negative Determination Regarding Application for Reconsideration

By an application dated December 4, 1980, the petitioner requested administrative reconsideration of the Department of Labor's Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance in the case of former workers producing piston rings for automobiles at Sealed Power Corporation, St. Johns Division, Muskegon, Michigan. The determination was published in the Federal Register on November 13, 1980 (45 FR 75296).

Pursuant to 29 CFR 90.18(c), reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts previously considered; or

(3) If, in the opinion of the Certifying Officer, a misrepresentation of facts or of the law justifies reconsideration of the decision.

The petitioner generally contends that, since piston rings are an integral part of the whole automobile, it would be logical to also entitle workers producing automobile piston rings to trade adjustment assistance as has already been done for workers in the American automakers' parts and assembly plants.

The Department's review of the investigative file revealed that U.S. imports of piston rings, like or directly competitive with those produced by Sealed Power's St. John Division, were negligible during the period under investigation. The Department's survey of Sealed Power's customers showed that most responding customers did not purchase imported piston rings during the period under investigation. A customer who did import piston rings showed that those imports were an insignificant proportion of that customer's total purchases of piston rings.

Imports of piston rings for automobiles must be considered by themselves in determining import injury to workers who manufactured this product at the St. Johns Division of Sealed Power Corporation, Muskegon, Michigan. Imported automobiles cannot be considered "like or directly competitive" with piston rings for automobiles even though they may have had a secondary impact on supplies of component parts to domestic automakers. The courts have concluded that imported finished articles are not like or directly competitive with domestic component parts thereof. *United Shoe Workers of America, AFL-CIO v. Bedell, 506 F 2d. 174 (1974).* In that case, the court held that imported finished women's shoes were not like or directly competitive with shoe counters, a component of footwear.

With respect to the issue of the Department's coverage of Chrysler's and other automakers' parts producing workers, it should be noted that in those instances the parts workers' firm—as that term is used in Section 222 of the Trade Act of 1974—produced automobiles and that the Department has found that there have been increased imports of directly competitive automobiles which contributed importantly to the workers' separations. In the case of workers for independent parts producing firms the Department is only able to consider the workers as employees of the parts producing firm. It is not able to consider them as employees of a firm which produces automobiles. Thus, it cannot take into account auto imports (or the piston rings contained in imported

automobiles) in determining whether or not workers of independent parts producing firms are eligible for trade adjustment assistance.

Conclusion

After review of the application and the investigative file, I conclude that there has been no error or misinterpretation of fact or misinterpretation of the law which would justify reconsideration of the Department of Labor's prior decision. The application is, therefore, denied.

Signed at Washington, D.C., this 9th day of January 1981.

C. Michael Aho,

Director, Office of Foreign Economic Research.

[FR Doc. 81-1700 Filed 1-22-81; 8:45 am]

BILLING CODE 4510-28-M

Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for worker adjustment assistance issued during the period January 5–9, 1981.

In order for an affirmative determination to be made and a certification of eligibility to apply for adjustment assistance to be issued, each of the group eligibility requirements of Section 222 of the Act must be met.

(1) that a significant number of proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) that sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) that increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

NEGATIVE DETERMINATIONS

In each of the following cases it has been concluded that at least one of the above criteria has not been met.

TA–W–10,918; Ventcon, Inc., Allen Park, MI

Investigation revealed that criterion (3) has not been met. Aggregate U.S. imports of air conditioning and heating ducts are negligible.

TA–W–8708; United Screw and Bolt, Cleveland, OH

Investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA–W–8253; The B.F. Goodrich Co., Marion, OH

Investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA–W–8096; Forest Hills Sportswear Co., Lawrenceburg, TN

Investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA–W–10,868; Goodyear Tire and Rubber Co., Danville, VA

Investigation revealed that criterion (3) has not been met.

TA–W–8370; Capac Manufacturing Co., Capac, MI

Investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA–W–8650; Sheller-Globe Corp., Niles, MI

Investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA–W–8720; Escan Corp., Escanaba, MI

Investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA–W–11,068; Legislative Services Bureau, Lansing, MI

Investigation revealed that criterion (3) has not been met. Aggregate U.S. imports of documents are negligible.

AFFIRMATIVE DETERMINATIONS

TA–W–8128; GK Technologies, Inc., Powal, VT

With respect to workers producing insulated wire, investigation revealed that criterion (3) has not been met. A survey of customers revealed that increased imports did not contribute importantly to separations of workers producing insulated wire at the firm.

A certification was issued applicable to all workers producing cordsets at the subject firm who were separated on or after April 1, 1980.

I hereby certify that the aforementioned determinations were issued during the period January 5–9, 1981. Copies of these determinations are available for inspection in Room S–5314, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, D.C. 20210 during normal working hours or will be mailed to persons who write to the above address.

Dated: January 12, 1981.

Marvin M. Fooks

Director, Office of Trade Adjustment Assistance.

[FR Doc. 81-1701 Filed 1-22-81; 8:45 am]

BILLING CODE 4510-28-M

Occupational Safety and Health Administration

Advisory Committee on Construction Safety and Health; Meeting

Notice is hereby given that the Advisory Committee on Construction Safety and Health, established under Section 107(e)(1) of the Contract Work Hours and Safety Standards Act (40 U.S.C. 333) and Section 7(b) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 656), will meet on March 10–11, 1981 in Room N5437, Frances Perkins Department of Labor Building, Washington, D.C. The meeting is open to the public and will begin at 9:00 a.m.

The agenda for the meeting will include discussion of proposed OSHA program directives that are relevant to the construction industry and a general discussion of construction safety and health matters.

Written data, views or arguments may be submitted, preferably with 20 copies, to the Division of Consumer Affairs. Any such submissions received prior to the meeting will be provided to the members of the Committee and will be included in the record of the meeting.

Anyone wishing to make an oral presentation should notify the Division of Consumer Affairs before the meeting. The request should state the amount of time desired, the capacity in which the person will appear, and a brief outline of the content of the presentation.

Oral presentations will be scheduled at the discretion of the chairman depending on the extent to which time permits. Communications may be mailed to Ken Hunt, Committee Management Officer, Office of Information and Consumer Affairs, OSHA, U.S. Department of Labor, Third Street and Constitution Avenue, NW., Room N3635, Washington, D.C. 20210, Phone: (202) 523–8024.

Materials provided to members of the Committee are available for inspection and copying at the above address.

Signed at Washington, D.C. this 16th day of January 1981.

Eula Bingham,

Assistant Secretary of Labor.

[FR Doc. 81-2005 Filed 1-22-81; 8:45 am]

BILLING CODE 4510-26-M

National Advisory Committee on Occupational Safety and Health; Full Committee Meeting and Subgroup Meeting

Notice is hereby given that the National Advisory Committee on Occupational Safety and Health (NACOSH) will meet on February 25–27, 1981 at the Frances Perkins Department of Labor Building, Room N4437, Third Street and Constitution Avenue, N.W., Washington, D.C. The meetings will begin at 9:00 a.m. the public is invited to attend.

The National Advisory Committee was established under Section 7(a) of the Occupational Safety and Health Act of 1970 [29 U.S.C. 656] to advise the Secretary of Labor and the Secretary of Health, Education and Welfare on matters relating to the administration of the Act.

Wednesday, February 25, 1981 will be devoted to Subgroup meetings. The Subgroups will discuss:

1. Reproductive Hazards.
2. Safety and Health Effects of New Energy Technologies.
3. Information Systems for NIOSH/OSHA Priority Setting.

The agenda for February 26 and 27 will include reports on OSHA and NIOSH activities, a discussion of repeat violations, and discussions of other safety and health matters relating to OSHA and NIOSH.

Written data or views concerning these agenda items may be submitted to the Division of Consumer Affairs. Such documents which are received before the scheduled meeting dates, preferably with 20 copies, will be presented to the Committee and included in the official record of the proceedings.

Anyone who wishes to make an oral presentation should notify the Division of Consumer Affairs before the meeting date. The request should include the amount of time desired, the capacity in which the person will appear and a brief outline of the content of the presentation. Oral presentations will be scheduled at the discretion of the chairmen of the Committee to the extent which time permits.

For additional information contact:

Clarence Page, Division of Consumer Affairs, Occupational Safety and Health Administration, 3rd Street and Constitution Avenue, N.W., Rm. N3635, Washington, D.C. 20210, Telephone 202/523-8024.

Official records of the meetings will be available for public inspection at the Division of Consumer Affairs.

Signed at Washington, D.C., this 16th day of January 1981.

Eula Bingham,

Assistant Secretary of Labor.

[FR Doc. 81-2025 Filed 1-22-81; 8:45 am]

BILLING CODE 4510-26-M

NUCLEAR REGULATORY COMMISSION

Criteria for Guidance of States and NRC in Discontinuance of NRC Regulatory Authority and Assumption Thereof by States Through Agreement

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Statement of Policy.

SUMMARY: The Nuclear Regulatory Commission has revised its statement of policy regarding criteria for guidance of States and NRC in discontinuance of NRC regulatory authority and assumption of regulatory authority by States through agreement. This action is necessary to make editorial changes to update the policy statement, to allow States to enter into agreements for low-level waste only, and to incorporate the provisions and requirements of the Uranium Mill Tailings Radiation Control Act of 1978. Adoption of this policy will allow interested States to enter into agreements with the NRC and regulate low-level waste sites only. Additionally, those States that meet the criteria for the regulation of uranium mills and tailings may exercise regulatory authority over these sources as provided by the Uranium Mill Tailings Radiation Control Act of 1978, as amended.

The revised statement of policy reflects the following principal changes:

1. Modification of Criterion 27 to allow a State to seek an agreement for the regulation of low-level waste as a separate category.
2. Inclusion of additional criteria for States wishing to continue regulating uranium and thorium processors and mill tailings after November 8, 1981.
3. Editorial and clarifying changes to make the statement current.

DATES: This policy statement is effective January 23, 1981.

FOR FURTHER INFORMATION CONTACT: John F. Kendig, Office of State Programs, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, telephone: 301-492-7767.

SUPPLEMENTARY INFORMATION:

1. These criteria were developed to implement a program, authorized by Pub. L. 86-373 which was enacted in the form of a new section to the Atomic Energy Act (Section 274) and approved by the President on September 23, 1959 and amended by Pub. L. 95-604 approved November 8, 1978. These criteria are intended to indicate factors which the Commission intends to consider in approving new or amended agreements. They are not intended to limit Commission discretion in viewing individual agreements or amendments. In accordance with these statutory provisions, when an agreement between a State and the NRC is effected, the Commission will discontinue its regulatory authority within that State over one or more of the following materials: byproduct material as defined in Section 11e(1) of the Act (radioisotopes), byproduct material as defined in Section 11e(2) of the Act (mill tailings or wastes), source material (uranium and thorium), special nuclear material (uranium 233, uranium 235 and plutonium) in quantities not sufficient to form a critical mass and permanent disposal of low-level waste containing one or more of the materials stated above but not including mill tailings.

2. An agreement may be effected between a State and NRC: (1) upon certification by the Governor that the State has a program for the control of radiation hazards adequate to protect the public health and safety with respect to the materials within the State covered by the proposed agreement and the State desires to assume regulatory responsibility for such materials; and (2) after a finding by the Commission that the State program is in accordance with the requirements of subsection o of section 274 and in all other respects compatible with the Commission's program for the regulation of such materials, and is adequate to protect the public health and safety with respect to the materials covered by the proposed agreement. It is also necessary that the State have enabling legislation authorizing its Governor to enter into such an agreement.

3. The original criteria were published on March 24, 1961 (26 FR 2537) after discussions with various State officials and other State representatives, to provide guidance and assistance to the States and the AEC (now NRC) in developing a regulatory program which would be compatible with that of the NRC. The criteria were circulated among States, Federal agencies, labor and industry, and other interested groups for comment.

4. The criteria require that the State authority consider the total accumulated occupational radiation exposure of individuals. To facilitate such an appoach, it is the view of the NRC that an overall radiation protection program is desirable. The maximum scope of

each State's radiation protection program is not, however, a necessary or appropriate subject for coverage in the criteria. Consequently, the criteria are silent on the question of whether a State should have a total regulatory program covering all sources of radiation, including those not subject to control by the NRC under the Atomic Energy Act, such as x-rays, radium, accelerators, etc.

5. These revised criteria provide for entering into an agreement for a separate category of materials, namely, low-level waste material in permanent disposal facilities. They also provide new criteria for States wishing to continue regulating uranium and thorium processing and the wastes resulting therefrom under the provisions of the Uranium Mill Tailings Radiation Control Act of 1978 (Pub. L. 95-604) after November 8, 1981. The revised criteria also contain a number of editorial changes such as changing AEC to NRC where appropriate to conform to present practice and law.

6. Inquiries about details of the criteria or other aspects of the NRC Federal-State Relations Program should be addressed to the Office of State Programs, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555.

Criteria [1]

Objectives

1. *Protection.* A State regulatory program shall be designed to protect the health and safety of the people against radiation hazards.

Radiation Protection Standards [2]

2. *Standards.* The State regulatory program shall adopt a set of standards for protection against radiation, which shall apply to byproduct, source and special nuclear materials in quantities not sufficient to form a critical mass.

3. *Uniformity in Radiation Standards.* It is important to strive for uniformity in technical definitions and terminology, particularly as related to such things as units of measurement and radiation dose. There shall be uniformity on maximum permissible doses and levels of radiation and concentrations of radioactivity, as fixed by Part 20 of the NRC regulations based on officially approved radiation protection guides.

4. *Total Occupational Radiation Exposure.* The regulatory authority shall consider the total occupational radiation exposure of individuals, including that from sources which are not regulated by it.

5. *Surveys, Monitoring.* Appropriate surveys and personnel monitoring under the close supervision of technically competent people are essential in achieving radiological protection and shall be made in determining compliance with safety regulations.

6. *Labels, Signs, Symbols.* It is desirable to achieve uniformity in labels, signs and symbols, and the posting thereof. However, it is essential that there be uniformity in labels, signs, and symbols affixed to radioactive products which are transferred from person to person.

7. *Instruction.* Persons working in or frequenting restricted areas [3] shall be instructed with respect to the health risks associated with exposure to radioactive materials and in precautions to minimize exposure. Workers shall have the right to request regulatory authority inspections as per 10 CFR 19, section 19.16 and to be represented during inspections as specified in section 19.14 of 10 CFR 19.

8. *Storage.* Licensed radioactive material in storage shall be secured against unauthorized removal.

9. *Waste Disposal.* The standards for the disposal of radioactive materials into the air, water, and sewers, and burial in the soil shall be in accordance with Part 20. Holders of radioactive material desiring to release or dispose of quantities in excess of the prescribed limits shall be required to obtain special permission from the appropriate regulatory authority.

10. *Regulations Governing Shipment of Radioactive Materials.* The State shall to the extent of its jurisdiction promulgate regulations applicable to the shipment of radioactive materials, such regulations to be compatible with those established by the U.S. Department of Transportation and other agencies of the United States whose jurisdiction over interstate shipment of such materials necessarily continues. State regulations regarding transportation of radioactive materials must be compatible with 10 CFR Part 71.

11. *Records and Reports.* The State regulatory program shall require that holders and users of radioactive materials (a) maintain records covering personnel radiation exposures, radiation surveys, and disposals of materials; (b) keep records of the receipt and transfer of the materials; (c) report significant incidents involving the materials, as prescribed by the regulatory authority; (d) make available upon request of a former employee a report of the employee's exposure to radiation; (e) at request of an employee advise the employee of his or her annual radiation exposure; and (f) inform each employee in writing when the employee has received radiation exposure in excess of the prescribed limits.

12. *Additional Requirements and Exemptions.* Consistent with the overall criteria here enumerated and to accommodate special cases or circumstances, the State regulatory authority shall be authorized in individual cases to impose additional requirements to protect health and safety, or to grant necessary exemptions which will not jeopardize health and safety.

Prior Evaluation of Uses of Radioactive Materials

13. *Prior Evaluation of Hazards and Uses, Exceptions.* In the present state of knowledge, it is necessary in regulating the possession and use of byproduct, source and special nuclear materials that the State regulatory authority require the submission of information on, and evaluation of, the potential hazards and the capability of the user or possessor prior to his receipt of the materials. This criterion is subject to certain exceptions and to continuing reappraisal as knowledge and experience in the atomic energy field increase. Frequently there are, and increasingly in the future there may be, categories of materials and uses as to which there is sufficient knowledge to permit possession and use without prior evaluation of the hazards and the capability of the possessor and user. These categories fall into two groups—those materials and uses which may be completely exempt from regulatory controls, and those materials and uses in which sanctions for misuse are maintained without pre-evaluation of the individual possession or use. In authorizing research and development or other activities involving multiple uses of radioactive materials, where an institution has people with extensive training and experience, the State regulatory authority may wish to provide a means for authorizing broad use of materials without evaluating each specific use.

14. *Evaluation Criteria.* In evaluating a proposal to use radioactive materials, the regulatory authority shall determine the adequacy of the applicant's facilities

[1] The criteria were first adopted in February 1961 (26 FR 2527, March 24, 1961, and amended in November 1966 (30 FR 15044, December 4, 1965). Minor editorial changes were made in June 1968 to reflect the authority of the U.S. Department of Transportation and Organization change in NCRP.

[2] Suggested State regulations and State legislation will give content to all criteria enunciated.

[3] "Restricted area" means any area access to which is controlled by the licensee for the purpose of radiation protection of individuals from exposure to radiation and radioactive materials. "Restricted area" shall not include any area used as residential quarters, although a separate room or rooms in a residential building may be set apart as a restricted area.

and safety equipment, his training and experience in the use of the materials for the purpose requested, and his proposed administrative controls. States should develop guidance documents for use by license applicants. this guidance should be consistent with NRC licensing and regulatory guides for various categories of licensed activities.

15. *Human Uses.* The use of radioactive materials and radiation on or in humans shall not be permitted except by properly qualified persons (normally licensed physicians) possessing prescribed minimum, experience in the use of radioisotopes or radiation.

Inspection

16. *Purpose, Frequency.* The possession and use of radioactive materials shall be subject to inspection by the regulatory authority and shall be subject to the performance of tests, as required by the regulatory authority. Inspection and testing is conducted to determine, and to assist in obtaining, compliance with regulatory requirements.

Frequency of inspection shall be related directly to the amount and kind of material and type of operation licensed, and it shall be adequate to insure compliance.

17. *Inspections Compulsory.* Licensees shall be under obligation by law to provide access to inspectors.

18. *Notification of Results of Inspection.* Licensees are entitled to be advised of the results of inspections and to notice as to whether or not they are in compliance.

Enforcement

19. *Enforcement.* Possession and use of radioactive materials should be amenable to enforcement through legal sanctions, and the regulatory authority shall be equipped or assisted by law with the necessary powers for prompt enforcement. This may include, as appropriate, administrative remedies looking toward issuance of orders requiring affirmative action or suspension or revocation of the right to possess and use materials, and the impounding of materials, the obtaining of injunctive relief, and the imposing of civil or criminal penalties.

Personnel

20. *Qualifications of Regulatory and Inspection Personnel.* The regulatory agency shall be staffed with sufficient trained personnel. Prior evaluation of applications for licenses or authorizations and inspection of licensees must be conducted by persons possessing the training and experience relevant to the type and level of radioactivity in the proposed use to be evaluated and inspected. This requires competency to evaluate various potential radiological hazards associated with the many uses of radioactive material and includes concentrations of radioactive materials in air and water, conditions of shielding, the making of radiation measurements, knowledge of radiation instruments—their selection, use and calibration—laboratory design, contamination control, other general principles and practices of radiation protection, and use of management controls in assuring adherence to safety procedures. In order to evaluate some complex cases, the State regulatory staff may need to be supplemented by consultants or other State agencies with expertise in geology, hydrology, water quality, radiobiology and engineering disciplines.

To perform the functions involved in evaluation and inspection, it is desirable that there be personnel educated and trained in the physical and/or life sciences, including biology, chemistry, physics and engineering, and that the personnel have had training and experience in radiation protection. For example, the person who will be responsible for the actual performance of evaluation and inspection of all of the various uses of byproduct, source and special nuclear material which might come to the regulatory body should have substantial training and extensive experience in the field of radiation protection. It is desirable that such a person have a bachelor's degree or equivalent in the physical or life sciences, and specific training-radiation protection.

It is recognized that there will also be persons in the program performing a more limited function in evaluation and inspection. These persons will perform the day-to-day work of the regulatory program and deal with both routine situations as well as some which will be out of the ordinary. These persons should have a bachelor's degree or equivalent in the physical or life sciences, training in health physics, and approximately two years of actual work experience in the field of radiation protection.

The foregoing are considered desirable qualifications for the staff who will be responsible for the actual performance of evaluation and inspection. In addition, there will probably be trainees associated with the regulatory program who will have an academic background in the physical or life sciences as well as varying amounts of specific training in radiation protection but little or no actual work experience in this field. The background and specific training of these persons will indicate to some extent their potential role in the regulatory program. These trainees, of course, could be used initially to evaluate and inspect those applications of radioactive materials which are considered routine or more standardized from the radiation safety standpoint, for example, inspection of industrial gauges, small research programs, and diagnostic medical programs. As they gain experience and competence in the field, trainees could be used progressively to deal with the more complex or difficult types of radioactive material applications. It is desirable that such trainees have a bachelor's degree or equivalent in the physical or life sciences and specific training in radiation protection. In determining the requirement for academic training of individuals in all of the foregoing categories proper consideration should be given to equivalent competency which has been gained by appropriate technical and radiation protection experience.

It is recognized that radioactive materials and their uses are so varied that the evaluation and inspection functions will require skills and experience in the different disciplines which will not always reside in one person. The regulatory authority should have the composite of such skills either in its employ or at its command, not only for routine functions, but also for emergency cases.

Special Nuclear Material, Source Material and Tritium

21. *Conditions Applicable to Special Nuclear Material, Source Material and Tritium.* Nothing in the State's regulatory program shall interfere with the duties imposed on the holder of the materials by the NRC, for example, the duty to report to the NRC, on NRC prescribed forms (1) transfers of special nuclear material, source material and tritium, and (2) periodic inventory data.

22. *Special Nuclear Material Defined.* Special nuclear material, in quantities not sufficient to form a critical mass, for present purposes means uranium enriched in the isotope U–235 in quantities not exceeding 350 grams of contained U–235; uranium 233 in quantities not exceeding 200 grams; plutonium in quantities not exceeding 200 grams; or any combination of them in accordance with the following formula: For each kind of special nuclear material, determine the ratio between the quantity of that special nuclear material and the quantity specified above for the same kind of special nuclear material. The sum of

such ratios for all of the kinds of special nuclear material in combination should not exceed "1" (i.e., unity). For example, the following quantities in combination would not exceed the limitation and are within the formula, as follows:

$$\frac{175 \text{ (grams contained U-235)}}{350} + \frac{50 \text{ (grams U-233)}}{200} + \frac{50 \text{ (grams Pu)}}{200} = 1$$

(This definition is subject to change by future Commission rule or regulation.)

Administration

23. State practices for assuring the fair and impartial administration of regulatory law, including provision for public participation where appropriate, should be incorporated in procedures for:

a. Formulation of rules of general applicability;

b. Approving or denying applications for licenses or authorization to possess and use radioactive materials, and

c. Taking disciplinary actions against licensees.

Arrangements For Discontinuing NRC Jurisdiction

24. *State Agency Designation.* The State should indicate which agency or agencies will have authority for carrying on the program and should provide the NRC with a summary of that legal authority. There should be assurances against duplicate regulation and licensing by State and local authorities, and it may be desirable that there be a single or central regulatory authority.

25. *Existing NRC Licenses and Pending Applications.* In effecting the discontinuance of jurisdiction, appropriate arrangements will be made by NRC and the State to ensure that there will be no interference with or interruption of licensed activities or the processing of license applications, by reason of the transfer. For example, one approach might be that the State, in assuming jurisdiction, could recognize and continue in effect, for an appropriate period of time under State law, existing NRC licenses, including licenses for which timely applications for renewal have been filed, except where good cause warrants the earlier reexamination or termination of the license.

26. *Relations With Federal Government and Other States.* There should be an interchange of Federal and State information and assistance in connection with the issuance of regulations and licenses or authorizations, inspection of licensees, reporting of incidents and violations, and training and education problems.

27. *Coverage, Amendments, Reciprocity.* An agreement providing for discontinuance of NRC regulatory authority and the assumption of regulatory authority by the State may relate to any one or more of the following categories of materials within the State, as contemplated by Public Law 86-373 and Public Law 95-604:

a. Byproduct materials as defined in section 11e(1) of the Act,

b. Byproduct materials as defined in section 11e(2) of the Act,

c. Source materials,

d. Special nuclear materials in quantities not sufficient to form a critical mass,

e. Low-level wastes in permanent disposal facilities, as defined by statute or Commission rules or regulations containing one or more of the materials stated in a, c, and d above but not including byproduct material as defined in Section 11e(2) of the Act;

but must relate to the whole of such category or categories and not to a part of any category.[1] If less than the five categories are included in any discontinuance of jurisdiction, discontinuance of NRC regulatory authority and the assumption of regulatory authority by the State of the others may be accomplished subsequently by an amendment or by a later agreement.

The agreement may incorporate by reference provisions of other documents, including these criteria, and the agreement shall be deemed to incorporate without specific reference the provisions of Pub. L. 86-373 and Pub. L. 95-604 and the related provisions of the Atomic Energy Act.

Arrangements should be made for the reciprocal recognition of State licenses and Federal licenses in connection with out-of-the-jurisdiction operations by a State or Federal licensee.

28. *NRC and Department of Energy Contractors.* The State should provide exemptions for NRC and DOE contractors which are substantially equivalent to the following exemptions:

a. Prime contractors performing work for the DOE at U.S. Government-owned or controlled sites;

b. Prime contractors performing research in, or development, manufacture, storage, testing, or transportation of, atomic weapons or components thereof;

c. Prime contractors using or operating nuclear reactors or other nuclear devices in a U.S. Government-owned vehicle or vessel; and

d. Any other prime contractor or subcontractor of DOE or NRC when the State and the NRC jointly determine (i) that, under the terms of the contract or subcontract, there is adequate assurance that the work thereunder can be accomplished without undue risk to the public health and safety and (ii) that the exemption of such contractor or subcontractor is authorized by law.

Additional Criteria for States Regulating Uranium or Thorium Processors and Wastes Resulting Therefrom After November 8, 1981

Statutes

29. State statutes or duly promulgated regulations should be enacted, if not already in place, to make clear State authority to carry out the requirements of Public Law 95-604, Uranium Mill Tailings Radiation Control Act (UMTRCA) as follows:

a. Authority to regulate the tailings or wastes produced by the extraction or concentration of uranium or thorium from any ore processed primarily for its source material content.

b. That an adequate surety (under terms established by regulation) will be provided by the licensee to assure the completion of all requirements established by the (cite appropriate State agency) for the decontamination, decommissioning, and reclamation of sites, structures, and equipment used in conjunction with the generation or disposal of such byproduct material.

c. If in the States' licensing and regulation of byproduct material or of any activity which produces byproduct material, the State collects funds from the licensee or its surety for long-term surveillance and maintenance of such material, the total amount of the funds collected by the State shall be transferred to the U.S. if custody of the byproduct material and its disposal site is transferred to the Federal Government upon termination of the State license. (See 10 CFR 150.32.) If no default has occurred and the reclamation or other bonded activity has been performed, funds for the purpose

[1] A State which does not wish to continue regulation of uranium and thorium processors and byproduct material, as defined in Section 11e.(2) of the Atomic Energy Act as amended, after November 8, 1981 pursuant to Pub. L. 95-604 may obtain authority over all source material licenses within the State except for uranium or thorium processors.

are not to be transferred to the Federal Government. The funds collected by the State shall be sufficient to ensure compliance with the regulations the Commission establishes pursuant to Section 161X of the Atomic Energy Act.

d. In the issuances of licenses, an opportunity for written comments, public hearing (with transcript) and cross examination is required.

e. In the issuances of licenses, a written determination of the action to be taken based upon evidence presented during the public comment period and which is subject to judicial review is required.

f. A ban on major construction prior to completion of the aforementioned stipulations.

g. An opportunity shall be provided for public participation through written comments, public hearings, and judicial review of rules.

30. In the enactment of any supporting legislation, the State should take into account the reservations of authority to the U.S. in UMTRCA as stated in 10 CFR 150.15a and summarized by the following:

a. The establishment of minimum standards governing reclamation, long-term surveillance or maintenance, and ownership of the byproduct material.

b. The determination that prior to the termination of a license, the licensee has complied with decontamination, decommissioning and reclamation standards, and ownership requirements for sites at which byproduct material is present.

c. The requirement that prior to termination of any license for byproduct material, as defined in Section 11e.(2), of the Atomic Energy Act or for any activity that results in the production of such material, title to such byproduct material and the disposal site be transferred to the Federal Government or State at the option of the State, provided such option is exercised prior to termination of the license.

d. The authority to require such monitoring, maintenance, and emergency measures after the license is terminated as necessary to protect the public health and safety for those materials and property for which the State has assumed custody pursuant to Pub. L. 95-604.

e. The authority to permit use of the surface or subsurface estate, or both of the land transferred to the United States or State pursuant under provision of the Uranium Mill Radiation Tailings Control Act.

f. The authority to exempt land ownership transfer requirements of Section 83(b)(1)(A).

31. It is preferable that State statutes contain the provisions of Section 9 of the Model Act, But the following may be accomplished by adoption of either procedures by regulation or technical criteria. In any case, authority for their implementation should be adequately supported by statute, regulation or case law as determined by the State Attorney General.

In the licensing and regulation of ores processed primarily for their source material content and for the disposal of byproduct material, procedures shall be established which provide a written analysis of the impact on the environment of the licensing activity. This analysis shall be available to the public before commencement of hearings and shall include:[a]

a. An assessment of the radiological and nonradiological public health impacts;

b. An assessment of any impact on any body of water or groundwater;

c. Consideration of alternatives to the licensed activities; and

d. Consideration of long-term impacts of licensed activities (see Item 36b.(1).

Regulations

32. State regulations should be reviewed for regulatory requirements, and where necessary incorporate regulatory language which is equivalent to the extent practicable or more stringent than regulations and standards adopted and enforced by the Commission, as required by Section 274o (see 10 CFR 40 and 10 CFR 150.31(b)).

Organizational Relationships Within the States

33. Organizational relationships should be established which will provide for an effective regulatory program for uranium mills and mill tailings.

a. Charts should be developed which show the management organization and lines of authority. This chart should define the specific lines of supervision from program management within the radiation control group and any other department within the State responsible for contributing to the regulation of uranium processing and disposal of tailings. When other State agencies or regional offices are utilized, the lines of communication and administrative control between the agencies and/or regions and the Program Director should be clearly drawn.

b. Those States that will utilize personnel from other State Departments or Federal agencies in preparing the environmental assessment should designate a lead agency for supervising and coordinating preparation of this environmental assessment. It is normally expected that the radiation control agency in Agreement States will be the lead agency. The basic premise is that the lead agency is required to prepare the environmental assessment. Utilization of an applicant's environmental report in lieu of a lead agency assessment of the proposed project is not adequate or appropriate. However, the lead agency may prepare an environmental assessment based upon an applicant's environmental report. Other credible information may be utilized by the State as long as such information is verified and documented by the State.

c. When a lead agency is designated, that agency should coordinate preparation of the statement. The other agencies involved should provide assistance with respect to their areas of jurisdiction and expertise. Factors relevant in obtaining assistance from other agencies include the applicable statutory authority, the time sequence in which the agencies become involved, the magnitude of their involvement, and relative expertise with respect to the project's environmental effects.

In order to bring an environmental assessment to a satisfactory conclusion, it is highly recommended that an initial scoping document be developed which clearly delineates the area and scope of work to be performed by each agency within a given time constraint.

d. For those areas in the environmental assessment where the State cannot identify a State agency having sufficient expertise to adequately evaluate the proposal or prepare an assessment, the State should have provisions for obtaining outside consulting services. In those instances where non-governmental consultants are utilized, procedures should be established to avoid conflict of interest consistent with State law and administrative procedures.

Medical consultants recognized for their expertise in emergency medical matters, such as the Oak Ridge and Hanford National Laboratories, relating to the intake or uranium and its diagnosis thereof associated with uranium mining and milling should be identified and available to the State for advice and direct assistance.

During the budget preparation, the State should allow for funding costs incurred by the use of consultants. In addition, consultants should be available for any emergencies which

[a] It is strongly recommended that a 30-day period be provided for public review.

may occur and for which their expertise would be needed immediately.

Personnel

34. Personnel needed in the processing of the license application can be identified or grouped according to the following skills: Technical; Administrative; and Support.

a. Administrative personnel are those persons who will provide internal guides, policy memoranda, reviews and managerial services necessary to assure completion of the licensing action. Support personnel are those persons who provide secretarial, clerical support, legal, and laboratory services. Technical personnel are those individuals who have the training and experience in radiation protection necessary to evaluate the enginering and radiological safety aspects of a uranium concentrator. Current indications are that 2 to 2.75 total professional person years' effort is needed to process a new conventional mill license, in situ license, or major renewal, to meet the requirements of UMTRCA. This number includes the effort for the environmental assessment and the in-plant safety review. It also includes the use of consultants. Heap leach applications may take less time and is expected to take 1.0 to 1.5 professional staff years' effort, depending on the circumstances encountered. Current indications are that the person years effort for support and legal services should be one secretary for approximately 2 conventional mills and ½ staff years for legal services for each noncontested mill case. The impact on environmental monitoring laboratory support services is difficult to estimate but should be added into the personnel requirements.

In addition, consideration should be given to various miscellaneous post-licensing ongoing activities including the issuance of minor amendments, inspections, and environmental surveillance. It is estimated that these activities may require about 0.5 to 1 person years effort per licensed facility per year, the latter being the case for a major facility. These figures do not include manpower for Title I activitives of UMTRCA.

b. In evaluating license applications the State shall have access to necessary specialities, e.g., radiological safety, hydrology, geology and dam construction and operation.

In addition to the personnel qualifications listed in the "Guide for Evaluation of State Radiation Control Programs," Revision 3, February 1, 1980, the regulatory staff involved in the regulatory process (Radiation) should have additional training in Uranium Mill Health Physics and Environmental Assessments.

c. Personnel in agencies other than the lead agency are included in these total person year numbers. If other agencies are counted in these numbers then it shall be demonstrated that these personnel will be available on a routine and continuing basis to a degree claimed as necessary to successfully comply with the requirements of UMTRCA and these criteria. The arrangements for making such resources available shall be documented, such as an interagency memorandum of understanding and confirmed by budgetary cost centers.

Functions To Be Covered

35. The States should develop procedures for licensing, inspection, and preparation of environmental assessments.

a. *Licensing*

(1) Licensing evaluations or assessments should include in-plant radiological safety aspects in occupational or restricted areas and environmental impacts to populations in unrestricted areas from the plant.

(2) It is expected that the State will review, evaluate and provide documentation of these evaluations. Items which should be evaluated are:

(a) Proposed activities;
(b) Scope of proposed action;
(c) Specific activities to be conducted;
(d) Administrative procedures;
(e) Facility organization and radiological safety responsibilities, authorities, and personnel qualifications;
(f) Licensee audits and inspections;
(g) Radiation safety training programs for workers;
(h) Radiation safety program, control and monitoring;
(i) Restricted area markings and access control;
(j) At existing mills, review of monitoring data, exposure records, licensee audit and inspection records, and other records applicable to existing mills;
(k) Environmental monitoring;
(l) Emergency procedures, radiological;
(m) Product transportation; and
(n) Site and physical decommissioning procedures, other than tailings.
(o) Employee exposure data and bioassay programs.

b. *Environmental Assessment*

(1) The environmental evaluation should consist of a detailed and documented evaluation of the following items:

(a) Topography;
(b) Geology;
(c) Hydrology and water quality;
(d) Meteorology;
(e) Background radiation;
(f) Tailings retention system;
(g) Interim stabilization, reclamation, and Site Decommissioning Program;
(h) Radiological Dose Assessment;
(1) Source terms
(2) Exposure pathway
(3) Dose commitment to individuals
(4) Dose commitment to populations
(5) Evaluation of radiological impacts to the public to include a determination of compliance with State and Federal regulations and comparisons with background values
(6) Occupational dose
(7) Radiological impact to biota other than man
(8) Radiological monitoring programs, pre-occupational and operational
(i) Impacts to surface and groundwater, both quality and quantity;
(j) Environmental effects of accidents; and
(k) Evaluation of tailings management alternatives in terms of regulations.

(2) The States are encouraged to examine the need to expand the scope of the assessment into other areas such as:

(a) Ecology;
(b) Environmental effects of site preparation and facility construction on environment and biota;
(c) Environmental effects of use and discharge of chemicals and fuels; and
(d) Economic and social effects.

c. *Inspections*

(1) As a minimum, items which should be inspected or included during the inspection of a uranium mill should adhere to the items evaluated in the in-plant safety review. The principal items recommended for inspection are:

(a) Administration;
(b) Mill circuit, including any additions, deletions, or circuit changes;
(c) Accidents/incidents;
(d) Part 19 or equivalent requirements of the State;
(e) Action taken on previous findings;
(f) A mill tour to determine compliance with regulations, and license conditions;
(g) Tailings waste management in accordance with regulations and license conditions (see NRC Reg. Guide 3.11.1);
(h) Records;
(i) Respiratory protection in accordance with license conditions or 10 CFR Part 20.
(j) Effluent and environmental monitoring;
(k) Training programs;
(l) Transportation and shipping;
(m) Internal review and audit by management;

(n) Exit interview; and

(o) Final written report documenting the results of the inspection and findings on each item.

(2) In addition, the inspector should perform the following:

(a) Independent surveys and sampling.

(3) Additional guidance is contained in appropriate NRC regulatory and inspection guides. A *complete* inspection should be performed at least once per year.

d. *Operational Data Review*

(1) In addition to the reporting requirements required by the regulations or license conditions, the licensee will submit in writing to the regulatory agency within 60 days after January 1 and July 1 of each year, reports specifying the quantity of each of the principal radionuclides released to unrestricted areas in liquid and in gaseous effluents during the previous six months of operation. This data shall be reported in a manner that will permit the regulatory agency to confirm the potential annual radiation doses to the public.

(2) All data from the radiological and non-radiological environmental monitoring program will also be submitted for the same time periods and frequency. The data will be reported in a manner that will allow the regulatory agency to conform the dose to receptors.

Instrumentation

30. The State should have available both field and laboratory instrumentation sufficient to ensure the licensee's control of materials and to validate the licensee's measurements.

a. The State will submit its list of instrumentation to the NRC for review. Arrangements should be made for calibrating such equipment.

b. Laboratory-type instrumentation should be available in a State agency or through a commercial service which has the capability for quantitative and qualitative analysis of radionuclides associated with natural uranium and its decay chain, primarily: U-238, Ra-226, Th-230, Pb-210, and Rn-222, in a variety of sample media such as will be encountered from an environmental sampling program.

Analysis and data reduction from laboratory analytical facilities should be available to the licensing and inspection authorities in a timely manner. Normally, the data should be available within 30 days of submittal. State acceptability of quality assurance (QA) programs should also be established for the analytical laboratories.

c. Arrangements should also be completed so that a large number of samples in a variety of sample media resulting from a major accident can be analyzed in a time frame that will allow timely decisions to be made regarding public health and safety.

d. Arrangements should be made to participate in the Environmental Protection Agency quality assurance program for laboratory performance.

Dated at Washington, D.C. this 16th day of January, 1981.

For the Nuclear Regulatory Commission.

John C. Hoyle,

Assistant Secretary of the Commission.

[FR Doc. 81-2029 Filed 1-22-81; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards; Proposed Meetings

In order to provide advance information regarding proposed meetings of the ACRS Subcommittees and Working Groups, and of the full Committee, the following preliminary schedule reflects the current situation, taking into account additional meetings which have been scheduled and meetings which have been postponed or cancelled since the last list of proposed meetings published Dec. 22, 1980 (45 FR 84182). Those meetings which are definitely scheduled have had, or will have, an individual notice published in the Federal Register approximately 15 days (or more) prior to the meeting. Those Subcommittee and Working Group meetings for which it is anticipated that there will be a portion or all of the meeting open to the public are indicated by an asterisk (*). It is expected that the sessions of the full Committee meeting designated by an asterisk (*) will be open in whole or in part to the public. ACRS full Committee meetings begin at 8:30 a.m. and Subcommittee and Working Group meetings usually begin at 8:30 a.m. The time when items listed on the agenda will be discussed during full Committee meetings and when Subcommittee and Working Group meetings will start will be published prior to each meeting. Information as to whether a meeting has been firmly scheduled, cancelled, or rescheduled, or whether changes have been made in the agenda for the February 1981 ACRS full Committee meeting can be obtained by a prepaid telephone call to the Office of the Executive Director of the Committee (telephone 202/634-3267, ATTN: Mary E. Vanderholt) between 8:15 a.m. and 5:00 p.m., Easter Time.

ACRS Subcommittee Meetings

**Fort St. Vrain*, January 27, 1981, at site, near Longmont, CO. The Subcommittee will review operating experience, degree of success in eliminating the core power fluctuations, core performance (fuel and structural), plans for testing and operation at levels above 70% of rated power and plans for future operations, modifications, refueling, and shift manning requirments. Notice of this meeting was published Jan. 12.

**Safety Philosophy, Technology and Criteria*, January 28, 1981, Los Angeles, CA. The Subcommittee will discuss requirements for new (beyond Near-Term Construction Permit) reactor plants. Notice of this meeting was published Jan. 14.

**Extreme External Phenomena*, January 29–30, 1981, Los Angeles, CA. The Subcommittee will discuss the status of the Seismic Safety Margins Program. Notice of this meeting was published Jan. 14.

**San Onofre 2 and 3*, January 31, 1981, Los Angeles, CA. The Subcommittee will meet to review the seismology and geology related items for San Onofre Units 2 and 3 for an Operating License. Notice of this meeting was published Jan. 15.

**Regulatory Activities*, February 3, 1981, Washington, DC. The Subcommittee will discuss proposed Regulatory Guides and Regulations. Notice of this meeting was published Jan. 19.

**Plant Features Important to Safety*, February 3, 1981, Washington, DC. The Subcommittee will discuss the NRC definitions of the terms "safety grade", "safety related" and "important to safety" as developed for testimony related to the Three Mile Island Unit 1 restart, as well as review the generic implications of the use of these definitions in the licensing process. Notice of this meeting was published Jan. 19.

**NRC Safety Research Program*, February 4, 1981, Washington, DC. The Subcommittee will discuss NRC's long-range safety research plan and ACRS comments on the Office of Nuclear Regulatory Research response to ACRS recommendations in NUREG-0090. Notice of this meeting was published Jan. 21.

**Safety Philosophy, Technology and Criteria*, February 4, 1981, Washington, DC. The Subcommittee will discuss the proposed Near-Term Construction Permit. Notice of this meeting was published Jan. 21.

**Reactor Radiological Effects*, February 5, 1981, (1:00 p.m.), Washington, DC. The Subcommittee is to review and comment on the NRC Staff's paper to the NRC Commissioners on the current status of thinking and

research related to iodine releases and accident source terms. Notice of this meeting was published Jan. 22.

**Advanced Reactors*, February 12–13, 1981, Chicago, IL. The Subcommittee will discuss matters relating to the development of LMFBR safety design criteria.

**San Onofre Units 2 and 3*, February 19, 1981, Los Angeles, CA. The Subcommittee will discuss nonseismic, plant-related items for the Operating License review.

**Summer Plant Operating Licensing Review*, February 26–27, 1981, near site—Columbia, SC. The Subcommittee will continue review of the Operating License application. Notice of this meeting was published Dec. 22.

**Three Mile Island, Unit 2*, March 5–6, 1981 (tentative), Washington, DC. The Subcommittee will review the status of decontamination at TMI–2 and the mode for interaction between the ACRS and the Three Mile Island Advisory Panel. Notice of the meeting was published Dec. 22.

**Three Mile Island, Unit 1*, March 5–6, 1981 (tentative), Washington, DC. The Subcommittee will review the modifications made to TMI–1 in preparation for a restart following the TMI–2 certification process. Notice of this meeting was published Dec. 22.

**Transportation of Radioactive Materials*, March 10, 1981 (tentative), Washington, DC. The Subcommittee will begin a review of the transportation certification process of the NRC Transportation Certification Branch. Notice of this meeting was published Dec. 22.

**Regulatory Activities*, March 10, 1981 (tentative), Washington, DC. The Subcommittee will discuss proposed Regulatory Guides.

**NRC Safety Research Program*, March 11, 1981, Washington, DC. The Subcommittee will discuss NRC's Draft Long-Range Research Plan (NUREG–0740) and ACRS comments on the Office of Nuclear Regulatory Research response to ACRS Recommendations listed in NUREG–0699.

**Generic Items*, March 11, 1981, Washington, DC. The Subcommittee will compare items in order to ensure that ACRS generic items are receiving adequate attention by the NRC Staff; examine methods to combine the ACRS list with the NRC's program for dealing with generic items; and consider means for dealing with future generic items given such a merger. Notice of this meeting was published Dec. 22.

**Site Evaluation*, March 19–20, 1981 (tentative), Washington, DC. The Subcommittee will discuss the latest developments in emergency planning and siting rulemaking.

ACRS Full Committee Meetings

February 5–7, 1981

A. **Near Term Construction Permits*—requirements for NTCPs.

B. **NRC Safety Research Program*—ACRS Annual Report to the U.S. Congress and NRC Long-Range Program Plans.

C. **San Onofre Nuclear Generating Station Units 2 and 3*—Operating License review (seismic design).

D. **Report of ACRS Subcommittees on Safety Related Matters*—discuss matters being reviewd by ACRS Subcommittees including radioactive waste management and disposal, impact of control system failures on nuclear power plant safety, impact of plant operating experience on resolution of anticipated transients without scram, and proposed NRC Regulatory Guides.

E. **Review of Fission Product Source Term*—review of source term used in the evaluation of reactor safety and design/siting of nuclear facilities.

March 12–14, 1981: Agenda to be announced.

April 9–11, 1981: Agenda to be announced.

Dated: January 16, 1981.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 81-2430 Filed 1-22-81; 8:45 am]

BILLING CODE 7590-01-M

DEPARTMENT OF STATE

Office of the Secretary

[Public Notice No. 737]

El Paso, Tex.; Application for Bridge Permit

Notice is hereby given that the Department of State has received an application for a permit authorizing the replacement and expansion of the Zaragosa Bridge between El Paso, Texas and Ciudad Juarez, Chihuahua, Mexico. The application has been filed by the City of El Paso, Texas, which proposes to construct, operate and maintain two three-lne bridges for vehicular and pedestrian traffic at the site of the existing bridge in the Ysleta area of El Paso. The existing bridge is owned and operated by the U.S. Section of the International Boundary and Water Commission.

The Department's jurisdiction with respect to this application is based upon Executive Order 11423, dated August 16, 1968, and the International Bridge Act of 1972 (Pub. L. 92–343, 86 Stat. 731, approved September 26, 1972).

As required by E. O. 11423, the Department of State is circulating this application to concerned agencies for comment. In addition, the Office of Environment and Health of the Department of State is reviewing an assessment of the environmental effects of the proposal, which has been submitted as part of the application, in order to determine if an environmental impact statement will be required.

Interested persons may submit their views regarding this application in writing by February 23, 1981 to Mr. John R. Crook, Assistant Legal Adviser for Economic and Business Affairs, Room 6420, Department of State, 2201 C Street, NW, Washington, D.C. 20520.

The application and related documents made part of the record to be considered by the Department of State in connection with this application are available for inspection and copying in the Office of the Assistant Legal Adviser for Economic and Business Affairs during normal business hours.

Any questions relating to this notice may be addressed to Mr. Crook at the above address, (202–632–0242) or to Mr. David P. Stewart (202–632–1572).

Dated: January 19, 1981.

John R. Crook,

Assistant Legal Adviser for Economic and Business Affairs.

[FR Doc. 81-2440 Filed 1-22-81; 8:45 am]

BILLING CODE 4710-01-M

DEPARTMENT OF THE TREASURY

[Dept. Circular Public Debt Series—No. 1–81]

Treasury Notes of January 31, 1983, Series M–1983

January 15, 1981.

1. Invitation for Tenders

1.1. The Secretary of the Treasury, under the authority of the Second Liberty Bond Act, as amended, invites tenders for approximately $4,500,000,000 of United States securities, designated Treasury Notes of January 31, 1983, Series M–1983 (CUSIP No. 912827 LM 2). The securities will be sold at auction, with bidding on the basis of yield. Payment will be required at the price equivalent of the bid yield of each accepted tender. The interest rate on the securities and the price equivalent of each accepted bid will be determined in the manner described below. Additional amounts of these securities may be issued to Government accounts and Federal Reserve Banks for their own account in exchange for maturing

Treasury securities. Additional amounts of the new securities may also be issued at the average price to Federal Reserve Banks, as agents for foreign and international monetary authorities, to the extent that the aggregate amount of tenders for such accounts exceeds the aggregate amount of maturing securities held by them.

2. Description of Securities

2.1. The securities will be dated February 2, 1981, and will bear interest from that date, payable on a semiannual basis on July 31, 1981, and each subsequent 6 months on January 31 and July 31 until the principal becomes payable. They will mature January 31, 1983, and will not be subject to call for redemption prior to maturity.

2.2. The income derived from the securities is subject to all taxes imposed under the Internal Revenue Code of 1954. The securities are subject to estate, inheritance, gift, or other excise taxes, whether Federal or State, but are exempt from all taxation now or hereafter imposed on the principal or interest thereof by any State, any possession of the United States, or any local taxing authority.

2.3. The securities will be acceptable to secure deposits of public monies. They will not be acceptable in payment of taxes.

2.4. Bearer securities with interest coupons attached, and securities registered as to principal and interest, will be issued in denominations of $5,000, $10,000, $100,000, and $1,000,000. Book-entry securities will be available to eligible bidders in multiples of those amounts. Interchanges of securities of different denominations and of coupon, registered, and book-entry securities, and the transfer of registered securities will be permitted.

2.5. The Department of the Treasury's general regulations governing United States securities apply to the securities offered in this circular. These general regulations include those currently in effect, as well as those that may be issued at a later date.

3. Sale Procedures

3.1. Tenders will be received at Federal Reserve Banks and Branches and at the Bureau of the Public Debt, Washington, D.C. 20226, up to 1:30 p.m., Eastern Standard time, Wednesday, January 21, 1981. Noncompetitive tenders as defined below will be considered timely if postmarked no later than Tuesday, January 20, 1981.

3.2. Each tender must state the face amount of securities bid for. The minimum bid is $5,000 and larger bids must be in multiples of that amount. Competitive tenders must also show the yield desired, expressed in terms of an annual yield with two decimals, e.g., 7.11%. Common fractions may not be used. Noncompetitive tenders must show the term "noncompetitive" on the tender form in lieu of a specified yield. No bidder may submit more than one noncompetitive tender and the amount may not exceed $1,000,000.

3.3. All bidders must certify that they have not made and will not make any agreements for the sale or purchase of any securities of this issue prior to the deadline established in Section 3.1. for receipt of tenders. Those authorized to submit tenders for the account of customers will be required to certify that such tenders are submitted under the same conditions, agreements, and certifications as tenders submitted directly by bidders for their own account.

3.4. Commercial banks, which for this purpose are defined as banks accepting demand deposits, and primary dealers, which for this purpose are defined as dealers who make primary markets in Government securities and report daily to the Federal Reserve Bank of New York their positions in and borrowings on such securities, may submit tenders for account of customers if the names of the customers and the amount for each customer are furnished. Others are only permitted to submit tenders for their own account.

3.5. Tenders will be received without deposit for their own account from commercial banks and other banking institutions; primary dealers, as defined above; Federally-insured savings and loan associations; States, and their political subdivisions or instrumentalities; public pension and retirement and other public funds; international organizations in which the United States holds membership; foreign central banks and foreign states; Federal Reserve Banks; and Government accounts. Tenders from others must be accompanied by full payment for the amount of securities applied for (in the form of cash, maturing Treasury securities, or readily-collectible checks), or by a payment guarantee of 5 percent of the face amount applied for, from a commercial bank or a primary dealer.

3.6. Immediately after the closing hour, tenders will be opened, followed by a public announcement of the amount and yield range of accepted bids. Subject to the reservations expressed in Section 4, noncompetitive tenders will be accepted in full, and then competitive tenders will be accepted, starting with those at the lowest yields, through successively higher yields to the extent required to attain the amount offered. Tenders at the highest accepted yield will be prorated if necessary. After the determination is made as to which tenders are accepted, a coupon rate will be established, on the basis of a ⅛ of one percent increment, which results in an equivalent average accepted price close to 100.000 and a lowest accepted price above the original issue discount limit of 99.750. That rate of interest will be paid on all of the securities. Based on such interest rate, the price on each competitive tender allotted will be determined and each successful competitive bidder will be required to pay the price equivalent to the yield bid. Those submitting noncompetitive tenders will pay the price equivalent to the weighted average yield of accepted competitive tenders. Price calculations will be carried to three decimal places on the basis of price per hundred, e.g., 99.923, and the determinations of the Secretary of the Treasury shall be final. If the amount of noncompetitive tenders received would absorb all or most of the offering, competitive tenders will be accepted in an amount sufficient to provide a fair determination of the yield. Tenders received from Government accounts and Federal Reserve Banks will be accepted at the price equivalent to the weighted average yield of accepted competitive tenders.

3.7. Competitive bidders will be advised of the acceptance or rejection of their tenders. Those submitting noncompetitive tenders will only be notified if the tender is not accepted in full, or when the price is over par.

4. Reservations

4.1. The Secretary of the Treasury expressly reserves the right to accept or reject any or all tenders in whole or in part, to allot more or less than the amount of securities specified in Section 1, and to make different percentage allotments to various classes of applicants when the Secretary considers it in the public interest. The Secretary's action under this Section is final.

5. Payment and Delivery

5.1. Settlement for allotted securities must be made at the Federal Reserve Bank or Branch or at the Bureau of the Public Debt, wherever the tender was submitted. Settlement on securities allotted to institutional investors and to others whose tenders are accompanied by a payment guarantee as provided in Section 3.5. must be made or completed on or before Monday, February 2, 1981. Payment in full must accompany tenders submitted by all other investors. Payment must be in cash; in other funds immediately available to the Treasury; in Treasury bills, notes, or bonds (with

all coupons detached) maturing on or before the settlement date but which are not overdue as defined in the general regulations governing United States securities; or by check drawn to the order of the institution to which the tender was submitted, which must be received from institutional investors no later than Friday, January 30, 1981. When payment has been submitted with the tender and the purchase price of allotted securities is over par, settlement for the premium must be completed timely, as specified in the preceding sentence. When payment has been submitted with the tender and the purchase price is under par, the discount will be remitted to the bidder. Payment will not be considered complete where registered securities are requested if the appropriate identifying number as required on tax returns and other documents submitted to the Internal Revenue Service (an individual's social security number or an employer identification number) is not furnished. When payment is made in securities, a cash adjustment will be made to or required of the bidder for any difference between the face amount of securities presented and the amount payable on the securities allotted.

5.2. In every case where full payment has not been completed on time, an amount of up to 5 percent of the face amount of securities allotted, shall, at the discretion of the Secretary of the Treasury, be forfeited to the United States.

5.3. Registered securities tendered in payment for allotted securities are not required to be assigned if the new securities are to be registered in the same names and forms as appear in the registrations or assignments of the securities surrendered. When the new securities are to be registered in names and forms different from those in the inscriptions or assignments of the securities presented, the assignment should be to "The Secretary of the Treasury for (securities offered by this circular) in the name of (name and taxpayer identifying number)." If new securities in coupon form are desired, the assignment should be to "The Secretary of the Treasury for coupon (securities offered by this circular) to be delivered to (name and address)." Specific instructions for the issuance and delivery of the new securities, signed by the owner or authorized representative, must accompany the securities presented. Securities tendered in payment should be surrendered to the Federal Reserve Bank or Branch or to the Bureau of the Public Debt, Washington, D.C. 20226. The securities must be delivered at the expense and risk of the holder.

5.4. If bearer securities are not ready for delivery on the settlement date, purchasers may elect to receive interim certificates. These certificates shall be issued in bearer form and shall be exchangeable for definitive securities of this issue, when such securities are available, at any Federal Reserve Bank or Branch or at the Bureau of the Public Debt, Washington, D.C. 20226. The interim certificates must be returned at the risk and expense of the holder.

5.5. Delivery of securities in registered form will be made after the requested form of registration has been validated, the registered interest account has been established, and the securities have been inscribed.

6. General Provisions

6.1. As fiscal agents of the United States, Federal Reserve Banks are authorized and requested to receive tenders, to make allotments as directed by the Secretary of the Treasury, to issue such notices as may be necessary, to receive payment for and make delivery of securities on full-paid allotments, and to issue interim certificates pending delivery of the definitive securities.

6.2. The Secretary of the Treasury may at any time issue supplemental or amendatory rules and regulations governing the offering. Public announcement of such changes will be promptly provided.

Supplementary Statement

The announcement set forth above does not meet the Department's criteria for significant regulations and, accordingly, may be published without compliance with the Departmental procedures applicable to such regulations.

Paul H. Taylor,

Fiscal Assistant Secretary.

[FR Doc. 81-2372 Filed 1-19-81; 2:28 pm]

BILLING CODE 4810-40-M

VETERANS ADMINISTRATION

Education Benefits; Change of Program; Unsatisfactory Progress or Conduct

AGENCY: Veterans Administration.

ACTION: Request for public comments.

SUMMARY: The Veterans Administration is publishing for public comment new and revised statements of procedures which have been adopted by the agency for implementation when a veteran or eligible person makes a second or subsequent change in his or her program of education and when the veteran or eligible person makes unsatisfactory progress or conduct. These statements will better acquaint veterans, eligible persons, educational institutions and the public at large with the way in which decisions will be made in this area.

DATE: Comments must be received on or before February 19, 1981.

ADDRESS: Send written comments to: Administrator of Veterans Affairs (271A), Veterans Administration, 810 Vermont Avenue, N.W., Washington, D.C. 20420.

Comments will be available for inspection at the address shown above during the normal business hours until March 2, 1981.

FOR FURTHER INFORMATION CONTACT: June C. Schaeffer, Assistant Director for Policy and Program Administration, Education Service, Department of Veterans Benefits, Veterans Administration, 810 Vermont Avenue, NW., Washington, DC 20420 (202-389-2092).

SUPPLEMENTARY INFORMATION: This publication contains DVB Circulars 22-80-37 and 22-80-38. These circulars deal with procedures for use in determining whether a veteran or eligible person may receive educational assistance following a second or subsequent change in program of education or after unsatisfactory progress.

These circulars have been distributed through normal channels. The Veterans Administration is implementing the procedures contained in the circulars. All comments received will be reviewed and use in changing the circulars, where necessary.

Additional Comment Information

Interested persons are invited to submit written comments, suggestions or objections regarding this document to the Administrator of Veterans Affairs (271A), Veterans Administration, 810 Vermont Avenue, NW., Washington, DC 20420. All written comments received will be available for public inspection at the above address only between the hours of 8 am and 4:30 pm, Monday through Friday (except holidays) until March 2, 1981. Any person visiting the Veterans Administration Central Office in Washington, DC for the purpose of inspecting any such comments will be received by the Central Office Veterans Services Unit in room 122. Such visitors to a VA field station will be informed that the records are available for inspection only in Central Office and furnished the address and the above room number.

Approved: January 13, 1981.

By direction of the Administrator.

Rufus H. Wilson,

Deputy Administrator.

Department of Veterans Benefits,
Veterans Administration,
Washington, D.C. 20420, DVB
Circular 22-80-37, October 23, 1980.

Second and Subsequent Change of Program

1. Background

a. Title 38, United States Code, section 1791, authorizes the Administrator to approve changes of program for veterans/servicepersons under chapters 32 and 34, and for eligible persons under chapter 35. Before approval of a second or subsequent change of program, the Administrator must find that the proposed program is suitable to the aptitudes, interests and abilities of the veteran or other eligible person.

b. In the past, Veterans Administration regulations have prescribed that a VA counseling psychologist evaluate the suitability of a second or subsequent change of program. A revision of VA regulations has eliminated the requirement that these evaluations be made through VA counseling for trainees under chapters 32 and 34, and for eligible persons under chapter 35.

c. Even though the revision of VA regulations eliminates the requirement for VA counseling in most circumstances, VA counseling will continue to be provided to eligible veterans and servicepersons under chapters 32 and 34, and to eligible persons under chapter 35, upon their request.

d. The first change of program for an eligible son or daughter under chapter 35 will now be processed in the same manner as the first change of program for a veteran student. Unless a chapter 35 trainee is requesting a change to or from a program of special restorative or specialized vocational training, the request for a first change of program does not require the review of a VA counseling psychologist.

2. Purpose

a. This circular contains instructions and procedures to be used by Adjudication Division personnel when making determinations concerning requests for a second or subsequent change of program from veterans, servicepersons, or other eligible persons.

(1) The procedures described in later paragraphs are intended to ensure the statutory requirements of 38 U.S.C. 1791 are fulfilled. The reviews and determinations will be made by an adjudicator (GS-9 or higher grade employee). Technical assistance will be provided by the VR&C (Vocational Rehabilitation & Counseling) staff as necessary.

(2) These procedures will permit the adjudicator to make a determination based on evidence which, in many cases, will already be of record with the VA. In other cases, additional information that may be needed for an adjudicative determination is readily available to the claimant and can be promptly submitted. The procedures have the potential for significantly reducing the overall time required to complete action on requests for second and subsequent changes of program.

b. Pending modification of existing published procedures, the provisions of this circular will be followed.

3. Change of Program

a. A change of program is a change in a student's educational, professional or vocational objective which requires a like change in the courses which must be pursued in order to attain the new objective.

b. If one program is generally recognized as a prerequisite to, or required for entry into another program, there is no change of program upon entering the more advanced or higher level program.

c. A student may elect to change his or her objective without incurring a change of program if substantially all credits and experience previously acquired are transferable to the new program. The most common example of such an adjustment is a change from one degree objective to another, when no material loss of credit occurs because the courses the student has completed are mainly the general education courses that would be required for either degree (38 C.F.R. 21.4234).

4. Adjudicative Actions Following Receipt of a Request for a Second Change of Program

a. When the request is for a second change of program, and the claimant has not *requested* VA counseling, the claims or DEA folder will be carefully reviewed to determine whether evidence is already of record with the VA that will support a finding the proposed new program is probably suitable. Supportive evidence includes, but is not limited to, one or more of the following:

(1) A report from previous VA counseling which indicates the veteran or eligible person has an aptitude for training similar to that provided by the program being requested.

(2) The new program follows a pattern which complements other training previously pursued by the veteran or eligible person. For example, a veteran's second program (first change) was on-the-job training to become a police officer. He/she has successfully completed the program and now requests approval to pursue an associate's degree program in Police Science.

(3) The veteran's or eligible person's request is for approval of an apprenticeship or an established on-the-job training program already approved for VA benefits and he/she has been accepted into the training program.

(4) The veteran or eligible person is requesting to reenter his/her original program, in which he/she was making satisfactory progress prior to entering another program.

(5) The veteran's or eligible person's request is accompanied by a written recommendation from his/her institutional academic adviser, based on grade evaluations and counseling sessions with the student, that successful completion of the new program is probable (i.e., the program is suitable).

b. In cases such as those described in subparagraph a (1) through (5) above, the request for second change of program may be approved without obtaining additional evidence from the claimant if progress in the previous program was satisfactory at the time of interruption. Whenever the request is for resumption of benefits following termination for unsatisfactory progress or conduct, the cause for the earlier unsatisfactory progress or conduct must be found to have been removed. This may necessitate further development in accordance with the procedures contained in DVB Circular 22-80-38, Unsatisfactory Progress or Conduct.

c. If VA counseling has been requested by a trainee under chapter 32, 34 or 35, VA Form 22-1944, Eligibility Entitlement and Counseling Information, will be completed and forwarded to the VR&C Division in accordance with M22-2, part II, paragraph 5.07. Further development will not be undertaken by the adjudicator in these cases, since the VR&C Division will provide a recommendation concerning a suitable program after counseling the claimant.

d. When VA counseling has not been requested, and the evidence of record with the VA is not adequate to determine the suitability of a program, or when evidence suggests the proposed program may not be suitable, the claimant will be asked to furnish additional evidence. A dictated letter will be sent after all evidence of record has been thoroughly reviewed so that the claimant is not asked to furnish information that will be redundant.

Exhibit B to this circular provides typical questions that may be included in the letter to the claimant.

(1) Although claimants will not be required to obtain non-VA counseling nor to submit the results of such counseling, this type of information is very useful in resolving the question of program suitability, and claimants should be encouraged to submit such evidence if it is available. If evidence of non-VA counseling is not submitted, the adjudicative determination will be based on other types of information that are submitted by the claimant.

(2) A development letter should *always* solicit the claimant's reasons for believing why the requested program is suitable to his/her aptitudes, interests, and abilities.

(3) A development letter (see exhibit A for sample) will offer another opportunity and invitation for the claimant to request VA counseling. This will be accomplished, in part, by enclosing VA Form 22–1902, Counseling Record-Personal Information, with the letter.

(4) Due to the time required to conduct a thorough review of the claimant's folder and to compose an appropriate letter, adjudicators are authorized to record an EPC (end product code) 220 when the development letter is dispatched.

(5) A diary suspense period of 30 days will be established for the claimant's response. Control will be maintained under EPC 220. If the claimant has not replied to the request after 30 days, the claim will be administratively disallowed and the end product may be recorded.

e. When the claimant replies to the request, all evidence of record will again be reviewed.

(1) If the claimant submits his/her own statement demonstrating that he/she has substantive reasons for believing the program is suitable, the adjudicator may approve the request.

(2) If evidence of a technical nature (e.g., aptitude test results, achievement test scores, counseling writeups, etc.) is received the adjudicator will, if appropriate, request an interpretation of the technical evidence from a VA counseling psychologist.

(a) The evidence and the claims of DEA folder will be referred to the VR&C Division under cover of VA Form 3230. It will be annotated with a request for VR&C's interpretation of the technical evidence.

(b) Counseling psychologists will review these cases within 2 workdays of receipt in the VR&C Division. The counseling psychologist's interpretation(s) of the technical evidence wil be prepared on VA Form 119, Report of Contact, and promptly transmitted to the Adjudication Division. Time spent by the VR&C staff to provide these interpretations will be reported as "Other Measured Hours."

(3) If VA Form 22–1902 is returned by a trainee under chapter 32, 34 or 35 as a request to receive VA counseling, referral to VR&C will be made in accordance with the procedure outlined in M22–2, part II, paragraph 5.07.

(a) If the claimant completes VA counseling, the VR&C Division will forward a recommendation regarding the suitability of the program to the Adjudication Division using VA Form 22–1902k or 22–1902l.

(b) If the claimant does not subsequently report for VA counseling, the claim will be returned to the Adjudication Division with the counseling psychologist's recommendation regarding the suitability of the program based on available information. The adjudicator will then proceed with an adjudicative determination and take appropriate action to approve or disallow the request. The EPC 220 will be recorded upon final disposition of the request.

5. Requests for a Change of Program After the Second Change

a. A change of program after the second change (i.e., a request for a fourth or subsequent program) may be approved for a veteran or other eligible person *only* if a subsequent change is necessitated by circumstances beyond the control of the claimant.

b. If such circumstances necessitate a change of program after the second change, approval of the request *will be contingent* upon finding the requested program is suitable to the claimant's interests, aptitudes, and abilities.

c. After receipt of a request for a fourth (or later) program of eduction or training, evidence to satisfy both issues, necessity and suitability, will be requested concurrently from the claimant, if adequate evidence is not already of record.

d. Acceptable reasons for the necessity of an additional change of program include, but are not limited to, the following situations:

(1) The claimant has incurred a disability which prevents employment in an occupation for which the claimant trained previously.

(2) Health reasons have forced the claimant to move to a new location where training in the program previously pursued is not available within normal commuting distance.

(3) Unexpected financial difficulties prevent completion of the prior program because of the cost to complete the program.

(4) An additional program is necessary to complement the prior program in order to qualify the claimant for employment in the occupational field of the claimant's approved final objective.

(5) The claimant is unable to complete his/her prior program because it was discontinued by the school, and the same program is not offered by another school within normal commuting distance.

e. The necessity for an additional change of program involves consideration of the situations described above as they relate to the claimant's third program (second change), or the last program that was pursued by the claimant if an additional change has already been approved.

f. If a claimant does not submitacceptable evidence of extenuating circumstances that would necessitate the additional change of program, the request will be denied without consideration of the suitability of the requested program.

g. If acceptable reasons establish that an additional change of program is necessitated by circumstances beyond the control of the claimant, final approval or disapproval of the request will be dependent upon the adjudicator's determination of program suitability.

6. Award and Related Procedures

a. If the adjudicator finds the proposed program is suitable, or has received a favorable recommendation from the counseling psychologist, the claimant will be informed of the approval of his/her program.

(1) Notification to the claimant will be by VA Form 22–1993a or by dictated letter. VA Form 22–1999, Enrollment Certification, will also be sent, if not already of record.

(2) It is imperative the notice to the claimant approving a second change or subsequent change of program makes clear that upon his or her acceptance and negotiation of a benefit payment, no further change of program can be approved, even if a new program is shown to be suitable to his/her aptitudes, interests, and abilities, unless an additional change is necessitated by circumstances beyond his/her control [38 U.S.C. 1791(c)].

b. If all evidence necessary for an award of benefits is of record when a favorable determination regarding suitability is made, an award will be authorized concurrently with issuance of the notice of approval to the claimant.

7. Disallowances

a. A request for a second (or subsequent) change of program will be disallowed when evidence establishes that the requested program is not suitable, when evidence reasonably suggests the requested program is intended for avocational, recreational or personal enrichment purposes, or when the evidence submitted by the claimant is *clearly insufficient* to determine suitability. Possible reasons for finding a program not suitable are:

(1) the claimant has previously completed a program objective, the requested program is unrelated to any previous training, and the claimant does not present a plan for using the proposed training to qualify for, or to obtain, new employment.

(2) A claimant's request is to pursue a program which will result in an academic degree of a lower level than previously completed, and the claimant does not demonstrate that the additional training would supplement and/or enhance the prior degree nor does the claimant show the new degree would provide an alternative occupational opportunity.

(3) The claimant's prior programs were of the same general nature as the program requested, and the prior programs were pursued only briefly before the claimant interrupted training. For example, a veteran initially pursued a program in Air Conditioning and Refrigeration for 3 months, then terminated. He/she used his/her first change of program to pursue a course in small engine repair, withdrawing from that program after 4 months. The request for a second change of program is to pursue a program in automotive mechanics. If the veteran has not consulted a vocational guidance counselor, and has not submitted a counselor's recommendation that such a program is suitable, it may reasonably be concluded that training in a mechanical field is not suitable to the claimant's interests and aptitudes.

(4) A written report from the claimant's school academic adviser to the effect that the successful pursuit for the new program is questionable based on demonstrated academic ability.

b. A dictated letter of disallowance (see exhibit C for example) to the claimant will furnish the reasons for disallowance and will summarize the evidence upon which the determination was based. A VA Form 1–4107, Notice of Procedural and Appellate Rights, will be enclosed, as will VA Form 22–1995 (22–5495 or 22–5495w) for the claimant's use in applying for a different program or for requesting VA counseling assistance in selecting a suitable educational or vocational program.

8. Miscellaneous

a. Many VA application forms, letters and other publications must be revised to reflect the new procedures contained in this circular. It will be necessary for regional offices to modify existing form letters, if possible, or to use dictated letters for development and disallowance purposes until appropriate form letters can be published.

b. Paragraphs currently used in computer-generated letters do not satisfy the requirements for properly notifying a claimant of the consequences of electing a second change of program. The adjudicator is responsible for assuring that the claimant receives adequate notification.

c. If a claimant elects to appeal the denial of a request for change of program and requests a personal hearing, the VA hearing panel may include, when appropriate, a counseling psychologist from the VR&C staff.

9. Rescissions

a. DVB Circular 22–76–8.

b. This circular is rescinded October 1, 1981.

Dorothy L. Starbuck,
Chief Benefits Director.

Exhibit A

Sample Letter—Development of Evidence for Change of Program

Dear : We have received your request for a change of your approved training objective.

A second change or program is generally the final opportunity for a student to change his or her training objective and still be eligible for VA educational assistance. Accordingly, we are required to determine whether the program you are requesting, , is suitable to your interests, aptitudes and abilities before we can take further action on your request.

Please use the enclosed VA Form 21–4138 to furnish the following information:

Also, if you received counseling from a school's academic or vocational counselor before deciding on this program, please submit a copy of the counseling report which recommends the types of training programs you should consider.

If you have not consulted your school's counselor, but you would like assistance in deciding upon a training program, please complete and return the enclosed VA Form 22–1902 and we will schedule an appointment with a professional VA counseling psychologist. Please do not return VA Form 22–1902 if you do not wish to receive VA counseling.

It is important that you reply to this letter as soon as possible, since we will not be able to take further action on your request until we receive your response.

Sincerely yours,

Adjudication Officer.

Exhibit B

Typical Information to Supplement a Request for a Second or Subsequent Change of Program

1. Adjudicators will select appropriate questions, such as those shown below, for inclusion in the development letter to the claimant.

2. General Information:

a. Home telephone number.

b. Business telephone number.

c. Please describe your present employment. Give your job title, principal duties and responsibilities.

d. What do you like most about your present employment? Like least?

e. Do you have a disability that limits the type of work you can perform?

3. Previous Use of VA Benefits:

a. What did you like most about (Title of Program), the first program for which you received VA benefits? Liked least?

b. Did you complete that program? If no, please explain.

c. What did you like most about (Title of Program), the second program for which you received VA benefits? Liked least?

d. Did you complete that program? If no, please explain.

4. Program of Education or Training Being Requested:

a. Briefly state your reasons for selecting this program, and explain why the training will be suitable to your aptitudes, interests and abilities.

b. Please specifically identify the educational, professional or vocational objective you expect to achieve after completion of this training program.

c. Briefly explain the admission standards for your program. If you have already been accepted, please furnish a copy of your admission or acceptance notification.

Exhibit C

Sample Letter—Disallowance (program suitability not established)

Dear : We have carefully reviewed your request for approval to receive VA benefits for training in a program. As we informed you in our letter dated , your request cannot be approved unless the program is shown to be suitable to your interests, aptitudes, and abilities.

The following evidence was available for our determination of the suitability of your requested program:

a. Your original application for VA benefits showing the training you received before and during military service.

b. Records of your previous training with VA assistance.

c. The supporting evidence you submitted on (date) , which included:

We regret to inform you that we are unable to approve your request for a change of program. The evidence we have received does not show your proposed new program is suited to your interests, aptitudes and abilities.

We would like to remind you again that vocational-educational counseling is

available from the VA to help you make the best use of your VA benefits. An application form is enclosed for your use to apply for a different program of education or training, or to apply for VA counseling.

If you disagree with our decision, please review the enclosed Notice of Procedural and Appellant Rights.

Sincerely yours,

Adjudication Officer.

Enclosure(s)

Department of Veterans Benefits,
Veterans Administration,
Washington, D.C. 20420, DVB
Circular 22-80-38, October 23, 1980.

Unsatisfactory Progress or Conduct

1. Background

a. Title 38, United States Code, sections 1674 and 1724, require that educational assistance benefits to veterans and other eligible persons be discontinued when the student ceases to make satisfactory progress toward completion of his or her training objective. Pertinent sections of title 38, Code of Federal Regulations, include:

(1) 21.4135(g) and 21.5130—Discontinuance dates for benefits.

(2) 21.4203(d) and 21.5200—Reports by schools.

(3) 21.4253(d), 21.4254(b) and 21.5250—Approval of programs.

(4) 21.4277, 21.4278 and 21.5270—Discontinuance because of unsatisfactory progress or conduct and reentrance requirements.

b. Both accredited and nonaccredited schools are required by law (38 U.S.C. 1775 and 1776) to have and to enforce standards of progress and conduct for their programs to be approved for VA benefits. These standards should be stated plainly in the schools catalog or bulletin. A school's policy and regulations for standards of progress and conduct must define:

(1) The school's grading system.

(2) The minimum satisfactory grade level.

(3) Conditions for interruption of training due to unsatisfactory grades or progress.

(4) A description of any probationary period.

(5) Conditions for a student's reentrance/readmission following dismissal/suspension for unsatisfactory progress.

(6) Conditions for dismissal due to unsatisfactory conduct.

c. After educational assistance benefit payments have been terminated due to unsatisfactory progress or conduct, benefits cannot be resumed unless the Veterans Administration finds the cause of the unsatisfactory progress or conduct has been removed and the program of education or training to be pursued by the veteran or eligible person is suitable to the aptitudes, interests and abilities of the student.

d. In the past, VA regulations have prescribed that recommendations regarding the removal of the cause for unsatisfactory progress or conduct and the suitability of a program would be made by a VA counseling psychologist. Those regulations have been revised to eliminate the requirement that such recommendations be developed through VA counseling.

e. Upon receipt of this circular, requests for reentry into training following unsatisfactory progress or conduct will not be referred routinely to the VR&C (Vocational Rehabilitation and Counseling) Division unless VA counseling has been requested by a trainee under chapter 32, 34 or 35. Most determinations of eligibility to reenter training will be made by the Adjudication Division without recommendations from the VR&C staff.

f. In 1976, Public Law 94-502 added a provision to 38 U.S.C. that progress would be considered unsatisfactory when a veteran or other eligible person was not progressing at a rate that would permit graduation within the approved length of a program based on the training time certified to the VA. Sections 1674 and 1724 have been amended by PL 96-466, to delete this provision in favor of reliance on schools' standards of progress.

g. Sections 1775 and 1776, 38 U.S.C., as amended by PL 94-502, require schools to maintain, publish and enforce standards of progress in order to have their programs approved for VA benefits. Oversight of schools' enforcement of their standards of progress by the SAA, VA and accrediting agencies will ensure against future abuses of VA educational assistance programs by persons who do not intend to pursue a program seriously.

2. Purpose

a. This circular provides instructions for school certifying officials and VA personnel for the termination of benefit payments due to unsatisfactory progress or conduct and for the processing of requests to reenter training under chapter 32, 34, or 35 with VA benefits after training has been interrupted due to unsatisfactory progress or conduct.

(1) If a veteran or serviceperson under chapter 32 or 34, or eligible person under chapter 35, has requested VA counseling in his/her application for resumption of benefits, the application will be referred to the VR&C Division in accordance with the procedures described in DVB Manual M22-3, part II, paragraph 5.07. A VA counseling psychologist will recommend appropriate action based on the findings and the results of VA counseling.

(2) When VA counseling has not been requested, adjudicative determinations will rely primarily upon the recommendations of the schools' academic or vocational guidance counselors, if such recommendations are available, when determining if benefit payments should be resumed after unsatisfactory progress or conduct.

b. The major portion of this circular and the examples used are devoted to institutional training. This is because past experience with the problems of unsatisfactory progress or conduct has shown they occur most often in institutional programs. In fact, unsatisfactory progress is usually defined as substandard academic performance. In spite of the focus on institutional programs, no less importance is intended for the problems of unsatisfactory progress or conduct when they occur in other types of training programs.

3. Responsibilities of Schools

a. All schools are required to maintain an academic record for each student which includes, for a veteran or other eligible person, the credit allowed toward the student's current program due to previous training and experience. The record must also show the results of each enrollment period, to include the unit courses or subjects undertaken and the final result (e.g., grade, passed, failed, withdrawn, incomplete, test results, etc.). The record must be cumulative and document the progress being made toward completion of the program.

(1) For those institutions operating on a term basis, the results for each term must be shown.

(2) For those institutions that use a narrative grading system and/or unspecified academic terms, as opposed to the traditional grading system and specified terms, the academic record must contain sufficient information to permit the recipient of a transcript to make an informed evaluation of the student's educational experience.

(3) For those schools not operating on a term basis, the record must show the student's proficiency at the various stages in the training program.

b. School officials are responsible for enforcing their established standards of progress. This will require that the school specify intervals between initial enrollment and graduation (i.e., completion) when each student's progress will be evaluated. Each such

evaluation must compare the student's progress with clearly defined progress standards such as:

(1) For programs offered on a term basis, a minimum grade average (e.g., GPA (grade point average)) or credit level that bears a reasonable relationship to final attainment of graduation requirements. It is frequently appropriate that separate evaluation be made for overall GPA and the GPA attained in courses from the student's major field of study.

(2) For programs not offered on a term basis, a minimum proficiency level expected of a student if he/she is to successfully complete the program within the number of hours of training that has been approved by the SAA (State approving agency). Measurement of a student's proficiency should be based on instructors' appraisals, graded course work, periodic testing, or other techniques that will permit an evaluation of students' progress toward satisfactory completion of the program.

c. When a student has failed to maintain prescribed standards of progress, the VA must be informed promptly so that benefit payments can be discontinued in accordance with the law. The termination date assigned by the school will be the last day of the term or other evaluation period in which the student's progress became unsatisfactory.

(1) Institutions should use VA Form 22–1999b, Notice of Change in Student Status, to report the student's termination.

(2) Flight schools, correspondence schools and training establishments may submit notice of termination on the periodic certification forms (VA forms in the 22–6553 series) used in these training programs. A letter or other written communication, providing the student's name, VA file number and the date and reason for termination should be used if a VA form is not available.

(3) The reporting official will assist the student and the VA by furnishing the reason(s) progress or conduct is considered unsatisfactory, and by describing the apparent cause(s), if known.

d. Schools that provide a period of academic probation may not continue to certify a veteran or eligible person (who remains in a probationary status) for an indefinite period of time. It is expected that institutions will report a termination due to unsatisfactory progress if a student remains on academic probation beyond 2 terms, quarters or semesters without an improvement in his/her academic standing. Clearly, if a school continues to certify the enrollment of a veteran or eligible person whose academic progress remains below graduation requirements, then the school's progress standards do not satisfy the approval criteria of 38 CFR 21.4253 and 21.4254.

e. A school's standards of progress must include specific conditions a veteran or eligible person is required to satisfy to permit recertification for VA benefits after being terminated (for benefit purposes) because of unsatisfactory progress or conduct.

(1) When a school recertifies a student's enrollment to the VA after a termination due to unsatisfactory progress or conduct, it is presumed the school has established there is a reasonable likelihood that the student will be able to maintain satisfactory progress and conduct in the future.

(2) The school's certifying official is encouraged to submit a statement with the first recertification of enrollment that describes the conditions for the student's continued certification to the VA. These conditions should prescribe the minimum performance standards to be achieved by the student during the next enrollment/evaluation period.

f. Veterans and eligible persons should be advised of the counseling services available to them at the school in order to resolve academic or other problems and to establish a meaningful plan for successful completion of their education or training. Schools and training establishments that are unable to provide counseling services are asked to remind veterans and eligible persons of the counseling services available through the VA.

4. Responsibilities of SAA's

a. The SAA must assure that a school enforces standards of progress specific enough to determine a point in time when VA benefits for veterans and other eligible persons should be discontinued due to unsatisfactory progress. The grades/results of all unit courses and subjects are to be considered when determining if progress standards are being met.

b. The SAA is responsible for suspending or withdrawing the approval of programs at any school that has not adopted or is not enforcing progress standards that reflect the academic performance or proficiency necessary for a veteran or other eligible person to satisfy graduation requirements.

5. Responsibilities of the VA Education Liaison Representative

a. The ELR (Educational Liaison Representative) is responsible for reviewing the policies and regulations for standards of progress of each approved school to ensure that they are completely and plainly stated, and that they are enforced.

b. The ELR must make prompt referral to the SAA of any evidence that a school is not enforcing its standards of progress for veterans and eligible persons.

6. VA Actions Following Notification of Unsatisfactory Progress or Conduct

a. Upon receipt of a notice of termination due to unsatisfactory progress or conduct, the Adjudication Division will act promptly to stop further payment of educational assistance benefits if the student's award extends beyond the termination date for benefits as reported by the school. It is essential that ending reason code 62, Unsatisfactory Progress, be used in the stop-payment transaction. The "folder pull" indicatory in the Target System must also be set (see DVB Circular 22–80–14).

b. A computer-generated termination letter will be allowed to issue so that the student is informed of his/her remaining entitlement and the amount of overpayment, if any.

c. Until FL 22–337 can be revised, a dictated letter will also be sent to inform the student of the consequences of unsatisfactory progress or conduct in training and the procedures that must be followed if the student wishes to have benefits resumed. A sample letter is shown as exhibit A to this circular.

7. Requests for Reentry Into Training

a. A specific request for resumption of VA benefits following an interruption due to unsatisfactory progress or conduct must be submitted by the claimant to initiate action by the VA to determine whether further payments of VA educational assistance allowance should be authorized. Requests may be submitted on VA Form 22–1995, 22–5495 or 22–5495w, as appropriate.

b. An adjudicator (GS–9 or higher grade employee) will determine whether:

(1) The cause of the unsatisfactory progress has been removed;

(2) There is a reasonable likelihood the unsatisfactory progress will not recur; and

(3) The program of education or training now being requested by the veteran or other eligible person is suitable to his or her aptitudes, interests and abilities.

c. Following termination of VA benefits because of unsatisfactory progress, the majority of requests for reentry into training have been for resumption of benefits for the same program at the same school the student has been attending. These requests are

more easily resolved, provided there have not been prior reports of unsatisfactory progress, than are requests to pursue training at another school.

(1) If the same school will again certify enrollment to the VA, and indicates on the enrollment certification that the problems relating to the unsatisfactory progress or conduct have been discussed with the student, the adjudicator will accept the school's recertification of the student's enrollment as prima facie evidence that the cause of the unsatisfactory progress has been removed. The school will monitor the student's progress and ensure that if there is a recurrence of unsatisfactory progress, it will again be promptly reported to the VA.

(2) In these cases, the suitability of the program will be conceded (in the absence of contradictory evidence) based on the student's expressed desire to continue in the same program, and the school's decision that the student's enrollment may again be certified to the VA for benefit payments.

d. When, after VA benefits have been terminated for unsatisfactory progress, a veteran or eligible person requests approval to change his/her program and/or place of training, a determination of eligibility for resumption of benefits will be based on other types of evidence, as described in the following subparagraphs.

e. The development of evidence to evaluate the issue of unsatisfactory progress must be undertaken carefully in order to prevent further frustration for the student who has been making a serious effort to maintain satisfactory progress.

f. A request for evidence from a claimant must be designed to elicit the actual cause of unsatisfactory progress and the measures taken by the student to correct the problem. However, the request must not infer or suggest the cause(s) so as to lead the claimant into furnishing a particular response. The development letter must not contain statements that offer assurance benefits will be resumed, or statements that imply it is unlikely that the claimant's request for approval of a new program or place of training will be approved. Due to the time required to compose an appropriate development letter, adjudicators are authorized to record an end product code 220 at the time the letter is dispatched.

g. Whenever a claimant requests approval to change programs and/or place of training, one of the essential items to be furnished will be a personal statement in which the student gives an explanation of the reasons progress in training has not been satisfactory. The student should also give his/her reasons for believing there is an increased likelihood progress will be satisfactory after a change of program or place of training.

h. If the new program will be pursued at an institution, through a correspondence school, or at a flight school, the student will be asked to submit:

(1) A copy of his/her transcript of grades or other equivalent evaluation that reflects the results of his/her performance through the time progress or conduct was reported as unsatisfactory.

(2) A copy of the official notification of acceptance or admission into the program being requested.

(3) A copy of the results of academic or vocational counseling or testing, if available.

(4) A copy of the school's evaluation of the student's prior training and experience made by the admissions officer, registrar or other school official. If an enrollment certification has been received, the evaluation may be indicated by the credit allowed for prior training by the school.

(5) For degree programs, a school's statement giving the special conditions, if any, which must be met for the student's full matriculation into the program.

(6) For nondegree programs, a statement from the school giving the special conditions, if any, associated with the student's enrollment.

i. If training is to be provided by an on-the-job or apprenticeship training establishment, the claimant will be asked to obtain a statement from the owner of the establishment or the personnel office, attesting to the fact the claimant has been hired, or is being considered for placement into a training program.

8. Evaluation of Evidence and Related Actions

a. The types of evidence furnished by a claimant will be evaluated together with the following evidence that may be of record in the claims or DEA (Departments' Educational Assistance) folder.

(1) Is this the first indication that the student's progress in training is unsatisfactory, or has the claimant previously been interrupted because of unsatisfactory progress or conduct in the same or a similar program? If the latter, is the cause for unsatisfactory progress or conduct substantially the same as the previous cause(s)?

(2) Has the student completed a significant portion of the same or a similar program (i.e., approximately half or more), or will the new program represent the claimant's initial attempt at that type of program?

(3) Has the student recently received VA tutorial assistance?

(4) Does the claimant's record show previous pursuit of deficency courses?

(5) Does the claimant possess a high school diploma or equivalent?

(6) Is there a record of previous Va counseling, or counseling information previously submitted by the claimant, that deals with the problem of unsatisfactory progress?

(7) Has the student recently received nonpunitive grades and submitted evidence of mitigating circumstances that could also be reasons for making unsatisfactory progress?

b. Finding that the cause for unsatisfactory progress has been removed will require a judgmental decision by Adjudication personnel. Typical causes and acceptable remedies are:

(1) The claimant's progress was unsatisfactory in a full-time academic program.

(a) The student cited the cause for unsatisfactory progress as insufficient time to complete assigments and prepare for several examinations at the same time.

1. The student proposes to reduce his/her rate of pursuit to attain satisfactory progress through enrollment in fewer courses.

2. The student plans to devote more time to his/her educational program by reducing the number of hours worked each week or by obtaining employment that allows (more) study time on the job.

3. VA tutorial assistance was claimed shortly before academic suspension or dismissal and evidence supports a conclusion that further tutoring will raise performance to an acceptable level.

(b) Evidence shows the student was unprepared academically for his/her program and he/she plans to pursue a different program that is less demanding (academically) than the previous program.

(2) The student's progress became unsatisfactory due to family, financial or health problems that, according to the claimant's own statement, have subsequently been resolved.

(3) The student has received poor grades in certain advanced or upper-division classes because necessary prerequisite courses were not completed. The student now plans to pursue the prerequisite courses, or will attend other refresher, remedial or deficiency training.

c. If the adjudicator determines that the cause for the unsatisfactory progress has probably been removed, the requested program still must be found suitable to the aptitudes, interests and abilities of the claimant before benefit payments can be resumed. Procedures for determining the suitability of a program are found in DVB Circular 22–80–37, Second or Subsequent Change of Program.

d. If the student or school submits evidence such as aptitude test results, percentile rankings, technical counseling reports, etc., the adjudicator may request the assistance of a VA counseling psychologist for an evaluation of the evidence.

(1) The evidence and the claims or DEA folder will be referred to the VR&C Division under cover of VA Form 3230. It will be annotated with a request that VR&C's interpretation of the evidence address the likelihood that the cause for unsatisfactory progress has been removed and the probable suitability of the proposed program.

(2) Counseling psychologists will review these cases within 2 workdays of receipt in VR&C. When reviews have been completed, the claims or DEA folder with the counseling psychologist's interpretation noted on VA Form 119, Report of Contact, will be returned promptly to the Adjudication Division. Time expended for these reviews will be reported as "Other Measured Hours."

e. If a claimant requests and receives VA counseling, the VR&C Division will prepare a recommendation concerning resumption of benefits on VA Form 22–1902 or 22–1902L for the Adjudication Division.

(1) If the recommendation from VR&C is in favor of resumption of benefits, conditions for continuation of benefits may be indicated by the VA counseling psychologist. If the school has reported conditions that are more restrictive than those recommended by the VR&C Division the conditions furnished by the school will apply. Notification of approval will be transmitted to the claimant by use of VA Form 22–1993a, Certificate of Eligibility, or by dictated letter.

(2) If a claimant does not report for requested VA counseling, the claim will be returned to the Adjudication Division. If there is technical evidence in the record which has a bearing on the determination to be made, the counseling psychologist will provide an interpretation of this evidence for consideration by the adjudicator. The adjudicator will then proceed with an adjudicative determination to approve or disallow the request for resumption of benefit payments.

f. Approval of payment for an interval between terms is appropriate only if the student has been permitted to reenroll in the next available term, and payment is otherwise in order for the interval.

9. Disallowances

a. A determination that the cause for unsatisfactory progress has *not* been removed will require that the claimant's request be disallowed. These determinations require the same degree of careful deliberation as a favorable determination. Justifiable reasons for disallowance are:

(1) Evidence of multiple occurrences of unsatisfactory progress in the same or a similar program.

(2) A significant portion of a program has been completed, but according to a report from the claimant's school, there is no possibility the student can raise his or her academic standing to a level that would permit graduation within reasonable period of additional training.

(3) A student has been unable to attain satisfactory progress in his/her program despite intensive tutoring.

(4) A claimant's record of prior training conclusively shows inadequate prior education for the program being attempted.

(5) Evidence submitted by the claimant is clearly insufficient for an informed determination.

b. A dictated letter of disallowance to the claimant will furnish the reasons for disallowance and will summarize the evidence upon which the determination was based. VA Form 1–4107, Notice of Procedural and Appellate Rights, will be enclosed, as will VA Form 22–1995 (22–5495) or 22–5495w) for the claimant's use in applying for a different program, for requesting VA counseling assistance, or for later reapplication for the same program after the cause for unsatisfactory progress or conduct has been removed.

10. Miscellaneous

a. The new procedures described by this circular will be incorporated into VA manuals, pamphlets, application forms, and form letters as soon as possible and practical.

b. If a claimant elects to appeal the denial of a request for resumption of benefit payments and requests a personal hearing, the VA hearing panel may include, when appropriate, a counseling psychologist from the VR&C staff.

c. Education liaison representatives will ensure that a copy of this circular is sent to each SAA.

11. Rescissions

a. Appendix O, Revised, and change 10 to DVB Circular 20–76–84; Appendix G and change 11 to DVB Circular 20–77–97; DVB Circular 20–78–1 and change 1 thereto.

b. This circular is rescinded October 1, 1981.

Dorothy L. Starbuck,
Chief Benefits Director.

Exhibit A

Termination Letter—Unsatisfactory Progress

Dear : We have terminated your award of educational assistance benefits effective *(date)*, because we have received evidence that you are not making satisfactory progress toward the completion of your objective. We are sending a separate letter to inform you of your remaining entitlement to benefits and the amount of an overpayment of benefits, if any.

Since you have not made satisfactory progress in training, we will not be able to authorize VA benefits for any future training unless we receive evidence that the cause for your unsatisfactory progress has been corrected, and evidence that the training program you select is suitable to your aptitudes, interests and abilities.

In order to apply for additional benefits, for the same program or for a different program, you should submit the enclosed application form. Please submit the following evidence with your application:

a. Your own statement describing the

reason(s) you were not able to maintain satisfactory progress in training, and how you plan to overcome the problem(s). You should explain why you believe your program is suitable for you.

b. A transcript of grades or an equivalent evaluation of the performance you have previously demonstrated in training.

c. A copy of your official notice of acceptance into your proposed training program. This should include the school's evaluation of your prior training and experience and list the special conditions, if any, you must meet to continue your enrollment at the school.

d. If you have consulted your school's academic or vocational guidance counselor, please submit a copy of the counselor's written recommendation concerning the appropriate course of action to avoid recurrence of unsatisfactory progress or conduct.

If you would like the assistance of a professionally trained VA counselor in selecting a suitable program, you can make your request on the application form. This counseling is provided free of charge.

Please do not hesitate to contact one of our benefit counselors for futher information and assistance. The VA telephone number can be found in your local telephone directory under "U.S. Government, Veterans Administration."

Sincerely yours,

———, ———,

Adjudication Officer.

Enclosure.

Note: A VA Form 1–4107, Notice of Procedural and Appellate Rights, will be enclosed.

[FR Doc. 81-2294 Filed 1-22-81; 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register
Vol. 46, No. 15
Friday, January 23, 1981

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

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1

COMMODITY FUTURES TRADING COMMISSION.

TIME AND DATE: Tuesday, January 27, 1981, 10:00 a.m.

PLACE: 2033 K Street, N.W., Washington, D.C., 5th floor hearing room.

STATUS: Open.

MATTERS TO BE CONSIDERED:

The regulation of advertising in the commodity futures industry.

Proposed rule prohibiting futures commission merchants from agreeing to limit any person's loss or guaranteeing any person against loss.

CONTACT PERSON FOR MORE INFORMATION: Jane Stuckey, 254-6314.

[S-117-81 Filed 1-21-81; 3:30 pm]

BILLING CODE 6351-01-M

2

FEDERAL DEPOSIT INSURANCE CORPORATION.

Notice of Changes in Subject Matter of Agency Meeting.

Pursuant to the provisions of subsection (e)(2) of the "Government in the Sunshine Act" (5 U.S.C. 552b(e)(2)), notice is hereby given that at its closed meeting held at 2:30 p.m. on Monday, January 19, 1981, the Corporation's Board of Directors determined, on motion of Chairman Irvine H. Sprague, seconded by Director William M. Isaac (Appointive), concurred in by Director John G. Heimann (Comptroller of the Currency), that Corporation business required the withdrawal from the agenda for consideration at the meeting, on less than seven days' notice to the public, of the following matters:

Request of Investors Bank & Trust Company, Boston, Massachusetts, for modification of conditions imposed in granting Federal deposit insurance.

Application of Home Savings Bank of Upstate New York, Albany, New York, for consent to establish a branch on Columbia Turnpike, 200 yards southwest of Sherwood Avenue, Town of East Greenbush, New York.

The Community Savings Bank, Rochester, New York, for consent to establish a branch at the southeast corner of Muller Boulevard and Jefferson Road, Town of Henrietta, New York.

The Board further determined, by the same majority vote, that Corporation business required the addition to the agenda for consideration at the meeting, on less than seven days' notice to the public, of the following matters:

Recommendations regarding the liquidation of a bank's assets acquired by the Corporation in its capacity as receiver, liquidator, or liquidating agent of those assets:

Case No. 44,629-L—Banco Economias, San German, Puerto Rico.

Memorandums and Resolution re: Centennial Bank, Philadelphia, Pennsylvania.

The Board further determined, by the same majority vote, that no earlier notice of the changes in the subject matter on the meeting was practicable; that the public interest did not require consideration of the matters added to the agenda in a meeting open to public observation; and that the matters added to the agenda could be considered in a closed meeting by authority of subsections (c)(4), (c)(6), (c)(9)(B), and (c)(10) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(4), (c)(6), (c)(9)(B), and (c)(10)).

Dated: January 19, 1981.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[S-116-81 Filed 1-21-81; 11:30 am]

BILLING CODE 6714-01-M

3

FEDERAL ENERGY REGULATORY COMMISSION.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: [26 FR 6126, January 21, 1981].

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: January 22, 1981, 10 a.m.

CHANGE IN THE MEETING: The following item has been added:

Item No., Docket No., and Company

CAG-16, ST80-59, Southern Natural Gas Company.

Lois D. Cashell,

Acting Secretary.

[FR Doc. S-114-81 Filed 1-21-81; 11:31 am]

BILLING CODE 6450-01-M

4

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM.

TIME AND DATE: 10 a.m., Wednesday, January 28, 1981.

PLACE: Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

STATUS: Open.

MATTERS TO BE CONSIDERED:

Summary Agenda

Because of its routine nature, no substantive discussion of the following item is anticipated. This matter will be voted on without discussion unless a member of the Board requests that the item be moved to the discussion agenda.

1. Proposed amendments to Regulation F to conform with SEC rules regarding safe harbor from liability for projections, corporate governance, dividend-reinvestment plans, tender offers, and going-private transactions. (Proposed earlier for public comment; Docket No. R-0327)

Discussion Agenda

2. Proposals concerning eligibility to hold NOW accounts.

3. Proposed revisions to the Board's "Rules Regarding Delegation of Authority" in the areas of Reserve Bank operations and personnel.

4. Any item carried foward from a previously announced meeting.

Note: This meeting will be recorded for the benefit of those unable to attend. Cassettes will be available for listening in the Board's Freedom of Information Office, and copies may be ordered for $5 per cassette by calling (202) 452-3684 or by writing to: Freedom of Information Office, Board of Governors of the Federal Reserve System, Washington, D.C. 20551.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204.

Dated: January 19, 1981.

James McAfee,

Assistant Secretary of the Board.

[S-113-81 Filed 1-21-81; 9:10 am]

BILLING CODE 6210-01-M

5

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: Notice forwarded to Federal Register on January 19, 1981.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 10:00 a.m., Wednesday, January 20, 1981.

CHANGES IN THE MEETING: One of the items announced for inclusion at this meeting was consideration of any agenda items carried forward from a previous meeting; the following such open item(s) was added:

1. Further consideration of the proposal to revise Regulation C (Home Mortgage Disclosure) to implement amendments to the Home Mortgage Disclosure Act.

This matter was originally announced for an open meeting on Wednesday, January 21, 1981.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 462-3204.

Dated: January 21, 1981.

James McAfee,

Assistant Secretary of the Board.

[FR Doc. S-119-81 Filed 1-21-81; 3:09 pm]

BILLING CODE 6210-01-M

6

U.S. METRIC BOARD, PUBLIC AWARENESS AND EDUCATION COMMITTEE.

TIME AND DATE: 1:30 p.m., Wednesday, February 4, 1981.

PLACE: U.S. Metric Board, 4th Floor, 1600 Wilson Boulevard, Arlington, Virginia 22209.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

Approval of minutes.
Approval of Agenda.
Report on Personnel.
Review of previous month's activity.
Review of previous Public Forum.
Report on next Public Forum.
Review of Metric Magazine program.
Philosophy of USMB Public Awareness and Education program.
Status of educational materials.
Public Forum presentations for FY 1981.
Metric Week Plan/Theme/PSAs.
Political or Editorial contest.
Report of Public Awareness and Education operating plan.
Meeting sites for FY 1982.
Review of *What About Metric.*
Discussion of T. V. PSA concepts.
Agenda for next meeting.

[S-113-81 Filed 1-21-81; 10:23 am]

BILLING CODE 6820-01-M

7

NATIONAL COUNCIL ON THE HANDICAPPED.

TIME AND DATE:
9:00 a.m.—5:00 p.m., Wednesday, February 18, 1981.
9:00 a.m.—5:00 p.m., Thursday, February 19, 1981.
9:00 a.m.—5:00 p.m., Friday, February 20, 1981.

PLACE: Capitol Holiday Inn, (202) 479-4000, 550 C Street, S.W., Washington, D.C. 200024.

STATUS: Open meeting.

MATTERS TO BE CONSIDERED:

1. Reports to Council by the Rehabilitation Service Administration (RSA) and the National Institute of Handicapped Research (NIHR).
2. Council discussion of its operating procedures and review of its draft Annual Report to the Secretary, Congress and the President.

CONTACT PERSON FOR MORE INFORMATION: Carol Berman, National Council on the Handicapped, (202) 245-3496.

Carol Berman,

Executive Secretary.

[S-119-81 Filed 1-21-81; 3:47 pm]

BILLING CODE 4000-01-M

8

NEIGHBORHOOD REINVESTMENT CORPORATION: [No. 17].

Personnel Committee Meeting

TIME AND DATE: 3:00 PM, January 27, 1981.

PLACE: Conference Room E, Sixth Floor, Federal Home Loan Bank Board, 1700 G Street, N.W., Washington, D.C.

STATUS: Open Meeting.

CONTACT PERSON FOR MORE INFORMATION: Timothy McCarthy, Associate Director, Communications, (202) 377-6815.

AGENDA: I. Approval of Neighborhood Reinvestment Corporation Group Pension Plan and Group Annuity Contract.

Donnie L. Bryant,

Secretary.

January 21, 1981.

[FR S-118-81 Filed 1-21-81; 2:22 pm]

BILLING CODE: None.

9

NUCLEAR REGULATORY COMMISSION.

DATE: Thursday, January 22 & Friday, January 23, 1981.

PLACE: Commissioners' Conference Room, 1717 H St. N.W., Washington, D.C.

STATUS: Open/Closed.

MATTERS TO BE CONSIDERED:

Thursday, January 22

10 a.m.—1. Briefing on Information Flow Concerning the TMI Accident (approximately 2 hours) (closed—exemptions 7, 10).

2 p.m.—1. Affirmation Session (approximately 30 minutes—public meeting).

a. Affirmation Items.

1. EPA's Env. Rad. Protection Stds for Nuc Pwr Operations.

2. Fire Protection Rule for Future Plants.

3. Petition Filed by Citizens Advisory Board Requesting Amendment to 10 CFR 2.

4. Draft Bailly Show Cause Order (tentative).

5. Final rule in Part 60 (tentative).

b. Discussion and Vote of above Affirmation Items, if Required.

2. Discussion of Management-Organization and Internal Personnel Matters (approx. 1½ hours—closed—exemptions 2, 6).

Friday, January 23

2 p.m.—1. Briefing on NFS-Erwin (tentative—approximately 1½ hours—closed—exemption 1).

ADDITIONAL INFORMATION: By a vote of 4-0 on January 15, the Commission determined pursuant to 5 U.S.C. 552b(e)(1) and § 9.107(a) of the Commission's Rules that Commission business required that the Discussion of TMI-1 Restart Order, held that day, be held on less than one week's notice to the public and that it be closed to the public under Exemption 10.

AUTOMATIC TELEPHONE ANSWERING SERVICE FOR SCHEDULE UPDATE: (202) 634-1498.

Those planning to attend a meeting should reverify the status on the date of the meeting.

CONTACT PERSON FOR MORE INFORMATION: Walter Magee (202) 634-1410.

Walter Magee,

Office of the Secretary.

January 15, 1981.

[S-120-8 Filed 1-21-81; 4:32 pm]

BILLING CODE 7590-01-M

10

NUCLEAR REGULATORY COMMISSION.

DATE: Monday, January 26 and Tuesday, January 27, 1981.

PLACE: Commissioners' Conference Room, 1717 H Street, N.W., Washington, D.C.

STATUS: Open.

MATTERS TO BE CONSIDERED:

Monday, January 26, 2 p.m.

Briefing on Adequacy of Sequoyah Ignition Systems (approximately 1½ hours—public meeting—postponed from 1/21/81).

Tuesday, January 27, 2 p.m.

Discussion and Vote on Final Rule to 10 CFR Part 60, "Disposal of High-Level Radioactive Wastes in Geologic

Repositories—Licensing Procedures" (if necessary—approximately 1½ hours—public meeting).

AUTOMATIC TELEPHONE ANSWERING SERVICE FOR SCHEDULE UPDATE: (202) 634–1498.

Those planning to attend a meeting should reverify the status on the day of the meeting.

CONTACT PERSON FOR MORE INFORMATION: Walter Magee (202) 634–1410.

Dated: January 19, 1981.

Walter Magee,

Office of the Secretary.

[S-133-81 Filed 1-21-81; 4:22 pm]

BILLING CODE 7590-01-M

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CFR PARTS AFFECTED DURING JANUARY

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AGENCY PUBLICATION ON ASSIGNED DAYS OF THE WEEK

The following agencies have agreed to publish all documents on two assigned days of the week (Monday/Thursday or Tuesday/Friday). This is a voluntary program. (See OFR NOTICE 41 FR 32914, August 6, 1976.)

Monday	Tuesday	Wednesday	Thursday	Friday
DOT/SECRETARY	USDA/ASCS		DOT/SECRETARY	USDA/ASCS
DOT/COAST GUARD	USDA/FNS		DOT/COAST GUARD	USDA/FNS
DOT/FAA	USDA/FSQS		DOT/FAA	USDA/FSQS
DOT/FHWA	USDA/REA		DOT/FHWA	USDA/REA
DOT/FRA	MSPB/OPM		DOT/FRA	MSPB/OPM
DOT/NHTSA	LABOR		DOT/NHTSA	LABOR
DOT/RSPA	HHS/FDA		DOT/RSPA	HHS/FDA
DOT/SLSDC			DOT/SLSDC	
DOT/UMTA			DOT/UMTA	
CSA			CSA	

Documents normally scheduled for publication on a day that will be a Federal holiday will be published the next work day following the holiday.
Comments on this program are still invited.
Comments should be submitted to the Day-of-the-Week Program Coordinator, Office of the Federal Register, National Archives and Records Service, General Services Administration, Washington, D.C. 20408

NOTE: As of September 2, 1980, documents from the Animal and Plant Health Inspection Service, Department of Agriculture, will no longer be assigned to the Tuesday/Friday publication schedule.

REMINDERS

The "reminders" below identify documents that appeared in issues of the Federal Register 15 days or more ago. Inclusion or exclusion from this list has no legal significance.

Rules Going Into Effect Today

CIVIL AERONAUTICS BOARD

84991 12-24-80 / Air carriers; terminations, suspensions, and reductions of service; maintenance of schedule listings

ENERGY DEPARTMENT

Economic Regulatory Administration—

84987 12-24-80 / Calculation for the cost of using alternate fuels under the Powerplant and Industrial Fuel Use Act of 1978

ENVIRONMENTAL PROTECTION AGENCY

85004 12-24-80 / Approval of Michigan sulfur dioxide stock; Implementation plan for Consumer Power Company's J. H. Campbell Plant

85005 12-24-80 / Approval and promulgation of implementation plans: State of Missouri

INTERIOR DEPARTMENT

Land Management Bureau—

84768 12-23-80 / California; partial revocation of reclamation withdrawals

Rules Going Into Effect Saturday, January 24, 1981

INTERIOR DEPARTMENT

Land Management Bureau—

85023 12-24-80 / California; Revocation of air navigation site withdrawal

Rules Going Into Effect Sunday, January 25, 1981

AGRICULTURE DEPARTMENT

Food Safety and Quality Service—

7 1-2-81 / Increase in fees and charges

List of Public Laws

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's List of Public Laws.

A complete listing for the second session of the 96th Congress is published in the Reader Aids section of the issue of January 7, 1981

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1-23-81
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BOOK 2:
Pages
7561-7632

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Revised as of October 1, 1980

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A Cumulative checklist of CFR issuances for 1980 appears in the back of the first issue of the Federal Register each month in the Reader Aids section. In addition, a checklist of current CFR volumes, comprising a complete CFR set, appears each month in the LSA (List of CFR Sections Affected).

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federal register

Book 2 of 2 Books
Friday, January 23, 1981

7582 Part II—HHS/FDA:
Medical Devices; Classification of Gastroenterology-Urology Devices; Proposed Rules—will consist of approximately 120 pages

7644 Part III—DOI/FWS:
U.S. Fish and Wildlife Service Migration Policy

7666 Part IV—EPA:
Incinerator Standards for Owners and Operators of Hazardous Waste Management Facilities; Interim Final Rule and Proposed Rule

7682 Part V—DOL/OSHA:
Hazardous Materials; Request for Comments

7702 Part VI—DOL/WSH/ESA:
Minimum Wages for Federal and Federally-Assisted Construction; General Wage Determination Decisions, Modifications and Supersedeas Decisions

7748 Part VII—DOA/FNS:
Food Stamp Program; Photo Identification

7798 Part VIII—DOL:
Office of the Assistant Secretary for Labor-Management Relations—Hospital Employee Protection Program

CONTINUED INSIDE

7764 Part IX—DOL/ETA:
Basic and Support Service of the Employment Service; Final Rule

7776 Part X—DOE/ERA:
Mandatory Petroleum Price Regulations; Retroactive Amendments to "V" Factor of Refiner Cost Allocation Formulas

7786 Part XI—DOL/ETA:
Unemployment Compensation for Civilian Employees

7796 Part XII—DOL/ETA:
Unemployment Compensation for Ex-Service Members

7806 Part XIII—Office of the Special Assistant to the President for Consumer Affairs:
Export of Banned or Significantly Restricted Substances; Background Report on Executive Order 12264

7822 Part XIV—DOL/ETA:
Comprehensive Employment and Training Act Regulations; Amendments

7836 Part XV—EPA:
Federal Radiation Protection Guidance for Occupational Exposures

7848 Part XVI—DOA/FNS:
Special Supplemental Food Program for Women, Infants and Children; Eligibility Criteria

7858 Part XVII—DOI/OSMRE:
List of Laboratories Qualified To Perform Work Under the Small Operator Assistance Program

7878 Part XVIII—DOA/FNS:
Special Supplemental Food Program for Women, Infants, and Children; Food Delivery Systems

7894 Part XIX—DOI/OSMRE:
Prime Farmlands; Interim and Permanent Regulatory Programs

7902 Part XX—DOI/OSMRE:
Permanent and Interim Regulatory Program Modifications

7908 Part XXI—DOI/OSMRE:
Amendment of State Program Process

7912 Part XXII—The President:
Executive Orders 12276–12285 Relating to the Release of the American Hostages in Iran

federal register

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Part II

Department of Health and Human Services

Food and Drug Administration

Medical Devices; Classification of Gastroenterology-Urology Devices; Proposed Rules

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 876

[Docket No. 78N-1065]

Classification of Gastroenterology-Urology Devices; Development of General Provisions

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing general rules applicable to the classification of all gastroenterology-urology devices. The Medical Device Amendments of 1976 require the agency to classify all medical devices intended for human use into three categories: class I, general controls; class II, performance standards; and class III, premarket approval. In the preamble to this proposal, FDA describes the development of the proposed regulations classifying individual gastroenterology-urology devices, which are being published elsewhere in this issue of the Federal Register. The preamble also describes the activities of the Gastroenterology-Urology Device Section of the General Medical Devices Panel (formerly the Gastroenterological and Urological Device Classification Panel), an FDA advisory committee that makes recommendations to FDA concerning the classification of gastroenterology-urology devices.

DATES: Comments by March 24, 1981. FDA proposes that the final regulation based on this proposal become effective 30 days after the date of its publication in the Federal Register.

ADDRESS: Written comments to the Dockets Management Branch (formerly the Hearing Clerk's office) (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Fernando Villarroel, Bureau of Medical Devices (HFK-420), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7750.

SUPPLEMENTARY INFORMATION:

Device Classification System

The Medical Device Amendments of 1976 (the amendments) (Pub. L. 94-295) establish a comprehensive system for the regulation of medical devices intended for human use. One provision of the amendments, section 513 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360c) establishes three categories (classes) of devices, depending on the regulatory controls needed to provide reasonable assurance of their safety and effectiveness. The three categories are as follows: class I, general controls; class II, performance standards; and class III, premarket approval.

Most devices are not classified under section 513 of the act until after FDA has (1) received a recommendation from a device panel (an FDA advisory committee); (2) published the panel's recommendation for comment, along with a proposed regulation classifying the device; and (3) published a final regulation classifying the device. These steps must precede the classification of any device that was in commercial distribution before May 28, 1976 (the date of enactment of the amendments) and that was not previously regarded by FDA as a new drug under section 505 of the act (21 U.S.C. 355). A device that is first offered for commercial distribution after May 28, 1976, and that is substantially equivalent to a device classified under this scheme, is classified in the same class as the device to which it is substantially equivalent.

A device that FDA previously regarded as a new drug, or a newly offered device that is not substantially equivalent to a device that was in commercial distribution before the amendments, is classified by statute into class III. These two types of devices are classified into class III without any FDA rulemaking proceedings. The agency determines whether new devices are substantially equivalent to previously offered devices by means of the premarket notification procedure in section 510(k) of the act (21 U.S.C. 360(k)) and Part 807 of the regulations (21 CFR Part 807).

Related Regulations

In the Federal Register of July 28, 1976 (43 FR 32988), the agency issued final regulations describing the procedures for classifying devices intended for human use. These regulations, which were proposed in the Federal Register of September 13, 1977 (42 FR 46028), supplement the agency's regulations in Part 14 (21 CFR Part 14) governing the use of advisory committees. The agency also issued interim device classification procedures in a notice published in the Federal Register of May 19, 1975 (40 FR 21848).

Activities of Panel

Anticipating enactment of the amendments, FDA established several advisory committees to make preliminary recommendations on device classification. The Gastroenterology-Urology Device Classification Panel (the Panel) was originally chartered on April 16, 1973, as the Panel on Review of Gastroenterological and Urological Devices. FDA placed a report of the Panel's tentative classification recommendations on file with the Dockets Management Branch (HFA-305), Food and Drug Administration, and announced the availability of the report to the public by notice published in the Federal Register of April 20, 1976 (41 FR 16603). On August 9, 1976, the Panel and other preamendments device classification panels were rechartered to reflect their new responsibilities under the amendments. The agency directed each panel to reconsider its preamendments classification recommendations in light of the new requirements. In 1976 and 1977, the Panel reviewed all devices that FDA had referred to it to make certain that its recommendations were in accord with the amendments.

Throughout the Panel's deliberations, interested persons were given an opportunity to present their views, data, and other information concerning the classification of gastroenterology-urology devices. The Panel also invited experts to testify and sought information on many devices from the published literature.

In October 1977, the Panel submitted to FDA a preliminary report of its recommendations. The report included a roster of current and former Panel members and consultants and listed all meeting dates. The agency placed a copy of the report in the Dockets Management Branch (HFA-305), Food and Drug Administration, and announced its availability to the public by notice published in the Federal Register of November 29, 1977 (42 FR 60792). At subsequent meetings the Panel changed its previous recommendations concerning the classification of several devices. An addendum to the Panel report showing these changes has been placed in the Dockets Management Branch, Food and Drug Administration. Also available in the Dockets Management Branch are summary minutes from all Panel meetings, verbatim transcripts of meetings held after May 28, 1976 (the date of enactment of the amendments), and all references cited in individual gastroenterology-urology device proposed classification regulations.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and a new structure. FDA

published notices of these changes in the Federal Register of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). The Gastroenterological and Urological Device Classification Panel was terminated, and its functions are now conducted by the Gastroenterology-Urology Device Section of the General Medical Devices Panel.

Relationship Between the Device Names in the Device Registration and Listing Codes and the Device Names in Classification Regulations

Some manufacturers have become accustomed to identifying a device by its registration and listing name and three letter code used for purposes of device listing under section 510 of the act (21 U.S.C. 360). However, FDA is still making changes in the names and identifications of generic types of devices in the classification regulations for all devices for which final regulations have not been published. Because FDA has not used the present device registration and listing names in the proposed and final classification regulations, FDA has prepared an index of names of generic types of medical devices used in classification regulations to aid a manufacturer in matching its device with the proper classification regulation. The index shows the device registration and listing product code for each device reviewed by a classification panel and the corresponding name of the generic type of device and classification panel in which the device classification will be published in the Federal Register. The agency announced the availability of this index in the Federal Register of March 6, 1979 (44 FR 12269). If necessary, this index will be updated and the availability of the revised index will be reannounced in the Federal Register. FDA believes that, because this index is available, it is unnecessary to include or cross reference the present device registration and listing name and product code in the classification regulations. In the future, following publication of most of the device classification regulations, the agency will revise and reissue the device registration and listing product code so the device names to be used for registration and listing correspond to the device names in the final device classification regulations.

List of Gastroenterology-Urology Devices

In 1972 FDA surveyed device manufacturers to identify the devices for which classification regulations would be needed. Following this survey, FDA developed a list of gastroenterology-urology devices. The Panel supplemented the list by using its members' knowledge of gastroenterology-urology devices in use. Devices that were solely for experimental or investigational use or that were not generally available were not included. Additional gastroenterology-urology devices, which are not included in this list and which were commercially available before May 28, 1976, will be added to the list as necessary.

FDA is proposing to establish a new Part 876 in title 21 of the Code of Federal Regulations. Part 876 will consist of sections identifying each gastroenterology-urology device with a brief narrative description and stating the classification of that device. A list of gastroenterology-urology devices appears elsewhere in this preamble.

Individual Gastroenterology-Urology Device Classification Regulations

Elsewhere in this issue of the Federal Register, the agency is issuing 57 individual proposed regulations to classify each gastroenterology-urology device. The agency is proposing to classify 4 of these devices into class I (general controls), 40 devices into class II (performance standards), and 10 into class III (premarket approval). In addition, in one document the agency is proposing to classify a device into class II, while proposing to classify some accessories of the device into class I. In two other documents, FDA is proposing to classify devices into class II for some uses and into class III for other uses.

The agency also is publishing the recommendations of the Panel regarding these devices, as required by section 513 (c)(2) and (d)(1) of the act (21 U.S.C. 360c (c)(2) and (d)(1)).

Published Panel Recommendations

Each published Panel recommendation concerning a gastroenterology-urology device includes the information described below.

1. *Identification.* Both the Panel recommendation and the proposed FDA classification regulation include a brief narrative identification of the device. The identification statement is necessarily broad because it applies to a category or type of device rather than to a specific device. As explained in proposed § 876.1 (21 CFR 876.1), any manufacturer of a newly offered device who files a premarket notification submission under section 510(k) of the act (21 U.S.C. 360(k)) and Part 807 (21 CFR Part 807) of the regulations cannot show merely that the device is accurately described by the section title and identification provisions of a classification regulation. Although a new device may be described accurately by the title and identification in a classification regulation, it is nevertheless in class III under section 513(f) of the act if it is not substantially equivalent to a preamendments device (or to a postamendments device that has already been reclassified from class III into class I or class II). It is not practical for FDA to publish an identification of each type of device that is so detailed as to anticipate every product feature that may be relevant in determining whether a new device is substantially equivalent to previous devices classified by the regulation. The agency believes that this problem was recognized in, and addressed by, the premarket notification procedures in section 510(k) of the act. Accordingly, any manufacturer who submits a premarket notification submission should state why the manufacturer believes the device is substantially equivalent to other devices in commercial distribution, as required by § 807.87 (21 CFR 807.87), and whether the device is described in a classification regulation.

Several regulations classify products that have both medical and nonmedical uses. FDA will regulate a multipurpose product as a medical device if it is intended for a medical purpose i.e., for "use in the diagnosis of disease or other conditions, or in the cure, mitigation, treatment, or prevention of disease," or "to affect the structure or any function of the body." Section 201(h). FDA will determine the intended use of a product based upon the expressions of the persons legally responsible for its labeling and by the circumstances surrounding its distribution. The most important factors the agency will consider in determining the intended use of a particular product are the labeling, advertising, and other representations accompanying the product. Products that have medical uses only are clearly intended for medical purposes and, therefore, will be regulated as medical devices whether or not medical claims are made for them.

2. *Recommended classification.* Each Panel's recommendation describes whether the device is recommended for classification into class I (general controls), class II (performance standards), or class III (premarket approval).

For each device recommended for classification into class I, the Panel considered whether the device should be exempt from any requirements under certain sections of the act: section 510

(21 U.S.C. 360, registration), section 519 (21 U.S.C. 360i, records and reports), and section 520(f) (21 U.S.C. 360j(f), good manufacturing practice requirements). The Panel recommended that several devices be exempted from section 510, section 519, and section 520(f) of the act in the manufacture of these devices. The agency's policy concerning these exemption recommendations is discussed below in the section of this proposal concerning "Exemptions for Class I Devices."

A Panel recommendation that a device be classified into class II includes the Panel's recommended priority ("high," "medium," or "low") for establishing a performance standard for the device. Similarly, each Panel recommendation that a device be classified into class III includes the Panel's recommended priority ("high," "medium," or "low") for application of premarket approval requirements to that device. As explained below in the section of this notice concerning "Priorities for Class II and III Devices," the agency is not, however, proposing the establishment of FDA priorities at this time.

3. *Summary of reasons for recommendation.* The summary of reasons for the Panel's recommendation explains why the Panel believes that a particular device meets the statutory criteria for classification into class I, II, or III.

Except in those instances in which FDA's classification proposal differs from the Panel's recommendation, FDA is adopting the Panel's summary of reasons as the agency's statement of the reasons for issuing the regulations, as required by section 517(f) of the act (21 U.S.C. 360g(f)).

The summary of reasons for a recommendation identifies any device that is an implant or a life-supporting or life-sustaining device. The summary of reasons for any implant or life-supporting or life-sustaining device that is not recommended for classification into class III also explains why the Panel determined that classification of the device into class III is not necessary to provide reasonable assurance of its safety and effectiveness. The agency provides a similar explanation in the "Proposed Classification" section of the preamble to any proposal to classify an implant or a life-supporting or life-sustaining device into a class other than class III.

4. *Summary of data on which the recommendation is based.* In many cases, the Panel based its recommendations on the Panel members' personal knowledge of, and clinical experience with, the devices under review. The Panel particularly relied upon clinical experience and judgment when the Panel considered a device that had been used extensively and was accepted widely before the amendments were enacted. The legislative history of the amendments provides that the term "data" has a special meaning in section 513(c)(2)(A) of the act, which requires that a Panel recommendation summarize the data upon which a recommendation is based. As used in that section, "data" refers not only to the results of scientific experiments, but also to less formal evidence, other scientific information, or judgments of experts (House Committee on Interstate and Foreign Commerce, Medical Device Amendments of 1976, H.R. Rept. No. 94-853, 94th Congress, 2d Session 40 (1976)). FDA has determined that clinical experience and judgment constitute valid scientific evidence for classifying certain devices.

In many cases, FDA sought more data and information concerning the classification of a device than were cited by the Panel. References to these data and information are found in the "Proposed Classification" section of the preambles to individual gastroenterology-urology device regulations. The agency is adopting as its statement of the basis for issuing the regulation under section 517(f) of the act the Panel's summary of the data on which a recommendation to classify a device is based, together with any additional data and information cited in the preamble to the proposed classification regulation.

5. *Risks to health.* In identifying the risks to health presented by gastroenterology-urology devices, the Panel recognized that few devices are completely free of risk. The Panel listed the risks it considered most significant, especially those that are unique to the individual device. In some cases, FDA has identified risks to health presented by a device in addition to those presented by the Panel. These additional risks are set out in the section of the preamble concerning the "Proposed Classification" of a particular device. The term "electrical injury" in this section includes electrical shock as well as other adverse effects of electricity, such as burns and the consequences of electrically induced muscular contractions.

Because of the classification recommendations and FDA regulations may not identify all risks to health presented by gastroenterology-urology devices, future regulations establishing performance standards under section 514 of the act (21 U.S.C. 360d) or requiring premarket approval under section 515(b) of the act (21 U.S.C. 360e(b)) may identify additional risks to health to be addressed by FDA requirements.

Proposed Classification

Each proposed regulation to classify a gastroenterology-urology device states whether FDA agrees with the Panel's recommendation, describes the agency's proposed classification of the device, and proposes a new section in Part 876 in which the device classification will be codified.

FDA cautions that the final classification of a device may differ from the proposal. Factors that may cause such a change include comments, the agency's reconsideration of existing data and information, and the agency's consideration of new data and information.

Priorities for Class II and III Devices

For a device that the Panel recommends be classified into class II or class III, section 513(c)(2)(A) of the act requires that the Panel recommendation include, to the extent practicable, a recommendation for the assignment of a priority for application to the device of performance standards or premarket approval requirements. In developing its advice concerning priorities ("high," "medium," or "low") of device recommended for classification into class II or class III, the Panel compared the devices with other gastroenterology-urology devices, based on information available to the Panel members concerning the relative importance of use of the device and the relative risks presented by the device. The Panel recommended assignment of a "high priority" only to those class II or class III devices that the Panel believed should receive the agency's immediate attention.

FDA is not proposing at this time to establish priorities for development of performance standards for all class II devices. Section 513(d)(3) of the act authorizes, but does not require, establishment of these priorities. In the Federal Register of February 1, 1980 (45 FR 7489 and 45 FR 7493), FDA published notices identifying which class II devices the agency found to warrant a high priority for the development of performance standards. At a later date, the agency will establish priorities for the development of standards for the remaining class II devices. All priorities established by the agency are based on the classification panels' recommendations, available resources, and other relevant factors. The agency's priorities will be reflected in the

agency's annual budget request and other publicly available documents and may be published in the Federal Register.

Exemptions for Class I Devices

Section 513 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360c) provides that FDA may exempt a device recommended for classification into class I from a requirement under the following sections of the act: section 510 (21 U.S.C. 360), registration; section 519 (21 U.S.C. 360i), records and reports; and section 520(f) (21 U.S.C. 360j(f)), good manufacturing practices.

Under section 510 of the act, a person "engaged in the manufacture, preparation, propagation, compounding or processing of * * * a device or devices" must register with FDA (section 510(b) through (i)), file a list of devices (section 510(j)), and notify FDA at least 90 days before beginning commerical distribution of a device (section 510(k)). (See Part 807 (21 CFR Part 807).) Section 510(g)(4) authorizes the agency to exempt a device from section 510 if it finds that compliance with that section is not necessary for the protection of the public health. In § 807.65 (21 CFR 807.65), FDA has exempted certain classes of persons from section 510 of the act. Several devices classification panels have recommended that manufacturers of certain class I devices also be exempted from all or some of the requirements of section 510. The agency has determined that protection of the public health requires that manufacturers of medical devices, other than those already exempt under § 807.65, register and list their products with FDA to ensure that the agency can identify these manufacturers and their products and conduct necessary inspections.

The agency has determined, however, that it is not necessary for the protection of the public health that FDA receive premarket notification submissions for certain devices. Thus, the agency has proposed to exempt manufacturers of certain devices from Subpart E of Part 807 of the regulations, which implements section 510(k) of the act. The agency does not, at this time, anticipate that premarket approval will be required for these devices. The agency believes that the semiannual updating of device listing under section 510(j)(2) of the act will provide FDA with adequate notice of new products within these generic types of devices.

Section 519 of the act authorizes FDA to issue regulations requiring device manufacturers, importers, and distributors to establish and maintain such records, make such reports, and provide such information as the agency may reasonably require to assure that devices are not adulterated or misbranded and to otherwise assure their safety and effectiveness. The records and reports requirements in several of FDA's present device regulations are authorized, wholly or in part, by section 519. The most extensive of these requirements are found in the device good manufacturing practice (GMP) regulation under Part 820 (21 CFR Part 820), published in the Federal Register of July 21, 1978 (43 FR 31508). In the future, FDA will publish other regulations in accordance with section 519 of the act, including regulations requiring reports to FDA of experience with medical devices. Until these regulations are issued, FDA believes that it cannot properly issue exemptions from them. In the future, whenever the agency proposes device regulations that include records and reports requirements, interested persons may submit comments requesting that certain classes of manufacturers or other persons be exempted from the requirements, and FDA will issue exemptions that are appropriate.

The only type of exemption from records and reports requirements that FDA is proposing now, in device classification regulations, is an exemption of certain manufacturers from most requirements of the device GMP regulation. As explained below, the exemption will not extend to two device GMP records requirements.

The device GMP regulation was published in final form in the Federal Register of July 21, 1978. At the time of the Panel's recommendations, the GMP regulation had not yet been promulgated, and the agency had not yet developed criteria for exempting manufacturers of a class I device from GMP requirements. The agency has now decided that, if any one of the following criteria is met, FDA will consider exempting from the GMP regulation manufacturers of a class I device that is not labeled or otherwise represented as sterile. The agency will not, however, exempt manufacturers of a device from general requirements concerning records or complaint files. The criteria are:

1. FDA has determined, based on adequate information about current practices in the manufacture of the device and about user experience with the device, that application of the GMP regulation is unlikely to improve the safety and effectiveness of the device.

2. FDA has determined that all possible defects relating to the safety and effectiveness of the device are readily detectable before use, either through visual examination by the user or routine testing before use, e.g., testing a clinical laboratory reagent with positive and negative controls.

3. FDA has determined that any defect in the device that is not readily detectable will not result in a device failure that could have an adverse effect on the patient or other user.

FDA has determined that no device that is labeled or otherwise represented as sterile will be exempted from the device GMP regulation. A sterile device must be subject to the entire GMP regulation to ensure that manufacturers adequately reduce the bioburden (number of microorganisms) on the device and its components during the manufacturing process. This reduction is accomplished through adherence to a comprehensive quality assurance program as is required by the GMP regulation, with adequate environmental controls, trained personnel, appropriate maintenance and calibration of sterilization equipment, recordkeeping concerning lot sterility, strict packaging and labeling controls, and other quality assurance measures.

The agency also has determined that no exemption from the device GMP regulation will extend to § 820.180, with respect to general requirements concerning records, or § 820.198, with respect to complaint files. The agency believes that granting exemptions from these sections would not be in the public interest, and that compliance with these sections is not unduly burdensome for device manufacturers. To ensure that device manufacturers have adequate systems for complaint investigation and followup, all manufacturers are required to comply with the complaint file requirements. All device manufacturers also are required to comply with the general requirements concerning records to ensure that FDA has access to complaint files, can investigate device-related injury reports and complaints about product defects, may determine whether the manufacturer's corrective actions are adequate, and may determine whether the exemption from other sections of the GMP regulation is still appropriate.

In general, FDA has not initiated proposals to exempt manufacturers of devices from requirements under section 510 or 520(f) of the act, but has acted on the basis of exemption recommendations of the device classification panels. However, FDA has proposed occasionally to exempt manufacturers of certain devices classified into class I or class II from the requirements of certain sections of the GMP regulation, according to the above exemption criteria. Manufacturers and other interested persons may submit

comments on the appropriateness of the proposed exemptions of manufacturers of devices, whether the exemptions are proposed in response to recommendations of the panels or on the agency's initiative. Comments requesting additional exemptions should be supported by information showing that the exemption of manufacturers of a device from the premarket notification requirement or the GMP regulation is consistent with the criteria discussed above.

Guidelines for Preparing Petitions Requesting Exemption or Variance From the Device GMP Regulation for Devices Classified Into Class I or Class II

FDA has prepared guidelines on the procedures that should be followed by persons who wish to submit petitions for exemption or variance from the device GMP regulation. These petitions may be submitted in accordance with provisions of section 520(f)(2) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360j(f)(2)). The agency announced the availability of the guidelines in a notice published in the Federal Register of January 18, 1980 (45 FR 3571).

List of Gastroenterology-Urology Devices

The following is a list of gastroenterology-urology devices that FDA is proposing to classify, the section in the Code of Federal Regulations under which the regulation classifying the device will be codified, the docket number of the proposed classification regulation, and the proposed classification of each device.

Section and device	Docket No.	Class
Subpart B—Diagnostic Devices		
876.1075 Gastroenterology-urology biopsy instrument.	78N-1946	II
876.1400 Stomach pH electrode	78N-1952	II
876.1500 Endoscope and accessories	78N-1953	II
876.1620 Urodynamics measurement system.	78N-1960	II
876.1725 Gastrointestinal motility monitoring system.	78N-1955	II
876.1800 Urine flow or volume measuring system.	78N-1954	II
Subpart C—Monitoring Devices		
876.2040 Enuresis alarm	78N-1958	II
Subpart D—Prosthetic Devices		
876.3350 Penile inflatable implant	78N-1968	III
876.3630 Penile rigidity implant	78N-1979	III
876.3750 Testicular prosthesis	78N-1961	III
Subpart E—Surgical Devices		
876.4000 Fiberoptic light urethral catheter.	78N-1947	II
876.4300 Circumcision instrument	78N-1990	II
876.4370 Colostomy rod	78N-1971	II
876.4300 Endoscopic electrosurgical unit and accessories.	78N-1962	II
876.4370 Gastroenterology-urology evacuator.	78N-1994	II
876.4400 Hemorrhoidal ligator	78N-1995	II
876.4490 Electrohydraulic lithotripter	78N-1998	III
876.4500 Mechanical lithotripter	78N-2001	II
876.4520 Gastroenterology-urology 5-hexipic retractor.	78N-1969	I
876.4530 Foley tube	78N-2007	II
876.4560 Interlocking urethral sound	78N-2008	II
876.4620 Ureteral stent	78N-1964	II
876.4660 Water jet renal stone dislodger system.	78N-1966	II
876.4680 Ureteral stone dislodger	78N-2002	II
876.4730 Manual gastroenterology-urology surgical instrument and accessories.	78N-1966	I
876.4770 Urethrotome	78N-2004	II
876.4960 Urological table and accessories.	78N-2070	II
Subpart F—Therapeutic Devices		
876.5010 Biliary catheter and accessories.	78N-2005	II
876.5030 Continent ileostomy catheter	78N-1972	II
876.5090 Suprapubic urological catheter and accessories.	78N-1969	II
876.5130 Urological catheter and accessories.	78N-2006	II
876.5160 Urological clamp for males	78N-2009	II
876.5210 Enema kit	78N-2060	I
876.5220 Colonic irrigation system	78N-2011	II, III
876.5250 Urine collector and accessories.	78N-2010	II
876.5270 Implanted electrical urinary continence device.	78N-1976	III
876.5280 Implanted mechanical/hydraulic urinary continence device.	78N-1988	III
876.5320 Nonimplanted electrical continence device.	78N-2060	III
876.5365 Esophageal dilator	78N-2058	II
876.5460 Rectal dilator	78N-1992	II
876.5470 Ureteral dilator	78N-2057	II
876.5530 Urethral dilator	78N-2059	II
876.5540 Blood access device and accessories.	78N-2044	II, III
876.5600 Sorbent regenerated dialysate delivery system for hemodialysis.	78N-2019	II
876.5630 Peritoneal dialysis system and accessories.	78N-2051	II
876.5665 Water purification system for hemodialysis.	78N-2047	II
876.5820 Hemodialysis system and accessories.	78N-2014	II, I
876.5830 Hemodialyzer with disposable insert (KIII type).	78N-2039	II
876.5860 High permeability hemodialysis system.	78N-2039	III
876.5870 Sorbent hemoperfusion system.	78N-2061	III
876.5880 Isolated kidney perfusion and transport system and accessories.	78N-2063	II
876.5886 Ostomy irrigator	78N-1975	II
876.5900 Ostomy pouch and accessories.	78N-1974	II
876.5920 Protective garment for incontinence.	78N-2062	II
876.5955 Peritoneo-venous shunt	78N-1980	III
876.5970 Hernia Support-e	78N-1967	II
876.5980 Gastrointestinal tube and accessories.	78N-2072	II

Devices Not in Commercial Distribution

The Panel made classification recommendations concerning several devices that may not be in commercial distribution. If a device was not in commercial distribution before enactment of the amendments and is not substantially equivalent to a device that was in commercial distribution before the amendments, the device is classified into class III by section 513(f) of the act (21 U.S.C. 360c(f)). Because FDA is unaware that the devices listed below are now in commercial distribution, the agency is not issuing a separate proposed regulation for the devices and is requesting the submission of information regarding the commercial distribution of any of these devices:

1. The Panel recommended that the ostomy magnet, a device used with a cap to maintain continence following a colostomy, be classified into class II (performance standards) because the Panel believed that the biocompatibility of the materials should be controlled.

2. The Panel recommended that the radio pill, a device used to transmit data such as movement, temperature, pressure, and acid base balance from within the body, be classified into class II (performance standards) because the Panel believed that the biocompatibility of the materials on the exterior of the device should be adequately controlled.

3. The Panel recommended that the ultrasonic stone crusher, a device used to facilitate removal of stones lodged in various ducts, be classified into class III (premarket approval) because the Panel believed that unsafe energy levels may be generated by the device, resulting in tissue damage, and that there is not sufficient information available to establish a performance standard that will assure the safety and effectiveness of this device.

4. The Panel recommended that the uretero vesicle valve, a device used to treat uretero vesicle valve disorders or used when the ureter is implanted in the colon, be classified into class III (premarket approval) because the Panel believed that the device is an implant and there is not sufficient information available to establish a performance standard that will assure its safety and effectiveness.

5. The Panel recommended that the urethral sphincter prosthesis, a device used to provide urinary continence by means of a manually operated spigot valve, be classified into class III (premarket approval) because the Panel believed that the device is an implant and that there is not sufficient information available to establish a performance standard that will assure its safety and effectiveness.

6. The Panel recommended that the urethral replacer, a device used to restore proper function to the urethra by means of a prosthetic replacement, be classified into class III (premarket approval) because the Panel believed that the device is an implant and that there is not sufficient information available to establish a performance standard that will assure its safety and effectiveness.

7. The Panel recommended that the cystometric air device, a device used to measure volume and pressure when the urinary bladder is filled with air through a catheter, be classified into class III (premarket approval) because the Panel

believed that the use of an insoluble gas (i.e., air) may lead to air embolism. Therefore, these devices present a potential unreasonable risk of illness or injury to the patient.

8. The Panel recommended that the prostatic cooler, a device designed to cool the prostate in order to stop bleeding by means of a balloon catheter which can be filled with coolant after insertion into the bladder, be classified into class III (premarket approval) because the Panel believed that the device presents a potential unreasonable risk of illness or injury to the patient.

9. The Panel recommended that the esophageal and gastric cooler, a device that consists of a balloon attached to tubes through which a liquid coolant is circulated to expand the balloon and bring the coolant into proximity with the walls of the stomach or esophagus to reduce bleeding, be classified into class III (premarket approval) because the Panel believed that the device is used to treat severe and life threatening conditions and presents a potential unreasonable risk of illness or injury to the patient.

10. The Panel recommended that the ureteral prosthesis, a device designed to replace a portion of the ureter by implantation of a tube made of silastic, dacron, teflon, or other suitable material, be classified into class III (premarket approval) because the Panel believed that the device is an implant and that there is not sufficient information available to establish a performance standard that would assure its safety and effectiveness.

Devices Considered by Two or More Panels

Many devices were reviewed by two or more device classification panels. For these devices, FDA will publish each panel's recommendation and a single proposed classification regulation. The following devices were considered by the Gastroenterology-Urology Device Section of the General Medical Devices Panel (formerly the Gastroenterological and Urological Device Classification Panel) and by other panels:

1. The Surgical and Rehabilitation Devices Panel recommended that the AC-powered endoscope and accessories be classified into class II, the incandescent endoscope lamp be classified into class I, and the battery-powered endoscope and accessories be classified into class I. The General Medical Devices Panel recommended that the endoscope and accessories be classified into class II. The agency has determined that these devices are essentially the same. Therefore, the agency is proposing a single regulation classifying the endoscope and accessories into class II, and is publishing the two Panels' recommendations in a proposal appearing elsewhere in this issue of the Federal Register.

2. The Surgical and Rehabilitation Devices Panel recommended that the testicular prosthesis be classified into class II. The General Medical Devices panel recommended that the testicular prosthesis be classified into class III. The agency has determined that these devices are essentially the same. The agency is proposing a single regulation classifying the testicular prosthesis into class III and is publishing the two Panels' recommendations in a proposal appearing elsewhere in this issue of the Federal Register.

3. The Surgical and Rehabilitation Devices Panel recommended that the inflatable penile implant be classified into class III. The General Medical Devices Panel recommended that the mechanical/hydraulic impotence device be classified into class III. The agency has determined that these devices are essentially the same. Therefore, the agency is proposing a single regulation classifying the penile inflatable implant into class III and is publishing the two Panels' recommendations in a proposal appearing elsewhere in this issue of the Federal Register.

4. The Surgical and Rehabilitation Devices Panel recommended that the rigid rod penile implant be classified into class II. The General Medical Devices Panel recommended that the penile rigidity implant be classified into class III. The agency has determined that these devices are essentially the same. FDA is proposing a single regulation classifying the penile rigidity implant into class III and is publishing the two Panels' recommendations in a proposal appearing elsewhere in this issue of the Federal Register.

5. The Surgical and Rehabilitation Devices Panel recommended that the biliary catheter and accessories be classified into class II. The General Medical Devices panel recommended that the biliary catheter and accessories be classified into class II. The agency has determined that these devices are essentially the same. Therefore, the agency is proposing a single regulation classifying the biliary catheter and accessories into class II and is publishing the two Panels' recommendations in a proposal appearing elsewhere in this issue of the Federal Register.

6. The Surgical and Rehabilitation Devices Panel recommended that the urethral catheter be classified into class II. The General Medical Devices Panel recommended that the urological catheter and accessories be classified into class II. The agency has determined that these devices are essentially the same. Therefore, the agency is proposing a single regulation classifying the urological catheter and accessories into class II and is publishing the two Panels' recommendations in a proposal appearing elsewhere in this issue of the Federal Register.

7. The Surgical and Rehabilitation Devices Panel recommended that the rectal catheter and the irrigation and aspiration catheter (gastric, colonic, etc.) be classified into class II. The General Medical Devices Panel recommended that gastrointestinal tubes and accessories be classified into class II. The agency has determined that these devices are essentially the same. Therefore, the agency is proposing a single regulation classifying gastrointestinal tubes and accessories into class II and is publishing the two Panels' recommendations in a proposal appearing elsewhere in this issue of the Federal Register.

8. The General Medical Devices Panel and the Surgical and Rehabilitation Devices panel recommended that the ostomy bag be classified into class I. The Gastroenterology-Urology Device Section of the General Medical Devices Panel recommended that the ostomy pouch and accessories be classified into class II. The agency has determined that these devices are essentially the same. Therefore, the agency is proposing a single regulation classifying the ostomy pouch and accessories into class II and is publishing the two Panels' recommendations in a proposal appearing elsewhere in this issue of the Federal Register.

9. The Obstetrics-Gynecology and Radiologic Devices Panel recommended that the AC-powered vaginal muscle stimulator used for incontinence control be classified into class III. The General Medical Devices Panel recommended that the nonimplantable electrical stimulator for urinary continence control be classified into class III. The agency has determined that these devices are essentially the same. Therefore, the agency is proposing a single regulation classifying the nonimplanted electrical continence device into class III and is publishing the two Panels' recommendations in a proposal appearing elsewhere in this issue of the Federal Register.

10. The Surgical and Rehabilitation Devices panel recommended that the gastrointestinal motility system be classified into class II. The General Medical Devices Panel recommended

that the gastrointestinal motility monitoring system be classified into class II. The agency has determined that these devices are essentially the same. Therefore, the agency is proposing a single regulation classifying the gastrointestinal motility monitoring system into class II and is publishing the two Panels' recommendations in a proposal appearing elsewhere in this issue of the Federal Register.

11. The Surgical and Rehabilitation Devices Panel recommended that the colonic irrigator be classified into class I. The General Medical Devices Panel recommended that the colon cleansing device be classified into class II for some uses and class III for other uses. The agency has determined that these devices are essentially the same. Therefore, the agency is proposing a single regulation classifying the colonic irrigation system into class II for some uses and class III for other uses, and is publishing the two Panel's recommendations in a proposal appearing elsewhere in this issue of the Federal Register.

12. The Gastroenterology-Urology Device Section of the General Medical Devices Panel and other sections or panels listed below made classification recommendations concerning the following devices:

Device	Other panel(s)
Electromagnetic or doppler non-invasive blood flow meter	Circulatory Systems.
GU applicator	General Hospital and Personal Use Section of the General Medical Devices Panel.
Scrotal support	General Hospital and Personal Use Section of the General Medical Devices Panel.
Dialysis patient scales	Obstetrics-Gynecology and Radiologic.
Barium enema kit	Surgical and Rehabilitation.
Metal mesh	
Injection cannula	
Fiberoptic focusing headlight	
Gastro/urology needle	
Abdominal belt	
Pure latex sheet drape	
Disposable urological drape	
GU tourniquet	
Stomach and intestinal suturing apparatus	
Clip for suturing apparatus	
Plastic wound protector	

The agency is not at this time publishing the recommendations of the Gastroenterology-Urology Device Section of the General Medical Devices Panel to classify the devices listed above. The agency has published, or will publish, these recommendations and proposed classification regulations along with the recommendations of other Panels that reviewed the devices. Some of these other Panel's recommendations have already been published in the Federal Register. The following table shows the current structure of the advisory committees involved with classification of medical devices and a list of all proposed and final classification regulations published to date:

Panel/Section Name and Publication Date in "Federal Register"

Circulatory Systems Devices Panel
March 9, 1979, 44 FR 13284–13434 (proposals); February 5, 1980, 45 FR 7904–7971 (final regulations)
Clinical Chemistry and Hematology Devices Panel
Clinical Chemistry Device Section
Clinical Toxicology Device Section
Hematology and Pathology Device Section
September 11, 1979, 44 FR 52950–53063 (proposals); September 12, 1980, 45 FR 60578–60651 (final regulations)
General Medical Devices Panel
General Hospital and Personal Use Device Section
Gastroenterology-Urology Device Section
August 24, 1979, 44 FR 49644–49954 (proposals); October 21, 1980, 45 FR 69678–69737 (final regulations)
Immunology and Microbiology Devices Panel
Immunology Device Section
April 22, 1980, 45 FR 27204–27350 (proposals)
Microbiology Device Section
April 22, 1980, 45 FR 27204–27359 (proposals)
Obstetrics-Gynecology and Radiologic Devices Panel
Obstetrics-Gynecology Device Section
Radiology Device Section
April 3, 1979, 44 FR 19894–19971 (proposals); February 26, 1980, 45 FR 12682–12720 (final regulations)
Ophthalmic; Ear, Nose, and Throat; and Dental Devices Panel
Ophthalmic Device Section
Ear, Nose, and Throat Device Section
Dental Device Section
Respiratory and Nervous System Devices Panel
Anesthesiology Device Section
November 2, 1979, 44 FR 63282–63426 (proposals)
Neurological Device Section
November 28, 1978, 43 FR 54640–55732 (proposals); September 4, 1979, 44 FR 51726–51778 (final regulations)
Surgical and Rehabilitation Devices Panel
Physical Medicine Device Section
Orthopedic Device Section
General and Plastic Surgery Device Section
August 28, 1979, 44 FR 50458–50537 (proposals)

Environmental Impact

The agency has determined pursuant to § 25.24(b)(12) (21 CFR 25.24(b)(12)) (proposed December 11, 1979; 44 FR 71742) that this proposed action is of a type that does not individually or cumulatively have a significant impact on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513 and 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a))), and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs proposes that Chapter I of Title 21 of the Code of Federal Regulations be amended by adding new Part 876, Subpart A, to read as follows:

PART 876—GASTROENTEROLOGY-UROLOGY DEVICES

Subpart A—General Provisions

Sec.
876.1 Scope.

Authority: Secs. 513 and 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c and 371(a)).

Subpart A—General Provisions

§ 876.1 Scope.

(a) This part sets forth the classification of gastroenterology-urology devices intended for human use.

(b) The identification of a device in a regulation in this part is not a precise description of every device that is, or will be, subject to the regulation. A manufacturer who submits a premarket notification submission for a device under Part 807 cannot show merely that the device is accurately described by the section title and identification provision of a regulation in this part, but shall state why the device is substantially equivalent to other devices, as required by § 807.87.

(c) To avoid duplicative listings, a gastroenterology-urology device that has two or more types of uses (e.g., used both as a diagnostic device and as a therapeutic device) is listed in one subpart only.

(d) References in this part to regulatory sections of the Code of Federal Regulations are to Chapter I of Title 21 unless otherwise noted.

Interested persons may, on or before March 24, 1981, submit to the Dockets Management Branch (formerly the Hearing Clerk's office) (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, written comments regarding this

proposal. Four copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

In accordance with Executive Order 12044, as amended by Executive Order 12221, the economic effects of this proposal have been carefully analyzed, and it has been determined that the proposed rulemaking does not involve major economic consequences as defined by that order. A copy of the regulatory analysis assessment supporting this determination is on file with the Dockets Management Branch, Food and Drug Administration.

Dated: December 19, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 81-749 Filed 1-22-81; 8:45 am]

BILLING CODE 4110-03-M

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21 CFR Part 876

[Docket No. 78N-1046]

Medical Devices; Classification of Gastroenterology-Urology Biopsy Instruments

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing for public comment a proposed regulation classifying gastroenterology-urology biopsy instruments into class II (performance standards). FDA is also publishing the recommendation of the Gastroenterology-Urology Device Classification Panel that the devices be classified into class II. The effect of classifying a device into class II is to provide for the future development of one or more performance standards to assure the safety and effectiveness of the device. After considering public comments, FDA will issue a final regulation classifying the devices. These actions are being taken under the Medical Device Amendments of 1976.

DATES: Comments by March 24, 1981. FDA proposes that the final regulation based on this proposal become effective 30 days after the date of its publication in the Federal Register.

ADDRESS: Written comments to the Dockets Management Branch (formerly the Hearing Clerk's office) (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Fernando Villarroel, Bureau of Medical Devices (HFK-420), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7750.

SUPPLEMENTARY INFORMATION:

Panel Recommendation

A proposal elsewhere in this issue of the Federal Register provides background information concerning the development of the proposed regulation. The Gastroenterology-Urology Device Classification Panel, an FDA advisory committee, made the following recommendation regarding the classification of gastroenterology-urology biopsy instruments:

1. Identification: A gastroenterology-urology biopsy instrument is a device used to remove, by cutting or aspiration, a specimen of tissue for microscopic examination. This generic type of device includes the biopsy punch, gastrointestinal mechanical biopsy instrument, suction biopsy instrument, gastro-urology biopsy needle and needle set, and nonelectric biopsy forceps. This recommendation does not apply to biopsy instruments that have specialized uses in other medical specialty areas and that were the subject of recommendations by other device classification panels.

2. Recommended classification: Class II (performance standards). The Panel recommends that establishing a performance standard for these devices be a low priority.

3. Summary of reasons for recommendation: The Panel recommends that gastroenterology-urology biopsy instruments be classified into class II because the mechanical properties and tissue removal mechanisms must be controlled by a performance standard to assure that unnecessary cutting or tissue removal does not occur, causing unnecessary risks to the patient. The design, materials, and construction of this device must be controlled by a performance standard to ensure that the shape, size, rigidity, flexibility, surface finish, and strength of the device are appropriate to prevent trauma, hemorrhage, or perforation and to enable proper cleaning and sterilization of the device to prevent infection. The Panel believes that general controls alone would not provide sufficient control over these characteristics. The Panel believes that a performance standard would provide reasonable assurance of the safety and effectiveness of the devices and that there is sufficient information to establish a performance standard.

4. Summary of data on which the recommendation is based: The Panel based its recommendation on the Panel members' personal knowledge of, and clinical experience with, the devices and on the widespread use of the devices in medical practice.

5. Risks to health: (a) Trauma, hemorrhage, or perforation: Improper size, shape, rigidity, arrangement, or finish on parts of these devices may cause tissue trauma, hemorrhage, or perforation. (b) Infection: Defects in the design or construction of the device preventing adequate cleaning or sterilization, or defects in packaging or processing of a device sold as sterile, may allow pathogenic organisms to be introduced and cause an infection in the patient.

Proposed Classification

FDA agrees with the Panel recommendation and is proposing that gastroenterology-urology biopsy instruments be classified into class II (performance standards). The agency believes that a performance standard is necessary for these devices because general controls alone are insufficient to control the risks to health presented by the devices. A performance standard would provide reasonable assurance of the safety and effectiveness of the devices. The agency also believes that there is sufficient information to establish a performance standard for these devices.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and a new structure. FDA published notices of these changes in the Federal Register of May 19, 1978 (43 FR 21606, 21607, and 21608) and May 26, 1978 (43 FR 22672 and 22673). This proposed classification regulation identifies each device panel by the former name. Further information regarding the device advisory committees and list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the Federal Register.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540-548 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs proposes to amend Part 876 in Subpart B by adding new § 876.1075, to read as follows:

Subpart B—Diagnostic Devices

§ 878.1575 Gastroenterology-urology biopsy instrument.

(a) *Identification.* A gastroenterology-urology biopsy instrument is a device used to remove, by cutting or aspiration, a specimen of tissue for microscopic examination. This generic type of device includes the biopsy punch, gastrointestinal mechanical biopsy instrument, suction biopsy instrument, gastro-urology biopsy needle and needle set, and nonelectric biopsy forceps. This section does not apply to biopsy instruments that have specialized uses in other medical specialty areas and that are covered by classification regulations in other parts of the device classification regulations.

(b) *Classification.* Class II (performance standards).

Interested persons may, on or before March 24, 1981, submit to the Dockets Management Branch (formerly the Hearing Clerk's office) (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, written comments regarding this proposal. Four copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen at 4 p.m., Monday through Friday.

Dated: December 19, 1980.

William F. Randolph

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 81–750 Filed 1–22–81; 8:45 am]

BILLING CODE 4110–03–M

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21 CFR Part 878

[Docket No. 78N–1052]

Medical Devices; Classification of Stomach pH Electrodes

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing for public comment a proposed regulation classifying stomach pH electrodes into class II (performance standards). FDA is also publishing the recommendation of the Gastroenterology-Urology Device Classification Panel that the device be classified into class II. The effect of classifying a device into class II is to provide for the future development of one or more performance standards to assure the safety and effectiveness of the device. After considering public comments, FDA will issue a final regulation classifying the device. These actions are being taken under the Medical Device Amendments of 1976.

DATES: Comments by March 24, 1981. FDA proposes that the final regulation based on this proposal become effective 30 days after the date of its publication in the Federal Register.

ADDRESS: Written comments to the Dockets Management Branch (formerly the Hearing Clerk's office) (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Fernando Villarroel, Bureau of Medical Devices (HFK–420), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7750.

SUPPLEMENTARY INFORMATION:

Panel Recommendation

A proposal elsewhere in this issue of the Federal Register provides background information concerning the development of the proposed regulation. The Gastroenterology-Urology Device Classification Panel, an FDA advisory committee, made the following recommendation regarding the classification of stomach pH electrodes:

1. Identification: A stomach pH electrode is a device used to measure intragastric and intraesophageal pH (hydrogen ion concentration). The pH electrode is at the end of a flexible lead which may be inserted into the stomach through the patient's mouth and esophagus. The device may include an integral gastrointestinal tube.

2. Recommended classification: Class II (performance standards). The Panel recommends that establishing a performance standard for this device be a low priority.

3. Summary of reasons for recommendation: The Panel recommends that stomach pH electrodes be classified into class II because the measurement accuracy of the device must be controlled by a performance standard to prevent inaccurate diagnostic information. The design, materials used in, and construction of this device must be controlled by a performance standard to ensure that the size, shape, rigidity, flexibility, surface finish, and tensile strength of the device are appropriate to prevent tissue trauma, hemorrhage, or perforation and to enable proper cleaning and sterilization of the device to prevent infection. The Panel believes that general controls alone would not provide sufficient control over this characteristic. The Panel believes that a performance standard would provide a reasonable assurance of the safety and effectiveness of the device and that there is sufficient information to establish a performance standard.

4. Summary of data on which the recommendation is based: The Panel based its recommendation on the Panel members' personal knowledge of, and clinical experience with, this device.

5. Risks to health: (a) Misdiagnosis and inappropriate therapy: Inadequate design of the device can lead to generation of inaccurate diagnostic data. The user may prescribe a course of treatment based on inaccurate diagnostic data which places the patient at risk unnecessarily. (b) Hemorrhage: Bleeding of the gastrointestinal tract may result from a mucosal injury caused by irritation from the device and consequent forceful vomiting. (c) Infection: Defects in the design or construction of the device preventing adequate cleaning or sterilization, or defects in packaging or processing of a device sold as sterile, may allow pathogenic organisms to be introduced and cause an infection in the patient. (d) Trauma or perforation: Improper size, shape, rigidity, arrangement, or finish on parts of these devices may cause tissue trauma or perforation.

Proposed Classification

FDA agrees with the Panel recommendation and is proposing that stomach pH electrodes be classified into class II (performance standards). The agency believes that a performance standard is necessary for this device because general controls alone are insufficient to control the risks to health presented by this device. A performance standard would provide reasonable assurance of the safety and effectiveness of the device. The agency also believes that there is sufficient information to establish a performance standard for this device.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and a new structure. FDA published notices of these changes in the Federal Register of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22072 and 22073). This proposed classification regulation identifies each device panel by the former name. Further information regarding the device advisory committees and list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the Federal Register.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–548 (21 U.S.C. 360c, 371(a))) and under authority

delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs proposes to amend Part 876 in Subpart B by adding new § 876.1400, to read as follows:

§ 876.1400 Stomach pH electrode.

(a) *Identification.* A stomach pH electrode is a device used to measure intragastric and intraesophageal pH (hydrogen ion concentration). The pH electrode is at the end of a flexible lead which may be inserted into the stomach through the patient's mouth and esophagus. The device may include an integral gastrointestinal tube.

(b) *Classification.* Class II (performance standards).

Interested persons may, on or before March 24, 1981, submit to the Dockets Management Branch (formerly the Hearing Clerk's office) (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, written comments regarding this proposal. Four copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: December 18, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 81-791 Filed 1-22-81; 8:45 am]

BILLING CODE 4110-03-M

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21 CFR Part 876

[Docket No. 78N-1953]

Medical Devices; Classification of Endoscopes and Accessories

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing for public comment a proposed regulation classifying endoscopes and accessories into class II (performance standards). FDA is also publishing the recommendation of the Gastroenterology-Urology Device Classification Panel that these devices be classified into class II, and the recommendation of the General and Plastic Surgery Device Classification Panel that certain endoscopes and accessories be classified into class II and that battery-powered endoscopes and accessories and incandescent endoscope lamps be classified into class I (general controls). The effect of classifying a device into class II is to provide for the future development of one or more performance standards to assure the safety and effectiveness of the device. The effect of classifying a device into class I is to require that the device meet only the general controls applicable to all devices. After considering public comments, FDA will issue a final regulation classifying the devices. These actions are being taken under the Medical Device Amendments of 1976.

DATES: Comments by March 24, 1981. FDA proposes that the final regulation based on this proposal become effective 30 days after the date of its publication in the Federal Register.

ADDRESS: Written comments to the Dockets Management Branch (formerly the hearing Clerk's office) (HFA-305), Food and Drug Admininstration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Fernando Villarroel, Bureau of Medical Devices (HFK-420), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7750.

SUPPLEMENTARY INFORMATION:

Panel Recommendation

A proposal elsewhere in this issue of the Federal Register provides background information concerning the development of the proposed regulation. The Gastroenterology-Urology Device Classification Panel and the General and Plastic Surgery Device Classification Panel, FDA advisory committees, made the following recommendations regarding the classification of endoscopes and accessories:

1. Identification: An endoscope and accessories is a device used to provide access, illuminate, and allow observation or manipulation of body cavities, hollow organs, and canals. The device consists of various rigid or flexible instruments that are inserted into body spaces and may include an optical system for conveying an image to the user's eye and their accessories may assist in gaining access or increase the versatility and augment the capabilities of the devices. Examples of devices that are within this generic type of device include cleaning accessories for endoscopes, photographic accessories for endoscopes, nonpowered anoscopes, automatic pneumoperitoneum apparatus, binocular attachments for endoscopes, pocket battery boxes, flexible or rigid choledochoscopes, colonoscopes, diagnostic cystoscopes, cystourethroscopes, enteroscopes, esophagogastroduodenoscopes, rigid esophagoscopes, fiberoptic illuminators for endoscopes, incandescent endoscope lamps, mediastinoscopes, simple or spring-loaded pneumoperitoneum needles, biliary pancreatoscopes, proctoscopes, resectoscopes, nephroscopes, sigmoidoscopes, laparoscopes, ureteroscopes, urethroscopes, endomagnetic retrievers, cytology brushes for endoscopes and lubricating jelly for transurethral surgical instruments. This recommendation does not apply to endoscopes that have specialized uses in other medical specialty areas and that were the subject of recommendations by other device classification panels.

2. Recommended classification: Class II (performance standards). The Gastroenterology-Urology Device Classification Panel recommends that establishing a performance standard for these devices be a high priority. The General and Plastic Surgery Device Classification Panel recommends that establishing a performance standard for these devices be a low priority. The General and Plastic Surgery Device Classification Panel recommends that battery-powered endoscopes and accessories be classified into class I (general controls) and that they be exempt from the good manufacturing practice regulation under section 520(f) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360j(f)) and exempt from premarket notification under section 510(k) of the act (21 U.S.C. 360(k)). The General and Plastic Surgery Device Classification Panel also recommends that incandescent endoscope lamps be classified into class I with no exemptions.

3. Summary of reasons for recommendation: The Panels recommend that endoscopes and their accessories be classified into class II because the electrical, optical, mechanical, biocompatibility, and lighting characteristics of these devices must be controlled by a performance standard to prevent injury to the patient. The Panels believe that general controls alone would not provide sufficient control over these characteristics. The Panels believe that performance standards would provide reasonable assurance of the safety and effectiveness of the devices and that there is sufficient information to establish performance standards. The General and Plastic Surgery Device Classification Panel recommends that battery-powered endoscopes and accessories and incandescent endoscope lamps be classified into class

I because the Panel believes that general controls are sufficient to provide reasonable assurance of the safety and effectiveness of the devices. The Panel recommends that battery-powered endoscopes and accessories be exempt from premarket notification procedures under section 510(k) of the act and from the good manufacturing practice regulation under section 520(f) of the act because the Panel believes that these are simple devices that present no unreasonable risks to health when used in a normal manner and for the purposes recommended.

4. Summary of data on which the recommendation is based: The Panels based their recommendations on the Panel members' personal knowledge of, and clinical experience with, the devices and on the widespread use of the devices in medical practice.

5. Risks to health: (a) Misdiagnosis and inappropriate therapy: Inadequate design of the devices can lead to generation of inaccurate diagnostic data. The user may prescribe a course of treatment based on inaccurate diagnostic data which places the patient at risk unnecessarily. (b) Infection: Defects in the design or construction of the device preventing adequate cleaning or sterilization, or defects in packaging or processing of a device sold as sterile, may allow pathogenic organisms to be introduced and cause an infection in the patient. (c) Trauma, hemorrhage, or perforation: Improper size, shape, rigidity, arrangement, or finish on parts of these devices may cause tissue trauma, hemorrhage, or perforation. (d) Adverse tissue reaction: If the materials used in the construction of these devices are not biocompatible, the patient may have an adverse tissue reaction. (e) Electrical injury: Improper design, construction, or a malfunction of the device could result in electrical injury to the patient or operator. (f) Burns: An intense concentration of heat may cause thermal burns to tissue. (g) Rupture of body cavity, embolism and hypotensive shock: Those accessories that inject gas into the patient may allow high pressures to build up within the patient, possibly causing a rupture of the body cavity or an air or carbon dioxide embolism, and, if the pressure continues for extensive periods of time, a decrease in cardiac function and subsequent hypotensive shock.

Proposed Classification

FDA agrees with the recommendation of the Gastroenterology-Urology Device Classification Panel and in part with the recommendation of the General and Plastic Surgery Device Classification Panel and is proposing that endoscopes and accessories be classified into class II (performance standards). The agency believes that a performance standard is necessary for these devices because general controls alone are insufficient to control the risks to health presented by the devices. A performance standard will provide reasonable assurance of the safety and effectiveness of the devices. FDA also believes that there is sufficient information to establish a performance standard for these devices.

On August 20, 21, and 22, 1980 the National Institutes of Health held a consensus conference entitled "Endoscopy: What is its Role in Upper Gastrointestinal Bleeding?" The conference summary (Ref. 1) discusses briefly the use of endoscopy in the diagnosis and treatment of upper gastrointestinal bleeding.

The agency disagrees with the General and Plastic Surgery Device Classification Panel recommendation that battery-powered endoscopes and accessories and incandescent endoscope lamps be classified into class I (general controls). The agency believes that the risk of electrical injury and other hazards exist with the battery-powered devices as well as with AC-powered devices. The agency believes that the risk of electrical injury and thermal burns to tissue in contact with incandescent endoscope lamps requires a performance standard to minimize these hazards. Because the agency has determined that endoscopes and accessories should be classified into class II rather than class I, the agency is not required to publish a regulation adopting or rejecting the General and Plastic Surgery Device Classification Panel's recommendation that certain of these devices be exempt from the premarket notification procedures under section 510(k), and the good manufacturing practice regulation under section 520(f) of the act.

FDA has reviewed the recommendations of the Gastroenterology-Urology Device Classification Panel and of the General and Plastic Surgery Device Classification Panel for endoscopes and accessories and has concluded that these devices should be published in the part of the Code of Federal Regulations for gastrointerology and urology devices.

Reference

The following information has been placed in the Dockets Management Branch (address above) and may be seen by interested persons from 9 a.m. to 4 p.m., Monday through Friday.

1. "Endoscopy in Upper GI Bleeding," National Institutes of Health Consensus Development Conference Summary, Vol. 3, No. 5, 1980.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and a new structure. FDA published notices of these changes in the Federal Register of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). This proposed classification regulation identifies each device panel by the former name. Further information regarding the device advisory committees and list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the Federal Register.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs proposes to amend Part 876 in Subpart B by adding new § 876.1500, to read as follows:

§ 876.1500 Endoscope and accessories.

(a) *Identification.* An endoscope and accessories is a device used to provide access, illumination, and allow observation or manipulation of body cavities, hollow organs, and canals. The device consists of various rigid or flexible instruments that are inserted into body spaces and may include an optical system for conveying an image to the user's eye and their accessories may assist in gaining access or increase the versatility and augment the capabilities of the devices. Examples of devices that are within this generic type of device include cleaning accessories for endoscopes, photographic accessories for endoscopes, nonpowered anoscopes, automatic pneumoperitoneum apparatus, binocular attachments for endoscopes, pocket battery boxes, flexible or rigid choledochoscopes, colonoscopes, diagnostic cystoscopes, cystourethroscopes, enteroscopes, esophagogastroduodenoscopes, rigid esophagoscopes, fiberoptic illuminators for endoscopes, incandescent endoscope lamps, mediastinoscopes, simple or spring-loaded pneumoperitoneum needles, biliary pancreatoscopes, proctoscopes, resectoscopes, nephroscopes, sigmoidoscopes, laparoscopes, ureteroscopes, urethroscopes endomagnetic retrievers, cytology brushes for endoscopes and lubricating jelly for transurethral surgical instruments. This section does not apply to endoscopes that have specialized uses in other medical

specialty areas and that are covered by classification regulations in other parts of the device classification regulations.

(b) *Classification.* Class II (performance standards).

Interested persons may, on or before March 24, 1981, submit to the Dockets Management Branch (formerly the Hearing Clerk's office) (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, written comments regarding this proposal. Four copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: December 19, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 81-732 Filed 1-22-81; 8:45 am]

BILLING CODE 4110-03-M

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21 CFR Part 876

[Docket No. 78–1050]

Medical Devices; Classification of Urodynamics Measurement Systems

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing for public comment a proposed regulation classifying urodynamics measurement systems into class II (performance standards). FDA is also publishing the recommendation of the Gastroenterology-Urology Device Classification Panel that the devices be classified into class II. The effect of classifying a device into class II is to provide for the future development of one or more performance standards to assure the safety and effectiveness of the device. After considering public comments, FDA will issue a final regulation classifying the devices. These actions are being taken under the Medical Device Amendments of 1976.

DATES: Comments by March 24, 1981. FDA proposes that the final regulation based on this proposal become effective 30 days after the date of its publication in the Federal Register

ADDRESS: Written comments to the Dockets Management Branch (formerly the Hearing Clerk's office) (HFA–305), food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT:

Fernando Villarroel, Bureau of Medical Devices (HFK–420), food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7750.

SUPPLEMENTARY INFORMATION:

Panel Recommendation

A proposal elsewhere in this issue of the Federal Register provides background information concerning the development of the proposed regulation. The Gastroenterology-Urology Device Classification Panel, an FDA advisory committee, made the following recommendation regarding the classification of urodynamics measurement systems:

1. Identification: A urodynamics measurement system is a device used to measure volume and pressure in the urinary bladder when it is filled through a catheter with carbon dioxide or water. The device controls the supply of carbon dioxide or water any may also record the electrical activity of the urinary muscles. The device system may include transducers, electronic signal conditioning and display equipment, a catheter withdrawal device to enable a urethral pressure profile to be obtained, and special catheters for urethral profilometry and electrodes for electromyography. This generic type of device includes the cystometric gas (carbon dioxide) device, the cystometric hydraulic device, and the electrical recording cystometer, but excludes any device that uses air to fill the bladder.

2. Recommended classification: Class II (performance standards). The Panel recommends that different priorities be given for establishing performance standards for the various kinds of products within the generic urodynamics measurement system. The Panel recommends that the cystometric gas device be given a high priority, that the cystometric hydraulic device be given a medium priority and that the electrical recording cystometer be given a low priority for the development of performance standards.

3. Summary of reasons for recommendation: The Panel recommends that urodynamics measurement systems be classified into class II because the design, accuracy, and any limitations of the function of the device must be controlled by a performance standard to ensure that insoluble gas (e.g., air) does not enter the system and that the amount and pressure of delivered carbon dioxide or water are controlled to prevent overdistension of the bladder. The electrical porperties of the device must be controlled by a performance standard to prevent electrical injury to the patient or operator. The design and construction of the device must be controlled by a performance standard to enable proper cleaning and sterilization of the device to prevent infection. The measurement accuracy of the device must be controlled by a performance standard to prevent the development of inaccurate diognostic information. The Panel believes that general controls alone would not provide sufficient control over these characteristics. The Panel believes that a performance standard would provide reasonable assurance of the safety and effectiveness of the devices and that there is sufficient information to establish a performance standard.

4. Summary of data on which the recommendation is based: The Panel based its recommendation on the Panel members' personal knowledge of, and clinical experience with, the devices.

5. Risks to health: (a) Misdiagnosis and inappropriate therapy: Inadequate design of the device may lead to generation of inaccurate diagnostic data. The user may prescribe a course of treatment based on inaccurate diagnostic data which places the patient at risk unnecessarily. (b) Electrical injury: Improper design, construction, or a malfunction of the device can result in electrical injury to the patient or operator. (c) Infection: Defects in the design or construction of the device preventing adequate cleaning or sterilization, or defects in packaging or processing of a device sold as sterile, may allow pathogenic organisms to be introduced and cause an infection in the patient. (d) Overdistention of the bladder: The failure of the device to prevent excess gas or water pressure in the bladder may cause an overdistention of the bladder.

Proposed Classification

FDA agrees with the Panel recommendation and is proposing that urodynamics measurement systems be classified into class II (performance standards). The agency believes that a performance standard is necessary for these devices because general controls alone are insufficient to control the risks to health presented by the devices. A performance standard would provide reasonable assurance of the safety and effectiveness of the devices. FDA also believes that there is sufficient information to establish a performance standard for these devices.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and a new structure. FDA published notices of these changes in

the Federal Register of May 19, 1978 (43 FR 21668, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). This proposed classification regulation identifies each device panel by the former name. Further information regarding the device advisory committees and list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the Federal Register.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–548 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs proposes to amend Part 876 in Subpart B by adding new § 876.1620, to read as follows:

§ 876.1620 Urodynamics measurement system.

(a) *Identification.* A urodynamics measurement system is a device used to measure volume and pressure in the urinary bladder when it is filled through a catheter with carbon dioxide or water. The device controls the supply of carbon dioxide or water and may also record the electrical activity of the urinary muscles. The device system may include transducers, electronic signal conditioning and display equipment, a catheter withdrawal device to enable a urethral pressure profile to be obtained, and special catheters for urethral profilometry and electrodes for electromyography. This generic type of device includes the cystometric gas (carbon dioxide) device, the cystometric hydraulic device, and the electrical recording cystometer, but excludes any device that uses air to fill the bladder.

(b) *Classification.* Class II (performance standards).

Interested persons may, on or before March 24, 1981, submit to the Dockets Management Branch (formerly the Hearing Clerk's office) (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, written comments regarding this proposal. Four copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: December 19, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 81-730 Filed 1-20-81; 8:45 am]

BILLING CODE 4110-03-M

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21 CFR Part 876

[Docket No. 78N–1955]

Medical Devices; Classification of Gastrointestinal Motility Monitoring Systems

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing for public comment a proposed regulation classifying gastrointestinal motility monitoring systems into class II (performance standards). FDA is also publishing the recommendation of the Gastroenterology-Urology Device Classification Panel and of the General and Plastic Surgery Device Classification Panel that the device be classified into class II. The effect of classifying a device into class II is to provide for the future development of one or more performance standards to assure the safety and effectiveness of the device. After considering public comments, FDA will issue a final regulation classifying the device. These actions are being taken under the Medical Device Amendments of 1976.

DATES: Comments by March 24, 1981. FDA proposes that the final regulation based on this proposal become effective 30 days after the date of its publication in the Federal Register.

ADDRESS: Written comments to the Dockets Management Branch (formerly the Hearing Clerk's office) (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Fernando Villarroel, Bureau of Medical Devices (HFK–420), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7750.

SUPPLEMENTARY INFORMATION:

Panel Recommendation

A proposal elsewhere in this issue of the Federal Register provides background information concerning the development of the proposed regulation. The Gastroenterology-Urology Device Classification Panel and the General and Plastic Surgery Device Classification Panel, FDA advisory committees, made the following recommendations regarding the classification of gastrointestinal motility monitoring systems:

1. Identification: A gastrointestinal motility monitoring system is a device used to measure peristaltic activity or pressure in the stomach or esophagus by means of a probe with transducers that is introduced through the mouth into the gastrointestinal tract. The device may include signal conditioning, amplifying, and recording equipment. This generic type of device includes the esophageal motility monitor and tube, the gastrointestinal motility (electrical) system, and certain accessories, such as a pressure transducer, amplifier, and external recorder.

2. Recommended classification: Class II (performance standards). Both Panels recommend that establishing a performance standard for this device be a low priority.

3. Summary of reasons for recommendation: The Panels recommend that gastrointestinal motility monitoring systems be classified into class II because the electrical properties of the device must be controlled by a performance standard to prevent electrical injury to the patient or operator. The design, materials, and construction of the device must be controlled by a performance standard to ensure that the shape, size, rigidity, flexibility, surface finish, and strength of the device are appropriate to prevent trauma, hemorrhage, or perforation. The measurement accuracy of the device must be controlled by a performance standard to prevent the development of inaccurate diagnostic information. The Panels believe that general controls alone would not provide sufficient control over these characteristics. The Panels believe that a performance standard would provide reasonable assurance of the safety and effectiveness of the device and that there is sufficient information to establish a performance standard.

4. Summary of data on which the recommendation is based: Both Panels based their recommendations on the Panel members' personal knowledge of, and clinical experience with, the device.

5. Risks to health: (a) Misdiagnosis and inappropriate therapy: Inadequate design of the device may lead to the generation of inaccurate diagnostic data. The user may prescribe a course of treatment based on inaccurate diagnostic data which places the patient at risk unnecessarily. (b) Trauma, hemorrhage, or perforation: Improper size, shape, rigidity, arrangement or finish on parts of this device may cause tissue trauma, hemorrhage, or perforation. (c) Electrical injury: Improper design or a malfunction of the

device may cause electrical injury to the patient or the operator.

Proposed Classification

FDA agrees with the recommendations of both Panels and is proposing that gastrointestinal motility monitoring systems be classified into class II (performance standards). The agency believes that a performance standard is necessary for this device because general controls alone are insufficient to control the risks to health presented by the device. A performance standard would provide reasonable assurance of the safety and effectiveness of the device. FDA also believes that there is sufficient information to establish a performance standard for this device. FDA has reviewed the recommendations of both the Gastroenterology-Urology Device Classification Panel and the General and Plastic Surgery Device Classification Panel for gastrointestinal motility monitoring systems and has concluded that the classification of this device should be published in the part of the Code of Federal Regulations for gastroenterology and urology devices.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and a new structure. FDA published notices of these changes in the Federal Register of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). This proposed classification regulation identifies each device panel by the former name. Further information regarding the device advisory committees and list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the Federal Register.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs proposes to amend Part 876 in Subpart B by adding new § 876.1725, to read as follows:

§ 876.1725 Gastrointestinal motility monitoring system.

(a) *Identification.* A gastrointestinal motility monitoring system is a device used to measure peristalic activity or pressure in the stomach or esophagus by means of a probe with transducers that is introduced through the mouth into the gastrointestinal tract. The device may include signal conditioning, amplifying, and recording equipment. This generic type of device includes the esophageal motility monitor and tube, the gastrointestinal motility (electrical) system, and certain accessories, such as a pressure transducer, amplifier, and external recorder.

(b) *Classification.* Class II (performance standards).

Interested persons may, on or before March 24, 1981, submit to the Dockets Management Branch (formerly the Hearing Clerk's office) (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, written comments regarding this proposal. Four copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: December 19, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 81-794 Filed 1-22-81; 8:45 am]

BILLING CODE 4110-03-M

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21 CFR Part 876

[Docket No. 78N–1964]

Medical Devices; Classification of Urine Flow or Volume Measuring Systems

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing for public comment a proposed regulation classifying urine flow or volume measuring systems into class II (performance standards). FDA is also publishing the recommendation of the Gastroenterology-Urology Device Classification Panel that the devices be classified into class II. The effect of classifying a device into class II is to provide for the future development of one or more performance standards to assure the safety and effectiveness of the device. After considering public comments, FDA will issue a final regulation classifying the devices. These actions are being taken under the Medical Device Amendments of 1976.

DATES: Comments by March 24, 1981. FDA proposes that the final regulation based on this proposal become effective 30 days after the date of its publication in the Federal Register.

ADDRESS: Written comments to the Dockets Management Branch (formerly the Hearing Clerk's office) HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Fernando Villarroel, Bureau of Medical Devices (HFK–420), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7750.

SUPPLEMENTARY INFORMATION:

Panel Recommendation

A proposal elsewhere in this issue of the Federal Register provides background information concerning the development of the proposed regulation. The Gastroenterology-Urology Device Classification Panel, an FDA advisory committee, made the following recommendation regarding the classification of urine flow or volume measuring systems:

1. Identification: A urine flow or volume measuring system is a device that measures directly or indirectly the volume or flow of urine from a patient, either during the course of normal urination or while the patient is catheterized. The device may include a drip chamber to reduce the risk of retrograde bacterial contamination of the bladder and a transducer and electrical signal conditioning and display equipment. This generic type of device includes the electrical urinometer, mechanical urinometer, nonelectric urinometer, disposable nonelectric urine flow rate measuring device, and uroflowmeter.

2. Recommended classification: Class II (performance standards). The Panel recommends that establishing a performance standard for these devices be a low priority.

3. Summary of reasons for recommendation: The Panel recommends that urine flow or volume measuring systems be classified into class II because the design and construction of the device must be controlled by a performance standard to enable proper cleaning and sterilization of the device to prevent infection. The electrical properties of the device must be controlled by a performance standard to prevent electrical injury to the patient or operator. The measurement accuracy of the device must be controlled by a performance standard to prevent the development of inaccurate diagnostic information. The Panel believes that general controls alone would not provide sufficient control over these characteristics. The Panel believes that a performance standard would provide reasonable assurance of the safety and effectiveness of the devices and that

there is sufficient information to establish a performance standard.

4. Summary of data on which the recommendation is based: The Panel based its recommendation on the Panel members' personal knowledge of, and clinical experience with, these devices and on the widespread use of these devices in medical practice.

5. Risks to health: (a) Misdiagnosis and inappropriate therapy: Inadequate design and calibration of the device may lead to generation of inaccurate diagnostic data. The user may prescribe a course of treatment based on inaccurate diagnostic data that places the patient at risk unnecessarily. (b) Infection: Defects in the design or construction of the device preventing adequate cleaning or sterilization, or defects in packaging or processing of a device sold as sterile may allow pathogenic organisms to be introduced and cause an infection in the patient. (c) Electrical injury: Improper design and construction or a malfunction of the device may result in electrical injury to the patient or the operator.

Proposed Classification

FDA agrees with the Panel recommendations and is proposing that urine flow or volume measuring systems be classified into class II (performance standards). The agency believes that a performance standard is necessary for these devices because general controls alone are insufficient to control the risks to health presented by the devices. A performance standard would provide reasonable assurance of the safety and effectiveness of the devices. The agency also believes that there is sufficient information to establish a performance standard for these devices.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and a new structure. FDA published notices of these changes in the Federal Register of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). This proposed classification regulation identifies each device panel by the former name. Further information regarding the device advisory committees and list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the Federal Register.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs proposes to amend Part 876 in Subpart B by adding new § 876.1800, to read as follows:

§ 876.1800 Urine flow or volume measuring system.

(a) *Identification.* A urine flow or volume measuring system is a device that measures directly or indirectly the volume or flow of urine from a patient, either during the course of normal urination or while the patient is catheterized. The device may include a drip chamber to reduce the risk of retrograde bacterial contamination of the bladder and a transducer and electrical signal conditioning and display equipment. This generic type of device includes the electrical urinometer, mechanical urinometer, nonelectric urinometer, disposable nonelectric urine flow rate measuring device, and uroflowmeter.

(b) *Classification.* Class II (performance standards).

Interested persons may, on or before March 24, 1981, submit to the Dockets Management Branch (formerly the Hearing Clerk's office) (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, written comments regarding this proposal. Four copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: December 19, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 81-755 Filed 1-22-81; 8:45 am]

BILLING CODE 4110-03-M

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21 CFR Part 876

[Docket No. 78N–1958]

Medical Devices; Classification of Enuresis Alarms

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing for public comment a proposed regulation classifying enuresis alarms into class II (performance standards). FDA is also publishing the recommendation of the Gastroenterology-Urology Device Classification Panel that the device be classified into class II. The effect of classifying a device into class II is to provide for the future development of one or more performance standards to assure the safety and effectiveness of the device. After considering public comments, FDA will issue a final regulation classifying the device. These actions are being taken under the Medical Device Amendments of 1976.

DATES: Comments by March 24, 1981. FDA proposes that the final regulation based on this proposal become effective 30 days after the date of its publication in the Federal Register.

ADDRESS: Written comments to the Dockets Management Branch (formerly the Hearing Clerk's office) (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Fernando Villarroel, Bureau of Medical Devices (HFK–420), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7750.

SUPPLEMENTARY INFORMATION:

Panel Recommendation

A proposal elsewhere in this issue of the Federal Register provides background information concerning the development of the proposed regulation. The Gastroenterology-Urology Device Classification Panel, an FDA advisory committee, made the following recommendation regarding the classification of enuresis alarms:

1. Identification: An enuresis alarm is a device used in the treatment of bedwetting. Through an electrical trigger mechanism, the device sounds an alarm when a small quantity of urine is detected on a sensing pad. This generic type of device includes the conditioned response enuresis alarm.

2. Recommended classification: Class II (performance standards.) The Panel recommends that establishing a performance standard for this device be a low priority.

3. Summary of reasons for recommendation: The Panel recommends that enuresis alarms be classified into class II because the materials used in the device that contact the body must be controlled by a performance standard to ensure their biocompatibility to prevent an adverse tissue reaction. The electrical properties of the device must be controlled by a performance standard to prevent electrical injury to the patient. The Panel believes that general controls alone would not provide sufficient control over these characteristics. The Panel believes that a performance standard would provide reasonable assurance of the safety and effectiveness of the device and that there is sufficient information to establish a performance standard.

4. Summary of data on which the recommendation is based: The Panel based its recommendation on the Panel members' personal knowledge of, and clinical experience with, the device and on the widespread use of the device in medical practice.

5. Risks to health: (a) Adverse tissue reaction: If the materials used in the device are not biocompatible, the patient may have an adverse tissue reaction. (b) Electrical injury: Improper design, construction, or a mulfunction of the device could result in electrical injury to the patient or the operator.

Proposed Classification

FDA agrees with the Panel recommendation and is proposing that enuresis alarms be classified into class II (performance standards). The agency believes that a performance standard is necessary for this device because general controls alone are insufficient to control the risks to health presented by the device. A performance standard would provide reasonable assurance of the safety and effectiveness of the device. The agency also believes that there is sufficient information to establish a performance standard for this device.

On April 28, 1976, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and a new structure. FDA published notices of these changes in the Federal Register of May 19, 1976 (43 FR 21660, 21667, and 21668) and May 26, 1976 (43 FR 22672 and 22673). This proposed classification regulation identifies each device panel by the former name. Further information regarding the device advisory committees and list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the Federal Register.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs proposes to amend Part 876 in Subpart C by adding new § 876.2040, to read as follows:

Subpart C—Monitoring Devices

§ 876.2040 Enuresis alarm.

(a) *Identification.* An enuresis alarm is a device used in the treatment of bedwetting. Through an electrical trigger mechanism, the device sounds an alarm when a small quantity of urine is detected on a sensing pad. This generic type of device includes conditioned response enuresis alarms.

(b) *Classification.* Class II (performance standards).

Interested persons may, on or before March 24, 1981, submit to the Dockets Management Branch (formerly the Hearing Clerk's office) (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, written comments regarding this proposal. Four copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: December 19, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 81-798 Filed 1-22-81; 8:45 am]

BILLING CODE 4110-03-M

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21 CFR Part 876

[Docket No. 78N–1068]

Medical Devices; Classification of Penile Inflatable Implants

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Administration (FDA) is issuing for public comment a proposed regulation classifying penile inflatable implant devices into class III (premarket approval). FDA is also publishing the recommendation of the Gastroenterology-Urology Device Classification Panel and of the General and Plastic Surgery Device Classification Panel that the devices be classified into class III. The effect of classifying a device into class III is to require each manufacturer of the device to submit to FDA a premarket approval application at a date to be set in a future regulation. Each premarket approval application would include information concerning safety and effectiveness tests for the device. After considering public comments, FDA will issue a final regulation classifying the device. These actions are being taken under the Medical Device Amendments of 1976.

DATES: Comments by March 24, 1981. FDA proposes that the final regulation based on this proposal become effective 30 days after the date of its publication in the Federal Register.

ADDRESS: Written comments to the Dockets Management Branch (formerly the Hearing Clerk's office) (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Fernando Villarroel, Bureau of Medical Devices (HFK–420), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7750.

SUPPLEMENTARY INFORMATION:

Panel Recommendation

A proposal elsewhere in this issue of the Federal Register provides background information concerning the development of the proposed regulation. The Gastroenterology-Urology Device Classification Panel and the General and Plastic Surgery Device Classification Panel, FDA advisory committees, made the following recommendation regarding the classification of penile inflatable implants:

1. Identification: A penile inflatable implant is a device that consists of two inflatable cylinders implanted in the penis, connected to a reservoir filled with radiopaque fluid implanted in the abdomen, and a subcutaneous manual pump implanted in the scrotum. When the cylinders are inflated, they provide rigidity to the penis. This device is used in the treatment of erectile impotence.

2. Recommended classification: Class II (premarket approval). The Gastroenterology-Urology Device Classification Panel recommends that premarket approval of this device be a high priority. The General and Plastic Surgery Device Classification Panel recommends that establishing premarket approval for this device be a medium priority.

3. Summary of reasons for recommendation: the Gastroenterology-Urology Device Classification Panel and the General and Plastic Surgery Device Classification Panel recommend that this device be classified into class III because it is an implanted device and sufficient information is not available to establish a performance standard that would assure its safety and effectiveness. The Panels also believe that there is not sufficient information available on this device to show that general controls are sufficient to assure its safety and effectiveness. Therefore, the device should be subject to premarket approval to assure that manufacturers develop sufficient information showing that the device is safe and effective.

4. Summary of data on which the recommendation is based: the Panels based their recommendations on the experimental nature of this device and

the lack of adequate medical literature and experience supporting its safety and effectiveness.

5. Risks to health: (a) Additional surgery: A defective pump, kinking or rupture of the tube, or low fluid volume in the reservoir may lead to malfunction of the device and require additional surgery. (b) Infection: Defects in the design or construction of the device preventing adequate cleaning or sterilization, or defects in packaging or processing of a device sold as sterile may allow pathogenic organisms to be introduced and cause an infection in the patient. (c) Adverse tissue reaction and erosion: If the materials used in the device are not biocompatible, the patient may have an adverse tissue reaction and tissue erosion adjacent to the device.

Proposed Classification

The agency agrees with recommendations of both Panels and is proposing that penile inflatable implants be classified into class III (premarket approval). FDA believes that the device presents a potential unreasonable risk of illness or injury to the patient if there are not adequate data to assure the safe and effective use of the device. In addition, the device is purported or represented to be for a use (treatment of sexual dysfunction) that is of substantial importance in preventing impairment of human health. Furthermore, the device is an implant, which the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360c(d)) requires to be classified into class III unless the agency determines that premarket approval is not necessary to provide reasonable assurance of a device's safety and effectiveness. In this case, the agency has determined that premarket approval is necessary for the device because general controls and performance standards are insufficient to provide reasonable assurance of the safety and effectiveness of the device. FDA also believes that there is insufficient information to establish a standard to provide reasonable assurance of the safety and effectiveness of the device.

FDA has reviewed the recommendations of the Gastroenterology-Urology Device Classification Panel and of the General and Plastic Surgery Device Classification Panel for penile inflatable implants and has concluded that the classification of this device should be published in the part of the Code of Federal regulations for gastroenterology and urology devices.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and a new structure. FDA published notices of these changes in the Federal Register of May 16, 1978 (43 FR 21606, 21607, and 21608) and May 26, 1978 (43 FR 22672 and 22673). This proposed classification regulation identifies each device panel by the former name. Further information regarding the device advisory committees and list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the Federal Register.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs proposes to amend Part 876 in Subpart D by adding new § 876.3350, to read as follows:

Subpart D—Prosthetic Devices

§ 876.3350 Penile inflatable implant.

(a) *Identification.* A penile inflatable implant is a device that consists of two inflatable cylinders implanted in the penis, connected to a reservoir filled with radiopaque fluid implanted in the abdomen, and a subcutaneous manual pump implanted in the scrotum. When the cylinders are inflated, they provide rigidity to the penis. this device is used in the treatment of erectile impotence.

(b) *Classification.* Class III (premarket approval).

Interested persons may, on or before March 24, 1981, submit to the Dockets Management Branch (formerly the Hearing Clerk's office) (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, written comments regarding this proposal. four copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: December 19, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 81-757 Filed 1-23-81; 8:45 am]

BILLING CODE 4110-03-M

21 CFR Part 876

[Docket No. 78N-1079]

Medical Devices; Classification of Penile Rigidity Implants

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing for public comment a proposed regulation classifying penile rigidity implants into class III (premarket approval). FDA is also publishing the recommendation of the Gastroenterology-Urology Device Classification Panel that the device be classified into class III (premarket approval) and the recommendation of the General and Plastic Surgery Device Classification Panel that the device be classified into class II (performance standards). The effect of classifying a device into class III is to require each manufacturer of the device to submit to FDA a premarket approval application at a date to be set in a future regulation. Each premarket approval application would include information concerning safety and effectiveness tests for the device. The effect of classifying a device into class II is to provide for the future development of one or more performance standards to assure the safety and effectiveness of the device. After considering public comments, FDA will issue a final regulation classifying the device. These actions are being taken under the Medical Device Amendments of 1976.

DATES: Comments by March 24, 1981. FDA proposes that the final regulation based on this proposal become effective 30 days after the date of its publication in the Federal Register.

ADDRESS: Written comments to the Dockets Management Branch (formerly the Hearing Clerk's office) (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Fernando Villarroel, Bureau of Medical Devices (HFK–420), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7750.

SUPPLEMENTARY INFORMATION:

Panel Recommendation

A proposal elsewhere in this issue of the Federal Register provides background information concerning the development of the proposed regulation. The Gastroenterology-Urology Device Classification Panel and the General and Plastic Surgery Device Classification Panel, FDA advisory committees, made the following

recommendation regarding the classification of penile rigidity implants:

1. Identification: A penile rigidity implant is a device that consists of a single semi-rigid rod or a pair of semi-rigid rods implanted in the penis to provide rigidity. It is used in the treatment of erectile impotence.

2. Recommended classification: The Gastroenterology-Urology Device Classification Panel recommends tht penile rigidity implants be classified into class III (premarket approval) and that premarket approval of this device be a high priority. The General and Plastic Surgery Device Classification panel recommends that penile rigidity implants be classified into class II (performance standards) and that establishing a performance standard for this device be a high priority.

3. Summary of reasons for recommendation: The Gastroenterology-Urology Device Classification Panel recommends that the penile rigidity implant be classified into class III (premarket approval) because the device is implanted. The Panel believes that the long term consequences of the implantation of this device are not well understood. The Panel believes that general controls alone would not provide sufficient control over the performance characteristics of the device. The Panel also believes that insufficient information exists to determine that general controls or standards would be adequate to provide reasonable assurance of the safety and effectiveness of the device. The Panel also noted that many problems with the device are associated with the size of the device used, and suggested that a variety of sizes should be available to facilitate appropriate fit.

The General and Plastic Surgery Panel recommends that the penile rigidity implant be classified into class II (performance standards) because the Panel believes that the materials used in the construction of this device must meet a satisfactory level of tissue or blood compatibility, including requirements for adequate surface finish and cleanliness which may affect the degree of compatibility. The design of the device, including strength and rigidity, must be controlled to prevent tissue trauma and structural problems; e.g., fracture of the device. The Panel believes that general controls alone would not provide sufficient control over these characteristics. Although the penile rigidity implant is an implanted device, the General and Plastic Surgery Panel believes that premarket approval is not necessary because sufficient information exists to establish a performance standard that would provide reasonable assurance of the safety and effectiveness of the device.

4. Summary of data on which the recommendation is based: The Panels based their recommendations on the Panel members' personal knowledge of and clinical experience with, the device and familiarity with the medical literature. The Gastroenterology-Urology Device Classification Panel cited studies in which Small et al. (Ref. 1) and Merrill et al. (Ref. 2) reported successful implantation of the device in the short term in 14 of 15 patients.

5. Risks to health: (a) Adverse tissue reaction: If the materials used in the construction of the device are not biocompatible, the patient may have an adverse tissue reaction. (b) Infection: Defects in the design or construction of the device preventing adequate cleaning or sterilization, or defects in packaging or processing of a device sold as sterile, may allow pathogenic organisms to be introduced and cause an infection in the patient. (c) Urinary retention: If the prosthesis compresses the urethra, urine flow will be impeded. (d) Erosion or malfunction: If the implant is improperly sized or mechanically breaks, it may either cause tissue erosion or fail to provide adequate support.

Proposed Classification

FDA agrees with the recommendation of the Gastroenterology-Urology Device Classification Panel and is proposing that penile rigidity implants be classified into class III (premarket approval). FDA has reviewed the recommendations of both Panels and obtained additional data and information on penile rigidity implants. An article on the use of one type of this device during an 18-month period reports that 55 of 61 patients regained capacity for sexual intercourse (Ref. 3). The complications noted in this study include wound infection, penile edema, intractable pain, urinary obstruction, displacement of the silicone rods, and urethral erosion. Loeffler and Iverson noted three complications in 72 patients: infection, extrusion, and improper placement of the prosthesis (Ref. 4). In all four cases the prosthesis was removed. In another study carried out by Apfelberg, Maser, and Lash on 25 patients, an 8 percent complication rate was reported (Ref. 5).

FDA disagrees with the General and Plastic Surgery Device Classification Panel recommendation that penile rigidity implants be classified into class II (performance standards). FDA believes that the device presents a potential unreasonable risk of illness or injury to the patient if there are not adequate data to assure the safe and effective use of the device. In addition, the device is purported or represented to be for a use (treatment of sexual dysfunction) that is of substantial importance in preventing impairment of human health. Furthermore, the device is an implant, which the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360c(d)) requires to be classified into class III unless the agency determines that premarket approval is not necessary to provide reasonable assurance of a device's safety and effectiveness. In this case, the agency has determined that premarket approval is necessary for the device because general controls and performance standards are insufficient to provide reasonable assurance of the safety and effectiveness of the device. FDA also believes that there is insufficient information to establish a standard to provide reasonable assurance of the safety and effectiveness of the device.

There is evidence (Refs. 1 through 5) of complications due to some designs of the device and that these complications cannot be addressed adequately by a performance standard.

FDA has reviewed the recommendations of the Gastroenterology-Urology Device Classification Panel and of the General and Plastic Surgery Device Classification Panel for penile rigidity implants and has concluded that the classification of this device should be published in the part of the Code of Federal Regulations for gastroenterology and urology devices.

References

The following information has been placed in the Dockets Management Branch (address above) and may be seen by interested persons from 9 a.m. to 4 p.m., Monday through Friday.

1. Small, M., et al., "Penile Prosthesis New Implant for Management of Impotence," *Journal of Florida Medical Association*, 62:21–25, 1975.

2. Merrill, D., et al., "Experience with the Small-Carrion Penile Prosthesis," *Journal of Urology*, 115:277–279, 1976.

3. Gottesman, J., "The Small-Carrion Prosthesis for Male Impotence," *Journal of Urology*, 117:289–290, 1977.

4. Loeffler, R. A. and R. E. Iverson, "Surgical Treatment of Impotence in the Male," *Plastic and Reconstructive Surgery*, 59:292–297, 1976.

5. Apfelberg, D., M. Maser, and H. Lash, "Surgical Management of Impotence," *The American Journal of Surgery*, 132:335–337, 1976.

On April 28, 1976, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and a new structure. FDA published notices of these changes in

the Federal Register of May 19, 1976 (42 FR 21686, 21687, and 21688) and May 28, 1976 (43 FR 22672 and 22673). This proposed classification regulation identifies each device panel by the former name. Further information regarding the device advisory committees and list of their new names may be found in the preamble to the general provisions published elsewhere in this issue of the Federal Register.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs proposes to amend Part 876 in Subpart D by adding new § 876.3630, to read as follows:

§ 876.3630 Penile rigidity implant.

(a) *Identification.* A penile rigidity implant is a device that consists of a single semi-rigid rod or a pair of semi-rigid rods implanted in the penis to provide rigidity. It is used in the treatment of erectile impotence.

(b) *Classification.* Class III (premarket approval).

Interested persons may, on or before March 24, 1981, submit to the Dockets Management Branch (formerly the Hearing Clerk's office) (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, written comments regarding this proposal. Four copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: December 23, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 81-758 Filed 1-22-81; 8:45 am]

BILLING CODE 4110-03-M

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21 CFR Part 876

[Docket No. 78N–1991]

Medical Devices; Classification of Testicular Prostheses

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing for public comment a proposed regulation classifying testicular prostheses into class III (premarket approval). FDA is also publishing the recommendation of the Gastroenterology-Urology Device Classification Panel that the device be classified into class III and the recommendation of the General and Plastic Surgery Device Classification Panel that the device be classified into class II. The effect of classifying a device into class III is to require each manufacturer of the device to submit to FDA a premarket approval application at a date to be set in a future regulation. Each premarket approval application would include information concerning safety and effectiveness tests for the device. The effect of classifying a device into class II is to provide for the future development of one or more performance standards to assure the safety and effectiveness of the device. After considering public comments, FDA will issue a final regulation classifying the device. These actions are being taken under the Medical Device Amendments of 1976.

DATES: Comments by March 24, 1981. FDA proposes that the final regulation based on this proposal become effective 30 days after the date of its publication in the Federal Register.

ADDRESS: Written comments to the Dockets Management Branch (formerly the Hearing Clerk's office) (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Fernando Villarroel, Bureau of Medical Devices (HFK–420), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7750.

SUPPLEMENTARY INFORMATION:

Panel Recommendation

A proposal elsewhere in this issue of the Federal Register provides background information concerning the development of the proposed regulation. The Gastroenterology-Urology Device Classification Panel, and the General and Plastic Surgery Device Classification Panel, FDA advisory committees, made the following recommendations regarding the classification of testicular prostheses:

1. Identification: A testicular prosthesis is an implanted device that consists of a solid or gel-filled silicone rubber prosthesis that is implanted surgically to resemble a testicle.

2. Recommended classification: The Gastroenterology-Urology Device Classification Panel recommends that testicular prostheses be classified into Class III (premarket approval) and that premarket approval of this device be a medium priority. The General and Plastic Surgery Device Classification Panel recommends that the device be classified into class II (performance standards) and that establishing a performance standard for this device be a high priority.

3. Summary of reasons for recommendation: The Gastroenterology-Urology Device Classification Panel recommends that these devices be classified into class III because they are implanted devices. The Panel believes that the long-term consequences of the implantation of these devices are not well understood. There is insufficient information available to establish a performance standard that would assure their safety and effectiveness. The Panel believes that general controls are insufficient to assure their safety and effectiveness. Therefore, the devices should be subject to premarket approval to assure that manufacturers demonstrate satisfactory performance of the devices and thus assure their safety and effectiveness.

The General and Plastic Surgery Device Classification Panel recommends that testicular prostheses be classified into class II because the design and construction of the device must be controlled by a performance standard to enable proper cleaning and sterilization of the device to prevent infection. The materials used in the device that contact the body must be controlled by a performance standard to ensure their biocompatibility to prevent an adverse tissue reaction. The Panels believe that general controls alone would not provide sufficient control over these characteristics. Although the testicular prosthesis is an implanted device, the Panel believes that premarket approval is not necessary to provide reasonable assurance of the safety and effectiveness of this device because there is sufficient information available to establish a performance standard.

4. Summary of data on which the recommendation is based: The Panels based their recommendations on the Panel members' personal knowledge of, and clinical experience with, the device.

5. Risks to health: (a) Adverse tissue reaction: If the materials used in the construction of the device are not biocompatible, the patient may have an adverse tissue reaction. (b) Infection: Defects in the design or construction of the device preventing adequate cleaning or sterilization, or defects in packaging or processing of a device sold as sterile, may allow pathogenic organisms to be introduced and cause an infection in the patient.

Proposed Classification

FDA agrees with the recommendation of the Gastroenterology-Urology Device Classification Panel and is proposing

that testicular prostheses be classified into class III (premarket approval). The agency has reviewed the Panel recommendation and has obtained additional data and information describing the use of the testicular prosthesis. The gel-filled prosthesis has been used with minimal complications (Ref. 1); however, silicone gel is known to migrate in the body even from an intact prosthesis. Also, the long-term effects on the body from the silicone material are unknown (Refs. 2 and 3). The clinical use of materials other than silicone rubber was less successful in a study reported by Prentiss (Ref. 4).

FDA disagrees with the recommendation of the General and Plastic Surgery Device Classification Panel that testicular prostheses be classified into class II (performance standards). The device presents a potential unreasonable risk of illness or injury to the patient. The silicone within the prosthesis may migrate in the body of the patient, as described above, with unknown long-term effects (Refs. 2 and 3). Furthermore, the device is an implant which the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360c(d)) requires to be classified into class III unless the agency determines that premarket approval is not necessary to provide reasonable assurance of a device's safety and effectiveness. In this case, the agency has determined that premarket approval is necessary for the device because FDA believes that the device presents a potential unreasonable risk of illness or injury to the patient if there are not adequate data to assure the safe and effective use of the device. In addition, the device is purported or represented to be for a use (reconstructive surgery) that is of substantial importance in preventing impairment of human health. In this case, the agency has determined that premarket approval is necessary for the device because general controls and performance standards are insufficient to provide reasonable assurance of the safety and effectiveness of the device. FDA also believes that there is insufficient information to establish a standard to provide reasonable assurance of the safety and effectiveness of the device.

References

The following information has been placed in the Dockets Management Branch (address above) and may be seen by interested persons, from 9 a.m. to 4 p.m., Monday through Friday.

1. Lattimer, J. K., et al., "A Natural Feeling Testicular Prosthesis," *Journal of Urology*, 110:81–83, 1973.

2. Hausner, R. J., et al., "Foreign Body Reaction to Silicone Gel in Axillary Lymph Nodes after Augmentation Mammaplasty," *Plastic and Reconstructive Surgery*, 62(2):361–363, 1978.

3. Wickham, M. G., et al., "Silicone Identification in Prosthesis-Associated Fibrous Capsules," *Science*, 199:437–439, 1978.

4. Prentiss, R., "Testicular Prosthesis Materials, Methods, and Results," *Journal of Urology*, 90:206–210, 1963.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and a new structure. FDA published notices of these changes in the Federal Register of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). This proposed classification regulation identifies each device panel by the former name. Further information regarding the device advisory committees and list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the Federal Register.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs proposes to amend Part 876 in Subpart D by adding new § 876.3750, to read as follows:

§ 876.3750 Testicular prosthesis.

(a) *Identification.* A testicular prothesis is an implanted device that consists of a solid or gel-filled silicone rubber prosthesis that is implanted surgically to resemble a testicle.

(b) *Classification.* Class III (premarket approval).

Interested persons may, on or before March 24, 1981, submit to the Dockets Management Branch (formerly the Hearing Clerk's office) (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, written comments regarding this proposal. Four copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: December 19, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 81-759 Filed 1-22-81; 8:45 am]

BILLING CODE 4110-03-M

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21 CFR Part 876

[Docket No. 78N–1947]

Medical Devices; Classification of Fiberoptic Light Ureteral Catheters

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing for public comment a proposed regulation classifying fiberoptic light ureteral catheters into class II (performance standards). FDA is also publishing the recommendation of the Gastroenterology-Urology Device Classification Panel that the device be classified into class II. The effect of classifying a device into class II is to provide for the future development of one or more performance standards to assure the safety and effectiveness of the device. After considering public comments, FDA will issue a final regulation classifying the device. These actions are being taken under the Medical Device Amendments of 1976.

DATES: Comments by March 24, 1981. FDA proposes that the final regulation based on this proposal become effective 30 days after the date of its publication in the Federal Register.

ADDRESS: Written comments to the Dockets Management Branch (formerly the Hearing Clerk's office) (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Fernando Villarroel, Bureau of Medical Devices (HFK–420), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7750.

SUPPLEMENTARY INFORMATION:

Panel Recommendation

A proposal elsewhere in this issue of the Federal Register provides background information concerning the development of the proposed regulation. The Gastroenterology-Urology Device Classification Panel, an FDA advisory committee, made the following recommendation regarding the classification of fiberoptic light ureteral catheters:

1. Identification: A fiberoptic light ureteral catheter is a device that consists of a fiberoptic bundle that emits

light throughout its length and is shaped so that it can be inserted into the ureter to enable the path of the ureter to be seen during lower abdominal or pelvic surgery.

2. Recommended classification: Class II (performance standards). The Panel recommends that establishing a performance standard for this device be a low priority.

3. Summary of reasons for recommendation: The Panel recommends that fiberoptic light ureteral catheters be classified into class II because characteristics of the device, including the shape and rigidity of the catheter and the light intensity, must be controlled by a performance standard to prevent trauma. The Panel believes that the design, materials, and construction of the device must be controlled by a performance standard to ensure that the shape, size, rigidity, flexibility, surface finish, and strength of the device are appropriate to prevent trauma, hemorrhage, or perforation and to enable proper cleaning and sterilization of the device to prevent infection. The Panel believes that general controls would not provide sufficient control over these characteristics. The Panel believes that a performance standard would provide reasonable assurance of the safety and effectiveness of the device and that there is sufficient information to establish a performance standard.

4. Summary of data on which the recommendation is based: The panel based its recommendations on the Panel members' personal knowledge of, and clinical experience with, this device.

5. Risks to health: (a) Trauma, hemorrhage, or perforation: Improper size, shape, rigidity, arrangement, or finish on parts of this device may cause tissue trauma, hemorrhage, or perforation of the ureter. (b) Infection: Defects in the design or construction of the device preventing adequate cleaning or sterilization, or defects in packaging or processing of a device sold as sterile, may allow pathogenic organisms to be introduced and cause an infection in the patient.

Proposed Classification

FDA agrees with the Panel recommendation and is proposing that fiberoptic light ureteral catheters be classified into class II (performance standards). The agency believes that a performance standard is necessary for this device because general controls alone are insufficient to control the risks to health presented by the device. A performance standard would provide reasonable assurance of the safety and effectiveness of the device. The agency also believes that there is sufficient information to establish a performance standard for this device.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and a new structure. FDA published notices of these changes in the Federal Register of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). This proposed classification regulation identifies each device panel by the former name. Further information regarding the device advisory committees and list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the Federal Register.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs proposes to amend Part 876 in Subpart E by adding new § 876.4020, to read as follows:

Subpart E—Surgical Devices

§ 876.4020 Fiberoptic light ureteral catheter.

(a) *Identification.* A fiberoptic light ureteral catheter is a device that consists of a fiberoptic bundle that emits light throughout its length and is shaped so that it can be inserted into the ureter to enable the path of the ureter to be seen during lower abdominal or pelvic surgery.

(b) *Classification.* Class II (performance standards).

Interested persons may, on or before March 24, 1981, submit to the Dockets Management Branch (formerly the Hearing Clerk's office) (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, written comments regarding this proposal. Four copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: December 18, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 81-700 Filed 1-23-81; 8:45 am]

BILLING CODE 4110-03-M

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21 CFR Part 876

[Docket No. 78N-1990]

Medical Devices; Classification of Circumcision Instruments

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing for public comment a proposed regulation classifying circumcision instruments into class II (performance standards). FDA is also publishing the recommendation of the Gastroenterology-Urology Device Classification Panel that the devices be classified into class II. The effect of classifying a device into class II is to provide for the future development of one or more performance standards to assure the safety and effectiveness of the device. After considering the public comments, FDA will issue a final regulation classifying the devices. These actions are being taken under the Medical Device Amendments of 1976.

DATES: Comments by March 24, 1981. FDA proposes that the final regulation based on this proposal become effective 30 days after the date of its publication in the Federal Register.

ADDRESS: Written comments to the Dockets Management Branch (formerly the Hearing Clerk's office) (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Fernando Villarroel, Bureau of Medical Devices (HFK–430), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7750.

SUPPLEMENTARY INFORMATION:

Panel Recommendation

A proposal elsewhere in this issue of the Federal Register provides background information concerning the development of the proposed regulation. The Gastroenterology-Urology Device Classification Panel, an FDA advisory committee, made the following recommendation regarding the classification of circumcision instruments:

1. Identification: A circumcision instrument is a device made specifically for use in circumcision procedures. This generic type of device includes the plastic bell circumcision device, circumcision shield, and circumcision clamp.

2. Recommended classification: Class II (performance standards). The Panel recommends that establishing a

performance standard for these devices be a low priority.

3. Summary of reasons for recommendation: The Panel recommends that circumcision instruments be classified into class II because the configuration and accurate sizing of the devices must be controlled by a performance standard to prevent tissue damage. The Panel recommends that the design and construction of the device must be controlled by a performance standard to enable proper cleaning and sterilization of the device to prevent infection. The materials used in the device that contact the body must be controlled by a performance standard to ensure their biocompatibility to prevent an adverse tissue reaction. The design, materials, and construction of the device must be controlled by a performance standard to ensure that the shape, size, rigidity, flexibility, surface finish, and strength of the device are appropriate to prevent trauma or hemorrhage. The Panel believes that general controls alone would not provide sufficient control over these characteristics. The Panel believes that a performance standard would provide reasonable assurance of the safety and effectiveness of the devices and that there is sufficient information to establish a performance standard.

4. Summary of data on which the recommendation is based: The panel based its recommendation on the Panel members' personal knowledge of, and clinical experience with, these devices and on the widespread use of these devices in medical practice.

5. Risks to health: (a) Excessive trauma or hemorrhage: Improper size, shape, rigidity, arrangement, or finish on parts of these devices may cause excessive tissue trauma or hemorrhage. (b) Adverse tissue reaction: If the materials used in the construction of these devices are not biocompatible, the patient may have an adverse tissue reaction. (c) Infection: Defects in the design or construction of the device preventing adequate cleaning or sterilization, or defects in packaging or processing of a device sold as sterile, may allow pathogenic organisms to be introduced and cause an infection in the patient.

Proposed classification

FDA agrees with the Panel recommendation and is proposing that circumcision instruments be classified into calass II (performance standards). The agency believes that a performance standard is necessary for these devices because general controls alone are insufficient to control the risks to health presented by the devices. A performance standard would provide reasonable assurance of the safety and effectiveness of the devices. The agency also believes that there is sufficient information to establish a performance standard for these devices.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and a new structure. FDA published notices of these changes in the Federal Register of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). This proposed classification regulation identifies each device panel by the former name. Further information regarding the device advisory committees and list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the Federal Register.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs proposes to amend Part 876 in subpart E by adding new § 876.4200, to read as follows:

§ 876.4200 Circumcision instrument.

(a) *Identification.* A circumcision instrument is a device made specifically for use in circumcision procedures. This generic type of device includeds the plastic bell circumcision device, circumcision shield, and circumcision clamp.

(b) *Classification.* Class II (performance standards).

Interested persons may, on or before March 24, 1981, submit to the Dockets Management Branch (formerly the Hearing Clerk's office) (HFA–305), food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, written comments regarding this proposal. Four copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: December 19, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 81-791 Filed 1-22-81; 8:45 am]

BILLING CODE 4110-03-M

21 CFR Part 876

[Docket No. 78N–1371]

Medical Devices; Classification of Colostomy Rods

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing for public comment a proposed regulation classifying colostomy rods into class II (performance standards). FDA is also publishing the recommendation of the Gastroenterology-Urology Device Classification Panel that the device be classified into class II. The effect of classifying a device into class II is to provide for the future development of one or more performance standards to assure the safety and effectiveness of the device. After considering public comments, FDA will issue a final regulation classifying the device. These actions are being taken under the Medical Device Amendments of 1976.

DATES: Comments by March 24, 1981. FDA proposes that the final regulation based on this proposal become effective 30 days after the date of its publication in the Federal Register.

ADDRESS: Written comments to the Dockets Management Branch (formerly the Hearing Clerk's office) (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Fernando Villarroel, Bureau of Medical Devices (HFK–420), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7750.

SUPPLEMENTARY INFORMATION:

Panel Recommendation

A proposal elsewhere in this issue of the Federal Register provides background information concerning the development of the proposed regulation. The Gastroenterology-Urology Device Classification Panel, an FDA advisory committee, made the following recommendation regarding the classification of colostomy rods:

1. *Identification:* A colostomy rod is a device used during the loop colostomy procedure. A loop of colon is surgically brought out through the abdominal wall and the stiff colostomy rod is placed through the loop temporarily to keep the colon from slipping back through the surgical opening.

2. Recommended classification: Class II (performance standards). The Panel recommends that establishing a performance standard for this device be a low priority.

3. Summary of reasons for recommendation: The Panel recommends that colostomy rods be classified into class II because the materials used in the device that contact the body must meet a biocompatibility standard to prevent an adverse tissue reaction. The design, materials, and construction of the device must be controlled by a performance standard to ensure that the shape, size, rigidity, flexibility, surface finish, and strength of the device are appropriate to prevent trauma, hemorrhage, perforation, or breakage allowing the intestine to retract into the peritoneal cavity leading to leakage of peritoneal contents and peritonitis. The Panel believes that general controls alone would not provide sufficient control over these characteristics. The Panel believes that a performance standard would provide reasonable assurance of the safety and effectiveness of the device and that there is sufficient information to establish a performance standard.

4. Summary of data on which the recommendation is based: The Panel based its recommendation on the panel members' personal knowledge of, and clinical experience with, the device.

5. Risks to health: (a) Trauma, hemorrhage, or perforation: Improper size, shape, rigidity, arrangement, or finish on parts of this device may cause tissue trauma, hemorrhage, or perforation. (b) Adverse tissue reaction: If the materials used in the device are not biocompatible, the patient may have an adverse tissue reaction. (c) Peritonitis: If the device breaks, the loop of intestine may retract into the peritoneal cavity and leak intestinal contents, with consequent peritonitis. (d) Infection: Defects in the design or construction of the device preventing adequate cleaning or sterilization, or defects in packaging or processing of a device sold as sterile, may allow pathogenic organisms to be introduced and cause an infection in the patient.

Proposed Classification

FDA agrees with the Panel recommendation and is proposing that colostomy rods be classified into class II (performance standards). The agency believes that a performance standard is necessary for this device because general controls alone are insufficient to control the risks to health presented by the device. A performance standard will provide reasonable assurance of the safety and effectiveness of the device. The agency also believes that there is sufficient information to establish a performance standard for this device.

On April 23, 1976, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and a new structure. FDA published notices of these changes in the Federal Register of May 19, 1976 (43 FR 21666, 21667, and 21668) and May 28, 1976 (43 FR 22672 and 22673). This proposed classification regulation identifies each device panel by the former name. Further information regarding the device advisory committees and list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the Federal Register.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs proposes to amend Part 876 in Subpart E by adding new § 876.4270, to read as follows:

§ 876.4270 Colostomy rod.

(a) *Identification.* A colostomy rod is a device used during the loop colostomy procedure. A loop of colon is surgically brought out through the abdominal wall and the stiff colostomy rod is placed through the loop temporarily to keep the colon from slipping back through the surgical opening.

(b) *Classification.* Class II (performance standards).

Interested persons may, on or before March 24, 1981, submit to the Dockets Management Branch (formerly the Hearing Clerk's office) (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, written comments regarding this proposal. Four copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: December 19, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 81-752 Filed 1-22-81; 8:45 am]

BILLING CODE 4110-03-M

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21 CFR Part 876

[Docket No. 78N-1093]

Medical Devices; Classification of Endoscopic Electrosurgical Units and Accessories

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing for public comment a proposed regulation classifying endoscopic electrosurgical units and accessories into class II (performance standards). FDA is also publishing the recommendation of the Gastroenterology-Urology Device Classification Panel that the devices be classified into class II. the effects of classifying a device into class II is to provide for the future development of one or more performance standards to assure the safety and effectiveness of the device. After considering public comments, FDA will issue a final regulation classifying the devices. These actions are being taken under the Medical Device Amendments of 1976.

DATES: Comments by March 24, 1981. FDA proposes that the final regulation based on this proposal become effective 30 days after the date of its publication in the Federal Register.

ADDRESS: Written comments to the Dockets Management Branch (formerly the Hearing Clerk's office) (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, Md 20857.

FOR FURTHER INFORMATION CONTACT: Fernando Villarroel, Bureau of Medical Devices (HFK–420), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, Md 20910, 301–426–7750.

SUPPLEMENTARY INFORMATION:

Panel Recommendation

A proposal elsewhere is this issue of the Federal Register provides background information concerning the development of the proposed regulation. The Gastroenterology-Urology Device Classification Panel, an FDA advisory committee, made the following recommendation regarding the classification of endoscopic electrosurgical units and accessories:

1. Identification: An endoscopic electrosurgical unit and accessories is a device used to perform electrosurgical procedures through an endoscope. This generic type of device includes the electrosurgical generator, patient plate, electric biopsy forceps, electrode, flexible snare, electrosurgical alarm system, electrosurgical power supply unit, electrical clamp, self-opening rigid snare, flexible suction coagulator electrode, patient return wristlet, contact jelly, adaptor to the cord for transurethral surgical instruments, the electric cord for transurethral surgical instruments, and the transurethral desiocator.

2. Recommended classification: Class II (performance standards). The Panel recommends that establishing a performance standard for these devices be a high priority.

3. Summary of reasons for recommendation: The Panel recommends that endoscopic electrosurgical units and accessories be classified into class II (performance standards) because the design and construction of the devices must be controlled by a performance standard to prevent electrical injury to the patient. The design and construction of the device must be controlled by a performance standard to ensure proper cleaning and sterilization of the device to prevent infection. The materials used in the device that contact the body must meet a biocompatibility standard to prevent an adverse tissue reaction. The design, material, and construction of the device must be controlled by a performance standard to ensure that the shape, size, rigidity, flexibility, and surface finish are appropriate to prevent trauma, hemorrhage, and perforation. The Panel believes that general controls alone would not provide sufficient control over these characteristics. The Panel believes that a performance standard would provide reasonable assurance of the safety and effectiveness of the devices and that there is sufficient information to establish a performance standard.

4. Summary of data on which the recommendation is based: The Panel based its recommendation on the Panel members' personal knowledge of, and clinical experience with, the devices and on the widespread use of the devices in medical practice.

5. Risks to health: (a) Trauma, hemorrhage, or perforation: Improper size, shape, rigidity, arrangement, or finish on parts of the device may cause tissue trauma, hemorrhage, or perforation. (b) Electrical injury: Improper design, construction, or a malfunction of the device could result in electrical injury to the patient or the operator. (c) Infection: Defects in the design or construction of the device preventing adequate cleaning or sterilization, or defects in packaging or processing of a device sold as sterile, may allow pathogenic organisms to be introduced and cause an infection in the patient. (d) Adverse tissue reaction: If the materials used in the device are not biocompatible, the patient may have an adverse tissue reaction.

Proposed Classification

FDA agrees with the Panel recommendation and is proposing that endoscopic electrosurgical units and accessories be classified into class II (performance standards). The agency believes that a performance standard is necessary for this device because general controls alone are insufficient to control the risks to health presented by the device. A performance standard would provide reasonable assurance of the safety and effectiveness of the device. The agency also believes that there is sufficient information to establish a performance standard for this device.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and a new structure. FDA published notices of these changes in the Federal Register of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). This proposed classification regulation identifies each device panel by the former name. Further information regarding the device advisory committees and list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the Federal Register.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–549 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs proposes to amend Part 878 in Subpart E by adding new § 878.4300, to read as follows:

§ 878.4300 Endoscopic electrosurgical unit and accessories.

(a) *Identification.* An endoscopic electrosurgical unit and accessories is a device used to perform electrosurgical procedures through an endoscope. This generic type of device includes the electrosurgical generator, patient plate, electric biopsy forceps, electrode, flexible snare, electrosurgical alarm system, electrosurgical power supply unit, electrical clamp, self-opening rigid snare, flexible suction coagulator electrode, patient return wristlet, contact jelly, adaptor to the cord for transurethral surgical instruments, the electric cord for transurethral surgical instruments, and the transurethral desiccator.

(b) *Classification.* Class II (performance standards).

Interested persons may, on or before March 24, 1981, submit to the Dockets Management Branch (formerly the Hearing Clerk's office) (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, written comments regarding this proposal. Four copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: December 19, 1980.

William F. Randolph,
Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 81-750 Filed 1-22-81; 8:45 am]
BILLING CODE 4110-03-M

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21 CFR Part 878

[Docket No. 78N–1094]

Medical Devices; Classification of Gastroenterology-Urology Evacuators

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing for public comment a proposed regulation classifying gastroenterology-urology evacuators into class II (performance standards). FDA is also publishing the recommendation of the Gastroenterology-Urology Device Classification Panel that the device be classified into class II. The effect of classifying a device into class II is to provide for the future development of one or more performance standards to assure the safety and effectiveness of the device. After considering public comments, FDA will issue a final regulation classifying the device. These actions are being taken under the Medical Device Amendments of 1976.

DATES: Comments by March 24, 1981. FDA proposes that the final regulation based on this proposal become effective 30 days after the date of its publication in the Federal Register.

ADDRESS: Written comments to the Dockets Management Branch (formerly the Hearing Clerk's office) (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Fernando Villarroel, Bureau of Medical Devices (HFK–420), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7750.

SUPPLEMENTARY INFORMATION:

Panel Recommendation

A proposal elsewhere in this issue of the Federal Register provides background information concerning the development of the proposed regulation. The Gastroenterology-Urology Device

Classification Panel, an FDA advisory committee, made the following recommendation regarding the classification of gastroenterology-urology evacuators:

1. Identification: A gastroenterology-urology evacuator is a device used to remove debris and fluids during gastroenterological and urological procedures by drainage, aspiration, or irrigation. This generic type of device includes the fluid evacuator system, manually operated bladder evacuator, and the AC-powered vacuum pump.

2. Recommended classification: Class II (performance standards). The Panel recommends that establishing a performance standard for this device be of low priority.

3. Summary of reasons for recommendation: The Panel recommends that gastroenterology-urology evacuators be classified into class II because the design, materials, and construction of the device must be controlled by a performance standard to ensure that the shape, size, rigidity, flexibility, surface finish, and strength of the device are appropriate to prevent trauma, hemorrhage, or perforation and to ensure that the suction force is controlled to prevent inadequate aspiration due to lack of suction or damage to tissue by excessive suction. The constraction of the evacuator tube must be controlled to maintain patency. The design and construction of the device must be controlled by a performance standard to prevent excessive irrigant pressure in the bladder during irrigant instillation and to enable proper cleaning and sterilization of the device to prevent infection. The electrical properties of the device must be controlled to prevent electrical injury to the patient or operator. The Panel believes that general controls alone would not provide sufficient control over these characteristics. The Panel believes that a performance standard would provide reasonable assurance of the safety and effectiveness of the device and that there is sufficient information to establish a performance standard.

4. Summary of data on which the recommendation is based: The panel based its recommendation on the Panel members' personal knowledge of, and clinical experience with, the device and on the widespread use of the device in medical practice.

5. Risks to health: (a) Trauma, hemorrhage, or perforation: The size, shape, rigidity, arrangement, or finish on parts of this device may cause tissue trauma, hemorrhage, or perforation. (b) Retrograde bacterial spread: Poor design or performance of the device may cause inadequate aspiration of the body cavity and possible retrograde bacterial spread. (c) Bladder rupture: Excessive pressure exerted during irrigant instillation can result in bladder rupture. (d) Tissue damage: Excessive suction can cause tissue damage. (e) Infection: Defects in the design or construction of the device preventing adequate cleaning or sterilization, or defects in packaging or processing of a device sold as sterile may allow pathogenic organisms to be introduced and cause an infection in the patient. (f) Electrical injury: Improper design, construction, or a malfunction of the device could result in electrical injury to the patient or the operator.

Proposed Classification

FDA agrees with the Panel recommendation and is proposing that gastroenterology-urology evacuators be classified into class II (performance standards). The agency believes that a performance standard is necessary for this device because general controls alone are insufficient to control the risks to health presented by the device. A performance standard would provide reasonable assurance of the safety and effectiveness of the device. The agency also believes that there is sufficient information to establish a performance standard for this device.

On April 28, 1976, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and a new structure. FDA published notices of these changes in the **Federal Register** of May 19, 1976 (43 FR 21666, 21667, and 21668) and May 26, 1976 (43 FR 22672 and 22673). This proposed classification regulation identifies each device panel by the former name. Further information regarding the device advisory committees and list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the **Federal Register**.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs proposes to amend Part 876 in Subpart E by adding new § 876.4370, to read as follows:

§ 876.4370 Gastroenterology-urology evacuator.

(a) *Identification.* A gastroenterology-urology evacuator is a device used to remove debris and fluids during gastroenterological and urological procedures by drainage, aspiration, or irrigation. This generic type of device includes the fluid evacuator system, manually operated bladder evacuator, and the AC-powered vacuum pump.

(b) *Classification.* Class II (performance standards).

Interested persons may, on or before march 24, 1981, submit to the Dockets Management Branch (formerly the Hearing Clerk's office) (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, written comments regarding this proposal. Four copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: December 19, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 81-704 Filed 1-23-81; 8:45 am]

BILLING CODE 4110-03-M

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21 CFR Part 876

[Docket No. 78N-1995]

Medical Devices; Classification of Hemorrhoidal Ligators

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing for public comment a proposed regulation classifying hemorrhoidal ligators into class II (performance standards). FDA is also publishing the recommendation of the Gastroenterology-Urology Device Classification Panel that the device be classified into class II. The effect of classifying a device into class II is to provide for the future development of one or more performance standards to assure the safety and effectiveness of the device. After considering public comments, FDA will issue a final regulation classifying the device. These actions are being taken under the Medical Device Amendments of 1976.

DATES: Comments by March 24, 1981. FDA proposes that the final regulation based on this proposal become effective 30 days after the date of its publication in the **Federal Register**.

ADDRESS: Written comments to the Dockets Management Branch (formerly the Hearing Clerk's office) (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT:
Fernando Villarroel, Bureau of Medical Devices (HFK–420), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7750.

SUPPLEMENTARY INFORMATION:

Panel Recommendation

A proposal elsewhere in this issue of the Federal Register provides background information concerning the development of the proposed regulation. The Gastroenterology-Urology Device Classification Panel, an FDA advisory committee, made the following recommendation regarding the classification of hemorrhoidal ligators:

1. Identification: A hemorrhoidal ligator is a device used to cut off the blood flow to hemorrhoidal tissue by means of a ligature or band placed around the hemorrhoid.

2. Recommended classification: Class II (performance standards). The Panel recommends that establishing a performance standard for this device be a low priority.

3. Summary of reasons for recommendation: The Panel recommends that hemorrhoidal ligators be classified into class II because the Panel believes that the materials used in, and mechanical design of, this device must be controlled by a performance standard to prevent excessive tissue strangulation or hemorrhage. The Panel believes that general controls alone would not provide sufficient control over this characteristic. The Panel believes that a performance standard would provide reasonable assurance of the safety and effectiveness of the device and that there is sufficient information to establish a performance standard.

4. Summary of data on which the recommendation is based: The Panel based its recommendation on the Panel members' personal knowledge of, and clinical experience with, the device and on the widespread use of the device in medical practice.

5. Risks to health: Hemorrhage or excessive strangulation of tissue: Breakage or poor design of this device could result in hemorrhage or excessive strangulation of tissue.

Proposed Classification

FDA agrees with the Panel recommendation and is proposing that hemorrhoidal ligators be classified into class II (performance standards). The agency believes that a performance standard is necessary for this device because general controls alone are insufficient to control the risks to health presented by the device. A performance standard would provide reasonable assurance of the safety and effectiveness of the device. The agency also believes that there is sufficient information to establish a performance standard for this device.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and a new structure. FDA published notices of these changes in the Federal Register of May 19 and 26, 1978 (43 FR 21666 and 22672). This classification regulation identifies each device panel by the former name. Further information regarding the device advisory committees and list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the Federal Register.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs proposes to amend Part 876 in Subpart E by adding new § 876.4400, to read as follows:

§ 876.4400 Hemorrhoidal ligator.

(a) *Identification.* A hemorrhoidal ligator is a device used to cut off the blood flow to hemorrhoidal tissue by means of a ligature or band placed around the hemorrhoid.

(b) *Classification.* Class II (performance standards).

Interested persons may, on or before March 24, 1981, submit to the Dockets Management Branch (formerly the Hearing Clerk's office) (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, written comments regarding this proposal. Four copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: December 19, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 81–765 Filed 1–22–81; 8:45 am]

BILLING CODE 4110–03–M

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21 CFR Part 876

[Docket No. 78N–1096]

Medical Devices; Classification of Electrohydraulic Lithotriptors

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing for public comment a proposed regulation classifying electrohydraulic lithotriptors into class III (premarket approval). FDA is also publishing the recommendation of the Gastroenterology-Urology Device Classification Panel that the device be classified into class III. The effect of classifying a device into class III is to require each manufacturer of the device to submit to FDA a premarket approval application at a date to be set in a future regulation. Each premarket approval application would include information concerning safety and effectiveness tests for the device. After considering public comments, FDA will issue a final regulation classifying the device. These actions are being taken under the Medical Device Amendments of 1976.

DATES: Comments by March 24, 1981. FDA proposes that the final regulation based on this proposal become effective 30 days after the date of its publication in the Federal Register.

ADDRESS: Written comments to the Dockets Management Branch (formerly the Hearing Clerk's office) (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT:
Fernando Villarroel, Bureau of Medical Devices (HFK–420), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7750.

SUPPLEMENTARY INFORMATION:

Panel Recommendation

A proposal elsewhere in this issue of the Federal Register provides background information concerning the development of the proposed regulation. The Gastroenterology-Urology Device Classification Panel, an FDA advisory committee, made the following recommendation regarding the classification of electrohydraulic lithotriptors:

1. Identification: An electrohydraulic lithotriptor is an AC-powered device used to fragment urinary bladder stones. It consists of a high voltage source connected by a cable to a bipolar electrode that is introduced into the urinary bladder through a cystoscope. With the bladder full of water, the electrode is held against the stone and repeated electrical discharges between the two poles of the electrode cause electrohydraulic shock waves which disintegrate the stone.

2. Recommended classification: Class III (premarket approval). The Panel

recommends that premarket approval of this device be a high priority.

3. Summary of reasons for recommendation: The Panel recommends that this device be classified into class III because it presents a potential unreasonable risk of illness or injury to the patient. The Panel believes that a performance standard would not provide reasonable assurance of the safety and effectiveness of the device and that there is not sufficient information to establish a standard. The device, therefore, should be subject to premarket approval to assure that manufacturers demonstrate satisfactory performance of the device and thus assure its safety and effectiveness.

4. Summary of data on which the recommendation is based: The Panel based its recommendation on the usage of this device as reported in the medical literature. Although the references cited indicate the value of using this device, the Panel members identified significant hazards associated with its use (Refs. 1, 2, and 3). The Panel believes there is not enough information at this time to promulgate a performance standard for this device.

5. Risks to health: (a) Perforation of the bladder: If the stone is against the bladder mucosa, the introduction of shock waves into the stone and the physical contact of the stone with the bladder wall can cause ulceration, infection, sloughing, and eventual perforation of the bladder. (b) Inability to crush stones: Use of inadequate voltage can result in failure to fragment the stones. (c) Formation of additional stones: This device can drive particles from a stone being fragmented into the bladder wall. If the fragments of the stone remain in the bladder wall, they can become nuclei for the formation of additional stones. (d) Electrical injury: Improper design, construction, or a malfunction of the device could result in electrical injury to the patient or the operator.

Proposed Classification

FDA agrees with the Panel recommendation and is proposing that electrohydraulic lithotriptors be classified into class III (premarket approval). FDA believes that the device presents a potential unreasonable risk of illness or injury to the patient if there are not adequate data to assure the safe and effective use of the device. Shock waves associated with the use of this device may result in significant tissue damage. In addition, the device is purported or represented to be for a use (treatment of urinary bladder stones) that is of substantial importance in preventing impairment of human health. Premarket approval is necessary for the device because general controls and performance standards are insufficient to provide reasonable assurance of the safety and effectiveness of the device. FDA also believes that there is insufficient information to establish a standard to provide reasonable assurance of the safety and effectiveness of the device.

References

The following information has been placed in the Dockets Management Branch and may be seen by interested persons from 9 a.m. to 4 p.m., Monday through Friday.

1. Alfthun, O. and M. Murtomaa, "Experience with the Clinical and Experimental Urat-I Lithotriptor," *Scandinavian Journal of Urology and Nephrology*, 6:(23–25), 1972.
2. Raney, A. M., "Electrohydraulic Lithotripsy: Experimental Study and Case Reports with the Stone Disintegrator," *The Journal of Urology*, Volume 113, pp. 345–347, March 1975.
3. Raney, A. M., "Electrohydraulic Cystolithotripsy," *Urology*, Volume VII:4, April 1976, pp. 379–381.

On April 28, 1976, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and a new structure. FDA published notices of these changes in the Federal Register of May 19, 1976 (43 FR 21666, 21667, and 21668) and May 26, 1976 (43 FR 22672 and 22673). This proposed classification regulation identifies each device panel by the former name. Further information regarding the device advisory committees and list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the Federal Register.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs proposes to amend Part 876 in Subpart E by adding new § 876.4480, to read as follows:

§ 876.4480 Electrohydraulic lithotriptor.

(a) *Identification.* An electrohydraulic lithotriptor is an AC-powered device used to fragment urinary bladder stones. It consists of a high voltage source connected by a cable to a bipolar electrode that is introduced into the urinary bladder through a cystoscope. With the bladder full of water, the electrode is held against the stone and repeated electrical discharges between the two poles of the electrode cause electrohydraulic shock waves which disintegrate the stone.

(b) *Classification.* Class III (premarket approval).

Interested persons may, on or before March 24, 1981, submit to the Dockets Management Branch (formerly the Hearing Clerk's office) (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, written comments regarding this proposal. Four copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: December 19, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 81-795 Filed 1-23-81; 8:45 am]
BILLING CODE 4110-03-M

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21 CFR Part 876

[Docket No. 79N-0391]

Medical Devices; Classification of Mechanical Lithotriptors

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing for public comment a proposed regulation classifying mechanical lithotriptors into class II (performance standards). FDA is also publishing the recommendation of the Gastroenterology-Urology Device Classification Panel that the device be classified into class II. The effect of classifying a device into class II is to provide for the future development of one or more performance standards to assure the safety and effectiveness of the device. After considering public comments, FDA will issue a final regulation classifying the device. These actions are being taken under the Medical Device Amendments of 1976.

DATES: Comments by March 24, 1981. FDA proposes that the final regulation based on this proposal become effective 30 days after the date of its publication in the Federal Register.

ADDRESS: Written comments to the Dockets Management Branch (formerly the Hearing Clerk's office) (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT:
Fernando Villarroel, Bureau of Medical Devices (HFK–420), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, Md. 20910, 301–427–7750.

SUPPLEMENTARY INFORMATION:

Panel Recommendation

A proposal elsewhere in this issue of the Federal Register provides background information concerning the development of the proposed regulation. The Gastroenterology-Urology Device Classification Panel, an FDA advisory committee, made the following recommendation regarding the classification of mechanical lithotriptors:

1. Identification: A mechanical lithotriptor is a device with steel jaws that is inserted into the urinary bladder through the urethra to grasp and crush bladder stones.

2. Recommended classification: Class II (performance standards). The Panel recommends that establishing a performance standard for this device be a low priority.

3. Summary of reasons for recommendation: The Panel recommends that mechanical lithotriptors be classified into class II because the Panel believes that the mechanical design and performance of the device, especially of the jaws, must be controlled by a performance standard to prevent injury to the patient. The design and construction of the device must be controlled by a performance standard to enable proper cleaning and sterilization of the device to prevent infection. The Panel believes that general controls alone would not provide sufficient control over these characteristics. The Panel believes that a performance standard would provide reasonable assurance of the safety and effectiveness of the device and that there is sufficient information to establish a performance standard.

4. Summary of data on which the recommendation is based: the Panel based its recommendation on the Panel members' personal knowledge of, and clinical experience with, the device.

5. Risks to health: (a) Trauma, hemorrhage, or perforation: Improper size, shape, rigidity, arrangement, or finish on parts of this device may cause tissue trauma or perforation, and the sharp teeth of the jaws may cause hemorrhage. (b) Infection: Defects in the design or construction of the device preventing adequate cleaning or sterilization, or defects in packaging or processing of a device sold as sterile, may allow pathogenic organisms to be introduced and cause infection in the patient.

Proposed Classification

FDA agrees with the Panel recommendation and is proposing that mechanical lithotriptors be classified into class II (performance standards). The agency believes that a performance standard is necessary for this device because general controls alone are insufficient to control the risks to health presented by the device. A performance standard would provide reasonable assurance of the safety and effectiveness of the device. The agency also believes that there is sufficient information to establish a performance standard for this device.

On April 28, 1976, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and a new structure. FDA published notices of these changes in the Federal Register of May 19, 1976 (43 FR 21666, 21667, and 21668) and May 26, 1976 (43 FR 22672 and 22673). This proposed classification regulation identifies each device panel by the former name. Further information regarding the device advisory committees and list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the Federal Register.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs proposes to amend Part 876 in Subpart E by adding new § 876.4500, to read as follows:

§ 876.4500 Mechanical lithotriptor.

(a) *Identification.* A mechanical lithotriptor is a device with steel jaws that is inserted into the urinary bladder through the urethra to grasp and crush bladder stones.

(b) *Classification.* Class II (performance standards).

Interested persons may, on or before March 24, 1981, submit to the Dockets Management Branch (formerly the Hearing Clerk's office) (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, written comments regarding this proposal. Four copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: December 19, 1980.

William F. Randolph,
Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 81-797 Filed 1-22-81; 8:45 am]

BILLING CODE 4110-03-M

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21 CFR Part 876

[Docket No. 79N–1099]

Medical Devices; Classification of Gastroenterology-Urology Fiberoptic Retractors

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing for public comment a proposed regulation classifying gastroenterology-urology fiberoptic retractors into class I (general controls). FDA is also publishing the recommendation of the Gastroenterology-Urology Device Classification Panel that the device be classified into class I. The effect of classifying a device into class I is to require that the device meet only the general controls applicable to all devices. After considering public comments, FDA will issue a final regulation classifying the device. These actions are being taken under the Medical Device Amendments of 1976.

DATES: Comments by March 24, 1981. FDA proposes that the final regulation based on this proposal become effective 30 days after the date of its publication in the Federal Register.

ADDRESS: Written comments to the Dockets Management Branch (formerly the Hearing Clerk's office) (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT:
Fernando Villarroel, Bureau of Medical Devices (HFK–420), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7750.

SUPPLEMENTARY INFORMATION:

Panel Recommendation

A proposal elsewhere in this issue of the Federal Register provides background information concerning the development of the proposed regulation. The Gastroenterology-Urology Device Classification Panel, an FDA advisory committee, made the following recommendation regarding the classification of gastroenterology-urology fiberoptic retractors:

1. Identification: A gastroenterology-urology fiberoptic retractor is a device that consists of a mechanical retractor

with a fiberoptic light system that is used to illuminate deep surgical sites.

2. Recommended classification: Class I (general controls). The Panel recommends that there be no exemptions.

3. Summary of reasons for recommendation: The Panel recommends that gastroenterology-urology fiberoptic retractors be classified into class I (general controls) because the Panel believes that general controls are sufficient to provide reasonable assurance of the safety and effectiveness of this device.

4. Summary of data on which the recommendation is based: The Panel based its recommendation on the Panel members' personal knowledge of, and clinical experience with, the device and on the widespread use of the device in medical practice.

5. Risks to health: Inadequate illumination. If the fiberoptic bundles in the device become disrupted, discontinuity or loss of light may result.

Proposed Classification

FDA agrees with the Panel recommendation and is proposing that gastroenterology-urology fiberoptic retractors be classified into class I (general controls) with no exemptions. The agency believes that general controls alone are sufficient to provide reasonable assurance of the safety and effectiveness of the device. FDA agrees with the Panel that the fiberoptic bundles of this device may become disrupted and cause discontinuity or loss of light. However, the agency believes that general controls are adequate to control this risk to health.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and a new structure. FDA published notices of these changes in the Federal Register of May 12, 1978 (43 FR 21006, 21007, and 21008) and May 26, 1978 (43 FR 22672 and 22673). This proposed classification regulation identifies each device panel by the former name. Further information regarding the device advisory committees and list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the Federal Register.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–549 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs proposes to amend Part 876 in Subpart E by adding new § 876.4530, to read as follows:

§ 876.4530 Gastroenterology-urology fiberoptic retractor.

(a) *Identification.* A gastroenterology-urology fiberoptic retractor is a device that consists of a mechanical retractor with a fiberoptic light system that is used to illuminate deep surgical sites.

(b) *Classification.* Class I (general controls).

Interested persons may, on or before March 24, 1981, submit to the Dockets Management Branch (formerly the Hearing Clerk's office) (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, written comments regarding this proposal. Four copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: December 19, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 81-798 Filed 1-22-81; 8:45 am]

BILLING CODE 4110-03-M

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21 CFR Part 876

[Docket No. 79N–2067]

Medical Devices; Classification of Ribdams

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing for public comment a proposed regulation classifying ribdams into class II (performance standards). FDA is also publishing the recommendation of the Gastroenterology-Urology Device Classification Panel that the device be classified into class II. The effect of classifying a device into class II is to provide for the future development of one or more performance standards to assure the safety and effectiveness of the device. After considering public comments, FDA will issue a final regulation classifying the device. These actions are being taken under the Medical Device Amendments of 1976.

DATES: Comments by March 24, 1981. FDA proposes that the final regulation based on this proposal become effective 30 days after the date of its publication in the Federal Register.

ADDRESS: Written comments to the Dockets Management Branch (formerly the Hearing Clerk's office) (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Fernando Villarroel, Bureau of Medical Devices (HFK–433), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7780.

SUPPLEMENTARY INFORMATION:

Panel Recommendation

A proposal elsewhere in this issue of the Federal Register provides background information concerning the development of the proposed regulation. The Gastroenterology-Urology Device Classification Panel, an FDA advisory committee, made the following recommendation regarding the classification of ribdams:

1. Identification: A ribdam is a device that consists of a broad strip of latex with supporting ribs used to drain surgical wounds where copious urine drainage is expected.

2. Recommended classification: Class II (performance standards). The Panel recommends that establishing a performance standard for this device be a low priority.

3. Summary of reasons for recommendation: The Panel recommends that ribdams be classified into class II because the materials used in the device that contact the body must be controlled by a performance standard to ensure their biocompatibility to prevent an adverse tissue reaction. The design and construction of the device must be controlled by a performance standard to enable proper cleaning and sterilization of the device to prevent infection. In addition, if the device is excessively bulky, pressure on tissues can delay healing. The Panel believes that general controls alone would not provide sufficient control over these characteristics. The Panel believes that a performance standard would provide reasonable assurance of the safety and effectiveness of the device and that there is sufficient information to establish a performance standard.

4. Summary of data on which the recommendation is based: The Panel based its recommendation on the Panel members' personal knowledge of, and clincial experience with, the device and on the widespread use of this device in medical practice.

5. Risks to health: (a) Delayed healing and tissue necrosis (destruction): If the device is too bulky, pressure on tissues is increased which may delay the healing process and cause tissue necrosis. (b) Infection: Defects in the design or construction of

the device preventing adequate cleaning or sterilization, or defects in packaging or processing of a device sold as sterile, may allow pathogenic organisms to the introduced and cause an infection in the patient. (c) Adverse tissue reaction: If the materials used in the device are not biocompatible, the patient may have an adverse tissue reaction.

Proposed Classification

FDA agrees with the Panel recommendation and is proposing that ribdams be classified into class II (performance standards). The agency believes that a performance standard is necessary for this device because general controls alone are insufficient to control the risks to health presented by the device. A performance standard would provide reasonable assurance of the safety and effectiveness of the device. The agency also believes that there is sufficient information to establish a performance standard for this device.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and a new structure. FDA published notices of these changes in the **Federal Register** of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). This proposed classification regulation identifies each device panel by the former name. Further information regarding the device advisory committees and list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the Federal Register.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drug proposes to amend Part 876 in Subpart E by adding new § 876.4560, to read as follows:

876.4560 Ribdam.

(a) *Identification.* A ribdam is a device that consists of a broad strip of latex with supporting ribs used to drain surgical wounds where copious urine drainage is expected.

(b) *Classification.* Class II (performance standards).

Interested persons may, on or before March 24, 1981, submit to the Dockets Management Branch (formerly the Hearing Clerk's office) (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, written comments regarding this proposal. Four copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

December 19, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 81-758 Filed 1-22-81; 8:45 am]

BILLING CODE 4110-03-M

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21 CFR Part 876

[Docket No. 78N-2068]

Medical Devices; Classification of Interlocking Urethral Sounds

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing for public comment a proposed regulation classifying interlocking urethral sounds into class II (performance standards). FDA is also publishing the recommendation of the Gastroenterology-Urology Device Classification Panel that the device be classified into class II. The effect of classifying a device into class II is to provide for the future development of one or more performance standards to assure the safety and effectiveness of the device. After considering public comments, FDA will issue a final regulation classifying the device. These actions are being taken under the Medical Device Amendments of 1976.

DATES: Comments by March 24, 1981. FDA proposes that the final regulation based on this proposal become effective 30 days after the date of its publication in the **Federal Register.**

ADDRESS: Written comments to the Dockets Management Branch (formerly the Hearing Clerk's office) (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Fernando Villarroel, Bureau of Medical Devices (HFK–420), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7750.

SUPPLEMENTARY INFORMATION:

Panel Recommendation

A proposal elsewhere in this issue of the **Federal Register** provides background information concerning the development of the proposed regulation. The Gastroenterology-Urology Device Classification Panel, an FDA advisory committee, made the following recommendation regarding the classification of interlocking urethral sounds:

1. Identification: An interlocking urethral sound is a device that consists of two metal sounds (elongated instruments for exploring or sounding body cavities) with interlocking ends, such as with male and female threads or a rounded point and mating socket, used in the repair of a ruptured urethra. The device may include a protective cap to fit over the metal threads.

2. Recommended classification: Class II (performance standards). The Panel recommends that establishing a performance standard for this device be a low priority.

3. Summary of reasons for recommendation: The Panel recommends that interlocking urethral sounds be classified into class II because the design of the device must be controlled by a performance standard to prevent further trauma to the urethra. The materials used in the device that contact the body must be controlled by a performance standard to ensure their biocompatibility to prevent an adverse tissue reaction. The Panel believes that general controls alone would not provide sufficient control over this characteristic. The Panel believes that a performance standard would provide reasonable assurance of the safety and effectiveness of the device and that there is sufficient information to establish a performance standard.

4. Summary of data on which the recommendation is based: The Panel based its recommendation on the Panel members' personal knowledge of, and clinical experience with, the device.

5. Risks to health: (a) Perforation, bleeding, perineal urethral trauma: Improper design of the device or failure of the safety cap may cause additional trauma to the injured urethra. (b) Adverse tissue reaction: If the materials used in the device are not biocompatible, the patient may have an adverse tissue reaction.

Proposed Classification

FDA agrees with the Panel recommendation and is proposing that interlocking urethral sounds be classified into class II (performance standards). The agency believes that a performance standard is necessary for this device because general controls alone are insufficient to control the risks to health presented by the device. A performance standard would provide reasonable assurance of the safety and effectiveness of the device. The agency also believes that there is sufficient

information to establish a performance standard for this device.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and a new structure. FDA published notices of these changes in the Federal Register of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). This proposed classification regulation identifies each device panel by the former name. Further information regarding the device advisory committees and list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the Federal Register.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a)]) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs proposes to amend Part 876 in Subpart E by adding new § 876.4590, to read as follows:

§ 876.4590 Interlocking urethral sound.

(a) *Identification.* An interlocking urethral sound is a device that consists of two metal sounds (elongated instruments for exploring or sounding body cavities) with interlocking ends, such as with male and female threads or a rounded point and mating socket, used in the repair of a ruptured urethra. The device may include a protective cap to fit over the metal threads.

(b) *Classification.* Class II (performance standards).

Interested persons may, on or before March 24, 1981, submit to the Dockets Management Branch (formerly the Hearing Clerk's office) (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, written comments regarding this proposal. Four copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: December 19, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 81–278 Filed 1–23–81; 8:45 am]

BILLING CODE 4110–03–M

21 CFR Part 876

[Docket No. 79N–1984]

Medical Devices; Classification of Ureteral Stents

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing for public comment a proposed regulation classifying ureteral stents into class II (performance standards). FDA is also publishing the recommendation of the Gastroenterology-Urology Device Classification Panel that the device be classified into class II. The effect of classifying a device into class II is to provide for the future development of one or more performance standards to assure the safety and effectiveness of the device. After considering public comments, FDA will issue a final regulation classifying the device. These actions are being taken under the Medical Device Amendments of 1976.

DATES: Comments by March 24, 1981. FDA proposes that the final regulation based on this proposal become effective 30 days after the date of its publication in the Federal Register.

ADDRESS: Written comments to the Dockets Management Branch (formerly the Hearing Clerk's office) (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Fernando Villarroel, Bureau of Medical Devices (HFK–420), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7750.

SUPPLEMENTARY INFORMATION:

Panel Recommendation

A proposal elsewhere in this issue of the Federal Register provides background information concerning the development of the proposed regulation. The Gastroenterology-Urology Device Classification Panel, an FDA advisory committee, made the following recommendation regarding the classification of ureteral stents:

1. Identification: A ureteral stent is a tube-like implanted device that is inserted into the ureter to provide ureteral rigidity and allow the passage of urine. The device may have finger-like protrusions or hooked ends to keep the tube in place. It is used in the treatment of ureteral injuries and ureteral obstruction.

2. Recommended classification: Class II (performance standards). The Panel recommends that establishing a performance standard for this device be a high priority.

3. Summary of reasons for recommendation: The Panel recommends that ureteral stents be classified into class II because the material used in the device that contacts the body must be controlled by a performance standard to ensure it is biocompatible to prevent an adverse tissue reaction. The design, materials, and construction of the device must be controlled by a performance standard to ensure that the shape, size, rigidity, flexibility, surface finish, and strength of the device are appropriate to prevent trauma, hemorrhage, perforation or migration of the device and to enable proper cleaning and sterilization of the device to prevent infection. The Panel believes that general controls alone would not provide sufficient control over these characteristics. The Panel believes that a performance standard would provide reasonable assurance of the safety and effectiveness of the device and that there is sufficient information to establish a performance standard.

4. Summary of data on which the recommendation is based: The Panel based its recommendation on the Panel members' personal knowledge of, and clinical experience with, the device, and on a review of the literature. Dorr (Ref. 1) has reported on 20 patients treated with this type of repair between 1963 and 1971. Good results were observed in 11 of the 20 patients who were followed from 3 months to 5 years. Four patients had slight residual ureteral obstruction, and of the remaining five patients, the results were inconclusive. Of the 20 cases reviewed, only 2 had complications directly related to the stenting technique.

5. Risks to health: (a) Trauma, hemorrhage, or perforation: The size, shape, rigidity, arrangement or finish on parts of this device may cause tissue trauma, hemorrhage, or perforation. (b) Adverse tissue reaction: If the material used in the device is not biocompatible, it may cause an adverse tissue reaction. (c) Migration of stent: Upward or downward migration of the stent may necessitate additional surgery to restore ureteral function. (d) Infection: Defects in the design or construction of the device preventing adequate cleaning or sterilization, or defects in packaging or processing of a device sold as sterile, may allow pathogenic organisms to be introduced and cause an infection in the patient.

Proposed Classification

FDA agrees with the Panel recommendation and is proposing that

ureteral stents be classified into Class II (performance standards). FDA has obtained additional data on the use of ureteral stents (Refs. 2 through 4). The agency notes that the implantation of a silicone rubber ureteral stent has been used for many years as an acceptable method in the treatment of ureteral obstruction, usually in patients with advanced carcinoma, where the implants have performed satisfactorily for up to 26 months (Ref. 2). Later studies (Refs. 3 and 4) discuss variations in the design of the device that were made to prevent migration of the stent up or down the ureter. The literature indicates that the silicone rubber stent is satisfactory in relieving ureteral obstruction, has presented few problems, and can be removed easily through a cystoscope when required. Although the device is an implant, the agency believes that in this case premarket approval is unnecessary and that performance standards will provide reasonable assurance of the safety and effectiveness of the device. The agency believes that general controls alone are insufficient to control the risks to health presented by the device. The agency also believes that there is sufficient information to establish a performance standard for this device.

References

The following information has been placed in the Dockets Management Branch (address above) and may be seen by interested persons from 9 a.m. to 4 p.m., Monday through Friday.

1. Dorr, R. P., R. K. Ratliff, and C. W. Hyndman, "Technique of Ureteral Repair Using an Indwelling Ureteral Stent," *Journal of Urology*, 111:481–482, 1974.
2. Gibbons, R. P., J. T. Macon, and R. J. Correa, Jr., "Experience With Undwelling Silicone Rubber Ureteral Catheters," *Journal of Urology*, 111:594–598, 1974.
3. Gibbons, R. P., R. J. Correa, Jr., K. B. Cummings, and J. T. Mason, "Experience With Indwelling Ureteral Stent Catheters," *Journal of Urology*, 115:22–26, 1976.
4. Finney, R. P., "Experience With New Double J Ureteral Catheter Stent," *Journal of Urology*, 120:678–681, 1978.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and a new structure. FDA published notices of these changes in the Federal Register of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). This proposed classification regulation identifies each device panel by the former name. Further information regarding the device advisory committees and list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the Federal Register.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–548 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs proposes to amend Part 876 in Subpart E by adding new § 876.4620, to reas as follows:

§ 876.4620 Ureteral stent.

(a) *Identification.* A ureteral stent is a tube-like implanted device that is inserted into the ureter to provide ureteral rigidity and allow the passage of urine. The device may have finger-like protrusions or hooked ends to keep the tube in place. It is used in the treatment of ureteral injuries and ureteral obstruction.

(b) *Classification.* Class II (performance standards).

Interested persons may, on or before March 24, 1981, submit to the Dockets Management Branch (formerly the Hearing Clerk's office) (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, written comments regarding this proposal. Four copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: December 19, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 81–771 Filed 1–22–81; 8:45 am]

BILLING CODE 4110–03–M

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21 CFR Part 876

[Docket No. 78N–1068]

Medical Devices; Classification of Water Jet Renal Stone Dislodger Systems

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing for pubic comment a proposed regulation classifying water jet renal stone disloger systems into class II (performance standards). FDA is also publishing the recommendation of the Gastroenterology-Urology Device Classification Panel that the device be classified into class II. The effect of classifying a device into class II is to provide for the future development of one or more performance standards to assure the safety and effectiveness of the device. After considering public comments, FDA will issue a final regulation classifying the device. These actions are being taken under the Medical Device Amendments of 1976.

DATES: Comments by March 24, 1981. FDA proposes that the final regulation based on this proposal become effective 30 days after the date of its publication in the Federal Register.

ADDRESS: Written comments to the Dockets Management Branch (formerly the Hearing Clerk's office) (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Fernando Villarroel, Bureau of Medical Devices (HFK–420), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7750.

SUPPLEMENTARY INFORMATION:

Panel Recommendation

A proposal elsewhere in this issue of the Federal Register provides background information concerning the development of the proposed regulation. The Gastroenterology-Urology Device Classification Panel, an FDA advisory committee, made the following recommendation regarding the classification of water jet renal stone dislodger systems:

1. Identification: A water jet renal stone dislodger system is a device used to dislodge stones from renal calyces (recesses of the pelvis of the kidney) by means of a pressurized stream of water through a conduit. The device is used in the surgical removal of kidney stones.

2. Recommended classification: Class II (performance standards). The Panel recommends that establishing a performance standard for this device be a low priority.

3. Summary of reasons for recommendation: The Panel recommends that water jet renal stone dislodger systems be classified into class II because the Panel believes that the amount of pressure delivered by the device must be controlled by a performance standard to prevent renal damage due to excessive water pressure and to enable proper cleaning and sterilization of the device to prevent infection. The Panel believes that general controls alone would not provide sufficient control over this characteristic. The Panel believes that a performance standard would provide reasonable assurance of the safety and effectiveness of the device and that

there is sufficient information to establish a performance standard.

4. Summary of data on which the recommendation is based: The Panel based its recommendation on the Panel members' personal knowledge of, and clinical experience with, the device and on the widespread use of the device in medical practice.

5. Risks to health: (a) Kidney damage: Kidney damage may result if this device injects fluid into renal calyces at too high a pressure level. (b) Infection: Defects in the design or construction of the device preventing adequate cleaning or sterilization, or defects in packaging or processing of a device sold as sterile may allow pathogenic organisms to be introduced and cause an infection in the patient.

Proposed Classification

FDA agrees with the Panel recommendation and is proposing that water jet renal stone dislodger systems be classified into class II (performance standards). The agency believes that a performance standard is necessary for this device because general controls alone are insufficient to control the risks to health presented by the device. A performance standard would provide reasonable assurance of the safety and effectiveness of the device. The agency also believes that there is sufficient information to establish a performance standard for this device.

On April 28, 1976 the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and a new structure. FDA published notices of these changes in the Federal Register of May 19, 1976 (43 FR 21666, 21667, and 21668) and May 26, 1976 (43 FR 22672 and 22673). This proposed classification regulation identifies each device panel by the former name. Further information regarding the device advisory committees and list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the Federal Register.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs proposes to amend Part 876 in Subpart E by adding new § 876.4650, to read as follows:

§ 876.4650 Water jet renal stone dislodger system.

(a) *Identification.* A water jet renal stone dislodger system is a device used to dislodge stones from renal calyces (recesses of the pelvis of the kidney) by means of a pressurized stream of water through a conduit. The device is used in the surgical removal of kidney stones.

(b) *Classification.* Class II (performance standards).

Interested persons may, on or before March 24, 1981, submit to the Dockets Management Branch (formerly the Hearing Clerk's office) (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, written comments regarding this proposal. Four copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: December 19, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 81-772 Filed 1-22-81; 8:45 am]

BILLING CODE 4110-03-M

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21 CFR Part 876

[Docket No. 78N-2002]

Medical Devices; Classification of Ureteral Stone Dislodgers

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing for public comment a proposed regulation classifying ureteral stone dislodgers into class II (performance standards). FDA is also publishing the recommendation of the Gastroenterology-Urology Device Classification Panel that the device be classified into class II. The effect of classifying a device into class II is to provide for the future development of one or more performance standards to assure the safety and effectiveness of the device. After considering public comments, FDA will issue a final regulation classifying the device. These actions are being taken under the Medical Device Amendments of 1976.

DATES: Comments by March 24, 1981. FDA proposes that the final regulation based on this proposal become effective 30 days after the date of its publication in the Federal Register.

ADDRESS: Written comments to the Dockets Management Branch (formerly the Hearing Clerk's office) (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Fernando Villarroel, Bureau of Medical Devices (HFK–420), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7750.

SUPPLEMENTARY INFORMATION:

Panel Recommendation

A proposal elsewhere in this issue of the Federal Register provides background information concerning the development of the proposed regulation. The Gastroenterology-Urology Device Classification Panel, an FDA advisory committee, made the following recommendation regarding the classification of ureteral stone dislodgers:

1. Identification: A ureteral stone dislodger is a device that consists of a bougie or a catheter with an expandable wire basket near the tip, a special flexible tip, or other special construction. It is inserted through a cystoscope and used to entrap and remove stones from the lower ureter. This generic type of device includes the metal basket and the flexible ureteral stone dislodger.

2. Recommended classification: Class II (performance standards). The Panel recommends that establishing a performance standard for this device be a low priority.

3. Summary of reasons for recommendation: The Panel recommends that ureteral stone dislodgers be classified into class II because the Panel believes that the design and materials of the device must be controlled by a performance standard to prevent damage to the ureter. The materials used in the device that contact the body must be controlled by a performance standard to ensure biocompatibility of the materials to prevent an adverse tissue reaction. The design, materials, and construction of the device must be controlled by a performance standard to ensure that the shape, size, rigidity, flexibility, surface finish and tensile strength of the device are appropriate to prevent trauma, hemorrhage, and perforation. The Panel noted that device malfunction may lead to incarceration of the metal basket in the ureter, causing additional surgery. The Panel believes that general controls alone would not provide sufficient control over these characteristics. The Panel believes that a performance standard would provide reasonable assurance of the safety and effectiveness of the device and that there is sufficient information to establish a performance standard.

4. Summary of data on which the recommendation is based: The Panel

based its recommendation on the Panel members' personal knowledge of, and clinical experience with, the device and on the widespread use of the device in medical practice.

5. Risks to health: (a) Trauma, hemorrhage, or perforation: The size, shape, rigidity, arrangement, or finish on parts of this device may cause tissue trauma, hemorrhage, or perforation. Bleeding, perforation, or avulsion of the ureter may result if an improperly designed device contains sharp exposed wires or is not of the correct flexibility. (b) Additional surgery: A defect in the device or malfunction of the device could cause the metal basket to be incarcerated in the ureter, causing the patient to have to undergo additional surgery, with attendent risks. (c) Infection: Defects in the design or construction of the device preventing adequate cleaning or sterilization, or defects in packaging or processing of a device sold as sterile, may allow pathogenic organisms to be introduced and cause an infection in the patient.

Proposed Classification

FDA agrees with the Panel recommendation and is proposing that ureteral stone dislodgers be classified into class II (performance standards). The agency believes that a performance standard is necessary for this device because general controls alone are insufficient to control the risks to health presented by the device. A performance standard would provide reasonable assurance of the safety and effectiveness of the device. The agency also believes that there is sufficient information to establish a performance standard for this device.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and a new structure. FDA published notices of these changes in the Federal Register of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). This proposed classification regulation identifies each device panel by the former name. Further information regarding the device advisory committees and list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the Federal Register.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs proposes to amend Part 876 in Subpart E by adding new § 876.4680, to read as follows:

§ 876.4680 Ureteral stone dislodger.

(a) *Identification.* A ureteral stone dislodger is a device that consists of a bougie or a catheter with an expandable wire basket near the tip, a special flexible tip, or other special construction. It is inserted through a cystoscope and used to entrap and remove stones from the lower ureter. This generic type of device includes the metal basket and the flexible ureteral stone dislodger.

(b) *Classification.* Class II (performance standards).

Interested persons may, on or before March 24, 1981, submit to the Dockets Management Branch (formerly the Hearing Clerk's office) (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, written comments regarding this proposal. Four copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: December 19, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 81–773 Filed 1–22–81; 8:45 am]

BILLING CODE 4110–03–M

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21 CFR Part 876

[Docket No. 78N–1996]

Medical Devices; Classification of Manual Gastroenterology-Urology Surgical Instruments and Accessories

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing for public comment a proposed regulation classifying manual gastroenterology-urology surgical instruments and accessories into class I (general controls). FDA is also publishing the recommendation of the Gastroenterology-Urology Device Classification Panel that the devices be classified into class I. The effect of classifying a device into class I is to require that the device meet only the general controls applicable to all devices. After considering public comments, FDA will issue a final regulation classifying the devices. These actions are being taken under the Medical Device Amendments of 1976.

DATE: Comments by March 24, 1981. FDA proposes that the final regulation based on this proposal become effective 30 days after the date of its publication in the Federal Register.

ADDRESS: Written comments to the Dockets Management Branch (formerly the Hearing Clerk's office) (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Fernando Villarroel, Bureau of Medical Devices (HFK–420), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7750.

SUPPLEMENTARY INFORMATION:

Panel Recommendation

A proposal elsewhere in this issue of the Federal Register provides background information concerning the development of the proposed regulation. The Gastroenterology-Urology Device Classification Panel, an FDA advisory committee, made the following recommendation regarding the classification of manual gastroenterology-urology surgical instruments and accessories:

1. Identification: A manual gastroenterology-urology surgical instrument and accessories is a device designed to be used for gastroenterological and urological surgical procedures. The device may be nonpowered, hand-held, or hand-manipulated. Manual gastroenterology-urology surgical instruments include the biopsy forceps cover, biopsy tray without biopsy instruments, line clamp, nonpowered rectal probe, nonelectrical clamp, colostomy spur-crushers, locking device for intestinal clamp, needle holder, gastro-urology hook, gastro-urology probe and director, nonself-retaining retractor, laparotomy rings, nonelectrical snare, rectal specula, bladder neck spreader, self-retaining retractor, and scoop.

2. Recommended classification: Class I (general controls). The Panel recommends that these devices be exempt from registration, device listing, and premarket notification procedures under section 510 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360), records and reports requirements under section 519 of the act (21 U.S.C. 360i), and the good manufacturing practice regulation under section 520(f) of the act (21 U.S.C. 360j(f).

3. Summary of reasons for recommendation: The Panel recommends that manual gastroenterology-urology surgical

instruments and accessories be classified into class I because the Panel believes that general controls are sufficient to provide reasonable assurance of the safety and effectiveness of these devices. The Panel believes that manufacturers of the devices should not be required to comply with registration, device listing, premarket notification procedures, records and reports requirements, and the good manufacturing practice regulation because the quality and any defects of the devices are readily apparent to the user.

4. Summary of data on which the recommendation is based: The Panel based its recommendation on the Panel members' personal knowledge of, and clinical experience with, the devices.

5. Risks to health: Trauma, hemorrhage, or perforation: The size, shape, rigidity, arrangement, or finish on parts of these devices may cause tissue trauma, hemorrhage, or perforation.

Proposed Classification

FDA agrees with the Panel recommendation and is proposing that manual gastroenterology-urology surgical instruments and accessories be classified into class I (general controls). The agency believes that general controls are sufficient to provide reasonable assurance of the safety and effectiveness of the devices. FDA disagrees with the Panel recommendation that manufacturers of manual gastroenterology-urology surgical instruments and accessories be exempt from registration, device listing, and premarket notification under section 510 of the act. Under section 510(g)(4) of the act, the agency may exempt a manufacturer from compliance with section 510 only upon a finding that compliance is not necessary for the protection of the public health. In the case of manual gastroenterology-urology surgical instruments and accessories, the agency cannot make the required finding. To protect the public health, the agency needs to require manufacturers of these devices to register and to list their products with FDA so that the agency is able to identify the firms manufacturing these devices and conduct necessary inspections. Premarket notification by these manufacturers assures that FDA learns of new products, and of significant modifications of existing products, for which premarket approval is required.

The agency disagrees with the Panel recommendation that manufacturers of manual gastroenterology-urology surgical instruments and accessories be exempt from records and reports requirements under section 519 of the act (21 U.S. 360i). The records and reports requirements in several of FDA's present device regulations are authorized, wholly or in part, by section 519. The most extensive of these requirements are found in the device good manufacturing practice (GMP) regulation, published in the Federal Register of July 21, 1978 (43 FR 31508). In the future, FDA will publish other regulations under section 519, including regulations requiring reports to FDA of experience with medical devices. Until these regulations are issued, FDA believes that it cannot properly issue exemptions from them. In the future, whenever the agency proposes device regulations that include records and reports requirements, interested persons may submit comments requesting that certain classes of manufacturers or other persons be exempt from the requirements, and FDA will issue exemptions that are appropriate. The only type of exemption from records and reports requirements that FDA is proposing now, in device classification regulations, is an exemption of certain manufacturers from requirements of the device GMP regulation. The exemption will not extend to two device GMP requirements, § 820.180 (21 CFR 820.180) with respect to general requirements concerning records and § 820.198 (21 CFR 820.198), with respect to complaint files.

FDA disagrees with the Panel recommendation that manufacturers of manual gastroenterology-urology surgical instruments and accessories be exempt from the good manufacturing practice (GMP) regulation under section 520(f) of the act. The agency believes that compliance with this regulation is necessary to assure the quality of these devices and thus their safety, effectiveness, and compliance with the adulteration and misbranding provisions of the act. Compliance with the GMP regulation will help prevent production of manual gastroenterology-urology surgical instruments and accessories having defects that could harm users. FDA agrees with the Panel that these devices can cause tissue damage if the parts possess improper configuration, rigidity, or finish; however, the agency believes that these hazards can be adequately controlled by general controls.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and a new structure. FDA published notices of these changes in the Federal Register of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). This proposed classification regulation identifies each device panel by the former name. Further information regarding the device advisory committees and list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the Federal Register.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs proposes to amend Part 876 in Subpart E by adding new § 876.4730, to read as follows:

§ 876.4730 Manual gastroenterology-urology surgical instrument and accessories.

(a) *Identification.* A manual gastroenterology-urology surgical instrument and accessories is a device designed to be used for gastroenterological and urological surgical procedures. The device may be nonpowered, hand-held, or hand-manipulated. Manual gastroenterology-urology surgical instruments include the biopsy forceps cover, biopsy tray without biopsy instruments, line clamp, nonpowered rectal probe, nonelectrical clamp, colostomy spur-crushers, locking device for intestinal clamp, needle holder, gastro-urology hook, gastro-urology probe and director, nonself-retaining retractor, laparotomy rings, nonelectrical snare, rectal specula, bladder neck spreader, self-retaining retractor, and scoop.

(b) *Classification.* Class I (general controls).

Interested persons may, on or before March 24, 1981, submit to the Dockets Management Branch (formerly the Hearing Clerk's office) (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, written comments regarding this proposal. Four copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: December 19, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 81–774 Filed 1–22–81; 8:45 am]

BILLING CODE 4110–03–M

21 CFR Part 876

[Docket No. 78N-2004]

Medical Devices; Classification of Urethrotomes

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing for public comment a proposed regulation classifying urethrotomes into class II (performance standards). FDA is also publishing the recommendation of the Gastroenterology-Urology Device Classification Panel that the device be classified into class II. The effect of classifying a device into class II is to provide for the future development of one or more performance standards to assure the safety and effectiveness of the device. After considering public comments, FDA will issue a final regulation classifying the device. These actions are being taken under the Medical Device Amendments of 1976.

DATES: Comments by March 24, 1981. FDA proposes that the final regulation based on this proposal become effective 30 days after the date of its publication in the Federal Register.

ADDRESS: Written comments to the Dockets Management Branch (formerly the Hearing Clerk's office) (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Fernando Villarroel, Bureau of Medical Devices (HFK-420), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7750.

SUPPLEMENTARY INFORMATION:

Panel Recommendation

A proposal elsewhere in this issue of the Federal Register provides background information concerning the development of the proposed regulation. The Gastroenterology-Urology Device Classification Panel, and FDA advisory committee, made the following recommendation regarding the classification of urethrotomes:

1. Identification: A urethrotome is a device that is inserted into the urethra and used to cut urethral strictures and enlarge the urethra. It is a metal instrument equipped with a dorsal-fin cutting blade which can be elevated from its sheath. Some urethrotomes incorporate an optical channel for visual control.

2. Recommended classification: Class II (performance standards). The Panel recommends that establishing a performance standard for this device be a low priority.

3. Summary of reasons for recommendation: The Panel recommends that urethrotomes be classified into class II because the design of the cutting blade, together with its associated complex mechanical linkages and fiberoptic lighting system, must be controlled by a performance standard to prevent avulsion of urethral mucosa, external sphincter injury, light failure and loss of field of vision, injury to the operator, or tissue trauma, hemorrhage or perforation.

The Panel believes that the design and construction of the device must be controlled by performance standards to enable proper cleaning and sterilization of the device to prevent infection. The Panel believes that general controls alone would not provide sufficient control over these characteristcs. The Panel believes that a performance standard would provide reasonable assurance of the safety and effectiveness of the device and that there is sufficient information to establish a performance standard.

4. Summary of data on which the recommendation is based: The Panel based its recommendation on the Panel members' personal knowledge of, and clinical experience with, the device.

5. Risks to health: (a) Trauma, hemorrhage, or perforation. Improper size, shape, rigidity, or arrangement of the device or finish on parts of this device may cause tissue trauma, hemorrhage, or perforation.

(b) External sphincter injury: Defects in the design of the device may result in injury to the external sphincter and urethral avulsion.

(c) Infection: Defects in the design or construction of the device preventing adequate cleaning or sterilization, or defects in packaging or processing of a device sold as sterile, may allow pathogenic organisms to be introduced and cause an infection in the patient.

Proposed Classification

FDA agrees with the Panel recommendation and is proposing that urethrotomes be classified into class II (performance standards). The agency believes that a performance standard is necessary for this device because general controls alone are insufficient to control the risks to health presented by the device. A performance standard would provide reasonable assurance of the safety and effectiveness of the device. The agency also believes that there is sufficient information to establish a performance standard for this device.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and a new structure. FDA published notices of these changes in the Federal Register of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). This proposed classification regulation identifies each device panel by the former name. Further information regarding the device advisory committees and list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the Federal Register.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540-546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs proposes to amend Part 876 in Subpart E by adding new § 876.4770, to read as follows:

§ 876.4770 Urethrotome.

(a) *Identification.* A urethrotome is a device that is inserted into the urethra and used to cut urethral strictures and enlarge the urethra. It is a metal instrument equipped with a dorsal-fin cutting blade which can be elevated from its sheath. Some urethrotomes incorporate an optical channel for visual control.

(b) *Classification.* Class II (performance standards).

Interested persons may, on or before March 24, 1981 submit to the Dockets Management Branch (formerly the Hearing Clerk's office) (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, written comments regarding this proposal. Four copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: December 19, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 81-775 Filed 1-22-81; 8:45 am]

BILLING CODE 4110-03-M

21 CFR Part 876

[Docket No. 78N-2070]

Medical Devices; Classification of Urological Tables and Accessories

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing for public comment a proposed regulation classifying urological tables and accessories into class II (performance standards). FDA is also publishing the recommendation of the Gastroenterology-Urology Device Classification Panel that the device be classified into class II. The effect of classifying a device into class II is to provide for the future development of one or more performance standards to assure the safety and effectiveness of the device. After considering public comments, FDA will issue a final regulation classifying the device. These actions are being taken under the Medical Device Amendments of 1976.

DATES: Comments by March 24, 1981. FDA proposes that the final regulation based on this proposal become effective 30 days after the date of its publication in the Federal Register.

ADDRESS: Written comments to the Dockets Management Branch (formerly the Hearing Clerk's office) (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Fernando Villarroel, Bureau of Medical Devices (HFK-420), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7750.

SUPPLEMENTARY INFORMATION:

Panel Recommendation

A proposal elsewhere in this issue of the Federal Register provides background information concerning the development of the proposed regulation. The Gastroenterology-Urology Device Classification Panel, an FDA advisory committee, made the following recommendation regarding the classification of urological tables and accessories:

1. Identification: A urological table and accessories is a device that consists of a table, stirrups, and belts used to support a patient in a suitable position for endoscopic procedures of the lower urinary tract. The table can be adjusted into position mechanically or electrically.

2. Recommended classification: Class II (performance standards). The Panel recommends that establishing a performance standard for this device be a medium priority.

3. Summary of reasons for recommendation: The Panel Recommends that urological tables and accessories be classified into class II because the design of the table and the locking, release, and movement mechanism of the stirrups must be controlled by a performance standard to avoid injury to the patient. Any electrical properties of the device must be controlled by a performance standard to prevent electrical injury to the patient or operator. The Panel believes that general controls alone would not provide sufficient control over these characteristics. The Panel believes that a performance standard would provide reasonable assurance of the safety and effectiveness of the device and that there is sufficient information to establish a performance standard.

4. Summary of data on which the recommendation is based: The Panel based its recommendation on the Panel members' personal knowledge of, and clinical experience with, the device and on the widespread use of this device in medical practice.

5. Risks to health: (a) Electrical injury: Improper design, construction, or a malfunction of the electrically operated device could result in electrical injury to the patient or the operator.

(b) Pressure injuries: Defects in design, construction, or malfunction of the device may lead to pressure injuries which could result in pressure sores, nerve palsies, venous stasis, impaired healing, tissue necrosis or edema.

Proposed Classification

FDA agrees with the Panel recommendation and is proposing that urological tables and accessories be classified into class II (performance standards). The agency believes that a performance standard is necessary for this device because general controls alone are insufficient to control the risks to health presented by the device. A performance standard would provide reasonable assurance of the safety and effectiveness of the device. The agency also believes that there is sufficient information to establish a performance standard for this device.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and a new structure. FDA published notices of these changes in the Federal Register of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). This proposed classification regulation identifies each device panel by the former name. Further information regarding the device advisory committees and list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the Federal Register.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540-546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs proposes to amend Part 876 in Subpart E by adding new § 876.4890, to read as follows:

§ 876.4890 Urological table and accessories.

(a) *Identification.* A urological table and accessories is a device that consists of a table, stirrups, and belts used to support a patient in a suitable position for endoscopic procedures of the lower urinary tract. The table can be adjusted into position mechanically or electrically.

(b) *Classification.* Class II (performance standards).

Interested persons may, on or before March 24, 1981, submit to the Dockets Management Branch (formerly the Hearing Clerk's office) (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, written comments regarding this proposal. Four copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: December 19, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 81-770 Filed 1-22-81; 8:45 am]

BILLING CODE 4110-03-M

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21 CFR Part 876

[Docket No. 78N-2005]

Medical Devices; Classification of Biliary Catheters and Accessories

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing for public comment a proposed regulation classifying biliary catheters and accessories into class II (performance standards). FDA is also publishing the recommendation of the

Gastroenterology-Urology Device Classification Panel and of the General and Plastic Surgery Device Classification Panel that these devices be classified into class II. The effect of classifying a device into class II is to provide for the future development of one or more performance standards to assure the safety and effectiveness of the device. After considering public comments, FDA will issue a final regulation classifying the devices. These actions are being taken under the Medical Device Amendments of 1976.

DATES: Comments by March 24, 1981. FDA proposes that the final regulation based on this proposal become effective 30 days after the date of its publication in the Federal Register.

ADDRESS: Written comments to the Dockets Management Branch (formerly the Hearing Clerk's office) (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Fernando Villarroel, Bureau of Medical Devices (HFK–420), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7750.

SUPPLEMENTARY INFORMATION:

Panel Recommendation

A proposal elsewhere in this issue of the Federal Register provides background information concerning the development of the proposed regulation. The Gastroenterology-Urology Device Classification Panel and the General and Plastic Surgery Device Classification Panel, FDA advisory committees, made the following recommendations regarding the classification of biliary catheters and accessories:

1. Identification: A biliary catheter and accessories is a tubular flexible device used for temporary or prolonged drainage of the biliary tract, for splinting of the bile duct during healing, or for preventing stricture of the bile duct. This generic type of device may include a bile collecting bag that is attached to the biliary catheter by a connector and fastened to the patient with a strap.

2. Recommended classification Class II (performance standards). Both Panels recommend that establishing a performance standard for these devices be a low priority.

3. Summary of reasons for recommendation: The Gastroenterology-Urology Device Classification Panel recommends that biliary catheters and accessories be classified into class II because the design, materials, and construction of the device must be controlled by a performance standard to ensure that the shape, size, rigidity, flexibility, surface finish, and strength of the device are appropriate to prevent trauma, hemorrhage, or perforation. A performance standard is also necessary to enable proper cleaning and sterilization of the device to prevent infection. The materials used in the device that contact the body must be controlled by a performance standard to ensure their biocompatibility to prevent an adverse tissue reaction.

The General and Plastic Surgery Device Classification Panel recommends that biliary catheters be classified into class II because the material integrity of catheters must meet an acceptable level of performance to reduce the possibility of fragmentation of the catheter, leading to formation of biliary calculi. Materials used in the construction of these devices must comply with a performance standard to ensure they meet a generally accepted satisfactory level of tissue or blood biocompatibility, to prevent an adverse tissue reaction.

The Panels believe that general controls alone would not provide sufficient control over these characteristics. The Panels believe that a performance standard would provide reasonable assurance of the safety and effectiveness of the devices and that there is sufficient information to establish a performance standard. The Gastroenterology-Urology Panel believes that the device as it is presently marketed is not suitable for long term implantation (over 30 days).

4. Summary of data on which the recommendation is based: The Panels based their recommendation on the Panel members' personal knowledge of, and clinical experience with, the devices.

5. Risks to health: (a) Trauma, hemorrhage, or perforation: The size, shape, rigidity, and arrangement of the devices or finish on parts of these devices may cause tissue trauma, hemorrhage, or perforation.

(b) Bile duct obstruction: The size, shape, or design of the device may result in obstruction of, or injury to, the bile duct.

(c) Infection: Defects in the design or construction of the device preventing adequate cleaning or sterilization, or defects in packaging or processing of devices sold as sterile, may allow pathogenic organisms to be introduced and cause an infection in the patient.

(d) Biliary calculi (stone) formation: Fragmentation, stiffening, or obstruction caused by the device can result in the formation of biliary calculi.

(e) Adverse tissue reaction: If the materials used in the device are not biocompatible, the patient may have an adverse tissue reaction.

Proposed Classification

FDA agrees with the recommendations of both Panels and is proposing that biliary catheters and accessories be classified into class II (performance standards). The agency believes that a performance standard is necessary for these devices because general controls alone are insufficient to control the risks to health presented by the devices. A performance standard would provide reasonable assurance of the safety and effectiveness of the devices. The agency also believes that there is sufficient information to establish a performance standard for these devices.

FDA has reviewed the recommendations of the Gastroenterology-Urology Device Classification Panel and of the General and Plastic Surgery Device Classification Panel for biliary catheters and has concluded that the classification of this device should be published in the part of the Code of Federal Regulations for gastroenterology and urology devices.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and a new structure. FDA published notices of these changes in the Federal Register of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). This proposed classification regulation identifies each device panel by the former name. Further information regarding the device advisory committees and list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the Federal Register.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs proposes to amend Part 876 in Subpart F by adding new § 876.5010, to read as follows:

Subpart F—Therapeutic Devices

§ 876.5010 Biliary catheter and accessories.

(a) *Identification.* A biliary catheter and accessories is a tubular flexible device used for temporary or prolonged drainage of the biliary tract, for splinting of the bile duct during healing, or for preventing structure of the bile duct. This generic type of device may include

a bile collecting bag that is attached to the biliary catheter by a connector and fastened to the patient with a strap.

(b) *Classification.* Class II (performance standards).

Interested persons may, on or before March 24, 1981, submit to the Dockets Management Branch (formerly the Hearing Clerk's office) (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, written comments regarding this proposal. Four copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: December 19, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 81–777 Filed 1–22–81; 8:45 am]

BILLING CODE 4110–03–M

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21 CFR Part 876

[Docket No. 78N–1072]

Medical Devices; Classification of Continent Ileostomy Catheters

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing for public comment a proposed regulation classifying continent ileostomy catheters into class II (performance standards). FDA is also publishing the recommendation of the Gastroenterology-Urology Device Classification Panel that the device be classified into class II. The effect of classifying a device into class II is to provide for the future development of one or more performance standards to assure the safety and effectiveness of the device. After considering public comments, FDA will issue a final regulation classifying the device. These actions are being taken under the Medical Device Amendments of 1976.

DATES: Comments by March 24, 1981. FDA proposes that the final regulation based on this proposal become effective 30 days after the date of its publication in the Federal Register.

ADDRESS: Written comments to the Dockets Management Branch (formerly the Hearing Clerk's office) (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Fernando Villarroel, Bureau of Medical Devices (HFK–420), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7750.

SUPPLEMENTARY INFORMATION:

Panel Recommendation

A proposal elsewhere in this issue of the Federal Register provides background information concerning the development of the proposed regulation. The Gastroenterology-Urology Device Classification Panel, an FDA advisory committee, made the following recommendation regarding the classification of continent ileostomy catheters:

1. Identification: A continent ileostomy catheter is a flexible tubular device used as a form during surgery for continent ileostomy and it provides drainage after surgery. Additionally, the device may be inserted periodically by the patient for routine care to empty the ileal pouch. This generic type of device includes the rectal catheter for continent ileostomy.

2. Recommended classification: Class II (performance standards). The Panel recommends that establishing a performance standard for this device be a low priority.

3. Summary of reasons for recommendation: The Panel recommends that continent ileostomy catheters be classified into class II (performance standards) because the design and construction of the device must be controlled by a performance standard to ensure that the shape, size, rigidity, flexibility, surface finish, and strength of the device are appropriate to prevent trauma, hemorrhage, or perforation.

The materials used in the device that contact the body must be controlled by a performance standard to ensure their biocompatibility to prevent an adverse tissue reaction. The Panel believes that general controls alone would not provide sufficient control over these characteristics. The Panel believes that a performance standard would provide reasonable assurance of the safety and effectiveness of the device and that there is sufficient information to establish a performance standard.

4. Summary of data on which the recommendation is based: The Panel based its recommendation on the Panel members' personal knowledge of, and clinical experience with, the device. The Panel members noted that this device has not been used extensively.

5. Risks to health: (a) Trauma, hemorrhage, or perforation: Improper size, shape, rigidity, and arrangement, or finish on parts of this devices may cause tissue trauma, hemorrhage, or perforation.

(b) Adverse tissue reaction: If the materials used in the construction of the device are not biocompatible, the patient may have an adverse tissue reaction.

(c) Infection: Defects in the design or construction of the device preventing adequate cleaning or sterilization, or defects in packaging or processing of a device sold as sterile, may allow pathogenic organisms to be introduced and cause an infection in the patient.

Proposed Classification

FDA agrees with the Panel recommendation and is proposing that continent ileostomy catheters be classified into class II (performance standards). The agency believes that a performance standard is necessary for this device because general controls alone are insufficient to control the risks to health presented by the device. A performance standard would provide reasonable assurance of the safety and effectiveness of the device. The agency also believes that there is sufficient information to establish a performance standard for this device.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and a new structure. FDA published notices of these changes in the Federal Register of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). This classification regulation identifies each device panel by the former name. Further information regarding the device advisory committees and list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the Federal Register.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs proposes to amend Part 876 in Subpart F by adding new § 876.5030 to read as follows:

§ 876.5030 Continent ileostomy catheter.

(a) *Identification.* A continent ileostomy catheter is a flexible tubular device used as a form during surgery for continent ileostomy and it provides drainage after surgery. Additionally, the device may be inserted periodically by the patient for routine care to empty the ileal pouch. This generic type of device includes the rectal catheter for continent ileostomy.

(b) *Classification.* Class II (performance standards).

Interested persons may, on or before March 24, 1981, submit to the Dockets Management Branch (formerly the Hearing Clerk's office) (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, written comments regarding this proposal. Four copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: December 19, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 81-778 Filed 1-22-81; 8:45 am]

BILLING CODE 4110-03-M

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21 CFR Part 876

[Docket No. 78N-1969]

Medical Devices; Classification of Suprapubic Urological Catheters and Accessories

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing for public comment a proposed regulation classifying suprapubic urological catheters, and accessories into class II (performance standards). FDA is also publishing the recommendation of the Gastroenterology-Urology Device Classification Panel that the devices be classified into class II. The effect of classifying a device into class II is to provide for the future development of one or more performance standards to assure the safety and effectiveness of the device. After considering public comments, FDA will issue a final regulation classifying the devices. These actions are being taken under the Medical Device Amendments of 1976.

DATES: Comments by March 24, 1981. FDA proposes that the final regulation based on this proposal become effective 30 days after the date of its publication in the Federal Register.

ADDRESS: Written comments to the Dockets Management Branch (formerly the Hearing Clerk's office) (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Fernando Villarroel, Bureau of Medical Devices (HFK–420), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7750.

SUPPLEMENTARY INFORMATION:

Panel Recommendation

A proposal elsewhere in this issue of the Federal Register provides background information concerning the development of the proposed regulation. The Gastroenterology-Urology Device Classification Panel, an FDA advisory committee, made the following recommendation regarding the classification of suprapubic urological catheters and accessories:

1. Identification: A suprapubic urological catherer and accessories is a tubular flexible device that is inserted through the abdominal wall into the urinary bladder with the aid of a trocar and cannula. The device is used to pass fluids to and from the urinary tract. This generic type of device includes the suprapubic catheter and tube, malecot catheter, catheter punch instrument, suprapubic drainage tube, and the suprapubic cannula and trocar.

2. Recommended classification: Class II (performance standards). The Panel recommends that establishing a peformance standard for these devices be a high priority.

3. Summary of reasons for recommendation: The Panel recommends that the suprapubic urological catheter and accessories be classified into class II because the Panel believes that the design, materials, and construction of the device must be controlled by a performance standard to ensure that the device's shape, size, rigidity, surface finish, and strength are appropriate to prevent trauma, hemorrhage, or perforation. A performance standard is also needed to ensure that the structural integrity of the device is adequate to prevent collapse of the catheter, blocking the drainage of urine, and to enable proper cleaning and sterilization of the device to prevent infection. The materials used in the device that contact the body must be controlled by a performance standard to ensure their biocompatibility to prevent an adverse tissue reaction. This device can be implanted into the patient for an extended period of time; however, the majority of the applications for this device are for less than 30 days. The Panel recommends that labeling indicate to the user the internal and external diameters of the device.

The Panel believes that general controls alone would not provide sufficient control over these characteristics. The Panel believes that a performance standard would provide reasonable assurance of the safety and effectiveness of the device and that there is sufficient information to establish a performance standard.

4. Summary of data on which the recommendation is based: The Panel based its recommendation on the Panel Members' personal knowledge of, and clinical experience with, the devices, and on the widespread successful use of the devices in the medical practice.

5. Risks to health: (a) Trauma, hemorrhage, or perforation: The size, shape, rigidity, arrangement, or finish on parts of these devices may cause tissue trauma, hemorrhage, or perforation.

(b) Adverse tissue reaction: If the materials used in the devices are not biocompatible, an adverse tissue reaction may result.

(c) Failure of urine drainage: If the device has poor structural integrity, the catheter wall could collapse, causing a blockage that would prevent urine from draining.

(d) Infection: Defects in the design or construction of the device preventing adequate cleaning or sterilization, or defects in packaging or processing of a device sold as sterile, may allow pathogenic organisms to be introduced and cause an infection in the patient.

Proposed Classification

FDA agrees with the Panel recommendation and is proposing that suprapubic urological catheters and accessories be classified into class II (performance standards). The agency believes that a performance standard is necessary for these devices because general controls alone are insufficient to control the risks to health presented by the devices. A performance standard would provide reasonable assurance of the safety and effectiveness of the devices. The agency also believes that there is sufficient information to establish a performance standard for these devices.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and a new structure. FDA published notices of these changes in the Federal Register of May 19, 1978 (43 FR 21666, 21667, and 21668), and May 26, 1978 (43 FR 22672 and 22673). This proposed classification regulation identifies each device panel by the former name. Further information regarding the device advisory committees and list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the Federal Register.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs proposes to amend Part 876 in Subpart F by adding new § 876.5090, to read as follows:

§ 876.5090 Suprapubic urological catheter and accessories.

(a) *Identification.* A suprapubic urological catheter and accessories is a tubular flexible device that is inserted through the abdominal wall into the urinary bladder with the aid of a trocar and cannula. The device is used to pass fluids to and from the urinary tract. This generic type of device includes the suprapubic catheter and tube, malecot catheter, catheter punch instrument, suprapubic drainage tube, and the suprapubic cannula and trocar.

(b) *Classification.* Class II (performance standard).

Interested persons may, on or before March 24, 1981, submit to the Dockets Management Branch (formerly the Hearing Clerk's office) (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, written comments regarding this proposal. Four copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: December 19, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 81–779 Filed 1–22–81; 8:45 am]

BILLING CODE 4110–03–M

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21 CFR Part 876

Docket No. 78N–2008

Medical Devices; Classification of Urological Catheters and Accessories

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing for public comment a proposed regulation classifying urological catheters and accessories into class II (performance standards). FDA is also publishing the recommendation of the Gastroenterology-Urology Device Classification Panel that urological catheters, urological catheter trays and urological catheter stylets be classified into class II and that urological catheter accessories be classified into class I (general controls). FDA is also publishing the recommendation of the General and Plastic Surgery Device Classification Panel that the urological catheter be classified into class II. The effect of classifying a device into class II is to provide for the future development of one or more performance standards to assure the safety and effectiveness of the device. The effect of classifying a device into class I is to require that the device meet only the general controls applicable to all devices. After considering public comments, FDA will issue a final regulation classifying the devices. These actions are being taken under the Medical Device Amendments of 1976.

DATES: Comments by March 24, 1981. FDA proposes that the final regulation based on this proposal become effective 30 days after the date of its publication in the Federal Register.

ADDRESS: Written comments to the Dockets Management Branch (formerly the Hearing Clerk's office) (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Fernando Villarroel, Bureau of Medical Devices (HFK–420), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7750.

SUPPLEMENTARY INFORMATION:

Panel Recommendation

A proposal elsewhere in this issue of the Federal Register provides background information concerning the development of the proposed regulation. The Gastroenterology-Urology Device Classification Panel and the General and Plastic Surgery Device Classification Panel, FDA advisory committees, made the following recommendations regarding the classification of urological catheters and accessories:

1. Identification: A urological catheter and accessories is a tubular, flexible device that is inserted through the urethra and used to pass fluids to or from the urinary tract. This generic type of device includes radiopaque urological catheters, ureteral catheters, urethral catheters, coude catheters, balloon retention type catheters, straight catheters, upper urinary tract catheters, double lumen female urethrographic catheters, disposable ureteral catheters, male urethrographic catheters, and urological catheter accessories including urethral catheter stylets, ureteral catheter adapters, ureteral catheter holders, ureteral catheter stylets, ureteral catheterization trays and the gastro-urological irrigation tray (for urological use).

2. Recommended classification: Class II (performance standards). The Gastroenterology-Urology Device Classification Panel recommends that urological catheters, urological catheterization trays, and urological catheter stylets be classified into class II. The Panel recommends that establishing a performance standard for urological catheters be a high priority, and that establishment of a performance standard for urological catheterization trays and urological catheter stylets be a medium priority. The General and Plastic Surgery Device Classification Panel recommends that urological catheters be classified into class II and that establishing a performance standard for this device be a low priority. The Gastroenterology-Urology Device Classification Panel recommends that urological catheter accessories be classified into class I (general controls). The Gastroenterology-Urology Panel recommends that these accessories be exempt from registration, device listing, and premarket notification procedures under section 510 of the act (21 U.S.C. 360), records and reports requirements under section 519 of the act (21 U.S.C. 360i), and the good manufacturing practice regulation under section 520(f) of the act (21 U.S.C. 360j(f)).

3. Summary of reasons for recommendation: The Gastroenterology-Urology Device Classification Panel recommends that urological catheters, urological catheterization trays, gastro-urological irrigation trays (for urological use), and urological catheter stylets be classified into class II because the design, materials, and construction of the devices must be controlled by a performance standard to ensure that the shape, size, rigidity, surface finish, and strength of the devices are appropriate in order to prevent trauma, hemorrhage, or perforation. The materials used in devices that contact the body must be controlled by a performance standard to ensure their biocompatibility to prevent an adverse tissue reaction. The design and construction of the device must be controlled by a performance standard to enable proper cleaning and sterilization to prevent infection in the patient. The Gastroenterology-Urology Device Classification Panel recommends that urological catheter accessories be classified into class I (general controls) because the Panel believes that general controls are sufficient to provide reasonable assurance of the safety and effectiveness of these devices. The Panel believes that manufacturers of these

device accessories be exempt from registration and device listing requirements, premarket notification procedures, records and reports requirements, and the good manufacturing practice regulation because these are simple devices in common use that present only minimal risks to health, and that the quality of, and any defects of, the device are readily apparent upon user examination. The General and Plastic Surgery Device Classification Panel recommends that urological catheters be classified into class II because the materials used in devices that contact the body must meet a biocompatibility standard to prevent an adverse tissue reaction, and that these devices should not degrade by interaction with body tissue or fluids, nor contain residual (particulate) matter. The Panels believe that general controls alone would not provide sufficient control over these characteristics. The Panels believe that a performance standard would provide reasonable assurance of the safety and effectiveness of the devices and that there is sufficient information to establish a standard.

4. Summary of data on which the recommendation is based: The Panels based their recommendations on the Panel members' personal knowledge of, and clinical experience with, the devices.

5. Risks to health: (a) Infection: Defects in the design or construction of the devices preventing adequate cleaning or sterilization or defects in packaging or processing of devices sold as sterile may allow pathogenic organisms to be introduced and cause an infection in the patient.

(b) Trauma, hemorrhage, or perforation: Improper size, shape, rigidity, arrangement, or finish on parts of these devices may cause tissue trauma, hemorrhage, or perforation.

(c) Adverse tissue reaction: If the materials used in the construction of these devices are not biocompatible, the patient may have an adverse tissue reaction.

(d) Obstruction to urine passage: Inadequate size of the lumen or collapse or kinking of the tube because of inappropriate design and construction may lead to obstruction of the passage of urine through the catheter.

(e) Tissue injury: Failure of a balloon-type catheter to deflate as necessary may lead to tissue injury.

Proposed Classification

The agency agrees in part with the recommendation of the Gastroenterology-Urology Device Classification Panel and agrees with the recommendation of the General and Plastic Surgery Device Classification Panel and is proposing that urological catheters and accessories be classified into class II (performance standards). The agency believes that a performance standard is necessary for these devices because general controls alone are insufficient to control the risks to health presented by these devices. A performance standard would provide reasonable assurance of the safety and effectiveness of the devices. FDA also believes that there is sufficient information to establish a performance standard for these devices.

The agency disagrees with the Gastroenterology-Urology Device Classification Panel's recommendation that urological catheter accessories be classified into class I (general controls). The agency believes that these accessories' design characteristics, including their size, shape, rigidity, arrangement, and finish must be controlled to prevent tissue trauma, hemorrhage, or perforation. Furthermore, the biocompatibility of the materials used in the devices must be controlled to prevent adverse tissue reactions.

Because the agency has determined that urological catheter accessories should be classified into class II rather than class I, the agency is not required to publish a regulation adopting or rejecting the Panel recommendation that these devices be exempt from registration and listing requirements and the premarket notification procedures under section 510, the records and reports requirements under section 519, and the good manufacturing practice regulation under section 520(f) of the act.

FDA has reviewed the recommendations of the Gastroenterology-Urology Device Classification Panel and of the General and Plastic Surgery Device Classification Panel for urological catheters and accessories and has concluded that the classification of these devices should be published in the part of the Code of Federal Regulations for gastroenterology-urology devices.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and a new structure. FDA published notices of these changes in the Federal Register of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). This proposed classification regulation identifies each device panel by the former name. Further information regarding the device advisory committees and list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the Federal Register.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs proposes to amend Part 876 in Subpart F by adding new § 876.5130, to read as follows:

§ 876.5130 Urological catheter and accessories.

(a) *Identification.* A urological catheter and accessories is a tubular, flexible device that is inserted through the urethra and used to pass fluids to or from the urinary tract. This generic type of device includes radiopaque urological catheters, ureteral catheters, urethral catheters, coude catheters, balloon retention type catheters, straight catheters, upper urinary tract catheters, double lumen female urethrographic catheters, disposable ureteral catheters, male urethrographic catheters, and urological catheter accessories including uretheral catheter stylets, ureteral catheter adapters, ureteral catheter holders, ureteral catheter stylets, ureteral catheterization trays and the gastro-urological irrigation tray (for urological use).

(b) *Classification.* Class II (performance standards).

Interested persons may, on or before March 24, 1981, submit to the Dockets Management Branch (formerly the Hearing Clerk's office) (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, written comments regarding this proposal. Four copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: December 19, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 81-780 Filed 1-23-81; 8:45 am]

BILLING CODE 4110-03-M

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21 CFR Part 876

[Docket No. 78N-2009]

Medical Devices; Classification of Urological Clamps for Males

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing for public comment a proposed regulation classifying urological clamps for males into class II (performance standards). FDA is also publishing the recommendation of the Gastroenterology-Urology Device Classification Panel that the device be classified into class II. The effect of classifying a device into class II is to provide for the future development of one or more performance standards to assure the safety and effectiveness of the device. After considering public comments, FDA will issue a final regulation classifying the device. These actions are being taken under the Medical Device Amendments of 1976.

DATES: Comments by March 24, 1981. FDA proposes that the final regulation based on this proposal become effective 30 days after the date of its publication in the Federal Register.

ADDRESS: Written comments to the Dockets Management Branch (formerly the Hearing Clerk's office) (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Fernando Villarroel, Bureau of Medical Devices (HFK-420), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7750.

SUPPLEMENTARY INFORMATION:

Panel Recommendation

A proposal elsewhere in this issue of the Federal Register provides background information concerning the development of the proposed regulation. The Gastroenterology-Urology Device Classification Panel, an FDA advisory committee, made the following recommendation regarding the classification of urological clamps for males:

1. Identification: A urological clamp for males is a device used to close the urethra of a male to control urinary incontinence or to hold anesthetic or radiography contrast media in the urethra temporarily. It is an external clamp.

2. Recommended classification: Class II (performance standards). The Panel recommends that establishing a performance standard for this device be a low priority.

3. Summary of reasons for recommendation: The Panel recommends that urological clamps for males be classified into class II because the materials used in the devices that contact the body must be controlled by performance standard to ensure their biocompatibility to prevent an adverse tissue reaction. The design, materials, and construction of the devices must be controlled by a performance standard to ensure that the amount of pressure the clamp exerts is not excessive and that the locking mechanism is reliable to avoid damage to the skin from leakage of urine. The Panel believes that a performance standard would provide reasonable assurance of the safety and effectiveness of the devices and that there is sufficient information to establish a performance standard.

4. Summary of data on which the recommendation is based: The Panel based its recommendation on the Panel members' personal knowledge of, and clinical experience with, the device and on the widespread use of the device in medical practice.

5. Risks to health: (a) Pressure injuries: Defects in design, construction, or malfunction of the device may lead to pressure injuries such as pressure sores, nerve palsies, venous stasis, impaired healing, tissue necrosis, or compression of blood vessels that leads to edema.

(b) Infection or skin reaction: If the locking mechanism of the clamp fails, leakage of urine may lead to infection or skin reaction.

(c) Adverse tissue reaction: If the materials used in the construction of the devices are not biocompatible, the patient may have an adverse tissue reaction.

Proposed Classification

FDA agrees with the Panel recommendation and is proposing that urological clamps for males be classified into class II (performance standards). The agency believes that a performance standard is necessary for this device because general controls alone are insufficient to control the risks to health presented by this device. A performance standard would provide reasonable assurance of the safety and effectiveness of the device. The agency believes that there is sufficient information to establish a performance standard for this device.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and a new structure. FDA published notices of these changes in the Federal Register of May 19, 1978 (43 FR 21666, 21667, and 21668), and May 26, 1978 (43 FR 22672 and 22673). This proposed classification regulation identifies each device panel by the former name. Further information regarding the device advisory committees and list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the Federal Register.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540-546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs proposes to amend Part 876 in Subpart F by adding new § 876.5160, to read as follows:

§ 876.5160 Urological clamp for males.

(a) *Identification.* A urological clamp for males is a device used to close the urethra of a male to control urinary incontinence or to hold anesthetic or radiography contrast media in the urethra temporarily. It is an external clamp.

(b) *Classification.* Class II (performance standards).

Interested persons may, on or before March 24, 1981, submit to the Dockets Management Branch (formerly the Hearing Clerk's office) (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, written comments regarding this proposal. Four copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: December 19, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 81-781 Filed 1-22-81; 8:45 am]

BILLING CODE 4110-03-M

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21 CFR Part 876

[Docket No. 78N-2060]

Medical Devices; Classification of Enema Kits

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing for public comment a proposed regulation classifying enema kits into class I (general controls). FDA is also publishing the recommendation of the Gastroenterology-Urology Device Classification Panel that the device be classified into class I. The effect of classifying a device into class I is to require that the device meet only the general controls applicable to all devices. After considering public comments, FDA will issue a final

regulation classifying the device. These actions are being taken under the Medical Device Amendments of 1976.

DATES: Comments by March 24, 1981. FDA proposes that the final regulation based on this proposal become effective 30 days after the date of its publication in the Federal Register.

ADDRESS: Written comments to the Dockets Management Branch (formerly the Hearing Clerk's office) (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Fernando Villarroel, Bureau of Medical Devices (HFK–420), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7750.

SUPPLEMENTARY INFORMATION:

Panel Recommendation

A proposal elsewhere in this issue of the Federal Register provides background information concerning the development of the proposed regulation. The Gastroenterology-Urology Device Classification Panel, an FDA advisory committee, made the following recommendation regarding the classification of enema kits:

1. Identification: An enema kit is a device intended to instill water or other fluids into the colon through a nozzle inserted into the rectum to promote evacuation of the contents of the lower colon. The device consists of a container for fluid connected to the nozzle either directly or via tubing.

2. Recommended classification: Class I (general controls). The Panel recommends that this device be exempt from registration, device listing, and premarket notification under section 510 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360).

3. Summary of reasons for recommendation: The Panel recommends that enema kits be classified into class I because the Panel believes that any defects in the device are readily apparent and that general controls are sufficient to provide reasonable assurance of the safety and effectiveness of this device. The Panel believes that manufacturers of the device should not be required to comply with registration, device listing, and premarket notification procedures because enema kits present no unreasonable risks to health when used in the manner recommended and the quality of the device is readily apparent to the user.

4. Summary of data on which the recommendation is based: The Panel based its recommendation on the Panel members' personal knowledge of, and clinical experience with, the device.

5. Risks to health: None identified.

Proposed Classification

FDA agrees with the Panel recommendation and is proposing that enema kits be classified into class I (general controls). Although the device presents a risk of colon irritation if used excessively or inappropriately, the agency believes that general controls are sufficient to provide reasonable assurance of the safety and effectiveness of the device.

FDA disagrees with the Panel's recommendation that manufacturers of enema kits be exempt from all requirements under section 510 of the act. Under section 510(g)(4), the agency may exempt a manufacturer from section 510 only upon a finding that compliance with this section is not necessary for the protection of the public health. In the case of enema kits, the agency cannot make the required finding. To protect the public health, the agency needs to require manufacturers of this device to register and to list their products with FDA, so that the agency is able to identify the firms manufacturing this device and conduct necessary inspections. Premarket notification by these manufacturers assures that FDA learns of new products, and of significant modifications of existing products, for which premarket approval is required.

FDA is proposing that a manufacturer of this device be exempt, in the manufacture of the device, from all requirements in the GMP regulation except § 820.180, with respect to general requirements concerning records, and § 820.198 with respect to complaint files. Based on available information about current practices used in the manufacture of the device and user experience with the device, the agency has determined that application of the GMP regulation, other than §§ 820.180 and 820.198, is unlikely to improve the safety and effectiveness of the device. The agency believes, however, that manufacturers of enema kits must still be required to comply with the complaint file requirements to ensure that these manufacturers have adequate systems for complaint investigations and followup. The agency also believes that manufacturers of enema kits must still be required to comply with the general requirements concerning records to ensure that FDA has access to complaint file, can investigate device-related injury reports and complaints about product defects, may determine whether the manufacturer's corrective actions are adequate, and may determine whether the exemption from other sections of the GMP regulation is still appropriate.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and a new structure. FDA published notices of these changes in the Federal Register of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 22672 and 22673). This proposed classification regulation identifies each device panel by the former name. Further information regarding the device advisory committees and list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the Federal Register.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs proposes to amend Part 878 in Subpart F by adding new § 878.5210, to read as follows:

§ 878.5210 Enema kit.

(a) *Identification.* An enema kit is a device intended to instill water or other fluids into the colon through a nozzle inserted into the rectum to promote evacuation of the contents of the lower colon. The advice consists of a container for fluid connected to the nozzle either directly or via tubing. This device does not include the colonic irrigation system (§ 878.5220).

(b) *Classification.* Class I (general controls). The device is exempt from the good manufacturing practice regulation in Part 820, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

Interested persons may, on or before March 24, 1981, submit to the Dockets Management Branch (formerly the Hearing Clerk's office) (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, written comments regarding this proposal. Four copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: December 19, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 81-762 Filed 1-23-81; 8:45 am]

BILLING CODE 4110-03-M

21 CFR Part 876

[Docket No. 78N-2011]

Medical Devices; Classification of Colonic Irrigation Systems

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing for public comment a proposed regulation classifying into class II (performance standards) colonic irrigation systems intended for colon cleansing when medically indicated, such as before radiological or endoscopic examinations and classifying into class III (premarket approval) colonic irrigation systems when intended for all other uses, including use routinely for general well being. FDA is also publishing the recommendation of the Gastroenterology-Urology Device Classification Panel that the device intended for colon cleansing when medically indicated be classified into class II and that the device be classified into class III when intended for all other uses. FDA is also publishing the recommendation of the General and Plastic Surgery Device Classification Panel that the device be classified into class I (general controls). The effect of classifying a device into class I is to require that the device meet only the general controls applicable to all devices. The effect of classifying a device into class II is to provide for the future development of one or more performance standards to assure the safety and effectiveness of the device. The effect of classifying a device into class III is to require each manufacturer of the device to submit to FDA a premarket approval application at a date to be set in a future regulation. Each premarket approval application would include information concerning safety and effectiveness tests for the device. After considering public comments, FDA will issue a final regulation classifying the device. These actions are being taken under the Medical Device Amendments of 1976.

DATES: Comments by March 24, 1981. FDA proposes that the final regulation based on this proposal become effective 30 days after the date of its publication in the Federal Register.

ADDRESS: Written comments to the Dockets Management Branch (formerly the Hearing Clerk's office) (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Fernando Villarroel, Bureau of Medical Devices (HFK-420), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7750.

SUPPLEMENTARY INFORMATION:

Panel Recommendation

A proposal elsewhere in this issue of the Federal Register provides background information concerning the development of the proposed regulation. The Gastroenterology-Urology Device Classification Panel and the General and Plastic Surgery Device Classification Panel, FDA advisory committees, made the following recommendations regarding the classification of colonic irrigation systems:

1. Identification: A colonic irrigation system is a device intended to instill water into the colon through a nozzle inserted into the rectum to cleanse (evacuate) the contents of the lower colon. The system is designed to allow evacuation of the contents of the colon during the administration of the colonic irrigation. The device consists of a container for fluid connected to the nozzle via tubing and includes a system which enables the pressure, temperature, or flow of water through the nozzle to be controlled. The device may include a console-type toilet and necessary fittings to allow the device to be connected to water and sewer pipes. The device may use electrical power to heat the water.

2. Recommended classification: The Gastroenterology-Urology Device Classification Panel recommends that the colonic irrigation system intended for colon cleansing when medically indicated, such as before radiological or endoscopic examinations, be classified into class II (performance standards) and that establishing a performance standard for this device be a low priority. The Panel recommends that this device, when intended for other uses, including use routinely for general well being, be classified into class III (premarket approval) and that premarket approval of this device be a low priority. The General and Plastic Surgery Device Classification Panel recommends that this device be classified into class I (general controls), and that there be no exemptions.

3. Summary of reasons for recommendation: On October 26, 1978, the Gastroenterology-Urology Device Classification Panel recommended that colonic irrigation systems be classified into class III because the safety and effectiveness of this device had not been proven for all of its intended uses. Subsequently, the Panel decided to recommend that this device be classified into class II for purposes of colon cleansing when medically indicated, such as before radiological or endoscopic examinations, and into class III when intended for all other uses, including use routinely for general well being. The Panel recommends that colonic irrigation systems used for colon cleansing when medically indicated be classified into class II, because the water pressure and temperature regulating mechanisms used in this device must be controlled by a performance standard to prevent damage to the colon. The electrical properties of this device must be controlled by a performance standard to prevent electrical injury to the patient or operator. The Panel noted that the more elaborate devices do not seem to be any more efficacious than many of the simple systems, such as an enema kit (§ 876.5210). The Panel recommended that this device be labeled to show that it is safe and effective only for colon cleansing when medically indicated and cautioned that excessive or inappropriate use of the device could be irritating to the colon. The Panel believes that general controls alone would not provide sufficient control over the water pressure and temperature regulating mechanisms of the device. The Panel believes that a performance standard would provide reasonable assurance of the safety and effectiveness of the device solely for the use indicated, and that there is sufficient information to establish a performance standard for this use of the device. The Panel recommends that colonic irrigation systems intended for nonmedically indicated uses, including use routinely for general well being, be classified into class III because the Panel believes that it is not possible to establish an adequate performance standard for the device because safe and satisfactory performance has never been demonstrated. Therefore, the device, when intended for these nonmedically indicated uses, must be subject to premarket approval to assure that manufacturers demonstrate satisfactory performance of the device and, thus, assure its safety and effectiveness. The General and Plastic Surgery Device Classification Panel recommends that colonic irrigation systems be classified into class I (general controls) because general controls are sufficient to provide

reasonable assurance of the safety and effectiveness of the device. The Panel does not believe that this device requires performance standards to control the identified risks to health.

4. Summary of data on which the recommendation is based: The Panel based its recommendation on the Panel members' personal knowledge of, and clinical experience with, the device.

5. Risks to health: (a) Tissue burns: The temperature regulating mechanism for the water heater used in this device may allow overheating of the water which is delivered to the patient's colon, resulting in tissue burns.

(b) Perforation of the colon: Excessive water pressure delivered by this device could result in perforation of the wall of the colon.

(c) Colon irritation: Excessive or inappropriate use of this device may result in irritation of the colon.

(d) Electrical injury: Improper design, construction, or a malfunction of the device could result in electrical injury to the patient or operator.

Proposed Classification

FDA agrees with the recommendation of the Gastroenterology-Urology Device Classification Panel and is proposing that colonic irrigation systems intended for colon cleansing when medically indicated, such as before radiological or endoscopic examinations, be classified into class II (performance standards) and that the device be classified into class III (premarket approval) when intended for all other uses, including use routinely for general well being. The agency believes that a performance standard is necessary for this device intended for colon cleansing when medically indicated because general controls alone are insufficient to control the risks to health presented by the device. A performance standard would provide reasonable assurance of the safety and effectiveness of the device intended for colon cleansing when medically indicated. The agency also believes that there is sufficient information to establish a performance standard for this use of the device.

However, the agency believes that premarket approval is necessary for this device when intended for other than medically indicated occasional colon cleansing, such as for general well being, because it safety and effectiveness has not been demonstrated for these purposes. The agency believes that insufficient information exists to determine that general controls would provide reasonable assurance of the safety and effectiveness of the device for uses other than the medically indicated uses described above, and that insufficient information exists to establish a performance standard for these other uses of this device.

FDA disagrees with the recommendation of the General and Plastic Surgery Device Classification Panel that the colonic irrigation system be classified into class I (general controls). As described above, the agency believes that either a performance standard or premarket approval is necessary for this device, depending upon its intended uses.

The agency has reviewed the Panel's recommendations for the colonic irrigation system and has concluded that the classification of this device should be published in the part of the Code of Federal Regulations for gastroenterology-urology devices.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and a new structure. FDA published notices of these changes in the **Federal Register** of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). This proposed classification regulation identifies each device panel by the former name. Further information regarding the device advisory committees and list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the **Federal Register**.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs proposes to amend Part 876 in Subpart F by adding new § 876.5220, to read as follows:

§ 876.5220 Colonic irrigation system.

(a) *Identification.* A colonic irrigation system is a device intended to instill water into the colon through a nozzle inserted into the rectum to cleanse (evacuate) the Contents of the lower colon. The system is designed to allow evacuation of the contents of the colon during the administration of the colonic irrigation. The device consists of a container for fluid connected to the nozzle via tubing and includes a system which enables the pressure, temperature, or flow of water through the nozzle to be controlled. The device may include a console-type toilet and necessary fittings to allow the device to be connected to water and sewer pipes. The device may use electrical power to heat the water. This device does not include the enema kit (§ 876.5210).

(b) *Classification.* (1) Class II (performance standards) when the device is intended for colon cleansing when medically indicated, such as before radiological or endoscopic examinations.

(2) Class III (premarket approval) when the device is intended for other uses, including colon cleansing routinely for general well being.

Interested persons may, on or before March 24, 1981, submit to the Dockets Management Branch (formerly the Hearing Clerk's office) (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, written comments regarding this proposal. Four copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: December 19, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 81-780 Filed 1-22-81; 8:45 am]

BILLING CODE 4110-03-M

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21 CFR Part 876

[Docket No. 78N-2010]

Medical Devices; Classification of Urine Collectors and Accessories

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing for public comment a proposed regulation classifying urine collectors and accessories into class II (performance standards). FDA is also publishing the recommendation of the Gastroenterology-Urology Device Classification Panel that the devices be classified into class II. The effect of classifying a device into class II is to provide for the future development of one or more performance standards to assure the safety and effectiveness of the device. After considering public comments, FDA will issue a final regulation classifying the devices. These actions are being taken under the Medical Device Amendments of 1976.

DATES: Comments by March 24, 1981. FDA proposes that the final regulation based on this proposal become effective 30 days after the date of its publication in the **Federal Register**.

ADDRESS: Written comments to the Dockets Management Branch (formerly the Hearing Clerk's office) (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Fernando Villarreal, Bureau of Medical Devices (HFK–420), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7750.

SUPPLEMENTARY INFORMATION:

Panel Recommendation

A proposal elsewhere in this issue of the Federal Register provides background information concerning the development of the proposed regulation. The Gastroenterology-Urology Device Classification Panel, an FDA advisory committee, made the following recommendation regarding the classification of urine collectors and accessories:

1. Identification: A urine collector and accessories is a device used to collect urine. The device and accessories consist of tubing, a suitable receptacle, connectors, mechanical supports, and may include a means to prevent the backflow of urine or ascent of infection. This generic type of device includes the corrugated rubber sheath, pediatric urine collector, urinary drainage collection kit, closed urine drainage system, leg bag, uresheath-type incontinence device, and paste-on device for incontinence.

2. Recommended classification: Class II (performance standards). The Panel recommends that establishing a performance standard for these devices be a high priority.

3. Summary of reasons for recommendation: The Panel recommends that urine collectors and accessories be classified into class II because the materials used in the device that contact the body must be controlled by a performance standard to ensure their biocompatibility to prevent an adverse tissue reaction. The design, materials, and construction of the device must be controlled by a performance standard to ensure that the shape, size, rigidity, surface finish and strength of the device are appropriate to prevent trauma or hemorrhage and to enable proper cleaning and sterilization of the device to prevent infection in the patient. The Panel believes that general controls alone would not provide reasonable assurance of the safety and effectiveness of the devices and that there is sufficient information to establish a performance standard.

4. Summary of data on which the recommendation is based: The Panel based its recommendation on the Panel members' personal knowledge of, and clinical experience with, the devices and on the widespread use of the devices in medical practice.

5. Risks to health: (a) Trauma or hemorrhage: The size, shape, rigidity, arrangement, or finish on parts of the devices may cause tissue trauma or hemorrhage.

(b) Adverse tissue reaction: If the materials used in the device are not biocompatible, the patient may have an adverse tissue reaction.

(c) Infection: Defects in the design or construction of the device preventing adequate cleaning or sterilization, or defects in packaging or processing of a device sold as sterile, may allow pathogenic organisms to be introduced and cause an infection in the patient.

Proposed Classification

FDA agrees with the Panel recommendation and is proposing that urine collectors and accessories be classified into class II (performance standards). The agency believes that a performance standard is necessary for these devices because general controls alone are insufficient to control the risks to health presented by the devices. A performance standard would provide reasonable assurance of the safety and effectiveness of the devices. The agency also believes that there is sufficient information to establish a performance standard for these devices.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and a new structure. FDA published notices of these changes in the **Federal Register** of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). This proposed classification regulation identifies each device panel by the former name. Further information regarding the device advisory committees and list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the **Federal Register**.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drug proposes to amend Part 876 in Subpart F by adding new § 876.5250, to read as follows:

§ 876.5250 Urine collector and accessories.

(a) *Identification.* A urine collector and accessories is a device used to collect urine. The device and accessories consist of tubing, a suitable receptacle, connectors, mechanical supports, and may include a means to prevent the backflow of urine or ascent of infection. This generic type of device includes the corrugated rubber sheath, pediatric urine collector, urinary drainage collection kit, closed urine drainage system, leg bag, uresheath-type incontinence device, and paste-on device for incontinence.

(b) *Classification.* Class II performance standards).

Interested persons may, on or before March 24, 1981, submit to the Dockets Management Branch (formerly the Hearing Clerk's office) (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, written comments regarding this proposal. Four copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: December 19, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 81-764 Filed 1-22-81; 8:45 am]

BILLING CODE 4110-03-M

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21 CFR Part 876

[Docket No. 78N–1078]

Medical Devices; Classification of Implanted Electrical Urinary Continence Devices

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing for public comment a proposed regulation classifying implanted electrical urinary continence devices into class III (Premarket approval). FDA is also publishing the recommendation of the Gastroenterology-Urology Device Classification Panel that the devices be classified into class III. The effect of classifying a device into class III is to require each manufacturer of the device to submit to FDA a premarket approval application at a date to be set in a future regulation. Each premarket approval application would include information concerning safety and effectiveness tests for the device. After considering public comments, FDA will issue a final regulation classifying the devices. These

actions are being taken under the Medical Device Amendments of 1976.

DATES: Comments by March 24, 1981. FDA proposes that the final regulation based on this proposal become effective 30 days after the date of its publication in the Federal Register.

ADDRESS: Written comments to the Dockets Management Branch (formerly the Hearing Clerk's office) (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Fernando Villarroel, Bureau of Medical Devices (HFK–420), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7750.

SUPPLEMENTARY INFORMATION:

Panel Recommendation

A proposal elsewhere in this issue of the Federal Register provides background information concerning the development of the proposed regulation. The Gastroenterology-Urology Device Classification Panel, an FDA advisory committee, made the following recommendation regarding the classification of implanted electrical urinary continence devices:

1. Identification: An implanted electrical urinary continence device is a device intended for treatment of urinary incontinence that consists of a receiver implanted in the abdomen, electrodes for pulsed-stimulation that are implanted either in the bladder wall or in the pelvic floor, and a battery-powered transmitter outside the body.

2. Recommended classification: Class III (Premarket approval). The Panel recommends that premarket approval of these devices be a medium priority.

3. Summary of reasons for recommendation: The Panel recommends that these devices be classified into class III because they are implanted devices and the Panel believes there is insufficient information available to establish a performance standard and to show that general controls are sufficient to ensure their safety and effectiveness. Therefore, the devices should be subject to premarket approval to ensure that manufacturers demonstrate satisfactory performance and thus ensure their safety and effectiveness.

4. Summary of data on which the recommendation is based: The Panel based its recommendation on a review of the historical data concerning implanted electrical urinary continence devices. Halverstadt (Ref. 1) discussed several unsolved problems inherent in the electrical stimulation of the bladder. These problems include breakage of lead wires, the cumbersome nature of the electrodes, risk of perforation by wires of the bladder cavity, difficulty of obtaining uniform contraction of the detrusor muscle, and the spread of the stimulus to neighboring tissues producing abdominal pain. The Panel also based its recommendation on the experimental nature of these devices and on the lack of adequate medical literature and experience supporting their safety and effectiveness.

5. Risks to health: (a) Adverse tissue reaction and erosion: Defects in the design or the construction of the device, or lack of biocompatibility of the materials used in the device, may cause an adverse tissue reaction and tissue erosion adjacent to the device.

(b) Infection: Defects in the design or contruction of the device preventing adequate cleaning or sterilization, or defects in packaging or processing of a device sold as sterile, may allow pathogenic organisms to be introduced and cause an infection in the patient.

(c) Tissue damage: Defects in the electrode wires may lead to their breakage and consequent tissue damage.

(d) Abdominal and leg pain: The amount of stimulation by the electrodes necessary to obtain adequate bladder stimulation may lead to abdominal and leg pain.

(e) Electrical injury: Improper design, construction, or a malfunction of the device could result in electrical injury to the patient or the operator.

Proposed Classification

FDA agrees with the Panel recommendation and is proposing that implanted electrical urinary continence devices be classified into class III (premarket approval). FDA believes that the device presents a potential unreasonable risk of illness or injury to the patient if there are not adequate data to assure the safe and effective use of the device. In addition, the device is purported or represented to be for a use (treatment of urinary incontinence) that is of substantial importance in preventing impairment of human health. Furthermore, the device is an implant, which the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360c(d)) requires to be classified into class III unless the agency determines that premarket approval is not necessary to provide reasonable assurance of a device's safety and effectiveness. In this case, the agency has determined that premarket approval is necessary for the device because general controls and performance standards are insufficient to provide reasonable assurance of the safety and effectiveness of the device. FDA also believes that there is insufficient information to establish a standard to provide reasonable assurance of the safety and effectiveness of the device.

Reference

The following information has been placed in the Dockets Management Branch (address above) and may be seen by interested persons from 9 a.m. to 4 p.m., Monday through Friday.

1. Halverstadt, D. B., W. L. Parry, "Electronic Stimulation of the Human Bladder: 9 Years Later," *Journal of Urology*, 13, 341:344, 1975.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and a new structure. FDA published notices of these changes in the Federal Register of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 25, 1978 (43 FR 22672 and 22673). This proposed classification regulation identifies each device panel by the former name. Further information regarding the device advisory committees and list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the Federal Register.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs proposes to amend Part 876 in Subpart F by adding new § 876.5270, to read as follows:

§ 876.5270 Implanted electrical urinary continence device.

(a) *Identification.* An implanted electrical urinary continence device is a device intended for treatment of urinary incontinence that consists of a receiver implanted in the abdomen, electrodes for pulsed-stimulation that are implanted either in the bladder wall or in the pelvic floor, and a battery-powered transmitter outside the body.

(b) *Classification.* Class III (premarket approval).

Interested persons may, on or before March 24, 1981, submit to the Dockets Management Branch (formerly the Hearing Clerk's office) (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, written comments regarding this proposal. Four copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received

comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: December 19, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 81-785 Filed 1-22-81; 8:45 am]

BILLING CODE 4110-03-M

21 CFR Part 876

[Docket No. 78N-1969]

Medical Devices; Classification of Implanted Mechanical/Hydraulic Urinary Continence Devices

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing for public comment a proposed regulation classifying implanted mechanical/hydraulic urinary continence devices into class III (premarket approval). FDA is also publishing the recommendation of the Gastroenterology-Urology Device Classification Panel that the device be classified into class III. The effect of classifying a device into class III is to require each manufacturer of the device to submit to FDA a premarket approval application at a date to be set in a future regulation. Each premarket approval application would include information concerning safety and effectiveness tests for the device. After considering public comments, FDA will issue a final regulation classifying the devices. These actions are being taken under the Medical Device Amendments of 1976.

DATES: Comments by March 24, 1981. FDA proposes that the final regulation based on this proposal become effective 30 days after the date of its publication in the Federal Register.

ADDRESS: Written comments to the Dockets Management Branch (formerly the Hearing Clerk's office) (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Fernando Villarreal, Bureau of Medical Devices (HFK-420), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7750.

SUPPLEMENTARY INFORMATION:

Panel Recommendation

A proposal elsewhere in this issue of the Federal Register provides background information concerning the development of the proposed regulation. The Gastroenterology-Urology Device Classification Panel, an FDA advisory committee, made the following recommendation regarding the classification of implanted mechanical/hydraulic urinary continence devices:

1. Identification: An implanted mechanical/hydraulic urinary continence device is a device used to treat urinary incontinence by the application of continuous or intermittent pressure to occlude the urethra. The device may consist of implanted fixed or adjustable pressure pads or an inflatable cuff around the urethra connected to a container of radiopaque fluid implanted in the abdomen and a manual pump and valve implanted under the skin surface. The fluid is pumped from the container to inflate the cuff or pad to press on the urethra.

2. Recommended classification: Class III (premarket approval). The Panel recommends that premarket approval of these devices be a high priority.

3. Summary of reasons for recommendation: The Panel recommends that these devices be classified into class III because they are implanted devices. The Panel believes that the long term consequences of the implantation of these devices are not well understood. There is insufficient information available to establish a performance standard that would assure their safety and effectiveness. The Panel believes that general controls are insufficient to assure their safety and effectiveness. Therefore, the devices should be subject to premarket approval to assure that manufacturers demonstrate satisfactory performance of the devices and thus assure their safety and effectiveness.

4. Summary of data on which the recommendation is based: The Panel based its recommendation on a review of the literature for this device and on a presentation given by F. Brantley Scott at a Panel meeting held on September 28, 1976 (Ref. 1). Dr. Scott described safety features incorporated into one type of this device; the implanted inflatable cuff pressure is set below the patient's diastolic blood pressure so that the urethra underneath the cuff continues to have an adequate blood supply. Also, before the bladder pressure becomes inordinately high, the cuff opens automatically allowing release of urine. The most recent published medical article cited by the Panel indicates problems with this device may necessitate further surgery for its correction or removal (Ref. 2).

5. Risks to health: (a) Adverse tissue reaction and erosion: If the materials used in the device are not biocompatible, the patient may have an adverse tissue reaction and tissue erosion adjacent to the device.

(b) Leakage of urine: Kinking of the tube, insufficient fluid volume in the fluid container, or a defect in the cuff or pressure pad can result in failure to prevent leakage or urine through the urethra.

(c) Infection: Defects in the design or construction of the device preventing adequate cleaning or sterilization, or defects in packaging or processing of a device sold as sterile, may allow pathogenic organisms to be introduced and cause an infection in the patient.

(d) Urinary tract infection: If the cuff locks in the closed position preventing emptying of the bladder, urine may back up into the ureter or kidneys and lead to urinary tract infections.

(e) Additional surgery: Defects in the device or malfunction of the device may require the patient to undergo additional surgery, with attendent risks.

Proposed Classification

FDA agrees with the Panel recommendation and is proposing that implanted mechanical/hydraulic urinary continence devices be classified into class III (premarket approval).

FDA believes that the device presents a potential unreasonable risk of illness or injury to the patient if there are not adequate data to assure the safe and effective use of the device. In addition, the device is purported or represented to be for a use (treatment of incontinence) that is of substantial importance in preventing impairment of human health. Furthermore, the device is an implant, which the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360c(d)) requires to be classified into class III unless the agency determines that premarket approval is not necessary to provide reasonable assurance of a device's safety and effectiveness. In this case, the agency has determined that premarket approval is necessary for the device because general controls and performance standards are insufficient to provide reasonable assurance of the safety and effectiveness of the device. FDA also believes that there is insufficient information to establish a standard to provide reasonable assurance of the safety and effectiveness of the device.

References

The following information has been placed in the Dockets Management Branch (address above) and may be seen by interested persons, from 9 a.m. to 4 p.m., Monday through Friday.

1. Transcript of the Meeting of the Gastroenterological and Urological Device Classification Panel, September 28, 1976, pp. 6-17.

2. Furlow, W. L., "The Implantable Artificial Genitourinary Sphincter in the Management of Total Urinary Incontinence." *Mayo Clinic Proceedings*, 51:341–345, 1976.

On April 28, 1976, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and a new structure. FDA published notices of these changes in the Federal Register of May 19, 1976 (43 FR 21666, 21667, and 21668), and May 26, 1976 (43 FR 22672 and 22673). This proposed classification regulation identifies each device panel by the former name. Further information regarding the device advisory committees and list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the Federal Register.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs proposes to amend Part 876 in Subpart F by adding new § 876.5280, to read as follows:

§ 876.5280 Implanted mechanical/hydraulic urinary continence device.

(a) *Identification.* An implanted mechanical/hydraulic urinary continence device is a device used to treat urinary incontinence by the application of continuous or intermittent pressure to occlude the urethra. The device may consist of implanted fixed or adjustable pressure pads or an inflatable cuff around the urethra connected to a container of radiopaque fluid implanted in the abdomen and a manual pump and valve implanted under the skin surface. The fluid is pumped from the container to inflate the cuff or pad to press on the urethra.

(b) *Classification.* Class III (premarket approval).

Interested persons may, on or before March 24, 1981, submit to the Dockets Management Branch (formerly the Hearing Clerk's office) (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, written comments regarding this proposal. Four copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: December 19, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 81–780 Filed 1–22–81; 8:45 am]

BILLING CODE 4110–03–M

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21 CFR Part 876

[Docket No. 78N–2069]

Medical Devices; Classification of Nonimplanted Electrical Continence Devices

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing for public comment a proposed regulation classifying nonimplanted electrical continence devices into class III (premarket approval). FDA is also publishing the recommendation of the Obstetrical and Gynecological Device Classification Panel that the device be classified into class III and the recommendation of the Gastroenterology-Urology Device Classification Panel that the device be classified into class II. The effect of classifying a device into class III is to require each manufacturer of the device to submit to FDA a premarket approval application at a date to be set in a future regulation. Each premarket approval application would include information concerning safety and effectiveness tests for the device. The effect of classifying a device into class II is to provide for the future development of one or more performance standards to assure the safety and effectiveness of the device. After considering public comments, FDA will issue a final regulation classifying the device. These actions are being taken under the Medical Device Amendments of 1976.

DATES: Comments by March 24, 1981. FDA proposes that the final regulation based on this proposal become effective 30 days after the date of its publication in the Federal Register.

ADDRESS: Written comments to the Dockets Management Branch (formerly the Hearing Clerk's office) (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Fernando Villarroel, Bureau of Medical Devices (HFK–420), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7750.

SUPPLEMENTARY INFORMATION:

Panel Recommendation

A proposal elsewhere in this issue of the Federal Register provides background information concerning the development of the proposed regulation. The Gastroenterology-Urology Device Classification Panel, an FDA advisory committee, made the following recommendation regarding the classification of nonimplanted electrical continence devices:

1. Identification: A nonimplanted electrical continence device is a device that consists of a pair of electrodes on a plug or a pessary that are connected by an electrical cable to a battery-powered pulse source. The plug or pessary is inserted into the rectum or into the vagina and used to stimulate the muscles of the pelvic floor to maintain urinary or fecal continence. When necessary, the plug or pessary may be removed by the user.

2. Recommended classification: The Obstetrical and Gynecological Device Classification Panel recommends that the nonimplanted electrical continence device be classified into class III (premarket approval). The Obstetrical and Gynecological Device Classification Panel recommends that premarket approval of this device be a low priority. The Gastroenterology-Urology Device Classification Panel recommends that the device be classified into class II (performance standards). The Gastroenterology-Urology Device Classification Panel recommends that establishing a performance standard be a low priority.

3. Summary of reasons for recommendation: The Obstetrical and Gynecological Device Classification Panel recommends that the nonimplanted electrical continence device be classified into class III because there is a lack of definitive medical data to support the safety and effectiveness of this device. The Gastroenterology-Urology Device Classification Panel recommends that the nonimplanted electrical continence device be classified into class II because the design characteristics, electrical properties, and materials used in the construction of the device must be controlled by a performance standard to ensure that the stimulation is as painless as possible. The materials used in the device that contact the body must be controlled by a performance standard to ensure their biocompatibility to prevent an adverse tissue reaction. Also, the electrical properties of the device must be controlled by a performance standard to prevent electrical injury to the patient. The Panel believes that general controls alone would not

provide sufficient control over these characteristics. The Panel believes that a performance standard would provide a reasonable assurance of the safety and effectiveness of the device and that there is sufficient information to establish a performance standard.

4. Summary of data on which the recommendation is based: The Obstetrical and Gynecological Device Classification Panel based its recommendation on its review of the medical literature which showed that there is a lack of sufficient data to support the safety and effectiveness of the device. The Gastroenterology-Urology Device Classification Panel based its recommendation and the Panel members' personal knowledge of, and clinical experience with, the device and on a review of the medical literature. In one study (Ref. 1), 64 patients were selected for treatment of incontinence using this generic type of device. The selections were based on the results obtained from cystometrogram and urethral pressure profile investigations. The results indicated that 29 of the 64 patients reported satisfactory improvements. The report noted that this kind of electronic treatment would best serve those patients requiring only short-term control of incontinence.

5. Risks to health: (a) Excessive pain: The electrical pulses generated by this device to stimulate the pelvic floor muscles may cause the patient to have excessive pain.

(b) Adverse tissue reaction: If the materials used in the construction of the device are not biocompatible, the patient may have an adverse tissue reaction.

(c) Electrical injury: Improper design, construction, or a malfunction of the device could result in an electrical injury to the patient.

(d) Urinary retention: If the design of the device makes it difficult or impossible for the patient to remove the device, it may lead to urinary retention.

Proposed Classification

FDA agrees with the recommendations of the Obstetrical and Gynecological Device Classification Panel is proposing that nonimplanted electrical devices be classified into class III (premarket approval). The agency has obtained additional data and information describing the device. Godec, et al., (Ref. 2) include the results of several studies where the reported effectiveness of the device ranged from 23 percent to 92 percent, with the number of patients ranging from 7 through 40. Godec and Cass in a later study (Ref. 3) report some improvement in urinary continence in 17 out of 20 patients. This higher effectiveness rate appears to be related more to careful selection of the patients rather than any identifiable characteristics of the device.

Because of the review of the medical literature that reveals both concern about safety and a possible lack of effectiveness, FDA disagrees with the recommendation of the Gastroenterology-Urology Device Classification Panel that the nonimplanted electrical continence device be classified into class II (performance standards).

FDA believes that the device is purported or represented to be for a use (treatment of urinary or fectal incontinence) that is of substantial importance in preventing impairment of human health. Due to the considerable variation in the reported effectiveness of the device, the agency believes that premarket approval is necessary for the device because general controls or performance standards are insufficient to provide reasonable assurance of the safety and effectiveness of the device. FDA also believes that there is insufficient information to establish a standard to provide reasonable assurance of the safety and effectiveness of the device. The agency has reviewed the recommendations of the Panels for the nonimplanted electrical continence device and has concluded that the classification of this device should be published in the part of the Code of Federal Regulations for gastroenterology and urology devices.

References

The following information has been placed in the Dockets Management Branch (address above) and may be seen by interested persons from 9 a.m. to 4 p.m., Monday through Friday.

1. Edwards, L. and J. Malvern, "Electronic Control of Incontinence: A Critical Review of the Present Situation," *British Journal of Urology*, 44:467–472, 1972.

2. Godec, C. et al., "Electrical Stimulation for Incontinence," *Urology*, 7:389–397, 1976.

3. Godec, C. and A. Cass, "Acute Electrical Stimulation for Urinary Incontinence," *Urology*, 12:340–342, 1978.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and a new structure. FDA published notices of these changes in the Federal Register of May 19, 1976 (43 FR 21666, 21667, and 21668) and May 26, 1976 (43 FR 22672 and 22673). This proposed classification regulation identifies each device panel by the former name. Further information regarding the device advisory committees and list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the Federal Register.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs proposes to amend Part 876 in Subpart F by adding new § 876.5320, to read as follows:

§ 876.5320 Nonimplanted electrical continence device.

(a) *Identification.* A nonimplanted electrical continence device is a device that consists of a pair of electrodes on a plug or a pessary that are connected by an electrical cable to a battery-powered pulse source. The plug or pessary is inserted into the rectum or into the vagina and used to stimulate the muscles of the pelvic floor to maintain urinary or fecal continence. When necessary, the plug or pessary may be removed by the user.

(b) *Classification.* Class III (premarket approval).

Interested persons may, on or before March 24, 1981, submit to the Dockets Management Branch (formerly the Hearing Clerk's office) (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, written comments regarding this proposal. Four copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: December 19, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 81–797 Filed 1–22–81; 8:45 am]

BILLING CODE 4110–03–M

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21 CFR Part 876

[Docket No. 78N–2058]

Medical Devices; Classification of Esophageal Dilators

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing for public comment a proposed regulation classifying esophageal dilators into class II (performance standards). FDA is also publishing the recommendation of the Gastroenterology-Urology Device

Classification Panel that the device be classified into class II. The effect of classifying a device into class II is to provide for the future development of one or more performance standards to assure the safety and effectiveness of the device. After considering public comments, FDA will issue a final regulation classifying the device. These actions are being taken under the Medical Device Amendments of 1976.

DATES: Comments by March 24, 1981. FDA proposes that the final regulation based on this proposal become effective 30 days after the date of its publication in the Federal Register.

ADDRESS: Written comments to the Dockets Management Branch (formerly the Hearing Clerk's office) (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Fernando Villarroel, Bureau of Medical Devices (HFK–420), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7750.

SUPPLEMENTARY INFORMATION:

Panel Recommendation

A proposal elsewhere in this issue of the Federal Register provides background information concerning the development of the proposed regulation. The Gastroenterology-Urology Device Classification Panel, an FDA advisory committee, made the following recommendation regarding the classification of esophageal dilators:

1. Identification: An esophageal dilator is a device that consists of a cyclindrical instrument that may be hollow and weighted with mercury or a metal oliveshaped weight that slides on a guide, such as a string or wire and is used to dilate a stricture of the esophagus. This generic type of device includes esophageal or gastrointestinal bougies and the esophageal dilator (metal olive).

2. Recommended classification: Class II (performance standards). The Panel recommends that establishing a performance standard for this device be a medium priority.

3. Summary of reasons for recommendation: The Panel recommends that esophageal dilators be classified into class II because the design, materials and construction of the device must be controlled by a performance standard to ensure that the size, shape, rigidity, flexibility, surface finish, and strength of the device are appropriate to prevent trauma, hemorrhage, or perforation. The materials used in the construction of the device must be controlled to ensure their biocompatibility to prevent an adverse tissue reaction. The design and construction of the device must be controlled by a performance standard to ensure that the device can be cleaned and sterilized adequately to prevent infection. The Panel believes that general controls alone would not provide sufficient control over these characteristics. The Panel believes that a performance standard would provide reasonable assurance of the safety and effectiveness of the device and that there is sufficient information to establish a performance standard.

4. Summary of data on which the recommendation is based: The Panel based its recommendation on the Panel members' personal knowledge of, and clinical experience with, the device and on the widespread use of this device in medical practice.

5. Risks to health: (a) Infection: Defects in the design or construction of the device preventing adequate cleaning or sterilization, or defects in packaging or processing of a device sold as sterile, may allow pathogenic organisms to be introduced and cause an infection in the patient.

(b) Trauma, hemorrhage, or perforation of the esophagus: Improper size, shape, rigidity, arrangement, or finish on parts of this device may cause tissue trauma, hemorrhage, or perforation of the esophagus.

(c) Adverse tissue reaction: If the materials used in the device are not biocompatible, the patient may have an adverse tissue reaction.

Proposed Classification

FDA agrees with the Panel recommendation and is proposing that esophageal dilators be classified into class II (performance standards). The agency believes that a performance standard is necessary for this device because general controls alone are insufficient to control the risks to health presented by the device. A performance standard would provide reasonable assurance of the safety and effectiveness of the device. The agency also believes that there is sufficient information to establish a performance standard for this device.

On April 20, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and a new structure. FDA published notices of these changes in the Federal Register of May 18, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). This proposed classification regulation identifies each device panel by the former name. Further information regarding the device advisory committees an list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the Federal Register.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs proposes to amend Part 876 in Subpart F by adding new § 876.5365, to read as follows:

§ 876.5365 Esophageal dilator.

(a) *Identification.* An esophageal dilator is a device that consists of a cylindrical instrument that may be hollow and weighted with mercury or a metal olive-shaped weight that slides on a guide, such as a string or wire and is used to dilate a stricture of the esophagus. This generic type of device includes esophageal or gastrointestinal bougies and the esophageal dilator (metal olive).

(b) *Classification.* Class II (performance standards).

Interested persons may, on or before March 24, 1981, submit to the Dockets Management Branch (formerly the Hearing Clerk's office) (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, written comments regarding this proposal. Four copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m. Monday through Friday.

Dated: December 19, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 81-798 Filed 1-23-81; 8:45 am]

BILLING CODE 4110-03-M

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21 CFR Part 876

[Docket No. 78N–1092]

Medical Devices; Classification of Rectal Dilators

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing for public comment a proposed regulation classifying rectal dilators into class II (performance standards). FDA is also publishing the recommendation of the Gastroenterology-Urology Device

Classification Panel that the device be classified into class II. The effect of classifying a device into class II is to provide for the future development of one or more performance standards to assure the safety and effectiveness of the device. After considering public comments, FDA will issue a final regulation classifying the device. These actions are being taken under the Medical Device Amendments of 1976.

DATES: Comments by March 24, 1981. FDA proposes that the final regulation based on this proposal become effective 30 days after the date of its publication in the Federal Register.

ADDRESS: Written comments to the Dockets Management Branch (formerly the Hearing Clerk's office) (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Fernando Villarroel, Bureau of Medical Devices (HFK–420), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7750.

SUPPLEMENTARY INFORMATION:

Panel Recommendation

A proposal elsewhere in this issue of the Federal Register provides background information concerning the development of the proposed regulation. The Gastroenterology-Urology Device Classification Panel, an FDA advisory committee, made the following recommendation regarding the classification of rectal dilators:

1. Identification: A rectal dilator is a device designed to dilate the anal sphincter and canal when the size of the anal opening may interfere with its function or the passage of an examining instrument.

2. Recommended classification: Class II (performance standards). The Panel recommends that establishing a performance standard for this device be a low priority.

3. Summary of reasons for recommendation: The Panel recommends that rectal dilators be classified into class II because the Panel believes that the design, materials and construction of the device must be controlled by a performance standard to ensure that the size, shape, rigidity, flexibility, surface finish, and strength of this device are appropriate to prevent trauma, hemorrhage, or perforations. The materials used in the construction of the device must be controlled by a performance standard to ensure their biocompatibility to prevent any adverse tissue reaction. The design and construction of this device must be controlled by a performance standard to enable the proper cleaning or sterilization of the device to prevent infection. The Panel believes that general controls alone would not provide sufficient control over these characteristics. The Panel believes that a performance standard would provide reasonable assurance of the safety and effectiveness of the device and that there is sufficient information to establish a performance standard.

4. Summary of data on which the recommendation is based: The Panel based its recommendation on the Panel members' personal knowledge of, and clinical experience with, the device and on the widespread use of the device in medical practice.

5. Risks to health: (a) Trauma, hemorrhage, or perforation: The size, shape, rigidity, and arrangement, or finish on parts of this devices may cause tissue trauma, hemorrhage, or perforation.

(b) Adverse tissue reaction: If the materials used in the device are not biocompatible, the patient may have an adverse tissue reaction.

(c) Infection: Defects in the design or construction of the device preventing adequate cleaning or sterilization or defects in packaging or processing of a device sold as sterile, may allow pathogenic organisms to be introduced and cause an infection in the patient.

Proposed Classification

FDA agrees with the Panel recommendation and is proposing that rectal dilators be classified into class II (performance standards). The agency believes that a performance standard is necessary for this device because general controls alone are insufficient to control the risks to health presented by the device. A performance standard will provide reasonable assurance of the safety and effectiveness of the device. The agency also believes that there is sufficient information to establish a performance standard for this device.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and a new structure. FDA published notices of these changes in the Federal Register of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). This proposed classification regulation identifies each device panel by the former name. Further information regarding the device advisory committees and list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the Federal Register.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs proposes to amend Part 876 in Subpart F by adding new § 876.5450, to read as follows:

§ 876.5450 Rectal dilator.

(a) *Identification.* A rectal dilator is a device designed to dilate the anal sphincter and canal when the size of the anal opening may interfere with its function or the passage of an examining instrument.

(b) *Classification.* Class II (performance standards).

Interested persons may, on or before March 24, 1981, submit to the Dockets Management Branch (formerly the Hearing Clerk's office) (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, written comments regarding this proposal. Four copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: December 19, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 81–780 Filed 1–22–81; 8:45 am]

BILLING CODE 4110–03–M

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21 CFR Part 876

[Docket No. 78N–2057]

Medical Devices; Classification of Ureteral Dilators

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing for public comment a proposed regulation classifying ureteral dilators into class II (performance standards). FDA is also publishing the recommendation of the Gastroenterology-Urology Device Classification Panel that the device be classified into class II. The effect of classifying a device into class II is to provide for the future development of one or more performance standards to assure the safety and effectiveness of the device. After considering public comments, FDA will issue a final regulation classifying the device. These

actions are being taken under the Medical Device Amendments of 1976.

DATES: Comments by March 24, 1981. FDA proposes that the final regulation based on this proposal become effective 30 days after the date of its publication in the Federal Register.

ADDRESS: Written comments to the Dockets Management Branch (formerly the Hearing Clerk's office) (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Fernando Villarroel, Bureau of Medical Devices (HFK-420), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7750.

SUPPLEMENTARY INFORMATION:

Panel Recommendation

A proposal elsewhere in this issue of the Federal Register provides background information concerning the development of the proposed regulation. The Gastroenterology-Urology Device Classification Panel, an FDA advisory committee, made the following recommendation regarding the classification of ureteral dilators:

1. Identification: A ureteral dilator is a device that consists of a specially shaped catheter or bougie and is used to dilate the ureter at the place where a stone has become lodged or to dilate a ureteral stricture.

2. Recommended classification: Class II (performance standards). The Panel recommends that establishing a performance standard for this device be a low priority.

3. Summary of reasons for recommendation: The Panel recommends that ureteral dilators be classified into class II because the design, materials and construction of the device must be controlled by a performance standard to ensure that the size, shape, rigidity, flexibility, surface finish, and strength of the device are appropriate to prevent trauma, hemorrhage, or perforation. The design and construction of the device must be controlled by a performance standard to enable proper cleaning and sterilization of the device to prevent infection. Materials used in the device that contact the body must be controlled by a performance standard to ensure their biocompatibility to prevent an adverse tissue reaction. The Panel believes that general controls alone would not provide sufficient control over these characteristics. The Panel believes that a performance standard would provide a reasonable assurance of the safety and effectiveness of the device and that there is sufficient information to establish a performance standard.

4. Summary of data on which the recommendation is based: The Panel based its recommendation on the Panel members' personal knowledge of, and clinical experience with, the device and on the widespread use of this device in medical practice.

5. Risks to health: (a) Infection: Defects in the design or construction of the device preventing adequate cleaning or sterilization, or defects in packaging or processing of a device sold as sterile may allow pathogenic organisms to be introduced and cause an infection in the patient. (b) Trauma, hemorrhage, or perforation: Improper size, shape, rigidity, arrangement, or finish on parts of this device may cause tissue trauma, hemorrhage or perforation of the ureter. (c) adverse tissue reaction: If the materials in the device are not biocompatible, the patient may have an adverse tissue reaction.

Proposed Classification

FDA agrees with the Panel recommendation and is proposing that ureteral dilators be classified into class II (performance standards). The agency believes that a performance standard is necessary for this device because general controls alone are insufficient to control the risks to health presented by the device. A performance standard would provide reasonable assurance of the safety and effectiveness of the device. The agency also believes that there is sufficient information to establish a performance standard for this device.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and a new structure. FDA published notices of these changes in the Federal Register of May 19, 1978 (43 FR 21867, and 21868) and May 26, 1978 (43 FR 22872 and 22873). This proposed classification regulation identifies each device panel by the former name. Further information regarding the device advisory committees and list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the Federal Register.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540-546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs proposes to amend Part 876 in Subpart F by adding new § 876.5470, to read as follows:

§ 876.5470 Ureteral dilator.

(a) *Identification:* A ureteral dilator is a device that consists of a specially shaped catheter or bougie and is used to dilate the ureter at the place where a stone has become lodged or to dilate a ureteral stricture.

(b) *Classification.* Class II (performance standards).

Interested persons may, on or before March 24, 1981 submit to the Dockets Management Branch (formerly the Hearing Clerk's office) (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, written comments regarding this proposal. Four copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: December 19, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 81-760 Filed 1-22-81; 8:45 am]

BILLING CODE 4110-03-M

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21 CFR Part 876

[Docket No. 78N-2058]

Medical Devices; Classification of Urethral Dilators

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing for public comment a proposed regulation classifying urethral dilators into class II (performance standards). FDA is also publishing the recommendation of the Gastroenterology-Urology Device Classification Panel that the device be classified into class II. The effect of classifying a device into class II is to provide for the future development of one or more performance standards to assure the safety and effectiveness of the device. After considering public comments, FDA will issue a final regulation classifying the device. These actions are being taken under the Medical Device Amendments of 1976.

DATES: Comments by March 24, 1981. FDA proposes that the final regulation based on this proposal become effective 30 days after the date of its publication in the Federal Register.

ADDRESS: Written comments to the Dockets Management Branch (formerly the Hearing Clerk's office) (HFA-305),

Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT:
Fernando Villarreal, Bureau of Medical Devices (HFK–420), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7750.

SUPPLEMENTARY INFORMATION:

Panel Recommendation

A proposal elsewhere in this issue of the Federal Register provides background information concerning the development of the proposed regulation. The Gastroenterology-Urology Device Classification Panel, an FDA advisory committee, made the following recommendation regarding the classification of urethral dilators:

1. Identification: A urethral dilator is a device that consists of a slender hollow or solid instrument made of metal, plastic, or other suitable material in a cylindrical form and in a range of sizes and stiffnesses and may include a mechanism to expand the portion of the device in the urethra and indicate the degree of expansion on a dial. It is used to dilate the urethra. This generic type of device includes the mechanical urethral dilator, urological bougies, metal or plastic urethral sound, urethrometer, filiform, and filiform follower.

2. Recommended classification: Class II (performance standards). The Panel recommends that establishing a performance standard for this device be a low priority.

3. Summary of reasons for recommendation: The Panel recommends that urethral dilators be classified into class II because the design, materials, and construction of the device must be controlled by a performance standard to ensure that the size, shape, rigidity, flexibility, surface finish, and strength of the device are appropriate to prevent trauma, hemorrhage, or perforation. The calibration of the device must be controlled to prevent overdilation of the urethra. The design and construction of the device must be controlled by a performance standard to enable proper cleaning and sterilization of the device to prevent infection. Materials used in the device that contact the body must be controlled by a performance standard to ensure their biocompatibility to prevent an adverse tissue reaction. The Panel believes that general controls alone will not provide sufficient control over these characteristics. The Panel believes that a performance standard will provide a reasonable assurance of the safety and effectiveness of the device and that there is sufficient information to establish a performance standard.

4. Summary of data on which the recommendation is based: The Panel based its recommendation on the Panel members' personal knowledge of, and clinical experience with, the device and on the widespread use of this device in medical practice.

5. Risks to health: (a) Adverse tissue reaction: If the materials in the device are not biocompatible, the patient may have an adverse tissue reaction. (b) Trauma, hemorrhage, or perforation: Improper size, shape, rigidity, arrangement, or finish on parts of this device may cause tissue trauma, hemorrhage, or perforation. (c) Overdilation of the urethra: The use of a mechanical urethral dilator that is not calibrated properly may cause overdilation of the urethra. (d) Infection: Defects in the design or construction of the device preventing adequate cleaning or sterilization, or defects in packaging or processing of a device sold as sterile, may allow organisms to be introduced and cause an infection in the patient.

Proposed Classification

FDA agrees with the Panel recommendation and is proposing that urethral dilators be classified into class II (performance standards). The agency believes that a performance standard is necessary for this device because general controls alone are insufficient to control the risks to health presented by this device. A performance standard would provide reasonable assurance of the safety and effectiveness of the device. The agency also believes that there is sufficient information to establish a performance standard for this device.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and a new structure. FDA published notices of these changes in the Federal Register of May 19, 1978 (43 FR 21668, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). This proposed classification regulation identifies each device panel by the former name. Further information regarding the device advisory committees and list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the Federal Register.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs proposes to amend Part 876 in Subpart F by adding new § 876.5520, to read as follows:

§ 876.5520 Urethral dilator.

(a) *Identification.* A urethral dilator is a device that consists of a slender hollow or solid instrument made of metal, plastic, or other suitable material in a cylindrical form and in a range of sizes and stiffnesses and may include a mechanism to expand the portion of the device in the urethra and indicate the degree of expansion on a dial. It is used to dilate the urethra. This generic type of device includes the mechanical urethral dilator, urological bougies, metal or plastic urethral sound, urethrometer, filiform, and filiform follower.

(b) *Classification.* Class II (performance standards).

Interested persons may, on or before March 24, 1981 submit to the Dockets Management Branch (formerly the Hearing Clerk's office) (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, written comments regarding this proposal. Four copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: December 19, 1980.

William F. Randolph,
Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 81–791 Filed 1–22–81; 8:45 am]
BILLING CODE 4110–03–M

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21 CFR PART 876

[Docket No. 78N–2044]

Medical Devices; Classification of Blood Access Devices and Accessories

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing for public comment a proposed regulation classifying into class II (performance standards) nonimplanted blood access devices and accessories and classifying into class III (premarket approval) implanted blood access devices and accessories. FDA is also publishing the recommendation of the Gastroenterology-Urology Device Classification Panel that the devices be classified into class II. The effect of classifying a device into class II is to provide for the future development of

one or more performance standards to assure the safety and effectiveness of the device. The effect of classifying a device into class III is to require each manufacturer of the device to submit to FDA a premarket approval application at a date to be set in a future regulation. Each premarket approval application would include information concerning safety and effectiveness tests for the device. After considering public comments, FDA will issue a final regulation classifying the devices. These actions are being taken under the Medical Device Amendments of 1976.

DATES: Comments by March 24, 1981. FDA proposes that the final regulation based on this proposal become effective 30 days after the date of its publication in the Federal Register.

ADDRESS: Written comments to the Dockets Management Branch (formerly the Hearing Clerk's office) (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Fernando Villarroel, Bureau of Medical Devices (HFK–420), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7750.

SUPPLEMENTARY INFORMATION:

Panel Recommendation

A proposal elsewhere is this issue of the Federal Register provides background information concerning the development of the proposed regulation. The Gastroenterology-Urology Device Classification Panel, an FDA advisory committee, made the following recommendation regarding the classification of blood access devices and accessories:

1. *Identification:* A blood access device and accessories is a device intended to provide access to a patient's blood for hemodialysis or substantially equivalent uses. When used for hemodialysis, it is part of an artificial kidney system for the treatment of patients with renal failure or toxemic conditions and provides access to a patient's blood for hemodialysis. The device includes implanted blood access devices and nonimplanted blood access devices and accessories. Accessories common to either type include the shunt adaptor, cannula clamp, shunt connector, shunt stabilizer, vessel dilator, disconnect forceps, shunt guard, crimp plier, tube plier, crimp ring, joint ring, fistula adaptor, and declotting tray (including contents). The implanted and nonimplanted blood access devices and accessories are either connected to a system, such as the hemodialysis system and accessories (§ 876.5820) during dialysis, or are plugged or connected together. This generic type of device includes various shunts and connectors specifically designed to provide access to blood, such as the arteriovenous (A–V) shunt cannula and vessel tip. (a) The implanted blood access device consists of various flexible or rigid tubes, which are surgically implanted in appropriate blood vessels, may come through the skin, and are intended to remain in the body for 30 days or more. (b) The non-implanted blood access device consists of various flexible or rigid tubes, such as catheters, cannulae or hollow needles, which are inserted into appropriate blood vessels or a vascular graft prosthesis (§§ 870.3450 and 870.3460), and are intended to remain in the body for less than 30 days. This generic type of device includes fistula needles, the single needle dialysis set (coaxial flow needle), and the single needle dialysis set (alternating flow, needle only).

2. Recommended classification: Class II (performance standards). The Panel recommends that establishing a performance standard for these devices be a medium priority.

3. Summary of reasons for recommendation: The Panel recommends that blood access devices and accessories be classified into class II because the design, materials, and construction of these devices must be controlled by a performance standard to enable the proper cleaning and sterilization of these devices to prevent infection. Materials used in the device that contact the patient's body and the blood must be controlled by a performance standard to ensure biocompatibility of the materials to prevent an adverse tissue reaction. The design, materials, and construction of the device must be controlled by a performance standard to ensure that the shape, size, rigidity, flexibility, surface finish, and strength of the device are appropriate to prevent trauma, hemorrhage, or perforation. The Panel also noted that implanted blood access devices that are attached to the sides of large bore blood vessels are more liable to serious complications. These complications include infection, thrombosis, ischemia of the limb distal to the device and massive hemorrhage. The Panel recommends that implanted blood access devices be attached to the side of large bore blood vessels only when smaller blood vessels are unavailable for use.

4. Summary of data on which the recommendation is based: The Panel based its recommendation on the Panel members' personal knowledge of, and clinical experience with, the devices, and on a presentation made by Dr. Khalid Butt at the July 6, 1978 meeting of the Panel (Ref. 1).

5. Risks to health: (a) Infection: Defects in the design or construction of the device preventing adequate cleaning or sterilization, or defects in packaging or processing of a device sold as sterile, may allow pathogenic organisms to be introduced and cause an infection in the patient. (b) Trauma, hemorrhage, or perforation: Improper size, shape, rigidity, arrangement, or finish on parts of these devices may cause tissue trauma, hemorrhage, or perforation. (c) Adverse tissue reaction: If the materials used in the construction of the device are not biocompatible, degrade by interaction with body tissue or fluids, or contain residual (particulate) matter, the patient may have an adverse tissue reaction. (d) Massive hemorrhage: Acoidental dislodgment due to weakening of the attachment of the device to the blood vessels (e.g., through infection) or disconnection of the device could lead to massive hemorrhage.

Proposed Classification

FDA agrees in part with the Panel recommendation and is proposing that nonimplanted blood access devices and accessories be classified into class II (performance standards). Although the nonimplanted device is life supporting and life sustaining, the agency believes that premarket approval is not necessary because a performance standard would provide reasonable assurance of the safety and effectiveness of the nonimplanted device. The agency believes that a performance standard is necessary because general controls alone are insufficient to control the risks to health presented by the nonimplanted devices.

FDA has reviewed pertinent clinical literature on implanted and nonimplanted blood access devices and accessories (Refs. 1 through 6). FDA realizes that the nonimplanted blood access device is not intended to be implanted for 30 days or more and although it is part of a life-supporting and life-sustaining system, this system is used to treat renal failure, which is more life threatening than the risks to health from use of the device. Additionally, nonimplanted blood access devices and accessories have been used successfully for two decades to provide repetitive access to a patient's blood circulatory system for hemodialysis. The agency has determined that the risks associated with these nonimplanted devices can be adequately controlled by developing standards for the construction of and materials used in the device and that premarket approval is therefore

unnecessary. The agency believes that there is sufficient information to establish performance standards for these nonimplanted devices.

FDA disagrees in part with the Panel recommendation and is proposing that implanted blood access devices be classified into class III (premarket approval). The device is an implant which the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360c(d)) requires to be classified into class III unless the agency determines that premarket approval is not necessary to provide reasonable assurance of a device's safety and effectiveness. In this case, the agency has determined that premarket approval is necessary for the implanted device because FDA believes that the device presents a potential unreasonable risk of illness or injury to the patient if there are not adequate data to assure the safe and effective use of the device. In addition, the implanted device is part of a life-supporting and life-sustaining system. FDA believes that general controls and performance standards are insufficient to provide reasonable assurance of the safety and effectiveness of the implanted device. FDA also believes that there is insufficient information to establish a standard to provide reasonable assurance of the safety and effectiveness of the implanted device.

FDA agrees with the Panel's cautionary statement on the use of blood access devices attached to the sides of large bore blood vessels. Some of the Problems with this use are discussed in Ref. 6.

References

The following information has been placed in the Dockets Management Branch (address above) and may be seen by interested persons from 9 a.m. to 4 p.m., Monday through Friday.

1. Transcript of the Gastroenterology and Urology Classification Panel meeting, July 6, 1978, pp. 92–120.

2. Bleyn, J. et al., "Review of Vascular Access for Hemodialysis," *in* "Technical Aspects of Renal Dialysis," edited by T. H. Frost, Pitman Medical Publishing Company, Ltd., London, 1978, pp. 137–146.

3. Bailey, G. L. and A. P. Morgan, "Circulatory Access for Hemodialysis," *in* "Hemodialysis Principles and Practice," edited by George L. Bailey, Academic Press, New York, 1972, pp. 211–233.

4. Erben, J. et. al., "Long-Term Experience with the Technique of Subclavian and Femoral Vein Cannulation in Hemodialysis," *Artificial Organs*, 3(3), August, 1979.

5. Flynn, C. T. and R. McGowan, "Subclavian Vein Catheter and Clockwork Pump," *Dialysis and Transplantation*, 9(6), June, 1980, pp. 556–557 and p. 616.

6. Morgan, A. and M. Lazarus, "Vascular Access for Hemodialysis," *American Journal of Surgery*, 129:432, April, 1975.

On April 28, 1976, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and a new structure. FDA published notices of these changes in the **Federal Register** of May 19, 1976 (43 FR 21666, 21667, and 21668) and May 26, 1976 (43 FR 22672 and 22673). This proposed classification regulation identifies each device panel by the former name. Further information regarding the device advisory committees and list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the **Federal Register**.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs proposes to amend Part 876 in Subpart F by adding new § 876.5540, to read as follows:

§ 876.5540 Blood access device and accessories.

(a) *Identification.* A blood access device and accessories is a device intended to provide access to a patient's blood for hemodialysis or substantially equivalent uses. When used for hemodialysis, it is part of an artificial kidney system for the treatment of patients with renal failure or toxemic conditions and provides access to a patient's blood for hemodialysis. The device includes implanted blood access devices and nonimplanted blood access devices and accessories. Accessories common to either type include the shunt adaptor, cannula clamp, shunt connector, shunt stabilizer, vessel dialator, disconnect forceps, shunt guard, crimp plier, tube plier, crimp ring, joint ring, fistula adaptor, and declotting tray (including contents). The implanted and nonimplanted blood access devices and accessories are either connected to a system, such as the hemodialysis system and accessories (§ 876.5820) during dialysis, or are plugged or connected together. This generic type of device includes various shunts and connector specifically designed to provide access to blood, such as the arteriovenous (A–V) shunt cannula and vessel tip.

(1) The implanted blood access device consists of various flexible or rigid tubes, which are surgically implanted in appropriate blood vessels, may come through the skin, and are intended to remain in the body for 30 days or more.

(2) The nonimplanted blood access device consist of various flexible or rigid tubes, such as catheters, cannulae or hollow needles, which are inserted into appropriate blood vessels or a vascular graft prosthesis (§§ 870.3450 and 870.3460), and are intended to remain in the body for less than 30 days. This generic type of device includes fistula needles, the single needle dialysis set (coaxial flow needle), and the single needle dialysis set (alternating flow, needle only).

(b) *Classification*—(1) *Implanted blood access device and accessories.* Class III (premarket approval).

(2) *Nonimplanted blood access device and accessories.* Class II (performance standards).

Interested persons may, on or before March 24, 1981 submit to the Dockets Management Branch (formerly the Hearing Clerk's office) (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, written comments regarding this proposal. Four copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the Docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: December 19, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 81-782 Filed 1-22-81; 8:45 am]

BILLING CODE 4110-03-M

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21 CFR Part 876

[Docket No. 78N-2019]

Medical Devices; Classification of Sorbent Regenerated Dialysate Delivery Systems for Hemodialysis

AGENCY: Food and Drug Administration.

ACTION: Proposed Rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing for public comment a proposed regulation classifying sorbent regenerated dialysate delivery systems for hemodialysis into class II (performance standards). FDA is also publishing the recommendation of the Gastroenterology-Urology Device Classification Panel that the device be classified into class II. The effect of classifying a device into class II is to provide for the future development of one or more performance standards to assure the safety and effectiveness of the device. After considering public

comments, FDA will issue a final regulation classifying the device. These actions are being taken under the Medical Device Amendments of 1976.

DATES: Comments by March 24, 1981. FDA proposes that the final regulation based on this proposal become effective 30 days after the date of its publication in the Federal Register.

ADDRESS: Written coments to the Dockets Management Branch (formerly the Hearing Clerk's office) (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Fernando Villarroel, Bureau of Medical Devices (HFK–420), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7750.

SUPPLEMENTARY INFORMATION:

Panel Recommendation

A proposal elsewhere in this issue of the Federal Register provides background information concerning the development of the proposed regulation. The Gastroenterology-Urology Device Classification Panel, an FDA advisory committee, made the following recommendation regarding the classification of sorbent regenerated dialysate delivery systems for hemodialysis:

1. Identification: A sorbent regenerated dialysate delivery system for hemodialysis is a device that is part of an artificial kidney system for the treatment of patients with renal failure or toxemic conditions, and that consists of a sorbent cartridge and the means to circulate dialysate through this cartridge and the dialysate compartment of the dialyzer. The device is used with the extracorporeal blood system and the dialyzer of the hemodialysis system and accessories (§ 876.5820). The device includes the means to maintain the temperature, conductivity, electrolyte balance, flow rate and pressure of the dialysate, and alarms to indicate abnormal dialysate conditions. The sorbent cartridge may include adsorbent, ion exchange and catalytic materials.

2. Recommended classification: Class II (performance standards). The Panel recommends that establishing a performance standard for this device be a high priority.

3. Summary of reasons for recommendation: The Panel recommends that sorbent regenerated dialysate delivery systems for hemodialysis be classified into class II (performance standards) because the adsorption and ion exchange properties of the cartridge materials must be adequately controlled by a performance standard to prevent electrolyte imbalance. The design and construction of the device must be controlled by a performance standard to enable proper cleaning and sterilization to prevent infection. Also, materials used in the device that contact the body must be controlled by a performance standard to ensure biocompatibility of the materials to prevent an adverse tissue reaction. When this device is used with other devices as a system, the combination must be compatible. The Panel believes that an electrical safety standard will ensure that the electrical properties of the device are controlled to prevent electrical injury to the patient or operator. The Panel recommends that the device be labeled with the following caution statement: If the device is used in the dialysis of a patient with very high blood glucose or with a drug intoxication, the sorbent cartridge may become saturated with the glucose or the toxic drug, interfering with further removal of undesirable substances from the blood of the patient. The Panel believes that general controls would not provide sufficient control over these characteristics. Although the sorbent regenerated dialysate delivery system for hemodialysis is part of a life-supporting and life-sustaining device, the Panel believes that premarket approval is not necessary to provide reasonable assurance of the safety and effectiveness of this device because there is sufficient information available to establish a performance standard.

4. Summary of data on which the recommendation is based: The Panel based its recommendation on the Panel members' personal knowledge of, and clinical experience with, the device.

5. Risks to health: (a) Infection: Defects in the design or construction of the device preventing adequate cleaning or sterilization, or defects in packaging or processing of a device sold as sterile, may allow pathogenic organisms to be introduced and cause an infection in the patient. (b) Electrical injury: Improper design, construction, or a malfunction of the device could result in electrical injury to the patient or the operator. (c) Adverse tissue reaction: If the materials used in the construction of the device are not biocompatible, degrade by interaction with body tissue or fluids, or contains residual (particulate) matter, the patient may have an adverse tissue reaction. (d) Pyrogenic reaction (a sudden fever with collapse and chills): Toxic substances may be leached from, or transmitted by, the device. These substances may cause the patient to have a pyrogenic reaction. (e) Electrolyte imbalance: Incorrect composition of the dialysate could result in electrolyte imbalance in the patient's blood and thus lead to cardiac disorders, blood cell damage, or muscle cramps. (f) Inadequate dialysis: Malfunction of the device, inappropriately low membrane permeability, inadequate blood flow, or leakage in the dialysate delivery system may cause inadequate removal of toxic substances from the patient's blood. If the sorbent cartridge becomes saturated with glucose or with a toxic drug, the sorbent cartridge may not remove more of the undesirable substances from the patient's blood. (g) Hemolysis, thromboembolic complications, or other blood damage: The materials used in the construction of the device or excessive dialysate temperature may result in hemolysis, thromboembolic complications, or other damage to the patient's blood. (h) Accumulative toxic effect: Repeated exposure to substances that may be leached from materials that contact the blood or dialysate may lead to an accumulation of these substances in the patient's body, causing a toxic effect.

Proposed Classification

FDA agrees with the Panel recommendation and is proposing that sorbent regenerated dialysate delivery systems for hemodialysis be classified into class II (performance standards). The agency has reviewed the Panel recommendation and has obtained additional data and information describing the use of the sorbent regenerated dialysate delivery system for hemodialysis. A recent paper (Ref. 1) describes the use of the device. Since 1973 it has been used by as many as 1,500 patients, some of whom have been dialyzed with the device for as long as 5 years. The paper includes 32 references concerning the use of this device.

FDA realizes that this generic type of device is a part of a device that is both life-sustaining and life-supporting when used in conjunction with hemodialysis; however, the device is used to treat renal failure, which is more life threatening than the risks to health from use of the device. Additionally, the device has been used successfully for over 10 years to regenerate dialysate for hemodialysis. The agency has determined that the risks associated with these devices can be adequately controlled by developing standards for the construction of and materials used in the device and that premarket approval is therefore unnecessary. The agency believes that there is sufficient information to establish performance standards for these devices.

Reference

The following information has been placed in the Dockets Management Branch (address above) and may be seen by interested persons from 9 a.m. to 4 p.m., Monday through Friday.

1. Blumenkrantz, M. J., et al., "Applications of the Redy® Sorbent System to Hemodialysis and Peritoneal Dialysis," *Artificial Organs*, 3(3): 250–256, 1979.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and a new structure. FDA published notices of these changes in the Federal Register of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). This proposed classification regulation identifies each device panel by the former name. Further information regarding the device advisory committees and list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the Federal Register.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs proposes to amend Part 876 in Subpart F by adding new § 876.5600, to read as follows:

§ 876.5600 Sorbent regenerated dialysate delivery system for hemodialysis.

(a) *Identification.* A sorbent regenerated dialysate delivery system for hemodialysis is a device that is part of an artificial kidney system for the treatment of patients with renal failure or toxemic conditions, and that consists of a sorbent cartridge and the means to circulate dialysate through this cartridge and the dialysate compartment of the dialyzer. The device is used with the extracorporeal blood system and the dialyzer of the hemodialysis system and accessories (§ 876.5820). The device includes the means to maintain the temperature, conductivity, electrolyte balance, flow rate and pressure of the dialysate, and alarms to indicate abnormal dialysate conditions. The sorbent cartridge may include adsorbent, ion exchange and catalytic materials.

(b) *Classification.* Class II (performance standards).

Interested persons may, on or before March 24, 1981 submit to the Dockets Management Branch (formerly the Hearing Clerk's office) (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, written comments regarding this proposal. Four copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: December 19, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 81-758 Filed 1-22-81; 8:45 am]

BILLING CODE 4110-03-M

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21 CFR Part 876

[Docket No. 78N-2051]

Medical Devices; Classification of Peritoneal Dialysis Systems and Accessories

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing for public comment a proposed regulation classifying peritoneal dialysis systems and accessories into class II (performance standards). FDA is also publishing the recommendation of the Gastroenterology-Urology Device Classification Panel that the device be classified into class II. The effect of classifying a device into class II is to provide for the future development of one or more performance standards to assure the safety and effectiveness of the device. After considering public comments, FDA will issue a final regulation classifying the device. These actions are being taken under the Medical Device Amendments of 1976.

DATES: Comments by March 24, 1981. FDA proposes that the final regulation based on this proposal become effective 30 days after the date of its publication in the Federal Register.

ADDRESS: Written comments to the Dockets Management Branch (formerly the Hearing Clerk's office) (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Fernando Villarroel, Bureau of Medical Devices (HFK–420), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7750.

SUPPLEMENTARY INFORMATION:

Panel Recommendation

A proposal elsewhere in this issue of the Federal Register provides background information concerning the development of the proposed regulation. The Gastroenterology-Urology Device Classification Panel, an FDA advisory committee, made the following recommendation regarding the classification of peritoneal dialysis systems and accessories:

1. Identification: (a) A peritoneal dialysis system and accessories is a device that is used as an artificial kidney system for the treatment of patients with renal failure or toxemic conditions and that consists of a peritoneal access device, an administration set for peritoneal dialysis, a source of dialysate, and, in some cases, a water purification mechanism. After the dialysate is instilled into the peritoneal cavity, it is allowed to dwell there so that undesirable substances from the patient's blood pass through the lining membrane of the peritoneal cavity into this dialysate. These substances are then removed when the dialysate is drained from the patient. The peritoneal dialysis system may regulate and monitor the dialysate temperature, volume, and delivery rate together with the time course of each cycle of filling, dwell time, and draining of the peritoneal cavity or manual controls may be used. This generic device includes the semiautomatic and the automatic peritoneal delivery system. (b) The peritoneal access device is a flexible tube that is implanted through the abdominal wall into the peritoneal cavity and that may have attached cuffs to provide anchoring and a skin seal. The device is either a single use peritoneal catheter, intended to remain in the peritoneal cavity for less than 30 days, or a long term peritoneal catheter. Accessories include stylets and trocars to aid in the insertion of the catheter and an obturator to maintain the patency of the surgical fistula in the abdominal wall between treatments. (c) The disposable administration set for peritoneal dialysis consists of tubing, an optional reservior bag, and appropriate connectors. It may include a peritoneal dialysate filter to trap and remove contaminating particles. (d) The source of dialysate may be sterile prepackaged dialysate (for semiautomatic peritoneal dialysate delivery systems or "cycler systems") or dialysate prepared from dialysate concentrate and sterile purified water (for automatic peritoneal dialysate delivery systems or "reverse osmosis" systems).

2. Recommended classification: Class II (performance standards). The Panel recommends that establishing a

performance standard for this device be a high priority.

3. Summary of reasons for recommendation: The Panel recommends that peritoneal dialysis systems and accessories be classified into class II because the materials used in the device that contact the body must be controlled by a performance standard to ensure their biocompatibility to prevent an adverse tissue reaction. The design and construction of the device must be controlled by a performance standard to enable proper cleaning and sterilization to prevent infection, to ensure that the catheter does not move and cause bowel injury, and to ensure that the skin seals prevent the introduction of microorganisms leading to the peritonitis. The design of the device must be controlled by a performance standard to ensure that the device dispenses and drains the proper volume of sterile peritoneal dialysate at the correct times, achieves adequate dialysis, and does not overfill the peritoneal cavity. The electrical properties of the device must also be controlled to prevent electrical injury to the patient or operator. The design, materials, and construction of the device must be controlled by a performance standard to ensure that the shape, size, rigidity, flexibility, surface finish, and strength of the device are appropriate to prevent trauma, hemorrhage, or perforation. The tubing and the integrity of the tubing connector of the administration set must be controlled by a performance standard to prevent inadequate dialysis due to separation of the connector with loss of dialysate, or blockage of the tubing with retention of the dialysate in the peritoneal cavity. The physical integrity of the filter must be controlled by a performance standard to prevent contaminants from entering the patient's body leading to peritonitis, and the materials used in the construction of the administration set must be controlled by a performance standard to ensure that toxic substances are not leached into the dialysate with an adverse effect on the patient. The dialysate proportioning capability of the device must be controlled by a performance standard to prevent electrolyte imbalance. The Panel believes that general controls alone would not provide sufficient control over these characteristics. Although this device is life-sustaining and life-supporting, and the long term peritoneal catheter is implanted, the Panel believes that premarket approval is not necessary to provide reasonable assurance of the safety and effectiveness of the device. The Panel believes that a performance standard would provide reasonable assurance of the safety and effectiveness of the device and that there is sufficient information available to establish a performance standard.

4. Summary of data on which the recommendation is based: The Panel based its recommendation on the Panel members' personal knowledge of, and clinical experience with, the device and on the widespread use of the device in medical practice.

5. Risks to health: (a) Infection: Defects in the design or construction of the device preventing adequate cleaning or sterilization, or defects in packaging or processing of a device sold as sterile, may allow pathogenic organisms to be introduced and cause an infection in the patient. (b) Electrical injury: Improper design, construction, or a malfunction of the device could result in electrical injury to the patient or the operator. (c) Adverse tissue reaction: If the materials used in the construction of these devices are not biocompatible, degrade by interaction with body tissue or fluids, or contain residual (particulate) matter, the patient may have an adverse tissue reaction. (d) Trauma, hemorrhage, or perforation: Improper size, shape, rigidity, arrangement, or finish on parts of these devices may cause tissue trauma, hemorrhage, or perforation. (e) Electrolyte imbalance: Incorrect composition of the dialysate could result in electrolyte imbalance in the patient's blood and thus lead to cardiac disorders, blood cell damage, or muscle cramps. (f) Pain and abdominal distention: Malfunction of the control mechanism, or obstruction of the outflow tubing, may cause overfilling with, or retention of, dialysate leading to pain and abdominal distention. Overfilling can cause increased abdominal pressure that may decrease the venous blood returned to the heart, leading to possible shock or death. (g) Peritonitis: The introduction of pathogenic micro-organisms due to improper design of the catheter and skin seal, or due to defects in the filter, may lead to peritonitis. (h) Accumulative toxic effect: Repeated exposure to toxic substances which may be leached from materials which contact the dialysate may lead to an accumulation of these substances in the patient's body and cause a toxic effect. (i) Inadequate peritoneal dialysis: Separation or malfunction of the connectors or tubing of the dialysis catheter may cause leakage of dialysate and inadequate peritoneal dialysis.

Proposed Classification

The agency agrees with the Panel recommendation and is proposing that peritoneal dialysis systems and accessories be classified into class II (performance standards). FDA realizes that this generic type of device is a part of a device that is both life-sustaining and life-supporting when used in conjunction with hemodialysis; however, the device is used to treat renal failure, which is more life threatening than the risks to health from due of the device. Additionally, the device has been used successfully for a long period of time. The agency has determined that the risks associated with these devices can be adequately controlled by developing standards for the construction of, and materials used in, the device and that premarket approval is therefore unnecessary. The agency believes that there is sufficient information to establish performance standards for these devices. The agency believes that a performance standard is necessary for this device because general controls alone are insufficient to control the risks to health presented by the device.

The agency has reviewed the medical literature and found that the peritoneal dialysis system and accessories, including the long term peritoneal dialysis catheters, have been used in the treatment of acute renal failure. Rae (Ref. 1) cited the safety and efficacy of this treatment and states that the long term peritoneal dialysis is probably the most universally used peritoneal access device for acute renal failure. Oreopoulus (Ref. 2) and Vasmonde (Ref. 3) reviewed the safety and efficacy of this treatment, citing hemorrhage, bowel perforation, peritonitis, fluid and electrolyte abnormalities, and seizure as complications that may occur but that can be controlled by proper training of both patients and attending personnel. Tenchkoff (Ref. 4) cited the safety and efficacy of this treatment suggesting that 20 to 25 percent of patients in need of dialysis should receive peritoneal dialysis as the treatment. Oreopoulus (Ref. 2) reports that the long term peritoneal dialysis catheter has made repetitive peritoneal dialysis possible. The average duration of implantation is 1 year, including reports of the same catheter functioning in use for 7 years.

References

The following information has been placed in the Dockets Management Branch (address above) and may be seen by interested persons from 9 a.m. to 4 p.m., Monday through Friday.

1. Rae, Angus, "Peritoneal Dialysis Access," *Dialysis and Transplantation*, 6(2) 18–23 (1977).

2. Oreopoulus, D.G., "Overall Experience with Peritoneal Dialysis," *Dialysis and Transplantation*, 7(8) 783–787 (1978).

3. Vasmonde, C. A. and G. C. Peret, "Peritoneal Dialysis Today," *Kidney*, 10(6) 31–35 (1977).

4. Tenchkoff, H., "Peritoneal Dialysis Today: A New Look," *Nephron*, 12, 420–436 (1974).

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and a new structure. FDA published notices of these changes in the Federal Register of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). This proposed classification regulation identifies each device panel by the former name. Further information regarding the device advisory committees and list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the Federal Register.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs proposes to amend Part 876 in Subpart F by adding new § 876.5630, to read as follows:

§ 876.5630 Peritoneal dialysis system and accessories.

(a) *Identification.* (1) A peritoneal dialysis system and accessories is a device that is used as an artificial kidney system for the treatment of patients with renal failure or toxemic conditions and that consists of a peritoneal access device, an administration set for peritoneal dialysis, a source of dialysate, and, in some cases, a water purification mechanism. After the dialysate is instilled into the peritoneal cavity, it is allowed to dwell there so that undesirable substances from the patient's blood pass through the lining membrane of the peritoneal cavity into this dialysate. These substances are then removed when the dialysate is drained from the patient. The peritoneal dialysis system may regulate and monitor the dialysate temperature, volume, and delivery rate together with the time course of each cycle of filling, dwell time, and draining of the peritoneal cavity or manual controls may be used. This generic device includes the semiautomatic and the automatic peritoneal delivery system.

(2) The peritoneal access device is a flexible tube that is implanted through the abdominal wall into the peritoneal cavity and that may have attached cuffs to provide anchoring and a skin seal. The device is either a single use peritoneal catheter, intended to remain in the peritoneal cavity for less than 30 days, or a long term peritoneal catheter. Accessories include stylets and trocars to aid in the insertion of the catheter and an obturator to maintain the patency of the surgical fistula in the abdominal wall between treatments.

(3) The disposable administration set for peritoneal dialysis consists of tubing, an optional reservoir bag, and appropriate connectors. It may include a peritoneal dialysate filter to trap and remove contaiminating particles.

(4) The source of dialysate may be sterile prepackaged dialysate (for semiautomatic peritoneal dialysate delivery systems or "cycler systems") or dialysate prepared from dialysate concentrate and sterile purified water (for automatic peritoneal dialysate delivery systems or "reverse osmosis" systems).

(b) *Classification.* Class II (performance standards).

Interested persons may, on or before March 24, 1981 submit to the Dockets Management Branch (formerly the Hearing Clerk's office) (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, written comments regarding this proposal. Four copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: December 19, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 81–794 Filed 1–22–81; 8:45 am]

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21 CFR Part 876

[Docket No. 78N–2047]

Medical Devices; Classification of Water Purification Systems for Hemodialysis

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing for public comment a proposed regulation classifying water purification systems for hemodialysis into class II (performance standards). FDA is also publishing the recommendation of the Gastroenterology-Urology Device Classification Panel that the device be classified into class II. The effect of classifying a device into class II is to provide for the future development of one or more performance standards to assure the safety and effectiveness of the device. After considering public comments, FDA will issue a final regulation classifying the device. These actions are being taken under the Medical Device Amendments of 1976.

DATES: Comments by March 24, 1981. FDA proposes that the final regulation based on this proposal become effective 30 days after the date of its publication in the Federal Register.

ADDRESS: Written coments to the Dockets Management Branch (formerly the Hearing Clerk's office) (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Fernando Villarroel, Bureau of Medical Devices (HFK–420), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7750.

SUPPLEMENTARY INFORMATION:

Panel Recommendation

A proposal elsewhere in this issue of the Federal Register provides background information concerning the development of the proposed regulation. The Gastroenterology-Urology Device Classification Panel, an FDA advisory committee, made the following recommendation regarding the classification of water purification systems for hemodialysis:

1. Identification: A water purification system for hemodialysis is a device that is intended for use with a hemodialysis system and that is intended to remove organic and inorganic substances and bacteria from water used to dilute dialysate concentrate to form dialysate. This generic type of device may include a water softener, sediment filter, carbon filter, reverse osmosis system, deionizer, and water distillation system.

2. Recommended classification: Class II (performance standards). The Panel recommends that establishing a performance standard for this device be a high priority.

3. Summary of reasons for recommendation: The Panel recommends that water purification systems for hemodialysis be classified into class II because the design, materials, and construction of the device must be controlled by a performance standard to ensure that the device

delivers adequately purified water to prevent toxic reactions in the patient. The design and construction of the device must be controlled by a performance standard to enable proper cleaning and sterilization of the device to prevent infection. The Panel believes that general controls alone would not provide sufficient control over this characteristic. Although the water purification system for hemodialysis is part of both a life-sustaining and a life-supporting device, the Panel believes that premarket approval is not necessary to provide reasonable assurance of the safety and effectiveness of this device because there is sufficient information available to establish a performance standard.

4. Summary of data on which the recommendation is based: The Panel based its recommendation on the Panel members' personal knowledge of, and clinical experience with, the device and on the widespread use of the device in medical practice and on presentations made to the Panel meeting on April 11, 1980 (Ref. 1).

5. Risks to health: (a) Toxic reactions: Defects in design or construction of the device or a malfunction of the device may result in failure to purify the water to be mixed with the dialysate concentrate and lead to toxic reactions in a patient. (b) Pyrogenic reaction (a sudden fever with collapse and chills): Toxic substances may be leached from, or transmitted by, the device. These toxic substances may cause the patient to have a pyrogenic reaction.

Proposed Classification

FDA agrees with the Panel recommendation and is proposing that water purification systems for hemodialysis be classified into class II (performance standards). These systems were considered in an FDA contract report (Ref. 2). FDA realizes that this generic type of device is a part of a device that is both life-sustaining and life-supporting when used in conjunction with hemodialysis; however, the device is used to treat renal failure, which is more life threatening than the risks to health from use of the device. Additionally, the device has been used successfully for a period of time in hemodialysis. The agency has determined that the risks associated with these devices can be adequately controlled by developing standards for the construction of and materials used in the device and that premarket approval is therefore unnecessary. The agency believes that there is sufficient information to establish performance standards for these devices. The agency believes that a performance standard is necessary because general controls alone are insufficient to control the risks to health presented by the device.

References

The following information has been placed in the Dockets Management Branch (address above) and may be seen by interested persons from 9 a.m. to 4 p.m., Monday through Friday.

1. Transcript of the Gastroenterology and Urology Device Classification Panel Meeting, April 11, 1980, pp. 6–41.

2. Contract Report, Investigation of the Risks and Hazards Associated with Hemodialysis Devices, FDA Bureau of Medical Devices Contract No. 223-78-2068, 1980.

On April 28, 1976, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and a new structure. FDA published notices of these changes in the Federal Register of May 19, 1976 (43 FR 21666, 21667, and 21668) and May 25, 1976 (43 FR 22672 and 22673). This proposed classification regulation identifies each device panel by the former name. Further information regarding the device advisory committees and list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the Federal Register.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–543 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs proposes to amend Part 876 in Subpart F by adding new § 876.5665, to read as follows:

§ 876.5665 Water purification system for hemodialysis.

(a) *Identification.* A water purification system for hemodialysis is a device that is intended for use with a hemodialysis system and that is intended to remove organic and inorganic substances and bacteria from water used to dilute dialysate concentrate to form dialysate. This generic type of device may include a water softener, sediment filter, carbon filter, and water distillation system.

(b) *Classification.* Class II (performance standards).

Interested persons may, on or before March 24, 1981 submit to the Dockets Management Branch (formerly the Hearing Clerk's office) (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane Rockville, MD 20857, written comments regarding this proposal. Four copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: December 18, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 81-795 Filed 1-22-81; 8:45 am]

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21 CFR Part 876

[Docket No. 78N-2014]

Medical Devices; Classification of Hemodialysis Systems and Accessories

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing for public comment a proposed regulation classifying hemodialysis systems into class II (performance standards). The proposed regulation would also classify certain accessories of these device systems into class II and other accessories into class I (general controls). FDA is also publishing the recommendation of the Gastroenterology-Urology Device Classification Panel that the devices be classified into class II and that certain accessories of the devices be classified into class I. The effect of classifying a device into class II is to provide for the future development of one or more performance standards to assure the safety and effectiveness of the device. The effect of classifying a device into class I is to require that the device meet only the general controls applicable to all devices. After considering public comments, FDA will issue a final regulation classifying the device. These actions are being taken under the Medical Device Amendments of 1976.

DATES: Comments by March 24, 1981. FDA proposes that the final regulation based on this proposal become effective 30 days after its date of publication in the Federal Register.

ADDRESS: Written comments to the Dockets Management Branch (formerly the Hearing Clerk's office) (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Fernando Villarroel, Bureau of Medical Devices (HFK–430), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7750.

SUPPLEMENTARY INFORMATION:

Panel Recommendation

A proposal elsewhere in this issue of the Federal Register provides background information concerning the development of the proposed regulation. The Gastroenterology-Urology Device Classification Panel, an FDA advisory committee, made the following recommendation regarding the classification of hemodialysis systems and accessories:

1. Identification: A hemodialysis system and accessories is a device that is used as an artificial kidney system for the treatment of patients with renal failure or toxemic conditions and that consists of an extracorporeal blood system, a conventional dialyzer, a dialysate delivery system, and accessories. Blood from a patient flows through the tubing of the extracorporeal blood system to the blood compartment of the dialyzer, then returns through further tubing of the extracorporeal blood system to the patient. The dialyzer has two compartments that are separated by a semipermeable membrane. While the blood is in the blood compartment, undesirable substances in the blood pass through the semipermeable membrane into the dialysate in the dialysate compartment. The dialysate delivery system controls and monitors the dialysate circulating through the dialysate compartment of the dialyzer. (a) The extracorporeal blood system consists of tubing, pumps, pressure monitors, air foam or bubble detectors, and alarms to keep blood moving safely from the blood access device and accessories for hemodialysis (§ 876.5540) to the blood compartment of the dialyzer and back to the patient. (b) The conventional dialyzer allows a transfer of water and solutes between the blood and the dialysate through the semipermeable membrane. The semipermeable membrane of the conventional dialyzer has a sufficiently low permeability to water that an ultrafiltration controller is not required to prevent excessive loss of water from the patient's blood. This conventional dialyzer does not include hemodialyzers with disposable inserts (Kiil type) (§ 876.5830) or dialyzers of high permeability (§ 876.5860). (c) The dialysate delivery system consists of mechanisms that monitor and control the temperature, conductivity, flow rate, and pressure of the dialysate and circulates dialysate through the dialysate compartment of the dialyzer. The dialysate delivery system includes alarms to indicate abnormal dialysate conditions. This dialysate delivery system does not include the sorbent regenerated dialysate delivery system for hemodialysis (§ 876.5600), the dialysate delivery system of the peritoneal dialysis system and accessories (§ 876.5630), or the controlled dialysate delivery system of the high permeability hemodialysis system (§ 876.5860). (d) Accessories to the hemodialysis system include the unpowered dialysis chair without a scale, the powered dialysis chair without a scale, the dialyzer holder set, dialysis tie gun and ties, and hemodialysis start/stop tray.

The Panel previously identified this generic type of device or its parts as the dialysis transducer protector, blood tubing set with or without antiregurgitation valve, dialysis blood filter, Y adapter, infusion T blood tubing connector, extraluminal blood pump, blood pump insert, blood level detector, automatic blood tubing clamp, line clamp, air or foam detector, air bubble detector, pillow pressure alarm, single-needle dialysis set (alternating flow, controller, and tubing only), hollow fiber capillary flow dialyzer, parallel flow dialyzer, single coil dialyzer, twin coil dialyzer, central multiple patient dialysate delivery system, recirculating dialysate delivery system, recirculating single-pass dialysate delivery system, single patient dialysate delivery system, negative pressure type dialysis control system, dialysate proportioning subsystem, water manometer, holding tank, blood leak detector, dialysate tubing connector, coil cannister, remote type conductivity meter, dialysate standard conductivity test solution, dialysate level detector, dialysate flowmeter, dialysate tubing, nonremote conductivity meter, dialysis temperature monitor, and single-pass dialysate delivery system.

2. Recommended classification: Class II (performance standards), except for certain accessories (unpowered dialysis chairs, hemodialysis start/stop trays, dialyzer holder sets, and dialysis tie guns and ties) that the Panel recommends be classified into class I. The Panel recommends that establishing a performance standard for this generic type of device be a high priority. The Panel recommends that establishing a performance standard for powered dialysis chairs be a medium priority. The Panel recommends that unpowered dialysis chairs, hemodialysis start/stop trays, dialyzer holder sets, and dialysis tie guns and ties be exempt from registration and device listing requirements and premarket notification procedures under section 510 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360) and from records and reports requirements under section 519 of the act (21 U.S.C. 360i). The Panel also recommends that hemodialysis start/stop trays, dialyzer holder sets, and dialysis tie guns and ties be exempt from the good manufacturing practice regulation under section 520(f) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360j(f)).

3. Summary of reasons for recommendation: The Panel recommends that hemodialysis systems and accessories be classified into class II because the blood and the dialysate flow characteristics and the membrane permeability of the device must be controlled by a performance standard to ensure the removal of waste and toxic substances from the patient's blood without excessive removal of water or desirable substances. The design, materials, and construction of the device must be controlled by a performance standard to ensure that the shape, size, surface finish, rigidity, flexibility, and strength of the device are appropriate to prevent trauma, perforation, blood leakage or membrane rupture, leading to massive blood loss and vascular collapse of the patient and to enable proper cleaning and sterilization of the device to prevent infection in the patient. Materials used in the device that contact the blood must be controlled by a performance standard to ensure their biocompatibility to prevent an adverse tissue reaction. The membrane integrity of the device must be controlled by a performance standard to prevent transfer of contaminants from the dialysate to the patient's blood, leading to infection. The dialysate delivery system must be controlled by standards to ensure that the dialysate is delivered to the dialyzer in the prescribed quantity, with the prescribed conductivity, and at the prescribed temperature, and to assure that alarms are provided to warn of malfunctions. The electrical properties of the device must also be controlled to prevent electrical injury to the patient or operator. The materials used in those parts of the device that contact the disalysate must be controlled to prevent contamination of the dialysate. The design and construction of the air bubble detector must be controlled by a performance standard to prevent the introduction to the patient of a fatal air embolus. The design and construction of the extraluminal blood pump must be controlled by a performance standard to prevent damage to blood cells or inadequate blood flow due to improper design, and to prevent blood loss due to poor fitting connections or laceration of the tubing. The design and construction

of the venous blood line filter must also be controlled by a performance standard to prevent excessive resistance in the filter, leading to excessive ultrafiltration.

In addition, the Panel recommends that the date of manufacture of any conventional dialyzer be shown on its label.

The Panel believes that general controls would not provide sufficient control over these characteristics. Although the hemodialysis system and accessories is both life-sustaining and life-supporting, the Panel believes that premarket approval is not necessary to provide reasonable assurance of safety and effectiveness of this device because there is sufficient information to establish a performance standard.

The Panel recommends that hemodialysis start/stop trays, dialyzer holder sets, unpowered dialysis chairs, and dialysis tie guns and ties be classified into class I because the Panel believes that general controls are sufficient to provide reasonable assurance of the safety and effectiveness of these devices.

The Panel recommends that unpowered dialysis chairs be classified into class I because the Panel believes that general controls are sufficient to provide reasonable assurance of the safety and effectiveness of this device. The Panel believes that the risk of cross contamination due to difficulty in cleaning the chair and the risk of hypovolemic shock due to an inability to reposition the patient can be controlled by general controls. The Panel believes that manufacturers of the device should not be required to comply with registration, device listing, premarket notification, and records and reports regulations, because the Panel believes unpowered dialysis chairs present only minimal risks to health and that the quality of, and any defects of, the device are readily apparent to the user. The Panel believes that manufacturers of these devices should not be required to comply with the good manufacturing practice regulation because the Panel believes that the system accessories present only minimal risks to health and that the quality of the devices is readily apparent to the user.

4. Summary of data on which the recommendation is based: The Panel based its recommendation on the Panel members' personal knowledge of, and clinical experience with, the devices and on the widespread use of these devices in medical practice for more than 18 years. The Panel also cited work by the National Institutes of Health that establishes criteria for determining safety and effectiveness of conventional hemodialyzers (Ref. 1).

5. Risks to health: (a) Infection: Defects in the design or construction of the device preventing adequate cleaning or sterilization, or defects in packaging or processing of a device sold as sterile, may allow pathogenic organisms to be introduced and cause an infection in the patient. (b) Electrical injury: Improper design, construction, or a malfunction of the device could result in electrical injury to the patient or the operator. (c) Adverse tissue reaction: if the materials used in the construction of the device are not biocompatible, degrade by interaction with body tissue or fluids, or contain residual (particulate) matter, the patient may have an adverse tissue reaction. (d) Pyrogenic reaction (a sudden fever with collapse and chills): Toxic substances may be leached from, or transmitted by, the device. These substances may cause the patient to have a pyrogenic reaction. (e) Electrolyte imbalance: Incorrect composition of the dialysate could result in electrolyte imbalance in the patient's blood and thus lead to cardiac disorders, blood cell damage, or muscle cramps. (f) Hypotension or hypovolemic shock: An abnormally high or uncontrolled ultrafiltration rate may result in hypotension, hypovolemic shock, or both. Inability of the dialysis chair to allow for easy and rapid repositioning of the patient in the event of a hypotensive episode during therapy could delay the treatment of hypovolemic shock. (g) Loss of protein: Inappropriately high membrane permeability may permit loss of protein from the blood. (h) Fatal air embolism: Inability of an air foam or bubble detector to sense small air bubbles and the presence of foam may allow a potentially fatal embolus to enter the patient's bloodstream. (i) Microbial cross-contamination: Inadequate dialysis chair design or improper chair covering materials that prevent adequate cleaning between patients could result in microbial cross-contamination. (j) Inadequate dialysis: Malfunctions of the device, inappropriately low membrane permeability, inadequate blood flow, or leakage in the dialysate delivery system may cause inadequate removal of toxic substances from the patient's blood. (k) Blood loss: Membrane punctures caused by manufacturing defects or structural defects that cause the dialyzer to fall from its holder or cause the severing of blood lines or dialysate tubing, or the inability of sensors to detect blood leakage into the dialysate, may result in loss of the patient's blood (l) Hemolysis, thromboembolic complications, or other blood damage: The materials used in the construction of the device, improper design of the blood pump, or excessive dialysate temperature may result in hemolysis, thromboembolic complications, or other damage to the patient's blood. (m) Accumulative toxic effect: Repeated exposure to substances that may be leached from materials that contact the blood or dialysate may lead to an accumulation of these substances in the patient's body and cause a toxic effect.

Proposed Classification

FDA agrees with the Panel recommendation and is proposing that hemodialysis systems be classified into class II (performance standards). FDA is proposing that certain accessories of these device systems be classified into class II and that other accessories (unpowered dialysis chairs, hemodialysis start/stop trays, dialyzer holder sets, and dialysis tie guns and ties) be classified into class I (general controls).

Hemodialysis systems and accessories have been used successfully in treating patients with end-stage renal disease for two decades. Increasingly, patients are able to live and, in many cases, to lead productive lives in spite of a disease condition that formerly was invariably fatal (Ref. 3). The benefits of the use of this device far outweigh the risks from its use. The basic device, and the material used in the most common semipermeable membrane used in the device, are about the same now as those used in experimental hemodialysis in 1944. Additionally, a study was performed under an FDA contract (Ref. 2) to investigate the risks associated with the use of hemodialysis systems and accessories. FDA realizes that this generic type of device is both life-sustaining and life-supporting when used in conjunction with hemodialysis; however, the device is used to treat renal failure, which is more life threatening than the risks to health from use of the device. Additionally, the device has been used successfully for many years for hemodialysis. The agency has determined that the risks associated with these devices can be adequately controlled by developing standards for the construction of and materials used in the device and that premarket approval is therefore unnecessary. The agency believes that there is sufficient information to establish performance standards for these devices. FDA believes that performance standards are necessary because general controls alone are

insufficient to control the risks to health presented by the device.

FDA disagrees with the Panel's recommendation that manufacturers of unpowered dialysis chairs, hemodialysis start/stop trays, dialyzer holder sets, and dialysis tie guns and ties be exempt from all requirements under section 510 of the act. Under section 510(g)(4), the agency may exempt a manufacturer from section 510 only upon a finding that compliance with this section is not necessary for the protection of the public health. In the case of unpowered dialysis chairs, hemodialysis start/stop trays, dialyzer holder sets, and dialysis tie gun and ties, the agency cannot make the required finding. To protect the public health, the agency needs to require manufacturers of these device accessories to register and to list their products with FDA, so that the agency is able to identify the firms manufacturing these devices and conduct necessary inspections. Premarket notification by these manufacturers assures that FDA learns of new products, and of significant modifications of existing products, for which premarket approval is required.

FDA disagrees with the Panel's recommendation that manufacturers of the unpowered dialysis chairs, hemodialysis start/stop trays, dialyzer holder sets, and dialysis tie guns and ties, be exempt from records and reports regulations under section 519 of the act (21 U.S.C. 360i). The records and reports requirements in several of FDA's present device regulations are authorized, wholly or in part, by section 519. The most extensive of these requirements are found in the device good manufacturing practice (GMP) regulation published in the Federal Register of July 21, 1978 (43 FR 31508). In the future, FDA will publish other regulations under section 519, including regulations requiring reports to FDA of experience with medical devices. Until these regulations are issued, FDA believes that it cannot properly issue exemptions from them. In the future, whenever the agency proposes device regulations that include records and reports requirements, interested persons may submit comments requesting that certain classes of manufacturers or other persons be exempt from the requirements, the FDA will issue exemptions that are appropriate. The only type of exemption from records and reports requirements that FDA is proposing now, in device classification regulations, is an exemption of certain manufacturers from requirements of the device GMP regulation. The exemption will not extend to two device GMP requirements, § 820.180 (21 CFR 820.180), with respect to general requirements concerning records and § 820.198 (21 CFR 820.198), with respect to complaint files. The agency disagrees with the Panel recommendation that manufacturers of hemodialysis start/stop trays, dialyzer holder sets and dialysis tie guns and ties, be exempt from the good manufacturing (GMP) practice regulation (21 CFR Part 820) under section 520(f) of the act. The agency believes that compliance with this regulation is necessary to assure the quality of this device and thus its safety, effectiveness, and compliance with the adulteration and misbranding provisions of the act. Compliance with the GMP regulation will help prevent production of hemodialysis accessories and support equipment having defects that could harm users, such as structural defects in the devices that could, as noted by the Panel, cause blood loss. The agency believes that general controls are sufficient to control these risks to health. The agency agrees with the Panel that unpowered dialysis chairs can cause microbial cross-contamination between patients and make the treatment of hemodynamic shock difficult if the patient cannot easily be put into the proper position. However, the agency believes that general controls are sufficient to control these risks to health.

References

The following information has been placed in the Dockets Management Branch (address above) and may be seen by interested persons from 9 a.m. to 4 p.m., Monday through Friday.

1. Evaluation of Hemodialyzers and Dialysis Membranes, DHEW Publication No. (NIH), 77-1294, 1977.

2. Standards Report, Investigation of the Risks and Hazards Associated with Hemodialysis Devices, FDA Bureau of Medical Devices Contract No. 223-78-5048, 1980.

3. Manis T. and E. A. Friedman, "Dialytic Therapy for Irreversible Uremia," *New England Journal of Medicine*, 301(23): 1260-1265, 1979.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and a new structure. FDA published notices of these changes in the Federal Register of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). This proposed classification regulation identifies each device panel by the former name. Further information regarding the device advisory committees and list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the Federal Register.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540-548 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs proposes to amend Part 876 in Subpart F by adding new § 876.5820, to read as follows:

§ 876.5820 Hemodialysis system and accessories.

(a) *Identification.* A hemodialysis system and accessories is a device that is used as an artificial kidney system for the treatment of patients with renal failure or toxemic conditions and that consists of an extracorporeal blood system, a conventional dialyzer, a dialystate delivery system, and accessories. Blood from a patient flows through the tubing of the extracorporeal blood system to the blood compartment of the dialyzer, then returns through further tubing of the extracorporeal blood system to the patent. The dialyzer has two compartments that are separated by a semipermeable membrane. While the blood is in the blood compartment, undesirable substances in the blood pass through the semipermeable membrane into the dialysate in the dialysate compartment. The dialysate delivery system controls and monitors the dialysate circulating through the dialysate compartment of the dialyzer.

(1) The extracorporeal blood system consists of tubing, pumps, pressure monitors, air foam or bubble detectors, and alarms to keep blood moving safely from the blood access device and accessories for hemodialysis (§ 876.5540) to the blood compartment of the dialyzer and back to the patient.

(2) The conventional dialyzer allows a transfer of water and solutes between the blood and the dialysate through the semipermeable membrane. The semipermeable membrane of the conventional dialyzer has a sufficiently low permeability to water that an ultrafiltration controller is not required to prevent excessive loss of water from the patient's blood. This conventional dialyzer does not include hemodialyzers with the disposable inserts (Kill type) (§ 876.5830) or dialyzers of high permeability (§ 876.5860)

(3) The dialysate delivery system consists of mechanisms that monitor and control the temperature, conductivity, flow rate, and pressure of the dialysate and circulates dialysate through the dialysate compartment of the dialyzer. The dialysate delivery system includes alarms to indicate

abnormal dialysate conditions. This dialysate delivery system does no include the sorbent regenerated dialysate delivery system for hemodialysis (§ 876.5600), the dialysate delivery system of the peritoneal dialysis system and accessories (§ 876.5630), or the controlled dialysate delivery system of the high permeability hemodialysis system (§ 876.5820).

(4) Accessories to the hemodialysis system include the unpowered dialysis chair without a scale, the powered dialysis chair without a scale, the dialyzer holder set, dialysis tie gun and ties, and hemodialysis start/stop tray.

(b) *Classification.* (1) Class II (performance standards) for a hemodialysis system other than accessories.

(2) Class I (general controls) for accessories of the hemodialysis system, such as the unpowered dialysis chair, hemodialysis start/stop tray, dialyzer holder set, and dialysis tie gun and ties.

Interested persons may, on or before March 24, 1981 submit to the Dockets Management Branch (formerly the Hearing Clerk's office) (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, written comments regarding this proposal. Four copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this documents. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: December 19, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 81-793 Filed 1-22-81; 8:45 am]

BILLING CODE 4110-03-M

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21 CFR Part 876

[Docket No. 78N–2098]

Medical Devices; Classification of Hemodialyzers With Disposable Inserts (Kill Type)

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing for public comment a proposed regulation classifying hemodialyzers with disposable inserts (Kill type) into class II (performance standards). FDA is also publishing the recomendation of the Gastroenterology-Urology Device Classification Panel that the device be classified into class II. The effect of classifying a device into class II is to provide for the future development of one or more performance standards to assure the safety and effectiveness of the device. After considering public comments, FDA will issue a final regulation classifying the device. These actions are being taken under the Medical Device Amendments of 1976.

DATE: Comments by March 24, 1981. FDA proposes that the final regulation based on this proposal become effective 30 days after the date of its publication in the Federal Register.

ADDRESS: Written comments to the Dockets Management Branch (formerly the Hearing Clerk's office) (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Fernando Villarroel, Bureau of Medical Devices (HFK–420), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7750.

SUPPLEMENTARY INFORMATION:

Panel Recommendation

A proposal elsewhere in this issue of the Federal Register provides background information concerning the development of the proposed regulation. The Gastroenterology-Urology Device Classification Panel, and FDA advisory committee, made the following recommendation regarding the classification of hemodialyzers with disposable inserts (Kill type):

1. Identification: A hemodialyzer with disposable inserts (Kill type) is a device that is used as a part of an artificial kidney system for the treatment of patients with renal failure or toxemic conditions and that includes disposable inserts consisting of layers of seimpermeable membranes sandwiched between support plates. The device is used with the extracorporeal blood system and the dialysate delivery system of the hemodialysis system and accessories (§ 876.5820).

2. Recomended classification: Class II (performance standards). The Panel recommends that establishing a performance standard for this device be a medium priority.

3. Summary of reasons for recommendation: The Panel recommends that hemodialyzers with disposable inserts (Kill type) be classified into class II because the dialysate and blood flow characteristics and the membrane permeability must be controlled by a performance standard to ensure the removal of waste and toxic substances from the patient's blood without excessive removal of water or desirable substances. The design, materials, and construction of the device must be controlled by a performance standard to ensure that the shape, size, surface finish, and strength be appropriate in order to prevent blood leakage or membrane rupture leading to massive blood loss and vascular collapse of the patient and to enable proper cleaning and sterilization to prevent infection in the patient. Also, materials used in the device that contact the blood must be controlled by a performance standard to ensure biocompatibility of the materials to prevent an adverse tissue reaction. The Panel believes that general controls alone would not provide sufficient control over these characteristics. Although the hemodialyzer with disposable inserts (Kill type) is part of both a life-sustaining and a life-supporting device, the Panel believes that premarket approval is not necessary to provide reasonable assurance of the safety and effectiveness of this device because there is sufficient information available to establish a performance standard.

4. Summary of data on which the recommendation is based: The Panel based its recommendation on the Panel member's personal knowledge of, and clinical experience with, the device and on the widespread use of the device in medical practice (*Ref. 1*).

5. Risks to health: (a) Infection: Defects in the design or construction of the device preventing adequate cleaning or sterilization, or defects in packaging or processing of a device sold as sterile, may allow pathogenic organisms to be introduced and cause an infection in the patient. (b) Adverse tissue reaction: If the materials used in the construction of the devices are not biocompatible, the patient may have an adverse tissue or blood reaction. (c) Inadequate dialysis: Malfunctions of the device, inappropriately low membrane permeability, or inadequate blood flow may cause inadequate removal of toxic substances from the patient's blood. (d) Blood loss: Membrane punctures caused by manufacturing or handling errors or difficulty in assembling the dialyzer may result in blood loss. (e) Pyrogenic reaction (a sudden fever with collapse and chills): Toxic substances may be leached from, or transmitted by, the device. These substances may cause the patient to have pyrogenic reaction. (f) Hemolysis, thromboembolic complications, or other blood damage: The materials used in or the design of the device may lead to hemolysis, thromboembolic complications, or other damage to the patient's blood.

Proposed Classification

FDA agrees with the Panel recommendation and is proposing that hemodialyzers with disposal inserts (Kill type) be classified into class II (performance standards). FDA realizes that this generic type of device is both life-sustaining and life-supporting when used in conjunction with hemodialysis; however, the device is used to treat renal failure, which is more life threating than the risks to health from use of the device. Additionally, the device has been used successfully for many years for hemodialysis. The agency has determined that the risks associated with these devices can be adequately controlled by developing standards for the construction of and materials used in the device and that premarket approval is therefore unnecessary. The agency believes that there is sufficient information to establish performance standards for these devices.

References

The following information has been placed in the Dockets Management Branch (address above) and may be seen by interested persons from 9 a.m. to 4 p.m., Monday through Friday.

1. Evaluation of Hemodialyzers and Dialysis Membranes, DHEW (NIH) Publication No. 77-1294.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs proposes to amend Part 876 in Subpart F by adding new § 876.5830, to read as follows:

§ 876.5830 Hemodialyzer with disposal insert (Kill type).

(a) *Identification.* A hemodialyzer with disposal inserts (Kill type) is a device that is used as a part of an artificial kidney system for the treatment of patients with renal failure or toxemic conditions and that includes disposable inserts consisting of layers of semipermeable membranes sandwiched between support plates. The device is used with the extracorporeal blood system and the dialysate delivery system of the hemodialysis system and accessories (§ 876.5820).

(b) *Classification.* Class II (performance standards).

Interested persons may, on or before March 24, 1981 submit to the Dockets Management Branch (formerly the Hearing Clerk's office) (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, written comments regarding this proposal. Four copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: December 19, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 81-797 Filed 1-22-81; 8:45 am]

BILLING CODE 4110-03-M

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21 CFR Part 876

[Docket No. 78N-2038]

Medical Devices; Classification of High Permeability Hemodialysis Systems

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing for public comment a proposed regulation classifying high permeability hemodialysis systems into class III (premarket approval). FDA is also publishing the recommendation of the Gastroenterology-Urology Device Classification Panel that the device be classified into class III. The effect of classifying a device into class III is to require each manufacturer of the defice to submit to FDA a premarket approval application at a date to be set in a future regulation. Each premarket approval application would include information concerning safety and effectiveness tests for the device. After considering public comments, FDA will issue a final regulation classifying the device. These actions are being taken under the Medical Device Amendments of 1976.

DATES: Comments by March 24, 1981. FDA proposes that the final regulation based on this proposal become effective 30 days after the date of its publication in the Federal Register.

ADDRESS: Written comments to the Dockets Management Branch (formerly the Hearing Clerk's office) (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Fernando Villarroel, Bureau of Medical Devices (HFK–420), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7750.

SUPPLEMENTARY INFORMATION:

Panel Recommendation

A proposal elsewhere in this issue of the Federal Register provides background information concerning the development of the proposed regulation. The Gastroenterology-Urology Device Classification Panel, and FDA advisory committee, made the following recommendation regarding the classification of high permeability hemodialysis systems:

1. Identification: A high permeability hemodialysis system is a device that is used as an artificial kidney system for the treatment of patients with renal failure or toxemic conditions and that has a semipermeable membrane that is more permeable to water than the semipermeable membrane of the conventional dialyzer. The device system consists of an extracorporeal blood system, a high permeability dialyzer, and a controlled dialysate delivery system that incorporates an ultrafiltration controller to prevent excessive loss of water from the patient's blood. This highly permeable, semipermeable membrane also permits greater loss of higher molecular weight substances from the blood, compared with the conventional dialyzer of the hemodialysis system and accessories (§ 876.5820).

The extracorporeal blood system is the same generic type of extracorporeal blood system that is used in the hemodialysis system and accessories (§ 876.5820). The controlled dialysate delivery system also is similar to the conventional dialysate delivery system of the hemodialysis system and accessories (§ 876.5820), with the addition of an ultrafiltration controller to regulate the rate of the removal of water from the patient's blood.

This generic type of device includes the sealed dialysate delivery system.

2. Recommended classification: Class III (premarket approval). The Panel recommends that premarket approval of this device be a high priority.

3. Summary of reasons for recommendation: The Panel recommends that this device be classified into class III because of the lack of sufficient scientific and medical data on the device from which to develop a performance standard to assure its safety and effectiveness. There is insufficient information about the membrane transport properties of the high permeability hemodialysis system, particularly in regard to their effect on patient well-being. Therefore, further investigation of the device is necessary to establish its safety and effectiveness. The Panel emphasized the urgent need for establishment of criteria that specifies the safe and effective rates of solute and water removal from the patient by the device. The Panel believes that general controls alone

would not provide sufficient control over these characteristics. The Panel also believes that insufficient information exists to determine that general controls or a performance standard would be adequate to provide reasonable assurance of the safety and effectiveness of this life-supporting device. Therefore, the device should be subject to premarket approval to assure that manufacturers demonstrate satisfactory performance of the device and thereby assure its safety and effectiveness.

4. Summary of data on which the recommendation is based: The Panel based its recommendation on the experimental nature of this device and the lack of adequate medical literature and experience supporting its safety and effectiveness.

5. Risks to health: (a) Infection: Defects in the design or construction of the device preventing adequate cleaning or sterilization, or defects in packaging or processing of a device sold as sterile, may allow pathogenic organisms to be introduced and cause an infection in the patient. (b) Electrical injury: Improper design, construction, or a malfunction of the device could result in electrical injury to the patient or the operator. (c) Adverse tissue reaction: If the materials used in the construction of the device are not biocompatible, degrade by interaction with body tissue or fluids, or contain residual (particulate) matter, the patient may have an adverse tissue reaction. (d) Pyrogenic reaction (a sudden fever with collapse and chills): Toxic substances may be leached from, or transmitted by, the device. These substances may cause the patient to have a pyrogenic reaction. (e) Electrolyte imbalance: Incorrect composition of the dialysate could result in electrolyte imbalance in the patient's blood and thus lead to cardiac disorders, blood cell damage, or muscle cramps. (f) Hypovolemic shock: An abnormally high or uncontrolled ultrafiltration rate may result in hypotension, hypovolemic shock, or both. (g) Loss of protein: Inappropriately high membrane permeability may permit loss of proteins from the blood. (h) Fatal air embolism: Inability of an air foam or bubble detector to sense small air bubbles and the presence of foam may allow a potentially fatal air embolus to enter the patient's blood stream. (i) Blood loss: Membrane punctures caused by manufacturing defects or structural defects that cause the dialyzer to fall from its holder or cause the serving of blood lines or dialysate tubing, or the inability of sensors to detect blood leakage into the dialysate, may result in loss of the patient's blood. (j) Hemolysis, thromboembolic complications, or other blood damage: The materials used in the construction of the device, improper design of the blood pump, or excessive dialysate temperature may result in hemolysis, thromboembolic complications, or other damage to the pateint's blood. (k) Accumulative toxic effect: Repeated exposure to substances that may be leached from materials that contact the blood or dialysate may lead to an accumulation of these subetances in the patient's body and cause a toxic effect. (l) Unpredictable loss of water from the patient's blood: The highly permeable, semipermeable membrane used in the dialyzer causes an unperdictable amount of water loss from the patient's blood which may adversely affect the patient's well being.

Proposed Classification

FDA agrees with the Panel recommendation and is proposing that high permeability hemodialysis systems be classified into class III (premarket approval). The agency believes that the device is purported or represented to be for a use (hemodialysis) in supporting or sustaining human life and presents a potential unreasonable risk of illness or injury. The Federal Food, Drug, and Cosmetic Act requires the agency to classify a life-supporting or life-sustaining device into class III unless the agency determines that premarket approval is not necessary to provide reasonable assurance of the safety and effectiveness of the device. In this case the agency has determined that premarket approval is necessary. The agency believes that insufficient information exists to determine that general controls or performance standards will provide reasonable assurance of the safety and effectiveness of the device.

On April 28, 1976, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and a new structure. FDA published notices of these changes in the Federal Register of May 19, 1976 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). This proposed classification regulation identifies each device panel by the former name. Further information regarding the device advisory committees and list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the Federal Register.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–543 (21 U.S.C. 360c, 371(a)) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs proposed to amend Part 876 in Subpart F by adding new § 876.5860, to read as follows:

§ 876.5860 High permeability hemodialysis system.

(a) *Identification.* A high permeability hemodialysis system is a device that is used as an artificial kidney system for the treatment of patients with renal failure or toxemic conditions and that has a semipermeable membrane that is more permeable to water than the semipermeable membrane of the conventional dialyzer. The device system consists of an extracorporeal blood system, a high permeability dialyzer, and a controlled dialysate delivery system that incorporates an ultrafiltration controller to prevent excessive loss of water from the patient's blood. This highly permeable, semipermeable membrane also permits greater loss of higher molecular weight substances from the blood, compared with the conventional dialyzer of the hemodialysis system and accessories (§ 876.5820). The extracorporeal blood system is the same generic type of extracorporeal blood system that is used in the hemodialysis system and accessories (§ 876.5820). The controlled dialysate delivery system also is similar to the conventional dialysate delivery system of the hemodialysis system and accessories (§ 876.5820), with the addition of an ultrafiltration controller to regulate the rate of the removal of water from the patient's blood. This generic type of device includes the sealed dialysate delivery system.

(b) *Classification.* Class III (premarket approval).

Interested persons may on or before March 24, 1981 submit to the Dockets Management Branch (formerly the Hearing Clerk's office) (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, written comments regarding this proposal. Four copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: December 19, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 81-709 Filed 1-22-81; 8:45 am]

BILLING CODE 4110-03-M

21 CFR Part 876

[Docket No. 78N-2081]

Medical Devices; Classification of Sorbent Hemoperfusion Systems

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing for public comment a proposed regulation classifying sorbent hemoperfusion systems into class III (premarket approval). FDA is also publishing the recommendation of the Gastroenterology-Urology Device Classification Panel that the device be classified into class III. The effect of classifying a device into class III is to require each manufacturer of the device to submit to FDA a premarket approval application at a date to be set in a future regulation. Each premarket approval application would include information concerning safety and effectiveness tests for the device. After considering public comments, FDA will issue a final regulation classifying the device. These actions are being taken under the Medical Device Amendments of 1976.

DATES: Comments by March 24, 1981. FDA proposes that the final regulation based on this proposal become effective 30 days after the date of its publication in the Federal Register.

ADDRESS: Written comments to the Dockets Management Branch (formerly the Hearing Clerk's office) (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Fernando Villarpel, Bureau of Medical Devices (HFK-420), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7750.

SUPPLEMENTARY INFORMATION:

Panel Recommendation

A proposal elsewhere in this issue of the Federal Register provides background information concerning the development of the proposed regulation. The Gastroenterology-Urology Device Classification Panel, and FDA advisory committee, made the following recommendation regarding the classification of sorbent hemoperfusion systems:

1. Identification: A sorbent hemoperfusion system is a device that consists of an extracorporeal blood system similar to that identified in the hemodialysis system and accessories (§ 876.5820) and a container filled with adsorbent material that removes a wide range of substances, both toxic and normal, from blood flowing through it. The adsorbent materials are usually activated-carbon or resins which may be coated or immobilized to prevent fine particles entering the patient's blood. The generic type of device may include lines and filters specifically designed to connect the device to the extracorporeal blood system. The device is used in the treatment of poisoning, drug overdose, hepatic coma, or metabolic disturbances.

2. Recommended classification: Class III (premarket approval). The Panel recommends that premarket approval of this device be a high priority.

3. Summary of reasons for recommendation: The Panel recommends that sorbent hemoperfusion systems be classified into class III because the device is life sustaining and life supporting and because there is a lack of data on the absorption characteristics of this device regarding the possibility that it may, while removing toxic substances, also remove essential substances from the blood or cause loss of platelets and leukocytes (white cells). The Panel believes that general controls alone would not provide sufficient control over these characteristics. The Panel also believes that it is not possible to establish an adequate performance standard for this device. Therefore, the device should be subject to premarket approval to assure that manufacturers demonstrate satisfactory performance of the device and, thus, assure its safety and effectiveness.

4. Summary of data on which the recommendation is based: The Panel based its recommendation on the lack of adequate data to support its safety and efficacy.

5. Risks to health: (a) Substantial platelet loss: The adsorption characteristics of the material may cause large losses of platelets during hemoperfusion. (b) Particulate emboli: Carbon or fine particles leached from the sorbent column of the device may be deposited in the arterioles of the lungs and other organs as particulate emboli. (c) Metabolic disturbance: The removal of many normal metabolites along with undesirable substances may lead to metabolic disturbance. (d) Pyrogenic reaction (a sudden fever with collapse and chills): Toxic substances may be leached from the device. These substances may cause the patient to have a pyrogenic reaction. (e) Infection: Defects in the design or construction of the device preventing adequate cleaning or sterilization, or defects in packaging or processing of a device sold as sterile, may allow pathogenic organisms to be introduced and cause an infection in the patient. (f) Leucopenia: The materials used or design of the device may cause absorption of leukocytes resulting in transient leucopenia (loss of leukocytes).

Proposed Classification

FDA agrees with the Panel recommendation and is proposing that sorbent hemoperfusion systems be classifed into class III (premarket approval). The agency believes that the device is purported or represented to be for a use (removing toxic substances from the blood) in supporting or sustaining human life. The Federal Food, Drug, and Cosmetic Act requires the agency to classify any life-supporting or life-sustaining device into class III unless the agency determines that premarket approval is not necessary to provide reasonable assurance of the safety and effectiveness of the device. In this case the agency has determined that premarket approval is necessary. The agency believes that insufficient information exists to determine that general controls or performance standards would provide reasonable assurance of the safety and effectiveness of the device.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and a new structure. FDA published notices of these changes in the Federal Register of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). This proposed classification regulation identifies each device panel by the former name. Further information regarding the device advisory committees and list of their new names may be found in the preamble to the general provisions, published elsewhere in the issue of the Federal Register.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540-546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs proposes to amend Part 876 in Subpart F by adding new § 876.5870, to read as follows:

§ 876.5870 Sorbent hemoperfusion system.

(a) *Identification.* A sorbent hemoperfusion system is a device that consists of an extracorporeal blood system similar to that identified in the hemodialysis system and accessories (§ 876.5820) and a container filled with adsorbent material that removes a wide range of substances, both toxic and normal, from blood flowing through it. The absorbent materials are usually

activated-carbon or resins which may be coated or immobilized to prevent fine particles entering the patient's blood. The generic type of device may include lines and filters specifically designed to connect the device to the extracorporeal blood system. The device is used in the treatment of poisoning, drug overdose, hepatic coma, or metabolic disturbances.

(b) *Classification.* Class III (premarket approval).

Interested persons may, on or before March 24, 1981 submit to the Dockets Management Branch (formerly the Hearing Clerk's office) (HFA—305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, written comments regarding this proposal. Four copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: December 19, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 81-759 Filed 1-23-81; 8:45 am]

BILLING CODE 4110-03-M

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21 CFR Part 876

[Docket No. 78N-2063]

Medical Devices; Classification of Isolated Kidney Perfusion and Transport Systems and Accessories

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing for public comment a proposed regulation classifying isolated kidney perfusion and transport systems and accessories into class II (performance standards). FDA is also publishing the recommendation of the Gastroenterology-Urology Device Classification Panel that the device be classified into class II. The effect of classifying a device into class II is to provide for the future development of one or more performance standards to assure the safety and effectiveness of the device. After considering public comments, FDA will issue a final regulation classifying the device. These actions are being taken under the Medical Device Amendments of 1976.

DATES: Comments by March 24, 1981. FDA proposes that the final regulation based on this proposal become effective 30 days after the date of its publication in the Federal Register.

ADDRESS: Written comments to the Dockets Management Branch (formerly the Hearing Clerk's office) (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Fernando Villarroel, Bureau of Medical Devices (HFK–420), Food and Drug Administration, 8757 Georgia Ave., Silver Springs, MD 20910, 301–427–7750.

SUPPLEMENTARY INFORMATION:

Panel Recommendation

A proposal elsewhere in this issue of the Federal Register provides background information concerning the development of the proposed regulation. The Gastroenterology-Urology Device Classification Panel, an FDA advisory committee, made the following recommendation regarding the classification of isolated kidney perfusion and transport systems and accessories:

1. Identification: An isolated kidney perfusion and transport system and accessories is a device that is used to support a donated or a cadaver kidney and to maintain the organ in a near-normal physiologic state until it is transplanted into a recipient patient. This generic type of device may include tubing, catheters, connectors, an ice storage or freezing container with or without bag or preservatives, pulsatile or nonpulsatile hypothermic isolated organ perfusion apparatus with or without oxygenator, and a disposable perfusion set.

2. Recommended classification: Class II (performance standards). The Panel recommends that establishing a performance standard for this device be a medium priority.

3. Summary of reasons for recommendation: The Panel recommends that isolated kidney perfusion and transport systems and accessories be classified into class II because the materials used in the device, the integrity of the partitioning between the perfusate and coolant, the temperature regulation procedure, the design characteristics allowing sterilization, and the maintenance of proper identification of the tubing connectors to prevent the coolant tubing being connected to the perfusate connectors of the device, or the reverse, must be controlled by a performance standard. The performance standard would prevent sepsis, kidney damage, adverse tissue reaction, infection and users' mistakes in connecting the tubing for the perfusate and coolant. The Panel believes that general controls alone would not provide sufficient control over these characteristics. Although the device is used to maintain a viable kidney for use in a life-sustaining procedure, the Panel believes that premarket approval is not necessary to provide reasonable assurance of the safety and effectiveness of this device because there is sufficient information available to establish a performance standard.

4. Summary of data on which the recommendation is based: The Panel based its recommendation on the Panel members' personal knowledge of, and clinical experience with, the devices.

5. Risks to health: (a) Infection: Defects in the design or construction of the device preventing adequate cleaning or sterilization, or defects in packaging or processing of a device sold as sterile, may allow pathogenic organisms to be introduced and cause an infection in the patient. (b) Kidney damage: Inappropriate pressure regulation, excessive temperature ranges, insufficient or excessive perfusion, or inadequate oxygenation may lead to kidney damage. (c) Adverse tissue reaction: If the materials used in the construction of the devices are not biocompatible, the patient may have an adverse tissue reaction. (d) Blood incompatibility: Toxic materials from the device may cause damage to the patient's blood or lead to thromboembolic complications after the kidney is transplanted.

Proposed Classification

FDA agrees with the Panel recommendation and is proposing that isolated kidney perfusion and transport systems and accessories be classified into class II (performance standards). The agency has reviewed the Panel recommendation and has obtained additional data and information describing the use of the isolated kidney perfusion and transport systems and accessories.

An important summary monograph (Ref. 1) reviews the extensive use of this device over a period of at least 10 years and cites 172 references. FDA realizes that this generic type of device is used in a life-supporting procedure; however, the device is used in the transplantation of a kidney to treat renal failure, which is more life threatening than the risks to health from use of the device. Additionally, isolated kidney perfusion and transport systems have been used successfully for over 10 years to preserve kidneys for transplantation.

Although an isolated kidney perfusion and transport system and accessories is

a device used in a life-supporting procedure, the agency believes that premarket approval is not necessary because a performance standard would provide reasonable assurance of the safety and effectiveness of the device. The agency believes that a performance standard is necessary because general controls alone are insufficient to control the risks to health presented by the device. The agency also believes that there is sufficient information to establish a performance standard for this device.

Reference

The following information has been placed in the Dockets Management Branch (address above), and may be seen by interested persons from 9 a.m. to 4 p.m., Monday through Friday.

1. Collins, G. M. and N. A. Halasz, "Current Aspects of Renal Preservation," *Supplement to Urology*, X(1), July 1977, 22–32.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and a new structure. FDA published notices of these changes in the Federal Register of May 19, 1978 (43 FR 21668, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). This proposed classification regulation identifies each device panel by the former name. Further information regarding the device advisory committees and list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the Federal Register.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs proposes to amend Part 876 in Subpart F by adding new § 876.5880, to read as follows:

§ 876.5880 Isolated kidney perfusion and transport system and accessories.

(a) *Identification.* An isolated kidney perfusion and transport system and accessories is a device that is used to support a donated or a cadaver kidney and to maintain the organ in a near-normal physiologic state until it is transplanted into a recipient patient. This generic type of device may include tubing, catheters, connectors, an ice storage or freezing container with or without bag or preservatives, pulsatile or nonpulsatile hypothermic isolated organ perfusion apparatus with or without oxygenator, and a disposable perfusion set.

(b) *Classification.* Class II (performance standards).

Interested persons may, on or before March 24, 1981 submit to the Dockets Management Branch (formerly the Hearing Clerk's office) (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, written comments regarding this proposal. Four copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: December 19, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 81-200 Filed 1-22-81; 8:45 am]

BILLING CODE 4110-03-M

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21 CFR Part 876

[Docket No. 78N–1975]

Medical Devices; Classification of Ostomy Irrigators

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing for public comment a proposed regulation classifying ostomy irrigators into class II (performance standards). FDA is also publishing the recommendation of the Gastroenterology-Urology Device Classification Panel that the device be classified into class II. The effect of classifying a device into class II is to provide for the future development of one or more performance standards to assure the safety and effectiveness of the device. After considering public comments, FDA will issue a final regulation classifying the device. These actions are being taken under the Medical Device Amendments of 1976.

DATES: Comments by March 24, 1981. FDA proposes that the final regulation based on this proposal become effective 30 days after the date of its publication in the Federal Register.

ADDRESS: Written comments to the Dockets Management Branch (formerly the Hearing Clerk's office) (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Fernando Villarroel, Bureau of Medical Devices (HFK–420), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7750.

SUPPLEMENTARY INFORMATION:

Panel Recommendation

A proposal elsewhere in this issue of the Federal Register provides background information concerning the development of the proposed regulation. The Gastroenterology-Urology Device Classification Panel, an FDA advisory committee, made the following recommendation regarding the classification of ostomy irrigators:

1. Identification: An ostomy irrigator is a device that consists of a container for fluid, tubing with a cone-shaped tip or a soft and flexible catheter with a retention shield and that is used to wash out the color through a colostomy, a surgically created opening of the colon on the surface of the body.

2. Recommended classification: Class II (performance standards). The Panel recommends that establishing a performance standard for this device be a high priority.

3. Summary of reasons for recommendation: The Panel recommends that ostomy irrigators be classified into class II because the design and construction of the device must be controlled by a performance standard to ensure that the shape and size of the cone are appropriate to prevent leaks that may lead to skin irritation. The design, materials, and construction of the device must be controlled by a performance standard to ensure that the shape, size, rigidity, flexibility, surface finish and strength of the device are appropriate to prevent trauma, hemorrhage or perforation. The Panel also recommends that the materials used in the device that contact the body be controlled by a performance standard to ensure their biocompatibility to prevent an allergic or an adverse tissue reaction. The Panel was concerned about the possibility of bowel injury by any catheter which may be used with the device. The Panel recommends that the shape of the cone be controlled to avoid damage to the stoma or to the colon, because a long thin, irrigator cone could be as dangerous as a catheter. The Panel believes that cone-shaped irrigators are less likely to cause injury to the colon than long, thin irrigators. The Panel believes that general controls alone would not provide sufficient control over these characteristics. The Panel believes that a performance standard would provide a reasonable assurance of the safety and effectiveness of the device and that there is sufficient

information to establish a performance standard.

4. Summary of data on which the recommendation is based: The Panel based its recommendation on the Panel members' personal knowledge of, and clinical experience with, the device.

5. Risks to health: (a) Trauma, hemorrhage, or perforation: Improper size, shape, rigidity, arrangement, or finish on parts of this device may cause tissue trauma, hemorrhage, or perforation. (b) Irritation or allergic reaction: If the device leaks, is of incorrect size, or is not biocompatible, an allergic reaction or skin irritation could occur. (c) Colon injury: If a cone-shaped or other type of irrigation tip is too long and thin, an injury to the colon could occur. (d) Adverse tissue reaction: If the materials used in the device are not biocompatible, the patient may have an adverse tissue reaction.

Proposed Classification

FDA agrees with the Panel recommendation and is proposing that ostomy irrigators be classified into class II (performance standards). The agency believes that a performance standard is necessary for this device because general controls alone are insufficient to control the risks to health presented by the device. A performance standard would provide reasonable assurance of the safety and effectiveness of the device. The agency also believes that there is sufficient information to establish a performance standard for this device.

On April 28, 1976, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and a new structure. FDA published notices of these changes in the Federal Register of May 19, 1976 (43 FR 21666, 21667, and 21668) and May 26, 1976 (43 FR 22672 and 22673). This proposed classification regulation identifies each device panel by the former name. Further information regarding the device advisory committees and list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the Federal Register.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a))] and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs proposes to amend Part 876 in Subpart F by adding new § 876.5895, to read as follows:

§ 876.5895 Ostomy irrigator.

(a) *Identification.* An ostomy irrigator is a device that consists of a container for fluid, tubing with a cone-shaped tip or a soft and flexible catheter with a retention shield and that is used to wash out the colon through a colostomy, a surgically created opening of the colon on the surface of the body.

(b) *Classification.* Class II (performance standards).

Interested persons may, on or before March 24, 1981 submit to the Dockets Management Branch (formerly the Hearing Clerk's office) (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, written comments regarding this proposal. Four copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: December 19, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 81-601 Filed 1-23-81; 8:45 am]

BILLING CODE 4110-03-M

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21 CFR Part 876

[Docket No. 78N–1974]

Medical Devices; Classification of Ostomy Pouches and Accessories

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing for public comment a proposed regulation classifying ostomy pouches and accessories into class II (performance standards). FDA is also publishing the recommendation of the Gastroenterology-Urology Device Classification Panel that these devices be classified into class II and the recommendation of the General Hospital and Personal Use Device Classification Panel and of the General and Plastic Surgery Device Classification Panel that these devices be classified into class I (general controls). The effect of classifying a device into class II is to provide for the future development of one or more performance standards to assure the safety and effectiveness of the device. The effect of classifying a device into class I is to require that the device meet only the general controls applicable to all devices. After considering public comments, FDA will issue a final regulation classifying the devices. These actions are being taken under the Medical Device Amendments of 1976.

DATES: Comments by March 24, 1981. FDA proposes that the final regulation based on this proposal become effective 30 days after the date of its publication in the Federal Register.

ADDRESS: Written comments to the Dockets Management Branch (formerly the Hearing Clerk's office) (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Fernando Villarroel, Bureau of Medical Devices (HFK–420), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7750.

SUPPLEMENTARY INFORMATION:

Panel Recommendation

A proposal elsewhere in this issue of the Federal Register provides background information concerning the development of the proposed regulation. The Gastroenterology-Urology Device Classification Panel, the General Hospital and Personal Use Device Classification Panel, and the General and Plastic Surgery Device Classification Panel, FDA advisory committees, made the following recommendations regarding the classification of ostomy pouches and accessories:

1. Identification: An ostomy pouch and accessories is a device that consists of a bag that is attached to the patient's skin by an adhesive material and that is intended for use as a receptacle for collection of fecal material or urine following an ileostomy, colostomy, or ureterostomy (a surgically created opening of the small intestine, large intestine or the ureter on the surface of the body). This generic type of device and its accessories includes the ostomy pouch, ostomy adhesive, the disposable colostomy appliance, ostomy collector, colostomy pouch, urinary ileostomy bag, urine collecting ureterostomy bag, ostomy drainage bag with adhesive, stomal bag, ostomy protector, and the ostomy size selector, but excludes ostomy pouches which incorporate arsenic-containing compounds.

2. Recommended classification: The Gastroenterology-Urology Device Classification Panel recommends that the devices be classified into class II (performance standards) and that establishing a performance standard for these devices be a low priority. The General Hospital and Personal Use Device Classification Panel recommends that the devices be classified into class I

(general controls) and that they be exempt from the good manufacturing practice regulation under section 520(f) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360j(f)) except for those regulations relating to the adhesives used and traceability records. The General and Plastic Surgery Device Classification Panel recommends that the devices be classified into class I and that there be no exemptions.

3. Summary of reasons for recommendation: The Gastroenterology-Urology Device Classification Panel recommends that ostomy pouches and accessories be classified into class II because the Panel believes that the materials used in the device that contact the body must be controlled by a performance standard to ensure their biocompatibility to prevent an adverse tissue reaction. The design and construction of the device must be controlled by a performance standard to ensure that the device fits properly and cannot slip, to prevent leakage or damage to the stoma. The measurement function of the ostomy size selector must be controlled by a performance standard to ensure selection of a correctly sized ostomy appliance, to prevent leakage or stoma damage. The Panel believes that general controls alone would not provide sufficient control over these characteristics. The Panel believes that a performance standard would provide reasonable assurance of safety and effectiveness of the device and that there is sufficient information to establish a performance standard. The General Hospital and Personal Use Device Classification Panel and the General and Plastic Surgery Device Classification Panel recommend that ostomy pouches and accessories be classified into class I because the Panels believe that general controls are sufficient to provide reasonable assurance of the safety and effectiveness of the devices. The General Hospital and Personal Use Device Classification Panel recommends that the devices be exempt from the good manufacturing practice regulation because the quality of the devices is easily discernible and defects are readily apparent to the user. However, the Panel also recommends that the labeling warn users of possible sensitivity of the skin to the adhesive material on the devices.

4. Summary of data on which the recommendation is based: The Panels based their recommendations on the Panel members' personal knowledge of, and clinical experience with, the devices and on the widespread use of these devices in medical practice.

5. Risks to health: (a) Adverse tissue reaction: If the materials used in the devices are not biocompatible, the patient may have an adverse tissue reaction. (b) Loss of skin: Inadequate fit or leakage allowing liquid feces or urine to contact the skin will cause irritation and loss of skin surface. (c) Damage or obstruction of stoma: An improper size, malposition, or slipping of the device with pressure against a protruding stoma may cause damage to, or obstruction of, the stoma. (d) Toxic systemic effects: Toxic substances in the adhesive material which are absorbed through the skin or lungs may cause toxic systemic effects in the patient. (e) Damage to stoma or skin: An improperly calibrated ostomy size selector may result in selection of an incorrectly sized ostomy appliance, which could lead to damage to the skin or stoma.

Proposed Classification

FDA agrees with the recommendation of the Gastroenterology-Urology Device Classification Panel and is proposing that ostomy pouches and accessories be classified into class II (performance standards). The agency has reviewed the medical literature and has found that allergenicity is related to the chemical composition of the materials used in construction of ostomy pouches and accessories (Ref. 1). Therefore, the agency disagrees with the recommendations of the General Hospital and Personal Use Device Classification Panel and the General and Plastic Surgery Device Classification Panel that ostomy pouches and accessories be classified into class I (general controls). The agency believes that performance standards are necessary to ensure that the adhesives that contact the skin are biocompatible. The adhesives may be in contact with the patient for many years. Because the agency has determined that ostomy pouches and accessories should be classified into class II rather than class I, the agency is not required to publish a regulation adopting or rejecting the recommendation of the General Hospital and Personal Use Device Classification Panel that these devices be exempt from the good manufacturing practice regulation under section 520(f) of the act. The agency believes that a performance standard is necessary for these devices because general controls alone are insufficient to control the risks to health presented by the devices. A performance standard would provide reasonable assurance of the safety and effectiveness of the devices. The agency aso believes that there is sufficient information to establish a performance standard for these devices.

FDA has reviewed the recommendations for ostomy pouches and accessories of the Gastroenterology-Urology Device Classification Panel, the General Hospital and Personal Use Device Classification Panel, and the General and Plastic Surgery Device Classification Panel, and has concluded that the classification of these devices should be published in the part of the Code of Federal Regulations for gastroenterology and urology devices.

Reference

The following information has been placed in the Dockets Management Branch (address above) and may be seen by interested persons from 9 a.m. to 4 p.m., Monday through Friday.

1. Hill, G., "Ileostomy Surgery Physiology and Management," Grune and Stratton, New York, pp. 47–60, 1978.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and a new structure. FDA published notices of these changes in the Federal Register of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). This proposed classification regulation identifies each device panel by the former name. Further information regarding the device advisory committees and list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the Federal Register.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs proposes to amend Part 876 in Subpart F by adding new § 876.5900, to read as follows:

§ 876.5900 Ostomy pouch and accessories.

(a) *Identification.* An ostomy pouch and accessories is a device that consists of a bag that is attached to the patient's skin by an adhesive material and that is intended for use as a receptacle for collection of fecal material or urine following an ileostomy, colostomy, or ureterostomy (a surgically created opening of the small intestine, large intestine or the ureter on the surface of the body). This generic type of device and its accessories includes the ostomy pouch, ostomy adhesive, the disposable colostomy appliance, ostomy collector,*

colostomy pouch, urinary ileostomy bag, urine collecting ureterostomy bag, ostomy drainage bag with adhesive, stomal bag, ostomy proctor, and the ostomy size selector, but excludes ostomy pouches which incorporate arsenic-containing compounds.

(b) *Classification.* Class II (performance standards).

Interested persons may, on or before March 24, 1981 submit to the Dockets Management Branch (formerly the Hearing Clerk's office) (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, written comments regarding this proposal. Four copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: December 19, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 81-832 Filed 1-22-81; 8:45 am]

BILLING CODE 4110-03-M

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21 CFR Part 876

[Docket No. 78N-2062]

Medical Devices; Classification of Protective Garments for Incontinence

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing for public comment a proposed regulation classifying protective garments for incontinence into class I (general controls). FDA is also publishing the recommendation of the Gastroenterology-Urology Device Classification Panel that the device be classified into class I (general controls). The effect of classifying a device into class I is to require that the device meet only the general controls applicable to all devices. After considering public comments, FDA will issue a final regulation classifying the device. These actions are being taken under the Medical Device Amendments of 1976.

DATES: Comments by March 24, 1981. FDA proposes that the final regulation based on this proposal become effective 30 days after the date of its publication in the Federal Register.

ADDRESS: Written comments to the Dockets Management Branch (formerly the Hearing Clerk's office) (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Fernando Villarroel, Bureau of Medical Devices (HFK–420), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7750.

SUPPLEMENTARY INFORMATION:

Panel Recommendation

A proposal elsewhere in this issue of the Federal Register provides background information concerning the development of the proposed regulation. The Gastroenterology-Urology Device Classification Panel, an FDA advisory committee, made the following recommendation regarding the classification of protective garments for incontinence:

1. Identification: A protective garment for incontinence is a device that consists of absorbent padding and a fluid barrier and that is intended to protect an incontinent patient's garments from the patient's urine. This generic type of device does not include diapers for infants.

2. Recommended classification: Class I (general controls). The Panel recommends that there be no exemptions.

3. Summary of reasons for recommendation: The Panel recommends that protective garments for incontinence be classified into class I because general controls are sufficient to provide reasonable assurance of their safety and effectiveness. The Panel does not believe that this device requires a performance standard to control the identified risks to health. The Panel recommends that the risk of skin irritation be controlled by proper warning in the labeling that if a patient is allowed to remain in a garment that is saturated by urine, there is a risk of skin irritation.

4. Summary of data on which the recommendation is based: The Panel based its recommendation is based: The Panel based its recommendation on the Panel members' personal knowledge of, and clinical experience with, the device.

5. Risks to health: Skin irritation: The material used in this device in combination with ammonia formed by the bacterial decomposition of urine may cause skin irritation.

Proposed Classification

FDA agrees with the Panel's recommendation and is proposing that protective garments for incontinence be classified into class I (general controls). The agency believes that the risk of skin irritation can be controlled by proper labeling. The agency believes that protective garments for incontinence should be classified into class I because the agency believes that general controls are sufficient to provide reasonable assurance of the safety and effectiveness of the device.

The agency has determined that compliance with the device good manufacturing practice (GMP) Regulation, except for § 820.180 (general requirements concerning records) and § 820.198 (complaint files), is not required to assure that protective garments for incontinence will be safe and effective and otherwise in compliance with the act. The agency has based its determination on available information about current practices used in the manufacture of the device and user experience with the device. The agency is not exempting manufacturers of protective garments for incontinence from the requirements of §§ 820.180 or 820.198 because it has determined that compliance with these sections is in the public interest and will not be unduly burdensome for device manufacturers.

There are two procedures by which FDA may exempt a manufacturer of a device from complying with any or all of the requirements of the GMP regulation. First, a manufacturer of a device subject to any requirements under the GMP regulation may petition the agency pursuant to section 520(f)(2)(A) of the act (21 U.S.C. 360j(f)(2)(A)) for an exemption of variance from the requirement. An exemption granted in response to such a petition applies only to the manufacturer who submitted the petition. Second, in classifying a medical device into class I under section 513 of the act (21 U.S.C. 360c) the agency may determine that certain of the requirements of the GMP regulation shall not apply to the device. In that instance, the exemption applies to all manufacturers of the generic type of device that is the subject of the classification regulation. The agency may grant an exemption under either procedure only if it determines that compliance with the requirement is not necessary to assure that the device will be safe and effective and otherwise in compliance with the act.

The agency previously granted a manufacturer's petition (79P–0288) for exemption of its protective garments for incontinence from the requirements of the GMP regulation, except § 820.180 (general requirements concerning records) and § 820.198 (complaint files). As explained above, that exemption applied only to the petitioner. In this regulation classifying protective garment for incontinence, FDA is exempting from

certain sections of the GMP regulation all manufacturers of this generic type of device. This action is consistent with the agency's policies and criteria for exemption discussed in the preamble to the proposed general provisions for this Part, published elsewhere in this issue of the Federal Register. Additional information regarding the procedures for petitioning for exemptions or variances from the GMP regulations is available, as described in a notice published in the Federal Register of January 16, 1980 (45 FR 3671).

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and a new structure. FDA published notices of these changes in the Federal Register of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). This proposed classification regulation identifies each device panel by the former name. Further information regarding the device advisory committees and list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the Federal Register.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs proposes to amend Part 876 in Subpart F by adding new § 876.5920, to read as follows:

§ 876.5920 Protective garment for incontinence.

(a) *Identification.* A protective garment for incontinence is a device that consists of absorbent padding and a fluid barrier and that is intended to protect an incontinent patient's garments from the patient's urine. This generic type of device does not include diapers for infants.

(b) *Classification.* Class I (general controls). The device is exempt from the good manufacturing practice regulation in Part 820, with the exception of § 820.180, regarding general requirements concerning records, and § 820.198, regarding complaint files.

Interested persons may, on or before March 24, 1981 submit to the Dockets Management Branch (formerly the Hearing Clerk's office) (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, written comments regarding this proposal. Four copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: December 19, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 81-668 Filed 1-22-81; 8:45 am]

BILLING CODE 4110-03-M

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21 CFR Part 876

[Docket No. 78N–1980]

Medical Devices; Classification of Peritoneo-Venous Shunts

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing for public comment a proposed regulation classifying peritoneo-venous shunts into class III (premarket approval). FDA is also publishing the recommendation of the Gastroenterology-Urology Device Classification Panel that the peritoneo-venous shunt of LeVeen design be classified into class II (performance standards) and subject to a requirement that manufacturers develop long term followup data on its use and that peritoneo-venous shunts of other designs be classified into class III (premarket approval). The effect of classifying a device into class III is to require each manufacturer of the device to submit to FDA a premarket approval application at a date to be set in a future regulation. Each premarket approval application would include information concerning safety and effectiveness tests for the device. The effect of classifying a device into class II is to provide for the future development of one or more performance standards to assure the safety and effectiveness of the device. After considering public comments, FDA will issue a final regulation classifying the device. These actions are being taken under the Medical Device Amendments of 1976.

DATES: Comments by March 24, 1981. FDA proposes that the final regulation based on this proposal become effective 30 days after the date of its publication in the Federal Register.

ADDRESS: Written comments to the Dockets Management Branch (formerly the Hearing Clerk's office) (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Fernando Villarroel, Bureau of Medical Devices (HFK–420), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7750.

SUPPLEMENTARY INFORMATION:

Panel Recommendation

A proposal elsewhere in this issue of the Federal Register provides background information concerning the development of the proposed regulation. The Gastroenterology-Urology Device Classification Panel, an FDA advisory committee, made the following recommendation regarding the classification of peritoneo-venous shunts:

1. Identification: A peritoneo-venous shunt is an implanted device that consists of a catheter and a pressure activated one-way valve. The catheter is implanted with one end in the peritoneal cavity and the other in a large vein. This device enables ascitic fluid in the peritoneal cavity to flow into the venous system for the treatment of intractable ascites.

2. Recommended classification: Class III (premarket approval), except for the peritoneo-venous shunt of the LeVeen design. The Panel recommends that premarket approval of the device be a high priority. The Panel recommends that the LeVeen design of peritoneo-venous shunt be classified into class II (performance standards). The Panel also recommends that establishing a performance standard for this device be a low priority.

3. Summary of reasons for recommendation: The Panel recommends that the peritoneo-venous shunt of any design other than the LeVeen shunt be classified into class III, because the device is life-supporting, life-sustaining, and an implant. The Panel believes that the long term consequences of the implantation of the peritoneo-venous shunt of other than the LeVeen design are not well understood. There is a lack of safety and effectiveness data to demonstrate the satisfactory performance of the peritoneo-venous shunt of other than the LeVeen design. Therefore, the device, other than the LeVeen design, must be subject to premarket approval to assure its safety and effectiveness. The Panel believes that general controls alone would not provide sufficient control over the performance characteristics of the device. The Panel also believes that insufficient information exists to determine that general controls or standards would provide reasonable assurance of the safety and effectiveness of the peritoneo-venous shunt of other than the LeVeen design.

The Panel also recommends that peritoneo-venous shunts of the LeVeen design be classified into class II because the functioning of the one-way valve must be controlled and the materials used in the construction of this device must meet a generally accepted satisfactory level of tissue or blood compatibility, including attributes of adequate surface finish and cleanliness that may affect the degree of compatibility. Also the design of the device must be controlled to prevent tissue trauma. The Panel believes that general controls alone would not provide sufficient control over these characteristics. Although the peritoneo-venous shunt of the LeVeen design is an implanted device, the Panel believes that premarket approval is not necessary because sufficient information exists to establish a performance standard for this type of the device that would provide reasonable assurance of its safety and effectiveness. The Panel also recommends that manufacturers of the LeVeen peritoneo-venous shunt should be required to develop long term clinical followup data to assure its safety and effectiveness.

The peritoneo-venous shunt is an implanted device that has demonstrated successful application for the treatment of intractable ascites (Refs. 1 through 9). LeVeen reports that approximately 1,100 implantations have been performed with this device (Ref. 1). In one study reported by LeVeen, 70 percent of the patients with ascites (excluding those patients with severe alcoholic hepatitis or upper gastrointestinal bleeding) survived at least 12 to 18 months following surgery (Ref. 1). Twenty-three ascitic patients with renal failure (creatinine level 2.3 milligrams per deciliter or blood urea nitrogen (BUN) level 40 milligrams per deciliter) demonstrated improvement, i.e., decreased BUN level, decreased plasma creatinine, and increased urine flow. Eighteen of 23 patients survived at least 4 weeks post-operatively and one patient without complications involving the liver has survived 4 years in excellent health. However, patients with alcoholic hepatitis and congestive heart failure have continued to exhibit high morbidity and mortality (Ref. 6). In a study of 24 patients with cirrhosis and intractable ascites, 14 patients were still surviving in reported followups from 3 to 21 months (Ref. 3). Case reports include the use of peritoneo-venous shunts in conjunction with hemodialysis (Refs. 8 and 9).

The Gastroenterology-Urology Device Classification Panel heard presentations by Dr. Harry LeVeen and Dr. Malcolm Stanley (Ref. 10). In this presentation, studies that compare surgical intervention with the LeVeen shunt and medical therapy were discussed. Following these presentations the Panel concluded that the LeVeen shunt design should be subject to long term clinical followup, but that the controls of performance standards would ensure the safety and effectiveness of the device.

4. Summary of data on which the recommendation is based: The Panel based its recommendation on the Panel members' personal knowledge of, and clinical experience with, the device and on a review of the medical literature (Refs. 1 through 9).

5. Risks to health: (a) Infection: Defects in the design or construction of the device preventing adequate cleaning or sterilization, or defects in packaging or processing of a device sold as sterile, may allow pathogenic organisms to be introduced and cause an infection in the patient. (b) Trauma, hemorrhage, or perforation: Improper size, shape, rigidity, arrangement, or finish on parts of this device may cause tissue damage. (c) Adverse tissue reaction: If the materials used in the constructon of the device are not biocompatible, the patient may have an adverse tissue reaction. (d) Blood incompatibility or blood disorders: The materials or design of the device may cause damage to blood or lead to thromboembolic complications. Also, the shunting of ascitic fluid into the venous system by this device can result in blood disorders with thrombosis or hemorrhage, particularly in patients with severe liver disorders.

Proposed Classification

FDA agrees with the Panel recommendation that peritoneo-venous shunts of other than the LeVeen design be classified into class III (premarket approval) and disagrees with the Panel recommendation that peritoneo-venous shunts of the LeVeen design be classified into class II (performance standards). FDA is proposing that all peritoneo-venous shunts be classified into class III (premarket approval). FDA believes that the device presents a potential unreasonable risk of illness or injury to the patient if there are not adequate data to assure the safe and effective use of the device. In addition, the device is purported or represented to be for a use (removing excess fluid from the peritoneal cavity) that is of substantial importance in preventing impairment of human health. Furthermore, the device is an implant, which the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360c(d)) requires to be classified into class III unless the agency determines that premarket approval is not necessary to provide reasonable assurance of a device's safety and effectiveness. In this case, the agency has determined that premarket approval is necessary for the device because general controls and performance standards are insufficient to provide reasonable assurance of the safety and effectiveness of the device. FDA also believes that there is insufficient information to establish a standard to provide reasonable assurance of the safety and effectiveness of the device.

FDA is sensitive to the Panel's concerns about the continued availability of the LeVeen shunt and the Panel recommendation regarding the need for long term surveillance of the use of this type of the device. In addition to the LeVeen shunt, FDA has identified the Denver design of the peritoneo-venous shunt (Ref. 11), which is a preamendments device. FDA also requests information on any other kinds of preamendments peritoneo-shunts that are presently being used. FDA believes that the concerns of the Panel can best be met be classifying all designs of this generic type of device into class III and limiting premarket approval of these devices to long term followup studies.

References

The following information has been placed in the Dockets Management Branch (address above) and may be seen by interested persons from 9 a.m. to 4 p.m., Monday through Friday.

1. LeVeen, H. et al., "Peritoneo-Venous Shunt for Ascites," *Surgical Annual*, 10:191–214, 1978.

2. Wapnick, S. et al., "LeVeen Continuous Peritoneal-Jugular Shunt," *Journal of the American Medical Association*, 237:131–133, January 10, 1977.

3. Reinhardt, G. et al., "Peritoneo-Venous Shunting for Ascites," *Surgery, Gynecology,and Obstetrics*, 145:419–424, 1977.

4. Pladson, T. et al., "Hepatorenal syndrome," *Archives of Internal Medicine*, 137:1246–1249, 1977.

5. Witte, M. et al., "Peritoneo-Venous (LeVeen) Shunt," *Journal of the American Medical Association*, 239:31–33, January 2, 1978.

6. Wapnick, S. et al., "Renal Failure in Ascites Secondary to Hepatic, Renal, and Pancreatic Disease," *Archives of Surgery*, 13:561–565, 1978.

7. Agishi, T. et al., "Implantable Peritoneo-Caval Shunt Pump for Intractable Ascites," *Transactions of the American Society for Artifical Internal Organs*, 23:662–668, 1977.

8. Wooldridge, T. et al., "LeVeen Shunt: Long-Term Therapy for Idiopathic Ascites of

Chronic Renal Failure," *Proceedings of Dialysis Transplant Forum*, 8:38–41, 1978.

9. Yen, M. et al., "Peritoneo-Venous Shunt for Ascites Associated with Maintenance Dialysis," *Clinical Nephrology*, 8:440–442, 1977.

10. Transcript of the Gastroenterology and Urology Device Classification Panel Meeting, October 26, 1978, pp. 5–63.

11. Land, R. H. et al. "Peritoneal-Venous Shunting System for Surgical Management of Ascites," *Contemporary Surgery*, 14:31–45, 1979.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and a new structure. FDA published notices of these changes in the Federal Register of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). This proposed classification regulation identifies each device panel by the former name. Further information regarding the device advisory committees and list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the Federal Register.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs proposes to amend Part 878 in Subpart F by adding new § 878.5955, to read as follows:

§ 878.5955 Peritoneo-venous shunt.

(a) *Identification.* A peritoneo-venous shunt is an implanted device that consists of a catheter and a pressure activated one-way valve. The catheter is implanted with one end in the peritoneal cavity and the other in a large vein. This device enables ascitic fluid in the peritoneal cavity to flow into the venous system for the treatment of intractable ascites.

(b) *Classification.* Class III (premarket approval).

Interested persons may, on or before March 24, 1981 submit to the Dockets Management Branch (formerly the Hearing Clerk's office) (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, written comments regarding this proposal. Four copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: December 19, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 81-891 Filed 1-22-81; 8:45 am]

BILLING CODE 4110-03-M

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21 CFR Part 878

Docket No. 78N–1967]

Medical Devices; Classification of Hernia Supports

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing for public comment a proposed regulation classifying hernia supports into class II (performance standards). FDA is also publishing the recommendation of the Gastroenterology-Urology Device Classification Panel that the device be classified into class II. The effect of classifying a device into class II is to provide for the future development of one or more performance standards to assure the safety and effectiveness of the device. After considering public comments, FDA will issue a final regulation classifying the device. These actions are being taken under the Medical Device Amendments of 1976.

DATES: Comments by March 24, 1981. FDA proposes that the final regulation based on this proposal become effective 30 days after the date of its publication in the Federal Register.

ADDRESS: Written comments to the Dockets Management Branch (formerly the Hearing Clerk's office) (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Fernando Villarroel, Bureau of Medical Devices (HFK–420), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7750.

SUPPLEMENTARY INFORMATION:

Panel Recommendation

A proposal elsewhere in this issue of the Federal Register provides background information concerning the development of the proposed regulation. The Gastroenterology-Urology Device Classification Panel, an FDA advisory committee, made the following recommendation regarding the classification of hernia supports:

1. Identification: A hernia support is a device, usually made of elastic, canvas, leather, or metal, that is intended to be placed over a hernial opening (a weakness in the abdominal wall) to prevent protrusion of the abdominal contents. This generic type of device includes the umbilical truss.

2. Recommended classification: Class II (performance standards). The Panel recommends that establishing a performance standard for this device be a low priority.

3. Summary of reasons for recommendation: The Panel recommends that hernia supports be classified into class II because the materials used in the device that contact the body must be controlled by a performance standard to ensure their biocompatibility to prevent an adverse tissue reaction. The design and construction of the device must be controlled by a performance standard so that the device will not cause pressure sores or aggravate the hernia. The Panel believes that general controls alone would not provide sufficient control over these characteristics. The Panel believes that a performance standard would provide reasonable assurance of the safety and effectiveness of the device and that there is sufficient information to establish a performance standard.

4. Summary of data on which the recommendation is based: The Panel based its recommendation on the Panel members' personal knowledge of, and clinical experience with, the device and on the widespread use of the device in medical practice.

5. Risks to health: (a) Adverse tissue reaction: If the materials used in the construction of the device are not biocompatible, the patient may have an adverse tissue reaction. (b) Exacerbation of the hernia: Inadequate design or construction of the device may cause pressure sores or increase the severity of the hernia.

Proposed Classification

FDA agrees with the Panel recommendation and is proposing that hernia supports be classified into class II (performance standards). The agency believes that a performance standard is necessary for this device because general controls alone are insufficient to control the risks to health presented by the device. A performance standard will provide reasonable assurance of the safety and effectiveness of the device. The agency also believes that there is sufficient information to establish a performance standard for this device.

The agency has determined that compliance with the device good manufacturing practice (GMP) regulation, except for § 820.180 (general requirements concerning records) and § 820.198 (complaint files), is not required to assure that hernia supports

will be safe and effective and otherwise in compliance with the act. The agency has based its determination on available information about current practices used in the manufacture of the device and user experience with the device. The agency is not exempting manufacturers of hernia supports from the requirements of §§ 820.180 or 820.198 because it has determined that compliance with these sections is in the public interest and will not be unduly burdensome for device manufacturers.

There are two procedures by which FDA may exempt a manufacturer of a device from complying with any or all of the requirements of the GMP regulation. First, a manufacturer of a device subject to any requirement under the GMP regulation may petition the agency pursuant to section 520(f)(2)(A) of the act (21 U.S.C. 360j(f)(2)(A)) for an exemption or variance from the requirement. An exemption granted in response to such a petition applies only to the manufacturer who submitted the petition. Second, in classifying a medical device into class I under section 513 of the act (21 U.S.C. 360c), the agency may determine that certain of the requirements of the GMP regulation shall not apply to the device. In that instance, the exemption applies to all manufacturers of the generic type of device that is the subject of the classification regulation. The agency may grant an exemption under either procedure only if it determines that compliance with the requirement is not necessary to assure that the device will be safe and effective and otherwise in compliance with the act.

The agency previously granted a manufacturer's petition (79P-0278) for exemption of its hernia support from the requirements of the GMP regulation, except § 820.180 (general requirements concerning records) and §820.198 (complaint files). As explained above, that exemption applied only to the petitioner. In this regulation classifying hernia supports, FDA is exempting from certain sections of the GMP regulation all manufacturers of this generic type of device. This action is consistent with the agency's policies and criteria for exemption discussed in the preamble to the proposed general provisions for this Part, published elsewhere in this issue of the **Federal Register**. Additional information regarding the procedures for petitioning for exemptions or variances from the GMP regulation is available, as described in a notice published in the **Federal Register**. of January 18, 1980 (45 FR 3671).

On April 28, 1976, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and a new structure. FDA published notices of these changes in the **Federal Register**. of May 19, 1976 (43 FR 21666, 21667, and 21668) and May 26, 1976 (43 FR 22672 and 22673). This proposed classification regulation identifies each device panel by the former name. Further information regarding the device advisory committees and list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the **Federal Register**.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs proposes to amend Part 878 in Subpart F by adding new § 878.5970, to read as follows:

§ 878.5970 Hernia support.

(a) *Identification.* A hernia support is a device, usually made of elastic, canvas, leather, or metal, that is intended to be placed over a hernial opening (a weakness in the abdominal wall) to prevent protrusion of the abdominal contents. This generic type of device includes the umbilical truss.

(b) *Classification.* Class II (performance standards). The device is exempt from the good manufacturing practice regulation in Part 820, with the exception of § 820.180, regarding general requirements concerning records, and § 820.198, regarding complaint files.

Interested persons may, on or before March 24, 1981 submit to the Dockets Management Branch (formerly the Hearing Clerk's office) (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, written comments regarding this proposal. Four copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: December 19, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 81-605 Filed 1-22-81; 8:45 am]

BILLING CODE 4110-03-M

21 CFR Part 878

[Docket No. 78N-2072]

Medical Devices; Classification of Gastrointestinal Tubes and Accessories

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing for public comment a proposed regulation classifying gastrointestinal tubes and accessories into class II (performance standards). FDA is also publishing the recommendations of the Gastroenterology-Urology Device Classification Panel and of the General and Plastic Surgery Device Classification Panel that the devices be classified into class II. The effect of classifying a device into class II is to provide for the future development of one or more performance standards to assure the safety and effectiveness of the device. After considering public comments, FDA will issue a final regulation classifying the devices. These actions are being taken under the Medical Device Amendments of 1976.

DATES: Comments by March 24, 1981. FDA proposes that the final regulation based on this proposal become effective 30 days after the date of its publication in the **Federal Register**.

ADDRESS: Written comments to the Dockets Management Branch (formerly the Hearing Clerk's office) (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Fernando Villarroel, Bureau of Medical Devices (HFK-420), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7750.

SUPPLEMENTARY INFORMATION:

Panel Recommendation

A proposal elsewhere in this issue of the **Federal Register** provides background information concerning the development of the proposed regulation. The Gastroenterology-Urology Device Classification Panel and the General and Plastic Surgery Device Classification Panel, FDA advisory committees, made the following recommendation regarding the classification of gastrointestinal tubes and accessories.

1. Identification: A gastrointestinal tube and accessories is a device that consists of flexible or semirigid tubing used for instilling fluids into, withdrawing fluids from, splinting, or suppressing bleeding of the alimentary

tract. This device may incorporate an integral inflatable balloon for retention or hemostasis. This generic type of device includes the hemostatic bag, irrigation and aspiration catheter (gastric, colonic, etc.), rectal catheter, sterile infant gavage set, gastrointestinal string and tubes to locate internal bleeding, double lumen tube for intestinal decompression or intubation, feeding tube, gastroenterostomy tube, Levine tube, nasogastric tube, single lumen tube with mercury weight balloon for intestinal intubation or decompression, and gastro-urological irrigation tray (for gastrological use).

2. Recommended classification: Class II (performance standards). The Gastroenterology-Urology Device Classification Panel recommends that establishing a performance standard for these devices be a medium priority. The General and Plastic Surgery Device Classification Panel recommends that establishing a performance standard for these devices be a low priority.

3. Summary of reasons for recommendation: The Gastroenterology-Urology Device Classification Panel recommends that gastrointestinal tubes and accessories be classified into class II (performance standards) because the materials used in the construction of the devices must be controlled by a performance standard to ensure their biocompatibility. Also, the design and construction of the devices, including the shape, size, tensile strength, flexibility, surface finish, softness, and strength of the devices must be controlled to prevent tissue damage and blockage, trauma, hemorrhage, or perforation, to enable proper cleaning and sterilization to prevent infection, and the structure and the balloon cuff function must operate properly to permit the tube to be recovered. The General and Plastic Surgery Device Classification Panel recommends that the devices be classified into class II because the devices should be constructed of materials that are nontoxic, nonallergenic, noncarcinogenic, nonpyrogenic, and that do not degrade by interaction with body tissue or body fluid. The General and Plastic Surgery Device Classification Panel also recommends that the devices not contain residual foreign matter. The Panels believe that general controls alone would not provide sufficient control over these characteristics. The Panels believe that a performance standard would provide reasonable assurance of the safety and effectiveness of these devices and that there is sufficient information to establish a performance standard.

4. Summary of data on which the recommendation is based: The Panels based their recommendations on the Panel members' personal knowledge of, and clinical experience with, the devices and on the widespread use of these devices in medical practice.

5. Risks to health: (a) Trauma, hemorrhage, or perforation: Improper size, shape, rigidity, arrangement, or finish on parts of these devices may cause tissue trauma, hemorrhage, or perforation. (b) Adverse tissue reaction: If the materials used in the construction of the devices are not biocompatible, the patient may have an adverse tissue reaction. (c) Wound contamination: If a gastroenterostomy tube breaks, the contents may contaminate the surgical wound. (d) Tissue necrosis (destruction): If the devices exert excessive pressure on the intestine, they may cause tissue necrosis. (e) Ineffective treatment: If the devices are too flexible, they may not be able to pass into the gut, or if the tube is defective and does not allow the intestinal contents to be drained, ineffective treatment could result. (f) Inability to recover tube: If the thin structure of the double lumen tube becomes knotted, or the balloon does not deflate, there may be difficulty in extracting the tube. (g) Infection: Defects in the design and construction of the device preventing adequate cleaning or sterilization, or defects in packaging or processing of a device sold as sterile, may allow pathogenic organisms to be introduced and cause an infection in the patient. (h) Kinking of gut: If intestinal splinting tubes are too supple, the gut may kink. (i) Erosion of gut: If intestinal splinting tubes are too stiff, erosioin of the gut may result.

Proposed Classification

FDA agrees with the recommendations of both Panels and is proposing that gastrointestinal tubes and accessories be classified into class II (performance standards). The agency believes that a performance standard is necessary for these devices because general controls alone are insufficient to control the risks to health presented by the devices. A performance standard would provide reasonable assurance of the safety and effectiveness of the devices. The agency also believes that there is sufficient information to establish a performance standard for these devices.

FDA has reviewed the recommendations of the Gastroenterology-Urology Device Classification Panel and of the General and Plastic Surgery Device Classification Panel for gastrointestinal tubes and accessories, and has concluded that the classification of these devices should be published in the part of the Code of Federal Regulations for gastroenterology and urology devices.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and a new structure. FDA published notices of these changes in the Federal Register of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). This proposed classification regulation identifies each device panel by the former name. Further information regarding the device advisory committees and list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the Federal Register.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs proposes to amend Part 876 in Subpart F by adding new § 876.5980, to read as follows:

§ 876.5980 Gastrointestinal tube and accessories.

(a) *Identification.* A gastrointestinal tube and accessories is a device that consists of flexible or semi-rigid tubing used for instilling fluids into, withdrawing fluids from, splinting, or suppressing bleeding of the alimentary tract. This device may incorporate an integral inflatable balloon for retention or hemostasis. This generic type of device includes the hemostatic bag, irrigation and aspiration catheter (gastric, colonic, etc.), rectal catheter, sterile infant gavage set, gastrointestinal string and tubes to locate internal bleeding, double lumen tube for intestinal decompression or intubation, feeding tube, gastroenterostomy tube, Levine tube, nasogastric tube, single lumen tube with mercury weight balloon for intestinal intubation or

decompression, and gastro-urological irrigation (for gastrological use).

(b) *Classification.* Class II (performance standards).

Interested persons may, on or before March 24, 1981 submit to the Dockets Management Branch (formerly the Hearing Clerk's office) (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, written comments regarding this proposal. Four copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: December 19, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 81-606 Filed 1-22-81; 8:45 am]

BILLING CODE 4110-03-M

federal register

Friday
January 23, 1981

Part III

Department of the Interior

Fish and Wildlife Service

U.S. Fish and Wildlife Service Mitigation Policy

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

U.S. Fish and Wildlife Service Mitigation Policy; Notice of Final Policy

AGENCY: U.S. Fish and Wildlife Service, Department of the Interior.

ACTION: Notice of Final Policy.

SUMMARY: This Notice establishes final policy guidance for U.S. Fish and Wildlife Service personnel involved in making recommendations to protect or conserve fish and wildlife resources. The policy is needed to: (1) ensure consistent and effective Service recommendations; (2) allow Federal and private developers to anticipate Service recommendations and plan for mitigation needs early; and (3) reduce Service and developer conflicts as well as project delays. The intended effect of the policy is to protect and conserve the most important and valuable fish and wildlife resources while facilitating balanced development of the Nation's natural resources.

EFFECTIVE DATE: January 23, 1981.

ADDRESS: Comments submitted on the proposed policy may be inspected in Room 736, 1375 K Street, N.W., Washington, D.C. 20005, between 9 a.m. and 3 p.m. on business days.

FOR FURTHER INFORMATION CONTACT: John Christian, Policy Group Leader—Environment, U.S. Fish and Wildlife Service, Department of the Interior, Washington, D.C. 20240, (202) 343–7151.

SUPPLEMENTARY INFORMATION:

BACKGROUND

The development and use of the Nation's natural resources continues in an effort to provide people with their basic needs and to improve their lives. Fish and wildlife and the intricate fabric of natural resources upon which they depend provide benefits to people in many ways. Fishing, hunting, and bird watching are basic benefits that come to mind immediately. These activities involve the direct use of these renewable "natural resources." Perhaps a greater benefit, although more difficult for some to understand, is the maintenance of the structure and function of the ecosystem that comprises all living species, including people. The presence of diverse, healthy fish and wildlife populations generally signals a healthy ecosystem which contains those elements necessary for human survival, including unpolluted air an productive land.

That fabric of natural resources called habitat is the supply for fish and wildlife renewal. The life requirements for plant and animal species are varied and complex. Each species requires a different set of environmental conditions for survival and vigorous growth. These conditions form the habitat of the various species. The development and use of natural resources leads to changes in environmental conditions that can redefine habitat and thus change the mix and abundance of plant and animal species.

A given change in habitat might increase or decrease overall habitat productivity or result in gains or losses of species that are valuable to people or ecosystems. In some cases, habitat modifications can also increase the numbers of species considered undesirable, and create a nuisance to people or crowd out more valuable species. Therefore, development actions can cause habitat changes that are considered either beneficial or adverse depending on the intended wildlife management objectives.

When professional biologists determine that a given development action will cause a change that is considered adverse, it is appropriate to consider ways to avoid or minimize and compensate for such adverse change or loss of public resources. This is commonly referred to as mitigation.

Fish and wildlife resources are public in nature. The Service has provided Federal leadership for over 40 years to protect and conserve fish and wildlife and their habitat for the benefit of the people of the United States. Under its legal authorities, the Service conducts fish and wildlife impact investigations and provides mitigation recommendations on development projects of all kinds. These efforts have been conducted through a full partnership with State agencies responsible for fish and wildlife resources, and since 1970, with the National Marine Fisheries Service of the U.S. Department of Commerce. The recommendations of the Service are considered by the Federal development and regulatory agencies for their adoption as permitted by law.

Over the years, the Service has reviewed innumerable project and program plans with the potential to adversely affect fish and wildlife resources. The mitigation recommended in recent years by Service personnel to prevent or ameliorate adverse impacts has been governed primarily by a broad policy statement on mitigation promulgated in 1974 and by specific guidelines issued as needed. Recent events have prompted the Service to make known its mitigation objectives and policies. Specific management needs include:

(1) Recent legislative, executive and regulatory developments concerning the environment which had led to a need to update and expand the advice within the 1974 Service policy statement;

(2) Increasing Service review responsibilities which require issuance of comprehensive guidance on mitigation to maintain the quality and consistency of Service mitigation recommendations;

(3) An explicit summary of Service mitigation planning goals and policies to be disclosed to developers and action agencies to aid their earliest planning efforts; and

(4) Finally, the current national need to accelerate development of energy resources which requires that early planning decisions be made that can minimize conflict between important environmental values and energy development.

For these reasons, it was determined to be necessary to fully outline the overall mitigation policy of the U.S. Fish and Wildlife Service. The final Service policy statement integrates and outlines the major aspects of current Service mitigation efforts. Intended as an overview document, its guidance is based on an analysis of current Service field recommendations and on the guidance contained in recent Service management documents.

This policy conditions only the actions of Service employees involved in providing mitigation recommendations. It does not dictate actions or positions that Federal action agencies or individuals must accept. However, it is hoped that the policy will provide a common basis for mitigation decisionmaking and facilitate earlier consideration of fish and wildlife values in project planning activities.

Finally, it should be stressed that this Service policy outlines mitigation needs for fish and wildlife, their habitat and uses thereof. Others interested in mitigation of project impacts on other aspects of the environment such as human health or heritage conservation may find the Service policy does not fully cover their needs. There was no intent to develop a mitigation policy that covers all possible public impacts except those stated. However, the Service strongly believes that preservation and conservation of natural resources is a necessary prerequisite to human existence.

DISCUSSION

The following items are included to provide a better understanding of the policy's relationship to other guidance and to improve the understanding of its technical basis.

1. Relationship of Service Mitigation Policy to Other Service Planning Activities.

The final policy is designed to stand on its own. However, for a clearer perspective of the relationship of the policy to the goals and objectives of the U.S. Fish and Wildlife Service, it can be read with the Service Management Plan and the Habitat Preservation Program Management Document.

The Service Management Plan describes the overall direction of the Service and the interrelationships of the four major categories, including Habitat Preservation, Wildlife Resources, Fishery Resources, and Federal Aid-Endangered Species.

The Habitat Preservation Program Management Document outlines what the Service will do over a one- to five-year period to ensure the conservation and proper management of fish and wildlife habitat. It provides guidance to Service personnel and other interested parties on the goals, objectives, policies, and strategies of the Habitat Preservation Category of the U.S. Fish and Wildlife Service. It includes a discussion of important resource problems that the Service believes require priority attention.

2. Relationship of the Mitigation Policy to any future Fish and Wildlife Coordination Act (FWCA) Regulations and the National Environmental Policy Act (42 U.S.C. 4321–4347) (NEPA).

The Service migitation policy outlines internal guidance for Service personnel for all investigations and recommendations for mitigation under relevant Service authorities, including the FWCA and NEPA. However, the coverage of the policy is basically different from that of any future FWCA regulations as was explained in the preamble to the proposed policy (September 9, 1980) (45 FR 59486–59494). Any future FWCA regulations will principally recommend procedures for all affected agencies to ensure compliance with that Act before and after they receive fish and wildlife agency recommendations. In contrast, the Service mitigation policy only applies to Service personnel and outlines mitigation planning goals and policies for impact analyses and recommendations.

The relationship of the migitation policy to NEPA requirements is also a complementary one. The regulations implementing NEPA (43 FR 55978–56007) recognize "appropriate" mitigation recommendations as an important element of the rigorous analysis and display of alternatives including the proposed action (40 CFR Part 1502.14). The NEPA regulations later specify that Service impact analyses and mitigation recommendation shall be used as input to preparation of draft environmental impact statements (DEIS) as follows:

"To the fullest extent possible, agencies shall prepare draft environmental impact statements concurrently with and integrated with environmental impact analyses and related surveys and studies required by the Fish and Wildlife Coordination Act (16 U.S.C. 661 et seq.), the National Historic Preservation Act of 1966 (16 U.S.C. 470 et seq.), the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.), and other environmental review laws and executive orders." (40 CFR 1502.25(a)).

These provisions provide clear direction that NEPA requirements are not duplicative of or substitute for mitigation recommendations developed under the Fish and Wildlife Coordination Act and other Service authorities. In fact, the NEPA regulations require that Service recommendations be fully integrated into the NEPA process as vital information necessary to comply with NEPA.

3. Focus of the Policy on Habitat Value.

The policy covers impacts to fish and wildlife populations, their habitat and the human uses thereof. However, the primary focus in terms of specific guidance is on the mitigation of losses of habitat value. Population estimates are considered by many to be unreliable indicators for evaluating fish and wildlife impacts. Sampling errors, cyclic fluctuations of populations and the lack of time series data all contribute to the problem. Therefore, the Service feels that habitat value, by measuring carrying capacity, is a much better basis for determining mitigation requirements. However, the use of population information is not foreclosed by the policy. In fact, concern for population losses led to formulation of the "General Policy" section to ". . . seek to mitigation all losses of fish, wildlife, their habitat and uses thereof. . . ." The Service agrees that migitation of population losses is a necessary aspect of this policy, for example, when habitat value is not affected but migration routes are blocked off as in the case of dam construction on a salmon river.

Mitigation of human use losses of fish and wildlife resources is also a necessary aspect of the policy. However, if mitigation of habitat value occurs, then in the majority of cases, losses of human use are also minimized. But, in some cases, public access to the resource may be cut off by the project and significant recreational or commercial benefits may be lost.

In those cases where mitigation of habitat value is not deemed adequate for losses of fish and wildlife populations or human uses, the Service will seek to mitigate such losses in accordance with the general principles and concepts presented in the policy. However, in the majority of cases, the Service feels that mitigation of impacts on habitat values will assure a continuous supply of fish and wildlife populations and human use opportunities.

The Service has recently revised and updated its *Habitat Evaluation Procedures* (HEP). It can be used, where appropriate, to determine mitigation needs based on habitat value losses. In some cases, the project may not be deemed appropriate for applying the methodology as in the case of activities conducted on the high seas under the Outer Continental Shelf (OCS) leasing program. In such cases, the use of other methods to describe habitat value impacts is clearly acceptable, including the best professional judgment of Service biologists. Other limitations related to the use of HEP are outlined in the Ecological Services Manual (100 ESM 1). The HEP are available upon request from the Chief, Division of Ecological Services, U.S. Fish and Wildlife Service, Department of the Interior, Washington, D.C. 20240.

4. Acre for Acre Loss Replacement Is Not Necessarily Recommended by the Policy.

As explained above, the policy focuses on habitat value. The habitat value of an acre of habitat can vary considerably depending on the type of vegetation and other physical, biological or chemical features. Service recommendations, therefore, will be based on the habitat value adversely impacted, as opposed to strictly acreage. For example, loss of one acre of a specific type of wetland might result in recommendations for replacement of less than one acre of a different type of wetland of greater habitat value. If the habitat value of the wetland available for replacement was equal to that lost, then recommendations could be on an acre-for-acre basis.

5. Rationale for Mitigation Planning Goals.

In developing this policy, it was agreed that the fundamental principles guiding mitigation are: 1) that avoidance or compensation be recommended for the most valued resources; and 2) that the degree of mitigation requested

correspond to the value and scarcity of the habitat at risk. Four Resource Categories of decreasing importance were identified, with mitigation planning goals of decreasing stringency developed for these categories. Table 1 summarizes all categories and their goals.

Table 1: Resource Categories and Mitigation Planning Goals

Resource category and designation criteria	Mitigation planning goal
1 High value for evaluation species and unique and irreplaceable.	No loss of existing habitat value.
2 High value for evaluation species and scarce or becoming scarce.	No net loss of in-kind habitat value.
3 High to medium value for evaluation species and abundant.	No net loss of habitat value while minimizing loss of in-kind habitat value.
4 Medium to low value for evaluation species.	Minimize loss of habitat value.

POLICY HISTORY

The policy statement integrates and outlines the major aspects of current Service mitigation efforts. Intended as an overview document, its guidance is based on an analysis of over 350 Service field recommendations and on the guidance contained in recent Service management documents. The proposed policy was published in the Federal Register on September 9, 1980 (45 FR 59466–59494). A correction notice which corrected insignificant formatting and typographical errors was published on September 19, 1980 (45 FR 62564). A notice extending the comment period on the proposed policy to November 10, 1980, was published on October 8, 1980 (45 FR 66878). The final publication is based on full and thorough consideration of the public comments as discussed below.

RESPONSE TO COMMENTS

Over 90 sets of comments were received on the proposed policy. All comments were thoroughly analyzed and cataloged and considered. Many commentors expressed agreement with Service publication of the policy, sensing a more consistent and predictable Service approach to mitigation recommendations and a resultant decrease in the degree of conflict with developers. Many felt the policy represented a rational approach to fish and wildlife resource management, and that it would provide for adequate protection and conservation of the Nation's fish and wildlife resources. The underlying concept that the degree of mitigation requested should correspond to the importance and scarcity of the habitat at risk was also supported by many commentors. Numerous commentors also praised its scope, cohesiveness and clarity, and stressed that it should provide valuable guidance for Government personnel providing technical and project planning assistance.

Detailed responses to significant comments follow:

GENERAL COMMENTS ON THE PROPOSED SERVICE MITIGATION POLICY

Comment: Although the Service prepared an Environmental Assessment and, from its findings, concluded that policy issuance did not constitute a major Federal action which would significantly affect the quality of the human environment within the meaning of Section 102(2)(C) of the National Environmental Policy Act (NEPA), a few commentors disagreed with the Service's conclusion that an Environmental Impact Statement (EIS) was not necessary for the proposed action.

Response: During policy development, the Service took action to determine if preparation of an environmental impact statement under NEPA was required. Although section 1508.18 of the Council on Environmental Quality's (CEQ) Regulations for implementing the procedural provisions of NEPA classified adoption of an official policy as a "Federal action," it remained unclear as to whether this action was "major," or whether it would "significantly" affect the quality of the human environment, since policy implementation would not result in or substantially alter agency programs. As was stated in the preamble, this policy is basically a distillation of approaches and policy currently being practiced by Service field personnel in providing mitigation recommendations.

In order to resolve this uncertainty, an Environmental Assessment was prepared for the proposed and final policy. By doing so, the Service has complied with one of the major purposes of the NEPA regulations, which is to have NEPA applied early in the decisionmaking process.

The NEPA regulations do not, in the opinion of the Service, require that the agency speculate on future, possible events without any relation to actual, existing impacts of an action. Section 1502.2 of the NEPA regulations directs that an EIS is to be analytical, however, the Service action simply does not create any impacts capable of such analysis. Thus, there is no reasonable or scientific way for the Service to analyze any environmental impacts, significant or otherwise, as discussed in §§ 1502.16 and 1508.27.

This problem is particularly vexsome when those impacts depend on future contingencies and can be more appropriately analyzed when those contingencies occur. Even § 1502.4, which discussed EIS's in terms of broad agency actions, does so in the context of specific impacts caused by the action. In the opinion of the Service, it has fully complied with the letter and spirit of NEPA and its regulations.

Comment: One commentor felt that the preamble statement that an EIS would be premature at this time contradicted a finding of no significant impact.

Response: The Service sees no contradiction with a finding of no significant impact and the statement that an EIS is premature. The finding of no significant impact derives from an analysis showing that the policy has no significant impacts amenable to analysis at the present time. However, when in the future the Service does apply the policy in developing mitigation recommendations for a major Federal action which might significantly affect the quality of the human environment, then the environmental impacts associated with implementing those recommendations which are considered justifiable by the development agency can be analyzed by that development agency. The Service has no way of predicting which of its recommendations will be accepted by the developer; therefore, analysis of impacts of accepted mitigation recommendations is the responsibility of the developer.

Comment: One commentor was of the opinion that an EIS "should be prepared for the Service's proposed mitigation recommendations on each project." Moreover, the commentor felt that a significant portion of these EIS's should be devoted to analysis of economic impacts.

Response: Mitigation recommendations and actions cannot be meaningfully analyzed except in the context of the development action initiating them. And, since an EIS would be required for any major Federal action which would significantly affect the quality of the human environment and whose alternatives would include consideration of mitigation, a separate EIS would not be necessary for mitigation actions.

Under the FWCA, the action agency which makes the ultimate decision is to include all "justifiable mitigation means and measures" in project formulation. The burden of analyzing the economic impacts of "justifiable" mitigation measures therefore rests primarily with

the project sponsor, who will likely use the Water Resources Council's Principles and Standards to assist in the analysis.

Comment: The substantive requirements of the Service mitigation policy should be consistent with the requirements of the National Environmental Policy Act's implementing regulations and the Water Resources Council's Principles and Standards.

Response: We agree. The proposed and final policy have been developed consistent with the substantive and procedural requirements or these regulations.

Comment: The Environmental Assessment identifies as one of the advantages of the proposed mitigation policy the establishment of "* * * minimum performance standards for FWS recommendations (which would serve as benchmarks by which the FWS and developers or action agencies * * * could assess individual Service mitigation proposals." However, neither the Federal Register notice nor the Environmental Assessment identify or discuss these "benchmarks."

Response: The term "benchmarks" referred to the mitigation goals and planning procedures. Both the proposed policy preamble and its Environmental Assessment discussed these guidelines, explaining their derivation and importance to policy purposes. However, a point of clarification is needed regarding these guidelines. It is the recommendations made by Service personnel that would be measured against these standards, not the mitigation implemented by an action agency. The final policy makes this point explicit.

Comment: Many commentors argued that the proposed policy goes beyond that authorized by law. Specific concern was expressed over the use of words that were mandatory in tone (e.g., "require" and "must") as opposed to advisory. In addition, some commented that the Service has no authority to support or oppose projects as stated in the policy.

Response: The Service agrees that the legal authorities for the mitigation policy do not authorize the Service to exercise veto power over land and water development activities. That understanding was implicit in the proposed policy. Appropriate changes have been made in the policy to more explicitly recognize and signify the advisory nature of the Service responsibility.

However, it should be clearly noted that the Fish and Wildlife Coordination Act places clear mandatory requirements on Federal development agencies falling under that Act's authority to (1) consult with the Service, National Marine Fisheries Service (NMFS) and State agencies responsible for fish and wildlife resources; (2) incorporate such reports and recommendations in one overall project report; (3) provide "full consideration" of the "reports and recommendations;" (4) include in the project plan "such justifiable means and measures for wildlife purposes as the reporting agency finds should be adopted to obtain overall maximum project benefits;" and (5) other requirements related to funding and land acquisition.

The clear intent of Congress was that recommendations developed by the U.S. Fish and Wildlife Service, NMFS, and State agencies responsible for fish and wildlife resources be taken seriously, and we know of no law which prohibits the Service from taking a position for or against a project when making mitigation recommendations.

Comment: The policy will adversely impact developmental interests.

Response: The goal of the policy is to provide for equal consideration of fish and wildlife conservation while facilitating development.

Congress has clearly stated that "wildlife conservation shall receive equal consideration and be coordinated with other features of water-resource development programs" (Pub. L. 85-624, Fish and Wildlife Coordination Act). This advice is further amplified in Senate Report 1981 on the FWCA (84th Congress, 2nd Session (1958)). The Congress recognized that in some instances, the level of dollar benefits to some purposes might have to be diminished "in some slight degree" in order to accomplish the fish and wildlife conservation objectives of the Act.

However, policy issuance should benefit developmental interests. By providing developers with a clear picture of Service mitigation concerns and priorities, the policy will allow developers to anticipate Service mitigation recommendations prior to final decisions on project design and location. By reducing a developer's planning uncertainties, the policy will result in lowered project costs and fewer project delays and conflicts.

Comment: Does the policy present general guidance or minimum required standards? The Service appears to be trying to establish required standards

Response: The final policy sets out mitigation goals and planning guidance to guide the development of Service mitigation recommendations. It does not require absolute strict adherence to a required standard. Changes have been made to reflect this.

Comment: No mention is made of the State role in mitigation planning to assure a compatible approach. The States' authorities and decisionmaking prerogatives with respect to fish and wildlife resources should be denoted and the States' roles in mitigation should be emphasized further.

Response: A compatible approach is desirable. We have included appropriate changes. However, the policy is solely for Service personnel. There is no intent to infringe on the States' prerogatives.

Comment: The policy should require full public disclosure of Service mitigation analyses, determinations, and recommendations.

Response: We agree that full disclosure of Service analyses, determinations and recommendations during the mitigation process would serve the public interest. All public documents associated with Service recommendations for mitigation on specific land and water developments are available for review in Ecological Services field offices. No change in the policy is necessary.

Comment: The Service should specifically address the acid rain problem and its policy. In particular, the policy should address the impact of Federal policies and programs that support power plant conversions to coal.

Response: The Service currently reviews such Federal actions under NEPA, since these policies and programs are likely to require an EIS. Because acid rain has been highlighted as an Important Resource Problem (IRP) by the Service, environmental analyses which do not adequately address acid rain problems will receive particular attention by Service reviewers. Our comments will be technically reinforced by Service research already being conducted in this area. Since the policy already covers this issue, no change is necessary.

Comment: Could the mitigation policy call for a recommendation as extreme as reflooding of the Mississippi River Valley?

Response: The mitigation policy would not lead to so extreme a recommendation because it does not apply to development actions completed prior to enactment of Service authorities or exempted by those authorities. In those situations where the policy does apply, there will be no recommendations for mitigation over and above the level of impacts associated with a project. This policy acts to minimize impacts of projects, not reverse them.

Comment: Which agency enforces this policy and what power does it have?

Response: This is a policy that applies only to Service personnel. It does not predetermine the actions of other Federal agencies, nor the actions of State agencies or developers. Although the policy statement is not judicially enforceable, the Service will administer the policy by monitoring the mitigation recommendations made by its own personnel.

Comment: Too often land acquired for mitigation does not provide the spectrum of resource values previously available because the managing agency's philosophy prevents it from managing the land for a mix of goals.

Response: Lands acquired for mitigation purposes must provide the specific mitigation benefits for which there were intended. Secondary land uses, such as provision of timber, oil and gas exploration, or recreational benefits, should be attempted where these uses are compatible with the mitigation lands' primary purpose. This concept has been added to the policy.

SPECIFIC COMMENTS ON THE MITIGATION POLICY

(These comments are keyed to sections of the proposed policy.)

I. Purpose

Comment: Why is this policy apparently unconcerned with flora?

Response: Mitigating for fish and wildlife loses necessarily means dealing with the plant communities on which all animal life indirectly depends. When habitat is preserved, it is the plant communities that are the vast bulk of the living material of that habitat.

Plants *per se* are addressed by other authorities of the Service which are not within the scope of this policy, such as the Endangered Species Act and associated regulations.

II. Authority

No comments.

III. Scope

Comment: How does the policy affect projects already completed or under construction?

Response: Appropriate changes in the Scope section have been made to clarify policy coverage with regard to completed projects or projects under construction.

Comment: Since Federal permit renewals will result in no new effects on the environment, they should be exempt from the policy.

Response: The permit or license renewal process provides an opportunity to re-evaluate the project. Depending on new scientific information concerning impacts, the adequacy of past developer mitigation efforts, or new authorities, new mitigation recommendations may be necessary.

Not infrequently, permit or license holders use the renewal process as a convenient occasion to seek changes in their permits. Any changes in permit or license holders' activities have to be evaluated to determine whether or not they necessitate new mitigation recommendations.

This policy, therefore, will be used by the Service in permit or license renewal proceedings, keeping in mind that Service recommendations are advisory to action agencies. Appropriate changes were made in the policy to reflect this position.

Comment: Does this policy apply to man-induced wetlands?

Response: Where the Service has the authority and responsibility to recommend mitigation for these habitats, the tenets of the policy shall apply.

Comment: There is a need for a mechanism for evaluating enhancement and a means to differentiate it from mitigation.

Response: Although enhancement is an important concern of the Service, the Service mitigation policy should not serve as the primary vehicle for discussing enhancement. The final policy does differentiate between enhancement and mitigation recommendations by defining enhancement to include measures which would improve fish and wildlife resources beyond that which would exist without the project and which cannot be used to satisfy the appropriate mitigation planning goal. As for evaluating enhancement, it would appear likely that many of the procedures that can be used to evaluate mitigation can be used to evaluate enhancement.

Comment: What is the basis for the policy position that enhancement cannot occur until all losses are compensated? There is no legislative history for this.

Response: Unfortunately, the term "enhancement" suffers from wide differences in semantic usage. The proposed policy used the term to be synonymous with improvements beyond the achievement of full mitigation. This strict interpretation appeared to spark controversy.

The final policy incorporates a different usage of the term. Enhancement is used to describe measures not necessary to accomplish mitigation purposes.

Comment: The policy should credit towards mitigation goals those habitat value increases associated with areas of the habitat which are enhanced by the project. Habitat value should be computed for enhancement activities, and the inclusion of habitat enhancement factors would provide for a more accurate estimate of the project's impact on the environment.

Response: Use of the term "habitat enhancement" to describe development or improvement efforts is confused by this comment. The mitigation policy does not cover enhancement as we have described it. However, where habitat improvement or development caused by a project will result in habitat value increases, it may be considered as mitigation when consistent with the resource category designation criteria and the appropriate mitigation planning goal.

Comment: There should be a clear statement that all opportunities for enhancement of fish and wildlife resources be thoroughly considered and included in project plans to the extent feasible.

Response: We agree. Appropriate changes were made.

IV. Definition of Mitigation

Comment: Some commentors indicated concern over the definition of mitigation as used in the policy. Specific concern was expressed that those aspects of project planning that include avoidance or actions to minimize impacts should be considered good project planning and that mitigation should be confined solely to actions to compensate for resource losses.

Response: The Service agrees that avoidance or actions to minimize impacts should be part of the early design of projects and not just and afterthought. Some consider mitigation to be a separate and distinct process that occurs after project planning has been completed. The legally binding definition of mitigation as used in the regulations to implement the National Environmental Policy Act (NEPA) can have the effect of altering this notion through incorporation of all those actions that can lessen project impacts throughout the planning process.

The policy has been modified to more clearly state that the Service supports and encourages incorporation of features that will reduce adverse impacts on fish and wildlife resources as part of early planning and project design in order to avoid delays or conflicts. But without the emphasis on avoidance and minimization provided by the NEPA regulations' definition, there would be little incentive for development agencies to incorporate such features. The Service, therefore, supports and adopts that definition.

V. Mitigation Policy of the U.S. Fish and Wildlife Service

Comment: A number of documents are referred to in the draft policy. They are essential to the functioning of the policy and should be published as an appendix and otherwise made available for public comment, including public hearings.

Response: The preamble to the proposed policy clearly indicated that the policy was designed to stand on its own. The referenced documents are not essential to the functioning of the policy. For instance, even though Service filed personnel will rely basically on the *Habitat Evaluation Procedures* in conducting project analyses, the policy indicates that other methods can be used where appropriate and available. The concept of habitat value has been recognized throughout the history of fish and wildlife management. It is not new.

Regardless of the fact that the policy stands on its own, the referenced documents have undergone varying degrees of public scrutiny independent of the mitigation policy. For instance, a notice of availability and request for public comment was published in the Federal Register for the Service Management Plan and Program Management Document on September 29, 1980 (45 FR 64271–64272). A habitat-based evaluation methodology has been under active development in the Service since 1973. The first document officially called the *Habitat Evaluation Procedures* was published in 1976 with the most recent revision in 1980. During this 7 year period, The Nation's top wildlife biologists have been consulted, both within the government and outside. The procedures have been presented at numerous public conferences and have been the subject of intense scrutiny.

Finally, the referenced documents were made available to reviewers. Over 75 requests were made and immediately filled to allow commentors the full benefit of this information in preparing comments, including the group providing this comment. Minor changes were made in the policy to more clearly indicate that the policy can stand on its own.

A. General Principles

Comment: Pursued to its logical conclusion, the concept of fish and wildlife as public trust resources could lead to serious restrictions on the use and management of private lands.

Response: When the concept of personal property rights is exercised in such a way as to jeopardize the interests of the public in fish and wildlife resources on public or private lands, the government may use its authorities to see that any damage to those interests is prevented or mitigated.

The Service does and will attempt to fulfill its duties within its authorities and in a reasonable manner. It is certainly cognizant of the fact that pursuing any concept to its logical extreme may lead to unreasonableness, and will continue to strive to prevent this from happening in its mitigation activities.

Comment: What does "equal consideration" of wildlife conservation mean within the context of the Fish and Wildlife Coordination Act and this mitigation policy?

Response: "Equal consideration" was not defined in the Act or this policy, and has no particular meaning in the context of this policy. This policy only covers Service recommendations, not action agency requirements.

Comment: The proposed Service policy now absolutely precludes support for non-water dependent projects within or affecting waters of the United States. This should be modified to conform to the requirements of Federal regulatory agencies such as the Army Corps of Engineers (COE) and the Environmental Protection Agency (EPA).

Response: The Service policy clearly does not exercise veto power over development actions. Moreover, the Service will execute its responsibilities fully within the context of existing laws and regulations governing environmental reviews. However, the Service feels that wetlands and shallow water habitats should not be subjected to *needless* development of the public values of these areas. The Service policy statement does not include water dependency as the "sole" criterion for its recommendations. Other factors, including the likelihood of a significant loss, are considered prior to a Service recommendation for support of a project or the "no project" alternative.

The provisions of the policy have been modified to make such recommendations discretionary.

Comment: Congress, not the Service, is the entity that has the authority to require and fund compensation for Federal projects.

Response: We agree. The Policy has been modified.

Comment: Mitigation should not be required for an indefinite period of time.

Response: Mitigation is appropriate for the entire time period that habitat losses persist, which includes the life of the project and as long afterwards as the impacts of the project continue to exist. The policy reflects this position.

Comment: Under "General Principles," the policy should seek and endorse novel or imaginative approaches to mitigation.

Response: The Service fully supports development of novel and imaginative approaches that mitigate losses of fish and wildlife, their habitat, and uses thereof, and has been in the forefront of such development. No change is necessary.

Comment: An Indian tribe strongly supports the Department of the Interior's recognition of the role of Indian tribal governments in mitigation planning.

Response: Our national heritage and, in some cases, the livelihood of Indian tribes, can be directly linked with the conservation and use of fish and wildlife resources. Therefore, the U.S. Fish and Wildlife Service will continue to recognize and support Indian tribal governments' efforts to mitigate impacts on these resources.

B. U.S. Fish and Wildlife Service Mitigation Goals by Resource Category

Comment: The mitigation goals for the resource categories were characterized as: reasonable, too strict, or not strict enough.

Response: As was explained in the preamble to the draft policy, the resource categories and their mitigation goals were abstracted from an analysis of actual field recommendations. The designation criteria for the resource categories (replaceability, scarcity, and value for evaluation species) are the basic decision factors used by Service personnel to assess relative mitigation needs. The mitigation goals represent reasonable mitigation expectations for projects, viewed in the light of our two-faceted goal—(1) to conserve, protect and enhance fish and wildlife and their habitats, and (2) to facilitate balanced development of our Nation's natural resources.

Numerous comments were received commending us on the balanced approach embodied in this policy. Since its tenets derive from field recommendations and comments, the credit belongs entirely to our field staff.

Some commentors criticized the mitigation goals. One group felt that one or several of the mitigation goals were too strict. These commentors objected to what they considered to be unreasonably high goals for fish and wildlife mitigation. In contrast to this first group, another set of commentors felt that the goals were not strict enough, and called attention to our legislative responsibility to seek protection for all fish and wildlife resources.

Our response is that the mitigation goals represent the best professional judgment and cumulative experience of Service field supervisors in developing mitigation proposals that would satisfy

our legislative mandates, operate under time and money constraints, and assist in maximizing overall social well-being. The basic concept, therefore, is unchanged in the final policy, although minor changes were made to improve understanding based on the comments.

Comment: Rather than rely on strict inflexible mitigation goals, the Service should use "tradeoff" evaluation procedures in developing mitigation proposals.

Response: It is the responsibility of the Federal action agency to use tradeoff evaluation procedures consistent with the Water Resources Council's Principles and Standards, where applicable, to select a mitigation alternative that will assist in maximizing overall project benefits. The Fish and Wildlife Coordination Act specifies that "the project plan shall include such justifiable means and measures for wildlife purposes as the *reporting agency* (emphasis added) finds should be adopted to obtain maximum overall project benefits." The role of the Service is to represent those public trust resources under its jurisdiction. The proposed policy outlined a system wherein the highest valued resources would be subject to the most protective mitigation recommendations. Few, if any, commentors have disagreed with this valuation perspective. Therefore, no changes were made.

However, many commenters have questioned the reasonableness of a seemingly uncompromising system that did not appear to allow occasional deviations from these goals.

The system is not rigid. As stated in the Purpose section of the policy, the policy advice will be used as guidance for Service personnel, but variations appropriate to individual circumstances are permitted.

Comment: Numerous commentors raised the issue of the somewhat subjective nature of identifying certain species as "important" for the purposes of the policy. In addition, commentors indicated that such distinctions could lead to mis-classification of habitats in terms of resource categories and that clear criteria were needed. Finally, many commentors felt that the artificial distinction of certain species as "important" was both a violation of the public trust and Service legal authorities.

Response: People perceive some species to be more important than others. In the context of biology and ecology, all species are important, serving a useful purpose within the confines of their biological niche. The mitigation policy must address *both* the needs and desires of human society *and* the ecosystem perspective. This is a difficult task. But human decisions concerning fish and wildlife resources in the face of a development action require judgment about the values of what will be lost and the need to avoid or minimize and compensate for loss of such values.

The specific criteria for such determinations are also exceedingly difficult to frame in a National policy context. The importance of a species to society depends on a complex, changing mix of factors. The importance of a species within an ecosystem is also subject to many dynamic factors. But human decisions about the level and type of mitigation necessary for development actions must be made in the absence of perfect information concerning these factors. In addition, the Service biologist reviewing project impacts has severe constraints on the number of species and ecosystem linkages that can be analyzed given funding, personnel and time limitations. Somehow, choices must be made.

We have deleted the term "important species" from the policy and replaced it with a more precise term, "evaluation species." The criteria for selection of evaluation species still includes those species of high resource value to humans or that represent a broader ecological perspective of an area. Other changes have been made related to the determination of resource categories to allow for additional public input and resource agency coordination into such determinations, where appropriate.

The effect of this change is not intended and shall not be interpreted to broaden the scope or extent of application of this policy. But it does remove the implication that species can be ranked against each other in terms of their overall importance to society, which many considered quite beyond the capability of human beings.

Comment: The wording of the policy should clearly indicate that species selected for analysis should only be those demonstrated to actually utilize an area.

Response: We agree, except for situations where fish and wildlife restoration or improvement plans have been approved by State or Federal resource agencies. In that case the analysis will include species identified in such plans. Appropriate clarification has added to the definition of evaluation species.

Comment: The proper focus of the policy should be the ecosystem rather than particular species.

Response: Aside from the very real technical problems of applying a complex concept such as the ecosystem to mitigation planning, the authorities underlying this policy deal with fish and wildlife and their habitat, rather than ecosystems.

Ecosystems are addressed under this policy in two ways. First, one criterion in the selection of an evaluation species is the biological importance of the species to the functioning of its ecosystem. Secondly, when habitat loss is mitigated, the part of the ecosystem comprising that habitat is itself protected. No changes have been made.

Comment: Recreational use losses may at times have to be directly mitigated. The goal statements should reflect this need.

Response: We agree. Appropriate changes were made.

Comment: In addition to assessing conditions of scarcity from a biogeographical viewpoint, i.e., ecoregions, the policy should also use geopolitical subdivisions, e.g., state boundaries.

Response: As a Federal agency, the Service perceives its major responsibility to be to protect those fish and wildlife and their habitat that are valuable and scarce on a national level, whether or not they transcend state boundaries. However, should State resource agencies with to outline relative scarcity on a more local basis, Service personnel would certainly assist, whenever practicable. This point has been added to the policy.

Comment: The policy should scale the relative need to achieve a particular mitigation goal to the degree a particular habitat will be impacted. For example, if a half-acre of important habitat is affected by a project and it is part of a one-acre plot, this circumstance should lead to a mitigation recommendation different from the situation where the same half-acre is part of a ten thousand acre area. As drafted, the policy does not reflect the differences in these situations.

Response: The Purpose section of the policy states that it will be used as guidance for Service personnel, but variations appropriate to individual circumstances will be permitted. The relative need to achieve a particular mitigation goal depends primarily on the perceived value of the habitat, its scarcity, and the replaceability of the threatened habitat. Other factors, such as scaling considerations, can combine to modify this general Service perspective on what constitutes appropriate mitigation.

Comment: The resource categories and mitigation goals are general, lack definition, and provide no guidance on habitat value. These categories are all

subject to interpretation by the Service field personnel.

Response: It would be counterproductive, if not impossible, for a national policy to be worded as precisely as the commentor suggests and still be implemented in a reasonable manner under numerous and diverse local circumstances. Words used to describe resource categories and mitigation goals do have generally understood meanings. It is essential that field personnel be allowed to exercise professional judgment in applying resource categories and mitigation goals to specific activities. However, numerous clarifying changes were made based on the comments to increase comprehension and understanding.

Comment: It is essential to other agencies' review to know what general types of habitat will be most important in the U.S. Fish and Wildlife Service mitigation policy. At a minimum, some examples of the types of habitat within each category should be given.

Response: The final policy does give guidance on areas that will be generally considered for Resource Category 1 or 2. Providing examples for all resource categories could be misleading since the same type of habitat may fall into several different resource categories, depending on, among other factors, its relative scarcity and quality from one local to another across the nation.

On the other hand, field professionals are generally familiar with the quality and abundance of a given type of habitat that is in their area, so it is preferable not to burden them with potentially inappropriate guidelines of this nature.

Comment: The policy should clearly distinguish between upland habitats and the more valuable wetland habitats.

Response: In some cases, upland habitats may be determined to have resource values equal to or greater than wetland habitats, so a policy that solely favored one habitat type over the other would not be in the best public interest. However, the policy has been changed to indicate that certain habitats within Service-identified Important Resource Problems (IRPs) and special aquatic sites should be given special consideration as Resource Category 1 or 2. The IRPs contain a predominance of wetland coastal areas.

Comment: If you build something in a habitat, it just changes it to another habitat that some other animal or fish lives in—including the human being, although the Service does not seem to appreciate that. For example, if you build a highway, it is bad for dogs, rabbits, opossums and field rats and such that get run over by cars and trucks, but it is good for crows and buzzards that eat dead meat.

Response: The Service has not come across many instances where crows and buzzards could be considered scarce, but when such a circumstance can be documented and verified, the Service will certainly try to protect and enhance valuable highway habitat.

• *Resource Category 1*

Comment: A literal interpretation of the Resource Category 1 mitigation goal would require absolutely no habitat loss—not even a nature trail. Resource Category 1 should be deleted.

Response: Not all environmental changes are adverse to the habitat of a fish and wildlife resource. If a nature trail resulted in an insignificant impact on habitat value that was determined not to be adverse, then the Service would not recommend against it. The policy has been clarified to reflect this point.

Comment: Endangered and threatened species should be included as part of Resource Category 1.

Response: It would be inappropriate to expand the scope of the Mitigation Policy to include threatened and endangered species. The treatment of these species is addressed in an extensive body of complex and detailed legislation and regulation. The Congress has legislated very specific and precise law with regard to threatened and endangered species. Inclusion of these species under this policy would only confuse the issue and compound the difficulties involved in implementation of the Endangered Species Act and its associated regulations. Other reasons are discussed in the scope section of the final policy.

Comment: For all practical purppoees, Resource Categories 1 and 2 adopt a "no growth" policy.

Response: The U.S. Fish and Wildlife Service is not advocating a "no growth" mitigation policy. The means and measures to achieve mitigation for Resource Categories 1 and 2 are designed to provide some flexibility so that limited growth can occur in an environmentally prudent manner. The policy reflects the national consensus that some habitats are of exceptional public value and should be carefully conserved, as evidenced in the Wild and Scenic Rivers Act (Pub. L. 90–542), the Wilderness Act (Pub. L. 88–577), and the National Trails System Act (Pub. L. 94–527).

• *Resource Category 2*

Comment: It is ill-advised to support in-kind replacement involving trading habitat for lesser value habitat which is then improved to support the species affected by the project. It takes too long, and in the meantime, populations supported by the habitat on the project site are lost.

Response: If the period required for improving the replacement habitat to the appropriate condition was exceedingly long, this may be one indication that the habitat at risk was unique or irreplaceable and actually belonged in Resource 1. In that case in-kind replacement through improvement of lesser quality habitat would be an inappropriate mitigation recommendation. Also, additional measures aimed at population restoration could be recommended to restock the area, provided suitable habitat was available to support the stocked species. No changes were made.

Comment: One Commenter was perturbed by an apparently rigid insistence by the policy of in-kind replacement of lost habitat. The commentor pointed out that there could be occasions in which in-kind habitat was not available to a project sponsor.

Response: The policy guideline for Resource Category 2 includes an exception when "* * * in-kind replacement is not physically or biologically attainable". No change was necessary.

Comment: The policy appears to insist upon "acre-for-acre" replacement of in-kind habitat.

Response: The policy does not insist on "acre-for-acre" replacement of in-kind habitat. The mitigation planning goals involving in-kind replacement specifically ask for replacement of in-kind habitat *value*. This point has been further clarified in the definitions section, throughout the policy, and in the policy preamble.

• *Resource Category 3*

Comment: The mitigation goal for Resource Category 3 is not authorized by law and will be difficult to implement due to professional disagreement on satisfactory achievement.

Response: Under the Fish and Wildlife Coordination Act, the Service has the responsibility to recommend compensation for the loss of fish and wildlife resources. The Act does not restrict compensation to in-kind compensation. By recommending out-of-kind compensation under certain circumstances, the Service increases the range of options that developers may use to mitigate project impacts to include development and improvement of marginal resources different from those lost. However, modifications have been made in the policy to indicate that

in-kind replacement is preferred for Resource Category 3.

Comment: The mitigation goal for Resource Category 3 should emphasize that in-kind habitat value replacement is preferable to out-of-kind replacement.

Response: We agree. This point has been brought out in the final policy statement.

Comment: Although out-of-kind replacement is acceptable for Resource Category 3 losses and, under certain circumstances, may be accepted for Resource Category 2 losses, the policy should advise against replacement of rare habitat types for more common habitat types.

Response: We agree with the commentor's point and expect that Service field personnel will recommend mitigation alternatives that incorporate this concept, to the extent practicable. The Service is entirely in favor of preserving and/or promoting habitat diversity. No changes were necessary.

• *Resource Categories 4 and 5*

Comment: Compensation should be included as a means for satisfying the mitigation goal for Resource Category 4.

Response: Appropriate language changes have been made to allow for such recommendations.

Comment: Habitats encompassed by Resource Categories 4 and 5 are the only areas wherein significant increases in fish and wildlife can be realized through habitat improvement. Yet, the mitigation goals for these categories allow continual loss of these areas which possess great potential for improvements in carrying capacity.

Response: The Service appreciates the significance of areas with relatively low existing habitat values with respect to their potential for carrying capacity improvements. In fact, the Service may recommend improvement of these areas' habitat values to mitigate for unavoidable losses in Resource Catorgories 2 and 3. In addition, where these areas are included in a project planning area and are not appropriate for mitigation efforts, the Service will recommend that all opportunities for enhancement of these areas be thoroughly considered and included in project plans, where practicable.

We have amended the policy to include the above guidance.

Comment: Resource Category 5 is confusing and unnecessary. All habitat has some value, no matter how low. It should be redefined or deleted.

Response: We agree. This resource category has been deleted from the final policy.

C. Mitigation Planning Procedures

1. *Mitigation Goals*

Comment: Developers, Federal resource agencies, and the public should participate with the Service and State agencies in making Resource Category determinations and in developing mitigation proposals.

Response: Developers, as well as other members of the public, may provide information that will assist the Service in making Resource Category determinations. This opportunity has been noted in the final policy statement. Moreover, where these parties' inputs will significantly aid in development of mitigation proposals that will adequately satisfy mitigation planning goals, the Service will welcome their input.

Comment: It is hoped that reclassification of habitats in Resource Category 3 to Resource Categories 2 or 1 can be readily employed if and when certain habitats become more scarce.

Response: Resource Category determinations are made on the basis of conditions likely to occur without the project. If those conditions later change, the Resource Category of a given habitat can be redetermined.

However, once a mitigation plan in connection with a given project has been agreed upon, the U.S. Fish and Wildlife Service will not provide new or additional recommendations except under limited circumstances as outlined in the policy under the scope section.

2. *Impact Assessment Methods*

Comment: The policy does not appear to recognize that development activities may also show positive environmental effects. For example, cleared spaces beneath power lines can provide browsing areas for wildlife. Such positive effects should be factored into the mitigation assessment process.

Response: We agree. This point has been included in the final policy statement. The final policy further indicates that the Service and other State and Federal resource agencies shall make the determination of whether a biological change constitutes a beneficial or adverse impact. However, when determining mitigation needs for a planning area, the Service will utilize these policy guidelines to determine whether these positive effects can be applied towards mitigation.

Comment: The draft policy indicates "no net loss" as a goal for certain Resource Categories but it is unclear in defining the time period allowed to restore the land to its original value as in the case of strip mining operations. Maintenance of "no net loss" throughout the life of a long-term operation is not possible.

Response: The policy states that the net biological impact of a specific project proposal is the difference in predicted habitat value between the future with the action and the future without the action. This is based on the procedures established by the Water Resources Council's Principles and Standards. The future with the project determination includes consideration of losses during the life of the project. Under the policy, if the disturbed habitat is of sufficient value for evaluation species to warrant a Resource Category 2 or 3 level determination, the Service will provide recommendations for "no net loss" over the life of the project. The ability of the project sponsor to achieve this goal depends on many factors that cannot be predicted in advance. In many cases, it will be possible to achieve this goal. No change was necessary.

Comment: The with and without analyses should make allowances for human activities and natural species successions which can reasonably be expected to take place in the project area.

Response: We agree. Appropriate changes have been made in this policy.

Comment: Many commentors disagreed with the emphasis placed on the *Habitat Evaluation Procedures* (HEP) within the Service policy statement. Some commentors felt it should be de-emphasized, whereas others felt it deserved further emphasis.

Response: Although references to the more technical aspects of HEP have been deleted, the methodology itself remains one of the Service's more important impact assessment tools. The policy does not recommend exclusive use of HEP, since time or resource contraints may, in some cases, show alternative methods to be more practical. Where HEP habitat value assessments do not fully capture important biological characteristics within a planning area, Service personnel will use supplemental data, methodologies, and/or professional judgment to develop appropriate mitigation proposals.

Comment: What are the "other habitat evaluation systems" alluded to in the policy's section on impact assessment methods? This reference is very vague.

Response: Other systems can include the Habitat Evaluation System (HES) developed by the Department of the Army, and the Instream flow Incremental Methodology (IFIM) of the U.S. Fish and Wildlife Service. Additional systems are referenced by the Water Resources Council in a draft document entitled, "Analysis of

Wetland Evaluation Procedures" and other publications. This information is not appropriate for inclusion into the policy so no change was made.

Comment: If other methodologies are found to be more appropriate for use than the Instream Flow Incremental Methodology (IFIM) for measuring flow impacts, they should be used.

Response: We agree. The final policy does state, however, that consideration should be given to the use of the IFIM.

Comment: Hopefully, this policy will stop the piecemeal destruction of valuable habitat, especially in areas like the Florida Keys where insidious lot-by-lot development continues in low wetland sites with the concurrence of the U.S. Fish and Wildlife Service.

Response: The Service does not concur with piecemeal development where significant resource losses will occur. Cumulative impacts are addressed by this policy. The Service is sensitive to this loss of habitat and will seek mitigation consistent with this policy. No change was necessary.

Comment: Population information should be included as an additional factor in determining mitigation requirements.

Response: We agree. Although population mitigation was an implicit part of the proposed policy, further language clarifying this point has been added to the final policy statement.

Comment: Professional judgment should be used as an alternative method for assessing project impacts.

Response: We agree that this is a valuable method that has been in use for many years. It is difficult to improve on informed and considered scientific judgment by an expert. The Service will continue to rely heavily on this approach. The policy was changed to reflect this emphasis.

3. *Mitigation Recommendations*

Comment: Service recommendations should be timely.

Response: The proposed and final policy specifically require Service personnel to present mitigation recommendations "* * * at the earliest possible stage of project planning to assure maximum consideration." This point has been echoed throughout Service management documents. Service personnel can generally provide timely guidance provided developers make a point of notifying them of proposed projects still in the planning stage and provided Federal action agencies supply sufficient transfer funding with which to conduct environmental investigations. Under Section 2(e) of the Fish and Wildlife Coordination Act, Federal action agencies are authorized to transfer funds to the Service "* * * as may be necessary to conduct all or part of the investigations required to carry out the purposes of * * *" (Section 2 of the Act)." The Service uses these transfer funds to conduct project-specific investigations.

Comment: Requiring field biologists to consider cost-effectiveness in providing mitigation recommendations is beyond their capability and may conflict with the lead agencies' role as the determiner of overall public interest. Habitat protection should be a higher priority than cost-effectiveness.

Response: The proposed policy did not require a cost-effectiveness analysis by Service biologists in a formal sense. We fully agree that Service personnel must perceive their responsibility to be analysis and recommendations based on the biological aspects of project proposals. There is no intent to require Service biologists to do a formal economic analysis for which they are not trained nor for which there is clear legislative direction. However, the Service has a responsibility to the public to give consideration to cost while recommending ways to conserve fish and wildlife. The policy has been changed to reflect this need for consideration of other factors.

Comment: The Federal action agency should have the option of non-Service expertise to develop mitigation measures in those instances where the Service cannot meet lead agency program requirements.

Response: Although the Service cannot prevent other agencies from utilizing biological expertise from non-Federal sources to develop mitigation plans, the Fish and Wildlife Coordination Act specifically authorizes the Secretary of the Interior to prepare a report and recommendations on the fish and wildlife aspects of projects, including mitigation. This report and recommendations are to receive "full consideration" by the development agency. If the Federal action agency involves the Service early and provides sufficient transfer funds, then the Service should be able to meet their needs. No change in the policy was necessary.

Comment: Several mitigation proposals should be prepared for each alternative structural or non-structural plan.

Response: The Service is willing to prepare multiple proposals provided funds and time are available.

Comment: Some commentors felt that concurrent and proportionate funding of mitigation may not always lead to optimal mitigation and should not be a rigid requirement. Other commentors strongly supported concurrent and proportionate funding.

Response: The Water Resources Council's Principles and Standards require "* * * *at least* concurrent and proportionate implementation with other major project features, except where such concurrent and proportionate mitigation is physically impossible" (emphasis added).

We agree with the Council, and endorse expenditure of funds at an earlier stage of project planning when this will lead to more effective mitigation. Appropriate changes to the policy on this matter have been made.

Comment: Mitigation costs should include the cost of managing the acquired land for the life of the project, and the value of present and future timber and crops on acquired land. In addition, an environmental benefit/cost analysis should be developed for each project, and Congress should not authorize a project unless the project plan includes the proposed mitigation program and all its costs, including the cost of lost timber productivity and other resources.

Response: Costing of projects is determined by the Water Resource Council's Principles and Standards and is therefore beyond the jurisdiction of this policy. We point out that Service policy does not preclude timber harvest or other resource recovery operations on mitigation lands when the activity is compatible with fish and wildlife management objectives.

Comment: The Service mitigation policy should more clearly note that fee-simple land acquisition should be a measure of last resort.

Response: The policy statement has undergone further modification to more clearly stress the conditions when land acquisition is to be recommended by Service personnel. In the future, the Service will place far greater emphasis on developing mitigation recommendations that avoid, minimize, or rectify impacts in order to reduce the need for compensation lands. Amplification of this point may be seen in the section on mitigation planning procedures.

Comment: If some interest in land must be acquired, areas of marginal productivity should be considered first. Such underdeveloped land would benefit from better management of its productive capacity and respond more vigorously than land already at higher levels of production.

Response: We agree that special consideration should be given to marginal lands, and have changed the policy accordingly.

Comment: Who owns land acquired for mitigation purposes?

Response: Depending on the individual circumstances of the project, land acquired through fee-simple title is usually owned either by the Federal or State government and administered by appropriate Federal or State resource agencies. Where wildlife easements are acquired, the land belongs to the property owner, and the easement right to the Federal or State government.

Comment: The policy should require Service personnel to identify the authority to be used in implementing any mitigation recommendations that are made.

Response: The final policy clearly identifies the legal authorities under which the Service is expected to develop mitigation recommendations. In addition, the policy only applies to Service recommendations and is not an instrument directing legal research in individual circumstances. It would be inappropriate to instruct our personnel to indentify the implementing authority for the development agencies which are fully aware of the authorities available to implement Service recommendations. In the case of projects to be authorized by Congress, authorities to implement mitigation can be, and increasingly have been, spelled out.

Comment: The policy neglects to indicate the necessary process if an agency does not agree with Service mitigation recommendations.

Response: This process has already been established for most Federal agencies. If the project planners and the Service field office cannot agree on a modified or substitute proposal for mitigation, the matter often is referred upwards to the next highest level. Higher management levels are then generally able to resolve the issue quickly, although the Federal action agency has the final say. No change was necessary.

Comment: Mitigation recommendations should ensure that habitats which are preserved are adequate in size and contiguous to ensure species survival and ecosystem functioning.

Response: We agree. This point has not, however, been added to the policy since it is standard operating procedure at the field level.

Comment: Improvement of public use prospects within a project area should not be considered mitigation for habitat value losses. Development of public access is legitimate mitigation only when public uses are lost as a result of project action.

Response: We agree. Construction of public access facilities does not replace habitat lost or degraded and may even reduce wildlife habitat and invite degradation by making an area more accessible to more people. Construction of public use facilities may be in the public interest but should not be disguised as mitigation for loss or degradation of wildlife habitat. This point has been added to the policy.

4. *Follow-up*

Comment: The Service should initiate post-project evaluation studies, as well as encourage, support, and participate in these studies.

Response: We agree and will do so within the constraints of time, personnel and cost. The Service will initiate additional follow-up studies when funds are provided by the Federal action agency. The policy has been changed to reflect this.

Comment: Follow-up studies must be designed so as to separate the effects on fish and wildlife populations of implementing mitigation recommendations from other causes of changes in species numbers. This has not been the case in past studies.

Response: We agree in principle, but point out that this is a very difficult task technically, and that the conclusions in this regard rarely withstand vigorous analysis.

Nonetheless, distinguishing the true causes of population changes should be one of the goals of the follow-up study.

Comment: The policy should indicate what actions would occur if post-project evaluation shows mitigation recommendations are not being achieved as agreed to by the developer.

Response: We agree. The policy now includes provisions instructing Service personnel to recommend corrective action in such situations.

Appendix A

No Comments.

Appendix B

Comment: Why not include more intensive management of remaining habitat as a way of reducing net habitat loss?

Response: We agree, and have modified the policy accordingly in the Means and Measures section, which has since been integrated into the body of the final policy.

The section clearly places priority on increased habitat management as a means of replacing habitat losses, and additionally stresses use of existing public lands to accomplish these ends.

Comment: A mitigation recommendation of "No project" is not logical or valid as a mitigation measure.

Response: The Council on Environmental Quality's definition of mitigation, which has been adopted in this policy, clearly states that mitigation includes "... avoiding the impact altogether by not taking a certain action or parts of an action. ..." Obviously, a mitigation recommendation of "No project" falls under this subset of the definition, since a project's impact can be avoided *altogether* by a decision not to construct a project.

Appendix C

Comment: The definition of the word "practicable" should be amended to denote that the burden of identifying alternative mitigation measures and of conducting a searching inquiry into their practicability rests with the Service as well as the Federal action agency.

Response: The policy indicates that the Service will strive to provide mitigation recommendations that represent the best judgment of the Service on the most effective means and measures to achieve the mitigation goal, including consideration of cost.

Comment: A definition for "developments" (as used in Section V.A., "General Principles") should be provided in Appendix C.

Response: "Development" is a general-purpose term encompassing those activities falling under the scope of Service mitigation authorities cited within this policy. For example, if timber harvesting activities require preparation of an EIS, or involves waters of the U.S. and requires the issuance of a Federal permit or license, the Service would provide mitigation recommendations consistent with the policy.

NATIONAL ENVIRONMENTAL POLICY ACT REQUIREMENTS

The Service has prepared an Environmental Assessment of this final policy. Based on an analysis of the Environmental Assessment, the Director of the U.S. Fish and Wildlife Service has concluded that the final action is not a major Federal action which would significantly affect the quality of the human environment within the meaning of Section 102(2)(c) of the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4347). Thus the policy does not require an Environmental Impact Statement (EIS).

The Environmental Assessment and Finding of No Significant Impact will be furnished upon request.

REGULATORY ANALYSIS

This policy statement has been issued in conformity with the Department of the Interior's rulemaking requirements, which apply to actions meeting the broad definition of a rule set forth in the Administrative Procedures Act, 5 U.S.C.

551(4) and 43 CFR Part 14.2(e) (1980). This statement is not intended to be judicially enforceable. It will not be codified. It does not create private rights. It only guides internal Service administration and is not to be inflexibly applied by Service personnel. The Department had previously determined that the proposed policy was not a significant rule and did not require a regulatory analysis under Executive Order 12044 and 43 Part 14. No significant changes were made in the final policy that required a new determination.

ACKNOWLEDGEMENTS

The primary author of this final policy is John Christian, Leader, Policy Group—Environment, U.S. Fish and Wildlife Service, (202) 343–7151. Primary support for policy development was provided by policy analysts Nancy Chu, Scott Cameron, and Peter Ciborowski; and Ecological Services Washington Office and field personnel. Manuscript preparation was accomplished by Roberta Hissey, Karen Baker, Carol Prescott, and Jinethel Baynes.

Accordingly, the mitigation policy of the U.S. Fish and Wildlife Service is set forth as follows:

U.S. FISH AND WILDLIFE SERVICE MITIGATION POLICY

I. PURPOSE

This document establishes policy for U.S. Fish and Wildlife Service recommendations on mitigating the adverse impacts of land and water developments on fish, wildlife, their habitats, and uses thereof. It will help to assure consistent and effective recommendations by outlining policy for the levels of mitigation needed and the various methods for accomplishing mitigation. It will allow Federal action agencies and private developers to anticipate Service recommendations and plan for mitigation measures early, thus avoiding delays and assuring equal consideration of fish and wildlife resources with other project features and purposes. This policy provides guidance for Service personnel but variations appropriate to individual circumstances are permitted.

This policy supersedes the December 16, 1974, policy statement entitled "Position Paper of the Fish and Wildlife Service Relative to Losses to Fish and Wildlife Habitat Caused by Federally Planned or Constructed Water Resource Developments" and the Service River Basin Studies Manual Release 2-350 entitled "General Bureau Policy on River Basin Studies."

II. AUTHORITY

This policy is established in accordance with the following major authorities: (See Appendix A for other authorities.)

Fish and Wildlife Act of 1956 (16 U.S.C. 742(a)–754). This Act authorizes the development and distribution of fish and wildlife information to the public, Congress, and the President, and the development of policies and procedures that are necessary and desirable to carry out the laws relating to fish and wildlife including: (1) ". . . take such steps as may be required for the development, advancement, management, conservation, and protection of the fisheries resources;" and (2) ". . . take such steps as may be required for the development, management, advancement, conservation, and protection of wildlife resources through research . . . and other means."

Fish and Wildlife Coordination Act (16 U.S.C. 661–667(e)). This Act authorizes the U.S. Fish and Wildlife Service, National Marine Fisheries Service (NMFS), and State agencies responsible for fish and wildlife resources to investigate all proposed Federal undetakings and non-Federal actions needing a Federal permit or license which would impound, divert, deepen, or otherwise control or modify a stream or other body of water and to make mitigation and enhancement recommendations to the involved Federal agency. "Recommendations . . . shall be as specific as practicable with respect to features recommended for wildlife conservation and development, lands to be utilized or acquired for such purposes, the results expected, and shall describe the damage to wildlife attributable to the project and the measures proposed for mitigating or compensating for these damages." In addition, the Act requires that wildlife conservation be coordinated with other

features of water resource development programs.

Determinations under this authority for specific projects located in estuarine areas constitute compliance with the provisions of the Estuary Protection Act. (See Appendix A.)

Watershed Protection and Flood Prevention Act (16 U.S.C. 1001–1009). This Act allows the Secretary of the Interior to make surveys, investigations, and ". . . prepare a report with recommendations concerning the conservation and development of wildlife resources . . ." on small watershed projects.

National Environmental Policy Act of 1969 (42 U.S.C. 4321–4347). This Act and its implementing regulations (40 CFR Part 1500–1508) requires that the U.S. Fish and Wildlife Service be notified of all major Federal actions affecting fish and wildlife resources and their views and recommendations solicited. Upon completion of a draft Environmental Impact Statement, the Service is required to review it and make comments and recommendations, as appropriate. In addition, the Act provides that "the Congress authorizes and directs that, to the fullest extent possible . . . all agencies of the Federal Government shall . . . identify and develop methods and procedures . . . which will ensure that presently unquantified environmental amenities and values may be given appropriate consideration in decisionmaking along with economic and technical considerations."

III. SCOPE

A. Coverage

This policy applies to all activities of the Service related to the evaluation of impacts of land and water developments and the subsequent recommendations to mitigate those adverse impacts except as specifically excluded below. This includes: (1) investigations and recommendations for all actions requiring a federally issued permit or license that would impact waters of the U.S.; (2) all major Federal actions significantly affecting the quality of the human environment; and (3) other Federal actions for which the Service has legislative authority or executive direction for involvement including, but not limited to: coal, minerals, and outer continental shelf lease sales or Federal approval of State permit programs for the control of discharges of dredged or fill material.

B. Exclusions

This policy does not apply to threatened or endangered species. The requirements for threatened and endangered species are covered in the Endangered Species Act of 1973 and accompanying regulations at 50 CFR Parts 17, 402, and 424. Under Section 7 of the Endangered Species Act, as amended, all Federal agencies shall ensure that activities authorized, funded, or carried out by them are not likely to jeopardize the continued existence of listed species or result in the destruction or adverse modification of critical habitat. Mitigating adverse impacts of a project would not in itself be viewed as satisfactory agency compliance with Section 7. Furthermore, it is clear to the Service that Congress considered the traditional concept of mitigation to be inappropriate for Federal activities impacting listed species or their critical habitat.

This policy does not apply to Service recommendations for Federal projects completed or other projects permitted or licensed prior to enactment of Service authorities (unless indicated otherwise in a specific statute) or specifically exempted by them and not subject to reauthorization or renewal. It also does not apply where mitigation plans have already been agreed to be the Service, except where new activities or changes in current activities would result in new impacts or where new authorities, new scientific information, or developer failure to implement agreed upon recommendations make it necessary. Service personnel involved in land and water development investigations will make a judgment as to the applicability of the policy for mitigation plans under development and not yet agreed upon as of the date of final publication of this policy.

Finally, this policy does not apply to Service recommendations related to the enhancement of fish and wildlife resources. Recommendations for measures which improve fish and wildlife resources beyond that which would exist without the project and which cannot be used to satisfy the

appropriate mitigation planning goal should be considered as enhancement measures. The Service strongly supports enhancement of fish and wildlife resources. The Service will recommend that all opportunities for fish and wildlife resources enhancement be thoroughly considered and included in project plans, to the extent practicable.

IV. DEFINITION OF MITIGATION

The President's Council on Environmental Quality defined the term "mitigation" in the National Environmental Policy Act regulations to include: "(a) avoiding the impact altogether by not taking a certain action or parts of an action; (b) minimizing impacts by limiting the degree or magnitude of the action and its implementation; (c) rectifying the impact by repairing, rehabilitating, or restoring the affected environment; (d) reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action; and (e) compensating for the impact by replacing or providing substitute resources or environments." (40 CFR Part 1508.20(a–e)).

The Service supports and adopts this definition of mitigation and considers the specific elements to represent the desirable sequence of steps in the mitigation planning process. (See Appendix B for definitions of other important terms necessary to understand this policy.)

V. MITIGATION POLICY OF THE U.S. FISH AND WILDLIFE SERVICE

The overall goals and objectives of the Service are outlined in the Service Management Plan and an accompanying Important Resource Problems document which describes specific fish and wildlife problems of importance for planning purposes. Goals and objectives for Service activities related to land and water development are contained in the Habitat Preservation Program Management Document. The mitigation policy was designed to stand on its own; however, these documents will be consulted by Service personnel to provide the proper perspective for the Service mitigation policy. They are available upon request from the Director, U.S. Fish and Wildlife Service, Washington, D.C. 20240.

A. General Policy

The mission of the U.S. Fish and Wildlife Service is to:

PROVIDE THE FEDERAL LEADERSHIP TO CONSERVE, PROTECT AND ENHANCE FISH AND WILDLIFE AND THEIR HABITAT FOR THE CONTINUING BENEFIT OF THE PEOPLE

The goal of Service activities oriented toward land and water development responds to Congressional direction that fish and wildlife resource conservation receive equal consideration and be coordinated with other features of Federal resource development and regulatory programs through effective and harmonious planning, development, maintenance and coordination of fish and wildlife resource conservation and rehabilitation in the United States, its territories and possessions. The goal is to:

CONSERVE, PROTECT AND ENHANCE FISH AND WILDLIFE AND THEIR HABITATS AND FACILITATE BALANCED DEVELOPMENT OF THIS NATION'S NATURAL RESOURCES BY TIMELY AND EFFECTIVE PROVISION OF FISH AND WILDLIFE INFORMATION AND RECOMMENDATIONS

Fish and wildlife and their habitats are public resources with clear commercial, recreational, social, and ecological value to the Nation. They are conserved and managed for the people by State, Federal and Indian tribal Governments. If land or water developments are proposed which may reduce or eliminate the public benefits that are provided by such natural resources, then State and Federal resource agencies and Indian tribal agencies have a responsibility to recommend means and measures to mitigate such losses. Accordingly:

IN THE INTEREST OF SERVING THE PUBLIC, IT IS THE POLICY OF THE U.S. FISH AND WILDLIFE SERVICE TO SEEK TO MITIGATE LOSSES OF FISH, WILDLIFE, THEIR HABITATS, AND USES THEREOF FROM LAND AND WATER DEVELOPMENTS

In administering this policy, the Service will strive to provide information and recommendations that fully support the Nation's need for fish and wildlife resource conservation as well as sound economic and social development through balanced multiple use of the Nation's natural resources. The Service will actively seek to facilitate needed development and avoid conflicts and delays through early involvement in land and water development planning activities in advance of proposals for specific projects or during the early planning and design stage of specific projects.

This should include early identification of resource areas containing high and low habitat values for important species and the development of ecological design information that outlines specific practicable means and measures for avoiding or minimizing impacts. The former can be used by developers to site projects in the least valuable areas. This could possibly lower total project costs to development interests. These actions are part of good planning and are in the best public interest.

The early provision of information to private and public agencies in a form which enables them to avoid or minimize fish and wildlife losses as a part of initial project design is the preferred form of fish and wildlife conservation.

B. U.S. Fish and Wildlife Service Mitigation Planning Goals by Resource Category

The planning goals and guidelines that follow will be used to guide Service recommendations on mitigation of project impacts. Four Resource Categories are used to indicate that the level of mitigation recommended will be consistent with the fish and wildlife resource values involved.

The policy covers impacts to fish and wildlife populations, their habitat and the human uses thereof. However, the primary focus in terms of specific guidance is on recommendations related to habitat value losses. In many cases, compensation of habitat value losses should result in replacement of fish and wildlife populations and human uses. But where it does not, the Service will recommend appropriate additional means and measures.

RESOURCE CATEGORY 1

a. Designation Criteria

Habitat to be impacted is of high value for evaluation species and is unique and irreplaceable on a national basis or in the ecoregion section.

b. Mitigation Goal

No Loss of Existing Habitat Value.

c. Guideline

The Service will recommend that all losses of existing habitat be prevented as these one-of-a-kind areas cannot be replaced. Insignificant changes that do not result in adverse impacts on habitat value may be acceptable provided they will have no significant cumulative impact.

RESOURCE CATEGORY 2

a. Designation Criteria

Habitat to be impacted is of high value for evaluation species and is relatively scarce or becoming scarce on a national basis or in the ecoregion section.

b. Mitigation Goal

No Net Loss of In-Kind Habitat Value.

c. Guideline

The Service will recommend ways to avoid or minimize losses. If losses are likely to occur, then the Service will recommend ways to immediately rectify them or reduce or eliminate them over time. If losses remain likely to occur, then the Service will recommend that those losses be compensated by replacement of the same kind of habitat value so that the total loss of such in-kind habitat value will be eliminated.

Specific ways to achieve this planning goal include: (1) physical modification of replacement habitat to convert it to the same type lost; (2) restoration or rehabilitation of previously altered habitat; (3) increased management of similar replacement habitat so that the in-kind value of the lost habitat is replaced, or (4) a combination of these measures. By replacing habitat value losses with similar habitat values, populations of species associated with that habitat may remain relatively stable in the area over time. This is generally referred to as in-kind replacement.

Exceptions: An exception can be made to this planning goal when: (1) different habitats and species available for replacement are determined to be of greater value than those lost, *or* (2) in-kind replacement is not physically or biologically attainable in the ecoregion section. In either case, replacement involving different habitat kinds may be recommended provided that the total value of the habitat lost is recommended for replacement (see the guideline for Category 3 mitigation below).

RESOURCE CATEGORY 3

a. Designation Criteria

Habitat to be impacted is of high to medium value for evaluation species and is relatively abundant on a national basis.

b. Mitigation Goal

No Net Loss of Habitat Value While Minimizing Loss of In-Kind Habitat Value

c. Guideline

The Service will recommend ways to immediately rectify them or reduce or eliminate them over time. If losses remain likely to occur, then the Service will recommend ways to avoid or minimize losses. If losses are likely to occur, then the Service will recommend that those losses be compensated by replacement of habitat value so that the total loss of habitat value will be eliminated.

It is preferable, in most cases, to recommend ways to replace such habitat value losses in-kind. However, if the Service determines that in-kind replacement is not desirable or possible, then other specific ways to achieve this planning goal include: (1) substituting different kinds of habitats, or (2) increasing management of different replacement habitats so that the value of the lost habitat is replaced. By replacing habitat value losses with different habitats or increasing management of different habitats, populations of species will be different, depending on the ecological attributes of the replacemnet habitat. This will result in no net loss of total habitat value, but may result in significant differences in fish and wildlife populations. This is generally referred to as out-of-kind replacement.

RESOURCE CATEGORY 4

a. Designation Criteria

Habitat to be impacted is of medium to low value for evaluation species.

b. Mitigation Goal

Minimize Loss of Habitat Value.

c. Guideline

The Service will recommend ways to avoid or minimize losses. If losses are likely to occur, then the Service will recommend ways to immediately rectify them or reduce or eliminate them over time. If losses remain likely to occur, then the Service may not make a recommendation for compensation, depending on the significance of the potential loss.

However, because these areas posses relatively low habitat values, they will likely exhibit the greatest potential for significant habitat value improvements. Service personnel will fully investigate these areas' potential for improvement, since they could be used to mitigate Resource Category 2 and 3 losses.

C. Mitigation Planning Policies

1. State-Federal Partnership

a. The U.S. Fish and Wildlife Service will fully coordinate activities with those State agencies responsible for fish and wildlife resources, the National Marine Fisheries Service (NMFS) and the Environmental Protection Agency (EPA) related to the investigation of project proposals and development of mitigation recommendations for resources of concern to the State, NMFS or EPA.

b. Service personnel will place special emphasis on working with State agencies responsible for fish and wildlife resources, NMFS and EPA to develop compatible approaches and to avoid duplication of efforts.

2. Resource Category Determinations

a. The Service will make Resource Category determinations as part of the mitigation planning process. Such determinations will be made early in the planning process and transmitted to the Federal action agency or private developer to aid them in their project planning, to the extent practicable.

b. Resource Category determinations will be made through consulation and coordination with State agencies responsible for fish and wildlife resources and other Federal resource agencies, particularly the National Marine Fisheries Service and the Environmental Protection Agency, whenever resources of concern to those groups are involved. Where other elements of the public, including development groups, have information that can assist in making such determinations, the Service will welcome such information.

c. All Resource Category determinations will contain a technical rationale consistent with the designation criteria. The rationale will: (1) outline the reasons why the evaluation species were selected; (2) discuss the value of the habitat to the evaluation species; and (3) discuss and contrast the relative scarcity of the fish and wildlife resource on a national and ecoregion section basis.

Note.—If the State agency responsible for fish and wildlife resources wishes to outline scarcity on a more local basis, U.S. Fish and Wildlife Service personnel should assist in developing such rationale, whenever practicable.)

d. When funding, personnel, and available information make it practicable, specific geographic areas or, alternatively, specific habitat types that comprise a given Resource Category should be designated in advance of development. Priority for predesignation will be placed on those areas that are of high value for evaluation species and are subject to development pressure in the near future. Such predesignations can be used by developers or regulators to determine the least valuable areas for use in project planning and siting considerations.

e. The following examples should be given special consideration as either Resource Category 1 or 2:

(1) Certain habitats within Service-identified Important Resource Problem (IRP) areas. Those IRPs dealing with threatened or endangered species are not covered by this policy. (See Scope)

(2) Special aquatic and terrestrial sites including legally designated or set-aside

areas such as sanctuaries, fish and wildlife management areas, hatcheries, and refuges, and other aquatic sites such as floodplains, wetlands, mudflats, vegetated shallows, coral reefs, riffles and pools, and springs and seeps.

3. Impact Assessment Principles

a. Changes in fish and wildlife productivity or ecosystem structure and function may not result in a biologically adverse impact. The determination as to whether a biological change constitutes an adverse impact for which mitigation should be recommended is the responsibility of the Service and other involved Federal and State resource agencies.

b. The net biological impact of a development proposal (or alternatives) is the difference in predicted biological conditions between the future with the action and the future without the action. If the future without the action cannot be reasonably predicted and documented by the project sponsor, then the Service analysis should be based on biological conditions that would be expected to exist over the planning period due to natural species succession or implementation of approved restoration/improvement plans or conditions which currently exist in the planning area.

c. Service review of project impacts will consider, whenever practicable:

(1) The total long-term biological impact of the project, including any secondary or indirect impacts regardless of location; and (2) any cumulative effects when viewed in the context of existing or anticipated projects.

d. The Habitat Evaluation Procedures will be used by the Service as a basic tool for evaluating project impacts and as a basis for formulating subsequent recommendations for mitigation subject to the exemptions in the Ecological Services Manual (100 ESM 1). When the Habitat Evaluation Procedures do not apply, then other evaluation systems may be used provided such use conforms with policies provided herein.

e. In those cases where instream flows are an important determinant of habitat value, consideration should be given to the use of the Service's Instream Flow Incremental Methodology to develop instream flow mitigation recommendations, where appropriate.

f. Where specific impact evaluation methods or mitigation technologies are not available, Service employees shall continue to apply their best professional judgment to develop mitigation recommendations.

4. Mitigation Recommendations

a. The Service may recommend support of projects or other proposals when the following criteria are met:

(1) They are ecologically sound;

(2) The least environmentally damaging reasonable alternative is selected;

(3) Every reasonable effort is made to avoid or minimize damage or loss of fish and wildlife resources and uses;

(4) All important recommended means and measures have been adopted with guaranteed implementation to satisfactorily compensate for unavoidable damage or loss consistent with the appropriate mitigation goal; and

(5) For wetlands and shallow water habitats, the proposed activity is clearly water dependent and there is a demonstrated public need.

The Service may recommend the "no project" alternative for those projects or other proposals that do not meet all of the above criteria and where there is likely to be a significant fish and wildlife resource loss.

b. Recommendations will be presented by the Service at the earliest possible stage of project planning to assure maximum consideration. The Service will strive to provide mitigation recommendations that represent the best judgment of the Service, including consideration of cost, on the most effective means and measures of satisfactorily achieving the mitigation planning goal. Such recommendations will be developed in cooperation with the Federal action agency or private developer responsible for the project, whenever practicable, and will place heavy reliance on cost estimates provided by that Federal action agency or private developer.

c. The Service will recommend that the Federal action agency include designated funds for all fish and wildlife resource mitigation (including, but not limited to, Service investigation costs, initial development costs and continuing operation, maintenance, replacement, and administrative costs) as part of the initial and any alternative project plans and that mitigation funds (as authorized and appropriated by Congress for Federal projects) be spent concurrently and proportionately with overall project construction and operation funds throughout the life of the project.

Note.—Prevention of losses may necessitate expenditure of funds at an earlier stage of project planning. This is acceptable and preferred.

d. Service mitigation recommendations will be made under an explicit expectation that these means and measures: (1) would be the ultimate responsibility of the appropriate Federal action agency to implement or enforce; and (2) would provide for a duration of effectiveness for the life of the project plus such additional time required for the adverse effects of an abandoned project to cease to occur.

e. Land acquisition in fee title for the purpose of compensation will be recommended by the Service *only* under one or more of the following three conditions:

(1) When a change in ownership is necessary to guarantee the future conservation of the fish and wildlife resource consistent with the mitigation goal for the specific project area; *or*

(2) When other means and measures for mitigation (see Section 5 below) will not compensate habitat losses consistent with the mitigation goal for the specific project area; *or*

(3) When land acquisition in fee title is the most cost-effective means that may partially or completely achieve the mitigation goal for the specific project area.

Service recommendations for fee title land acquisition will seek to identify mitigation lands with marginal economic potential.

f. First priority will be given to recommendation of a mitigation site within the planning area. Second priority will be given to recommendation of a mitigation site in proximity to the planning area within the same ecoregion section. Third priority will be given to recommendation of a mitigation site elsewhere within the same ecoregion section.

g. Service personnel will fully support a variety of uses on mitigation lands where such uses are compatible with dominant fish and wildlife uses and, for Federal wildlife refuges, are consistent with the provisions of the Refuge Recreation Act and the National Wildlife Refuge Administration Act. However, it may be in the best public interest to recommend limiting certain uses that would significantly decrease habitat value for species of high public interest. In such cases, the Service may recommend against such incompatible uses.

h. Measures to increase recreation values will not be recommended by Service personnel to compensate for losses of habitat value. Recreation use losses not restored through habitat value mitigation will be addressed through separate and distinct recommended measures to offset those specific losses.

i. The guidelines contained in this policy do not apply to threatened or endangered species. However, where both habitat and endangered or threatened species impacts are involved,

Service personnel shall fully coordinate Environment effects with Endangered Species efforts to provide timely, consistent, and unified recommendations for resolution of fish and wildlife impacts, to the extent possible. More specifically, Environment and Endangered Species personnel shall coordinate all related activities dealing with investigations of land and water developments. This includes full use of all provisions that can expedite Service achievement of "one-stop shopping," including coordinated early planning involvement, shared permit review activities, consolidated permit reporting, and consolidated flow of pre-project information to developers, consistent with legislative mandates and deadlines.

j. The Service will place high priority on and continue to develop and implement procedures for reducing delays and conflicts in permit related activities. Such procedures will include, but not be limited to:

(1) Joint processing of permits.

(2) Resource mapping.

(3) Early provision of ecological design information.

(4) Involvement in Special Area Management Planning.

k. The Service will encourage predevelopment compensation actions by Federal action agencies which can be used to offset future unavoidable losses for lands or waters not adequately protected by an existing law, policy, or program.

Banking of habitat value for the express purpose of compensation for unavoidable future losses will be considered to be a mitigation measure and not an enhancement measure. Withdrawals from the mitigation "bank" to offset future unavoidable losses will be based on habitat value replacement, not acreage or cost for land purchase and management.

5. Mitigation Means and Measures

Mitigation recommendations can include, but are not limited to, the types of actions presented below. These means and measures are presented in the general order and priority in which they should be recommended by Service personnel with the exception of the "no project" alternative. (See Section 4(a)).

a. Avoid the impact

(1) Design project to avoid damage or loss of fish and wildlife resources including management practices such as timing of activities or structural features such as multiple outlets, passage or avoidance structures and water pollution control facilities.

(2) Use of nonstructural alternative to proposed project.

(3) No project.

b. Minimize the impact

(1) Include conservation of fish and wildlife as an authorized purpose of Federal projects.

(2) Locate at the least environmentally damaging site.

(3) Reduce the size of the project.

(4) Schedule timing and control of initial construction operations and subsequent operation and maintenance to minimize disruption of biological community structure and function.

(5) Selective tree clearing or other habitat manipulation.

(6) Control water pollution through best management practices.

(7) Time and control flow diversions and releases.

(8) Maintain public access.

(9) Control public access for recreational or commercial purposes.

(10) Control domestic livestock use.

c. Rectify the impact

(1) Regrade disturbed areas to contours which provide optimal fish and wildlife habitat or approximate original contours.

(2) Seed, fertilize and treat areas as necessary to restore fish and wildlife resources.

(3) Plant shrubs and trees and other vegetation to speed recovery.

(4) Control polluted spoil areas.

(5) Restock fish and wildlife resources in repaired areas. Fish stocking or introductions will be consistent with the Service Fish Health Policy (January 3, 1978).

d. Reduce or eliminate the impact over time

(1) Provide periodic monitoring of mitigation features to assure continuous operation.

(2) Assure proper training of project personnel in the operations of the facility to preserve existing or restored fish and wildlife resources at project sites.

(3) Maintain or replace equipment or structures so that future loss of fish and wildlife resources due to equipment or structure failure does not occur.

e. Compensate for impacts

(1) Conduct wildlife management activities to increase habitat values of existing areas, with project lands and nearby public lands receiving priority.

(2) Conduct habitat construction activities to fully restore or rehabilitate previously altered habitat or modify existing habitat suited to evaluation species for purpose of completely offsetting habitat value losses.

(3) Build fishery propagation facilities.

(4) Arrange legislative set-aside or protective designation for public lands.

(5) Provide buffer zones.

(6) Lease habitat.

(7) Acquire wildlife easements.

(8) Acquire water rights.

(9) Acquire land in fee title.

6. Follow-up

The Service encourages, supports, and will initiate, whenever practicable, post-project evaluations to determine the effectiveness of recommendations in achieving the mitigation planning goal. The Service will initiate additional follow-up studies when funds are provided by the Federal action agency.

In those instances where Service personnel determine that Federal agencies or private developers have not carried out those agreed upon mitigation means and measures, then the Service will request the responsible Federal action agency to initiate corrective action.

APPENDIX A—OTHER AUTHORITIES AND DIRECTION FOR SERVICE MITIGATION RECOMMENDATIONS

LEGISLATIVE

Federal Water Pollution Control Act, as amended (33 U.S.C. 1251 et seq.). The 1977 amendments require the Fish and Wildlife Service ". . . upon request of the Governor of a State, and without reimbursement, to provide technical assistance to such State in developing a Statewide (water quality planning) program and in implementing such program after its approval." In addition, this Act requires the Service to comment on proposed State permit programs for the control of discharges of dredged or fill material and to comment on all Federal permits within 90 days of receipt.

Federal Power Act of 1920, as amended (16 U.S.C. 791(a), 803, 811). This Act authorizes the Secretary of the Interior to impose conditions on licenses issued for hydroelectric projects within specific withdrawn public lands. The Secretary is given specific authority to prescribe fishways to be constructed, maintained, and operated at the licensee's expense.

Estuary Protection Act (16 U.S.C. 1221–1226). This Act requires the Secretary of the Interior to review all project plans and reports for land and water resource development affecting estuaries and to make recommendations for conservation, protection, and enhancement.

Coastal Zone Management Act of 1972 (16 U.S.C. 1451–1464). This Act

requires the Secretary of Commerce to obtain the views of Federal agencies affected by the program, including the Department of the Interior, and to ensure that these views have been given adequate consideration before approval of Coastal Zone Management Plans. The Service provides the Department's views about fish and wildlife resources. Pursuant to the Coastal Zone Management Act Amendments of 1980 (Pub. L. 96-464) the Department of Interior provides comments on Federal grants to help States protect and preserve coastal areas because of their ". . . conservational, recreational, ecological or aesthetic values." The 1980 Amendments also authorize the Department of Interior to enter into Special Area Management Planning to ". . . provide for increased specificity in protecting natural resources, reasonable coast dependent economic growth . . . and improved predictability in government decisionmaking."

Water Bank Act (16 U.S.C. 1301–1311). This Act requires that the Secretary of Agriculture ". . . shall consult with the Secretary of Interior and take appropriate measures to insure that the program carried out . . . is in harmony with wetlands programs administered by the Secretary of the Interior."

Wild and Scenic Rivers Act (16 U.S.C. 1271–1287). This Act requires the Secretary of the Interior to comment on such proposals. The Fish and Wildlife Service provides the Department's views with regard to fish and wildlife resources.

Geothermal Steam Act of 1970 (30 U.S.C. 1001–1025). This Act requires that the Fish and Wildlife Service recommend to the Secretary those lands that shall not be leased for geothermal development by reason of their status "as . . . a fish hatchery administered by the Secretary, wildlife refuge, wildlife range, game range, wildlife management area, waterfowl production area, or for lands acquired or reserved for the protection and conservation of fish and wildlife that are threatened with extinction."

Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 et seq.). This Act requires the Department of the Interior to regulate surface mining and reclamation at existing and future mining areas. The Fish and Wildlife Service provides the Department with technical assistance regarding fish and wildlife aspects of Department programs on active and abandoned mine lands, including review of State regulatory submissions and mining plans, and comments on mining and reclamation plans.

Outer Continental Shelf Lands Act Amendments of 1978 (43 U.S.C. 1801). This Act requires the Secretary of the Interior to manage an environmentally sound oil and natural gas development program on the outer continental shelf. The Fish and Wildlife Service provides recommendations for the Department regarding potential ecological impacts before leasing in specific areas and contributes to environmental studies undertaken subsequent to leasing.

Mineral Leasing Act of 1920, as amended (30 U.S.C. 185). This Act authorizes the Secretary of the Interior to grant rights-of-way through Federal lands for pipelines transporting oil, natural gas, synthetic liquids or gaseous fuels, or any other refined liquid fuel. Prior to granting a right-of-way for a project which may have a significant impact on the environment, the Secretary is required by this Act to request and review the applicant's plan for construction, operation, and rehabilitation of the right-of-way. Also, the Secretary is authorized to issue guidelines and impose stipulations for such projects which shall include, but not be limited to, ". . . requirements for restoration, revegetation and curtailment or erosion of surface land; . . . requirements designed to control or prevent damage to the environment (including damage to fish and wildlife habitat); and . . . requirements to protect the interests of individuals living in the general area of the right-of-way or permit who rely on the fish, wildlife and biotic resources of the area for subsistence purposes."

Cooperative Unit Act (16 U.S.C. 753(a)–753(b)). This Act provides for cooperative programs for research and training between the Fish and Wildlife Service, the States, and universities.

Airport and Airway Development Act (49 U.S.C. 1716). This Act requires the Secretary of Transportation to ". . . consult with the Secretary of the Interior with regard to the effect that any project . . . may have on natural resources including, but not limited to, fish and wildlife, natural, scenic, and recreation assets, water and air quality, and other factors affecting the environment . . .".

Department of Transportation Act (49 U.S.C. 1653(f)). This Act makes it national policy that ". . . special effort should be made to preserve the natural beauty of the countryside and public park and recreation lands, wildlife and waterfowl refuges, and historic sites . . ." and requires that the Secretary of Transportation ". . . cooperate and consult with the Secretary of the Interior in developing transportation plans and programs that include measures to maintain or enhance the natural beauty of the lands traversed." The Department of Transportation projects using protected lands cannot be approved unless there are no feasible and prudent alternatives to avoid such use and, if none, all possible measures to minimize harm have been considered.

EXECUTIVE

President's Water Policy Message (June 6, 1978). This Message directs the Secretary of the Interior to promulgate procedures for determination of measures to prevent or to mitigate losses of fish and wildlife resources.

Water Resources Council's *Final Rules; Principles and Standards for Water and Related Land Resources Planning—Level C* (September 29, 1980). These rules reiterate the importance of participation in the development planning process by interested Federal agencies, including the Department of the Interior. This participation includes review, coordination, or consultation required under various legislative and executive authorities. Under these rules, "Consideration is to be given to mitigation (as defined in 40 CFR 1508.20) of the adverse effects of each alternative plan. Appropriate mitigation is to be included where suitable as determined by the agency decisionmaker. Mitigation measures included are to be planned for at least concurrent and proportionate implementation with other major project features, except where such concurrent and proportionate mitigation is physically impossible. In the latter case, the reasons for deviation from this rule are to be presented in the planning report, and mitigation is to be planned for the earliest possible implementation. Mitigation for fish and wildlife and their habitat is to be planned in coordination with Federal and State fish and wildlife agencies in accordance with the Fish and Wildlife Coordination Act of 1958 (16 U.S.C. 661–664) (sic)."

Executive Order 11990—Protection of Wetlands (May 24, 1977). This Executive Order requires that each Federal agency ". . . take action to minimize the destruction, loss or degradation of wetlands, and to preserve and enhance the natural and beneficial values of wetlands in carrying out the agency's responsibilities for: (1) acquiring, managing and disposing of Federal lands and facilities; and (2) providing federally undertaken, financed or assisted construction and improvements; and (3) conducting Federal activities and programs affecting land use, including but not limited to water and related land resources planning, regulation and licensing activities." Relevant wetland concerns and values include, but are not

limited to, maintenance of natural systems and long-term productivity of existing flora and fauna, habitat diversity, hydrological utility, fish, wildlife, timber, and food. Under this Order, a developmental project in a wetland may proceed only if no practicable alternatives can be ascertained and if the proposal . . . includes all practicable measures to minimize harm to the wetland that may result from its use."

Executive Order 11988—Floodplain Management (May 24, 1977). This Executive Order requires that Federal agencies take floodplain management into account when formulating or evaluating water or land use plans and that these concerns be reflected in the budgets, procedures, and regulations of the various agencies. This Order allows developmental activities to proceed in floodplain areas only when the relevant agencies have ". . . considered alternatives to avoid adverse effects and incompatible development in the floodplains . . ." or when, in lieu of this, they have ". . . designed or modified their actions in order to minimize potential harm to or within the floodplain . . .".

Executive Order 11987—Exotic Organisms (May 24, 1977). This Executive Order requires that Federal agencies shall restrict, to the extent permitted by law, the introduction of exotic species into the lands or waters which they own, lease, or hold for purposes of administration, and encourage the States, local governments, and private citizens to do the same. This Executive Order also requires Federal agencies to restrict, to the extent permitted by law, the importation of exotic species and to restrict the use of Federal funds and programs for such importation. The Secretary of the Interior, in consultation with the Secretary of Agriculture, is authorized to develop by rule or regulation a system to standardize and simplify the requirements and procedures appropriate for implementing this Order.

NATIONAL/INTERNATIONAL TREATIES

Federal Trust Responsibility to Indian Tribes. This responsibility is reflected in the numerous Federal treaties with the Indian tribes. These treaties have the force of law. Protection of Indian hunting and fishing rights necessitates conservation of fish and wildlife and their habitat.

Convention Between the United States and Japan (September 19, 1974). This Treaty endorses the establishment of sanctuaries and fixes preservation and enhancement of migratory bird habitat as a major goal of the signatories.

Convention Between the United States and the Union of Soviet Socialist Republics Concerning the Conservation of Migratory Birds and Their Environments (November 8, 1976). This Treaty endorses the establishment of sanctuaries, refuges, and protected areas. It mandates reducing or eliminating damage to all migratory birds. Furthermore, it provides for designation of special areas for migratory bird breeding, wintering, feeding, and molting, and commits the signatories to ". . . undertake measures necessary to protect the ecosystems in these areas . . . against pollution, detrimental alteration and other environmental degradation." Implementing legislation, Pub. L. 95-616, was passed in the United States in 1978.

Convention on Nature Protection and Wildlife Preservation in the Western Hemisphere (April 15, 1941). This Treaty has several provisions requiring parties to conserve certain wildlife resources and their habitats.

Convention Between the United States and Great Britain (for Canada) for Protection of Migratory Birds (August 1, 1916, as amended January 30, 1979). This Treaty provides for a uniform ". . . system of protection for certain species of birds which migrate between the United States and Canada, in order to assure the preservation of species either harmless or beneficial to man." The Treaty prohibits hunting insectivorous birds, but allows killing of birds under permit when injurious to agriculture. The 1979 amendment allows subsistence hunting of waterfowl outside of the normal hunting season.

APPENDIX B—OTHER DEFINITIONS

"Compensation," when used in the context of Service mitigation recommendations, means full replacement of project-induced losses to fish and wildlife resources, provided such full replacement has been judged by the Service to be consistent with the appropriate mitigation planning goal.

"Ecoregion" refers to a large biogeographical unit characterized by distinctive biotic and abiotic relationships. An ecoregion may be subclassified into domains, divisions, provinces, and sections. A technical explanation and map is provided in the "Ecoregions of the United States" by Robert G. Bailey, published by the U.S. Forest Service, 1976.

"Ecosystem" means all of the biotic elements (i.e., species, populations, and communities) and abiotic elements (i.e., land, air, water, energy) interacting in a given geographic area so that a flow of energy leads to a *clearly* defined trophic structure, biotic diversity, and material cycles. (Eugene P. Odum. 1971. *Fundamentals of Ecology*)

"Evaluation species" means those fish and wildlife resources in the planning area that are selected for impact analysis. They must currently be present or known to occur in the planning area during at least one stage of their life history except where species not present (1) have been identified in fish and wildlife restoration or improvement plans approved by State or Federal resource agencies, or (2) will result from natural species succession over the life of the project. In these cases, the analysis may include such identified species not currently in the planning area.

There are two basic approaches to the selection of evaluation species: (1) selection of species with high public interest, economic value or both; and (2) selection of species to provide a broader ecological perspective of an area. The choice of one approach in lieu of the other may result in a completely different outcome in the analysis of a proposed land or water development. Therefore, the objectives of the study should be clearly defined before species selection is initiated. If the objectives of a study are to base a decision on potential impacts to an entire ecological community, such as a unique wetland, then a more ecologically based approach is desirable. If, however, a land or water use decision is to be based on potential impacts to a public use area, then species selection should favor animals with significant human use values. In actual practice, species should be selected to represent social, economic and broad ecological views because mitigation planning efforts incorporate objectives that have social, economic, and ecological aspects. Species selection always should be approached in a manner that will optimize contributions to the stated objectives of the mitigation planning effort.

Most land and water development decisions are strongly influenced by the perceived impacts of the proposed action on human use. Since economically or socially important species have clearly defined linkages to human use, they should be included as evaluation species in all appropriate land and water studies. As a guideline, the following types of species should be considered:

- Species that are associated with Important Resource Problems as designated by the Director of the Fish and Wildlife Service (except for threatened or endangered species).

• Other species with monetary and non-monetary benefits to people accruing from consumptive and nonconsumptive human uses including, but not limited to, fishing, hunting, bird-watching and educational, aesthetic, scientific or subsistence uses.

An analysis based only on those species with directly identifiable economic or social value may not be broad enough to adequately describe all of the ramifications of a land and water use proposal. If it is desirable to increase the ecological perspective of an assessment, the following types of species should be considered:

• Species known to be sensitive to specific land and water use actions. The species selected with this approach serve as "early warning" or indicator species for the affected fish and wildlife community.

• Species that perform a key role in a community because of their role in nutrient cycling or energy flows. These species also serve as indicators for a large segment of the fish and wildlife community, but may be difficult to identify.

• Species that represent groups of species which utilize a common environmental resource (guilds). A representative species is selected from each guild and predicted environmental impacts for the selected species are extended with some degree of confidence to other guild members.

"Federal action agency" means a department, agency or instrumentality of the United States which plans, constructs, operates or maintains a project, or which plans for or approves a permit, lease, or license for projects or manages Federal lands.

"Fish and wildlife resources" means birds, fishes, mammals, and all other classes of wild animals and all types of aquatic and land vegetation upon which wildlife is dependent.

"Habitat" means the area which provides direct support for a given species, population, or community. It includes all environmental features that comprise an area such as air quality, water quality, vegetation and soil characteristics and water supply (including both surface and groundwater).

"Habitat value" means the suitability of an area to support a given evaluation species.

"Important Resource Problem" means a clearly defined problem with a single important population or a community of similar species in a given geographic area as defined by the Director of the Fish and Wildlife Service.

"In-kind replacement" means providing or managing substitute resources to replace the habitat value of the resources lost, where substitute resources are physically and biologically the same or closely approximate those lost.

"Loss" means a change in fish and wildlife resources due to human activities that is considered adverse and:

(1) reduces the biological value of that habitat for evaluation species;

(2) reduces population numbers of evaluation species;

(3) increases population numbers of "nuisance" species;

(4) reduces the human use of those fish and wildlife resources; or

(5) disrupts ecosystem structure and function.

Changes that improve the value of existing habitat for evaluation species are not to be considered losses, i.e., burning or selective tree harvesting for wildlife management purposes. In addition, reductions in animal populations for the purpose of harvest or fish and wildlife managment will not be considered as losses for the purpose of this policy.

"Minimize" means to reduce to the smallest practicable amount or degree.

"Mitigation banking" means habitat protection or improvement actions taken expressly for the purpose of compensating for unavoidable losses from specific future development actions. It only includes those actions above and beyond those typically taken by Congress for protection of fish and wildlife resources.

"Out-of-kind replacement" means providing or managing substitute resources to replace the habitat value of the resources lost, where such substitute resources are physically or biologically different from those lost.

"Planning area" means a geographic space with an identified boundary that includes:

(1) The area identified in the study's authorizing document;

(2) The locations of resources included in the study's identified problems and opportunities;

(3) The locations of alternative plans, often called "project areas;" and

(4) The locations of resources that would be directly, indirectly, or cumulatively affected by alternative plans, often called the "affected area."

"Practicable" means capable of being done within existing constraints. The test of what is practicable depends upon the situation and includes consideration of the pertinent factors, such as environment, cost, or technology.

"Project" means any action, planning or approval process relating to an action that will directly or indirectly affect fish and wildlife resources.

"Replacement" means the substitution or offsetting of fish and wildlife resource losses with resources considered to be of equivalent biological value. However, resources used for replacement represent loss or modification of another type of habitat value. Replacement actions still result in a loss of habitat acreage and types which will continually diminish the overall national resource base. It should be clearly understood that replacement actions never restore the lost fish and wildlife resource—that is lost forever.

Dated: January 12, 1981.

Cecil Andrus,

Secretary of the Department of the Interior.

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Part IV

Environmental Protection Agency

Incinerator Standards for Owners and Operators of Hazardous Waste Management Facilities; Interim Final Rule and Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 122, 264, and 265

[SWH-FRL 1736-8]

Incinerator Standards for Owners and Operators of Hazardous Waste Management Facilities; Consolidated Permit Regulations

AGENCY: Environmental Protection Agency.

ACTION: Interim Final Rule (Parts 264 and 122) and Final rule (Part 265).

SUMMARY: The Environmental Protection Agency is amending its regulations for the management of hazardous waste by (1) promulgating, on an interim final basis, incinerator standards that will be the basis for permit issuance to owners and operators of hazardous waste management facilities (Part 264, Subpart O); (2) finalizing the interim status incinerator standards issued on May 19, 1980 (Part 265, Subpart O); and, (3) amending the permit regulations (Part 122) to correspond to the facility regulations being published today.

Under the Resource Conservation and Recovery Act (RCRA), the Agency is required to establish a Federal hazardous waste management system. Early last year EPA began issuing the first phase of regulations designed to implement that system. In January of this year EPA promulgated major portions of the Phase II technical standards for facilities that treat and store hazardous wastes. Today's publication adds another part to the Phase II technical standards by setting forth requirements for owners or operators of incinerator facilities that treat hazardous waste. These regulations provide the necessary standards by which permits may be granted. The substantive requirements for hazardous waste incinerator permits are included in Part 264, Subpart O. Information required for Part B of a permit application is specified in Part 122.25(b)(5). In many cases trial burns will be necessary to gather data needed for Part B of an incinerator facility's permit application. Criteria for trial burn permits are detailed in Part 122.27(b). Interim Status Standards must be observed by existing facilities until final action on their permit applications. EPA is today finalizing the Interim Status Standards for Incinerators which were promulgated, on an interim final basis, on May 19, 1980. These are in Part 265, Subpart O.

DATES: *Effective Date:* These regulations become effective on July 22, 1981, which is six months after the date of publication in the Federal Register, as RCRA Section 3010(b) requires.

Comment Date: These regulations are issued on an interim final basis. EPA will accept public comments on the Part 264 and Part 122 regulations and comments in response to requests in the preamble until March 24, 1981. In regard to the final regulation (Part 265), EPA will accept comments only on technical errors (e.g., typographical errors, inaccurate cross references, etc.).

ADDRESSES: Comments should be sent to Docket Clerk [Docket No. 30041], Office of Solid Waste (WH-562), U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460.

Public Docket: The public docket for these regulations is located in Room 2711, U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C., and is available for viewing from 9:00 a.m. to 4:00 p.m. Monday through Friday, excluding holidays. Among other things, the docket contains background documents which explain, in more detail than the preamble to this regulation, the basis for many of the provisions in this regulation.

Copies of Regulations: Single copies of these regulations will be available approximately 30 days after publication from Ed Cox, Solid Waste Information, U.S. Environmental Protection Agency, 26 West St. Clair Street, Cincinnati, Ohio 45268, telephone (513) 684-8362. Multiple copies will be available from the Superintendent of Documents, Washington, D.C. 20402.

FOR FURTHER INFORMATION CONTACT: For general information contact the RCRA hazardous waste hotline, Office of Solid Waste (WH-565), U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460 (phone 800-424-9346, or in Washington, D.C. 554-1404).

For information on implementation of these regulations, contact the EPA regional offices below:

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Dennis Huebner, Chief, Waste Management Branch, John F. Kennedy Building, Boston, Massachusetts 02203, (617) 223-5775

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Region X

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SUPPLEMENTARY INFORMATION: This preamble outlines the basis and purpose of the standards for incineration of hazardous waste that the Agency is publishing in today's Federal Register. It also summarizes and explains changes from the standards originally proposed. More complete explanation of, and support for, these standards can be found in "*Background Document*, 40 CFR Part 264 Subpart O, and 40 CFR Part 265 Subpart O: Incineration," and in the guidance materials which the Agency has developed to assist in the understanding and implementation of these regulations. The latest drafts of these manuals—"Engineering Handbook on Hazardous Waste Incineration," and "Permit Writers' Guidance Document for Hazardous Waste Incineration"—are available in the RCRA docket room, as is the Background Document.

EPA is also proposing today a procedure to allow a variance in acceptable incinerator emissions, based on case-by-case assessments of the risk to human health and the environment from such emissions. This procedure

could be used to set emission limits for hazardous inorganic constituents and combustion by-products, as well as for the organic constituents controlled by today's promulgation. This proposal appears elsewhere in today's Federal Register and is discussed in a separate preamble section.

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I. Authority

These regulations are issued under the authority of Section 1006, 2002(a), 3004, 3005, and 3007 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended, 42 U.S.C. §§ 6905, 6912(a), 6924, 6925, and 6927.

II. Background

On December 18, 1978, EPA issued proposed standards for owners and operators of hazardous waste management facilities, including standards for incinerators (43 FR 58946). The Agency received more than 250 comments on the proposed incinerator regulations and held five public hearings on the December 18 proposal. On May 19, 1980, EPA promulgated the first of two major phases of the final regulations for hazardous waste management facilities. Phase I included administrative standards for hazardous waste facilities with RCRA permits (40 CFR Part 264) and administrative and technical standards for hazardous waste facilities in interim status (40 CFR Part 265). As part of those May 19, 1980 regulations, EPA issued interim status standards for incineration under 40 CFR Part 265, Subpart O. Those Subpart O regulations are being promulgated today as final standards with few minor changes to reflect additional public comment.

EPA also announced on May 19, 1980, its intent to promulgate the technical standards for hazardous waste facilities with permits (40 CFR Part 264) as Phase II of the regulations in the fall of 1980. (For a discussion of the phased approach to the regulations see the background and overview discussion accompanying the Parts 264 and 265 regulations published on May 19, 1980, at 45 FR 33154. For a discussion of the Phase II regulations overall, see the introductory material accompanying the January 12, 1981 regulations at 46 FR 2802.)

Early in January of this year, EPA promulgated the first portion of Phase II of the technical standards for facilities with permits. These included standards addressing financial requirements, closure and post-closure, location, and storage in containers, tanks, piles, and surface impoundments.

The regulations for incinerators that EPA is issuing today represent an additional part of the Phase II standards. Another part of Phase II, standards for land disposal, is being promulgated elsewhere in today's Federal Register.

The Agency has also made additions in today's promulgation to the permitting regulations in Part 122 to correspond with the new technical requirements of Part 264, Subpart O. These include information required for Part B of a permit application (§ 122.25(b)(5)) and criteria for trial burn permits (§ 122.27). Elsewhere in today's Federal Register, the Agency is proposing additions to the Part 264, Subpart O standards being promulgated today. These additions will necessitate future additions to the Part 122 permitting standards.

Many of the terms used in today's regulation are defined in the Part 260 regulations which were issued on May 19, 1980, at 45 FR 33066. For example one key point underlying the regulations promulgated today is that incineration of hazardous waste is a form of "treatment" as treatment is defined under § 260.10(73).

The definintion of incinerator in § 260.10(30) notes that the primary purpose is to "thermally break down hazardous waste." This should be differentiated from the combustion of wastes primarily for the recovery of their thermal value, which is not "incineration" and, in accordance with the exclusion of reused or recycled wastes under § 261.6, is exempt from these incinerator regulations.

Today's regulations should also be distinguished from "thermal treatment" standards for which the Agency has published interim status standards (Part 265, Subpart P) which it intends to finalize sometime soon. The Agency has not yet issued technical permit standards for thermal treatment under Part 264. When promulgated, these standards will address thermal treatment processes which do not come under the definition of incineration.

As a result of adding Subpart O to Part 264, the Agency has also made a number of technical conforming changes to other sections, including §§ 264.10, 264.13, 264.15, 264.73, 264.112, and 264.142.

III. Synopsis of the 1978 Proposal for Incinerators

A. The Regulations as Proposed

Proposed regulations for incineration of hazardous waste were published as 40 CFR § 250.45–1 on December 18, 1978 (45 FR 59006). They required owners and operators to meet a number of performance standards coupled with various operating requirements, most of which were intended to help ensure that the performance criteria were continuously met.

The performance criteria required that all incinerators burning hazardous wastes achieve a destruction efficiency (DE) of 99.99%, and a combustion efficiency of at least 99.9%; that particulate emissions be less than 270 mg./scm³ (0.12 gr/scf) at zero excess air; that fugitive emissions be controlled; and that emission controls remove more than 99% of the halogens when hazardous wastes containing more than 0.5% halogens were burned.

Proposed operating regulations required that owners or operators monitor and record significant variables at 15 minute intervals; that trial burns be conducted, analyzed and reported to the Regional Administrator before each new and "significantly different" hazardous waste was incinerated; and that the wastes be retained for 2 seconds at 1000° C. combustion temperature (1200° C. for halogen containing wastes). A "note" or variance provided that incinerators need not comply with the detailed combustion criteria if an equivalent combustion efficiency could be achieved by other means. A device to automatically cut off waste feed whenever combustion or scrubber conditions changed significantly was a final requirement.

B. Comments on the Proposed Regulations

The Agency received more than 250 comments on the proposed incinerator regulations. The most significant of these are discussed in Section V of this

preamble. All of them are considered in the accompanying "Background Document."

Many comments dealt with broad and general issues such as the propriety of applying any design and operating requirements, rather than relying solely on performance standards. Some comments questioned the Agency's statutory authority to regulate hazardous waste incineration under RCRA at all, rather than under the Clean Air Act.

On the other hand, many comments were essentially technical. One comment suggested that turbulence criteria be added to the time and temperature requirements. Others suggested that the measurement methodology was unclear or difficult to apply and that the measurement locations and frequencies for emission and effluent temperature measurements need to be specified. Three comments pointed to dangers inherent in automatic cut-off devices, and suggested that gradual shut-downs were preferable.

A middle range of comments accepted the general framework of the proposed regulations but stated that specific criteria were unnecessary or infeasible. In particular it was claimed that the halogen removal levels appropriate for chlorine were more stringent than those necessary or possible for other halogens, such as bromides or iodides. Similar comments suggested that the general 99.99% Destruction Efficiency requirement was impractical and very costly and would divert wastes from the relatively "safe" incineration option into "dangerous" long-term disposal in landfills. Some comments suggested varying Destruction Efficiency in accord with each waste's degree of hazard.

The high cost of trial burns and of trial burn analyses was frequently mentioned. There was considerable concern about the requirement that a new trial burn be performed before each "significantly different" new waste was incinerated. Several commenters pointed out that the almost infinite variety of chemical mixtures making up waste feeds made this requirement both expensive and impossible to apply with certainty, depending on the definition of "significantly different." A few comments suggested that the requirement that fugitive emissions be controlled should be more specific.

A final category of comments suggested specific exemptions or additional inclusions for the regulations when finally promulgated. The most important of these dealt with exempting wastes which were hazardous solely because of ignitability. Others recommended clarifying the status of incinerator ash residue and scrubber effluents as hazardous wastes, and of cement kiln incinerators and utility boilers burning hazardous wastes for their thermal value.

IV. The Incinerator Regulations Promulgated Today

A. Part 264—General Standards for Hazardous Waste Incineration

1. Applicability (§ 264.340)

This regulation and § 122.27(b) provide the substantive basis for all incinerator permits to be issued under Section 3005 of RCRA. In accord with §§ 261.2(c)(2) and 261.6, Part 260 defines "incinerator" so that combustion of wastes *primarily* for the recovery of their thermal value is not "incineration" and thus, is exempt from these standards. EPA plans to reconsider, and perhaps narrow, the § 261.6 exclusions in the future. The Agency specifically solicits comments on appropriate regulation of emissions from combustion of hazardous waste for purposes of thermal recovery.

The Agency may soon move to integrate these regulations with those promulgated under the Toxic Substance Control Act (TSCA) to control incineration of polychlorinated biphenyls (PCBs). EPA welcomes comments on the form and substance of that integration. Until that time the incineration of wastes which are subject to EPA's TSCA disposal criteria (40 CFR Part 761) will continue to be subject to control under TSCA rather than RCRA. Those requirements are more stringent than, but not inconsistent with, the requirements of this Subpart.

Thermal treatment of hazardous waste in systems other than incinerators is seldom utilized now, but EPA expects that practice to grow in importance. Interim Status Standards for such treatment were published, on an interim final basis, as Subpart P of Part 265. The Agency expects to finalize those standards soon and to promulgate permitting standards for non-incinerator thermal treatment at some time in the future. These are expected to be Subpart P of 40 CFR Part 264.

Finally, the regulation provides that wastes which are hazardous solely because of ignitability (and which contain no constitutents listed as toxic in Part 261, Appendix VIII) must be burned in accordance with a permit, but are exempted from most of the substantive requirements of the Subpart O regulations.

2. Waste Analysis (§ 264.341)

Required waste analysis takes two forms.

First, on an on-going basis, the operator must ensure that waste feed to the incinerator does not deviate from that defined in his permit. Such a deviation would be a violation of the permit. The permit, under § 264.345(b), will be written to specify wastes which the facility has demonstrated its ability to treat adequately. Thus, for waste feeds not specified in the permit, there is no assurance that the required performance standards can be met, especially in the absence of defined operation conditions. As a result, the Agency will require facilities to analyze waste feeds adequately to ensure that they remain within the terms of their permits, and to indicate in their waste analysis plans (required by § 264.13) how they will do this.

A second, and more intensive, form of waste analysis is required as part of each permit application and whenever a permit modification or a trial burn permit is sought. In these cases the applicant must describe certain physical properties of his waste feed and must analyze his waste sufficiently to identify the presence of any hazardous organic constituents listed in Part 261, Appendix VIII, except that the applicant need not analyze for Appendix VIII constituents which would not reasonably be expected to be in the waste. This analysis must be performed using the techniques specified in EPA's publication SW-846, or techniques of at least equivalent sensitivity and reliability.

A comprehensive analysis of the hazardous organic constituents of a waste as it is to be incinerated is necessary to identify the waste components to which the performance standard (especially the destruction and removal requirement) will apply. Analytical techniques such as capillary column gas chromatography and a "reverse search" of mass spectra are well within the capability of widely available laboratory services, so long as the constituents to be searched for are specified in some way. In order to identify hazardous components of waste feeds and, at the same time, limit the scope of the waste analysis to practical limits, the scope of the search is initially specified as those constituents listed in Part 261, Appendix VIII. In almost all cases the scope of the mass spectral analysis will be further limited by deleting analysis for those Appendix VIII constituents which would not reasonably be expected to be present in the waste.

Incinerators commonly receive wastes from a wide variety of generating processes and mix them for combustion

on the basis of BTU value and physical characteristics. Thus analysis of waste feed that will actually be burned is more important than analysis of wastes as they are received or as they are stored prior to blending as a waste feed. Further, reliance on information provided on the manifest or data considered as part of EPA's listing process will seldom be adequate. Therefore, the analysis required by § 264.341 is necessary to allow EPA to define operating conditions necessary to incinerate the waste feed in compliance with appropriate performance standards.

3. Principal Organic Hazardous Constituents (POHCs) (§ 264.342)

Waste feed mixtures will be specified in each facility's permit. For each waste feed mixture, identified in a facility permit, the permit will specify Principal Organic Hazardous Constituents (POHC's) which must be destroyed or removed as required by the applicable performance standard. Identification of those waste feed constitutents to which the performance standard will be applied is central to application of the standard. The Agency has chosen to designate specific POHC's rather than require that *all* hazardous constituents of the waste feed meet the performance standard. This reduces the analytical burden and associated cost of verifying compliance with the performance standard. Selecting limited POHCs avoids the necessity for measuring compliance against perhaps dozens of constituents that may be present in a given waste in insignificant quantities. Finally, designating as POHCs those waste constituents which are most difficult to destroy will generally ensure that less stable hazardous organic constitúents are also destroyed.

For those reasons POHC selection will be made by the permit writer primarily on the basis of difficulty of incineration, but the permit writer may then consider concentration or quantity of constituents and need not designate as POHCs those present only in insignificant quantities. Thus the regulation says that difficult-to-burn constituents are those "most likely" to be selected as POHCs, while larger quantity constituents are "more likely" to be selected than those present in lesser quantities.

4. Performance Standards (§ 264.343)

Three performance standards are the heart of this regulation. The most important of these is the requirement that incinerators burning hazardous waste must achieve a destruction and removal efficiency (DRE) of 99.99% for each POHC designated for each waste feed. This requirement (which includes particulate removal) is based on extensive data indicating that such a destruction efficiency is attainable in industrial incinerators burning a wide range of organic hazardous wastes. EPA has now defined the required performance standard to include credit for removal efficiencies as well as destruction efficiencies. This approach makes the performance standard more easily attainable since it allows credit for removal by air pollution control equipment as well as for destruction in a combustion zone, and it avoids the technical difficulties associated with precise measurements within the extreme conditions of a combustion zone. Yet the reliance on destruction and removal efficiency, rather than mere destruction efficiency, poses no environmental hazards since the standard still covers all emissions *before* their release to the environment, and since waste residues trapped by emission control equipment must still be treated as hazardous wastes and managed properly within the RCRA system.

There are limits to the destruction and removal efficiency approach. It does not control the actual mass of POHCs emitted since, for any given destruction and removal efficiency, mass emissions vary directly in proportion to variations in mass feed rate. Perhaps most importantly, the approach fails to account for emissions of hazardous combustion by-products which may be equally or more hazardous than POHCs themselves. Finally, metals, since they are not combustible, are not now controlled using this approach.

EPA has considered, and is still considering, the feasibility of additional approaches to the control of emissions from hazardous waste incinerators. The Agency is today proposing, elsewhere in today's **Federal Register**, a set of procedures for varying the performance standard to address the problems just mentioned. However, until it is clear that the proposed variance procedure is practicable, the Agency is relying upon the approach promulgated today. The effect of these combined approaches is that in the absence of data showing that lesser emission levels are safe or that greaters levels are necessary, the Agency will require that hazardous wastes not be incinerated under standards less stringent than those known to be currently attainable by the existing technology of high quality commercial hazardous waste incineration. Initial analysis of data available to the Agency indicates that, for typical waste feed rates, most organic wastes will present no significant health hazards when treated to a 99.99% destruction and removal efficiency.

An additional performance standard is a requirement that incinerators burning hazardous waste containing more than 0.5% chlorine must remove 99% of the hydrogen chloride from their exhaust gas. The level of 0.5% chlorine content was chosen as the threshold level for the 99% hydrogen chloride removal requirement since the chlorine content of American coal ranges up to almost that concentration. Current Clean Air Act regulations do not specify hydrogen chloride or chlorine limits for emissions for the combustion of such coal. The small additional emissions from incineration of low-chlorine hazardous wastes are not likely to be a serious problem. Some potential candidates for incineration (for example hexochlorobenzene) do include high chlorine levels and will produce significant emissions. Thus the hydrogen chloride removal requirement is necessary.

The final performance standard is that incinerators not emit particulate matter exceeding 180 milligrams per dry standard cubic meter. Particulates from hazardous waste combustion can absorb hazardous constituents onto their surface, or may themselves be hazardous, making their control important. Control is addressed through the DRE standard because particulates are included in the analysis of the stack emissions for POHC's. However, neither combustion by-products nor metals are controlled through the performance standards promulgated today. Thus, some control of these substances can be achieved by controlling the emissions of particulates. The emission limits required are the same as those required by the Clean Air Act's New Source Performance Standards for municipal incinerators. Data indicate that they are achievable by all hazardous waste incinerators except, perhaps, for cement kilns. Cement kilns are exempt from this Subpart when burning waste for re-use or for recovery of thermal value.

It is very important to note that, while these three performance standards are the goal of this regulation, it is not technically practicable to directly monitor compliance with the performance standards on a continuous basis. Enforcement instead will be based on compliance with operating conditions demonstrated (by trial burns or alternative data) to be adequate to achieve these performance standards, and then specified in the permit. However, EPA may require verification

tests of compliance with the performance standard either periodically, as specified in the permit, or when there is an indication that the performance standards are not being met. If the test, or other data, indicate non-compliance with the performance standard, then the Agency will have grounds to modify, revoke, or re-issue a permit so as to ensure that the performance standards will be met. In most cases the Agency does not expect verification tests to be necessary more frequently than annually.

5. New Wastes: trial burns or permit modifications (§ 264.344)

Each permit will specify the waste feeds which it allows and the operating conditions required for each waste feed. When an owner or operator wishes to burn waste feeds for which operating conditions have not been set in a permit he must either secure a permit modification, or, if the burn is to be of short duration and for the specific purposes listed in § 122.27(b), he must secure a temporary trial burn permit.

The criteria for granting trial burn permits are specified in § 122.27(b) which is summarized later in this preamble. The criteria for granting new permits and permit modifications are those outlined in Part 264, Subpart O. These criteria require demonstration, for a defined waste feed, of operating conditions adequate to achieve the performance standards of § 264.343. This demonstration may be based either on the results of an approved trial burn, or on alternative data adequate to demonstrate that the performance standard can be met and adequate to define operating conditions necessary to meet the standard. Obviously, if an owner or operator wishes to avoid repeated applications for permit modifications, it is in his interests to demonstrate, in each permit application, the widest possible variety of waste feeds that can be adequately incinerated under each set of operating conditions. Furthermore, for economic reasons, applicants may wish to define their waste feeds in varying groups, seeking less stringent operating requirements for easily combusted waste feeds, while narrowing the class of waste feeds that are subject to more demanding and expensive operating requirements. To the extent that the applicant can demonstrate in his permit application that the required performance standards can be met for each of these classes of waste feed, he is, of course, free to make these separations.

6. Operating Requirements (§ 264.345)

Each permit will specify, on a case-by-case basis, operating conditions which have been demonstrated (in the trial burn) to be adequate to meet the performance standard and with which compliance is required. The regulation specifies several operating parameters which will almost always be significant variables for attainment of the performance standards. Limits will be set for these operating parameters in every permit. However, if any specific incinerator's design or waste feed makes it necessary, the permit writer may also specify other operating requirements necessary to ensure that the applicable performance standards are met.

Three further operating requirements will be applied uniformly. During start-up and shut-down of an incinerator, hazardous waste must not be fed unless the incinerator is at a steady state of operation. This requirement is aimed at the problem of inconsistent performance and incomplete combustion when wastes are burned in a zone where combustion conditions have not stabilized within limits defined in the permit.

The regulation also requires that fugitive emissions must be controlled. Where feasible this should be through total sealing of the combustion zone. Where that is impossible (as with rotary kilns) incinerators should maintain "negative pressure", i.e. a combustion zone pressure lower than atmospheric pressure. Alternative means of control may be allowed where they are demonstrated to provide effectiveness equivalent to maintenance of "negative pressure." These requirements are necessitated by the danger of escape of fugitive emissions—including hazardous waste constituents—that could threaten human health or the environment. They are already generally practiced in commercial hazardous waste incineration.

Finally, incinerators must be operated with a functioning system to shut off waste feed when operating requirements are violated. This requirement will protect against deviation from the performance standard; in fact, it is implicit in the requirements that hazardous wastes can be incinerated only in compliance with a permit and that the operating requirements are conditions of the permit. After shutting off hazardous waste feed, the facility may take appropriate steps to either shut-down the incinerator or to return to operating conditions defined in its permit.

7. Monitoring and Inspections (§ 264.347)

EPA has made every effort to reduce monitoring and inspection to the minimum level necessary to ensure that operation of the incinerator does not deviate from the required performance standards. In fact, the recognition that it is technically not practical to continuously monitor for compliance with the performance standard is a major factor underlying the monitoring which is required. The regulation requires, as a minimum, continuous monitoring of combustion temperature, waste feed rate, and air feed rate.

These are the variables which most significantly affect destruction and removal efficiency; they are also continuously controllable by incinerator operators. Continuous monitoring of carbon monoxide emissions is also required. This monitoring is the simplest procedure for approximate verification that adequate combustion actually is taking place. Finally, the regulation requires daily inspection of the incinerator and associated equipment, including alarm systems and emergency shut-down controls. Since the incinerator is a complex system, subject to high stress conditions, this inspection is necessary to control against leaks, spills, or fugitive emissions, and to ensure that stand-by systems will actually operate when needed.

8. Closure (§ 264.351)

At closure the owner must remove all hazardous waste and hazardous waste residues from the incinerator site. Wastes which are hazardous solely because of ignitability are *not* exempt from this provision, since the risk they pose to human health and the environment is very real when they are not being burned in the controlled combustion zone of a permitted hazardous waste incinerator.

B. Part 122—Incinerator Facility Permits

Part 122 includes regulations covering the permitting process. Two portions of Part 122 are particularly related to hazardous waste incinerator operation. Section 122.25 describes information required in Part B of an owner or operator's permit application; § 122.25(b)(5) describes the particular information required in applications for permits to incinerate hazardous waste. Section 122.27 describes short-term permits; § 122.27(b) sets out the procedures and standards for obtaining a permit to conduct a trial burn of hazardous waste.

1. Permit Application Information (§ 122.25(b)(5))

Permit writer's will have to make significant judgments, based on information contained in facility permit applications. EPA has limited the information required in Part B of a permit application for an incinerator to that necessary to make those judgments properly. As § 122.25(b)(5) specifies, applicants must meet one or more of three sets of information requirements.

If the facility is seeking to incinerate hazardous waste under the exemption available for waste which is hazardous solely because it is ignitable, the permit application must provide analytical results adequate to determine that hazardous constituents listed in Part 261, Appendix VIII, are not present in the waste. The reasons for this are explained above, in the substantive discussion of the ignitability exemption.

Initially, information will be submitted for most facilities under § 122.25(b)(5)(ii). This requires that an applicant submit the results of a trial burn of the relevant waste feed, conducted under § 122.27(b). This submission must include all the waste analyses, engineering data, analytical results, and calculations related to the trial burn and its results. This information must be adequate to allow the permit writer to determine operating conditions that will ensure that the facility will meet the performance standards for the relevant waste feeds.

Finally, applicants may seek to avoid the trial burn requirement by submission of alternative data. This information, specified in § 122.25(b)(5)(iii), is essentially a re-statement of the information required to obtain a trial burn permit under § 122.27(b). It is supplemented by such further information as the permit writer may require to determine that the alternative data in adequate to ensure that the performance standards will be met, and to set adequate operating parameters.

2. Trial Burn Permits (§ 122.27(b))

Destruction and removal efficiencies for any given waste feed can vary greatly, and are dependent both on operating conditions and on specific aspects of any incinerator's design. Thus, compliance with applicable performance standards will often have to be demonstrated by empirical measurement, rather than by prediction. Trial burns are the mechanisms for these measurements.

Each trial burn can be conducted only with the specific approval of a permitting official. However, the full procedural requirements for general permits need not be followed. This is because short term permits will be of limited duration (generally less than a dozen hours of combustion, spread over operating periods of up to two weeks), and for the limited purposes of determining feasability of compliance, and the operating conditions necessary to comply, with applicable performance standards. In addition, trial burns will not be allowed if they pose an imminent hazard to human health or the environment.

Applications for a trial burn permit must include a trial burn plan which, if approved, will become a condition of the trial burn permit. This plan will include a waste analysis (indentical to that required for general permits) which describes certain physical properties of the proposed waste feed and which includes an analysis sufficient to identify the presence of any hazardous organic constituents listed in Part 261, Appendix VIII, which may be present in the waste.

In addition, the applicant must provide a detailed description of his incinerator and of the sampling and monitoring procedures to be followed, along with descriptions of safety equipment and full information about the time, waste quantity, and operating conditions of the proposed trial burn.

The permitting official may ask to have this information supplemented if he needs further data to determine whether the trial burn is likely to demonstrate compliance with the performance standards, identify associated operating conditions, and will not itself present an imminent hazard to human health and the environment. When the permitting official determines that the data meet these objectives, he will approve the trial burn plan, will specify the trial Principal Organic Hazardous Constituents (trial POHCs) for which the facility must calculate destruction and removal efficiencies during the trial burn, and will issue a trial burn permit incorporating the conditions in the trial burn plan.

When trial burns are carried out, EPA may wish to have an observor present and, if necessary, can insist upon doing so under the authority of Section 3007 of RCRA, and 40 CFR 122.(7)(i). In any case the trial burn must be conducted in accordance with the trial burn permit and waste feed must cease when specified operating conditions are violated.

Determinations specified in the trial burn permit must be made during the trial burn, or as soon after it as is practical. In all cases, these will include a quantitative analysis of the trial POHCs in the waste feed to the incinerator and a quantitative analysis of the trial POHCs in the exhaust gas emitted from the incinerator. These analyses are necessary to make the required computation of destruction and removal efficiency (DRE) in accordance with the formula specified in § 264.343(a). This DRE computation must be supported and verified by a total mass balance of the trial POHCs in the waste feed, and must be compared with required quantitative analyses of scrubber water and other residues for trial POHCs. Measurement of hazardous combustion by-products will be used to verify attainment of the DRE performance standard, through comparison with the mass balance of POHCs. It may also help meet public concern about the presence of by-products in incinerator emissions. Data accumulated from these trial burn analyses may lead to reductions in the number and complexity of subsequent trial burns, either by reducing the need for those burns, or by aiding the selection of surrogates to simplify such analyses.

Compliance with the other performance standards must be demonstrated by direct measurement of particulate emissions and hydrogen chloride removal efficiencies. Sources of fugitive emissions and their means of control must also be identified.

Measurements of average, maximum, and minimum temperatures in the combustion zone and of air feed rates are always necessary to help establish operating conditions which will assure continued compliance with the performance standard. In addition, the trial burn permit may specify other data collection, if necessary to determine compliance with applicable performance standards, or to establish operating requirements.

Since § 122.27 Short-Term Permits are somewhat separate from the normal permitting procedures, and since they will not always include public participation, for purposes of clarity the Agency has specified that all submissions required by this subsection shall be certified by signature. Since repeated submissions may be required to establish acceptable waste analyses, trial burn plans, and trial burn analyses, the Agency has decided to require only that the certification be made by a person authorized to make reports, rather than requiring that each submission be signed by a person of vice-presidential or equivalent corporate rank.

C. Part 265—Interim Status Standards for Hazardous Waste Incineration

Facilities which qualify for interim status may continue to operate until final Agency action on their permit applications. Throughout that time owners or operators must comply with all relevant interim status standards. If the owner or operator of a facility which has interim status wishes to burn a waste which he has not listed in Part A of his permit application, he must supplement his Part A application as required by § 122.23(c)(1).

EPA is today finalizing the Interim Status Standards which were issued, on an interim final basis, on May 19, 1980 (45 FR 33250). With small exceptions the regulations follow the text of the interim final promulgation. They are discussed in the preamble accompanying that promulgation. The Agency has, however, modified those regulations in two significant ways. First, the regulation now prevents hazardous waste feed during shut-down situations, in addition to forbidding it during start-up conditions. On the other hand, the Agency has recognized that wastes which are hazardous solely because of ignitability can be burned safely even when operating conditions are unstable. Thus the final regulations allow exemptions for ignitable wastes, conditional upon the owner or operator performing and maintaining analyses that show that the waste feed would not reasonably be expected to contain hazardous constituents listed in Part 261, Appendix VIII.

V. Issues Raised by Comments, and Changes in the Regulation

A. General Concepts Underlying the Regulation

1. *Authority*

Several commenters argued that RCRA granted EPA no authority to regulate hazardous waste incineration since legislative history did not label incineration a form of "disposal" and since the Clean Air Act adequately controlled incinerator emissions.

Whether hazardous waste incineration falls within the Section 1004(3) definition of "disposal" is not a controlling issue. The Agency is regulating incineration as "treatment" of hazardous wastes. Section 1004(34) defines treatment:

(34) The term "treatment", when used in connection with hazardous waste, means any method, technique, or process, including neutralization, designed to change the biological character or composition of any hazardous waste so as to neutralize waste and render it non-hazardous, safe for transport, amenable for recovery, amenable for storage, or reduced in volume. Such term includes any activity or processing designed to change the physical form or chemical composition of hazardous waste so as to render it non-hazardous.

As a process designed to render hazardous waste non-hazardous and reduced in volume, incineration certainly falls within this definition. The Agency's statutory mandate to regulate such treatment pocesses is then found in Section 3004, which requires that the Administrator promulgate performance standards for the treatment of hazardous wastes.

This also fits the broad structure of RCRA, which requires that hazardous wastes be sent only to facilities which have RCRA permits to treat them. The Administrator's authority in this matter is make even more clear in Section 3004 which says that the standards set by the Agency "shall include, but need not be limited to, requirements respecting—

(3) Treatment . . . of all such wastes . . . pursuant to such operating methods, techniques, and practices as may be satisfactory to the Administrator.

This mandate also serves the objectives of the statute, defined by Congress in Section 1003(4) as, among other things, "regulating the treatment . . . of hazardous wastes which have adverse affects on health and the environment". Furthermore, incineration of hazardous wastes was discussed extensively in EPA's 1974 *Report to Congress: Disposal of Hazardous Wastes*, a document that strongly influenced Congressional development of RCRA. Additionally, EPA has consistently indicated in both Federal Register proposals and Congressional testimony that it will control incinerators under RCRA. Congress gave no signs of disapproval of this in the 1980 RCRA amendments.

The Agency cannot agree with those commenters who suggested that the proposed regulations should be replaced by, or were in conflict with, the Clean Air Act. Current Clean Air Act regulations address only a portion of the potential emissions from a hazardous waste incinerator. The Clean Air Act is oriented toward control of emissions on a pollutant-by-pollutant basis, and current regulations are focused largely on wide-spread, large-volume, pollutants (particulates, NO_x, SO_x, etc) and on specified hazardous emissions from specific sources. In contrast, the pollutants which could be emitted from hazardous waste incinerators are far more numerous and diverse. Many are acutely toxic or carcinogenic. A case-by-case, chemical by chemical, regulatory approach under the Clean Air Act is not practical in this situation.

RCRA provides authority to control emissions broadly through destruction and combustion performance standards and direct operating and design standards. Such a regulatory approach is necessary in order to adequately protect human health and the environment as required by RCRA. To the exent that standards can be developed in the future under the Clean Air Act to deal with specific hazardous air emissions, this may aid in the task of regulating hazardous waste incineration. Moreover, since hazardous waste incinerators will often store and generate hazardous waste, they will already be within the RCRA system for manifests and permitting. Thus regulating hazardous waste incineration under RCRA (rather than the Clean Air Act) may be the simplest way to minimize the regulatory burden on applicants.

2. Performance Standards and Engineering Judgment

Several comments on the proposed regulations criticized as too inflexible two facets of the proposed regulations: (1) universally applicable specific design and operating requirements, and (2) performance requirements that did not allow waste-specific variances.

Both of these concerns were seriously considered. As discussed in the next paragraph, the Agency has revised the regulations so that they now rely heavily on performance standards, with few operating requirements specified. Facility-specific and waste-specific variances proved, however, to be technically and procedurally complex. They required techniques and procedures which were not proposed and which relied on much scientific knowledge not included in the 1978 proposal. EPA, therefore, is proposing today a waste-specific and facility-specific variance and a procedure for applying it. The Agency specifically solicits comments and data relevant to the proposed variance and procedure; but, until the variance is shown to be feasible and is finalized, permits will be issued under the performance standards promulgated today.

The other general comment was easier to address. The proposed regulations included specific, universally applicable operating requirements for temperature, dwell-time, combustion efficiency, and quantity of excess air. Commenters persuasively argued that these standards did not provide enough flexibility to account for the many differences in wastes and incinerator

designs, and that they were often not necessary, even to meet the performance standards EPA required. On more abstract grounds they also argued that performance standards were inherently better than operating standards since they adequately protected human health and the environment, while not stifling innovative approaches which might be more economical, more efficient, or more effective.

The Agency concluded that these comments had merit. Different wastes and different incinerator designs have been shown in EPA tests to attain the required destruction and removal efficiencies under a variety of operating conditions. Thus some flexibility to tailor operating standards on a case-by-case basis can more effectively assure protection of human health, while, at the same time, avoiding needless requirements. The regulations now include few nationally applicable design and operating standards, but rely instead on selected performance standards. However, as many industry comments pointed out, it is technically impractical to continuously monitor the most important of these performance requirements (destruction and removal efficiency) especially when quick response times may be important. Thus pure reliance on performance standards is not feasible and specific operating criteria will have to be observed for proper facility operation and to demonstrate compliance with the required DRE. These specific operating standards will now, however, be specified on a case-by-case basis during the permit drafting process based primarily on the results of trial burns (or alternative data) which demonstrate the operating conditions necessary to achieve compliance with the performance standards. The permit writer will need to exercise some measure of scientific and engineering judgment in interpreting the trial burn data and defining acceptable limits on operating conditions and waste feed variations. The procedural mechanisms for making these case-by-case determinations (including data compilations from trial burns) are necessarily complex, but they appear the best alternative to uniform national standards.

This approach—tailoring of regulatory requirements to specific wastes and facilities, based on the trial burn (or alternative data)—is consistent with the approach EPA has adopted for other regulations for management of hazardous waste. It recognizes that case-by-case judgments, based on site-specific circumstances can be applied in establishing the operating requirements applicable to an incinerator. In making such scientific and engineering judgments, the permit writers will be able to apply the latest state-of-the-art information on incinerator technology and the thermal destruction characteristics of waste to the facility-specific information obtained from trial burns and contained in permit applications. To aid this process, EPA is publishing a "Permit Writer's Guidance Document for Hazardous Waste Incineration" and an "Engineering Handbook on Hazardous Waste Incineration." The Agency expects to make these manuals available to the public in the near future. The latest drafts of these manuals are now available for inspection in the RCRA docket room, but the Agency expects to update them periodically.

B. Significant Comments; and Changes to Part 264

The Agency has considered each comment relevant to hazardous waste incineration. Significant ones are summarized here; others are included in the detailed discussions in the companion "Background Document."

Commenters suggested that incineration of wastes which are hazardous solely because of ignitability should not be subject to incineration regulations. EPA agrees in principle and, as mentioned above, has exempted such wastes from most of the substantive requirements of Part 264, Subpart O. However, applicants must show in a permit application that an ignitable waste does not contain toxic organic constituents listed in Part 261, Appendix VIII. This showing must be based on an analysis of the waste for any organic constituents listed in Appendix VIII, except those that can be demonstrated not to be reasonably likely to be in the waste. This showing is necessary because wastes which fail the ignitability characteristic described in Part 261 may also contain toxic organic constituents. Even wastes listed solely for ignitability may contain such constituents if the Agency did not have exhaustive composition data at the time of listing. Since toxic organic constituents must be destroyed in an incinerator in accordance with the performance standard, any ignitable waste containing such constituents is subject to all of the Subpart O standards.

Incineration of ignitable wastes which are exempted from most of Subpart O will, however, still be covered by RCRA permits. This allows generators and transporters of ignitable hazardous wastes to ship them to the facilities. It also ensures that they will be safely stored and otherwise handled until and through the facility's closure period.

Commenters challenged the waste analysis requirement both on the general grounds that it was ambiguous and unnecessary (since manifest data should suffice) and on the specific ground that determination of "principal hazardous components" was ambiguous and, perhaps, ruinously expensive. The waste analysis requirements are now far more detailed and linked more closely to the determination of the "principal hazardous components"—now called "principal organic hazardous constituents (POCHs)." The requirements clearly require more information than is shown on the manifest, as indeed they must since further information is requred to determine DRE and set operating conditions. EPA has also improved the clarity of the regulation by specifying that it is the waste *feed* to the incinerator that must be analyzed for burn-related information (thus assuring that affects of combination and blending are given credit and consideration), and by specifying which detailed waste analyses requirements are required only on permit application and which simplified analyses must be performed on an on-going basis.

Finally, EPA has responded to concern about determination of "principal hazardous components" by establishing a procedure for identification of POHCs during each permit writing process. The applicant may suggest certain POHCs for designation, but the determination will be made by the permit writer, using all available data (including trial burns) to determine those organic hazardous constituents most difficult to burn and present in significant quantities. This POHC selection analysis, while costly, will not be prohibitive since, even where necessary, GC/MS analysis against an identified list of constituents (those organics listed in Part 261, Appendix VIII) will give adequate qualitative and quantitative results at a reasonable cost. Even this analysis can be reduced if the applicant demonstrates that listed constituents would not reasonably be expected to be present in the waste feed.

Commenters often favored performance standards in theory but criticized the proposed Destruction Efficiency requirement of 99.99% for several reasons. Some criticized its general attainability, others argued that measurement near combustion zones was dangerous and inherently

unreliable; others pointed out that *inorganic* materials such metallic as elements, could not be "destroyed" by any combustion process short of nuclear transformation.

The regulations now call for a "Destruction and Removal Efficiency (DRE)" of 99.99% rather than 99.99% Destruction Efficiency (DE). This very significant change avoids the risks and unreliability of combustion zone gas measurement, and it gives facilities credit for pollutant removals made by their air pollution control equipment. It also means that measurements will be made at the point of release to the atmosphere—the real point of concern for protection of human health and the environment. Yet adequate protection is assured because air pollution control residues must be safely managed; in fact protection may be enhanced by the greater reliability of measurement.

EPA also now applies the DRE only to hazardous *organic* constituents, thus recognizing that inorganics are not "destroyed" by combustion. Inorganics can, of course, be "removed" from incinerator emissions, however the Agency has not yet analyzed data on what removal efficiencies represent the state of the art for inorganics removal controls. EPA is today proposing a procedure for case-by-case determinations of acceptable inorganic emissions. The Agency specifically solicits comments on that procedure and data on attainable inorganic removal standards.

Finally, on the most important point (attainability), EPA surveyed U.S. and international technical literature to obtain all available data on performance of incinerators destroying hazardous waste. EPA has now identified 54 waste/incinerator combinations for which an efficiency determination has been reported. This survey included all of the applicable full scale test work performed by EPA's Office of Solid Waste in 1975 and 1976, as well as all known and relevant test burns reported by industry, including a test-burn report submitted by the American Society of Mechanical Engineers.

In reviewing the 54 incinerator tests, all but nine achieved at least a 99.99% destruction efficiency. The remaining nine achieved efficiencies very close to 99.99%, and, upon close examination of the test reports, all of those nine tests had explainable and correctable problems which prevented attaining a 99.99% destruction efficiency. Since the final regulation is based on destruction and *removal* efficiency, the 99.99% performance level is more readily attainable than that monitored in test burns. Data clearly indicate that commercial hazardous waste incinerators can attain a 99.99% DRE for a wide-range of organic hazardous wastes, including those most difficult to burn.

Commenters objected to the proposed 99% removal requirement for all halogens, noting the difficulty of achieving 99% removal of halogens other than hydrogen chloride and claiming that other halogens were less dangerous than hydrogen chloride. Some argued for case-by-case determinations of necessary halogen removals.

EPA has retained the 99% removal requirement for hydrogen chloride from wastes containing significant amounts of chlorine. The comments received, and surveys of the technology in place, indicate that 99% removal for hydrogen chloride is attainable. EPA's Office of Solid Waste determined hydrogen chloride removals for four of its test burns in 1975 and 1976. All exceeded the required removals. Industry reports confirm this. The Agency, however, does not yet have data to support the attainability of, or need for, similar removals for other hydrogen halides. EPA is today proposing a procedure for case-by-case determination of acceptable hydrogen halide emissions, based on assessment of impacts on human health and the environment. The Agency specifically solicits comments on that procedure and on attainable hydrogen halide control levels.

Commenters criticized the proposed regulatory standard for particulate emissions. Some felt that it was too stringent, and others saw it as more permissive than existing Clean Air Act standards. Both groups criticized the complex formula for correcting for carbon dioxide in the exhaust stream.

EPA has clarified the formula to make it clear that the formula, calculations, and final standard are equivalent to the New Stationary Source Performance Standard for municipal incinerators promulgated under the Clean Air Act. Industry information and EPA's own full-scale tests indicate that this standard is attainable for facilities regulated under this Subpart.

Commenters objected to EPA's reliance on a combination of continuous monitoring of carbon monoxide emissions and a requirement of 99.9% combustion efficiency as an indicator of destruction efficiency. Determination of the combustion efficiency involves monitoring of both CO and CO_2 from the combustion process on a continuous basis. Commenters argued that a 99.9% combustion efficiency, as defined in the proposed regulation, is not achievable. Commenters also argued that measurement is a problem because absorption of CO_2 in wet scrubber systems can produce errors in the measurement of combustion efficiency.

The Agency has decided to drop the specification of combustion efficiency, as a result of these and related comments, and because the objectives of the proposed combustion efficiency standard can be obtained more simply. Thus, carbon dioxide no longer needs to be monitored. The final standard states that the carbon monoxide in the exhaust stack will be monitored on a continuous basis, but the maximum concentration limit in the emissions will be specified as an operating condition on a case-by-case basis in each permit. The permit limit will be determined based on a trial burn test or on other data submitted in lieu of a trial burn.

Carbon Monoxide monitoring is important because it provides a continuous indicator of the completeness of combustion which has taken place in an incinerator. When CO monitoring is combined with continuous monitoring of temperature, waste feed rate, and air feed rate, it is possible to determine on a continuous basis whether the incinerator is operating within limits defined in the trial burn as necessary to achieve 99.99% DRE.

As discussed above, commenters critized reliance on uniform operating requirements. The Agency agrees and these requirements will now be set on a case-by-case basis. The final regulations specify several incinerator operating parameters which are to become part of the permit issued by the Agency. These are combustion temperature, waste feed rate, air feed rate, and CO level in the exhaust gas. Also specified will be allowable variations in waste composition of the incinerator feed, and allowable changes in incinerator design and operating procedures. Standards regarding changes in design, operation, and feed composition are now specified.

The first reason for this is the shift from uniform requirements to those set on a case-by-case basis. It is now necessary to ensure that incinerator practices do not change (from those specified in permit applications) in ways that could make the specified conditions inadequate. A related reason is that DRE is now not monitored directly or continuously and the proposed combustion efficiency requirement has been dropped. Modifications to incinerators after trial burns could affect DRE without detection. Permit writers, therefore, will specify acceptable changes in incineration design, configuration, operating methods, and waste feed character.

Commenters criticized the proposed standard for control of fugitive

emissions of unburned hazardous waste and combustion products. Most stated that the level of control required was vague, or that EPA should state it as the level of best practical technology. Others argued that limited fugitive emissions are inevitable in some types of incinerators, particularly rotary kilns.

The Agency has now made the standard more precise. It now specifies two control techniques in current usage—sealing the combustion zone, and operating so that pressures in the combustion zone are less than in ambient air. Data indicate that the first technique can be used in all incinerators except rotary kilns, while "negative pressure" is the norm for all incinerators except fluidized bed incinerators. In any case, each facility may rely on either or both practices, or on any new method demonstrated to meet a performance standard equivalent to that achieved by "negative pressure" systems.

Commenters criticized the proposal for requiring that incinerators be shut-down and that waste feed be cut off whenever permit deviations occurred. Some argued that automatic shut-downs would in fact be harmful since rapid cooling would damage refractory liners.

The Agency has modified the regulation to make clear that, while hazardous waste *feed* must be cut-off, a total facility shutdown is not required. Human health and the environment will be protected if waste feed ceases. Non-hazardous auxiliary fuel feed may continue. Having ceased waste feed, the facility is free to correct deviations through whatever control modifications the situation requires.

Commmenters critized the proposed monitoring and facility inspection requirements. They questioned the expense and reliability of the required gaseous monitoring equipment, the frequency of inspections, and the specification of monitoring points. In these final rules, the Agency has specified a minimum schedule for monitoring and inspecting the operation of incinerators. Combustion and CO monitoring equipment must be monitored continuously, and operating corrections made to ensure that critical conditions are not allowed to vary outside permit limits. In addition, the regulation requires that equipment be inspected in accordance with both the minimum frequencies specified in the Subpart O standard and in the facility inspection schedule.

The permit writer may require measurements and calculations (similar to those used in a trial burn) to verify compliance with the DRE. The Agency expects that generally this will not be required more frequently than annually, and in most cases even less frequently.

C. Significant Comments; and Changes to Part 122

Comments suggested that trial burns should not be subject to the incinerator performance standard since the purpose of the trial burn is to determine the feasibility of, and the conditions necessary for, compliance with that standard. They also argued that failures to meet the performance standard might be inevitable, instructive, in good faith, and of minor environmental consequence. EPA agrees with much of this argument and, as discussed above, has created a special, simplified, permit process for trial burns. This procedure, codified as § 122.27(b), effectively exempts trial burns from Subpart O and subjects them only to conditions directly relevant to trial burns. In substance, these parallel §§ 264.341 (waste analysis) and 264.342 (POHC selection). These are combined with required compliance with approved operating conditions set forth in an approved trial burn plan. They provide an alternative basis for protection of human health and the environment, adequate for the limited mass and duration of trial burn emissions.

Trial burns are essential to the application of this regulation. The evaluation of trial burn data, and the setting of permit conditions which result from those data, represent the major focus of scientific and engineering judgment by the permitting official. It is in that process that the permit writer:

(1) applies scientific and engineering judgment to identify the principal organic hazardous constituents to which the performance standard applies, and

(2) establishes the operating conditions that will be placed in the permit.

The Agency intends that new trial burns should be minimized to the extent possible and conduct of those burns should proceed quickly so that they do not become an administrative barrier to the utilization of hazardous waste incineration. This is a particular concern with off-site facilities that burn a wide variety of hazardous wastes from many different generators. The regulations deal with this concern in several ways.

First, the simplified permit process described in § 122.27(b) has been set up. Second, as § 122.25 and Subpart O make clear, a trial burn may be waived, if the facility owner or operator can provide data equivalent to that which would be developed in a trial burn. This may be data from previous operational burns in a similar incinerator on similar waste, burns in pilot facilities, etc. Finally, trial burns can be minimized by prudent planning and structuring of trial burns by the facility owner or operator.

Although the DRE performance standard applies to each waste feed burned, this does not mean that a separate trial burn for each waste or each different mixture of wastes is required. To the extent practicable, the Agency intends to establish a ranking of wastes based on difficulty of thermal destruction. If an owner or operator established (through a trial burn) operating conditions for those wastes which are most difficult to destroy, this could provide the alternative documentation for the permitting official to allow certain other wastes to be burned at the same conditions. To avoid overly stringent burn conditions for easily combusted wastes, the facility owner might want to carry out, at different operating conditions, trial burns on two or more basic group of wastes, or waste mixtures, so that permit conditions could be established for each.

As an aid to this approach, EPA is working to construct a hierarchy of waste incinerability. Currently, data are available to develop comparative and predictive assessments, but not to define a complete hierarchy. It is now possible, based on current knowledge, to make some judgments of relative incinerability of different wastes. Data indicate that each of several predictive theories are reasonably accurate and that various theories generally agree in outcome. As more test burns are completed, and as more research and pilot incineration tests are conducted by EPA, a more complete incinerability hierarchy will be developed. As this data base is developing, the permit writer will need to exercise judgment in establishing the bounds on wastes and waste mixtures that can be burned at a given set of incinerator conditions. Thus, initially the trial burn burden may be large, but it should diminish substantially over time.

The Agency has placed a specific requirement in the trial burn section requiring that data collected from any approved trial burn be submitted to the Agency. This information is to be submitted whether or not the trial burn was successful in demonstration compliance with the performance standards. This data will allow the Agency to determine if excessive amounts of POHC's were emitted during the trial burn, to add to the information base being developed by the Agency, and to determine the reliability of successful trial burn results that are reported to the Agency.

D. Significant Comments; and Changes to Part 265

Commenters argued that banning the use of high BTU hazardous waste as fuel to start-up incinerators was contrary to sound practice. Some also argued that wastes which contain only carbon, hydrogen, and oxygen should be allowed as start-up fuel. Finally they asserted that EPA had failed to recognize degree of hazard of wastes.

The Agency has concluded that use of clean auxiliary fuel (such as fuel oil or natural gas) to start-up incinerators is a prudent practice. EPA realizes, however, that some wastes may be hazardous due solely to ignitability and might well be suitable for start-up. Thus, the final regulations for interim status incineration exempt wastes which are hazardous due solely to ignitability from the substantive requirements of this Subpart. The Agency has also modified the operating requirements to require that hazardous waste not be fed to the incinerator during shut down.

The Agency, however, disagrees with the comment that wastes which have only hydrogen, oxygen, and carbon in their structure should be exempted from the pre-heating requirement. An example of such a waste material is benzene, which contains only hydrogen and carbon, but which is hazardous because of its carcinogenic properties.

Finally, EPA has decided not to incorporate a degree of hazard approach into these Interim Status Standards since, even if feasible at all, it would require greater interaction between facilities and the Agency than interim status makes practical.

VI. Regulatory Analysis

Executive Order 12044 requires EPA to prepare a regulatory analysis for all new significant regulations. This analysis includes a comprehensive economic impact analysis and a discussion of the regulatory alternatives considered.

A. Economic Analysis

EPA plans to complete its formal analysis of the total Part 264 RCRA program and make it available for public review and comment in mid-1981. The Agency has, however, completed a fairly substantial preliminary analysis of the cost of the regulation published today. A copy of the preliminary cost analysis will shortly be available in the EPA Regional libraries, the EPA Headquarters library and the Docket Room in the Office of Solid Waste.

While total costs and impacts of the entire Part 264 regulation cannot be determined yet, EPA is building a model which allows such determinations. Inputs to this model are quantities of waste by waste stream and industry, unit costs of waste management, lists of feasible management methods for each waste stream, and capacity for existing management processes. The output from the model is the cost of the regulation by industry. These costs then serve as input to determining impacts. The incinerator costs discussed here will be used in this model.

The incremental costs by which RCRA regulations will increase the costs of current practice of managing hazardous waste are now being determined. These are the incremental costs of treating (or storing or disposing) of waste by a given method (e.g., in a incinerator) which is in compliance with the regulations. Preliminary costs have been developed for incinerators. In the following analysis these costs are presented on an incremental annualized after tax basis. Because they are incremental, they represent the additional cost of waste management imposed by the Part 264 general status regulations (over and above the costs imposed by the Part 265 interim status standards) on those owners or operators required to obtain a RCRA permit for incinerating hazardous waste. Because they are annualized, they represent the cost (in 1980 dollars) the owner or operator would incur if he incurred the same cost each year.

As a result of the permitting standards for incinerator, (Subpart O of Part 264), operators of incinerators will face higher costs. The regulations require the owners or operators of incinerators to achieve a destruction and removal efficiency (DRE) of 99.99%, to perform trial burns, to monitor continuously for carbon monoxide, to install an automatic shut down system which will automatically keep waste from entering the combustion chamber when incinerator operating conditions do not comply with the permit conditions, to close the incinerator against fugitive emissions, and to determine the principle organic hazardous constituents of the waste.

In the cost analysis, EPA determined that different types of wastes will incur different incremental costs. The primary reasons for cost differences among waste types is that some wastes require a higher temperature than others to assure a DRE of 99.99%, and that some types of wastes must be incinerated in a rotary kiln, while others can be incinerated in a liquid injector. The following table shows the annualized unit baseline (or pre-RCRA) cost for incineration, the cost increment due to the Part 265 Subpart O and financial requirements regulations, the increment due to the Part 264 Subpart O and Financial requirements regulations, and the cost of incineration following the Part 264 regulations. These figures show that the cost increment due to these Part 264 incinerator regulations is very low, and adds less than 6% to current costs even for the most toxic materials to be burned.

Annualized Incremental Unit Cost of Compliance With Part 264 for Incinerators[1]

[Unit cost (dollars per ton)]

Cost	Nonhalogenated liquids	Halogenated liquids	Nonhalogenated solids and sludges	Halogenated solids and sludges	Highly toxic materials
Baseline	$53.57	$259.29	$357.14	$535.79	$535.79
Part 265 without financial requirements	.97	1.94	.97	.97	.97
Part 265 financial requirements	1.88	7.04	12.54	12.54	12.54
Part 264 without financial requirements	3.62	7.23	3.62	11.62	46.48
Part 264 financial requirements	.22	.97	1.52	1.52	1.52
Total	60.24	276.37	375.59	563.24	617.10

[1] These costs are based on waste streams being incinerated as follows:

- Nonhalogenated liquids are incinerated in a liquid injection incinerator without pollution control devices and with a design capacity of 20,000 MT per year.
- Halogenated liquids are incinerated in a liquid injection incinerator with pollution control devices and with a design capacity of 10,000 MT per year.
- Nonhalogenated solids and sludges, halogenated solids and sludges, and highly toxic materials are incinerated in a rotary kiln incinerator with pollution control devices and with a design capacity of 20,000 MT per year.

The cost for Part 265 without financial requirements includes costs for monitoring, recordkeeping and reporting, administration, training and contingency plans, and equipment. It excludes the cost of waste analysis, which is dependent on the annual quantity of particular waste streams incinerated,

The cost for Part 265 financial requirements includes the cost of closure as well as providing a trust fund for closure. To the extent that owners or operators are able to use letters of credit or surety bonds to comply with the financial requirements, these costs will be significantly lower. The cost for Part 264 without financial requirements reflects costs for achieving the requisite DRE, performing trial burns, monitoring for CO, installing and operating an automatic waste feed cut-off system, determining the principal hazardous organic components of the waste, and periodically inspecting and analyzing burns to insure compliance with permit conditions. The cost for Part 264 financial requirements reflects the fact that the analysis assumes that owner or operators will build trust funds over 10 years for Part 264 and 15 years for Part 265.

The annualized incremental unit costs for Part 264 were derived from estimates of capital and operating and maintenance costs (O & M costs). The following table shows the capital and O & M costs, and serves as the basis for these Part 264 estimates.

Total Incremental Capital and Operating and Maintenance Cost of Compliance With Part 264 for Incinerators

[Cost in thousands of dollars]

Cost	Liquid injection—non-halogenated and halogenated liquids	Rotary kiln		
		Non-halogenated solids and sludges	Halogenated solids and sludges	Highly toxic materials
Capital	222.2	222.2	222.2	352.2
O & M	84.0	84.0	308.0	1,248.0

The cost analysis indicates that an owner or operator will incur capital costs for the following requirements: a) conducting trial burns; b) attaining the required destruction and removal efficiency; c) monitoring CO continuously; d) installing an automatic waste feed shut-off system; and e) determining the principal organic hazardous constituents of the waste feed. In addition, the owner or operator will incur annual operating and maintennce costs for (a) through (e), plus annual costs for periodic inspections and analyses of burns.

B. Regulatory Alternatives

EPA plans to prepare and make available for public comment in mid-1981 a full Regulatory Analysis for the entire RCRA program. This will include both the economic impact analysis and a summary of the regulatory approaches considered.

The Regulatory Flexibility Act (PL-96-354) requires all Federal agencies to consider the effects of their regulations on "small entities", i.e. small businesses, small organizations, and small governmental jurisdictions. It requires agencies to propose for public comment "Regulatory Flexibility Analysis" for any regulations proposed *after* January 1, 1981, and which will cause a significant impact on a substantial number of small entities. Since the Agency proposed this regulation before January 1, 1981, it is not legally required to comply with the Regulatory Flexibility Act.

However, the Agency is concerned about small entity impacts and has already considered them. EPA believes that a significant portion of the impact of the hazardous waste regulations on small businesses is caused by the regulations previously promulgated under § 3001 of RCRA. These rules define hazardous waste and thus determine who must comply with the regulation. For primarily administrative reasons, the Agency included a special exemption in the regulations promulgated on May 19, 1980 for small quantity generators (§ 261.5). This provision exempts from full regulation generators that produce less than 1000 kilograms of hazardous waste per calendar month (except that there are lower exemptions for certain acutely hazardous wastes). This exemption applies to firms that are small quantity generators which also incinerate their waste on-site. Such incinerators would not be subject to the Subpart O regulations for incinerators. Thus, EPA believes it has directly addressed the objectives of this Act.

VII. OMB Review

Under the Federal Reports Act of 1942, as amended by the Paperwork Reduction Act of 1980, OMB reviews reporting requirements in proposed forms and regulations in order to minimize the reporting burden on respondents and the cost to government. Although EPA has initiated discussions with the staff of OMB, time has prevented the completion and submission to OMB of the reporting requirements, and supporting materials, contained in these regulations. These regulations, pursuant to Section 3010(b) of the Act, do not take effect until six months after their promulgation. EPA anticipates that OMB review will be completed well before the reporting requirements take effect.

VIII. Supporting Documents

A. Background Documents

Included in the record supporting these regulations are two background documents providing response to public comments and rationale for how and why the regulations have come to be written the way they are. In conjunction with the references listed in them, these documents provide the basis for and defense of the promulgated regulations.

The background documents include: (1) summaries and responses to comments on the May 19 interim final, interim status, regulations; (2) summaries and responses to comments on the propriety of certain May 19 regulations as interim status requirements; (3) summaries and responses to comments on the proposed (December 1978) general standards; and (4) rationale for the general standards promulgated today.

Copies of these documents are available for review in the EPA regional office libraries and at the EPA headquarters library, Room 2404, Waterside Mall, 401 M Street, S.W., Washington, D.C. 20460.

B. Guidance Documents

To assist owners and operators of facilities as well as regulatory officials to implement these regulations, EPA has prepared guidance manuals. These will not have the effect of regulations, but will provide guidance on how to apply the regulations and will include certain operation information on incineration.

EPA has prepared the following manuals in support of the hazardous waste incinerator regulations: Engineering Handbook on Hazardous Waste Incineration; Permit Writers Guidance Document on Hazardous Waste Incineration.

For a more complete list of manuals that EPA is preparing in support of the entire hazardous waste regulatory program see the preamble discussion in the January 12, 1981 regulation.

(Secs. 1008, 2002(a), 3004, 3005, and 3007 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended, 42 U.S.C. §§ 6906, 6912(a), 6924, 6925 and 6927)

Dated: January 13, 1981.

Douglas M. Costle,

Administrator.

For the reasons set out in the Preamble, 40 CFR Parts 264, 265, and 122 are amended as set forth below. Part 264, Subpart O, and §§ 122.25(b)(5) and 122.27(b) are published in the Federal Register as interim final rules, and Part 265, Subpart O, is published in the

Federal Register as a final rule (see preamble for discussion).

PART 264—STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES

1. In § 264.10, paragraph (b) is revised to read as follows:

§ 264.10 Applicability.

* * * * *

(b) Section 264.18(b) is applicable only to facilities subject to regulation under Part 264, Subparts I, J, K, L, and O.

2. In § 264.13, paragraph (b)(6) is revised to read as follows:

§ 264.13 General waste analysis.

* * * * *

(b) * * *

(6) Where applicable, the methods which will be used to meet the additional waste analysis requirements for specific waste management methods as specified in §§ 264.17 and 264.341.

* * * * *

3. In § 264.15, paragraph (b)(4) is revised to read as follows:

§ 264.15 General inspection requirements.

* * * * *

(b) * * *

(4) The frequency of inspection may vary for the items on the schedule. However, it should be based on the rate of possible deterioration of the equipment and the probability of an environmental or human health incident if the deterioration or malfunction of any operator error goes undetected between inspections. Areas subject to spills, such as loading and unloading areas, must be inspected daily when in use. At a minimum, the inspection schedule must include the terms and frequencies called for in §§ 264.174, 264.194, 264.226, 264.254, and 264.347, where applicable.

* * * * *

4. In § 264.73, paragraph (b) is amended by revising paragraph (b)(3), adding new paragraph (b)(6), and redesignating paragraph (b)(6) and (b)(7) as (b)(7) and (b)(8) respectively revised to read as follows:

§ 264.73 Operating record.

* * * * *

(b) * * *

(3) Records and results of waste analyses performed as specified in §§ 264.13, 264.17, and 264.341;

* * * * *

(6) Monitoring, testing, or analytical data where required by § 264.347;

(7) For off-site facilities, notices to generators as specified in § 264.12(b); and

(8) All closure cost estimates under § 264.142, and, for disposal facilities, all post-closure cost estimates under § 264.144.

* * * * *

5. In § 264.112, paragraph (a) and paragraph (a)(1) are revised to read as follows:

§ 264.112 Closure plan; amendment of plan.

(a) The owner or operator of a hazardous waste management facility must have a written closure plan. The plan must be submitted with the permit application, in accordance with § 122.25(a)(13) of this Chapter, and approved by the Regional Administrator as part of the permit issuance proceeding under Part 124 of this Chapter. In accordance with § 122.29 of this Chapter, the approved closure plan will become a condition of any RCRA permit. The Regional Administrator's decision must assure that that approved closure plan is consistent with §§ 264.111, 264.113, 264.114, 264.115 and the applicable requirements of §§ 264.178, 264.197, 264.228, 264.258, and 264.351. A copy of the approved plan and all revisions to the plan must be kept at the facility until closure is completed and certified in accordance with § 264.115. The plan must identify steps necessary to completely or partially close the facility at any point during its intended operating life and to completely close the facility at the end of its intended operating life. The closure plan must include, at least:

(1) A description of how and when the facility will be partially closed, if applicable, and finally closed. The description must identify the maximum extent of the operation which will be unclosed during the life of the facility, and how the requirements of §§ 264.111, 264.113, 264.114, 264.115, and the applicable closure requirements of §§ 264.178, 264.197, 264.228, 264.258, and 264.351 will be met;

* * * * *

6. In § 264.142, paragraph (a) is revised to read as follows:

§ 264.142 Cost estimate for facility closure.

(a) The owner or operator must have a written estimate of the cost of closing the facility in accordance with the requirements in §§ 264.111–264.115 and applicable closure requirements in §§ 264.178, 264.197, 264.228, 264.258, and 264.351. The owner or operator must keep this estimate, and all subsequent estimates required in this Section, at the facility. The estimate must equal the cost of closure at the point in the facility's operating life when the extent and manner of its operation would make closure the most expensive, as indicated by its closure plan [see § 264.112(a)].

[*Comment:* For example, the closure cost estimate for a particular landfill may be for the cost of closure when its active disposal operations extend over 20 acres, if at all other times these operations extend over less than 20 acres. The estimate would not include costs of partial closures that the closure plan schedules before or after the time of maximum closure cost.]

* * * * *

7. In 40 CFR Part 264, Subpart O is added to read as follows:

Subpart O—Incinerators

Sec.

264.340 Applicability.
264.341 Waste analysis.
264.342 Principal organic hazardous constituents (POHCs).
264.343 Performance standards.
264.344 New wastes: Trial burns or permit modifications.
264.345 Operating requirements.
264.346 [Reserved]
264.347 Monitoring and inspections.
264.348–264.350 [Reserved]
264.351 Closure.
264.352–264.999 [Reserved]

Subpart O—Incinerators

§ 264.340 Applicability.

(a) The regulations in this Subpart apply to owners and operators of facilities that incinerate hazardous waste, except as § 264.1 provides otherwise.

(b) If the Regional Administrator finds, after an examination of the waste analysis included with Part B of the applicants permit application, that the waste to be burned:

(1) Is either (i) listed as a hazardous waste in Part 261, Subpart D, of this Chapter only because it is ignitable (Hazard Code I) or, (ii) that the waste has been tested against the characteristics of hazardous waste under Part 261, Subpart C, of this Chapter and that it meets only the ignitability characteristic; and

(2) That the waste analysis included with Part B of the permit application includes none of the hazardous constituents listed in Part 261, Appendix VIII;

then the Regional Administrator may, in establishing the permit conditions, exempt the applicant from all requirements of this Subpart except § 264.341 (Waste Analysis) and § 264.351 (Closure).

(c) The owner or operator of an incinerator may conduct trial burns, subject only to the requirements of § 122.27(b) of this Chapter (Trial Burn Permits).

§ 264.341 Waste analysis.

(a) As a portion of a trial burn plan required by § 122.27(b) of this Chapter, or with Part B of his permit application, the owner or operator must have included an analysis of his waste feed sufficient to provide all information required by § 122.27(b)(2) or § 122.25(b)(5) of this Chapter.

(b) Throughout normal operation the owner or operator must conduct sufficient waste analysis to verify that waste feed to the incinerator is within the physical and chemical composition limits specified in his permit (under § 264.345(b)).

§ 264.342 Principal organic hazardous constituents (POHCs).

(a) Principal Organic Hazardous Constituents (POHCs) in the waste feed must be treated to the extent required by the performance standard of § 264.343.

(b)(1) One or more POHCs will be specified in the facility's permit, from among those constituents listed in Part 261, Appendix VIII of this Chapter, for each waste feed to be burned. This specification will be based on the degree of difficulty of incineration of the organic constituents in the waste and on their concentration or mass in the waste feed, considering the results of waste analyses and trial burns or alternative data submitted with Part B of the facility's permit application. Organic constituents which represent the greatest degree of difficulty of incineration will be those most likely to be designated as POHCs. Constituents are more likely to be designated as POHCs if they are present in large quantities or concentrations in the waste.

(2) Trial POHCs will be designated for performance of trial burns in accordance with the procedure specified in § 122.27(b) of this Chapter for obtaining trial burn permits.

§ 264.343 Performance standards.

An incinerator burning hazardous waste must be designed, constructed, and maintained so that, when operated in accordance with operating requirements specified under § 264.345, it will meet the following performance standards:

(a) An incinerator burning hazardous waste must achieve a destruction and removal efficiency (DRE) of 99.99% for each principal organic hazardous constituent (POHC) designated (under § 264.342) in its permit for each waste feed. DRE is determined for each POHC from the following equation:

$$DRE = \left(\frac{W_{in} - W_{out}}{W_{in}}\right) \times 100\%$$

Where:

W_{in} = Mass feed rate of one principal organic hazardous constituent (POHC) in the waste stream feeding the incinerator, and

W_{out} = Mass emission rate of the same POHC present in exhaust emissions prior to release to the atmosphere.

(b) An incinerator burning hazardous waste containing more than 0.5% chlorine must remove 99% of the hydrogen chloride from the exhaust gas.

(c) An incinerator burning hazardous waste must not emit particulate matter exceeding 180 milligrams per dry standard cubic meter (0.08 grains per dry standard cubic foot) when corrected for 12% CO_2 using the procedures presented in the Clean Air Act regulations, "Standards of Performance for Incinerators", 40 CFR 60.50, Subpart E.

(d) For purposes of permit enforcement, compliance with the operating requirements specified in the permit (under § 264.345) will be regarded as compliance with this Section. However, evidence that compliance with those permit conditions is insufficient to ensure compliance with the performance requirements of this Section may be "information" justifying modification, revocation, or reissuance of a permit under § 122.15 of this Chapter.

§ 264.344 New wastes: trial burns or permit modifications.

(a) The owner or operator of a hazardous waste incinerator may burn only wastes specified in his permit and only under operating conditions specified for those wastes under § 264.345, except:

(1) In approved trial burns under § 122.27(b) of this Chapter; or

(2) Under exemptions created by § 264.340.

(b) Other hazardous wastes may be burned only after operating conditions have been specified in a new permit or a permit modification as applicable. Operating requirements for new wastes may be be based on either trial burn results or alternative data included with Part B of a permit application under § 122.25(b)(5) of this Chapter.

§ 264.345 Operating requirements.

(a) An incinerator must be operated in accordance with operating requirements specified in the permit. These will be specified on a case-by-case basis as those demonstrated (in a trial burn or in alternative data as specified in § 264.344(b) and included with Part B of a facility's permit application) to be sufficient to comply with the performance standards of § 264.343.

(b) Each set of operating requirements will specify the composition of the waste feed (including acceptable variations in the physical or chemical properties of the waste feed which will not affect compliance with the performance requirement of § 264.343) to which the operating requirements apply. For each such waste feed, the permit will specify acceptable operating limits including the following conditions:

(1) Carbon monoxide (CO) level in the stack exhaust gas;

(2) Waste feed rate;

(3) Combustion temperature;

(4) Air feed rate to the combustion system;

(5) Allowable variations in incinerator system design or operating procedures; and

(6) Such other operating requirements as are necessary to ensure that the performance standards of § 264.343 are met.

(c) During start-up and shut-down of an incinerator, hazardous waste (except ignitable waste exempted in accordance with § 264.340) must not be fed into the incinerator unless the incinerator is operating within the conditions of operation (temperature, air feed rate, etc.) specified in the permit.

(d) Fugitive emissions from the combustion zone must be controlled by:

(1) Keeping the combustion zone totally sealed against fugitive emissions; or

(2) Maintaining a combustion zone pressure lower than atmospheric pressure; or

(3) An alternate means of control demonstrated (with Part B of the permit application) to provide fugitive emissions control equivalent to maintenance of combustion zone pressure lower than atmospheric pressure.

(e) An incinerator must be operated with a functioning system to automatically cut off waste feed to the incinerator when operating conditions deviate from limits established under paragraph (a) of this Section.

(f) An incinerator must cease operation when changes in waste feed,

incinerator design or operating conditions exceed limits designated in its permit.

§ 264.346 [Reserved]

§ 264.347 Monitoring and inspections.

(a) The owner or operator must conduct, as a minimum, the following monitoring while incinerating hazardous waste:

(1) Combustion temperature, waste feed rate, and air feed rate must be monitored on a continuous basis.

(2) CO must be monitored on a continuous basis at a point in the incinerator downstream of the combustion zone and prior to release to the atmosphere.

(3) Upon request by the Regional Administrator, sampling and analysis of the waste and exhaust emissions must be conducted to verify that the operating requirements established in the permit achieve the performance standards of § 264.343.

(b) The incinerator and associated equipment (pumps, valves, conveyors, pipes, etc.) must be completely inspected at least daily for leaks, spills, and fugitive emissions. All emergency waste feed cut-off controls and system alarms must be checked daily to verify proper operation.

(c) This monitoring and inspection data must be recorded and the records must be placed in the operating log required by § 264.73.

§§ 264.348–264.350 [Reserved]

§ 264.351 Closure.

At closure the owner or operator must remove all hazardous waste and hazardous waste residues (including, but not limited to, ash, scrubber waters, and scrubber sludges) from the incinerator site.

[*Comment:* At closure, as throughout the operating period, unless the owner or operator can demonstrate, in accordance with § 261.3(d) of this Chapter, that the residue removed from the incinerator is not a hazardous waste, the owner or operator becomes a generator of hazardous waste and must manage it in accordance with applicable requirements of Parts 262–266 of this Chapter.]

§§ 264.352–264.999 [Reserved]

PART 265—INTERIM STATUS STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES

1. In § 265.73, paragraph (b)(3) is revised to read as follows:

§ 265.73 Operating record.

* * * * *

(b) * * *

(3) Records and results of waste analysis and trial tests performed as specified in §§ 265.13, 265.193, 265.225, 265.252, 265.273, 265.341, 265.375, and 265.402;

* * * * *

2. 40 CFR Part 265, Subpart O, is revised to read as follows:

Subpart O—Incinerators

Sec.
265.340 Applicability.
265.341 Waste analysis.
265.342–265.344 [Reserved]
265.345 General operating requirements.
265.346 [Reserved]
265.347 Monitoring and inspection.
265.348–265.350 [Reserved]
265.351 Closure.
265.352–265.399 [Reserved]

§ 265.340 Applicability.

(a) The regulations in this Subpart apply to owners or operators of facilities that treat hazardous waste in incinerators, except as § 265.1 and paragraph (b) of this Section provide otherwise.

(b) Incineration of wastes which:

(1) Meet only the ignitability characteristic under Part 261, Subpart C, of this Chapter, or

(2) Are listed in Part 261, Subpart D, of this Chapter for ignitability only (Hazard Code I),

are exempted from the requirements of this Subpart, except § 265.351, if the owner or operator can document that the waste feed would not reasonably be expected to contain constituents listed in Part 261, Appendix VIII of this Chapter. Such documentation must be in writing and must be kept at the facility.

§ 265.341 Waste analysis.

In addition to the waste analyses required by § 265.13, the owner or operator must sufficiently analyze any waste which he has not previously burned in his incinerator to enable him to establish steady state (normal) operating conditions (including waste and auxiliary fuel feed and air flow) and to determine the type of pollutants which might be emitted. At a minimum, the analysis must determine:

(a) Heating value of the waste;

(b) Halogen content and sulfur content in the waste; and

(c) Concentrations in the waste of lead and mercury, unless the owner or operator has written, documented data that show that the element is not present.

[*Comment:* As required by § 265.73, the owner or operator must place the results from each waste analysis, or the documented information, in the operating record of the facility.]

§§ 265.342–265.344 [Reserved]

§ 265.345 General operating requirements.

During start-up and shut-down of an incinerator, the owner or operator must not feed hazardous waste unless the incinerator is at steady state (normal) conditions of operation, including steady state operating temperature and air flow.

§ 265.346 [Reserved]

§ 265.347 Monitoring and inspections.

The owner or operator must conduct, as a minimum, the following monitoring and inspections when incinerating hazardous waste:

(a) Existing instruments which relate to combustion and emission control must be monitored at least every 15 minutes. Appropriate corrections to maintain steady state combustion conditions must be made immediately either automatically or by the operator. Instruments which relate to combustion and emission control would normally include those measuring waste feed, auxiliary fuel feed, air flow, incinerator temperature, scrubber flow, scrubber pH, and relevant level controls.

(b) The stack plume (emissions) must be observed visually at least hourly for normal appearance (color and opacity). The operator must immediately make any indicated corrections necessary to return visible emissions to their normal appearance.

(c) The complete incinerator and associated equipment (pumps, valves, conveyors, pipes, etc.) must be inspected at least daily for leaks, spills, and fugitive emissions, and all emergency shutdown controls and system alarms must be checked to assure proper operation.

§§ 265.348–265.350 [Reserved]

§ 265.351 Closure.

At closure, the owner or operator must remove all hazardous waste and hazardous waste residues (including but not limited to ash, scrubber waters, and scrubber sludges) from the incinerator.

[*Comment:* At closure, as throughout the operating period, unless the owner or operator can demonstrate, in accordance with § 261.3(d) of this Chapter, that the residue removed from his incinerator is not a hazardous waste, the owner or operator becomes a generator of hazardous waste and must manage it in accordance with all applicable requirements of Parts 262–266 of this Chapter.]

§§ 265.339-265.369 [Reserved]

PART 122—EPA ADMINISTERED PERMIT PROGRAMS: THE HAZARDOUS WASTE PERMIT PROGRAM

1. In § 122.25, paragraph (b)(5) is added to read as follows:

§ 122.5 Contents of Part B

* * * * *

(b) * * *

(5) For facilities that *incinerate hazardous* waste, except as § 264.340 of this Chapter provides otherwise, the applicant must fulfill the requirements of paragraph (b)(5) (i), (ii), or (iii) of this Section.

(i) When seeking exemption under § 264.340(b) (ignitable waste only):

(A) That the waste is either (1) listed as a hazardous waste in Part 261, Subpart D of this Chapter, only because it is ignitable (Hazard Code I) or, (2) that the waste has been tested against the characteristics of hazardous waste under Part 261, Subpart C of this Chapter, and that it meets only the ignitability characteristic, and includes none of the hazardous constituents listed in Part 261, Appendix VIII of this Chapter; or

(ii) Submit results of a trial burn conducted in accordance with § 122.27(b) including all the determinations required by § 122.27(b); or

(iii) In lieu of a trial burn, the applicant may submit the following information:

(A) An analysis of each waste or mixture of wastes to be burned including:

(*1*) Heat value of the waste in the form and composition in which it will be burned.

(*2*) Viscosity (if applicable), or description of physical form of the waste.

(*3*) An identification of any hazardous organic constitutents listed in Part 261, Appendix VIII, of this Chapter which are present in the waste to be burned, except that the applicant need not analyze for constituents listed in Part 261, Appendix VIII, of this Chapter which would reasonably not be expected to be found in the waste. The Constituents excluded from analysis must be identified and the basis for their exclusion stated. The waste analysis must rely on analytical techniques specified in EPA document SW-846 (referenced in 40 CFR Part 261, Appendix III) or their equivalent.

(*4*) An approximate quantification of the hazardous constituents identified in the waste, within the precision produced by the analytical methods specified in EPA document SW-846.

(*5*) A quantification of those hazardous constituents in the waste which may be designated as POHC's based on data submitted from other trial or operational burns which demonstrate compliance with the performance standard in § 264.343 of this Chapter.

(B) A detailed engineering description of the incinerator, including:

(*1*) Manufacturer's name and model number of incinerator.

(*2*) Type of incinerator.

(*3*) Linear dimension of incinerator unit including cross sectional area of combustion chamber.

(*4*) Description of auxiliary fuel system (type/feed).

(*5*) Capacity of prime mover.

(*6*) Description of automatic waste feed cutoff system(s).

(*7*) Stack gas monitoring and pollution control monitoring system.

(*8*) Nozzle and burner design.

(*9*) Construction materials.

(*10*) Location and description of temperature, pressure, and flow indicating devices and control devices.

(C) A description and analysis of the waste to be burned compared with the waste for which data from operational or trial burns are provided to support the contention that a trial burn is not needed. The data should include those items listed in § 122.25(b)(5)(iii)(A). This analysis should specify the POCH's which the applicant has identified in the waste for which a permit is sought, and any differences from the POCH's in the waste for which burn data are provided.

(D) The design and operating conditions of the incinerator unit to be used, compared with that for which comparative burn data are available.

(E) A description of the results submitted from any previously conducted trial burn(s) including:

(*1*) Sampling and analysis techniques used to calculate performance standards in § 264.343 of this Chapter,

(*2*) Methods and results of monitoring temperatures, waste feed rates, air feed rates, and carbon monoxide,

(*3*) Identification of any hazardous combustion by-products detected,

(*4*) The certification and results required by § 122.27(b)(5)(ii).

(F) The expected incinerator operation information to demonstrate compliance with §§ 264.343 and 264.345 of this chapter including:

(*1*) Expected carbon monoxide (CO) level in the stack exhaust gas.

(*2*) Waste feed rate.

(*3*) Combustion zone temperature.

(*4*) Air feed rate.

(*5*) Expected stack gas volume, flow rate, and temperature.

(*6*) Computed residence time for waste in the combustion zone.

(*7*) Expected hydrochloric acid removal efficiency.

(*8*) Expected fugitive emissions and their control procedures.

(*9*) Proposed waste feed cut-off limits based on the identified significant operating parameters.

(G) Such supplemental information as the Director finds necessary to achieve the purposes of this paragraph.

(H) Waste analysis data, including that submitted in paragraph (b)(5)(iii)(A), sufficient to allow the Director to specify as permit Principal Organic Hazardous Constituents (permit POHC's) those constituents for which destruction and removal efficiencies will be required.

(iv) The Director shall approve a permit application without a trial burn if he finds that:

(A) The wastes are sufficiently similar; and

(B) The incinerator units are sufficiently similar, and the data from other trial burns are adequate to specify (under § 264.345 of this Chapter) operating conditions that will ensure that the performance standards in § 264.343 of this Chapter will be met by the incinerator.

2. Section 122.27 is amended by revising the title, redesignating the existing Section as paragraph (a) and making conforming redesignations within paragraph (a), and adding a new paragraph (b) to read as follows:

§ 122.27 Short term permits.

(Applicable to State RCRA Programs, see § 123.7)

(a) *Emergency permits.* Notwithstanding any other provision of this part or Part 124, in the event the Director finds an imminent and substantial endangerment to human health or the environment the Director may issue a temporary emergency permit to a facility to allow treatment, storage, or disposal of hazardous waste for a non-permitted facility with an effective permit. This emergency permit:

(1) May be oral or written. If oral, it shall be followed in five days by a written emergency permit;

(2) Shall not exceed 90 days in duration;

(3) Shall clearly specify the hazardous wastes to be received, and the manner and location of their treatment, storage, or disposal;

(4) May be terminated by the Director at any time without process if he or she determines that termination is appropriate to protect human health and the environment;

(5) Shall be accompanied by a public notice published under § 124.11(b) including:

(i) Name and address of the office granting the emergency authorization;

(ii) Name and location of the permitted HWM facility;

(iii) A brief description of the wastes involved;

(iv) A brief description of the action authorized and reasons for authorizing it; and

(v) Duration of the emergency permit; and

(6) Shall incorporate, to the extent possible and not inconsistent with the emergency situation, all applicable requirements of this Part and 40 CFR Parts 264 and 266.

(b) *Trial burn permits.* For the purposes of determining feasibility of compliance with the incinerator performance standard of § 264.343 of this Chapter and of determining adequate incinerator operating conditions under § 264.345 of this Chapter, the Director may issue a trial burn permit to a facility to allow short term operation of a hazardous waste incinerator subject to paragraphs (b)(1)–(5) of this Section.

(1) The trial burn must be conducted in accordance with a trial burn plan prepared by the applicant and approved by the Director. The trial burn plan will then become a condition of the permit. The trial burn plan will include the following information:

(i) An analysis of each waste or mixture of wastes to be burned which includes:

(A) Heat value of the waste in the form and composition in which it will be burned.

(B) Viscosity (if applicable), or description of physical form of the waste.

(C) An identification of any hazardous organic constituents listed in Part 261, Appendix VIII of this Chapter, which are present in the waste to be burned, except that the applicant need not analyze for constituents listed in Part 261, Appendix VIII, of this Chapter which would reasonably not be expected to be found in the waste. The constituents excluded from analysis must be identified and the basis for their exclusion stated. The waste analysis must rely on analytical techniques specified in EPA document SW–846 (referenced in 40 CFR Part 261, Appendix III), or their equivalent.

(D) An approximate quantification of the hazardous constituents identified in the waste, within the precision produced by the analytical methods specified in EPA document SW–846.

(E) A quantification of those hazardous constituents in the waste which may be designated as POHC's based on data submitted from other trial or operational burns which demonstrate compliance with the performance standard in § 264.343 of this Chapter.

(ii) A detailed engineering description of the incinerator for which the trial burn permit is sought including:

(A) Manufacturer's name and model number of incinerator (if available).

(B) Type of incinerator.

(C) Linear dimensions of the incinerator unit including the cross sectional area of combustion chamber.

(D) Description of the auxiliary fuel system (type/feed).

(E) Capacity of prime mover.

(F) Description of automatic waste feed cut-off system(s).

(G) Stack gas monitoring and pollution control equipment.

(H) Nozzle and burner design.

(I) Construction materials.

(J) Location and description of temperature, pressure, and flow indicating and control devices.

(iii) A detailed description of sampling and monitoring procedures, including sampling and monitoring locations in the system, the equipment to be used, sampling and monitoring frequency, and planned analytical procedures for sample analysis.

(iv) A detailed test schedule for each waste for which the trial burn is planned including date(s), duration, quantity of waste to be burned, and other factors relevant to the Director's decision under paragraph (b)(4) of this section.

(v) A detailed test protocol, including, for each waste identified, the ranges of temperature, waste feed rate, air feed rate, use of auxiliary fuel, and any other relevant parameters that will be varied to affect the destruction and removal efficiency of the incinerator.

(vi) A description of, and planned operating conditions for, any emission control equipment which will be used.

(vii) Procedures for rapidly stopping waste feed, shutting down the incinerator, and controlling emissions in the event of an equipment malfunction.

(viii) Such other information as the Director reasonably finds necessary to determine whether to approve the trial burn plan in light of the purposes of this paragraph and the criteria in paragraph (b)(4) of this section.

(2) The Director, in reviewing the trial burn plan, shall evaluate the sufficiency of the information provided and may require the applicant to supplement this information, if necessary, to achieve the purposes of this paragraph.

(3) Based on the waste analysis data in the trial burn plan, the Director will specify as trial Principal Organic Hazardous Constituents (trial POHC's), those constituents for which destruction and removal efficiencies must be calculated during the trial burn. These trial POHC's will be specified by the Director based on his estimate of the difficulty of incineration of the constituents identified in the waste analysis, the concentration or mass in the waste feed, and, for wastes listed in Part 261 of this Chapter, the hazardous waste constituent or constituents identified in Appendix VII of that Part as the basis for listing.

(4) The Director shall approve a trial burn plan if he finds that:

(i) The trial burn is likely to determine whether the incinerator performance standard required by § 264.343 of this Chapter can be met;

(ii) The trial burn itself will not present an imminent hazard to human health or the environment;

(iii) The trial burn will help the Director to determine operating requirements to be specified under § 264.345 of this Chapter; and

(iv) The information sought in paragraphs (b)(4)(i) and (iii) of this section cannot reasonably be developed through other means.

(5)(i) During each approved trial burn (or as soon after the burn as is practicable), the applicant must make the following determinations:

(A) A quantitative analysis of the trial POHC's in the waste feed to the incinerator.

(B) A quantitative analysis of the exhaust gas for the concentration and mass emissions of the trial POHC's, CO_2, O_2, and hazardous combustion by-products.

(C) A quantitative analysis of the scrubber water (if any), ash residues, and other residues, for the trial POHC's.

(D) A total mass balance of the trial POHC's in the waste.

(E) A computation of destruction and removal efficiency (DRE), in accordance with the DRE formula specified in § 264.343(a) of this Chapter.

(F) If the waste feed contains more than 0.5 percent chlorine, a computation of chlorine removal efficiency, in accordance with § 264.343(b).

(G) A computation of particulate emissions, in accordance with § 264.343(c) of this Chapter.

(H) An identification of sources of fugitive emissions and their means of control.

(I) A measurement of average, maximum, and minimum temperatures, and air feed rates.

(J) A continous measurement of CO in the exhaust gas.

(K) Such other information as the Director may specify as necessary to ensure that the trial burn will determine compliance with the performance standard in § 264.343 of this Chapter and to establish the operating conditions required by § 264.345 of this Chapter as necessary to meet that performance standard.

(ii) The applicant shall submit to the Director a certification that the trial burn has been carried out in accordance with the approved trial burn plan, and the results of all the determinations required in paragraph (b)(5)(i) of this Section. To the extent possible, this submission shall be made within 30 days of the completion of the trial burn, or sooner if the Director so requests.

(iii) All data collected during any trial burn must be submitted to the Director following the completion of the trial burn. The results of the trial burn must be included with Part B of the permit application, if a permit application is submitted.

(iv) All submissions required by this paragraph shall be certified on behalf of the applicant by the signature of a person authorized to sign a permit application or a report under § 122.6.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 264

[SWH-FRL 1730-6]

Incinerator Standards for Owners and Operators of Hazardous Waste Management Facilities

AGENCY: Environmental Protection Agency.

ACTION: Proposed rules.

SUMMARY: The Environmental Protection Agency is proposing to amend the Part 264, Subpart O, general (permit) standards published today in the Federal Register. The proposed amendments apply primarily to the incinerator performance standards (§ 264.343) and include emission limits for hazardous combustion by-products, a variance standard based on an assessment of risk to human health, and a procedure to set emission limits for toxic metals and hydrogen halides based on an assessment of risk. In addition the procedure for designation of POHC's (§ 264.342) is proposed to be amended to include hazardous combustion by-products.

EPA is proposing these additions to the Part 264 general standards because they are major changes from the proposed rules published on December 18, 1978 [43 FR 58982].

DATES: Comments are due on or before April 23, 1981. A public hearing will be held March 19, 1981.

ADDRESS: Comments should be addressed to Deborah Villari, Docket Clerk, Office of Solid Waste (WH-562), U.S. Environmental Protection Agency, 401 M St. SW., Washington, D.C. 20460. Comments should identify the regulatory docket as follows: "Docket No. 3004, Proposed Amendment, Hazardous Waste Incineration."

The official record for this rulemaking is available at Room 2711, U.S. Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460 and is available for viewing from 9 a.m. to 4:30 p.m., Monday through Friday excluding holidays.

A public hearing will be held at the Auditorium, Department of Health and Human Services, 330 Independence Ave. SW., Washington, D.C. on March 19, 1981, from 9 a.m. to 4 p.m.

FOR FURTHER INFORMATION CONTACT: Mr. Ed Martin, Office of Solid Waste (WH-565) U.S. Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460, (202) 755-9203.

SUPPLEMENTARY INFORMATION: A public hearing will be held at the Auditorium, Department of Health and Human Services, 330 Independence Ave. SW., Washington, D.C. on March 19, 1981, from 9 a.m. to 4 p.m. Anyone wishing to make a statement at the hearing should notify in writing Ms. Geraldine Wyer, Public Participation Officer, Office of Solid Waste (WH-562) U.S. Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460.

Oral and written comments may be submitted at the public hearing. Persons who wish to make oral presentations must restrict their presentations to 10 minutes and are encouraged to have written copies of their complete comments for inclusion in the official record.

Preamble Outline

I. Authority
II. Background
III. Summary of Proposed Rules
IV. Regulatory Analysis
V. Supporting Documents

I. Authority

This regulation is proposed under the authority of Sections 1006, 2002(a), and 3004 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended [RCRA] 42 U.S.C. 6905, 6912(a), and 6924.

II. Background

Early last year EPA began issuing regulations which comprise the Subtitle C hazardous waste management system and announced that the regulations would be issued in two phases. In January of this year EPA promulgated a large portion of the Phase II technical standards for facilities that treat and store hazardous wastes (Part 264). Elsewhere in today's Federal Register, the Agency promulgated interim final standards for incinerators under Part 264.

However, some of the requirements which the Agency believes may be necessary for adequate control of the incineration of hazardous wastes are substantially different than those proposed in December 18, 1978 [43 FR 58982]. The Agency is therefore proposing these requirements herein, to give the regulated community and the general public the opportunity to comment on them. As a result of the comments received the Agency may abandon these proposed requirements or change them substantially before promulgating them.

III. Summary of Proposed Rules

A. Introduction

On December 18, 1978, EPA proposed permitting standards for the incineration of hazardous waste. (43 FR 58946). After consideration of comments the Agency is promulgating those standards on an interim final basis elsewhere in today's Federal Register. At the heart of those interim final standards is the requirement that incinerators must achieve a destruction and removal efficiency (DRE) of 99.99% for each designated principal organic hazardous constituent (POHC) in the waste feed mixture. The principal organic hazardous constituents are to be designated by the permit writer based on the difficulty of incineration and quantity of the hazardous organic constituents in the waste feed mixture. Operating conditions capable of achieving 99.99% destruction and removal of these POHC's will then be incorporated into the permit on the basis of trial burns or equivalent information.

Concurrently with the promulgation of these interim final permitting standards, EPA is today proposing a number of amendments to the standard which are designed to supplement the standards and make them more comprehensive.

The proposed additional requirements in this package include the following: (1) a revision to the designation of POHCs to include hazardous combustion by-products (§ 264.342); (2) an emission limit for the hazardous combustion by-products formed during incineration (§ 264.343(d)); (3) a variance to the 99.99% DRE performance standard for principal organic hazardous constituents and the emission limit on hazardous combustion by-products based on an assessment of risk to human health (§ 264.343(e)); and, (4) a procedure to set emission limits on toxic metals, elemental halogens, and hydrogen halides based on assessment of risk to human health (§ 264.343(f)).

B. Emissions Limits for Hazardous Combustion By-Products (§ 264.343(d))

An important shortcoming in the incinerator performance standards promulgated today is their failure to address hazardous combustion by-products formed during incineration. If combustion in an incinerator is not complete many hazardous wastes break down and recombine into other forms of hazardous organic compounds. Thus even if the principal organic hazardous constituents (POHC's) in the waste feed are destroyed in accordance with the destruction and removal efficiency standard, the stack gases may contain other hazardous constituents formed during incineration. In some cases the combustion by-products produced may be more toxic than the unburned POHC's.

In order to remedy this problem, the Agency is proposing an amendment to the incinerator regulations which requires that the mass emission rate of hazardous combustion by-products not exceed 0.01% of the total mass feed rate of POHC's feed to the incinerator. This mass emission rate is analogous to the 99.99% DRE based mass emission rate of POHC's. However, the mass emission rate is calculated, not as a percentage of the quantity of combustion products generated, but as a percentage of the quantity of POHC's fed into the incinerator. Consequently, where the DRE for POHC's is 99.99%, this mass emission rate will allow a total emission rate for by-products equal to the mass emission for POHC's. The rationale behind allowing a mass emission of hazardous combustion by-products equal to the mass emission allowed for POHC's is that (1) such hazardous combustion by-products are believed to be as hazardous as POHC's and should thus be equally limited to the extent technologically feasible, and (2) a total mass emission limit for hazardous combustion by-products equal to the total mass emission limit for POHC's is technologically feasible since the chemical constitutents of both are the same. EPA specifically solicits comments on the technological feasibility of the proposed emission limit, and on alternate means of setting emission limits on hazardous combustion by-products.

As a supplement to the proposed 0.01 emission limit, the Agency is also proposing to allow more or less stringent mass emission limits for hazardous combustion by-products on a case-by-case basis pursuant to the variance procedure being proposed at § 264.343 (e) and (g).

The Agency intends that the hazardous combusion by-products subject to the proposed emission limit will be designated by the permit writer on the basis of information supplied by the permit applicant. This designation cannot be made until the components of the stack gas have been identified. The identification of stack gas components and designation of hazardous cumbustion by-products will generally take place following analysis of data from the trial burn, which analysis will encompass only Part 261, Appendix VIII, constituents and will be based on the same considerations upon which POHC designation is based. Where the trial burn data show that the designated hazardous by-products of combustion have not been destroyed in accordance with the required emission limit, the operating conditions will have to be adjusted to achieve compliance with this limit and the trial burn will have to be repeated to show that the required emission limit could be met.

In some instances, it may be possible for the permit applicant to provide a prediction of hazardous combustion by-products based on data from the literature or from laboratory burns or previous pilot or full scale burns where hazardous combustion by-products have been identified. These data would be included in the trial burn plan, and would allow a tentative designation of hazardous by-products by the permit writer. This would allow the applicant to plan for the destruction of these substances in the trial burn and might obviate the necessity of a second trial burn. In cases where a trial burn waiver is requested, the applicant's prediction of combustion by-products, as described above, would provide the only basis for designation of hazardous combustion by-products by the permit writer and for designation of the operating conditions necessary to achieve the required emission limit. Thus, if a trial burn waiver is requested, the permit writer must be convinced before granting the waiver that the prediction of combustion by-products and their emission rates is accurate.

C. Limits on Toxic Metals, Hydrogen Halides and Elemental Halogens § 264.343(f))

The proposed incineration regulations (43 FR 58946) required incinerators to meet the destruction efficiency requirement for toxic metals and non-organic halogen compounds. Commenters objected to this proposal on the basis that non-organic components cannot be thermally destructed.

Commenters correctly discerned that the originally proposed destruction efficiency requirement was inapplicable to metals and other non-organics. However, the destruction and *removal* efficiency approach adopted in today's interim final regulations can be applied to metals and non-organic halogen compounds, because that approach considers removal of waste constituents in the emission control system as well as destruction in the combustion zone. This approach recognizes that metals and non-organic halogens emitted can be controlled through removal and included in a destruction and removal efficiency calculation. However, the Agency elected not to apply a destruction and removal efficiency standard to metals and non-organic halogens in the interim final regulation because the Agency does not now have test data to indicate what specific removal levels are achievable, except in the case of hydrogen chloride emissions.

Instead, the Agency is proposing at § 264.343(f) to require that emission limits for metals and non-organic halogens (other than HCl) be set on a case-by-case basis by assessing the risk to human health, using the approach established for assessing a variance to the 99.99 percent DRE standard and the proposed hazardous combustion by-products standard. The methodology for these assessments and the manner in which these assessments are to be integrated into the permitting process is discussed in Section E of this preamble.

The Agency anticipates that a risk assessment will be required whenever the permit applicant's waste analysis reveals the presence of toxic metals or non-organic halogens in the waste. Comments on the necessity and feasibility of such a risk assessment and/or the removal efficiencies demonstrated to be technologically feasible are specifically requested.

In proposing the risk assessment based limits for toxic metals, hydrogen halides and elemental halogens, the Agency considered whether metals and non-organic halogens were adequately addressed through standards developed under the Clean Air Act, and determined that they were not. The only existing Federal point source standards applicable to hazardous waste incinerators address beryllium and mercury. These metals are controlled through National Emission Standards for Hazardous Air Pollutants (NESHAPS). However, the NESHAP for mercury applies to sludge incinerators, and thus would not be applicable to all hazardous waste incinerators. Additionally, an ambient standard for lead has been promulgated under the Clean Air Act and is applied through the State Implementation plan (SIP) process. However, some incinerators, due to their small size, may not be covered by this standard.

D. Variance to the Destruction and Removal Efficiency (§ 264.343 (e) and (g))

A number of comments on the December 18, 1978 proposed incineration standards argued for flexibility in the proposed destruction efficiency. The Agency agrees that such flexibility is desirable because the Destruction and Removal Efficiency (DRE) performance standard may be either more or less stringent than necessary to provide assurance of protecting human health and the environment in all circumstances. A basic reason is that destruction and removal efficiency is a percentage

removal standard, and, thus, allows for varying mass emission rates. For any DRE, mass emission rates can vary based on the mass feed rate.

As a result of the comments and EPA's further analysis, EPA is proposing to add a variance procedure to the incinerator regulations providing the permit writer with discretion to alter the basis performance requirements of 99.99 percent destruction and removal efficiency. Under this proposal, the permit writer may establish permit limitations based on an assessment of the risk to human health. If the risk assessment indicates that a more restrictive emission rate is needed to protect human health, the permit writer may strengthen the performance standard either by requiring a higher destruction and removal efficiency or by specifying a lower waste feed rate. In a like manner, the permit writer may reduce the performance standard by approving a lower destruction and removal efficiency (or higher feed rate) if the risk assessment indicates that the lower rate limit will pose no significant hazard to human health. Section d (Estimating risk to human health) of this preamble describes the procedures for conducting these risk assessments.

Although the proposed variance procedure allows the permit writer to either raise or lower the mass emission rate the Agency considered the option of allowing use of the variance only to raise the performance standard. The primary reason for including the variance is to ensure protection of human health in those instances where either a highly toxic stack emission or a very high through-put results in potential risk to humans even at a 99.99% DRE. Although a 99.99% DRE may not be required to protect human health in other instances, the Agency is reluctant to allow incinerators to operate below performance levels that are widely attainable by current technology. The Agency is concerned that until the value of risk assessments is proven and the method of conducting them is perfected, using 99.99% DRE as the minimum acceptable performance, with risk assessment as a tool to increase that standard, provides a more conservative approach which is more certain of protecting human health. On the other hand, the Agency recognizes that there are competing considerations which argue for making the variance flexible in both directions. For example, the 99.99% DRE may not be necessary to protect human health in a location remote from population or where the waste being burned is only marginally hazardous.

Accordingly, the Agency is requesting comment on the question of whether the variance procedure should be used to both raise or lower the destruction and removal efficiency, or only to raise it. If the variance is flexible in both directions, will the variance dominate the standard, in essence making the 99.99% target moot? Is risk assessment sufficiently developed that a relaxed standard based on such an assessment would be acceptable, or should a minimum, i.e. 99.99% DRE, be established?

The Agency recognizes that in some instances it may not be possible, due to lack of data, to conduct a scientifically supportable risk assessment. When a risk assessment is not possible or is not conducted at the behest of the applicant, the public, or permit writer, the performance standard of 99.99% DRE will be the basis for permitting. Over time, data will be developed to expand risk assessment capabilities.

E. Implementation of the Agency's Proposed Risk Assessment Provisions

1. *Procedures for developing a permit requirements based on a human health "risk assessment."* The manner in which the risk assessment-based variance procedure should be integrated with the permitting process has deliberately been left somewhat flexible in the proposed regulations. Before discussing the many ways in which these two can be integrated, some overview of the permitting process should be provided.

There are basically two routes by which a permit applicant can obtain an incinerator permit according to the regulations promulgated today under Parts 264 and 122. In one, the permit applicant submits to the permit writer a trial burn plan which contains an analysis of his waste feed, a description of the operating conditions believed to be capable of achieving a 99.99% DRE of POHC's, and a description of the test protocol he intends to employ in demonstrating achievement of this DRE. On the basis of this submission, the permit writer tentatively designates the POHC's in the applicant's waste and issues a trial burn permit allowing the applicant to conduct a trial burn. The purpose of the trial burn is to demonstrate that the operating conditions specified in the trial burn plan are indeed sufficient to achieve the desired DRE. After the trial burn is completed the applicant submits data to the permit writer containing the results of the trial burn. The permit writer then reviews this data, and issues a draft permit which is subject to public review and comment before being finalized.

The other route, is essentially the same as the first, but the permit applicant does not conduct a trial burn. Instead, he secures a trial burn waiver. Such a waiver will only be granted where the applicant can supply data demonstrating that particular operating conditions for his incinerator will achieve the desired DRE.

The Agency believes that the risk assessment procedure can be effectively integrated into the permit process described above. The integration could occur several possible ways, depending on whether the risk assessment is initiated by the permit writer, the permit applicant or the public. It can also be carried out at several different points of the process—either prior to the trial burn, following the trial burn but before issuance of a draft permit for public comment, or after public comment. These are discussed below.

A risk assessment variance analysis will in most instances be performed by the applicant prior to conduct of a trial burn. This would be advantageous in that the applicant would know prior to the trial burn whether he would need to demonstrate a performance other than 99.99% DRE. Thus, he may be able to avoid having to repeat a trial burn, although the POHC's and hazardous combustion by-products will not be finally determined until the trial burn is complete. In most instances, the trial POHC's, designated by the permit writer from waste analysis data included with the trial burn plan, will also be the final POHC's. Thus the permit applicant, on the basis of waste analysis data in his possession, will be able to compute stack POHC emissions at the 99.99% DRE and at other destruction and removal efficiencies and to compute the risks associated with those DRE's. Hazardous combustion by-products present a more difficult problem. While a prediction can be made, the trial burn may indicate different or additional by-products than those predicted. Should this occur, a risk assessment for those new hazardous by-products would have to be performed after the trial burn.

In cases where the applicant requests that a risk assessment for a variance be performed, this request would be included in a "variance assessment plan" submitted as a part of the trial burn plan. It would include a description of the proposed methodology to be used in the assessment. In reviewing the variance assessment plan, the permit writer would accept or, require modification of, the risk assessment methodology, and would designate the trial POHC's and trial hazardous combustion by-products to be included

in the risk assessment. The risk assessment would then be performed and the results submitted to the permit writer for incorporation into the trial burn plan.

In cases where the applicant does not request a variance assessment, but instead it is required by the permit writer, upon review of the trial burn plan, the applicant would be requested to amend the plan with a methodology for the risk assessment. Then the process would proceed as described above. In either case, the performance of the risk assessment prior to conduct of a trial burn would add a step to the trial burn application process. That step would require that a new part be added to the trial burn plan, that the permit writer approve that part of the plan, and that the applicant complete the assessment and submit it to the permit writer to complete the trial burn plan. In addition, the applicant or permit writer might decide to provide opportunity for public comment on the results of the risk assessment and the variances determined by the permit writer prior to conduct of the trial burn.

In cases where a waiver of the trial burn is requested in Part B of the permit application, the same procedure would be followed regarding a risk assessment variance. Part B would not be considered final until a determination of the need for, and, where appropriate, completion of, a risk assessment was made.

The second option for integrating a risk assessment into the permit process is to conduct the assessment following the trial burn. A probable basis for requiring a risk assessment at this time would be that the data from the trial burn revealed hazardous by-products which were not predicted. A risk assessment at this juncture might be requested by the applicant in his submittal of trial burn results in Part B of the permit application, required by the permit writer upon review of those results prior to issuance of a draft permit, or requested by the public as a part of their review of the permit application or draft permit. In any of these cases the applicant may be requested (at the permit writer's descretion) to submit a methodology for the risk assessment, and upon approval, to conduct the assessment and submit the results to the permit writer, essentially as a modification of Part B of the permit. If review of the results causes the permit writer to use the variance and alter the performance standard, a repeat of the trial burn may be necessary. If so, a new trial burn plan will be required, thereby forcing a repeat of the permit application process.

2. *Calculation of the human health "risk assessment."* Section 264.343(g) proposes four elements which must be considered in performing any risk assessment. These elements include (1) data on the mass and concentrations of POHC's, hazardous combustion by-products, metals and hydrogen halides which may be omitted from the stack; (2) air dispersion estimates of these substances for determining ground level ambient concentrations of emitted pollutants; (3) expected human and environmental exposure; and (4) the consequences of exposure, including dose response curves for carcinogens and or estimated toxic effects for noncarcinogens. Based on this data, the Regional Administrator must determine the maximum level of pollutants which may be emitted without posing an unacceptable risk to human health or the environment. Operating conditions necessary to ensure that these levels are not exceeded would be included in the incinerator permit.

These regulations do not specify any one methodology for performing the risk assessment. Permit writers may, as long as they address the factors identified in the regulation, develop risk assessments in the manner most appropriate to the nature of the incinerator and waste feeds in question. The Agency has, however, identified approaches to risk assessment which it believes can feasibly be employed by permit writers and which satisfy the requirements of today's proposal. These approaches are discussed in detail in "Background Document: Hazardous Waste Incineration Proposal."

One major issue on which comment is requested is whether the regulations should specify a methodology, including (as discussed below) an acceptable risk level to be employed by the permit writer in developing permit limitations based on a risk assessment. The following discussion identifies one approach which could be used by permit writers. EPA requests comments on the appropriateness of the method and the assumptions which are used.

a. *Emission rate estimates.* Emission rates can be determined from sampling and analysis during trial burns or they can be calculated based on feed rates, POHC concentrations in the food, and assumed DRE's. In order to conduct a risk assessment *prior to* a trial burn, the latter approach would be required, and is straight-forward using the equation for DRE in § 264.343(a).

b. *Air dispersion modeling.* The role of air dispersion modeling is to estimate the ground level concentrations of hazardous wastes emitted by incinerators. This data is used, along with health effects data discussed below to calculate human health risks from exposure to the emissions, and, ultimately, the levels of emissions which will be allowed by the permit writer.

One appropriate source of information in developing air dispersion models is the *Guideline on Air Quality Models* (EPA publication 450/2-78-027). The Guideline recommends specific air dispersion models appropriate for various situations. The guideline also makes recommendations concerning the source and meteorological data to be used in these models. This document has undergone extensive review by the scientific community and is incorporated into regulations under the Clean Air Act.

The *Guideline on Air Quality Models* discusses both screening and refined modeling techniques. The screening techniques involve simple calculation and are based on generally conservative assumptions. Thus, if screening shows that an allowable concentration is not exceeded, more detailed modeling need not be performed. If, however, screening indicates that allowable concentrations are exceeded, it is desirable to use a more refined technique to confirm these results.

In performing air quality modeling for purposes of risk assessments, two factors should be noted. First, assessments of impact on human health are generally based on long-term exposure to emissions. Thus, there will usually be no need to estimate daily or hourly fluctuations. For some substances which demonstrate acute effects, shorter averaging times may, however, be necessary. Second, hazardous pollutants should generally be considered chemically unreactive in the atmosphere. Unless applicants can demonstrate that the hazardous emissions are degraded to non-hazardous substances in the atmosphere, an inert pollutant model should be used.

c. *Exposure estimates.* An approach to risk assessment which the Agency believes can most simply be applied is a determination of incremental individual risks at the point of maximum ground level concentration of emissions from the incinerator. The actual presence of individuals at this point, or the number of individuals, would not be considered.

This is a relatively simplified and conservative approach to risk assessment. It assumes, in essence, that an individual is exposed to the greatest ambient concentration of hazardous constituents, regardless of where that may be. An alternative approach would

be to assess the aggregate risk to total exposed populations. The determination of individual risk at the point of maximum concentration avoids the difficult and often disputed estimates of actual total population exposure to different concentrations. Nothing in the regulation, of course, precludes the permit applicant or other interested persons from preparing such estimates for consideration by the permit writer.

d. *Estimating risk to human health.* Numerous models exist for predicting the human health effects of exposure to various concentrations of pollutants. The fundamental question in selecting the appropriate model is whether the pollutant has a threshold below which no adverse effects to human health are expected. Carcinogens are generally considered to be non-threshold substances; pollutants displaying other toxic effects may have a threshold. In calculating the risk from several pollutants with both threshold and non-threshold effects, the lowest safe levels should be employed in setting emission limits.

Non-threshold pollutants (Carcinogens). An appropriate methodology for estimating the risk to human health from carcinogens is the Linearized Multistage Model for Cancer Induction employed by EPA's Cancer Assessment Group. The general formula for this model is $P = q_1^* x$, in which P represents the lifetime risk to an individual of cancer due to an average daily exposure, x, to the substance. q_1^* is a value representing the carcinogenic potency of the carcinogen from inhalation exposure. Currently q_1^* values for inhalation exposure have been developed for 21 carcinogens; these values are listed in the background document for this proposal. Additional values will be prepared by the Agency in the near future.

In estimating the daily average exposure assumptions which must be employed include the weight of the exposed individual, the amount of air inhaled on a daily basis and the amount of pollutant retained by the individual. Values which have been developed, and which could be used by the permit writer, include a reference weight of 70 kg, inhalation of 23 m3/day of air, and retention of 50% of inhaled pollutants. The last value may vary with particulate size. A detailed discussion on this methodology and these assumptions is contained in the background document.

To derive permit limitations based on a risk assessment, permit writers must determine an acceptable level of risk. Two qualitative measures of risk have been used by the Agency in evaluating carcinogenic hazards to populations exposed to an agent. These are: (1) individual lifetime cancer risk, which is defined as the probability that an exposed person will die of cancer, as opposed to other causes, as a result of exposure, and (2) the number of cancer cases per year which can be attributed to the exposure. The individual risk depends on the carcinogenic potency of the compound and the concentration of the agent in the exposure medium, whereas the number of cases depends on the individual risk and the size of the exposed population.

In deciding what risk is acceptable from a public health protection point of view the Environmental Protection Agency regulatory offices have concentrated on the individual risk. For example, EPA's Office of Pesticides and Toxic Substances is considering a lifetime risk of less than 10^{-6} as acceptably low in the case of nitrosamine contamination of pesticide products. EPA's Water Quality Office is requiring the reporting of hazardous material spills into navigable water that could be used as a source of drinking water if the risks are greater than 10^{-6}. In the Food and Drug Administration regulations of animal feed additives that could cause residues of carcinogenic substances in edible meat, a risk of less than 10^{-6} is considered safe enough to require no use restriction. The Agency's recently promulgated Water Quality Criteria for the protection of human health present values based on a risk range of 10^{-7} to 10^{-8}.

The attitude of many scientists and policy makers seems to be that risk of less than 10^{-7} is too small to justify the resources required to issue and enforce a regulation. However, a risk of above 10^{-4} is usually considered serious enough either to take regulatory action or to require a determination that the costs of control are prohibitively large. Within the range of roughly 10^{-7} to 10^{-4} the acceptability of a risk is usually a result of cost-benefit balancing.

Under the regulation proposed today, the determination of acceptable risk has been left to the permit writer. This determination will be made on a case-by-case basis as a part of the permitting process. However, to ensure reasonable consistency from one case to another, the Agency anticipates establishing a "Risk Review Board" to review individual risk decisions.

The Agency considered establishing an acceptable risk level in the regulation, but has determined that such a risk determination, affecting a local area, can best be made on a case-by-case basis after reviewing the local circumstances associated with the incinerator. However, the Agency is requesting comment on the issue of how acceptable risk levels can be established, and whether that should be done in the regulation or as part of the permit process.

Threshold Pollutants (Non-carcinogens) For pollutants which display threshold effects, risk assessment calculations require development of an acceptable daily intake from inhalation of the pollutant. Unlike risk assessments for carcinogens, no social judgment need be made as to acceptable levels of risk. Rather, the issue involves a scientific determination of safe levels of exposure.

One basis for calculating these values is by use of the "Threshold Limit Values" ("TLV") developed by the American Conference of Governmental Hygienists. TLV's represent 8-hour, and Industrial time-weighted average concentrations in air that are intended to protect workers from various adverse health effects over a normal working lifetime. For purposes of the risk assessment associated with today's proposal, TLV's would have to be reduced by an appropriate factor to reflect the fact that exposure would not be limited to a healthy population and for a limited period during the day.

Additionally, acceptable intake levels may be derived from toxicological data defining "No Observed Adverse Effect Levels" ("NOAELs") or similar appropriate concepts. Derivation of acceptable intake values in this case would require application of "safety factors" to account for extrapolation from animal data to man. Guidelines for applying such safety factors have been developed by the National Academy of Science.

IV. Regulatory Analysis

Under Executive Order 12044, the Agency is required to prepare a regulatory analysis for all new significant regulations. This analysis includes a comprehensive economic impact analysis and a discussion of the regulatory alternatives considered. The Agency has not yet prepared the economic impact analysis for this proposal. However, the Agency plans to complete it and make it available for public review and comment before a final rule is promulgated. In addition, EPA plans to prepare and allow public comment on a full Regulatory Analysis before promulgation of this rule which will include both the economic impact analysis and summary of approaches considered.

The Federal Report Acts of 1942 requires federal agencies to minimize the reporting burden created by their regulations. For all new regulations,

agencies must estimate the size of the reporting burden, describe who must report and apply to OMB for a clearance. Accordingly EPA is estimating the reporting burden of this rule and will submit a clearance package to OMB as soon as possible. Congress has recently amended this Act with the Paperwork Reduction Act of 1980. After the effective date of this new Act (April 1, 1980) all Agencies must have OMB's approval of the reporting burden before any regulation is published as a proposal or promulgation.

The Regulatory Feixibility Act requires all Federal agencies to consider the effects of their regulations on "small entities", i.e., small businesses, small organizations, and small governmental jurisdictions. It requires agencies to propose for public comment a "Regulatory Flexibility Analysis" for any regulations proposed after January 1, 1981 which will cause a significant impact on a substantial number of small entities.

The analysis should include primarily a description of the impact of the rule on small entities, an estimate of the number of small entities affected, a description of the reporting and other compliance requirements, and a description of any alternatives considered to minimize the impacts.

Although EPA has not yet prepared a Regulatory Flexibility Analysis of the small entity impacts of the rules it is proposing today, it believes that a significant portion of the potential impact of these rules on small entities has already been substantially reduced by the small quantity generator exemption contained in EPA's May 19, 1980, regulations; an exemption granted primarily for administrative reasons. (See 40 CFR § 261.5.) EPA intends to analyze the impact of these rules on small entities more thoroughly in the future, and publish its analysis for public comment. In the meantime, the Agency expressly invites the public to address the impact of this rule on small entities in their comments.

V. Supporting Documents

A. Background Documents

Two background documents have been prepared to support these regulations, providing rationale for the need to supplement the interim final regulations, and the rationale for the proposals as written. In conjuction with the references listed in them, these documents provide most of the basis for and defense of the proposed regulations. However, the background document in support of the interim final Part 264, Subpart O regulations also provides background information that may help in understanding the proposed regulations. Finally, the guidance documents that EPA is developing for the Subpart O regulations provide useful background information.

Thus, the following documents and others referenced in them support the Subpart O regulations proposed today: (1) "Background Document, 40 CFR Part 264 Subpart O, and 40 CFR Part 265 Subpart O: Incineration"; (2) "Background Document, 40 CFR Part 264 Subpart O: Incineration—Proposed Standards"; (3) "Engineering Handbook on Hazardous Waste Incineration"; and (4) "Permit Writer's Guidance Document for Hazardous Waste Incineration".

Copies of these documents are available for review in the EPA regional office libraries and at the EPA headquarters library, Room 2404, Waterside Mall, 401 M Street, S.W., Washington, D.C. 20460.

B. Guidance Documents

Reliance on performance standards and the incorporation of case-by-case consideration of many factors provide considerable flexibility to accommodate new technologies, special needs of specific locations, and variations in waste characteristics. To assist both owners and operators of facilities and regulatory officials, EPA is preparing guidance manuals. These will not have the effect of regulations, but will provide guidance on how facilities may be designed and operated to meet the standards. Future manuals will also provide guidance on what modifications and variations are likely to be effective under the variance procedures. They will be organized to correspond closely to the regulations and will be based on the collective knowledge of the Agency, the literature, and experts throughout the world.

EPA has already prepared the following manuals in support of the hazardous waste incinerator regulations:

(1) Engineering Handbook on Hazardous Waste Incineration;

(2) Permit Writer's Guidance Manual on Hazardous Waste Incineration.

For a more complete list of guidance manuals that EPA is preparing in support of the entire hazardous waste regulatory program see the preamble discussion in the January 12, 1981 regulation.

(Section 1006, 2002(a), 3004, 3005, and 3007 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended, 42 U.S.C. §§ 6905, 6912(a), 6924, 6925 and 6927.)

Dated: January 12, 1981

Douglas M. Costle,

Administrator.

For the reasons set out in the preamble, it is proposed to amend 40 CFR Part 264, Subpart O as set forth below:

PART 264—STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES

1. In § 264.342 the section heading and paragraphs (a) and (b) are revised to read as follows:

§ 264.342 Designation of principal organic hazardous constituents and hazardous combustion by-products.

(a) Principal organic hazardous constitutents (POHCs) and hazardous combustion by-products must be treated to the extent required by the performance standards specified in § 264.343. (b)(1) For each waste feed to be burned, one or more POHCs and hazardous combustion by-products will be specified from among those constituents listed in Part 261, Appendix VIII of this Chapter. This specification will be based on the degree of difficulty of incineration of the organic constituents of the waste feed and its combustion by-products, their concentration or mass, considering the results of waste analyses and trial burns or alternative data submitted with Part B of the facility's permit application. Organic constituents or by-products which represent the greatest degree of difficulty of incineration will be those most likely to be designated as POHCs or hazardous combustion by-products. Constituents are more likely to be designated as POHCs or hazardous combustion by-products if they are present in large quantities or concentrations. (ii) Trial POHCs will be designated for performance of trial burns in accordance with the procedure specified in § 122.27(b) for obtaining trial burn permits. Trial hazardous combustion by-products may be designated under the same procedures.

* * * * *

2. Section 264.343 is amended by redesignating paragraph (d) as paragraph (h) and adding new paragraphs (d), (e), (f), and (g) as follows:

§ 264.343 Performance standards.

* * * * *

(d) Incinerators burning hazardous waste must destroy hazardous combustion by-products designated under § 264.342 so that the total mass emission rate of these by-products

emitted from the stack is no more than .01% of the total mass feed rate of POHCs fed into the incinerator.

(e) After consideration of the factors listed in paragraph (g) of this Section, the Regional Administrator may, on a case-by-case basis, establish performance standards which are either more or less stringent than those required by paragraphs (a) and (d) of this Section based on a finding that:

(1) More stringent standards are necessary because the emission rates achieved by the application of the performance standards otherwise required by this Section may pose an unacceptable risk to human health and the environment, or

(2) Less stringent standards will achieve emission rates which do not pose an unacceptable risk to human health and the environment.

(f) After consideration of the factors listed in paragraph (g) of this section, the Regional Administrator may, on a case-by-case basis, stipulate performance standards for metals, hydrogen halides, and elemental halogens, based on a finding that such standards are necessary to limit the emission rates of these constituents to levels which do not pose an unacceptable risk to human health and the environment.

(g) The findings under paragraphs (e) and (f) of this Section will be made after evaluating the following data, which the Regional Administrator may require from the permit applicant:

(1) Emissions of POHC's, hazardous combustion by-products, metals, and hydrogen halides, including:

(i) Mass emission rates from the stack, and

(ii) Concentration in the gas stream exiting the stack;

(2) Air dispersion estimates for these substances, including:

(i) Meteorological data,

(ii) Description of the air dispersion models,

(iii) Assumptions underlying the air dispersion models used;

(3) Expected human and environmental exposure, including:

(i) Topographic considerations,

(ii) Population distributions,

(iii) Population activities, and

(iv) Modes, intensity and duration of exposure;

(4) Consequences of exposure, including:

(i) Dose-response curves for carcinogens,

(ii) Health effects based on human or animal studies for other toxic constituents,

(iii) Potential for accumulation of toxic constituents in the human body, and

(iv) Statements of expected risk to individuals or populations.

(h) For purposes of permit enforcement, compliance with the operating requirements specified in the permit (under § 264.345) will be regarded as compliance with this Section. However, evidence that compliance with those permit conditions is insufficient to ensure compliance with the performance requirements of this Section may be "information" justifying modification, revocation, or reissuance of a permit under § 122.15 of this Chapter.

* * * * *

[FR Doc. 81-2214 Filed 1-22-81; 8:45 am]
BILLING CODE 6560-26-M

federal register

Friday
January 23, 1981

Part V

Department of Labor

Occupational Safety and Health Administration

Hazardous Materials; Request for Comments

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1910

[Docket No. S-013]

Hazardous Materials

AGENCY: Occupational Safety and Health Administration, U.S. Department of Labor.

ACTION: Advance notice of proposed rulemaking; request for comments and notice of an informal public meeting.

SUMMARY: The Occupational Safety and Health Administration (OSHA) (the Agency) is planning to revise its safety standards concerning hazardous materials which are contained in Subpart H of 29 CFR Part 1910, §§ 1910.101 through 1910.116. The existing hazardous materials standards cover safety hazards associated with compressed gases; flammable and combustible liquids including those used in spray finishing or dip tank operations; explosives and blasting agents; liquefied petroleum gases; and anhydrous ammonia.

The purpose of this notice is to solicit information regarding the content, scope and format of a complete revision of Subpart H. This information will also be used by the National Institute for Occupational Safety and Health (NIOSH) which is seeking to supplement its safety research in the area of petroleum refinery maintenance.

In addition, this notice announces the scheduling of an informal public meeting to give the public an opportunity for making oral presentations of comments and information regarding the issues discussed here.

DATES: Notice of intention to appear at the public meeting scheduled below must be received by March 13, 1981.

The informal public meeting will be held on April 8 and 9, 1981.

The written information requested in this notice must be submitted on or before July 30, 1981.

ADDRESSES: Send notices of intention to appear to Mr. Tom Hall, Division of Consumer Affairs, Room N3635, U.S. Department of Labor, Occupational Safety and Health Administration, 200 Constitution Avenue, N.W., Washington, D.C. 20210, (202)523-8024.

The informal public meeting will be held in the Auditorium, Frances Perkins Department of Labor Building, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Written comments requested in this notice should be submitted, in quadruplicate, to the Docket Officer, Docket S-013, Room S6212, U.S. Department of Labor, Occupational Safety and Health Administration, 200 Constitution Avenue, N.W., Washington, D.C. 20210, (202)523-7894.

FOR FURTHER INFORMATION CONTACT:

Public Meeting:

Mr. Tom Hall, Division of Consumer Affairs, at the address above, (202) 523-8024.

Directorate of Safety Standards Programs:

Mr. Glen E. Gardner or Ms. Joanne E. Slattery, Directorate of Safety Standards Programs, Office of Fire Protection Engineering and Systems Safety Standards, Occupational Safety and Health Administration, U.S. Department of Labor, Room N3463, 200 Constitution Avenue, N.W., Washington, D.C. 20210, (202) 523-7225.

SUPPLEMENTARY INFORMATION:

Background

The present OSHA standards covering safety hazards associated with hazardous materials are contained in Subpart H of 29 CFR Part 1910, §§ 1910.101 through 1910.116. The hazardous materials addressed in Subpart H include compressed gases; flammable and combustible liquids including those used in spray finishing or dip tank operations; explosives and blasting agents; liquefied petroleum gases; and anhydrous ammonia. These Subpart H standards became effective on August 27, 1971, after promulgation under Section 6(a) of the Occupational Safety and Health Act of 1970 (the Act), 29 U.S.C. 655(a). Section 6(a) of the Act authorized OSHA to promulgate standards based on national consensus standards such as those published by the National Fire Protection Association (NFPA) and the American National Standards Institute (ANSI), and on established Federal standards.

Several factors indicate to OSHA that a comprehensive revision of its Subpart H standards may be necessary. One factor is that since the original promulgation of OSHA standards, NFPA and ANSI have revised and updated their standards. OSHA has been petitioned by these organizations and other interested persons to adopt the more recent versions of these standards or to make other changes to the existing standards.

Another factor concerns the possible need for extending coverage to some industrial operations that are not currently addressed in Subpart H. For example, current OSHA standards may not adequately address significant hazards associated with oil refineries, chemical processing plants, or combustible dust processes.

OSHA also recognizes that since the adoption of Subpart H in 1971, there have been advances in technology and industrial practices associated with hazardous materials. These changes may have created a need for revising the present hazardous materials standards to better address current safety problems.

In addition, although OSHA has already revoked many public and property protection provisions in its standards which were not directly relevant to employee safety and health (43 FR 49728; October 24, 1978), OSHA still feels that there is a need to revise these hazardous materials standards so that they more directly address significant employee safety hazards.

Finally, this advance notice is another step in the Agency's continuing program of using a common sense approach by streamlining and simplifying standards while focusing on the more serious workplace hazards. In this regard, OSHA has already undertaken the comprehensive revision of its fire protection standards (Subpart L of 29 CFR Part 1910; 45 FR 60656 (September 12, 1980)) and its electrical standards (Subpart S of 29 CFR Part 1910; 46 FR 4034 (January 16, 1981)).

For these reasons, OSHA has concluded that a comprehensive revision of its Subpart H standards may be necessary to provide more effective protection for employees who work with and around hazardous materials which pose a risk of fire, explosion, acute exposure and other safety hazards. Any rulemaking proceeding to revise Subpart H will be conducted in accordance with Section 6(b) of the Act (29 U.S.C. 655(b)) and 29 CFR Part 1911, and will provide adequate public notice of and opportunity to comment on proposed changes.

Comments and Information Requested

Through this advance notice, OSHA invites interested persons and organizations to provide written and oral comments relating to the need for and content of a Subpart H revision. In particular, OSHA invites comments regarding any needed changes, additions or deletions to Subpart H and information in response to the questions below. OSHA also invites comments pertaining to any economic considerations (including, but not limited to, costs) and environmental impact regarding the questions posed in this notice. OSHA further requests that

any available injury data be provided where applicable.

A revision of OSHA's hazardous materials standards may have a significant economic impact on a substantial number of small entities, particularly small businesses. In accordance with the provisions of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164 (5 U.S.C. 601 *et seq.*)), OSHA invites information regarding the economic impact which any of these contemplated changes to Subpart H might have on small businesses, including, but not limited to, compliance, reporting and recordkeeing costs. OSHA also requests comments regarding alternatives which would minimize the economic impact on small businesses while at the same time accomplishing the objective of protecting worker safety and health.

OSHA realizes that this notice addresses a large amount of material. However, the Agency anticipates that interested persons and organizations will concentrate their remarks on those areas of concern to them. OSHA also anticipates that the information received will provide OSHA with some guidance on the sequence in which the hazardous materials standards should be revised or developed.

As noted above, NIOSH is particpating with OSHA in this information gathering process. Material concerning petroleum refinery maintenance is of particular interest. It is the intention of the Division of Safety Research, NIOSH, both to develop standards recommendations to assist OSHA and, simultaneously, to develop safety guidelines for petroleum refinery maintenance. Therefore, a copy of all relevant communications received in response to this notice will be forwarded to NIOSH for it use.

It should be noted that safety requirements concerning the storage and handling of anhydrous ammonia, presently § 1910.111, will not be discussed in this notice. Revision of the anhydrous ammonia provisions was the subject of an April 23, 1976, advance notice of proposed rulemaking in the Federal Register (41 FR 17227).

Additionally, grain handling facilities will not be specifically addressed in this notice. Grain handling facilities were the subject of a February 15, 1980, request for information published in the Federal Register (45 FR 10732). Comments and information received in response to the anhydrous ammonia and grain handling facilities notices will be considered in any development of standards for these acres which may be included in Subpart H.

The remaining standards in Subpart H will be discussed in this advance notice. Discussion will be limited to safety issues and will not address health issues. OSHA invites written or oral comments and information regarding the following general and specific issues concerning Subpart H.

A. *General Issues:* Several issues have been raised which are common to a number of the hazardous materials standards contained in Subpart H. OSHA invites comments on these general issues which are set forth below.

(1) Should OSHA use a new format in revising its hazardous materials standards? On September 12, 1980, OSHA published in the Federal Register (45 FR 60656) a revision of its fire protection standards contained in Subpart L of 29 CFR Part 1910. Revised Subpart L utilizes a new format consisting primarily of performance, or goal-oriented mandatory standards. These performance standards are accompanied by several nonmandatory appendices which contain compliance guidelines intended to provide compliance flexibility. Compliance can be effected through the means suggested in the appendices or in some other manner as long as the level of performance required by the standard is met. Additionally, Appendix C to Subpart L contains a list of applicable references intended to provide the employer with additional information which will be helpful in the implementation of the mandatory performance standards. OSHA is considering the use of this format in revising its hazardous materials standards. Comments are invited on the advantages or disadvantages of such a format.

(2) Do particular provisions of Subpart H need simplification or clarification? For example, would it be simpler to have all of the definitions applicable to Subpart H contained in one section, or would it be simpler to continue to have applicable definitions accompany each section to Subpart H? Comments which identify other Subpart H provisions in need of simplification or clarification are invited as well as suggested corrections to such provisions.

(3) Are there gaps in the coverage of Subpart H with regard to both the hazards and types of workplaces covered? For example, current OSHA standards may not adequately address significant hazards associated with oil refineries, chemical processing plants, or combustible dust processes. OSHA invites public comment on these issues by posing the following questions: (a) what are these significant gaps; (b) how can OSHA best eliminate these gaps: through the revision of existing standards, the development of new standards, or both; and, (c) should new standards apply to all industries (horizontal standards) or only to a particular industry (vertical standards), or should a combination of both types of standards be used?

(4) Should OSHA expand the coverage of Subpart H in order to more fully address the problems involved with hazardous materials? Should OSHA also recognize and change the section titles? Such expansion and reorganization of Subpart H as envisioned by OSHA would include section designations for any new standards that are developed to cover gaps which exist in current standards.

The following outline for Subpart H is under consideration by OSHA and is being presented to solicit comments from the public regarding its content and the need for expansion, deletion, and reorganization:

Subpart H—Hazardous Materials

1910.10 Scope and application.
.102 Definitions.

Gases

1910.103 General requirements (including containers, storage, handling, and use).
.104 Liquefied energy gases (LEG).
.105 Hydrogen.
.106 Oxygen.
.107 Acetylene.
.108 Cryogens (cryogenic gases including refrigerants).

Liquids and oxidizers

1910.109 Flammable and combustible liquids.
.110 Anhydrous ammonia.
.111 Oxidizing materials (liquids and solids).
.112 Corrosive liquids.

Solids

1910.113 Explosive materials (manufacturing, storage, handling, and use).
.114 Ammonium nitrate.
.115 Fireworks.
.116 Combustible dusts (metal and organic).
.117 Flammable solids.
.118 Reserved.
.119 Reserved.

Operations involving hazardous materials

1910.120 Grain handling facilities.
.121 Spray application using flammable or combustible liquids.
.122 Dip tanks containing flammable or combustible liquids.
.123 Oil refineries.
.124 Chemical plants.
.125 Reserved.

Is the scope of this expanded version of Subpart H too broad? Should some of the subject areas be consolidated and are there any subject areas that should be eliminated entirely? Conversely, is

the scope of this expanded revision of Subpart H too narrow? What other hazardous materials should OSHA include in Subpart H?

(5) Should OSHA require controls such as labeling or other means of marking piping and hose transfer systems to prevent the inadvertent mixing of chemicals or other materials at loading and unloading points? What information is available on the number of employee injuries and fatalities caused by the inadvertent mixing of chemicals or other materials at these points? What type of controls are currently in use to prevent these occurrences? How effective are such controls in preventing employee injuries and fatalities? What additional controls would provide greater employee protection?

(6) Should OSHA specifically require special protective equipment for employees who repair piping containing hazardous materials? (See present OSHA requirements for protective equipment in Subpart I of 29 CFR Part 1910, particularly §1910.132(a).) For example, should breathing apparatus be made available and ready for use during repair work? Should fire-resistive protective clothing be required when repair work is performed on piping which contains flammable material? Should emergency ventilation equipment and, when necessary, a water supply and hose, be accessible and ready for use to dilute vapors or liquid leaks that occur during repair work taking place inside of buildings? Should OSHA require written emergency rescue procedures? What other measures should OSHA consider?

(7) Should OSHA develop standards for the hazards of in-plant piping systems that use flammable premixed gases? How should OSHA define flammable gas? What test procedures should be used? What source materials should be used?

(8) Should OSHA require testing of piping used for flammable, combustible, or toxic gases or liquids? For example, should OSHA require an acceptance static pressure test on piping that is newly installed or has been repaired, to assure that the piping will not leak? If static pressure testing of piping were to be required, what test methods and testing equipment should be acceptable to OSHA?

(9) Should employers be required to provide information and training to those employees who handle or use materials covered in Subpart H? Should OSHA require material safety data sheets or equivalent forms for those substances covered in Subpart H? What information should be contained in these material safety data sheets, e.g., manufacturer name, chemical and trade name, physical and chemical properties, hazards? By what other means should OSHA require employers to inform employees of hazards? What employee training should OSHA require? Is there a need for requirements in addition to those which would be created by the proposed Hazards Identification standard (46 FR 4412; January 16, 1981)?

(10) What types of personal protective equipment and clothing should be required for handling hazardous materials (e.g., gloves, full body clothing, boots, eye protection)? What specifications should be used and what test methods and pass/fail criteria should be applied to such equipment? Are specifications possible for broad industry application? What would be an alternative to the use of specifications that would assure appropriate protection from specific hazards? What protective equipment and clothing are presently being used and how effective are they? How often must equipment and clothing be replaced? What training should employees have is the use of protective equipment and clothing? How often should such training be provided? Should OSHA standards include provisions for a broad class or general use type of protective equipment and clothing for handling a class of similar materials? For which substances should protective equipment and clothing be addressed only on a substance by substance basis? Is further research on the question of protective equipment and clothing necessary for the materials or processes covered by this notice before suitable protection can be specified?

(11) What injury data is available concerning the storage, handling, and use of hazardous materials? What circumstances were involved in such accidents? Were there control or safeguard failures, pipeling ruptures, uncontrolled sources of ignition, procedural errors, or the inability of personal protective equipment and clothing to prevent injury?

(12) Should OSHA require the use of monitoring devices for various hazardous materials which would indicate when an unsafe condition is beginning to develop? For example, a device which monitors the hazardous material-to-air volume ratio would serve as a warning when a hazardous atmosphere is being approached. OSHA invites comments on the types of monitoring devices which are available (both fixed and portable types) and on devices which are presenty being used to monitor gases, vapors, and dusts. Should these devices produce an audible alarm? Are common monitoring devices available which are approved for use in hazardous (explosive) atmospheres? If so, when should OSHA require such monitoring devices? What degree of accuracy should be required of such monitoring devices?

(13) Should OSHA require planning for workplace disasters as a part of a written emergency action plan as addressed in the new § 1910.38, Subpart E, as revised September 12, 1980 (45 FR 60656)? Under what conditions? What type of training should be required for employees who will be affected by such plans? How often should such training activities be conducted? Should such plans require planning and coordination with outside resources such as hospitals, ambulance services, and police and fire departments to ensure appropriate response to workplace disasters? Can allowances be made for an employer's inability to control performance of such outside agencies? Should OSHA encourage the development of community cooperation in planning for workplace disaster situations? If so, how?

(14) Should OSHA require communication devices such as radio, telephone, etc., to be available for emergency use by employees who work with hazardous materials while alone or in isolated areas?

(15) Should OSHA require some form of systems safety analysis such as failure mode and effects analysis for operations involving hazardous materials? If so, what sizes and types of operations should be covered?

(16) Should fire retardant coatings and mastics be acceptable under Subpart H with respect to protection against fire? For example, certain OSHA standards, such as § 1910.106(d)(4)(ii), require walls to have a specified fire-resistance rating when used to protect employees from exposure to hazardous materials. Should walls having fire retardant coatings and mastics which afford a specified level of protection, be acceptable to OSHA as alternatives to fire-resistance rated walls? What criteria and test methods should be specified to evaluate the protective characteristics of fire retardant coatings and mastics? What field compliance techniques or devices are available to determine if the fire retardant coatings and mastics are capable of providing the intended level of protection?

B. *Specific Issues:* In addition to the general issues discussed above, OSHA invites comments on the following specific issues relating to hazardous materials.

(1) *Compressed gas cylinders.* (a) Should OSHA develop inspection

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procedures for compressed gas cylinders? Should cylinder inspection continue to be conducted in accordance with the Hazardous Materials Regulations of the Department of Transportation (DOT) (49 CFR Parts 171–179) and with Compressed Gas Association (CGA) Pamphlets C–6 and C–8 as prescribed in § 1910.101(a)?

(b) Should standards for compressed gas cylinders be contained in Subpart H or should such standards be contained in Subpart M, Compressed Gas and Compressed Air Equipment?

(c) Should OSHA standards include quality assurance provisions for compressed gas cylinders manufactured outside of the United States? Should DOT approval of such cylinders be acceptable to OSHA?

(d) Is there a need for standards which specifically address the use of compressed gas cylinders in hospitals and laboratories?

(e) Should OSHA develop requirements for the handling, in-plant transportation, securing during use, and storage of compressed gas cylinders?

(f) Should OSHA require a color coding system for compressed gas cylinders that would serve to identify the contents? What type of system should be required?

(2) *Liquefied petroleum gas (LPG).* (a) Should MAPP (methylacetylene-propadiene) gas be considered a liquefied petroleum gas? Although MAPP gas possesses some of the same characteristics as LP gases (especially the LP gas, propane) it does not technically conform to the definition in the National Fire Protection Association (NFPA) Standard 58, "Liquefied Petroleum Gases, Storage and Handling," nor to the OSHA definition of LP gases in § 1910.110(a)(7). Consequently, MAPP gas is not presently covered by a specific OSHA standard. A new section is being considered (§ 1910.104 in the outline discussed above) entitled "liquefied energy gases" which would include liquefied natural gas (LNG), liquefied synthetic natural gas (SNG), MAPP gas, and LP gases. OSHA invites comments concerning the appropriateness and effectiveness of such an approach.

(b) Should OSHA adopt applicable provisions of the latest edition of the NFPA standard for LP gases (NFPA 58)? The 1968 edition of NFPA 58 was used as the source for the present OSHA standard for LP gases (§ 1910.110) and OSHA has not revised or updated this standard since its promulgation in 1971.

(c) Should LP gas-fired temporary heaters (salamanders) be tested and approved in accordance with the American National Standards Institute (ANSI) standard for gas-fired construction heaters [ANSI Z83.7]? Who should perform the testing? Should testing and approval by the American Gas Association (AGA) be acceptable?

(d) Should OSHA standards include maintenance provisions for LP gas distribution equipment? What maintenance provisions should be specified?

(e) Should OSHA incorporate applicable provisions of ANSI Standard B138–1, "Design and Construction of LP-Gas Installations at Marine and Pipeline Terminals, Natural Gas Processing Plants, Refineries and Tank Farms," for all of general industry?

(f) Should OSHA adopt standards to cover aerosol container filling processes which use LP gases or some other flammable gas as the propellent? Are injury data available which would indicate a need for such standards? Should OSHA use the provisions of the latest edition of NFPA 58 which apply to filling LP gas containers as a basis for any requirements pertaining to aerosol container filling processes? What precautions and special procedures are presently being used for filling rooms? What are proper procedures for disposal of leaking containers?

(3) *Liquefied natural gas (LNG) and synthetic natural gas (SNG).* (a) Should OSHA develop standards for LNG and SNG? What source standards should be used? What hazards need to be addressed?

(b) Should OSHA develop standards for underground and above-ground storage of LNG and SNG?

(4) *Cryogens.* Should OSHA develop standards which address the safe handling, use, in-plant transportation, and storage of cryogens (gases compressed to a liquid state of extremely low temperatures)? Should cryogens be defined in terms of temperature alone or both temperature and pressure? Should OSHA develop design criteria for pressure vessels and other storage containers based on the extreme low temperature properties of cryogens?

(5) *Flammable and combustible liquids.* (a) Should OSHA allow storage tanks for flammable and combustible liquids to be constructed of materials other than steel? What minimum criteria should these other materials meet? If storage tanks were constructed of other materials, would there be an increased risk of leaks? What other hazards, if any, would be presented by the use of other materials?

(b) Should certain industries which are presently exempted from the OSHA standard for flammable and combustible liquids as specified in § 1910.106 (j) (6) be covered by a revised OSHA standard for flammable and combustible liquids? What requirements should be provided to cover these industries?

(c) Should OSHA require safety coated (plastic-coated) glass containers to be used for the storage of flammable and combustible liquids where plain glass containers are presently permitted? Should OSHA permit greater quantities of flammable and combustible liquids to be stored in plastic-coated glass containers than those which are presently premitted in plain glass containers? What should the maxium quantity be? Should OSHA continue to permit plain glass containers and then, as an alternative, permit greater quantities to be stored in plastic-coated glass containers? What types of accidents or incidents, whether they produced injury or not, have occurred with plain glass containers that might have been prevented if plastic-coated glass containers were used? What criteria for coating glass containers are already available and how were they developed? What criteria should be developed?

(d) Should any container acceptable to DOT for the shipment of flammable and combustible liquids also be acceptable to OSHA for the storage of flammable and combustible liquids in the workplace? If so, what limitations should be placed on the use of the containers and their storage facilities? What hazards can be expected during the transfer of flammable and combustible liquids from storage containers? Is there a hazard in transferring flammable and combustible liquids from shipping containers acceptable to DOT, to storage containers acceptable to OSHA? What hazards are associated with the storing of flammable and combustible liquids in the shipping containers? Which specific operations involving storage, handling, or transferring of liquids, can be considered more hazardous than others and why? What problems can be encountered during the storage and handling of non-metallic containers? Are there significant hazards associated with the generation of static electricity during the transfer of flammable and combustible liquids from non-metallic containers? What procedures are used to dissipate the static electrical charge normally associated with the transfer of flammable and combustible liquids? Are sufficient charges of electrical energy generated and stored in non-metallic containers which can be later released as a potential ignition source? What level of static electrical charge is necessary to ignite flammable and

combustible liquid vapors found in dispensing areas and what distance can this electrical charge be expected to travel if the conductor is: (1) the ambient atmosphere, or, (2) the rack or holding device that holds the container during dispensing operations? Does the construction material of spouts or spigots (i.e. metallic versus non-metallic) affect the dissipation of the electrical charge developed during dispensing of flammable and combustible liquids?

(e) Should OSHA limit vapor concentrations to a specific percentage of a liquid's lower flammable limit (LFL) (also known as lower explosive limit (LEL)) when determining hazardous concentrations? If so, what should that specific percentage be for nonhazardous, or Class I, Division 1, Class I, Division 2 locations?

(f) Should OSHA develop separate standards for the storage of flammable and combustible liquids in laboratories? If so, how should they differ from general storage requirements?

(g) Should OSHA permit the use of automatic closing nozzles with latch open devices on Class I liquid dispensers (such as gasoline service pumps) used in industrial occupancies? Automatic closing nozzles with latch open devices are currently allowed on Class I liquid dispensers in service stations accessible to the public when dispensing is done by the attendant (§ 1910.106(g)(3)(vi)(*b*)) but they are not allowed in industrial occupancies. Would spillage increase if automatic closing nozzles with latch open devices were permitted in industrial occupancies?

(h) Should OSHA continue to require that all rebuilt or repaired nozzle valves be recertified as specified in § 1910.106(g)(3)(iv)(*b*)(2)? Why or why not?

(i) Should OSHA permit the use of military-type "jerry cans" for the storage of flammable and combustible liquids? Under what conditions?

(j) Should OSHA recognize alternative flash point determination test methods (such as the Setaflash closed cup tester) in addition to those specified in § 1910.106(a)(14)?

(k) Should OSHA change the drainage requirements as prescribed in § 1910.107(b)(2)(vii) for outdoor storage facilities for flammable and combustible liquids? What should be required?

(l) Should OSHA change its definition of a liquid as specified in § 1910.106(a)(17) to exclude the more viscous liquids such as certain paints and coatings? What test method should be used for flash point determination of such viscous liquids?

(m) Should OSHA continue to limit the size of indoor storage rooms as specified in § 1910.106(d)(4)(ii)? If OSHA does not continue to limit the size, what additional requirements should apply?

(n) Should OSHA redefine flammable and combustible liquids in order to exclude those water base liquids (such as water base paints) which have a flash point but do not have fire points? Should liquids (such as wine) containing 24 percent or less alcohol by volume by excluded provided that the remainder of the liquid does not present a hazard? What criteria and test methods should OSHA use to define flammable and combustible liquids?

(6) *Oxidizing materials.* (a) Should OSHA develop standards which address the storage, handling and use of oxidizing materials? What source materials should be used?

(b) Would fire protection measures and storage provisions alone be appropriate and adequate for protecting employees involved with the storage, handling and use of oxidizing materials?

(c) Should oxidizing materials be classified? In what manner should they be classified? What criteria and test methods should OSHA use to define oxidizing materials?

(7) *Corrosive liquids.* (a) Should OSHA develop standards which address the storage, handling and use of corrosive liquids? What sources of information should OSHA use to develop standards?

(b) Should OSHA require the employer to have special safety procedures for treatment of in-plant accidents involving corrosive liquids? Should OSHA prohibit the use of plain glass containers and require the use of plastic-coated glass containers for storage and handling of corrosive liquids?

(c) Should corrosive liquids be classified? In what manner should they be classified? What criteria and test methods should OSHA use to define corrosive liquids?

(8) *Explosives and blasting agents.* (a) Should OSHA develop standards for the manufacture of explosives? Section 1910.109 of the current OSHA Subpart H covers the transportation, storage, and use of explosives and blasting agents, but does not cover the manufacture of explosives.

Standards of the Bureau of Alcohol, Tobacco and Firearms (BATF) contain requirements for the storage of explosives (Subpart J of 27 CFR Part 181, Sections 181.161 through 181.200); standards of the Department of Transportation (DOT) contain requirements for the transportation of explosives (49 CFR Parts 171 through 179); and, the OSHA Construction Standards (29 CFR Part 1926, Subpart U) contain requirements for the use of explosives in blasting.

It has been suggested that § 1910.109 be revised to include provisions for the manufacture of explosives and to incorporate the above noted standards by reference where appropriate. OSHA is interested in receiving comments concerning the usefulness and feasibility of this approach.

(b) Should OSHA develop a separate standard for the manufacture, storage, and handling of fireworks? In the alternative, should requirements for fireworks be more clearly delineated in the context of present standards for explosives?

(c) Should OSHA permit the transportation of blasting caps in the same vehicle with other explosives when the safety procedures specified by DOT in 49 CFR 177.835(g) are followed?

(d) Should OSHA ever permit blasting operations to be performed during non-daylight hours? Under what conditions? Present OSHA standards (§ 1910.109(e)(1)(v)) require blasting operations to be performed only during daylight hours.

(e) Are present OSHA definitions for "explosive" as specified in § 1910.109(a)(3) and "blasting agent" as specified in § 1910.109(a)(1) technically accurate? Are there other definitions which would be as accurate but would also be consistent with those of other agencies, such as DOT?

(f) When testing circuits to charged holes, should OSHA require that blasting galvanometers, which verify that circuitry is completed, be equipped with a silver chloride cell which is especially designed for this purpose? Are there alternative batteries available which are equally safe? There has been some controversy concerning this issue. Some experts state that specifying the use of a silver chloride battery is necessary to ensure against accidental detonation of the charged holes. Other experts argue that specifying the use of a silver chloride battery creates a monopoly market for this type of battery, restricts innovative technology, and needlessly excludes other types of batteries which could be used without jeopardizing employee safety.

(9) *Combustible dusts.* (a) Should OSHA develop standards in Subpart H which define and regulate combustible dusts? If so, should various classes of combustible dusts be individually addressed, e.g., metal, organic, plastic? Or would it be sufficient to develop general requirements applicable to all combustible dusts? What source standards should be used?

(b) Should OSHA require specific dust control criteria for those industries whose manufacturing processes involve combustible dusts, e.g., the pharmaceutical industry and food processing industry? Under what condition, if any, should explosion venting be required?

(10) *Flammable solids.* Should OSHA develop standards for the use, handling, and storage of flammable solids (such as camphor, potassium, sodium, and phosphorus)? What source standards should be used? What definitions and test methods should OSHA specify to accurately identify these substances?

(11) *Spray application using flammable or combustible materials.* (a) Should ventilation requirements for spray finishing operations presently contained in § 1910.94(c) be incorporated into a Subpart H standard for spray application using flammable or combustible materials? Confusion frequently exists when reference must be made to to § 1910.94(c) concerning spray booth ventilation requirements when the other spray application requirements are contained in Subpart H, § 1910.107. Would this confusion be eliminated if requirements for ventilation and spray finishing were contained in one standard?

(b) Should the requirement for a 20 foot distance between a spray booth and electrical equipment as specified in § 1910.107(c)(2) be reduced to ten feet, and under certain conditions, five feet, to be consistent with the latest editions of the National Fire Protection Association (NFPA) Standard 33, "Spray Application Using Flammable and Combustible Materials" and the National Electrical Code. The 20 foot distance requirement was originally adopted from the 1968 edition of NFPA 33. Would employee safety be adequate at these reduced distances?

(c) Should OSHA ever permit the recirculation of air exhausted from a spray operation back to the same spray operation? If so, under what conditions? What precautions should OSHA require? Present OSHA standards (§ 1910.107(d)(9)) prohibit the recirculation of air exhausted from spray operations. However, recirculation is permitted by the latest edition of NFPA 33 under certain conditions.

(d) Should OSHA permit open spraying, i.e., spraying outside of a spray booth or spray room, as is presently permitted in the latest edition of NFPA 33? If so, under what conditions should OSHA permit this practice?

(e) The present OSHA ventilation standard for spray operations (§ 1910.94(c)(6)) requires specific ventilation rates. It further requires that ventilation must dilute solvent vapors to less than 25 percent of the lower flammable limit (LFL) (also called the lower explosive limit, LEL). Is compliance with the specified percentage alone, sufficient to provide for employee safety? If not, what else should be required?

(f) Should OSHA ever permit the placing of electric motors (approved for use in hazardous locations) in exhaust ducts that are less than five feet in length? This practice is currently prohibited by § 1910.107(d)(5). Should this practice be allowed provided that: (1) the motors are shielded from direct overspray; (2) the fan blades are mounted directly on the motor shaft; and (3) inspections, cleaning, and maintenance are conducted on a regularly scheduled basis? Are there other precautions that are necessary?

(g) Should OSHA permit the use of thin plastic or paper bags as protective covers on sprinkler heads? It has been suggested that thin coverings on sprinkler heads would not slow the activation of the sprinkler heads to any significant extent and would protect the heads from overspray which could slow their activation. OSHA is seeking any data on the use of such protective coverings.

(h) Should OSHA permit the use of strippable coatings or kraft paper in spray areas to facilitate cleaning? It has been suggested that the use of kraft paper to cover exposed areas in spray operations facilitates cleaning and does not significantly increase the fire hazard once it is covered with a thin coating of overspray. Under what conditions, if any, should OSHA permit this practice to be used?

(i) Should OSHA develop standards which specifically address the use of water base finishes in spray operations? Most of these finishes involve little or no hazard in the liquid state but leave highly combustible residue upon the vaporation of the liquid carrier.

(j) Should ventilation requirements for powder coating operations be different from those for liquid spray operations? For example, the latest edition of NFPA 33 addresses ventilation for powder coating operations by requiring sufficient airflow to maintain the exhaust duct at a powder concentration that will not exceed one half of the lower flammable limit or minimum explosive concentration (MEC) of the powder in use as compared with 25 percent of the lower flammable limit (LFL) for liquids. IF the MEC of the powder has not been established, the NFPA standard requires that the exhaust duct powder concentration be maintained below 0.015 ounces per cubic fot (15 g/m³). Does this approach provide an adequate margin of safety for employees?

(k) Should OSHA allow the use of spray buildings? A spray building is a detached building where only spray operations are conducted. What special conditions should be required for this type of building? Are the present OSHA requirements in § 1910.107 unnecessarily stringent for application to spray buildings?

(l) Should OSHA change the title of § 1910.107, "Spray Finishing Using Flammable and Combustible Materials," to the NFPA title, "Spray Application Using Flammable and Combustible Materials," to be consistent with the source standard as well as to eliminate confusion in the application of the standard?

(12) *Dip tanks containing flammable or combustible liquids.* (a) Should the title of the present standard, § 1910.108, "Dip Tanks Containing Flammable or Combustible Liquids," be changed to be consistent with the proposed title of the National Fire Protection Association (NFPA) Standard 34, "Standard for Dipping and Coating Processes Using Flammable or Combustible Liquids?"

(b) At present all dip tanks containing flammable or combustible liquids are covered by § 1910.108 without regard to the flash point of the liquid. Should OSHA limit coverage only to those liquids with flash points below 200 degrees F, and to those liquids with flash points above 200 degrees F whose temperatures are raised to within 80 degrees F below their flash point? Would this approach provide adequate employee safety?

(c) Should the present requirements for dip tank bottom drains (§ 1910.108(c)(3)) be revoked? It has been suggested that bottom drains are for the protection of the tank contents rather than for employee safety. Additionally, it has been suggested that in the event of fire, draining the tanks may not contribute significantly to employee safety, and may actually decrease safety because draining the tanks results in exposing more residue-laden surfaces.

(d) Should OSHA permit alternatives to its present requirement that overflow piping lead to a safe location outside the building as specified in § 1910.108(c)(2)? Suggested alternatives include overflow piping which leads to a safe location inside the building or, instead of overflow piping, having a dike around the dip tank in conjunction with limiting employee exposures? What criteria should be applied?

(e) Should OSHA ever permit the heating of liquids in dip tanks to temperatures above their flash points? Under what conditions? Present OSHA standards prohibit the heating of liquids in dip tanks to within 50 degrees F below their flash points as specified in § 1910.106(c)(7). However, the latest edition of NFPA 34 permits the heating of liquids to their boiling points or to within 100 degrees F below their autoignition temperatures. Should OSHA revise its standard in this regard? If so, what additional requirements should be specified for ventilation and employee safety?

(f) Should applicable provisions of § 1910.94(d) concerning ventilation for open surface tanks be incorporated into the Subpart H standard for dip tanks?

(g) Should present provisions addressing hardening and tempering tanks as specified in § 1910.106(h)(1) be made applicable to internal quench tanks, i.e., fully enclosed tank systems used in heating-treating materials?

(h) Should ventilation required for dip tanks be based on a percentage of the lower flammable limit (LFL)? The proposed NFPA Standard 34 would require that ventilation systems maintain vapor concentrations at or below 25 percent of the LFL five feet or more from the vapor source. If OSHA adopts this approach, what type of monitoring should be used to ensure that the vapor concentration does not exceed specified levels?

(13) *Molten metal operations.* Should OSHA develop standards for operations involving molten metal? If so, what problems should be addressed? What measures are available to minimize the incidence of steam explosions resulting from spills or the introduction of moisture into furnaces? Should OSHA require monitoring for carbon monoxide (CO) in areas of employee exposure near furnaces to prevent employees from being overcome by acute exposures?

(14) *Oil refineries, gas, chemical and petrochemical plants.* (a) Oil refineries, gas, chemical and petrochemical plants have been modified to operate at higher output and with greater stroage capacity than contemplated in their original layout. Does improper spacing between certain equipment, resulting from these plant modifications, contribute to substantial safety hazards? Should OSHA propose general spacing requirements for equipment in refineries and plants which are being modified or planned? What should be the basis for these requirements?

(b) Should OSHA require an emergency action plan as addressed in new § 1910.38, Subpart E, as revised September 12, 1980 (45 FR 60656) for all employees including contractors? What specific elements should be contained in such a plan?

(c) Should OSHA require a "hot work" permit system for types of work which may cause fire or explosion?

(d) Can some flammable vapor or gas concentration (percentage of lower flammable limits) be specified as the upper bound at which regular electrical wiring can be used without hazard to employees? What monitoring and ventilation should be provided to ensure that the concentrations of flammable vapors or gases are kept below an upper limit? What level of accuracy should be required of the monitoring equipment? What monitoring equipment is currently available or in use?

(e) Should OSHA require special safety procedures for employees, including employees of outside contractors, for work performed during breakdown process repairs, refinery turnaround procedures, and other planned process modifications or changes? Should all such procedures be in writing?

(f) Should compressed air be permitted to be used as a purge gas for flammable or combustible material containers and piping? Under what conditions? If compressed air is permitted for purging flammable and combustible material containers and piping, what is the potential for a flammable vapor-air mixture occurring?

(g) Should OSHA develop standards for high pressure steam or water equipment used in the cleaning of equipment?

(h) Should OSHA propose requirements for the use of system safety analysis, such as failure mode and effects analysis, for new operations, shutdowns, and turnarounds involving hazardous materials? Such analysis would be conducted before any new operation, shutdown, or turnaround occurred and would include a study of conditions and environments that effect system failures, the modes in which failure could take place, the problems that could be generated, and the preventive or safety measures to be taken.

(i) Should OSHA require employers to prepare and implement a system safety program which identifies all hazards capable of causing a disabling injury or death in each operation and defines the alternative measures to eliminate or control those hazards?

(j) Shoud a system safety program include all of the following: failure mode and effect analysis; fault tree analysis; sneak circuit analysis including risk assessment and hazard control?

(h) Should the scope of the system safety plan include: (1) design of new systems/facilities; (2) modifications to existing system/facilities; and, (3) operations and maintenance of systems/facilities?

Public Participation

Written Comments and Information

The written comments and information requested in this notice must be submitted on or before July 30, 1981, in quadruplicate to the Docket Officer, Docket S-013, Room S6212, U.S. Department of Labor, Occupational Safety and Health Administration, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Public Meeting

In order to provide an informal forum in which interested persons can orally present comments and information regarding the issues discussed in this notice or on any other aspect concerning the regulation of hazardous materials in Subpart H, OSHA has scheduled a public meeting for April 8 and 9, 1981, in the Auditorium, Frances Perkins Department of Labor Building, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

The meeting on each day will begin promptly at 9:00 a.m., will recess from 12 noon until 1:30 p.m. and then continue until 5:00 p.m. The chairperson will be a representative of the U.S. Department of Labor, designated by the Assistant Secretary, and will have the necessary authority to regulate the conduct of the meetings.

OSHA requests that any person wishing to make oral presentations submit a notice of intention to appear by March 13, 1981. Notice should be addressed to Mr. Tom Hall, Division of Consumer Affairs, Room N3635, U.S. Department of Labor, Occupational Safety and Health Administration, 200 Constitution Avenue, N.W., Washington, D.C. 20210. The notice should identify the person and/or organization intending to testify, the amount of time requested for oral presentation, the subject, and a brief summary of the intended oral presentation. All persons giving written advance notice will have time reserved for oral presentations. Persons who do not submit advance notice, but who still wish to testify, are requested to register at the meeting they attend.

As long as time permits, all persons who wish to be heard will be allowed to make oral presentations, Howevr, priority will be given to those who register in advance.

Additional Public Meetings

OSHA would like to determine if holding additional public meetings in locations other than Washington, D.C. will enable more person to participate. Specifically, OSHA wants to know whether there are significant numbers of persons who cannot attend the April public meetings in Washington, D.C., but who would be able to participate in a public meeting held on a different date in a more convenient location. Such persons should request the Agency to hold additional meetings and indicate when such meetings should be held and the city or region of the country in which to hold the meetings. (Such requests should be sent to the address provided above for written comments.) OSHA will carefully consider such request in determining whether and where to hold additional meetings. Notice of any additional meetings will be published in the Federal Register.

All written and oral submissions, as well as other information gathered by the Agency, will be considerd by OSHA in the development of proposed standards or revisions to Subpart H. In addition, these submissions will be available for inspection and copying during normal business hours at the OSHA Docket Office.

Authority

This document was prepared under the direction of Eula Bingham, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

(Sec. 6, 84 Stat. 1593 (29 U.S.C. 655); 29 CFR Part 1911; Secretary of Labor's Order No. 8–76 (41 FR 25059))

Signed at Washington, D.C., this 19th day of January, 1981.

Eula Bingham,

Assistant Secretary of Labor.

[FR Doc. 81–2298 Filed 1–22–81; 8:45 am]
BILLING CODE 4510–26–M

federal register

Friday
January 23, 1981

Part VI

Department of Labor

Wage and Hour Division, Employment Standards Administration

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions, Modifications and Supersedeas Decisions

DEPARTMENT OF LABOR

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor specify, in accordance with applicable law and on the basis of information available to the Department of Labor from its study of local wage conditions and from other sources, the basic hourly wage rates and fringe benefit payments which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of the character and in the localities specified therein.

The determinations in these decisions of such prevailing rates and fringe benefits have been made by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR 1.1 (including the statutes listed at 36 FR 306 following Secretary of Labor's order No. 24–70) containing provisions for the payment of wages which are dependent upon determination by the Secretary of Labor under the Davis-Bacon Act; and pursuant to the provisions of part 1 of subtitle A of title 29 of Code of Federal Regulations, Procedure for Predetermination of Wage Rates (37 FR 21138) and of Secretary of Labor's Orders 12–71 and 15–71 (36 FR 8755, 8756). The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in effective date as prescribed in that section, because the necessity to issue construction industry wage determination frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions are effective from their date of publication in the Federal Register without limitation as to time and are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision together with any modifications issued subsequent to its publication date shall be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR, Part 5. The wage rates contained therein shall be the minimum paid under such contract by contractors and subcontractors on the work.

Modifications and Supersedeas Decisions to General Wage Determination Decisions

Modifications and supersedeas decisions to general wage determination decisions are based upon information obtained concerning changes in prevailing hourly wage rates and fringe benefit payments since the decisions were issued.

The determinations of prevailing rates and fringe benefits made in the modifications and supersedeas decisions have been made by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR 1.1 (including the statutes listed at 36 FR 306 following Secretary of Labor's Order No. 24–70) containing provisions for the payment of wages which are dependent upon determination by the Secretary of Labor under the Davis-Bacon Act; and pursuant to the provisions of part 1 of subtitle A of title 29 of Code of Federal Regulations, Procedure for Predetermination of Wage Rates (37 FR 21138) and of Secretary of Labor's orders 13–71 and 15–71 (36 FR 8755, 8756). The prevailing rates and fringe benefits determined in foregoing general wage determination decisions, as hereby modified, and/or superseded shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged in contract work of the character and in the localities described therein.

Modifications and supersedeas decisions are effective from their date of publication in the Federal Register without limitation as to time and are to be used in accordance with the provisions of 29 CFR Parts 1 and 5.

Any person, organization, or governmental agency having an interest in the wages determined as prevailing is encouraged to submit wage rate information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Office of Government Contract Wage Standards, Division of Government Contract Wage Determinations, Washington, D.C. 20210. The cause for not utilizing the rulemaking procedures prescribed in 5 U.S.C. 553 has been set forth in the original General Determination Decision.

New General Wage Determination Decisions

Virgin Islands: VI81-3011

Modifications to General Wage Determination Decisions

The numbers of the decisions being modified and their dates of publication in the Federal Register are listed with each State.

Alaska: AK80-5130	Sept. 26, 1980.
California:	
CA80-5135	Oct. 3, 1980.
CA80-5147	Nov. 28, 1980.
Connecticut:	
CT80-2074	Aug. 15, 1980.
NY80-3079	Dec. 30, 1980.
Delaware: NY80-3079	Dec. 30, 1980.
Florida:	
FL79-1099	Feb. 16, 1979.
FL80-1039	Jan. 4, 1980.
FL81-1168	Jan. 6, 1981.
FL81-1167	Jan. 6, 1981.
FL81-1169	Jan. 6, 1981.
FL81-1169	Jan. 6, 1981.
Louisiana: LA81-4002	Jan. 6, 1981.
Maine: NY80-3079	Dec. 30, 1980.
Maryland:	
MD80-3081	Oct. 30, 1980.
NY80-3079	Dec. 30, 1980.
Massachusetts:	
MA80-2046	July 7, 1980.
NY80-3079	Dec. 30, 1980.
Michigan: MI80-3082	Aug. 15, 1980.
New Hampshire: NY80-3079	Dec. 30, 1980.
New Jersey:	
NJ79-3029	Jan. 4, 1980.
NY80-3079	Dec. 30, 1980.
New York:	
NY80-3023	April 4, 1980.
NY80-3035	April 25, 1980.
NY80-3079	Dec. 30, 1980.
Pennsylvania: NY80-3079	Dec. 30, 1980.
Puerto Rico:	
PR80-3063	Oct. 17, 1980.
PR80-3070	Oct. 24, 1980.
PR80-3069	Oct. 24, 1980.
Texas:	
TX80-4085	Nov. 7, 1980.
TX80-4086	Nov. 7, 1980.
TX80-4087	Dec. 5, 1980.
TX80-4088	Dec. 5, 1980.
TX81-4007	Jan. 6, 1981.
TX81-4009	Jan. 6, 1981.
Rhode Island: NY80-3079	Dec. 30, 1980.

Supersedeas Decisions to General Wage Determination Decisions

The numbers of the decisions being superseded and their dates of publication in the Federal Register are listed with each State. Supersedeas

decision numbers are in parentheses following the numbers of the decisions being superseded.

Connecticut: CT80-2079 (CT81-8001)	Aug. 15, 1980.
Florida: FL80-1040 (FL81-1180)	Jan. 4, 1980.
New Hampshire:	
NH80-2038 (NH81-3008)	Aug. 15, 1980.
NH80-2057 (NH81-3010)	Aug. 1, 1980.
New York: NY79-3028 (NY81-8008)	Sept. 7, 1979.
North Carolina:	
NC81-1137 (NC81-1182)	Dec. 30, 1980.
NC81-1141 (NC81-1183)	Dec. 30, 1980.
NC81-1145 (NC81-1181)	Dec. 30, 1980.

Cancellation of General Wage Determination Decision

The general wage decision listed below is cancelled. Agencies with construction projects pending to which the cancelled decision would have been applicable should utilize the project determination procedure by submitting Form SF-308. See Regulations Part 1 [29 CFR], Section 1.5. Contracts for which bids have been opened shall not be affected by this notice. Also consistent with 29 CFR, 1.7(b)(2), the incorporation of the cancelled decision in contract specifications, the opening of bids is within ten (10) days of this notice, need not be affected.

AZ80-5124—Pima County Arizona dated August 1, 1980, in 45 FR 51386—Residential Construction

Signed at Washington, D.C., this 16th day of January 1981.

Dorothy P. Coma,

Assistant Administrator, Wage and Hour Division.

BILLING CODE 4510-27-M

[FR Doc. 81-2220 Filed 1-22-81; 8:45 am]

BILLING CODE 4510-27-C

NEW DECISION

STATE: Virgin Islands COUNTY: Island Wide
DECISION NO.: VI81-3011 DATE: Date of Publication
DESCRIPTION OF WORK: Building Construction Projects including Residential Construction Projects (single family homes and apartments up to and including 4 stories).

	Basic Hourly Rates	Fringe Benefits Payments H & W	Pensions	Vacation	Education and/or Appr. Tr.
Air Conditioning Mechanics	5.00				
Carpenters	4.51				
Cement Masons	4.43				
Electricians	4.62				
Ironworkers	4.50				
Laborers:					
Unskilled	3.41				
Mason Tenders	3.51				
Painters	3.50				
Plumbers & Pipefitters	4.00				
Power Equipment Operators:					
Backhoe	4.50				
Compressor	4.00				
Crane	5.00				
Truck Drivers	5.00				
Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5 (a)(1)(ii)).					

Modification Page 1

DECISION NO. AK80-5130 Mod. #2
(45 FR 64040 September 26, 1980)

STATEWIDE, ALASKA	Basic Hourly Rates	Fringe Benefits Payments H & W	Pensions	Vacation	Education and/or Appr. Tr.
ADD:					
Elevator Constructor Probationary Helper	$11.22	1.195	.95		.035
CHANGE:					
Electricians Residential Electricians	12.00	1.20	3%		.10
Elevator Constructors	22.445	1.195	.95	a	.035
Painters					
Area 1					
Zone 1 and 3					
Brush, Roller, Paper, Vinyl	20.24	1.35	2.00		.21
Utildor, Swing, Sign Bosun	20.51	1.35	2.00		.21
Structural Steel, Pot Tender, Sand Blast	20.77	1.35	2.00		.21
Finish Metal	21.29	1.35	2.00		.21
Spray Painter	21.24	1.35	2.00		.21
Hand Taper	20.53	1.35	2.00		.21
Machine Taper	21.58	1.35	2.00		.21
Buffer Operator	20.80	1.35	2.00		.21
Hardwood Finisher	21.03	1.35	2.00		.21
Zone 2					
Brush, Roller, Paper, Vinyl	21.14	1.35	2.00		.21
Utildor, Swing, Sign Bosun	21.40	1.35	2.00		.21
Structural Steel, Pot Tender, Sand Blast	21.66	1.35	2.00		.21
Finish Metal	22.14	1.35	2.00		.21
Spray Painter	22.14	1.35	2.00		.21
Hand Taper	21.42	1.35	2.00		.21
Machine Taper	22.47	1.35	2.00		.21
Buffer Operator	21.69	1.35	2.00		.21
Hardwood Finishers	21.92	1.35	2.00		.21

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DECISION NO. AK80-5130 Mod. No. 2 cont'd

Modification Page 3

DECISION NO. CA80-5135 - Mod. #4

DECISION NO. AK80-5130 Mod. No. 2 cont'd

STATEWIDE, ALASKA	Basic Hourly Rates	Fringe Benefits Payments: H & W	Pensions	Vacation	Education and/or Appr. Tr.
Painters					
Area 2 and 3					
Brush, Roller, Sign Paper and Vinyl, Swing Stage, Taper/Drywall, Structural Steel	$19.95	1.10	2.00		.25
Spray and Sand Blast, Pot Tender	20.35	1.10	2.00		.25
Epoxy and Tar Applicator	20.55	1.10	2.00		.25
Steeple Jack and Tower	20.95	1.10	2.00		.25
Residential Painters	21.75	1.10	2.00		.25
Plumbers	11.34	1.10	2.00		.25
Area 1	21.12	1.35	2.90		.35
Roofers					
Area 1	19.00	1.40	3.30		.05
Area 2 and 3	18.70	1.40	3.30		.05
Asbestos Workers	25.17	.78	1.45		.10
Boilermakers	20.97	1.30	1.25	1.00	.04
DELETE:					
Power Equipment Operators Dredging					
Group 1	16.33	1.20	3.00		
Group 2	17.35	1.20	3.00		
Group 3	17.81	1.20	3.00		
Group 4	18.30	1.20	3.00		
Group 5	19.43	1.20	3.00		

DECISION NO.CA80-5135 - Mod.#4

(45 FR 65867 - October 3, 1980)

Imperial, Inyo, Kern, Los-Angeles, Mono, Orange, Riverside, San Luis Obispo, Santa Barbara and Ventura Counties, California	Basic Hourly Rates	Fringe Benefits Payments: H & W	Pensions	Vacation	Education and/or Appr. Tr.
Change:					
ELECTRICIANS:					
Area 8:					
Electricians	$18.25	1.10	3%+1.50		.03
Cable Splicers	19.75	1.10	3%+1.50		.03
Area 10:					
Electricians	21.00	1.10	3%+1.50		.03
Cable Splicers	22.50	1.10	3%+1.50		.03
LINE CONSTRUCTION:					
Area 9:					
Groundman	16.44	1.10	3%+1.50		.03
Lineman, Equipment Op.	21.00	1.10	3%+1.50		.03
Cable Splicer	22.50	1.10	3%+1.50		.03
Add:					
LINE CONSTRUCTION:					
Area 11:					
Santa Barbara County (Remainder of County):					
Groundman	13.69	1.10	3%+1.50		.03
Lineman	18.25	1.10	3%+1.50		.03
Cable Splicer	19.75	1.10	3%+1.50		.03
Equipment Operator	18.25	1.10	3%+1.50		.03

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DECISION NO. CA80-5147 - Mod. #3
(45 FR 76015 - November 18, 1980)
Imperial, Kern, Los Angeles Orange, Riverside, San Luis Obispo, Santa Barbara and Ventura Counties, California

	Basic Hourly Rates	Fringe Benefits Payments H & W	Pensions	Vacation	Education and/or Appr. Tr.
Change:					
ELECTRICIANS:					
Area 9:					
Electricians	$21.00	1.10	3%+1.50		.03
Cable Splicers	22.50	1.10	3%+1.50		.03
Area 10:					
Electricians	18.25	1.10	3%+1.50		.03
Cable Splicers	19.75	1.10	3%+1.50		.03

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DECISION NO. CT80-2074 - Mod. #3
(45 FR 54602 - August 15, 1980)
Hartford, Middlesex, New Haven, New London, & Tolland Counties, Connecticut

	Basic Hourly Rates	Fringe Benefits Payments H & W	Pensions	Vacation	Education and/or Appr. Tr.
Change:					
Asbestos Workers					
New London Co.: Griswold, Ledyard, Lisbon, W. Stonington, Preston, Stonington, & Voluntown	17.28	1.45	1.33		.03
Boilermakers	14.63	1.275	1.46		.03
Bricklayers (Building)					
Hartford Co.: Berlin, New Britain, Newington, & Southington; New Haven Co.: Meriden, Wallingford, Cheshire (North of Route 68)	11.05	.75	.75		
Hartford Co.: Canton	11.05	.75	.75		
New Haven Co.: Ansonia, Derby, Oxford, Seymour, & Southbury	11.05	.75	.75		
Hartford Co.: Bristen, Plainville, Naugatuck, Prospect, Waterbury, & Wolcott	11.05	.75	.75		
New Haven Co.: Milford (West of Indian River to the Orange Town line)	11.05	.75	.75		
Bricklayers (Heavy & Highway)	11.15	.75	.75	h	
Electricians					
Hartford Co.: Hartland; New Haven Co.: Beacon Falls, Middlebury, Naugatuck, Oxford, Prospect, Seymour, Southbury, Waterbury, & Walcott	12.10	1.22	3%+ .60	h	1/8%
Middlesex Co.: Remainder of County; Hartford Co.: Berlin, Bristen, New Britain, Newington, Plainville, Southington; New Haven Co.: Remainder of County; New London Co.: Fishers Island, Sound Old Lyme, Groton, Waterford, & Ledyard (Submarine Base Only)	13.10	1.07	3%+ .65		4%
Glaziers					
New Haven Co.: Except Wallingford	12.33	1.10	.47	h	.01

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DECISION NO. CT80-2074 - Mod. #3 (Cont'd)

	Basic Hourly Rates	Fringe Benefits Payments H & W	Pensions	Vacation	Education and/or Appr. Tr.
Change:					
Laborers					
Hartford Co.: Bristen, Plainville, Southington; New Haven Co.: Cheshire, Meriden, Wallingford	11.05	.75	.75		
Hartford Co.: Berlin, New Britain, Newington; New Haven Co.: Ansonia, Derby, Oxford, Seymour, Southbury	11.05	.75	.75		
Hartford Co.: Canton, Naugatuck, Prospect, Waterbury, & Wolcott	11.05	.75	.75		
New Haven Co.: Milford (West of Indian River to the Orange Town line)	11.05	.75	.75		
Laborers (Heavy & Highway)	11.15	.75	.75	h	
Painters					
Hartford Co.: Bristen, Plainville, Southington; New Haven Co.: Cheshire, Meriden, Wallingford	11.05	.75	.75		
Hartford Co.: Berlin, New Britain, Newington; New Haven Co.: Ansonia, Derby, Oxford, Seymour, Southbury	11.05	.75	.75		
Hartford Co.: Canton, Naugatuck, Prospect, Waterbury, & Wolcott	11.05	.75	.75		
New Haven Co.: Milford (West of Indian River to the Orange Town line)	11.05	.75	.75		
Painters (Heavy & Highway)	11.15	.75	.75	h	
Plasterers					
Hartford Co.: Bristen, Plainville, Southington; New Haven Co.: Cheshire, Meriden, Wallingford	11.05	.75	.75		
Hartford Co.: Berlin, New Britain, Newington; New Haven Co.: Ansonia, Derby, Oxford, Seymour, Southbury	11.05	.75	.75		
Hartford Co.: Canton, Naugatuck, Prospect, Waterbury, & Wolcott	11.05	.75	.75		
New Haven Co.: Milford (West of Indian River to the Orange Town line)	11.05	.75	.75		
Plasterers (Heavy & Highway)	11.15	.75	.75	h	
Plumbers & Pipefitters					
Hartford Co.: Bristen, Plainville, Southington; New Haven Co.: Cheshire, Meriden, Wallingford	11.05	.75	.75		
Hartford Co.: Berlin, New Britain, Newington; New Haven Co.: Ansonia, Derby, Oxford, Seymour, Southbury	11.05	.75	.75		
Hartford Co.: Canton, Naugatuck, Prospect, Waterbury, & Wolcott	11.05	.75	.75		
New Haven Co.: Milford (West of Indian River to the Orange Town line)	11.05	.75	.75		
Plumbers & Pipefitters (Heavy & Highway)	11.15	.75	.75	h	
Roofers					
Hartford Co.: Bristen, Plainville, Southington; New Haven Co.: Cheshire, Meriden, Wallingford	11.05	.75	.75		
Hartford Co.: Berlin, New Britain, Newington; New Haven Co.: Ansonia, Derby, Oxford, Seymour, Southbury	11.05	.75	.75		
Hartford Co.: Canton, Naugatuck, Prospect, Waterbury, & Wolcott	11.05	.75	.75		
New Haven Co.: Milford (West of Indian River to the Orange Town line)	11.05	.75	.75		
Roofers (Heavy & Highway)	11.15	.75	.75	h	
Sheetmetal Workers					
Hartford Co.: Bristen, Plainville, Southington; New Haven Co.: Cheshire, Meriden, Wallingford	11.05	.75	.75		
Hartford Co.: Berlin, New Britain, Newington; New Haven Co.: Ansonia, Derby, Oxford, Seymour, Southbury	11.05	.75	.75		
Hartford Co.: Canton, Naugatuck, Prospect, Waterbury, & Wolcott	11.05	.75	.75		
New Haven Co.: Milford (West of Indian River to the Orange Town line)	11.05	.75	.75		
Sheetmetal Workers (Heavy & Highway)	11.15	.75	.75	h	
Steamfitters					
Hartford Co.: Bristen, Plainville, Southington; New Haven Co.: Cheshire, Meriden, Wallingford	11.05	.75	.75		
Hartford Co.: Berlin, New Britain, Newington; New Haven Co.: Ansonia, Derby, Oxford, Seymour, Southbury	11.05	.75	.75		
Hartford Co.: Canton, Naugatuck, Prospect, Waterbury, & Wolcott	11.05	.75	.75		
New Haven Co.: Milford (West of Indian River to the Orange Town line)	11.05	.75	.75		
Steamfitters (Heavy & Highway)	11.15	.75	.75	h	

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DECISION NO. CT80-2074 - Mod. #3 (Cont'd)

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Lathers Hartford Co.: Windsor Locks, Granby, Windsor, New Britain, Plainville; New London Co.: Groton, Mystic, Norwich; Middlesex Co.: Deep River, Middletown, Haddam; Tolland Co.: Tolland & Rockville	11.15	.50	.40		.01
Roofers New Haven Co.: Ansonia, Beacon Falls, Bethany, Branford, Derby, E. Haven, Guilford, Hamden, Madison, Milford, Middlebury, Naugatuck, New Haven, N. Branford, N. Haven, Orange, Oxford, Seymour, Union City, W. Haven, & Woodbridge	13.15	1.35	.50		
Hartford Co.: Middlesex Co.: New Haven Co.: Cheshire, Meriden, Prospect, Wallingford, & Wolcott; New London Co.: Tolland Co. Composition	11.85	.575	.85	.55	
Slate, Tile	11.35	.575	.85	.55	
Sheet Metal Workers	13.24	.81	1.23		.09
Sprinkler Fitters	14.00	.85	1.20		.08
Steamfitters Hartford Co.: Avon, Bloomfield, Burlington, Canton, E. Granby, E. Hartford, E. Windsor, Enfield, Farmington, Glastonbury, Granby, Hartford, Manchester, Marlborough, Newington, Rocky Hill, Simsbury, S. Windsor, Suffield, W. Hartford, Wethersfield, Windsor, & Windsor Locks; Middlesex Co.: Chester, Cromwell, Deep River, E. Haddam, Hampton, Haddam, Marcmas (Atomic River Project), Middlefield, Middletown, & Portland; Tolland Co.: Andover, Bolton, Columbia, Coventry, Ellington, Hebron, Mansfield, Somers, Stafford, Storrs, Tolland, Union, Vernon, & Wallington	13.57	1.16	1.51		.13

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Decision #FL79-1039 - Mod. #6 (44 FR 10228 - February 16, 1979) Volusia County (except Cape Kennedy Space Flight Center and Cape Canaveral Air Force Station, Florida)					
Change: Carpenters	9.25	.55	.80		.12
Decision #FL80-1039 - Mod. #1 (45FR 1344 - January 4, 1980) Gadsden, Jefferson, and Leon					
Change: Laborers	3.35				
Truck Drivers	3.35				

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-Decision #FL81-1166-Mod. #1 (46 FR-1518- January 6,1981) Alachua, Bradford, Calhoun, Citrus, Columbia, Dixie, Franklin, Gadsden, Gilhrist, Hamilton, Hernando, Holmes, Jackson, Jefferson, Lake, Lafayette, Leon, Levy, Liberty, Madison, Marion, Pasco, Putnam, Sumter, Suwannee, Taylor, Union, Wakulla, and Washington Change: Description of Work To Read: Highway Construction Projects (excluding tunnels, building structures in rest area projects and railroad construction; bascule, suspension and spandrel arch bridges; bridges designed for commercial navigation; bridges involving marine construction; and other major bridges)	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.

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Decision #FL81-1167- Mod. #1 (46 FR-1518- January 6, 1981) Bay, Escambia, gulf, Okaloosa, Santa Rosa, and Walton Change: Description of Work to Read: Highway Construction Projects (excluding tunnels, building structures in rest area projects and railroad construction; bascule, suspension, and spandrel arch bridges; bridges designed for commercial navigation; bridges involving marine construction; and other major bridges)	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Decision #FL81-1168- Mod. #1 (46 FR - 1519- January 6, 1981) Baker, Clay, Duval, Flagler, Nassau, and St. Johns Change: Description of Work to Read: Highway Construction Projects (excluding tunnels, building structures in rest area projects and railroad construction; bascule, suspension and spandrel arch bridges; bridges designed for commercial navigation; bridges involving marine construction; and other major bridges)					

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Decision #FL81-1169- Mod. #1 (46 FR-1519- January 6, 1981) Brevard, Indian River, Martin, Okeechobee, and St. Lucie Change: Description of Work to Read: Highway Construction Projects (excluding tunnels, building structures in rest area projects and railroad construction; bascule, suspension and spandrel arch bridges; bridges designed for commercial navigation; bridges involving marine construction; and other major bridges)	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.

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Decision #FL81-1170- Mod. #1 (46 FR-1519- January 6, 1981) Broward, Dade, Monroe, and Palm Beach Change: Description of Work to Read: Highway Construction Projects (excluding tunnels, building structures in rest area projects and railroad construction; bascule, suspension and spandrel arch bridges; bridges designed for commercial navigation; bridges involving marine construction; and other major bridges)	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Decision #FL81-1169 - Mod. #1 (46 FR - 1519- January 6, 1981) Brevard and Volusia (excluding Cape Canaveral Air Force Station, Patrick Air Force Base, Kennedy Space Flight Center and Melabar Radar Site), Hillsborou Indian River, Manatee, Martin, Orange, Osceola, Pinellas, Polk, St. Lucie, Sarasota, and Seminole Counties, Florida					
Change: Description of Work to Read: Highway construction projects (excluding tunnels, building structures in rest area projects and railroad construction; bascule, suspension and spandrel arch bridges; bridges designed for commercial navigation; bridges involving marine construction; and other major bridges)					
DECISION NO. LA81-4002 - MOD. #1 (46 FR 1520 - January 6, 1981) Allen, Beauregard, Bossier, Caddo, Calcasieu, Cameron, Jefferson, Jefferson Davis, Orleans, Plaquemines, St. Bernard & St. Charles Parishes, Louisiana					
CHANGE: Laborers: Zone 1 - Group 4	$ 8.93	.30	.27		.05

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
DECISION NO. MD80-3061 - MOD. #2 (45 FR 70696 - October 30, 1980) Counties of Anne Arundel (excluding the D.C. Training School), Baltimore, Baltimore City, Maryland, and for Heavy Construction Projects in Harford and Howard Counties, Maryland					
ADD: SHEET METAL WORKERS	11.45	1.10	.92		.07
CHANGE: ASBESTOS WORKERS	$12.45	.85	.95		.02
BOILERMAKERS	14.275	1.275	1.00		.04
ROOFERS, WATERPROOFER: (All types)	10.25	.60	.45		
TILE & TERRAZZO WORKERS	10.66	.90	.50		.04
POWER EQUIPMENT OPERATORS: Building and Heavy Construction:					
Group I	12.83	1.00	1.15		.15
Group II	11.95	1.00	1.15		.15
Group III	11.34	1.00	1.15		.15
Group IV	10.75	1.00	1.15		.15
Group V	9.57	1.00	1.15		.15

POWER EQUIPMENT OPERATOR CLASSIFICATIONS

Group I - Operators handling or setting steel, stone prestressed concrete or machinery. Tower cranes.

Group II - Backfiller, backhoe, batching plants, boat captain, cableway, case type hoe (with a front end bucket over 1-1/4 yds.), concrete mixing plants, concrete paver, crane, derrick boat, double concrete pump, dragline, Rimco type overhead loader, elevating grader, excavating scoop (25 yds. and over), front end loader (1-3/4 yds. and over), gradalls, grader, hoist (2 active drums or more), multiple conveyor, pile driving machine, power trenching machine, tunnel mucking machine, twin engine scraper, welder, whitley rig and bulldozers (d-9 or equivalent and above)

DECISION NO. MA80-3061 - CONT'D

POWER EQUIPMENT OPERATOR CLASSIFICATIONS CONT'D

Group III - Asphalt spreader, bull float, Case type Backhoe (with a front end bucket 1-1/4 yds. and under), concrete mixer (with skip), concrete pump, concrete spreader, excavating scoop (under 25 yds.), finishing machine, front end tractor loader (under 1-3/4 yds.), hi-lift fork lift, longitudinal float, narrow gauge locomotive, one drum hoist, power roller on hot mix asphalt, screeding machine, stone crusher, stone spreader, sub-grader, tractor with attachments (2 or more provided both attachments are being used) and all bulldozers except D-9 or equivalent and above.

Group IV - Caterpillar type tractor, compressors, elevator operator, firemen, fuel truck, grease truck, grout pump, light plant, mighty midget with compressor, single conveyor, space heaters, welding machines, well-drill, wellpoint system, and all power rollers except on hot mix asphalt.

Group V - Deck hands, oilers (all types)

Welders - receive rates prescribed for craft performing operation to which welding is incidental.

PAID HOLIDAYS:
A-New Year's Day; B-Memorial Day; C-Independence Day; D-Labor Day; E-Thanksgiving Day; F-Christmas Day.

FOOTNOTES:
a. Holidays: A through F.
b. Employer contributes 8% of basic hourly rate for 5 years or more of service or 6% of the basic hourly rate for 6 months to 5 years of service as vacation pay credit.
c. Employer with 1 year of service - 1 week's paid vacation; 2 - 3 weeks paid vacation, provided the employee has worked 125 days in the previous contract year.
d. Holidays: A through F plus the employee's birthday; the day after Thanksgiving Day and Christmas Eve (provided the employee has worked one day and has been available for work during holiday week).
e. Employee working Christmas Eve shall work 4 hours and receive 8 hours pay.
f. Holidays: A through F.

DECISION NO. MA80-2045 (R) MOD. #3 (45 FR 45794 - July 7, 1980)	Basic Hourly Rates	Fringe Benefit Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Worcester County, Massachusetts					
CHANGE:					
BOILERMAKERS	14.63	1.275	10%		.03
ELECTRICIANS:					
Ashburnham, Athol, Bolton, Fitchburg, Gardner, Harvard, Hubbardston, Lancaster, Leominster, Lunenburg, Phillipston, Westminster and Winchendon	12.90	.75	3%+1.00		.02
PAINTERS:					
Warren, West Warren:					
Brush and Tapers	10.02	1.20	.65		.08
Spray-epoxys & interior dry fogs & materials thinned with anything other than water &/or mineral spirits	13.36	1.60	.8667		.1067
Spray-materials thinned with water &/or mineral spirits, excluding epoxys & interior dry fogs	13.89	1.20	.65		.08
Swing stage under 40' steel	10.207	1.20	.65		.08
Swing stage over 40' steel	10.52	1.20	.65		.08
Holedale, Mendon, Milford, Southboro, Upton and Westboro:					
Brush (New Construction), paperhangers and tapers	11.40	.85	.80		.03
Brush (Repaint)	10.85	.85	.80		.03
Remainder of County:					
Brush	12.73	.90	1.65		.04
Steel	14.85	.90	1.65		.04
Sandblasting, Spray	13.73	.90	1.65		.04
Repaint	10.82	.90	1.65		.04
Residential	9.55	.90	1.65		.04

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	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
SIGN PAINTERS, ERECTORS & FABRICIATORS	10.25	.84	.50	.82	.04
PIPEFITTERS:					
Holedale and Southboro	15.07	1.30	1.08		.05
Pondville	15.61	.94	1.45		.07
Remainder of County	12.38	.80	1.00		.05
PLUMBERS:					
Holedale and Southboro	15.07	1.30	1.08		.05
Ashburnham, Athol, Bolton, Fitchburg, Gardner, Harvard, Hubbardston, Lancaster, Leominster, Lunenburg, Petersham, Phillipston, Royalston, Templeton, Westminster and Winchendon	11.71	.80	.65	.47	.05
Remainder of County	12.83	1.15	.90		.05
ROOFERS	12.00	1.12	.98		.02
POWER EQUIPMENT OPERATORS					
Building Construction: Royalston, Phillipston, Athol, Petersham, Hardwick, New Braintree, Brookfield, E. Brookfield, W. Brookfield, Oakham, Barre, Templeton, Winchendon, Sturbridge, W. Brookfield, and Warren					
Class I	11.63	.95	1.00	a	.07
Class II	11.43	.95	1.00	a	.07
Class III	11.23	.95	1.00	a	.07
Class IV	10.86	.95	1.00	a	.07
Class V	9.84	.95	1.00	a	.07
Class VI	9.29	.95	1.00	a	.07
Class VII	8.39	.95	1.00	a	.07

DECISION NO. MA80-2045 - CONT'D

CLASSIFICATIONS

Class I Shovels, Cranes, Hydraulic Cranes 10 ton capacity or over, Draglines, Derricks, Elevators with Chicago Boom, Backhoes, Gradalls, Elevating Graders, Pile Driving Rigs, Concrete Road Pavers, three drum Hoisting and Trenching Machines, Belt-type Loaders, Front End Loader 5½ yards or over, Dual Drum Paver, Automatic Grader (i.e. C.M.I.) Combination Back Hoe Loader 3/4 yard hoe or over

Class II Rotary Drill (with mounted compressor), compressor hoes (3 to 6 compressors), Rock and Earth Boring Machines (excluding McCarthy and similar drills), Graders Front End Loaders-4 yards to 5½ yards, two Drum Hoist, High Fork Lifts with capacity of 15 feet and over, Scrapers-21 yards and over (struck load), sonic Hammer Console

Class III Combination Backhoe-Loader-up to 3/4 hoe, Bulldozer, Push Cats, Scraper-up to 21 yards (struck load)-self propelled or tractor drawn, Fireman, Front End Loaders-up to 4 yards, Asphalt paver, Asphalt Roller-10 ton or over, Well Drillers, Mechanics, Welders, Pumperete Machines, Concrete pumps and similar type pumps, Engineer or Fireman on High Pressure Boiler (on site), Self Loading Batch Plant, Well Point, Electric Pumps used in Well Point System, Pumps-12 inches and over (total discharge), compressor (one or two)900 cu. ft. and over, Powered Grease Truck, Automatic Elevators, (manually or remote controls), Grout Pumps, Boom Truck, Hydraulic Cranes-under 10 ton

Class IV Asphalt Roller-under 10 ton

Class V Single Drum Hoist, Self-Propelled Roller, Self-Propelled Compactors Power Pavement Breakers, Concrete Pavement Finishing Machines, Two Bag Mixers with Skip, McCarthy and similar drills, Batch Plants (not self-loading) Bulk Cement Plants, Self-Propelled Material Spreaders, A Frame Trucks, Fork Lifts up to 15 feet

Class VI Compressors (one or two) 315 cu. ft. to 900 cu. ft. Pumps-4 inches to 12 inches (total discharge), Tractor (without blade or machines used for pulverizing, Grading or Seeding

DECISION NO. MA80-2045 - CONT'D

DECISION NO. MA80-2045 - CONT'D

CLASSIFICATIONS CONT'D

Class VII Compressors (up to 315 cu. ft.), Small Mixers, Pumps (Up to 4 inches), Power Heaters, Welding Machines, Conveyors, Oiler, Helpers on Grease Truck, and Grease Trucks with hand greasing equipment

PAID HOLIDAYS:
A-New Year's Day; B-Memorial Day; C-Independance Day; D-Labor Day; E-Thanksgiving Day; F-Christmas Day

FOOTNOTES:
a. Holidays; A through F, Veterans' Day and Columbus Day

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
POWER EQUIPMENT OPERATORS: Building Construction: Remainder of County					
Class I	13.76	1.18	1.15	a	.03
Class II	13.64	1.18	1.15	a	.03
Class III	11.52	1.18	1.15	a	.03
Class IV	12.55	1.18	1.15	a	.03
Class V	10.21	1.18	1.15	a	.03
Class VI	10.83	1.18	1.15	a	.03

CLASSIFICATIONS

Class I Cranes, shovels, truck cranes, cherry pickers, dragline, trench hoes, backhoes, three drum machines, derricks, pile drivers, elevator towers, hoists, gradalls, shovel dozers, front end loaders, fork lifts, augers, boring machines, rotary drills, post hole hammers, post hole diggers pumperete machines, asphalt plant (on site), concrete batching and/or mixing plant (on site, crusher plant (on site), paving concrete mixers, timber jacks, Boom over 150' including jib additional $.50 per hour' Boom over 185' including jib - additional $.90 per hour; Boom 210' including jib - additional $1.25 per hour; Boom over 250' including jib - additional $1.90 per hour; Boom over 295' including jib - additional $2.65 per hour

Class II Sonic or vibratory hammers, graders, tandem scrapers, concrete pumps, bulldozers, tractors, york rakes, mulching machines, portable steam boiler, portable steam generators, rollers, spreaders, tampers (self propelled or tractor drawn), asphalt pavers, mechanic maintenance, paving screed machines, stationary steam boilers, paving concrete finishing machines, oal trucks, ballast regulators, switch tampers, rail anchor machinery, tire trucks (when operated by the employer on the job site)

Class III Pumps (1-3 grouped), compressors, welding machines (1-3 grouped), generators, concrete vibrators, lighting plants, heaters (power driven 1-5), well-point systems (operating and installing), syphones-pullscmeters, concrete mixers, values controlling permanent plant air or steam, conveyors, Jackson type tampers, single diaphragn pump, lighting plants

Class IV Assistant engineers (firemen)

Class V Oilers (other than truck cranes and gradalls)

Class VI Oilers on truck cranes and gradalls

DECISION NO. MA80-2045 - CONT'D

PAID HOLIDAYS:
A-New Year's Day; B-Memorial Day; C-Independence Day; D-Labor Day; E-Thanksgiving Day; F-Christmas Day

FOOTNOTE:
A. Holidays: A through F, Washington's Birthday, Columbus Day, Veterans' Day and Patriots Day.

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
POWER EQUIPMENT OPERATORS: Heavy and Highway Construction: Sturbridge, Brookfield, W. & E. Brookfield, Oakham, Barre, Templeton, Winchendon, Royalston, Phillipston, Athol, Petersham, Hardwich, New Braintree, W. Brookfield, and Warren:					
Class I	11.63	.95	1.00	a	.07
Class II	11.43	.95	1.00	a	.07
Class III	11.23	.95	1.00	a	.07
Class IV	10.86	.95	1.00	a	.07
Class V	9.84	.95	1.00	a	.07
Class VI	9.29	.95	1.00	a	.07
Class VII	8.39	.95	1.00	a	.07
Class VIII	12.13	.95	1.00	a	.07

DECISION NO. MA80-2045 - CONT'D

CLASSIFICATIONS

Class I Shovels, Crawler and Truck Cranes, Derricks, Backhoes, Trenching Machines, Elevating Graders, Belt-type Loaders, Gradalls, Pile Drivers, Concrete Pavers, on site Processing Plant (Engineer in charge), Dragline, Clam Shell, Cableways, Shaft Hoists, Mucking Machines, Front End Loader-3¼ yards and over Tower Cranes, Self-propelled Hydraulic Cranes-10 tons and over, Dual Paver, Automatic Graders-Excavator (C.M.I or equal), Scrapers towing pan or wagon, Tandem Dozers or Push Cats (2 units in tandem), Welder using semi automatic Welding Machine, Shotcrete Machine, Tunnel Boring Machine

Class II Rotary Drill (with mounted Compressor), Compressor House 3 to 6 Compressors), Rock and Earth Boring Machines (excluding McCarthy and similar drills), Grader, Front End Loaders-4 yards to 3¼ yards, Scraper-21 yards and over (struck Load), Forklifts-7 ft. lift and over or 3 ton capacity and over, Sonic Hammer Console

Class III Bulldozer, Push Cats, Scrapers-up to 21 yards (struck load) Self-propelled or Tractor Drawn, Self-powered Asphalt Paver, Front End Loaders-up to 4 yards, Mechanics, Welders, Well Driller, Pumpcrete Machine, Engineer or Fireman on High Pressure Boiler (on job), Well point Operators, Electric Pumps used in well Point system, Fireman, Pumps-16 inches or over total discharge, Compressors (1 or 2) cu. ft. and over Powered Grease Truck, Asphalt Roller-10 ton and over, Tunnel Locomotive and Dinkys, Grout Pumps, Hydraulic Jacks (jacking pipe, slip forms, etc.), Boom Truck Self-Propelled Hydraulic Cranes up to 10 ton, Self-loading Batch Plant (on job).

Class IV Asphalt Roller-up to 10 ton

Class V Hoists, Conveyors, Self-powered Rollers and Compactors, Power Pavement Breaker, Self-propelled Material Spreader, Self-powered Concrete Finishing Machine, Two Bag Mixer with skip, McCarthy and similar Drills, Batch Plant (not self-loading), Bulk Cement Plant

DECISION NO. MA80-2045 - CONT'D

CLASSIFICATIONS (CONT'D)

Class VI Compressor (315 cu. ft. to 900 cu. ft., 1 or 2), Pumps 4" to 16" total discharge, Tractor without blade drawing sheepsfoot roller, Rubber tired roller or other type of compactors including machines for pulverising and aerating soil

Class VII Compressor (up to 315 cu. ft.), Small Mixers with skip, Oiler, Pumps up to 4", Grease Truck, Helper on powered Grease Truck, Power Heaters, Welding Machines, A-Frame Trucks, Forklifts-up to 7 ft. lift and up to 3 ton capacity, Hydro Boom, Parts Man (in repair shop), Power Safety Boat

Class VIII Operator of Cranes with 200 ft. of boom or more

FOOTNOTES:
a. Holidays: New Year's Day; Washington's Birthday; Memorial Day; Independence Day; Labor Day; Columbus Day; Veteran's Day; Thanksgiving Day and Christmas Day

DECISION NO. MA80-2045 - CONT'D

	Basic Hourly Rate	Fringe Benefit Payments: H & W	Pensions	Vacation	Education and/or Appr. Tr.
POWER EQUIPMENT OPERATORS HEAVY & HIGHWAY CONSTRUCTION:					
Remainder of County:					
Group I	13.76	1.18	1.15	a	.03
Hourly premium for boom lengths including jib					
Over 150 feet + $.50					
Over 185 feet + .90					
Over 210 feet + 1.25					
Over 250 feet + 1.90					
Over 295 feet + 2.65					
Group II	13.64	1.18	1.15	a	.03
Group III	11.52	1.18	1.15	a	.03
Group IV	12.55	1.18	1.15	a	.03
Group V	10.21	1.18	1.15	a	.03
Group VI	10.83	1.18	1.15	a	.03

CLASSIFICATIONS

Group I Power shovels, cranes, truck cranes, derricks, pile drivers, trenching machines, mechanical hoist pavement breakers, cement concrete pavers, draglines, hoisting engines, three drum machines, pumpcrete machines, uke loaders, shovel dozers, front end loaders, mucking machines, shaft hoists, steam engines, backhoe, gradalls, cable ways fork lifts, cherry pickers, boring machines, rotary drills, post hole hammers, post hole diggers, asphalt plant on job site, concrete batching and/or mixing plant on job site, crusher plant on job site, paving concrete mixers, timber jacks

Group II Sonic or vibratory hammers, graders, scrapers, tandem scrapers, bulldozer, tractor, mechanic maintenance, York rakes, mulching machines paving screed machine, stationary steam boilers, paving concrete finishing machine, grout pumps, portable steam boilers, portable steam generators, rollers, spreaders, asphalt pavers, locomotives or machines used in place thereof, tampers, self propelled or tractor drawn, cal tracks, ballast regulators, rail anchor machines, switch tampers

DECISION NO. MA80-2045 - CONT'D

CLASSIFICATIONS CONT'D

Group III Pump (1-3 grouped), compressors, welding machine (1-3 grouped), generators, lighting plants, heaters (power driven) 1-5), syphons, pulsometers, concrete mixers, valves controlling permanent plant air steam, conveyors, wellpoint system (operating and installing)

Group IV Assistant Engineers (fireman)

Group V Oilers (other than truck cranes & gradalls)

Group VI Oilers (on truck cranes & gradalls)

FOOTNOTES:

a. Holidays - New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, Christmas Day, Washington's Birthday, Columbus Day, Veterans Day and Patriots Day

DECISION NO. MI80-2062 Mod#2 (45 FR 54615 August 15,1980)	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
COUNTIES: Alpena, Alcona, Charlevois, Emmet, Grand Traverse, Leelanau, Mason, Montmorency, Muskegon, Oceana, Oscoda & Presque Isle; Michigan					
OMIT:					
Montmorency County - Building Construction Only					

DECISION NO. MI79-2029 - MOD. #7 (44 FR 1350 - January 4, 1980)	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Bergen, Essex, Hudson, Hunterdon, Middlesex, Morris, Passaic, Somerset, Union and Warren Counties, New Jersey					
CHANGE:					
DOCKBUILDERS & PILEDRIVERMEN	$13.25	1.85	1.78	1.01	.05
IRONWORKERS-STRUCTURAL, REINFORCING & ORNAMENTAL: Bergen, Essex, Hudson, Hunterdon, Middlesex, Morris, Passaic, Somerset, Sussex & Union Counties	11.39	.91	2.54	1.15	.11
LINE CONSTRUCTION (Excluding Railroad Construction):					
Zone 3					
Linemen, Cable Splicers, Line Equipment Operators and Groundmen	15.35	126	9%+.58		.75%
Zone 5					
Linemen, Cable Splicers, Line Equipment Operators and Groundmen	14.88	7%	3%+1.48		.75%
SHEET METAL WORKERS:					
Zone 3	12.80	1.22	1.72	.98	.04

DECISION NO. HY79-3029 - (Cont'd)

	Basic Hourly Rates	Fringe Benefits Payments: H & W	Pensions	Vacation	Education and/or Appr. Tr.
POWER EQUIPMENT OPERATORS: (Excluding Steel Erection):					
Group 1	16.91	7%	15%		3%
Group 2	15.09	7%	15%		3%
Group 3	14.21	7%	15%		3%
Group 4	14.10	7%	15%		3%
Group 5	13.87	7%	15%		3%
Group 6	13.38	7%	15%		3%
Group 7	13.09	7%	15%		3%
Group 8	12.92	7%	15%		3%
Group 9	12.87	7%	15%		3%
Group 10	12.75	7%	15%		3%
Group 11	12.70	7%	15%		3%
Group 12	12.46	7%	15%		3%
Group 13	12.06	7%	15%		3%
Group 14	11.89	7%	15%		3%
Group 15	11.55	7%	15%		3%
Group 16	9.57	7%	15%		3%
POWER EQUIPMENT OPERATORS: Steel Erection:					
Group 1	18.72	7%	15%		3%
Group 2	16.91	7%	15%		3%
Group 3	16.00	7%	15%		3%
Group 4	15.26	7%	15%		3%
Group 5	13.48	7%	15%		3%
Group 6	13.09	7%	15%		3%
Group 7	12.94	7%	15%		3%
Group 8	12.57	7%	15%		3%
Group 9	12.01	7%	15%		3%

DECISION NO. HY80-3022 - Mod. #3
(45 FR 23264 - April 4, 1980)
Monroe County, New York

Classes:	Basic Hourly Rates	Fringe Benefits Payments: H & W	Pensions	Vacation	Education and/or Appr. Tr.
LINE CONSTRUCTION					
Electrical Overhead & Underground Distribution Work					
Journeyman Lineman & Technician	11.60	1.40	3%+1.00	a	
Cable Splicer	15.32	1.40	3%+1.00	a	
Groundman Digging Machine Operator, Groundman Dynamite Man	10.465	1.40	3%+1.00	a	
Groundman Mobile Equipment Operator, Mechanic First Class, Ground Truck Driver	9.33	1.40	3%+1.00	a	
Groundman Truck Driver (Tractor Trailer)	9.8975	1.40	3%+1.00	a	
Driver Mechanic, Groundman - Experienced	8.2621	1.40	3%+1.00	a	
All Overhead Transmission Line Work and Lighting for Athletic Fields					
Journeyman Lineman & Technician	13.25	1.40	3%+1.00	a	
Groundman Digging Machine Operator, Groundman Dynamite Man	11.95	1.40	3%+1.00	a	
Groundman Mobile Equipment Operator, Mechanic First Class, Groundman Truck Driver	10.65	1.40	3%+1.00	a	
Groundman Truck Driver (Tractor Trailer Unit)	11.30	1.40	3%+1.00	a	
Driver Mechanic, Groundman - Experienced	10.00	1.40	3%+1.00	a	
Sub-Station, Switching Structures (when not part of the line), Electrical, Telephone or CATV Commercial Work, Street Lighting & Signal Systems					
Journeyman Lineman & Technician	13.95	1.40	3%+1.00	a	
Cable Splicer	15.32	1.40	3%+1.00	a	
Groundman Digging Machine Operator, Groundman Dynamite Man	12.58	1.40	3%+1.00	a	
Groundman Mobile Equipment Operator, Mechanic First Class, Groundman Truck Driver	11.21	1.40	3%+1.00	a	
Groundman Truck Driver (Tractor Trailer Unit)	11.895	1.40	3%+1.00	a	
Driver Mechanic, Groundman - Experienced	10.523	1.40	3%+1.00	a	

DECISION NO. HY80-3022 - Mod. #3 (Cont'd)

DECISION NO. HY80-3035 - Mod. #2
(45 FR 28040 - April 25, 1980)
Broome & Chemango Counties, New York

DECISION NO. NY80-3022 - Mod. #3 (Cont'd)

LINE CONSTRUCTION CONT'D	Basic Hourly Rates	Fringe Benefits Payments: H & W	Pensions	Vacation	Education and/or Appr. Tr.
All Pipe type Cable Installations, Maintenance Jobs or Projects:					
Journeyman Lineman	13.95	1.40	3%+1.00	a	
Certified Lineman Welder	14.635	1.40	3%+1.00	a	
Cable Splicer	13.32	1.40	3%+1.00	a	
Groundman Equipment Operator	13.95	1.40	3%+1.00	a	
Groundman Truck Driver (Tractor Trailer Unit)	11.895	1.40	3%+1.00	a	
Groundman Truck Drivers	11.21	1.40	3%+1.00	a	
Groundman	10.525	1.40	3%+1.00	a	

FOOTNOTE:

a. Paid Holidays: New Year's Day, Washington's Birthday, Good Friday, Decoration Day, Independence Day, Labor Day, Thanksgiving Day, Christmas Day, and Election Day for the President of the United States and Election Day for the Governor of New York State, provided the employee works the day before or the day after a holiday.

Painters:					
Basic rate	11.90	1.67	1.04		.10
Wiper, Drywall	12.10	1.67	1.04		.10
Stilts (drywall), Epoxy (brush & roll), Wall Covering	12.15	1.67	1.04		.10
Swing Scaffold, Window Brackets, Structural Steel (up to 40'), Cherry Picker mechanical, Aerial Lift	12.40	1.67	1.04		.10
Spray, Water Hydroblasting, Metalizing, Mechanical taper	12.30	1.67	1.04		.10
Spray (epoxy), Structural Steel (over 40')	12.60	1.67	1.04		.10
Sandblasting (from solid platform)	12.65	1.67	1.04		.10
Sandblasting (hanging platform), Steeple Jack	12.90	1.67	1.04		.10
Bridges	13.15	1.67	1.04		.10

DECISION NO. NY80-3035 - Mod. #2
(45 FR 28040 - April 25, 1980)
Broome & Chenango Counties, New York

Crafts:	Basic Hourly Rates	Fringe Benefits Payments: H & W	Pensions	Vacation	Education and/or Appr. Tr.
Boilermakers	14.63	1.275	10%		.03
Bricklayers					
Chenango County (Remainder of County)					
Bricklayers, Cement Masons, Plasterers, & Stone Masons (Building)					
Total project cost over $250,000	12.81	1.00	.69		.01
Total project cost under $250,000	11.21	1.00	.69		.01
Marble Mason, Tile & Terrazzo Workers	12.41	1.00	.69		.01
Electricians					
Chenango County (New Berlin and Sherburne)					
Electricians	13.33	.80	3%+.60		.07
Cable Splicer	14.73	.80	3%+.60		.07
Ironworkers					
Broome County & Chenango County (Remainder of County)					
Structural, Ornamental, Reinforcing, Rodmen, Riggers, Machinery Movers, Fence Erector & Stone Derrickmen	11.80	.95	1.14		.02
Shooters	12.05	.95	1.14		.02
Shooters, Bucker-up	11.925	.95	1.14		.02
Laborers, Building					
Chenango County (tops. of Columbus, New Berlin, South New Berlin, and Sherburne)					
Total project cost over $500,000					
Unskilled and Flagmen	9.36	.85	1.27		
Mortar Mixer, Plaster Mixer, Power Buggy, Signal Man, Asphalt Worker, Chipping Hammer 12 lbs. or over, Temp Operator, Vibrator Operator, & Chain Saw Operator	9.41	.85	1.27		
Powderman, Pipelayer, Form & Joint Setter, Concrete Rootman, Gunite, Sandblasting, Epoxy, Wagon Drill, Jackhammer & Air Track Drill	9.51	.85	1.27		
Blasters	9.86	.85	1.27		

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DECISION NO. NY80-3035 - Mod #2 (Con't)

	Basic Hourly Rates	Fringe Benefits Payments H & W	Pensions	Vacation	Education and/or Appr. Tr.
Laborers, Building					
Chenango County (Twps. of Columbus, New Berlin, South New Berlin, and Sherburne)					
Total project cost under $500,000					
Unskilled and Flagmen	8.01	.85	1.00		
Mortar Mixer, Plaster Mixer Power Buggy, Signal Man, Asphalt Worker, Chipping Hammer 12 lbs. or over, Tamp Operator, Vibrator Operator, and Chain Saw Operator	8.16	.85	1.00		
Powderman, Pipelayer, Form & Joint Setter, Concrete Bootman, Gunite, Sandblasting, Epoxy, Wagon Drill, Jackhammer & Air Track Drill	8.26	.85	1.00		
Blasters	8.61	.85	1.00		
Painters:					
Broome County, Chenango County (Remainder of County)					
Brush	9.30	.55	.60		
Spray Epoxy	10.53	.55	.60		
Bridges	10.77	.55	.60		
Structural Steel, Spray, Steeple Jack	10.30	.55	.60		
Epoxy	9.55	.55	.60		
Swing Chair, Swing Scaffold, Roll over 10" & Sandblasting	9.80	.55	.60		

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DECISION NO. NY80-3035 - Mod. #2 (Con't)

LINE CONSTRUCTION	Basic Hourly Rates	Fringe Benefits Payments H & W	Pensions	Vacation	Education and/or Appr. Tr.
Electrical Overhead & Underground Distribution Work					
Journeyman Lineman & Technician	11.60	1.40	3%+1.00	a	
Cable Splicer	13.32	1.40	3%+1.00	a	
Groundman Digging Machine Operator, Groundman Dynamite Man	10.465	1.40	3%+1.00	a	
Groundman Mobile Equipment Operator, Mechanic First Class, Ground Truck Driver	9.33	1.40	3%+1.00	a	
Groundman Truck Driver (Tractor Trailer)	9.8975	1.40	3%+1.00	a	
Driver Mechanic, Groundman - Experienced	8.2621	1.40	3%+1.00	a	
All Overhead Transmission Line Work and Lighting for Athletic Fields					
Journeyman Lineman & Technician	13.25	1.40	3%+1.00	a	
Groundman Digging Machine Operator, Groundman Dynamite Man	11.95	1.40	3%+1.00	a	
Groundman Mobile Equipment Operator, Mechanic First Class, Groundman Truck Driver	10.65	1.40	3%+1.00	a	
Groundman Truck Driver (Tractor Trailer Unit)	11.30	1.40	3%+1.00	a	
Driver Mechanic, Groundman - Experienced	10.00	1.40	3%+1.00	a	
Sub-Station, Switching Structures (when not part of the line), Electrical, Telephone or CATV Commercial Work, Street Lighting & Signal Systems					
Journeyman Lineman & Technician	13.95	1.40	3%+1.00	a	
Cable Splicer	15.32	1.40	3%+1.00	a	
Groundman Digging Machine Operator, Groundman Dynamite Man	12.58	1.40	3%+1.00	a	
Groundman Mobile Equipment Operator, Mechanic First Class, Groundman Truck Driver	11.21	1.40	3%+1.00	a	
Groundman Truck Driver (Tractor Trailer Unit)	11.895	1.40	3%+1.00	a	
Driver Mechanic, Groundman - Experienced	10.525	1.40	3%+1.00	a	

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DECISION NO. NY80-3035 - Mod. #2 (Con't)

	Basic Hourly Rates	Fringe Benefits Payments H & W	Pensions	Vacation	Education and/or Appr. Tr.
Power Equipment Operators:					
Broome County, Chenango County (Remainder of County)					
Asphalt Plant Operator	9.30	.55	.60		
Backhoe, Trackhoe, Excavator, Piledriver	10.53	.55	.60		
Boom Truck	10.77	.55	.60		
Bulldozer, Endloader, Forklift, Grader, Motor Patrol, Scraper	10.30	.55	.60		
Concrete Pump	9.55	.55	.60		
Crane, Hoist, Shovel	9.80	.55	.60		
Roller	9.30	.55	.60		
Power Equipment Operators:					
Chenango County (Twps. of Columbus, New Berlin, South New Berlin, and Sherburne)					
Total project cost under $500,000					
Asphalt Plant Operator	8.01	.85	1.00		
Backhoe, Trackhoe, Excavator, Piledriver	8.16	.85	1.00		
Boom Truck	8.26	.85	1.00		
Bulldozer, Endloader, Forklift, Grader, Motor Patrol, Scraper	8.61	.85	1.00		
Concrete Pump	8.16	.85	1.00		
Crane, Hoist, Shovel	8.26	.85	1.00		
Roller	8.01	.85	1.00		

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DECISION NO. NY80-3079 -

	Basic Hourly Rates	Fringe Benefits Payments H & W	Pensions	Vacation	Education and/or Appr. Tr.
Power Equipment Operators:					
Broome County					
Asphalt Plant Operator	9.30	.55	.60		
Backhoe, Trackhoe, Excavator, Piledriver	10.53	.55	.60		
Boom Truck	10.77	.55	.60		
Bulldozer, Endloader, Forklift, Grader, Motor Patrol, Scraper	10.30	.55	.60		
Concrete Pump	9.55	.55	.60		
Crane, Hoist, Shovel	9.80	.55	.60		
Roller	9.30	.55	.60		

DECISION NO. NY80-3035 - Mod. #2 (Con't)

LINE CONSTRUCTION CONT'D	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
All Pipe Type Cable Installations, Maintenance Jobs or Projects					
Journeyman Lineman	13.95	1.40	3%+1.00	a	
Certified Lineman Welder	14.635	1.40	3%+1.00	a	
Cable Splicer	15.32	1.40	3%+1.00	a	
Groundman Equipment Operator	13.95	1.40	3%+1.00	a	
Groundman Truck Driver (Tractor Trailer Unit)	11.895	1.40	3%+1.00	a	
Groundman Truck Drivers	11.21	1.40	3%+1.00	a	
Groundman	10.525	1.40	3%+1.00	a	

FOOTNOTE:

a. Paid Holidays: New Year's Day, Washington's Birthday, Good Friday, Decoration Day, Independence Day, Labor Day, Thanksgiving Day, Christmas Day, and Election Day for the President of the United States and Election Day for the Governor of New York State, provided the employee works the day before or the day after a holiday.

DECISION NO. NY80-3079 - MOD. #1 (45 FR 86192 - December 30, 1980) STATES: Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, and Rhode Island	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ADD:					
DRILL BOATS:					
Engineer	13.22	.73	.70	b	
Blaster	13.36	.73	.70	b	
Driller, Welder or Machinist	13.23	.73	.70	b	
Fireman	12.82	.73	.70	b	
Oiler	12.61	.73	.70	b	

FOOTNOTES:

b. Holidays: New Year's Day, Washington's Birthday, Memorial Day, Independence Day, Labor Day, Veterans' Day, Thanksgiving Day and Christmas Day
Vacation: 6½ days vacation with pay for 84 days of service, plus one additional day for each additional period of 21 2/3 days of service, all in one calendar year. Employees not qualifying for vacation as set forth above will receive one day's vacation with pay for each full 20 days of service in one calendar year.

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
DECISION NO. PR80-3069 - Mod. #1 (45 FR 69137 - October 17, 1980) Puerto Rico, Island Wide					
Change:					
Carpenter's Helpers	3.35				
Electrician's Helpers	3.35				
Ironworkers, Reinforcing	3.35				
Laborers	3.35				
Mason Tenders	3.35				
Painters, Brush	3.35				
Painters, Spray	3.35				
Plumber's Helpers	3.35				
DECISION NO. PR80-3070 - Mod. #1 (45 FR 70668 - October 24, 1980) Puerto Rico, Island Wide					
Change:					
Carpenter's Helpers	3.35				
Electrician's Helpers	3.35				
Laborers:					
Unskilled	3.35				
Mason Tenders	3.35				
Painters, Brush	3.35				
Plumber's Helpers	3.35				
DECISION NO. PR80-3069 - Mod. #1 (45 FR 70665 - October 24, 1980) Puerto Rico, Island Wide					
Change:					
Carpenter's Helpers	3.35				
Ironworkers, Reinforcing	3.35				
Laborers:					
Unskilled	3.35				
Mason Tenders	3.35				
Painters, Brush	3.35				

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
DECISION NO. TX80-4085 - MOD. #3 (45 FR 74365 - November 7, 1980) Armstrong, Carson, Castro, Childress, Collingsworth, Dallam, Deaf Smith, Donley, Gray, Hansford, Hartley, Hemphill, Hutchinson, Lipscomb, Moore, Ochiltree, Oldham, Potter, Randall, Roberts, Sherman, Swisher & Wheeler Cos., Texas					
CHANGE:					
Sheet metal workers	$13.12	.50	.72		.12
DECISION NO. TX80-4086 - MOD. #3 (45 FR 74368 - November 7, 1980) Collin, Dallas, Denton, Ellis, Grayson, Hood, Hunt, Johnson, Kaufman, Palo Pinto, Rockwall, Tarrant & Wise Cos., Texas					
CHANGE:					
Bricklayers & stonemasons:					
Zone 3	12.97	.57	.50		.04
DECISION NO. TX80-4097 - MOD. #2 (45 FR 80644 - December 5, 1980) Lubbock County, Texas					
CHANGE:					
Painters:					
Brush	9.85				
Spray; sandblasters	10.60				
Sheet metal workers	13.12	.50	.72		.12

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
DECISION NO. TX80-4099 - MOD. #2 (45 FR 80646 - December 5, 1980) Lubbock County, Texas					
CHANGE:					
Painters:					
Brush	9.85				
Spray; sandblasters	10.60				
Sheet metal workers	13.12	.50	.72		.12

SUPERSEDEAS DECISION

STATE: Connecticut — COUNTIES: Fairfield, Litchfield & Windham

DECISION NO. CT81-3001 — DATE: Date of Publication

Supersedes Decision No. CT80-3073 dated August 15, 1980 in 45 FR 54994

DESCRIPTION OF WORK: Building, Residential, Highway, and Heavy (excluding tunnel construction) Construction Projects

Modification Page 34

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
DECISION NO. TX80-4099 - MOD. #2 (45 FR 80640 - December 5, 1980) Bell, Bosque, Coryell, Falls, Hill & McLennan Cos., Texas					
CHANGE: Building Construction: Carpenters: Zone 2 - Millwrights	$11.68	.42			
DECISION NO. TX81-4007 - MOD. #1 (46 FR 1548 - January 6, 1981) Ector & Midland Cos., Texas					
CHANGE: Painters: Brush	9.68		.35		
Spray	10.555		.35		
DECISION NO. TX81-4009 - MOD. #1 (46 FR 1549 - January 6, 1981) Taylor County, Texas					
CHANGE: Painters: Brush, tape & bedding, paperhanger	9.68		.35		
Spray	10.555		.35		

SUPERSEDEAS DECISION

STATE: Connecticut — COUNTIES: Fairfield, Litchfield & Windham

DECISION NO. CT81-3001 — DATE: Date of Publication

Supersedes Decision No. CT80-2073 dated August 15, 1980 in 45 FR 54594

DESCRIPTION OF WORK: Building, Residential, Highway, and Heavy (excluding tunnel construction) Construction Projects

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Asbestos Workers					
Fairfield Co., Litchfield Co. (Barkhamsted, Bethlehem, Bridgewater, Cornwall, Goshen, Harwinton, Kent, Litchfield, Morris, New Hartford, New Milford, Plymouth, Roxbury, Sharon, Torrington, Warren, Washington, Watertown, Winchester, Woodbury, & Thomaston), Windham Co. (Ashford, Chaplin, Eastford, Hampton, Scotland & Windham)	14.04	.85	1.46		
Litchfield Co. (Canaan, Colebrook, Norfolk, N. Canaan, & Salisbury)	11.95	1.04	1.40		.01
Windham Co. (Woodstock)	13.18	1.45	1.63		
Windham Co. (Brooklyn, Canterbury, Killingly, Plainfield, Pomfret, Putnam, Sterling, & Thompson)	14.63	1.275	1.44		.02
Boilermakers					
Bricklayers, Cement Masons, Finishers, Masons, Plasterers, Stone Masons, Terrazzo Workers, Tile Setters					
Building Construction:					
Fairfield Co. (Bridgeport, Easton, Fairfield, Monroe, Stratford, & Trumbull)	11.05	.75	.75		
Fairfield Co. (Ansonia, Derby & Shelton)	11.08	.75	.75		
Fairfield Co. (New Canaan, Norwalk, Ridgefield, Weston, Westport, & Wilton)	11.05	.75	.75		
Fairfield Co. (Darien & Stamford)	11.47	.83	.15		
Fairfield Co. (Greenwich)	11.78	.80	.95		
Fairfield Co. (Bethel, Brookfield, Danbury, New Fairfield, Newtown Redding, & Sherman), Litchfield Co. (Bridgewater, Kent, New Milford, & Roxbury)	11.05	.75	.75		

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	Basic Hourly Rates	Fringe Benefits Payments: H & W	Pensions	Vacation	Education and/or Appr. Tr.
Litchfield Co. (Barkhamsted, Bethlehem, Canaan, Colebrook, Cornwall, Goshen, Harwinton, Litchfield, Morris, New Hartford, Norfolk, N. Canaan, Salisbury, Sharon, Torrington, Warren, Washington, & Winchester)	11.05	.75	.75		
Windham Co.	11.05	.75	.75		
Litchfield Co. (Plainville, Plymouth, Prospect, Thomaston, Watertown, & Woodbury)	11.05	.75	.75		.03
Bricklayers					
Heavy & Highway Construction:					
Except Darien, Greenwich & Stamford	11.15	.75	.75	a	
Darien & Stamford	11.37	.83	.25	a	
Greenwich	10.95	.80	.95	a	
Carpenters, Millwrights, Pile-drivermen, & Soft Floor Layers					
Building Construction:					
Fairfield Co. (Bridgeport, Easton, Fairfield, Monroe, Shelton, Stratford, Trumbull, Weston, & Westport)	12.00	.90	.65	c	a
Fairfield Co. (Bethel, Brookfield, Danbury, Darien, Greenwich, New Canaan, New Fairfield, Newtown, Norwalk, Redding, Ridgefield, Sherman, Stamford, & Wilton)	11.80	.90	.65		.10
Litchfield Co. (Barkhamsted, Bethlehem, Bridgewater, Canaan, Colebrook, Cornwall, Goshen, Kent, Litchfield, Morris, New Hartford, New Milford, Norfolk, North Canaan, Roxbury, Salisbury, Sharon, Torrington, Warren, Washington, Winchester, & Woodbury)					
Commercial	11.55	.90	.65		.10
Residential	10.20	.90	.30		.10

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	Basic Hourly Rates	Fringe Benefits Payments: H & W	Pensions	Vacation	Education and/or Appr. Tr.
Litchfield Co. (Harwinton, Plymouth, Thomaston, & Watertown)	12.00	.90	.65		.05
Windham Co.	12.00	.90	.65		.03
Heavy & Highway Construction:					
Fairfield Co. (Bridgeport, Easton, Fairfield, Monroe, Shelton, Stratford, Trumbull, Weston, & Westport)	11.70	.90	.65	d	.05
Fairfield Co. (Bethel, Brookfield, Danbury, Darien, New Canaan, New Fairfield, Newton, Norwalk, Wilton, Redding, Ridgefield, Sherman, & Stamford)					
Litchfield Co. (Remainder of Co.)	11.70	.90	.65	d+ .70	.10
Litchfield Co. (Harwinton, Thomaston, & Watertown)	11.70	.90	.65	d	.05
Windham Co.	11.70	.90	.65	d	.03
Electricians					
Fairfield Co. (Norwalk - east of Five Mile River -, Weston, Westport)	12.03	1.08	3%+ .65	6%	4%
Fairfield Co. (Bethel, Bridgeport, Brookfield, Danbury, Easton, Fairfield, Monroe, New Fairfield, Newton, Redding, Ridgefield, Shelton, Sherman, Stratford, & Trumbull)					
Litchfield Co. (Bridgewater & New Milford)	13.03	1.10	3%+1.05		4%
Fairfield Co. (Darien, Greenwich, New Canaan, Stamford, and that portion of Norwalk lying West of the Five Mile River)	14.27		9%%+a	10%	4%+.02
Litchfield Co. (Plymouth)	13.10	1.07	3%+.65		4%
Windham Co.	13.03	1.50	3%+1.60		4%
Litchfield Co. (Remainder of County)	12.10	1.22	3%+.60	f	1/8%

DECISION NO. CT81-3001 Page 4

	Basic Hourly Rates	Fringe Benefits Payments: H & W	Pensions	Vacation	Education and/or Appr. Tr.
Electricians					
Fairfield Co. (Darien, Greenwich, New Canaan, Stamford, & Wilton)	13.03	1.10	3%+1.05		4%
Litchfield Co. (Barkhamsted, Bethlehem, Bridgewater, Canaan, Colebrook, Cornwall, Goshen, Kent, Litchfield, Morris, New Hartford, New Milford, Norfolk, North Canaan, Roxbury, Salisbury, Sharon, Torrington, Warren, Washington, Winchester, & Woodbury)					
Commercial	11.55	.90	.65		.10
Residential	10.20	.90	.30		.10

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	Basic Hourly Rates	Fringe Benefits Payments: H & W	Pensions	Vacation	Education and/or Appr. Tr.
Elevator Constructors	13.50	1.10	3%+1.05		4%
Glaziers					
Fairfield Co. (Bridgeport, Easton, Fairfield, Monroe, Shelton, Stratford, Trumbull, Weston, & Westport)	11.70	.90	.65	d	.05
Fairfield Co. (Bethel, Brookfield, Danbury, Darien, New Canaan, New Fairfield, Newton, Norwalk, Wilton, Redding, Ridgefield, Sherman, & Stamford)					
Litchfield Co. (Remainder of Co.)	11.70	.90	.65	d+ .70	.10
Litchfield Co. (Harwinton, Thomaston, & Watertown)	11.70	.90	.65	d	.05
Windham Co.	11.70	.90	.65	d	.03
Heavy & Highway Construction:					
Fairfield Co. (Bridgeport, Easton, Fairfield, Monroe, Shelton, Stratford, Trumbull, Weston, & Westport)	11.70	.90	.65	d	.05
Fairfield Co. (Bethel, Brookfield, Danbury, Darien, New Canaan, New Fairfield, Newton, Norwalk, Wilton, Redding, Ridgefield, Sherman, & Stamford)					
Litchfield Co. (Remainder of Co.)	11.70	.90	.65	d+ .70	.10
Litchfield Co. (Harwinton, Thomaston, & Watertown)	11.70	.90	.65	d	.05
Windham Co.	11.70	.90	.65	d	.03

	Basic Hourly Rates	Fringe Benefits Payments H & W	Pensions	Vacation	Education and/or Appr. Tr.
Elevator Constructors	12.745	1.195	.95	a+b+g	.032
Elevator Constructors' Helpers	8.92	1.195	.95	a+b+g	.032
Elevator Constructors' Helpers Probationary	6.37				
Glaziers					
Fairfield Co. (Greenwich Fairfield Co. (Remainder of County), Litchfield Co.	13.75	.66	1.91	.67	.01
Windham Co.	12.33	1.10	.47	h	.01
Ironworkers:	11.81	.84	.35	h	
Ornamental, Reinforcing, Structural, and Precast Concrete Erection	14.75	1.03	1.45	i	.10
Lathers					
Fairfield Co. (Bridgeport, Easton, Fairfield, Monroe, Redding, Ridgefield, Shelton, Stratford, Trumbull, Weston, Westport, & Wilton)	10.60	.50	.40		.01
Fairfield Co. (Greenwich, New Canaan, Norwalk & Stamford)	10.01	.50	.20	.75	.01
Fairfield Co. (Bethel, Brookfield, Danbury, New Fairfield, Newton, & Sherman), Litchfield Co. (Bethlehem, Bridgewater, Cornwall, Goshen, Harwinton, Litchfield, Morris, New Milford, N. Canaan, Plymouth, Roxbury, Thomaston, Torrington, Warren, Washington, Watertown, & Woodbury)	10.60	.50	.50		.01
Litchfield Co. (Northcastle, Colebrook, New Hartford, Norfolk, & Winchester)					
Windham Co. (Chaplin, Hampton, Scotland, & Windham)	11.13	.50	.40		.01
Windham Co. (Danielson)	9.99	.65	.75		.01

	Basic Hourly Rates	Fringe Benefits Payments H & W	Pensions	Vacation	Education and/or Appr. Tr.
Line Construction					
Fairfield Co. (Darien, Greenwich, New Canaan, Stamford, & that portion of Norwalk, West of Five Mile River)					
Railroad Construction:					
Lineman	10.71	6%	9½%	10%	.02+½%
Dynamite Man	9.53	6%	9½%	10%	.02+½%
Boring Machine Operator	9.32	6%	9½%	10%	.02+½%
Compressor Operator	8.67	6%	9½%	10%	.02+½%
Driver Groundman	8.14	6%	9½%	10%	.02+½%
Groundman	7.28	6%	9½%	10%	.02+½%
Underground Railroad Construction:					
Lineman	13.26	6%	9½%	10%	.02+½%
Equipment Operator	12.20	6%	9½%	10%	.02+½%
Dynamite Man & Transitman	11.80	6%	9½%	10%	.02+½%
Mechanic	11.54	6%	9½%	10%	.02+½%
Heavy Driver Groundman	10.87	6%	9½%	10%	.02+½%
Driver Groundman	10.21	6%	9½%	10%	.02+½%
Groundman	9.68	6%	9½%	10%	.02+½%
Fairfield Co. (Remainder of County), Litchfield Co., & Windham Co.					
Utility Work and Railroads:					
Lineman, Cable Splicer, & Dynamite Man	13.30	.70	3%+.75	j	
Heavy Equipment Operator	12.24	.70	3%+.75	j	
Equipment Operator, Tractor Trailer Driver, Field Mechanic	11.55	.70	3%+.75	j	
Material Man	11.43	.70	3%+.75	j	
Groundman Truck Driver	10.35	.70	3%+.75	j	
Groundman, Experienced	9.28	.70	3%+.75	j	
Groundman, Inexperienced	8.25	.70	3%+.75	j	
Commercial Rates:					
Lineman	11.92	.70	3%+.75	j	
Equipment Operator	11.19	.70	3%+.75	j	
Driver Groundman	8.87	.70	3%+.75	j	
Traffic Control, Illumination & Maintenance:					
Lineman & Cable Splicer	11.95	.70	3%+.75	j	
Groundman Truck Driver	9.92	.70	3%+.75	j	
Equipment Operator	11.07	.70	3%+.75	j	
Groundman, experienced	8.90	.70	3%+.75	j	

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Marble Setters' Helpers					
Fairfield Co. (Darien, Greenwich, Norfolk, Stamford, & Westport)	10.95	1.21	1.71		
Marble Setters' Helpers, Terrazzo Workers' Helpers, & Tile Setters					
Fairfield Co. (Remainder of County), Litchfield Co., & Windham Co.	8.75	.50	.65		
Painters					
Bridge:					
Structural Steel	16.20				
Spray	17.70				
Sandblasting or Power Tools	15.20				
Painters					
Fairfield Co. (Greenwich)					
Brush, Structural Steel, Paperhangers, Tapers	11.00	.20	.75	.30	
Spray	16.50	.20	.75	.30	
Fairfield Co. (Bridgeport, Easton, Fairfield, Southport, Stratford, & Trumbull)					
Brush	10.55	.50	.65	k	
Boson Chair, Swing Stage	11.30	.50	.65	k	
Spray, Epoxy	13.05	.50	.65	k	
Taper	11.05	.50	.65	k	
Sandblasting	12.53	.50	.65	k	
Fairfield Co. (Darien, Stamford, New Canaan, Norwalk, Weston, Westport, & Wilton)					
Brush	10.80	.50	.75	.30	.01
Roller, Paperhangers, Tapers, Epoxy	11.30	.50	.75	.30	.01
Spray	14.00	.50	.75	.30	.01
Fairfield Co. (Bethel, Brookfield, Newton, Redding, Ridgefield, Sandy Hook, & Sherman)					
Litchfield Co. (New Milford)					
Brush	12.60	.50	1.00	k	
Steel	14.40	.50	1.00	k	
Paperhangers, Tapers	12.60	.50	1.00	k	
Epoxy	13.50	.50	1.00	k	
Residential	10.85	.50	1.00	k	
Spray	18.90	.50	1.00	k	

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Painters, Cont'd					
Bridgefield Co. (Byram)					
Brush	10.65	.65	1.13	.30	.05
Spray	11.65	.65	1.13	.30	.05
Steel, Swing Stage, Boatswain Chair	12.175	.65	1.13	.30	.05
Drywall, Taper	11.45	.65	1.13	.30	.05
Fairfield Co. (Monroe & Shelton)					
Brush	12.25	.50	1.00	1	.01
Hand Roller, Paperhangers	12.75	.50	1.00	1	.01
Structural Steel, Epoxy, Polyester	13.25	.50	1.00	1	.01
Spray	16.25	.50	1.00	1	.01
Windham Co. (Willimantic & Windham) Litchfield Co. (Remainder of County)					
Brush Tapers	11.00	.60	.70		.01
Paperhangers	11.50	.60	.70		.01
Riding Steel, Steamcleaning, Sandblasting, Tanks, Towers, & Hazardous Work	11.58	.60	.70		.01
Spray	14.00	.60	.70		.01
Windham Co. (Remainder of County)					
Brush	12.00	.70	.80		.01
Paperhangers, Sign, Taping	12.94	.70	.80		.01
Roller	12.51	.70	.80		.01
Structural Steel, Swing Stage	12.61	.70	.80		.01
Spraying Oil Paint	15.14	.70	.80		.01
Spraying Epoxy	17.69	.70	.80		.01
Residential	10.00	.70	.80		.01
Plumbers					
Windham Co. (Windham)	12.26	1.10	1.39		.15
Fairfield Co. (Greenwich)	11.43	.75	.80	.91	.06
Fairfield Co. (Bridgeport, Easton, Fairfield, Monroe, Shelton, Stratford, & Trumbull)	11.74	.75	.70	6%	.01
Fairfield Co. (Georgetown, Norwalk, S. Norwalk, Weston, Westport, & Wilton)	11.40	.75	.80	.36	.02
Fairfield Co. (Bethel, Brookfield, Danbury, New Fairfield, Newton, Redding, Ridgefield, & Sherman), Litchfield Co. (Bridgewater, New Milford)	13.40	.75	.80	.70	.02

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Plumbers					
Fairfield Co. (Stamford)	12.00	.75	.80	.70	.02
Litchfield Co. (Litchfield)	11.40	.75	.80	.36	.02
Litchfield Co. (Torrington)	11.40	.75	.80	.36	.02
Litchfield Co. (Remainder of County)	11.40	.75	.80	.36	.02
Pipefitters					
Fairfield Co. (Greenwich)	11.43	.75	.80	.91	.06
Fairfield Co. (Bridgeport, Easton, Fairfield, Monroe, Shelton, Stratford, & Trumbull)	11.74	.75	.70	6%	.01
Fairfield Co. (Georgetown, Norwalk, S. Norwalk, Weston, Westport, & Wilton)	11.40	.75	.80	.36	.02
Fairfield Co. (Bethel, Brookfield, Danbury, New Fairfield, Newton, Redding, Ridgefield, & Sherman), Litchfield Co. (Bridgewater, New Milford)	13.40	.75	.80	.70	.02
Litchfield Co. (Litchfield)	11.40	.75	.80	.36	.02
Litchfield Co. (Torrington)	11.40	.75	.80	.36	.02
Litchfield Co. (Remainder of County)	11.40	.75	.80	.36	.02
Roofers					
Fairfield Co. (Bridgeport, Easton, Fairfield, Monroe, Shelton, Stratford, & Trumbull)	11.74	.75	.70	6%	.01
Fairfield Co. (Georgetown, Norwalk, S. Norwalk, Weston, Westport, & Wilton)	11.40	.75	.80	.36	.02
Fairfield Co. (Bethel, Brookfield, Danbury, New Fairfield, Newton, Redding, Ridgefield, & Sherman), Litchfield Co. (Bridgewater, New Milford)	13.40	.75	.80	.70	.02
Litchfield Co. (Litchfield)	11.40	.75	.80	.36	.02
Litchfield Co. (Torrington)	11.40	.75	.80	.36	.02
Litchfield Co. (Remainder of County)	11.40	.75	.80	.36	.02
Sheetmetal Workers					
Fairfield Co. (Greenwich)	11.43	.75	.80	.91	.06
Fairfield Co. (Bridgeport, Easton, Fairfield, Monroe, Shelton, Stratford, & Trumbull)	11.74	.75	.70	6%	.01
Fairfield Co. (Georgetown, Norwalk, S. Norwalk, Weston, Westport, & Wilton)	11.40	.75	.80	.36	.02
Fairfield Co. (Bethel, Brookfield, Danbury, New Fairfield, Newton, Redding, Ridgefield, & Sherman), Litchfield Co. (Bridgewater, New Milford)	13.40	.75	.80	.70	.02
Litchfield Co. (Litchfield)	11.40	.75	.80	.36	.02
Litchfield Co. (Torrington)	11.40	.75	.80	.36	.02
Litchfield Co. (Remainder of County)	11.40	.75	.80	.36	.02

PAID HOLIDAYS:
A-New Year's Day, B-Memorial Day, C-Independence Day, D-Labor Day, E-Thanksgiving Day, F-Christmas Day

FOOTNOTES:
a. Paid Holidays: A through F, and Good Friday.

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Plumbers, Cont'd					
Fairfield Co. (Darien, New Canaan & Stamford)	11.75	.75	.80	4%	.02
Fitchfield Co. (Remainder of County)	13.50	.88	.80	a	.05
Windham Co. (Remainder of County)	14.77	.80	1.00	e	.10
Roofers					
Fairfield Co., Litchfield Co. (Bethlehem, Bridgewater, Kent, New Milford, Roxbury, Washington, & Woodbury)	12.63	1.35	.50		
Litchfield Co. (Bantan, Canaan, Colebrook, Cornwall, Cornwall Bridge, E. Canaan, Falls Village, Gaylordsville, Goshen, Lakeside, Litchfield, Marbledale, Morris, New Hartford, New Preston, Norfolk, Northfield, Oakville, Prequabuck, Pine Meadow, Pleasant Valley, Plymouth, Riverton, Salisbury, Sharon, S. Kent, Taconic, Terryville, Thomaston, Torrington, Washington, Depot, Watertown, W. Cornwall, W. Goshen, Winchester Center, & Winsted), Windham Co.					
Composition	10.95	.575	.85	.33	
Slate & Tile	11.48	.575	.85	.33	
Sheet Metal Workers					
Fairfield Co, Litchfield Co.	13.96	9½%	7%		.03
Windham Co.	13.24	.81	1.23		.09
Sprinkler Fitters	14.00	.85	1.20		.08
Steamfitters					
Windham Co. (Windham	13.57	1.16	1.51		.13
Tile Setters' Helpers					
Fairfield Co. (Darien, Greenwich Stamford, Norfolk, & Westport)	12.71				
Welders - receive rate prescribed for craft performing operations to which welding is incidental					

PAID HOLIDAYS:
A-New Year's Day, B-Memorial Day, C-Independence Day, D-Labor Day, E-Thanksgiving Day, F-Christmas Day

FOOTNOTES:

a. Paid Holidays: A through F, and Good Friday.

b. Paid Holiday: Good Friday. Employee must work 3 days during the work week in which the holiday falls; if scheduled, and if scheduled, the working day before and the working day after the holiday

c. Paid Holidays: B, C, D, and Good Friday. Employee must be employed 14 consecutive days immediately prior to the holiday

d. Paid Holidays: B, C, and D

f. The last 4 regular working hours prior to christmas shall be paid half day off.

g. Employer contributes 6% of basic hourly rate for 5 years or more of service or 4% of basic hourly rate for 6 months to 5 years of service as vacation pay credit.

h. Paid Holidays: A through F, Washington's Birthday, Good Friday, and Columbus Day.

i. The last 4 hours off on Christmas Eve paid if employee has worked 3 consecutive days prior to Christmas Eve

j. Paid Holidays: A through F, Washington's Birthday, Good Friday, and a floating holiday per year provided the employee has been employed for a period of 3 working days prior to the holidays and works the scheduled work days immediately preceding and following the holidays.

k. Paid Holidays: C and D providing the employee works the day before and the day after the holiday

l. Paid Holidays: B,C,D, and E providing the employee works the day before and the day after the holiday

m. Paid Holidays: D and D, half day paid holiday the Friday after Thanksgiving, the last working day before Christmas, and Good Friday.

n. Employer contributes $100 per year to the apprenticeship and training fund

o. Paid Holiday: D and four hours the day after Thanksgiving

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5 (a)(1)(ii)).

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LABORERS BUILDING CONSTRUCTION	Basic Hourly Rates	Fringe Benefits Payments H & W	Pensions	Vacation	Education and/or Appr. Tr.
Caisson	8.65	.60	.80		.10
Asphalt rakers, concrete & power buggy ops., concrete saw ops., chain saw ops., fence & guard rail erectors, form setters, pipelayers, dry stone wall builders, mason tenders, pneumatic drill ops., pneumatic gas & electric drill ops., powdermen & wagon drill ops. and precast erectors	8.90	.60	.80		.10
Air track operators, block pavers, and curb setters, sandblasters	9.15	.60	.80		.10
Open air caisson, cylindrical work and boring crew:					
Top man	8.65	.60	.80		.10
Bottom man	9.15	.60	.80		.10
HEAVY & HIGHWAY CONSTRUCTION					
Laborers	8.65	.60	.80		.10
Acetylene burners, asphalt raker, chain saw operator, concrete & power buggy operators, concrete saw operators, fence & guard rail erectors, form setters, hand operated vibratory compactor operators, hand operated vibrator compactor operators, mason tenders, pipelayers, pneumatic gas & electric drill operators, powderman & wagon drill operators	8.90	.60	.80		.10
Air track operators, block paver, curb setters	9.15	.60	.80		.10
Blasters	9.40	.60	.80		.10

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POWER EQUIPMENT OPERATORS BUILDING CONSTRUCTION	Basic Hourly Rates	Fringe Benefits Payments H & W	Pensions	Vacation	Education and/or Appr. Tr.
Derrick, Hoisting engineer 2 drums and over, Hoisting structural steel, pile driver & setting stone	13.67	1.10	1.10	a	.15
Dragline Forklift - over 5' lift, Front end loader - 7 cy. or over, Gradall, Hoisting engineer (all types of equipment where a drum and cable are used to hoist, pull motive power or operateon), Koehring scooper loader and/or hoe, master mechanic, shovel, & tower crane	13.53	1.10	1.10	a	.15
Maintenance engineer	13.41	1.10	1.10	a	.15
Central mix operator, Coleman loader and screening plant or similar equipment, combination hoe and loader over ¾ yd, conveyors - regardless of motive power, Front end loader 3 cy. up to 7 cy, Jey drill limited to jey heavy weight champion or equivalent, Mucking machine, Post hole digger, pumperete machine, rock boring machine, vibratory hammer, welder & well digger	13.09	1.10	1.10	a	.15
Asphalt Spreader	12.83	1.10	1.10	a	.15
Bulldozer, Carry-all Operators, Grader, & Scraper pan	12.75	1.10	1.10	a	.15
Combination hoe and loader machine, concrete mixer - 5 bags and over, Front end loader under 3 cy., powerstone spreader	12.60	1.10	1.10	a	.15
Air and steam valve	11.78	1.10	1.10	a	.15
Compressor, generator, pump and well point, welding machine	11.65	1.10	1.10	a	.15
Fork lift not over 4', & Steam Jenny	12.56	1.10	1.10	a	.15
Mechanical Heater	11.46	1.10	1.10	a	.15
Roller	12.45	1.10	1.10	a	.15
Dinky machine, power pavement breaker	12.23	1.10	1.10	a	.15
Firemen (High Pressure)	11.20	1.10	1.10	a	.15
Oiler	10.62	1.10	1.10	a	.15

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POWER EQUIPMENT OPERATORS BUILDING CONSTRUCTION (CONT'D)	Basic Hourly Rates	Fringe Benefits Payments H & W	Pensions	Vacation	Education and/or Appr. Tr.
Oiler-Driver	11.02	1.10	1.10	a	.15
Pavement breaker	12.23	1.10	1.10	a	.15
Pipelayer	11.78	1.10	1.10	a	.15
Pumpcrete operator	12.83	1.10	1.10	a	.15
Rigger	12.83	1.10	1.10	a	.15
Rigger Foreman	13.09	1.10	1.10	a	.15
Roller	12.45	1.10	1.10	a	.15
Scraper	12.75	1.10	1.10	a	.15
Shovel, Crane, Backhoe, Dragline, Trenching Machine	13.67	1.10	1.10	a	.15
Shovel, Crane, Backhoe, Dragline, Trenching Machine Oiler-Driver	11.02	1.10	1.10	a	.15
Tractor	12.75	1.10	1.10	a	.15
Trenching machine	12.75	1.10	1.10	a	.15
Truck Crane Oiler-Driver	11.02	1.10	1.10	a	.15
Truck Mounted Concrete Pump	12.83	1.10	1.10	a	.15
Welder	12.83	1.10	1.10	a	.15

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TRUCK DRIVERS BUILDING CONSTRUCTION	Basic Hourly Rates	Fringe Benefits Payments H & W	Pensions	Vacation	Education and/or Appr. Tr.
Dump truck, Flat bed truck, Pickup truck, Stake truck, Tractor trailer, Water truck	11.02	1.10	1.10	a	.15
Mechanic	11.78	1.10	1.10	a	.15
Transit mix truck	11.02	1.10	1.10	a	.15
Truck Mounted Concrete Pump Oiler-Driver	11.02	1.10	1.10	a	.15
HEAVY & HIGHWAY CONSTRUCTION					
Dump truck, Flat bed truck, Pickup truck, Stake truck, Tractor trailer, Water truck	11.02	1.10	1.10	a	.15
Mechanic	11.78	1.10	1.10	a	.15
Transit mix truck	11.02	1.10	1.10	a	.15
Truck Mounted Concrete Pump Oiler-Driver	11.02	1.10	1.10	a	.15

POWER EQUIPMENT OPERATORS
BUILDING CONSTRUCTION (CONT'D)

Crane with boom, excluding jib, over 150' - $.25 extra

Crane with boom, excluding jib, over 200' - $.50 extra

FOOTNOTE:
a. Paid Holidays: New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, Christmas Day, and Good Friday

POWER EQUIPMENT OPERATORS
HEAVY & HIGHWAY

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CLASS 1	13.70	1.10	1.10	a	.15
CLASS 2	13.51	1.10	1.10	a	.15
CLASS 3	13.11	1.10	1.10	a	.15
CLASS 4	12.87	1.10	1.10	a	.15
CLASS 5	12.68	1.10	1.10	a	.15
CLASS 6	12.45	1.10	1.10	a	.15
CLASS 7	12.19	1.10	1.10	a	.15
CLASS 8	11.09	1.10	1.10	a	.15
CLASS 9	11.22	1.10	1.10	a	.15
CLASS 10	11.66	1.10	1.10	a	.15
CLASS 11	12.10	1.10	1.10	a	.15
CLASS 12	10.65	1.10	1.10	a	.15
CLASS 13	11.58	1.10	1.10	a	.15
CLASS 14	7.05	1.10	1.10	a	.15
Crane with 150' boom $.25 extra					
Crane with 200' boom $.50 extra					
Survey Crew					
Chief of Party	11.65	1.10	1.10	a	.15
Ass't Chief of Party	10.81	1.10	1.10	a	.15
Instrument Man	9.97	1.10	1.10	a	.15
Rodman & Chainman	7.43	1.10	1.10	a	.15

Class 1: Erecting and handling structural steel; front end loader (7 cy. or over)
Class 2: Piledriver; Power shovel and crane; Dragline; gradall; trenching machine; lighter derrick; paver (concrete); derrick (stiff leg and guy); steel pile shooting; hoebring loader (scooper) master machine
Class 3: Drill (joy heavy weight champion or equivalent); side boom; loader (euclid); mucking machine; pumpcrete; rock and earth boring machine; Post hole digger; well digger; & hammer (vibratory); central mix; combination hoe & loader (over ½ yd.)
Class 4: Asphalt spreader
Class 5: Front end loader (3 yds. or over); Grader; power stone spreader; combination hoe and loader
Class 6: Asphalt roller; bulldozer; jerryall; maintenance engineer; concrete mixer (5 bags and over); Welder
Class 7: Front end loader (under 3 yds.); roller; power chipper; fork lift; finishing machine; asphalt plant; power pavement breaker; dinky machine
Class 8: Compressor; pump
Class 9: Fireman (high pressure)
Class 10: Well point system
Class 11: Compressor battery
Class 12: Oiler
Class 13: Batch plant; bulk cement plant
Class 14: Track Backhoe oiler

FOOTNOTE:
a. Paid Holidays: New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, Christmas Day, and Good Friday

TRUCK DRIVERS	Basic Hourly Rates	Fringe Benefits Payments H & W	Pensions	Vacation	Education and/or Appr. Tr.
CLASS 1	9.26	1.04	1.10	a	
CLASS 2	9.36	1.04	1.10	a	
CLASS 3	9.46	1.04	1.10	a	
CLASS 4	9.41	1.04	1.10	a	
CLASS 5	9.51	1.04	1.10	a	
CLASS 6	9.56	1.04	1.10	a	

CLASS 1: Two axle trucks; helpers
CLASS 2: Three axle trucks; two axle ready mix
CLASS 3: Four axle trucks; heavy duty trailer-up to 40 tons
CLASS 4: Three axle ready-mix
CLASS 5: Four axle ready-mix; specialized earth moving equipment other than conventional tye on-the road trucks and semi-trailer (including Euclids)
CLASS 6: Heavy duty trailer-40 tons and over

FOOTNOTE:
a. Paid Holidays: New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, Christmas Day, and Good Friday

SUPERSEDEAS DECISION

STATE: Florida COUNTIES: Lake, Orange, Osceola and Seminole
DECISION NUMBER: FL81-1180 DATE: Date of Publication
Supersedes Decision Number: FL80-1040, dated January 4, 1980, in 45 FR 1342
DESCRIPTION OF WORK: Residential Construction Projects consisting of single family homes and apartments up to and including 4 stories

	Basic Hourly Rates	Fringe Benefits Payments H & W	Pensions	Vacation	Education and/or Appr. Tr.
A/C Mechanic	5.77				
Carpenters	6.59				
Cement Masons	8.00				
Drywall Hangers	10.19				
Drywall Finishers	9.00				
Electricians	6.23				
Insulation Installers	8.00				
Iron Workers	6.25				
Laborers					
Unskilled	3.50				
Mason Tenders	5.00				
Painters	7.00				
Plasterers	6.93				
Plumbers	7.00				
Sheet Metal Workers	5.93				
Soft Floor Layers	5.00				
P.E.O.					
Backhoe	5.13				
Front End Loader	5.17				
Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5 (a) (1) (ii))					

SUPERSEDEAS DECISION

STATE: NEW HAMPSHIRE COUNTIES: HILLSBOROUGH & MERRIMACK
DECISION NUMBER NH81-3009 DATE: DATE OF PUBLICATION
Supersedes Decision No. NH80-2056, dated August 15, 1980 in 45FR 54631
DESCRIPTION OF WORK: BUILDING AND HEAVY CONSTRUCTION PROJECTS

SUPERSEDEAS DECISION

STATE: NEW HAMPSHIRE COUNTIES: HILLSBOROUGH & MERRIMACK
DECISION NUMBER NH81-3009 DATE: DATE OF PUBLICATION
Supersedes Decision No. NH80-2056, dated August 15, 1980 in 45FR 54631
DESCRIPTION OF WORK: BUILDING AND HEAVY CONSTRUCTION PROJECTS

HILLSBOROUGH COUNTY
BUILDING & HEAVY CONSTRUCTION

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ASBESTOS WORKERS	14.31	1.40	1.15		.05
BOILERMAKERS	14.63	1.275	10%		.03
BRICKLAYERS, CEMENT MASONS, MARBLE SETTERS, PLASTERERS, STONE MASONS, TERRAZZO WORKERS & TILE SETTERS	10.19	1.01	.89		.01
CARPENTERS:					
Pelham					
Carpenters & Soft Floor Layers	12.25	1.00	1.00		.07
Millwrights	13.65	1.00	1.00		.10
Greenville:					
Carpenters & Soft Floor Layers	12.50	.75	1.00		.07
Millwrights	13.65	1.00	1.00		.10
Remainder of County					
Carpenters & Soft Floor Layers	10.13	.65	.85		.03
Piledrivermen & Millwrights	10.98	.65	.85		.03
ELECTRICIANS					
Pelham	12.37	1.00	3%+.60		.02
Remainder of County	12.40	.80	3%		.03
ELEVATOR CONSTRUCTORS					
Constructors	13.88	1.195	.95	a+b	.035
Helpers	9.72	1.195	.95	a+b	.035
GLAZIERS	9.47	.77	.69		.03
IRONWORKERS					
Structural, Ornamental, and Reinforcing	12.48	1.18	1.85		.02
LINE CONSTRUCTION					
Lineman	8.35	.70	3%+.50	d	3/8of1%
Equipment Operator	7.69	.70	3%+.50	d	3/8of1%
Groundman	5.25	.70	3%+.50	d	3/8of1%
Driver Groundman	5.71	.70	3%+.50	d	3/8of1%
PAINTERS					
Brush	9.10	.50			
Paperhangers	9.35	.50			
Spray & Sandblasting	10.60	.50			
Open Structual Steel	10.35	.50			
Enclosed Structural Steel & Steeple Jack	9.60	.50			

DECISION NO. NH81-3009

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
PLUMBERS & STEAMFITTERS					
Hudson & Pelham	13.22	1.10	1.10		.02
Remainder of County	12.55	.88	.75		.02
ROOFERS	7.80				
SHEET METAL WORKERS	10.92	.85	.85		.02
SPRINKLER FITTERS	12.93	.85	1.20		.08

DECISION NO. NH81-3009

MERRIMACK COUNTY
BUILDING & HEAVY CONSTRUCTION

	Basic Hourly Rates	Fringe Benefits Payments: H & W	Pensions	Vacation	Education and/or Appr. Tr.
ASBESTOS WORKERS	14.31	1.40	1.15		.05
BOILERMAKERS	14.63	1.275	10%		.03
BRICKLAYERS, CEMENT MASONS, MARBLE SETTERS, PLASTERERS, STONE MASONS, TERRAZZO WORKERS, & TILE SETTERS	10.19	1.01	.89		.01
CARPENTERS & SOFT FLOOR LAYERS	10.13	.65	.85		.03
Millwrights & Piledrivers	10.98	.65	.85		.03
ELECTRICIANS					
Bookset	12.40	.80	3%		.03
Remainder of County:					
Gen. contracts $400,000. & over	13.07	.80	3%+.50		.02
Gen. contracts less than $400,000.	8.05	.80	3%+.50		.02
ELEVATOR CONSTRUCTORS					
Constructors	13.88	1.195	.95	a+b	.035
Helpers	9.72	1.195	.95	a+b	.035
GLAZIERS	9.47	.77	.69		.03
IRONWORKERS					
Structural, Ornamental & Reinforcing	12.45	1.15	1.55		.02
LINE CONSTRUCTION					
Linemen	8.35	.70	3%+.50	d	3/8of1%
Equipment Operator	7.69	.70	3%+.50	d	3/8of1%
Groundman	5.25	.70	3%+.50	d	3/8of1%
Driver Groundman	5.71	.70	3%+.50	d	3/8of1%
PAINTERS					
Brush	9.10	.50			
Open Structural Steel Work	10.35	.50			
Enclosed Structural Steel Work & Steeplejack	9.60	.50			
Paperhangers	9.35	.50			
Spray & Sandblasting	10.60	.50			
PLUMBERS & STEAMFITTERS	12.55	.88	.75		.02
ROOFERS	7.80				
SHEET METAL WORKERS	10.92	.85	.85		.02
SPRINKLER FITTERS	12.93	.85	1.20		.08

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Welders - receive rate prescribed for craft performing operation to which welding is incidental

PAID HOLIDAYS

A-New Year's Day; B-Memorial Day; C-Independence Day; D-Labor Day; E-Thanksgiving Day; F-Christmas

FOOTNOTES:

a. Employer contributes 6% basic hourly rate for 5 years or more of service or 8% basic hourly rate for 6 months to 5 years of service as Vacation Pay credit.

b. Holidays: A through F

c. Holidays: A through F: Washington's Birthday, Christmas Eve and Good Friday, providing employee has worked 45 full days during the 120 calendar days prior to the holiday, and the regular scheduled work days immediately preceding and following the holiday

d. Holidays: B through F, provided the employee has been employed 5 working days prior to the holiday and provided the employee works the scheduled work days immediately preceding and following the holiday

e. Holidays: B, C, and E provided employee works the day before and after each holiday

DECISION NO. NH81-3009

POWER EQUIPMENT OPERATORS
BUILDING CONSTRUCTION

DECISION NO. NH81-3009

	Basic Hourly Rates	Fringe Benefits Payments: H & W	Pensions	Vacation	Education and/or Appr. Tr.
POWER EQUIPMENT OPERATORS					
Asphalt Spreader	9.10	.70	3%+.50	d	3/8of1%
Bulldozer	8.35	.70	3%+.50	d	3/8of1%
Crane	9.10	.70	3%+.50	d	3/8of1%
Crane Oiler	7.69	.70	3%+.50	d	3/8of1%
Fireman	7.69	.70	3%+.50	d	3/8of1%
Grader	8.35	.70	3%+.50	d	3/8of1%
Hoisting Engineer	8.35	.70	3%+.50	d	3/8of1%
Mechanic	8.35	.70	3%+.50	d	3/8of1%
Oiler	7.69	.70	3%+.50	d	3/8of1%
Roller	7.69	.70	3%+.50	d	3/8of1%
Scraper	7.69	.70	3%+.50	d	3/8of1%
Shovel	8.35	.70	3%+.50	d	3/8of1%
Tractor	7.69	.70	3%+.50	d	3/8of1%
Trenching Machine	8.35	.70	3%+.50	d	3/8of1%
Truck Driver	7.69	.70	3%+.50	d	3/8of1%
Welder	8.35	.70	3%+.50	d	3/8of1%
POWER EQUIPMENT OPERATORS					
Asphalt Spreader	9.10	.70	3%+.50	d	3/8of1%
Bulldozer	8.35	.70	3%+.50	d	3/8of1%
Crane	9.10	.70	3%+.50	d	3/8of1%
Crane Oiler	7.69	.70	3%+.50	d	3/8of1%
Fireman	7.69	.70	3%+.50	d	3/8of1%
Grader	8.35	.70	3%+.50	d	3/8of1%
Hoisting Engineer	8.35	.70	3%+.50	d	3/8of1%
Mechanic	8.35	.70	3%+.50	d	3/8of1%
Oiler	7.69	.70	3%+.50	d	3/8of1%
Roller	7.69	.70	3%+.50	d	3/8of1%
Scraper	7.69	.70	3%+.50	d	3/8of1%
Shovel	8.35	.70	3%+.50	d	3/8of1%
Tractor	7.69	.70	3%+.50	d	3/8of1%
Trenching Machine	8.35	.70	3%+.50	d	3/8of1%
Truck Driver	7.69	.70	3%+.50	d	3/8of1%
Welder	8.35	.70	3%+.50	d	3/8of1%

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LABORERS:

Building Construction

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Laborers	8.07	.75	1.10		.10
Plasterers' Tenders	8.24	.75	1.10		.10
Pipelayers, Fence & Guard Rail Erectors	8.36	.75	1.10		.10
Pneumatic Tool Ops., Pavement Breakers, Drillers, Chipping Gun Op., Chipping Gun Op., Powdermen & Blasters	8.65	.75	1.10		.10
All other Pneumatic Tool Ops. on Boiler and Stack Work	9.11	.75	1.10		.10
Heavy Construction					
Laborers and Pipelayers	7.67	.60	.80	a	.10
Pneumatic Tool Op., Drillers, Concrete Vibrators, & Electric Chipping Machines	8.17	.60	.80	a	.10
Blasterers and Powdermen	8.42	.60	.80	a	.10

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POWER EQUIPMENT OPERATORS
BUILDING CONSTRUCTION

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CLASS 1	11.10	.95	.75	a	.05
CLASS 2	10.85	.95	.75	a	.05
CLASS 3	10.65	.95	.75	a	.05
CLASS 4	9.835	.95	.75	a	.05
CLASS 5	9.81	.95	.75	a	.05
CLASS 6	8.99	.95	.75	a	.05
CLASS 7	9.19	.95	.75	a	.05
CLASS 8	12.10	.95	.75	a	.05
CLASS 9	11.60	.95	.75	a	.05

CLASS 1 - Shovel, Crane, Dragline, Derrick, Backhoe, Elevator with Chicago Boom, Gradall, Elevating Grader, Front End Loader 6 yds. and over, Cherry Picker, Pile Driving Rigs, Concrete Road Pavers, all three Drum Hoisting and Trenching Machines

CLASS 2 - Rotary Drill with Mounted Compressor, Compressor House (3-6 compressors), Rock and Earth Boring Machines excluding McCarthy and similar Drills, Graders, 4 yds. and over Front End Loader, Two Drum Hoists, High Fork Lifts with Capacity of 15' & over, Scrapers, Sonic Hammer, Vibratary Hammer

CLASS 3 - Bulldozers, Push Cats, Scrapers (tractor drawn), Asphalt Paver, Front End Loader 3/4 yds. to 4 yds., Well Driller, Mechanics, Pumperete Machines, Concrete Pumps and Similar Type Pumps, Engineer or Fireman on High Pressure Boiler (on job), Self Loading Batch Plant, Well Point Operators including installing, Engineer-in-charge of Power Grease Truck, all Automatic Elevators permanent or Temporary operated manually or by remote controls

CLASS 4 - Single Drum Hoist, Self powered Roller, Self Propelled Compactors, Power Pavement Breakers, Concrete Pavement Finishing Machines, Two Bag Mixers with Skip, Front End Loaders under 3/4 yds., McCarthy and similar Drills, Batch Plant not Self Loading, Bulk Cement Plants Self-Propelled Material Spreaders, A-Frame Trucks, Fork Lifts up to 15'

CLASS 5 - Compressor 315 Cubic ft. and over, (one or two), Pumps (4 inches & over total discharge) when total discharge is over 12 inches, Classification 3 will be paid, Tractor (without blade or Bucket) Drawing Roller Compactors or other Machines

CLASS 6 - Compressors (up to 315 cubic feet) Small Mixers, Pumps (up to 4 inches), Power Heaters, Welding Machines (when 3 or more heaters or Welding Machines are used on one Job, classification 4 rate will be paid), Conveyor Oiler including Helpers on Grease Trucks and Grease Trucks with Hand Greasing Equipment

CLASS 7 - Oilers on Truck Cranes and Gradalls

CLASS 8 - Cranes with boom lengths of 200 feet or more

CLASS 9 - Crane with boom length of 150 feet or more

PAID HOLIDAYS: A-New Year's Day; B-Memorial Day; C-Independence Day; D-Labor Day; e-Thanksgiving Day; F-Christmas Day

FOOTNOTE: A. Holidays: A through F, Veterans Day, Washington's Birthday and Columbus Day.

DECISION NO. NH81-3009 NH 2-FEO-2-3-2

POWER EQUIPMENT OPERATORS HEAVY CONSTRUCTION	Basic Hourly Rates	Fringe Benefits Payments H & W	Pensions	Vacation	Education and/or Appr. Tr.
CLASS 1	10.48	.95	.75	a	.05
CLASS 2	10.19	.95	.75	a	.05
CLASS 3	9.96	.95	.75	a	.05
CLASS 4	9.33	.95	.75	a	.05
CLASS 5	8.965	.95	.75	a	.05
CLASS 6	8.36	.95	.75	a	.05
CLASS 7	11.05	.95	.75	a	.05

CLASS 1 - Shovels, Crawler & Truck Crane, Derricks, Backhoes, Trenching Machines, Elevating Graders, Gradalls, Piledrivers, Concrete Pavers, Engineers on Site Processing Plant, Dragline, Clamshell, Cableways
CLASS 2 - Rotary Drill (with mounted compressor), Compressor House (3 to 6 compressors) Rock and earth Boring Machine (excluding McCarthy and similar drills), Grader, Front End Loader (4 yds. or over)
CLASS 3 - Bulldozer, Push Cats, Scraper (Self propelled or tractor drawn), Self-Powered Asphalt Paver. (Front End Loader 3/4 to 4 yds.), Mechanics, Well driller, Pumperete Machine, Engineer or Fireman on High Pressure Boiler (on job) Self-loading Batch Plant (on job), Well Point Operators
CLASS 4 - Hoists, Conveyors, Self-powered Rollers and Compactors, Self-propelled Material Spreaders, Self-powered Concrete Finishing Machine Mixers (2 bag with skip), Front End Loader (Under 3/4 yd.), McCarthy & similar Drills, Batch Plant (not a self-loading), Bulk Cement Plant
CLASS 5 - Compressor (315 C.F. or over-one or two), Pump 4" or over, Tractor without blades, Drawing Sheeps-foot, Rubber Roller or other type Compactor including Machines for Pulverizing and aerating Soil
CLASS 6 - Compressor (up to 315 C.F.), Small Mixers with skip, Oiler Pumps up to 4", Grease Truck, Power Heaters, Welding Machines (when 3 or more Welding Machines Class 4 rate applied), A-Frame, Forklifts, (Where grease truck contains powered grease equipment, engineer in charge shall be paid Class 3 rate)
CLASS 7 - Crane with boom length of 200 feet or more including jib

PAID HOLIDAYS: A-New Year's Day; B-Memorial Day; C-Independence Day; D-Thanksgiving Day; F-Christmas Day

FOOTNOTE: a. Holidays: A through F; Washington's Birthday; Veteran's Day and Columbus Day

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POWER EQUIPMENT OPERATORS MARINE CONSTRUCTION	Basic Hourly Rates	Fringe Benefits Payments H & W	Pensions	Vacation	Education and/or Appr. Tr.
CLASS 1	13.76	1.18	1.15	a	.03
CLASS 2	13.98	1.18	1.15	a	.03
CLASS 3	13.64	1.18	1.15	a	.03
CLASS 4	13.64	1.18	1.15	a	.03
CLASS 5	12.55	1.18	1.15	a	.03
CLASS 6	11.52	1.18	1.15	a	.03
CLASS 7	10.21	1.18	1.15	a	.03
CLASS 8	11.40	1.18	1.15	a	.03
CLASS 9	10.83	1.18	1.15	a	.03

Booms over 150' including jib-additional $.25 per hour
Booms over 185' including jib-additional $.50 per hour
Booms 220' including jib-additional $.75 per hour
Booms over 275' including jib-additional $1.00 per hour

CLASS 1 - Power Shovel, Crane, Truck Crane, Derrick, Cherry Picker, Pile Driver, 2 or more Drum Machine, Lighter, Derrick Boat, Trenching Machine, Mechanical Hoists, Pavement Breaker, Cement Concrete Paver, Dragline, Hoisting Engine, Pumperete Machine, Elevating Grader, Shovel Dozer (except when pushing) Front End Loader, (except when pushing) Backhoe, Gradall, Cableway, Boring Machine, Rotary Drill Post Hole Hammer, Post Hole Digger, Fork Lift
CLASS 2 - Swinger Engine
CLASS 3 - Sonic or Vibratory Hammer, Grader, Scraper (over 21 yds. struck), Tandem Scraper Concrete Pump, Bulldozer, scraper (21 yds. or less)
CLASS 4 - Portable Steam Boiler, Portable Steam generator, Roller, Tractor, Mechanic (maintenance), Concrete Mixer with Side Loader
CLASS 5 - Assistant Engineer (firemen)
CLASS 6 - Pump, Compressor, Welding Machine, Heater (power driven), Valve Controlling Permanent Plant (air or steam), Wellpoint System, Auger (powered by independent engine and attached to pile driver), Hydraulic Saw, Generator, Lighting Plant, Syphon, Pulsometer, Concrete Mixer
CLASS 7- Oiler (other than truck crane and gradall)
CLASS 8 - Oiler on Scow
CLASS 9 - Oiler on Truck Crane and Gradall

PAID HOLIDAYS: (WHERE APPLICABLE)
A-New Year's Day; B-Memorial Day; C-Independence Day; D-Labor; E-Thanksgiving Day; F-Christmas Day

FOOTNOTE: A. Holidays: A through F; Washington's Birthday, Patriots Day, Columbus Day; & Veteran's Day; Provided the employee has worked 3 days during the week in which which the holidays falls and is available for work the days preceding the holidays.

SUPERSEDEAS DECISION

STATE: New Hampshire COUNTIES: Rockingham & Strafford
DECISION NUMBER: NH81-3010 DATE: Date of Publication
Supersedes Decision No. NH80-2057, dated August 1, 1980 in 45 FR 51411
DESCRIPTION OF WORK: Building, Heavy and Marine Construction Projects

DECISION NO. NH81-3009 NH -TD-1-2-3-L

TRUCK DRIVERS

	Basic Hourly Rates	Fringe Benefits Payments H & W	Pensions	Vacation	Education and/or Appr. Tr.
CLASS 1	6.41	.80	.50	a	
CLASS 2	6.64	.80	.50	a	
CLASS 3	6.87	.80	.50	a	

CLASS 1 - Two Axle Equipment
CLASS 2 - Three Axle Equipment including Low Beds
CLASS 3 - Special Earth Hauling Equipment other than Conventional Type on the road Truck and Semitrailers Trailer Dumps.

PAID HOLIDAYS: A-New Year's Day; B-Memorial Day; C-Independence Day; D-Labor Day; E-Thanksgiving Day; F-Christmas Day

FOOTNOTE: A. Holidays: A through F, plus Washington's Birthday, Veteran's Day and Columbus Day; (provided employee works two days in the calendar week in which the holiday falls; reports for work the last day assigned prior to the holiday and the first assigned following the holiday)

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5 (a)(1)(ii)).

SUPERSEDEAS DECISION

STATE: New Hampshire COUNTIES: Rockingham & Strafford
DECISION NUMBER: NH81-3010 DATE: Date of Publication
Supersedes Decision No. NH80-2057, dated August 1, 1980 in 45 FR 51411
DESCRIPTION OF WORK: Building, Heavy and Marine Construction Projects

ROCKINGHAM COUNTY

BUILDING & HEAVY CONSTRUCTION	Basic Hourly Rates	Fringe Benefits Payments H & W	Pensions	Vacation	Education and/or Appr. Tr.
ASBESTOS WORKERS	14.31	1.40	1.15		.05
BOILERMAKERS	14.63	1.275	10%		.03
BRICKLAYERS, CEMENT MASONS, Marble Masons, Plasterers, Stonemasons, Tile setters & Terrazzo Workers	10.19	1.01	.89		.01
CARPENTERS:					
Salem:					
Carpenters & Soft Floor Layers	12.10	1.00	1.00		.05
Remainder of county:					
Carpenters & Soft Floor Layers	10.13	.65	.85		.03
Piledrivers, Wharf & Dock Builders & Millwrights	10.98	.65	.85		.03
ELECTRICIANS					
Twps. of Exeter, Greenland, Hampton, Hampton Falls, Portsmouth, Newington, Newmarket, Northwood, Nottingham, Rye, Seabrook, Strathan & S. New Market	12.65	.75	3%+.25		.02
Kingston, Kensington, N. Kingston, Hampstead, Plaistow, Westville, Atkinson, N. Salem & Salem	12.37	1.00	3%+.60		.02
Remainder of County	12.40	.80	3%		.03
ELEVATOR CONSTRUCTORS					
Constructors	13.88	1.19%	.95	a+b	.035
Helpers	9.72	1.19%	.95	a+b	.035
IRONWORKERS					
Structural, Ornamental and Reinforcing	12.45	1.15	1.55		.02
LABORERS: BUILDING					
Laborers	8.07	.75	1.10		.10
Plasterers Tenders	8.24	.75	1.10		.10
Drillers, Pavement Breakers, Pneumatic Tool Ops., Chipping Gun Ops., Blasters & Powdermen	8.65	.75	1.10		.10
All other Pneumatic Tool Ops. on Boiler & Stack Work	9.11	.75	1.10		.10

DECISION NO. NH81-3010

	Basic Hourly Rates	Fringe Benefits Payments H & W	Pensions	Vacation	Education and/or Appr. Tr.
Pipelayers, Fence & Guard Rail Erectors	8.36	.75	1.10		.10
LABORERS, HEAVY					
Laborers & Pipelayers	7.67	.60	.80	d	.10
Pneumatic Tool Op., Drillers Concrete Vibrators & Powderman	8.17	.60	.80	d	.10
Blasters & Powdermen	8.42	.60	.80	d	.10
LINE CONSTRUCTION					
Linemen	8.35	.70	3%+.50	c	3/8of1%
Equipment Operator	7.69	.70	3%+.50	c	3/8of1%
Groundman	5.25	.70	3%+.50	c	3/8of1%
Driver Groundman	5.71	.70	3%+.50	c	3/8of1%
PAINTERS					
Brush	8.96		.25		
Spray & Sandblasting	10.08		.25		
Open Structural Steel	9.63		.25		
Salem:					
Brush	13.41	.82	1.40		.04
Structural Steel	15.82	.82	1.40		.04
Spray & Sandblasting	14.41	.82	1.40		.04
Repaint	12.07	.82	1.40		.04
PLUMBERS & STEAMFITTERS					
Pleistow, Atkinson, Danville, Hampstead, and Kingston	11.80	1.65	.87		.05
Salem and Windham	11.15	.87	1.00		.05
Remainder of County	12.55	.88	.75		.02
ROOFERS	7.80				
SHEET METAL WORKERS	10.92	.85	.85		.02
SPRINKLER FITTERS	12.93	.85	1.20		.08

DECISION NO. NH81-3010

STRAFFORD COUNTY BUILDING AND HEAVY CONSTRUCTION	Basic Hourly Rates	Fringe Benefits Payments H & W	Pensions	Vacation	Education and/or Appr. Tr.
ASBESTOS WORKERS	14.31	1.40	1.15		.05
BOILERMAKERS	14.63	1.275	10%		.03
BRICKLAYERS, CEMENT MASONS, Marble Setters, Plasterers Stone Masons, Terrazzo Workers and Tile Setters	10.19	1.01	.89		.01
CARPENTERS & SOFT FLOOR LAYERS	10.13	.65	.85		.03
Pile Drivers, Dock Builders & Millwrights	10.98	.65	.85		.03
ELECTRICIANS	12.65	.75	3%+.25		.02
ELEVATOR CONSTRUCTORS					
Constructors	13.88	1.195	.95	a+b	.035
Helpers	9.72	1.195	.95	a+b	.035
IRONWORKERS					
Structural, Ornamental & Reinforcing	12.45	1.15	1.55		.02
LABORERS					
Laborers	8.07	.75	1.10		.10
Plasterers Tenders	8.24	.75	1.10		.10
Boilers, Stack Work, Pneumatic Tool Op., Drillers, Pavement Breakers, Electric Chipping Ops., Blasters, Powdermen & Creosote Work	8.65	.75	1.10		.10
Pipelayers, Fence & Guardrail Erectors	8.36	.75	1.10		.10
Pneumatic Tool on Boiler & Stack Work	9.11	.75	1.10		.10
LINE CONSTRUCTION					
Linemen	8.35	.70	3%+.50	c	3/8of1%
Equipment Operator	7.69	.70	3%+.50	c	3/8of1%
Groundman	5.25	.70	3%+.50	c	3/8of1%
Driver Groundman	5.71	.70	3%+.50	c	3/8of1%
PAINTERS					
Brush	8.96		.25		
Spray and Tender	10.08		.25		
Structural Steel	9.63		.25		
PLUMBERS & STEAMFITTERS	12.55	.88	.75		.02
ROOFERS	7.80				
SHEET METAL WORKERS	10.92	.85	.85		.02
SPRINKLER FITTERS	12.93	.85	1.20		.08

DECISION NO. NH81-3010

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Welders - receive rate prescribed for craft performing operation to which welding is incidental.

PAID HOLIDAYS:
A-New Year's Day; B-Memorial Day; C-Independence Day; D-Labor Day; E-Thanksgiving Day; F-Christmas Day

FOOTNOTES:

a. Employer contributes 8% basic hourly rate for 5 years or more of service or 6% basic hourly rate for 6 months to 5 years of service as Vacation Pay credit.

b. Holidays: A through F

c. Holidays: B through F provided employee has been employed 5 working days prior to the holiday and provided employee works the scheduled work days immediately preceding and following the holidays.

d. Holiday: B, C, & E provided employee works the scheduled work days before and after each holiday

DECISION NO. NH81-3010
BUILDING CONSTRUCTION
POWER EQUIPMENT OPERATORS

NH-1-PEO

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CLASS 1	12.80	1.18	1.15	a	.03
CLASS 2	12.48	1.18	1.15	a	.03
CLASS 3	11.62	1.18	1.15	a	.03
CLASS 4	10.73	1.18	1.15	a	.03
CLASS 5	10.24	1.18	1.15	a	.03
CLASS 6	9.74	1.18	1.15	a	.03

Boom lengths including jib over 150' add $.55; over 185' add $.90 over 210' add $1.25; over 250' add $1.90; over 295' add $2.65

CLASS 1 - Shovels, Cranes, Truck Cranes, Cherry Pickers; Dragline, Trench Hoe, Backhoe, 3 Drum Machine, Derricks, Pile, Elevator Tow Hoist, Gradall, Shovel Dozer (except when pushing), Front End Loa (except when pushing), Fork Lift Auger, Boring Machine, Rotary Dr Post Hole Hammer, Post Hole Digger, Pumperete Machine
CLASS 2 - Sonic or Vibratory Hammer, Grader, Scraper more than 21 yds. struck, Tandem Scraper, Concrete Pump, Bulldozer, Scraper 21 yds. struck or less, Portable Steam Boiler, Portable Steam Generator, Roller, Spreader, Tamper, Asphalt Paver, Mchcanics, Maintenance.
CLASS 3 - Assistant Engineers (firemen)
CLASS 4 - Pumps (1-3 grouped), Compressor, Welding Machine (1-3 grouped), Generator, Concrete Vibrator, Lighting Plant, Heater (Power driven 1-5), Wellpoint (operating & installing), Syphons-Pulsometers, Conc. Mixers, Valves controlling Permanent Plant Air or Steam Conveyor, Jackson Type Tamper Cranes & Gradalls
CLASS 5 - Oilers on Truck Cranes & Gradalls
CLASS 6 - Oilers (other than truck cranes & gradalls)

FOOTNOTE: a. 10 paid holidays; New Year's Day; Memorial Day; Independnece Day, Labor Day, Thanksgiving Day, Christmas Day, Washington's Birthday, Fast Day, Columbus Day, and Armistice Day

DECISION NO. NH81-3010

HEAVY CONSTRUCTION POWER EQUIPMENT OPERATORS	Basic Hourly Rates	Fringe Benefits Payments H & W	Pensions	Vacation	Education and/or Appr. Tr.
CLASS 1	11.67	1.18	1.15	a	.03
CLASS 2	12.59	1.18	1.15	a	.03
CLASS 3	11.54	1.18	1.15	a	.03
CLASS 4	10.205	1.18	1.15	a	.03
CLASS 5	10.97	1.18	1.15	a	.03
CLASS 6	9.31	1.18	1.15	a	.03
CLASS 7	9.41	1.18	1.15	a	.03

Boom length including jib: over 150' - additional $.25 per hour; over 185' additional $.50 per hour; over 220' additiona $.75 per hour; over 275' additional $1.00 per hour; over 295' additional $2.00 per hour.

CLASS 1 - Power Shovels, Cranes, Truck Cranes, Derrick, Pile Drivers, Trenching Machines, Mechanical Hoist, Pavement Breakers, Cement Concrete Pavers, Draglines, Hoisting Engines, Three Drum Machines, Pumperete Machines Elevating Graders, Shovel Dozers, (when used for digging or loading), Front End Loaders (when used for digging or loading), Mucking Machines (when used as in shafts and tunnels), Shaft Hoists, Steam Engineers, Backhoes, Gradalls and cableways
CLASS 2 - Master Mechanics
CLASS 3 - Grader, Scrapers, more than 21 yds., Struck and Tandem Scrapers, Bulldozers, Scrapers 21 yds., Struck or less, Grout Pumps, Portable Steam Boilers, Roller, Spreaders, Asphalt Pavers, Locomotive and Tampers Self-propelled or Tractor-drawn, Mechanics, Maintenance, Sonic or Vibratory Hammers
CLASS 4 - Pumps (s) (1-3 grouped), Compressors Welding Machine (s) (1-3 grouped) Generators, Lighting Plants, Heaters (power driven (105), Syphons, Pulsometers, Concrete Mixers, Valves Controlling permanent Plant Air or Steam, Conveyors, Wellpoint System (operating and installing)
CLASS 5 - Assistant Engineers (Firemen)
CLASS 6 - Oilers (other than truck Cranes and Gradalls)
CLASS 7 - Oilers on Truck cranes and Gradalls

PAID HOLIDAYS: A-New Year's; B-Memorial Day; C-Independence Day; D-Labor D-Labor; E-Thanksgiving Day; F-Christmas Day

FOOTNOTE: a Holidays: A through F; Washington's Birthday; Columbus Day; Veterans' Day; Fast Day

DECISION NO. NH81-3010

POWER EQUIPMENT OPERATORS MARINE CONSTRUCTION	Basic Hourly Rates	Fringe Benefits Payments H & W	Pensions	Vacation	Education and/or Appr. Tr.
CLASS I	13.76	1.18	1.15	a	.03
CLASS II	13.71	1.18	1.15	a	.03
CLASS III	13.64	1.18	1.15	a	.03
CLASS IV	13.64	1.18	1.15	a	.03
CLASS V	12.55	1.18	1.15	a	.03
CLASS VI	11.52	1.18	1.15	a	.03
CLASS VII	10.21	1.18	1.15	a	.03
CLASS VIII	11.40	1.18	1.15	a	.03
CLASS IX	10.83	1.18	1.15	a	.03

Booms over 150' including jib-additional $.25 per hour
Booms over 185' including jib-additional $.50 per hour
Booms 220' including jib additional $.75 per hour. Booms over 275' including jib-additional $1.00 per hour

CLASS 1 - Power Shovel, Crane, Truck Crane, Derrick, Cherry Picker, Pile Driver, 2 or more Drum Machine, Lighter, Derrick Boat, Trenching Machine, Mechanical Hoist, Pavement Breaker Cement Concrete Paver, Dragline, Hoisting Engine, Pumperete Machine, Elevating Grader, Shovel Dozer (except when pushing) Front End Loader (except when Pushing), Backhoe, Gradall, Cableway, Boring Machine, Rotary Drill, Post Hole Hammer, Post Hole Digger for Lift
CLASS 2 - Swinger Engine
CLASS 3 - Sonic or Vibratory Hammer, Grader, scraper (over 21 yds. Struck), Tandem Scraper Concrete Pump, Bulldozer, Scraper (21 yds. Struck or less).
CLASS 4 - Portable Steam Boiler, Portable Steam Generator, Roller, Tractor Mechanic (maintenance), Concrete Mixer with Side Loader
CLASS 5 - Assistant Engineer (firemen).
CLASS 6 - Pump, Compressor, Welding Machine, Heater (power Driven), Valve Controlling Permanent Plant (air or steam), Wellpoint System, Auger (powered by independent engine and attached to pile drivers), Hydraulic Saw, Generator, Lighting Plant, Syphon, Pulsometer, Concrete Mixer
CLASS 7 - Oiler (other than truck crane and gradall)
CLASS 8 - Oiler on Scow
CLASS 9 - Oiler on Truck Crane and Gradall

PAID HOLIDAY: (WHERE APPLICABLE)
A-New Year's Day; B-Memorial Day; C-Independence Day; D-Labor Day; E-Thanksgiving Day; F-Christmas Day

FOOTNOTE: A. Holidays: A through F; Washington's Birthday, Patriot's Day, Columbus Day; & Veteran's Day; Provided the employee has worked 3 days during the week in which the holidays falls and is available for work the days preceding the Holidays.

DECISION NO. NH81-3010

TRUCK DRIVERS

SUPERSEDEAS DECISION

STATE: New York COUNTY: Orange
DECISION NO.: NY81-3003 DATE: Date of Publication
Supersedes Decision No. NY79-3028 dated September 7, 1979 in 44 FR 52370
DESCRIPTION OF WORK: Building Construction, (does not include single family homes and apartments up to and including 4 stories), Heavy and Highway Construction Projects.

DECISION NO. NH81-3010

TRUCK DRIVERS

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CLASS I	6.41	.80	.50	a	
CLASS II	6.64	.80	.50	a	
CLASS III	6.87	.80	.50	a	

Class 1-Two axle equipment
Class 2-Three axle equipment including low beds
Class 3-Special earth hauling equipment other than conventional type on the road truck and semitrailers trailer dumps

PAID HOLIDAYS: A-New Year's Day; B-Memorial Day; C-Independence Day; D-Labor Day; E-Thanksgiving Day; F-Christmas Day.

Footnote: a Holiddys: A through F, plus Washington's Birthday, Veteran's Day and Columbus Day; (provided employee works two days in the calender week in which the holiday falls; reports for work the last day assigned prior to the holiday and the the first assigned following the holiday).

SUPERSEDEAS DECISION

STATE: New York COUNTY: Orange
DECISION NO.: NY81-3003 DATE: Date of Publication
Supersedes Decision No. NY79-3028 dated September 7, 1979 in 44 FR 52570
DESCRIPTION OF WORK: Building Construction, (does not include single family homes and apartments up to and including 4 stories), Heavy and Highway Construction Projects.

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Asbestos Workers	15.6654	.9138	1.8276		
Boilermakers	14.34	5%	5%		
Bricklayers, Cement Masons, Plasterers and Stonemasons					
All that portion bounded on the East by the Hudson River to Woodbury Twp. line South of Bear Mt., thence along this line to a point South of Lake Mombasha, thence due West to the Lehigh-Hudson River R.R. line, thence Northerly along this R.R. line to Maybrook, then Northerly along the Pen Central R.R. line to the Ulster County line and along this line Easterly to the starting point, the Hudson River.					
All that portion lying within these boundaries including the towns on the East side of the above named R.R. lines:					
Building	11.44	1.45	1.85		
Heavy & Highway	11.71	1.45	1.85		
Starting at the junction of Ulster County, Sullivan County, and Orange County, along Ulster County line, Southeast to the New York New Haven and Hartford R.R. line to a point South of Wisner, thence East to the top of the Bellvale Mt. Range, thence Southerly to the New Jersey State line, including the Towns of Warwick, New Milford & Bellvale					
Building	11.30	1.25	2.20		
Heavy & Highway	11.55	1.25	2.20		
Carpenters, Soft Floor Layers, Bridge, Dock and Wharf:					
Twps. of Tuxedo, Woodbury, Part of Cornwall, Monroe, Chester, Blooming Grove and Highlands	11.30	1.10	.60	1.45fn	.15
Carpenters, Piledrivermen & Rock Builders:					
Remainder of County	11.20	.80	1.15	.55	.05

	Basic Hourly Rates	Fringe Benefits Payments: H & W	Pensions	Vacation	Education and/or Appr. Tr.
Electricians					
Twps. of Otisville, Middletown, Goshen, Florida, Warwick, Port Jervis, Sparrow Bush, Monroe, Harmon, Southfield, Tuxedo Lake and Tuxedo	12.00	8%	19%	10%	1%
Remainder of County	12.50	7.4%	3%+1.20	.70	1%
Elevator Constructors	13.53	1.195	.95	a+b	.035
Elevator Constructors Helpers	9.47	1.195	.95	a+b	.035
Elevator Constructors Helpers Probationary	6.765				
Elevator Constructors Modernization	9.35	.495	.32+c	a+b	.02
Elevator Constructors Modernization Helpers	7.01	.495	.32+c	a+b	.02
Elevator Constructor Repair	8.50	.495	.32+c	a+b	.02
Elevator Constructor Repair Helper	6.38	.495	.32+c	a+b	.02
Glaziers	13.75	.66	1.91	.67	.01
Ironworkers	11.10	1.86	3.75	1.60	.01
Laborers, Building Common Laborers, Mason Tenders, Mortar Mixers, Hod Carriers, Scaffold Builders, Concrete men, Vibrator men, poured gypsum, Roof work, wrecking, walking power buggy men, Landscaper, Chipping Hammer (air or electric 1" and under)	10.00	1.15	1.15	d	
Asphalt men, Pipelayers, Air or Electric Jackhammer, Powdermen, Gunnite, Sandblasting, Air Trac, Barmen, Chain Saw, Riding Power Buggy, Vibro, Barco, Joy Tamper or similar, Joy or Jib Drills, Walk Behind Roller, Wagon Drill, All Fork Lifts	10.25	1.15	1.15	d	
Grade, Pipe, Concrete Clearing, Black Top, Drill, Paving etc., Blaster, Form Setter, Burner (acetylene torch), Ingersoll-Rand, Heavy Duty Crawler Type HCM2, Drill Machines or Equivalent, All wrecking work fifty feet or more above grade	10.65	1.15	1.15	d	

	Basic Hourly Rates	Fringe Benefits Payments: H & W	Pensions	Vacation	Education and/or Appr. Tr.
Laborers	8.57	1.03	.15	1.00	.01
Marble Setters, Terrazzo Workers & Tile Setters:					
West Newburgh, Little Britain, Rock Tavern, Lagrange, New Hampton, Ridgebury & Johnson to County Line and all areas inclusive South thereof					
Marble Setters, Cutters	12.55	1.21	1.71	e	
Marble Setters' Helpers	10.53	1.21	1.71	e	
Terrazzo Workers	11.88	1.32	1.50		
Terrazzo Workers' Helpers	9.48	1.21	1.50		
Terrazzo Machine Operator	7.68	.475	.475		
Tile Setters	12.325	1.15	1.10		
Tile Setters' Helpers	10.71	.30	1.27		
That area in Orange County following within a 30 mile radius from Columbus Circle, NYC. (Area boundary line is just south of Newburgh; South of Maybrook; North of Goshen, South of Middletown; North of Johnson; North of Unionville					
Marble Setter Helpers	9.63	1.85		f	
Tile Setter Helper	9.03	1.85		f	
Terrazzo Helper	9.65	1.85		f	
Painters:					
Commercial	10.60	1.00	.65		
Spray, Sandblasting, Steel, Smoke Stacks, Bridges, Power Plants, Radio Towers, Epoxy and other toxic materials	11.60	1.00	.65		
Plumbers & Steamfitters					
Twps., Villages and Hamlets and/or portions thereof: Lakeville, Four Corners, Sterling Forest, Tuxedo, Tuxedo Park, Southfield, Arden, Newburgh Junction, Greenwood Lake, Monroe, Harriman, Woodbury Falls, Woodbury Station, Central Valley, and the Palisades Interstate Park and Bear Mountain Park	13.86	1.00	1.76		.10
Jobbing & alterations Under $5,000	9.80	1.00	1.76		.10

	Basic Hourly Rates	Fringe Benefits Payments: H & W	Pensions	Vacation	Education and/or Appr. Tr.
Plumbers & Steamfitters					
Twps. of Otisville, Middletown, Goshen, Florida, Warwick, Port Jervis, Sparrow Bush, Monroe, Harmon, Southfield, Tuxedo Lake and Tuxedo	12.00	8%	19%	10%	1%
Remainder of County	12.50	7.4%	3%+1.20	.70	1%
Plumbers & Steamfitters Helpers	9.47	1.195	.95	a+b	.035
Plumbers & Steamfitters Helpers Probationary	6.765				
Plumbers & Steamfitters Modernization	9.35	.495	.32+c	a+b	.02
Plumbers & Steamfitters Modernization Helpers	7.01	.495	.32+c	a+b	.02
Plumbers & Steamfitters Repair	8.50	.495	.32+c	a+b	.02
Plumbers & Steamfitters Repair Helper	6.38	.495	.32+c	a+b	.02
Roofers:					
Roofers, Composition	10.00	1.15	1.15	d	
Roofers, Composition Kettlemen	10.25	1.15	1.15	d	
Roofers, Composition Tar Pot Firemen	9.75	1.15	1.15	d	
Roofers, Composition Helpers	8.00	1.15	1.15	d	
Roofers, Composition Damp & Waterproofers	10.25	1.15	1.15	d	
Roofers, Composition Damp & Waterproofers Helpers	8.00	1.15	1.15	d	
Roofers, Composition Slate & Tile	10.25	1.15	1.15	d	
Roofers, Composition Slate & Tile Helpers	8.00	1.15	1.15	d	
Sheetmetal Workers:					
Commercial	11.60	1.00	.65		
Spray, Sandblasting, Steel, Smoke Stacks, Bridges, Power Plants, Radio Towers, Epoxy and other toxic materials	12.60	1.00	.65		
Sprinkler Fitters					
Twps., Villages and Hamlets and/or portions thereof: Lakeville, Four Corners, Sterling Forest, Tuxedo, Tuxedo Park, Southfield, Arden, Newburgh Junction, Greenwood Lake, Monroe, Harriman, Woodbury Falls, Woodbury Station, Central Valley, and the Palisades Interstate Park and Bear Mountain Park	13.86	1.00	1.76		.10
Jobbing & alterations Under $5,000	9.80	1.00	1.76		.10

	Basic Hourly Rates	Fringe Benefits Payments: H & W	Pensions	Vacation	Education and/or Appr. Tr.
Steamfitters					
Twps. of Otisville, Middletown, Goshen, Florida, Warwick, Port Jervis, Sparrow Bush, Monroe, Harmon, Southfield, Tuxedo Lake and Tuxedo	12.00	8%	19%	10%	1%
Remainder of County	12.50	7.4%	3%+1.20	.70	1%
Steamfitters Helpers	9.47	1.195	.95	a+b	.035
Steamfitters Helpers Probationary	6.765				
Steamfitters Modernization	9.35	.495	.32+c	a+b	.02
Steamfitters Modernization Helpers	7.01	.495	.32+c	a+b	.02
Steamfitters Repair	8.50	.495	.32+c	a+b	.02
Steamfitters Repair Helper	6.38	.495	.32+c	a+b	.02
Sprinkler Fitters					
Twps., Villages and Hamlets and/or portions thereof: Lakeville, Four Corners, Sterling Forest, Tuxedo, Tuxedo Park, Southfield, Arden, Newburgh Junction, Greenwood Lake, Monroe, Harriman, Woodbury Falls, Woodbury Station, Central Valley, and the Palisades Interstate Park and Bear Mountain Park	13.86	1.00	1.76		.10
Jobbing & alterations Under $5,000	9.80	1.00	1.76		.10

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Roofers:					
Pitch, Pitch built up	12.25	1.10	1.95	a	.35
Asphalt Shingle	9.25	1.10	1.95	a	.35
Asbestos, Slate & Tile, Slab, & Asphalt Built up	11.75	1.10	1.95	a	.35
Sheet Metal Workers	14.56	2.236	2.20		.13
Sprinkler Fitters	14.52	.85	1.20		.08
Welders receive rate prescribed for craft performing operation to which welding is incidental					
Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5(a)(1)(ii)).					

FOOTNOTES:

a. In the event of a death in the family of the member of the unit he shall be paid 3 days wages, family means husband, wife, mother, father, sister, brother or children. Wages are only paid on the condition that the member of the unit attends the funeral of the deceased.

b. Employer contributes $7.00 per day to Annuity Fund.

c. Employer contributes 6.4% of basic hourly rate for 5 years or more service or 4.2% basic hourly rate for 6 months to 5 years of service as Vacation Pay Credit.

d. Election Day shall be observed in accordance with New York State Law.

e. Paid Holidays: New Year's Eve & Christmas Eve.

f. Paid Holidays: New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, Good Friday, Columbus Day, Providing employee works any one of three days preceeding or following the holiday.

g. Two hours off with pay on General Election Day, provided the employee has received 4 hours pay that day.

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
HEAVY & HIGHWAY CONSTRUCTION					
LABORERS:					
GROUP I	10.15	1.15	1.15	a	
GROUP II	10.40	1.15	1.15	a	
GROUP III	10.80	1.15	1.15	a	

HEAVY AND HIGHWAY CONSTRUCTION

GROUP I
Laborers, pitman, chuck tender, dump men, placing and maintenance of all flares, lights, barracades and all reflective type materials for traffic control

GROUP II
Concrete men, vibrator men, asphalt men, joint setter, signal men, mason tenders, mortar men, pipelayers, rip rap and dry stone layers, steel rod carriers, jackhammer, pavement breaker, wagon drill, air track, jib rig and joy drill op., power buggy op., gunnite and sandblasting, coal passers and other machine op., sprayer and nozzle men on mulching and seeding machines, all seeding and sod laying, all landscape work, grade checkers, all bridge work, walk behind self-propelled power saw walk behind rollers and tampers of all types, wrecking laborers (including barmen and burnermen), sheeting and shoring laborers, bit grinder, operator of form pin pullers and drivers, joint and jet sealers and filling and wiring of baskets for gabion walls, permanent signal man

GROUP III
Concrete finisher on highways, form setter, granite stone layer, ingersoll rand heavy duty crawler - master type MXMI or equivalent or any drill using a 4" or larger bit

FOOTNOTE:
a. Holidays: New Year's Day; Memorial Day; Independence Day; Labor Day; Thanksgiving Day; Christmas Day; Lincoln's Birthday; Washington's Birthday; Columbus Day; Election Day; Veteran's Day; provided employee works one day in the calendar week in which the holiday falls and reports for work the first working day following the holiday.

LINE CONSTRUCTION	Basic Hourly Rates a	Fringe Benefit Payments H & W	Pensions	Vacation	Education and/or Appr. Tr.
Electrical Overhead & Underground Distribution Work					
Journeyman Lineman & Technician	11.60	1.40	3%+1.00	a	
Cable Splicer	13.32	1.40	3%+1.00	a	
Groundman Digging Machine Operator, Groundman Dynamite Man	10.445	1.40	3%+1.00	a	
Groundman Mobile Equipment Operator, Mechanic First Class, Ground Truck Driver	9.39	1.40	3%+1.00	a	
Groundman Truck Driver (Tractor Trailer)	9.8975	1.40	3%+1.00	a	
Driver Mechanic, Groundman - Experienced	8.2621	1.40	3%+1.00	a	
All Overhead Transimission Line Work and Lighting for Athletic Fields					
Journeyman Lineman & Technician	13.23	1.40	3%+1.00	a	
Groundman Digging Machine Operator, Groundman Dynamite Man	11.95	1.40	3%+1.00	a	
Groundman Mobile Equipment Operator, Mechanic First Class, Groundman Truck Driver	10.65	1.40	3%+1.00	a	
Groundman Truck Driver (Tractor Trailer Unit)	11.30	1.40	3%+1.00	a	
Driver Mechanic, Groundman - Experienced	10.00	1.40	3%+1.00	a	
Sub-Station, Switching Structures (when not part of the line), Electrical, Telephone or CATV Commercial Work, Street Lighting & Signal Systems					
Journeyman Lineman & Technician	13.45	1.40	3%+1.00	a	
Cable Splicer	15.32	1.40	3%+1.00	a	
Groundman Digging Machine Operator, Groundman Dynamite Man	12.58	1.40	3%+1.00	a	
Groundman Mobile Equipment Operator, Mechanic First Class, Groundman Truck Driver	11.21	1.40	3%+1.00	a	
Groundman Truck Driver (Tractor Trailer Unit)	11.895	1.40	3%+1.00	a	
Driver Mechanic, Groundman - Experienced	10.525	1.40	3%+1.00	a	

LINE CONSTRUCTION CONT'D	Basic Hourly Rates	Fringe Benefit Payments H & W	Pensions	Vacation	Education and/or Appr. Tr.
All Pipe type Cable Installations Maintenance Jobs or Projects					
Journeyman Lineman	13.95	1.40	3%+1.00	a	
Certified Lineman Welder	14.635	1.40	3%+1.00	a	
Cable Splicer	15.32	1.40	3%+1.00	a	
Groundman Equipment Operator	13.95	1.40	3%+1.00	a	
Groundman Truck Driver (Tractor Trailer Unit)	11.895	1.40	3%+1.00	a	
Groundman Truck Drivers	11.21	1.40	3%+1.00	a	
Groundman	10.525	1.40	3%+1.00	a	

FOOTNOTE:

a. Paid Holidays: New Year's Day, Washington's Birthday, Good Friday, Decoration Day, Independence Day, Labor Day, Thanksgiving Day, Christmas Day, and Election Day for the President of the United States and Election Day for the Governor of New York State, provided the employee works the day before or the day after a holiday

	Basic Hourly Rates	Fringe Benefit Payments H & W	Pensions	Vacation	Education and/or Appr. Tr.
POWER EQUIPMENT OPERATORS:					

POWER EQUIPMENT OPERATORS: BUILDING, HEAVY, HIGHWAY, ROAD, STREET AND SEWER CONSTRUCTION (CONT'D)

GROUP 3

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
POWER EQUIPMENT OPERATORS: BUILDING, HEAVY, HIGHWAY, ROAD, STREET AND SEWER CONSTRUCTION:					
GROUP 1	16.91	12%+.40	10%	a	3%
GROUP 2	15.09	12%+.40	10%	a	3%
GROUP 3	14.21	12%+.40	10%	a	3%
GROUP 4	14.10	12%+.40	10%	a	3%
GROUP 5	13.87	12%+.40	10%	a	3%
GROUP 6	13.38	12%+.40	10%	a	3%
GROUP 7	13.09	12%+.40	10%	a	3%
GROUP 8	12.92	12%+.40	10%	a	3%
GROUP 9	12.87	12%+.40	10%	a	3%
GROUP 10	12.75	12%+.40	10%	a	3%
GROUP 11	12.70	12%+.40	10%	a	3%
GROUP 12	12.46	12%+.40	10%	a	3%
GROUP 13	12.06	12%+.40	10%	a	3%
GROUP 14	11.89	12%+.40	10%	a	3%
GROUP 15	11.55	12%+.40	10%	a	3%

POWER EQUIPMENT OPERATORS: BUILDING, HEAVY, HIGHWAY, ROAD, STREET AND SEWER CONSTRUCTION

GROUP 1
Helicopters pilot/engineer

GROUP 2
Autograde-combination subgrader, base MTL spreader & base trimmer (CMI & similar type); autograde placer-trimmer-spreader-combination (CMI & similar types); autograde slip form paver (CMI & similar types); back hoes (all types, including all combination hoe loaders); central power plants (all types); concrete paving machines; cranes (all types, including overhead & straddle travelling type); cranes, gantry; derricks- land or floating (building & heavy construction rate only), drill master, quarry master (down the hole drill); draglines; elevator graders; engines, large diesel (1625 HP) and staging pump; front end loaders (5 yds & over); gradalls; grader, rago; helicopters co-pilot and communication engineer; jacks, screw air hydraulic power operated unit or console type (not hand jack or pile load test type); locomotive (large); mucking machines; pavers (21E and over); paver, cesinous, Broyhill; pavement and concrete breaker (i.e. superhammer); pavement breaker truck mounted; piledriver; scooper (loader and shovel) Koehring; shovels; treechopper with boom; trench machines

POWER EQUIPMENT OPERATORS: BUILDING, HEAVY, HIGHWAY, ROAD, STREET AND SEWER CONSTRUCTION (CONT'D)

GROUP 3
Pump, staging

GROUP 4
A-frame, boom attachment on loaders; boring & drilling machines; brush chopper, shipper & shredder; cableways; carryalls; cherry pickers - 6 tons & under (over 6 tons - crane rate applies); concrete pump; concrete pump system, pumperete, squeezecrete & similar types; equipment); forklifts; front end loaders (2 yds but less than 5 yds); groove cutting machines (ride or type); heater planer; hoist (Chicago Boom); Pans, LeTourneau, DW's Ukes, pumpcrete machines, squeezecrete & concrete pumping; scrapers-LeTourneau, Dw's Ukes; side booms; squeezecrete; "straddle" carrier, Ross and similar types; winch trucks (hoisting)

GROUP 5
Aerial platform (used as hoist); hoists all types except Chicago Boom type (building & heavy construction rate only); elevator or house cars (building and heavy construction rate only); roof hoists

GROUP 6
Asphalt spreaders; bridge deck finisher; grader, finish only; rollers-backtop

GROUP 7
Asphalt curbing machines; asphalt plant engineer; autograde tube finisher & texturing machine (CMI & similar types); autograde concrete machine (CMI & similar types); autograde curb trimmer & sidewalk shoulder, slipform (CMI & similar types); barbending machines (power); batchers, batching plant & crusher on site; bet convey or system; boilers and steam jennies (building & heavy construction rate only); boom type skimmer machines (building & heavy construction rate only); car dumpers (railroad); compressor and blower type units; concrete breaking machines; concrete finishing machines; concrete saws & cutters (ride on type); concrete spreaders-hetzel, recomatic & similar types; concrete vibrators (highway, road, street & sewer construction rate only); conveyors, under 125 ft.; crushing machines; ditching machine, small (Ditch witch or

POWER EQUIPMENT OPERATORS: BUILDING, HEAVY, HIGHWAY, ROAD, STREET AND SEWER CONSTRUCTION (CONT'D)

GROUP 7 (CONT'D)
similar); drill doctor (duties include dust collector); dope pots (mechanical with or without pump); dumpeters; fine grade machine (large type); front end loaders (1 yd & over but less than 2 yds) - highway, road, street & sewer construction rate only; front end loaders (under 2 yds) - building and heavy construction rates only; generators; giraffe grinders; graders and motor patrols; gunnite machines (excluding nozzle); hammer vibratory (in conjunction with generator); hoppers; hopper doors (power operated); ladders (motorized) - building & heavy construction rate only; laddervator; lights, portable generating light plants; locomotive (dinky type); mechanic; mixers (excepting paving mixers); motor patrols & graders; pavers (under 21E); pavement breakers - small, self-propelled ride on type (also maintains compressor or hydraulic unit); pipe bending machine (power); pitch pump; plasterer pump (regardless of size) - building & heavy construction rate only; post hole digger; rod bending machines (power); scales, power; seaman pulverizing mixer; silos; skimmer machines (boom type) - highway, road, street & sewer construction rate only; steam jennies and boilers; steel cutting machines, services & maintains; vibrating plants (used in conjunction with unloading); welder and repair mechanic

GROUP 8
Compressors (2 or 3 within a total distance of 100' constitutes a battery) - building & heavy construction rate only; welding machines, gas or electric converters of any type - (2 or 3 in battery) - building and heavy construction rates only; welding system, mutiple (rectifier transformer type) - building & heavy construction rate only

GROUP 9
Brooms & sweepers; bulldozer, D5 and over; fireman, sprinkler and water pump trucks (used on job site or in conjunction with jobsite); stone spreaders; sweepers & brooms; tractor, D8 & over; water and sprinkler trucks (used on job site or in conjunction with job site)

POWER EQUIPMENT OPERATORS: BUILDING, HEAVY, HIGHWAY, ROAD, STREET AND SEWER CONSTRUCTION (CONT'D)

GROUP 10
Compressors (2 or 3 within a total distance of 100' constitutes a battery) - highway, road, street and sewer construction rate only

GROUP 11
Front end loaders (under 1 yd.) - highway, road, street & sewer construction rate only

GROUP 12
Bulldozer under D5; rollers - grade fill or stone base; tractors, under D8

GROUP 13
Compressor (single); heaters (Nelson or other type including propane, natural gas of flow type units); pumps (4 inch suction & over including submersible pumps); pumps (2 or less than 4 inch suction including submersible pumps); pumps, diesel engine & Hydraulic (immaterial of power) - highway, road, street & sewer construction rate only; temporary heating plant (Nelson or other type, including propane, natural gas or flow type units); welding machines, gas or electric converters of any type - single (building & heavy construction rate only); welding machines, gas or electric converters of any type (2 or 3 in battery) - highway, road, street & sewer construction rate only; wellpoint systems (including installation and maintenance)

GROUP 14
Concrete spreaders, (small type) convey or loaders (not including elevator graders) - highway, road, street & sewer construction rate only, farm tractors (highway, road, street & sewer construction rate only); fertilizing equipment; fine grade machine (small type) - highway, road, street and sewer construction rate only; form line graders (small type) - highway, road, street & sewer construction rate only; grease, gas, fuel and oil supply trucks; mixers, concrete small (highway, road, street and sewer construction rate only);mulching equipment; road finishing machines (small type) - highway, road, street and sewer construction only; seeding equipment; tamping machines, vibrating self-propelled; welding machines, gas or electric converters of any type-single (highway, road, street and sewer construction rate only)

GROUP 15
Assistant engineer/oiler; mechanics helper; tire repair and maintenance

Basic Hourly Rates	Fringe Benefits Payments			
	H & W	Pensions	Vacation	Education and/or Appr. Tr.
$ 9.00	1.50	1.50	0.30	0.20

POWER EQUIPMENT OPERATORS - STEEL ERECTION

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
POWER EQUIPMENT OPERATORS: STEEL ERECTION					
GROUP 1	18.72	12%+.40	10%	a	3%
GROUP 2	16.91	12%+.40	10%	a	3%
GROUP 3	16.00	12%+.40	10%	a	3%
GROUP 4	15.26	12%+.40	10%	a	3%
GROUP 5	13.48	12%+.40	10%	a	3%
GROUP 6	13.09	12%+.40	10%	a	3%
GROUP 7	12.94	12%+.40	10%	a	3%
GROUP 8	12.57	12%+.40	10%	a	3%
GROUP 9	12.01	12%+.40	10%	a	3%

50¢ per hour on machines where "Cat Head" or "Sheave Point" is at least 100 feet above groung level and less than 140 feet; 75¢ per hour on machines where "Cat Head" or "Sheave Point" is 140 feet, or "Sheave Point" is 140 feet, or over above ground level.

FOOTNOTES:

a. Paid Holidays: New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, Christmas Day, Washington's Birthday, Presidential Election Day, and Veterans Day provided the employee works any of the 3 days in the 5 work days preceeding the holiday and the first work day after the recognized holiday.

POWER EQUIPMENT OPERATORS - STEEL ERECTION

GROUP 1
Helicopters pilot/engineer

GROUP 2
Cranes (all cranes - land or floating with booms - including jib, 140 feet and over above the ground); derricks (land or floating with booms including jib, 140 feet and over above the ground); helicopters co-pilot & communications engineer

GROUP 3
Cranes (all cranes - land or floating with booms - including jib, less than 140 feet above the ground); derricks (land or floating, with booms including jib, less than 140 feet above the ground)

GROUP 4
Aerial platform used as hoist; a-frame; cherry pickers - 6 tons and under (over 6 tons - crane rate applies); fork lifts; hoists (all types except Chicago Boom type); jacks (agrew air hydraulic power operated unit or console type, not hand jack or pile load test type); side booms

GROUP 5
Compressors (2 or 3 in battery); generators; welding machines (gas Or electric convertors of any type 2 or 3 in battery multiple welders) welding system mutiple (rectifier transformer type)

GROUP 6
Maintenance engineer

GROUP 7
Fireman

GROUP 8
Compressor (single); rod bending machines (power); welding machines (gas or electric converters of any type-single)

GROUP 9
Assistant engineer/oiler; straddle carrier

SUPERSEDEAS DECISION

DECISION NO. WV81-3003 Page 14

STATE: NORTH CAROLINA COUNTIES: Bladen, Chatham, Cumberland, Duplin, Harnett, Hoke, Lee, Moore, Pender, Robeson, Sampson, and Scotland

DECISION NUMBER: NC81-1182 DATE: Date of publication
Supersedes Decision Nos.: ~~NC81-2197, December 30, 1980, 45 FR 86196~~ NC81-1141, December 30, 1980, 45 FR 86196
DESCRIPTION OF WORK: Building Construction (excluding single family homes and apartments up to and including four stories)

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
TRUCK DRIVERS					
Drivers on LeTourneau Tractors, double barrel Euclids, Athey wagon and similar equipment (except when hooked to scrapers), low beds, I-Bean, pole trailers, road oil distributors, tire trucks tractors and trailers with 5 axle and over	11.50	1.00	1.05	a	
Equipment 25 yards and over up to and including 30 yard bodies cable dump trailers, powder and dynamite trucks	11.40	1.00	1.05	a	
Equipment up to and including 24 yards bodies, mixer trucks, dump crete trucks and similar types of equipment, fuel trucks and all other tractor trailers	11.20	1.00	1.05	a	
Ten wheelers, grease trucks and tiller men	10.60	1.00	1.05	a	
Straight trucks	11.00	1.00	1.05	a	
Pick-up trucks used for hauling material parts escort man over the road	11.00	1.00	1.05	a	

PAID HOLIDAYS:
A-New Year's Day; B-Memorial Day; C-Independence Day; D-Labor Day; E-Thanksgiving Day and F-Christmas Day

FOOTNOTE:
a. Holidays: A through F

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR 5.5(a)(1)(ii)).

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Air conditioning mechanics	$6.24				
Bricklayers	8.00				
Carpenters	5.88				
Cement masons	5.39				
Electricians	6.94				
Electronic technicians	6.70				
Glaziers	5.25				
Insulators	7.72				
Ironworkers:					
structural & ornamental	6.77				
reinforcing	9.45				
Laborers:					
lathers	8.80				
mason tenders	4.00				
pipelayers	4.52				
unskilled	3.72				
Millwrights	9.45				
Painters	5.00				
Plasterers	7.25				
Plumbers & Pipefitters	9.45				
Power Equipment Operators:					
asphalt paver	4.75				
asphalt raker	4.50				
asphalt roller	4.25				
backhoe	6.77				
bulldozer	8.55				
crane	10.00				
forklift	6.30				
front end loader	6.25				
mechanic	6.00				
scraper	5.89				
Roofers	5.00				
Sheet metal workers	5.54				
Soft floor layers	5.75				
Sprinkler fitters	8.75				
Tile setters	5.75				
Truck drivers	3.72				

Unlisted classifications needed for work not included within the scope of this classification may be added only after award as provided in the labor standards contract clauses (29 CFR, 5.5 (a)(1)(ii)).

[FR Doc. 81-2338 Filed 1-22-81; 8:45 am]
BILLING CODE 4510-27-C

SUPERSEDEAS DECISION

STATE: NORTH CAROLINA COUNTIES: Carteret, Craven, Jones, Lenior, Onslow, and Pamlico

DECISION NUMBER: NC81-1181 DATE: Date of publication
Supersedes Decision No. NC81-1145, December 30, 1980, 45 FR 86198
DESCRIPTION OF WORK: Building Construction (excluding single family homes

[FR Doc. 81-2288 Filed 1-22-81; 8:45 am]
BILLING CODE 4510-27-C

SUPERSEDEAS DECISION

STATE: NORTH CAROLINA COUNTIES: Carteret, Craven, Jones, Lenior, Onslow, and Pamlico

DECISION NUMBER: NC81-1181 DATE: Date of publication

Supersedes Decision No. NC81-1145, December 30, 1980, 45 FR 86198

DESCRIPTION OF WORK: Building Construction (excluding single family homes and apartments up to and including four stories)

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Asbestos workers	$7.26				
Brickalyers	7.10				
Carpenters	6.02				
Cement masons	5.68				
Drywall mechanics	7.00				
Electricians	5.94				
Electronic technicians	4.50				
Glaziers	5.38				
Insulation mechanics	6.50				
Ironworkers	6.66				
Laborers:					
mason tenders	3.78				
pipelayers	4.94				
unskilled	3.78				
Painters	5.00				
Plasterers	6.00				
Plumbers	6.07				
Power Equipment Operators:					
asphalt raker	4.27				
backhoe	5.32				
bulldozer	5.25				
crane	6.80				
distributor	4.70				
forklift	6.50				
loader	4.50				
motor grader	5.36				
pans - scraper	4.60				
paver - screed	4.25				
roller	5.00				
tractor	5.00				
Roofers	5.91				
Sheet metal workers	5.77				
Soft floor layers	7.00				
Sprinkler fitters	7.95				
Tile setters	6.00				
Truck drivers	5.85				

Unlisted classifications needed for work not included within the scope of this classification may be added only after award as provided in the labor standards contract clauses (29 CFR, 5.5 (a)(1)(ii)).

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federal register

Friday
January 23, 1981

Part VII

Department of Agriculture

Food and Nutrition Service

Food Stamp Program; Photo Identification

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Parts 272, 273, 274, and 278

[Amendment 19]

Food Stamp Program; Photo Identification

AGENCY: Food and Nutrition Service, USDA.

ACTION: Proposed rule.

SUMMARY: This rulemaking proposes to amend the current regulations published October 17, 1978 (43 FR 47846) concerning the identification of food stamp participants. The amendment proposed in this rulemaking would mandate photo identification in certain areas as a result of changes in the Food Stamp Act enacted by Pub. L. 96-249, 94 Stat. 357, May 26, 1980. The purpose of this proposed rule is to improve program integrity without creating barriers to households with a legitimate need of food assistance.

DATE: Comments must be received on or before March 24, 1981 to be assured of consideration.

ADDRESS: Comments should be submitted to: Alberta C. Frost, Deputy Administrator for Family Nutrition Programs, Food and Nutrition Service, USDA, Washington, D.C. 20250. All written comments will be open to public inspection at the offices of the Food and Nutrition Service during regular business hours (8:30 a.m. to 5:00 p.m. Monday through Friday) at Room 678, 500 12th Street, S.W., Washington, D.C. 20250. Phone (202) 447-8-9075.

FOR FURTHER INFORMATION CONTACT: Larry R. Carnes, Chief, Policy and Regulations Section, Program Standards Branch, Program Development Division, Food and Nutrition Service, Washington, D.C. 20250. Phone (202) 447-9075. The Draft Impact Analysis is available on request from the above-named individual.

SUPPLEMENTARY INFORMATION: This proposed action has been reviewed under USDA procedures established in Secretary's Memorandum 1955 to implement Executive Order 12044 and has been classified "not significant".

The proposal has been reviewed with regard to the requirements of Public Law 96-354. Robert Greenstein, Administrator of the Food and Nutrition Service, has certified that the proposal does not have a significant economic impact on a substantial number of small entities. The proposal would require use of photo ID cards in the food stamp program in project areas (defined in 7 CFR 271.2) with over 50,000 participants. Therefore, small government jurisdictions are not affected. Small business and small organizations are affected only to the degree that they serve as food stamp issuing agents in jurisdictions where photo ID's would be required—and the only impact on them is that they must check the photo ID and record the ID number before issuing stamps. This is not a requirement with a significant economic impact.

Section 117 of Pub. L. 96-249 directs that food stamp households present a photo identification card to obtain food stamps in those food stamp project areas (defined in 7 CFR 271.2), or parts of project areas, where the Secretary, in consultation with the Department's Inspector General, finds this would be useful to protect program integrity.

Current regulations (7 CFR 273.10 (g)(4)) require State agencies to issue an ID card to each certified household as proof of eligibility. The household presents the ID card when it receives its food stamp allotment. In addition, if a food retailer has any cause to believe that a person presenting coupons has no right to use the coupons, then that person is requested to show the household's card.

States may currently use photo ID cards but may not require households to accept and use photo ID cards as a condition of receiving food stamps as this was not specified as a condition of eligibility by the Act prior to passage of Pub. L. 96-249.

Areas where photo ID's would be mandated

The principal question addressed by this proposed rule is where to mandate use of photo ID cards. The House Committee Report accompanying Pub. L. 96-249 (Report No. 96-788) states that: "Use of the card should be restricted to large urban areas, although the Secretary would have the discretion, after consulting with the Department's Inspector General, to require use of such a card in any project area(s) or part(s) thereof where he determined that resort to the card as an anti-fraud device would be useful to protect program integrity. . . . The Committee expects the Department to apply the photo identification requirement sparingly and with discrimination because of its cost and because of its tendency to deter genuinely needy households from receiving food stamps. The requirement should not be applicable, other than in rare instances, to predominantly rural areas. It is definitely a useful tool in curtailing program abuses and highly cost-beneficial when applied somewhat surgically to duplicate redemptions problem areas, such as those in large metropolitan centers."

As the Report indicated, the principal utility of photo ID cards is in preventing duplicate issuances. If a food stamp authorization card is stolen from the mails, a photo ID card can prevent its being illegally transacted. Duplicate issuances have been a problem in New York City and a number of other large cities. New York City estimates that about 2,500 authorization cards a month are stolen and transacted, and that use of photo ID cards should eliminate most of these illegal transactions. Duplicate redemptions have not been a problem in non-metropolitan areas.

In accordance with both the House Committee Report and the Department's own data which indicate the need for photo ID's in major urban centers but not in rural areas, and based on consultation with the Departments Inspector General, this rulemaking proposes to mandate the use of photo ID's in project areas with 50,000 or more food stamp participants. These project areas cover urban areas, where photo ID's are likely to be cost-effective, and include nearly half of the entire food stamp caseload.

In addition, the proposed rule would also allow FNS, in conjunction with the Department's Inspector General, to mandate photo identification in project areas with less than 50,000 food stamp participants if there is evidence that this is necessary in such areas to protect program integrity. Factors to be considered would include, but are not limited to, the history of the level of duplicate issuances in that project area (the higher the level of replacement cards issued, the greater the need for photo identification) and results of management evaluation reviews of the area's issuance problems.

At the same time, the Department recognizes that not every project area in the nation with 50,000 or more food stamp participants may have a need for photo identification. A project area may have a very low level of duplicate issuances, in which case the photo identification requirement may not be cost-effective. Also, a project area using mail issuance for a sizeable portion of its food stamp caseload may not need photo identification. To allow for these and other such factors, the Department proposes to allow States to submit justification to FNS which demonstrates that this requirement is not necessary in particular project areas. FNS, in conjunction with the Inspector General, will determine when to grant requests for exemptions for such project areas.

There is one circumstance where the 50,000 participant rule may not really accomplish its intended purpose of targeting urban areas and other locations with a high concentration of food stamp recipients. This occurs where the entire State is a single food stamp project area, or where project areas cover multi-county welfare districts. If a heavily rural State constitutes a single project area, the State as a whole may have participation over 50,000 even though no part of the State approaches this level of participation. In this situation, photo identification may not be necessary in the State, and certainly is not likely to be necessary or cost-effective in the entire State.

The proposed rule therefore contains special provisions for treating these project areas. Where project areas with more than 50,000 participants cover welfare districts or entire States, as opposed to individual counties, cities, or parishes, the State agency would work with FNS to identify those areas where photo identification is needed. The Department would, in consultation with the State agency, establish which (if any) parts of the project area would be required to apply the photo identification requirement. The Department is especially interested in receiving comments on this approach.

These provisions covering which areas are subject to the photo ID requirement are designed to be targeted to areas where photo ID's should save funds through reduction of duplicate issuances, while excluding those areas where photo ID's are likely to cost more than they save. Due to the cost of the photo ID cards, the requirement is likely to be cost-ineffective in areas without duplicate issuance problems.

The requirements for photo ID's set forth in these rules should be read in conjunction with proposed rules to restrict or control issuance of replacement authorization documents. The proposed rules on replacement issuances should, themselves, have a significant impact on reducing duplicate issuances.

Upon publication of final rules on photo ID requirements, the Department would notify States of which project areas (except for multi-county and Statewide project areas) have 50,000 or more food stamp participants and are subject to the photo ID requirement. FNS would use the latest data available in making this determination. In addition, shortly after publication of the final rule, the Department would determine, in consultation with State agencies, which parts of multi-county or Statewide project areas with more than 50,000 participants are subject to the requirement. Thereafter, the Department would notify States at the beginning of each fiscal year of any additions to or deletions from the list of areas subject to the requirement. The Department would be authorized, at any time (including times other than the publication of final rules or the beginning of the fiscal year), to determine that an area with fewer than 50,000 participants should be subject to the photo ID requirement or that an area with more than 50,000 participants should, in response to a State agency request, be exempt from the requirement.

Use of photo ID's in ATP and HIR systems

Pub. L. 96-249 and the House Committee Report indicate that the photo ID should be used in areas using authorization cards (ATPs) as an intermediate step in the coupon issuance process. Since the authorization card can be lost or stolen, the photo ID can be used to ascertain whether the person attempting to transact the card at a food stamp issuance point is a legitimate recipient. By contrast, in a coupon mail-out system, photo ID's would serve no purpose. The recipient never appears at an issuance point to exchange an intermediary authorization document for coupons. The House Committee Report states that the photo ID requirement should not be applied to areas with mail issuance. This proposed rulemaking reflects this approach.

Some project areas use a third system, however, known as the household issuance record (HIR) system. In these issuance systems, the household is not mailed an intermediary authorization document, but must appear in person at an issuance point each month. The issuance point maintains a household issuance record document indicating the amount of benefits the household has been certified to receive for that month. Since no intermediary authorization document is used, and therefore no document can be lost or stolen and transacted by another person, the House Committee Report suggests that the photo ID requirement also should not apply where HIR systems are used. At the same time however, since a household member must still appear in person to receive coupons, a photo ID card may serve a useful purpose in preventing improper acquisition of food stamps at the issuance point. Therefore, the proposed rule would require that project areas with either ATP or HIR systems be subject to the photo ID requirement (areas with mail issuance would not be covered). The Department is especially interested in comments on whether areas with HIR systems should be subject to the requirement.

It should be noted that most urban areas use ATP issuance systems, and that most areas using HIR or mail issuance systems have fewer than 50,000 participants and would normally not be subject to the photo ID requirement, anyway.

Photo ID exemptions

Section 11(e)(2) of the Food Stamp Act of 1977 directs that certain persons, principally those who cannot come to the food stamp office because they are elderly or handicapped, and who are unable to appoint an authorized representative, are to be provided out-of-office certifications. Since such persons do not come to the food stamp office, it is not practicable to provide them with a photo ID. Pub. L. 96-249 recognizes this fact, and contains an exception for persons who must be certified out of the food stamp office. Therefore this rule proposes that a photo ID not be required of households certified by out-of-office interviews. Additionally, the proposed rule would exempt elderly and disabled households processed under SSI/SSA joint processing rules from photo ID requirements because such households are interviewed at the SSA office and do not visit the food stamp office. If, however, any of these households, or their authorized representatives, visit the food stamp local office (e.g., to report a coupon loss), the State agency should attempt to issue them a photo ID card.

State agencies would issue photo ID's to households certified for expedited service unless this could not be done within the expedited service timeframes. If this occurs, a nonphoto ID card would initially be issued, and would then have to be replaced with a photo ID prior to issuance of the next allotment. However, issuance of a photo ID within the expedited service timeframes should normally be possible, as the photo ID could generally be made at the time the household is in the food stamp office for its interview.

Finally, the House Committee Report directs that a "good cause" exemption be granted to those persons whose religion does not permit them to be photographed. The proposed rule would implement this directive, which the Department envisions would be used in few circumstances.

A household that did not receive a photo ID card for one of these reasons would be issued an ID card which meets the photo ID card specifications (discussed later in this preamble), except that, in lieu of a photograph, the

State agency would annotate the card in some fashion to indicate that it is valid without the photograph.

Noncompliance

The proposed rule would permit any responsible household member to comply with the photo identification requirement. The person whose picture appeared on the photo ID would be the only person authorized to obtain coupons for the household. If no member of the household agrees to be photographed, and the household does not designate an authorized representative to be photographed and obtain the household's coupons, then the household would not be permitted to participate in the food stamp program. The household would be ineligible to participate in the program until the photo identification requirement is complied with.

This rule proposes that when an authorized representative designated by the household to obtain coupons for the household does not comply with the photo identification requirement that person would not be allowed to act in this capacity on the household's behalf. The household would be required to either designate another authorized representative or have a household member comply with the requirement for the household to be considered in compliance.

Photo ID card specifications

Current regulations on food stamp ID's specify that the ID be issued in the name of the household member to whom the ATP was issued, and that the household member and any authorized representative sign the ID prior to its use. Other specifications such as serialization, address, and format are at the State agency's option.

This rule would add several requirements where photo ID's are used. While States would have a wide degree of latitude, subject to FNS approval, on what to require on the photo ID card, the photo ID would have to be laminated, serialized, include a color picture, and provide space for the signature of the person pictured in the ID. These specifications have been recommended by the Department's Office of Inspector General as being necessary to prevent unauthorized use of the photo ID card. State agencies would be allowed to require other identifying information, such as an expiration date or the household's address. The photo ID card would be subject to FNS approval.

With regard to the use of serial numbers, the rule proposes that, at coupon issuance, the cashier annotate the photo ID number on either the ATP card or HIR card, whichever is applicable. Annotating the ID number on the ATP/HIR card should ensure that the cashier checks the photo ID card, and would provide a means for determining in reviews whether issuance agents were properly performing this function. Also, the annotation would show whether two ATP's for a particular allotment were issued to the same household. Finally, households would be discouraged from attempting to receive duplicate issuances if they know that their photo ID number is being recorded on the ATP/HIR card. If a household falsely reported nonreceipt of an ATP card, received a replacement ATP, and transacted both cards, the presence of the household's photo ID number on both cards would constitute important substantiation of fraud.

In the interests of cost efficiency, the Department envisages a food stamp photo identification system that, whenever possible, builds off existing photo ID systems. Some areas already use photo ID's in public assistance and/or general assistance programs. The Department does not wish to require separate photo ID's for cash assistance and food stamps where this is not necessary.

Accordingly, State agencies would be allowed to use a single photo ID card in conjunction with other programs where the card meets the minimum specifications required for food stamp ID's (i.e., it is laminated, serialized, has a color picture, and has a space for the signature of the person in the photograph).

There is one difficult question in this area, however. If a photo ID card from another program is to be used, should the Department require that a notation be made on the photo ID indicating that the person receives food stamps?

On the one hand, such a notation would be useful if the retail store asked to see an ID. If no such notation appeared on the card, the retailer would not be certain that the person presenting the card was a food stamp recipient.

On the other hand, the requirement for a notation of the card might cause a considerable expense and administrative burden in some areas. Metropolitan areas now using photo ID's in cash assistance programs might have to redesign and replace ID's for their entire cash assistance caseload, or alternatively, they would have a unlaminate the cards. Since the overwhelming majority of cash assistance recipients in most jurisdictions also receive food stamps, an argument can be made that the problems arising from not requiring a notation are marginal and do not justify the administrative burden.

A third approach could be to require the notation but to give State agencies an extended period of time (beyond the implementation timeframes required in this rulemaking) to annotate the existing photo ID cards, and to allow unannotated photo ID's to be used in the meantime.

The Department is especially interested in comments on this issue. While the proposed rule does require that the notation be on the photo ID (and does not provide for an extended period of time), the purpose of this provision is principally to generate comment on this issue. The Department's final decision will be based to a significant degree on the information on this matter that is provided by commenters.

Authorized representatives

Under current regulations, ID cards are issued in the name of the household member to whom the ATP card is issued or for whom issuance is authorized. If no member of the household can pick up the household's coupons, the household may designate an authorized representative to do so on its behalf. If the authorized representative is to be used on a regular basis, i.e., it is not on a one-time emergency situation that has suddenly arisen, then the State agency must have the authorized representative's signature put on the ID card as well. Thus, in these situations the person in whose name the issuance is authorized and the household's authorized representative (not an emergency authorized representative) are both designated on the household's ID card.

In areas photo ID cards are used, the use of authorized representatives can be problematical. As proposed, the photo ID cards that would be issued in compliance with these rules would contain a double check against fraud. First, they would contain the photo of the person who is to obtain the household's allotments. Second, they would be serialized so that State agencies ensure that only one issuance is made to each household each month. Since it normally would not be possible to have two photographs (that of a household member and that of an authorized representative) on a single photo ID, the problem is how to reconcile the need for two ID cards that some households have with the necessity of being able to trace ID cards back to specific households through serial numbers.

Some systems used by State agencies may employ photo ID cards that are

preprinted with serial numbers. In these systems, issuing two photo ID cards with the same serial number would normally be impossible. As a result, it may not be possible to provide a second photo ID in these areas. This does not present an insuperable problem, however. In such areas, if the household needed to designate someone other than the person pictured on the photo ID card to obtain the household's coupons, that person could function as an emergency authorized representative. Sections 274.2(e)(7) and 274.2(f)(3) of existing regulations prescribe procedures for emergency authorized representatives. These procedures have their own built-in safeguards. The household member must sign a form (which can be the ATP, itself) designating the person as the emergency authorized representative, and the representative must also sign the form. The representative must present the household's ID at the issuance point and the signature on the designation form must match the signature on the ID. In addition, the representative must sign the ATP/HIR card at the issuance point for receipt of coupons, and this signature must match the signature on the designation form.

In some areas, State agencies may be able to issue two photo ID cards to households each with the same ID number. These rules would allow such a system to be used, provided the control function the serial number are intended to serve is not compromised.

In still other systems, State agencies may be able to issue two ID cards with different numbers to the same household, yet be able to trace each to the household thereby ensuring that the household is not participating twice a month. This system would also be allowed by the proposed rules.

The Department invites all comments on this provision and would especially like to hear alternative suggestions. Those that address the problems of administrative feasibility would be especially welcome.

Under any of these systems, there would still be a need for a system to provide for written designation of an emergency authorized representative to obtain a particular allotment. This is specifically envisioned by the House Committee Report. The current regulatory provisions set forth in § 274.2(e)(7) and § 274.2(f)(3) contain (as noted above) appropriate safeguards, and would not be affected by this proposed rule. However, some areas that would be subject to the photo ID requirement might need to change the form they use to designate an emergency authorized representative. Some State agencies currently use a tear-off section to the ID to designate an emergency authorized representative. Designating an emergency authorized representative on a photo ID card would not be possible, however, because of the proposed requirement that the card be laminated (which precludes alterations). In such areas, either the ATP or an alternative form would need to be used to designate an emergency authorized representative.

Mutilated or altered ID cards

Existing regulations do not address the subject of mutilated and/or altered food stamp ID cards. This issue is addressed in this proposed rule.

This rule proposes to deny the issuance of benefits when a food stamp photo ID card that appears to have been mutilated/altered is present. In such instances, the household would be required to obtain a new photo ID card prior to issuance of its benefits. If a household's opportunity to participate expires between the time the household requested a replacement photo ID card and the delivery of that card to the household, the household would be entitled to benefits lost as a result of not being able to obtain that particular allotment.

The Department is proposing to delay the issuance of benefits until valid identification has been presented to minimize issuance losses. Issuing benefits without assurance of proper identification would defeat the purpose of mandating photo ID cards in high risk areas.

In addition, to assure tight controls on issuance of ID cards, the rule proposes that the State agency limit issuance of ID cards to the time of initial certification, with replacements made only in instances of loss, mutilation/alteration, destruction, or change in the person authorized to obtain coupons, or where the State agency determines that new ID's are needed to keep the photographs up-to-date or is otherwise changing its ID format or system.

Use of photo ID's at issuance points and retail stores

The proposed rules require that the photo ID be checked at the issuance point, and prohibit the issuance of food stamps to any person other than the person pictured on the ID card (except in the case of a duly designated emergency authorized representative, in which case two signature comparisons must be made).

The proposed rules do not apply the same requirement to the purchase of food with food stamps at retail stores. Since various members of the household can purchase food with food stamps, such a requirement would be impractical. This is recognized in both the statute and the House Committee Report. Pub. L. 96-249 directs that a household use photo ID cards "when using its authorization card in order to receive its coupons". The House Committee Report states: "The need to present a photo identification card would apply only to the point of issuance (surrender of card for coupons) and not at the point of using the coupons in a retail food store. This is because of the numerous members of any household who can buy food for it with the coupons as opposed to the one authorized representative (household head or spouse or other responsible member) who can obtain coupons in its behalf."

As the House Committee Report directs, existing rules on the identification of food stamp users by retail stores would remain in effect. Section 278.2(h) requires that if a food retailer has any cause to believe that a person presenting coupons has no right to use the coupons, the retailer should ask the person to show the ID card of the household to establish the right of that person to use the coupons. Where photo ID cards are in use, it would not be necessary for the person presenting the ID cards to the retailer to be pictured on the card. Presentation of the household's ID would establish the right of the person to use the coupons. Language is added to § 278.2(h) to make this explicit.

Implementation

Implementation of photo ID requirements is different from implementation of most other food stamp regulations. Normally, the Department sets a timeframe (usually 120 days after publication of final rules) for a new requirement to begin being applied to all new applicants and at all recertifications. The rest of the caseload is converted to the new requirement as it is recertified.

However, photo ID requirements cannot really be effective until the entire caseload is converted to photo ID's. There needs to be a point in time at which issuance agents will not issue coupons unless the person seeking coupons presents a photo ID. This entails that the entire caseload have been converted to photo ID's in that time.

The Department is proposing that areas subject to the photo ID requirement have issued all photo ID's, and begin requiring presentation of photo ID's at issuance points, no later than the first day of the month nine months after publication. This would

allow approximately three months for the purchase and installation of photo ID cards, and about six months to issue photo ID's to the area's caseload. The six month period would allow a large majority (although not all) of the caseload to be issued photo ID's at their normal recertifications. The Department is especially interested in comments on the nine-month requirement.

As noted above, FNS would notify all project areas with more than 50,000 participants at the time of publication of final rules. To meet the nine month timeframe, FNS and State agencies would need to resolve expeditiously the matter of which parts of multi-county or Statewide project areas with more than 50,000 participants are to be subject to the new requirements. In addition, State agencies wishing to secure an exemption of any project areas from the requirement would need to submit justification to FNS for such exemptions in an expeditious manner. FNS would rule on all such requests within 30 days of their receipt.

For the reasons set out in the preamble, it is proposed that Parts 272, 273, 274 and 276 of Title 7, *Code of Federal Regulations*, are amended as set forth below.

PART 272—REQUIREMENTS FOR PARTICIPATING STATE AGENCIES

1. In § 272.1, a new paragraph (g)(30) is added to read as follows:

§ 272.1 General terms and conditions.

* * * * *

(g) *Implementation.* * * *

* * * * * *

(30) Amendment 191. Areas subject to the photo ID card requirement must have issued photo ID cards (or cards annotated to indicate that the card is valid without a photograph, in accordance with § 273.10(g)(4)(ii)(c)) to all participating households, and shall require presentation of photo ID cards (or the annotated cards) at issuance points as a precondition of issuing coupons to households, no later than the first of the month that is nine months after the publication of final regulations. Any areas that become subject to the photo ID card requirement at a later date shall also come into full compliance no later than the first of the month that occurs nine months after FNS notifies the State agency that the area is subject to the requirement.

PART 273—CERTIFICATION OF ELIGIBLE HOUSEHOLDS

2. In § 273.10, paragraphs (g)(4)(i), (ii) and (iii) are revised and (g)(4)(v) is removed. The revised paragraphs read as follows:

§ 273.10 Determining household eligibility and benefit level.

* * * * *

(g) *Certification notices to households.*

* * * * *

(4) *Identification (ID) cards.* The State agency shall issue an ID card to each certified household as proof of program eligibility. Areas designated by FNS for the mandatory use of photo ID cards shall follow the requirements of paragraphs (i) and (ii) and (iv) below. Non-mandated photo ID areas shall follow the requirements of paragraphs (i), (iii) and (iv) below.

(i) *General Provisions:* (A) All ID cards shall be issued in the name of the household member who is authorized to receive the household's issuance. Photo ID cards shall contain the photograph of the person who will receive the household's issuance; i.e., who will either transact the household's ATP card or, in an HIR system, pick up the household's allotment. A photo ID card shall be signed by the person pictured on the card, be it the household member or authorized representative designated to pick up the household's allotment. A nonphoto ID card shall be signed by the household member in whose name it is issued and by other persons designated on the ID as authorized to pick up the allotment, whether it is another household member or authorized representative.

(B) The State agency shall limit issuance of ID cards to the time of initial certification, with replacements made only in instances of loss, mutilation, destruction, or changes in the person authorized to obtain coupons, or where the State agency determines that new ID cards are needed to keep the photographs up-to-date or is otherwise changing its ID card format or system.

(C) The State agency shall place an expiration date only on those ID cards issued to households certified for delivered meals for a temporary period.

(D) ID cards delivered to households by mail shall not be mailed in the same envelope with the ATP or coupons.

(ii) *Mandatory Photo ID Cards.* (A) FNS mandates the use of photo ID cards in those project areas (defined in 7 CFR 271.2) or portions thereof with 50,000 or more food stamp participants, except for those project areas serviced entirely by mail issuance, or where FNS, in consultation with the Office of the Inspector General, approves a State agency's request for an exemption. FNS will notify State agencies at the beginning of each fiscal year of any areas that either require or no longer require the use of photo ID cards. In addition, FNS, in consultation with the Office of the Inspector General, may designate at any time, project areas or portions thereof with less than 50,000 participants as requiring the use of photo ID cards upon a determination that the level of duplicate redemptions justifies the institution of photo ID cards.

(B) In project areas where photo ID cards are mandatory, the State agency shall issue a photo ID card to each eligible household at the time of certification, except for the following:

(1) Households certified by out-of-office interviews as specified in § 273.2 (e)(2) or under the SSI-food stamp joint processing rules in § 273.2(k). However, the Sate agency should attempt to replace the nonphoto ID card issued to these households with a photo ID card if and when the appropriate household member or authorized representative is in the office for any other reason. The State agency may not require such households to make a special trip into the office solely for the purpose of issuing a photo ID card.

(2) Households whose religion does not allow them to be photographed. The State agency shall verify the household's statement regarding its religion if the statement is questionable in accordance with § 273.2(f)(2).

(3) Households entitled to expedited service if the State agency's photo ID card system is incapable of producing a photo ID card in time for the household to participate as required by § 273.2(i). A photo ID card shall be obtained prior to issuance of the household's next allotment.

(C) Mandated photo ID cards shall be serially numbered, laminated after signature by the person photograhed, include a color photograph of the person designated by the household to obtain coupons, and contain the household's case number or other identifying information. A photo ID card used in another program may be adapted for food stamp purposes if it meets these specifications and can be annotated to indicate food stamp eligibility. Households exempt from mandated photo ID cards shall be issued an ID card which also meets these specifications except that in lieu of a photograph the State agency shall annotate the card to show an exception was granted to the household and that the ID card is valid.

(D) A household subject to the mandatory photo ID card requirement shall not participate until such time as a household member or a designated authorized representative complies. If a

designated authorized representative does not comply, the household may designate a household member or another authorized representative to be photographed. Only the signature of the person photographed shall be on the photo ID card and only that person may obtain the household's coupons. If, at a later date, the person who is photographed is unable to travel to the issuance point to obtain a particular allotment, the household may use the emergency authorized representative procedures provided in § 273.1 (f)(1)(ii), § 274.2 (e)(7) and § 274.2(f)(3). In addition, State agencies which have the capability may develop systems to issue more than one photo ID card to households needing either an additional household member, or an authorized representative as well as a household member, authorized to obtain coupons. These systems must assure that the safeguards provided by photo ID cards are maintained.

(E) If a mutilated or altered photo ID card is presented at the issuance point, the household shall obtain a replacement photo ID card prior to issuance. If a household's opportunity to participate expires between the time the household requested a replacement photo ID card and the delivery of that card to the household, the household shall be entitled to benefits lost as a result of not being able to obtain that particular allotment.

(F) The state agency shall, to the extent practicable, permit the household to complete the photo ID card requirements at the time of the interview so the household does not need to make a special trip to that office or to a separate location solely to obtain a photo ID card. Only in those instances where the applicant wishes another household member or an authorized representative to be designated to obtain coupons should a separate trip be required.

(iii) *Nonphoto ID Card Areas.* (A) In areas not designated by FNS as requiring photo ID cards, the ID card shall contain space for the name and signature of household member to whom the coupon allotment is to be issued and for any authorized representatives designated by the household. All persons listed on the ID card shall sign the card prior to its use. If the household does not name an authorized representative, the State agency shall void that area of the ID card to prevent names and signatures being entered at a later date. The ID card may be serially numbered at the State agency's option.

(B) State agencies may use photo ID cards in these areas provided the State Agency shall not delay or deny benefits because household members or their authorized representatives are unable or refuse to be photographed.

(iv) * * *

(v) Deleted.

PART 274—ISSUANCE AND USE OF FOOD COUPONS

3. In § 274.2 (e)(8) and (f)(4) are amended by adding the following language to read as follows:

§ 274.2 Issuance systems.

* * * * *

(e) *ATP Issuance.* * * *

(8) * * * If the household is required to present a photo ID card in accordance with § 273.10(g)(4), coupons shall be issued only when the person presenting the ATP is pictured on the ID card. The cashier shall write the serial number of the photo ID card on the ATP. If the photo ID card appears to be mutilated or altered, the cashier shall not issue the coupons, but shall advise the household to obtain a replacement ID card from the State agency.

* * * * *

(f) *HIR Card issuance system.* * * *

(4) * * * If the household is required to present a photo ID card in accordance with § 273.10(g)(4), coupons shall be issued only when the person requesting food stamps is pictured on the ID card. The cashier shall write the serial number of the photo ID card on the HIR card. If the photo ID card appears to be mutilated or altered, the cashier shall not issue the coupons, but shall advise the household to obtain a replacement ID card from the State agency.

* * * * *

4. In § 274.7, introductory paragraph of (c) is revised.

§ 274.7 Issuance record retention and security

* * * * *

(c) *Accountable Documents.* HIR cards, ATP's, forms FNS–286, and mandated photo ID cards shall be considered accountable documents. The State agency shall provide the following minimum security and control procedures for these documents: * * *

* * * * *

PART 278—PARTICIPATION OF RETAIL FOOD STORES, WHOLESALE FOOD CONCERNS AND BANKS

5. In § 278.2 (h) is amended by adding the following sentence to read as follows:

§ 278.2 Participation of retail food stores.

* * * * *

(h) Identifying coupon users.

* * * Where photo ID cards are in use, the person presenting the ID card need not be pictured on the card.

* * * * *

Authority: 91 Stat. 958 (7 U.S.C. 2011–2027).

(Catalog of Federal Domestic Assistance Program, No. 10.551 Food Stamps)

Dated: January 9, 1981.

Robert Greenstein,

Administrator.

[FR Doc. 81-2329 Filed 1-23-81; 8:45 am]

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January 23, 1981

Part VIII

Department of Labor

Office of the Assistant Secretary for Labor-Management Relations

Hospital Employee Protection Program

DEPARTMENT OF LABOR

Office of the Assistant Secretary for Labor-Management Relations

29 CFR Part 225

Hospital Employee Protection Program; Procedures and Guidelines Followed by Secretary for Determining That Fair and Equitable Arrangements Have Been Made for Protection of Employees Affected by Program To Assist and Encourage the Discontinuance of Unneeded Hospital Services

AGENCY: Labor-Management Services Administration, Labor.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: This proposed rule prescribes guidelines and procedures relating to the Department of Labor's responsibility for reviewing applications for grants filed with the Secretary of Health and Human Services. The purpose of such responsibility is to assure that fair and equitable arrangements have been made to protect the interests of hospital employees against a worsening of their positions with respect to their employment when such employees are affected by the discontinuance of services.

DATES: Written comments concerning the proposed regulation must be received by the Department of Labor on or before March 24, 1981.

ADDRESS: Interested persons are invited to submit written comments (with four copies, if possible) concerning any part or all of the proposed regulation to the Division of Employee Protections; Labor-Management Services Administration; U.S. Department of Labor; Room N–5639; 200 Constitution Avenue, N.W.; Washington, D.C., 20210. Attention: Proposed Regulation.

FOR FURTHER INFORMATION CONTACT: Ron Glass, Division of Employee Protections, Labor-Management Services Administration; U.S. Department of Labor; Room N–5639; 200 Constitution Avenue, N.W., Washington, D.C., 20210; phone number (202) 523–6495. This is not a toll-free number.

SUPPLEMENTARY INFORMATION:

A. Background

On October 4, 1979, the President signed the Health Planning and Resources Development Amendments of 1979, Public Law 96–79, 93 Stat. 592. These amendments, hereinafter called the Act, amend the Public Health Services Act of 1974. Included in Title III of this legislation is a new grant program, administered by the Department of Health and Human Services (hereinafter called HHS), designed to encourage and assist the discontinuance of unneeded hospital services. Section 1642(c)(1) of the Act requires certification of employee protective arrangements by the Secretary of Labor before the approval of grant applications by HHS. Section 1642(c)(2) states that "the Secretary of Labor shall by regulation prescribe guidelines for arrangements for the protection of the interests of employees affected by the discontinuance of hospital services".

Section 1642(c) requires such protective arrangements to include "arrangements to preserve the rights of employees under collective-bargaining agreements, continuation of collective-bargaining rights consistent with the provisions of the National Labor Relations Act, reassignment of affected employees to other jobs, retraining programs, protecting pension, health benefits, and other fringe benefits of affected employees, and arranging adequate severance pay, if necessary".

This regulation specifies procedures by which the Department of Labor will review proffered arrangements and notify HHS and the grant applicant of the Department's determination. The regulation is designed to aid hospitals and representatives of affected hospital employees in the development of the required arrangements. The regulation defines the term "employee" and other terms. The regulation also: (1) explains methods for preserving the rights of employees under collective-bargaining agreements and for the continuation of collective-bargaining rights consistent with the provisions of the National Labor Relations Act, and (2) establishes minimum standards for reassignment of affected employees to other jobs, for retraining programs and for protecting pension, health benefits and other fringe benefits of affected employees.

B. Discussion of the Proposed Regulation

The language in Section 1642(c) of the Act differs from earlier proposed versions of the legislation. In addition, there is little legislative history explaining the background and rationale for the specific requirements contained in the Act. The conferees for the Senate and House, in explaining the provisions of this section of the bill, said:

> The conferees recognize that the closing of unneeded facilities and services will affect many employees. In requiring the hospital discontinuing services to make fair and equitable arrangements to protect the interests of employees, the conferees intend for the hospital to protect employees against a worsening of their positions respecting employment. This means that the hospitals should make a reasonable effort to obtain comparable employment for affected employees. The Secretary of Labor should describe the issues which hospitals must address in making fair and equitable arrangements, and is expected to actively encourage and foster adequate protection for all employees affected by grants under this section.

The language in the Act could be interpreted literally as requiring complete maintenance of the earnings and benefits of employees affected by a discontinuance of hospital facilities. However, the phrase specifying protection "against a worsening of position" has appeared in other statutes where the legislative history makes it clear that Congress did not intend to provide earnings and benefit maintenance for employees.

In the development of this proposed regulation the costs of the employee protection provisions have been weighted. One of the purposes of the health planning law is reduction of hospital costs—or reduction in the rate of increase of hospital costs. The authorization limits in the law indicate that a large and costly program is not intended. If the costs of the employee protection arrangements are unreasonably high, the law's intent would be defeated. Again, any loss of hospital employment involves "a worsening of the positions of employees with respect to their employment", but to achieve Congressional intent, the costs of employee protections must be weighted against the objective of reducing costs by eliminating surplus hospital facilities.

Duration

The statute does not specify how long the arrangements for employee protections should continue after an employee becomes unemployed as a consequence of a discontinuance of hospital facilities. The proposed regulation generally provides that the duration of the protections shall be for a maximum of two years from the time an affected employee is reassigned or dismissed. During this period, pensions, health benefits, and other rights must be preserved and continued. However, monetary payments to replace some of the lost wages must be provided only for a maximum of 52 weeks.

Definitions

Section 225.2 defines many terms which are used throughout the regulation. One of the more important definitions is that of "employee". In drafting this definition, consideration was given to the possibility of using the

same definition of "employee" as that in other statutes such as the National Labor Relations Act and the Fair Labor Standards Act. Use of such statutory definitions has been tentatively rejected because they would limit too severely the application of protections for personnel affected by a closure of hospital facilities. The proposed definition would include supervisors and subordinate executives. It would exclude such top executives as the Administrator and Medical Director. Comments are especially invited on questions of where to draw the line between top executives and rank-and-file employees or whether even top executives should be included in the definition.

The definition of "employee" limits the term to paid personnel of the hospital receiving a grant in connection with the closure of facilities. It excludes employees of contractors who may be affected by closure of hospital facilities. Some hospitals operate directly the cafeterias, snack bars or restaurants for use by hospital staff and visitors, while other hospitals contract with firms which specialize in the operation of such facilities. If a hospital closes, the employees of contractors who work in the hospital might be affected to the same extent as employees on the hospital payroll. However, it is clear from Section 1642(a)(2)(C) of the Act that Congress intended to limit the use of funds for employee protections to employees of hospitals receiving grants from HHS. The proposed definition also is intended to resolve questions as to the treatment of part-time, temporary and probationary employees.

Another important proposed defintion is for the term "substantially equivalent employment". The proposed regulation provides that hospital employees who are affected by a discontinuance of facilities shall have the benefit of employee protection arrangements until they obtain substantially equivalent employment or refuse an offer of substantially equivalent employment. In drafting the definition, consideration was given to several issues, the most important of which concerned questions as to whether the term should be defined in a way which would limit its application to employment or offers of employment by other hospitals. It is recognized that in most cases professional hospital personnel may regard employment outside the hospital industry as not substantially equivalent, while non-professional personnel such as clerical, custodial and food service employees may find employment or receive offers from firms other than hospitals and may be indifferent as to whether it is a hospital or not. As proposed in the definition, the term does not limit "substantially equivalent employment" to the hospital industry because of the likelihood that even nurses, technicians and similar professional or semi-professional employees may find acceptable employment possibilities in industries other than health care.

Procedures

§ 225.3 of the proposed regulation describes the procedure under which the Department of Labor (DOL) will perform the functions required by the Act to certify to HHS "that fair and equitable arrangements have been made to protect the interests of employees affected by the discontinuance of service against a worsening of their positions with respect to their employment". This section puts the responsibility on a hospital applying for a grant to (1) plan the employee protection arrangements before applying for a grant, (2) describe the arrangements which have been made in its application to the HHS, and (3) supply certain other information needed by the DOL for its review of that portion of the application relating to employee protection arrangements.

Continuation of Bargaining Rights

§ 225.4 provides that where employees are represented by a labor organization, it is expected that the protective arrangements will be negotiated with such organization. § 225.7 requires bargaining in good faith about employee protection arrangements. If an impasse in bargaining occurs, the DOL would perform a role somewhat like that of an arbitrator in an impasse situation. However, any DOL decision which may be necessary would be based upon a written submission without a hearing.

Reassignment and Retraining

A hospital discontinuing some or all of its facilities can reduce the costs of employee protection arrangements if most of the affected employees can be transferred or placed in substantially equivalent positions. One of the important ways a hospital can reduce the costs of employee protection arrangements is by promptly providing retraining programs which can assist in the placement of affected employees in new jobs. Because the employee protection arrangements are limited in duration and are further limited in the amounts of wage replacements, employees have an incentive to obtain sustantially equivalent employment and to receive training for such purpose. Provisions in the statute concerning reassignment and retraining are covered in § 225.6 of the proposed regulations.

Because of the wide diversity of the occupations of hospital employees and their wide range of functions and skills, it is recognized that the reassignment and retraining may need to be different for different groups of employees. For purposes of this regulation, reassignment generally means transfer of employees within the hospital or placement of an employee outside the hospital; retraining includes, but is not limited to, (1) on-the-job training in connection with transfers within the hospital where only such minimum training may be necessary, and (2) arrangements for affected employees to receive more formal training where it is needed to qualify for substantially equivalent employment. § 225.6 sets forth in general the principles to be applied in planning these arrangements.

Reemployment Rights

§ 225.9 provides reemployment rights for affected employees who become unemployed as a result of the closure of some of a hospital facilities. In drafting this section, consideration was given to the possibility of imposing an obligation upon other hospitals in the area that before they hire new employees they must consider the affected employes who were laid off by the hospitals which is closing some of its facilities. It was concluded that the DOL lacks authority to impose such a duty on any hospital other than the hospital which receives an HHS grant. It is recognized, however, that a recipient of a grant will be closing its facilities in connection with a planning process that involves other hospital in the community; it is expected that in this planning process all hospitals involved will give serious consideration to hiring employees of the hospital closing its facilities. The planning process could include the development of a hospital priority hiring system which might coordinate a voluntary effort among hospitals in a local area to give priority in hiring displaced hospital employees over new entries in the job market.

Pensions

§ 225.10 is intended to ensure that an affected employee with more than 12 months of service will be entitled to receive credit toward vesting, participation and benefit accrual for the duration of the protected period of unemployment. If the affected employee is not reemployed by the facility and covered by the same plan at the end of the protected period, the employee will then become fully vested in his or her accured benefit or, in the case of a

defined contribution plan, the balance in his or her plan account. The reason for providing these protections is to ensure that affected employees with at least one year of service do not lose pension benefits to which they otherwise might have been entitled except for the closing of a facility under the Act.

Employees who are not yet plan participants will continue to be credited with time towards participation under the plan. Once employees are plan participants they will continue to be credited for both vesting and benefit accrual purposes during the protected period. Employees who are not reemployed and covered by the same plan at the end of the protected period of unemployment will become fully vested regardless of plan provisions and whether they are subsequently covered by a new plan. To do otherwise could result in non-vested employees losing potential benefits which had not vested under the old plan. In addition, such employees would have to begin again accruing credit toward a pension under a new plan. There is also a problem relating to multi-employer pension plans in the private sector which this proposed regulation does not purport to resolve. A hospital participating in a multiemployer plan may not be able to cause the trustees of such plan to provide the additional vested rights created by this regulation. It is not likely that a multiemployer plan would be terminated as a consequence of the closure of one of the hospitals sponsoring the plan; and employees affected by a closure of one hospital who obtain employment at another hospital in positions covered by the same plan would suffer no impairment of their pension rights. However, affected employees who do not obtain employment under the same plan would not have their pension rights fully protected, especially in cases where they have not satisfied the length of service requirements of the plan for vesting. Comments and suggestions are solicited with respect to this problem. Consideration is being given to the possibility of requiring a hospital receiving an HHS grant to provide whatever funding may be needed to assure the payment of vested benefits required by this proposed regulation.

Dismissal Allowances

The Act requires that the protections include "arrangements for adequate severance pay, if necessary". Possibly Congress intended lump sum payments to be made in lieu of all other protections if an employee is not reassigned within the hospital or placed in another position outside the hospital. However, lump sum payments could become costly, providing windfalls for those employees who quickly find other employment and for those who choose to retire. In addition, there would be a need to make lump sum payments large enough to ensure adequate protection for those who become unemployed and lose their health insurance and pension benefits as well as their wages.

The proposed regulation does not provide for severance pay in lump sums. However, § 225.13 of the proposed regulation provides for dismissal allowances as a type of severance pay. The dismissal allowances are to be paid by the grant recipient for a period related to the affected employee's length of service, with a maximum duration of 52 weeks. The dismissal allowance would give the eligible worker a monthly or weekly payment from the hospital which when added to unemployment insurance and income from other employment would equal 85% of the average pay the employee was receiving prior to termination. The 85% level has been chosen to avoid the disincentive to return to employment which results under a 100% guarantee.

Notice to Employees

Section 225.15 provides that a hospital receiving an HHS grant shall give notice to affected employees at least 60 days before the closure of facilities.

C. Drafting Information

This regulation was drafted by the Division of Employee Protections, Labor-Management Services Administration. The principal staff contact is Ron Glass. The Department of Labor has consulted with the Department of Health and Human Services in the promulgation of this regulation.

E. Regulatory Analysis

The Department of Labor has determined that the proposal in this document is not a major regulation that requires the preparation of a regulatory analysis, within the meaning of Executive Order 12044 and the Department of Labor's guidelines published at 44 Fr 5570.

The Department of Labor has also certified, in accordance with 5 U.S.C. 605(b), that the regulation in this document will not have a significant economic impact on a substantial number of small business entities.[1]

Accordingly, a new Part 225, in Chapter II of Title 28 CFR is proposed to read as follows:

[1] Certification is filed as part of the original document.

PART 225—REGULATION AND GUIDELINES, SECTION 1642(c) OF PUBLIC HEALTH SERVICES ACT AS AMENDED BY HEALTH PLANNING AND RESOURCES DEVELOPMENT AMENDMENTS OF 1979

Sec.
225.1 Purpose.
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225.5 Employees not represented by a labor organization.
225.6 Preservation of rights under collective bargaining agreements.
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225.13 Dismissal allowance.
225.14 Resolution of disputes.
225.15 Notice to employees.

Authority: Section 1642(c) of the Health Planning and Resources Development Amendments of 1979, Pub. L. 96-79, 93 Stat. 592.

§ 225.1 Purpose.

The purpose of this regulation is to prescribe procedures and guidelines for arrangements for the protection of the interests of employees affected by the discontinuance of hospital services, as provided in Section 1642(c) of the Public Health Services Act as amended by the Health Planning and Resources Development Amendments of 1979. Section 1642(c)(1) of the Act states that the Secretary of HHS may not approve an application submitted by a hospital under Section 1642(b) of the Act unless the Secretary of Labor has:

Certified that fair and equitable arrangements have been made to protect the interests of employees affected by the discontinuance of services against a worsening of their positions with respect to their employment, including arrangements to preserve the rights of employees under collective-bargaining agreements, continuation of collective-bargaining rights consistent with the provisions of the National Labor Relations Act, reassignment of affected employees to other jobs, retraining programs, protecting pension, health benefits, and other fringe benefits of affected employees, and arranging adequate severance pay, if necessary.

The Secretary of Labor shall by regulation prescribe guidelines for arrangements for the protection of interests of employees affected by the discontinuance of hospital services.

* * *

§ 225.2 Definitions.

As used in this regulation, unless the context otherwise indicates:

(a) Act means the Public Health Services Act as amended by the Health Planning and Resources Development Amendments of 1979, Public Law 96-79—October 4, 1979, 93 Stat. 592.

(b) DOL means the United States Department of Labor.

(c) HHS means the United States Department of Health and Human Services.

(d) Employee(s) means all paid hospital personnel with certain exceptions listed below. The term includes permanent part-time employees who are regularly employed for at least 20 hours per week. The term includes supervisors, subordinate executives, interns and residents. The following are excluded from the definition of employee:

(1) Temporary employees.

(2) Probationary employees if at the time of hire they were obligated to serve a probationary period and have not completed such period.

(3) Members of the Board of Directors and corporate officers.

(4) Top executives such as the Administrator and/or Medical Director.

(5) Self-employed persons and employees of contractors who perform their services within the hospital.

(e) Affected employee(s) means any employee(s) whose position is abolished or who otherwise is adversely affected with respect to wages, hours or terms and conditions of employment as a result of a discontinuance of facilities including actions in anticipation of a discontinuance of facilities. If an employee whose position is not abolished is displaced by another employee whose position is to be abolished, the person thereby removed shall be considered an affected employee for the purposes of this regulation.

(f) Substantially equivalent employment means permanent employment in any industry in the commuting area which:

(1) Requires the same or similar occupational skills as those required by the position in which the affected employee was serving at the hospital at which the employee was affected; and

(2) Provides approximately the same total value of wages, or salaries and fringe benefits as those covered by the affected employee's position at the time the employer was affected by the discontinuance.

(g) Period of protection means the duration of an affected employee's entitlement to the rights and benefits provided under this regulation. In no case shall the period of protection exceed an employee's period of employment with the hospital, nor shall the period for dismissal allowances provided in § 225.13 exceed 52 weeks. The employee's period of protection shall continue for two years beyond the date on which the employee was affected by a discontinuance or until:

(1) the employee obtains substantially equivalent employment;

(2) the employee refuses to accept substantially equivalent employment; or

(3) the employee voluntarily accepts employment either in or out of the commuting area which otherwise meets the requirements of § 225.2(f)(2).

Notwithstanding (1), (2) and (3) above, an employee's reemployment rights shall continue for a period equal to his or her period of protection despite the conclusion of the period of protection for other benefits.

(h) The terms "preservation of rights under collective-bargaining agreements", and "continuation of collective-bargaining rights consistent with the provisions of the National Labor Relations Act", "reassignment of affected employees to other jobs", "retraining programs", "protecting pension, health benefits, and other fringe benefits of affected employees", and "adequate severance pay" are defined and explained in § 225.8 through 225.13 of this regulation.

§ 225.3 Procedure.

(a) Upon receipt from HHS of an application for a grant under Section 1642(b) of the Act, together with a request for the certification of employee protective arrangements, the Department of Labor will review the application to determine if the arrangements comply with this requirement of Section 1642(c) of the Act and this regulation.

(b) To facilitate review, the section of the application dealing with employee protections should describe the employees whose status and rights may be affected by the discontinuance of the facilities. The application should identify any labor organization representing any such employees and include a copy of any collective bargaining agreement(s) in effect. Identification must include the name of a contact person for any such labor organization as well as a telephone number and address where the contact person may be reached.

(c) When a hospital files an application for a grant with HHS, it shall post notices where they can be seen by potentially affected employees who are not represented by labor organizations advising them that the application has been filed, where the portion of the application relating to employee protection arrangements may be examined, and of their right to send a letter commenting on such arrangements to the Division of Employee Protections, Labor-Management Services Administration; U.S. Department of Labor; Room N-5632; 200 Constitution Avenue, N.W.; Washington, D.C. 20210. A copy of this regulation shall also be included with the proposed protective arrangements for examination by employees.

(d) Section 1642(c)(3) of the Act limits the time within which the Department of Labor shall review each application. Therefore, the application should include a sufficiently detailed description of the employee protection arrangements which have been made so that it will be unnecessary for the DOL to request additional information. Upon the completion of its review, the DOL will send a letter to HHS either certifying or declining to certify that fair and equitable arrangements have been made. If the DOL declines to certify, the letter will contain an explanation of reasons for declining to certify. The DOL will send copies of such letters to the applicant and to any representative of affected employees identified in the application. A declination of certification, however, does not preclude or prejudice the filing of an amended application.

(e) As provided in Section 1642(c)(3)(A) of the Act, the DOL review will be completed within 90 days from the date of receipt by the DOL of a hospital's application for a grant. If the information required by this section of the regulation is incomplete, the DOL may decline to certify that adequate arrangements for employee protections have been made, without prejudice to the right of the applicant to file an amended application containing the required information. In that event the 90 day limit will apply to the receipt by the DOL of an amended application.

§ 225.4 Employees represented by a labor organization.

If employees of the grant application who may be affected are represented by a labor organization it is expected that protective arrangements shall be the product of negotiations with such organization pursuant to § 225.7(a) of this regulation.

§ 225.5 Employees not represented by a labor organization.

If there is no labor organization representing employees of the grant applicant who may be affected, the hospital in its application to HHS shall describe the wages or salaries and working conditions including fringe benefits in effect before the

discontinuance of facilities and shall describe what arrangements have been made to comply with this regulation. If a labor organization represents some but not all the employees of the grant applicant who may be affected, the application to HHS shall include a statement of the wages or salaries and working conditions of employees who are not represented and include a description of the employee protection arrangements that have been made for the unrepresented employees.

§ 225.6 Preservation of rights under collective bargaining agreements.

The grantee must preserve employees' rights under any existing collective agreement. The rights of affected employees under the collective agreement shall continue until the end of the period of protection. This does not require the continuation of wages or salaries applicable to positions from which affected employees are dismissed or displaced.

§ 225.7 Continuation of collective bargaining rights.

For purposes of this regulation, the statutory phrase "continuation of collective-bargaining rights consistent with the provisions of the National Labor Relations Act"—as distinguished from the preservation of rights under collective bargaining agreements—means the following:

(a) A hospital contemplating discontinuance of facilities which will affect employees represented by a labor organization must negotiate with such organization regarding the terms of the employee protection provisions. As under the National Labor Relations Act, both parties must bargain in good faith and reduce to writing any agreement which may be reached. If the hospital applying for a grant is operated by a State or local government and such hospital is prohibited by State or local law from engaging in collective bargaining as provided in the National Labor Relations Act, it shall inform the representative(s) of affected employees of its intent to file an application for the grant and give such representative(s) an opportunity to confer with management concerning the arrangements for employee protections.

(b) In the case of an impasse in bargaining, the hospital shall include in its application to HHS a statement setting forth its last offer to the organization. It shall also include a statement from the organization setting forth its objections to the hospital's last offer and the reasons for such objections. Upon a review of such documents the Assistant Secretary for Labor-Management Relations will prescribe fair and equitable arrangements which are a condition of certification to the HHS, or if certification is denied shall set forth the reasons for denial.

(c) In the event a hospital and the representative of affected employees cannot settle any dispute or controversy with respect to the interpretation, application, or enforcement of any provision of either (1) a negotiated employee protection arrangement, or (2) employee protection arrangements prescribed by the DOL in accordance with (b), such dispute shall be resolved by arbitration. A negotiated employee protection arrangement shall provide procedures for arbitration. If the arrangements are prescribed under (b) above, the DOL will include a procedure for the resolution of disputes.

§ 225.8 Reassignment and retraining.

(a) A hospital may use any one or a combination of several methods to satisfy the statutory requirements relating to reassignment of affected employees to other jobs and retraining programs. Reassignment means transfer of employees within the hospital or placement of employees outside the hospital. Retraining includes, but is not limited to:

(1) On-the-job training in connection with transfers within the hospital where only minimum training may be necessary; and

(2) Arrangements for affected employees to receive more formal training where it is needed to qualify for substantially equivalent employment as defined in § 225.2(f).

(b) The following principles shall apply:

(1) When a hospital plans to discontinue some of its facilities but to continue operating other facilities, the responsibility of the hospital is (i) if possible, to reassign affected employees to other positions in the hospital for which they may be qualified, and (ii) to provide retraining for affected employees so that they can serve in other positions which may be available or which are expected to become available in the foreseeable future.

(2) Where the employer has some discretion in determining which affected employees are to be reassigned or retrained, the selection among them should be guided by any existing affirmative action obligations. For purposes of this section and § 225.9, the term "affirmative action obligations" shall include such obligations existing under: Executive Order 11246, as amended; statute; court order; or settlement agreement (including a letter of commitment made to OFCCP and/or a conciliation agreement arising from a charge or complaint of discrimination).

(3) If an entire hospital is to be closed—or if only some of its facilities are to be closed and it is not possible to reassign affected employees to other positions within the hospital—the responsibility for reassignment requires that the hospital prior to closure shall provide a placement service for affected employees. The placement service may be in the form of a community-wide placement service operated on behalf of hospitals and hospital employees in the commuting area. It may also be in the form of a combination placement and retraining program designed to place employees in allied industries or within the hospital industry as attrition creates open positions.

(4) If all the affected employees cannot be placed in the hospital industry or allied industries, the reassignment effort shall include reasonable measures to assist affected employees in obtaining employment in other industries in the commuting area.

(5) The reassignment effort shall be directed primarily to placing employees in substantially equivalent positions in the commuting area, but it may encompass efforts to place employees outside the commuting area. The refusal of an affected employee to accept an offer of substantially equivalent employment within the commuting area has the consequence of terminating the employee's rights under the protection arrangements. If an employee accepts substantially equivalent employment outside the commuting area, however, the employee waives all rights under the protection arrangements. Because of the limits on the duration and amounts of dismissal allowances provided in § 225.13 of this regulation, affected employees—especially those at more highly compensated pay levels—may prefer to seek and accept employment outside the commuting area and forego their rights under the protection arrangements.

(6) A hospital training program which already exists may be utilized in the reassignment and retraining arrangements if there is a reasonable prospect that affected employees will be placed in at least substantially equivalent positions upon the completion of such training. To satisfy the minimum requirements of this regulation, arrangements for retraining need not, however, provide programs for upgrading the skills of employees.

(7) In the case of professional employees such as nurses, the retraining must provide for the enrollment of affected employees in specialized

courses in professional schools if necessary to qualify for substantially equivalent positions in another specialty area. For example, if a registered nurse has been serving in a maternity ward or a general duty area which is to be closed and needs additional specialized training to qualify for duty in the emergency room or a children's ward, the retraining shall encompass that kind of training.

(8) Whenever reasonably possible, retraining should commence before an employee is dismissed and employees should be permitted to attend retraining during duty hours.

(9) Retraining for affected employees who are not reassigned to other positions must be provided unless there is no reasonable prospect that training would lead to their employment in substantially equivalent positions.

§ 225.9 Reemployment rights.

(a) If a hospital continues operating after discontinuing some of its facilities, any affected employee who has not been reassigned as provided in § 225.8 of this regulation shall be offered employment in any other position in the hospital for which such employee is qualified or for which the employee can become qualified after retraining before any new employees are hired by the hospital to permanently fill vacancies in such position.

(b) Where the employer has some discretion in determining which affected employees shall be rehired, the selection among them should be guided by any existing affirmative action obligations.

§ 225.10 Pensions.

(a) The requirement in the Act that employee pension rights be protected applies to any pension plan covering the positions held by affected employees at the time of discontinuance of facilities or layoff in anticipation of discontinuance.

(b) The term "pension plan" includes any plan, fund, or program maintained by an employer to the extent that it either provides retirement income to employees or results in a deferral of income by employees. The term "pension plan" includes defined benefit pension plans, money purchase pension plans and profit sharing plans which provide benefits at retirement.

(c) An affected employee who has been employed for at least 12 months by a hospital in which a discontinuance of facilities occurs shall continue to receive credit under any pension plan maintained by the hospital in which the employee is or may become a participant as if the employee had continued in service during the protected period.

(d) If the employee has not been admitted to participation in the plan on the date of the employee's dismissal, the employee shall be admitted to participation if and when the employee would have been admitted if he continued in employment during the protected period.

(e) In the case of a money purchase pension plan or any other individual account plan, the employee's account shall be credited with contributions made by the employer to the plan as if the employee continued in the employment of the hospital until the end of the protected period.

(f) For purposes of this section, an employee shall be deemed to continue during the protected period at the rate of pay in effect immediately before the employee's dismissal, and at a level of hours worked per day, week, month, or year no less than the employee's average level of hours worked during the 12 months preceding his dismissal.

(g) If the plan requires employee contributions, an affected employee may be required to make any such contributions as a condition to receiving credit under this section. Such contributions, if the employee so elects, may be deducted from the employee's dismissal allowance provided in § 225.13 of this Part.

(h) If the employee is not reemployed by the hospital and covered by the same plan at the end of the protected period, the employee's benefit entitlements under the pension plan shall become nonforfeitable (i.e., "vested") in full.

(i) If an affected employee is not reemployed under the coverage of the plan before the expiration of the period of protection, the administrator of the plan may pay to the employee in a lump sum the entire amount of the employee's vested benefits to the extent permitted by the Employee Retirement Income Security Act and Treasury regulations.

§ 225.11 Health benefits.

Any affected employee who is not reassigned to a position as provided in § 225.8 of this regulation shall continue to be eligible at no greater cost to the affected employee than applicable to active employees for coverage under any hospital insurance, medical benefits including optical and dental benefits or other variety of health plan in which the employee participated before becoming unemployed upon the discontinuance of hospital facilities. If the affected employee has elected not to participate in any such program before said employee was terminated, there is no obligation to extend such eligibility after the termination. If the affected employee had exercised an option providing low benefits prior to termination, said employee shall not subsequently be eligible to change options to receive higher benefits. If an employee exercised a high option prior to termination, however, the employee may subsequently elect an option for lower benefits at whatever interval is allowed under the plan for changing options.

§ 225.12 Other fringe benefits.

An affected employee who is not reassigned to a position as provided in § 225.8 of this regulation shall continue to be eligible for other fringe benefits established by collective bargaining or by custom and practice to which the employee was entitled before becoming unemployed upon the discontinuance of hospital facilities. Examples of other fringe benefits include: life insurance, disability insurance, accidental death and dismemberment insurance, and dental insurance. However, benefits attached to the performance of a job such as free parking need not be continued for employees not actively employed.

§ 225.13 Dismissal allowance.

(a) During an affected employee's period of protection the protective arrangements shall provide for monthly or weekly dismissal allowances to be claculated as provided in paragraph (b) below with the duration of such allowances limited by paragraph (d) below.

(b) The amounts of dismissal allowances shall be calculated as follows: The total gross pay during the 12 months preceding the date the affected employee became unemployed shall be determined, including payment for any overtime. If the dismissal allowances are to be paid monthly, the total shall be divided by 12; if the dismissal allowances are to be paid weekly, the total shall be divided by 52. In the case of an employee with less than one year's service, the amounts shall be the average weekly earnings received by the employee in the position last occupied for each week in which the employee performed service. These amounts (which in effect are average monthly or weekly gross earnings) shall be reduced by 15%. The result is the dismissal allowance payable to an affected employee which shall be subject to deductions for: first, gross earnings from other employment; second, all applicable federal, state, and local taxes; third, other appropriate deductions (e.g., mandatory employee retirement plan contributions); and, finally, this net amount is subject to the

deduction of unemployment compensation.

(c) The monthly or weekly dismissal allowance shall not exceed 70% of the average monthly or weekly earnings during the preceding year of all regular full-time employees at the hospital.

(d) The duration of the dismissal allowance shall vary according to the employee's length of service with the employee receiving one week of benefit for each full month of service up to a maximum of 52 weeks.

(e) In the case of employees who held other full-time or part time employment prior to dismissal, the earnings from their other employment continuing subsequent to dismissal shall not be deducted from their dismissal allowances if such earnings do not exceed there earnings from such employment prior to dismissal. Any excess, however, may be deducted from their dimissal allowances.

(f) A hospital may require employees to report, as a condition of receiving dismissal allowances, the amounts they receive from unemployment insurance and other employment.

§ 225.14 Resolution of disputes.

"(a) In the case of employee protection arrangements for non-represented employees, any controversy over the interpretation, application, or enforcement of the employee protection arrangements between an affected employee and a hospital may be submitted for determination to the Assistant Secretary for Labor-Management Relations, whose decision shall be final.

(b) In the case of an arrangement of employee protections negotiated between a hospital and a labor organization, questions arising out of the interpretation or application of the agreement and any dispute between a hospital and any affected employee covered by the agreement shall be resolved under whatever procedures the parties to the agreement have provided, with arbitration as the final step as provided in § 225.7.

§ 225.15 Notice to employees.

(a) When a hospital receives approval of a grant from HHS, it shall post notice to employees at locations where they can reasonably be expected to be read by employees at least 60 days prior to any discontinuation of facilities. The notices shall identify the facilities to be discontinued, advise employees where they may obtain a copy of the employee protection arrangements and this regulation and identify by name and location the hospital officer who will administer the arrangements.

(b) In addition to posting the notices, notice shall be given individually to employees in postions which are known to be affected by the discontinuance either at their place of employment or at their home address.

Signed at Washington, D.C., this 19th day of January.

William P. Hobgood,

Assistant Secretary for Labor-Management Relations.

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Part IX

Department of Labor

Employment and Training Administration

Basic and Support Service of the Employment Service; Final Rule

DEPARTMENT OF LABOR

Employment and Training Administration

20 CFR Parts 601, 602, 603, 604, 653, 658

Basic and Support Services of the Employment Service

AGENCY: Employment and Training Administration, Labor.

ACTION: Final rule.

SUMMARY: These regulations are published to revise and update the management and operation of the employment service system. It is the purpose of these regulations to clarify and simplify the various policies, procedures and guidelines now contained in the Employment Security Manual and field instructions governing basic and support services of the employment service system.

EFFECTIVE DATE: April 23, 1981.

ADDRESS: Joseph T. Paslawski, Director, Office of Plans, Policies and Design, U.S. Employment Service, 601 D Street, NW., Room 8004, Washington, D.C., 20213.

FOR FURTHER INFORMATION CONTACT: Edward A. Waters, Division of Policies and Program Design, U.S. Employment Service, 601 D Street, NW., Room 8018 (376-6700), Washington, D.C., 20213.

SUPPLEMENTARY INFORMATION: On October 24, 1978, the Department of Labor published proposed rules in the Federal Register governing the basic services of the employment service system, support services, and review and assessment of State agency compliance with the employment service regulations.

Every effort was made to encourage public participation in this rulemaking process. Prior to October 24, 1978, several opportunities were provided State agencies to comment on various drafts of these regulations. Meetings were also held in Washington, D.C., with State agency personnel to review the regulations in draft form. All State agencies were then given a draft before publication as proposed rulemaking and encouraged to comment.

The public was given until December 26, 1978, to comment on the proposal. Over 300 written comments were received from State employment service agencies, individuals and interested organizations. The comments were pertinent and well developed. A number of commenters were critical of specific proposed rulemaking provisions and provided suggestions on how particular provisions could be improved. The Department studied these comments thoroughly and established an evaluation procedure to allow consideration of each comment on its own merits, and in relationship to other comments received on the same or related subjects. The Department found the comments helpful and has adopted a significant number of their suggestions in the final rulemaking.

Even though there was a 60-day comment period on the proposed rulemaking, the Department welcomes comments on these final rules and will evaluate them for future revisions. Those wishing to do so should send comments to Joseph T. Paslawski at the address given above. The Department also intends to develop future regulations containing a series of administrative measures to foster and improve the planning and delivery of employment and training services, emphasizing a close working relationship between the State employment service agencies and CETA prime sponsors.

The Equal Employment Opportunity Commission has waived the prepublication consultation requirements of Executive Order 12067 in order to allow these regulations to be published in a timely manner. Consultation will take place following publication and any changes to the regulations will be published thereafter.

Discussion of Major Comments

The most significant issues raised by the commenters were as follows: (1) The Department's decision not to propose specific standards to be used for the employment of counselors by the State agencies, (2) the Department's authority to issue these regulations and the commenters' concerns about their effect on the employment service system, (3) the need for and utility of handbooks in conjunction with these regulations, (4) the absence of rules on test research and development, and (5) the State employment service coordination with prime sponsors under the Comprehensive Employment and Training Act (CETA).

A number of commenters expressed disagreement with the Department's decision not to include in its proposed rulemaking a set of standards for employment service counselors. Generally, the commenters were concerned about maintaining the quality of counseling services in the absence of specific standards and the contrast with other counseling programs that have recognized standards.

The Department agrees that standards for counselors are necessary. As explained in the proposed rulemaking, however, the Department decided not to include standards at this time because of the Uniform Guidelines on Employee Selection Procedures recently adopted by the Department and the emphasis in those guidelines on validating personnel standards with respect to equal employment opportunity. The Department will continue to study this issue. However, further delay in the finalization of these regulations to accommodate the development of standards is not acceptable.

A substantial proportion of the commenters questioned the Department's authority to publish these regulations. Section 12 of the Wagner-Peyser Act of 1933, as amended, (29 U.S.C. 49 *et. seq.*), authorizes the Secretary of Labor to make rules and regulations as may be necessary to carry out the provisions of the Act. The operations of the Federal-State employment service system have been subject, for over 40 years, to the rules and regulations developed under this authority. These rules and regulations are embodied in the Employment Security (ES) Manual referenced at 20 CFR 603.4 and in Federal regulations currently published as final rules. Over the years, the ES Manual, together with other directives, has been the principal vehicle for issuing policy, operating procedures, guidelines and technical assistance. The Manual system, however, had weaknesses, principally the inability to distinguish between required and advisory material.

After studying a number of alternatives, the present system of using Regulations, Handbooks and Technical Assistance Guides (TAGs) was selected because it provided some significant benefits. Among the most important are: A clear distinction between required policy and optional procedures; greater flexibility to States in managing their operations, to the extent permitted by law; elimination of unnecessary requirements; and a uniform system whereby policies and procedures can be clearly updated.

In the present system each of the three documents has a distinct purpose. Reflecting the intent of legislation, Congressional actions, executive orders and court orders that affect the Job Service, the regulations provide regions and States with national policy and requirements for the operation of the Job Service.

The Employment and Training Handbooks which accompany the regulations provide explanations of the regulations and recommended procedures to maintain consistency in the quality of services provided to the public as well as program data to ETA. The Handbooks do not establish policy

or substantive requirements beyond what is already established in the regulations.

Technical Assistance Guides (TAGs) are issued as areas of need are identified. Material in the TAGs is optional and is developed for the purpose of providing States with suggestions on how to meet policy and other requirements established by the regulations.

The Department has no intention of imposing unnecessary requirements on State ES agencies with the publication of these regulations. As regulations governing specific operations of the Federal-State employment service system are published and become effective, ES Manual sections will be revoked. It should be noted that this procedure was used when various other ES regulations were published by the Department in final form.

Many commenters noted the absence of proposed regulations dealing with test research and development and insisted that they be addressed in the final regulations. The Department agrees that there is a need for further guidance in this area. The regulations now provide that ETA shall design and, in cooperation with specified State agencies, maintain a test research and development program.

Numerous commenters reiterated the Department's objective of better coordination between CETA prime sponsors and the Employment Service. Generally it was felt that section 653.407 could be better organized and the language made more definitive. This section has been revised to reflect related provisions of the April 3, 1979 CETA regulations, implementing the CETA Amendments of 1978, which were published in final form during the comment and resolution period of these regulations (44 FR 19990).

The Department also received comments on the role of the employment service in the administration of work requirements under § 653.406. The proposed rules were interpreted to require reimbursement for labor exchange services provided individuals receiving public assistance. It is not the Department's intent to deny public assistance recipients the labor exchange services available to all other applicants. However, these regulations do require reimbursement for the provision of so-called "work test" or other information to benefit paying agencies where the work requirement and reporting provisions are imposed exclusively under authority of State or local law.

Discussion of Significant Changes

Definitions in § 651.10

Bona Fide Occupational Qualification (BFOQ)

It was clear from the comments received on § 653.7 dealing with discriminatory job orders that an operational definition to guide the day-to-day application of the BFOQ concept was needed. Therefore, the Department has added a definition of BFOQ in § 651.10.

Job Development

Commenters objected to the requirement of a job order as part of the proposed job development definition. The Department agrees that since the primary purpose of job development is to bring to the employer's attention a particular applicant that the employer may ultimately want to hire, the requirement of a job order is inappropriate. Accordingly, the definition has been revised to delete the requirement for a job order and to add the job interview as a part of the job development process.

Placement

Significant numbers of comments were received on two aspects of the placement definition. First, in the proposed definition, one of the four required steps to be completed to receive placement credit was verification that the applicant "entered on *the* job" to which he/she was referred. The point was well made that unknown numbers of placements would not be credited because the placement did not match exactly with the original job order. Commenters suggested substituting the language "entered on *a* job," which would allow credit for placement resulting from a specific referral. After careful consideration the Department decided that the standard in the final regulations will be "entered on *a* job."

Second, commenters noted the lack of any language that recognizes as valid a placement following a job development referral on behalf of a specific applicant. The definition of placement was amended to permit credit for hiring made after a job development contact on behalf of a specific applicant, without the necessity of a job order form prior to referral.

All Definitions

It should be noted that minor changes have been made in the language of many proposed definitions to make the definitions in these final regulations consistent with the *ETA Glossary of Terms and Definitions.*

Discriminatory Job Orders; Affirmative Action Job Orders (653.7)

The Department is aware of the sensitive and difficult issues that arise when it develops regulations regarding the handling of discriminatory and affirmative action job orders. Clarity and consistency were prime considerations in this final rulemaking.

Comments received on the discriminatory job orders section indicated that there was confusion about the meaning of bona fide occupational qualification (BFOQ). A definition has been added to make clear that a BFOQ is a narrow exception to the general rule against discrimination. This was needed to guide the States and the public in the handling of discriminatory job orders.

Regarding affirmative action job orders, commenters raised questions of interpretation of the language used in defining this type of order and suggested more specific wording which they thought might clarify and improve this section. A significant addition has been made to paragraph (e) which now authorizes State agencies to accept affirmative action job orders on the basis of voluntary affirmative action plans adopted pursuant to the Affirmative Action Guidelines of the Equal Employment Opportunity Commission. (29 CFR Part 1608, published January 19, 1979, at 44 FR 4422.) Employers who affirm that they are involved in such affirmative action programs will be allowed to submit affirmative action job orders.

Some thought the language of paragraph (f) permitted exclusive referral of target group individuals. The language of this paragraph has been revised to make clear that exclusive referrals are not permitted and that qualified applicants other than those in the affirmative action job order are also to be referred.

Labor Disputes (653.8)

The comments received on § 653.8 concerning State responsibilities in the case of labor disputes questioned the inclusion of procedural language that might more properly belong in a handbook, requested clarification of some terms used, and objected to the imposition of "new" responsibilities upon the States. Additional commenters strongly protested the ES policy of refusing to refer applicants to vacant positions involved in a labor dispute.

The language of the proposal has been retained and revised in the final regulations to make clear that certain procedures are required with respect to labor disputes involving work

stoppages. These are not new requirements, but rather the codification of ongoing ES policies and responsibilities. The Department has consistently taken the position that the ES, seeking to avoid involvement in a labor dispute, will not make referrals to openings which are vacant as the result of a labor dispute. The requirement to report on labor disputes is similarly an ongoing responsibility which forms a basis for the Bureau of Labor Statistics' survey of work stoppages.

Job Development (653.10)

Commenters opposed paragraphs (b) and (c) of this section as an attempt to provide special treatment for certain groups of applicants (i.e., displaced homemakers and individuals seeking nontraditional jobs). It is the intent of these requirements to accommodate the changing composition of the labor force by developing specialized techniques to cope with traditional job stereotyping and artificial barriers to employment. While acknowledging that displaced homemakers face particular difficulty in entry or reentry into the labor market, the specialized techniques required by these paragraphs are directed at obstacles which affect job opportunities for all applicants, both men and women. Accordingly, the Department is retaining these provisions.

Counseling (653.11)

The counseling section has undergone a number of changes, most of which were for sharpening and clarification purposes rather than substance. Specific changes in content were limited to those areas covered by the commenters.

The Department agrees that the term "State counseling supervisor" was not appropriate for all agencies and it has been removed. Language has been added to this section to require that State agencies provide counseling to applicants who specifically request counseling services. A new paragraph (e) has also been added which requires the safeguarding of confidential information and records.

Testing (653.12)

The proposed regulations did not contain any mention of test research and development. Commenters thought there was a definite need to add language that would recognize and guide this activity. The Department agrees, and a new § 653.405 was written for this purpose. State agencies can administer only tests approved by ETA. This requires review and updating of tests to insure their continued validity and soundness. The new section provides that ETA shall design and, in cooperation with specified States, maintain a test research and development program.

Employer Services (653.13)

Some commenters were concerned about the lack of specific authorization to provide technical services to employers. The Department has, for clarity, added specific language in reference to those services.

Review and Assessment of State Agency Compliance With Employment Service Regulations

The Department is continuing to study the issue of State agency review and assessment within the context of a related rulemaking procedure involving the employment service. See, 45 FR 2529 (January 11, 1980). Accordingly, the Department is deferring final action on the proposed standards for review and assessment of State agency compliance with employment service regulations pending the conclusion of the January 11, 1980 rulemaking.

Regulatory Analysis

Although the proposed regulations were initially developed prior to the Department's guidelines on Improving Government Regulations, they were included in the January 26, 1979 semiannual agenda and were determined to be significant. Since the financial and other impact is less than specified in the Department's criteria for identifying major regulations, the preparation of a regulatory analysis is not required. (See, 44 FR 5576, January 26, 1979). These regulations have been duly considered and approved as meeting the Department's criteria for significant regulations.

Accordingly, Title 20, Chapter V, of the Code of Federal Regulations is amended as follows:

PART 601—ADMINISTRATIVE PROCEDURE

§ 601.7 [Removed]

1. Section 601.7, *Requests for funds for servicemen's readjustment allowance program,* is removed. This program expired several years ago.

2. In order to conform the regulations with the Department's overall regulations for the administration of grant programs (published in final form on July 20, 1979, at 44 FR 42920), § 601.9 *Audits.*, is revised to read as follows:

§ 601.9 Audits.

The Department of Labor's audit regulations at 41 CFR 29–70.207–2(h) and (i), 41 CFR 29–70.207–3, and 41 CFR 29–70.207–4 shall apply with respect to employment service and unemployment insurance programs.

PART 602—FEDERAL-STATE EMPLOYMENT SERVICE SYSTEM

3. The table of contents for Part 602 is revised to read as follows:

Sec.
602.1 Definitions.
602.3 Vocational rehabilitation services.
602.5a Special service for the handicapped.
602.8 Agricultural and related industry placement services.
602.11 Services and facilities.
602.12 Organization.
602.14 Manual of instructions.
602.15 Personnel administration.
602.16 Fiscal affairs.
602.17 Advisory councils.
602.18 Confidential character of records.
602.19 Reports and studies.
602.20 State plans of operation.
602.22 Amounts and purposes of grants.

4. The following sections in Part 602 are removed:

Sec.
602.2 Placement services.
602.4 Occupational analysis.
602.4a Industrial services.
602.5 Services to veterans.
602.6 Labor market information service.
602.7 Participation in community programs.
602.13 Arrangements between United States Employment Service and related Federal agencies.

5. Section 602.3, *Employment counseling and selective placement services,* is revised to read as follows:

§ 602.3 Vocational rehabilitation services.

Local offices shall establish and maintain cooperative relationships with community and State agencies and organizations for the coordination and mutual improvement of vocational adjustment services. In those States where State boards, departments, or agencies exist which are charged with the administration of State laws for the vocational rehabilitation of handicapped persons, the State agency shall make provision for cooperation with such boards, departments, or agencies.

§ 602.11 [Amended]

6. Section 602.11, *Services and facilities,* is amended by removing the words "to 602.10, inclusive," and adding in lieu thereof "to Parts 638 (§ 638.13), 653, 654, 655 and 656 of this Chapter."

PART 603—STATE PROGRAM BUDGET PLANS UNDER THE WAGNER-PEYSER ACT

§ 603.3 [Amended]

7. Section 603.3, *Compliance with USES regulations,* is amended by adding

the citations "938 (§ 638.13)" in the numerical sequence.

PART 604—POLICIES OF THE UNITED STATES EMPLOYMENT SERVICE

6. The following sections in Part 604 are removed:

Sec.
604.1 The placement process.
604.2 Clearance.
604.3 Employment counseling.
604.4 Services for veterans.
604.6 Service to youth.
604.8 Servce to minority groups.
604.9 Preparation and use of labor market information.
604.10 Employment service testing.
604.11 Industrial services.
604.12 Community participation.
604.13 Foreign labor.
604.14 Employer relations.
604.15 Information services.
604.17 Older workers.
604.18 Occupational analysis activities.
604.20 Service to women.
604.21 Employability development services.

PART 651—GENERAL PROVISIONS GOVERNING THE EMPLOYMENT SERVICE SYSTEM

9. The table of contents for Part 651 is revised to read as follows:

Sec.
651.1 Scope and purpose of the Federal-State employment service system.
651.2 Basic structure of the employment service system.
651.3 Authority and effect of regulations for the employment service system.
651.4 Series of handbooks for the employment service system.
651.5 Federal statutes governing the employment service system.
651.6 Executive orders affecting the employment service system.
651.7 Uniform Guidelines on Employee Selection Procedures.
651.8 Format of the regulations for the employment service system.
651.9 Consolidated table of contents for Parts 651–658.
651.10 Definitions of terms used in Parts 651–658.

10. A new paragraph (c) is added to § 651.1 which reads as follows:

§ 651.1 Scope and purpose of the Federal-State employment service system.

* * * * *

(c) Neither the ETA nor the State agencies are guarantors of the accuracy or truthfulness of information contained on job orders submitted by employers. No job order accepted or recruited upon by the ES constitutes an offer to contract to which the ETA or a State agency is in any way a party. Nevertheless, material misrepresentation of job order information supplied by the employer constitutes a violation of these regulations, and the procedures at subpart F of Part 658 of this Chapter shall be followed upon discovery by the ETA or a State agency.

§§ 651.3–651.7 [Redesignated as §§ 651.5, 651.6, 651.8–651.10]

11. Section 651.3, § 651.4, § 651.5, § 651.6, and § 651.7 are redesignated as § 651.5, § 651.6, § 651.8, § 651.9, and § 651.10 respectively.

12. A new § 651.3, § 651.4 and § 651.7 are added to read as follows:

§ 651.3 Authority and effect of regulations for the employment service system.

(a) The regulations governing the employment service system in Chapter V of this title are issued under the authority of the Wagner-Peyser Act, 29 U.S.C. 49 *et seq.*, unless otherwise noted.

(b) The regulations are binding on the Federal/State employment service system. The Assistant Secretary for Employment and Training has the authority to waive any provision(s) of these regulations, except to the extent they are required by statute, through a notice in the Federal Register which includes:

(1) The provisions being waived;
(2) The State agencies affected;
(3) The reason for the waiver; and
(4) The period for which the waiver will be in effect.

(c) The ES regulations require State agencies to provide certain services and observe national priorities and special emphases in return for funds appropriated each year under authority of the Wagner-Peyser Act and Title III of the Social Security Act. The level of required services provided by a State agency, though, is dependent upon the extent to which the State agency can provide the required services through the proper and efficient administration of its allocated share of the appropriation.

§ 651.4 Series of handbooks for the employment service system.

(a) Section 12 of the Wagner-Peyser Act authorizes the Secretary to issue rules and regulations to carry out the provisions of the Act. The Employment and Training Administration handbooks for the employment service system provide explanations of the regulations and recommended procedures to the State agencies for carrying out employment service programs. The handbooks do not establish policy or substantive requirements beyond those established in the regulations.

(b) Each State agency in the employment service system will be offered an opportunity to review and comment on the Handbooks and on any subsequent substantive amendment or revision prior to their becoming effective.

§ 651.7 Uniform guidelines on employee selection procedures.

Each State agency shall comply with the Uniform Guidelines on Employee Selection Procedures (41 CFR Part 60–3). Where tests or selection procedures have an adverse impact on any race, sex or national origin group in the selection of applicants or staff, such tests or selection procedures shall be validated, modified or changed in accordance with the Guidelines or otherwise demonstrated to be in accord with Federal law.

§ 651.8 [Amended]

13. Because Executive Order 11075 has been revoked, § 651.6, *Executive Orders affecting the employment service system,* is amended by removing paragraph (d) and redesignating paragraphs (e) through (k) as paragraphs (d) through (j).

§ 651.9 [Amended]

14. Section 651.9, *Consolidated table of contents for Part 651–658,* is amended by revising the table of contents for Part 651, adding a table of contents for Subpart A of Part 653, reserving a Subpart D of Part 653 and adding a table of contents for Subpart E of Part 653 as follows:

PART 651—GENERAL PROVISIONS GOVERNING THE FEDERAL-STATE EMPLOYMENT SERVICE SYSTEM

Sec.
651.1 Scope and purpose of the Federal-State employment service system.
651.2 Basic structure of the employment service system.
651.3 Authority and effect of regulations for the employment service system.
651.4 Series of handbooks for the employment service system.
651.5 Federal statutes governing the employment service system.
651.6 Executive orders affecting the employment service system.
651.7 Uniform Guidelines on Employee Selection Procedures.
651.8 Format of the regulations for the employment service system.
651.9 Consolidated table of contents for Parts 651–658.
651.10 Definitions of terms used in Parts 651–658.

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PART 653—SERVICES OF THE EMPLOYMENT SERVICE SYSTEM

Subpart A—Basic Services of the Employment Service System

653.1 Scope and purpose of subpart.
653.2 Job information.
653.3 Information on supportive services, training and education opportunities.

Sec.
653.4 Registration.
653.5 Job order taking.
653.6 Job referral.
653.7 Discriminatory job orders; affirmative action job orders.
653.8 Labor disputes.
653.9 Clearance systems for job orders for nonagricultural workers.
653.10 Job development.
653.11 Employment counseling.
653.12 Employment service testing.
653.13 Employer services.
• • • • •
Subpart D—Services to the Handicapped [Reserved]
Subpart E—Support Services
653.400 Scope and purpose of subpart.
653.401 Labor market information (LMI) program.
653.402 Occupational analysis activities.
653.403 Multistate labor market area agreements.
653.404 Automated systems.
653.405 Test research and development activities.
653.406 Participation in administration of related Federal State and local programs.
653.407 Coordination with Comprehensive Employment and Training Act (CETA).
653.408 Participation with community programs.
653.409 Arrangements with related Federal and community programs.

§ 651.10 [Amended]

15. In § 651.10 *Definitions of terms used in Parts 651–658*, in each definition where it applies, the words "shall mean" are amended to read "means."

16. The following definitions in § 651.10 are revised:

"Applicant" shall means a person who files an application for services with a local office of a State agency, with outstationed staff or with an outreach worker.

"Employment Service (ES)" means the national system of public employment offices known as Job Service offices consisting of the U.S. Employment Service (USES), its grantee State agencies, and the various offices of the State agencies.

"ES regulations" means the Federal regulations at 20 CFR Parts 601–604, 621, 638 (§ 638.13), and 651–658 and at 29 CFR Parts 26 and 75.

"Job Bank" shall means a computer assisted system which provides listings of current job openings in the area, on a regular basis, for distribution to JS and WIN offices and to cooperating agencies.

"Local office" shall mean a full-time office of a State agency maintained for the purpose of providing placement and other services of the public service system.

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17. The following definitions in § 651.10 are added and inserted in alphabetical order:

"Affirmative Action" means positive, result-oriented action imposed on or assumed by an employer pursuant to legislation, court order, consent decree, directive of a fair employment practice authority, government contract, grant or loan, or voluntary affirmative action plan adopted pursuant to the Affirmative Action Guidelines of the Equal Employment Opportunity Commission to provide equal employment opportunities for members of a specified group which for reasons of past custom, historical practice, or other nonoccupationally valid purposes has been discouraged from entering certain occupational fields.

A "Bona Fide Occupational Qualification (BFOQ)" means that an employment decision or request based on age, sex, national origin or religion is based on a finding that such characteristic is necessary to the individual's ability to perform the job in question. Since a BFOQ is an exception to the general prohibition against discrimination on the basis of age, sex, national origin or religion, it must be interpreted narrowly in accordance with the Equal Employment Opportunity Commission regulations set forth at 29 CFR Parts 1604, 1605 and 1627.

"Clearance" means activities in the placement process involving joint action of local offices in different labor market areas and/or States in the location, selection and the job referral of an applicant.

"Decertification" means the rescission by the Secretary of the year end certification made under Section 7 of the Wagner-Peyser Act to the Secretary of the Treasury that the State agency may receive funds authorized by the Wagner-Peyser Act.

"Dictionary of Occupational Titles (DOT)" shall mean the Dictionary of Occupational Titles, the reference work published by the USES which contains brief, non-technical definitions of U.S. job titles, distinguishing number codes, and worker trait data.

"Employer" shall mean a person, firm, corporation or other association or organization (1) which currently has a location within the United States to which U.S. workers may be referred for employment, and which proposes to employ a worker at a place within the United States and (2) which has an employer relationship with respect to employees under this subpart as indicated by the fact that it hires, pays, fires, supervises and otherwise controls the work of such employee. An association of employers shall be considered an employer if it has all of the indicia of an employer set forth in this definition. Such an association, however, shall be considered as a joint employer with the employer member if either shares in exercising one or more of the definitional indicia.

"Establishment" means a public or private economic employing unit generally at a single physical location which produces and/or sells goods or services, for example, a mine, factory, store, farm orchard or ranch. It is usually engaged in one, or predominantly one, type of commerical or governmental activity. Each branch or subsidiary unit of a large employer in a geographical area or community should be considered an individual establishment, except that all such units in the same physical location shall be considered a single establishment. A component of an establishment which may not be located in the same physical structure (such as the warehouse of a department store) should also be considered as part of the parent establishment. For the purpose of the "Seasonal farmworker" definition, farm labor contractors and crew leaders are not considered establishments; it is the organizations to which they supply the workers that are the establishments.

"Full Application" means an application for an applicant who has participated in an application interview and which includes the applicant's personal characteristics, work history and an occupational classification and DOT code.

"Identification Card" (applicant identification card) means a card given to the applicant on which are recorded identifying information and the dates of the applicant's visits to the local employment office.

"Job Development" means the process of securing a job interview with a public or private employer for a specific applicant for whom the local office has no suitable opening on file

"Job Information" means information derived from data compiled in the normal course of employment service activities from reports, job orders, applications and the like.

"Job Opening" means a single job opportunity for which the local office has on file a request to select and refer on applicant or applicants.

"Job Referral" means (1) the act of bringing to the attention of an employer an applicant or group of applicants who are available for specific job openings and (2) the record of such referral. "Job Referral" means the same as "referral to a job."

"Labor Market Area" means a geographic area consisting of a central

city (or cities) and the surrounding territory within a reasonable commuting distance.

"Labor Market Information (LMI)" means that body of knowledge pertaining to the socio-economic forces influencing the employment process in specific labor market areas. These forces, which affect labor demand-supply relationships and define the content of the LMI program, include population and growth charcteristics, trends in industrial and occupational structure, technological developments, shifts in consumer demands, unionization, trade disputes, retirement practices, wage levels, conditions of employment, training opportunities, job vacancies, and job search information.

"Partial Application" means the application of an applicant who has not participated in an application interview and which does not include an occupational classification of DOT code. Partial applications prepared for Migrants and Seasonal Farmworkers must include a signed waiver for full services at that time in accordance with 20 CFR 653.103.

"Placement" means the hiring by a public or private employer of an individual referred by the employment office for a job or an interview, provided that the employment office completed all of the following steps:

(a) Prepared a job order form prior to referral, except in the case of a job development contact on behalf of a specific applicant;

(b) Made prior arrangements with the employer for the referral of an individual or individuals;

(c) Referred an individual who had not been specifically designated by the employer, except for referrals on agricultural job orders for a specific crew leader or worker;

(d) Verified from a reliable source, preferably the employer, that the individual had entered on a job; and

(e) Appropriately recorded the placement.

"Rural Area" means an area which is not included in the urban area of a Standard Metropolitan Statistical Area and which has a population of less than 10,000.

"Secretary" means the Secretary of the U.S. Department of Labor or the Secretary's designee.

"Standard Metropolitan Statistical Area (SMSA)" means a metropolitan area designated by the Bureau of Census which contains (1) at least one city of 50,000 inhabitants or more, or (2) twin cities with a combined population of at least 50,000.

"Supportive Services" means services other than employment or training that are needed to enable individuals to obtain or retain employment, or to participate in employment and training programs.

"Tests" means a standardized method of measuring an individual's possession of, interest in, or ability to acquire, job skills and knowledge. Use of tests by employment service staff must be in accordance with the provisions of:

(1) 41 CFR Part 60-3, *Uniform Guidelines on Employee Selection Procedures;*

(2) 29 CFR Part 1627, *Records To Be Made or Kept Relating to Age; Notices To Be Posted; Administrative Exemptions;* and

(3) The Department of Labor's regulations on Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance, which have been published as 29 CFR Part 32 at 45 FR 66706 (October 7, 1980).

"Training" means a planned, systematic sequence of instruction or other learning experience on an individual or group basis under competent supervision, which is designed to impart skills, knowledge, or abilities to prepare individuals for employment.

"Transaction" means a single ES activity performed on behalf of an individual seeking assistance and/or the result of such an activity, e.g., applicant registration referral to a job, referral to a supportive service, counseling interview, testing, job development, job placement, enrollment in training, and inactivation of an applicant registration.

"Vocational Plan" means a plan developed jointly by a counselor or counselor trainee and the applicant which describes: (1) The applicant's short-range and long-range occupational goals and (2) the actions to be taken to place the plan into effect.

"Work Incentive Program (WIN)" means the employment and training program under Part C of Title IV of the Social Security Act, administered by a State agency (such as the State employment service) or another public or nonprofit private agency.

PART 653—SERVICES OF THE EMPLOYMENT SERVICE SYSTEM

18. The table of contents for Part 653 is amended by adding a table of contents for Subpart A of Part 653, reserving a Subpart D of Part 653 and adding a table of contents for Subpart E of Part 653 as follows:

Subpart A—Basic Services of the Employment Service System

Sec.
653.1 Scope and purpose of subpart.
653.2 Job information.
653.3 Information on supportive services, training and education opportunities.
653.4 Registration.
653.5 Job order taking.
653.6 Job referral.
653.7 Discriminatory job orders; affirmative action job orders.
653.8 Labor disputes.
653.9 Clearance systems for job orders for nonagricultural workers.
653.10 Job development.
653.11 Employment counseling.
653.12 Employment service testing.
653.13 Employer services.
* * * * *
Subpart D—Services to the Handicapped [Reserved]
Subpart E—Support Services
653.400 Scope and purpose of subpart.
653.401 Labor market information (LMI) program.
653.402 Occupational analysis activities.
653.403 Multistate labor market area agreements.
653.404 Automated systems.
653.405 Test research and development activities.
653.406 Participation in administration of related Federal, State and local programs.
653.407 Coordination with Comprehensive Employment and Training Act (CETA).
653.408 Participation with community programs.
653.409 Public information service.

Authority: Wagner-Peyser Act of 1933, as amended, 29 U.S.C. 49 *et seq.*; 5 U.S.C. 301; unless otherwise noted.

19. Subpart A of Part 653 is added to read as follows:

Subpart A—Basic Services of the Employment Service System

§ 653.1 Scope and purpose of subpart.

(a) This subpart sets forth those basic employment services which each State agency shall provide to the public. Subparts B, C and D of this Part 653 describe the special efforts which State agencies must make in providing services to MSFWs, veterans and the handicapped, respectively.

(b) The basic services described in this subpart are the principal ES services which lead to placement of individuals into employment.

(1) Sections 653.2 and 653.3 describe services which must be available to all individuals, regardless of whether they are registered with the employment service.

(2) Sections 653.4 through 653.8 describe the registration process and those services which may only be provided to applicants.

(3) Sections 653.9 through 653.12 describe those services which are provided employers in eliciting job orders, accepting and servicing those job

orders, and assisting employers to make better use of the employment service system.

§ 653.2 Job information.

(a) State agencies shall compile job information for the purpose of providing it to the public.

(b) Each State agency shall make available job information with respect to local office areas to all individuals and, if desired by an individual, job information with respect to other areas within the State. Upon request from an individual, State agencies shall assist an individual to obtain job information about jobs in other States in which he/she may have an interest in employment.

(c) Job information available to the public about specific job openings listed with a State agency shall include:

(1) Job title and hiring specifications;

(2) Salary or wage range;

(3) Starting date of employment;

(4) Anticipated duration of employment;

(5) Any special terms and conditions of employment identified by the employer;

(6) Where applicable, notice of affirmative action specification and target group(s) encouraged to apply;

(7) total base hours to be worked each week, and any overtime indicated;

(8) Location of worksite, when appropriate.

(d) State agencies shall insure that the policies for maintaining confidentiality of records and for disclosure of information at 20 CFR 602.16 and 604.16 are adhered to in providing job information.

§ 653.3 Information on supportive services, training, and educational opportunities.

Each State agency shall provide to the public on request information on supportive services, training and educational opportunities that are available from other agencies (e.g., CETA, WIN, State Welfare, Veterans Administration).

§ 653.4 Registration.

(a) State agencies shall register as a job applicant any individual legally qualified to work in the United States without regard to place of residence, current employment status, or occupational qualifications. Registration shall consist of the taking of an application which includes the recording of an individual's availability for employment or training and/or employability development services. State agencies shall obtain from an applicant only that information which is necessary to determine the applicant's qualifications and facilitate placement on a job, and to satisfy ETA reporting requirements.

(b) Registration, including all ETA required data elements, shall have been completed prior to:

(1) Job referral;

(2) Job development;

(3) Employment counseling; or

(4) Employment testing, except when testing is being done solely as a service for another agency or organization or for research purposes.

(c) Except as otherwise required by ES regulations, State agencies may require full or partial applications in registering individuals. When establishing State agency policy on requiring full or partial applications, State agencies shall consider the extent to which a full application is necessary for offering services such as job development, employment counseling, and job referral from the active application file when the applicant is not physically present, i.e., the extent to which such services require knowledge of the applicants' skills, knowledge, and abilities. State agencies shall, however, require employment service staff to accept a full application from any individual who requests to file a full application.

(d) No inquiry is to be made regarding the union or nonunion affiliation of an applicant, nor is such information to be recorded on the applicant record.

§ 653.5 Job order taking.

(a) State agencies shall accept job orders from an employer except for:

(1) Job orders from an employer who has had services discontinued in accordance with the provisions at Subpart F of Part 658 of this chapter;

(2) Job orders which contain specifications which are in violation of Federal, State, or local laws such as laws governing wages, hours, child labor, or housing standards where housing is offered as a condition of work;

(3) Job orders which contain discriminatory provisions in accordance with § 653.7;

(4) Job orders involving labor disputes in accordance with § 653.8;

(5) Job orders on which a job referral may result in a monetary or other charge being made to either the employer or the applicant;

(6) Job orders from farm labor contractors who are not registered with the Employment Standards Administration where required by Federal law and who do not possess a valid State certificate where required by State law; and

(7) Job orders which specifically designate the individual to be referred; except that State agencies may accept an agricultural job order for specific crew leader or worker preferred by the employer, provided the order meets the nondiscrimination criteria.

(b) Job orders from agricultural and related industry establishments and from certain food processing establishments which require recruitment from outside the local office area shall be serviced according to § 653.108, *Services for Migrant and Seasonal Farmworkers*. These establishments are identified by a Standard Industrial Classification (SIC) code of 01 through 07, except 027, 074, 078, 0752, and 0761, or an SIC code of 201, 2033, 2035, or 2037.

(c) Job orders accepted by State agencies shall contain only that information which is necessary to select qualified applicants for job referral and to satisfy ETA reporting requirements.

(d) Job orders from United States and foreign employers to recruit U.S. workers for employment at locations outside the U.S. are subject to the requirements of these regulations irrespective of the laws of the Country in which the employment is located. Prior to performing any service under a job order of this type, the State agency must have a written understanding with the employer on the particulars of the referral activity and copies of the job order and written understanding must be sent to the regional office.

§ 653.6 Job referral.

(a) Every attempt shall be made to refer applicants to jobs which utilize the applicant's highest skills, knowledge, and abilities in keeping with the information provided by the applicant and the employer.

(b) Preference in referring applicants shall be given to those who are veterans pursuant to § 653.221. In the case of referrals on affirmative action job orders, the provisions of § 653.7 shall be followed.

(c) No referral shall be made which results in a charge or fee being levied on the applicant for referral to a job or on the employer for hiring applicants referred by the employment service.

(d) Applicants may be referred to job orders indicating that union membership is required after obtaining employment: *Provided*, That the applicant concurs in referral to such a job opening and that such a membership requirement is legal in the State where the job opening exists.

(e) When the State agencies are performing services under grants, subcontracts or agreements with other

Federally funded programs (e.g., CETA, WIN, Job Corps) referrals to such programs shall be made in accordance with the regulations in effect for the program.

§ 653.7 Discriminatory job orders; affirmative action job orders.

(a) State agencies shall promote the equal employment opportunity of all applicants on the basis of their skills, knowledge, and abilities as determined from the information provided by the applicant.

(b) State agencies shall not accept any discriminatory job orders. A discriminatory job order is one which indicates a preference or requirement for workers of a specific race, color, religion, sex, age, national origin, citizenship or physical or mental status unrelated to job performance, except if the requirement is a bona fide occupational qualification (BFOQ) under the Equal Employment Opportunity Commission regulations set forth at 29 CFR Parts 1604, 1605, and 1627.

(c) Whenever an employer submits a job order which is determined to be discriminatory, the State agency shall inform the employer that the job order may not be accepted and the reason why, unless the employer withdraws the discriminatory specifications.

(d) State agencies shall accept affirmative action job orders which seek qualified applicants who are members of a specified group which for reasons of past custom, historical practice, or other nonoccupationally valid purposes have been discouraged from entering certain occupational fields. To be accepted, an affirmative action job order must result from a court order, the directives of a fair employment practices authority, the affirmation action provisions of a government contract, grant, loan, or the provisions of a Federal, State, or local law or a voluntary affirmative action plan adopted pursuant to the Affirmative Action Guidelines of the Equal Employment Opportunity Commission set forth at 29 CFR Part 1608.

(e) If the employer asserts that the job order is an affirmative action job order and cites an authority for that order described at paragraph (d) of this section, the State agency shall note on the order that it is an affirmative action job order, with the authority provided and the target group(s) requested.

(f) In making job referrals on affirmative action job orders, State agencies shall make every effort to include a significant number of qualified applicants from the target group(s) to enable the employer to meet its affirmative action obligations. In referring qualified individuals to affirmative action job orders, veterans referral priorities in § 653.221(a)(7) shall be followed, i.e., qualified veteran applicants, including veterans who are members of the affirmative action target group(s), will be given preference in referral; thereafter all qualified applicants, including members of the affirmative action target group(s), shall be referred.

(g) State agencies shall attempt to service affirmative action job orders from applicants currently available and through active recruitment in the local community, especially through local public agencies such as the CETA prime sponsors.

(h)(1) An employer asserting a BFOQ has the burden of proving a BFOQ exists. A BFOQ shall be interpreted narrowly in accordance with the Equal Employment Opportunity Commission regulations set forth at 29 CFR Parts 1604, 1605, and 1627.

(2) A job order asserting a BFOQ based on religion shall be accepted if the employer can demonstrate that the job duties are such that they can only be performed by an individual who is a member of the specified religious denomination. In addition, religious corporations, associations, educational institutions or societies, but not other employers, may specify a restriction or preference for individuals of a particular religion to perform work connected with the carrying on of their activities.

(3) An otherwise discriminatory job order may be accepted if the job order is for training or employment in a Federal or Federally assisted employment or training program in which participation is limited to persons of the group(s) specified in the job order, or if the job order limitation is required by Federal law or a State law not in conflict with Federal law, such as a child labor law.

§ 653.8 Labor disputes.

(a) State agencies shall make no job referral on job orders which will aid directly or indirectly in the filling of a job opening which is vacant because the former occupant is on strike, or is being locked out in the course of a labor dispute, or the filling of which is otherwise an issue in a labor dispute involving a work stoppage.

(b) Written notification shall be provided to all applicants referred to jobs not at issue in the labor dispute that a labor dispute exists in the employing establishment and that the job to which the applicant is being referred is not at issue in the dispute.

(c) When a job order is received from an employer reportedly involved in a labor dispute involving a work stoppage, State agencies shall:

(1) Verify the existence of the labor dispute and determine its significance with respect to each vacancy involved in the job order; and

(2) Notify all potentially affected staff concerning the labor dispute.

(d) State agencies shall resume full referral services when they have been notified of, and verified with the employer and workers' representative(s), that the labor dispute has been terminated.

(e) State agencies shall notify the regional office in writing of the existence of labor disputes which:

(1) Result in a work stoppage at an establishment involving a significant number of workers; or

(2) Involve multi-establishment employers with other establishments outside the reporting State.

§ 653.9 Clearance system for job orders for nonagricultural workers.

(a) This section applies to all clearance activities on job orders seeking nonagricultural workers, except that:

(1) In areas covered by multistate agreements under § 653.403, clearance activities shall be conducted in accordance with an approved multistate agreement; and

(2) Job orders seeking migrant food processing workers shall be handled in accordance with § 653.108.

(b) Each State agency shall cooperate with the ETA in establishing and maintaining a system for facilitating the movement of nonagricultural workers between labor market areas within the State (intrastate clearance), or between the States (interstate clearance). In doing so, each State agency shall:

(1) Serve applicants by referring them to job openings suitable for them when they desire employment in a State different from where they live, or when they cannot be placed locally and will accept employment elsewhere;

(2) Service employers who request such assistance by locating, selecting, and referring qualified applicants from other States when such applicants are not available within the State; and

(3) Recruit qualified applicants from sources within the State before resorting to interstate clearance unless:

(i) The area is covered by a multistate labor market area agreement; or

(ii) The State agency anticipates a shortage of workers within the State.

§ 653.10 Job development.

(a) State agencies shall insure that local offices provide job development

for those applicants who can best benefit from such assistance.

(b) State agencies shall develop and implement specialized techniques to facilitate the placement of qualified applicants in jobs which have traditionally been limited primarily to individuals of the opposite sex.

(c) State agencies shall develop and implement specialized techniques to assist affected applicants, such as displaced homemakers, to overcome artificial barriers to entry or reentry into the labor market.

§ 653.11 Employment counseling.

(a) Each State agency shall provide employment counseling for applicants who request, or who otherwise have been identified as needing, employment counseling services and who accept referral to counseling.

(b) Each State agency's employment counseling service shall have as its objective to assist applicants with the problems of vocational choice, occupational change, or job adjustment which interfere with obtaining or holding suitable employment.

(c) Each State agency shall insure that Job Service staff recognized applicants in need of employment counseling and refer them for employment counseling service.

(d) Each State agency shall insure that employment counseling is provided by qualified and trained employment counselors or counselor trainees.

(e) Each State agency shall maintain a separate counseling record on each applicant counseled and preserve the confidentiality of information and records on counseled applicants.

(f) Each State agency's employment counseling staff shall:

(1) Administer, or arrange to have administered by appropriate Job Service staff, only those tests approved by the ETA;

(2) Assist the applicant in developing a vocational plan which shall be part of the applicant's counseling record and which shall be reflected in the assignment of occupational classifications to the applicant; and

(3) Refer applicants to other community resources for training and other services which the State agency is not equipped to provide and which will improve the applicant's employability.

(g) Each State agency shall cooperate with schools, community agencies, CETA prime sponsors, and other public organizations which also provide counseling and guidance services or which have clients who can benefit from employment counseling services of the State agency.

§ 653.12 Employment testing.

(a) Each State agency shall administer an employment testing program in accordance with the provisions of:

(1) 41 CFR Part 60–3, *Uniform Guidelines on Employee Selection Procedures;*

(2) 29 CFR Part 1627, *Records To Be Made or Kept Relating to Age; Notices To Be Posted; Administrative Exemptions;* and

(3) The Department of Labor's regulations on Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance, which have been published as 29 CFR Part 32 at 45 FR 66706 (October 7, 1980).

(b) In operating the testing program, the State agency shall:

(1) Administer only those tests approved by the ETA, using the specific instructions contained in the manual for each test and required test materials, equipment and facilities;

(2) Use only staff trained in the appropriate administration of each ETA approved test(s);

(3) Provide for reporting test results in an appropriate form to individuals, employers and other organizations;

(c) The State agencies may:

(1) Provide for testing apprenticeship candidates for Joint Apprenticeship Committees and/or national unions and testing employed workers for promotion or transfer and civil service candidates; and

(2) Provide for release of certain testing materials to other organizations, under procedures designed to safeguard their administration and use and assure adequate security to protect their integrity. Copies of such procedures shall be sent to the appropriate ETA Regional Office for Federal approval prior to the release of testing materials.

§ 653.13 Employer services.

(a) Each State agency shall establish and maintain an employer services program which:

(1) Solicits job orders from employers and promotes the maximum use of employment service facilities;

(2) Provides information on labor market conditions and other subjects of interest to the employers;

(3) Provides information to employers covered by the Federal contractor job listing program regarding the employers' listing and reporting responsibilities under the provisions of Section 2012 of Title 38, United States Code and the Department's veterans' affirmative action regulations at 41 CFR Part 60–250; and

(4) Elicits information from employers, including individual job requirements, anticipated hiring, composition and size of work force, and need for employment services, which will contribute to the State agencies' ability to plan and provide services to employers.

(b) States are authorized to provide technical services to employers including but not limited to job analysis services, affirmative action planning assistance, test selection, turnover and absenteeism control, job evaluation information and other support directed towards work force stabilization.

§ 653.103 [Amended]

20. § 653.103, *MSFW job applications,* is amended, by removing the citation "651.7" and inserting in lieu thereof the citation "651.10."

§ 653.108 [Amended]

21. Paragraph (c)(1) of § 653.108, *Requirements for intrastate and interstate job orders seeking agricultural workers,* is amended by adding the word "or" between the words "citizenship" and "mental" and removing the phrase ", or veteran or nonveteran status."

22. A new Subpart D—Services to the Handicapped is added and reserved as follows: Subpart D—Services to the Handicapped [Reserved]

23. Subpart E of Part 653 is added to read as follows:

Subpart E—Support Services

§ 653.400 Scope and purpose of subpart.

Subpart A of this Part 653 sets forth the basic services of the employment service system. This subpart sets forth the services which support those basic services.

§ 653.401 Labor market information (LMI) program.

States agencies, under the direction of the ETA, with appropriate assistance from the Bureau of Labor Statistics (BLS) shall:

(a) Develop and maintain an LMI program to collect, analyze, and issue information on current and anticipated labor market developments and opportunities for employment and training;

(b) Submit plans as part of the Program and Budget Plan (PBP) each fiscal year for using any funds specifically allocated for LMI activities;

(c) Supplement LMI as appropriate to meet individual State and area needs; and

(d) Disseminate and explain LMI as requested by appropriate groups (e.g., CETA prime sponsors, Vocational Education Agencies, State Employment and Training Councils).

§ 653.402 Occupational analysis activities.

(a) The ETA shall design and, in cooperation with State agencies, maintain a... occupational analysis program for the purpose of developing improved occupational information which may then be used to develop job search and career guidance information and techniques. This program shall include collecting, analyzing, and organizing information about the duties and performance requirements of jobs and the relationships among jobs.

(b) State agencies shall inform the ETA of changes that occur in occupations within their State (e.g., new or emerging occupations, changes in job requirements).

§ 653.403 Multistate labor market area agreements.

When a single labor market area covers part of two or more States, the State agencies involved shall establish and maintain by a written agreement adequate arrangements and procedures to assure that applicants have full access to job opportunities and employers have full access to the available labor supply within the area, without regard to State boundaries. Copies of such agreements shall be sent to the appropriate ETA Regional Office(s).

§ 653.404 Automated systems.

(a) State agencies shall cooperate with ETA in the establishment and maintenance of automated systems designed to aid in the more effective administration and operation of employment service programs, and which assist the Secretary in carrying out the provisions of section 312(f) of CETA.

(b) ETA shall assist in appraising and selecting sites for the establishment of automated systems. The ETA shall:

(1) Provide assistance to State agencies in establishing automated systems and making them operational; and

(2) Monitor implementation of the systems and their subsequent operation.

(c) State agencies shall insure that:

(1) ES Staff, in making job referrals based on the output of automated matching systems, shall follow the requirements for preference in job referral of veteran applications established at § 653.221(a)(7) and for filling job orders from employers with affirmative action obligations at § 653.7;

(2) Information on applicants and employers in the automated system shall be used in ways consistent with the policies for maintaining confidentiality of records and for disclosure of information at 20 CFR §§ 602.18 and 604.18.

(d) Costs for the implementation and maintenance of computer-assisted systems will be shared with other ETA programs in accordance with ETA fiscal standards.

§ 653.405 Test research and development activities.

(a) The ETA shall design, and in cooperation with specified State agencies, maintain a test research and development program for the purpose of developing and validating tests used in counseling and selection of employment service applicants in accordance with ETA standards and Federal requirements.

§ 653.406 Participation in administration of related Federal, State and local programs.

(a) Each State agency shall participate in the administration of related Federal, State and local programs to the extent required by Federal law; regulation or directive of the Secretary; or agreement between the Secretary and the agency administering such a program.

(b) Each State agency shall participate in the administration of programs established exclusively under State or local law only to the extent that the costs of doing so are paid to the State agency by the agency administering such a program.

(c) A State agency shall make information from employment service files available to a public agency with any duty or responsibility under Parts A or D of Title IV of the Social Security Act upon request of the public agency: *Provided, That:*

(1) The costs for doing so are paid to the State agency by the appropriate public agency;

(2) The information concerns an individual receiving benefits or eligible to receive benefits under a program receiving funds under Parts A or D of Title IV of the Social Security Act; and

(3) The information is requested for purposes reasonably necessary for the proper administration of an activity authorized or required under Parts A or D of Title III of the Social Security Act.

§ 653.407 Coordination with Comprehensive Employment and Training Act (CETA).

(a) Each State agency shall establish linkages with State and local prime sponsors and other program sponsors under CETA.

(b) Each State agency shall provide a copy of its annual Program Budget Plan to all CETA prime sponsors within the State.

(c) Each State agency shall enter into written agreements with the State and local prime sponsors. The purpose of such agreements shall be to maximize the level of coordination and minimize duplication between the State agency and State and local prime sponsors. Such agreements shall delineate the responsibility of each and cover at a minimum:

(1) Coorination of employment service activities with employment and training services of the prime sponsors;

(2) A description of arrangements for coordination of employer contacts and other activities involving contact with employers;

(3) Arrangements to coordinate activities including certification, referral, and publicity functions under the Targeted Jobs Tax Credit Program established by the Revenue Act of 1978, 26 U.S.C. 44B, 51–52; and

(4) Arrangements to accept information on available public service employment positions, in order that such information may be provided to unemployment insurance recipients and other applicants for ES services.

(d) A copy of the agreement described in paragraph (c) of this section shall be made available to the RA upon request.

(e) Each State agency shall coordinate with prime sponsor staff in providing priority services to veterans and other eligible persons as required by Chapter 41 of Title 38, United States Code (relating to counseling and employment services to veterans) and in filling job openings covered by the mandatory listing requirements of 38 U.S.C. 2012.

(f) Each State agency shall actively seek to deliver appropriate services to State and local prime sponsors.

(g) Each State agency shall participate in the following activities:

(1) Prime sponsor planning councils;

(2) State Employment and Training Council (S.E.T.C.); and

(3) ETA negotiated agreements for employment services; e.g., recruitment, certification, selection, referral and placement for programs such as Job Corps, HIRE II and the Young Adult Conservation Corps.

§ 653.408 Arrangements with related Federal and community programs.

(a) The ETA is authorized to establish appropriate arrangements with other Federal, State or local agencies, and private and community organizations for the coordination of activities and the exchange of services which relate to the purposes and programs of the Employment Service. Each State agency shall comply with and carry out such arrangements.

(b) Each State agency shall, wherever practicable, cooperate with other public agencies and private nonprofit organizations concerned with employment problems in developing programs for increasing employment opportunities which will result in more efficient administration of ES activities or use of ES funds.

§ 653.409 Public information service.

Each State agency shall keep the public informed through the use of the public information media, e.g., radio, television, and newspapers, about ES operations and services. Disclosure of identifying information on individual applicants or employers is prohibited unless that disclosure is specifically authorized in writing by each applicant and/or employer, and is in keeping with §§ 602.18 and 604.16 of this chapter.

PART 658—ADMINISTRATIVE PROVISIONS GOVERNING THE EMPLOYMENT SERVICE

Subpart E—Employment Service Complaint System

§ 658.411 [Amended]

24. Paragraph (a)(1) of § 658.411, *State agency officials responsible for handling ES-related complaints,* is amended by removing the phrase "or non-veteran."

25. Paragraph (b)(1) of § 658.420, *Establishment of ES complaint system at the ETA regional office,* is amended by removing the phrase "or non-veteran."

(Wagner-Peyer Act of 1933, as amended, 29 U.S.C. 49 et seq.; 5 U.S.C. 301; and 38 U.S.C. Chapters 41 and 42)

Signed at Washington, D.C., this 19th day of January 1981.

Ray Marshall,

Secretary of Labor.

[FR Doc. 81-3071 Filed 1-22-81; 8:45 am]

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January 23, 1981

Part X

Department of Energy

Economic Regulatory Administration

Mandatory Petroleum Price Regulations; Retroactive Amendments to "V" Factor of Refiner Cost Allocation Formulae

DEPARTMENT OF ENERGY

Economic Regulatory Administration

10 CFR Part 212

[Docket No. ERA-R-80-30]

Mandatory Petroleum Price Regulations; Retroactive Amendments to "V" Factor of Refiner Cost Allocation Formulas

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Final rule.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) is amending as of April 30, 1974, the definition of the denominator of the "V" factor of the refiner cost allocation formula contained in 10 CFR § 212.83 to reinstate that definition in the form and wording as promulgated in 39 FR 15138 (May 1, 1974), and to repromulgate all subsequent amendments to the definition. This amendment has the effect of requiring that the denominator of the "V" factor represent virtually the total volume of refinery output, including volumes of petroleum coke, petroleum wax, asphalt, road oil and refinery gas. Including all such volumes in the denominator of the "V" factor assures that products subject to price controls bear only their volumetric share of increased costs incurred in the refining process.

DATE: Effective date: April 30, 1974.

FOR FURTHER INFORMATION CONTACT:

Jack Vandenberg (Office of Public Information), Economic Regulatory Administration, Room B-110 2000 M Street, NW., Washington, D.C. 20461 (202) 653-4055

William Funk (Office of General Counsel), Department of Energy Room 6A-099, 1000 Independence Avenue, SW., Washington, D.C. 20585 (202) 252-6730.

SUPPLEMENTARY INFORMATION:

I. Background
II. The Proposed Amendment
III. Comments and Responses
A. Objections on the Merits
B. Legal Objections
C. Enforcement Issues
IV. Amendments Adopted
V. Procedural Requirements

I. Background [1]

In 1979 the definition of "V_a" in the refiner price formula (10 CFR 212.83) (hereafter referred to as the "V" factor) that had been adopted on April 30, 1974, was declared invalid by the District Court for the Eastern District of Texas. In so finding, the court held that in promulgating that definition, the agency (1) had violated 5 U.S.C. 553 by failing to provide notice and comment on the rule, (2) had acted arbitrarily and capriciously by failing to consider the objectives of the Emergency Petroleum Allocation Act (EPAA), and (3) had violated section 4(b)(2)(A) of the EPAA by failing to provide for a dollar-for-dollar passthrough of crude oil costs. The Temporary Emergency Court of Appeals (TECA) upheld the district court on the first two points, but did not address the third. [2]

The "V" factor in the April 30, 1974 rule, as well as in previous Cost of Living Council regulations and subsequent Federal Energy Administration (FEA) regulations, was used to determine the maximum allowable increased crude oil costs that could be passed through in prices of petroleum products subject to price controls. The "V" factor operated through a volumetric apportionment of costs. All petroleum products subject to price controls, as a group, could not bear a greater proportion of crude oil cost increases than their sales volume bore to the total sales volume of all products derived from crude oil. Similarly, certain specified petroleum products, individually, could not bear a greater proportion of crude oil cost increases than the sales volume each such product bore to the total volume of products derived from crude oil sold by the refiner.

When the Economic Stabilization Act of 1970 (ESA), which authorized price controls on petroleum products until April 30, 1974, expired, price controls on "refined petroleum products," a defined term, continued under the EPAA. Five petroleum products previously controlled, however, were not included in the definition of "refined petroleum products" in the EPAA, and, therefore, were exempt from controls. These products were: petroleum coke, petroleum wax, asphalt, road oil, and refinery gas. In anticipation of the expiration of the ESA (and thus the authority to control these five products), the FEA promulgated a rule on April 3, 1974, to delete from the term "covered products" (which term was used to describe products subject to price controls) those five products. The agency did not realize, however, that this change in definition would result in a disproportionate allocation of costs to refined petroleum products under the "V" factor as it then read. [3] When this oversight was discovered, the agency promulgated the April 30, 1974 rule amending the definition of the "V" factor to reinstitute the allocation of increased crude oil costs to all refined petroleum products on the basis of the volumetric proportion of each product's sales to total sales of all products derived from crude oil. It was this rule that the courts have held invalid.

II. The Proposed Amendment

In our September 5, 1980 notice of proposed rulemaking we proposed to adopt, retroactively to April 30, 1974, the "V" factor rule that had been invalidated. Moreover, we also proposed to re-adopt all subsequent amendments to the April 30, 1974 rule, the status of which amendments, although not invalidated by the court's judgment, was not totally clear. As explained in the preamble to that proposal, our intent was to adopt a rule that would, for the periods in question, best further the purposes of the EPAA. We also explained why we believed it both necessary and appropriate to adopt the rule retroactively.

III. Comments and Response

As a general matter, several commenters questioned our good faith in the rulemaking proceeding, suggesting that we had already made up our minds and that the proceeding was a sham. There is no truth in those suggestions. The original proposal was drafted and proposed in the good faith belief that the proposed rule, proposed to be adopted retroactively, would better further the purposes of the EPAA than the rule that would exist in the absence of adopting the proposed rule. The reasons for this belief were reflected in the preamble to the proposed rule. Refiners' vehement opposition to the proposal [4], and the arguments raised in support of that opposition, led to a reconsideration of the proposal and the reasons behind it. Several of the alternatives raised by commenters, although not contained in the proposal, were given serious

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[1] The background and the proposed rule were extensively discussed in the preamble to the proposed rule (45 FR 58871, September 5, 1980). That discussion is incorporated herein by reference.

[2] While the validity of the April 30, 1974 rule is no longer involved in litigation, the scope of the judgment with respect to the plaintiff Mobil is currently before TECA on appeal. In our view, the adoption of today's final rule does not affect the appeal, and nothing in the current litigation suggests that the adoption of this rule is inappropriate.

[3] How the change in definition of "covered products" resulted in a disproportionate allocation of costs under the "V" factor is more fully described in the preamble to the proposed rule.

[4] Of the 49 commenters, 43 opposed adoption of the proposed rule. Five resellers and one trade association representing resellers supported the proposal. Of the 43 commenters that opposed the rule, 41 were either refiners or trade associations representing refiners.

consideration as possible further proposals in a continued rulemaking. Nevertheless, after a thorough review of the original proposal, comments thereon, and possible alternatives, we have decided to adopt as a final rule the rule proposed. Our reasons for this action are described in detail below. We recognize that our decision will lead some to believe that their original skepticism in our good faith has been proved correct, but we cannot fail to take the action we believe to be correct, after a thorough consideration of the entire record, merely because some will interpret that action in a false light.

A. Objections on the Merits

A consistent theme in the objections to the proposed rule was that the effect of volumetric apportionment of increased crude oil costs to the five exempt products is inequitable, contrary to market realities, and unreasonable. Essentially, commenters alleged that certain of these products constituted the residual waste of the refinery process and could never recover their volumetric proportion of crude oil costs. Moreover, it was alleged by several refiners that their particular circumstances prohibited them from recouping their volumetric proportion of increased crude oil costs with respect to the five exempt products as a group. Thus, they said, they were forced to under-recoup their increased crude oil costs, which was inequitable, unfair, and led to market distortions by penalizing investment in facilities to produce these five exempt products.

A related comment was that the volumetric apportionment of costs to all controlled products was unreasonable. Again, because the commenters believed the exempt products were the least valuable products—and the controlled products the most valuable—they believed that controlled products *per se* were entitled to a higher than volumetric proportion of increased crude oil costs.

The commenters felt that our 1979 adoption of the gasoline "tilt," where we recognized the importance of allowing a greater-than volumetric apportionment of crude oil costs to gasoline, was precedent for allowing the passthrough on several products of the increased crude oil costs volumetrically attributable to the five exempt products.

Some commenters advised that no rule should be promulgated, suggesting that all increased crude oil costs should be available for passthrough on covered products.

Other commenters suggested that DOE could propose a new alternative that would allow passthrough on covered products of only unrecouped increased crude oil costs volumetrically apportioned to the five exempt products. This, they said, would avoid the "double recovery" problem we had noted in the preamble to the proposed rule.

Moreover, in light of our concern, expressed in the preamble to the proposed rule, that failure to adopt any rule could result in substantial increases in banks that might be passed through in a tight gasoline market, other commenters suggested the proper solution was to limit the bank passthroughs, not to change retroactively the cost allocation formula.

Finally, many commenters said that our concern with the effect on enforcement actions of failure to adopt any rule was improper. These commenters claimed that we were trying "to revive otherwise barren allegations of overcharges." *See* comments of American Petrofina, Inc.

In light of these many comments, we extensively reconsidered the proposed rule and the previously articulated reasons for it. First, we have determined that our concern with the possible effects on future gasoline prices is not of overriding importance in this rulemaking. The elimination of the equal application rule (which occurred after the "V" factor proposal was issued), the current size of the banks, the current and projected gasoline market, and the limited length of time left under price controls all suggest that, if a crisis occurs that might make possible large increases in gasoline prices, the more direct and appropriate regulatory response would most likely be further limitations on bank passthroughs or the elimination of the banks.

Nevertheless, we continue to believe a rule that would allow a double recovery of certain increased crude oil costs to be inequitable under the EPAA. One of the principal purposes, if not the paramount purpose, of the EPAA was to mandate a system of price controls. The legislative history and findings and purposes section of the EPAA make clear that the regulations thereunder were to *minimize* the impacts of crude oil shortages. To allow refiners to recover *all* increased costs of crude oil on only those petroleum products subject to controls, while certain products were exempt and able to be sold at market prices, thereby recovering some, all, or more than all the increased cost of crude oil associated with those products, is directly contrary to the spirit and purpose of the EPAA. Such a price regime would also be directly contrary to several of the section 4(b)(1) objectives, *see* FR 58673 for a discussion of these objectives. None of the other objectives, moreover, would be furthered by allowing such a double recovery.

Generally, the commenters did not attack this conclusion. Those who addressed the double recovery problem, however, noted that this problem did not by itself compel the conclusion that the "V" factor proposal was the proper solution. Rather, they suggested, the double recovery problem could be solved by allowing the passthrough on covered products of only the unrecouped increased costs volumetrically attributable to the five exempt products.

We considered this suggestion very carefully because initially it appeared a reasonable and equitable manner of prescribing prices.[9] The major problem with adopting this suggestion on an industry-wide basis was how to determine the "recouped" increased curde oil costs in order to determine the unrecouped crude oil cost increases. For example, it is not necessarily true that the difference between revenues received in the sale of exempt products in a particular month and the revenues received in the sale of exempt products in May 1973 represent "recouped" increased crude oil costs, since this amount would also include increased non-product costs. Even if these separate components could be identified and quantified in the price regulations, there would then be a sequence of recovery issue. While such issues and problems might be resolvable, the result would be very complicated and would require the logical and legal paradox of DOE investigation and audit of revenues received for *exempt* products. Moreover, at least one refiner has stated that it no longer has records of its sales prices for exempt products. These administrative burdens, which would have to be imposed on all refiners, whether or not they might benefit from the rule, as well as on DOE, have to be weighed against whatever benefits might flow from adoption of such a rule.

This complexity and administrative burden was recognized by some commenters. TOSCO, in response, proposed a simplified system. Under that proposal *all* increased crude oil costs would be allocated to covered products, but all increases in revenue for the five exempt products (in any given month) over the revenues received in

[9] Although this alternative was not expressly proposed, we considered it and related alternatives as carefully as the proposed version. While adoption of one of the alternatives might have had to have been preceded by further notice and comment, we did not need to reach that question because, as discussed below, we have determined the proposed "V" factor best furthers EPAA objectives.

May 1973 would be deducted from the refiner's pool of increased product and non-product costs. TOSCO noted that this would be a simple, easily administered system. While this is true, TOSCO's proposal could have particularly detrimental effects if adopted on an industry-wide basis. The increased revenues for the five exempt products for some refiners could well exceed the increased crude oil costs volumetrically attributable to those products in a given month, depending on the type of exempt products produced, their volume, and the market.[6] In this circumstance, refiners would be penalized by profiting in the exempt markets because they would lose the ability to passthrough actual increased costs associated with controlled products on those products.[7] This would conflict with the EPAA objective of economic efficiency and minimizing economic distortion.

Thus, providing a mechanism for passing through on covered products only the unrecouped increased crude oil costs volumetrically attributable to the exempt products would benefit some refiners—to greater or lesser degrees depending on the volume and type of exempt products produced—but would impose certain costs on all refiners, and perhaps significant costs on some refiners depending on the particular regulatory approach adopted.

In assessing the relative burden that would be imposed on refiners by the proposed rule or the suggested alternative, we noted that not all refiners indicated that the proposed rule would preclude them from recouping all costs volumetrically attributable to the five exempt products. Moreover, most commenters did not indicate that problems with cost recoupment applied to all exempted products. Many commenters indicated only that increased costs could not always be recouped in sales of petroleum coke and asphalt. These commenters, however, did not always indicate whether the costs associated with petroleum coke and asphalt were in fact recouped in sales of other exempted products.[8]

In short, we have determined on the basis of the record that the problems that would arguably be caused by the proposed rule—that is, not allowing any recoupment on covered products of increased crude oil costs volumetrically attributed to the five exempted products as a class—would at most impact only some refiners, and only some of these refiners in a significant amount.[9] Given the cost, complexity, and improbability of contriving a rule that would benefit only some refiners without having caused offsetting disequalibria or distortions in the marketplace for exempt products, while imposing some burdens on all refiners, we have determined that the proposed rule should be adopted.

In making this decision, we recognize that the final rule does not result in perfect equity and does not *guarantee* full recovery of increased crude oil costs by all refiners. However, we do not believe that any cost apportionment formula in a price control regime can ever attain these objectives or that Congress expected the price controls under the EPAA to achieve such goals. It is our view that the benefits of the final rule are sufficient to overcome its costs when compared with the costs and benefits of alternatives to it.

In weighing these factors, we have balanced each of the objectives of the EPAA.[10] Specifically, we believe that the volumetric apportionment of increased crude oil costs to covered products preserves an economically sound and competitive petroleum industry. Such apportionment also tends to make covered product prices more equitable among refiners. For example, if two refiners each processed the same number of barrels of crude oil, and each had identical increased crude oil costs, their maximum lawful prices for covered products will be similar under a volumetric apportionment formula. If, however, costs volumentrically attributable to exempt products could in whole or in part be passed through on covered products, the maximum lawful prices for covered products by different refiners could then vary *due solely to volumes of exempt products* sold. These differing prices for covered products, due solely to products not subject to controls, would frustrate the purpose of achieving equitable prices for covered products.

Moreover, were refiners able to pass through on covered products some costs volumetrically attributable to exempt products, false economic incentives could be created that would frustrate the purpose of the EPAA to further economic efficiency and to minimize economic distortion and unnecessary interference with market mechanisms, to the extent practicable under a price control regime. For example, in a softening market for the exempt products and a tight market for covered products, maintaining production or shifting production to greater volumes of exempt products could actually increase a refiner's revenues on covered products, as unrecouped increased crude oil costs on the exempt products could be recouped on the covered products.

The other objectives of the EPAA are less directly pertinent to the volumetric apportionment of increased crude oil costs in our view, and the commenters did not focus on them. We recognize that, with respect to the particular circumstances of those refiners most adversely affected, a combination of volumetric apportionment of increased crude oil costs and market forces may have prevented them from recouping all of these crude oil costs in prices for the exempt products. Thus, as to them, the proposed "V" factor may not have been as economically efficient as would be ideal, may have contained elements of inflexibility, and may have interfered with market mechanisms to a certain degree. Nevertheless, we find that it simply is not practicable now to adopt a cost allocation system that would cure these problems but not cause equal or greater problems in addition. Given the fact that exception relief is available on a case-by-case basis under 10 CFR 205.50 *et seq.*, where there is serious hardship or gross inequity,[11] we believe the adoption of the proposed "V" factor, together with the availability of exception relief in appropriate cases, minimizes any negative impacts of the "V" factor with respect to the EPAA objectives and, to the maximum extent practicable, furthers the objectives of the EPAA.

Finally, we do not believe the adoption of the proposed "V" factor is in any way inconsistent with the adoption of the gasoline "tilt." In the latter case, the record at that time supported a finding that a volumetric apportionment

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[6] For example, petroleum wax is a premium product.

[7] For example, Getty Oil was granted exception relief equivalent to the proposal of TOSCO, yet Getty declined that relief.

[8] Of the 37 refiners that commented on the proposal, only 20 alleged that they had been unable to recover in the sale of exempt products the increased crude oil costs volumetrically attributable to exempt products. Only one of the 20 quantified the extent of its under-recoupment.

[9] In this regard, we have considered the number of comments that specifically indicated both the impact and the magnitude of the impact on them. We have also considered the number and nature of requests for exception relief from the "V" factor as adopted on April 30, 1974. Finally, we have considered public comments by refiners on previous rulemakings that raised cost allocation issues.

[10] In considering these objectives, and in comparing volumetric apportionment to other possible schemes of cost allocation, we have analyzed the effects that would have occurred had the proposed rule or alternatives thereto been adopted in 1974 as well as the effects today of adopting this rule.

[11] For example, in a particular case it might well be feasible and appropriate to allow a refiner to pass through on covered products unrecouped crude oil cost increases volumetrically attributable to exempt products.

of both crude oil and non-product costs to gasoline (1) was economically inefficient, (2) unnecessarily interfered with market mechanisms, and (3) resulted in economic distortions. These negative features of the limitation of volumetrically attributable costs to gasoline impacted not just some, but all, refiners. Moreover, we found that this limitation on the cost passthrough for a covered product might have serious impacts on necessary investments in refineries to produce gasoline, which, we believed and time has confirmed, was a product for which additional investments were necessary to preserve an economically sound petroleum industry and to prevent gasoline shortages. Finally, we found an administratively simple manner of allowing the passthrough on gasoline of a greater than volumetrically attributable proportion of increased costs, one that would not create other distortions in the marketplace.

The record in this proceeding does not support equivalent findings to allow a greater than volumetric proportion of increased crude oil costs on covered products in a regime of full price controls.[12] First, the record does not support a simple fixed percentage add-on to the volumetric apportionment of crude oil costs to covered products, because of the wide variance in refiners' production of and recoveries on exempt products. Second, while there are claims by some commenters that the proposed "V" factor would inhibit investment in production of petroleum coke and asphalt, there is nothing in the record that suggests a critical need for such investment, or that as a result of the April 30, 1974 rule necessary investments were not, in fact, made.

In summary, we find that a rule that prohibits a recovery on covered products of costs already recovered on exempt products to be necessary to fulfill the objectives of the EPAA. Moreover, we find that the volumetric apportionment of increased crude oil costs on covered products, with the availability of exception relief in particular cases where such apportionment causes serious hardship or gross inequity, to the maximum extent practicable best furthers the objectives of the EPAA, even when compared with the alternative of allowing on an industry-wide basis only unrecouped increased crude oil costs attributable to the exempt products to be added to the costs of covered products.

B. Legal Objections

A large number of commenters raised what they felt to be legal objections to the proposal, as well as to the rulemaking proceeding itself.

1. *Dollar-for-Dollar Passthrough.* A common claim was that the proposed rule could not be adopted because it violated the dollar-for-dollar passthrough requirement of section 4(b)(2)(A) of the EPAA. It was noted in this regard that the district court in the "V" factor case had specifically held that the original rule, which we proposed to re-adopt, was, because of this provision, beyond the statutory authority of the agency.

We acknowledge that the district court so held, but as noted in the Background, this issue, although appealed, was not addressed by TECA. We must respectfully disagree with the district court's conclusion, as well as the claims of the commenters on this issue.

Section 4(b)(2)(A) in 1974 required that the price regulations under the EPAA provide for "a dollar-for-dollar passthrough of net increases in the cost of crude oil, residual fuel oil, and refined petroleum products to all marketers and distributors at the retail level." [13] After February 1, 1976, that section required the regulations to provide for "a dollar-for-dollar passthrough of net increases in the cost of crude oil, residual fuel oil, and refined petroleum products at all levels of distribution from the producer through the retail level." [14] With respect to all controlled products, a dollar-for-dollar passthrough of increased crude oil costs was provided under the April 30, 1974 rule by allowing the proportion of costs of the crude oil used in those products to be passed through on those products. With respect to the exempt products, there was never a limitation in the regulations on the increased crude oil costs that could be passed through on those products. Thus, the regulations themselves did not prohibit or restrict the recovery of increased crude oil costs. Even the district court recognized this, for in its Findings of Fact it stated, *"[b]ecause of market conditions and* the amendment of § 212.83(c)(2), Mobil has been unable to recover all of its increased crude oil costs * * *." (Emphasis added). Nothing in our regulations has ever intended or purported to guarantee dollar-for-dollar recovery where market conditions would not allow full recovery. Rather, with respect to controlled products, the regulations have allowed refiners to pass through, if the market would bear it, a volumetric proportion of increased crude oil costs, and with respect to uncontrolled products, refiners have always been free to passthrough all those increased costs that the market would bear. As TECA held in *Cities Service v. FEA*, 529 F. 2d 1016, 1024 (1975), "[t]he Allocation Act does not guarantee that all increased costs will be absorbed by the marketplace * * *; rather the Act merely mandates that an opportunity for the pass-through of such costs be provided." Moreover, the regulations have also provided that any refiner that suffers from gross inequity or severe hardship by reason of our regulations may obtain exception relief from the regulations causing the hardship or inequity. Thus, the regulations have fully provided for a dollar-for-dollar passthrough of increased crude oil costs.

2. *Participation by the Office of Special Counsel in the Rulemaking.* Some commenters claimed that the provision in the Department of Energy Organization Act (DOE Act) requiring the Secretary to provide by rule for the separation of regulatory and enforcement functions in the ERA prohibited any participation by the Office of Special Counsel in the rulemaking. *See* 42 U.S.C. 7138(a). That provision of the DOE Act has been implemented in 10 CFR 1001.1, which provides in pertinent part:

> the regulation preparation and enforcement functions delegated to the Administrator of ERA shall be performed by separate entities of the ERA. The Office of the Assistant Administrator for Regulations and Emergency Planning shall be responsible for the preparation of regulations. The Office of the * * * Special Counsel for Compliance shall be responsible for the bringing of individual enforcement actions. No officer or member of the office of the Assistant Administrator for Regulations and Emergency Planning shall have authority to make or concur in any decision by ERA to institute an individual enforcement investigation or adjudicate an individual enforcement proceeding.

Nothing in this regulation precludes the Office of Special Counsel from

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[12] The discussion above has focussed on a regime of full price controls such as existed during 1974 and 1975. Once significant petroleum products are not subject to controls, the ability to recover increased crude oil costs volumetrically attributable to those decontrolled products and the original five exempt products is measurably enhanced. In this regard, commenters in this rulemaking generally did not assert the inability to recover costs attributable to decontrolled and exempt products as a group in the period following decontrol of heating oil and diesel oil. Moreover, comments in the decontrol rulemakings in 1979 generally supported continuation of the volumetric apportionment formula.

[13] Under this language it would not appear that refiners were entitled to dollar-for-dollar passthrough. *See Standard Oil v. FEA*, 453 F. Supp. 203 (N.D. Ohio 1978).

[14] This requirement lapsed on June 30, 1979, by reason of section 16 of the EPAA, but we accept for purposes of argument that the requirement would have to apply with respect to a rule adopted retroactively to a date before June 30, 1979.

participating in an advisory or consultative role with respect to proposed or final rules. Moreover, nothing in the legislative history of the DOE Act, the Administrative Procedure Act, or sound administrative practices suggests that such a role is inappropriate.[16] Indeed, the recently enacted Regulatory Flexibility Act, Pub. L. No. 96-354, specifically requires proposed and final rules to consider compliance issues. *See* 5 U.S.C. 603(b)(4). Offices and personnel involved in compliance work, such as Office of Special Counsel for Compliance, are natural, if not inevitable, sources for information and input with respect to such issues.

In this rulemaking the Office of Special Counsel has played just such a role. Other offices in DOE, including the Office of General Counsel and the Assistant Secretary for Policy and Evaluation, have also participated in the rulemaking. We believe the participation of the Office of Special Counsel was particularly appropriate in this rulemaking because of its experience with the "V" factor and its consequent ability to assess the impact of the proposal and alternatives thereto with respect to compliance issues.

3. *Adequacy of Notice and Comment.* Several commenters suggested that affording notice and comment on the proposed rule could not cure the failure to provide notice and comment on the April 30, 1974 rule. We are not by this rulemaking proceeding attempting to cure a failure to provide notice and comment in the April 30, 1974 rule. Rather this rulemaking proceeding is a distinct action and, therefore, should and does conform with the appropriate procedural requirements.

Moreover, some commenters alleged that we had already made up our minds and thus the notice and comment were a sham. With respect to this point, we have already indicated that our minds were not made up, that the proposal was in fact a proposal reflecting our tentative conclusions, and that we carefully considered modifying the original proposal on the basis of the comments.

4. *Retroactivity Issues.* A primary legal objection to the proposed rule was its retroactive effect. Refiners and their representatives were virtually unanimous in their view that the rule could not be adopted retroactively. Various reasons were cited. Some commenters believed that absent some explicit statutory authorization for retroactive rulemaking a retroactive rule either was unlawful or there was an almost conclusive presumption against the retroactivity, citing *Transcontinental & Western Air v. CAB*, 169 F.2d 893, 894 (D.C. Cir. 1948), *aff'd*, 336 U.S. 601 (1949). We believe that the legislative rulemaking authority contained in the EPAA embraces the authority to adopt retroactive legislative rules under the proper circumstances, notwithstanding the lack of an explicit statement to that effect in the EPAA. We have articulated this belief in the past, *see* 44 FR 21810 (April 12, 1979),[16] and court cases have upheld the general authority to issue retroactive rules absent explicit statutory authority, *see, e.g., General Telephone Co. of the Southwest v. United States*, 449 F.2d 846 (5th Cir. 1971); *Retail, Wholesale & Department Store Union v. NLRB*, 466 F.2d 380 (D.C. Cir. 1972). Moreover, the court in *Standard Oil Co. v. DOE*, 596 F.2d 1029 (TECA 1978), implicitly recognized that DOE has such authority in the proper circumstances.

Other commenters expressed the view that an agency is prohibited from adopting a retroactive rule to replace a rule invalidated by a court *except* under the authority and supervision of the court. Although specifically requested for a citation for such a proposition of law, these commenters did not provide such a citation. Rather, they cited *Addison v. Holly Hill Fruit Products*, 322 U.S. 607 (1944). That case, however, did not hold or suggest that an agency could retroactively promulgate a rule to replace a voided rule *only* under the authority and supervision of a court. Instead, in that case the Supreme Court itself recognized the need for a retroactive rule to replace the voided rule and directed that a retroactive rule be promulgated.[17] That a court in its equitable jurisdiction can direct an agency to promulgate a retroactive rule to replace the rule voided by the court certainly does not logically suggest that an agency acting under its statutory authority cannot independently promulgate a retroactive rule to replace a voided rule in the absence of court direction or supervision.

Finally, various commenters took issue with our balancing of the considerations that can justify a retroactive legislative rule. *See, e.g., Retail, Wholesale Department Store Union NLRM, supra.*

We believe that the applicable factors listed in that case support the adoption of the proposed "V" factor rule on a retroactive basis.

First, the retroactive adoption of this rule does not represent an abrupt departure from well-established practice; rather, it merely attempts to fill a void in an unsettled area of the law. Not a single commenter indicated that it did not contemporaneously understand the "V" factor as promulgated in the April 30, 1974 rule. To our knowledge, only one refiner in the nation did not file cost allocation reports in accordance with the terms of the April 30, 1974 rule. Thus, whether or not that rule was valid at the time, it was clearly the well-established practice. Moreover, we believe that the decision in the *Mobil* case has created an unsettled area of the law with respect to the applicable law after April 30, 1974. That is, while it is clear that the April 30, 1974 rule was held invalid, the conclusions of law of the district court only addressed that rule and the judgment only declared void that rule. Consequently, rules adopted after that date that repromulgated the "V" factor have not been declared void. The fact that TECA authorized the plaintiff *Mobil* to pass through on covered products increased crude oil costs attributable to exempt products for a period after that date, however, has led to questions as to the applicable law after that date with respect to refiners not parties to the case. By adopting this rule retroactively to April 30, 1974, we will settle these questions of law.

Second, we are aware of only one refiner that claims to have relied on any other rule than the April 30, 1974 rule in filing cost allocation reports or for any other purpose. Indeed, all other refiners have manifested compliance with the terms of the April 30, 1974 rule.[18] Thus,

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[16] A few commenters claimed that separation of functions provision in 5 U.S.C. 554(d) somehow applied here. That provision does not apply to informal rulemakings pursuant to 5 U.S.C. 553, such as this rulemaking.

[16] This Federal Register notice was a draft report by DOE on retroactive application of rules and rule interpretations, which notice solicited public comments on the report. The report distinguished between the retroactive effect of rulings and interpretations and legislative rules, published with notice and comment, with a retroactive effective date. None of the fourteen comments received in response to the notice denied that DOE had the authority, after notice and comment, to adopt a retroactive legislative rule in appropriate circumstances.

[17] Indeed, the Court made clear that, in directing the Administrator to promulgate a retroactive rule, it "would not be telling the Administrator how to exercise his discretion but would merely require him to exercise it. It is a remedy against inaction." 322 U.S. at 623. The Court also made clear that the authority under which the Administrator would promulgate the new rule was the authority of the statute, not any authority derived from the court. Moreover, the statute in question there did not expressly authorize retroactive rules.

[18] Some commenters claimed that their compliance with the April 30, 1974 rule was irrelevant, and that we confused compliance with reliance. For purposes of the balancing test in the *Retail, Wholesale* case, the issue is whether persons have relied on a rule *other* than the one to be adopted retroactively. Only one commenter claimed to rely on a rule different from the "V"

adoption of the proposed rule recreates the identical regulatory scheme that existed prior to the court decision in the *Mobil* case, a regulatory scheme that the industry had broadly and consistently obeyed.

Third, we do not believe that any burden is imposed on refiners by the retroactivity of this rule. In this regard, it is important to distinguish between the "burdens" that would be imposed on refiners by a volumetric apportionment formula *per se* and the "burdens" caused by the retroactive effect of this rule. This is, under the *Retail, Wholesale* case, the issue is whether adopting a rule retoactively would cause burdens that would not have been caused had the rule been promulgated prospectively at the time to which it is now to be adopted retroactively. No commenter claimed that the retroactive adoption of the proposed rule caused burdens that would not have been equally caused by the April 30, 1974 rule, had it been validly promulgated. Indeed, as this rule merely recreates the situation obtaining prior to the invalidation of the April 30, 1974 rule, it cannot by definition create a different or greater burden.[19] Consequently, we do not believe adoption of this rule retroactively causes any *additional* burden to refiners. Rather, failure to adopt this rule would retroactively create burdens for the customers of refiners. This is so because refiners that complied with the terms of the April 30, 1974 rule might today attempt to impose on their customers retroactively the burden of a windfall resulting from judicial invalidation of that rule, even though we have now found that rule reasonable and proper.

Finally, we find a compelling statutory interest in adopting a rule retroactive to April 30, 1974, that will preclude passing through to covered products increased crude oil costs already recovered on exempt products. Previously in the preamble we have discussed the reasons why we believe the preclusion of "double recoveries" is compelled by the objectives of the EPAA. Perhaps, had the April 30, 1974 rule never been promulgated and had refiners relied on a different rule in their cost allocation reports and pricing, to adopt a wholly new rule seven years later to preclude "double recoveries" would not be justified, because of refiners' reliance on the former rule. That, however, is not the case here. As has been demonstrated above, refiners have not relied on any different rule in their cost allocation reports or pricing. Thus, we are not changing the ground rules. Consequently, we believe the compelling statutory interests are controlling and fully justify the adoption of the rule retroactively to April 30, 1974.[20]

As we mentioned in the proposal of the "V" factor, wholly apart from the considerations adumbrated in the *Retail, Wholesale* case, we believe that the case of *Addison* v. *Holly Hill Fruit Products*, 322 U.S. 607 (1944), fully supports the appropriateness of retroactive rulemaking in this case. While many commenters took issue with us on this point, after our review of the comments, we continue to believe that the similarities between the situation in *Addison* and here are striking and the alleged differences are more apparent than real.

C. Enforcement Issues

In our proposed rule we stated that one of the reasons why we believed the proposal was necessary was that it would maintain the integrity of the price control system. This was due in part, we said, to the fact that "refiners that violated price controls in the past (with respect to matters totally unrelated to the issues involved in this rulemaking) *might assert* a right to avoid any real liability by merely offsetting the amounts in violation against their costs associated with uncontrolled products * * *." (Emphasis added). 45 FR 58874. Several commenters reacted negatively to this statement and inferences which they drew from it.

Specifically they alleged that enforcement concerns were not an appropriate consideration in adopting a retroactive rule and that, even if the proposed retroactive "V" factor rule were lawful, it could not be used to support allegations of overcharges for the periods in question.

As indicated above, the *Mobil* case only held the April 30, 1974 rule invalid. What rules are in effect after that date, therefore, is unclear with respect to persons other than Mobil. Thus, refiners could assert various theories of the law for this period, as indeed they have suggested in attempted refilings. In the absence of this rule these questions might have to be resolved in piece-meal litigation. For example, while Mobile has never claimed the right to recoup on covered products unrecouped increased costs attributable to decontrolled (as opposed to exempt) products, other refiners have so claimed, relying on the *Mobil* decision. The rule adopted today hereby settles these questions of law.

Moreover, we believe that this final rule can and should be enforced retroactively, but it is important to keep in mind the nature of the enforcement that would be involved: it is not criminal prosecution for violation of today's retroactive rule but rather obtaining refunds of overcharges. Nothing in the law or constitution generally prohibits such enforcement of retroactive regulatory provisions. Indeed, the balancing test of the *Retail, Wholesale* case presumes enforcement of the retroactive rule. Moreover, the EPAA itself was on one occasion adopted with retroactive effect, and the legislative history made clear that it could be enforced with respect to that retroactive period.[21]

Above, we have demonstrated (1) why the volumetric apportionment of crude oil costs best furthers the purposes of the EPAA, thereby showing why it should have been adopted on April 30, 1974, and (2) why retroactive promulgation of the rule that should have been in existence at that time is proper today. Such demonstrations, we believe, are sufficient to justify the legality of enforcement today of these retroactively adopted provisions.

Many commenters, however, have claimed that, because the April 30, 1974 rule was declared invalid, their pool of increased costs for the period thereafter can be enlarged, such that alleged violations based on their contemporaneously reported increased costs are either diminished or obliterated.[22] Whatever might be the effect on current enforcement actions were we not to promulgate today's rule, we believe it beyond cavil that enforcement actions to obtain refunds based upon today's rule are lawful and appropriate.

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factor in the April 30, 1974 rule. Whether or not refiners relied on the *validity* of the April 30, 1974 rule, they clearly complied with its terms in their actions and did not rely on any other rule or construction.

[19] With respect to the inherent "burdens" of a volumetric apportionment of costs rule, we have addressed those earlier in this preamble and found them mitigated both by the limited number of refiners that suffer them, the limited amount of burden involved in many cases, and the availability of exception relief in serious cases.

[20] In the *Retail, Wholesale* case, the court mentioned a fifth consideration—whether the case was one of first impression. As the discussion in that case indicates, however, that consideration is more appropriate to standards of conduct adopted through adjudication rather than rulemaking. The concept behind that consideration can apply to rulemaking, but that concept is, we believe, expressed in the other considerations as well. Therefore, to the extent that consideration applies to rulemaking, we believe it is met in this rule.

[21] On August 31, 1975 the EPAA expired. On September 29, 1975, the expiration date was amended, retroactive to the earlier date to continue uninterrupted the regulatory scheme. *See* Pub. L. No. 94-99, 89 Stat. 481 (1975).

[22] It should be noted here that not all price violations are dependent on the pool of increased costs.

Some commenters, believe, however, that once a court has determined the April 30, 1974 rule invalid, they have some undefined inalienable property right to pass through on covered products the increased crude oil costs which the April 30, 1974 rule prohibited from being passed through on covered products. We do not believe that to be the case. To the contrary, we do not believe their interest in those increased costs today is any greater than it was or would have been in April 30, 1974. Refiners complied with the "V" factor rule, did not rely on any other cost apportionment formula, and filed contemporaneous reports claiming certain increased costs.

In the absence of today's rule, refiners would retroactively claim increased costs to be applied to these past periods. Generally, our regulations allow for refiling of increased costs only within one year of the original report. 10 CFR 212.126(d)(1). Exceptions are only made for "good cause." 10 CFR 212.126(d)(2). In adopting this rule today, we are in effect determining that no good cause exists to allow refiners on an industry-wide basis to retroactively include increased crude oil costs volumetrically attributable to exempt products. No good cause exists because a rule that precludes the passthrough on covered products of costs not volumetrically attributable to those products best furthers the purposes of the EPAA.

In sum, we are not adopting today's rule to "protect" or "revive" enforcement actions. If we did not believe that today's rule on the merits best furthered the purposes of the EPAA and that, after careful consideration of the court cases dealing with retroactive rulemaking, it properly could be adopted with retroactive effect, we would *not* adopt today's rule. Having determined, however, that the rule *does* best further the purposes of the EPAA and that it *is* appropriate to give it retroactive effect, we believe that enforcement of the entire regulatory scheme, including proceeding against overcharges, by seeking refunds, is both proper and equitable. Adoption of this rule will protect the integrity of a coherent regulatory structure. To fail to enforce all the terms of that structure would undermine the purposes of the EPAA that today's rule is intended to further and impose burdens on the customers of refiners and the economy as a whole by not obtaining the refunds that are due to them.

III. Amendments Adopted

The amendments adopted today institute a definition of "V_a" in 10 CFR 212.83(c)(2) effective April 30, 1974. This definition changes the definition of the same term adopted on January 14, 1974 (39 FR 1924, January 15, 1974). This previous definition of "V_a" included only the volumes of "covered products," a defined term which at the time effectively encompassed all products produced from crude oil. The term "covered products," however, was amended on April 3, 1974, (39 FR 12343, April 5, 1974) to include only crude oil, residual fuel oil and "refined petroleum products," which itself was a defined term. The effect of the April 3, 1974 amendment, therefore, was to change the meaning of the definition of "V_a" even though the definition of "V_a" itself had not changed. This effect was not perceived by the agency at the time of the promulgation of the April 3, 1974 rule.

The amendment adopted today, retroactive to April 30, 1974, defines "V_a" to include not only "covered products" but also "all products refined from crude petroleum other than covered products." This has the effect, therefore, of re-creating for the period after April 30, 1974, the regulatory scheme that existed prior to April 3, 1974, as well as the regulatory scheme adopted on April 30, 1974, but which was later invalidated by the courts.

In addition, we are repromulgating the subsequent amendments to the definition of "V_a", its deletion and the substitution of the definition of "V_a", its subsequent amendments, the definition of "R_i", and subsequent amendment to that definition. Each of these is repromulgated as of the date on which each was originally effective.

IV. Procedural Requirements

A. Section 404 of the DOE Act

Pursuant to the requirements of Section 404(a) of the Department of Energy Organization Act, we have referred these amendments to the Federal Energy Regulatory Commission (FERC) for a determination whether they would significantly affect any matter within the Commission's jurisdiction. The Commission has advised us that it "has decided not to exercise its discretion to determine that the proposed rule significantly affects any function within the jurisdiction of the Commission."

B. National Environmental Policy Act

It has been determined that these amendments would not significantly affect the quality of the human environment within the meaning of the National Environmental Policy Act (NEPA, 42 U.S.C. 4321 *et seq.*), and therefore, neither an environmental assessment nor an environmental impact statement is required by NEPA and the applicable DOE regulations for compliance with NEPA.

C. Regulatory Analysis

The draft regulatory analysis prepared in conjunction with the proposed rule focused largely upon the possible impacts on future gasoline prices of a failure to adopt any rule in this proceeding. As noted above, our further analysis, especially in light of the public comments, has convinced us that possible impacts on future gasoline prices, with or without this rule, are better addressed through regulatory action more specifically addressed to that issue in light of the circumstances that make substantial and rapid price increases possible. Such action might include further limitations on the passthrough of banks or partial or total elimination of banks. In any case, because the magnitude of price impacts on future gasoline sales is not the basis for our final rule, the draft regulatory analysis was not finalized. Rather the analysis prescribed by Executive Order 12044 and DOE Order 2030 is contained in the preamble to this rule, which encompasses and constitutes our final regulatory analysis.

(Emergency Petroleum Allocation Act of 1973, 15 U.S.C. § 751 *et seq.*, Pub. L. 93–159, as amended, Pub. L. 93–511, Pub. L. 94–99, Pub. L. 94–133, Pub. L. 94–163, and Pub. L. 94–385; Federal Energy Administration Act of 1974, 15 U.S.C. § 787 *et seq.*, Pub. L. 93–275, as amended, Pub. L. 94–332, Pub. L. 94–385, Pub. L. 95–70, and Pub. L. 95–91; Energy Policy and Conservation Act, 42 U.S.C. § 6201 *et seq.*, Pub. L. 94–163, as amended, Pub. L. 94–385, and Pub. L. 95–70; Department of Energy Organization Act, 42 U.S.C. § 7101 *et seq.*, Pub. L. 95–91; E.O. 11790, 39 FR 23185; E.O. 12009, 42 FR 46267)

In consideration of the foregoing, Part 212 of Chapter II, Title 10 of the Code of Federal Regulations, is amended as set forth below.

Issued in Washington, D.C., January 16, 1981.

Lynn R. Coleman,

Deputy Secretary, Department of Energy.

§ 212.83 [Amended]

1. Effective April 30, 1974, 10 CFR 212.83(c)(2), as published in 39 FR 1924 (January 15, 1974), is amended by revising the definition of "V_a" to read as follows:

V_a = The total volume of all covered products and all products refined from crude petroleum other than covered products sold in the period "n" (the consecutive three-month period of the preceding year such that the middle

month of the period corresponds to the current month "u").

2. The subsequent amendments to the definition of "V_a", its deletion and the substitution of the definition of "V_a", the subsequent amendments to the definition of "V_a", the definition of "R_t", and subsequent amendment to that definition are hereby repromulgated as published in the following Federal Register notices, effective on the dates indicated therein:

39 FR 30828 (August 26, 1974)
39 FR 42368 (December 5, 1974)
40 FR 10444 (March 6, 1975)
41 FR 5111 (February 4, 1976)
41 FR 15330 (April 12, 1976)
42 FR 5023 (January 27, 1977)
42 FR 39195 (August 3, 1977)

[FR Doc. 81-2368 Filed 1-22-81; 8:45 am]
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Friday
January 23, 1981

Part XI

Department of Labor

Employment and Training Administration

Unemployment Compensation for Civilian Employees

DEPARTMENT OF LABOR

Employment and Training Administration

20 CFR Part 609

Unemployment Compensation for Federal Civilian Employees; Revision of Regulations

AGENCY: Employment and Training Administration, Labor.

ACTION: Proposed rule.

SUMMARY: The Department of Labor proposes to revise the regulations for the Program of Unemployment Compensation for Federal Civilian Employees (UCFE Program). Changes to the regulations incorporate statutory amendments, which principally concern the finality of Federal findings as to the reasons for termination of Federal employment; the treatment of the Virgin Islands as a participating State in the Federal-State Unemployment Compensation Program; and the Federal share of the costs of benefits on joint claims under the UCFE Program and State unemployment compensation laws. The regulations are also reorganized and revised to state the rights and obligations of claimants for the benefits and to clarify the respective duties and responsibilities of the Federal Government and the State agencies. The setting forth of this information in each Part dealing with a separate unemployment compensation program conforms to the more recent practice in writing regulations in this area.

DATE: Written comments must be received by the Department on or before March 24, 1981.

ADDRESS: Send comments on this proposal to the U.S. Department of Labor, Employment and Training Administration, Room 7000, Patrick Henry Building, 601 "D" Street NW., Washington, D.C. 20213. All comments received will be available for public inspection during normal business hours, in Room 7000 at the above address.

FOR FURTHER INFORMATION CONTACT: Charles W. Reynolds, Unemployment Insurance Service, at (202) 376-6222. (This is not a toll free number.)

SUPPLEMENTARY INFORMATION: The unemployment compensation program for Federal civilian employees is a program financed by Federal funds to furnish unemployment benefits to eligible indicidusls who are separted from Federal employment and are unable to obtain work. The UCFE Program was created by Pub. L. 83-767, approved on September 1, 1954. It has been codified in 5 U.S.C. 8501-8508.

On October 20, 1976, the Unemployment Compensation Amendments of 1976 (Pub. L. 94-566, 90 Stat. 2267) were enacted. Section 116 of the 1976 Amendments authorized the inclusion of the Virgin Islands in the Federal-State Unemployment Compensation Program, and this became effective on January 1, 1978, with the approval of the Virgin Islands unemployment compensation law. This has an effect on the manner in which the UCFE Program is administered in the Virgin Islands, and requires conforming changes in the regulations.

Section 214 of the 1976 Amendments amended 5 U.S.C. 8501 to add a definition of the term "base period," and amended 5 U.S.C. 8506(a) in regard to the proration of costs of claims filed jointly under State law and the UCFE Program. These amendments also require changes in the regulations.

Section 313 of the 1976 Amendments repealed the finality provisions as to Federal findings formerly in 5 U.S.C. 8506(a). This amendment necessitates major changes in the regulations.

Revisions to Part 609 are proposed in this document to implement the statutory amendments. Included in this document are a reorganization and upgrading of the regulations to conform to the more recent practice in writing regulations for unemployment compensation programs, including new sections, new titles for sections, replacing words of gender, and deleting references to specific form numbers to be used in the program.

The significant changes proposed in Part 609 are:

1. All sections in this proposal have been renumbered, their order of appearance rearranged, and the titles changed in most instances. Some of the sections in the present regulations have been incorporated into one section, while other sections have been amplified for clarity. However, there are no legal or substantive changes in this new arrangement with the exception of those changes mentioned below. This rearrangement is only a reorganization and upgrading of the present regulations to conform with the more recent practice in writing regulations for unemployment compensation programs.

2. Section 609.1 is a new section explaining the purposes of the UCFE Program, the rules of construction to be applied, and including provisions for monitoring the uniform application of the law. In this regard the regulation is revised to incorporate into §§ 609.1(d)(3) and (4) specific rules for assigning responsibility to the States for the payment of benefits only in accordance with the law and this regulation. These rules (sometimes referred to as the "Lopez Rule") were developed following *In re Lopez* and other cases, where a State had paid claims in flagrant disregard of the law and the regulations.

3. Section 609.2, *Definitions of terms,* has been revised to amplify certain terms for the purpose of clarification and to delete exceptions in the definitions pertaining to the Virgin Islands. The term "base period" has been defined in accordance with the Unemployment Compensation Amendments of 1976.

4. Sections 609. to 609.11 are new sections which set forth specific rules concerning eligibility requirements, benefit amounts, claims, determinations of entitlement, notices of determinations, appeal and review, and other provisions on benefit administration including more specific provisions on overpayments and penalties for fraud. There are no legal or substantive program changes in these sections, but they reflect more recent practice in writing regulations for unemployment compensation programs.

5. Proposed §§ 609.7, 609.9 and 609.21 to 609.24 are revisions of present sections to implement section 313 of the Unemployment Compensation Amendments of 1976 which rescinded the provisions pertaining to the finality of Federal findings. Individuals filing UCFE claims shall have the same appeal rights regarding their separation from Federal employment as those individuals filing claims under the State unemployment compensation law. These changes include deleting present § 609.18 on the finality of Federal findings, and changes previously made in present §§ 609.9 and 609.23 relating to hearings in connection with requests for reconsideration of Federal findings.

6. Section 609.8 contains a subsection that relates to the assignment of Federal civilian service and wages to the appropriate State for benefit purposes. Hereafter, all Federal wages and service for an individual shall be assinged tothe appropriate State and not just the wages and services used in the appropriate State's base period. This will simplify administration of the program, provide more effective control over assignments, and conform to the procedure for the UCX Program (20 CFR Part 614).

7. A new § 609.14, *Payments to States,* is added to provide for the proration of costs of claims filed jointly under State law and the UCFE Program, in accordance with section 214(a) of the Unemployment Compensation Amendments of 1976. Under this

amendment to 5 U.S.C. 8506(a), the Federal share of joint claims is in the proportion that the Federal wages in the base period bear to the total base period wages of the claimant.

8. Subpart D, *Provisions Applying Only to Virgin Islands*, has been deleted. In addition, all special provisions formerly applicable to the Virgin Islands have been deleted from the sections in which they appeared. This change is due to section 116 of the Unemployment Compensation Amendments of 1976, under which the Virgin Islands became a participating State in the Federal-State Unemployment Compensation Program.

9. Sections 609.12, 609.13, 609.15, 609.16 and 609.17 are new sections pertaining to inviolate rights, recordkeeping and disclosure of information, public access to Agreements, administration in the absence of an Agreement with a State, and information, reports and studies. Except as to disclosure of information, these sections provide no new legal or substantive change, but have been added to conform with the new practice in writing regulations for unemployment compensation programs.

Note.—The Department of Labor has determined that the proposal in this document is not a major regulation that requires the preparation of a regulatory analysis, within the meaning of Executive Order 12044 and the Department's guidelines published at 44 FR 5570. This note also reflects that I have certified, in accordance with 5 U.S.C. 605(b), that the regulation in this document will not have a significant economic impact on a substantial number of small business entities.

This document was prepared under the direction and control of the Administrator of the Unemployment Insurance Service, Employment and Training Administration, U.S. Department of Labor, 601 "D" Street, N.W., Washington, D.C. 20213; telephone: (202) 376-7032.

Accordingly, it is proposed to revise 20 CFR Part 609 as set out below.

Signed at Washington, D.C., on January 19, 1981.

Ernest G. Green,

Assistant Secretary for Employment and Training.

PART 609—UNEMPLOYMENT COMPENSATION FOR FEDERAL CIVILIAN EMPLOYEES

Subpart A—General Provisions

Sec.
609.1 Purpose and application.
609.2 Definitions of terms.

Subpart B—Administration of UCFE Program

609.3 Eligibility requirements for UCFE.
609.4 Weekly and maximum benefit amounts.
609.5 Claims for UCFE.
609.6 Determinations of entitlement; notices to individual.
609.7 Appeal and review.
609.8 The applicable State for an individual.
609.9 Provisions of State law applicable to UCFE claims.
609.10 Restrictions on entitlement.
609.11 Overpayments; penalties for fraud.
609.12 Inviolate rights to UCFE.
609.13 Recordkeeping; disclosure of information.
609.14 Payments to States.
609.15 Public access to Agreements.
609.16 Administration in absence of an Agreement.
609.17 Information, reports, and studies.

Subpart C—Responsibilities of Federal Agencies

609.20 Information to Federal civilian employees.
609.21 Findings of Federal agency.
609.22 Correcting Federal findings.
609.23 Furnishing additional information.
609.24 Reconsideration of Federal findings.
609.25 Furnishing other information.
609.26 Liaison with Department.

Authority: 5 U.S.C. 8509; Secretary's order No. 4-75, 40 FR 18515; (5 U.S.C. 301). Interpret and apply secs. 8501-8508 of title 5, United States Code.

Subpart A—General Provisions

§ 609.1 Purpose and application.

(a) *Purpose.* Subchapter I of chapter 85, title 5 of the United States Code, as amended by Public Law 94-566, 90 Stat. 2667, 5 U.S.C. §§ 8501-8506, provides for a permanent program of unemployment compensation for unemployed Federal civilian employees. The unemployment compensation provided for in Subchapter I is hereinafter referred to as Unemployment Compensation for Federal Employees, or UCFE. The regulations in this Part are issued to implement the UCFE Program.

(b) *First rule of construction.* The Act and the implementing regulations in this Part shall be construed liberally so as to carry out the purposes of the Act.

(c) *Second rule of construction.* The Act and the implementing regulations in this Part shall be construed so as to assure insofar as possible the uniform interpretation and application of the Act throughout the United States.

(d) *Effectuating purpose and rules of construction.*

(1) In order to effectuate the provisions of this section, each State agency shall forward to the United States Department of Labor (hereafter Department), not later than 10 days after issuance, a copy of each judicial or administrative decision ruling on an individual's entitlement to payment of UCFE or to credit for a waiting period. On request of the Department, a State agency shall forward to the Department a copy of any determination or redetermination ruling on an individual's entitlement to UCFE or waiting period credit.

(2) If the Department believes that a determination, redetermination, or decision is inconsistent with the Department's interpretation of the Act or this Part, the Department may at any time notify the State agency of the Department's view. Thereafter the State agency shall issue a redetermination or appeal if possible, and shall not follow such determination, redetermination, or decision as a precedent; and, in any subsequent proceedings which involve such determination, redetermination, or decision, or wherein such determination, redetermination, or decision is cited as precedent or otherwise relied upon, the State agency shall inform the claims deputy or hearing officer or court of the Department's view and shall make all reasonable efforts, including appeal or other proceedings in an appropriate forum, to obtain modification, limitation, or overruling of the determination, redetermination, or decision.

(3) If the Department believes that a determination, redetermination, or decision is patently and flagrantly violative of the Act or this Part, the Department may at any time notify the State agency of the Department's view. If the determination, redetermination, or decision in question denies UCFE to a claimant, the steps outlined in paragraph (2) above shall be followed by the State agency. If the determination, redetermination, or decision in question awards UCFE to a claimant, the benefits are "due" within the meaning of section 303(a)(1) of the Social Security Act, 42 U.S.C. § 503(a)(1), and therefore must be paid promptly to the claimant. However, the State agency shall take the steps outlined in paragraph (2) above, and payments to the claimant may be temporarily delayed if redetermination or appeal action is taken not more than one business day following the day on which the first payment otherwise would be issued to the claimant; and the redetermination action is taken or appeal is filed to obtain a reversal of the award of UCFE and a ruling consistent with the Department's view; and the redetermination action or appeal seeks an expedited redetermination or appeal within not more than two weeks after the redetermination action is taken or the appeal is filed. If redetermination action is not taken or appeal is not filed within the above time limit, or a redetermination or decision is not obtained within the two-week limit, or any redetermination or decision or order

is issued which affirms the determination, redetermination, or decision awarding UCFE or allows it to stand in whole or in part, the benefits awarded must be paid promptly to the claimant.

(4)(i) If any determination, redetermination, or decision, referred to in paragraph (2) or paragraph (3) above, is treated as a precedent for any future UCFE claim or claim under the UCX Program (Part 614 of this chapter), the Secretary will decide whether the Agreement with the State entered into under the Act shall be terminated.

(ii) In the case of any determination, redetermination, or decision that is not legally warranted under the Act or this Part, including any determination, redetermination, or decision referred to in paragraph (3) above, the Secretary will decide whether the State shall be required to restore the funds of the United States for any sums paid under such a determination, redetermination, or decision, and whether, in the absence of such restoration, the Agreement with the State shall be terminated and whether other action shall be taken to recover such sums for the United States.

(5) A State agency may request reconsideration of a notice issued pursuant to paragraph (2) or paragraph (3) above, and shall be given an opportunity to present views and arguments if desired.

(6) Concurrence of the Department in a determination, redetermination, or decision shall not be presumed from the absence of a notice issued pursuant to this section.

§ 609.2 Definitions of terms.

For the purposes of the Act and this Part:

(a) "Act" means subchapter I of chapter 85, title 5, United States Code, 5 U.S.C. §§ 8501–8508.

(b) "Agreement" means the Agreement entered into pursuant to the Act between a State and the Secretary under which the State agency of the State agrees to make payments of unemployment compensation in accordance with the Act and the regulations and procedures thereunder prescribed by the Department.

(c) "Base period" means the base period as defined by the applicable State law for the benefit year.

(d) "Benefit year" means the benefit year as defined by the applicable State law, and if not so defined the term means the period prescribed in the Agreement with the State or, in the absence of an Agreement, the period prescribed by the Department.

(e) "Federal agency" means any department, agency, or governmental body of the United States, including any instrumentality wholly or partially owned by the United States, in any branch of the Government of the United States, which employs any individual in Federal civilian service.

(f) "Federal civilian service" means service performed in the employ of any Federal agency, except service performed—

(1) By an elective official in the executive or legislative branches of the Government of the United States;

(2) As a member of the Armed Forces of the United States;

(3) By Foreign Service personnel for whom special separation allowances are provided under chapter 14 of title 22 of the United States Code;

(4) Outside the 50 States, the Commonwealth of Puerto Rico, the Virgin Islands, and the District of Columbia, by an individual who is not a citizen of the United States;

(5) By an individual excluded by regulations of the Office of Personnel Management from civil service retirement coverage provided by Subchapter III of chapter 83 of title 5 of the United States Code because the individual is paid on a contract or fee basis;

(6) By an individual receiving nominal pay and allowances of $12 or less a year;

(7) In a hospital, home, or other institution of the United States by a patient or inmate thereof;

(8) By a student-employee as defined by 5 U.S.C. § 5351; that is (i) a student nurse, medical or dental intern, resident-in-training, student dietitian, student physical therapist, or student occupational therapist, assigned or attached to a hospital, clinic, or medical or dental laboratory operated by an agency as defined in section 5351; or (ii) any other student-employee, assigned or attached primarily for training purposes to such a hospital, clinic, or medical or dental laboratory operated by such an agency, who is designated by the head of the agency with the approval of the Office of Personnel Management;

(9) By an individual serving on a temporary basis in case of fire, storm, earthquake, flood, or other similar emergency;

(10) By an individual employed under a Federal relief program to relieve the individual from unemployment;

(11) As a member of a State, county, or community committee under the Agricultural Stabilization and Conservation Service or of any other board, council, committee, or other similar body, unless such body is composed exclusively of individuals otherwise in the full-time employ of the United States;

(12) By an officer or member of the crew on or in connection with an American vessel which is (i) owned by or bareboat chartered to the United States, and (ii) the business of which is conducted by a general agent of the Secretary of Commerce, and (iii) if contributions on account of such service are required under section 3305(g) of the Internal Revenue Code of 1954 (26 U.S.C. § 3305(g)) to be made to an unemployment fund under a State law;

(13) By an individual excluded by any other Federal law from coverage under the UCFE Program; or

(14) By an individual whose service is covered by the UCX Program to which Part 614 of this chapter applies.

(g) "Federal employee" means an individual who has performed Federal civilian service.

(h) "Federal findings" means the facts reported by a Federal agency pertaining to an individual as to (1) whether or not the individual has performed Federal civilian service for such an agency; (2) the period or periods of such Federal civilian service; (3) the individual's Federal wages; and (4) the reasons for termination of the individual's Federal civilian service.

(i) "Federal wages" means all pay and allowances, in cash and in kind, for Federal civilian service.

(j) "First claim" means an initial claim for unemployment compensation under the UCFE Program, the UCX Program (Part 614 of this chapter), a State law, or some combination thereof, whereby a benefit year is established under an applicable State law.

(k) "Official station" means the State (or country, if outside the United States) designated on a Federal employee's notification of personnel action terminating the individual's Federal civilian service (Standard Form 50 or its equivalent) as the individual's "duty station." If the form of notification does not specify the Federal employee's "duty station", the individual's official station shall be the State or country designated under "name and location of employing office" on such form or designated as the individual's place of employment on an equivalent form.

(l) "Secretary" means the Secretary of Labor of the United States.

(m) "State" means the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, and the Virgin Islands.

(n) "State agency" means the agency of the State which administers the applicable State law and is administering the UCFE Program in the

State pursuant to an Agreement with the Secretary.

(o)(1) "State law" means the unemployment compensation law of a State approved by the Secretary under section 3304 of the Internal Revenue Code of 1954, 26 U.S.C. § 3304, if the State is certified under section 3304(c) of the Internal Revenue Code of 1954, 26 U.S.C. § 3304(c).

(2) "Applicable State law" means the State law made applicable to a UCFE claimant by § 609.8.

(p)(1) "Unemployment compensation" means cash benefits (including dependents' allowances) payable to individuals with respect to their unemployment, and includes regular, additional, emergency, and extended compensation.

(2) "Regular compensation" means unemployment compensation payable to an individual under any State law, but not including additional compensation or extended compensation.

(3) "Additional compensation" means unemployment compensation totally financed by a State and payable under a State law by reason of conditions of high unemployment or by reason of other special factors.

(4) "Emergency compensation" means supplementary unemployment compensation payable under a temporary Federal law after exhaustion of regular and extended compensation.

(5) "Extended compensation" means unemployment compensation payable to an individual for weeks of unemployment in an extended benefit period, under those provisions of a State law which satisfy the requirements of the Federal-State Extended Unemployment Compensation Act of 1970, as amended, 26 U.S.C. § 3304 note, and Part 615 of this chapter, with respect to the payment of extended compensation.

(q) "Week" means, for purposes of eligibility for and payment of UCFE, a week as defined in the applicable State law.

(r) "Week of unemployment" means a week of total, part-total, or partial unemployment as defined in the applicable State law, which shall be applied in the same manner and to the same extent to all employment and earnings, and in the same manner and to the same extent for for the purposes of the UCFE Program, as if the individual filing for UCFE were filing a claim for State unemployment compensation.

Subpart B—Administration of UCFE Program

§ 609.3 Eligibility requirements for UCFE.

An individual shall be eligible to receive a payment of UCFE or to waiting period credit with respect to a week of unemployment if:

(a) The individual has Federal civilian service and Federal wages in the base period under the applicable State law;

(b) The individual meets the qualifying employment and wage requirements of the applicable State law, either on the basis of Federal civilian service and Federal wages alone or in combination with service and wages covered under a State law or under the UCX Program (Part 614 of this chapter);

(c) The individual has filed an initial claim for UCFE and, as appropriate, has filed a timely claim for waiting period credit or a payment of UCFE with respect to that week of unemployment; and

(d) The individual is totally, part-totally, or partially unemployed, and is able to work, available for work, and seeking work within the meaning of or as required by the applicable State law, and is not subject to disqualification under this Part or the applicable State law, with respect to that week of unemployment.

§ 609.4 Weekly and maximum benefit amounts.

(a) *Total unemployment.* The weekly amount of UCFE payable to an eligible individual for a week of total unemployment shall be the amount that would be payable to the individual as unemployment compensation for a week of total unemployment as determined under the applicable State law.

(b) *Partial and part-total unemployment.* The weekly amount of UCFE payable for a week of partial or part-total unemployment shall be the amount that would be payable to the individual as unemployment compensation for a week of parital or part-total unemployment as determined under the applicable State law.

(c) *Maximum amount.* The maximum amount of UCFE which shall be payable to an eligible individual during and subsequent to the individual's benefit year shall be the maximum amount of all unemployment compensation that would be payable to the individual as determined under the applicable State law.

(d) *Computation rules.* (1) The weekly and maximum amounts of UCFE payable to an individial under the UCFE Program shall be determined under the applicable State law to be in the same amount, on the same terms, and subject to the same conditions as the State unemployment compenstaion which would be payable to the individual under the applicable state law if the individual's Federal civilian service and Federal wages assigned or transferred under this part to the State has been included as employment and wages covered by that State law.

(2) All Federal civilian service and Federal wages for all Federal agencies shall be considered employment with a single employer for purposes of the UCFE Program.

§ 609.5 Claims for UCFE.

(a) *First claims.* A first claim for UCFE shall be filed by an individual in any State agency of any State (or Canada) according to the applicable State law, and on a form prescribed by the Department which shall be furnished to the individual by the State agency where the claim is filed.

(b) *Weekly claims.* Claims for waiting week credit and payments of UCFE for weeks of unemployment shall be filed in any State agency (or Canada) at the times and in the manner as claims for State unemployment compensation are filed under the applicable State law, and on forms prescribed by the Department which shall be furnished to the individual by the State agency where the claim is filed.

(c) *Secretary's standard.* The procedure for reporting and filing claims for UCFE and waiting period credit shall be consistent with this Part 609 and the Secretary's "Standard for Claim Filing, Claimant Reporting, Job Finding and Employment Services" (*Employment Security Manual*, Part V, sections 5000 *et seq.*)

§ 609.6 Determinations of entitlement; notices to individual.

(a) *Determination of first claim.* The State agency whose State law applies to an individual under § 609.8 shall promptly, upon the filing of a first claim for UCFE, determine whether the individual is eligible and whether a disqualification applies, and, if the individual is found to be eligible, the individual's benefit year and the weekly and maximum amounts of UCFE payable to the individual.

(b) *Determinations of weekly claims.* The State agency promptly shall, upon the filing of a claim for a payment of UCFE or waiting period credit with respect to a week, determine whether the individual is entitled to a payment of UCFE or waiting period credit with respect to such week, and, if entitled, the amount of UCFE or waiting period credit to which the individual is entitled.

(c) *Redetermination.* The provisions of the applicable State law concerning the right to request, or authority to undertake, reconsideration of a determination pertaining to State unemployment compensation under the applicable State law shall apply to determinations pertaining to UCFE.

(d) *Notices to individual.* The State agency promptly shall give notice in writing to the individual of any determination or redetermination of a first claim, and, except as may be authorized under paragraph (g) of this section, of any determination or redetermination of any weekly claim which denies UCFE or waiting period credit or reduces the weekly amount or maximum amount initially determined to be payable. Each notice of determination or redetermination shall include such information regarding the determination or redetermintion and notice of right to reconsideration or appeal, or both, as is furnished with written notices of determinations and redeterminations with respect to claims for State unemployment compensation; and where information furnished by a Federal agency was considered in making the determination, or redetermination, the notice thereof shall include an explanation of the right of the individual to seek additional information pursuant to § 609.23 and/or a reconsideration of Federal findings pursuant to § 609.24.

(e) *Obtaining information for claim determinations.*

(1) Information required for the determination of claims for UCFE shall be obtained by the State agency from claimants, employers, and others, in the same manner as information is obtained for claim purposes under the applicable State law, but information (including additional and reconsidered Federal findings) shall be obtained from the Federal agency that employed the UCFE claimant as prescribed in §§ 609.21–609.25. On request by a UCFE claimant, the State agency shall seek additional information pursuant to § 609.23 and reconsideration of Federal findings pursuant to § 609.24.

(2) If Federal findings have not been received from a Federal agency within 12 days after the request for information was submitted to the Federal agency, the State agency shall determine the individual's entitlement to UCFE on the basis of an affidavit completed by the individual on a form prescribed by the Department. In addition, the individual shall submit for examination by the State agency any documents issued by the Federal agency (for example, Standard Form 50 or W–2) verifying that the individual performed services for and received wages from such Federal agency.

(3) If Federal findings recieved by a State agency after a determination has been made under this section contain information which would result in a change in the individual's eligibility for or entitlement to USFE, the State agency promptly shall make a redetermination and notify the individual, as provided in this section. All payments of UCFE made prior to or after such redetermination shall be adjusted in accordance therewith.

(f) *Promptness.* Full payment of UCFE when due shall be consistent with this Part 609 and shall be made with the greatest promptness that is administratively feasible, but the provisions of Part 640 of this chapter (relating to promptness of benefit payments) shall not be applicable to the UCFE Program.

(g) *Secretary's standard.* The procedures for making determinations and redeterminations, and furnishing written notices of determinations, redeterminations, and rights of appeal to individuals applying for UCFE, shall be consistent with this Part 609 and with the Secretary's "Standard for Claim Determinations—Separation Information" (*Employment Security Manual,* Part V, sections 6010 *et seq.*).

§ 609.7 Appeal and review.

(a) *Applicable State law.* The provisions of the applicable State law concerning the right of appeal and fair hearing from a determination or redetermination of entitlement to State unemployment compensation shall apply to determinations and redeterminations of eligibility for or entitlement to UCFE and waiting period credit. Any such determination or redetermination shall be subject to appeal and review only in the manner and to the extent provided in the applicable State law with respect to determinations and redeterminations of entitlement to State unemployment compensation.

(b) *Rights of appeal and fair hearing.* The provisions on right of appeal and opportunity for a fair hearing with respect to claims for UCFE shall be consistent with this Part and with sections 303(a)(1) and 303(a)(3) of the Social Security Act, 42 U.S.C. §§ 503(a)(1) and 503(a)(3).

(c) *Promptness on appeals.* (1) Decision on appeals under the UCFE Program shall accord with the Secretary's "Standard for Appeals Promptness—Unemployment Compensation" in Part 650 of this chapter, and with § 609.1(d).

(2) Any provision of an applicable State law for advancement or priority of unemployment compensation cases on judicial calendars, or otherwise intended to provide for the prompt payment of unemployment compensation when due, shall apply to proceedings involving claims for UCFE.

(d) *Appeal and review by Federal agency.* If a Federal agency believes that a State agency's determination or redetermination of an individual's eligibility for or entitlement to UCFE is incorret, the Federal agency may seek appeal and review of such determination or redetermination in the same manner as an interested employer may seek appeal and review under the applicable State law.

§ 609.8 The applicable State for an individual.

(a) *The applicable State.* The applicable State for an individual shall be the State to which the individual's Federal civilian service and Federal wages are assigned or transferred under this section. The applicable State law for the individual shall be the State law of such State.

(b) *Assignment of service and wages.* (1) An individual's Federal civilian service and Federal wages shall be assigned to the State in which the individual had his or her last official station prior to filing a first claim unless:

(i) At the time a first claim is filed the individual resides in another State in which, after separation from Federal civilian service, the individual performed services covered under the State law, in which case all of the individual's Federal civilian service and wages shall be assigned to the latter State; or

(ii) Prior to filing a first claim an individual's last official station was outside the States, in which case all of the individual's Federal civilian service and Federal wages shall be assigned to the State in which the individual resides at the time the individual files a first claim, provided the individual is personally present in such State when the individual files the first claim.

(2) Federal civilian service and wages assigned to a State in error shall be reassigned for use by the proper State agency. An appropriate record of a reassignment shall be made by the State agency which makes the reassignment.

(3) Federal civilian service and Federal wages assigned to a State shall be transferred to another State where such transfer is necessary for the purposes of a combined-wage claim filed by an individual.

(c) *Assignment deemed complete.* All of an individual's Federal service and

Federal wages shall be deemed to have been assigned to a State upon the filing of a first claim. Federal civilian service and Federal wages shall be assigned to a State only in accordance with Paragraph (b) of this section.

(d) *Use of assigned service and wages.* All assigned Federal civilian service and Federal wages shall be used only by the State to which assigned or transferred in accordance with paragraph (b) of this section.

§ 609.9 Provisions of State law applicable to UCFE claims.

(a) *Particular provisions applicable.* Except where the result would be inconsistent with the provisions of the Act or this Part or the procedures thereunder prescribed by the Department, the terms and conditions of the applicable State law which apply to claims for, and the payment of, State unemployment compensation shall apply to claims for, and the payment of, UCFE and claims for waiting period credit. The provisions of the applicable State law which shall apply include, but are not limited to:

(1) Claim filing and reporting;

(2) Information to individuals, as appropriate;

(3) Notices to individuals, and Federal agencies, as appropriate, including notice to each individual of each determination and redetermination of eligibility for or entitlement to UCFE;

(4) Determinations and redeterminations;

(5) Ability to work, availability for work, and search for work, and

(6) Disqualifications.

(b) *IBPP.* The *Interstate Benefit Payment Plan* shall apply, where appropriate, to individuals filing claims for UCFE.

(c) *Wage combining.* The State's provisions complying with the *Interstate Arrangement for Combining Employment and Wages* (Part 616 of this chapter) shall apply, where appropriate, to individuals filing claims for UCFE.

(d) *Procedural requirements.* The provisions of the applicable State law which apply hereunder to claims for and the payment of UCFE shall be applied consistently with the requirements of Title III of the Social Security Act and the Federal Unemployment Tax Act which are pertinent in the case of State unemployment compensation, including but not limited to those standards and requirements specifically referred to in the provisions of this Part, except as provided in paragraph (f) of § 609.6.

§ 609.10 Restrictions on entitlement.

(a) *Disqualification.* If the week of unemployment for which an individual claims UCFE is a week to which a disqualification for State unemployment compensation applies under the applicable State law, or would apply but for the fact that the individual has no right to such compensation, the individual shall not be entitled to a payment of UCFE for that week.

(b) *Allocation on terminal annual leave payments.* Lump-sum terminal annual leave payments shall not be allocated by a Federal agency and shall be allocated by a State agency in the same manner as similar payments to individuals employed by private employers are allocated under the applicable State law. In a State in which a private employer has an option as to the period to which such payments shall be allocated, such payments shall be allocated to the date of separation from employment.

§ 609.11 Overpayments; penalties for fraud.

(a) *False statements and representations.* Section 8507(a) of the Act provides that if a State agency, the Department, or a court of competent jurisdiction finds that an individual—

(1) knowingly has made, or caused to be made by another, a false statement or representation of a material fact, or knowingly has failed, or caused another to fail, to disclose a material fact; and

(2) as a result of that action has received an amount as UCFE to which the individual was not entitled; the individual shall repay the amount to the State agency or the Department. Instead of requiring repayment, the State agency or the Department may recover the amount by deductions from UCFE payable to the individual during the 2-year period after the date of the finding. A finding by a State agency or the Department may be made only after an opportunity for a fair hearing, subject to such further review as may be appropriate under § 609.7.

(b) *Prosecution for fraud.* Section 1919 of title 18, United States Code, provides that whoever makes a false statement or representation of a material fact knowing it to be false, or knowingly fails to disclose a material fact, to obtain or increase for himself or for any other individual any payment authorized to be paid under chapter 85 of title 5, United States Code, or under an agreement thereunder, shall be fined not more than $1,000 or imprisoned not more than one year, or both.

(c) *Absence of fraud.* If a State agency or court of competent jurisdiction finds that an individual has received a payment of UCFE to which the individual was not entitled under the Act and this Part, which was not due to a false statement or representation as provided in paragraph (a) or (b) of this section, the individual shall be liable to repay to the applicable State the total sum of the payment to which the individual was not entitled, and the State agency shall take all reasonable measures authorized under any State law or Federal law to recover for the account of the United States the total sum of the payment to which the individual was not entitled.

(d) *Recovery by offset.* (1) The State agency shall recover, insofar as is possible, the amount of any overpayment which is not repaid by the individual, by deductions from any UCFE payable to the individual under the Act and this Part, or from any unemployment compensation payable to the individual under any Federal unemployment compensation law administered by the State agency, or from any assistance or allowance payable to the individual with respect to unemployment under any other Federal law administered by the State agency.

(2) A State agency shall also recover, insofar as is possible, the amount of any overpayment of UCFE made to the individual by another State, by deductions from any UCFE payable by the State agency to the individual under the Act and this Part, or from any unemployment compensation payable to the individual under any Federal unemployment compensation law administered by the State agency, or from any assistance or allowance payable to the individual with respect to unemployment under any other Federal law administered by the State agency.

(3) Recoupment of fraudulent overpayments referred to in paragraph (a) of this section shall be limited to the 2-year period stated in that paragraph. Recoupment of fraudulent overpayments referred to in paragraph (b) of this section, and nonfraudulent overpayments referred to in paragraph (c) of this section shall be subject to any time limitation on recoupment provided for in the State law that applies to the case.

(e) *Debts due the United States.* UCFE payable to an individual shall be applied by the State agency for the recovery by offset of any debt due to the United States from the individual, but shall not be applied or used by the State agency in any manner for the payment of any debt of the individual to any State or any other entity or person except pursuant to a court order for child support or alimony in accordance with the law of the State and section 459 of the Social Security Act, 42 U.S.C. § 659.

(f) *Application of State law.* (1) Any provision of State law that may be applied for the recovery of overpayments or prosecution for fraud, and any provision of State law authorizing waiver of recovery of overpayment of unemployment compensation, shall be applicable to UCFE.

(2) In the case of any finding of false statement or representation under the Act and paragraph (a) of this section, or prosecution for fraud under 18 U.S.C. § 1919 or pursuant to paragraph (f)(1) of this section, the individual shall be disqualified or penalized in accordance with the provisions of the applicable State law relating to fraud in connection with a claim for State unemployment compensation.

(g) *Final decision.* Recovery of any overpayment of UCFE shall not be enforced by the State agency until the determination or redetermination establishing the overpayment has become final, or if appeal is taken from the determination or redetermination, until the decision after opportunity for a fair hearing has become final.

(h) *Procedural requirements.* (1) The provisions of paragraphs (c), (d), and (g) of § 609.6 shall apply to determinations and redeterminations made pursuant to this section.

(2) The provisions of § 609.7 shall apply to determinations and redeterminations made pursuant to this section.

(i) *Fraud detection and prevention.* Provisions in the procedures of each State with respect to detection and prevention of fraudulent overpayment of UCFE shall be, as a minimum, commensurate with the procedures adopted by the State with respect to State unemployment compensation and consistent with the Secretary's "Standard for Fraud and Overpayment Detection" (*Employment Security Manual,* Part V, sections 7510 *et seq.*).

(j) *Recovered overpayment.* An amount repaid or recouped under this section shall be—

(1) deposited in the fund from which payment was made, if the repayment was to a State agency; or

(2) returned to the Treasury of the United States and credited to the current applicable appropriation, fund, or account from which payment was made, if the repayment was to the Department.

§ 609.12 Inviolate rights to UCFE.

Except as specifically provided in this Part, the rights of individuals to UCFE shall be protected in the same manner and to the same extent as the rights of persons to State unemployment compensation are protected under the applicable State law. Such measures shall include protection of applicants for UCFE from waiver, release, assignment, pledge, encumbrance, levy, execution, attachment, and garnishment of their rights to UCFE, except as provided in § 609.11. In the same manner and to the same extent, individuals shall be protected from discrimination and obstruction in regard to seeking, applying for, and receiving any right to UCFE.

§ 609.13 Recordkeeping; disclosure of information.

(a) *Recordkeeping.* Each State agency all make and maintain records pertaining to the administration of the UCFE program as the Department requires, and will make will such records available for inspection, examination, and audit by such Federal officials or employees as the Department may designate or as may be required be law.

(b) *Disclosure of information.* Information in records maintained by a State agency in administering the UCFE Program shall be kept confidential, and information in such records may be disclosed only in the same manner and to the same extent as information with respect to State unemployment compensation and the entitlement of individuals thereto may be disclosed under the applicable State law. This provision on the confidentiality of information maintained in the administration of the UCFE Program shall not apply, however, to the Department or for the purposes of §§ 609.11 or 609.13, or in the case of information, reports and studies required pursuant to §§ 609.17 or 609.25, or where the result would be inconsistent with the Freedom of Information Act (5 U.S.C. § 552), the Privacy Act of 1974 (5 U.S.C. § 552a), or regulations of the Department promulgated thereunder.

§ 609.14 Payments to States.

(a) *State entitlement.* Each State is entitled to be paid by the United States with respect to each individual whose base period wages included Federal wages, an amount bearing the same ratio to the total amount of compensation paid to such individual as the amount of the individual's Federal wages in the individual's base period bears to the total amount of the individual's base period wages.

(b) *Payment.* Each State shall be paid, either in advance or by way of reimbursement, as may be determined by the Department, the sum that the Department estimates the State is entitled to receive under the Act and this Part for each calendar month. The sum shall be reduced or increased by the amount which the Department finds that its estimate for an earlier calendar month was greater or less than the sum which should have been paid to the State. An estimate may be made on the basis of a statistical, sampling, or other method agreed on by the Department and the State agency.

(c) *Certification by the Department.* The Department, from time to time, shall certify to the Secretary of the Treasury the sum payable to each State under this section. The Secretary of the Treasury, before audit or settlement by the General Accounting Office, shall pay the State in accordance with the certification from the funds for carrying out the purposes of the Act and this Part.

(d) *Use of money.* Money paid a State under the Act and this Part may be used solely for the purposes for which it is paid. Money so paid which is not used solely for these purposes shall be returned, at the time specified by the Agreement, to the Treasury of the United States and credited to the current applicable appropriation, fund, or account from which payments to States under the Act and this Part may be made.

§ 609.15 Public access to agreements.

The State agency of a State will make available to any individual or organization a true copy of the Agreement with the State for inspection and copying. Copies of an Agreement may be furnished on request to any individual or organization upon payment of the same charges, if any, as apply to the furnishing of copies of other records of the State agency.

§ 609.16 Administration in absence of an agreement.

(a) *Administering Program.* The Department shall administer the UCFE Program through personnel of the Department or through other arrangements under procedures prescribed by the Department, in the case of any State which does not have an Agreement with the Secretary as provided for in 5 U.S.C. § 8502. The procedures prescribed by the Department under this section shall be consistent with the Act and this Part.

(b) *Applicable State law.* On the filing by an individual of a claim for UCFE in accordance with arrangements under this section, UCFE shall be paid to the individual, if eligible, in the same amount, on the same terms, and subject to the same conditions as would be paid to the individual under the applicable State law if the individual's Federal

civilian service and Federal wages had been included as employment and wages under the State law. Any such claim shall include the individual's Federal civilian service and Federal wages, combined with any service and wages covered by State law. However, if the individual, without regard to his or her Federal civilian service and Federal wages, has employment or wages sufficient to qualify for compensation during the benefit year under that State law, then payments of UCFE under this section may be made only on the basis of the individual's Federal civilian service and Federal wages.

(c) *Fair hearing.* An individual whose claim for UCFE is denied under this section is entitled to a fair hearing under rules of procedure prescribed by the Department. A final determination by the Department with respect to entitlement to UCFE under this section is subject to review by the courts in the same manner and to the same extent as is provided by section 205(g) of the Social Security Act, 42 U.S.C. 405(g).

§ 609.17 Information, reports, and studies.

State agencies shall furnish to the Department such information and reports and conduct such studies as the Department determines are necessary or appropriate for carrying out the purposes of the UCFE Program.

Subpart C—Responsibilities of Federal Agencies

§ 609.20 Information to Federal civilian employees.

Each Federal agency shall:

(a) Furnish information to its employees as to their rights and responsibilities under the UCFE Program and 18 U.S.C. § 1919; and

(b) Furnish a completed copy of a form approved by the Department, "Notice to Federal Employee About Unemployment Compensation," in accordance with instructions thereon, to each employee at the time of separation from Federal civilian service, when transferred from one payroll office to another, or when the office responsible for distribution of the form is advised that an individual is in nonpay status for seven consecutive days or more.

§ 609.21 Findings of Federal agency.

(a) *Answering request.* Within four workdays after receipt from a State agency of a request for Federal findings on a form furnished by the State agency, and prescribed by the Department, a Federal agency shall make such Federal findings, complete all copies of the form, and transmit the completed copies to the State agency. If documents necessary for completion of the form have been assigned to an agency records center or the Federal Records Center in St. Louis, the Federal agency shall obtain the necessary information from the records center. Any records center shall give priority to such a request.

(b) *Failure to meet time limit.* If a completed form containing the Federal agency's findings cannot be returned within four workdays of receipt, the Federal agency immediately shall inform the State agency, and shall include an estimated date by which the completed form will be returned.

(c) *Administrative control.* Each Federal agency shall maintain a control of all requests for Federal findings received by it, and the Federal agency's response to each request. The records shall be maintained so as to enable the Federal agency to ascertain at any time the number of such forms that have not been returned to State agencies, and the dates of the Federal agency's receipt of such unreturned forms.

§ 609.22 Correcting Federal findings.

If a Federal agency ascertains at any time within one year after it has returned a completed form reporting its findings, that any of its findings were erroneous, it shall promptly correct its error and forward its corrected findings to the State agency.

§ 609.23 Furnishing additional information.

On receipt of a request for additional information from a State agency, a Federal agency shall consider the information it supplied initially in connection with such request and shall review its findings. The Federal agency promptly shall forward to the State agency such additional findings as will respond to the request. The Federal agency shall, if possible, respond within four workdays after the receipt of a request under this section.

§ 609.24 Reconsideration of Federal findings.

On receipt of a request for reconsideration of Federal findings from a State agency, the Federal agency shall consider the initial information supplied in connection with such request and shall review its findings. The Federal agency shall correct any errors or omissions in its findings and shall affirm, modify, or reverse any or all of its findings in writing. The Federal agency promptly shall forward its reconsidered findings to the requesting authority. The Federal agency shall, if possible, respond within four work days after the receipt of a request under this section.

§ 609.25 Furnishing other information.

(a) *Additional information.* In addition to the information required by §§ 609.21, 609.22, 609.23, and 609.24, a Federal agency shall furnish to a State agency or the Department, within the time requested, any information which it is not otherwise prohibited from releasing by law, which the Department determines is necessary for the administration of the UCFE Program.

(b) *Reports.* Federal agencies shall furnish to the Department or State agencies such reports containing such information as the Department determines are necessary or appropriate for carrying out the purposes of the UCFE Program.

§ 609.26 Liaison with Department.

To facilitate the Department's administration of the UCFE Program, each Federal agency shall designate one or more of its officials to be the liaison with the Department. Each Federal agency will inform the Department of its designation(s) and of any change in a designation.

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Part XII

Department of Labor

Employment and Training Administration

Unemployment Compensation for Ex-Service Members

DEPARTMENT OF LABOR

20 CFR Part 614

Unemployment Compensation for Ex-Service Members; Revision of Regulations

AGENCY: Employment and Training Administration, Labor.

ACTION: Proposed rule.

SUMMARY: The Department of Labor proposes to revise the regulations for the Program of Unemployment Compensation for Ex-Servicemembers (UCX Program). Changes to the regulations incorporate statutory amendments; which require treatment of the Virgin Islands as a participating State in the Federal-State Unemployment Compensation Program, which prescribe a new rule for determining the Federal share of the cost of benefits in connection with joint claims under the UCX Program and State unemployment compensation laws, and which revise the eligibility requirements for entitlement to the program benefits. The regulations are also reorganized and revised to state the rights and obligations of claimants for the benefits and to clarify the respective duties and responsibilities of the Federal Government and the State agencies. The setting forth of this information in each Part dealing with a separate unemployment compensation program conforms to the more recent practice in writing regulations in this area.

DATE: Written comments must be received by the Department on or before March 24, 1981.

ADDRESS: Send comments on this proposal to the U.S. Department of Labor, Employment and Training Administration, Room 7000, Patrick Henry Building, 601 "D" Street, N.W., Washington, D.C. 20213. All comments received will be available for public inspection during normal business hours in Room 7000 at the above address.

FOR FURTHER INFORMATION CONTACT: Charles W. Reynolds, Unemployment Insurance Service, at (202) 376-6222. (This is not a toll-free number).

SUPPLEMENTARY INFORMATION: The UCX Program is financed by Federal funds to furnish unemployment benefits to individuals who are separated from military service and are unable to obtain work. The program was created by Public Law 85-848, approved on August 28, 1958. It has been codified in 5 U.S.C. 8521-8525.

Section 116 of the Unemployment Compensation Amendments of 1976 (Pub. L. 94-566, 90 Stat 2667, 2672) authorized treatment of the Virgin Islands as a State for unemployment compensation purposes. This change became effective on January 1, 1978, following approval of the Virgin Islands unemployment compensation law, as amended to meet Federal statutory requirements, by the Secretary of Labor. The change in the status of the Virgin Islands requires conforming changes in the UCX regulations.

Section 214 of the Unemployment Compensation Amendments of 1976 amended 5 U.S.C. 8505(a) to provide for prorating of costs as to claims filed jointly under the UCX Program and State unemployment compensation laws, and also amended 5 U.S.C. 8501 to add a definition of "base period." These changes also require conforming changes in the UCX regulations.

Section 415 of the Multiemployer Pension Plan Amendments Act of 1980 (Pub. L. 96-364, 94 Stat. 1208, 1310) amended 5 U.S.C. 8521 to require 365 days instead of 90 days as the minimum period of military service required to qualify for benefits under the UCX Program. This amendment applies to all individuals filing new UCX claims on or after October 1, 1980.

Revisions to Part 614 are proposed in this document to implement the statutory amendments. This revision of the UCX regulations also includes a reorganization and upgrading to conform to the more recent practice in writing regulations for unemployment compensation programs, including new sections, new titles for sections, replacing words of gender, and deleting references to specific form numbers to be used in the program.

The significant changes proposed in Part 614 are:

1. All sections in this proposal have been renumbered, titles changed, and their order of appearance rearranged. Some of the sections in the present regulations have been incorporated into one section, while other sections have been amplified for clarity. However, there are no legal or substantive changes in this new arrangement with the exception of those changes mentioned below. This rearrangement is only a reorganization and upgrading of the present regulations to conform to the more recent practice in writing regulations for unemployment compensation programs.

2. Section 614.1 is a new section explaining the purpose of the UCX Program, the rules of construction to be applied, and including provisions for monitoring the uniform application of the law. In this regard the regulation is revised to incorporate into §§ 614.1(d)(3) and (4) specific rules for assigning responsibility to the States for the payment of benefits only in accordance with the law and this regulation. These rules (sometimes referred to as the "Lopez Rule") were developed following *In re Lopez* and other cases, where a State had paid claims in flagrant disregard of the law and the regulations.

3. Section 614.2, *Definitions of terms*, has been revised to expand certain definitions for the purpose of clarification. All provisions for special handling of claims pertaining to the Virgin Islands have been deleted. The term "base period" has been defined in accordance with the Unemployment Compensation Amendments of 1976.

4. Sections 614.3 to 614.11 are new sections which set forth specific rules concerning eligibility requirements, benefit amounts, claims, determinations of entitlement, notices of determinations, appeal and review, and other provisions on benefit administration, including more specific provisions on overpayments and penalties for fraud. There are no legal or substantive program changes in these sections, but they reflect more recent practice in writing regulations for unemployment compensation programs.

5. Section 614.12, *Schedules of Remuneration*, is revised in that the current schedule shall no longer be a part of the section. The schedule prescribes a scale of wages by military grade which is used in computing benefit amounts for UCX claims. The frequency of military pay raises, and the amount of time required to adopt new schedules by regulation, has caused administrative problems in making new schedules effective at a given date so as to regularize the effective dates of new schedules. The Secretary of Labor, after consultation with the Secretary of Defense, will issue the schedules as required by 5 U.S.C. 8521 (a) (2), and in accordance with revised § 614.12. The State agencies and Federal military agencies will be notified of each new Schedule, and it will be published in the Federal Register as a notice. New Schedules will not, however, require a change in Part 614, and will not be published as a part of the regulations.

6. Sections 614.13, 614.14, 614.16, 614.17 and 614.18 are new sections pertaining to inviolate rights, recordkeeping and disclosure of information, public access to Agreements, administration in the absence of an Agreement with a State, and information, reports and studies. Except as to disclosure of information, these sections provide no new legal or substantive change, but have been added to conform to the new practice in

writing regulations for unemployment compensation programs.

7. Section 614.15, *Payments to States*, is a new section to provide for proration of costs of claims filed jointly under State law and the UCX Program, in accordance with section 214(a) of the Unemployment Compensation Amendments of 1976. Under this amendment to 5 U.S.C. 8505(a), the Federal share of joint claims is in the proportion that the Federal military wages in the base period bear to the total base period wages of the claimant.

8. Sections 614.2(g) and 614.23(a) are revised to reflect the new minimum service requirement of 365 days instead of the 90 days previously required.

Note.—The Department of Labor has determined that the proposal in this document is not a major regulation that requires the preparation of a regulatory analysis, within the meaning of Executive Order 12044 and the Deparment's guidelines published at 44 FR 5570. This note also reflects that I have certified, in accordance with 5 U.S.C. 605(b), that the regulation in this document will not have a significant economic impact on a substantial number of small business entities.

This document was prepared under the direction and control of the Administrator of the Unemployment Insurance Service, Employment and Training Administration, U.S. Department of Labor, 601 "D" Street, N.W., Washington, D.C. 20213; telephone: (202) 376-7032.

Accordingly, it is proposed to revise 20 CFR Part 614 as set out below.

Signed at Washington, D.C., on January 19, 1981.

Ernest G. Green,

Assistant Secretary for Employment and Training.

PART 614—UNEMPLOYMENT COMPENSATION FOR EX-SERVICEMEMBERS

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Authority: 5 U.S.C. 8506; Secretary's Order No. 4-75, 40 FR 18515 (5 U.S.C. 301). Interpret and apply secs. 8521-8525 of title 5, United States Code.

Subpart A—General Provisions

§ 614.1 Purpose and application.

(a) *Purpose.* Subchapter II of chapter 85, title 5 of the United States Code, as amended by Pub. L. 94-566, 90 Stat. 2667 (5 U.S.C. §§ 8521-8525), provides for a permanent program of unemployment compensation for unemployed individuals separated from the Armed Forces. The unemployment compensation provided for in subchapter II is hereinafter referred to as Unemployment Compensation for Ex-Servicemembers, or UCX. The regulations in this Part are issued to implement the UCX Program.

(b) *First rule of construction.* The Act and the implementing regulations in this Part shall be construed liberally so as to carry out the purposes of the Act.

(c) *Second rule of construction.* The Act and the implementing regulations in this Part shall be construed so as to assure insofar as possible the uniform interpretation and application of the Act throughout the United States.

(d) *Effectuating purpose and rules of construction.*

(1) In order to effectuate the provisions of this section, each State agency shall forward to the United States Department of Labor (hereafter Department), not later than 10 days after issuance, a copy of each judicial or administrative decision ruling on and individual's entitlement to payment of UCX or to credit for a waiting period. On request of the Department, a State agency shall forward to the Department a copy of any determination or redetermination ruling on an individual's entitlement to UCX or waiting period credit.

(2) If the Department believes that a determination, redetermination, or decision is inconsistent with the Department's interpretation of the Act or this Part, the Department may at any time notify the State agency of the Department's view. Thereafter the State agency shall issue a redetermination or appeal if possible, and shall not follow such determination, redetermination, or decision as a precedent; and, in any subsequent proceeding which involve such determination, redetermination, or decision, or wherein such determination, redetermination, or decision is cited as precedent or otherwise relied upon, the State agency shall inform the claims deputy or hearing officer or court of the Department's view and shall all reasonable efforts, including appeal or other proceedings in an appropriate forum, to obtain modification, limitation, or overruling of the determination, redetermination, or decision.

(3) If the Department believes that a determination, redetermination, or decision is patently and flagrantly violative of the Act or this Part, the Department may at any time notify the State agency of the Department's view. If the determination, redetermination, or decision in question denies UCX to a claimant, the steps outlined in paragraph (2) above shall be followed by the State agency. If the determination, redetermination, or decision in question awards UCX to a claimant, the benefits are "due" within the meaning of section 303(a)(1) of the Social Security Act, 42 U.S.C. 503(a)(1), and therefore must be paid promptly to the claimant. However, the State agency shall take the steps outlined in paragraph (2) above, and payments to the claimant may be temporarily delayed if redetermination or appeal action is taken not more than one business day following the day on which the first payment otherwise would be issued to the claimant; and the redetermination action is taken or appeal is filed to obtain a reversal of the award of UCX and a ruling consistent with the Department's view, and the redetermination action or appeal seeks an expedited redetermination or appeal within not more than two weeks after the redetermination action is taken or the appeal is filed. If redetermination action is not taken or appeal is not filed within the above time limit or a redetermination or decision is not obtained within the two-week limit, or any redetermination or decision or order is issued which affirms the determination, redetermination, or decision awarding UCX or allows it to stand in whole or in part, the benefits awarded must be paid promptly to the claimant.

(4)(1) If any determination, redetermination, or decision, referred to in paragraph (2) or paragraph (3) above, is treated as a precedent for any future UCX claim or claim under the UCFE Program (Part 609 of this chapter), the Secretary will decide whether the Agreement with the State entered into under the Act shall be terminated.

(ii) In the case of any determination, redetermination, or decision that is not legally warranted under the Act or this part, including any determination, redetermination, or decision referred to in paragraph (3) above, the Secretary will decide whether the State shall be required to restore the funds of the United States for any sums paid under such a determination, redetermination, or decision, and whether, in the absence of such restoration, the Agreement with the State shall be terminated and whether other action shall be taken to recover such sums for the United States.

(5) A State agency may request reconsideration of a notice issued pursuant to paragraph (2) or paragraph (3) above, and shall be given an opportunity to present views and arguments if desired.

(6) Concurrence of the Department in a determination, redetermination, or decision shall not be presumed from the absence of a notice issued pursuant to this section.

§ 614.2 Definitions of terms.

For purposes of the Act and this Part:

(a) "Act" means subchapter II of chapter 85 of title 5 of the United States Code, 5 U.S.C. 8521–8525.

(b) "Agreement" means the Agreement entered into pursuant to 5 U.S.C. 8502 between a State and the Secretary under which the State agency of the State agrees to make payments of unemployment compensation in accordance with the Act and the regulations and procedures thereunder prescribed by the Department.

(c) "Base period" means the base period as defined by the applicable State law for the benefit year.

(d) "Benefit year" means the benefit year as defined by the applicable State law, and if not so defined the term means the period prescribed in the Agreement with the State or, in the absence of an Agreement, the period prescribed by the Department.

(e) "Ex-servicemember" means an individual who has performed Federal military service.

(f) "Federal military agency" means any of the Armed Forces of the United States, including the Army, Air Force, Navy, Marine Corps, and Coast Guard.

(g) "Federal military service" means a period of active service, including active duty for training purposes, in the Armed Forces if—

(1) Such service was continuous for 365 days or more or was terminated in less than 365 days because of an actual service-incurred injury or disability; and

(2) With respect to such service the individual (i) was discharged or released under conditions other than dishonorable, (ii) was not given a bad conduct discharge, or (iii) if an officer, did not resign for the good of the service.

(h) "Federal military wages" means all pay and allowances in cash and in kind for Federal military service, including any payment for unused military leave which is allocated under § 614.10, as determined in accordance with the applicable Schedule of Remuneration.

(i) "First claim" means an initial claim for unemployment compensation under the UCX Program, the UCFE Program (Part 609 of this chapter), or a State law, or some combination thereof, first filed by an individual after the individual's latest discharge or release from Federal military service, whereby a benefit year is established under an applicable State law.

(j) "Military document" means an official document or documents issued to an individual by a Federal military agency relating to the individual's Federal military service and discharge or release from such service.

(k) "Period of active service" means a period of continuous active duty (including active duty for training purposes) in a Federal military agency or agencies, beginning with the date of entry upon active duty and ending on the effective date of the first discharge or release thereafter which is not qualified or conditional.

(l) "Schedule of Remuneration" means the schedule issued by the Department from time to time under 5 U.S.C. 8521(a)(2) and this Part, which specifies for purposes of the UCX Program the pay and allowances for each pay grade of servicemembers.

(m) "Secretary" means the Secretary of Labor of the United States.

(n) "State" means the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, and the Virgin Islands.

(o) "State agency" means the agency of the State which administers the applicable State unemployment compensation law and is administering the UCX Program in the State pursuant to an Agreement with the Secretary.

(p)(1) "State law" means the unemployment compensation law of a State approved by the Secretary under section 3304 of the Internal Revenue Code of 1954, 26 U.S.C. § 3304, if the State is certified under section 3304(c) of the Internal Revenue Code of 1954, 26 U.S.C. § 3304(c).

(2) "Applicable State law" means the State law made applicable to a UCX claimant by § 614.6.

(q)(1) "Unemployment compensation" means cash benefits (including dependents' allowances) payable to individuals with respect to their unemployment, and includes regular, additional, emergency, and extended compensation.

(2) "Regular compensation" means unemployment compensation payable to an individual under any State law, but not including additional compensation or extended compensation.

(3) "Additional compensation" means unemployment compensation totally financed by a State and payable under a State law by reason of conditions of high unemployment or by reason of other special factors.

(4) "Emergency compensation" means supplementary unemployment compensation payable under a temporary Federal law after exhaustion of regular and extended compensation.

(5) "Extended compensation" means unemployment compensation payable to an individual for weeks of unemployment in an extended benefit period, under those provisions of a State law which satisfy the requirements of the Federal-State Extended Unemployment Compensation Act of 1970, as amended, 26 U.S.C. § 3304 note, and Part 615 of this chapter, with respect to the payment of extended compensation.

(r) "Unemployment compensation for Ex-service-members" means the unemployment compensation payable under the Act to claimants eligible for the payments, and is referred to as UCX.

(s) "Week" means, for purposes of eligibility for and payment of UCX, a week as defined in the applicable State law.

(t) "Week of unemployment" means a week of total, part-total, or partial unemployment as defined in the applicable State law, which shall be applied in the same manner and to the same extent to all employment and earnings, and in the same manner and to the same extent for the purposes of the UCX Program, as if the individual filing for UCX were filing a claim for State unemployment compensation.

Subpart B—Administration of UCX Program

§ 614.3 Eligibility requirements for UCX.

An individual shall be eligible to receive a payment of UCX or waiting

period credit with respect to a week of unemployment if:

(a) The individual has Federal military service and Federal military wages in the base period under the applicable State law;

(b) The individual meets the qualifying employment and wage requirements of the applicable State law, either on the basis of Federal military service and Federal military wages alone or in combination with service and wages covered under a State law or under the UCFE Program (Part 609 of this chapter);

(c) The individual has filed an initial claim for UCX and, as appropriate, has filed a timely claim for waiting period credit or payment of UCX with respect to that week of unemployment; and

(d) The individual is totally, part-totally, or partially unemployed, and is able to work, available for work, and seeking work within the meaning of or as required by the applicable State law, and is not subject to disqualification under this Part or the applicable State law, with respect to that week of unemployment.

§ 614.4 Weekly and maximum benefit amounts.

(a) *Total unemployment.* The weekly amount of UCX payable to an eligible individual for a week of total unemployment shall be the amount that would be payable to the individual as unemployment compensation for a week of total unemployment as determined under the applicable State law.

(b) *Partial and part-total unemployment.* The weekly amount of UCX payable for a week of partial or part-total unemployment shall be the amount that would be payable to the individual as unemployment compensation for a week of partial or part-total unemployment as determined under the applicable State law.

(c) *Maximum amount.* The maximum amount of UCX which shall be payable to an eligible individual during and subsequent to the individual's benefit year shall be the maximum amount of all unemployment compensation that would be payable to the individual as determined under the applicable State law.

(d) *Computation rule.* The weekly and maximum amounts of UCX payable to an individual under the UCX Program shall be determined under the applicable State law to be in the same amount, on the same terms, and subject to the same conditions as the State unemployment compensation which would be payable to the individual under the applicable State law if the individual's Federal military service and Federal military wages assigned or transferred under this Part to the State had been included as employment and wages covered by that State law, subject to the use of the applicable Schedule of Remuneration.

§ 614.5 Claims for UCX.

(a) *First claims.* A first claim for UCX shall be filed by an individual in any State agency of any State according to the applicable State law, and on a form prescribed by the Department which shall be furnished to the individual by the State agency where the claim is filed.

(b) *Weekly claims.* Claims for waiting week credit and payments of UCX for weeks of unemployment shall be filed in any State agency (or Canada) at the times and in the manner as claims for State unemployment compensation are filed under the applicable State law, and on forms prescribed by the Department which shall be furnished to the individual by the State agency where the claim is filed.

(c) *Secretary's standard.* The procedures for reporting and filing claims for UCX and waiting period credit shall be consistent with this Part 614 and the Secretary's "Standard for Claim Filing, Claimant Reporting, Job Finding and Employment Services" *(Employment Security Manual,* Part V, sections 5000 *et seq.*).

§ 614.6 Determinations of entitlement; notices to individual.

(a) *Determination of first claim.* Except for findings of a Federal military agency or the Veterans Administration and the applicable Schedule of Remuneration which are final and conclusive under § 614.25, the State agency whose State law applies to an individual under § 614.8 shall, promptly upon the filing of first claim for UCX, determine whether the individual is otherwise eligible and, if the individual is found to be eligible, the individual's benefit year and the weekly and maximum amounts of UCX payable to the individual.

(b) *Determinations of weekly claims.* The State agency promptly shall, upon the filing of a claim for a payment of UCX or waiting period credit with respect to a week, determine whether the individual is entitled to a payment of UCX or waiting period credit with respect to such week, and, if entitled, the amount of UCX or waiting period credit to which the individual is entitled.

(c) *Redetermination.* The provisions of the applicable State law concerning the right to request, or authority to undertake, reconsideration of a determination pertaining to State unemployment compensation under the applicable State law shall apply to determinations pertaining the UCX.

(d) *Notices to individual.* The State agency promptly shall give notice in writing to the individual of any determination or redetermination of a first claim, and, except as may be authorized under paragraph (g) of this section, of any determination or redetermination of any weekly claim which denies UCX or waiting period credit or reduces the weekly amount or maximum amount initially determined to be payable. Each notice of determination or redetermination shall include such information regarding the determination or redetermination and notice of right to reconsideration or appeal, or both, as is furnished with written notices of determinations and redeterminations with respect to claims for State unemployment compensation. Such notice shall include the findings of any Federal military agency or the Veterans Administration, and shall inform the individual of the finality of such findings and of the individual's right to request correction of such findings as is provided in §§ 614.22 and 614.24.

(e) *Obtaining information for claim determinations.*

(1) Information required for the determination of claims for UCX shall be obtained by the State agency from claimants, employers, and others, in the same manner as information is obtained for claim purposes under the applicable State law, but Federal military findings shall be obtained from military documents, the applicable Schedule of Remuneration, and from Federal military agencies and the Veterans' Administration as prescribed in §§ 614.21–614.20.

(2) Procedures for requesting correction of Federal findings and Veterans Administration findings, and State agency procedures when requests are made and responses are received, are prescribed in §§ 614.22–614.24.

(f) *Promptness.* Full payment of UCX when due shall be consistent with this Part 614 and shall be made with the greatest promptness that is administratively feasible, but the provisions of Part 640 of this chapter (relating to promptness of benefit payments) shall not be applicable to the UCX Program.

(g) *Secretary's standard.* The procedures for making determinations and redeterminations, and furnishing written notices of determinations, redeterminations, and rights of appeal to individuals applying for UCX, shall be consistent with this Part 614 and with the Secretary's "Standard for Claim

Determinations—Separation Information" (*Employment Security Manual*, Part V, sections 6010 *et seq.*).

§ 614.7 Appeal and review.

(a) *Applicable State law.* The provisions of the applicable State law concerning the right of appeal and fair hearing from a determination or redetermination of entitlement to State unemployment compensation (exclusive of findings which are final and conclusive under § 614.25) shall apply to determinations and redeterminations of eligibility for or entitlement to UCX and waiting period credit. Any such determination or redetermination shall be subject to appeal and review only in the manner and to the extent provided in the applicable State law with respect to determinations and redeterminations of entitlement to State unemployment compensation. (Section 614.24 governs appeals of findings of the Veterans Administration.)

(b) *Rights of appeal and fair hearing.* The provisions on right of appeal and opportunity for a fair hearing with respect to claims for UCX shall be consistent with this Part and with sections 303(a)(1) and 303(a)(3) of the Social Security Act, 42 U.S.C. §§ 503(a)(1) and 503(a)(3).

(c) *Promptness on appeals.* (1) Decisions on appeals under the UCX Program shall accord with the Secretary's "Standard for Appeals Promptness—Unemployment Compensation" for Part 650 of this chapter, and with § 614.1(d).

(2) Any provision of an applicable State law for advancement or priority of unemployment compensation cases on judicial calendars, or otherwise intended to provide for the prompt payment of unemployment compensation when due, shall apply to proceedings involving claims for UCX.

(d) *Appeal and review by Federal military agency.* If a Federal military agency believes that a State agency's determination or redetermination of an individual's eligibility for or entitlement to UCX is incorrect, the Federal military agency may seek appeal and review of such determination or redetermination in the same manner as an interested employer may seek appeal and review under the applicable State law.

§ 614.8 The applicable State for an individual.

(a) *The applicable State.* The applicable State for an individual shall be the State to which the individual's Federal military service and Federal military wages are assigned or transferred under this section. The applicable State law for the individual shall be the State law of such State.

(b) *Assignment of service and wages.* (1) When an individual files a first claim all of the individual's Federal military service and Federal military wages shall be deemed to be assigned to the State in which such claim is filed, which shall be the "Paying State" in the case of a combined-wage claim. (Section 616.6(e) of this chapter.)

(2) Federal military service and Federal military wages assigned to a State in error shall be reassigned for use by the proper State agency. An appropriate record of the reassignment shall be made by the State agency which makes the reassignment.

(c) *Assignment deemed complete.* All of an individual's Federal military service and Federal military wages shall be deemed to have been assigned to a State upon the filing of a first claim. Federal military service and Federal military wages shall be assigned to a State only in accordance with paragraph (b) of this section.

(d) *Use of assigned service and wages.* All assigned Federal military service and Federal military wages shall be used only by the State to which assigned in accordance with paragraph (b) of this section, except that any Federal military service and Federal military wages which are not within the base period of the State to which they were assigned shall be subject to transfer in accordance with Part 616 of this chapter for the purposes of any subsequent Combined-Wage Claim filed by the individual.

§ 614.9 Provisions of State law applicable to UCX claims.

(a) *Particular provisions applicable.* Except where the result would be inconsistent with the provisions of the Act or this Part or the procedures thereunder prescribed by the Department, the terms and conditions of the applicable State law which apply to claims for, and the payment of, State unemployment compensation shall apply to claims for, and the payment of, UCX and claims for waiting period credit. The provisions of the applicable State law which shall apply include, but are not limited to:

(1) Claim filing and reporting;

(2) Information to individuals, as appropriate;

(3) Notices to individuals, as appropriate, including notice to each individual of each determination and redetermination of eligibility for or entitlement to UCX;

(4) Determinations and redeterminations;

(5) Ability to work, availability for work, and search for work; and

(6) Disqualifications, except in regard to separation from any Federal military agency.

(b) *IBPP.* The *Interstate Benefit Payment Plan* shall apply, where appropriate, to individuals filing claims for UCX.

(c) *Wage combining.* The State provisions complying with the *Interstate Arrangement for Combining Employment and Wages* (Part 616 of this chapter) shall apply, where appropriate, to individuals filing claims for UCX.

(d) *Procedural requirements.* The provisions of the applicable State law which apply hereunder to claims for and the payment of UCX shall be applied consistently with the requirements of Title III of the Social Security Act and the Federal Unemployment Tax Act which are pertinent in the case of State unemployment compensation, including but not limited to those standards and requirements specifically referred to in the provisions of this Part, except as provided in paragraph (f) of § 614.9.

§ 614.10 Restrictions on entitlement.

(a) *Disqualification.* If the week of unemployment for which an individual claims UCX is a week to which a disqualification for State unemployment compensation applies under the applicable State law, the individual shall not be entitled to a payment of UCX for that week. As provided in § 614.9(a), no disqualification shall apply in regard to separation from any Federal military agency.

(b) *Effect of "days lost".* The continuity of a period of an individual's Federal military service shall not be deemed to be interrupted by reason of any "days lost" in such period, but "days lost" shall not be counted for purposes of determining:

(1) Whether an individual has performed Federal military service;

(2) Whether an individual meets the wage and employment requirements of a State law; or

(3) The amount of an individual's Federal military wages.

(c) *Allocation of military accrued leave.* A State agency shall allocate the number of days of unused military leave specified in an ex-servicemember's military document, for which a lump-sum payment has been made, in the same manner as similar payments by private employers to their employees are allocated under the applicable State law, except that the applicable Schedule of Remuneration instead of the lump-sum payment shall be used to determine the amount of the claimant's Federal military wages. In a State in which a

private employer has an option as to the period to which such payments shall be allocated, such payments shall be allocated to the date of the individual's latest discharge or release from Federal military service. An allocation under this paragraph shall be disregarded in determining whether an individual has had a period of active service constituting Federal military service.

(d) *Education and training allowances.* An individual is not entitled to UCX under the Act or this Part for a period with respect to which the individual receives:

(1) A subsistence allowance for vocational rehabilitation training under chapter 31 of title 38 of the United States Code, 38 U.S.C. §§ 1501 *et seq.*, or under Part VIII of Veterans Regulation Number 1(a); or

(2) An educational assistance allowance or special training allowance under chapter 35 of title 38 of the United States Code, 38 U.S.C. §§ 1700 *et seq.*

§ 614.11 Overpayments; penalties for fraud.

(a) *False statements and representations.* Section 8507(a) of the Act provides that if a State agency, the Department, or a court of competent jurisdiction finds that an individual—

(1) knowingly has made, or caused to be made by another, a false statement or representation of a material fact, or knowingly has failed, or caused another to fail, to disclose a material fact; and

(2) as a result of that action has received an amount as UCX to which the individual was not entitled; the individual shall repay the amount to the State agency or the Department. Instead of requiring repayment, the State agency or the Department may recover the amount by deductions from UCX payable to the individual during the 2-year period after the date of the finding. A finding by a State agency or the Department may be made only after an opportunity for a fair hearing, subject to such further review as may be appropriate under § 614.7.

(b) *Prosecution for fraud.* Section 1919 of title 18, United States Code, provides that whoever makes a false statement or representation of a material fact knowing it to be false, or knowingly fails to disclose a material fact, to obtain or increase for himself or for any other individual any payment authorized to be paid under chapter 85 of title 5, United States Code, or under an agreement thereunder, shall be fined not more than $1,000 or imprisioned not more than one year, or both.

(c) *Absence of fraud.* If a State agency or court of competent jurisdiction finds that an individual has received a payment of UCX to which the individual was not entitled under the Act and this Part, which was not due to a false statement or representation as provided in paragraph (a) or (b) of this section, the individual shall be liable to repay to the applicable State the total sum of the payment to which the individual was not entitled, and the State agency shall take all reasonable measures authorized under any State law or Federal law to recover for the account of the United States the total sum of the payment to which the individual was not entitled.

(d) *Recovery by offset.* (1) The State agency shall recover, insofar as is possible, the amount of any overpayment which is not repaid by the individual, by deductions from any UCX payable to the individual under the Act and this Part, or from any unemployment compensation payable to the individual under any Federal unemployement compensation law administered by the State agency, or from any assistance or allowance payable to the individual with respect to unemployment under any other Federal law administered by the State agency.

(2) A State agency shall also recover, insofar as is possible, the amount of any overpayment of UCX made to the individual by another State by deductions from any UCX payable by the State agency to the individual under the Act and this Part, or from any unemployment compensation payable to the individual under any Federal unemployment compensation law administered by the State agency, or from any assistance or allowance payable to the individual with respect to unemployment under any other Federal law administered by the State agency.

(3) Recoupment of fraudulent overpayments referred to in paragraph (a) of this section shall be limited to the 2-year period stated in that paragraph. Recoupment of fraudulent overpayments referred to in paragraph (b) of this section, and nonfraudulent overpayments referred to in paragraph (c) of this section shall be subject to any time limitation on recoupment provided for in the State law that applies to the case.

(e) *Debts due the United States.* UCX payable to an individual shall be applied by the State agency for the recovery by offset of any debt due to the United States from the individual, but shall not be applied or used by the State agency in any manner for the payment of any debt of the individual to any State or any other entity or person except pursuant to a court order for child support or alimony in accordance with the law of the State and section 459 of the Social Security Act, 42 U.S.C. § 659.

(f) *Application of State law.* (1) Any provision of State law that may be applied for the recovery of overpayments or prosecution for fraud, and any provision of State law authorizing waiver of recovery of overpayments of unemployment compensation, shall be applicable to UCX.

(2) In the case of any finding of false statement or representation under the Act and paragraph (a) of this section, or prosecution for fraud under 18 U.S.C. § 1919 or pursuant to paragraph (f)(1) of this section, the individual shall be disqualified or penalized in accordance with the provisions of the applicable State law relating to fraud in connection with a claim for State unemployment compensation.

(g) *Final decision.* Recovery of any overpayment of UCX shall not be enforced by the State agency until the determination or redetermination establishing the overpayment has become final, or if appeal is taken from the determination or redetermination, until the decision after opportunity for a fair hearing has become final.

(h) *Procedural requirements.* (1) The provisions of paragraphs (c), (d), and (g) of § 614.6 shall apply to determinations and redeterminations made pursuant to this section.

(2) The provisions of § 614.7 shall apply to determinations and redeterminations made pursuant to this section.

(i) *Fraud detection and prevention.* Provisions in the procedures of each State with respect to detection and prevention of fraudulent overpayments of UCX shall be, as a minimum, commensurate with the procedures adopted by the State with respect to State unemployment compensation and consistent with the Secretary's "Standard for Fraud and Overpayment Detection" (*Employment Security Manual*, Part V, sections 7510 *et seq.*).

(j) *Recovered overpayments* An amount repaid or recouped under this section shall be—

(1) deposited in the fund from which payment was made, if the repayment was to a State agency; or

(2) returned to the Treasury of the United States and credited to the current applicable appropriation, fund, or account from which payment was made, if the repayment was to the Department.

§ 614.12 Schedules of Remuneration.

(a) *Authority.* Section 8521(a)(2) of chapter 85, title 5 of the United States Code, 5 U.S.C. 8521(a)(2), requires the Secretary of Labor to issue from time to

time, after consultation with the Secretary of Defense, a Schedule of Remuneration specifying the pay and allowances for each pay grade of members of the Armed Forces.

(b) *Elements of schedule.* A schedule reflects representative amounts for appropriate elements of the pay and allowances, whether in cash or kind, for each pay grade of members of the Armed Forces, with a statement of the effective date of the schedule. Benefit amounts for the UCX Program are computed on the basis of the Federal military wages for the pay grade of the individual at the time of the individual's latest discharge or release from Federal military service, as specified in the schedule applicable at the time the individual files his or her first claim for compensation for the benefit year.

(c) *Effective date.* Any new Schedule of Remuneration shall take effect beginning with the first week of the calendar quarter following the calendar quarter in which such schedule is issued, and shall remain applicable until a subsequent schedule becomes effective. Prior schedules shall continue to remain applicable for the periods they were in effect.

(d) *Publication.* Any new Schedule of Remuneration shall be issued by the Secretary of Labor to the State agencies and the Federal military agencies. Promptly after the issuance of a new Schedule of Remuneration it shall be published as a notice in the Federal Register.

§ 614.13 Inviolate rights to UCX.

Except as specifically provided in this Part, the rights of individuals to UCX shall be protected in the same manner and to the same extent as the rights of persons to State unemployment compensation are protected under the applicable State law. Such measures shall include protection of applicants for UCX from waiver, release, assignment, pledge, encumbrance, levy, execution, attachment, and garnishment of their rights to UCX, except as provided in § 614.11. In the same manner and to the same extent, individuals shall be protected from discrimination and obstruction in regard to seeking, applying for, and receiving any right to UCX.

§ 614.14 Recordkeeping; disclosure of information.

(a) *Recordkeeping.* Each State agency will make and maintain records pertaining to the administration of the UCX Program as the Department requires, and will make all such records available for inspection, examination, and audit by such Federal officials or employees as the Department may designate or as may be required by law.

(b) *Disclosure of information.* Information in records maintained by a State agency in administering the UCX Program shall be kept confidential, and information in such records may be disclosed only in the same manner and to the same extent as information with respect to State unemployment compensation and the entitlement of individuals thereto may be disclosed under the applicable State law. This provision on the confidentiality of information maintained in the administration of the UCX Program shall not apply, however, to the Department or for the purposes of §§ 614.11 or 614.14, or in the case of information, reports and studies required pursuant to §§ 614.18 or 614.20, or where the result would be inconsistent with the Freedom of Information Act, 5 U.S.C. § 552, the Privacy Act of 1974, 5 U.S.C. § 552a, or regulations of the Department promulgated thereunder.

§ 614.15 Payments to States.

(a) *State entitlement.* Each State is entitled to be paid by the United States with respect to each individual whose base period wages included Federal military wages, an amount bearing the same ratio to the total amount of compensation paid to such individual as the amount of the individual's Federal military wages in the individual's base period bears to the total amount of the individual's base period wages.

(b) *Payment.* Each State shall be paid, either in advance or by way of reimbursement, as may be determined by the Department, the sum that the Department estimates the State is entitled to receive under the Act and this Part for each calendar month. The sum shall be reduced or increased by the amount which the Department finds that its estimate for an earlier calendar month was greater or less than the sum which should have been paid to the State. An estimate may be made on the basis of a statistical, sampling, or other method agreed on by the Department and the State agency.

(c) *Certification by the Department.* The Department, from time to time, shall certify to the Secretary of the Treasury the sum payable to each State under this section. The Secretary of the Treasury, before audit or settlement by the General Accounting Office, shall pay the State in accordance with the certification from the funds for carrying out the purposes of the Act and this Part.

(d) *Use of money.* Money paid a State under the Act and this Part may be used solely for the purposes for which it is paid. Money so paid which is not used solely for these purposes shall be returned, at the time specified by the Agreement, to the Treasury of the United States and credited to the current applicable appropriation, fund, or account from which payments to States under the Act and this Part may be made.

§ 614.16 Public access to agreements.

The State agency of a State will make available to any individual or organization a true copy of the Agreement with the State for inspection and copying. Copies of an Agreement may be furnished on request to any individual or organization upon payment of the same charges, if any, as apply to the furnishing of copies of other records of the State agency.

§ 614.17 Administration in absence of an agreement.

(a) *Administering program.* The Department shall administer the UCX Program through personnel of the Department or through other arrangements under procedures prescribed by the Department, in the case of any State which does not have an Agreement with the Secretary as provided for in 5 U.S.C. § 8502. The procedures prescribed by the Department under this section shall be consistent with the Act and this Part.

(b) *Applicable State law.* On the filing by an individual of a claim for UCX in accordance with arrangements under this section, UCX shall be paid to the individual, if eligible, in the same amount, on the same terms, and subject to the same conditions as would be paid to the individual under the applicable State law if the individual's Federal military service and Federal military wages had been included as employment and wages under the State law. Any such claims shall include the individual's Federal military service and Federal military wages, combined with any service and wages covered by State law. However, if the individual, without regard to his or her Federal military service and Federal military wages, has employment or wages sufficient to qualify for compensation during the benefit year under that State law, then payments of UCX under this section may be made only on the basis of the individual's Federal military service and Federal military wages.

(c) *Fair hearing.* An individual whose claim for UCX is denied under this section is entitled to a fair hearing under rules of procedure prescribed by the Department. A final determination by the Department with respect to entitlement to UCX under this section is

subject to review by the courts in the same manner and to the same extent as is provided by section 205(g) of the Social Security Act, 42 U.S.C. 405(g).

§ 614.18 Information, reports, and studies.

State agencies shall furnish to the Department such information and reports and conduct such studies as the Department determines are necessary or appropriate for carrying out the purposes of the UCX Program.

Subpart C—Responsibilities of Federal Military Agencies and State Agencies

§ 614.20 Information to ex-servicemembers.

At the time of discharge or release from Federal military service each Federal military agency shall furnish to each ex-servicemember information explaining rights and responsibilities under the UCX Program and 18 U.S.C. § 1919, and military documents necessary for filing claims for UCX.

§ 614.21 Findings of Federal military agency.

(a) *Findings in military documents.* Information contained in a military document furnished to an ex-servicemember shall constitute findings to which § 614.25 applies as to:

(1) Whether an individual has performed Federal military service, or whether paragraph (b) of this section or §§ 614.23 and 614.24 are applicable;

(2) The beginning and ending dates of the period of military service and "days lost" during such period;

(3) The type of discharge or release terminating the period of military service; and

(4) The individual's pay grade at the time of discharge or release from military service.

(b) Bad Conduct and Dishonorable discharges. A military document which shows that an individual received a bad conduct or dishonorable discharge shall be a finding to which § 614.25 applies, that the individual did not perform Federal military service.

§ 614.22 Correcting Federal findings.

(a) *Request for correction.* (1) If an individual believes that a finding specified in § 614.21 is incorrect or that information as to any finding has been omitted from a military document, the individual may request the issuing Federal military agency to correct the military document. A request for correction may be made through the State agency, which shall forward such request and any supporting information submitted by the individual to the Federal military agency.

(2) The Federal military agency shall promptly forward to the individual or State agency making the request the corrected military document. Information contained in a corrected military document issued pursuant to such a request shall constitute the findings of the Federal military agency under § 614.21.

(3) If a determination or redetermination based on a finding as to which correction is sought has been issued by a State agency before a request for correction under this paragraph is made, the individual who requested such correction shall file a request for redetermination or appeal from such determination or redetermination with the State agency, and shall inform the State agency of the request for correction.

(4) An individual who files a request for correction of findings under this paragraph shall promptly notify the State agency of the action of the Federal military agency on such request.

(b) *State agency procedure when request made.*

(1) If a determination of entitlement has not been made when an individual notifies a State agency of a request for correction under paragraph (a) of this section, the State agency may postpone such determination until the individual has notified the State agency of the action of the Federal military agency on the request.

(2) If a determination of entitlement has been made when an individual notifies a State agency that a request for correction of Federal findings has been made, or if an individual notifies a State agency prior to a determination of entitlement that a request has been made but such determination is not postponed by the State agency, the individual may file a request for redetermination or appeal in accordance with the applicable State law.

(3) Except as provided in paragraph (c) of this section, no redetermination shall be made or hearing scheduled on an appeal until the individual has notified the State agency of the action of the Federal military agency on a request for correction under paragraph (a) of this section.

(c) *State agency procedure when request answered.* On receipt of notice of the action of a Federal military agency on a request for correction of its findings, a State agency shall:

(1) Make a timely determination or redetermination of the individual's entitlement, or

(2) Promptly schedule a hearing on the individual's appeal.

If such notice is not received by a State agency within one year of the date on which an individual first filed a claim, or such notice is not given promptly by an individual, a State agency without further postponement may make such determination or redetermination or schedule such hearing.

(d) *Findings corrected without request.* Information as to any finding specified in § 614.21 contained in a corrected military document issued by a Federal military agency on its own motion shall constitute the findings of such agency under § 614.21, if notice thereof is received by a State agency before the period for redetermination or appeal has expired under the State law. On timely receipt of such notice a State agency shall take appropriate action under the applicable State law to give effect to the corrected findings.

§ 614.23 Findings of Veterans Administration

(a) *Request for findings.* If a military document shows that an individual's discharge or release from Federal military service was under conditions other than honorable, or that the period of such service was less than 90 days, the Veterans Administration on request of a State agency shall decide whether the individual was discharged or released—

(1) Under conditions other than dishonorable, or

(2) In the case of an officer, by reason of resignation for the good of the service, or

(3) By reason of an actual service-incurred disability.

(b) *Qualified or conditional separations.* On request of a State agency the Veterans Administration also shall decide whether an individual's discharge or release from Federal military service was qualified or conditional.

(c) *Finality of Findings.* Any decision by the Veterans Administration under this section shall constitute a finding to which § 614.25 applies.

(d) *Promptness of decision.* The Veterans Administration shall promptly act on and reply to any request received under this section.

§ 614.24 Correcting Veterans Administration findings.

(a) *Request for correction.* (1) If an individual believes that a finding under § 614.23 is incorrect, the individual may request reconsideration of or appeal such finding under the procedures of the Veterans Administration. The decision of the Veterans Administration on any such request shall constitute the findings of the Veterans Administration under § 614.23.

(2) Any request for correction must be filed before the period for redetermination or appeal of the UCX claim has expired under the applicable State law.

(3) A request for correction may be made through the State agency, which shall forward such request and any supporting information submitted by the individual to the Veterans Administration. If a request for correction is not made through the State agency, the individual shall notify the State agency promptly that a request for correction has been filed with the Veterans Administration.

(4) The individual making a request for correction under this section shall notify the State agency promptly of the action of the Veterans Administration on the request, unless the State agency is notified directly by the Veterans administration.

(b) *State agency procedure when request made. (1) If a State agency has not made a determination of entitlement when an individual requests correction of a Veterans Administration finding under paragraph (a) of this section, the State agency shall postpone such determination until it is notified of the action of the Veterans administration on the request.*

(2) If a determination of entitlement has been made when an individual requests correction of a Veterans Administration finding under paragraph (a) of this section, the individual may file with the State agency a request for redetermination or an appeal in accordance with the applicable State law. No redetermination shall be made, or hearing scheduled on an appeal, until the State agency receives notice of the action of the Veterans Administration on such request.

(c) *State agency procedure when request answered.* On receipt of the action of the Veterans Administration a State agency shall:

(1) Make a timely determination or redetermination of the individual's entitlement; or

(2) Promptly schedule a hearing on the individual's appeal.

(d) *Promptness of correction.* The Veterans Administration shll promptly act on and reply to any request received under this section.

§ 614.25 Finality of findings.

The findings of a Federal military agency referred to in §§ 614.21 and 614.22, the findings of the Veterans Administration referred to in §§ 614.23 and 614.24, and the Schedules of Remuneration issued by the Department pursuant to the Act and § 614.12, shall be final and conclusive for all purposes of the UCX Program, including appeal and review pursuant to § 614.7 or § 614.17.

§ 614.26 Furnishing other information.

(a) *Additional information.* In addition to the information required by §§ 614.21, 614.22, 614.23, and 614.24, a Federal military agency or the Veterans Administration shall furnish to a State agency or the Department, within the time requested, any information which it is not otherwise prohibited from releasing by law, which the Department determines is necessary for the administration of the UCX Program.

(b) *Reports.* Federal military agencies shall furnish to the Department or State agencies such reports containing such information as the Department determines are necessary or appropriate for carrying out the purposes of the UCX Program.

§ 614.27 Liaison with Department.

To facilitate the Department's administration of the UCX Program, each Federal military agency and the Veterans Administration shall designate one or more of its officials to be the liaison with the Department. Each Federal military agency will inform the Department of its designation(s) and of any change in a designation.

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Part XIII

Office of the Special Assistant to the President for Consumer Affairs

Export of Banned or Significantly Restricted Substances; Background Report on Executive Order 12264

OFFICE OF THE SPECIAL ASSISTANT TO THE PRESIDENT FOR CONSUMER AFFAIRS, THE WHITE HOUSE

Background Report on Executive Order 12264 on Federal Policy Regarding the Export of Banned or Significantly Restricted Substances

AGENCY: Office of the Special Assistant to the President for Consumer Affairs, The White House.

ACTION: Background Report.

SUMMARY: For the past two and a half years, a 22-agency working group worked on the development of a Federal policy regarding the export of hazardous substances banned or significantly restricted for use in the United States. On August 12, 1980, the working group published in the Federal Register, for public comment, its draft report. (45 FR 53754) On the basis of comments received from the public and from affected agencies as well, the policy described in the draft report was refined and submitted to the President in the form of a proposed Executive Order.

On January 15, 1981, the President signed Executive Order 12264, embodying the policy recommendations developed by the working group. The Executive Order was published in the Federal Register of January 19, 1981. (46 FR 4659)

The background report being published today is based on the draft report published on August 12 of last year. It is intended to inform the public about the policy considerations that went into the development of the Executive Order, to describe the statutory context against which the Order was prepared, and to discuss the procedures, standards, and activities that are provided for in the Order.

FOR FURTHER INFORMATION CONTACT: Requests for additional copies of this report, or questions about its contents, should be directed to Kitty Gillman, Council on Environmental Quality, 722 Jackson Place, N.W., Washington, D.C. 20006, (202) 395-5780.

Background Report on the Executive Order on Federal Policy Regarding the Export of Banned or Significantly Restricted Substances

I. Introduction

The Executive Order issued by the President today follows a two and a half year effort by a Carter Administration Working Group to examine and improve Federal policy on the export of hazardous substances which are banned or whose use is significantly restricted in the United States.* The catalyst for this effort was the national and international controversy over U.S. exports of TRIS-treated children's sleepwear, after it had been banned for sale in the United States.

The export of TRIS-treated sleepwear was not an isolated incident. Congressional hearings in July 1978** pointed out numerous instances in which American firms exported, without restriction on the part of the U.S. government, substances that had been banned or strictly limited for use in this country. In some of these cases, the risks and benefits of using the exported products in the importing countries may have been different from those in the United States due to differing economic, social, and cultural conditions. However, in most instances, there was little evidence of a special U.S. government effort to share with importing countries the information which had led the United States to ban or strictly limit the use of the products, so that the importing countries could make their own informed judgments. The unrestrained export of hazardous substances by U.S. firms raised questions about this country's ethical responsibility for the hazards arising from hazardous exports, questions that have important implications for U.S. trade and foreign relations. One result of this concern was that in 1978 Congress amended several regulatory acts to provide notification to importers and/or to the government of the importing nation when certain banned products are exported from the United States.

U.S. manufacturers have a strong stake in fostering a positive attitude among foreign governments and consumers toward products bearing the label "Made in USA." Sale abroad of banned products tends to undermine foreign confidence in American-made products. Among the potential consequences are losses in export trade and thus negative effects on our balance of payments, and possible adverse long-term effects on foreign markets.

Uncontrolled export of hazardous substances also tends to damage our relations with foreign countries. Importing countries—generally the poorer, less developed nations of the world—have urged that exporting countries exercise restraint in sending abroad products that are banned for use at home and provide full information on the products' effects. UN Environment Programme resolutions (formally called decisions) in 1977, 1978, and 1980 asked nations not to permit export of hazardous substances without the knowledge and consent of the importing countries. To these countries, a U.S. government policy that tolerates unrestrained export of banned products could appear callous or hostile and thus be detrimental to U.S. foreign policy interests.

In the summer of 1978, the Interagency Working Group was established to explore the nature and scope of problems related to the export of banned or significantly restricted substances, and, if appropriate, to propose a government policy to which all Federal agencies would subscribe. The Executive Order is based upon recommendations of the Working Group.

Definition of Banned and Significantly Restricted Substances

Careful definition of terms is necessary, to make clear what substances should be considered for purposes of a policy to control export of banned and significantly restricted substances. The Executive Order generically defines these substances to mean a pesticide, chemical, food (including meat, meat product, or poultry), food additive, drug, cosmetic, medical device, electronic product, biological product, color additive, or consumer product for which a Federal agency has taken any of the following types of regulatory actions in order to protect against an actual or potential threat to the health or safety of the United States public or to the environment:

(1) Final rulemaking or adjudicatory action (including emergency or interim binding action) which denies or revokes approval for, or prohibits, the manufacture, production, use, or sale in the United States.

(2) Final rulemaking or adjudicatory action (including emergency or interim binding action) which prohibits or revokes approval of most significant uses in the United States.

(3) Withholding, or absence of registration or approval for any substance for which Federal law

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*The Working Group, convened by Esther Peterson, Special Assistant to the President for Consumer Affairs, included the Departments of State, Agriculture, Commerce, Energy, Health and Human Services (Food and Drug Administration), Justice, Defense, Labor, Transportation, and Treasury, and the Environmental Protection Agency, Consumer Product Safety Commission, Export-Import Bank, Overseas Private Investment Corporation, ACTION, Agency for International Development, Regulatory Council, Office of Management and Budget, Council on Environmental Quality, Nuclear Regulatory Commission, Office of the U.S. Trade Representative, and several other Executive offices. Mrs. Peterson served as Chair of the Working Group; Robert Harris, Member of the Council on Environment Quality was Co-Chair.

**Hearings before the Subcommittee on Commerce, Consumer and Monetary Affairs of the House Committee on Government Operations.

requires Federal agency registration or approval before manufacture, production, use, or sale in the United States.

A more detailed definition of "banned and significantly restricted substances," in which the substances and products covered by the policy are defined in terms of regulatory action under certain sections of certain statutes, is provided in Section VII.

Certain categories of products were excluded from the policy because of their special legislative history or because of the special problems they raise: alcohol, tobacco, and firearms; military weapons and equipment; narcotic and psychotropic substances; and nuclear fuels. Hazardous non-nuclear wastes are not included since another effort led by the State Department is developing a policy to deal with exports of these wastes. Also generally excluded from consideration are the export of hazardous production facilities, and U.S. financial assistance for such facilities. Substances which may cause hazardous workplace conditions are included in parts of the policy.

III. Nature and Scope of the Problem

Since there are only limited controls at present on export of banned and significantly restricted substances, the government has no mechanisms for monitoring or valuing such exports. Further, many firms resist disclosure of the extent or destination of export products. Some of them consider their marketing plans trade secrets. Thus, no estimates are available of the dollar value of such substances exported from the United States.

Virtually unrestrained export is currently allowed for many substances banned for sale in the United States: certain food dyes; cyclamate sweeteners; and drugs, cosmetics, and antibiotics that are adulterated or misbranded. Other banned substances may be exported provided notice is sent to the importing nation. These include most CPSC and EPA-regulated products. Finally, a few classes of banned substances, including unapproved drugs and banned medical devices, are categorically prohibited from export.

Several examples, drawn from Congressional hearings and information provided by federal agencies, suggest suggest the nature and scope of the problem. Some of the examples also suggest the complexity of controlling the export of substances which the United States may consider too hazardous to use but which other countries, with differing needs and conditions, may judge differently.

- Complying with federal requirements, U.S. manufacturers treated children's sleepwear with the chemical flame-retardant TRIS. In April 1977, after the carcinogenic hazard of the substance was discovered the Consumer Product Safety Commission (CSPC) banned domestic sales of TRIS-treated sleepwear. According to Congressional testimony, however, exports of the garments continued for more than a year. Approximately 2.4 million pieces valued at $1.2 million were reported to have been shipped abroad. Most banned consumer products may still be exported, provided the government of the importing country is notified of the shipment.

- In March 1978, the Food and Drug Administration (FDA) issued a final rule prohibiting the nonessential uses of certain chlorofluorocarbons (CFCs) as propellants in self-pressurized containers of foods, drugs and cosmetics. EPA at the same time prohibited domestic production, processing, and use of CFCs (other than those covered by FDA) for nonessential aerosol propellant use. These actions were taken because chlorofluorocarbons may deplete stratospheric ozone, leading to an increase in skin cancer, climatic changes, and other adverse biological and ecological effects. EPA also banned the processing of CFCs into aerosols for export, though it did not ban the export of unprocessed CFCs. Subsequently, some manufacturers requested information from FDA as to whether or not is was legal to export cosmetics (e.g., hair sprays) containing chlorofluorocarbons as propellants. FDA advised these firms that shipping cosmetic products to other countries was lawful as long as they were not prohibited by the country to which they are shipped.

- The very powerful and very hazardous pesticide, Leptophos, never registered by EPA for domestic use, was manufactured in the United States principally for export. According to Congressional testimony, nearly 14 million pounds was exported to 50 countries between 1971 and 1976. In 1971 and 1972 a number of Egyptain farmers were found to be suffering from hallucinations and impairment of vision and speech after using Leptophos, and 1,200 water buffalos were reported to have died from exposure to the pesticide.

- According to the General Accounting Office, over 550 million pounds of pesticides were exported from the United States in 1976. Of these exports, approximately 30 percent (more than 160 million pounds) were pesticides whose use is prohibited in the United States. This includes unregistered pesticides which contain an "active ingredient" that is contained in registered products, but which is being exported in a different formulation; pesticides for which registration has never been sought; and pesticides whose registration has been cancelled, suspended, or denied. Unregistered pesticides may lawfully be exported provided that the product is labeled as unregistered (and meets other labeling requirements) and that importers are notified and acknowledge that the pesticide is unregistered. A copy of the acknowledgement is sent to EPA for transmittal to the foreign government.

- The World Health Organization has estimated that approximately 500,000 human poisonings, including about 5,000 deaths, are attributable to pesticides each year. Many of these are due to use of certain classes of pesticides which degrade quickly but are extremely toxic when applied. EPA has established stringent standards for the training and certification of individuals wishing to use these registered pesticides in the United States. However, the U.S. exports tens of millions of pounds of these pesticides each year to countries where such training may not be required and warning labels may not be followed.

- Chloramphenicol is an extremely potent antibiotic used in the United States only against typhoid fever and a few other life-threatening infections because of its serious potential side effects, such as aplastic anemia. The FDA indicated in Congressional testimony that an American firm had labelled and exported it to Spanish-speaking countries as suitable for treatment of much more routine diseases for which there had been no substantiation of its effectiveness, including measles, mumps, and chicken pox, with no warnings as to its dangerous side effects.

- Depo-Provera, a drug that can be used legally in 60 countries (though not in the United States) as an injectable contraceptive, is supplied for contraception by an American drug firm from overseas manufacturing sites. According to FDA, it is approved for use in the United States only for palliative treatment of endometrial and renal cancer, because animal tests have suggested that it may itself be carcinogenic. Currently, it may not be exported for contraceptive use. Some people have asked for U.S. approval of the drug as a contraceptive so its can be used in AID programs for population control.

Besides the concerns about health and safety effects of hazardous substances exports on foreign citizens, effects on our own citizens are also a cause of concern. Export of hazardous substances can have a direct effect on U.S. citizens by more than one route: through adverse effects on workers in the plant where the product is manufactured; through the reimportation of the original substances or their traces or derivatives; through the illegal diversion into domestic commerce of restricted products originally produced for export; or through transport of hazardous substances back to this country via the air or oceans. The world environment itself could suffer through release of hazardous substances to the global commons.

A General Accounting Office report concluded that many kinds of imported foods may be contaminated with pesticides not allowed in the United States. FDA spot checks (examining about 1 percent of shipments) of imported raw agricultural commodities found that about 8 percent of the shipments tested in 1977 through 1979 contained residues of pesticides for which no U.S. tolerance levels exist. According to the GAO report, test results showing unacceptable residue levels are sometimes received after the item tested has already entered the marketplace. Moreover, the vast majority of imported foods enter the United States with no testing for toxic residues. Pesticides banned in the United States but used in other countries, especially nearby countries like Canada and Mexico, can also travel by water or air to enter the environment of the United States.

Several factors suggest that the problem of hazardous substances exports is likely to increase over the next several years. Growth in world population, especially in developing countries, will put a strain on global resources. Significant health and food supply problems may follow, leading to increased foreign demand for imported drugs, pesticides, and other potentially hazardous products. Moreover, continued new discoveries of carcinogenic and other damaging effects of many substances are probable over the next few years. In some cases, certain firms may be left with stocks of materials which can no longer be sold in the United States, and the incentive to recover some of their investment by selling the products abroad may be considerable.

If current economic trends continue, exports are likely to increase. In 1970, total U.S. exports of goods and services were $62.5 billion or 6.4 percent of gross national product. By 1978, the percentage had risen to 9.7 percent and the dollar value was $205 billion. Yet the U.S. balance of trade has generally deteriorated, and pressure for U.S. firms to increase exports has mounted. The National Export Policy recommended by the President's National Export Policy Task Force provides new economic incentives for export. Importing countries may improve their ability to assess the effects of imports and exclude those they consider damaging. Nevertheless, it appears that the problem of hazardous substances exports will remain serious.

IV. Existing Statutory Authority and Procedures

A. Summary of Existing Authority

The following agencies have been directed by Congress to regulate the domestic manufacture, use, and introduction in interstate commerce of certain products or substances that may involve hazards to human health and the environment.

Agency [1]	Product class	Statute
Consumer Product Safety Commission.	Consumer products	Consumer Product Safety Act.
	Fabric-type products	Flammable Fabrics Act.
	Household chemical substances, e.g., if toxic, corrosive, flammable.	Federal Hazardous Substances Act.
	Children's articles	
Drug Enforcement Administration	Drug (narcotics and dangerous drugs)	Controlled Substances Act.
Environmental Protection Agency	Pesticides	Federal Insecticides, Fungicide, and Federal Food, Drug, and Cosmetic Act.
	Chemical substances	Toxic Substances Act.
Food and Drug Administration	Foods, drugs, cosmetics, and medical devices.	Federal Food, Drug, and Cosmetic Act.
	Biological and electronic products	Public Health Service Act.
U.S. Department of Agriculture	Meat and meat products	Federal Meat Inspection Act.
	Poultry	Poultry Products Inspection Act.
Occupational Safety and Health Administration.	Workplace hazards and workplace equipment.	Occupational Safety and Health Act.

[1] The Customs Service of the Treasury Department assists some of these agencies in enforcement.

While many of the statutes listed above address the export issue in some measure, there are no consistent principles underlying their various mandates. If any generalization is warranted, it is that Congress seems recently to have moved away from extremes—complete permissiveness on the one hand and rigid controls on the other—toward a middle course that calls for notification, disclosure, and, in limited circumstances, bans on exports of hazardous substances (see Appendix A for more information on the provisions of these statutes).

Since the mid-1970s, Congress has put increasing emphasis on notification to the receiving country of the export of banned and significantly restricted substances. Such notification was required by the Toxic Substances Control Act of 1976 and amendments to four existing statutes passed in 1978 by the 95th Congress. These amendment strengthened existing notification procedures of the Federal Insecticide, Fungicide, and Rodenticide Act and established notification requirements for consumer products under the Consumer Product Safety Act, the Flammable Fabrics Act, and the Federal Hazardous Substances Act. Also, Congress authorized limited discretionary export banning authority, to protect U.S. consumers, under the same three acts. These recent actions suggest that there is a growing concern in Congress about the effects of exports of hazardous sustances on foreign citizens, combined with the view that it is generally appropriate for countries to make their own judgments about their needs for hazardous substances, so long as they are adequately informed.

The provisions of existing statutes pertaining to export of substances which are banned or significantly restricted in the United States are of five general types, although some statutes fit more than one category. In addition there are a good many qualifications and exceptions in the laws. As the following outline shows, the regulatory scheme is complex.

(1) Substances for which there are no export limitations or for which exports must be in accord with the laws of the importing nation

Federal Food, Drug, and Cosmetic Act—adulterated or misbranded foods (except meat and poultry subject to controls), cosmetics, drugs, and antibiotics.

Public Health Service Act—noncomplying electronic products.

Federal Insecticide, Fungicide and Rodenticide Act—registered pesticides composed of active ingredients for which major uses have been cancelled or suspended.

(2) Substances for which notification of the importing country of any export is required

Federal Insecticides, Fungicide, and Rodenticide Act—pesticides not registered for use in the United States.

Toxic Substances Control Act—certain regulated chemical substances.

Consumer Product Safety Act—consumer products which are banned or do not meet federal safety standards.

Flammable Fabrics Act—fabric-type products which do not conform to federal safety standards.

Federal Hazardous Substances Act—toxic, flammable, corrosive and otherwide hazardous products, including children's articles which fail to meet federal requirements.

(3) Substances for which prior approval by the importing country must be sought

Federal Food, Drug, and Cosmetic Act—unapproved medical devices[1] and investigational drugs.[2]

(4) Substances for which an agency can ban exports if there is a risk to health or the environment of the United States

Toxic Substances Control Act—chemical substances [3]

Consumer Product Safety Act—consumer products [4]

Flammable Fabrics Act—fabric-type products[4]

Federal Hazardous Substances Act—household chemicals[4]

(5) Substances for which there is a total ban on export

Federal Food, Drug, and Costmetic Act—unapproved new drugs,[5] unapproved new animal drugs

Public Health Service Act—unapproved biological products (serums, vaccines, etc.)

Meat Inspection Act—meat failing to meet U.S. quality standards (except for preservation)

Poultry Products Inspection Act—poultry failing to meet U.S. standards.

A more detailed summary of the authority contained in the various regulatory statutes for each product appears in Appendix A.

It is not surprising that the export provisions of the various regulatory statutes are not consistent in their treatment of the export hazardous substances. First, these laws were enacted over a period of 40 years. In addition, considering the different hazards involved in the various product categories, the various circumstances in which the products are shipped, and the different conditions of use of the products, some variation in the treatment of different products is perhaps warranted.

This is not to say that more consistency in the treatment of hazardous substance exports is not desirable or achievable. For example, where federal agencies provide notification of export to a foreign government, it is desirable to systematize the procedures to assure more regularity in the process. Additional steps, included in the Executive Order and described later in this report, will make product hazard information and data more readily available and accessible. Finally, there are some circumstances, also discussed afterward, under which any export of a banned or significantly restricted substances may be undesirable and not in the national interest.

In addition to the laws regulating specific products or practices, two additional authorities are relavant to export policy.

First, the Export Administration Act of 1979 (Pub. L. 96-72) authorizes the President to use export controls to restrict the export of goods and technology where such export might prove detrimental to the national security of the United States; restrict export where necessary to prevent the excessive drain of scarce materials from the United States or to reduce the serious inflationary impact of foreign demand; and restrict export where necessary to further significantly the foreign policy of the United States or to fulfill its declared international obligations. This recently enacted statute extends and revises the Export Administration Act of 1969.

Second, Executive Order No. 12114, issued by President Carter on January 4, 1979, requires that agencies analyze the environmental effects aboard of certain types of major Federal actions that may significantly affect the environment. This analysis helps guide decisions by the responsible agency officials. However, the grant or denial of an export license under the Export Administration Act is not considered a major Federal action for the purposes of Executive Order No. 12114.

B. Present Export Procedures

Present agency procedures dealing with the export of hazardous substances may be described in two categories: (1) procedures to implement specific control authorities and (2) mechanisms to promote international cooperation in the analysis and exchange of hazard data and to develop common approaches to regulation.

1. Procedures to Implement Existing Control Authority

Most agencies have in place administrative procedures which could be adapted to carrying out a more consistent export policy for banned and severely restricted hazardous substances. This is particularly true of agencies with long established responsibilities in the export area. The Commerce Department has well established procedures for imposing export controls for the various purposes specified in the Export Administration Act. The State Department has formal procedures for the cases where it is required by statute to transmit notifications regarding hazardous exports from U.S. regulatory agencies to foreign governments. Customs has long-established procedures for controlling the entry of goods into international commerce, such as checking for required export licenses and documents, which could be adopted to the needs of an export policy for banned and severely restricted hazardous products. FDA has in place under its various statutory authorities procedures for approving exports, as well as for notifying foreign governments of significant regulatory decisions and changes in statutes or regulatory approaches. In the case of agencies with new statutory authorities—EPA for the Toxic Substances Control Act and Federal Insecticide, Fungicide, and Rodenticide Act and CPSC for the various laws it administers—new formal procedures are largely in place. Final regulations for carrying out notification for CPSC-regulated products appeared in the Federal Register on August 8, 1980. A policy statement regarding notification under FIFRA appeared in the Federal Register on July 28, 1980. EPA published final rules covering export notices for PCBs, CFCs, asbestos and dioxins (the four substances regulated under TSCA

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[1] Non-complying banned products cannot be exported unless the HHS Secretary determines that export is not contrary to public health and safety and the foreign government approves of the export.

[2] Export is permitted if requested by the foreign government.

[3] Banning is authorized if the exported product presents an unreasonable risk of injury to health within the U.S. or to the environment of the U.S.

[4] Banning is authorized if exported product presents an unreasonable risk of injury to consumers within the U.S.

[5] A bill (S. 1075) has passed the Senate which would allow export if the approval of the importing country were obtained and the HHS Secretary determined that the export would not be contrary to public health.

so far), and for all substances regulated under TSCA so far), and for all substances regulated under TSCA in the future, on December 16, 1980.

2. Existing Programs to Foster International Exchange of Hazard Data and Consistent Approaches to Regulation and Export of Hazardous Substances

The U.S. government is participating in several programs to promote international cooperation on control of hazardous substances and their export. The programs seek to improve exchange of information, to broaden understanding of common regulatory issues, and to develop consistent approaches where feasible.

The locus and subjects of such international intitiatives include:

- Organization for Economic Cooperation and Development (OECD): exchange of information on regulation of pesticides and other toxic chemicals; development of consistent testing methods and control practices for chemicals; possible controls over the export of unsafe consumer goods; study of export policy needs for chemicals.
- United Nations General Assembly (UNGA): Resolution requesting the Secretary General in cooperation with the United Nations agencies and bodies concerned, especially the World Health Organization, to assist governments to exchange information on banned hazardous chemicals and unsafe pharmaceutical products. A report is to be submitted to the General Assembly at its 36th (1981) session, through the Economic and Social Council about the experience of Members States and United Nations agencies and bodies concerned.
- United Nations Environment Programme (UNEP): resolutions calling for strong and consistent policies governing hazardous substances exports; development of an International Registry of Potentially Toxic Chemicals (IRPTC) to serve as a data clearinghouse for all information generated on potentially toxic substances.
- World Health Organization (WHO, a UN body): dissemination of methodologies to study the human health effects of chemicals and evaluate risks; development of environmental health criteria for various toxic substances; intergovernmental cooperation on international health matters.
- Food and Agricultural Organization (FAO, a UN body): consultation on assessing environmental hazards of pesticides and on developing consistent requirements for pesticide registration.
- Codex Alimentarius Commission (independent UN body established by WHO and FAO): establishment of international maximum residue limits for pesticides in foods, to be adopted by member countries.
- International Labor Organization (ILO): a global occupational safety and health hazard alert system.
- The UN Committee of Exports on the Transport of Dangerous Goods: development of recommendations regarding classification, labeling, and packaging of hazardous materials during transport.
- Multinational agreements: an example, is the Tri-Partite Pesticide Agreement among the U.S., U.K., and Canada.

U.S. participation in international programs takes on still more importance as the United States implements a strong hazardous substances export policy. The "International Efforts" Section VI, below, describes the provisions included in the Executive Order and recommendations by the Working Group for strengthened international efforts.

V. Policy

This section identifies the considerations that were weighed in arriving at a hazardous substances export policy and discusses how the policy balances those considerations.

A. Policy Considerations

The Executive Order establishes a consistent, practical Federal policy to govern the export of banned and significantly restricted substances. It takes the following considerations into account:

(1) As a nation exporting banned and significantly restricted substances, the United States has a moral obligation to recognize and assist in controlling the potential effects of these substances on the health and safety of citizens abroad and on the world environment.

(2) Nations differ substantially in their economic and cultural conditions and in their use of, and need for, hazardous substances. It is difficult for one nation to make decisions on the acceptability of risks for another nation. Such assessments require extensive information regarding economic, political, and social conditions which U.S. regulatory agencies do not have and cannot readily obtain.

(3) U.S. relations with other countries could be harmed by unrestrained export of substances which are banned or significantly restricted in the United States.

(4) The unrestrained export of hazardous products could undermine confidence of foreign buyers in U.S.-made goods, and could jeopardize their sale abroad.

(5) Excessively restrictive limitations on the export of products which a foreign country may decide it needs could place U.S. firms at a competitive disadvantage and harm U.S. relations with the government of that country.

(6) Excessively restrictive limitations could also place significant economic burdens on the U.S. economy, including adverse effects on the balance of trade and payments, on output and jobs, and perhaps on domestic competition (if smaller firms suffer disproportionately from reduced ability to compete in foreign markets).

(7) An export policy should be administratively simple and inexpensive to implement, and should recognize the complexities of international commerce.

(8) The United States should encourage and participate actively in international initiatives to develop consistent policies for hazardous substance exports, and for the sharing of data, analysis, and information. The effectiveness of unilateral United States action could be substantially diminished if foreign facilities or firms were to become alternative suppliers of substances which U.S. policies seek to control.

(9) The United States should attempt to protect American citizens against the dangers to their health and safety of importing hazardous substances and their derivatives or residues, and of damage to the world environment.

B. Elements of the Policy

The policy upon which the Executive Order is based includes the considerations listed above and also recognizes and uses the expertise of individual regulatory agencies. The policy relies on existing statutory authority and is further implemented through the Order. The Order sets forth the *minimum* requirements that all agencies are obligated to meet. Agencies are expected to adopt more stringent requirements where required by statute or where authorized and appropriate for the types of hazards within their jurisdiction.

(1) Hazard Notification

In most circumstances the international responsibilities of the United States can be met by an effective hazard notification system. Existing law requires notification tied to actual shipment (either first shipment of the year or shipment-by-shipment) or intent to export for most categories of products included in this policy. Exceptions include foods and cosmetics which are

adulterated or misbranded; radiation-emitting electronic products which do not meet FDA health and safety standards; approved drugs and antibiotics which do not meet FDA quality control standards; and registered pesticides made from active ingredients for which major uses have been suspended or cancelled in the United States.

Most of the laws requiring notification, including those contained in the Consumer Product Safety Act, the Federal Hazardous Substances Act, the Flammable Fabrics Act, and the Federal Insecticide, Fungicide, and Rodenticide Act, are just 2 years old; some of the regulations implementing them are very recent. The notification schemes in the various laws differ in terms of timing, frequency, and content of the notice, and experience with them is minimal. Accordingly, the Working Group was not able at this point to recommend the best scheme for notification.

The Working Group did not recommend any changes in existing law at this time. It is suggested that, as we gain experience with the requirements of present laws, an assessment be made of the laws' effectiveness, any important omissions they may have left, and any burdens they may impose. The Executive Branch may want to work with Congress to determine whether notification requirements should be imposed where they are not now required and whether existing notification requirements should be modified.

Notification systems are intended to allow a foreign government to decide for itself whether the potential benefits of a substance are worth the anticipated risks and detriments. With this knowledge, a foreign government is in a position to limit the importation of a particular hazardous substance or take other measures to protect its citizens, if it decides any of these limitations or measures are in its national interest.

There is a need for greater procedural uniformity in the notification process as used by Federal agencies. It will be more effective and more efficient, for the United States and for other countries, to establish an official government-to-government contact for transmission of information concerning hazardous substances.

The Executive Order designates the State Department as the official conduit of notifications concerning exports of banned and significantly restricted hazardous substances for all Federal agencies. This designation is consistent with the Department's role as official U.S. representative to foreign governments. Each agency will list for the State Department its own offices and people to be contacted if a foreign government wants further information about regulatory actions or hazardous substances risks. Agencies will also work with the Department to identify their opposite numbers in foreign governments, to receive notifications and to serve as points of contact. The State Department will transmit notifications to the U.S. embassy in the country in question and may also transmit them to the country's embassy in the United States. U.S. embassies in foreign countries will keep on file copies of notifications transmitted to host governments for a period of one year. If a foreign government is asked under any existing notification system to respond to a notice, that response will be transmitted through the State Department to the relevant U.S. regulatory agency.

Individual agencies will still be free to communicate directly with their counterparts in a foreign government if they wish, and will of course do so where required to by law.

In addition to greater uniformity in procedure, it is also desirable to achieve greater uniformity in the content of the notices sent to foreign governments. Under the Executive Order, the information to be provided by the State Department to the foreign government will include, at a minimum:

(a) The name of the hazardous substance to be exported;

(b) A concise summary of the agency's regulatory actions regarding that substance, including the statutory authority for such actions and the timetable for any further actions that are

(c) A concise summary of the potential risks to human health or safety or to the environment that are the grounds for the agency's actions.

In addition, to the exent deemed appropriate by the agency with jurisdiction, copies of additional documents may be forwarded to a foreign country to assist that country in its assessment of the risks associated with the substance. Trade secrets or other confidential commercial or financial information will not be sent to a foreign government unless authorized or required by existing law (including statutes and regulations). Agencies will keep on file any supplemental materials forwarded to importing countries and, to the extent permitted by law, disclose them to the public upon request.

(2) Annual Summary

As a complement to the notification scheme that is already in effect, the Executive Order requires the preparation and distribution of a report which:

(a) Summarizes all final regulatory actions of the types described in Section VII * that were taken by federal agencies by the end of the previous calendar year (including those antedating that calendar year but continuing in force) and that are of significant international interest;

(b) Summarizes all proposed regulatory actions of the types described in Section VII * that were pending before agencies at the end of the previous calendar year and that are of significant international interest (proceedings preliminary to issuance of a proposed rule, such as issuance by EPA of a Rebuttable Presumption Against Registrations, would not be included); and

(c) Indicates generally what kind of additional information is available with respect to each of these final or proposed regulatory actions and how the information may be obtained.

The report will also include information on some substances that are generally permitted for use in the United States, subject to conditions or restrictions based on potential risks to human health or safety or the environment. For example, the Occupational Safety and Health Administration, under the Occupational Safety and Health Act, issues health standards that set maximum workplace exposure levels for certain chemicals and other substances, and establishes other requirements for worker protection. Similarly, the Environmental Protection Agency issues regulations governing the use of some pesticides. Such regulations should be included in the Annual Summary when they are likely to be of interest to other countries in protecting against similar hazards.

The report will be compiled by the Regulatory Council and distributed by the State Department to appropriate foreign officials and to public and private international organizations. (The latter includes such organizations as the UN Environment Programme, OECD, FAO, World Health Organization and the ILO.) Each agency will provide the Regulatory Council with the information requested in a standard format and on a timetable determined by the Regulatory Council. The report will also be published in the United States in the Federal Register.

The annual summary will serve several important purposes. It will compile in one up-to-date document a summary of U.S. regulatory actions banning or significantly restricting the

* Information on unregistered pesticides would be included in the Annual Report only if EPA cancels or denies registration or if a tolerance is denied or repealed.

manufacture, production, use, or sale of hazardous substances. It will inform foreign governments of regulatory actions the previous year that were not included in the last annual report, and for which some governments will not have received a shipment notification. It will also give foreign governments notice of prospective regulatory actions so they can monitor the progress of a proceeding if they so desire (the nature and function of proposed rules will, of course, be explicitly described). Furnished with this information, a foreign government will able to take regulatory action it deems appropriate at the same time that U.S. regulatory action takes place. The report will also list people and offices in the United States to approach for discussions of hazards of particular substances. The summary will also serve as a "hazard alert" for foreign governments on products that it may be importing from other countries.

(3) Export Control

In general, the responsibilities of the United States concerning the export of hazardous substances will be fulfilled in most cases through notification. There are a few limited circumstances, however, where additional safeguards are needed to assure good and stable relations with other nations in the world community. If the United States does not exercise special vigilance over the export of certain extremely hazardous banned or significantly restricted products which represent a substantial threat to human health or safety or the environment, our economic and diplomatic ties with other countries could be jeopardized. Citizens and governments of foreign countries receiving these products directly, or being adversely affected indirectly as innocent bystanders, may develop increasingly hostile attitudes towards this country and its products.

As indicated in Section IV, existing law already prohibits the export of some substances in particular circumstances. Another mechanism that can be used to prohibit hazardous exports where such exports would prove detrimental to the foreign policy interests of the United States is the Export Administration Act of 1979 (Pub. L. No. 96–72, 93 Stat 503, 50 U.S.C. App. 2401 *et seq.* (the Act)). The Act authorizes the President to "* * * prohibit or curtail the exportation of any goods, technology, or other information subject to the jurisdiction of the United States or exported by any person subject to the jurisdiction of the United States to the extent necessary to further significantly the foreign policy of the United States or to fulfill its declared international obligations." (Sec.6 (a) (1)). The authority contained in this subsection is to be exercised by the Secretary of Commerce, in consultation with the Secretary of State and such other departments and agencies as the Secretary considers appropriate, and is to be implemented by means of export licenses issued by the Secretary.

The Export Administration Act of 1979 is the successor statute to the Export Administration Act of 1969. By memorandum dated January 30, 1979, Deputy Assistant Attorney General, Office of Legal Counsel, Leon Ulman advised the Department of Commerce that the 1969 statute gave the President authority to control exports of hazardous substances for foreign policy purposes. On January 9, 1980, the Working Group inquired as to whether this authority was modified in the 1979 statute. Deputy Assistant Attorney General Ulman advised the Working Group, by memorandum dated April 11, 1980, that the President may control the export of hazardous substances to further significantly the foreign policy of the United States under the 1979 statute.[7]

The Executive Order provides that, in very few instances for certain extremely hazardous prohibited and significantly restricted products and substances, the Secretary of Commerce may require a validated export license. Export controls will be limited to extremely hazardous substances [8] which represent a substantial threat to human health or safety or to the environment; the export of which would cause clear and significant harm to the foreign policy interests of the United States; and for which export licenses would be granted only in exceptional cases.

The products on which such export controls may be imposed will be chosen in the following manner. First, the appropriate regulatory agencies will prepare lists of substances, products, and class of substances or products which have been banned or significantly restricted in the United States under the specific statutory authorities listed in Section VII. These prohibited and restricted substances, with the exception of certain unapproved products [9] and "medicines and medical supplies" as that phrase is used in Section 6(f) of the Act [10] will constitute the universe from which those substances to be subjected to export controls may be chosen. No substance which is not already prohibited or significantly restricted for use in the United States will be considered for export controls under this policy.

Next, these lists of substances and products will be brought before an interagency task force chaired by the State Department and composed of the Department of Commerce, the Environmental Protection Agency, the Consumer Product Safety Commission, the Food and Drug Administration, and the Office of the U.S. Special Trade Representative. The State Department, as chair of the task force may invite representatives of other Federal agencies as well to participate from time to time in the work of the task force. This task force will advise the State Department as to which of the listed substances should be considered candidates for inclusion on the Commodity Control List. The task force will be mindful of, and give the strictest interpretation to, the provisions of the

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[7] By memorandum dated November 13, 1980, Deputy Assistant Attorney General Ulman, advised Joseph Onek, Deputy Counsel to the President, that the seven statutes providing for regulation of products and substances covered by this policy do not limit the President's authority under the Export Administration Act to control export of hazardous substances for foreign policy purposes.

[8] The determination as to whether a praticular subetance is an extremely hazardous substance will be made by the agency primarily responsible for regulating the substance on the basis of the record compiled in connection with a regulatory action taken by that agency concerning that substance. This determination would not require an additional regulatory proceeding.

[9] Pesticides for which registration has never been sought will not generally be included in the universe of products since U.S. regulatory agencies will not necessarily possess any test data on their health or safety ramifications. However, pesticides for which a tolerance has been denied or repealed will be included in the universe for the purpose of consideration for export controls. In this way, an unregistered pesticide may be placed on the list for consideration. For example, the unregistered pesticide Leptophos would appear on the list (were it still being manufactured), because EPA denied a tolerance for residues on foods (under authority of Sec. 408 of the Federal Food, Drug, and Cosmetics Act). Existing law already prohibits the export of new drugs and new animal drugs. Present law also prohibits the export of certain medical devices unless the Secretary of Health and Human Services has determined that the export is not contrary to public health and safety and has the approval of the country to which the device is intended for export.

[10] Export controls will not be applied to medicines and medical supplies which are excluded from such controls by the Export Administration Act. Deputy Assistant Attorney General Ulman advised the Working Group by memorandum dated November 13, 1980, that the President is given great discretion and flexibility under the EAA in defining the scope of this exclusion: "In the absence of a definition specially confining this general authority, the President may utilize his authority to the utmost extent and identify the contours of the (medicine or medical supplies) exclusion subject only to the limitations imposed by humanitarianism suggested by the concept of basic human needs." Given this discretion of the President to define the scope of the exclusion, the phrase "medicine and medical supplies" shall be construed so as to permit consideration for inclusion on the Commodity Control List of drugs and devices within the categories specified in Subsection 1–101(b–e) of the order and representing a substantial threat to human health or safety or to the environment.

Executive Order that export controls will be imposed in only a very few instances for extremely hazardous products. The task force will endeavor to reach consensus on its advice, consistent with the policy and standards defined in the order.

In advising the State Department on possible candidates for the Commodity Control List, the task force will consider, to the extent possible within the limits of available information, the type, extent, and severity of the potential detrimental effects of each substance proposed for inclusion on the Commodity Control List by a member of the task force; the likelihood of the effects; the duration of the effects; the ability of foreign countries to avoid or mitigate the effects; the availability of the substance from sources other than the United States; the availability of other substances or methods that would serve the same purpose as the substance to be exported; and the importance of the beneficial uses of the substance (this is not intended to require a rigorous, quantitative analysis of costs and benefits, however, as is usually performed in domestic regulatory procedures).

The interagency task force will be receptive to members of the public, foreign governments, and nongovernmental organizations submitting their views or contributing information which will be helpful in considering whether to place a banned or significantly restricted substance on the Commodity Control List.

The function of the regulatory agencies on the task force is to provide technical advice to the State Department, on the basis of available information compiled in the course of previous regulatory proceedings pertaining to the substance or product; and to assure that those products for which a recommendation of restricted export is made all pose a common, especially severe, level of hazard. The task force will be a continuing one which will review additional substances and suggest new candidates for the Commodity Control List as new actions of the type defined in Section VII are taken; should a domestic regulation of this type be altered or rescinded, the task force will also consider removal of the substance form the List.

With the benefit of advice obtained from the interagency task force, the State Department will identify, subject to the concurrence of the Secretary of Commerce, those few extremely hazardous banned or significantly restricted substances which should be included on the Commodity Control List because their export would cause clear and significant harm to the foreign policy interests of the United States. The task force will attempt to stay abreast of pending regulatory action, so that if export controls are deemed necessary, they may be recommended as soon as possible after promulgation of a new regulation banning or significantly restricting a product.

In the event that the State and Commerce Departments disagree over the imposition of export controls, the disagreement will be referred to the President as provided in the Act.

The Act mandates a number of procedural and substantive requirements which must be met when invoking foreign policy controls. The President may impose export controls "only after full consideration of the impact (of such controls) on the economy of the United States" (Sec. 3(2)) and only if the foreign policy standard is satisfied (Sec. 3(2)(B)). Where the controlled goods or technology are comparably available from foreign sources, he may impose controls only after he "determines that adequate evidence has been presented to him demonstrating that the absence of such controls would prove detrimental to the foreign policy or national security of the United States". Sec. 4(c). Furthermore, the President is obligated to initiate negotiations with foreign governments to eliminate foreign availability of goods or technology comparable to those subject to U.S. controls (Sec. 6(g)). Export controls maintained for foreign policy reasons expire one year after their imposition, unless extended by the President.

In addition, the Act specifies several preconditions to the imposition of foreign policy controls. The President must determine that reasonable efforts have been made to achieve the purposes of the controls through negotiations or other alternative means" Sec. 6(d). The President must "in every possible instance * * * consult with the Congress before imposing any export control * * *" Sec. 6(e). The Secretary of Commerce must "consult with such affected United States industries as the Secretary considers appropriate, with respect to * * * [criteria 1 and 4 listed below]" Sec. 6(c).

Section 6(b) of the Act also requires that the President consider the following criteria [11] when imposing, expanding, or extending foreign policy controls:

(1) The probability that such controls will achieve the intended foreign policy purpose, in light of other factors, including the availability from other countries of the goods or technology proposed for such controls;

(2) The compatibility of the proposed controls with the foreign policy objectives of the United States, including the effort of counter international terrorism, and with overall United States policy toward the country which is the proposed target of the controls;

(3) The reaction of other countries to the imposition or expansion of such export controls by the United States;

(4) The likely effects of the proposed controls on the export performance of the United States, on the competitive position of the United States in the international economy, on the international reputation of the United States as a supplier of goods and technology, and on individual United States companies and their employees and communities, including the effects of the controls on existing contracts;

(5) The ability of the United States to enforce the proposed controls effectively; and

(6) The foreign policy consequences of not imposing controls.

In addition to consulting with Congress, the Act requires that when controls are imposed, expanded or extended, the President "shall immediately notify the Congress of such action and shall submit with such notification a report * * *." The report must (1) specify "the conclusions of the President" with respect to each of the six criteria discussed above; (2) specify "the nature and results of any alternative means attempted * * * or the reasons for imposing, extending, or expanding the control without attempting any such alternative means"; and (3) indicate "how such controls will further significantly the foreign policy of the United States * * *." (Sec. 6(e).)

The Secretary of Commerce has statutory authority, or the President has delegated to the Secretary, the responsibility for meeting many of the above requirements.

Once all of the above requirements for imposing export controls have been met and a hazardous substance has been placed on the Commodity Control List, an exporter must apply to the Commerce Department for a validated license before it can export that substance. The Act sets forth specific statutory deadlines for processing applications. The Department of Commerce will make the decision on whether to grant the license in consultation with the Federal agency with domestic regulatory authority, the State Department, and any other relevant agency.

Historically, the Commerce Department has rarely, if ever, granted licenses over State Department objections. In this context, Commerce will continue to give great weight to State Department recommendations. The State Department will not

[11] The legislative history of the Act indicates that these criteria are to be taken into consideration, but they are not conditions which must be met.

recommend issuing a license unless it has determined that the export would cause clear and significant harm to U.S. foreign policy interestes, and that the State Department, after appropriate consultations, has received no objections to the export from the government of the foreign country to which the banned or significantly restricted product is to be exported. The State Department's determination and findings will be conveyed in writing to the Commerce Department. The State Department should instruct its personnel at missions and embassies in foreign nations to be prepared to carry out such consultations. Embassy personnel should be instructed to identify an official of the foreign government with whom to consult on proposed hazardous export shipments. When a validated export license is sought for a substance added to the CCL under this policy, a U.S. embassy official in the country of destination will apprise the foreign government official of the nature of the product, quantity to be shipped, the regulatory action which prohibited or significantly restricted its sale in the United States, the potential risks to human health or the environment which were the basis for the action, and such other information as is deemed appropriate (provided that trade secrets or other confidential commercial or financial information will not be sent to a foreign government unless authorized or required by existing law).

Other factors to be considered by the Commerce Department in acting on an application for a validated export license might include: the type of hazardous substance; the destination of the export; the proposed use to which the product would be put; labeling or marketing plans; whether the foreign government is the importer; the nature and type of hazards involved; the number of people potentially affected by the hazard; the benefits to be gained by the export (again, this would not be a rigorous, quantitative analysis of costs and benefits); the availability of alternative sources of the substance; the availability of non-hazardous alternatives; precautions the importer will take with the substance; the dangers inherent in alternative substances presently being used; the effect the substance might have on neighboring countries; the potential reaction of other countries; results of consultations with industry representatives and other concerned parties; and the results of international efforts to curb the export of the substance. Actual experience evaluating applications may reveal other factors that should be considered. The Commerce Department will propose and receive comment on regulations governing its consideration of applications for export licenses for hazardous substances.

The economic consequences of invoking export controls are unlikely to be great. The categories of products which are candidates for the Commodity Control List are well defined (see Section VII) and readily identifiable. The circumstances in which substances may be chosen for the CCL are very limited, and the number of substances selected will be few. In addition, it is quite possible that a U.S. firm may have or could develop a substitute product offering the same benefits without posing severely hazardous risks.

(4) Evaluation

Considering the importance of an effective policy for export of hazardous substances, and recognizing that experience with such a policy is lacking, it is essential to evaluate from time to time how well the policy is working in practice. The Executive Order calls for a progress report to the President 18 months after the effective date of the policy, and annually thereafter. The report will be prepared jointly by the Council on Environmental Quality, the Department of State, and the Department of Commerce in consultation with other affected agencies.

The report will summarize agency activities under the policy, evaluate the effectiveness of the hazardous substances export policy, and make any recommendations that are deemed appropriate.

(5) Government-Sponsored Exports

All the policies discussed so far apply to exports by private commercial firms. Somewhat different considerations apply to products which the U.S. government itself buys and distributes abroad, mainly for the purpose of assisting economic development in other countries. The Working Group recommended that the U.S. government, in its own dealings with export of hazardous substances, maintain the highest standards of good judgment and scrupulous care for the health and welfare of foreign citizens and their environment.

Environmental review, by which government agencies look at the consequences of a proposed action before undertaking it, and analyze reasonable alternatives, is a good model for government dealings with hazardous exports. In fact, such an approach has been tried and worked well. In the early 1970's, the Agency for International Development (AID) distributed abroad some pesticides which were not approved for use in the United States (Leptophos, DDT for other than public health uses). Following a lawsuit, AID reexamined its entire pesticide program, writing a comprehensive environmental impact statement that looked at consequences and weighed alternatives. AID no longer purchases or distributes abroad pesticides that are banned for use in the United States, except for compelling reasons and after very careful examination. The AID pest control program now emphasizes alternatives such as integrated pest management.

The Working Group recommended the same approach of program assessment and analysis of alternatives for other programs that may involve the distribution abroad of hazardous substances. For example, population programs that are a part of U.S.-assisted development efforts should be carefully scrutinized, to ensure that the birth control drugs and devices bought with U.S. government funds are as safe and effective as possible. The program assessment should be concerned with more than the simple avoidance of products that have already been banned, through lengthy legal proceedings, for use in the United States. It should also be sensitive to the likely circumstances of use in the country of destination. For example, if a birth control drug is known to interfere with vitamin metabolism, or if safe application of a birth control device requires special medical skills, these facts should be carefully considered before the U.S. government provides the funds to export such products to countries where women are likely to be malnourished, or medical skills are scarce.

Similar considerations apply to mother-child nutrition programs. Infant formula that is safe and convenient to use in the United States may be fatal if used in places with impure water supplies. Program assessments and the decisions based on them should take such factors into account.

Responsible, well-informed decisions by U.S. Government agencies related to shipments of hazardous substances abroad might serve as a model for other countries and for private traders.

(b) Labeling of Hazardous Exports

The Working Group recommended that regulatory agencies give continuing attention to improvements in labeling, as a technique for dealing with hazardous exports. In some cases, it may be possible to develop simplified,

more readily understandable labels. Agencies may also want to consider new requirements that pesticide, drug and toxic substance labels on exported products include more information on the nature of possible hazards associated with their use. The Executive Branch, working with the Congress, may wish to propose legislation, if appropriate, to impose such requirements.

VI. International Efforts

Unilateral actions should be just one part of a broader U.S. program to promote international cooperation on trade of hazardous substances throughout the world. In the Executive Order, the President directs the State Department and other federal agencies in consultation with the State Department to seek international agreement in these areas:

- Notification of the export of hazardous substances;
- Comprehensive adoption of uniform, readily understandable hazard labeling for substances in international commerce;
- Improved worldwide hazard alert systems and clearinghouses for information on health and safety risks in the workplace;
- Other common standards and practices related to the export of hazardous substances.

These steps could lead to the formulation of an international convention governing hazardous substances exports.

A common international effort is important for several reasons. Common policies governing hazardous exports, subscribed to by all countries, would help to assure that U.S. multinational firms located abroad or firms in other nations would not become alternate suppliers for hazardous substances. Consistency among nations in hazard notification and labeling would be more effective than widely varying national programs, because more hazards would be covered and the procedures would be more universally understood; more accurate, because it would be based on broad international experience; and less burdensome to industry, because firms would not have to respond to multiple varying requirements. Moreover countries like the United States that take responsibility for hazardous exports would not be penalized economically.

Through international cooperation, ongoing technical assistance programs should focus on helping developing countries to establish adequate standards for health and safety, competent regulation, and effective use of available hazard information. The United States committed itself to such bilateral efforts when it signed the Multilateral Trade Negotiations Agreement on Technical Barriers to Trade (Standards Code) in December, 1979. Differences among countries in needs and desires for assistance should be recognized in shaping these programs. International cooperation will more likely flourish if it is built on existing structures, and is mindful of resources constraints that affect the ability of developing countries to contribute to the effort.

Targeted technical assistance to countries which are increasing their importation, manufacture and use of chemicals would greatly enhance the policy's chances of success. The Working Group recommended that appropriate agencies consider possibilities for technical assistance under present legal authorities, and adopt changes to make present programs more effective. In this connection, the Department of Commerce should investigate opportunities for the Bureau of the Census to monitor exports to hazardous substances, to serve as the basis for better notification and targeting technical assistance.

The Working Group recommended continued participation by the United States in the international efforts listed in Section IV. The Group encouraged increased activity by the UNEP Committee on Toxic Chemicals, the WHO International Program on Chemical Safety, and the OECD. The OECD has begun considering approaches to the control of toxic substances and export of hazardous products. OECD membership includes the major non-Communist industrialized nations; these nations are responsible for the bulk of hazardous substances trade. OECD is an excellent forum for exchange of information and technology among member countries, and for consideration of export notification and control policies. However, OECD is not so useful as a clearinghouse for communication with less developed countries, which are often importing countries and are thus greatly interested in and affected by policies concerning trade in hazardous substances. OECD should be encouraged to cooperate with UNEP, or to include by other means a broader array of nations in conducting deliberations on these matters.

U.S. resources to be devoted to international health and safety cooperation merit careful consideration and budget review. The success of the effort will depend to a significant extent on U.S. leadership, plus financial support and cooperation from other major industrial countries.

The steps described above, together with provisions of the Executive Order, are important first steps toward the control of hazardous substances in international trade. The adoption of a U.S. policy that includes notification, export controls in very limited circumstances, careful assessment of exports by U.S. government agencies, and efforts to reach international agreements on controls over hazardous exports will put the United States in a position of world leadership in the field. Through such domestic and international policies, the United States will be in a strong position to persuade over industrialized nations to control the distribution of hazardous products throughout the world. This leadership role is consistent with the President's human rights themes and will enhance the U.S. trading position.

VII. Substances Covered by the Policy

As discussed in Section II, The Executive Order covers substances which are banned or significantly restricted in the United States because of the threat they pose to public health and safety or the environment. It thus applies to substances and products regulated under certain sections of FIFRA, TSCA, FDCA, PHSA, CPSA, FHSA and the Flammable Fabrics Act. The Order specifically defines the policy as covering the following substances and products, all of which are banned or significantly restricted in the United States:

(a) A food or class of food which

(1) Is adulterated, as defined by rules or orders issued under Sec. 402(a) or (c) (21 U.S.C. 342(a) or (c)), or

(2) Is in violation or emergency permit controls issued under Sec. 404 (21 U.S.C. 344)

of the Federal Food, Drug, and Cosmetic Act;

(b) A drug which is

(1) Adulterated, as defined by rules or orders issued under Sec. 501(a), (b), (c) or (d) (21 U.S.C. 351(a), (b), (c), or (d)),

(2) Misbranded, as defined by rules or orders issued under Sec. 502(j) (21 U.S.C. 352(j)) or

(3) A new drug or new animal drug for which an approval is not in effect under Sec. 505 (21 U.S.C. 355) or Sec. 512 (21 U.S.C. 360), respectively,

of the Federal Food, Drug, and Cosmetic Act;

(c) An antibiotic drug which has not been certified under Sec. 507 (21 U.S.C. 357)

of the Federal Food, Drug, and Cosmetic Act;

(d) A drug containing insulin which has not been certified under Sec. 506 (21 U.S.C. 356)

of the Federal Food, Drug, and Cosmetic Act;

(e) A device which

(1) Is adulterated, as defined by rules or orders issued under Sec. 501(a) (21 U.S.C. 351(a)),

(2) Is misbranded, as defined by rules or orders issued under Sec. 502(j) (21 U.S.C. 352(j)),

(3) Does not conform with a performance standard issued under Sec. 514 (21 U.S.C. 360d),

(4) Has not received premarket approval under Sec. 515 (21 U.S.C. 360e), or

(5) Is banned under Sec. 516 (21 U.S.C. 360f)

of the Federal Food, Drug, and Cosmetic Act;

(f) A cosmetic which is adulterated, as defined by rules or orders issued under Sec. 601 (21 U.S.C. 361) of the Federal Food, Drug, and Cosmetic Act;

(g) A food additive or color additive which is deemed unsafe within the meaning of Sec. 409 (21 U.S.C. 348) or Sec. 706 (21 U.S.C. 376), respectively, of the Federal Food, Drug, and Cosmetic Act;

(h) A biological product which has been propagated or manufactured and prepared at an establishment which does not hold a license as required by Sec. 351 (42 U.S.C. 262) of the Public Health Service Act;

(i) An electronic product which does not comply with a performance standard issued under Sec. 358 (42 U.S.C. 263f) of the Public Health Service Act;

(j) A consumer product which

(1) Does not comply with a consumer product safety standard adopted under Secs. 7 and 9 (15 U.S.C. 2056 and 2058) other than one relating solely to labeling,

(2) Has been declared to be a banned hazardous product under Secs. 8 and 9 (15 U.S.C. 2057 and 2058),

(3) Presents a substantial product hazard under Sec. 12 (15 U.S.C. 2061), or

(4) Is an imminently hazardous consumer product under Sec. 12 (15 U.S.C. 2061),

of the Consumer Product Safety Act;

(k) A fabric, related material, or product which does not comply with a flammability standard (other than one relating to labeling) adopted under Sec. 4 (15 U.S.C. 1193) of the Flammable Fabrics Act;

(l) A product which is a banned hazardous substance (including a children's article) under Secs. 2 and 3 (15 U.S.C. 1261 and 1262) of the Federal Hazardous Substances Act;

(m)(1) A pesticide which, on the basis of potential risks to human health or safety or to the environment,

(A) has been denied registration for all or most significant uses under Sec. 3(c)(6) (7 U.S.C. 136a(c)(6)),

(B) has been classified for restricted use under Sec. 3(d)(1)(C) (7 U.S.C. 136a(d)(1)(C)),

(C) has had its registration cancelled or suspended for all or most significant uses under Sec. 6 (7 U.S.C. 136d),

(D) has been proceeded against and seized under Sec. 13(b)(3) (7 U.S.C. 136k), or

(E) has not had its registration cancelled, but requires an acknowledgement statement under Sec. 17(a)(2) (7 U.S.C. 136o(a)(2))

of the Federal Insecticide, Fungicide, and Rodenticide Act, or

(2) A pesticide chemical for which a tolerance has been denied or repealed under Sec. 408 (21 U.S.C. 346(a)) of the Federal Food, Drug, and Cosmetic Act; and

(n) A chemical substance or mixture

(1) Which is subject to an order or injunction issued under Sec. 5(f)(3) (15 U.S.C. 2604(f)(3)),

(2) Which is subject to a requirement issued under Sec. 6(a)(1), 6(a)(2), 6(a)(5), or 6(a)(7) (15 U.S.C. 2605(a)(1), 2605(a)(2), 2605(a)(5), or 2605(a)(7)) or

(3) For which a civil action has been brought and relief granted under Sec. 7 (15 U.S.C. 2606)

of the Toxic Substances Control Act.

The number of substances and products covered by the Executive Order and the policy is limited. (The extremely hazardous substances to be placed on the Commodity Control List will be selected from among those products and substances and will be very much smaller in number.) Under FIFRA, EPA estimates that there are 32 pesticide chemicals the use of which is entirely prohibited in the United States or for which major uses are prohibited, and 50 which are classified for restricted use under FIFRA Sec. 3(d)(1)(C)). (EPA also estimated on the basis of early experience with the notification process that there are perhaps 25 pesticides which are wholly unregistered in the United States being manufactured for export only.[12]) Under TSCA, four classes of chemicals, (PCBs, chlorofluorocarbons, asbestos, and dioxins) have been regulated so far, though more actions are expected in the future. Under FDCA and FHSA there have been some several hundred regulatory actions prohibiting sale of certain kinds of foods, drugs, cosmetics, and medical products; it is not known how many products are manufactured and sold for export only which do not comply with these regulations. However, it is anticipated that few of these products would be recommended for inclusion on the Commodity Control List. Under the three statutes which CPSC administers, some 30 classes of products have been subject to standard-setting or other actions which prohibit sale in the United States. Again, it is not certain how many products which do not comply with these requirements are exported, but early experience with notification requirements suggests that the number is quite small.

Excluded from the purview of the policy are alcohol, tobacco, firearms, military weapons and equipment, narcotic and psychotropic substances, and nuclear fuel. Also excluded are the exportation of hazardous production facilities, and U.S. financial assistance for such facilities. As indicated, certain substances which may create hazardous workplace conditions are included only in the annual summary called for in the Executive Order. Finally, Export-Import Bank financing of exports is not covered by the policy or the Order.

Alcohol, tobacco, and firearms were excluded because they are extensively controlled through the tax code and their health and safety implications are well known. The Working Group believed there is sufficient attention to and control over these products and that their exclusion does not detract from the policy. Military weapons and equipment and narcotic and psychotropic substances were excluded because they are subject to an extensive system of national controls and agreements under international treaty obligations. Likewise, nuclear fuels were excluded because they are extensively controlled nationally and internationally.

As indicated by the criteria, substances for which most significant uses in the United States have been prohibited are covered by the policy and the Order. In this category are products such as DDT, banned for most uses by EPA because of its serious adverse environmental effects but allowed for certain very narrowly defined uses (i.e., public health measures).

Products that are not restricted for use in the United States, but subject to unsafe circumstances of consumption abroad are not covered by the Executive Order and were not included in the

[12] While unregistered pesticides are covered by certain aspects of the Executive Order and policy (e.g., notification as required by statute), they will generally not be candidates for inclusion on the Commodity Control List or the Annual Report on regulatory actions.

Working Group's policy recommendations affecting private, commercial trade. The Working Group excluded these products with some reluctance, since there are indications that they are posing problems in certain countries. One such product is infant formula, discussed above in connection with U.S. government actions. It appears that commercial trade involving such products might be more appropriately dealt with through such means as technical assistance or codes for industry rather than export controls.

The Working Group also excluded from consideration the export of hazardous production facilities and direct or indirect financial assistance for those facilities (for example, through the Export-Import Bank and the Overseas Private Investment Corporation). As occupational health and safety and environmental protection requirements are placed on U.S. production facilities, some firms have established new facilities in other countries with less rigorous regulatory requirements. In some cases these "runaway" facilities have been established in Mexico near the U.S. border so that they remain close to U.S. markets, with advanced freight transport systems, but they can be and are located elsewhere in the world.

Hazardous production facilities were excluded because the issues they raise and the nature of possible remedial action are quite different from those related to exports of hazardous substances. In the case of banned or severely restricted hazardous substances, there are amply precedents for export controls on products. This is not true for exports of production facilities. Only certain exported production facilities involving major federal actions abroad (as defined under Executive Order 12114) are subject even to environmental review. Often the only connection between the facility and this country is that it is owned or built by a U.S.-based firm. Any system of controls for export of hazardous facilities would require a statutory basis; this is an issue that the Congress may want to examine.

Substances causing hazardous workplace conditions as regulated by OSHA are included in one part of the Order. The Annual Summary will include OSHA health standards where appropriate, so that foreign governments will have the benefit of our studies and regulations to protect their own workers.

The question of how to control the export of hazardous wastes (as defined by EPA under RCRA) has not yet been resolved. However, it is currently being addressed by an interagency group led by the State Department which is nearing completion of a proposed policy. EPA has promulgated new regulations governing the management and disposal of hazardous wastes in the United States. At present, if such wastes are to be exported, EPA must be notified 30 days in advance of export. EPA will then in turn notify foreign governments in cooperation with the State Department.

Implementation and Enforcement

To implement the Executive Order, each regulatory agency with jurisdiction over substances subject to the policy will undertake the following:

(1) Define with particularity either the specific products or the classes of products which are banned or significantly restricted substances as defined in Section VIII, for publication in the Federal Register. This list will be revised as necessary to reflect new regulatory actions.

(2) Prepare, on an annual basis, consistent with the format developed by the Regulatory Council, summaries of all final and proposed regulatory actions taken each year concerning banned and severely restricted hazardous substances, and indications of what additional information is available with respect to each of these final or proposed regulatory actions. In addition, in the first year, each agency will provide a listing or summary of all of its final regulatory actions with respect to such hazardous substances.

(3) Establish procedures, where notification is required under existing law, for expeditiously notifying the State Department of exports of relevant hazardous substances to foreign countries. The procedures will include timing and content of notices, recordkeeping responsibilities, provisions relating to trade secrets and confidential information, any special agency requirements in addition to those required by the order, and provisions for enforcement.

It is not anticipated that the regulatory agencies will require additional personnel or resources to carry out these tasks. In implementing the Order's requirements, the State Department will need to enhance its ability to expeditiously provide export notifications, through its embassies, to the appropriate foreign officials, and to consult with these officials prior to the granting of a validated export license for hazardous substances on the Commodity Control List. This will require each embassy to develop accurate up-to-date directories of the foreign officials responsible for hazardous substances so that there is no delay in identifying the appropriate official when a notification is transmitted or an export license is applied for.

The Department of Commerce will have enhanced responsibilities in implementing the Export Administration Act. In order to implement certain provisions of the Order, a limited number of extremely hazardous substances may be added to the Commodity Control List (see Section V). The small number of substances so listed should not unduly burden the Department. However, limited additional resources (approximately 5–15 staff members) may need to be added to the offices responsible for implementing this part of the Order.

The Customs Service also has authority, resources, field structure, and enforcement experience which will be needed to implement certain provisions of the Order. Customs, through the use of Shipper's Export Declarations, enforces Commerce's present export licensing requirements. Customs can inspect, seize, and detain articles in violation of the Export Administration Act. Enforcement responsibility for shipment notification would be added as another element in the Customs export check.

Attachment A

Consumer Product Safety Commission

Consumer Product Safety Act (15 U.S.C. 2051)

Products or Financing Arrangement

Consumer products—articles used in and around the residence, school, or in recreation for the personal use, consumption, or enjoyment of a consumer, except tobacco, motor vehicles, pesticides, boats, annunition, aircraft, foods, drugs, cosmetics, or medical devices.

(15 U.S.C. 2052(a)(1))

Regulatory Authority for Domestic Use

CPSC can (1) set mandatory Federal standards for products which pose an unreasonable risk of injury; (2) ban products which pose such risk if no standard can adequately protect the public; (3) seek a court order to seize products which contain an imminent hazard; (4) order pre-market notice of new products; (5) mandate labeling and data disclosure requirements; and (6) order public notice and recall of products presenting substantial product hazards.

(15 U.S.C. 2056, 2057; 2058; 2061; 2062; 2063; 2064; 2070(c))

Regulatory Authority for Exports

The CPSC can prohibit export if it determines that exportation of a product

presents an unreasonable risk of injury to consumers within the U.S.

Any other product can be exported (except to U.S. installation outside the U.S.) if it

(1) Is manufactured or sold for export purposes and has never been distributed in the U.S., and

(2) Is labeled for export.

Thirty days prior to exporting a product which does not comply with a product safety standard or banned by rule, the exporter must notify the CPSC. CPSC notifies country of destination of the exportation and the basis of the standard or rule. CPSC may, by petition, require only 10 days notice.

(15 U.S.C. 2067)

Pending Amendments

None.

Federal Hazardous Substances Act (14 USC 1261)

Products or Financing Arrangement

A substance which is (1) toxic, corrosive, an irritant, a strong sensitizer, flammable, combustible, or which generates pressure and which may cause substantial personal injury or illness, and (2) toys.

(15 U.S.C. 1261)

Regulatory Authority for Domestic Use

CPSC may ban hazardous substances, require labeling, and seek a court order to seize noncomplying products, or enjoin their distribution.

(15 U.S.C. 1262; 1265; 1267)

Regulatory Authority for Exports

CPSC may prohibit export if it determines that exportation of a hazardous substance represents an unreasonable risk of injury to persons residing within the United States. All other products can be exported if they are

(1) in a package branded in accordance with the specifications of the foreign purchaser;

(2) labeled in accordance with the laws of the foreign country;

(3) labeled on the shipping package as intended for export;

(4) so exported

and have not previously been introduced into domestic commerce.

Thirty days prior to exporting a misbranded or banned hazardous substance, the exporter must notify CPSC. CPSC notifies country of destination of the exportation and the basis upon which the substance has been misbranded or banned. CPSC may, by petition, require only 10 days notice.

(15 U.S.C. 1264(b); 1265(a); 1273(d))

Pending Amendments

None.

Flammable Fabrics Act (15 USC 1191)

Products or Financing Arrangement

Wearing apparel, fabrics, interior furnishings, or related materials.

(15 U.S.C. 1191)

Regulatory Authority for Domestic Use

CPSC can set standards, issue cease and desist order, and seek court order to seize noncomplying products.

(15 U.S.C. 1193; 1195)

Regulatory Authority for Exports

The CPSC can prohibit export if it determines that exportation of a product presents an unreasonable risk of injury to persons residing within the U.S.

Any other product can be exported (except to U.S. installations outside the U.S.) if it is labeled for export.

(15 U.S.C. 1202)

CPSC interprets this provision so as to require the manufacturers of noncomplying goods to have the intention to export goods at the time of original manufacture.

(16 CFR 1602.2)

Thirty days prior to exporting a fabric which fails to conform with a standard, the exporter must notify CPSC. CPSC notifies country of destination of the exportation and the basis of the standard. CPSC may, by petition, require only 10 days notice.

(15 U.S.C. 1202)

Pending Amendments

None.

Food and Drug Administration

Federal Food, Drug & Cosmetic Act (21 U.S.C. 301 et seq.)

Products or Financing Arrangement

Foods.

(21 U.S.C. 321(f))

Regulatory Authority for Domestic Use

Secretary may establish standards of identity, levels of adulteration, and standards of misbranding.

(21 U.S.C. 341–343)

Regulatory Authority for Exports

May be exported (no permit required) if:

(1) Accords to specifications of foreign purchaser.

(2) Is not in conflict with laws of foreign country.

(3) Is labeled for export.

(4) Is not offered for domestic sale.

(21 U.S.C. 381(d))

Foods which are subject to Emergency Permit Controls and for which a permit has not been issued cannot be exported.

(21 U.S.C. 344)

Pending Amendments

None.

Products or Financing arrangement

New drugs.

New animal drugs.

(21 U.S.C. 321(p) and (w))

Regulatory Authority for Domestic Use

No introduction of new drugs or animal drugs in interstate commerce without approval by FDA. "Interstate commerce" between any state or territory and any place outside thereof.

(21 U.S.C. 335(a) and 360b(a))

Regulatory Authority for Exports

No exportation permitted unless the new drug is in complete compliance with an approved new drug application.

Exportation authorized for *investigational* use only if FDA receives, through the State Department, a formal request from the foreign government. The request must specify that such government has adequate information about the drug and the proposed investigational use.

(21 CFR 312.1 and 21 CFR 811.1)

Pending Amendments

New drugs not yet approved in U.S., or approved drugs not in compliance with domestic requirements, may be exported if exporting firm applies to the HHS Secretary for an export permit. The Secretary shall issue the permit unless he finds:

(1) Drug does not accord to specifications of foreign purchaser.

(2) Drug is not labeled for export.

(3) The foreign government has not been informed of the legal status of the drug in the U.S. and it does not disapprove of importation of the drug.

(4) Export of the drug is contrary to the public health (presumably of the U.S. or the foreign country).

(H.R. 4258 and S. 1045, Sec. 134–135)

Products or Financing Arrangement

Medical devices for human uses.

(21 U.S.C. 321(h))

Regulatory Authority for Domestic Use

Depending upon the type of device, the Secretary may (1) establish performance standards, (2) require premarket approval, (3) ban devices which present unreasonable deception or an unreasonable and substantive risk of illness or injury, and (4) require recall.

(21 U.S.C. 360d, 360e, 360f, 360h)

Regulatory Authority for Exports

Generally, may be exported (no permit required) if:
(1) Accords to specifications of foreign purchaser;
(2) Is not in conflict with the laws of foreign country;
(3) Is labeled for export; and
(4) Is not offered for sale in domestic commerce.
In addition to the above, devices which do not comply with performance standards, have not received premarket clearance, or have been banned cannot be exported unless the Secretary has determined:
(1) That exportation is not contrary to the public health and safety; and
(2) That the foreign country approves.

(21 U.S.C. 381 (d)(1) and (d)(2))

Similar requirements for investigational devices.

(21 CFR 812.16(b))

Pending Amendments

None.

Products or Financing Arrangement

Drugs approved for U.S. use.

Regulatory Authority for Domestic Use

Drug must previously have been approved by FDA.

Regulatory Authority for Exports

A drug which may be sold in interstate commerce may be exported without special requirements. A drug which is misbranded or adulterated may be exported (no permit required) if—
(1) Accords to specifications of foreign purchaser
(2) Is not in conflict with laws of foreign country
(3) Is labeled for export
(4) Is not offered for domestic sale
This provision also applies to antibiotics, insulin, and pre-1938 drugs.

(21 U.S.C. 381(d))

Pending Amendments

May be exported (permit required) so long as drug meets manufacture and quality standards required for domestic products (outlined in subparts 3 and 4 of H.R. 4250 and S. 1045).

(H.R. 4250 and S. 1045, Sec. 134)

Products or Financing Arrangement

Cosmetics.

(21 U.S.C. 321(i))

Regulatory Authority for Domestic Use

Secretary may establish standards of adulteration and misbranding.

(21 U.S.C. 361–362)

Regulatory Authority for Exports

May be exported (no permit required) if:
(1) Accords to specifications of foreign purchaser
(2) Is not in conflict with laws of foreign country
(3) Is labeled for export
(4) Is not offered for domestic sale

(21 U.S.C. 381(d))

Pending Amendments

None.

Environmental Protection Agency

Federal Insecticide, Fungicide and Rodenticide Act

(7 U.S.C. 136)

Products or Financing Arrangement

Substance or mixture of substances intended for preventing destroying, repelling, or mitigating any pest, or for use as a plant regulator, defoliant or desiccant.

(7 U.S.C. 136)

Regulatory Authority for Domestic Use

Registration of pesticides for specified use upon a finding by EPA of no "unreasonable adverse effect on the environment"; EPA registration of pesticide producers; EPA can issue "stop sale, use, or removal" orders and seek court orders for seizure of non-complying pesticides.

(7 U.S.C. 136a; 136e, 176k)

Regulatory Authority for Exports

Pesticides are subject only to certain labeling regulations when intended solely for export and are prepared or packed according to specifications or directions of the foreign purchaser. Pesticides not registered in the U.S. may be exported if, prior to export, the foreign purchaser signs a statement acknowledging that it understands the product cannot be sold in the U.S. A copy of the statement must be forwarded to EPA for transmittal to the appropriate government official of the importing country.
EPA notifies State Department whenever there is a cancellation or suspension of registration which is of international significance. State Department notifies foreign governments and appropriate international agencies.
EPA, in cooperation with State and other appropriate federal agencies are to participate and cooperate in international efforts to develop improved pesticide research and regulation.

(7 U.S.C. 136(0))

Pending Amendments

None.

Food and Drug Administration

Public Health Service Act (42 U.S.C. 201 et seq.)

Products or Financing Arrangement

Biological Products.

(42 U.S.C. 262)

Regulatory Authority for Domestic Use

HHS Secretary licenses establishments which propagate or manufacture and prepare biological products (e.g., viruses, serums, vaccines, blood, toxins)

(42 U.S.C. 262(a))

Regulatory Authority for Exports

No exportation of products which cannot be sold in U.S.

(42 U.S.C. 262(a))

Pending Amendments

None.

Food and Drug Administration

Public Health Service Act

(42 U.S.C. 201 et. seq.)

Products or Financing Arrangement

Electronic products.

(42 U.S.C. 263c(2))

Regulatory Authority for Domestic Use

Secretary of HHS may establish performance standards to control emission of electronic product radiation and require notification for defects or non-compliance.

(42 U.S.C. 263f(a); 263g)

Regulatory Authority for Exports

Products for export need not conform to standards if:
(1) Labeled for export; and
(2) Product meets all applicable requirements for the foreign country.

(42 U.S.C. 263f(a)(3))

Pending Amendments

None.

Drug Enforcement Administration

Controlled Substances Import and Export

(21 U.S.C. 951)

Products or Financing Arrangement

Narcotics and Dangerous Drugs.

Regulatory Authority for Domestic Use

Broad controls are provided for the transhipment of controlled substances through the United States to other

countries and for their in transit shipment within the U.S. for immediate export, and for the possession of controlled substances on board any vessel, aircraft or other vehicle arriving or departing from the United States.

Regulatory Authority for Exports

Regulates the importation and exportation of all controlled substances—narcotics, marijuana, depressants, stimulants and other dangerous drugs. No controlled substance can be exported except in compliance with specified procedures which vary accordingly to the schedule of the substance. Registration of importers and exporters of substances classified in schedule I or II would be based on the Attorney General's determination that this would be consistent with the public interest and certain treaty obligations.

Pending Amendments

None.

Environmental Protection Agency

Resource Conservation and Recovery Act of 1976

(42 U.S.C. 6901–6987)

Products or Financing Arrangement

Hazardous wastes, which are defined to include solids, liquids, and sludges which may cause or significantly contribute to an increase in serious irreversible or incapacitating reversible, illness; or pose a substantial present or potential hazard to human health on the environment when improperly treated, stored, transported or disposed of, or otherwise managed.

(42 U.S.C. 6903(5))

Regulatory Authority for Domestic Use

EPA to identify hazardous wastes, establish standards applicable to generators and transporters of such waste and owners and operators of hazardous waste treatment, storage and disposal facilities. Each person owning or operating a hazardous waste treatment, storage or disposal facility is required to obtain a permit from EPA within prescribed time periods. EPA is to assist states in the development of hazardous waste programs.

(42 U.S.C. 6921–25, 6930)

Regulatory Authority for Exports

None.

Pending Amendments

None.

Toxic Substances Control Act

(15 U.S.C. 2601)

Products or Financing Arrangement

Chemical substances or mixtures except pesticides, tobacco, nuclear materials, firearms, etc.

(15 U.S.C. 2602)

Regulatory Authority for Domestic Use

EPA may require testing, impose pre-market notice requirements, require labeling, limit or prohibit sale if tests show a reasonable basis to conclude an unreasonable risk of injury to health or the environment, or obtain a court order to seize a substance or mixture posing an imminent hazard.

(15 U.S.C. 2603–2606)

Regulatory Authority for Exports

Statute does not apply if substance, mixture or article is manufactured for export and is labeled as such *except* as follows:

1. If EPA finds the substance, mixture or article will present "an unreasonable risk of injury to health within the United States or to the environment of the United States," it may control export. Administrator may order testing to make such a determination.

2. If a person intends to export a substance which has been subject to certain regulatory actions, such person shall notify EPA and EPA shall furnish foreign government notice of the rule, order, action, or relief.

(15 U.S.C. 2611)

Pending Amendments

None.

U.S. Department of Agriculture Food Safety and Quality Service

Federal Meat Inspection Act

(21 U.S.C. 601 et seq.)

Products or Financing Arrangement

Meat or meat food products of cattle, sheep, swine, goats, horses, mules or other equines.

Regulatory Authority for Domestic Use

Secretary has regulatory authority with respect to standards of identity, adulteration and misbranding.

Regulatory Authority for Exports

Meat or meat food products which are not allowed to enter interstate or foreign commerce may not be exported. Provisions in regard to preservatives used in meat food products shall not apply to such products when exported if:

(1) they are prepared or packed according to specifications or directions of the foreign purchasers; and

(2) no substance used therein is in conflict with the laws of the country to which the products are to be exported.

(21 U.S.C. 606)

In addition, livestock and meat or meat food products derived therefrom that are offered for export must undergo an export inspection and certification procedure.

(21 U.S.C. 612–618)

Pending Amendments

None.

U.S. Department of Agriculture Food Safety and Quality Service

Poultry Products Inspection Act

(21 U.S.C. 451 et seq.)

Products or Financing Arrangement

Poultry and poultry products.

Regulatory Authority for Domestic Use

Secretary has regulatory authority with respect to standards of identity, adulteration and misbranding.

Regulatory Authority for Exports

Poultry or poultry products which are not allowed to enter interstate or foreign commerce may not be exported.

Pending Amendments

None.

Esther Peterson,

Special Assistant to the President for Consumer Affairs, Chair, Interagency Working Group on Hazardous Substances Export Policy.

The White House

January 15, 1981.

[FR Doc. 81-2400 Filed 1-19-81; 3:01 pm]

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Part XIV

Department of Labor

Employment and Training Administration

Comprehensive Employment and Training Act Regulations; Amendments

DEPARTMENT OF LABOR

Employment and Training Administration

20 CFR Parts 676, 677, 678, and 679

Comprehensive Employment and Training Act Regulations; Amendments to Administrative Provisions

AGENCY: Employment and Training Administration, Labor.

ACTION: Final rule.

SUMMARY: This document contains several amendments to the reporting, recordkeeping and various other administrative provisions in the final regulations for programs under Titles I, II, VI, and VII, and Youth Programs under Title IV of the Comprehensive Employment and Training Act (CETA) published on May 20, 1980, 45 FR 33846. The document implements proposed changes which were published on May 20, 1980, at 45 FR 33922.

EFFECTIVE DATE: February 23, 1981.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Andersen, Administrator, Office of Comprehensive Employment Development, Employment and Training Administration, U.S. Department of Labor, 601 "D" Street, NW., Washington, D.C. 20213, Telephone: (202) 376-6254.

SUPPLEMENTARY INFORMATION:

Background:

On Tuesday, May 20, 1980, regulations for the implementation of programs under Titles I, II, VI, VII and Youth Programs under Title IV of the Comprehensive Employment and Training Act (CETA) were published in the Federal Register, 45 FR 33846. On the same date, proposed changes to several sections of these regulations, which had inadvertently been omitted from the proposed rules published on April 4, 1980, 45 FR 23296, were also published for comment, at 45 FR 33922.

The changes proposed at 45 FR 33922 were designed primarily to reduce unnecessary paperwork burdens on prime sponsors, by deleting certain reporting and recordkeeping requirements and shifting other information from the Annual Plan subparts to the Annual Plan General Narrative or from the Annual Plan to the Master Plan.

Comments:

The proposed revisions were published for a 60-day review and comment period. The Department received approximately 40 written comments on the proposed changes. Following is a description of each affected section as it appears in these amendments, a summary of the comments received and the Department's response.

Deletions from Master Plan Requirements; Maintenance of Descriptions On-Site

In the proposed amendments, various items required by § 676.10 to be included in the Master Plan were deleted, including: (A) the description of procedures to ensure that planning council meetings are open (§ 676.10-4(f)(2)); (B) the description of staff support to the council (§ 676.10-4(f)(3)); (C) the description of the Personnel Merit System (§ 676.10-4(g)(1)(iii)); (D) the description of the allowance payment system (§ 676.10-4(g)(2)(vi)); and (E) the description of methods to insure compliance with retirement provisions (§ 676.10-4(g)(2)(vii)). The requirement that various aspects of the allowance payment system be described in the Comprehensive Employment and Training Plan (CETP) was also deleted from § 676.26-2 (e)(2), (f)(2), (f)(3), (g), (h)(2), (h)(3) and (j).

As an alternative it was proposed to require, at § 676.22(f) (1), (2) and (3), that prime sponsors maintain descriptions on-site of the personnel merit system, retirement system and allowance payment system. Revisions were also proposed to § 676.26-2 (h)(2) and (h)(3) to reference the revised § 676.22.

One commenter opposed the deletions at §§676.10-4(f)(2) and 676.10-4(f)(3) and expressed concern that these deletions would be viewed by prime sponsors as a DOL retreat from commitment to the concept of open local planning in which interested persons, including aspiring service deliverers and representatives of significant groups in the prime sponsor's jurisdiction, can participate.

The Department believes that the requirement at Section 676.7 that each prime sponsor appoint to its planning council members who are representative of the significant segments of the eligible population, CBO's, public interest groups, etc., and the provision at § 676.8 for involvement in the planning process of groups not directly represented on the council, satisfy the requirement for open planning. Accordingly, the provision is adopted as proposed.

Several commenters recommended that the provision in § 676.10-4(g)(2)(vi) which requires a description of the allowance payment system in the Comprehensive Employment and Training Plan (CETP) be maintained.

These commenters reasoned that this description provides the opportunity to review the proposed system and procedures before they are implemented. One commenter objected to deletion of the requirement at § 676.10-4(g)(2)(vii) of a description of methods to insure compliance with retirement provisions. The majority of commenters welcomed the proposed deletions from the Master Plan. The Department observes that the proposed revisions simply eliminate these descriptions from the already cumbersome Master Plan, while requiring, at Section 676.22(f), that the descriptions be available for on-site review. Accordingly, the provision is adopted as proposed.

Transfers from Annual Plan Subparts to Master Plan; from Annual Plan Subparts to Annual Plan General Narrative

The proposed amendments transferred from the Annual Plan Subparts to the Master Plan the requirements that prime sponsors describe methods for insuring compliance with the annual average wage provisions, for determining PSE wage rates if rates for comparable jobs have not been established and for integrating PSE programs with other programs under the Act. The changes would be effected by deleting §§ 677.58(b)(3) (iv), (v) and (vi) and 678.6(b)(3) (v), (vi), and (vii) and by adding § 676.10-4 (i), (ii) and (iii).

Several commenters stated that consolidation and transfer of the several PSE requirements in the Master Plan would facilitate the stated goal of reducing unnecessary paperwork and noted that these items, which are administrative and standard in nature, are more appropriate for inclusion in the Master Plan. The Department agrees with the commenters. Accordingly, the provision is adopted as proposed.

The proposed amendments also transferred the requirement that prime sponsors provide significant segment charts and related information from the Annual Plan Subparts for Title II-B, C and D, Title VI and VII to the Annual Plan General Narrative, by deleting §§ 677.15(b)(1), 677.56(b)(1), 678.6(b)(1) and 679.5(d)(1)(ii) and adding Section 676.11(c)(5)(i) (A), (B), (C), and (D).

There were no comments on this proposal, which is designed to centralize target group information in the General Narrative. Accordingly, the changes are adopted as proposed.

PSE Occupational Summary

The proposal eliminated the required PSE Occupational Summary by deleting all reference to the Summary in §§ 676.12(f), 676.16(c)(3)(v), 677.56 (a) and (f) and 678.6 (a) and (f).

Two commenters opposed elimination of the PSE Occupational Summary on the ground the document is useful in reviewing prime sponsors' plans for compliance with the regulations. The vast majority of commenters welcomed elimination of the document. Some commenters noted that because of changes in the number of slots and in positions and wages throughout the fiscal year, the information in the Summaries was never complete or accurate. They also noted that in light of targeting of services and individualization of activities through the employability development plans (EDPs), public service employment (PSE) positions are likely to change as participants change. The Department agrees with these comments. Accordingly, references to the PSE Occupational Summary are deleted as proposed.

Annual Report of Training and Completions

The proposed regulations revised § 676.44 to require, at subparagraph (a)(6), a new Annual Report of Training and Completions. The Department received only two comments on this proposed change. Both commenters opposed the additional requirement because of the increase in workload. While the Department understands that the additional report increases prime sponsors' workload, the amendment is adopted as proposed to implement the requirements of Section 313(g)(1)(B) of the Act.

Administrative Costs

The May 20, 1980 proposal amended § 677.39(f) to clarify that the 20 percent of vocational education assistance funds which may be used for administrative costs under § 677.39(e) comes out of the 85 percent to be used to provide services to participants, rather than the 15 percent allocated for coordination, linkage and other activities under § 677.39(f). All comments received on this proposal were favorable. Accordingly, the provision is adopted as proposed.

Regulatory Analysis; Catalog Number

The regulations herein do not fall within the criteria for significant regulations requiring the preparation of a regulatory analysis under the Department of Labor guidelines implementing Executive Order 12044 (43 FR 12661, March 23, 1978). The program for which this rule is promulgated is listed in the Catalog of Domestic Federal Assistance as No. 17.232 "Comprehensive Employment and Training Programs."

Accordingly, the regulations at Part 676, 677, 678 and 679 of Title 20 of the Code of Federal Regulations are amended as set forth below:

PART 676—GENERAL PROVISIONS GOVERNING PROGRAMS UNDER THE COMPREHENSIVE EMPLOYMENT AND TRAINING ACT

1. Section 676.10–4 is amended by deleting subparagraphs 676.10–4(f)(2) and 676.10–4(f)(3) and renumbering the existing 676.10–4(f)(4), (5), (6), (7) and (8) as 676.10–4(f) (2), (3), (4), (5) and (6). Also, subparagraphs 676.10–4(g)(1)(iii), 676.10–4(g)(2)(vi) and 676.10–4(g)(2)(vii) are deleted and the existing subparagraph 676.10–4(g)(2)(viii) is renumbered as 676.10–4(g)(2)(vi).

§ 676.10–4 Narrative description.

The narrative description shall include:

(a) *Statement of purpose.*—(b) *Geographic Area, Population and Labor Market.* (1) A detailed description of the geographic area to be served and demographic characteristics of the population (with data, if available, indicating the number of potential eligible participants from each significant segment and their income and employment status) (sec. 103(a)(1)(A)).

(2) A comprehensive analysis of the local labor market and economic conditions, using existing sources such as the Employment Service, which includes identification of the availability of employment and training in the public and private sectors and the potential for job growth in those sectors (sec. 103(a)(1)(B)).

(3) A statement of long-term program goals related to the improvement of the labor market and economic conditions (sec. 103(a)(2)).

(c) *Approoch.* (1)(i) A description of arrangements to ensure that employment and training services are provided to those individuals most in need, including low-income persons, handicapped individuals, older workers facing artificial barriers to employment and persons of limited English-language proficiency (sec. 103(a)(5)(A)).

(ii) The method used to determine priorities for service based on objective locally established criteria using such factors as employment status, household status, level of employability development, handicap, veteran status, age, race, sex or other criteria established by the prime sponsor (sec. 103(b)(12)).

(2) A description of the recruitment, intake, and selection methods to be used to identify, and place participants in programs (secs. 103(a)(4)(B) and 103(a)(5)(A)).

(3) A description of the system for developing participant employability plans, including the methods for determining the appropriate training and services to provide to each participant (sec. 205).

(4) A description of job development and placement services, and how these services will relate to, and be coordinated with, other area employment and training opportunities not provided under the Act, including any special activities designed to orient participants for their job responsibilities (sec. 103(b)(8)).

(5) A description of arrangements to provide participants with job search assistance, counseling and other services (sec. 103(a)(4)(B)).

(6) A description of methods to insure compliance with personnel procedures and collective bargaining agreements where participants are engaged in employment and training activities (sec. 103(a)(18)).

(d) *Service Deliverers.* (1) A description of procedures and criteria used to select service deliverers in accordance with § 676.23 (sec. 103(a)(3)(B)).

(2) A description of the criteria used to designate programs of demonstrated effectiveness (sec. 103(a)(4)(A)).

(3) A description of procedures for giving special consideration to employment and training programs of demonstrated effectiveness which are operated by community-based organizations (sec. 123(1)).

(e) *Coordination.* (1) A description of the methods for coordination between the prime sponsor and local State Employment Security Agencies, as provided in the agreement under § 676.23(g) (sec. 103(a)(15)).

(2) A summary of the agreement made with State or local educational agencies or post-secondary institutions for the conduct of employment and training programs (sec. 103(b)(16)).

(3) A description of procedures used to ensure the participation of, and consultation with, local education agencies, vocational education agencies, community-based organizations, Federal and State agencies, organized labor, apprenticeship programs, business and other institutions and organizations, including women's organizations, in the conduct of programs (sec. 103(a)(8)(A) and (9)).

(4) A description of methods to coordinate programs with employment and training programs administered by the Secretary and other federally-funded programs in the area (sec. 103(a)(8)(B)).

(5) A description of arrangements for the use of skill centers established under section 231 of the Manpower Development and Training Act of 1962 and efforts to promote maximum feasible use of apprenticeship or other on-the-job training opportunities available for veterans under Section 1787 of Title 38 United States Code, and coordination with the appropriate apprenticeship agency (sec. 103(a)(8)(A) and (c)).

(6) A description of procedures concerning academic credit developed in conjunction with the appropriate local educational agency or institution of higher education and approved by the appropriate State educational agency (sec. 103(a)(16)).

(7) A description of plans and activities to coordinate, strengthen, and expand employment and training activities with economic development activities in the private sector (sec. 103(a)(20)).

(8) A description of arrangements for implementing responsibilities under the Targeted Jobs Tax Credit program established by the Revenue Act of 1978.

(f) *Prime Sponsor Planning.* (1) A description of the functions and responsibilities of the prime sponsor Planning Council (secs. 109(e)and 103(a)(10)).

(2) A list of the groups within the community represented on the council (sec. 109(b))

(3) A description of procedures used to select members of the council (sec. 103(a)(4)(C)).

(4) A description of the methods and arrangements for the participation of groups not directly represented on the council as required by § 676.6, Planning Process, (secs. 103(a)(6) and 103(a)(14)).

(5) A description of efforts to involve the private sector in the design and implementation of programs (sec. 103(b)(8)).

(6) A description of coordination and consultation linkages between the Prime Sponsor Planning Council, Youth Council, and Private Industry Council (secs. 109(f) and 103(a)(4)(C).

(g) *Management and Administration.* (1) Organizational Structure and Staffing.

(i) A description of the prime sponsor's organizational structure (sec. 103(a)(4)(A)).

(ii) A description of procedures to recruit and select administrative staff (sec. 103(a)(4)(A)).

(2) Administrative Controls. A description of arrangements and procedures for:

(i) Management Information System (including accounting, participant tracking system, client record and reporting systems) (sec. 103(a)(11));

(ii) Evaluation and monitoring system, including the independent unit responsible for monitoring programs and subrecipients (secs. 103(a)(12) and 121(o)(3));

(iii) Fiscal and program auditing, including procedures for auditing subrecipients and bonding (secs. 103(a)(12) and 134);

(iv) Supervising deliverers of services (sec. 103(a)(4)(A));

(v) Determining and verifying eligibility of applicants, including the quarterly sampling procedures as required in § 676.75 (sec. 103(a)(11));

(vi) A description of procedures to ensure that funds received under the Act will be used in compliance with the maintenance of effort provisions set forth in § 676.73 (secs. 121 (e) and (g), 122 (c) and (e)).

(3) Grievance procedures. A description of the procedures for resolving any complaints or grievances alleging violation of the Act, regulations, and CETP from CETA participants, contractors, subrecipients and other parties (secs. 106 and 103(a)(4)(A)).

(h) *Nondiscrimination and equal opportunity.* (1) A description of the mechanisms which will be used to ensure nondiscrimination and the provision of equal opportunities (sec. 103(a)(5)(B)).

(2) A description of plans and procedures concerning affirmative action, as described in § 676.54.

(3) A description of efforts and procedures to eliminate artificial barriers to employment and occupational advancement for CETA participants, including the hiring, licensing and contracting activities of subrecipients and contractors of the prime sponsor (secs. 103(a)(19) and 103(b)(11));

(4) A description of efforts to remove architectural barriers to employment of the handicapped (sec. 121(a)(5)).

(i) *Public Service Employment.* (1) An explanation of the basis for distributing funds and the basis upon which job allocation to each employing agency will be made (secs. 123(i) and 606(b)).

(2) A description of the process for selecting project applicants including (sec. 605 (a) and (b)):

(i) The methods and criteria to be used for soliciting and approving project applicants;

(ii) The role of the planning council in the approval process (sec. 109(e)(1));

(3) A description of the items required on the project applications including at least the following information (sec. 605(b)):

(i) Description of project;

(ii) Goals and objectives;

(iii) Number of persons to be served; and

(iv) Length of project.

(4)(i) A description of the methods to be used to ensure that, at the end of the fiscal year, the annual average wage rate does not exceed the area's required annual average wage rate, as described in § 676.28–1(c)(3);

(ii) A description of the methods determine wage rates if the wage rates for comparable jobs have not been established; and

(iii) A description of how the public service employment program is integrated with other programs under the Act.

2. Section 676.11(c)(5)(i) is amended by adding new subparagraphs (A) through (D). Accordingly, § 676.11 is revised to read as follows:

§ 676.11 Annual plan.

(a) *General.* (1) The Annual Plan including its subparts shall be prepared pursuant to provisions in this section and §§ 676.41, 677.15, 677.33, 677.56, 678.6, 679.4, 680.5, 680.104, 680.207, and 680.304 as appropriate.

(2) In submitting the Annual Plan for RA approval, prime sponsors shall comply with the comment and publication procedures in § 676.12 and the planning process in § 676.6. The Annual Plan shall consist of an Application for Federal Assistance (SF–424), Narrative Description and Program Planning Summaries, Budget Information Summaries and other forms as appropriate.

(b) *Application for Federal Assistance.* The Application for Federal Assistance (SF–424) shall identify the total amount of funds requested for programs under Parts 677, 678, 679, and 680.

(c) *Narrative Description.* The narrative description shall include:

(1) A summary of any evaluation conducted of the program(s) in the previous year and current year to date and a description of the use made of such evaluation (sec. 103(b)(14)).

(2) A detailed summary of the expenditures made during the preceding year, and of results achieved and changes made in the Annual Plan for the program year (sec. 103(b)(5)).

(3) A summary of the extent to which special needs of the handicapped have been met during the previous year, including the number served, type of training provided and the number placed in unsubsidized employment (sec. 103(b)(15)).

(4) A list of the specific training subgrants and agreements from the current year, including the rate of

positive termination for program completers (sec. 103(b)(13)).

(5) Approach.

(i) A description of specific programs or services, including apprenticeship programs, if any, designed specifically for those segments of the population who are experiencing severe handicaps in obtaining employment, including individuals who lack credentials, require basic and remedial skills development, have limited English-language proficiency, are handicapped, are disabled or Vietnam-era veterans, are offenders, are displaced homemakers, are public assistance recipients, are persons 55 years of age or older, are youth, are single parents, are women or other individuals having particular disadvantages in the labor market (sec. 103(b)(3); sec. 214; sec. 215; and sec. 216).

(A) For Title II Part B and C. (*1*) Identification of those groups that have been determined for priority of service and most in need.

(*2*) A breakout of the eligible population by race, sex, national origin, and age, and the planned level of services to be provided for these significant segments in terms of the percent each group will constitute of those to be served (sec. 103(b)(2)). Where the planned level of service to any significant segment varies above or below the group's incidence in the eligible population, a justification must be provided.

(B) For Title II Part D. A breakout of the eligible population by race, sex, national origin and age, and the planned level of services to be provided these groups in terms of the percentage each group will constitute of those to be served (sec. 103(b)(2)). Where the planned level of service to any significant segment varies above or below the group's incidence in the eligible population, a justification must be provided.

(C) For Title VI. A breakout of the eligible population by race, sex, national origin and age, and the planned level of services to be provided these groups in terms of the percentage each group will constitute of those to be served (sec. 103(b)(2)). Where the planned level of service to any significant segment varies above or below the group's incidence in the eligible population, a justification must be provided.

(D) For Title VII. An analysis of the eligible population by race, sex, national origin and age, and a presentation of the planned levels of service to be provided these significant segments in terms of the percent each group will constitute of those to be served (sec. 103(b)(2)). Where the planned level of service to any significant segment varies above or below the group's incidence in the eligible population a justification must be provided.

(ii) A statement of any intention to apply for and utilize funds provided under the Act which are not allocated by formula (sec. 103(b)(9)).

(iii) A description of the efforts to be undertaken to increase the participation of qualified disabled and Vietnam-era veterans in accordance with § 676.20a(a) (sec. 121(b)(2)(A)).

(iv) A description of the plans and methods to be used to provide opportunities for minority-owned businesses and small businesses (including those owned by women), to compete for procurement contracts such as the use of set-asides where appropriate (sec. 121(k)).

(v) A description of how program activities will contribute to occupational development, upward mobility, development of new careers and overcoming of sex stereotyping, including procedures which will lead to skill development and job opportunities for participants in occupations traditionally limited to individuals of the opposite sex (secs. 103(a)(5)(C) and 121(f)(1)).

(vi) A description of any outstationing of PSE participants in accordance with § 675.25 concerning employment and training activities and the reasons why such outstationing is necessary.

(vii) A description of provisions to safeguard programs from political activities.

(viii) A description of the plans and methods to be used in providing special consideration in filling public service jobs to qualified public assistance recipients (or persons who would be eligible to receive public assistance according to established criteria if they would apply for such assistance) and special disabled and Vietnam-era veterans with special emphasis on those who served in the Indo-China theater on or after August 15, 1964 and on or before May 7, 1975 (sec. 122(b)).

(6) Annual Plan Subparts for each program to be operated under the Act as required by §§ 677.15, 677.33, 677.56, 678.6, 679.4, 680.5, 680.104, 680.207, and 680.304.

3. Section 676.12 is amended to delete paragraph (f), and existing paragraphs (g) and (h) have been relettered as 676.12 (f) and (g). Accordingly, § 676.12 is revised to read as follows:

§ 676.12 Comment and publication procedures relating to submission of the CETP.

(a) Prime sponsors shall make public the provisions of the Plan prior to submission to the RA through such means as public hearings, public notice in newspapers, bulletins, or other media, including publications that primarily serve significant segments of the eligible population (sec. 104(a)(3)).

(b)(1) Each prime sponsor shall publish at a minimum in one issue of a newspaper or newspapers of general circulation in the prime sponsor's area (including minority newspapers, where applicable) a statement indicating the following information:

(i) The source of funds;

(ii) The amount requested;

(iii) A brief summary of the purpose of the proposed program and activities; and

(iv) The location and hours when the CETP and a comparison of performance against the prior year's plan through the most recent quarter, can be reviewed and the address and phone number where questions and comments may be directed.

(2) The prime sponsor shall publish the statement at least 45 days prior to the submission of the CETP to the RA in order to allow at least 30 days of review and comment. In addition, a copy of the newspaper article shall be transmitted to the RA (sec. 104(a)(3)).

(3)(i) The prime sponsor may include a statement indicating that subsequent modifications to the CETP will not be subject to these publication requirements: *Provided*, That the notice states that interested groups, organizations, or individuals may notify the prime sponsor of their desire to review any subsequent modification during the grant year.

(ii) The prime sponsor shall maintain a list of such notifications and provide these parties with copies of modifications 30 days prior to submission to the RA.

(c)(1) Each prime sponsor shall, at least 45 days before submitting its CETP to the RA, allow at least 30 days for review and comment by providing the complete Plan, to the Governor, the State employment and training council, the prime sponsor planning council, appropriate labor organizations, and the private industry council, with notice of the opportunity to review the plan going to appropriate units of general local government in its area, and appropriate native American recipients (sec. 104(a)(1)).

(2)(i) Copies of the comments and recommendations of the Governor, the State employment and training council, and the prime sponsor planning council shall be transmitted to the RA with submission of the Plan, or if the comments are received after the submission of the Plan, they may be sent separately to the RA (sec. 104(b)).

(ii) The prime sponsor shall provide an explanation for the rejection of recommendations made by the planning council, including minority reports, which were not included in the Plan (sec. 103(a)(18)).

(d) At the same time, each prime sponsor shall provide written notification of the availability of the Plan to each House of the State Legislature for appropriate referral, to appropriate community-based organizations of demonstrated effectiveness including appropriate women's organizations, veterans organizations, and appropriate educational and apprenticeship agencies and institutions (sec. 104(a)). Prime sponsors shall allow at least 30 days for review and comment.

(e) If a State or areawide clearinghouse notifies a prime sponsor that it wishes to review the complete Plan, the applicant shall also provide a copy of such to the clearinghouse(s) 45 days prior to its submission to the RA.

(f) A prime sponsor shall acknowledge all written comments and shall inform in writing any party submitting a substantive written comment of whether any Plan revision will be made in response to the comment, and the reasons for the prime sponsor's determination. The prime sponsor shall provide, upon request, copies of all written comments to the planning council and the Governor (sec. 104(b)).

(g) If no comments are received from an A–95 Clearinghouse, or if the Clearinghouse has not requested to review the CETP, the prime sponsor applicant shall so note this on Standard Form 424.

4. Section 676.16 is amended by deleting subparagraph (c)(3)(v). Accordingly, § 676.16 is revised to read as follows:

§ 676.16 Modifications.

(a) The RA may require modification of the CETP only once each fiscal quarter, with the exception of changes in the funding allocation level or to ensure compliance with the Act and regulations total amount of funds requested for program under Parts 677, 678, 679, and [108]).

(b) Modifications of the Master Plan.

(1) The Assurances and Certifications may only be modified by the RA.

(2) Prime sponsors shall obtain prior RA approval of a modification initiated by a prime sponsor which proposes to make a significant change in the Narrative Description.

(3) Modification requests from prime sponsors shall consist of the following:

(i) Approval Request Letter;

(ii) Revised Narrative Description or revised Assurances and Certifications, if appropriate; and

(iii) A copy of the newspaper announcement required in paragraph (d) of this section, for significant changes to the narrative description.

(c) Modifications to the Annual Plan.

(1) Prior RA approval is required to modify:

(i) The duration of the Annual Plan or Subparts of the Annual Plan;

(ii) The Annual Plan allocation;

(iii) An increase or decrease of 15% or more in the cumulative number of individuals to be served, planned enrollment levels for program activities, planned placements, terminations or individuals to be served within significant segments;

(iv) For Annual Plan Subparts of $100,000 or less, a cumulative transfer of $15,000 among program activities or cost categories;

(v) For Annual Plan Subparts of over $100,000, the cumulative transfer among program activities or cost categories of $50,000 or more or 15 percent of the total plan budget, whichever is greater; or

(vi) Significant changes in program design.

(2) Prime sponsors may not modify their Annual Plan solely to adjust planned performance to meet actual performance.

(3) Modifications to the Annual Plan requested by prime sponsors shall consist of:

(i) Approval Request Letter;

(ii) Revised Form SF 424 (if required);

(iii) Revised Program Planning Summary and Budget Information Summary for current and future quarters only;

(iv) Description of any conforming changes made in the Narrative Descriptions.

(4)(i) Modification of the Annual Plan pursuant to paragraph (c)(1) of this section must be made within 30 days from the beginning of the quarter in which changes are effective.

(ii) A prime sponsor may make any change, consistent with the regulations, in its Program Planning Summary, Budget Information Summary, or Narrative Description which is not set out in paragraph (c)(1) of this section without prior RA approval, but must notify the RA of any such change within 30 days from the beginning of the quarter in which the changes are effective.

(d) Publication and comment procedures specified in § 676.12 shall apply to modifications for which prior RA approval is necessary except that:

(1) Each prime sponsor shall comply with the comment and publication requirements at least 30 days prior to submission of its modification to the RA.

(2)(i) The required newspaper announcement shall include a notice of the prime sponsor's intent to modify, a brief summary of the nature and purpose of the proposed modification, the location where and hours when the complete modification can be reviewed, and the telephone number to which questions may be directed.

(ii) This publication requirement may be waived by the prime sponsor if the notification process under § 676.12(b)(3)(i) and (ii) has been met.

(3)(i) The prime sponsor shall clear modifications through the A–95 clearinghouse only if:

(A) There is a cumulative increase or decrease in funds equal to or more than 15 percent of the allocation for any Annual Plan Subpart for the current program year; or

(B) The Annual Plan, or any Subpart, is extended for a period of more than 3 calendar months.

(ii) When A–95 clearance is required, the notice from the prime sponsor to the clearinghouse shall consist of a revised SF 424 and a brief description of the anticipated modification. If within 15 days of the notice, the prime sponsor receives no notice from the A–95 clearinghouses that it wishes to review the modification, the prime sponsor may submit the modification to the RA without A–95 clearance.

(e) The RA shall approve or disapprove proposed modifications fully or partially within 30 days of receipt, and, within 7 days of such action, notify the prime sponsor and the Governor in writing of the decisions. The procedures in § 676.14(b) and (c)(1) concerning review, approval and disapproval shall apply to modifications.

(5) Section 676.22 is amended by adding paragraph (f). Accordingly § 676.22 is revised to read as follows:

§ 676.22 Program management systems.

(a) All recipients shall establish management systems to assess all programs. Recipients shall take necessary corrective action to remedy deficient performance under their grant and to plan for more effective programs.

(b) Prime sponsors shall institute and maintain effective systems for the overall management of their programs, including but not limited to:

(1) Program monitoring systems as described in § 676.75–2;

(2) Eligibility verification systems as described in § 676.75–3;

(3) Complaint and Hearing Procedures as described in § 676.83;

(4) Mechanisms for taking immediate corrective action where problems have been identified.

(c) All recipients shall establish and maintain financial management and participant tracking systems in accordance with § 676.34. Such systems shall be designed to enable the recipient to effectively manage its program and to provide information necessary to design program activities and delivery mechanisms best suited to resolve employment and training problems (Sec. 104(c)(3)).

(d) Each recipient shall establish and use procedures for the systematic assessment on a quarterly basis of program performance in relation to the goals contained in its grant. Recipients shall:

(1) Establish written quantified goals for each activity and service and for each subrecipient based on the specific program purposes of the service, activity or subgrant;

(2) Establish and use procedures for collecting performance information (including information on the status of individuals subsequent to entering unsubsidized employment) and for assessing such information in terms of the goals contained in its grant;

(3) Establish and use procedures for identifying performance problems and for developing and implementing appropriate remedial actions (sec. 103(a)(4)(A)).

(e) Recipients shall establish and use procedures whereby the information collected and assessments conducted shall be considered in subsequent program planning and in the selection of deliverers. Prime sponsors shall provide program assessments to their Planning Council and, as appropriate, to their Youth and Private Industry Councils.

(f) Each prime sponsor shall maintain on-site a description of its:

(1) Personnel merit system,

(2) Allowance payment system, and

(3) Retirement system.

These descriptions must be available for review by authorized DOL staff.

8. Section 676.26–2 is amended at paragraphs (e)(2), (f)(2), (f)(3), (g), (h)(2), (h)(3) and (j) to delete all references to the CETP. Further, paragraphs (h)(2) and (h)(3) are amended by adding the phrase "with the conditions for such increases to be maintained on site as required in § 676.22". Accordingly, § 676.26–2 is revised to read as follows:

§ 676.26–2 Payment of allowances.

(a) *General.* (1) Except for persons receiving incentive allowances, a basic hourly allowance shall be paid to participants for time spent in classroom training. In addition, allowances may be paid to a participant enrolled in *Services* and *Other Activities* when such services or activities are combined with another activity or are provided on a regularly scheduled basis.

(2) No participant shall receive compensation for classroom training for more than 104 weeks in a 5-year period, beginning October 1, 1978, or the subsequent date of the participant's initial enrollment in CETA. Participants who have exhausted the 104-week limitation on receipt of compensation may continue to be enrolled in classroom training without payments: *Provided,* That they have not exhausted the 30-month limitation on total CETA participation described in § 676.30. (sec. 121(c)(1)).

(b) *The allowance payment system.* A standard system for payment of allowances shall be maintained by every recipient to ensure prompt and efficient payment to all participants (sec. 124(a)). The standard payment system shall consist of a uniform set of procedures, but may be operated by one or more service deliverers. It shall include:

(1) Determination of entitlement and computation of amount to be paid;

(2) Maintenance of a system for requesting payment of training allowances, including the certification, issuance and distribution of payments;

(3) Maintenance of payment records and preparation of required statistical and fiscal reports;

(4) Maintenance of a system to detect and collect overpayment;

(5) Issuance of written notification to participants when allowances are reduced, denied or overpaid; and

(6) Arrangements with other agencies to obtain information to minimize unauthorized payments, including arrangements with:

(i) The State Employment Security Agency for the initial and periodic verification of a participant's receipt of unemployment compensation (sec. 124(a));

(ii) Appropriate agencies for verification of public assistance payments (e.g., local welfare agencies); and

(iii) Training facilities for submittal of payment requests and certifications of attendance.

(c) *Selection of service deliverer.* The recipient shall provide a standard allowance payment system either directly or through an organization or organizations it considers appropriate for its particular circumstances. The recipient, in selecting the service deliverer for the payment of allowances, shall give first consideration to the use of the unemployment insurance component in the SESA before using other agencies that may have experience in operating an allowance payment system (sec. 103(a)(7)).

(d) *Basic allowances.* (1) A basic hourly allowance shall, except as provided in paragraphs (h) and (j) of this section, equal the higher of:

(i) The minimum hourly wage prescribed by State or local law for most employment in the recipient's area, multiplied by the number of hours during which the participant attends or is absent for good cause; or

(ii) The minimum hourly wage specified in Section 6(a)(1) of the Fair Labor Standards Act, multiplied by the number of hours during which the participant attends or is absent for good cause.

(2) For participants who are institutionalized, including prisoners, all or part of the allowances, as determined by the recipient and the head of the institution, may be held in reserve by the institution and delivered upon the participant's release from the institution. The institution shall not retain any portion of these funds, or interest earned on these funds, while held in reserve. In addition, dependent allowances may not be held in reserve.

(e) *Dependent allowances.* (1) Participants receiving basic allowances or who would be receiving full basic allowances were it not for adjustments under paragraph (h) of this section shall receive dependent allowances of $5 per week for each dependent in excess of two dependents, up to a maximum of $20 for six or more dependents (sec. 124(a)(1)).

(2) Dependent allowances shall be reduced prorata for absence without good cause (sec. 124(a)).

(f) *Incentive allowances for persons receiving public assistance.* (1) Incentive allowances in the amount of $30 per week, in lieu of basic allowances, shall be paid to participants, including youths participating in summer youth programs under Subpart C of Part 680, who are receiving public assistance, or whose needs or income are taken into account in determining public assistance payments to others. Youths participating in programs under Subparts A, B, and D of Part 680 shall be paid basic allowances, if applicable, regardless of their public assistance status (sec. 124(a)(3)).

(2) Incentive allowances shall be reduced prorata for absences without good cause. The methodology (e.g., daily or hourly proration) for making the reduction shall be described in the recipient's CETP.

(3) Incentive allowances may be adjusted downward, provided that the adjustment shall not result in an incentive allowance payment at a rate less than the higher of the Federal, State, or local minimum wage multiplied by the number of hours of participation or absences with good cause.

(4) Incentive allowances shall be disregarded in determining the amount of public assistance payments individuals are entitled to receive under Federal or federally assisted public assistance programs (sec. 124(a)(3)).

(g) *Additional allowances.* Additional reasonable allowances, such as allowances for transportation or subsistence, may be paid to participants to cover extraordinary costs associated with participation in an activity.

(h) *Adjustments in basic allowances.* (1) The basic allowance shall be reduced on a weekly basis by the amount of any unemployment compensation received by the participant for the same week. The basic allowance shall not be reduced because of any unemployment compensation that is payable for a week(s) prior to the participant's enrollment in an activity where allowances are paid. If unemployment compensation is paid on a biweekly basis, it shall be prorated over the two weeks before the allowance is reduced. Where eligible, participants should be encouraged to apply for and claim unemployment compensation if they are not already receiving such benefits (sec. 124(a)).

(2) The basic allowance may be adjusted upward if conditions for such increases are described in documentation maintained on site as required in § 676.22.

(3) Periodic increases to the basic allowances may be provided as an incentive to participation if the conditions for such increases are described in documentation maintained on site as required in § 676.22.

(4)(i) The basic hourly allowance for a participant may be reduced, at the option of the recipient, on a weekly basis, by the total amount of any Basic Education Opportunity Grant (BEOG) during the period in which the participant is enrolled in the classroom training; or

(ii) The recipient may make arrangements with training institution to apply BEOG payment to tuition, books and related training costs normally funded by the recipient. The recipient should then pay the training institution the difference, if any, between the actual training costs and the BEOG.

(5) The basic allowance may be reduced by the amount of wages received by classroom training participants who are also enrolled full-time during the same payment period in work experience, PSE or OJT. The determination of whether the activity is full-time shall be based on the number of hours that constitute full-time employment for employees similarly employed.

(i) *Rounding of amount of allowance payable.* Allowance payments under this section, if rounded, may only be rounded to the next higher multiple of a dollar.

(j) *Waivers of allowances.* (1) The payment of all or part of the basic allowance may be waived only in accordance with paragraphs (j) (2) or (3) of this section. When all or part of the basic allowance is waived, the recipient shall maintain documentation that the waiver accomplishes the goals established by the recipient when requesting the waiver. However, when participants, who had received either basic or incentive allowances continue to participate in classroom training without compensation after their 104 weeks of receipt of allowances, these waiver provisions do not apply, since these participants have exhausted their eligibility for allowances and are not waiving them (sec. 1239(a)).

(2) Waivers of basic allowances shall be allowable ony when the following conditions have been met and documented:

(i) That the waiver will be applied to the total enrollment in a course and will not be imposed on an individual basis, except as provided in paragraph (j)(3) of this section; and

(ii) That the waiver will not have the effect of denying participation to individuals who could not participate without receipt of allowances; and

(iii) That the waiver will increase the number of participants served or the level of services provided; and

(iv) That the waiver will otherwise promote the purposes of the Act; and

(v) That all participants for whom allowances are waived will be so notified in writing; and

(vi) That documentation of the participant's notification of the waiver will be made a part of the participant's record.

(3) In exceptional circumstances, individual waivers, when described in the CETP or grant may be granted under the following conditions:

(i) The waiver is at the written agreement of the participant; and

(ii) All of the funds allocated in the Budget Information Summary for allowances have been obligated and training opportunities are still unfilled and available.

(4) The dependent allowances may not be waived, except in cases where the entire basic allowance is waived.

(5) Allowance payments shall not be waived solely because a participant receives benefits through the Vietnam Era Veteran's Readjustment Assistance Act, as amended.

(6) Incentive allowances shall not be waived.

(k) *Repayments.* Recipients shall require participants to repay the amount of any overpayment of allowances under this Part, except if the overpayment was made in the absence of fault on the part of the participant. Where the recipient does not require repayment, the recipient shall maintain written documentation of the overpayment specifying the absence of fault on the part of the participant. Where the recipient requires repayment, any overpayment not repaid may be set off against any future allowance or other payments under the Act to which the participant may become entitled, but in no case shall the wage be reduced below the applicable minimum wage.

7. Section 676.44 is amended by adding subparagraph (a)(6). Accordingly, § 676.44 is revised to read as follows:

§ 676.44 Reporting requirements for prime sponsors.

(a) Each prime sponsor shall submit five periodic reports which will be used by the Secretary to assess its performance in carrying out the objectives of the Act. Reports 1, 2, and 3 of this section shall be prepared to coincide with the ending dates of Federal fiscal year quarters. These five reports are:

(1) The Program Status Summary (sec. 127(d)(1));

(2) The Financial Status Report (sec. 127(d)(3));

(3) The Quarterly Summary of Participant Characteristics (sec. 127(d)(2));

(4) Annual CETA Program Activity Summary (sec. 127(d)); and

(5) Annual Report of Detailed Characteristics (sec. 127(d)). Prime sponsors may from time to time be required to prepare and submit additional reports requested by DOL and other Federal agencies for the performance of the legal responsibilities of these agencies. Detailed descriptions of the five reports are in the *Forms Preparation Handbook.*

(6) The Annual Report of Training Enrollments and Completions (sec. 313(g)).

(b) The Periodic reports shall be sent by the prime sponsor to be received by the RA no later than 30 days after the

end of the reporting period. The annual reports shall be sent to arrive no later than 90 days after the end of the fiscal year.

(c) Separate reports will be required for each Annual Plan Subpart.

PART 677—PROGRAMS UNDER TITLE II OF THE COMPREHENSIVE EMPLOYMENT AND TRAINING ACT

8. Section 677.15 is amended by deleting paragraph (b)(1), and existing paragraphs (b)(e) and (3) have been renumbered as 677.15(b)(1) and (2). Accordingly, § 677.15 is revised to read as follows:

§ 677.15 Annual plan subpart.

(a) *General.* To receive financial assistance under Parts B and C of Title II, a prime sponsor shall submit the following information, which will become part of the Annual Plan described in § 676.11. This Subpart shall consist of a Narrative Description, Program Planning Summary, and Budget Information Summary specific to Parts B and C of Title II.

(b) The Narrative Description shall include:

(1) *Results and Benefits.* Provide a statement on:

(i) Specific quantified performance and placement goals, by program activity;

(ii) Any performance and placement goals, with respect to groups designated to be served (sec. 103(b)(4));

(iii) Explain any variation between the prime sponsor's performance and placement goals and the Secretary's performance standards (sec. 103(b)(4)); and

(iv) Any non-quantifiable goals or outcomes.

(2) *Approach.* (i) Program Activities and Services.

(A) A description of the program activities and services to be provided including a description of how the proposed work experience activities conform to the program requirements for work experience as distinct from PSE.

(B) A description of the circumstances that warrant a waiver of the work experience limitations set forth in § 676.30(g)(2), if appropriate.

(C) A description of upgrading or retraining activities including the prime sponsor's system for determining eligibility for participation, the criteria used for selection of occupations and employers, and the length of the training period (sec. 221(a) and (b)).

(ii) A description of arrangement to ensure that funds under Subparts 2 and 3 of Part A Title IV of the Act will not be used to replace opportunities available for eligible youth under Title II (secs. 421 and 451).

(iii) A list of the selected service deliverers (summary of recipients and contractors) and the services or facilities to be provided by each. (sec. 103(b)(7)).

(c) The prime sponsor shall attach a Program Planning Summary (PPS) which reflects the goals, objectives and activities for the program year.

(d)(1) The prime sponsor shall attach a Budget Information Summary (BIS) containing the proposed budget for programs under Parts A, B, and C of Title II.

(2) If any item of capital equipment which individually costs more than $1,000 is to be purchased, a list, including quantity and prices of items, must be provided.

(3) If administrative costs are planned to exceed 20% of the funds allocated, adequate justification must be provided.

9. Section 677.39 is amended at paragraph (f). Accordingly, § 677.39 is revised to read as follows:

§ 677.39 Vocational education activities.

(a) The Governor shall provide vocational education funds received by special grant to the State Vocational Education Board as described in § 677.34 of this Subpart D and approve the plans for expenditure of those funds.

(b)(1) The State Vocational Education Board representatives will provide the training and services detailed in a nonfinancial agreement with the prime sponsor as described in § 677.35 of this Subpart D.

(2) If no Vocational Education Board exists within a State, the Governor may provide financial assistance to an alternate agency which serves the same purpose as a State Vocational Education Board. If the Vocational Education Board refuses to participate in this program the Governor shall make alternative arrangements to provide these services.

(c) Vocational education services which may be provided by a State Vocational Education Board include, but are not limited to, basic or general education, educational programs conducted for offenders, institutional training, and supportive services. Vocational education funds may be used for the payment of allowances to participants in vocational education training and for administrative costs incurred for the vocational education programs funded under the Act.

(d) When funds for vocational education services are used for the payment of allowances to participants, the method of payment utilized must be that of the prime sponsor whose participants are receiving such allowances.

(1) Where the prime sponsor has an established delivery system for the payment of allowances pursuant to § 676.26 (Compensation for participants), the State Vocational Education Board shall utilize the agency or agencies administering that system.

(2) Where the prime sponsor has no allowances payment delivery system, the method of payments shall be developed between the prime sponsor and the State Vocational Education Board subject to the requirements of § 676.26.

(e) For funds for vocational eduction assistance, not less than 85 percent shall be used for providing vocational education services to prime sponsor's participants in programs under the Act.

(1) Of this amount, not more than 20 percent of the funds used for such education and services may be used for administration.

(2) At least fifty percent of the vocational education funds allocated to administration shall be made available to local prime sponsor areas unless adequate justification for not doing so is provided to the RA by the Governor.

(f) Subject to the limitations specified in § 676.40 (allowable costs under CETA), remaining funds may also be used by the Vocational Educational Board for the following activities:

(1) To coordinate programs under this Act with existing vocational education programs;

(2) To coordinate the utilization of funds under this Act with the Vocational Education Act, as amended, to enhance economic growth and development in the State;

(3) To develop linkages between vocational education and training programs under this Act with private sector employers;

(4) To provide technical assistance to vocational education agencies to aid them in making cooperative arrangements with appropriate prime sponsors;

(5) To provide information, curriculum materials and technical assistance in curriculum development and staff development to prime sponsors.

(g) Of the total amount provided for vocational education assistance, the Governor may retain only the nominal amount of administrative funds necessary to carry out his or her responsibilities to provide for passing the funds through to the Vocational Education Board.

10. Section 677.56 is amended by deleting at paragraph (a) the words "PSE Occupational Summary" and by deleting paragraphs (b)(1), and

subparagraphs (b)(3) (iv), (v), and (vi) and paragraph (f) and renumbering the existing 677.56(b) (2), (3), and (4) as 677.56(b) (1), (2), and (3). Accordingly, § 677.56 is revised to read as follows:

§ 677.56 Annual plan subpart.

(a) *General.* To receive financial assistance under Part D of Title II of the Act, a prime sponsor shall submit the following information as the Annual Plan Subpart which will become part of its Annual Plan:

Narrative Description.
Program Planning Summary.
Budget Information Summary.
Monthly Schedule.

(b) *Narrative Description.* The narrative description shall include:

(1) *Results and Benefits.* The results and benefits expected including:

(i) Specific quantifiable performance and placement goals by program activity;

(ii) Performance and placement goals with respect to groups designated to be served (sec. 103(b)(4));

(iii) The relationship between the prime sponsor's performance and placement goals and the Secretary's performance standards (sec. 103(b)(4)); and

(iv) Non-quantifiable goals which the prime sponsor intends to achieve.

(2) *Approach.* The approach to be used in producing the expected results and benefits, including:

(i) Program activities and services to be provided, including a description of the arrangements for the provision of training and services that will assist participants in obtaining unsubsidized employment;

(ii) How the prime sponsor will provide for an orderly transition from the number of jobs funded in the current fiscal year to the number of jobs that will be funded with the allocation for the next fiscal year (sec. 602(c));

(iii) The wages or salaries and fringe benefits for public service employment participants and a comparison of these with the wages or salaries and fringe benefits paid to person in similar public occupations by the same employer; levels of employment not supported under the Act; layoffs, and hiring and promotional freezes in each employing agency (sec. 103(b)(10)).

(3) *Service Deliverers.* A list of the selected service deliverers and the services or facilities to be provided by each (summary of subrecipients and contractors).

(c) *Program Planning Summary (PPS).* A PPS reflecting the goals and activities for the program year.

(d) *Budget Information Summary (BIS).* A BIS containing the proposed budget and a list specifying the quantity and price of each piece of capital equipment exceeding $1,000 to be purchased during the fiscal year.

(e) *Monthly Schedule.* A monthly schedule which contains an estimate of the total number of participants who will be enrolled in Title II, Part D programs at the end of each month and the total cumulative expenditures expected to have been incurred by the end of each month by the PSE and non-PSE programs.

PART 678—PUBLIC SERVICE EMPLOYMENT PROGRAMS UNDER TITLE VI OF THE COMPREHENSIVE EMPLOYMENT AND TRAINING ACT

11. Section 678.6 is amended by deleting at paragraph (a) the words "and PSE Occupational Summary" and by deleting paragraphs (b)(3)(v), (vi), (vii); (b)(1) and (f), and renumbering the existing 678.6(b)(2), (3) and (4) as 678.6(b)(1), (2) and (3). Accordingly § 678.6 is revised to read as follows:

§ 678.6 Annual plan subpart.

(a) *General.* To receive financial assistance under Title VI of the Act, a prime sponsor shall submit the following information as the Annual Plan Subpart which will become part of its Annual Plan: Narrative Description, Program Planning Summary, Budget Information Summary and Monthly Schedule.

(b) (1) *Results and Benefits.* The results and benefits expected including:

(i) Specific quantifiable performance and placement goals by program activity;

(ii) Performance and placement goals, with respect to groups designated to be served (sec. 103(b)(4));

(iii) The relationship between the prime sponsor's performance and placement goals and the Secretary's performance standards (sec. 103(b)(4)); and

(iv) Non-quantifiable goals which the prime sponsor intends to achieve.

(2) *Approach.* The approach to be used in producing and expected results and benefits including:

(i) Program activites and services to be provided, including a description of the arrangements for the provision of training and services that will assist participants in obtaining unsubsidized employment;

(ii) How the prime sponsor will provide for an orderly transition from the number of jobs funded in the current fiscal year to the number of jobs which will be funded with the allocation for the next fiscal year (sec. 602(c));

(iii) The extent to which the prime sponsor will supplement wages of persons other than those who were in the program on September 30, 1978, including:

(A) The maximum amount of funds used to supplement any one particular job funded under this Part; and

(B) The total amount of funds used to supplement all jobs funded under this Part;

(iv) The wage rates or salaries and fringe benefits for public service employment participants and a comparison of these with the wages or salaries and fringe benefits paid to persons in similar public occupations by the same employer; levels of employment not supported under the Act; layoffs, and hiring and promotional freezes in each employing agency (sec.103(b)(10));

(3) *Service Deliverers.* A list of the selected deliverers and the services or facilities to be provided by each (summary of subrecipient and contractors).

(c) *Program Planning Summary (PPS).* A PPS reflecting the goals and activities for the program year.

(d) *Budget Information Summary (BIS).* A BIS containing the proposed budget and a list specifying the quantity and price of each piece of capital equipment exceeding $1,000 to be purchased during the fiscal year.

(e) *Monthly Schedule.* A monthly schedule which contains an estimate of the total number of participants who will be enrolled in Title VI programs at the end of each month, and the total cumulative expenditures expected to have been incurred by the end of each month by the PSE and non-PSE programs.

PART 679—PRIVATE SECTOR INITIATIVE

Program for the Economically Disadvantaged Under the Comprehensive Employment and Training Act

12. Section 679.5(d)(1) is amended by deleting paragraph (d)(1)(ii) and deleting "(i)" before the sentence beginning "State the objectives . . . ." Accordingly, § 679.5 is revised to read as follows:

§ 679.5 Annual plan subpart.

(a) *General.* To receive financial assistance under this Part, a prime sponsor shall submit the following information, which will become part of the Annual Plan as described in § 676.11. This subpart shall consist of a Narrative Description, Statement of Concurrence, Program Planning Summary, and Budget Information

Summary, specific to Title VII (sec. 103(b)).

(b) The prime sponsor shall transmit a copy of the Title VII Annual Plan subpart to the prime sponsor's planning council, to appropriate labor organizations, community-based organizations, educational agencies and institutions, Overall Economic Development Program committees and to such other parties as are required by § 676.12(d). The comment and publication procedures of § 676.12 apply to this Part (secs. 703(b)(4) and (5)).

(c) The Annual Plan subpart shall have the concurrence of both the PIC and the prime sponsor in order to be approved. Therefore, a Statement of Concurrence shall be submitted, signifying the concurrence of the PIC and the prime sponsor with the contents of the Annual Plan subpart or any modifications thereto.

(d) *Narrative Description.* The narrative description shall include:

(1) *Objectives and need for assistance.* State the objectives and need for funding under this Part, including an identification of private sector occupations where there are labor shortages.

(2) *Results and benefits.* Provide a statement on:

(i) Specific quantified performance and placement goals, by program activity.

(ii) Any performance and placement goals with respect to groups designated to be served (sec. 103(b)(4)).

(iii) Explain any variation between such performance and placement goals and the Secretary's performance standards (sec. 103(b)(4)).

(iv) Any nonquantifiable goals or outcomes.

(3) *Approach.* Provide a description of:

(i) The specific activities to be conducted, and how these activities will be integrated with other training and placement activities under the Act (sec. 703(a)).

(ii) The procedures and standards to be used for the selection of occupations in which training is to be provided.

(iii) The system that will be used to review and assess the success of activities, including a description of the role of the PIC.

(4) *Private Industry Council (PIC).* Provide the following:

(i) The responsibilities assumed and the functions to be performed by the Private Industry Council in the planning, operation and review of programs.

(ii) A list of the PIC Membership indicating representation from among those membership categories identified in § 679.3–2.

(iii) Staffing arrangements for support of the PIC agreed upon the PIC and the prime sponsor.

(iv) A description of procedures established to ensure periodic consultation and coordination of activity between the PIC and the prime sponsor's planning council and other appropriate agencies in the labor market area.

(v) For multijurisdictional PIC's (except for existing consortia) identify the geographic area to be served, the prime sponsors participating, administrative and programmatic relationships between the PIC and the participating prime sponsors and the functions to be performed by each. A copy of the written agreement cited in § 679.3–6 must be included as an attachment to the Annual Plan Subpart.

(e) *Statement of Concurrence.* This statement documents the concurrence of the PIC and the prime sponsor with the contents of the Annual Plan Subpart.

(f) *Program Planning Summary (PPS).* The PPS reflects the goals, objectives and activities planned under Title VII for the program year.

(g) *Budget Information Summary (BIS).* The BIS contains the planned budget under Title VII for the program year.

(Sec. 126 of the Comprehensive Employment and Training Act (Pub. L. 95–524, 92 Stat. 1909, 29 U.S.C. 801 *et seq.*))

Signed at Washington, D.C., this 16th day of January 1981.

Ray Marshall,

Secretary of Labor.

[FR Doc. 81–2911 Filed 1–21–81; 2:02 pm]

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DEPARTMENT OF LABOR

Employment and Training Administration

20 CFR Part 676

Comprehensive Employment and Training Act

AGENCY: Employment and Training Administration, Labor.

ACTION: Final rule.

SUMMARY: This document contains several amendments to Part 676, Subpart D of the Comprehensive Employment and Training Act (CETA) regulations dealing with nondiscrimination, equal opportunity, equitable service and affirmative action published on May 20, 1980, 45 FR 33846. The document implements modifications proposed by the Equal Employment Opportunity Commission (EEOC) pursuant to its review and coordination responsibilities with respect to equal employment opportunity regulations under Executive Order 12067 (43 FR 28967, June 30, 1978).

EFFECTIVE DATE: February 23, 1981.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Anderson, Administrator, Office of Comprehensive Employment Development, Employment and Training Administration, U.S. Department of Labor, 601 "D" Street, N.W., Washington, D.C. 20213, Telephone: (202) 376-6254.

SUPPLEMENTARY INFORMATION:

Background

On April 4, 1980, the Department of Labor published proposed revisions to the CETA regulations at 20 CFR Parts 675–679 45 FR 23296 *et seq.* Inadvertently, the nondiscrimination/equal opportunity provisions in Part 676, Subpart D of that proposal were not submitted to the Equal Employment Opportunity Commission in advance of publication for review pursuant to Executive Order 12067 (1–304, 43 FR 28967, June 30, 1978). As a result, EEOC's comments were not considered in the final regulations published on May 20, 1980, 45 FR 33846. The purpose of these amendments is to incorporate the EEOC comments on Subpart D into the final regulations.

EEOC Comments

Following is a description of each affected section as it appears in these amendments, a summary of the EEOC comments and the Department's response.

Uniform Guidelines on Employee Selection Procedures

Section 676.52(d)(3) of the current regulations requires that tests or selection procedures which have an adverse impact on any race, sex or national origin group in the selection of participants or staff be validated in accordance with the Uniform Guidelines on Employee Selection Procedures (41 CFR Part 60–3). The EEOC notes that validation is only one alternative under the Uniform Guidelines; that employers may eliminate or modify the tests or procedures in question to remove or minimize the adverse impact (see 41 CFR 60–3.3 and 60–3.6). The Department agrees that the regulation should reflect the existence of this option and is amending § 676.52(d)(3) to indicate that tests and selection procedures shall be used only in conformity with the Uniform Guidelines. The last sentence of § 676.52(d)(3) is also clarified to reflect that tests or procedures which have been validated in accordance with the Uniform Guidelines shall not be considered artificial barriers to employment.

EEOC also notes that under the Uniform Guidelines, selection procedures which have an adverse impact on individuals of certain religions are treated in the same manner as procedures which have an adverse impact on persons of a certain race, sex, or national origin. EEOC suggests that § 676.52(d)(3) be amended accordingly. The Department agrees with this comment and considers that § 676.52(d)(3), as amended, addresses EEOC's concern.

Equitable Provision of Services and Affirmative Action

EEOC observes that although § 676.54(a) and (c) require affirmative action in certain instances, neither section indicates explicitly that written affirmative action plans are contemplated. EEOC recommends that the regulation be amended to specify that written plans are required. The Department notes that affirmative action under CETA may not always require a written plan, as is the case under the EEOC Affirmative Action Guidelines (29 CFR Part 1608, §§ 1608.4(d) and 1608.10; see 44 FR 4422, 4424 (January 19, 1979)). Also CETA Plan and reporting requirements, in many instances, will provide adequate written documentation of prime sponsors' affirmative action commitments, without the imposition of additional paperwork burdens. The Department, accordingly, is amending the regulation to clarify that the minimum requirements in § 676.54(d) apply wherever an affirmative action *plan* is required or voluntarily undertaken under the preceding paragraphs (§ 676.54(a), (b) and (c)).

EEOC suggests that the affirmative action provision for administrative staff in § 676.54(a) be amended to require that prime sponsors make special efforts to recruit and hire persons who reflect the demographic characteristics of the *CETA-eligible* population in the area. DOL notes that Section 121(b)(1)(B) of the statute provides separately for (1) increasing staff employment opportunities for "members of the eligible population" and (2) making special efforts to recruit and hire staff who reflect the "significant demographic segments of the population residing in the area." The Department does not believe that Congress intended the demographic requirement to be expanded to include the income and other eligibility criteria required for enrollment as a CETA participant. Accordingly, the existing provision is retained unchanged.

EEOC also suggests that § 676.54(b) dealing with affirmative action for handicapped persons be amended to apply specifically to administrative staff. The Department notes that this change would exceed the statute (Section 103(b)(15)), which is clearly limited to participation in programs under the Act. The existing language, accordingly, is retained. DOL notes, however, that other statutory non-discrimination provisions with respect to handicap (*e.g.*, Section 132 of CETA Section 504 of the Rehabilitation Act of 1973, as amended) apply to administrative staff. Also, to conform with the requirements of Section 504 and

the Department's implementing regulations (45 FR 66707 *et seq.*, October 7, 1980), the reference in § 676.54(b) to the standards of the American National Standards Institute (ANSI) is deleted. The provision is amended to indicate that in identifying and removing architectural barriers, recipients shall be guided by the standards of the General Services Administration (GSA) under the Architectural Barriers Act, at 41 CFR 101–19.6.

With respect to affirmative action to increase levels of service to previously underrepresented groups (§ 676.54(c)), EEOC proposes that the "groups" in question be identified specifically, in terms of age, race, sex, and national origin. DOL considers this change unnecessary since the phrase "previously underrepresented groups" is well understood among recipients to include age, race, sex, and national origin and may also include other groups, such as handicapped persons.

Finally, EEOC reads § 676.53(c) as permitting prime sponsors to underserve significant segments of their eligible populations by as much as 15 percent without justifying the variance. Based on this reading, EEOC recommends elimination of the provision. EEOC also proposes that recipients be permitted to provide service to target groups *beyond* their representation in the eligible population where such special consideration is necessary because of employment disadvantages faced by such groups, as in the case of past exclusion or discouragement from seeking certain types of employment. The Department notes that the 15 percent variance is designed to permit prime sponsors to provide service to target groups beyond their representation in the eligible population, but that this or any planned variance from the target group's representation in the eligible population must be justified in the prime sponsor's Plan (§ 676.11(c)(5)(i) (A), (B), (C), and (D); formerly §§ 677.15(b)(1)(ii), 677.56(b)(1), 678.6(b)(1) and 679.5(d)(1)(ii)). To clarify the intent of the 15 percent provision, the Department is amending Section 676.53(c) to indicate that it is to be read in conjunction with the above-cited Plan provisions, which require justification of any variations in planned service levels. The amendment also clarifies that corrective action is mandatory if there is more than a 15 percent variance in service levels, but is also permissible if a prime sponsor cannot adequately justify a variance in service of less than 15 percent.

Miscellaneous

EEOC questions the references in § 676.52(a) to procedures for handling discrimination complaints set forth in Subpart F (§ 676.86(f)) of the CETA regulations, on the ground that Subpart F was not included in the proposed rules published on April 4, 1980 (45 FR 23296 *et seq.*). The Department notes that the Subpart F reference is to the requirements of 20 CFR Part 676, Subpart F as published on April 3, 1979 (44 FR 19990 *et seq.*), which are still in effect. See 45 FR 33846, 33851, May 20, 1980. EEOC's comments on substantive provisions in Subpart F will be addressed when proposed revisions to that Subpart are published in the Federal Register.

EEOC notes, correctly, that the reference to section 121(a)(4) of the statute in § 676.52(c) is inaccurate. The provision, accordingly, is amended to delete the incorrect reference. The reference to Section 121(a)(5), which deals with removal of architectural barriers to employment of the handicapped, however, is retained. EEOC also notes that the regulatory references in § 676.54(c) are inaccurate. The Department agrees and the provision is amended to delete the inaccurate references and to substitute the correct references, to § 676.10–4 (c) and (h).

The Department has determined that these amendments are not a significant regulation which requires preparation of a regulatory analysis under DOL's guidelines implementing Executive Order 12044 (43 FR 12661, March 23, 1978). Also, in accordance with 5 U.S.C. 605(b), the Secretary has certified that the regulation herein will not have a significant economic impact on a substantial number of small business entities. The program for which this rule is promulgated is listed in the Catalog of Domestic Federal Assistance as No. 17.232 "Comprehensive Employment and Training Programs."

Accordingly, 20 CFR Part 676, Subpart D, is revised to read as follows:

Signed at Washington, D.C., this 16th day of January 1981.

(Section 126 of the Comprehensive Employment and Training Act (Pub. L. 95–524, 92 Stat. 1909, 29 U.S.C. 801 et seq.))

Ray Marshall,

Secretary of Labor.

Subpart D—Nondiscrimination; Equal Opportunity; Equitable Service and Affirmative Action

§ 676.51 General.

This subpart sets out the Department of Labor's regulations for insuring that discrimination prohibited by section 132 of the Act does not occur in any CETA programs. The subpart also implements various equal opportunity and equitable provision of service requirements in the Act and sets forth affirmative action provisions which implement these requirements.

§ 676.52 Nondiscrimination and equal opportunity.

(a) No person shall, on the ground of race, color, religion, sex, national origin, age, handicap, or political affiliation or belief, be discriminated against, or denied employment as a participant, administrator, or staff person, in connection with any program under the Act. No participant under the Act shall be discriminated against by reason of citizenship. Participation shall be open to citizens and nationals of the United States, lawfully admitted resident aliens, and lawfully admitted refugees and parolees. Such discrimination is covered by this Subpart and the procedures for handling discrimination complaints in § 676.86(f)(9) (sec. 132(e)). Recipients shall also comply with the Department of Labor's nondiscrimination requirements at 29 CFR Part 31 and subsequent amendments thereto. The 29 CFR Part 31 regulations are currently being revised to implement section 132 of the Act, Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, as amended, the Age Discrimination Act of 1975, as amended and Title IX of the Education Amendments of 1972, as amended. The Department's regulations under Section 504 of the Rehabilitation Act, published on October 7, 1980 (45 FR 66706) will be incorporated into the revised 29 CFR Part 31.

(b) All programs, to the maximum extent feasible, shall contribute to the elimination of sex stereotyping. Prime sponsors, in planning their program activities, shall:

(1) Recruit for, and encourage, female entry, through such means as training, into occupations with skill shortages where women represent less than 25 percent of the labor force; and

(2) Recruit for, and encourage, male entry, through such means as training, into occupations with skill shortages where men represent less than 25 percent of the labor force.

(c) All programs shall contribute to the maximum extent feasible to the elimination of architectural barriers (sec. 121(a)(5)).

(d)(1) No person shall be denied training or employment in any program because of artificial barriers to employment.

(2) Prime sponsors shall analyze and reevaluate job descriptions and qualification requirements at all levels of employment, including civil service requirements and practices relating thereto, with a view toward removing artificial barriers to public service employment, as defined in § 675.4 (sec. 122(f)).

(3) Tests or selection procedures used in the selection of participants or staff shall be used only in conformity with the Uniform Guidelines on Employee Selection Procedures (41 CFR Part 60–3). Tests or selection procedures which have been validated in accordance with the Uniform Guidelines shall not be considered to be artificial barriers to employment.

(e) Prime sponsors shall establish procedures to ensure against discrimination and foster equal opportunity.

(f) Each prime sponsor shall assign equal opportunity (EO) responsibilities on a full-time basis to an individual or staff, or if this is not practicable, explain why in the Master Plan.

(g) Members of the eligible population shall be provided maximum feasible opportunities for employment in the administration of programs, including staff positions in which they will have opportunities for occupational training and career advancement.

§ 676.53 Equitable provision of services to significant segments of the eligible population.

(a) CETA recipients shall provide employment and training opportunities on an equitable basis to significant segments of the eligible population (age, race, sex, or national origin group) (sec. 121(b)(1)).

(b) When planning and developing employment and training opportunities, prime sponsors shall first set planned service levels, taking into consideration the age, race, sex, and national origin composition of the eligible population. Whenever giving affirmative action to handicapped individuals, or members of other groups, or giving special consideration to Vietnam-Era and special disabled veterans and public assistance recipients, giving special emphasis to groups such as the target groups set forth in the Act, or otherwise serving those most in need will result in service to a significant segment at a level more or less than the incidence of persons in that significant segment in the total eligible population, the prime sponsor's Annual Plan shall provide adequate justification, including an explanation of how the make-up of the target groups by age, race, sex, and national origin will impact on the overall service levels by age, race, sex, and national origin. Prime sponsors may design program and services to assist specific target groups.

(c) The recipient shall take positive steps, such as active recruitment and other affirmative action efforts as described in § 674.54, to ensure that the planned levels of participation are realized. If service levels by prime sponsors to a significant segment (age, race, sex, or national origin group) differ by more than 15 percent from the levels set forth in the approved CETP (see § 676.11(c)(5)(1)(A), (B) and (C)), the RA shall require corrective action of any prime sponsor which is not able to adequately justify the variance. Corrective action requirements may also be imposed where a prime sponsor cannot adequately justify a variance in service of less than 15 percent.

§ 676.54 Affirmative action.

(a) Each recipient shall take affirmative action to recruit and hire qualified staff who will reflect the significant segments of the population residing in the area by age, race, sex and national origin (sec. 121(b)(1)(B)). See generally the EEOC's Affirmative Action Guidelines 44 FR 4426, January 19, 1979.

(b) Each recipient shall establish an affirmative action plan for outreach to, and training, placement, and advancement of, handicapped individuals in employment and training programs under the Act. Such an affirmative action plan shall be described in the Annual Plan or grant application (sec. 103(b)(15)). In identifying and removing architectural barriers, recipients shall be guided by the standards of the General Services Administration (GSA) under the Architectural Barriers Act, at 41 CFR § 101–19.6.

(c) Any recipient, which has been determined by DOL or another Federal, State or local government agency to have discriminated in its CETA program, shall take affirmative action to overcome the effects of that discrimination. Other recipients are also encouraged to undertake affirmative action in order to increase the participation of previously underrepresented groups, to ensure that planned levels of participation are realized or as one of the mechanisms described in the Master Plan to ensure nondiscrimination and foster equal opportunity and equitable provision of services (676.10–4 (c) and (h)). As one recommended means of ensuring nondiscrimination and equal opportunity, prime sponsors may require subrecipients and contractors to prepare affirmative action plans for CETA participants and CETA administrative staff.

(d) Where affirmative action plans are required or voluntarily undertaken under the preceding paragraphs (a), (b) and (c) of this section, they shall include as a minimum:

(1) The development and implementation of specific steps, including the assignment of management responsibility, to achieve objectives within specific timeframes, e.g., special recruitment efforts, test validation, job analysis, display of EEO posters, identification of artificial barriers to employment and development of upward mobility programs;

(2) The establishment of monitoring and evaluation procedures to measure progress in meeting the goals of the affirmative action plan within the projected timeframes;

(3) Internal dissemination of an affirmative action policy statement to all CETA management officials, staff, and participants, and external dissemination of the statement to community groups, community-based organizations, minority and women's organizations, and the general public;

(4) Written documentation that subgrantees and contractors are aware of the affirmative action plan including the specific staffing and service goals; and

(5) Placement of advertisements regarding programs in minority owned or operated newspapers and magazines.

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Part XV

Environmental Protection Agency

Federal Radiation Protection Guidance for Occupational Exposures

[RH-FRL 1722-5]

Federal Radiation Protection Guidance for Occupational Exposures; Proposed Recommendations, Request for Written Comments, and Public Hearings

AGENCY: U.S. Environmental Protection Agency.

ACTION: Proposed recommendations for radiation protection of workers.

SUMMARY: We are proposing to make recommendations to the President for new guidance to Federal agencies for the protection of workers exposed to ionizing radiation. These proposals are based on a review of existing guidance in the light of scientific knowledge of radiation risks and of experience in the control of occupational exposure. The proposed recommendations include both qualitative guidance on radiation protection and numerical guides for maximum allowed dose equivalents (RPG's [1]). The most significant changes proposed are (a) that a graded set of minimum radiation protection requirements be introduced in three levels; (b) that the RPG for maximum whole-body dose equivalent be reduced from three rem [2] per quarter to five rem per year, and that regulatory agencies establish lower limits for specific types of work situations; (c) that limitation of internal doses [3] take into account the sum of the risks to all organs, rather than continue to be based only on the most significantly exposed organ; (d) that the RPGs for the whole body apply to the appropriately weighted sum of the doses from both internal and external exposures; and (e) that the dose to the embryo and the fetus be limited through one of several alternative recommendations.

We welcome written comments on these proposals and will hold public hearings as discussed below. We will carefully consider all oral and written comments in preparing our final recommendations to the President.

DATES: 1. All written comments in response to this notice must be received by us by April 24, 1981, in order to be used.

2. Public hearings will be held at the following locations, beginning no earlier than 60 days following publication of this notice: Washington, D.C., Chicago, Illinois, San Francisco, California, Houston, Texas. We will publish the times and addresses for these hearings shortly.

3. Instructions of interest to those who wish to appear at the public hearings are given below under the heading "Public Hearings."

ADDITIONAL INFORMATION: We will be happy to send a copy of a background report which provides additional information on these proposed recommendations to anyone requesting it. Please send requests to Mr. Luis F. Garcia at the address below. This report is also available for inspection and copying at EPA's Central Docket Section and ten Regional Offices (addresses below).

ADDRESSES: Written comments should be addressed to the Director, Criteria and Standards Division (ANR-460), U.S. Environmental Protection Agency, Washington, D.C. 20460, Attention: Docket No. A-79-46. These comments and the public hearing record will be filed under the above docket number and will be available for inspection and copying at the U.S. Environmental Protection Agency's Central Docket Section, Room 2903B, Mail 401 M Street, S.W., Washington, D.C. 20460, and at the Agency's library in each of its ten regional offices: *Region I:* JFK Building, Room 2100-B; Boston, Massachusetts 02203 (Tel. 617-223-5791); *Region II:* 26 Federal Plaza, Room 1002, New York, New York 10278 (Tel. 212-264-2661); *Region III:* Curtis Building, 6th & Walnut Streets, Philadelphia, Pennsylvania 19106 (Tel. 215-597-0580); *Region IV:* 345 Courtland Street, N.E., Atlanta, Georgia 30365 (Tel. 404-881-4216); *Region V:* 230 South Dearborn Street, Room 1417, Chicago, Illinois 60604 (Tel. 312-353-2022); *Region VI:* First International Building, 1201 Elm Street, 28th Floor, Dallas, Texas 75270 (Tel. 214-767-7341); *Region VII:* 324 East 11th Street, Kansas City, Missouri 64106 (Tel. 816-374-3497); *Region VIII:* Radiation Program Office (in lieu of library), 1860 Lincoln Street, Second Floor, Denver, Colorado 80203 (Tel. 303-837-2221); *Region IX:* 215 Fremont Street, 6th Floor, San Francisco, California 94105 (Tel. 415-556-1841: *Region X:* 1200 Sixth Avenue, 12th Floor, Seattle, Washington 98101 (Tel. 206-442-1289).

FOR FURTHER INFORMATION CONTACT: Contact Mr. Luis F. Garcia, U.S. Environmental Protection Agency (ANR-460), Washington, D.C. 20460 (Telephone 703-557-8224), about these proposed recommendations or the public hearings.

SUPPLEMENTARY INFORMATION:

Statutory Authority

The Administrator of the Environmental Protection Agency (EPA) is charged under Executive Order 10831, Reorganization Plan No. 3 of 1970, and Public Law 86-373 to "* * * advise the President with respect to radiation matters, directly or indirectly affecting health, including guidance for all Federal agencies in the formulation of radiation standards and in the establishment and execution of programs of cooperation with States." This guidance has historically taken the form of qualitative and quantitative "Radiation Protection Guidance." The recommendations we propose here would replace those portions of existing Federal guidance that apply to radiation protection of workers, which were adopted in 1960 (25 FR 4402).

Previous Actions by EPA

We began this review of the 1960 radiation protection guidance for workers in 1974. The most recent notice of this activity listed the principal issues being addressed and announced our intent to hold public hearings on proposed recommendations (44 FR 53785, Sept. 17, 1979).

We have sponsored two major studies in support of this program. First, the Committee on the Biological Effects of Ionizing Radiations, National Academy of Sciences—National Research Council, has reviewed the scientific data on the health risks of low level ionizing radiation developed since its 1972 report. Second, we have carried out a study of occupational radiation exposures and published our findings in a report entitled: "Occupational Exposure to Ionizing Radiation in the United States: A Comprehensive Summary for the Year 1975." We have also considered recent recommendations of the National Council on Radiation Proctection and Measurements.

In developing these proposals, we have also consulted with the technical staffs of the Federal agencies that regulate or influence the regulation of occupational exposure, and will continue this consultation in developing final recommendations. These agencies are the Occupational Safety and Health Administration, the Nuclear Regulatory Commission, the Mine Safety and Health Administration, the Department of Defense, the Department of Energy, the Department of Transportation, the Food and Drug Administration, the National Aeronautics and Space Administration, the National Institute for Occupational Safety and Health, and

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[1] Radiation Protection Guides.

[2] A *rad* is a unit of measure for dose, i.e., the amount of ionizing radiation energy absorbed per unit weight of tissue. Thus, the same energy absorbed by twice as much tissue gives only one-half the number of rads. The *rem*, a unit for dose equivalent, is a rad multiplied by factors which describe how damaging the type of radiation is.

[3] In this notice we henceforth use "dose" to mean "dose equivalent."

the National Bureau of Standards. These agencies, which have not formally endorsed these recommendations, will formally review final proposals when they are developed following public review.

Issues Addressed

The principal issues we addressed in formulating these recommendations were identified in the advance notice cited above. They were:

1. Are the doses currently received by workers and the maximum doses permitted under existing guidance adequately low? In this regard, a) how adequate is the basis used for estimating risks to health from radiation exposure, and b) what are the appropriate bases for judging maximum individual and collective radiation doses in the work force and the tradeoffs between these two indices of the health impact of occupational exposure?

2. Should the same guides apply to all categories of workers (e.g., dental workers, nuclear medicine technicians, nuclear maintenance personnel, industrial radiographers)? Should specific guides be developed for pregnant women, female workers who could bear children, and/or men?

3. On what time basis should the guides be expressed? Quarterly? Annual? Should the lifetime occupational dose be limited? Should the age of the worker be a factor?

4. Should the guidance reflect or cover medical, accidental, and/or emergency exposures?

5. Is existing guidance for situations that involve exposure of less than the whole body adequate? In this respect, a) what organs and parts of the body should have designated limits, and b) on what basis should guidance be expressed for exposure of more than one organ or portion of the body?

6. How should the radiation protection principles requiring a) justification of any exposure, and b) reduction of the dose from justified exposures to the lowest practicable or as low as is reasonably achievable level be applied to exposure of workers? Should the concept of lowest feasible level be applied to exposure of workers?

7. What, if any, relationship should be maintained between permissible levels of risk to health from radiation exposure and other regulated hazards of disease or accidents?

Additional issues suggested since publication of the advance notice include:

8. Should the guidance include numerical values for the factors (called "quality" and "modifying" factors) used to convert dose (measured in rads) to dose equivalent (measured in rem)? If so, should this be developed now or issued later as supplementary guidance?

9. What guidance should apply to workers who do not use radiation sources, but who are exposed to radiation due to the activities of workers under the control of other employers?

10. Are there situations that may require doses higher than normally permitted? Should we provide special guidance for them?

Many of these issues are addressed below. However, for a more complete and extensive discussion please refer to the background report cited above under the heading "Additional Information."

Risks From Occupational Exposure

There are three kinds of risks from the low levels of ionizing radiation characteristic of occupational exposures. The most important of these is cancer, which is fatal at least half the time. Another risk is the induction of hereditary effects in descendants of exposed persons. The severity of these effects ranges from fatal to inconsequential. We assume that at low levels of exposure the risk of cancer and hereditary effects is in proportion to the dose received, and that the severity of any induced effect is independent of the dose level. That is, while the probability of a given type of cancer occurring increases with dose, such a cancer induced at one dose is equally as debilitating as that same type of cancer induced at another dose. Thus, for these effects we assume that there is no completely risk-free level of radiation exposure.

The third type of risk includes a variety of other effects on workers and on the children of women exposed during pregnancy. These effects range from serious effects on children, such as mental retardation, to less serious effects on workers, such as opacification of the lens of the eye and temporary impairment of fertility. For these effects we believe the degree of damage (i.e., the severity) depends to some extent on the dose level. At the dose levels allowed by current radiation protection guides, we believe that none of the effects on workers themselves occurs to a degree sufficient to be clinically detectable. At these levels, however, effects on children exposed in utero may be serious.

The risks of effects on health from low level ionizing radiation were reviewed for EPA by the National Academy of Sciences (NAS) in reports published in 1972 and in 1980. We have used these studies and others to estimate the risks associated with the current and proposed Federal guides for limiting radiation dose. Details of these and other risk estimates we use are provided in the accompanying background report.[4]

A worker who received the largest lifetime dose allowed under present guides (5 rem per year from age 18 to assumed retirement at age 65, or 235 rem) would have a lifetime risk of about 3 to 6 in 100 of dying from radiation-induced cancer, and numerically comparable chances both of nonfatal cancer and, for male workers, of mutational effects in his descendants.[5] Risks of mutational effects from exposure of female workers are assumed to be three to four times smaller. However, in our recent national survey of exposures for the year 1975, 99% of all workers received less than half of, and only 0.15% exceeded, an annual dose of 5 rem. Based on these and other data, we believe that only a few workers involved in accidents have received close to the current maximum allowed lifetime dose.

The average worker exposed to radiation sustains only a small risk of death from radiation. The estimated average risk of death due to radiation-induced cancer is smaller, for example, than the risk of job-related accidental death in the safest of all major occupational categories, retail trades, for which the annual death rate was 60 per million workers in 1975. We estimate that the collective dose to the more than one million workers potentially exposed to radiation in their workplace for that same year will not lead to more than 15–36 premature cancer deaths. Other ways of expressing this risk are that the exposure of an average worker to radiation in 1975 represented an average lifeshortening of about two to three and a half hours, or an average increase in his chance of cancer death of about one to three in 100,000. In 1975 about one sixth of United States deaths were from cancer.

The comparative time-loss associated with nonfatal cancer is also estimated to be very small. The average time lost by

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[4] Our estimated ranges of risk for cancer death are based on absolute and relative linear risk models used by the 1972 BEIR Committee and the assumption that the risk of incurring most radiogenic cancers continues throughout the lifetime of exposed persons. The 1980 BEIR report, which was just published, gives estimates based on a variety of risk models, some of which yield lower and some higher values. Based on our preliminary review, we do not believe that the differences between these values and those we have adopted here would lead to any changes in these proposals.

[5] Mutational effects here mean those hereditary effects included by the BEIR Committee in their 1972 report as serious disabilities. Examples are congenital malformations leading to premature death, hemophilia, sickle cell anemia, cystic fibrosis, diabetes, schizophrenia, and epilepsy.

U.S. workers due to all occupationally-related injuries and illnesses over a working lifetime is one month. For radiation-induced nonfatal cancers it is estimated to be about four days for a hypothetical individual receiving the largest lifetime dose allowed (235 rem), and for the average worker it is about two hours.

Limitation of Whole Body (External) Exposure

Based on these observations, risks due to occupational exposure to radiation do not appear to be unreasonably high for the average worker. They are comparable to risks of accidental death in the least hazardous occupations. However, a worker exposed to the current maximum allowed dose year after year would sustain substantial risks. The proposed radiation protection guidance contains provisions to avoid the accumulation of large lifetime doses through reduction of the maximum allowed annual dose and through specific minimum radiation protection requirements for workers in high-dose work situations. These include on-the-job radiation protection supervision for high-dose jobs, maintenance of lifetime dose records, and an admonition that exposure of workers should be managed so that their lifetime doses do not exceed 100 rem.

Existing Federal guidance permits doses up to 3 rem per quarter (or 12 rem per year), within an overall cumulative limit of 5(N–18) rem, where N is the age of the worker. This flexibility, which allows annual doses greater than 5 rem, does not permit specific tasks that require doses to individuals of more than 5 rem (since the 3 rem per quarter limit prohibits this), but it does permit the same worker to accomplish several tasks requiring doses at or near this quarterly limit in a given year. In view of the risks, it is our judgement that repeated exposures in a year at such levels should not occur, and these recommendations would eliminate this flexibility. One appropriate solution in cases where workers with specific skills are in short supply is to train additional workers, rather than to impose higher risks on a few individuals.

Because we assume that any exposure carries some risk, we believe that it is important to avoid unnecessary exposures at any exposure level. Although more than 97% of all workers in our survey received annual doses less than one rem, these same workers accumulated about half of the collective dose received by the entire work force. Many of these workers, because their doses are low compared to the limits, may receive only minimal training, supervision, and monitoring for radiation protection. Many also work in situations where there is no need for exposures to ever approach the existing or the proposed new RPGs. On the other hand, some exposures at higher doses are justified. The proposed recommendations, therefore, provide a graded system of radiation protection which would establish minimum radiation protection requirements for each of three different ranges of exposure within the basic guides for maximum allowed dose to all workers. We anticipate that maximum exposure of the vast majority of workers would be effectively limited to the lowest of these ranges (less than approximately 0.5 rem to the whole body per year) through the deterrent of requirements for increased justification, on-the-job radiation protection supervision, and monitoring in the two higher ranges. In addition, the recommendations encourage regulatory agencies to establish more restrictive regulatory limits for work situations not requiring the maximum doses allowed under the basic guides.

The proposed guidance leaves agencies considerable discretion in implementing the minimum radiation protection requirements for justification of exposure of workers in each of the various ranges. We are considering additional guidance which would recommend the establishment of more explicit requirements for the highest range (Range C). These requirements could include establishment of criteria for use of Range C, or prior application to and approval by the regulatory agency of Range C exposure (either for specific or more general job situations). We request specific comments on these and similar approaches to further restrictions on the exposure of workers at these higher levels.

We have considered both higher and lower alternatives to the proposed 5 rem/year RPG for whole-body exposure. This value is proposed because (a) it is the current internationally-accepted value, (b) there appear to be essential jobs requiring near 5 rem per year, and (c) the risks to the few workers in these jobs are not high compared to other industrial hazards. In addition, the costs for levels significantly lower (one rem/year or less) appear to be unwarranted, both in terms of increased collective dose to the entire workforce (in return for a few lower individual doses), and in terms of increased economic costs.

In 1975 the National Council on Radiation Protection and Measurements took the position that no change was required in the recommendation given by it in 1971. That recommendation is that "The maximum permissible prospective dose equivalent for whole body irradiation from all occupational sources shall be 5 rems in any one year" (NCRP Report No. 39, Jan. 15, 1971). Likewise the International Commission on Radiological Protection in 1977 recommended a basic dose-equivalent annual limit of 5 rem for whole body exposures to ionizing radiation (ICRP Publication 26, Jan. 17, 1977). In support of its recommendation the ICRP states that "The Commission believes that for the foreseeable future a valid method for judging the acceptability of the level of risk in radiation work is by comparing this risk with that for other occupations recognized as having high standards of safety. * * *." The radiation risk factors given in ICRP Publication 26 in arriving at its recommendation were reviewed by ICRP in May 1978 and no changes were made (ICRP Publication 28, 1978).

Nevertheless, these recommendations are all value judgments; there is not now compelling evidence for any particular value and it is hard to get such evidence. In judging the acceptability of the risks involved, it is necessary to identify (a) activities that cannot be performed at particular maximum dose levels, (b) skilled professionals and workers in limited supply whose numbers would be difficult to quickly increase in order to reduce average annual doses, and (c) the costs for additional workers and equipment that would be needed to meet different limits. For example, we are aware of a small number of maintenance tasks at nuclear power stations that could not be done under some limits less than 5 rem/year. There may be many more examples of professions, principally in medical areas, with limited labor pools. These include cardiologists performing catheterizations using fluoroscopy; and radiologists, neuro-radiologists, and nuclear medicine technologists with large patient loads for special procedures. Finally, studies by the Department of Energy and the nuclear power industry report that large costs and many more workers would be needed to greatly reduce the dose limits for many operations. Their projections of costs and personnel requirements increase expotentially with decreasing limits. We therefore request, in addition to comment on reduction of the current RPG of 3 rem/quarter to our proposed recommendation of 5 rem/year, comment on the above factors for reduction of the current RPG to 0.5 rem/year, 1 rem/year, and 3 rem/year.

Limitation of Partial Body Exposures

Exposure of portions of the body can occur through localized irradiation of

extremities (such as hands in glove boxes), or by breathing or swallowing radioactive materials, which then migrate to different organs of the body.

Current guidance limits such exposures through separate numerical guides for organs and for individual parts of the body that are easily exposed, such as hands and feet or lens of the eye. Some organs recognized as easily subjected to high doses or as particularly sensitive to radiation have specific guides.

These current guides are applied separately. For example, even though a worker has received the maximum allowed dose to his thyroid, he may also receive doses to his lungs, skin, or any other organ, as long as no single organ receives more than the dose specified by its guide. We assume that the risks associated with such multiple doses are additive.

An alternative approach is to limit the total risk of fatal cancer in all exposed organs. This method has been adopted by the International Commission on Radiological Protection (ICRP). It is also adopted in these recommendations, but only when it leads to a greater degree of protection than limiting the dose to critical organs. Specifically, the recommended guidance provides that (a) either the combined risk of fatal cancer from all doses to individual organs not exceed the risk permitted under the whole body guide or (b) the dose to the most significantly exposed organ not exceed its guide, whichever is more restrictive. The recommendations also provide, when workers receive both external doses from whole-body exposure and internal doses from radionuclides, that the sum of the risks of fatal cancer from external whole-body doses and those due to breathing or swallowing radioactive materials not exceed the risk of fatal cancer allowed by the whole-body guide.

The numerical weighting factors chosen to relate risks to individual organs to whole-body risk are discussed in the background report cited above. In general, they are consistent with recent determinations of risk of fatal cancer by national and international scientific bodies, such as the NAS and the ICRP.

We have chosen the limiting annual dose to most single organs to be 30 rem, rather than the internationally-adopted value of 50 rem, because we do not see a need for a value higher than any now used in this country. The risk associated with 30 rem to any of these organs is equal to or less than that of 5 rem to the whole body. Additional differences from internationally-used values for gonads, lens of eye, and hands are discussed below.

It is usually impractical to directly monitor the dose received by a worker who breathes or swallows radioactive materials, but it is useful to be able to predict doses that may be received from breathing contaminated atmospheres or swallowing contaminated materials. To make decisions about radiation protection of such workers possible, it is necessary to calculate the amounts of different kinds of radioactive materials which, when breathed in or swallowed, give the maximum dose allowed by the RPGs. Those calculations require complex models of metabolism and dosimetry. We propose that these limiting amounts of radioactivity be designated the "Radioactivity Intake Factors" (RIFs), and that they replace the currently used "Radioactivity Concentration Guides."

Recent advances in modeling metabolism and dosimetry have produced significant changes in the doses calculated for radioactive materials in the body. For many radioactive materials the changes in the RIFs due to changes in the models are considerably larger than the changes due to the proposed new RPGs. These new models more often reduce allowable intakes than raise them. However, for those cases where the RIF for any specific radionuclide would be increased, the question arises whether regulations adopted by implementing agencies should retain existing values, in accordance with proposed Recommendations 2 and 6. We believe that, for existing applications, experience gained over the past two decades shows that current values can be reasonably achieved. Accordingly, in cases where the RIF for any specific radionuclide would be increased under the proposed guidance, we recommend that the value adopted in regulations governing existing applications be no higher than that now in use. A summary of the changes due to the new models and to the proposed new guides is provided for the more significant radionuclides in the background report.

Limitation of Risk From Mutations

The current guides for limiting dose to the gonads are identical to those for the whole body. For a given annual dose, the risk of mutational effects in all of a male worker's descendants combined is believed to be numerically comparable to his lifetime risk of fatal cancer. The risk to a female worker's descendants is smaller. The medical severity of these hereditary effects is usually less than, and, at worst, comparable to, death from cancer. For these reasons we do not believe that a more restrictive guide is required for the gonads than for the whole body. The proposed new guide for gonadal dose is therefore identical to that proposed for the whole body. This guide is specified separately and not included in the scheme proposed above for weighting partial-body doses because the risks involved are of a fundamentally different nature: the affected individual is not the one exposed to radiation and the effects include different types of harm.

Limitation of Risk to the Unborn (Fertilized Oocyte, Embryo, and Fetus

Protection of the unborn from radiation is an already well-established principle; the purpose of the guide for gonadal exposure is to limit mutational effects in children conceived after the exposure. However, those conceived but not yet born, the "unborn," are also at risk. Their risks are greater, for a given dose, than the risks to those not yet conceived. Current guidance does not contain a dose limitation to protect the unborn from these risks.

The risk of serious harm following in utero exposure requires careful attention because of the magnitude and diversity of the effects, because they occur so early in life, and because those who suffer the harm are involuntarily exposed. These risks are not as well quantified as those to adults. Nevertheless, available evidence indicates that at critical periods in the development of the unborn, for the same dose, risks may be many times greater than those to adults.

There are several factors which mitigate this situation. First, the exposure of most workers under annual limits is relatively evenly distributed over the year, so that only a quarter of a worker's annual dose is delivered to the unborn during any trimester. Second, the mother's body provides considerable shielding of the unborn for most types of exposure. Finally, the total period of potential exposure is small for the unborn compared to that for a worker—a period of months compared to a working lifetime.

It is difficult to provide for protection of the unborn without affecting the rights of women to equal job opportunities. This difficulty is compounded because the critical period for most harm to the unborn occurs soon after conception—during the second and third month after conception, when a woman may not know that she is pregnant. Based on our assessments of the risks and the other factors noted above, we believe that the maximum dose to the unborn should be a factor of ten below the maximum permitted adult workers in any year. This is also the current recommendation of the National

Council on Radiation Protection and Measurements. In Recommendation 6 we propose four alternatives which would, with varying degrees of certainty, achieve this objective.

The first two alternatives rely upon voluntary compliance and, therefore, should have less impact on equal job opportunities for women. The first assumes a woman knows she is pregnant within six weeks of conception, and will then, along with her employer, take appropriate protective action. It therefore does not guarantee that doses to the unborn during the critical early stages of pregnancy will be less than 0.5 rem.

The second alternative adds a voluntary limit on dose rate to women who can bear children in order to protect the unborn whose existence is not yet known. It permits women to hold any job, but encourages women able to bear children not to take those few jobs which potentially involve high dose rates.

The third alternative insures protection of all unborn throughout gestation by making the voluntary requirements of the second mandatory. It would bar women of child-bearing capacity from those few jobs which involve high dose rates.

The final alternative would restrict the exposure of all workers, male and female, to a level which would protect the unborn at the level of the first alternative. This alternative preserves equal job opportunity for women at the cost of causing more total harm. Studies of several high exposure activities show that decreasing the dose limits to this extent would significantly increase the collective dose to workers, and that some current activities would not be possible.

None of these alternatives is completely satisfactory; they each involve either varying degrees of adequacy of protection of the unborn, some sacrifice of equal job opportunity for women, or causing more total harm, or foregoing some of the benefits to society from activities using radiation. We invite public comment on the relative importance to be attached to each of these factors in formulating guidance, and on whether or not the guidance should address this matter now. We would also be happy to receive suggestions for other alternatives.

Limitation of Other Risks

The risk of nonfatal cancer is not only intrinsically less important than that of fatal cancer, but is very much smaller than other nonfatal occupational risks. Thus, we believe the protection provided against fatal cancers includes adequate protection against nonfatal cancers.

While adequate protection against cataracts of the lens of the eye might be provided by a higher maximum average annual dose than the 5 rem now allowed, no operational difficulty is reported with use of 5 rem as an annual limit. That value is therefore retained in these proposals.

The maximum annual dose for skin of the whole body is maintained at 30 rem, since a need for allowing higher doses has not been demonstrated. However, the current guide permits 75 rem to hands and forearms, or feet and ankles, because of the assumed lower risk when only these portions of the skin and underlying tissue of these extremities are involved. We agree that at low dose rates the risk depends in some degree on the amount of skin and tissue exposed, and that exposure of the extremities is therefore less dangerous than of the whole body. However, for forearms, feet, and ankles such a high value is not needed and we propose that the guides for skin and the whole body apply to these extremites. For the hands a higher value appears to be justified for work in glove boxes. It is proposed to be 50 rem, the limit recommended by the ICRP.

Other Considerations

These recommendations apply to workers exposed to other than normal background radiation on the job. It is sometimes hard to identify such workers, because everyone is exposed to natural sources of radiation and many occupational exposures are small. Regulatory agencies will have to use care in selecting classes of workers whose exposure does not need to be regulated. In selecting such classes we recommend that the agency consider both the collective dose which is likely to be avoided through regulation and the maximum individual doses possible.

The question often arises whether or not exposure for medical purposes and other nonoccupational exposures should be considered in calculating the doses that workers receive within the guides. If there were a threshold for risk of health effects from radiation, this could be an important consideration. However, since we assume that the risk at low doses is proportional to the dose, each exposure must be justified on its individual merits. For this reason, in Note 1 to the recommendations we exclude medical and other nonoccupational exposure from the total calculated occupational radiation exposure of workers.

In many jobs diagnostic x-ray examinations are a routine part of periodic or pre-employment physical examinations. Some of these examinations are a condition of employment and some are not. Federal radiation protection guidance on use of diagnostic x-rays was issued by the President on February 1, 1978 (43 FR 4377). These recommendations provide that, in general, use of such x-ray examinations should be avoided unless a medical benefit will result to a worker, considering the importance of the x-ray examination in preventing and diagnosing diseases, the risk from radiation, and the cost. Although all of the recommendations in that guidance may be usefully applied to x-ray examinations of workers, Recommendations 1 through 4 are particularly pertinent. Because this matter has been addressed by separate Federal guidance, exposure from such diagnostic x-ray examinations is not included in this guidance for occupational exposure.

Current Federal guidance provides that occupational doses to minors (those below the age of eighteen) be limited to one tenth the RPGs for older workers. We propose no change.

No other general types of exposed workers are singled out for special protection by these recommendations. However, one special class of workers—underground uranium miners—is already subject to a separate Federal guide (36 FR 12921). That guide limits exposure of their lungs to radioactive decay products of radon gas. The Mine Safety and Health Administration regulates exposure of all underground miners in accordance with this guide. We expect to review the guide on the exposure of miners to decay products of radon in the future. Exposure of miners to other radiation is governed by the Federal radiation protection guidance in these proposed recommendations.

We have not addressed the issues of emergency exposures or of whether overdoses in one year should lead to additional restrictions on doses in future years. Such situations must be dealt with on the merits in each case and under the regulatory mandate of the controlling Federal agency. We do not consider it either practical or reasonable to prejudge or prescribe general conditions for such situations beyond the general principles which apply to all radiation exposure that are set forth below in Recommendations 1 and 2.

We recognize, in addition, that some situations may exist which justify planned exposures exceeding the guides. Recommendation 9 provides for this. It requires that the controlling Federal agency fully consider and disclose the reasons for any such exposures.

Estimated Impact of These Proposals

We estimated above that the exposure of 1.1 million workers in 1975 (the latest year for which we have complete statistics) will lead to 15–36 additional premature cancer deaths and comparable numbers of serious mutational effects and nonlethal cancers. If this new guidance is adopted, workers should be harmed less in the future. We are not able to quantify the improvement because we cannot predict how efficiently the guidance will be implemented and we do not know how much of existing exposure is unjustified. However, the proposed recommendations provide a framework of graded minimum requirements to cut down the amount of unjustified exposure, and a recommendation that implementing agencies establish lower regulatory limits for workers who can operate significantly below the new maximum limits. We believe that most workers can. The proposals also reduce the maximum annual and lifetime dose that any worker can get by about 60%.

We have made only a limited assessment of the costs of implementing this proposed guidance. We do not believe it would be prudent to attempt a detailed analysis, because agencies developing regulations to carry out this guidance may use different means, and their specific proposals will be subjected to public review and economic analysis when they are developed.

The principal cost will be that associated with reduced RPGs. In order to comply with a reduced RPG an enterprise can hire more workers, reassign (and, if necessary, retrain) present employees, improve its procedures or technology, or curtail the activity. In general, a mix of these will be used, depending on the value of the reduced RPG, on the cost of each alternative, and on other factors. Since we do not know what mix will be used, for the purpose of developing rough numberical estimates of the upper bounds of costs we have used a simple model based on the costs for hiring new workers only.

From the distribution of doses found in our national survey of exposures for the year 1975, we computed the total excess collective dose between the old RPG of 3 rem per quarter and the proposed RPG of 5 rem per year. Dividing this excess by the value of the proposed new RPG gives the minimum number of workers that must be hired to absorb this dose. The average labor cost, including overhead, for each additional worker was assumed to be $40,000 per year. This method yields a cost of about $35 million per year. We believe the actual cost of meeting the new RPG will be much less.

We have also attempted to evaluate costs if existing workers now receiving lower doses are retrained to do high-dose jobs instead of hiring new workers. Some workers are very difficult to replace (e.g., medical professionals, such as cardiologists and radiologists; and workers in small enterprises with very limited labor pools). However, we believe that most workers can be relatively easily retrained (e.g., medical technicians and skilled laborers, such as welders and pipe fitters) to handle tasks which cause higher exposures. We estimate that workers that can be reassigned to these jobs would require training varying from a few days to a few months. For these workers, the costs are expected to range from a few percent to a few tens of percent of the annual cost of new hires. In addition, these costs are incurred only once instead of annually, as in the case of new hires. We therefore estimate that the costs based on the above new hires model may be as much as ten times too high, for the first year, and an even greater over-estimate in succeeding years. We welcome comments on the costs of implementing these proposals, on whether or not the costs are reasonable, and why.

Proposed Recommendations

We propose nine recommendations as guidance to Federal agencies in the formulation of Federal radiation protection standards for workers, and in their establishment of programs of cooperation with States. In all cases but one we have made single recommendations for public comment. The exception, Recommendation 8, addresses protection of the unborn during gestation. Because this recommendation involves issues that go beyond simple radiation protection of workers, including equality of employment rights and the rights of the unborn, we have proposed four alternatives for public consideration. The recommendations follow:

1. All occupational exposure should be justified by the net benefit of the activity causing the exposure. The justification should include comparable consideration of alternatives not requiring radiation exposure.

2. For any justified activity a sustained effort should be made to assure that the collective dose is as low as is reasonably achievable.

3. The radiation dose to individuals should conform to the numerical Radiation Protection Guides (RPGs) specified below. Individual doses should be maintained as far below these RPGs as is reasonably achievable and consistent with Recommendation 2.

Radiation Protection Guides

a. The sum of the annual dose equivalent [6] from external exposure and the annual committed dose equivalent [7] from internal exposure should not exceed the following values:

Whole body—5 rem
Gonads—5 rem
Lens of eye—5 rem
Hands—50 rem
Any other organ—30 rem

b. Non-uniform exposure of the body should also satisfy the condition on the weighted sum of annual dose equivalents and committed dose equivalents, H_w, that

$$H_w = \Sigma_i w_i H_i < 5 \text{ rem},$$

where w_i is a weighting factor, H_i is the annual dose equivalent and committed dose equivalent to organ $_i$, and the sum excludes the gonads, lens of eye, and hands. Recommended values of w_i are:

Breast—0.20
Lung—0.16
Red bone marrow—0.16
Thyroid—0.04
Bone surfaces—0.03
Skin—0.01
Other organs [8]—0.08

c. When both uniform whole-body exposure and nonuniform exposure of the body occur, in addition to the requirements of 3a, the annual uniform whole-body dose equivalent added to the sum of weighted annual dose equivalents from additional nonuniform exposure, H_w, should not exceed 5 rem.

4. The following Minimum Radiation Protection Requirements should be established by appropriate authorities and carried out in the workplace, on the basis of the range of doses anticipated in individual work situations. The numerical values specifying the dose ranges may be adjusted to fit the needs of specific situations by implementing agencies.[9]

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[6] "Dose equivalent" means the quantity expressed by the unit "rem," as defined by the International Commission on Radiation Units (ICRU).

[7] "Annual committed dose equivalent" applies only to dose equivalents from radionuclides inside the body. It means the sum of all dose equivalents that may accumulate over an individual's remaining lifetime (usually taken as 50 years) from radioactivity that is taken into the body in a given year.

[8] Applies only to each of the five other organs with highest doses.

[9] Suggested numerical ranges are: Range A, less than 0.1 RPG; Range B, 0.1–0.3 RPG; Range C, 0.3–1.0 RPG.

Minimum Radiation Protection Requirements

Range A

a. Determine that exposures result only from justified activities and are as low as is reasonably achievable. These determinations may often be made on a generic basis, that is, by considering groups of similar work situations and protective measures.

b. Monitor or otherwise determine individual or area exposure rates to the extent necessary to give reasonable assurance that doses are within the range and are as low as is reasonably achievable.

c. Instruct workers on basic hazards of radiation and radiation protection principles, and on the levels of risk from radiation and appropriate radiation protection practices for their specific work situations. The degree of instruction appropriate will depend on the potential exposure involved.

Range B

The above requirements, plus:

d. Provide professional radiation protection supervision in the work place sufficient to assure that both individual and collective exposures are justified and are as low as is reasonably achievable.

e. Provide individual monitoring and recordkeeping.

Range C

The above requirements, plus:

f. Justify the need for work situations which are expected to make a significant contribution to exposure in Range C and provide professional radiation protection supervision before and while such jobs are undertaken to assure that collective and individual exposures are as low as is reasonably achievable.

g. Carry out sufficient additional monitoring of workers to achieve Recommendation 4f.

h. Once a worker has been exposed in Range C, maintain a lifetime dose record, including at least all subsequent annual doses (as specified in Recommendation 3d) in Ranges B and C.

i. Maintain lifetime doses as low as is reasonably achievable. The accumulation of doses (as recorded under Recommendation 4h) by individual workers should be managed so that their lifetime accumulated dose is less than 100 rem.

5. a. "Radioactivity Intake Factors" (RIFs) should be used to regulate occupational radiation hazards from breathing, swallowing, or immersion in media containing radionuclides. The RIF for a radionuclide is defined as the maximum annual intake (in curies) for which the committed dose equivalent to a reference person satisfies the Radiation Protection Guides in Recommendation 3. RIFs may be derived for different chemical or physical forms, and for intake by breathing, swallowing, or for external exposure from air containing a radioactive gas. Exposure regulated through use of the RIFs should meet the same Minimum Radiation Protection Requirements as equivalent exposure under the Radiation Protection Guides.

b. When a RIF for a specific radionuclide in a specific chemical or physical form determined on the basis of part (a) is larger than that currently in use, a value no greater than that in current use should be adopted in regulations governing work situations identical or similar to those currently in existence.

6. Federal agencies should establish limits and administrative levels that are below the RPGs and the RIFs, when this is appropriate. Such limits or levels may apply to specific categories of workers or work situations.

7. In addition to any other Federal restrictions, the occupational exposure of individuals younger than eighteen should be limited to one tenth of the Radiation Protection Guides for adult workers.

8. Exposure of the unborn [10] should be restricted more than that of workers. This should include special consideration of ALARA practices for women. Women able to bear children should be fully informed of current knowledge of risks to the unborn from radiation. In addition, employers should assure that protection of the unborn is achieved without loss of job security or economic penalty to women workers. Due to the complexity of the issues involved, we propose four alternative recommendations on numerical limitation of dose to the unborn for public comment. We would be glad to receive other recommendations for dealing with exposure of the unborn.

a. Women are encouraged to voluntarily keep total dose to any unborn less than 0.5 rem during any known or suspected pregnancy; or

b. Women able to bear children are encouraged to voluntarily avoid job situations involving whole-body dose rates greater than 0.2 rem per month, and to keep total dose to the unborn less than 0.5 rem during any known pregnancy; or

c. Women able to bear children should be limited to job situations involving whole-body dose rates less than 0.2 rem per month. Total dose to the unborn during any known period of pregnancy should be limited to 0.5 rem; or

d. The whole-body dose to both male and female workers should not exceed 0.5 rem during any six month period.

9. In exceptional circumstances the RPGs may be exceeded, for cause, but only if the Federal agency having jurisdiction carefully considers the specific reasons for doing so, and publicly discloses them unless this would compromise national security.

The following notes clarify application of the above recommendations:

1. Occupational exposure of workers does not include that due to (a) normal background radiation and (b) exposure as a patient of practitioners of the healing arts.

2. When the uniform external whole-body exposure occurs in addition to exposure from radioactive materials taken into the body, the requirement of Recommendation 3c may be satisfied by the condition that

$$\frac{H_{ext}}{RPG_{wb}} + \sum_j \frac{I_j}{RIF_j} \leq 1,$$

where H_{ext} is the annual external whole-body dose equivalent, RPG_{wb} is 5 rem, I_j is the intake of radionuclide j, and RIF_j is defined as in Recommendation 5.

3. The values currently specified by the ICRP for quality factors and dosimetric conventions for measurement of the various types of radiation may be used for determining conformance with the RPGs. The model for a reference person and the metabolic models currently specified by the ICRP may be used to calculate the RIFs. We will recommend other factors, conventions, and models when and if they are more appropriate.

4. Numerical guides for emergency exposures are not provided by this guidance. Agencies should follow the general principles established by Recommendations 1, 2, 7, 8, and 9 in dealing with such situations.

5. Procedures for handling overexposures are not addressed by this guidance. The equitable handling of such cases is the responsibility of the employer and the Federal agency having regulatory jurisdiction.

6. Limits for periods other than one year may be derived by Federal agencies from the annual RPGs and RIFs when necessary for administrative

[10] "Unborn" here means the fertilized oocyte, the embryo, and the fetus.

purposes. Such limits should be consistent with Recommendation 2 and the three ranges in Recommendation 4.

7. The existing guide for limiting exposure of underground uranium miners to radon decay products is not changed by these recommendations.

These proposed recommendations would provide general guidance for the radiation protection of workers. They would replace that part of existing guidance (see 25 FR 4402 of May 18, 1960) which applies to workers. Individual Federal agencies, with their knowledge of specific worker exposure situations, would use this guidance as the basis upon which to develop detailed standards and regulations to meet their particular statutory obligations. We propose to follow the activities of the Federal agencies as they implement the final Guidance, to issue any necessary clarifications and interpretations, and to promote the coordination necessary for an effective Federal program of worker protection.

Public Hearings

Public hearings on these proposed recommendations will be held as indicated above under the heading "Dates." Because of their major responsibilities to regulate radiation exposures in work places, the Nuclear Regulatory Commission (NRC) and the Occupational Safety and Health Administration (OSHA) will participate in sponsoring these hearings. The following conditions and procedures will govern the conduct of the hearings:

1. Purpose, Type, and Scope

These hearings are to provide additional opportunity for people to express opinions and provide factual information to aid EPA, OSHA, and NRC in carrying out their respective responsibilities for guidance on and regulation of occupational exposure to ionizing radiation. The hearings will be informal and legislative in nature rather than adjudicatory or formal rulemaking hearings. Technical rules of evidence, discovery, subpoena powers, testimony under oath, and similar formalities will not apply.

The issues to be covered by these hearings are those listed above under the heading "*Issues Addressed.*" They include those listed in our advance notice of September 17, 1979 (44 FR 53785) and additional issues suggested since then. As indicated in that notice, both EPA and NRC have been petitioned by the Natural Resources Defense Council, Inc., to revise occupational guidance and standards. The subject matter of these hearings encompasses the issues raised in those petitions (See 40 FR 50327 of October 29, 1975).

2. Presiding Officer and Panel

The hearings will be conducted by a presiding officer. A six member panel consisting of representatives of EPA, OSHA, and NRC will assist the presiding officer. A principal responsibility of the panel will be to clarify the testimony by eliciting views, comments, and factual information from participants. Members of the panel will not present views or respond to questions on behalf of their agencies. The membership of the panel may vary from time to time.

The presiding officer and panel shall have the joint responsibility to assure a fair and impartial hearing and to encourage the development of testimony that will contribute to informed decision-making. It will not be the function of the presiding officer or the panel to issue an opinion or to make decisions at the conclusion of the hearings. The presiding officer shall conduct the hearings in an orderly, fair, and expeditious manner and make procedural decisions. His functions shall include, but not be limited to, the following:

a. Regulating the course of the hearings and the conduct of participants, including establishing reasonable time limits for the hearings, establishing the sequence and length of presentations and questioning, and opening and closing each hearing session;

b. Making determinations concerning procedure and similar matters;

c. Assuring that questioning of speakers by panel members and others is consistent with the nature and purpose of these hearings;

d. Making determinations on the relevance of oral testimony and questions to the issues identified as within the scope of the hearings, or, in consulation with the panel, to additional issues pertinent to the proceedings; and, as necessary, terminating irrelevant presentations;

e. Ruling on late requests to participate;

f. Deciding how long the hearing record will remain open for written comments and additional data after the end of the oral proceedings.

3. Participation in the Hearings

Persons or organizations who wish to give presentations longer than ten minutes or present extensive data and evidence must give written notice to the Director, Criteria and Standards Division (ANR–460), U.S. Environmental Protection Agency, Washington, D.C. 20460, no later than 28 days prior to the scheduled date of a hearing. The notice should include: (1) the name, address, and telephone number of the participant; (2) the hearing at which they wish to testify; (3) the organization (if any) that they will represent; (4) the amount of time requested; and (5) which of the issues they want to address. Oral presentations will generally be restricted to 30 minutes. Detailed or lengthy material should be summarized orally and presented in full in written submissions. Requests for longer times for oral presentations will be considered only on the basis of a detailed summary of the material to be presented. The Agency will notify participants in advance if their allocated time is less than that requested.

An opportunity will be provided each day of the hearings for persons who have not submitted a notice as specified above to make brief oral statements. A register will be provided at the beginning of each hearing for this purpose. A minimum period will be set aside for such statements in the agenda for each hearing, and the presiding officer may allocate additional time, as necessary. The maximum time allowed for such statements will depend on the number of registrants and the availability of time, but will generally be limited to periods of no more than 5 to 10 minutes each. In order to assist the management of the hearings, persons wishing to make such statements are encouraged to register promptly at the beginning of the hearing.

Attendance at the hearings will be open to all members of the public, and seating will be made available on a first-come first-served basis.

4. Testimony and Written Submission

a. The oral proceedings will be recorded verbatim and a transcript made availabe promply for inspection and copying, as specified below under the heading "The Public Hearing Record." It will help the panel if speakers supply copies of their oral testimony before they give it. However, this in not required.

b. Fourteen copies of any written statements and documents on which speakers intend to base their oral statements must be submitted to the Director (see "Addresses" above) no later than 14 days before the beginning of the hearing in which they will testify. We would appreciate if speakers would also provide eight additional copies for the use of the panel.

c. Questions may be directed to speakers by the hearing panel, by other speakers, and by other members of the public. Speakers may respond or not, as

they wish. Questions should be designed to elicit relevant information and should not be repetitious of questions asked by others. The views of questioners should be expressed in their statements and not as prefaces to questions. Such informal questioning will be at the discretion and under the control of the presiding officer.

d. Members of the public who are not able to attend the hearings or prefer not to ask questions themselves may suggest questions to the hearing panel to ask of speakers. These must be submitted no later than 14 days before any hearing to the Director (see "Addresses" above). The panel will decide whether or not to ask these questions.

e. Members of the public may also submit comments during the post-hearing comment period set by the presiding officer. These post-hearing comments should be confined to responses to data and opinions submitted at the hearings or to written comments received by the Agency.

f. In addition to these public hearings, we would appreciate any written comments on these proposals. These will be given equal consideration in formulating final recommendations. The procedure for submitting such written comment is given above under the headings "Dates" and "Addresses." Participants in the hearings may refer to and comment on such written comments, which will be available for public inspection and copying as specified below under "The Public Hearing Record."

5. Opening Statement

At the opening of each hearing, EPA will provide a summary statement of the proposed recommendations and of the major issues involved. At that time speakers and other members of the public can ask questions of the EPA representatives in order to clarify the proposed recommendations and the reasons why EPA is proposing them.

6. The Public Hearing Record

The procedures for filing documents in these hearings will be specified by the presiding officer, except as already provided herein.

The hearing record will include the transcript of oral statements by speakers, the questions and answers, and all written materials filed in connection with these hearings. Items in this public hearing record will be filed under EPA Docket No. A-79-45 and will be available for public inspection and copying as soon as possible following their receipt, at the U.S. Environmental Protection Agency's Central Docket Section, Room 2903B, Mail, 401 M Street, S.W., Washington, D.C. 20460, and at each of the Agency's ten regional offices (see "Addresses" above).

Dated: January 16, 1981.

Douglas M. Costle,

Administrator.

[FR Doc. 81-2288 Filed 1-22-81; 8:45 am]
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Friday
January 23, 1981

Part XVI

Department of Agriculture

Food and Nutrition Service

Special Supplemental Food Program for Women, Infants and Children; Eligibility Criteria

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Part 246

[Amdt. 2]

Special Supplemental Food Program for Women, Infants and Children; Eligibility Criteria

AGENCY: Food and Nutrition Service, USDA.

ACTION: Final rule.

SUMMARY: These final regulations set forth the income eligibility criteria for participation in the Special Supplemental Food Program for Women, Infants and Children (WIC) and revise the definition for health services. The regulations implement provisions of Public Law 95-627 and Public Law 96-499 regarding the income criteria standards to be used in conjunction with the nutritional risk criteria in determining eligibility of persons for participation in the WIC Program.

EFFECTIVE DATE: State and local agencies must begin implementation of these regulations no later than July 1, 1981. Implementation of new income eligibility standards must be phased in at regular certification periods.

FOR FURTHER INFORMATION CONTACT: Barbara Sandoval, Director, Supplemental Food Programs Division, U.S. Department of Agriculture, Washington, D.C. 20250, (202) 447-8206. The Final Impact Statement describing the options considered in developing this final rule and the impact of implementing each option is available on request from the above named individual.

SUPPLEMENTARY INFORMATION: The final action has been reviewed under USDA procedures established in Secretary's Memorandum 1955 to implement Executive Order 12044, and has been classified "not significant."

Public Law 95-627, enacted on November 10, 1978, requires the Secretary to establish income eligibility standards, along with nutritional risk criteria, for determining a person's eligibility for participation in the Program. The law also provides that persons will be eligible only if they are members of families that satisfy the income standards prescribed for reduced-price school meals under section 9 of the National School Lunch Act. Until December 1980, the eligibility limit for reduced-price school meals was 195 percent of the poverty guidelines established by the Department, plus an allowance for itemized hardship deductions. The poverty guidelines were computed by taking the most recent OMB poverty guidelines and increasing them to reflect increases in the Consumer Price Index (CPI). However, Public Law 96-499, enacted December 5, 1980, eliminates the update of the OMB poverty guidelines, and replaces the itemized deductions with a standard deduction.

On January 9, 1979, a notice was published in 44 FR 2114 proposing to revise the WIC Program regulations and to establish the required income criteria. The proposal was based on section 3 of Public Law 95-627 which amended section 17 of the Child Nutrition Act of 1966.

The proposed regulations required all State agencies to use 195 percent of the poverty guidelines as the WIC income limit. Lower or higher income limits would not have been authorized. Since WIC regulations direct that State agencies make health care available to all participants, this proposal would also have required States to make health care available to persons with incomes up to 195 percent of the poverty guidelines. The proposal received considerable criticism. Although approximately 50 commenters supported the income eligibility standard as proposed, over 100 commenters opposed it.

Most of the commenters opposed to setting a uniform national income standard felt that each State should be allowed to set its own guidelines at some other level, for example at a level which would coincide with the reduced cost medical care standards already in use in the State. Commenters observed that for some local agencies, setting a uniform national income standard for WIC Program eligibility at a level higher than the current income standards for health care services would create a gap in the availability of health care for some WIC participants served by those local agencies. Some persons would be eligible for the Program according to the uniform national income standard, but would have income too high to be eligible for health care at the local agency. To assure the availability of health care to all participants, these local agencies would either have to raise their health income standards to coincide with the uniform national income standard for WIC or make contractual agreements with other health providers. Commenters stated that this would cause great difficulties for many local agencies, and could cause some to drop out of the Program.

Because the income eligibility requirement has been a highly controversial issue, the Department reproposed this section of the regulations on February 8, 1980, at 45 FR 8670 with a sixty-day comment period. The new proposal contained three alternative options for establishing WIC income limits, and sought comments on all three approaches.

In response to the February 8 proposed rulemaking, the Department received 440 comment letters from interested groups, State agencies, local agencies, Government offices and the general public. The Department carefully analyzed these letters, which contained comments supporting, opposing or suggesting new alternatives for the income criteria. The substantive comments received and the actions taken by the Department are discussed below.

The following paragraphs explain the three income alternatives and the reaction to each one:

Alternative A

Under Alternative A a uniform national income standard would be established at 195 percent of the poverty level. This alternative was identical to the approach originally proposed in the January 9, 1979, proposed rulemaking.

This alternative would require States to consider all applicants with incomes equal to or below 195 percent of the poverty level as having met the WIC income requirement. Since WIC regulations require that health services be made available to all WIC participants, local agencies would have to assure that health care is available to all WIC participants either directly from the local agency or through other health care providers.

The purpose of this alternative was to provide a uniform national income standard. This would assure that all persons from families with incomes at or below 195 percent of poverty are considered income eligible, and, if also certified as being at nutritional risk, are offered the full benefits of WIC supplemental foods, nutrition education and access to health care, to the extent that funds for such participants are available.

Seventy-four commenters supported this alternative. Many of these commenters stated they did not want to eliminate from participation anyone below 195 percent of the poverty level. Seventeen commenters stated that this alternative conforms with existing State or local standards for health care and provides administrative benefits to local agencies and health care to participants. A number of commenters believed this alternative is the only one that carries out WIC's objective of providing health services, nutrition education, and

supplemental food to as many people as possible. Commenters also said this was the fairest alternative since it would provide equal treatment of all women, infants and children regardless of the State or local area in which they reside.

There were 171 opponents of Alternative A. Thirty-three of these opponents stated that this alternative would eliminate WIC benefits for large numbers of people. Commenters expressed concern that the combination of the uniform national income criteria in Alternative A and the strict health services definition in the regulations, as hereinafter discussed would cause the closing of some WIC clinics, thus eliminating benefits to current and potential WIC participants. They went on to explain that because many people have incomes at or below 195 percent of the poverty level, some local jurisdictions cannot provide health services to all people who fall within this income limit. Further, some agencies with health income standards below 195 percent would have to withdraw from the Program. Many commenters reinforced this idea by stating that the lack of flexibility in this alternative precludes allowing States to incorporate the WIC Program into existing health care delivery systems. Seven State and local agencies said this alternative would be too expensive for them to implement and six agencies stated that this alternative did not allow for variations in the cost of living and income level differences between States.

After careful consideration, the Department has not selected this alternative. The Department is concerned that selection of this alternative might cause some local agencies to drop the Program, and wants State and local agencies to have the flexibility to match WIC and health care income limits. In addition, contrary to what some commenters believed, this alternative does not increase the number of persons the Program can serve. The caseload is determined more directly by available funding levels, not by the income limit.

Alternative B

This alternative would establish 195 percent of the poverty guidelines as the uniform national income ceiling, but differs from Alternative A in that it would permit State agencies the discretion to provide health care to only those WIC participants with incomes within State or local income limits for free or reduced cost health care.

Many State agencies base eligibility for free or reduced cost health care on income limits which are lower than 195 percent of the poverty guidelines. Under this alternative, those State agencies would not be required to make health services available to WIC participants if their incomes exceed the State's income standard for health care. In other words, State agencies would be required to provide WIC foods and nutrition education, but not health care, to participants whose income exceeds State or local limits for free or reduced cost health care. Participants whose income is equal to or below State or local limits for free or reduced price health care would be provided health care as well as WIC foods and nutrition education.

This alternative would result in some applicants receiving supplemental food, as well as nutrition education, without health services. The total benefit package including health care would be concentrated on those applicants most in need, based on the local income standards for health care.

Fifty-three commenters supported Alternative B. Many commenters stated this alternative would provide local agencies with the flexibility to tailor the Program to meet the individual circumstances of each area.

Twelve supporters stated that this alternative would allow conformance to their State or local standards for providing health care to participants. Seven supporters liked this alternative because it would continue to provide supplemental food to those participants whose incomes did not allow them to receive health services.

There were 192 opponents to Alternative B. Fifty-four of the commenters opposed this alternative because they believed implementation would be administratively difficult. Many stated that the multi-tiered eligibility system would result in complicated paperwork. In addition, because this alternative would create two categories of participants—those who have health services made available to them and those who do not—42 commenters said this was contrary to the philosophy and legislative intent of WIC which is to provide WIC benefits to all participants as an adjunct to health care. Some commenters felt implementation of this alternative would be the first step toward making WIC a welfare program where some people would be eligible by income alone.

After consideration of the comments, the Department has decided not to select this alternative. The Department believes this alternative is not desirable because of its interest in maintaining WIC as an adjunct to health care for all participants and avoiding increases in the administrative burden of local agencies by creating the multi-tiered eligibility system.

Alternative C

This alternative establishes 195 percent of the poverty guidelines as a maximum income ceiling rather than a uniform, national income limit. Under this alternative, States would have the discretion to determine income eligibility standards for all WIC benefits (including health care) so long as these standards did not exceed 195 percent of the poverty guidelines or fall below 125 percent of the poverty guidelines (125 percent of the poverty guidelines is the income limit for free school lunches prescribed by the National School Lunch Act).

Under this alternative, individuals with incomes above the State or local income standard would not be considered eligible for WIC benefits. A State agency could not set an income standard for the WIC Program below 125 percent or above 195 percent of the poverty guidelines. States would be required to provide supplemental foods, nutrition education and access to health care services to WIC participants with incomes at or below the State or local income standard.

The purpose of this alternative is to maintain the tie between the WIC Program and health services. From its inception, the WIC Program has operated in conjunction with health services. Coordination of WIC with health care benefits was a primary concern of the majority of commenters addressing the income requirement. In some areas, utilization of existing health services by pregnant women and infants has increased substantially with the introduction of WIC. The desire on the part of some communities to participate in the Program has encouraged the development of health resources. Also, the connection between the provision of food, nutrition education and health services has been a major reason for the strong support of the Program at the local level. Furthermore, health care is especially crucial for the WIC target population. There is no question that the early detection of problems and continuous health supervision are particularly important for pregnant women and young children.

There were 165 supporters of Alternative C. Forty-nine of these supporters stated that this alternative conforms with existing State or local standards for health care and, therefore, provides administrative benefits to State or local agencies. Thirty-two commenters supported this alternative because of the flexibility it provides to administering agencies. Establishing a

range for WIC income eligibility standards would allow States to set income eligibility standards consistent with their income standards for health services, while still providing for a minimum income limit. This consistency should allow agencies to simplify the income screening process for participants and help maintain linkage of WIC services with other health services.

There were 166 opponents of Alternative C. Of the 166 commenters opposed to this alternative, however, 89 stated they would support Alternative C if it did not have the 125 percent floor. They felt the 125 percent limit would curtail State discretion and flexibility. The rationale given by most of these 89 commenters was that removal of the 125 percent limit would allow greater flexibility for States since the 125 percent limit was not necessarily useful in States where the cost of living was lower than the average for the United States. Further, some of these commenters felt their recommendation corresponded to the USDA position in the Department's FY 1981 budget proposal which recommended lowering the income eligibility requirement for free meals in the School Lunch Program from 125 percent to 100 percent of the poverty guidelines. They also felt that their proposal would continue the linkage of WIC and other health benefits.

Thirteen commenters felt Alternative C would result in a loss of benefits to WIC participants since some local agencies would have to limit their caseload to participants with incomes equal to or lower than the 195 percent level. However, since neither administrative nor food funding to States would be affected by this change, the total caseload possible in the States would remain essentially the same.

Eleven commenters expressed concern about the effect that having different standards in different areas would have on migrants and other participants who move to a new area. However, participants who move during their certification period have verification of certification cards that allow them to continue participating in the Program without a new certification of income until their certification card expires. Special provisions for migrants whose certification expires while they are instream are discussed later in this preamble.

Consideration of all comments has led the Department to select this alternative with some modification. The Department believes that this alternative best promotes coordination of WIC benefits with health services, and, therefore, promotes linkage of WIC and other health benefits for participants. Further, the use of a single income criterion in any given locality for both WIC and health care eligibility determinations provides for administrative efficiency.

The Department has carefully considered the position of the 89 commenters who did not want a minimum income standard. Some of those commenters did not necessarily oppose the establishment of a minimum income standard but felt that the proposed standard was too high. The Department wishes to balance the concerns of those commenters who requested more State flexibility in this area with the need to set some minimum income standard. The proposed rules would have set the minimum standard at 125 percent of poverty guidelines which were revised to reflect recent increases in the Consumer Price Index. Under the proposal, during the July 1, 1980–June 30, 1981 period, the minimum income for a family of four would be $10,250 per year. The final rules set the minimum income standard at 100 percent of the OMB income poverty guidelines. This reflects a minimum income for a family of four of $7,450. The Department believes that States should not establish a minimum standard below the poverty level.

The maximum income limit, established in accordance with P.L. 96–499, will be 195 percent of the OMB poverty guidelines (without any update for increases in the Consumer Price Index), plus a standard deduction. The Department will provide State agencies each year with a set of maximum income limitations by household size that include the standard deduction, so that local agencies do not have to perform any additional computations to reflect the deduction. The Department will also provide State agencies each year with the minimum income limits by household size.

The final rules provide that WIC participants must be provided the full range of WIC benefits—supplemental foods, nutrition education, and access to health care.

Indian Provision—The steering committee of the Indian and Native American WIC Coalition, supported by a number of Indian State agencies, commented that the income eligibility alternatives proposed by USDA would be administratively inefficient for Indian areas in which most residents have low incomes. Such alternatives are confusing to Indian participants because they view WIC as part of the health care benefits provided to all Indian people. As relationships between Indian tribes and the Federal Government developed over the years, the Government has (since 1955 through the Indian Health Service) made health services available to Indian people without regard to income status.

Indian WIC agencies usually have agreements with the Indian Health Service whereby they provide pediatric and obstetric care and in many cases WIC certification and nutrition education. According to the Coalition, from the viewpoint of the Indian WIC participant, WIC services are part of the total health care package provided by the Indian Health Service to Indian people. The Coalition also stated that it is widely recognized that Indian people experience a high rate of poverty. The Bureau of Indian Affairs as well as most tribes have income data that supports this.

The Coalition felt the Department's alternatives would be administratively inefficient for Indians since the vast majority of Indian participants have family incomes below the 195 percent poverty ceiling. The Coalition said that small tribal agencies would need to institute expensive new administrative procedures to make income determinations that would screen out few, if any, applicants, and that the cost of this effort would likely be greater than the savings in food dollars. This is of particular concern, because many Indian State agencies already experience very high administrative costs in operating the WIC Program. The Coalition proposed two alternatives for Indian agencies: (1) Consider all Indian people categorically as having incomes below the poverty ceiling, or (2) Obtain a declaration from the tribe or Bureau of Indian Affairs that the majority of Indian people within the Indian Tribal Organization's service area have incomes at or below the poverty ceiling. The Coalition received support from ten tribal State agencies, one tribal local agency and one tribal interest group.

A finding of categorical income eligibility for Indians is not authorized by the WIC authorizing legislation. Therefore, like other WIC participants, Indians are required to satisfy the income eligibility standards as a precedent to receipt of WIC benefits. However, the Department is reluctant to impose an administrative burden on Indian local WIC agencies that would require an expenditure of time and administrative funds grossly disproportionate to the benefits received.

Because Indian health service areas are usually clearly definable by geographic boundaries or tribal membership requirements, and in recognition of the known high rate of

poverty and health problems among Indians, the Department has decided to modify the income determination requirements for Indians. The Department has determined that if an Indian State agency, or a local agency operated by an Indian organization or the Indian Health Service, can document that the vast majority of the Indian households in its service area have incomes below the maximum income limit, a somewhat abbreviated income certification system may be instituted. If an Indian State agency, or a non-Indian State agency acting on behalf of a local agency operated by an Indian organization or the Indian Health Service submits documentation to FNS indicating that the vast majority of the Indian members located in the agency's service area have incomes below the maximum income level, then an Indian household member applying to that local agency for WIC benefits may be certified as income eligible if the member is informed of the maximum income level and confirms in writing that his or her family income is at or below that level. The WIC local agency is required to verify individually any applicant's income if the certifying officials have reason to believe the applicant receives an income in excess of the maximum income level.

Migrant Provisions—Another issue which has been brought to the Department's attention concerns the computation of income for migrant farmworkers. The Department recognizes that it can be particularly difficult to determine the income of migrants while they are instream, i.e., away from their home base.

While instream, migrant income fluctuates due to factors such as episodic employment and changing weather conditions. Anticipating income that migrants have not yet received can be difficult. Inequities may result if the income does not materialize, and can result in hardships to persons at nutritional risk during the period prior to the income's receipt. Relying on income received in a previous month is also risky, and may also result in hardships if the income is no longer available due to such factors as the need of migrants to settle credit advances in their last location or to pay for the costs of traveling to a new work location.

These difficulties can be compounded, as commenters noted, when different areas through which migrants travel have different WIC income limits and different definitions of income. Frequent income redeterminations would be administratively costly to local agencies while proving burdensome and occasionally inequitable to migrant recipients.

Migrants are among those most in need of the benefits of participation in the WIC Program. For persons in the WIC Program target population—pregnant, breastfeeding, or postpartum women, infants and young children—the mobility of an instream migrant family increases the potential for nutritional risk conditions. The Department is especially concerned that inconsistent income limits and definitions not disqualify instream migrants with a legitimate need for the Program.

Accordingly, this final rule provides that if a migrant farmworker is instream and needs to be certified again because the migrant's verification of certification (VOC) card has expired, the migrant shall automatically be deemed to satisfy the income standards until such time as the migrant is no longer instream. In other words, either in the home-base State or an instream state, shall remain valid for as long as the migrant remains instream that year. An instream migrant being certified again because her VOC has expired must again be determined to be at nutritional risk.

The procedure would not apply to migrants who appear at a WIC local agency instream but have not previously been certified and have no VOC card. This procedure essentially requires migrants to have one income determination for each year's agricultural season (including the period in the home-base area prior to the beginning of the agricultural season), but removes requirements for any additional income determinations.

This procedure does not apply to participants with expiring VOC cards who are not migrants. There is no special need to use this procedure for non-migrant participants.

To make the distinction between migrant participants and other persons, local agencies must be able to identify migrants. Some migrant and public interest organizations as well as the WIC Migrant Task Force, have requested that the Department formulate a definition of migrant farmworkers so that uniform criteria for identifying migrants apply across all States. There is no single definition that is universally accepted and various Federal programs serving migrants define them in different ways. The Department plans, in a proposed rulemaking to be published shortly, to explore possible regulatory definitions of migrant farmworkers. In the meantime, however, each State agency must have a definition of migrants which shall be included in the State Plan.

Definition of Income

The final rules provide that the State agency can either use the WIC Program definition of income as outlined in Section 246.7(c)(3) or a State or local agency definition of income used for health care services. If a State agency uses State or local income standards for health care as the income limits for WIC eligibility, the definition of income under these standards must be restricted to money income, and may not include the value of inkind housing or other inkind benefits when being applied to WIC participants. For example, a State cannot use the State's Medicaid definition of income for determining WIC eligibility if the Medicaid definition applies the value of inkind housing to a participant's income. If a State or local agency wishes to use a definition of income that differs from the definition set forth in § 246.7(c)(3), the State agency must submit the alternative definition for FNS approval in its State plan.

Deductions

The proposed regulations allowed State agency discretion in the use of hardship deductions from gross income. Eighty-seven comments were received on deductions from income. Fifty-one of those commenters supported allowing State agency discretion in determining hardship deductions. These supporters agreed with the Department's theory that deductions for the WIC Program should be similar if not the same as those for other health programs. One local agency and two interest groups opposed allowing any State discretion in determing deductions. Twenty-one commenters wanted hardship deductions applied in all States, and mandated by the Department. The consensus of these supporters was that gross income is not an accurate economic indicator when additional expenses such as high fuel and shelter costs, child care, child support costs and other similar expenses play a part in determining each family's spendable income.

Public Law 96–499 establishes the eligibility limit for reduced price school lunches at 195 percent of the poverty guidelines plus a standard deduction. The law precludes use of itemized deductions which enable families with higher incomes to qualify. Since the WIC income maximum is now tied by law to the reduced price income limit for school lunches, the Department cannot allow State or local agencies to use itemized, hardship deductions in determining WIC eligibility unless the State agency can demonstrate to FNS that any such

deduction is structured in such a way that no family found eligible for WIC will have gross income that exceeds the nationally prescribed maximum WIC income standard. (For example, a State with a WIC income standard of 175 percent of poverty might be able to allow a deduction for child care costs up to $50 per month and still demonstrate that no person could qualify with an income above the maximum income standard.) The provision allowing for limited use of itemized deductions under certain circumstances is included to allow States with similar deductions in their health care programs to coordinate the programs to the maximum degree possible.

Verification of Income—The proposed rules provided State agencies with flexibility to determine policies they wished to follow with regard to verification of information provided by applicants. Ninety-five commenters responded to the proposed regulations on verification of income. Forty-four of those commenters supported allowing State discretion in determining verification policies. They agreed with the Department's philosophy of allowing the State to use whatever method is currently in use for other health programs that are being coordinated with WIC.

Twenty-one commenters specifically supported mandating self-declaration as the method to be used for determining income in WIC. This is the method used in the school lunch and breakfast program and other child nutrition programs under which applicants indicate their income in writing. As noted by several supporters, the self-declaration method represents administratively the easiest and least costly method of income determination because no paperwork is involved.

Twenty commenters supported verification of income. Several felt verification should be used all the time, while others wanted verification to be used only when necessary. Responses varied as to the means for verifying income. Twenty-nine commenters supported using proof of participation in other Federal programs such as the Food Stamp Program, Aid to Families with Dependent Children, Medicaid, etc. Several commenters also suggested using check stubs or W–2's for verification.

The Department has decided to allow State and local agency discretion when verifying income. The Department believes that allowing State and local agency discretion in this area could alleviate administrative problems in instances where WIC intake is combined with intake for other health services offered by the State agency. An example would be where joint intake procedures are used to determine eligibility for both WIC benefits and for free or reduced price health care.

Health Services Definition—Prior to the WIC regulations published in July 1979, health services were defined as "ongoing, routine pediatric and obstetrical care such as infant and child care, prenatal and postpartum examinations, nutritional examinations or screening, diagnosis and treatment or referral for treatment." The regulations published July 27, 1979, defined health services as "ongoing, routine pediatric and obstetric care such as infant and child care, and prenatal and postpartum examinations." The portion of the definition referring to "nutritional examinations or screening, diagnosis and treatment or referral for treatment" was deleted at that time.

This change was made in an effort to tighten the relationship between WIC and health care. However, shortly after the July 1979 regulations were published, the Department began receiving expressions of strong concern, especially from State and local agencies and FNS Regional Offices, that the change could have major unintended consequences. They warned that the new definition was so strict that many WIC local agencies would be forced out of the program. This could be a particularly serious problem in poor, medically underserved areas such as parts of the rural South. It was reported to FNS that a number of local agencies in the South could not meet the new, restrictive definition.

Due to the potentially serious consequences of the new definition, it was never fully implemented. Existing local agencies continued to participate, while the Department, in the February 8, 1980, proposed rulemaking, requested comments on possible revisions of the definition.

The comments calling for revision of the definition were numerous. Four commenters supported retaining the definition, while 139 commenters asked for a change. Thirty-four commenters, including four State agencies and 21 local agencies, asked for returning to the definition contained in WIC regulations prior to July 27, 1979. Eighty-three commenters, including 22 State agencies and 24 local agencies, proposed modifying the definition to allow health services to be made available by a referral mechanism.

The comment from the Nevada State Division of Health was typical of concerns expressed by many commenters. The Division of Health stated that the Department's definition would require that WIC services be available only when a full range of other health services is also available. This, according to the Nevada State agency, would allow only the more sophisticated clinics to offer the WIC Program, and would jeopardize WIC services made available through agencies with more limited funding for health care. The commentor believed this would deemphasize the preventive health aspects of the Program.

Many commenters stated that the ability on the part of local agencies to refer participants for health services is essential if the Program is to fulfill its mission of providing benefits to those persons in greatest need in areas of greatest need.

These strong expressions of concern clearly indicates a need for a revised definition, and the desirability of allowing referral for health care services. Accordingly, the definition of health services is being revised to allow participation by local agencies that refer participants for health services. The definition will now read: "Health services means ongoing, routine pediatric and obstetric care (such as infant and child care and prenatal and postpartum examinations) or referral for treatment."

This revised definition does not alter the requirement for local agencies to have a competent professional authority on the staff of the local agency and the capabilities necessary to perform the certification procedures.

As a result of the revised definition, several other conforming changes are being made in the regulations. A change is made in the provisions concerning agreements between State and local agencies and in the local agency priority system. Section 246.6(b)(3) will now require that each local agency that makes health services available through referral must have a plan for continued efforts to make health services available to participants at the clinic or through written agreements with health care providers.

Section 246.5(e)(1) will add, as the last priority, agencies that refer participants to health care providers.

These revisions maintain the vital WIC Program by local agencies that use referral mechanisms to make health care available.

Cost of Certification

The Department has learned that some local agencies charge Program applicants a paperwork processing fee or for routine tests performed as part of the initial or subsequent certification process. This is contrary to Public Law 95–627, Section 17(c)(1), which requires

that the Program be provided to participants "at no cost." The regulations, therefore, specify the legislative intent which is to ensure that the Program imposes no financial burdens on the potential participant.

Implementation

State and local agencies must begin implementing the provisions of this rule regarding WIC income limits on July 1, 1981. After that date, all State and local agencies must begin applying the new income eligibility standards to all new applicants, as well as to all ongoing participants at the time of each participant's next regular certification. State and local agencies need not review cases of ongoing participants during the participant's certification period, but must apply the new standards at the time of subsequent certification for all certifications that occur on or after July 1, 1981.

The July 1, 1981, implementation date is timed to coincide with the regular, annual change in the poverty guidelines, which takes effect each July 1. FNS will announce on or about May 1, 1981, the maximum and minimum income limits that will take effect on July 1, 1981. This will follow the issuance by OMB of the annual revision in the poverty guidelines.

The provisions of this rulemaking that modify the definition of health services shall also become effective on July 1, 1981.

Authority: Child Nutrition Amendments of 1978, Public Law 95-627, Section 3, 92 Stat 3614, and Omnibus Reconciliation Act, Pub. L. 96-499 (December 5, 1980).

Therefore, Part 246 is amended to read as follows:

PART 246—SPECIAL SUPPLEMENTAL FOOD PROGRAM FOR WOMEN, INFANTS, AND CHILDREN

1. Section 246.2 is amended by revising the definition of "health services" and adding in alphabetical sequence the definition of "income poverty guidelines" to read as follows:

§ 246.2 Definitions.

* * * * *

"Health services" means ongoing, routine pediatric and obstetric care (such as infant and child care and prenatal and postpartum examinations) or referral for treatment.

* * * * *

"Income poverty guidelines" means the nonfarm income poverty guidelines prescribed by the Office of Management and Budget. These guidelines are adjusted annually by the Office of Management and Budget, with each annual adjustment effective July 1 of each year. The income poverty guidelines prescribed by the Office of Management and Budget for the contiguous 48 States and the District of Columbia shall also be used for Puerto Rico and the Virgin Islands. Separate income poverty guidelines are prescribed for Alaska and Hawaii.

* * * * *

2. In § 246.4, paragraphs (a)(9) and (a)(12) are revised to read as follows:

§ 246.4 State agency plan of program operations and administration.

(a) * * *

(9) Plans to provide Program benefits to eligible migrant farmworkers and Indians, including procedures, such as expansion of services during migrant season, to be instituted by the State agency to ensure that eligible migrant farmworkers may, to the maximum extent feasible, continue to receive Program benefits when they enter the State agency's jurisdiction subsequent to original certification in another Program jurisdiction. In addition, the definition of a migrant farmworker shall be included in the Plan.

* * * * *

(12) A description of the methods used to certify participants which shall include: (i) a list of the specific nutritional risk criteria by priority level which cites conditions and indices to be used to determine a person's nutritional risk; and (ii) the State agency's income standards including the definition of income used by the State agency if it differs from the definition set forth in § 246.7(c)(3). The State agency shall also submit any local agency income standards which it has approved and which differ from the State agency's income standard; (iii) for Indian State agencies (and State agencies acting on behalf of the local agencies operated by either an Indian organization or the Indian Health Service) that wish to apply for the alternate income determination procedure in accordance with § 246.7(c)(4), the documentation that the vast majority of Indian household members in a local agency's service area have incomes below the State agency's income eligibility criterion.

* * * * *

3. Section 246.5 is amended by revising paragraphs (e)(1)(i)–(iv) and by adding a new paragraph (e)(1)(v) to read as follows:

§ 246.5 Selection of local agencies.

* * * * *

(e) * * *

(1) * * *

(i) First consideration shall be given to a public or private nonprofit health agency that will provide ongoing, routine pediatric and obstetric care and administrative services.

(ii) Second consideration shall be given to a public or private nonprofit health or human service agency that will enter into a written agreement with another agency for either ongoing, routine pediatric and obstetric care or administrative services.

(iii) Third consideration shall be given to a public or private nonprofit health agency that will enter into a written agreement with private physicians, licensed by the State, in order to provide ongoing, routine pediatric and obstetric care to a specific category of participants (women, infants or children).

(iv) Fourth consideration shall be given to a public or private nonprofit human service agency that will enter into a written agreement with private physicians, licensed by the State to provide ongoing, routine pediatric and obstetric care.

(v) Fifth consideration shall be given to a public or private nonprofit health or human service agency that will provide ongoing, routine pediatric and obstetric care through referral to a health provider.

* * * * *

4. In § 246.6, paragraph (b)(3) is revised to read as follows:

§ 246.6 Agreements with local agencies.

* * * * *

(b) * * *

(3) Makes available appropriate health services to participants up to the income level specified for the Program and informs applicants of the health services which are available. (When health services are provided through referral, the local agency must have a plan for continued efforts to make health services available to participants at the clinic or through written agreements with health care providers.)

* * * * *

5. In § 246.7, paragraph (a)(3), (b)(2) and (c) are revised and a new paragraph (n) is added to read as follows:

§ 246.7 Certification.

(a) * * *

(3) Meet the income criteria specified in paragraph (b)(2) of this section.

(b) * * *

(2) The State agency shall provide the local agencies with the income guidelines and procedures to be used in income determinations which establish eligibility for the Program. The State agency may prescribe different income limits for use by different local agencies

if there are variances in the income standards used by the local agencies for free and reduced price health care. The income guidelines established by the State agency for use in any local agency shall not be less than the applicable State or local income limit for free or reduced price health care, except that the State agency's income standard may not be greater than 195% of the income poverty guidelines for each family size plus a standard deduction prescribed by FNS. In addition, the income guidelines established by the State agency may not be less than 100% of the income poverty guidelines for each family size. Each State agency shall annually announce and transmit to each local agency the State agency's family size income guidelines to be used in making income determinations by June 1 of each year, unless changes in the income poverty guidelines do not effect the State agency income guidelines. The State and local agencies shall implement these income guidelines each July 1, beginning with July 1, 1981. Each year, State and local agencies shall apply the new income guidelines as of July 1 to all new applicants, as well as to all ongoing participants at the time of each participant's next regular certification.

* * * * *

(c) *Income Determination.* (1) The State agency shall ensure the local agencies determine income through the use of a clear and simple application provided or approved by the State agency. In applying the income poverty guidelines, the State agency may instruct the local agencies to consider the income of the family during the past 12 months and the family's current rate of income to determine which is the better indicator of income. However, persons from families with adult members who are unemployed shall be eligible based on income during the period of unemployment if the loss of income causes the current rate of income to be less than the State agency's income limit for WIC eligibility.

(2) In determining the definition of income, the State agency may use a definition of income that is used by the State agency to determine eligibility for free and reduced priced health care, provided that the value of inkind housing and other inkind benefits are not counted as income for the purpose of this Program, and that any income or benefits received under any Federal program which are excluded from consideration as income by a legislative prohibition are not counted (FNS will provide State agencies with a list of such Federal programs). The State agency's definition of income may not allow deductions from income for expenses due to hardships unless the State agency can demonstrate that no household whose gross income before deductions exceeds 195 percent of the income poverty guidelines plus the standard deduction prescribed by FNS shall be found eligible under the State's income definition. The definition of income may vary between local agencies within the State agency's jurisdiction (if necessary to coincide with local agency income standards for health care) or it may be a State-wide definition that is identical for all local agencies under the State agency. The State agency shall annually request approval in the State Plan of operations and administration to use its definition of income.

(3) If the State agency does not have a definition of income that is used to determine eligibility for free or reduced price health care, the State agency shall use the following definition of income: (i) Income for the purposes of this part means gross income before deductions for income taxes, employees' social security taxes, insurance premiums, bonds, etc. Income includes the following: (A) Monetary compensation for services, including wages, salary, commissions, or fees; (B) Net income from farm and non-farm self-employment; (C) Social Security; (D) Dividends or interest on savings or bonds, income from estates or trusts, or net rental income; (E) Public assistance or welfare payments; (F) Unemployment compensation; (G) Government civilian employee or military retirement or pensions or veterans' payments; (H) Private pensions or annuities; (I) Alimony or child support payments; (J) Regular contributions from persons not living in the household; (K) Net royalties; and (L) Other cash income. Other cash income would include, but would not be limited to, cash amounts received or withdrawn from any source including savings, investments, trust accounts and other resources which are readily available to the family. (ii) Income for the purposes of this part shall not include the following: (A) Income or benefits received under any Federal program which are excluded from consideration as income by any legislative prohibition, for example, income received by volunteers for services performed in the National Older Americans Volunteer Program under the Domestic Volunteer Act of 1973, and the value of assistance to children or their families under the National School Lunch Act, the Child Nutrition Act of 1966 and the Food Stamp Act of 1977. (B) The value of inkind benefits.

(4) (i) If the Indian State agency (or a non-Indian State agency acting on behalf of a local agency operated by an Indian organization or the Indian Health Service) submits census data or other reliable documentation demonstrating to FNS that the vast majority of the Indian households in a local agency's service area have incomes at or below the State agency's income eligibility criterion, then FNS may authorize the State agency to approve the use of the following income certification system in those local agencies for which data has been provided.

(ii) The local Indian agency shall inform each Indian household applicant of the maximum family income allowed for that applicant's family size. The local agency shall ensure that the applicant signs a statement that his/her family income meets that criterion. The local agency may verify the income eligibility of any Indian applicant if WIC officials have reasonable cause to believe the applicant receives an income in excess of the State agency's income criterion.

(5) If an instream migrant farmworker participant needs to be certified again because the participant's verification of certification card has expired, the participant shall be deemed to satisfy the State agency's income standard. Any determination that a migrant has met the income standard, either in the migrant's home base area before the migrant has entered the stream for a particular agricultural season, or in an instream area during the agricultural season, shall satisfy the income criteria for that migrant participant in any State for any subsequent certification while the migrant is instream during that agricultural season. (This procedure shall not apply to participants whose verification of certification cards have expired if the participants are not instream migrant farmworkers.)

(6) To lend administrative efficiency and participant convenience to the certification process, whenever possible, WIC intake procedures shall be combined with intake procedures for other health programs or services administered by the State and local agencies. Such merging may include verification procedures, certification interviews, and income computations. A State or local agency may require verification of information which it determines to be necessary to determine eligibility for Program benefits. Each State agency which has other State administered programs that routinely obtain verification of income, such as the Medicaid, public assistance and Food Stamp Programs, may accept

verification of a WIC applicant's participation in such programs as face value evidence of income within the WIC limits; provided those programs use income eligibility limits at or below the State's WIC income limit.

* * * * *

(n) The certification procedure shall be performed at no cost to the applicant.

* * * * *

Note.—The reporting and recordkeeping requirements contained herein have been approved by the Office of Management and Budget in accordance with the Federal Reports Act of 1942.

(Catalog of Federal Domestic Asistance Program No. 10.577, National Archives Reference Service.)

Dated: January 13, 1981.

Robert Greenstein,

Administrator, Food and Nutrition Service.

[FR Doc. 81-2054 Filed 1-23-81; 8:45 am]

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federal register

Friday
January 23, 1981

Part XVII

Department of the Interior

Office of Surface Mining Reclamation and Enforcement

List of Laboratories Qualified To Perform Work Under the Small Operator Assistance Program

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

List of Laboratories Qualified To Perform Work Under the Small Operator Assistance Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), U.S. Department of the Interior.

ACTION: Notice of laboratories qualified to perform work under the Small Operator Assistance Program.

SUMMARY: OSM is informing the public and State regulatory authorities of laboratories that have been qualified as of November 1980, for work under the Small Operator Assistance Program (SOAP). During the interim and under permanent regulatory programs, qualified laboratories will provide the *determination* of probable hydrologic consequences and *statement* of the results of test borings for eligible small operators. The *determination* and *statement* are two important permit application requirements.

This notice is published pursuant to 30 CFR 795.17(a)(2).

FOR FURTHER INFORMATION CONTACT: Further information can be obtained by contacting the following people:

Headquarters: Donald W. Willen, Department of Interior, Office of Surface Mining, 1951 Constitution Avenue NW, Room 5215L, Washington, DC 20240 (202) 343–6104.

Region I: Keith Eggleston, Office of Surface Mining, 603 Morris Street, Charleston, West Virginia 25301 (304) 342–6125, Ext. 290.

Region II: Charles Ferst, Office of Surface Mining, Farragut Building, 530 Gay Street SW, Knoxville, Tennessee 37902 (615) 637–8060.

Region III: Leroy Davis, Office of Surface Mining, Federal Building & Court House, 46 East Ohio Street, Indianapolis, Indiana 46204 (317) 269–2532.

Region IV: Ronald Schwartz, Office of Surface Mining, Scarritt Building, 818 Grand Avenue, Kansas City, Missouri 64106 (816) 374–3429.

Region V: Charles Harrison, Office of Surface Mining, Brooks Towers, 1020 15th Street, Denver, Colorado 80202 (303) 837–5066.

SUPPLEMENTARY INFORMATION: The laboratories listed below were qualified by OSM or State regulatory authorities as of November 1980, for work under the Small Operator Assistance Program (SOAP). This list updates the earlier list of qualified laboratories published in the Federal Register on February 19, 1980. The *determination* of probable hydrologic consequences of proposed mining and reclamation operations and *statement* of the results of test borings or core samplings are provided to eligible small operators under the SOAP. As defined in 30 CFR 795.17(a)(1), qualified laboratory is "a designated public agency, private consulting firm, institution, or analytical laboratory which can provide the *determination* or *statement* under this Program."

To qualify for work under the SOAP, laboratories have to satisfy conditions of personnel, experience, organization and facilities, and other criteria as set forth in 30 CFR 795.17(b). The laboratory qualification process consists of two phases: 1. completion of an application form provided by the Office, and 2. an on-site inspection of laboratory personnel and facilities by the Office.

Tow basic qualification categories are: 1. prime contractors (for *determination* and/or *statement*) and; 2. subcontractors (for water quality and/or overburden and coal analysis). The prime contractors are qualified to provide hydrologic and geologic data collection and interpretative reports, and must be able to provide most of the service in-house. The subcontractors are qualified to provide analytical services to the prime contractors. In-house services must be provided by personnel employed full-time by the specific office of the laboratory requesting qualification. However, some services may be provided to the prime contractor by individual consultants (specialists) if their use has been approved by OSM during the qualification process. Lists of consulstants will not be published in the Federal Register. Small business, women owned, minority owned, and certified 8(a) laboratories are indicated in the list.

The list of qualified laboratories will be published periodically in the Federal Register. Becoming qualified or being listed in the Federal Register does not guarantee contracts for work in the SOAP. Under procedures for Federal administration of the SOAP, contracts will be awarded to successful offerors to Request for Proposal (RFP) solicitations. RFPs will be issued periodically as the need arises. Qualified laboratories may compete for work in States other than those States in which they are located. States that administer the SOAP under interim or permanent regulatory programs may use this list of qualified laboratories, may use similar procurement procedures, and also may qualify laboratories.

Laboratories may be disqualified and dropped from the list of qualified laboratories for inadequate performance in contracts, conflicts of interest, or for changes in personnel, facilities or organization that cause the laboratory to no longer meet the requirements set forth in 30 CFR 795.17(b).

All laboratories will be requalified periodically.

Dated: January 16, 1981.

Paul L. Reeves,

Acting Director, Office of Surface Mining Reclamation and Enforcement.

List of Qualified Laboratories

Type of Contractor:
P=prime contractor
S=subcontractor
Qualification Category:
D=field data collection, water quality analyses, data compilation and interpretation, and report writing to produce a *determination* of the probable hydrologic consequences of mining and reclamation operations
D'=same as above except that water qualify analyses will be subcontracted
S=field data collection, overburden and coal analyses, data compilation and interpretation, and report writing to produce a *statement* of the results of test borings or core samplings
S'=same as above except that overburden and coal analyses will be subcontracted
W=water quality analyses
O=overburden and coal analyses
Classes of Business:
1=small business under the Engineering Services size standards
2=woman-owned business
3=minority owned as defined in Public Law 95–507
4=certified 8(a) by the Small Business Administration
Qualifying Agency:
Laboratories qualified by State regulatory authorities are identified by letter in front of laboratory name. All other laboratories were qualified by OSM.
a=qualified by Ohio Department of Natural Resources.

BILLING CODE 4310-05-M

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OFFICE OF SURFACE MINING RECLAMATION AND ENFORCEMENT
LIST OF LABORATORIES QUALIFIED TO PERFORM WORK UNDER THE SMALL OPERATOR ASSISTANCE PROGRAM

LABORATORY NAME	ADDRESS	CITY	ST	ZIP	TYPE OF QUAL	BUSINESS CONTRTR CAT.	CLASS

OFFICE OF SURFACE MINING RECLAMATION AND ENFORCEMENT
LIST OF LABORATORIES QUALIFIED TO PERFORM WORK UNDER THE SMALL OPERATOR ASSISTANCE PROGRAM

LABORATORY NAME	ADDRESS	CITY	ST	ZIP	TYPE OF CONTRTR	QUAL CAT.	BUSINESS CLASS
REGION 1							
××××××DISTRICT OF COLUMBIA×××××××							
HOWARD UNIVERSITY, DEPT. OF CIVIL ENGINEERING	2400 6TH STREET, N.W.	WASHINGTON	DC	20059	S	W O	3
××××××MARYLAND×××××××							
GREENHORNE AND O'MEARA, INC.	6715 KENILWORTH AVENUE	RIVERDALE	MD	20840	P	D S	1
HITTMAN ASSOCIATES	9190 RED BRANCH ROAD	COLUMBIA	MD	21045	P	D'S	
NUS CORPORATION	4 RESEARCH PLACE	ROCKVILLE	MD	20850	P	D'S	
PEER CONSULTANT	1160 ROCKVILLE PIKE, SUITE 101	ROCKVILLE	MD	20852	P	D S	1 2 3 4
PENNIMAN & BROWNE, INC.	6252 FALLS ROAD	BALTIMORE	MD	21209	S	O	1
××××××NEW JERSEY×××××××							
FUGRO ATLANTIC, INC.	23 BELMONT DRIVE	SOMERSET	NJ	08873	P	D S	
WOODWARD-CLYDE CONSULTANTS	1425 BROAD STREET	CLIFTON	NJ	07012	P	D S	
××××××PENNSYLVANIA×××××××							
AACKENHEIL AND ASSOCIATES GEO SYSTEMS, INC.	1000 BANKSVILLE ROAD	PITTSBURGH	PA	15216	P	D'S'	1
ALCHEMIS	AIRPORT ROAD, COMMERCIAL PARK, 4626 PARK DRIVE	BATH	PA	18014	S	W O	1
ANDREW S. MCCREATH AND SON, INC.	610 WILLOW STREET, P. O. BOX 1453	HARRISBURG	PA	17105	S	W O	
ATEC ASSOCIATES	75 ACCO DRIVE	YORK	PA	17402	P	D S	
BASIC TECHNOLOGY CORPORATION	7125 SALTSBURG ROAD	PITTSBURGH	PA	15235	P	D S	
BCM-BETZ-CONVERSE-MURDOCH, INC.	ONE PLYMOUTH MEETING MALL	PLYMOUTH MEETING	PA	19462	P	D'S'	

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BERGER ASSOCIATES	P.O. BOX 1943	HARRISBURG	PA	17105	P	D S	1
BROCKWAY LABORATORIES	R.D. #2 - BOX 840	BROCKWAY	PA	15824	S	W O	1
CENTRAL ENVIRONMENTAL SERVICES	12 WATER STREET	CLEARFIELD	PA	16830	S	W	1
D'APPOLONIA	10 DUFF ROAD	PITTSBURGH	PA	15235	P	D'S'	
ENERGY IMPACT ASSOCIATES	P. O. BOX 1899	PITTSBURGH	PA	15230	P	D S	1
FAIRWAY LABORATORIES, INC.	2900 FAIRWAY DRIVE, P.O. BOX 1925	ALTOONA	PA	16603	S	W	1
FREE-COL DIVISION OF FREEPORT BRICK COMPANY	P. O. BOX 557, COTTON ROAD	MEADVILLE	PA	16335	S	W O	1
G & C COAL ANALYTICAL LABORATORY	RD #1	SUMMERVILLE	PA	15864	S	O	1
GAI CONSULTANTS, INC.	570 BEATTY ROAD	MONROEVILLE	PA	15146	P	D S	1
GANNETT FLEMING CORDDRY AND CARPENTER, INC.	P. O. BOX 1963	HARRISBURG	PA	17105	P	D'S'	
GARBART ENGINEERING COMPANY	R.D. #1, BOX 340	LEMONT FURNACE	PA	15456	P	D S	1
GENERAL ENGINEERING	P. O. BOX 311, GREENVILLE AVENUE EXTENDED	CLARION	PA	16214	P	D S	1
GEO-TECHNICAL SERVICES, INC.	851 SOUTH 19TH STREET	HARRISBURG	PA	17104	P	D S	1 3
GEOMEGA, INC.	P. O. BOX 13127	PITTSBURGH	PA	15243	P	D S	1 3
GILBERT/COMMONWEALTH	P. O. BOX 1498	READING	PA	19603	P	D S	
GREEN INTERNATIONAL, INC.	504 BEAVER STREET	SEWICKLEY	PA	15143	P	D'S'	1
INDIANA ANALYTICAL LABORATORIES, INC.	P. O. BOX 87	SHELOCTA	PA	15774	P	D'S'	1
L. ROBERT KIMBALL AND ASSOCIATES	615 W. HIGHLAND AVENUE	EDENSBURG	PA	15931	P	D'S'	
LANCASTER LABORATORIES, INC.	2425 NEW HOLLAND PIKE	LANCASTER	PA	17601	S	W	1
LEE-SIMPSON	DEPOSIT NATIONAL BANK	DUBOIS	PA	15801	P	D'S	1
MAHAFFEY LABORATORY	P. O. BOX 28, BANNER RIDGE ROAD	MAHAFFEY	PA	15757	S	W	1
MEISER AND EARL, HYDROGEOLOGISTS	1512 WEST COLLEGE AVENUE	STATE COLLEGE	PA	16801	P	D S	1

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MICHAEL BAKER, JR., INC.	381 DUTCH RIDGE ROAD, P. O. BOX 280	BEAVER	PA	15009	P	D'S	
MOODY AND ASSOCIATES, INC.	R.D. #4, COTTON ROAD	MEADVILLE	PA	16335	P	D S	1
MRM COMPANY - ENGINEERS	918 PARK AVENUE	PITTSBURGH	PA	15234	P	D S	1 4 3
NUS CORPORATION	MANOR OAK TWO, 1910 COCHRAN ROAD	PITTSBURGH	PA	15220	P	D'S'	
OMNI CONSULTANTS, INC.	VALLEY FORGE PLAZA, SUITE 660	KING OF PRUSSIA	PA	19406	P	D S	1
PENN-LAUREL ASSOCIATES, INC.	R.D. #1, ROUTE 30	CENTRAL CITY	PA	15926	P	D'S	1
PENNSYLVANIA ENVIRONMENTAL CONSULTANTS, INC.	FORT PITT PROF. BLDG., 1517 WOODRUFF STREET	PITTSBURGH	PA	15220	P	D'S'	1
REGINALD B. ADAMS LABORATORY	618 SWISSVALE AVENUE	PITTSBURGH	PA	15221	S	W	1
ROBINS AND ASSOCIATES	704 LISBURN ROAD	CAMP HILL	PA	17011	P	D'S'	1
SCIENCE MANAGEMENT ENGINEERING	900 WEST VALLEY FORGE ROAD, P. O. BOX 190	KING OF PRUSSIA	PA	19406	P	D'S'	
SEWALD LABORATORIES	1403 WEST FOURTH STREET	WILLIAMSPORT	PA	17701	S	W	1
SKELLY AND LOY	2601 NORTH FRONT STREET	HARRISBURG	PA	17110	P	D'S'	1
SRW ASSOCIATES, INC.	630 IDLEWOOD AVENUE	CARNEGIE	PA	15106	P	D S	1
STEWARD LABS	R.D. #1	STRATTANVILLE	PA	16258	S	W O	1 2
TALLAMY, VANKUREN, GERTIS AND THIELMAN	LEGISLATIVE ROUTE 17065	LANSE	PA	16849	P	D S	
THE CHESTER ENGINEERS	845 FOURTH AVENUE	CORAOPOLIS	PA	15108	P	D'S'	
VAPCO ENGINEERING CO., INC.	99 NORTH GILPIN STREET	PUNXSUTAWNEY	PA	15767	P	D S	1
VEP ASSOCIATES, INC.	543 BELMONT AVENUE, ROUTE 611	MT. POCONO	PA	18344	P	D S	1
WAPORA, INC.	511 OLD LANCASTER ROAD	BERWYN	PA	19312	P	D'S'	
Z & M LABORATORIES	R.D. #1, ROUTE 30	CENTRAL CITY	PA	15926	S	W	1

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OFFICE OF SURFACE MINING RECLAMATION AND ENFORCEMENT
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LABORATORY NAME	ADDRESS	CITY	ST	ZIP	TYPE OF CONTRTR	QUAL CAT.	BUSINESS CLASS
APPALACHIAN ANALYTICAL & WATER QUALITY LAB., INC.	391 SINKING CREEK ROAD	BRISTOL	VA	24201	S	W	1
CENTEC ANALYTICAL SVCS., INC.	P. O. BOX 956, 2160 INDUSTRIAL DRIVE	SALEM	VA	24153	S	W O	1
DEMBERRY, NEALON AND DAVIS	626 SOUTH MAIN STREET	MARION	VA	24354	P	D S	
ENGINEERING SCIENCE	7903 WEST PARK DRIVE	MCLEAN	VA	22102	P	D S	
ENVIRONMENTAL TECHNICAL SERVICES	204 MAIN STREET, P. O. BOX 689	WISE	VA	24293	S	W	1
FOUNDATION ENGR. OF VIRGINIA, P.C.	106 FEATHERBED LANE	WINCHESTER	VA	22601	P	S	1
FROEHLING AND ROBERTSON	3015 DUMBARTON ROAD	RICHMOND	VA	23261	P	D'S'	1
HAYES, SEAY, MATTERN AND MATTERN	1351 FRANKLIN ROAD, S.W.	ROANOKE	VA	24016	P	D S	1
LEE LABORATORY	P. O. BOX 588	JONESVILLE	VA	24263	S	W	1 2
OLVER,INC	1531 N. MAIN STREET	BLACKSBURG	VA	24060	P	D'S'	1
PARAMONT MINING CORPORATION	P. O. BOX 800	WISE	VA	24293	S	W O	
POWELL VALLEY ENGINEERING	P. O. BOX 595	PENNINGTON GAP	VA	24277	P	D S	1
QUALITY TESTING, INC.	P. O. BOX 931	GRUNDY	VA	24614	S	W O	1
QUILLEN AND GILLENWATER	P. O. BOX 607	GATE CITY	VA	24251	P	D S	1
RESOURCE APPLICATIONS, INC.	226 MAPLE AVE.,WEST,SUITE 401	VIENNA	VA	22180	P	D S	1 3
STEARNS, CONRAD AND SCHMIDT	11800 SUNRISE VALLEY DRIVE, SUITE 432	RESTON	VA	22091	P	D S	1
THOMPSON AND LITTON, INC.	P. O. BOX 1307	WISE	VA	24293	P	D S	1
TRIANGLE RESEARCH, INC.	P. O. BOX 886	GRUNDY	VA	24614	S	W	1
VERSAR, INC.	6621 ELECTRONIC DRIVE	SPRINGFIELD	VA	22151	S	W O	1
WATER TESTING, INC.	P. O. BOX 979	WISE	VA	24293	S	W	1
WWWWWWWEST VIRGINIAWWWWWW							
ALLEGHENY LAND & MINERAL CO.	227 WASHINGTON AVENUE, P.O. BOX 1748	CLARKSBURG	WV	26301	P	D S	1

OFFICE OF SURFACE MINING RECLAMATION AND ENFORCEMENT
LIST OF LABORATORIES QUALIFIED TO PERFORM WORK UNDER THE SMALL OPERATOR ASSISTANCE PROGRAM

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BERGER ASSOCIATES	1204 KANAWHA BLVD., EAST	CHARLESTON	WV	25301	P	D S	
BLACK ROCK LABORATORIES	P. O. BOX 5, EAST GATE PLAZA	MORGANTOWN	WV	26505	S	W O	1
BRACKENRICH AND ASSOCIATES	P. O. BOX 207	LEWISBURG	WV	24901	P	D'S'	1
BURGESS AND NIPLE, LIMITED	400 BERRY'S RUN ROAD	PARKERSBURG	WV	26101	P	D S	
COMMERCIAL TESTING & ENG. CO.	5793 MACCORKLE AVE., S.E. - P.O. BOX 808	CHARLESTON	WV	25323	S	W O	
DESCOALS, INC.	P. O. BOX 789	ELKINS	WV	26241	P	D S	1
DUNLAP SURVEY, INC.	BOX 148	SUMMERSVILLE	WV	26651	P	D S	1
ENVIRONMENTAL EXPLORATION	165 SCOTT AVE., SUITE 104	MORGANTOWN	WV	26505	P	D S	1
ESMER AND ASSOCIATES, INC.	P. O. BOX 397	BOOMER	WV	25031	P	D'S'	1 3
GEOLOGICAL SERVICES, INC.	910 4-TH AVE, SUITE 1005 WEST VIRGINIA BLDG.	HUNTINGTON	WV	25701	P	D S	1
HARRAH ENGINEERING	P. O. BOX 309	SUMMERSVILLE	WV	26651	P	D S	1
HOWARD, NEEDLES, TAMMEN & BERGENDOFF	1120 KANAWHA BLVD., E.	CHARLESTON	WV	25301	P	D S	
JHM LABORATORIES	325 13-TH STREET	DUNBAR	WV	25064	S	W O	
JOHNSON AND ANDERSON, INC.	1206 VIRGINIA AVE., EAST - SUITE 101	CHARLESTON	WV	25301	P	D S	
KELLY, GIDLEY, BLAIR AND WOLFE	1260 GREENBRIER STREET	CHARLESTON	WV	25311	P	D S	1
MILAM/BCM ENGINEERING, INC.	1400 OHIO AVENUE	DUNBAR	WV	25064	P	D'S'	
MOUNTAIN STATE SURVEYING COMPANY	P. O. BOX 63	KINGWOOD	WV	26537	P	D'S	1
PEERLESS EAGLE COAL	P. O. BOX 488	SUMMERSVILLE	WV	26651	S	W O	
RELIANCE LABORATORIES	213 E. PHILADELPHIA AVENUE, P. O. BOX 625	BRIDGEPORT	WV	26330	S	W O	1
ROBINS AND ASSOCIATES	16241/2 KANAWHA BOULEVARD, EAST	CHARLESTON	WV	25311	P	D S	1
SCIENCE APPLICATIONS, INC.	SUITE 8, CHESTNUT RIDGE PROFESSIONAL BUILDING	MORGANTOWN	WV	26505	P	D S	
SCIENCE MANAGEMENT ENGINEERING	P. O. BOX 757	NITRO	WV	25143	P	D S	

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KELLY AND LOY	CHARLESTON NATIONAL PLAZA, SUITE 601	CHARLESTON	WV	25301	P	D S	1
STAGG ENGINEERING SERVICES, INC.	P. O. BOX 5217	CHARLESTON	WV	25311	P	D S	1
STANDARD LABORATORIES, INC.	3322 PENNSYLVANIA AVENUE	CHARLESTON	WV	25302	S	M O	1 2
STRUM ENVIRONMENTAL SERVICES	P.O. BOX 650	BRIDGEPORT	WV	26330	P	D'S'	1
TECHNICAL TESTING LABORATORIES, INC.	1263 GREENBRIER STREET	CHARLESTON	WV	25311	P	D'S'	1 3
THE H. C. NUTTING CO.	912 MORRIS STREET	CHARLESTON	WV	25301	P	D S	
TRA-DET, INC.	WHEELING-OHIO COUNTY AIRPORT	WHEELING	WV	26003	P	D'S'	1
UTD CORPORATION	BEVERLY PIKE, ROUTE 3, BOX 260	ELKINS	WV	26241	P	D S	
VANDE LINDE, INC. ROBINSON & ROBINSON	1317 HANSFORD STREET	CHARLESTON	WV	25301	P	D S	1
WEST AUGUSTA COMPANY	334 RANDOLPH AVENUE, P. O. BOX 1303	ELKINS	WV	26241	P	D S	1
WHITLEY ENGINEERING COMPANY	910 4-TH AVE., SUITE 1001 WEST VIRGINIA BLDG.	HUNTINGTON	WV	25701	P	D S	1
	REGION 2						
	××××××ALABAMA×××××××						
ALMON & ASSOCIATES	P. O. BOX 2687	TUSCALOOSA	AL	35401	P	D'	1
ANALYTICAL LABS	2007 WHITESBURG DRIVE	HUNTSVILLE	AL	35801	S	M O	
BETZ-CONVERSE-MURDC	108 ST. ANTHONY STREET	MOBILE	AL	36601	P	D'	
BIO-CHEM ANALYSIS	4948 N. MEMORIAL PARKWAY	HUNTSVILLE	AL	35810	S	M O	
C.P. HAINS HYDROLOGY	P.O. BOX 238	NORTHPORT	AL	35476	P	D'	1
COMMERCIAL TESTING	216 OXMOOR CIRCLE	BIRMINGHAM	AL	35209	S	O	
ENGINEERING ANALYSIS	2109 CLINTON AVENUE, W.	HUNTSVILLE	AL	35805	P	D'S'	1
FEDERER-BHATE ASSOCIATE	5217 5TH AVENUE, SOUTH	BIRMINGHAM	AL	35212	P	D'S'	1 3

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FRANK HOLLIS & ASSOCIATES	P. O. BOX 911	ONEONTA	AL	35121	P	D'	
GILBERT-FOSTER-BROOKS	3500 SKYLAND BOULEVARD, EAST	TUSCALOOSA	AL	35405	P	D O	1
HARMON ENGINEERING	AUBURN IND. PARK	AUBURN	AL	36830	P	D S	
HYDRO SCIENCE RESEARCH GROUP	P.O. BOX 314	MCCALLA	AL	35111	P	D'S'	
LAW ENGINEERING	3608-7TH CT. SOUTH	BIRMINGHAM	AL	35222	P	D S	
METCO LABORATORIES	514 GAULT AVENUE, N.	FT. PAYNE	AL	35967	P	D S	1
MINING SERVICES	1429 - 39TH AVENUE, E.	TUSCALOOSA	AL	35404	P	D S	
P. E. LAMOREAUX	P. O. BOX 2318	TUSCALOOSA	AL	35401	P	D'S'	1
R. E. MALLETTE	2610 3RD AVENUE, S.	BIRMINGHAM	AL	35233	P	D'S'	
SCIENTIFIC SERVICES	500 WYNN DRIVE	HUNTSVILLE	AL	35805	S	W O	1
T.L. DOUGLAS	1720-3RD AVENUE	N. BESSEMER	AL	35020	P	D S	1
TUSCALOOSA TEST LAB	3516 GREENSBORO ROAD	TUSCALOOSA	AL	35403	P	D S	1
	######FLORIDA#######						
AGRO SERVICES INTERNATIONAL	P. O. BOX 667	ORANGE CITY	FL	32763	P	S	1
ARDAMAN & ASSOCIATES	P. O. BOX 13003	ORLANDO	FL	32809	P	D'S'	1
BREEDLOVE & ASSOCIATES	618 NW 13TH AVE.	GAINESVILLE	FL	32601	P	D	1
CLARK ENGINEERS-SCI.	7520 S.W. 57TH AVENUE	MIAMI	FL	33143	P	D	1
ENVIRONMENTAL CENTER	JACKSONVILLE UNIVERSITY	JACKSONVILLE	FL	32211	P	D'	1
FLOWERS CHEMICAL LABS	P. O. BOX 597	ALTAMNTE SPRINGS	FL	32701	P	S W	1
GREINER ENGINEERING SCIENCE	P. O. BOX 23646	TAMPA	FL	33623	P	D'	
HYDRO-SCIENCE RESEARCH GROUP	2928 FRANKLIN	LAKELAND	FL	33801	P	D'S'	1
JOYCE ENVIRONMENTAL CONSULTANTS	LIVE OAK BOULEVARD	CASSELBERRY	FL	32707	S	W	
ORLANDO LABS., INC.	P. O. BOX 8008	ORLANDO	FL	32856	S	W O	1

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P. E. LAMOREAUX	4313 S. FLORIDA AVENUE	LAKELAND	FL	33803	P	S M	1
PRIEDE SEDGEWICK,INC	P.O. BOX 8117	JACKSONVILLE	FL	32211	P	D'	1 3
SEABURN AND ROBERTSON	P. O. BOX 23184	TAMPA	FL	33623	P	D'S'	1
TECHNICAL SERVICES	P. O. BOX 52329	JACKSONVILLE	FL	32201	S	M O	1
ZELLARS-WILLIAMS	4222 S. FLORIDA AVENUE	LAKELAND	FL	33803	P	D'S'	1
	NNNNNNGEORGIANNNNNNN						
APPLIED BIOLOGY	641 DEKALB IND. WAY	ATLANTA	GA	30033	S	M	1 2
ARMOUR & CAPE, INC.	2295 PARKLAKE DRIVE	ATLANTA	GA	30345	P	D'	1
ATEC ASSOC. OF GEORGIA	3936 SHIRLEY DRIVE, SW	ATLANTA	GA	30336	P	S	
CAMP-DRESSER-MCKEE	1945 THE EXCHANGE	ATLANTA	GA	30339	P	D'	
DAMES & MOORE	455 E. PACES FERRY	ATLANTA	GA	30305	P	D'S	
KUN-YOUNG CHIU	109 E. ADAIR STREET	VALDOSTA	GA	31601	P	D'S'	1 3
LAW ENGINEERING	P.O. BOX 98008	ATLANTA	GA	30359	P	D S	
MAYS-SUDDERTH-ETHEREDGE	1775, THE EXCHANGE	ATLANTA	GA	30339	P	D'S'	1
SOIL AND MATERIAL ENGINEERING	1937 BRIARWOOD COURT	ATLANTA	GA	30329	P	D'S	1
VERSITECH	6855 JIMMY CARTER,	NORCROSS	GA	30071	P	D'S'	
WAPORA, INC.	3301 BUCKEYE ROAD NE	ATLANTA	GA	30341	P	D S	
	NNNNNNNKENTUCKYNNNNNNN						
BECK MAR LABS	4010 DUPONT CIRCLE	LOUISVILLE	KY	40207	S	M	1 2
BOOKER ASSOC. INC.	343 WALLER AVE.	LEXINGTON	KY	40504	P	D'	1
BOWSER-MORNER TESTING LABS., INC.	P. O. BOX 636	MAYSVILLE	KY	41056	P	D'S'	
CLAY LABORATORIES	RT. 3 BOX, 11A	MANCHESTER	KY	40962	S	M O	

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COMMONWEALTH TECHNOLOGY	2520 REGANCY ROAD	LEXINGTON	KY	40503	P	D S	1
CUMBERLAND CHEM. LAB	RT. 4, BOX 895	WILLIAMSBURGH	KY	40769	S	M O	1 2
DAMES AND MOORE	1815 RICHMOND ROAD	LEXINGTON	KY	40502	P	D'S'	
DONAN ENGINEERING	P.O. BOX 528	MADISONVILLE	KY	42431	P	D'S'	1
EARTH LABORATORIES	P.O. BOX 571	CORBIN	KY	40701	S	M O	1
ENGINEERING-SCIENCE	345 BLUE SKY PARKWAY	LEXINGTON	KY	40511	P	D'S'	
ENKENCO, INC.	RR 3 BOX 16	HAZARD	KY	40701	P	S M	
FAST FACT LAB	RT. 6, BOX 47	LONDON	KY	40741	S	M O	
FULLER-MOSSBARGER	1315 LEESTOWN ROAD	LEXINGTON	KY	40508	P	D'S'	1
G. COX & ASSOCIATES	P. O. BOX 447	WILLIAMSBURG	KY	40769	P	D'S'	1
GEOLOGICAL ASSOCIATES	P. O. BOX 634	SOMERSET	KY	42501	P	S'	1
HILL ENGINEERING	NORTH LAKE DRIVE	PRESTONBURG	KY	41653	P	D'S'	1
HILL-JACKSON	P. O. BOX 548	PRESTONBURG	KY	41653	S	M	1
HITTMAN ASSOC.	P.O. BOX 13024	LEXINGTON	KY	40511	P	D'S'	
J. S. GRIFFIN AND ASSOCIATES	P. O. BOX 676	HENDERSON	KY	42420	P	S	1
MAYS-SUDDERTH-ETHEREDGE	DELZAN PLACE	LEXINGTON	KY	40503	P	D'S'	1
MCCOY & MCCOY	BOX 238	MADISONVILLE	KY	42431	S	M O	1
MILLER-WIHRY-LEE	1387 SOUTH FORTH STREET	LOUISVILLE	KY	40208	P	D'S'	1
NESBITT ENGINEERING	400 E. VINE ST.	LEXINGTON	KY	40507	P	D'S'	1
PARROTT, ELY & HURT	6220 EUCLID AVENUE	LEXINGTON	KY	40522	P	D'	
PAUL D. LUNDY AND ASSOCIATES	1901/2 CUMBERLAND	MIDDLESBORO	KY	40965	P	D'S'	1
PRASAD ENGINEERING	P. O. BOX 360	WHITESBURG	KY	41858	P	D'S'	1 3
PRASAD ENGINEERING, INC.	1460 NEWTOWN PIKE	LEXINGTON	KY	40511	S	M O	
PROCTOR-DAVIS-RAY	210 MALIBU	LEXINGTON	KY	40502	P	D'	1

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R. R. CRAWFORD	P. O. DRAWER 929	WHITESBURG	KY	41858	P	S'	1
RESOURCE CONSULTANT	P. O. BOX 282	WILLIAMSBURG	KY	40769	P	S'	1
RHODES AND ASSOCIATES	1910 HARRODSBURG ROAD	LEXINGTON	KY	40503	P	D'S'	
S.M.R. ENGINEERS AND ENVIRONMENTAL	DRAWER NO. 761	CENTRAL CITY	KY	42330	P	D S	1
SKELLY & LOY	P.O. BOX 11604	LEXINGTON	KY	40576	P	D'S'	1
STANONIS & ASSOC.	105.5 N. MAIN	HENDERSON	KY	42420	P	S'	
SUMMIT ENGINEERING	P.O. BOX 933	PIKEVILLE	KY	41501	P	D S	1
T.M. REGAN, INC.	377 WALLER AVE.	LEXINGTON	KY	40504	S	W O	1
TEE ENGINEERING	1314 S. BROADWAY	LEXINGTON	KY	40504	P	D S'	1
TRI-STATE TESTING	P. O. BOX 681	ASHLAND	KY	41101	S	W O	
VAUGHAN ENGINEERS	1002 N. MAIN STREET	MADISONVILLE	KY	42431	P	D'S'	1
VAUGHN AND MELTON	P. O. BOX 1425	MIDDLESBORO	KY	40965	P	D	1
WATKINS & ASSOC.	P.O. BOX 951	LEXINGTON	KY	40588	P	D O	1
	NNNNNNNORTH CAROLINANNNNNNN						
OCEAN DATA SYSTEMS	4505 FRANKLIN AVENUE	WILMINGTON	NC	28403	P	D	1
RESEARCH AND ANALYTICAL LAB	P. O. BOX 473	KENERSVILLE	NC	27284	S	W	
	SOUTH CAROLINANNNNNNN						
ENWRIGHT ASSOC., INC.	BOX 5287 STATION B	GREENVILLE	SC	29606	P	D S	1
J.E. SIRRINE	P.O. BOX 5456	GREENVILLE	SC	29606	P	D	
	NNNNNNTENNESSEENNNNNN						
ARO, INC.	P.O. BOX 884	TULLAHOMA	TN	37388	S	W O	
ENVIRONMENTAL MGMT. PLANNING	151 ATHENS WAY	NASHVILLE	TN	37228	P	D	1

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ENVIRONMENTAL PLANNING ENGR.	224 PETERS RD. RM 208	KNOXVILLE	TN	37923	P	D'S'	1
ENVIRONMENTAL SYSTEMS CORP.	P.O. BOX 2525	KNOXVILLE	TN	37901	P	D S'	1
ENVIRONMENTAL TEST CONSUL	751 E. BROOKHAVE COURT	MEMPHIS	TN	38117	S	W O	1
KENWILL, INC.	BOX 432	MARYVILLE	TN	37801	P	D S	1 2
LAW ENGINEERING	333 TROY CIRCLE	KNOXVILLE	TN	37919	P	S	
MILLER-WITHRY-LEE	2147 BELCOURT AVE.	NASHVILLE	TN	37212	P	D'S'	
MINING CONSULTANTS	REYNOLDS RD.	FRANKLIN	TN	37064	P	D S'	
RUSSELL AXON	UNITED AMERICAN PLAZA	KNOXVILLE	TN	37929	P	D'	
SCIENCE APPLICATION	P. O. BOX 843	OAK RIDGE	TN	37830	P	D'	
STEWART LABORATORY	5815 MIDDLEBROOK PARK	KNOXVILLE	TN	37917	S	W O	1 2
TECHNICAL LAB.	515 CHEROKEE BOULEVARD	CHATTANOOGA	TN	37405	S	W O	
TERRE-AQUA RESEARCH ENGINEERS	P. O. BOX 846	CROSSVILLE	TN	38555	P	D O	1
U.S. TESTING	3765 PREMIERE COVE	MEMPHIS	TN	38118	P	S W	
WOODSON-TENENT LAB	P.O. BOX 2135	MEMPHIS	TN	38101	S	W O	

REGION 3

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—AQUALAB, INC.	RT. 20 AT VALLEY LANE	STREAMWOOD	IL	60103	S	W O	1
BROWN & ROTHMAN ENGINEERS	500 W. POPLAR ST.	HARRISBURGH	IL	62946	P	D'S'	
CAMP DRESSER & MCKEE, INC.	302 E. JOHN ST.	CHAMPAIGN	IL	61820	P	D S	
CEPHEUS INDUSTRIES, INC.	BOX 525	MARION	IL	62959	S	W O	1
—CITY OF CARBONDALE WATER AND WASTEWATER CENTRAL LAB.	1001 S. WALL STREET	CARBONDALE	IL	62901	S	W O	

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COAL EXTRATION & UTILIZATION RESEARCH CTR.	SOUTHERN ILLINOIS UNIVERSITY	CARBONDALE	IL	62901	P	D S	
COMMERCIAL TESTING & ENG. CO.	228 NORTH LASALLE ST.	CHICAGO	IL	60601	S	M O	
DAILY & ASSOC. ENGINEERS, INC.	1703 WEST LUTHY DRIVE	PEORIA	IL	61614	P	D S	1
DAMES & MOORE	1350 NORTHWEST HIGHWAY	PARK RIDGE	IL	60068	P	D'S'	
DELEUW, CATHER & CO.	165 WEST WACKER DRIVE	CHICAGO	IL	60601	P	D'S'	
ENERGY ENVIRONMENTAL CONSULTANT	820 DAVIS ST., SUITE 400	EVANSTON	IL	60201	S	M O	
ERLIN HIME & ASSOC.	811 SKOKIE ROAD	NORTHBROOK	IL	60093	S	O	1
ESCOR, INC.	1845 OAK STREET, SUITE 3	NORTHFIELD	IL	60093	P	D S'	1
ESPEY HUSTON & ASSOC.	10400 HIGGINS ROAD	ROSEMONT	IL	60018	P	D'S'	1
HANSON ENGINEERS	1525 S. 6TH STREET	SPRINGFIELD	IL	62703	P	D'S'	1
HARDING LAWSON & ASSOC.	125 WINDSOR DRIVE, SUITE 107	OAK BROOK	IL	60521	P	D'S'	
HARZA ENGINEERING	150 S. WACKER DRIVE	CHICAGO	IL	60606	P	D S'	
KEY AGRICULTURAL SERVICES	114 SHADY LANE	MACON	IL	61455	S	M O	1 3
RANDOLPH & ASSOC., INC.	8901 N. INDUSTRIAL RD.	PEORIA	IL	61614	P	D S	
TRACE ELEMENTS, INC.	460 SOUTH NORTHWEST HIGHWAY	PARK RIDGE	IL	60062	S	M	1
WAPORA, INC	35 EAST WACKER DRIVE, SUITE 2380	CHICAGO	IL	60601	P	D'S'	
WOODWARD-CLYDE CONSULTANTS	SUITE 1500, 11 EAST ADAMS	CHICAGO	IL	60603	P	D'S'	
WOODWARD-CLYDE CONSULTANTS	901 CHARLESTON AVE.	MATTOON	IL	61938	P	D'S'	
	NNNNNNNINDIANANNNNNNN						
A & L GREAT LAKES AGRICULTURAL LABS	5011 DECATUR ROAD	FORT WAYNE	IN	46806	P	D	1
AMERICAN CONSULTING ENGINEERS	525 EAST 38TH STREET	INDIANAPOLIS	IN	46205	P	D'	1 2 4
AMERICAN TESTING ENGINEERING COMPANY	5150 EAST 65TH STREET	INDIANAPOLIS	IN	46220	P	D'S	1

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CHEMICAL SERVICE LABORATORY, INC.	3408 INDUSTRIAL PARKWAY, BOX 22 0	JEFFERSONVILLE	IN	47130	S	W O	
CRANOR LAND SERVICE	R.R.#1, BOX 127	RUSHVILLE	IN	46173	P	D'S'	1
D'APPOLONIA-DISTRICT OFFICE	MOUNTED ROUTE 522B	CHESTERTON	IN	46304	P	D'S'	
ECOL SCIENCES, INC.	211 W. WASHINGTON ST.	SOUTH BEND	IN	46601	P	D'S'	1
EMS LABORATORIES	7901 W. MORRIS STREET	INDIANAPOLIS	IN	46220	S	W O	1
ETS, INC.	6523 CARROLLTON AVE.	INDIANAPOLIS	IN	46220	P	S	
GEOSCIENCES RESEARCH ASSOC.	414 S.WALNUT STREET	BLOOMINGTON	IN	47401	P	D'S'	1
HOWARD NEEDLES TAMMEN & BERGENDOFF	3333 FOUNDERS LANE	INDIANAPOLIS	IN	46238	P	D'	
LAWSON-FISHER ASSOC.	101 JMS BUILDING	SOUTH BEND	IN	46601	P	D'S'	1
NATIONAL LABORATORIES, INC.	600 BOND STREET	EVANSVILLE	IN	47708	P	D S	1 4
NICTL	540 TYLER STREET	GARY	IN	46402	S	W O	
REID, QUEBE, ALLISON, WILCOX, AND ASSOCIATES	3901 INDUSTRIAL BLVD.	INDIANAPOLIS	IN	46254	S	W O	4 1
SIECO, INC.	309 WASHINGTON ST.	COLUMBUS	IN	47201	P	D S'	1 3 4
WILLIAMS LABORATORY SVCS.,INC	1843 COMMERCE DRIVE	SOUTH BEND	IN	46628	P	D S	1
	##########MICHIGAN##########						
AQUATIC SYSTEMS, INC.	120 WEST LUDINGTON AVE.	LUDINGTON	MI	49431	P	D S	1
BONEL ENTERPRISES	18159 DORSET	SOUTHFIELD	MI	48075	P	D S	1 3
JOHNSON AND ANDERSON, INC.	2300 DIXIE HWY., P. O. BOX 1166	PONTIAC	MI	48056	P	D'S'	1 4
SHELL ENVIRONMENTAL GROUP	1120 MAY STREET	LANSING	MI	48096	S	W O	1 4
	##########OHIO##########						
A. R. ZAPLATA COMPANY	P. O. BOX 308	LISBON	OH	44432	P	D'S'	1 4
ASSOCIATES MAPPING SERVICES, INC.	1450 SOUTHEAST PLAZA, FRANKLIN AVENUE	SALEM	OH	44460	P	D'S'	1 4

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ATEC ASSOCIATES	11306 TAMARCO DRIVE	CINCINNATI	OH	45242	P	D S	1
BOWSER-MORNER TESTING LAB., INC.	420 DAVIS AVE.	DAYTON	OH	45401	P	D S	1
BUCKEYE LAND SURVEYING, INC.	215 S. 5TH STREET	COSHOCTON	OH	43812	P	D'S'	
BUCKEYE SERVICES	162 1/2 BROADWAY, P.O. BOX 546	NEW PHILADELPHIA	OH	44663	P	D S	1 4
BURGESS & NIPPLE LIMITED	5058 REED ROAD	COLUMBUS	OH	43228	P	D S	
CLC LABS	1046 CRUPPER AVENUE BUSCH CORPORATE CENTER	COLUMBUS	OH	43229	S	W O	1
DAMES AND MOORE	1150 WEST 8TH STREET	CINCINNATI	OH	45203	P	D'S'	
ECO-DATA ANALYSIS, LTD.	11801 CEDAR AVE.	CLEVELAND	OH	44106	P	D S	1 3 4
GLM MAPPING	236 EAST WASHINGTON STREET	LISBON	OH	44432	P	D S	1
HOWARD LABORATORIES	3601 S. DIXIE	DAYTON	OH	45439	S	W O	
M.A.S AND ASSOCIATES	11453 MARKET STREET	NORTH LIMA	OH	44452	P	D'S'	1
MID-EASTERN GEOTECHNICAL, INC.	BOX 587	MARIETTA	OH	45750	P	S'	1
MINE SERVICES COMPANY	1286 WEST LANE AVENUE	COLUMBUS	OH	43221	P	D'S'	
MINING AND RECLAMATION COMPANY	129 N. TENTH STREET	CAMBRIDGE	OH	43769	S	W O	
MODERN CHEMICALS	100 KERR STREET	POMEROY	OH	45769	S	W O	
OHIO AGRICULTURE RESEARCH AND DEVELOPMENT CENTER		WOOSTER	OH	44691	S	O	
—OHIO DEPT. OF HEALTH	OHIO STATE UNIVERSITY	COLUMBUS	OH	43210	S	W	
OHIO MINING CONSULTANTS	240 HURON STREET	JACKSON	OH	45640	P	D'S'	
STILSON LABORATORIES, INC.	170 N. HIGH STREET	COLUMBUS	OH	04321	P	D S	1
THE H. C. NUTTING COMPANY	4120 AIRPORT ROAD	CINCINNATI	OH	45226	P	D S	
THE STANDARD TESTING COMPANY	610 WEST MAIN STREET	CANFIELD	OH	44406	S	W O	
THE TCW COMPANY	SOUTH MAIN STREET BOX 648	NEW LEXINGTON	OH	43764	P	D S'	1 3 4

OFFICE OF SURFACE MINING RECLAMATION AND ENFORCEMENT
LIST OF LABORATORIES QUALIFIED TO PERFORM WORK UNDER THE SMALL OPERATOR ASSISTANCE PROGRAM

LABORATORY NAME	ADDRESS	CITY	ST	ZIP	TYPE OF CONTRTR	QUAL CAT.	BUSINESS CLASS

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LABORATORY NAME	ADDRESS	CITY	ST	ZIP	TYPE OF CONTRTR	QUAL CAT.	BUSINESS CLASS
TOLEDO TESTING LAB	1810 N. 12TH STREET	TOLEDO	OH	43624	P	D S	1 4
WAPORA, INC.	5700 HILLSIDE AVE.	CINCINNATI	OH	45233	P	D S	
	******WISCONSIN******						
DONOHUE AND ASSOCIATES, INC.	4738 NORTH 40TH STREET	SHEBOYGAN	WI	53081	P	D'S'	
OWEN AYRES & ASSOC.	1300 W. CLAIREMONT	EAU CLAIRE	WI	54701	P	D S	
	REGION 4						
	******ARKANSAS******						
AMERICAN INTERPLEX CORPORATION	3400 ASHER AVENUE	LITTLE ROCK	AR	72204	S	W O	1
ARKANSAS MINING & MINERALS RESOURCES INSTITUTE	MCEVER HALL, ARKANSAS TECH. UNIVERSITY	RUSSELLVILLE	AR	72801	P	S W	
HOLMAN/PYLE COMPANY	5616 PATTERSON	LITTLE ROCK	AR	72209	S	W	1
	******IOWA******						
IOWA GEOLOGICAL SURVEY	123 NORTH CAPITOL STREET	IOWA CITY	IA	52242	P	D'S	
IOWA UNIVERSITY HYGIENIC LABORATORY	OAKDALE CAMPUS	IOWA CITY	IA	52242	S	W O	
MINNESOTA VALLEY TESTING LAB., INC.	35 WEST LINCOLN WAY	NEVADA	IA	50201	S	W O	1
	******KANSAS******						
ENVIRONMENTAL LABORATORIES, INC.	P. O. BOX 2368	TOPEKA	KS	66601	S	W	1
LANGSTON LABORATORIES, INC.	2065 WEST 103RD TERRACE	LEAWOOD	KS	66206	S	W	1 4
LUMAN'S LABORATORIES	505 MAPLE	CHETOPA	KS	67336	S	W	1
QUALITY WATER ANALYSIS LAB., INC.	121 E. FOURTH	PITTSBURG	KS	66762	P	S W	1
TALIAFERRO AND BROWNE	710 MINNESOTA	KANSAS CITY	KS	66101	P	D'	1 3

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WOODWARD-CLYDE CONSULTANTS	5055 ANTIOCH ROAD	OVERLAND PARK	KS	66203	P	D'S	
	MMMMMMMISSOURIMMMMMMM						
BOOKER ASSOCIATES, INC.	1139 OLIVE STREET	ST. LOUIS	MO	63101	P	D'	1 4
BRUCE WILLIAMS CONSULTING ENGINEERING AND ASSOCIATES	P.O. BOX 169	JOPLIN	MO	64801	S	M O	1 4
ENGINEERING SURVEYS & SERVICES	1113 FAY STREET	COLUMBIA	MO	65201	P	D S	1
INDUSTRIAL TESTING LABORATORIES, INC.	2350 SEVENTH BLVD.	ST. LOUIS	MO	63104	S	M	
MID MISSOURI ENGINEERS, INC.	506 NICHOLS	COLUMBIA	MO	65201	S	M	1 4
SHANNON & WILSON, INC.	11500 OLIVE BLVD.	ST. LOUIS	MO	63141	P	D'S'	1
WOODWARD-CLYDE CONSULTANTS	1350 BAUR BLVD.	ST. LOUIS	MO	63104	P	S	
	MMMMMMNEBRASKAMMMMMM						
HOSKINS-WESTERN-SONDEREGGER, INC.	825 "J" STREET	LINCOLN	NE	68501	P	D S	1
	MMMMMMOKLAHOMAMMMMMM						
ENGINEERING ENTERPRISES, INC.	1225 WEST MAIN STREET	NORMAN	OK	73069	P	D'S'	1
ENVIRONMENTAL CONTROL LABORATORY	P. O. BOX 274	NORMAN	OK	73070	S	M	1
ESPEY, HUSTON & ASSOCIATES	4545 LINCOLN BLVD.	OKLAHOMA CITY	OK	73105	P	D'S'	1 4
KAY, KAY AND ASSOCIATES	P. O. BOX 366	NOBLE	OK	73068	P	D S'	1 3
MID-STATES ANALYTICAL LAB., INC.	5460 S. 101ST EAST AVENUE	TULSA	OK	74145	S	M	1
PETRA, INC.	4505 E. 68TH ST.	TULSA	OK	74136	P	D'S'	1
STANDARD TESTING AND ENGINEERING COMPANY	3400 LINCOLN BLVD.	OKLAHOMA CITY	OK	73105	S	M O	1
*WILLIAMS BROTHERS ENGINEERING CO.	6600 S. YALE AVENUE	TULSA	OK	74177	P	D S	

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LABORATORY NAME	ADDRESS	CITY	ST	ZIP	TYPE OF CONTRTR	QUAL CAT.	BUSINESS CLASS
	########TEXAS########						
ANA-LAB CORPORATION	2608 DUDLEY ROAD	KILGORE	TX	75662	S	W O	1
CORE LABORATORIES, INC.	11061 SHADY TRAIL	DALLAS	TX	75229	P	D S	
FARNER & WINSLOW	10500 N.W. FREEWAY	HOUSTON	TX	77092	P	D'	1
SOUTHWESTERN LABORATORIES	222 CAVALCADE	HOUSTON	TX	77009	S	W O	
SOUTHWESTERN LABORATORY ANALYTICAL SERVICES DIVISION	P. O. BOX 10687	DALLAS	TX	75207	S	W O	
SOUTHWESTERN LABORATORY GEOTECHNICAL ENGINEERING DIV.	812 GREAT S.W. PARKWAY, P.O. BOX 1526	ARLINGTON	TX	76010	P	S	
SPECTRIX CORPORATION	7408 FANNIN	HOUSTON	TX	77054	S	W O	1
	REGION 5						
	########CALIFORNIA########						
CORE LABORATORIES, INC.	401 CANAL STREET	WILMINGTON	CA	89074	S	W O	
ESCA-TECH CORP.	3081 RED HILL AVENUE, BLDG.II, SUITE 212	COSTA MESA	CA	92626	P	D'S'	1 4
G. E. TEMPO	816 STATE STREET	SANTA BARBARA	CA	93101	P	D	1
GEOSCIENTIFIC SYSTEMS AND CONSULTING	8405 PERSHING DRIVE SUITE 402	PLAYA DEL RAY	CA	80033	P	D'S'	1
HYDROCOMP	201 SAN ANTONIO CIRCLE	MOUNTAIN VIEW	CA	94040	P	D	1
TRUDSDAIL LABORATORIES, INC.	4101 N. FIGUEROA STREET	LOS ANGELES	CA	98065	S	W O	1
	########COLORADO########						
BOOKCLIFF COMMERCIAL LAB., INC.	737 LINCOLN AVE., SUITE 308 BOX 585	STEAMBOAT SPOS.	CO	80477	S	W	
"C H 2 M HILL	5995 SO. SYRACUSE STREET	ENGLEWOOD	CO	80111	P	D'S'	

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LABORATORY NAME	ADDRESS	CITY	ST	ZIP	TYPE OF CONTRTR	QUAL CAT.	BUSINESS CLASS
CAMP DRESSER & MCKEE, INC.	11455 WEST 48TH AVENUE	WHEATRIDGE	CO	80033	P	D'S'	
CHARLES S. ROBINSON AND ASSOCIATES, INC.	622 GARDENIA COURT	GOLDEN	CO	80401	P	D'S'	1
COLORADO SCHOOL OF MINES RESEARCH INSTITUTE	P.O. BOX 112	GOLDEN	CO	80401	P	D S	
COMMERCIAL TESTING & ENG. CO.	498 ORCHARD STREET	GOLDEN	CO	80401	S	M O	
DAMES & MOORE	605 PARFET STREET	DENVER	CO	80215	P	D'S'	
ENGINEERING SCIENCE	2785 N. SPEER, SUITE 140	DENVER	CO	80211	P	D'S'	
HITTMAN ASSOCIATES, INC.	WOODSIDE PLAZA I, SUITE 112 5500 S. SYRACUSE CIRCLE	ENGLEWOOD	CO	80111	P	D S	1
J. F. SATO AND ASSOCIATES	5898 SOUTH RAPP	LITTLETON	CO	80122	P	D'S'	1 4
LEONARD RICE CONSULTING WATER ENGINEERS	2695 ALCOTT	DENVER	CO	80215	P	D	1
NUS	720 S. COLORADO BLVD.	DENVER	CO	80222	P	S'	
WILLARD OWENS, ASSOCIATES	7391 WEST 38TH AVENUE	WHEATRIDGE	CO	80033	P	D'S'	1
WOODWARD-CLYDE CONSULTANTS	2909 WEST 7TH AVENUE, P. O. BOX 4036	DENVER	CO	80204	P	D'S'	
	××××××MONTANA×××××××						
EARTH SCIENCE SERVICES	EXECUTIVE BUILDING 1115 NORTH SEVENTH AVE.	BOZEMAN	MT	59715	P	S	1
ENERGY LABORATORIES	1107 SO.BROADWAY,P.O.BOX 595	BILLINGS	MT	59103	S	W O	1
GEO. SERVICES WEST	P. O. BOX 7182 - 520 NORTH PLATTE SIREET	MISSOULA	MT	59807	P	S'	1
GEO. WEST, INC.	P. O. BOX 1252 - 119-1/2 N. BROADWAY	BILLINGS	MT	59103	P	S'	1
HKM ASSOCIATES	P.O. BOX 31318 EXECUTIVE PLAZA, AIRPORT	BILLINGS	MT	59107	P	D'S'	1
NORTHERN TESTING LABORATORIES	600 SOUTH 25TH STREET, P.O. BOX 306 15	BILLINGS	MT	59107	S	W	
OLSON-ELLIOTT & ASSOCIATES	P. O. BOX 1209, POWER BLOCK, SUITE 616	HELENA	MT	59601	P	D'S'	1

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LABORATORY NAME	ADDRESS	CITY	ST	ZIP	TYPE OF CONTRTR	QUAL CAT.	BUSINESS CLASS
××××××NEBRASKA×××××××							
ENGINEERING TESTING LABORATORIES	1010 NORTH 31ST STREET	OMAHA	NE	68131	P	D'S'	1
HENNINGSON, DURHAM & RICHARDSON	8404 INDIAN HILLS DRIVE	OMAHA	NE	68114	P	D'S'	
MIDWEST LABORATORIES	13800 "O" STREET	OMAHA	NE	68137	P	D'S'	
××××××NEW MEXICO×××××××							
ENVIRONMENTAL SERVICE, INC.	1120 CAMINO CRUZ BLANCA	SANTA FE	NM	87501	P	D'S'	1
HUMBLE DESIGN & CONSTRUCTION	P. O. BOX 1369	BLOOMFIELD	NM	87413	P	D'S'	
××××××NORTH DAKOTA×××××××							
BARR ENGINEERING CO.	5700 LINCOLN DRIVE	EDINA	MN	55436	P	D'S'	
××××××SOUTH DAKOTA×××××××							
BLACK HILLS TESTING LABORATORY	1301 MOUNTAIN VIEW ROAD	RAPID CITY	SD	57701	P	D'S'	
××××××UTAH×××××××							
CHEMICAL & GEOLOGICAL LABORATORIES	1763 SOUTH 300 WEST	SALT LAKE CITY	UT	84115	P	D'S'	
CHEM

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LABORATORY NAME	ADDRESS	CITY	ST	ZIP	TYPE OF CONTRTR	QUAL CAT.	BUSINESS CLASS
	******NEW MEXICO******						
CPI	POST OFFICE BOX 1844	SANTE FE	NM	87501	P	D'S'	1
EARTH ENVIRONMENTAL CONSULTANTS, INC.	9426 INDIAN SCHOOL ROAD, N.E.	ALBUQUERQUE	NM	87112	P	D	1
	******OREGON******						
CENTURY-WEST ENGINEERING	61360 SOUTH HIGHWAY 97, P. O. BOX 1174	BEND	OR	97701	P	D S	1
	******UTAH******						
UNITEX	4575 BERMADA CIRCLE	SALT LAKE CITY	UT	84117	S	W O	1 4
UTE RESEARCH LABORATORIES	P. O. BOX 119	FORT DUCHESNE	UT	84026	S	W O	1 4
	******WYOMING******						
IN-SITU CONSULTING, INC.	253 NO. THIRD	LARAMIE	WY	82070	P	S	1
INTERMOUNTAIN LAB, INC.	450 MAIN, NORTH	SHERIDAN	WY	82801	S	W O	1
WYOMING ANALYTICAL LABS, INC.	BOX 638 - 605 SOUTH ADAMS	LARAMIE	WY	82070	S	W O	1 2

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federal register

Friday
January 23, 1981

Part XVIII

Department of Agriculture

Food and Nutrition Service

Special Supplemental Food Program for Woman, Infants, and Children; Food Delivery Systems

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Part 246

Special Supplemental Food Program for Women, Infants, and Children; Food Delivery Systems

AGENCY: Food and Nutrition Service, USDA.

ACTION: Proposed rule.

SUMMARY: This notice proposes strengthened requirements for the operation of Special Supplemental Food Program for Women, Infants and Children (WIC) food delivery systems and vendor monitoring. The proposal includes changes in many areas of the food delivery systems of State agencies which operate the Program: stronger criteria to be used in authorizing vendors for participation; more detailed vendor agreements; more explicit vendor training requirements; stronger requirements for vendor on-site monitoring, including provisions for detection of high risk vendors; strengthened requirements for the review of food instruments for possible overcharges and for other errors; provisions which allow limiting the number of authorized vendors; allowance of up to 50 percent of funds collected from vendor overcharges to be used for administrative purposes; and requirement of prior notification to FNS for development of automatic data processing systems. The proposed changes would assure greater accountability for delivery of food instruments and supplemental foods. The changes are designed to decrease vendor abuse and loss of Program funds. These, in turn, would increase funds available for participant service and would improve Program integrity.

DATE: To be assured of consideration, comments must be received on or before March 24, 1981.

ADDRESS: Send comments to: Barbara Sandoval, Director, Supplemental Food Programs Division, Food and Nutrition Service, U.S. Department of Agriculture, Washington, D.C. 20250.

FOR FURTHER INFORMATION CONTACT: Lynda Couvillion, Acting Branch Chief, Policy and Program Development Branch, Supplemental Food Programs Division, Food and Nutrition Service, U.S. Department of Agriculture, Washington, D.C. 20250, (202) 447–8704.

The draft impact analysis describing the options considered in developing this proposed rule and the impact of implementing each option is available on request from the above named individuals.

SUPPLEMENTARY INFORMATION:

Note.—This proposal has been reviewed under USDA criteria established to implement Executive Order 12044 "Improving Government Regulations" and has been classified "not significant."

The Special Supplemental Food Program for Women, Infants and Children (WIC) provides supplemental foods and nutrition education to pregnant, breastfeeding and postartum women, infants and children up to age five. Eligibility must be determined by a competent professional authority on the basis of low income and nutritional risk.

The delivery of the prescribed foods to WIC participants is administered by State agencies within requirements specified in the Program regulations. Each State agency designs its own food delivery system which must provide effective service to participants within its jurisdiction and assure that the funds granted to the State agency for this purpose are expended accordingly.

Program regulations allow State agencies to operate three types of food delivery systems: retail purchase, home delivery and direct distribution. In a retail purchase system, the participant receives from the WIC agency a food instrument—which prescribes specific quantities of specific foods. The participant redeems this food instrument (a check or voucher) at an authorized retail vendor, usually a grocery store, who must indicate the actual purchase price of the foods. With a check, the vendor deposits the check in his or her bank, which is then reimbursed by the State agency. With a voucher, the vendor submits the voucher directly to the State or local agency for payment. In a home delivery system, the WIC agency contracts with a vendor, often a dairy, who delivers the prescribed food to the participant's home. In a direct distribution system the WIC agency itself purchases food, often on the wholesale market, and distributes it to participants.

Overall Purpose of the Proposal

The overall purpose of this proposal is to set forth regulations which would correct problems in the WIC food delivery system identified in audits and management evaluations and prevent loss of Program funds, and to solicit comments from State agences, local agencies, vendors, public interest groups and other interested parties on the desirability and feasibility of the proposed changes prior to issuance of final rules.

The results of audits and management evaluations of the WIC Programs have indicated the need for improving the efficiency and effectiveness of the food delivery system in order to prevent a loss of Program funds. Of particular interest have been audits conducted by the Office of the Inspector General of the Department of Agriculture: one of a large State agency, submitted in late 1979, and a national audit of the WIC Program which examined operations in ten States, submitted in late 1980. (*1 2*)

A number of problems have been identified in State agencies operating retail purchase food delivery systems. Problems directly involving retail vendors have included payment of improper or overpriced food instruments, and vendors who have provided ineligible items instead of the authorized supplemental foods. The WIC Program is a more complex program for retailers then the Food Stamp Program and this can lead to errors by vendors due to insufficient understanding of WIC Program rules. In addition, in many cases the level of training and monitoring of vendors has been less in the WIC Program than in the Food Stamp Program. The Department greatly values the cooperation of the many conscientious vendors who work with the WIC Program. The identification of problems in audits and management evaluations does, however, indicate the need for strengthened guidance to and monitoring of participating vendors.

Other problems in the food delivery systems have involved accountability of State agency operations, such as inadequate reconciliation of redeemed food instruments and poor measures to provide secure transportation and storage of food instruments. Proposals to resolve these problems are included in this notice as well.

Similarly, some problems have been identified in States which operate home delivery systems. The problems have included a lack of competitive bidding to select home delivery vendors and inadequate measures to verify proper delivery of supplemental foods to participants.

In formulating these proposals, the Department has undertaken extensive discussions at the National and Regional levels of FNS, including compliance officers of the Food Stamp Program, and has solicited comments and discussion with State and local agencies, members of the National Advisory Council on Maternal, Infant and Fetal Nutrition, Program participants, and other interested parties. At the National State Directors' Meeting on Program Management in December 1979,

workshops on vendor monitoring and food delivery systems provided many suggested changes.(5) Studies sponsored by FNS have examined the feasibility of major changes in the food delivery system, the role of participants, and possible improvements in State agency performance standards. The national WIC audit made many recommendations for Program improvement. Prior to publication of this proposal, discussions have been held with State agencies on the basic items proposed and preliminary State input was used in bringing the proposed changes to their current version.

Based on the analysis of the many recommendations, the Department is proposing to retain the basic structure of the food delivery system, but to strengthen and clarify a wide variety of the specific components in the current framework. Therfore, the proposed changes touch upon many interrelated aspects of Program operations, especially vendor relations and financial management. Many State agencies have already undertaken many of these changes on their own initiative and already meet or exceed the proposed requirements. Other States may need to make more extensive changes in their food delivery systems in order to be in compliance.

The improvement of accountability for food delivery systems for the WIC Program is a top priority concern. Balancing this is a strong concern that the regulations not create so many administrative burdens that State agencies are forced to cut back on other vital areas of Program operations. The Department is well aware that many State and local agencies are operating in a very restricted fiscal environment with tight budgets and personnel ceilings. The Department believes that the proposed changes are feasible and impose a modest administrative burden in return for the potential savings in Program funds. The Department is seriously interested in comments from those who are actually operating the Program at the State and local level on the expected impact of the proposal on State agency administrative capabilities.

Similarly, there is concern about the impact of these regulations on vendors who participate in the Program in the actual provision and distribution of supplemental foods. The WIC Program provides a great deal of sales to vendors not only in the direct contribution of WIC sales, but because WIC participants who come to an authorized store to purchase supplemental foods normally purchase other products at the same time. In return for the business directed to them as a result of Program participation, vendors are expected to meet certain standards of accountable behavior. The proposal clarifies the mutual obligations of State agencies and food vendors and strengthens State agency review of the propriety of vendor actions and of payments to vendors for supplemental foods. The Department is interested in comments from vendors, State agencies and other interested parties on the expected effect of these regulations on vendor relations and vendor workload in fulfilling Program obligations.

Background on Proposed Changes

The following are explanations of the various proposed regulatory changes. The overall proposal has been designed to allow flexibility in the procedures which State agencies choose to implement the requirements. For example, though the proposal would require that all vendors be trained at least once every two years, there are ways that this can be combined with the vendor authorization process or with the vendor monitoring requirements. States may establish policies and procedures which meet the regulatory requirements, but which also meet the needs of their individual State conditions. In examining the following proposals, State and local agencies may wish to consider how they could blend the various requirements in creating an integrated food delivery system applicable to their individual conditions.

Vendor Authorization

Experience in both WIC and the Food Stamp Program has indicated that a key control of vendor abuse lies in the process of selecting vendors authorized to operate the Program. The participation of conscientious and well-informed vendors means better delivery of food to participants and improved Program operations. Therefore, the Department is proposing to strengthen the vendor authorization requirements, especially criteria to be considered in approving vendors. In order to ensure the proper collection of information, it is proposed in Section 246.10(d)(3) that State agencies use a standard vendor application form. The application form would contain the information required to review and evaluate vendors' qualifications. If the State desires, this vendor application form can be used as part of the vendor agreement. This issue will be explained in more depth later.

In addition to the vendor application form, a documented on-site visit by a State or local official prior to or at the time of the initial authorization of a vendor will be required. However, after the initial authorization, additional authorization visits will no longer be required and contact with the vendor may be handled by mail or telephone. This ensures that a State or local official actually sees the vendor and his or her facilities prior to entry into the Program. This also affords the opportunity for personal contact of the vendor with a WIC official who can explain the operation of the Program.

The Department does not expect State agencies to visit or to document visits to the vendors already authorized. There are two reasons for this: (1) There are tens of thousands of vendors already authorized to participate and it would create a serious burden to require documentation for the vendors already participating. (2) There are other requirements which would assure visits to vendors at a certain frequency which would afford the chance to review vendor operations and to give them Program training.

State agencies will be required to consider certain specific criteria prior to authorization. Recognizing that different areas will have different needs for vendors, the Department is not requiring that a vendor meet all of the standards in order to participate, but that States at least review the vendor qualifications. States are allowed to establish mandatory standards or to add additional criteria at their discretion.

The specific criteria mandated are: (1) availability of all categories of WIC supplemental foods, with the exception of special infant formulas; (2) reasonable prices for supplemental foods, as determined by the State agency; (3) no conflict of interest between State or local officials or their immediate families and the vendor; (4) suitability of location and business hours for participant access; (5) presence of an approved State or local health inspection certificate, where this is appropriate; (6) no current disqualification from other FNS programs, such as the Food Stamp Program, and (7) satisfactory compliance of the vendor with prior WIC agreements.

Most of these criteria are self-evident. Reasonable prices can be an important factor in areas with a large number of vendors available. Stores which charge higher prices ultimately cost the Program more money and decrease availability of foods for participants. On the other hand, when an area has relatively few vendors, then it may be necessary to accept high-priced vendors to assure participant access. State or local health inspection certificates are included since this is a commonly available sign that a store meets certain

standards of quality. However, there are some areas in which health inspection certificates are given only for stores that cut meat; such a certificate would not necessarily be applicable to WIC since meat is not a WIC supplemental food. Other criteria are related to the vendor's record of honest and fair business practices—whether the vendor has been disqualified from other FNS programs and whether the vendor's compliance with prior WIC agreements is satisfactory. The other major FNS program is the Food Stamp Program, though some other vendors, such as home delivery vendors or wholesalers, can be involved with other FNS programs, such as the Summer Food Service Program.

The Department is also proposing to amend Section 246.10(e)(7) to allow State agencies to establish criteria to limit the number of vendors authorized. Current regulations require a minimum of four vendors within each clinic service area, unless there are documented reasons why this is not feasible. This requirement will be maintained. However, there are many communities where participant convenience does not require authorization of a large number of vendors. By utilizing selection criteria carefully, it should be possible to authorize only the vendors who would provide the best service to the program.

The State agency may utilize various methods to limit the number of vendors: the criteria could be based on vendor qualifications or there could be a maximum number of vendors per clinic service area. The criteria may be utilized State wide or only in selected local agencies.

Limitation of the number of vendors may offer the administrative advantage of allowing limited State or local staff to focus guidance and monitoring on a manageable number of vendors. Some of the other requirements of this proposal will increase the workload of some State and local agencies in authorizing, training, and monitoring vendors; the allowance of criteria to limit the number of vendors can reduce the administrative workload involved. In fact, the limitation of the number of vendors is already allowable under current regulations and this proposal is largely a clarification of policy. A number of State agencies have expressed interest in the concept, but have been hesitant to undertake limitations without stronger regulatory support.

Vendor Agreements

Effective use of the vendor agreement can reduce vendor problems. The purpose of the agreement is to specify the performance expectations between the vendor and the WIC agency, and to provide both parties recourse if the terms are not met. While some requirements regarding vendor agreements are specified in the current regulations, it is apparent that stronger agreements are necessary to insure proper retail transactions in the Program. Therefore, the Department is proposing a number of changes in § 246.10(d)(3)(iii).

One issue regarding vendor contracts is whether they should be time-limited or open-ended. Current regulations do not address this question. While an open-ended contract allows State flexibility in dealing with vendors, it may make it more difficult to assure vendor accountability. The Department is proposing to require a time-limited agreement. A time-limited agreement offers an opportunity for both the vendor and the WIC agency to evaluate their own and the other's performance, and to deliberately renew their commitments under a new agreement, or to decline to enter into a new agreement. The vendor agreement would specify that neither the vendor nor the State agency has an obligation to renew the agreement. The Department is proposing to require that the maximum effective period for a vendor agreement be two years. This time period is seen as offering sufficient frequency for reconsidering and renewing the commitments, without being unduly burdensome.

The Department is also proposing to require that the agreement be signed by someone who has the legal authority to obligate the store. This provision is essential for assuring that vendor rights and obligations are clearly understood and agreed to by the person responsible for the daily operation of the store. In some chain stores, there are rules which prohibit managers of individual outlets to sign agreements; they may only be signed by officials in the district office. In such situations, the vendor agreements must clearly state the particular store outlets to be included in the agreement. The Department is interested in issues regarding chain stores and the WIC Program and would welcome comments concerning how this and other proposed measures should best be applied to chain stores.

The vendor agreement can be an important way to clearly state the mutual obligations of the State agency and the vendor. In order to clarify responsibilities, the Department is proposing to expand significantly the items which must be specified in the vendor agreements. State agencies are allowed to add more provisions at their discretion and will be allowed to use their own language as long as the intent of the provisions is maintained.

The provisions fall into five basic groups. The first group concerns the provision of supplemental foods and policies for reimbursing the vendor. They are: (1) the vendor will only provide approved WIC supplemental foods to participants, (2) the vendor will charge the same or less as is charged to other customers, (3) the vendor will accept food instruments from participants only in the valid time period and will submit them for payment in the allowed time period, (4) the State may demand refunds for overcharged food instruments, (5) the State may deny payment for or may demand refunds for improper food instruments, and (6) the vendor will not seek restitution from participants for food instruments not redeemed by the State. All of the above items are already part of the WIC policy and their inclusion in the vendor agreement would notify the vendor of these policies.

The second group concerns vendor responsibilities for training and for employee action. Provisions include: (1) the manager of the store or home delivery service will accept WIC training at least once every two years and the State or local agency shall provide such training, (2) the vendor will train cashiers, warehouse or delivery route personnel on Program requirements, and (3) the vendor is accountable for actions of employees in WIC transactions. The first provision clearly states the mutual obligations of the WIC Program staff and the vendor in ensuring that vendors are trained. In order to make sure that training is directed to those who are responsible for store procedures, the training must be given to the managers who are responsible for the day-to-day operation of the stores. For example, if a store is part of a retail chain, then the managers for each particular authorized outlet must be trained. The training could be provided during visits by State or local agency personnel to the store, or in the case of chains, during a meeting sponsored by the chain that included store managers in a given geographical area. Two years is believed to be a minimum frequency of training for a Program as complex as the WIC Program. The other two provisions clearly state vendor obligations for employee knowledge and behavior.

The third group of specifications deal with monitoring of vendors. They are: (1) the vendor may be monitored for

compliance, (2) if monitored, a retail vendor will provide access to food instruments negotiated that day, (3) retail vendors will allow access to shelf price records, if available, and (4) home delivery vendors will keep WIC records and allow access to State or Federal officials. Essentially, these provide for agreement by the vendor to be monitored and to allow access to relevant records of operations.

The fourth group of provisions center on civil rights and related issues. Provisions include: (1) the vendor will offer the same courtesies to WIC participants as to other customers and (2) the vendor will meet Departmental non-discrimination requirements. The nondiscrimination clause is in the current regulations and prohibits discrimination on the basis of race, color, or national origin.

The final group of provisions focuses on the terms of the agreement and possible vendor sanctions. Provisions include: (1) neither the vendor nor the State are obligated to renew the vendor agreements, (2) either the State or the vendor may terminate the agreement with cause with at least 15 days written notice, (3) the State may disqualify a vendor for Program abuse and the vendor has a right to appeal the decision, (4) the vendor will notify the State if it ceases operations or ownership changes and the agreement is terminated if ownership changes, and (5) the vendor is notified of liability to prosecution for deliberate fraud under penalties of Section 246.18.

Because of the increased complexity of the vendor agreements under the proposal, the Department is proposing that the vendor agreement be standard Statewide. This would ensure that the vendors are treated equitably Statewide. Exceptions would be allowed with State approval. Occasionally, there are vendors, such as Army PX stores, who are only allowed to sign certain types of agreements. In such cases, the State agency can approve modification of the vendor agreement.

At the present time most State agencies use an agreement which consists of one document signed by both the vendor and a WIC official. Another format which could be used is one similar to that used in the Food Stamp Program. Under this approach, the vendor application form would contain the stipulations required of the vendor, as well as a place for the vendor's signature signifying his or her agreement to abide by these stipulations. Upon approval of the vendor, a State or local official would sign the application agreement and also sign a permit which would be returned to the vendor. This permit, which the State agency could require the vendor to display, would serve as the authorization for that vendor to redeem WIC food instruments for the time period specified in the agreement.

This application permit format is seen as offering greater potential for enforcement of vendor accountability. A permit displayed on the vendor's wall (if the State agency requires it) is easily checked by participants, local agency staff and the public for assurance of the vendor's authority to participate in the Program. When a vendor is removed from the Program, the permit would be removed and returned to the State agency. The Department proposes to make this format a State option, rather than a requirement, however, because some States have been successful in assuring vendor accountability through the use of a well written, single-document vendor agreement.

Vendor Training

In § 246.10(d)(5) the Department is proposing to require that vendors be trained at least once every two years. Current regulations require vendor training, but specify no timeframes. Two years was selected as a timeframe sufficiently frequent to keep the vendor aware of the Program without being unduly time-consuming for State or local staff or the vendor. Since vendors will be authorized at most for two years at a time, this links the training requirements and the authorization process.

This training by either State or local agency staff can be provided in a number of ways. Vendor training can be provided during the pre-authorization visit; vendor training can be provided during monitoring visits; additional vendor visits aimed specifically at training can be made; or vendor attendance at WIC training sessions could be used. The particular method is primarily up to the State or local agency, in accordance with its policies and workload. For some State or local agencies, the most convenient method may be to conduct group training sessions in which a number of vendors are educated together. However, the WIC staff must realize that there is a mutual obligation for training. For example, if a vendor cannot go to a group training session, then the WIC staff should attempt to visit the vendor.

The Department is proposing to require that when vendor training is delegated to the local agency, the State agency will provide training to local agency staffs on effective vendor training methods. The Department believes this requirement to be necessary in order to ensure that local agencies understand how to effectively educate vendors about the Program. The Department envisions that State training of local agency staff in this area can be easil incorporated into the current management activities of State and local agencies. The expectation is that such training would enable agency staffs to work more effectively, rather than longer. If vendors can be effectively instructed in Program purposes and requirements, there should be less work needed to handle vendor-related problems.

Compared to the Food Stamp Program, WIC is a complex operation for the vendor: only certain specific foods are allowable; food instruments are valid for only a certain time; and the food instruments must be completed correctly to ensure payment. Unquestionably, many of the vendor-related problems are due to unintentional errors of the vendor. Improved training of vendors should help reduce these problems. The Department is interested in comments on the vendor training requirements. One particular issue of interest is whether the training requirements for chain stores should be the same as for independent stores. Many chain stores have regular training programs which may be efficient and effective in training store personnel, and the Department is interested in how to provide training to chain stores in a manner that is both efficient for the State agency and these stores, and effective in securing understanding of WIC Program rules.

Vendor Monitoring

On-site visits are important for assuring that State or local personnel can directly observe vendor operations and collect evidence of any possible violations. The current regulations require that at least 10 percent of all vendors have an on-site visit each year. A majority of State agencies conduct far more than this level. Nonetheless, audits and management evaluations have documented a number of instances of vendor problems which had gone undetected or uncorrected, some of which caused a loss of Program funds.

Weaknesses have been identified in the current system for vendor monitoring: (1) Current regulations only ensure that a minimum quantity of vendors are reviewed; they do not ensure the quality of the review. (2) Adequate vendor monitoring cannot be assured by requiring only 10 percent of vendors be visited annually. Under this requirement it is very possible that a large number of vendors would never be visited. (3) Adequate documentation to substantiate the performance or quality

of vendor reviews is not generally available, nor is it required in the WIC Program regulations. (4) Data analysis which could enhance the effectiveness of vendor monitoring was often not done or not utilized effectively. For example, in some States, lists of vendors who were suspected of problems were generated, but local agencies did not use them. Therefore, the Department has proposed a number of changes to strengthen the requirements for vendor monitoring in § 250.10(d)(6).

It is proposed that if a State agency chooses to delegate the authority for on-site monitoring visits to local agency staff, then the State must provide training to local agency staff on effective methods of vendor monitoring. Whereas many State agencies have staff who specialize in vendor affairs, very few local agencies have staff with special expertise in this area. When the local agency staff visit vendors they may be uncertain of how to look for problems and they may be prompted to view the chief function of an on-site monitoring visit as a public relations visit. The proposal would help assure a minimal level of quality to on-site vendor monitoring visits in a State.

In order to assure proper documentation of on-site visits, the Department is proposing that the State or local agency document the following: names of vendor and reviewer; date of review; nature of problem(s) detected or the observation that the vendor appears to be in compliance with Program requirements; how the vendor plans to correct any problem noted; and the signature of the reviewer. Most of these specifications are self-explanatory. It should be noted that the method of correction for problems does not mean that a formal corrective action plan must be established, but means that the reviewer has gained some understanding of how the vendor intends to correct any problems detected.

It is proposed that allowable methods of on-site monitoring include, but are not limited to: compliance purchases, review of cashier check-out procedures, and review of the availability and prices of WIC supplemental foods. The primary purpose of this is to clearly distinguish the functions of on-site monitoring from the functions of vendor training. It is allowable to combine training visits with monitoring visits in some circumstances, for the sake of administrative efficiency and effectiveness. There are cases in which training visits should not be combined with monitoring, such as when conducting covert compliance purchases. Overall, the method to be used in any given situation is left to State discretion.

The Department would like to strengthen State capabilities to conduct compliance purchases. In a compliance purchase, an investigator will covertly visit a vendor and submit food instruments in order to determine whether the vendor is engaging in unacceptable practices. The Department believes that the compliance purchase is the strongest method to gain solid evidence of vendor fraud. If a State agency needs to go to court to prosecute a vendor for fraud, then evidence from a compliance purchase is one of the best types of evidence. Many State agencies do not currently conduct compliance purchases. Therefore, this rulemaking would require that States have the authority to conduct compliance purchases. The Department recognizes that in some States, the authority to conduct compliance purchases may reside outside the State agency, such as in the State Attorney-General's office or in a welfare fraud investigation unit. The proposal would require State agencies either to have the authority to conduct compliance purchases themselves, or be able to arrange for this responsibility to be assumed by other appropriate authorities. This proposal does not require any particular level of compliance purchases, but assures that State agencies are prepared to conduct compliance purchases when they appear to be necessary.

The proposed rules also set new requirements regarding the number of vendors to be monitored. The rules would allow for two alternate systems: a broad range system and a high risk screening system. State agencies would need FNS approval to operate either system. FNS could disapprove the application if it determined that the system described is not effective or that the system selected is not appropriate to the conditions of that State agency. The chart below outlines the differences between the two systems.

Proposed WIC Vendor Monitoring Systems

Broad Range System

Minimal level of on-site monitoring: 35 percent of all authorized vendors per year, with all vendors visited at least once every five years.

Selection criteria: In selecting vendors to be visited, participant complaints and high volume of WIC sales must be among the factors taken into account.

High Risk Screening System

Documentation: State agency must document effectiveness of system.

Minimal level of on-site monitoring: Visits to *all* vendors detected as high risk, *plus* visits to vendors not detected as high risk at a level equivalent to 10 percent of all authorized vendors per year.

Selection criteria: State must be able to identify high risk vendors through effective detection of vendors with:

(1) suspected overcharges on redeemed food instruments, and

(2) errors in redeemed food instruments, including at least: redemption outside valid dates, vendor identification missing, and purchase price missing.

Participant complaints must also be used to identify high risk vendors, as well as other screening or detection mechanisms which the State may develop.

In the broad range system, the required level of vendor on-site monitoring visits is at least 35 percent of all authorized vendors per year, with all vendors visited at least once every five years. Analysis of average State agency food package costs indicates that average food costs are lower in States with 35 or more percent vendor monitoring. It is expected that the broad range system would be of particular use in States with relatively few vendors or States without adequate funds or staff to detect high risk vendors through reviews of redeemed food instruments. For these State agencies, it may be more efficient to visit more vendors than to develop the more sophisticated screening capacity. The required criteria for selecting vendors for review are relatively simple: participant complaints and high volume of WIC sales. No State agencies should have trouble in selecting vendors using these criteria. Further, if they so choose, States can use the broad range system while simultaneously developing the capability to conduct high risk screening.

In many respects, the high risk screening system represents a more powerful way to monitor vendors. In addition to targeting high risk vendors, screening can provide more effective monitoring visits. Since a reviewer already has an idea of the type of offenses which are suspected, a more effective and efficient visit can be conducted. Operation of the high risk screening system required that a State agency not only have a sophisticated system to review food instruments and account for participant complaints, but that criteria based on those capacities

be integrated into a system for monitoring the vendors and pursuing those who appear to be violating Program regulations. In designing such a system, States should attempt to keep the system selective so that it produces a manageable number of vendors to monitor effectively.

The high risk screening proposal also requires additional on-site monitoring of vendors not detected by the high risk system at a level equivalent to at least 10 percent or more of all authorized vendors per year. The purposes of the additional visits are twofold: (1) It guarantees a minimal monitoring presence, so that all vendors are aware that there is a certain fixed probability that they will be monitored. (2) Any screening system has weaknesses. An unscrupulous vendor may be able to violate program rules without triggering the screening system criteria. This requires the States to monitor some vendors not selected by the high risk criteria.

In order to utilize the high risk screening system, State agencies must document the effectiveness of their system to FNS. The necessary documentation would need to be arranged between the State agency and the corresponding FNS Regional Office. Examples of the types of documentation which might be appropriate include a description of the system to screen high risk vendors and evidence of effectiveness. The description of the system to screen high risk vendors could include: The criteria used to select high risk vendors for review (e.g., "X" number of food instruments submitted by a vendor have suspected overcharges or participant complaint indicates that a vendor may be providing unauthorized items instead of the approved WIC foods, etc.); the method or reviewing food instruments (e.g., all submitted food instruments are reviewed by the ADP system prior to payment, or all redeemed food instruments are reviewed manually at a certain frequency, or other appropriate specifications, such as, manually-issued food instruments will be reviewed in a separate system from ADP-issued food instruments, etc.); and methods of conducting on-site monitoring visits to detected high risk vendors (e.g., all high risk vendors will be visited by State agency staff within a certain date of the detection, or vendors detected of being high risk will be reported to the appropriate local agency staff who will visit them within a certain time period or certain types of suspected violations will justify a compliance purchase visit, etc.). The evidence to indicate the effectiveness of the system could include: a sample list of high risk vendors generated by the system and the suspected problems; sample reports of results of the on-site monitoring visits; and reports of sanctions brought against vendors for offenses. The Department is not proposing such specific methods for detecting or monitoring high risk vendors or precise numerical criteria for defining high risk vendors in recognition that some variation from State to State or from food delivery system to food delivery system may be warranted.

The Department is interested in comments on the feasibility of the proposed amendment to § 246.10(d)(6) for vendor monitoring. In comments from State agencies, the Department is especially interested in receiving an idea of which vendor monitoring systems the State plans to operate, the broad range or the high risk screening system. Another item of interest is the implementation time. The Department is planning to make the regulations effective one year from the date of issuance of the final regulations. The overall implementation time will be discussed in more depth later. Do commenters believe that one year is a feasible implementation time for the vendor monitoring requirements?

Participant and Vendor Complaints

In order to guarantee that participant complaints can be untilized in the vendor monitoring system, § 246.10(d)(7)(i) is being revised. It would require the State agency to have procedures which document the handling of complaints reported by participants. Appropriate complaints should be followed up with monitoring visits or other measures to correct the problem. This does not mean that all complaints need formal follow-up actions; there will often be petty complaints or comments from chronic complainers which do not necessarily justify a response. However, all complaints reported should be documented, regardless of whether they are acted upon. Corresponding to the participant complaint procedures, another part of the regulation will be amended to require that participants and proxies are informed of how the food delivery system works, including vendor responsibilities, and the right to complain about improper vendor practices.

A similar provision will be made that the State agency must document vendor complaints. As considered appropriate, the State agency shall attempt to correct the problem. The problems of Program abuse are not merely confined to vendors; participants will sometimes knowingly or unknowingly violate Program requirements. Many times, vendors can identify problems which should be reported to the State or local agency, whether they are problems of specific participants or procedural problems. This proposal would guarantee that all vendor complaints are documented.

Sanctions and Disqualifications

The first proposal in this area is a change of terminology. In the current regulations, the term "suspension" is used for vendors and participants who are disqualified due to Program abuse. Unfortunately, "suspension" implies that the party will be reinstated in the Program after the suspension period. This is not always the case. In some cases, after the suspension period the offending party may apply to reenter the Program, but may be denied. However, any vendor or participant who had been disqualified for a certain time period should always be able to reapply for Program participation at the end of the disqualification period. If a State so chooses, then the reentry can be automatic for certain situations. In order to clarify this problem in terminology the word "suspension" is being changed to "disqualification" in § 246.10(d)(7)(iii) and (iv) and § 246.23(a) and (c).

A strong enforcement and sanction system is just as important as the system to detect Program abuse. A prompt, well-publicized vendor disqualification will not only remove the abusive vendor and save Program funds, it will also serve as a warning to other vendors that they can also be sanctioned for Program violations. Because of reports that some State agencies are lax in sanctioning vendors, the Department is proposing to heighten the importance of the sanction system. The maximum disqualification period for vendors will be increased to three years for serious or repeated Program abuse. More important, State agencies will be required to establish policies to determine the type and level of vendor sanctions to be applied against vendors, based upon the nature of the Program violations and such other factors as the State agency determines appropriate, such as whether the violations represented repeated offenses, whether the offenses represented the vendor's policy or the actions of an untrained employee who did not understand Program rules, and whether prior warning and an opportunity for correction were provided. Sanctions which can be used include disqualification, claims for improper or overcharged food instruments, and the penalties cited in § 246.16 for deliberate

fraud. Therefore, the State would be required to determine specific penalties for specific offenses. For example, a State might establish a policy under which it would send a claim and a warning letter upon detecting the first overcharged food instrument; would disqualify the vendor for a certain time period after detecting a certain number of overcharges; and if evidence indicated repeated, serious offenses despite warnings, such as providing cash for food instruments, would disqualify the vendor for up to the maximum period and possibly refer the vendor to the proper legal authorities for prosecution.

The Department requests comments on the area of sanctions. If State agencies believe that more regulatory support is needed in order to obtain effective sanction capabilities, then their comments should express this.

Control of Food Instruments

Audits have reported incidents of disregard for food instrument security, such as boxes of negotiable food instruments sitting in places accessible to the public and failure to document serial numbers of food instruments shipped to or received by local agencies. Current regulations specify the State agency's responsibility for control of food instruments, as well as its liability for claims for lost or misused food instruments. In order to emphasize this State agency responsibility, the Department is proposing to add in § 246.1C(d)(9) the clarification that the State agency is responsible for the secure transportation and storage of unissued food instruments. Steps must be taken to provide secure transportation for food instruments, such as use of certified mail, specially designed vehicles, or personal delivery.

It is intended that documentation be maintained regarding the receipt and issuance of all food instruments, and that local agencies provide secure space for unissued food instruments. While these procedures can be cumbersome, they are essential for prevention of theft, and they should be followed at all times under current regulations.

Reconciliation of Food Instruments

An important element of the financial management system for WIC is the reconciliation of issued and redeemed food instruments. In order to clarify the obligations of State agencies with respect to reconciliation, the Department proposes to revise the definition of reconciliation in § 246.1C(d)(1C). State agencies will be required to identify disposition of all food instruments within 150 days of issuance as either redeemed, unissued, issued but unredeemed, voided in the issuance process, stolen, lost, or expired.

Reconciliation will specifically entail reconciliation of each food instrument issued with food instruments redeemed and adjustment of previously reported financial obligations to account for actual redemptions and other changes in the status of the food instruments (e.g., expired). The 150 day timeframe is based upon the maximum time for valid payment of a food instrument after issuance: a participant has 30 days to use it, the store has 60 days to submit it for payment, and the State agency must pay within 60 days.

An issue which has been raised in the national WIC audit is whether reconciliation should reconcile redeemed food instrument with issuance records or with certification records. If a redeemed food instrument is suspected of being fraudulent in some manner, such as illegitimate issuance by a WIC employee, then it would be worthwhile to be able to check that the food instrument was issued to a valid certified participant. The Department recognizes, however, that to require this as a routine procedure could necessitate costly revision of procedures and is likely to be cost-ineffective, especially since there is not evidence of significant problems in this area. Therefore, it is proposed that a State agency must be able to demonstrate to FNS that it has the capability to reconcile a given redeemed food instrument to valid certification records when necessary, but no requirement is proposed that States perform this task as a routine matter. This capability could be demonstrated by the State agency during FNS management evaluation visits. The capability is important so that States, FNS, or auditors can track the validity of redeemed food instruments all the way to certification if this becomes necessary in individual cases.

Finally, the Department is proposing a one percent tolerance level for reconciliation of food instruments. Though reconciliation is a crucial area of proper financial management, there are often minor problems that prevent 100 percent reconciliation, such as data misreads or keypunch errors. For many of these minor problems, it is not cost effective to pursue the problem for every single food instrument. Therefore, it is proposed that Section 246.18(a) be revised to allow FNS to determine that the reconciliation process is satisfactorily completed for State agencies which can demonstrate that one percent or less of the number of food instruments are not accounted for in the reconciliation process. It should be noted that FNS does not necessarily need to grant the one percent tolerance if it believes that a problem in reconciliation can be rectified. For example, if a local agency in a State has improper accounting for the manually-issued food instruments, then this is a problem which can and should be rectified systematically, as opposed to a random problem such as a keypunch error which is more difficult to correct systematically. Overall, the Department believes that including a one percent tolerance in reconciliation will ease State agency administrative burdens by relieving them of unrealistic expectations of 100 percent reconciliation.

Proxies and Participant Notification

Many State agencies allow authorized proxies to pick up and use food instruments when the participant is unable to do so. The Department recognizes the value of proxies and wishes to utilize them in the WIC Program. Some States have requested that there be specific provisions for this in the regulations. Therefore, in § 246.10(d)(12) it is proposed that all States establish uniform procedures for proxies. In order to help assure that the participant has access to nutrition education and health services, the State agency will be directed to consider the adequacy of nutrition eduction and health services provided to the participant when deciding whether an individual participant can utilize a proxy. The reasons for using a proxy shall be documented.

An issue of similar importance is participant notification about the food delivery system and the right to complain about improper vendor practices. Therefore, § 246.10(d)(12) will be revised to require instruction of participants or their authorized proxies on the proper use of food instruments, including vendor responsibilities. Participants and proxies shall also be notified of their right to complain about improper vendor practices. The purpose of these changes is to help ensure that participants are fully aware of what the vendor ought to do in accepting WIC food instruments or in providing supplemental foods. It also helps to involve the participant and proxy in the vendor monitoring system. The inclusion of proxies in the notification is very important. A small survey in New York City revealed that many participants used proxies and that the proxies were usually not trained in using the food instruments.[4]

Conflict of Interest

Section 246.10(d)(13) is being modified slightly to prohibit conflict of interest between a State or local agency official or a member of an official's immediate family and an authorized food vendor within the official's jurisdiction. Conflict of interest is defined as a situation in which the official or family member owns, in whole or in substantial part, or controls the authorized vendor. Under these providions, no conflict of interest would exist if an official is a member of a cooperatively-owned food store or owns a small numer of shares of stock in a corporate vendor.

Delivery of Food Instruments

In § 246.10(e)(2) there are many references to the use of mailing as an alternate system to provide food instruments to participants. The preferred system is one in which participants personally pick up food instruments, in order to ensure access to nutrition education and heath services. Some State agencies have pointed out that the regulations are over-specific in this area since there are viable alternative delivery systems aside from mailing. Therefore, the references to mailing are being changed to "mailing or deliveries through other means" in this provision of the regulations, in order to broaden the alternate systems which a State may implement.

Design of the Food Instrument

Current regulations specify requirements for food instruments used to purchase WIC foods. The design of a food instrument has a significant bearing on its appropriate and effective use. The Department is proposing two changes in the requirements regarding items on the face of the food instrument in Section 246.10(e)(3)(v). The first is to delete the requirement that the maximum value of the food instrument be printed on the face of the food instrument. Instead, this would be allowed, but would be done at the discretion of the State agency. Experience has shown that printing the maximum value on the food instrument has drawbacks as well as advantages. Some States find the maximum value necessary for limiting their financial liability. On the other hand, the maximim value appearing of the face of the food instrument can encourage vendors to charge higher prices and thereby can be inflationary.

The second change would be to require that if the maximum value is printed, that it be clearly distinguishable from the space for the actual amount of pruchase. The purpose of this change is to eliminate the perception that a vendor is always entitled to the full maximum value of the food instrument. It reduces the probability that a confused cashier would automatically write in the maximum price for the actual purchase price. Examples of ways this could be done include: having the words "actual amount of sale" printed larger and in a different area of the food instrument from the maximum value.

Review of Food Instruments

In retail purchase systems, two types of food instruments are used—check and voucher. Approximately half of the WIC State agencies use a check system and half use vouchers. In a check system, the vendor deposits the food instrument in his or her own bank, thereby receiving payment immediately. The food instrument is itself a bank check and is drawn against the WIC agency's bank. In a voucher system, the vendor submits the food instrument to the State or local agency, which reimburses the vendor. In either system, certain information must be provided on the food instrument to ensure that the payment requested is proper. The State agency is responsible for ensuring that the necessary information is provided.

The State agency should review food instruments to ensure that the necessary information is provided and that the price appears appropriate. A food instrument missing information or with an inappropriate price either should not be paid or, if it was already paid, then either the missing information should be provided or a claim should be assessed against the vendor for the improper food instrument. The State agency's review procedures are, in turn, subject to audit and review by the Department. Unfortunately, audits have found that payments have been made to vendors in spite of serious errors in filling out food instruments. These errors have included: banks redeeming a check-type instrument for maximum value when the actual purchase price is left blank; vendors who routinely charge the maximum value regardless of the price of the food provided; food instruments being paid when the vendor's identification is omitted; and the redemption of food instruments either before or after their valid period.

In order to ensure that State agencies review food instruments thoroughly, the Department is proposing changes in Section 246.10(e)(4). The proposed changes may require modification of State agency food instrument redemption procedures. However, the Department believes that the measures are largely a clarification of the type of accountable procedures which should be utilized now by State agencies in paying food instruments.

In order to review the food instruments for suspected overcharges, most State agencies utilize a price edit in which the purchase price given by the vendor on the food instrument is compared to an expected price for the food instrument. The expected price is usually based upon an average price of the food instrument for the given food item(s), based on prior redemptions, or on information regarding the prices of the given store or in the local area. If the food instrument price given by the vendor is a certain percent or a certain value above the expected price, then the food instrument is noted as a possible overcharge.

The proposed regulations specify that all food instruments must be reviewed for proper price. It is further specified that if the review is conducted prior to payment to the vendor, as would usually be done in the voucher system, and the food instrument contains an overcharge, then the State agency will either deny or delay payment for the food instrument or for the excess amount. Further work may then be necessary to determine the correct amount that the vendor should be paid. If the review is conducted after the payment, as would be done in the check system, then a claim against the vendor shall be assessed for the excess amount, when this is determined. Regardless of when the review is conducted, the State agency shall adjust the payment accordingly, or issue a claim in the appropriate amount, if the vendor corrects the food instrument. If the vendor substantiates that the food instrument does contain the proper charge, no claim shall be pursued and prompt payment shall be made, if this has not already been done.

The proposal will also establish requirements concerning State agency review of food instruments for other errors. The State must review food instruments for three specific errors, although the State agency may check for other errors at its discretion. The errors are: (1) vendor identification is missing, (2) the actual purchase price of the supplemental foods is missing, and (3) the food instrument was submitted by the participant or the vendor outside the valid dates.

Similar to the provisions for overcharges, the State agency is given the option of reviewing before or after payment of food instruments. If the State agency reviews the food instruments prior to payment and finds that an instrument contains one of these three errors, then the payment shall not be made at that time. If a vendor can correct the error, then the State shall

make payment in the appropriate amount. For example, if vendor identification was missing, the vendor may place the identification on the vouchers. If the price was missing, the vendor may demonstrate what price should have been included. If the State reviews after payment and finds one of these errors, then a claim shall be assessed against the vendor for the value of the erroneous food instruments unless the vendor corrects the error.

Vendor identification is considered a necessary element of the food instrument. This can be a name of the vendor, an identification number or a similar unique identifier (if a chain store, it should identify the specific outlet in some manner). In many cases, the vendors batch their food instruments so that only a small number actually have the vendor identification readily accessible. The requirement for vendor identification on each food instrument is being proposed in order to assure that all food instruments can later be assigned to a specific vendor whether as a part of the vendor monitoring system or as an audit trail.

The actual purchase price is necessary to assure proper expenditures in redeeming the food instrument. In some check systems, if the actual price is missing, then the bank redeems the check for the maximum value. Under the proposals, even if the bank redeems the check for maximum value, the State agency will later assess a claim for the excess value. In turn, this should lead the vendor to learn that the actual price should always be written on the food instrument.

The final requirement will be that the food instrument was utilized in the proper time frame. If the participant submitted it after the expiration date, then the vendor should not honor it. If the vendor submits the food instrument after the vendor expiration date, then the State should not honor it. In the current regulations, the State agency is allowed to reimburse vendors who submit the food instruments after the expiration date up to $200.00 per submission without FNS approval. This provision would be retained in the proposal.

The Department has proposed that all food instruments be reviewed to detect overcharges and errors. It is believed that this is necessary in order to assure strong financial accountability and to effectively detect possible vendor violations. However, it is also recognized that such review processes may be arduous and costly. Therefore comments are requested on the feasibility of such reviews or alternate ways to accomplish the same ends, such as sampling of food instruments. Commenters who suggest alternative plans are encouraged to be as specific as possible.

Home Delivery Systems

Audits have found problems in the home delivery systems operated by some State agencies. In order to correct problems identified, the Department is proposing several changes to Section 246.10(f) which deals solely with home delivery systems.

One problem identified is that some home delivery vendors are given exclusive rights in an area, but are not selected in accordance with approved Federal procurement procedures, especially competitive bidding. The home delivery vendors given exclusive rights are guaranteed a large volume of business which will be paid by Federal funds. Section 246.10(f)(2) would specify that such vendors must be selected in accordance with relevant Federal regulations.

Another problem found is that home delivery vendors are oftern paid in advance of delivery of foods, and there may not be procedures to assure that the food is actually delivered to participants. In § 245.10(f)(3) the Department proposes to require that home delivery vendors be paid only after the delivery of food to participants. It is further proposed that there must be procedures to verify, at least once a month, the actual delivery of supplemental foods to participants. For example, the State may require that, once a month, the home delivery vendor secure from participants a signed statement acknowledging receipt of food, and that the vendor submit these to the State or retain them for possible review by the State. In this example, the State should also ensure that the vendor has alternate means to verify delivery in case the participant does not return the statement for foods actually received (e.g., the participant could be out of town at the time in question or could have lost the statement slip). However, the requirement for verification of delivery does not mean that the payment to the vendor must await the verification. Payments can be make after the delivery, but prior to the verification. If the verification fails to substantiate the delivery of food to certain participants, then a claim or other adjustment of payment can be made at a later time.

In order to have access to relevant records of home delivery vendors for State of Federal reviews or audit, it is proposed that home delivery vendors be required to retain records of the delivery of supplemental foods and of bills sent and payment received for the supplemental foods. Further, the home delivery vendor must allow State or Federal authorities access to the records.

The last change in home delivery systems relates to the actual delivery of supplemental foods. One problem which has sometimes occurred is the delivery of too much food. Home delivery vendors usually make weekly deliveries based on 4 week cycles as one month. There have been instances where this has resulted in the delivery of 13 food packages over a year, as opposed to the authorized 12 packages. At the opposite end of the spectrum, other vendors have delivered food so infrequently and in such large quantities that participants cannot store the foods. Therefore, it is proposed that State agencies ensure that the proper supplemental foods are delivered in accordance with § 246.8 and in accordance with participant convenience. This is a fairly broad mandate which allows great flexibility in actually implementing the regulations.

The purpose of these proposals is to assure accountability in home delivery systems while not discouraging State agencies and home delivery vendors from participating in these systems. The Department is interested in comments on how successfully these proposals achieve these goals.

Program Costs

In order to aid in implementation of the proposals, three new provisions are made in the program costs area of the regulations in § 246.12. These provisions are: cost of food instruments used in monitoring, ADP prior notification, and recovery of vendor overcharges.

In § 245.12(b)(5), the cost of food instruments used in monitoring would be added as an allowable administrative cost. This is considered as an administrative cost, as opposed to a food cost, since it is used in an administrative function and not to directly serve a participant.

At the present time, about half of the State agencies are using or developing ADP systems to manage Program operations. During the procurement of some of these systems serious problems arose, particularly when State agencies waited too long to inform FNS that they were seeking computerization. These problems have including bidding practices not strictly in compliance with Federal requirements and purchase of systems which failed to meet Program needs adequately. Current regulations require prior approval by FNS of State agency purchase of ADP systems. However, some States have not understood the importance of early FNS

involvement in ADP system procurement, in order that effective technical assistance can be offered by FNS. Therefore, the Department is proposing to clarify in § 246.12(c)(1) of the regulation that FNS must be informed of a State agency decision to seek automation for any Program operation, other than those dealing solely with staff payroll and related general management functions. In light of past experience, in which some State agencies have had to abort their initial work toward purchase and design of ADP systems, the Department believes that this proposal may reduce State agency workloads. This proposal would also correspond to the requirements for submission of Advance Planning Documents to FNS for computer systems over $100,000 in value.

Many of the requirements in this proposal will increase the workload of some State agencies. The Department believes that the proposed requirements are within the capabilities and the budget of the State agencies. In order to aid State agencies, the Department is proposing, in § 246.12(d), an incentive to State agencies to collect vendor overcharges more aggressively. Funds recovered from vendor overcharges would be returned to the State agencies and the State would be allowed to use up to 50 percent for administrative costs, with the remainder to be used for food costs. This division of funds would allow States to acquire more administrative funds based on the effectiveness of their systems to collect overcharges from vendors and would also allow the collected funds to be used to benefit more participants. The Department hopes that this would serve as an effective incentive for improved State agency performance in monitoring vendors and recovering vendor overcharges.

Historically, WIC funds have often been subject to reallocation in order to redistribute funds to States based on need and prior expenditure. The funds which are gained from the recovery of vendor overcharges should not be taken away in the reallocation process. Therefore, in § 246.14(f), it is proposed that the funds gained from recovery of vendor overcharges should be held harmless in the event of reallocation. This provision would protect the gains in administrative or food funds earned by the State agency recovery process.

Implementation Time

The Department is considering issuing the final regulations with an implementation time of one year. This proposal was issued with a 60 day comment period; the Department expects issuance of final rules in mid-1981, barring unforeseen circumstances. If final regulations are issued at that time, then this would give State agencies until mid-1982 to achieve implementation of the regulations. The Department would appreciate comments on the feasibility of the one year implementation time. If commenters foresee problems in one particular area of the proposal, then they can request a different timeframe for that one section.

Alternatives to This Proposed Rule

As always, the Department is willing to consider comments and alternatives to any of the specific provisions detailed in this proposal. However, there is also a much broader alternative to these amendments. In preliminary discussion of these issues, some State agencies have suggested that the Department should avoid issuing regulations which require a State agency to use a certain method in operating the food delivery system. They have stated that the regulations should express broad goals to be achieved and should allow State agencies to implement methods as they see fit. The Department appreciates the nature of this comment and wishes to avoid over-regulation of the WIC Program.

Nonetheless, the Department feels the need for strengthening regulations in this area, because of the reports of vendor violations and overcharges and other serious problems in the State administration of the food delivery system. The current regulations are already clear in the expressed goals of accountable State administration of the food delivery system, but significant problems have still been found. It is clear that broad regulatory goals are not adequate by themselves.

This leaves the Department with two regulatory options: (1) issuing specific regulations on specific activities in the food delivery system or (2) issuing broad performance standards to be used in evaluating State agency food delivery systems. Presumably, the second option would allow greater State agency flexibility in the manner in which it administers its food delivery system, as long as the State meets the performance standards. The Department has followed the first option in this proposal. However, the proposal still allows ample State flexibility in actual implementation of the provisions. The Department has avoided the second option because it is unaware of any performance standards which are appropriate. In order to be useful in this area, a good performance standard or standards would need to: (1) accurately evaluate the administration of the food delivery system, especially control of vendor abuse, (2) encompass the broad range of activities involved, (3) be readily measurable, and (4) be equally valid for all State agencies and food delivery systems.

The Department is aware of some broad indicators of the food delivery system, such as average food package costs or the number of maximum value vouchers submitted by vendors. However, these indicators are not sufficiently accurate or equitable for use as State agency performance standards. The Department is willing to consider comments in this area.

Lessening of Regulatory Burdens

The final area in which the Department is requesting comments concerns the lessening of regulatory burdens in the WIC Program. The Department recognizes that this proposed rule may cause an increase in workload in some State agencies. The Department believes that there should be a priority given to the proper administration of food delivery systems. In order to achieve this in a workable manner, some other State or local duties may need to be adjusted.

Therefore, comments are requested on other, existing regulatory requirements which could be revised or eliminated in order to ease State or local administrative burdens. In considering this question, commenters should be aware that the mandates of the Program's authorizing legislation, Public Law 95-627, must be followed and that regulations cannot supercede or eliminate the requirements imposed by law.

Analysis of Regulatory Flexibility

This proposed rulemaking has been reviewed with regard to the provisions of Public Law 96-354. Robert Greenstein, Administrator of the Food and Nutrition Service, has certified that the proposal does not have a significant economic impact on a substantial number of small entities.

The bulk of this proposal modifies current requirements regarding State agency operation of the WIC food delivery system. Standards for monitoring and training of food retailers, strengthened requirements for review of food instruments, requirements for reconciliation of redeemed food instruments, and provisions for the design of food instruments are included. These requirements devolve on State agencies, and should not have a significant economic impact on retailers. In some States, retailers may be visited more frequently by State reviewers or trainers, but this will not have a

significant economic impact upon retailers.

The proposal does make explicit the authority of State agencies to limit the number of approved retailers in an area, but this is an authority the State agencies have always had. While some State agencies may choose not to reauthorize some retailers, a substantial number of retailers is not likely to be so affected.

The proposal also provides more specific guidance on disqualification of retailers who are defrauding or otherwise abusing the Program, and requires State agency actions to assure that participating retailers are not overcharging the Program. Since most retailers are complying with Program requirements and are not defrauding, overcharging, or otherwise abusing the Program, a substantial number should not be affected.

Changes in the language of the vendor agreements or in the design of food instruments will not have a significant economic impact on retailers; these changes will not increase workload or staffing requirements of retailers.

The provisions regarding home delivery systems will affect some businesses involved in home deliveries of WIC foods, but the effect would not be a significant economic impact. The requirements, that there be regular verification of delivery of foods at least once a month and that payment not precede delivery, are in accord with the normal home delivery practices in many areas. In addition, there are not a substantial number of home delivery routes participating in the Program. Over 90 percent of the Program operates through retailers or direct distribution.

The provisions regarding monitoring and training of retailers may also affect local agencies in those areas where State agencies choose to delegate some of this responsibility to local agencies. A number of local agencies are already performing these functions. The added functions, where delegated to local agencies, should not be so workload intensive as to generate a significant economic impact. Moreover, the smaller the local agency, the fewer the number of retailers it would need to monitor and the smaller the impact on its workload.

(Child Nutrition Amendments of 1978, Public Law 95-627, 92 Stat. 3611 (42 U.S.C. 1786))

References

(1) Audit Report, FNS-Special Supplemental Food Program for Women, Infants and Children, California State Department of Health, Sacramento, California, as of October 18, 1979. Conducted by the Office of the Inspector General, U.S. Department of Agriculture.

(2) Audit Report, Food and Nutrition Service, Special Supplemental Food Program for Women, Infants and Children, Food Instrument Delivery System, Washington, D.C., as of October 1, 1980. Conducted by the Office of the Inspector General, U.S. Department of Agriculture.

(3) *National State Directors Meeting on Program Management: Summary Report*, Food and Nutrition Service, U.S. Department of Agriculture, 1980.

(4) New York City WIC Committee of the Hunger Task Force, *WIC Vendor Monitoring Report: 1980*, Community Center of Greater New York.

Accordingly, it is proposed that Part 246 be amended as follows:

1. Section 246.10 is revised to read as follows:

§ 246.10 Food delivery system.

(a) *General.* This section sets forth design and operational requirements for State and local agency food delivery systems.

(b) *Uniform food delivery systems.* The State agency may operate up to three types of food delivery systems: retail purchase, home delivery or direct distribution. Each system shall be uniform within the jurisdiction of the State agency. When used, food instruments shall be uniform within each type of system.

(c) *Free of charge.* Participtants shall receive the Program's supplemental foods free of charge.

(d) *State agency responsibilities.* Each State agency is responsible for the fiscal management of, and accountability for, food delivery systems under its jurisdiction and shall comply with the following requirements:

(1) The State agency shall design all food delivery systems to be used by local agencies under its jurisdiction. FNS may, for a stated cause and by written notice, require revision of a proposed or operating food delivery system and shall allow a reasonable time for the State agency to effect such a revision. The State agency shall ensure that these food delivery systems are accessible for WIC participants. All contracts entered into by the State or local agency for the managment or operation of the food delivery systems shall be in conformance with the requirements of A-102, Attachment O.

(2) The State agency shall ensure that food vendors are promptly paid for food costs. Payments for valid food instruments shall be made within 60 days after receipt of the food insturments. Actual payment to food vendors may be made by local agencies.

(3) The State agency shall ensure that all food vendors selected to participate in the Program are properly authorized. Only food vendors authorized by the State or local agency may redeem food instruments or otherwise provide supplemental foods to participants. Procedures for authorization shall include at least the following:

(i) The State agency shall use a uniform vendor application form for all food vendors applying for Program participation. The application form shall have all information required for vendor approval. A documented on-site visit shall precede intial authorization of the food vendor. However, such visits are not required for subsequent authorizations.

(ii) In approving food vendors for authorizaiton, the State or local agency shall consider at least the following criteria:

(A) The retail vendor stocks all categories of WIC supplemental foods, except special infant formulas. The State agency may authorize a retail vendor which stocks only special infant formulas.

(B) The food vendor has reasonable prices for supplemental foods, as determined by the State agency;

(C) The food vendor is not owned, in whole or in substantial part, or controlled by a State or local agency official in whose jurisdiction the food vendor is located or a member of any such official's immediate family;

(D) The food vendor has a suitable location and hours of business for participant access, as determined by the State agency;

(E) The food vendor has a current approved State or local health inspection certificate, where such a certificate is appropriate;

(F) The food vendor is not currently disqualified from participation in any other FNS programs; and

(G) The food vendor has satisfactorily complied with prior agreements to participate in the Program.

(iii) The State agency shall ensure that all food vendors participating in the Program enter into written agreements with the State or local agency. Copies of these agreements shall be on file at the State agency. Agreements shall be in effect for a period not to exceed two years. The food vendor agreement shall be signed by a representative of the food vendor who has legal authority to obligate the vendor. When the vendor representative is obligating more than one outlet, then all the outlets shall be specified in the agreement. A standard vendor agreement form shall be used Statewide, though exceptions may be made with the approval of the State

agency. The agreement shall contain the following specifications, although the State agency may determine the precise wording to be used:

(A) In providing supplemental foods to participants, the food vendor shall only provide the approved supplemental foods.

(B) The food vendor shall provide supplemental foods at the current price or at less than the current price charged to other customers.

(C) When food instruments are used, the food vendor shall submit those food instruments for payment within the allowed time period and accept food instruments from a participant only within the allowed time period.

(D) The State agency has the right to demand refunds for charges of more than the actual purchase price for supplemental foods.

(E) The State agency may deny payment to the food vendor for improper food instruments or may demand refunds for payments already made on improper food instruments.

(F) The food vendor shall not seek restitution from participants for food instruments not redeemed by the State agency.

(G) The manager of the store or home delivery service shall accept training in WIC procedures at least once every two years and the State or local agency shall provide such training.

(H) The food vendor shall inform and train cashiers, warehouse staff or delivery route personnel on Program requirements.

(I) The food vendor shall be accountable for actions of employees in the utilization of food instruments or provision of supplemental foods.

(J) The food vendor shall offer WIC participants the same courtesies as offered to other customers.

(K) The food vendor may be monitored for compliance with WIC rules.

(L) During a monitoring visit of a retail vendor, the food vendor shall provide access to food instruments negotiated the day of the review at the request of the reviewer.

(M) For retail vendors, the vendor shall provide access to shelf price records, if available.

(N) Home delivery vendors shall retain records relevant to the provision of supplemental foods and shall allow access to them by State and/or Federal officials.

(O) Under § 246.18 of the regulations, those who have willfully misapplied, stolen or fraudulently obtained WIC funds shall be subject to a fine of not more than $10,000 or imprisonment for not more than five years or both, if the value of the funds is $100 or more. If the value is less than $100, then the penalties are a fine of not more than $1,000 or imprisonment for not more than one year or both.

(P) The food vendor shall comply with the nondiscrimination procedures of Department regulations (7 CFR 15).

(Q) Neither the State agency nor the food vendor have an obligation to renew the vendor agreement.

(R) Either the State agency or the food vendor may terminate the agreement for cause after providing at least 15 BLL/DB days written notice.

(S) The State agency may disqualify a food vendor for reasons of Program abuse. The vendor has the right to appeal a State agency decision pertaining to denial of application to participate or to vendor disqualification.

(T) The food vendor shall notify the State agency when the vendor ceases operations or ownership changes. The agreement is null and void if the ownership changes.

(iv) The format of the agreement shall be limited to either of the following:

(A) A single document signed by both the vendor and a State or local agency official;

(B) A vendor application form which contains the stipulations required of the vendor agreement and is signed by both the vendor and the State or local agency official plus a permit signed by the State or local agency official. The State agency may require the vendor to display the permit in public view.

(4) The State agency shall ensure that food vendors are transmitted pertinent information and are provided guidance concerning the authorized supplemental foods, including a list of acceptable brand name products, and all other applicable FNS guidelines and instructions.

(5) The State agency shall ensure that training is provided by the State or local agency personnel for participating food vendors. When vendor training is delegated to the local agency, the State agency shall provide training for local agency staff on effective vendor training methods. The State agency shall ensure that personal contact is made with the manager of each authorized retail outlet or home delivery service for the purpose of providing training about Program requirements at a minimum of once every two years. The required training contact may be provided during a pre-authorization visit, a monitoring visit, a group training session or a visit conducted solely for training purposes.

(6) The State agency shall be responsible for the monitoring of food vendors within its jurisdiction. If the State agency chooses to delegate all or part of this responsibility to local agencies, then the State agency must provide training to local agency staff in effective methods of vendor monitoring.

(i) The following shall be documented for all on-site vendor monitoring visits, at a minimum: names of both vendor and reviewer; date of review; nature of problem(s) detected or the observation that the vendor appears to be in compliance with Program requirements; how the vendor plans to correct deficiencies detected; and the signature of the reviewer. Methods of on-site monitoring visits may include, but are not limited to: compliance purchases, review of cashier check-out procedures, and review of the availability and prices of WIC supplemental foods.

(ii) The State agency shall have the authority to conduct compliance purchases to collect evidence of vendor practices or shall be able to arrange for this responsibility to be assumed by the proper State or local authorities.

(iii) The State agency shall obtain FNS approval to operate either of the vendor monitoring systems described in paragraphs (d)(6)(iv) or (v) of this section.

(iv) In the broad range system, the State agency shall conduct on-site monitoring visits of at least 35 percent of all authorized vendors in its jurisdiction each year. At a minimum, each authorized vendor shall be visited at least once every five years. Food vendors shall be selected for review on the basis of at least the following criteria: participant complaints and high volume of WIC sales.

(v) In the high risk screening system, the following is required:

(A) The State agency shall describe to FNS its systems both for detecting and for monitoring high risk vendors, and shall document to FNS the effectiveness of these systems.

(B) Criteria to distinguish high risk vendors shall include at least the following: a specific level or other distinguishing measure regarding the scope and/or severity of suspected overcharges of redeemed food instruments; a specific level or levels, or other distinguishing measures, regarding the scope and/or severity of errors in food instruments, which shall include at a minimum, redemption outside valid dates, vendor identification missing, and missing purchase prices; and participant complaints which indicate possible serious vendor violations of Program rules.

(C) An on-site monitoring visit shall be conducted of every vendor detected as being at high risk.

(D) The State agency shall conduct on-site monitoring visits to food vendors

not detected by the high risk monitoring criteria at a level equivalent to 10 percent or more of all authorized vendors per year, in order to maintain a routine monitoring presence.

(7) The State agency shall implement a system of management review to limit food vendor and participant abuses of the program. The system shall incude the following:

(i) The State agency shall have procedures which document the handling of complaints reported by participants. As considered appropriate by the State agency, correction of improper practices and/or compensation shall be sought from the vendor.

(ii) The State agency shall have procedures which document the handling of complaints reported by vendors. As considered appropriate by the State agency, the State agency shall attempt to correct the problems.

(iii) The State agency shall establish policies which determine the type and level of sanctions to be applied to food vendors, based upon the severity and nature of the Program violations observed, and such other factors as the State agency determines appropriate, such as whether the violation represented repeated offenses over a period of time, whether the offenses represented vendor policy or whether they represented the actions of an individual employee who did not understand Program rules, and whether prior warning and an opportunity for correction was provided to the vendor.

The period of disqualification from Program participation shall be a reasonable period of time, not to exceed three years. The maximum period of disqualification shall be imposed only for serious, or repeated Program abuse. The State agency shall provide adequate procedures for vendors to appeal a disqualification from participation under the Program as specified in Section 246.24. Prior to disqualifying a food vendor, the State agency shall consider whether the disqualification would create undue hardships for participants. A food vendor's current disqualification from participation in any other FNS program shall be grounds for review of that vendor's operation of the WIC Program. Food vendors may be subject to sanctions in addition to disqualification, such as claims for improper or overcharged food instruments and the penalties outlined in Section 246.16 in the case of deliberate fraud.

(iv) The State agency shall establish procedures designed to control participant abuse of the Program. Participant abuse includes, but is not limited to, knowing and deliberate misrepresentation of circumstances to obtain benefits, sale of supplemental foods or food instruments to, or exchange with, other individuals or entities, and receipt from food vendors of cash or credit toward purchase of unauthorized food or other items of value in lieu of authorized supplemental foods. The State agency shall establish sanctions for participant abuse. Such sanctions may, at the discretion of the State agency, include disqualification from the Program. Warnings may be given prior to the imposition of sanctions. Before a participant is disqualified from the Program for alleged abuse, that participant shall be given full opportunity to appeal a disqualification as set forth in Section 246.23. At the State agency's discretion, participants may be disqualified for a period not to exceed three months. However, the disqualification may be waived if a competent professional authority determines that a serious health risk may result.

(v) The State agency shall refer food vendors and participants who abuse the Program to the Federal, State or local authorities for prosecution under applicable statutes, where appropriate.

(8) The State agency shall ensure that the food delivery system is compatible with the delivery of health and nutrition education services to the participants.

(9) The State agency shall control the receipt and issuance of supplemental foods and food instruments. The State agency shall ensure the secure transportation and storage of unissued food instruments.

(10) The State agency shall identify disposition of all food instruments as either redeemed, unissued, issued but unredeemed, voided in the issuance process, lost, stolen, or expired. Reconciliation of food instruments shall entail reconciliation of each food instrument issued with food instruments redeemed and adjustment of previously reported financial obligations to account for actual redemptions and other changes in the status of food instruments.

(i) Reconciliation of food instruments shall be performed within 150 days of the date of issuance and shall be in accordance with the financial management requirements of § 246.11.

(ii) The state agency shall be able to demonstrate to FNS its capability to reconcile a given redeemed food instrument to valid certification records.

(11) The State agency shall ensure that supplemental foods are not issued for use in institutions, such as homes for unmarried mothers.

(12) The State agency shall ensure that each participant or representative signs a receipt for supplemental foods or food instruments. This requirement shall not pertain to systems which deliver food instruments by alternate means, such as by mailing. All State agencies shall establish uniform procedures which allow proxies designated by participants to act on their behalf. In determining whether an individual participant should be allowed to designate a proxy, there shall be consideration of whether there are adequate measures for the provision of nutrition education and health services to that participant. The reasons for allowing the participant to designate a proxy shall be documented. State agencies shall ensure that participants and their proxies receive instructions on the proper use of food instruments, including vendor responsibilities, or on the procedures for receiving supplemental foods. Participants and their proxies shall also be notified that they have the right to complain about improper vendor practices with regard to Program responsibilities.

(13) The State agency shall ensure that no authorized food vendor is owned, in whole or in substantial part, or controlled by any State or local agency official in whose jurisdiction for food vendor is located, or a member of any such official's immediate family.

(e) *Retail purchase system.* Retail purchase food delivery systems are systems in which participants obtain supplemental foods by submitting a food instrument to local retail outlets. All retail purchase food delivery systems shall meet the following requirements:

(1) The State agency shall use uniform food instruments within its jurisdiction. The State agency is responsible for the design and printing of the uniform food instruments, and their serialization.

(2) To ensure that nutrition education and health services are frequently available to participants, FNS recommends that, wherever feasible, participants personally obtain their food instruments from the local agency. However, the State agency shall develop guidelines for the delivery of food instruments to participants through means other than direct pick-up of food instruments, such as through the mailing of food instruments. Food instruments may be mailed or otherwise delivered to participants on a local agency-wide basis only if approved by the State agency. In making its determination regarding the mailing, or delivery through other means, of food instruments by a local agency, the State agency shall consider participant hardships, such as seasonal inclement

weather, which may be encountered by the target population of local agency if food instruments are not mailed or othewise delivered. The State agency shall approve a local agency's request for the mailing or delivery through other means of food instruments if accountability is ensured and if either a reasonable level of health and nutrition education services can be provided, or if the State agency determines that persons in need of the Program in rural areas will be unable to participate in the Program if food instruments are not mailed, or otherwise delivered, to them. A local agency may mail, or deliver through other means, food instruments in individual cases only if, in each case:

(i) The participant encounters difficulties in personally obtaining food instruments for such reasons as illness, imminent childbirth, inclement weather conditions, distance to travel, high cost of travel, or inability to get to the local agency during business hours;

(ii) The reasons for mailing or otherwise delivering the food instruments are documented by the State of local agency in the participant's certification file; and

(iii) The mailing or delivery through other means of food instruments to the participant is discontinued if the participant's initial hardship is resolved.

(3) Each food instrument shall clearly bear on its face the following information:

(i) The first date from which the food instrument may be used by the participant to obtain supplemetal foods.

(ii) The last date by which the participant may use the food instrument to obtain supplemental foods. This date shall be a minimum of 30 days from the date specified in paragraph (e)(3)(i) of this section or, for the participant's first month of issuance, it may be the end of the month or cycle for which the food instrument is valid.

(iii) An expiration date by which the food vendor is required to submit the food instrument for payment. This date shall be no more than 90 days from the date specified in paragraph (e)(3)(i) of this section. If the date is less than 60 days from the date specified in paragraph (e)(3)(ii) of this section, the State agency shall ensure that the food vendor is able to submit food instruments for redemption within the required time limit without undue burden.

(iv) A unique and sequential serial number.

(v) At the discretion of the State agency, a maximum purchase price which is higher than the price of the food for which it will be used, but low enough to be a reasonable protection against potential losses of funds. When the maximum value is shown, the space for the actual value of the supplemental foods purchased shall be clearly distinguishable. For example, the words "actual amoumt of sale" could be printed larger and in a different area of the food instrument than the maximum value.

(4) The State agency shall establish procedures to assure the propriety of redeemed food instruments:

(i) The State agency shall assure that food vendors are not reimbursed in excess of the actual purchase price of the supplemental foods. The State agency shall review all food instruments submitted by food vendors to identify those that are unreasonably priced. If the State agency pays food vendors after such a review, then payment for food instruments that contain overcharges, or for the amounts that represent overcharges shall be denied, or delayed in accordance with paragraph (e)(4)(iii) of this section. If the State agency pays food vendors prior to such a review, then claims shall be made against the vendor for excess amounts, when they are determined.

(ii) The State agency shall review all food instruments submitted by food vendors for errors. At a minimum, all food instruments submitted by food vendors shall be reviewed for the following errors: the vendor identification is missing; the actual purchase price of the supplemental foods is missing; and the food instrument was submitted by the participant or vendor outside the specified valid dates. If the State agency pays food vendors after such a review, then payment for food instruments containing any of these three errors shall be denied at that time. If the State agency pays food vendors prior to such a review, then claims shall be made against the vendor for the value of the food instruments with any of these three errors present unless the vendor corrects the error.

(iii) When payment for a food instrument is denied or delayed, or a claim for reimbursement is assessed, then the affected food vendor shall have an opportunity to correct or justify the overcharge or error. For example, if vendor identification was missing, the vendor may place his or her identification on the vouchers. If the actual price is missing, the vendor may demonstrate what price should have been included. If the State agency is satisfied with the correction or justification, then it shall provide payment, or adjust the payment or claim to the vendor accordingly.

(5) With justification and documentation, State agencies may reimburse food vendors for food instruments submitted after the expiration date if the total value of the food instruments submitted at one time is $200.00 or less. If the total value of the food instruments submitted at one time exceeds $200.00, reimbursement may not be made without the approval of the FNS Regional Office.

(6) The State agency shall ensure that no more than a three month supply of food instruments is issued to any participant at one time and that nutrition education and health services are frequently made available to the participant, and that nutrition education services are made available in accordance with § 246.9(e).

(7) The State agency shall enter into written agreements with as many food vendors as is necessary to assure convenience to participants in obtaining supplemental foods. At a minimum, the State agency shall enter into written agreements with at least four food vendors in each clinic service area, unless the State agency determines that it is impossible to enter into written agreements with four food vendors in the clinic service area for reasons such as lack of retail outlets which meet Program requirements or refusal of vendors to participate. The State agency may establish criteria which limit the number of vendors authorized to participate.

(f) *Home food delivery systems.* Home food delivery systems are systems in which food is delivered to the participant's home. Systems for home delivery of food shall provide for:

(1) Uniform food instruments, where applicable, which comply with the appropriate requirements set forth in paragraph (e) of this section ;

(2) Procurement of supplemental foods in accordance with § 246.17, which may entail measures such as the purchase of food in bulk lots by the State agency and the use of discounts that are available to States. The selection of home delivery vendors that are given exclusive contracts to an area shall conform to requirements of A–90, A–102, A–110 or FMC 74–4; and

(3) The accountable delivery of supplemental foods to participants. The State agency shall ensure that:

(i) Home delivery vendors are paid only after the delivery of supplemental foods to the participants.

(ii) There exists a routine procedure to verify the actual delivery of supplemental foods to participants. At a minimum, such verification must occur at least once a month.

(iii) Each authorized home delivery vendor retains records of the delivery of supplemental foods to participants, and of bills sent and payment received for provision of these supplemental foods, and allows access to these records by State and/or Federal authorities.

(iv) The proper amount of supplemental foods are delivered, in accordance with Section 246.8 and in accordance with the convenience of the participants.

(g) *Direct distribution systems.* Direct distribution food delivery systems are systems in which participants pick up food from storage facilities operated by the State or local agency. Systems for direct distribution of food shall provide for:

(1) Uniform food instruments, where applicable, which comply with the appropriate requirements set forth under paragraph (e) of this section;

(2) Adequate storage and insurance coverage that minimizes the danger of loss due to theft, infestation, fire, spoilage, or other causes;

(3) Adequate inventory control of food received, in stock, and issued;

(4) Procurement of supplemental foods in accordance with § 246.17, which may entail measures such as purchase of food in bulk lots by the State agency and the use of discounts that are available to States;

(5) The availability of Program benefits to participants and potential participants who live at great distances from storage facilities; and

(6) The accountable delivery of supplemental foods to participants.

2. Section 246.12 is amended by revising paragraphs (b)(5), (c)(1), and adding (d) to read as follows:

§ 246.12 Program costs.

* * * * *

(b) * * *

(5) The cost of administering the food delivery system, including the cost of transporting food and the cost of food instrument used solely for monitoring or investigation.

* * * * *

(c) * * *

(1) Computerized information systems which are required by a State or local agency, except for those used in general management and payroll, including purchase of automatic data processing equipment or systems whether by outright purchase, rental-purchase agreement or other method of acquisition. Approval shall be granted by FNS if the proposed system meets the requirements of this part, A–80, A–102, and FMC 74–4. When a State agency decides to seek computerization, except for use in general management or payroll, FNS shall be informed, in order to allow adequate opportunity for provision of technical assistance.

* * * * *

(d) *Recovery of vendor overcharges.* Funds collected by the recovery of claims assessed against food vendors for overcharges on food instruments or supplemental foods may be retained by the State agency. The State agency may use up to 50 percent of these funds for administrative purposes and the remainder shall be used to pay food costs.

3. Section 246.14 is amended by adding paragraph (f) to read as follows:

§ 246.14 Distribution of funds.

* * * * *

(f) *Recovery of vendor overcharges.* Funds which are gained by the State agency through the recovery of claims assessed against food vendors for overcharges, in accordance with Section 246.12(d), shall be held harmless by FNS in the event of reallocation of funds.

4. In § 246.18, paragraph (a) is amended by adding two new sentences at the end to read as follows:

§ 246.18 Claims and penalties.

(a) * * * FNS is authorized to establish claims against a State agency for unreconciled food instruments. When a State agency can demonstrate that 99 percent or more of the food instruments issued have been accounted for by the reconciliation process, then FNS may determine that the reconciliation process has been completed to satisfaction.

* * * * *

§ 246.23 [Amended]

5. Section 246.23 is amended by removing the word "suspension" and inserting, in its place, the word "disqualification" in paragraphs (a) and (c).

(Catalog of Federal Domestic Assistance Program No. 10.557, National Archives Reference Service.)

Signed in Washington, D.C. on January 16, 1981.

Carol Tucker Foreman,

Assistant Secretary for Food and Consumer Services.

[FR Doc. 81-2256 Filed 1-22-81; 8:45 am]

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Friday
January 23, 1981

Part XIX

Department of the Interior

Office of Surface Mining Reclamation and Enforcement

Prime Farmlands: Interim and Permanent Regulatory Programs

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Parts 716 and 785

Prime Farmlands; Interim and Permanent Regulatory Programs

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Final rules.

SUMMARY: The Department is revising the grandfather exemption to the prime farmland provisions of Section 510(d) of the Surface Mining Control and Reclamation Act in the interim regulatory program, 30 CFR 716.7(a)(2), and the permanent regulatory program, 30 CFR 785.17(a). The final rules exempt all pre-August 3, 1977, permits and all revisions or renewals of those permits from the special prime farmland performance standards established by Section 510(d)(1) of the Act. They also allow continuations of pre-existing mining operations where the lands to be grandfathered are an extension of a mining pit or pits permitted and in existence on August 3, 1977. All such prime farmland exemptions will terminate on August 3, 1982.

EFFECTIVE DATE: February 23, 1981.

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION:

Background

Section 510(d)(1) of the Surface Mining Control and Reclamation Act of 1977 (the Act) gives special protection to the nation's prime farmlands in two main ways. First, an operator who desires to mine these lands must show that he has the technological capability to restore the lands to their premining productivity. Second, if a satisfactory showing is made, the Act then mandates the operator to take special environmental protection measures during operations, including soil handling measures not required of other mining operations. Section 515(b)(7).

The Congress chose, however, not to apply this standard immediately to all surface coal mining operations and provided in Section 510(d)(2) of the Act:

> Nothing in this subsection shall apply to any permit issued prior to the date of enactment of this Act, or to any revisions or renewals thereof, or to any existing surface mining operations for which a permit was issued prior to the date of enactment of this Act.

This provision exempts or "grandfathers" the listed operations from the restoration showing requirement and from the performance standards designed for prime farmlands.

To carry out Section 510(d)(2), the Department adopted separate regulations for the interim and permanent regulatory programs. As originally adopted for the interim program on December 13, 1977 (42 FR 62803–04, codified at 30 CFR 716.7(a)(2)), the regulations provided:

> The requirements of this section are applicable to any permit issued on or after August 3, 1977. Permits issued before that date and revisions and renewals of those permits need not conform to the provisions of this section regarding actions to be taken before a permit is issued. Permit renewals or revisions shall include only those areas that—
>
> [i] Were in the original permit area or in a mining plan approved prior to August 3, 1977; or
>
> [ii] Are contiguous and under State regulation or practice would have normally been considered as a renewal or revision of a previously approved plan.

The intent of this regulation was "to allow permit renewals or revisions to include expansions of existing operations" under limited conditions, thereby assuring a reasonable transition period for the industry. 42 FR 62661, December 13, 1977.

By contrast, the permanent program regulation, 30 CFR 785.17(a), adopted on March 13, 1979 (44 FR 15373), provided an exemption only for those "areas where mining is authorized under permits issued or mining plans approved prior to August 3, 1977 * * *." The permanent rule exemption was designed to implement congressional intent "to prevent indefinite expansion of mining in prime farmland areas if operators cannot achieve compliance with the prime farmland performance standards." 44 FR 15084, March 13, 1979.

Both the interim and permanent regulations were challenged by the coal industry. The interim regulations were generally sustained in the District Court as a reasonable exercise of the Secretary's discretion in implementing the Act (*In Re: Surface Mining Regulation Litigation*, 452 F. Supp. 327, 340 (D.D.C. 1978)), but were overturned in the Court of Appeals (*In Re: Surface Mining Regulation Litigation*, No. 78–2190, 78–2191, 78–2192, Slip op. at 26 (D.C. Cir., May 2, 1980) as amended by order dated June 30, 1980. Prior to the decision of the Court of Appeals, the Department voluntarily suspended the permanent program regulation. 44 FR 77454–55, December 31, 1979.

In the litigation, as well as in the interim and permanent program rulemakings, the primary issue has been whether the Act allows an exemption for areas of ongoing mines that were not covered by state permits prior to August 3, 1977, and, if so, how extensive an area could be exempt. The legislative history of the Act shows that this issue was of major congressional concern. During presentation of the final Conference Committee Report, H.R. Rep. No. 95–493, 95th Cong., 1st Session (July 12, 1977) to both Houses of Congress, contradictory statements of intent were made on the floor of both Houses. On one side were several members of Congress who believed that the grandfather exemption would be limited to those lands already included in state permits. On the other side were those who understood that the grandfather exemption protected not only permitted operations, but also allowed continuation for an extended period of those operations outside permit areas. For example, Congressman Teongas, with the approval of Congressman Udall, stated that the exemption was not intended to give grandfathered operations "the right of contiguous or noncontiguous expansions that were not specified or authorized in the originally approved and grandfathered permits." 123 Cong. Rec. H7588–89 (Daily ed., July 21, 1977). On the other hand Senator Metcalf noted agreement with Senator McClure's statement that "the exclusion will apply to continued operation of an ongoing mine beyond the acreage and time covered in the existing permit * * * just so long as the continuance does, in fact, constitute a continued operation of an ongoing mine." 123 Cong. Rec. S12442 (Daily ed., July 20, 1977).

While the legislative history contains conflicting views, the Court of Appeals has ruled on the issue of whether any lands unpermitted as of August 3, 1977, may be grandfathered. In responding to a petition for rehearing of its May 2, 1980, panel decision in the interim program litigation, the Court made it clear that the Secretary must extend the grandfather exemption beyond the actual, pre-1977 permit area:

> The issue essentially is whether, under the Section 502(d) exclusion from the Act's more rigorous reclamation requirements of "any existing surface mining operations for which a permit was issued prior to August 3, 1977," there can be *any* ongoing operations on land that, although contiguous, was not covered by

the permit. We believe that, if the quoted statutory provision is to have any meaning at all, there can be; and that the legislative history of the last-minute addition to the Act of the words quoted above, disclosed a Congressional purpose that there can be. The Secretary's interim regulation to the contrary was thus in conflict with the statute. (footnote omitted). *In re: Surface Mining Regulation Litigation*, No. 78-2190, 78-2191, 78-2192, Slip op. (D.C. Cir., June 30, 1980).

In reaching this conclusion the Court deleted language previously used in its May 2, 1980, decision which implied that the exemption was nearly limitless. The Secretary thus interprets the June 30, 1980, decision to authorize him to place a reasonable limit on the extent of grandfathering in order to carry out the "purposes and provisions" of the Act. See Section 201(c)(2) of the Act.

Proposed Rules

After the District Court's ruling, but prior to the Court of Appeals' May 2, 1980, decision, the Secretary proposed identical interim and permanent program grandfather regulations interpreting Section 510(d)(2). 45 FR 25982-25986, April 16, 1980. The rules took a new approach and did not directly follow either of the prior rules. The Secretary proposed to allow grandfathering in three specific instances. First, the proposed regulations grandfathered lands included in permits prior to August 3, 1977. This proposal corresponds to the first of the three statutory clauses in Section 510(d)(2). Second, the proposed regulations grandfathered permitted lands if the permits were "renewed" or "revised" within the meaning of the Act. In other words, the grandfather exemption would be available if the term of the permit were lengthened (a renewal) or if the method of mining within the permit were changed (a revision). Neither of these exemptions would allow new lands (other than incidental boundary changes) to be grandfathered. This approach corresponds to the second statutory clause in Section 510(d)(2). Third, to cover the third clause of Section 510(d)(2), the proposed regulations added a new basis for grandfathering contiguous mining areas, and placed a 1982 limitation on the period of time for which this exemption would be valid.

The comment period on the proposed rule was extended once and later reopened to allow the public to comment on how the Court of Appeals' decision of June 30, 1980, affected the proposal. 45 FR 39448, June 10, 1980; 45 FR 56364, August 25, 1980. The Secretary has now considered all of the comments and the recent court decisions and has decided to adopt the rules as proposed, with only minor changes, for both the interim and permanent programs.

Final Rulemaking

The final rules exempt all lands included in pre-August 3, 1977, permits and all revisions or renewals of those permits. 30 CFR 716.7(a)(2)(i) and (ii) and 785.17(a)(1) and (2). The final rules also allow continuations of pre-existing surface coal mining operations where the lands to be exempted are: (1) an extension of a continuous mining pit or pits; (2) part of a single permitted operation; and (3) part of a continuous recoverable coal seam. Moreover, the permittee must demonstrate that he or she had a pre-August 3, 1977, legal right to mine the exempted lands. 30 CFR 716.7(a)(2)(iii) and 785.17(a)(3).

The proposed regulations substantially anticipated the modified decision of the Court of Appeals. In accordance with that decision's interpretation of the Act, the final regulations allow some grandfathering outside of the original pre-August 3, 1977, permit area and establish a grandfathering cut-off date of August 3, 1982. The regulations respond to the congressional concern that the grandfather clause give some flexibility to existing operations. See, e.g., 123 Cong Rec. S6104 (Daily ed., May 20, 1977).

The regulations also respond to congressional concern that mining operations in different states be accorded equal grandfathering treatment. 123 Cong. Rec. S8802 (Daily ed., May 26, 1977). This concern is reflected in Section 101(g) of the Act in which Congress has noted that uniform mining and reclamation standards are essential to avoid distortions of competition among coal producers in different states. The Secretary believes that a fixed cut-off date for grandfathering is necessary to respond fully to these congressional concerns.

The regulations are also based on the prevailing congressional concern, the protection of the nation's prime farmlands. See for example, Sections 102(f), 510(d)(1), and 515(b)(7) of the Act and 123 Cong. Rec. S8104 (Daily ed., May 20, 1977). To satisfy this concern and these statutory requirements, the Secretary believes that he has a duty to ensure that full environmental protection is made applicable to all prime farmlands within a reasonable time. A cut-off date ensures that mining operations cannot continue for a period far beyond the time needed to provide a fair and reasonable transition period.

In establishing a fixed cut-off date while extending the grandfather exemption beyond the immediate permit area in special cases, the Secretary is mindful of Illinois' experience with grandfathering and has considered the practical implications of these changes. Illinois has been the state where application of these changes has raised the most controversy. In applying a fixed cut-off date and extended grandfathering, Illinois has grandfathered 12 thousand acres which were not included in pre-August 3, 1977, permits. Illinois limited the scope of these decisions by having all exemptions expire in 1982. See discussion of *In re: Southwestern Illinois Coal Corporation (The Captain Mine*, Docket No. RA 78-1) at 45 FR 25004, April 10, 1980. Conversely, Illinois' decisions were expansive in that mining sites were deemed contiguous even if two sites were physically unconnected except by long stretches of haul-roads. See discussion of *Midland Coal Company v. Andrus*, No. 79-1172 (D. Ill. Dec. 21, 1979), vacated May 28, 1980, at 45 FR 25004, April 16, 1980. The state's policy with respect to contiguity was based on its view that some reasonable extension of grandfathering beyond the permit area was needed. The Secretary has reviewed Illinois' exemption decisions and finds that virtually all come within the new rule; two exceptions have been identified but both involve mines that are now inactive and consequently will not be affected by this rulemaking.

The final regulations allow a five-year period for pre-existing, permitted prime farmland operations to remain exempt from the Act's special prime farmlands permitting and performance standard requirements. This five-year period gives the mining companies adequate time for transition and allows them opportunity to meet the new permitting and performance standards and to conduct any new tests they might need. This five year period is identical to the basic five year permit term established by Section 506(b) of the Act. (The Secretary, however, does not view the proviso in Section 506(b) as an appropriate vehicle for extending the August 3, 1982, date). The Secretary believes that the statutory permit term creates an inference of the reasonableness of this provision. Finally, and perhaps most importantly, the five-year term is identical to that chosen by Illinois after that state carefully considered the condition of the mining industry there. Companies in Illinois (and, to a lesser degree, elsewhere) have relied upon this limit. While this reliance does not prevent the Secretary from adopting a different

standard, it has been a major factor in seeking a workable resolution of this difficult problem.

The Secretary considered several alternatives in addition to the August 3, 1982, time limit: no time limitation, a later limit such as 1987, and an earlier limit. Each of the alternatives is less successful than the final regulation in carrying out the multiple congressional concerns noted above and frustrates one or more of the purposes to be achieved. A shorter limit would tend to restrict the ability of mining companies to make a smooth transition and does not share the statutory basis of the five year term. Longer or unrestricted time limits err in the other direction. They would provide too much time, thereby unnecessarily sacrificing the productivity of prime farmlands, and would undermine the progress that Illinois has made in reaching a reasonable solution to the problem. For these reasons, the Secretary has decided not to change the 1982 cut-off date as set forth in the proposed rule.

With respect to physical contiguity, there is further need to define those operations that qualify for the exemption. For example, an operation partially or fully permitted before August 3, 1977, which mines continously along a seam, clearly qualifies under the regulation. The more difficult question involves partially or fully permitted operations where mining areas are physically separated. The regulation promulgated today will not allow breaks except those caused by roads or similar facilities which *bisect* but do not *connect* two parcels.

Upon further consideration, however, the Secretary has concluded that a single continuous surface coal mining operation for purposes of grandfathering could include non-contiguous parcels. Accordingly, the proposed rule has been amended by changing Sections 716.7(a)(2)(iii)(A) and (C) and 785.17(a)(3)(i) and (iii) to include the concept of "continuous surface coal mining operation" and by adding §§ 716.7(a)(2)(v) and 785.17(a)(5) to explain that phrase. The additions and amendments allow non-contiguous parcels to be grandfathered if the operator can present clear and convincing evidence that, prior to August 3, 1977, the non-contiguous parcels were part of a single continuous surface coal mining operation. A single continuous surface coal mining operation is presumed to consist only of a single continuous mining pit unless the permittee can meet the "clear and convincing" proof requirement.

The Secretary cannot anticipate nor has a rule been established for the type or amount of evidence an operator must produce to meet this burden of proof. This is an evidentiary matter to be determined by the regulatory authority. Examples of such evidence might include signed contracts, mining plans, permit applications or other legal documents specifically treating physically separate parcels as a single mining unit. On the other hand, if an operator lacked a legal interest in all of the property, there would be a strong presumption against a finding of a single unit. Convenience of the operator or generalized plans without specific proof of a legal interest would be inadequate to meet the "clear and convincing proof" test. This limited expansion of the grandfather exemption is also adopted with the express understanding that its expansion is closely and integrally tied to the August 3, 1982, time limit. Without the time limit, the expanded exemption would clearly present an unacceptable risk that operations could be indefinitely exempted.

Finally, there is a minor change in § 716.7(a)(2). "After August 3, 1977," has been changed to "on or after August 3, 1977," in order to comport with the statutory language at Section 510(d)(2). For additional clarity, "and" has been added after the semi-colon at §§ 716.7(a)(2)(iii)(A) and 785.17(a)(3)(i); "or" has been added after the semi-colon at §§ 716.7(a)(2)(i) and 785.17(a)(1). "Surface mining operation" has been changed to "surface *coal* mining operation" whenever necessary to comport with the Act, the regulations, and congressional intent (see discussion under the analysis of public comments).

Related Rulemaking

On June 11, 1979, the Department proposed six revisions to 30 CFR 716.7 of the interim regulations in order to implement the District Court's decision generally sustaining those regulations. See, *In Re: Surface Mining Regulation Litigation*, 452 F. Supp. 327, 340 (D.D.C. 1978), and 44 FR 33628, June 11, 1979. Briefly described, these proposed changes were as follows: (1) defining *historically used for cropland* as 5 out of 10 years; (2) measuring the historical use period from the date of acquisition of the land for mining purposes; (3) providing for the regulatory authority to have flexibility to classify as prime farmland those lands important to the State or local economy; (4) providing for the regulatory authority to have flexibility to classify as prime farmland those lands taken out of cropland use for more than 5 years in 10 due to ownership circumstances which do not relate to the capability of the land to produce crops; (5) substitution of the term "cropland" for "cultivated crops"; and (6) implementing the grandfather exemption of the Act (Section 510(d)(2)).

Final regulations on these six changes will soon be published by the Department in the Federal Register (citation and date of publication presently unavailable; hereinafter referred to as the "historical use" rulemaking). The first five changes described above and in the final "historical use" rulemaking notice are not affected by the instant rulemaking. The sixth proposed change, the revision of the interim program grandfather exemption (42 FR 62661, December 13, 1977, codified at 30 CFR 716.7(a)(2)), is affected by the instant rulemaking. Following is a discussion of the evolution and current status of the grandfather exemption regulation.

On June 11, 1979, the Department proposed to revise 30 CFR 716.7(a)(2) to clarify that Section 510(d)(2) of the Act exempted surface coal mining operations operating under permits issued prior to August 3, 1977, or renewals or revisions thereof, *from both the prime farmland permit application requirements and special performance standards of the Act.* 44 FR 33628, June 11, 1979. This revision was accomplished by proposing the deletion of the words "regarding actions to be taken before a permit is issued" from 30 CFR 716.7(a)(2) as originally promulgated on December 13, 1977 (44 FR 62694). Subparagraphs (i) and (ii) of 30 CFR 716.7(a)(2), as published on December 13, 1977, were not affected by the June 11, 1979, proposal. This proposed deletion was mandated by the District Court's decision in *In Re: Surface Mining Regulation Litigation*, 452 F. Supp. at 340 (D.D.C. 1978).

As noted in the recent "historical use" rulemaking, the Department received no comments on this proposed change. Comments on other exemption issues such as contiguity, revisions, renewals, and other matters were, however, received. These have been transferred to this rulemaking for review, consideration and response, and are analyzed below. In summary, the Department has recently published in its "historical use" rulemaking as final rules the six changes proposed on June 11, 1979. As part of the recent "historical use" notice of final rulemaking, the clause "regarding actions to be taken before a permit is issued" has been deleted from 30 CFR 716.7(a)(2).

In the instant rulemaking, the Department is affecting all subsections of 30 CFR 716.7(a)(2). Accordingly, the version of 30 CFR 716.7(a)(2) recently published as part of the "historical use"

rulemaking is now entirely replaced by the final regulations published today.

For the convenience of the public, the following table shows the current status of all subsections of 30 CFR 716.7:

Subsection of regulation (§ 716.7)	Where to find the final regulation
(a)(1)	The "historical use" rulemaking.
(a)(2)	The instant rulemaking (published today).
(b)(1)	The "historical use" rulemaking.
(b)(2)	The "historical use" rulemaking.
(b)(3)	The "historical use" rulemaking.
(c)	45 FR 62204, Dec. 13, 1977, codified at 30 CFR 716.7(c).
(d)(1) remainder of (d), (e), (f), (g).	The "historical use" rulemaking 42 FR 62204-05, Dec. 13, 1977, codified at 30 CFR 716.7(d) *et seq.*

State Programs

State programs must have provisions which are consistent with the final permanent rule, §785.17(a), in accordance with 30 CFR Part 732. However, at this time, resubmission is pending for numerous other state programs because of injunctions issued against the states. The Secretary is also developing other new permanent program legislative rules at this time. Accordingly, the Secretary has determined that state programs need not contain provisions consistent with today's new permanent program rule at this time. After review and final decision on state programs submitted before March 4, 1980, the states will be given the opportunity to amend their programs as appropriate to make them consistent with the new permanent rule.

In the meantime, state programs must have provisions consistent with the Surface Mining Control and Reclamation Act of 1977 and those Federal regulations issued on March 13, 1979, and which have not been suspended. States may, if they wish, adopt provisions implementing federal regulations adopted after March 13, 1979.

Nonetheless, the interim program rule, § 716.7(a)(2), will be effective in those states with *and* without approved permanent state programs 30 days from publication in the Federal Register.

All states, regardless of primacy status, are therefore expected to apply the interim program rule commencing 30 days from publication to each operation until that operation receives it permanent program permit. The Secretary believes that efficient implementation of these revised rules would lead states with approved programs to encourage all permit applicants to comply with the new rules in their permanent program applications, even if the state program is not yet revised to reflect the new rules.

Public Hearings

Public hearings on the proposed grandfather regulations were held on April 30, 1980, in Washington, D.C. and on May 15, 1980, in Springfield, Illinois. Sessions were scheduled to begin in the morning and to continue until all those intending to speak had opportunity to do so. Members of the public took advantage of these public hearings by submitting their comments, both verbally and written, to representatives from OSM. These comments were then made part of the public record and were carefully considered in preparation of the final rules.

Public Meetings

Representatives of OSM were available to meet members of the public at their request between April 16 and May 30, 1980, between June 10 and June 25, 1980, and between August 25, and September 4, 1980, to receive their advice and recommendations concerning the content of the proposed regulations. Notice of OSM's availability was published in the proposed rules at 45 FR 25993, April 16, 1980, the extension notice at 45 FR 39448, June 10, 1980, and the reopening notice at 45 FR 56364, August 25, 1980.

Analysis of Comments

In its April 16, 1980, Federal Register notice, 45 FR 25992–25995, the Department proposed identical interim and permanent program prime farmland grandfather regulations interpreting Section 510(d) of the Act. Briefly described, the Secretary proposed to allow grandfathering on prime farmlands permitted prior to August 3, 1977, for renewals or revisions of pre-August 3, 1977, permits, and for certain extensions of pre-existing mining operations where the grandfathered lands are an extension of a mining pit. All exemptions were proposed to terminate on August 3, 1982. The proposed rule was opened to public comment, meetings and hearings as noted above.

As a result of a thorough review and consideration of the submitted comments, the Department has promulgated final rules. These are uniform for the interim and permanent program. They depart from the proposed rules only by the addition of a limited modification which allows non-contiguous parcels, which are found by the regulatory authority to be part of a single continuous surface coal mining operation permitted prior to August 3, 1977, to be exempted until August 3, 1982, from the special prime farmlands permitting requirements and performance standards.

In response to the proposed rule on the grandfather exemption, the Department received 30 sets of written comments in addition to the oral testimony taken at the public hearings of April 30 and May 15, 1980. Written comments were received essentially from four sources: governmental authorities, concerned citizens (primarily farmers), private environmental organizations, and coal mining companies and organizations composed of such companies.

This section discusses the comments presented by the public and the decisions made by the Department in response to those comments. The Department considered significant comments to be those urging the adoption of viable alternatives or questioning the provisions in the proposed regulation, and those which provided reasonable rationale, justification, technical references, or other materials supporting the recommendations or comments. Insignificant comments, that is, those of a more general nature or which correct minor errors, are included in the administrative record for this rulemaking but are not discussed here.

General Comments

While the bulk of the comments discussed specific aspects of the proposed rulemaking, some comments were directed toward the rules in general. One group of comments concerned the impacts of *In re: Surface Mining Regulation Litigation*, No. 79–2190 *et al.* (D.C. Cir., May 2, 1980), as modified (D.C. Cir., June 30, 1980), which postdated the publication of the proposed rules. Some commenters suggested that the proposed regulations be withdrawn and new regulations proposed to ensure compliance with the findings in those decisions. The Secretary is of the opinion that the final rules comply with the Court of Appeals' modified decision. Because there are no major changes from the proposed rules, it is unnecessary for the rules to be withdrawn and reproposed. The changes that have been made in the proposed rules have resulted largely from the Department's accepting certain comments.

Commenters have disagreed about the Court decision's effect on the interim and permanent program regulations relating to the grandfather clause. One commenter contended that the decision touched only interim program regulations and thus the permanent program regulation could be

independently formulated and contain separate provisions. Another contended that both the interim and permanent program regulations were governed by the Court decision. The Secretary agrees with the latter viewpoint. The Court of Appeals based its decision on the language in Section 510(d)(2) of the Act. That section does not differentiate between the interim and permanent program with respect to the grandfather clause. Moreover, as noted in the April 16, 1980, proposed rulemaking at 45 FR 25993, the decision to adopt similar rules "is an attempt to respond to the difficulty the Department has encountered in attempting to enforce the current grandfather clause and in problems State have had in applying the regulation." Hence, the Secretary has decided to promulgate identical provisions for the grandfather clause exemption in the interim and permanent programs.

A second group of comments suggested alternative mechanisms for the implementation of the grandfather clause exemptions. One commenter recommended returning to the approach in the permanent regulations adopted March 13, 1979 (44 FR 15373) and suspended December 31, 1979 (44 FR 77454–55). The Secretary concluded, however, that further rulemaking was necessary as a result of issues raised in the permanent program litigation. See 44 FR 77434, December 31, 1979.

Some commenters favored a case-specific determination on the applicability of the exemption to individual mining operations based on suggested criteria (*e.g.*, mining plans, maps, and documents relating to the mining operation which were prepared before August 3, 1977; information concerning the company's legal and financial commitments relating to the operation; governmental documents and approvals relating to the operation). The flaw in this approach is that it would undermine the uniform treatment of mining operations in different states as required by the Act. The criteria suggested by the commenters of necessity depend upon information developed in conjunction with pre-Act state permit requirements. The application of these suggested criteria would thus result in exemptions based on the vagaries of pre-Act state permit procedures. See testimony of John Conlon (National Coal Association/ American Mining Congress), May 15, 1980, pp. 53–54. Congress clearly intended "* * * that such existing mines should continue in operation independent of the tortuitous nature of states' permit machinery." *In re: Surface Mining Regulation Litigation, supra.* (May 2, 1980) at 31, ftnt. 18. Moreover, Congress explicitly stated in the Act that national standards were necessary to insure that competition among coal producers in different states would not undermine the ability of the individual states to control coal operations within the states. Section 101(g). Congress recognized the importance of uniformity in the regulatory standards. Thus the commenters' approach is at odds with congressional intent. In any event, operators have some opportunity to demonstrate the particular circumstances of each case for purposes of proving the existence of "a single continuous surface coal mining operation" under these regulations.

Pre-existing Permits

Section 716.7(a)(2)(i) of the interim rules, and § 785.17(a)(1) of the permanent rules provide an exemption for mines that are operating under a permit issued prior to August 3, 1977. To a large extent, commenters accepted or supported the wording of these sections. However, two critical comments were received. One commenter wanted the regulations to specify that only *surface mining* permits (meaning a permit to mine coal) issued prior to August 3, 1977, would exempt a mining operation from the prime farmlands provisions of the Act. The Secretary believes that the language of the regulations as proposed is sufficient to provide this interpretation.

Another commenter suggested that the mine operator, when applying for a permit under the permanent program, be required to have commenced mining in addition to possessing a permit issued prior to August 3, 1977. The Secretary did not adopt this suggestion. The language of the Act specifically extends the prime farmlands exemption to mining operations possessing a permit issued prior to August 3, 1977. Imposing the suggested limitation would exclude permitted mining operations in violation of congressional intent. H.R. Rep. No. 95–493, 95th Cong., 1st Sess. 105 (1977).

Renewals and Revisions of Pre-existing Permits

Pursuant to the Act, the regulations (in §§ 716.7(a)(2)(ii) and 785.17(a)(2)) extend the exemption to include renewals or revisions of a permit issued prior to August 3, 1977. Most commenters accepted the wording of these sections in the proposed form. One commenter asserted that a "renewal" or "revision" of the permit cannot allow the expansion of the mining operation beyond the permit boundaries. The Secretary believes the commenter has misunderstood the effect of the rule. The intent of the grandfather exemption is not to issue renewals or revisions of permits. Instead the rule exempts permit "revisions or renewals" from the special prime farmlands permitting and performance standards requirements, as mandated by Section 510(d)(2) of the Act. The Department's use of the term "revisions" in §§ 716.7(a)(2)(ii) and 785.17(a)(2), which include "incidental boundary changes to the original permit," is based on Section 511(a)(3) of the Act.

Existing Surface Coal Mining Operations

The proposed interim regulations at § 716.7(a)(2)(iii) and the permanent rule counterpart at § 785.17(a)(3) provide an exemption for existing surface coal mining operations. In addition, the proposed regulations list three requirements for an existing surface coal mining operation: the land is part of a single continuous mining pit permitted prior to August 3, 1977; the operator must have possessed the legal right to mine the land prior to August 3, 1977; and the land must contain a continuous recoverable coal seam.

Comments critical of the proposed regulations were numerous. One commenter asserted that the Secretary's interpretation of the language in the Act underlying these provisions is mistaken. That commenter claimed that the scope of the mining operation was limited by the scope of the permit issued to the operation. Thus, the exemption could not apply to property beyond the original permit boundaries. This interpretation of the Act is at variance with the Appeals Court's holding that Section 510(d)(2)'s provision for "any existing surface mining operations for which a permit was issued prior to August 3, 1977" includes ongoing operations on land that was not a part of the original permit. *In Re: Surface Mining Regulation Litigation, supra.* (June 30, 1980). The Department has based the final regulations in part on the Court's holding.

A commenter urged that the regulations be altered to specify that all three conditions listed in 30 CFR 716.7(a)(2)(iii) and 785.17(a)(3) must be met by the mining operation to receive the prime farmlands exemption. The final rule includes "and" after 716.7(a)(2)(iii)(A) and 785.17(a)(3)(i) to insure that this interpretation is understood.

Numerous commenters expressed concern that the use of "surface mining operations" in the regulations was intended to exclude the surface impacts of underground mines from the exemption. The term employed in the

proposed regulations is the same term used by Congress in Section 510(d)(2) of the Act. However, elsewhere in the Act and particularly in the definitions (Section 701), Congress employed the term "surface *coal* mining operations." There is no indication from the language of the Act or the legislative history of Section 510 that Congress intended these two terms to differ. The Secretary is of the opinion that the language in Section 510(d)(2) was a mere oversight by Congress. As a result, the Secretary has used the term "surface coal mining operation" in the final regulation to insure that surface effects of underground mines are included in the exemption.

Commenters criticized the use of the term "single continuous mining pit" because it excluded mining operations involving multiple pits. They assert that Congress did not intend multiple pit mining operations to be treated differently than single pit operations. The Secretary concurs with this comment and has altered the regulations accordingly. See 30 CFR 716.7(a)(2)(v) and 785.17(a)(5) and the discussion above related thereto.

Commenters also criticized the requirement that permittees must have had a "legal right to mine the lands prior to August 3, 1977." They argued that because the limitation was not explicitly included in the Act, the Department was not justified in imposing it in the regulations. It is clear, however, that Congress intended and the Court of Appeals recognized the prime farmlands exemption is limited in scope. The Secretary has concluded that a "right to mine" as indicated by ownership, contract, or lease is both indicative of the geographical scope of the mining operation at the time the permit was issued and effective in fairly limiting the scope of the exemption. This limitation certainly will not exclude any ongoing mining operations intended to be included in this exemption because ongoing operations could be expected to possess a right to mine. Some commenters have criticized the exclusion of options to purchase, contract or lease. They assert that the acquisition of such an option is indicative of an intent to include the property within the ongoing mining operation. The Secretary does not accept this assumption. By the very nature of an option, an operator is in no way bound or committed to including the property within the operation. At most, an option can be said to indicate that the operator is considering including the land in the operation. Thus, the Secretary believes that an option does not demonstrate that the land is within an ongoing mining operation.

Definitions of "Continuous Mining Pit" and "Continuous Surface Coal Mining Operation"

Sections 716.7(a)(2)(iv) and 785.17(a)(4) of the proposed regulations defined the term "continuous mining pit" for the purpose of these regulations. To clarify the intent of the final regulations at §§ 716.7(a)(2)(iii) and 785.17(a)(3), the definition of the term "continuous surface coal mining operations" was added in §§ 716.7(a)(2)(v) and 785.17(a)(5). The inclusion of this term in the final regulations is the result both of a number of comments concerning the potential exclusion of surface effects of underground mines from the exemption and the Court of Appeals' decision including non-contiguous parcels within the exemption for existing operations.

A number of commenters suggested that a pit (or by implication, a mining operation) could not be considered "continuous" where it was divided physically by anything—be it road or bare land. Drawing an analogy to farmlands, these commenters noted that farmland bisected by a road, pipeline, railroad, powerline or bare land would not be considered a continuous land tract. It would be operated and taxed independently. So, they argued, a mining pit should be similarly divided.

The Secretary recognizes that such a situation may exist with regards to farmlands the analogy is not applicable here. Under the Court of Appeals' decision, the Department is compelled to conclude that such a division would not alter the "continuous" nature of the pits or mining operations.

Exemption Termination Date

The Department specifically requested comments on the August 3, 1982, exemption cut-off date proposed in §§ 716.7(a)(2)(v) and 785.17(a)(5), renumbered as §§ 716.7(a)(2)(vi) and 785.17(a)(6), in the final regulations. 45 FR 25992–25995, April 16, 1980. Most of the commenters did not suggest alternate dates, but rather stated that the cut-off date was arbitrary, unsupported by the Act and should be deleted. While two alternative dates were suggested, both suffer the same flaw and neither complies with the congressional intent as effectively as the proposed 1982 date. One commenter suggested that the exemption terminate 8 months after the date on which the Secretary approves a state regulatory program. This date is derived from 30 CFR 771.11 (general requirements for permits).

Other commenters suggested that the termination date be determined in a case-specific manner, depending on the individual mining operation and the permit programs of the individual states. Both alternatives would vary the termination date from state to state. The latter suggestion could even result in different dates for each operation. This variation would undermine the previously discussed congressional desire for uniformity in regulations to ensure that competitive advantages to individual operations in different States are not granted based on administrative technicalities.

The Secretary believes that the proposed cut-off date is not arbitrary and is supported by the Act. As discussed above, Congress intended, and the Appeals Court recognized, that the prime farmland exemption would not be limitless. The need for geographical limitations was explained in the preamble to the proposed regulations. 45 FR 25994, April 16, 1980. The cut-off date insures an orderly transition period between pre-Act and post-Act standards, prevents mining from continuing indefinitely through expansions to contiguous and non-contiguous areas, reduces the potentially wide variations in the application of the law in the different states, and provides certainty to the public and the industry with regards to the scope of the prime farmland exemption. The five-year period chosen corresponds to that of a permit under the Surface Mining Act (Section 506(b)) and is reasonable in fulfilling the purposes stated above.

Drafting Information

The principal authors of these rules and the accompanying preamble are: Ralph E. Ewalt, Agronomist, Technical Services and Research, OSM, Indianapolis, Indiana (317/269–2066) and Arlo Dalrymple, Agronomist, Technical Services and Research, OSM, Washington, D.C. (703/756–0964).

Statements of Significance and Environmental Impact

The Department of the Interior has determined that this document is not a significant rule and does not require a regulatory analysis under Executive Order 12044 and 43 CFR Part 14. The final rule for the interim program is exempt from Section 102(2)(c) of the National Environmental Policy Act under Section 501(a) of the Surface Mining Act. The Department of the Interior has determined that the significant impacts of the final permanent program rules on the quality of the human environment have

previously been identified in the final environmental statement on the permanent program (OSM–EIS–1) available January 29, 1979. Accordingly, no new environmental impact statement has been prepared for this rulemaking. The documents supporting the determinations of significance and of environmental impact are available for inspection in Room 135 of the Interior South Building, 1951 Constitution Avenue N.W., Washington, D.C. 20240.

Dated: January 16, 1981.

Joan M. Davenport,

Assistant Secretary, Energy and Minerals.

Final Regulations

The following regulations in Chapter VII of Title 30 of the Code of Federal Regulations are amended as follows:

A. 30 CFR 716.7(a)(2) is revised to read:

§ 716.7 Prime farmland.

(a) * * *

(2) Except as otherwise provided in this paragraph, the requirements of this section are applicable to any lands covered by a permit application filed on or after August 3, 1977. This section does not apply to:

(i) Any permit issued prior to August 3, 1977; or

(ii) Any renewal or revision of a permit issued prior to August 3, 1977. For the purposes of this subparagraph, "renewal" of a permit shall mean a decision by the regulatory authority to extend the time by which the permittee may complete mining within the boundaries of the original permit, and "revision" of the permit shall mean a decision by the regulatory authority to allow changes in the method of mining operations within the original permit area, or the decision of the regulatory authority to allow incidental boundary changes to the original permit; or

(iii) Lands included in any existing surface coal mining operation for which a permit was issued for all or any part thereof prior to August 3, 1977, provided that:

(A) Such lands are part of a single continuous surface coal mining operation begun under a permit issued before August 3, 1977; and

(B) The permittee had a legal right to mine the lands prior to August 3, 1977, through ownership, contract, or lease but not including an option to buy, lease, or contract; and

(C) The lands contained part of a continuous recoverable coal seam that was being mined in a single continuous mining pit (or multiple pits if the lands are proven to be part of a single continuous surface coal mining operation) begun under a permit issued prior to August 3, 1977.

(iv) For the purposes of this paragraph a pit shall be deemed to be a single continuous mining pit even if portions of the pit are crossed by a road, pipeline, railroad, or powerline or similar crossing.

(v) For the purpose of this paragraph, a single continuous surface coal mining operation is presumed to consist only of a single continuous mining pit begun under a permit issued prior to August 3, 1977, but may include non-contiguous parcels if the operator can prove by clear and convincing evidence that, prior to August 3, 1977, the non-contiguous parcels were part of a single permitted operation. For the purposes of this subparagraph, clear and convicing evidence includes, but is not limited to, contracts, leases, deeds or other properly executed legal documents (not including options) that specifically treat physically separate parcels as one surface coal mining operation.

(vi) The exceptions granted by subparagraphs (i)–(v) of this paragraph apply only to lands mined to the coal face and related benches prior to August 3, 1982.

* * * * *

B. 30 CFR 785.17(a) is revised to read:

§ 785.17 Prime farmland.

(a) This section applies to any person who conducts or intends to conduct surface coal mining and reclamation operations on prime farmlands historically used for cropland except:

(1) Any permit issued prior to August 3, 1977; or

(2) Any renewal or revision of a permit issued prior to August 3, 1977. For purposes of this subparagraph, "renewal" of a permit shall mean a decision by the regulatory authority to extend the time by which the permittee may complete mining within the boundaries of the original permit, and "revision" of the permit shall mean a decision by the regulatory authority to allow incidental boundary changes to the original permit; or

(3) Lands included in any existing surface mining operation, for which a permit was issued for all or any part thereof prior to August 3, 1977, provided that:

(i) Such lands are part of a single continuous surface coal mining operation begun under a permit issued before August 3, 1977; and

(ii) The permittee had a legal right to mine the lands prior to August 3, 1977, through ownership, contract, or lease but not including an option to buy, lease or contract; and

(iii) The lands contained part of a continuous recoverable coal seam that was being mined in a single continuous mining pit (or multiple pits if the lands are proven to be a part of a single continuous surface coal mining operation) begun under a permit issued prior to August 3, 1977.

(4) For the purposes of this paragraph a pit shall be deemed to be a single continuous mining pit even if portions of the pit are crossed by a road, pipeline, railroad or powerline or similar crossing.

(5) For the purposes of this paragraph, a single continuous surface coal mining operation is presumed to consist only of a single continuous mining pit begun under a permit issued prior to August 3, 1977, but may include non-contiguous parcels if the operator can prove by clear and convincing evidence that, prior to August 3, 1977, the non-contiguous parcels were part of a single permitted operation. For the purposes of this paragraph, clear and convincing evidence includes, but is not limited to, contracts, leases, deeds or other properly executed legal documents (not including options) that specifically treat physically separate parcels as one surface coal mining operation.

(6) The exceptions granted by paragraphs (a)(1)–(5) of this section apply only to lands mined to the coal face and related benches prior to August 3, 1982.

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Part XX

Department of the Interior

Office of Surface Mining Reclamation and Enforcement

Permanent and Interim Regulatory Program Modifications

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 700

Permanent and Interim Regulatory Program Modifications; Extraction of Coal

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule.

SUMMARY: This rule change implements Section 528(2) of the Surface Mining Control and Reclamation Act of 1977 (Act) which provides an exemption from the Act's requirements for the extraction of coal where a surface mining operation affects two acres or less.

EFFECTIVE DATE: Februrary 23, 1981.

ADDRESSES: Director, Office of Surface Mining, U.S. Department of the Interior, South Building, 1951 Constitution Avenue NW., Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT: Carl Pavetto, Office of Surface Mining, Division of Inspection, (202) 343-5365.

SUPPLEMENTARY INFORMATION:

Background:

Section 528(2) of the Act exempts from regulation surface coal mining operations which affect two acres or less. 30 U.S.C. 1278(2). The intent of Congress in providing for this exemption was to avoid imposing the Act's requirements on the occasional "pick and shovel" operator. 119 Cong. Rec. 1357 (1973). Throughout the legislative history of the Act, Congress expressed its belief that the exemption "would cause very little environmental damage and that the regulation of [such operators] would place a heavy burden on both the miner and the regulatory authority." *See e.g.* S. Rep. 95-128, 95th Cong. 1st. Sess. 98 (1977); S. Rep. 94-28, 94th Cong. 1st Sess. 223 (1975). Clearly, Congress did not intend that the two acre exemption be used as a vehicle for circumventing the Act in a manner that would cause serious environmental harm.

The Surface Mining Act is a remedial statute which includes among its purposes for the protection of "society and the environment from the adverse effects of surface coal mining operations." Sec. 102(a). 30 U.S.C. 1202(a). The courts require that exemptions from the terms of remedial statutes, such as the Surface Mining Act, be narrowly construed. *De Lux Ranchos Inc.* v. *Coldwell Banker & Co.*, 608 F. 2d 1297, 1302 (9th Cir. 1979); *Wirtz* v. *Ti Ti Peat Humus Company*, 373 F. 2d 209, 212, (4th Cir. 1967). To interpret such exemptions otherwise would "utterly frustrate the legislative purpose." *Southern Ry. Company* v. *Occupational Safety and Health Review Comm'n*, 539 F. 2d 335, (4th Cir. 1976); *Southern Pacific Transportation* v. *Usery*, 539 F. 2d 386 (5th Cir. 1976). Accordingly, the provision exempting surface mining operations of two acres or less from the requirements of the Act must be narrowly construed to insure that society and the environment are protected from the adverse effects of surface mining.

Section 700.11(b) of the permanent program regulations as originally adopted attempted to avoid abuse of the exemption by excluding from its scope operations "conducted by a person who affects or intends to affect more than two acres at physically related sites, or any such operation conducted by a person who affects or intends to affect more than two acres at physically unrelated sites within one year." 44 FR 15312 (1979). In the litigation over the permanent regulatory program, the Commonwealth of Virginia challenged these regulations as overbroad. *In re: Permanent Surface Mining Regulation Litigation*, Civ. No. 80-1308 (D.D.C. 1980). In response to this legal challenge, OSM agreed to change the language of Section 700.11(b) to reflect more closely congressional intent. On February 6, 1980, OSM proposed new rules on the two acre exemption. 45 FR 8241 (1980). A hearing was held on the purposed rules in Washington, D.C. on February 25, 1980. The public comment period extended from February 6, 1980 to March 7, 1980.

As a result of comments received at the hearing and in writing during the comment period OSM conducted an investigation to ascertain the extent to which the two acre exemption was being abused. That investigation has revealed widespread abuse of the two acre exemption. For example, in one documented case a single operator was found to be conducting surface mining operations on four separate sites within a one-mile radius. Although the aggregate area of the four sites exceeded four acres, the operator claimed the two acre exemption for each operation. As a result of inadequate reclamation measures, erosion and acid drainage has occurred. Another instance of abuse was observed and documented where one operator is conducting mining operations on two sites within a three-mile radius. Again the two acre exemption has been claimed although the total disturbed area exceeds three acres. OSM also has observed operators opening mining operations of less than two acres then skipping 50 or 100 feet to open new operations of less than two acres, claiming the exemption in each instance.

The abuses cited are not isolated incidents. In the Administrative Record are documented hundreds of sites where a two acre exemption is claimed. While OSM does not seek to regulate bona fide pick and shovel operations it is clear that many alleged two acre operations do not properly qualify for the exemption. The number of abuses appears to be increasing as more operators learn of the exemption and new methods are devised for mining on multiple sites and claiming the exemption. Methods uncovered thus far include the use of shell corporations where an exemption is claimed by many ostensibly small operators that are in fact closely connected to larger corporations. One such scheme uncovered by OSM employed 30 individual operators, each subject to the control of the parent corporation and each claiming the exemption. Case studies of these and other examples of abuse have been collected and placed in a file labeled "two acre exemption case studies" in the administrative record for this rule.

In this amended rule, OSM adopts three methods for halting abuse of the two acre exemption: (1) Defining the term "affect"; (2) excluding related sites that exceed two acres in aggregate; and (3) excluding processing and support facilities from the exemption.

The definition of "affect" is taken from WEBSTER'S NEW INTERNATIONAL DICTIONARY, (1961), which defines that term as follows: "To act upon; to produce a material influence upon or alteration in * * *." Accordingly, under this revised rule, any impact from a surface mining operation that materially influences or alters any land or water resource is deemed to "affect" that resource for purposes of the exemption. This construction is consistent with the intent of Congress that the two acre exemption apply only where very little environmental harm would result. S. Rep. 94-128, 95th Cong., 1st Sess. 988 (1977).

The rule also provides, as part of the definition of "affect," that roads and streams affected by a mining operation shall be included in the two acre calculation. This interpretation flows directly from the language of Section 528(2) of the Act. In particular, OSM intends that roads affected by mining operations be included in the two acre calculation regardless of their ownership. The inclusion of all affected

roads will ensure that the exemption is not circumvented by statutes that authorize counties to accept into county road systems private roads used for industrial purposes and neither maintained by the county nor used by the general public. Finally, the definition of "affects" states that the area affected shall include the land or water above underground mine workings. This language reaffirms the current policy as reflected by the definition of "affected area" at 30 CFR 701.5 and makes clear that OSM intends that the definition of "affects" in no way changes the definition of "affected area" in the existing regulations.

Second the revised rule adopts both mandatory and discretionary criteria for determining whether two or more sites are related. For purposes of calculating the affected area, the acreage of related sites is added.

The two mandatory criteria which require a finding of relatedness are: (1) Sites on which operations are conducted by the same operator, principal or permittee within a one year period; and (2) sites which are located in the same State. Where both of these criteria are met, the sites shall be deemed related and their acreage added unless the operator can demonstrate affirmatively that the operations are not related. These mandatory criteria are necessary because OSM has found numerous mine sites that allegedly fall within the two acre exemption, but are owned by the same company within the same general area and appear to have been scattered deliberately so that each site remains just less than two acres. Many of these mines are connected by haul roads and use the same processing facilities. OSM does not believe that these are the "pick and shovel" operations Congress intended to exempt from the Act's requirements. Accordingly, OSM has determined that operations under the control of the same operator, principal or permittee and located in close physical proximity to one another must be treated as a single operation for the purposes of Section 528(2) of the Act.

In attempting to establish an appropriate distance between sites presumed to be "related," OSM considered radii of various lengths, but decided that the State boundary would be the most logical limit because it would be easiest to administer and enforce. Such a limit is also consistent with the concept of State primacy embodied in Section 101(f) of the Act, 30 U.S.C. 1201(f).

In addition to the two mandatory criteria for determining that sites are related, the rules contain three discretionary criteria. Two or more sites may be deemed related if: (1) Two or more operations are conducted with substantially the same personnel, equipment, haul roads, or loading or processing facilities; or (2) the coal extraction operations are conducted or controlled by the same person or persons in such a manner or under a scheme which suggests that the operations involved are related; or (3) the coal removed from the various sites is owned by the same person or persons. Whenever any of these criteria are met, the state regulatory authority, in states with approved state programs, or OSM, in the initial regulatory program, in states in which a federal program has been implemented, and in the federal lands program, may exercise its discretion and find these sites related. This provision guards against abuse of the exemption by ensuring, for example, that a contract operator, who owns and processes all of the coal being mined by subsidiary operators, protected by shell corporations, cannot avoid the requirements of the Act by claiming the two acre exemption for himself and each subsidiary operator. OSM does not believe that Congress intended to allow miners operating under such a scheme to be exempt under Section 528(2) of the Act. *See* 119 Cong. Rec. 1357 (1973).

The determination as to the relatedness of sites will be made either by OSM, during the initial regulatory program, in states where a federal program has been implemented, and in the federal lands program, or by the state regulatory authority in states with approved permanent regulatory programs. This determination will be made by the appropriate agency, either on its own initiative or at the request of any person, and must be made within a reasonable time of receipt of such a request. The determination must be made in writing and include the right of administrative appeal. Where OSM makes the determination this right of appeal will be provided in accordance with the regulations at 43 CFR 4.1280. OSM expects that a comparable appeal right shall be provided by states with approved programs.

Third and finally, the revised regulation specifically provides that the two acre exemption does not apply to coal processing and preparation facilities. By its terms, the exemption applies only to "*the extraction of coal* for commercial purposes where the surface mining operation affects two acres or less." 30 U.S.C. 1278(a) [emphasis added]. Rather than extend the exemption to all "surface coal mining operations" as that term is defined in Section 701(28) of the Act (30 U.S.C. 1291(28)). Congress limited the scope of Section 528(2) activities involving the "extraction of coal."

As a final point, OSM notes that all operators of surface coal mining operations subject to the Act are required to pay to the Secretary of the Interior a reclamation fee as set forth in 30 CFR Part 837. If an operator is found to have violated the two acre exemption regulation and therefore is subject to the Act, OSM will assess a reclamation fee plus interest for all coal mined by the operator at the relevant site after the effective date of the Act.

Response To Public Comments

1. In the preamble to the proposed rules, (45 FR 8241 (1980)) OSM suggested four criteria for determining the relatedness of mine sites. Among these criteria was whether coal extraction operations occur along the same coal seam or seams. Several commenters complained that this factor is irrelevant because one coal seam may extend for hundreds of miles. OSM agrees with this criticism and accordingly has eliminated this criterion from the final rule.

The original proposed rules also considered whether coal extraction operations "are in such physical proximity as to suggest an intent by the operator to avoid the requirements of the Act." Commenters objected to this criterion as overly vague and OSM has decided to substitute a statewide geographic standard to address this objection.

2. One commenter asserted that inquiry into whether operations are conducted with substantially the same equipment, personnel, haul roads, or loading and processing facilities is inappropriate inasmuch as many small operators, for reasons of efficiency, share common support facilities and management. OSM has rejected this view. The "pick and shovel" standard announced by Congress for determining eligibility for the exemption is a narrow one; as noted above in the discussion of the legislative history of the Act, only a small percentage of surface mining operations properly fall within its scope. Moreover, under this revised rule the common use of such resources as equipment, roads and personnel does not necessitate a determination that the sites are related. OSM expects that the regulatory authority will look at all facets of the operations implicated by the discretionary criteria in deciding whether two or more sites are related.

3. One commenter suggested that determinations as to the relatedness of different sites should be carried out on a case by case basis and that advance criteria are unnecessary. OSM has

rejected this suggestion on the ground that uniform application of the exemption is essential. The Act requires that "competition in interstate commerce among sellers of coal produced in different States" be insured. 30 U.S.C. Section 1201(g). Unless the criteria for the exemption are applied uniformly among the States, persons conducting operations in States that construe the exemption broadly would gain a competitive advantage over operators in States that adopt a more restricted interpretation.

4. Several commenters argued that the regulations are inconsistent insofar as they exclude preparation facilities from the exemption while at the same time including haul roads in the two acre calculation. OSM's believes that the statutory language for the exemption applies only to the extraction of coal and the necessary concomitants of such extraction, including haul roads. Accordingly, the exemption is inapplicable to coal processing or other such activities subject to regulation under the Act, the purpose or need for which is unrelated to coal extraction.

Other Information

Pursuant to 43 CFR Part 14, the Department of the Interior has determined that the proposed rules are not significant and do not require a regulatory analysis. The "Determination of Significance" document prepared by OSM is available for inspection at the address indicated above.

OSM has prepared an environmental assessment on these proposed amendments. The assessment resulted in a finding that the proposed rules will not have a significant impact on the quality of the human environment so as to require the preparation of an environmental impact statement. The environmental assessment is available for inspection at the address indicated above.

The principal authors of these proposed rules are Carl Pavetto, OSM, and Mark Squillace, Office of the Solicitor.

Dated: January 15, 1981.

Jean M. Davenport,

Assistant Secretary, Energy and Minerals.

Section 700.11(b) is revised as follows:

§ 700.11 Applicability.

* * * * *

(b) The extraction of coal for commercial purposes where the surface coal mining and reclamation operation incident to the coal extraction affects two acres or less, but not any operation conducted by a person who affects or intends to affect more than two acres at related sites. All land and bodies of water affected by coal extraction, including roads and streams shall be included in the two acre calculation; *Provided, however,* That:

(1) For purposes of this paragraph, "affect" means, to act upon, to produce a material influence upon or alteration in; *Provided, however,* That the area affected shall include land or water which is located above underground mine workings;

(2) This exemption from the requirements of the Act is not available for coal loading, processing, or preparation facilities;

(3) Two or more sites shall be deemed related if the operations on those sites are conducted by the same operator, principal, or permittee during any one year period and the sites are located in the same State unless the operator affirmatively demonstrates that the sites are not related;

(4) The regulatory authority may exercise its discretion to find that any two or more sites are related if—

(A) The operations on those sites are conducted with substantially the same equipment, personnel, haul roads, loading or processing facilities; or

(B) The operations are conducted or controlled by the same person or persons in a manner which suggests that the sites involved are related; or

(C) The coal removed at such operations is owned by the same person or persons.

(5) The regulatory authority may on its own initiative, and shall, within a reasonable time after receipt of a request from any person, make a written determination that two or more sites are not related for purposes of this subsection. The regulatory authority shall make a reasonable effort to notify interested persons by mail at least ten (10) days prior to making such a determination. Prior to the time that the determination is made, any person may submit and the regulatory authority shall consider written information supporting or refuting the relatedness of sites under both the mandatory and discretionary criteria established by this subsection. Any determination made under this subsection shall state, with reasonable specificity, the information and criteria on which it is based. A copy of the determination shall be sent to all persons who submitted information to the regulatory authority or otherwise expressed an interest in the decision. Any person who is or may be adversely affected by the determination shall have the right of administrative appeal.

[FR Doc. 81-2288 Filed 1-22-81; 8:45 am]
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federal register

Friday
January 23, 1981

Part XXI

Department of the Interior

Office of Surface Mining Reclamation and Enforcement

Amendment of State Program Process

DEPARTMENT OF THE INTERIOR
Office of Surface Mining Reclamation and Enforcement
30 CFR Part 732

State Program Amendment Process

AGENCY: Office of Surface Mining Reclamation Enforcement (OSM), U.S. Department of the Interior.

ACTION: Final Rule.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement is amending the procedures of § 732.17 concerning amendment of State programs, to shorten and simplify in certain situations the State program amendment process.

DATE: This rule is effective January 23, 1981.

ADDRESSES: Written comments submitted on the proposed rule may be reviewed in Room 153, Office of Surface Mining, U.S. Department of the Interior, South Building, 1951 Constitution Avenue, NW., Washington, D.C. 20240, Monday through Friday, 8:30 a.m. to 5:00 p.m.

FOR FURTHER INFORMATION CONTACT: Carl C. Close, Assistant Director for State and Federal Programs, Office of Surface Mining, U.S. Department of the Interior, Washington, D.C. 20240, (202) 343-4225.

SUPPLEMENTARY INFORMATION:

I. Background

On March 13, 1979, the Secretary of the Interior promulgated the final rules for the permanent regulatory program under the Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. 1201 *et seq.* (SMCRA). The rules include the requirements of Section 503(a) of the Act that for a state to assume primary jurisdiction under the Act for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders it must submit its proposed permanent program to OSM for approval.

Sections 732.12, 732.13 and 732.15 of the permanent program regulations prescribe the procedures, time schedules and criteria for approval and disapproval of a proposed state program. Section 732.17 requires that amendments to the approved state program follow the same procedures as those required by §§ 732.12, 732.13 and 732.15.

On September 24, 1979, Ed Herschler personally and as Governor on behalf of the State of Wyoming petitioned OSM to modify Section 732.17 to streamline the process of amendment of approved State programs following changes in Federal requirements based on court decisions or amendments of the Act. The petition proposed that (1) the Regional Director be authorized to approve any proposed state program amendment containing analogous changes and the decision by the Regional Director be the final decision by the Department of the Interior; (2) the decision be made after notice of the proposed amendment is published in the Federal Register and the public has an opportunity to comment; and (3) the Regional Director publish his decision within 60 days from the day the proposed amendment is received and the amendment to the state program be effective the day it is approved.

On December 20, 1979, the Director, OSM granted the petition submitted by Governor Herschler. In granting the petition, the Director agreed in principle with the need to clarify 30 CFR 732.17, but indicated that he had not made a determination on how this objective could best be accomplished or what time limits should be set on actions to amend State programs.

On July 14, 1980, the Secretary published a proposed rule (45 FR 47182–47185) to amend 30 CFR 732.17 to clarify and streamline the amendment process for approved State programs.

The proposed regulation provided for:

(1) Publication of notice of receipt of an amendment by OSM within ten days;

(2) Public comment period of 30 days for the majority of all amendment requests and a minimum 15 day public comment period under certain specified conditions as required by 43 CFR Part 14;

(3) Holding public hearings on proposed amendments as necessary;

(4) Decision on amendment requests within 30 days after the close of the public comment period;

(5) A resubmission period of 30 days following the disapproval of an amendment request; and

(6) Final decision on resubmitted amendment requests within 30 days.

Under this process amendments that contain changes analogous to the Federal Act and/or regulations could be processed in two months or less. For complex amendments where public hearings are determined to be desirable the process could be expanded to the full six month maximum time. Six months was established as the maximum period for action on state program amendments to conform with Section 503(b) of SMCRA which provides that the Secretary approve or disapprove a state program within six calendar months after submission. OSM found that the proposed rule met the requirements of 43 CFR Part 14 concerning requirements for public participation.

In addition to providing a revised scheduling of the amendment review and approval process, the proposed regulation incorporated either in whole or by reference requirements of 30 CFR 732.12, 732.13 and 732.15 that are directly applicable to the amendment review process. Included in this category are provisions concerning hearing format and procedures, review by the Regional Director, review and concurrence by appropriate Federal agencies, effective dates of amendments, and criteria for amendment approval.

On August 14, 1980, a public hearing was held in Washington, D.C. to consider oral public comments on the proposed rule. The public comment period closed on August 15, 1980.

II. Public Comments on the Proposed Rule

Comments on the proposed rule were received from eight individuals and groups during the public comment period and at the public hearing on the proposed rule. Six commenters supported the overall purpose of the proposed rule. One commenter opposed adoption of the proposed rule and one commentor expressed concern about those aspects of the proposed rule that limit public review and comment on state program amendments or revised state program amendments. Specific comments and proposals for modification of the proposed rule presented by the commentors are discussed below:

1. The Appalachian Research and Defense Fund of Kentucky, Inc. (ARDFK) opposed the proposed rule because it believes it represents a process which is contrary to congressional intent that there be a uniform surface mine regulatory program in the United States. ARDFK believes the proposed rules allow a particular state to apply pressure at a local or regional level for approval of regulations or a regulatory scheme which is less stringent or in other ways not uniform with the regulatory schemes being approved or disapproved in other states. It stated that the present method for review of state programs and amendments is essential if there is going to be a uniform and fair permanent program regulatory system.

The Secretary does not agree with the commentor's contentions. The proposed rule does not in any way modify or change the criteria for approval of state regulatory programs. Amendments to state programs processed under the procedures set forth in 30 CFR 732.17 will be evaluated against the criteria established in Section 503 of SMCRA and 30 CFR 732.15 that relate to the

amendment proposed by the state. This regulation modification does not provide any changes in the standards against which state programs or amendments to state programs will be evaluated. The revised regulation only provides flexibility in the procedures for review of state program amendments. Amendment requests will vary in both scope and complexity and may range from minor wording changes in state regulations to complete revisions of all or parts of complete systems that form an approved state program. For this reason the Secretary believes that the amendment process must be flexible and provide an amendment review procedure that can be tailored to the specific amendment being considered.

2. The Environmental Policy Institute (EPI) recommended that proposed language of § 732.17(h)(2)(ii) concerning notice of the cost of copies be deleted and replaced with language comparable to the last sentence of 30 CFR 732.12(a)(1) which provides that single copies of proposed state program materials be furnished, free of charge, by the Regional Director upon request.

The Secretary agrees with the commentor's suggestion and has modified the language of § 732.17(h)(2)(ii) to provide copies of proposed state program amendments to requestors where the full text of the amendment is not included in the Federal Register.

3. EPI recommended that proposed § 732.17(h)(4) should be made fully consistent with the final amendments of 30 CFR 732.12 issued on May 20, 1980 (45 FR 33825). This section provides that public hearings shall be held no sooner than five days before the close of the public comment period and that the comment period shall end on a date following any public hearing scheduled to be held.

The Secretary agrees with the commentor's suggestion and has modified 30 CFR 732.17(h)(4) to include the revised provision.

4. EPI suggested that there should be more detailed guidelines under which the Regional Director could waive a public hearing under proposed § 732.17(h)(4). It noted that this is particularly important when the Regional Director waives a hearing on the basis of the state's hearings or meetings. In this case there is no language compelling the state to furnish the record on such hearings to the Regional Director for consideration in his or her recommendation to the Director.

The Secretary agrees that in those instances where the Regional Director determines that a public hearing will not be held on the ground that public hearings and meetings have already been held by the state, that the state regulatory authority should be obliged to provide the Regional Director a complete record of any hearings or meetings including transcripts, written presentations, exhibits and copies of all comments. 30 CFR 732.17(h)(4) has been modified to incorporate the suggested change.

5. EPI suggested that when a state program amendment is disapproved by the Director and there must be revisions to it prior to resubmittal under proposed § 732.17(h)(7), and that any revisions should be subject to public comment. Specifically, EPI recommends that there should be a public notice of the receipt of a revised amendment and a minimum public comment period of fifteen days from the date of the public notice. EPI states that the notice and public comment period could all occur within twenty days of the receipt of the submission, leaving OSM a full ten days to evaluate and act on the resubmission.

The Secretary agrees that a public comment period should be provided and has modified the language of § 732.17(h)(8) to provide it.

6. EPI also raised a question as to how OSM can realistically solicit and publicly disclose the views of Federal agencies within the limits of the review schedule outlined in proposed 30 CFR 732.17(h). The Secretary believes that Federal agency comments can be solicited and disclosed within the time frames outlined in 30 CFR 732.17(h). Amendment requests will normally focus on limited changes to an approved state program and therefore will not require that long review periods be available to Federal agencies. When amendment requests are complex the procedures of 30 CFR 732.17(h) provide longer review periods.

7. Three commentors indicated that the authority for approval of amendment requests in 30 CFR 732.17(h)(5) and (6) should be delegated to the Regional Director. Commentors were concerned that review and decision-making at the Director's level could make it impracticable to remain committed to the time schedule detailed in the proposed rule.

As indicated in the discussion of public comments on the petition (45 FR 47163), OSM has chosen not to seek a change in the delegation of authority for approval/disapproval actions on amendment requests. The Secretary does not believe that this issue will materially impact the review process and time schedule set forth in the rule.

8. One commentor suggested that 30 CFR 732.17(h)(3) should reflect that the 15 day public comment period *will* be provided where "an amendment concerns changes in State law, regulations or the procedures contained in the approved program that are analogous to changes in SMCRA and/or implementing regulations * * *." The commentor stated that it is unclear what purpose is served by granting discretion to vary from this period once the decision has been made that the change is in fact analogous. The commentor also suggested that a converse change be made to § 732.17(h)(4) by substituting "may" for "will."

It is the intent of OSM to provide a 15 day public comment period when state program amendments concern changes in State law, regulations or the procedures contained in an approved program that are analogous to changes in SMCRA or implementing regulations. However, general rulemaking procedures set forth by the Department of the Interior in 43 CFR 14 provide for a minimum public comment period 30 days (43 CFR 14.5(b)(3)(iv)). A shorter period may be used only in special cases requiring more timely action. The proposed rule was drafted to make allowance for those cases when providing a 30 day comment could be accommodated without impacting the operation of the surface coal mining regulatory program by the State regulatory authority. The Secretary has, therefore, made no change in the wording of the final rule. The clarifying wording change to 30 CFR 732.17(h)(4) suggested by the commentor has been adopted by the Secretary.

9. One commentor recommended that in determining if a public hearing should be held, another factor for consideration would be whether the amendment is analogous to changes in SMCRA and/or implementing regulations. The Secretary agrees that this factor would be a consideration in determining whether a public hearing should be held and believes that factors identified in the proposed rule would cover such amendment. The purpose of provisions for discretionary public hearings was to eliminate unnecessary hearings while still preserving any potential need for oral public comment.

10. One commentor indicated that 30 CFR 732.17(h)(9) should be modified to reflect that where the proposed state program amendment is in response to and consistent with court or legislative changes to the Act or regulations, consistency with the changed law is the appropriate criteria for approval or disapproval.

The Secretary believes that the language of the proposed regulation adequately reflects such criteria in that

court or legislative changes to SMCRA or implementing regulations would be incorporated in the sections of SMCRA and 30 CFR referenced in 30 CFR 732.15.

11. One commentor recommended that 30 CFR 732.17(h)(11) be modified to state that the decision approving or disapproving program amendments will be published in the Federal Register within 10 days after the Director's decision has been made.

The Secretary has accepted the recommendation of the commentor and has made appropriate modifications to 30 CFR 732.17(h)(11).

12. Two commentors recommended that more consideration be given to the timeframe proposed in Governor Herschler's September 19, 1979, petition and indicated that it should take OSM only 60 days for approving changes made at the state level to reflect Federal changes. One suggested that OSM approvals could be expedited by using the notice required by § 732.17(h)(1) as a means both to alert the public to the receipt of an amendment and to provide the determination by the Regional Director as to whether the amendment proposes a complex or significant change. The commentor also suggested that when it is determined that the amendment is not a complex or significant change, both the Regional Director and Director should be able to review simultaneously and concurrently approve the proposed amendment.

The regulation would allow amendment processing in 65 days premised on a Federal Register announcement within 10 days, a 15-day public comment period, a 30-day period for discussion by the Regional Director and Director and publication of the decision in the Federal Register within 10 days. A public comment period of 30 days would increase the total time to 80 days. A few days may be cut from either of the cited examples if time is saved during the Regional Director's and Director's review of Federal Register publications occur earlier.

However, because of normal lag time required by the Federal Register and time required for analysis of public comments, it is unlikely that realistic schedules of shorter duration could be developed.

The commentor also suggested that the notice of receipt be used to provide the determination of the Regional Director whether the amendment proposes a complex or significant change. The proposed rule requires that the notice announcing receipt of the state program amendment set forth the schedule for review and action on the amendment request. This action requires that a determination on both the length of comment period and a determination on hearing plans (30 CFR 732.17(h)(3) and (4)). The final point made by the commentor concerned simultaneous review by the Regional Director and Director. The proposed rule does not preclude simultaneous review and to the extent possible such a review will occur. However, until the public comment period has closed and comments have been analyzed by the Regional Director, review by the Director cannot be completed.

The Secretary, while noting the commentors suggestions, has made no change in the review schedule outlined in the proposed rule.

13. Two commentors expressed concerns about the provision in proposed 30 CFR 732.17(h)(3) which allows a shorter public comment period for changes in state law, regulations or procedures contained in the approved program that are analogous to changes in SMCRA or implementing regulations. One concern related to the belief that "analogous" would be interpreted to mean "identical to" by OSM. The Secretary does not believe that state proposals must be identical to Federal provisions to receive the benefit of the shortened review time provided in 30 CFR 732.17(h)(3). Analogous means only that provisions must be comparable or similar.

This commentor also questioned whether changes in guidelines, interpretative rules or provisions for which no Federal regulation existed could receive the benefit of any expedited review. Such changes would be considered in that the proposed rule is applicable to procedures contained in the approved program in addition to changes in state laws and regulations.

A commentor charged that the amendment to 30 CFR 732.17 makes only one small distinction between analogous and other state program amendments and that is to reduce the minimum public comment period to 15 days, rather than 30 days.

The Secretary does not agree with the commentor in that once a proposed state program amendment has been found to be "analogous" in all likelihood a public hearing would not be held and review by the Regional Director and Director could be completed more quickly than would be the case for amendments of greater complexity and scope.

The Secretary has not modified the proposed rule based on the concerns expressed by either of the commentors.

III. Action

The rule being adopted today remains largely as proposed. Changes have been made in response to public comments on the proposed rule and include:

1. Section 732.17(h)(2)(ii) has been modified to provide that requestors may upon request receive one free copy of proposed amendments to a state program from the Regional Director when the full text is not included in the Federal Register.

2. Section 732.17(h)(4) has been modified to provide that public hearings shall be held no sooner than five days before the close of the public comment period and provide that the public comment period shall end on a date following any public hearing scheduled to be held. This provision has also been modified to provide that when state regulatory authority public hearings or meetings are accepted in lieu of an OSM hearing, the state regulatory authority shall provide to the Regional Director a complete record of any hearings or meetings including transcripts, written presentations, exhibits and copies of all comments.

3. Section 732.17(h)(6) has been modified to provide for a 15 day public comment period on amendments resubmitted for approval after modification by the state regulatory authority pursuant to an initial disapproval by the Director.

4. Section 732.17(h)(11) has been modified to provide that the decision approving or disapproving program amendments will be published in the Federal Register within 10 days after the date of the Director's decision.

In all other substantive respects the final rule mirrors the rule proposed on July 14, 1980.

The rule has been made effective upon publication on the ground that it does not impose obligations upon any individual or State; rather, it clarifies and streamlines the amendment process for approved state programs. The public and states should receive the benefits of this process immediately. A later effective date is not in the public interest.

IV. Determination of Significance

The rule does not fall within any of the categories listed in 43 CFR 14.3(o). Consequently, the Department of the Interior has determined that this document is not a significant rule and does not require a regulatory analysis under Executive Order 12044 and 43 CFR Part 14.

V. Statement of Environmental Impact

The Department of the Interior has determined that this action will not have a significant effect on the human environment and an environmental

impact statement will therefore not be prepared.

VI. State of Authorship

The primary author of this document is Arthur Abbs, State Programs Division, Office of Surface Mining.

Dated: January 15, 1981.

Jean M. Davenport,

Assistant Secretary for Energy and Minerals.

Text of the Amendment

§ 732.17 [Amended]

30 CFR 732.17(f)(2) is removed. A new section 30 CFR 732.17(h) is added to read as follows:

* * * * *

(h) The following procedures, time schedules and criteria for approval and disapproval shall apply to state program amendments.

(1) Within ten days after receipt of a state program amendment from a state regulatory authority, the Regional Director will publish a notice of receipt of the amendment in the Federal Register.

(2) The Federal Register notice announcing the receipt of the amendment will indicate that the amendment(s) is being reviewed by the Regional Director and will include the following:

(i) The text or a summary of the amendment(s) proposed by the regulatory authority;

(ii) Addresses where copies of the proposed amendment(s) may be obtained if the text is not included in the Federal Register notice and that each requestor may receive, free of charge, one single copy of proposed amendment(s) from the Regional Director.

(iii) Date(s) of public comment period(s) and addresses where public comments should be directed;

(iv) Dates and locations of public hearing(s) and/or meeting(s) if public hearing(s) and/or meeting(s) are to be held; and

(v) A schedule for review and action on the amendment(s).

(3) A minimum public comment period of 30 days will be provided for each proposed state program amendment, except a 15 day public comment period may be provided where an amendment concerns changes in state law, regulations or the procedures contained in the approved program that are analogous to changes in SMCRA and/or implementing regulations: *Provided,* That the notice of receipt published in the Federal Register includes the full text of the proposed amendment: *And provided,* That all applicable provisions of 43 CFR Part 14 are compiled with.

(4) Public hearings may be provided at the discretion of the Regional Director and shall be held no sooner than five days before the close of the public comment period. The comment period shall end on a date following any public hearing scheduled to be held.

Public hearing plans will be announced in the notice of receipt of the amendment published in the Federal Register. In determining whether to hold a public hearing, the Regional Director will consider the subject of the amendment, its complexity and public hearing and meetings conducted by the state regulatory authority prior to submission of the amendment for OSM approval. When state regulatory authority public hearings or meetings are accepted in lieu of an OSM hearing, the state regulatory authority shall provide to the Regional Director a complete record of any hearings or meetings including transcripts, written presentations, exhibits and copies of all comments. Hearings shall be informal and follow legislative procedures. The format and the rules of procedure for each hearing shall be determined by the Regional Director and published in the notice required by § 732.17(h)(1).

(5) Upon the close of the public comment period, the transcript, written presentations, exhibits, and copies of all comments shall be transmitted by the Regional Director to the Director with a recommended decision from the Regional Director.

(6) Upon receipt of the Regional Director's recommendation, the Director shall consider all relevant information, including any information obtained from public hearings and comments, and shall approve or disapprove the amendment request within 30 days after the close of public comment period established in accordance with § 732.17(h)(3).

(7) If the Director disapproves the amendment request, the state regulatory authority will have 30 days after publication of the Director's decision to resubmit a revised amendment request for consideration by the Director.

(8) The Director will approve or disapprove amendment resubmissions within 30 days after receipt. There shall be a public comment period of not less than 15 days from the date of publication of the notice of receipt of the revised amendment. If the scope of the amendment has been expanded beyond that of the initial amendment request the Director may approve/disapprove portions of the initial amendment request and subject the remainder to review and approval procedures outlined in this subsection or treat the entire amendment request as a new request and initiate the review procedures of this section.

(9) The applicable criteria for approval or disapproval of state programs set forth in § 732.15 shall be utilized by the Director in approving or disapproving state program amendments.

(10) State program amendments shall not be approved until the Director has—

(i) Solicited and publicly disclosed the views of the Administrator of the Environmental Protection Agency, the Secretary of Agriculture, and the heads of other Federal agencies concerned with or having special expertise relevant to the program amendment(s) as proposed; and

(ii) Obtained written concurrence of the Administrator of the Environmental Protection Agency with respect to those aspects of a state program amendment(s) which relate to air or water quality standards promulgated under the authority of the Clean Water Act, as amended (33 U.S.C. Section 1251 *et seq.*), and the Clean Air Act, as amended (42 U.S.C. Section 7401 *et seq.*).

(11) All decisions approving or disapproving program amendments shall be published in the Federal Register and shall be effective upon publication unless the notice specifies a different effective date. The decision approving or disapproving program amendments will be published in the Federal Register within 10 days after the date of the Director's decision.

(12) The Director shall complete actions on amendment requests in accordance with the schedule developed under § 732.17(h)(2)(v); however, final action on all amendment requests must be completed within six months after receipt of the proposed amendments from the state.

(Authority for establishing procedures and criteria for approval or disapproval of State program submissions is found in Sections 102, 201(c), 501(b), 503, 505–510, 521, and 522, Pub. L. 95–87, 91 Stat. 445, 445(c), 455(b), 470, 473–488, 495, 498, 499, 501, 504, and 507 (30 U.S.C. 1202, 1211(c), 1251(b), 1253, 1255–1269, 1271, and 1272)

[FR Doc. 81-2281 Filed 1-22-81; 8:45 am]
BILLING CODE 4310-05-M

federal register

Friday
January 23, 1981

Part XXII

The President

Executive Orders 12276 through 12285 Relating to the Release of the American Hostages in Iran

V. 46 No. 1 JAN 23 80

Title 2—

The Presi

Federal Register
Vol. 46, No. 15
Friday, January 23, 1981

Presidential Documents

Title 3—

The President

Executive Order 12278 of January 19, 1981

Direction Relating to Establishment of Escrow Accounts

By the authority vested in me as President by the Constitution and statutes of the United States, including Section 203 of the International Emergency Economic Powers Act (50 U.S.C. 1702), Section 301 of Title 3 of the United States Code, Section 1732 of Title 22 of the United States Code, and Section 301 of the National Emergencies Act (50 U.S.C. 1631), in view of the continuing unusual and extraordinary threat to the national security, foreign policy and economy of the United States upon which I based my declarations of national emergency in Executive Order 12170, issued November 14, 1979, and in Executive Order 12211, issued April 17, 1980, in order to implement agreements with the Government of Iran, as reflected in Declarations of the Government of the Democratic and Popular Republic of Algeria dated January 19, 1981, relating to the release of U.S. diplomats and nationals being held as hostages and to the resolution of claims of United States nationals against Iran, and to begin the process of normalization of relations between the United States and Iran, it is hereby ordered that as of the effective date of this Order:

1–101. The Secretary of the Treasury is authorized to enter into, and to license, authorize, direct, and compel any appropriate official and/or the Federal Reserve Bank of New York, as fiscal agent of the United States, to enter into escrow or related agreements with a foreign central bank and with the Central Bank of Algeria under which certain money and other assets, as and when directed by the Secretary of the Treasury, shall be credited by the foreign central bank to an escrow account on its books in the name of the Central Bank of Algeria, for transfer to the Government of Iran if and when the Central Bank of Algeria receives from the Government of Algeria a certification that the 52 U.S. diplomats and nationals being held hostage in Iran have safely departed from Iran. Such agreements shall include other parties and terms as determined by the Secretary of the Treasury to be appropriate to carry out the purposes of this Order.

1–102. The Secretary of the Treasury is authorized to license, authorize, direct, and compel the Federal Reserve Bank of New York, as fiscal agent of the United States, to receive certain money and other assets in which Iran or its agencies, instrumentalities, or controlled entities have an interest and to hold or transfer such money and other assets, and any interest earned thereon, in such a manner as he deems necessary to fulfill the rights and obligations of the United States under the Declaration of the Government of the Democratic and Popular Republic of Algeria dated January 19, 1981, and the escrow and related agreements described in paragraph 1–101 of this Order. Such money and other assets may be held in interest-bearing form and where possible shall be invested with or through the entity holding the money or asset on the effective date of this Order.

1–103. Compliance with this Executive Order, any other Executive Order licensing, authorizing, directing or compelling the transfer of the assets referred to in paragraphs 1–101 and 1–102 of this Order, or any regulations, instructions, or directions issued thereunder shall to the extent thereof be a full acquittance and discharge for all purposes of the obligation of the person making the same. No person shall be held liable in any court for or with respect to anything done or omitted in good faith in connection with the administration of, or pursuant to and in reliance on, such orders, regulations, instructions, or directions.

1-104. The Attorney General shall seek to intervene in any litigation within the United States which arises out of this Order and shall, among other things, defend the legality of, and all actions taken pursuant to, each of its provisions.

1-105. The Secretary of the Treasury is delegated and authorized to exercise all functions vested in the President by the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*) to carry out the purposes of this Order.

1-106. This Order shall be effective immediately.

Jimmy Carter

THE WHITE HOUSE,
January 19, 1981.

[FR Doc. 81-2775
Filed 1-22-81; 9:17 am]
Billing code 3195-01-M

Presidential Documents

Executive Order 12277 of January 19, 1981

Direction To Transfer Iranian Government Assets

By the authority vested in me as President by the Constitution and statutes of the United States, including Section 203 of the International Emergency Economic Powers Act (50 U.S.C. 1702), Section 301 of Title 3 of the United States Code, Section 1732 of Title 22 of the United States Code, and Section 301 of the National Emergencies Act (50 U.S.C. 1631), in view of the continuing unusual and extraordinary threat to the national security, foreign policy and economy of the United States upon which I based my declarations of national emergency in Executive Order 12170, issued November 14, 1979, and in Executive Order 12211, issued April 17, 1980, in order to implement agreements with the Government of Iran, as reflected in Declarations of the Government of the Democratic and Popular Republic of Algeria dated January 19, 1981, relating to the release of U.S. diplomats and nationals being held as hostages and to the resolution of claims of United States nationals against Iran, and to begin the process of normalization of relations between the United States and Iran and in which Iran and the United States instruct and require that the assets described in this order shall be transferred as set forth below by the holders of such assets, it is hereby ordered that as of the effective date of this Order:

1-101. The Federal Reserve Bank of New York is licensed, authorized, directed, and compelled to transfer to accounts at the Bank of England, and subsequently to transfer to accounts at the Bank of England established pursuant to an escrow agreement approved by the Secretary of the Treasury, all gold bullion, and other assets (or the equivalent thereof) in its custody, of the Government of Iran, or its agencies, instrumentalities or controlled entities. Such transfers shall be executed when and in the manner directed by the Secretary of the Treasury. The Secretary of the Treasury is also authorized to license, authorize, direct, and compel the Federal Reserve Bank of New York to engage in whatever further transactions he deems appropriate and consistent with the purposes of this Order, including any transactions related to the return of such bullion and other assets pursuant to the escrow agreement.

1-102. (a) All licenses and authorizations for acquiring or exercising any right, power, or privilege, by court order, attachment, or otherwise, including the license contained in Section 535.504 of the Iranian Assets Control Regulations, with respect to the properties described in Section 1-101 of this Order are revoked and withdrawn.

(b) All rights, powers, and privileges relating to the properties described in section 1-101 of this Order and which derive from any attachment, injunction, other like proceedings or process, or other action in any litigation after November 14, 1979, at 8:10 a.m. EST, including those derived from Section 535.504 of the Iranian Assets Control Regulations, other than rights, powers, and privileges of the Government of Iran and its agencies, instrumentalities, and controlled entities, whether acquired by court order or otherwise, are nullified, and all persons claiming any such right, power, or privilege are hereafter barred from exercising the same.

(c) All persons subject to the jurisdiction of the United States are prohibited from acquiring or exercising any right, power, or privilege, whether by court order or otherwise, with respect to the properties (and any income earned thereon) referred to in Section 1-101 of this Order.

1-103. Compliance with this Order, any other Executive Order licensing, authorizing, directing, or compelling the transfer of the assets described in

section 1–101 of this Order, or any regulations, instructions, or directions issued thereunder shall to the extent thereof be a full acquittance and discharge for all purposes of the obligation of the person making the same. No person shall be held liable in any court for or with respect to anything done or omitted in good faith in connection with the administration of, or pursuant to and in reliance on, such orders, regulations, instructions, or directions.

1–104. The Attorney General shall seek to intervene in any litigation within the United States which arises out of this Order and shall, among other things, defend the legality of, and all actions taken pursuant to, each of its provisions.

1–105. The Secretary of the Treasury is delegated and authorized to exercise all functions vested in the President by the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*) to carry out the purposes of this Order.

1–106. This Order shall be effective immediately.

Jimmy Carter

THE WHITE HOUSE,
January 19, 1981.

[FR Doc. 81-2776
Filed 1-22-81; 9:18 am]
Billing code 3195-01-M

Presidential Documents

Executive Order 12278 of January 19, 1981

Direction To Transfer Iranian Government Assets Overseas

By the authority vested in me as President by the Constitution and statutes of the United States, including Section 203 of the International Emergency Economic Powers Act (50 U.S.C. 1702), Section 301 of Title 3 of the United States Code, Section 1732 of Title 22 of the United States Code, and Section 301 of the National Emergencies Act (50 U.S.C. 1631), in view of the continuing unusual and extraordinary threat to the national security, foreign policy and economy of the United States upon which I based my declarations of national emergency in Executive Order 12170, issued November 14, 1979, and in Executive Order 12211, issued April 17, 1980, in order to implement agreements with the Government of Iran, as reflected in Declarations of the Government of the Democratic and Popular Republic of Algeria dated January 19, 1981, relating to the release of U.S. diplomats and nationals being held as hostages and to the resolution of claims of United States nationals against Iran, and to begin the process of normalization of relations between the United States and Iran and in which Iran and the United States instruct and require that the assets described in this Order shall be transferred as set forth below by the holders of such assets, it is hereby ordered that as of the effective date of this Order:

1–101. Any branch or office of a United States bank or subsidiary thereof, which branch or office is located outside the territory of the United States and which on or after 8:10 a.m. E.S.T. on November 14, 1979 (a) has been or is in possession of funds or securities legally or beneficially owned by the Government of Iran or its agencies, instrumentalities, or controlled entities, or (b) has carried or is carrying on its books deposits standing to the credit of or beneficially owned by such Government, agencies, instrumentalities, or controlled entities, is licensed, authorized, directed, and compelled to transfer such funds, securities, and deposits, including interest from November 14, 1979, at commercially reasonable rates, to the account of the Federal Reserve Bank of New York at the Bank of England, to be held or transferred as directed by the Secretary of the Treasury. The Secretary of the Treasury shall determine when the transfers required by this section shall take place. The funds, securities and deposits described in this section shall be further transferred as provided for in the Declaration of the Government of the Democratic and Popular Republic of Algeria and its Annex.

1–102. Any banking institution subject to the jurisdiction of the United States that has executed a set-off on or after November 14, 1979, at 8:10 a.m. E.S.T. against Iranian funds, securities, authorized, directed, and compelled to cancel such set-off and to transfer all funds, securities, and deposits which have been subject to such set-off, or deposits referred to in section 1–101 is hereby licensed, including interest from November 14, 1979, at commercially reasonable rates, pursuant to the provisions of section 1–101 of this Order.

1–103. If the funds, securities, and deposits described in section 1–101 are not promptly transferred to the control of the Government of Iran, such funds, securities, and deposits shall be returned to the banking institutions holding them on the effective date of this Order and the set-offs described in section 1–102 shall be in force as if this Order had not been issued and the status of all such funds, securities, deposits and set-offs shall be *status quo ante*.

1–104. (a) All licenses and authorizations for acquiring or exercising any right, power, or privilege, by court order, attachment, or otherwise, including the license contained in Section 535.504 of the Iranian Assets Control Regulations,

with respect to the properties described in Sections 1–101 and 1–102 of this Order are revoked and withdrawn.

(b) All rights, powers, and privileges relating to the properties described in Sections 1–101 and 1–102 of this Order and which derive from any attachment, injunction, other like proceedings or process, or other action in any litigation after November 14, 1979, at 8:10 a.m. E.S.T., including those derived from Section 535.504 of the Iranian Assets Control Regulations, other than rights, powers, and privileges of the Government of Iran and its agencies, instrumentalities, and controlled entities, whether acquired by court order or otherwise, are nullified, and all persons claiming any such right, power, or privilege are hereafter barred from exercising the same.

(c) All persons subject to the jurisdiction of the United States are prohibited from acquiring or exercising any right, power, or privilege, whether by court order or otherwise, with respect to the properties (and any income earned thereon) referred to in Sections 1–101 and 1–102 of this Order.

1–105. Compliance with this Order, any other Executive Order licensing, authorizing, directing, or compelling the transfer of the assets described in Sections 1–101 and 1–102 of this Order, or any regulations, instructions, or directions issued thereunder shall to the extent thereof be a full acquittance and discharge for all purposes of the obligation of the person making the same. No person shall be held liable in any court for or with respect to anything done or omitted in good faith in connection with the administration of, or pursuant to and in reliance on, such orders, regulations, instructions, or directions.

1–106. The Attorney General shall seek to intervene in any litigation within the United States which arises out of this Order and shall, among other things, defend the legality of, and all actions taken pursuant to, each of its provisions.

1–107. The Secretary of the Treasury is delegated and authorized to exercise all functions vested in the President by the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*) to carry out the purposes of this Order.

1–108. This Order shall be effective immediately.

Jimmy Carter

THE WHITE HOUSE,
January 19, 1981.

[FR Doc. 81-2777
Filed 1-22-81; 8:10 am]
Billing code 3195-01-M

Presidential Documents

Executive Order 12279 of January 19, 1981

Direction To Transfer Iranian Government Assets Held by Domestic Banks

By the authority vested in me as President by the Constitution and statutes of the United States, including Section 203 of the International Emergency Economic Powers Act (50 U.S.C. 1702), Section 301 of Title 22 of the United States Code, Section 1732 of 3 Title 22 of the United States Code, and Section 301 of the National Emergencies Act (50 U.S.C. 1631), in view of the continuing unusual and extraordinary threat to the national security, foreign policy and economy of the United States upon which I based my declarations of national emergency in Executive Order 12170, issued November 14, 1979, and in Executive Order 12211, issued April 17, 1980, in order to implement agreements with the Government of Iran, as reflected in Declarations of the Government of the Democratic and Popular Republic of Algeria dated January 19, 1981, relating to the release of U.S. diplomats and nationals being held as hostages and to the resolution of claims of United States nationals against Iran, and to begin the process of normalization of relations between the United States and Iran and in which Iran and the United States instruct and require that the assets described in this Order shall be transferred as set forth below by the holders of such assets, it is hereby ordered that as of the effective date of this Order:

1-101. Any branch or office of a banking institution subject to the jurisdiction of the United States, which branch or office is located within the United States and is, on the effective date, either (a) in possession of funds or securities legally or beneficially owned by the Government of Iran or its agencies, instrumentalities, or controlled entities, or (b) carrying on its books deposits standing to the credit of or beneficially owned by such Government, agencies, instrumentalities, or controlled entities is licensed, authorized, directed and compelled to transfer such funds, securities, and deposits, including interest from November 14, 1979, at commercially reasonable rates, to the Federal Reserve Bank of New York, to be held or transferred as directed by the Secretary of the Treasury.

1-102. (a) All licenses and authorizations for acquiring or exercising any right, power, or privilege, by court order, attachment, or otherwise, including the license contained in Section 535.504 of the Iranian Assets Control Regulations, with respect to the properties described in Section 1-101 of this Order are revoked and withdrawn.

(b) All rights, powers, and privileges relating to the properties described in section 1-101 of this Order and which derive from any attachment, injunction, other like proceedings or process, or other action in any litigation after November 14, 1979, at 8:10 a.m. EST, including those derived from Section 535.504 of the Iranian Assets Control Regulations, other than rights, powers, and privileges of the Government of Iran and its agencies, instrumentalities, and controlled entities, whether acquired by court order or otherwise, are nullified, and all persons claiming any such right, power, or privilege are hereafter barred from exercising the same.

(c) All persons subject to the jurisdiction of the United States are prohibited from acquiring or exercising any right, power, or privilege whether by court order or otherwise, with respect to the properties (and any income earned thereon) referred to in Section 1-101 of this Order.

1–103. Compliance with this Order, any other Executive Order licensing, authorizing, directing or compelling the transfer of the assets described in section 1–101 of this Order, or any regulations, instructions, or directions issued thereunder shall to the extent thereof be a full acquittance and discharge for all purposes of the obligation of the person making the same. No person shall be held liable in any court for or with respect to anything done or omitted in good faith in connection with the administration of, or pursuant to and in reliance on, such orders, regulations, instructions, or directions.

1–104. The Attorney General shall seek to intervene in any litigation within the United States which arises out of this Order and shall, among other things, defend the legality of, and all actions taken pursuant to, each of its provisions.

1–105. The Secretary of the Treasury is delegated and authorized to exercise all functions vested in the President by the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*) to carry out the purposes of this Order.

1–106. This Order shall be effective immediately.

Jimmy Carter

THE WHITE HOUSE,
January 19, 1981.

[FR Doc. 81-2776
Filed 1-23-81; 9:21 am
Billing code 3195-01-M

Presidential Documents

Executive Order 12280 of January 19, 1981

Direction To Transfer Iranian Government Financial Assets Held by Non-Banking Institutions

By the authority vested in me as President by the Constitution and statutes of the United States, including Section 203 of the International Emergency Economic Powers Act (50 U.S.C. 1702), Section 301 of Title 3 of the United States Code, Section 1732 of Title 22 of the United States Code, and Section 301 of the National Emergencies Act (50 U.S.C. 1631), in view of the continuing unusual and extraordinary threat to the national security, foreign policy and economy of the United States upon which I based my declarations of national emergency in Executive Order 12170, issued November 14, 1979, and in Executive Order 12211, issued April 17, 1980, in order to implement agreements with the Government of Iran, as reflected in Declarations of the Government of the Democratic and Popular Republic of Algeria dated January 19, 1981, relating to the release of U.S. diplomats and nationals being held as hostages and to the resolution of claims of United States nationals against Iran, and to begin the process of normalization of relations between the United States and Iran and in which Iran and the United States instruct and require that the assets described in this Order shall be transferred as set forth below by the holders of such assets, it is hereby ordered that as of the effective date of this Order:

1–101. Any person subject to the jurisdiction of the United States which is not a banking institution and is on the effective date in possession or control of funds or securities of Iran or its agencies, instrumentalities, or controlled entities is licensed, authorized, directed and compelled to transfer such funds or securities to the Federal Reserve Bank of New York to be held or transferred as directed by the Secretary of the Treasury.

1–102. (a) All licenses and authorizations for acquiring or exercising any right, power, or privilege, by court order, attachment, or otherwise, including the license contained in Section 535.504 of the Iranian Assets Control Regulations, with respect to the properties described in Section 1–101 of this Order are revoked and withdrawn.

(b) All rights, powers, and privileges relating to the properties described in section 1–101 of this Order and which derive from any attachment, injunction, other like proceedings or process, or other action in any litigation after November 14, 1979, at 8:10 a.m. EST, including those derived from Section 535.504 of the Iranian Assets Control Regulations, other than rights, powers, and privileges of the Government of Iran and its agencies, instrumentalities, and controlled entities, whether acquired by court order or otherwise, are nullified, and all persons claiming any such right, power, or privilege are hereafter barred from exercising the same.

(c) All persons subject to the jurisdiction of the United States are prohibited from acquiring or exercising any right, power, or privilege, whether by court order or otherwise, with respect to the properties (and any income earned thereon) referred to in Section 1–101 of this Order.

1–103. Compliance with this Executive Order, any other Executive Order licensing, authorizing, directing or compelling the transfer of the assets described in paragraph 1–101 of this Order, or any regulations, instructions, or directions issued thereunder shall to the extent thereof be a full acquittance and discharge for all purposes of the obligation of the person making the same. No person shall be held liable in any court for or with respect to

anything done or omitted in good faith in connection with the administration of, or pursuant to and in reliance on, such orders, regulations, instructions, or directions.

1–104. The Attorney General shall seek to intervene in any litigation within the United States which arises out of this Order and shall, among other things, defend the legality of and all actions taken pursuant to, each of its provisions.

1–105. The Secretary of the Treasury is delegated and authorized to exercise all functions vested in the President by the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*) to carry out the purposes of this Order.

1–106. This Order shall be effective immediately.

Jimmy Carter

THE WHITE HOUSE,
January 19, 1981.

[FR Doc. 81-2779
Filed 1-22-81; 9:22 am]
Billing code 3195-01-M

Presidential Documents

Executive Order 12281 of January 19, 1981

Direction To Transfer Certain Iranian Government Assets

By the authority vested in me as President by the Constitution and statutes of the United States, including Section 203 of the International Emergency Economic Powers Act (50 U.S.C. 1702), Section 301 of Title 3 of the United States Code, Section 1732 of Title 22 of the United States Code, and Section 301 of the National Emergencies Act (50 U.S.C. 1631), in view of the continuing unusual and extraordinary threat to the national security, foreign policy and economy of the United States upon which I based my declarations of national emergency in Executive Order 12170, issued November 14, 1979, and in Executive Order 12211, issued April 17, 1980, in order to implement agreements with the Government of Iran, as reflected in Declarations of the Government of the Democratic and Popular Republic of Algeria dated January 19, 1981, relating to the release of U.S. diplomats and nationals being held as hostages and to the resolution of claims of United States nationals against Iran, and to begin the process of normalization of relations between the United States and Iran and in which Iran and the United States instruct and require that the assets described in this Order shall be transferred as set forth below by the holders of such assets, it is hereby ordered that as of the effective date of this Order:

1–101. All persons subject to the jurisdiction of the United States in possession or control of properties, not including funds and securities, owned by Iran or its agencies, instrumentalities, or controlled entities are licensed, authorized, directed and compelled to transfer such properties, as directed after the effective date of this Order by the Government of Iran, acting through its authorized agent. Except where specifically stated, this license, authorization, and direction does not relieve persons subject to the jurisdiction of the United States from existing legal requirements other than those based upon the International Emergency Economic Powers Act.

1–102. (a) All licenses and authorizations for acquiring or exercising any right, power, or privilege, by court order, attachment, or otherwise, including the license contained in Section 535.504 of the Iranian Assets Control Regulations, with respect to the properties described in Section 1–101 of this Order are revoked and withdrawn.

(b) All rights, powers, and privileges relating to the properties described in section 1–101 of this Order and which derive from any attachment, injunction, other like proceedings or process, or other action in any litigation after November 14, 1979, at 8:10 a.m. EST, including those derived from Section 535.504 of the Iranian Assets Control Regulations, other than rights, powers, and privileges of the Government of Iran and its agencies, instrumentalities, and controlled entities, whether acquired by court order or otherwise, are nullified, and all persons claiming any such right, power, or privilege are hereafter barred from exercising the same.

(c) All persons subject to the jurisdiction of the United States are prohibited from acquiring or exercising any right, power, or privilege, whether by court order or otherwise, with respect to the properties (and any income earned thereon) referred to in Section 1–101 of this Order.

1–103. Compliance with this Executive Order, any other Executive Order licensing, authorizing, directing or compelling the transfer of the assets described in paragraph 1–101 of this Order, or any regulations, instructions, or directions issued thereunder shall to the extent thereof be a full acquittance and discharge for all purposes of the obligation of the person making the

same. No person shall be held liable in any court for or with respect to anything done or omitted in good faith in connection with the administration of, or pursuant to and in reliance on, such orders, regulations, instructions, or directions.

1–104. The Attorney General shall seek to intervene in any litigation within the United States which arises out of this Order and shall, among other things, defend the legality of, and all actions taken pursuant to, each of its provisions.

1–105. The Secretary of the Treasury is delegated and authorized to exercise all functions vested in the President by the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*) to carry out the purposes of this Order.

1–106. This Order shall be effective immediately.

THE WHITE HOUSE,
January 19, 1981.

[FR Doc. 81-2780
Filed 1-23-81; 9:23 am
Billing code 3195-01-M

Presidential Documents

Executive Order 12282 of January 19, 1981

Revocation of Prohibitions Against Transactions Involving Iran

By the authority vested in me as President by the Constitution and statutes of the United States, including Section 203 of the International Emergency Economic Powers Act (50 U.S.C. 1702), Section 301 of Title 3 of the United States Code, Section 1732 of Title 22 of the United States Code, and Section 301 of the National Emergencies Act (50 U.S.C. 1631), in view of the continuing unusual and extraordinary threat to the national security, foreign policy and economy of the United States upon which I based my declarations of national emergency in Executive Order 12170, issued November 14, 1979, and in Executive Order 12211, issued April 17, 1980, in order to implement agreements with the Government of Iran, as reflected in Declarations of the Government of the Democratic and Popular Republic of Algeria dated January 19, 1981, relating to the release of U.S. diplomats and nationals being held as hostage and to the resolution of claims of United States nationals against Iran, and to begin the process of normalization of relations between the United States and Iran, it is hereby ordered that as of the effective date of this Order:

1–101. The prohibitions contained in Executive Order 12205 of April 7, 1980, and Executive Order 12211 of April 17, 1980, and Proclamation 4702 of November 12, 1979, are hereby revoked.

1–102. The Secretary of the Treasury is delegated and authorized to exercise all functions vested in the President by the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*) to carry out the purpose of this Order.

1–103. This Order shall be effective immediately.

Jimmy Carter

THE WHITE HOUSE,
January 19, 1981.

[FR Doc. 81-2781
Filed 1-22-81; 8:51 am]
Billing code 3195-01-M

[FR Doc. 81-2782
Filed 1-22-81; 8:
Billing code 3195-

Presidential Documents

Executive Order 12283 of January 19, 1981

Non-Prosecution of Claims of Hostages and for Actions at the United States Embassy and Elsewhere

By the authority vested in me as President by the Constitution and statutes of the United States, including Section 203 of the International Emergency Economic Powers Act (50 U.S.C. 1702), Section 301 of Title 3 of the United States Code, Section 1732 of Title 22 of the United States Code, and Section 301 of the National Emergencies Act (50 U.S.C. 1631), in view of the continuing unusual and extraordinary threat to the national security, foreign policy and economy of the United States upon which I based my declarations of national emergency in Executive Order 12170, issued November 14, 1979, and in Executive Order 12211, issued April 17, 1980, in order to implement agreements with the Government of Iran, as reflected in Declarations of the Government of the Democratic and Popular Republic of Algeria dated January 19, 1981, relating to the release of U.S. diplomats and nationals being held as hostages and to the resolution of claims of United States nationals against Iran, and to begin the process of normalization of relations between the United States and Iran, it is hereby ordered that as of the effective date of this Order:

1–101. The Secretary of the Treasury shall promulgate regulations: (a) prohibiting any person subject to U.S. jurisdiction from prosecuting in any court within the United States or elsewhere any claim against the Government of Iran arising out of events occurring before the date of this Order relating to (1) the seizure of the hostages on November 4, 1979, (2) their subsequent detention, (3) injury to United States property or property of United States nationals within the United States Embassy compound in Tehran after November 3, 1979, or (4) injury to United States nationals or their property as a result of popular movements in the course of the Islamic Revolution in Iran which were not an act of the Government of Iran; (b) prohibiting any person not a U.S. national from prosecuting any such claim in any court within the United States; (c) ordering the termination of any previously instituted judicial proceedings based upon such claims; and (d) prohibiting the enforcement of any judicial order issued in the course of such proceedings.

1–102. The Attorney General of the United States is authorized and directed, immediately upon the issuance of regulations in accordance with Section 1–101, to take all appropriate measures to notify all appropriate courts of the existence of this Order and implementing regulations and the resulting termination of litigation.

1–103. The Secretary of the Treasury is delegated and authorized to exercise all functions vested in the President by the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*) to carry out the purpose of this Order.

1–104. This Order shall be effective immediately.

THE WHITE HOUSE,
January 19, 1981.

Jimmy Carter

[FR Doc. 81-2782
Filed 1-22-81; 9:25 am]
Billing code 3195-01-M

Presidential Documents

Executive Order 12284 of January 19, 1981

Restrictions on the Transfer of Property of the Former Shah of Iran

By the authority vested in me as President by the Constitution and statutes of the United States, including Section 203 of the International Emergency Economic Powers Act (50 U.S.C. 1702), Section 301 of Title 3 of the United States Code, Section 1732 of Title 22 of the United States Code, and Section 301 of the National Emergencies Act (50 U.S.C. 1631), in view of the continuing unusual and extraordinary threat to the national security, foreign policy and economy of the United States upon which I based my declarations of national emergency in Executive Order 12170, issued November 14, 1979, and in Executive Order 12211, issued April 17, 1980, in order to implement agreements with the Government of Iran, as reflected in Declarations of the Government of the Democratic and Popular Republic of Algeria dated January 19, 1981, relating to the release of U.S. diplomats and nationals being held as hostages and to the resolution of claims of United States nationals against Iran, and to begin the process of normalization of relations between the United States and Iran, it is hereby ordered that as of the effective date of this Order:

1–101. For the purpose of protecting the rights of litigants in courts within the United States, all property and assets located in the United States within the control of the estate of Mohammad Reza Pahlavi, the former Shah of Iran, or any close relative of the former Shah served as a defendant in litigation in such courts brought by Iran seeking the return of property alleged to belong to Iran, is hereby blocked as to each such estate or person until all such litigation against such estate or person is finally terminated.

1–102. The Secretary of the Treasury is authorized and directed (a) to promulgate regulations requiring all persons who are subject to the jurisdiction of the United States and who, as of November 3, 1979, or as of this date, have actual or constructive possession of property of the kind described in Section 1–101, or knowledge of such possession by others, to report such possession or knowledge thereof, to the Secretary of the Treasury in accordance with such regulations and (b) to make available to the Government of Iran or its designated agents all identifying information derived from such reports to the fullest extent permitted by law. Such reports shall be required as to all individuals described in 1–101 and shall be required to be filed within 30 days after publication of a notice in the Federal Register.

1–103. The Secretary of the Treasury is authorized and directed (a) to require all agencies within the Executive Branch of the United States Government to deliver to the Secretary all official financial books and records which serve to identify any property of the kind described in Section 1–101 of this Order, and (b) to make available to the Government of Iran or its designated agents all identifying information derived from such books and records to the fullest extent permitted by law.

1–104. The Attorney General of the United States having advised the President of his opinion that no claim on behalf of the Government of Iran for recovery of property of the kind described in Section 1–101 of this Order should be considered legally barred either by sovereign immunity principles or by the act of state doctrine, the Attorney General is authorized and directed to prepare, and upon the request of counsel representing the Government of Iran to present to the appropriate court or courts within the United States, suggestions of interest reflecting that such is the position of the United States, and

that it is also the position of the United States that Iranian decrees and judgments relating to the assets of the former Shah and the persons described in Section 1–101 should be enforced by such courts in accordance with United States law.

1–105. The Secretary of the Treasury is delegated and authorized to exercise all functions vested in the President by the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*) to carry out the purposes of this Order.

1–106. This Order shall be effective immediately.

Jimmy Carter

THE WHITE HOUSE,
January 19, 1981.

[FR Doc. 81-2783
Filed 1-22-81; 8:28 am]
Billing code 3195-01-M

Presidential Documents

Executive Order 12285 of January 19, 1981

President's Commission on Hostage Compensation

By the authority vested in me by the Constitution and statutes of the United States of America, and as President of the United States of America, in accordance with the Federal Advisory Committee Act, as amended (5 U.S.C. App. I), it is hereby ordered as follows:

1-1. *Establishment.*

1-101. There is established the President's Commission on Hostage Compensation, hereinafter referred to as the Commission, which shall be composed of not more than nine members who shall be appointed by the President.

1-102. The President shall designate a Chairman from among the members.

1-2. *Functions.*

1-201. The Commission shall study and analyze, and make recommendations to the President on, the question whether the United States should provide financial compensation to United States nationals who have been held in captivity outside the United States, either (1) by or with the approval of a foreign government, or (2) by reason of their status as employees of the United States Government or as dependents of such employees.

1-202. The Commission shall submit a report to the President ninety days after the date of this Order. The report shall contain the Commission's recommendations as to whether legislation to deal with the foregoing compensation issue is appropriate and, if so, as to what such legislation should provide. The report shall specifically contain the Commission's recommendations concerning the compensation of United States nationals held hostage in Iran on and after November 4, 1979.

1-203. In analyzing the foregoing issues the Commission shall consider all factors which it may consider relevant, including the prior practice with respect to governmental compensation, both by the United States Government and by foreign governments, of persons held in captivity abroad.

1-204. In the performance of its functions the Commission shall specifically address the following issues:

(a) whether any legislation authorizing compensation should set forth specific legislative standards, or whether the standards by which to award compensation should be administratively developed;

(b) whether any standards developed either legislatively or administratively should be applied uniformly to civilian and military government employees, dependents of such employees, and private citizens, or whether separate criteria should be developed for these or other categories;

(c) whether an existing administrative body should determine amounts of compensation, or whether a new body should be established for this purpose; and

(d) whether compensation should be paid for injuries suffered by members of families of persons who have been held in captivity.

1-3. *Administrative Provisions.*

1-301. In performing its functions the Commission shall conduct such studies, reviews, and inquiries as may be necessary. In addition to conducting open meetings in accordance with the Federal Advisory Committee Act, the Com-

mission shall conduct public hearings to identify critical issues and possible solutions related to compensation.

1–302. The Commission is authorized to request from any Executive agency such information that may be deemed necessary to carry out its functions under this Order. Each Executive agency shall, to the extent permitted by law, furnish such information to the Commission in the performance of its functions under this Order.

1–303. Each member of the Commission who is not otherwise employed in the Federal Government may receive, to the extent permitted by law, compensation for each day he or she is engaged in the work of the Commission at a rate not to exceed the maximum daily rate now or hereafter prescribed by law for GS–18 of the General Schedule, and may also receive transportation and travel expenses, including per diem in lieu of subsistence, as authorized by law (5 U.S.C. 5702 and 5703).

1–304. All necessary administrative staff services, support, facilities, and expenses of the Commission shall, to the extent permitted by law, be furnished by the Department of State.

1–4. *General Provisions.*

1–401. Notwithstanding the provisions of any other Executive Order, the functions of the President under the Federal Advisory Committee Act, as amended (5 U.S.C. App. I), except that of reporting annually to the Congress, which are applicable to the Commission, shall be performed by the Secretary of State in accordance with guidelines and procedures established by the Administrator of General Services.

1–402. The Commission shall terminate thirty days after submitting its report.

Jimmy Carter

THE WHITE HOUSE,
January 19, 1981.

[FR Doc. 81-2784
Filed 1-22-81; 9:27 am]
Billing code 3195-01-M

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